Subtitle A—Income Taxes

Chapter
1. Normal taxes and surtaxes.
2. Tax on self-employment income.
2A. Unearned income Medicare contribution.
3. Withholding of tax on nonresident aliens and foreign corporations.
4. Taxes to enforce reporting on certain foreign accounts.
[5. Repealed.]
6. Consolidated returns.

AMENDMENTS

2010—Pub. L. 111–152, title I, §1402(a)(3), Mar. 30, 2010, 124 Stat. 1062, which directed amendment of the ''table of chapters for subtitle A of chapter 1 of the Internal Revenue Code of 1986'' by adding item for chapter 2A, was executed by adding item for chapter 2A to the table of chapters for this subtitle to reflect the probable intent of Congress.

Pub. L. 111–147, title V, §501(c)(8), Mar. 18, 2010, 124 Stat. 106, which directed amendment of the ''table of chapters of the Internal Revenue Code of 1986'' by adding item for chapter 4 ''at the end'', was executed by adding item for chapter 4 after item for chapter 3 in the table of chapters for this subtitle to reflect the probable intent of Congress.

1997—Pub. L. 105–34, title XI, §1131(c)(4), Aug. 5, 1997, 111 Stat. 980, struck out item for chapter 5 ''Tax on transfers to avoid income tax''.

1990—Pub. L. 101–508, title XI, §11801(b)(11), Nov. 5, 1990, 104 Stat. 1388–522, struck out item for chapter 4 ''Rules applicable to recovery of excessive profits on government contracts''.

1984—Pub. L. 98–369, div. A, title IV, §474(r)(29)(D), July 18, 1984, 98 Stat. 844, struck out ''and tax-free covenant bonds'' at end of item for chapter 3.

CHAPTER 1—NORMAL TAXES AND SURTAXES

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[1] Section numbers editorially supplied.

[2] So in original. Probably should follow item for subchapter Q.

AMENDMENTS

2005—Pub. L. 109–135, title I, §101(b)(4), Dec. 21, 2005, 119 Stat. 2593, substituted ''Short-Term Regional Benefits'' for ''New York Liberty Zone Benefits'' in subchapter Y.

2004—Pub. L. 108–357, title II, §248(b)(2), Oct. 22, 2004, 118 Stat. 1457, added subchapter R.

2002—Pub. L. 107–147, title III, §301(c), Mar. 9, 2002, 116 Stat. 40, added subchapter Y.

2000—Pub. L. 106–554, §1(a)(7) [title I, §101(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–600, added subchapter X.

1997—Pub. L. 105–34, title VII, §701(c), Aug. 5, 1997, 111 Stat. 869, added subchapter W.

1993—Pub. L. 103–66, title XIII, §13301(b), Aug. 10, 1993, 107 Stat. 555, added subchapter U.

1986—Pub. L. 99–514, title XIII, §1303(c)(1), Oct. 22, 1986, 100 Stat. 2658, struck out subchapter U ''General stock ownership plans''.

1982—Pub. L. 97–354, §5(b), Oct. 19, 1982, 96 Stat. 1697, substituted in subchapter S ''Tax treatment of S corporations and their shareholders'' for ''Election of certain small business corporations as to taxable status''.

1980—Pub. L. 96–589, §3(a)(2), Dec. 24, 1980, 94 Stat. 3400, added subchapter V.

1978—Pub. L. 95–600, title VI, §601(c)(1), Nov. 6, 1978, 92 Stat. 2897, added subchapter U.

1966—Pub. L. 89–389, §4(b)(2), Apr. 14, 1966, 80 Stat. 116, struck out subchapter R effective January 1, 1969.

1962—Pub. L. 87–834, §17(b)(4), Oct. 16, 1962, 76 Stat. 1051, added subchapter T.

1960—Pub. L. 86–779, §10(c), Sept. 14, 1960, 74 Stat. 1009, added to subchapter M heading ''and real estate investment trusts''.

1958—Pub. L. 85–866, title I, §64(d)(1), Sept. 2, 1958, 72 Stat. 1656, added subchapter S.

Subchapter A—Determination of Tax Liability

Part
I. Tax on individuals.
II. Tax on corporations.
III. Changes in rates during a taxable year.
IV. Credits against tax.
[V. Repealed.]
VI. Minimum tax for tax preferences.[1]
VII. Environmental tax.
[VIII. Repealed.]

AMENDMENTS

1989—Pub. L. 101–234, title I, §102(a), Dec. 13, 1989, 103 Stat. 1980, repealed Pub. L. 100–360, §111, and provided that the provisions of law amended by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

1988—Pub. L. 100–360, title I, §111(c), July 1, 1988, 102 Stat. 697, added part VIII ''Supplemental medicare premium''.

1986—Pub. L. 99–499, title V, §516(b)(5), Oct. 17, 1986, 100 Stat. 1771, added part VII.

1976—Pub. L. 94–455, title XIX, §1901(b)(2), Oct. 4, 1976, 90 Stat. 1792, struck out part V ''Tax surcharge''.

1969—Pub. L. 91–172, title III, §301(b)(1), Dec. 30, 1969, 83 Stat. 585, added part VI.

1968—Pub. L. 90–364, title I, §102(d), June 28, 1968, 82 Stat. 259, added part V.

PART I—TAX ON INDIVIDUALS

Sec.
1. Tax imposed.
2. Definitions and special rules.
3. Tax tables for individuals having taxable income of less than $20,000.[1]

[1] Part heading amended by Pub. L. 99–514 without corresponding amendment of analysis.

[1] Section catchline amended by Pub. L. 95–30 without corresponding amendment of analysis.

[4. Repealed.]
5. Cross references relating to tax on individuals.

AMENDMENTS

1976—Pub. L. 94–455, title V, § 501(c)(1), Oct. 4, 1976, 90 Stat. 1559, substituted ''Tax tables for individuals having taxable income of less than $20,000'' for ''Optional tax tables for individuals'' in item 3 and struck out item 4 relating to rules for optional tax.

1969—Pub. L. 91–172, title VIII, § 803(d)(9), Dec. 30, 1969, 83 Stat. 685, substituted ''Definitions and special rules'' and ''Optional tax tables for individuals'' for ''Tax in case of joint return or return of surviving spouse'' and ''Optional tax if adjusted gross income is less than $5,000'' in items 2 and 3, respectively.

§ 1. Tax imposed

(a) Married individuals filing joint returns and surviving spouses

There is hereby imposed on the taxable income of—

(1) every married individual (as defined in section 7703) who makes a single return jointly with his spouse under section 6013, and

(2) every surviving spouse (as defined in section 2(a)),

a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over $36,900	15% of taxable income.
Over $36,900 but not over $89,150.	$5,535, plus 28% of the excess over $36,900.
Over $89,150 but not over $140,000.	$20,165, plus 31% of the excess over $89,150.
Over $140,000 but not over $250,000.	$35,928.50, plus 36% of the excess over $140,000.
Over $250,000	$75,528.50, plus 39.6% of the excess over $250,000.

(b) Heads of households

There is hereby imposed on the taxable income of every head of a household (as defined in section 2(b)) a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over $29,600	15% of taxable income.
Over $29,600 but not over $76,400.	$4,440, plus 28% of the excess over $29,600.
Over $76,400 but not over $127,500.	$17,544, plus 31% of the excess over $76,400.
Over $127,500 but not over $250,000.	$33,385, plus 36% of the excess over $127,500.
Over $250,000	$77,485, plus 39.6% of the excess over $250,000.

(c) Unmarried individuals (other than surviving spouses and heads of households)

There is hereby imposed on the taxable income of every individual (other than a surviving spouse as defined in section 2(a) or the head of a household as defined in section 2(b)) who is not a married individual (as defined in section 7703) a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over $22,100	15% of taxable income.
Over $22,100 but not over $53,500.	$3,315, plus 28% of the excess over $22,100.
Over $53,500 but not over $115,000.	$12,107, plus 31% of the excess over $53,500.
Over $115,000 but not over $250,000.	$31,172, plus 36% of the excess over $115,000.
Over $250,000	$79,772, plus 39.6% of the excess over $250,000.

(d) Married individuals filing separate returns

There is hereby imposed on the taxable income of every married individual (as defined in section 7703) who does not make a single return jointly with his spouse under section 6013, a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over $18,450	15% of taxable income.
Over $18,450 but not over $44,575.	$2,767.50, plus 28% of the excess over $18,450.
Over $44,575 but not over $70,000.	$10,082.50, plus 31% of the excess over $44,575.
Over $70,000 but not over $125,000.	$17,964.25, plus 36% of the excess over $70,000.
Over $125,000	$37,764.25, plus 39.6% of the excess over $125,000.

(e) Estates and trusts

There is hereby imposed on the taxable income of—

(1) every estate, and

(2) every trust,

taxable under this subsection a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over $1,500	15% of taxable income.
Over $1,500 but not over $3,500.	$225, plus 28% of the excess over $1,500.
Over $3,500 but not over $5,500.	$785, plus 31% of the excess over $3,500.
Over $5,500 but not over $7,500.	$1,405, plus 36% of the excess over $5,500.
Over $7,500	$2,125, plus 39.6% of the excess over $7,500.

(f) Phaseout of marriage penalty in 15-percent bracket; adjustments in tax tables so that inflation will not result in tax increases

(1) In general

Not later than December 15 of 1993, and each subsequent calendar year, the Secretary shall prescribe tables which shall apply in lieu of the tables contained in subsections (a), (b), (c), (d), and (e) with respect to taxable years beginning in the succeeding calendar year.

(2) Method of prescribing tables

The table which under paragraph (1) is to apply in lieu of the table contained in subsection (a), (b), (c), (d), or (e), as the case may be, with respect to taxable years beginning in any calendar year shall be prescribed—

(A) except as provided in paragraph (8), by increasing the minimum and maximum dollar amounts for each rate bracket for which a tax is imposed under such table by the cost-of-living adjustment for such calendar year,

(B) by not changing the rate applicable to any rate bracket as adjusted under subparagraph (A), and

(C) by adjusting the amounts setting forth the tax to the extent necessary to reflect the adjustments in the rate brackets.

(3) Cost-of-living adjustment

For purposes of paragraph (2), the cost-of-living adjustment for any calendar year is the percentage (if any) by which—

(A) the CPI for the preceding calendar year, exceeds

(B) the CPI for the calendar year 1992.

(4) CPI for any calendar year

For purposes of paragraph (3), the CPI for any calendar year is the average of the Consumer Price Index as of the close of the 12-month period ending on August 31 of such calendar year.

(5) Consumer Price Index

For purposes of paragraph (4), the term ''Consumer Price Index'' means the last Consumer Price Index for all-urban consumers published by the Department of Labor. For purposes of the preceding sentence, the revision of the Consumer Price Index which is most consistent with the Consumer Price Index for calendar year 1986 shall be used.

(6) Rounding

(A) In general

If any increase determined under paragraph (2)(A), section 63(c)(4), section 68(b)(2) or section 151(d)(4) is not a multiple of $50, such increase shall be rounded to the next lowest multiple of $50.

(B) Table for married individuals filing separately

In the case of a married individual filing a separate return, subparagraph (A) (other than with respect to sections 63(c)(4) and 151(d)(4)(A)) shall be applied by substituting ''$25'' for ''$50'' each place it appears.

(7) Special rule for certain brackets

(A) Calendar year 1994

In prescribing the tables under paragraph (1) which apply with respect to taxable years beginning in calendar year 1994, the Secretary shall make no adjustment to the dollar amounts at which the 36 percent rate bracket begins or at which the 39.6 percent rate begins under any table contained in subsection (a), (b), (c), (d), or (e).

(B) Later calendar years

In prescribing tables under paragraph (1) which apply with respect to taxable years beginning in a calendar year after 1994, the cost-of-living adjustment used in making adjustments to the dollar amounts referred to in subparagraph (A) shall be determined under paragraph (3) by substituting ''1993'' for ''1992''.

(8) Elimination of marriage penalty in 15-percent bracket

With respect to taxable years beginning after December 31, 2003, in prescribing the tables under paragraph (1)—

(A) the maximum taxable income in the 15-percent rate bracket in the table contained in subsection (a) (and the minimum taxable income in the next higher taxable income bracket in such table) shall be 200 percent of the maximum taxable income in the 15-percent rate bracket in the table contained in subsection (c) (after any other adjustment under this subsection), and

(B) the comparable taxable income amounts in the table contained in subsection (d) shall be ½ of the amounts determined under subparagraph (A).

(g) Certain unearned income of children taxed as if parent's income

(1) In general

In the case of any child to whom this subsection applies, the tax imposed by this section shall be equal to the greater of—

(A) the tax imposed by this section without regard to this subsection, or

(B) the sum of—

(i) the tax which would be imposed by this section if the taxable income of such child for the taxable year were reduced by the net unearned income of such child, plus

(ii) such child's share of the allocable parental tax.

(2) Child to whom subsection applies

This subsection shall apply to any child for any taxable year if—

(A) such child—

(i) has not attained age 18 before the close of the taxable year, or

(ii)(I) has attained age 18 before the close of the taxable year and meets the age requirements of section 152(c)(3) (determined without regard to subparagraph (B) thereof), and

(II) whose earned income (as defined in section 911(d)(2)) for such taxable year does not exceed one-half of the amount of the individual's support (within the meaning of section 152(c)(1)(D) after the application of section 152(f)(5) (without regard to subparagraph (A) thereof)) for such taxable year,

(B) either parent of such child is alive at the close of the taxable year, and

(C) such child does not file a joint return for the taxable year.

(3) Allocable parental tax

For purposes of this subsection—

(A) In general

The term ''allocable parental tax'' means the excess of—

(i) the tax which would be imposed by this section on the parent's taxable income if such income included the net unearned income of all children of the parent to whom this subsection applies, over

(ii) the tax imposed by this section on the parent without regard to this subsection.

For purposes of clause (i), net unearned income of all children of the parent shall not be taken into account in computing any exclusion, deduction, or credit of the parent.

(B) Child's share

A child's share of any allocable parental tax of a parent shall be equal to an amount which bears the same ratio to the total allocable parental tax as the child's net unearned income bears to the aggregate net unearned income of all children of such parent to whom this subsection applies.

(C) Special rule where parent has different taxable year

Except as provided in regulations, if the parent does not have the same taxable year as the child, the allocable parental tax shall be determined on the basis of the taxable year of the parent ending in the child's taxable year.

(4) Net unearned income

For purposes of this subsection—

(A) In general

The term ''net unearned income'' means the excess of—

(i) the portion of the adjusted gross income for the taxable year which is not attributable to earned income (as defined in section 911(d)(2)), over

(ii) the sum of—

(I) the amount in effect for the taxable year under section 63(c)(5)(A) (relating to limitation on standard deduction in the case of certain dependents), plus

(II) the greater of the amount described in subclause (I) or, if the child itemizes his deductions for the taxable year, the amount of the itemized deductions allowed by this chapter for the taxable year which are directly connected with the production of the portion of adjusted gross income referred to in clause (i).

(B) Limitation based on taxable income

The amount of the net unearned income for any taxable year shall not exceed the individual's taxable income for such taxable year.

(C) Treatment of distributions from qualified disability trusts

For purposes of this subsection, in the case of any child who is a beneficiary of a qualified disability trust (as defined in section 642(b)(2)(C)(ii)), any amount included in the income of such child under sections 652 and 662 during a taxable year shall be considered earned income of such child for such taxable year.

(5) Special rules for determining parent to whom subsection applies

For purposes of this subsection, the parent whose taxable income shall be taken into account shall be—

(A) in the case of parents who are not married (within the meaning of section 7703), the custodial parent (within the meaning of section 152(e)) of the child, and

(B) in the case of married individuals filing separately, the individual with the greater taxable income.

(6) Providing of parent's TIN

The parent of any child to whom this subsection applies for any taxable year shall provide the TIN of such parent to such child and such child shall include such TIN on the child's return of tax imposed by this section for such taxable year.

(7) Election to claim certain unearned income of child on parent's return

(A) In general

If—

(i) any child to whom this subsection applies has gross income for the taxable year only from interest and dividends (including Alaska Permanent Fund dividends),

(ii) such gross income is more than the amount described in paragraph (4)(A)(ii)(I) and less than 10 times the amount so described,

(iii) no estimated tax payments for such year are made in the name and TIN of such child, and no amount has been deducted and withheld under section 3406, and

(iv) the parent of such child (as determined under paragraph (5)) elects the application of subparagraph (B),

such child shall be treated (other than for purposes of this paragraph) as having no gross income for such year and shall not be required to file a return under section 6012.

(B) Income included on parent's return

In the case of a parent making the election under this paragraph—

(i) the gross income of each child to whom such election applies (to the extent the gross income of such child exceeds twice the amount described in paragraph (4)(A)(ii)(I)) shall be included in such parent's gross income for the taxable year,

(ii) the tax imposed by this section for such year with respect to such parent shall be the amount equal to the sum of—

(I) the amount determined under this section after the application of clause (i), plus

(II) for each such child, 10 percent of the lesser of the amount described in paragraph (4)(A)(ii)(I) or the excess of the gross income of such child over the amount so described, and

(iii) any interest which is an item of tax preference under section 57(a)(5) of the child shall be treated as an item of tax preference of such parent (and not of such child).

(C) Regulations

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

(h) Maximum capital gains rate

(1) In general

If a taxpayer has a net capital gain for any taxable year, the tax imposed by this section for such taxable year shall not exceed the sum of—

(A) a tax computed at the rates and in the same manner as if this subsection had not been enacted on the greater of—

(i) taxable income reduced by the net capital gain; or

(ii) the lesser of—

(I) the amount of taxable income taxed at a rate below 25 percent; or

(II) taxable income reduced by the adjusted net capital gain;

(B) 5 percent (0 percent in the case of taxable years beginning after 2007) of so much of the adjusted net capital gain (or, if less, taxable income) as does not exceed the excess (if any) of—

(i) the amount of taxable income which would (without regard to this paragraph) be taxed at a rate below 25 percent, over

(ii) the taxable income reduced by the adjusted net capital gain;

(C) 15 percent of the adjusted net capital gain (or, if less, taxable income) in excess of the amount on which a tax is determined under subparagraph (B);

(D) 25 percent of the excess (if any) of—

(i) the unrecaptured section 1250 gain (or, if less, the net capital gain (determined without regard to paragraph (11))), over

(ii) the excess (if any) of—

(I) the sum of the amount on which tax is determined under subparagraph (A) plus the net capital gain, over

(II) taxable income; and

(E) 28 percent of the amount of taxable income in excess of the sum of the amounts on which tax is determined under the preceding subparagraphs of this paragraph.

(2) Net capital gain taken into account as investment income

For purposes of this subsection, the net capital gain for any taxable year shall be reduced (but not below zero) by the amount which the taxpayer takes into account as investment income under section 163(d)(4)(B)(iii).

(3) Adjusted net capital gain

For purposes of this subsection, the term ''adjusted net capital gain'' means the sum of—

(A) net capital gain (determined without regard to paragraph (11)) reduced (but not below zero) by the sum of—

(i) unrecaptured section 1250 gain, and

(ii) 28-percent rate gain, plus

(B) qualified dividend income (as defined in paragraph (11)).

(4) 28-percent rate gain

For purposes of this subsection, the term ''28-percent rate gain'' means the excess (if any) of—

(A) the sum of—

(i) collectibles gain; and

(ii) section 1202 gain, over

(B) the sum of—

(i) collectibles loss;

(ii) the net short-term capital loss; and

(iii) the amount of long-term capital loss carried under section 1212(b)(1)(B) to the taxable year.

(5) Collectibles gain and loss

For purposes of this subsection—

(A) In general

The terms ''collectibles gain'' and ''collectibles loss'' mean gain or loss (respectively) from the sale or exchange of a collectible (as defined in section 408(m) without regard to paragraph (3) thereof) which is a capital asset held for more than 1 year but only to the extent such gain is taken into account in computing gross income and such loss is taken into account in computing taxable income.

(B) Partnerships, etc.

For purposes of subparagraph (A), any gain from the sale of an interest in a partnership, S corporation, or trust which is attributable to unrealized appreciation in the value of collectibles shall be treated as gain from the sale or exchange of a collectible. Rules similar to the rules of section 751 shall apply for purposes of the preceding sentence.

(6) Unrecaptured section 1250 gain

For purposes of this subsection—

(A) In general

The term ''unrecaptured section 1250 gain'' means the excess (if any) of—

(i) the amount of long-term capital gain (not otherwise treated as ordinary income) which would be treated as ordinary income if section 1250(b)(1) included all depreciation and the applicable percentage under section 1250(a) were 100 percent, over

(ii) the excess (if any) of—

(I) the amount described in paragraph (4)(B); over

(II) the amount described in paragraph (4)(A).

(B) Limitation with respect to section 1231 property

The amount described in subparagraph (A)(i) from sales, exchanges, and conversions described in section 1231(a)(3)(A) for any taxable year shall not exceed the net section 1231 gain (as defined in section 1231(c)(3)) for such year.

(7) Section 1202 gain

For purposes of this subsection, the term ''section 1202 gain'' means the excess of—

(A) the gain which would be excluded from gross income under section 1202 but for the percentage limitation in section 1202(a), over

(B) the gain excluded from gross income under section 1202.

(8) Coordination with recapture of net ordinary losses under section 1231

If any amount is treated as ordinary income under section 1231(c), such amount shall be allocated among the separate categories of net section 1231 gain (as defined in section 1231(c)(3)) in such manner as the Secretary may by forms or regulations prescribe.

(9) Regulations

The Secretary may prescribe such regulations as are appropriate (including regulations requiring reporting) to apply this subsection in the case of sales and exchanges by pass-thru entities and of interests in such entities.

(10) Pass-thru entity defined

For purposes of this subsection, the term ''pass-thru entity'' means—

(A) a regulated investment company;

(B) a real estate investment trust;

(C) an S corporation;

(D) a partnership;
(E) an estate or trust;
(F) a common trust fund; and
(G) a qualified electing fund (as defined in section 1295).

(11) Dividends taxed as net capital gain

(A) In general

For purposes of this subsection, the term ''net capital gain'' means net capital gain (determined without regard to this paragraph) increased by qualified dividend income.

(B) Qualified dividend income

For purposes of this paragraph—

(i) In general

The term ''qualified dividend income'' means dividends received during the taxable year from—
(I) domestic corporations, and
(II) qualified foreign corporations.

(ii) Certain dividends excluded

Such term shall not include—
(I) any dividend from a corporation which for the taxable year of the corporation in which the distribution is made, or the preceding taxable year, is a corporation exempt from tax under section 501 or 521,
(II) any amount allowed as a deduction under section 591 (relating to deduction for dividends paid by mutual savings banks, etc.), and
(III) any dividend described in section 404(k).

(iii) Coordination with section 246(c)

Such term shall not include any dividend on any share of stock—
(I) with respect to which the holding period requirements of section 246(c) are not met (determined by substituting in section 246(c) ''60 days'' for ''45 days'' each place it appears and by substituting ''121-day period'' for ''91-day period''), or
(II) to the extent that the taxpayer is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property.

(C) Qualified foreign corporations

(i) In general

Except as otherwise provided in this paragraph, the term ''qualified foreign corporation'' means any foreign corporation if—
(I) such corporation is incorporated in a possession of the United States, or
(II) such corporation is eligible for benefits of a comprehensive income tax treaty with the United States which the Secretary determines is satisfactory for purposes of this paragraph and which includes an exchange of information program.

(ii) Dividends on stock readily tradable on United States securities market

A foreign corporation not otherwise treated as a qualified foreign corporation under clause (i) shall be so treated with respect to any dividend paid by such corporation if the stock with respect to which such dividend is paid is readily tradable on an established securities market in the United States.

(iii) Exclusion of dividends of certain foreign corporations

Such term shall not include any foreign corporation which for the taxable year of the corporation in which the dividend was paid, or the preceding taxable year, is a passive foreign investment company (as defined in section 1297).

(iv) Coordination with foreign tax credit limitation

Rules similar to the rules of section 904(b)(2)(B) shall apply with respect to the dividend rate differential under this paragraph.

(D) Special rules

(i) Amounts taken into account as investment income

Qualified dividend income shall not include any amount which the taxpayer takes into account as investment income under section 163(d)(4)(B).

(ii) Extraordinary dividends

If a taxpayer to whom this section applies receives, with respect to any share of stock, qualified dividend income from 1 or more dividends which are extraordinary dividends (within the meaning of section 1059(c)), any loss on the sale or exchange of such share shall, to the extent of such dividends, be treated as long-term capital loss.

(iii) Treatment of dividends from regulated investment companies and real estate investment trusts

A dividend received from a regulated investment company or a real estate investment trust shall be subject to the limitations prescribed in sections 854 and 857.

(i) Rate reductions after 2000

(1) 10-percent rate bracket

(A) In general

In the case of taxable years beginning after December 31, 2000—
(i) the rate of tax under subsections (a), (b), (c), and (d) on taxable income not over the initial bracket amount shall be 10 percent, and
(ii) the 15 percent rate of tax shall apply only to taxable income over the initial bracket amount but not over the maximum dollar amount for the 15-percent rate bracket.

(B) Initial bracket amount

For purposes of this paragraph, the initial bracket amount is—
(i) $14,000 in the case of subsection (a),
(ii) $10,000 in the case of subsection (b), and
(iii) ½ the amount applicable under clause (i) (after adjustment, if any, under

subparagraph (C)) in the case of subsections (c) and (d).

(C) Inflation adjustment

In prescribing the tables under subsection (f) which apply with respect to taxable years beginning in calendar years after 2003—

(i) the cost-of-living adjustment shall be determined under subsection (f)(3) by substituting ''2002'' for ''1992'' in subparagraph (B) thereof, and

(ii) the adjustments under clause (i) shall not apply to the amount referred to in subparagraph (B)(iii).

If any amount after adjustment under the preceding sentence is not a multiple of $50, such amount shall be rounded to the next lowest multiple of $50.

(2) Reductions in rates after June 30, 2001

In the case of taxable years beginning in a calendar year after 2000, the corresponding percentage specified for such calendar year in the following table shall be substituted for the otherwise applicable tax rate in the tables under subsections (a), (b), (c), (d), and (e).

In the case of taxable years beginning during calendar year:	The corresponding percentages shall be substituted for the following percentages:			
	28%	31%	36%	39.6%
2001	27.5%	30.5%	35.5%	39.1%
2002	27.0%	30.0%	35.0%	38.6%
2003 and thereafter.	25.0%	28.0%	33.0%	35.0%

(3) Adjustment of tables

The Secretary shall adjust the tables prescribed under subsection (f) to carry out this subsection.

(Aug. 16, 1954, ch. 736, 68A Stat. 5; Pub. L. 88–272, title I, §111, Feb. 26, 1964, 78 Stat. 19; Pub. L. 89–809, title I, §103(a)(2), Nov. 13, 1966, 80 Stat. 1550; Pub. L. 91–172, title VIII, §803(a), Dec. 30, 1969, 83 Stat. 678; Pub. L. 95–30, title I, §101(a), May 23, 1977, 91 Stat. 127; Pub. L. 95–600, title I, §101(a), Nov. 6, 1978, 92 Stat. 2767; Pub. L. 97–34, title I, §§101(a), 104(a), Aug. 13, 1981, 95 Stat. 176, 188; Pub. L. 97–448, title I, §101(a)(3), Jan. 12, 1983, 96 Stat. 2366; Pub. L. 99–514, title I, §101(a), title III, §302(a), title XIV, §1411(a), Oct. 22, 1986, 100 Stat. 2096, 2218, 2714; Pub. L. 100–647, title I, §§1001(a)(3), 1014(e)(1)–(3), (6), (7), title VI, §6006(a), Nov. 10, 1988, 102 Stat. 3349, 3561, 3562, 3686; Pub. L. 101–239, title VII, §§7811(j)(1), 7816(b), 7831(a), Dec. 19, 1989, 103 Stat. 2411, 2420, 2425; Pub. L. 101–508, title XI, §§11101(a)–(c), (d)(1)(A), (2), 11103(c), 11104(b), Nov. 5, 1990, 104 Stat. 1388–403 to 1388–406, 1388–408; Pub. L. 103–66, title XIII, §§13201(a), (b)(3)(A), (B), 13202(a), 13206(d)(2), Aug. 10, 1993, 107 Stat. 457, 459, 461, 467; Pub. L. 104–188, title I, §1704(m)(1), (2), Aug. 20, 1996, 110 Stat. 1882, 1883; Pub. L. 105–34, title III, §311(a), Aug. 5, 1997, 111 Stat. 831; Pub. L. 105–206, title V, §5001(a)(1)–(4), title VI, §§6005(d)(1), 6007(f)(1), July 22, 1998, 112 Stat. 787, 788, 800, 810; Pub. L. 105–277, div. J, title IV, §4002(i)(1), (3), Oct. 21, 1998, 112 Stat. 2681–907, 2681–908; Pub. L. 106–554, §1(a)(7) [title I, §117(b)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–604; Pub. L. 107–16, title I, §101(a), (c)(1), (2), title III, §§301(c)(1), 302(a), (b), June 7, 2001, 115 Stat. 41, 43, 54; Pub. L. 108–27, title I, §§102(a), (b)(1), 104(a), (b), 105(a), title III, §§301(a)(1), (2)(A), (b)(1), 302(a), (e)(1), May 28, 2003, 117 Stat. 754, 755, 758, 760, 763; Pub. L. 108–311, title I, §101(c), (d), title IV, §§402(a)(1)–(3), 408(a)(1), (2), Oct. 4, 2004, 118 Stat. 1167, 1168, 1184, 1190; Pub. L. 108–357, title IV, §413(c)(1), Oct. 22, 2004, 118 Stat. 1506; Pub. L. 109–222, title V, §510(a)—(c), May 17, 2006, 120 Stat. 364; Pub. L. 110–28, title VIII, §8241(a), (b), May 25, 2007, 121 Stat. 199; Pub. L. 110–185, title I, §101(f)(2), Feb. 13, 2008, 122 Stat. 617.)

AMENDMENT OF SECTION

For termination of amendment by section 105 of Pub. L. 108–311, see Effective and Termination Dates of 2004 Amendments note below.

For termination of amendment by sections 107 and 303 of Pub. L. 108–27, see Effective and Termination Dates of 2003 Amendment note below.

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table below.

AMENDMENTS

2008—Subsec. (i)(1)(D). Pub. L. 110–185 struck out heading and text of subpar. (D). Text read as follows: ''This paragraph shall not apply to any taxable year to which section 6428 applies.''

2007—Subsec. (g). Pub. L. 110–28, §8241(b), struck out ''minor'' before ''children'' in heading.

Subsec. (g)(2)(A). Pub. L. 110–28, §8241(a), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''such child has not attained age 18 before the close of the taxable year,''.

2006—Subsec. (g)(2)(A). Pub. L. 109–222, §510(a), substituted ''age 18'' for ''age 14''.

Subsec. (g)(2)(C). Pub. L. 109–222, §510(c), added subpar. (C).

Subsec. (g)(4)(C). Pub. L. 109–222, §510(b), added subpar. (C).

2004—Subsec. (f)(8). Pub. L. 108–311, §§101(c), 105, temporarily amended par. (8) generally, substituting provisions relating to elimination of marriage penalty in 15-percent bracket for provisions relating to phaseout of marriage penalty in 15-percent bracket. See Effective and Termination Dates of 2004 Amendments note below.

Subsec. (g)(7)(B)(ii)(II). Pub. L. 108–311, §408(a)(1), substituted ''10 percent'' for ''10 percent.''

Subsec. (h)(1)(D)(i). Pub. L. 108–311, §402(a)(1), inserted ''(determined without regard to paragraph (11))'' after ''net capital gain''.

Subsec. (h)(6)(A)(ii)(I). Pub. L. 108–311, §408(a)(2)(A), substituted ''(4)(B)'' for ''(5)(B)''.

Subsec. (h)(6)(A)(ii)(II). Pub. L. 108–311, §408(a)(2)(B), substituted ''(4)(A)'' for ''(5)(A)''.

Subsec. (h)(10)(F) to (H). Pub. L. 108–357, §413(c)(1)(A), inserted ''and'' at end of subpar. (F), redesignated subpar. (H) as (G), and struck out former subpar. (G) which read as follows: ''a foreign investment company which is described in section 1246(b)(1) and for which an election is in effect under section 1247; and''.

Subsec. (h)(11)(B)(iii)(I). Pub. L. 108–311, §402(a)(2), substituted ''substituting in section 246(c)'' for ''substituting in section 246(c)(1)'', ''121-day period'' for ''120-day period'', and ''91-day period'' for ''90-day period''.

Subsec. (h)(11)(C)(iii). Pub. L. 108–357, §413(c)(1)(B), struck out ''a foreign personal holding company (as de-

fined in section 552), a foreign investment company (as defined in section 1246(b)), or'' before ''a passive foreign investment''.

Subsec. (h)(11)(D)(ii). Pub. L. 108–311, § 402(a)(3), substituted ''a taxpayer to whom this section applies'' for ''an individual''.

Subsec. (i)(1)(B)(i). Pub. L. 108–311, §§ 101(d)(1), 105, temporarily struck out ''($12,000 in the case of taxable years beginning after December 31, 2004, and before January 1, 2008)'' after ''$14,000''. See Effective and Termination Dates of 2004 Amendments note below.

Subsec. (i)(1)(C). Pub. L. 108–311, §§ 101(d)(2), 105, temporarily reenacted heading without change and amended text generally, substituting provisions relating to inflation adjustment in calendar years after 2003 for such provisions in calendar years after 2000. See Effective and Termination Dates of 2004 Amendments note below.

2003—Subsec. (f)(8)(A). Pub. L. 108–27, §§ 102(b)(1), 107, temporarily substituted ''2002'' for ''2004''. See Effective and Termination Dates of 2003 Amendment note below.

Subsec. (f)(8)(B). Pub. L. 108–27, §§ 102(a), 107, temporarily inserted table item relating to years 2003 and 2004. See Effective and Termination Dates of 2003 Amendment note below.

Subsec. (h)(1)(B). Pub. L. 108–27, §§ 301(a)(1), 303, temporarily substituted ''5 percent (0 percent in the case of taxable years beginning after 2007)'' for ''10 percent''. See Effective and Termination Dates of 2003 Amendment note below.

Subsec. (h)(1)(C). Pub. L. 108–27, §§ 301(a)(2)(A), 303, temporarily substituted ''15 percent'' for ''20 percent''. See Effective and Termination Dates of 2003 Amendment note below.

Subsec. (h)(2). Pub. L. 108–27, §§ 301(b)(1)(A), (B), 303, temporarily redesignated par. (3) as (2) and struck out heading and text of former par. (2). Text read as follows:

''(A) REDUCTION IN 10-PERCENT RATE.—In the case of any taxable year beginning after December 31, 2000, the rate under paragraph (1)(B) shall be 8 percent with respect to so much of the amount to which the 10-percent rate would otherwise apply as does not exceed qualified 5-year gain, and 10 percent with respect to the remainder of such amount.

''(B) REDUCTION IN 20-PERCENT RATE.—The rate under paragraph (1)(C) shall be 18 percent with respect to so much of the amount to which the 20-percent rate would otherwise apply as does not exceed the lesser of—

''(i) the excess of qualified 5-year gain over the amount of such gain taken into account under subparagraph (A) of this paragraph; or

''(ii) the amount of qualified 5-year gain (determined by taking into account only property the holding period for which begins after December 31, 2000),

and 20 percent with respect to the remainder of such amount. For purposes of determining under the preceding sentence whether the holding period of property begins after December 31, 2000, the holding period of property acquired pursuant to the exercise of an option (or other right or obligation to acquire property) shall include the period such option (or other right or obligation) was held.'' See Effective and Termination Dates of 2003 Amendment note below.

Subsec. (h)(3). Pub. L. 108–27, §§ 302(e)(1), 303, temporarily amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''For purposes of this subsection, the term 'adjusted net capital gain' means net capital gain reduced (but not below zero) by the sum of—

''(A) unrecaptured section 1250 gain; and

''(B) 28-percent rate gain.'' See Effective and Termination Dates of 2003 Amendment note below.

Pub. L. 108–27, §§ 301(b)(1)(B), 303, temporarily redesignated par. (4) as (3). Former par. (3) temporarily redesignated (2). See Effective and Termination Dates of 2003 Amendment note below.

Subsec. (h)(4) to (7). Pub. L. 108–27, §§ 301(b)(1)(B), 303, temporarily redesignated pars. (5) to (8) as (4) to (7), respectively. Former par. (4) temporarily redesignated (3). See Effective and Termination Dates of 2003 Amendment note below.

Subsec. (h)(8). Pub. L. 108–27, §§ 301(b)(1)(C), 303, temporarily redesignated par. (10) as (8). Former par. (8) temporarily redesignated (7). See Effective and Termination Dates of 2003 Amendment note below.

Subsec. (h)(9). Pub. L. 108–27, §§ 301(b)(1)(A), (C), 303, temporarily redesignated par. (11) as (9) and struck out heading and text of former par. (9). Text read as follows: ''For purposes of this subsection, the term 'qualified 5-year gain' means the aggregate long-term capital gain from property held for more than 5 years. The determination under the preceding sentence shall be made without regard to collectibles gain, gain described in paragraph (7)(A)(i), and section 1202 gain.'' See Effective and Termination Dates of 2003 Amendment note below.

Subsec. (h)(10). Pub. L. 108–27, §§ 301(b)(1)(C), 303, temporarily redesignated par. (12) as (10). Former par. (10) temporarily redesignated (8). See Effective and Termination Dates of 2003 Amendment note below.

Subsec. (h)(11). Pub. L. 108–27, §§ 302(a), 303, temporarily added par. (11). See Effective and Termination Dates of 2003 Amendment note below.

Pub. L. 108–27, §§ 301(b)(1)(C), 303, temporarily redesignated par. (11) as (9). See Effective and Termination Dates of 2003 Amendment note below.

Subsec. (h)(12). Pub. L. 108–27, §§ 301(b)(1)(C), 303, temporarily redesignated par. (12) as (10). See Effective and Termination Dates of 2003 Amendment note below.

Subsec. (i)(1)(B)(i). Pub. L. 108–27, §§ 104(a), 107, temporarily substituted ''($12,000 in the case of taxable years beginning after December 31, 2004, and before January 1, 2008)'' for ''($12,000 in the case of taxable years beginning before January 1, 2008)''. See Effective and Termination Dates of 2003 Amendment note below.

Subsec. (i)(1)(C). Pub. L. 108–27, §§ 104(b), 107, temporarily amended heading and text of subpar. (C) generally. Text read as follows: ''In prescribing the tables under subsection (f) which apply with respect to taxable years beginning in calendar years after 2000—

''(i) the Secretary shall make no adjustment to the initial bracket amount for any taxable year beginning before January 1, 2009,

''(ii) the cost-of-living adjustment used in making adjustments to the initial bracket amount for any taxable year beginning after December 31, 2008, shall be determined under subsection (f)(3) by substituting '2007' for '1992' in subparagraph (B) thereof, and

''(iii) such adjustment shall not apply to the amount referred to in subparagraph (B)(iii).

If any amount after adjustment under the preceding sentence is not a multiple of $50, such amount shall be rounded to the next lowest multiple of $50.'' See Effective and Termination Dates of 2003 Amendment note below.

Subsec. (i)(2). Pub. L. 108–27, § 105(a), 107, temporarily amended table generally. Prior to amendment, table read as follows:

''In the case of taxable years beginning during calendar year:	**The corresponding percentages shall be substituted for the following percentages:**			
	28%	**31%**	**36%**	**39.6%**
2001	27.5%	30.5%	35.5%	39.1%
2002 and 2003	27.0%	30.0%	35.0%	38.6%
2004 and 2005	26.0%	29.0%	34.0%	37.6%
2006 and thereafter ...	25.0%	28.0%	33.0%	35.0%''

See Effective and Termination Dates of 2003 Amendment note below.

2001—Subsec. (f). Pub. L. 107–16, §§ 302(b)(2), 901, temporarily substituted ''Phaseout of marriage penalty in 15-percent bracket; adjustments'' for ''Adjustments'' in heading. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (f)(2)(A). Pub. L. 107–16, §§ 302(b)(1), 901, temporarily inserted ''except as provided in paragraph (8),''

before ''by increasing''. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (f)(6)(B). Pub. L. 107–16, §§ 301(c)(1), 901, temporarily substituted ''(other than with respect to sections 63(c)(4) and 151(d)(4)(A)) shall be applied'' for ''(other than with respect to subsection (c)(4) of section 63 (as it applies to subsections (c)(5)(A) and (f) of such section) and section 151(d)(4)(A)) shall be applied''. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (f)(8). Pub. L. 107–16, §§ 302(a), 901, temporarily added par. (8). See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (g)(7)(B)(ii)(II). Pub. L. 107–16, §§ 101(c)(1), 901, temporarily substituted ''10 percent.'' for ''15 percent''. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (h)(1)(A)(ii)(I), (B)(i). Pub. L. 107–16, §§ 101(c)(2)(A), 901, temporarily substituted ''25 percent'' for ''28 percent''. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (h)(13). Pub. L. 107–16, §§ 101(c)(2)(B), 901, temporarily struck out par. (13), which set out special rules for determination of 28-percent rate gain, unrecaptured section 1250 gain, pass-thru entities, and charitable remainder trusts. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (i). Pub. L. 107–16, §§ 101(a), 901, temporarily added subsec. (i). See Effective and Termination Dates of 2001 Amendment note below.

2000—Subsec.(h)(8). Pub. L. 106–554 substituted ''means the excess of—'' and subpars. (A) and (B) for ''means an amount equal to the gain excluded from gross income under section 1202(a).''

1998—Subsec. (g)(3)(C), (D). Pub. L. 105–206, § 6007(f)(1), redesignated subpar. (D) as (C) and struck out heading and text of former subpar. (C). Text read as follows: ''If tax is imposed under section 644(a)(1) with respect to the sale or exchange of any property of which the parent was the transferor, for purposes of applying subparagraph (A) to the taxable year of the parent in which such sale or exchange occurs—

''(i) taxable income of the parent shall be increased by the amount treated as included in gross income under section 644(a)(2)(A)(i), and

''(ii) the amount described in subparagraph (A)(ii) shall be increased by the amount of the excess referred to in section 644(a)(2)(A).''

Subsec. (h). Pub. L. 105–206, § 6005(d)(1), reenacted subsec. heading without change and amended text of subsec. (h) generally, substituting present provisions comprising pars. (1) to (13) for former similar provisions comprising pars. (1) to (11).

Subsec. (h)(5). Pub. L. 105–206, § 5001(a)(1), amended par. (5) generally. Prior to amendment, par. (5) read as follows:

''(5) 28-PERCENT RATE GAIN.—For purposes of this subsection—

''(A) IN GENERAL.—The term '28-percent rate gain' means the excess (if any) of—

''(i) the sum of—

''(I) the aggregate long-term capital gain from property held for more than 1 year but not more than 18 months;

''(II) collectibles gain; and

''(III) section 1202 gain, over

''(ii) the sum of—

''(I) the aggregate long-term capital loss (not described in subclause (IV)) from property referred to in clause (i)(I);

''(II) collectibles loss;

''(III) the net short-term capital loss; and

''(IV) the amount of long-term capital loss carried under section 1212(b)(1)(B) to the taxable year.

''(B) SPECIAL RULES.—

''(i) SHORT SALE GAINS AND HOLDING PERIODS.—Rules similar to the rules of section 1233(b) shall apply where the substantially identical property has been held more than 1 year but not more than 18 months; except that, for purposes of such rules—

''(I) section 1233(b)(1) shall be applied by substituting '18 months' for '1 year' each place it appears; and

''(II) the holding period of such property shall be treated as being 1 year on the day before the earlier of the date of the closing of the short sale or the date such property is disposed of.

''(ii) LONG-TERM LOSSES.—Section 1233(d) shall be applied separately by substituting '18 months' for '1 year' each place it appears.

''(iii) OPTIONS.—A rule similar to the rule of section 1092(f) shall apply where the stock was held for more than 18 months.

''(iv) SECTION 1256 CONTRACTS.—Amounts treated as long-term capital gain or loss under section 1256(a)(3) shall be treated as attributable to property held for more than 18 months.''

Subsec. (h)(6)(A). Pub. L. 105–206, § 5001(a)(2), substituted ''1 year'' for ''18 months''.

Subsec. (h)(7)(A)(i), (ii). Pub. L. 105–206, § 5001(a)(3), amended cls. (i) and (ii) generally. Prior to amendment, cls. (i) and (ii) read as follows:

''(i) the amount of long-term capital gain (not otherwise treated as ordinary income) which would be treated as ordinary income if—

''(I) section 1250(b)(1) included all depreciation and the applicable percentage under section 1250(a) were 100 percent, and

''(II) only gain from property held for more than 18 months were taken into account, over

''(ii) the excess (if any) of—

''(I) the amount described in paragraph (5)(A)(ii), over

''(II) the amount described in paragraph (5)(A)(i).''

Subsec. (h)(13). Pub. L. 105–206, § 5001(a)(4), struck out ''for periods during 1997'' after ''Special rules'' in par. heading and amended headings and text of subpars. (A) and (B) generally. Prior to amendment, subpars. (A) and (B) read as follows:

''(A) DETERMINATION OF 28-PERCENT RATE GAIN.—In applying paragraph (5)—

''(i) the amount determined under subclause (I) of paragraph (5)(A)(i) shall include long-term capital gain (not otherwise described in paragraph (5)(A)(i)) which is properly taken into account for the portion of the taxable year before May 7, 1997;

''(ii) the amounts determined under subclause (I) of paragraph (5)(A)(ii) shall include long-term capital loss (not otherwise described in paragraph (5)(A)(ii)) which is properly taken into account for the portion of the taxable year before May 7, 1997; and

''(iii) clauses (i)(I) and (ii)(I) of paragraph (5)(A) shall be applied by not taking into account any gain and loss on property held for more than 1 year but not more than 18 months which is properly taken into account for the portion of the taxable year after May 6, 1997, and before July 29, 1997.

''(B) OTHER SPECIAL RULES.—

''(i) DETERMINATION OF UNRECAPTURED SECTION 1250 GAIN NOT TO INCLUDE PRE-MAY 7, 1997 GAIN.—The amount determined under paragraph (7)(A)(i) shall not include gain properly taken into account for the portion of the taxable year before May 7, 1997.

''(ii) OTHER TRANSITIONAL RULES FOR 18-MONTH HOLDING PERIOD.—Paragraphs (6)(A) and (7)(A)(i)(II) shall be applied by substituting '1 year' for '18 months' with respect to gain properly taken into account for the portion of the taxable year after May 6, 1997, and before July 29, 1997.''

Subsec. (h)(13)(B). Pub. L. 105–277, § 4002(i)(1), substituted ''paragraph (7)(A)(i)'' for ''paragraph (7)(A)'' in introductory provisions.

Subsec. (h)(13)(D). Pub. L. 105–277, § 4002(i)(3), added subpar. (D).

1997—Subsec. (h). Pub. L. 105–34 amended heading and text of subsec. (h) generally. Prior to amendment, text read as follows: ''If a taxpayer has a net capital gain for any taxable year, then the tax imposed by this section shall not exceed the sum of—

''(1) a tax computed at the rates and in the same manner as if this subsection had not been enacted on the greater of—

''(A) taxable income reduced by the amount of the net capital gain, or

''(B) the amount of taxable income taxed at a rate below 28 percent, plus

''(2) a tax of 28 percent of the amount of taxable income in excess of the amount determined under paragraph (1).

For purposes of the preceding sentence, the net capital gain for any taxable year shall be reduced (but not below zero) by the amount which the taxpayer elects to take into account as investment income for the taxable year under section 163(d)(4)(B)(iii).''

1996—Subsec. (g)(7)(A)(ii). Pub. L. 104–188, §1704(m)(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''such gross income is more than $500 and less than $5,000,''.

Subsec. (g)(7)(B)(i). Pub. L. 104–188, §1704(m)(2)(A), substituted ''twice the amount described in paragraph (4)(A)(ii)(I)'' for ''$1,000''.

Subsec. (g)(7)(B)(ii)(II). Pub. L. 104–188, §1704(m)(2)(B), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: ''for each such child, the lesser of $75 or 15 percent of the excess of the gross income of such child over $500, and''.

1993—Subsecs. (a) to (e). Pub. L. 103–66, §§13201(a), 13202(a), amended subsecs. (a) to (e) generally, substituting five-tiered tax tables for all categories applicable to tax years after December 31, 1992, for prior three-tiered tax tables.

Subsec. (f)(1). Pub. L. 103–66, §13201(b)(3)(A)(i), substituted ''1993'' for ''1990''.

Subsec. (f)(3)(B). Pub. L. 103–66, §13201(b)(3)(A)(ii), substituted ''1992'' for ''1989''.

Subsec. (f)(7). Pub. L. 103–66, §13201(b)(3)(B), added par. (7).

Subsec. (h). Pub. L. 103–66, §13206(d)(2), inserted as concluding provision at end ''For purposes of the preceding sentence, the net capital gain for any taxable year shall be reduced (but not below zero) by the amount which the taxpayer elects to take into account as investment income for the taxable year under section 163(d)(4)(B)(iii).''

1990—Subsecs. (a) to (e). Pub. L. 101–508, §11101(a), amended subsecs. (a) to (e) generally, substituting three-tiered tax tables for all categories applicable to tax years after Dec. 31, 1990, for prior two-tiered tax tables.

Subsec. (f)(1). Pub. L. 101–508, §11101(d)(1)(A)(i), substituted ''1990'' for ''1988''.

Subsec. (f)(3)(B). Pub. L. 101–508, §11101(d)(1)(A)(ii), substituted ''1989'' for ''1987''.

Subsec. (f)(6)(A). Pub. L. 101–508, §11104(b)(1), substituted ''section 151(d)(4)'' for ''section 151(d)(3)''.

Pub. L. 101–508, §11103(c), inserted reference to section 68(b)(2).

Pub. L. 101–508, §11101(b)(2), struck out ''subsection (g)(4),'' after ''paragraph (2)(A),''.

Subsec. (f)(6)(B). Pub. L. 101–508, §11104(b)(2), substituted ''section 151(d)(4)(A)'' for ''section 151(d)(3)''.

Subsec. (g). Pub. L. 101–508, §11101(d)(2), redesignated subsec. (i) as (g).

Pub. L. 101–508, §11101(b)(1), struck out subsec. (g) which provided for phaseout of 15-percent rate and personal exemptions.

Subsec. (h). Pub. L. 101–508, §11101(d)(2), redesignated subsec. (j) as (h) and struck out former subsec. (h) which provided tax schedules for taxable years beginning in 1987.

Subsec. (i). Pub. L. 101–508, §11101(d)(2), redesignated subsec. (i) as (g).

Subsec. (j). Pub. L. 101–508, §11101(d)(2), redesignated subsec. (j) as (h).

Pub. L. 101–508, §11101(c), amended subsec. (j) generally. Prior to amendment, subsec. (j) read as follows:

''(1) IN GENERAL.—If a taxpayer has a net capital gain for any taxable year to which this subsection applies, then the tax imposed by this section shall not exceed the sum of—

''(A) a tax computed at the rates and in the same manner as if this subsection had not been enacted on the greater of—

''(i) the taxable income reduced by the amount of net capital gain, or

''(ii) the amount of taxable income taxed at a rate below 28 percent, plus

''(B) a tax of 28 percent of the amount of taxable income in excess of the amount determined under subparagraph (A), plus

''(C) the amount of increase determined under subsection (g).

''(2) YEARS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to—

''(A) any taxable year beginning in 1987, and

''(B) any taxable year beginning after 1987 if the highest rate of tax set forth in subsection (a), (b), (c), (d), or (e) (whichever applies) for such taxable year exceeds 28 percent.''

1989—Subsec. (f)(6)(B). Pub. L. 101–239, §7831(a), substituted ''subsection (c)(4) of section 63 (as it applies to subsections (c)(5)(A) and (f) of such section) and section 151(d)(3)'' for ''section 63(c)(4)''.

Subsec. (i)(3)(C), (D). Pub. L. 101–239, §7811(j)(1), redesignated subpar. (C), relating to special rule where parent has different taxable year, as (D).

Subsec. (i)(7)(A). Pub. L. 101–239, §7816(b), inserted ''(other than for purposes of this paragraph)'' after ''shall be treated'' in concluding provisions.

1988—Subsec. (g)(2). Pub. L. 100–647, §1001(a)(3), inserted provision relating to application of subpar. (B) at end of last sentence.

Subsec. (i)(3)(A). Pub. L. 100–647, §1014(e)(2), substituted ''any exclusion, deduction, or credit'' for ''any deduction or credit''.

Subsec. (i)(3)(C). Pub. L. 100–647, §1014(e)(7), added subpar. (C) relating to special rule where parent has different taxable year.

Pub. L. 100–647, §1014(e)(1), added subpar. (C) relating to coordination with section 644.

Subsec. (i)(4)(A)(i). Pub. L. 100–647, §1014(e)(3)(A), substituted ''adjusted gross income'' for ''gross income'' and inserted ''attributable to'' after ''which is not''.

Subsec. (i)(4)(A)(ii)(II). Pub. L. 100–647, §1014(e)(3)(B)–(D), substituted ''his deductions'' for ''his deduction'', ''the itemized deductions allowed'' for ''the deductions allowed'', and ''adjusted gross income'' for ''gross income''.

Subsec. (i)(5)(A). Pub. L. 100–647, §1014(e)(6), substituted ''custodial parent (within the meaning of section 152(e))'' for ''custodial parent''.

Subsec. (i)(7). Pub. L. 100–647, §6006(a), added par. (7).

1986—Subsecs. (a) to (e). Pub. L. 99–514, §101(a), in amending subsecs. (a) to (e) generally, substituted a general tax table for tax tables (1), (2), and (3) in each subsec. applicable to taxable years beginning in 1982, 1983, and after 1983, respectively.

Subsec. (f). Pub. L. 99–514, §101(a), in amending subsec. (f) generally, in par. (1) substituted ''1988,'' for ''1984'' and struck out ''paragraph (3) of'' before ''subsections'', in par. (2) struck out ''paragraph (3) of'' before ''subsection'' in introductory provisions, substituted subpars. (A) to (C) for former subpars. (A) to (C) which read as follows:

''(A) by increasing—

''(i) the maximum dollar amount on which no tax is imposed under such table, and

''(ii) the minimum and maximum dollar amounts for each rate bracket for which a tax is imposed under such table,

by the cost-of-living adjustment for such calendar year,

''(B) by not changing the rate applicable to any rate bracket as adjusted under subparagraph (A)(ii), and

''(C) by adjusting the amounts setting forth the tax to the extent necessary to reflect the adjustments in the rate brackets.'',

and struck out concluding provisions which read as follows: ''If any increase determined under subparagraph (A) is not a multiple of $10, such increase shall be rounded to the nearest multiple of $10 (or if such increase is a multiple of $5, such increase shall be in-

creased to the next highest multiple of $10).'', in par. (3)(B) substituted ''1987'' for ''1983'', in par. (4) substituted ''August 31'' for ''September 30'', in par. (5) inserted requirement that the Consumer Price Index most consistent with such Index for calendar year 1986 be used, and added par. (6).

Subsecs. (g), (h). Pub. L. 99–514, § 101(a), in amending section generally, added subsecs. (g) and (h).

Subsec. (i). Pub. L. 99–514, § 1411(a), added subsec. (i).

Subsec. (j). Pub. L. 99–514, § 302(a), added subsec. (j).

1982—Subsecs. (d), (e). Pub. L. 97–448, § 101(a)(3), set out as a note below, provided for amendment of the tables applying to married individuals filing separately or to estates and trusts so as to correct any figure differing by not more than 50 cents from the correct amount under the formula used in constructing such table. Corrections to the tables in subsecs. (d) and (e) appeared in Announcement 83–50 contained in Internal Revenue Bulletin No. 1983–12 of Mar. 21, 1983.

1981—Subsecs. (a) to (e). Pub. L. 97–34, § 101(a), generally revised tax tables downward providing for cumulative across-the-board reductions of 23 percent on a three phase schedule under which different new rates were set for taxable years beginning in 1982, for taxable years beginning in 1983, and for taxable years beginning after 1983.

Subsec. (f). Pub. L. 97–34, § 104(a), added subsec. (f).

1978—Subsec. (a). Pub. L. 95–600 generally made a downward revision of tax table for married individuals filing joint returns and surviving spouses resulting in a table under which, among other changes, a bottom bracket imposing no tax on taxable income of $3,400 or less was substituted for a bottom bracket imposing no tax on taxable income of $3,200 or less.

Subsec. (b). Pub. L. 95–600 generally made a downward revision of tax table for heads of household resulting in a table under which, among other changes, a bottom bracket imposing no tax on taxable income of $2,300 or less was substituted for a bottom bracket imposing no tax on taxable income of $2,200 or less.

Subsec. (c). Pub. L. 95–600 generally made a downward revision of tax table for unmarried individuals other than surviving spouses and heads of households resulting in a table under which, among other changes, a bottom bracket imposing no tax on taxable income of $2,300 or less was substituted for a bottom bracket imposing no tax on taxable income of $2,200 or less.

Subsec. (d). Pub. L. 95–600 generally made a downward revision of tax tables for married individuals filing separate returns resulting in a table under which, among other changes, a bottom bracket imposing no tax on taxable income of $1,700 or less was substituted for a bottom bracket imposing no tax on taxable income of $1,600 or less.

Subsec. (e). Pub. L. 95–600 generally made a downward revision of tax tables for estates and trusts resulting in a table under which, among other changes, a bottom bracket under which a tax of 14% is imposed on taxable income of $1,050 for a bottom bracket under which a tax of 14% was imposed on taxable income of $500 or less.

1977—Subsec. (a). Pub. L. 95–30 generally made a downward revision of tax table for married individuals filing joint returns and surviving spouses resulting in a table under which, among other changes, a bottom bracket imposing no tax on taxable income of $3,200 or less was substituted for a bottom bracket under which a tax of 14% had been imposed on a taxable income of $1,000 or less.

Subsec. (b). Pub. L. 95–30 generally made a downward revision of tax table for heads of households resulting in a table under which, among other changes, a bottom bracket imposing no tax on taxable income of $2,200 or less was substituted for a bottom bracket under which a tax of 14% had been imposed on a taxable income of $1,000 or less.

Subsec. (c). Pub. L. 95–30 generally made a downward revision of tax table for unmarried individuals other than surviving spouses and heads of households resulting in a table under which, among other changes, a bottom bracket imposing no tax on taxable income of $2,200 or less was substituted for a bottom bracket under which a tax of 14% had been imposed on a taxable income of $500 or less.

Subsec. (d). Pub. L. 95–30 generally made a downward revision of tax table for married individuals filing separate returns resulting in a table under which, among other changes, a bottom bracket imposing no tax on taxable income of $1,600 or less was substituted for a bottom bracket under which a tax of 14% had been imposed on a taxable income of $500 or less. Provisions making table applicable to estates and trusts were struck out. See subsec. (e).

Subsec. (e). Pub. L. 95–30 added subsec. (e) consisting of table formerly contained in subsec. (d) but without any downward revision and limited so as to apply only to estates and trusts.

1969—Subsec. (a). Pub. L. 91–172 substituted a table of rates of tax for married individuals filing joint returns and surviving spouses for the tables of rates of tax on individuals. For rates of taxes on unmarried individuals and married persons filing separate returns, see subsecs. (c) and (d) of this section.

Subsec. (b). Pub. L. 91–172 generally revised rates of tax of heads of household downwards and struck out provisions defining head of household, determination of status, and limitations. For definition of head of household, determination of status, and limitations, see section 2(b) of this title.

Subsec. (c). Pub. L. 91–172 substituted rates of tax on unmarried individuals (other than surviving spouses and heads of household) for special rules explaining the rates of tax imposed under former subsecs. (a) and (b)(1) and prescribing a maximum limit of 87 percent of the taxable year.

Subsec. (d). Pub. L. 91–172 substituted a table of rates of tax for married individuals filing separate returns for provision prescribing the applicability of the rates to non-resident aliens. For applicability of rates of tax to non-resident aliens, see section 2(d) of this title.

Subsec. (e). Pub. L. 91–172 struck out cross reference to section 63. See section 2(e) of this title.

1966—Subsecs. (d), (e). Pub. L. 89–809 added subsec. (d) and redesignated former subsec. (d) as (e).

1964—Pub. L. 88–272 amended section generally by splitting the former first bracket which started at $2,000 into four new brackets, the 14 percent bracket representing a 30 percent reduction, the 15 percent bracket a 25 percent cut, and the 16 percent bracket a 20 percent cut, and reducing all other brackets by cuts averaging about 20 percent and effectuated these cuts in two steps, one in 1964, and one in 1965.

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Pub. L. 111–148, title X, § 10909(c), Mar. 23, 2010, 124 Stat. 1023, as amended by Pub. L. 111–312, title I, § 101(b)(1), Dec. 17, 2010, 124 Stat. 3298, provided that: ''Each provision of law amended by this section [amending sections 24, 25, 25A, 25B, 26, 30, 30B, 30D, 36C, 137, 904, 1016, 1400C, and 6211 of this title and section 1324 of Title 31, Money and Finance, and renumbering section 23 of this title as section 36C of this title] is amended to read as such provision would read if this section had never been enacted. The amendments made by the preceding sentence shall apply to taxable years beginning after December 31, 2011.''

Pub. L. 111–148, title X, § 10909(d), Mar. 23, 2010, 124 Stat. 1024, as amended by Pub. L. 111–312, title I, § 101(b)(2), Dec. 17, 2010, 124 Stat. 3298, provided that: ''Except as provided in subsection (c) [set out as a note above], the amendments made by this section [amending sections 24, 25, 25A, 25B, 26, 30, 30B, 30D, 36C, 137, 904, 1016, 1400C, and 6211 of this title and section 1324 of Title 31, Money and Finance, and renumbering section 23 of this title as section 36C of this title] shall apply to taxable years beginning after December 31, 2009.''

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–28, title VIII, § 8241(c), May 25, 2007, 121 Stat. 199, provided that: ''The amendment made by this

section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [May 25, 2007].''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–222, title V, § 510(d), May 17, 2006, 120 Stat. 364, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2005.''

EFFECTIVE AND TERMINATION DATES OF 2004 AMENDMENTS

Pub. L. 108–357, title IV, § 413(d), Oct. 22, 2004, 118 Stat. 1510, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 170, 171, 245, 312, 443, 465, 508, 542, 543, 562, 563, 751, 864, 898, 904, 951, 954, 989, 1014, 1016, 1212, 1223, 1248, 1260, 1291, 1294, 4947, 4948, 6103, 6501, and 6679 of this title and repealing sections 551 to 558, 1246, 1247, and 6035 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

''(2) SUBSECTION (C)(27).—The amendments made by subsection (c)(27) [amending section 6103 of this title] shall apply to disclosures of return or return information with respect to taxable years beginning after December 31, 2004.''

Pub. L. 108–311, title I, § 101(e), Oct. 4, 2004, 118 Stat. 1168, provided that: ''The amendments made by this section [amending this section and sections 24 and 63 of this title] shall apply to taxable years beginning after December 31, 2003.''

Pub. L. 108–311, title I, § 105, Oct. 4, 2004, 118 Stat. 1169, provided that: ''Each amendment made by this title [amending this section and sections 24, 32, 55, and 63 of this title] shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16, § 901, set out as an Effective and Termination Dates of 2001 Amendment note below] to the same extent and in the same manner as the provision of such Act to which such amendment relates.''

Pub. L. 108–311, title IV, § 402(b), Oct. 4, 2004, 118 Stat. 1186, provided that: ''The amendments made by subsection (a) [amending this section and sections 691, 854, and 857 of this title and provisions set out as a note under this section] shall take effect as if included in section 302 of the Jobs and Growth Tax Relief Reconciliation Act of 2003 [Pub. L. 108–27].''

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

Pub. L. 108–27, title I, § 102(c), May 28, 2003, 117 Stat. 754, provided that: ''The amendments made by this section [amending this section and provisions set out as a note under this section] shall apply to taxable years beginning after December 31, 2002.''

Pub. L. 108–27, title I, § 104(c), May 28, 2003, 117 Stat. 755, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2002.

''(2) TABLES FOR 2003.—The Secretary of the Treasury shall modify each table which has been prescribed under section 1(f) of the Internal Revenue Code of 1986 for taxable years beginning in 2003 and which relates to the amendment made by subsection (a) to reflect such amendment.''

Pub. L. 108–27, title I, § 105(b), May 28, 2003, 117 Stat. 755, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2002.''

Pub. L. 108–27, title I, § 107, May 28, 2003, 117 Stat. 755, provided that: ''Each amendment made by this title [enacting section 6429 of this title, amending this section and sections 24, 55, and 63 of this title, and amending provisions set out as notes under this section] shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16, § 901, set out as an Effective and Termination Dates of 2001 Amendment note below] to the same extent and in the same manner as the provision of such Act to which such amendment relates.''

Pub. L. 108–27, title III, § 301(d), May 28, 2003, 117 Stat. 760, provided that:

''(1) IN GENERAL.—Except as otherwise provided by this subsection, the amendments made by this section [amending this section, sections 55, 57, 1445, and 7518 of this title, and section 1177 of Title 46, Appendix, Shipping] shall apply to taxable years ending on or after May 6, 2003.

''(2) WITHHOLDING.—The amendment made by subsection (a)(2)(C) [amending section 1445 of this title] shall apply to amounts paid after the date of the enactment of this Act [May 28, 2003].

''(3) SMALL BUSINESS STOCK.—The amendments made by subsection (b)(3) [amending section 57 of this title] shall apply to dispositions on or after May 6, 2003.''

Pub. L. 108–27, title III, § 302(f), May 28, 2003, 117 Stat. 764, as amended by Pub. L. 108–311, title IV, § 402(a)(6), Oct. 4, 2004, 118 Stat. 1185, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 163, 301, 306, 338, 467, 531, 541, 584, 702, 854, 857, 1255, and 1257 of this title and repealing section 341 of this title] shall apply to taxable years beginning after December 31, 2002.

''(2) PASS-THRU ENTITIES.—In the case of a pass-thru entity described in subparagraph (A), (B), (C), (D), (E), or (F) of section 1(h)(10) of the Internal Revenue Code of 1986, as amended by this Act, the amendments made by this section shall apply to taxable years ending after December 31, 2002; except that dividends received by such an entity on or before such date shall not be treated as qualified dividend income (as defined in section 1(h)(11)(B) of such Code, as added by this Act).''

Pub. L. 108–27, title III, § 303, May 28, 2003, 117 Stat. 764, as amended by Pub. L. 109–222, title I, § 102, May 17, 2006, 120 Stat. 346; Pub. L. 111–312, title I, § 102(a), Dec. 17, 2010, 124 Stat. 3298, provided that: ''All provisions of, and amendments made by, this title [amending this section, sections 55, 57, 163, 301, 306, 338, 467, 531, 541, 584, 702, 854, 857, 1255, 1257, 1445, and 7518 of this title, and section 1177 of Title 46, Appendix, Shipping, repealing section 341 of this title, and enacting provisions set out as notes under this section] shall not apply to taxable years beginning after December 31, 2012, and the Internal Revenue Code of 1986 shall be applied and administered to such years as if such provisions and amendments had never been enacted.''

[Pub. L. 111–312, title I, § 102(b), Dec. 17, 2010, 124 Stat. 3299, provided that: ''The amendment made by this section [amending section 303 of Pub. L. 108–27, set out above] shall take effect as if included in the enactment of the Jobs and Growth Tax Relief Reconciliation Act of 2003 [Pub. L. 108–27].'']

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Pub. L. 111–312, title II, § 201(c), Dec. 17, 2010, 124 Stat. 3299, provided that: ''Title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16, § 901, set out below] (relating to sunset of provisions of such Act) shall not apply to title VII of such Act [Pub. L. 107–16, § 701, amending section 55 of this title and enacting provisions set out as a note under section 55 of this title] (relating to alternative minimum tax).''

Pub. L. 109–280, title VIII, § 811, Aug. 17, 2006, 120 Stat. 996, provided that: ''Title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16, § 901, set out below] shall not apply to the provisions of, and amendments made by, subtitles A through F of title VI of such Act [subtitles A to F [§§ 601–666] of title VI of Pub. L. 107–16, enacting sections 25B, 45E, 402A, and 4980F of this title, amending sections 24, 25, 25B, 26, 38, 39, 72, 132, 196, 219, 401, 402, 403, 404, 408, 408A,

409, 411, 412, 414 to 416, 457, 501, 505, 664, 861, 904, 1400C, 3401, 3405, 4972, 4973, 4975, 4979A, 6047, and 6051 of this title and sections 1003, 1053, 1054, 1082, 1104, and 1108 of Title 29, Labor, enacting provisions set out as notes under sections 24, 38, 72, 132, 219, 401, 402, 403, 404, 408, 409, 411, 412, 414 to 416, 457, 861, 4972, 4975, 4980F, and 7801 of this title and section 1107 of Title 29, and amending provisions set out as notes under section 414 of this title and section 1107 of Title 29] (relating to pension and individual retirement arrangement provisions).''

Pub. L. 109–280, title XIII, §1304(a), Aug. 17, 2006, 120 Stat. 1109, provided that: ''Section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16, set out below] (relating to sunset provisions) shall not apply to section 402 of such Act [amending sections 72, 135, 221, 529, 530, 4973, and 6693 of this title and enacting provisions set out as a note under section 72 of this title] (relating to modifications to qualified tuition programs).''

Pub. L. 107–16, title I, §101(d), June 7, 2001, 115 Stat. 44, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 6428 of this title and amending this section and sections 15, 531, 541, 3402, and 3406 of this title] shall apply to taxable years beginning after December 31, 2000.

''(2) AMENDMENTS TO WITHHOLDING PROVISIONS.—The amendments made by paragraphs (6), (7), (8), (9), (10), and (11) of subsection (c) [amending sections 3402 and 3406 of this title] shall apply to amounts paid after the 60th day after the date of the enactment of this Act [June 7, 2001]. References to income brackets and rates of tax in such paragraphs shall be applied without regard to [former] section 1(i)(1)(D) of the Internal Revenue Code of 1986.''

Pub. L. 107–16, title III, §301(d), June 7, 2001, 115 Stat. 54, as amended by Pub. L. 108–27, title I, §103(b), May 28, 2003, 117 Stat. 754, provided that: ''The amendments made by this section [amending this section and section 63 of this title] shall apply to taxable years beginning after December 31, 2002.''

Pub. L. 107–16, title III, §302(c), June 7, 2001, 115 Stat. 54, as amended by Pub. L. 108–27, title I, §102(b)(2), May 28, 2003, 117 Stat. 754, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2002.''

Pub. L. 107–16, title IX, §901, June 7, 2001, 115 Stat. 150, as amended by Pub. L. 107–358, §2, Dec. 17, 2002, 116 Stat. 3015; Pub. L. 111–312, title I, §101(a)(1), Dec. 17, 2010, 124 Stat. 3298, provided that:

''(a) IN GENERAL.—All provisions of, and amendments made by, this Act [see Tables for classification] shall not apply—

''(1) to taxable, plan, or limitation years beginning after December 31, 2012, or

''(2) in the case of title V [see Tables for classification], to estates of decedents dying, gifts made, or generation skipping transfers, after December 31, 2012.

''(b) APPLICATION OF CERTAIN LAWS.—The Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.] shall be applied and administered to years, estates, gifts, and transfers described in subsection (a) as if the provisions and amendments described in subsection (a) had never been enacted.''

''(c) EXCEPTION.—Subsection (a) shall not apply to section 803 [set out as a note preceding section 101 of this title] (relating to no federal income tax on restitution received by victims of the Nazi regime or their heirs or estates).''

[Pub. L. 111–312, title I, §101(a)(2), Dec. 17, 2010, 124 Stat. 3298, provided that: ''The amendment made by this subsection [amending section 901 of Pub. L. 107–16, set out above] shall take effect as if included in the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16].'']

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title I, §117(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–605, provided that: ''The amendments made by this section [amending this section and section 1202 of this title] shall apply to stock acquired after the date of the enactment of this Act [Dec. 21, 2000].''

EFFECTIVE DATE OF 1998 AMENDMENTS

Pub. L. 105–277, div. J, title IV, §4002(k), Oct. 21, 1998, 112 Stat. 2681–908, provided that: ''The amendments made by this section [amending this section and sections 408A, 6015, 6103, 6159, 7421, 7443A, and 7491 of this title and amending provisions set out as a note under section 6601 of this title] shall take effect as if included in the provisions of the 1998 Act [Pub. L. 105–206] to which they relate.''

Pub. L. 105–206, title V, §5001(b), July 22, 1998, 112 Stat. 788, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 1223 and 1235 of this title] shall apply to taxable years ending after December 31, 1997.

''(2) SUBSECTION (a)(5).—The amendments made by subsection (a)(5) [amending sections 1223 and 1235 of this title] shall take effect on January 1, 1998.''

Pub. L. 105–206, title VI, §6024, July 22, 1998, 112 Stat. 826, provided that: ''Except as otherwise provided in this title [see Tables for classification], the amendments made by this title shall take effect as if included in the provisions of the Taxpayer Relief Act of 1997 [Pub. L. 105–34] to which they relate.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 311(d) of Pub. L. 105–34 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section, sections 55, 57, 904, 1445, and 7518 of this title, and section 1177 of Title 46, Appendix, Shipping] shall apply to taxable years ending after May 6, 1997.

''(2) WITHHOLDING.—The amendment made by subsection (c)(1) [amending section 1445 of this title] shall apply only to amounts paid after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1704(m)(4) of Pub. L. 104–188 provided that: ''The amendments made by this subsection [amending this section and section 59 of this title] shall apply to taxable years beginning after December 31, 1995.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13201(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and sections 41, 63, 68, 132, 151, 453A, 513, 531, and 541 of this title] shall apply to taxable years beginning after December 31, 1992.''

Section 13202(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and sections 531 and 541 of this title] shall apply to taxable years beginning after December 31, 1992.''

Section 13206(d)(3) of Pub. L. 103–66 provided that: ''The amendments made by this subsection [amending this section and section 163 of this title] shall apply to taxable years beginning after December 31, 1992.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11101(e) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section, sections 32, 41, 59, 63, 135, 151, 513, 691, 904, 6103, and 7518 of this title, and section 1177 of Title 46, Appendix, Shipping] shall apply to taxable years beginning after December 31, 1990.''

Section 11103(e) of Pub. L. 101–508 provided that: ''The amendments made by this section [enacting section 68 of this title and amending this section and section 56 of this title] shall apply to taxable years beginning after December 31, 1990.''

Section 11104(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and section 151 of this title] shall apply to taxable years beginning after December 31, 1990.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7817 of Pub. L. 101–239 provided that: ''Except as otherwise provided in this part [part I (§§ 7811–7817) of subtitle H of title VII of Pub. L. 101–239, see Tables for classification], any amendment made by this part shall take effect as if included in the provision of the 1988 Act [Pub. L. 100–647] to which such amendment relates.''

Section 7831(g) of Pub. L. 101–239 provided that: ''Any amendment made by this section [amending this section and sections 42, 406, 407, and 1250 of this title and provisions set out as notes under sections 141 and 263A of this title] shall take effect as if included in the provision of the Tax Reform Act of 1986 [Pub. L. 99–514] to which such amendment relates.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1019 of title I of Pub. L. 100–647 provided that:

''(a) GENERAL RULE.—Except as otherwise provided in this title, any amendment made by this title [see Tables for classification], shall take effect as if included in the provision of the Reform Act [Pub. L. 99–514] to which such amendment relates.

''(b) WAIVER OF ESTIMATED TAX PENALTIES.—No addition to tax shall be made under section 6654 or 6655 of the 1986 Code for any period before April 16, 1989 (March 16, 1989 in the case of a taxpayer subject to section 6655 of the 1986 Code) with respect to any underpayment to the extent such underpayment was created or increased by any provision of this title or title II [see Tables for classification].''

Section 6006(b) of Pub. L. 100–647 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 151 of title I of Pub. L. 99–514 provided that:

''(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this title [enacting section 67 of this title, amending this section, sections 3, 5, 15, 21, 32, 62, 63, 74, 85, 86, 102, 108, 117, 129, 151, 152, 164, 170, 172, 183, 213, 265, 274, 280A, 402, 441, 443, 527, 541, 613A, 642, 667, 861, 862, 901, 904, 1398, 1441, 2032A, 3121, 3231, 3306, 3401, 3402, 3507, 4941, 4945, 6012 to 6014, 6212, 6504, 6511, and 7871 of this title, and section 409 of Title 42, The Public Health and Welfare, renumbering section 223 of this title as section 220 of this title, repealing sections 24, 221, 222, and 1301 to 1305 of this title, and enacting provisions set out as a note under section 32 of this title] shall apply to taxable years beginning after December 31, 1986.

''(b) UNEMPLOYMENT COMPENSATION.—The amendment made by section 121 [amending section 85 of this title] shall apply to amounts received after December 31, 1986, in taxable years ending after such date.

''(c) PRIZES AND AWARDS.—The amendments made by section 122 [amending sections 74, 102, 274, 3121, 3231, 3306, 3401, 4941, and 4945 of this title and section 409 of Title 42, The Public Health and Welfare] shall apply to prizes and awards granted after December 31, 1986.

''(d) SCHOLARSHIPS.—The amendments made by section 123 [amending sections 74, 117, 1441, and 7871 of this title] shall apply to taxable years beginning after December 31, 1986, but only in the case of scholarships and fellowships granted after August 16, 1986.

''(e) PARSONAGE AND MILITARY HOUSING ALLOWANCES.—The amendment made by section 144 [amending section 265 of this title] shall apply to taxable years beginning before, on, or after, December 31, 1986.''

Section 302(b) of Pub. L. 99–514 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.''

Section 1411(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section and section 6103 of this title] shall apply to taxable years beginning after December 31, 1986.''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 109 of title I of Pub. L. 97–448 provided that: ''Except as otherwise provided in this title, any amendment made by this title [see Tables for classification] shall take effect as if it had been included in the provision of the Economic Recovery Tax Act of 1981 [Pub. L. 97–34, Aug. 13, 1981, 95 Stat. 172] to which such amendment relates.''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 101(f)(1) of Pub. L. 97–34, as amended by Pub. L. 97–448, title I, § 101(a)(1), Jan. 12, 1983, 96 Stat. 2365, provided that: ''The amendments made by subsections (a), (c), and (d) [amending this section and sections 3, 21, 55, 541, and 1304 of this title and repealing section 1348 of this title] shall apply to taxable years beginning after December 31, 1981; except that the amendment made by paragraph (3) of subsection (d) [amending section 21 of this title] shall apply to taxable years ending after December 31, 1981.''

Section 104(e) of Pub. L. 97–34 provided that: ''The amendments made by this section [amending this section and sections 63, 151, 6012, and 6013 of this title] shall apply to taxable years beginning after December 31, 1984.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 101(f)(1) of Pub. L. 95–600 provided that: ''The amendments made by subsections (a), (b), (c), and (d) [amending sections 63, 402, 1302, and 6012 of this title] shall apply to taxable years beginning after December 31, 1978.''

EFFECTIVE DATE OF 1977 AMENDMENT

Section 106(a) of Pub. L. 95–30 provided that: ''The amendments made by sections 101, 102, and 104 [amending this section and sections 3, 21, 42, 57, 63, 143, 161, 172, 211, 402, 441, 443, 511, 584, 613A, 641, 642, 667, 703, 861, 862, 873, 904, 911, 931, 1034, 1211, 1302, 6012, 6014, 6212, 6504, and 6654 of this title and repealing sections 36, 141, 142, 144, and 145 of this title] shall apply to taxable years beginning after December 31, 1976.''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 803(f) of Pub. L. 91–172, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by subsections (a) [amending this section], (b) [amending section 2 of this title], and (d) (other than paragraphs (1) and (8)) [amending sections 5, 511, 632, 641, 1347, and 6015 of this title] shall apply to taxable years beginning after December 31, 1970, except that section 2(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [section 2(c) of this title], as amended by subsection (b), shall also apply to taxable years beginning after December 31, 1969. The amendments made by subsections (c) [amending section 3 of this title], (d)(1) [amending section 6014 of this title], and (d)(8) [amending section 1304 of this title] shall apply to taxable years beginning after December 31, 1969''.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 103(n) of Pub. L. 89–809 provided that:

''(1) The amendments made by this section (other than the amendments made by subsections (h), (i), and (k)) [enacting section 877 of this title, amending this section and sections 116, 154, 871, 872, 873, 874, 875, 932, 6015, and 7701 of this title, renumbering section 877 as 878, and repealing section 1493 of this title] shall apply with respect to taxable years beginning after December 31, 1966.

''(2) The amendments made by subsection (h) [amending section 1441 of this title] shall apply with respect to payments made in taxable years of recipients beginning after December 31, 1966.

''(3) The amendments made by subsection (i) [amending section 1461 of this title] shall apply with respect to payments occurring after December 31, 1966.

''(4) The amendments made by subsection (k) [amending section 3401 of this title] shall apply with respect to remuneration paid after December 31, 1966.''

EFFECTIVE DATE OF 1964 AMENDMENT

Section 131 of Pub. L. 88–272, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Except for purposes of section 21 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to effect of changes in rates during a taxable year), the amendments made by parts I and II of this title [amending this section and sections 2, 11, 37, 141, 144, 242, 821, 871, 963, 6016, 6074, 6154, 6212, 6504, and 6655 of this title] shall apply with respect to taxable years beginning after December 31, 1963.''

SHORT TITLE OF 2010 AMENDMENT

Pub. L. 111–329, §1, Dec. 22, 2010, 124 Stat. 3566, provided that: ''This Act [amending sections 4081, 4261, 4271, and 9502 of this title and sections 40117, 44302, 44303, 47104, 47107, 47115, 47141, 48103, and 49108 of Title 49, Transportation, enacting provisions set out as notes under sections 4081 and 9502 of this title and section 40117 of Title 49, and amending provisions set out as a note under section 47109 of Title 49] may be cited as the 'Airport and Airway Extension Act of 2010, Part IV'.''

Pub. L. 111–325, §1(a), Dec. 22, 2010, 124 Stat. 3537, provided that: ''This Act [amending sections 267, 302, 316, 562, 851, 852, 853, 853A, 854, 855, 860, 871, 1212, and 4982 of this title, repealing section 6697 of this title, and enacting provisions set out as notes under sections 267, 316, 562, 851, 852, 854, 855, 860, 1212, and 4982 of this title] may be cited as the 'Regulated Investment Company Modernization Act of 2010'.''

Pub. L. 111–312, §1(a), Dec. 17, 2010, 124 Stat. 3296, provided that: ''This Act [see Tables for classification] may be cited as the 'Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010'.''

Pub. L. 111–249, §1, Sept. 30, 2010, 124 Stat. 2627, provided that: ''This Act [amending sections 4081, 4261, 4271, and 9502 of this title and sections 1135, 40117, 41743, 44302, 44303, 44703, 47104, 47107, 47115, 47141, 48103, and 49108 of Title 49, Transportation, enacting provisions set out as notes under sections 4081 and 9502 of this title and sections 1135 and 40117 of Title 49, and amending provisions set out as notes under sections 41731, 44701, and 47109 of Title 49] may be cited as the 'Airport and Airway Extension Act of 2010, Part III'.''

Pub. L. 111–240, title II, §2001, Sept. 27, 2010, 124 Stat. 2553, provided that: ''This title [amending sections 38 to 40, 55, 72, 162, 168, 179, 195, 280F, 402A, 460, 861, 862, 864, 1202, 1374, 1400L, 1400N, 6041, 6330, 6707A, 6721, and 6722 of this title and enacting provisions set out as notes under sections 38 to 40, 72, 162, 168, 179, 195, 280F, 402A, 460, 861, 1202, 1374, 6041, 6330, 6655, 6662A, 6707A, and 6721 of this title] may be cited as the 'Creating Small Business Jobs Act of 2010'.''

Pub. L. 111–237, §1, Aug. 16, 2010, 124 Stat. 2497, provided that: ''This Act [amending sections 6201, 6213, 6302, and 6501 of this title and enacting provisions set out as notes under sections 6201, 6302, and 6655 of this title] may be cited as the 'Firearms Excise Tax Improvement Act of 2010'.''

Pub. L. 111–226, §1, Aug. 10, 2010, 124 Stat. 2389, provided that: ''This Act [enacting section 909 of this title, amending sections 32, 304, 861, 864, 871, 901, 904, 960, 2104, 6012, 6051, 6302, and 6501 of this title and section 1396r–8 of Title 42, The Public Health and Welfare, repealing section 3507 of this title, enacting provisions set out as notes under sections 32, 304, 861, 864, 901, 904, 909, 960, and 6501 of this title and section 1396r–8 of Title 42, and amending provisions set out as a note under section 1396d of Title 42] may be cited as the '_____Act of_____'. [sic]''

Pub. L. 111–205, §1, July 22, 2010, 124 Stat. 2236, provided that: ''This Act [enacting and amending provisions set out as notes under section 3304 of this title] may be cited as the 'Unemployment Compensation Extension Act of 2010'.''

Pub. L. 111–198, §1, July 2, 2010, 124 Stat. 1356, provided that: ''This Act [amending sections 36, 6103, and 6657 of this title, section 1187 of Title 8, Aliens and Nationality, and section 2131 of Title 22, Foreign Relations and Intercourse, and enacting provisions set out as notes under sections 36, 6103, and 6657 of this title] may be cited as the 'Homebuyer Assistance and Improvement Act of 2010'.''

Pub. L. 111–197, §1, July 2, 2010, 124 Stat. 1353, provided that: ''This Act [amending sections 4081, 4261, 4271, and 9502 of this title and sections 106, 40117, 44302, 44303, 47104, 47107, 47115, 47141, 48101 to 48103, and 49108 of Title 49, Transportation, enacting provisions set out as notes under sections 4081 and 9502 of this title and section 40117 of Title 49, and amending provisions set out as a note under section 47109 of Title 49] may be cited as the 'Airport and Airway Extension Act of 2010, Part II'.''

Pub. L. 111–161, §1, Apr. 30, 2010, 124 Stat. 1126, provided that: ''This Act [amending sections 4081, 4261, 4271, and 9502 of this title and sections 106, 40117, 44302, 44303, 47104, 47107, 47115, 47141, 48101 to 48103, and 49108 of Title 49, Transportation, enacting provisions set out as notes under sections 4081 and 9502 of this title and section 40117 of Title 49, and amending provisions set out as a note under section 47109 of Title 49] may be cited as the 'Airport and Airway Extension Act of 2010'.''

Pub. L. 111–159, §1, Apr. 26, 2010, 124 Stat. 1123, provided that: ''This Act [amending section 5000A of this title and enacting provisions set out as a note under section 5000A of this title] may be cited as the 'TRICARE Affirmation Act'.''

Pub. L. 111–157, §1, Apr. 15, 2010, 124 Stat. 1116, provided that: ''This Act [amending section 119 of Title 17, Copyrights, sections 1395w–4 and 1396b of Title 42, The Public Health and Welfare, and section 325 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, enacting provisions set out as notes under sections 3304 and 6432 of this title and section 1395w–4 of Title 42, and amending provisions set out as notes under sections 3304 and 6432 of this title and section 119 of Title 17] may be cited as the 'Continuing Extension Act of 2010'.''

Pub. L. 111–153, §1, Mar. 31, 2010, 124 Stat. 1084, provided that: ''This Act [amending sections 4081, 4261, 4271, and 9502 of this title and sections 106, 40117, 44302, 44303, 47104, 47107, 47115, 47141, 48101 to 48103, and 49108 of Title 49, Transportation, enacting provisions set out as notes under sections 4081 and 9502 of this title and section 40117 of Title 49, and amending provisions set out as a note under section 47109 of Title 49] may be cited as the 'Federal Aviation Administration Extension Act of 2010'.''

Pub. L. 111–147, §1(a), Mar. 18, 2010, 124 Stat. 71, provided that: ''This Act [enacting chapter 4 and section 6038D of this title, amending sections 51, 54F, 149, 163, 165, 179, 643, 679, 864, 871, 881, 1287, 1291, 1298, 3111, 3221, 4701, 6011, 6048, 6229, 6414, 6431, 6501, 6513, 6611, 6662, 6677, 6724, and 9502 to 9504 of this title, section 777c of Title 16, Conservation, sections 405 and 410 of Title 23, Highways, section 3121 of Title 31, Money and Finance, and sections 5305, 5307, 5309, 5311, 5337, 5338, 31104, and 31144 of Title 49, Transportation, enacting provisions set out as notes under sections 38, 51, 54F, 149, 179, 643, 679, 864, 871, 1291, 6011, 6038D, 6048, 6229, 6431, 6655, 6662, 6677, 9502, and 9503 of this title and section 101 of Title 23, and amending provisions set out as notes under section 901 of Title 2, The Congress, sections 402, 403, and 405 of Title 23, and sections 5309, 5310, 5338, 14710, 31100, 31301, and 31309 of Title 49] may be cited as the 'Hiring Incentives to Restore Employment Act'.''

Pub. L. 111–144, §1, Mar. 2, 2010, 124 Stat. 42, provided that: ''This Act [amending sections 35, 139C, 6432, and 6720C of this title, section 119 of Title 17, Copyrights, sections 1395*l* and 1395w–4 of Title 42, The Public Health and Welfare, and section 325 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, enacting provisions set out as a note under section 6432 of this title, and amending provisions set out as notes under sections 3304 and 6432 of this title and section 119 of Title 17] may be cited as the 'Temporary Extension Act of 2010'.''

SHORT TITLE OF 2009 AMENDMENT

Pub. L. 111–116, §1, Dec. 16, 2009, 123 Stat. 3031, provided that: ''This Act [amending sections 4081, 4261, 4271, and 9502 of this title and sections 106, 40117, 44302, 44303, 47104, 47107, 47115, 47141, 48101 to 48103, and 49108 of Title 49, Transportation, enacting provisions set out as notes under sections 4081 and 9502 of this title and section 40117 of Title 49, and amending provisions set out as a note under section 47109 of Title 49] may be cited as the 'Fiscal Year 2010 Federal Aviation Administration Extension Act, Part II'.''

Pub. L. 111–92, §1, Nov. 6, 2009, 123 Stat. 2984, provided that: ''This Act [amending sections 36, 56, 132, 172, 810, 864, 1400C, 3301, 6011, 6213, 6698, and 6699 of this title, section 1103 of Title 42, The Public Health and Welfare, and section 352 of Title 45, Railroads, enacting provisions set out as notes under sections 36, 56, 132, 172, 864, 3301, 3304, 6011, 6213, 6655, and 6698 of this title and section 1103 of Title 42, and amending provisions set out as a note under section 3304 of this title] may be cited as the 'Worker, Homeownership, and Business Assistance Act of 2009'.''

Pub. L. 111–69, §1, Oct. 1, 2009, 123 Stat. 2054, provided that: ''This Act [amending sections 4081, 4261, 4271, and 9502 of this title and sections 106, 40117, 41743, 44302, 44303, 47104, 47107, 47115, 47141, 48101 to 48103, and 49108 of Title 49, Transportation, enacting provisions set out as notes under sections 4081 and 9502 of this title and section 40117 of Title 49, and amending provisions set out as notes under sections 41731 and 47109 of Title 49] may be cited as the 'Fiscal Year 2010 Federal Aviation Administration Extension Act'.''

Pub. L. 111–42, title II, §201, July 28, 2009, 123 Stat. 1964, provided that: ''This title [enacting provisions set out as a note under section 6655 of this title] may be cited as the 'Corporate Estimated Tax Shift Act of 2009'.''

Pub. L. 111–12, §1, Mar. 30, 2009, 123 Stat. 1457, provided that: ''This Act [amending sections 4081, 4261, 4271, and 9502 of this title and sections 106, 40117, 44302, 44303, 47104, 47107, 47115, 47141, 48101 to 48103, and 49108 of Title 49, Transportation, enacting provisions set out as notes under sections 4081 and 9502 of this title and section 40117 of Title 49, and amending provisions set out as a note under section 47109 of Title 49] may be cited as the 'Federal Aviation Administration Extension Act of 2009'.''

Pub. L. 111–5, §1, Feb. 17, 2009, 123 Stat. 115, provided that: ''This Act [see Tables for classification] may be cited as the 'American Recovery and Reinvestment Act of 2009'.''

Pub. L. 111–5, div. B, title I, §1000(a), Feb. 17, 2009, 123 Stat. 306, provided that: ''This title [see Tables for classification] may be cited as the 'American Recovery and Reinvestment Tax Act of 2009'.''

Pub. L. 111–5, div. B, title I, §1899, Feb. 17, 2009, 123 Stat. 423, provided that: ''This part [part VI (§§1899–1899L) of subtitle I of title I of div. B of Pub. L. 111–5, amending sections 35, 4980B, 7527, and 9801 of this title, sections 1162, 1181, 2918, and 2919 of Title 29, Labor, and sections 300bb–2 and 300gg of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under sections 35, 4980B, 7527, and 9801 of this title] may be cited as the 'TAA Health Coverage Improvement Act of 2009'.''

Pub. L. 111–5, div. B, title II, §2000(a), Feb. 17, 2009, 123 Stat. 436, provided that: ''This title [amending sections 603, 604, 607, 1103, 1308, and 1322 of Title 42, The Public Health and Welfare, and section 352 of Title 45, Railroads, enacting provisions set out as notes under sections 3304 and 6428 of this title and sections 603, 607, 655, 1103, and 1308 of Title 42, and amending provisions set out as notes under section 3304 of this title] may be cited as the 'Assistance for Unemployed Workers and Struggling Families Act'.''

SHORT TITLE OF 2008 AMENDMENT

Pub. L. 110–449, §1, Nov. 21, 2008, 122 Stat. 5014, provided that: ''This Act [enacting and amending provisions set out as notes under section 3304 of this title] may be cited as the 'Unemployment Compensation Extension Act of 2008'.''

Pub. L. 110–428, §1, Oct. 15, 2008, 122 Stat. 4839, provided that: ''This Act [amending sections 6103 and 7803 of this title and section 376 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as notes under sections 6103 and 7207 of this title and section 376 of Title 28] may be cited as the 'Inmate Tax Fraud Prevention Act of 2008'.''

Pub. L. 110–343, div. B, §1(a), Oct. 3, 2008, 122 Stat. 3807, provided that: ''This division [see Tables for classification] may be cited as the 'Energy Improvement and Extension Act of 2008'.''

Pub. L. 110–343, div. C, §1(a), Oct. 3, 2008, 122 Stat. 3861, provided that: ''This division [see Tables for classification] may be cited as the 'Tax Extenders and Alternative Minimum Tax Relief Act of 2008'.''

Pub. L. 110–343, div. C, title VII, §701, Oct. 3, 2008, 122 Stat. 3912, provided that: ''This subtitle [subtitle A (§§701–704) of title VII of div. C of Pub. L. 110–343, amending section 6033 of this title and enacting provisions set out as a note under section 6033 of this title] may be cited as the 'Heartland Disaster Tax Relief Act of 2008'.''

Pub. L. 110–330, §1, Sept. 30, 2008, 122 Stat. 3717, provided that: ''This Act [amending sections 4081, 4261, 4271, and 9502 of this title and sections 106, 40117, 41743, 44302, 44303, 47104, 47107, 47115, 47141, 48101 to 48103, and 49108 of Title 49, Transportation, enacting provisions set out as notes under sections 4081 and 9502 of this title and section 40117 of Title 49, and amending provisions set out as notes under sections 41731 and 47109 of Title 49] may be cited as the 'Federal Aviation Administration Extension Act of 2008, Part II'.''

Pub. L. 110–289, div. C, §3000(a), July 30, 2008, 122 Stat. 2877, provided that: ''This division [see Tables for classification] may be cited as the 'Housing Assistance Tax Act of 2008'.''

Pub. L. 110–253, §1, June 30, 2008, 122 Stat. 2417, provided that: ''This Act [amending sections 4081, 4261, 4271, and 9502 of this title and sections 40117, 44302, 44303, 47104, 47115, 47141, and 48103 of Title 49, Transportation, enacting provisions set out as notes under sections 4081 and 9502 of this title and section 47104 of Title 49, and amending provisions set out as a note under section 47109 of Title 49] may be cited as the 'Federal Aviation Administration Extension Act of 2008'.''

Pub. L. 110–245, §1(a), June 17, 2008, 122 Stat. 1624, provided that: ''This Act [enacting chapter 15 and sections 45P and 877A of this title, amending sections 32, 38, 72, 121, 125, 134, 143, 219, 280C, 401, 403, 404, 408A, 414, 457, 530, 877, 3121, 3306, 3401, 6039G, 6103, 6428, 6511, 6651, 7701, and 9812 of this title, section 1185a of Title 29, Labor, and sections 300gg–5, 409, 410, 1382a, and 1382b of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under sections 32, 38, 72, 121, 125, 134, 143, 219, 401, 408A, 414, 3121, 3401, 6103, 6428, 6511, and 6651 of this title and section 1382a of Title 42] may be cited as the 'Heroes Earnings Assistance and Relief Tax Act of 2008'.''

Pub. L. 110–234, title XV, §15001(a), May 22, 2008, 122 Stat. 1484, and Pub. L. 110–246, §4(a), title XV, §15001(a), June 18, 2008, 122 Stat. 1664, 2246, provided that: ''This title [see Tables for classification] may be cited as the 'Heartland, Habitat, Harvest, and Horticulture Act of 2008'.''

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

Pub. L. 110–190, §1, Feb. 28, 2008, 122 Stat. 643, provided that: ''This Act [amending sections 4081, 4261, 4271, and 9502 of this title and sections 47104 and 48103 of Title 49, Transportation, enacting provisions set out as notes under sections 4081 and 9502 of this title and section 41731 of Title 49, and amending provisions set out as notes under sections 41731 and 47109 of Title 49] may be cited as the 'Airport and Airway Extension Act of 2008'.''

Pub. L. 110–185, §1(a), Feb. 13, 2008, 122 Stat. 613, provided that: ''This Act [amending this section, sections 168, 179, 1400L, 1400N, 6211, 6213, and 6428 of this title, and section 1324 of Title 31, Money and Finance, and enacting provisions set out as notes under sections 168, 179, and 6428 of this title] may be cited as the 'Economic Stimulus Act of 2008'.''

SHORT TITLE OF 2007 AMENDMENT

Pub. L. 110–172, §1(a), Dec. 29, 2007, 121 Stat. 2473, provided that: ''This Act [see Tables for classification] may be cited as the 'Tax Technical Corrections Act of 2007'.''

Pub. L. 110–166, §1, Dec. 26, 2007, 121 Stat. 2461, provided that: ''This Act [amending sections 26 and 55 of this title and enacting provisions set out as notes under sections 26 and 55 of this title] may be cited as the 'Tax Increase Prevention Act of 2007'.''

Pub. L. 110–142, §1, Dec. 20, 2007, 121 Stat. 1803, provided that: ''This Act [enacting sections 139B and 6699 of this title, amending sections 42, 108, 121, 163, 216, 6103, and 6698 of this title, and enacting provisions set out as notes under sections 42, 108, 121, 139B, 163, 216, 6103, 6655, 6698, and 6699 of this title] may be cited as the 'Mortgage Forgiveness Debt Relief Act of 2007'.''

Pub. L. 110–28, title VIII, §8201(a), May 25, 2007, 121 Stat. 190, provided that: ''This subtitle [subtitle B (§§8201–8248) of title VIII of Pub. L. 110–28, enacting section 6676 of this title, amending this section, sections 38, 45B, 51, 179, 641, 761, 1361, 1362, 1368, 1400N, 1402, 6060, 6103, 6107, 6109, 6330, 6404, 6503, 6657, 6694 to 6696, 7407, 7427, 7528, and 7701 of this title, and section 411 of Title 42, The Public Health and Welfare, enacting provisions set out as notes under this section and sections 38, 45B, 51, 179, 641, 761, 1361, 1362, 6060, 6330, 6404, 6657, and 6676 of this title, and amending provisions set out as a note under section 6655 of this title] may be cited as the 'Small Business and Work Opportunity Tax Act of 2007'.''

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109–432, §1(a), Dec. 20, 2006, 120 Stat. 2922, provided that: ''This Act [see Tables for classification] may be cited as the 'Tax Relief and Health Care Act of 2006'.''

Pub. L. 109–432, div. A, title III, §301, Dec. 20, 2006, 120 Stat. 2948, provided that: ''This title [amending sections 106, 223, 408, and 4980G of this title and enacting provisions set out as notes under sections 106, 223, and 4980G of this title] may be cited as the 'Health Opportunity Patient Empowerment Act of 2006'.''

Pub. L. 109–227, §1, May 29, 2006, 120 Stat. 385, provided that: ''This Act [amending section 219 of this title and enacting provisions set out as notes under section 219 of this title] may be cited as the 'Heroes Earned Retirement Opportunities Act'.''

Pub. L. 109–222, §1(a), May 17, 2006, 120 Stat. 345, provided that: ''This Act [enacting section 4965 of this title, amending this section and sections 26, 54, 55, 142 to 144, 148, 149, 163, 167, 170, 179, 199, 355, 408A, 468B, 852, 871, 897, 911, 953, 954, 1221, 1355, 1445, 3402, 6011, 6033, 6049, 6159, 6652, 7122, and 7872 of this title, enacting provisions set out as notes under this section and sections 26, 54 to 56, 142, 143, 163, 167, 170, 199, 355, 408A, 468B, 852, 897, 911, 954, 1355, 3402, 4965, 6049, 6159, and 6655 of this title, and amending provisions set out as notes under this section and sections 56 and 114 of this title] may be cited as the 'Tax Increase Prevention and Reconciliation Act of 2005'.''

SHORT TITLE OF 2005 AMENDMENTS

Pub. L. 109–135, §1(a), Dec. 21, 2005, 119 Stat. 2577, provided that: ''This Act [see Tables for classification] may be cited as the 'Gulf Opportunity Zone Act of 2005'.''

Pub. L. 109–135, title IV, §401, Dec. 21, 2005, 119 Stat. 2610, provided that: ''This subtitle [subtitle A (§§401–413) of title IV of Pub. L. 109–135, see Tables for classification] may be cited as the 'Tax Technical Corrections Act of 2005'.''

Pub. L. 109–73, §1(a), Sept. 23, 2005, 119 Stat. 2016, provided that: ''This Act [amending sections 170 and 7508 of this title and enacting provisions set out as notes under sections 170 and 7508 of this title] may be cited as the 'Katrina Emergency Tax Relief Act of 2005'.''

Pub. L. 109–58, title XIII, §1300(a), Aug. 8, 2005, 119 Stat. 986, provided that: ''This title [see Tables for classification] may be cited as the 'Energy Tax Incentives Act of 2005'.''

SHORT TITLE OF 2004 AMENDMENTS

Pub. L. 108–357, §1(a), Oct. 22, 2004, 118 Stat. 1418, provided that: ''This Act [see Tables for classification] may be cited as the 'American Jobs Creation Act of 2004'.''

Pub. L. 108–311, §1(a), Oct. 4, 2004, 118 Stat. 1166, provided that: ''This Act [see Tables for classification] may be cited as the 'Working Families Tax Relief Act of 2004'.''

SHORT TITLE OF 2003 AMENDMENTS

Pub. L. 108–121, §1(a), Nov. 11, 2003, 117 Stat. 1335, provided that: ''This Act [amending sections 5, 62, 101, 121, 132, 134, 162, 501, 530, 692, 2201, 3121, 3306, 3401, 6013, and 7508 of this title, section 1478 of Title 10, Armed Forces, and section 58c of Title 19, Customs Duties, and enacting provisions set out as notes under sections 5, 62, 101, 121, 132, 134, 501, 530, 2201, and 7508 of this title and section 1478 of Title 10] may be cited as the 'Military Family Tax Relief Act of 2003'.''

Pub. L. 108–27, §1(a), May 28, 2003, 117 Stat. 752, provided that: ''This Act [enacting section 6429 of this title and section 801 of Title 42, The Public Health and Welfare, amending this section, sections 24, 55, 57, 63, 163, 168, 179, 301, 306, 338, 467, 531, 541, 584, 702, 854, 857, 1255, 1257, 1400L, 1445, and 7518 of this title, and section 1177 of Title 46, Appendix, Shipping, repealing section 341 of this title, enacting provisions set out as notes under this section, sections 24, 55, 63, 168, and 179 of this title, and section 1396d of Title 42, and amending provisions set out as notes under this section] may be cited as the 'Jobs and Growth Tax Relief Reconciliation Act of 2003'.''

Pub. L. 108–26, §1, May 28, 2003, 117 Stat. 751, provided that: ''This Act [enacting and amending provisions set out as notes under section 3304 of this title] may be cited as the 'Unemployment Compensation Amendments of 2003'.''

SHORT TITLE OF 2002 AMENDMENTS

Pub. L. 107–358, §1, Dec. 17, 2002, 116 Stat. 3015, provided that: ''This Act [amending provisions set out as a note under this section] may be cited as the 'Holocaust Restitution Tax Fairness Act of 2002'.''

Pub. L. 107–181, §1, May 20, 2002, 116 Stat. 583, provided that: ''This Act [amending section 107 of this title and enacting provisions set out as a note under section 107 of this title] may be cited as the 'Clergy Housing Allowance Clarification Act of 2002'.''

Pub. L. 107–147, §1(a), Mar. 9, 2002, 116 Stat. 21, provided that: ''This Act [see Tables for classification] may be cited as the 'Job Creation and Worker Assistance Act of 2002'.''

Pub. L. 107–134, §1(a), Jan. 23, 2002, 115 Stat. 2427, provided that: This Act [enacting sections 139 and 5891 of this title and section 1148 of Title 29, Labor, amending sections 5, 101, 104, 140, 642, 692, 2011, 2053, 2201, 6013, 6081, 6103, 6105, 6161, 6404, 7213, 7508, and 7508A of this title and section 1302 of Title 29, enacting provisions set out as notes under sections 101, 108, 139, 501, 642, 692, 2011, 5891, 6081, and 6103 of this title, section 401 of Title 42, The Public Health and Welfare, and section 40101 of Title 49, Transportation, and amending provisions set out as a note under section 40101 of Title 49] may be cited as the 'Victims of Terrorism Tax Relief Act of 2001'.''

SHORT TITLE OF 2001 AMENDMENTS

Pub. L. 107–16, §1(a), June 7, 2001, 115 Stat. 38, provided that: ''This Act [see Tables for classification]

may be cited as the 'Economic Growth and Tax Relief Reconciliation Act of 2001'.''

Pub. L. 107–15, §1, June 5, 2001, 115 Stat. 37, provided that: ''This Act [amending provisions set out as a note under section 101 of this title] may be cited as the 'Fallen Hero Survivor Benefit Fairness Act of 2001'.''

SHORT TITLE OF 2000 AMENDMENTS

Pub. L. 106–573, §1, Dec. 28, 2000, 114 Stat. 3061, provided that: ''This Act [amending section 453 of this title and enacting provisions set out as a note under section 453 of this title] may be cited as the 'Installment Tax Correction Act of 2000'.''

Pub. L. 106–554, §1(a)(7) [§1(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–587, provided that: ''This Act [H.R. 5662, as enacted by section 1(a)(7) of Pub. L. 106–554, see Tables for classification] may be cited as the 'Community Renewal Tax Relief Act of 2000'.''

Pub. L. 106–519, §1(a), Nov. 15, 2000, 114 Stat. 2423, provided that: ''This Act [enacting sections 114 and 941 to 943 of this title, amending sections 56, 275, 864, 903 and 999 of this title, and repealing sections 921 to 927 of this title] may be cited as the 'FSC Repeal and Extraterritorial Income Exclusion Act of 2000'.''

Pub. L. 106–476, title IV, §4001, Nov. 9, 2000, 114 Stat. 2176, provided that: ''This title [enacting sections 1681 to 1681b of Title 19, Customs Duties, amending sections 5704, 5754, and 5761 of this title, and enacting provisions set out as notes under sections 5704 and 5761 of this title and section 1681 of Title 19] may be cited as the 'Imported Cigarette Compliance Act of 2000'.''

SHORT TITLE OF 1999 AMENDMENT

Pub. L. 106–170, title V, §500, Dec. 17, 1999, 113 Stat. 1918, provided that: ''This title [see Tables for classification] may be cited as the 'Tax Relief Extension Act of 1999'.''

SHORT TITLE OF 1998 AMENDMENTS

Pub. L. 105–277, div. J, §1000(a), Oct. 21, 1998, 112 Stat. 2681–886, provided that: ''This division [§§1000–5301, see Tables for classification] may be cited as the 'Tax and Trade Relief Extension Act of 1998'.''

Pub. L. 105–277, div. C, title XV, §1501, Oct. 21, 1998, 112 Stat. 2681–741, provided that: ''This title [amending sections 4132 and 9510 of this title and section 300aa–11 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under sections 4132 and 9510 of this title] may be cited as the 'Vaccine Injury Compensation Program Modification Act'.''

Pub. L. 105–206, §1(a), July 22, 1998, 112 Stat. 685, provided that: ''This Act [see Tables for classification] may be cited as the 'Internal Revenue Service Restructuring and Reform Act of 1998'.''

Pub. L. 105–206, title III, §3000, July 22, 1998, 112 Stat. 726, provided that: ''This title [see Tables for classification] may be cited as the 'Taxpayer Bill of Rights 3'.''

Pub. L. 105–206, title VI, §6001(a), July 22, 1998, 112 Stat. 790, provided that: ''This title [see Tables for classification] may be cited as the 'Tax Technical Corrections Act of 1998'.''

Pub. L. 105–178, title IX, §9001(a), June 9, 1998, 112 Stat. 499, provided that: ''This title [amending sections 40, 132, 4041, 4051, 4071, 4081, 4091, 4221, 4481 to 4483, 6156, 6412, 6421, 6427, 9503, and 9504 of this title and section 460*l*–11 of Title 16, Conservation, repealing section 9511 of this title, enacting provisions set out as notes under sections 40, 132, 172, 4041, 6421, and 9503 of this title, and amending provisions set out as a note under section 172 of this title] may be cited as the 'Surface Transportation Revenue Act of 1998'.''

SHORT TITLE OF 1997 AMENDMENTS

Pub. L. 105–35, §1, Aug. 5, 1997, 111 Stat. 1104, provided that: ''This Act [enacting section 7213A of this title, amending sections 7213 and 7431 of this title, and enacting provisions set out as notes under sections 7213 and 7431 of this title] may be cited as the 'Taxpayer Browsing Protection Act'.''

Section 1(a) of Pub. L. 105–34 provided that: ''This Act [see Tables for classification] may be cited as the 'Taxpayer Relief Act of 1997'.''

Pub. L. 105–2, §1(a), Feb. 28, 1997, 111 Stat. 4, provided that: ''This Act [amending sections 4041, 4081, 4091, 4261, 4271, and 9502 of this title and enacting provisions set out as notes under sections 4041, 4081, and 4261 of this title] may be cited as the 'Airport and Airway Trust Fund Tax Reinstatement Act of 1997'.''

SHORT TITLE OF 1996 AMENDMENTS

Section 1(a) of Pub. L. 104–188 provided that: ''This Act [see Tables for classification] may be cited as the 'Small Business Job Protection Act of 1996'.''

Pub. L. 104–168, §1(a), July 30, 1996, 110 Stat. 1452, provided that: ''This Act [enacting sections 4958, 7434, 7435, and 7524 of this title, amending sections 501, 4955, 4963, 6013, 6033, 6041 to 6042, 6044, 6045, 6049, 6050B, 6050H to 6050K, 6050N, 6103, 6104, 6159, 6201, 6213, 6323, 6334, 6343, 6404, 6503, 6601, 6651, 6652, 6656, 6672, 6685, 7122, 7213, 7422, 7430, 7433, 7454, 7502, 7608, 7609, 7623, 7802, 7805, and 7811 of this title, renumbering sections 7434 and 7435 as sections 7435 and 7436 of this title, enacting provisions set out as notes under sections 501, 4955, 6013, 6033, 6041, 6103, 6104, 6159, 6201, 6311, 6323, 6334, 6404, 6503, 6601, 6651, 6652, 6656, 6672, 7122, 7430, 7433 to 7435, 7524, 7608, 7609, 7623, 7802, 7803, 7805, and 7811 of this title, and amending provisions set out as a note under section 7608 of this title] may be cited as the 'Taxpayer Bill of Rights 2'.''

SHORT TITLE OF 1994 AMENDMENTS

Pub. L. 103–465, title VII, §750, Dec. 8, 1994, 108 Stat. 5012, provided that: ''This subtitle [subtitle F (§§750–781) of title VII of Pub. L. 103–465, enacting sections 1310, 1311, and 1350 of Title 29, Labor, amending sections 401, 404, 411, 412, 415, 417, 4971, and 4972 of this title and sections 1053 to 1056, 1082, 1132, 1301, 1303, 1305, 1306, 1322, 1341, 1342, and 1343 of Title 29, and enacting provisions set out as notes under sections 401, 411, 412, and 4972 of this title and sections 1056, 1082, 1303, 1306, 1310, 1311, 1322, 1341, and 1342 of Title 29] may be cited as the 'Retirement Protection Act of 1994'.''

Pub. L. 103–387, §1, Oct. 22, 1994, 108 Stat. 4071, provided that: ''This Act [enacting section 3510 of this title, amending sections 3102 and 3121 of this title, section 3701 of Title 31, Money and Finance, and sections 401, 402, 404, 409, 410, and 1383 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under sections 3102 and 3510 of this title, section 3701 of Title 31, and sections 401, 402, and 1383 of Title 42] may be cited as the 'Social Security Domestic Employment Reform Act of 1994'.''

SHORT TITLE OF 1993 AMENDMENTS

Pub. L. 103–152, §1, Nov. 24, 1993, 107 Stat. 1516, provided that: ''This Act [amending sections 503, 504, 1105, 1108, and 1382j of Title 42, The Public Health and Welfare, enacting provisions set out as notes under section 3304 of this title and sections 503 and 1382j of Title 42, amending provisions set out as notes under section 3304 of this title and section 352 of Title 45, Railroads, and repealing provisions set out as a note under section 3304 of this title] may be cited as the 'Unemployment Compensation Amendments of 1993'.''

Section 13001(a) of title XIII of Pub. L. 103–66 provided that: ''This chapter [chapter 1 (§§13001–13444) of title XIII of Pub. L. 103–66, see Tables for classification] may be cited as the 'Revenue Reconciliation Act of 1993'.''

Pub. L. 103–6, §1, Mar. 4, 1993, 107 Stat. 33, provided that: ''This Act [enacting provisions set out as notes under section 3304 of this title, section 31 of Title 2, The Congress, and section 352 of Title 45, Railroads, and amending provisions set out as notes under section 3304 of this title and section 352 of Title 45] may be cited as the 'Emergency Unemployment Compensation Amendments of 1993'.''

SHORT TITLE OF 1992 AMENDMENTS

Pub. L. 102–486, title XIX, §19141, Oct. 24, 1992, 106 Stat. 3036, provided that: ''This subtitle [subtitle C

(§§ 19141–19143) of title XIX of Pub. L. 102–486, enacting sections 9701 to 9722 of this title, amending sections 1231 and 1232 of Title 30, Mineral Lands and Mining, and enacting provisions set out as a note under section 9701 of this title] may be cited as the 'Coal Industry Retiree Health Benefit Act of 1992'.''

Pub. L. 102–318, § 1, July 3, 1992, 106 Stat. 290, provided that: ''This Act [enacting section 1110 of Title 42, The Public Health and Welfare, amending sections 55, 62, 72, 151, 219, 401 to 404, 406 to 408, 411, 414, 415, 457, 691, 871, 877, 1441, 3121, 3304, 3306, 3402, 3405, 4973, 4980A, 6047, 6652, 6655, and 7701 of this title, section 8509 of Title 5, Government Organization and Employees, section 2291 of Title 19, Customs Duties, and sections 502, 503, 1101, 1102, 1104, and 1105 of Title 42, enacting provisions set out as notes under sections 401, 402, 3302, 3304, and 6655 of this title, section 8509 of Title 5, section 2291 of Title 19, and sections 502, 666, 1102, and 1108 of Title 42, and amending provisions set out as notes under section 3304 of this title, sections 502 and 666 of Title 42, and section 352 of Title 45, Railroads] may be cited as the 'Unemployment Compensation Amendments of 1992'.''

SHORT TITLE OF 1991 AMENDMENTS

Pub. L. 102–240, title VIII, § 8001(a), Dec. 18, 1991, 105 Stat. 2203, provided that: ''This title [enacting section 9511 of this title, amending sections 4041, 4051, 4071, 4081, 4091, 4221, 4481, 4482, 4483, 6156, 6412, 6420, 6421, 6427, 9503, and 9504 of this title and section 460*l*–11 of Title 16, Conservation, and enacting provisions set out as notes under section 9503 of this title, section 101 of Title 23, Highways, and section 1601 of former Title 49, Transportation] may be cited as the 'Surface Transportation Revenue Act of 1991'.''

Pub. L. 102–227, § 1(a), Dec. 11, 1991, 105 Stat. 1686, provided that: ''This Act [amending sections 25, 28, 41, 42, 48, 51, 57, 120, 127, 143, 144, 162, 864, and 6655 of this title and enacting provisions set out as notes under sections 25, 28, 42, 51, 120, 127, 143, 144, 162, 864, and 6655 of this title] may be cited as the 'Tax Extension Act of 1991'.''

SHORT TITLE OF 1990 AMENDMENT

Section 11001(a) of title XI of Pub. L. 101–508 provided that: ''This title [see Tables for classification] may be cited as the 'Revenue Reconciliation Act of 1990'.''

SHORT TITLE OF 1989 AMENDMENT

Section 7001(a) of title VII of Pub. L. 101–239 provided that: ''This title [see Tables for classification] may be cited as the 'Revenue Reconciliation Act of 1989'.''

Section 7701 of title VII of Pub. L. 101–239 provided that: ''This subtitle [subtitle G (§§ 7701–7743) of title VII of Pub. L. 101–239, see Tables for classification] may be cited as the 'Improved Penalty Administration and Compliance Tax Act'.''

SHORT TITLE OF 1988 AMENDMENT

Section 1(a) of Pub. L. 100–647 provided that: ''This Act [see Tables for classification] may be cited as the 'Technical and Miscellaneous Revenue Act of 1988'.''

Section 6226 of Pub. L. 100–647 provided that: ''This subtitle [subtitle J (§§ 6226–6247) of title VI of Pub. L. 100–647, enacting sections 6159, 6326, 6712, 7430, 7432, 7433, 7520, 7521, and 7811 of this title, amending sections 6213, 6214, 6331, 6332, 6334, 6335, 6343, 6404, 6512, 6601, 6673, 6863, 7216, 7429, 7481, 7482, 7802, and 7805 of this title and section 504 of Title 5, Government Organization and Employees, renumbering section 6326 as 6327, 7432 as 7433, and 7433 as 7434 of this title, and enacting provisions set out as notes under this section and sections 6159, 6213, 6214, 6326, 6331, 6404, 6512, 6673, 6712, 6863, 7429, 7430, 7432, 7520, 7521, 7605, 7801 to 7803, 7805, and 7811 of this title] may be cited as the 'Omnibus Taxpayer Bill of Rights'.''

SHORT TITLE OF 1987 AMENDMENTS

Pub. L. 100–223, title IV, § 401, Dec. 30, 1987, 101 Stat. 1532, provided that: ''This title [enacting section 4283 of this title, amending sections 4041, 4261, 4271, 6427, and 9502 of this title, and enacting provisions set out as notes under sections 4041 and 4261 of this title] may be cited as the 'Airport and Airway Revenue Act of 1987'.''

Pub. L. 100–203, title IX, § 9302(a), Dec. 22, 1987, 101 Stat. 1330–333, provided that: ''This part [part II (§§ 9302–9346) of subtitle D of part II of Pub. L. 100–203, enacting sections 1085b and 1371 of Title 29, Labor, amending sections 401, 404, 411, 412, 414, and 4971 of this title and sections 1021, 1023, 1024, 1054, 1082 to 1084, 1085a, 1086, 1103, 1107, 1113, 1132, 1201, 1301, 1305 to 1307, 1322, 1341, 1342, 1344, 1349, 1362, 1364, 1367, and 1368 of Title 29, repealing section 1349 of Title 29, and enacting provisions set out as notes under sections 401, 404, 412, and 4971 of this title and sections 1054, 1107, 1132, 1301, 1305, 1322, and 1344 of Title 29] may be cited as the 'Pension Protection Act'.''

Pub. L. 100–203, title X, § 10000(a), Dec. 22, 1987, 101 Stat. 1330–382, provided that: ''This title [see Tables for classification] may be cited as the 'Revenue Act of 1987'.''

Pub. L. 100–17, title V, § 501, Apr. 2, 1987, 101 Stat. 256, provided that: ''This title [amending sections 4041, 4051, 4052, 4071, 4081, 4221, 4481, 4482, 4483, 6156, 6412, 6420, 6421, 6427, and 9503 of this title and section 460*l*–11 of Title 16, Conservation, and enacting provisions set out as notes under sections 4052 and 4481 of this title] may be cited as the 'Highway Revenue Act of 1987'.''

SHORT TITLE OF 1986 AMENDMENTS

Pub. L. 99–662, title XIV, § 1401, Nov. 17, 1986, 100 Stat. 4266, provided that: ''This title [enacting sections 4461, 4462, 9505, and 9506 of this title and section 988a of Title 33, Navigation and Navigable Waters, amending section 4042 of this title and sections 984 and 1804 of Title 33, repealing sections 1801 and 1802 of Title 33, and enacting provisions set out as notes under sections 4042, 4461, 9505, and 9506 of this title and sections 984 and 988 of Title 33] may be cited as the 'Harbor Maintenance Revenue Act of 1986'.''

Section 1(a) of Pub. L. 99–514 provided that: ''This Act [see Tables for classification] may be cited as the 'Tax Reform Act of 1986'.''

Pub. L. 99–499, title V, § 501, Oct. 17, 1986, 100 Stat. 1760, provided that: ''This title [enacting sections 59A, 4671, 4672, 9507, and 9508 of this title, amending sections 26, 164, 275, 936, 1561, 4041, 4042, 4081, 4221, 4611, 4612, 4661, 4662, 6154, 6416, 6420, 6421, 6425, 6427, 6655, 9502, 9503, and 9506 of this title and section 9601 of Title 42, The Public Health and Welfare, repealing sections 4681 and 4682 of this title and sections 9631 to 9633, 9641, and 9653 of Title 42, and enacting provisions set out as notes under this section and sections 26, 4041, 4611, 4661, 4671, 4681, 9507, and 9508 of this title] may be cited as the 'Superfund Revenue Act of 1986'.''

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98–369, § 1(a), July 18, 1984, 98 Stat. 494, provided that: ''This Act [see Tables for classification] may be cited as the 'Deficit Reduction Act of 1984'.''

Pub. L. 98–369, div. A (§§ 5–1082), § 5(a), July 18, 1984, 98 Stat. 494, provided that: ''This division [see Tables for classification] may be cited as the 'Tax Reform Act of 1984'.''

SHORT TITLE OF 1983 AMENDMENTS

Pub. L. 98–135, § 1, Oct. 24, 1983, 97 Stat. 857, provided that: ''This Act [amending section 3306 of this title and sections 1323 and 1397b of Title 42, The Public Health and Welfare, enacting provisions set out as notes under sections 3304 and 3306 of this title and section 1323 of Title 42, and amending provisions set out as notes under section 3304 of this title] may be cited as the 'Federal Supplemental Compensation Amendments of 1983'.''

Pub. L. 98–76, title II, § 201, Aug. 12, 1983, 97 Stat. 419, provided that: ''This title [enacting sections 3321 to 3323 and 6050G of this title, amending sections 72, 86, 105, 3201, 3202, 3211, 3221, 3231, 6157, 6201, 6317, 6513, and 6601 of this title and section 430 of Title 42, The Public

Health and Welfare, and enacting provisions set out as notes under sections 72, 105, 3201, 3321, and 6302 of this title and section 231n of Title 45, Railroads] may be cited as the 'Railroad Retirement Revenue Act of 1983'.''

Pub. L. 98–67, title I, § 101(a), Aug. 5, 1983, 97 Stat. 369, provided that: ''This title [enacting sections 3406 and 6705 of this title, amending sections 31, 274, 275, 643, 661, 3402, 3403, 3502, 3507, 6011, 6013, 6015, 6042, 6044, 6049, 6051, 6365, 6401, 6413, 6652, 6653, 6654, 6676, 6678, 6682, 7205, 7215, 7431, 7654, and 7701 of this title, repealing sections 3451 to 3456 of this title, enacting provisions set out as notes under sections 31, 3451, and 6011 of this title, and repealing provisions set out as a note under section 3451 of this title] may be cited as the 'Interest and Dividend Tax Compliance Act of 1983'.''

Pub. L. 97–473, title II, § 201, Jan. 14, 1983, 96 Stat. 2607, provided that: ''This title [enacting section 7871 of this title, amending sections 41, 103, 164, 170, 2055, 2106, 2522, 4227, 4484, 6420, 6421, 6424, 6427, and 7701 of this title, and enacting provisions set out as a note under section 7871 of this title] may be cited as the 'Indian Tribal Governmental Tax Status Act of 1982'.''

Section 1(a) of Pub. L. 97–448 provided that: ''This Act [see Tables for classification] may be cited as the 'Technical Corrections Act of 1982'.''

Pub. L. 97–424, title V, § 501(a), Jan. 6, 1983, 96 Stat. 2168, provided that: ''This title [see Tables for classification] may be cited as the 'Highway Revenue Act of 1982'.''

SHORT TITLE OF 1982 AMENDMENTS

Pub. L. 97–362, § 1(a), Oct. 25, 1982, 96 Stat. 1726, provided that: ''This Act [amending sections 8509 and 8521 of Title 5, Government Organization and Employees, sections 48, 172, 4401, 4411, 6051, 7447, 7448, 7456, 7459, and 7463 of this title, and section 601 of former Title 46, Shipping, enacting provisions set out as notes under sections 8509 and 8521 of Title 5 and sections 48, 172, 336, 4401, 4411, 6051, 7448, and 7463 of this title, and amending provisions set out as notes under section 2291 of Title 19, Customs Duties, and section 3306 of this title] may be cited as the 'Miscellaneous Revenue Act of 1982'.''

Pub. L. 97–354, § 1(a), Oct. 19, 1982, 96 Stat. 1669, provided that: ''This Act [enacting sections 1361 to 1363, 1366 to 1368, 1371 to 1375, 1377 to 1379, and 6241 to 6245 of this title, amending sections 29, 31, 40, 41, 46, 48, 50A, 50B, 52, 53, 55, 57, 58, 62, 108, 163, 168, 170, 172, 179, 183, 189, 194, 267, 280, 280A, 291, 447, 464, 465, 613A, 992, 1016, 1101, 1212, 1251, 1254, 1256, 3453, 3454, 4992, 4996, 6037, 6042, 6362, and 6661 of this title and section 1108 of Title 29, Labor, omitting section 1376 of this title, and enacting provisions set out as a note under section 1361 of this title] may be cited as the 'Subchapter S Revision Act of 1982'.''

Pub. L. 97–248, § 1(a), Sept. 3, 1982, 96 Stat. 324, provided that: ''This Act [see Tables for classification] may be cited as the 'Tax Equity and Fiscal Responsibility Act of 1982'.''

Section 401 of title IV of Pub. L. 97–248 provided that: ''This title [enacting sections 6046A and 6221 to 6232 of this title and section 1508 of Title 28, Judiciary and Judicial Procedure, amending sections 702, 6031, 6213, 6216, 6422, 6501, 6504, 6511, 6512, 6515, 6679, 7422, 7451, 7456, 7459, 7482, and 7485 of this title and section 1346 of Title 28, and enacting provisions set out as notes under sections 6031, 6046A, 6221, and 6231 of this title] may be cited as the 'Tax Treatment of Partnership Items Act of 1982'.''

SHORT TITLE OF 1981 AMENDMENTS

Pub. L. 97–119, title I, § 101(a), Dec. 29, 1981, 95 Stat. 1635, provided that: ''This subtitle [subtitle A (§§ 101–104) of title I of Pub. L. 97–119, enacting sections 9500, 9501, 9601, and 9602 of this title, amending sections 501 and 4121 of this title and sections 902, 925, 932, and 934 of Title 30, Mineral Lands and Mining, repealing section 934a of Title 30, and enacting provisions set out as notes under sections 4121 and 9501 of this title and section 934 of Title 30] may be cited as the 'Black Lung Benefits Revenue Act of 1981'.''

Section 1(a) of Pub. L. 97–34 provided that: ''This Act [see Tables for classification] may be cited as the 'Economic Recovery Tax Act of 1981'.''

SHORT TITLE OF 1980 AMENDMENTS

Pub. L. 96–605, § 1(a), Dec. 28, 1980, 94 Stat. 3521, provided that: ''This Act [enacting sections 66 and 195 of this title, amending sections 48, 105, 125, 274, 401, 408, 409A, 410, 414, 415, 501, 513, 514, 528, 861, 871, and 2055 of this title, and enacting provisions set out as notes under sections 48, 66, 119, 125, 195, 274, 401, 409A, 414, 415, 501, 513, 514, 528, 861, 871, 2055, 3121, and 7701 of this title] may be cited as the 'Miscellaneous Revenue Act of 1980'.''

Pub. L. 96–589, § 1(a), Dec. 24, 1980, 94 Stat. 3389, provided that: ''This Act [enacting sections 370, 1398, 1399, 6658, and 7464 of this title, redesignating former section 7464 of this title as 7465, amending sections 108, 111, 118, 128, 302, 312, 337, 351, 354, 355, 357, 368, 381, 382, 422, 443, 542, 703, 1017, 1023, 1371, 3302, 6012, 6036, 6103, 6155, 6161, 6212, 6213, 6216, 6326, 6404, 6503, 6512, 6532, 6871, 6872, 6873, 7430, and 7508 of this title, repealing section 1018 of this title, and enacting provisions set out as a note under section 108 of this title] may be cited as the 'Bankruptcy Tax Act of 1980'.''

Pub. L. 96–510, title II, § 201(a), Dec. 11, 1980, 94 Stat. 2796, provided that: ''This title [enacting chapter 38 of this title, sections 9631 to 9641 of Title 42, The Public Health and Welfare, and provisions set out as a note under section 4611 of this title] may be cited as the 'Hazardous Substance Response Revenue Act of 1980'.''

Pub. L. 96–499, title XI, § 1100, Dec. 5, 1980, 94 Stat. 2660, provided: ''This title [enacting sections 103A, 280D, 897, 6039C, and 6429 of this title, amending sections 103, 861, 871, 882, 3121, 3306, 4251, 6652, and 6655 of this title and section 409 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under sections 1, 103A, 280D, 897, 3121, and 6655 of this title] may be cited as the 'Revenue Adjustments Act of 1980'.''

Pub. L. 96–499, title XI, subtitle A (§§ 1101–1104), § 1101, Dec. 5, 1980, 94 Stat. 2660, provided: ''This subtitle [enacting section 103A of this title, amending section 103 of this title, and enacting provisions set out as a note under section 103A of this title] may be cited as the 'Mortgage Subsidy Bond Tax Act of 1980'.''

Pub. L. 96–499, title XI, § 1121, Dec. 5, 1980, 94 Stat. 2682, provided: ''This subtitle [subtitle C (§§ 1121–1125) of title XI of Pub. L. 96–499, enacting sections 897 and 6039C of this title, amending sections 861, 871, 882, and 6652 of this title, and enacting provisions set out as notes under section 897 of this title] may be cited as the 'Foreign Investment in Real Property Tax Act of 1980'.''

Pub. L. 96–471, § 1(a), Oct. 19, 1980, 94 Stat. 2247, provided: ''This Act [enacting sections 453 to 453B of this title, amending sections 311, 336, 337, 381, former section 453, sections 453B, 481, 644, 691, 1038, 1239, and 1255 of this title, and enacting provisions set out as notes under sections 453, 691, and 1038 of this title] may be cited as the 'Installment Sales Revision Act of 1980'.''

Pub. L. 96–283, title IV, § 401, June 28, 1980, 94 Stat. 582, provided that: ''This title [enacting sections 4495 to 4498 of this title and sections 1472, 1473 of Title 30, Mineral Lands and Mining, and enacting provision set out as a note under section 4495 of this title] may be cited as the 'Deep Seabed Hard Mineral Removal Tax Act of 1979'.''

Pub. L. 96–223, § 1(a) Apr. 2, 1980, 94 Stat. 229, provided that: ''This Act [see Tables for classification] may be cited as the 'Crude Oil Windfall Profit Tax Act of 1980'.''

Pub. L. 96–222, § 1(a), Apr. 1, 1980, 94 Stat. 194, provided that: ''This Act [see Tables for classification] may be cited as the 'Technical Corrections Act of 1979'.''

SHORT TITLE OF 1979 AMENDMENT

Pub. L. 96–39, title VIII, § 801(a), July 26, 1979, 93 Stat. 273, provided that: ''This subtitle [subtitle A (§§ 801–810)

of title VIII of Pub. L. 96–39, amending sections 5001, 5002 to 5008, 5043, 5061, 5064, 5066, 5116, 5171 to 5173, 5175 to 5178, 5180, 5181, 5201 to 5205, 5207, 5211 to 5215, 5221 to 5223, 5231, 5232, 5235, 5241, 5273, 5291, 5301, 5352, 5361 to 5363, 5365, 5381, 5391, 5551, 5601, 5604, 5610, 5612, 5615, 5663, 5681, 5682, and 5691 of this title, repealing sections 5009, 5021 to 5026, 5081 to 5084, 5174, 5233, 5234, 5251, 5252, 5364, and 5521 to 5523 of this title, and enacting provisions set out as notes under sections 5001, 5061, 5171, and 5173 of this title] may be cited as the 'Distilled Spirits Tax Revision Act of 1979'.''

SHORT TITLE OF 1978 AMENDMENTS

Section 1(a) of Pub. L. 95–618, Nov. 9, 1978, 92 Stat. 3174, provided that: ''This Act [enacting sections 44C, 124, and 4064 of this title, amending sections 39, 46 to 48, 56, 57, 167, 263, 465, 613, 613A, 614, 751, 1016, 1254, 4041, 4063, 4081, 4092, 4093, 4217, 4221, 4222, 4293, 4483, 6096, 6401, 6412, 6416, 6421, 6424, 6427, 6504, and 6675 of this title, redesignating section 124 of this title as section 125, enacting provisions set out as notes under sections 39, 44C, 48, 124, 167, 263, 613, 613A, 4041, 4063, 4064, 4081, 4093, and 4221 of this title, and amending provisions set out as notes under section 57 of this title and section 120 of Title 23, Highways] may be cited as the 'Energy Tax Act of 1978'.''

Pub. L. 95–615, §1, Nov. 8, 1978, 92 Stat. 3097, provided that: ''This Act [probably meaning sections 1 to 8 of Pub. L. 95–615, amending section 167 of this title, enacting provisions set out as notes under sections 61, 62, and 911 of this title, and amending provisions set out as notes under sections 117, 167, 382, 401, and 911 of this title] may be cited as the 'Tax Treatment Extension Act of 1977'.''

Pub. L. 95–615, §201(a), Nov. 8, 1978, 92 Stat. 3098, provided that: ''This Act [probably meaning sections 201 to 210 of Pub. L. 95–615, enacting section 913 of this title, amending sections 43, 62, 119, 217, 911, 1034, 1302, 1304, 1402, 3401, 6011, 6012, and 6091 of this title, and enacting provisions set out as notes under sections 61, 401, and 911 of this title] may be cited as the 'Foreign Earned Income Act of 1978'.''

Section 1(a) of Pub. L. 95–600 provided that: ''This Act [see Tables for classification] may be cited as the 'Revenue Act of 1978'.''

Pub. L. 95–502, title II, §201, Oct. 21, 1978, 92 Stat. 1696, provided that: ''This title [enacting section 4042 of this title and sections 1801 to 1804 of Title 33, Navigation and Navigable Waters, amending section 4293 of this title, and enacting provisions set out as notes under section 4042 of this title] may be cited as the 'Inland Waterways Revenue Act of 1978'.''

Pub. L. 95–227, §1, Feb. 10, 1978, 92 Stat. 11, provided that: ''This Act [enacting sections 192, 4121, and 4951 to 4953 of this title and section 934a of Title 30, Mineral Lands and Mining, amended sections 501, 4218, 4221, 4293, 4946, 6104, 6213, 6405, 6416, 6501, 6503, and 7454 of this title and section 934 of Title 30 and enacted provisions set out as notes under sections 192 and 4121 of this title and section 934 of Title 30] may be cited as the 'Black Lung Benefits Revenue Act of 1977'.''

SHORT TITLE OF 1977 AMENDMENTS

Section 1(a) of Pub. L. 95–30 provided that: ''This Act [see Tables for classification] may be cited as the 'Tax Reduction and Simplification Act of 1977'.''

Pub. L. 95–19, §1, Apr. 12, 1977, 91 Stat. 39, provided that: ''This Act [amending section 3304 of this title, enacting provisions set out as notes under sections 3302, 3304, and 3309 of this title, and amending provisions set out as notes under sections 3302, 3304, and 3309 of this title and sections 359 and 360 of Title 2, The Congress] may be cited as the 'Emergency Unemployment Compensation Extension Act of 1977'.''

SHORT TITLE OF 1976 AMENDMENTS

Pub. L. 94–455, title I, §101, Oct. 4, 1976, 90 Stat. 1525, provided that: ''This Act [see Tables for classification] may be cited as the 'Tax Reform Act of 1976'.''

Section 1 of Pub. L. 94–452 provided that: ''This Act [enacting section 6158 of this title, amending sections 311, 1101, 1102, 1103, 6151, 6503, and 6601 of this title, and enacting provisions set out as notes under sections 311, 1101, and 6158 of this title] may be cited as the 'Bank Holding Company Tax Act of 1976'.''

SHORT TITLE OF 1975 AMENDMENTS

Pub. L. 94–164, §1, Dec. 23, 1975, 89 Stat. 970, provided that: ''This Act [amending sections 11, 21, 42, 43, 103, 141, 883, 962, 1561, 3402, 6012, 6153, and 6154 of this title and provisions set out as notes under sections 42, 43, and 3402 of this title, and enacting provisions set out as notes under this section and sections 3, 11, 43, 103, and 883 of this title] may be cited as the 'Revenue Adjustment Act of 1975'.''

Pub. L. 94–12, §1(a), Mar. 29, 1975, 89 Stat. 26, provided that: ''This Act [enacting sections, 42, 43, 44, 613A, 907, 955, and 6428 of this title, amending sections 3, 11, 12, 21, 46, 47, 48, 50A, 50B, 56, 141, 214, 535, 613, 703, 851, 901, 902, 951, 954, 962, 993, 1034, 1561, 3304 note, 3402, 6012, 6096, 6201, and 6401 of this title, repealing sections 955 and 963 of this title, and enacting provisions set out as notes under sections 3, 11, 43, 44, 46, 48, 50A, 214, 410, 535, 613A, 907, 955, 993, 3304, 3402, 6428, and 6611 of this title and section 402 of Title 42, The Public Health and Welfare] may be cited as the 'Tax Reduction Act of 1975'.''

SHORT TITLE OF 1973 AMENDMENTS

Pub. L. 93–69, title I, §110, July 10, 1973, 87 Stat. 166, provided that: ''This title [amending sections 3201, 3202, 3211, and 3221 of this title and sections 228b, 228c, and 228e of Title 45, Railroads, enacting provisions set out as notes under section 3201 of this title and sections 228b, 228c, 228f, and 228*o* of Title 45, and amending provisions set out as notes under section 228c of Title 45] may be cited as the 'Railroad Retirement Amendments of 1973'.''

For short title of Pub. L. 93–17 as the ''Interest Equalization Tax Extension Act of 1973'', see section 1(a) of Pub. L. 93–17, set out as a note under section 2104 of this title.

SHORT TITLE OF 1972 AMENDMENT

Pub. L. 92–512, title II, §201, Oct. 20, 1972, 86 Stat. 936, provided that: ''This title [enacting sections 6361 to 6363 of this title, amending sections 6405 and 7463 of this title, and enacting provisions set out as a note under section 7463 of this title] may be cited as the 'Federal-State Tax Collection Act of 1972'.''

SHORT TITLE OF 1971 AMENDMENTS

Pub. L. 92–178, §1(a), Dec. 10, 1971, 85 Stat. 497, provided that: ''This Act [see Tables for classification] may be cited as the 'Revenue Act of 1971'.''

For short title of Pub. L. 92–9 as the ''Interest Equalization Tax Extension Act of 1971'', see section 1(a) of Pub. L. 92–9, set out as a note under section 861 of this title.

SHORT TITLE OF 1970 AMENDMENT

For short title of Pub. L. 91–614 as the ''Excise, Estate, and Gift Tax Adjustment Act of 1970'', see section 1 of Pub. L. 91–614, set out as a Short Title note under section 2001 of this title.

SHORT TITLE OF 1969 AMENDMENTS

Pub. L. 91–172, §1(a), Dec. 30, 1969, 83 Stat. 487, provided that: ''This Act [see Tables for classification] may be cited as the 'Tax Reform Act of 1969'.''

For short title of Pub. L. 91–128 as the ''Interest Equalization Tax Extension Act of 1969'', see section 1(a) of Pub. L. 91–128, set out as a note under section 4182 of this title.

SHORT TITLE OF 1968 AMENDMENT

Pub. L. 90–364, §1(a), June 28, 1968, 82 Stat. 251, provided that: ''This Act [enacting sections 51 and 6425 of

this title, amending sections 103, 243, 276, 501, 963, 3402, 4061, 4251, 6020, 6154, 6412, 6651, 6655, 7203, 7502, and 7701 of this title and sections 603, 607, and 1396b of Title 42, The Public Health and Welfare, repealing sections 6016, 6074, and 4251 to 4254 of this title, enacting provisions set out as notes under sections 51, 103, 276, 501, 4061, 6154, and 7502 of this title, section 3101 of Title 5, Government Organization and Employees, sections 11 and 757b of former Title 31, Money and Finance, and section 1396b of Title 42, and amending notes under section 1396b of Title 42,] may be cited as the 'Revenue and Expenditure Control Act of 1968'.''

SHORT TITLE OF 1967 AMENDMENT

For short title of Pub. L. 90–59 as the ''Interest Equalization Tax Extension Act of 1967'', see section 1(a) of Pub. L. 90–59, set out as a note under section 6011 of this title.

SHORT TITLE OF 1966 AMENDMENTS

For short title of title I of Pub. L. 89–809 as the ''Foreign Investors Tax Act of 1966'', see section 101 of Pub. L. 89–809, set out as a note under section 861 of this title.

For short title of title III of Pub. L. 89–809 as the ''Presidential Election Campaign Fund Act of 1966'', see section 301 of Pub. L. 89–809, set out as a Short Title note under section 6096 of this title.

For short title of Pub. L. 89–719 as the ''Federal Tax Lien Act of 1966'', see section 1(a) of Pub. L. 89–719, set out as a Short Title note under section 6321 of this title.

SHORT TITLE OF 1965 AMENDMENT

Pub. L. 89–44, § 1(a), June 21, 1965, 79 Stat. 136, provided that: ''This Act [see Tables for classification] may be cited as the 'Excise Tax Reduction Act of 1965'.''

SHORT TITLE OF 1964 AMENDMENTS

Section 1 of Pub. L. 88–348 provided: ''That this Act [amending sections 165, 4061, 4251, 4261, 5001, 5022, 5041, 5051, 5063, 5701, 5707, and 6412 of this title, and provisions set out as notes under sections 165, 4261, and 5701 of this title] may be cited as the 'Excise-Tax Rate Extension Act of 1964'.''

Pub. L. 88–272, § 2(a), Feb. 26, 1964, 78 Stat 19, provided that: ''This Act [see Tables for classification] may be cited as the 'Revenue Act of 1964'.''

SHORT TITLE OF 1963 AMENDMENT

Pub. L. 88–52, § 1, June 29, 1963, 77 Stat. 72, provided: ''That this Act [amending sections 11, 821, 4061, 4251, 4261, 5001, 5022, 5041, 5051, 5063, 5701, 5707, 6412 of this title and provisions set out as notes under sections 4261 and 5701 of this title] may be cited as the 'Tax Rate Extension Act of 1963'.''

SHORT TITLE OF 1962 AMENDMENTS

Pub. L. 87–834, § 1(a), Oct. 16, 1962, 76 Stat. 960, provided that: ''This Act [see Tables for classification] may be cited as the 'Revenue Act of 1962'.''

For short title of Pub. L. 87–792 as the ''Self-Employed Individuals Tax Retirement Act of 1962'', see section 1 of Pub. L. 87–792, set out as a note under section 401 of this title.

Pub. L. 87–508, § 1, June 28, 1962, 76 Stat. 114, provided: ''That this Act [amending sections 11, 821, 4061, 4251 to 4253, 4261 to 4264, 5001, 5002, 5041, 5051, 5063, 5701, 6707, 6412, 6416, and 6421 of this title, enacting provisions set out as notes under section 4261, 6416, and 6421 of this title, and amending provisions set out as a note under section 5701 of this title] may be cited as the 'Tax Rate Extension Act of 1962'.''

SHORT TITLE OF 1961 AMENDMENT

Pub. L. 87–72, § 1, June 30, 1961, 75 Stat. 193, provided: ''That this Act [amending sections 11, 821, 4061, 4251, 4261, 5001, 5022, 5041, 5051, 5063, 5701, 5707, and 6412 of this title and provisions set out as a note under section 5701 of this title] may be cited as the 'Tax Rate Extension Act of 1961'.''

SHORT TITLE OF 1959 AMENDMENTS

Pub. L. 86–75, § 1, June 30, 1959, 73 Stat. 157, provided: ''That this Act [amending sections 11, 821, 4061, 4251, 4261, 5001, 5022, 5041, 5051, 5063, 5701, 5707 and 6412 of this title and provisions set out as a note under section 5701 of this title] may be cited as the 'Tax Rate Extension Act of 1959'.''

Section 1 of Pub. L. 86–69 provided that: ''This Act [amending former part I of subchapter L of this chapter and sections 116, 381, 841, 842, 891, 1016, 1201, 1232, 1504, 4371, and 6501 of this title and enacting provisions set out as notes under sections 801, 6072, and 6655 of this title] may be cited as the 'Life Insurance Company Income Tax Act of 1959'.''

SHORT TITLE OF 1958 AMENDMENTS

Pub. L. 85–866, title I, § 1(a), Sept. 2, 1958, 72 Stat. 1606, provided that: ''This title [see Tables for classification] may be cited as the 'Technical Amendments Act of 1958'.''

Pub. L. 85–866, title II, § 201, Sept. 2, 1958, 72 Stat. 1676, provided that: ''This title [amending sections 165, 172, 179, 535, 1244, 1551, 6161, 6166, 6503, and 6601 of this title and enacting provisions set out as notes under sections 172, 179, 535, 6161 of this title] may be cited as the 'Small Business Tax Revision Act of 1958'.''

For short title of Pub. L. 85–859 as the ''Excise Tax Technical Changes Act of 1958'', see section 1(a) of Pub. L. 85–859, set out as a Short Title note under section 5001 of this title.

Pub. L. 85–475, § 1, June 30, 1958, 72 Stat. 259, provided: ''That this Act [amending sections 11, 821, 4061, 4292, 5001, 5022, 5041, 5051, 5063, 5134, 5701, 5707, 6412, 6415, 6416, 7012, and 7272 of this title and repealing sections 4271 to 4273 and 4281 to 4283 of this title] may be cited as the 'Tax Rate Extension Act of 1958'.''

SHORT TITLE OF 1957 AMENDMENT

Section 1 of Pub. L. 85–12 provided: ''That this Act [amending sections 11, 821, 4061, 5001, 5022, 5041, 5051, 5063, 5134, 5701, 5707, and 6412 of this title] may be cited as the 'Tax Rate Extension Act of 1957'.''

SHORT TITLE OF 1956 AMENDMENTS

For short title of title II of act June 29, 1956 as the ''Highway Revenue Act of 1956'', see section 201(a) of act June 29, 1956, set out as a note under section 4041 of this title.

For short title of act Mar. 29, 1956 as the ''Tax Rate Extension Act of 1956'', see section 1 of act Mar. 29, 1956, set out as a note under section 4041 of this title.

Section 1 of act Mar. 13, 1956, provided: ''That this Act [enacting section 843 of this title and amending sections 316, 501, 594, 801 to 805, 811 to 813, 816 to 818, 821, 822, 832, 841, 842, 891, 1201, 1504, and 4371 of this title] be cited as the 'Life Insurance Company Tax Act for 1955'.''

SHORT TITLE OF 1955 AMENDMENT

For short title of act Mar. 30, 1955 as the ''Tax Rate Extension Act of 1955'', see section 1 of act Mar. 30, 1955, set out as a note under section 4041 of this title.

PURPOSES AND PRINCIPLES

Pub. L. 111–5, § 3, Feb. 17, 2009, 123 Stat. 115, provided that:

''(a) STATEMENT OF PURPOSES.—The purposes of this Act [see Tables for classification] include the following:

''(1) To preserve and create jobs and promote economic recovery.

''(2) To assist those most impacted by the recession.

''(3) To provide investments needed to increase economic efficiency by spurring technological advances in science and health.

''(4) To invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits.

''(5) To stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive state and local tax increases.

''(b) GENERAL PRINCIPLES CONCERNING USE OF FUNDS.—The President and the heads of Federal departments and agencies shall manage and expend the funds made available in this Act so as to achieve the purposes specified in subsection (a), including commencing expenditures and activities as quickly as possible consistent with prudent management.''

TRANSITIONAL RULES FOR TAXABLE YEARS WHICH INCLUDE MAY 6, 2003

Pub. L. 108–27, title III, §301(c), May 28, 2003, 117 Stat. 759, provided that: ''For purposes of applying section 1(h) of the Internal Revenue Code of 1986 in the case of a taxable year which includes May 6, 2003—

''(1) The amount of tax determined under subparagraph (B) of section 1(h)(1) of such Code shall be the sum of—

''(A) 5 percent of the lesser of—

''(i) the net capital gain determined by taking into account only gain or loss properly taken into account for the portion of the taxable year on or after May 6, 2003 (determined without regard to collectibles gain or loss, gain described in section 1(h)(6)(A)(i) of such Code, and section 1202 gain), or

''(ii) the amount on which a tax is determined under such subparagraph (without regard to this subsection),

''(B) 8 percent of the lesser of—

''(i) the qualified 5-year gain (as defined in section 1(h)(9) of the Internal Revenue Code of 1986, as in effect on the day before the date of the enactment of this Act [May 28, 2003]) properly taken into account for the portion of the taxable year before May 6, 2003, or

''(ii) the excess (if any) of—

''(I) the amount on which a tax is determined under such subparagraph (without regard to this subsection), over

''(II) the amount on which a tax is determined under subparagraph (A), plus

''(C) 10 percent of the excess (if any) of—

''(i) the amount on which a tax is determined under such subparagraph (without regard to this subsection), over

''(ii) the sum of the amounts on which a tax is determined under subparagraphs (A) and (B).

''(2) The amount of tax determined under subparagraph (C) of section (1)(h)(1) of such Code shall be the sum of—

''(A) 15 percent of the lesser of—

''(i) the excess (if any) of the amount of net capital gain determined under subparagraph (A)(i) of paragraph (1) of this subsection over the amount on which a tax is determined under subparagraph (A) of paragraph (1) of this subsection, or

''(ii) the amount on which a tax is determined under such subparagraph (C) (without regard to this subsection), plus

''(B) 20 percent of the excess (if any) of—

''(i) the amount on which a tax is determined under such subparagraph (C) (without regard to this subsection), over

''(ii) the amount on which a tax is determined under subparagraph (A) of this paragraph.

''(3) For purposes of applying section 55(b)(3) of such Code, rules similar to the rules of paragraphs (1) and (2) of this subsection shall apply.

''(4) In applying this subsection with respect to any pass-thru entity, the determination of when gains and losses are properly taken into account shall be made at the entity level.

''(5) For purposes of applying section 1(h)(11) of such Code, as added by section 302 of this Act, to this subsection, dividends which are qualified dividend income shall be treated as gain properly taken into account for the portion of the taxable year on or after May 6, 2003.

''(6) Terms used in this subsection which are also used in section 1(h) of such Code shall have the respective meanings that such terms have in such section.''

COORDINATION OF PROVISIONS IN AMENDATORY ACTS

Pub. L. 105–277, div. J, title IV, §4001(b), Oct. 21, 1998, 112 Stat. 2681–906, provided that: ''For purposes of applying the amendments made by any title of this division [§§1000–5301, see Tables for classification] other than this title [see Definitions note set out below for classification], the provisions of this title shall be treated as having been enacted immediately before the provisions of such other titles.''

Pub. L. 105–206, title VI, §6001(b), July 22, 1998, 112 Stat. 790, provided that: ''For purposes of applying the amendments made by any title of this Act other than this title, the provisions of this title [see Tables for classification] shall be treated as having been enacted immediately before the provisions of such other titles.''

Section 1600 of title XVI of Pub. L. 105–34 provided that: ''For purposes of applying the amendments made by any title of this Act other than this title, the provisions of this title [see Tables for classification] shall be treated as having been enacted immediately before the provisions of such other titles.''

Section 1701 of Pub. L. 104–188 provided that: ''For purposes of applying the amendments made by any subtitle [subtitle A to F (§§1111–1621) and H to J (§§1801–1954) of title I of Pub. L. 104–188, see Tables for classification] of this title other than this subtitle [subtitle G (§§1701–1704) of title I of Pub. L. 104–188, see Tables for classification], the provisions of this subtitle shall be treated as having been enacted immediately before the provisions of such other subtitles.''

Section 11700 of Pub. L. 101–508 provided that: ''For purposes of applying the amendments made by any subtitle [subtitles A to F (§§11101–11622) and H and I (§§11801–11901) of title XI of Pub. L. 101–508, see Tables for classification] of this title other than this subtitle [subtitle G (§§11700–11704) of title XI of Pub. L. 101–508, see Tables for classification], the provisions of this subtitle shall be treated as having been enacted immediately before the provisions of such other subtitles.''

Section 7801(b) of Pub. L. 101–239 provided that: ''For purposes of applying the amendments made by any subtitle [subtitles A to G (§§7101–7743) of title VII of Pub. L. 101–239, see Tables for classification] of this title other than this subtitle [subtitle H (§§7801–7894) of title VII of Pub. L. 101–239, see Tables for classification], the provisions of this subtitle shall be treated as having been enacted immediately before the provisions of such other subtitles.''

Section 1800 of title XVIII of Pub. L. 99–514 provided that: ''For purposes of applying the amendments made by any title of this Act other than this title, the provisions of this title [see Tables for classification] shall be treated as having been enacted immediately before the provisions of such other titles.''

ADJUSTMENTS FOR CONSUMER PRICE INDEX ERROR

Pub. L. 106–554, §1(a)(7) [title III, §308], Dec. 21, 2000, 114 Stat. 2763, 2763A–636, provided that:

''(a) DETERMINATIONS BY OMB.—As soon as practicable after the date of the enactment of this Act [Dec. 21, 2000], the Director of the Office of Management and Budget shall determine with respect to each applicable Federal benefit program whether the CPI computation error for 1999 has or will result in a shortfall in payments to beneficiaries under such program (as compared to payments that would have been made if the error had not occurred). As soon as practicable after the date of the enactment of this Act, but not later than 60 days after such date, the Director shall direct the head of the Federal agency which administers such

program to make a payment or payments that, insofar as the Director finds practicable and feasible—

''(1) are targeted to the amount of the shortfall experienced by individual beneficiaries, and

''(2) compensate for the shortfall.

''(b) COORDINATION WITH FEDERAL AGENCIES.—As soon as practicable after the date of the enactment of this Act [Dec. 21, 2000], each Federal agency that administers an applicable Federal benefit program shall, in accordance with such guidelines as are issued by the Director pursuant to this section, make an initial determination of whether, and the extent to which, the CPI computation error for 1999 has or will result in a shortfall in payments to beneficiaries of an applicable Federal benefit program administered by such agency. Not later than 30 days after such date, the head of such agency shall submit a report to the Director and to each House of the Congress of such determination, together with a complete description of the nature of the shortfall.

''(c) IMPLEMENTATION PURSUANT TO AGENCY REPORTS.—Upon receipt of the report submitted by a Federal agency pursuant to subsection (b), the Director shall review the initial determination of the agency, the agency's description of the nature of the shortfall, and the compensation payments proposed by the agency. Prior to directing payment of such payments pursuant to subsection (a), the Director shall make appropriate adjustments (if any) in the compensation payments proposed by the agency that the Director determines are necessary to comply with the requirements of subsection (a) and transmit to the agency a summary report of the review, indicating any adjustments made by the Director. The agency shall make the compensation payments as directed by the Director pursuant to subsection (a) in accordance with the Director's summary report.

''(d) INCOME DISREGARD UNDER FEDERAL MEANS-TESTED BENEFIT PROGRAMS.—A payment made under this section to compensate for a shortfall in benefits shall, in accordance with guidelines issued by the Director pursuant to this section, be disregarded in determining income under title VIII of the Social Security Act [42 U.S.C. 1001 et seq.] or any applicable Federal benefit program that is means-tested.

''(e) FUNDING.—Funds otherwise available under each applicable Federal benefit program for making benefit payments under such program are hereby made available for making compensation payments under this section in connection with such program.

''(f) NO JUDICIAL REVIEW.—No action taken pursuant to this section shall be subject to judicial review.

''(g) DIRECTOR'S REPORT.—Not later than April 1, 2001, the Director shall submit to each House of the Congress a report on the activities performed by the Director pursuant to this section.

''(h) DEFINITIONS.—For purposes of this section:

''(1) APPLICABLE FEDERAL BENEFIT PROGRAM.—The term 'applicable Federal benefit program' means any program of the Government of the United States providing for regular or periodic payments or cash assistance paid directly to individual beneficiaries, as determined by the Director of the Office of Management and Budget.

''(2) FEDERAL AGENCY.—The term 'Federal agency' means a department, agency, or instrumentality of the Government of the United States.

''(3) CPI COMPUTATION ERROR FOR 1999.—The term 'CPI computation error for 1999' means the error in the computation of the Consumer Price Index announced by the Bureau of Labor Statistics on September 28, 2000.

''(i) TAX PROVISIONS.—In the case of taxable years (and other periods) beginning after December 31, 2000, if any Consumer Price Index (as defined in section 1(f)(5) of the Internal Revenue Code of 1986) reflects the CPI computation error for 1999—

''(1) the correct amount of such Index shall (in such manner and to such extent as the Secretary of the Treasury determines to be appropriate) be taken into account for purposes of such Code, and

''(2) tables prescribed under section 1(f) of such Code to reflect such correct amount shall apply in lieu of any tables that were prescribed based on the erroneous amount.''

APPLICATION OF SPECIAL RULES FOR MAXIMUM CAPITAL GAINS RATE

Pub. L. 105–277, div. J, title IV, § 4002(i)(2), Oct. 21, 1998, 112 Stat. 2681–907, provided that:

''(2)(A) Subparagraphs (A)(i)(II), (A)(ii)(II), and (B)(ii) of section 1(h)(13) of the 1986 Code shall not apply to any distribution after December 31, 1997, by a regulated investment company or a real estate investment trust with respect to—

''(i) gains and losses recognized directly by such company or trust, and

''(ii) amounts properly taken into account by such company or trust by reason of holding (directly or indirectly) an interest in another such company or trust to the extent that such subparagraphs did not apply to such other company or trust with respect to such amounts.

''(B) Subparagraph (A) shall not apply to any distribution which is treated under section 852(b)(7) or 857(b)(8) of the 1986 Code as received on December 31, 1997.

''(C) For purposes of subparagraph (A), any amount which is includible in gross income of its shareholders under section 852(b)(3)(D) or 857(b)(3)(D) of the 1986 Code after December 31, 1997, shall be treated as distributed after such date.

''(D)(i) For purposes of subparagraph (A), in the case of a qualified partnership with respect to which a regulated investment company meets the holding requirement of clause (iii)—

''(I) the subparagraphs referred to in subparagraph (A) shall not apply to gains and losses recognized directly by such partnership for purposes of determining such company's distributive share of such gains and losses, and

''(II) such company's distributive share of such gains and losses (as so determined) shall be treated as recognized directly by such company.

The preceding sentence shall apply only if the qualified partnership provides the company with written documentation of such distributive share as so determined.

''(ii) For purposes of clause (i), the term 'qualified partnership' means, with respect to a regulated investment company, any partnership if—

''(I) the partnership is an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.],

''(II) the regulated investment company is permitted to invest in such partnership by reason of section 12(d)(1)(E) of such Act [15 U.S.C. 80a–12(d)(1)(E)] or an exemptive order of the Securities and Exchange Commission under such section, and

''(III) the regulated investment company and the partnership have the same taxable year.

''(iii) A regulated investment company meets the holding requirement of this clause with respect to a qualified partnership if (as of January 1, 1998)—

''(I) the value of the interests of the regulated investment company in such partnership is 35 percent or more of the value of such company's total assets, or

''(II) the value of the interests of the regulated investment company in such partnership and all other qualified partnerships is 90 percent or more of the value of such company's total assets.''

CAPITAL GAIN DISTRIBUTION BY TRUST

Pub. L. 105–277, div. J, title IV, § 4003(b), Oct. 21, 1998, 112 Stat. 2681–909, as amended by Pub. L. 106–554, § 1(a)(7) [title III, § 312(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–640, provided that: ''In the case of any capital gain distribution made after 1997 by a trust to which section 664 of the 1986 Code applies with respect to amounts properly taken into account by such trust

during 1997, paragraphs (5)(A)(i)(I), (5)(A)(ii)(I), (7)(A)(i)(II), and (13)(A) of section 1(h) of the 1986 Code (as in effect for taxable years ending on December 31, 1997) shall not apply.''

ELECTION TO RECOGNIZE GAIN ON ASSETS HELD ON JANUARY 1, 2001

Pub. L. 105–34, title III, §311(e), Aug. 5, 1997, 111 Stat. 835, as amended by Pub. L. 106–554, §1(a)(7) [title III, §314(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–643; Pub. L. 107–147, title IV, §414(a), Mar. 9, 2002, 116 Stat. 54, provided that: ''For purposes of the Internal Revenue Code of 1986—

''(1) IN GENERAL.—A taxpayer other than a corporation may elect to treat—

''(A) any readily tradable stock (which is a capital asset) held by such taxpayer on January 1, 2001, and not sold before the next business day after such date, as having been sold on such next business day for an amount equal to its closing market price on such next business day (and as having been reacquired on such next business day for an amount equal to such closing market price), and

''(B) any other capital asset or property used in the trade or business (as defined in section 1231(b) of the Internal Revenue Code of 1986) held by the taxpayer on January 1, 2001, as having been sold on such date for an amount equal to its fair market value on such date (and as having been reacquired on such date for an amount equal to such fair market value).

''(2) TREATMENT OF GAIN OR LOSS.—

''(A) Any gain resulting from an election under paragraph (1) shall be treated as received or accrued on the date the asset is treated as sold under paragraph (1) and shall be included in gross income notwithstanding any provision of the Internal Revenue Code of 1986.

''(B) Any loss resulting from an election under paragraph (1) shall not be allowed for any taxable year.

''(3) ELECTION.—An election under paragraph (1) shall be made in such manner as the Secretary of the Treasury or his delegate may prescribe and shall specify the assets for which such election is made. Such an election, once made with respect to any asset, shall be irrevocable. Such an election shall not apply to any asset which is disposed of (in a transaction in which gain or loss is recognized in whole or in part) before the close of the 1-year period beginning on the date that the asset would have been treated as sold under such election.

''(4) READILY TRADABLE STOCK.—For purposes of this subsection, the term 'readily tradable stock' means any stock which, as of January 1, 2001, is readily tradable on an established securities market or otherwise.

''(5) DISPOSITION OF INTEREST IN PASSIVE ACTIVITY.—Section 469(g)(1)(A) of the Internal Revenue Code of 1986 shall not apply by reason of an election made under paragraph (1).''

[Pub. L. 107–147, title IV, §414(b), Mar. 9, 2002, 116 Stat. 54, provided that: ''The amendments made by this section [amending section 311(e) of Pub. L. 105–34, set out above] shall take effect as if included in section 311 of the Taxpayer Relief Act of 1997 [Pub. L. 105–34].'']

ELECTION TO PAY ADDITIONAL 1993 TAXES IN INSTALLMENTS

Section 13201(d) of Pub. L. 103–66 provided that:

''(1) IN GENERAL.—At the election of the taxpayer, the additional 1993 taxes may be paid in 3 equal installments.

''(2) DATES FOR PAYING INSTALLMENTS.—In the case of any tax payable in installments by reason of paragraph (1)—

''(A) the first installment shall be paid on or before the due date for the taxpayer's taxable year beginning in calendar year 1993,

''(B) the second installment shall be paid on or before the date 1 year after the date determined under subparagraph (A), and

''(C) the third installment shall be paid on or before the date 2 years after the date determined under subparagraph (A).

For purposes of the preceding sentence, the term 'due date' means the date prescribed for filing the taxpayer's return determined without regard to extensions.

''(3) EXTENSION WITHOUT INTEREST.—For purposes of section 6601 of the Internal Revenue Code of 1986, the date prescribed for the payment of any tax payable in installments under paragraph (1) shall be determined with regard to the extension under paragraph (1).

''(4) ADDITIONAL 1993 TAXES.—

''(A) IN GENERAL.—For purposes of this subsection, the term 'additional 1993 taxes' means the excess of—

''(i) the taxpayer's net chapter 1 liability as shown on the taxpayer's return for the taxpayer's taxable year beginning in calendar year 1993, over

''(ii) the amount which would have been the taxpayer's net chapter 1 liability for such taxable year if such liability had been determined using the rates which would have been in effect under section 1 of the Internal Revenue Code of 1986 for taxable years beginning in calendar year 1993 but for the amendments made by this section [amending this section and sections 41, 63, 68, 132, 151, 453A, 513, 531, and 541 of this title] and section 13202 [amending this section and sections 531 and 541 of this title] and such liability had otherwise been determined on the basis of the amounts shown on the taxpayer's return.

''(B) NET CHAPTER 1 LIABILITY.—For purposes of subparagraph (A), the term 'net chapter 1 liability' means the liability for tax under chapter 1 of the Internal Revenue Code of 1986 determined—

''(i) after the application of any credit against such tax other than the credits under sections 31 and 34, and

''(ii) before crediting any payment of estimated tax for the taxable year.

''(5) ACCELERATION OF PAYMENTS.—If the taxpayer does not pay any installment under this section on or before the date prescribed for its payment or if the Secretary of the Treasury or his delegate believes that the collection of any amount payable in installments under this section is in jeopardy, the Secretary shall immediately terminate the extension under paragraph (1) and the whole of the unpaid tax shall be paid on notice and demand from the Secretary.

''(6) ELECTION ON RETURN.—An election under paragraph (1) shall be made on the taxpayer's return for the taxpayer's taxable year beginning in calendar year 1993.

''(7) EXCEPTION FOR ESTATES AND TRUSTS.—This subsection shall not apply in the case of an estate or trust.''

TRANSITIONAL RULE FOR MAXIMUM CAPITAL GAINS RATE

Section 302(c) of Pub. L. 99–514, which related to long-term capital gain on rights to royalties paid under particular leases and assignments, was repealed by Pub. L. 100–647, title I, §1003(b)(1), Nov. 10, 1988, 102 Stat. 3382.

COORDINATION WITH OTHER PROVISIONS

Pub. L. 99–509, title VIII, §8081, Oct. 21, 1986, 100 Stat. 1965, provided that: ''Nothing in any provision of this Act [see Tables for classifications] (other than this title) shall be construed as—

''(1) imposing any tax (or exempting any person or property from any tax),

''(2) establishing any trust fund, or

''(3) authorizing amounts to be expended from any trust fund.''

[S.Con.Res. 174, agreed to Oct. 18, 1986, provided: ''That, in the enrollment of the bill (H.R. 5300) to provide for reconciliation pursuant to section 2 of the con-

current resolution on the budget for fiscal year 1987, the Clerk of the House of Representatives shall insert at the end of section 8081 of the bill the following: Paragraph (3) shall not apply to any authorization made by title IX of this Act.'' As a result of clerical error, the sentence was inserted at the end of section 8101 of the bill, and appears at the end of section 8101 of Pub. L. 99–509, 100 Stat. 1967.]

Pub. L. 99–499, title V, § 531, Oct. 17, 1986, 100 Stat. 1782, provided that: ''Notwithstanding any provision of this Act [see Tables for classifications] not contained in this title [see Short Title of 1986 Amendment note above], any provision of this Act (not contained in this title) which—

''(1) imposes any tax, premium, or fee,

''(2) establishes any trust fund, or

''(3) authorizes amounts to be expended from any trust fund,

shall have no force or effect.''

ELIMINATION OF 50-CENT ROUNDING ERRORS

Section 101(a)(3) of Pub. L. 97–448, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''If any figure in any table—

''(A) which is set forth in section 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by section 101 of the Economic Recovery Tax Act of 1981 [Pub. L. 97–34, title I, § 101, Aug. 13, 1981, 95 Stat. 176], and

''(B) which applies to married individuals filing separately or to estates and trusts,

differs by not more than 50 cents from the correct amount under the formula used in constructing such table, such figure is hereby corrected to the correct amount.'' [See 1982 Amendment note above.]

POLICY WITH RESPECT TO ADDITIONAL TAX REDUCTIONS

Section 3 of Pub. L. 95–600 provided that: ''As a matter of national policy the rate of growth in Federal outlays, adjusted for inflation, should not exceed 1 percent per year between fiscal year 1979 and fiscal year 1983; Federal outlays as a percentage of gross national product should decline to below 21 percent in fiscal year 1980, 20.5 percent in fiscal year 1981, 20 percent in fiscal year 1982 and 19.5 percent in fiscal year 1983; and the Federal budget should be balanced in fiscal years 1982 and 1983. If these conditions are met, it is the intention that the tax-writing committees of Congress will report legislation providing significant tax reductions for individuals to the extent that these tax reductions are justified in the light of prevailing and expected economic conditions.''

EFFECTIVE DATE OF CERTAIN DEFINITIONS AND DESIGNATIONS

Pub. L. 94–455, title XIX, § 1908, Oct. 4, 1976, 90 Stat. 1836, provided that: ''For purposes of any amendment made by any provision of this Act [see Tables for classification] (other than this title)—

''(1) which contains a term the meaning of which is defined in or modified by any provision of this title, and

''(2) which has an effective date earlier than the effective date of the provision of this title defining or modifying such term,

that definition or modification shall be considered to take effect as of such earlier effective date.''

CONGRESSIONAL DECLARATION RELATING TO 1975 AMENDMENT

Pub. L. 94–164, § 1A, Dec. 23, 1975, 89 Stat. 970, provided that:

''(a) Congress is determined to continue the tax reduction for the first 6 months of 1976 in order to assure continued economic recovery.

''(b) Congress is also determined to continue to control spending levels in order to reduce the national deficit.

''(c) Congress reaffirms its commitments to the procedures established by the Congressional Budget and Impoundment Control Act of 1974 [see Tables for classification of Pub. L. 93–344, July 12, 1974, 88 Stat. 297] under which it has already established a binding spending ceiling for the fiscal year 1976.

''(d) If the Congress adopts a continuation of the tax reduction provided by this Act [see Short Title of 1975 Amendment note above] beyond June 30, 1976, and if economic conditions warrant doing so, Congress shall provide, through the procedures in the Budget Act [Pub. L. 93–344], for reductions in the level of spending in the fiscal year 1977 below what would otherwise occur, equal to any additional reduction in taxes (from the 1974 tax rate levels) provided for the fiscal year 1977: *Provided, however*, That nothing shall preclude the right of the Congress to pass a budget resolution containing a higher or lower expenditure figure if the Congress concludes that this is warranted by economic conditions or unforeseen circumstances.''

CONGRESSIONAL DECLARATION RELATING TO 1964 AMENDMENT

Pub. L. 88–272, § 1, Feb. 26, 1964, 78 Stat. 19, provided that: ''It is the sense of Congress that the tax reduction provided by this Act [see Short Title of 1964 Amendment note above] through stimulation of the economy, will, after a brief transitional period, raise (rather than lower) revenues and that such revenue increases should first be used to eliminate the deficits in the administrative budgets and then to reduce the public debt. To further the objective of obtaining balanced budgets in the near future, Congress by this action, recognizes the importance of taking all reasonable means to restrain Government spending and urges the President to declare his accord with this objective.''

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

Provisions relating to inflation adjustment of items in sections 1, 24, 25A, 25B, 32, 36C, 42, 59, 63, 68, 132, 135, 137, 146, 147, 151, 179, 213, 219, 220, 221, 223, 408A, 512, 513, 685, 877, 877A, 911, 2032A, 2503, 2523, 2631, 4001, 4003, 4161, 4261, 6012, 6013, 6033, 6039F, 6323, 6334, 6601, 7430, and 7702B of this title for certain years were contained in the following:

2011—Revenue Procedures 2010–40 and 2011–12.
2010—Revenue Procedures 2009–50, 2010–24, and 2010–35.
2009—Revenue Procedure 2008–66.
2008—Revenue Procedure 2007–66.
2007—Revenue Procedures 2006–53 and 2007–36.
2006—Revenue Procedure 2005–70.
2005—Revenue Procedure 2004–71.
2004—Revenue Procedure 2003–85.
2003—Revenue Procedure 2002–70.
2002—Revenue Procedure 2001–59.
2001—Revenue Procedure 2001–13.
2000—Revenue Procedure 99–42.
1999—Revenue Procedure 98–61.
1998—Revenue Procedure 97–57.
1997—Revenue Procedure 96–59.
1996—Revenue Procedure 95–53.
1995—Revenue Procedure 94–72.
1994—Revenue Procedure 93–49.
1993—Revenue Procedure 92–102.
1992—Revenue Procedure 91–65.
1991—Revenue Procedure 90–64.
1990—Revenue Procedure 90–7.
1989—Revenue Procedure 88–56.
1986—Revenue Procedure 85–55.
1985—Revenue Procedure 84–79.

DEFINITIONS

Pub. L. 105–277, div. J, title IV, § 4001(a), Oct. 21, 1998, 112 Stat. 2681–906, provided that: ''For purposes of this title [amending this section, sections 51, 56, 67, 68, 86, 135, 137, 163, 172, 219, 221, 264, 351, 368, 408A, 469, 873, 954, 2001, 2031, 6015, 6103, 6159, 6311, 6404, 6693, 7421, 7443A, 7491, 9503, and 9510 of this title, and sections 401 and 407 of Title 42, The Public Health and Welfare, enacting provisions set out as notes under this section, sections 51, 67, 68, 86, 172, 833, 6103, and 9503 of this title, and sec-

tion 401 of Title 42, and amending provisions set out as notes under sections 6601 and 7508A of this title]—

''(1) 1986 CODE.—The term '1986 Code' means the Internal Revenue Code of 1986.

''(2) 1998 ACT.—The term '1998 Act' means the Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105–206) [see Tables for classification].

''(3) 1997 ACT.—The term '1997 Act' means the Taxpayer Relief Act of 1997 (Public Law 105–34) [see Tables for classification].''

§ 2. Definitions and special rules

(a) Definition of surviving spouse

(1) In general

For purposes of section 1, the term ''surviving spouse'' means a taxpayer—

(A) whose spouse died during either of his two taxable years immediately preceding the taxable year, and

(B) who maintains as his home a household which constitutes for the taxable year the principal place of abode (as a member of such household) of a dependent (i) who (within the meaning of section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) is a son, stepson, daughter, or stepdaughter of the taxpayer, and (ii) with respect to whom the taxpayer is entitled to a deduction for the taxable year under section 151.

For purposes of this paragraph, an individual shall be considered as maintaining a household only if over half of the cost of maintaining the household during the taxable year is furnished by such individual.

(2) Limitations

Notwithstanding paragraph (1), for purposes of section 1 a taxpayer shall not be considered to be a surviving spouse—

(A) if the taxpayer has remarried at any time before the close of the taxable year, or

(B) unless, for the taxpayer's taxable year during which his spouse died, a joint return could have been made under the provisions of section 6013 (without regard to subsection (a)(3) thereof).

(3) Special rule where deceased spouse was in missing status

If an individual was in a missing status (within the meaning of section 6013(f)(3)) as a result of service in a combat zone (as determined for purposes of section 112) and if such individual remains in such status until the date referred to in subparagraph (A) or (B), then, for purposes of paragraph (1)(A), the date on which such individual died shall be treated as the earlier of the date determined under subparagraph (A) or the date determined under subparagraph (B):

(A) the date on which the determination is made under section 556 of title 37 of the United States Code or under section 5566 of title 5 of such Code (whichever is applicable) that such individual died while in such missing status, or

(B) except in the case of the combat zone designated for purposes of the Vietnam conflict, the date which is 2 years after the date designated under section 112 as the date of termination of combatant activities in that zone.

(b) Definition of head of household

(1) In general

For purposes of this subtitle, an individual shall be considered a head of a household if, and only if, such individual is not married at the close of his taxable year, is not a surviving spouse (as defined in subsection (a)), and either—

(A) maintains as his home a household which constitutes for more than one-half of such taxable year the principal place of abode, as a member of such household, of—

(i) a qualifying child of the individual (as defined in section 152(c), determined without regard to section 152(e)), but not if such child—

(I) is married at the close of the taxpayer's taxable year, and

(II) is not a dependent of such individual by reason of section 152(b)(2) or 152(b)(3), or both, or

(ii) any other person who is a dependent of the taxpayer, if the taxpayer is entitled to a deduction for the taxable year for such person under section 151, or

(B) maintains a household which constitutes for such taxable year the principal place of abode of the father or mother of the taxpayer, if the taxpayer is entitled to a deduction for the taxable year for such father or mother under section 151.

For purposes of this paragraph, an individual shall be considered as maintaining a household only if over half of the cost of maintaining the household during the taxable year is furnished by such individual.

(2) Determination of status

For purposes of this subsection—

(A) an individual who is legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married;

(B) a taxpayer shall be considered as not married at the close of his taxable year if at any time during the taxable year his spouse is a nonresident alien; and

(C) a taxpayer shall be considered as married at the close of his taxable year if his spouse (other than a spouse described in subparagraph (B)) died during the taxable year.

(3) Limitations

Notwithstanding paragraph (1), for purposes of this subtitle a taxpayer shall not be considered to be a head of a household—

(A) if at any time during the taxable year he is a nonresident alien; or

(B) by reason of an individual who would not be a dependent for the taxable year but for—

(i) subparagraph (H) of section 152(d)(2), or

(ii) paragraph (3) of section 152(d).

(c) Certain married individuals living apart

For purposes of this part, an individual shall be treated as not married at the close of the tax-

able year if such individual is so treated under the provisions of section 7703(b).

(d) Nonresident aliens

In the case of a nonresident alien individual, the taxes imposed by sections 1 and 55 shall apply only as provided by section 871 or 877.

(e) Cross reference

For definition of taxable income, see section 63.

(Aug. 16, 1954, ch. 736, 68A Stat. 8; Pub. L. 88–272, title I, § 112(b), Feb. 26, 1964, 78 Stat. 24; Pub. L. 91–172, title VIII, § 803(b), Dec. 30, 1969, 83 Stat. 682; Pub. L. 93–597, § 3(b), Jan. 2, 1975, 88 Stat. 1951; Pub. L. 94–455, title XIX, § 1901(a)(1), (b)(9), Oct. 4, 1976, 90 Stat. 1764, 1795; Pub. L. 94–569, § 3(a), Oct. 20, 1976, 90 Stat. 2699; Pub. L. 97–448, title III, § 307(a), Jan. 12, 1983, 96 Stat. 2407; Pub. L. 98–369, div. A, title IV, § 423(c)(2), July 18, 1984, 98 Stat. 801; Pub. L. 99–514, title XIII, § 1301(j)(10), title XVII, § 1708(a)(1), Oct. 22, 1986, 100 Stat. 2658, 2782; Pub. L. 100–647, title I, § 1007(g)(13)(A), Nov. 10, 1988, 102 Stat. 3436; Pub. L. 108–311, title II, §§ 202, 207(1), Oct. 4, 2004, 118 Stat. 1175, 1177; Pub. L. 109–135, title IV, § 412(a), Dec. 21, 2005, 119 Stat. 2636.)

AMENDMENTS

2005—Subsec. (b)(2)(C). Pub. L. 109–135 substituted ''subparagraph (B)'' for ''subparagraph (C)''.

2004—Subsec. (a)(1)(B)(i). Pub. L. 108–311, § 207(1), inserted '', determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof'' after ''section 152''.

Subsec. (b)(1)(A)(i). Pub. L. 108–311, § 202(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''a son, stepson, daughter, or stepdaughter of the taxpayer, or a descendant of a son or daughter of the taxpayer, but if such son, stepson, daughter, stepdaughter, or descendant is married at the close of the taxpayer's taxable year, only if the taxpayer is entitled to a deduction for the taxable year for such person under section 151 (or would be so entitled but for paragraph (2) or (4) of section 152(e)), or''.

Subsec. (b)(2). Pub. L. 108–311, § 202(b)(1), redesignated subpars. (B) to (D) as (A) to (C), respectively, and struck out former subpar. (A) which read as follows: ''a legally adopted child of a person shall be considered a child of such person by blood;''.

Subsec. (b)(3)(B)(i), (ii). Pub. L. 108–311, § 202(b)(2), amended cls. (i) and (ii) generally. Prior to amendment, cls. (i) and (ii) read as follows:

''(i) paragraph (9) of section 152(a), or

''(ii) subsection (c) of section 152.''

1988—Subsec. (d). Pub. L. 100–647 substituted ''the taxes imposed by sections 1 and 55'' for ''the tax imposed by section 1''.

1986—Subsec. (a)(3)(B). Pub. L. 99–514, § 1708(a)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the date which is—

''(i) December 31, 1982, in the case of service in the combat zone designated for purposes of the Vietnam conflict, or

''(ii) 2 years after the date designated under section 112 as the date of termination of combatant activities in that zone, in the case of any combat zone other than that referred to in clause (i).''

Subsec. (c). Pub. L. 99–514, § 1301(j)(10), substituted ''section 7703(b)'' for ''section 143(b)''.

1984—Subsec. (b)(1)(A). Pub. L. 98–369, § 423(c)(2)(A), substituted ''which constitutes for more than one-half of such taxable year'' for ''which constitutes for such taxable year''.

Subsec. (b)(1)(A)(i). Pub. L. 98–369, § 423(c)(2)(B), inserted ''(or would be so entitled but for paragraph (2) or (4) of section 152(e))''.

1983—Subsec. (a)(3)(B)(i). Pub. L. 97–448 substituted ''December 31, 1982'' for ''January 2, 1978''.

1976—Subsec. (a)(3)(B). Pub. L. 94–569 substituted ''the date which is'' for ''the date which is 2 years after'' in provisions preceding cl. (i), substituted ''January 2, 1978'' for ''the date of the enactment of this paragraph'' in cl. (i), and substituted ''2 years after the date'' for ''the date'' in cl. (ii).

Subsec. (b)(3)(B)(ii). Pub. L. 94–455, § 1901(b)(9), redesignated cl. (iii) as (ii) and struck out former cl. (ii) which provided that an individual who was a dependent solely by reason of par. (10) of section 152(a) would not be considered as a head of a household.

Subsec. (c). Pub. L. 94–455, § 1901(a)(1), substituted ''shall be treated as not married at the close of the taxable year'' for ''shall not be considered as married''.

1975—Subsec. (a)(3). Pub. L. 93–597 added par. (3).

1969—Subsec. (a). Pub. L. 91–172 redesignated subsec. (b) as (a). See sec. 1(a) of this title.

Subsec. (b). Pub. L. 91–172 redesignated provisions of former section 1(b)(2) to (4) of this title as subsec. (b). Former subsec. (b) redesignated (a), with minor changes.

Subsec. (c). Pub. L. 91–172 added subsec. (c).

Subsec. (d). Pub. L. 91–172 redesignated as subsec. (d) provisions of former section 1(d) with minor changes.

Subsec. (e). Pub. L. 91–172 redesignated as subsec. (e) provisions of former section 1(e).

1964—Subsec. (a). Pub. L. 88–272 inserted reference to section 141.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title II, § 208, Oct. 4, 2004, 118 Stat. 1178, provided that: ''The amendments made by this title [amending this section and sections 21, 24, 25B, 32, 42, 51, 72, 105, 120, 125, 129, 132, 151 to 153, 170, 213, 220, 221, 529, 2032A, 2057, 7701, 7702B, and 7703 of this title] shall apply to taxable years beginning after December 31, 2004.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1301(j)(10) of Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

Section 1708(b) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section and sections 692, 6013, and 7508 of this title] shall apply to taxable years beginning after December 31, 1982.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 423(d) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and sections 43, 44A, 105, 143, 152, and 213 of this title] shall apply to taxable years beginning after December 31, 1984.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1901(d) of Pub. L. 94–455 provided that: ''Except as otherwise expressly provided in this section, the amendments made by this section [see Tables for classification] shall apply with respect to taxable years beginning after December 31, 1976. The amendments made by subsections (a)(29) and (b)(10) shall apply with respect to taxable years ending after the date of the enactment of this Act [Oct. 4, 1976].''

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–597 applicable to taxable years ending on or after Feb. 28, 1961, see section 3(c) of Pub. L. 93–597, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1970, except that subsec. (c) is applicable to taxable years beginning after Dec. 31, 1969, see section 803(f) of Pub. L. 91–172, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272, except for purposes of section 21 of this title, effective with respect to taxable years beginning after Dec. 31, 1963, see section 131 of Pub. L. 88–272, set out as a note under section 1 of this title.

§ 3. Tax tables for individuals

(a) Imposition of tax table tax

(1) In general

In lieu of the tax imposed by section 1, there is hereby imposed for each taxable year on the taxable income of every individual—

(A) who does not itemize his deductions for the taxable year, and

(B) whose taxable income for such taxable year does not exceed the ceiling amount,

a tax determined under tables, applicable to such taxable year, which shall be prescribed by the Secretary and which shall be in such form as he determines appropriate. In the table so prescribed, the amounts of the tax shall be computed on the basis of the rates prescribed by section 1.

(2) Ceiling amount defined

For purposes of paragraph (1), the term ''ceiling amount'' means, with respect to any taxpayer, the amount (not less than $20,000) determined by the Secretary for the tax rate category in which such taxpayer falls.

(3) Authority to prescribe tables for taxpayers who itemize deductions

The Secretary may provide that this section shall apply also for any taxable year to individuals who itemize their deductions. Any tables prescribed under the preceding sentence shall be on the basis of taxable income.

(b) Section inapplicable to certain individuals

This section shall not apply to—

(1) an individual making a return under section 443(a)(1) for a period of less than 12 months on account of a change in annual accounting period, and

(2) an estate or trust.

(c) Tax treated as imposed by section 1

For purposes of this title, the tax imposed by this section shall be treated as tax imposed by section 1.

(d) Taxable income

Whenever it is necessary to determine the taxable income of an individual to whom this section applies, the taxable income shall be determined under section 63.

(e) Cross reference

For computation of tax by Secretary, see section 6014.

(Aug. 16, 1954, ch. 736, 68A Stat. 8; Pub. L. 88–272, title III, § 301(a), Feb. 26, 1964, 78 Stat. 129; Pub. L. 91–172, title VIII, § 803(c), Dec. 30, 1969, 83 Stat. 684; Pub. L. 94–12, title II, § 201(c), Mar. 29, 1975, 89 Stat. 29; Pub. L. 94–455, title V, § 501(a), Oct. 4, 1976, 90 Stat. 1558; Pub. L. 95–30, title I, § 101(b), May 23, 1977, 91 Stat. 131; Pub. L. 95–600, title IV, § 401(b)(1), Nov. 6, 1978, 92 Stat. 2867; Pub. L. 95–600, title II, § 202(g), as added Pub. L. 96–222, title I, § 108(a)(1)(A), Apr. 1, 1980, 94 Stat. 223; Pub. L. 96–222, title I, § 108(a)(1)(E), Apr. 1, 1980, 94 Stat. 225; Pub. L. 97–34, title I, §§ 101(b)(2)(B), (C), (c)(2)(A), 121(c)(3), Aug. 13, 1981, 95 Stat. 183, 197; Pub. L. 99–514, title I, §§ 102(b), 141(b)(1), Oct. 22, 1986, 100 Stat. 2102, 2117.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–514, § 102(b), substituted subsec. (a) for former subsec. (a) which read as follows:

''(1) IN GENERAL.—In lieu of the tax imposed by section 1, there is hereby imposed for each taxable year on the tax table income of every individual whose tax table income for such year does not exceed the ceiling amount, a tax determined under tables, applicable to such taxable year, which shall be prescribed by the Secretary and which shall be in such form as he determines appropriate. In the tables so prescribed, the amounts of tax shall be computed on the basis of the rates prescribed by section 1.

''(2) CEILING AMOUNT DEFINED.—For purposes of paragraph (1), the term ''ceiling amount'' means, with respect to any taxpayer, the amount (not less than $20,000) determined by the Secretary for the tax rate category in which such taxpayer falls.

''(3) CERTAIN TAXPAYERS WITH LARGE NUMBER OF EXEMPTIONS.—The Secretary may exclude from the application of this section taxpayers in any tax rate category having more than the number of exemptions for that category determined by the Secretary.

''(4) TAX TABLE INCOME DEFINED.—For purposes of this section, the term 'tax table income' means adjusted gross income—

''(A) reduced by the sum of—

''(i) the excess itemized deductions, and

''(ii) the direct charitable deduction, and

''(B) increased (in the case of an individual to whom section 63(e) applies) by the unused zero bracket amount.

''(5) SECTION MAY BE APPLIED ON THE BASIS OF TAXABLE INCOME.—The Secretary may provide that this section shall be applied for any taxable year on the basis of taxable income in lieu of tax table income.''

Subsec. (b). Pub. L. 99–514, § 141(b)(1), struck out par. (1) which read: ''an individual to whom section 1301 (relating to income averaging) applies for the taxable year,'' and redesignated pars. (2) and (3) as (1) and (2), respectively.

1981—Subsec. (a)(1). Pub. L. 97–34, § 101(b)(2)(B), inserted ''and which shall be in such form as he determines appropriate'' after ''Secretary''.

Subsec. (a)(4)(A). Pub. L. 97–34, § 121(c)(3), substituted ''reduced by the sum of (i) the excess itemized deductions, and (ii) the direct charitable deduction'' for ''reduced by the excess itemized deductions''.

Subsec. (a)(5). Pub. L. 97–34, § 101(b)(2)(C), added par. (5).

Subsec. (b)(1). Pub. L. 97–34, § 101(c)(2)(A), substituted ''an individual to whom section 1301 (relating to income averaging) applies for the taxable year'' for ''an individual to whom (A) section 1301 (relating to income averaging), or (B) section 1348 (relating to maximum rate on personal service income), applies for the taxable year''.

1980—Subsec. (b)(1). Pub. L. 96–222 redesignated subpars. (B) and (C) as (A) and (B), respectively, and struck out former subpar. (A) which made reference to section 911 (relating to earned income from sources without the United States).

1978—Subsec. (b)(1). Pub. L. 95–600 struck out subpar. (B) which related to the alternative capital gains tax under section 1201 of this title, and redesignated subpars. (C) and (D) as (B) and (C), respectively.

1977—Pub. L. 95–30 struck out ''having taxable income of less than $20,000'' after ''individuals'' in section catchline.

Subsec. (a). Pub. L. 95–30 designated existing provisions as par. (1), substituted ''tax table income'' for ''taxable income'' and ''does not exceed the ceiling amount'' for ''does not exceed $20,000'', and added pars. (2) to (4).

Subsecs. (b) to (e). Pub. L. 95–30 added subsec. (b), redesignated former subsec. (b) as (c), and added subsecs. (d) and (e).

1976—Pub. L. 94–455 designated existing provisions as subsec. (a), substituted provision relating to taxable income for such year does not exceed $20,000 for provision relating to adjusted gross income for such year is less than $15,000 and who has elected for such year to pay the tax imposed by this section, struck out ''or his delegate'' after ''Secretary'', ''beginning after Dec. 31, 1969'' after ''each taxable year'', struck out provision requiring computation of taxable income by using standard deduction, and added subsec. (b).

1975—Pub. L. 94–12 substituted ''$15,000'' for ''$10,000''.

1969—Pub. L. 91–172 raised the individual gross income limit of $5,000 to $10,000 for exercising the option and substituted provision that the tax has to be determined under tables to be prescribed by the Secretary or his delegate for tables of tax rates for single persons, heads of household, married persons filing joint returns, married persons filing separate returns with 10 per cent standard deduction and married persons filing separate returns with minimum standard deduction.

1964—Pub. L. 88–272 substituted optional tax tables covering five categories for taxable years beginning on or after Jan. 1, 1964, and before Jan. 1, 1965, and for years beginning after Dec. 31, 1964, for a single general table.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 101(c)(2)(A) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 101(f)(1) of Pub. L. 97–34, set out as a note under section 1 of this title.

Amendment by section 121(c)(3) of Pub. L. 97–34 applicable to contributions made after Dec. 31, 1981, in taxable years beginning after such date, see section 121(d) of Pub. L. 97–34, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 108(a)(2) of Pub. L. 96–222 provided that:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by paragraph (1) [amending this section and sections 119, 911, and 913 of this title] shall take effect as if included in the Foreign Earned Income Act of 1978 [Pub. L. 95–615].

''(B) PARAGRAPH (1)(E).—The amendment made by paragraph (1)(E) [amending this section] shall apply to taxable years beginning after December 31, 1978.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 401(b)(1) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 401(c) of Pub. L. 95–600, set out as a note under section 1201 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 508 of Pub. L. 94–455 provided that: ''Except as otherwise provided, the amendments made by this title [enacting section 44A, amending this section and sections 36, 37, 41, 42, 46, 50A, 104, 144, 213, 217, 904, 1211, 1304, 3402, 6014, and 6096, enacting provisions set out as notes under sections 105, 8022, and repealing sections 4 and 214 of this title] shall apply to taxable years beginning after December 31, 1975.''

EFFECTIVE AND TERMINATION DATES OF 1975 AMENDMENT

Section 209(a) of Pub. L. 94–12, as amended by Pub. L. 94–164, § 2(e), Dec. 23, 1975, 89 Stat. 972, provided that: ''The amendments made by sections 201, 202(a), and 203 [enacting section 42 of this title and amending this section and sections 56, 141, 6012, and 6096 of this title] shall apply to taxable years ending after December 31, 1974. The amendments made by sections 201(a) and 202(a) [amending section 141 of this title] shall cease to apply to taxable years ending after December 31, 1975; those made by sections 201(b), 201(c), and 203 [enacting section 42 of this title and amending this section and sections 56, 6012, and 6096 of this title] shall cease to apply to taxable years ending after December 31, 1976.''

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 803(f) of Pub. L. 91–172, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 301(c) of Pub. L. 88–272, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Except for purposes of section 21 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to effect of changes in rates during a taxable year), the amendments made by this section [amending this section and sections 4 and 6014 of this title] shall apply to taxable years beginning after December 31, 1963.''

[§ 4. Repealed. Pub. L. 94–455, title V, § 501(b)(1), Oct. 4, 1976, 90 Stat. 1558]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 10; Feb. 26, 1964, Pub. L. 88–272, title II, § 232(f)(1), title III, § 301(b)(1), (3), 78 Stat. 111, 140; Dec. 30, 1969, Pub. L. 91–172, title VIII, § 802(c)(1)–(3), 83 Stat. 677, 678; Dec. 10, 1971, Pub. L. 92–178, title III, § 301(b), 85 Stat. 520, related to rules for optional tax.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1975, see section 508 of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 3 of this title.

§ 5. Cross references relating to tax on individuals

(a) Other rates of tax on individuals, etc.

(1) For rates of tax on nonresident aliens, see section 871.

(2) For doubling of tax on citizens of certain foreign countries, see section 891.

(3) For rate of withholding in the case of nonresident aliens, see section 1441.

(4) For alternative minimum tax, see section 55.

(b) Special limitations on tax

(1) For limitation on tax in case of income of members of Armed Forces, astronauts, and victims of certain terrorist attacks on death, see section 692.

(2) For computation of tax where taxpayer restores substantial amount held under claim of right, see section 1341.

(Aug. 16, 1954, ch. 736, 68A Stat. 10; Pub. L. 88–272, title II, § 232(f)(2), Feb. 26, 1964, 78 Stat. 111; Pub. L. 91–172, title III, § 301(b)(2), title VIII, § 803(d)(6), Dec. 30, 1969, 83 Stat. 585, 684; Pub. L.

94–455, title XIX, §§ 1901(b)(22)(B), 1951(c)(3)(A), Oct. 4, 1976, 90 Stat. 1798, 1841; Pub. L. 95–600, title IV, §§ 401(b)(2), 421(e)(1), Nov. 6, 1978, 92 Stat. 2867, 2875; Pub. L. 96–222, title I, § 104(a)(4)(H)(vii), Apr. 1, 1980, 94 Stat. 218; Pub. L. 97–248, title II, § 201(d)(4), formerly § 201(c)(4), Sept. 3, 1982, 96 Stat. 419, renumbered § 201(d)(4), Pub. L. 97–448, title III, § 306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 99–514, title I, § 141(b)(2), title VII, § 701(e)(4)(A), Oct. 22, 1986, 100 Stat. 2117, 2343; Pub. L. 107–134, title I, § 101(b)(1), Jan. 23, 2002, 115 Stat. 2428; Pub. L. 108–121, title I, § 110(a)(2)(A), Nov. 11, 2003, 117 Stat. 1342.)

AMENDMENTS

2003—Subsec. (b)(1). Pub. L. 108–121 inserted '', astronauts,'' after ''Forces''.

2002—Subsec. (b)(1). Pub. L. 107–134 inserted ''and victims of certain terrorist attacks'' before ''on death''.

1986—Subsec. (a)(4). Pub. L. 99–514, § 701(e)(4)(A), amended par. (4) generally, substituting ''alternative minimum tax'' for ''minimum tax for taxpayers other than corporations''.

Subsec. (b)(2), (3). Pub. L. 99–514, § 141(b)(2), struck out par. (2) which read: ''For limitation on tax where an individual chooses the benefits of income averaging, see section 1301.'' and redesignated former par. (3) as (2).

1982—Subsec. (a)(4). Pub. L. 97–248, § 201(d)(4), formerly § 201(c)(4), substituted ''section 55'' for ''sections 55 and 56''.

1980—Subsec. (a)(4). Pub. L. 96–222 substituted ''sections 55 and 56'' for ''section 55''.

1978—Subsec. (a)(3). Pub. L. 95–600, § 401(b)(2), redesignated par. (4) as (3). Former par. (3), relating to the alternative tax in the case of capital gains, was struck out.

Subsec. (a)(4), (5). Pub. L. 95–600, §§ 401(b)(2), 421(e)(1), redesignated par. (5) as (4) and substituted ''taxpayers other than corporations, see section 55'' for ''preferences, see section 56''. Former par. (4) redesignated (3).

1976—Subsec. (b). Pub. L. 94–455 redesignated pars. (2), (3), and (4), as (1), (2), (3), respectively, and struck out former par. (1) which referred to section 632 for limitation on tax attributable to sales of oil or gas properties and par. (5) which referred to section 1347 for limitation on tax attributable to claims against the U.S. involving acquisition of property.

1969—Subsec. (a)(5). Pub. L. 91–172, § 301(b)(2), added par. (5).

Subsec. (b). Pub. L. 91–172, § 803(d)(6), substituted ''tax'' for ''surtax'' in pars. (1) and (5).

1964—Subsec. (b). Pub. L. 88–272 redesignated pars. (2), (3), (4), (7) and (8) as pars. (1) to (5), respectively, substituted ''where an individual chooses the benefits of income averaging'' for ''with respect to compensation for longterm services'' in par. (3), and struck out former pars. (1), (5) and (6) which referred to tax attributable to receipt of lump sum under annuity, endowment, or life insurance contract, to income from artistic work or inventions, and to back pay, respectively.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–121, title I, § 110(a)(4), Nov. 11, 2003, 117 Stat. 1342, provided that: ''The amendments made by this subsection [amending this section and sections 692 and 6013 of this title] shall apply with respect to any astronaut whose death occurs after December 31, 2002.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–134 applicable to taxable years ending before, on, or after Sept. 11, 2001, with provisions relating to waiver of limitations, see section 101(d) of Pub. L. 107–134, set out as a note under section 692 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 141(b)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 701(e)(4)(A) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 201(e)(1) of Pub. L. 97–248 provided that: ''The amendments made by this section [amending this section and sections 46, 53, 55, 56, 57, 58, 173, 174, 511, 616, 617, 897, 901, 936, 1016, 6015, 6362, 6654, and 7701 of this title] shall apply to taxable years beginning after December 31, 1982.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 401(b)(2) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 401(c) of Pub. L. 95–600, set out as a note under section 1201 of this title.

Section 421(g) of Pub. L. 95–600 provided that: ''The amendments made by this section [enacting section 55 of this title and amending this section and sections 57, 58, 443, 511, 666, 871, 877, 904, 6015, 6362, and 6654 of this title] shall apply to taxable years beginning after December 31, 1978, except that the amendment made by paragraph (1) of subsection (b) [amending section 57 of this title] shall apply to sales and exchanges made after July 26, 1978, in taxable years ending after such date.''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 301(c) of Pub. L. 91–172, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [enacting sections 56 to 58 of this title and amending this section and sections 12, 46, 51, 443, 453, 511, 901, 1373, 1375, 6015, and 6654 of this title] shall apply to taxable years ending after December 31, 1969. In the case of a taxable year beginning in 1969 and ending in 1970, the tax imposed by section 56 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) shall be an amount equal to the tax imposed by such section (determined without regard to this sentence) multiplied by a fraction—

''(1) the numerator of which is the number of days in the taxable year occurring after December 31, 1969, and

''(2) the denominator of which is the number of days in the entire taxable year.''

Amendment by section 803(d)(6) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1970, see section 803(f) of Pub. L. 91–172, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 232(g) of Pub. L. 88–272, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) GENERAL RULE.—Except as provided in paragraph (2), the amendments made by this section [enacting sections 1301 to 1305, amending this section and sections 4, 72, 144, 402, 403, 6511, and omitting former sections 1301 to 1307 of this title] shall apply with respect to taxable years beginning after December 31, 1963.

''(2) INCOME FROM AN EMPLOYMENT.—If, in a taxable year beginning after December 31, 1963, an individual or partnership receives or accrues compensation from an employment (as defined by section 1301(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as in effect immediately before the enactment of this Act [Feb. 26, 1964] and the employment began before February 6, 1963, the tax attributable to such compensation

may, at the election of the taxpayer, be computed under the provisions of sections 1301 and 1307 of such Code as in effect immediately before the enactment of this Act. If a taxpayer so elects (at such time and in such manner as the Secretary of the Treasury or his delegate by regulations prescribes), he may not choose for such taxable year the benefits provided by part I of subchapter Q of chapter 1 of such Code (relating to income averaging) as amended by this Act and (if he elects to have subsection (e) of such section 1307 apply) section 170(b)(5) of such Code as amended by this Act shall not apply to charitable contributions paid in such taxable year.''

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(4)(A) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, see section 1012(aa)(2) of Pub. L. 100–647, set out as a note under section 861 of this title.

PART II—TAX ON CORPORATIONS

Sec.
11. Tax imposed.
12. Cross references relating to tax on corporations.

§ 11. Tax imposed

(a) Corporations in general

A tax is hereby imposed for each taxable year on the taxable income of every corporation.

(b) Amount of tax

(1) In general

The amount of the tax imposed by subsection (a) shall be the sum of—

(A) 15 percent of so much of the taxable income as does not exceed $50,000,

(B) 25 percent of so much of the taxable income as exceeds $50,000 but does not exceed $75,000,

(C) 34 percent of so much of the taxable income as exceeds $75,000 but does not exceed $10,000,000, and

(D) 35 percent of so much of the taxable income as exceeds $10,000,000.

In the case of a corporation which has taxable income in excess of $100,000 for any taxable year, the amount of tax determined under the preceding sentence for such taxable year shall be increased by the lesser of (i) 5 percent of such excess, or (ii) $11,750. In the case of a corporation which has taxable income in excess of $15,000,000, the amount of the tax determined under the foregoing provisions of this paragraph shall be increased by an additional amount equal to the lesser of (i) 3 percent of such excess, or (ii) $100,000.

(2) Certain personal service corporations not eligible for graduated rates

Notwithstanding paragraph (1), the amount of the tax imposed by subsection (a) on the taxable income of a qualified personal service corporation (as defined in section 448(d)(2)) shall be equal to 35 percent of the taxable income.

(c) Exceptions

Subsection (a) shall not apply to a corporation subject to a tax imposed by—

(1) section 594 (relating to mutual savings banks conducting life insurance business),

(2) subchapter L (sec. 801 and following, relating to insurance companies), or

(3) subchapter M (sec. 851 and following, relating to regulated investment companies and real estate investment trusts).

(d) Foreign corporations

In the case of a foreign corporation, the taxes imposed by subsection (a) and section 55 shall apply only as provided by section 882.

(Aug. 16, 1954, ch. 736, 68A Stat. 11; Mar. 30, 1955, ch. 18, § 2, 69 Stat. 14; Mar. 29, 1956, ch. 115, § 2, 70 Stat. 66; Pub. L. 85–12, § 2, Mar. 29, 1957, 71 Stat. 9; Pub. L. 85–475, § 2, June 30, 1958, 72 Stat. 259; Pub. L. 86–75, § 2, June 30, 1959, 73 Stat. 157; Pub. L. 86–564, title II, § 201, June 30, 1960, 74 Stat. 290; Pub. L. 86–779, § 10(d), Sept. 14, 1960, 74 Stat. 1009; Pub. L. 87–72, § 2, June 30, 1961, 75 Stat. 193; Pub. L. 87–508, § 2, June 28, 1962, 76 Stat. 114; Pub. L. 88–52, § 2, June 29, 1963, 77 Stat. 72; Pub. L. 88–272, title I, § 121, Feb. 26, 1964, 78 Stat. 25; Pub. L. 89–809, title I, § 104(b)(2), Nov. 13, 1966, 80 Stat. 1557; Pub. L. 91–172, title IV, § 401(b)(2)(B), Dec. 30, 1969, 83 Stat. 602; Pub. L. 94–12, title III, § 303(a), (b), Mar. 29, 1975, 89 Stat. 44; Pub. L. 94–164, § 4(a)–(c), Dec. 23, 1975, 89 Stat. 973, 974; Pub. L. 94–455, title IX, § 901(a), Oct. 4, 1976, 90 Stat. 1606; Pub. L. 95–30, title II, § 201(1), (2), May 23, 1977, 91 Stat. 141; Pub. L. 95–600, title III, § 301(a), Nov. 6, 1978, 92 Stat. 2820; Pub. L. 97–34, title II, § 231(a), Aug. 13, 1981, 95 Stat. 249; Pub. L. 98–369, div. A, title I, § 66(a), July 18, 1984, 98 Stat. 585; Pub. L. 99–514, title VI, § 601(a), Oct. 22, 1986, 100 Stat. 2249; Pub. L. 100–203, title X, § 10224(a), Dec. 22, 1987, 101 Stat. 1330–412; Pub. L. 100–647, title I, § 1007(g)(13)(B), Nov. 10, 1988, 102 Stat. 3436; Pub. L. 103–66, title XIII, § 13221(a), (b), Aug. 10, 1993, 107 Stat. 477.)

AMENDMENTS

1993—Subsec. (b)(1). Pub. L. 103–66, § 13221(a)(3), inserted at end of closing provisions ''In the case of a corporation which has taxable income in excess of $15,000,000, the amount of the tax determined under the foregoing provisions of this paragraph shall be increased by an additional amount equal to the lesser of (i) 3 percent of such excess, or (ii) $100,000.''

Subsec. (b)(1)(C), (D). Pub. L. 103–66, § 13221(a)(1), (2), added subpars. (C) and (D) and struck out former subpar. (C) which read as follows: ''34 percent of so much of the taxable income as exceeds $75,000.''

Subsec. (b)(2). Pub. L. 103–66, § 13221(b), substituted ''35 percent'' for ''34 percent''.

1988—Subsec. (d). Pub. L. 100–647 substituted ''the taxes imposed by subsection (a) and section 55'' for ''the tax imposed by subsection (a)''.

1987—Subsec. (b). Pub. L. 100–203 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''The amount of the tax imposed by subsection (a) shall be the sum of—

''(1) 15 percent of so much of the taxable income as does not exceed $50,000,

''(2) 25 percent of so much of the taxable income as exceeds $50,000 but does not exceed $75,000, and

''(3) 34 percent of so much of the taxable income as exceeds $75,000.

In the case of a corporation which has taxable income in excess of $100,000 for any taxable year, the amount of tax determined under the preceding sentence for such taxable year shall be increased by the lesser of (A) 5 percent of such excess, or (B) $11,750.''

1986—Subsec. (b). Pub. L. 99–514 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as fol-

lows: ''The amount of the tax imposed by subsection (a) shall be the sum of—

''(1) 15 percent (16 percent for taxable years beginning in 1982) of so much of the taxable income as does not exceed $25,000;

''(2) 18 percent (19 percent for taxable years beginning in 1982) of so much of the taxable income as exceeds $25,000 but does not exceed $50,000;

''(3) 30 percent of so much of the taxable income as exceeds $50,000 but does not exceed $75,000;

''(4) 40 percent of so much of the taxable income as exceeds $75,000 but does not exceed $100,000; plus

''(5) 46 percent of so much of the taxable income as exceeds $100,000.

In the case of a corporation with taxable income in excess of $1,000,000 for any taxable year, the amount of tax determined under the preceding sentence for such taxable year shall be increased by the lesser of (A) 5 percent of such excess, or (B) $20,250.''

1984—Subsec. (b). Pub. L. 98–369 inserted ''In the case of a corporation with taxable income in excess of $1,000,000 for any taxable year, the amount of tax determined under the preceding sentence for such taxable year shall be increased by the lesser of (A) 5 percent of such excess, or (B) $20,250.''

1981—Subsec. (b)(1). Pub. L. 97–34, §231(a)(1), substituted ''15 percent (16 percent for taxable years beginning in 1982)'' for ''17 percent''.

Subsec. (b)(2). Pub. L. 97–34, §231(a)(2), substituted ''18 percent (19 percent for taxable years beginning in 1982)'' for ''20 percent''.

1978—Pub. L. 95–600 reduced corporate tax rates by substituting provisions imposing a five-step tax rate structure on corporate taxable income for provisions using a normal tax and surtax approach to the taxation of corporate taxable income.

1977—Subsec. (b)(1). Pub. L. 95–30, §201(1), substituted ''December 31, 1978'' for ''December 31, 1977''.

Subsec. (b)(2). Pub. L. 95–30, §201(1), substituted ''January 1, 1979'' for ''January 1, 1978'' in provisions preceding subpar. (A).

Subsec. (d)(1). Pub. L. 95–30, §201(2), substituted ''December 31, 1978'' for ''December 31, 1977''.

Subsec. (d)(2). Pub. L. 95–30, §201(2), substituted ''January 1, 1979'' for ''January 1, 1978''.

1976—Subsec. (a). Pub. L. 94–455 reenacted subsec. (a) without change.

Subsec. (b). Pub. L. 94–455, among other changes, substituted ''December 31, 1977, 22 percent'' for ''December 31, 1976, 22 percent'' and ''after December 31, 1974 and before January 1, 1978'' for ''after December 31, 1974 and before January 1, 1977'' and struck out provisions relating to the six-month application of the general rule.

Subsec. (c). Pub. L. 94–455 struck out provisions relating to the special rule for 1976 for calendar year taxpayers.

Subsec. (d). Pub. L. 94–455, among other changes, substituted provisions relating to surtax exemption of $25,000 for a taxable year ending Dec. 31, 1977, or $50,000 for a taxable year ending after Dec. 31, 1974, and before Jan. 1, 1978, for provisions relating to surtax exemption of $50,000 for any taxable year and struck out provisions relating to six-month application of the general rule.

1975—Subsec. (b). Pub. L. 94–164 redesignated existing pars. (1) and (2) as pars. (1)(A) and (1)(B), and in par. (1)(A) as so redesignated substituted ''after December 31, 1976'' for ''before January 1, 1975 or after December 31, 1975'', and in par. (1)(B) as so redesignated substituted ''January 1, 1977'' for ''January 1, 1976'', and added par. (2).

Pub. L. 94–12, §303(a), reduced the normal tax for a taxable year ending after Dec. 31, 1974, and before Jan. 1, 1976, to 20 percent of so much of the taxable income as does not exceed $25,000 plus 22 percent of so much of the taxable income as exceeds $25,000.

Subsec. (c). Pub. L. 94–164 designated existing provisions as par. (1), struck out special percentages for taxable years beginning before Jan. 1, 1964, and after Dec. 31, 1963 and before Jan. 1, 1965, and added par. (2).

Subsec. (d). Pub. L. 94–164 designated existing provisions as par. (1), substituted ''$50,000'' for ''$25,000'', inserted reference to section 1564 of this title, and added par. (2).

Pub. L. 94–12, §303(b), substituted ''$50,000'' for ''$25,000''.

1969—Subsec. (d). Pub. L. 91–172 substituted ''section 1561 or 1564'' for ''section 1561''.

1966—Subsec. (e)(4). Pub. L. 89–809, §104(b)(2)(A), struck out par. (4) which made reference to section 881(a) (relating to foreign corporations not engaged in business in United States).

Subsec. (f). Pub. L. 89–809, §104(b)(2)(B), added subsec. (f).

1964—Subsec. (b). Pub. L. 88–272 applied the 30 percent tax to years beginning before Jan. 1, 1964 instead of July 1, 1964 in par. (1), and in par. (2), reduced the rate from 25 percent to 22 percent, and applied it to years beginning after Dec. 31, 1963, instead of June 30, 1964.

Subsec. (c). Pub. L. 88–272 increased the percentage from 22 to 28 for taxable years beginning after Dec. 31, 1963, and before Jan. 1, 1965, and to 26 percent for taxable years beginning after Dec. 31, 1964. The surtax exemption previously carried in subsec. (c), is now stated in subsec. (d).

Subsecs. (d), (e). Pub. L. 88–272 added subsec. (d) and redesignated former subsec. (d) as (e).

1963—Subsec. (b). Pub. L. 88–52 substituted ''July 1, 1964'' for ''July 1, 1963'' and ''June 30, 1964'' for ''June 30, 1963'' wherever appearing.

1962—Subsec. (b). Pub. L. 87–508 substituted ''July 1, 1963'' for ''July 1, 1962'' and ''June 30, 1963'' for ''June 30, 1962'' wherever appearing.

1961—Subsec. (b). Pub. L. 87–72 substituted ''July 1, 1962'' for ''July 1, 1961'' and ''June 30, 1962'' for ''June 30, 1961'' wherever appearing.

1960—Subsec. (b). Pub. L. 86–564 substituted ''July 1, 1961'' for ''July 1, 1960'' and ''June 30, 1961'' for ''June 30, 1960'' wherever appearing.

Subsec. (d)(3). Pub. L. 86–779 inserted ''and real estate investment trusts'' after ''regulated investment companies''.

1959—Subsec. (b). Pub. L. 86–75 substituted ''July 1, 1960'' for ''July 1, 1959'' and ''June 30, 1960'' for ''June 30, 1959'' wherever appearing.

1958—Subsec. (b). Pub. L. 85–475 substituted ''July 1, 1959'' for ''July 1, 1958'' and ''June 30, 1959'' for ''June 30, 1958'' wherever appearing.

1957—Subsec. (b). Pub. L. 85–12 substituted ''July 1, 1958'' for ''April 1, 1957'' and ''June 30, 1958'' for ''March 31, 1957'' wherever appearing.

1956—Subsec. (b). Act Mar. 29, 1956, substituted ''April 1, 1957'' for ''April 1, 1956'' and ''March 31, 1957'' for ''March 31, 1956'' wherever appearing.

1955—Subsec. (b). Act Mar. 30, 1955, substituted ''April 1, 1956'' for ''April 1, 1955'' and ''March 31, 1956'' for ''March 31, 1955'' wherever appearing.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13221(d) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and sections 852, 1201, and 1445 of this title] shall apply to taxable years beginning on or after January 1, 1993; except that the amendment made by subsection (c)(3) [amending section 1445 of this title] shall take effect on the date of the enactment of this Act [Aug. 10, 1993].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10224(b) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 601(b) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning on or after July 1, 1987.

''(2) CROSS REFERENCE.—

"For treatment of taxable years which include July 1, 1987, see section 15 of the Internal Revenue Code of 1986."

EFFECTIVE DATE OF 1984 AMENDMENT

Section 66(c) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 1561 of this title] shall apply to taxable years beginning after December 31, 1983.

''(2) AMENDMENTS NOT TREATED AS CHANGED IN RATE OF TAX.—The amendments made by this subsection [probably should be ''section''] shall not be treated as a change in a rate of tax for purposes of section 21 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 231(c) of Pub. L. 97–34 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1981.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 301(c) of Pub. L. 95–600 provided that: ''The amendments made by this section [amending this section and sections 12, 57, 244, 247, 511, 527, 528, 802, 821, 826, 852, 857, 882, 907, 922, 962, 1351, 1551, 1561, 6154, and 6655 of this title] shall apply to taxable years beginning after December 31, 1978.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 901(d) of Pub. L. 94–455 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on December 23, 1975. The amendments made by subsection (b) [amending section 821 of this title] shall apply to taxable years ending after December 31, 1974. The amendments made by subsection (c) [amending sections 21, 1561, and 6154 of this title] shall apply to taxable years ending after December 31, 1975.''

EFFECTIVE AND TERMINATION DATES OF 1975 AMENDMENTS

Section 4(e) of Pub. L. 94–164 provided that: ''The amendments made by subsections (b), (c), and (d) [amending this section and sections 21, 962, and 1561 of this title] apply to taxable years beginning after December 31, 1975. The amendment made by subsection (c) [amending this section] ceases to apply for taxable years beginning after December 31, 1976.''

Section 305(b)(1) of Pub. L. 94–12 provided that: ''The amendments made by section 303 [amending this section and sections 12, 962, and 1561 of this title and enacting provisions set out as a note under this section] shall apply to taxable years ending after December 31, 1974. The amendments made by subsections (b) and (c) of such section [amending this section and sections 12, 962, and 1561 of this title and enacting provisions set out as a note under this section] shall cease to apply for taxable years ending after December 31, 1975.''

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to taxable years beginning after Dec. 31, 1969, see section 401(h)(2) of Pub. L. 91–172, set out as a note under section 1561 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 104(n) of Pub. L. 89–809 provided that: ''The amendments made by this section (other than subsection (k)) [enacting section 6683 to this title and amending this section and sections 245, 301, 512, 542, 543, 545, 819, 821, 822, 831, 832, 841, 842, 881, 882, 884, 952, 953, 1249, 1442, and 6016 of this title] shall apply with respect to taxable years beginning after December 31, 1966. The amendment made by subsection (k) [amending section 1248(d)(4) of this title] shall apply with respect to sales or exchanges occurring after December 31, 1966.''

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272, except for purposes of section 21 of this title, effective with respect to taxable years beginning after Dec. 31, 1963, see section 131 of Pub. L. 88–272, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–779 applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86–779, set out as an Effective Date note under section 856 of this title.

ALLOCATION OF 1975 TAXABLE INCOME AMONG COMPONENT MEMBERS OF CONTROLLED GROUP OF CORPORATIONS

Section 303(c)(1) of Pub. L. 94–12 provided in part that: ''In applying subsection (b)(2) of section 11 [subsec. (b)(2) of this section], the first $25,000 of taxable income and the second $25,000 of taxable income shall each be allocated among the component members of a controlled group of corporations in the same manner as the surtax exemption is allocated.''

§ 12. Cross references relating to tax on corporations

(1) For tax on the unrelated business income of certain charitable and other corporations exempt from tax under this chapter, see section 511.

(2) For accumulated earnings tax and personal holding company tax, see parts I and II of subchapter G (sec. 531 and following).

(3) For doubling of tax on corporations of certain foreign countries, see section 891.

(4) For alternative tax in case of capital gains, see section 1201(a).

(5) For rate of withholding in case of foreign corporations, see section 1442.

(6) For limitation on benefits of graduated rate schedule provided in section 11(b), see section 1551.

(7) For alternative minimum tax, see section 55.

(Aug. 16, 1954, ch. 736, 68A Stat. 11; Pub. L. 88–272, title II, § 234(b)(4), Feb. 26, 1964, 78 Stat. 115; Pub. L. 91–172, title III, § 301(b)(3), Dec. 30, 1969, 83 Stat. 585; Pub. L. 94–12, title III, § 303(c)(2), Mar. 29, 1975, 89 Stat. 44; Pub. L. 95–600, title III, § 301(b)(1), Nov. 6, 1978, 92 Stat. 2820; Pub. L. 98–369, div. A, title I, § 474(r)(29)(E), July 18, 1984, 98 Stat. 844; Pub. L. 99–514, title VII, § 701(e)(4)(B), Oct. 22, 1986, 100 Stat. 2343.)

AMENDMENTS

1986—Par. (7). Pub. L. 99–514 amended par. (7) generally, substituting ''alternative minimum tax'' and ''55'' for ''minimum tax for tax preferences'' and ''56'', respectively.

1984—Pars. (6) to (8). Pub. L. 98–369 redesignated pars. (7) and (8) as (6) and (7), respectively. Former par. (6), which referred to section 1451 for withholding of tax on tax-free covenant bonds, was struck out.

1978—Par. (7). Pub. L. 95–600 substituted ''benefits of graduated rate schedule provided in section 11(b)'' for ''the $25,000 exemption from surtax provided in section 11(c)''.

1975—Par. (7). Pub. L. 94–12 substituted ''$50,000'' for ''$25,000'' for a limited period. See Effective and Termination Dates of 1975 Amendment note set out below.

1969—Par. (8). Pub. L. 91–172 added par. (8).

1964—Par. (8). Pub. L. 88–272 struck out par. (8) which referred to section 1503 for additional tax for corporations filing consolidated returns.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

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

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

EFFECTIVE AND TERMINATION DATES OF 1975 AMENDMENT

Amendment by Pub. L. 94–12 applicable to taxable years ending after Dec. 31, 1974, but to cease to apply for taxable years ending after Dec. 31, 1975, see section 305(b)(1) of Pub. L. 94–12, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 301(c) of Pub. L. 91–172, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

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

APPLICABILITY OF CERTAIN AMENDMENTS BY PUBLIC LAW 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, see section 1012(aa)(2) of Pub. L. 100–647, set out as a note under section 861 of this title.

PART III—CHANGES IN RATES DURING A TAXABLE YEAR

Sec.
15. Effect of changes.

AMENDMENTS

1984—Pub. L. 98–369, div. A, title IV, §474(b)(3), July 18, 1984, 98 Stat. 830, substituted ''15. Effect of changes'' for ''21. Effect of changes''.

§ 15. Effect of changes

(a) General rule

If any rate of tax imposed by this chapter changes, and if the taxable year includes the effective date of the change (unless that date is the first day of the taxable year), then—

(1) tentative taxes shall be computed by applying the rate for the period before the effective date of the change, and the rate for the period on and after such date, to the taxable income for the entire taxable year; and

(2) the tax for such taxable year shall be the sum of that proportion of each tentative tax which the number of days in each period bears to the number of days in the entire taxable year.

(b) Repeal of tax

For purposes of subsection (a)—

(1) if a tax is repealed, the repeal shall be considered a change of rate; and

(2) the rate for the period after the repeal shall be zero.

(c) Effective date of change

For purposes of subsections (a) and (b)—

(1) if the rate changes for taxable years ''beginning after'' or ''ending after'' a certain date, the following day shall be considered the effective date of the change; and

(2) if a rate changes for taxable years ''beginning on or after'' a certain date, that date shall be considered the effective date of the change.

(d) Section not to apply to inflation adjustments

This section shall not apply to any change in rates under subsection (f) of section 1 (relating to adjustments in tax tables so that inflation will not result in tax increases).

(e) References to highest rate

If the change referred to in subsection (a) involves a change in the highest rate of tax imposed by section 1 or 11(b), any reference in this chapter to such highest rate (other than in a provision imposing a tax by reference to such rate) shall be treated as a reference to the weighted average of the highest rates before and after the change determined on the basis of the respective portions of the taxable year before the date of the change and on or after the date of the change.

(f) Rate reductions enacted by Economic Growth and Tax Relief Reconciliation Act of 2001

This section shall not apply to any change in rates under subsection (i) of section 1 (relating to rate reductions after 2000).

(Aug. 16, 1954, ch. 736, 68A Stat. 12, §21; Pub. L. 88–272, title I, §132, Feb. 26, 1964, 78 Stat. 30; Pub. L. 91–172, title VIII, §803(e), Dec. 30, 1969, 83 Stat. 685; Pub. L. 92–178, title II, §205, Dec. 10, 1971, 85 Stat. 511; Pub. L. 94–12, title III, §305(b)(2), Mar. 29, 1975, 89 Stat. 45; Pub. L. 94–164, §4(d)(2), Dec. 23, 1975, 89 Stat. 975; Pub. L. 94–455, title IX, §901(c)(2), Oct. 4, 1976, 90 Stat. 1607; Pub. L. 95–30, title I, §101(d)(2), May 23, 1977, 91 Stat. 133; Pub. L. 95–600, title I, §106, Nov. 6, 1978, 92 Stat. 2776; Pub. L. 97–34, title I, §101(d)(3), Aug. 13, 1981, 95 Stat. 184; renumbered §15, Pub. L. 98–369, div. A, title IV, §474(b)(1), July 18, 1984, 98 Stat. 830; Pub. L. 99–514, title I, §101(b), Oct. 22, 1986, 100 Stat. 2099; Pub. L. 100–647, title I, §1006(a), Nov. 10, 1988, 102 Stat. 3393; Pub. L. 107–16, title I, §101(c)(3), June 7, 2001, 115 Stat. 43.)

AMENDMENT OF SECTION

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

AMENDMENTS

2001—Subsec. (f). Pub. L. 107–16, §§101(c)(3), 901, temporarily added subsec. (f). See Effective and Termination Dates of 2001 Amendment note below.

1988—Subsec. (e). Pub. L. 100–647 added subsec. (e).

1986—Subsec. (d). Pub. L. 99–514 amended subsec. (d) generally, substituting ''apply to inflation adjust-

ments'' for ''apply to section 1 rate changes made by Economic Recovery Tax Act of 1981'' in heading and struck out ''section 1 attributable to the amendments made by section 101 of the Economic Tax Act of 1981 or'' before ''subsection (f)'' in text.

1984—Pub. L. 98–369 renumbered section 21 of this title as this section.

1981—Subsec. (d). Pub. L. 97–34 substituted provisions that this section shall not apply to any change in rates under section 1 attributable to the amendments made by section 101 of the Economic Recovery Tax Act of 1981 or subsec. (f) of section 1 for provisions that had related to the changes made by section 303(b) of the Tax Reduction Act of 1975 in the surtax exemption.

Subsecs. (e), (f). Pub. L. 97–34 struck out subsecs. (e) and (f) which had related, respectively, to changes made by the Tax Reduction and Simplification Act of 1977 and to changes made by Revenue Act of 1978.

1978—Subsec. (f). Pub. L. 95–600 added subsec. (f).

1977—Subsec. (d). Pub. L. 95–30, § 101(d)(2)(A), (B), redesignated subsec. (f) as (d). Former subsec. (d), which directed that, in applying subsec. (a) to a taxable year of an individual which was not a calendar year, each change made by the Tax Reform Act of 1969 in part I or in the application of part IV or V of subchapter B for purposes of the determination of taxable income should be treated as a change in a rate of tax, was struck out.

Subsec. (e). Pub. L. 95–30, § 101(d)(2)(A), (C), added subsec. (e). Former subsec. (e), which directed that, in applying subsec. (a) to a taxable year of an individual which was not a calendar year, each change made by the Revenue Act of 1971 in section 141 (relating to the standard deduction) and section 151 (relating to personal exemptions) should be treated as a change in a rate of tax, was struck out.

Subsec. (f). Pub. L. 95–30, § 101(d)(2)(B), redesignated subsec. (f) as (d).

1976—Subsec. (f). Pub. L. 94–455 substituted ''in the surtax exemption and any change under section 11(d) in the surtax exemption'' for ''and the change made by section 3(c) of the Revenue Adjustment Act of 1975 in section 11(d) (relating to corporate surtax exemption)''.

1975—Subsec. (f). Pub. L. 94–164 inserted reference to change made by section 3(c) of the Revenue Adjustment Act of 1975.

Pub. L. 94–12 added subsec. (f).

1971—Subsec. (e). Pub. L. 92–178 added subsec. (e).

1969—Subsec. (d). Pub. L. 91–172 substituted provisions covering changes made by the Tax Reform Act of 1969 in case of individuals for provisions covering changes made by Revenue Act of 1964.

1964—Subsec. (d). Pub. L. 88–272 amended subsection generally by substituting provisions relating to changes made by the Revenue Act of 1964, for provisions relating to taxable years beginning before Jan. 1, 1954, and ending after Dec. 31, 1953.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2000, see section 101(d)(1) of Pub. L. 107–16, set out as a note under section 1 of this title.

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 101(f)(1) of Pub. L. 97–34, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to taxable years ending after Dec. 31, 1975, see section 901(d) of Pub. L. 94–455, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–164 applicable to taxable years beginning after Dec. 31, 1975, see section 4(e) of Pub. L. 94–164, set out as an Effective and Termination Dates of 1975 Amendments note under section 11 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 132 of Pub. L. 88–272 provided that the amendment made by that section is effective with respect to taxable years ending after Dec. 31, 1963.

COORDINATION OF 1997 AMENDMENT WITH SECTION 15

Pub. L. 105–34, title I, § 1(c), Aug. 5, 1997, 111 Stat. 788, provided that: ''No amendment made by this Act [see Tables for classification] shall be treated as a change in a rate of tax for purposes of section 15 of the Internal Revenue Code of 1986.''

COORDINATION OF 1993 AMENDMENT WITH SECTION 15

Pub. L. 103–66, title XIII, § 13001(c), Aug. 10, 1993, 107 Stat. 416, provided that: ''Except in the case of the amendments made by section 13221 [amending sections 11, 852, 1201, and 1445 of this title] (relating to corporate rate increase), no amendment made by this chapter [chapter 1 (§§ 13001–13444) of title XIII of Pub. L. 103–66, see Tables for classification] shall be treated as a change in a rate of tax for purposes of section 15 of the Internal Revenue Code of 1986.''

COORDINATION OF 1990 AMENDMENT WITH SECTION 15

Pub. L. 101–508, title XI, § 11001(c), Nov. 5, 1990, 104 Stat. 1388–400, provided that: ''Except as otherwise expressly provided in this title, no amendment made by this title [see Tables for classification] shall be treated as a change in a rate of tax for purposes of section 15 of the Internal Revenue Code of 1986.''

COORDINATION OF 1987 AMENDMENT WITH SECTION 15

Pub. L. 100–203, title X, § 10000(c), Dec. 22, 1987, 101 Stat. 1330–382, provided that: ''No amendment made by this title [see Tables for classification] shall be treated as a change in a rate of tax for purposes [of] section 15 of the Internal Revenue Code of 1986.''

COORDINATION OF 1986 AMENDMENT WITH SECTION 15

Section 3(b) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), for purposes of section 15 of the Internal Revenue Code of 1986, no amendment or repeal made by this Act [see Tables for classification] shall be treated as a change in the rate of a tax imposed by chapter 1 of such Code.

''(2) EXCEPTION.—Paragraph (1) shall not apply to the amendment made by section 601 [amending section 11 of this title] (relating to corporate rate reductions).''

PART IV—CREDITS AGAINST TAX

Subpart
A. Nonrefundable personal credits.

Subpart
B. Other credits.
C. Refundable credits.
D. Business-related credits.
E. Rules for computing investment credit.
F. Rules for computing work opportunity credit.
G. Credit against regular tax for prior year minimum tax liability.[1]
H. Nonrefundable credit to holders of clean renewable energy bonds.
I. Qualified tax credit bonds.
J. Build America bonds.

AMENDMENTS

2009—Pub. L. 111–5, div. B, title I, §1531(c)(6), Feb. 17, 2009, 123 Stat. 360, added item for subpart J.

2008—Pub. L. 110–234, title XV, §15316(c)(5), May 22, 2008, 122 Stat. 1511, and Pub. L. 110–246, title XV, §15316(c)(5), June 18, 2008, 122 Stat. 2273, made identical amendments, adding items for subparts H and I and striking out item for former subpart H ''Nonrefundable credit to holders of certain bonds''. The amendment by Pub. L. 110–234 was repealed by Pub. L. 110–246, §4(a), June 18, 2008, 122 Stat. 1664.

2005—Pub. L. 109–58, title XIII, §1303(c)(1), Aug. 8, 2005, 119 Stat. 996, added item for subpart H.

1996—Pub. L. 104–188, title I, §§1201(e)(3), 1601(b)(2)(F)(ii), Aug. 20, 1996, 110 Stat. 1772, 1833, substituted ''Other credits'' for ''Foreign tax credit, etc.'' in item for subpart B and ''work opportunity credit'' for ''targeted jobs credit'' in item for subpart F.

1990—Pub. L. 101–508, title XI, §11813(b)(26), Nov. 5, 1990, 104 Stat. 1388–555, substituted ''Rules for computing investment credit'' for ''Rules for computing credit for investment in certain depreciable property'' in item for subpart E.

1984—Pub. L. 98–369, div. A, title IV, §§471(a), 474(n)(3), July 18, 1984, 98 Stat. 825, 834, substituted ''Nonrefundable personal credits'' for ''Credits allowable'' in item for subpart A, ''Foreign tax credit, etc'' for ''Rules for computing credit for investment in certain depreciable property'' in item for subpart B, ''Refundable credits'' for ''Rules for computing credit for expense of work incentive programs'' in item for subpart C, and ''Business-related credits'' for ''Rules for computing credit for employment of certain new employees'' in item for subpart D, and added items for subparts E and F.

1977—Pub. L. 95–30, title II, §202(d)(1)(B), May 23, 1977, 91 Stat. 147, added subpart D.

1971—Pub. L. 92–178, title VI, §601(c)(1), Dec. 10, 1971, 85 Stat. 557, added subpart C.

SUBPART A—NONREFUNDABLE PERSONAL CREDITS

Sec.
21. Expenses for household and dependent care services necessary for gainful employment.
22. Credit for the elderly and the permanently and totally disabled.
[23. Renumbered.]
24. Child tax credit.
25. Interest on certain home mortgages.
25A. Hope and Lifetime Learning credits.
25B. Elective deferrals and IRA contributions by certain individuals.
25C. Nonbusiness energy property.
25D. Residential energy efficient property.
26. Limitation based on tax liability; definition of tax liability.

AMENDMENT OF ANALYSIS

For termination of amendment by section 10909(c) of Pub. L. 111–148, see Effective and Termination Dates of 2010 Amendment note set out under section 1 of this title.

[1] Editorially supplied. Subpart G of part IV added by Pub. L. 99–514 without corresponding amendment of part analysis.

AMENDMENTS

2010—Pub. L. 111–148, title X, §10909(b)(2)(O), (c), Mar. 23, 2010, 124 Stat. 1023, as amended by Pub. L. 111–312, title I, §101(b)(1), Dec. 17, 2010, 124 Stat. 3298, temporarily struck out item 23 ''Adoption expenses''.

2005—Pub. L. 109–58, title XIII, §§1333(b)(2), 1335(b)(5), Aug. 8, 2005, 119 Stat. 1030, 1036, added items 25C and 25D.

2001—Pub. L. 107–16, title VI, §618(c), June 7, 2001, 115 Stat. 108, added item 25B.

1998—Pub. L. 105–206, title VI, §6004(a)(1), July 22, 1998, 112 Stat. 792, substituted ''Hope and Lifetime Learning credits'' for ''Higher education tuition and related expenses'' in item 25A.

1997—Pub. L. 105–34, title I, §101(d)(3), title II, §201(e), Aug. 5, 1997, 111 Stat. 799, 806, added items 24 and 25A.

1996—Pub. L. 104–188, title I, §1807(c)(6), Aug. 20, 1996, 110 Stat. 1902, added item 23.

1990—Pub. L. 101–508, title XI, §11801(b)(1), Nov. 5, 1990, 104 Stat. 1388–522, struck out item 23 ''Residential energy credit''.

1986—Pub. L. 99–514, title I, §112(b)(5), Oct. 22, 1986, 100 Stat. 2109, struck out item 24 ''Contributions to candidates for public office''.

1984—Pub. L. 98–369, div. A, title IV, §§471(b), 612(f), July 18, 1984, 98 Stat. 826, 913, substituted ''Nonrefundable Personal Credits'' for ''Credits Allowable'' as subpart A heading, struck out analysis of sections 31 through 45 formerly comprising subpart A, and inserted a new analysis of sections consisting of items 21 (formerly 44A), 22 (formerly 37), 23 (formerly 44C), 24 (formerly 41), and 25 and 26 (newly enacted).

1983—Pub. L. 98–67 repealed amendments made by Pub. L. 97–248. See 1982 Amendment note below.

Pub. L. 98–21, title I, §122(c)(7), Apr. 20, 1983, 97 Stat. 87, inserted ''and the permanently and totally disabled'' to item 37.

Pub. L. 97–424, title V, §515(b)(6)(D), Jan. 6, 1983, 96 Stat. 2181, substituted ''and special fuels'' for '', special fuels, and lubricating oil'' after ''gasoline'' in item 39.

Pub. L. 97–414, §4(c)(1), Jan. 4, 1983, 96 Stat. 2056, added item 44H.

1982—Pub. L. 97–248, title III, §§307(b)(3), 308(a), Sept. 3, 1982, 96 Stat. 590, 591, provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, item 31 is amended to read ''Tax withheld on wages, interest, dividends, and patronage dividends''. Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

1981—Pub. L. 97–34, title II, §221(c)(2), title III, §331(e)(2), Aug. 13, 1981, 95 Stat. 247, 295, added items 44F and 44G.

1980—Pub. L. 96–223, title II, §§231(b)(1), 232(b)(3)(B), Apr. 2, 1980, 94 Stat. 272, 276, added items 44D and 44E.

1978—Pub. L. 95–618, title I, §101(b)(1), Nov. 9, 1978, 92 Stat. 3179, added item 44C.

1977—Pub. L. 95–30, title I, §101(e)(1), title II, §202(d)(1)(A), May 23, 1977, 91 Stat. 134, 147, added item 44B and struck out item 36 ''Credit not allowed to individuals taking standard deduction''.

1976—Pub. L. 94–455, title IV, §401(a)(2)(D), title V, §§501(c)(2), 503(b)(5), 504(a)(2), title XIX, §1901(b)(1)(Z), Oct. 4, 1976, 90 Stat. 1555, 1559, 1562, 1565, 1792, substituted in item 42 ''General tax credit'' for ''Taxable income credit'', struck out in item 36 ''pay optional tax or'', inserted in item 33 ''possession tax credit'', substituted in item 37 ''Credit of the elderly'' for ''Retirement income'', added item 44A, and struck out item 35 ''Partially tax-exempt interest received by individuals''.

1975—Pub. L. 94–164, §3(a)(2), Dec. 23, 1975, 89 Stat. 973, substituted ''Taxable income credit'' for ''Credit for personal exemptions'' in item 42.

Pub. L. 94–12, title II, §§ 203(b)(1), 204(c), 208(d)(1), Mar. 29, 1975, 89 Stat. 30, 32, 35, renumbered item 42 as 45 and added item 42 applicable to taxable years ending after Dec. 31, 1974, but to cease to apply to taxable years ending after Dec. 31, 1975, item 43 applicable to taxable years beginning after Dec. 31, 1974, but before Jan. 1, 1976, and item 44.

1971—Pub. L. 92–178, title VI, § 601(c)(2), Dec. 10, 1971, 85 Stat. 557, added items 40 and 41, and redesignated former item 40 as 42.

1970—Pub. L. 91–258, title II, § 207(d)(10), May 21, 1970, 84 Stat. 249, inserted '', special fuels,'' after ''gasoline'' in item 39.

1965—Pub. L. 89–44, title VIII, § 809(d)(1), June 21, 1965, 79 Stat. 167, added item 39 and redesignated former item 39 as 40.

1964—Pub. L. 88–272, title II, § 201(d)(1), Feb. 26, 1964, 78 Stat. 32, struck out item 34.

1962—Pub. L. 87–834, § 2(g)(1), (2), Oct. 16, 1962, 76 Stat. 972, 973, added headings of subparts A and B and item 38, and redesignated former item 38 as 39.

§ 21. Expenses for household and dependent care services necessary for gainful employment

(a) Allowance of credit

(1) In general

In the case of an individual for which there are 1 or more qualifying individuals (as defined in subsection (b)(1)) with respect to such individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the applicable percentage of the employment-related expenses (as defined in subsection (b)(2)) paid by such individual during the taxable year.

(2) Applicable percentage defined

For purposes of paragraph (1), the term ''applicable percentage'' means 35 percent reduced (but not below 20 percent) by 1 percentage point for each $2,000 (or fraction thereof) by which the taxpayer's adjusted gross income for the taxable year exceeds $15,000.

(b) Definitions of qualifying individual and employment-related expenses

For purposes of this section—

(1) Qualifying individual

The term ''qualifying individual'' means—

(A) a dependent of the taxpayer (as defined in section 152(a)(1)) who has not attained age 13,

(B) a dependent of the taxpayer (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B)) who is physically or mentally incapable of caring for himself or herself and who has the same principal place of abode as the taxpayer for more than one-half of such taxable year, or

(C) the spouse of the taxpayer, if the spouse is physically or mentally incapable of caring for himself or herself and who has the same principal place of abode as the taxpayer for more than one-half of such taxable year.

(2) Employment-related expenses

(A) In general

The term ''employment-related expenses'' means amounts paid for the following expenses, but only if such expenses are incurred to enable the taxpayer to be gainfully employed for any period for which there are 1 or more qualifying individuals with respect to the taxpayer:

(i) expenses for household services, and

(ii) expenses for the care of a qualifying individual.

Such term shall not include any amount paid for services outside the taxpayer's household at a camp where the qualifying individual stays overnight.

(B) Exception

Employment-related expenses described in subparagraph (A) which are incurred for services outside the taxpayer's household shall be taken into account only if incurred for the care of—

(i) a qualifying individual described in paragraph (1)(A), or

(ii) a qualifying individual (not described in paragraph (1)(A)) who regularly spends at least 8 hours each day in the taxpayer's household.

(C) Dependent care centers

Employment-related expenses described in subparagraph (A) which are incurred for services provided outside the taxpayer's household by a dependent care center (as defined in subparagraph (D)) shall be taken into account only if—

(i) such center complies with all applicable laws and regulations of a State or unit of local government, and

(ii) the requirements of subparagraph (B) are met.

(D) Dependent care center defined

For purposes of this paragraph, the term ''dependent care center'' means any facility which—

(i) provides care for more than six individuals (other than individuals who reside at the facility), and

(ii) receives a fee, payment, or grant for providing services for any of the individuals (regardless of whether such facility is operated for profit).

(c) Dollar limit on amount creditable

The amount of the employment-related expenses incurred during any taxable year which may be taken into account under subsection (a) shall not exceed—

(1) $3,000 if there is 1 qualifying individual with respect to the taxpayer for such taxable year, or

(2) $6,000 if there are 2 or more qualifying individuals with respect to the taxpayer for such taxable year.

The amount determined under paragraph (1) or (2) (whichever is applicable) shall be reduced by the aggregate amount excludable from gross income under section 129 for the taxable year.

(d) Earned income limitation

(1) In general

Except as otherwise provided in this subsection, the amount of the employment-related expenses incurred during any taxable year which may be taken into account under subsection (a) shall not exceed—

(A) in the case of an individual who is not married at the close of such year, such individual's earned income for such year, or

(B) in the case of an individual who is married at the close of such year, the lesser of such individual's earned income or the earned income of his spouse for such year.

(2) Special rule for spouse who is a student or incapable of caring for himself

In the case of a spouse who is a student or a qualifying individual described in subsection (b)(1)(C), for purposes of paragraph (1), such spouse shall be deemed for each month during which such spouse is a full-time student at an educational institution, or is such a qualifying individual, to be gainfully employed and to have earned income of not less than—

(A) $250 if subsection (c)(1) applies for the taxable year, or

(B) $500 if subsection (c)(2) applies for the taxable year.

In the case of any husband and wife, this paragraph shall apply with respect to only one spouse for any one month.

(e) Special rules

For purposes of this section—

(1) Place of abode

An individual shall not be treated as having the same principal place of abode of the taxpayer if at any time during the taxable year of the taxpayer the relationship between the individual and the taxpayer is in violation of local law.

(2) Married couples must file joint return

If the taxpayer is married at the close of the taxable year, the credit shall be allowed under subsection (a) only if the taxpayer and his spouse file a joint return for the taxable year.

(3) Marital status

An individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(4) Certain married individuals living apart

If—

(A) an individual who is married and who files a separate return—

(i) maintains as his home a household which constitutes for more than one-half of the taxable year the principal place of abode of a qualifying individual, and

(ii) furnishes over half of the cost of maintaining such household during the taxable year, and

(B) during the last 6 months of such taxable year such individual's spouse is not a member of such household,

such individual shall not be considered as married.

(5) Special dependency test in case of divorced parents, etc.

If—

(A) section 152(e) applies to any child with respect to any calendar year, and

(B) such child is under the age of 13 or is physically or mentally incapable of caring for himself,

in the case of any taxable year beginning in such calendar year, such child shall be treated as a qualifying individual described in subparagraph (A) or (B) of subsection (b)(1) (whichever is appropriate) with respect to the custodial parent (as defined in section 152(e)(4)(A)), and shall not be treated as a qualifying individual with respect to the noncustodial parent.

(6) Payments to related individuals

No credit shall be allowed under subsection (a) for any amount paid by the taxpayer to an individual—

(A) with respect to whom, for the taxable year, a deduction under section 151(c) (relating to deduction for personal exemptions for dependents) is allowable either to the taxpayer or his spouse, or

(B) who is a child of the taxpayer (within the meaning of section 152(f)(1)) who has not attained the age of 19 at the close of the taxable year.

For purposes of this paragraph, the term ''taxable year'' means the taxable year of the taxpayer in which the service is performed.

(7) Student

The term ''student'' means an individual who during each of 5 calendar months during the taxable year is a full-time student at an educational organization.

(8) Educational organization

The term ''educational organization'' means an educational organization described in section 170(b)(1)(A)(ii).

(9) Identifying information required with respect to service provider

No credit shall be allowed under subsection (a) for any amount paid to any person unless—

(A) the name, address, and taxpayer identification number of such person are included on the return claiming the credit, or

(B) if such person is an organization described in section 501(c)(3) and exempt from tax under section 501(a), the name and address of such person are included on the return claiming the credit.

In the case of a failure to provide the information required under the preceding sentence, the preceding sentence shall not apply if it is shown that the taxpayer exercised due diligence in attempting to provide the information so required.

(10) Identifying information required with respect to qualifying individuals

No credit shall be allowed under this section with respect to any qualifying individual unless the TIN of such individual is included on the return claiming the credit.

(f) Regulations

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

(Added Pub. L. 94–455, title V, §504(a)(1), Oct. 4, 1976, 90 Stat. 1563, §44A; amended Pub. L. 95–600, title I, §121(a), Nov. 6, 1978, 92 Stat. 2779; Pub. L. 97–34, title I §124 (a)–(d), Aug. 13, 1981, 95 Stat.

197, 198; Pub. L. 98–21, title I, § 122(c)(1), Apr. 20, 1983, 97 Stat. 87; renumbered § 21 and amended Pub. L. 98–369, div. A, title IV, §§ 423(c)(4), 471(c), 474(c), July 18, 1984, 98 Stat. 801, 826, 830; Pub. L. 99–514, title I, § 104(b)(1), Oct. 22, 1986, 100 Stat. 2104; Pub. L. 100–203, title X, § 10101(a), Dec. 22, 1987, 101 Stat. 1330–384; Pub. L. 100–485, title VII, § 703(a)–(c)(1), Oct. 13, 1988, 102 Stat. 2426, 2427; Pub. L. 104–188, title I, § 1615(b), Aug. 20, 1996, 110 Stat. 1853; Pub. L. 107–16, title II, § 204(a), (b), June 7, 2001, 115 Stat. 49; Pub. L. 107–147, title IV, § 418(b), Mar. 9, 2002, 116 Stat. 57; Pub. L. 108–311, title II, §§ 203, 207(2), (3), Oct. 4, 2004, 118 Stat. 1175, 1177; Pub. L. 109–135, title IV, § 404(b), Dec. 21, 2005, 119 Stat. 2634; Pub. L. 110–172, § 11(a)(1), Dec. 29, 2007, 121 Stat. 2484.)

AMENDMENT OF SECTION

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

PRIOR PROVISIONS

A prior section 21 was renumbered section 15 of this title.

AMENDMENTS

2007—Subsec. (e)(5). Pub. L. 110–172 substituted ''section 152(e)(4)(A)'' for ''section 152(e)(3)(A)'' in concluding provisions.

2005—Subsec. (b)(1)(B). Pub. L. 109–135 inserted ''(as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B))'' after ''dependent of the taxpayer''.

2004—Subsec. (a)(1). Pub. L. 108–311, § 203(a), substituted ''In the case of an individual for which there are 1 or more qualifying individuals (as defined in subsection (b)(1)) with respect to such individual'' for ''In the case of an individual who maintains a household which includes as a member one or more qualifying individuals (as defined in subsection (b)(1))''.

Subsec. (b)(1). Pub. L. 108–311, § 203(b), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'qualifying individual' means—

''(A) a dependent of the taxpayer who is under the age of 13 and with respect to whom the taxpayer is entitled to a deduction under section 151(c),

''(B) a dependent of the taxpayer who is physically or mentally incapable of caring for himself, or

''(C) the spouse of the taxpayer, if he is physically or mentally incapable of caring for himself.''

Subsec. (e)(1). Pub. L. 108–311, § 203(c), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''An individual shall be treated as maintaining a household for any period only if over half the cost of maintaining the household for such period is furnished by such individual (or, if such individual is married during such period, is furnished by such individual and his spouse).''

Subsec. (e)(5). Pub. L. 108–311, § 207(2), struck out ''paragraph (2) or (4) of'' before ''section 152(e)'' in subpar. (A) and substituted ''as defined in section 152(e)(3)(A)'' for ''within the meaning of section 152(e)(1)'' in concluding provisions.

Subsec. (e)(6)(B). Pub. L. 108–311, § 207(3), substituted ''section 152(f)(1)'' for ''section 151(c)(3)''.

2002—Subsec. (d)(2)(A). Pub. L. 107–147, § 418(b)(1), substituted ''$250'' for ''$200''.

Subsec. (d)(2)(B). Pub. L. 107–147, § 418(b)(2), substituted ''$500'' for ''$400''.

2001—Subsec. (a)(2). Pub. L. 107–16, §§ 204(b), 901, temporarily substituted ''35 percent'' for ''30 percent'' and ''$15,000'' for ''$10,000''. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (c)(1). Pub. L. 107–16, §§ 204(a)(1), 901, temporarily substituted ''$3,000'' for ''$2,400''. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (c)(2). Pub. L. 107–16, §§ 204(a)(2), 901, temporarily substituted ''$6,000'' for ''$4,800''. See Effective and Termination Dates of 2001 Amendment note below.

1996—Subsec. (e)(10). Pub. L. 104–188 added par. (10).

1988—Subsec. (b)(1)(A). Pub. L. 100–485, § 703(a), substituted ''age of 13'' for ''age of 15''.

Subsec. (c). Pub. L. 100–485, § 703(b), inserted at end: ''The amount determined under paragraph (1) or (2) (whichever is applicable) shall be reduced by the aggregate amount excludable from gross income under section 129 for the taxable year.''

Subsec. (e)(5)(B). Pub. L. 100–485, § 703(a), substituted ''age of 13'' for ''age of 15''.

Subsec. (e)(9). Pub. L. 100–485, § 703(c)(1), added par. (9).

1987—Subsec. (b)(2)(A). Pub. L. 100–203 inserted at end ''Such term shall not include any amount paid for services outside the taxpayer's household at a camp where the qualifying individual stays overnight.''

1986—Subsecs. (b)(1)(A), (e)(6)(A). Pub. L. 99–514, § 104(b)(1)(A), substituted ''section 151(c)'' for ''section 151(e)''.

Subsec. (e)(6)(B). Pub. L. 99–514, § 104(b)(1)(B), substituted ''section 151(c)(3)'' for ''section 151(e)(3)''.

1984—Pub. L. 98–369, § 471(c), renumbered section 44A of this title as this section.

Subsec. (a)(1). Pub. L. 98–369, § 474(c)(2), (3), substituted ''subsection (b)(1)'' for ''subsection (c)(1)'' and ''subsection (b)(2)'' for ''subsection (c)(2)''.

Subsec. (b). Pub. L. 98–369, § 474(c)(1), redesignated subsec. (c) as (b). Former subsec. (b), which provided that the credit allowed by subsec. (a) could not exceed the amount of the tax imposed by this chapter for the taxable year reduced by the sum of the credits allowable under sections 33, 37, 38, 40, 41, 42, and 44, was struck out.

Subsec. (c). Pub. L. 98–369, § 474(c)(1), redesignated subsec. (d) as (c). Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 98–369, § 474(c)(1), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (d)(2). Pub. L. 98–369, § 474(c)(4), substituted ''subsection (b)(1)(C)'' for ''subsection (c)(1)(C)'' in introductory provisions.

Subsec. (d)(2)(A). Pub. L. 98–369, § 474(c)(5), substituted ''subsection (c)(1)'' for ''subsection (d)(1)''.

Subsec. (d)(2)(B). Pub. L. 98–369, § 474(c)(6), substituted ''subsection (c)(2)'' for ''subsection (d)(2).

Subsec. (e). Pub. L. 98–369, § 474(c)(1), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (e)(5). Pub. L. 98–369, § 474(c)(7), substituted ''subsection (b)(1)'' for ''subsection (c)(1)'' in provisions following subpar. (B).

Pub. L. 98–369, § 423(c)(4), amended par. (5) generally, substituting subpars. (A) and (B) reading:

''(A) paragraph (2) or (4) of section 152(e) applies to any child with respect to any calendar year, and

''(B) such child is under the age of 15 or is physically or mentally incapable of caring for himself,''

for former provisions:

''(A) a child (as defined in section 151(e)(3)) who is under the age of 15 or who is physically or mentally incapable of caring for himself receives over half of his support during the calendar year from his parents who are divorced or legally separated under a decree of divorce or separate maintenance or who are separated under a written separation agreement, and

''(B) such child is in the custody of one or both of his parents for more than one-half of the calendar year.''

and substituted in concluding text ''(whichever is appropriate) with respect to the custodial parent (within the meaning of section 152(e)(1)), and shall not be treated as a qualifying individual with respect to the noncustodial parent'' for '', as the case may be, with respect to that parent who has custody for a longer period during such calendar year than the other parent, and shall not be treated as being a qualifying individual with respect to such other parent.''

Subsecs. (f), (g). Pub. L. 98–369, § 474(c)(1), redesignated subsecs. (f) and (g) as (e) and (f), respectively.

1983—Subsec. (b)(2). Pub. L. 98–21 substituted ''relating to credit for the elderly and the permanently and totally disabled'' for ''relating to credit for the elderly''.

1981—Subsec. (a). Pub. L. 97–34, § 124(a), designated existing provisions as par. (1), substituted ''the applicable percentage'' for ''20 percent'' in par. (1) as so designated, and added par. (2).

Subsec. (c)(2)(B). Pub. L. 97–34, § 124(c), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (c)(2)(C), (D). Pub. L. 97–34, § 124(d), added subpars. (C) and (D).

Subsec. (d)(1). Pub. L. 97–34, § 124(b)(1)(A), substituted ''$2,400'' for ''$2,000''.

Subsec. (d)(2). Pub. L. 97–34, § 124(b)(1)(B), substituted ''$4,800'' for ''$4,000''.

Subsec. (e)(2)(A). Pub. L. 97–34, § 124(b)(2)(A), substituted ''$200'' for ''$166''.

Subsec. (e)(2)(B). Pub. L. 97–34, § 124(b)(2)(B), substituted ''$400'' for ''$333''.

1978—Subsec. (f)(6). Pub. L. 95–600 substituted provision disallowing a credit for any amount paid by a taxpayer to an individual with respect to whom, for the taxable year, a deduction under section 151(e) is allowable either to the taxpayer or his spouse or who is a child of the taxpayer who has not attained the age of 19 at the close of the taxpayer year and defining ''taxpayer year'' for provision disallowing a credit for any amount paid by the taxpayer to an individual bearing a relationship described in section 152(a)(1) through (8), or a dependent described in section 152(a)(9), except that a credit was allowed for an amount paid by a taxpayer to an individual with respect to whom, for the taxable year of the taxpayer in which the service was performed, neither the taxpayer nor his spouse was entitled to a deduction under section 151(e), provided the service constituted employment within the meaning of section 3121(b).

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–135, title IV, § 404(d), Dec. 21, 2005, 119 Stat. 2634, provided that: ''The amendments made by this section [amending this section and sections 152 and 223 of this title] shall take effect as if included in the provisions of the Working Families Tax Relief Act of 2004 [Pub. L. 108–311] to which they relate.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title IV, § 418(c), Mar. 9, 2002, 116 Stat. 58, provided that: ''The amendments made by this section [amending this section and sections 23 and 137 of this title] shall take effect as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16] to which they relate.''

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Pub. L. 107–16, title II, § 204(c), June 7, 2001, 115 Stat. 50, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2002.''

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1615(d) of Pub. L. 104–188 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 151, 6109, 6213, and 6724 of this title] shall apply with respect to returns the due date for which (without regard to extensions) is on or after the 30th day after the date of the enactment of this Act [Aug. 20, 1996].

''(2) SPECIAL RULE FOR 1995 AND 1996.—In the case of returns for taxable years beginning in 1995 or 1996, a taxpayer shall not be required by the amendments made by this section to provide a taxpayer identification number for a child who is born after October 31, 1995, in the case of a taxable year beginning in 1995 or November 30, 1996, in the case of a taxable year beginning in 1996.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 703(d) of Pub. L. 100–485 provided that: ''The amendments made by this section [amending this section and sections 129 and 6109 of this title] shall apply to taxable years beginning after December 31, 1988.''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10101(b) of Pub. L. 100–203, as amended by Pub. L. 100–647, title II, § 2004(a), Nov. 10, 1988, 102 Stat. 3598, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to expenses paid in taxable years beginning after December 31, 1987.

''(2) SPECIAL RULE FOR CAFETERIA PLANS.—For purposes of section 125 of the Internal Revenue Code of 1986, a plan shall not be treated as failing to be a cafeteria plan solely because under the plan a participant elected before January 1, 1988, to receive reimbursement under the plan for dependent care assistance for periods after December 31, 1987, and such assistance included reimbursement for expenses at a camp where the dependent stays overnight.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 423(c)(4) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1984, see section 423(d) of Pub. L. 98–369, set out as a note under section 2 of this title.

Section 475(a) of Pub. L. 98–369 provided that: ''The amendments made by this title [probably means subtitle F (§§ 471–475) of title IV of Pub. L. 98–369, which enacted sections 25, 38, and 39 of this title, amended this section and sections 12, 15, 22 to 24, 27 to 35, 37, 39 to 41, 44A, 44C to 44H, 45 to 48, 51, 52, 55, 56, 86, 87, 103, 108, 129, 168, 196, 213, 280C, 381, 383, 401, 404, 409, 441, 527, 642, 691, 874, 882, 901, 904, 936, 1016, 1033, 1351, 1366, 1374, 1375, 1441, 1442, 1451, 3507, 6013, 6096, 6201, 6211, 6213, 6362, 6401, 6411, 6420, 6421, 6427, 6501, 6511, 7701, 7871, 9502, and 9503 of this title, repealed sections 38, 40, 44, 44B, 50A, 50B, and 53 of this title, and enacted provisions set out as notes under sections 30, 33, 46, and 48 of this title] shall apply to taxable years beginning after December 31, 1983, and to carrybacks from such years.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual's annuity starting date was deferred under section 105(d)(6) of this title as in effect on the day before Apr. 20, 1983, such deferral shall end on the first day of such individual's first taxable year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98–21, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 124(f) of Pub. L. 97–34 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and

enacting section 129 of this title] shall apply to taxable years beginning after December 31, 1981.

''(2) The amendments made by subsection (e)(2) [amending sections 3121, 3306, and 3401 of this title and section 409 of Title 42, The Public Health and Welfare] shall apply to remuneration paid after December 31, 1981.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 121(b) of Pub. L. 95–600 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1978.''

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1975, see section 508 of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 3 of this title.

PROGRAM TO INCREASE PUBLIC AWARENESS

Pub. L. 101–508, title XI, §11114, Nov. 5, 1990, 104 Stat. 1388–414, provided that: ''Not later than the first calendar year following the date of the enactment of this subtitle [Nov. 5, 1990], the Secretary of the Treasury, or the Secretary's delegate, shall establish a taxpayer awareness program to inform the taxpaying public of the availability of the credit for dependent care allowed under section 21 of the Internal Revenue Code of 1986 and the earned income credit and child health insurance under section 32 of such Code. Such public awareness program shall be designed to assure that individuals who may be eligible are informed of the availability of such credit and filing procedures. The Secretary shall use appropriate means of communication to carry out the provisions of this section.''

§ 22. Credit for the elderly and the permanently and totally disabled

(a) General rule

In the case of a qualified individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 15 percent of such individual's section 22 amount for such taxable year.

(b) Qualified individual

For purposes of this section, the term ''qualified individual'' means any individual—

(1) who has attained age 65 before the close of the taxable year, or

(2) who retired on disability before the close of the taxable year and who, when he retired, was permanently and totally disabled.

(c) Section 22 amount

For purposes of subsection (a)—

(1) In general

An individual's section 22 amount for the taxable year shall be the applicable initial amount determined under paragraph (2), reduced as provided in paragraph (3) and in subsection (d).

(2) Initial amount

(A) In general

Except as provided in subparagraph (B), the initial amount shall be—

(i) $5,000 in the case of a single individual, or a joint return where only one spouse is a qualified individual,

(ii) $7,500 in the case of a joint return where both spouses are qualified individuals, or

(iii) $3,750 in the case of a married individual filing a separate return.

(B) Limitation in case of individuals who have not attained age 65

(i) In general

In the case of a qualified individual who has not attained age 65 before the close of the taxable year, except as provided in clause (ii), the initial amount shall not exceed the disability income for the taxable year.

(ii) Special rules in case of joint return

In the case of a joint return where both spouses are qualified individuals and at least one spouse has not attained age 65 before the close of the taxable year—

(I) if both spouses have not attained age 65 before the close of the taxable year, the initial amount shall not exceed the sum of such spouses' disability income, or

(II) if one spouse has attained age 65 before the close of the taxable year, the initial amount shall not exceed the sum of $5,000 plus the disability income for the taxable year of the spouse who has not attained age 65 before the close of the taxable year.

(iii) Disability income

For purposes of this subparagraph, the term ''disability income'' means the aggregate amount includable in the gross income of the individual for the taxable year under section 72 or 105(a) to the extent such amount constitutes wages (or payments in lieu of wages) for the period during which the individual is absent from work on account of permanent and total disability.

(3) Reduction

(A) In general

The reduction under this paragraph is an amount equal to the sum of the amounts received by the individual (or, in the case of a joint return, by either spouse) as a pension or annuity or as a disability benefit—

(i) which is excluded from gross income and payable under—

(I) title II of the Social Security Act,

(II) the Railroad Retirement Act of 1974, or

(III) a law administered by the Veterans' Administration, or

(ii) which is excluded from gross income under any provision of law not contained in this title.

No reduction shall be made under clause (i)(III) for any amount described in section 104(a)(4).

(B) Treatment of certain workmen's compensation benefits

For purposes of subparagraph (A), any amount treated as a social security benefit under section 86(d)(3) shall be treated as a disability benefit received under title II of the Social Security Act.

(d) Adjusted gross income limitation

If the adjusted gross income of the taxpayer exceeds—

(1) $7,500 in the case of a single individual,

(2) $10,000 in the case of a joint return, or

(3) $5,000 in the case of a married individual filing a separate return,

the section 22 amount shall be reduced by one-half of the excess of the adjusted gross income over $7,500, $10,000, or $5,000, as the case may be.

(e) Definitions and special rules

For purposes of this section—

(1) Married couple must file joint return

Except in the case of a husband and wife who live apart at all times during the taxable year, if the taxpayer is married at the close of the taxable year, the credit provided by this section shall be allowed only if the taxpayer and his spouse file a joint return for the taxable year.

(2) Marital status

Marital status shall be determined under section 7703.

(3) Permanent and total disability defined

An individual is permanently and totally disabled if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. An individual shall not be considered to be permanently and totally disabled unless he furnishes proof of the existence thereof in such form and manner, and at such times, as the Secretary may require.

(f) Nonresident alien ineligible for credit

No credit shall be allowed under this section to any nonresident alien.

(Aug. 16, 1954, ch. 736, 68A Stat. 15, §37; Aug. 9, 1955, ch. 659, §1, 69 Stat. 591; Jan. 28, 1956, ch. 17, §1, 70 Stat. 8; Pub. L. 87–792, §7(a), Oct. 10, 1962, 76 Stat. 828; Pub. L. 87–876, §1, Oct. 24, 1962, 76 Stat. 1199; Pub. L. 88–272, title I, §113(a), title II, §§201(d)(3), 202(a), Feb. 26, 1964, 78 Stat. 24, 32, 33; Pub. L. 93–406, title II, §2002(g)(1), Sept. 2, 1974, 88 Stat. 968; Pub. L. 94–455, title V, §503(a), title XIX, §1901(c)(1), Oct. 4, 1976, 90 Stat. 1559, 1803; Pub. L. 95–600, title VII, §§701(a)(1)–(3), 703(j)(11), Nov. 6, 1978, 92 Stat. 2897, 2942; Pub. L. 96–222, title I, §107(a)(1)(E)(i), Apr. 1, 1980, 94 Stat. 222; Pub. L. 97–34, title I, §111(b)(4), Aug. 13, 1981, 95 Stat. 194; Pub. L. 98–21, title I, §122(a), Apr. 20, 1983, 97 Stat. 85; renumbered §22 and amended Pub. L. 98–369, div. A, title IV, §§471(c), 474(d), July 18, 1984, 98 Stat. 826, 830; Pub. L. 99–514, title XIII, §1301(j)(8), Oct. 22, 1986, 100 Stat. 2658.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(3)(A)(i)(I), (B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Railroad Retirement Act of 1974, referred to in subsec. (c)(3)(A)(i)(II), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

AMENDMENTS

1986—Subsec. (e)(2). Pub. L. 99–514 substituted ''section 7703'' for ''section 143''.

1984—Pub. L. 98–369, §471(c), renumbered section 37 of this title as this section.

Subsec. (a). Pub. L. 98–369, §474(d)(1), substituted ''section 22 amount'' for ''section 37 amount''.

Subsec. (c). Pub. L. 98–369, §474(d)(2), substituted ''Section 22 amount'' for ''Section 37 amount'' in heading.

Subsec. (c)(1). Pub. L. 98–369, §474(d)(1), substituted ''section 22 amount'' for ''section 37 amount''.

Subsec. (d). Pub. L. 98–369, §474(d)(3), amended subsec. (d) generally, striking out heading ''Limitations'' and designation ''(1)'' before ''Adjusted gross income limitation'' thereby making existing par. (1) the entire subsec. (d), redesignating existing subpars. (A), (B), and (C) as pars. (1), (2), and (3), respectively, and striking out provisions, formerly comprising par. (2), which had limited the amount of the credit allowed by this section for the taxable year to the amount of the tax imposed by this chapter for such taxable year.

1983—Pub. L. 98–21 inserted reference to permanently and totally disabled in section catchline.

Subsec. (a). Pub. L. 98–21 amended subsec. (a) generally, substituting reference to a qualified individual for reference to an individual who has attained the age of 65 before the close of the taxable year.

Subsec. (b). Pub. L. 98–21 in amending section generally added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 98–21 in amending section generally, redesignated former subsec. (b) as (c) and, in (c) as so redesignated, added par. (2) and struck out former (2), which had provided that the initial amount was $2,500 in the case of a single individual, $2,500 in the case of a joint return where only one spouse was eligible for the credit under subsection (a), $3,750 in the case of a joint return where both spouses were eligible for the credit under subsection (a), or $1,875 in the case of a married individual filing a separate return, redesignated existing provisions as par. (3)(A), inserted ''benefit'' after ''disability'' therein, struck out former subpars. (A) to (C), which had specified sources of amounts received under title II of the Social Security Act, under the Railroad Retirement Act of 1935 or 1937, or otherwise excluded from gross income, added cls. (i) and (ii), substituted provision that no reduction would be made under cl. (i)(III) for any amount described in section 104(a)(4) for provision that no reduction would be made under former par. (3) for any amount excluded from gross income under section 72 (relating to annuities), 101 (relating to life insurance proceeds), 104 (relating to compensation for injuries or sickness), 105 (relating to amounts received under accident and health plans), 120 (relating to amounts received under qualified group legal services plans), 402 (relating to taxability of beneficiary of employees' trust), 403 (relating to taxation of employee annuities), or 405 (relating to qualified bond purchase plans), and added subpar. (B). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 98–21 in amending section generally redesignated former subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 98–21 in amending section generally, redesignated former subsec. (d) as (e) and struck out provision that ''joint return'' meant the joint return of a husband and wife made under section 6013 and inserted provisions defining permanent and total disability. Former subsec. (e), which provided for an election of prior law with respect to public retirement system income, was struck out.

Subsec. (f). Pub. L. 98–21 reenacted subsec. (f) without change.

1981—Subsec. (e)(9)(B). Pub. L. 97–34 substituted ''section 911(d)(2)'' for ''section 911(b)''.

1978—Subsec. (e)(2). Pub. L. 95–600, § 701(a)(1), inserted ''(and whose gross income includes income described in paragraph (4)(B))'' after ''who has not attained age 65 before the close of the taxable year''.

Subsec. (e)(4)(B). Pub. L. 95–600, § 701(a)(2), (3)(B), as amended by Pub. L. 96–222, § 107(a)(1)(E)(i), inserted ''and who performed the services giving rise to the pension or annuity (or is the spouse of the individual who performed the services)'' after ''before the close of the taxable year'' and substituted reference to paragraph (9)(A) for reference to paragraph (8)(A).

Subsec. (e)(5)(B). Pub. L. 95–600, § 701(a)(3)(C), as amended by Pub. L. 96–222, § 107(a)(1)(E)(i), substituted reference to paragraph (9)(A) for reference to paragraph (8)(A).

Subsec. (e)(8), (9). Pub. L. 95–600, § 701(a)(3)(A), as amended by Pub. L. 96–222, § 107(a)(1)(E)(i), added par. (8) and redesignated former par. (8) as (9).

1976—Pub. L. 94–455, § 503(a), among other changes, substituted ''Credits for the elderly'' for ''Retirement income'' in section catchline and in text substituted provisions permitting taxpayers who have all types of income to be eligible for the tax credit for provisions permitting taxpayers who have only retirement income to be eligible for the tax credit, eliminated provisions requiring taxpayers to earn $600 for the previous ten years for tax credit eligibility and provisions relating variations in treatment of married couples, and inserted provisions broadening coverage of the tax credit relief to low and middle income taxpayers.

Pub. L. 94–455, § 1901(c)(1), purported to amend subsec. (f) of this section by striking out ''a Territory''. The amendment could not be executed in view of the prior general amendment of this section by section 503(a) of Pub. L. 94–455. Section 1901(c)(1) was repealed by section 703(j)(11) of Pub. L. 95–600.

1974—Subsec. (c)(1)(E), (F). Pub. L. 93–406 inserted reference in subpar. (E) to retirement bonds described in section 409 and added subpar. (F).

1964—Subsec. (a). Pub. L. 88–272, §§ 113(a), 201(d)(3), substituted ''an amount equal to 17 percent, in the case of a taxable year beginning in 1964, or 15 percent, in the case of a taxable year beginning after December 31, 1964, of the amount received by such individual as retirement income (as defined in subsection (c) and as limited by subsection (d));'' for ''an amount equal to the amount received by such individual as retirement income (as defined in subsection (c) and as limited by subsection (d)), multiplied by the rate provided in section 1 for the first $2,000 of taxable income;'', and struck out ''section 34 (relating to credit for dividends received by individuals)'', before ''and section 35''.

Subsecs. (i), (j). Pub. L. 88–272, § 202(a), added subsec. (i) and redesignated former subsec. (i) as (j).

1962—Subsec. (c)(1). Pub. L. 87–792 inserted provisions in subpar. (A) requiring inclusion, in the case of an individual who is, or has been, an employee within the meaning of section 401(c)(1), distributions by a trust described in section 401(a) which is exempt from tax under section 501(a), and added subpar. (E).

Subsec. (d). Pub. L. 87–876 increased the limit on retirement income from $1,200 to $1,524, lowered the age requirement in par. (2)(A) from 65 to 62, and substituted provisions in par. (2)(B) which reduce the amount of retirement income for individuals who reach age 62, by one-half the amount of earned income in excess of $1,200 but not in excess of $1,700, and by the amount received over $1,700, for provisions which reduced such income by the amount earned over $1,200 by persons having reached age 65, and which defined income as in subsec. (g) of this section.

1956—Subsec. (d)(2). Act Jan. 28, 1956, reduced from 75 to 72 the age at which there will be no limitation on earned income and increased from $900 to $1,200 the amount that an individual over 65 can earn without reducing the $1,200 on which the retirement credit is computed.

1955—Subsec. (f). Act Aug. 9, 1955, extended the retirement income tax credit to members of the Armed Forces.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(d) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 122(d) of Pub. L. 98–21, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending sections 37 [now 22], 41 [now 24], 44A [now 21], 46, 53, 85, 105, 128, 403, 415, 904, and 7871 of this title] shall apply to taxable years beginning after December 31, 1983.

''(2) TRANSITIONAL RULE.—If an individual's annuity starting date was deferred under section 105(d)(6) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect on the day before the date of the enactment of this section [Apr. 20, 1983]), such deferral shall end on the first day of such individual's first taxable year beginning after December 31, 1983.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to taxable years beginning after Dec. 31, 1981, see section 115 of Pub. L. 97–34, set out as a note under section 911 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(a)(4) of Pub. L. 95–600 provided that:

''(A) The amendments made by paragraphs (1) and (2) [amending this section] shall apply to taxable years beginning after December 31, 1975.

''(B) The amendments made by paragraph (3) [amending this section] shall apply to taxable years beginning after December 31, 1977.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1975, see section 508 of Pub. L. 94–455, set out as a note under section 3 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 effective Jan. 1, 1974, see section 2002(i)(2) of Pub. L. 93–406, set out as an Effective Date note under section 4973 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 113(a) of Pub. L. 88–272, except for purposes of section 21 [now 15] of this title, effective with respect to taxable years beginning after Dec. 31, 1963, see section 131 of Pub. L. 88–272, set out as a note under section 1 of this title.

Section 201(e) of Pub. L. 88–272 provided that: ''The amendments made by subsection (a) [amending section 34 of this title] shall apply with respect to taxable years ending after December 31, 1963. The amendment made by subsection (b) [repealing section 34 of this title] shall apply with respect to taxable years ending after December 31, 1964. The amendment made by subsection (c) [amending section 116 of this title] shall apply with respect to taxable years beginning after December 31, 1963. The amendments made by subsection (d) [amending sections 35, 37 [now 22], 46, 116, 584, 642, 702, 854, 857, 871, 1375, and 6014 of this title] shall apply

with respect to dividends received after December 31, 1964, in taxable years ending after such date''.

Section 202(b) of Pub. L. 88–272 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1963.''

EFFECTIVE DATE OF 1962 AMENDMENTS

Section 2 of Pub. L. 87–876 provided that: ''The amendment made by the first section of this Act [amending this section] shall apply only to taxable years ending after the date of the enactment of this Act [Oct. 24, 1962].''

Section 8 of Pub. L. 87–792 provided that: ''The amendments made by this Act [enacting sections 405 and 6047 of this title and amending sections 37 [now 22], 62, 72, 101, 104, 105, 172, 401 to 404, 503, 805, 1361, 2039, 2517, 3306, 3401 and 7207 of this title] shall apply to taxable years beginning after December 31, 1962.''

EFFECTIVE DATE OF 1956 AMENDMENT

Section 2 of act Jan. 28, 1956, provided that: ''The amendment made by the first section of this Act [amending this section] shall apply only with respect to taxable years beginning after December 31, 1955.''

EFFECTIVE DATE OF 1955 AMENDMENT

Section 2 of act Aug. 9, 1955, provided that: ''The amendment made by this Act [amending this section] shall be applicable to taxable years beginning after December 31, 1954.''

DETERMINATION OF RETIREMENT INCOME CREDIT UNDER PROVISIONS AS THEY EXISTED PRIOR TO AMENDMENT BY PUB. L. 94–455 ELECTION

Pub. L. 95–30, title IV, §403, May 23, 1977, 91 Stat. 155, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''A taxpayer may elect (at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe) to determine the amount of his credit under section 37 [now 22] of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for his first taxable year beginning in 1976 under the provisions of such section as they existed before the amendment made by section 503 of the Tax Reform Act of 1976 [Pub. L. 94–455].''

[§ 23. Renumbered § 36C]

PRIOR PROVISIONS

A prior section 23, added Pub. L. 95–618, title I, §101(a), Nov. 9, 1978, 92 Stat. 3175, §44C; amended Pub. L. 96–223, title II, §§201, 202(a)–(d), 203(a), Apr. 2, 1980, 94 Stat. 256, 258; renumbered §23 and amended Pub. L. 98–369, div. A, title IV, §§471(c), 474(e), title VI, §612(e)(2), July 18, 1984, 98 Stat. 826, 831, 912, related to residential energy credit, prior to repeal by Pub. L. 101–508, title XI, §11801(a)(1), Nov. 5, 1990, 104 Stat. 1388–520.

§ 24. Child tax credit

(a) Allowance of credit

There shall be allowed as a credit against the tax imposed by this chapter for the taxable year with respect to each qualifying child of the taxpayer for which the taxpayer is allowed a deduction under section 151 an amount equal to $1,000.

(b) Limitations

(1) Limitation based on adjusted gross income

The amount of the credit allowable under subsection (a) shall be reduced (but not below zero) by $50 for each $1,000 (or fraction thereof) by which the taxpayer's modified adjusted gross income exceeds the threshold amount. For purposes of the preceding sentence, the term ''modified adjusted gross income'' means adjusted gross income increased by any amount excluded from gross income under section 911, 931, or 933.

(2) Threshold amount

For purposes of paragraph (1), the term ''threshold amount'' means—

(A) $110,000 in the case of a joint return,

(B) $75,000 in the case of an individual who is not married, and

(C) $55,000 in the case of a married individual filing a separate return.

For purposes of this paragraph, marital status shall be determined under section 7703.

(3) Limitation based on amount of tax

In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

(B) the sum of the credits allowable under this subpart (other than this section and sections 25A(i), 25B, 25D, 30, 30B, and 30D) and section 27 for the taxable year.

(c) Qualifying child

For purposes of this section—

(1) In general

The term ''qualifying child'' means a qualifying child of the taxpayer (as defined in section 152(c)) who has not attained age 17.

(2) Exception for certain noncitizens

The term ''qualifying child'' shall not include any individual who would not be a dependent if subparagraph (A) of section 152(b)(3) were applied without regard to all that follows ''resident of the United States''.

(d) Portion of credit refundable

(1) In general

The aggregate credits allowed to a taxpayer under subpart C shall be increased by the lesser of—

(A) the credit which would be allowed under this section without regard to this subsection and the limitation under section 26(a)(2) or subsection (b)(3), as the case may be, or

(B) the amount by which the aggregate amount of credits allowed by this subpart (determined without regard to this subsection) would increase if the limitation imposed by section 26(a)(2) or subsection (b)(3), as the case may be, were increased by the greater of—

(i) 15 percent of so much of the taxpayer's earned income (within the meaning of section 32) which is taken into account in computing taxable income for the taxable year as exceeds $10,000, or

(ii) in the case of a taxpayer with 3 or more qualifying children, the excess (if any) of—

(I) the taxpayer's social security taxes for the taxable year, over

(II) the credit allowed under section 32 for the taxable year.

The amount of the credit allowed under this subsection shall not be treated as a credit allowed under this subpart and shall reduce the amount of credit otherwise allowable under subsection (a) without regard to section 26(a)(2) or subsection (b)(3), as the case may be. For purposes of subparagraph (B), any amount excluded from gross income by reason of section 112 shall be treated as earned income which is taken into account in computing taxable income for the taxable year.

(2) Social security taxes

For purposes of paragraph (1)—

(A) In general

The term ''social security taxes'' means, with respect to any taxpayer for any taxable year—

(i) the amount of the taxes imposed by sections 3101 and 3201(a) on amounts received by the taxpayer during the calendar year in which the taxable year begins,

(ii) 50 percent of the taxes imposed by section 1401 on the self-employment income of the taxpayer for the taxable year, and

(iii) 50 percent of the taxes imposed by section 3211(a) on amounts received by the taxpayer during the calendar year in which the taxable year begins.

(B) Coordination with special refund of social security taxes

The term ''social security taxes'' shall not include any taxes to the extent the taxpayer is entitled to a special refund of such taxes under section 6413(c).

(C) Special rule

Any amounts paid pursuant to an agreement under section 3121(*l*) (relating to agreements entered into by American employers with respect to foreign affiliates) which are equivalent to the taxes referred to in subparagraph (A)(i) shall be treated as taxes referred to in such subparagraph.

(3) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 2001, the $10,000 amount contained in paragraph (1)(B) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ''calendar year 2000'' for ''calendar year 1992'' in subparagraph (B) thereof.

Any increase determined under the preceding sentence shall be rounded to the nearest multiple of $50.

(4) Special rule for 2009, 2010, 2011, and 2012

Notwithstanding paragraph (3), in the case of any taxable year beginning in 2009, 2010, 2011, or 2012, the dollar amount in effect for such taxable year under paragraph (1)(B)(i) shall be $3,000.

(e) Identification requirement

No credit shall be allowed under this section to a taxpayer with respect to any qualifying child unless the taxpayer includes the name and taxpayer identification number of such qualifying child on the return of tax for the taxable year.

(f) Taxable year must be full taxable year

Except in the case of a taxable year closed by reason of the death of the taxpayer, no credit shall be allowable under this section in the case of a taxable year covering a period of less than 12 months.

(Added Pub. L. 105–34, title I, § 101(a), Aug. 5, 1997, 111 Stat. 796; amended Pub. L. 105–206, title VI, § 6003(a), July 22, 1998, 112 Stat. 790; Pub. L. 105–277, div. J, title II, § 2001(b), Oct. 21, 1998, 112 Stat. 2681–901; Pub. L. 106–170, title V, § 501(b)(1), Dec. 17, 1999, 113 Stat. 1919; Pub. L. 107–16, title II, §§ 201(a)–(b)(2)(C), (c)(1), (2), (d), 202(f)(2)(B), title VI, § 618(b)(2)(A), June 7, 2001, 115 Stat. 45–47, 49, 108; Pub. L. 107–90, title II, § 204(e)(1), Dec. 21, 2001, 115 Stat. 893; Pub. L. 107–147, title IV, §§ 411(b), 417(23)(A), Mar. 9, 2002, 116 Stat. 45, 57; Pub. L. 108–27, title I, § 101(a), May 28, 2003, 117 Stat. 753; Pub. L. 108–311, title I, §§ 101(a), 102(a), 104(a), title II, § 204, title IV, § 408(b)(4), Oct. 4, 2004, 118 Stat. 1167, 1168, 1176, 1192; Pub. L. 109–135, title IV, § 402(i)(3)(B), Dec. 21, 2005, 119 Stat. 2613; Pub. L. 110–172, § 11(c)(1), Dec. 29, 2007, 121 Stat. 2488; Pub. L. 110–343, div. B, title I, § 106(e)(2)(B), title II, § 205(d)(1)(A), div. C, title V, § 501(a), Oct. 3, 2008, 122 Stat. 3817, 3838, 3876; Pub. L. 110–351, title V, § 501(c)(1), Oct. 7, 2008, 122 Stat. 3979; Pub. L. 111–5, div. B, title I, §§ 1003(a), 1004(b)(1), 1142(b)(1)(A), 1144(b)(1)(A), Feb. 17, 2009, 123 Stat. 313, 314, 330, 332; Pub. L. 111–148, title X, § 10909(b)(2)(A), (c), Mar. 23, 2010, 124 Stat. 1023; Pub. L. 111–312, title I, §§ 101(b)(1), 103(b), Dec. 17, 2010, 124 Stat. 3298, 3299.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENT OF SECTION

For termination of amendment by section 10909(c) of Pub. L. 111–148, see Effective and Termination Dates of 2010 Amendment note below.

For termination of amendment by sections 1004(e), 1142(e), and 1144(d) of Pub. L. 111–5, see Effective and Termination Dates of 2009 Amendment notes below.

For termination of amendment by sections 106(f)(3) and 205(f) of Pub. L. 110–343, see Effective and Termination Dates of 2008 Amendment notes below.

For termination of amendment by section 402(i)(3)(H) of Pub. L. 109–135, see Effective and Termination Dates of 2005 Amendment note below.

For termination of amendment by section 105 of Pub. L. 108–311, see Effective and Termination Dates of 2004 Amendment note below.

For termination of amendment by section 107 of Pub. L. 108–27, see Effective and Termination Dates of 2003 Amendment note below.

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

PRIOR PROVISIONS

A prior section 24, added Pub. L. 92–178, title VII, §701(a), Dec. 10, 1971, 85 Stat. 560, §41; amended Pub. L. 93–625, §§11(a)–(c), (e), 12(a), Jan. 3, 1975, 88 Stat. 2119, 2120; Pub. L. 94–455, title V, §503(b)(4), title XIX, §§1901(b)(1)(B), (H)(ii), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1562, 1790, 1791, 1834; Pub. L. 95–600, title I, §113(c), Nov. 6, 1978, 92 Stat. 2778; Pub. L. 97–473, title II, §202(b)(1), Jan. 14, 1983, 96 Stat. 2609; Pub. L. 98–21, title I, §122(c)(1), Apr. 20, 1983, 97 Stat. 87; renumbered §24 and amended Pub. L. 98–369, div. A, title IV, §§471(c), 474(f), July 18, 1984, 98 Stat. 826, 831, related to contributions to candidates for public office, prior to repeal by Pub. L. 99–514, title I, §§112(a), 151(a), Oct. 22, 1986, 100 Stat. 2108, 2121, applicable to taxable years beginning after Dec. 31, 1986.

AMENDMENTS

2010—Subsec. (b)(3)(B). Pub. L. 111–148, §10909(b)(2)(A), (c), as amended by Pub. L. 111–312, §101(b)(1), temporarily struck out ''23,'' before ''25A(i),''. See Effective and Termination Dates of 2010 Amendment note below.

Subsec. (d)(4). Pub. L. 111–312, §103(b), substituted ''2009, 2010, 2011, and 2012'' for ''2009 and 2010'' in heading and '', 2010, 2011, or 2012'' for ''or 2010'' in text.

2009—Subsec. (b)(3)(B). Pub. L. 111–5, §1144(b)(1)(A), (d), temporarily inserted ''30B,'' after ''30,''. See Effective and Termination Dates of 2009 Amendment note below.

Pub. L. 111–5, §1142(b)(1)(A), (e), temporarily inserted ''30,'' after ''25D,''. See Effective and Termination Dates of 2009 Amendment note below.

Pub. L. 111–5, §1004(b)(1), (e), temporarily inserted ''25A(i),'' after ''23,''. See Effective and Termination Dates of 2009 Amendment note below.

Subsec. (d)(4). Pub. L. 111–5, §1003(a), amended par. (4) generally. Prior to amendment, text read as follows: ''Notwithstanding paragraph (3), in the case of any taxable year beginning in 2008, the dollar amount in effect for such taxable year under paragraph (1)(B)(i) shall be $8,500.''

2008—Subsec. (a). Pub. L. 110–351 inserted ''for which the taxpayer is allowed a deduction under section 151'' after ''of the taxpayer''.

Subsec. (b)(3)(B). Pub. L. 110–343, §205(d)(1)(A), (f), temporarily substituted ''25D, and 30D'' for ''and 25D''. See Effective and Termination Dates of 2008 Amendment note below.

Pub. L. 110–343, §106(e)(2)(B), (f)(3), temporarily substituted '', 25B, and 25D'' for ''and 25B''. See Effective and Termination Dates of 2008 Amendment note below.

Subsec. (d)(4). Pub. L. 110–343, §501(a), added par. (4).

2007—Subsec. (d)(1)(B). Pub. L. 110–172, §11(c)(1)(A), substituted ''the greater of'' for ''the excess (if any) of'' in introductory provisions.

Subsec. (d)(1)(B)(ii)(II). Pub. L. 110–172, §11(c)(1)(B), substituted ''section 32'' for ''section''.

2005—Subsec. (b)(3). Pub. L. 109–135, §402(i)(3)(B)(i), (H), temporarily substituted ''In the case of a taxable year to which section 26(a)(2) does not apply, the credit'' for ''The credit'' in introductory provisions. See Effective and Termination Dates of 2005 Amendment note below.

Subsec. (d)(1). Pub. L. 109–135, §402(i)(3)(B)(ii), (H), temporarily reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The aggregate credits allowed to a taxpayer under subpart C shall be increased by the lesser of—

''(A) the credit which would be allowed under this section without regard to this subsection and the limitation under subsection (b)(3), or

''(B) the amount by which the amount of credit allowed by this section (determined without regard to this subsection) would increase if the limitation imposed by subsection (b)(3) were increased by the greater of—

''(i) 15 percent of so much of the taxpayer's earned income (within the meaning of section 32) which is taken into account in computing taxable income for the taxable year as exceeds $10,000, or

''(ii) in the case of a taxpayer with 3 or more qualifying children, the excess (if any) of—

''(I) the taxpayer's social security taxes for the taxable year, over

''(II) the credit allowed under section 32 for the taxable year.

The amount of the credit allowed under this subsection shall not be treated as a credit allowed under this subpart and shall reduce the amount of credit otherwise allowable under subsection (a) without regard to subsection (b)(3). For purposes of subparagraph (B), any amount excluded from gross income by reason of section 112 shall be treated as earned income which is taken into account in computing taxable income for the taxable year.'' See Effective and Termination Dates of 2005 Amendment note below.

2004—Subsec. (a). Pub. L. 108–311, §§101(a), 105, temporarily reenacted heading without change and amended text generally, substituting provisions relating to $1,000 per year credit per qualifying child for provisions relating to different credit amounts for calendar years 2003 through 2010 or thereafter. See Effective and Termination Dates of 2004 Amendment note below.

Subsec. (c)(1). Pub. L. 108–311, §204(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'qualifying child' means any individual if—

''(A) the taxpayer is allowed a deduction under section 151 with respect to such individual for the taxable year,

''(B) such individual has not attained the age of 17 as of the close of the calendar year in which the taxable year of the taxpayer begins, and

''(C) such individual bears a relationship to the taxpayer described in section 32(c)(3)(B).''

Subsec. (c)(2). Pub. L. 108–311, §204(b), substituted ''subparagraph (A) of section 152(b)(3)'' for ''the first sentence of section 152(b)(3)''.

Subsec. (d)(1). Pub. L. 108–311, §§104(a), 105, temporarily inserted at end of concluding provisions ''For purposes of subparagraph (B), any amount excluded from gross income by reason of section 112 shall be treated as earned income which is taken into account in computing taxable income for the taxable year.'' See Effective and Termination Dates of 2004 Amendment note below.

Subsec. (d)(1)(B)(i). Pub. L. 108–311, §§102(a), 105, temporarily struck out ''(10 percent in the case of taxable years beginning before January 1, 2005)'' after ''15 percent''. See Effective and Termination Dates of 2004 Amendment note below.

Subsec. (d)(2)(A)(iii). Pub. L. 108–311, §408(b)(4), amended directory language of Pub. L. 107–90. See 2001 Amendment note below.

2003—Subsec. (a)(2). Pub. L. 108–27, §§101(a), 107, temporarily amended table by deleting items relating to calendar years 2001 and 2002 and increasing per child amount from $600 to $1,000 for calendar years 2003 or 2004. See Effective and Termination Dates of 2003 Amendment note below.

2002—Subsec. (b)(3)(B). Pub. L. 107–147, §417(23)(A), amended directory language of Pub. L. 107–16, §618(b)(2)(A). See 2001 Amendment note below.

Subsec. (d)(1)(B). Pub. L. 107–147, §411(b), substituted ''aggregate amount of credits allowed by this subpart'' for ''amount of credit allowed by this section'' in introductory provisions.

2001—Subsec. (a). Pub. L. 107–16, §§201(a), 901, temporarily amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''There shall be allowed as a credit against the tax imposed by this chapter for the taxable year with respect to each qualifying child of the taxpayer an amount equal to $500 ($400 in the case of taxable years beginning in 1998).'' See Effective and Termination Dates of 2001 Amendments note below.

Subsec. (b). Pub. L. 107–16, §§201(b)(2)(A), 901, temporarily amended heading generally, substituting ''Limi-

tations'' for ''Limitation based on adjusted gross income''. See Effective and Termination Dates of 2001 Amendments note below.

Subsec. (b)(1). Pub. L. 107–16, §§ 201(b)(2)(B), 901, temporarily amended heading generally, substituting ''Limitation based on adjusted gross income'' for ''In general''. See Effective and Termination Dates of 2001 Amendments note below.

Subsec. (b)(3). Pub. L. 107–16, §§ 201(b)(1), 901, temporarily added par. (3). See Effective and Termination Dates of 2001 Amendments note below.

Subsec. (b)(3)(B). Pub. L. 107–16, § 618(b)(2)(A), as amended by Pub. L. 107–147, § 417(23)(A), substituted ''sections 23 and 25B'' for ''section 23''.

Pub. L. 107–16, §§ 202(f)(2)(B), 901, temporarily substituted ''this section and section 23'' for ''this section''. See Effective and Termination Dates of 2001 Amendments note below.

Subsec. (d). Pub. L. 107–16, §§ 201(c)(1), 901, temporarily amended subsec. heading and heading and text of par. (1) generally. Prior to amendment, text read as follows: ''In the case of a taxpayer with three or more qualifying children for any taxable year, the aggregate credits allowed under subpart C shall be increased by the lesser of—

''(A) the credit which would be allowed under this section without regard to this subsection and the limitation under section 26(a); or

''(B) the amount by which the aggregate amount of credits allowed by this subpart (without regard to this subsection) would increase if the limitation imposed by section 26(a) were increased by the excess (if any) of—

''(i) the taxpayer's Social Security taxes for the taxable year, over

''(ii) the credit allowed under section 32 (determined without regard to subsection (n)) for the taxable year.

The amount of the credit allowed under this subsection shall not be treated as a credit allowed under this subpart and shall reduce the amount of credit otherwise allowable under subsection (a) without regard to section 26(a).'' See Effective and Termination Dates of 2001 Amendments note below.

Subsec. (d)(1). Pub. L. 107–16, §§ 201(b)(2)(C)(i), 901, temporarily substituted ''subsection (b)(3)'' for ''section 26(a)'' wherever appearing in subsec. (d), as amended by Pub. L. 107–16, § 201(c). See Effective and Termination Dates of 2001 Amendments note below.

Subsec. (d)(1)(B). Pub. L. 107–16, §§ 201(b)(2)(C)(ii), 901, temporarily substituted ''amount of credit allowed by this section'' for ''aggregate amount of credits allowed by this subpart'' in subpar. (B) as amended by Pub. L. 107–16, § 201(c). See Effective and Termination Dates of 2001 Amendments note below.

Subsec. (d)(2). Pub. L. 107–16, §§ 201(d), 901, temporarily redesignated par. (3) as (2) and struck out heading and text of former par. (2). Text read as follows: ''For taxable years beginning after December 31, 2001, the credit determined under this subsection for the taxable year shall be reduced by the excess (if any) of—

''(A) the amount of tax imposed by section 55 (relating to alternative minimum tax) with respect to such taxpayer for such taxable year, over

''(B) the amount of the reduction under section 32(h) with respect to such taxpayer for such taxable year.'' See Effective and Termination Dates of 2001 Amendments note below.

Subsec. (d)(2)(A)(iii). Pub. L. 107–90, as amended by Pub. L. 108–311, § 408(b)(4), substituted ''section 3211(a)'' for ''section 3211(a)(1)''.

Subsec. (d)(3). Pub. L. 107–16, §§ 201(d)(2), 901, temporarily redesignated par. (4) as (3). Former par. (3) temporarily redesignated (2). See Effective and Termination Dates of 2001 Amendments note below.

Subsec. (d)(4). Pub. L. 107–16, §§ 201(c)(2), 901, temporarily added par. (4). Former par. (4) temporarily redesignated (3). See Effective and Termination Dates of 2001 Amendments note below.

1999—Subsec. (d)(2). Pub. L. 106–170 substituted ''2001'' for ''1998'' in introductory provisions.

1998—Subsec. (d)(1). Pub. L. 105–206, § 6003(a)(1)(C), added par. (1) and struck out heading and text of former par. (1). Text read as follows: ''In the case of a taxpayer with 3 or more qualifying children for any taxable year, the amount of the credit allowed under this section shall be equal to the greater of—

''(A) the amount of the credit allowed under this section (without regard to this subsection and after application of the limitation under section 26), or

''(B) the alternative credit amount determined under paragraph (2).''

Subsec. (d)(2). Pub. L. 105–277 substituted ''For taxable years beginning after December 31, 1998, the credit'' for ''The credit''.

Pub. L. 105–206, § 6003(a)(1)(C), added par. (2) and struck out heading and text of former par. (2). Text read as follows: ''For purposes of this subsection, the alternative credit amount is the amount of the credit which would be allowed under this section if the limitation under paragraph (3) were applied in lieu of the limitation under section 26.''

Subsec. (d)(3). Pub. L. 105–206, § 6003(a)(1)(A), (B), (2), redesignated par. (5) as (3), substituted ''paragraph (1)'' for ''paragraph (3)'' in introductory provisions, and struck out heading and text of former par. (3). Text read as follows: ''The limitation under this paragraph for any taxable year is the limitation under section 26 (without regard to this subsection)—

''(A) increased by the taxpayer's social security taxes for such taxable year, and

''(B) reduced by the sum of—

''(i) the credits allowed under this part other than under subpart C or this section, and

''(ii) the credit allowed under section 32 without regard to subsection (m) thereof.''

Subsec. (d)(4). Pub. L. 105–206, § 6003(a)(1)(A), struck out heading and text of par. (4). Text read as follows: ''If the amount of the credit under paragraph (1)(B) exceeds the amount of the credit under paragraph (1)(A), such excess shall be treated as a credit to which subpart C applies. The rule of section 32(h) shall apply to such excess.''

Subsec. (d)(5). Pub. L. 105–206, § 6003(a)(1)(B), redesignated par. (5) as (3).

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Pub. L. 111–312, title I, § 103(d), Dec. 17, 2010, 124 Stat. 3299, provided that: ''The amendments made by this section [amending this section and sections 25A and 32 of this title and amending provisions set out as a note under section 25A of this title] shall apply to taxable years beginning after December 31, 2010.''

Amendment by Pub. L. 111–148 terminated applicable to taxable years beginning after Dec. 31, 2011, and section is amended to read as if such amendment had never been enacted, see section 10909(c) of Pub. L. 111–148, set out as a note under section 1 of this title.

Amendment by Pub. L. 111–148 applicable to taxable years beginning after Dec. 31, 2009, see section 10909(d) of Pub. L. 111–148, set out as a note under section 1 of this title.

EFFECTIVE AND TERMINATION DATES OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, § 1003(b), Feb. 17, 2009, 123 Stat. 313, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008.''

Pub. L. 111–5, div. B, title I, § 1004(d), Feb. 17, 2009, 123 Stat. 315, provided that: ''The amendments made by this section [amending this section, sections 25 to 25B, 26, 904, 1400C, and 6211 of this title, and section 1324 of Title 31, Money and Finance] shall apply to taxable years beginning after December 31, 2008.''

Pub. L. 111–5, div. B, title I, § 1004(e), Feb. 17, 2009, 123 Stat. 315, provided that: ''The amendment made by subsection (b)(1) [amending this section] shall be subject to title IX of the Economic Growth and Tax Relief Rec-

onciliation Act of 2001 [Pub. L. 107–16, § 901, set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title] in the same manner as the provision of such Act to which such amendment relates.''

Pub. L. 111–5, div. B, title I, § 1142(c), Feb. 17, 2009, 123 Stat. 331, provided that: ''The amendments made by this section [amending this section and sections 25, 25B, 26, 30, 30B, 30C, 53, 55, 904, 1016, 1400C, and 6501 of this title] shall apply to vehicles acquired after the date of the enactment of this Act [Feb. 17, 2009].''

Pub. L. 111–5, div. B, title I, § 1142(e), Feb. 17, 2009, 123 Stat. 331, provided that: ''The amendment made by subsection (b)(1)(A) [amending this section] shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16, § 901, set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title] in the same manner as the provision of such Act to which such amendment relates.''

Pub. L. 111–5, div. B, title I, § 1144(c), Feb. 17, 2009, 123 Stat. 333, provided that: ''The amendments made by this section [amending this section and sections 25, 25B, 26, 30B, 30C, 55, 904, and 1400C of this title] shall apply to taxable years beginning after December 31, 2008.''

Pub. L. 111–5, div. B, title I, § 1144(d), Feb. 17, 2009, 123 Stat. 333, provided that: ''The amendment made by subsection (b)(1)(A) [amending this section] shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16, § 901, set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title] in the same manner as the provision of such Act to which such amendment relates.''

EFFECTIVE AND TERMINATION DATES OF 2008 AMENDMENT

Pub. L. 110–351, title V, § 501(d), Oct. 7, 2008, 122 Stat. 3980, provided that: ''The amendments made by this section [amending this section and section 152 of this title] shall apply to taxable years beginning after December 31, 2008.''

Amendment by section 106(e)(2)(B) of title I of div. B of Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2007, and subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, § 901, in the same manner as the provisions of such Act to which such amendment relates, see section 106(f)(1), (3) of Pub. L. 110–343, set out as a note under section 36C of this title.

Pub. L. 110–343, div. B, title II, § 205(e), (f), Oct. 3, 2008, 122 Stat. 3839, provided that:

''(e) EFFECTIVE DATE.—The amendments made by this section [enacting section 30D of this title and amending this section and sections 25, 25B, 26, 30B, 38, 1016, 1400C, and 6501 of this title] shall apply to taxable years beginning after December 31, 2008.

''(f) APPLICATION OF EGTRRA SUNSET.—The amendment made by subsection (d)(1)(A) [amending this section] shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16, § 901, set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title] in the same manner as the provision of such Act to which such amendment relates.''

Pub. L. 110–343, div. C, title V, § 501(b), Oct. 3, 2008, 122 Stat. 3876, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2007.''

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–172, § 11(c)(2), Dec. 29, 2007, 121 Stat. 2489, provided that: ''The amendments made by this subsection [amending this section] shall take effect as if included in the provisions of the Gulf Opportunity Zone Act of 2005 [Pub. L. 109–135] to which they relate.''

EFFECTIVE AND TERMINATION DATES OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, § 901, in the same manner as the provisions of such Act to which such amendment relates, see section 402(i)(3)(H) of Pub. L. 109–135, set out as a note under section 36C of this title.

Amendment by Pub. L. 109–135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which it relates and applicable to taxable years beginning after Dec. 31, 2005, see section 402(m) of Pub. L. 109–135, set out as a note under section 36C of this title.

EFFECTIVE AND TERMINATION DATES OF 2004 AMENDMENT

Amendment by section 101(a) of Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2003, see section 101(e) of Pub. L. 108–311, set out as a note under section 1 of this title.

Pub. L. 108–311, title I, § 102(b), Oct. 4, 2004, 118 Stat. 1168, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2003.''

Pub. L. 108–311, title I, § 104(c)(1), Oct. 4, 2004, 118 Stat. 1169, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2003.''

Amendment by title I of Pub. L. 108–311 subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, § 901, to the same extent and in the same manner as the provisions of such Act to which such amendments relate, see section 105 of Pub. L. 108–311, set out as a note under section 1 of this title.

Amendment by section 204 of Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

Pub. L. 108–27, title I, § 101(c), May 28, 2003, 117 Stat. 754, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 6429 of this title and amending this section] shall apply to taxable years beginning after December 31, 2002.

''(2) SUBSECTION (b).—The amendments made by subsection (b) [enacting section 6429 of this title] shall take effect on the date of the enactment of this Act [May 28, 2003].''

Amendments by title I of Pub. L. 108–27 subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, § 901, to the same extent and in the same manner as the provisions of such Act to which such amendments relate, see section 107 of Pub. L. 108–27, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by section 411(b) of Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by sections 201(b), 202(f), and 618(b) of Pub. L. 107–16 inapplicable to taxable years beginning during 2004 or 2005, see section 312(b)(2) of Pub. L. 108–311, set out as a note under section 36C of this title.

Amendment by sections 201(b), 202(f), and 618(b) of Pub. L. 107–16 inapplicable to taxable years beginning during 2002 and 2003, see section 601(b)(2) of Pub. L. 107–147, set out as a note under section 36C of this title.

Pub. L. 107–90, title II, § 204(f), Dec. 21, 2001, 115 Stat. 893, provided that: ''The amendments made by this section [enacting subchapter E of chapter 22 of this title and amending this section and sections 72, 3201, 3211,

3221, and 3231 of this title] shall apply to calendar years beginning after December 31, 2001.''

Pub. L. 107–16, title II, § 201(e), June 7, 2001, 115 Stat. 47, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 23, 25, 26, 32, 904, and 1400C of this title] shall apply to taxable years beginning after December 31, 2000.

''(2) SUBSECTION (b).—The amendments made by subsection (b) [amending this section and sections 23, 25, 26, 904, and 1400C of this title] shall apply to taxable years beginning after December 31, 2001.''

Amendment by section 202(f)(2)(B) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 202(g)(1) of Pub. L. 107–16, set out as a note under section 36C of this title.

Pub. L. 107–16, title VI, § 618(d), June 7, 2001, 115 Stat. 108, provided that: ''The amendments made by this section [enacting section 25B of this title and amending this section and sections 25, 25B, 26, 904, and 1400C of this title] shall apply to taxable years beginning after December 31, 2001.''

Amendment by sections 201(a)–(b)(2)(C), (c)(1), (2), (d) and 202(f)(2)(B) of Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, § 501(c), Dec. 17, 1999, 113 Stat. 1919, provided that: ''The amendments made by this section [amending this section and sections 26 and 904 of this title] shall apply to taxable years beginning after December 31, 1998.''

EFFECTIVE DATE OF 1998 AMENDMENTS

Pub. L. 105–277, div. J, title II, § 2001(c), Oct. 21, 1998, 112 Stat. 2681–901, provided that: ''The amendments made by this section [amending this section and section 26 of this title] shall apply to taxable years beginning after December 31, 1997.''

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section 101(e) of Pub. L. 105–34 provided that: ''The amendments made by this section [enacting this section and amending sections 32, 501, and 6213 of this title and section 1324 of Title 31, Money and Finance] shall apply to taxable years beginning after December 31, 1997.''

REFUNDS DISREGARDED IN ADMINISTRATION OF FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Pub. L. 107–16, title II, § 203, June 7, 2001, 115 Stat. 49, provided that: ''Any payment considered to have been made to any individual by reason of section 24 of the Internal Revenue Code of 1986, as amended by section 201, shall not be taken into account as income and shall not be taken into account as resources for the month of receipt and the following month, for purposes of determining the eligibility of such individual or any other individual for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds.''

§ 25. Interest on certain home mortgages

(a) Allowance of credit

(1) In general

There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the product of—

(A) the certificate credit rate, and

(B) the interest paid or accrued by the taxpayer during the taxable year on the remaining principal of the certified indebtedness amount.

(2) Limitation where credit rate exceeds 20 percent

(A) In general

If the certificate credit rate exceeds 20 percent, the amount of the credit allowed to the taxpayer under paragraph (1) for any taxable year shall not exceed $2,000.

(B) Special rule where 2 or more persons hold interests in residence

If 2 or more persons hold interests in any residence, the limitation of subparagraph (A) shall be allocated among such persons in proportion to their respective interests in the residence.

(b) Certificate credit rate; certified indebtedness amount

For purposes of this section—

(1) Certificate credit rate

The term ''certificate credit rate'' means the rate of the credit allowable by this section which is specified in the mortgage credit certificate.

(2) Certified indebtedness amount

The term ''certified indebtedness amount'' means the amount of indebtedness which is—

(A) incurred by the taxpayer—

(i) to acquire the principal residence of the taxpayer,

(ii) as a qualified home improvement loan (as defined in section 143(k)(4)) with respect to such residence, or

(iii) as a qualified rehabilitation loan (as defined in section 143(k)(5)) with respect to such residence, and

(B) specified in the mortgage credit certificate.

(c) Mortgage credit certificate; qualified mortgage credit certificate program

For purposes of this section—

(1) Mortgage credit certificate

The term ''mortgage credit certificate'' means any certificate which—

(A) is issued under a qualified mortgage credit certificate program by the State or political subdivision having the authority to issue a qualified mortgage bond to provide financing on the principal residence of the taxpayer,

(B) is issued to the taxpayer in connection with the acquisition, qualified rehabilitation, or qualified home improvement of the taxpayer's principal residence,

(C) specifies—

(i) the certificate credit rate, and

(ii) the certified indebtedness amount, and

(D) is in such form as the Secretary may prescribe.

(2) Qualified mortgage credit certificate program

(A) In general

The term ''qualified mortgage credit certificate program'' means any program—

(i) which is established by a State or political subdivision thereof for any calendar year for which it is authorized to issue qualified mortgage bonds,

(ii) under which the issuing authority elects (in such manner and form as the Secretary may prescribe) not to issue an amount of private activity bonds which it may otherwise issue during such calendar year under section 146,

(iii) under which the indebtedness certified by mortgage credit certificates meets the requirements of the following subsections of section 143 (as modified by subparagraph (B) of this paragraph):

(I) subsection (c) (relating to residence requirements),

(II) subsection (d) (relating to 3-year requirement),

(III) subsection (e) (relating to purchase price requirement),

(IV) subsection (f) (relating to income requirements),

(V) subsection (h) (relating to portion of loans required to be placed in targeted areas), and

(VI) paragraph (1) of subsection (i) (relating to other requirements),

(iv) under which no mortgage credit certificate may be issued with respect to any residence any of the financing of which is provided from the proceeds of a qualified mortgage bond or a qualified veterans' mortgage bond,

(v) except to the extent provided in regulations, which is not limited to indebtedness incurred from particular lenders,

(vi) except to the extent provided in regulations, which provides that a mortgage credit certificate is not transferrable, and

(vii) if the issuing authority allocates a block of mortgage credit certificates for use in connection with a particular development, which requires the developer to furnish to the issuing authority and the homebuyer a certificate that the price for the residence is no higher than it would be without the use of a mortgage credit certificate.

Under regulations, rules similar to the rules of subparagraphs (B) and (C) of section 143(a)(2) shall apply to the requirements of this subparagraph.

(B) Modifications of section 143

Under regulations prescribed by the Secretary, in applying section 143 for purposes of subclauses (II), (IV), and (V) of subparagraph (A)(iii)—

(i) each qualified mortgage certificate credit program shall be treated as a separate issue,

(ii) the product determined by multiplying—

(I) the certified indebtedness amount of each mortgage credit certificate issued under such program, by

(II) the certificate credit rate specified in such certificate,

shall be treated as proceeds of such issue and the sum of such products shall be treated as the total proceeds of such issue, and

(iii) paragraph (1) of section 143(d) shall be applied by substituting ''100 percent'' for ''95 percent or more''.

Clause (iii) shall not apply if the issuing authority submits a plan to the Secretary for administering the 95-percent requirement of section 143(d)(1) and the Secretary is satisfied that such requirement will be met under such plan.

(d) Determination of certificate credit rate

For purposes of this section—

(1) In general

The certificate credit rate specified in any mortgage credit certificate shall not be less than 10 percent or more than 50 percent.

(2) Aggregate limit on certificate credit rates

(A) In general

In the case of each qualified mortgage credit certificate program, the sum of the products determined by multiplying—

(i) the certified indebtedness amount of each mortgage credit certificate issued under such program, by

(ii) the certificate credit rate with respect to such certificate,

shall not exceed 25 percent of the nonissued bond amount.

(B) Nonissued bond amount

For purposes of subparagraph (A), the term ''nonissued bond amount'' means, with respect to any qualified mortgage credit certificate program, the amount of qualified mortgage bonds which the issuing authority is otherwise authorized to issue and elects not to issue under subsection (c)(2)(A)(ii).

(e) Special rules and definitions

For purposes of this section—

(1) Carryforward of unused credit

(A) In general

If the credit allowable under subsection (a) for any taxable year exceeds the applicable tax limit for such taxable year, such excess shall be a carryover to each of the 3 succeeding taxable years and, subject to the limitations of subparagraph (B), shall be added to the credit allowable by subsection (a) for such succeeding taxable year.

(B) Limitation

The amount of the unused credit which may be taken into account under subparagraph (A) for any taxable year shall not exceed the amount (if any) by which the applicable tax limit for such taxable year exceeds the sum of—

(i) the credit allowable under subsection (a) for such taxable year determined without regard to this paragraph, and

(ii) the amounts which, by reason of this paragraph, are carried to such taxable year and are attributable to taxable years before the unused credit year.

(C) Applicable tax limit

For purposes of this paragraph, the term ''applicable tax limit'' means—

(i) in the case of a taxable year to which section 26(a)(2) applies, the limitation imposed by section 26(a)(2) for the taxable year reduced by the sum of the credits allowable under this subpart (other than this section and sections 25D,[1] and 1400C), and

(ii) in the case of a taxable year to which section 26(a)(2) does not apply, the limitation imposed by section 26(a)(1) for the taxable year reduced by the sum of the credits allowable under this subpart (other than this section and sections 24, 25A(i), 25B, 25D, 30, 30B, 30D, and 1400C).

(2) Indebtedness not treated as certified where certain requirements not in fact met

Subsection (a) shall not apply to any indebtedness if all the requirements of subsection (c)(1), (d), (e), (f), and (i) of section 143 and clauses (iv), (v), and (vii) of subsection (c)(2)(A), were not in fact met with respect to such indebtedness. Except to the extent provided in regulations, the requirements described in the preceding sentence shall be treated as met if there is a certification, under penalty of perjury, that such requirements are met.

(3) Period for which certificate in effect

(A) In general

Except as provided in subparagraph (B), a mortgage credit certificate shall be treated as in effect with respect to interest attributable to the period—

(i) beginning on the date such certificate is issued, and

(ii) ending on the earlier of the date on which—

(I) the certificate is revoked by the issuing authority, or

(II) the residence to which such certificate relates ceases to be the principal residence of the individual to whom the certificate relates.

(B) Certificate invalid unless indebtedness incurred within certain period

A certificate shall not apply to any indebtedness which is incurred after the close of the second calendar year following the calendar year for which the issuing authority made the applicable election under subsection (c)(2)(A)(ii).

(C) Notice to Secretary when certificate revoked

Any issuing authority which revokes any mortgage credit certificate shall notify the Secretary of such revocation at such time and in such manner as the Secretary shall prescribe by regulations.

(4) Reissuance of mortgage credit certificates

The Secretary may prescribe regulations which allow the administrator of a mortgage credit certificate program to reissue a mortgage credit certificate specifying a certified mortgage indebtedness that replaces the outstanding balance of the certified mortgage indebtedness specified on the original certificate to any taxpayer to whom the original certificate was issued, under such terms and conditions as the Secretary determines are necessary to ensure that the amount of the credit allowable under subsection (a) with respect to such reissued certificate is equal to or less than the amount of credit which would be allowable under subsection (a) with respect to the original certificate for any taxable year ending after such reissuance.

(5) Public notice that certificates will be issued

At least 90 days before any mortgage credit certificate is to be issued after a qualified mortgage credit certificate program, the issuing authority shall provide reasonable public notice of—

(A) the eligibility requirements for such certificate,

(B) the methods by which such certificates are to be issued, and

(C) such other information as the Secretary may require.

(6) Interest paid or accrued to related persons

No credit shall be allowed under subsection (a) for any interest paid or accrued to a person who is a related person to the taxpayer (within the meaning of section 144(a)(3)(A)).

(7) Principal residence

The term ''principal residence'' has the same meaning as when used in section 121.

(8) Qualified rehabilitation and home improvement

(A) Qualified rehabilitation

The term ''qualified rehabilitation'' has the meaning given such term by section 143(k)(5)(B).

(B) Qualified home improvement

The term ''qualified home improvement'' means an alteration, repair, or improvement described in section 143(k)(4).

(9) Qualified mortgage bond

The term ''qualified mortgage bond'' has the meaning given such term by section 143(a)(1).

(10) Manufactured housing

For purposes of this section, the term ''single family residence'' includes any manufactured home which has a minimum of 400 square feet of living space and a minimum width in excess of 102 inches and which is of a kind customarily used at a fixed location. Nothing in the preceding sentence shall be construed as providing that such a home will be taken into account in making determinations under section 143.

(f) Reduction in aggregate amount of qualified mortgage bonds which may be issued where certain requirements not met

(1) In general

If for any calendar year any mortgage credit certificate program which satisfies procedural requirements with respect to volume limitations prescribed by the Secretary fails to meet the requirements of paragraph (2) of subsection (d), such requirements shall be treated as satisfied with respect to any certified in-

[1] So in original. The comma probably should not appear.

debtedness of such program, but the applicable State ceiling under subsection (d) of section 146 for the State in which such program operates shall be reduced by 1.25 times the correction amount with respect to such failure. Such reduction shall be applied to such State ceiling for the calendar year following the calendar year in which the Secretary determines the correction amount with respect to such failure.

(2) Correction amount

(A) In general

For purposes of paragraph (1), the term ''correction amount'' means an amount equal to the excess credit amount divided by 0.25.

(B) Excess credit amount

(i) In general

For purposes of subparagraph (A)(ii), the term ''excess credit amount'' means the excess of—

(I) the credit amount for any mortgage credit certificate program, over

(II) the amount which would have been the credit amount for such program had such program met the requirements of paragraph (2) of subsection (d).

(ii) Credit amount

For purposes of clause (i), the term ''credit amount'' means the sum of the products determined under clauses (i) and (ii) of subsection (d)(2)(A).

(3) Special rule for States having constitutional home rule cities

In the case of a State having one or more constitutional home rule cities (within the meaning of section 146(d)(3)(C)), the reduction in the State ceiling by reason of paragraph (1) shall be allocated to the constitutional home rule city, or to the portion of the State not within such city, whichever caused the reduction.

(4) Exception where certification program

The provisions of this subsection shall not apply in any case in which there is a certification program which is designed to ensure that the requirements of this section are met and which meets such requirements as the Secretary may by regulations prescribe.

(5) Waiver

The Secretary may waive the application of paragraph (1) in any case in which he determines that the failure is due to reasonable cause.

(g) Reporting requirements

Each person who makes a loan which is a certified indebtedness amount under any mortgage credit certificate shall file a report with the Secretary containing—

(1) the name, address, and social security account number of the individual to which the certificate was issued,

(2) the certificate's issuer, date of issue, certified indebtedness amount, and certificate credit rate, and

(3) such other information as the Secretary may require by regulations.

Each person who issues a mortgage credit certificate shall file a report showing such information as the Secretary shall by regulations prescribe. Any such report shall be filed at such time and in such manner as the Secretary may require by regulations.

(h) Regulations; contracts

(1) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations which may require recipients of mortgage credit certificates to pay a reasonable processing fee to defray the expenses incurred in administering the program.

(2) Contracts

The Secretary is authorized to enter into contracts with any person to provide services in connection with the administration of this section.

(i) Recapture of portion of Federal subsidy from use of mortgage credit certificates

For provisions increasing the tax imposed by this chapter to recapture a portion of the Federal subsidy from the use of mortgage credit certificates, see section 143(m).

(Added Pub. L. 98–369, div. A, title VI, §612(a), July 18, 1984, 98 Stat. 905; amended Pub. L. 99–514, title XIII, §1301(f), title XVIII, §§1862(a)–(d)(1), 1899A(1), Oct. 22, 1986, 100 Stat. 2655, 2883, 2884, 2958; Pub. L. 100–647, title I, §1013(a)(25), (26), title IV, §4005(a)(2), (g)(7), Nov. 10, 1988, 102 Stat. 3543, 3645, 3651; Pub. L. 101–239, title VII, §7104(b), Dec. 19, 1989, 103 Stat. 2305; Pub. L. 101–508, title XI, §11408(b), Nov. 5, 1990, 104 Stat. 1388–477; Pub. L. 102–227, title I, §108(b), Dec. 11, 1991, 105 Stat. 1688; Pub. L. 103–66, title XIII, §13141(b), Aug. 10, 1993, 107 Stat. 436; Pub. L. 104–188, title I, §1807(c)(1), Aug. 20, 1996, 110 Stat. 1902; Pub. L. 105–34, title III, §312(d)(1), Aug. 5, 1997, 111 Stat. 839; Pub. L. 105–206, title VI, §6008(d)(7), July 22, 1998, 112 Stat. 812; Pub. L. 107–16, title II, §201(b)(2)(F), title VI, §618(b)(2)(B), June 7, 2001, 115 Stat. 46, 108; Pub. L. 109–58, title XIII, §1335(b)(2), Aug. 8, 2005, 119 Stat. 1036; Pub. L. 109–135, title IV, §402(i)(3)(C), (4), Dec. 21, 2005, 119 Stat. 2613, 2615; Pub. L. 110–343, div. B, title II, §205(d)(1)(B), Oct. 3, 2008, 122 Stat. 3838; Pub. L. 111–5, div. B, title I, §§1004(b)(2), 1142(b)(1)(B), 1144(b)(1)(B), Feb. 17, 2009, 123 Stat. 314, 330, 332; Pub. L. 111–148, title X, §10909(b)(2)(B), (c), Mar. 23, 2010, 124 Stat. 1023; Pub. L. 111–312, title I, §101(b)(1), Dec. 17, 2010, 124 Stat. 3298.)

AMENDMENT OF SECTION

For termination of amendment by section 10909(c) of Pub. L. 111–148, see Effective and Termination Dates of 2010 Amendment note below.

For termination of amendment by section 402(i)(3)(H) of Pub. L. 109–135, see Effective and Termination Dates of 2005 Amendments note below.

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

PRIOR PROVISIONS

A prior section 25 was renumbered section 26 of this title.

AMENDMENTS

2010—Subsec. (e)(1)(C). Pub. L. 111–148, § 10909(b)(2)(B), (c), as amended by Pub. L. 111–312, temporarily struck out ''23,'' after ''and sections'' in cls. (i) and (ii). See Effective and Termination Dates of 2010 Amendment note below.

2009—Subsec. (e)(1)(C)(ii). Pub. L. 111–5, § 1144(b)(1)(B), inserted ''30B,'' after ''30,''.

Pub. L. 111–5, § 1142(b)(1)(B), inserted ''30,'' after ''25D,''.

Pub. L. 111–5, § 1004(b)(2), inserted ''25A(i),'' after ''24,''.

2008—Subsec. (e)(1)(C)(ii). Pub. L. 110–343 inserted ''30D,'' after ''25D,''.

2005—Subsec. (e)(1)(C). Pub. L. 109–135, § 402(i)(3)(C), (H), temporarily reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of this paragraph, the term 'applicable tax limit' means the limitation imposed by section 26(a) for the taxable year reduced by the sum of the credits allowable under this subpart (other than this section and sections 23, 24, 25B, and 1400C).'' See Effective and Termination Dates of 2005 Amendments notes below.

Pub. L. 109–58, § 1335(b)(2), which directed amendment of subpar. (C) by substituting ''other than this section, section 23, section 25D, and section 1400C'' for ''this section and sections 23 and 1400C'', was repealed by Pub. L. 109–135, § 402(i)(4). See Effective and Termination Dates of 2005 Amendments notes below.

2001—Subsec. (e)(1)(C). Pub. L. 107–16, § 618(b)(2)(B), inserted ''25B,'' after ''24,''.

Pub. L. 107–16, §§ 201(b)(2)(F), 901, temporarily inserted '', 24,'' after ''sections 23''. See Effective and Termination Dates of 2001 Amendment note below.

1998—Subsec. (e)(1)(C). Pub. L. 105–206 substituted ''sections 23 and 1400C'' for ''section 23''.

1997—Subsec. (e)(7). Pub. L. 105–34 substituted ''section 121'' for ''section 1034''.

1996—Subsec. (e)(1)(C). Pub. L. 104–188 inserted ''and section 23'' after ''other than this section''.

1993—Subsecs. (h) to (j). Pub. L. 103–66 redesignated subsecs. (i) and (j) as (h) and (i), respectively, and struck out heading and text of former subsec. (h). Text read as follows: ''No election may be made under subsection (c)(2)(A)(ii) for any period after June 30, 1992.''

1991—Subsec. (h). Pub. L. 102–227 substituted ''June 30, 1992'' for ''December 31, 1991''.

1990—Subsec. (h). Pub. L. 101–508 substituted ''December 31, 1991'' for ''September 30, 1990''.

1989—Subsec. (h). Pub. L. 101–239 substituted ''for any period after September 30, 1990'' for ''for any calendar year after 1989''.

1988—Subsec. (c)(2)(A)(ii). Pub. L. 100–647, § 1013(a)(25), amended Pub. L. 99–514, § 1301(f)(2)(C)(ii), see 1986 Amendment note below.

Subsec. (h). Pub. L. 100–647, § 4005(a)(2), substituted ''1989'' for ''1988''.

Pub. L. 100–647, § 1013(a)(26), substituted ''1988'' for ''1987''.

Subsec. (j). Pub. L. 100–647, § 4005(g)(7), added subsec. (j).

1986—Subsec. (a)(1)(B). Pub. L. 99–514, § 1862(d)(1), substituted ''paid or accrued'' for ''paid or incurred''.

Subsec. (b)(2)(A)(ii). Pub. L. 99–514, § 1301(f)(2)(A), substituted ''section 143(k)(4)'' for ''section 103A(*l*)(6)''.

Subsec. (b)(2)(A)(iii). Pub. L. 99–514, § 1301(f)(2)(B), substituted ''section 143(k)(5)'' for ''section 103A(*l*)(7)''.

Subsec. (c)(2)(A). Pub. L. 99–514, § 1301(f)(2)(E), substituted ''section 143(a)(2)'' for ''section 103A(c)(2)'' in provision following cl. (vii).

Pub. L. 99–514, § 1862(b), inserted ''Under regulations, rules similar to the rules of subparagraphs (B) and (C) of section 103A(c)(2) shall apply to the requirements of this subparagraph.''

Subsec. (c)(2)(A)(ii). Pub. L. 99–514, § 1301(f)(2)(C)(ii), as amended by Pub. L. 100–647, § 1013(a)(25), substituted ''private activity bonds which it may otherwise issue during such calendar year under section 146'' for ''qualified mortgage bonds which it may otherwise issue during such calendar year under section 103A''.

Subsec. (c)(2)(A)(iii). Pub. L. 99–514, § 1301(f)(2)(C)(i), substituted ''section 143'' for ''section 103A'' in introductory provisions, added subcls. (I) to (VI), and struck out former subcls. (I) to (V) which read as follows:

''(I) subsection (d) (relating to residence requirements),

''(II) subsection (e) (relating to 3-year requirement),

''(III) subsection (f) (relating to purchase price requirement),

''(IV) subsection (h) (relating to portion of loans required to be placed in targeted areas), and

''(V) subsection (j), other than paragraph (2) thereof (relating to other requirements),''.

Subsec. (c)(2)(A)(iii)(V). Pub. L. 99–514, § 1862(a), substituted ''subsection (j), other than paragraph (2) thereof'' for ''paragraph (1) of subsection (j)''.

Subsec. (c)(2)(B). Pub. L. 99–514, § 1301(f)(2)(C)(i), substituted in heading and introductory provisions ''section 143'' for ''section 103A''.

Pub. L. 99–514, § 1301(f)(2)(F), inserted in introductory provisions reference to subcl. (V), added cl. (iii) and closing provisions, and struck out former cl. (iii) and closing provisions which read as follows:

''(iii) paragraph (1) of section 103A(e) shall be applied by substituting '100 percent' for '90 percent or more'.

Clause (iii) shall not apply if the issuing authority submits a plan to the Secretary for administering the 90-percent requirement of section 103A(e)(1) and the Secretary is satisfied that such requirement will be met under such plan.''

Subsec. (d)(2)(A). Pub. L. 99–514, § 1301(f)(1)(A), substituted ''25 percent'' for ''20 percent'' in concluding provisions.

Subsec. (d)(3). Pub. L. 99–514, § 1301(f)(2)(G), struck out par. (3) ''Additional limit in certain cases'' which read as follows: ''In the case of a qualified mortgage credit certificate program in a State which—

''(A) has a State ceiling (as defined in section 103A(g)(4)) for the year an election is made that exceeds 20 percent of the average annual aggregate principal amount of mortgages executed during the immediately preceding 3 calendar years for single family owner-occupied residences located within the jurisdiction of such State, or

''(B) issued qualified mortgage bonds in an aggregate amount less than $150,000,000 for calendar year 1983,

the certificate credit rate for any mortgage credit certificate shall not exceed 20 percent unless the issuing authority submits a plan to the Secretary to ensure that the weighted average of the certificate credit rates in such mortgage credit certificate program does not exceed 20 percent and the Secretary approves such plan.''

Subsec. (e)(1)(B). Pub. L. 99–514, § 1862(c), amended subpar. (B) generally. Prior to amendment, subpar. (B) ''Limitations'' read as follows: ''The amount of the unused credit which may be taken into account under subparagraph (A) for any taxable year shall not exceed the amount by which the applicable tax limit for such taxable year exceeds the sum of the amounts which, by reason of this paragraph, are carried to such taxable year and are attributable to taxable years before the unused credit year.''

Subsec. (e)(2). Pub. L. 99–514, § 1301(f)(2)(H), substituted ''subsections (c)(1), (d), (e), (f), and (i) of section 143'' for ''subsection (d)(1), (e), (f), and (j) of section 103A''.

Subsec. (e)(6). Pub. L. 99–514, § 1301(f)(2)(I), substituted ''section 144(a)(3)(A)'' for ''section 103(b)(6)(C)(i)''.

Subsec. (e)(8)(A). Pub. L. 99–514, § 1301(f)(2)(J), substituted ''section 143(k)(5)(B)'' for ''section 103A(*l*)(7)(B)''.

Subsec. (e)(8)(B). Pub. L. 99–514, § 1301(f)(2)(K), substituted ''section 143(k)(4)'' for ''section 103A(*l*)(6)''.

Subsec. (e)(9). Pub. L. 99–514, § 1301(f)(2)(L), substituted ''section 143(a)(1)'' for ''section 103A(c)(1)''.

Subsec. (e)(10). Pub. L. 99–514, §1301(f)(2)(M), substituted ''section 143'' for ''section 103A''.

Subsec. (f)(1). Pub. L. 99–514, §1301(f)(2)(N), substituted ''subsection (d) of section 146'' for ''paragraph (4) of section 103A(g)''.

Subsec. (f)(2)(A). Pub. L. 99–514, §1301(f)(1)(B), substituted ''0.25'' for ''0.20''.

Subsec. (f)(3). Pub. L. 99–514, §1301(f)(2)(O), substituted ''section 146(d)(3)(C)'' for ''section 103A(g)(5)(C)''.

Subsec. (f)(4). Pub. L. 99–514, §1899A(1), substituted ''ensure'' for ''insure''.

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Amendment by Pub. L. 111–148 terminated applicable to taxable years beginning after Dec. 31, 2011, and section is amended to read as if such amendment had never been enacted, see section 10909(c) of Pub. L. 111–148, set out as a note under section 1 of this title.

Amendment by Pub. L. 111–148 applicable to taxable years beginning after Dec. 31, 2009, see section 10909(d) of Pub. L. 111–148, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by section 1004(b)(2) of Pub. L. 111–5 applicable to taxable years beginning after Dec. 31, 2008, see section 1004(d) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Amendment by section 1142(b)(1)(B) of Pub. L. 111–5 applicable to vehicles acquired after Feb. 17, 2009, see section 1142(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Amendment by section 1144(b)(1)(B) of Pub. L. 111–5 applicable to taxable years beginning after Dec. 31, 2008, see section 1144(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2008, see section 205(e) of Pub. L. 110–343, set out as an Effective and Termination Dates of 2008 Amendment note under section 24 of this title.

EFFECTIVE AND TERMINATION DATES OF 2005 AMENDMENTS

Amendment by section 402(i)(3)(C) of Pub. L. 109–135 subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, §901, in the same manner as the provisions of such Act to which such amendment relates, see section 402(i)(3)(H) of Pub. L. 109–135, set out as a note under section 36C of this title.

The Internal Revenue Code of 1986 to be applied and administered as if the amendments made by section 1335(b)(1)–(3) of Pub. L. 109–58 had never been enacted, see section 402(i)(4) of Pub. L. 109–135, set out as a note under section 36C of this title.

Amendments by Pub. L. 109–135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which they relate, except that amendment by section 402(i)(3)(C) of Pub. L. 109–135 is applicable to taxable years beginning after Dec. 31, 2005, see section 402(m) of Pub. L. 109–135, set out as a note under section 36C of this title.

Amendment by Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, in taxable years ending after such date, see section 1335(c) of Pub. L. 109–58, set out as a note under section 36C of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 inapplicable to taxable years beginning during 2004 or 2005, see section 312(b)(2) of Pub. L. 108–311, set out as a note under section 36C of this title.

Amendment by Pub. L. 107–16 inapplicable to taxable years beginning during 2002 and 2003, see section 601(b)(2) of Pub. L. 107–147, set out as a note under section 36C of this title.

Amendment by section 201(b)(2)(F) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 201(e)(2) of Pub. L. 107–16, set out as a note under section 24 of this title.

Amendment by section 618(b)(2)(B) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 618(d) of Pub. L. 107–16, set out as a note under section 24 of this title.

Amendment by section 201(b)(2)(F) of Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1807(e) of Pub. L. 104–188, set out as an Effective Date note under section 36C of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13141(f)(2) of Pub. L. 103–66 provided that: ''The amendment made by subsection (b) [amending this section] shall apply to elections for periods after June 30, 1992.''

EFFECTIVE DATE OF 1991 AMENDMENT

Section 108(c)(2) of Pub. L. 102–227 provided that: ''The amendment made by subsection (b) [amending this section] shall apply to elections for periods after December 31, 1991.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to elections for periods after Sept. 30, 1990, see section 11408(d)(2) of Pub. L. 101–508, set out as a note under section 143 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1013(a)(25), (26) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 4005(a)(2) of Pub. L. 100–647 applicable to bonds issued, and nonissued bond amounts elected, after Dec. 31, 1988, see section 4005(h)(1) of Pub. L. 100–647, set out as a note under section 143 of this title.

Amendment by section 4005(g)(7) of Pub. L. 100–647 applicable to financing provided, and mortgage credit certificates issued, after Dec. 31, 1990, with certain exceptions, see section 4005(h)(3) of Pub. L. 100–647, set out as a note under section 143 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1301(f)(1) of Pub. L. 99–514 applicable to nonissued bond amounts elected after Aug.

15, 1986, and amendment by section 1301(f)(2) of Pub. L. 99–514 applicable to certificates issued with respect to nonissued bond amounts elected after Aug. 15, 1986, see section 1311(b) of Pub. L. 99–514, as amended, set out as an Effective Date; Transitional Rules note under section 141 of this title.

Amendment by section 1862(a)–(d)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section 612(g) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section and section 6708 of this title, redesignating former section 25 as 26, and amending sections 23, 28 to 30, 38, 55, 103A, 163, 168, and 901 of this title] shall apply to interest paid or accrued after December 31, 1984, on indebtedness incurred after December 31, 1984.

''(2) ELECTIONS.—The amendments made by this section shall apply to elections under section 25(c)(2)(A)(ii) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this section) for calendar years after 1983.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 25A. Hope and Lifetime Learning credits

(a) Allowance of credit

In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year the amount equal to the sum of—

(1) the Hope Scholarship Credit, plus

(2) the Lifetime Learning Credit.

(b) Hope Scholarship Credit

(1) Per student credit

In the case of any eligible student for whom an election is in effect under this section for any taxable year, the Hope Scholarship Credit is an amount equal to the sum of—

(A) 100 percent of so much of the qualified tuition and related expenses paid by the taxpayer during the taxable year (for education furnished to the eligible student during any academic period beginning in such taxable year) as does not exceed $1,000, plus

(B) 50 percent of such expenses so paid as exceeds $1,000 but does not exceed the applicable limit.

(2) Limitations applicable to Hope Scholarship Credit

(A) Credit allowed only for 2 taxable years

An election to have this section apply with respect to any eligible student for purposes of the Hope Scholarship Credit under subsection (a)(1) may not be made for any taxable year if such an election (by the taxpayer or any other individual) is in effect with respect to such student for any 2 prior taxable years.

(B) Credit allowed for year only if individual is at least ½ time student for portion of year

The Hope Scholarship Credit under subsection (a)(1) shall not be allowed for a taxable year with respect to the qualified tuition and related expenses of an individual unless such individual is an eligible student for at least one academic period which begins during such year.

(C) Credit allowed only for first 2 years of postsecondary education

The Hope Scholarship Credit under subsection (a)(1) shall not be allowed for a taxable year with respect to the qualified tuition and related expenses of an eligible student if the student has completed (before the beginning of such taxable year) the first 2 years of postsecondary education at an eligible educational institution.

(D) Denial of credit if student convicted of a felony drug offense

The Hope Scholarship Credit under subsection (a)(1) shall not be allowed for qualified tuition and related expenses for the enrollment or attendance of a student for any academic period if such student has been convicted of a Federal or State felony offense consisting of the possession or distribution of a controlled substance before the end of the taxable year with or within which such period ends.

(3) Eligible student

For purposes of this subsection, the term ''eligible student'' means, with respect to any academic period, a student who—

(A) meets the requirements of section 484(a)(1) of the Higher Education Act of 1965 (20 U.S.C. 1091(a)(1)), as in effect on the date of the enactment of this section, and

(B) is carrying at least ½ the normal full-time work load for the course of study the student is pursuing.

(4) Applicable limit

For purposes of paragraph (1)(B), the applicable limit for any taxable year is an amount equal to 2 times the dollar amount in effect under paragraph (1)(A) for such taxable year.

(c) Lifetime Learning Credit

(1) Per taxpayer credit

The Lifetime Learning Credit for any taxpayer for any taxable year is an amount equal to 20 percent of so much of the qualified tuition and related expenses paid by the taxpayer during the taxable year (for education furnished during any academic period beginning in such taxable year) as does not exceed $10,000 ($5,000 in the case of taxable years beginning before January 1, 2003).

(2) Special rules for determining expenses

(A) Coordination with Hope Scholarship

The qualified tuition and related expenses with respect to an individual who is an eligi-

ble student for whom a Hope Scholarship Credit under subsection (a)(1) is allowed for the taxable year shall not be taken into account under this subsection.

(B) Expenses eligible for Lifetime Learning Credit

For purposes of paragraph (1), qualified tuition and related expenses shall include expenses described in subsection (f)(1) with respect to any course of instruction at an eligible educational institution to acquire or improve job skills of the individual.

(d) Limitation based on modified adjusted gross income

(1) In general

The amount which would (but for this subsection) be taken into account under subsection (a) for the taxable year shall be reduced (but not below zero) by the amount determined under paragraph (2).

(2) Amount of reduction

The amount determined under this paragraph is the amount which bears the same ratio to the amount which would be so taken into account as—

(A) the excess of—

(i) the taxpayer's modified adjusted gross income for such taxable year, over

(ii) $40,000 ($80,000 in the case of a joint return), bears to

(B) $10,000 ($20,000 in the case of a joint return).

(3) Modified adjusted gross income

The term ''modified adjusted gross income'' means the adjusted gross income of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933.

(e) Election not to have section apply

A taxpayer may elect not to have this section apply with respect to the qualified tuition and related expenses of an individual for any taxable year.

(f) Definitions

For purposes of this section—

(1) Qualified tuition and related expenses

(A) In general

The term ''qualified tuition and related expenses'' means tuition and fees required for the enrollment or attendance of—

(i) the taxpayer,

(ii) the taxpayer's spouse, or

(iii) any dependent of the taxpayer with respect to whom the taxpayer is allowed a deduction under section 151,

at an eligible educational institution for courses of instruction of such individual at such institution.

(B) Exception for education involving sports, etc.

Such term does not include expenses with respect to any course or other education involving sports, games, or hobbies, unless such course or other education is part of the individual's degree program.

(C) Exception for nonacademic fees

Such term does not include student activity fees, athletic fees, insurance expenses, or other expenses unrelated to an individual's academic course of instruction.

(2) Eligible educational institution

The term ''eligible educational institution'' means an institution—

(A) which is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088), as in effect on the date of the enactment of this section, and

(B) which is eligible to participate in a program under title IV of such Act.

(g) Special rules

(1) Identification requirement

No credit shall be allowed under subsection (a) to a taxpayer with respect to the qualified tuition and related expenses of an individual unless the taxpayer includes the name and taxpayer identification number of such individual on the return of tax for the taxable year.

(2) Adjustment for certain scholarships, etc.

The amount of qualified tuition and related expenses otherwise taken into account under subsection (a) with respect to an individual for an academic period shall be reduced (before the application of subsections (b), (c), and (d)) by the sum of any amounts paid for the benefit of such individual which are allocable to such period as—

(A) a qualified scholarship which is excludable from gross income under section 117,

(B) an educational assistance allowance under chapter 30, 31, 32, 34, or 35 of title 38, United States Code, or under chapter 1606 of title 10, United States Code, and

(C) a payment (other than a gift, bequest, devise, or inheritance within the meaning of section 102(a)) for such individual's educational expenses, or attributable to such individual's enrollment at an eligible educational institution, which is excludable from gross income under any law of the United States.

(3) Treatment of expenses paid by dependent

If a deduction under section 151 with respect to an individual is allowed to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins—

(A) no credit shall be allowed under subsection (a) to such individual for such individual's taxable year, and

(B) qualified tuition and related expenses paid by such individual during such individual's taxable year shall be treated for purposes of this section as paid by such other taxpayer.

(4) Treatment of certain prepayments

If qualified tuition and related expenses are paid by the taxpayer during a taxable year for an academic period which begins during the first 3 months following such taxable year, such academic period shall be treated for purposes of this section as beginning during such taxable year.

(5) Denial of double benefit

No credit shall be allowed under this section for any expense for which a deduction is allowed under any other provision of this chapter.

(6) No credit for married individuals filing separate returns

If the taxpayer is a married individual (within the meaning of section 7703), this section shall apply only if the taxpayer and the taxpayer's spouse file a joint return for the taxable year.

(7) Nonresident aliens

If the taxpayer is a nonresident alien individual for any portion of the taxable year, this section shall apply only if such individual is treated as a resident alien of the United States for purposes of this chapter by reason of an election under subsection (g) or (h) of section 6013.

(h) Inflation adjustments

(1) Dollar limitation on amount of credit

(A) In general

In the case of a taxable year beginning after 2001, each of the $1,000 amounts under subsection (b)(1) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ''calendar year 2000'' for ''calendar year 1992'' in subparagraph (B) thereof.

(B) Rounding

If any amount as adjusted under subparagraph (A) is not a multiple of $100, such amount shall be rounded to the next lowest multiple of $100.

(2) Income limits

(A) In general

In the case of a taxable year beginning after 2001, the $40,000 and $80,000 amounts in subsection (d)(2) shall each be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ''calendar year 2000'' for ''calendar year 1992'' in subparagraph (B) thereof.

(B) Rounding

If any amount as adjusted under subparagraph (A) is not a multiple of $1,000, such amount shall be rounded to the next lowest multiple of $1,000.

(i) American opportunity tax credit

In the case of any taxable year beginning in 2009, 2010, 2011, or 2012—

(1) Increase in credit

The Hope Scholarship Credit shall be an amount equal to the sum of—

(A) 100 percent of so much of the qualified tuition and related expenses paid by the taxpayer during the taxable year (for education furnished to the eligible student during any academic period beginning in such taxable year) as does not exceed $2,000, plus

(B) 25 percent of such expenses so paid as exceeds $2,000 but does not exceed $4,000.

(2) Credit allowed for first 4 years of post-secondary education

Subparagraphs (A) and (C) of subsection (b)(2) shall be applied by substituting ''4'' for ''2''.

(3) Qualified tuition and related expenses to include required course materials

Subsection (f)(1)(A) shall be applied by substituting ''tuition, fees, and course materials'' for ''tuition and fees''.

(4) Increase in AGI limits for Hope Scholarship Credit

In lieu of applying subsection (d) with respect to the Hope Scholarship Credit, such credit (determined without regard to this paragraph) shall be reduced (but not below zero) by the amount which bears the same ratio to such credit (as so determined) as—

(A) the excess of—

(i) the taxpayer's modified adjusted gross income (as defined in subsection (d)(3)) for such taxable year, over

(ii) $80,000 ($160,000 in the case of a joint return), bears to

(B) $10,000 ($20,000 in the case of a joint return).

(5) Credit allowed against alternative minimum tax

In the case of a taxable year to which section 26(a)(2) does not apply, so much of the credit allowed under subsection (a) as is attributable to the Hope Scholarship Credit shall not exceed the excess of—

(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

(B) the sum of the credits allowable under this subpart (other than this subsection and sections 25D and 30D) and section 27 for the taxable year.

Any reference in this section or section 24, 25, 26, 25B, 904, or 1400C to a credit allowable under this subsection shall be treated as a reference to so much of the credit allowable under subsection (a) as is attributable to the Hope Scholarship Credit.

(6) Portion of credit made refundable

40 percent of so much of the credit allowed under subsection (a) as is attributable to the Hope Scholarship Credit (determined after application of paragraph (4) and without regard to this paragraph and section 26(a)(2) or paragraph (5), as the case may be) shall be treated as a credit allowable under subpart C (and not allowed under subsection (a)). The preceding sentence shall not apply to any taxpayer for any taxable year if such taxpayer is a child to whom subsection (g) of section 1 applies for such taxable year.

(7) Coordination with midwestern disaster area benefits

In the case of a taxpayer with respect to whom section 702(a)(1)(B) of the Heartland Dis-

aster Tax Relief Act of 2008 applies for any taxable year, such taxpayer may elect to waive the application of this subsection to such taxpayer for such taxable year.

(j) Regulations

The Secretary may prescribe such regulations as may be necessary or appropriate to carry out this section, including regulations providing for a recapture of the credit allowed under this section in cases where there is a refund in a subsequent taxable year of any amount which was taken into account in determining the amount of such credit.

(Added Pub. L. 105–34, title II, § 201(a), Aug. 5, 1997, 111 Stat. 799; amended Pub. L. 107–16, title IV, § 401(g)(2)(A), June 7, 2001, 115 Stat. 59; Pub. L. 111–5, div. B, title I, § 1004(a), Feb. 17, 2009, 123 Stat. 313; Pub. L. 111–148, title X, § 10909(b)(2)(C), (c), Mar. 23, 2010, 124 Stat. 1023; Pub. L. 111–312, title I, §§ 101(b)(1), 103(a)(1), Dec. 17, 2010, 124 Stat. 3298, 3299.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENT OF SECTION

For termination of amendment by section 10909(c) of Pub. L. 111–148, see Effective and Termination Dates of 2010 Amendment note below.

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsecs. (b)(3)(A) and (f)(2)(A), is the date of enactment of Pub. L. 105–34 which was approved Aug. 5, 1997.

The Higher Education Act of 1965, referred to in subsec. (f)(2)(B), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Title IV of the Act is classified generally to subchapter IV (§ 1070 et seq.) of chapter 28 of Title 20, Education, and part C (§ 2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

Section 702(a)(1)(B) of the Heartland Disaster Tax Relief Act of 2008, referred to in subsec. (i)(7), is section 702(a)(1)(B) of Pub. L. 110–343, div. C, title VII, Oct. 3, 2008, 122 Stat. 3912, which is not classified to the Code.

AMENDMENTS

2010—Subsec. (i). Pub. L. 111–312, § 103(a)(1), substituted ‘‘, 2010, 2011, or 2012’’ for ‘‘or 2010’’ in introductory provisions.

Subsec. (i)(5)(B). Pub. L. 111–148, § 10909(b)(2)(C), (c), as amended by Pub. L. 111–312, § 101(b)(1), temporarily substituted ‘‘25D’’ for ‘‘23, 25D,’’. See Effective and Termination Dates of 2010 Amendment note below.

2009—Subsecs. (i), (j). Pub. L. 111–5 added subsec. (i) and redesignated former subsec. (i) as (j).

2001—Subsec. (e). Pub. L. 107–16, §§ 401(g)(2)(A), 901, temporarily amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows:

‘‘(1) IN GENERAL.—No credit shall be allowed under subsection (a) for a taxable year with respect to the qualified tuition and related expenses of an individual unless the taxpayer elects to have this section apply with respect to such individual for such year.

‘‘(2) COORDINATION WITH EXCLUSIONS.—An election under this subsection shall not take effect with respect to an individual for any taxable year if any portion of any distribution during such taxable year from an education individual retirement account is excluded from gross income under section 530(d)(2).’’

See Effective and Termination Dates of 2001 Amendment note below.

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Amendment by section 103(a)(1) of Pub. L. 111–312 applicable to taxable years beginning after Dec. 31, 2010, see section 103(d) of Pub. L. 111–312, set out as a note under section 24 of this title.

Amendment by Pub. L. 111–148 terminated applicable to taxable years beginning after Dec. 31, 2011, and section is amended to read as if such amendment had never been enacted, see section 10909(c) of Pub. L. 111–148, set out as a note under section 1 of this title.

Amendment by Pub. L. 111–148 applicable to taxable years beginning after Dec. 31, 2009, see section 10909(d) of Pub. L. 111–148, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–5 applicable to taxable years beginning after Dec. 31, 2008, see section 1004(d) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Pub. L. 107–16, title IV, § 401(h), June 7, 2001, 115 Stat. 60, provided that: ‘‘The amendments made by this section [amending this section and sections 135, 530, and 4973 of this title] shall apply to taxable years beginning after December 31, 2001.’’

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section 201(f) of Pub. L. 105–34 provided that:

‘‘(1) IN GENERAL.—The amendments made by this section [enacting this section and section 6050S of this title and amending sections 135, 6213, and 6724 of this title] shall apply to expenses paid after December 31, 1997 (in taxable years ending after such date), for education furnished in academic periods beginning after such date.

‘‘(2) LIFETIME LEARNING CREDIT.—Section 25A(a)(2) of the Internal Revenue Code of 1986 shall apply to expenses paid after June 30, 1998 (in taxable years ending after such date), for education furnished in academic periods beginning after such dates.’’

TREATMENT OF POSSESSIONS

Pub. L. 111–5, div. B, title I, § 1004(c), Feb. 17, 2009, 123 Stat. 314, as amended by Pub. L. 111–312, title I, § 103(a)(2), Dec. 17, 2010, 124 Stat. 3299, provided that:

‘‘(1) PAYMENTS TO POSSESSIONS.—

‘‘(A) MIRROR CODE POSSESSION.—The Secretary of the Treasury shall pay to each possession of the United States with a mirror code tax system amounts equal to the loss to that possession by reason of the application of section 25A(i)(6) of the Internal Revenue Code of 1986 (as added by this section) with respect to taxable years beginning in 2009, 2010, 2011, and 2012. Such amounts shall be determined by the Secretary of the Treasury based on information provided by the government of the respective possession.

‘‘(B) OTHER POSSESSIONS.—The Secretary of the Treasury shall pay to each possession of the United States which does not have a mirror code tax system amounts estimated by the Secretary of the Treasury

as being equal to the aggregate benefits that would have been provided to residents of such possession by reason of the application of section 25A(i)(6) of such Code (as so added) for taxable years beginning in 2009, 2010, 2011, and 2012 if a mirror code tax system had been in effect in such possession. The preceding sentence shall not apply with respect to any possession of the United States unless such possession has a plan, which has been approved by the Secretary of the Treasury, under which such possession will promptly distribute such payments to the residents of such possession.

''(2) COORDINATION WITH CREDIT ALLOWED AGAINST UNITED STATES INCOME TAXES.—Section 25A(i)(6) of such Code (as added by this section) shall not apply to a bona fide resident of any possession of the United States.

''(3) DEFINITIONS AND SPECIAL RULES.—

''(A) POSSESSION OF THE UNITED STATES.—For purposes of this subsection, the term 'possession of the United States' includes the Commonwealth of Puerto Rico and the Commonwealth of the Northern Mariana Islands.

''(B) MIRROR CODE TAX SYSTEM.—For purposes of this subsection, the term 'mirror code tax system' means, with respect to any possession of the United States, the income tax system of such possession if the income tax liability of the residents of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States.

''(C) TREATMENT OF PAYMENTS.—For purposes of section 1324(b)(2) of title 31, United States Code, the payments under this subsection shall be treated in the same manner as a refund due from the credit allowed under section 25A of the Internal Revenue Code of 1986 by reason of subsection (i)(6) of such section (as added by this section).''

§ 25B. Elective deferrals and IRA contributions by certain individuals

(a) Allowance of credit

In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the applicable percentage of so much of the qualified retirement savings contributions of the eligible individual for the taxable year as do not exceed $2,000.

(b) Applicable percentage

For purposes of this section—

(1) Joint returns

In the case of a joint return, the applicable percentage is—

(A) if the adjusted gross income of the taxpayer is not over $30,000, 50 percent,

(B) if the adjusted gross income of the taxpayer is over $30,000 but not over $32,500, 20 percent,

(C) if the adjusted gross income of the taxpayer is over $32,500 but not over $50,000, 10 percent, and

(D) if the adjusted gross income of the taxpayer is over $50,000, zero percent.

(2) Other returns

In the case of—

(A) a head of household, the applicable percentage shall be determined under paragraph (1) except that such paragraph shall be applied by substituting for each dollar amount therein (as adjusted under paragraph (3)) a dollar amount equal to 75 percent of such dollar amount, and

(B) any taxpayer not described in paragraph (1) or subparagraph (A), the applicable percentage shall be determined under paragraph (1) except that such paragraph shall be applied by substituting for each dollar amount therein (as adjusted under paragraph (3)) a dollar amount equal to 50 percent of such dollar amount.

(3) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 2006, each of the dollar amounts in paragraph (1) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ''calendar year 2005'' for ''calendar year 1992'' in subparagraph (B) thereof.

Any increase determined under the preceding sentence shall be rounded to the nearest multiple of $500.

(c) Eligible individual

For purposes of this section—

(1) In general

The term ''eligible individual'' means any individual if such individual has attained the age of 18 as of the close of the taxable year.

(2) Dependents and full-time students not eligible

The term ''eligible individual'' shall not include—

(A) any individual with respect to whom a deduction under section 151 is allowed to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins, and

(B) any individual who is a student (as defined in section 152(f)(2)).

(d) Qualified retirement savings contributions

For purposes of this section—

(1) In general

The term ''qualified retirement savings contributions'' means, with respect to any taxable year, the sum of—

(A) the amount of the qualified retirement contributions (as defined in section 219(e)) made by the eligible individual,

(B) the amount of—

(i) any elective deferrals (as defined in section 402(g)(3)) of such individual, and

(ii) any elective deferral of compensation by such individual under an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A), and

(C) the amount of voluntary employee contributions by such individual to any qualified retirement plan (as defined in section 4974(c)).

(2) Reduction for certain distributions

(A) In general

The qualified retirement savings contributions determined under paragraph (1) shall

be reduced (but not below zero) by the aggregate distributions received by the individual during the testing period from any entity of a type to which contributions under paragraph (1) may be made. The preceding sentence shall not apply to the portion of any distribution which is not includible in gross income by reason of a trustee-to-trustee transfer or a rollover distribution.

(B) Testing period

For purposes of subparagraph (A), the testing period, with respect to a taxable year, is the period which includes—

(i) such taxable year,

(ii) the 2 preceding taxable years, and

(iii) the period after such taxable year and before the due date (including extensions) for filing the return of tax for such taxable year.

(C) Excepted distributions

There shall not be taken into account under subparagraph (A)—

(i) any distribution referred to in section 72(p), 401(k)(8), 401(m)(6), 402(g)(2), 404(k), or 408(d)(4), and

(ii) any distribution to which section 408A(d)(3) applies.

(D) Treatment of distributions received by spouse of individual

For purposes of determining distributions received by an individual under subparagraph (A) for any taxable year, any distribution received by the spouse of such individual shall be treated as received by such individual if such individual and spouse file a joint return for such taxable year and for the taxable year during which the spouse receives the distribution.

(e) Adjusted gross income

For purposes of this section, adjusted gross income shall be determined without regard to sections 911, 931, and 933.

(f) Investment in the contract

Notwithstanding any other provision of law, a qualified retirement savings contribution shall not fail to be included in determining the investment in the contract for purposes of section 72 by reason of the credit under this section.

(g) Limitation based on amount of tax

In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

(1) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

(2) the sum of the credits allowable under this subpart (other than this section and sections 25A(i), 25D, 30, 30B, and 30D) and section 27 for the taxable year.

(Added and amended Pub. L. 107–16, title VI, §618(a), (b)(1), June 7, 2001, 115 Stat. 106, 108; Pub. L. 107–147, title IV, §§411(m), 417(1), Mar. 9, 2002, 116 Stat. 48, 56; Pub. L. 108–311, title II, §207(4), Oct. 4, 2004, 118 Stat. 1177; Pub. L. 109–135, title IV, §402(i)(3)(D), Dec. 21, 2005, 119 Stat. 2614; Pub. L. 109–280, title VIII, §§812, 833(a), Aug. 17, 2006, 120 Stat. 997, 1003; Pub. L. 110–343, div. B, title I, §106(e)(2)(C), title II, §205(d)(1)(C), Oct. 3, 2008, 122 Stat. 3817, 3838; Pub. L. 111–5, div. B, title I, §§1004(b)(4), 1142(b)(1)(C), 1144(b)(1)(C), Feb. 17, 2009, 123 Stat. 314, 330, 332; Pub. L. 111–148, title X, §10909(b)(2)(D), (c), Mar. 23, 2010, 124 Stat. 1023; Pub. L. 111–312, title I, §101(b)(1), Dec. 17, 2010, 124 Stat. 3298.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title and Revenue Notices listed in a table under section 401 of this title.

AMENDMENT OF SECTION

For termination of amendment by section 10909(c) of Pub. L. 111–148, see Effective and Termination Dates of 2010 Amendment note below.

For termination of amendment by section 402(i)(3)(H) of Pub. L. 109–135, see Effective and Termination Dates of 2005 Amendment note below.

AMENDMENTS

2010—Subsec. (g)(2). Pub. L. 111–148, §10909(b)(2)(D), (c), as amended by Pub. L. 111–312, temporarily struck out ''23,'' before ''25A(i),''. See Effective and Termination Dates of 2010 Amendment note below.

2009—Subsec. (g)(2). Pub. L. 111–5, §1144(b)(1)(C), inserted ''30B,'' after ''30,''.

Pub. L. 111–5, §1142(b)(1)(C), inserted ''30,'' after ''25D,''.

Pub. L. 111–5, §1004(b)(4), inserted ''25A(i),'' after ''23,''.

2008—Subsec. (g)(2). Pub. L. 110–343, §205(d)(1)(C), substituted '', 25D, and 30D'' for ''and 25D''.

Pub. L. 110–343, §106(e)(2)(C), substituted ''sections 23 and 25D'' for ''section 23''.

2006—Subsec. (b). Pub. L. 109–280, §833(a), reenacted heading without change and amended text of subsec. (b) generally, substituting provisions consisting of introductory provisions and pars. (1) to (3) for former provisions consisting of introductory provisions and a table of applicable percentages for amounts of adjusted gross income for a joint return, a head of household, and all other cases.

Subsec. (h). Pub. L. 109–280, §812, struck out heading and text of subsec. (h). Text read as follows: ''This section shall not apply to taxable years beginning after December 31, 2006.''

2005—Subsec. (g). Pub. L. 109–135, §402(i)(3)(D), (H), temporarily substituted ''In the case of a taxable year to which section 26(a)(2) does not apply, the credit'' for ''The credit'' in introductory provisions. See Effective and Termination Dates of 2005 Amendment note below.

2004—Subsec. (c)(2)(B). Pub. L. 108–311 substituted ''152(f)(2)'' for ''151(c)(4)''.

2002—Subsec. (d)(2)(A). Pub. L. 107–147, §411(m), reenacted heading without change and amended text of subpar. (A) generally. Prior to amendment, text read as follows: ''The qualified retirement savings contributions determined under paragraph (1) shall be reduced (but not below zero) by the sum of—

''(i) any distribution from a qualified retirement plan (as defined in section 4974(c)), or from an eligible deferred compensation plan (as defined in section 457(b)), received by the individual during the testing period which is includible in gross income, and

''(ii) any distribution from a Roth IRA or a Roth account received by the individual during the testing period which is not a qualified rollover contribution (as defined in section 408A(e)) to a Roth IRA or a rollover under section 402(c)(8)(B) to a Roth account.''

Subsecs. (g), (h). Pub. L. 107–147, §417(1), redesignated subsec. (g), relating to termination, as (h).

2001—Subsec. (g). Pub. L. 107–16, § 618(b)(1), added subsec. (g) relating to limitation based on amount of tax.

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Amendment by Pub. L. 111–148 terminated applicable to taxable years beginning after Dec. 31, 2011, and section is amended to read as if such amendment had never been enacted, see section 10909(c) of Pub. L. 111–148, set out as a note under section 1 of this title.

Amendment by Pub. L. 111–148 applicable to taxable years beginning after Dec. 31, 2009, see section 10909(d) of Pub. L. 111–148, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by section 1004(b)(4) of Pub. L. 111–5 applicable to taxable years beginning after Dec. 31, 2008, see section 1004(d) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Amendment by section 1142(b)(1)(C) of Pub. L. 111–5 applicable to vehicles acquired after Feb. 17, 2009, see section 1142(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Amendment by section 1144(b)(1)(C) of Pub. L. 111–5 applicable to taxable years beginning after Dec. 31, 2008, see section 1144(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 106(e)(2)(C) of Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2007, see section 106(f)(1) of Pub. L. 110–343, set out as an Effective and Termination Dates of 2008 Amendment note under section 36C of this title.

Amendment by section 205(d)(1)(C) of Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2008, see section 205(e) of Pub. L. 110–343, set out as an Effective and Termination Dates of 2008 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, § 833(d), Aug. 17, 2006, 120 Stat. 1004, provided that: ''The amendments made by this section [amending this section and sections 219 and 408A of this title] shall apply to taxable years beginning after 2006.''

EFFECTIVE AND TERMINATION DATES OF 2005 AMENDMENT

Amendment by section 402(i)(3)(D) of Pub. L. 109–135 subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, § 901, in the same manner as the provisions of such Act to which such amendment relates, see section 402(i)(3)(H) of Pub. L. 109–135, set out as a note under section 36C of this title.

Amendment by Pub. L. 109–135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which it relates and applicable to taxable years beginning after Dec. 31, 2005, see section 402(m) of Pub. L. 109–135, set out as a note under section 36C of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title IV, § 411(x), Mar. 9, 2002, 116 Stat. 53, provided that: ''Except as provided in subsection (c) [amending sections 23 and 137 of this title and enacting provisions set out as a note under section 23 of this title], the amendments made by this section [amending this section, sections 23, 24, 38, 45E, 45F, 63, 137, 401 to 404, 408, 409, 412, 414 to 417, 457, 530, 2016, 2101, 2511, 4980F, and 6428 of this title, sections 1003, 1054, 1055, 1082, and 1104 of Title 29, Labor, and provisions set out as notes under sections 38, 415, and 4980F of this title] shall take effect as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16] to which they relate.''

EFFECTIVE DATE

Amendment by section 618(b)(1) of Pub. L. 107–16 inapplicable to taxable years beginning during 2004 or 2005, see section 312(b)(2) of Pub. L. 108–311, set out as an Effective and Termination Dates of 2001 Amendment note under section 36C of this title.

Amendment by section 618(b)(1) of Pub. L. 107–16 inapplicable to taxable years beginning during 2002 and 2003, see section 601(b)(2) of Pub. L. 107–147, set out as an Effective and Termination Dates of 2001 Amendment note under section 36C of this title.

Amendment by section 618(b)(1) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 618(d) of Pub. L. 107–16, set out as an Effective and Termination Dates of 2001 Amendment note under section 24 of this title.

§ 25C. Nonbusiness energy property

(a) Allowance of credit

In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

(1) 10 percent of the amount paid or incurred by the taxpayer for qualified energy efficiency improvements installed during such taxable year, and

(2) the amount of the residential energy property expenditures paid or incurred by the taxpayer during such taxable year.

(b) Limitations

(1) Lifetime limitation

The credit allowed under this section with respect to any taxpayer for any taxable year shall not exceed the excess (if any) of $500 over the aggregate credits allowed under this section with respect to such taxpayer for all prior taxable years ending after December 31, 2005.

(2) Windows

In the case of amounts paid or incurred for components described in subsection (c)(2)(B) by any taxpayer for any taxable year, the credit allowed under this section with respect to such amounts for such year shall not exceed the excess (if any) of $200 over the aggregate credits allowed under this section with respect to such amounts for all prior taxable years ending after December 31, 2005.

(3) Limitation on residential energy property expenditures

The amount of the credit allowed under this section by reason of subsection (a)(2) shall not exceed—

(A) $50 for any advanced main air circulating fan,

(B) $150 for any qualified natural gas, propane, or oil furnace or hot water boiler, and

(C) $300 for any item of energy-efficient building property.

(c) Qualified energy efficiency improvements

For purposes of this section—

(1) In general

The term ''qualified energy efficiency improvements'' means any energy efficient building envelope component which meets the prescriptive criteria for such component established by the 2009 International Energy Conservation Code, as such Code (including supplements) is in effect on the date of the enactment of the American Recovery and Reinvestment Tax Act of 2009 (or, in the case of an exterior window, a skylight, an exterior door, a metal roof with appropriate pigmented coatings, or an asphalt roof with appropriate cooling granules, which meet the Energy Star program requirements), if—

(A) such component is installed in or on a dwelling unit located in the United States and owned and used by the taxpayer as the taxpayer's principal residence (within the meaning of section 121),

(B) the original use of such component commences with the taxpayer, and

(C) such component reasonably can be expected to remain in use for at least 5 years.

(2) Building envelope component

The term ''building envelope component'' means—

(A) any insulation material or system which is specifically and primarily designed to reduce the heat loss or gain of a dwelling unit when installed in or on such dwelling unit,

(B) exterior windows (including skylights),

(C) exterior doors, and

(D) any metal roof or asphalt roof installed on a dwelling unit, but only if such roof has appropriate pigmented coatings or cooling granules which are specifically and primarily designed to reduce the heat gain of such dwelling unit.

(3) Manufactured homes included

The term ''dwelling unit'' includes a manufactured home which conforms to Federal Manufactured Home Construction and Safety Standards (part 3280 of title 24, Code of Federal Regulations).

(d) Residential energy property expenditures

For purposes of this section—

(1) In general

The term ''residential energy property expenditures'' means expenditures made by the taxpayer for qualified energy property which is—

(A) installed on or in connection with a dwelling unit located in the United States and owned and used by the taxpayer as the taxpayer's principal residence (within the meaning of section 121), and

(B) originally placed in service by the taxpayer.

Such term includes expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the property.

(2) Qualified energy property

(A) In general

The term ''qualified energy property'' means—

(i) energy-efficient building property,

(ii) a qualified natural gas, propane, or oil furnace or hot water boiler, or

(iii) an advanced main air circulating fan.

(B) Performance and quality standards

Property described under subparagraph (A) shall meet the performance and quality standards, and the certification requirements (if any), which—

(i) have been prescribed by the Secretary by regulations (after consultation with the Secretary of Energy or the Administrator of the Environmental Protection Agency, as appropriate), and

(ii) are in effect at the time of the acquisition of the property, or at the time of the completion of the construction, reconstruction, or erection of the property, as the case may be.

(C) Requirements and standards for air conditioners and heat pumps

The standards and requirements prescribed by the Secretary under subparagraph (B) with respect to the energy efficiency ratio (EER) for central air conditioners and electric heat pumps—

(i) shall require measurements to be based on published data which is tested by manufacturers at 95 degrees Fahrenheit, and

(ii) may be based on the certified data of the Air Conditioning and Refrigeration Institute that are prepared in partnership with the Consortium for Energy Efficiency.

(3) Energy-efficient building property

The term ''energy-efficient building property'' means—

(A) an electric heat pump water heater which yields an energy factor of at least 2.0 in the standard Department of Energy test procedure,

(B) an electric heat pump which achieves the highest efficiency tier established by the Consortium for Energy Efficiency, as in effect on January 1, 2009.[1]

(C) a central air conditioner which achieves the highest efficiency tier established by the Consortium for Energy Efficiency, as in effect on January 1, 2009,

(D) a natural gas, propane, or oil water heater which has either an energy factor of at least 0.82 or a thermal efficiency of at least 90 percent.[2]

(E) a stove which uses the burning of biomass fuel to heat a dwelling unit located in the United States and used as a residence by the taxpayer, or to heat water for use in such a dwelling unit, and which has a thermal efficiency rating of at least 75 percent.

(4) Qualified natural gas, propane, or oil furnace or hot water boiler

The term ''qualified natural gas, propane, or oil furnace or hot water boiler'' means a natu-

[1] So in original. The period probably should be a comma.

[2] So in original. The period probably should be '', and''.

ral gas, propane, or oil furnace or hot water boiler which achieves an annual fuel utilization efficiency rate of not less than 95.

(5) Advanced main air circulating fan

The term ''advanced main air circulating fan'' means a fan used in a natural gas, propane, or oil furnace and which has an annual electricity use of no more than 2 percent of the total annual energy use of the furnace (as determined in the standard Department of Energy test procedures).

(6) Biomass fuel

The term ''biomass fuel'' means any plant-derived fuel available on a renewable or recurring basis, including agricultural crops and trees, wood and wood waste and residues (including wood pellets), plants (including aquatic plants), grasses, residues, and fibers.

(e) Special rules

For purposes of this section—

(1) Application of rules

Rules similar to the rules under paragraphs (4), (5), (6), (7), and (8) of section 25D(e) shall apply.

(2) Joint ownership of energy items

(A) In general

Any expenditure otherwise qualifying as an expenditure under this section shall not be treated as failing to so qualify merely because such expenditure was made with respect to two or more dwelling units.

(B) Limits applied separately

In the case of any expenditure described in subparagraph (A), the amount of the credit allowable under subsection (a) shall (subject to paragraph (1)) be computed separately with respect to the amount of the expenditure made for each dwelling unit.

(3) Property financed by subsidized energy financing

For purposes of determining the amount of expenditures made by any individual with respect to any property, there shall not be taken into account expenditures which are made from subsidized energy financing (as defined in section 48(a)(4)(C)).

(f) Basis adjustments

For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

(g) Termination

This section shall not apply with respect to any property placed in service—

(1) after December 31, 2007, and before January 1, 2009, or

(2) after December 31, 2011..[3]

(Added Pub. L. 109–58, title XIII, § 1333(a), Aug. 8, 2005, 119 Stat. 1026; amended Pub. L. 109–135, title IV, § 412(b), Dec. 21, 2005, 119 Stat. 2636; Pub. L. 110–172, § 11(a)(2), Dec. 29, 2007, 121 Stat. 2484; Pub. L. 110–343, div. B, title III, § 302(a)–(e), Oct. 3, 2008, 122 Stat. 3844, 3845; Pub. L. 111–5, div. B, title I, §§ 1103(b)(2)(A), 1121(a)–(e), Feb. 17, 2009, 123 Stat. 320, 322–324; Pub. L. 111–312, title VII, § 710(a), (b), Dec. 17, 2010, 124 Stat. 3314.)

[3] So in original.

REFERENCES IN TEXT

The date of the enactment of the American Recovery and Reinvestment Tax Act of 2009, referred to in subsec. (c)(1), is the date of the enactment of div. B of Pub. L. 111–5, which was approved Feb. 17, 2009.

AMENDMENTS

2010—Subsecs. (a), (b). Pub. L. 111–312, § 710(b)(1), amended subsecs. (a) and (b) generally. Prior to amendment, subsecs. (a) and (b) read as follows:

''(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 30 percent of the sum of—

''(1) the amount paid or incurred by the taxpayer during such taxable year for qualified energy efficiency improvements, and

''(2) the amount of the residential energy property expenditures paid or incurred by the taxpayer during such taxable year.

''(b) LIMITATION.—The aggregate amount of the credits allowed under this section for taxable years beginning in 2009 and 2010 with respect to any taxpayer shall not exceed $1,500.''

Subsec. (c)(1). Pub. L. 111–312, § 710(b)(2)(D)(ii), inserted ''an exterior window, a skylight, an exterior door,'' after ''in the case of'' in introductory provisions.

Pub. L. 111–312, § 710(b)(2)(A), in introductory provisions, substituted ''2009 International Energy Conservation Code, as such Code (including supplements) is in effect on the date of the enactment of the American Recovery and Reinvestment Tax Act of 2009'' for ''2000 International Energy Conservation Code, as such Code (including supplements) is in effect on the date of the enactment of this section''.

Subsec. (c)(2)(A). Pub. L. 111–312, § 710(b)(2)(E), struck out ''and meets the prescriptive criteria for such material or system established by the 2009 International Energy Conservation Code, as such Code (including supplements) is in effect on the date of the enactment of the American Recovery and Reinvestment Tax Act of 2009'' after ''on such dwelling unit''.

Subsec. (c)(4). Pub. L. 111–312, § 710(b)(2)(D)(i), struck out par. (4). Text read as follows: ''Such term shall not include any component described in subparagraph (B) or (C) of paragraph (2) unless such component is equal to or below a U factor of 0.30 and SHGC of 0.30.''

Subsec. (d)(2)(A)(ii). Pub. L. 111–312, § 710(b)(2)(C)(ii), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''any qualified natural gas furnace, qualified propane furnace, qualified oil furnace, qualified natural gas hot water boiler, qualified propane hot water boiler, or qualified oil hot water boiler, or''.

Subsec. (d)(3)(E). Pub. L. 111–312, § 710(b)(2)(B), struck out '', as measured using a lower heating value'' after ''75 percent''.

Subsec. (d)(4). Pub. L. 111–312, § 710(b)(2)(C)(i), amended par. (4) generally. Prior to amendment, par. (4) defined the terms ''qualified natural gas furnace'', ''qualified natural gas hot water boiler'', ''qualified propane furnace'', ''qualified propane hot water boiler'', ''qualified oil furnace'', and ''qualified oil hot water boiler''.

Subsec. (e)(3). Pub. L. 111–312, § 710(b)(3), added par. (3).

Subsec. (g)(2). Pub. L. 111–312, § 710(a), substituted ''2011'' for ''2010''.

2009—Subsecs. (a), (b). Pub. L. 111–5, § 1121(a), added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which related to credit equal to the sum of 10 percent of the amount paid for qualified energy effi-

ciency improvements and the amount of energy property expenditures and provided limits on credits and expenditures.

Subsec. (c)(2)(A). Pub. L. 111–5, §1121(d)(2), inserted ''and meets the prescriptive criteria for such material or system established by the 2009 International Energy Conservation Code, as such Code (including supplements) is in effect on the date of the enactment of the American Recovery and Reinvestment Tax Act of 2009'' after ''such dwelling unit''.

Subsec. (c)(4). Pub. L. 111–5, §1121(d)(1), added par. (4).

Subsec. (d)(2)(A)(ii). Pub. L. 111–5, §1121(c)(2), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''a qualified natural gas, propane, or oil furnace or hot water boiler, or''.

Subsec. (d)(3)(B). Pub. L. 111–5, §1121(b)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''an electric heat pump which has a heating seasonal performance factor (HSPF) of at least 9, a seasonal energy efficiency ratio (SEER) of at least 15, and an energy efficiency ratio (EER) of at least 13,''.

Subsec. (d)(3)(C). Pub. L. 111–5, §1121(b)(2), substituted ''2009'' for ''2006''.

Subsec. (d)(3)(D). Pub. L. 111–5, §1121(b)(3), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''a natural gas, propane, or oil water heater which has an energy factor of at least 0.80 or a thermal efficiency of at least 90 percent, and''.

Subsec. (d)(3)(E). Pub. L. 111–5, §1121(b)(4), inserted '', as measured using a lower heating value'' after ''75 percent''.

Subsec. (d)(4). Pub. L. 111–5, §1121(c)(1), amended par. (4) generally. Prior to amendment, text read as follows: ''The term 'qualified natural gas, propane, or oil furnace or hot water boiler' means a natural gas, propane, or oil furnace or hot water boiler which achieves an annual fuel utilization efficiency rate of not less than 95.''

Subsec. (e)(1). Pub. L. 111–5, §1103(b)(2)(A), substituted ''and (8)'' for ''(8), and (9)''.

Subsec. (g)(2). Pub. L. 111–5, §1121(e), substituted ''December 31, 2010'' for ''December 31, 2009''.

2008—Subsec. (c)(1). Pub. L. 110–343, §302(e)(1), in introductory provisions, inserted '', or an asphalt roof with appropriate cooling granules,'' before ''which meet the Energy Star program requirements''.

Subsec. (c)(2)(D). Pub. L. 110–343, §302(e)(2), inserted ''or asphalt roof'' after ''metal roof'' and ''or cooling granules'' after ''pigmented coatings''.

Subsec. (d)(2)(C). Pub. L. 110–343, §302(d)(2), amended heading and text of subpar. (C) generally. Prior to amendment, subpar. (C) related to requirements for standards for central air conditioners, electric heat pumps, and geothermal heat pumps.

Subsec. (d)(3)(C), (D). Pub. L. 110–343, §302(d)(1), redesignated subpars. (D) and (E) as (C) and (D), respectively, and struck out former subpar. (C) which read as follows: ''a geothermal heat pump which—

''(i) in the case of a closed loop product, has an energy efficiency ratio (EER) of at least 14.1 and a heating coefficient of performance (COP) of at least 3.3,

''(ii) in the case of an open loop product, has an energy efficiency ratio (EER) of at least 16.2 and a heating coefficient of performance (COP) of at least 3.6, and

''(iii) in the case of a direct expansion (DX) product, has an energy efficiency ratio (EER) of at least 15 and a heating coefficient of performance (COP) of at least 3.5,''.

Subsec. (d)(3)(E). Pub. L. 110–343, §302(d)(1), redesignated subpar. (F) as (E). Former subpar. (E) redesignated (D).

Pub. L. 110–343, §302(c), inserted ''or a thermal efficiency of at least 90 percent'' after ''0.80''.

Subsec. (d)(3)(F). Pub. L. 110–343, §302(d)(1), redesignated subpar. (F) as (E).

Pub. L. 110–343, §302(b)(1), added subpar. (F).

Subsec. (d)(6). Pub. L. 110–343, §302(b)(2), added par. (6).

Subsec. (g). Pub. L. 110–343, §302(a), substituted ''placed in service—'' for ''placed in service after December 31, 2007'' and added pars. (1) and (2).

2007—Subsec. (c)(3). Pub. L. 110–172 substituted ''part 3280'' for ''section 3280''.

2005—Subsec. (b)(2). Pub. L. 109–135 substituted ''subsection (c)(2)(B)'' for ''subsection (c)(3)(B)''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §710(c), Dec. 17, 2010, 124 Stat. 3315, provided that: ''The amendments made by this section [amending this section] shall apply to property placed in service after December 31, 2010.''

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1103(c), Feb. 17, 2009, 123 Stat. 321, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by this section [amending this section and sections 25D and 48 to 48B of this title] shall apply to periods after December 31, 2008, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990 [Nov. 5, 1990]).

''(2) CONFORMING AMENDMENTS.—The amendments made by subparagraphs (A) and (B) of subsection (b)(2) [amending this section and section 25D of this title] shall apply to taxable years beginning after December 31, 2008.''

Pub. L. 111–5, div. B, title I, §1121(f), Feb. 17, 2009, 123 Stat. 324, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008.

''(2) EFFICIENCY STANDARDS.—The amendments made by paragraphs (1), (2), and (3) of subsection (b) and subsections (c) and (d) shall apply to property placed in service after the date of the enactment of this Act [Feb. 17, 2009].''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title III, §302(f), Oct. 3, 2008, 122 Stat. 3845, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made [by] this section [amending this section] shall apply to expenditures made after December 31, 2008.

''(2) MODIFICATION OF QUALIFIED ENERGY EFFICIENCY IMPROVEMENTS.—The amendments made by subsection (e) [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Oct. 3, 2008].''

EFFECTIVE DATE

Pub. L. 109–58, title XIII, §1333(c), Aug. 8, 2005, 119 Stat. 1030, provided that: ''The amendments made by this section [enacting this section and amending section 1016 of this title] shall apply to property placed in service after December 31, 2005.''

§ 25D. Residential energy efficient property

(a) Allowance of credit

In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

(1) 30 percent of the qualified solar electric property expenditures made by the taxpayer during such year,

(2) 30 percent of the qualified solar water heating property expenditures made by the taxpayer during such year,

(3) 30 percent of the qualified fuel cell property expenditures made by the taxpayer during such year,

(4) 30 percent of the qualified small wind energy property expenditures made by the taxpayer during such year, and

(5) 30 percent of the qualified geothermal heat pump property expenditures made by the taxpayer during such year.

(b) Limitations

(1) Maximum credit for fuel cells

In the case of any qualified fuel cell property expenditure, the credit allowed under subsection (a) (determined without regard to subsection (c)) for any taxable year shall not exceed $500 with respect to each half kilowatt of capacity of the qualified fuel cell property (as defined in section 48(c)(1)) to which such expenditure relates.

(2) Certification of solar water heating property

No credit shall be allowed under this section for an item of property described in subsection (d)(1) unless such property is certified for performance by the non-profit Solar Rating Certification Corporation or a comparable entity endorsed by the government of the State in which such property is installed.

(c) Limitation based on amount of tax; carryforward of unused credit

(1) Limitation based on amount of tax

In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

(B) the sum of the credits allowable under this subpart (other than this section) and section 27 for the taxable year.

(2) Carryforward of unused credit

(A) Rule for years in which all personal credits allowed against regular and alternative minimum tax

In the case of a taxable year to which section 26(a)(2) applies, if the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a)(2) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

(B) Rule for other years

In the case of a taxable year to which section 26(a)(2) does not apply, if the credit allowable under subsection (a) exceeds the limitation imposed by paragraph (1) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

(d) Definitions

For purposes of this section—

(1) Qualified solar water heating property expenditure

The term ''qualified solar water heating property expenditure'' means an expenditure for property to heat water for use in a dwelling unit located in the United States and used as a residence by the taxpayer if at least half of the energy used by such property for such purpose is derived from the sun.

(2) Qualified solar electric property expenditure

The term ''qualified solar electric property expenditure'' means an expenditure for property which uses solar energy to generate electricity for use in a dwelling unit located in the United States and used as a residence by the taxpayer.

(3) Qualified fuel cell property expenditure

The term ''qualified fuel cell property expenditure'' means an expenditure for qualified fuel cell property (as defined in section 48(c)(1)) installed on or in connection with a dwelling unit located in the United States and used as a principal residence (within the meaning of section 121) by the taxpayer.

(4) Qualified small wind energy property expenditure

The term ''qualified small wind energy property expenditure'' means an expenditure for property which uses a wind turbine to generate electricity for use in connection with a dwelling unit located in the United States and used as a residence by the taxpayer.

(5) Qualified geothermal heat pump property expenditure

(A) In general

The term ''qualified geothermal heat pump property expenditure'' means an expenditure for qualified geothermal heat pump property installed on or in connection with a dwelling unit located in the United States and used as a residence by the taxpayer.

(B) Qualified geothermal heat pump property

The term ''qualified geothermal heat pump property'' means any equipment which—

(i) uses the ground or ground water as a thermal energy source to heat the dwelling unit referred to in subparagraph (A) or as a thermal energy sink to cool such dwelling unit, and

(ii) meets the requirements of the Energy Star program which are in effect at the time that the expenditure for such equipment is made.

(e) Special rules

For purposes of this section—

(1) Labor costs

Expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the property described in subsection (d) and for piping or wiring to interconnect such property to the dwelling unit shall be taken into account for purposes of this section.

(2) Solar panels

No expenditure relating to a solar panel or other property installed as a roof (or portion thereof) shall fail to be treated as property described in paragraph (1) or (2) of subsection (d) solely because it constitutes a structural com-

ponent of the structure on which it is installed.

(3) Swimming pools, etc., used as storage medium

Expenditures which are properly allocable to a swimming pool, hot tub, or any other energy storage medium which has a function other than the function of such storage shall not be taken into account for purposes of this section.

(4) Fuel cell expenditure limitations in case of joint occupancy

In the case of any dwelling unit with respect to which qualified fuel cell property expenditures are made and which is jointly occupied and used during any calendar year as a residence by two or more individuals, the following rules shall apply:

(A) Maximum expenditures for fuel cells

The maximum amount of such expenditures which may be taken into account under subsection (a) by all such individuals with respect to such dwelling unit during such calendar year shall be $1,667 in the case of each half kilowatt of capacity of qualified fuel cell property (as defined in section 48(c)(1)) with respect to which such expenditures relate.

(B) Allocation of expenditures

The expenditures allocated to any individual for the taxable year in which such calendar year ends shall be an amount equal to the lesser of—

(i) the amount of expenditures made by such individual with respect to such dwelling during such calendar year, or

(ii) the maximum amount of such expenditures set forth in subparagraph (A) multiplied by a fraction—

(I) the numerator of which is the amount of such expenditures with respect to such dwelling made by such individual during such calendar year, and

(II) the denominator of which is the total expenditures made by all such individuals with respect to such dwelling during such calendar year.

(5) Tenant-stockholder in cooperative housing corporation

In the case of an individual who is a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), such individual shall be treated as having made his tenant-stockholder's proportionate share (as defined in section 216(b)(3)) of any expenditures of such corporation.

(6) Condominiums

(A) In general

In the case of an individual who is a member of a condominium management association with respect to a condominium which the individual owns, such individual shall be treated as having made the individual's proportionate share of any expenditures of such association.

(B) Condominium management association

For purposes of this paragraph, the term ''condominium management association'' means an organization which meets the requirements of paragraph (1) of section 528(c) (other than subparagraph (E) thereof) with respect to a condominium project substantially all of the units of which are used as residences.

(7) Allocation in certain cases

If less than 80 percent of the use of an item is for nonbusiness purposes, only that portion of the expenditures for such item which is properly allocable to use for nonbusiness purposes shall be taken into account.

(8) When expenditure made; amount of expenditure

(A) In general

Except as provided in subparagraph (B), an expenditure with respect to an item shall be treated as made when the original installation of the item is completed.

(B) Expenditures part of building construction

In the case of an expenditure in connection with the construction or reconstruction of a structure, such expenditure shall be treated as made when the original use of the constructed or reconstructed structure by the taxpayer begins.

(f) Basis adjustments

For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

(g) Termination

The credit allowed under this section shall not apply to property placed in service after December 31, 2016.

(Added Pub. L. 109–58, title XIII, §1335(a), Aug. 8, 2005, 119 Stat. 1033; amended Pub. L. 109–135, title IV, §402(i)(1), (2), (3)(E), Dec. 21, 2005, 119 Stat. 2612, 2614; Pub. L. 109–432, div. A, title II, §206, Dec. 20, 2006, 120 Stat. 2945; Pub. L. 110–343, div. B, title I, §106(a)–(c)(3)(A), (c)(4)–(e)(1), Oct. 3, 2008, 122 Stat. 3814–3816; Pub. L. 111–5, div. B, title I, §§1103(b)(2)(B), 1122(a), Feb. 17, 2009, 123 Stat. 320, 324.)

AMENDMENT OF SECTION

For termination of amendment by section 402(i)(3)(H) of Pub. L. 109–135, see Effective and Termination Dates of 2005 Amendment note below.

AMENDMENTS

2009—Subsec. (b)(1). Pub. L. 111–5, §1122(a)(1), amended par. (1) generally. Prior to amendment, par. (1) related to maximum credit with respect to qualified solar water heating property expenditures, qualified fuel cell property, qualified small wind energy property expenditures, and qualified geothermal heat pump property expenditures.

Subsec. (e)(4). Pub. L. 111–5, §1122(a)(2)(A), added par. heading and introductory provisions and struck out former heading and introductory provisions. Former introductory provisions read as follows: ''In the case of any dwelling unit which is jointly occupied and used

during any calendar year as a residence by two or more individuals the following rules shall apply:''.

Subsec. (e)(4)(A). Pub. L. 111–5, §1122(a)(2)(A), added subpar. (A) and struck out former subpar. (A) which related to maximum amount of expenditures allowed for credit in jointly occupied dwelling units with respect to qualified solar water heating property expenditures, qualified fuel cell property, qualified small wind energy property expenditures, and qualified geothermal heat pump property expenditures.

Subsec. (e)(4)(C). Pub. L. 111–5, §1122(a)(2)(B), struck out subpar. (C) which read as follows: ''Subparagraphs (A) and (B) shall be applied separately with respect to expenditures described in paragraphs (1), (2), and (3) of subsection (d).''

Subsec. (e)(9). Pub. L. 111–5, §1103(b)(2)(B), struck out par. (9). Text read as follows: ''For purposes of determining the amount of expenditures made by any individual with respect to any dwelling unit, there shall not be taken into account expenditures which are made from subsidized energy financing (as defined in section 48(a)(4)(C)).''

2008—Subsec. (a)(4). Pub. L. 110–343, §106(c)(1), added par. (4).

Subsec. (a)(5). Pub. L. 110–343, §106(d)(1), added par. (5).

Subsec. (b)(1). Pub. L. 110–343, §106(b)(1), amended par. (1) as amended by Pub. L. 110–343, §106(c)(2) and (d)(2), by redesignating subpars. (B) to (E) as (A) to (D), respectively, and striking out former subpar. (A) which read as follows: ''$2,000 with respect to any qualified solar electric property expenditures,''.

Subsec. (b)(1)(D). Pub. L. 110–343, §106(c)(2), added subpar. (D).

Subsec. (b)(1)(E). Pub. L. 110–343, §106(d)(2), added subpar. (E).

Subsec. (c). Pub. L. 110–343, §106(e)(1), amended heading and text of subsec. (c) generally. Prior to amendment, subsec. (c) related to carryforward of unused credit.

Subsec. (d)(4). Pub. L. 110–343, §106(c)(3)(A), added par. (4).

Subsec. (d)(5). Pub. L. 110–343, §106(d)(3), added par. (5).

Subsec. (e)(4)(A). Pub. L. 110–343, §106(b)(2), amended subpar. (A) as amended by Pub. L. 110–343, §106(c)(4) and (d)(4), by redesignating cls. (ii) to (v) as (i) to (iv), respectively, and striking out former cl. (i) which read as follows: ''$6,667 in the case of any qualified solar electric property expenditures,''.

Subsec. (e)(4)(A)(iv). Pub. L. 110–343, §106(c)(4), added cl. (iv).

Subsec. (e)(4)(A)(v). Pub. L. 110–343, §106(d)(4), added cl. (v).

Subsec. (g). Pub. L. 110–343, §106(a), substituted ''December 31, 2016'' for ''December 31, 2008''.

2006—Subsecs. (a)(1), (b)(1)(A). Pub. L. 109–432, §206(b)(1), substituted ''solar electric property expenditures'' for ''photovoltaic property expenditures''.

Subsec. (d)(2). Pub. L. 109–432, §206(b)(2), substituted ''solar electric property expenditure'' for ''photovoltaic property expenditure'' in heading and text.

Subsec. (e)(4)(A)(i). Pub. L. 109–432, §206(b)(1), substituted ''solar electric property expenditures'' for ''photovoltaic property expenditures''.

Subsec. (g). Pub. L. 109–432, §206(a), substituted ''2008'' for ''2007''.

2005—Subsec. (b)(1). Pub. L. 109–135, §402(i)(1), inserted ''(determined without regard to subsection (c))'' after ''subsection (a)'' in introductory provisions.

Subsec. (c). Pub. L. 109–135, §402(i)(3)(E), (H), temporarily reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.'' See Effective and Termination Dates of 2005 Amendment note below.

Subsec. (e)(4)(A), (B). Pub. L. 109–135, §402(i)(2), amended subpars. (A) and (B) generally. Prior to amendment, subpars. (A) and (B) read as follows:

''(A) The amount of the credit allowable, under subsection (a) by reason of expenditures (as the case may be) made during such calendar year by any of such individuals with respect to such dwelling unit shall be determined by treating all of such individuals as 1 taxpayer whose taxable year is such calendar year.

''(B) There shall be allowable, with respect to such expenditures to each of such individuals, a credit under subsection (a) for the taxable year in which such calendar year ends in an amount which bears the same ratio to the amount determined under subparagraph (A) as the amount of such expenditures made by such individual during such calendar year bears to the aggregate of such expenditures made by all of such individuals during such calendar year.''

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by section 1103(b)(2)(B) of Pub. L. 111–5 applicable to taxable years beginning after Dec. 31, 2008, see section 1103(c)(2) of Pub. L. 111–5, set out as a note under section 25C of this title.

Pub. L. 111–5, div. B, title I, §1122(b), Feb. 17, 2009, 123 Stat. 324, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008.''

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2007, except that amendment by section 106(b) of Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2008, see section 106(f)(1), (2) of Pub. L. 110–343, set out as an Effective and Termination Dates of 2008 Amendment note under section 36C of this title.

EFFECTIVE AND TERMINATION DATES OF 2005 AMENDMENT

Amendment by section 402(i)(3)(E) of Pub. L. 109–135 subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, §901, in the same manner as the provisions of such Act to which such amendment relates, see section 402(i)(3)(H) of Pub. L. 109–135, set out as a note under section 36C of this title.

Amendments by Pub. L. 109–135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which they relate, except that amendment by section 402(i)(3)(E) of Pub. L. 109–135 is applicable to taxable years beginning after Dec. 31, 2005, see section 402(m) of Pub. L. 109–135, set out as a note under section 36C of this title.

EFFECTIVE DATE

Section applicable to property placed in service after Dec. 31, 2005, in taxable years ending after such date, see section 1335(c) of Pub. L. 109–58, set out as an Effective and Termination Dates of 2005 Amendments note under section 36C of this title.

§ 26. Limitation based on tax liability; definition of tax liability

(a) Limitation based on amount of tax

(1) In general

The aggregate amount of credits allowed by this subpart (other than sections 24, 25A(i), 25B, 25D, 30, 30B, and 30D) for the taxable year shall not exceed the excess (if any) of—

(A) the taxpayer's regular tax liability for the taxable year, over

(B) the tentative minimum tax for the taxable year (determined without regard to the alternative minimum tax foreign tax credit).

For purposes of subparagraph (B), the taxpayer's tentative minimum tax for any tax-

able year beginning during 1999 shall be treated as being zero.

(2) Special rule for taxable years 2000 through 2011

For purposes of any taxable year beginning during 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, or 2011, the aggregate amount of credits allowed by this subpart for the taxable year shall not exceed the sum of—

(A) the taxpayer's regular tax liability for the taxable year reduced by the foreign tax credit allowable under section 27(a), and

(B) the tax imposed by section 55(a) for the taxable year.

(b) Regular tax liability

For purposes of this part—

(1) In general

The term ''regular tax liability'' means the tax imposed by this chapter for the taxable year.

(2) Exception for certain taxes

For purposes of paragraph (1), any tax imposed by any of the following provisions shall not be treated as tax imposed by this chapter:

(A) section 55 (relating to minimum tax),

(B) section 59A (relating to environmental tax),

(C) subsection (m)(5)(B), (q), (t), or (v) of section 72 (relating to additional taxes on certain distributions),

(D) section 143(m) (relating to recapture of proration of Federal subsidy from use of mortgage bonds and mortgage credit certificates),

(E) section 530(d)(4) (relating to additional tax on certain distributions from Coverdell education savings accounts),

(F) section 531 (relating to accumulated earnings tax),

(G) section 541 (relating to personal holding company tax),

(H) section 1351(d)(1) (relating to recoveries of foreign expropriation losses),

(I) section 1374 (relating to tax on certain built-in gains of S corporations),

(J) section 1375 (relating to tax imposed when passive investment income of corporation having subchapter C earnings and profits exceeds 25 percent of gross receipts),

(K) subparagraph (A) of section 7518(g)(6) (relating to nonqualified withdrawals from capital construction funds taxed at highest marginal rate),

(L) sections 871(a) and 881 (relating to certain income of nonresident aliens and foreign corporations),

(M) section 860E(e) (relating to taxes with respect to certain residual interests),

(N) section 884 (relating to branch profits tax),

(O) sections 453(*l*)(3) and 453A(c) (relating to interest on certain deferred tax liabilities),

(P) section 860K[1] (relating to treatment of transfers of high-yield interests to disqualified holders),

(Q) section 220(f)(4) (relating to additional tax on Archer MSA distributions not used for qualified medical expenses),

(R) section 138(c)(2) (relating to penalty for distributions from Medicare Advantage MSA not used for qualified medical expenses if minimum balance not maintained),

(S) sections 106(e)(3)(A)(ii), 223(b)(8)(B)(i)(II), and 408(d)(9)(D)(i)(II) (relating to certain failures to maintain high deductible health plan coverage),

(T) section 170(*o*)(3)(B) (relating to recapture of certain deductions for fractional gifts),

(U) section 223(f)(4) (relating to additional tax on health savings account distributions not used for qualified medical expenses),

(V) subsections (a)(1)(B)(i) and (b)(4)(A) of section 409A (relating to interest and additional tax with respect to certain deferred compensation),

(W) section 36(f) (relating to recapture of homebuyer credit), and

(X) section 457A(c)(1)(B) (relating to determinability of amounts of compensation).

(c) Tentative minimum tax

For purposes of this part, the term ''tentative minimum tax'' means the amount determined under section 55(b)(1).

(Added § 25, renumbered § 26, Pub. L. 98–369, div. A, title IV, § 472, title VI, § 612(a), July 18, 1984, 98 Stat. 827, 905; amended Pub. L. 99–499, title V, § 516(b)(1)(A), Oct. 17, 1986, 100 Stat. 1770; Pub. L. 99–514, title II, § 261(c), title VI, § 632(c)(1), title VII, § 701(c)(1), Oct. 22, 1986, 100 Stat. 2214, 2277, 2340; Pub. L. 100–647, title I, §§ 1006(t)(16)(C), 1007(g)(1), 1011A(c)(10), 1012(q)(8), title IV, § 4005(g)(4), title V, § 5012(b)(2), Nov. 10, 1988, 102 Stat. 3425, 3434, 3476, 3524, 3650, 3662; Pub. L. 101–239, title VII, §§ 7811(c)(1), (2), 7821(a)(4)(A), Dec. 19, 1989, 103 Stat. 2406, 2407, 2424; Pub. L. 104–188, title I, § 1621(b)(1), Aug. 20, 1996, 110 Stat. 1866; Pub. L. 105–34, title II, § 213(e)(1), title XVI, § 1602(a)(1), Aug. 5, 1997, 111 Stat. 817, 1093; Pub. L. 105–277, div. J, title II, § 2001(a), Oct. 21, 1998, 112 Stat. 2681–901; Pub. L. 106–170, title V, § 501(a), Dec. 17, 1999, 113 Stat. 1918; Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–628; Pub. L. 107–16, title II, §§ 201(b)(2)(D), 202(f)(2)(C), title VI, § 618(b)(2)(C), June 7, 2001, 115 Stat. 46, 49, 108; Pub. L. 107–22, § 1(b)(2)(A), July 26, 2001, 115 Stat. 197; Pub. L. 107–147, title IV, §§ 415(a), 417(23)(B), title VI, § 601(a), Mar. 9, 2002, 116 Stat. 54, 57, 59; Pub. L. 108–311, title III, § 312(a), title IV, §§ 401(a)(1), 408(a)(5)(A), Oct. 4, 2004, 118 Stat. 1181, 1183, 1191; Pub. L. 109–135, title IV, §§ 403(hh)(1), 412(c), Dec. 21, 2005, 119 Stat. 2631, 2636; Pub. L. 109–222, title III, § 302(a), May 17, 2006, 120 Stat. 353; Pub. L. 110–166, § 3(a), Dec. 26, 2007, 121 Stat. 2461; Pub. L. 110–172, § 11(a)(3), Dec. 29, 2007, 121 Stat. 2484; Pub. L. 110–289, div. C, title I, § 3011(b)(1), July 30, 2008, 122 Stat. 2891; Pub. L. 110–343, div. B, title I, § 106(e)(2)(D), title II, § 205(d)(1)(D), div. C, title I, § 101(a), title VIII, § 801(b), Oct. 3, 2008, 122 Stat. 3817, 3839, 3863, 3931; Pub. L. 111–5, div. B, title I, §§ 1004(b)(3), 1011(a), 1142(b)(1)(D), 1144(b)(1)(D), Feb. 17, 2009, 123 Stat. 314, 319, 330, 332; Pub. L. 111–148, title X, § 10909(b)(2)(E), (c), Mar. 23, 2010, 124 Stat. 1023; Pub. L. 111–312, title I, § 101(b)(1), title II, § 202(a), Dec. 17, 2010, 124 Stat. 3298, 3299.)

[1] See References in Text note below.

AMENDMENT OF SECTION

For termination of amendment by section 10909(c) of Pub. L. 111–148, see Effective and Termination Dates of 2010 Amendment note below.

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

REFERENCES IN TEXT

Section 860K, referred to in subsec. (b)(2)(P), was repealed by Pub. L. 108–357, title VIII, § 835(a), Oct. 22, 2004, 118 Stat. 1593.

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111–148, § 10909(b)(2)(E), (c), as amended by Pub. L. 111–312, § 101(b)(1), temporarily struck out ''23,'' before ''24,'' in introductory provisions. See Effective and Termination Dates of 2010 Amendment note below.

Subsec. (a)(2). Pub. L. 111–312, § 202(a), substituted ''2011'' for ''2009'' in heading and ''2009, 2010, or 2011'' for ''or 2009'' in introductory provisions.

2009—Subsec. (a)(1). Pub. L. 111–5, § 1144(b)(1)(D), inserted ''30B,'' after ''30,'' in introductory provisions.

Pub. L. 111–5, § 1142(b)(1)(D), inserted ''30,'' after ''25D,'' in introductory provisions.

Pub. L. 111–5, § 1004(b)(3), inserted ''25A(i),'' after ''24,'' in introductory provisions.

Subsec. (a)(2). Pub. L. 111–5, § 1011(a), substituted ''2009'' for ''2008'' in heading and ''2008, or 2009'' for ''or 2008'' in introductory provisions.

2008—Subsec. (a)(1). Pub. L. 110–343, § 205(d)(1)(D), substituted ''25D, and 30D'' for ''and 25D'' in introductory provisions.

Pub. L. 110–343, § 106(e)(2)(D), substituted ''25B, and 25D'' for ''and 25B'' in introductory provisions.

Subsec. (a)(2). Pub. L. 110–343, § 101(a), substituted ''2008'' for ''2007'' in heading and ''2007, or 2008'' for ''or 2007'' in introductory provisions.

Subsec. (b)(2)(W). Pub. L. 110–289 added subpar. (W).

Subsec. (b)(2)(X). Pub. L. 110–343, § 801(b), added subpar. (X).

2007—Subsec. (a)(2). Pub. L. 110–166 substituted ''2007'' for ''2006'' in heading and ''2006, or 2007'' for ''or 2006'' in introductory provisions.

Subsec. (b)(2)(S) to (V). Pub. L. 110–172 added subpars. (S) and (T) and redesignated former subpars. (S) and (T) as (U) and (V), respectively.

2006—Subsec. (a)(2). Pub. L. 109–222 substituted ''2006'' for ''2005'' in heading and ''2005, or 2006'' for ''or 2005'' in introductory provisions.

2005—Subsec. (b)(2)(E). Pub. L. 109–135, § 412(c), substituted ''section 530(d)(4)'' for ''section 530(d)(3)''.

Subsec. (b)(2)(T). Pub. L. 109–135, § 403(hh)(1), added subpar. (T).

2004—Subsec. (a)(2). Pub. L. 108–311, § 312(a), substituted ''rule for taxable years 2000 through 2005'' for ''rule for 2000, 2001, 2002, and 2003'' in heading and ''2003, 2004, or 2005'' for ''or 2003'' in text.

Subsec. (b)(2)(R). Pub. L. 108–311, § 408(a)(5)(A), substituted ''Medicare Advantage MSA'' for ''Medicare+Choice MSA''.

Subsec. (b)(2)(S). Pub. L. 108–311, § 401(a)(1), added subpar. (S).

2002—Subsec. (a)(1). Pub. L. 107–147, § 417(23)(B), amended directory language of Pub. L. 107–16, § 618(b)(2)(C). See 2001 Amendment note below.

Subsec. (a)(2). Pub. L. 107–147, § 601(a), substituted ''rule for 2000, 2001, 2002, and 2003'' for ''rule for 2000 and 2001'' in heading and ''during 2000, 2001, 2002, or 2003,'' for ''during 2000 or 2001,'' in introductory provisions.

Subsec. (b)(2)(P), (Q). Pub. L. 107–147, § 415(a), which directed striking ''and'' at end of subpar. (P) and substituting '', and'' for the period at the end of subpar. (Q), was executed to subpars. (P) and (Q) as redesignated by Pub. L. 105–34, § 213(e)(1), to reflect the probable intent of Congress. See 1997 Amendment notes below.

Subsec. (b)(2)(R). Pub. L. 107–147, § 415(a), added subpar. (R).

2001—Subsec. (a)(1). Pub. L. 107–16, § 618(b)(2)(C), as amended by Pub. L. 107–147, § 417(23)(B), substituted '', 24, and 25B'' for ''and 24'' in introductory provisions.

Pub. L. 107–16, §§ 202(f)(2)(C), 901, temporarily substituted ''sections 23 and 24'' for ''section 24'' in introductory provisions. See Effective and Termination Dates of 2001 Amendments note below.

Pub. L. 107–16, §§ 201(b)(2)(D), 901, temporarily inserted ''(other than section 24)'' after ''this subpart'' in introductory provisions. See Effective and Termination Dates of 2001 Amendments note below.

Subsec. (b)(2)(E). Pub. L. 107–22 substituted ''Coverdell education savings'' for ''education individual retirement''.

2000—Subsec. (b)(2)(Q). Pub. L. 106–554 substituted ''Archer MSA'' for ''medical savings account''.

1999—Subsec. (a). Pub. L. 106–170 reenacted subsec. heading without change and amended text generally. Prior to amendment, text read as follows: ''The aggregate amount of credits allowed by this subpart for the taxable year shall not exceed the excess (if any) of—

''(1) the taxpayer's regular tax liability for the taxable year, over

''(2) the tentative minimum tax for the taxable year (determined without regard to the alternative minimum tax foreign tax credit).

For purposes of paragraph (2), the taxpayer's tentative minimum tax for any taxable year beginning during 1998 shall be treated as being zero.''

1998—Subsec. (a). Pub. L. 105–277 inserted concluding provisions.

1997—Subsec. (b)(2)(E) to (O). Pub. L. 105–34, § 213(e)(1), added subpar. (E) and redesignated former subpars. (E) to (N) as (F) to (O), respectively. Former subpar. (O) redesignated (P).

Subsec. (b)(2)(P). Pub. L. 105–34, § 213(e)(1), redesignated subpar. (P) as (Q).

Pub. L. 105–34, § 1602(a)(1), added subpar. (P).

Subsec. (b)(2)(Q). Pub. L. 105–34, § 213(e)(1), redesignated subpar. (P) as (Q).

1996—Subsec. (b)(2)(O). Pub. L. 104–188 added subpar. (O).

1989—Subsec. (b)(2)(C), (D). Pub. L. 101–239, § 7811(c)(1), amended subpars. (C) and (D) generally. Prior to amendment, subpars. (C) and (D) read as follows:

''(C) subsection (m)(5)(B) (q), or (v) of section 72 (relating to additional tax on certain distributions),

''(D) section 72(t) (relating to 10-percent additional tax on early distributions from qualified retirement plans),''.

Subsec. (b)(2)(K). Pub. L. 101–239, § 7811(c)(2), added subpar. (K) and struck out former subpar. (K) which was identical.

Subsec. (b)(2)(L), (M). Pub. L. 101–239, § 7811(c)(2), added subpars. (L) and (M) and struck out former subpars. (L) and (M) which read as follows:

''(L) section 860E(e) (relating to taxes with respect to certain residual interests), and

''(L) section 884 (relating to branch profits tax), and

''(M) section 143(m) (relating to recapture of portion of federal subsidy from use of mortgage bonds and mortgage credit certificates).''

Subsec. (b)(2)(N). Pub. L. 101–239, § 7821(a)(4)(A), which directed amendment of subsec. (b)(2) of this section ''as amended by section 11811'' by adding subpar. (N), was executed as if it directed amendment of subsec. (b)(2) of this section ''as amended by section 7811'', to reflect the probable intent of Congress and the renumbering of section 11811 of H.R. 3299 as section 7811 prior to the enactment of H.R. 3299 into law as Pub. L. 101–239.

1988—Subsec. (b)(2)(C). Pub. L. 100–647, § 1011A(c)(10)(A), struck out '', (*o*)(2),'' after ''subsection (m)(5)(B)''.

Pub. L. 100–647, § 5012(b)(2), substituted ''(q), or (v)'' for ''or (q)''.

Subsec. (b)(2)(D). Pub. L. 100–647, § 1011A(c)(10)(B), substituted ''72(t) (relating to 10-percent additional tax on early distributions from qualified retirement

plans)'' for ''408(f) (relating to additional tax on income from certain retirement accounts)''.

Subsec. (b)(2)(K). Pub. L. 100–647, §1007(g)(1), substituted ''corporations).'' for ''corporations,''.

Subsec. (b)(2)(L). Pub. L. 100–647, §1012(q)(8), added subpar. (L) relating to branch profits tax.

Pub. L. 100–647, §1006(t)(16)(C), added subpar. (L) relating to taxes with respect to certain residual interests.

Subsec. (b)(2)(M). Pub. L. 100–647, §4005(g)(4), added subpar. (M).

1986—Subsec. (a). Pub. L. 99–514, §701(c)(1)(A), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The aggregate amount of credits allowed by this subpart for the taxable year shall not exceed the taxpayer's tax liability for such taxable year.''

Subsec. (b). Pub. L. 99–514, §701(c)(1)(B)(i), (v), substituted ''Regular tax liability'' for ''Tax liability'' in heading and ''this part'' for ''this section'' in introductory provisions.

Subsec. (b)(1). Pub. L. 99–514, §701(c)(1)(B)(ii), substituted ''regular tax liability'' for ''tax liability''.

Subsec. (b)(2). Pub. L. 99–499 added subpar. (B) and redesignated former subpars. (B) to (J) as (C) to (K), respectively.

Pub. L. 99–514, §701(c)(1)(B)(iii), substituted ''section 55 (relating to minimum tax)'' for ''section 56 (relating to corporate minimum tax)'' in subpar. (A).

Pub. L. 99–514, §632(c)(1), substituted ''certain built-in gains'' for ''certain capital gains'' in subpar. (G).

Pub. L. 99–514, §261(c), added subpar. (I).

Pub. L. 99–514, §701(c)(1)(B)(iv), added subpar. (J).

Subsec. (c). Pub. L. 99–514, §701(c)(1)(C), amended subsec. (c) generally, substituting provisions relating to tentative minimum tax for provisions referring to section 55(c) of this title for similar rule for alternative minimum tax for taxpayers other than corporations.

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Pub. L. 111–312, title II, §202(b), Dec. 17, 2010, 124 Stat. 3299, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009.''

Amendment by Pub. L. 111–148 terminated applicable to taxable years beginning after Dec. 31, 2011, and section is amended to read as if such amendment had never been enacted, see section 10909(c) of Pub. L. 111–148, set out as a note under section 1 of this title.

Amendment by Pub. L. 111–148 applicable to taxable years beginning after Dec. 31, 2009, see section 10909(d) of Pub. L. 111–148, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by section 1004(b)(3) of Pub. L. 111–5 applicable to taxable years beginning after Dec. 31, 2008, see section 1004(d) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Pub. L. 111–5, div. B, title I, §1011(b), Feb. 17, 2009, 123 Stat. 319, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008.''

Amendment by section 1142(b)(1)(D) of Pub. L. 111–5 applicable to vehicles acquired after Feb. 17, 2009, see section 1142(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Amendment by section 1144(b)(1)(D) of Pub. L. 111–5 applicable to taxable years beginning after Dec. 31, 2008, see section 1144(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 106(e)(2)(D) of Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2007, see section 106(f)(1) of div. B of Pub. L. 110–343, set out as an Effective and Termination Dates of 2008 Amendment note under section 36C of this title.

Amendment by section 205(d)(1)(D) of Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2008, see section 205(e) of div. B of Pub. L. 110–343, set out as an Effective and Termination Dates of 2008 Amendment note under section 24 of this title.

Pub. L. 110–343, div. C, title I, §101(b), Oct. 3, 2008, 122 Stat. 3863, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2007.''

Amendment by section 801(b) of Pub. L. 110–343 applicable to amounts deferred which are attributable to services performed after Dec. 31, 2008, with certain exceptions, see section 801(d) of div. C of Pub. L. 110–343, set out as an Effective Date note under section 457A of this title.

Pub. L. 110–289, div. C, title I, §3011(c), July 30, 2008, 122 Stat. 2891, provided that: ''The amendments made by this section [enacting section 36 of this title, amending this section and section 6211 of this title and section 1324 of Title 31, Money and Finance, and renumbering former section 36 of this title as section 37 of this title] shall apply to residences purchased on or after April 9, 2008, in taxable years ending on or after such date.''

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–166, §3(b), Dec. 26, 2007, 121 Stat. 2461, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–222, title III, §302(b), May 17, 2006, 120 Stat. 353, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2005.''

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–135, title IV, §403(nn), Dec. 21, 2005, 119 Stat. 2632, provided that: ''The amendments made by this section [see Tables for classification] shall take effect as if included in the provisions of the American Jobs Creation Act of 2004 [Pub. L. 108–357] to which they relate.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title III, §312(c), Oct. 4, 2004, 118 Stat. 1181, provided that: ''The amendments made by this section [amending this section and section 904 of this title] shall apply to taxable years beginning after December 31, 2003.''

Pub. L. 108–311, title IV, §401(b), Oct. 4, 2004, 118 Stat. 1183, provided that: ''The amendments made by subsection (a) [amending this section and section 35 of this title] shall take effect as if included in section 1201 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 [Pub. L. 108–173].''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title IV, §415(b), Mar. 9, 2002, 116 Stat. 54, provided that: ''The amendment made by this section [amending this section] shall take effect as if included in section 4006 of the Balanced Budget Act of 1997 [Pub. L. 105–33].''

Pub. L. 107–147, title VI, §601(c), Mar. 9, 2002, 116 Stat. 59, provided that: ''The amendments made by this section [amending this section and section 904 of this title] shall apply to taxable years beginning after December 31, 2001.''

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 inapplicable to taxable years beginning during 2004 or 2005, see section 312(b)(2) of Pub. L. 108–311, set out as a note under section 36C of this title.

Amendment by Pub. L. 107–16 inapplicable to taxable years beginning during 2002 and 2003, see section 601(b)(2) of Pub. L. 107–147, set out as a note under section 36C of this title.

Pub. L. 107–22, §1(c), July 26, 2001, 115 Stat. 197, provided that: ''The amendments made by this section [amending this section and sections 72, 135, 529, 530, 4973, 4975, and 6693 of this title] shall take effect on the date of the enactment of this Act [July 26, 2001].''

Amendment by section 201(b)(2)(D) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 201(e)(2) of Pub. L. 107–16, set out as a note under section 24 of this title.

Amendment by section 202(f)(2)(C) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 202(g)(1) of Pub. L. 107–16, set out as a note under section 36C of this title.

Amendment by section 618(b)(2)(C) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 618(d) of Pub. L. 107–16, set out as a note under section 24 of this title.

Amendment by sections 201(b)(2)(D) and 202(f)(2)(C) of Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to taxable years beginning after Dec. 31, 1998, see section 501(c) of Pub. L. 106–170, set out as a note under section 24 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 applicable to taxable years beginning after Dec. 31, 1997, see section 2001(c) of Pub. L. 105–277, set out as a note under section 24 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 213(f) of Pub. L. 105–34 provided that: ''The amendments made by this section [enacting section 530 of this title and amending this section and sections 135, 4973, 4975, and 6693 of this title] shall apply to taxable years beginning after December 31, 1997.''

Section 1602(i) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section and sections 162, 220, 264, 877, 2107, 2501, 4975, 6050Q, 6652, 6693, 6724, and 7702B of this title, renumbering section 6039F of this title as section 6039G of this title, and amending provisions set out as a note under section 264 of this title] shall take effect as if included in the provisions of the Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104–191] to which such amendments relate.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1621(d) of Pub. L. 104–188 provided that: ''The amendments made by this section [enacting sections 860H to 860L of this title and amending this section and sections 56, 382, 582, 856, 860G, 1202, and 7701 of this title] shall take effect on September 1, 1997.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7811(c)(1), (2) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Section 7823 of Pub. L. 101–239 provided that: ''Except as otherwise provided in this part [part II (§§7821–7823) of subtitle H of title VII of Pub. L. 101–239, amending this section and sections 453A, 842, 1503, 6427, 6655, 6863, 7519, 7611, 9502, 9503, and 9508 of this title and enacting provisions set out as notes under sections 56 and 7519 of this title], any amendment made by this part shall take effect as if included in the provision of the 1987 Act [Pub. L. 100–203, title X] to which such amendment relates.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1006(t)(16)(C) of Pub. L. 100–647 applicable, with certain exceptions, to transfers after Mar. 31, 1988, and to excess inclusions for periods after Mar. 31, 1988, see section 1006(t)(16)(D)(ii)–(iv) of Pub. L. 100–647, set out as a note under section 860E of this title.

Amendment by sections 1007(g)(1), 1011A(c)(10), and 1012(q)(8) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 4005(g)(4) of Pub. L. 100–647 applicable, with certain exceptions, to financing provided, and mortgage credit certificates issued, after Dec. 31, 1990, see section 4005(h)(3) of Pub. L. 100–647, set out as a note under section 143 of this title.

Amendment by section 5012(b)(2) of Pub. L. 100–647 applicable to contracts entered into on or after June 21, 1988, with special rule where death benefit increases by more than $150,000, certain other material changes taken into account, and certain exchanges permitted, see section 5012(e) of Pub. L. 100–647, set out as an Effective Date note under section 7702A of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 261(c) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 261(g) of Pub. L. 99–514, set out as an Effective Date note under section 7518 of this title.

Amendment by section 632(c)(1) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, but only in cases where the return for the taxable year is filed pursuant to an S election made after Dec. 31, 1986, see section 633(b) of Pub. L. 99–514, as amended, set out as an Effective Date note under section 336 of this title.

Amendment by section 632(c)(1) of Pub. L. 99–514 not applicable in the case of certain transactions, see section 54(d)(3)(D) of Pub. L. 98–369, as amended, set out as an Effective Date of 1984 Amendment note under section 311 of this title.

Amendment by section 701(c)(1) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

Section 516(c) of Pub. L. 99–499 provided that: ''The amendments made by this section [enacting section 59A of this title and amending this section and sections 164, 275, 936, 1561, 6154, 6425, and 6655 of this title] shall apply to taxable years beginning after December 31, 1986.''

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 21 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUBLIC LAW 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(c)(1) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

TREATMENT OF TAX IMPOSED UNDER FORMER SECTION 409(c)

Section 491(f)(5) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''For purposes of section 26(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this Act), any tax imposed by section 409(c) of such Code (as in effect before its repeal by this section) shall be treated as a tax imposed by section 408(f) of such Code.''

SUBPART B—OTHER CREDITS

Sec.
27. Taxes of foreign countries and possessions of the United States; possession tax credit.
[28, 29. Renumbered.]
30. Certain plug-in electric vehicles.
30A. Puerto Rico economic activity credit.
30B. Alternative motor vehicle credit.
30C. Alternative fuel vehicle refueling property credit.
30D. New qualified plug-in electric drive motor vehicles.

AMENDMENTS

2009—Pub. L. 111–5, div. B, title I, §1142(b)(8), Feb. 17, 2009, 123 Stat. 331, substituted ''Certain plug-in electric vehicles'' for ''Credit for qualified electric vehicles'' in item 30.

2008—Pub. L. 110–343, div. B, title II, §205(d)(4), Oct. 3, 2008, 122 Stat. 3839, added item 30D.

2005—Pub. L. 109–135, title IV, §412(e), Dec. 21, 2005, 119 Stat. 2637, substituted ''Alternative fuel vehicle refueling property credit'' for ''Clean-fuel vehicle refueling property credit'' in item 30C.

Pub. L. 109–58, title XIII, §§1322(a)(3)(K), 1341(b)(5), 1342(b)(5), Aug. 8, 2005, 119 Stat. 1012, 1049, 1051, struck out item 29 ''Credit for producing fuel from a nonconventional source'' and added items 30B and 30C.

1997—Pub. L. 105–34, title XVI, §1601(f)(1)(B), Aug. 5, 1997, 111 Stat. 1090, substituted ''Puerto Rico'' for ''Puerto Rican'' in item 30A.

1996—Pub. L. 104–188, title I, §§1205(a)(3)(A), 1601(b)(2)(E), (F)(i), Aug. 20, 1996, 110 Stat. 1775, 1833, substituted ''Other Credits'' for ''Foreign Tax Credits, Etc.'' in subpart heading, struck out item 28 ''Clinical testing expenses for certain drugs for rare diseases or conditions'', and added item 30A.

1992—Pub. L. 102–486, title XIX, §1913(b)(2)(A), Oct. 24, 1992, 106 Stat. 3020, added item 30.

1986—Pub. L. 99–514, title II, §231(d)(3)(J), Oct. 22, 1986, 100 Stat. 2180, struck out item 30 ''Credit for increasing research activities''.

1984—Pub. L. 98–369, div. A, title IV, §471(b), July 18, 1984, 98 Stat. 826, added subpart B heading and analysis of sections for subpart B consisting of items 27 (formerly 33), 28 (formerly 44H), 29 (formerly 44D), and 30 (formerly 44F). Former subpart B was redesignated E.

§ 27. Taxes of foreign countries and possessions of the United States; possession tax credit

(a) Foreign tax credit

The amount of taxes imposed by foreign countries and possessions of the United States shall be allowed as a credit against the tax imposed by this chapter to the extent provided in section 901.

(b) Section 936 credit

In the case of a domestic corporation, the amount provided by section 936 (relating to Puerto Rico and possession tax credit) shall be allowed as a credit against the tax imposed by this chapter.

(Aug. 16, 1954, ch. 736, 68A Stat. 13, §33; Pub. L. 94–455, title X, §1051(a), Oct. 4, 1976, 90 Stat. 1643; renumbered §27, Pub. L. 98–369, div. A, title IV, §471(c), July 18, 1984, 98 Stat. 826.)

AMENDMENTS

1984—Pub. L. 98–369, §471(c), renumbered section 33 of this title as this section.

1976—Pub. L. 94–455 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1051(i) of Pub. L. 94–455, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) Except as provided by paragraph (2), the amendments made by this section [enacting section 936 of this title and amending sections 33 [now 27], 48, 116, 243, 246, 861, 901, 904, 931, 1504, and 6091 of this title] shall apply to taxable years beginning after December 31, 1975, except that 'qualified possession source investment income' as defined in section 936(d)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall include income from any source outside the United States if the taxpayer establishes to the satisfaction of the Secretary of the Treasury or his delegate that the income from such sources was earned before October 1, 1976.

''(2) The amendment made by subsection (d)(2) [amending section 901 of this title] shall not apply to any tax imposed by a possession of the United States with respect to the complete liquidation occurring before January 1, 1979, of a corporation to the extent that such tax is attributable to earnings and profits accumulated by such corporation during periods ending before January 1, 1976.''

[§ 28. Renumbered § 45C]

[§ 29. Renumbered § 45K]

§ 30. Certain plug-in electric vehicles

(a) Allowance of credit

There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 10 percent of the cost of any qualified plug-in electric vehicle placed in service by the taxpayer during the taxable year.

(b) Per vehicle dollar limitation

The amount of the credit allowed under subsection (a) with respect to any vehicle shall not exceed $2,500.

(c) Application with other credits

(1) Business credit treated as part of general business credit

So much of the credit which would be allowed under subsection (a) for any taxable year (determined without regard to this subsection) that is attributable to property of a character subject to an allowance for depreciation shall be treated as a credit listed in section 38(b) for such taxable year (and not allowed under subsection (a)).

(2) Personal credit

(A) In general

For purposes of this title, the credit allowed under subsection (a) for any taxable year (determined after application of paragraph (1)) shall be treated as a credit allowable under subpart A for such taxable year.

(B) Limitation based on amount of tax

In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed under subsection (a) for any taxable year (determined after application of paragraph (1)) shall not exceed the excess of—

(i) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

(ii) the sum of the credits allowable under subpart A (other than this section

and sections 25D and 30D) and section 27 for the taxable year.

(d) Qualified plug-in electric vehicle

For purposes of this section—

(1) In general

The term ''qualified plug-in electric vehicle'' means a specified vehicle—

(A) the original use of which commences with the taxpayer,

(B) which is acquired for use or lease by the taxpayer and not for resale,

(C) which is made by a manufacturer,

(D) which is manufactured primarily for use on public streets, roads, and highways,

(E) which has a gross vehicle weight rating of less than 14,000 pounds, and

(F) which is propelled to a significant extent by an electric motor which draws electricity from a battery which—

(i) has a capacity of not less than 4 kilowatt hours (2.5 kilowatt hours in the case of a vehicle with 2 or 3 wheels), and

(ii) is capable of being recharged from an external source of electricity.

(2) Specified vehicle

The term ''specified vehicle'' means any vehicle which—

(A) is a low speed vehicle within the meaning of section 571.3 of title 49, Code of Federal Regulations (as in effect on the date of the enactment of the American Recovery and Reinvestment Tax Act of 2009), or

(B) has 2 or 3 wheels.

(3) Manufacturer

The term ''manufacturer'' has the meaning given such term in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

(4) Battery capacity

The term ''capacity'' means, with respect to any battery, the quantity of electricity which the battery is capable of storing, expressed in kilowatt hours, as measured from a 100 percent state of charge to a 0 percent state of charge.

(e) Special rules

(1) Basis reduction

For purposes of this subtitle, the basis of any property for which a credit is allowable under subsection (a) shall be reduced by the amount of such credit so allowed.

(2) No double benefit

The amount of any deduction or other credit allowable under this chapter for a new qualified plug-in electric drive motor vehicle shall be reduced by the amount of credit allowable under subsection (a) for such vehicle.

(3) Property used by tax-exempt entity

In the case of a vehicle the use of which is described in paragraph (3) or (4) of section 50(b) and which is not subject to a lease, the person who sold such vehicle to the person or entity using such vehicle shall be treated as the taxpayer that placed such vehicle in service, but only if such person clearly discloses to such person or entity in a document the amount of any credit allowable under subsection (a) with respect to such vehicle (determined without regard to subsection (c)).

(4) Property used outside United States not qualified

No credit shall be allowable under subsection (a) with respect to any property referred to in section 50(b)(1).

(5) Recapture

The Secretary shall, by regulations, provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any property which ceases to be property eligible for such credit.

(6) Election not to take credit

No credit shall be allowed under subsection (a) for any vehicle if the taxpayer elects to not have this section apply to such vehicle.

(f) Termination

This section shall not apply to any vehicle acquired after December 31, 2011.

(Added Pub. L. 102–486, title XIX, § 1913(b)(1), Oct. 24, 1992, 106 Stat. 3019; amended Pub. L. 104–188, title I, §§ 1205(d)(4), 1704(j)(4)(A), Aug. 20, 1996, 110 Stat. 1776, 1881; Pub. L. 107–147, title VI, § 602(a), Mar. 9, 2002, 116 Stat. 59; Pub. L. 108–311, title III, § 318(a), Oct. 4, 2004, 118 Stat. 1182; Pub. L. 109–58, title XIII, § 1322(a)(3)(A), Aug. 8, 2005, 119 Stat. 1011; Pub. L. 111–5, div. B, title I, § 1142(a), Feb. 17, 2009, 123 Stat. 328; Pub. L. 111–148, title X, § 10909(b)(2)(F), (c), Mar. 23, 2010, 124 Stat. 1023; Pub. L. 111–312, title I, § 101(b)(1), Dec. 17, 2010, 124 Stat. 3298.)

AMENDMENT OF SECTION

For termination of amendment by section 10909(c) of Pub. L. 111–148, see Effective and Termination Dates of 2010 Amendment note below.

REFERENCES IN TEXT

The date of the enactment of the American Recovery and Reinvestment Tax Act of 2009, referred to in subsec. (d)(2)(A), is the date of the enactment of div. B of Pub. L. 111–5, which was approved Feb. 17, 2009.

The Clean Air Act, referred to in subsec. (d)(3), is act July 14, 1955, ch. 360, 69 Stat. 322. Title II of the Act, known as the National Emission Standards Act, is classified generally to subchapter II (§ 7521 et seq.) of chapter 85 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 30 was renumbered section 41 of this title.

AMENDMENTS

2010—Subsec. (c)(2)(B)(ii). Pub. L. 111–148, § 10909(b)(2)(F), (c), as amended by Pub. L. 111–312, temporarily substituted ''25D'' for ''23, 25D,''. See Effective and Termination Dates of 2010 Amendment note below.

2009—Pub. L. 111–5 amended section generally. Prior to amendment, section provided for credit of 10 percent of the cost of any qualified electric vehicle, subject to a $4,000 per vehicle limitation, a 75 percent reduction

for any vehicle placed in service after Dec. 31, 2005, and a Dec. 31, 2006, termination date.

2005—Subsec. (b)(3)(A). Pub. L. 109–58 substituted ''section 27'' for ''sections 27 and 29'' in introductory provisions.

2004—Subsec. (b)(2). Pub. L. 108–311 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''In the case of any qualified electric vehicle placed in service after December 31, 2003, the credit otherwise allowable under subsection (a) (determined after the application of paragraph (1)) shall be reduced by—

''(A) 25 percent in the case of property placed in service in calendar year 2004,

''(B) 50 percent in the case of property placed in service in calendar year 2005, and

''(C) 75 percent in the case of property placed in service in calendar year 2006.''

2002—Subsec. (b)(2). Pub. L. 107–147, §602(a)(1)(A), substituted ''December 31, 2003,'' for ''December 31, 2001,'' in introductory provisions.

Subsec. (b)(2)(A). Pub. L. 107–147, §602(a)(1)(B), substituted ''2004'' for ''2002''.

Subsec. (b)(2)(B). Pub. L. 107–147, §602(a)(1)(B), substituted ''2005'' for ''2003''.

Subsec. (b)(2)(C). Pub. L. 107–147, §602(a)(1)(B), substituted ''2006'' for ''2004''.

Subsec. (e). Pub. L. 107–147, §602(a)(2), substituted ''December 31, 2006'' for ''December 31, 2004''.

1996—Subsec. (b)(3)(A). Pub. L. 104–188, §1205(d)(4), substituted ''sections 27 and 29'' for ''sections 27, 28, and 29''.

Subsec. (d)(1). Pub. L. 104–188, §1704(j)(4)(A)(i), inserted ''(determined without regard to subsection (b)(3))'' before period at end.

Subsec. (d)(4). Pub. L. 104–188, §1704(j)(4)(A)(ii), added par. (4).

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Amendment by Pub. L. 111–148 terminated applicable to taxable years beginning after Dec. 31, 2011, and section is amended to read as if such amendment had never been enacted, see section 10909(c) of Pub. L. 111–148, set out as a note under section 1 of this title.

Amendment by Pub. L. 111–148 applicable to taxable years beginning after Dec. 31, 2009, see section 10909(d) of Pub. L. 111–148, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–5 applicable to vehicles acquired after Feb. 17, 2009, see section 1142(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–58 applicable to credits determined under the Internal Revenue Code of 1986 for taxable years ending after Dec. 31, 2005, see section 1322(c)(1) of Pub. L. 109–58, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title III, §318(b), Oct. 4, 2004, 118 Stat. 1182, provided that: ''The amendments made by this section [amending this section] shall apply to property placed in service after December 31, 2003.''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title VI, §602(c), Mar. 9, 2002, 116 Stat. 59, provided that: ''The amendments made by this section [amending this section, section 280F of this title, and provisions set out as a note under section 280F of this title] shall apply to property placed in service after December 31, 2001.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1205(d)(4) of Pub. L. 104–188 applicable to amounts paid or incurred in taxable years ending after June 30, 1996, see section 1205(e) of Pub. L. 104–188, set out as a note under section 45K of this title.

EFFECTIVE DATE

Section 1913(c) of Pub. L. 102–486 provided that: ''The amendments made by this section [enacting this section and 179A of this title and amending sections 53, 55, 62, and 1016 of this title] shall apply to property placed in service after June 30, 1993.''

TRANSITIONAL RULE

Pub. L. 111–5, div. B, title I, §1142(d), Feb. 17, 2009, 123 Stat. 331, provided that: ''In the case of a vehicle acquired after the date of the enactment of this Act [Feb. 17, 2009] and before January 1, 2010, no credit shall be allowed under section 30 of the Internal Revenue Code of 1986, as added by this section, if credit is allowable under section 30D of such Code with respect to such vehicle.''

§ 30A. Puerto Rico economic activity credit

(a) Allowance of credit

(1) In general

Except as otherwise provided in this section, if the conditions of both paragraph (1) and paragraph (2) of subsection (b) are satisfied with respect to a qualified domestic corporation, there shall be allowed as a credit against the tax imposed by this chapter an amount equal to the portion of the tax which is attributable to the taxable income, from sources without the United States, from—

(A) the active conduct of a trade or business within Puerto Rico, or

(B) the sale or exchange of substantially all of the assets used by the taxpayer in the active conduct of such trade or business.

In the case of any taxable year beginning after December 31, 2001, the aggregate amount of taxable income taken into account under the preceding sentence (and in applying subsection (d)) shall not exceed the adjusted base period income of such corporation, as determined in the same manner as under section 936(j).

(2) Qualified domestic corporation

For purposes of paragraph (1), the term ''qualified domestic corporation'' means a domestic corporation—

(A) which is an existing credit claimant with respect to Puerto Rico, and

(B) with respect to which section 936(a)(4)(B) does not apply for the taxable year.

(3) Separate application

For purposes of determining—

(A) whether a taxpayer is an existing credit claimant with respect to Puerto Rico, and

(B) the amount of the credit allowed under this section,

this section (and so much of section 936 as relates to this section) shall be applied separately with respect to Puerto Rico.

(b) Conditions which must be satisfied

The conditions referred to in subsection (a) are—

(1) 3-year period

If 80 percent or more of the gross income of the qualified domestic corporation for the 3-

year period immediately preceding the close of the taxable year (or for such part of such period immediately preceding the close of such taxable year as may be applicable) was derived from sources within a possession (determined without regard to section 904(f)).

(2) Trade or business

If 75 percent or more of the gross income of the qualified domestic corporation for such period or such part thereof was derived from the active conduct of a trade or business within a possession.

(c) Credit not allowed against certain taxes

The credit provided by subsection (a) shall not be allowed against the tax imposed by—

(1) section 59A (relating to environmental tax),

(2) section 531 (relating to the tax on accumulated earnings),

(3) section 541 (relating to personal holding company tax), or

(4) section 1351 (relating to recoveries of foreign expropriation losses).

(d) Limitations on credit for active business income

The amount of the credit determined under subsection (a) for any taxable year shall not exceed the sum of the following amounts:

(1) 60 percent of the sum of—

(A) the aggregate amount of the qualified domestic corporation's qualified possession wages for such taxable year, plus

(B) the allocable employee fringe benefit expenses of the qualified domestic corporation for such taxable year.

(2) The sum of—

(A) 15 percent of the depreciation allowances for the taxable year with respect to short-life qualified tangible property,

(B) 40 percent of the depreciation allowances for the taxable year with respect to medium-life qualified tangible property, and

(C) 65 percent of the depreciation allowances for the taxable year with respect to long-life qualified tangible property.

(3) If the qualified domestic corporation does not have an election to use the method described in section 936(h)(5)(C)(ii) (relating to profit split) in effect for the taxable year, the amount of the qualified possession income taxes for the taxable year allocable to nonsheltered income.

(e) Administrative provisions

For purposes of this title—

(1) the provisions of section 936 (including any applicable election thereunder) shall apply in the same manner as if the credit under this section were a credit under section 936(a)(1)(A) for a domestic corporation to which section 936(a)(4)(A) applies,

(2) the credit under this section shall be treated in the same manner as the credit under section 936, and

(3) a corporation to which this section applies shall be treated in the same manner as if it were a corporation electing the application of section 936.

(f) Denial of double benefit

Any wages or other expenses taken into account in determining the credit under this section may not be taken into account in determining the credit under section 41.

(g) Definitions

For purposes of this section, any term used in this section which is also used in section 936 shall have the same meaning given such term by section 936.

(h) Application of section

This section shall apply to taxable years beginning after December 31, 1995, and before January 1, 2006.

(Added Pub. L. 104–188, title I, § 1601(b)(1), Aug. 20, 1996, 110 Stat. 1830; amended Pub. L. 105–34, title XVI, § 1601(f)(1)(A), Aug. 5, 1997, 111 Stat. 1090; Pub. L. 106–554, § 1(a)(7) [title III, § 311(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–640.)

AMENDMENTS

2000—Subsecs. (f) to (h). Pub. L. 106–554 added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

1997—Pub. L. 105–34 substituted ''Puerto Rico'' for ''Puerto Rican'' in section catchline.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(7) [title III, § 311(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–640, provided that: ''Subsection (c) [not classified to the Code] and the amendments made by this section [amending this section and sections 280C and 857 of this title] shall take effect as if included in the provisions of the Ticket to Work and Work Incentives Improvement Act of 1999 [Pub. L. 106–170, see Tables for classification] to which they relate.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 36C of this title.

EFFECTIVE DATE

Section 1601(c) of Pub. L. 104–188 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending sections 55, 56, 59, and 936 of this title] shall apply to taxable years beginning after December 31, 1995.

''(2) SPECIAL RULE FOR QUALIFIED POSSESSION SOURCE INVESTMENT INCOME.—The amendments made by this section shall not apply to qualified possession source investment income received or accrued before July 1, 1996, without regard to the taxable year in which received or accrued.

''(3) SPECIAL TRANSITION RULE FOR PAYMENT OF ESTIMATED TAX INSTALLMENT.—In determining the amount of any installment due under section 6655 of the Internal Revenue Code of 1986 after the date of the enactment of this Act [Aug. 20, 1996] and before October 1, 1996, only ½ of any increase in tax (for the taxable year for which such installment is made) by reason of the amendments made by subsections (a) and (b) [enacting this section and amending sections 55, 56, 59, and 936 of this title] shall be taken into account. Any reduction in such installment by reason of the preceding sentence shall be recaptured by increasing the next required installment for such year by the amount of such reduction.''

AMERICAN SAMOA ECONOMIC DEVELOPMENT CREDIT

Pub. L. 109–432, div. A, title I, § 119, Dec. 20, 2006, 120 Stat. 2942, as amended by Pub. L. 110–343, div. C, title

III, § 309(a), Oct. 3, 2008, 122 Stat. 3869; Pub. L. 111–312, title VII, § 756(a), Dec. 17, 2010, 124 Stat. 3322, provided that:

''(a) IN GENERAL.—For purposes of section 30A of the Internal Revenue Code of 1986, a domestic corporation shall be treated as a qualified domestic corporation to which such section applies if such corporation—

''(1) is an existing credit claimant with respect to American Samoa, and

''(2) elected the application of section 936 of the Internal Revenue Code of 1986 for its last taxable year beginning before January 1, 2006.

''(b) SPECIAL RULES FOR APPLICATION OF SECTION.—The following rules shall apply in applying section 30A of the Internal Revenue Code of 1986 for purposes of this section:

''(1) AMOUNT OF CREDIT.—Notwithstanding section 30A(a)(1) of such Code, the amount of the credit determined under section 30A(a)(1) of such Code for any taxable year shall be the amount determined under section 30A(d) of such Code, except that section 30A(d) shall be applied without regard to paragraph (3) thereof.

''(2) SEPARATE APPLICATION.—In applying section 30A(a)(3) of such Code in the case of a corporation treated as a qualified domestic corporation by reason of this section, section 30A of such Code (and so much of section 936 of such Code as relates to such section 30A) shall be applied separately with respect to American Samoa.

''(3) FOREIGN TAX CREDIT ALLOWED.—Notwithstanding section 30A(e) of such Code, the provisions of section 936(c) of such Code shall not apply with respect to the credit allowed by reason of this section.

''(c) DEFINITIONS.—For purposes of this section, any term which is used in this section which is also used in section 30A or 936 of such Code shall have the same meaning given such term by such section 30A or 936.

''(d) APPLICATION OF SECTION.—Notwithstanding section 30A(h) or section 936(j) of such Code, this section (and so much of section 30A and section 936 of such Code as relates to this section) shall apply to the first 6 taxable years of a corporation to which subsection (a) applies which begin after December 31, 2005, and before January 1, 2012.''

[Pub. L. 111–312, title VII, § 756(b), Dec. 17, 2010, 124 Stat. 3322, provided that: ''The amendments made by this section [amending section 119 of Pub. L. 109–432, set out above] shall apply to taxable years beginning after December 31, 2009.'']

[Pub. L. 110–343, div. C, title III, § 309(b), Oct. 3, 2008, 122 Stat. 3869, provided that: ''The amendments made by this section [amending section 119 of Pub. L. 109–432, set out above] shall apply to taxable years beginning after December 31, 2007.'']

§ 30B. Alternative motor vehicle credit

(a) Allowance of credit

There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

(1) the new qualified fuel cell motor vehicle credit determined under subsection (b),

(2) the new advanced lean burn technology motor vehicle credit determined under subsection (c),

(3) the new qualified hybrid motor vehicle credit determined under subsection (d),

(4) the new qualified alternative fuel motor vehicle credit determined under subsection (e), and

(5) the plug-in conversion credit determined under subsection (i).

(b) New qualified fuel cell motor vehicle credit

(1) In general

For purposes of subsection (a), the new qualified fuel cell motor vehicle credit determined under this subsection with respect to a new qualified fuel cell motor vehicle placed in service by the taxpayer during the taxable year is—

(A) $8,000 ($4,000 in the case of a vehicle placed in service after December 31, 2009), if such vehicle has a gross vehicle weight rating of not more than 8,500 pounds,

(B) $10,000, if such vehicle has a gross vehicle weight rating of more than 8,500 pounds but not more than 14,000 pounds,

(C) $20,000, if such vehicle has a gross vehicle weight rating of more than 14,000 pounds but not more than 26,000 pounds, and

(D) $40,000, if such vehicle has a gross vehicle weight rating of more than 26,000 pounds.

(2) Increase for fuel efficiency

(A) In general

The amount determined under paragraph (1)(A) with respect to a new qualified fuel cell motor vehicle which is a passenger automobile or light truck shall be increased by—

(i) $1,000, if such vehicle achieves at least 150 percent but less than 175 percent of the 2002 model year city fuel economy,

(ii) $1,500, if such vehicle achieves at least 175 percent but less than 200 percent of the 2002 model year city fuel economy,

(iii) $2,000, if such vehicle achieves at least 200 percent but less than 225 percent of the 2002 model year city fuel economy,

(iv) $2,500, if such vehicle achieves at least 225 percent but less than 250 percent of the 2002 model year city fuel economy,

(v) $3,000, if such vehicle achieves at least 250 percent but less than 275 percent of the 2002 model year city fuel economy,

(vi) $3,500, if such vehicle achieves at least 275 percent but less than 300 percent of the 2002 model year city fuel economy, and

(vii) $4,000, if such vehicle achieves at least 300 percent of the 2002 model year city fuel economy.

(B) 2002 model year city fuel economy

For purposes of subparagraph (A), the 2002 model year city fuel economy with respect to a vehicle shall be determined in accordance with the following tables:

(i) In the case of a passenger automobile:

If vehicle inertia weight class is:	The 2002 model year city fuel economy is:
1,500 or 1,750 lbs	45.2 mpg
2,000 lbs	39.6 mpg
2,250 lbs	35.2 mpg
2,500 lbs	31.7 mpg
2,750 lbs	28.8 mpg
3,000 lbs	26.4 mpg
3,500 lbs	22.6 mpg
4,000 lbs	19.8 mpg
4,500 lbs	17.6 mpg
5,000 lbs	15.9 mpg
5,500 lbs	14.4 mpg
6,000 lbs	13.2 mpg
6,500 lbs	12.2 mpg
7,000 to 8,500 lbs	11.3 mpg.

(ii) In the case of a light truck:

If vehicle inertia weight class is:	The 2002 model year city fuel economy is:
1,500 or 1,750 lbs	39.4 mpg
2,000 lbs	35.2 mpg
2,250 lbs	31.8 mpg
2,500 lbs	29.0 mpg
2,750 lbs	26.8 mpg
3,000 lbs	24.9 mpg
3,500 lbs	21.8 mpg
4,000 lbs	19.4 mpg
4,500 lbs	17.6 mpg
5,000 lbs	16.1 mpg
5,500 lbs	14.8 mpg
6,000 lbs	13.7 mpg
6,500 lbs	12.8 mpg
7,000 to 8,500 lbs	12.1 mpg.

(C) Vehicle inertia weight class

For purposes of subparagraph (B), the term ''vehicle inertia weight class'' has the same meaning as when defined in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

(3) New qualified fuel cell motor vehicle

For purposes of this subsection, the term ''new qualified fuel cell motor vehicle'' means a motor vehicle—

(A) which is propelled by power derived from 1 or more cells which convert chemical energy directly into electricity by combining oxygen with hydrogen fuel which is stored on board the vehicle in any form and may or may not require reformation prior to use,

(B) which, in the case of a passenger automobile or light truck, has received on or after the date of the enactment of this section a certificate that such vehicle meets or exceeds the Bin 5 Tier II emission level established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle,

(C) the original use of which commences with the taxpayer,

(D) which is acquired for use or lease by the taxpayer and not for resale, and

(E) which is made by a manufacturer.

(c) New advanced lean burn technology motor vehicle credit

(1) In general

For purposes of subsection (a), the new advanced lean burn technology motor vehicle credit determined under this subsection for the taxable year is the credit amount determined under paragraph (2) with respect to a new advanced lean burn technology motor vehicle placed in service by the taxpayer during the taxable year.

(2) Credit amount

(A) Fuel economy

(i) In general

The credit amount determined under this paragraph shall be determined in accordance with the following table:

In the case of a vehicle which achieves a fuel economy (expressed as a percentage of the 2002 model year city fuel economy) of—	The credit amount is—
At least 125 percent but less than 150 percent	$400
At least 150 percent but less than 175 percent	$800
At least 175 percent but less than 200 percent	$1,200
At least 200 percent but less than 225 percent	$1,600
At least 225 percent but less than 250 percent	$2,000
At least 250 percent	$2,400.

(ii) 2002 model year city fuel economy

For purposes of clause (i), the 2002 model year city fuel economy with respect to a vehicle shall be determined on a gasoline gallon equivalent basis as determined by the Administrator of the Environmental Protection Agency using the tables provided in subsection (b)(2)(B) with respect to such vehicle.

(B) Conservation credit

The amount determined under subparagraph (A) with respect to a new advanced lean burn technology motor vehicle shall be increased by the conservation credit amount determined in accordance with the following table:

In the case of a vehicle which achieves a lifetime fuel savings (expressed in gallons of gasoline) of—	The conservation credit amount is—
At least 1,200 but less than 1,800	$250
At least 1,800 but less than 2,400	$500
At least 2,400 but less than 3,000	$750
At least 3,000	$1,000.

(3) New advanced lean burn technology motor vehicle

For purposes of this subsection, the term ''new advanced lean burn technology motor vehicle'' means a passenger automobile or a light truck—

(A) with an internal combustion engine which—

(i) is designed to operate primarily using more air than is necessary for complete combustion of the fuel,

(ii) incorporates direct injection,

(iii) achieves at least 125 percent of the 2002 model year city fuel economy,

(iv) for 2004 and later model vehicles, has received a certificate that such vehicle meets or exceeds—

(I) in the case of a vehicle having a gross vehicle weight rating of 6,000 pounds or less, the Bin 5 Tier II emission standard established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle, and

(II) in the case of a vehicle having a gross vehicle weight rating of more than 6,000 pounds but not more than 8,500 pounds, the Bin 8 Tier II emission standard which is so established,

(B) the original use of which commences with the taxpayer,

(C) which is acquired for use or lease by the taxpayer and not for resale, and

(D) which is made by a manufacturer.

(4) Lifetime fuel savings

For purposes of this subsection, the term ''lifetime fuel savings'' means, in the case of any new advanced lean burn technology motor vehicle, an amount equal to the excess (if any) of—

(A) 120,000 divided by the 2002 model year city fuel economy for the vehicle inertia weight class, over

(B) 120,000 divided by the city fuel economy for such vehicle.

(d) New qualified hybrid motor vehicle credit

(1) In general

For purposes of subsection (a), the new qualified hybrid motor vehicle credit determined under this subsection for the taxable year is the credit amount determined under paragraph (2) with respect to a new qualified hybrid motor vehicle placed in service by the taxpayer during the taxable year.

(2) Credit amount

(A) Credit amount for passenger automobiles and light trucks

In the case of a new qualified hybrid motor vehicle which is a passenger automobile or light truck and which has a gross vehicle weight rating of not more than 8,500 pounds, the amount determined under this paragraph is the sum of the amounts determined under clauses (i) and (ii).

(i) Fuel economy

The amount determined under this clause is the amount which would be determined under subsection (c)(2)(A) if such vehicle were a vehicle referred to in such subsection.

(ii) Conservation credit

The amount determined under this clause is the amount which would be determined under subsection (c)(2)(B) if such vehicle were a vehicle referred to in such subsection.

(B) Credit amount for other motor vehicles

(i) In general

In the case of any new qualified hybrid motor vehicle to which subparagraph (A) does not apply, the amount determined under this paragraph is the amount equal to the applicable percentage of the qualified incremental hybrid cost of the vehicle as certified under clause (v).

(ii) Applicable percentage

For purposes of clause (i), the applicable percentage is—

(I) 20 percent if the vehicle achieves an increase in city fuel economy relative to a comparable vehicle of at least 30 percent but less than 40 percent,

(II) 30 percent if the vehicle achieves such an increase of at least 40 percent but less than 50 percent, and

(III) 40 percent if the vehicle achieves such an increase of at least 50 percent.

(iii) Qualified incremental hybrid cost

For purposes of this subparagraph, the qualified incremental hybrid cost of any vehicle is equal to the amount of the excess of the manufacturer's suggested retail price for such vehicle over such price for a comparable vehicle, to the extent such amount does not exceed—

(I) $7,500, if such vehicle has a gross vehicle weight rating of not more than 14,000 pounds,

(II) $15,000, if such vehicle has a gross vehicle weight rating of more than 14,000 pounds but not more than 26,000 pounds, and

(III) $30,000, if such vehicle has a gross vehicle weight rating of more than 26,000 pounds.

(iv) Comparable vehicle

For purposes of this subparagraph, the term ''comparable vehicle'' means, with respect to any new qualified hybrid motor vehicle, any vehicle which is powered solely by a gasoline or diesel internal combustion engine and which is comparable in weight, size, and use to such vehicle.

(v) Certification

A certification described in clause (i) shall be made by the manufacturer and shall be determined in accordance with guidance prescribed by the Secretary. Such guidance shall specify procedures and methods for calculating fuel economy savings and incremental hybrid costs.

(3) New qualified hybrid motor vehicle

For purposes of this subsection—

(A) In general

The term ''new qualified hybrid motor vehicle'' means a motor vehicle—

(i) which draws propulsion energy from onboard sources of stored energy which are both—

(I) an internal combustion or heat engine using consumable fuel, and

(II) a rechargeable energy storage system,

(ii) which, in the case of a vehicle to which paragraph (2)(A) applies, has received a certificate of conformity under the Clean Air Act and meets or exceeds the equivalent qualifying California low emission vehicle standard under section 243(e)(2) of the Clean Air Act for that make and model year, and

(I) in the case of a vehicle having a gross vehicle weight rating of 6,000 pounds or less, the Bin 5 Tier II emission standard established in regulations prescribed by the Administrator of the Environmental Protection Agency under

section 202(i) of the Clean Air Act for that make and model year vehicle, and

(II) in the case of a vehicle having a gross vehicle weight rating of more than 6,000 pounds but not more than 8,500 pounds, the Bin 8 Tier II emission standard which is so established,

(iii) which has a maximum available power of at least—

(I) 4 percent in the case of a vehicle to which paragraph (2)(A) applies,

(II) 10 percent in the case of a vehicle which has a gross vehicle weight rating of more than 8,500 pounds and not more than 14,000 pounds, and

(III) 15 percent in the case of a vehicle in excess of 14,000 pounds,

(iv) which, in the case of a vehicle to which paragraph (2)(B) applies, has an internal combustion or heat engine which has received a certificate of conformity under the Clean Air Act as meeting the emission standards set in the regulations prescribed by the Administrator of the Environmental Protection Agency for 2004 through 2007 model year diesel heavy duty engines or ottocycle heavy duty engines, as applicable,

(v) the original use of which commences with the taxpayer,

(vi) which is acquired for use or lease by the taxpayer and not for resale, and

(vii) which is made by a manufacturer.

Such term shall not include any vehicle which is not a passenger automobile or light truck if such vehicle has a gross vehicle weight rating of less than 8,500 pounds.

(B) Consumable fuel

For purposes of subparagraph (A)(i)(I), the term ''consumable fuel'' means any solid, liquid, or gaseous matter which releases energy when consumed by an auxiliary power unit.

(C) Maximum available power

(i) Certain passenger automobiles and light trucks

In the case of a vehicle to which paragraph (2)(A) applies, the term ''maximum available power'' means the maximum power available from the rechargeable energy storage system, during a standard 10 second pulse power or equivalent test, divided by such maximum power and the SAE net power of the heat engine.

(ii) Other motor vehicles

In the case of a vehicle to which paragraph (2)(B) applies, the term ''maximum available power'' means the maximum power available from the rechargeable energy storage system, during a standard 10 second pulse power or equivalent test, divided by the vehicle's total traction power. For purposes of the preceding sentence, the term ''total traction power'' means the sum of the peak power from the rechargeable energy storage system and the heat engine peak power of the vehicle, except that if such storage system is the sole means by which the vehicle can be driven, the total traction power is the peak power of such storage system.

(D) Exclusion of plug-in vehicles

Any vehicle with respect to which a credit is allowable under section 30D (determined without regard to subsection (c) thereof) shall not be taken into account under this section.

(e) New qualified alternative fuel motor vehicle credit

(1) Allowance of credit

Except as provided in paragraph (5), the new qualified alternative fuel motor vehicle credit determined under this subsection is an amount equal to the applicable percentage of the incremental cost of any new qualified alternative fuel motor vehicle placed in service by the taxpayer during the taxable year.

(2) Applicable percentage

For purposes of paragraph (1), the applicable percentage with respect to any new qualified alternative fuel motor vehicle is—

(A) 50 percent, plus

(B) 30 percent, if such vehicle—

(i) has received a certificate of conformity under the Clean Air Act and meets or exceeds the most stringent standard available for certification under the Clean Air Act for that make and model year vehicle (other than a zero emission standard), or

(ii) has received an order certifying the vehicle as meeting the same requirements as vehicles which may be sold or leased in California and meets or exceeds the most stringent standard available for certification under the State laws of California (enacted in accordance with a waiver granted under section 209(b) of the Clean Air Act) for that make and model year vehicle (other than a zero emission standard).

For purposes of the preceding sentence, in the case of any new qualified alternative fuel motor vehicle which weighs more than 14,000 pounds gross vehicle weight rating, the most stringent standard available shall be such standard available for certification on the date of the enactment of the Energy Tax Incentives Act of 2005.

(3) Incremental cost

For purposes of this subsection, the incremental cost of any new qualified alternative fuel motor vehicle is equal to the amount of the excess of the manufacturer's suggested retail price for such vehicle over such price for a gasoline or diesel fuel motor vehicle of the same model, to the extent such amount does not exceed—

(A) $5,000, if such vehicle has a gross vehicle weight rating of not more than 8,500 pounds,

(B) $10,000, if such vehicle has a gross vehicle weight rating of more than 8,500 pounds but not more than 14,000 pounds,

(C) $25,000, if such vehicle has a gross vehicle weight rating of more than 14,000 pounds but not more than 26,000 pounds, and

(D) $40,000, if such vehicle has a gross vehicle weight rating of more than 26,000 pounds.

(4) New qualified alternative fuel motor vehicle

For purposes of this subsection—

(A) In general

The term ''new qualified alternative fuel motor vehicle'' means any motor vehicle—

(i) which is only capable of operating on an alternative fuel,

(ii) the original use of which commences with the taxpayer,

(iii) which is acquired by the taxpayer for use or lease, but not for resale, and

(iv) which is made by a manufacturer.

(B) Alternative fuel

The term ''alternative fuel'' means compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, and any liquid at least 85 percent of the volume of which consists of methanol.

(5) Credit for mixed-fuel vehicles

(A) In general

In the case of a mixed-fuel vehicle placed in service by the taxpayer during the taxable year, the credit determined under this subsection is an amount equal to—

(i) in the case of a 75/25 mixed-fuel vehicle, 70 percent of the credit which would have been allowed under this subsection if such vehicle was a qualified alternative fuel motor vehicle, and

(ii) in the case of a 90/10 mixed-fuel vehicle, 90 percent of the credit which would have been allowed under this subsection if such vehicle was a qualified alternative fuel motor vehicle.

(B) Mixed-fuel vehicle

For purposes of this subsection, the term ''mixed-fuel vehicle'' means any motor vehicle described in subparagraph (C) or (D) of paragraph (3), which—

(i) is certified by the manufacturer as being able to perform efficiently in normal operation on a combination of an alternative fuel and a petroleum-based fuel,

(ii) either—

(I) has received a certificate of conformity under the Clean Air Act, or

(II) has received an order certifying the vehicle as meeting the same requirements as vehicles which may be sold or leased in California and meets or exceeds the low emission vehicle standard under section 88.105–94 of title 40, Code of Federal Regulations, for that make and model year vehicle,

(iii) the original use of which commences with the taxpayer,

(iv) which is acquired by the taxpayer for use or lease, but not for resale, and

(v) which is made by a manufacturer.

(C) 75/25 mixed-fuel vehicle

For purposes of this subsection, the term ''75/25 mixed-fuel vehicle'' means a mixed-fuel vehicle which operates using at least 75 percent alternative fuel and not more than 25 percent petroleum-based fuel.

(D) 90/10 mixed-fuel vehicle

For purposes of this subsection, the term ''90/10 mixed-fuel vehicle'' means a mixed-fuel vehicle which operates using at least 90 percent alternative fuel and not more than 10 percent petroleum-based fuel.

(f) Limitation on number of new qualified hybrid and advanced lean-burn technology vehicles eligible for credit

(1) In general

In the case of a qualified vehicle sold during the phaseout period, only the applicable percentage of the credit otherwise allowable under subsection (c) or (d) shall be allowed.

(2) Phaseout period

For purposes of this subsection, the phaseout period is the period beginning with the second calendar quarter following the calendar quarter which includes the first date on which the number of qualified vehicles manufactured by the manufacturer of the vehicle referred to in paragraph (1) sold for use in the United States after December 31, 2005, is at least 60,000.

(3) Applicable percentage

For purposes of paragraph (1), the applicable percentage is—

(A) 50 percent for the first 2 calendar quarters of the phaseout period,

(B) 25 percent for the 3d and 4th calendar quarters of the phaseout period, and

(C) 0 percent for each calendar quarter thereafter.

(4) Controlled groups

(A) In general

For purposes of this subsection, all persons treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (*o*) of section 414 shall be treated as a single manufacturer.

(B) Inclusion of foreign corporations

For purposes of subparagraph (A), in applying subsections (a) and (b) of section 52 to this section, section 1563 shall be applied without regard to subsection (b)(2)(C) thereof.

(5) Qualified vehicle

For purposes of this subsection, the term ''qualified vehicle'' means any new qualified hybrid motor vehicle (described in subsection (d)(2)(A)) and any new advanced lean burn technology motor vehicle.

(g) Application with other credits

(1) Business credit treated as part of general business credit

So much of the credit which would be allowed under subsection (a) for any taxable year (determined without regard to this subsection) that is attributable to property of a character subject to an allowance for depreciation shall be treated as a credit listed in section 38(b) for such taxable year (and not allowed under subsection (a)).

(2) Personal credit

(A) In general

For purposes of this title, the credit allowed under subsection (a) for any taxable year (determined after application of paragraph (1)) shall be treated as a credit allowable under subpart A for such taxable year.

(B) Limitation based on amount of tax

In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed under subsection (a) for any taxable year (determined after application of paragraph (1)) shall not exceed the excess of—

(i) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

(ii) the sum of the credits allowable under subpart A (other than this section and sections 25D, 30, and 30D) and section 27 for the taxable year.

(h) Other definitions and special rules

For purposes of this section—

(1) Motor vehicle

The term ''motor vehicle'' means any vehicle which is manufactured primarily for use on public streets, roads, and highways (not including a vehicle operated exclusively on a rail or rails) and which has at least 4 wheels.

(2) City fuel economy

The city fuel economy with respect to any vehicle shall be measured in a manner which is substantially similar to the manner city fuel economy is measured in accordance with procedures under part 600 of subchapter Q of chapter I of title 40, Code of Federal Regulations, as in effect on the date of the enactment of this section.

(3) Other terms

The terms ''automobile'', ''passenger automobile'', ''medium duty passenger vehicle'', ''light truck'', and ''manufacturer'' have the meanings given such terms in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

(4) Reduction in basis

For purposes of this subtitle, the basis of any property for which a credit is allowable under subsection (a) shall be reduced by the amount of such credit so allowed (determined without regard to subsection (g)).

(5) No double benefit

The amount of any deduction or other credit allowable under this chapter—

(A) for any incremental cost taken into account in computing the amount of the credit determined under subsection (e) shall be reduced by the amount of such credit attributable to such cost, and

(B) with respect to a vehicle described under subsection (b) or (c), shall be reduced by the amount of credit allowed under subsection (a) for such vehicle for the taxable year.

(6) Property used by tax-exempt entity

In the case of a vehicle whose use is described in paragraph (3) or (4) of section 50(b) and which is not subject to a lease, the person who sold such vehicle to the person or entity using such vehicle shall be treated as the taxpayer that placed such vehicle in service, but only if such person clearly discloses to such person or entity in a document the amount of any credit allowable under subsection (a) with respect to such vehicle (determined without regard to subsection (g)). For purposes of subsection (g), property to which this paragraph applies shall be treated as of a character subject to an allowance for depreciation.

(7) Property used outside United States, etc., not qualified

No credit shall be allowable under subsection (a) with respect to any property referred to in section 50(b)(1) or with respect to the portion of the cost of any property taken into account under section 179.

(8) Recapture

The Secretary shall, by regulations, provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any property which ceases to be property eligible for such credit (including recapture in the case of a lease period of less than the economic life of a vehicle).,[1] except that no benefit shall be recaptured if such property ceases to be eligible for such credit by reason of conversion to a qualified plug-in electric drive motor vehicle.

(9) Election to not take credit

No credit shall be allowed under subsection (a) for any vehicle if the taxpayer elects to not have this section apply to such vehicle.

(10) Interaction with air quality and motor vehicle safety standards

Unless otherwise provided in this section, a motor vehicle shall not be considered eligible for a credit under this section unless such vehicle is in compliance with—

(A) the applicable provisions of the Clean Air Act for the applicable make and model year of the vehicle (or applicable air quality provisions of State law in the case of a State which has adopted such provision under a waiver under section 209(b) of the Clean Air Act), and

(B) the motor vehicle safety provisions of sections 30101 through 30169 of title 49, United States Code.

(i) Plug-in conversion credit

(1) In general

For purposes of subsection (a), the plug-in conversion credit determined under this subsection with respect to any motor vehicle which is converted to a qualified plug-in electric drive motor vehicle is 10 percent of so much of the cost of the converting such vehicle as does not exceed $40,000.

(2) Qualified plug-in electric drive motor vehicle

For purposes of this subsection, the term ''qualified plug-in electric drive motor vehicle'' means any new qualified plug-in electric

[1] So in original.

drive motor vehicle (as defined in section 30D, determined without regard to whether such vehicle is made by a manufacturer or whether the original use of such vehicle commences with the taxpayer).

(3) Credit allowed in addition to other credits

The credit allowed under this subsection shall be allowed with respect to a motor vehicle notwithstanding whether a credit has been allowed with respect to such motor vehicle under this section (other than this subsection) in any preceding taxable year.

(4) Termination

This subsection shall not apply to conversions made after December 31, 2011.

(j) Regulations

(1) In general

Except as provided in paragraph (2), the Secretary shall promulgate such regulations as necessary to carry out the provisions of this section.

(2) Coordination in prescription of certain regulations

The Secretary of the Treasury, in coordination with the Secretary of Transportation and the Administrator of the Environmental Protection Agency, shall prescribe such regulations as necessary to determine whether a motor vehicle meets the requirements to be eligible for a credit under this section.

(k) Termination

This section shall not apply to any property purchased after—

(1) in the case of a new qualified fuel cell motor vehicle (as described in subsection (b)), December 31, 2014,

(2) in the case of a new advanced lean burn technology motor vehicle (as described in subsection (c)) or a new qualified hybrid motor vehicle (as described in subsection (d)(2)(A)), December 31, 2010,

(3) in the case of a new qualified hybrid motor vehicle (as described in subsection (d)(2)(B)), December 31, 2009, and

(4) in the case of a new qualified alternative fuel vehicle (as described in subsection (e)), December 31, 2010.

(Added Pub. L. 109–58, title XIII, §1341(a), Aug. 8, 2005, 119 Stat. 1038; amended Pub. L. 109–135, title IV, §§402(j), 412(d), Dec. 21, 2005, 119 Stat. 2615, 2636; Pub. L. 110–343, div. B, title II, §205(b), Oct. 3, 2008, 122 Stat. 3838; Pub. L. 111–5, div. B, title I, §§1141(b)(1), 1142(b)(2), 1143(a)–(c), 1144(a), Feb. 17, 2009, 123 Stat. 328, 330–332; Pub. L. 111–148, title X, §10909(b)(2)(G), (c), Mar. 23, 2010, 124 Stat. 1023; Pub. L. 111–312, title I, §101(b)(1), Dec. 17, 2010, 124 Stat. 3298.)

AMENDMENT OF SECTION

For termination of amendment by section 10909(c) of Pub. L. 111–148, see Effective and Termination Dates of 2010 Amendment note below.

REFERENCES IN TEXT

The Clean Air Act, referred to in text, is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of Title 42, The Public Health and Welfare. Title II of the Act, known as the National Emissions Standards Act, is classified generally to subchapter II (§7521 et seq.) of chapter 85 of Title 42. Sections 202(i), 209(b), and 243(e)(2) of the Act are classified to sections 7521(i), 7543(b), and 7583(e)(2), respectively, of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

The date of the enactment of this section, referred to in subsecs. (b)(3)(B) and (h)(2), is the date of enactment of Pub. L. 109–58, which was approved Aug. 8, 2005.

The date of the enactment of the Energy Tax Incentives Act of 2005, referred to in subsec. (e)(2), is the date of enactment of title XIII of Pub. L. 109–58, which was approved Aug. 8, 2005.

AMENDMENTS

2010—Subsec. (g)(2)(B)(ii). Pub. L. 111–148, §10909(b)(2)(G), (c), as amended by Pub. L. 111–312, temporarily struck out ''23,'' before ''25D,''. See Effective and Termination Dates of 2010 Amendment note below.

2009—Subsec. (a)(5). Pub. L. 111–5, §1143(b), added par. (5).

Subsec. (d)(3)(D). Pub. L. 111–5, §1141(b)(1), substituted ''subsection (c) thereof'' for ''subsection (d) thereof''.

Subsec. (g)(2). Pub. L. 111–5, §1144(a), amended par. (2) generally. Prior to amendment, text read as follows: ''The credit allowed under subsection (a) (after the application of paragraph (1)) for any taxable year shall not exceed the excess (if any) of—

''(A) the regular tax liability (as defined in section 26(b)) reduced by the sum of the credits allowable under subpart A and sections 27 and 30, over

''(B) the tentative minimum tax for the taxable year.''

Subsec. (h)(1). Pub. L. 111–5, §1142(b)(2), amended par. (1) generally. Prior to amendment, text read as follows: ''The term 'motor vehicle' has the meaning given such term by section 30(c)(2).''

Subsec. (h)(8). Pub. L. 111–5, §1143(c), inserted at end '', except that no benefit shall be recaptured if such property ceases to be eligible for such credit by reason of conversion to a qualified plug-in electric drive motor vehicle.''

Subsecs. (i) to (k). Pub. L. 111–5, §1143(a), added subsec. (i) and redesignated former subsecs. (i) and (j) as (j) and (k), respectively.

2008—Subsec. (d)(3)(D). Pub. L. 110–343 added subpar. (D).

2005—Subsec. (g)(2)(A). Pub. L. 109–135, §412(d), substituted ''regular tax liability (as defined in section 26(b))'' for ''regular tax''.

Subsec. (h)(6). Pub. L. 109–135, §402(j), inserted at end ''For purposes of subsection (g), property to which this paragraph applies shall be treated as of a character subject to an allowance for depreciation.''

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Amendment by Pub. L. 111–148 terminated applicable to taxable years beginning after Dec. 31, 2011, and section is amended to read as if such amendment had never been enacted, see section 10909(c) of Pub. L. 111–148, set out as a note under section 1 of this title.

Amendment by Pub. L. 111–148 applicable to taxable years beginning after Dec. 31, 2009, see section 10909(d) of Pub. L. 111–148, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1141(c), Feb. 17, 2009, 123 Stat. 328, provided that: ''The amendments made by this section [amending this section and sections 30D, 38, 1016, and 6501 of this title] shall apply to vehicles acquired after December 31, 2009.''

Amendment by section 1142(b)(2) of Pub. L. 111–5 applicable to vehicles acquired after Feb. 17, 2009, see sec-

tion 1142(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Pub. L. 111–5, div. B, title I, §1143(d), Feb. 17, 2009, 123 Stat. 332, provided that: ''The amendments made by this section [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Feb. 17, 2009].''

Amendment by section 1144(a) of Pub. L. 111–5 applicable to taxable years beginning after Dec. 31, 2008, see section 1144(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2008, see section 205(e) of Pub. L. 110–343, set out as an Effective and Termination Dates of 2008 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 402(j) of Pub. L. 109–135 effective as if included in the provision of the Energy Policy Act of 2005, Pub. L. 109–58, to which such amendment relates, see section 402(m)(1) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 36C of this title.

EFFECTIVE DATE

Pub. L. 109–58, title XIII, §1341(c), Aug. 8, 2005, 119 Stat. 1049, provided that: ''The amendments made by this section [enacting this section and amending sections 38, 55, 1016, and 6501 of this title] shall apply to property placed in service after December 31, 2005, in taxable years ending after such date.''

§ 30C. Alternative fuel vehicle refueling property credit

(a) Credit allowed

There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 30 percent of the cost of any qualified alternative fuel vehicle refueling property placed in service by the taxpayer during the taxable year.

(b) Limitation

The credit allowed under subsection (a) with respect to all qualified alternative fuel vehicle refueling property placed in service by the taxpayer during the taxable year at a location shall not exceed—

(1) $30,000 in the case of a property of a character subject to an allowance for depreciation, and

(2) $1,000 in any other case.

(c) Qualified alternative fuel vehicle refueling property

For purposes of this section, the term ''qualified alternative fuel vehicle refueling property'' has the same meaning as the term ''qualified clean-fuel vehicle refueling property'' would have under section 179A if—

(1) paragraph (1) of section 179A(d) did not apply to property installed on property which is used as the principal residence (within the meaning of section 121) of the taxpayer, and

(2) only the following were treated as clean-burning fuels for purposes of section 179A(d):

(A) Any fuel at least 85 percent of the volume of which consists of one or more of the following: ethanol, natural gas, compressed natural gas, liquified natural gas, liquefied petroleum gas, or hydrogen.

(B) Any mixture—

(i) which consists of two or more of the following: biodiesel (as defined in section 40A(d)(1)), diesel fuel (as defined in section 4083(a)(3)), or kerosene, and

(ii) at least 20 percent of the volume of which consists of biodiesel (as so defined) determined without regard to any kerosene in such mixture.

(C) Electricity.

(d) Application with other credits

(1) Business credit treated as part of general business credit

So much of the credit which would be allowed under subsection (a) for any taxable year (determined without regard to this subsection) that is attributable to property of a character subject to an allowance for depreciation shall be treated as a credit listed in section 38(b) for such taxable year (and not allowed under subsection (a)).

(2) Personal credit

The credit allowed under subsection (a) (after the application of paragraph (1)) for any taxable year shall not exceed the excess (if any) of—

(A) the regular tax liability (as defined in section 26(b)) reduced by the sum of the credits allowable under subpart A and section 27, over

(B) the tentative minimum tax for the taxable year.

(e) Special rules

For purposes of this section—

(1) Basis reduction

The basis of any property shall be reduced by the portion of the cost of such property taken into account under subsection (a).

(2) Property used by tax-exempt entity

In the case of any qualified alternative fuel vehicle refueling property the use of which is described in paragraph (3) or (4) of section 50(b) and which is not subject to a lease, the person who sold such property to the person or entity using such property shall be treated as the taxpayer that placed such property in service, but only if such person clearly discloses to such person or entity in a document the amount of any credit allowable under subsection (a) with respect to such property (determined without regard to subsection (d)). For purposes of subsection (d), property to which this paragraph applies shall be treated as of a character subject to an allowance for depreciation.

(3) Property used outside United States not qualified

No credit shall be allowable under subsection (a) with respect to any property referred to in section 50(b)(1) or with respect to the portion of the cost of any property taken into account under section 179.

(4) Election not to take credit

No credit shall be allowed under subsection (a) for any property if the taxpayer elects not to have this section apply to such property.

(5) Recapture rules

Rules similar to the rules of section 179A(e)(4) shall apply.

(6) Special rule for property placed in service during 2009 and 2010

In the case of property placed in service in taxable years beginning after December 31, 2008, and before January 1, 2011—

(A) in the case of any such property which does not relate to hydrogen—

(i) subsection (a) shall be applied by substituting ''50 percent'' for ''30 percent'',

(ii) subsection (b)(1) shall be applied by substituting ''$50,000'' for ''$30,000'', and

(iii) subsection (b)(2) shall be applied by substituting ''$2,000'' for ''$1,000'', and

(B) in the case of any such property which relates to hydrogen, subsection (b)(1) shall be applied by substituting ''$200,000'' for ''$30,000''.

(f) Regulations

The Secretary shall prescribe such regulations as necessary to carry out the provisions of this section.

(g) Termination

This section shall not apply to any property placed in service—

(1) in the case of property relating to hydrogen, after December 31, 2014, and

(2) in the case of any other property, after December 31, 2011..[1]

(Added Pub. L. 109–58, title XIII, §1342(a), Aug. 8, 2005, 119 Stat. 1049; amended Pub. L. 109–135, title IV, §§402(k), 412(d), Dec. 21, 2005, 119 Stat. 2615, 2636; Pub. L. 110–172, §6(b), Dec. 29, 2007, 121 Stat. 2479; Pub. L. 110–343, div. B, title II, §207(a), (b), Oct. 3, 2008, 122 Stat. 3839; Pub. L. 111–5, div. B, title I, §§1123(a), 1142(b)(3), 1144(b)(2), Feb. 17, 2009, 123 Stat. 325, 331, 332; Pub. L. 111–312, title VII, §711(a), Dec. 17, 2010, 124 Stat. 3315.)

AMENDMENTS

2010—Subsec. (g)(2). Pub. L. 111–312 substituted ''December 31, 2011.'' for ''December 31, 2010''.

2009—Subsec. (d)(2)(A). Pub. L. 111–5, §1144(b)(2), substituted ''section 27'' for ''sections 27 and 30B''.

Pub. L. 111–5, §1142(b)(3), struck out '', 30,'' before ''and 30B''.

Subsec. (e)(6). Pub. L. 111–5, §1123(a), added par. (6).

2008—Subsec. (c)(2)(C). Pub. L. 110–343, §207(b), added subpar. (C).

Subsec. (g)(2). Pub. L. 110–343, §207(a), substituted ''December 31, 2010'' for ''December 31, 2009''.

2007—Subsec. (b). Pub. L. 110–172, §6(b)(1), reenacted heading without change and amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: ''The credit allowed under subsection (a) with respect to any alternative fuel vehicle refueling property shall not exceed—''.

Subsec. (c). Pub. L. 110–172, §6(b)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

''(1) IN GENERAL.—Except as provided in paragraph (2), the term 'qualified alternative fuel vehicle refueling property' has the meaning given to such term by section 179A(d), but only with respect to any fuel—

''(A) at least 85 percent of the volume of which consists of one or more of the following: ethanol, natural gas, compressed natural gas, liquefied natural gas, liquefied petroleum gas, or hydrogen, or

''(B) any mixture of biodiesel (as defined in section 40A(d)(1)) and diesel fuel (as defined in section 4083(a)(3)), determined without regard to any use of kerosene and containing at least 20 percent biodiesel.

''(2) RESIDENTIAL PROPERTY.—In the case of any property installed on property which is used as the principal residence (within the meaning of section 121) of the taxpayer, paragraph (1) of section 179A(d) shall not apply.''

2005—Subsec. (d)(2)(A). Pub. L. 109–135, §412(d), substituted ''regular tax liability (as defined in section 26(b))'' for ''regular tax''.

Subsec. (e)(2). Pub. L. 109–135, §402(k), inserted at end ''For purposes of subsection (d), property to which this paragraph applies shall be treated as of a character subject to an allowance for depreciation.''

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §711(b), Dec. 17, 2010, 124 Stat. 3315, provided that: ''The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2010.''

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1123(b), Feb. 17, 2009, 123 Stat. 325, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008.''

Amendment by section 1142(b)(3) of Pub. L. 111–5 applicable to vehicles acquired after Feb. 17, 2009, see section 1142(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Amendment by section 1144(b)(2) of Pub. L. 111–5 applicable to taxable years beginning after Dec. 31, 2008, see section 1144(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title II, §207(c), Oct. 3, 2008, 122 Stat. 3840, provided that: ''The amendments made by this section [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Oct. 3, 2008], in taxable years ending after such date.''

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–172, §6(e), Dec. 29, 2007, 121 Stat. 2481, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 41, 45J, 4041, 4042, 4082, and 6430 of this title, and enacting provisions set out as a note under section 6430 of this title] shall take effect as if included in the provisions of the Energy Policy Act of 2005 [Pub. L. 109–58] to which they relate.

''(2) NONAPPLICATION OF EXEMPTION FOR OFF-HIGHWAY BUSINESS USE.—The amendment made by subsection (d)(3) [amending section 4041 of this title] shall apply to fuel sold for use or used after the date of the enactment of this Act [Dec. 29, 2007].

''(3) AMENDMENT MADE BY THE SAFETEA–LU.—The amendment made by subsection (d)(2)(C)(ii) [amending section 4082 of this title] shall take effect as if included in section 11161 of the SAFETEA–LU [Pub. L. 109–59].''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 402(k) of Pub. L. 109–135 effective as if included in the provision of the Energy Policy Act of 2005, Pub. L. 109–58, to which such amendment relates, see section 402(m)(1) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 36C of this title.

EFFECTIVE DATE

Pub. L. 109–58, title XIII, §1342(c), Aug. 8, 2005, 119 Stat. 1051, provided that: ''The amendments made by

[1] So in original.

this section [enacting this section and amending sections 38, 55, 1016, and 6501 of this title] shall apply to property placed in service after December 31, 2005, in taxable years ending after such date.''

§ 30D. New qualified plug-in electric drive motor vehicles

(a) Allowance of credit

There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of the credit amounts determined under subsection (b) with respect to each new qualified plug-in electric drive motor vehicle placed in service by the taxpayer during the taxable year.

(b) Per vehicle dollar limitation

(1) In general

The amount determined under this subsection with respect to any new qualified plug-in electric drive motor vehicle is the sum of the amounts determined under paragraphs (2) and (3) with respect to such vehicle.

(2) Base amount

The amount determined under this paragraph is $2,500.

(3) Battery capacity

In the case of a vehicle which draws propulsion energy from a battery with not less than 5 kilowatt hours of capacity, the amount determined under this paragraph is $417, plus $417 for each kilowatt hour of capacity in excess of 5 kilowatt hours. The amount determined under this paragraph shall not exceed $5,000.

(c) Application with other credits

(1) Business credit treated as part of general business credit

So much of the credit which would be allowed under subsection (a) for any taxable year (determined without regard to this subsection) that is attributable to property of a character subject to an allowance for depreciation shall be treated as a credit listed in section 38(b) for such taxable year (and not allowed under subsection (a)).

(2) Personal credit

(A) In general

For purposes of this title, the credit allowed under subsection (a) for any taxable year (determined after application of paragraph (1)) shall be treated as a credit allowable under subpart A for such taxable year.

(B) Limitation based on amount of tax

In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed under subsection (a) for any taxable year (determined after application of paragraph (1)) shall not exceed the excess of—

(i) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

(ii) the sum of the credits allowable under subpart A (other than this section and section 25D) and section 27 for the taxable year.

(d) New qualified plug-in electric drive motor vehicle

For purposes of this section—

(1) In general

The term ''new qualified plug-in electric drive motor vehicle'' means a motor vehicle—

(A) the original use of which commences with the taxpayer,

(B) which is acquired for use or lease by the taxpayer and not for resale,

(C) which is made by a manufacturer,

(D) which is treated as a motor vehicle for purposes of title II of the Clean Air Act,

(E) which has a gross vehicle weight rating of less than 14,000 pounds, and

(F) which is propelled to a significant extent by an electric motor which draws electricity from a battery which—

(i) has a capacity of not less than 4 kilowatt hours, and

(ii) is capable of being recharged from an external source of electricity.

(2) Motor vehicle

The term ''motor vehicle'' means any vehicle which is manufactured primarily for use on public streets, roads, and highways (not including a vehicle operated exclusively on a rail or rails) and which has at least 4 wheels.

(3) Manufacturer

The term ''manufacturer'' has the meaning given such term in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

(4) Battery capacity

The term ''capacity'' means, with respect to any battery, the quantity of electricity which the battery is capable of storing, expressed in kilowatt hours, as measured from a 100 percent state of charge to a 0 percent state of charge.

(e) Limitation on number of new qualified plug-in electric drive motor vehicles eligible for credit

(1) In general

In the case of a new qualified plug-in electric drive motor vehicle sold during the phaseout period, only the applicable percentage of the credit otherwise allowable under subsection (a) shall be allowed.

(2) Phaseout period

For purposes of this subsection, the phaseout period is the period beginning with the second calendar quarter following the calendar quarter which includes the first date on which the number of new qualified plug-in electric drive motor vehicles manufactured by the manufacturer of the vehicle referred to in paragraph (1) sold for use in the United States after December 31, 2009, is at least 200,000.

(3) Applicable percentage

For purposes of paragraph (1), the applicable percentage is—

(A) 50 percent for the first 2 calendar quarters of the phaseout period,

(B) 25 percent for the 3d and 4th calendar quarters of the phaseout period, and

(C) 0 percent for each calendar quarter thereafter.

(4) Controlled groups

Rules similar to the rules of section 30B(f)(4) shall apply for purposes of this subsection.

(f) Special rules

(1) Basis reduction

For purposes of this subtitle, the basis of any property for which a credit is allowable under subsection (a) shall be reduced by the amount of such credit so allowed.

(2) No double benefit

The amount of any deduction or other credit allowable under this chapter for a new qualified plug-in electric drive motor vehicle shall be reduced by the amount of credit allowed under subsection (a) for such vehicle.

(3) Property used by tax-exempt entity

In the case of a vehicle the use of which is described in paragraph (3) or (4) of section 50(b) and which is not subject to a lease, the person who sold such vehicle to the person or entity using such vehicle shall be treated as the taxpayer that placed such vehicle in service, but only if such person clearly discloses to such person or entity in a document the amount of any credit allowable under subsection (a) with respect to such vehicle (determined without regard to subsection (c)).

(4) Property used outside United States not qualified

No credit shall be allowable under subsection (a) with respect to any property referred to in section 50(b)(1).

(5) Recapture

The Secretary shall, by regulations, provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any property which ceases to be property eligible for such credit.

(6) Election not to take credit

No credit shall be allowed under subsection (a) for any vehicle if the taxpayer elects to not have this section apply to such vehicle.

(7) Interaction with air quality and motor vehicle safety standards

A motor vehicle shall not be considered eligible for a credit under this section unless such vehicle is in compliance with—

(A) the applicable provisions of the Clean Air Act for the applicable make and model year of the vehicle (or applicable air quality provisions of State law in the case of a State which has adopted such provision under a waiver under section 209(b) of the Clean Air Act), and

(B) the motor vehicle safety provisions of sections 30101 through 30169 of title 49, United States Code.

(Added Pub. L. 110–343, div. B, title II, §205(a), Oct. 3, 2008, 122 Stat. 3835; amended Pub. L. 111–5, div. B, title I, §1141(a), Feb. 17, 2009, 123 Stat. 326; Pub. L. 111–148, title X, §10909(b)(2)(H), (c), Mar. 23, 2010, 124 Stat. 1023; Pub. L. 111–312, title I, §101(b)(1), Dec. 17, 2010, 124 Stat. 3298.)

AMENDMENT OF SECTION

For termination of amendment by section 10909(c) of Pub. L. 111–148, see Effective and Termination Dates of 2010 Amendment note below.

REFERENCES IN TEXT

The Clean Air Act, referred to in subsecs. (d)(1)(D), (3), (f)(7)(A), is act July 14, 1955, ch. 360, 69 Stat. 322, which is classified generally to chapter 85 (§7401 et seq.) of Title 42, The Public Health and Welfare. Title II of the Act, known as the National Emissions Standards Act, is classified generally to subchapter II (§7521 et seq.) of chapter 85 of Title 42. Section 209(b) of the Act is classified to section 7543(b) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

AMENDMENTS

2010—Subsec. (c)(2)(B)(ii). Pub. L. 111–148, §10909(b)(2)(H), (c), as amended by Pub. L. 111–312, temporarily substituted ''section 25D'' for ''sections 23 and 25D''. See Effective and Termination Dates of 2010 Amendment note below.

2009—Pub. L. 111–5 amended section generally. Prior to amendment, section provided credit with respect to each new qualified plug-in electric drive motor vehicle placed in service and set forth provisions defining ''applicable amount'' and ''new qualified plug-in electric drive motor vehicle'' and stating limitations based on vehicle weight, the number of vehicles eligible for credit, and amount of tax liability.

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Amendment by Pub. L. 111–148 terminated applicable to taxable years beginning after Dec. 31, 2011, and section is amended to read as if such amendment had never been enacted, see section 10909(c) of Pub. L. 111–148, set out as a note under section 1 of this title.

Amendment by Pub. L. 111–148 applicable to taxable years beginning after Dec. 31, 2009, see section 10909(d) of Pub. L. 111–148, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–5 applicable to vehicles acquired after Dec. 31, 2009, see section 1141(c) of Pub. L. 111–5, set out as a note under section 30B of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 2008, see section 205(e) of Pub. L. 110–343, set out as an Effective and Termination Dates of 2008 Amendment note under section 24 of this title.

SUBPART C—REFUNDABLE CREDITS

Sec.
31. Tax withheld on wages.
32. Earned income.
33. Tax withheld at source on nonresident aliens and foreign corporations.
34. Certain uses of gasoline and special fuels.
35. Health insurance costs of eligible individuals.
36. First-time homebuyer credit.
36A. Making work pay credit.
36B. Refundable credit for coverage under a qualified health plan.
36C. Adoption expenses.
37. Overpayments of tax.

AMENDMENT OF ANALYSIS

For termination of amendment by section 10909(c) of Pub. L. 111–148, see Effective and Termination Dates of 2010 Amendment note under section 1 of this title.

AMENDMENTS

2010—Pub. L. 111–148, title X, §10909(b)(2)(Q), (c), Mar. 23, 2010, 124 Stat. 1023, as amended by Pub. L. 111–312,

title I, §101(b)(1), Dec. 17, 2010, 124 Stat. 3298, temporarily added item 36C.

Pub. L. 111–148, title I, §1401(d)(2), Mar. 23, 2010, 124 Stat. 220, added item 36B.

2009—Pub. L. 111–5, div. B, title I, §1001(e)(3), Feb. 17, 2009, 123 Stat. 312, added item 36A.

2008—Pub. L. 110–289, div. C, title I, §3011(b)(4), July 30, 2008, 122 Stat. 2891, added item 36 and redesignated former item 36 as 37.

2002—Pub. L. 107–210, div. A, title II, §201(c)(2), Aug. 6, 2002, 116 Stat. 960, which directed amendment of the table of sections for subpart C of part IV of this chapter by adding items 35 and 36 and striking out the last item, was executed to the table of sections for this subpart which is in part IV of subchapter A of this chapter by adding those items and striking out former item 35 ''Overpayments of tax'' to reflect the probable intent of Congress.

1984—Pub. L. 98–369, div. A, title IV, §471(b), July 18, 1984, 98 Stat. 826, added subpart C heading and analysis of sections for subpart C consisting of items 31, 32 (formerly 43), 33 (formerly 32), 34 (formerly 39), and 35 (formerly 45). Former subpart C, setting out the rules for computing credit for expenses of work incentive programs, was repealed.

§ 31. Tax withheld on wages

(a) Wage withholding for income tax purposes

(1) In general

The amount withheld as tax under chapter 24 shall be allowed to the recipient of the income as a credit against the tax imposed by this subtitle.

(2) Year of credit

The amount so withheld during any calendar year shall be allowed as a credit for the taxable year beginning in such calendar year. If more than one taxable year begins in a calendar year, such amount shall be allowed as a credit for the last taxable year so beginning.

(b) Credit for special refunds of social security tax

(1) In general

The Secretary may prescribe regulations providing for the crediting against the tax imposed by this subtitle of the amount determined by the taxpayer or the Secretary to be allowable under section 6413(c) as a special refund of tax imposed on wages. The amount allowed as a credit under such regulations shall, for purposes of this subtitle, be considered an amount withheld at source as tax under section 3402.

(2) Year of credit

Any amount to which paragraph (1) applies shall be allowed as a credit for the taxable year beginning in the calendar year during which the wages were received. If more than one taxable year begins in the calendar year, such amount shall be allowed as a credit for the last taxable year so beginning.

(c) Special rule for backup withholding

Any credit allowed by subsection (a) for any amount withheld under section 3406 shall be allowed for the taxable year of the recipient of the income in which the income is received.

(Aug. 16, 1954, ch. 736, 68A Stat. 12; Pub. L. 94–455, title XIX, §1906(b)(13)(D), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–248, title III, §§302(a), 308(a), Sept. 3, 1982, 96 Stat. 585, 591; Pub. L. 97–354, §3(i)(4), Oct. 19, 1982, 96 Stat. 1691; Pub. L. 97–448, title III, §306(b)(1), Jan. 12, 1983, 96 Stat. 2405; Pub. L. 98–67, title I, §§102(a), 104(d)(2), Aug. 5, 1983, 97 Stat. 369, 379; Pub. L. 98–369, div. A, title IV, §471(c), title VII, §714(j)(2), July 18, 1984, 98 Stat. 826, 962.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98–369, §714(j)(2), substituted ''as tax under chapter 24'' for ''under section 3402 as tax on the wages of any individual''.

1983—Pub. L. 98–67 added subsec. (c) and repealed amendments made by Pub. L. 97–248. See 1982 Amendment note below.

Pub. L. 97–448 amended subsec. (d) generally. See 1982 Amendment note below.

1982—Pub. L. 97–248, as amended by Pub. L. 97–354 and Pub. L. 97–448, amended section generally, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983. Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

1976—Subsec. (b)(1). Pub. L. 94–455 struck out ''or his delegate'' after ''The Secretary'' and ''(or his delegate)'' after ''taxpayer or the Secretary''.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 715 of Pub. L. 98–369 provided that: ''Any amendment made by this subtitle [subtitle A (§§711–715) of title VII of Pub. L. 98–369, see Tables for classification] shall take effect as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248] to which such amendment relates.''

EFFECTIVE DATE OF 1983 AMENDMENTS

Section 110 of title I of Pub. L. 98–67 provided that:

''(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this title [enacting sections 3406 and 6705 of this title, amending this section and sections 274, 275, 643, 661, 3402, 3403, 3502, 3507, 6011, 6013, 6015, 6042, 6044, 6049, 6051, 6365, 6401, 6413, 6652, 6653, 6654, 6676, 6678, 6682, 7205, 7215, 7431, 7654, and 7701 of this title, repealing sections 3451 to 3456 of this title, enacting provisions set out as notes under sections 1, 3451, and 6011 of this title, and repealing provisions set out as a note under section 3451 of this title] shall apply with respect to payments made after December 31, 1983.

''(b) SECTION 102.—The amendments made by section 102 [amending this section and sections 274, 275, 643, 661, 3403, 3502, 3507, 6013, 6015, 6042, 6044, 6049, 6051, 6365, 6401, 6413, 6654, 6682, 7205, 7215, 7654, and 7701 of this title, repealing sections 3451 to 3456 of this title, enacting provisions set out as a note under section 3451 of this title, and repealing provisions set out as a note under section 3451 of this title] shall take effect as of the close of June 30, 1983.

''(c) SECTIONS 104(b) AND 107.—The amendments made by sections 104(b) and 107 [amending sections 6682, 7205, and 7431 of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1983].''

Section 311(d) of Pub. L. 97–448 provided that: ''The amendments made by section 306 [amending this section and sections 48, 55, 263, 291, 312, 338, 401, 501, 1232, 6038A, 6226, 6228, 6679, and 7701 of this title, enacting provisions set out as notes under sections 338 and 1232 of this title, and amending provisions set out as notes under sections 56, 72, 101, 103, 168, 302, 311, 338, 415, 907, and 5701 of this title] shall take effect as if included in the provisions of the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248] to which such amendments relate.''

CONSTRUCTION OF AMENDMENT BY TITLE VII OF DIVISION A OF PUB. L. 98–369

Section 701 of title VII of div. A of Pub. L. 98–369 provided that: ''For purposes of applying the amendments made by any title of this Act [see Tables for classification] other than this title, the provisions of this title shall be treated as having been enacted immediately before the provisions of such other titles.''

§ 32. Earned income

(a) Allowance of credit

(1) In general

In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the credit percentage of so much of the taxpayer's earned income for the taxable year as does not exceed the earned income amount.

(2) Limitation

The amount of the credit allowable to a taxpayer under paragraph (1) for any taxable year shall not exceed the excess (if any) of—

(A) the credit percentage of the earned income amount, over

(B) the phaseout percentage of so much of the adjusted gross income (or, if greater, the earned income) of the taxpayer for the taxable year as exceeds the phaseout amount.

(b) Percentages and amounts

For purposes of subsection (a)—

(1) Percentages

The credit percentage and the phaseout percentage shall be determined as follows:

(A) In general

In the case of taxable years beginning after 1995:

In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
1 qualifying child	34	15.98
2 or more qualifying children.	40	21.06
No qualifying children	7.65	7.65

(B) Transitional percentages for 1995

In the case of taxable years beginning in 1995:

In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
1 qualifying child	34	15.98
2 or more qualifying children.	36	20.22
No qualifying children	7.65	7.65

(C) Transitional percentages for 1994

In the case of a taxable year beginning in 1994:

In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
1 qualifying child	26.3	15.98
2 or more qualifying children.	30	17.68
No qualifying children	7.65	7.65

(2) Amounts

(A) In general

Subject to subparagraph (B), the earned income amount and the phaseout amount shall be determined as follows:

In the case of an eligible individual with:	The earned income amount is:	The phaseout amount is:
1 qualifying child	$6,330	$11,610
2 or more qualifying children.	$8,890	$11,610
No qualifying children	$4,220	$5,280

(B) Joint returns

In the case of a joint return filed by an eligible individual and such individual's spouse, the phaseout amount determined under subparagraph (A) shall be increased by—

(i) $1,000 in the case of taxable years beginning in 2002, 2003, and 2004,

(ii) $2,000 in the case of taxable years beginning in 2005, 2006, and 2007, and

(iii) $3,000 in the case of taxable years beginning after 2007.

(3) Special rules for 2009, 2010, 2011, and 2012

In the case of any taxable year beginning in 2009, 2010, 2011, or 2012—

(A) Increased credit percentage for 3 or more qualifying children

In the case of a taxpayer with 3 or more qualifying children, the credit percentage is 45 percent.

(B) Reduction of marriage penalty

(i) In general

The dollar amount in effect under paragraph (2)(B) shall be $5,000.

(ii) Inflation adjustment

In the case of any taxable year beginning in 2010, the $5,000 amount in clause (i) shall be increased by an amount equal to—

(I) such dollar amount, multiplied by

(II) the cost of living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins determined by substituting ''calendar year 2008'' for ''calendar year 1992'' in subparagraph (B) thereof.

(iii) Rounding

Subparagraph (A) of subsection (j)(2) shall apply after taking into account any increase under clause (ii).

(c) Definitions and special rules

For purposes of this section—

(1) Eligible individual

(A) In general

The term ''eligible individual'' means—

(i) any individual who has a qualifying child for the taxable year, or

(ii) any other individual who does not have a qualifying child for the taxable year, if—

(I) such individual's principal place of abode is in the United States for more than one-half of such taxable year,

(II) such individual (or, if the individual is married, either the individual or the individual's spouse) has attained age 25 but not attained age 65 before the close of the taxable year, and

(III) such individual is not a dependent for whom a deduction is allowable under section 151 to another taxpayer for any taxable year beginning in the same calendar year as such taxable year.

For purposes of the preceding sentence, marital status shall be determined under section 7703.

(B) Qualifying child ineligible

If an individual is the qualifying child of a taxpayer for any taxable year of such taxpayer beginning in a calendar year, such individual shall not be treated as an eligible individual for any taxable year of such individual beginning in such calendar year.

(C) Exception for individual claiming benefits under section 911

The term ''eligible individual'' does not include any individual who claims the benefits of section 911 (relating to citizens or residents living abroad) for the taxable year.

(D) Limitation on eligibility of nonresident aliens

The term ''eligible individual'' shall not include any individual who is a nonresident alien individual for any portion of the taxable year unless such individual is treated for such taxable year as a resident of the United States for purposes of this chapter by reason of an election under subsection (g) or (h) of section 6013.

(E) Identification number requirement

No credit shall be allowed under this section to an eligible individual who does not include on the return of tax for the taxable year—

(i) such individual's taxpayer identification number, and

(ii) if the individual is married (within the meaning of section 7703), the taxpayer identification number of such individual's spouse.

(F) Individuals who do not include TIN, etc., of any qualifying child

No credit shall be allowed under this section to any eligible individual who has one or more qualifying children if no qualifying child of such individual is taken into account under subsection (b) by reason of paragraph (3)(D).

(2) Earned income

(A) The term ''earned income'' means—

(i) wages, salaries, tips, and other employee compensation, but only if such amounts are includible in gross income for the taxable year, plus

(ii) the amount of the taxpayer's net earnings from self-employment for the taxable year (within the meaning of section 1402(a)), but such net earnings shall be determined with regard to the deduction allowed to the taxpayer by section 164(f).

(B) For purposes of subparagraph (A)—

(i) the earned income of an individual shall be computed without regard to any community property laws,

(ii) no amount received as a pension or annuity shall be taken into account,

(iii) no amount to which section 871(a) applies (relating to income of nonresident alien individuals not connected with United States business) shall be taken into account,

(iv) no amount received for services provided by an individual while the individual is an inmate at a penal institution shall be taken into account,

(v) no amount described in subparagraph (A) received for service performed in work activities as defined in paragraph (4) or (7) of section 407(d) of the Social Security Act to which the taxpayer is assigned under any State program under part A of title IV of such Act shall be taken into account, but only to the extent such amount is subsidized under such State program, and

(vi) a taxpayer may elect to treat amounts excluded from gross income by reason of section 112 as earned income.

(3) Qualifying child

(A) In general

The term ''qualifying child'' means a qualifying child of the taxpayer (as defined in section 152(c), determined without regard to paragraph (1)(D) thereof and section 152(e)).

(B) Married individual

The term ''qualifying child'' shall not include an individual who is married as of the close of the taxpayer's taxable year unless the taxpayer is entitled to a deduction under section 151 for such taxable year with respect to such individual (or would be so entitled but for section 152(e)).

(C) Place of abode

For purposes of subparagraph (A), the requirements of section 152(c)(1)(B) shall be met only if the principal place of abode is in the United States.

(D) Identification requirements

(i) In general

A qualifying child shall not be taken into account under subsection (b) unless the taxpayer includes the name, age, and TIN of the qualifying child on the return of tax for the taxable year.

(ii) Other methods

The Secretary may prescribe other methods for providing the information described in clause (i).

(4) Treatment of military personnel stationed outside the United States

For purposes of paragraphs (1)(A)(ii)(I) and (3)(C), the principal place of abode of a member of the Armed Forces of the United States shall be treated as in the United States during

any period during which such member is stationed outside the United States while serving on extended active duty with the Armed Forces of the United States. For purposes of the preceding sentence, the term ''extended active duty'' means any period of active duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period.

(d) Married individuals

In the case of an individual who is married (within the meaning of section 7703), this section shall apply only if a joint return is filed for the taxable year under section 6013.

(e) Taxable year must be full taxable year

Except in the case of a taxable year closed by reason of the death of the taxpayer, no credit shall be allowable under this section in the case of a taxable year covering a period of less than 12 months.

(f) Amount of credit to be determined under tables

(1) In general

The amount of the credit allowed by this section shall be determined under tables prescribed by the Secretary.

(2) Requirements for tables

The tables prescribed under paragraph (1) shall reflect the provisions of subsections (a) and (b) and shall have income brackets of not greater than $50 each—

(A) for earned income between $0 and the amount of earned income at which the credit is phased out under subsection (b), and

(B) for adjusted gross income between the dollar amount at which the phaseout begins under subsection (b) and the amount of adjusted gross income at which the credit is phased out under subsection (b).

[(g) Repealed. Pub. L. 111–226, title II, § 219(a)(2), Aug. 10, 2010, 124 Stat. 2403]

[(h) Repealed. Pub. L. 107–16, title III, § 303(c), June 7, 2001, 115 Stat. 55]

(i) Denial of credit for individuals having excessive investment income

(1) In general

No credit shall be allowed under subsection (a) for the taxable year if the aggregate amount of disqualified income of the taxpayer for the taxable year exceeds $2,200.

(2) Disqualified income

For purposes of paragraph (1), the term ''disqualified income'' means—

(A) interest or dividends to the extent includible in gross income for the taxable year,

(B) interest received or accrued during the taxable year which is exempt from tax imposed by this chapter,

(C) the excess (if any) of—

(i) gross income from rents or royalties not derived in the ordinary course of a trade or business, over

(ii) the sum of—

(I) the deductions (other than interest) which are clearly and directly allocable to such gross income, plus

(II) interest deductions properly allocable to such gross income,

(D) the capital gain net income (as defined in section 1222) of the taxpayer for such taxable year, and

(E) the excess (if any) of—

(i) the aggregate income from all passive activities for the taxable year (determined without regard to any amount included in earned income under subsection (c)(2) or described in a preceding subparagraph), over

(ii) the aggregate losses from all passive activities for the taxable year (as so determined).

For purposes of subparagraph (E), the term ''passive activity'' has the meaning given such term by section 469.

(j) Inflation adjustments

(1) In general

In the case of any taxable year beginning after 1996, each of the dollar amounts in subsections (b)(2) and (i)(1) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined—

(i) in the case of amounts in subsections (b)(2)(A) and (i)(1), by substituting ''calendar year 1995'' for ''calendar year 1992'' in subparagraph (B) thereof, and

(ii) in the case of the $3,000 amount in subsection (b)(2)(B)(iii), by substituting ''calendar year 2007'' for ''calendar year 1992'' in subparagraph (B) of such section 1.

(2) Rounding

(A) In general

If any dollar amount in subsection (b)(2)(A) (after being increased under subparagraph (B) thereof), after being increased under paragraph (1), is not a multiple of $10, such dollar amount shall be rounded to the nearest multiple of $10.

(B) Disqualified income threshold amount

If the dollar amount in subsection (i)(1), after being increased under paragraph (1), is not a multiple of $50, such amount shall be rounded to the next lowest multiple of $50.

(k) Restrictions on taxpayers who improperly claimed credit in prior year

(1) Taxpayers making prior fraudulent or reckless claims

(A) In general

No credit shall be allowed under this section for any taxable year in the disallowance period.

(B) Disallowance period

For purposes of paragraph (1), the disallowance period is—

(i) the period of 10 taxable years after the most recent taxable year for which there was a final determination that the taxpayer's claim of credit under this section was due to fraud, and

(ii) the period of 2 taxable years after the most recent taxable year for which there was a final determination that the taxpayer's claim of credit under this section was due to reckless or intentional disregard of rules and regulations (but not due to fraud).

(2) Taxpayers making improper prior claims

In the case of a taxpayer who is denied credit under this section for any taxable year as a result of the deficiency procedures under subchapter B of chapter 63, no credit shall be allowed under this section for any subsequent taxable year unless the taxpayer provides such information as the Secretary may require to demonstrate eligibility for such credit.

(*l*) Coordination with certain means-tested programs

For purposes of—

(1) the United States Housing Act of 1937,

(2) title V of the Housing Act of 1949,

(3) section 101 of the Housing and Urban Development Act of 1965,

(4) sections 221(d)(3), 235, and 236 of the National Housing Act, and

(5) the Food and Nutrition Act of 2008,

any refund made to an individual (or the spouse of an individual) by reason of this section, and any payment made to such individual (or such spouse) by an employer under section 3507,[1] shall not be treated as income (and shall not be taken into account in determining resources for the month of its receipt and the following month).

(m) Identification numbers

Solely for purposes of subsections (c)(1)(E) and (c)(3)(D), a taxpayer identification number means a social security number issued to an individual by the Social Security Administration (other than a social security number issued pursuant to clause (II) (or that portion of clause (III) that relates to clause (II)) of section 205(c)(2)(B)(i) of the Social Security Act).

(Added Pub. L. 94–12, title II, § 204(a), Mar. 29, 1975, 89 Stat. 30, § 43; amended Pub. L. 94–164, § 2(c), Dec. 23, 1975, 89 Stat. 971; Pub. L. 94–455, title IV, § 401(c)(1)(B), (2), Oct. 4, 1976, 90 Stat. 1557; Pub. L. 95–600, title I, §§ 104(a)–(e), 105(a), Nov. 6, 1978, 92 Stat. 2772, 2773; Pub. L. 95–615, § 202(g)(5), formerly § 202(f)(5), Nov. 8, 1978, 92 Stat. 3100, renumbered § 202(g)(5) and amended Pub. L. 96–222, title I, §§ 101(a)(1), (2)(E), 108(a)(1)(A), Apr. 1, 1980, 94 Stat. 194, 195, 223; Pub. L. 97–34, title I, §§ 111(b)(2), 112(b)(3), Aug. 13, 1981, 95 Stat. 194, 195; Pub. L. 98–21, title I, § 124(c)(4)(B), Apr. 20, 1983, 97 Stat. 91; renumbered § 32 and amended Pub. L. 98–369, div. A, title IV, §§ 423(c)(3), 471(c), title X, § 1042(a)–(d)(2), July 18, 1984, 98 Stat. 801, 826, 1043; Pub. L. 99–514, title I, §§ 104(b)(1)(B), 111(a)–(d)(1), title XII, § 1272(d)(4), title XIII, § 1301(j)(8), Oct. 22, 1986, 100 Stat. 2104, 2107, 2594, 2658; Pub. L. 100–647, title I, §§ 1001(c), 1007(g)(12), Nov. 10, 1988, 102 Stat. 3350, 3436; Pub. L. 101–508, title XI, §§ 11101(d)(1)(B), 11111(a), (b), (e), Nov. 5, 1990, 104 Stat. 1388–405, 1388–408, 1388–412, 1388–413; Pub. L. 103–66, title XIII, § 13131(a)–(d)(1), Aug. 10, 1993, 107 Stat. 433–435; Pub. L. 103–465, title VII, §§ 721(a), 722(a), 723(a), 742(a), Dec. 8, 1994, 108 Stat. 5002, 5003, 5010; Pub. L. 104–7, § 4(a), Apr. 11, 1995, 109 Stat. 95; Pub. L. 104–193, title IV, § 451(a), (b), title IX, §§ 909(a), (b), 910(a), (b), Aug. 22, 1996, 110 Stat. 2276, 2277, 2351, 2352; Pub. L. 105–34, title I, § 101(b), title III, § 312(d)(2), title X, § 1085(a)(1), (b)–(d), Aug. 5, 1997, 111 Stat. 798, 840, 955, 956; Pub. L. 105–206, title VI, §§ 6003(b), 6010(p)(1), (2), 6021(a), (b), July 22, 1998, 112 Stat. 791, 816, 817, 823, 824; Pub. L. 106–170, title IV, § 412(a), Dec. 17, 1999, 113 Stat. 1917; Pub. L. 107–16, title II, § 201(c)(3), title III, § 303(a)–(f), (h), June 7, 2001, 115 Stat. 47, 55–57; Pub. L. 107–147, title IV, § 416(a)(1), Mar. 9, 2002, 116 Stat. 55; Pub. L. 108–311, title I, § 104(b), title II, § 205, Oct. 4, 2004, 118 Stat. 1169, 1176; Pub. L. 109–135, title III, § 302(a), Dec. 21, 2005, 119 Stat. 2608; Pub. L. 109–432, div. A, title I, § 106(a), Dec. 20, 2006, 120 Stat. 2938; Pub. L. 110–234, title IV, § 4002(b)(1)(B), (2)(O), May 22, 2008, 122 Stat. 1096, 1097; Pub. L. 110–245, title I, § 102(a), June 17, 2008, 122 Stat. 1625; Pub. L. 110–246, § 4(a), title IV, § 4002(b)(1)(B), (2)(O), June 18, 2008, 122 Stat. 1664, 1857, 1858; Pub. L. 111–5, div. B, title I, § 1002(a), Feb. 17, 2009, 123 Stat. 312; Pub. L. 111–226, title II, § 219(a)(2), Aug. 10, 2010, 124 Stat. 2403; Pub. L. 111–312, title I, § 103(c), Dec. 17, 2010, 124 Stat. 3299.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENT OF SECTION

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (c)(2)(B)(v) and (m), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§ 601 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. Sections 205(c)(2)(B)(i) and 407(d)(4), (7) of the Act are classified to sections 405(c)(2)(B)(i) and 607(d)(4), (7), respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 3507, referred to in subsec. (*l*), was repealed by Pub. L. 111–226, title II, § 219(a)(1), Aug. 10, 2010, 124 Stat. 2403.

The United States Housing Act of 1937, referred to in subsec. (*l*)(1), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note under section 1437 of Title 42 and Tables.

The Housing Act of 1949, referred to in subsec. (*l*)(2), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title V of the Act is classified generally to subchapter III (§ 1471 et seq.) of chapter 8A of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of Title 42 and Tables.

Section 101 of the Housing and Urban Development Act of 1965, referred to in subsec. (*l*)(3), is section 101 of Pub. L. 89–117, title I, Aug. 10, 1965, 79 Stat. 451, which enacted section 1701s of Title 12, Banks and Banking, and amended sections 1451 and 1465 of Title 42.

Sections 221(d)(3), 235, and 236 of the National Housing Act, referred to in subsec. (*l*)(4), are classified to

[1] See References in Text note below.

sections 1715*l*(d)(3), 1715z, and 1715z–1, respectively, of Title 12.

The Food and Nutrition Act of 2008, referred to in subsec. (*l*)(5), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

PRIOR PROVISIONS

A prior section 32 was renumbered section 33 of this title.

AMENDMENTS

2010—Subsec. (b)(3). Pub. L. 111–312 substituted ''2009, 2010, 2011, and 2012'' for ''2009 and 2010'' in heading and '', 2010, 2011, or 2012'' for ''or 2010'' in introductory provisions.

Subsec. (g). Pub. L. 111–226 struck out subsec. (g). Text read as follows:

''(1) RECAPTURE OF EXCESS ADVANCE PAYMENTS.—If any payment is made to the individual by an employer under section 3507 during any calendar year, then the tax imposed by this chapter for the individual's last taxable year beginning in such calendar year shall be increased by the aggregate amount of such payments.

''(2) RECONCILIATION OF PAYMENTS ADVANCED AND CREDIT ALLOWED.—Any increase in tax under paragraph (1) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit (other than the credit allowed by subsection (a)) allowable under this part.''

2009—Subsec. (b)(3). Pub. L. 111–5 added par. (3).

2008—Subsec. (c)(2)(B)(vi). Pub. L. 110–245 amended cl. (vi) generally. Prior to amendment, cl. (vi) read as follows: ''in the case of any taxable year ending—

''(I) after the date of the enactment of this clause, and

''(II) before January 1, 2008,

a taxpayer may elect to treat amounts excluded from gross income by reason of section 112 as earned income.''

Subsec. (*l*)(5). Pub. L. 110–246, § 4002(b)(1)(B), (2)(O), substituted ''Food and Nutrition Act of 2008'' for ''Food Stamp Act of 1977''.

2006—Subsec. (c)(2)(B)(vi)(II). Pub. L. 109–432 substituted ''2008'' for ''2007''.

2005—Subsec. (c)(2)(B)(vi)(II). Pub. L. 109–135 substituted ''2007'' for ''2006''.

2004—Subsec. (c)(1)(C) to (G). Pub. L. 108–311, § 205(b)(1), redesignated subpars. (D) to (G) as (C) to (F), respectively, and struck out former subpar. (C) which related to 2 or more claiming qualifying child.

Subsec. (c)(2)(B)(vi). Pub. L. 108–311, § 104(b), added cl. (vi).

Subsec. (c)(3). Pub. L. 108–311, § 205(a), amended par. (3) generally, substituting subpars. (A) to (D) for former subpars. (A) to (E), relating to qualifying child in general, relationship test, age requirements, identification requirements, and place of abode requirements.

Subsec. (c)(4). Pub. L. 108–311, § 205(b)(2), substituted ''(3)(C)'' for ''(3)(E)''.

Subsec. (m). Pub. L. 108–311, § 205(b)(3), substituted ''(c)(1)(E)'' for ''(c)(1)(F)''.

2002—Subsec. (g)(2). Pub. L. 107–147 substituted ''part'' for ''subpart''.

2001—Subsec. (a)(2)(B). Pub. L. 107–16, §§ 303(d)(1), 901, temporarily struck out ''modified'' before ''adjusted gross income''. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (b)(2). Pub. L. 107–16, §§ 303(a)(1), 901, temporarily reenacted par. heading without change, designated existing provisions as subpar. (A), inserted subpar. heading, substituted ''Subject to subparagraph (B), the earned'' for ''The earned'', and added subpar. (B). See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (c)(1)(C). Pub. L. 107–16, §§ 303(f), 901, temporarily amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: ''If 2 or more individuals would (but for this subparagraph and after application of subparagraph (B)) be treated as eligible individuals with respect to the same qualifying child for taxable years beginning in the same calendar year, only the individual with the highest modified adjusted gross income for such taxable years shall be treated as an eligible individual with respect to such qualifying child.'' See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (c)(2)(A)(i). Pub. L. 107–16, §§ 303(b), 901, temporarily inserted '', but only if such amounts are includible in gross income for the taxable year'' after ''other employee compensation''. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (c)(3)(A)(ii). Pub. L. 107–16, §§ 303(e)(2)(B), 901, temporarily struck out ''except as provided in subparagraph (B)(iii),'' before ''who has''. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (c)(3)(B)(i). Pub. L. 107–16, §§ 303(e)(1), 901, temporarily reenacted heading, introductory provisions, and subcl. (III) of cl. (i) without change and amended subcls. (I) and (II) generally. Prior to amendment, subcls. (I) and (II) read as follows:

''(I) a son or daughter of the taxpayer, or a descendant of either,

''(II) a stepson or stepdaughter of the taxpayer, or.''

See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (c)(3)(B)(iii). Pub. L. 107–16, §§ 303(e)(2)(A), 901, temporarily reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of clause (i)(III), the term 'eligible foster child' means an individual not described in clause (i)(I) or (II) who—

''(I) is a brother, sister, stepbrother, or stepsister of the taxpayer (or a descendant of any such relative) or is placed with the taxpayer by an authorized placement agency,

''(II) the taxpayer cares for as the taxpayer's own child, and

''(III) has the same principal place of abode as the taxpayer for the taxpayer's entire taxable year.''

See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (c)(3)(E). Pub. L. 107–16, §§ 303(h), 901, temporarily substituted ''subparagraph (A)(ii)'' for ''subparagraphs (A)(ii) and (B)(iii)(II)''. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (c)(5). Pub. L. 107–16, §§ 303(d)(2)(A), 901, temporarily struck out heading and text of par. (5), which defined ''modified adjusted gross income'' as meaning adjusted gross income without regard to certain described amounts and increased by certain described amounts. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (f)(2)(B). Pub. L. 107–16, §§ 303(d)(2)(B), 901, temporarily struck out ''modified'' before ''adjusted gross income'' in two places. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (h). Pub. L. 107–16, §§ 303(c), 901, temporarily struck out heading and text of subsec. (h). Text read as follows: ''The credit allowed under this section for the taxable year shall be reduced by the amount of tax imposed by section 55 (relating to alternative minimum tax) with respect to such taxpayer for such taxable year.'' See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (j)(1)(B). Pub. L. 107–16, §§ 303(a)(2), 901, temporarily amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 1995' for 'cal-

endar year 1992' in subparagraph (B) thereof.'' See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (j)(2)(A). Pub. L. 107–16, §§303(a)(3), 901, temporarily substituted ''subsection (b)(2)(A) (after being increased under subparagraph (B) thereof)'' for ''subsection (b)(2)''. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (n). Pub. L. 107–16, §§201(c)(3), 901, temporarily struck out heading and text of subsec. (n), which had increased credit allowable under this section in the case of a taxpayer with respect to whom a child tax credit is allowed under section 24(a), described amount of increase, and set forth provisions relating to coordination with other credits allowable under this part. See Effective and Termination Dates of 2001 Amendment note below.

1999—Subsec. (c)(3)(B)(iii). Pub. L. 106–170 added subcl. (I) and redesignated former subcls. (I) and (II) as (II) and (III), respectively.

1998—Subsec. (c)(1)(F). Pub. L. 105–206, §6021(a), added introductory provisions and struck out former introductory provisions which read as follows: ''The term 'eligible individual' does not include any individual who does not include on the return of tax for the taxable year—''.

Subsec. (c)(1)(G). Pub. L. 105–206, §6021(b)(2), added subpar. (G).

Subsec. (c)(2)(B)(v). Pub. L. 105–206, §6010(p)(2), inserted ''shall be taken into account'' before '', but only''.

Subsec. (c)(3)(A)(ii) to (iv). Pub. L. 105–206, §6021(b)(3), inserted ''and'' at end of cl. (ii), substituted a period for '', and'' at end of cl. (iii), and struck out cl. (iv) which read as follows: ''with respect to whom the taxpayer meets the identification requirements of subparagraph (D)''.

Subsec. (c)(3)(D)(i). Pub. L. 105–206, §6021(b)(1), reenacted heading without change and amended text of cl. (i) generally. Prior to amendment, text read as follows: ''The requirements of this subparagraph are met if the taxpayer includes the name, age, and TIN of each qualifying child (without regard to this subparagraph) on the return of tax for the taxable year.''

Subsec. (c)(5)(A). Pub. L. 105–206, §6010(p)(1)(A), inserted ''and increased by the amounts described in subparagraph (C)'' before period at end.

Subsec. (c)(5)(B). Pub. L. 105–206, §6010(p)(1)(B), (C), inserted ''or'' at end of cl. (iii) and substituted cl. (iv)(III) and concluding provisions for former cls. (iv)(III), (v), (vi), and concluding provisions which read as follows:

> ''(III) other trades or businesses
>
> ''(v) interest received or accrued during the taxable year which is exempt from tax imposed by this chapter, and
>
> ''(vi) amounts received as a pension or annuity, and any distributions or payments received from an individual retirement plan, by the taxpayer during the taxable year to the extent not included in gross income.

For purposes of clause (iv), there shall not be taken into account items which are attributable to a trade or business which consists of the performance of services by the taxpayer as an employee. Clause (vi) shall not include any amount which is not includible in gross income by reason of section 402(c), 403(a)(4), 403(b), 408(d)(3), (4), or (5), or 457(e)(10).''

Subsec. (c)(5)(C). Pub. L. 105–206, §6010(p)(1)(C), added subpar. (C).

Subsecs. (m), (n). Pub. L. 105–206, §6003(b), redesignated subsec. (m), relating to supplemental child credit, as (n) and amended text generally. Prior to amendment, text read as follows:

''(1) IN GENERAL.—In the case of a taxpayer with respect to whom a credit is allowed under section 24 for the taxable year, there shall be allowed as a credit under this section an amount equal to the supplemental child credit (if any) determined for such taxpayer for such taxable year under paragraph (2). Such credit shall be in addition to the credit allowed under subsection (a).

''(2) SUPPLEMENTAL CHILD CREDIT.—For purposes of this subsection, the supplemental child credit is an amount equal to the excess (if any) of—

> ''(A) the amount determined under section 24(d)(1)(A), over
>
> ''(B) the amount determined under section 24(d)(1)(B).

The amounts referred to in subparagraphs (A) and (B) shall be determined as if section 24(d) applied to all taxpayers.

''(3) COORDINATION WITH SECTION 24.—The amount of the credit under section 24 shall be reduced by the amount of the credit allowed under this subsection.''

1997—Subsec. (c)(2)(B)(v). Pub. L. 105–34, §1085(c), added cl. (v).

Subsec. (c)(4). Pub. L. 105–34, §312(d)(2), struck out ''(as defined in section 1034(h)(3)'' after ''serving on extended active duty'' and inserted at end ''For purposes of the preceding sentence, the term 'extended active duty' means any period of active duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period.''

Subsec. (c)(5)(B). Pub. L. 105–34, §1085(d)(4), inserted at end of concluding provisions ''Clause (vi) shall not include any amount which is not includible in gross income by reason of section 402(c), 403(a)(4), 403(b), 408(d)(3), (4), or (5), or 457(e)(10).''

Subsec. (c)(5)(B)(iv). Pub. L. 105–34, §1085(b), substituted ''75 percent'' for ''50 percent'' in introductory provisions.

Subsec. (c)(5)(B)(v), (vi). Pub. L. 105–34, §1085(d)(1)–(3), added cls. (v) and (vi).

Subsec. (k). Pub. L. 105–34, §1085(a)(1), added subsec. (k). Former subsec. (k) redesignated (*l*).

Subsec. (*l*). Pub. L. 105–34, §1085(a)(1), redesignated subsec. (k) as (*l*). Former subsec. (*l*) redesignated (m).

Subsec. (m). Pub. L. 105–34, §1085(a)(1), redesignated subsec. (*l*) as (m) relating to identification numbers.

Pub. L. 105–34, §101(b), added subsec. (m) relating to supplemental child credit.

1996—Subsec. (a)(2)(B). Pub. L. 104–193, §910(a), inserted ''modified'' before ''adjusted gross income''.

Subsec. (b)(2). Pub. L. 104–193, §909(a)(3), reenacted heading without change and amended text generally. Prior to amendment, text consisted of subpars. (A) and (B) setting out tables for determining the earned income amount for taxable years beginning after 1994 and for taxable years beginning in 1994.

Subsec. (c)(1)(C). Pub. L. 104–193, §910(a), inserted ''modified'' before ''adjusted gross income''.

Subsec. (c)(1)(F). Pub. L. 104–193, §451(a), added subpar. (F).

Subsec. (c)(5). Pub. L. 104–193, §910(b), added par. (5).

Subsec. (f)(2)(B). Pub. L. 104–193, §910(a), inserted ''modified'' before ''adjusted gross income'' in two places.

Subsec. (i)(1). Pub. L. 104–193, §909(a)(1), substituted ''$2,200'' for ''$2,350''.

Subsec. (i)(2). Pub. L. 104–193, §909(b), added subpars. (D) and (E) and concluding provisions.

Subsec. (j). Pub. L. 104–193, §909(a)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

''(1) IN GENERAL.—In the case of any taxable year beginning after 1994, each dollar amount contained in subsection (b)(2)(A) shall be increased by an amount equal to—

> ''(A) such dollar amount, multiplied by
>
> ''(B) the cost-of-living adjustment determined under section 1(f)(3), for the calendar year in which the taxable year begins, by substituting 'calendar year 1993' for 'calendar year 1992'.

''(2) ROUNDING.—If any dollar amount after being increased under paragraph (1) is not a multiple of $10, such dollar amount shall be rounded to the nearest multiple of $10 (or, if such dollar amount is a multiple of $5, such dollar amount shall be increased to the next higher multiple of $10).''

Subsec. (*l*). Pub. L. 104–193, § 451(b), added subsec. (*l*).

1995—Subsecs. (i) to (k). Pub. L. 104–7 added subsec. (i) and redesignated former subsecs. (i) and (j) as (j) and (k), respectively.

1994—Subsec. (c)(1)(E). Pub. L. 103–465, § 722(a), added subpar. (E).

Subsec. (c)(2)(B)(iv). Pub. L. 103–465, § 723(a), added cl. (iv).

Subsec. (c)(3)(D)(i). Pub. L. 103–465, § 742(a), amended heading and text of cl. (i) generally. Prior to amendment, text read as follows: ''The requirements of this subparagraph are met if—

''(I) the taxpayer includes the name and age of each qualifying child (without regard to this subparagraph) on the return of tax for the taxable year, and

''(II) in the case of an individual who has attained the age of 1 year before the close of the taxpayer's taxable year, the taxpayer includes the taxpayer identification number of such individual on such return of tax for such taxable year.''

Subsec. (c)(4). Pub. L. 103–465, § 721(a), added par. (4).

1993—Subsec. (a). Pub. L. 103–66, § 13131(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the sum of—

''(1) the basic earned income credit, and

''(2) the health insurance credit.''

Subsec. (b). Pub. L. 103–66, § 13131(a), substituted ''Percentages and amounts'' for ''Computation of credit'' in heading and amended text generally. Prior to amendment, text related to method of computation of both earned income credit and health insurance credit.

Subsec. (c)(1)(A). Pub. L. 103–66, § 13131(b), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows: ''The term 'eligible individual' means any individual who has a qualifying child for the taxable year.''

Subsec. (c)(3)(D)(ii). Pub. L. 103–66, § 13131(d)(1), redesignated cl. (iii) as (ii), substituted ''clause (i)'' for ''clause (i) or (ii)'', and struck out heading and text of former cl. (ii). Text read as follows: ''In the case of any taxpayer with respect to which the health insurance credit is allowed under subsection (a)(2), the Secretary may require a taxpayer to include an insurance policy number or other adequate evidence of insurance in addition to any information required to be included in clause (i).''

Subsec. (i)(1). Pub. L. 103–66, § 13131(c)(1), added par. (1) and struck out text and heading of former par. (1). Text read as follows: ''In the case of any taxable year beginning after the applicable calendar year, each dollar amount referred to in paragraph (2)(B) shall be increased by an amount equal to—

''(A) such dollar amount, multiplied by

''(B) the cost-of-living adjustment determined under section 1(f)(3), for the calendar year in which the taxable year begins, by substituting 'calendar year 1984' for 'calendar year 1989' in subparagraph (B) thereof.''

Subsec. (i)(2), (3). Pub. L. 103–66, § 13131(c), redesignated par. (3) as (2) and struck out former par. (2) which defined terms for purposes of the inflation adjustment in par. (1).

1990—Subsec. (a). Pub. L. 101–508, § 11111(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''In the case of an eligible individual, there is allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to 14 percent of so much of the earned income for the taxable year as does not exceed $5,714.''

Subsec. (b). Pub. L. 101–508, § 11111(a), substituted heading for one which read ''Limitation'' and amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''The amount of the credit allowable to a taxpayer under subsection (a) for any taxable year shall not exceed the excess (if any) of—

''(1) the maximum credit allowable under subsection (a) to any taxpayer, over

''(2) 10 percent of so much of the adjusted gross income (or, if greater, the earned income) of the taxpayer for the taxable year as exceeds $9,000.

In the case of any taxable year beginning in 1987, paragraph (2) shall be applied by substituting '$6,500' for '$9,000'.''

Subsec. (c). Pub. L. 101–508, § 11111(a), amended subsec. (c) generally, inserting ''and special rules'' in heading and substituting present provisions for provisions defining ''eligible individual'' and ''earned income''.

Subsec. (i)(1)(B). Pub. L. 101–508, § 11101(d)(1)(B), substituted ''1989'' for ''1987''.

Subsec. (i)(2)(A). Pub. L. 101–508, § 11111(e)(1), (2), substituted ''clause (i) of subparagraph (B)'' for ''clause (i) or (ii) of subparagraph (B)'' in cl. (i) and ''clause (ii)'' for ''clause (iii)'' in cl. (ii).

Subsec. (i)(2)(B). Pub. L. 101–508, § 11111(e)(3), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The dollar amounts referred to in this subparagraph are—

''(i) the $5,714 amount contained in subsection (a),

''(ii) the $6,500 amount contained in the last sentence of subsection (b), and

''(iii) the $9,000 amount contained in subsection (b)(2).''

Subsec. (j). Pub. L. 101–508, § 11111(b), added subsec. (j).

1988—Subsec. (h). Pub. L. 100–647, § 1007(g)(12), struck out ''for taxpayers other than corporations'' after ''alternative minimum tax''.

Subsec. (i)(3). Pub. L. 100–647, § 1001(c), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''If any increase determined under paragraph (1) is not a multiple of $10, such increase shall be rounded to the nearest multiple of $10 (or, if such increase is a multiple of $5, such increase shall be increased to the next higher multiple of $10).''

1986—Subsec. (a). Pub. L. 99–514, § 111(a), substituted ''14 percent'' for ''11 percent'' and ''$5,714'' for ''$5,000''.

Subsec. (b). Pub. L. 99–514, § 111(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''The amount of the credit allowable to a taxpayer under subsection (a) for any taxable year shall not exceed the excess (if any) of—

''(1) $550, over

''(2) 12⅔ percent of so much of the adjusted gross income (or, if greater, the earned income) of the taxpayer for the taxable year as exceeds $6,500.''

Subsec. (c)(1)(A)(i). Pub. L. 99–514, § 1301(j)(8), substituted ''section 7703'' for ''section 143''.

Pub. L. 99–514, § 104(b)(1)(B), substituted ''section 151(c)(3)'' for ''section 151(e)(3)''.

Subsec. (c)(1)(C). Pub. L. 99–514, § 1272(d)(4), struck out ''or 931'' after ''911'' in heading, and amended text generally. Prior to amendment, text read as follows: ''The term 'eligible individual' does not include an individual who, for the taxable year, claims the benefits of—

''(i) section 911 (relating to citizens or residents of the United States living abroad),

''(ii) section 931 (relating to income from sources within possessions of the United States).''

Subsec. (d). Pub. L. 99–514, § 1301(j)(8), substituted ''section 7703'' for ''section 143''.

Subsec. (f)(2)(A), (B). Pub. L. 99–514, § 111(d)(1), added subpars. (A) and (B) and struck out former subpars. (A) and (B) which read as follows:

''(A) for earned income between $0 and $11,000, and

''(B) for adjusted gross income between $6,500 and $11,000.''

Subsec. (i). Pub. L. 99–514, § 111(c), added subsec. (i).

1984—Pub. L. 98–369, § 471(c), renumbered section 43 of this title as this section.

Subsec. (a). Pub. L. 98–369, § 1042(a), substituted ''11 percent'' for ''10 percent''.

Subsec. (b)(1). Pub. L. 98–369, § 1042(d)(1), substituted ''$550'' for ''$500''.

Subsec. (b)(2). Pub. L. 98–369, § 1042(b), substituted ''12⅔ percent'' for ''12.5 percent'' and ''$6,500'' for ''$6,000''.

Subsec. (c)(1)(A)(i). Pub. L. 98–369, § 423(c)(3)(A), inserted ''or would be so entitled but for paragraph (2) or (4) of section 152(e)''.

Subsec. (c)(1)(B). Pub. L. 98–369, § 423(c)(3)(B), substituted ''as the individual for more than one-half of the taxable year'' for ''as the individual''.

Subsec. (f)(2)(A). Pub. L. 98–369, § 1042(d)(2), substituted ''between $0 and $11,000'' for ''between $0 and $10,000''.

Subsec. (f)(2)(B). Pub. L. 98–369, § 1042(d)(2), substituted ''between $6,500 and $11,000'' for ''between $6,000 and $10,000''.

Subsec. (h). Pub. L. 98–369, § 1042(c), added subsec. (h).

1983—Subsec. (c)(2)(A)(ii). Pub. L. 98–21 inserted before period at end '', but such net earnings shall be determined with regard to the deduction allowed to the taxpayer by section 164(f)''.

1981—Subsec. (c)(1)(C). Pub. L. 97–34 struck out reference to section 913 in heading, substituted ''relating to citizens or residents of the United States living abroad'' for ''relating to income earned by individuals in certain camps outside the United States'' in cl. (i), struck out cl. (ii) which made reference to section 913, and redesignated cl. (iii) as (ii).

1980—Subsec. (c)(1)(C). Pub. L. 96–222, § 101(a)(1), in heading substituted ''who claims benefit of section 911, 913, or 931'' for ''entitled to exclude income under section 911'' and in text substituted ''claims the benefits of'' for ''is entitled to exclude any amounts from gross income under'' and inserted reference to section 913 (relating to deduction for certain expenses of living abroad).

Subsecs. (g), (h). Pub. L. 96–222, § 101(a)(2)(E), redesignated subsec. (h) as (g).

1978—Subsec. (a). Pub. L. 95–600, § 104(a), substituted ''subtitle'' for ''chapter'' and ''$5,000'' for ''$4,000''.

Subsec. (b). Pub. L. 95–600, § 104(b), substituted provision limiting the allowable credit to an amount not to exceed the excess of $500 over 12.5 percent of so much of the adjusted gross income for the taxable year as exceeds $6,000 for provision limiting the allowable credit to an amount reduced by 10 percent of so much of the adjusted gross income for the taxable year as exceeds $4,000.

Subsec. (c)(1). Pub. L. 95–600, § 104(e), amended par. (1) generally, substituting in definition of eligible individual one who is married and is entitled to a deduction under section 151 for a child, provided the child has the same principal abode as the individual and the abode is in the United States, is a surviving spouse, or is a head of household, provided the household is in the United States for one who maintains a household in the United States which is the principal abode of that individual and a child of that individual who meets the requirements of section 151(e)(1)(B) or a child of that individual who is disabled within the meaning of section 72(m)(7) and to whom the individual is entitled to claim a deduction under section 151.

Subsec. (c)(1)(C). Pub. L. 95–615, § 202(f)(5), which directed the amendment of subsec. (c)(1)(B) by substituting ''(relating to income earned by employees in certain camps)'' for ''(relating to earned income from sources without the United States)'', was executed to subsec. (c)(1)(C) to reflect the probable intent of Congress and the general amendment of subsec. (c)(1) by Pub. L. 95–600 which enacted provisions formerly contained in subsec. (c)(1)(B) in subsec. (c)(1)(C).

Subsec. (c)(2)(B). Pub. L. 95–600, § 104(d), redesignated cls. (ii) to (iv) as (i) to (iii), respectively. Former cl. (i), which provided that amounts be taken into account only if includible in the gross income of the taxpayer for the taxable year, was struck out.

Subsec. (f). Pub. L. 95–600, § 104(c), added subsec. (f).

Subsec. (h). Pub. L. 95–600, § 105(a), added subsec. (h).

1976—Subsec. (a). Pub. L. 94–455, § 401(c)(1)(B), substituted ''is allowed'' for ''shall be allowed'' and struck out provisions relating to the application of the six-month rule.

Subsec. (b). Pub. L. 94–455, § 401(c)(1)(B), struck out provisions relating to the application of the six-month rule.

Subsec. (c)(1)(A). Pub. L. 94–455, § 401(c)(2), among other changes, substituted ''section 44A(f)(1)'' for ''section 214(b)(3)'' and ''if such child meets the requirements of section 151(e)(1)(B)'' for ''with respect to whom he is entitled to claim a deduction under section 151(e)(1)(B)'' and inserted reference to a child of that individual who is disabled (within the meaning of section 72(m)(7)) and with respect to whom that individual is entitled to claim a deduction under section 151.

1975—Subsec. (a). Pub. L. 94–164 designated existing provisions as par. (1) and added par. (2).

Subsec. (b). Pub. L. 94–164 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–312 applicable to taxable years beginning after Dec. 31, 2010, see section 103(d) of Pub. L. 111–312, set out as an Effective and Termination Dates of 2010 Amendment note under section 24 of this title.

Pub. L. 111–226, title II, § 219(c), Aug. 10, 2010, 124 Stat. 2403, provided that: ''The repeals and amendments made by this section [amending this section and sections 6012, 6051, and 6302 of this title and repealing section 3507 of this title] shall apply to taxable years beginning after December 31, 2010.''

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, § 1002(b), Feb. 17, 2009, 123 Stat. 312, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008.''

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 4002(b)(1)(B), (2)(O) of Pub. L. 110–246 effective Oct. 1, 2008, see section 4407 of Pub. L. 110–246, set out as a note under section 1161 of Title 2, The Congress.

Pub. L. 110–245, title I, § 102(d), June 17, 2008, 122 Stat. 1625, provided that: ''The amendments made by this section [amending this section and section 6428 of this title] shall apply to taxable years ending after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, § 106(b), Dec. 20, 2006, 120 Stat. 2938, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006.''

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–135, title III, § 302(b), Dec. 21, 2005, 119 Stat. 2608, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2005.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 110–245, title I, § 102(c), June 17, 2008, 122 Stat. 1625, provided that: ''Section 105 of the Working Families Tax Relief Act of 2004 [section 105 of Pub. L. 108–311, set out as a note under section 1 of this title] (relating to application of EGTRRA sunset to this title [probably means title I of Pub. L. 108–311, see Tables for classification]) shall not apply to section 104(b) of such Act [amending this section].''

Pub. L. 108–311, title I, § 104(c)(2), Oct. 4, 2004, 118 Stat. 1169, provided that: ''The amendments made by subsection (b) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 4, 2004].''

Amendment by section 205 of Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title IV, § 416(a)(2), Mar. 9, 2002, 116 Stat. 55, provided that: ''The amendment made by this subsection [amending this section] shall take effect as if included in section 474 of the Tax Reform Act of 1984 [Pub. L. 98–369].''

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by section 201(c)(3) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2000, see section 201(e)(1) of Pub. L. 107–16, set out as a note under section 24 of this title.

Pub. L. 107–16, title III, § 303(i), June 7, 2001, 115 Stat. 57, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 6213 of this title] shall apply to taxable years beginning after December 31, 2001.

''(2) SUBSECTION (g).—The amendment made by subsection (g) [amending section 6213 of this title] shall take effect on January 1, 2004.''

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title IV, § 412(b), Dec. 17, 1999, 113 Stat. 1917, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1999.''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title VI, § 6021(c), July 22, 1998, 112 Stat. 824, provided that:

''(1) ELIGIBLE INDIVIDUALS.—The amendment made by subsection (a) [amending this section] shall take effect as if included in the amendments made by section 451 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104–193].

''(2) QUALIFYING CHILDREN.—The amendments made by subsection (b) [amending this section] shall take effect as if included in the amendments made by section 11111 of Revenue Reconciliation Act of 1990 [Pub. L. 101–508].''

Amendment by sections 6003(b) and 6010(p)(1), (2) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 101(b) of Pub. L. 105–34 applicable to taxable years beginning after Dec. 31, 1997, see section 101(e) of Pub. L. 105–34, set out as an Effective Date note under section 24 of this title.

Amendment by section 312(d)(2) of Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 of this title.

Section 1085(e) of Pub. L. 105–34 provided that:

''(1) The amendments made by subsection (a) [amending this section and sections 6213 and 6695 of this title] shall apply to taxable years beginning after December 31, 1996.

''(2) The amendments made by subsections (b), (c), and (d) [amending this section] shall apply to taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 451(d) of Pub. L. 104–193 provided that: ''The amendments made by this section [amending this section and section 6213 of this title] shall apply with respect to returns the due date for which (without regard to extensions) is more than 30 days after the date of the enactment of this Act [Aug. 22, 1996].''

Section 909(c) of Pub. L. 104–193 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1995.

''(2) ADVANCE PAYMENT INDIVIDUALS.—In the case of any individual who on or before June 26, 1996, has in effect an earned income eligibility certificate for the individual's taxable year beginning in 1996, the amendments made by this section shall apply to taxable years beginning after December 31, 1996.''

Section 910(c) of Pub. L. 104–193 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1995.

''(2) ADVANCE PAYMENT INDIVIDUALS.—In the case of any individual who on or before June 26, 1996, has in effect an earned income eligibility certificate for the individual's taxable year beginning in 1996, the amendments made by this section shall apply to taxable years beginning after December 31, 1996.''

EFFECTIVE DATE OF 1995 AMENDMENT

Section 4(b) of Pub. L. 104–7 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1995.''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 721(d)(1) of Pub. L. 103–465 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1994.''

Section 722(b) of Pub. L. 103–465 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1994.''

Section 723(b) of Pub. L. 103–465 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1993.''

Section 742(c) of Pub. L. 103–465 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 6109 of this title] shall apply to returns for taxable years beginning after December 31, 1994.

''(2) EXCEPTION.—The amendments made by this section shall not apply to—

''(A) returns for taxable years beginning in 1995 with respect to individuals who are born after October 31, 1995, and

''(B) returns for taxable years beginning in 1996 with respect to individuals who are born after November 30, 1996.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13131(e) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and sections 162, 213, and 3507 of this title] shall apply to taxable years beginning after December 31, 1993.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11101(d)(1)(B) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11101(e) of Pub. L. 101–508, set out as a note under section 1 of this title.

Section 11111(f) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and sections 162, 213, and 3507 of this title] shall apply to taxable years beginning after December 31, 1990.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of

the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by sections 104(b)(1)(B) and 111(a)–(d)(1) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1272(d)(4) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

Amendment by section 1301(j)(8) of Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 423(c)(3) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1984, see section 423(d) of Pub. L. 98–369, set out as a note under section 2 of this title.

Section 1042(e) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending sections 32 and 3507 of this title] shall apply to taxable years beginning after December 31, 1984.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1989, see section 124(d)(2) of Pub. L. 98–21, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to taxable years beginning after Dec. 31, 1981, see section 115 of Pub. L. 97–34, set out as a note under section 911 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 101(b)(1)(A) of Pub. L. 96–222 provided that: ''The amendment made by subsection (a)(1) [amending this section] shall apply to taxable years beginning after December 31, 1977.''

Section 201 of Pub. L. 96–222 provided that: ''Except as otherwise provided in title I, any amendment made by title I [see Tables for classification] shall take effect as if it had been included in the provision of the Revenue Act of 1978 [Pub. L. 95–600, see Tables for classification] to which such amendment relates.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 104(f) of Pub. L. 95–600 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1978.''

Section 105(g)(1) of Pub. L. 95–600 provided that: ''The amendments made by subsections (a) and (d) [amending this section and section 6012 of this title] shall apply to taxable years beginning after December 31, 1978.''

EFFECTIVE DATE OF 1978 AMENDMENT; ELECTION OF PRIOR LAW

Amendment by Pub. L. 95–615 applicable to taxable years beginning after Dec. 31, 1977, with provision for election of prior law, see section 209 of Pub. L. 95–615, set out as a note under section 911 of this title.

EFFECTIVE AND TERMINATION DATES OF 1976 AMENDMENT

Section 401(e) of Pub. L. 94–455, as amended by Pub. L. 95–30, title I, § 103(c), May 23, 1977, 91 Stat. 139; Pub. L. 95–600, title I, § 103(b), Nov. 6, 1978, 92 Stat. 2771, provided that: ''The amendments made by subsection (a) [amending sections 43 [now 32] and 6096 of this title] shall apply to taxable years ending after December 31, 1975, and shall cease to apply to taxable years ending after December 31, 1978. The amendments made by subsection (c) [amending this section] shall apply to taxable years ending after December 31, 1975. The amendments made by subsection (b) [amending sections 141 and 6012 of this title] shall apply to taxable years ending after December 31, 1975. The amendments made by subsection (d) [amending section 3402 of this title] shall apply to wages paid after September 14, 1976.''

EFFECTIVE AND TERMINATION DATES OF 1975 AMENDMENTS

Section 2(g) of Pub. L. 94–164, as amended by Pub. L. 94–455, § 402(b), provided that: ''The amendments made by this section [amending sections 43 [now 32], 141, 3402, and 6012 of this title and provisions set out as notes under sections 42 and 43 [now 32] of this title] (other than by subsection (d) [enacting provisions set out as a note under this section]) apply to taxable years ending after December 31, 1975, and before January 1, 1978. Subsection (d) applies to taxable years ending after December 31, 1975.''

Section 209(b) of Pub. L. 94–12, as amended by Pub. L. 94–164, § 2(f), Dec. 23, 1975, 89 Stat. 972; Pub. L. 94–455, title IV, § 401(c)(1)(A), Oct. 4, 1976, 90 Stat. 1557; Pub. L. 95–30, title I, § 103(b), May 23, 1977, 91 Stat. 139; Pub. L. 95–600, title I, § 103(a), Nov. 6, 1978, 92 Stat. 2771, provided that: ''The amendments made by section 204 [enacting this section and amending sections 6201 and 6401 of this title] shall apply to taxable years beginning after December 31, 1974.''

STUDY ON EARNED INCOME TAX CREDIT CERTIFICATION PROGRAM

Pub. L. 108–199, div. F, title II, § 206, Jan. 23, 2004, 118 Stat. 319, provided that:

''(a) STUDY.—The Internal Revenue Service shall conduct a study, as a part of any program that requires certification (including pre-certification) in order to claim the earned income tax credit under section 32 of the Internal Revenue Code of 1986, on the following matters:

''(1) The costs (in time and money) incurred by the participants in the program.

''(2) The administrative costs incurred by the Internal Revenue Service in operating the program.

''(3) The percentage of individuals included in the program who were not certified for the credit, including the percentage of individuals who were not certified due to—

''(A) ineligibility for the credit; and

''(B) failure to complete the requirements for certification.

''(4) The percentage of individuals to whom paragraph (3)(B) applies who were—

''(A) otherwise eligible for the credit; and

''(B) otherwise ineligible for the credit.

''(5) The percentage of individuals to whom paragraph (3)(B) applies who—

''(A) did not respond to the request for certification; and

''(B) responded to such request but otherwise failed to complete the requirements for certification.

''(6) The reasons—

''(A) for which individuals described in paragraph (5)(A) did not respond to requests for certification; and

''(B) for which individuals described in paragraph (5)(B) had difficulty in completing the requirements for certification.

''(7) The characteristics of those individuals who were denied the credit due to—

''(A) failure to complete the requirements for certification; and

''(B) ineligibility for the credit.

''(8) The impact of the program on non-English speaking participants.

''(9) The impact of the program on homeless and other highly transient individuals.

''(b) REPORT.—

''(1) PRELIMINARY REPORT.—Not later than July 30, 2004, the Commissioner of the Internal Revenue Service shall submit to Congress a preliminary report on the study conducted under subsection (a).

''(2) FINAL REPORT.—Not later than June 30, 2005, the Commissioner of the Internal Revenue Service shall submit to Congress a final report detailing the findings of the study conducted under subsection (a).''

PROGRAM TO INCREASE PUBLIC AWARENESS

Secretary of the Treasury, or Secretary's delegate, to establish taxpayer awareness program to inform taxpaying public of availability of earned income credit and child health insurance under this section, see section 11114 of Pub. L. 101–508, set out as a note under section 21 of this title.

EMPLOYEE NOTIFICATION

Section 111(e) of Pub. L. 99–514 provided that: ''The Secretary of the Treasury is directed to require, under regulations, employers to notify any employee who has not had any tax withheld from wages (other than an employee whose wages are exempt from withholding pursuant to section 3402(n) of the Internal Revenue Code of 1986) that such employee may be eligible for a refund because of the earned income credit.''

DISREGARD OF REFUND FOR DETERMINATION OF ELIGIBILITY FOR FEDERAL BENEFITS OR ASSISTANCE

Section 2(d) of Pub. L. 94–164, as amended by Pub. L. 94–455, title IV, §402(a), Oct. 4, 1976, 90 Stat. 1558; Pub. L. 95–600, title I, §105(f), Nov. 6, 1978, 92 Stat. 2776; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Any refund of Federal income taxes made to any individual by reason of section 43 [now 32] of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to earned income credit), and any payment made by an employer under [former] section 3507 of such Code (relating to advance payment of earned income credit) shall not be taken into account in any year ending before 1980 as income or receipts for purposes of determining the eligibility, for the month in which such refund is made or any month thereafter of such individual or any other individual for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds, but only if such individual (or the family unit of which he is a member) is a recipient of benefits or assistance under such a program for the month before the month in which such refund is made.''

[Section 105(g)(3) of Pub. L. 95–600 provided that: ''Subsection (f) [amending section 2(d) of Pub. L. 94–164, set out above] shall take effect on the date of enactment of this Act [Nov. 6, 1978].'']

§ 33. Tax withheld at source on nonresident aliens and foreign corporations

There shall be allowed as a credit against the tax imposed by this subtitle the amount of tax withheld at source under subchapter A of chapter 3 (relating to withholding of tax on nonresident aliens and on foreign corporations).

(Aug. 16, 1954, ch. 736, 68A Stat. 13, §32; renumbered §33 and amended Pub. L. 98–369, div. A, title IV, §§471(c), 474(j), July 18, 1984, 98 Stat. 826, 832.)

PRIOR PROVISIONS

A prior section 33 was renumbered section 27 of this title.

AMENDMENTS

1984—Pub. L. 98–369, §471(c), renumbered section 32 of this title as this section.

Pub. L. 98–369, §474(j), amended section generally, striking out ''and on tax-free covenant bonds'' after ''foreign corporations'' in section catchline, and, in text, substituting ''as a credit against the tax imposed by this subtitle'' for ''as credits against the tax imposed by this chapter'', and striking out designation ''(1)'' before ''the amount of tax withheld'', and '', and (2) the amount of tax withheld at source under subchapter B of chapter 3 (relating to interest on tax-free covenant bonds)'' after ''on foreign corporations)''.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 475(b) of Pub. L. 98–369 provided that: ''The amendments made by subsections (j) and (r)(29) [amending this section and sections 12, 164, 1441, 1442, 6049, and 7701 of this title and repealing section 1451 of this title] shall not apply with respect to obligations issued before January 1, 1984.''

§ 34. Certain uses of gasoline and special fuels

(a) General rule

There shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the sum of the amounts payable to the taxpayer—

(1) under section 6420 (determined without regard to section 6420(g)),

(2) under section 6421 (determined without regard to section 6421(i)),[1] and

(3) under section 6427 (determined without regard to section 6427(k)).

(b) Exception

Credit shall not be allowed under subsection (a) for any amount payable under section 6421 or 6427, if a claim for such amount is timely filed and, under section 6421(i) or 6427(k), is payable under such section.

(Added Pub. L. 89–44, title VIII, 809(c), June 21, 1965, 79 Stat. 167, §39; amended Pub. L. 91–258, title II, §207(c), May 21, 1970, 84 Stat. 248; Pub. L. 94–455, title XIX, §§1901(a)(3), 1906(b)(8), (9), Oct. 4, 1976, 90 Stat. 1764, 1834; Pub. L. 94–530, §1(c)(1), Oct. 17, 1976, 90 Stat. 2487; Pub. L. 95–599, title V, §505(c)(1), Nov. 6, 1978, 92 Stat. 2760; Pub. L. 95–618, title II, §233(b)(2)(C), Nov. 9, 1978, 92 Stat. 3191; Pub. L. 96–223, title II, §232(d)(4)(A), Apr. 2, 1980, 94 Stat. 278; Pub. L. 97–424, title V, §515(b)(6)(A)–(C), Jan. 6, 1983, 96 Stat. 2181; renumbered §34 and amended Pub. L. 98–369, div. A, title IV, §471(c), title IX, §911(d)(2)(A), July 18, 1984, 98 Stat. 826, 1006; Pub. L. 99–514, title XVII, §1703(e)(2)(F), title XVIII, §1877(a), Oct. 22, 1986, 100 Stat. 2778, 2902; Pub. L. 100–647, title I, §1017(c)(2), Nov. 10, 1988, 102 Stat. 3576; Pub. L. 104–188, title I, §1606(b)(1), Aug. 20, 1996, 110 Stat. 1839; Pub. L. 105–206, title VI, §6023(24)(B), July 22, 1998, 112 Stat. 826; Pub. L. 110–172, §11(a)(4), Dec. 29, 2007, 121 Stat. 2484.)

REFERENCES IN TEXT

Section 6421(i), referred to in subsec. (a)(2), was repealed by Pub. L. 103–66, title XIII, §13241(f)(7), Aug. 10, 1993, 107 Stat. 512.

PRIOR PROVISIONS

A prior section 34, acts Aug. 16, 1954, ch. 736, 68A Stat. 13; June 25, 1959, Pub. L. 86–69, §3(a)(1), 73 Stat. 139; Sept. 14, 1960, Pub. L. 86–779, §10(e), 74 Stat. 1009; Feb. 26, 1964, Pub. L. 88–272, title II, §201(a), 78 Stat. 31, related to dividends received by individuals, prior to repeal

[1] See References in Text note below.

by Pub. L. 88–272, title II, § 201(b), Feb. 26, 1964, 78 Stat. 31, effective with respect to dividends received after Dec. 31, 1964.

AMENDMENTS

2007—Subsec. (a)(1). Pub. L. 110–172, § 11(a)(4)(A), struck out ''with respect to gasoline used during the taxable year on a farm for farming purposes'' before ''(determined without regard to section 6420(g))''.

Subsec. (a)(2). Pub. L. 110–172, § 11(a)(4)(B), which directed striking out ''with respect to gasoline used during the taxable year: (A) otherwise than as a fuel in a highway vehicle; or (B) in vehicles while engaged in furnishing certain public passenger land transportation service'', was executed by striking out ''with respect to gasoline used during the taxable year (A) otherwise than as a fuel in a highway vehicle or (B) in vehicles while engaged in furnishing certain public passenger land transportation service'' before ''(determined without regard to section 6421(i))'', to reflect the probable intent of Congress.

Subsec. (a)(3). Pub. L. 110–172, § 11(a)(4)(C), struck out ''with respect to fuels used for nontaxable purposes or resold during the taxable year'' before ''(determined without regard to section 6427(k))''.

1998—Subsec. (b). Pub. L. 105–206 substituted ''section 6421(i)'' for ''section 6421(j)''.

1996—Subsec. (a)(3). Pub. L. 104–188 amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''under section 6427—

''(A) with respect to fuels used for nontaxable purposes or resold, or

''(B) with respect to any qualified diesel-powered highway vehicle purchased (or deemed purchased under section 6427(g)(6)),

during the taxable year (determined without regard to section 6427(k)).''

1988—Subsec. (b). Pub. L. 100–647 substituted ''section 6421(j) or 6427(k)'' for ''section 6421(i) or 6427(j)''.

1986—Subsec. (a)(3). Pub. L. 99–514, § 1877(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''under section 6427 with respect to fuels used for nontaxable purposes or resold during the taxable year (determined without regard to section 6427(j)).''

Pub. L. 99–514, § 1703(e)(2)(F), substituted ''6427(k)'' for ''6427(j)''.

1984—Pub. L. 98–369, § 471(c), renumbered section 39 of this title as this section.

Subsec. (a)(3). Pub. L. 98–369, § 911(d)(2)(A), which directed the amendment of par. (4) by substituting ''6427(j)'' for ''6427(i)'' was executed to par. (3) to reflect the probable intent of Congress and the redesignation of par. (4) as (3) by Pub. L. 97–424.

Subsec. (b). Pub. L. 98–369, § 911(d)(2)(A), substituted ''6427(j)'' for ''6427(i)''.

1983—Pub. L. 97–424, § 515(b)(6)(C), substituted ''and special fuels'' for '', special fuels, and lubricating oil'' after ''gasoline'' in section catchline.

Subsec. (a)(2) to (4). Pub. L. 97–424, § 515(b)(6)(A), inserted ''and'' at end of par. (2), redesignated par. (4) as (3), and struck out former (3) which referred to amounts payable to the taxpayer under section 6424 with respect to lubricating oil used during the taxable year for certain nontaxable purposes (determined without regard to section 6424(f)).

Subsec. (b). Pub. L. 97–424, § 515(b)(6)(B)(i), substituted ''6421 or 6427'' for ''6421, 6424, or 6427'' after ''amount payable under''.

Pub. L. 97–424, § 515(b)(6)(B)(ii), substituted ''6421(i) or 6427(i)'' for ''6421(i), 6424(f), or 6427(i)'' after ''and, under''.

1980—Subsec. (a)(4). Pub. L. 96–223 substituted ''6427(i)'' for ''6427(h)''.

Subsec. (b). Pub. L. 96–223 substituted ''6427(i)'' for ''6427(h)''.

1978—Subsec. (a)(3). Pub. L. 95–618 substituted ''for certain nontaxable purposes'' for ''otherwise than in a highway motor vehicle''.

Subsec. (a)(4). Pub. L. 95–599 substituted ''6427(h)'' for ''6427(g)''.

Subsec. (b). Pub. L. 95–599 substituted ''6427(h)'' for ''6427(g)''.

1976—Subsec. (a)(1). Pub. L. 94–455, § 1906(b)(8), substituted ''6420(g)'' for ''6420(h)''.

Subsec. (a)(3). Pub. L. 94–455, § 1906(b)(9), substituted ''6424(f)'' for ''6424(g)''.

Subsec. (a)(4). Pub. L. 94–530 substituted ''6427(g)'' for ''6427(f)''.

Subsec. (b). Pub. L. 94–530, which directed the amendment of subsec. (c) by substituting ''6427(g)'' for ''6427(f)'', was executed to subsec. (b) to reflect the probable intent of Congress and the redesignation of subsec. (c) as (b) by Pub. L. 94–455.

Pub. L. 94–455, § 1901(a)(3), redesignated subsec. (c) as (b) and substituted ''section 6421(i), 6424(f), or 6427(f), is payable'' for ''section 6421(i), 6424(g) or 6427(f) is payable''. Former subsec. (b), relating to determination of taxpayers first taxable year with respect to tax credit for certain uses of gasoline and lubricating oil, was struck out.

Subsec. (c). Pub. L. 94–455, § 1901(a)(3), redesignated subsec. (c) as (b).

1970—Pub. L. 91–258, § 207(c)(1), inserted reference to special fuels in section catchline.

Subsec. (a)(4). Pub. L. 91–258, § 207(c)(2), added par. (4).

Subsec. (c). Pub. L. 91–258, § 207(c)(3), (4), inserted references to sections 6427 and 6427(f), respectively.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title VI, § 6023(32), July 22, 1998, 112 Stat. 826, provided that: ''The amendments made by this section [amending this section and sections 45A, 59, 72, 142, 501, 512, 543, 871, 1017, 1250, 3121, 3401, 4092, 4221, 4222, 4973, 4975, 6039, 6050R, 6103, 6416, 6421, 6427, 6501, 7434, 7702B, 7872, and 9502 of this title] shall take effect on the date of the enactment of this Act [July 22, 1998].''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1606(c) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section and section 6427 of this title] shall apply to vehicles purchased after the date of the enactment of this Act [Aug. 20, 1996].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1703(e)(2)(F) of Pub. L. 99–514 applicable to gasoline removed (as defined in section 4082 of this title as amended by section 1703 of Pub. L. 99–514) after Dec. 31, 1987, see section 1703(h) of Pub. L. 99–514 set out as a note under section 4081 of this title.

Amendment by section 1877(a) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 911(d)(2)(A) of Pub. L. 98–369 effective Aug. 1, 1984, see section 911(e) of Pub. L. 98–369, set out as a note under section 6427 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 515(c) of Pub. L. 97–424 provided that: ''The amendments made by this section [amending sections 39 [now 34], 874, 882, 4101, 4102, 4221, 4222, 6201, 6206, 6416, 6421, 6504, 6675, 7210, 7603 to 7605, 7609, and 7610 of this title and repealing sections 4091 to 4094 and 6424 of this title] shall apply with respect to articles sold after the date of the enactment of this Act [Jan. 6, 1983].''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 effective on Jan. 1, 1979, see section 232(h)(2) of Pub. L. 96–223, set out as a note under section 6427 of this title.

EFFECTIVE DATE OF 1978 AMENDMENTS

Section 233(d) of Pub. L. 95–618 provided that: ''The amendments made by this section [amending sections 39 [now 34], 4041, 4221, 4483, 6416, 6421, 6424, 6427, 6504, and 6675 of this title and amending a provision set out as a note under section 120 of Title 23, Highways] shall take effect on the first day of the first calendar month which begins more than 10 days after the date of the enactment of this Act [Nov. 9, 1978].''

Amendment by Pub. L. 95–599 effective Jan. 1, 1979, see section 505(d) of Pub. L. 95–599, set out as a note under section 6427 of this title.

EFFECTIVE DATE OF 1976 AMENDMENTS

Amendment by Pub. L. 94–530 effective on Oct. 1, 1976, see section 1(d) of Pub. L. 94–530, set out as a note under section 4041 of this title.

Amendment by section 1901(a)(3) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 1906(b)(8), (9) of Pub. L. 94–455, to take effect on Feb. 1, 1977, see section 1906(d) of Pub. L. 94–455, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–258 applicable with respect to taxable years ending after June 30, 1970, see section 211(b) of Pub. L. 91–258, set out as a note under section 4041 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning on or after July 1, 1965, see section 809(f) of Pub. L. 89–44, set out as an Effective Date of 1965 Amendment note under section 6420 of this title.

§ 35. Health insurance costs of eligible individuals

(a) In general

In the case of an individual, there shall be allowed as a credit against the tax imposed by subtitle A an amount equal to 65 percent (80 percent in the case of eligible coverage months beginning before February 13, 2011) of the amount paid by the taxpayer for coverage of the taxpayer and qualifying family members under qualified health insurance for eligible coverage months beginning in the taxable year.

(b) Eligible coverage month

For purposes of this section—

(1) In general

The term ''eligible coverage month'' means any month if—

(A) as of the first day of such month, the taxpayer—

(i) is an eligible individual,

(ii) is covered by qualified health insurance, the premium for which is paid by the taxpayer,

(iii) does not have other specified coverage, and

(iv) is not imprisoned under Federal, State, or local authority, and

(B) such month begins more than 90 days after the date of the enactment of the Trade Act of 2002.

(2) Joint returns

In the case of a joint return, the requirements of paragraph (1)(A) shall be treated as met with respect to any month if at least 1 spouse satisfies such requirements.

(c) Eligible individual

For purposes of this section—

(1) In general

The term ''eligible individual'' means—

(A) an eligible TAA recipient,

(B) an eligible alternative TAA recipient, and

(C) an eligible PBGC pension recipient.

(2) Eligible TAA recipient

(A) In general

Except as provided in subparagraph (B), the term ''eligible TAA recipient'' means, with respect to any month, any individual who is receiving for any day of such month a trade readjustment allowance under chapter 2 of title II of the Trade Act of 1974 or who would be eligible to receive such allowance if section 231 of such Act were applied without regard to subsection (a)(3)(B) of such section. An individual shall continue to be treated as an eligible TAA recipient during the first month that such individual would otherwise cease to be an eligible TAA recipient by reason of the preceding sentence.

(B) Special rule

In the case of any eligible coverage month beginning after the date of the enactment of this paragraph and before February 13, 2011, the term ''eligible TAA recipient'' means, with respect to any month, any individual who—

(i) is receiving for any day of such month a trade readjustment allowance under chapter 2 of title II of the Trade Act of 1974,

(ii) would be eligible to receive such allowance except that such individual is in a break in training provided under a training program approved under section 236 of such Act that exceeds the period specified in section 233(e) of such Act, but is within the period for receiving such allowances provided under section 233(a) of such Act, or

(iii) is receiving unemployment compensation (as defined in section 85(b)) for any day of such month and who would be eligible to receive such allowance for such month if section 231 of such Act were applied without regard to subsections (a)(3)(B) and (a)(5) thereof.

An individual shall continue to be treated as an eligible TAA recipient during the first month that such individual would otherwise cease to be an eligible TAA recipient by reason of the preceding sentence.

(3) Eligible alternative TAA recipient

The term ''eligible alternative TAA recipient'' means, with respect to any month, any individual who—

(A) is a worker described in section 246(a)(3)(B) of the Trade Act of 1974 who is

participating in the program established under section 246(a)(1) of such Act, and

(B) is receiving a benefit for such month under section 246(a)(2) of such Act.

An individual shall continue to be treated as an eligible alternative TAA recipient during the first month that such individual would otherwise cease to be an eligible alternative TAA recipient by reason of the preceding sentence.

(4) Eligible PBGC pension recipient

The term ''eligible PBGC pension recipient'' means, with respect to any month, any individual who—

(A) has attained age 55 as of the first day of such month, and

(B) is receiving a benefit for such month any portion of which is paid by the Pension Benefit Guaranty Corporation under title IV of the Employee Retirement Income Security Act of 1974.

(d) Qualifying family member

For purposes of this section—

(1) In general

The term ''qualifying family member'' means—

(A) the taxpayer's spouse, and

(B) any dependent of the taxpayer with respect to whom the taxpayer is entitled to a deduction under section 151(c).

Such term does not include any individual who has other specified coverage.

(2) Special dependency test in case of divorced parents, etc.

If section 152(e) applies to any child with respect to any calendar year, in the case of any taxable year beginning in such calendar year, such child shall be treated as described in paragraph (1)(B) with respect to the custodial parent (as defined in section 152(e)(4)(A)) and not with respect to the noncustodial parent.

(e) Qualified health insurance

For purposes of this section—

(1) In general

The term ''qualified health insurance'' means any of the following:

(A) Coverage under a COBRA continuation provision (as defined in section 9832(d)(1)).

(B) State-based continuation coverage provided by the State under a State law that requires such coverage.

(C) Coverage offered through a qualified State high risk pool (as defined in section 2744(c)(2) of the Public Health Service Act).

(D) Coverage under a health insurance program offered for State employees.

(E) Coverage under a State-based health insurance program that is comparable to the health insurance program offered for State employees.

(F) Coverage through an arrangement entered into by a State and—

(i) a group health plan (including such a plan which is a multiemployer plan as defined in section 3(37) of the Employee Retirement Income Security Act of 1974),

(ii) an issuer of health insurance coverage,

(iii) an administrator, or

(iv) an employer.

(G) Coverage offered through a State arrangement with a private sector health care coverage purchasing pool.

(H) Coverage under a State-operated health plan that does not receive any Federal financial participation.

(I) Coverage under a group health plan that is available through the employment of the eligible individual's spouse.

(J) In the case of any eligible individual and such individual's qualifying family members, coverage under individual health insurance if the eligible individual was covered under individual health insurance during the entire 30-day period that ends on the date that such individual became separated from the employment which qualified such individual for—

(i) in the case of an eligible TAA recipient, the allowance described in subsection (c)(2),

(ii) in the case of an eligible alternative TAA recipient, the benefit described in subsection (c)(3)(B), or

(iii) in the case of any eligible PBGC pension recipient, the benefit described in subsection (c)(4)(B).

For purposes of this subparagraph, the term ''individual health insurance'' means any insurance which constitutes medical care offered to individuals other than in connection with a group health plan and does not include Federal- or State-based health insurance coverage.

(K) In the case of eligible coverage months beginning before February 13, 2012, coverage under an employee benefit plan funded by a voluntary employees' beneficiary association (as defined in section 501(c)(9)) established pursuant to an order of a bankruptcy court, or by agreement with an authorized representative, as provided in section 1114 of title 11, United States Code.

(2) Requirements for state-based coverage

(A) In general

The term ''qualified health insurance'' does not include any coverage described in subparagraphs (B) through (H) of paragraph (1) unless the State involved has elected to have such coverage treated as qualified health insurance under this section and such coverage meets the following requirements:

(i) Guaranteed issue

Each qualifying individual is guaranteed enrollment if the individual pays the premium for enrollment or provides a qualified health insurance costs credit eligibility certificate described in section 7527 and pays the remainder of such premium.

(ii) No imposition of preexisting condition exclusion

No pre-existing condition limitations are imposed with respect to any qualifying individual.

(iii) Nondiscriminatory premium

The total premium (as determined without regard to any subsidies) with respect to a qualifying individual may not be greater than the total premium (as so determined) for a similarly situated individual who is not a qualifying individual.

(iv) Same benefits

Benefits under the coverage are the same as (or substantially similar to) the benefits provided to similarly situated individuals who are not qualifying individuals.

(B) Qualifying individual

For purposes of this paragraph, the term ''qualifying individual'' means—

(i) an eligible individual for whom, as of the date on which the individual seeks to enroll in the coverage described in subparagraphs (B) through (H) of paragraph (1), the aggregate of the periods of creditable coverage (as defined in section 9801(c)) is 3 months or longer and who, with respect to any month, meets the requirements of clauses (iii) and (iv) of subsection (b)(1)(A); and

(ii) the qualifying family members of such eligible individual.

(3) Exception

The term ''qualified health insurance'' shall not include—

(A) a flexible spending or similar arrangement, and

(B) any insurance if substantially all of its coverage is of excepted benefits described in section 9832(c).

(f) Other specified coverage

For purposes of this section, an individual has other specified coverage for any month if, as of the first day of such month—

(1) Subsidized coverage

(A) In general

Such individual is covered under any insurance which constitutes medical care (except insurance substantially all of the coverage of which is of excepted benefits described in section 9832(c)) under any health plan maintained by any employer (or former employer) of the taxpayer or the taxpayer's spouse and at least 50 percent of the cost of such coverage (determined under section 4980B) is paid or incurred by the employer.

(B) Eligible alternative TAA recipients

In the case of an eligible alternative TAA recipient, such individual is either—

(i) eligible for coverage under any qualified health insurance (other than insurance described in subparagraph (A), (B), or (F) of subsection (e)(1)) under which at least 50 percent of the cost of coverage (determined under section 4980B(f)(4)) is paid or incurred by an employer (or former employer) of the taxpayer or the taxpayer's spouse, or

(ii) covered under any such qualified health insurance under which any portion of the cost of coverage (as so determined) is paid or incurred by an employer (or former employer) of the taxpayer or the taxpayer's spouse.

(C) Treatment of cafeteria plans

For purposes of subparagraphs (A) and (B), the cost of coverage shall be treated as paid or incurred by an employer to the extent the coverage is in lieu of a right to receive cash or other qualified benefits under a cafeteria plan (as defined in section 125(d)).

(2) Coverage under Medicare, Medicaid, or SCHIP

Such individual—

(A) is entitled to benefits under part A of title XVIII of the Social Security Act or is enrolled under part B of such title, or

(B) is enrolled in the program under title XIX or XXI of such Act (other than under section 1928 of such Act).

(3) Certain other coverage

Such individual—

(A) is enrolled in a health benefits plan under chapter 89 of title 5, United States Code, or

(B) is entitled to receive benefits under chapter 55 of title 10, United States Code.

(g) Special rules

(1) Coordination with advance payments of credit

With respect to any taxable year, the amount which would (but for this subsection) be allowed as a credit to the taxpayer under subsection (a) shall be reduced (but not below zero) by the aggregate amount paid on behalf of such taxpayer under section 7527 for months beginning in such taxable year.

(2) Coordination with other deductions

Amounts taken into account under subsection (a) shall not be taken into account in determining any deduction allowed under section 162(*l*) or 213.

(3) Medical and health savings accounts

Amounts distributed from an Archer MSA (as defined in section 220(d)) or from a health savings account (as defined in section 223(d)) shall not be taken into account under subsection (a).

(4) Denial of credit to dependents

No credit shall be allowed under this section to any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins.

(5) Both spouses eligible individuals

The spouse of the taxpayer shall not be treated as a qualifying family member for purposes of subsection (a), if—

(A) the taxpayer is married at the close of the taxable year,

(B) the taxpayer and the taxpayer's spouse are both eligible individuals during the taxable year, and

(C) the taxpayer files a separate return for the taxable year.

(6) Marital status; certain married individuals living apart

Rules similar to the rules of paragraphs (3) and (4) of section 21(e) shall apply for purposes of this section.

(7) Insurance which covers other individuals

For purposes of this section, rules similar to the rules of section 213(d)(6) shall apply with respect to any contract for qualified health insurance under which amounts are payable for coverage of an individual other than the taxpayer and qualifying family members.

(8) Treatment of payments

For purposes of this section—

(A) Payments by Secretary

Payments made by the Secretary on behalf of any individual under section 7527 (relating to advance payment of credit for health insurance costs of eligible individuals) shall be treated as having been made by the taxpayer on the first day of the month for which such payment was made.

(B) Payments by taxpayer

Payments made by the taxpayer for eligible coverage months shall be treated as having been made by the taxpayer on the first day of the month for which such payment was made.

(9) COBRA premium assistance

In the case of an assistance eligible individual who receives premium reduction for COBRA continuation coverage under section 3001(a) of title III of division B of the American Recovery and Reinvestment Act of 2009 for any month during the taxable year, such individual shall not be treated as an eligible individual, a certified individual, or a qualifying family member for purposes of this section or section 7527 with respect to such month.

(10)[1] Continued qualification of family members after certain events

In the case of eligible coverage months beginning before February 13, 2011—

(A) Medicare eligibility

In the case of any month which would be an eligible coverage month with respect to an eligible individual but for subsection (f)(2)(A), such month shall be treated as an eligible coverage month with respect to such eligible individual solely for purposes of determining the amount of the credit under this section with respect to any qualifying family members of such individual (and any advance payment of such credit under section 7527). This subparagraph shall only apply with respect to the first 24 months after such eligible individual is first entitled to the benefits described in subsection (f)(2)(A).

(B) Divorce

In the case of the finalization of a divorce between an eligible individual and such individual's spouse, such spouse shall be treated as an eligible individual for purposes of this section and section 7527 for a period of 24 months beginning with the date of such finalization, except that the only qualifying family members who may be taken into account with respect to such spouse are those individuals who were qualifying family members immediately before such finalization.

(C) Death

In the case of the death of an eligible individual—

(i) any spouse of such individual (determined at the time of such death) shall be treated as an eligible individual for purposes of this section and section 7527 for a period of 24 months beginning with the date of such death, except that the only qualifying family members who may be taken into account with respect to such spouse are those individuals who were qualifying family members immediately before such death, and

(ii) any individual who was a qualifying family member of the decedent immediately before such death (or, in the case of an individual to whom paragraph (4) applies, the taxpayer to whom the deduction under section 151 is allowable) shall be treated as an eligible individual for purposes of this section and section 7527 for a period of 24 months beginning with the date of such death, except that in determining the amount of such credit only such qualifying family member may be taken into account.

(10)[1] Regulations

The Secretary may prescribe such regulations and other guidance as may be necessary or appropriate to carry out this section, section 6050T, and section 7527.

(Added Pub. L. 107–210, div. A, title II, § 201(a), Aug. 6, 2002, 116 Stat. 954; amended Pub. L. 108–311, title IV, § 401(a)(2), Oct. 4, 2004, 118 Stat. 1183; Pub. L. 110–172, § 11(a)(5), Dec. 29, 2007, 121 Stat. 2485; Pub. L. 111–5, div. B, title I, §§ 1899A(a)(1), 1899C(a), 1899E(a), 1899G(a), title III, § 3001(a)(14)(A), Feb. 17, 2009, 123 Stat. 423, 424, 426, 430, 465; Pub. L. 111–144, § 3(b)(5)(A), Mar. 2, 2010, 124 Stat. 44; Pub. L. 111–344, title I, §§ 111(a), 113(a), 115(a), 117(a), Dec. 29, 2010, 124 Stat. 3614–3616.)

REFERENCES IN TEXT

The date of the enactment of the Trade Act of 2002, referred to in subsec. (b)(1)(B), is the date of enactment of Pub. L. 107–210, which was approved Aug. 6, 2002.

The Trade Act of 1974, referred to in subsec. (c)(2), (3), is Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978. Chapter 2 of title II of the Act is classified generally to part 2 (§ 2271 et seq.) of subchapter II of chapter 12 of Title 19, Customs Duties. Sections 231, 233, 236, and 246 of the Act are classified to sections 2291, 2293, 2296, and 2318 of Title 19, respectively. For complete classification of this Act to the Code, see section 2101 of Title 19 and Tables.

The date of the enactment of this paragraph, referred to in subsec. (c)(2)(B), probably means the date of enactment of Pub. L. 111–5, which amended par. (2) generally and which was approved Feb. 17, 2009.

The Employee Retirement Income Security Act of 1974, referred to in subsecs. (c)(4)(B) and (e)(1)(F)(i), is

[1] So in original. There are two pars. designated "(10)".

Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829. Title IV of the Act is classified principally to subchapter III (§ 1301 et seq.) of chapter 18 of Title 29, Labor. Section 3(37) of the Act is classified to section 1002(37) of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

Section 2744(c)(2) of the Public Health Service Act, referred to in subsec. (e)(1)(C), is classified to section 300gg–44(c)(2) of Title 42, The Public Health and Welfare.

The Social Security Act, referred to in subsec. (f)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Parts A and B of title XVIII of the Act are classified generally to parts A (§ 1395c et seq.) and B (§ 1395j et seq.), respectively, of subchapter XVIII of chapter 7 of Title 42, The Public Health and Welfare. Titles XIX and XXI of the Act are classified generally to subchapters XIX (§ 1396 et seq.) and XXI (§ 1397aa et seq.), respectively, of chapter 7 of Title 42. Section 1928 of the Act is classified to section 1396s of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 3001(a) of title III of division B of the American Recovery and Reinvestment Act of 2009, referred to in subsec. (g)(9), is section 3001(a) of Pub. L. 111–5, div. B, title III, Feb. 17, 2009, 123 Stat. 455, which enacted sections 139C, 6432, and 6720C of this title, amended this section, and enacted provisions set out as a note under section 6432 of this title.

PRIOR PROVISIONS

A prior section 35 was renumbered section 37 of this title.

Another prior section 35, acts Aug. 16, 1954, ch. 736, 68A Stat. 14; Sept. 2, 1958, Pub. L. 85–866, title I, § 41(b), 72 Stat. 1639; Feb. 26, 1964, Pub. L. 88–272, title II, § 201(d)(2), 78 Stat. 32, related to partially tax-exempt interest received by individuals, prior to repeal by Pub. L. 94–455, title XIX, § 1901(a)(2), Oct. 4, 1976, 90 Stat. 1764, effective with respect to taxable years beginning after Dec. 31, 1976.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–344, § 111(a), substituted ''February 13, 2011'' for ''January 1, 2011''.

Subsec. (c)(2)(B). Pub. L. 111–344, § 113(a), substituted ''February 13, 2011'' for ''January 1, 2011'' in introductory provisions.

Subsec. (e)(1)(K). Pub. L. 111–344, § 117(a), substituted ''February 13, 2012'' for ''January 1, 2011''.

Subsec. (g)(9). Pub. L. 111–144 substituted ''section 3001(a) of title III of division B of the American Recovery and Reinvestment Act of 2009'' for ''section 3002(a) of the Health Insurance Assistance for the Unemployed Act of 2009''.

Subsec. (g)(10). Pub. L. 111–344, § 115(a), which directed amendment of par. (9) by substituting ''February 13, 2011'' for ''January 1, 2011'', was executed by making the substitution in par. (10) relating to continued qualification of family members after certain events, to reflect the probable intent of Congress and the redesignation of par. (9) as (10) by Pub. L. 111–5, § 3001(a)(14)(A). See 2009 Amendment note below.

2009—Subsec. (a). Pub. L. 111–5, § 1899A(a)(1), inserted ''(80 percent in the case of eligible coverage months beginning before January 1, 2011)'' after ''65 percent''.

Subsec. (c)(2). Pub. L. 111–5, § 1899C(a), amended par. (2) generally. Prior to amendment, text read as follows: ''The term 'eligible TAA recipient' means, with respect to any month, any individual who is receiving for any day of such month a trade readjustment allowance under chapter 2 of title II of the Trade Act of 1974 or who would be eligible to receive such allowance if section 231 of such Act were applied without regard to subsection (a)(3)(B) of such section. An individual shall continue to be treated as an eligible TAA recipient during the first month that such individual would otherwise cease to be an eligible TAA recipient by reason of the preceding sentence.''

Subsec. (e)(1)(K). Pub. L. 111–5, § 1899G(a), added subpar. (K).

Subsec. (g)(9), (10). Pub. L. 111–5, § 3001(a)(14)(A), added par. (9) and redesignated former par. (9) as (10) relating to continued qualification of family members after certain events.

Pub. L. 111–5, § 1899E(a), added par. (9) and redesignated former par. (9) as (10) relating to regulations. Amendment was executed before amendment by Pub. L. 111–5, § 3001(a)(14)(A), to reflect the probable intent of Congress, notwithstanding effective date provisions in section 1891 of Pub. L. 111–5. See Effective Date of 2009 Amendment note below.

2007—Subsec. (d)(2). Pub. L. 110–172 struck out ''paragraph (2) or (4) of'' before ''section 152(e)'' and substituted ''(as defined in section 152(e)(4)(A))'' for ''(within the meaning of section 152(e)(1))''.

2004—Subsec. (g)(3). Pub. L. 108–311 amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''Amounts distributed from an Archer MSA (as defined in section 220(d)) shall not be taken into account under subsection (a).''

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–344, title I, § 111(c), Dec. 29, 2010, 124 Stat. 3615, provided that: ''The amendments made by this section [amending this section and section 7527 of this title] shall apply to coverage months beginning after December 31, 2010.''

Pub. L. 111–344, title I, § 113(b), Dec. 29, 2010, 124 Stat. 3615, provided that: ''The amendment made by this section [amending this section] shall apply to coverage months beginning after December 31, 2010.''

Pub. L. 111–344, title I, § 115(c), Dec. 29, 2010, 124 Stat. 3615, provided that: ''The amendments made by this section [amending this section and section 2918 of Title 29, Labor] shall apply to months beginning after December 31, 2010.''

Pub. L. 111–344, title I, § 117(b), Dec. 29, 2010, 124 Stat. 3616, provided that: ''The amendment made by this section [amending this section] shall apply to coverage months beginning after December 31, 2010.''

Amendment by Pub. L. 111–144 effective as if included in the provisions of section 3001 of Pub. L. 111–5 to which it relates, see section 3(c) of Pub. L. 111–144, set out as a note under section 6432 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Except as otherwise provided and subject to certain applicability provisions, amendment by sections 1899A(a)(1), 1899C(a), 1899E(a), and 1899G(a) of Pub. L. 111–5 effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1891 of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 2271 of Title 19, Customs Duties.

Pub. L. 111–5, div. B, title I, § 1899A(b), Feb. 17, 2009, 123 Stat. 424, provided that: ''The amendments made by this section [amending this section and section 7527 of this title] shall apply to coverage months beginning on or after the first day of the first month beginning 60 days after the date of the enactment of this Act [Feb. 17, 2009].''

Pub. L. 111–5, div. B, title I, § 1899C(b), Feb. 17, 2009, 123 Stat. 425, provided that: ''The amendment made by this section [amending this section] shall apply to coverage months beginning after the date of the enactment of this Act [Feb. 17, 2009].''

Pub. L. 111–5, div. B, title I, § 1899E(c), Feb. 17, 2009, 123 Stat. 428, provided that: ''The amendments made by this section [amending this section and section 2918 of Title 29, Labor] shall apply to months beginning after December 31, 2009.''

Pub. L. 111–5, div. B, title I, § 1899G(b), Feb. 17, 2009, 123 Stat. 430, provided that: ''The amendments made by this section [amending this section] shall apply to coverage months beginning after the date of the enactment of this Act [Feb. 17, 2009].''

Amendment by section 3001(a)(14)(A) of Pub. L. 111–5 applicable to taxable years ending after Feb. 17, 2009,

see section 3001(a)(14)(B) of Pub. L. 111–5, set out as a Premium Assistance for COBRA Benefits note under section 6432 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 effective as if included in section 1201 of Pub. L. 108–173, see section 401(b) of Pub. L. 108–311, set out as a note under section 26 of this title.

EFFECTIVE DATE

Pub. L. 107–210, div. A, title II, § 201(d), Aug. 6, 2002, 116 Stat. 960, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and section 300gg–45 of Title 42, The Public Health and Welfare, amending section 1324 of Title 31, Money and Finance, and renumbering former section 35 of this title as section 36 of this title] shall apply to taxable years beginning after December 31, 2001.

''(2) STATE HIGH RISK POOLS.—The amendment made by subsection (b) [enacting section 300gg–45 of Title 42] shall take effect on the date of the enactment of this Act [Aug. 6, 2002].''

CONSTRUCTION

Nothing in title II of Pub. L. 107–210 or the amendments by that title, other than provisions relating to COBRA continuation coverage and reporting requirements, to be construed as creating a new mandate on any party regarding health insurance coverage, see section 203(f) of Pub. L. 107–210, set out as a Construction of 2002 Amendment note under section 2918 of Title 29, Labor.

SURVEY AND REPORT ON ENHANCED HEALTH COVERAGE TAX CREDIT PROGRAM

Pub. L. 111–5, div. B, title I, § 1899I, Feb. 17, 2009, 123 Stat. 431, provided that:

''(a) SURVEY.—

''(1) IN GENERAL.—The Secretary of the Treasury shall conduct a biennial survey of eligible individuals (as defined in section 35(c) of the Internal Revenue Code of 1986) relating to the health coverage tax credit under section 35 of the Internal Revenue Code of 1986 (hereinafter in this section referred to as the 'health coverage tax credit').

''(2) INFORMATION OBTAINED.—The survey conducted under subsection (a) shall obtain the following information:

''(A) HCTC PARTICIPANTS.—In the case of eligible individuals receiving the health coverage tax credit (including individuals participating in the health coverage tax credit program under section 7527 of such Code, hereinafter in this section referred to as the 'HCTC program')—

''(i) demographic information of such individuals, including income and education levels,

''(ii) satisfaction of such individuals with the enrollment process in the HCTC program,

''(iii) satisfaction of such individuals with available health coverage options under the credit, including level of premiums, benefits, deductibles, cost-sharing requirements, and the adequacy of provider networks, and

''(iv) any other information that the Secretary determines is appropriate.

''(B) NON-HCTC PARTICIPANTS.—In the case of eligible individuals not receiving the health coverage tax credit—

''(i) demographic information of each individual, including income and education levels,

''(ii) whether the individual was aware of the health coverage tax credit or the HCTC program,

''(iii) the reasons the individual has not enrolled in the HCTC program, including whether such reasons include the burden of the process of enrollment and the affordability of coverage,

''(iv) whether the individual has health insurance coverage, and, if so, the source of such coverage, and

''(v) any other information that the Secretary determines is appropriate.

''(3) REPORT.—Not later than December 31 of each year in which a survey is conducted under paragraph (1) (beginning in 2010), the Secretary of the Treasury shall report to the Committee on Finance and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Ways and Means, the Committee on Education and Labor, and the Committee on Energy and Commerce of the House of Representatives the findings of the most recent survey conducted under paragraph (1).

''(b) REPORT.—Not later than October 1 of each year (beginning in 2010), the Secretary of the Treasury (after consultation with the Secretary of Health and Human Services, and, in the case of the information required under paragraph (7), the Secretary of Labor) shall report to the Committee on Finance and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Ways and Means, the Committee on Education and Labor, and the Committee on Energy and Commerce of the House of Representatives the following information with respect to the most recent taxable year ending before such date:

''(1) In each State and nationally—

''(A) the total number of eligible individuals (as defined in section 35(c) of the Internal Revenue Code of 1986) and the number of eligible individuals receiving the health coverage tax credit,

''(B) the total number of such eligible individuals who receive an advance payment of the health coverage tax credit through the HCTC program,

''(C) the average length of the time period of the participation of eligible individuals in the HCTC program, and

''(D) the total number of participating eligible individuals in the HCTC program who are enrolled in each category of coverage as described in section 35(e)(1) of such Code,

with respect to each category of eligible individuals described in section 35(c)(1) of such Code.

''(2) In each State and nationally, an analysis of—

''(A) the range of monthly health insurance premiums, for self-only coverage and for family coverage, for individuals receiving the health coverage tax credit, and

''(B) the average and median monthly health insurance premiums, for self-only coverage and for family coverage, for individuals receiving the health coverage tax credit,

with respect to each category of coverage as described in section 35(e)(1) of such Code.

''(3) In each State and nationally, an analysis of the following information with respect to the health insurance coverage of individuals receiving the health coverage tax credit who are enrolled in coverage described in subparagraphs (B) through (H) of section 35(e)(1) of such Code:

''(A) Deductible amounts.

''(B) Other out-of-pocket cost-sharing amounts.

''(C) A description of any annual or lifetime limits on coverage or any other significant limits on coverage services, or benefits.

The information required under this paragraph shall be reported with respect to each category of coverage described in such subparagraphs.

''(4) In each State and nationally, the gender and average age of eligible individuals (as defined in section 35(c) of such Code) who receive the health coverage tax credit, in each category of coverage described in section 35(e)(1) of such Code, with respect to each category of eligible individuals described in such section.

''(5) The steps taken by the Secretary of the Treasury to increase the participation rates in the HCTC program among eligible individuals, including outreach and enrollment activities.

''(6) The cost of administering the HCTC program by function, including the cost of subcontractors, and recommendations on ways to reduce administrative costs, including recommended statutory changes.

''(7) The number of States applying for and receiving national emergency grants under section 173(f) of the Workforce Investment Act of 1998 (29 U.S.C. 2918(f)), the activities funded by such grants on a State-by-State basis, and the time necessary for application approval of such grants.''

§ 36. First-time homebuyer credit

(a) Allowance of credit

In the case of an individual who is a first-time homebuyer of a principal residence in the United States during a taxable year, there shall be allowed as a credit against the tax imposed by this subtitle for such taxable year an amount equal to 10 percent of the purchase price of the residence.

(b) Limitations

(1) Dollar limitation

(A) In general

Except as otherwise provided in this paragraph, the credit allowed under subsection (a) shall not exceed $8,000.

(B) Married individuals filing separately

In the case of a married individual filing a separate return, subparagraph (A) shall be applied by substituting ''$4,000'' for ''$8,000''.

(C) Other individuals

If two or more individuals who are not married purchase a principal residence, the amount of the credit allowed under subsection (a) shall be allocated among such individuals in such manner as the Secretary may prescribe, except that the total amount of the credits allowed to all such individuals shall not exceed $8,000.

(D) Special rule for long-time residents of same principal residence

In the case of a taxpayer to whom a credit under subsection (a) is allowed by reason of subsection (c)(6), subparagraphs (A), (B), and (C) shall be applied by substituting ''$6,500'' for ''$8,000'' and ''$3,250'' for ''$4,000''.

(2) Limitation based on modified adjusted gross income

(A) In general

The amount allowable as a credit under subsection (a) (determined without regard to this paragraph) for the taxable year shall be reduced (but not below zero) by the amount which bears the same ratio to the amount which is so allowable as—

(i) the excess (if any) of—

(I) the taxpayer's modified adjusted gross income for such taxable year, over

(II) $125,000 ($225,000 in the case of a joint return), bears to

(ii) $20,000.

(B) Modified adjusted gross income

For purposes of subparagraph (A), the term ''modified adjusted gross income'' means the adjusted gross income of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933.

(3) Limitation based on purchase price

No credit shall be allowed under subsection (a) for the purchase of any residence if the purchase price of such residence exceeds $800,000.

(4) Age limitation

No credit shall be allowed under subsection (a) with respect to the purchase of any residence unless the taxpayer has attained age 18 as of the date of such purchase. In the case of any taxpayer who is married (within the meaning of section 7703), the taxpayer shall be treated as meeting the age requirement of the preceding sentence if the taxpayer or the taxpayer's spouse meets such age requirement.

(c) Definitions

For purposes of this section—

(1) First-time homebuyer

The term ''first-time homebuyer'' means any individual if such individual (and if married, such individual's spouse) had no present ownership interest in a principal residence during the 3-year period ending on the date of the purchase of the principal residence to which this section applies.

(2) Principal residence

The term ''principal residence'' has the same meaning as when used in section 121.

(3) Purchase

(A) In general

The term ''purchase'' means any acquisition, but only if—

(i) the property is not acquired from a person related to the person acquiring such property (or, if married, such individual's spouse), and

(ii) the basis of the property in the hands of the person acquiring such property is not determined—

(I) in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or

(II) under section 1014(a) (relating to property acquired from a decedent).

(B) Construction

A residence which is constructed by the taxpayer shall be treated as purchased by the taxpayer on the date the taxpayer first occupies such residence.

(4) Purchase price

The term ''purchase price'' means the adjusted basis of the principal residence on the date such residence is purchased.

(5) Related persons

A person shall be treated as related to another person if the relationship between such persons would result in the disallowance of losses under section 267 or 707(b) (but, in applying section 267(b) and (c) for purposes of this section, paragraph (4) of section 267(c) shall be treated as providing that the family of an individual shall include only his spouse, ancestors, and lineal descendants).

(6) Exception for long-time residents of same principal residence

In the case of an individual (and, if married, such individual's spouse) who has owned and

used the same residence as such individual's principal residence for any 5-consecutive-year period during the 8-year period ending on the date of the purchase of a subsequent principal residence, such individual shall be treated as a first-time homebuyer for purposes of this section with respect to the purchase of such subsequent residence.

(d) Exceptions

No credit under subsection (a) shall be allowed to any taxpayer for any taxable year with respect to the purchase of a residence if—

(1) the taxpayer is a nonresident alien,

(2) the taxpayer disposes of such residence (or such residence ceases to be the principal residence of the taxpayer (and, if married, the taxpayer's spouse)) before the close of such taxable year,

(3) a deduction under section 151 with respect to such taxpayer is allowable to another taxpayer for such taxable year, or

(4) the taxpayer fails to attach to the return of tax for such taxable year a properly executed copy of the settlement statement used to complete such purchase.

(e) Reporting

If the Secretary requires information reporting under section 6045 by a person described in subsection (e)(2) thereof to verify the eligibility of taxpayers for the credit allowable by this section, the exception provided by section 6045(e) shall not apply.

(f) Recapture of credit

(1) In general

Except as otherwise provided in this subsection, if a credit under subsection (a) is allowed to a taxpayer, the tax imposed by this chapter shall be increased by 6⅔ percent of the amount of such credit for each taxable year in the recapture period.

(2) Acceleration of recapture

If a taxpayer disposes of the principal residence with respect to which a credit was allowed under subsection (a) (or such residence ceases to be the principal residence of the taxpayer (and, if married, the taxpayer's spouse)) before the end of the recapture period—

(A) the tax imposed by this chapter for the taxable year of such disposition or cessation shall be increased by the excess of the amount of the credit allowed over the amounts of tax imposed by paragraph (1) for preceding taxable years, and

(B) paragraph (1) shall not apply with respect to such credit for such taxable year or any subsequent taxable year.

(3) Limitation based on gain

In the case of the sale of the principal residence to a person who is not related to the taxpayer, the increase in tax determined under paragraph (2) shall not exceed the amount of gain (if any) on such sale. Solely for purposes of the preceding sentence, the adjusted basis of such residence shall be reduced by the amount of the credit allowed under subsection (a) to the extent not previously recaptured under paragraph (1).

(4) Exceptions

(A) Death of taxpayer

Paragraphs (1) and (2) shall not apply to any taxable year ending after the date of the taxpayer's death.

(B) Involuntary conversion

Paragraph (2) shall not apply in the case of a residence which is compulsorily or involuntarily converted (within the meaning of section 1033(a)) if the taxpayer acquires a new principal residence during the 2-year period beginning on the date of the disposition or cessation referred to in paragraph (2). Paragraph (2) shall apply to such new principal residence during the recapture period in the same manner as if such new principal residence were the converted residence.

(C) Transfers between spouses or incident to divorce

In the case of a transfer of a residence to which section 1041(a) applies—

(i) paragraph (2) shall not apply to such transfer, and

(ii) in the case of taxable years ending after such transfer, paragraphs (1) and (2) shall apply to the transferee in the same manner as if such transferee were the transferor (and shall not apply to the transferor).

(D) Waiver of recapture for purchases in 2009 and 2010

In the case of any credit allowed with respect to the purchase of a principal residence after December 31, 2008—

(i) paragraph (1) shall not apply, and

(ii) paragraph (2) shall apply only if the disposition or cessation described in paragraph (2) with respect to such residence occurs during the 36-month period beginning on the date of the purchase of such residence by the taxpayer.

(E) Special rule for members of the armed forces, etc.

(i) In general

In the case of the disposition of a principal residence by an individual (or a cessation referred to in paragraph (2)) after December 31, 2008, in connection with Government orders received by such individual, or such individual's spouse, for qualified official extended duty service—

(I) paragraph (2) and subsection (d)(2) shall not apply to such disposition (or cessation), and

(II) if such residence was acquired before January 1, 2009, paragraph (1) shall not apply to the taxable year in which such disposition (or cessation) occurs or any subsequent taxable year.

(ii) Qualified official extended duty service

For purposes of this section, the term ''qualified official extended duty service'' means service on qualified official extended duty as—

(I) a member of the uniformed services,

(II) a member of the Foreign Service of the United States, or

(III) an employee of the intelligence community.

(iii) Definitions

Any term used in this subparagraph which is also used in paragraph (9) of section 121(d) shall have the same meaning as when used in such paragraph.

(5) Joint returns

In the case of a credit allowed under subsection (a) with respect to a joint return, half of such credit shall be treated as having been allowed to each individual filing such return for purposes of this subsection.

(6) Return requirement

If the tax imposed by this chapter for the taxable year is increased under this subsection, the taxpayer shall, notwithstanding section 6012, be required to file a return with respect to the taxes imposed under this subtitle.

(7) Recapture period

For purposes of this subsection, the term ''recapture period'' means the 15 taxable years beginning with the second taxable year following the taxable year in which the purchase of the principal residence for which a credit is allowed under subsection (a) was made.

(g) Election to treat purchase in prior year

In the case of a purchase of a principal residence after December 31, 2008, a taxpayer may elect to treat such purchase as made on December 31 of the calendar year preceding such purchase for purposes of this section (other than subsections (b)(4), (c), (f)(4)(D), and (h)).

(h) Application of section

(1) In general

This section shall only apply to a principal residence purchased by the taxpayer on or after April 9, 2008, and before May 1, 2010.

(2) Exception in case of binding contract

In the case of any taxpayer who enters into a written binding contract before May 1, 2010, to close on the purchase of a principal residence before July 1, 2010, and who purchases such residence before October 1, 2010, paragraph (1) shall be applied by substituting ''October 1, 2010'' for ''May 1, 2010''.

(3) Special rule for individuals on qualified official extended duty outside the United States

In the case of any individual who serves on qualified official extended duty service (as defined in section 121(d)(9)(C)(i)) outside the United States for at least 90 days during the period beginning after December 31, 2008, and ending before May 1, 2010, and, if married, such individual's spouse—

(A) paragraphs (1) and (2) shall each be applied by substituting ''May 1, 2011'' for ''May 1, 2010'', and

(B) paragraph (2) shall be applied by substituting ''July 1, 2011'' for ''July 1, 2010'', and for ''October 1, 2010''.

(Added Pub. L. 110–289, div. C, title I, §3011(a), July 30, 2008, 122 Stat. 2888; amended Pub. L. 111–5, div. B, title I, §1006(a)–(c), (d)(2), (e), Feb. 17, 2009, 123 Stat. 316, 317; Pub. L. 111–92, §§11(a)–(g), 12(a)–(c), Nov. 6, 2009, 123 Stat. 2989–2992; Pub. L. 111–198, §2(a), (b), July 2, 2010, 124 Stat. 1356.)

PRIOR PROVISIONS

A prior section 36 was renumbered section 37 of this title.

Another prior section 36, acts Aug. 16, 1954, ch. 736, 68A Stat. 15; Oct. 4, 1976, Pub. L. 94–455, title V, §501(b)(2), title X, §1011(c), title XIX, §1901(b)(1)(A), 90 Stat. 1558, 1611, 1790, directed that credits provided by section 32 not be allowed if an individual elects under section 144 to take standard deduction, prior to repeal by Pub. L. 95–30, title I, §§101(d)(3), 106(a), May 23, 1977, 91 Stat. 133, 141, applicable to taxable years beginning after Dec. 31, 1976.

AMENDMENTS

2010—Subsec. (h)(2). Pub. L. 111–198, §2(a), substituted ''and who purchases such residence before October 1, 2010, paragraph (1) shall be applied by substituting 'October 1, 2010''' for ''paragraph (1) shall be applied by substituting 'July 1, 2010'''.

Subsec. (h)(3)(B). Pub. L. 111–198, §2(b), inserted '', and for 'October 1, 2010'''' after ''for 'July 1, 2010'''.

2009—Subsec. (b)(1)(A). Pub. L. 111–5, §1006(b)(1), substituted ''$8,000'' for ''$7,500''.

Subsec. (b)(1)(B). Pub. L. 111–5, §1006(b), substituted ''$4,000'' for ''$3,750'' and ''$8,000'' for ''$7,500''.

Subsec. (b)(1)(C). Pub. L. 111–5, §1006(b)(1), substituted ''$8,000'' for ''$7,500''.

Subsec. (b)(1)(D). Pub. L. 111–92, §11(c)(1), added subpar. (D).

Subsec. (b)(2)(A)(i)(II). Pub. L. 111–92, §11(c)(2), substituted ''$125,000 ($225,000'' for ''$75,000 ($150,000''.

Subsec. (b)(3). Pub. L. 111–92, §11(d), added par. (3).

Subsec. (b)(4). Pub. L. 111–92, §12(a)(1), added par. (4).

Subsec. (c)(3)(A)(i). Pub. L. 111–92, §12(c), inserted ''(or, if married, such individual's spouse)'' after ''person acquiring such property''.

Subsec. (c)(6). Pub. L. 111–92, §11(b), added par. (6).

Subsec. (d). Pub. L. 111–5, §1006(d)(2), (e), redesignated pars. (3) and (4) as (1) and (2), respectively, and struck out former pars. (1) and (2) which read as follows:

''(1) a credit under section 1400C (relating to first-time homebuyer in the District of Columbia) is allowable to the taxpayer (or the taxpayer's spouse) for such taxable year or any prior taxable year,

''(2) the residence is financed by the proceeds of a qualified mortgage issue the interest on which is exempt from tax under section 103,''.

Subsec. (d)(3). Pub. L. 111–92, §11(g), added par. (3).

Subsec. (d)(4). Pub. L. 111–92, §12(b), added par. (4).

Subsec. (f)(4)(D). Pub. L. 111–92, §11(a)(2), inserted ''and 2010'' after ''2009'' in heading and struck out '', and before December 1, 2009'' after ''December 31, 2008'' in introductory provisions.

Pub. L. 111–5, §1006(c)(1), added subpar. (D).

Subsec. (f)(4)(E). Pub. L. 111–92, §11(e), added subpar. (E).

Subsec. (g). Pub. L. 111–92, §12(a)(2), inserted ''(b)(4),'' before ''(c)''.

Pub. L. 111–92, §11(a)(3), amended subsec. (g) generally. Prior to amendment, text read as follows: ''In the case of a purchase of a principal residence after December 31, 2008, and before December 1, 2009, a taxpayer may elect to treat such purchase as made on December 31, 2008, for purposes of this section (other than subsections (c) and (f)(4)(D)).''

Pub. L. 111–5, §1006(a)(2), (c)(2), substituted ''December 1, 2009'' for ''July 1, 2009'' and ''subsections (c) and (f)(4)(D)'' for ''subsection (c)''.

Subsec. (h). Pub. L. 111–92, §11(a)(1), substituted ''May 1, 2010'' for ''December 1, 2009'', designated existing provisions as par. (1), inserted heading, and added par. (2).

Pub. L. 111–5, §1006(a)(1), substituted ''December 1, 2009'' for ''July 1, 2009''.

Subsec. (h)(3). Pub. L. 111–92, §11(f), added par. (3).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–198, §2(c), July 2, 2010, 124 Stat. 1356, provided that: ''The amendments made by this section [amending this section] shall apply to residences purchased after June 30, 2010.''

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–92, §11(j)(1)–(3), Nov. 6, 2009, 123 Stat. 2991, provided that:

''(1) IN GENERAL.—The amendments made by subsections (b), (c), (d), and (g) [amending this section] shall apply to residences purchased after the date of the enactment of this Act [Nov. 6, 2009].

''(2) EXTENSIONS.—The amendments made by subsections (a) [amending this section], (f) [amending this section], and (i) [amending section 1400C of this title] shall apply to residences purchased after November 30, 2009.

''(3) WAIVER OF RECAPTURE.—The amendment made by subsection (e) [amending this section] shall apply to dispositions and cessations after December 31, 2008.''

Pub. L. 111–92, §12(e), Nov. 6, 2009, 123 Stat. 2992, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 6213 of this title] shall apply to purchases after the date of the enactment of this Act [Nov. 6, 2009].

''(2) DOCUMENTATION REQUIREMENT.—The amendments made by subsection (b) [amending this section] shall apply to returns for taxable years ending after the date of the enactment of this Act [Nov. 6, 2009].

''(3) TREATMENT AS MATHEMATICAL AND CLERICAL ERRORS.—The amendments made by subsection (d) [amending section 6213 of this title] shall apply to returns for taxable years ending on or after April 9, 2008.''

Pub. L. 111–5, div. B, title I, §1006(f), Feb. 17, 2009, 123 Stat. 317, provided that: ''The amendments made by this section [amending this section and section 1400C of this title] shall apply to residences purchased after December 31, 2008.''

EFFECTIVE DATE

Section applicable to residences purchased on or after Apr. 9, 2008, in taxable years ending on or after such date, see section 3011(c) of Pub. L. 110–289, set out as an Effective Date of 2008 Amendment note under section 26 of this title.

§ 36A. Making work pay credit

(a) Allowance of credit

In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the lesser of—

(1) 6.2 percent of earned income of the taxpayer, or

(2) $400 ($800 in the case of a joint return).

(b) Limitation based on modified adjusted gross income

(1) In general

The amount allowable as a credit under subsection (a) (determined without regard to this paragraph and subsection (c)) for the taxable year shall be reduced (but not below zero) by 2 percent of so much of the taxpayer's modified adjusted gross income as exceeds $75,000 ($150,000 in the case of a joint return).

(2) Modified adjusted gross income

For purposes of subparagraph (A),[1] the term ''modified adjusted gross income'' means the adjusted gross income of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933.

(c) Reduction for certain other payments

The credit allowed under subsection (a) for any taxable year shall be reduced by the amount of any payments received by the taxpayer during such taxable year under section 2201, and any credit allowed to the taxpayer under section 2202, of the American Recovery and Reinvestment Tax Act of 2009.

(d) Definitions and special rules

For purposes of this section—

(1) Eligible individual

(A) In general

The term ''eligible individual'' means any individual other than—

(i) any nonresident alien individual,

(ii) any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, and

(iii) an estate or trust.

(B) Identification number requirement

Such term shall not include any individual who does not include on the return of tax for the taxable year—

(i) such individual's social security account number, and

(ii) in the case of a joint return, the social security account number of one of the taxpayers on such return.

For purposes of the preceding sentence, the social security account number shall not include a TIN issued by the Internal Revenue Service.

(2) Earned income

The term ''earned income'' has the meaning given such term by section 32(c)(2), except that such term shall not include net earnings from self-employment which are not taken into account in computing taxable income. For purposes of the preceding sentence, any amount excluded from gross income by reason of section 112 shall be treated as earned income which is taken into account in computing taxable income for the taxable year.

(e) Termination

This section shall not apply to taxable years beginning after December 31, 2010.

(Added Pub. L. 111–5, div. B, title I, §1001(a), Feb. 17, 2009, 123 Stat. 309.)

REFERENCES IN TEXT

Sections 2201 and 2202 of the American Recovery and Reinvestment Tax Act of 2009, referred to in subsec. (c), are sections 2201 and 2202 of Pub. L. 111–5, which are set out as notes under section 6428 of this title.

EFFECTIVE DATE

Pub. L. 111–5, div. B, title I, §1001(f), Feb. 17, 2009, 123 Stat. 312, provided that: ''This section [enacting this section, amending sections 6211 and 6213 of this title and section 1324 of Title 31, Money and Finance, and enacting provisions set out as notes under this section],

[1] So in original. Probably should be ''paragraph (1),''.

and the amendments made by this section, shall apply to taxable years beginning after December 31, 2008.''

TREATMENT OF POSSESSIONS

Pub. L. 111–5, div. B, title I, §1001(b), Feb. 17, 2009, 123 Stat. 310, provided that:

''(1) PAYMENTS TO POSSESSIONS.—

''(A) MIRROR CODE POSSESSION.—The Secretary of the Treasury shall pay to each possession of the United States with a mirror code tax system amounts equal to the loss to that possession by reason of the amendments made by this section [enacting this section and amending sections 6211 and 6213 of this title and section 1324 of Title 31, Money and Finance] with respect to taxable years beginning in 2009 and 2010. Such amounts shall be determined by the Secretary of the Treasury based on information provided by the government of the respective possession.

''(B) OTHER POSSESSIONS.—The Secretary of the Treasury shall pay to each possession of the United States which does not have a mirror code tax system amounts estimated by the Secretary of the Treasury as being equal to the aggregate benefits that would have been provided to residents of such possession by reason of the amendments made by this section for taxable years beginning in 2009 and 2010 if a mirror code tax system had been in effect in such possession. The preceding sentence shall not apply with respect to any possession of the United States unless such possession has a plan, which has been approved by the Secretary of the Treasury, under which such possession will promptly distribute such payments to the residents of such possession.

''(2) COORDINATION WITH CREDIT ALLOWED AGAINST UNITED STATES INCOME TAXES.—No credit shall be allowed against United States income taxes for any taxable year under section 36A of the Internal Revenue Code of 1986 (as added by this section) to any person—

''(A) to whom a credit is allowed against taxes imposed by the possession by reason of the amendments made by this section for such taxable year, or

''(B) who is eligible for a payment under a plan described in paragraph (1)(B) with respect to such taxable year.

''(3) DEFINITIONS AND SPECIAL RULES.—

''(A) POSSESSION OF THE UNITED STATES.—For purposes of this subsection, the term 'possession of the United States' includes the Commonwealth of Puerto Rico and the Commonwealth of the Northern Mariana Islands.

''(B) MIRROR CODE TAX SYSTEM.—For purposes of this subsection, the term 'mirror code tax system' means, with respect to any possession of the United States, the income tax system of such possession if the income tax liability of the residents of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States.

''(C) TREATMENT OF PAYMENTS.—For purposes of section 1324(b)(2) of title 31, United States Code, the payments under this subsection shall be treated in the same manner as a refund due from the credit allowed under section 36A of the Internal Revenue Code of 1986 (as added by this section).''

REFUNDS DISREGARDED IN THE ADMINISTRATION OF FEDERAL PROGRAMS AND FEDERALLY ASSISTED PROGRAMS

Pub. L. 111–5, div. B, title I, §1001(c), Feb. 17, 2009, 123 Stat. 311, provided that: ''Any credit or refund allowed or made to any individual by reason of section 36A of the Internal Revenue Code of 1986 (as added by this section) or by reason of subsection (b) of this section [set out as a note above] shall not be taken into account as income and shall not be taken into account as resources for the month of receipt and the following 2 months, for purposes of determining the eligibility of such individual or any other individual for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds.''

§36B. Refundable credit for coverage under a qualified health plan

(a) In general

In the case of an applicable taxpayer, there shall be allowed as a credit against the tax imposed by this subtitle for any taxable year an amount equal to the premium assistance credit amount of the taxpayer for the taxable year.

(b) Premium assistance credit amount

For purposes of this section—

(1) In general

The term ''premium assistance credit amount'' means, with respect to any taxable year, the sum of the premium assistance amounts determined under paragraph (2) with respect to all coverage months of the taxpayer occurring during the taxable year.

(2) Premium assistance amount

The premium assistance amount determined under this subsection with respect to any coverage month is the amount equal to the lesser of—

(A) the monthly premiums for such month for 1 or more qualified health plans offered in the individual market within a State which cover the taxpayer, the taxpayer's spouse, or any dependent (as defined in section 152) of the taxpayer and which were enrolled in through an Exchange established by the State under 1311[1] of the Patient Protection and Affordable Care Act, or

(B) the excess (if any) of—

(i) the adjusted monthly premium for such month for the applicable second lowest cost silver plan with respect to the taxpayer, over

(ii) an amount equal to 1/12 of the product of the applicable percentage and the taxpayer's household income for the taxable year.

(3) Other terms and rules relating to premium assistance amounts

For purposes of paragraph (2)—

(A) Applicable percentage

(i) In general

Except as provided in clause (ii), the applicable percentage for any taxable year shall be the percentage such that the applicable percentage for any taxpayer whose household income is within an income tier specified in the following table shall increase, on a sliding scale in a linear manner, from the initial premium percentage to the final premium percentage specified in such table for such income tier:

In the case of household income (expressed as a percent of poverty line) within the following income tier:	The initial premium percentage is—	The final premium percentage is—
Up to 133%	2.0%	2.0%

[1] So in original. Probably should be preceded by ''section''.

In the case of household income (expressed as a percent of poverty line) within the following income tier:	The initial premium percentage is—	The final premium percentage is—
133% up to 150%	3.0%	4.0%
150% up to 200%	4.0%	6.3%
200% up to 250%	6.3%	8.05%
250% up to 300%	8.05%	9.5%
300% up to 400%	9.5%	9.5%.

(ii) Indexing

(I) In general

Subject to subclause (II), in the case of taxable years beginning in any calendar year after 2014, the initial and final applicable percentages under clause (i) (as in effect for the preceding calendar year after application of this clause) shall be adjusted to reflect the excess of the rate of premium growth for the preceding calendar year over the rate of income growth for the preceding calendar year.

(II) Additional adjustment

Except as provided in subclause (III), in the case of any calendar year after 2018, the percentages described in subclause (I) shall, in addition to the adjustment under subclause (I), be adjusted to reflect the excess (if any) of the rate of premium growth estimated under subclause (I) for the preceding calendar year over the rate of growth in the consumer price index for the preceding calendar year.

(III) Failsafe

Subclause (II) shall apply for any calendar year only if the aggregate amount of premium tax credits under this section and cost-sharing reductions under section 1402 of the Patient Protection and Affordable Care Act for the preceding calendar year exceeds an amount equal to 0.504 percent of the gross domestic product for the preceding calendar year.

(B) Applicable second lowest cost silver plan

The applicable second lowest cost silver plan with respect to any applicable taxpayer is the second lowest cost silver plan of the individual market in the rating area in which the taxpayer resides which—

(i) is offered through the same Exchange through which the qualified health plans taken into account under paragraph (2)(A) were offered, and

(ii) provides—

(I) self-only coverage in the case of an applicable taxpayer—

(aa) whose tax for the taxable year is determined under section 1(c) (relating to unmarried individuals other than surviving spouses and heads of households) and who is not allowed a deduction under section 151 for the taxable year with respect to a dependent, or

(bb) who is not described in item (aa) but who purchases only self-only coverage, and

(II) family coverage in the case of any other applicable taxpayer.

If a taxpayer files a joint return and no credit is allowed under this section with respect to 1 of the spouses by reason of subsection (e), the taxpayer shall be treated as described in clause (ii)(I) unless a deduction is allowed under section 151 for the taxable year with respect to a dependent other than either spouse and subsection (e) does not apply to the dependent.

(C) Adjusted monthly premium

The adjusted monthly premium for an applicable second lowest cost silver plan is the monthly premium which would have been charged (for the rating area with respect to which the premiums under paragraph (2)(A) were determined) for the plan if each individual covered under a qualified health plan taken into account under paragraph (2)(A) were covered by such silver plan and the premium was adjusted only for the age of each such individual in the manner allowed under section 2701 of the Public Health Service Act. In the case of a State participating in the wellness discount demonstration project under section 2705(d) of the Public Health Service Act, the adjusted monthly premium shall be determined without regard to any premium discount or rebate under such project.

(D) Additional benefits

If—

(i) a qualified health plan under section 1302(b)(5) of the Patient Protection and Affordable Care Act offers benefits in addition to the essential health benefits required to be provided by the plan, or

(ii) a State requires a qualified health plan under section 1311(d)(3)(B) of such Act to cover benefits in addition to the essential health benefits required to be provided by the plan,

the portion of the premium for the plan properly allocable (under rules prescribed by the Secretary of Health and Human Services) to such additional benefits shall not be taken into account in determining either the monthly premium or the adjusted monthly premium under paragraph (2).

(E) Special rule for pediatric dental coverage

For purposes of determining the amount of any monthly premium, if an individual enrolls in both a qualified health plan and a plan described in section 1311(d)(2)(B)(ii)(I) of the Patient Protection and Affordable Care Act for any plan year, the portion of the premium for the plan described in such section that (under regulations prescribed by the Secretary) is properly allocable to pediatric dental benefits which are included in the essential health benefits required to be provided by a qualified health plan under section 1302(b)(1)(J) of such Act shall be treated as a premium payable for a qualified health plan.

(c) Definition and rules relating to applicable taxpayers, coverage months, and qualified health plan

For purposes of this section—

(1) Applicable taxpayer

(A) In general

The term ''applicable taxpayer'' means, with respect to any taxable year, a taxpayer whose household income for the taxable year equals or exceeds 100 percent but does not exceed 400 percent of an amount equal to the poverty line for a family of the size involved.

(B) Special rule for certain individuals lawfully present in the United States

If—

(i) a taxpayer has a household income which is not greater than 100 percent of an amount equal to the poverty line for a family of the size involved, and

(ii) the taxpayer is an alien lawfully present in the United States, but is not eligible for the medicaid program under title XIX of the Social Security Act by reason of such alien status,

the taxpayer shall, for purposes of the credit under this section, be treated as an applicable taxpayer with a household income which is equal to 100 percent of the poverty line for a family of the size involved.

(C) Married couples must file joint return

If the taxpayer is married (within the meaning of section 7703) at the close of the taxable year, the taxpayer shall be treated as an applicable taxpayer only if the taxpayer and the taxpayer's spouse file a joint return for the taxable year.

(D) Denial of credit to dependents

No credit shall be allowed under this section to any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins.

(2) Coverage month

For purposes of this subsection—

(A) In general

The term ''coverage month'' means, with respect to an applicable taxpayer, any month if—

(i) as of the first day of such month the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer is covered by a qualified health plan described in subsection (b)(2)(A) that was enrolled in through an Exchange established by the State under section 1311 of the Patient Protection and Affordable Care Act, and

(ii) the premium for coverage under such plan for such month is paid by the taxpayer (or through advance payment of the credit under subsection (a) under section 1412 of the Patient Protection and Affordable Care Act).

(B) Exception for minimum essential coverage

(i) In general

The term ''coverage month'' shall not include any month with respect to an individual if for such month the individual is eligible for minimum essential coverage other than eligibility for coverage described in section 5000A(f)(1)(C) (relating to coverage in the individual market).

(ii) Minimum essential coverage

The term ''minimum essential coverage'' has the meaning given such term by section 5000A(f).

(C) Special rule for employer-sponsored minimum essential coverage

For purposes of subparagraph (B)—

(i) Coverage must be affordable

Except as provided in clause (iii), an employee shall not be treated as eligible for minimum essential coverage if such coverage—

(I) consists of an eligible employer-sponsored plan (as defined in section 5000A(f)(2)), and

(II) the employee's required contribution (within the meaning of section 5000A(e)(1)(B)) with respect to the plan exceeds 9.5 percent of the applicable taxpayer's household income.

This clause shall also apply to an individual who is eligible to enroll in the plan by reason of a relationship the individual bears to the employee.

(ii) Coverage must provide minimum value

Except as provided in clause (iii), an employee shall not be treated as eligible for minimum essential coverage if such coverage consists of an eligible employer-sponsored plan (as defined in section 5000A(f)(2)) and the plan's share of the total allowed costs of benefits provided under the plan is less than 60 percent of such costs.

(iii) Employee or family must not be covered under employer plan

Clauses (i) and (ii) shall not apply if the employee (or any individual described in the last sentence of clause (i)) is covered under the eligible employer-sponsored plan or the grandfathered health plan.

(iv) Indexing

In the case of plan years beginning in any calendar year after 2014, the Secretary shall adjust the 9.5 percent under clause (i)(II) in the same manner as the percentages are adjusted under subsection (b)(3)(A)(ii).

(D) Exception for individual receiving free choice vouchers

The term ''coverage month'' shall not include any month in which such individual has a free choice voucher provided under section 10108 of the Patient Protection and Affordable Care Act.

(3) Definitions and other rules

(A) Qualified health plan

The term ''qualified health plan'' has the meaning given such term by section 1301(a) of the Patient Protection and Affordable

Care Act, except that such term shall not include a qualified health plan which is a catastrophic plan described in section 1302(e) of such Act.

(B) Grandfathered health plan

The term ''grandfathered health plan'' has the meaning given such term by section 1251 of the Patient Protection and Affordable Care Act.

(d) Terms relating to income and families

For purposes of this section—

(1) Family size

The family size involved with respect to any taxpayer shall be equal to the number of individuals for whom the taxpayer is allowed a deduction under section 151 (relating to allowance of deduction for personal exemptions) for the taxable year.

(2) Household income

(A) Household income

The term ''household income'' means, with respect to any taxpayer, an amount equal to the sum of—

(i) the modified adjusted gross income of the taxpayer, plus

(ii) the aggregate modified adjusted gross incomes of all other individuals who—

(I) were taken into account in determining the taxpayer's family size under paragraph (1), and

(II) were required to file a return of tax imposed by section 1 for the taxable year.

(B) Modified adjusted gross income

The term ''modified adjusted gross income'' means adjusted gross income increased by—

(i) any amount excluded from gross income under section 911, and

(ii) any amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax.

(3) Poverty line

(A) In general

The term ''poverty line'' has the meaning given that term in section 2110(c)(5) of the Social Security Act (42 U.S.C. 1397jj(c)(5)).

(B) Poverty line used

In the case of any qualified health plan offered through an Exchange for coverage during a taxable year beginning in a calendar year, the poverty line used shall be the most recently published poverty line as of the 1st day of the regular enrollment period for coverage during such calendar year.

(e) Rules for individuals not lawfully present

(1) In general

If 1 or more individuals for whom a taxpayer is allowed a deduction under section 151 (relating to allowance of deduction for personal exemptions) for the taxable year (including the taxpayer or his spouse) are individuals who are not lawfully present—

(A) the aggregate amount of premiums otherwise taken into account under clauses (i) and (ii) of subsection (b)(2)(A) shall be reduced by the portion (if any) of such premiums which is attributable to such individuals, and

(B) for purposes of applying this section, the determination as to what percentage a taxpayer's household income bears to the poverty level for a family of the size involved shall be made under one of the following methods:

(i) A method under which—

(I) the taxpayer's family size is determined by not taking such individuals into account, and

(II) the taxpayer's household income is equal to the product of the taxpayer's household income (determined without regard to this subsection) and a fraction—

(aa) the numerator of which is the poverty line for the taxpayer's family size determined after application of subclause (I), and

(bb) the denominator of which is the poverty line for the taxpayer's family size determined without regard to subclause (I).

(ii) A comparable method reaching the same result as the method under clause (i).

(2) Lawfully present

For purposes of this section, an individual shall be treated as lawfully present only if the individual is, and is reasonably expected to be for the entire period of enrollment for which the credit under this section is being claimed, a citizen or national of the United States or an alien lawfully present in the United States.

(3) Secretarial authority

The Secretary of Health and Human Services, in consultation with the Secretary, shall prescribe rules setting forth the methods by which calculations of family size and household income are made for purposes of this subsection. Such rules shall be designed to ensure that the least burden is placed on individuals enrolling in qualified health plans through an Exchange and taxpayers eligible for the credit allowable under this section.

(f) Reconciliation of credit and advance credit

(1) In general

The amount of the credit allowed under this section for any taxable year shall be reduced (but not below zero) by the amount of any advance payment of such credit under section 1412 of the Patient Protection and Affordable Care Act.

(2) Excess advance payments

(A) In general

If the advance payments to a taxpayer under section 1412 of the Patient Protection and Affordable Care Act for a taxable year exceed the credit allowed by this section (determined without regard to paragraph (1)), the tax imposed by this chapter for the taxable year shall be increased by the amount of such excess.

(B) Limitation on increase

(i) In general

In the case of a taxpayer whose household income is less than 500 percent of the poverty line for the size of the family involved for the taxable year, the amount of the increase under subparagraph (A) shall in no event exceed the applicable dollar amount determined in accordance with the following table (one-half of such amount in the case of a taxpayer whose tax is determined under section 1(c) for the taxable year):

If the household income (expressed as a percent of poverty line) is:	The applicable dollar amount is:
Less than 200%	$600
At least 200% but less than 250%	$1,000
At least 250% but less than 300%	$1,500
At least 300% but less than 350%	$2,000
At least 350% but less than 400%	$2,500
At least 400% but less than 450%	$3,000
At least 450% but less than 500%	$3,500.

(ii) Indexing of amount

In the case of any calendar year beginning after 2014, each of the dollar amounts in the table contained under clause (i) shall be increased by an amount equal to—

(I) such dollar amount, multiplied by

(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year, determined by substituting ''calendar year 2013'' for ''calendar year 1992'' in subparagraph (B) thereof.

If the amount of any increase under clause (i) is not a multiple of $50, such increase shall be rounded to the next lowest multiple of $50.

(3) Information requirement

Each Exchange (or any person carrying out 1 or more responsibilities of an Exchange under section 1311(f)(3) or 1321(c) of the Patient Protection and Affordable Care Act) shall provide the following information to the Secretary and to the taxpayer with respect to any health plan provided through the Exchange:

(A) The level of coverage described in section 1302(d) of the Patient Protection and Affordable Care Act and the period such coverage was in effect.

(B) The total premium for the coverage without regard to the credit under this section or cost-sharing reductions under section 1402 of such Act.

(C) The aggregate amount of any advance payment of such credit or reductions under section 1412 of such Act.

(D) The name, address, and TIN of the primary insured and the name and TIN of each other individual obtaining coverage under the policy.

(E) Any information provided to the Exchange, including any change of circumstances, necessary to determine eligibility for, and the amount of, such credit.

(F) Information necessary to determine whether a taxpayer has received excess advance payments.

(g) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section, including regulations which provide for—

(1) the coordination of the credit allowed under this section with the program for advance payment of the credit under section 1412 of the Patient Protection and Affordable Care Act, and

(2) the application of subsection (f) where the filing status of the taxpayer for a taxable year is different from such status used for determining the advance payment of the credit.

(Added and amended Pub. L. 111–148, title I, §1401(a), title X, §§10105(a)–(c), 10108(h)(1), Mar. 23, 2010, 124 Stat. 213, 906, 914; Pub. L. 111–152, title I, §§1001(a), 1004(a)(1)(A), (2)(A), (c), Mar. 30, 2010, 124 Stat. 1030, 1034, 1035; Pub. L. 111–309, title II, §208(a), (b), Dec. 15, 2010, 124 Stat. 3291, 3292.)

REFERENCES IN TEXT

Sections 1251, 1301, 1302, 1311, 1321, 1402, and 1412 of the Patient Protection and Affordable Care Act, referred to in text, are classified to sections 18011, 18021, 18022, 18031, 18041, 18071, and 18082, respectively, of Title 42, The Public Health and Welfare.

Sections 2701 and 2705(d) of the Public Health Service Act, referred to in subsec. (b)(3)(C), are classified to sections 300gg and 300gg–4(d), respectively, of Title 42, The Public Health and Welfare.

The Social Security Act, referred to in subsec. (c)(1)(B)(ii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title XIX of the Act is classified generally to subchapter XIX (§1396 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 10108 of the Patient Protection and Affordable Care Act, referred to in subsec. (c)(2)(D), is section 10108 of Pub. L. 111–148, which enacted section 139D of this title and section 18101 of Title 42, The Public Health and Welfare, amended this section and sections 162, 4980H, 6056, and 6724 of this title and section 218b of Title 29, Labor, and enacted provisions set out as notes under this section and sections 139D, 162, 4980H, and 6056 of this title. For complete classification of section 10108 to the Code, see Tables.

AMENDMENTS

2010—Subsec. (b)(3)(A)(i). Pub. L. 111–152, §1001(a)(1)(A), substituted ''for any taxable year shall be the percentage such that the applicable percentage for any taxpayer whose household income is within an income tier specified in the following table shall increase, on a sliding scale in a linear manner, from the initial premium percentage to the final premium percentage specified in such table for such income tier:'' for ''with respect to any taxpayer for any taxable year is equal to 2.8 percent, increased by the number of percentage points (not greater than 7) which bears the same ratio to 7 percentage points as—'' in introductory provisions, inserted table, and struck out subcls. (I) and (II) which read as follows:

''(I) the taxpayer's household income for the taxable year in excess of 100 percent of the poverty line for a family of the size involved, bears to

''(II) an amount equal to 200 percent of the poverty line for a family of the size involved.''

Subsec. (b)(3)(A)(ii). Pub. L. 111–152, §1001(a)(1)(B), added cl. (ii) and struck out former cl. (ii). Text read as

follows: ''If a taxpayer's household income for the taxable year equals or exceeds 100 percent, but not more than 133 percent, of the poverty line for a family of the size involved, the taxpayer's applicable percentage shall be 2 percent.''

Pub. L. 111–148, §10105(a), substituted ''equals or exceeds'' for ''is in excess of''.

Subsec. (b)(3)(A)(iii). Pub. L. 111–152, §1001(a)(1)(B), struck out cl. (iii). Text read as follows: ''In the case of taxable years beginning in any calendar year after 2014, the Secretary shall adjust the initial and final applicable percentages under clause (i), and the 2 percent under clause (ii), for the calendar year to reflect the excess of the rate of premium growth between the preceding calendar year and 2013 over the rate of income growth for such period.''

Subsec. (c)(1)(A). Pub. L. 111–148, §10105(b), inserted ''equals or'' before ''exceeds''.

Subsec. (c)(2)(C)(i)(II). Pub. L. 111–152, §1001(a)(2)(A), substituted ''9.5 percent'' for ''9.8 percent''.

Subsec. (c)(2)(C)(iv). Pub. L. 111–152, §1001(a)(2), substituted ''9.5 percent'' for ''9.8 percent'' and ''(b)(3)(A)(ii)'' for ''(b)(3)(A)(iii)''.

Pub. L. 111–148, §10105(c), substituted ''subsection (b)(3)(A)(iii)'' for ''subsection (b)(3)(A)(ii)''.

Subsec. (c)(2)(D). Pub. L. 111–148, §10108(h)(1), added subpar. (D).

Subsec. (d)(2)(A)(i), (ii). Pub. L. 111–152, §1004(a)(1)(A), substituted ''modified adjusted gross'' for ''modified gross''.

Subsec. (d)(2)(B). Pub. L. 111–152, §1004(a)(2)(A), amended subpar. (B) generally. Prior to amendment, text read as follows: ''The term 'modified gross income' means gross income—

''(i) decreased by the amount of any deduction allowable under paragraph (1), (3), (4), or (10) of section 62(a),

''(ii) increased by the amount of interest received or accrued during the taxable year which is exempt from tax imposed by this chapter, and

''(iii) determined without regard to sections 911, 931, and 933.''

Subsec. (f)(2)(B). Pub. L. 111–309, §208(a), amended generally subpar. heading and cl. (i). Prior to amendment, text of cl. (i) read as follows: ''In the case of an applicable taxpayer whose household income is less than 400 percent of the poverty line for the size of the family involved for the taxable year, the amount of the increase under subparagraph (A) shall in no event exceed $400 ($250 in the case of a taxpayer whose tax is determined under section 1(c) for the taxable year).''

Subsec. (f)(2)(B)(ii). Pub. L. 111–309, §208(b), inserted ''in the table contained'' after ''each of the dollar amounts'' in introductory provisions.

Subsec. (f)(3). Pub. L. 111–152, §1004(c), added par. (3).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–309, title II, §208(c), Dec. 15, 2010, 124 Stat. 3292, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2013.''

Pub. L. 111–148, title X, §10108(h)(2), Mar. 23, 2010, 124 Stat. 914, provided that: ''The amendment made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 2013.''

EFFECTIVE DATE

Pub. L. 111–148, title I, §1401(e), Mar. 23, 2010, 124 Stat. 220, provided that: ''The amendments made by this section [enacting this section and amending sections 280C and 6211 of this title and section 1324 of Title 31, Money and Finance] shall apply to taxable years ending after December 31, 2013.''

§ 36C. Adoption expenses

(a) Allowance of credit

(1) In general

In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter the amount of the qualified adoption expenses paid or incurred by the taxpayer.

(2) Year credit allowed

The credit under paragraph (1) with respect to any expense shall be allowed—

(A) in the case of any expense paid or incurred before the taxable year in which such adoption becomes final, for the taxable year following the taxable year during which such expense is paid or incurred, and

(B) in the case of an expense paid or incurred during or after the taxable year in which such adoption becomes final, for the taxable year in which such expense is paid or incurred.

(3) $13,170 credit for adoption of child with special needs regardless of expenses

In the case of an adoption of a child with special needs which becomes final during a taxable year, the taxpayer shall be treated as having paid during such year qualified adoption expenses with respect to such adoption in an amount equal to the excess (if any) of $13,170 over the aggregate qualified adoption expenses actually paid or incurred by the taxpayer with respect to such adoption during such taxable year and all prior taxable years.

(b) Limitations

(1) Dollar limitation

The aggregate amount of qualified adoption expenses which may be taken into account under subsection (a) for all taxable years with respect to the adoption of a child by the taxpayer shall not exceed $13,170.

(2) Income limitation

(A) In general

The amount allowable as a credit under subsection (a) for any taxable year (determined without regard to subsection (c)) shall be reduced (but not below zero) by an amount which bears the same ratio to the amount so allowable (determined without regard to this paragraph but with regard to paragraph (1)) as—

(i) the amount (if any) by which the taxpayer's adjusted gross income exceeds $150,000, bears to

(ii) $40,000.

(B) Determination of adjusted gross income

For purposes of subparagraph (A), adjusted gross income shall be determined without regard to sections 911, 931, and 933.

(3) Denial of double benefit

(A) In general

No credit shall be allowed under subsection (a) for any expense for which a deduction or credit is allowed under any other provision of this chapter.

(B) Grants

No credit shall be allowed under subsection (a) for any expense to the extent that funds for such expense are received under any Federal, State, or local program.

[(c) Repealed. Pub. L. 111–148, title X, § 10909(b)(2)(I)(ii), Mar. 23, 2010, 124 Stat. 1023]

(d) Definitions

For purposes of this section—

(1) Qualified adoption expenses

The term ''qualified adoption expenses'' means reasonable and necessary adoption fees, court costs, attorney fees, and other expenses—

(A) which are directly related to, and the principal purpose of which is for, the legal adoption of an eligible child by the taxpayer,

(B) which are not incurred in violation of State or Federal law or in carrying out any surrogate parenting arrangement,

(C) which are not expenses in connection with the adoption by an individual of a child who is the child of such individual's spouse, and

(D) which are not reimbursed under an employer program or otherwise.

(2) Eligible child

The term ''eligible child'' means any individual who—

(A) has not attained age 18, or

(B) is physically or mentally incapable of caring for himself.

(3) Child with special needs

The term ''child with special needs'' means any child if—

(A) a State has determined that the child cannot or should not be returned to the home of his parents,

(B) such State has determined that there exists with respect to the child a specific factor or condition (such as his ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps) because of which it is reasonable to conclude that such child cannot be placed with adoptive parents without providing adoption assistance, and

(C) such child is a citizen or resident of the United States (as defined in section 217(h)(3)).

(e) Special rules for foreign adoptions

In the case of an adoption of a child who is not a citizen or resident of the United States (as defined in section 217(h)(3))—

(1) subsection (a) shall not apply to any qualified adoption expense with respect to such adoption unless such adoption becomes final, and

(2) any such expense which is paid or incurred before the taxable year in which such adoption becomes final shall be taken into account under this section as if such expense were paid or incurred during such year.

(f) Filing requirements

(1) Married couples must file joint returns

Rules similar to the rules of paragraphs (2), (3), and (4) of section 21(e) shall apply for purposes of this section.

(2) Taxpayer must include TIN

(A) In general

No credit shall be allowed under this section with respect to any eligible child unless the taxpayer includes (if known) the name, age, and TIN of such child on the return of tax for the taxable year.

(B) Other methods

The Secretary may, in lieu of the information referred to in subparagraph (A), require other information meeting the purposes of subparagraph (A), including identification of an agent assisting with the adoption.

(g) Basis adjustments

For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

(h) Adjustments for inflation

(1) Dollar limitations

In the case of a taxable year beginning after December 31, 2010, each of the dollar amounts in subsections (a)(3) and (b)(1) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ''calendar year 2009'' for ''calendar year 1992'' in subparagraph (B) thereof.

If any amount as increased under the preceding sentence is not a multiple of $10, such amount shall be rounded to the nearest multiple of $10.

(2) Income limitation

In the case of a taxable year beginning after December 31, 2002, the dollar amount in subsection (b)(2)(A)(i) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ''calendar year 2001'' for ''calendar year 1992'' in subparagraph (B) thereof.

If any amount as increased under the preceding sentence is not a multiple of $10, such amount shall be rounded to the nearest multiple of $10.

(i) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out this section and section 137, including regulations which treat unmarried individuals who pay or incur qualified adoption expenses with respect to the same child as 1 taxpayer for purposes of applying the dollar amounts in subsections (a)(3) and (b)(1) of this section and in section 137(b)(1).

(Added Pub. L. 104–188, title I, § 1807(a), Aug. 20, 1996, 110 Stat. 1899, § 23; amended Pub. L. 105–34,

title XVI, § 1601(h)(2)(A), (B), Aug. 5, 1997, 111 Stat. 1092; Pub. L. 105–206, title VI, §§ 6008(d)(6), 6018(f)(1), July 22, 1998, 112 Stat. 812, 823; Pub. L. 107–16, title II, §§ 201(b)(2)(E), 202(a)(1), (b)(1)(A), (2)(A), (c), (d)(1), (e)(1), (f)(1), (2)(A), June 7, 2001, 115 Stat. 46–49; Pub. L. 107–147, title IV, §§ 411(c)(1)(A)–(E), 418(a)(1), Mar. 9, 2002, 116 Stat. 45, 57; Pub. L. 109–58, title XIII, § 1335(b)(1), Aug. 8, 2005, 119 Stat. 1036; Pub. L. 109–135, title IV, § 402(i)(3)(A), (4), Dec. 21, 2005, 119 Stat. 2612, 2615; Pub. L. 110–343, div. B, title I, § 106(e)(2)(A), Oct. 3, 2008, 122 Stat. 3817; renumbered § 36C and amended Pub. L. 111–148, title X, § 10909(a)(1), (b)(1), (2)(I), (c), Mar. 23, 2010, 124 Stat. 1021, 1022, 1023; Pub. L. 111–312, title I, § 101(b)(1), Dec. 17, 2010, 124 Stat. 3298.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENT OF SECTION

For termination of amendment by section 10909(c) of Pub. L. 111–148, see Effective and Termination Dates of 2010 Amendment note below.

For termination of amendment by section 106(f)(3) of div. B of Pub. L. 110–343, see Effective and Termination Dates of 2008 Amendment note below.

For termination of amendment by section 402(i)(3)(H) of Pub. L. 109–135, see Effective and Termination Dates of 2005 Amendment note below.

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

AMENDMENTS

2010—Subsec. (a)(3). Pub. L. 111–148, § 10909(a)(1)(B), (c), as amended by Pub. L. 111–312, temporarily substituted ''$13,170'' for ''$10,000'' in heading and text. See Effective and Termination Dates of 2010 Amendment note below.

Subsec. (b)(1). Pub. L. 111–148, § 10909(a)(1)(A), (c), as amended by Pub. L. 111–312, temporarily substituted ''$13,170'' for ''$10,000''. See Effective and Termination Dates of 2010 Amendment note below.

Subsec. (b)(4). Pub. L. 111–148, § 10909(b)(2)(I)(i), (c), as amended by Pub. L. 111–312, temporarily struck out par. (4). Text read as follows: ''In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

''(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

''(B) the sum of the credits allowable under this subpart (other than this section and section 25D) and section 27 for the taxable year.''

See Effective and Termination Dates of 2010 Amendment note below.

Subsec. (c). Pub. L. 111–148, § 10909(b)(2)(I)(ii), (c), as amended by Pub. L. 111–312, temporarily struck out subsec. (c) which related to carryforwards of unused credit. See Effective and Termination Dates of 2010 Amendment note below.

Subsec. (h). Pub. L. 111–148, § 10909(a)(1)(C), (c), as amended by Pub. L. 111–312, temporarily amended subsec. (h) generally. Prior to amendment, subsec. (h) related to adjustments for inflation. See Effective and Termination Dates of 2010 Amendment note below.

2008—Subsec. (b)(4)(B). Pub. L. 110–343, § 106(e)(2)(A), (f)(3), temporarily inserted ''and section 25D'' after ''this section''. See Effective and Termination Dates of 2008 Amendment note below.

2005—Subsec. (b)(4). Pub. L. 109–135, § 402(i)(3)(A)(i), (H), temporarily substituted ''In the case of a taxable year to which section 26(a)(2) does not apply, the credit'' for ''The credit'' in introductory provisions. See Effective and Termination Dates of 2005 Amendment note below.

Subsec. (c). Pub. L. 109–135, § 402(i)(3)(A)(ii), (H), temporarily reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''If the credit allowable under subsection (a) for any taxable year exceeds the limitation imposed by subsection (b)(4) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year. No credit may be carried forward under this subsection to any taxable year following the fifth taxable year after the taxable year in which the credit arose. For purposes of the preceding sentence, credits shall be treated as used on a first-in first-out basis.'' See Effective and Termination Dates of 2005 Amendment note below.

Pub. L. 109–58, § 1335(b)(1), which directed amendment of subsec. (c) by substituting ''this section, section 25D, and section 1400C'' for ''this section and section 1400C'', was repealed by Pub. L. 109–135, § 402(i)(4). See Effective and Termination Dates of 2005 Amendment notes below.

2002—Subsec. (a)(1). Pub. L. 107–147, § 411(c)(1)(A), reenacted heading without change and amended text of par. (1) generally. Prior to amendment, text read as follows: ''In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter—

''(A) in the case of an adoption of a child other than a child with special needs, the amount of the qualified adoption expenses paid or incurred by the taxpayer, and

''(B) in the case of an adoption of a child with special needs, $10,000.''

Subsec. (a)(2). Pub. L. 107–147, § 411(c)(1)(C), struck out concluding provisions which read as follows: ''In the case of the adoption of a child with special needs, the credit allowed under paragraph (1) shall be allowed for the taxable year in which the adoption becomes final.''

Subsec. (a)(3). Pub. L. 107–147, § 411(c)(1)(B), added par. (3).

Subsec. (b)(1). Pub. L. 107–147, § 411(c)(1)(D), substituted ''subsection (a)'' for ''subsection (a)(1)(A)''.

Subsec. (h). Pub. L. 107–147, § 418(a)(1), substituted ''subsection (a)(3)'' for ''subsection (a)(1)(B)'' in introductory provisions and inserted concluding provisions.

Subsec. (i). Pub. L. 107–147, § 411(c)(1)(E), substituted ''the dollar amounts in subsections (a)(3) and (b)(1)'' for ''the dollar limitation in subsection (b)(1)''.

2001—Subsec. (a)(1). Pub. L. 107–16, §§ 202(a)(1), 901, temporarily amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter the amount of the qualified adoption expenses paid or incurred by the taxpayer.'' See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (a)(2). Pub. L. 107–16, §§ 202(c), 901, temporarily inserted concluding provisions. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (b)(1). Pub. L. 107–16, §§ 202(b)(1)(A), 901, temporarily substituted ''subsection (a)(1)(A)'' for ''subsection (a)'' and ''$10,000'' for ''$5,000'' and struck out ''($6,000, in the case of a child with special needs)'' before period at end. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (b)(2)(A)(i). Pub. L. 107–16, §§ 202(b)(2)(A), 901, temporarily substituted ''$150,000'' for ''$75,000''. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (b)(4). Pub. L. 107–16, §§ 202(f)(1), 901, temporarily added par. (4). See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (c). Pub. L. 107–16, §§ 202(f)(2)(A), 901, temporarily substituted ''subsection (b)(4)'' for ''section

26(a)'' and struck out ''reduced by the sum of the credits allowable under this subpart (other than this section and sections 24 and 1400C)'' before '', such excess''. See Effective and Termination Dates of 2001 Amendment note below.

Pub. L. 107–16, §§201(b)(2)(E), 901, temporarily substituted ''and sections 24 and 1400C'' for ''and section 1400C''. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (d)(2). Pub. L. 107–16, §§202(d)(1), 901, temporarily amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''The term 'eligible child' means any individual—

''(A) who—

''(i) has not attained age 18, or

''(ii) is physically or mentally incapable of caring for himself, and

''(B) in the case of qualified adoption expenses paid or incurred after December 31, 2001, who is a child with special needs.''

See Effective and Termination Dates of 2001 Amendment note below.

Subsecs. (h), (i). Pub. L. 107–16, §§202(e)(1), 901, temporarily added subsec. (h) and redesignated former subsec. (h) as (i). See Effective and Termination Dates of 2001 Amendment note below.

1998—Subsec. (b)(2)(A). Pub. L. 105–206, §6018(f)(1), inserted ''(determined without regard to subsection (c))'' after ''for any taxable year'' in introductory provisions.

Subsec. (c). Pub. L. 105–206, §6008(d)(6), inserted ''and section 1400C'' after ''other than this section''.

1997—Subsec. (a)(2). Pub. L. 105–34, §1601(h)(2)(A), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''The credit under paragraph (1) with respect to any expense shall be allowed—

''(A) for the taxable year following the taxable year during which such expense is paid or incurred, or

''(B) in the case of an expense which is paid or incurred during the taxable year in which the adoption becomes final, for such taxable year.''

Subsec. (b)(2)(B). Pub. L. 105–34, §1601(h)(2)(B), substituted ''determined without regard to sections 911, 931, and 933.'' for ''determined—

''(i) without regard to sections 911, 931, and 933, and

''(ii) after the application of sections 86, 135, 137, 219, and 469.''

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Amendment by Pub. L. 111–148 terminated applicable to taxable years beginning after Dec. 31, 2011, and section is amended to read as if such amendment had never been enacted, see section 10909(c) of Pub. L. 111–148, set out as a note under section 1 of this title.

Amendment by Pub. L. 111–148 applicable to taxable years beginning after Dec. 31, 2009, see section 10909(d) of Pub. L. 111–148, set out as a note under section 1 of this title.

EFFECTIVE AND TERMINATION DATES OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title I, §106(f), Oct. 3, 2008, 122 Stat. 3817, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 24, 25B, 25D, 26, and 45 of this title] shall apply to taxable years beginning after December 31, 2007.

''(2) SOLAR ELECTRIC PROPERTY LIMITATION.—The amendments made by subsection (b) [amending section 25D of this title] shall apply to taxable years beginning after December 31, 2008.

''(3) APPLICATION OF EGTRRA SUNSET.—The amendments made by subparagraphs (A) and (B) of subsection (e)(2) [amending this section and section 24 of this title] shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16, §901, set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title] in the same manner as the provisions of such Act to which such amendments relate.''

EFFECTIVE AND TERMINATION DATES OF 2005 AMENDMENT

Pub. L. 109–135, title IV, §402(i)(3)(H), Dec. 21, 2005, 119 Stat. 2615, provided that: ''The amendments made by this paragraph [amending this section and sections 24, 25, 25B, 25D, 904, and 1400C of this title] (and each part thereof) shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16, §901, set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title] in the same manner as the provisions of such Act to which such amendment (or part thereof) relates.''

Pub. L. 109–135, title IV, §402(i)(4), Dec. 21, 2005, 119 Stat. 2615, struck out Pub. L. 109–58, §1335(b)(1)–(3), and provided in part that: ''The Internal Revenue Code of 1986 shall be applied and administered as if the amendments made [by] such paragraphs [amending this section and sections 25 and 1400C of this title] had never been enacted.''

Pub. L. 109–135, title IV, §402(m), Dec. 21, 2005, 119 Stat. 2615, provided that:

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [see Tables for classification] shall take effect as if included in the provisions of the Energy Policy Act of 2005 [Pub. L. 109–58] to which they relate.

''(2) REPEAL OF PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.—The amendments made by subsection (a) [amending sections 121, 246, 247, 1223, 1245, and 1250 of this title and repealing sections 1081 to 1083 of this title] shall not apply with respect to any transaction ordered in compliance with the Public Utility Holding Company Act of 1935 [15 U.S.C. 79 et seq.] before its repeal.

''(3) COORDINATION OF PERSONAL CREDITS.—The amendments made by subsection (i)(3) [amending this section and sections 24, 25, 25B, 25D, 904, and 1400C of this title] shall apply to taxable years beginning after December 31, 2005.''

Pub. L. 109–58, title XIII, §1335(c), Aug. 8, 2005, 119 Stat. 1036, provided that: ''The amendments made by this section [enacting section 25D of this title and amending this section and sections 25, 1016, and 1400C of this title] shall apply to property placed in service after December 31, 2005, in taxable years ending after such date.''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title IV, §411(c)(3), Mar. 9, 2002, 116 Stat. 46, provided that: ''The amendments made by this subsection [amending this section and section 137 of this title] shall apply to taxable years beginning after December 31, 2002; except that the amendments made by paragraphs (1)(C), (1)(D) [amending this section], and (2)(B) [amending section 137 of this title] shall apply to taxable years beginning after December 31, 2001.''

Amendment by section 418(a)(1) of Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 418(c) of Pub. L. 107–147, set out as a note under section 21 of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Pub. L. 108–311, title III, §312(b)(2), Oct. 4, 2004, 118 Stat. 1181, provided that: ''The amendments made by sections 201(b), 202(f), and 618(b) of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16, amending this section and sections 24, 25, 25B, 26, 904, and 1400C of this title] shall not apply to taxable years beginning during 2004 or 2005.''

Pub. L. 107–147, title VI, §601(b)(2), Mar. 9, 2002, 116 Stat. 59, provided that: ''The amendments made by sections 201(b), 202(f), and 618(b) of the Economic Growth

and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16, amending this section and sections 24, 25, 25B, 26, 904, and 1400C of this title] shall not apply to taxable years beginning during 2002 and 2003.''

Amendment by section 201(b)(2)(E) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 201(e)(2) of Pub. L. 107–16, set out as a note under section 24 of this title.

Pub. L. 107–16, title II, § 202(g), June 7, 2001, 115 Stat. 49, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 24, 26, 137, 904, and 1400C of this title] shall apply to taxable years beginning after December 31, 2001.

''(2) SUBSECTION (a).—The amendments made by subsection (a) [amending this section and section 137 of this title] shall apply to taxable years beginning after December 31, 2002.''

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title VI, § 6018(h), July 22, 1998, 112 Stat. 823, provided that: ''The amendments made by this section [amending this section and sections 219, 408, 414, and 679 of this title and amending provisions set out as notes under sections 167 and 4091 of this title] shall take effect as if included in the provisions of the Small Business Job Protection Act of 1996 [Pub. L. 104–188] to which they relate.''

Amendment by section 6008(d)(6) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1601(j) of Pub. L. 105–34 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section, sections 30A, 52, 55, 137, 401, 403, 404, 408, 414, 512, 529, 593, 641, 679, 860L, 956, 1361, 1374, 4001, 4041, 4092, 4261, 6039D, 6048, 6050R, 6501, 6693, 7701, and 9503 of this title, section 1055 of Title 29, Labor, and provisions set out as notes under sections 529 and 4091 of this title] shall take effect as if included in the provisions of the Small Business Job Protection Act of 1996 [Pub. L. 104–188] to which they relate.

''(2) CERTAIN ADMINISTRATIVE REQUIREMENTS WITH RESPECT TO CERTAIN PENSION PLANS.—The amendment made by subsection (d)(2)(D) [amending section 401 of this title] shall apply to calendar years beginning after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE

Section 1807(e) of Pub. L. 104–188 provided that: ''The amendments made by this section [enacting this section and section 137 of this title, renumbering former section 137 of this title as section 138, and amending sections 25, 86, 135, 219, 469, and 1016 of this title] shall apply to taxable years beginning after December 31, 1996.''

EXPENSES PAID OR INCURRED BEFORE 2002

Pub. L. 107–147, title IV, § 411(c)(1)(F), Mar. 9, 2002, 116 Stat. 45, provided that: ''Expenses paid or incurred during any taxable year beginning before January 1, 2002, may be taken into account in determining the credit under section 23 [now 36C] of the Internal Revenue Code of 1986 only to the extent the aggregate of such expenses does not exceed the applicable limitation under section 23(b)(1) of such Code as in effect on the day before the date of the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001 [June 7, 2001].''

TAX CREDIT AND GROSS INCOME EXCLUSION STUDY AND REPORT

Section 1807(d) of Pub. L. 104–188 provided that: ''The Secretary of the Treasury shall study the effect on adoptions of the tax credit and gross income exclusion established by the amendments made by this section [enacting this section and section 137 of this title, renumbering former section 137 of this title as section 138, and amending sections 25, 86, 135, 219, 469, and 1016 of this title] and shall submit a report regarding the study to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives not later than January 1, 2000.''

§ 37. Overpayments of tax

For credit against the tax imposed by this subtitle for overpayments of tax, see section 6401.

(Aug. 16, 1954, ch. 736, 68A Stat. 16, § 38; renumbered § 39, Pub. L. 87–834, § 2(a), Oct. 16, 1962, 76 Stat. 962; renumbered § 40, Pub. L. 89–44, title VIII, § 809(c), June 21, 1965, 79 Stat. 167; renumbered § 42, Pub. L. 92–178, title VI, § 601(a), Dec. 10, 1971, 85 Stat. 553; renumbered § 43, Pub. L. 94–12, title II, § 203(a), Mar. 29, 1975, 89 Stat. 29; renumbered § 44, Pub. L. 94–12, title II, § 204(a), Mar. 29, 1975, 89 Stat. 30; renumbered § 45, Pub. L. 94–12, title II, § 208(a), Mar. 29, 1975, 89 Stat. 32; renumbered § 35, Pub. L. 98–369, div. A, title IV, § 471(c), July 18, 1984, 98 Stat. 826; renumbered § 36, Pub. L. 107–210, div. A, title II, § 201(a), Aug. 6, 2002, 116 Stat. 954; renumbered § 37, Pub. L. 110–289, div. C, title I, § 3011(a), July 30, 2008, 122 Stat. 2888.)

PRIOR PROVISIONS

A prior section 37 was renumbered section 22 of this title.

SUBPART D—BUSINESS RELATED CREDITS

Sec.
38. General business credit.
39. Carryback and carryforward of unused credits.
40. Alcohol, etc., used as fuel.
40A. Biodiesel and renewable diesel used as fuel.
41. Credit for increasing research activities.
41.[1] Employee stock ownership credit.
42. Low-income housing credit.
43. Enhanced oil recovery credit.
44. Expenditures to provide access to disabled individuals.
[44A–H. Renumbered, Repealed.]
45. Electricity produced from certain renewable resources, etc.
45A. Indian employment credit.
45B. Credit for portion of employer social security taxes paid with respect to employee cash tips.
45C. Clinical testing expenses for certain drugs for rare diseases or conditions.
45D. New markets tax credit.
45E. Small employer pension plan startup costs.
45F. Employer-provided child care credit.
45G. Railroad track maintenance credit.
45H. Credit for production of low sulfur diesel fuel.
45I. Credit for producing oil and gas from marginal wells.
45K.[2] Credit for producing fuel from a nonconventional source.

[1] Section 41 repealed by Pub. L. 99–514 without corresponding amendment of subpart analysis.

[2] So in original. Probably should follow item 45J.

45J. Credit for production from advanced nuclear power facilities.
45L. New energy efficient home credit.
45M. Energy efficient appliance credit.
45N. Mine rescue team training credit.
45O. Agricultural chemicals security credit.
45P. Employer wage credit for employees who are active duty members of the uniformed services.
45Q. Credit for carbon dioxide sequestration.
45R. Employee health insurance expenses of small employers.

AMENDMENT OF ANALYSIS

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note set out under section 1 of this title.

AMENDMENTS

2010—Pub. L. 111–148, title I, §1421(e), Mar. 23, 2010, 124 Stat. 242, added item 45R.

2008—Pub. L. 110–343, div. B, title I, §115(c), Oct. 3, 2008, 122 Stat. 3831, which directed amendment of table of sections for subpart B by adding item 45Q at end, was executed by adding item 45Q at end of table of sections for this subpart to reflect the probable intent of Congress.

Pub. L. 110–245, title I, §111(d), June 17, 2008, 122 Stat. 1635, added item 45P.

Pub. L. 110–234, title XV, §§15321(b)(3)(B), 15343(d), May 22, 2008, 122 Stat. 1513, 1520, and Pub. L. 110–246, title XV, §§15321(b)(3)(B), 15343(d), June 18, 2008, 122 Stat. 2275, 2282, made identical amendments, inserting '', etc.,'' after ''Alcohol'' in item 40 and adding item 45O. The amendments by Pub. L. 110–234 were repealed by Pub. L. 110–246, §4(a), June 18, 2008, 122 Stat. 1664.

2006—Pub. L. 109–432, div. A, title IV, §405(d), Dec. 20, 2006, 120 Stat. 2958, added item 45N.

2005—Pub. L. 109–58, title XIII, §§1306(c), 1322(a)(3)(L), 1332(e), 1334(c), 1346(b)(2), Aug. 8, 2005, 119 Stat. 999, 1012, 1026, 1033, 1055, inserted ''and renewable diesel'' after ''Biodiesel'' in item 40A and added items 45J to 45M.

2004—Pub. L. 108–357, title II, §245(d), title III, §§302(c)(3), 339(e), 341(d), title VII, §710(b)(3)(B), Oct. 22, 2004, 118 Stat. 1448, 1466, 1484, 1487, 1556, added items 40A and 45G to 45I and inserted '', etc'' after ''resources'' in item 45.

Pub. L. 108–311, title IV, §408(b)(7), Oct. 4, 2004, 118 Stat. 1193, amended directory language of Pub. L. 107–16, §619(c)(3). See 2001 Amendment note below.

2001—Pub. L. 107–16, title VI, §619(c)(3), June 7, 2001, 115 Stat. 110, as amended by Pub. L. 108–311, title IV, §408(b)(7), Oct. 4, 2004, 118 Stat. 1193, added item 45E.

Pub. L. 107–16, title II, §205(b)(2), title IX, §901, June 7, 2001, 115 Stat. 53, 150, temporarily added item 45F.

2000—Pub. L. 106–554, §1(a)(7) [title I, §121(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–610, added item 45D.

1996—Pub. L. 104–188, title I, §1205(a)(3)(B), Aug. 20, 1996, 110 Stat. 1775, added item 45C.

1993—Pub. L. 103–66, title XIII, §§13322(e), 13443(c), Aug. 10, 1993, 107 Stat. 563, 569, added items 45A and 45B.

1992—Pub. L. 102–486, title XIX, §1914(d), Oct. 24, 1992, 106 Stat. 3023, added item 45.

1990—Pub. L. 101–508, title XI, §§11511(c)(1), 11611(d), Nov. 5, 1990, 104 Stat. 1388–485, 1388–503, added items 43 and 44.

1986—Pub. L. 99–514, title II, §§231(d)(3)(K), 252(d), Oct. 22, 1986, 100 Stat. 2180, 2205, added item 41 relating to credit for increasing research activities and item 42.

1984—Pub. L. 98–369, div. A, title IV, §471(b), July 18, 1984, 98 Stat. 826, added subpart D heading and analysis of sections for subpart D, consisting of items 38 (new), 39 (new), 40 (formerly 44E), and 41 (formerly 44G). Former subpart D was redesignated F.

§ 38. General business credit

(a) Allowance of credit

There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

(1) the business credit carryforwards carried to such taxable year,

(2) the amount of the current year business credit, plus

(3) the business credit carrybacks carried to such taxable year.

(b) Current year business credit

For purposes of this subpart, the amount of the current year business credit is the sum of the following credits determined for the taxable year:

(1) the investment credit determined under section 46,

(2) the work opportunity credit determined under section 51(a),

(3) the alcohol fuels credit determined under section 40(a),

(4) the research credit determined under section 41(a),

(5) the low-income housing credit determined under section 42(a),

(6) the enhanced oil recovery credit under section 43(a),

(7) in the case of an eligible small business (as defined in section 44(b)), the disabled access credit determined under section 44(a),

(8) the renewable electricity production credit under section 45(a),

(9) the empowerment zone employment credit determined under section 1396(a),

(10) the Indian employment credit as determined under section 45A(a),

(11) the employer social security credit determined under section 45B(a),

(12) the orphan drug credit determined under section 45C(a),

(13) the new markets tax credit determined under section 45D(a),

(14) in the case of an eligible employer (as defined in section 45E(c)), the small employer pension plan startup cost credit determined under section 45E(a),

(15) the employer-provided child care credit determined under section 45F(a),

(16) the railroad track maintenance credit determined under section 45G(a),

(17) the biodiesel fuels credit determined under section 40A(a),

(18) the low sulfur diesel fuel production credit determined under section 45H(a),

(19) the marginal oil and gas well production credit determined under section 45I(a),

(20) the distilled spirits credit determined under section 5011(a),

(21) the advanced nuclear power facility production credit determined under section 45J(a),

(22) the nonconventional source production credit determined under section 45K(a),

(23) the new energy efficient home credit determined under section 45L(a),

(24) the energy efficient appliance credit determined under section 45M(a),

(25) the portion of the alternative motor vehicle credit to which section 30B(g)(1) applies,

(26) the portion of the alternative fuel vehicle refueling property credit to which section 30C(d)(1) applies,

(27) the Hurricane Katrina housing credit determined under section 1400P(b),

(28) the Hurricane Katrina employee retention credit determined under section 1400R(a),

(29) the Hurricane Rita employee retention credit determined under section 1400R(b),

(30) the Hurricane Wilma employee retention credit determined under section 1400R(c),

(31) the mine rescue team training credit determined under section 45N(a),

(32) in the case of an eligible agricultural business (as defined in section 45O(e)), the agricultural chemicals security credit determined under section 45O(a),

(33) the differential wage payment credit determined under section 45P(a),

(34) the carbon dioxide sequestration credit determined under section 45Q(a)[1]

(35) the portion of the new qualified plug-in electric drive motor vehicle credit to which section 30D(c)(1) applies, plus

(36) the small employer health insurance credit determined under section 45R.

(c) Limitation based on amount of tax

(1) In general

The credit allowed under subsection (a) for any taxable year shall not exceed the excess (if any) of the taxpayer's net income tax over the greater of—

(A) the tentative minimum tax for the taxable year, or

(B) 25 percent of so much of the taxpayer's net regular tax liability as exceeds $25,000.

For purposes of the preceding sentence, the term ''net income tax'' means the sum of the regular tax liability and the tax imposed by section 55, reduced by the credits allowable under subparts A and B of this part, and the term ''net regular tax liability'' means the regular tax liability reduced by the sum of the credits allowable under subparts A and B of this part.

(2) Empowerment zone employment credit may offset 25 percent of minimum tax

(A) In general

In the case of the empowerment zone employment credit credit—

(i) this section and section 39 shall be applied separately with respect to such credit, and

(ii) for purposes of applying paragraph (1) to such credit—

(I) 75 percent of the tentative minimum tax shall be substituted for the tentative minimum tax under subparagraph (A) thereof, and

(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the empowerment zone employment credit, the New York Liberty Zone business employee credit, the eligible small business credits, and the specified credits).

(B) Empowerment zone employment credit

For purposes of this paragraph, the term ''empowerment zone employment credit'' means the portion of the credit under subsection (a) which is attributable to the credit determined under section 1396 (relating to empowerment zone employment credit).

(3) Special rules for New York Liberty Zone business employee credit

(A) In general

In the case of the New York Liberty Zone business employee credit—

(i) this section and section 39 shall be applied separately with respect to such credit, and

(ii) in applying paragraph (1) to such credit—

(I) the tentative minimum tax shall be treated as being zero, and

(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the New York Liberty Zone business employee credit, the eligible small business credits, and the specified credits).

(B) New York Liberty Zone business employee credit

For purposes of this subsection, the term ''New York Liberty Zone business employee credit'' means the portion of work opportunity credit under section 51 determined under section 1400L(a).

(4) Special rules for specified credits

(A) In general

In the case of specified credits—

(i) this section and section 39 shall be applied separately with respect to such credits, and

(ii) in applying paragraph (1) to such credits—

(I) the tentative minimum tax shall be treated as being zero, and

(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the eligible small business credits and the specified credits).

(B) Specified credits

For purposes of this subsection, the term ''specified credits'' means—

(i) for taxable years beginning after December 31, 2004, the credit determined under section 40,

(ii) the credit determined under section 42 to the extent attributable to buildings placed in service after December 31, 2007,

(iii) the credit determined under section 45 to the extent that such credit is attributable to electricity or refined coal produced—

(I) at a facility which is originally placed in service after the date of the enactment of this paragraph, and

(II) during the 4-year period beginning on the date that such facility was originally placed in service,

(iv) the credit determined under section 45B,

[1] So in original. Probably should be followed by a comma.

(v) the credit determined under section 45G,

(vi) the credit determined under section 45R,

(vii) the credit determined under section 46 to the extent that such credit is attributable to the energy credit determined under section 48,

(viii) the credit determined under section 46 to the extent that such credit is attributable to the rehabilitation credit under section 47, but only with respect to qualified rehabilitation expenditures properly taken into account for periods after December 31, 2007, and

(ix) the credit determined under section 51.

(5) Special rules for eligible small business credits in 2010

(A) In general

In the case of eligible small business credits determined in taxable years beginning in 2010—

(i) this section and section 39 shall be applied separately with respect to such credits, and

(ii) in applying paragraph (1) to such credits—

(I) the tentative minimum tax shall be treated as being zero, and

(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the eligible small business credits).

(B) Eligible small business credits

For purposes of this subsection, the term ''eligible small business credits'' means the sum of the credits listed in subsection (b) which are determined for the taxable year with respect to an eligible small business. Such credits shall not be taken into account under paragraph (2), (3), or (4).

(C) Eligible small business

For purposes of this subsection, the term ''eligible small business'' means, with respect to any taxable year—

(i) a corporation the stock of which is not publicly traded,

(ii) a partnership, or

(iii) a sole proprietorship,

if the average annual gross receipts of such corporation, partnership, or sole proprietorship for the 3-taxable-year period preceding such taxable year does not exceed $50,000,000. For purposes of applying the test under the preceding sentence, rules similar to the rules of paragraphs (2) and (3) of section 448(c) shall apply.

(D) Treatment of partners and S corporation shareholders

Credits determined with respect to a partnership or S corporation shall not be treated as eligible small business credits by any partner or shareholder unless such partner or shareholder meets the gross receipts test under subparagraph (C) for the taxable year in which such credits are treated as current year business credits.

(6) Special rules

(A) Married individuals

In the case of a husband or wife who files a separate return, the amount specified under subparagraph (B) of paragraph (1) shall be $12,500 in lieu of $25,000. This subparagraph shall not apply if the spouse of the taxpayer has no business credit carryforward or carryback to, and has no current year business credit for, the taxable year of such spouse which ends within or with the taxpayer's taxable year.

(B) Controlled groups

In the case of a controlled group, the $25,000 amount specified under subparagraph (B) of paragraph (1) shall be reduced for each component member of such group by apportioning $25,000 among the component members of such group in such manner as the Secretary shall by regulations prescribe. For purposes of the preceding sentence, the term ''controlled group'' has the meaning given to such term by section 1563(a).

(C) Limitations with respect to certain persons

In the case of a person described in subparagraph (A) or (B) of section 46(e)(1) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990), the $25,000 amount specified under subparagraph (B) of paragraph (1) shall equal such person's ratable share (as determined under section 46(e)(2) (as so in effect) of such amount.

(D) Estates and trusts

In the case of an estate or trust, the $25,000 amount specified under subparagraph (B) of paragraph (1) shall be reduced to an amount which bears the same ratio to $25,000 as the portion of the income of the estate or trust which is not allocated to beneficiaries bears to the total income of the estate or trust.

(d) Ordering rules

For purposes of any provision of this title where it is necessary to ascertain the extent to which the credits determined under any section referred to in subsection (b) are used in a taxable year or as a carryback or carryforward—

(1) In general

The order in which such credits are used shall be determined on the basis of the order in which they are listed in subsection (b) as of the close of the taxable year in which the credit is used.

(2) Components of investment credit

The order in which the credits listed in section 46 are used shall be determined on the basis of the order in which such credits are listed in section 46 as of the close of the taxable year in which the credit is used.

(3) Credits no longer listed

For purposes of this subsection—

(A) the credit allowable by section 40, as in effect on the day before the date of the enactment of the Tax Reform Act of 1984, (relating to expenses of work incentive pro-

grams) and the credit allowable by section 41(a), as in effect on the day before the date of the enactment of the Tax Reform Act of 1986, (relating to employee stock ownership credit) shall be treated as referred to in that order after the last paragraph of subsection (b), and

(B) the credit determined under section 46—

(i) to the extent attributable to the employee plan percentage (as defined in section 46(a)(2)(E) as in effect on the day before the date of the enactment of the Tax Reform Act of 1984) shall be treated as a credit listed after paragraph (1) of section 46, and

(ii) to the extent attributable to the regular percentage (as defined in section 46(b)(1) as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall be treated as the first credit listed in section 46.

(Added and amended Pub. L. 98–369, div. A, title IV, § 473, title VI, § 612(e)(1), July 18, 1984, 98 Stat. 827, 912; Pub. L. 99–514, title II, §§ 221(a), 231(d)(1), (3)(B), 252(b), title VII, § 701(c)(4), title XI, § 1171(b)(1), (2), Oct. 22, 1986, 100 Stat. 2173, 2178, 2179, 2205, 2341, 2513; Pub. L. 100–647, title I, §§ 1002(e)(8)(A), 1007(g)(2), (8), Nov. 10, 1988, 102 Stat. 3368, 3434, 3435; Pub. L. 101–508, title XI, §§ 11511(b)(1), 11611(b)(1), 11813(b)(2), Nov. 5, 1990, 104 Stat. 1388–485, 1388–503, 1388–551; Pub. L. 102–486, title XIX, § 1914(b), Oct. 24, 1992, 106 Stat. 3023; Pub. L. 103–66, title XIII, §§ 13302(a)(1), (c)(1), 13322(a), 13443(b)(1), Aug. 10, 1993, 107 Stat. 555, 559, 569; Pub. L. 104–188, title I, §§ 1201(e)(1), 1205(a)(2), 1702(e)(4), Aug. 20, 1996, 110 Stat. 1772, 1775, 1870; Pub. L. 106–554, § 1(a)(7) [title I, § 121(b)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–609; Pub. L. 107–16, title II, § 205(b)(1), title VI, § 619(b), June 7, 2001, 115 Stat. 53, 110; Pub. L. 107–147, title III, § 301(b)(1), (2), title IV, § 411(d)(2), Mar. 9, 2002, 116 Stat. 39, 46; Pub. L. 108–357, title II, § 245(c)(1), title III, §§ 302(b), 339(b), 341(b), title VII, § 711(a), (b), Oct. 22, 2004, 118 Stat. 1448, 1465, 1484, 1487, 1557, 1558; Pub. L. 109–58, title XIII, §§ 1306(b), 1322(a)(2), 1332(b), 1334(b), 1341(b)(1), 1342(b)(1), Aug. 8, 2005, 119 Stat. 999, 1011, 1026, 1033, 1049, 1051; Pub. L. 109–59, title XI, §§ 11126(b), 11151(d)(1), Aug. 10, 2005, 119 Stat. 1958, 1968; Pub. L. 109–135, title I, § 103(b)(1), title II, § 201(b)(1), title IV, § 412(f), Dec. 21, 2005, 119 Stat. 2595, 2607, 2637; Pub. L. 109–432, div. A, title IV, § 405(b), Dec. 20, 2006, 120 Stat. 2957; Pub. L. 110–28, title VIII, § 8214(a), May 25, 2007, 121 Stat. 193; Pub. L. 110–172, § 11(a)(6), Dec. 29, 2007, 121 Stat. 2485; Pub. L. 110–234, title XV, § 15343(b), May 22, 2008, 122 Stat. 1519; Pub. L. 110–245, title I, § 111(b), June 17, 2008, 122 Stat. 1635; Pub. L. 110–246, § 4(a), title XV, § 15343(b), June 18, 2008, 122 Stat. 1664, 2281; Pub. L. 110–289, div. C, title I, § 3022(b), (c), July 30, 2008, 122 Stat. 2894; Pub. L. 110–343, div. B, title I, §§ 103(b), 115(b), title II, § 205(c), div. C, title III, § 316(b), Oct. 3, 2008, 122 Stat. 3811, 3831, 3838, 3872; Pub. L. 111–5, div. B, title I, § 1141(b)(2), Feb. 17, 2009, 123 Stat. 328; Pub. L. 111–148, title I, § 1421(b), (c), Mar. 23, 2010, 124 Stat. 241, 242; Pub. L. 111–240, title II, § 2013(a), (c), Sept. 27, 2010, 124 Stat. 2555.)

Amendment of Section

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

References in Text

The date of the enactment of this paragraph, referred to in subsec. (c)(4)(B)(iii)(I), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsecs. (c)(6)(C) and (d)(3)(B)(ii), is the date of enactment of Pub. L. 101–508, which was approved Nov. 5, 1990.

The date of the enactment of the Tax Reform Act of 1984, referred to in subsec. (d)(3)(A), (B)(i), is the date of enactment of Pub. L. 98–369, which was approved July 18, 1984.

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (d)(3)(A), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

Codification

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Prior Provisions

A prior section 38, added Pub. L. 87–834, § 2(a), Oct. 16, 1962, 76 Stat. 962; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to investment in certain depreciable property, prior to repeal by Pub. L. 98–369, div. A, title IV, § 474(m)(1), July 18, 1984, 98 Stat. 833.

Another prior section 38 was renumbered section 37 of this title.

Amendments

2010—Subsec. (b)(36). Pub. L. 111–148, § 1421(b), added par. (36).

Subsec. (c)(2)(A)(ii)(II). Pub. L. 111–240, § 2013(c)(1), inserted ''the eligible small business credits,'' after ''the New York Liberty Zone business employee credit,''.

Subsec. (c)(3)(A)(ii)(II). Pub. L. 111–240, § 2013(c)(2), inserted '', the eligible small business credits,'' after ''the New York Liberty Zone business employee credit''.

Subsec. (c)(4)(A)(ii)(II). Pub. L. 111–240, § 2013(c)(3), inserted ''the eligible small business credits and'' before ''the specified credits''.

Subsec. (c)(4)(B)(vi) to (ix). Pub. L. 111–148, § 1421(c), added cl. (vi) and redesignated former cls. (vi) to (viii) as (vii) to (ix), respectively.

Subsec. (c)(5), (6). Pub. L. 111–240, § 2013(a), added par. (5) and redesignated former par. (5) as (6).

2009—Subsec. (b)(35). Pub. L. 111–5 substituted ''30D(c)(1)'' for ''30D(d)(1)''.

2008—Subsec. (b)(32). Pub. L. 110–246, § 15343(b), added par. (32).

Subsec. (b)(33). Pub. L. 110–245 added par. (33).

Subsec. (b)(34). Pub. L. 110–343, § 115(b), added par. (34).

Subsec. (b)(35). Pub. L. 110–343, § 205(c), added par. (35).

Subsec. (c)(4)(B)(ii) to (iv). Pub. L. 110–289, § 3022(b), added cl. (ii) and redesignated former cls. (ii) and (iii) as (iii) and (iv), respectively. Former cl. (iv) redesignated (v).

Subsec. (c)(4)(B)(v). Pub. L. 110–343, § 316(b)(2), added cl. (v). Former cl. (v) redesignated (vi).

Pub. L. 110–343, § 103(b)(1), added cl. (v). Former cl. (v) redesignated (vi).

Pub. L. 110–289, § 3022(c), added cl. (v). Former cl. (v) redesignated (vi).

Pub. L. 110–289, § 3022(b), redesignated cl. (iv) as (v).

Subsec. (c)(4)(B)(vi). Pub. L. 110–343, § 316(b)(1), redesignated cl. (v) as (vi). Former cl. (vi) redesignated (vii).

Pub. L. 110–343, § 103(b)(2), substituted ''section 46 to the extent that such credit is attributable to the reha-

bilitation credit under section 47, but only with respect to'' for ''section 47 to the extent attributable to''.

Pub. L. 110–343, §103(b)(1), which directed amendment of subpar. (B) by ''redesignating clause (vi) as clause (vi) and (vii), respectively'', was executed by redesignating cls. (v) and (vi) as (vi) and (vii), respectively, to reflect the probable intent of Congress.

Pub. L. 110–289, §3022(c), redesignated cl. (v) as (vi).

Subsec. (c)(4)(B)(vii). Pub. L. 110–343, §316(b)(1), redesignated cl. (vi) as (vii). Former cl. (vii) redesignated (viii).

Pub. L. 110–343, §103(b)(1), which directed amendment of subpar. (B) by ''redesignating clause (vi) as clause (vi) and (vii), respectively'', was executed by redesignating cls. (v) and (vi) as (vi) and (vii), respectively, to reflect the probable intent of Congress.

Subsec. (c)(4)(B)(viii). Pub. L. 110–343, §316(b)(1), redesignated cl. (vii) as (viii).

2007—Subsec. (b)(8), (24). Pub. L. 110–172, §11(a)(6)(A), struck out ''and'' at end.

Subsec. (b)(30). Pub. L. 110–172, §11(a)(6)(C), inserted ''plus'' at end.

Pub. L. 110–172, §11(a)(6)(B), struck out ''plus'' at end.

Subsec. (c)(4)(B)(iii), (iv). Pub. L. 110–28 added cls. (iii) and (iv).

2006—Subsec. (b)(29) to (31). Pub. L. 109–432 struck out ''and'' at end of par. (29), substituted '', plus'' for period at end of par. (30), and added par. (31).

2005—Subsec. (b)(20). Pub. L. 109–59, §11126(b), added par. (20).

Subsec. (b)(21). Pub. L. 109–58, §1306(b), as amended by Pub. L. 109–59, §11151(d)(1), added par. (21).

Subsec. (b)(22). Pub. L. 109–58, §1322(a)(2), added par. (22).

Subsec. (b)(23). Pub. L. 109–58, §1332(b), added par. (23).

Subsec. (b)(24). Pub. L. 109–58, §1342(b)(1), which directed the striking out of ''plus'' at end, could not be executed because ''plus'' did not appear at end.

Pub. L. 109–58, §1334(b), added par. (24).

Subsec. (b)(25). Pub. L. 109–58, §1341(b)(1), added par. (25).

Subsec. (b)(26). Pub. L. 109–58, §1342(b)(1), added par. (26).

Subsec. (b)(27). Pub. L. 109–135, §103(b)(1), added par. (27).

Subsec. (b)(28) to (30). Pub. L. 109–135, §201(b)(1), added pars. (28) to (30).

Subsec. (c)(2)(A)(ii)(II). Pub. L. 109–135, §412(f)(1), substituted '', the New York Liberty Zone business employee credit, and the specified credits'' for ''or the New York Liberty Zone business employee credit or the specified credits''.

Subsec. (c)(3)(A)(ii)(II). Pub. L. 109–135, §412(f)(2), substituted ''and the specified credits'' for ''or the specified credits''.

Subsec. (c)(4)(B). Pub. L. 109–135, §412(f)(3), substituted ''means'' for ''includes'' in introductory provisions and inserted ''and'' at end of cl. (i).

2004—Subsec. (b)(16). Pub. L. 108–357, §245(c)(1), added par. (16).

Subsec. (b)(17). Pub. L. 108–357, §302(b), added par. (17).

Subsec. (b)(18). Pub. L. 108–357, §339(b), added par. (18).

Subsec. (b)(19). Pub. L. 108–357, §341(b), added par. (19).

Subsec. (c)(2)(A)(ii)(II), (3)(A)(ii)(II). Pub. L. 108–357, §711(b), inserted ''or the specified credits'' after ''employee credit''.

Subsec. (c)(4), (5). Pub. L. 108–357, §711(a), added par. (4) and redesignated former par. (4) as (5).

2002—Subsec. (b)(15). Pub. L. 107–147, §411(d)(2), substituted ''45F(a)'' for ''45F''.

Subsec. (c)(2)(A)(ii)(II). Pub. L. 107–147, §301(b)(2), inserted ''or the New York Liberty Zone business employee credit'' after ''employment credit''.

Subsec. (c)(3), (4). Pub. L. 107–147, §301(b)(1), added par. (3) and redesignated former par. (3) as (4).

2001—Subsec. (b)(12). Pub. L. 107–16, §619(b), struck out ''plus'' at end.

Subsec. (b)(13). Pub. L. 107–16, §619(b), substituted '', plus'' for period at end.

Pub. L. 107–16, §§205(b)(1), 901, temporarily struck out ''plus'' at end. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (b)(14). Pub. L. 107–16, §619(b), added par. (14).

Pub. L. 107–16, §§205(b)(1), 901, temporarily substituted '', plus'' for period at end. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (b)(15). Pub. L. 107–16, §§205(b)(1), 901, temporarily added par. (15). See Effective and Termination Dates of 2001 Amendment note below.

2000—Subsec. (b)(13). Pub. L. 106–554 added par. (13).

1996—Subsec. (b)(2). Pub. L. 104–188, §1201(e)(1), substituted ''work opportunity credit'' for ''targeted jobs credit''.

Subsec. (b)(12). Pub. L. 104–188, §1205(a)(2), added par. (12).

Subsec. (c)(2)(C). Pub. L. 104–188, §1702(e)(4), amended subpar. (C), as in effect on day before date of enactment of the Revenue Reconciliation Act of 1990 (title XI of Pub. L. 101–508, approved Nov. 5, 1990), by inserting before period at end of first sentence ''and without regard to the deduction under section 56(h)''.

1993—Subsec. (b)(7). Pub. L. 103–66, §13302(a)(1), struck out ''plus'' at end.

Subsec. (b)(8). Pub. L. 103–66, §13322(a), which directed amendment of par. (8) by striking ''plus'' at end, could not be executed because ''plus'' did not appear at end.

Pub. L. 103–66, §13302(a)(1), substituted '', and'' for period at end.

Subsec. (b)(9). Pub. L. 103–66, §13443(b)(1), struck out ''plus'' at end.

Pub. L. 103–66, §13322(a), substituted '', plus'' for period at end.

Pub. L. 103–66, §13302(a)(1), added par. (9).

Subsec. (b)(10). Pub. L. 103–66, §13443(b)(1), substituted '', plus'' for period at end.

Pub. L. 103–66, §13322(a), added par. (10).

Subsec. (b)(11). Pub. L. 103–66, §13443(b)(1), added par. (11).

Subsec. (c)(2), (3). Pub. L. 103–66, §13302(c)(1), added par. (2) and redesignated former par. (2) as (3).

1992—Subsec. (b)(6) to (8). Pub. L. 102–486 struck out ''plus'' at end of par. (6), substituted ''; plus'' for period at end of par. (7), and added par. (8).

1990—Subsec. (b)(1). Pub. L. 101–508, §11813(b)(2)(A), substituted ''section 46'' for ''section 46(a)''.

Subsec. (b)(4). Pub. L. 101–508, §11511(b)(1), struck out ''plus'' at end.

Subsec. (b)(5). Pub. L. 101–508, §11611(b)(1), struck out ''plus'' at end.

Pub. L. 101–508, §11511(b)(1), substituted '', plus'' for period at end.

Subsec. (b)(6). Pub. L. 101–508, §11611(b)(1), substituted '', plus'' for period at end.

Pub. L. 101–508, §11511(b)(1), added par. (6).

Subsec. (b)(7). Pub. L. 101–508, §11611(b)(1), added par. (7).

Subsec. (c)(2). Pub. L. 101–508, §11813(b)(2)(B), redesignated par. (3) as (2) and struck out former par. (2) which permitted an offset of regular investment tax credit against 25 percent of minimum tax.

Subsec. (c)(2)(C). Pub. L. 101–508, §11813(b)(2)(C), inserted ''(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)'' after ''46(e)(1)'' and ''(as so in effect)'' after ''46(e)(2)''.

Subsec. (c)(3). Pub. L. 101–508, §11813(b)(2)(B), redesignated par. (3) as (2).

Subsec. (d). Pub. L. 101–508, §11813(b)(2)(D)(i), substituted ''any provision'' for ''sections 46(f), 47(a), 196(a), and any other provision'' in introductory provisions.

Subsec. (d)(2). Pub. L. 101–508, §11813(b)(2)(D)(ii), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The order in which credits attributable to a percentage referred to in section 46(a) are used shall be determined on the basis of the order in which such percentages are listed in section 46(a) as of the close of the taxable year in which the credit is used.''

Subsec. (d)(3)(B). Pub. L. 101–508, §11813(b)(2)(D)(iii), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the employee plan percentage (as defined in section 46(a)(2)(E), as in effect on

the day before the date of the enactment of the Tax Reform Act of 1984) shall be treated as referred to after section 46(a)(2).''

1988—Subsec. (c). Pub. L. 100–647, § 1007(g)(2), amended pars. (1) to (3) generally, substituting pars. (1) and (2) for former pars. (1) to (3), redesignating former par. (4) as (3), and substituting ''subparagraph (B) of paragraph (1)'' for ''subparagraphs (A) and (B) of paragraph (1)'' in subpars. (A), (B), (C), and (D).

Pub. L. 100–647, § 1007(g)(8), made technical correction to directory language of Pub. L. 99–514, § 701(c)(4), see 1986 Amendment note below.

Subsec. (d). Pub. L. 100–647, § 1002(e)(8)(A), substituted ''Ordering rules'' for ''Special rules for certain regulated companies'' in heading and amended text generally. Prior to amendment, text read as follows: ''In the case of any taxpayer to which section 46(f) applies, for purposes of sections 46(f), 47(a), and 196(a) and any other provision of this title where it is necessary to ascertain the extent to which the credits determined under section 40(a), 41(a), 42(a), 46(a), or 51(a) are used in a taxable year or as a carryback or carryforward, the order in which such credits are used shall be determined on the basis of the order in which they are listed in subsection (b).''

1986—Subsec. (b)(4). Pub. L. 99–514, § 231(d)(1), added par. (4).

Pub. L. 99–514, § 1171(b)(1), struck out former par. (4) which read as follows: ''the employee stock ownership credit determined under section 41(a)''.

Subsec. (b)(5). Pub. L. 99–514, § 252(b)(1), added par. (5).

Subsec. (c). Pub. L. 99–514, § 701(c)(4), as amended by Pub. L. 100–647, § 1007(g)(8), added pars. (1) to (3), redesignated former par. (3) as (4), and struck out former par. (1) ''In general'' which provided: ''The credit allowed under subsection (a) for any taxable year shall not exceed the sum of—

''(A) so much of the taxpayer's net tax liability for the taxable year as does not exceed $25,000, plus

''(B) 75 percent of so much of the taxpayer's net tax liability for the taxable year as exceeds $25,000.''

and former par. (2) ''Net tax liability'', which provided: ''For purposes of paragraph (1), the term 'net tax liability' means the tax liability (as defined in section 26(b)), reduced by the sum of the credits allowable under subparts A and B of this part.''

Subsec. (c)(1)(B). Pub. L. 99–514, § 221(a), substituted ''75 percent'' for ''85 percent''.

Subsec. (d). Pub. L. 99–514, § 252(b)(2), inserted ''42(a),''.

Pub. L. 99–514, § 1171(b)(2), substituted ''and 196(a)'' for ''196(a), and 404(i)'' and struck out ''41(a),'' after ''40(a)''.

Pub. L. 99–514, § 231(d)(3)(B), inserted ''41(a),'' after ''40(a),''.

1984—Subsec. (c)(2). Pub. L. 98–369, § 612(e)(1), substituted ''section 26(b)'' for ''section 25(b)''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title II, § 2013(d), Sept. 27, 2010, 124 Stat. 2556, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to credits determined in taxable years beginning after December 31, 2009, and to carrybacks of such credits.''

Pub. L. 111–148, title I, § 1421(f), title X, § 10105(e)(4), Mar. 23, 2010, 124 Stat. 242, 907, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting section 45R of this title and amending this section and sections 196 and 280C of this title] shall apply to amounts paid or incurred in taxable years beginning after December 31, 2009.

''(2) MINIMUM TAX.—The amendments made by subsection (c) [amending this section] shall apply to credits determined under section 45R of the Internal Revenue Code of 1986 in taxable years beginning after December 31, 2009, and to carrybacks of such credits.''

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–5 applicable to vehicles acquired after Dec. 31, 2009, see section 1141(c) of Pub. L. 111–5, set out as a note under section 30B of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 103(b) of Pub. L. 110–343 applicable to credits determined under section 46 of this title in taxable years beginning after Oct. 3, 2008, and to carrybacks of such credits, see section 103(f)(1), (2) of Pub. L. 110–343, set out as a note under section 48 of this title.

Pub. L. 110–343, div. B, title I, § 115(d), Oct. 3, 2008, 122 Stat. 3831, provided that: ''The amendments made by this section [enacting section 45Q of this title and amending this section] shall apply to carbon dioxide captured after the date of the enactment of this Act [Oct. 3, 2008].''

Amendment by section 205(c) of Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2008, see section 205(e) of Pub. L. 110–343, set out as an Effective and Termination Dates of 2008 Amendment note under section 24 of this title.

Pub. L. 110–343, div. C, title III, § 316(c)(2), Oct. 3, 2008, 122 Stat. 3873, provided that: ''The amendments made by subsection (b) [amending this section] shall apply to credits determined under section 45G of the Internal Revenue Code of 1986 in taxable years beginning after December 31, 2007, and to carrybacks of such credits.''

Pub. L. 110–289, div. C, title I, § 3022(d)(2), (3), July 30, 2008, 122 Stat. 2894, provided that:

''(2) LOW INCOME HOUSING CREDIT.—The amendments made by subsection (b) [amending this section] shall apply to credits determined under section 42 of the Internal Revenue Code of 1986 to the extent attributable to buildings placed in service after December 31, 2007.

''(3) REHABILITATION CREDIT.—The amendments made by subsection (c) [amending this section] shall apply to credits determined under section 47 of the Internal Revenue Code of 1986 to the extent attributable to qualified rehabilitation expenditures properly taken into account for periods after December 31, 2007.''

Pub. L. 110–245, title I, § 111(e), June 17, 2008, 122 Stat. 1635, provided that: ''The amendments made by this section [enacting section 45P of this title and amending this section and section 280C of this title] shall apply to amounts paid after the date of the enactment of this Act [June 17, 2008].''

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110–234, title XV, § 15343(e), May 22, 2008, 122 Stat. 1520, and Pub. L. 110–246, § 4(a), title XV, § 15343(e), June 18, 2008, 122 Stat. 1664, 2282, provided that: ''The amendments made by this section [enacting section 45O of this title and amending this section and section 280C of this title] shall apply to amounts paid or incurred after the date of the enactment of this Act [June 18, 2008].''

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–28, title VIII, § 8214(b), May 25, 2007, 121 Stat. 193, provided that: ''The amendments made by this section [amending this section] shall apply to credits determined under sections 45B and 51 of the Internal Revenue Code of 1986 in taxable years beginning after December 31, 2006, and to carrybacks of such credits.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, § 405(e), Dec. 20, 2006, 120 Stat. 2958, provided that: ''The amendments made by this section [enacting section 45N of this title and amending this section and section 280C of this title] shall apply to taxable years beginning after December 31, 2005.''

EFFECTIVE DATE OF 2005 AMENDMENTS

Pub. L. 109–59, title XI, §11126(d), Aug. 10, 2005, 119 Stat. 1958, provided that: ''The amendments made by this section [enacting section 5011 of this title and amending this section] shall apply to taxable years beginning after September 30, 2005.''

Pub. L. 109–59, title XI, §11151(d)(2), Aug. 10, 2005, 119 Stat. 1968, provided that: ''If the Energy Policy Act of 2005 [Pub. L. 109–58, see Tables for classification] is enacted before the date of the enactment of this Act [Aug. 10, 2005], for purposes of executing any amendments made by the Energy Policy Act of 2005 to section 38(b) of the Internal Revenue Code of 1986, the amendments made by section 11126(b) of this Act [amending this section] shall be treated as having been executed before such amendments made by the Energy Policy Act of 2005.''

Pub. L. 109–59, title XI, §11151(f)(3), Aug. 10, 2005, 119 Stat. 1969, provided that: ''The amendments made by subsections (d)(1) and (e)(2) [amending this section and sections 4041 and 6426 of this title] shall take effect as if included in the provision of the Energy Tax Incentives Act of 2005 [Pub. L. 109–58, title XIII] to which they relate.''

Pub. L. 109–58, title XIII, §1306(d), Aug. 8, 2005, 119 Stat. 999, provided that: ''The amendments made by this section [enacting section 45J of this title and amending this section] shall apply to production in taxable years beginning after the date of the enactment of this Act [Aug. 8, 2005].''

Amendment by section 1322(a)(2) of Pub. L. 109–58 applicable to credits determined under the Internal Revenue Code of 1986 for taxable years ending after Dec. 31, 2005, see section 1322(c)(1) of Pub. L. 109–58, set out as a note under section 45K of this title.

Pub. L. 109–58, title XIII, §1332(f), Aug. 8, 2005, 119 Stat. 1026, provided that: ''The amendments made by this section [enacting section 45L of this title and amending this section and sections 196 and 1016 of this title] shall apply to qualified new energy efficient homes acquired after December 31, 2005, in taxable years ending after such date.''

Pub. L. 109–58, title XIII, §1334(d), Aug. 8, 2005, 119 Stat. 1033, provided that: ''The amendments made by this section [enacting section 45M of this title and amending this section] shall apply to appliances produced after December 31, 2005.''

Amendment by section 1341(b)(1) of Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, in taxable years ending after such date, see section 1341(c) of Pub. L. 109–58, set out as an Effective Date note under section 30B of this title.

Amendment by section 1342(b)(1) of Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, in taxable years ending after such date, see section 1342(c) of Pub. L. 109–58, set out as an Effective Date note under section 30C of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, §245(e), Oct. 22, 2004, 118 Stat. 1448, provided that: ''The amendments made by this section [enacting section 45G of this title and amending this section and sections 39 and 1016 of this title] shall apply to taxable years beginning after December 31, 2004.''

Pub. L. 108–357, title III, §302(d), Oct. 22, 2004, 118 Stat. 1466, provided that: ''The amendments made by this section [enacting section 40A of this title and amending this section and sections 87 and 196 of this title] shall apply to fuel produced, and sold or used, after December 31, 2004, in taxable years ending after such date.''

Pub. L. 108–357, title III, §339(f), Oct. 22, 2004, 118 Stat. 1485, provided that: ''The amendments made by this section [enacting section 45H of this title and amending this section and sections 196, 280C, and 1016 of this title] shall apply to expenses paid or incurred after December 31, 2002, in taxable years ending after such date.''

Pub. L. 108–357, title III, §341(e), Oct. 22, 2004, 118 Stat. 1487, provided that: ''The amendments made by this section [enacting section 45I of this title and amending this section and section 39 of this title] shall apply to production in taxable years beginning after December 31, 2004.''

Pub. L. 108–357, title VII, §711(c), Oct. 22, 2004, 118 Stat. 1558, provided that: ''Except as otherwise provided, the amendments made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title III, §301(b)(3), Mar. 9, 2002, 116 Stat. 40, provided that: ''The amendments made by this subsection [amending this section] shall apply to taxable years ending after December 31, 2001.''

Amendment by section 411(d)(2) of Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Pub. L. 107–16, title II, §205(c), June 7, 2001, 115 Stat. 53, provided that: ''The amendments made by this section [enacting section 45F of this title and amending this section and section 1016 of this title] shall apply to taxable years beginning after December 31, 2001.''

Pub. L. 107–16, title VI, §619(d), June 7, 2001, 115 Stat. 110, as amended by Pub. L. 107–147, title IV, §411(n)(2), Mar. 9, 2002, 116 Stat. 48, provided that: ''The amendments made by this section [enacting section 45E of this title and amending this section and sections 39 and 196 of this title] shall apply to costs paid or incurred in taxable years beginning after December 31, 2001, with respect to qualified employer plans first effective after such date.''

Amendment by section 205(b)(1) of Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title I, §121(e)], Dec. 21, 2000, 114 Stat. 2763, 2763A–610, provided that: ''The amendments made by this section [enacting section 45D of this title, amending this section and sections 39 and 196 of this title, and enacting provisions set out as notes under section 45D of this title] shall apply to investments made after December 31, 2000.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1201(g) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section and sections 41, 45A, 51, 196, and 1396 of this title] shall apply to individuals who begin work for the employer after September 30, 1996.''

Amendment by section 1205(a)(2) of Pub. L. 104–188 applicable to amounts paid or incurred in taxable years ending after June 30, 1996, see section 1205(e) of Pub. L. 104–188, set out as a note under section 45K of this title.

Section 1702(i) of Pub. L. 104–188 provided that: ''Except as otherwise expressly provided, any amendment made by this section [amending this section, sections 50, 56, 59, 143, 151, 168, 172, 179, 243, 280F, 341, 424, 460, 613A, 805, 832, 861, 897, 1248, 1250, 1367, 1504, 2701, 2702, 2704, 4093, 4975, 5041, 5061, 5354, 6038A, 6302, 6416, 6427, 6501, 6503, 6621, 6724, and 7012 of this title, and provisions set out as a note under section 42 of this title] shall take effect as if included in the provision of the Revenue Reconciliation Act of 1990 [Pub. L. 101–508, title XI] to which such amendment relates.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13303 of Pub. L. 103–66 provided that: ''The amendments made by this part [part I (§§13301–13303) of

subchapter C of chapter 1 of title XIII of Pub. L. 103–66, enacting sections 1391 to 1394 and 1396 to 1397D of this title and amending this section and sections 39, 51, 196, 280C, and 381 of this title] shall take effect on the date of the enactment of this Act [Aug. 10, 1993].''

Section 13322(f) of Pub. L. 103–66 provided that: ''The amendments made by this section [enacting section 45A of this title and amending this section and sections 39, 196, and 280C of this title] shall apply to wages paid or incurred after December 31, 1993.''

Section 13443(d) of Pub. L. 103–66, as amended by Pub. L. 104–188, title I, § 1112(a)(2), Aug. 20, 1996, 110 Stat. 1759, provided that: ''The amendments made by this section [enacting section 45B of this title and amending this section and section 39 of this title] shall apply with respect to taxes paid after December 31, 1993, with respect to services performed before, on, or after such date.''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1914(e) of Pub. L. 102–486 provided that: ''The amendments made by this section [enacting section 45 of this title and amending this section and section 39 of this title] shall apply to taxable years ending after December 31, 1992.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11511(b)(1) of Pub. L. 101–508 applicable to costs paid or incurred in taxable years beginning after Dec. 31, 1990, see section 11511(d)(1) of Pub. L. 101–508, set out as an Effective Date note under section 43 of this title.

Section 11611(e) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 44 of this title and amending this section and sections 39 and 190 of this title] shall apply to expenditures paid or incurred after the date of the enactment of this Act [Nov. 5, 1990].

''(2) SUBSECTION (c).—The amendment made by subsection (c) [amending section 190 of this title] shall apply to taxable years beginning after the date of the enactment of this Act.''

Amendment by section 11813(b)(2) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1002(e)(8)(C) of Pub. L. 100–647 provided that: ''The amendments made by this paragraph [amending this section and section 49 of this title] shall apply to taxable years beginning after December 31, 1983, and to carrybacks from such years.''

Amendment by section 1007(g)(2), (8) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 221(b) of Pub. L. 99–514 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1985.''

Amendment by section 231(d)(1), (3)(B) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1985, see section 231(g) of Pub. L. 99–514, set out as a note under section 41 of this title.

Amendment by section 252(b) of Pub. L. 99–514 applicable to buildings placed in service after Dec. 31, 1986, in taxable years ending after such date, see section 252(e) of Pub. L. 99–514, set out as an Effective Date note under section 42 of this title.

Amendment by section 701(c)(4) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

Section 1171(c) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 56, 108, 401, and 404 of this title and repealing sections 41 and 6699 of this title] shall apply to compensation paid or accrued after December 31, 1986, in taxable years ending after such date.

''(2) SECTIONS 404(i) AND 6699 TO CONTINUE TO APPLY TO PRE-1987 CREDITS.—The provisions of sections 404(i) and 6699 of the Internal Revenue Code of 1986 shall continue to apply with respect to credits under section 41 of such Code attributable to compensation paid or accrued before January 1, 1987 (or under section 38 of such Code with respect to qualified investment before January 1, 1983).''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to interest paid or accrued after December 31, 1984, on indebtedness incurred after December 31, 1984, see section 612(g) of Pub. L. 98–369, set out as an Effective Date note under section 25 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 21 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by section 11813(b)(2) of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

BUSINESS CREDIT FOR RETENTION OF CERTAIN NEWLY HIRED INDIVIDUALS IN 2010

Pub. L. 111–147, title I, § 102, Mar. 18, 2010, 124 Stat. 75, provided that:

''(a) IN GENERAL.—In the case of any taxable year ending after the date of the enactment of this Act [Mar. 18, 2010], the current year business credit determined under section 38(b) of the Internal Revenue Code of 1986 for such taxable year shall be increased, with respect to each retained worker with respect to which subsection (b)(2) is first satisfied during such taxable year, by the lesser of—

''(1) $1,000, or

''(2) 6.2 percent of the wages (as defined in section 3401(a) [probably means section 3401(a) of the Internal Revenue Code of 1986]) paid by the taxpayer to such retained worker during the 52 consecutive week period referred to in subsection (b)(2).

''(b) RETAINED WORKER.—For purposes of this section, the term 'retained worker' means any qualified individual (as defined in section 3111(d)(3) or section 3221(c)(3) of the Internal Revenue Code of 1986)—

''(1) who was employed by the taxpayer on any date during the taxable year,

''(2) who was so employed by the taxpayer for a period of not less than 52 consecutive weeks, and

''(3) whose wages (as defined in section 3401(a) [probably means section 3401(a) of the Internal Revenue Code of 1986]) for such employment during the last 26 weeks of such period equaled at least 80 percent of such wages for the first 26 weeks of such period.

''(c) LIMITATION ON CARRYBACKS.—No portion of the unused business credit under section 38 of the Internal Revenue Code of 1986 for any taxable year which is attributable to the increase in the current year business credit under this section may be carried to a taxable year beginning before the date of the enactment of this section [Mar. 18, 2010].

''(d) TREATMENT OF POSSESSIONS.—

''(1) PAYMENTS TO POSSESSIONS.—

''(A) MIRROR CODE POSSESSIONS.—The Secretary of the Treasury shall pay to each possession of the United States with a mirror code tax system amounts equal to the loss to that possession by reason of the application of this section (other than this subsection). Such amounts shall be determined by the Secretary of the Treasury based on information provided by the government of the respective possession.

''(B) OTHER POSSESSIONS.—The Secretary of the Treasury shall pay to each possession of the United States which does not have a mirror code tax system amounts estimated by the Secretary of the Treasury as being equal to the aggregate benefits that would have been provided to residents of such possession by reason of the application of this section (other than this subsection) if a mirror code tax system had been in effect in such possession. The preceding sentence shall not apply with respect to any possession of the United States unless such possession has a plan, which has been approved by the Secretary of the Treasury, under which such possession will promptly distribute such payments to the residents of such possession.

''(2) COORDINATION WITH CREDIT ALLOWED AGAINST UNITED STATES INCOME TAXES.—No increase in the credit determined under section 38(b) of the Internal Revenue Code of 1986 against United States income taxes for any taxable year determined under subsection (a) shall be taken into account with respect to any person—

''(A) to whom a credit is allowed against taxes imposed by the possession by reason of this section for such taxable year, or

''(B) who is eligible for a payment under a plan described in paragraph (1)(B) with respect to such taxable year.

''(3) DEFINITIONS AND SPECIAL RULES.—

''(A) POSSESSION OF THE UNITED STATES.—For purposes of this subsection, the term 'possession of the United States' includes the Commonwealth of Puerto Rico and the Commonwealth of the Northern Mariana Islands.

''(B) MIRROR CODE TAX SYSTEM.—For purposes of this subsection, the term 'mirror code tax system' means, with respect to any possession of the United States, the income tax system of such possession if the income tax liability of the residents of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States.

''(C) TREATMENT OF PAYMENTS.—For purposes of section 1324(b)(2) of title 31, United States Code, rules similar to the rules of section 1001(b)(3)(C) of the American Recovery and Reinvestment Tax Act of 2009 [section 1001(b)(3)(C) of Pub. L. 111–5, set out as a note under section 36A of this title] shall apply.''

CREDIT FOR CONTRIBUTIONS TO CERTAIN COMMUNITY DEVELOPMENT CORPORATIONS

Section 13311 of Pub. L. 103–66, as amended by Pub. L. 104–188, title I, §1703(n)(13), Aug. 20, 1996, 110 Stat. 1877, provided that:

''(a) IN GENERAL.—For purposes of section 38 of the Internal Revenue Code of 1986, the current year business credit shall include the credit determined under this section.

''(b) DETERMINATION OF CREDIT.—The credit determined under this section for each taxable year in the credit period with respect to any qualified CDC contribution made by the taxpayer is an amount equal to 5 percent of such contribution.

''(c) CREDIT PERIOD.—For purposes of this section, the credit period with respect to any qualified CDC contribution is the period of 10 taxable years beginning with the taxable year during which such contribution was made.

''(d) QUALIFIED CDC CONTRIBUTION.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified CDC contribution' means any transfer of cash—

''(A) which is made to a selected community development corporation during the 5-year period beginning on the date such corporation was selected for purposes of this section,

''(B) the amount of which is available for use by such corporation for at least 10 years,

''(C) which is to be used by such corporation for qualified low-income assistance within its operational area, and

''(D) which is designated by such corporation for purposes of this section.

''(2) LIMITATIONS ON AMOUNT DESIGNATED.—The aggregate amount of contributions to a selected community development corporation which may be designated by such corporation shall not exceed $2,000,000.

''(e) SELECTED COMMUNITY DEVELOPMENT CORPORATIONS.—

''(1) IN GENERAL.—For purposes of this section, the term 'selected community development corporation' means any corporation—

''(A) which is described in section 501(c)(3) of such Code and exempt from tax under section 501(a) of such Code,

''(B) the principal purposes of which include promoting employment of, and business opportunities for, low-income individuals who are residents of the operational area, and

''(C) which is selected by the Secretary of Housing and Urban Development for purposes of this section.

''(2) ONLY 20 CORPORATIONS MAY BE SELECTED.—The Secretary of Housing and Urban Development may select 20 corporations for purposes of this section, subject to the availability of eligible corporations. Such selections may be made only before July 1, 1994. At least 8 of the operational areas of the corporations selected must be rural areas (as defined by section 1393(a)(2) of such Code).

''(3) OPERATIONAL AREAS MUST HAVE CERTAIN CHARACTERISTICS.—A corporation may be selected for purposes of this section only if its operational area meets the following criteria:

''(A) The area meets the size requirements under section 1392(a)(3).

''(B) The unemployment rate (as determined by the appropriate available data) is not less than the national unemployment rate.

''(C) The median family income of residents of such area does not exceed 80 percent of the median gross income of residents of the jurisdiction of the local government which includes such area.

''(f) QUALIFIED LOW-INCOME ASSISTANCE.—For purposes of this section, the term 'qualified low-income assistance' means assistance—

''(1) which is designed to provide employment of, and business opportunities for, low-income individuals who are residents of the operational area of the community development corporation, and

''(2) which is approved by the Secretary of Housing and Urban Development.''

APPLICABILITY OF CERTAIN AMENDMENTS BY PUBLIC LAW 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(c)(4) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I

of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

EFFECTIVE 15-YEAR CARRYBACK OF EXISTING CARRYFORWARDS OF STEEL COMPANIES

Section 212 of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1002(f), Nov. 10, 1988, 102 Stat. 3369, provided that:

''(a) GENERAL RULE.—If a qualified corporation makes an election under this section for its 1st taxable year beginning after December 31, 1986, with respect to any portion of its existing carryforwards, the amount determined under subsection (b) shall be treated as a payment against the tax imposed by chapter 1 of the Internal Revenue Code of 1986 made by such corporation on the last day prescribed by law (without regard to extensions) for filing its return of tax under chapter 1 of such Code for such 1st taxable year.

''(b) AMOUNT.—For purposes of subsection (a), the amount determined under this subsection shall be the lesser of—

''(1) 50 percent of the portion of the corporation's existing carryforwards to which the election under subsection (a) applies, or

''(2) the corporation's net tax liability for the carryback period.

''(c) CORPORATION MAKING ELECTION MAY NOT USE SAME AMOUNTS UNDER SECTION 38.—In the case of a qualified corporation which makes an election under subsection (a), the portion of such corporation's existing carryforwards to which such an election applies shall not be taken into account under section 38 of the Internal Revenue Code of 1986 for any taxable year beginning after December 31, 1986.

''(d) NET TAX LIABILITY FOR CARRYBACK PERIOD.—For purposes of this section—

''(1) IN GENERAL.—A corporation's net tax liability for the carryback period is the aggregate of such corporation's net tax liability for taxable years in the carryback period.

''(2) NET TAX LIABILITY.—The term 'net tax liability' means, with respect to any taxable year, the amount of the tax imposed by chapter 1 of the Internal Revenue Code of 1954 [now 1986] for such taxable year, reduced by the sum of the credits allowable under part IV of subchapter A of such chapter 1 (other than section 34 thereof). For purposes of the preceding sentence, any tax treated as not imposed by chapter 1 of such Code under section 26(b)(2) of such Code shall not be treated as tax imposed by such chapter 1.

''(3) CARRYBACK PERIOD.—The term 'carryback period' means the period—

''(A) which begins with the corporation's 15th taxable year preceding the 1st taxable year from which there is an unused credit included in such corporation's existing carryforwards (but in no event shall such period begin before the corporation's 1st taxable year ending after December 31, 1961), and

''(B) which ends with the corporation's last taxable year beginning before January 1, 1986.

''(e) NO RECOMPUTATION OF MINIMUM TAX, ETC.—Nothing in this section shall be construed to affect—

''(1) the amount of the tax imposed by section 56 of the Internal Revenue Code of 1986, or

''(2) the amount of any credit allowable under such Code,

for any taxable year in the carryback period.

''(f) REINVESTMENT REQUIREMENT.—

''(1) IN GENERAL.—Any amount determined under this section must be committed to reinvestment in, and modernization of the steel industry through investment in modern plant and equipment, research and development, and other appropriate projects, such as working capital for steel operations and programs for the retraining of steel workers.

''(2) SPECIAL RULE.—In the case of the LTV Corporation, in lieu of the requirements of paragraph (1)—

''(A) such corporation shall place such refund in a separate account; and

''(B) amounts in such separate account—

''(i) shall only be used by the corporation—

''(I) to purchase an insurance policy which provides that, in the event the corporation becomes involved in a title 11 or similar case (as defined in section 368(a)(3)(A) of the Internal Revenue Code of 1954 [now 1986]), the insurer will provide life and health insurance coverage during the 1-year period beginning on the date when the corporation receives the refund to any individual with respect to whom the corporation would (but for such involvement) have been obligated to provide such coverage the coverage provided by the insurer will be identical to the coverage which the corporation would (but for such involvement) have been obligated to provide, and provides that the payment of insurance premiums will not be required during such 1-year period to keep such policy in force, or

''(II) directly in connection with the trade or business of the corporation in the manufacturer or production of steel; and

''(ii) shall be used (or obligated) for purposes described in clause (i) not later than 3 months after the corporation receives the refund.

''(3) In the case of a qualified corporation, no offset to any refund under this section may be made by reason of any tax imposed by section 4971 of the Internal Revenue Code of 1986 (or any interest or penalty attributable to any such tax), and the date on which any such refund is to be paid shall be determined without regard to such corporation's status under title 11, United States Code.

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

''(1) QUALIFIED CORPORATION.—

''(A) IN GENERAL.—The term 'qualified corporation' means any corporation which is described in section 806(b) of the Steel Import Stabilization Act [19 U.S.C. 2253 note] and a company which was incorporated on February 11, 1983, in Michigan.

''(B) CERTAIN PREDECESSORS INCLUDED.—In the case of any qualified corporation which has carryforward attributable to a predecessor corporation described in such section 806(b), the qualified corporation and the predecessor corporation shall be treated as 1 corporation for purposes of subsections (d) and (e).

''(2) EXISTING CARRYFORWARDS.—The term 'existing carryforward' means the aggregate of the amounts which—

''(A) are unused business credit carryforwards to the taxpayer's 1st taxable year beginning after December 31, 1986 (determined without regard to the limitations of section 38(c) and any reduction under section 49 of the Internal Revenue Code of 1986), and

''(B) are attributable to the amount of the regular investment credit determined for periods before January 1, 1986, under section 46(a)(1) of such Code (relating to regular percentage), or any corresponding provision of prior law, determined on the basis that the regular investment credit was used first.

''(3) SPECIAL RULE FOR RESTRUCTURING.—In the case of any corporation, any restructuring shall not limit, increase, or otherwise affect the benefits which would have been available under this section but for such restructuring.

''(h) TENTATIVE REFUNDS.—Rules similar to the rules of section 6425 of the Internal Revenue Code of 1986 shall apply to any overpayment resulting from the application of this section.''

EFFECTIVE 15-YEAR CARRYBACK OF EXISTING CARRYFORWARDS OF QUALIFIED FARMERS

Section 213 of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1002(g), Nov. 10, 1988, 102 Stat. 3369, provided that:

''(a) GENERAL RULE.—If a taxpayer who is a qualified farmer makes an election under this section for its 1st

taxable year beginning after December 31, 1986, with respect to any portion of its existing carryforwards, the amount determined under subsection (b) shall be treated as a payment against the tax imposed by chapter 1 of the Internal Revenue Code of 1986 made by such taxpayer on the last day prescribed by law (without regard to extensions) for filing its return of tax under chapter 1 of such Code for such 1st taxable year.

''(b) AMOUNT.—For purposes of subsection (a), the amount determined under this subsection shall be equal to the smallest of—

''(1) 50 percent of the portion of the taxpayer's existing carryforwards to which the election under subsection (a) applies,

''(2) the taxpayer's net tax liability for the carryback period (within the meaning of section 212(d) of this Act [set out as a note above]), or

''(3) $750.

''(c) TAXPAYER MAKING ELECTION MAY NOT USE SAME AMOUNTS UNDER SECTION 38.—In the case of a qualified farmer who makes an election under subsection (a), the portion of such farmer's existing carryforwards to which such an election applies shall not be taken into account under section 38 of the Internal Revenue Code of 1986 for any taxable year beginning after December 31, 1986.

''(d) NO RECOMPUTATION OF MINIMUM TAX, ETC.—Nothing in this section shall be construed to affect—

''(1) the amount of the tax imposed by section 56 of the Internal Revenue Code of 1954 [now 1986], or

''(2) the amount of any credit allowable under such Code,

for any taxable year in the carryback period (within the meaning of section 212(d)(3) of this Act [set out as a note above]).

''(e) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) QUALIFIED FARMER.—The term 'qualified farmer' means any taxpayer who, during the 3-taxable year period preceding the taxable year for which an election is made under subsection (a), derived 50 percent or more of the taxpayer's gross income from the trade or business of farming.

''(2) EXISTING CARRYFORWARD.—The term 'existing carryforward' means the aggregate of the amounts which—

''(A) are unused business credit carryforwards to the taxpayer's 1st taxable year beginning after December 31, 1986 (determined without regard to the limitations of section 38(c) of the Internal Revenue Code of 1986), and

''(B) are attributable to the amount of the investment credit determined for periods before January 1, 1986, under section 46(a) of such Code (or any corresponding provision of prior law) with respect to section 38 property which was used by the taxpayer in the trade or business of farming, determined on the basis that such credit was used first.

''(3) FARMING.—The term 'farming' has the meaning given such term by section 2032A(e)(4) and (5) of such Code.''

TREATMENT OF INVESTMENT TAX CREDITS WITH RESPECT TO CERTAIN PUBLIC UTILITIES

For provisions requiring different applications of subsec. (c) of this section to certain public utilities by making substitutions in the percentages of the tentative minimum tax referred to in subsec. (c)(3)(A)(ii), (B), under certain circumstances, see section 701(f)(6) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TRANSITION RULES

Section 1177 of subtitle C (§§ 1171–1177) of title XI of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1011B(*l*)(1), (2), Nov. 10, 1988, 102 Stat. 3493, provided that:

''(a) SECTION 1171.—The amendments made by section 1171 [amending this section and sections 56, 108, 401, and 404 of this title and repealing sections 41 and 6699 of this title] shall not apply in the case of a tax credit employee stock ownership plan if—

''(1) such plan was favorably approved on September 23, 1983, by employees, and

''(2) not later than January 11, 1984, the employer of such employees was 100 percent owned by such plan.

''(b) SUBTITLE NOT TO APPLY TO CERTAIN NEWSPAPER.—The amendments made by section 1175 [amending section 401 of this title] shall not apply to any daily newspaper—

''(1) which was first published on December 17, 1855, and which began publication under its current name in 1954, and

''(2) which is published in a constitutional home rule city (within the meaning of section 146(d)(3)(C) of the Internal Revenue Code of 1986) which has a population of less than 2,500,000.''

Section 1011B(*l*)(3) of Pub. L. 100–647 provided that: ''If any newspaper corporation described in section 1177(b) of the Reform Act [section 1177(b) of Pub. L. 99–514, set out above], as amended by this subsection, pays in cash a dividend within 60 days after the date of the enactment of this Act [Nov. 10, 1988] to the corporation's employee stock ownership plans and if a corporate resolution declaring such dividend was adopted before November 30, 1987, and such resolution specifies that such dividend shall be contingent upon passage by the Congress of technical corrections, then such dividend (to the extent the aggregate amount so paid does not exceed $3,500,000) shall be treated as if it had been declared and paid in 1987 for all purposes of the Internal Revenue Code of 1986.''

ACCOUNTING FOR INVESTMENT CREDIT IN CERTAIN FINANCIAL REPORTS AND REPORTS TO FEDERAL AGENCIES

Pub. L. 92–178, title I, § 101(c), Dec. 10, 1971, 85 Stat. 499, as amended by Pub. L. 98–369, div. A, title IV, § 450(a), July 18, 1984, 98 Stat. 818; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—It was the intent of Congress in enacting, in the Revenue Act of 1962 [see Short Title of 1962 Amendment note set out under section 1 of this title], the investment credit allowed by section 38 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], and it is the intent of the Congress in restoring that credit in this Act [section 50 of this title], to provide an incentive for modernization and growth of private industry. Accordingly, notwithstanding any other provision of law, on and after the date of the enactment of this Act [Dec. 10, 1971]—

''(A) no taxpayer shall be required to use, for purposes of financial reports subject to the jurisdiction of any Federal agency or reports made to any Federal agency, any particular method of accounting for the credit allowed by such section 38 [this section], and

''(B) a taxpayer shall disclose, in any such report, the method of accounting for such credit used by him for purposes of such report.

''(2) EXCEPTIONS.—Paragraph (1) shall not apply to taxpayers who are subject to the provisions of section 46(e) of the Internal Revenue Code of 1986 (as added by section 105(c) of this Act) or to section 203(e) of the Revenue Act of 1964 (as modified by section 105(e) of this Act) [set out as note below].''

[Section 450(b) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this note]

shall take effect as if included in the Revenue Act of 1971.'']

TREATMENT OF INVESTMENT CREDIT BY FEDERAL REGULATORY AGENCIES

Pub. L. 88–272, title II, § 203(e), Feb. 26, 1964, 78 Stat. 35, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''It was the intent of the Congress in providing an investment credit under section 38 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] and it is the intent of the Congress in repealing the reduction in basis required by section 48(g) of such Code to provide an incentive for modernization and growth of private industry (including that portion thereof which is regulated). Accordingly, Congress does not intend that any agency or instrumentality of the United States having jurisdiction with respect to a taxpayer shall, without the consent of the taxpayer, use—

''(1) in the case of public utility property (as defined in section 46(c)(3)(B) of the Internal Revenue Code of 1986, more than a proportionate part (determined with reference to the average useful life of the property with respect to which the credit was allowed) of the credit against tax allowed for any taxable year by section 38 of such Code, or

''(2) in the case of any other property, any credit against tax allowed by section 38 of such Code,

to reduce such taxpayer's Federal income taxes for the purpose of establishing the cost of service of the taxpayer or to accomplish a similar result by any other method.''

Section 203(e) of Pub. L. 88–272, not applicable to public utility property to which section 46(e) of this title applies, see section 105(e) of Pub. L. 92–178, set out as a note under section 46 of this title.

§ 39. Carryback and carryforward of unused credits

(a) In general

(1) 1-year carryback and 20-year carryforward

If the sum of the business credit carryforwards to the taxable year plus the amount of the current year business credit for the taxable year exceeds the amount of the limitation imposed by subsection (c) of section 38 for such taxable year (hereinafter in this section referred to as the ''unused credit year''), such excess (to the extent attributable to the amount of the current year business credit) shall be—

(A) a business credit carryback to the taxable year preceding the unused credit year, and

(B) a business credit carryforward to each of the 20 taxable years following the unused credit year,

and, subject to the limitations imposed by subsections (b) and (c), shall be taken into account under the provisions of section 38(a) in the manner provided in section 38(a).

(2) Amount carried to each year

(A) Entire amount carried to first year

The entire amount of the unused credit for an unused credit year shall be carried to the earliest of the 21 taxable years to which (by reason of paragraph (1)) such credit may be carried.

(B) Amount carried to other 20 years

The amount of the unused credit for the unused credit year shall be carried to each of the other 20 taxable years to the extent that such unused credit may not be taken into account under section 38(a) for a prior taxable year because of the limitations of subsections (b) and (c).

(3) 5-year carryback for marginal oil and gas well production credit

Notwithstanding subsection (d), in the case of the marginal oil and gas well production credit—

(A) this section shall be applied separately from the business credit (other than the marginal oil and gas well production credit) or the eligible small business credits,

(B) paragraph (1) shall be applied by substituting ''each of the 5 taxable years'' for ''the taxable year'' in subparagraph (A) thereof, and

(C) paragraph (2) shall be applied—

(i) by substituting ''25 taxable years'' for ''21 taxable years'' in subparagraph (A) thereof, and

(ii) by substituting ''24 taxable years'' for ''20 taxable years'' in subparagraph (B) thereof.

(4) 5-year carryback for eligible small business credits

(A) In general

Notwithstanding subsection (d), in the case of eligible small business credits determined in the first taxable year of the taxpayer beginning in 2010—

(i) paragraph (1) shall be applied by substituting ''each of the 5 taxable years'' for ''the taxable year'' in subparagraph (A) thereof, and

(ii) paragraph (2) shall be applied—

(I) by substituting ''25 taxable years'' for ''21 taxable years'' in subparagraph (A) thereof, and

(II) by substituting ''24 taxable years'' for ''20 taxable years'' in subparagraph (B) thereof.

(B) Eligible small business credits

For purposes of this subsection, the term ''eligible small business credits'' has the meaning given such term by section 38(c)(5)(B).

(b) Limitation on carrybacks

The amount of the unused credit which may be taken into account under section 38(a)(3) for any preceding taxable year shall not exceed the amount by which the limitation imposed by section 38(c) for such taxable year exceeds the sum of—

(1) the amounts determined under paragraphs (1) and (2) of section 38(a) for such taxable year, plus

(2) the amounts which (by reason of this section) are carried back to such taxable year and are attributable to taxable years preceding the unused credit year.

(c) Limitation on carryforwards

The amount of the unused credit which may be taken into account under section 38(a)(1) for any succeeding taxable year shall not exceed the amount by which the limitation imposed by section 38(c) for such taxable year exceeds the sum of the amounts which, by reason of this section,

are carried to such taxable year and are attributable to taxable years preceding the unused credit year.

(d) Transitional rule

No portion of the unused business credit for any taxable year which is attributable to a credit specified in section 38(b) or any portion thereof may be carried back to any taxable year before the first taxable year for which such specified credit or such portion is allowable (without regard to subsection (a)).

(Added Pub. L. 98–369, div. A, title IV, § 473, July 18, 1984, 98 Stat. 828; amended Pub. L. 99–514, title II, § 231(d)(3)(C)(i), title XVIII, § 1846, Oct. 22, 1986, 100 Stat. 2179, 2856; Pub. L. 100–647, title I, § 1002(*l*)(26), Nov. 10, 1988, 102 Stat. 3381; Pub. L. 101–508, title XI, §§ 11511(b)(2), 11611(b)(2), 11801(a)(2), Nov. 5, 1990, 104 Stat. 1388–485, 1388–503, 1388–520; Pub. L. 102–486, title XIX, § 1914(c), Oct. 24, 1992, 106 Stat. 3023; Pub. L. 103–66, title XIII, §§ 13302(a)(2), 13322(d), 13443(b)(2), Aug. 10, 1993, 107 Stat. 555, 563, 569; Pub. L. 104–188, title I, §§ 1205(c), 1703(n)(1), Aug. 20, 1996, 110 Stat. 1775, 1877; Pub. L. 105–34, title VII, § 701(b)(1), title X, § 1083(a), Aug. 5, 1997, 111 Stat. 869, 951; Pub. L. 105–206, title VI, § 6010(n), July 22, 1998, 112 Stat. 816; Pub. L. 106–554, § 1(a)(7) [title I, § 121(b)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–610; Pub. L. 107–16, title VI, § 619(c)(1), June 7, 2001, 115 Stat. 110; Pub. L. 108–357, title II, § 245(b)(1), title III, § 341(c), Oct. 22, 2004, 118 Stat. 1447, 1487; Pub. L. 109–135, title IV, § 412(g), Dec. 21, 2005, 119 Stat. 2637; Pub. L. 111–240, title II, § 2012(a), (b), Sept. 27, 2010, 124 Stat. 2554.)

PRIOR PROVISIONS

A prior section 39 was renumbered section 34 of this title.

Another prior section 39 was renumbered section 37 of this title.

AMENDMENTS

2010—Subsec. (a)(3)(A). Pub. L. 111–240, § 2012(b), inserted ''or the eligible small business credits'' after ''credit)''.

Subsec. (a)(4). Pub. L. 111–240, § 2012(a), added par. (4).

2005—Subsec. (a)(1)(A). Pub. L. 109–135, § 412(g)(1), substituted ''the taxable year'' for ''each of the 1 taxable years''.

Subsec. (a)(3)(B). Pub. L. 109–135, § 412(g)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''paragraph (1) shall be applied by substituting '5 taxable years' for '1 taxable years' in subparagraph (A) thereof, and''.

2004—Subsec. (a)(3). Pub. L. 108–357, § 341(c), added par. (3).

Subsec. (d). Pub. L. 108–357, § 245(b)(1), amended heading and text of subsec. (d) generally, substituting provisions prohibiting carryback of the unused business credit attributable to a credit specified in section 38(b) for provisions prohibiting carryback of the enhanced oil recovery credit before 1991, sections 44, 45A, and 45B credits before their enactments, the renewable electricity production credit before its effective date, the empowerment zone employment credit, section 45C credit before July 1, 1996, DC Zone credits before their effective date, the new markets tax credit before Jan. 1, 2001, and the small employer pension plan startup cost credit before Jan. 1, 2002.

2001—Subsec. (d)(10). Pub. L. 107–16, § 619(c)(1), added par. (10).

2000—Subsec. (d)(9). Pub. L. 106–554 added par. (9).

1998—Subsec. (a)(2). Pub. L. 105–206 amended Pub. L. 105–34, § 1083(a)(2). See 1997 Amendment note below.

1997—Subsec. (a)(1). Pub. L. 105–34, § 1083(a)(1), substituted ''1-year'' for ''3-year'' and ''20-year'' for ''15-year'' in heading, ''1 taxable'' for ''3 taxable'' in subpar. (A), and ''20 taxable'' for ''15 taxable'' in subpar. (B).

Subsec. (a)(2). Pub. L. 105–34, § 1083(a)(2), as amended by Pub. L. 105–206, § 6010(n), in subpar. (A), substituted ''21 taxable'' for ''18 taxable'', and in subpar. (B), substituted ''20 years'' for ''17 years'' in heading and ''20 taxable'' for ''17 taxable'' in text.

Subsec. (d)(8). Pub. L. 105–34, § 701(b)(1), added par. (8).

1996—Subsec. (d)(5). Pub. L. 104–188, § 1703(n)(1)(A), substituted ''45A'' for ''45'' in heading.

Subsec. (d)(6). Pub. L. 104–188, § 1703(n)(1)(B), substituted ''45B'' for ''45'' in heading.

Subsec. (d)(7). Pub. L. 104–188, § 1205(c), added par. (7).

1993—Subsec. (d)(4). Pub. L. 103–66, § 13302(a)(2), added par. (4).

Subsec. (d)(5). Pub. L. 103–66, § 13322(d), added par. (5).

Subsec. (d)(6). Pub. L. 103–66, § 13443(b)(2), added par. (6).

1992—Subsec. (d). Pub. L. 102–486 redesignated par. (5), relating to carryback of enhanced oil recovery credit, as (1), redesignated par. (5), relating to carryback of section 44 credit, as (2), and added par. (3).

1990—Subsec. (d)(1) to (4). Pub. L. 101–508, § 11801(a)(2), struck out par. (1) which related to carryforwards from an unused credit year which did not expire before first taxable year beginning after Dec. 31, 1983, par. (2) which related to carrybacks in determining amount allowable as credit including net tax liability, par. (3) which related to similar rules for research credit under section 30, and par. (4) which provided for no carryback of low-income housing credit before 1987.

Subsec. (d)(5). Pub. L. 101–508, § 11611(b)(2), added par. (5) relating to carryback of section 44 credit.

Pub. L. 101–508, § 11511(b)(2), added par. (5) relating to carryback of enhanced oil recovery credit.

1988—Subsec. (d)(4). Pub. L. 100–647 added par. (4).

1986—Subsec. (d)(1)(A). Pub. L. 99–514, § 1846(1), inserted ''(as in effect before the enactment of the Tax Reform Act of 1984)''.

Subsec. (d)(2)(B). Pub. L. 99–514, § 1846(2), substituted ''as defined in section 26(b)'' for ''as so defined in section 25(b)''.

Subsec. (d)(3). Pub. L. 99–514, § 231(d)(3)(C)(i), added par. (3).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title II, § 2012(c), Sept. 27, 2010, 124 Stat. 2554, provided that: ''The amendments made by this section [amending this section] shall apply to credits determined in taxable years beginning after December 31, 2009.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, § 245(b)(2), Oct. 22, 2004, 118 Stat. 1448, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to taxable years ending after December 31, 2003.''

Amendment by section 245(b) of Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2004, see section 245(e) of Pub. L. 108–357, set out as a note under section 38 of this title.

Amendment by section 341(c) of Pub. L. 108–357 applicable to production in taxable years beginning after Dec. 31, 2004, see section 341(e) of Pub. L. 108–357, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to costs paid or incurred in taxable years beginning after Dec. 31, 2001, with respect to qualified employer plans first effective after such date, see section 619(d) of Pub. L. 107–16, as amended, set out as an Effective and Termination Dates of 2001 Amendment note under section 38 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 applicable to investments made after Dec. 31, 2000, see § 1(a)(7) [title I,

§ 121(e)] of Pub. L. 106–554, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 701(d) of Pub. L. 105–34 provided that: ''Except as provided in subsection (c) [amending table of subchapters for this chapter], the amendments made by this section [enacting subchapter W of this chapter and amending this section and section 1016 of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997].''

Section 1083(b) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply to credits arising in taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1205(c) of Pub. L. 104–188 applicable to amounts paid or incurred in taxable years ending after June 30, 1996, see section 1205(e) of Pub. L. 104–188, set out as a note under section 45K of this title.

Section 1703(*o*) of Pub. L. 104–188 provided that: ''Any amendment made by this section [amending this section and sections 40, 59, 108, 117, 135, 143, 163, 904, 956A, 958, 1017, 1044, 1201, 1245, 1297, 1394, 1397B, 1561, 4001, 6033, 6427, 6501, 6655, and 9502 of this title, renumbering section 6714 of this title as section 6715, and amending provisions set out as notes under sections 38, 42, 197, and 1258 of this title and section 401 of Title 42, The Public Health and Welfare] shall take effect as if included in the provision of the Revenue Reconciliation Act of 1993 [Pub. L. 103–66, title XIII, ch. I, §§ 13001–13444] to which such amendment relates.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13322(d) of Pub. L. 103–66 applicable to wages paid or incurred after Dec. 31, 1993, see section 13322(f) of Pub. L. 103–66, set out as a note under section 38 of this title.

Amendment by section 13443(b)(2) of Pub. L. 103–66 applicable with respect to taxes paid after Dec. 31, 1993, with respect to services performed before, on, or after such date, see section 13443(d) of Pub. L. 103–66, as amended, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–486 applicable to taxable years ending after Dec. 31, 1992, see section 1914(e) of Pub. L. 102–486, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11511(b)(2) of Pub. L. 101–508 applicable to costs paid or incurred in taxable years beginning after Dec. 31, 1990, see section 11511(d)(1) of Pub. L. 101–508, set out as an Effective Date note under section 43 of this title.

Amendment by section 11611(b)(2) of Pub. L. 101–508 applicable to expenditures paid or incurred after Nov. 5, 1990, see section 11611(e)(1) of Pub. L. 101–508, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 231(d)(3)(C)(i) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1985, see section 231(g) of Pub. L. 99–514, set out as a note under section 41 of this title.

Amendment by section 1846 of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 21 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by section 11801(a)(2) of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 40. Alcohol, etc., used as fuel

(a) General rule

For purposes of section 38, the alcohol fuels credit determined under this section for the taxable year is an amount equal to the sum of—

(1) the alcohol mixture credit,

(2) the alcohol credit,

(3) in the case of an eligible small ethanol producer, the small ethanol producer credit, plus

(4) the cellulosic biofuel producer credit.

(b) Definition of alcohol mixture credit, alcohol credit, and small ethanol producer credit

For purposes of this section, and except as provided in subsection (h)—

(1) Alcohol mixture credit

(A) In general

The alcohol mixture credit of any taxpayer for any taxable year is 60 cents for each gallon of alcohol used by the taxpayer in the production of a qualified mixture.

(B) Qualified mixture

The term ''qualified mixture'' means a mixture of alcohol and gasoline or of alcohol and a special fuel which—

(i) is sold by the taxpayer producing such mixture to any person for use as a fuel, or

(ii) is used as a fuel by the taxpayer producing such mixture.

(C) Sale or use must be in trade or business, etc.

Alcohol used in the production of a qualified mixture shall be taken into account—

(i) only if the sale or use described in subparagraph (B) is in a trade or business of the taxpayer, and

(ii) for the taxable year in which such sale or use occurs.

(D) Casual off-farm production not eligible

No credit shall be allowed under this section with respect to any casual off-farm production of a qualified mixture.

(2) Alcohol credit

(A) In general

The alcohol credit of any taxpayer for any taxable year is 60 cents for each gallon of alcohol which is not in a mixture with gasoline or a special fuel (other than any denaturant) and which during the taxable year—

(i) is used by the taxpayer as a fuel in a trade or business, or

(ii) is sold by the taxpayer at retail to a person and placed in the fuel tank of such person's vehicle.

(B) User credit not to apply to alcohol sold at retail

No credit shall be allowed under subparagraph (A)(i) with respect to any alcohol which was sold in a retail sale described in subparagraph (A)(ii).

(3) Smaller credit for lower proof alcohol

In the case of any alcohol with a proof which is at least 150 but less than 190, paragraphs (1)(A) and (2)(A) shall be applied by substituting ''45 cents'' for ''60 cents''.

(4) Small ethanol producer credit

(A) In general

The small ethanol producer credit of any eligible small ethanol producer for any taxable year is 10 cents for each gallon of qualified ethanol fuel production of such producer.

(B) Qualified ethanol fuel production

For purposes of this paragraph, the term ''qualified ethanol fuel production'' means any alcohol which is ethanol which is produced by an eligible small ethanol producer, and which during the taxable year—

(i) is sold by such producer to another person—

(I) for use by such other person in the production of a qualified mixture in such other person's trade or business (other than casual off-farm production),

(II) for use by such other person as a fuel in a trade or business, or

(III) who sells such ethanol at retail to another person and places such ethanol in the fuel tank of such other person, or

(ii) is used or sold by such producer for any purpose described in clause (i).

(C) Limitation

The qualified ethanol fuel production of any producer for any taxable year shall not exceed 15,000,000 gallons (determined without regard to any qualified cellulosic biofuel production).

(D) Additional distillation excluded

The qualified ethanol fuel production of any producer for any taxable year shall not include any alcohol which is purchased by the producer and with respect to which such producer increases the proof of the alcohol by additional distillation.

(5) Adding of denaturants not treated as mixture

The adding of any denaturant to alcohol shall not be treated as the production of a mixture.

(6) Cellulosic biofuel producer credit

(A) In general

The cellulosic biofuel producer credit of any taxpayer is an amount equal to the applicable amount for each gallon of qualified cellulosic biofuel production.

(B) Applicable amount

For purposes of subparagraph (A), the applicable amount means $1.01, except that such amount shall, in the case of cellulosic biofuel which is alcohol, be reduced by the sum of—

(i) the amount of the credit in effect for such alcohol under subsection (b)(1) (without regard to subsection (b)(3)) at the time of the qualified cellulosic biofuel production, plus

(ii) in the case of ethanol, the amount of the credit in effect under subsection (b)(4) at the time of such production.

(C) Qualified cellulosic biofuel production

For purposes of this section, the term ''qualified cellulosic biofuel production'' means any cellulosic biofuel which is produced by the taxpayer, and which during the taxable year—

(i) is sold by the taxpayer to another person—

(I) for use by such other person in the production of a qualified cellulosic biofuel mixture in such other person's trade or business (other than casual off-farm production),

(II) for use by such other person as a fuel in a trade or business, or

(III) who sells such cellulosic biofuel at retail to another person and places such cellulosic biofuel in the fuel tank of such other person, or

(ii) is used or sold by the taxpayer for any purpose described in clause (i).

The qualified cellulosic biofuel production of any taxpayer for any taxable year shall not include any alcohol which is purchased by the taxpayer and with respect to which such producer increases the proof of the alcohol by additional distillation.

(D) Qualified cellulosic biofuel mixture

For purposes of this paragraph, the term ''qualified cellulosic biofuel mixture'' means a mixture of cellulosic biofuel and gasoline or of cellulosic biofuel and a special fuel which—

(i) is sold by the person producing such mixture to any person for use as a fuel, or

(ii) is used as a fuel by the person producing such mixture.

(E) Cellulosic biofuel

For purposes of this paragraph—

(i) In general

The term ''cellulosic biofuel'' means any liquid fuel which—

(I) is produced from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis, and

(II) meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545).

(ii) Exclusion of low-proof alcohol

Such term shall not include any alcohol with a proof of less than 150. The determination of the proof of any alcohol shall be made without regard to any added denaturants.

(iii) Exclusion of certain fuels

The term ''cellulosic biofuel'' shall not include any fuel if—

(I) more than 4 percent of such fuel (determined by weight) is any combination of water and sediment,

(II) the ash content of such fuel is more than 1 percent (determined by weight), or

(III) such fuel has an acid number greater than 25.

(F) Allocation of cellulosic biofuel producer credit to patrons of cooperative

Rules similar to the rules under subsection (g)(6) shall apply for purposes of this paragraph.

(G) Registration requirement

No credit shall be determined under this paragraph with respect to any taxpayer unless such taxpayer is registered with the Secretary as a producer of cellulosic biofuel under section 4101.

(H) Application of paragraph

This paragraph shall apply with respect to qualified cellulosic biofuel production after December 31, 2008, and before January 1, 2013.

(c) Coordination with exemption from excise tax

The amount of the credit determined under this section with respect to any alcohol shall, under regulations prescribed by the Secretary, be properly reduced to take into account any benefit provided with respect to such alcohol solely by reason of the application of section 4041(b)(2), section 6426, or section 6427(e).

(d) Definitions and special rules

For purposes of this section—

(1) Alcohol defined

(A) In general

The term ''alcohol'' includes methanol and ethanol but does not include—

(i) alcohol produced from petroleum, natural gas, or coal (including peat), or

(ii) alcohol with a proof of less than 150.

(B) Determination of proof

The determination of the proof of any alcohol shall be made without regard to any added denaturants.

(2) Special fuel defined

The term ''special fuel'' includes any liquid fuel (other than gasoline) which is suitable for use in an internal combustion engine.

(3) Mixture or alcohol not used as a fuel, etc.

(A) Mixtures

If—

(i) any credit was determined under this section with respect to alcohol used in the production of any qualified mixture, and

(ii) any person—

(I) separates the alcohol from the mixture, or

(II) without separation, uses the mixture other than as a fuel,

then there is hereby imposed on such person a tax equal to 60 cents a gallon (45 cents in the case of alcohol with a proof less than 190) for each gallon of alcohol in such mixture.

(B) Alcohol

If—

(i) any credit was determined under this section with respect to the retail sale of any alcohol, and

(ii) any person mixes such alcohol or uses such alcohol other than as a fuel,

then there is hereby imposed on such person a tax equal to 60 cents a gallon (45 cents in the case of alcohol with a proof less than 190) for each gallon of such alcohol.

(C) Small ethanol producer credit

If—

(i) any credit was determined under subsection (a)(3), and

(ii) any person does not use such fuel for a purpose described in subsection (b)(4)(B),

then there is hereby imposed on such person a tax equal to 10 cents a gallon for each gallon of such alcohol.

(D) Cellulosic biofuel producer credit

If—

(i) any credit is allowed under subsection (a)(4), and

(ii) any person does not use such fuel for a purpose described in subsection (b)(6)(C),

then there is hereby imposed on such person a tax equal to the applicable amount (as defined in subsection (b)(6)(B)) for each gallon of such cellulosic biofuel.

(E) Applicable laws

All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under subparagraph (A), (B), (C), or (D) as if such tax were imposed by section 4081 and not by this chapter.

(4) Volume of alcohol

For purposes of determining under subsection (a) the number of gallons of alcohol with respect to which a credit is allowable under subsection (a), the volume of alcohol shall include the volume of any denaturant (including gasoline) which is added under any formulas approved by the Secretary to the extent that such denaturants do not exceed 2

percent of the volume of such alcohol (including denaturants).

(5) Pass-thru in the case of estates and trusts

Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

(6) Special rule for cellulosic biofuel producer credit

No cellulosic biofuel producer credit shall be determined under subsection (a) with respect to any cellulosic biofuel unless such cellulosic biofuel is produced in the United States and used as a fuel in the United States. For purposes of this subsection, the term ''United States'' includes any possession of the United States.

(7) Limitation to alcohol with connection to the United States

No credit shall be determined under this section with respect to any alcohol which is produced outside the United States for use as a fuel outside the United States. For purposes of this paragraph, the term ''United States'' includes any possession of the United States.

(e) Termination

(1) In general

This section shall not apply to any sale or use—

(A) for any period after December 31, 2011, or

(B) for any period before January 1, 2012, during which the rates of tax under section 4081(a)(2)(A) are 4.3 cents per gallon.

(2) No carryovers to certain years after expiration

If this section ceases to apply for any period by reason of paragraph (1) or subsection (b)(6)(H), no amount attributable to any sale or use before the first day of such period may be carried under section 39 by reason of this section (treating the amount allowed by reason of this section as the first amount allowed by this subpart) to any taxable year beginning after the 3-taxable-year period beginning with the taxable year in which such first day occurs.

(3) Exception for cellulosic biofuel producer credit

Paragraph (1) shall not apply to the portion of the credit allowed under this section by reason of subsection (a)(4).

(f) Election to have alcohol fuels credit not apply

(1) In general

A taxpayer may elect to have this section not apply for any taxable year.

(2) Time for making election

An election under paragraph (1) for any taxable year may be made (or revoked) at any time before the expiration of the 3-year period beginning on the last date prescribed by law for filing the return for such taxable year (determined without regard to extensions).

(3) Manner of making election

An election under paragraph (1) (or revocation thereof) shall be made in such manner as the Secretary may by regulations prescribe.

(g) Definitions and special rules for eligible small ethanol producer credit

For purposes of this section—

(1) Eligible small ethanol producer

The term ''eligible small ethanol producer'' means a person who, at all times during the taxable year, has a productive capacity for alcohol (as defined in subsection (d)(1)(A) without regard to clauses (i) and (ii)) not in excess of 60,000,000 gallons.

(2) Aggregration [1] rule

For purposes of the 15,000,000 gallon limitation under subsection (b)(4)(C) and the 60,000,000 gallon limitation under paragraph (1), all members of the same controlled group of corporations (within the meaning of section 267(f)) and all persons under common control (within the meaning of section 52(b) but determined by treating an interest of more than 50 percent as a controlling interest) shall be treated as 1 person.

(3) Partnership, S corporations, and other pass-thru entities

In the case of a partnership, trust, S corporation, or other pass-thru entity, the limitations contained in subsection (b)(4)(C) and paragraph (1) shall be applied at the entity level and at the partner or similar level.

(4) Allocation

For purposes of this subsection, in the case of a facility in which more than 1 person has an interest, productive capacity shall be allocated among such persons in such manner as the Secretary may prescribe.

(5) Regulations

The Secretary may prescribe such regulations as may be necessary—

(A) to prevent the credit provided for in subsection (a)(3) from directly or indirectly benefiting any person with a direct or indirect productive capacity of more than 60,000,000 gallons of alcohol during the taxable year, or

(B) to prevent any person from directly or indirectly benefiting with respect to more than 15,000,000 gallons during the taxable year.

(6) Allocation of small ethanol producer credit to patrons of cooperative

(A) Election to allocate

(i) In general

In the case of a cooperative organization described in section 1381(a), any portion of the credit determined under subsection (a)(3) for the taxable year may, at the election of the organization, be apportioned pro rata among patrons of the organization on the basis of the quantity or value of business done with or for such patrons for the taxable year.

(ii) Form and effect of election

An election under clause (i) for any taxable year shall be made on a timely filed

[1] So in original. Probably should be ''Aggregation''.

return for such year. Such election, once made, shall be irrevocable for such taxable year. Such election shall not take effect unless the organization designates the apportionment as such in a written notice mailed to its patrons during the payment period described in section 1382(d).

(B) Treatment of organizations and patrons

(i) Organizations

The amount of the credit not apportioned to patrons pursuant to subparagraph (A) shall be included in the amount determined under subsection (a)(3) for the taxable year of the organization.

(ii) Patrons

The amount of the credit apportioned to patrons pursuant to subparagraph (A) shall be included in the amount determined under such subsection for the first taxable year of each patron ending on or after the last day of the payment period (as defined in section 1382(d)) for the taxable year of the organization or, if earlier, for the taxable year of each patron ending on or after the date on which the patron receives notice from the cooperative of the apportionment.

(iii) Special rules for decrease in credits for taxable year

If the amount of the credit of the organization determined under such subsection for a taxable year is less than the amount of such credit shown on the return of the organization for such year, an amount equal to the excess of—

(I) such reduction, over

(II) the amount not apportioned to such patrons under subparagraph (A) for the taxable year,

shall be treated as an increase in tax imposed by this chapter on the organization. Such increase shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.

(h) Reduced credit for ethanol blenders

(1) In general

In the case of any alcohol mixture credit or alcohol credit with respect to any sale or use of alcohol which is ethanol during calendar years 2001 through 2011—

(A) subsections (b)(1)(A) and (b)(2)(A) shall be applied by substituting ''the blender amount'' for ''60 cents'',

(B) subsection (b)(3) shall be applied by substituting ''the low-proof blender amount'' for ''45 cents'' and ''the blender amount'' for ''60 cents'', and

(C) subparagraphs (A) and (B) of subsection (d)(3) shall be applied by substituting ''the blender amount'' for ''60 cents'' and ''the low-proof blender amount'' for ''45 cents''.

(2) Amounts

For purposes of paragraph (1), the blender amount and the low-proof blender amount shall be determined in accordance with the following table:

In the case of any sale or use during calendar year:	The blender amount is:	The low-proof blender amount is:
2001 or 2002	53 cents	39.26 cents
2003 or 2004	52 cents	38.52 cents
2005, 2006, 2007, or 2008.	51 cents	37.78 cents
2009 through 2011	45 cents	33.33 cents.

(3) Reduction delayed until annual production or importation of 7,500,000,000 gallons

(A) In general

In the case of any calendar year beginning after 2008, if the Secretary makes a determination described in subparagraph (B) with respect to all preceding calendar years beginning after 2007, the last row in the table in paragraph (2) shall be applied by substituting ''51 cents'' for ''45 cents''.

(B) Determination

A determination described in this subparagraph with respect to any calendar year is a determination, in consultation with the Administrator of the Environmental Protection Agency, that an amount less than 7,500,000,000 gallons of ethanol (including cellulosic ethanol) has been produced in or imported into the United States in such year.

(Added Pub. L. 96–223, title II, § 232(b)(1), Apr. 2, 1980, 94 Stat. 273, § 44E; amended Pub. L. 97–34, title II § 207(c)(3), Aug. 13, 1981, 95 Stat. 225; Pub. L. 97–354, § 5(a)(2), Oct. 19, 1982, 96 Stat. 1692; Pub. L. 97–424, title V, § 511(b)(2), (d)(3), Jan. 6, 1983, 96 Stat. 2170, 2171; renumbered § 40 and amended Pub. L. 98–369, div. A, title IV, §§ 471(c), 474(k), title IX, §§ 912(c), (f), 913(b), July 18, 1984, 98 Stat. 826, 832, 1007, 1008; Pub. L. 100–203, title X, § 10502(d)(1), Dec. 22, 1987, 101 Stat. 1330–444; Pub. L. 101–508, title XI, § 11502(a)–(f), Nov. 5, 1990, 104 Stat. 1388–480 to 1388–482; Pub. L. 104–188, title I, § 1703(j), Aug. 20, 1996, 110 Stat. 1876; Pub. L. 105–178, title IX, § 9003(a)(3), (b)(1), June 9, 1998, 112 Stat. 502; Pub. L. 108–357, title III, §§ 301(c)(1)–(4), 313(a), Oct. 22, 2004, 118 Stat. 1461, 1467; Pub. L. 109–58, title XIII, § 1347(a), (b), Aug. 8, 2005, 119 Stat. 1056; Pub. L. 110–234, title XV, §§ 15321(a)–(b)(2), (3)(B), (c)–(e), 15331(a), 15332(a), May 22, 2008, 122 Stat. 1512–1516; Pub. L. 110–246, § 4(a), title XV, §§ 15321(a)–(b)(2), (3)(B), (c)–(e), 15331(a), 15332(a), June 18, 2008, 122 Stat. 1664, 2274–2278; Pub. L. 110–343, div. B, title II, § 203(a), Oct. 3, 2008, 122 Stat. 3833; Pub. L. 111–152, title I, § 1408(a), Mar. 30, 2010, 124 Stat. 1067; Pub. L. 111–240, title II, § 2121(a), Sept. 27, 2010, 124 Stat. 2567; Pub. L. 111–312, title VII, § 708(a)(1), (2), Dec. 17, 2010, 124 Stat. 3312.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

PRIOR PROVISIONS

A prior section 40, added Pub. L. 92–178, title VI, § 601(a), Dec. 10, 1971, 85 Stat. 553; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to allowance as a credit of expenses of work incentive programs, prior to repeal by Pub. L. 98–369, div. A, title IV, § 474(m)(1), July 18, 1984, 98 Stat. 833.

Another prior section 40 was renumbered section 37 of this title.

AMENDMENTS

2010—Subsec. (b)(6)(E)(iii). Pub. L. 111–240, §2121(a)(4), substituted ''certain'' for ''unprocessed'' in heading.

Pub. L. 111–152 added cl. (iii).

Subsec. (b)(6)(E)(iii)(III). Pub. L. 111–240, §2121(a)(1)–(3), added subcl. (III).

Subsec. (e)(1)(A). Pub. L. 111–312, §708(a)(1)(A), substituted ''December 31, 2011'' for ''December 31, 2010''.

Subsec. (e)(1)(B). Pub. L. 111–312, §708(a)(1)(B), substituted ''January 1, 2012'' for ''January 1, 2011''.

Subsec. (h)(1), (2). Pub. L. 111–312, §708(a)(2), substituted ''2011'' for ''2010''.

2008—Pub. L. 110–246, §15321(b)(3)(B), inserted '', etc.,'' after ''Alcohol'' in section catchline.

Subsec. (a)(4). Pub. L. 110–246, §15321(a), added par. (4).

Subsec. (b)(4)(C). Pub. L. 110–246, §15321(e), inserted ''(determined without regard to any qualified cellulosic biofuel production)'' after ''15,000,000 gallons''.

Subsec. (b)(6). Pub. L. 110–246, §15321(b)(1), added par. (6).

Subsec. (d)(3)(C). Pub. L. 110–246, §15321(c)(2)(A), substituted ''Small ethanol producer'' for ''Producer'' in heading.

Subsec. (d)(3)(D). Pub. L. 110–246, §15321(c)(1), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (d)(3)(E). Pub. L. 110–246, §15321(c)(2)(B), substituted ''(C), or (D)'' for ''or (C)''.

Pub. L. 110–246, §15321(c)(1), redesignated subpar. (D) as (E).

Subsec. (d)(4). Pub. L. 110–246, §15332(a), substituted ''2 percent'' for ''5 percent''.

Subsec. (d)(6). Pub. L. 110–246, §15321(d), added par. (6).

Subsec. (d)(7). Pub. L. 110–343 added par. (7).

Subsec. (e)(2). Pub. L. 110–246, §15321(b)(2)(A), inserted ''or subsection (b)(6)(H)'' after ''by reason of paragraph (1)''.

Subsec. (e)(3). Pub. L. 110–246, §15321(b)(2)(B), added par. (3).

Subsec. (h)(2). Pub. L. 110–246, §15331(a)(1), in table, substituted ''2005, 2006, 2007, or 2008'' for ''2005 through 2010'', struck out period after ''37.78 cents'', and inserted last row reading ''2009 through 2010'', ''45 cents'', and ''33.33 cents.''

Subsec. (h)(3). Pub. L. 110–246, §15331(a)(2), added par. (3).

2005—Subsec. (g)(1), (2), (5)(A). Pub. L. 109–58, §1347(a), substituted ''60,000,000'' for ''30,000,000''.

Subsec. (g)(6)(A)(ii). Pub. L. 109–58, §1347(b), inserted at end ''Such election shall not take effect unless the organization designates the apportionment as such in a written notice mailed to its patrons during the payment period described in section 1382(d).''

2004—Subsec. (c). Pub. L. 108–357, §301(c)(1), substituted ''section 4041(b)(2), section 6426, or section 6427(e)'' for ''subsection (b)(2), (k), or (m) of section 4041, section 4081(c), or section 4091(c)''.

Subsec. (d)(4). Pub. L. 108–357, §301(c)(2), reenacted heading without change and amended text of par. (4) generally, substituting provisions relating to determination of the number of gallons of alcohol with respect to which a credit is allowable under subsec. (a) for provisions relating to determination of the number of gallons of alcohol with respect to which a credit is allowable under subsec. (a) or the percentage of any mixture which consists of alcohol under section 4041(k) or 4081(c).

Subsec. (e)(1)(A). Pub. L. 108–357, §301(c)(3)(A), substituted ''2010'' for ''2007''.

Subsec. (e)(1)(B). Pub. L. 108–357, §301(c)(3)(B), substituted ''2011'' for ''2008''.

Subsec. (g)(6). Pub. L. 108–357, §313(a), added par. (6).

Subsec. (h)(1). Pub. L. 108–357, §301(c)(4)(A), substituted ''2010'' for ''2007'' in introductory provisions.

Subsec. (h)(2). Pub. L. 108–357, §301(c)(4)(B), substituted ''through 2010'' for '', 2006, or 2007'' in table.

1998—Subsec. (e)(1). Pub. L. 105–178, §9003(a)(3), substituted ''December 31, 2007'' for ''December 31, 2000'' in subpar. (A) and ''January 1, 2008'' for ''January 1, 2001'' in subpar. (B).

Subsec. (h). Pub. L. 105–178, §9003(b)(1), reenacted heading without change and amended text of subsec. (h) generally. Prior to amendment, text read as follows: ''In the case of any alcohol mixture credit or alcohol credit with respect to any alcohol which is ethanol—

''(1) subsections (b)(1)(A) and (b)(2)(A) shall be applied by substituting '54 cents' for '60 cents';

''(2) subsection (b)(3) shall be applied by substituting '40 cents' for '45 cents' and '54 cents' for '60 cents'; and

''(3) subparagraphs (A) and (B) of subsection (d)(3) shall be applied by substituting '54 cents' for '60 cents' and '40 cents' for '45 cents'.''

1996—Subsec. (e)(1)(B). Pub. L. 104–188 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''for any period before January 1, 2001, during which the Highway Trust Fund financing rate under section 4081(a)(2) is not in effect.''

1990—Subsec. (a)(2). Pub. L. 101–508, §11502(a)(1), substituted '', plus'' for period at end.

Subsec. (a)(3). Pub. L. 101–508, §11502(a)(2), added par. (3).

Subsec. (b). Pub. L. 101–508, §11502(e)(2), which directed the insertion of '', and except as provided in subsection (h)'' in introductory provisions without specifying the location of such insertion, was executed after ''section'' to reflect the probable intent of Congress.

Pub. L. 101–508, §11502(b)(3), substituted '', alcohol credit, and small ethanol producer credit'' for ''and alcohol credit'' in heading.

Subsec. (b)(4), (5). Pub. L. 101–508, §11502(b)(1), (2), added par. (4) and redesignated former par. (4) as (5).

Subsec. (d)(3)(C), (D). Pub. L. 101–508, §11502(d)(1), (2), added subpar. (C), redesignated former subpar. (C) as (D), and substituted ''subparagraph (A), (B), or (C)'' for ''subparagraph (A) or (B)''.

Subsec. (e). Pub. L. 101–508, §11502(f), amended subsec. (e) generally, substituting present provisions for provisions prohibiting the applicability of this section to any sale or use after Dec. 31, 1992, and prohibiting carryovers to any taxable year beginning after Dec. 31, 1994.

Subsec. (g). Pub. L. 101–508, §11502(c), added subsec. (g).

Subsec. (h). Pub. L. 101–508, §11502(e)(1), added subsec. (h).

1987—Subsec. (c). Pub. L. 100–203 substituted '', section 4081(c), or section 4091(c)'' for ''or section 4081(c)''.

1984—Pub. L. 98–369, §471(c), renumbered section 44E of this title as this section.

Subsec. (a). Pub. L. 98–369, §474(k)(1), substituted ''For purposes of section 38, the alcohol fuels credit determined under this section for the taxable year is an amount equal to the sum of'' for ''There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of'' in introductory provisions.

Subsec. (b)(1)(A), (2)(A). Pub. L. 98–369, §912(c)(1), substituted ''60 cents'' for ''50 cents''.

Subsec. (b)(3). Pub. L. 98–369, §912(c), substituted ''45 cents'' for ''37.5 cents'' and ''60 cents'' for ''50 cents''.

Subsec. (c). Pub. L. 98–369, §913(b), substituted ''(b)(2), (k), or (m)'' for ''(b)(2) or (k)''.

Pub. L. 98–369, §474(k)(2), substituted ''the credit determined under this section'' for ''the credit allowable under this section''.

Subsec. (d)(1)(A)(i). Pub. L. 98–369, §912(f), substituted ''coal (including peat)'' for ''coal''.

Subsec. (d)(3)(A). Pub. L. 98–369, §912(c), substituted ''60 cents'' for ''50 cents'' and ''45 cents'' for ''37.5 cents''.

Subsec. (d)(3)(A)(i). Pub. L. 98–369, §474(k)(3), substituted ''credit was determined'' for ''credit was allowable''.

Subsec. (d)(3)(B). Pub. L. 98–369, §912(c), substituted ''60 cents'' for ''50 cents'' and ''45 cents'' for ''37.5 cents''.

Subsec. (d)(3)(B)(i). Pub. L. 98–369, § 474(k)(3), substituted ''credit was determined'' for ''credit was allowable''.

Subsec. (e). Pub. L. 98–369, § 474(k)(4), redesignated subsec. (f) as (e). Former subsec. (e), which had placed a limitation based on the amount of tax, was struck out.

Subsec. (e)(2). Pub. L. 98–369, § 474(k)(5), substituted ''section 39 by reason of this section (treating the amount allowed by reason of this section as the first amount allowed by this subpart)'' for ''subsection (e)(2)''.

Subsec. (f). Pub. L. 98–369, § 474(k)(6), added subsec. (f). Former subsec. (f) redesignated (e).

1983—Subsec. (b)(1)(A), (2)(A). Pub. L. 97–424, § 511(d)(3)(A), substituted ''50 cents'' for ''40 cents''.

Subsec. (b)(3). Pub. L. 97–424, § 511(d)(3), substituted ''50 cents'' for ''40 cents'' and ''37.5 cents'' for ''30 cents''.

Subsec. (c). Pub. L. 97–424, § 511(b)(2), substituted ''subsection (b)(2) or (k) of section 4041 or section 4081(c)'' for ''section 4041(k) or 4081(c)'' after ''reason of the application of''.

Subsec. (d)(3)(A), (B). Pub. L. 97–424, § 511(d)(3), substituted ''50 cents'' for ''40 cents'' and ''37.5 cents'' for ''30 cents''.

1982—Subsec. (d)(5). Pub. L. 97–354 substituted ''Pass-thru in the case of estates and trusts'' for ''Pass-through in the case of subchapter S corporations, etc.'' in par. heading, and substituted provisions relating to the applicability of rules similar to rules of subsec. (d) of section 52 for provisions relating to the applicability of rules similar to rules of subsecs. (d) and (e) of section 52.

1981—Subsec. (e)(2)(A). Pub. L. 97–34 substituted ''15'' for ''7'' in two places, and ''14'' for ''6'' in one place.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, § 708(a)(3), Dec. 17, 2010, 124 Stat. 3312, provided that: ''The amendments made by this subsection [amending this section] shall apply to periods after December 31, 2010.''

Pub. L. 111–240, title II, § 2121(b), Sept. 27, 2010, 124 Stat. 2567, provided that: ''The amendments made by this section [amending this section] shall apply to fuels sold or used on or after January 1, 2010.''

Pub. L. 111–152, title I, § 1408(b), Mar. 30, 2010, 124 Stat. 1067, provided that: ''The amendment made by this section [amending this section] shall apply to fuels sold or used on or after January 1, 2010.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title II, § 203(d), Oct. 3, 2008, 122 Stat. 3834, provided that: ''The amendments made by this section [amending this section and sections 40A, 6426, and 6427 of this title] shall apply to claims for credit or payment made on or after May 15, 2008.''

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110–234, title XV, § 15321(g), May 22, 2008, 122 Stat. 1514, and Pub. L. 110–246, § 4(a), title XV, § 15321(g), June 18, 2008, 122 Stat. 1664, 2276, provided that: ''The amendments made by this section [amending this section and sections 40A and 4101 of this title] shall apply to fuel produced after December 31, 2008.''

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

Pub. L. 110–234, title XV, § 15331(c), May 22, 2008, 122 Stat. 1516, and Pub. L. 110–246, § 4(a), title XV, § 15331(c), June 18, 2008, 122 Stat. 1664, 2278, provided that: ''The amendments made by this section [amending this section and section 6426 of this title] shall take effect on the date of the enactment of this Act [June 18, 2008].''

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

Pub. L. 110–234, title XV, § 15332(c), May 22, 2008, 122 Stat. 1516, and Pub. L. 110–246, § 4(a), title XV, § 15332(c), June 18, 2008, 122 Stat. 1664, 2278, provided that: ''The amendments made by this section [amending this section and section 6426 of this title] shall apply to fuel sold or used after December 31, 2008.''

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title XIII, § 1347(c), Aug. 8, 2005, 119 Stat. 1056, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Aug. 8, 2005].''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title III, § 301(d), Oct. 22, 2004, 118 Stat. 1463, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting section 6426 of this title and amending this section and sections 4041, 4081, 4083, 4101, 6427, and 9503 of this title] shall apply to fuel sold or used after December 31, 2004.

''(2) REGISTRATION REQUIREMENT.—The amendment made by subsection (b) [amending section 4101 of this title] shall take effect on April 1, 2005.

''(3) EXTENSION OF ALCOHOL FUELS CREDIT.—The amendments made by paragraphs (3), (4), and (14) of subsection (c) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 22, 2004].

''(4) REPEAL OF GENERAL FUND RETENTION OF CERTAIN ALCOHOL FUELS TAXES.—The amendments made by subsection (c)(12) [amending section 9503 of this title] shall apply to fuel sold or used after September 30, 2004.''

Pub. L. 108–357, title III, § 313(b), Oct. 22, 2004, 118 Stat. 1468, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–178, title IX, § 9003(b)(3), June 9, 1998, 112 Stat. 503, provided that: ''The amendments made by this subsection [amending this section and sections 4041, 4081, and 4091 of this title] shall take effect on January 1, 2001.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§ 13001–13444, to which such amendment relates, see section 1703(*o*) of Pub. L. 104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11502(h) of Pub. L. 101–508 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to alcohol produced, and sold or used, in taxable years beginning after December 31, 1990.

''(2) The amendments made by subsection (g) [amending provisions not classified to the Code] shall apply to articles entered or withdrawn from warehouse on or after January 1, 1991.''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10502(e) of Pub. L. 100–203 provided that: ''The amendments made by this section [enacting sections 4091 to 4093 of this title, amending this section and sections 4041, 4081, 4101, 4221, 6206, 6416, 6421, 6427, 6652, 9502,

9503, and 9508 of this title, and enacting provisions set out as notes under sections 4091 and 9502 of this title] shall apply to sales after March 31, 1988.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(k) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Section 912(g) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and sections 4041, 4081, and 6427 of this title] shall take effect on January 1, 1985.''

Amendment by section 913(b) of Pub. L. 98–369 effective Aug. 1, 1984, see section 913(c) of Pub. L. 98–369, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendments by section 511(b)(2), (d)(3) of Pub. L. 97–424 effective Apr. 1, 1983, see section 511(h) of Pub. L. 97–424, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to unused credit years ending after Sept. 30, 1980, see section 209(c)(2)(C) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

EFFECTIVE DATE

Section 232(h)(1), (4) of Pub. L. 96–223, as amended by Pub. L. 97–448, title II, § 202(e), Jan. 12, 1983, 96 Stat. 2396, provided that:

''(1) The amendments made by subsections (b) and (c) [enacting sections 44E [now 40] and 86 of this title and amending sections 55, 381, 383, 4081, and 6096 of this title] shall apply to sales or uses after September 30, 1980, in taxable years ending after such date.

''(4) Notwithstanding paragraph (1), the provisions of section 44E(d)(4)(B) [now 40(d)(4)(B)] of such Code, as added by this section, shall take effect on April 2, 1980.''

§ 40A. Biodiesel and renewable diesel used as fuel

(a) General rule

For purposes of section 38, the biodiesel fuels credit determined under this section for the taxable year is an amount equal to the sum of—

(1) the biodiesel mixture credit, plus

(2) the biodiesel credit, plus

(3) in the case of an eligible small agri-biodiesel producer, the small agri-biodiesel producer credit.

(b) Definition of biodiesel mixture credit, biodiesel credit, and small agri-biodiesel producer credit

For purposes of this section—

(1) Biodiesel mixture credit

(A) In general

The biodiesel mixture credit of any taxpayer for any taxable year is $1.00 for each gallon of biodiesel used by the taxpayer in the production of a qualified biodiesel mixture.

(B) Qualified biodiesel mixture

The term ''qualified biodiesel mixture'' means a mixture of biodiesel and diesel fuel (as defined in section 4083(a)(3)), determined without regard to any use of kerosene, which—

(i) is sold by the taxpayer producing such mixture to any person for use as a fuel, or

(ii) is used as a fuel by the taxpayer producing such mixture.

(C) Sale or use must be in trade or business, etc.

Biodiesel used in the production of a qualified biodiesel mixture shall be taken into account—

(i) only if the sale or use described in subparagraph (B) is in a trade or business of the taxpayer, and

(ii) for the taxable year in which such sale or use occurs.

(D) Casual off-farm production not eligible

No credit shall be allowed under this section with respect to any casual off-farm production of a qualified biodiesel mixture.

(2) Biodiesel credit

(A) In general

The biodiesel credit of any taxpayer for any taxable year is $1.00 for each gallon of biodiesel which is not in a mixture with diesel fuel and which during the taxable year—

(i) is used by the taxpayer as a fuel in a trade or business, or

(ii) is sold by the taxpayer at retail to a person and placed in the fuel tank of such person's vehicle.

(B) User credit not to apply to biodiesel sold at retail

No credit shall be allowed under subparagraph (A)(i) with respect to any biodiesel which was sold in a retail sale described in subparagraph (A)(ii).

(3) Certification for biodiesel

No credit shall be allowed under paragraph (1) or (2) of subsection (a) unless the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer or importer of the biodiesel which identifies the product produced and the percentage of biodiesel and agri-biodiesel in the product.

(4) Small agri-biodiesel producer credit

(A) In general

The small agri-biodiesel producer credit of any eligible small agri-biodiesel producer for any taxable year is 10 cents for each gallon of qualified agri-biodiesel production of such producer.

(B) Qualified agri-biodiesel production

For purposes of this paragraph, the term ''qualified agri-biodiesel production'' means any agri-biodiesel which is produced by an eligible small agri-biodiesel producer, and which during the taxable year—

(i) is sold by such producer to another person—

(I) for use by such other person in the production of a qualified biodiesel mixture in such other person's trade or business (other than casual off-farm production),

(II) for use by such other person as a fuel in a trade or business, or

(III) who sells such agri-biodiesel at retail to another person and places such agri-biodiesel in the fuel tank of such other person, or

(ii) is used or sold by such producer for any purpose described in clause (i).

(C) Limitation

The qualified agri-biodiesel production of any producer for any taxable year shall not exceed 15,000,000 gallons.

(c) Coordination with credit against excise tax

The amount of the credit determined under this section with respect to any biodiesel shall be properly reduced to take into account any benefit provided with respect to such biodiesel solely by reason of the application of section 6426 or 6427(e).

(d) Definitions and special rules

For purposes of this section—

(1) Biodiesel

The term ''biodiesel'' means the monoalkyl esters of long chain fatty acids derived from plant or animal matter which meet—

(A) the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545), and

(B) the requirements of the American Society of Testing and Materials D6751.

Such term shall not include any liquid with respect to which a credit may be determined under section 40.

(2) Agri-biodiesel

The term ''agri-biodiesel'' means biodiesel derived solely from virgin oils, including esters derived from virgin vegetable oils from corn, soybeans, sunflower seeds, cottonseeds, canola, crambe, rapeseeds, safflowers, flaxseeds, rice bran, mustard seeds, and camelina, and from animal fats.

(3) Mixture or biodiesel not used as a fuel, etc.

(A) Mixtures

If—

(i) any credit was determined under this section with respect to biodiesel used in the production of any qualified biodiesel mixture, and

(ii) any person—

(I) separates the biodiesel from the mixture, or

(II) without separation, uses the mixture other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the rate applicable under subsection (b)(1)(A) and the number of gallons of such biodiesel in such mixture.

(B) Biodiesel

If—

(i) any credit was determined under this section with respect to the retail sale of any biodiesel, and

(ii) any person mixes such biodiesel or uses such biodiesel other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the rate applicable under subsection (b)(2)(A) and the number of gallons of such biodiesel.

(C) Producer credit

If—

(i) any credit was determined under subsection (a)(3), and

(ii) any person does not use such fuel for a purpose described in subsection (b)(4)(B),

then there is hereby imposed on such person a tax equal to 10 cents a gallon for each gallon of such agri-biodiesel.

(D) Applicable laws

All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under subparagraph (A) or (B) as if such tax were imposed by section 4081 and not by this chapter.

(4) Pass-thru in the case of estates and trusts

Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

(5) Limitation to biodiesel with connection to the United States

No credit shall be determined under this section with respect to any biodiesel which is produced outside the United States for use as a fuel outside the United States. For purposes of this paragraph, the term ''United States'' includes any possession of the United States.

(e) Definitions and special rules for small agri-biodiesel producer credit

For purposes of this section—

(1) Eligible small agri-biodiesel producer

The term ''eligible small agri-biodiesel producer'' means a person who, at all times during the taxable year, has a productive capacity for agri-biodiesel not in excess of 60,000,000 gallons.

(2) Aggregation rule

For purposes of the 15,000,000 gallon limitation under subsection (b)(4)(C) and the 60,000,000 gallon limitation under paragraph (1), all members of the same controlled group of corporations (within the meaning of section 267(f)) and all persons under common control (within the meaning of section 52(b) but determined by treating an interest of more than 50 percent as a controlling interest) shall be treated as 1 person.

(3) Partnership, S corporation, and other pass-thru entities

In the case of a partnership, trust, S corporation, or other pass-thru entity, the limitations contained in subsection (b)(4)(C) and paragraph (1) shall be applied at the entity level and at the partner or similar level.

(4) Allocation

For purposes of this subsection, in the case of a facility in which more than 1 person has an interest, productive capacity shall be allocated among such persons in such manner as the Secretary may prescribe.

(5) Regulations

The Secretary may prescribe such regulations as may be necessary—

(A) to prevent the credit provided for in subsection (a)(3) from directly or indirectly benefiting any person with a direct or indirect productive capacity of more than 60,000,000 gallons of agri-biodiesel during the taxable year, or

(B) to prevent any person from directly or indirectly benefiting with respect to more than 15,000,000 gallons during the taxable year.

(6) Allocation of small agri-biodiesel credit to patrons of cooperative

(A) Election to allocate

(i) In general

In the case of a cooperative organization described in section 1381(a), any portion of the credit determined under subsection (a)(3) for the taxable year may, at the election of the organization, be apportioned pro rata among patrons of the organization on the basis of the quantity or value of business done with or for such patrons for the taxable year.

(ii) Form and effect of election

An election under clause (i) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year. Such election shall not take effect unless the organization designates the apportionment as such in a written notice mailed to its patrons during the payment period described in section 1382(d).

(B) Treatment of organizations and patrons

(i) Organizations

The amount of the credit not apportioned to patrons pursuant to subparagraph (A) shall be included in the amount determined under subsection (a)(3) for the taxable year of the organization.

(ii) Patrons

The amount of the credit apportioned to patrons pursuant to subparagraph (A) shall be included in the amount determined under such subsection for the first taxable year of each patron ending on or after the last day of the payment period (as defined in section 1382(d)) for the taxable year of the organization or, if earlier, for the taxable year of each patron ending on or after the date on which the patron receives notice from the cooperative of the apportionment.

(iii) Special rules for decrease in credits for taxable year

If the amount of the credit of the organization determined under such subsection for a taxable year is less than the amount of such credit shown on the return of the organization for such year, an amount equal to the excess of—

(I) such reduction, over

(II) the amount not apportioned to such patrons under subparagraph (A) for the taxable year,

shall be treated as an increase in tax imposed by this chapter on the organization. Such increase shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.

(f) Renewable diesel

For purposes of this title—

(1) Treatment in the same manner as biodiesel

Except as provided in paragraph (2), renewable diesel shall be treated in the same manner as biodiesel.

(2) Exception

Subsection (b)(4) shall not apply with respect to renewable diesel.

(3) Renewable diesel defined

The term ''renewable diesel'' means liquid fuel derived from biomass which meets—

(A) the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545), and

(B) the requirements of the American Society of Testing and Materials D975 or D396, or other equivalent standard approved by the Secretary.

Such term shall not include any liquid with respect to which a credit may be determined under section 40. Such term does not include any fuel derived from coprocessing biomass with a feedstock which is not biomass. For purposes of this paragraph, the term ''biomass'' has the meaning given such term by section 45K(c)(3).

(4) Certain aviation fuel

(A) In general

Except as provided in the last 3 sentences of paragraph (3), the term ''renewable diesel'' shall include fuel derived from biomass which meets the requirements of a Department of Defense specification for military jet fuel or an American Society of Testing and Materials specification for aviation turbine fuel.

(B) Application of mixture credits

In the case of fuel which is treated as renewable diesel solely by reason of subparagraph (A), subsection (b)(1) and section 6426(c) shall be applied with respect to such fuel by treating kerosene as though it were diesel fuel.

(g) Termination

This section shall not apply to any sale or use after December 31, 2011.

(Added Pub. L. 108–357, title III, § 302(a), Oct. 22, 2004, 118 Stat. 1463; amended Pub. L. 109–58, title XIII, §§ 1344(a), 1345(a)–(d), 1346(a), (b)(1), Aug. 8, 2005, 119 Stat. 1052–1055; Pub. L. 109–135, title IV, § 412(h), Dec. 21, 2005, 119 Stat. 2637; Pub. L. 110–234, title XV, § 15321(f), May 22, 2008, 122 Stat. 1514; Pub. L. 110–246, § 4(a), title XV, § 15321(f), June 18, 2008, 122 Stat. 1664, 2276; Pub. L. 110–343, div. B, title II, §§ 202(a), (b)(1), (b)(3)–(f), 203(b), Oct. 3, 2008, 122 Stat. 3832, 3833; Pub. L. 111–312, title VII, § 701(a), Dec. 17, 2010, 124 Stat. 3310.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2010—Subsec. (g). Pub. L. 111–312 substituted ''December 31, 2011'' for ''December 31, 2009''.

2008—Subsec. (b)(1)(A), (2)(A). Pub. L. 110–343, § 202(b)(1), substituted ''$1.00'' for ''50 cents''.

Subsec. (b)(3) to (5). Pub. L. 110–343, § 202(b)(3)(A), redesignated pars. (4) and (5) as (3) and (4), respectively, and struck out heading and text of former par. (3). Text read as follows: ''In the case of any biodiesel which is agri-biodiesel, paragraphs (1)(A) and (2)(A) shall be applied by substituting '$1.00' for '50 cents'.''

Subsec. (d)(1). Pub. L. 110–246, § 15321(f)(1), inserted concluding provisions.

Subsec. (d)(2). Pub. L. 110–343, § 202(f), substituted ''mustard seeds, and camelina'' for ''and mustard seeds''.

Subsec. (d)(3)(C)(ii). Pub. L. 110–343, § 202(b)(3)(D), substituted ''subsection (b)(4)(B)'' for ''subsection (b)(5)(B)''.

Subsec. (d)(5). Pub. L. 110–343, § 203(b), added par. (5).

Subsec. (e)(2), (3). Pub. L. 110–343, § 202(b)(3)(C), substituted ''subsection (b)(4)(C)'' for ''subsection (b)(5)(C)''.

Subsec. (f)(2). Pub. L. 110–343, § 202(b)(3)(B), amended heading and text of par. (2) generally. Prior to amendment, text read as follows:

''(A) RATE OF CREDIT.—Subsections (b)(1)(A) and (b)(2)(A) shall be applied with respect to renewable diesel by substituting '$1.00' for '50 cents'.

''(B) NONAPPLICATION OF CERTAIN CREDITS.—Subsections (b)(3) and (b)(5) shall not apply with respect to renewable diesel.''

Subsec. (f)(3). Pub. L. 110–343, § 202(d), in introductory provisions, struck out ''(as defined in section 45K(c)(3))'' after ''derived from biomass'' and, in concluding provisions, inserted at end ''Such term does not include any fuel derived from coprocessing biomass with a feedstock which is not biomass. For purposes of this paragraph, the term 'biomass' has the meaning given such term by section 45K(c)(3).''

Pub. L. 110–343, § 202(c)(1), (2), in introductory provisions, substituted ''liquid fuel'' for ''diesel fuel'' and struck out ''using a thermal depolymerization process'' before ''which meets—''.

Pub. L. 110–246, § 15321(f)(2), inserted concluding provisions.

Subsec. (f)(3)(B). Pub. L. 110–343, § 202(c)(3), inserted '', or other equivalent standard approved by the Secretary'' before period at end.

Subsec. (f)(4). Pub. L. 110–343, § 202(e), added par. (4).

Subsec. (g). Pub. L. 110–343, § 202(a), substituted ''December 31, 2009'' for ''December 31, 2008''.

2005—Pub. L. 109–58, § 1346(b)(1), inserted ''and renewable diesel'' after ''Biodiesel'' in section catchline.

Subsec. (a). Pub. L. 109–58, § 1345(a), reenacted heading without change and amended text of subsec. (a) generally. Prior to amendment, text read as follows: ''For purposes of section 38, the biodiesel fuels credit determined under this section for the taxable year is an amount equal to the sum of—

''(1) the biodiesel mixture credit, plus

''(2) the biodiesel credit.''

Subsec. (b). Pub. L. 109–58, § 1345(d)(2), substituted '', biodiesel credit, and small agri-biodiesel producer credit'' for ''and biodiesel credit'' in heading.

Subsec. (b)(4). Pub. L. 109–58, § 1345(d)(1), substituted ''paragraph (1) or (2) of subsection (a)'' for ''this section''.

Subsec. (b)(5). Pub. L. 109–58, § 1345(b), added par. (5).

Subsec. (b)(5)(B). Pub. L. 109–135 struck out ''(determined without regard to the last sentence of subsection (d)(2))'' after ''any agri-biodiesel'' in introductory provisions.

Subsec. (d)(3)(C),(D). Pub. L. 109–58, § 1345(d)(3), added subpar. (C) and redesignated former subpar. (C) as (D). The words following ''subsection (b)(5)(B),'' in subpar. (C) are shown as a flush provision notwithstanding directory language showing them as part of cl. (ii), to reflect the probable intent of Congress.

Subsec. (e). Pub. L. 109–58, § 1345(c), added subsec. (e). The words following ''subparagraph (A) for the taxable year,'' in subsec. (e)(6)(B)(iii) are shown as a flush provision notwithstanding directory language showing them as part of subcl. (II), to reflect the probable intent of Congress. Former subsec. (e) redesignated (f).

Pub. L. 109–58, § 1344(a), substituted ''2008'' for ''2006''.

Subsec. (f). Pub. L. 109–58, § 1346(a), added subsec. (f). Former subsec. (f) redesignated (g).

Pub. L. 109–58, § 1345(c), redesignated subsec. (e) as (f).

Subsec. (g). Pub. L. 109–58, § 1346(a), redesignated subsec. (f) as (g).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, § 701(d), Dec. 17, 2010, 124 Stat. 3310, provided that: ''The amendments made by this section [amending this section and sections 6426 and 6427 of this title] shall apply to fuel sold or used after December 31, 2009.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title II, § 202(g), Oct. 3, 2008, 122 Stat. 3833, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 6426 and 6427 of this title] shall apply to fuel produced, and sold or used, after December 31, 2008.

''(2) COPRODUCTION OF RENEWABLE DIESEL WITH PETROLEUM FEEDSTOCK.—The amendment made by subsection (d) [amending this section] shall apply to fuel produced, and sold or used, after the date of the enactment of this Act [Oct. 3, 2008].''

Amendment by section 203(b) of Pub. L. 110–343 applicable to claims for credit or payment made on or after May 15, 2008, see section 203(d) of Pub. L. 110–343, set out as a note under section 40 of this title.

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 15321(f) of Pub. L. 110–246 applicable to fuel produced after Dec. 31, 2008, see section 15321(g) of Pub. L. 110–246, set out as a note under section 40 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title XIII, § 1344(b), Aug. 8, 2005, 119 Stat. 1052, provided that: ''The amendments made by this section [amending this section and sections 6426 and 6427 of this title] shall take effect on the date of the enactment of this Act [Aug. 8, 2005].''

Pub. L. 109–58, title XIII, § 1345(e), Aug. 8, 2005, 119 Stat. 1055, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Aug. 8, 2005].''

Pub. L. 109–58, title XIII, § 1346(c), Aug. 8, 2005, 119 Stat. 1056, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to fuel sold or used after December 31, 2005.''

EFFECTIVE DATE

Section applicable to fuel produced, and sold or used, after Dec. 31, 2004, in taxable years ending after such date, see section 302(d) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendment note under section 38 of this title.

§ 41. Credit for increasing research activities

(a) General rule

For purposes of section 38, the research credit determined under this section for the taxable year shall be an amount equal to the sum of—

(1) 20 percent of the excess (if any) of—

(A) the qualified research expenses for the taxable year, over

(B) the base amount,

(2) 20 percent of the basic research payments determined under subsection (e)(1)(A), and

(3) 20 percent of the amounts paid or incurred by the taxpayer in carrying on any trade or business of the taxpayer during the taxable year (including as contributions) to an energy research consortium for energy research.

(b) Qualified research expenses

For purposes of this section—

(1) Qualified research expenses

The term ''qualified research expenses'' means the sum of the following amounts which are paid or incurred by the taxpayer during the taxable year in carrying on any trade or business of the taxpayer—

(A) in-house research expenses, and

(B) contract research expenses.

(2) In-house research expenses

(A) In general

The term ''in-house research expenses'' means—

(i) any wages paid or incurred to an employee for qualified services performed by such employee,

(ii) any amount paid or incurred for supplies used in the conduct of qualified research, and

(iii) under regulations prescribed by the Secretary, any amount paid or incurred to another person for the right to use computers in the conduct of qualified research.

Clause (iii) shall not apply to any amount to the extent that the taxpayer (or any person with whom the taxpayer must aggregate expenditures under subsection (f)(1)) receives or accrues any amount from any other person for the right to use substantially identical personal property.

(B) Qualified services

The term ''qualified services'' means services consisting of—

(i) engaging in qualified research, or

(ii) engaging in the direct supervision or direct support of research activities which constitute qualified research.

If substantially all of the services performed by an individual for the taxpayer during the taxable year consists of services meeting the requirements of clause (i) or (ii), the term ''qualified services'' means all of the services performed by such individual for the taxpayer during the taxable year.

(C) Supplies

The term ''supplies'' means any tangible property other than—

(i) land or improvements to land, and

(ii) property of a character subject to the allowance for depreciation.

(D) Wages

(i) In general

The term ''wages'' has the meaning given such term by section 3401(a).

(ii) Self-employed individuals and owner-employees

In the case of an employee (within the meaning of section 401(c)(1)), the term ''wages'' includes the earned income (as defined in section 401(c)(2)) of such employee.

(iii) Exclusion for wages to which work opportunity credit applies

The term ''wages'' shall not include any amount taken into account in determining the work opportunity credit under section 51(a).

(3) Contract research expenses

(A) In general

The term ''contract research expenses'' means 65 percent of any amount paid or incurred by the taxpayer to any person (other than an employee of the taxpayer) for qualified research.

(B) Prepaid amounts

If any contract research expenses paid or incurred during any taxable year are attributable to qualified research to be conducted after the close of such taxable year, such amount shall be treated as paid or incurred during the period during which the qualified research is conducted.

(C) Amounts paid to certain research consortia

(i) In general

Subparagraph (A) shall be applied by substituting ''75 percent'' for ''65 percent'' with respect to amounts paid or incurred by the taxpayer to a qualified research consortium for qualified research on behalf of the taxpayer and 1 or more unrelated taxpayers. For purposes of the preceding sentence, all persons treated as a single employer under subsection (a) or (b) of section 52 shall be treated as related taxpayers.

(ii) Qualified research consortium

The term ''qualified research consortium'' means any organization which—

(I) is described in section 501(c)(3) or 501(c)(6) and is exempt from tax under section 501(a),

(II) is organized and operated primarily to conduct scientific research, and

(III) is not a private foundation.

(D) Amounts paid to eligible small businesses, universities, and Federal laboratories

(i) In general

In the case of amounts paid by the taxpayer to—

(I) an eligible small business,

(II) an institution of higher education (as defined in section 3304(f)), or

(III) an organization which is a Federal laboratory,

for qualified research which is energy research, subparagraph (A) shall be applied by substituting ''100 percent'' for ''65 percent''.

(ii) Eligible small business

For purposes of this subparagraph, the term ''eligible small business'' means a small business with respect to which the taxpayer does not own (within the meaning of section 318) 50 percent or more of—

(I) in the case of a corporation, the outstanding stock of the corporation (either by vote or value), and

(II) in the case of a small business which is not a corporation, the capital and profits interests of the small business.

(iii) Small business

For purposes of this subparagraph—

(I) In general

The term ''small business'' means, with respect to any calendar year, any person if the annual average number of employees employed by such person during either of the 2 preceding calendar years was 500 or fewer. For purposes of the preceding sentence, a preceding calendar year may be taken into account only if the person was in existence throughout the year.

(II) Startups, controlled groups, and predecessors

Rules similar to the rules of subparagraphs (B) and (D) of section 220(c)(4) shall apply for purposes of this clause.

(iv) Federal laboratory

For purposes of this subparagraph, the term ''Federal laboratory'' has the meaning given such term by section 4(6) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703(6)), as in effect on the date of the enactment of the Energy Tax Incentives Act of 2005.

(4) Trade or business requirement disregarded for in-house research expenses of certain startup ventures

In the case of in-house research expenses, a taxpayer shall be treated as meeting the trade or business requirement of paragraph (1) if, at the time such in-house research expenses are paid or incurred, the principal purpose of the taxpayer in making such expenditures is to use the results of the research in the active conduct of a future trade or business—

(A) of the taxpayer, or

(B) of 1 or more other persons who with the taxpayer are treated as a single taxpayer under subsection (f)(1).

(c) Base amount

(1) In general

The term ''base amount'' means the product of—

(A) the fixed-base percentage, and

(B) the average annual gross receipts of the taxpayer for the 4 taxable years preceding the taxable year for which the credit is being determined (hereinafter in this subsection referred to as the ''credit year'').

(2) Minimum base amount

In no event shall the base amount be less than 50 percent of the qualified research expenses for the credit year.

(3) Fixed-base percentage

(A) In general

Except as otherwise provided in this paragraph, the fixed-base percentage is the percentage which the aggregate qualified research expenses of the taxpayer for taxable years beginning after December 31, 1983, and before January 1, 1989, is of the aggregate gross receipts of the taxpayer for such taxable years.

(B) Start-up companies

(i) Taxpayers to which subparagraph applies

The fixed-base percentage shall be determined under this subparagraph if—

(I) the first taxable year in which a taxpayer had both gross receipts and qualified research expenses begins after December 31, 1983, or

(II) there are fewer than 3 taxable years beginning after December 31, 1983, and before January 1, 1989, in which the taxpayer had both gross receipts and qualified research expenses.

(ii) Fixed-base percentage

In a case to which this subparagraph applies, the fixed-base percentage is—

(I) 3 percent for each of the taxpayer's 1st 5 taxable years beginning after December 31, 1993, for which the taxpayer has qualified research expenses,

(II) in the case of the taxpayer's 6th such taxable year, ⅙ of the percentage which the aggregate qualified research expenses of the taxpayer for the 4th and 5th such taxable years is of the aggregate gross receipts of the taxpayer for such years,

(III) in the case of the taxpayer's 7th such taxable year, ⅓ of the percentage which the aggregate qualified research expenses of the taxpayer for the 5th and 6th such taxable years is of the aggregate gross receipts of the taxpayer for such years,

(IV) in the case of the taxpayer's 8th such taxable year, ½ of the percentage which the aggregate qualified research expenses of the taxpayer for the 5th, 6th, and 7th such taxable years is of the aggregate gross receipts of the taxpayer for such years,

(V) in the case of the taxpayer's 9th such taxable year, ⅔ of the percentage which the aggregate qualified research expenses of the taxpayer for the 5th, 6th, 7th, and 8th such taxable years is of the aggregate gross receipts of the taxpayer for such years,

(VI) in the case of the taxpayer's 10th such taxable year, 5% of the percentage which the aggregate qualified research expenses of the taxpayer for the 5th, 6th, 7th, 8th, and 9th such taxable years is of the aggregate gross receipts of the taxpayer for such years, and

(VII) for taxable years thereafter, the percentage which the aggregate qualified research expenses for any 5 taxable years selected by the taxpayer from among the 5th through the 10th such taxable years is of the aggregate gross receipts of the taxpayer for such selected years.

(iii) Treatment of de minimis amounts of gross receipts and qualified research expenses

The Secretary may prescribe regulations providing that de minimis amounts of gross receipts and qualified research expenses shall be disregarded under clauses (i) and (ii).

(C) Maximum fixed-base percentage

In no event shall the fixed-base percentage exceed 16 percent.

(D) Rounding

The percentages determined under subparagraphs (A) and (B)(ii) shall be rounded to the nearest 1/100th of 1 percent.

(4) Election of alternative incremental credit

(A) In general

At the election of the taxpayer, the credit determined under subsection (a)(1) shall be equal to the sum of—

(i) 3 percent of so much of the qualified research expenses for the taxable year as exceeds 1 percent of the average described in subsection (c)(1)(B) but does not exceed 1.5 percent of such average,

(ii) 4 percent of so much of such expenses as exceeds 1.5 percent of such average but does not exceed 2 percent of such average, and

(iii) 5 percent of so much of such expenses as exceeds 2 percent of such average.

(B) Election

An election under this paragraph shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary.

(5) Election of alternative simplified credit

(A) In general

At the election of the taxpayer, the credit determined under subsection (a)(1) shall be equal to 14 percent (12 percent in the case of taxable years ending before January 1, 2009) of so much of the qualified research expenses for the taxable year as exceeds 50 percent of the average qualified research expenses for the 3 taxable years preceding the taxable year for which the credit is being determined.

(B) Special rule in case of no qualified research expenses in any of 3 preceding taxable years

(i) Taxpayers to which subparagraph applies

The credit under this paragraph shall be determined under this subparagraph if the taxpayer has no qualified research expenses in any one of the 3 taxable years preceding the taxable year for which the credit is being determined.

(ii) Credit rate

The credit determined under this subparagraph shall be equal to 6 percent of the qualified research expenses for the taxable year.

(C) Election

An election under this paragraph shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary. An election under this paragraph may not be made for any taxable year to which an election under paragraph (4) applies.

(6) Consistent treatment of expenses required

(A) In general

Notwithstanding whether the period for filing a claim for credit or refund has expired for any taxable year taken into account in determining the fixed-base percentage, the qualified research expenses taken into account in computing such percentage shall be determined on a basis consistent with the determination of qualified research expenses for the credit year.

(B) Prevention of distortions

The Secretary may prescribe regulations to prevent distortions in calculating a taxpayer's qualified research expenses or gross receipts caused by a change in accounting methods used by such taxpayer between the current year and a year taken into account in computing such taxpayer's fixed-base percentage.

(7) Gross receipts

For purposes of this subsection, gross receipts for any taxable year shall be reduced by returns and allowances made during the taxable year. In the case of a foreign corporation, there shall be taken into account only gross receipts which are effectively connected with the conduct of a trade or business within the United States, the Commonwealth of Puerto Rico, or any possession of the United States.

(d) Qualified research defined

For purposes of this section—

(1) In general

The term ''qualified research'' means research—

(A) with respect to which expenditures may be treated as expenses under section 174,

(B) which is undertaken for the purpose of discovering information—

(i) which is technological in nature, and

(ii) the application of which is intended to be useful in the development of a new or improved business component of the taxpayer, and

(C) substantially all of the activities of which constitute elements of a process of experimentation for a purpose described in paragraph (3).

Such term does not include any activity described in paragraph (4).

(2) Tests to be applied separately to each business component

For purposes of this subsection—

(A) In general

Paragraph (1) shall be applied separately with respect to each business component of the taxpayer.

(B) Business component defined

The term ''business component'' means any product, process, computer software, technique, formula, or invention which is to be—

(i) held for sale, lease, or license, or

(ii) used by the taxpayer in a trade or business of the taxpayer.

(C) Special rule for production processes

Any plant process, machinery, or technique for commercial production of a business component shall be treated as a separate business component (and not as part of the business component being produced).

(3) Purposes for which research may qualify for credit

For purposes of paragraph (1)(C)—

(A) In general

Research shall be treated as conducted for a purpose described in this paragraph if it relates to—

(i) a new or improved function,

(ii) performance, or

(iii) reliability or quality.

(B) Certain purposes not qualified

Research shall in no event be treated as conducted for a purpose described in this paragraph if it relates to style, taste, cosmetic, or seasonal design factors.

(4) Activities for which credit not allowed

The term ''qualified research'' shall not include any of the following:

(A) Research after commercial production

Any research conducted after the beginning of commercial production of the business component.

(B) Adaptation of existing business components

Any research related to the adaptation of an existing business component to a particular customer's requirement or need.

(C) Duplication of existing business component

Any research related to the reproduction of an existing business component (in whole or in part) from a physical examination of the business component itself or from plans, blueprints, detailed specifications, or publicly available information with respect to such business component.

(D) Surveys, studies, etc.

Any—

(i) efficiency survey,

(ii) activity relating to management function or technique,

(iii) market research, testing, or development (including advertising or promotions),

(iv) routine data collection, or

(v) routine or ordinary testing or inspection for quality control.

(E) Computer software

Except to the extent provided in regulations, any research with respect to computer software which is developed by (or for the benefit of) the taxpayer primarily for internal use by the taxpayer, other than for use in—

(i) an activity which constitutes qualified research (determined with regard to this subparagraph), or

(ii) a production process with respect to which the requirements of paragraph (1) are met.

(F) Foreign research

Any research conducted outside the United States, the Commonwealth of Puerto Rico, or any possession of the United States.

(G) Social sciences, etc.

Any research in the social sciences, arts, or humanities.

(H) Funded research

Any research to the extent funded by any grant, contract, or otherwise by another person (or governmental entity).

(e) Credit allowable with respect to certain payments to qualified organizations for basic research

For purposes of this section—

(1) In general

In the case of any taxpayer who makes basic research payments for any taxable year—

(A) the amount of basic research payments taken into account under subsection (a)(2) shall be equal to the excess of—

(i) such basic research payments, over

(ii) the qualified organization base period amount, and

(B) that portion of such basic research payments which does not exceed the qualified organization base period amount shall be treated as contract research expenses for purposes of subsection (a)(1).

(2) Basic research payments defined

For purposes of this subsection—

(A) In general

The term ''basic research payment'' means, with respect to any taxable year, any amount paid in cash during such taxable year by a corporation to any qualified organization for basic research but only if—

(i) such payment is pursuant to a written agreement between such corporation and such qualified organization, and

(ii) such basic research is to be performed by such qualified organization.

(B) Exception to requirement that research be performed by the organization

In the case of a qualified organization described in subparagraph (C) or (D) of paragraph (6), clause (ii) of subparagraph (A) shall not apply.

(3) Qualified organization base period amount

For purposes of this subsection, the term ''qualified organization base period amount'' means an amount equal to the sum of—

(A) the minimum basic research amount, plus

(B) the maintenance-of-effort amount.

(4) Minimum basic research amount

For purposes of this subsection—

(A) In general

The term ''minimum basic research amount'' means an amount equal to the greater of—

(i) 1 percent of the average of the sum of amounts paid or incurred during the base period for—

(I) any in-house research expenses, and

(II) any contract research expenses, or

(ii) the amounts treated as contract research expenses during the base period by reason of this subsection (as in effect during the base period).

(B) Floor amount

Except in the case of a taxpayer which was in existence during a taxable year (other than a short taxable year) in the base period, the minimum basic research amount for any base period shall not be less than 50 percent of the basic research payments for the taxable year for which a determination is being made under this subsection.

(5) Maintenance-of-effort amount

For purposes of this subsection—

(A) In general

The term ''maintenance-of-effort amount'' means, with respect to any taxable year, an amount equal to the excess (if any) of—

(i) an amount equal to—

(I) the average of the nondesignated university contributions paid by the taxpayer during the base period, multiplied by

(II) the cost-of-living adjustment for the calendar year in which such taxable year begins, over

(ii) the amount of nondesignated university contributions paid by the taxpayer during such taxable year.

(B) Nondesignated university contributions

For purposes of this paragraph, the term ''nondesignated university contribution'' means any amount paid by a taxpayer to any qualified organization described in paragraph (6)(A)—

(i) for which a deduction was allowable under section 170, and

(ii) which was not taken into account—

(I) in computing the amount of the credit under this section (as in effect during the base period) during any taxable year in the base period, or

(II) as a basic research payment for purposes of this section.

(C) Cost-of-living adjustment defined

(i) In general

The cost-of-living adjustment for any calendar year is the cost-of-living adjustment for such calendar year determined under section 1(f)(3), by substituting ''calendar year 1987'' for ''calendar year 1992'' in subparagraph (B) thereof.

(ii) Special rule where base period ends in a calendar year other than 1983 or 1984

If the base period of any taxpayer does not end in 1983 or 1984, section 1(f)(3)(B) shall, for purposes of this paragraph, be applied by substituting the calendar year in which such base period ends for 1992. Such substitution shall be in lieu of the substitution under clause (i).

(6) Qualified organization

For purposes of this subsection, the term ''qualified organization'' means any of the following organizations:

(A) Educational institutions

Any educational organization which—

(i) is an institution of higher education (within the meaning of section 3304(f)), and

(ii) is described in section 170(b)(1)(A)(ii).

(B) Certain scientific research organizations

Any organization not described in subparagraph (A) which—

(i) is described in section 501(c)(3) and is exempt from tax under section 501(a),

(ii) is organized and operated primarily to conduct scientific research, and

(iii) is not a private foundation.

(C) Scientific tax-exempt organizations

Any organization which—

(i) is described in—

(I) section 501(c)(3) (other than a private foundation), or

(II) section 501(c)(6),

(ii) is exempt from tax under section 501(a),

(iii) is organized and operated primarily to promote scientific research by qualified organizations described in subparagraph (A) pursuant to written research agreements, and

(iv) currently expends—

(I) substantially all of its funds, or

(II) substantially all of the basic research payments received by it,

for grants to, or contracts for basic research with, an organization described in subparagraph (A).

(D) Certain grant organizations

Any organization not described in subparagraph (B) or (C) which—

(i) is described in section 501(c)(3) and is exempt from tax under section 501(a) (other than a private foundation),

(ii) is established and maintained by an organization established before July 10, 1981, which meets the requirements of clause (i),

(iii) is organized and operated exclusively for the purpose of making grants to organizations described in subparagraph (A) pursuant to written research agreements for purposes of basic research, and

(iv) makes an election, revocable only with the consent of the Secretary, to be treated as a private foundation for purposes of this title (other than section 4940, relating to excise tax based on investment income).

(7) Definitions and special rules

For purposes of this subsection—

(A) Basic research

The term ''basic research'' means any original investigation for the advancement of scientific knowledge not having a specific commercial objective, except that such term shall not include—

(i) basic research conducted outside of the United States, and

(ii) basic research in the social sciences, arts, or humanities.

(B) Base period

The term ''base period'' means the 3-taxable-year period ending with the taxable year immediately preceding the 1st taxable year of the taxpayer beginning after December 31, 1983.

(C) Exclusion from incremental credit calculation

For purposes of determining the amount of credit allowable under subsection (a)(1) for any taxable year, the amount of the basic research payments taken into account under subsection (a)(2)—

(i) shall not be treated as qualified research expenses under subsection (a)(1)(A), and

(ii) shall not be included in the computation of base amount under subsection (a)(1)(B).

(D) Trade or business qualification

For purposes of applying subsection (b)(1) to this subsection, any basic research payments shall be treated as an amount paid in carrying on a trade or business of the taxpayer in the taxable year in which it is paid (without regard to the provisions of subsection (b)(3)(B)).

(E) Certain corporations not eligible

The term ''corporation'' shall not include—

(i) an S corporation,

(ii) a personal holding company (as defined in section 542), or

(iii) a service organization (as defined in section 414(m)(3)).

(f) Special rules

For purposes of this section—

(1) Aggregation of expenditures

(A) Controlled group of corporations

In determining the amount of the credit under this section—

(i) all members of the same controlled group of corporations shall be treated as a single taxpayer, and

(ii) the credit (if any) allowable by this section to each such member shall be its proportionate shares of the qualified research expenses, basic research payments, and amounts paid or incurred to energy research consortiums, giving rise to the credit.

(B) Common control

Under regulations prescribed by the Secretary, in determining the amount of the credit under this section—

(i) all trades or businesses (whether or not incorporated) which are under common control shall be treated as a single taxpayer, and

(ii) the credit (if any) allowable by this section to each such person shall be its proportionate shares of the qualified research expenses, basic research payments, and amounts paid or incurred to energy research consortiums, giving rise to the credit.

The regulations prescribed under this subparagraph shall be based on principles similar to the principles which apply in the case of subparagraph (A).

(2) Allocations

(A) Pass-thru in the case of estates and trusts

Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

(B) Allocation in the case of partnerships

In the case of partnerships, the credit shall be allocated among partners under regulations prescribed by the Secretary.

(3) Adjustments for certain acquisitions, etc.

Under regulations prescribed by the Secretary—

(A) Acquisitions

If, after December 31, 1983, a taxpayer acquires the major portion of a trade or business of another person (hereinafter in this paragraph referred to as the ''predecessor'') or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section for any taxable year ending after such acquisition, the amount of qualified research expenses paid or incurred by the taxpayer during periods before such acquisition shall be increased by so much of such expenses paid or incurred by the predecessor with respect to the acquired trade or business as is attributable to the portion of such trade or business or separate unit acquired by the taxpayer, and the gross receipts of the taxpayer for such periods shall be increased by so much of the gross receipts of such predecessor with respect to the acquired trade or business as is attributable to such portion.

(B) Dispositions

If, after December 31, 1983—

(i) a taxpayer disposes of the major portion of any trade or business or the major portion of a separate unit of a trade or business in a transaction to which subparagraph (A) applies, and

(ii) the taxpayer furnished the acquiring person such information as is necessary for the application of subparagraph (A),

then, for purposes of applying this section for any taxable year ending after such disposition, the amount of qualified research expenses paid or incurred by the taxpayer during periods before such disposition shall be decreased by so much of such expenses as is attributable to the portion of such trade or business or separate unit disposed of by the taxpayer, and the gross receipts of the taxpayer for such periods shall be decreased by so much of the gross receipts as is attributable to such portion.

(C) Certain reimbursements taken into account in determining fixed-base percentage

If during any of the 3 taxable years following the taxable year in which a disposition to which subparagraph (B) applies occurs, the disposing taxpayer (or a person with whom the taxpayer is required to aggregate expenditures under paragraph (1)) reimburses the acquiring person (or a person required to so aggregate expenditures with such person) for research on behalf of the taxpayer, then the amount of qualified research expenses of the taxpayer for the taxable years taken into account in computing the fixed-base percentage shall be increased by the lesser of—

(i) the amount of the decrease under subparagraph (B) which is allocable to taxable years so taken into account, or

(ii) the product of the number of taxable years so taken into account, multiplied by the amount of the reimbursement described in this subparagraph.

(4) Short taxable years

In the case of any short taxable year, qualified research expenses and gross receipts shall be annualized in such circumstances and under such methods as the Secretary may prescribe by regulation.

(5) Controlled group of corporations

The term ''controlled group of corporations'' has the same meaning given to such term by section 1563(a), except that—

(A) ''more than 50 percent'' shall be substituted for ''at least 80 percent'' each place it appears in section 1563(a)(1), and

(B) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

(6) Energy research consortium

(A) In general

The term ''energy research consortium'' means any organization—

(i) which is—

(I) described in section 501(c)(3) and is exempt from tax under section 501(a) and is organized and operated primarily to conduct energy research, or

(II) organized and operated primarily to conduct energy research in the public interest (within the meaning of section 501(c)(3)),

(ii) which is not a private foundation,

(iii) to which at least 5 unrelated persons paid or incurred during the calendar year in which the taxable year of the organization begins amounts (including as contributions) to such organization for energy research, and

(iv) to which no single person paid or incurred (including as contributions) during such calendar year an amount equal to more than 50 percent of the total amounts received by such organization during such calendar year for energy research.

(B) Treatment of persons

All persons treated as a single employer under subsection (a) or (b) of section 52 shall be treated as related persons for purposes of subparagraph (A)(iii) and as a single person for purposes of subparagraph (A)(iv).

(C) Foreign research

For purposes of subsection (a)(3), amounts paid or incurred for any energy research conducted outside the United States, the Commonwealth of Puerto Rico, or any possession of the United States shall not be taken into account.

(D) Denial of double benefit

Any amount taken into account under subsection (a)(3) shall not be taken into account under paragraph (1) or (2) of subsection (a).

(E) Energy research

The term ''energy research'' does not include any research which is not qualified research.

(g) Special rule for pass-thru of credit

In the case of an individual who—

(1) owns an interest in an unincorporated trade or business,

(2) is a partner in a partnership,

(3) is a beneficiary of an estate or trust, or

(4) is a shareholder in an S corporation,

the amount determined under subsection (a) for any taxable year shall not exceed an amount (separately computed with respect to such person's interest in such trade or business or entity) equal to the amount of tax attributable to that portion of a person's taxable income which is allocable or apportionable to the person's interest in such trade or business or entity. If the amount determined under subsection (a) for any taxable year exceeds the limitation of the preceding sentence, such amount may be carried to other taxable years under the rules of section 39; except that the limitation of the preceding sentence shall be taken into account in lieu of the limitation of section 38(c) in applying section 39.

(h) Termination

(1) In general

This section shall not apply to any amount paid or incurred—

(A) after June 30, 1995, and before July 1, 1996, or

(B) after December 31, 2011.

(2) Termination of alternative incremental credit

No election under subsection (c)(4) shall apply to taxable years beginning after December 31, 2008.

(2)[1] Computation for taxable year in which credit terminates

In the case of any taxable year with respect to which this section applies to a number of days which is less than the total number of days in such taxable year—

(A) the amount determined under subsection (c)(1)(B) with respect to such taxable year shall be the amount which bears the same ratio to such amount (determined without regard to this paragraph) as the number of days in such taxable year to which this section applies bears to the total number of days in such taxable year, and

(B) for purposes of subsection (c)(5), the average qualified research expenses for the preceding 3 taxable years shall be the amount which bears the same ratio to such average qualified research expenses (determined without regard to this paragraph) as the number of days in such taxable year to which this section applies bears to the total number of days in such taxable year.

(Added Pub. L. 97–34, title II, § 221(a), Aug. 13, 1981, 95 Stat. 241, § 44F; amended Pub. L. 97–354, § 5(a)(3), Oct. 19, 1982, 96 Stat. 1692; Pub. L. 97–448, title I, § 102(b)(2), Jan. 12, 1983, 96 Stat. 2372; renumbered § 30 and amended Pub. L. 98–369, div. A, title IV, §§ 471(c), 474(i)(1), title VI, § 612(e)(1), July 18, 1984, 98 Stat. 826, 831, 912; renumbered § 41 and amended Pub. L. 99–514, title II, § 231(a)(1), (b), (c), (d)(2), (3)(C)(ii), (e), title XVIII, § 1847(b)(1), Oct. 22, 1986, 100 Stat. 2173, 2175, 2178–2180, 2856; Pub. L. 100–647, title I, § 1002(h)(1), title IV, §§ 4007(a), 4008(b)(1), Nov. 10, 1988, 102 Stat. 3370, 3652; Pub. L. 101–239, title VII, §§ 7110(a)(1), (b), (b)[(c)], 7814(e)(2)(C), Dec. 19, 1989, 103 Stat. 2322, 2323, 2325, 2414; Pub. L. 101–508, title XI, §§ 11101(d)(1)(C), 11402(a), Nov. 5, 1990, 104 Stat. 1388–405, 1388–473; Pub. L. 102–227, title I, § 102(a), Dec. 11, 1991, 105 Stat. 1686; Pub. L. 103–66, title XIII, §§ 13111(a)(1), 13112(a), (b), 13201(b)(3)(C), Aug. 10, 1993, 107 Stat. 420, 421, 459; Pub. L. 104–188, title I, §§ 1201(e)(1), (4), 1204(a)–(d), Aug. 20, 1996, 110 Stat. 1772–1774; Pub. L. 105–34, title VI, § 601(a), (b)(1), Aug. 5, 1997, 111 Stat. 861; Pub. L. 105–277, div. J, title I, § 1001(a), Oct. 21, 1998, 112 Stat. 2681–888; Pub. L. 106–170, title V, § 502(a)(1), (b)(1), (c)(1), Dec. 17, 1999, 113 Stat. 1919; Pub. L. 108–311, title III, § 301(a)(1), Oct. 4, 2004, 118 Stat. 1178; Pub. L. 109–58, title XIII, § 1351(a), (b), Aug. 8, 2005, 119 Stat. 1056, 1057; Pub. L. 109–135, title IV, § 402(*l*), Dec. 21, 2005, 119 Stat. 2615; Pub. L. 109–432, div. A, title I, § 104(a)(1), (b)(1), (c)(1), Dec. 20, 2006, 120 Stat. 2934, 2935; Pub. L. 110–172, §§ 6(c), 11(e)(2), Dec. 29, 2007, 121 Stat. 2479, 2489; Pub. L. 110–343, div. C, title III, § 301(a)(1), (b)–(d), Oct. 3, 2008, 122 Stat. 3865, 3866; Pub. L. 111–312, title VII, § 731(a), Dec. 17, 2010, 124 Stat. 3317.)

[1] So in original. Probably should be ''(3)''.

REFERENCES IN TEXT

The date of the enactment of the Energy Tax Incentives Act of 2005, referred to in subsec. (b)(3)(D)(iv), is the date of enactment of title XIII of Pub. L. 109–58, which was approved Aug. 8, 2005.

PRIOR PROVISIONS

A prior section 41, added Pub. L. 97–34, title III, § 331(a), Aug. 13, 1981, 95 Stat. 289, § 44G; amended Pub. L. 97–448, title I, § 103(g)(1), Jan. 12, 1983, 96 Stat. 2379; renumbered § 41 and amended Pub. L. 98–369, div. A, title I, § 14, title IV, §§ 471(c), 474(*l*), 491(e)(2), (3), July 18, 1984, 98 Stat. 505, 826, 833, 852, 853, related to employee stock ownership credit, prior to repeal by Pub. L. 99–514, title XI, § 1171(a), Oct. 22, 1986, 100 Stat. 2513, applicable to compensation paid or accrued after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 1171(c) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 38 of this title. For transition rules relating to such repeal, see section 1177 of Pub. L. 99–514, set out as a Transition Rules note under section 38 of this title.

Another prior section 41 was renumbered section 24 of this title.

AMENDMENTS

2010—Subsec. (h)(1)(B). Pub. L. 111–312 substituted ''December 31, 2011'' for ''December 31, 2009''.

2008—Subsec. (c)(5)(A). Pub. L. 110–343, § 301(c), substituted ''14 percent (12 percent in the case of taxable years ending before January 1, 2009)'' for ''12 percent''.

Subsec. (h)(1)(B). Pub. L. 110–343, § 301(a)(1), substituted ''December 31, 2009'' for ''December 31, 2007''.

Subsec. (h)(2). Pub. L. 110–343, § 301(d), redesignated par. (3) as (2) related to computation for taxable year in which credit terminates.

Pub. L. 110–343, § 301(b), added par. (2). Former par. (2) redesignated (3).

Subsec. (h)(3). Pub. L. 110–343, § 301(d), amended par. (3) generally, redesignating it as par. (2) related to computation for taxable year in which credit terminated and amending heading and text generally. Prior to amendment, text read as follows: ''In the case of any taxable year with respect to which this section applies to a number of days which is less than the total number of days in such taxable year, the base amount with respect to such taxable year shall be the amount which bears the same ratio to the base amount for such year (determined without regard to this paragraph) as the number of days in such taxable year to which this section applies bears to the total number of days in such taxable year.''

Pub. L. 110–343, § 301(b), redesignated par. (2) as (3).

2007—Subsec. (a)(3). Pub. L. 110–172, § 6(c)(1), inserted ''for energy research'' before period at end.

Subsec. (f)(1)(A)(ii), (B)(ii). Pub. L. 110–172, § 11(e)(2), substituted ''qualified research expenses, basic research payments, and amounts paid or incurred to energy research consortiums,'' for ''qualified research expenses and basic research payments''.

Subsec. (f)(6)(E). Pub. L. 110–172, § 6(c)(2), added subpar. (E).

2006—Subsec. (c)(4)(A)(i). Pub. L. 109–432, § 104(b)(1)(A), substituted ''3 percent'' for ''2.65 percent''.

Subsec. (c)(4)(A)(ii). Pub. L. 109–432, § 104(b)(1)(B), substituted ''4 percent'' for ''3.2 percent''.

Subsec. (c)(4)(A)(iii). Pub. L. 109–432, § 104(b)(1)(C), substituted ''5 percent'' for ''3.75 percent''.

Subsec. (c)(5) to (7). Pub. L. 109–432, § 104(c)(1), added par. (5) and redesignated former pars. (5) and (6) as (6) and (7), respectively.

Subsec. (h)(1)(B). Pub. L. 109–432, § 104(a)(1), substituted ''2007'' for ''2005''.

2005—Subsec. (a)(3). Pub. L. 109–58, § 1351(a)(1), added par. (3).

Subsec. (b)(3)(C)(ii). Pub. L. 109–135, § 402(*l*)(2), struck out ''(other than an energy research consortium)'' after ''organization'' in introductory provisions.

Pub. L. 109–58, §1351(a)(3), inserted ''(other than an energy research consortium)'' after ''organization'' in introductory provisions.

Subsec. (b)(3)(D). Pub. L. 109–58, §1351(b), added subpar. (D).

Subsec. (f)(6). Pub. L. 109–58, §1351(a)(2), added par. (6).

Subsec. (f)(6)(C), (D). Pub. L. 109–135, §402(*l*)(1), added subpars. (C) and (D).

2004—Subsec. (h)(1)(B). Pub. L. 108–311 substituted ''December 31, 2005'' for ''June 30, 2004''.

1999—Subsec. (c)(4)(A)(i). Pub. L. 106–170, §502(b)(1)(A), substituted ''2.65 percent'' for ''1.65 percent''.

Subsec. (c)(4)(A)(ii). Pub. L. 106–170, §502(b)(1)(B), substituted ''3.2 percent'' for ''2.2 percent''.

Subsec. (c)(4)(A)(iii). Pub. L. 106–170, §502(b)(1)(C), substituted ''3.75 percent'' for ''2.75 percent''.

Subsecs. (c)(6), (d)(4)(F). Pub. L. 106–170, §502(c)(1), inserted '', the Commonwealth of Puerto Rico, or any possession of the United States'' before period at end.

Subsec. (h)(1). Pub. L. 106–170, §502(a)(1)(B), struck out concluding provisions which read as follows: ''Notwithstanding the preceding sentence, in the case of a taxpayer making an election under subsection (c)(4) for its first taxable year beginning after June 30, 1996, and before July 1, 1997, this section shall apply to amounts paid or incurred during the 36-month period beginning with the first month of such year. The 36 months referred to in the preceding sentence shall be reduced by the number of full months after June 1996 (and before the first month of such first taxable year) during which the taxpayer paid or incurred any amount which is taken into account in determining the credit under this section.''

Subsec. (h)(1)(B). Pub. L. 106–170, §502(a)(1)(A), substituted ''June 30, 2004'' for ''June 30, 1999''.

1998—Subsec. (h)(1). Pub. L. 105–277 substituted ''June 30, 1999'' for ''June 30, 1998'' in subpar. (B) and substituted ''36-month'' for ''24-month'' and ''36 months'' for ''24 months'' in concluding provisions.

1997—Subsec. (c)(4)(B). Pub. L. 105–34, §601(b)(1), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''An election under this paragraph may be made only for the first taxable year of the taxpayer beginning after June 30, 1996. Such an election shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary.''

Subsec. (h)(1). Pub. L. 105–34, §601(a), substituted ''June 30, 1998'' for ''May 31, 1997'' in subpar. (B) and ''during the 24-month period beginning with the first month of such year. The 24 months referred to in the preceding sentence shall be reduced by the number of full months after June 1996 (and before the first month of such first taxable year) during which the taxpayer paid or incurred any amount which is taken into account in determining the credit under this section.'' for ''during the first 11 months of such taxable year.'' in concluding provisions.

1996—Subsec. (b)(2)(D)(iii). Pub. L. 104–188, §1201(e)(1), (4), substituted ''work opportunity credit'' for ''targeted jobs credit'' in heading and text.

Subsec. (b)(3)(C). Pub. L. 104–188, §1204(d), added subpar. (C).

Subsec. (c)(3)(B)(i). Pub. L. 104–188, §1204(b), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The fixed-base percentage shall be determined under this subparagraph if there are fewer than 3 taxable years beginning after December 31, 1983, and before January 1, 1989, in which the taxpayer had both gross receipts and qualified research expenses.''

Subsec. (c)(4) to (6). Pub. L. 104–188, §1204(c), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

Subsec. (h). Pub. L. 104–188, §1204(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

''(1) IN GENERAL.—This section shall not apply to any amount paid or incurred after June 30, 1995.

''(2) COMPUTATION OF BASE AMOUNT.—In the case of any taxable year which begins before July 1, 1995, and ends after June 30, 1995, the base amount with respect to such taxable year shall be the amount which bears the same ratio to the base amount for such year (determined without regard to this paragraph) as the number of days in such taxable year before July 1, 1995, bears to the total number of days in such taxable year.''

1993—Subsec. (c)(3)(B)(ii). Pub. L. 103–66, §13112(a), amended heading and text of cl. (ii) generally. Prior to amendment, text read as follows: ''In a case to which this subparagraph applies, the fixed-base percentage is 3 percent.''

Subsec. (c)(3)(B)(iii). Pub. L. 103–66, §13112(b)(1), substituted ''clauses (i) and (ii)'' for ''clause (i)''.

Subsec. (c)(3)(D). Pub. L. 103–66, §13112(b)(2), substituted ''subparagraphs (A) and (B)(ii)'' for ''subparagraph (A)''.

Subsec. (e)(5)(C). Pub. L. 103–66, §13201(b)(3)(C), substituted ''1992'' for ''1989'' in cls. (i) and (ii).

Subsec. (h). Pub. L. 103–66, §13111(a)(1), substituted ''June 30, 1995'' for ''June 30, 1992'' in pars. (1) and (2) and ''July 1, 1995'' for ''July 1, 1992'' in two places in par. (2).

1991—Subsec. (h). Pub. L. 102–227 substituted ''June 30, 1992'' for ''December 31, 1991'' in pars. (1) and (2), and ''July 1, 1992'' for ''January 1, 1992'' in two places in par. (2).

1990—Subsec. (e)(5)(C)(i). Pub. L. 101–508, §11101(d)(1)(C)(i), inserted before period at end '', by substituting 'calendar year 1987' for 'calendar year 1989' in subparagraph (B) thereof''.

Subsec. (e)(5)(C)(ii). Pub. L. 101–508, §11101(d)(1)(C)(ii), (iii), substituted ''1989'' for ''1987'' and inserted at end ''Such substitution shall be in lieu of the substitution under clause (i).''

Subsec. (h). Pub. L. 101–508, §11402(a), substituted ''December 31, 1991'' for ''December 31, 1990'' wherever appearing and ''January 1, 1992'' for ''January 1, 1991'' wherever appearing.

1989—Subsec. (a)(1)(B). Pub. L. 101–239, §7110(b)(2)(A), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the base period research expenses, and''.

Subsec. (b)(4). Pub. L. 101–239, §7110(b)[(c)], added par. (4).

Subsec. (c). Pub. L. 101–239, §7110(b)(1), substituted ''Base amount'' for ''Base period research expenses'' in heading and amended text generally, substituting pars. (1) to (5) for former pars. (1) to (3) which defined ''base period research expenses'' and ''base period'' and prescribed minimum base period research expenses.

Subsec. (e)(7)(C)(ii). Pub. L. 101–239, §7110(b)(2)(B), substituted ''base amount'' for ''base period research expenses''.

Subsec. (f)(1). Pub. L. 101–239, §7110(b)(2)(C), substituted ''proportionate shares of the qualified research expenses and basic research payments'' for ''proportionate share of the increase in qualified research expenses'' in subpars. (A)(ii) and (B)(ii).

Subsec. (f)(3)(A). Pub. L. 101–239, §7110(b)(2)(D), substituted ''December 31, 1983'' for ''June 30, 1980'' and inserted before period at end '', and the gross receipts of the taxpayer for such periods shall be increased by so much of the gross receipts of such predecessor with respect to the acquired trade or business as is attributable to such portion''.

Subsec. (f)(3)(B). Pub. L. 101–239, §7110(b)(2)(E), substituted ''December 31, 1983'' for ''June 30, 1980'' in introductory provisions and inserted before period at end '', and the gross receipts of the taxpayer for such periods shall be decreased by so much of the gross receipts as is attributable to such portion''.

Subsec. (f)(3)(C). Pub. L. 101–239, §7110(b)(2)(F), substituted ''Certain reimbursements taken into account in determining fixed-base percentage'' for ''Increase in base period'' in heading, ''for the taxable years taken into account in computing the fixed-base percentage shall be increased by the lesser of'' for ''for the base period for such taxable year shall be increased by the

lesser of'' in introductory provisions, and new cls. (i) and (ii) for former cls. (i) and (ii) which read as follows:

''(i) the amount of the decrease under subparagraph (B) which is allocable to such base period, or

''(ii) the product of the number of years in the base period, multiplied by the amount of the reimbursement described in this subparagraph.''

Subsec. (f)(4). Pub. L. 101–239, § 7110(b)(2)(G), inserted ''and gross receipts'' after ''qualified research expenses''.

Subsec. (h). Pub. L. 101–239, § 7814(e)(2)(C), redesignated subsec. (i) as (h) and struck out former subsec. (h) which related to election, time for election, and manner of election by taxpayer to have research credit not apply for a taxable year.

Subsec. (h)(1). Pub. L. 101–239, § 7110(a)(1)(A), substituted ''December 31, 1990'' for ''December 31, 1989''.

Subsec. (h)(2). Pub. L. 101–239, § 7110(a)(1), substituted ''January 1, 1991'' for ''January 1, 1990'' in two places and substituted ''December 31, 1990'' for ''December 31, 1989''.

Pub. L. 101–239, § 7110(b)(2)(H), substituted ''base amount'' for ''base period expenses'' in heading and ''the base amount with respect to such taxable year shall be the amount which bears the same ratio to the base amount for such year (determined without regard to this paragraph)'' for ''any amount for any base period with respect to such taxable year shall be the amount which bears the same ratio to such amount for such base period'' in text.

Subsec. (i). Pub. L. 101–239, § 7814(e)(2)(C), redesignated subsec. (i) as (h).

1988—Subsec. (g). Pub. L. 100–647, § 1002(h)(1), inserted at end ''If the amount determined under subsection (a) for any taxable year exceeds the limitation of the preceding sentence, such amount may be carried to other taxable years under the rules of section 39; except that the limitation of the preceding sentence shall be taken into account in lieu of the limitation of section 38(c) in applying section 39.''

Subsec. (h). Pub. L. 100–647, § 4008(b)(1), added subsec. (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 100–647, § 4008(b)(1), redesignated former subsec. (h) as (i).

Pub. L. 100–647, § 4007(a), substituted ''1989'' and ''1990'' for ''1988'' and ''1989'', respectively, wherever appearing in subsec. (h), prior to redesignation as subsec. (i) by Pub. L. 100–647, § 4008(b)(1).

1986—Pub. L. 99–514, § 231(d)(2), renumbered section 30 of this title as this section.

Subsec. (a). Pub. L. 99–514, § 231(c)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 25 percent of the excess (if any) of—

''(1) the qualified research expenses for the taxable year, over

''(2) the base period research expenses.''

Subsec. (b)(2)(A)(iii). Pub. L. 99–514, § 231(e), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''any amount paid or incurred to another person for the right to use personal property in the conduct of qualified research.''

Subsec. (b)(2)(D)(iii). Pub. L. 99–514, § 1847(b)(1), substituted ''targeted jobs credit'' for ''new jobs or WIN credit'' in heading.

Subsec. (d). Pub. L. 99–514, § 231(b), inserted ''defined'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of this section the term 'qualified research' has the same meaning as the term research or experimental has under section 174, except that such term shall not include—

''(1) qualified research conducted outside the United States,

''(2) qualified research in the social sciences or humanities, and

''(3) qualified research to the extent funded by any grant, contract, or otherwise by another person (or any governmental entity).''

Subsec. (e). Pub. L. 99–514, § 231(c)(2), amended subsec. (e) generally, substituting ''Credit allowable with respect to certain payments to qualified organizations for basic research'' for ''Credit available with respect to certain basic research by colleges, universities, and certain research organizations'' in heading, and restating and expanding provisions of former pars. (1) to (4) into new pars. (1) to (7).

Subsec. (g). Pub. L. 99–514, § 231(d)(3)(C)(ii), amended subsec. (g) generally, substituting provisions relating to special rule for pass-thru of credit for provisions relating to limitation on amount of credit for research based on amount of tax liability.

Subsec. (h). Pub. L. 99–514, § 231(a)(1), added subsec. (h).

1984—Pub. L. 98–369, § 471(c), renumbered section 44F of this title as this section.

Subsec. (b)(2)(D)(iii). Pub. L. 98–369, § 474(i)(1)(A), substituted ''in determining the targeted jobs credit under section 51(a)'' for ''in computing the credit under section 40 or 44B''.

Subsec. (g)(1)(A). Pub. L. 98–369, § 612(e)(1), substituted ''section 26(b)'' for ''section 25(b)''.

Pub. L. 98–369, § 474(i)(1)(B), amended subpar. (A) generally, substituting ''shall not exceed the taxpayer's tax liability for the taxable year (as defined in section 25(b)), reduced by the sum of the credits allowable under subpart A and sections 27, 28, and 29'' for ''shall not exceed the amount of the tax imposed by this chapter reduced by the sum of the credits allowable under a section of this part having a lower number or letter designation than this section, other than the credits allowable by sections 31, 39, and 43. For purposes of the preceding sentence, the term 'tax imposed by this chapter' shall not include any tax treated as not imposed by this chapter under the last sentence of section 53(a)''.

1983—Subsec. (b)(2)(A). Pub. L. 97–448 inserted provision that cl. (iii) would not apply to any amount to the extent that the taxpayer (or any person with whom the taxpayer must aggregate expenditures under subsection (f)(1)) received or accrued any amount from any other person for the right to use substantially identical personal property.

1982—Subsec. (f)(2)(A). Pub. L. 97–354, § 5(a)(3)(A), substituted ''Pass-thru in the case of estates and trusts'' for ''Pass-through in the case of subchapter S corporations, etc.'' in subpar. heading, and substituted provisions relating to the applicability of rules similar to rules of subsec. (d) of section 52 for provisions relating to the applicability of rules similar to rules of subsecs. (d) and (e) of section 52.

Subsec. (g)(1)(B)(iv). Pub. L. 97–354, § 5(a)(3)(B), substituted ''an S corporation'' for ''an electing small business corporation (within the meaning of section 1371(b))''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, § 731(c), Dec. 17, 2010, 124 Stat. 3317, provided that: ''The amendments made by this section [amending this section and section 45C of this title] shall apply to amounts paid or incurred after December 31, 2009.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, § 301(e), Oct. 3, 2008, 122 Stat. 3866, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 45C of this title] shall apply to taxable years beginning after December 31, 2007.

''(2) EXTENSION.—The amendments made by subsection (a) [amending this section and section 45C of this title] shall apply to amounts paid or incurred after December 31, 2007.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by section 6(c) of Pub. L. 110–172 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which such amendment

relates, see section 6(e) of Pub. L. 110–172, set out as a note under section 30C of this title.

Pub. L. 110–172, §11(e)(3), Dec. 29, 2007, 121 Stat. 2489, provided that: ''The amendments made by this subsection [amending this section and section 6427 of this title] shall take effect as if included in the provisions of the Energy Policy Act of 2005 [Pub. L. 109–58] to which they relate.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §104(a)(3), Dec. 20, 2006, 120 Stat. 2934, provided that: ''The amendments made by this subsection [amending this section and section 45C of this title] shall apply to amounts paid or incurred after December 31, 2005.''

Pub. L. 109–432, div. A, title I, §104(b)(2), (3), Dec. 20, 2006, 120 Stat. 2934, provided that:

''(2) EFFECTIVE DATE.—Except as provided in paragraph (3), the amendments made by this subsection [amending this section] shall apply to taxable years ending after December 31, 2006.

''(3) TRANSITION RULE.—

''(A) IN GENERAL.—In the case of a specified transitional taxable year for which an election under section 41(c)(4) of the Internal Revenue Code of 1986 applies, the credit determined under section 41(a)(1) of such Code shall be equal to the sum of—

''(i) the applicable 2006 percentage multiplied by the amount determined under section 41(c)(4)(A) of such Code (as in effect for taxable years ending on December 31, 2006), plus

''(ii) the applicable 2007 percentage multiplied by the amount determined under section 41(c)(4)(A) of such Code (as in effect for taxable years ending on January 1, 2007).

''(B) DEFINITIONS.—For purposes of subparagraph (A)—

''(i) SPECIFIED TRANSITIONAL TAXABLE YEAR.—The term 'specified transitional taxable year' means any taxable year which ends after December 31, 2006, and which includes such date.

''(ii) APPLICABLE 2006 PERCENTAGE.—The term 'applicable 2006 percentage' means the number of days in the specified transitional taxable year before January 1, 2007, divided by the number of days in such taxable year.

''(iii) APPLICABLE 2007 PERCENTAGE.—The term 'applicable 2007 percentage' means the number of days in the specified transitional taxable year after December 31, 2006, divided by the number of days in such taxable year.''

Pub. L. 109–432, div. A, title I, §104(c)(2)–(4), Dec. 20, 2006, 120 Stat. 2935, provided that:

''(2) TRANSITION RULE FOR DEEMED REVOCATION OF ELECTION OF ALTERNATIVE INCREMENTAL CREDIT.—In the case of an election under section 41(c)(4) of the Internal Revenue Code of 1986 which applies to the taxable year which includes January 1, 2007, such election shall be treated as revoked with the consent of the Secretary of the Treasury if the taxpayer makes an election under section 41(c)(5) of such Code (as added by this subsection) for such year.

''(3) EFFECTIVE DATE.—Except as provided in paragraph (4), the amendments made by this subsection [amending this section] shall apply to taxable years ending after December 31, 2006.

''(4) TRANSITION RULE FOR NONCALENDAR TAXABLE YEARS.—

''(A) IN GENERAL.—In the case of a specified transitional taxable year for which an election under section 41(c)(5) of the Internal Revenue Code of 1986 (as added by this subsection) applies, the credit determined under section 41(a)(1) of such Code shall be equal to the sum of—

''(i) the applicable 2006 percentage multiplied by the amount determined under section 41(a)(1) of such Code (as in effect for taxable years ending on December 31, 2006), plus

''(ii) the applicable 2007 percentage multiplied by the amount determined under section 41(c)(5) of such Code (as in effect for taxable years ending on January 1, 2007).

''(B) DEFINITIONS AND SPECIAL RULES.—For purposes of subparagraph (A)—

''(i) DEFINITIONS.—Terms used in this paragraph which are also used in subsection (b)(3) [set out above] shall have the respective meanings given such terms in such subsection.

''(ii) DUAL ELECTIONS PERMITTED.—Elections under paragraphs (4) and (5) of section 41(c) of such Code may both apply for the specified transitional taxable year.

''(iii) DEFERRAL OF DEEMED ELECTION REVOCATION.—Any election under section 41(c)(4) of the Internal Revenue Code of 1986 treated as revoked under paragraph (2) shall be treated as revoked for the taxable year after the specified transitional taxable year.''

EFFECTIVE DATE OF 2005 AMENDMENTS

Amendment by Pub. L. 109–135 effective as if included in the provision of the Energy Policy Act of 2005, Pub. L. 109–58, to which such amendment relates, see section 402(m)(1) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 36C of this title.

Pub. L. 109–58, title XIII, §1351(c), Aug. 8, 2005, 119 Stat. 1058, provided that: ''The amendments made by this section [amending this section] shall apply to amounts paid or incurred after the date of the enactment of this Act [Aug. 8, 2005], in taxable years ending after such date.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title III, §301(b), Oct. 4, 2004, 118 Stat. 1178, provided that: ''The amendments made by this section [amending this section and section 45C of this title] shall apply to amounts paid or incurred after June 30, 2004.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, §502(a)(3), Dec. 17, 1999, 113 Stat. 1919, provided that: ''The amendments made by this subsection [amending this section and section 45C of this title] shall apply to amounts paid or incurred after June 30, 1999.''

Pub. L. 106–170, title V, §502(b)(2), Dec. 17, 1999, 113 Stat. 1919, provided that: ''The amendments made by this subsection [amending this section] shall apply to taxable years beginning after June 30, 1999.''

Pub. L. 106–170, title V, §502(c)(3), Dec. 17, 1999, 113 Stat. 1920, provided that: ''The amendments made by this subsection [amending this section and section 280C of this title] shall apply to amounts paid or incurred after June 30, 1999.''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. J, title I, §1001(c), Oct. 21, 1998, 112 Stat. 2681–888, provided that: ''The amendments made by this section [amending this section and section 45C of this title] shall apply to amounts paid or incurred after June 30, 1998.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 601(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section and section 45C of this title] shall apply to amounts paid or incurred after May 31, 1997.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1201(e)(1), (4) of Pub. L. 104–188 applicable to individuals who begin work for the employer after Sept. 30, 1996, see section 1201(g) of Pub. L. 104–188, set out as a note under section 38 of this title.

Section 1204(f) of Pub. L. 104–188 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 28 [now 45C] of this title] shall apply to taxable years ending after June 30, 1996.

''(2) SUBSECTIONS (c) AND (d).—The amendments made by subsections (c) and (d) [amending this section] shall apply to taxable years beginning after June 30, 1996.

''(3) ESTIMATED TAX.—The amendments made by this section shall not be taken into account under section 6654 or 6655 of the Internal Revenue Code of 1986 (relating to failure to pay estimated tax) in determining the amount of any installment required to be paid for a taxable year beginning in 1997.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13111(a)(1) of Pub. L. 103–66 applicable to taxable years ending after June 30, 1992, see section 13111(c) of Pub. L. 103–66, set out as a note under section 45C of this title.

Section 13112(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1993.''

Amendment by section 13201(b)(3)(C) of Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see section 13201(c) of Pub. L. 103–66, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–227 applicable to taxable years ending after Dec. 31, 1991, see section 102(c) of Pub. L. 102–227, set out as a note under section 45C of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11101(d)(1)(C) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11101(e) of Pub. L. 101–508, set out as a note under section 1 of this title.

Amendment by section 11402(a) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1989, see section 11402(c) of Pub. L. 101–508, set out as a note under section 45C of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7110(e) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section and sections 28, 174, 196, and 280C of this title] (other than subsection (a) [amending this section and section 28 of this title]) shall apply to taxable years beginning after December 31, 1989.''

Amendment by section 7814(e)(2)(C) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1002(h)(1) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 4008(d) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section and sections 28, 196, 280C, and 6501 of this title] shall apply to taxable years beginning after December 31, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 231(g) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—Except as provided in this subsection (2), the amendments made by this section [amending this section and sections 28, 38, 39, 108, 170, 280C, 381, 936, 6411, and 6511 of this title, renumbering former section 30 of this title as this section, and enacting and amending provisions set out as notes under this section] shall apply to taxable years beginning after December 31, 1985.

''(2) SUBSECTION (a).—The amendments made by subsection (a) [amending this section and provisions set out as a note under this section] shall apply to taxable years ending after December 31, 1985.

''(3) BASIC RESEARCH.—Section 41(a)(2) of the Internal Revenue Code of 1986 (as added by this section), and the amendments made by subsection (c)(2) [amending this section], shall apply to taxable years beginning after December 31, 1986.''

Amendment by section 1847(b)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(i)(1) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 612(e)(1) of Pub. L. 98–369 applicable to interest paid or accrued after Dec. 31, 1984, on indebtedness incurred after Dec. 31, 1984, see section 612(g) of Pub. L. 98–369, set out as an Effective Date note under section 25 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 102(h)(2) of Pub. L. 97–448 provided that the amendment made by that section is effective only with respect to amounts paid or incurred after March 31, 1982.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE

Pub. L. 97–34, title II, § 221(d), Aug. 13, 1981, 95 Stat. 241, as amended by Pub. L. 99–514, § 2, title II, § 231(a)(2), Oct. 22, 1986, 100 Stat. 2095, 2173, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section and amending sections 55, 381, 383, 6096, 6411, and 6511 of this title] shall apply to amounts paid or incurred after June 30, 1981.

''(2) TRANSITIONAL RULE.—

''(A) IN GENERAL.—If, with respect to the first taxable year to which the amendments made by this section apply and which ends in 1981 or 1982, the taxpayer may only take into account qualified research expenses paid or incurred during a portion of such taxable year, the amount of the qualified research expenses taken into account for the base period of such taxable year shall be the amount which bears the same ratio to the total qualified research expenses for such base period as the number of months in such portion of such taxable year bears to the total number of months in such taxable year.

''(B) DEFINITIONS.—For purposes of the preceding sentence, the terms 'qualified research expenses' and 'base period' have the meanings given to such terms by section 44F [now 41] of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this section).''

SPECIAL RULE FOR ELECTIONS UNDER EXPIRED PROVISIONS

Pub. L. 109–432, div. A, title I, § 123, Dec. 20, 2006, 120 Stat. 2944, provided that:

''(a) RESEARCH CREDIT ELECTIONS.—In the case of any taxable year ending after December 31, 2005, and before the date of the enactment of this Act [Dec. 20, 2006], any election under section 41(c)(4) or section 280C(c)(3)(C) of the Internal Revenue Code of 1986 shall be treated as having been timely made for such taxable year if such election is made not later than the later of April 15, 2007, or such time as the Secretary of the Treasury, or his designee, may specify. Such election

shall be made in the manner prescribed by such Secretary or designee.

''(b) OTHER ELECTIONS.—Except as otherwise provided by such Secretary or designee, a rule similar to the rule of subsection (a) shall apply with respect to elections under any other expired provision of the Internal Revenue Code of 1986 the applicability of which is extended by reason of the amendments made by this title [amending this section and sections 32, 45A, 45C, 45D, 51, 54, 62, 164, 168, 170, 198, 220, 222, 613A, 1397E, 1400, 1400A to 1400C, 1400F, 1400N, 6103, 7608, 7652, and 9812 of this title, section 1185a of Title 29, Labor, and section 300gg–5 of Title 42, The Public Health and Welfare, and repealing section 51A of this title].''

SPECIAL RULE FOR CREDIT ATTRIBUTABLE TO SUSPENSION PERIODS

Pub. L. 106–170, title V, §502(d), Dec. 17, 1999, 113 Stat. 1920, provided that:

''(1) IN GENERAL.—For purposes of the Internal Revenue Code of 1986, the credit determined under section 41 of such Code which is otherwise allowable under such Code—

''(A) shall not be taken into account prior to October 1, 2000, to the extent such credit is attributable to the first suspension period; and

''(B) shall not be taken into account prior to October 1, 2001, to the extent such credit is attributable to the second suspension period.

On or after the earliest date that an amount of credit may be taken into account, such amount may be taken into account through the filing of an amended return, an application for expedited refund, an adjustment of estimated taxes, or other means allowed by such Code.

''(2) SUSPENSION PERIODS.—For purposes of this subsection—

''(A) the first suspension period is the period beginning on July 1, 1999, and ending on September 30, 2000; and

''(B) the second suspension period is the period beginning on October 1, 2000, and ending on September 30, 2001.

''(3) EXPEDITED REFUNDS.—

''(A) IN GENERAL.—If there is an overpayment of tax with respect to a taxable year by reason of paragraph (1), the taxpayer may file an application for a tentative refund of such overpayment. Such application shall be in such manner and form, and contain such information, as the Secretary may prescribe.

''(B) DEADLINE FOR APPLICATIONS.—Subparagraph (A) shall apply only to an application filed before the date which is 1 year after the close of the suspension period to which the application relates.

''(C) ALLOWANCE OF ADJUSTMENTS.—Not later than 90 days after the date on which an application is filed under this paragraph, the Secretary shall—

''(i) review the application;

''(ii) determine the amount of the overpayment; and

''(iii) apply, credit, or refund such overpayment,

in a manner similar to the manner provided in section 6411(b) of such Code.

''(D) CONSOLIDATED RETURNS.—The provisions of section 6411(c) of such Code shall apply to an adjustment under this paragraph in such manner as the Secretary may provide.

''(4) CREDIT ATTRIBUTABLE TO SUSPENSION PERIOD.—

''(A) IN GENERAL.—For purposes of this subsection, in the case of a taxable year which includes a portion of the suspension period, the amount of credit determined under section 41 of such Code for such taxable year which is attributable to such period is the amount which bears the same ratio to the amount of credit determined under such section 41 for such taxable year as the number of months in the suspension period which are during such taxable year bears to the number of months in such taxable year.

''(B) WAIVER OF ESTIMATED TAX PENALTIES.—No addition to tax shall be made under section 6654 or 6655 of such Code for any period before July 1, 1999, with respect to any underpayment of tax imposed by such Code to the extent such underpayment was created or increased by reason of subparagraph (A).

''(5) SECRETARY.—For purposes of this subsection, the term 'Secretary' means the Secretary of the Treasury (or such Secretary's delegate).''

SPECIAL RULES FOR TAXABLE YEARS BEGINNING BEFORE OCT. 1, 1990, AND ENDING AFTER SEPT. 30, 1990

Section 7110(a)(2) of Pub. L. 101–239, which set forth the method of determining the amount treated as qualified research expenses for taxable years beginning before Oct. 1, 1990, and ending after Sept. 30, 1990, was repealed by Pub. L. 101–508, title XI, §11402(b)(1), Nov. 5, 1990, 104 Stat. 1388–473.

[Section 1702(d)(1) of Pub. L. 104–188 provided that: ''Notwithstanding section 11402(c) of the Revenue Reconciliation Act of 1990 [Pub. L. 101–508, set out as a note under section 45C of this title], the amendment made by section 11402(b)(1) of such Act [repealing section 7110(a)(2) of Pub. L. 101–239, formerly set out as a note above] shall apply to taxable years ending after December 31, 1989.'']

STUDY AND REPORT ON CREDIT PROVIDED BY THIS SECTION

Section 4007(b) of Pub. L. 100–647 directed Comptroller General of United States to conduct a study of credit provided by 26 U.S.C. 41 and submit a report of the study not later than Dec. 31, 1989, to Committee on Ways and Means of House of Representatives and Committee on Finance of Senate.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

NEW SECTION 41 TREATED AS CONTINUATION OF OLD SECTION 44F

Section 474(i)(2) of Pub. L. 98–369 provided that: ''For purposes of determining—

''(A) whether any excess credit under old section 44F [now 41] for a taxable year beginning before January 1, 1984, is allowable as a carryover under new section 30 [now 41], and

''(B) the period during which new section 30 [now 41] is in effect,

new section 30 [now 41] shall be treated as a continuation of old section 44F (and shall apply only to the extent old section 44F would have applied).''

§ 42. Low-income housing credit

(a) In general

For purposes of section 38, the amount of the low-income housing credit determined under this section for any taxable year in the credit period shall be an amount equal to—

(1) the applicable percentage of

(2) the qualified basis of each qualified low-income building.

(b) Applicable percentage: 70 percent present value credit for certain new buildings; 30 percent present value credit for certain other buildings

(1) Determination of applicable percentage

For purposes of this section, the term ''applicable percentage'' means, with respect to any building, the appropriate percentage prescribed by the Secretary for the earlier of—

(i) the month in which such building is placed in service, or

(ii) at the election of the taxpayer—

(I) the month in which the taxpayer and the housing credit agency enter into an agreement with respect to such building (which is binding on such agency, the taxpayer, and all successors in interest) as to the housing credit dollar amount to be allocated to such building, or

(II) in the case of any building to which subsection (h)(4)(B) applies, the month in which the tax-exempt obligations are issued.

A month may be elected under clause (ii) only if the election is made not later than the 5th day after the close of such month. Such an election, once made, shall be irrevocable.

(B)[1] Method of prescribing percentages

The percentages prescribed by the Secretary for any month shall be percentages which will yield over a 10-year period amounts of credit under subsection (a) which have a present value equal to—

(i) 70 percent of the qualified basis of a new building which is not federally subsidized for the taxable year, and

(ii) 30 percent of the qualified basis of a building not described in clause (i).

(C) Method of discounting

The present value under subparagraph (B) shall be determined—

(i) as of the last day of the 1st year of the 10-year period referred to in subparagraph (B),

(ii) by using a discount rate equal to 72 percent of the average of the annual Federal mid-term rate and the annual Federal long-term rate applicable under section 1274(d)(1) to the month applicable under clause (i) or (ii) of subparagraph (A)[1] and compounded annually, and

(iii) by assuming that the credit allowable under this section for any year is received on the last day of such year.

(2) Temporary minimum credit rate for nonfederally subsidized new buildings

In the case of any new building—

(A) which is placed in service by the taxpayer after the date of the enactment of this paragraph and before December 31, 2013, and

(B) which is not federally subsidized for the taxable year,

the applicable percentage shall not be less than 9 percent.

(3) Cross references

(A) For treatment of certain rehabilitation expenditures as separate new buildings, see subsection (e).

(B) For determination of applicable percentage for increases in qualified basis after the 1st year of the credit period, see subsection (f)(3).

(C) For authority of housing credit agency to limit applicable percentage and qualified basis which may be taken into account under this section with respect to any building, see subsection (h)(7).

[1] So in original. No subpar. (A) has been enacted.

(c) Qualified basis; qualified low-income building

For purposes of this section—

(1) Qualified basis

(A) Determination

The qualified basis of any qualified low-income building for any taxable year is an amount equal to—

(i) the applicable fraction (determined as of the close of such taxable year) of

(ii) the eligible basis of such building (determined under subsection (d)(5)).

(B) Applicable fraction

For purposes of subparagraph (A), the term ''applicable fraction'' means the smaller of the unit fraction or the floor space fraction.

(C) Unit fraction

For purposes of subparagraph (B), the term ''unit fraction'' means the fraction—

(i) the numerator of which is the number of low-income units in the building, and

(ii) the denominator of which is the number of residential rental units (whether or not occupied) in such building.

(D) Floor space fraction

For purposes of subparagraph (B), the term ''floor space fraction'' means the fraction—

(i) the numerator of which is the total floor space of the low-income units in such building, and

(ii) the denominator of which is the total floor space of the residential rental units (whether or not occupied) in such building.

(E) Qualified basis to include portion of building used to provide supportive services for homeless

In the case of a qualified low-income building described in subsection (i)(3)(B)(iii), the qualified basis of such building for any taxable year shall be increased by the lesser of—

(i) so much of the eligible basis of such building as is used throughout the year to provide supportive services designed to assist tenants in locating and retaining permanent housing, or

(ii) 20 percent of the qualified basis of such building (determined without regard to this subparagraph).

(2) Qualified low-income building

The term ''qualified low-income building'' means any building—

(A) which is part of a qualified low-income housing project at all times during the period—

(i) beginning on the 1st day in the compliance period on which such building is part of such a project, and

(ii) ending on the last day of the compliance period with respect to such building, and

(B) to which the amendments made by section 201(a) of the Tax Reform Act of 1986 apply.

(d) Eligible basis

For purposes of this section—

(1) New buildings

The eligible basis of a new building is its adjusted basis as of the close of the 1st taxable year of the credit period.

(2) Existing buildings

(A) In general

The eligible basis of an existing building is—

(i) in the case of a building which meets the requirements of subparagraph (B), its adjusted basis as of the close of the 1st taxable year of the credit period, and

(ii) zero in any other case.

(B) Requirements

A building meets the requirements of this subparagraph if—

(i) the building is acquired by purchase (as defined in section 179(d)(2)),

(ii) there is a period of at least 10 years between the date of its acquisition by the taxpayer and the date the building was last placed in service,

(iii) the building was not previously placed in service by the taxpayer or by any person who was a related person with respect to the taxpayer as of the time previously placed in service, and

(iv) except as provided in subsection (f)(5), a credit is allowable under subsection (a) by reason of subsection (e) with respect to the building.

(C) Adjusted basis

For purposes of subparagraph (A), the adjusted basis of any building shall not include so much of the basis of such building as is determined by reference to the basis of other property held at any time by the person acquiring the building.

(D) Special rules for subparagraph (B)

(i) Special rules for certain transfers

For purposes of determining under subparagraph (B)(ii) when a building was last placed in service, there shall not be taken into account any placement in service—

(I) in connection with the acquisition of the building in a transaction in which the basis of the building in the hands of the person acquiring it is determined in whole or in part by reference to the adjusted basis of such building in the hands of the person from whom acquired,

(II) by a person whose basis in such building is determined under section 1014(a) (relating to property acquired from a decedent),

(III) by any governmental unit or qualified nonprofit organization (as defined in subsection (h)(5)) if the requirements of subparagraph (B)(ii) are met with respect to the placement in service by such unit or organization and all the income from such property is exempt from Federal income taxation,

(IV) by any person who acquired such building by foreclosure (or by instrument in lieu of foreclosure) of any purchase-money security interest held by such person if the requirements of subparagraph (B)(ii) are met with respect to the placement in service by such person and such building is resold within 12 months after the date such building is placed in service by such person after such foreclosure, or

(V) of a single-family residence by any individual who owned and used such residence for no other purpose than as his principal residence.

(ii) Related person

For purposes of subparagraph (B)(iii), a person (hereinafter in this subclause referred to as the ''related person'') is related to any person if the related person bears a relationship to such person specified in section 267(b) or 707(b)(1), or the related person and such person are engaged in trades or businesses under common control (within the meaning of subsections (a) and (b) of section 52).

(3) Eligible basis reduced where disproportionate standards for units

(A) In general

Except as provided in subparagraph (B), the eligible basis of any building shall be reduced by an amount equal to the portion of the adjusted basis of the building which is attributable to residential rental units in the building which are not low-income units and which are above the average quality standard of the low-income units in the building.

(B) Exception where taxpayer elects to exclude excess costs

(i) In general

Subparagraph (A) shall not apply with respect to a residential rental unit in a building which is not a low-income unit if—

(I) the excess described in clause (ii) with respect to such unit is not greater than 15 percent of the cost described in clause (ii)(II), and

(II) the taxpayer elects to exclude from the eligible basis of such building the excess described in clause (ii) with respect to such unit.

(ii) Excess

The excess described in this clause with respect to any unit is the excess of—

(I) the cost of such unit, over

(II) the amount which would be the cost of such unit if the average cost per square foot of low-income units in the building were substituted for the cost per square foot of such unit.

The Secretary may by regulation provide for the determination of the excess under this clause on a basis other than square foot costs.

(4) Special rules relating to determination of adjusted basis

For purposes of this subsection—

(A) In general

Except as provided in subparagraphs (B) and (C), the adjusted basis of any building

shall be determined without regard to the adjusted basis of any property which is not residential rental property.

(B) Basis of property in common areas, etc., included

The adjusted basis of any building shall be determined by taking into account the adjusted basis of property (of a character subject to the allowance for depreciation) used in common areas or provided as comparable amenities to all residential rental units in such building.

(C) Inclusion of basis of property used to provide services for certain nontenants

(i) In general

The adjusted basis of any building located in a qualified census tract (as defined in paragraph (5)(C)) shall be determined by taking into account the adjusted basis of property (of a character subject to the allowance for depreciation and not otherwise taken into account) used throughout the taxable year in providing any community service facility.

(ii) Limitation

The increase in the adjusted basis of any building which is taken into account by reason of clause (i) shall not exceed the sum of—

(I) 25 percent of so much of the eligible basis of the qualified low-income housing project of which it is a part as does not exceed $15,000,000, plus

(II) 10 percent of so much of the eligible basis of such project as is not taken into account under subclause (I).

For purposes of the preceding sentence, all community service facilities which are part of the same qualified low-income housing project shall be treated as one facility.

(iii) Community service facility

For purposes of this subparagraph, the term ''community service facility'' means any facility designed to serve primarily individuals whose income is 60 percent or less of area median income (within the meaning of subsection (g)(1)(B)).

(D) No reduction for depreciation

The adjusted basis of any building shall be determined without regard to paragraphs (2) and (3) of section 1016(a).

(5) Special rules for determining eligible basis

(A) Federal grants not taken into account in determining eligible basis

The eligible basis of a building shall not include any costs financed with the proceeds of a federally funded grant.

(B) Increase in credit for buildings in high cost areas

(i) In general

In the case of any building located in a qualified census tract or difficult development area which is designated for purposes of this subparagraph—

(I) in the case of a new building, the eligible basis of such building shall be 130 percent of such basis determined without regard to this subparagraph, and

(II) in the case of an existing building, the rehabilitation expenditures taken into account under subsection (e) shall be 130 percent of such expenditures determined without regard to this subparagraph.

(ii) Qualified census tract

(I) In general

The term ''qualified census tract'' means any census tract which is designated by the Secretary of Housing and Urban Development and, for the most recent year for which census data are available on household income in such tract, either in which 50 percent or more of the households have an income which is less than 60 percent of the area median gross income for such year or which has a poverty rate of at least 25 percent. If the Secretary of Housing and Urban Development determines that sufficient data for any period are not available to apply this clause on the basis of census tracts, such Secretary shall apply this clause for such period on the basis of enumeration districts.

(II) Limit on MSA's designated

The portion of a metropolitan statistical area which may be designated for purposes of this subparagraph shall not exceed an area having 20 percent of the population of such metropolitan statistical area.

(III) Determination of areas

For purposes of this clause, each metropolitan statistical area shall be treated as a separate area and all nonmetropolitan areas in a State shall be treated as 1 area.

(iii) Difficult development areas

(I) In general

The term ''difficult development areas'' means any area designated by the Secretary of Housing and Urban Development as an area which has high construction, land, and utility costs relative to area median gross income.

(II) Limit on areas designated

The portions of metropolitan statistical areas which may be designated for purposes of this subparagraph shall not exceed an aggregate area having 20 percent of the population of such metropolitan statistical areas. A comparable rule shall apply to nonmetropolitan areas.

(iv) Special rules and definitions

For purposes of this subparagraph—

(I) population shall be determined on the basis of the most recent decennial census for which data are available,

(II) area median gross income shall be determined in accordance with subsection (g)(4),

(III) the term ''metropolitan statistical area'' has the same meaning as when used in section 143(k)(2)(B), and

(IV) the term ''nonmetropolitan area'' means any county (or portion thereof) which is not within a metropolitan statistical area.

(v) Buildings designated by State housing credit agency

Any building which is designated by the State housing credit agency as requiring the increase in credit under this subparagraph in order for such building to be financially feasible as part of a qualified low-income housing project shall be treated for purposes of this subparagraph as located in a difficult development area which is designated for purposes of this subparagraph. The preceding sentence shall not apply to any building if paragraph (1) of subsection (h) does not apply to any portion of the eligible basis of such building by reason of paragraph (4) of such subsection.

(6) Credit allowable for certain buildings acquired during 10-year period described in paragraph (2)(B)(ii)

(A) In general

Paragraph (2)(B)(ii) shall not apply to any federally- or State-assisted building.

(B) Buildings acquired from insured depository institutions in default

On application by the taxpayer, the Secretary may waive paragraph (2)(B)(ii) with respect to any building acquired from an insured depository institution in default (as defined in section 3 of the Federal Deposit Insurance Act) or from a receiver or conservator of such an institution.

(C) Federally- or State-assisted building

For purposes of this paragraph—

(i) Federally-assisted building

The term ''federally-assisted building'' means any building which is substantially assisted, financed, or operated under section 8 of the United States Housing Act of 1937, section 221(d)(3), 221(d)(4), or 236 of the National Housing Act, section 515 of the Housing Act of 1949, or any other housing program administered by the Department of Housing and Urban Development or by the Rural Housing Service of the Department of Agriculture.

(ii) State-assisted building

The term ''State-assisted building'' means any building which is substantially assisted, financed, or operated under any State law similar in purposes to any of the laws referred to in clause (i).

(7) Acquisition of building before end of prior compliance period

(A) In general

Under regulations prescribed by the Secretary, in the case of a building described in subparagraph (B) (or interest therein) which is acquired by the taxpayer—

(i) paragraph (2)(B) shall not apply, but

(ii) the credit allowable by reason of subsection (a) to the taxpayer for any period after such acquisition shall be equal to the amount of credit which would have been allowable under subsection (a) for such period to the prior owner referred to in subparagraph (B) had such owner not disposed of the building.

(B) Description of building

A building is described in this subparagraph if—

(i) a credit was allowed by reason of subsection (a) to any prior owner of such building, and

(ii) the taxpayer acquired such building before the end of the compliance period for such building with respect to such prior owner (determined without regard to any disposition by such prior owner).

(e) Rehabilitation expenditures treated as separate new building

(1) In general

Rehabilitation expenditures paid or incurred by the taxpayer with respect to any building shall be treated for purposes of this section as a separate new building.

(2) Rehabilitation expenditures

For purposes of paragraph (1)—

(A) In general

The term ''rehabilitation expenditures'' means amounts chargeable to capital account and incurred for property (or additions or improvements to property) of a character subject to the allowance for depreciation in connection with the rehabilitation of a building.

(B) Cost of acquisition, etc,[2] not included

Such term does not include the cost of acquiring any building (or interest therein) or any amount not permitted to be taken into account under paragraph (3) or (4) of subsection (d).

(3) Minimum expenditures to qualify

(A) In general

Paragraph (1) shall apply to rehabilitation expenditures with respect to any building only if—

(i) the expenditures are allocable to 1 or more low-income units or substantially benefit such units, and

(ii) the amount of such expenditures during any 24-month period meets the requirements of whichever of the following subclauses requires the greater amount of such expenditures:

(I) The requirement of this subclause is met if such amount is not less than 20 percent of the adjusted basis of the building (determined as of the 1st day of such period and without regard to paragraphs (2) and (3) of section 1016(a)).

(II) The requirement of this subclause is met if the qualified basis attributable

[2] So in original. Probably should be ''etc.,''.

to such amount, when divided by the number of low-income units in the building, is $6,000 or more.

(B) Exception from 10 percent rehabilitation

In the case of a building acquired by the taxpayer from a governmental unit, at the election of the taxpayer, subparagraph (A)(ii)(I) shall not apply and the credit under this section for such rehabilitation expenditures shall be determined using the percentage applicable under subsection (b)(2)(B)(ii).

(C) Date of determination

The determination under subparagraph (A) shall be made as of the close of the 1st taxable year in the credit period with respect to such expenditures.

(D) Inflation adjustment

In the case of any expenditures which are treated under paragraph (4) as placed in service during any calendar year after 2009, the $6,000 amount in subparagraph (A)(ii)(II) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting ''calendar year 2008'' for ''calendar year 1992'' in subparagraph (B) thereof.

Any increase under the preceding sentence which is not a multiple of $100 shall be rounded to the nearest multiple of $100.

(4) Special rules

For purposes of applying this section with respect to expenditures which are treated as a separate building by reason of this subsection—

(A) such expenditures shall be treated as placed in service at the close of the 24-month period referred to in paragraph (3)(A), and

(B) the applicable fraction under subsection (c)(1) shall be the applicable fraction for the building (without regard to paragraph (1)) with respect to which the expenditures were incurred.

Nothing in subsection (d)(2) shall prevent a credit from being allowed by reason of this subsection.

(5) No double counting

Rehabilitation expenditures may, at the election of the taxpayer, be taken into account under this subsection or subsection (d)(2)(A)(i) but not under both such subsections.

(6) Regulations to apply subsection with respect to group of units in building

The Secretary may prescribe regulations, consistent with the purposes of this subsection, treating a group of units with respect to which rehabilitation expenditures are incurred as a separate new building.

(f) Definition and special rules relating to credit period

(1) Credit period defined

For purposes of this section, the term ''credit period'' means, with respect to any building, the period of 10 taxable years beginning with—

(A) the taxable year in which the building is placed in service, or

(B) at the election of the taxpayer, the succeeding taxable year,

but only if the building is a qualified low-income building as of the close of the 1st year of such period. The election under subparagraph (B), once made, shall be irrevocable.

(2) Special rule for 1st year of credit period

(A) In general

The credit allowable under subsection (a) with respect to any building for the 1st taxable year of the credit period shall be determined by substituting for the applicable fraction under subsection (c)(1) the fraction—

(i) the numerator of which is the sum of the applicable fractions determined under subsection (c)(1) as of the close of each full month of such year during which such building was in service, and

(ii) the denominator of which is 12.

(B) Disallowed 1st year credit allowed in 11th year

Any reduction by reason of subparagraph (A) in the credit allowable (without regard to subparagraph (A)) for the 1st taxable year of the credit period shall be allowable under subsection (a) for the 1st taxable year following the credit period.

(3) Determination of applicable percentage with respect to increases in qualified basis after 1st year of credit period

(A) In general

In the case of any building which was a qualified low-income building as of the close of the 1st year of the credit period, if—

(i) as of the close of any taxable year in the compliance period (after the 1st year of the credit period) the qualified basis of such building exceeds

(ii) the qualified basis of such building as of the close of the 1st year of the credit period,

the applicable percentage which shall apply under subsection (a) for the taxable year to such excess shall be the percentage equal to ⅔ of the applicable percentage which (after the application of subsection (h)) would but for this paragraph apply to such basis.

(B) 1st year computation applies

A rule similar to the rule of paragraph (2)(A) shall apply to any increase in qualified basis to which subparagraph (A) applies for the 1st year of such increase.

(4) Dispositions of property

If a building (or an interest therein) is disposed of during any year for which credit is allowable under subsection (a), such credit shall be allocated between the parties on the basis of the number of days during such year the building (or interest) was held by each. In any such case, proper adjustments shall be made in the application of subsection (j).

(5) Credit period for existing buildings not to begin before rehabilitation credit allowed

(A) In general

The credit period for an existing building shall not begin before the 1st taxable year of the credit period for rehabilitation expenditures with respect to the building.

(B) Acquisition credit allowed for certain buildings not allowed a rehabilitation credit

(i) In general

In the case of a building described in clause (ii)—

(I) subsection (d)(2)(B)(iv) shall not apply, and

(II) the credit period for such building shall not begin before the taxable year which would be the 1st taxable year of the credit period for rehabilitation expenditures with respect to the building under the modifications described in clause (ii)(II).

(ii) Building described

A building is described in this clause if—

(I) a waiver is granted under subsection (d)(6)(C) with respect to the acquisition of the building, and

(II) a credit would be allowed for rehabilitation expenditures with respect to such building if subsection (e)(3)(A)(ii)(I) did not apply and if the dollar amount in effect under subsection (e)(3)(A)(ii)(II) were two-thirds of such amount.

(g) Qualified low-income housing project

For purposes of this section—

(1) In general

The term ''qualified low-income housing project'' means any project for residential rental property if the project meets the requirements of subparagraph (A) or (B) whichever is elected by the taxpayer:

(A) 20–50 test

The project meets the requirements of this subparagraph if 20 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income.

(B) 40–60 test

The project meets the requirements of this subparagraph if 40 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income.

Any election under this paragraph, once made, shall be irrevocable. For purposes of this paragraph, any property shall not be treated as failing to be residential rental property merely because part of the building in which such property is located is used for purposes other than residential rental purposes.

(2) Rent-restricted units

(A) In general

For purposes of paragraph (1), a residential unit is rent-restricted if the gross rent with respect to such unit does not exceed 30 percent of the imputed income limitation applicable to such unit. For purposes of the preceding sentence, the amount of the income limitation under paragraph (1) applicable for any period shall not be less than such limitation applicable for the earliest period the building (which contains the unit) was included in the determination of whether the project is a qualified low-income housing project.

(B) Gross rent

For purposes of subparagraph (A), gross rent—

(i) does not include any payment under section 8 of the United States Housing Act of 1937 or any comparable rental assistance program (with respect to such unit or occupants thereof),

(ii) includes any utility allowance determined by the Secretary after taking into account such determinations under section 8 of the United States Housing Act of 1937,

(iii) does not include any fee for a supportive service which is paid to the owner of the unit (on the basis of the low-income status of the tenant of the unit) by any governmental program of assistance (or by an organization described in section 501(c)(3) and exempt from tax under section 501(a)) if such program (or organization) provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services, and

(iv) does not include any rental payment to the owner of the unit to the extent such owner pays an equivalent amount to the Farmers' Home Administration under section 515 of the Housing Act of 1949.

For purposes of clause (iii), the term ''supportive service'' means any service provided under a planned program of services designed to enable residents of a residential rental property to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically handicapped. In the case of a single-room occupancy unit or a building described in subsection (i)(3)(B)(iii), such term includes any service provided to assist tenants in locating and retaining permanent housing.

(C) Imputed income limitation applicable to unit

For purposes of this paragraph, the imputed income limitation applicable to a unit is the income limitation which would apply under paragraph (1) to individuals occupying the unit if the number of individuals occupying the unit were as follows:

(i) In the case of a unit which does not have a separate bedroom, 1 individual.

(ii) In the case of a unit which has 1 or more separate bedrooms, 1.5 individuals for each separate bedroom.

In the case of a project with respect to which a credit is allowable by reason of this section and for which financing is provided by a

bond described in section 142(a)(7), the imputed income limitation shall apply in lieu of the otherwise applicable income limitation for purposes of applying section 142(d)(4)(B)(ii).

(D) Treatment of units occupied by individuals whose incomes rise above limit

(i) In general

Except as provided in clause (ii), notwithstanding an increase in the income of the occupants of a low-income unit above the income limitation applicable under paragraph (1), such unit shall continue to be treated as a low-income unit if the income of such occupants initially met such income limitation and such unit continues to be rent-restricted.

(ii) Next available unit must be rented to low-income tenant if income rises above 140 percent of income limit

If the income of the occupants of the unit increases above 140 percent of the income limitation applicable under paragraph (1), clause (i) shall cease to apply to such unit if any residential rental unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation. In the case of a project described in section 142(d)(4)(B), the preceding sentence shall be applied by substituting ''170 percent'' for ''140 percent'' and by substituting ''any low-income unit in the building is occupied by a new resident whose income exceeds 40 percent of area median gross income'' for ''any residential unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation''.

(E) Units where Federal rental assistance is reduced as tenant's income increases

If the gross rent with respect to a residential unit exceeds the limitation under subparagraph (A) by reason of the fact that the income of the occupants thereof exceeds the income limitation applicable under paragraph (1), such unit shall, nevertheless, be treated as a rent-restricted unit for purposes of paragraph (1) if—

(i) a Federal rental assistance payment described in subparagraph (B)(i) is made with respect to such unit or its occupants, and

(ii) the sum of such payment and the gross rent with respect to such unit does not exceed the sum of the amount of such payment which would be made and the gross rent which would be payable with respect to such unit if—

(I) the income of the occupants thereof did not exceed the income limitation applicable under paragraph (1), and

(II) such units were rent-restricted within the meaning of subparagraph (A).

The preceding sentence shall apply to any unit only if the result described in clause (ii) is required by Federal statute as of the date of the enactment of this subparagraph and as of the date the Federal rental assistance payment is made.

(3) Date for meeting requirements

(A) In general

Except as otherwise provided in this paragraph, a building shall be treated as a qualified low-income building only if the project (of which such building is a part) meets the requirements of paragraph (1) not later than the close of the 1st year of the credit period for such building.

(B) Buildings which rely on later buildings for qualification

(i) In general

In determining whether a building (hereinafter in this subparagraph referred to as the ''prior building'') is a qualified low-income building, the taxpayer may take into account 1 or more additional buildings placed in service during the 12-month period described in subparagraph (A) with respect to the prior building only if the taxpayer elects to apply clause (ii) with respect to each additional building taken into account.

(ii) Treatment of elected buildings

In the case of a building which the taxpayer elects to take into account under clause (i), the period under subparagraph (A) for such building shall end at the close of the 12-month period applicable to the prior building.

(iii) Date prior building is treated as placed in service

For purposes of determining the credit period and the compliance period for the prior building, the prior building shall be treated for purposes of this section as placed in service on the most recent date any additional building elected by the taxpayer (with respect to such prior building) was placed in service.

(C) Special rule

A building—

(i) other than the 1st building placed in service as part of a project, and

(ii) other than a building which is placed in service during the 12-month period described in subparagraph (A) with respect to a prior building which becomes a qualified low-income building,

shall in no event be treated as a qualified low-income building unless the project is a qualified low-income housing project (without regard to such building) on the date such building is placed in service.

(D) Projects with more than 1 building must be identified

For purposes of this section, a project shall be treated as consisting of only 1 building unless, before the close of the 1st calendar year in the project period (as defined in subsection (h)(1)(F)(ii)), each building which is (or will be) part of such project is identified in such form and manner as the Secretary may provide.

(4) Certain rules made applicable

Paragraphs (2) (other than subparagraph (A) thereof), (3), (4), (5), (6), and (7) of section 142(d), and section 6652(j), shall apply for purposes of determining whether any project is a qualified low-income housing project and whether any unit is a low-income unit; except that, in applying such provisions for such purposes, the term ''gross rent'' shall have the meaning given such term by paragraph (2)(B) of this subsection.

(5) Election to treat building after compliance period as not part of a project

For purposes of this section, the taxpayer may elect to treat any building as not part of a qualified low-income housing project for any period beginning after the compliance period for such building.

(6) Special rule where de minimis equity contribution

Property shall not be treated as failing to be residential rental property for purposes of this section merely because the occupant of a residential unit in the project pays (on a voluntary basis) to the lessor a de minimis amount to be held toward the purchase by such occupant of a residential unit in such project if—

(A) all amounts so paid are refunded to the occupant on the cessation of his occupancy of a unit in the project, and

(B) the purchase of the unit is not permitted until after the close of the compliance period with respect to the building in which the unit is located.

Any amount paid to the lessor as described in the preceding sentence shall be included in gross rent under paragraph (2) for purposes of determining whether the unit is rent-restricted.

(7) Scattered site projects

Buildings which would (but for their lack of proximity) be treated as a project for purposes of this section shall be so treated if all of the dwelling units in each of the buildings are rent-restricted (within the meaning of paragraph (2)) residential rental units.

(8) Waiver of certain de minimis errors and recertifications

On application by the taxpayer, the Secretary may waive—

(A) any recapture under subsection (j) in the case of any de minimis error in complying with paragraph (1), or

(B) any annual recertification of tenant income for purposes of this subsection, if the entire building is occupied by low-income tenants.

(9) Clarification of general public use requirement

A project does not fail to meet the general public use requirement solely because of occupancy restrictions or preferences that favor tenants—

(A) with special needs,

(B) who are members of a specified group under a Federal program or State program or policy that supports housing for such a specified group, or

(C) who are involved in artistic or literary activities.

(h) Limitation on aggregate credit allowable with respect to projects located in a State

(1) Credit may not exceed credit amount allocated to building

(A) In general

The amount of the credit determined under this section for any taxable year with respect to any building shall not exceed the housing credit dollar amount allocated to such building under this subsection.

(B) Time for making allocation

Except in the case of an allocation which meets the requirements of subparagraph (C), (D), (E), or (F), an allocation shall be taken into account under subparagraph (A) only if it is made not later than the close of the calendar year in which the building is placed in service.

(C) Exception where binding commitment

An allocation meets the requirements of this subparagraph if there is a binding commitment (not later than the close of the calendar year in which the building is placed in service) by the housing credit agency to allocate a specified housing credit dollar amount to such building beginning in a specified later taxable year.

(D) Exception where increase in qualified basis

(i) In general

An allocation meets the requirements of this subparagraph if such allocation is made not later than the close of the calendar year in which ends the taxable year to which it will 1st apply but only to the extent the amount of such allocation does not exceed the limitation under clause (ii).

(ii) Limitation

The limitation under this clause is the amount of credit allowable under this section (without regard to this subsection) for a taxable year with respect to an increase in the qualified basis of the building equal to the excess of—

(I) the qualified basis of such building as of the close of the 1st taxable year to which such allocation will apply, over

(II) the qualified basis of such building as of the close of the 1st taxable year to which the most recent prior housing credit allocation with respect to such building applied.

(iii) Housing credit dollar amount reduced by full allocation

Notwithstanding clause (i), the full amount of the allocation shall be taken into account under paragraph (2).

(E) Exception where 10 percent of cost incurred

(i) In general

An allocation meets the requirements of this subparagraph if such allocation is

made with respect to a qualified building which is placed in service not later than the close of the second calendar year following the calendar year in which the allocation is made.

(ii) Qualified building

For purposes of clause (i), the term ''qualified building'' means any building which is part of a project if the taxpayer's basis in such project (as of the date which is 1 year after the date that the allocation was made) is more than 10 percent of the taxpayer's reasonably expected basis in such project (as of the close of the second calendar year referred to in clause (i)). Such term does not include any existing building unless a credit is allowable under subsection (e) for rehabilitation expenditures paid or incurred by the taxpayer with respect to such building for a taxable year ending during the second calendar year referred to in clause (i) or the prior taxable year.

(F) Allocation of credit on a project basis

(i) In general

In the case of a project which includes (or will include) more than 1 building, an allocation meets the requirements of this subparagraph if—

(I) the allocation is made to the project for a calendar year during the project period,

(II) the allocation only applies to buildings placed in service during or after the calendar year for which the allocation is made, and

(III) the portion of such allocation which is allocated to any building in such project is specified not later than the close of the calendar year in which the building is placed in service.

(ii) Project period

For purposes of clause (i), the term ''project period'' means the period—

(I) beginning with the 1st calendar year for which an allocation may be made for the 1st building placed in service as part of such project, and

(II) ending with the calendar year the last building is placed in service as part of such project.

(2) Allocated credit amount to apply to all taxable years ending during or after credit allocation year

Any housing credit dollar amount allocated to any building for any calendar year—

(A) shall apply to such building for all taxable years in the compliance period ending during or after such calendar year, and

(B) shall reduce the aggregate housing credit dollar amount of the allocating agency only for such calendar year.

(3) Housing credit dollar amount for agencies

(A) In general

The aggregate housing credit dollar amount which a housing credit agency may allocate for any calendar year is the portion of the State housing credit ceiling allocated under this paragraph for such calendar year to such agency.

(B) State ceiling initially allocated to State housing credit agencies

Except as provided in subparagraphs (D) and (E), the State housing credit ceiling for each calendar year shall be allocated to the housing credit agency of such State. If there is more than 1 housing credit agency of a State, all such agencies shall be treated as a single agency.

(C) State housing credit ceiling

The State housing credit ceiling applicable to any State for any calendar year shall be an amount equal to the sum of—

(i) the unused State housing credit ceiling (if any) of such State for the preceding calendar year,

(ii) the greater of—

(I) $1.75 ($1.50 for 2001) multiplied by the State population, or

(II) $2,000,000,

(iii) the amount of State housing credit ceiling returned in the calendar year, plus

(iv) the amount (if any) allocated under subparagraph (D) to such State by the Secretary.

For purposes of clause (i), the unused State housing credit ceiling for any calendar year is the excess (if any) of the sum of the amounts described in clauses (ii) through (iv) over the aggregate housing credit dollar amount allocated for such year. For purposes of clause (iii), the amount of State housing credit ceiling returned in the calendar year equals the housing credit dollar amount previously allocated within the State to any project which fails to meet the 10 percent test under paragraph (1)(E)(ii) on a date after the close of the calendar year in which the allocation was made or which does not become a qualified low-income housing project within the period required by this section or the terms of the allocation or to any project with respect to which an allocation is cancelled by mutual consent of the housing credit agency and the allocation recipient.

(D) Unused housing credit carryovers allocated among certain States

(i) In general

The unused housing credit carryover of a State for any calendar year shall be assigned to the Secretary for allocation among qualified States for the succeeding calendar year.

(ii) Unused housing credit carryover

For purposes of this subparagraph, the unused housing credit carryover of a State for any calendar year is the excess (if any) of—

(I) the unused State housing credit ceiling for the year preceding such year, over

(II) the aggregate housing credit dollar amount allocated for such year.

(iii) Formula for allocation of unused housing credit carryovers among qualified States

The amount allocated under this subparagraph to a qualified State for any calendar year shall be the amount determined by the Secretary to bear the same ratio to the aggregate unused housing credit carryovers of all States for the preceding calendar year as such State's population for the calendar year bears to the population of all qualified States for the calendar year. For purposes of the preceding sentence, population shall be determined in accordance with section 146(j).

(iv) Qualified State

For purposes of this subparagraph, the term ''qualified State'' means, with respect to a calendar year, any State—

(I) which allocated its entire State housing credit ceiling for the preceding calendar year, and

(II) for which a request is made (not later than May 1 of the calendar year) to receive an allocation under clause (iii).

(E) Special rule for States with constitutional home rule cities

For purposes of this subsection—

(i) In general

The aggregate housing credit dollar amount for any constitutional home rule city for any calendar year shall be an amount which bears the same ratio to the State housing credit ceiling for such calendar year as—

(I) the population of such city, bears to

(II) the population of the entire State.

(ii) Coordination with other allocations

In the case of any State which contains 1 or more constitutional home rule cities, for purposes of applying this paragraph with respect to housing credit agencies in such State other than constitutional home rule cities, the State housing credit ceiling for any calendar year shall be reduced by the aggregate housing credit dollar amounts determined for such year for all constitutional home rule cities in such State.

(iii) Constitutional home rule city

For purposes of this paragraph, the term ''constitutional home rule city'' has the meaning given such term by section 146(d)(3)(C).

(F) State may provide for different allocation

Rules similar to the rules of section 146(e) (other than paragraph (2)(B) thereof) shall apply for purposes of this paragraph.

(G) Population

For purposes of this paragraph, population shall be determined in accordance with section 146(j).

(H) Cost-of-living adjustment

(i) In general

In the case of a calendar year after 2002, the $2,000,000 and $1.75 amounts in subparagraph (C) shall each be increased by an amount equal to—

(I) such dollar amount, multiplied by

(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting ''calendar year 2001'' for ''calendar year 1992'' in subparagraph (B) thereof.

(ii) Rounding

(I) In the case of the $2,000,000 amount, any increase under clause (i) which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000.

(II) In the case of the $1.75 amount, any increase under clause (i) which is not a multiple of 5 cents shall be rounded to the next lowest multiple of 5 cents.

(I) Increase in State housing credit ceiling for 2008 and 2009

In the case of calendar years 2008 and 2009—

(i) the dollar amount in effect under subparagraph (C)(ii)(I) for such calendar year (after any increase under subparagraph (H)) shall be increased by $0.20, and

(ii) the dollar amount in effect under subparagraph (C)(ii)(II) for such calendar year (after any increase under subparagraph (H)) shall be increased by an amount equal to 10 percent of such dollar amount (rounded to the next lowest multiple of $5,000).

(4) Credit for buildings financed by tax-exempt bonds subject to volume cap not taken into account

(A) In general

Paragraph (1) shall not apply to the portion of any credit allowable under subsection (a) which is attributable to eligible basis financed by any obligation the interest on which is exempt from tax under section 103 if—

(i) such obligation is taken into account under section 146, and

(ii) principal payments on such financing are applied within a reasonable period to redeem obligations the proceeds of which were used to provide such financing or such financing is refunded as described in section 146(i)(6).

(B) Special rule where 50 percent or more of building is financed with tax-exempt bonds subject to volume cap

For purposes of subparagraph (A), if 50 percent or more of the aggregate basis of any building and the land on which the building is located is financed by any obligation described in subparagraph (A), paragraph (1) shall not apply to any portion of the credit allowable under subsection (a) with respect to such building.

(5) Portion of State ceiling set-aside for certain projects involving qualified nonprofit organizations

(A) In general

Not more than 90 percent of the State housing credit ceiling for any State for any

calendar year shall be allocated to projects other than qualified low-income housing projects described in subparagraph (B).

(B) Projects involving qualified nonprofit organizations

For purposes of subparagraph (A), a qualified low-income housing project is described in this subparagraph if a qualified nonprofit organization is to own an interest in the project (directly or through a partnership) and materially participate (within the meaning of section 469(h)) in the development and operation of the project throughout the compliance period.

(C) Qualified nonprofit organization

For purposes of this paragraph, the term ''qualified nonprofit organization'' means any organization if—

(i) such organization is described in paragraph (3) or (4) of section 501(c) and is exempt from tax under section 501(a),

(ii) such organization is determined by the State housing credit agency not to be affiliated with or controlled by a for-profit organization;[3] and

(iii) 1 of the exempt purposes of such organization includes the fostering of low-income housing.

(D) Treatment of certain subsidiaries

(i) In general

For purposes of this paragraph, a qualified nonprofit organization shall be treated as satisfying the ownership and material participation test of subparagraph (B) if any qualified corporation in which such organization holds stock satisfies such test.

(ii) Qualified corporation

For purposes of clause (i), the term ''qualified corporation'' means any corporation if 100 percent of the stock of such corporation is held by 1 or more qualified nonprofit organizations at all times during the period such corporation is in existence.

(E) State may not override set-aside

Nothing in subparagraph (F) of paragraph (3) shall be construed to permit a State not to comply with subparagraph (A) of this paragraph.

(6) Buildings eligible for credit only if minimum long-term commitment to low-income housing

(A) In general

No credit shall be allowed by reason of this section with respect to any building for the taxable year unless an extended low-income housing commitment is in effect as of the end of such taxable year.

(B) Extended low-income housing commitment

For purposes of this paragraph, the term ''extended low-income housing commitment'' means any agreement between the taxpayer and the housing credit agency—

(i) which requires that the applicable fraction (as defined in subsection (c)(1)) for the building for each taxable year in the extended use period will not be less than the applicable fraction specified in such agreement and which prohibits the actions described in subclauses (I) and (II) of subparagraph (E)(ii),

(ii) which allows individuals who meet the income limitation applicable to the building under subsection (g) (whether prospective, present, or former occupants of the building) the right to enforce in any State court the requirement and prohibitions of clause (i),

(iii) which prohibits the disposition to any person of any portion of the building to which such agreement applies unless all of the building to which such agreement applies is disposed of to such person,

(iv) which prohibits the refusal to lease to a holder of a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder,

(v) which is binding on all successors of the taxpayer, and

(vi) which, with respect to the property, is recorded pursuant to State law as a restrictive covenant.

(C) Allocation of credit may not exceed amount necessary to support commitment

(i) In general

The housing credit dollar amount allocated to any building may not exceed the amount necessary to support the applicable fraction specified in the extended low-income housing commitment for such building, including any increase in such fraction pursuant to the application of subsection (f)(3) if such increase is reflected in an amended low-income housing commitment.

(ii) Buildings financed by tax-exempt bonds

If paragraph (4) applies to any building the amount of credit allowed in any taxable year may not exceed the amount necessary to support the applicable fraction specified in the extended low-income housing commitment for such building. Such commitment may be amended to increase such fraction.

(D) Extended use period

For purposes of this paragraph, the term ''extended use period'' means the period—

(i) beginning on the 1st day in the compliance period on which such building is part of a qualified low-income housing project, and

(ii) ending on the later of—

(I) the date specified by such agency in such agreement, or

(II) the date which is 15 years after the close of the compliance period.

[3] So in original. The semicolon probably should be a comma.

(E) Exceptions if foreclosure or if no buyer willing to maintain low-income status

(i) In general

The extended use period for any building shall terminate—

(I) on the date the building is acquired by foreclosure (or instrument in lieu of foreclosure) unless the Secretary determines that such acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate such period, or

(II) on the last day of the period specified in subparagraph (I) if the housing credit agency is unable to present during such period a qualified contract for the acquisition of the low-income portion of the building by any person who will continue to operate such portion as a qualified low-income building.

Subclause (II) shall not apply to the extent more stringent requirements are provided in the agreement or in State law.

(ii) Eviction, etc. of existing low-income tenants not permitted

The termination of an extended use period under clause (i) shall not be construed to permit before the close of the 3-year period following such termination—

(I) the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit, or

(II) any increase in the gross rent with respect to such unit not otherwise permitted under this section.

(F) Qualified contract

For purposes of subparagraph (E), the term ''qualified contract'' means a bona fide contract to acquire (within a reasonable period after the contract is entered into) the nonlow-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the applicable fraction (specified in the extended low-income housing commitment) of—

(i) the sum of—

(I) the outstanding indebtedness secured by, or with respect to, the building,

(II) the adjusted investor equity in the building, plus

(III) other capital contributions not reflected in the amounts described in subclause (I) or (II), reduced by

(ii) cash distributions from (or available for distribution from) the project.

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this paragraph, including regulations to prevent the manipulation of the amount determined under the preceding sentence.

(G) Adjusted investor equity

(i) In general

For purposes of subparagraph (E), the term ''adjusted investor equity'' means, with respect to any calendar year, the aggregate amount of cash taxpayers invested with respect to the project increased by the amount equal to—

(I) such amount, multiplied by

(II) the cost-of-living adjustment for such calendar year, determined under section 1(f)(3) by substituting the base calendar year for ''calendar year 1987''.

An amount shall be taken into account as an investment in the project only to the extent there was an obligation to invest such amount as of the beginning of the credit period and to the extent such amount is reflected in the adjusted basis of the project.

(ii) Cost-of-living increases in excess of 5 percent not taken into account

Under regulations prescribed by the Secretary, if the CPI for any calendar year (as defined in section 1(f)(4)) exceeds the CPI for the preceding calendar year by more than 5 percent, the CPI for the base calendar year shall be increased such that such excess shall never be taken into account under clause (i).

(iii) Base calendar year

For purposes of this subparagraph, the term ''base calendar year'' means the calendar year with or within which the 1st taxable year of the credit period ends.

(H) Low-income portion

For purposes of this paragraph, the low-income portion of a building is the portion of such building equal to the applicable fraction specified in the extended low-income housing commitment for the building.

(I) Period for finding buyer

The period referred to in this subparagraph is the 1-year period beginning on the date (after the 14th year of the compliance period) the taxpayer submits a written request to the housing credit agency to find a person to acquire the taxpayer's interest in the low-income portion of the building.

(J) Effect of noncompliance

If, during a taxable year, there is a determination that an extended low-income housing agreement was not in effect as of the beginning of such year, such determination shall not apply to any period before such year and subparagraph (A) shall be applied without regard to such determination if the failure is corrected within 1 year from the date of the determination.

(K) Projects which consist of more than 1 building

The application of this paragraph to projects which consist of more than 1 building shall be made under regulations prescribed by the Secretary.

(7) Special rules

(A) Building must be located within jurisdiction of credit agency

A housing credit agency may allocate its aggregate housing credit dollar amount only

to buildings located in the jurisdiction of the governmental unit of which such agency is a part.

(B) Agency allocations in excess of limit

If the aggregate housing credit dollar amounts allocated by a housing credit agency for any calendar year exceed the portion of the State housing credit ceiling allocated to such agency for such calendar year, the housing credit dollar amounts so allocated shall be reduced (to the extent of such excess) for buildings in the reverse of the order in which the allocations of such amounts were made.

(C) Credit reduced if allocated credit dollar amount is less than credit which would be allowable without regard to placed in service convention, etc.

(i) In general

The amount of the credit determined under this section with respect to any building shall not exceed the clause (ii) percentage of the amount of the credit which would (but for this subparagraph) be determined under this section with respect to such building.

(ii) Determination of percentage

For purposes of clause (i), the clause (ii) percentage with respect to any building is the percentage which—

(I) the housing credit dollar amount allocated to such building bears to

(II) the credit amount determined in accordance with clause (iii).

(iii) Determination of credit amount

The credit amount determined in accordance with this clause is the amount of the credit which would (but for this subparagraph) be determined under this section with respect to the building if—

(I) this section were applied without regard to paragraphs (2)(A) and (3)(B) of subsection (f), and

(II) subsection (f)(3)(A) were applied without regard to ''the percentage equal to ⅔ of''.

(D) Housing credit agency to specify applicable percentage and maximum qualified basis

In allocating a housing credit dollar amount to any building, the housing credit agency shall specify the applicable percentage and the maximum qualified basis which may be taken into account under this section with respect to such building. The applicable percentage and maximum qualified basis so specified shall not exceed the applicable percentage and qualified basis determined under this section without regard to this subsection.

(8) Other definitions

For purposes of this subsection—

(A) Housing credit agency

The term ''housing credit agency'' means any agency authorized to carry out this subsection.

(B) Possessions treated as States

The term ''State'' includes a possession of the United States.

(i) Definitions and special rules

For purposes of this section—

(1) Compliance period

The term ''compliance period'' means, with respect to any building, the period of 15 taxable years beginning with the 1st taxable year of the credit period with respect thereto.

(2) Determination of whether building is federally subsidized

(A) In general

Except as otherwise provided in this paragraph, for purposes of subsection (b)(1), a new building shall be treated as federally subsidized for any taxable year if, at any time during such taxable year or any prior taxable year, there is or was outstanding any obligation the interest on which is exempt from tax under section 103 the proceeds of which[4] are or were used (directly or indirectly) with respect to such building or the operation thereof.

(B) Election to reduce eligible basis by proceeds of obligations

A tax-exempt obligation shall not be taken into account under subparagraph (A) if the taxpayer elects to exclude from the eligible basis of the building for purposes of subsection (d) the proceeds of such obligation.

(C) Special rule for subsidized construction financing

Subparagraph (A) shall not apply to any tax-exempt obligation used to provide construction financing for any building if—

(i) such obligation (when issued) identified the building for which the proceeds of such obligation would be used, and

(ii) such obligation is redeemed before such building is placed in service.

(3) Low-income unit

(A) In general

The term ''low-income unit'' means any unit in a building if—

(i) such unit is rent-restricted (as defined in subsection (g)(2)), and

(ii) the individuals occupying such unit meet the income limitation applicable under subsection (g)(1) to the project of which such building is a part.

(B) Exceptions

(i) In general

A unit shall not be treated as a low-income unit unless the unit is suitable for occupancy and used other than on a transient basis.

(ii) Suitability for occupancy

For purposes of clause (i), the suitability of a unit for occupancy shall be determined under regulations prescribed by the Secretary taking into account local health, safety, and building codes.

[4] So in original. See 2008 Amendment note below.

(iii) Transitional housing for homeless

For purposes of clause (i), a unit shall be considered to be used other than on a transient basis if the unit contains sleeping accommodations and kitchen and bathroom facilities and is located in a building—

(I) which is used exclusively to facilitate the transition of homeless individuals (within the meaning of section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302), as in effect on the date of the enactment of this clause) to independent living within 24 months, and

(II) in which a governmental entity or qualified nonprofit organization (as defined in subsection (h)(5)) provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing.

(iv) Single-room occupancy units

For purposes of clause (i), a single-room occupancy unit shall not be treated as used on a transient basis merely because it is rented on a month-by-month basis.

(C) Special rule for buildings having 4 or fewer units

In the case of any building which has 4 or fewer residential rental units, no unit in such building shall be treated as a low-income unit if the units in such building are owned by—

(i) any individual who occupies a residential unit in such building, or

(ii) any person who is related (as defined in subsection (d)(2)(D)(iii)) to such individual.

(D) Certain students not to disqualify unit

A unit shall not fail to be treated as a low-income unit merely because it is occupied—

(i) by an individual who is—

(I) a student and receiving assistance under title IV of the Social Security Act,

(II) a student who was previously under the care and placement responsibility of the State agency responsible for administering a plan under part B or part E of title IV of the Social Security Act, or

(III) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws, or

(ii) entirely by full-time students if such students are—

(I) single parents and their children and such parents are not dependents (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of another individual and such children are not dependents (as so defined) of another individual other than a parent of such children, or.[5]

(II) married and file a joint return.

[5] So in original. The period probably should not appear.

(E) Owner-occupied buildings having 4 or fewer units eligible for credit where development plan

(i) In general

Subparagraph (C) shall not apply to the acquisition or rehabilitation of a building pursuant to a development plan of action sponsored by a State or local government or a qualified nonprofit organization (as defined in subsection (h)(5)(C)).

(ii) Limitation on credit

In the case of a building to which clause (i) applies, the applicable fraction shall not exceed 80 percent of the unit fraction.

(iii) Certain unrented units treated as owner-occupied

In the case of a building to which clause (i) applies, any unit which is not rented for 90 days or more shall be treated as occupied by the owner of the building as of the 1st day it is not rented.

(4) New building

The term ''new building'' means a building the original use of which begins with the taxpayer.

(5) Existing building

The term ''existing building'' means any building which is not a new building.

(6) Application to estates and trusts

In the case of an estate or trust, the amount of the credit determined under subsection (a) and any increase in tax under subsection (j) shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

(7) Impact of tenant's right of 1st refusal to acquire property

(A) In general

No Federal income tax benefit shall fail to be allowable to the taxpayer with respect to any qualified low-income building merely by reason of a right of 1st refusal held by the tenants (in cooperative form or otherwise) or resident management corporation of such building or by a qualified nonprofit organization (as defined in subsection (h)(5)(C)) or government agency to purchase the property after the close of the compliance period for a price which is not less than the minimum purchase price determined under subparagraph (B).

(B) Minimum purchase price

For purposes of subparagraph (A), the minimum purchase price under this subparagraph is an amount equal to the sum of—

(i) the principal amount of outstanding indebtedness secured by the building (other than indebtedness incurred within the 5-year period ending on the date of the sale to the tenants), and

(ii) all Federal, State, and local taxes attributable to such sale.

Except in the case of Federal income taxes, there shall not be taken into account under clause (ii) any additional tax attributable to the application of clause (ii).

(8) Treatment of rural projects

For purposes of this section, in the case of any project for residential rental property located in a rural area (as defined in section 520 of the Housing Act of 1949), any income limitation measured by reference to area median gross income shall be measured by reference to the greater of area median gross income or national non-metropolitan median income. The preceding sentence shall not apply with respect to any building if paragraph (1) of section 42(h) does not apply by reason of paragraph (4) thereof to any portion of the credit determined under this section with respect to such building.

(9) Coordination with low-income housing grants

(A) Reduction in State housing credit ceiling for low-income housing grants received in 2009

For purposes of this section, the amounts described in clauses (i) through (iv) of subsection (h)(3)(C) with respect to any State for 2009 shall each be reduced by so much of such amount as is taken into account in determining the amount of any grant to such State under section 1602 of the American Recovery and Reinvestment Tax Act of 2009.

(B) Special rule for basis

Basis of a qualified low-income building shall not be reduced by the amount of any grant described in subparagraph (A).

(j) Recapture of credit

(1) In general

If—

(A) as of the close of any taxable year in the compliance period, the amount of the qualified basis of any building with respect to the taxpayer is less than

(B) the amount of such basis as of the close of the preceding taxable year,

then the taxpayer's tax under this chapter for the taxable year shall be increased by the credit recapture amount.

(2) Credit recapture amount

For purposes of paragraph (1), the credit recapture amount is an amount equal to the sum of—

(A) the aggregate decrease in the credits allowed to the taxpayer under section 38 for all prior taxable years which would have resulted if the accelerated portion of the credit allowable by reason of this section were not allowed for all prior taxable years with respect to the excess of the amount described in paragraph (1)(B) over the amount described in paragraph (1)(A), plus

(B) interest at the overpayment rate established under section 6621 on the amount determined under subparagraph (A) for each prior taxable year for the period beginning on the due date for filing the return for the prior taxable year involved.

No deduction shall be allowed under this chapter for interest described in subparagraph (B).

(3) Accelerated portion of credit

For purposes of paragraph (2), the accelerated portion of the credit for the prior taxable years with respect to any amount of basis is the excess of—

(A) the aggregate credit allowed by reason of this section (without regard to this subsection) for such years with respect to such basis, over

(B) the aggregate credit which would be allowable by reason of this section for such years with respect to such basis if the aggregate credit which would (but for this subsection) have been allowable for the entire compliance period were allowable ratably over 15 years.

(4) Special rules

(A) Tax benefit rule

The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

(B) Only basis for which credit allowed taken into account

Qualified basis shall be taken into account under paragraph (1)(B) only to the extent such basis was taken into account in determining the credit under subsection (a) for the preceding taxable year referred to in such paragraph.

(C) No recapture of additional credit allowable by reason of subsection (f)(3)

Paragraph (1) shall apply to a decrease in qualified basis only to the extent such decrease exceeds the amount of qualified basis with respect to which a credit was allowable for the taxable year referred to in paragraph (1)(B) by reason of subsection (f)(3).

(D) No credits against tax

Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under this chapter.

(E) No recapture by reason of casualty loss

The increase in tax under this subsection shall not apply to a reduction in qualified basis by reason of a casualty loss to the extent such loss is restored by reconstruction or replacement within a reasonable period established by the Secretary.

(F) No recapture where de minimis changes in floor space

The Secretary may provide that the increase in tax under this subsection shall not apply with respect to any building if—

(i) such increase results from a de minimis change in the floor space fraction under subsection (c)(1), and

(ii) the building is a qualified low-income building after such change.

(5) Certain partnerships treated as the taxpayer

(A) In general

For purposes of applying this subsection to a partnership to which this paragraph applies—

(i) such partnership shall be treated as the taxpayer to which the credit allowable under subsection (a) was allowed,

(ii) the amount of such credit allowed shall be treated as the amount which would have been allowed to the partnership were such credit allowable to such partnership,

(iii) paragraph (4)(A) shall not apply, and

(iv) the amount of the increase in tax under this subsection for any taxable year shall be allocated among the partners of such partnership in the same manner as such partnership's taxable income for such year is allocated among such partners.

(B) Partnerships to which paragraph applies

This paragraph shall apply to any partnership which has 35 or more partners unless the partnership elects not to have this paragraph apply.

(C) Special rules

(i) Husband and wife treated as 1 partner

For purposes of subparagraph (B)(i), a husband and wife (and their estates) shall be treated as 1 partner.

(ii) Election irrevocable

Any election under subparagraph (B), once made, shall be irrevocable.

(6) No recapture on disposition of building which continues in qualified use

(A) In general

The increase in tax under this subsection shall not apply solely by reason of the disposition of a building (or an interest therein) if it is reasonably expected that such building will continue to be operated as a qualified low-income building for the remaining compliance period with respect to such building.

(B) Statute of limitations

If a building (or an interest therein) is disposed of during any taxable year and there is any reduction in the qualified basis of such building which results in an increase in tax under this subsection for such taxable or any subsequent taxable year, then—

(i) the statutory period for the assessment of any deficiency with respect to such increase in tax shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of such reduction in qualified basis, and

(ii) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(k) Application of at-risk rules

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, rules similar to the rules of section 49(a)(1) (other than subparagraphs (D)(ii)(II) and (D)(iv)(I) thereof), section 49(a)(2), and section 49(b)(1) shall apply in determining the qualified basis of any building in the same manner as such sections apply in determining the credit base of property.

(2) Special rules for determining qualified person

For purposes of paragraph (1)—

(A) In general

If the requirements of subparagraphs (B), (C), and (D) are met with respect to any financing borrowed from a qualified nonprofit organization (as defined in subsection (h)(5)), the determination of whether such financing is qualified commercial financing with respect to any qualified low-income building shall be made without regard to whether such organization—

(i) is actively and regularly engaged in the business of lending money, or

(ii) is a person described in section 49(a)(1)(D)(iv)(II).

(B) Financing secured by property

The requirements of this subparagraph are met with respect to any financing if such financing is secured by the qualified low-income building, except that this subparagraph shall not apply in the case of a federally assisted building described in subsection (d)(6)(B) if—

(i) a security interest in such building is not permitted by a Federal agency holding or insuring the mortgage secured by such building, and

(ii) the proceeds from the financing (if any) are applied to acquire or improve such building..[6]

(C) Portion of building attributable to financing

The requirements of this subparagraph are met with respect to any financing for any taxable year in the compliance period if, as of the close of such taxable year, not more than 60 percent of the eligible basis of the qualified low-income building is attributable to such financing (reduced by the principal and interest of any governmental financing which is part of a wrap-around mortgage involving such financing).

(D) Repayment of principal and interest

The requirements of this subparagraph are met with respect to any financing if such financing is fully repaid on or before the earliest of—

(i) the date on which such financing matures,

(ii) the 90th day after the close of the compliance period with respect to the qualified low-income building, or

(iii) the date of its refinancing or the sale of the building to which such financing relates.

In the case of a qualified nonprofit organization which is not described in section 49(a)(1)(D)(iv)(II) with respect to a building, clause (ii) of this subparagraph shall be ap-

[6] So in original.

plied as if the date described therein were the 90th day after the earlier of the date the building ceases to be a qualified low-income building or the date which is 15 years after the close of a compliance period with respect thereto.

(3) Present value of financing

If the rate of interest on any financing described in paragraph (2)(A) is less than the rate which is 1 percentage point below the applicable Federal rate as of the time such financing is incurred, then the qualified basis (to which such financing relates) of the qualified low-income building shall be the present value of the amount of such financing, using as the discount rate such applicable Federal rate. For purposes of the preceding sentence, the rate of interest on any financing shall be determined by treating interest to the extent of government subsidies as not payable.

(4) Failure to fully repay

(A) In general

To the extent that the requirements of paragraph (2)(D) are not met, then the taxpayer's tax under this chapter for the taxable year in which such failure occurs shall be increased by an amount equal to the applicable portion of the credit under this section with respect to such building, increased by an amount of interest for the period—

(i) beginning with the due date for the filing of the return of tax imposed by chapter 1 for the 1st taxable year for which such credit was allowable, and

(ii) ending with the due date for the taxable year in which such failure occurs,

determined by using the underpayment rate and method under section 6621.

(B) Applicable portion

For purposes of subparagraph (A), the term ''applicable portion'' means the aggregate decrease in the credits allowed to a taxpayer under section 38 for all prior taxable years which would have resulted if the eligible basis of the building were reduced by the amount of financing which does not meet requirements of paragraph (2)(D).

(C) Certain rules to apply

Rules similar to the rules of subparagraphs (A) and (D) of subsection (j)(4) shall apply for purposes of this subsection.

(*l*) Certifications and other reports to Secretary

(1) Certification with respect to 1st year of credit period

Following the close of the 1st taxable year in the credit period with respect to any qualified low-income building, the taxpayer shall certify to the Secretary (at such time and in such form and in such manner as the Secretary prescribes)—

(A) the taxable year, and calendar year, in which such building was placed in service,

(B) the adjusted basis and eligible basis of such building as of the close of the 1st year of the credit period,

(C) the maximum applicable percentage and qualified basis permitted to be taken into account by the appropriate housing credit agency under subsection (h),

(D) the election made under subsection (g) with respect to the qualified low-income housing project of which such building is a part, and

(E) such other information as the Secretary may require.

In the case of a failure to make the certification required by the preceding sentence on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, no credit shall be allowable by reason of subsection (a) with respect to such building for any taxable year ending before such certification is made.

(2) Annual reports to the Secretary

The Secretary may require taxpayers to submit an information return (at such time and in such form and manner as the Secretary prescribes) for each taxable year setting forth—

(A) the qualified basis for the taxable year of each qualified low-income building of the taxpayer,

(B) the information described in paragraph (1)(C) for the taxable year, and

(C) such other information as the Secretary may require.

The penalty under section 6652(j) shall apply to any failure to submit the return required by the Secretary under the preceding sentence on the date prescribed therefor.

(3) Annual reports from housing credit agencies

Each agency which allocates any housing credit amount to any building for any calendar year shall submit to the Secretary (at such time and in such manner as the Secretary shall prescribe) an annual report specifying—

(A) the amount of housing credit amount allocated to each building for such year,

(B) sufficient information to identify each such building and the taxpayer with respect thereto, and

(C) such other information as the Secretary may require.

The penalty under section 6652(j) shall apply to any failure to submit the report required by the preceding sentence on the date prescribed therefor.

(m) Responsibilities of housing credit agencies

(1) Plans for allocation of credit among projects

(A) In general

Notwithstanding any other provision of this section, the housing credit dollar amount with respect to any building shall be zero unless—

(i) such amount was allocated pursuant to a qualified allocation plan of the housing credit agency which is approved by the governmental unit (in accordance with rules similar to the rules of section 147(f)(2) (other than subparagraph (B)(ii) thereof)) of which such agency is a part,

(ii) such agency notifies the chief executive officer (or the equivalent) of the local

jurisdiction within which the building is located of such project and provides such individual a reasonable opportunity to comment on the project,

(iii) a comprehensive market study of the housing needs of low-income individuals in the area to be served by the project is conducted before the credit allocation is made and at the developer's expense by a disinterested party who is approved by such agency, and

(iv) a written explanation is available to the general public for any allocation of a housing credit dollar amount which is not made in accordance with established priorities and selection criteria of the housing credit agency.

(B) Qualified allocation plan

For purposes of this paragraph, the term ''qualified allocation plan'' means any plan—

(i) which sets forth selection criteria to be used to determine housing priorities of the housing credit agency which are appropriate to local conditions,

(ii) which also gives preference in allocating housing credit dollar amounts among selected projects to—

(I) projects serving the lowest income tenants,

(II) projects obligated to serve qualified tenants for the longest periods, and

(III) projects which are located in qualified census tracts (as defined in subsection (d)(5)(C)) and the development of which contributes to a concerted community revitalization plan, and

(iii) which provides a procedure that the agency (or an agent or other private contractor of such agency) will follow in monitoring for noncompliance with the provisions of this section and in notifying the Internal Revenue Service of such noncompliance which such agency becomes aware of and in monitoring for noncompliance with habitability standards through regular site visits.

(C) Certain selection criteria must be used

The selection criteria set forth in a qualified allocation plan must include

(i) project location,

(ii) housing needs characteristics,

(iii) project characteristics, including whether the project includes the use of existing housing as part of a community revitalization plan,

(iv) sponsor characteristics,

(v) tenant populations with special housing needs,

(vi) public housing waiting lists,

(vii) tenant populations of individuals with children,

(viii) projects intended for eventual tenant ownership,

(ix) the energy efficiency of the project, and

(x) the historic nature of the project.

(D) Application to bond financed projects

Subsection (h)(4) shall not apply to any project unless the project satisfies the requirements for allocation of a housing credit dollar amount under the qualified allocation plan applicable to the area in which the project is located.

(2) Credit allocated to building not to exceed amount necessary to assure project feasibility

(A) In general

The housing credit dollar amount allocated to a project shall not exceed the amount the housing credit agency determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period.

(B) Agency evaluation

In making the determination under subparagraph (A), the housing credit agency shall consider—

(i) the sources and uses of funds and the total financing planned for the project,

(ii) any proceeds or receipts expected to be generated by reason of tax benefits,

(iii) the percentage of the housing credit dollar amount used for project costs other than the cost of intermediaries, and

(iv) the reasonableness of the developmental and operational costs of the project.

Clause (iii) shall not be applied so as to impede the development of projects in hard-to-develop areas. Such a determination shall not be construed to be a representation or warranty as to the feasibility or viability of the project.

(C) Determination made when credit amount applied for and when building placed in service

(i) In general

A determination under subparagraph (A) shall be made as of each of the following times:

(I) The application for the housing credit dollar amount.

(II) The allocation of the housing credit dollar amount.

(III) The date the building is placed in service.

(ii) Certification as to amount of other subsidies

Prior to each determination under clause (i), the taxpayer shall certify to the housing credit agency the full extent of all Federal, State, and local subsidies which apply (or which the taxpayer expects to apply) with respect to the building.

(D) Application to bond financed projects

Subsection (h)(4) shall not apply to any project unless the governmental unit which issued the bonds (or on behalf of which the bonds were issued) makes a determination under rules similar to the rules of subparagraphs (A) and (B).

(n) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out

the purposes of this section, including regulations—

(1) dealing with—

(A) projects which include more than 1 building or only a portion of a building,

(B) buildings which are placed in service in portions,

(2) providing for the application of this section to short taxable years,

(3) preventing the avoidance of the rules of this section, and

(4) providing the opportunity for housing credit agencies to correct administrative errors and omissions with respect to allocations and record keeping within a reasonable period after their discovery, taking into account the availability of regulations and other administrative guidance from the Secretary.

(Added Pub. L. 99–514, title II, § 252(a), Oct. 22, 1986, 100 Stat. 2189; amended Pub. L. 99–509, title VIII, § 8072(a), Oct. 21, 1986, 100 Stat. 1964; Pub. L. 100–647, title I, §§ 1002(*l*)(1)–(25), (32), 1007(g)(3)(B), title IV, §§ 4003(a), (b)(1), (3), 4004(a), Nov. 10, 1988, 102 Stat. 3373–3381, 3435, 3643, 3644; Pub. L. 101–239, title VII, §§ 7108(a)(1), (b)–(e)(2), (f)–(m), (n)(2)–(q), 7811(a), 7831(c), 7841(d)(13)–(15), Dec. 19, 1989, 103 Stat. 2306–2321, 2406, 2426, 2429; Pub. L. 101–508, title XI, §§ 11407(a)(1), (b)(1)–(9), 11701(a)(1)–(3)(A), (4), (5)(A), (6)–(10), 11812(b)(3), 11813(b)(3), Nov. 5, 1990, 104 Stat. 1388–474, 1388–475, 1388–505 to 1388–507, 1388–535, 1388–551; Pub. L. 102–227, title I, § 107(a), Dec. 11, 1991, 105 Stat. 1687; Pub. L. 103–66, title XIII, § 13142(a)(1), (b)(1)–(5), Aug. 10, 1993, 107 Stat. 437–439; Pub. L. 104–188, title I, § 1704(t)(53), (64), Aug. 20, 1996, 110 Stat. 1890; Pub. L. 105–206, title VI, § 6004(g)(5), July 22, 1998, 112 Stat. 796; Pub. L. 106–400, § 2, Oct. 30, 2000, 114 Stat. 1675; Pub. L. 106–554, § 1(a)(7) [title I, §§ 131(a)–(c), 132–136], Dec. 21, 2000, 114 Stat. 2763, 2763A–610 to 2763A–613; Pub. L. 107–147, title IV, § 417(2), (3), Mar. 9, 2002, 116 Stat. 56; Pub. L. 108–311, title II, § 207(8), title IV, § 408(a)(3), Oct. 4, 2004, 118 Stat. 1177, 1191; Pub. L. 110–142, § 6(a), Dec. 20, 2007, 121 Stat. 1806; Pub. L. 110–289, div. C, title I, §§ 3001–3002(b), 3003(a)–(g), 3004(a)–(g), 3007(b), July 30, 2008, 122 Stat. 2878–2884, 2886; Pub. L. 111–5, div. B, title I, § 1404, Feb. 17, 2009, 123 Stat. 352.)

Inflation Adjusted Items for Certain Years

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

References in Text

The date of the enactment of this paragraph, referred to in subsec. (b)(2)(A), is the date of enactment of Pub. L. 110–289, which was approved July 30, 2008.

Section 201(a) of the Tax Reform Act of 1986, referred to in subsec. (c)(2)(B), is section 201(a) of Pub. L. 99–514, which amended section 168 of this title generally.

Section 3 of the Federal Deposit Insurance Act, referred to in subsec. (d)(6)(B), is classified to section 1813 of Title 12, Banks and Banking.

Section 8 of the United States Housing Act of 1937, referred to in subsecs. (d)(6)(C)(i), (g)(2)(B), and (h)(6)(B)(iv), is classified to section 1437f of Title 42, The Public Health and Welfare. Section 8(e)(2) of the Act was repealed by Pub. L. 101–625, title II, § 289(b)(1), Nov. 28, 1990, 104 Stat. 4128, effective Oct. 1, 1991, but to remain in effect with respect to single room occupancy dwellings as authorized by subchapter IV (§ 11361 et seq.) of chapter 119 of Title 42. See section 12839(b) of Title 42.

Sections 221(d)(3), (4) and 236 of the National Housing Act, referred to in subsec. (d)(6)(C)(i), are classified to sections 1715*l*(d)(3), (4) and 1715z–1, respectively, of Title 12, Banks and Banking.

Sections 515, 502(c), and 520 of the Housing Act of 1949, referred to in subsecs. (d)(6)(C)(i), (g)(2)(B)(iv), and (i)(8), are classified to sections 1485, 1472(c), and 1490, respectively, of Title 42, The Public Health and Welfare.

The date of the enactment of this subparagraph, referred to in subsec. (g)(2)(E), is the date of enactment of Pub. L. 100–647, which was approved Nov. 10, 1988.

The date of the enactment of this clause, referred to in subsec. (i)(3)(B)(iii)(I), is date of enactment of Pub. L. 101–239, which was approved Dec. 19, 1989.

The Social Security Act, referred to in subsec. (i)(3)(D)(i)(I), (II), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title IV of the Act is classified generally to subchapter IV (§ 601 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Parts B and E of title IV of the Act are classified generally to parts B (§ 620 et seq.) and E (§ 670 et seq.), respectively, of subchapter IV of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Job Training Partnership Act, referred to in subsec. (i)(3)(D)(i)(III), is Pub. L. 97–300, Oct. 13, 1982, 96 Stat. 1322, which was classified generally to chapter 19 (§ 1501 et seq.) of Title 29, Labor, and was repealed by Pub. L. 105–220, title I, § 199(b)(2), (c)(2)(B), Aug. 7, 1998, 112 Stat. 1059, effective July 1, 2000. Pursuant to section 2940(b) of Title 29, references to a provision of the Job Training Partnership Act, effective Aug. 7, 1998, are deemed to refer to that provision or the corresponding provision of the Workforce Investment Act of 1998, Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, and effective July 1, 2000, are deemed to refer to the corresponding provision of the Workforce Investment Act of 1998. For complete classification of the Job Training Partnership Act to the Code, see Tables. For complete classification of the Workforce Investment Act of 1998 to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

Section 1602 of the American Recovery and Reinvestment Tax Act of 2009, referred to in subsec. (i)(9)(A), is section 1602 of Pub. L. 111–5, which is set out as a note below.

Prior Provisions

A prior section 42, added Pub. L. 94–12, title II, § 203(a), Mar. 29, 1975, 89 Stat. 29; amended Pub. L. 94–164, § 3(a)(1), Dec. 23, 1975, 89 Stat. 972; Pub. L. 94–455, title IV, § 401(a)(2)(A), (B), title V, § 503(b)(4), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1555, 1562, 1834; Pub. L. 95–30, title I, § 101(c), May 23, 1977, 91 Stat. 132, which related to general tax credit allowed to individuals in an amount equal to the greater of (1) 2% of taxable income not exceeding $9,000 or (2) $35 multiplied by each exemption the taxpayer was entitled to, expired Dec. 31, 1978, pursuant to the terms of: (1) Pub. L. 94–12, § 209(a) as amended by Pub. L. 94–164, § 2(e), set out as an Effective and Termination Dates of 1975 Amendment note under section 56 of this title; (2) Pub. L. 94–164, § 3(b), as amended by Pub. L. 94–455, § 401(a)(1) and Pub. L. 95–30, § 103(a); and (3) Pub. L. 94–455, § 401(e), as amended by Pub. L. 95–30, § 103(c) and Pub. L. 95–600, title I, § 103(b), Nov. 6, 1978, 92 Stat. 2771, set out as an Effective and Termination Dates of 1976 Amendment note under section 32 of this title.

Another prior section 42 was renumbered section 37 of this title.

Amendments

2009—Subsec. (i). Pub. L. 111–5 added par. (9).

2008—Subsec. (b). Pub. L. 110–289, § 3002(a), redesignated par. (2) as (1), in heading, substituted ''Determination of applicable percentage'' for ''Buildings placed in service after 1987'', in text, substituted ''For purposes of this section, the term 'applicable percent-

age' means, with respect to any building, the appropriate percentage'' for ''(A) IN GENERAL.—In the case of any qualified low-income building placed in service by the taxpayer after 1987, the term 'applicable percentage' means the appropriate percentage'', ''a new building which is not federally subsidized for the taxable year'' for ''a building described in paragraph (1)(A)'', and ''a building not described in clause (i)'' for ''a building described in paragraph (1)(B)'', added par. (2), and struck out ''For purposes of this section—'' after subsec. heading and former par. (1) which related to buildings placed in service during 1987.

Subsec. (c)(2). Pub. L. 110–289, §3004(a), struck out concluding provisions which read as follows: ''Such term does not include any building with respect to which moderate rehabilitation assistance is provided, at any time during the compliance period, under section 8(e)(2) of the United States Housing Act of 1937 (other than assistance under the McKinney-Vento Homeless Assistance Act (as in effect on the date of the enactment of this sentence)).''

Subsec. (d)(2)(B)(ii). Pub. L. 110–289, §3003(g)(1), substituted ''the date the building was last placed in service,'' for ''the later of—

''(I) the date the building was last placed in service, or

''(II) the date of the most recent nonqualified substantial improvement of the building,''.

Subsec. (d)(2)(D). Pub. L. 110–289, §3003(e), (g)(2), redesignated cls. (ii) and (iii)(II) as (i) and (ii), respectively, in cl. (ii) struck out at end ''For purposes of the preceding sentence, in applying section 267(b) or 707(b)(1), '10 percent' shall be substituted for '50 percent'.'', and struck out former cls. (i) and (iii)(I) which related to the term ''nonqualified substantial improvement'' and application of section 179 for purposes of subpar. (B)(i).

Subsec. (d)(4)(C)(ii). Pub. L. 110–289, §3003(c), substituted ''shall not exceed the sum of—'' for ''shall not exceed 10 percent of the eligible basis of the qualified low-income housing project of which it is a part.'' and added subcls. (I) and (II).

Subsec. (d)(5)(A). Pub. L. 110–289, §3003(d), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows: ''If, during any taxable year of the compliance period, a grant is made with respect to any building or the operation thereof and any portion of such grant is funded with Federal funds (whether or not includible in gross income), the eligible basis of such building for such taxable year and all succeeding taxable years shall be reduced by the portion of such grant which is so funded.''

Subsec. (d)(5)(B), (C). Pub. L. 110–289, §3003(g)(3), redesignated subpar. (C) as (B) and struck out heading and text of former subpar. (B). Text read as follows: ''The eligible basis of any building shall not include any portion of its adjusted basis which is attributable to amounts with respect to which an election is made under section 167(k) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).''

Subsec. (d)(5)(C)(v). Pub. L. 110–289, §3003(a), added cl. (v).

Subsec. (d)(6). Pub. L. 110–289, §3003(f), amended par. (6) generally. Prior to amendment, par. (6) consisted of subpars. (A) to (E) relating to general rule for waiver of par. (2)(B)(ii) with respect to any federally-assisted building, definition of ''federally-assisted building'', waiver for buildings with low-income occupancy, waiver for buildings acquired from insured depository institutions in default, and definition of ''appropriate Federal official''.

Subsec. (e)(3)(A)(ii)(I). Pub. L. 110–289, §3003(b)(1)(A), substituted ''20 percent'' for ''10 percent''.

Subsec. (e)(3)(A)(ii)(II). Pub. L. 110–289, §3003(b)(1)(B), substituted ''$6,000'' for ''$3,000''.

Subsec. (e)(3)(D). Pub. L. 110–289, §3003(b)(2), added subpar. (D).

Subsec. (f)(5)(B)(ii)(II). Pub. L. 110–289, §3003(b)(3), substituted ''if the dollar amount in effect under subsection (e)(3)(A)(ii)(II) were two-thirds of such amount.'' for ''if subsection (e)(3)(A)(ii)(II) were applied by substituting '$2,000' for '$3,000'.''

Subsec. (g)(9). Pub. L. 110–289, §3004(g), added par. (9).

Subsec. (h)(1)(E)(ii). Pub. L. 110–289, §3004(b), substituted ''(as of the date which is 1 year after the date that the allocation was made)'' for ''(as of the later of the date which is 6 months after the date that the allocation was made or the close of the calendar year in which the allocation is made)''.

Subsec. (h)(3)(I). Pub. L. 110–289, §3001, added subpar. (I).

Subsec. (h)(4)(A)(ii). Pub. L. 110–289, §3007(b), inserted ''or such financing is refunded as described in section 146(i)(6)'' before period at end.

Subsec. (i)(2)(A). Pub. L. 110–289, §3002(b)(1), struck out '', or any below market Federal loan,'' before ''the proceeds of which''.

Subsec. (i)(2)(B). Pub. L. 110–289, §3002(b)(2)(A), in heading, struck out ''balance of loan or'' before ''proceeds'' and in text, struck out ''loan or'' before ''tax-exempt obligation'' and substituted ''for purposes of subsection (d) the proceeds of such obligation.'' for ''for purposes of subsection (d)—

''(i) in the case of a loan, the principal amount of such loan, and

''(ii) in the case of a tax-exempt obligation, the proceeds of such obligation.''

Subsec. (i)(2)(C). Pub. L. 110–289, §3002(b)(2)(B)(i), struck out ''or below market Federal loan'' after ''tax-exempt obligation'' in introductory provisions.

Subsec. (i)(2)(C)(i). Pub. L. 110–289, §3002(b)(2)(B)(ii), substituted ''(when issued)'' for ''or loan (when issued or made)'' and ''the proceeds of such obligation'' for ''the proceeds of such obligation or loan''.

Subsec. (i)(2)(C)(ii). Pub. L. 110–289, §3002(b)(2)(B)(iii), struck out '', and such loan is repaid,'' after ''redeemed''.

Subsec. (i)(2)(D), (E). Pub. L. 110–289, §3002(b)(2)(C), struck out subpars. (D) and (E) which related to below market Federal loan and buildings receiving HOME assistance or Native American housing assistance, respectively.

Subsec. (i)(3)(D)(i)(II), (III). Pub. L. 110–289, §3004(e), added subcl. (II) and redesignated former subcl. (II) as (III).

Subsec. (i)(8). Pub. L. 110–289, §3004(f), added par. (8).

Subsec. (j)(6). Pub. L. 110–289, §3004(c), amended par. (6) generally. Prior to amendment, text read as follows: ''In the case of a disposition of a building or an interest therein, the taxpayer shall be discharged from liability for any additional tax under this subsection by reason of such disposition if—

''(A) the taxpayer furnishes to the Secretary a bond in an amount satifactory to the Secretary and for the period required by the Secretary, and

''(B) it is reasonably expected that such building will continue to be operated as a qualified low-income building for the remaining compliance period with respect to such building.''

Subsec. (m)(1)(C)(ix), (x). Pub. L. 110–289, §3004(d), added cls. (ix) and (x).

2007—Subsec. (i)(3)(D)(ii)(I). Pub. L. 110–142 amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ''single parents and their children and such parents and children are not dependents (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of another individual, or''.

2004—Subsec. (d)(2)(D)(iii)(I). Pub. L. 108–311, §408(a)(3), substituted ''section 179(d)(7)'' for ''section 179(b)(7)''.

Subsec. (i)(3)(D)(ii)(I). Pub. L. 108–311, §207(8), inserted '', determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof'' after ''section 152''.

2002—Subsec. (h)(3)(C). Pub. L. 107–147, §417(2), substituted ''the amounts described in clauses (ii) through (iv) over the aggregate housing credit dollar amount allocated for such year'' for ''the amounts described in clauses (ii) and (iii) over the aggregate housing credit

dollar amount allocated for such year'' in concluding provisions.

Subsec. (m)(1)(B)(ii)(II), (III). Pub. L. 107–147, §417(3), struck out second ''and'' at end of subcl. (II) and inserted ''and'' at end of subcl. (III).

2000—Subsec. (c)(2). Pub. L. 106–400 substituted ''McKinney-Vento Homeless Assistance Act'' for ''Stewart B. McKinney Homeless Assistance Act'' in concluding provisions.

Subsec. (d)(4)(A). Pub. L. 106–554, §1(a)(7) [title I, §134(a)(1)], substituted ''subparagraphs (B) and (C)'' for ''subparagraph (B)''.

Subsec. (d)(4)(C), (D). Pub. L. 106–554, §1(a)(7) [title I, §134(a)(2), (3)], added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (d)(5)(C)(ii)(I). Pub. L. 106–554, §1(a)(7) [title I, §135(b)], in first sentence, inserted ''either'' before ''in which 50 percent'' and ''or which has a poverty rate of at least 25 percent'' before period at end.

Subsec. (h)(1)(E)(ii). Pub. L. 106–554, §1(a)(7) [title I, §135(a)(1)], in first sentence, substituted ''(as of the later of the date which is 6 months after the date that the allocation was made or the close of the calendar year in which the allocation'' for ''(as of the close of the calendar year in which the allocation''.

Subsec. (h)(3)(C). Pub. L. 106–554, §1(a)(7) [title I, §136(b)], which directed the substitution of ''clauses (i) through (iv)'' for ''clauses (i) and (iii)'' in the first sentence of concluding provisions, could not be executed because the words ''clauses (i) and (iii)'' did not appear subsequent to the amendment by Pub. L. 106–554, §1(a)(7) [title I, §131(c)(1)(B)]. See below.

Pub. L. 106–554, §1(a)(7) [title I, §135(a)(2)], in last sentence of concluding provisions, substituted ''project which fails to meet the 10 percent test under paragraph (1)(E)(ii) on a date after the close of the calendar year in which the allocation was made or which'' for ''project which''.

Pub. L. 106–554, §1(a)(7) [title I, §131(c)(1)], in first sentence of concluding provisions, substituted ''clause (i)'' for ''clause (ii)'' and ''clauses (ii)'' for ''clauses (i)''.

Subsec. (h)(3)(C)(i), (ii). Pub. L. 106–554, §1(a)(7) [title I, §131(a)], amended cls. (i) and (ii) generally. Prior to amendment, cls. (i) and (ii) read as follows:

''(i) $1.25 multiplied by the State population,

''(ii) the unused State housing credit ceiling (if any) of such State for the preceding calendar year,''.

Subsec. (h)(3)(D)(ii). Pub. L. 106–554, §1(a)(7) [title I, §136(a)], substituted ''the excess (if any) of—'' for ''the excess (if any) of the unused State housing credit ceiling for such year (as defined in subparagraph (C)(i)) over the excess (if any) of—'' in introductory provisions, added subcls. (I) and (II), and struck out former subcls. (I) and (II) which read as follows:

''(I) the aggregate housing credit dollar amount allocated for such year, over

''(II) the sum of the amounts described in clauses (ii) and (iii) of subparagraph (C).''

Pub. L. 106–554, §1(a)(7) [title I, §131(c)(2)], substituted ''subparagraph (C)(i)'' for ''subparagraph (C)(ii)'' in introductory provisions and ''clauses (ii)'' for ''clauses (i)'' in subcl. (II).

Subsec. (h)(3)(H). Pub. L. 106–554, §1(a)(7) [title I, §131(b)], added subpar. (H).

Subsec. (i)(2)(E). Pub. L. 106–554, §1(a)(7) [title I, §134(b)(2)], inserted ''or Native American housing assistance'' after ''HOME assistance'' in heading.

Subsec. (i)(2)(E)(i). Pub. L. 106–554, §1(a)(7) [title I, §134(b)(1)], inserted ''or the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.) (as in effect on October 1, 1997)'' after ''this subparagraph)''.

Subsec. (i)(3)(B)(iii)(I). Pub. L. 106–400 substituted ''McKinney-Vento Homeless Assistance Act'' for ''Stewart B. McKinney Homeless Assistance Act''.

Subsec. (m)(1)(A)(iii), (iv). Pub. L. 106–554, §1(a)(7) [title I, §133(a)], added cls. (iii) and (iv).

Subsec. (m)(1)(B)(ii)(III). Pub. L. 106–554, §1(a)(7) [title I, §132(b)], added subcl. (III).

Subsec. (m)(1)(B)(iii). Pub. L. 106–554, §1(a)(7) [title I, §133(b)], inserted ''and in monitoring for noncompliance with habitability standards through regular site visits'' before period at end.

Subsec. (m)(1)(C)(iii). Pub. L. 106–554, §1(a)(7) [title I, §132(a)(1)], inserted '', including whether the project includes the use of existing housing as part of a community revitalization plan'' before comma at end.

Subsec. (m)(1)(C)(v) to (viii). Pub. L. 106–554, §1(a)(7) [title I, §132(a)(2)], added cls. (v) to (viii) and struck out former cls. (v) to (vii) which read as follows:

''(v) participation of local tax-exempt organizations,

''(vi) tenant populations with special housing needs, and

''(vii) public housing waiting lists.''

1998—Subsec. (j)(4)(D). Pub. L. 105–206 substituted ''this chapter'' for ''subpart A, B, D, or G of this part''.

1996—Subsec. (c)(2). Pub. L. 104–188, §1704(t)(64), struck out ''of 1988'' after ''Homeless Assistance Act''.

Subsec. (d)(5)(B). Pub. L. 104–188, §1704(t)(53), provided that section 11812(b)(3) of Pub. L. 101–508 shall be applied by not executing the amendment therein to the heading of subsec. (d)(5)(B) of this section. See 1990 Amendment note below.

1993—Subsec. (g)(8). Pub. L. 103–66, §13142(b)(3), added par. (8).

Subsec. (h)(6)(B)(iv) to (vi). Pub. L. 103–66, §13142(b)(4), added cl. (iv) and redesignated former cls. (iv) and (v) as (v) and (vi), respectively.

Subsec. (i)(2)(E). Pub. L. 103–66, §13142(b)(5), added subpar. (E).

Subsec. (i)(3)(D). Pub. L. 103–66, §13142(b)(2), amended heading and text of subpar. (D) generally. Prior to amendment, text read as follows: ''A unit shall not fail to be treated as a low-income unit merely because it is occupied by an individual who is—

''(i) a student and receiving assistance under title IV of the Social Security Act, or

''(ii) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws.''

Subsec. (m)(2)(B)(iv). Pub. L. 103–66, §13142(b)(1), added cl. (iv).

Subsec. (*o*). Pub. L. 103–66, §13142(a)(1), struck out subsec. (*o*) which provided that subsec. (h)(3)(C)(i) would not apply to any amount allocated after June 30, 1992, and that subsec. (h)(4) would not apply to any building placed in service after June 30, 1992, with an exception for bond-financed buildings in progress.

1991—Subsec. (*o*)(1). Pub. L. 102–227, §107(a)(1), struck out '', for any calendar year after 1991'' after ''paragraph (2)'' in introductory provisions, inserted ''to any amount allocated after June 30, 1992'' before comma at end of subpar. (A), and substituted ''June 30, 1992'' for ''1991'' in subpar. (B).

Subsec. (*o*)(2). Pub. L. 102–227, §107(a)(2), substituted ''July 1, 1992'' for ''1992'' in introductory provisions and subpar. (A), ''June 30, 1992'' for ''December 31, 1991'' and ''June 30, 1994'' for ''December 31, 1993'' in subpar. (B), and ''July 1, 1994'' for ''January 1, 1994'' in subpar. (C).

1990—Subsec. (b)(1). Pub. L. 101–508, §11701(a)(1)(B), struck out at end ''A building shall not be treated as described in subparagraph (B) if, at any time during the credit period, moderate rehabilitation assistance is provided with respect to such building under section 8(e)(2) of the United States Housing Act of 1937.''

Subsec. (c)(2). Pub. L. 101–508, §11701(a)(1)(A), inserted at end ''Such term does not include any building with respect to which moderate rehabilitation assistance is provided, at any time during the compliance period, under section 8(e)(2) of the United States Housing Act of 1937.''

Pub. L. 101–508, §11407(b)(5)(A), inserted before period at end of last sentence ''(other than assistance under the Stewart B. McKinney Homeless Assistance Act of 1988 (as in effect on the date of the enactment of this sentence))''.

Subsec. (d)(2)(D)(i)(I). Pub. L. 101–508, §11812(b)(3), inserted ''(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)'' after ''section 167(k).''

Subsec. (d)(2)(D)(ii)(V). Pub. L. 101–508, §11407(b)(8), added subcl. (V).

Subsec. (d)(5)(B). Pub. L. 101–508, §11812(b)(3), which directed the insertion of ''(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)'' after ''section 167(k)'', was executed to the text, and not the heading, of subpar. (B). See 1996 Amendment note above.

Subsec. (d)(5)(C)(ii)(I). Pub. L. 101–508, §11407(b)(4), inserted at end ''If the Secretary of Housing and Urban Development determines that sufficient data for any period are not available to apply this clause on the basis of census tracts, such Secretary shall apply this clause for such period on the basis of enumeration districts.''

Pub. L. 101–508, §11701(a)(2)(B), inserted before period at end ''for such year''.

Pub. L. 101–508, §11701(a)(2)(A), which directed the insertion of ''which is designated by the Secretary of Housing and Urban Development and, for the most recent year for which census data are available on household income in such tract,'' after ''census tract'', was executed by making the insertion after ''any census tract'' to reflect the probable intent of Congress.

Subsec. (g)(2)(B)(iv). Pub. L. 101–508, §11407(b)(3), added cl. (iv).

Subsec. (g)(2)(D)(i). Pub. L. 101–508, §11701(a)(3)(A), inserted before period at end ''and such unit continues to be rent-restricted''.

Subsec. (g)(2)(D)(ii). Pub. L. 101–508, §11701(a)(4), inserted at end ''In the case of a project described in section 142(d)(4)(B), the preceding sentence shall be applied by substituting '170 percent' for '140 percent' and by substituting 'any low-income unit in the building is occupied by a new resident whose income exceeds 40 percent of area median gross income' for 'any residential unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation'.''

Subsec. (g)(3)(A). Pub. L. 101–508, §11701(a)(5)(A), substituted ''the 1st year of the credit period for such building'' for ''the 12-month period beginning on the date the building is placed in service''.

Subsec. (h)(3)(C). Pub. L. 101–508, §11701(a)(6)(A), substituted ''the sum of the amounts described in clauses (i) and (iii)'' for ''the amount described in clause (i)'' in second sentence.

Subsec. (h)(3)(D)(ii)(II). Pub. L. 101–508, §11701(a)(6)(B), substituted ''the sum of the amounts described in clauses (i) and (iii)'' for ''the amount described in clause (i)''.

Subsec. (h)(5)(B). Pub. L. 101–508, §11407(b)(9)(A), inserted ''own an interest in the project (directly or through a partnership) and'' after ''nonprofit organization is to''.

Subsec. (h)(5)(C)(i) to (iii). Pub. L. 101–508, §11407(b)(9)(B), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (h)(5)(D)(i). Pub. L. 101–508, §11407(b)(9)(C), inserted ''ownership and'' before ''material participation''.

Subsec. (h)(6)(B)(i). Pub. L. 101–508, §11701(a)(7)(A), inserted before comma at end ''and which prohibits the actions described in subclauses (I) and (II) of subparagraph (E)(ii)''.

Subsec. (h)(6)(B)(ii). Pub. L. 101–508, §11701(a)(7)(B), substituted ''requirement and prohibitions'' for ''requirement''.

Subsec. (h)(6)(B)(iii) to (v). Pub. L. 101–508, §11701(a)(8)(A), added cl. (iii) and redesignated former cls. (iii) and (iv) as (iv) and (v), respectively.

Subsec. (h)(6)(E)(i)(I). Pub. L. 101–508, §11701(a)(9), inserted before comma ''unless the Secretary determines that such acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate such period''.

Subsec. (h)(6)(E)(ii)(II). Pub. L. 101–508, §11701(a)(8)(C), inserted before period at end ''not otherwise permitted under this section''.

Subsec. (h)(6)(F). Pub. L. 101–508, §11701(a)(8)(D), inserted ''the nonlow-income portion of the building for fair market value and'' before ''the low-income portion'' in introductory provisions.

Subsec. (h)(6)(J) to (L). Pub. L. 101–508, §11701(a)(8)(B), redesignated subpars. (K) and (L) as (J) and (K), respectively, and struck out former subpar. (J) which related to sales of less than the low-income portions of a building.

Subsec. (i)(3)(D). Pub. L. 101–508, §11407(b)(6), substituted ''Certain students'' for ''Students in government-supported job training programs'' in heading and amended text generally. Prior to amendment, text read as follows: ''A unit shall not fail to be treated as a low-income unit merely because it is occupied by an individual who is enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws.''

Subsec. (i)(7). Pub. L. 101–508, §11701(a)(10), redesignated par. (8) as (7).

Subsec. (i)(7)(A). Pub. L. 101–508, §11407(b)(1), substituted ''the tenants (in cooperative form or otherwise) or resident management corporation of such building or by a qualified nonprofit organization (as defined in subsection (h)(5)(C)) or government agency'' for ''the tenants of such building''.

Subsec. (i)(8). Pub. L. 101–508, §11701(a)(10), redesignated par. (8) as (7).

Subsec. (k)(1). Pub. L. 101–508, §11813(b)(3)(A), substituted ''49(a)(1)'' for ''46(c)(8)'', ''49(a)(2)'' for ''46(c)(9)'', and ''49(b)(1)'' for ''47(d)(1)''.

Subsec. (k)(2)(A)(ii), (D). Pub. L. 101–508, §11813(b)(3)(B), substituted ''49(a)(1)(D)(iv)(II)'' for ''46(c)(8)(D)(iv)(II)''.

Subsec. (m)(1)(B)(ii) to (iv). Pub. L. 101–508, §11407(b)(7)(B), redesignated cls. (iii) and (iv) as (ii) and (iii), respectively, and struck out former cl. (ii) which read as follows: ''which gives the highest priority to those projects as to which the highest percentage of the housing credit dollar amount is to be used for project costs other than the cost of intermediaries unless granting such priority would impede the development of projects in hard-to-develop areas,''.

Pub. L. 101–508, §11407(b)(2), amended cl. (iv) generally. Prior to amendment, cl. (iv) read as follows: ''which provides a procedure that the agency will follow in notifying the Internal Revenue Service of noncompliance with the provisions of this section which such agency becomes aware of.''

Subsec. (m)(2)(B). Pub. L. 101–508, §11407(b)(7)(A), added cl. (iii) and inserted provision that cl. (iii) not be applied so as to impede the development of projects in hard-to-develop areas.

Subsec. (*o*)(1). Pub. L. 101–508, §11407(a)(1)(A), substituted ''1991'' for ''1990'' wherever appearing.

Subsec. (*o*)(2). Pub. L. 101–508, §11407(a)(1)(B), added par. (2) and struck out former par. (2) which read as follows: ''For purposes of paragraph (1)(B), a building shall be treated as placed in service before 1990 if—

''(A) the bonds with respect to such building are issued before 1990,

''(B) such building is constructed, reconstructed, or rehabilitated by the taxpayer,

''(C) more than 10 percent of the reasonably anticipated cost of such construction, reconstruction, or rehabilitation has been incurred as of January 1, 1990, and some of such cost is incurred on or after such date, and

''(D) such building is placed in service before January 1, 1992.''

1989—Subsec. (b)(1). Pub. L. 101–239, §7108(h)(5), inserted at end ''A building shall not be treated as described in subparagraph (B) if, at any time during the credit period, moderate rehabilitation assistance is provided with respect to such building under section 8(e)(2) of the United States Housing Act of 1937.''

Subsec. (b)(3)(C). Pub. L. 101–239, §7108(c)(2), which directed amendment of subpar. (C) by substituting ''subsection (h)(7)'' for ''subsection (h)(6))'', was executed by substituting ''subsection (h)(7)'' for ''subsection (h)(6)'', as the probable intent of Congress.

Subsec. (c)(1)(E). Pub. L. 101–239, §7108(i)(2), added subpar. (E).

Subsec. (d)(1). Pub. L. 101–239, §7108(*l*)(1), inserted ''as of the close of the 1st taxable year of the credit period'' before period at end.

Subsec. (d)(2)(A). Pub. L. 101–239, §7108(*l*)(2), substituted ''subparagraph (B), its adjusted basis as of the close of the 1st taxable year of the credit period, and'' for ''subparagraph (B), the sum of—

''(I) the portion of its adjusted basis attributable to its acquisition cost, plus

''(II) amounts chargeable to capital account and incurred by the taxpayer (before the close of the 1st taxable year of the credit period for such building) for property (or additions or improvements to property) of a character subject to the allowance for depreciation, and''.

Subsec. (d)(2)(B)(iv). Pub. L. 101–239, §7108(d)(1), added cl. (iv).

Subsec. (d)(2)(C). Pub. L. 101–239, §7108(*l*)(3)(A), substituted ''Adjusted basis'' for ''Acquisition cost'' in heading and ''adjusted basis'' for ''cost'' in text.

Subsec. (d)(5). Pub. L. 101–239, §7108(*l*)(3)(B), substituted ''Special rules for determining eligible basis'' for ''Eligible basis determined when building placed in service'' in heading.

Subsec. (d)(5)(A). Pub. L. 101–239, §7108(*l*)(3)(B), redesignated subpar. (B) as (A) and struck out former subpar. (A) which read as follows: ''Except as provided in subparagraphs (B) and (C), the eligible basis of any building for the entire compliance period for such building shall be its eligible basis on the date such building is placed in service (increased, in the case of an existing building which meets the requirements of paragraph (2)(B), by the amounts described in paragraph (2)(A)(i)(II)).''

Subsec. (d)(5)(B). Pub. L. 101–239, §7108(*l*)(3)(B), redesignated subpar. (C) as (B). Former subpar. (B) redesignated (A).

Subsec. (d)(5)(C). Pub. L. 101–239, §7108(*l*)(3)(B), redesignated subpar. (D) as (C). Former subpar. (C) redesignated (B).

Pub. L. 101–239, §7811(a)(1), inserted ''section'' before ''167(k)'' in heading.

Subsec. (d)(5)(D). Pub. L. 101–239, §7108(*l*)(3)(B), redesignated subpar. (D) as (C).

Pub. L. 101–239, §7108(g), added subpar. (D).

Subsec. (d)(6)(A)(i). Pub. L. 101–239, §7841(d)(13), substituted ''Farmers Home Administration'' for ''Farmers' Home Administration''.

Subsec. (d)(6)(C) to (E). Pub. L. 101–239, §7108(f), added subpars. (C) and (D) and redesignated former subpar. (C) as (E).

Subsec. (d)(7)(A). Pub. L. 101–239, §7831(c)(6), inserted ''(or interest therein)'' after ''subparagraph (B)'' in introductory provisions.

Subsec. (d)(7)(A)(ii). Pub. L. 101–239, §7841(d)(14), substituted ''under subsection (a)'' for ''under sebsection (a)''.

Subsec. (e)(2)(A). Pub. L. 101–239, §7841(d)(15), substituted ''to capital account'' for ''to captial account''.

Subsec. (e)(3). Pub. L. 101–239, §7108(d)(3), substituted ''Minimum expenditures to qualify'' for ''Average of rehabilitation expenditures must be $2,000 or more'' in heading, added subpars. (A) and (B), redesignated former subpar. (B) as (C), and struck out former subpar. (A) which read as follows: ''Paragraph (1) shall apply to rehabilitation expenditures with respect to any building only if the qualified basis attributable to such expenditures incurred during any 24-month period, when divided by the low-income units in the building, is $2,000 or more.''

Subsec. (e)(5). Pub. L. 101–239, §7108(*l*)(3)(C), substituted ''subsection (d)(2)(A)(i)'' for ''subsection (d)(2)(A)(i)(II)''.

Subsec. (f)(4). Pub. L. 101–239, §7831(c)(4), added par. (4).

Subsec. (f)(5). Pub. L. 101–239, §7108(d)(2), added par. (5).

Subsec. (g)(2)(A). Pub. L. 101–239, §7108(e)(2), inserted at end ''For purposes of the preceding sentence, the amount of the income limitation under paragraph (1) applicable for any period shall not be less than such limitation applicable for the earliest period the building (which contains the unit) was included in the determination of whether the project is a qualified low-income housing project.''

Pub. L. 101–239, §7108(e)(1)(B), substituted ''the imputed income limitation applicable to such unit'' for ''the income limitation under paragraph (1) applicable to individuals occupying such unit''.

Subsec. (g)(2)(B). Pub. L. 101–239, §7108(h)(2), added cl. (iii) and concluding provisions which defined ''supportive service''.

Subsec. (g)(2)(C) to (E). Pub. L. 101–239, §7108(e)(1)(A), added subpars. (C) and (D) and redesignated former subpar. (C) as (E).

Subsec. (g)(3)(D). Pub. L. 101–239, §7108(m)(3), added subpar. (D).

Subsec. (g)(4). Pub. L. 101–239, §7108(n)(2), struck out ''(other than section 142(d)(4)(B)(iii))'' after ''in applying such provisions''.

Subsec. (g)(7). Pub. L. 101–239, §7108(h)(3), added par. (7).

Subsec. (h)(1)(B). Pub. L. 101–239, §7108(m)(2), substituted ''(E), or (F)'' for ''or (E)''.

Subsec. (h)(1)(F). Pub. L. 101–239, §7108(m)(1), added subpar. (F).

Subsec. (h)(3)(C) to (G). Pub. L. 101–239, §7108(b)(1), added subpars. (C) and (D), redesignated former subpars. (D) to (F) as (E) to (G), respectively, and struck out former subpar. (C) which read as follows: ''The State housing credit ceiling applicable to any State for any calendar year shall be an amount equal to $1.25 multiplied by the State population.''

Subsec. (h)(4)(B). Pub. L. 101–239, §7108(j), substituted ''50 percent'' for ''70 percent'' in heading and in text.

Subsec. (h)(5)(D)(ii). Pub. L. 101–239, §7811(a)(2), substituted ''clause (i)'' for ''clause (ii)''.

Subsec. (h)(5)(E). Pub. L. 101–239, §7108(b)(2)(A), substituted ''subparagraph (F)'' for ''subparagraph (E)''.

Subsec. (h)(6). Pub. L. 101–239, §7108(c)(1), added par. (6). Former par. (6) redesignated (7).

Subsec. (h)(6)(B) to (E). Pub. L. 101–239, §7108(b)(2)(B), redesignated subpars. (C) to (E) as (B) to (D), respectively, and struck out former subpar. (B) which provided that the housing credit dollar amount could not be carried over to any other calendar year.

Subsec. (h)(7), (8). Pub. L. 101–239, §7108(c)(1), redesignated pars. (6) and (7) as (7) and (8), respectively.

Subsec. (i)(2)(D). Pub. L. 101–239, §7108(k), inserted at end ''Such term shall not include any loan which would be a below market Federal loan solely by reason of assistance provided under section 106, 107, or 108 of the Housing and Community Development Act of 1974 (as in effect on the date of the enactment of this sentence).''

Subsec. (i)(3)(B). Pub. L. 101–239, §7108(i)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''A unit shall not be treated as a low-income unit unless the unit is suitable for occupancy (as determined under regulations prescribed by the Secretary taking into account local health, safety, and building codes) and used other than on a transient basis. For purposes of the preceding sentence, a single-room occupancy unit shall not be treated as used on a transient basis merely because it is rented on a month-by-month basis.''

Pub. L. 101–239, §7831(c)(1), inserted ''(as determined under regulations prescribed by the Secretary taking into account local health, safety, and building codes)'' after ''suitable for occupancy''.

Pub. L. 101–239, §7108(h)(1), inserted at end ''For purposes of the preceding sentence, a single-room occupancy unit shall not be treated as used on a transient basis merely because it is rented on a month-by-month basis.''

Subsec. (i)(3)(D). Pub. L. 101–239, §7831(c)(2), added subpar. (D).

Subsec. (i)(3)(E). Pub. L. 101–239, §7108(h)(4), added subpar. (E).

Subsec. (i)(6). Pub. L. 101–239, §7831(c)(3), added par. (6).

Subsec. (i)(8). Pub. L. 101–239, §7108(q), added par. (8).

Subsec. (k)(2)(D). Pub. L. 101–239, §7108(*o*), added provision at end relating to the applicability of cl. (ii) to

qualified nonprofit organizations not described in section 46(c)(8)(D)(iv)(II) with respect to a building.

Subsec. (*l*)(1). Pub. L. 101–239, §7108(p), in introductory provisions, substituted ''Following'' for ''Not later than the 90th day following'' and inserted ''at such time and'' before ''in such form''.

Subsec. (m). Pub. L. 101–239, §7108(*o*), added subsec. (m). Former subsec. (m) redesignated (n).

Subsec. (m)(4). Pub. L. 101–239, §7831(c)(5), added par. (4).

Subsec. (n). Pub. L. 101–239, §7108(*o*), redesignated subsec. (m) as (n). Former subsec. (n) redesignated (*o*).

Pub. L. 101–239, §7108(a)(1), amended subsec. (n) generally. Prior to amendment, subsec. (n) read as follows: ''The State housing credit ceiling under subsection (h) shall be zero for any calendar year after 1989 and subsection (h)(4) shall not apply to any building placed in service after 1989.''

Subsec. (*o*). Pub. L. 101–239, §7108(*o*), redesignated subsec. (n) as (*o*).

1988—Subsec. (b)(2)(A). Pub. L. 100–647, §1002(*l*)(1)(A), substituted ''for the earlier of—'' for ''for the month in which such building is placed in service'' and added cls. (i) and (ii) and concluding provisions.

Subsec. (b)(2)(C)(ii). Pub. L. 100–647, §1002(*l*)(1)(B), substituted ''the month applicable under clause (i) or (ii) of subparagraph (A)'' for ''the month in which the building was placed in service''.

Subsec. (b)(3). Pub. L. 100–647, §1002(*l*)(9)(B), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''For treatment of certain rehabilitation expenditures as separate new buildings, see subsection (e).''

Subsec. (c)(2)(A). Pub. L. 100–647, §1002(*l*)(2)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''which at all times during the compliance period with respect to such building is part of a qualified low-income housing project, and''.

Subsec. (d)(2)(D)(ii). Pub. L. 100–647, §1002(*l*)(3), substituted ''Special rules for certain transfers'' for ''Special rule for nontaxable exchanges'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of determining under subparagraph (B)(ii) when a building was last placed in service, there shall not be taken into account any placement in service in connection with the acquisition of the building in a transaction in which the basis of the building in the hands of the person acquiring it is determined in whole or in part by reference to the adjusted basis of such building in the hands of the person from whom aquired [sic].''

Subsec. (d)(3). Pub. L. 100–647, §1002(*l*)(4), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The eligible basis of any building shall be reduced by an amount equal to the portion of the adjusted basis of the building which is attributable to residential rental units in the building which are not low-income units and which are above the average quality standard of the low-income units in the building.''

Subsec. (d)(5)(A). Pub. L. 100–647, §1002(*l*)(6)(B), substituted ''subparagraphs (B) and (C)'' for ''subparagraph (B)''.

Pub. L. 100–647, §1002(*l*)(5), inserted ''(increased, in the case of an existing building which meets the requirements of paragraph (2)(B), by the amounts described in paragraph (2)(A)(i)(II))'' before period at end.

Subsec. (d)(5)(C). Pub. L. 100–647, §1002(*l*)(6)(A), added subpar. (C).

Subsec. (d)(6)(A)(iii). Pub. L. 100–647, §1002(*l*)(7), struck out cl. (iii) which related to other circumstances of financial distress.

Subsec. (d)(6)(B)(ii). Pub. L. 100–647, §1002(*l*)(8), struck out ''of 1934'' after ''Act''.

Subsec. (f)(1). Pub. L. 100–647, §1002(*l*)(2)(B), substituted ''beginning with—'' for ''beginning with'' and subpars. (A) and (B) and concluding provisions for ''the taxable year in which the building is placed in service or, at the election of the taxpayer, the succeeding taxable year. Such an election, once made, shall be irrevocable.''

Subsec. (f)(3). Pub. L. 100–647, §1002(*l*)(9)(A), amended par. (3) generally. Prior to amendment, par. (3) ''Special rule where increase in qualified basis after 1st year of credit period'' read as follows:

''(A) CREDIT INCREASED.—If—

''(i) as of the close of any taxable year in the compliance period (after the 1st year of the credit period) the qualified basis of any building exceeds

''(ii) the qualified basis of such building as of the close of the 1st year of the credit period,

the credit allowable under subsection (a) for the taxable year (determined without regard to this paragraph) shall be increased by an amount equal to the product of such excess and the percentage equal to ⅔ of the applicable percentage for such building.

''(B) 1ST YEAR COMPUTATION APPLIES.—A rule similar to the rule of paragraph (2)(A) shall apply to the additional credit allowable by reason of this paragraph for the 1st year in which such additional credit is allowable.''

Subsec. (g)(2)(B)(i). Pub. L. 100–647, §1002(*l*)(10), struck out ''Federal'' after ''comparable''.

Subsec. (g)(2)(C). Pub. L. 100–647, §1002(*l*)(11), added subpar. (C).

Subsec. (g)(3). Pub. L. 100–647, §1002(*l*)(12), amended par. (3) generally, substituting subpars. (A) to (C) for former subpars. (A) and (B).

Subsec. (g)(4). Pub. L. 100–647, §1002(*l*)(13), inserted ''; except that, in applying such provisions (other than section 142(d)(4)(B)(iii)) for such purposes, the term 'gross rent' shall have the meaning given such term by paragraph (2)(B) of this subsection'' before period at end.

Subsec. (g)(6). Pub. L. 100–647, §1002(*l*)(32), added par. (6).

Subsec. (h)(1). Pub. L. 100–647, §1002(*l*)(14)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''No credit shall be allowed by reason of this section for any taxable year with respect to any building in excess of the housing credit dollar amount allocated to such building under this subsection. An allocation shall be taken into account under the preceding sentence only if it occurs not later than the earlier of—

''(A) the 60th day after the close of the taxable year, or

''(B) the close of the calendar year in which such taxable year ends.''

Subsec. (h)(1)(B). Pub. L. 100–647, §4003(b)(1), substituted ''(C), (D), or (E)'' for ''(C) or (D)''.

Subsec. (h)(1)(E). Pub. L. 100–647, §4003(a), added subpar. (E).

Subsec. (h)(4)(A). Pub. L. 100–647, §1002(*l*)(15), substituted ''if—'' for ''and which is taken into account under section 146'' and added cls. (i) and (ii).

Subsec. (h)(5)(D), (E). Pub. L. 100–647, §1002(*l*)(16), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (h)(6)(B)(ii). Pub. L. 100–647, §1002(*l*)(14)(B), struck out cl. (ii) which read as follows:

''(ii) ALLOCATION MAY NOT BE EARLIER THAN YEAR IN WHICH BUILDING PLACED IN SERVICE.—A housing credit agency may allocate its housing credit dollar amount for any calendar year only to buildings placed in service before the close of such calendar year.''

Subsec. (h)(6)(D). Pub. L. 100–647, §1002(*l*)(17), amended subpar. (D) generally. Prior to amendment, subpar. (D) ''Credit allowable determined without regard to averaging convention, etc.'' read as follows: ''For purposes of this subsection, the credit allowable under subsection (a) with respect to any building shall be determined—

''(i) without regard to paragraphs (2)(A) and (3)(B) of subsection (f), and

''(ii) by applying subsection (f)(3)(A) without regard to 'the percentage equal to ⅔ of'.''

Subsec. (h)(6)(E). Pub. L. 100–647, §1002(*l*)(18), added subpar. (E).

Subsec. (i)(2)(A). Pub. L. 100–647, §1002(*l*)(19)(A), inserted ''or any prior taxable year'' after ''such taxable year'' and substituted ''is or was outstanding'' for ''is outstanding'' and ''are or were used'' for ''are used''.

Subsec. (i)(2)(B). Pub. L. 100–647, § 1002(*l*)(19)(B), substituted ''balance of loan or proceeds of obligations'' for ''outstanding balance of loan'' in heading and amended text generally. Prior to amendment, text read as follows: ''A loan shall not be taken into account under subparagraph (A) if the taxpayer elects to exclude an amount equal to the outstanding balance of such loan from the eligible basis of the building for purposes of subsection (d).''

Subsec. (i)(2)(C). Pub. L. 100–647, § 1002(*l*)(19)(C), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (i)(2)(D). Pub. L. 100–647, § 1002(*l*)(19)(C), (D), redesignated former subpar. (C) as (D) and substituted ''this paragraph'' for ''subparagraph (A)''.

Subsec. (j)(4)(D). Pub. L. 100–647, § 1007(g)(3)(B), substituted ''D, or G'' for ''or D''.

Subsec. (j)(4)(F). Pub. L. 100–647, § 1002(*l*)(20), added subpar. (F).

Subsec. (j)(5)(B). Pub. L. 100–647, § 4004(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''This paragraph shall apply to any partnership—

''(i) more than ½ the capital interests, and more than ½ the profit interests, in which are owned by a group of 35 or more partners each of whom is a natural person or an estate, and

''(ii) which elects the application of this paragraph.''

Subsec. (j)(5)(B)(i). Pub. L. 100–647, § 1002(*l*)(21), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''which has 35 or more partners each of whom is a natural person or an estate, and''.

Subsec. (j)(6). Pub. L. 100–647, § 1002(*l*)(22), inserted ''(or interest therein)'' after ''disposition of building'' in heading, and in text inserted ''or an interest therein'' after ''of a building''.

Subsec. (k)(2)(B). Pub. L. 100–647, § 1002(*l*)(23), inserted before period at end '', except that this subparagraph shall not apply in the case of a federally assisted building described in subsection (d)(6)(B) if—'' and cls. (i) and (ii).

Subsec. (*l*). Pub. L. 100–647, § 1002(*l*)(24)(B), substituted ''Certifications and other reports to Secretary'' for ''Certifications to Secretary'' in heading.

Subsec. (*l*)(2), (3). Pub. L. 100–647, § 1002(*l*)(24)(A), added par. (2) and redesignated former par. (2) as (3).

Subsec. (n). Pub. L. 100–647, § 4003(b)(3), amended subsec. (n) generally, substituting a single par. for former pars. (1) and (2).

Subsec. (n)(1). Pub. L. 100–647, § 1002(*l*)(25), inserted '', and, except for any building described in paragraph (2)(B), subsection (h)(4) shall not apply to any building placed in service after 1989'' after ''year after 1989''.

1986—Subsec. (k)(1). Pub. L. 99–509 substituted ''subparagraphs (D)(ii)(II) and (D)(iv)(I)'' for ''subparagraph (D)(iv)(I)''.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–289, div. C, title I, § 3002(c), July 30, 2008, 122 Stat. 2880, provided that: ''The amendments made by this subsection [probably means this section, amending this section] shall apply to buildings placed in service after the date of the enactment of this Act [July 30, 2008].''

Pub. L. 110–289, div. C, title I, § 3003(h), July 30, 2008, 122 Stat. 2882, provided that:

''(1) IN GENERAL.—Except as otherwise provided in paragraph (2), the amendments made by this subsection [probably means this section, amending this section] shall apply to buildings placed in service after the date of the enactment of this Act [July 30, 2008].

''(2) REHABILITATION REQUIREMENTS.—

''(A) IN GENERAL.—The amendments made by subsection (b) [amending this section] shall apply to buildings with respect to which housing credit dollar amounts are allocated after the date of the enactment of this Act [July 30, 2008].

''(B) BUILDINGS NOT SUBJECT TO ALLOCATION LIMITS.—To the extent paragraph (1) of section 42(h) of the Internal Revenue Code of 1986 does not apply to any building by reason of paragraph (4) thereof, the amendments made by subsection (b) [amending this section] shall apply [to] buildings financed with bonds issued pursuant to allocations made after the date of the enactment of this Act [July 30, 2008].''

Pub. L. 110–289, div. C, title I, § 3004(i), July 30, 2008, 122 Stat. 2884, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section] shall apply to buildings placed in service after the date of the enactment of this Act [July 30, 2008].

''(2) REPEAL OF BONDING REQUIREMENT ON DISPOSITION OF BUILDING.—The amendment made by subsection (c) [amending this section] shall apply to—

''(A) interests in buildings disposed [of] after the date of the enactment of this Act [July 30, 2008], and

''(B) interests in buildings disposed of on or before such date if—

''(i) it is reasonably expected that such building will continue to be operated as a qualified low-income building (within the meaning of section 42 of the Internal Revenue Code of 1986) for the remaining compliance period (within the meaning of such section) with respect to such building, and

''(ii) the taxpayer elects the application of this subparagraph with respect to such disposition.

''(3) ENERGY EFFICIENCY AND HISTORIC NATURE TAKEN INTO ACCOUNT IN MAKING ALLOCATIONS.—The amendments made by subsection (d) [amending this section] shall apply to allocations made after December 31, 2008.

''(4) CONTINUED ELIGIBILITY FOR STUDENTS WHO RECEIVED FOSTER CARE ASSISTANCE.—The amendments made by subsection (e) [amending this section] shall apply to determinations made after the date of the enactment of this Act [July 30, 2008].

''(5) TREATMENT OF RURAL PROJECTS.—The amendment made by subsection (f) [amending this section] shall apply to determinations made after the date of the enactment of this Act [July 30, 2008].

''(6) CLARIFICATION OF GENERAL PUBLIC USE REQUIREMENT.—The amendment made by subsection (g) [amending this section] shall apply to buildings placed in service before, on, or after the date of the enactment of this Act [July 30, 2008].''

Pub. L. 110–289, div. C, title I, § 3007(c), July 30, 2008, 122 Stat. 2886, provided that: ''The amendments made by this section [amending this section and section 146 of this title] shall apply to repayments of loans received after the date of the enactment of this Act [July 30, 2008].''

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–142, § 6(b), Dec. 20, 2007, 121 Stat. 1806, provided that: ''The amendment made by this section [amending this section] shall apply to—

''(1) housing credit amounts allocated before, on, or after the date of the enactment of this Act [Dec. 20, 2007], and

''(2) buildings placed in service before, on, or after such date to the extent paragraph (1) of section 42(h) of the Internal Revenue Code of 1986 does not apply to any building by reason of paragraph (4) thereof.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 207(8) of Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(7) [title I, subtitle D, § 131(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–611, provided that: ''The amendments made by this section [amending this section] shall apply to calendar years after 2000.''

Pub. L. 106–554, § 1(a)(7) [title I, subtitle D, § 137], Dec. 21, 2000, 114 Stat. 2763, 2763A–613, provided that: ''Except as otherwise provided in this subtitle [amending this section and enacting provisions set out above], the amendments made by this subtitle shall apply to—

''(1) housing credit dollar amounts allocated after December 31, 2000; and

''(2) buildings placed in service after such date to the extent paragraph (1) of section 42(h) of the Internal Revenue Code of 1986 does not apply to any building by reason of paragraph (4) thereof, but only with respect to bonds issued after such date.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13142(a)(2) of Pub. L. 103–66 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to periods ending after June 30, 1992.''

Section 13142(b)(6) of Pub. L. 103–66, as amended by Pub. L. 104–188, title I, §1703(b), Aug. 20, 1996, 110 Stat. 1875, provided that:

''(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), the amendments made by this subsection [amending this section] shall apply to—

''(i) determinations under section 42 of the Internal Revenue Code of 1986 with respect to housing credit dollar amounts allocated from State housing credit ceilings after June 30, 1992, or

''(ii) buildings placed in service after June 30, 1992, to the extent paragraph (1) of section 42(h) of such Code does not apply to any building by reason of paragraph (4) thereof, but only with respect to bonds issued after such date.

''(B) FULL-TIME STUDENTS, WAIVER AUTHORITY, AND PROHIBITED DISCRIMINATION.—The amendments made by paragraphs (2), (3), and (4) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 10, 1993].

''(C) HOME ASSISTANCE.—The amendment made by paragraph (5) [amending this section] shall apply to periods after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1991 AMENDMENT

Section 107(b) of Pub. L. 102–227 provided that: ''The amendments made by this section [amending this section] shall apply to calendar years after 1991.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11407(a)(3) of Pub. L. 101–508 provided that: ''The amendments made by this subsection [amending this section and repealing provisions set out below] shall apply to calendar years after 1989.''

Section 11407(b)(10) of Pub. L. 101–508 provided that:

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by this subsection [amending this section] shall apply to—

''(i) determinations under section 42 of the Internal Revenue Code of 1986 with respect to housing credit dollar amounts allocated from State housing credit ceilings for calendar years after 1990, or

''(ii) buildings placed in service after December 31, 1990, to the extent paragraph (1) of section 42(h) of such Code does not apply to any building by reason of paragraph (4) thereof, but only with respect to bonds issued after such date.

''(B) TENANT RIGHTS, ETC.—The amendments made by paragraphs (1), (6), (8), and (9) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].

''(C) MONITORING.—The amendment made by paragraph (2) [amending this section] shall take effect on January 1, 1992, and shall apply to buildings placed in service before, on, or after such date.

''(D) STUDY.—The Inspector General of the Department of Housing and Urban Development and the Secretary of the Treasury shall jointly conduct a study of the effectiveness of the amendment made by paragraph (5) [amending this section] in carrying out the purposes of section 42 of the Internal Revenue Code of 1986. The report of such study shall be submitted not later than January 1, 1993, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.''

Section 11701(a)(3)(B) of Pub. L. 101–508 provided that: ''In the case of a building to which (but for this subparagraph) the amendment made by subparagraph (A) [amending this section] does not apply, such amendment shall apply to—

''(i) determinations of qualified basis for taxable years beginning after the date of the enactment of this Act [Nov. 5, 1990], and

''(ii) determinations of qualified basis for taxable years beginning on or before such date except that determinations for such taxable years shall be made without regard to any reduction in gross rent after August 3, 1990, for any period before August 4, 1990.''

Section 11701(n) of Pub. L. 101–508 provided that: ''Except as otherwise provided in this section, any amendment made by this section [amending this section and sections 148, 163, 172, 403, 1031, 1253, 2056, 4682, 4975, 4978B and 6038 of this title, and provisions set out as notes under this section and section 2040 of this title] shall take effect as if included in the provision of the Revenue Reconciliation Act of 1989 [Pub. L. 101–239, title VII] to which such amendment relates.''

Section 11812(c) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 56, 167, 168, 312, 381, 404, 460, 642, 1016, 1250, and 7701 of this title] shall apply to property placed in service after the date of the enactment of this Act [Nov. 5, 1990].

''(2) EXCEPTION.—The amendments made by this section shall not apply to any property to which section 168 of the Internal Revenue Code of 1986 does not apply by reason of subsection (f)(5) thereof.

''(3) EXCEPTION FOR PREVIOUSLY GRANDFATHER EXPENDITURES.—The amendments made by this section shall not apply to rehabilitation expenditures described in section 252(f)(5) of the Tax Reform Act of 1986 [Pub. L. 99–514] (as added by section 1002(*l*)(31) of the Technical and Miscellaneous Revenue Act of 1988 [see Transitional Rules note below]).''

Amendment by section 11813(b)(3) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7108(r) of Pub. L. 101–239, as amended by Pub. L. 101–508, title XI, §11701(a)(11), (12), Nov. 5, 1990, 104 Stat. 1388–507; Pub. L. 104–188, title I, §1702(g)(5)(A), Aug. 20, 1996, 110 Stat. 1873, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 142 of this title] shall apply to determinations under section 42 of the Internal Revenue Code of 1986 with respect to housing credit dollar amounts allocated from State housing credit ceilings for calendar years after 1989.

''(2) BUILDINGS NOT SUBJECT TO ALLOCATION LIMITS.—Except as otherwise provided in this subsection, to the extent paragraph (1) of section 42(h) of such Code does not apply to any building by reason of paragraph (4) thereof, the amendments made by this section shall apply to buildings placed in service after December 31, 1989.

''(3) ONE-YEAR CARRYOVER OF UNUSED CREDIT AUTHORITY, ETC.—The amendments made by subsection (b) [amending this section] shall apply to calendar years after 1989, but clauses (ii), (iii), and (iv) of section

42(h)(3)(C) of such Code (as added by this section) shall be applied without regard to allocations for 1989 or any preceding year.

''(4) ADDITIONAL BUILDINGS ELIGIBLE FOR WAIVER OF 10-YEAR RULE.—The amendments made by subsection (f) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 19, 1989].

''(5) CERTIFICATIONS WITH RESPECT TO 1ST YEAR OF CREDIT PERIOD.—The amendment made by subsection (p) [amending this section] shall apply to taxable years ending on or after December 31, 1989.

''(6) CERTAIN RULES WHICH APPLY TO BONDS.—Paragraphs (1)(D) and (2)(D) of section 42(m) of such Code, as added by this section, shall apply to obligations issued after December 31, 1989.

''(7) CLARIFICATIONS.—The amendments made by the following provisions of this section shall apply as if included in the amendments made by section 252 of the Tax Reform Act of 1986 [Pub. L. 99–514, enacting this section and amending sections 38 and 55 of this title]:

''(A) Paragraph (1) of subsection (h) (relating to units rented on a monthly basis) [amending this section].

''(B) Subsection (*l*) (relating to eligible basis for new buildings to include expenditures before close of 1st year of credit period) [amending this section].

''(8) GUIDANCE ON DIFFICULT DEVELOPMENT AREAS AND POSTING OF BOND TO AVOID RECAPTURE.—Not later than 180 days after the date of the enactment of this Act [Dec. 19, 1989]—

''(A) the Secretary of Housing and Urban Development shall publish initial guidance on the designation of difficult development areas under section 42(d)(5)(C) of such Code, as added by this section, and

''(B) the Secretary of the Treasury shall publish initial guidance under section 42(j)(6) of such Code (relating to no recapture on disposition of building (or interest therein) where bond posted).''

[Pub. L. 104–188, title I, § 1702(g)(5), Aug. 20, 1996, 110 Stat. 1873, provided that:

[''(A) Paragraph (11) of section 11701(a) of the Revenue Reconciliation Act of 1990 (and the amendment made by such paragraph) [Pub. L. 101–508, which amended section 7108(r)(2) of Pub. L. 101–239, set out above, by inserting ''but only with respect to bonds issued after such date'' before the period at the end of such section 7108(r)(2)] are hereby repealed, and section 7108(r)(2) of the Revenue Reconciliation Act of 1989 [Pub. L. 101–239] shall be applied as if such paragraph (and amendment) had never been enacted.

[''(B) Subparagraph (A) shall not apply to any building if the owner of such building establishes to the satisfaction of the Secretary of the Treasury or his delegate that such owner reasonably relied on the amendment made by such paragraph (11).'']

Amendment by section 7811(a) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Amendment by section 7831(c) of Pub. L. 101–239 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7831(g) of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1002(*l*)(1)–(25), (32) and 1007(g)(3)(B) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 4003(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section and provisions set out as a note under section 469 of this title] shall apply to amounts allocated in calendar years after 1987.''

Section 4004(b) of Pub. L. 100–647 provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall take effect as if included in the amendments made by section 252 of the Reform Act [section 252 of Pub. L. 99–514, enacting this section and amending sections 38 and 55 of this title].

''(2) PERIOD FOR ELECTION.—The period for electing not to have section 42(j)(5) of the 1986 Code apply to any partnership shall not expire before the date which is 6 months after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 8072(b) of Pub. L. 99–509 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as if included in the amendment made by section 252(a) of the Tax Reform Act of 1986 [enacting this section].''

EFFECTIVE DATE

Section 252(e) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section and amending sections 38 and 55 of this title] shall apply to buildings placed in service after December 31, 1986, in taxable years ending after such date.

''(2) SPECIAL RULE FOR REHABILITATION EXPENDITURES.—Subsection (e) of section 42 of the Internal Revenue Code of 1986 (as added by this section) shall apply for purposes of paragraph (1).''

SAVINGS PROVISION

For provisions that nothing in amendment by sections 11812(b)(3) and 11813(b)(3) of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

GRANTS TO STATES FOR LOW-INCOME HOUSING PROJECTS IN LIEU OF LOW-INCOME HOUSING CREDIT ALLOCATIONS FOR 2009

Pub. L. 111–5, div. B, title I, § 1602, Feb. 17, 2009, 123 Stat. 362, provided that:

''(a) IN GENERAL.—The Secretary of the Treasury shall make a grant to the housing credit agency of each State in an amount equal to such State's low-income housing grant election amount.

''(b) LOW-INCOME HOUSING GRANT ELECTION AMOUNT.—For purposes of this section, the term 'low-income housing grant election amount' means, with respect to any State, such amount as the State may elect which does not exceed 85 percent of the product of—

''(1) the sum of—

''(A) 100 percent of the State housing credit ceiling for 2009 which is attributable to amounts described in clauses (i) and (iii) of section 42(h)(3)(C) of the Internal Revenue Code of 1986, and

''(B) 40 percent of the State housing credit ceiling for 2009 which is attributable to amounts described in clauses (ii) and (iv) of such section, multiplied by

''(2) 10.

''(c) SUBAWARDS FOR LOW-INCOME BUILDINGS.—

''(1) IN GENERAL.—A State housing credit agency receiving a grant under this section shall use such grant to make subawards to finance the construction or acquisition and rehabilitation of qualified low-income buildings. A subaward under this section may be made to finance a qualified low-income building with or without an allocation under section 42 of the Internal Revenue Code of 1986, except that a State housing credit agency may make subawards to finance qualified low-income buildings without an allocation only if it makes a determination that such use will increase the total funds available to the State to build and rehabilitate affordable housing. In comply-

ing with such determination requirement, a State housing credit agency shall establish a process in which applicants that are allocated credits are required to demonstrate good faith efforts to obtain investment commitments for such credits before the agency makes such subawards.

''(2) SUBAWARDS SUBJECT TO SAME REQUIREMENTS AS LOW-INCOME HOUSING CREDIT ALLOCATIONS.—Any such subaward with respect to any qualified low-income building shall be made in the same manner and shall be subject to the same limitations (including rent, income, and use restrictions on such building) as an allocation of housing credit dollar amount allocated by such State housing credit agency under section 42 of the Internal Revenue Code of 1986, except that such subawards shall not be limited by, or otherwise affect (except as provided in subsection (h)(3)(J) of such section [section 42(h)(3) has no subpar. (J)]), the State housing credit ceiling applicable to such agency.

''(3) COMPLIANCE AND ASSET MANAGEMENT.—The State housing credit agency shall perform asset management functions to ensure compliance with section 42 of the Internal Revenue Code of 1986 and the long-term viability of buildings funded by any subaward under this section. The State housing credit agency may collect reasonable fees from a subaward recipient to cover expenses associated with the performance of its duties under this paragraph. The State housing credit agency may retain an agent or other private contractor to satisfy the requirements of this paragraph.

''(4) RECAPTURE.—The State housing credit agency shall impose conditions or restrictions, including a requirement providing for recapture, on any subaward under this section so as to assure that the building with respect to which such subaward is made remains a qualified low-income building during the compliance period. Any such recapture shall be payable to the Secretary of the Treasury for deposit in the general fund of the Treasury and may be enforced by means of liens or such other methods as the Secretary of the Treasury determines appropriate.

''(d) RETURN OF UNUSED GRANT FUNDS.—Any grant funds not used to make subawards under this section before January 1, 2011, shall be returned to the Secretary of the Treasury on such date. Any subawards returned to the State housing credit agency on or after such date shall be promptly returned to the Secretary of the Treasury. Any amounts returned to the Secretary of the Treasury under this subsection shall be deposited in the general fund of the Treasury.

''(e) DEFINITIONS.—Any term used in this section which is also used in section 42 of the Internal Revenue Code of 1986 shall have the same meaning for purposes of this section as when used in such section 42. Any reference in this section to the Secretary of the Treasury shall be treated as including the Secretary's delegate.

''(f) APPROPRIATIONS.—There is hereby appropriated to the Secretary of the Treasury such sums as may be necessary to carry out this section.''

ELECTION TO DETERMINE RENT LIMITATION BASED ON NUMBER OF BEDROOMS AND DEEP RENT SKEWING

Section 13142(c) of Pub. L. 103–66 provided that:

''(1) In the case of a building to which the amendments made by subsection (e)(1) or (n)(2) of section 7108 of the Revenue Reconciliation Act of 1989 [Pub. L. 101–239, amending this section] did not apply, the taxpayer may elect to have such amendments apply to such building if the taxpayer has met the requirements of the procedures described in section 42(m)(1)(B)(iii) of the Internal Revenue Code of 1986.

''(2) In the case of the amendment made by such subsection (e)(1), such election shall apply only with respect to tenants first occupying any unit in the building after the date of the election.

''(3) In the case of the amendment made by such subsection (n)(2), such election shall apply only if rents of low-income tenants in such building do not increase as a result of such election.

''(4) An election under this subsection may be made only during the 180-day period beginning on the date of the enactment of this Act [Aug. 10, 1993] and, once made, shall be irrevocable.''

ELECTION TO ACCELERATE CREDIT INTO 1990

Section 11407(c) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—At the election of an individual, the credit determined under section 42 of the Internal Revenue Code of 1986 for the taxpayer's first taxable year ending on or after October 25, 1990, shall be 150 percent of the amount which would (but for this paragraph) be so allowable with respect to investments held by such individual on or before October 25, 1990.

''(2) REDUCTION IN AGGREGATE CREDIT TO REFLECT INCREASED 1990 CREDIT.—The aggregate credit allowable to any person under section 42 of such Code with respect to any investment for taxable years after the first taxable year referred to in paragraph (1) shall be reduced on a pro rata basis by the amount of the increased credit allowable by reason of paragraph (1) with respect to such first taxable year. The preceding sentence shall not be construed to affect whether any taxable year is part of the credit, compliance, or extended use periods.

''(3) ELECTION.—The election under paragraph (1) shall be made at the time and in the manner prescribed by the Secretary of the Treasury or his delegate, and, once made, shall be irrevocable. In the case of a partnership, such election shall be made by the partnership.''

EXCEPTION TO TIME PERIOD FOR MEETING PROJECT REQUIREMENTS IN ORDER TO QUALIFY AS LOW-INCOME HOUSING

Section 11701(a)(5)(B) of Pub. L. 101–508 provided that: ''In the case of a building to which the amendment made by subparagraph (A) [amending this section] does not apply, the period specified in section 42(g)(3)(A) of the Internal Revenue Code of 1986 (as in effect before the amendment made by subparagraph (A)) shall not expire before the close of the taxable year following the taxable year in which the building is placed in service.''

STATE HOUSING CREDIT CEILING FOR CALENDAR YEAR 1990

Section 7108(a)(2) of Pub. L. 101–239 provided that in the case of calendar year 1990, section 42(h)(3)(C)(i) of the Internal Revenue Code of 1986 be applied by substituting ''$.9375'' for ''$1.25'', prior to repeal by Pub. L. 101–508, title XI, §11407(a)(2), (3), Nov. 5, 1990, 104 Stat. 1388–474, applicable to calendar years after 1989.

TRANSITIONAL RULES

Section 252(f) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1002(*l*)(28)–(31), Nov. 10, 1988, 102 Stat. 3381, provided that:

''(1) LIMITATION TO NON-ACRS BUILDINGS NOT TO APPLY TO CERTAIN BUILDINGS, ETC.—

''(A) IN GENERAL.—In the case of a building which is part of a project described in subparagraph (B)—

''(i) section 42(c)(2)(B) of the Internal Revenue Code of 1986 (as added by this section) shall not apply,

''(ii) such building shall be treated as not federally subsidized for purposes of section 42(b)(1)(A) of such Code,

''(iii) the eligible basis of such building shall be treated, for purposes of section 42(h)(4)(A) of such Code, as if it were financed by an obligation the interest on which is exempt from tax under section 103 of such Code and which is taken into account under section 146 of such Code, and

''(iv) the amendments made by section 803 [enacting section 263A of this title, amending sections 48, 267, 312, 447, 464, and 471 of this title, and repealing sections 189, 278, and 280 of this title] shall not apply.

''(B) PROJECT DESCRIBED.—A project is described in this subparagraph if—

''(i) an urban development action grant application with respect to such project was submitted on September 13, 1984,

''(ii) a zoning commission map amendment related to such project was granted on July 17, 1985, and

''(iii) the number assigned to such project by the Federal Housing Administration is 023–36602.

''(C) ADDITIONAL UNITS ELIGIBLE FOR CREDIT.—In the case of a building to which subparagraph (A) applies and which is part of a project which meets the requirements of subparagraph (D), for each low-income unit in such building which is occupied by individuals whose income is 30 percent or less of area median gross income, one additional unit (not otherwise a low-income unit) in such building shall be treated as a low-income unit for purposes of such section 42.

''(D) PROJECT DESCRIBED.—A project is described in this subparagraph if—

''(i) rents charged for units in such project are restricted by State regulations,

''(ii) the annual cash flow of such project is restricted by State law,

''(iii) the project is located on land owned by or ground leased from a public housing authority,

''(iv) construction of such project begins on or before December 31, 1986, and units within such project are placed in service on or before June 1, 1990, and

''(v) for a 20-year period, 20 percent or more of the residential units in such project are occupied by individuals whose income is 50 percent or less of area median gross income.

''(E) MAXIMUM ADDITIONAL CREDIT.—The maximum present value of additional credits allowable under section 42 of such Code by reason of subparagraph (C) shall not exceed 25 percent of the eligible basis of the building.

''(2) ADDITIONAL ALLOCATION OF HOUSING CREDIT CEILING.—

''(A) IN GENERAL.—There is hereby allocated to each housing credit agency described in subparagraph (B) an additional housing credit dollar amount determined in accordance with the following table:

"For calendar year:	The additional allocation is:
1987	$3,900,000
1988	$7,600,000
1989	$1,300,000.

''(B) HOUSING CREDIT AGENCIES DESCRIBED.—The housing credit agencies described in this subparagraph are:

''(i) A corporate governmental agency constituted as a public benefit corporation and established in 1971 under the provisions of Article XII of the Private Housing Finance Law of the State.

''(ii) A city department established on December 20, 1979, pursuant to chapter XVIII of a municipal code of such city for the purpose of supervising and coordinating the formation and execution of projects and programs affecting housing within such city.

''(iii) The State housing finance agency referred to in subparagraph (C), but only with respect to projects described in subparagraph (C).

''(C) PROJECT DESCRIBED.—A project is described in this subparagraph if such project is a qualified low-income housing project which—

''(i) receives financing from a State housing finance agency from the proceeds of bonds issued pursuant to chapter 708 of the Acts of 1966 of such State pursuant to loan commitments from such agency made between May 8, 1984, and July 8, 1986, and

''(ii) is subject to subsidy commitments issued pursuant to a program established under chapter 574 of the Acts of 1983 of such State having award dates from such agency between May 31, 1984, and June 11, 1985.

''(D) SPECIAL RULES.—

''(i) Any building—

''(I) which is allocated any housing credit dollar amount by a housing credit agency described in clause (iii) of subparagraph (B), and

''(II) which is placed in service after June 30, 1986, and before January 1, 1987,

shall be treated for purposes of the amendments made by this section as placed in service on January 1, 1987.

''(ii) Section 42(c)(2)(B) of the Internal Revenue Code of 1986 shall not apply to any building which is allocated any housing credit dollar amount by any agency described in subparagraph (B).

''(E) ALL UNITS TREATED AS LOW INCOME UNITS IN CERTAIN CASES.—In the case of any building—

''(i) which is allocated any housing credit dollar amount by any agency described in subparagraph (B), and

''(ii) which after the application of subparagraph (D)(ii) is a qualified low-income building at all times during any taxable year,

such building shall be treated as described in section 42(b)(1)(B) of such Code and having an applicable fraction for such year of 1. The preceding sentence shall apply to any building only to the extent of the portion of the additional housing credit dollar amount (allocated to such agency under subparagraph (A)) allocated to such building.

''(3) CERTAIN PROJECTS PLACED IN SERVICE BEFORE 1987.—

''(A) IN GENERAL.—In the case of a building which is part of a project described in subparagraph (B)—

''(i) section 42(c)(2)(B) of such Code shall not apply,

''(ii) such building shall be treated as placed in service during the first calendar year after 1986 and before 1990 in which such building is a qualified low-income building (determined after the application of clause (i)), and

''(iii) for purposes of section 42(h) of such Code, such building shall be treated as having allocated to it a housing credit dollar amount equal to the dollar amount appearing in the clause of subparagraph (B) in which such building is described.

''(B) PROJECT DESCRIBED.—A project is described in this subparagraph if the code number assigned to such project by the Farmers' Home Administration appears in the following table:

"The code number is:	The housing credit dollar amount is:
(i) 49284553664	$16,000
(ii) 4927742022446	$22,000
(iii) 49270742276087	$64,000
(iv) 490270742387293	$48,000
(v) 4927074218234	$32,000
(vi) 49270742274019	$36,000
(vii) 51460742345074	$53,000.

''(C) DETERMINATION OF ADJUSTED BASIS.—The adjusted basis of any building to which this paragraph applies for purposes of section 42 of such Code shall be its adjusted basis as of the close of the taxable year ending before the first taxable year of the credit period for such building.

''(D) CERTAIN RULES TO APPLY.—Rules similar to the rules of subparagraph (E) of paragraph (2) shall apply for purposes of this paragraph.

''(4) DEFINITIONS.—For purposes of this subsection, terms used in such subsection which are also used in section 42 of the Internal Revenue Code of 1986 (as added by this section) shall have the meanings given such terms by such section 42.

''(5) TRANSITIONAL RULE.—In the case of any rehabilitation expenditures incurred with respect to units located in the neighborhood strategy area within the community development block grant program in Ft. Wayne, Indiana—

''(A) the amendments made by this section [enacting this section and amending sections 38 and 55 of this title] shall not apply, and

''(B) paragraph (1) of section 167(k) of the Internal Revenue Code of 1986, shall be applied as if it did not contain the phrase 'and before January 1, 1987'.

The number of units to which the preceding sentence applies shall not exceed 150.''

§ 43. Enhanced oil recovery credit

(a) General rule

For purposes of section 38, the enhanced oil recovery credit for any taxable year is an amount equal to 15 percent of the taxpayer's qualified enhanced oil recovery costs for such taxable year.

(b) Phase-out of credit as crude oil prices increase

(1) In general

The amount of the credit determined under subsection (a) for any taxable year shall be reduced by an amount which bears the same ratio to the amount of such credit (determined without regard to this paragraph) as—

(A) the amount by which the reference price for the calendar year preceding the calendar year in which the taxable year begins exceeds $28, bears to

(B) $6.

(2) Reference price

For purposes of this subsection, the term ''reference price'' means, with respect to any calendar year, the reference price determined for such calendar year under section 45K(d)(2)(C).

(3) Inflation adjustment

(A) In general

In the case of any taxable year beginning in a calendar year after 1991, there shall be substituted for the $28 amount under paragraph (1)(A) an amount equal to the product of—

(i) $28, multiplied by

(ii) the inflation adjustment factor for such calendar year.

(B) Inflation adjustment factor

The term ''inflation adjustment factor'' means, with respect to any calendar year, a fraction the numerator of which is the GNP implicit price deflator for the preceding calendar year and the denominator of which is the GNP implicit price deflator for 1990. For purposes of the preceding sentence, the term ''GNP implicit price deflator'' means the first revision of the implicit price deflator for the gross national product as computed and published by the Secretary of Commerce. Not later than April 1 of any calendar year, the Secretary shall publish the inflation adjustment factor for the preceding calendar year.

(c) Qualified enhanced oil recovery costs

For purposes of this section—

(1) In general

The term ''qualified enhanced oil recovery costs'' means any of the following:

(A) Any amount paid or incurred during the taxable year for tangible property—

(i) which is an integral part of a qualified enhanced oil recovery project, and

(ii) with respect to which depreciation (or amortization in lieu of depreciation) is allowable under this chapter.

(B) Any intangible drilling and development costs—

(i) which are paid or incurred in connection with a qualified enhanced oil recovery project, and

(ii) with respect to which the taxpayer may make an election under section 263(c) for the taxable year.

(C) Any qualified tertiary injectant expenses (as defined in section 193(b)) which are paid or incurred in connection with a qualified enhanced oil recovery project and for which a deduction is allowable for the taxable year.

(D) Any amount which is paid or incurred during the taxable year to construct a gas treatment plant which—

(i) is located in the area of the United States (within the meaning of section 638(1)) lying north of 64 degrees North latitude,

(ii) prepares Alaska natural gas for transportation through a pipeline with a capacity of at least 2,000,000,000,000 Btu of natural gas per day, and

(iii) produces carbon dioxide which is injected into hydrocarbon-bearing geological formations.

(2) Qualified enhanced oil recovery project

For purposes of this subsection—

(A) In general

The term ''qualified enhanced oil recovery project'' means any project—

(i) which involves the application (in accordance with sound engineering principles) of 1 or more tertiary recovery methods (as defined in section 193(b)(3)) which can reasonably be expected to result in more than an insignificant increase in the amount of crude oil which will ultimately be recovered,

(ii) which is located within the United States (within the meaning of section 638(1)), and

(iii) with respect to which the first injection of liquids, gases, or other matter commences after December 31, 1990.

(B) Certification

A project shall not be treated as a qualified enhanced oil recovery project unless the operator submits to the Secretary (at such times and in such manner as the Secretary provides) a certification from a petroleum engineer that the project meets (and continues to meet) the requirements of subparagraph (A).

(3) At-risk limitation

For purposes of determining qualified enhanced oil recovery costs, rules similar to the rules of section 49(a)(1), section 49(a)(2), and section 49(b) shall apply.

(4) Special rule for certain gas displacement projects

For purposes of this section, immiscible nonhydrocarbon gas displacement shall be treated

as a tertiary recovery method under section 193(b)(3).

(5) Alaska natural gas

For purposes of paragraph (1)(D)—

(A) In general

The term ''Alaska natural gas'' means natural gas entering the Alaska natural gas pipeline (as defined in section 168(i)(16) (determined without regard to subparagraph (B) thereof)) which is produced from a well—

(i) located in the area of the State of Alaska lying north of 64 degrees North latitude, determined by excluding the area of the Alaska National Wildlife Refuge (including the continental shelf thereof within the meaning of section 638(1)), and

(ii) pursuant to the applicable State and Federal pollution prevention, control, and permit requirements from such area (including the continental shelf thereof within the meaning of section 638(1)).

(B) Natural gas

The term ''natural gas'' has the meaning given such term by section 613A(e)(2).

(d) Other rules

(1) Disallowance of deduction

Any deduction allowable under this chapter for any costs taken into account in computing the amount of the credit determined under subsection (a) shall be reduced by the amount of such credit attributable to such costs.

(2) Basis adjustments

For purposes of this subtitle, if a credit is determined under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

(e) Election to have credit not apply

(1) In general

A taxpayer may elect to have this section not apply for any taxable year.

(2) Time for making election

An election under paragraph (1) for any taxable year may be made (or revoked) at any time before the expiration of the 3-year period beginning on the last date prescribed by law for filing the return for such taxable year (determined without regard to extensions).

(3) Manner of making election

An election under paragraph (1) (or revocation thereof) shall be made in such manner as the Secretary may by regulations prescribe.

(Added Pub. L. 101–508, title XI, §11511(a), Nov. 5, 1990, 104 Stat. 1388–483; amended Pub. L. 106–554, §1(a)(7) [title III, §317(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–645; Pub. L. 108–357, title VII, §707(a), (b), Oct. 22, 2004, 118 Stat. 1550; Pub. L. 109–58, title XIII, §1322(a)(3)(B), Aug. 8, 2005, 119 Stat. 1011; Pub. L. 109–135, title IV, §412(i), Dec. 21, 2005, 119 Stat. 2637.)

INFLATION ADJUSTED ITEMS FOR CERTAIN TAX YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table below.

PRIOR PROVISIONS

A prior section 43 was renumbered section 32 of this title.

Another prior section 43 was renumbered section 37 of this title.

AMENDMENTS

2005—Subsec. (b)(2). Pub. L. 109–58 substituted ''section 45K(d)(2)(C)'' for ''section 29(d)(2)(C)''.

Subsec. (c)(5). Pub. L. 109–135 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of paragraph (1)(D)—

''(1) IN GENERAL.—The term 'Alaska natural gas' means natural gas entering the Alaska natural gas pipeline (as defined in section 168(i)(16) (determined without regard to subparagraph (B) thereof)) which is produced from a well—

''(A) located in the area of the State of Alaska lying north of 64 degrees North latitude, determined by excluding the area of the Alaska National Wildlife Refuge (including the continental shelf thereof within the meaning of section 638(1)), and

''(B) pursuant to the applicable State and Federal pollution prevention, control, and permit requirements from such area (including the continental shelf thereof within the meaning of section 638(1)).

''(2) NATURAL GAS.—The term 'natural gas' has the meaning given such term by section 613A(e)(2).''

2004—Subsec. (c)(1)(D). Pub. L. 108–357, §707(a), added subpar. (D).

Subsec. (c)(5). Pub. L. 108–357, §707(b), added par. (5).

2000—Subsec. (c)(1)(C). Pub. L. 106–554 inserted ''(as defined in section 193(b))'' after ''expenses'' and struck out ''under section 193'' after ''allowable''.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–58 applicable to credits determined under the Internal Revenue Code of 1986 for taxable years ending after Dec. 31, 2005, see section 1322(c)(1) of Pub. L. 109–58, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VII, §707(c), Oct. 22, 2004, 118 Stat. 1550, provided that: ''The amendment made by this section [amending this section] shall apply to costs paid or incurred in taxable years beginning after December 31, 2004.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title III, §317(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–645, provided that: ''The amendment made by this section [amending this section] shall take effect as if included in section 11511 of the Revenue Reconciliation Act of 1990 [Pub. L. 101–508].''

EFFECTIVE DATE

Section 11511(d) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section and amending sections 38, 39, 196, and 6501 of this title] shall apply to costs paid or incurred in taxable years beginning after December 31, 1990.

''(2) SPECIAL RULE FOR SIGNIFICANT EXPANSION OF PROJECTS.—For purposes of section 43(c)(2)(A)(iii) of the Internal Revenue Code of 1986 (as added by subsection (a)), any significant expansion after December 31, 1990, of a project begun before January 1, 1991, shall be treated as a project with respect to which the first injection commences after December 31, 1990.''

INFLATION ADJUSTED ITEMS FOR CERTAIN TAX YEARS

Provisions relating to inflation adjustment of items in this section for certain tax years were contained in the following:

2010—Internal Revenue Notice 2010–72.

2009—Internal Revenue Notice 2009–73.
2008—Internal Revenue Notice 2008–72.
2007—Internal Revenue Notice 2007–64.
2006—Internal Revenue Notice 2006–62.
2005—Internal Revenue Notice 2005–56.
2004—Internal Revenue Notice 2004–49.
2003—Internal Revenue Notice 2003–43.
2002—Internal Revenue Notice 2002–53.
2001—Internal Revenue Notice 2001–54.
2000—Internal Revenue Notice 2000–51.
1999—Internal Revenue Notice 99–45.
1998—Internal Revenue Notice 98–41.
1997—Internal Revenue Notice 97–39.
1996—Internal Revenue Notice 96–41.

§ 44. Expenditures to provide access to disabled individuals

(a) General rule

For purposes of section 38, in the case of an eligible small business, the amount of the disabled access credit determined under this section for any taxable year shall be an amount equal to 50 percent of so much of the eligible access expenditures for the taxable year as exceed $250 but do not exceed $10,250.

(b) Eligible small business

For purposes of this section, the term ''eligible small business'' means any person if—

(1) either—

(A) the gross receipts of such person for the preceding taxable year did not exceed $1,000,000, or

(B) in the case of a person to which subparagraph (A) does not apply, such person employed not more than 30 full-time employees during the preceding taxable year, and

(2) such person elects the application of this section for the taxable year.

For purposes of paragraph (1)(B), an employee shall be considered full-time if such employee is employed at least 30 hours per week for 20 or more calendar weeks in the taxable year.

(c) Eligible access expenditures

For purposes of this section—

(1) In general

The term ''eligible access expenditures'' means amounts paid or incurred by an eligible small business for the purpose of enabling such eligible small business to comply with applicable requirements under the Americans With Disabilities Act of 1990 (as in effect on the date of the enactment of this section).

(2) Certain expenditures included

The term ''eligible access expenditures'' includes amounts paid or incurred—

(A) for the purpose of removing architectural, communication, physical, or transportation barriers which prevent a business from being accessible to, or usable by, individuals with disabilities,

(B) to provide qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments,

(C) to provide qualified readers, taped texts, and other effective methods of making visually delivered materials available to individuals with visual impairments,

(D) to acquire or modify equipment or devices for individuals with disabilities, or

(E) to provide other similar services, modifications, materials, or equipment.

(3) Expenditures must be reasonable

Amounts paid or incurred for the purposes described in paragraph (2) shall include only expenditures which are reasonable and shall not include expenditures which are unnecessary to accomplish such purposes.

(4) Expenses in connection with new construction are not eligible

The term ''eligible access expenditures'' shall not include amounts described in paragraph (2)(A) which are paid or incurred in connection with any facility first placed in service after the date of the enactment of this section.

(5) Expenditures must meet standards

The term ''eligible access expenditures'' shall not include any amount unless the taxpayer establishes, to the satisfaction of the Secretary, that the resulting removal of any barrier (or the provision of any services, modifications, materials, or equipment) meets the standards promulgated by the Secretary with the concurrence of the Architectural and Transportation Barriers Compliance Board and set forth in regulations prescribed by the Secretary.

(d) Definition of disability; special rules

For purposes of this section—

(1) Disability

The term ''disability'' has the same meaning as when used in the Americans With Disabilities Act of 1990 (as in effect on the date of the enactment of this section).

(2) Controlled groups

(A) In general

All members of the same controlled group of corporations (within the meaning of section 52(a)) and all persons under common control (within the meaning of section 52(b)) shall be treated as 1 person for purposes of this section.

(B) Dollar limitation

The Secretary shall apportion the dollar limitation under subsection (a) among the members of any group described in subparagraph (A) in such manner as the Secretary shall by regulations prescribe.

(3) Partnerships and S corporations

In the case of a partnership, the limitation under subsection (a) shall apply with respect to the partnership and each partner. A similar rule shall apply in the case of an S corporation and its shareholders.

(4) Short years

The Secretary shall prescribe such adjustments as may be appropriate for purposes of paragraph (1) of subsection (b) if the preceding taxable year is a taxable year of less than 12 months.

(5) Gross receipts

Gross receipts for any taxable year shall be reduced by returns and allowances made during such year.

(6) Treatment of predecessors

The reference to any person in paragraph (1) of subsection (b) shall be treated as including a reference to any predecessor.

(7) Denial of double benefit

In the case of the amount of the credit determined under this section—

(A) no deduction or credit shall be allowed for such amount under any other provision of this chapter, and

(B) no increase in the adjusted basis of any property shall result from such amount.

(e) Regulations

The Secretary shall prescribe regulations necessary to carry out the purposes of this section.

(Added Pub. L. 101–508, title XI, § 11611(a), Nov. 5, 1990, 104 Stat. 1388–501.)

REFERENCES IN TEXT

The Americans With Disabilities Act of 1990, referred to in subsecs. (c)(1) and (d)(1) is Pub. L. 101–336, July 26, 1990, 104 Stat. 327, as amended, which is classified principally to chapter 126 (§ 12101 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of Title 42 and Tables.

The date of the enactment of this section, referred to in subsecs. (c)(1), (4) and (d)(1), is the date of enactment of Pub. L. 101–508, which was approved Nov. 5, 1990.

PRIOR PROVISIONS

A prior section 44, added Pub. L. 94–12, title II, § 208(a), Mar. 29, 1975, 89 Stat. 32; amended Pub. L. 94–45, title IV, § 401(a), June 30, 1975, 89 Stat. 243; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to purchase of new principal residence, prior to repeal by Pub. L. 98–369, div. A, title IV, § 474(m)(1), July 18, 1984, 98 Stat. 833, applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years.

Another prior section 44 was renumbered section 37 of this title.

EFFECTIVE DATE

Section applicable to expenditures paid or incurred after Nov. 5, 1990, see section 11611(e)(1) of Pub. L. 101–508, set out as an Effective Date of 1990 Amendment note under section 38 of this title.

[§ 44A. Renumbered § 21]

[§ 44B. Repealed. Pub. L. 98–369, div. A, title IV, § 474(m)(1), July 18, 1984, 98 Stat. 833]

Section, added Pub. L. 95–30, title II, § 202(a), May 23, 1977, 91 Stat. 141; amended Pub. L. 95–600, title III, § 321(b)(1), Nov. 6, 1978, 92 Stat. 2834; Pub. L. 96–222, title I, § 103(a)(6)(G)(i), (ii), Apr. 1, 1980, 94 Stat. 210, related to credit for employment of certain new employees.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 21 of this title.

[§ 44C. Renumbered § 23]

[§ 44D. Renumbered § 29]

[§ 44E. Renumbered § 40]

[§ 44F. Renumbered § 30]

[§ 44G. Renumbered § 41]

[§ 44H. Renumbered § 45C]

§ 45. Electricity produced from certain renewable resources, etc.

(a) General rule

For purposes of section 38, the renewable electricity production credit for any taxable year is an amount equal to the product of—

(1) 1.5 cents, multiplied by

(2) the kilowatt hours of electricity—

(A) produced by the taxpayer—

(i) from qualified energy resources, and

(ii) at a qualified facility during the 10-year period beginning on the date the facility was originally placed in service, and

(B) sold by the taxpayer to an unrelated person during the taxable year.

(b) Limitations and adjustments

(1) Phaseout of credit

The amount of the credit determined under subsection (a) shall be reduced by an amount which bears the same ratio to the amount of the credit (determined without regard to this paragraph) as—

(A) the amount by which the reference price for the calendar year in which the sale occurs exceeds 8 cents, bears to

(B) 3 cents.

(2) Credit and phaseout adjustment based on inflation

The 1.5 cent amount in subsection (a), the 8 cent amount in paragraph (1), the $4.375 amount in subsection (e)(8)(A), the $3 amount in subsection (e)(8)(D)(ii)(I), and in subsection (e)(8)(B)(i) the reference price of fuel used as a feedstock (within the meaning of subsection (c)(7)(A)) in 2002 shall each be adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. If any amount as increased under the preceding sentence is not a multiple of 0.1 cent, such amount shall be rounded to the nearest multiple of 0.1 cent.

(3) Credit reduced for grants, tax-exempt bonds, subsidized energy financing, and other credits

The amount of the credit determined under subsection (a) with respect to any project for any taxable year (determined after the application of paragraphs (1) and (2)) shall be reduced by the amount which is the product of the amount so determined for such year and the lesser of ½ or a fraction—

(A) the numerator of which is the sum, for the taxable year and all prior taxable years, of—

(i) grants provided by the United States, a State, or a political subdivision of a State for use in connection with the project,

(ii) proceeds of an issue of State or local government obligations used to provide financing for the project the interest on which is exempt from tax under section 103,

(iii) the aggregate amount of subsidized energy financing provided (directly or indirectly) under a Federal, State, or local program provided in connection with the project, and

(iv) the amount of any other credit allowable with respect to any property which is part of the project, and

(B) the denominator of which is the aggregate amount of additions to the capital account for the project for the taxable year and all prior taxable years.

The amounts under the preceding sentence for any taxable year shall be determined as of the close of the taxable year. This paragraph shall not apply with respect to any facility described in subsection (d)(2)(A)(ii).

(4) Credit rate and period for electricity produced and sold from certain facilities

(A) Credit rate

In the case of electricity produced and sold in any calendar year after 2003 at any qualified facility described in paragraph (3), (5), (6), (7), (9), or (11) of subsection (d), the amount in effect under subsection (a)(1) for such calendar year (determined before the application of the last sentence of paragraph (2) of this subsection) shall be reduced by one-half.

(B) Credit period

(i) In general

Except as provided in clause (ii) or clause (iii), in the case of any facility described in paragraph (3), (4), (5), (6), or (7) of subsection (d), the 5-year period beginning on the date the facility was originally placed in service shall be substituted for the 10-year period in subsection (a)(2)(A)(ii).

(ii) Certain open-loop biomass facilities

In the case of any facility described in subsection (d)(3)(A)(ii) placed in service before the date of the enactment of this paragraph, the 5-year period beginning on January 1, 2005, shall be substituted for the 10-year period in subsection (a)(2)(A)(ii).

(iii) Termination

Clause (i) shall not apply to any facility placed in service after the date of the enactment of this clause.

(c) Resources

For purposes of this section:

(1) In general

The term ''qualified energy resources'' means—

(A) wind,
(B) closed-loop biomass,
(C) open-loop biomass,
(D) geothermal energy,
(E) solar energy,
(F) small irrigation power,
(G) municipal solid waste,
(H) qualified hydropower production, and
(I) marine and hydrokinetic renewable energy.

(2) Closed-loop biomass

The term ''closed-loop biomass'' means any organic material from a plant which is planted exclusively for purposes of being used at a qualified facility to produce electricity.

(3) Open-loop biomass

(A) In general

The term ''open-loop biomass'' means—

(i) any agricultural livestock waste nutrients, or

(ii) any solid, nonhazardous, cellulosic waste material or any lignin material which is derived from—

(I) any of the following forest-related resources: mill and harvesting residues, precommercial thinnings, slash, and brush,

(II) solid wood waste materials, including waste pallets, crates, dunnage, manufacturing and construction wood wastes (other than pressure-treated, chemically-treated, or painted wood wastes), and landscape or right-of-way tree trimmings, but not including municipal solid waste, gas derived from the biodegradation of solid waste, or paper which is commonly recycled, or

(III) agriculture sources, including orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues.

Such term shall not include closed-loop biomass or biomass burned in conjunction with fossil fuel (cofiring) beyond such fossil fuel required for startup and flame stabilization.

(B) Agricultural livestock waste nutrients

(i) In general

The term ''agricultural livestock waste nutrients'' means agricultural livestock manure and litter, including wood shavings, straw, rice hulls, and other bedding material for the disposition of manure.

(ii) Agricultural livestock

The term ''agricultural livestock'' includes bovine, swine, poultry, and sheep.

(4) Geothermal energy

The term ''geothermal energy'' means energy derived from a geothermal deposit (within the meaning of section 613(e)(2)).

(5) Small irrigation power

The term ''small irrigation power'' means power—

(A) generated without any dam or impoundment of water through an irrigation system canal or ditch, and

(B) the nameplate capacity rating of which is not less than 150 kilowatts but is less than 5 megawatts.

(6) Municipal solid waste

The term ''municipal solid waste'' has the meaning given the term ''solid waste'' under

section 2(27)[1] of the Solid Waste Disposal Act (42 U.S.C. 6903).

(7) Refined coal

(A) In general

The term ''refined coal'' means a fuel—

(i) which—

(I) is a liquid, gaseous, or solid fuel produced from coal (including lignite) or high carbon fly ash, including such fuel used as a feedstock,

(II) is sold by the taxpayer with the reasonable expectation that it will be used for purpose[2] of producing steam, and

(III) is certified by the taxpayer as resulting (when used in the production of steam) in a qualified emission reduction.[3]

(ii) which is steel industry fuel.

(B) Qualified emission reduction

The term ''qualified emission reduction'' means a reduction of at least 20 percent of the emissions of nitrogen oxide and at least 40 percent of the emissions of either sulfur dioxide or mercury released when burning the refined coal (excluding any dilution caused by materials combined or added during the production process), as compared to the emissions released when burning the feedstock coal or comparable coal predominantly available in the marketplace as of January 1, 2003.

(C) Steel industry fuel

(i) In general

The term ''steel industry fuel'' means a fuel which—

(I) is produced through a process of liquifying coal waste sludge and distributing it on coal, and

(II) is used as a feedstock for the manufacture of coke.

(ii) Coal waste sludge

The term ''coal waste sludge'' means the tar decanter sludge and related byproducts of the coking process, including such materials that have been stored in ground, in tanks and in lagoons, that have been treated as hazardous wastes under applicable Federal environmental rules absent liquefaction and processing with coal into a feedstock for the manufacture of coke.

(8) Qualified hydropower production

(A) In general

The term ''qualified hydropower production'' means—

(i) in the case of any hydroelectric dam which was placed in service on or before the date of the enactment of this paragraph, the incremental hydropower production for the taxable year, and

(ii) in the case of any nonhydroelectric dam described in subparagraph (C), the hydropower production from the facility for the taxable year.

(B) Determination of incremental hydropower production

(i) In general

For purposes of subparagraph (A), incremental hydropower production for any taxable year shall be equal to the percentage of average annual hydropower production at the facility attributable to the efficiency improvements or additions of capacity placed in service after the date of the enactment of this paragraph, determined by using the same water flow information used to determine an historic average annual hydropower production baseline for such facility. Such percentage and baseline shall be certified by the Federal Energy Regulatory Commission.

(ii) Operational changes disregarded

For purposes of clause (i), the determination of incremental hydropower production shall not be based on any operational changes at such facility not directly associated with the efficiency improvements or additions of capacity.

(C) Nonhydroelectric dam

For purposes of subparagraph (A), a facility is described in this subparagraph if—

(i) the hydroelectric project installed on the nonhydroelectric dam is licensed by the Federal Energy Regulatory Commission and meets all other applicable environmental, licensing, and regulatory requirements,

(ii) the nonhydroelectric dam was placed in service before the date of the enactment of this paragraph and operated for flood control, navigation, or water supply purposes and did not produce hydroelectric power on the date of the enactment of this paragraph, and

(iii) the hydroelectric project is operated so that the water surface elevation at any given location and time that would have occurred in the absence of the hydroelectric project is maintained, subject to any license requirements imposed under applicable law that change the water surface elevation for the purpose of improving environmental quality of the affected waterway.

The Secretary, in consultation with the Federal Energy Regulatory Commission, shall certify if a hydroelectric project licensed at a nonhydroelectric dam meets the criteria in clause (iii). Nothing in this section shall affect the standards under which the Federal Energy Regulatory Commission issues licenses for and regulates hydropower projects under part I of the Federal Power Act.

(9) Indian coal

(A) In general

The term ''Indian coal'' means coal which is produced from coal reserves which, on June 14, 2005—

(i) were owned by an Indian tribe, or

[1] See References in Text note below.

[2] So in original. Probably should be preceded by ''the''.

[3] So in original. The period probably should be '', or''.

(ii) were held in trust by the United States for the benefit of an Indian tribe or its members.

(B) Indian tribe

For purposes of this paragraph, the term ''Indian tribe'' has the meaning given such term by section 7871(c)(3)(E)(ii).

(10) Marine and hydrokinetic renewable energy

(A) In general

The term ''marine and hydrokinetic renewable energy'' means energy derived from—

(i) waves, tides, and currents in oceans, estuaries, and tidal areas,

(ii) free flowing water in rivers, lakes, and streams,

(iii) free flowing water in an irrigation system, canal, or other man-made channel, including projects that utilize nonmechanical structures to accelerate the flow of water for electric power production purposes, or

(iv) differentials in ocean temperature (ocean thermal energy conversion).

(B) Exceptions

Such term shall not include any energy which is derived from any source which utilizes a dam, diversionary structure (except as provided in subparagraph (A)(iii)), or impoundment for electric power production purposes.

(d) Qualified facilities

For purposes of this section:

(1) Wind facility

In the case of a facility using wind to produce electricity, the term ''qualified facility'' means any facility owned by the taxpayer which is originally placed in service after December 31, 1993, and before January 1, 2013. Such term shall not include any facility with respect to which any qualified small wind energy property expenditure (as defined in subsection (d)(4) of section 25D) is taken into account in determining the credit under such section.

(2) Closed-loop biomass facility

(A) In general

In the case of a facility using closed-loop biomass to produce electricity, the term ''qualified facility'' means any facility—

(i) owned by the taxpayer which is originally placed in service after December 31, 1992, and before January 1, 2014, or

(ii) owned by the taxpayer which before January 1, 2014, is originally placed in service and modified to use closed-loop biomass to co-fire with coal, with other biomass, or with both, but only if the modification is approved under the Biomass Power for Rural Development Programs or is part of a pilot project of the Commodity Credit Corporation as described in 65 Fed. Reg. 63052.

(B) Expansion of facility

Such term shall include a new unit placed in service after the date of the enactment of this subparagraph in connection with a facility described in subparagraph (A)(i), but only to the extent of the increased amount of electricity produced at the facility by reason of such new unit.

(C) Special rules

In the case of a qualified facility described in subparagraph (A)(ii)—

(i) the 10-year period referred to in subsection (a) shall be treated as beginning no earlier than the date of the enactment of this clause, and

(ii) if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) shall be the lessee or the operator of such facility.

(3) Open-loop biomass facilities

(A) In general

In the case of a facility using open-loop biomass to produce electricity, the term ''qualified facility'' means any facility owned by the taxpayer which—

(i) in the case of a facility using agricultural livestock waste nutrients—

(I) is originally placed in service after the date of the enactment of this subclause and before January 1, 2014, and

(II) the nameplate capacity rating of which is not less than 150 kilowatts, and

(ii) in the case of any other facility, is originally placed in service before January 1, 2014.

(B) Expansion of facility

Such term shall include a new unit placed in service after the date of the enactment of this subparagraph in connection with a facility described in subparagraph (A), but only to the extent of the increased amount of electricity produced at the facility by reason of such new unit.

(C) Credit eligibility

In the case of any facility described in subparagraph (A), if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) shall be the lessee or the operator of such facility.

(4) Geothermal or solar energy facility

In the case of a facility using geothermal or solar energy to produce electricity, the term ''qualified facility'' means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this paragraph and before January 1, 2014 (January 1, 2006, in the case of a facility using solar energy). Such term shall not include any property described in section 48(a)(3) the basis of which is taken into account by the taxpayer for purposes of determining the energy credit under section 48.

(5) Small irrigation power facility

In the case of a facility using small irrigation power to produce electricity, the term ''qualified facility'' means any facility owned by the taxpayer which is originally placed in

service after the date of the enactment of this paragraph and before October 3, 2008.

(6) Landfill gas facilities

In the case of a facility producing electricity from gas derived from the biodegradation of municipal solid waste, the term ''qualified facility'' means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this paragraph and before January 1, 2014.

(7) Trash facilities

In the case of a facility (other than a facility described in paragraph (6)) which uses municipal solid waste to produce electricity, the term ''qualified facility'' means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this paragraph and before January 1, 2014. Such term shall include a new unit placed in service in connection with a facility placed in service on or before the date of the enactment of this paragraph, but only to the extent of the increased amount of electricity produced at the facility by reason of such new unit.

(8) Refined coal production facility

In the case of a facility that produces refined coal, the term ''refined coal production facility'' means—

(A) with respect to a facility producing steel industry fuel, any facility (or any modification to a facility) which is placed in service before January 1, 2010, and

(B) with respect to any other facility producing refined coal, any facility placed in service after the date of the enactment of the American Jobs Creation Act of 2004 and before January 1, 2012.

(9) Qualified hydropower facility

In the case of a facility producing qualified hydroelectric production described in subsection (c)(8), the term ''qualified facility'' means—

(A) in the case of any facility producing incremental hydropower production, such facility but only to the extent of its incremental hydropower production attributable to efficiency improvements or additions to capacity described in subsection (c)(8)(B) placed in service after the date of the enactment of this paragraph and before January 1, 2014, and

(B) any other facility placed in service after the date of the enactment of this paragraph and before January 1, 2014.

(C) CREDIT PERIOD.—In the case of a qualified facility described in subparagraph (A), the 10-year period referred to in subsection (a) shall be treated as beginning on the date the efficiency improvements or additions to capacity are placed in service.

(10) Indian coal production facility

In the case of a facility that produces Indian coal, the term ''Indian coal production facility'' means a facility which is placed in service before January 1, 2009.

(11) Marine and hydrokinetic renewable energy facilities

In the case of a facility producing electricity from marine and hydrokinetic renewable energy, the term ''qualified facility'' means any facility owned by the taxpayer—

(A) which has a nameplate capacity rating of at least 150 kilowatts, and

(B) which is originally placed in service on or after the date of the enactment of this paragraph and before January 1, 2014.

(e) Definitions and special rules

For purposes of this section—

(1) Only production in the United States taken into account

Sales shall be taken into account under this section only with respect to electricity the production of which is within—

(A) the United States (within the meaning of section 638(1)), or

(B) a possession of the United States (within the meaning of section 638(2)).

(2) Computation of inflation adjustment factor and reference price

(A) In general

The Secretary shall, not later than April 1 of each calendar year, determine and publish in the Federal Register the inflation adjustment factor and the reference price for such calendar year in accordance with this paragraph.

(B) Inflation adjustment factor

The term ''inflation adjustment factor'' means, with respect to a calendar year, a fraction the numerator of which is the GDP implicit price deflator for the preceding calendar year and the denominator of which is the GDP implicit price deflator for the calendar year 1992. The term ''GDP implicit price deflator'' means the most recent revision of the implicit price deflator for the gross domestic product as computed and published by the Department of Commerce before March 15 of the calendar year.

(C) Reference price

The term ''reference price'' means, with respect to a calendar year, the Secretary's determination of the annual average contract price per kilowatt hour of electricity generated from the same qualified energy resource and sold in the previous year in the United States. For purposes of the preceding sentence, only contracts entered into after December 31, 1989, shall be taken into account.

(3) Production attributable to the taxpayer

In the case of a facility in which more than 1 person has an ownership interest, except to the extent provided in regulations prescribed by the Secretary, production from the facility shall be allocated among such persons in proportion to their respective ownership interests in the gross sales from such facility.

(4) Related persons

Persons shall be treated as related to each other if such persons would be treated as a sin-

gle employer under the regulations prescribed under section 52(b). In the case of a corporation which is a member of an affiliated group of corporations filing a consolidated return, such corporation shall be treated as selling electricity to an unrelated person if such electricity is sold to such a person by another member of such group.

(5) Pass-thru in the case of estates and trusts

Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

[(6) Repealed. Pub. L. 109–58, title XIII, § 1301(f)(3), Aug. 8, 2005, 119 Stat. 990]

(7) Credit not to apply to electricity sold to utilities under certain contracts

(A) In general

The credit determined under subsection (a) shall not apply to electricity—

(i) produced at a qualified facility described in subsection (d)(1) which is originally placed in service after June 30, 1999, and

(ii) sold to a utility pursuant to a contract originally entered into before January 1, 1987 (whether or not amended or restated after that date).

(B) Exception

Subparagraph (A) shall not apply if—

(i) the prices for energy and capacity from such facility are established pursuant to an amendment to the contract referred to in subparagraph (A)(ii),

(ii) such amendment provides that the prices set forth in the contract which exceed avoided cost prices determined at the time of delivery shall apply only to annual quantities of electricity (prorated for partial years) which do not exceed the greater of—

(I) the average annual quantity of electricity sold to the utility under the contract during calendar years 1994, 1995, 1996, 1997, and 1998, or

(II) the estimate of the annual electricity production set forth in the contract, or, if there is no such estimate, the greatest annual quantity of electricity sold to the utility under the contract in any of the calendar years 1996, 1997, or 1998, and

(iii) such amendment provides that energy and capacity in excess of the limitation in clause (ii) may be—

(I) sold to the utility only at prices that do not exceed avoided cost prices determined at the time of delivery, or

(II) sold to a third party subject to a mutually agreed upon advance notice to the utility.

For purposes of this subparagraph, avoided cost prices shall be determined as provided for in 18 CFR 292.304(d)(1) or any successor regulation.

(8) Refined coal production facilities

(A) Determination of credit amount

In the case of a producer of refined coal, the credit determined under this section (without regard to this paragraph) for any taxable year shall be increased by an amount equal to $4.375 per ton of qualified refined coal—

(i) produced by the taxpayer at a refined coal production facility during the 10-year period beginning on the date the facility was originally placed in service, and

(ii) sold by the taxpayer—

(I) to an unrelated person, and

(II) during such 10-year period and such taxable year.

(B) Phaseout of credit

The amount of the increase determined under subparagraph (A) shall be reduced by an amount which bears the same ratio to the amount of the increase (determined without regard to this subparagraph) as—

(i) the amount by which the reference price of fuel used as a feedstock (within the meaning of subsection (c)(7)(A)) for the calendar year in which the sale occurs exceeds an amount equal to 1.7 multiplied by the reference price for such fuel in 2002, bears to

(ii) $8.75.

(C) Application of rules

Rules similar to the rules of the subsection (b)(3) and paragraphs (1) through (5) of this subsection shall apply for purposes of determining the amount of any increase under this paragraph.

(D) Special rule for steel industry fuel

(i) In general

In the case of a taxpayer who produces steel industry fuel—

(I) this paragraph shall be applied separately with respect to steel industry fuel and other refined coal, and

(II) in applying this paragraph to steel industry fuel, the modifications in clause (ii) shall apply.

(ii) Modifications

(I) Credit amount

Subparagraph (A) shall be applied by substituting ''$2 per barrel-of-oil equivalent'' for ''$4.375 per ton''.

(II) Credit period

In lieu of the 10-year period referred to in clauses (i) and (ii)(II) of subparagraph (A), the credit period shall be the period beginning on the later of the date such facility was originally placed in service, the date the modifications described in clause (iii) were placed in service, or October 1, 2008, and ending on the later of December 31, 2009, or the date which is 1 year after the date such facility or the modifications described in clause (iii) were placed in service.

(III) No phaseout

Subparagraph (B) shall not apply.

(iii) Modifications

The modifications described in this clause are modifications to an existing facility which allow such facility to produce steel industry fuel.

(iv) Barrel-of-oil equivalent

For purposes of this subparagraph, a barrel-of-oil equivalent is the amount of steel industry fuel that has a Btu content of 5,800,000 Btus.

(9) Coordination with credit for producing fuel from a nonconventional source

(A) In general

The term ''qualified facility'' shall not include any facility which produces electricity from gas derived from the biodegradation of municipal solid waste if such biodegradation occurred in a facility (within the meaning of section 45K) the production from which is allowed as a credit under section 45K for the taxable year or any prior taxable year.

(B) Refined coal facilities

(i) In general

The term ''refined coal production facility'' shall not include any facility the production from which is allowed as a credit under section 45K for the taxable year or any prior taxable year (or under section 29,[1] as in effect on the day before the date of enactment of the Energy Tax Incentives Act of 2005, for any prior taxable year).

(ii) Exception for steel industry coal

In the case of a facility producing steel industry fuel, clause (i) shall not apply to so much of the refined coal produced at such facility as is steel industry fuel.

(10) Indian coal production facilities

(A) Determination of credit amount

In the case of a producer of Indian coal, the credit determined under this section (without regard to this paragraph) for any taxable year shall be increased by an amount equal to the applicable dollar amount per ton of Indian coal—

(i) produced by the taxpayer at an Indian coal production facility during the 7-year period beginning on January 1, 2006, and

(ii) sold by the taxpayer—

(I) to an unrelated person, and

(II) during such 7-year period and such taxable year.

(B) Applicable dollar amount

(i) In general

The term ''applicable dollar amount'' for any taxable year beginning in a calendar year means—

(I) $1.50 in the case of calendar years 2006 through 2009, and

(II) $2.00 in the case of calendar years beginning after 2009.

(ii) Inflation adjustment

In the case of any calendar year after 2006, each of the dollar amounts under clause (i) shall be equal to the product of such dollar amount and the inflation adjustment factor determined under paragraph (2)(B) for the calendar year, except that such paragraph shall be applied by substituting ''2005'' for ''1992''.

(C) Application of rules

Rules similar to the rules of the subsection (b)(3) and paragraphs (1), (3), (4), and (5) of this subsection shall apply for purposes of determining the amount of any increase under this paragraph.

(D) Treatment as specified credit

The increase in the credit determined under subsection (a) by reason of this paragraph with respect to any facility shall be treated as a specified credit for purposes of section 38(c)(4)(A) during the 4-year period beginning on the later of January 1, 2006, or the date on which such facility is placed in service by the taxpayer.

(11) Allocation of credit to patrons of agricultural cooperative

(A) Election to allocate

(i) In general

In the case of an eligible cooperative organization, any portion of the credit determined under subsection (a) for the taxable year may, at the election of the organization, be apportioned among patrons of the organization on the basis of the amount of business done by the patrons during the taxable year.

(ii) Form and effect of election

An election under clause (i) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year. Such election shall not take effect unless the organization designates the apportionment as such in a written notice mailed to its patrons during the payment period described in section 1382(d).

(B) Treatment of organizations and patrons

The amount of the credit apportioned to any patrons under subparagraph (A)—

(i) shall not be included in the amount determined under subsection (a) with respect to the organization for the taxable year, and

(ii) shall be included in the amount determined under subsection (a) for the first taxable year of each patron ending on or after the last day of the payment period (as defined in section 1382(d)) for the taxable year of the organization or, if earlier, for the taxable year of each patron ending on or after the date on which the patron receives notice from the cooperative of the apportionment.

(C) Special rules for decrease in credits for taxable year

If the amount of the credit of a cooperative organization determined under subsection (a) for a taxable year is less than the amount of such credit shown on the return of the cooperative organization for such year, an amount equal to the excess of—

(i) such reduction, over

(ii) the amount not apportioned to such patrons under subparagraph (A) for the taxable year,

shall be treated as an increase in tax imposed by this chapter on the organization. Such increase shall not be treated as tax imposed by this chapter for purposes of deter-

mining the amount of any credit under this chapter.

(D) Eligible cooperative defined

For purposes of this section the term ''eligible cooperative'' means a cooperative organization described in section 1381(a) which is owned more than 50 percent by agricultural producers or by entities owned by agricultural producers. For this purpose an entity owned by an agricultural producer is one that is more than 50 percent owned by agricultural producers.

(Added Pub. L. 102–486, title XIX, §1914(a), Oct. 24, 1992, 106 Stat. 3020; amended Pub. L. 106–170, title V, §507(a)–(c), Dec. 17, 1999, 113 Stat. 1922; Pub. L. 106–554, §1(a)(7) [title III, §319(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–646; Pub. L. 107–147, title VI, §603(a), Mar. 9, 2002, 116 Stat. 59; Pub. L. 108–311, title III, §313(a), Oct. 4, 2004, 118 Stat. 1181; Pub. L. 108–357, title VII, §710(a)–(d), (f), Oct. 22, 2004, 118 Stat. 1552–1557; Pub. L. 109–58, title XIII, §§1301(a)–(f)(4), 1302(a), 1322(a)(3)(C), Aug. 8, 2005, 119 Stat. 986–990, 1011; Pub. L. 109–135, title IV, §§402(b), 403(t), 412(j), Dec. 21, 2005, 119 Stat. 2610, 2628, 2637; Pub. L. 109–432, div. A, title II, §201, Dec. 20, 2006, 120 Stat. 2944; Pub. L. 110–172, §§7(b), 9(a), Dec. 29, 2007, 121 Stat. 2482, 2484; Pub. L. 110–343, div. B, title I, §§101(a)–(e), 102(a)–(e), 106(c)(3)(B), 108(a)–(d)(1), Oct. 3, 2008, 122 Stat. 3808–3810, 3815, 3819–3821; Pub. L. 111–5, div. B, title I, §1101(a), (b), Feb. 17, 2009, 123 Stat. 319; Pub. L. 111–312, title VII, §702(a), Dec. 17, 2010, 124 Stat. 3311.)

INFLATION ADJUSTED ITEMS FOR CERTAIN TAX YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table below.

REFERENCES IN TEXT

The date of the enactment of this paragraph, the date of the enactment of this clause, the date of the enactment of this subclause, and the date of the enactment of the American Jobs Creation Act of 2004, referred to in subsecs. (b)(4)(B)(ii) and (d)(2)(C)(i), (3)(A)(i), (4) to (8), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

The date of the enactment of this clause and the date of the enactment of this paragraph, referred to in subsecs. (b)(4)(B)(iii), (c)(8), and (d)(9)(A), (B), are the date of enactment of Pub. L. 109–58, which was approved Aug. 8, 2005.

Section 2(27) of the Solid Waste Disposal Act, referred to in subsec. (c)(6), probably should be section 1004(27) of such Act which is classified to section 6903(27) of Title 42, The Public Health and Welfare.

The Federal Power Act, referred to in subsec. (c)(8)(C), is act June 10, 1920, ch. 285, 41 Stat. 1063. Part I of the Act is classified generally to subchapter I (§791a et seq.) of chapter 12 of Title 16, Conservation. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

The date of the enactment of this subparagraph and the date of the enactment of this paragraph, referred to in subsec. (d)(2)(B), (3)(B), (11), are the date of enactment of Pub. L. 110–343, which was approved Oct. 3, 2008.

Section 29, referred to in subsec. (e)(9)(B)(i), was redesignated section 45K of this title by Pub. L. 109–58, title XIII, §1322(a)(1), Aug. 8, 2005, 119 Stat. 1011.

The date of enactment of the Energy Tax Incentives Act of 2005, referred to in subsec. (e)(9)(B)(i), is the date of enactment of title XIII of Pub. L. 109–58, which was approved Aug. 8, 2005.

PRIOR PROVISIONS

A prior section 45 was renumbered section 37 of this title.

AMENDMENTS

2010—Subsec. (d)(8)(B). Pub. L. 111–312 substituted ''January 1, 2012'' for ''January 1, 2010''.

2009—Subsec. (d)(1). Pub. L. 111–5, §1101(a)(1), substituted ''2013'' for ''2010''.

Subsec. (d)(2)(A)(i), (ii), (3)(A)(i)(I), (ii), (4). Pub. L. 111–5, §1101(a)(2), substituted ''2014'' for ''2011''.

Subsec. (d)(5). Pub. L. 111–5, §1101(b), substituted ''and before October 3, 2008.'' for ''and before the date of the enactment of paragraph (11).''

Subsec. (d)(6), (7), (9)(A), (B). Pub. L. 111–5, §1101(a)(2), substituted ''2014'' for ''2011''.

Subsec. (d)(11)(B). Pub. L. 111–5, §1101(a)(3), substituted ''2014'' for ''2012''.

2008—Subsec. (b)(2). Pub. L. 110–343, §108(b)(2), inserted ''the $3 amount in subsection (e)(8)(D)(ii)(I),'' after ''subsection (e)(8)(A),''.

Subsec. (b)(4)(A). Pub. L. 110–343, §102(d), substituted ''(9), or (11)'' for ''or (9)''.

Subsec. (c)(1)(I). Pub. L. 110–343, §102(a), added subpar. (I).

Subsec. (c)(7)(A). Pub. L. 110–343, §108(a)(1), reenacted heading without change and amended text generally. Prior to amendment, subpar. (A) defined ''refined coal''.

Subsec. (c)(7)(A)(i). Pub. L. 110–343, §101(b)(1), amended subsec. (c)(7)(A)(i) as amended by Pub. L. 110–348, §108(a)(1), by inserting ''and'' at end of subcl. (II), substituting period for '', and'' at end of subcl. (III), and striking out subcl. (IV) which read as follows: ''is produced in such a manner as to result in an increase of at least 50 percent in the market value of the refined coal (excluding any increase caused by materials combined or added during the production process), as compared to the value of the feedstock coal, or''.

Subsec. (c)(7)(B). Pub. L. 110–343, §101(b)(2), inserted ''at least 40 percent of the emissions of'' after ''nitrogen oxide and''.

Subsec. (c)(7)(C). Pub. L. 110–343, §108(a)(2), added subpar. (C).

Subsec. (c)(8)(C). Pub. L. 110–343, §101(e), reenacted heading without change and amended text generally. Prior to amendment, subpar. (C) described a nonhydroelectric dam facility for purposes of subpar. (A).

Subsec. (c)(10). Pub. L. 110–343, §102(b), added par. (10).

Subsec. (d)(1). Pub. L. 110–343, §106(c)(3)(B), inserted at end ''Such term shall not include any facility with respect to which any qualified small wind energy property expenditure (as defined in subsection (d)(4) of section 25D) is taken into account in determining the credit under such section.''

Pub. L. 110–343, §101(a)(1), substituted ''January 1, 2010'' for ''January 1, 2009''.

Subsec. (d)(2)(A). Pub. L. 110–343, §101(a)(2)(A), substituted ''January 1, 2011'' for ''January 1, 2009'' in cls. (i) and (ii).

Subsec. (d)(2)(B), (C). Pub. L. 110–343, §101(d)(2), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (d)(3)(A). Pub. L. 110–343, §101(a)(2)(B), substituted ''January 1, 2011'' for ''January 1, 2009'' in cls. (i)(I) and (ii).

Subsec. (d)(3)(B), (C). Pub. L. 110–343, §101(d)(1), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (d)(4). Pub. L. 110–343, §101(a)(2)(C), substituted ''January 1, 2011'' for ''January 1, 2009''.

Subsec. (d)(5). Pub. L. 110–343, §102(e), which directed amendment of par. (5) by substituting ''the date of the enactment of paragraph (11)'' for ''January 1, 2012'', was executed by making the substitution for ''January 1, 2011'' to reflect the probable intent of Congress. See below.

Pub. L. 110–343, §101(a)(2)(D), substituted ''January 1, 2011'' for ''January 1, 2009''.

Subsec. (d)(6). Pub. L. 110–343, §101(a)(2)(E), substituted ''January 1, 2011'' for ''January 1, 2009''.

Subsec. (d)(7). Pub. L. 110–343, § 101(c), struck out ''combustion'' before ''facilities'' in heading and substituted ''facility (other than a facility described in paragraph (6)) which uses'' for ''facility which burns''.

Pub. L. 110–343, § 101(a)(2)(F), substituted ''January 1, 2011'' for ''January 1, 2009''.

Subsec. (d)(8). Pub. L. 110–343, § 108(c), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''In the case of a facility that produces refined coal, the term 'refined coal production facility' means a facility which is placed in service after the date of the enactment of this paragraph and before January 1, 2010.''

Pub. L. 110–343, § 101(a)(1), substituted ''January 1, 2010'' for ''January 1, 2009''.

Subsec. (d)(9)(A), (B). Pub. L. 110–343, § 101(a)(2)(G), substituted ''January 1, 2011'' for ''January 1, 2009''.

Subsec. (d)(11). Pub. L. 110–343, § 102(c), added par. (11).

Subsec. (e)(8)(D). Pub. L. 110–343, § 108(b)(1), added subpar. (D).

Subsec. (e)(9)(B). Pub. L. 110–343, § 108(d)(1), designated existing provisions as cl. (i), inserted heading, and added cl. (ii).

2007—Subsec. (c)(3)(A)(ii). Pub. L. 110–172, § 7(b)(1), struck out ''which is segregated from other waste materials and'' after ''lignin material''.

Subsec. (d)(2)(B)(i) to (iii). Pub. L. 110–172, § 7(b)(2), inserted ''and'' at the end of cl. (i), redesignated cl. (iii) as (ii), and struck out former cl. (ii) which read as follows: ''the amount of the credit determined under subsection (a) with respect to the facility shall be an amount equal to the amount determined without regard to this clause multiplied by the ratio of the thermal content of the closed-loop biomass used in such facility to the thermal content of all fuels used in such facility, and''.

Subsec. (e)(7)(A)(i). Pub. L. 110–172, § 9(a), substituted ''originally placed in service'' for ''placed in service by the taxpayer''.

2006—Subsec. (d)(1) to (7), (9). Pub. L. 109–432 substituted ''January 1, 2009'' for ''January 1, 2008'' wherever appearing.

2005—Subsec. (b)(4)(A). Pub. L. 109–58, § 1301(c)(2), substituted ''(7), or (9)'' for ''or (7)''.

Subsec. (b)(4)(B)(i). Pub. L. 109–58, § 1301(b)(1), inserted ''or clause (iii)'' after ''clause (ii)''.

Subsec. (b)(4)(B)(ii). Pub. L. 109–58, § 1301(f)(1), substituted ''January 1, 2005,'' for ''the date of the enactment of this Act''.

Subsec. (b)(4)(B)(iii). Pub. L. 109–58, § 1301(b)(2), added cl. (iii).

Subsec. (c). Pub. L. 109–58, § 1301(d)(4), substituted ''Resources'' for ''Qualified energy resources and refined coal'' in heading.

Subsec. (c)(1)(H). Pub. L. 109–58, § 1301(c)(1), added subpar. (H).

Subsec. (c)(3)(A)(ii). Pub. L. 109–135, § 402(b), substituted ''lignin material'' for ''nonhazardous lignin waste material''.

Pub. L. 109–58, § 1301(f)(2), inserted ''or any nonhazardous lignin waste material'' after ''cellulosic waste material''.

Subsec. (c)(7)(A)(i). Pub. L. 109–135, § 403(t), struck out ''synthetic'' after ''solid''.

Subsec. (c)(8). Pub. L. 109–58, § 1301(c)(3), added par. (8).

Subsec. (c)(9). Pub. L. 109–58, § 1301(d)(2), added par. (9).

Subsec. (d)(1) to (3). Pub. L. 109–58, § 1301(a)(1), substituted ''January 1, 2008'' for ''January 1, 2006'' wherever appearing.

Subsec. (d)(4). Pub. L. 109–58, § 1301(a)(2), substituted ''January 1, 2008 (January 1, 2006, in the case of a facility using solar energy)'' for ''January 1, 2006''.

Subsec. (d)(5), (6). Pub. L. 109–58, § 1301(a)(1), substituted ''January 1, 2008'' for ''January 1, 2006''.

Subsec. (d)(7). Pub. L. 109–58, § 1301(e), inserted at end ''Such term shall include a new unit placed in service in connection with a facility placed in service on or before the date of the enactment of this paragraph, but only to the extent of the increased amount of electricity produced at the facility by reason of such new unit.''

Pub. L. 109–58, § 1301(a)(1), substituted ''January 1, 2008'' for ''January 1, 2006''.

Subsec. (d)(8). Pub. L. 109–135, § 412(j)(1), substituted ''In the case of a facility that produces refined coal, the term'' for ''The term''.

Subsec. (d)(9). Pub. L. 109–58, § 1301(c)(4), added par. (9).

Subsec. (d)(10). Pub. L. 109–135, § 412(j)(2), substituted ''In the case of a facility that produces Indian coal, the term'' for ''The term''.

Pub. L. 109–58, § 1301(d)(3), added par. (10).

Subsec. (e)(6). Pub. L. 109–58, § 1301(f)(3), struck out heading and text of par. (6). Text read as follows: ''In the case of a facility using poultry waste to produce electricity and owned by a governmental unit, the person eligible for the credit under subsection (a) is the lessee or the operator of such facility.''

Subsec. (e)(8)(C). Pub. L. 109–58, § 1301(f)(4)(B), struck out ''and (9)'' after ''paragraphs (1) through (5)''.

Subsec. (e)(9). Pub. L. 109–58, § 1322(a)(3)(C)(i), substituted ''section 45K'' for ''section 29'' wherever appearing.

Pub. L. 109–58, § 1301(f)(4)(A), reenacted heading without change and amended text of par. (9) generally. Prior to amendment, text read as follows: ''The term 'qualified facility' shall not include any facility the production from which is allowed as a credit under section 29 for the taxable year or any prior taxable year.''

Subsec. (e)(9)(B). Pub. L. 109–58, § 1322(a)(3)(C)(ii), inserted ''(or under section 29, as in effect on the day before the date of enactment of the Energy Tax Incentives Act of 2005, for any prior taxable year)'' before period at end.

Subsec. (e)(10). Pub. L. 109–58, § 1301(d)(1), added par. (10).

Subsec. (e)(11). Pub. L. 109–58, § 1302(a), added par. (11).

2004—Pub. L. 108–357, § 710(b)(3)(B), inserted '', etc'' after ''resources'' in section catchline.

Subsec. (b)(2). Pub. L. 108–357, § 710(b)(3)(C), substituted ''The 1.5 cent amount in subsection (a), the 8 cent amount in paragraph (1), the $4.375 amount in subsection (e)(8)(A), and in subsection (e)(8)(B)(i) the reference price of fuel used as a feedstock (within the meaning of subsection (c)(7)(A)) in 2002'' for ''The 1.5 cent amount in subsection (a) and the 8 cent amount in paragraph (1)''.

Subsec. (b)(3). Pub. L. 108–357, § 710(f), inserted ''the lesser of ½ or'' before ''a fraction'' in introductory provisions and ''This paragraph shall not apply with respect to any facility described in subsection (d)(2)(A)(ii)'' in concluding provisions.

Subsec. (b)(4). Pub. L. 108–357, § 710(c), added par. (4).

Subsec. (c). Pub. L. 108–357, § 710(a), amended heading and text of subsec. (c) generally. Prior to amendment, subsec. (c) defined ''qualified energy resources'', ''closed-loop biomass'', ''qualified facility'', and ''poultry waste'' for purposes of this section.

Subsec. (c)(3). Pub. L. 108–311 substituted ''January 1, 2006'' for ''January 1, 2004'' in subpars. (A) to (C).

Subsec. (d). Pub. L. 108–357, § 710(b)(1), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 108–357, § 710(b)(1), redesignated subsec. (d) as (e).

Subsec. (e)(7)(A)(i). Pub. L. 108–357, § 710(b)(3)(A), substituted ''subsection (d)(1)'' for ''subsection (c)(3)(A)''.

Subsec. (e)(8). Pub. L. 108–357, § 710(b)(2), added par. (8).

Subsec. (e)(9). Pub. L. 108–357, § 710(d), added par. (9).

2002—Subsec. (c)(3). Pub. L. 107–147 substituted ''2004'' for ''2002'' in subpars. (A) to (C).

2000—Subsec. (d)(7)(A)(i). Pub. L. 106–554 substituted ''subsection (c)(3)(A)'' for ''paragraph (3)(A)''.

1999—Subsec. (c)(1)(C). Pub. L. 106–170, § 507(b)(1), added subpar. (C).

Subsec. (c)(3). Pub. L. 106–170, § 507(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'quali-

fied facility' means any facility owned by the taxpayer which is originally placed in service after December 31, 1993 (December 31, 1992, in the case of a facility using closed-loop biomass to produce electricity), and before July 1, 1999.''

Subsec. (c)(4). Pub. L. 106–170, §507(b)(2), added par. (4).

Subsec. (d)(6), (7). Pub. L. 106–170, §507(c), added pars. (6) and (7).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §702(b), Dec. 17, 2010, 124 Stat. 3311, provided that: ''The amendment made by this section [amending this section] shall apply to facilities placed in service after December 31, 2009.''

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1101(c), Feb. 17, 2009, 123 Stat. 319, provided that:

''(1) IN GENERAL.—The amendments made by subsection (a) [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Feb. 17, 2009].

''(2) TECHNICAL AMENDMENT.—The amendment made by subsection (b) [amending this section] shall take effect as if included in section 102 of the Energy Improvement and Extension Act of 2008 [Pub. L. 110–343].''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title I, §101(f), Oct. 3, 2008, 122 Stat. 3810, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section] shall apply to property originally placed in service after December 31, 2008.

''(2) REFINED COAL.—The amendments made by subsection (b) [amending this section] shall apply to coal produced and sold from facilities placed in service after December 31, 2008.

''(3) TRASH FACILITY CLARIFICATION.—The amendments made by subsection (c) [amending this section] shall apply to electricity produced and sold after the date of the enactment of this Act [Oct. 3, 2008].

''(4) EXPANSION OF BIOMASS FACILITIES.—The amendments made by subsection (d) [amending this section] shall apply to property placed in service after the date of the enactment of this Act.''

Pub. L. 110–343, div. B, title I, §102(f), Oct. 3, 2008, 122 Stat. 3811, provided that: ''The amendments made by this section [amending this section] shall apply to electricity produced and sold after the date of the enactment of this Act [Oct. 3, 2008], in taxable years ending after such date.''

Amendment by section 106(c)(3)(B) of Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2007, see section 106(f)(1) of Pub. L. 110–343, set out as an Effective and Termination Dates of 2008 Amendment note under section 36C of this title.

Pub. L. 110–343, div. B, title I, §108(e), Oct. 3, 2008, 122 Stat. 3821, provided that: ''The amendments made by this section [amending this section and section 45K of this title] shall apply to fuel produced and sold after September 30, 2008.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by section 7(b) of Pub. L. 110–172 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 7(e) of Pub. L. 110–172, set out as a note under section 1092 of this title.

Pub. L. 110–172, §9(c), Dec. 29, 2007, 121 Stat. 2484, provided that: ''The amendments made by this section [amending this section and section 856 of this title] shall take effect as if included in the provisions of the Tax Relief Extension Act of 1999 [Pub. L. 106–170] to which they relate.''

EFFECTIVE DATE OF 2005 AMENDMENTS

Amendment by section 402(b) of Pub. L. 109–135 effective as if included in the provision of the Energy Policy Act of 2005, Pub. L. 109–58, to which such amendment relates, see section 402(m)(1) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 36C of this title.

Amendment by section 403(t) of Pub. L. 109–135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

Pub. L. 109–58, title XIII, §1301(g), Aug. 8, 2005, 119 Stat. 990, as amended by Pub. L. 110–172, §11(a)(45), Dec. 29, 2007, 121 Stat. 2488, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 168 of this title and amending provisions set out as a note under this section] shall take effect on the date of the enactment of this Act [Aug. 8, 2005].

''(2) TECHNICAL AMENDMENTS.—The amendments made by subsections (e) and (f) [amending this section and section 168 of this title and amending provisions set out as a note under this section] shall take effect as if included in the amendments made by section 710 of the American Jobs Creation Act of 2004 [Pub. L. 108–357].''

Pub. L. 109–58, title XIII, §1302(c), Aug. 8, 2005, 119 Stat. 991, provided that: ''The amendments made by this section [amending this section and section 55 of this title] shall apply to taxable years of cooperative organizations ending after the date of the enactment of this Act [Aug. 8, 2005].''

Amendment by section 1322(a)(3)(C) of Pub. L. 109–58 applicable to credits determined under the Internal Revenue Code of 1986 for taxable years ending after Dec. 31, 2005, see section 1322(c)(1) of Pub. L. 109–58, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 2004 AMENDMENTS

Pub. L. 108–357, title VII, §710(g), Oct. 22, 2004, 118 Stat. 1557, as amended by Pub. L. 109–58, title XIII, §1301(f)(6), Aug. 8, 2005, 119 Stat. 990, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 48 of this title] shall apply to electricity produced and sold after the date of the enactment of this Act [Oct. 22, 2004], in taxable years ending after such date.

''(2) CERTAIN BIOMASS FACILITIES.—With respect to any facility described in section 45(d)(3)(A)(ii) of the Internal Revenue Code of 1986, as added by subsection (b)(1), which is placed in service before the date of the enactment of this Act, the amendments made by this section shall apply to electricity produced and sold after December 31, 2004, in taxable years ending after such date.

''(3) CREDIT RATE AND PERIOD FOR NEW FACILITIES.—The amendments made by subsection (c) [amending this section] shall apply to electricity produced and sold after December 31, 2004, in taxable years ending after such date.

''(4) NONAPPLICATION OF AMENDMENTS TO PREEFFECTIVE DATE POULTRY WASTE FACILITIES.—The amendments made by this section shall not apply with respect to any poultry waste facility (within the meaning of section 45(c)(3)(C), as in effect on the day before the date of the enactment of this Act) placed in service before January 1, 2005.

''(5) REFINED COAL PRODUCTION FACILITIES.—Section 45(e)(8) of the Internal Revenue Code of 1986, as added by this section, shall apply to refined coal produced and sold after the date of the enactment of this Act.''

Pub. L. 108–311, title III, §313(b), Oct. 4, 2004, 118 Stat. 1181, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to facilities placed in service after December 31, 2003.''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title VI, §603(b), Mar. 9, 2002, 116 Stat. 59, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to facilities placed in service after December 31, 2001.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, § 507(d), Dec. 17, 1999, 113 Stat. 1923, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Dec. 17, 1999].''

EFFECTIVE DATE

Section applicable to taxable years ending after Dec. 31, 1992, see section 1914(e) of Pub. L. 102–486, set out as an Effective Date of 1992 Amendment note under section 38 of this title.

INFLATION ADJUSTED ITEMS FOR CERTAIN TAX YEARS

Provisions relating to inflation adjustment of items in this section for certain tax years were contained in the following:
2010—Internal Revenue Notice 2010–37.
2009—Internal Revenue Notice 2009–40.
2008—Internal Revenue Notice 2008–48.
2007—Internal Revenue Notice 2007–40.
2006—Internal Revenue Notice 2006–51.
2005—Internal Revenue Notice 2005–37.
2004—Internal Revenue Notice 2004–29.
2003—Internal Revenue Notice 2003–29.
2002—Internal Revenue Notice 2002–39.
2001—Internal Revenue Notice 2001–33.
2000—Internal Revenue Notice 2000–52.
1999—Internal Revenue Notice 99–26.
1998—Internal Revenue Notice 98–27.
1997—Internal Revenue Notice 97–30.
1996—Internal Revenue Notice 96–25.

§ 45A. Indian employment credit

(a) Amount of credit

For purposes of section 38, the amount of the Indian employment credit determined under this section with respect to any employer for any taxable year is an amount equal to 20 percent of the excess (if any) of—

(1) the sum of—

(A) the qualified wages paid or incurred during such taxable year, plus

(B) qualified employee health insurance costs paid or incurred during such taxable year, over

(2) the sum of the qualified wages and qualified employee health insurance costs (determined as if this section were in effect) which were paid or incurred by the employer (or any predecessor) during calendar year 1993.

(b) Qualified wages; qualified employee health insurance costs

For purposes of this section—

(1) Qualified wages

(A) In general

The term ''qualified wages'' means any wages paid or incurred by an employer for services performed by an employee while such employee is a qualified employee.

(B) Coordination with work opportunity credit

The term ''qualified wages'' shall not include wages attributable to service rendered during the 1-year period beginning with the day the individual begins work for the employer if any portion of such wages is taken into account in determining the credit under section 51.

(2) Qualified employee health insurance costs

(A) In general

The term ''qualified employee health insurance costs'' means any amount paid or incurred by an employer for health insurance to the extent such amount is attributable to coverage provided to any employee while such employee is a qualified employee.

(B) Exception for amounts paid under salary reduction arrangements

No amount paid or incurred for health insurance pursuant to a salary reduction arrangement shall be taken into account under subparagraph (A).

(3) Limitation

The aggregate amount of qualified wages and qualified employee health insurance costs taken into account with respect to any employee for any taxable year (and for the base period under subsection (a)(2)) shall not exceed $20,000.

(c) Qualified employee

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the term ''qualified employee'' means, with respect to any period, any employee of an employer if—

(A) the employee is an enrolled member of an Indian tribe or the spouse of an enrolled member of an Indian tribe,

(B) substantially all of the services performed during such period by such employee for such employer are performed within an Indian reservation, and

(C) the principal place of abode of such employee while performing such services is on or near the reservation in which the services are performed.

(2) Individuals receiving wages in excess of $30,000 not eligible

An employee shall not be treated as a qualified employee for any taxable year of the employer if the total amount of the wages paid or incurred by such employer to such employee during such taxable year (whether or not for services within an Indian reservation) exceeds the amount determined at an annual rate of $30,000.

(3) Inflation adjustment

The Secretary shall adjust the $30,000 amount under paragraph (2) for years beginning after 1994 at the same time and in the same manner as under section 415(d), except that the base period taken into account for purposes of such adjustment shall be the calendar quarter beginning October 1, 1993.

(4) Employment must be trade or business employment

An employee shall be treated as a qualified employee for any taxable year of the employer only if more than 50 percent of the wages paid or incurred by the employer to such employee during such taxable year are for services performed in a trade or business of the employer. Any determination as to whether the preceding sentence applies with respect to any employee for any taxable year shall be made without regard to subsection (e)(2).

(5) Certain employees not eligible

The term ''qualified employee'' shall not include—

(A) any individual described in subparagraph (A), (B), or (C) of section 51(i)(1),

(B) any 5-percent owner (as defined in section 416(i)(1)(B)), and

(C) any individual if the services performed by such individual for the employer involve the conduct of class I, II, or III gaming as defined in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2703), or are performed in a building housing such gaming activity.

(6) Indian tribe defined

The term ''Indian tribe'' means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village, or regional or village corporation, as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(7) Indian reservation defined

The term ''Indian reservation'' has the meaning given such term by section 168(j)(6).

(d) Early termination of employment by employer

(1) In general

If the employment of any employee is terminated by the taxpayer before the day 1 year after the day on which such employee began work for the employer—

(A) no wages (or qualified employee health insurance costs) with respect to such employee shall be taken into account under subsection (a) for the taxable year in which such employment is terminated, and

(B) the tax under this chapter for the taxable year in which such employment is terminated shall be increased by the aggregate credits (if any) allowed under section 38(a) for prior taxable years by reason of wages (or qualified employee health insurance costs) taken into account with respect to such employee.

(2) Carrybacks and carryovers adjusted

In the case of any termination of employment to which paragraph (1) applies, the carrybacks and carryovers under section 39 shall be properly adjusted.

(3) Subsection not to apply in certain cases

(A) In general

Paragraph (1) shall not apply to—

(i) a termination of employment of an employee who voluntarily leaves the employment of the taxpayer,

(ii) a termination of employment of an individual who before the close of the period referred to in paragraph (1) becomes disabled to perform the services of such employment unless such disability is removed before the close of such period and the taxpayer fails to offer reemployment to such individual, or

(iii) a termination of employment of an individual if it is determined under the applicable State unemployment compensation law that the termination was due to the misconduct of such individual.

(B) Changes in form of business

For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated—

(i) by a transaction to which section 381(a) applies if the employee continues to be employed by the acquiring corporation, or

(ii) by reason of a mere change in the form of conducting the trade or business of the taxpayer if the employee continues to be employed in such trade or business and the taxpayer retains a substantial interest in such trade or business.

(4) Special rule

Any increase in tax under paragraph (1) shall not be treated as a tax imposed by this chapter for purposes of—

(A) determining the amount of any credit allowable under this chapter, and

(B) determining the amount of the tax imposed by section 55.

(e) Other definitions and special rules

For purposes of this section—

(1) Wages

The term ''wages'' has the same meaning given to such term in section 51.

(2) Controlled groups

(A) All employers treated as a single employer under section (a) or (b) of section 52 shall be treated as a single employer for purposes of this section.

(B) The credit (if any) determined under this section with respect to each such employer shall be its proportionate share of the wages and qualified employee health insurance costs giving rise to such credit.

(3) Certain other rules made applicable

Rules similar to the rules of section 51(k) and subsections (c), (d), and (e) of section 52 shall apply.

(4) Coordination with nonrevenue laws

Any reference in this section to a provision not contained in this title shall be treated for purposes of this section as a reference to such provision as in effect on the date of the enactment of this paragraph.

(5) Special rule for short taxable years

For any taxable year having less than 12 months, the amount determined under subsection (a)(2) shall be multiplied by a fraction, the numerator of which is the number of days in the taxable year and the denominator of which is 365.

(f) Termination

This section shall not apply to taxable years beginning after December 31, 2011.

(Added Pub. L. 103–66, title XIII, §13322(b), Aug. 10, 1993, 107 Stat. 559; amended Pub. L. 104–188, title I, §1201(e)(1), Aug. 20, 1996, 110 Stat. 1772; Pub. L. 105–206, title VI, §6023(1), July 22, 1998, 112 Stat. 824; Pub. L. 107–147, title VI, §613(a),

Mar. 9, 2002, 116 Stat. 61; Pub. L. 108–311, title III, § 315, title IV, § 404(b)(1), Oct. 4, 2004, 118 Stat. 1181, 1188; Pub. L. 109–432, div. A, title I, § 111(a), Dec. 20, 2006, 120 Stat. 2940; Pub. L. 110–343, div. C, title III, § 314(a), Oct. 3, 2008, 122 Stat. 3872; Pub. L. 111–312, title VII, § 732(a), Dec. 17, 2010, 124 Stat. 3317.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in subsec. (c)(6), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The date of the enactment of this paragraph, referred to in subsec. (e)(4), is the date of enactment of Pub. L. 103–66, which was approved Aug. 10, 1993.

AMENDMENTS

2010—Subsec. (f). Pub. L. 111–312 substituted ''December 31, 2011'' for ''December 31, 2009''.

2008—Subsec. (f). Pub. L. 110–343 substituted ''December 31, 2009'' for ''December 31, 2007''.

2006—Subsec. (f). Pub. L. 109–432 substituted ''2007'' for ''2005''.

2004—Subsec. (c)(3). Pub. L. 108–311, § 404(b)(1), inserted '', except that the base period taken into account for purposes of such adjustment shall be the calendar quarter beginning October 1, 1993'' before period at end.

Subsec. (f). Pub. L. 108–311, § 315, substituted ''December 31, 2005'' for ''December 31, 2004''.

2002—Subsec. (f). Pub. L. 107–147 substituted ''December 31, 2004'' for ''December 31, 2003''.

1998—Subsec. (b)(1)(B). Pub. L. 105–206 substituted ''work opportunity credit'' for ''targeted jobs credit'' in heading.

1996—Subsec. (b)(1)(B). Pub. L. 104–188, which directed that subsec. (b)(1)(B) of this section be amended in the text by substituting ''work opportunity credit'' for ''targeted jobs credit'', could not be executed because the words ''targeted jobs credit'' did not appear in the text.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, § 732(b), Dec. 17, 2010, 124 Stat. 3317, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, § 314(b), Oct. 3, 2008, 122 Stat. 3872, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, § 111(b), Dec. 20, 2006, 120 Stat. 2940, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2005.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title IV, § 404(f), Oct. 4, 2004, 118 Stat. 1188, provided that: ''The amendments made by this section [amending this section and sections 403, 408, 415, 530, and 4972 of this title] shall take effect as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16] to which they relate.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to individuals who begin work for the employer after Sept. 30, 1996, see section 1201(g) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE

Section applicable to wages paid or incurred after Dec. 31, 1993, see section 13322(f) of Pub. L. 103–66, set out as an Effective Date of 1993 Amendment note under section 38 of this title.

§ 45B. Credit for portion of employer social security taxes paid with respect to employee cash tips

(a) General rule

For purposes of section 38, the employer social security credit determined under this section for the taxable year is an amount equal to the excess employer social security tax paid or incurred by the taxpayer during the taxable year.

(b) Excess employer social security tax

For purposes of this section—

(1) In general

The term ''excess employer social security tax'' means any tax paid by an employer under section 3111 with respect to tips received by an employee during any month, to the extent such tips—

(A) are deemed to have been paid by the employer to the employee pursuant to section 3121(q) (without regard to whether such tips are reported under section 6053), and

(B) exceed the amount by which the wages (excluding tips) paid by the employer to the employee during such month are less than the total amount which would be payable (with respect to such employment) at the minimum wage rate applicable to such individual under section 6(a)(1) of the Fair Labor Standards Act of 1938 (as in effect on January 1, 2007, and determined without regard to section 3(m) of such Act).

(2) Only tips received for food or beverages taken into account

In applying paragraph (1), there shall be taken into account only tips received from customers in connection with the providing, delivering, or serving of food or beverages for consumption if the tipping of employees delivering or serving food or beverages by customers is customary.

(c) Denial of double benefit

No deduction shall be allowed under this chapter for any amount taken into account in determining the credit under this section.

(d) Election not to claim credit

This section shall not apply to a taxpayer for any taxable year if such taxpayer elects to have this section not apply for such taxable year.

(Added Pub. L. 103–66, title XIII, § 13443(a), Aug. 10, 1993, 107 Stat. 568; amended Pub. L. 104–188, title I, § 1112(a)(1), (b)(1), Aug. 20, 1996, 110 Stat. 1759; Pub. L. 110–28, title VIII, § 8213(a), May 25, 2007, 121 Stat. 193.)

REFERENCES IN TEXT

Sections 3(m) and 6(a)(1) of the Fair Labor Standards Act of 1938, referred to in subsec. (b)(1)(B), are classified

to sections 203(m) and 206(a)(1), respectively, of Title 29, Labor.

AMENDMENTS

2007—Subsec. (b)(1)(B). Pub. L. 110–28 inserted ''as in effect on January 1, 2007, and'' before ''determined without regard to''.

1996—Subsec. (b)(1)(A). Pub. L. 104–188, § 1112(a)(1), inserted ''(without regard to whether such tips are reported under section 6053)'' after ''section 3121(q)''.

Subsec. (b)(2). Pub. L. 104–188, § 1112(b)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''ONLY TIPS RECEIVED AT FOOD AND BEVERAGE ESTABLISHMENTS TAKEN INTO ACCOUNT.—In applying paragraph (1), there shall be taken into account only tips received from customers in connection with the provision of food or beverages for consumption on the premises of an establishment with respect to which the tipping of employees serving food or beverages by customers is customary.''

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–28, title VIII, § 8213(b), May 25, 2007, 121 Stat. 193, provided that: ''The amendment made by this section [amending this section] shall apply to tips received for services performed after December 31, 2006.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1112(a)(3) of Pub. L. 104–188 provided that: ''The amendments made by this subsection [amending this section and provisions set out as a note under section 38 of this title] shall take effect as if included in the amendments made by, and the provisions of, section 13443 of the Revenue Reconciliation Act of 1993 [Pub. L. 103–66].''

Section 1112(b)(2) of Pub. L. 104–188 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to tips received for services performed after December 31, 1996.''

EFFECTIVE DATE

Section applicable with respect to taxes paid after Dec. 31, 1993, with respect to services performed before, on, or after such date, see section 13443(d) of Pub. L. 103–66, as amended, set out as an Effective Date of 1993 Amendment note under section 38 of this title.

§ 45C. Clinical testing expenses for certain drugs for rare diseases or conditions

(a) General rule

For purposes of section 38, the credit determined under this section for the taxable year is an amount equal to 50 percent of the qualified clinical testing expenses for the taxable year.

(b) Qualified clinical testing expenses

For purposes of this section—

(1) Qualified clinical testing expenses

(A) In general

Except as otherwise provided in this paragraph, the term ''qualified clinical testing expenses'' means the amounts which are paid or incurred by the taxpayer during the taxable year which would be described in subsection (b) of section 41 if such subsection were applied with the modifications set forth in subparagraph (B).

(B) Modifications

For purposes of subparagraph (A), subsection (b) of section 41 shall be applied—

(i) by substituting ''clinical testing'' for ''qualified research'' each place it appears in paragraphs (2) and (3) of such subsection, and

(ii) by substituting ''100 percent'' for ''65 percent'' in paragraph (3)(A) of such subsection.

(C) Exclusion for amounts funded by grants, etc.

The term ''qualified clinical testing expenses'' shall not include any amount to the extent such amount is funded by any grant, contract, or otherwise by another person (or any governmental entity).

(D) Special rule

For purposes of this paragraph, section 41 shall be deemed to remain in effect for periods after June 30, 1995, and before July 1, 1996, and periods after December 31, 2011.

(2) Clinical testing

(A) In general

The term ''clinical testing'' means any human clinical testing—

(i) which is carried out under an exemption for a drug being tested for a rare disease or condition under section 505(i) of the Federal Food, Drug, and Cosmetic Act (or regulations issued under such section),

(ii) which occurs—

(I) after the date such drug is designated under section 526 of such Act, and

(II) before the date on which an application with respect to such drug is approved under section 505(b) of such Act or, if the drug is a biological product, before the date on which a license for such drug is issued under section 351 of the Public Health Service Act;[1] and

(iii) which is conducted by or on behalf of the taxpayer to whom the designation under such section 526 applies.

(B) Testing must be related to use for rare disease or condition

Human clinical testing shall be taken into account under subparagraph (A) only to the extent such testing is related to the use of a drug for the rare disease or condition for which it was designated under section 526 of the Federal Food, Drug, and Cosmetic Act.

(c) Coordination with credit for increasing research expenditures

(1) In general

Except as provided in paragraph (2), any qualified clinical testing expenses for a taxable year to which an election under this section applies shall not be taken into account for purposes of determining the credit allowable under section 41 for such taxable year.

(2) Expenses included in determining base period research expenses

Any qualified clinical testing expenses for any taxable year which are qualified research expenses (within the meaning of section 41(b)) shall be taken into account in determining base period research expenses for purposes of applying section 41 to subsequent taxable years.

[1] So in original. The semicolon probably should be a comma.

(d) Definition and special rules

(1) Rare disease or condition

For purposes of this section, the term ''rare disease or condition'' means any disease or condition which—

(A) affects less than 200,000 persons in the United States, or

(B) affects more than 200,000 persons in the United States but for which there is no reasonable expectation that the cost of developing and making available in the United States a drug for such disease or condition will be recovered from sales in the United States of such drug.

Determinations under the preceding sentence with respect to any drug shall be made on the basis of the facts and circumstances as of the date such drug is designated under section 526 of the Federal Food, Drug, and Cosmetic Act.

(2) Special limitations on foreign testing

(A) In general

No credit shall be allowed under this section with respect to any clinical testing conducted outside the United States unless—

(i) such testing is conducted outside the United States because there is an insufficient testing population in the United States, and

(ii) such testing is conducted by a United States person or by any other person who is not related to the taxpayer to whom the designation under section 526 of the Federal Food, Drug, and Cosmetic Act applies.

(B) Special limitation for corporations to which section 936 applies

No credit shall be allowed under this section with respect to any clinical testing conducted by a corporation to which an election under section 936 applies.

(3) Certain rules made applicable

Rules similar to the rules of paragraphs (1) and (2) of section 41(f) shall apply for purposes of this section.

(4) Election

This section shall apply to any taxpayer for any taxable year only if such taxpayer elects (at such time and in such manner as the Secretary may by regulations prescribe) to have this section apply for such taxable year.

(Added Pub. L. 97–414, § 4(a), Jan. 4, 1983, 96 Stat. 2053, § 44H; renumbered § 28 and amended Pub. L. 98–369, div. A, title IV, §§ 471(c), 474(g), title VI, § 612(e)(1), July 18, 1984, 98 Stat. 826, 831, 912; Pub. L. 99–514, title II, §§ 231(d)(3)(A), 232, title VII, § 701(c)(2), title XII, § 1275(c)(4), title XVIII, § 1879(b)(1), (2), Oct. 22, 1986, 100 Stat. 2178, 2180, 2340, 2599, 2905; Pub. L. 100–647, title I, § 1018(q)(1), title IV, § 4008(c)(1), Nov. 10, 1988, 102 Stat. 3585, 3653; Pub. L. 101–239, title VII, § 7110(a)(3), Dec. 19, 1989, 103 Stat. 2323; Pub. L. 101–508, title XI, §§ 11402(b)(2), 11411, Nov. 5, 1990, 104 Stat. 1388–473, 1388–479; Pub. L. 102–227, title I, §§ 102(b), 111(a), Dec. 11, 1991, 105 Stat. 1686, 1688; Pub. L. 103–66, title XIII, § 13111(a)(2), (b), Aug. 10, 1993, 107 Stat. 420; renumbered § 45C and amended Pub. L. 104–188, title I, §§ 1204(e), 1205(a)(1), (b), (d)(1), (2), Aug. 20, 1996, 110 Stat. 1775, 1776; Pub. L. 105–34, title VI, §§ 601(b)(2), 604(a), Aug. 5, 1997, 111 Stat. 862, 863; Pub. L. 105–115, title I, § 125(b)(2)(O), Nov. 21, 1997, 111 Stat. 2326; Pub. L. 105–277, div. J, title I, § 1001(b), Oct. 21, 1998, 112 Stat. 2681–888; Pub. L. 106–170, title V, § 502(a)(2), Dec. 17, 1999, 113 Stat. 1919; Pub. L. 108–311, title III, § 301(a)(2), Oct. 4, 2004, 118 Stat. 1178; Pub. L. 109–432, div. A, title I, § 104(a)(2), Dec. 20, 2006, 120 Stat. 2934; Pub. L. 110–343, div. C, title III, § 301(a)(2), Oct. 3, 2008, 122 Stat. 3865; Pub. L. 111–312, title VII, § 731(b), Dec. 17, 2010, 124 Stat. 3317.)

REFERENCES IN TEXT

Sections 505(b), (i) and 526 of the Federal Food, Drug, and Cosmetic Act, referred to in subsecs. (b)(2)(A) and (d)(1), (2)(A)(ii), are classified to sections 355(b), (i) and 360bb, respectively, of Title 21, Food and Drugs.

Section 351 of the Public Health Service Act, referred to in subsec. (b)(2)(A)(ii)(II), is classified to section 262 of Title 42, The Public Health and Welfare.

AMENDMENTS

2010—Subsec. (b)(1)(D). Pub. L. 111–312 substituted ''December 31, 2011'' for ''December 31, 2009''.

2008—Subsec. (b)(1)(D). Pub. L. 110–343 substituted ''December 31, 2009'' for ''December 31, 2007''.

2006—Subsec. (b)(1)(D). Pub. L. 109–432 substituted ''2007'' for ''2005''.

2004—Subsec. (b)(1)(D). Pub. L. 108–311 substituted ''December 31, 2005'' for ''June 30, 2004''.

1999—Subsec. (b)(1)(D). Pub. L. 106–170 substituted ''June 30, 2004'' for ''June 30, 1999''.

1998—Subsec. (b)(1)(D). Pub. L. 105–277 substituted ''June 30, 1999'' for ''June 30, 1998''.

1997—Subsec. (b)(1)(D). Pub. L. 105–34, § 601(b)(2), substituted ''June 30, 1998'' for ''May 31, 1997''.

Subsec. (b)(2)(A)(ii)(II). Pub. L. 105–115 struck out ''or 507'' after ''505(b)''.

Subsec. (e). Pub. L. 105–34, § 604(a), struck out subsec. (e) which read as follows:

''(e) TERMINATION.—This section shall not apply to any amount paid or incurred—

''(1) after December 31, 1994, and before July 1, 1996, or

''(2) after May 31, 1997.''

1996—Pub. L. 104–188, § 1205(a)(1), renumbered section 28 of this title as this section.

Subsec. (a). Pub. L. 104–188, § 1205(d)(1), substituted ''For purposes of section 38, the credit determined under this section for the taxable year is'' for ''There shall be allowed as a credit against the tax imposed by this chapter for the taxable year''.

Subsec. (b)(1)(D). Pub. L. 104–188, § 1204(e), inserted '', and before July 1, 1996, and periods after May 31, 1997'' after ''June 30, 1995''.

Subsec. (d)(2) to (5). Pub. L. 104–188, § 1205(d)(2), redesignated pars. (3) to (5) as (2) to (4), respectively, and struck out former par. (2) which read as follows: ''LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed by this section for any taxable year shall not exceed the excess (if any) of—

''(A) the regular tax (reduced by the sum of the credits allowable under subpart A and section 27), over

''(B) the tentative minimum tax for the taxable year.''

Subsec. (e). Pub. L. 104–188, § 1205(b), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''TERMINATION.—This section shall not apply to any amount paid or incurred after December 31, 1994.''

1993—Subsec. (b)(1)(D). Pub. L. 103–66, § 13111(a)(2), substituted ''June 30, 1995'' for ''June 30, 1992''.

Subsec. (e). Pub. L. 103–66, § 13111(b), substituted ''December 31, 1994'' for ''June 30, 1992''.

1991—Subsec. (b)(1)(D). Pub. L. 102–227, § 102(b), substituted ''June 30, 1992'' for ''December 31, 1991''.

Subsec. (e). Pub. L. 102–227, § 111(a), substituted ''June 30, 1992'' for ''December 31, 1991''.

1990—Subsec. (b)(1)(D). Pub. L. 101–508, §11402(b)(2), substituted ''December 31, 1991'' for ''December 31, 1990''.

Subsec. (e). Pub. L. 101–508, §11411, substituted ''December 31, 1991'' for ''December 31, 1990''.

1989—Subsec. (b)(1)(D). Pub. L. 101–239 substituted ''1990'' for ''1989''.

1988—Subsec. (b)(1)(D). Pub. L. 100–647, §4008(c)(1), substituted ''1989'' for ''1988''.

Subsec. (b)(2)(A)(ii)(II). Pub. L. 100–647, §1018(q)(1), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: ''before the date on which an application with respect to such drug is approved under section 505(b) of such Act or, if the drug is a biological product, before the date on which a license for such drug is issued under section 351 of the Public Health Services Act, and''.

1986—Subsec. (b)(1). Pub. L. 99–514, §231(d)(3)(A)(i), (iv), substituted ''41'' for ''30'' in subpars. (A), (B), and (D), and substituted ''1988'' for ''1985'' in subpar. (D).

Subsec. (b)(2)(A)(ii)(I). Pub. L. 99–514, §1879(b)(1)(A), substituted ''the date such drug'' for ''the date of such drug''.

Subsec. (b)(2)(A)(ii)(II). Pub. L. 99–514, §1879(b)(1)(B), inserted ''or, if the drug is a biological product, before the date on which a license for such drug is issued under section 351 of the Public Health Services Act''.

Subsec. (c). Pub. L. 99–514, §231(d)(3)(A)(i), (ii), substituted ''41'' for ''30'' in pars. (1) and (2) and ''41(b)'' for ''30(b)'' in par. (2).

Subsec. (d)(1). Pub. L. 99–514, §1879(b)(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''For purposes of this section, the term 'rare disease or condition' means any disease or condition which occurs so infrequently in the United States that there is no reasonable expectation that the cost of developing and making available in the United States a drug for such disease or condition will be recovered from sales in the United States of such drug. Determinations under the preceding sentence with respect to any drug shall be made on the basis of the facts and circumstances as of the date such drug is designated under section 526 of the Federal Food, Drug, and Cosmetic Act.''

Subsec. (d)(2). Pub. L. 99–514, §701(c)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The credit allowed by this section for any taxable year shall not exceed the taxpayer's tax liability for the taxable year (as defined in section 26(b)), reduced by the sum of the credits allowable under subpart A and section 27.''

Subsec. (d)(3)(B). Pub. L. 99–514, §1275(c)(4), struck out ''934(b) or'' before ''936'' in heading and amended text generally. Prior to amendment, text read as follows: ''No credit shall be allowed under this section with respect to any clinical testing conducted by a corporation to which section 934(b) applies or to which an election under section 936 applies.''

Subsec. (d)(4). Pub. L. 99–514, §231(d)(3)(A)(iii), substituted ''section 41(f)'' for ''section 30(f)''.

Subsec. (e). Pub. L. 99–514, §232, substituted ''1990'' for ''1987''.

1984—Pub. L. 98–369, §471(c), renumbered section 44H of this title as this section.

Subsec. (b)(1)(A), (B), (D). Pub. L. 98–369, §474(g)(1)(A), substituted ''section 30'' for ''section 44F''.

Subsec. (c)(1). Pub. L. 98–369, §474(g)(1)(A), substituted ''section 30'' for ''section 44F''.

Subsec. (c)(2). Pub. L. 98–369, §474(g)(1)(A), (B), substituted ''section 30'' for ''section 44F'' and ''section 30(b)'' for ''section 44F(b)''.

Subsec. (d)(2). Pub. L. 98–369, §612(e)(1), substituted ''section 26(b)'' for ''section 25(b)''.

Pub. L. 98–369, §474(g)(2), amended par. (2) generally, substituting ''shall not exceed the taxpayer's tax liability for the taxable year (as defined in section 25(b), reduced by the sum of the credits allowable under subpart A and section 27'' for ''shall not exceed the amount of the tax imposed by this chapter for the taxable year reduced by the sum of the credits allowable under a section of this subpart having a lower number or letter designation than this section, other than the credits allowable by sections 31, 39, and 43. For purposes of the preceding sentence, the term 'tax imposed by this chapter' shall not include any tax treated as not imposed by this chapter under the last sentence of section 53(a)''.

Subsec. (d)(4). Pub. L. 98–369, §474(g)(1)(C), substituted ''section 30(f)'' for ''section 44F(f)''.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–312 applicable to amounts paid or incurred after Dec. 31, 2009, see section 731(c) of Pub. L. 111–312, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–343 applicable to amounts paid or incurred after Dec. 31, 2007, see section 301(e)(2) of Pub. L. 110–343, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–432 applicable to amounts paid or incurred after Dec. 31, 2005, see section 104(a)(3) of Pub. L. 109–432, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to amounts paid or incurred after June 30, 2004, see section 301(b) of Pub. L. 108–311, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to amounts paid or incurred after June 30, 1999, see section 502(a)(3) of Pub. L. 106–170, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 applicable to amounts paid or incurred after June 30, 1998, see section 1001(c) of Pub. L. 105–277, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 601(b)(2) of Pub. L. 105–34 applicable to amounts paid or incurred after May 31, 1997, see section 601(c) of Pub. L. 105–34, set out as a note under section 41 of this title.

Section 604(b) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to amounts paid or incurred after May 31, 1997.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1204(e) of Pub. L. 104–188 applicable to taxable years ending after June 30, 1996, and not to be taken into account under section 6654 or 6655 of this title in determining amount of any installment required to be paid for a taxable year beginning in 1997, see section 1204(f) of Pub. L. 104–188, set out as a note under section 41 of this title.

Amendment by section 1205(a)(1), (b), (d)(1), (2) of Pub. L. 104–188 applicable to amounts paid or incurred in taxable years ending after June 30, 1996, see section 1205(e) of Pub. L. 104–188, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13111(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and section 41 of this title] shall apply to taxable years ending after June 30, 1992.''

EFFECTIVE DATE OF 1991 AMENDMENT

Section 102(c) of Pub. L. 102–227 provided that: ''The amendments made by this section [amending this sec-

tion and section 41 of this title] shall apply to taxable years ending after December 31, 1991.''

Section 111(b) of Pub. L. 102–227 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years ending after December 31, 1991.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11402(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and section 41 of this title and repealing provisions set out as a note under section 41 of this title] shall apply to taxable years beginning after December 31, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1018(q)(1) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 4008(c)(1) of Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1988, see section 4008(d) of Pub. L. 100–647, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 231(d)(3)(A) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1985, see section 231(g) of Pub. L. 99–514, set out as a note under section 41 of this title.

Amendment by section 701(c)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

Amendment by section 1275(c)(4) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

Section 1879(b)(3) of Pub. L. 99–514 provided that: ''The amendments made by this subsection [amending this section] shall apply to amounts paid or incurred after December 31, 1982, in taxable years ending after such date.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(g) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 612(e)(1) of Pub. L. 98–369, applicable to interest paid or accrued after December 31, 1984, on indebtedness incurred after December 31, 1984, see section 612(g) of Pub. L. 98–369, set out as an Effective Date note under section 25 of this title.

EFFECTIVE DATE

Section 4(d) of Pub. L. 97–414 provided that: ''The amendments made by this section [enacting this section and amending sections 280C and 6096 of this title] shall apply to amounts paid or incurred after December 31, 1982, in taxable years ending after such date.''

APPLICABILITY OF CERTAIN AMENDMENTS BY PUBLIC LAW 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(c)(2) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 45D. New markets tax credit

(a) Allowance of credit

(1) In general

For purposes of section 38, in the case of a taxpayer who holds a qualified equity investment on a credit allowance date of such investment which occurs during the taxable year, the new markets tax credit determined under this section for such taxable year is an amount equal to the applicable percentage of the amount paid to the qualified community development entity for such investment at its original issue.

(2) Applicable percentage

For purposes of paragraph (1), the applicable percentage is—

(A) 5 percent with respect to the first 3 credit allowance dates, and

(B) 6 percent with respect to the remainder of the credit allowance dates.

(3) Credit allowance date

For purposes of paragraph (1), the term ''credit allowance date'' means, with respect to any qualified equity investment—

(A) the date on which such investment is initially made, and

(B) each of the 6 anniversary dates of such date thereafter.

(b) Qualified equity investment

For purposes of this section—

(1) In general

The term ''qualified equity investment'' means any equity investment in a qualified community development entity if—

(A) such investment is acquired by the taxpayer at its original issue (directly or through an underwriter) solely in exchange for cash,

(B) substantially all of such cash is used by the qualified community development entity to make qualified low-income community investments, and

(C) such investment is designated for purposes of this section by the qualified community development entity.

Such term shall not include any equity investment issued by a qualified community development entity more than 5 years after the date that such entity receives an allocation under subsection (f). Any allocation not used within such 5-year period may be reallocated by the Secretary under subsection (f).

(2) Limitation

The maximum amount of equity investments issued by a qualified community development entity which may be designated under

paragraph (1)(C) by such entity shall not exceed the portion of the limitation amount allocated under subsection (f) to such entity.

(3) Safe harbor for determining use of cash

The requirement of paragraph (1)(B) shall be treated as met if at least 85 percent of the aggregate gross assets of the qualified community development entity are invested in qualified low-income community investments.

(4) Treatment of subsequent purchasers

The term ''qualified equity investment'' includes any equity investment which would (but for paragraph (1)(A)) be a qualified equity investment in the hands of the taxpayer if such investment was a qualified equity investment in the hands of a prior holder.

(5) Redemptions

A rule similar to the rule of section 1202(c)(3) shall apply for purposes of this subsection.

(6) Equity investment

The term ''equity investment'' means—

(A) any stock (other than nonqualified preferred stock as defined in section 351(g)(2)) in an entity which is a corporation, and

(B) any capital interest in an entity which is a partnership.

(c) Qualified community development entity

For purposes of this section—

(1) In general

The term ''qualified community development entity'' means any domestic corporation or partnership if—

(A) the primary mission of the entity is serving, or providing investment capital for, low-income communities or low-income persons,

(B) the entity maintains accountability to residents of low-income communities through their representation on any governing board of the entity or on any advisory board to the entity, and

(C) the entity is certified by the Secretary for purposes of this section as being a qualified community development entity.

(2) Special rules for certain organizations

The requirements of paragraph (1) shall be treated as met by—

(A) any specialized small business investment company (as defined in section 1044(c)(3)), and

(B) any community development financial institution (as defined in section 103 of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702)).

(d) Qualified low-income community investments

For purposes of this section—

(1) In general

The term ''qualified low-income community investment'' means—

(A) any capital or equity investment in, or loan to, any qualified active low-income community business,

(B) the purchase from another qualified community development entity of any loan made by such entity which is a qualified low-income community investment,

(C) financial counseling and other services specified in regulations prescribed by the Secretary to businesses located in, and residents of, low-income communities, and

(D) any equity investment in, or loan to, any qualified community development entity.

(2) Qualified active low-income community business

(A) In general

For purposes of paragraph (1), the term ''qualified active low-income community business'' means, with respect to any taxable year, any corporation (including a nonprofit corporation) or partnership if for such year—

(i) at least 50 percent of the total gross income of such entity is derived from the active conduct of a qualified business within any low-income community,

(ii) a substantial portion of the use of the tangible property of such entity (whether owned or leased) is within any low-income community,

(iii) a substantial portion of the services performed for such entity by its employees are performed in any low-income community,

(iv) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to collectibles (as defined in section 408(m)(2)) other than collectibles that are held primarily for sale to customers in the ordinary course of such business, and

(v) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to nonqualified financial property (as defined in section 1397C(e)).

(B) Proprietorship

Such term shall include any business carried on by an individual as a proprietor if such business would meet the requirements of subparagraph (A) were it incorporated.

(C) Portions of business may be qualified active low-income community business

The term ''qualified active low-income community business'' includes any trades or businesses which would qualify as a qualified active low-income community business if such trades or businesses were separately incorporated.

(3) Qualified business

For purposes of this subsection, the term ''qualified business'' has the meaning given to such term by section 1397C(d); except that—

(A) in lieu of applying paragraph (2)(B) thereof, the rental to others of real property located in any low-income community shall be treated as a qualified business if there are substantial improvements located on such property, and

(B) paragraph (3) thereof shall not apply.

(e) Low-income community

For purposes of this section—

(1) In general

The term ''low-income community'' means any population census tract if—

(A) the poverty rate for such tract is at least 20 percent, or

(B)(i) in the case of a tract not located within a metropolitan area, the median family income for such tract does not exceed 80 percent of statewide median family income, or

(ii) in the case of a tract located within a metropolitan area, the median family income for such tract does not exceed 80 percent of the greater of statewide median family income or the metropolitan area median family income.

Subparagraph (B) shall be applied using possessionwide median family income in the case of census tracts located within a possession of the United States.

(2) Targeted populations

The Secretary shall prescribe regulations under which 1 or more targeted populations (within the meaning of section 103(20) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702(20))) may be treated as low-income communities. Such regulations shall include procedures for determining which entities are qualified active low-income community businesses with respect to such populations.

(3) Areas not within census tracts

In the case of an area which is not tracted for population census tracts, the equivalent county divisions (as defined by the Bureau of the Census for purposes of defining poverty areas) shall be used for purposes of determining poverty rates and median family income.

(4) Tracts with low population

A population census tract with a population of less than 2,000 shall be treated as a low-income community for purposes of this section if such tract—

(A) is within an empowerment zone the designation of which is in effect under section 1391, and

(B) is contiguous to 1 or more low-income communities (determined without regard to this paragraph).

(5) Modification of income requirement for census tracts within high migration rural counties

(A) In general

In the case of a population census tract located within a high migration rural county, paragraph (1)(B)(i) shall be applied by substituting ''85 percent'' for ''80 percent''.

(B) High migration rural county

For purposes of this paragraph, the term ''high migration rural county'' means any county which, during the 20-year period ending with the year in which the most recent census was conducted, has a net out-migration of inhabitants from the county of at least 10 percent of the population of the county at the beginning of such period.

(f) National limitation on amount of investments designated

(1) In general

There is a new markets tax credit limitation for each calendar year. Such limitation is—

(A) $1,000,000,000 for 2001,

(B) $1,500,000,000 for 2002 and 2003,

(C) $2,000,000,000 for 2004 and 2005,

(D) $3,500,000,000 for 2006 and 2007,

(E) $5,000,000,000 for 2008,

(F) $5,000,000,000 for 2009[1]

(G) $3,500,000,000 for 2010 and 2011.

(2) Allocation of limitation

The limitation under paragraph (1) shall be allocated by the Secretary among qualified community development entities selected by the Secretary. In making allocations under the preceding sentence, the Secretary shall give priority to any entity—

(A) with a record of having successfully provided capital or technical assistance to disadvantaged businesses or communities, or

(B) which intends to satisfy the requirement under subsection (b)(1)(B) by making qualified low-income community investments in 1 or more businesses in which persons unrelated to such entity (within the meaning of section 267(b) or 707(b)(1)) hold the majority equity interest.

(3) Carryover of unused limitation

If the new markets tax credit limitation for any calendar year exceeds the aggregate amount allocated under paragraph (2) for such year, such limitation for the succeeding calendar year shall be increased by the amount of such excess. No amount may be carried under the preceding sentence to any calendar year after 2016.

(g) Recapture of credit in certain cases

(1) In general

If, at any time during the 7-year period beginning on the date of the original issue of a qualified equity investment in a qualified community development entity, there is a recapture event with respect to such investment, then the tax imposed by this chapter for the taxable year in which such event occurs shall be increased by the credit recapture amount.

(2) Credit recapture amount

For purposes of paragraph (1), the credit recapture amount is an amount equal to the sum of—

(A) the aggregate decrease in the credits allowed to the taxpayer under section 38 for all prior taxable years which would have resulted if no credit had been determined under this section with respect to such investment, plus

(B) interest at the underpayment rate established under section 6621 on the amount determined under subparagraph (A) for each prior taxable year for the period beginning on the due date for filing the return for the prior taxable year involved.

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[1] So in original. Probably should be followed by '', and''.

No deduction shall be allowed under this chapter for interest described in subparagraph (B).

(3) Recapture event

For purposes of paragraph (1), there is a recapture event with respect to an equity investment in a qualified community development entity if—

(A) such entity ceases to be a qualified community development entity,

(B) the proceeds of the investment cease to be used as required of subsection (b)(1)(B), or

(C) such investment is redeemed by such entity.

(4) Special rules

(A) Tax benefit rule

The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

(B) No credits against tax

Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.

(h) Basis reduction

The basis of any qualified equity investment shall be reduced by the amount of any credit determined under this section with respect to such investment. This subsection shall not apply for purposes of sections 1202, 1400B, and 1400F.

(i) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out this section, including regulations—

(1) which limit the credit for investments which are directly or indirectly subsidized by other Federal tax benefits (including the credit under section 42 and the exclusion from gross income under section 103),

(2) which prevent the abuse of the purposes of this section,

(3) which provide rules for determining whether the requirement of subsection (b)(1)(B) is treated as met,

(4) which impose appropriate reporting requirements,

(5) which apply the provisions of this section to newly formed entities, and

(6) which ensure that non-metropolitan counties receive a proportional allocation of qualified equity investments.

(Added Pub. L. 106–554, §1(a)(7) [title I, §121(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–605; amended Pub. L. 108–357, title II, §§221(a), (b), 223(a), Oct. 22, 2004, 118 Stat. 1431, 1432; Pub. L. 109–432, div. A, title I, §102(a), (b), Dec. 20, 2006, 120 Stat. 2934; Pub. L. 110–343, div. C, title III, §302, Oct. 3, 2008, 122 Stat. 3866; Pub. L. 111–5, div. B, title I, §1403(a), Feb. 17, 2009, 123 Stat. 352; Pub. L. 111–312, title VII, §733(a), (b), Dec. 17, 2010, 124 Stat. 3317, 3318.)

AMENDMENTS

2010—Subsec. (f)(1)(G). Pub. L. 111–312, §733(a), added subpar. (G).

Subsec. (f)(3). Pub. L. 111–312, §733(b), substituted ''2016'' for ''2014''.

2009—Subsec. (f)(1)(D). Pub. L. 111–5, §1403(a)(2), substituted ''and 2007,'' for '', 2007, 2008, and 2009.''

Subsec. (f)(1)(E), (F). Pub. L. 111–5, §1403(a)(1), (3), added subpars. (E) and (F).

2008—Subsec. (f)(1)(D). Pub. L. 110–343 substituted ''2008, and 2009'' for ''and 2008''.

2006—Subsec. (f)(1)(D). Pub. L. 109–432, §102(a), substituted '', 2007, and 2008'' for ''and 2007''.

Subsec. (i)(6). Pub. L. 109–432, §102(b), added par. (6).

2004—Subsec. (e)(2). Pub. L. 108–357, §221(a), amended heading and text of par. (2) generally, substituting provisions relating to regulations under which 1 or more targeted populations could be treated as low-income communities for provisions authorizing Secretary to designate any area within any census tract as a low-income community if certain conditions were met.

Subsec. (e)(4). Pub. L. 108–357, §221(b), added par. (4).

Subsec. (e)(5). Pub. L. 108–357, §223(a), added par. (5).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §733(c), Dec. 17, 2010, 124 Stat. 3318, provided that: ''The amendments made by this section [amending this section] shall apply to calendar years beginning after 2009.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §102(c), Dec. 20, 2006, 120 Stat. 2934, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Dec. 20, 2006].''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, §221(c), Oct. 22, 2004, 118 Stat. 1431, provided that:

''(1) TARGETED AREAS.—The amendment made by subsection (a) [amending this section] shall apply to designations made by the Secretary of the Treasury after the date of the enactment of this Act [Oct. 22, 2004].

''(2) TRACTS WITH LOW POPULATION.—The amendment made by subsection (b) [amending this section] shall apply to investments made after the date of the enactment of this Act [Oct. 22, 2004].''

Pub. L. 108–357, title II, §223(b), Oct. 22, 2004, 118 Stat. 1432, provided that: ''The amendment made by this section [amending this section] shall take effect as if included in the amendment made by section 121(a) of the Community Renewal Tax Relief Act of 2000 [Pub. L. 106–554, §1(a)(7) [title I, §121(a)], enacting this section].''

EFFECTIVE DATE

Section applicable to investments made after Dec. 31, 2000, see §1(a)(7) [title I, §121(e)] of Pub. L. 106–554, set out as a Effective Date of 2000 Amendment note under section 38 of this title.

SPECIAL RULE FOR ALLOCATION OF INCREASED 2008 LIMITATION

Pub. L. 111–5, div. B, title I, §1403(b), Feb. 17, 2009, 123 Stat. 352, provided that: ''The amount of the increase in the new markets tax credit limitation for calendar year 2008 by reason of the amendments made by subsection (a) [amending this section] shall be allocated in accordance with section 45D(f)(2) of the Internal Revenue Code of 1986 to qualified community development entities (as defined in section 45D(c) of such Code) which—

''(1) submitted an allocation application with respect to calendar year 2008, and

''(2)(A) did not receive an allocation for such calendar year, or

''(B) received an allocation for such calendar year in an amount less than the amount requested in the allocation application.''

GUIDANCE ON ALLOCATION OF NATIONAL LIMITATION

Pub. L. 106–554, §1(a)(7) [title I, §121(f)], Dec. 21, 2000, 114 Stat. 2763, 2763A–610, provided that: ''Not later than

120 days after the date of the enactment of this Act [Dec. 21, 2000], the Secretary of the Treasury or the Secretary's delegate shall issue guidance which specifies—

''(1) how entities shall apply for an allocation under section 45D(f)(2) of the Internal Revenue Code of 1986, as added by this section;

''(2) the competitive procedure through which such allocations are made; and

''(3) the actions that such Secretary or delegate shall take to ensure that such allocations are properly made to appropriate entities.''

AUDIT AND REPORT

Pub. L. 106–554, § 1(a)(7) [title I, § 121(g)], Dec. 21, 2000, 114 Stat. 2763, 2763A–610, provided that: ''Not later than January 31 of 2004, 2007, and 2010, the Comptroller General of the United States shall, pursuant to an audit of the new markets tax credit program established under section 45D of the Internal Revenue Code of 1986 (as added by subsection (a)), report to Congress on such program, including all qualified community development entities that receive an allocation under the new markets credit under such section.''

§ 45E. Small employer pension plan startup costs

(a) General rule

For purposes of section 38, in the case of an eligible employer, the small employer pension plan startup cost credit determined under this section for any taxable year is an amount equal to 50 percent of the qualified startup costs paid or incurred by the taxpayer during the taxable year.

(b) Dollar limitation

The amount of the credit determined under this section for any taxable year shall not exceed—

(1) $500 for the first credit year and each of the 2 taxable years immediately following the first credit year, and

(2) zero for any other taxable year.

(c) Eligible employer

For purposes of this section—

(1) In general

The term ''eligible employer'' has the meaning given such term by section 408(p)(2)(C)(i).

(2) Requirement for new qualified employer plans

Such term shall not include an employer if, during the 3-taxable year period immediately preceding the 1st taxable year for which the credit under this section is otherwise allowable for a qualified employer plan of the employer, the employer or any member of any controlled group including the employer (or any predecessor of either) established or maintained a qualified employer plan with respect to which contributions were made, or benefits were accrued, for substantially the same employees as are in the qualified employer plan.

(d) Other definitions

For purposes of this section—

(1) Qualified startup costs

(A) In general

The term ''qualified startup costs'' means any ordinary and necessary expenses of an eligible employer which are paid or incurred in connection with—

(i) the establishment or administration of an eligible employer plan, or

(ii) the retirement-related education of employees with respect to such plan.

(B) Plan must have at least 1 participant

Such term shall not include any expense in connection with a plan that does not have at least 1 employee eligible to participate who is not a highly compensated employee.

(2) Eligible employer plan

The term ''eligible employer plan'' means a qualified employer plan within the meaning of section 4972(d).

(3) First credit year

The term ''first credit year'' means—

(A) the taxable year which includes the date that the eligible employer plan to which such costs relate becomes effective, or

(B) at the election of the eligible employer, the taxable year preceding the taxable year referred to in subparagraph (A).

(e) Special rules

For purposes of this section—

(1) Aggregation rules

All persons treated as a single employer under subsection (a) or (b) of section 52, or subsection (m) or (*o*) of section 414, shall be treated as one person. All eligible employer plans shall be treated as 1 eligible employer plan.

(2) Disallowance of deduction

No deduction shall be allowed for that portion of the qualified startup costs paid or incurred for the taxable year which is equal to the credit determined under subsection (a).

(3) Election not to claim credit

This section shall not apply to a taxpayer for any taxable year if such taxpayer elects to have this section not apply for such taxable year.

(Added Pub. L. 107–16, title VI, § 619(a), June 7, 2001, 115 Stat. 108; amended Pub. L. 107–147, title IV, § 411(n)(1), Mar. 9, 2002, 116 Stat. 48.)

AMENDMENTS

2002—Subsec. (e)(1). Pub. L. 107–147 substituted ''subsection (m)'' for ''subsection (n)''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE

Section applicable to costs paid or incurred in taxable years beginning after Dec. 31, 2001, with respect to qualified employer plans first effective after such date, see section 619(d) of Pub. L. 107–16, as amended, set out as an Effective and Termination Dates of 2001 Amendment note under section 38 of this title.

§ 45F. Employer-provided child care credit

(a) In general

For purposes of section 38, the employer-provided child care credit determined under this

section for the taxable year is an amount equal to the sum of—

(1) 25 percent of the qualified child care expenditures, and

(2) 10 percent of the qualified child care resource and referral expenditures,

of the taxpayer for such taxable year.

(b) Dollar limitation

The credit allowable under subsection (a) for any taxable year shall not exceed $150,000.

(c) Definitions

For purposes of this section—

(1) Qualified child care expenditure

(A) In general

The term ''qualified child care expenditure'' means any amount paid or incurred—

(i) to acquire, construct, rehabilitate, or expand property—

(I) which is to be used as part of a qualified child care facility of the taxpayer,

(II) with respect to which a deduction for depreciation (or amortization in lieu of depreciation) is allowable, and

(III) which does not constitute part of the principal residence (within the meaning of section 121) of the taxpayer or any employee of the taxpayer,

(ii) for the operating costs of a qualified child care facility of the taxpayer, including costs related to the training of employees, to scholarship programs, and to the providing of increased compensation to employees with higher levels of child care training, or

(iii) under a contract with a qualified child care facility to provide child care services to employees of the taxpayer.

(B) Fair market value

The term ''qualified child care expenditures'' shall not include expenses in excess of the fair market value of such care.

(2) Qualified child care facility

(A) In general

The term ''qualified child care facility'' means a facility—

(i) the principal use of which is to provide child care assistance, and

(ii) which meets the requirements of all applicable laws and regulations of the State or local government in which it is located, including the licensing of the facility as a child care facility.

Clause (i) shall not apply to a facility which is the principal residence (within the meaning of section 121) of the operator of the facility.

(B) Special rules with respect to a taxpayer

A facility shall not be treated as a qualified child care facility with respect to a taxpayer unless—

(i) enrollment in the facility is open to employees of the taxpayer during the taxable year,

(ii) if the facility is the principal trade or business of the taxpayer, at least 30 percent of the enrollees of such facility are dependents of employees of the taxpayer, and

(iii) the use of such facility (or the eligibility to use such facility) does not discriminate in favor of employees of the taxpayer who are highly compensated employees (within the meaning of section 414(q)).

(3) Qualified child care resource and referral expenditure

(A) In general

The term ''qualified child care resource and referral expenditure'' means any amount paid or incurred under a contract to provide child care resource and referral services to an employee of the taxpayer.

(B) Nondiscrimination

The services shall not be treated as qualified unless the provision of such services (or the eligibility to use such services) does not discriminate in favor of employees of the taxpayer who are highly compensated employees (within the meaning of section 414(q)).

(d) Recapture of acquisition and construction credit

(1) In general

If, as of the close of any taxable year, there is a recapture event with respect to any qualified child care facility of the taxpayer, then the tax of the taxpayer under this chapter for such taxable year shall be increased by an amount equal to the product of—

(A) the applicable recapture percentage, and

(B) the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted if the qualified child care expenditures of the taxpayer described in subsection (c)(1)(A) with respect to such facility had been zero.

(2) Applicable recapture percentage

(A) In general

For purposes of this subsection, the applicable recapture percentage shall be determined from the following table:

If the recapture event occurs in:	The applicable recapture percentage is:
Years 1–3	100
Year 4	85
Year 5	70
Year 6	55
Year 7	40
Year 8	25
Years 9 and 10	10
Years 11 and thereafter	0.

(B) Years

For purposes of subparagraph (A), year 1 shall begin on the first day of the taxable year in which the qualified child care facility is placed in service by the taxpayer.

(3) Recapture event defined

For purposes of this subsection, the term ''recapture event'' means—

(A) Cessation of operation

The cessation of the operation of the facility as a qualified child care facility.

(B) Change in ownership

(i) In general

Except as provided in clause (ii), the disposition of a taxpayer's interest in a qualified child care facility with respect to which the credit described in subsection (a) was allowable.

(ii) Agreement to assume recapture liability

Clause (i) shall not apply if the person acquiring such interest in the facility agrees in writing to assume the recapture liability of the person disposing of such interest in effect immediately before such disposition. In the event of such an assumption, the person acquiring the interest in the facility shall be treated as the taxpayer for purposes of assessing any recapture liability (computed as if there had been no change in ownership).

(4) Special rules

(A) Tax benefit rule

The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

(B) No credits against tax

Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.

(C) No recapture by reason of casualty loss

The increase in tax under this subsection shall not apply to a cessation of operation of the facility as a qualified child care facility by reason of a casualty loss to the extent such loss is restored by reconstruction or replacement within a reasonable period established by the Secretary.

(e) Special rules

For purposes of this section—

(1) Aggregation rules

All persons which are treated as a single employer under subsections (a) and (b) of section 52 shall be treated as a single taxpayer.

(2) Pass-thru in the case of estates and trusts

Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

(3) Allocation in the case of partnerships

In the case of partnerships, the credit shall be allocated among partners under regulations prescribed by the Secretary.

(f) No double benefit

(1) Reduction in basis

For purposes of this subtitle—

(A) In general

If a credit is determined under this section with respect to any property by reason of expenditures described in subsection (c)(1)(A), the basis of such property shall be reduced by the amount of the credit so determined.

(B) Certain dispositions

If, during any taxable year, there is a recapture amount determined with respect to any property the basis of which was reduced under subparagraph (A), the basis of such property (immediately before the event resulting in such recapture) shall be increased by an amount equal to such recapture amount. For purposes of the preceding sentence, the term ''recapture amount'' means any increase in tax (or adjustment in carrybacks or carryovers) determined under subsection (d).

(2) Other deductions and credits

No deduction or credit shall be allowed under any other provision of this chapter with respect to the amount of the credit determined under this section.

(Added Pub. L. 107–16, title II, § 205(a), June 7, 2001, 115 Stat. 50; amended Pub. L. 107–147, title IV, § 411(d)(1), Mar. 9, 2002, 116 Stat. 46.)

TERMINATION OF SECTION

For termination of section by section 901 of Pub. L. 107–16, see Effective and Termination Dates note below.

AMENDMENTS

2002—Subsec. (d)(4)(B). Pub. L. 107–147 substituted ''this chapter or for purposes of section 55'' for ''subpart A, B, or D of this part''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE AND TERMINATION DATES

Section applicable to taxable years beginning after Dec. 31, 2001, see section 205(c) of Pub. L. 107–16, set out as an Effective and Termination Dates of 2001 Amendment note under section 38 of this title.

Section inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if it had never been enacted, see section 901 of Pub. L. 107–16, set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title.

§ 45G. Railroad track maintenance credit

(a) General rule

For purposes of section 38, the railroad track maintenance credit determined under this section for the taxable year is an amount equal to 50 percent of the qualified railroad track maintenance expenditures paid or incurred by an eligible taxpayer during the taxable year.

(b) Limitation

(1) In general

The credit allowed under subsection (a) for any taxable year shall not exceed the product of—

(A) $3,500, multiplied by
(B) the sum of—
(i) the number of miles of railroad track owned or leased by the eligible taxpayer as of the close of the taxable year, and
(ii) the number of miles of railroad track assigned for purposes of this subsection to the eligible taxpayer by a Class II or Class III railroad which owns or leases such railroad track as of the close of the taxable year.

(2) Assignments

With respect to any assignment of a mile of railroad track under paragraph (1)(B)(ii)—
(A) such assignment may be made only once per taxable year of the Class II or Class III railroad and shall be treated as made as of the close of such taxable year,
(B) such mile may not be taken into account under this section by such railroad for such taxable year, and
(C) such assignment shall be taken into account for the taxable year of the assignee which includes the date that such assignment is treated as effective.

(c) Eligible taxpayer

For purposes of this section, the term ''eligible taxpayer'' means—
(1) any Class II or Class III railroad, and
(2) any person who transports property using the rail facilities of a Class II or Class III railroad or who furnishes railroad-related property or services to a Class II or Class III railroad, but only with respect to miles of railroad track assigned to such person by such Class II or Class III railroad for purposes of subsection (b).

(d) Qualified railroad track maintenance expenditures

For purposes of this section, the term ''qualified railroad track maintenance expenditures'' means gross expenditures (whether or not otherwise chargeable to capital account) for maintaining railroad track (including roadbed, bridges, and related track structures) owned or leased as of January 1, 2005, by a Class II or Class III railroad (determined without regard to any consideration for such expenditures given by the Class II or Class III railroad which made the assignment of such track).

(e) Other definitions and special rules

(1) Class II or Class III railroad

For purposes of this section, the terms ''Class II railroad'' and ''Class III railroad'' have the respective meanings given such terms by the Surface Transportation Board.

(2) Controlled groups

Rules similar to the rules of paragraph (1) of section 41(f) shall apply for purposes of this section.

(3) Basis adjustment

For purposes of this subtitle, if a credit is allowed under this section with respect to any railroad track, the basis of such track shall be reduced by the amount of the credit so allowed.

(f) Application of section

This section shall apply to qualified railroad track maintenance expenditures paid or incurred during taxable years beginning after December 31, 2004, and before January 1, 2012.

(Added Pub. L. 108–357, title II, §245(a), Oct. 22, 2004, 118 Stat. 1447; amended Pub. L. 109–135, title IV, §403(f), Dec. 21, 2005, 119 Stat. 2623; Pub. L. 109–432, div. A, title IV, §423(a), Dec. 20, 2006, 120 Stat. 2973; Pub. L. 110–343, div. C, title III, §316(a), Oct. 3, 2008, 122 Stat. 3872; Pub. L. 111–312, title VII, §734(a), Dec. 17, 2010, 124 Stat. 3318.)

AMENDMENTS

2010—Subsec. (f). Pub. L. 111–312 substituted ''January 1, 2012'' for ''January 1, 2010''.

2008—Subsec. (f). Pub. L. 110–343 substituted ''January 1, 2010'' for ''January 1, 2008''.

2006—Subsec. (d). Pub. L. 109–432 inserted ''gross'' after ''means'' and ''(determined without regard to any consideration for such expenditures given by the Class II or Class III railroad which made the assignment of such track)'' before period at end.

2005—Subsec. (b). Pub. L. 109–135, §403(f)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The credit allowed under subsection (a) for any taxable year shall not exceed the product of—
''(1) $3,500, and
''(2) the number of miles of railroad track owned or leased by the eligible taxpayer as of the close of the taxable year.
A mile of railroad track may be taken into account by a person other than the owner only if such mile is assigned to such person by the owner for purposes of this subsection. Any mile which is so assigned may not be taken into account by the owner for purposes of this subsection.''

Subsec. (c)(2). Pub. L. 109–135, §403(f)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''any person who transports property using the rail facilities of a person described in paragraph (1) or who furnishes railroad-related property or services to such a person.''

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §734(b), Dec. 17, 2010, 124 Stat. 3318, provided that: ''The amendment made by this section [amending this section] shall apply to expenditures paid or incurred in taxable years beginning after December 31, 2009.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, §316(c)(1), Oct. 3, 2008, 122 Stat. 3872, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to expenditures paid or incurred during taxable years beginning after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §423(b), Dec. 20, 2006, 120 Stat. 2973, provided that: ''The amendment made by this section [amending this section] shall take effect as if included in the amendment made by section 245(a) of the American Jobs Creation Act of 2004 [Pub. L. 108–357].''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 2004, see section 245(e) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendment note under section 38 of this title.

§ 45H. Credit for production of low sulfur diesel fuel

(a) In general

For purposes of section 38, the amount of the low sulfur diesel fuel production credit determined under this section with respect to any facility of a small business refiner is an amount equal to 5 cents for each gallon of low sulfur diesel fuel produced during the taxable year by such small business refiner at such facility.

(b) Maximum credit

(1) In general

The aggregate credit determined under subsection (a) for any taxable year with respect to any facility shall not exceed—

(A) 25 percent of the qualified costs incurred by the small business refiner with respect to such facility, reduced by

(B) the aggregate credits determined under this section for all prior taxable years with respect to such facility.

(2) Reduced percentage

In the case of a small business refiner with average daily domestic refinery runs for the 1-year period ending on December 31, 2002, in excess of 155,000 barrels, the number of percentage points described in paragraph (1) shall be reduced (not below zero) by the product of such number (before the application of this paragraph) and the ratio of such excess to 50,000 barrels.

(c) Definitions and special rule

For purposes of this section—

(1) Small business refiner

The term ''small business refiner'' means, with respect to any taxable year, a refiner of crude oil—

(A) with respect to which not more than 1,500 individuals are engaged in the refinery operations of the business on any day during such taxable year, and

(B) the average daily domestic refinery run or average retained production of which for all facilities of the taxpayer for the 1-year period ending on December 31, 2002, did not exceed 205,000 barrels.

(2) Qualified costs

The term ''qualified costs'' means, with respect to any facility, those costs paid or incurred during the applicable period for compliance with the applicable EPA regulations with respect to such facility, including expenditures for the construction of new process operation units or the dismantling and reconstruction of existing process units to be used in the production of low sulfur diesel fuel, associated adjacent or offsite equipment (including tankage, catalyst, and power supply), engineering, construction period interest, and sitework.

(3) Applicable EPA regulations

The term ''applicable EPA regulations'' means the Highway Diesel Fuel Sulfur Control Requirements of the Environmental Protection Agency.

(4) Applicable period

The term ''applicable period'' means, with respect to any facility, the period beginning on January 1, 2003, and ending on the earlier of the date which is 1 year after the date on which the taxpayer must comply with the applicable EPA regulations with respect to such facility or December 31, 2009.

(5) Low sulfur diesel fuel

The term ''low sulfur diesel fuel'' means diesel fuel with a sulfur content of 15 parts per million or less.

(d) Special rule for determination of refinery runs

For purposes[1] this section and section 179B(b), in the calculation of average daily domestic refinery run or retained production, only refineries which on April 1, 2003, were refineries of the refiner or a related person (within the meaning of section 613A(d)(3)), shall be taken into account.

(e) Certification

(1) Required

No credit shall be allowed unless, not later than the date which is 30 months after the first day of the first taxable year in which the low sulfur diesel fuel production credit is determined with respect to a facility, the small business refiner obtains certification from the Secretary, after consultation with the Administrator of the Environmental Protection Agency, that the taxpayer's qualified costs with respect to such facility will result in compliance with the applicable EPA regulations.

(2) Contents of application

An application for certification shall include relevant information regarding unit capacities and operating characteristics sufficient for the Secretary, after consultation with the Administrator of the Environmental Protection Agency, to determine that such qualified costs are necessary for compliance with the applicable EPA regulations.

(3) Review period

Any application shall be reviewed and notice of certification, if applicable, shall be made within 60 days of receipt of such application. In the event the Secretary does not notify the taxpayer of the results of such certification within such period, the taxpayer may presume the certification to be issued until so notified.

(4) Statute of limitations

With respect to the credit allowed under this section—

(A) the statutory period for the assessment of any deficiency attributable to such credit shall not expire before the end of the 3-year period ending on the date that the review period described in paragraph (3) ends with respect to the taxpayer, and

(B) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

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[1] So in original. Probably should be followed by ''of''.

(f) Cooperative organizations

(1) Apportionment of credit

(A) In general

In the case of a cooperative organization described in section 1381(a), any portion of the credit determined under subsection (a) for the taxable year may, at the election of the organization, be apportioned among patrons eligible to share in patronage dividends on the basis of the quantity or value of business done with or for such patrons for the taxable year.

(B) Form and effect of election

An election under subparagraph (A) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.

(2) Treatment of organizations and patrons

(A) Organizations

The amount of the credit not apportioned to patrons pursuant to paragraph (1) shall be included in the amount determined under subsection (a) for the taxable year of the organization.

(B) Patrons

The amount of the credit apportioned to patrons pursuant to paragraph (1) shall be included in the amount determined under subsection (a) for the first taxable year of each patron ending on or after the last day of the payment period (as defined in section 1382(d)) for the taxable year of the organization or, if earlier, for the taxable year of each patron ending on or after the date on which the patron receives notice from the cooperative of the apportionment.

(3) Special rule

If the amount of a credit which has been apportioned to any patron under this subsection is decreased for any reason—

(A) such amount shall not increase the tax imposed on such patron, and

(B) the tax imposed by this chapter on such organization shall be increased by such amount.

The increase under subparagraph (B) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.

(g) Election to not take credit

No credit shall be determined under subsection (a) for the taxable year if the taxpayer elects not to have subsection (a) apply to such taxable year.

(Added Pub. L. 108–357, title III, §339(a), Oct. 22, 2004, 118 Stat. 1481; amended Pub. L. 110–172, §7(a)(1)(A), (2)(A), (3)(A), (B), Dec. 29, 2007, 121 Stat. 2481, 2482.)

AMENDMENTS

2007—Subsec. (b)(1)(A). Pub. L. 110–172, §7(a)(3)(A), substituted ''qualified costs'' for ''qualified capital costs''.

Subsec. (c)(2). Pub. L. 110–172, §7(a)(3)(B), struck out ''capital'' before ''costs'' in heading.

Pub. L. 110–172, §7(a)(3)(A), substituted ''qualified costs'' for ''qualified capital costs''.

Subsec. (d). Pub. L. 110–172, §7(a)(1)(A), redesignated subsec. (e) as (d) and struck out heading and text of former subsec. (d). Text read as follows: ''For purposes of this subtitle, if a credit is determined under this section for any expenditure with respect to any property, the increase in basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so determined.''

Subsec. (e). Pub. L. 110–172, §7(a)(1)(A), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (e)(1), (2). Pub. L. 110–172, §7(a)(3)(A), substituted ''qualified costs'' for ''qualified capital costs''.

Subsec. (f). Pub. L. 110–172, §7(a)(1)(A), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 110–172, §7(a)(2)(A), added subsec. (g). Former subsec. (g) redesignated (f).

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 7(e) of Pub. L. 110–172, set out as a note under section 1092 of this title.

EFFECTIVE DATE

Section applicable to expenses paid or incurred after Dec. 31, 2002, in taxable years ending after such date, see section 339(f) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendment note under section 38 of this title.

§45I. Credit for producing oil and gas from marginal wells

(a) General rule

For purposes of section 38, the marginal well production credit for any taxable year is an amount equal to the product of—

(1) the credit amount, and

(2) the qualified crude oil production and the qualified natural gas production which is attributable to the taxpayer.

(b) Credit amount

For purposes of this section—

(1) In general

The credit amount is—

(A) $3 per barrel of qualified crude oil production, and

(B) 50 cents per 1,000 cubic feet of qualified natural gas production.

(2) Reduction as oil and gas prices increase

(A) In general

The $3 and 50 cents amounts under paragraph (1) shall each be reduced (but not below zero) by an amount which bears the same ratio to such amount (determined without regard to this paragraph) as—

(i) the excess (if any) of the applicable reference price over $15 ($1.67 for qualified natural gas production), bears to

(ii) $3 ($0.33 for qualified natural gas production).

The applicable reference price for a taxable year is the reference price of the calendar year preceding the calendar year in which the taxable year begins.

(B) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 2005, each of the dol-

lar amounts contained in subparagraph (A) shall be increased to an amount equal to such dollar amount multiplied by the inflation adjustment factor for such calendar year (determined under section 43(b)(3)(B) by substituting ''2004'' for ''1990'').

(C) Reference price

For purposes of this paragraph, the term ''reference price'' means, with respect to any calendar year—

(i) in the case of qualified crude oil production, the reference price determined under section 45K(d)(2)(C), and

(ii) in the case of qualified natural gas production, the Secretary's estimate of the annual average wellhead price per 1,000 cubic feet for all domestic natural gas.

(c) Qualified crude oil and natural gas production

For purposes of this section—

(1) In general

The terms ''qualified crude oil production'' and ''qualified natural gas production'' mean domestic crude oil or natural gas which is produced from a qualified marginal well.

(2) Limitation on amount of production which may qualify

(A) In general

Crude oil or natural gas produced during any taxable year from any well shall not be treated as qualified crude oil production or qualified natural gas production to the extent production from the well during the taxable year exceeds 1,095 barrels or barrel-of-oil equivalents (as defined in section 45K(d)(5)).

(B) Proportionate reductions

(i) Short taxable years

In the case of a short taxable year, the limitations under this paragraph shall be proportionately reduced to reflect the ratio which the number of days in such taxable year bears to 365.

(ii) Wells not in production entire year

In the case of a well which is not capable of production during each day of a taxable year, the limitations under this paragraph applicable to the well shall be proportionately reduced to reflect the ratio which the number of days of production bears to the total number of days in the taxable year.

(3) Definitions

(A) Qualified marginal well

The term ''qualified marginal well'' means a domestic well—

(i) the production from which during the taxable year is treated as marginal production under section 613A(c)(6), or

(ii) which, during the taxable year—

(I) has average daily production of not more than 25 barrel-of-oil equivalents (as so defined), and

(II) produces water at a rate not less than 95 percent of total well effluent.

(B) Crude oil, etc.

The terms ''crude oil'', ''natural gas'', ''domestic'', and ''barrel'' have the meanings given such terms by section 613A(e).

(d) Other rules

(1) Production attributable to the taxpayer

In the case of a qualified marginal well in which there is more than one owner of operating interests in the well and the crude oil or natural gas production exceeds the limitation under subsection (c)(2), qualifying crude oil production or qualifying natural gas production attributable to the taxpayer shall be determined on the basis of the ratio which taxpayer's revenue interest in the production bears to the aggregate of the revenue interests of all operating interest owners in the production.

(2) Operating interest required

Any credit under this section may be claimed only on production which is attributable to the holder of an operating interest.

(3) Production from nonconventional sources excluded

In the case of production from a qualified marginal well which is eligible for the credit allowed under section 45K for the taxable year, no credit shall be allowable under this section unless the taxpayer elects not to claim the credit under section 45K with respect to the well.

(Added Pub. L. 108–357, title III, § 341(a), Oct. 22, 2004, 118 Stat. 1485; amended Pub. L. 109–58, title XIII, § 1322(a)(3)(B), (D), Aug. 8, 2005, 119 Stat. 1011; Pub. L. 109–135, title IV, § 412(k), Dec. 21, 2005, 119 Stat. 2637.)

AMENDMENTS

2005—Subsec. (a)(2). Pub. L. 109–135 substituted ''qualified crude oil production'' for ''qualified credit oil production''.

Subsec. (b)(2)(C)(i). Pub. L. 109–58, § 1322(a)(3)(B), substituted ''section 45K(d)(2)(C)'' for ''section 29(d)(2)(C)''.

Subsec. (c)(2)(A). Pub. L. 109–58, § 1322(a)(3)(D)(i), substituted ''section 45K(d)(5))'' for ''section 29(d)(5))''.

Subsec. (d)(3). Pub. L. 109–58, § 1322(a)(3)(D)(ii), substituted ''section 45K'' for ''section 29'' in two places.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–58 applicable to credits determined under the Internal Revenue Code of 1986 for taxable years ending after Dec. 31, 2005, see section 1322(c)(1) of Pub. L. 109–58, set out as a note under section 45K of this title.

EFFECTIVE DATE

Section applicable to production in taxable years beginning after Dec. 31, 2004, see section 341(e) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendment note under section 38 of this title.

§ 45J. Credit for production from advanced nuclear power facilities

(a) General rule

For purposes of section 38, the advanced nuclear power facility production credit of any taxpayer for any taxable year is equal to the product of—

(1) 1.8 cents, multiplied by

(2) the kilowatt hours of electricity—

(A) produced by the taxpayer at an advanced nuclear power facility during the 8-year period beginning on the date the facility was originally placed in service, and

(B) sold by the taxpayer to an unrelated person during the taxable year.

(b) National limitation

(1) In general

The amount of credit which would (but for this subsection and subsection (c)) be allowed with respect to any facility for any taxable year shall not exceed the amount which bears the same ratio to such amount of credit as—

(A) the national megawatt capacity limitation allocated to the facility, bears to

(B) the total megawatt nameplate capacity of such facility.

(2) Amount of national limitation

The aggregate amount of national megawatt capacity limitation allocated by the Secretary under paragraph (3) shall not exceed 6,000 megawatts.

(3) Allocation of limitation

The Secretary shall allocate the national megawatt capacity limitation in such manner as the Secretary may prescribe.

(4) Regulations

Not later than 6 months after the date of the enactment of this section, the Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection. Such regulations shall provide a certification process under which the Secretary, after consultation with the Secretary of Energy, shall approve and allocate the national megawatt capacity limitation.

(c) Other limitations

(1) Annual limitation

The amount of the credit allowable under subsection (a) (after the application of subsection (b)) for any taxable year with respect to any facility shall not exceed an amount which bears the same ratio to $125,000,000 as—

(A) the national megawatt capacity limitation allocated under subsection (b) to the facility, bears to

(B) 1,000.

(2) Phaseout of credit

(A) In general

The amount of the credit determined under subsection (a) shall be reduced by an amount which bears the same ratio to the amount of the credit (determined without regard to this paragraph) as—

(i) the amount by which the reference price (as defined in section 45(e)(2)(C)) for the calendar year in which the sale occurs exceeds 8 cents, bears to

(ii) 3 cents.

(B) Phaseout adjustment based on inflation

The 8 cent amount in subparagraph (A) shall be adjusted by multiplying such amount by the inflation adjustment factor (as defined in section 45(e)(2)(B)) for the calendar year in which the sale occurs. If any amount as increased under the preceding sentence is not a multiple of 0.1 cent, such amount shall be rounded to the nearest multiple of 0.1 cent.

(d) Advanced nuclear power facility

For purposes of this section—

(1) In general

The term ''advanced nuclear power facility'' means any advanced nuclear facility—

(A) which is owned by the taxpayer and which uses nuclear energy to produce electricity, and

(B) which is placed in service after the date of the enactment of this paragraph and before January 1, 2021.

(2) Advanced nuclear facility

For purposes of paragraph (1), the term ''advanced nuclear facility'' means any nuclear facility the reactor design for which is approved after December 31, 1993, by the Nuclear Regulatory Commission (and such design or a substantially similar design of comparable capacity was not approved on or before such date).

(e) Other rules to apply

Rules similar to the rules of paragraphs (1), (3), (4), and (5) of section 45(e) shall apply for purposes of this section.

(Added Pub. L. 109–58, title XIII, §1306(a), Aug. 8, 2005, 119 Stat. 997; amended Pub. L. 109–135, title IV, §402(d), Dec. 21, 2005, 119 Stat. 2610; Pub. L. 110–172, §6(a), Dec. 29, 2007, 121 Stat. 2479.)

REFERENCES IN TEXT

The date of the enactment of this section and the date of the enactment of this paragraph, referred to in subsecs. (b)(4) and (d)(1)(B), are the date of enactment of Pub. L. 109–58, which was approved Aug. 8, 2005.

AMENDMENTS

2007—Subsec. (b)(2). Pub. L. 110–172 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The national megawatt capacity limitation shall be 6,000 megawatts.''

2005—Subsec. (c)(2). Pub. L. 109–135, §402(d)(1), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''Rules similar to the rules of section 45(b)(1) shall apply for purposes of this section.''

Subsec. (e). Pub. L. 109–135, §402(d)(2), struck out ''(2),'' after ''(1),''.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which such amendment relates, see section 6(e) of Pub. L. 110–172, set out as a note under section 30C of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the Energy Policy Act of 2005, Pub. L. 109–58, to which such amendment relates, see section 402(m)(1) of Pub. L. 109–135, set out as a note under section 36C of this title.

EFFECTIVE DATE

Section applicable to production in taxable years beginning after Aug. 8, 2005, see section 1306(d) of Pub. L. 109–58, set out as an Effective Date of 2005 Amendment note under section 38 of this title.

§ 45K. Credit for producing fuel from a nonconventional source

(a) Allowance of credit

For purposes of section 38, the nonconventional source production credit determined under this section for the taxable year is an amount equal to—

(1) $3, multiplied by

(2) the barrel-of-oil equivalent of qualified fuels—

(A) sold by the taxpayer to an unrelated person during the taxable year, and

(B) the production of which is attributable to the taxpayer.

(b) Limitations and adjustments

(1) Phaseout of credit

The amount of the credit allowable under subsection (a) shall be reduced by an amount which bears the same ratio to the amount of the credit (determined without regard to this paragraph) as—

(A) the amount by which the reference price for the calendar year in which the sale occurs exceeds $23.50, bears to

(B) $6.

(2) Credit and phaseout adjustment based on inflation

The $3 amount in subsection (a) and the $23.50 and $6 amounts in paragraph (1) shall each be adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. In the case of gas from a tight formation, the $3 amount in subsection (a) shall not be adjusted.

(3) Credit reduced for grants, tax-exempt bonds, and subsidized energy financing

(A) In general

The amount of the credit allowable under subsection (a) with respect to any project for any taxable year (determined after the application of paragraphs (1) and (2)) shall be reduced by the amount which is the product of the amount so determined for such year and a fraction—

(i) the numerator of which is the sum, for the taxable year and all prior taxable years, of—

(I) grants provided by the United States, a State, or a political subdivision of a State for use in connection with the project,

(II) proceeds of any issue of State or local government obligations used to provide financing for the project the interest on which is exempt from tax under section 103, and

(III) the aggregate amount of subsidized energy financing (within the meaning of section 48(a)(4)(C)) provided in connection with the project, and

(ii) the denominator of which is the aggregate amount of additions to the capital account for the project for the taxable year and all prior taxable years.

(B) Amounts determined at close of year

The amounts under subparagraph (A) for any taxable year shall be determined as of the close of the taxable year.

(4) Credit reduced for energy credit

The amount allowable as a credit under subsection (a) with respect to any project for any taxable year (determined after the application of paragraphs (1), (2), and (3)) shall be reduced by the excess of—

(A) the aggregate amount allowed under section 38 for the taxable year or any prior taxable year by reason of the energy percentage with respect to property used in the project, over

(B) the aggregate amount recaptured with respect to the amount described in subparagraph (A)—

(i) under section 49(b) or 50(a) for the taxable year or any prior taxable year, or

(ii) under this paragraph for any prior taxable year.

The amount recaptured under section 49(b) or 50(a) with respect to any property shall be appropriately reduced to take into account any reduction in the credit allowed by this section by reason of the preceding sentence.

(5) Credit reduced for enhanced oil recovery credit

The amount allowable as a credit under subsection (a) with respect to any project for any taxable year (determined after application of paragraphs (1), (2), (3), and (4)) shall be reduced by the excess (if any) of—

(A) the aggregate amount allowed under section 38 for the taxable year and any prior taxable year by reason of any enhanced oil recovery credit determined under section 43 with respect to such project, over

(B) the aggregate amount recaptured with respect to the amount described in subparagraph (A) under this paragraph for any prior taxable year.

(c) Definition of qualified fuels

For purposes of this section—

(1) In general

The term ''qualified fuels'' means—

(A) oil produced from shale and tar sands,

(B) gas produced from—

(i) geopressured brine, Devonian shale, coal seams, or a tight formation, or

(ii) biomass, and

(C) liquid, gaseous, or solid synthetic fuels produced from coal (including lignite), including such fuels when used as feedstocks.

(2) Gas from geopressured brine, etc.

(A) In general

Except as provided in subparagraph (B), the determination of whether any gas is produced from geopressured brine, Devonian shale, coal seams, or a tight formation shall be made in accordance with section 503 of the Natural Gas Policy Act of 1978 (as in effect before the repeal of such section).

(B) Special rules for gas from tight formations

The term ''gas produced from a tight formation'' shall only include gas from a tight formation—

(i) which, as of April 20, 1977, was committed or dedicated to interstate com-

merce (as defined in section 2(18) of the Natural Gas Policy Act of 1978, as in effect on the date of the enactment of this clause), or

(ii) which is produced from a well drilled after such date of enactment.

(3) Biomass

The term ''biomass'' means any organic material other than—

(A) oil and natural gas (or any product thereof), and

(B) coal (including lignite) or any product thereof.

(d) Other definitions and special rules

For purposes of this section—

(1) Only production within the United States taken into account

Sales shall be taken into account under this section only with respect to qualified fuels the production of which is within—

(A) the United States (within the meaning of section 638(1)), or

(B) a possession of the United States (within the meaning of section 638(2)).

(2) Computation of inflation adjustment factor and reference price

(A) In general

The Secretary shall, not later than April 1 of each calendar year, determine and publish in the Federal Register the inflation adjustment factor and the reference price for the preceding calendar year in accordance with this paragraph.

(B) Inflation adjustment factor

The term ''inflation adjustment factor'' means, with respect to a calendar year, a fraction the numerator of which is the GNP implicit price deflator for the calendar year and the denominator of which is the GNP implicit price deflator for calendar year 1979. The term ''GNP implicit price deflator'' means the first revision of the implicit price deflator for the gross national product as computed and published by the Department of Commerce.

(C) Reference price

The term ''reference price'' means with respect to a calendar year the Secretary's estimate of the annual average wellhead price per barrel for all domestic crude oil the price of which is not subject to regulation by the United States.

(3) Production attributable to the taxpayer

In the case of a property or facility in which more than 1 person has an interest, except to the extent provided in regulations prescribed by the Secretary, production from the property or facility (as the case may be) shall be allocated among such persons in proportion to their respective interests in the gross sales from such property or facility.

(4) Gas from geopressured brine, Devonian shale, coal seams, or a tight formation

The amount of the credit allowable under subsection (a) shall be determined without regard to any production attributable to a property from which gas from Devonian shale, coal seams, geopressured brine, or a tight formation was produced in marketable quantities before January 1, 1980.

(5) Barrel-of-oil equivalent

The term ''barrel-of-oil equivalent'' with respect to any fuel means that amount of such fuel which has a Btu content of 5.8 million; except that in the case of qualified fuels described in subparagraph (C) of subsection (c)(1), the Btu content shall be determined without regard to any material from a source not described in such subparagraph.

(6) Barrel defined

The term ''barrel'' means 42 United States gallons.

(7) Related persons

Persons shall be treated as related to each other if such persons would be treated as a single employer under the regulations prescribed under section 52(b). In the case of a corporation which is a member of an affiliated group of corporations filing a consolidated return, such corporation shall be treated as selling qualified fuels to an unrelated person if such fuels are sold to such a person by another member of such group.

(8) Pass-thru in the case of estates and trusts

Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

(e) Application of section

This section shall apply with respect to qualified fuels—

(1) which are—

(A) produced from a well drilled after December 31, 1979, and before January 1, 1993, or

(B) produced in a facility placed in service after December 31, 1979, and before January 1, 1993, and

(2) which are sold before January 1, 2003.

(f) Extension for certain facilities

(1) In general

In the case of a facility for producing qualified fuels described in subparagraph (B)(ii) or (C) of subsection (c)(1)—

(A) for purposes of subsection (e)(1)(B), such facility shall be treated as being placed in service before January 1, 1993, if such facility is placed in service before July 1, 1998, pursuant to a binding written contract in effect before January 1, 1997, and

(B) if such facility is originally placed in service after December 31, 1992, paragraph (2) of subsection (e) shall be applied with respect to such facility by substituting ''January 1, 2008'' for ''January 1, 2003''.

(2) Special rule

Paragraph (1) shall not apply to any facility which produces coke or coke gas unless the original use of the facility commences with the taxpayer.

(g) Extension for facilities producing coke or coke gas

Notwithstanding subsection (e)—

(1) In general

In the case of a facility for producing coke or coke gas (other than from petroleum based products) which was placed in service before January 1, 1993, or after June 30, 1998, and before January 1, 2010, this section shall apply with respect to coke and coke gas produced in such facility and sold during the period—

(A) beginning on the later of January 1, 2006, or the date that such facility is placed in service, and

(B) ending on the date which is 4 years after the date such period began.

(2) Special rules

In determining the amount of credit allowable under this section solely by reason of this subsection—

(A) Daily limit

The amount of qualified fuels sold during any taxable year which may be taken into account by reason of this subsection with respect to any facility shall not exceed an average barrel-of-oil equivalent of 4,000 barrels per day. Days before the date the facility is placed in service shall not be taken into account in determining such average.

(B) Extension period to commence with unadjusted credit amount

For purposes of applying subsection (b)(2) to the $3 amount in subsection (a), in the case of fuels sold after 2005, subsection (d)(2)(B) shall be applied by substituting ''2004'' for ''1979''.

(C) Denial of double benefit

This subsection shall not apply to any facility producing qualified fuels for which a credit was allowed under this section for the taxable year or any preceding taxable year by reason of subsection (f).

(D) Nonapplication of phaseout

Subsection (b)(1) shall not apply.

(E) Coordination with section 45

No credit shall be allowed with respect to any qualified fuel which is steel industry fuel (as defined in section 45(c)(7)) if a credit is allowed to the taxpayer for such fuel under section 45.

(Added Pub. L. 96–223, title II, §231(a), Apr. 2, 1980, 94 Stat. 268, §44D; amended Pub. L. 97–34, title VI §611(a), Aug. 13, 1981, 95 Stat. 339; Pub. L. 97–354, §5(a)(1), Oct. 19, 1982, 96 Stat. 1692; Pub. L. 97–448, title II, §202(a), Jan. 12, 1983, 96 Stat. 2396; renumbered §29 and amended Pub. L. 98–369, div. A, title IV, §§471(c), 474(h), title VI, §612(e)(1), title VII, §722(d)(1), (2), July 18, 1984, 98 Stat. 826, 831, 912, 973; Pub. L. 99–514, title VII, §701(c)(3), title XVIII, §1879(c)(1), Oct. 22, 1986, 100 Stat. 2340, 2906; Pub. L. 100–647, title VI, §6302, Nov. 10, 1988, 102 Stat. 3755; Pub. L. 101–508, title XI, §§11501(a), (b)(1), (c)(1), 11813(b)(1), 11816, Nov. 5, 1990, 104 Stat. 1388–479, 1388–550, 1388–558; Pub. L. 102–486, title XIX, §1918, Oct. 24, 1992, 106 Stat. 3025; Pub. L. 104–188, title I, §§1205(d)(3), 1207(a), Aug. 20, 1996, 110 Stat. 1776; renumbered §45K and amended Pub. L. 109–58, title XIII, §§1321(a), 1322(a)(1), (3)(E), (F), (b), Aug. 8, 2005, 119 Stat. 1010–1012; Pub. L. 109–135, title IV, §§402(g), 412(*l*), Dec. 21, 2005, 119 Stat. 2611, 2637; Pub. L. 109–432, div. A, title II, §211(a), (b), Dec. 20, 2006, 120 Stat. 2947, 2948; Pub. L. 110–343, div. B, title I, §108(d)(2), Oct. 3, 2008, 122 Stat. 3821.)

INFLATION ADJUSTED ITEMS FOR CERTAIN TAX YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table below.

REFERENCES IN TEXT

Section 503 of the Natural Gas Policy Act of 1978 (as in effect before the repeal of such section), referred to in subsec. (c)(2)(A), was classified to section 3413 of Title 15, Commerce and Trade, prior to repeal by Pub. L. 101–60, §3(b)(5), July 26, 1989, 103 Stat. 159, effective Jan. 1, 1993.

Section 2(18) of the Natural Gas Policy Act of 1978, referred to in subsec. (c)(2)(B)(i), is classified to section 3301(18) of Title 15, Commerce and Trade.

The date of the enactment of this clause, and such date of enactment, referred to in subsec. (c)(2)(B), probably mean the date of enactment of Pub. L. 101–508, which amended subsec. (c)(2)(B) of this section generally, and which was approved Nov. 5, 1990.

AMENDMENTS

2008—Subsec. (g)(2)(E). Pub. L. 110–343 added subpar. (E).

2006—Subsec. (g)(1). Pub. L. 109–432, §211(b), inserted ''(other than from petroleum based products)'' after ''producing coke or coke gas'' in introductory provisions.

Subsec. (g)(2)(D). Pub. L. 109–432, §211(a), added subpar. (D).

2005—Pub. L. 109–58, §1322(a)(1), renumbered section 29 of this title as this section.

Subsec. (a). Pub. L. 109–135, §402(g), struck out ''if the taxpayer elects to have this section apply,'' after ''For purposes of section 38,'' in introductory provisions.

Pub. L. 109–58, §1322(a)(3)(E), substituted ''For purposes of section 38, if the taxpayer elects to have this section apply, the nonconventional source production credit determined under this section for the taxable year is'' for ''There shall be allowed as a credit against the tax imposed by this chapter for the taxable year'' in introductory provisions.

Subsec. (b)(6). Pub. L. 109–58, §1322(a)(3)(F), struck out heading and text of par. (6). Text read as follows: ''The credit allowed by subsection (a) for any taxable year shall not exceed the excess (if any) of—

''(A) the regular tax for the taxable year reduced by the sum of the credits allowable under subpart A and section 27, over

''(B) the tentative minimum tax for the taxable year.''

Subsec. (c)(2)(A). Pub. L. 109–58, §1322(b)(1)(A), inserted ''(as in effect before the repeal of such section)'' after ''1978''.

Subsecs. (e), (f). Pub. L. 109–58, §1322(b)(1)(B), redesignated subsecs. (f) and (g) as (e) and (f), respectively, and struck out former subsec. (e), which related to application of section with the Natural Gas Policy Act of 1978.

Subsec. (g). Pub. L. 109–135, §412(*l*)(1), substituted ''subsection (e)'' for ''subsection (f)'' in introductory provisions.

Pub. L. 109–58, §1322(b)(1)(B), redesignated subsec. (h) as (g).

Subsec. (g)(1)(A). Pub. L. 109–58, §1322(b)(2)(A), substituted ''subsection (e)(1)(B)'' for ''subsection (f)(1)(B)''.

Subsec. (g)(1)(B). Pub. L. 109–58, §1322(b)(2)(B), substituted ''subsection (e)'' for ''subsection (f)''.

Subsec. (g)(2)(C). Pub. L. 109–135, §412(*l*)(2), substituted ''subsection (f)'' for ''subsection (g)''.

Subsec. (h). Pub. L. 109–58, §1322(b)(1)(B), redesignated subsec. (h) as (g).

Pub. L. 109–58, §1321(a), added subsec. (h).

1996—Subsec. (b)(6)(A). Pub. L. 104–188, §1205(d)(3), substituted ''section 27'' for ''sections 27 and 28''.

Subsec. (g)(1)(A). Pub. L. 104–188, §1207(a), substituted ''July 1, 1998'' for ''January 1, 1997'' and ''January 1, 1997'' for ''January 1, 1996''.

1992—Subsec. (g). Pub. L. 102–486 added subsec. (g).

1990—Subsec. (b)(3)(A)(i)(III). Pub. L. 101–508, §11813(b)(1)(A), substituted ''section 48(a)(4)(C)'' for ''section 48(*l*)(11)(C)''.

Subsec. (b)(4). Pub. L. 101–508, §11813(b)(1)(B), substituted ''section 49(b) or 50(a)'' for ''section 47'' in two places.

Subsec. (b)(5), (6). Pub. L. 101–508, §11501(c)(1), added par. (5) and redesignated former par. (5) as (6).

Subsec. (c)(1)(B) to (E). Pub. L. 101–508, §11816(a), inserted ''and'' at end of subpar. (B), substituted a period for a comma at end of subpar. (C), and struck out subpar. (D) which related to qualifying processed wood fuels, and subpar. (E) which related to steam produced from solid agricultural byproducts (not including timber byproducts).

Subsec. (c)(2)(B). Pub. L. 101–508, §11501(b)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The term 'gas produced from a tight formation' shall only include—

''(i) gas the price of which is regulated by the United States, and

''(ii) gas for which the maximum lawful price applicable under the Natural Gas Policy Act of 1978 is at least 150 percent of the then applicable price under section 103 of such Act.''

Subsec. (c)(3). Pub. L. 101–508, §11813(b)(1)(C), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The term 'biomass' means any organic material which is an alternate substance (as defined in section 48(*l*)(3)(B)) other than coal (including lignite) or any product of such coal.''

Subsec. (c)(4). Pub. L. 101–508, §11816(b)(1), struck out par. (4) ''Qualifying processed wood fuel'' which read as follows:

''(A) IN GENERAL.—The term 'qualifying processed wood fuel' means any processed solid wood fuel (other than charcoal, fireplace products, or a product used for ornamental or recreational purposes) which has a Btu content per unit of volume or weight, determined without regard to any nonwood elements, which is at least 40 percent greater per unit of volume or weight than the Btu content of the wood from which it is produced (determined immediately before the processing).

''(B) ELECTION.—A taxpayer shall elect, at such time and in such manner as the Secretary by regulations may prescribe, as to whether Btu content per unit shall be determined for purposes of this paragraph on a volume or weight basis. Any such election—

''(i) shall apply to all production from a facility; and

''(ii) shall be effective for the taxable year with respect to which it is made and for all subsequent taxable years and, once made, may be revoked only with the consent of the Secretary.''

Subsec. (c)(5). Pub. L. 101–508, §11816(b)(1), struck out par. (5) ''Agricultural byproduct steam'' which read as follows: ''Steam produced from solid agricultural byproducts which is used by the taxpayer in his trade or business shall be treated as having been sold by the taxpayer to an unrelated person on the date on which it is used.''

Subsec. (d)(4). Pub. L. 101–508, §11816(b)(2), amended par. (4) generally, striking out ''Special rules applicable to'' before ''Gas'' in heading, redesignating former subpar. (A) as par. (4), striking out subpar. (B) which related to the reference price and application of phaseout for Devonian shale, and making minor changes in phraseology.

Subsec. (d)(5), (6). Pub. L. 101–508, §11816(b)(3), (4), redesignated par. (6) as (5), substituted ''subparagraph (C)'' for ''subparagraph (C), (D), or (E)'', and struck out former par. (5) which read as follows: ''In the case of a facility for the production of—

''(A) qualifying processed wood fuel, or

''(B) steam from solid agricultural byproducts,

paragraph (1) of subsection (b) shall not apply with respect to the amount of the credit allowable under subsection (a) for fuels sold during the 3-year period beginning on the date the facility is placed in service.''

Subsec. (d)(7) to (9). Pub. L. 101–508, §11816(b)(3), redesignated pars. (7) to (9) as (6) to (8), respectively.

Subsec. (f). Pub. L. 101–508, §11816(b)(5), amended subsec. (f) generally, redesignating former par. (1) as subsec. (f), making minor changes in phraseology, substituting par. (2) for former par. (1)(B) which read as follows: ''which are sold after December 31, 1979, and before January 1, 2003.'', and striking out former par. (2) which related to special rules applicable to qualified processed wood and solid agricultural byproduct steam.

Subsec. (f)(1)(A)(i), (ii). Pub. L. 101–508, §11501(a)(1), substituted ''1993'' for ''1991''.

Subsec. (f)(1)(B). Pub. L. 101–508, §11501(a)(2), substituted ''2003'' for ''2001''.

1988—Subsec. (f)(1)(A)(i), (ii). Pub. L. 100–647 substituted ''1991'' for ''1990''.

1986—Subsec. (b)(5). Pub. L. 99–514, §701(c)(3), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''The credit allowed by subsection (a) for a taxable year shall not exceed the taxpayer's tax liability for the taxable year (as defined in section 26(b)), reduced by the sum of the credits allowable under subpart A and sections 27 and 28.''

Subsec. (d)(8). Pub. L. 99–514, §1879(c)(1), inserted provision directing that a corporation which is a member of an affiliated group of corporations filing a consolidated return shall be treated as selling qualified fuels to an unrelated person if such fuels are sold to such person by another member of such group.

1984—Pub. L. 98–369, §471(c), renumbered section 44D of this title as this section.

Subsec. (b)(1)(A). Pub. L. 98–369, §722(d)(1), substituted ''in which the sale occurs'' for ''in which the taxable year begins''.

Subsec. (b)(2). Pub. L. 98–369, §722(d)(2), substituted ''in which the sale occurs'' for ''in which a taxable year begins''.

Subsec. (b)(5). Pub. L. 98–369, §612(e)(1), substituted ''section 26(b)'' for ''section 25(b)''.

Pub. L. 98–369, §474(h), amended par. (5) generally, substituting ''shall not exceed the taxpayer's tax liability for the taxable year (as defined in section 25(b)), reduced by the sum of the credits allowable under subpart A and sections 27 and 28'' for ''shall not exceed the tax imposed by this chapter for such taxable year, reduced by the sum of the credits allowable under a section of this subpart having a lower number or letter designation than this section, other than the credits allowable by sections 31, 39, and 43. For purposes of the preceding sentence, the term 'tax imposed by this chapter' shall not include any tax treated as not imposed by this chapter under the last sentence of section 53(a)''.

1983—Subsec. (f)(1)(B), (2)(A)(i). Pub. L. 97–448 substituted ''December 31, 1979'' for ''December 3, 1979''.

1982—Subsec. (d)(9). Pub. L. 97–354 substituted ''Passthru in the case of estates and trusts'' for ''Passthrough in the case of subchapter S corporations, etc.'' in par. heading, and substituted provisions relating to the applicability of rules similar to rules of subsec. (d) of section 52 for provisions relating to the applicability of rules similar to rules of subsecs. (d) and (e) of section 52.

1981—Subsec. (e). Pub. L. 97–34 substituted provisions respecting application with the Natural Gas Policy Act of 1978 for prior provision reading ''If the taxpayer makes an election under section 107(d) of the Natural Gas Policy Act of 1978 to have subsections (a) and (b) of section 107 of that Act, and subtitle B of title I of that Act, apply with respect to gas described in subsection (c)(1)(B)(i) produced from any well on a property, then the credit allowable by subsection (a) shall not be allowed with respect to any gas produced on that property.''

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–343 applicable to fuel produced and sold after Sept. 30, 2008, see section 108(e) of Pub. L. 110–343, set out as a note under section 45 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title II, § 211(c), Dec. 20, 2006, 120 Stat. 2948, provided that: ''The amendments made by this section [amending this section] shall take effect as if included in section 1321 of the Energy Policy Act of 2005 [Pub. L. 109–58].''

EFFECTIVE DATE OF 2005 AMENDMENTS

Amendment by section 402(g) of Pub. L. 109–135 effective as if included in the provision of the Energy Policy Act of 2005, Pub. L. 109–58, to which such amendment relates, see section 402(m)(1) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 36C of this title.

Pub. L. 109–58, title XIII, § 1321(b), Aug. 8, 2005, 119 Stat. 1011, provided that: ''The amendment made by this section [amending this section] shall apply to fuel produced and sold after December 31, 2005, in taxable years ending after such date.''

Pub. L. 109–58, title XIII, § 1322(c), Aug. 8, 2005, 119 Stat. 1012, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 30, 38, 43, 45, 45I, 53, 55, 613A, and 772 of this title and renumbering section 29 of this title as this section] shall apply to credits determined under the Internal Revenue Code of 1986 for taxable years ending after December 31, 2005.

''(2) SUBSECTION (b).—The amendments made by subsection (b) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 8, 2005].''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1205(e) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section and sections 30, 38, 39, 45C, 53, 55, and 280C of this title] shall apply to amounts paid or incurred in taxable years ending after June 30, 1996.''

Section 1207(b) of Pub. L. 104–188 provided that: ''The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 20, 1996].''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11501(b)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to gas produced after December 31, 1990.''

Section 11501(c)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1990.''

Section 11813(c) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 50 of this title and amending this section and sections 38, 42, 46 to 49, 52, 55, 108, 145, 147, 168, 170, 179, 196, 280F, 312, 465, 469, 861, 865, 1016, 1033, 1245, 1274A, 1371, 1388 and 1503 of this title] shall apply to property placed in service after December 31, 1990.

''(2) EXCEPTIONS.—The amendments made by this section shall not apply to—

''(A) any transition property (as defined in section 49(e) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act [Nov. 5, 1990]),

''(B) any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of such Code (as so in effect), and

''(C) any property described in section 46(b)(2)(C) of such Code (as so in effect).''

Section 11821(a) of Pub. L. 101–508 provided that: ''Except as otherwise provided in this part, the amendments made by this part [part I (§§ 11801–11821) of subtitle H of title XI of Pub. L. 101–508, see Tables for classification] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 701(c)(3) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

Section 1879(c)(2) of Pub. L. 99–514 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 231 of Public Law 96–223 [see Effective Date note below].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(h) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 612(e)(1) of Pub. L. 98–369 applicable to interest paid or accrued after Dec. 31, 1984, on indebtedness incurred after Dec. 31, 1984, see section 612(g) of Pub. L. 98–369, set out as an Effective Date note under section 25 of this title.

Section 722(d)(3) of Pub. L. 98–369 provided that: ''The amendments made by this subsection [amending this section] shall apply to taxable years ending after December 31, 1979.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Crude Oil Windfall Profit Tax Act of 1980, Pub. L. 96–223 to which such amendment relates, see section 203(a) of Pub. L. 97–448, set out as a note under section 6652 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 611(b) of Pub. L. 97–34 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years ending after December 31, 1979.''

EFFECTIVE DATE

Section 231(c) of Pub. L. 96–223 provided that: ''The amendments made by this section [enacting this section and amending section 6096 of this title] shall apply to taxable years ending after December 31, 1979.''

SAVINGS PROVISION

Section 11821(b) of Pub. L. 101–508 provided that: ''If—

''(1) any provision amended or repealed by this part [part I (§§ 11801–11821) of subtitle H of title XI of Pub. L. 101–508, see Tables for classification] applied to—

''(A) any transaction occurring before the date of the enactment of this Act [Nov. 5, 1990],

''(B) any property acquired before such date of enactment, or

''(C) any item of income, loss, deduction, or credit taken into account before such date of enactment, and

''(2) the treatment of such transaction, property, or item under such provision would (without regard to the amendments made by this part) affect liability for tax for periods ending after such date of enactment,

nothing in the amendments made by this part shall be construed to affect the treatment of such transaction, property, or item for purposes of determining liability for tax for periods ending after such date of enactment.''

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(c)(3) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

INFLATION ADJUSTED ITEMS FOR CERTAIN TAX YEARS

Provisions relating to inflation adjustment of items in this section for certain tax years were contained in the following:
2010—Internal Revenue Notice 2011–30.
2009—Internal Revenue Notice 2010–31.
2008—Internal Revenue Notice 2009–32.
2007—Internal Revenue Notice 2008–44.
2006—Internal Revenue Notice 2007–38.

§ 45L. New energy efficient home credit

(a) Allowance of credit

(1) In general

For purposes of section 38, in the case of an eligible contractor, the new energy efficient home credit for the taxable year is the applicable amount for each qualified new energy efficient home which is—

(A) constructed by the eligible contractor, and

(B) acquired by a person from such eligible contractor for use as a residence during the taxable year.

(2) Applicable amount

For purposes of paragraph (1), the applicable amount is an amount equal to—

(A) in the case of a dwelling unit described in paragraph (1) or (2) of subsection (c), $2,000, and

(B) in the case of a dwelling unit described in paragraph (3) of subsection (c), $1,000.

(b) Definitions

For purposes of this section—

(1) Eligible contractor

The term ''eligible contractor'' means—

(A) the person who constructed the qualified new energy efficient home, or

(B) in the case of a qualified new energy efficient home which is a manufactured home, the manufactured home producer of such home.

(2) Qualified new energy efficient home

The term ''qualified new energy efficient home'' means a dwelling unit—

(A) located in the United States,

(B) the construction of which is substantially completed after the date of the enactment of this section, and

(C) which meets the energy saving requirements of subsection (c).

(3) Construction

The term ''construction'' includes substantial reconstruction and rehabilitation.

(4) Acquire

The term ''acquire'' includes purchase.

(c) Energy saving requirements

A dwelling unit meets the energy saving requirements of this subsection if such unit is—

(1) certified—

(A) to have a level of annual heating and cooling energy consumption which is at least 50 percent below the annual level of heating and cooling energy consumption of a comparable dwelling unit—

(i) which is constructed in accordance with the standards of chapter 4 of the 2003 International Energy Conservation Code, as such Code (including supplements) is in effect on the date of the enactment of this section, and

(ii) for which the heating and cooling equipment efficiencies correspond to the minimum allowed under the regulations established by the Department of Energy pursuant to the National Appliance Energy Conservation Act of 1987 and in effect at the time of completion of construction, and

(B) to have building envelope component improvements account for at least ⅕ of such 50 percent,

(2) a manufactured home which conforms to Federal Manufactured Home Construction and Safety Standards (part 3280 of title 24, Code of Federal Regulations) and which meets the requirements of paragraph (1), or

(3) a manufactured home which conforms to Federal Manufactured Home Construction and Safety Standards (part 3280 of title 24, Code of Federal Regulations) and which—

(A) meets the requirements of paragraph (1) applied by substituting ''30 percent'' for ''50 percent'' both places it appears therein and by substituting ''⅓'' for ''⅕'' in subparagraph (B) thereof, or

(B) meets the requirements established by the Administrator of the Environmental Protection Agency under the Energy Star Labeled Homes program.

(d) Certification

(1) Method of certification

A certification described in subsection (c) shall be made in accordance with guidance prescribed by the Secretary, after consultation with the Secretary of Energy. Such guidance shall specify procedures and methods for calculating energy and cost savings.

(2) Form

Any certification described in subsection (c) shall be made in writing in a manner which

specifies in readily verifiable fashion the energy efficient building envelope components and energy efficient heating or cooling equipment installed and their respective rated energy efficiency performance.

(e) Basis adjustment

For purposes of this subtitle, if a credit is allowed under this section in connection with any expenditure for any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so determined.

(f) Coordination with investment credit

For purposes of this section, expenditures taken into account under section 47 or 48(a) shall not be taken into account under this section.

(g) Termination

This section shall not apply to any qualified new energy efficient home acquired after December 31, 2011.

(Added Pub. L. 109–58, title XIII, § 1332(a), Aug. 8, 2005, 119 Stat. 1024; amended Pub. L. 109–432, div. A, title II, § 205, Dec. 20, 2006, 120 Stat. 2945; Pub. L. 110–172, § 11(a)(7), Dec. 29, 2007, 121 Stat. 2485; Pub. L. 110–343, div. B, title III, § 304, Oct. 3, 2008, 122 Stat. 3845; Pub. L. 111–312, title VII, § 703(a), Dec. 17, 2010, 124 Stat. 3311.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsecs. (b)(2)(B) and (c)(1)(A)(i), is the date of enactment of Pub. L. 109–58, which was approved Aug. 8, 2005.

The National Appliance Energy Conservation Act of 1987, referred to in subsec. (c)(1)(A)(ii), is Pub. L. 100–12, Mar. 17, 1987, 101 Stat. 103. For complete classification of this Act to the Code, see Short Title of 1987 Amendment note set out under section 6201 of Title 42, The Public Health and Welfare, and Tables.

AMENDMENTS

2010—Subsec. (g). Pub. L. 111–312 substituted ''December 31, 2011'' for ''December 31, 2009''.

2008—Subsec. (g). Pub. L. 110–343 substituted ''December 31, 2009'' for ''December 31, 2008''.

2007—Subsec. (c)(2), (3). Pub. L. 110–172 substituted ''part 3280'' for ''section 3280'' in par. (2) and in introductory provisions of par. (3).

2006—Subsec. (g). Pub. L. 109–432 substituted ''2008'' for ''2007''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, § 703(b), Dec. 17, 2010, 124 Stat. 3311, provided that: ''The amendment made by this section [amending this section] shall apply to homes acquired after December 31, 2009.''

EFFECTIVE DATE

Section applicable to qualified new energy efficient homes acquired after Dec. 31, 2005, in taxable years ending after such date, see section 1332(f) of Pub. L. 109–58, set out as an Effective Date of 2005 Amendments note under section 38 of this title.

§ 45M. Energy efficient appliance credit

(a) General rule

(1) In general

For purposes of section 38, the energy efficient appliance credit determined under this section for any taxable year is an amount equal to the sum of the credit amounts determined under paragraph (2) for each type of qualified energy efficient appliance produced by the taxpayer during the calendar year ending with or within the taxable year.

(2) Credit amounts

The credit amount determined for any type of qualified energy efficient appliance is—

(A) the applicable amount determined under subsection (b) with respect to such type, multiplied by

(B) the eligible production for such type.

(b) Applicable amount

For purposes of subsection (a)—

(1) Dishwashers

The applicable amount is—

(A) $45 in the case of a dishwasher which is manufactured in calendar year 2008 or 2009 and which uses no more than 324 kilowatt hours per year and 5.8 gallons per cycle,

(B) $75 in the case of a dishwasher which is manufactured in calendar year 2008, 2009, or 2010 and which uses no more than 307 kilowatt hours per year and 5.0 gallons per cycle (5.5 gallons per cycle for dishwashers designed for greater than 12 place settings),

(C) $25 in the case of a dishwasher which is manufactured in calendar year 2011 and which uses no more than 307 kilowatt hours per year and 5.0 gallons per cycle (5.5 gallons per cycle for dishwashers designed for greater than 12 place settings),

(D) $50 in the case of a dishwasher which is manufactured in calendar year 2011 and which uses no more than 295 kilowatt hours per year and 4.25 gallons per cycle (4.75 gallons per cycle for dishwashers designed for greater than 12 place settings), and

(E) $75 in the case of a dishwasher which is manufactured in calendar year 2011 and which uses no more than 280 kilowatt hours per year and 4 gallons per cycle (4.5 gallons per cycle for dishwashers designed for greater than 12 place settings).

(2) Clothes washers

The applicable amount is—

(A) $75 in the case of a residential top-loading clothes washer manufactured in calendar year 2008 which meets or exceeds a 1.72 modified energy factor and does not exceed a 8.0 water consumption factor,

(B) $125 in the case of a residential top-loading clothes washer manufactured in calendar year 2008 or 2009 which meets or exceeds a 1.8 modified energy factor and does not exceed a 7.5 water consumption factor,

(C) $150 in the case of a residential or commercial clothes washer manufactured in calendar year 2008, 2009, or 2010 which meets or exceeds[1] 2.0 modified energy factor and does not exceed a 6.0 water consumption factor,

(D) $250 in the case of a residential or commercial clothes washer manufactured in calendar year 2008, 2009, or 2010 which meets or exceeds[1] 2.2 modified energy factor and does not exceed a 4.5 water consumption factor,

[1] So in original. Probably should be followed by ''a''.

(E) $175 in the case of a top-loading clothes washer manufactured in calendar year 2011 which meets or exceeds a 2.2 modified energy factor and does not exceed a 4.5 water consumption factor, and

(F) $225 in the case of a clothes washer manufactured in calendar year 2011—

(i) which is a top-loading clothes washer and which meets or exceeds a 2.4 modified energy factor and does not exceed a 4.2 water consumption factor, or

(ii) which is a front-loading clothes washer and which meets or exceeds a 2.8 modified energy factor and does not exceed a 3.5 water consumption factor.

(3) Refrigerators

The applicable amount is—

(A) $50 in the case of a refrigerator which is manufactured in calendar year 2008, and consumes at least 20 percent but not more than 22.9 percent less kilowatt hours per year than the 2001 energy conservation standards,

(B) $75 in the case of a refrigerator which is manufactured in calendar year 2008 or 2009, and consumes at least 23 percent but no more than 24.9 percent less kilowatt hours per year than the 2001 energy conservation standards,

(C) $100 in the case of a refrigerator which is manufactured in calendar year 2008, 2009, or 2010, and consumes at least 25 percent but not more than 29.9 percent less kilowatt hours per year than the 2001 energy conservation standards,

(D) $200 in the case of a refrigerator manufactured in calendar year 2008, 2009, or 2010 and which consumes at least 30 percent less energy than the 2001 energy conservation standards,

(E) $150 in the case of a refrigerator manufactured in calendar year 2011 which consumes at least 30 percent less energy than the 2001 energy conservation standards, and

(F) $200 in the case of a refrigerator manufactured in calendar year 2011 which consumes at least 35 percent less energy than the 2001 energy conservation standards.

(c) Eligible production

The eligible production in a calendar year with respect to each type of energy efficient appliance is the excess of—

(1) the number of appliances of such type which are produced by the taxpayer in the United States during such calendar year, over

(2) the average number of appliances of such type which were produced by the taxpayer (or any predecessor) in the United States during the preceding 2-calendar year period.

(d) Types of energy efficient appliance

For purposes of this section, the types of energy efficient appliances are—

(1) dishwashers described in subsection (b)(1),

(2) clothes washers described in subsection (b)(2), and

(3) refrigerators described in subsection (b)(3).

(e) Limitations

(1) Aggregate credit amount allowed

The aggregate amount of credit allowed under subsection (a) with respect to a taxpayer for any taxable year shall not exceed $25,000,000 reduced by the amount of the credit allowed under subsection (a) to the taxpayer (or any predecessor) for all prior taxable years beginning after December 31, 2010.

(2) Amount allowed for certain refrigerators and clothes washers

Refrigerators described in subsection (b)(3)(F) and clothes washers described in subsection (b)(2)(F) shall not be taken into account under paragraph (1).

(3) Limitation based on gross receipts

The credit allowed under subsection (a) with respect to a taxpayer for the taxable year shall not exceed an amount equal to 4 percent of the average annual gross receipts of the taxpayer for the 3 taxable years preceding the taxable year in which the credit is determined.

(4) Gross receipts

For purposes of this subsection, the rules of paragraphs (2) and (3) of section 448(c) shall apply.

(f) Definitions

For purposes of this section—

(1) Qualified energy efficient appliance

The term ''qualified energy efficient appliance'' means—

(A) any dishwasher described in subsection (b)(1),

(B) any clothes washer described in subsection (b)(2), and

(C) any refrigerator described in subsection (b)(3).

(2) Dishwasher

The term ''dishwasher'' means a residential dishwasher subject to the energy conservation standards established by the Department of Energy.

(3) Clothes washer

The term ''clothes washer'' means a residential model clothes washer, including a commercial residential style coin operated washer.

(4) Top-loading clothes washer

The term ''top-loading clothes washer'' means a clothes washer which has the clothes container compartment access located on the top of the machine and which operates on a vertical axis.

(5) Refrigerator

The term ''refrigerator'' means a residential model automatic defrost refrigerator-freezer which has an internal volume of at least 16.5 cubic feet.

(6) Modified energy factor

The term ''modified energy factor'' means the modified energy factor established by the Department of Energy for compliance with the Federal energy conservation standard.

(7) Produced

The term ''produced'' includes manufactured.

(8) 2001 energy conservation standard

The term ''2001 energy conservation standard'' means the energy conservation standards promulgated by the Department of Energy and effective July 1, 2001.

(9) Gallons per cycle

The term ''gallons per cycle'' means, with respect to a dishwasher, the amount of water, expressed in gallons, required to complete a normal cycle of a dishwasher.

(10) Water consumption factor

The term ''water consumption factor'' means, with respect to a clothes washer, the quotient of the total weighted per-cycle water consumption divided by the cubic foot (or liter) capacity of the clothes washer.

(g) Special rules

For purposes of this section—

(1) In general

Rules similar to the rules of subsections (c), (d), and (e) of section 52 shall apply.

(2) Controlled group

(A) In general

All persons treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (*o*) of section 414 shall be treated as a single producer.

(B) Inclusion of foreign corporations

For purposes of subparagraph (A), in applying subsections (a) and (b) of section 52 to this section, section 1563 shall be applied without regard to subsection (b)(2)(C) thereof.

(3) Verification

No amount shall be allowed as a credit under subsection (a) with respect to which the taxpayer has not submitted such information or certification as the Secretary, in consultation with the Secretary of Energy, determines necessary.

(Added Pub. L. 109–58, title XIII, §1334(a), Aug. 8, 2005, 119 Stat. 1030; amended Pub. L. 110–343, div. B, title III, §305(a)–(e), Oct. 3, 2008, 122 Stat. 3845–3847; Pub. L. 111–312, title VII, §709(a)–(d), Dec. 17, 2010, 124 Stat. 3312, 3313.)

AMENDMENTS

2010—Subsec. (b)(1)(C) to (E). Pub. L. 111–312, §709(a), added subpars. (C) to (E).

Subsec. (b)(2)(E), (F). Pub. L. 111–312, §709(b), added subpars. (E) and (F).

Subsec. (b)(3)(E), (F). Pub. L. 111–312, §709(c), added subpars. (E) and (F).

Subsec. (e)(1). Pub. L. 111–312, §709(d)(1), substituted ''$25,000,000'' for ''$75,000,000'' and ''December 31, 2010'' for ''December 31, 2007''.

Subsec. (e)(2). Pub. L. 111–312, §709(d)(2), substituted ''subsection (b)(3)(F)'' for ''subsection (b)(3)(D)'' and ''subsection (b)(2)(F)'' for ''subsection (b)(2)(D)''.

Subsec. (e)(3). Pub. L. 111–312, §709(d)(3), substituted ''4 percent'' for ''2 percent''.

2008—Subsec. (b). Pub. L. 110–343, §305(a), reenacted heading without change and amended text generally. Prior to amendment, subsec. (b) provided applicable credit amounts and energy savings amounts for dishwashers, clothes washers, and refrigerators.

Subsec. (c). Pub. L. 110–343, §305(b)(1), struck out par. (1) designation and heading, substituted ''The eligible'' for ''Except as provided in paragraphs (2), the eligible'', redesignated subpars. (A) and (B) of former par. (1) as pars. (1) and (2), respectively, and realigned margins, and struck out former par. (2) which provided a special rule for eligible production of refrigerators.

Subsec. (c)(2). Pub. L. 110–343, §305(b)(2), substituted ''2-calendar year'' for ''3-calendar year''.

Subsec. (d). Pub. L. 110–343, §305(c), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of this section, the types of energy efficient appliances are—

''(1) dishwashers described in subsection (b)(1)(A),

''(2) clothes washers described in subsection (b)(1)(B),

''(3) refrigerators described in subsection (b)(1)(C)(i),

''(4) refrigerators described in subsection (b)(1)(C)(ii), and

''(5) refrigerators described in subsection (b)(1)(C)(iii).''

Subsec. (e)(1). Pub. L. 110–343, §305(d)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The aggregate amount of credit allowed under subsection (a) with respect to a taxpayer for any taxable year shall not exceed $75,000,000 reduced by the amount of the credit allowed under subsection (a) to the taxpayer (or any predecessor) for all prior taxable years.''

Subsec. (e)(2). Pub. L. 110–343, §305(d)(2), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''In the case of refrigerators described in subsection (b)(1)(C)(i), the aggregate amount of the credit allowed under subsection (a) with respect to a taxpayer for any taxable year shall not exceed $20,000,000.''

Subsec. (f)(1). Pub. L. 110–343, §305(e)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'qualified energy efficient appliance' means—

''(A) any dishwasher described in subsection (b)(1)(A),

''(B) any clothes washer described in subsection (b)(1)(B), and

''(C) any refrigerator described in subsection (b)(1)(C).''

Subsec. (f)(3). Pub. L. 110–343, §305(e)(2), inserted ''commercial'' after ''including a''.

Subsec. (f)(4), (5). Pub. L. 110–343, §305(e)(3), added par. (4) and redesignated former par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (f)(6). Pub. L. 110–343, §305(e)(4), amended heading and text of par. (6) generally. Prior to amendment, text read as follows: ''The term 'EF' means the energy factor established by the Department of Energy for compliance with the Federal energy conservation standards.''

Pub. L. 110–343, §305(e)(3), redesignated par. (5) as (6). Former par. (6) redesignated (7).

Subsec. (f)(7), (8). Pub. L. 110–343, §305(e)(3), redesignated pars. (6) and (7) as (7) and (8), respectively.

Subsec. (f)(9), (10). Pub. L. 110–343, §305(e)(5), added pars. (9) and (10).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §709(e), Dec. 17, 2010, 124 Stat. 3314, provided that:

''(1) IN GENERAL.—The amendments made by subsections (a), (b), and (c) [amending this section] shall apply to appliances produced after December 31, 2010.

''(2) LIMITATIONS.—The amendments made by subsection (d) [amending this section] shall apply to taxable years beginning after December 31, 2010.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title III, §305(f), Oct. 3, 2008, 122 Stat. 3848, provided that: ''The amendments made by this section [amending this section] shall apply to appliances produced after December 31, 2007.''

EFFECTIVE DATE

Section applicable to appliances produced after Dec. 31, 2005, see section 1334(d) of Pub. L. 109–58, set out as

an Effective Date of 2005 Amendments note under section 38 of this title.

§ 45N. Mine rescue team training credit

(a) Amount of credit

For purposes of section 38, the mine rescue team training credit determined under this section with respect to each qualified mine rescue team employee of an eligible employer for any taxable year is an amount equal to the lesser of—

(1) 20 percent of the amount paid or incurred by the taxpayer during the taxable year with respect to the training program costs of such qualified mine rescue team employee (including wages of such employee while attending such program), or

(2) $10,000.

(b) Qualified mine rescue team employee

For purposes of this section, the term ''qualified mine rescue team employee'' means with respect to any taxable year any full-time employee of the taxpayer who is—

(1) a miner eligible for more than 6 months of such taxable year to serve as a mine rescue team member as a result of completing, at a minimum, an initial 20-hour course of instruction as prescribed by the Mine Safety and Health Administration's Office of Educational Policy and Development, or

(2) a miner eligible for more than 6 months of such taxable year to serve as a mine rescue team member by virtue of receiving at least 40 hours of refresher training in such instruction.

(c) Eligible employer

For purposes of this section, the term ''eligible employer'' means any taxpayer which employs individuals as miners in underground mines in the United States.

(d) Wages

For purposes of this section, the term ''wages'' has the meaning given to such term by subsection (b) of section 3306 (determined without regard to any dollar limitation contained in such section).

(e) Termination

This section shall not apply to taxable years beginning after December 31, 2011.

(Added Pub. L. 109–432, div. A, title IV, § 405(a), Dec. 20, 2006, 120 Stat. 2957; amended Pub. L. 110–343, div. C, title III, § 310, Oct. 3, 2008, 122 Stat. 3869; Pub. L. 111–312, title VII, § 735(a), Dec. 17, 2010, 124 Stat. 3318.)

AMENDMENTS

2010—Subsec. (e). Pub. L. 111–312 substituted ''December 31, 2011'' for ''December 31, 2009''.

2008—Subsec. (e). Pub. L. 110–343 substituted ''December 31, 2009'' for ''December 31, 2008''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, § 735(b), Dec. 17, 2010, 124 Stat. 3318, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009.''

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 2005, see section 405(e) of Pub. L. 109–432, set out as an Effective Date of 2006 Amendment note under section 38 of this title.

§ 45O. Agricultural chemicals security credit

(a) In general

For purposes of section 38, in the case of an eligible agricultural business, the agricultural chemicals security credit determined under this section for the taxable year is 30 percent of the qualified security expenditures for the taxable year.

(b) Facility limitation

The amount of the credit determined under subsection (a) with respect to any facility for any taxable year shall not exceed—

(1) $100,000, reduced by

(2) the aggregate amount of credits determined under subsection (a) with respect to such facility for the 5 prior taxable years.

(c) Annual limitation

The amount of the credit determined under subsection (a) with respect to any taxpayer for any taxable year shall not exceed $2,000,000.

(d) Qualified chemical security expenditure

For purposes of this section, the term ''qualified chemical security expenditure'' means, with respect to any eligible agricultural business for any taxable year, any amount paid or incurred by such business during such taxable year for—

(1) employee security training and background checks,

(2) limitation and prevention of access to controls of specified agricultural chemicals stored at the facility,

(3) tagging, locking tank valves, and chemical additives to prevent the theft of specified agricultural chemicals or to render such chemicals unfit for illegal use,

(4) protection of the perimeter of specified agricultural chemicals,

(5) installation of security lighting, cameras, recording equipment, and intrusion detection sensors,

(6) implementation of measures to increase computer or computer network security,

(7) conducting a security vulnerability assessment,

(8) implementing a site security plan, and

(9) such other measures for the protection of specified agricultural chemicals as the Secretary may identify in regulation.

Amounts described in the preceding sentence shall be taken into account only to the extent that such amounts are paid or incurred for the purpose of protecting specified agricultural chemicals.

(e) Eligible agricultural business

For purposes of this section, the term ''eligible agricultural business'' means any person in the trade or business of—

(1) selling agricultural products, including specified agricultural chemicals, at retail predominantly to farmers and ranchers, or

(2) manufacturing, formulating, distributing, or aerially applying specified agricultural chemicals.

(f) Specified agricultural chemical

For purposes of this section, the term ''specified agricultural chemical'' means—

(1) any fertilizer commonly used in agricultural operations which is listed under—

(A) section 302(a)(2) of the Emergency Planning and Community Right-to-Know Act of 1986,

(B) section 101 of part 172 of title 49, Code of Federal Regulations, or

(C) part 126, 127, or 154 of title 33, Code of Federal Regulations, and

(2) any pesticide (as defined in section 2(u) of the Federal Insecticide, Fungicide, and Rodenticide Act), including all active and inert ingredients thereof, which is customarily used on crops grown for food, feed, or fiber.

(g) Controlled groups

Rules similar to the rules of paragraphs (1) and (2) of section 41(f) shall apply for purposes of this section.

(h) Regulations

The Secretary may prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations which—

(1) provide for the proper treatment of amounts which are paid or incurred for purpose of protecting any specified agricultural chemical and for other purposes, and

(2) provide for the treatment of related properties as one facility for purposes of subsection (b).

(i) Termination

This section shall not apply to any amount paid or incurred after December 31, 2012.

(Added Pub. L. 110–234, title XV, § 15343(a), May 22, 2008, 122 Stat. 1518, and Pub. L. 110–246, § 4(a), title XV, § 15343(a), June 18, 2008, 122 Stat. 1664, 2280.)

REFERENCES IN TEXT

Section 302(a)(2) of the Emergency Planning and Community Right-to-Know Act of 1986, referred to in subsec. (f)(1)(A), is classified to section 11002(a)(2) of Title 42, The Public Health and Welfare.

Section 2(u) of the Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (f)(2), is classified to section 136(u) of Title 7, Agriculture.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.

Section applicable to amounts paid or incurred after June 18, 2008, see section 15343(e) of Pub. L. 110–246, set out as an Effective Date of 2008 Amendment note under section 38 of this title.

§ 45P. Employer wage credit for employees who are active duty members of the uniformed services

(a) General rule

For purposes of section 38, in the case of an eligible small business employer, the differential wage payment credit for any taxable year is an amount equal to 20 percent of the sum of the eligible differential wage payments for each of the qualified employees of the taxpayer during such taxable year.

(b) Definitions

For purposes of this section—

(1) Eligible differential wage payments

The term ''eligible differential wage payments'' means, with respect to each qualified employee, so much of the differential wage payments (as defined in section 3401(h)(2)) paid to such employee for the taxable year as does not exceed $20,000.

(2) Qualified employee

The term ''qualified employee'' means a person who has been an employee of the taxpayer for the 91-day period immediately preceding the period for which any differential wage payment is made.

(3) Eligible small business employer

(A) In general

The term ''eligible small business employer'' means, with respect to any taxable year, any employer which—

(i) employed an average of less than 50 employees on business days during such taxable year, and

(ii) under a written plan of the employer, provides eligible differential wage payments to every qualified employee of the employer.

(B) Controlled groups

For purposes of subparagraph (A), all persons treated as a single employer under subsection (b), (c), (m), or (*o*) of section 414 shall be treated as a single employer.

(c) Coordination with other credits

The amount of credit otherwise allowable under this chapter with respect to compensation paid to any employee shall be reduced by the credit determined under this section with respect to such employee.

(d) Disallowance for failure to comply with employment or reemployment rights of members of the reserve components of the Armed Forces of the United States

No credit shall be allowed under subsection (a) to a taxpayer for—

(1) any taxable year, beginning after the date of the enactment of this section, in which the taxpayer is under a final order, judgment, or other process issued or required by a district court of the United States under section 4323 of title 38 of the United States Code with respect to a violation of chapter 43 of such title, and

(2) the 2 succeeding taxable years.

(e) Certain rules to apply

For purposes of this section, rules similar to the rules of subsections (c), (d), and (e) of section 52 shall apply.

(f) Termination

This section shall not apply to any payments made after December 31, 2011.

(Added Pub. L. 110–245, title I, § 111(a), June 17, 2008, 122 Stat. 1634; amended Pub. L. 111–312, title VII, § 736(a), Dec. 17, 2010, 124 Stat. 3318.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (d)(1), is the date of the enactment of Pub. L. 110–245, which was approved June 17, 2008.

AMENDMENTS

2010—Subsec. (f). Pub. L. 111–312 substituted ''December 31, 2011'' for ''December 31, 2009''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §736(b), Dec. 17, 2010, 124 Stat. 3318, provided that: ''The amendment made by this section [amending this section] shall apply to payments made after December 31, 2009.''

EFFECTIVE DATE

Section applicable to amounts paid after June 17, 2008, see section 111(e) of Pub. L. 110–245, set out as an Effective Date of 2008 Amendment note under section 38 of this title.

§ 45Q. Credit for carbon dioxide sequestration

(a) General rule

For purposes of section 38, the carbon dioxide sequestration credit for any taxable year is an amount equal to the sum of—

(1) $20 per metric ton of qualified carbon dioxide which is—

(A) captured by the taxpayer at a qualified facility, and

(B) disposed of by the taxpayer in secure geological storage and not used by the taxpayer as described in paragraph (2)(B), and

(2) $10 per metric ton of qualified carbon dioxide which is—

(A) captured by the taxpayer at a qualified facility,

(B) used by the taxpayer as a tertiary injectant in a qualified enhanced oil or natural gas recovery project, and

(C) disposed of by the taxpayer in secure geological storage.

(b) Qualified carbon dioxide

For purposes of this section—

(1) In general

The term ''qualified carbon dioxide'' means carbon dioxide captured from an industrial source which—

(A) would otherwise be released into the atmosphere as industrial emission of greenhouse gas, and

(B) is measured at the source of capture and verified at the point of disposal or injection.

(2) Recycled carbon dioxide

The term ''qualified carbon dioxide'' includes the initial deposit of captured carbon dioxide used as a tertiary injectant. Such term does not include carbon dioxide that is re-captured, recycled, and re-injected as part of the enhanced oil and natural gas recovery process.

(c) Qualified facility

For purposes of this section, the term ''qualified facility'' means any industrial facility—

(1) which is owned by the taxpayer,

(2) at which carbon capture equipment is placed in service, and

(3) which captures not less than 500,000 metric tons of carbon dioxide during the taxable year.

(d) Special rules and other definitions

For purposes of this section—

(1) Only carbon dioxide captured and disposed of or used within the United States taken into account

The credit under this section shall apply only with respect to qualified carbon dioxide the capture and disposal or use of which is within—

(A) the United States (within the meaning of section 638(1)), or

(B) a possession of the United States (within the meaning of section 638(2)).

(2) Secure geological storage

The Secretary, in consultation with the Administrator of the Environmental Protection Agency[1] the Secretary of Energy, and the Secretary of the Interior,,[2] shall establish regulations for determining adequate security measures for the geological storage of carbon dioxide under paragraph (1)(B) or (2)(C) of subsection (a) such that the carbon dioxide does not escape into the atmosphere. Such term shall include storage at deep saline formations, oil and gas reservoirs, and unminable coal seams under such conditions as the Secretary may determine under such regulations.

(3) Tertiary injectant

The term ''tertiary injectant'' has the same meaning as when used within section 193(b)(1).

(4) Qualified enhanced oil or natural gas recovery project

The term ''qualified enhanced oil or natural gas recovery project'' has the meaning given the term ''qualified enhanced oil recovery project'' by section 43(c)(2), by substituting ''crude oil or natural gas'' for ''crude oil'' in subparagraph (A)(i) thereof.

(5) Credit attributable to taxpayer

Any credit under this section shall be attributable to the person that captures and physically or contractually ensures the disposal of or the use as a tertiary injectant of the qualified carbon dioxide, except to the extent provided in regulations prescribed by the Secretary.

(6) Recapture

The Secretary shall, by regulations, provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any qualified carbon dioxide which ceases to be captured, disposed of, or used as a tertiary injectant in a manner consistent with the requirements of this section.

(7) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 2009, there shall be substituted for each dollar amount contained in subsection (a) an amount equal to the product of—

(A) such dollar amount, multiplied by

(B) the inflation adjustment factor for such calendar year determined under section

[1] So in original. A comma probably should appear.

[2] So in original.

43(b)(3)(B) for such calendar year, determined by substituting ''2008'' for ''1990''.

(e) Application of section

The credit under this section shall apply with respect to qualified carbon dioxide before the end of the calendar year in which the Secretary, in consultation with the Administrator of the Environmental Protection Agency, certifies that 75,000,000 metric tons of qualified carbon dioxide have been taken into account in accordance with subsection (a).

(Added Pub. L. 110–343, div. B, title I, §115(a), Oct. 3, 2008, 122 Stat. 3829; amended Pub. L. 111–5, div. B, title I, §1131(a), (b), Feb. 17, 2009, 123 Stat. 325.)

INFLATION ADJUSTED ITEMS FOR CERTAIN TAX YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table below.

AMENDMENTS

2009—Subsec. (a)(1)(B). Pub. L. 111–5, §1131(b)(2), inserted ''and not used by the taxpayer as described in paragraph (2)(B)'' after ''storage''.

Subsec. (a)(2)(C). Pub. L. 111–5, §1131(a), added subpar. (C).

Subsec. (d)(2). Pub. L. 111–5, §1131(b)(1), inserted ''the Secretary of Energy, and the Secretary of the Interior,'' after ''Environmental Protection Agency'' and substituted ''paragraph (1)(B) or (2)(C) of subsection (a)'' for ''subsection (a)(1)(B)'' and '', oil and gas reservoirs, and unminable coal seams'' for ''and unminable coal seems''.

Subsec. (e). Pub. L. 111–5, §1131(b)(3), substituted ''taken into account in accordance with subsection (a)'' for ''captured and disposed of or used as a tertiary injectant''.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1131(c), Feb. 17, 2009, 123 Stat. 325, provided that: ''The amendments made by this section [amending this section] shall apply to carbon dioxide captured after the date of the enactment of this Act [Feb. 17, 2009].''

EFFECTIVE DATE

Section applicable to carbon dioxide captured after Oct. 3, 2008, see section 115(d) of Pub. L. 110–343, set out as an Effective Date of 2008 Amendment note under section 38 of this title.

INFLATION ADJUSTED ITEMS FOR CERTAIN TAX YEARS

Provisions relating to inflation adjustment of items in this section for certain tax years were contained in the following:

2010—Internal Revenue Notice 2010–75.

§ 45R. Employee health insurance expenses of small employers

(a) General rule

For purposes of section 38, in the case of an eligible small employer, the small employer health insurance credit determined under this section for any taxable year in the credit period is the amount determined under subsection (b).

(b) Health insurance credit amount

Subject to subsection (c), the amount determined under this subsection with respect to any eligible small employer is equal to 50 percent (35 percent in the case of a tax-exempt eligible small employer) of the lesser of—

(1) the aggregate amount of nonelective contributions the employer made on behalf of its employees during the taxable year under the arrangement described in subsection (d)(4) for premiums for qualified health plans offered by the employer to its employees through an Exchange, or

(2) the aggregate amount of nonelective contributions which the employer would have made during the taxable year under the arrangement if each employee taken into account under paragraph (1) had enrolled in a qualified health plan which had a premium equal to the average premium (as determined by the Secretary of Health and Human Services) for the small group market in the rating area in which the employee enrolls for coverage.

(c) Phaseout of credit amount based on number of employees and average wages

The amount of the credit determined under subsection (b) without regard to this subsection shall be reduced (but not below zero) by the sum of the following amounts:

(1) Such amount multiplied by a fraction the numerator of which is the total number of full-time equivalent employees of the employer in excess of 10 and the denominator of which is 15.

(2) Such amount multiplied by a fraction the numerator of which is the average annual wages of the employer in excess of the dollar amount in effect under subsection (d)(3)(B) and the denominator of which is such dollar amount.

(d) Eligible small employer

For purposes of this section—

(1) In general

The term ''eligible small employer'' means, with respect to any taxable year, an employer—

(A) which has no more than 25 full-time equivalent employees for the taxable year,

(B) the average annual wages of which do not exceed an amount equal to twice the dollar amount in effect under paragraph (3)(B) for the taxable year, and

(C) which has in effect an arrangement described in paragraph (4).

(2) Full-time equivalent employees

(A) In general

The term ''full-time equivalent employees'' means a number of employees equal to the number determined by dividing—

(i) the total number of hours of service for which wages were paid by the employer to employees during the taxable year, by

(ii) 2,080.

Such number shall be rounded to the next lowest whole number if not otherwise a whole number.

(B) Excess hours not counted

If an employee works in excess of 2,080 hours of service during any taxable year, such excess shall not be taken into account under subparagraph (A).

(C) Hours of service

The Secretary, in consultation with the Secretary of Labor, shall prescribe such reg-

ulations, rules, and guidance as may be necessary to determine the hours of service of an employee, including rules for the application of this paragraph to employees who are not compensated on an hourly basis.

(3) Average annual wages

(A) In general

The average annual wages of an eligible small employer for any taxable year is the amount determined by dividing—

(i) the aggregate amount of wages which were paid by the employer to employees during the taxable year, by

(ii) the number of full-time equivalent employees of the employee determined under paragraph (2) for the taxable year.

Such amount shall be rounded to the next lowest multiple of $1,000 if not otherwise such a multiple.

(B) Dollar amount

For purposes of paragraph (1)(B) and subsection (c)(2)—

(i) 2010, 2011, 2012, and 2013

The dollar amount in effect under this paragraph for taxable years beginning in 2010, 2011, 2012, or 2013 is $25,000.

(ii) Subsequent years

In the case of a taxable year beginning in a calendar year after 2013, the dollar amount in effect under this paragraph shall be equal to $25,000, multiplied by the cost-of-living adjustment under section 1(f)(3) for the calendar year, determined by substituting ''calendar year 2012'' for ''calendar year 1992'' in subparagraph (B) thereof.

(4) Contribution arrangement

An arrangement is described in this paragraph if it requires an eligible small employer to make a nonelective contribution on behalf of each employee who enrolls in a qualified health plan offered to employees by the employer through an exchange in an amount equal to a uniform percentage (not less than 50 percent) of the premium cost of the qualified health plan.

(5) Seasonal worker hours and wages not counted

For purposes of this subsection—

(A) In general

The number of hours of service worked by, and wages paid to, a seasonal worker of an employer shall not be taken into account in determining the full-time equivalent employees and average annual wages of the employer unless the worker works for the employer on more than 120 days during the taxable year.

(B) Definition of seasonal worker

The term ''seasonal worker'' means a worker who performs labor or services on a seasonal basis as defined by the Secretary of Labor, including workers covered by section 500.20(s)(1) of title 29, Code of Federal Regulations and retail workers employed exclusively during holiday seasons.

(e) Other rules and definitions

For purposes of this section—

(1) Employee

(A) Certain employees excluded

The term ''employee'' shall not include—

(i) an employee within the meaning of section 401(c)(1),

(ii) any 2-percent shareholder (as defined in section 1372(b)) of an eligible small business which is an S corporation,

(iii) any 5-percent owner (as defined in section 416(i)(1)(B)(i)) of an eligible small business, or

(iv) any individual who bears any of the relationships described in subparagraphs (A) through (G) of section 152(d)(2) to, or is a dependent described in section 152(d)(2)(H) of, an individual described in clause (i), (ii), or (iii).

(B) Leased employees

The term ''employee'' shall include a leased employee within the meaning of section 414(n).

(2) Credit period

The term ''credit period'' means, with respect to any eligible small employer, the 2-consecutive-taxable year period beginning with the 1st taxable year in which the employer (or any predecessor) offers 1 or more qualified health plans to its employees through an Exchange.

(3) Nonelective contribution

The term ''nonelective contribution'' means an employer contribution other than an employer contribution pursuant to a salary reduction arrangement.

(4) Wages

The term ''wages'' has the meaning given such term by section 3121(a) (determined without regard to any dollar limitation contained in such section).

(5) Aggregation and other rules made applicable

(A) Aggregation rules

All employers treated as a single employer under subsection (b), (c), (m), or (*o*) of section 414 shall be treated as a single employer for purposes of this section.

(B) Other rules

Rules similar to the rules of subsections (c), (d), and (e) of section 52 shall apply.

(f) Credit made available to tax-exempt eligible small employers

(1) In general

In the case of a tax-exempt eligible small employer, there shall be treated as a credit allowable under subpart C (and not allowable under this subpart) the lesser of—

(A) the amount of the credit determined under this section with respect to such employer, or

(B) the amount of the payroll taxes of the employer during the calendar year in which the taxable year begins.

(2) Tax-exempt eligible small employer

For purposes of this section, the term ''tax-exempt eligible small employer'' means an eligible small employer which is any organization described in section 501(c) which is exempt from taxation under section 501(a).

(3) Payroll taxes

For purposes of this subsection—

(A) In general

The term ''payroll taxes'' means—

(i) amounts required to be withheld from the employees of the tax-exempt eligible small employer under section 3401(a),

(ii) amounts required to be withheld from such employees under section 3101(b), and

(iii) amounts of the taxes imposed on the tax-exempt eligible small employer under section 3111(b).

(B) Special rule

A rule similar to the rule of section 24(d)(2)(C) shall apply for purposes of subparagraph (A).

(g) Application of section for calendar years 2010, 2011, 2012, and 2013

In the case of any taxable year beginning in 2010, 2011, 2012, or 2013, the following modifications to this section shall apply in determining the amount of the credit under subsection (a):

(1) No credit period required

The credit shall be determined without regard to whether the taxable year is in a credit period and for purposes of applying this section to taxable years beginning after 2013, no credit period shall be treated as beginning with a taxable year beginning before 2014.

(2) Amount of credit

The amount of the credit determined under subsection (b) shall be determined—

(A) by substituting ''35 percent (25 percent in the case of a tax-exempt eligible small employer)'' for ''50 percent (35 percent in the case of a tax-exempt eligible small employer)'',

(B) by reference to an eligible small employer's nonelective contributions for premiums paid for health insurance coverage (within the meaning of section 9832(b)(1)) of an employee, and

(C) by substituting for the average premium determined under subsection (b)(2) the amount the Secretary of Health and Human Services determines is the average premium for the small group market in the State in which the employer is offering health insurance coverage (or for such area within the State as is specified by the Secretary).

(3) Contribution arrangement

An arrangement shall not fail to meet the requirements of subsection (d)(4) solely because it provides for the offering of insurance outside of an Exchange.

(h) Insurance definitions

Any term used in this section which is also used in the Public Health Service Act or subtitle A of title I of the Patient Protection and Affordable Care Act shall have the meaning given such term by such Act or subtitle.

(i) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section, including regulations to prevent the avoidance of the 2-year limit on the credit period through the use of successor entities and the avoidance of the limitations under subsection (c) through the use of multiple entities.

(Added and amended Pub. L. 111–148, title I, § 1421(a), title X, § 10105(e)(1), (2), Mar. 23, 2010, 124 Stat. 237, 906.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (h), is act July 1, 1944, ch. 373, 58 Stat. 682, which is classified generally to chapter 6A (§ 201 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

The Patient Protection and Affordable Care Act, referred to in subsec. (h), is Pub. L. 111–148, Mar. 23, 2010, 124 Stat. 119. Subtitle A (§§ 1001 to 1004) of title I of the Act enacted sections 300gg–11 to 300gg–19, 300gg–93, and 300gg–94 of Title 42, The Public Health and Welfare, redesignated sections 300gg–4 to 300gg–7 of Title 42 as sections 300gg–25 to 300gg–28, respectively, of Title 42, and section 300gg–13 of Title 42 as section 300gg–9 of Title 42, amended former sections 300gg–11 and 300gg–12 and sections 300gg–21 to 300gg–23 of Title 42, and enacted provisions set out as a note under section 300gg–11 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 18001 of Title 42 and Tables.

AMENDMENTS

2010—Subsec. (d)(3)(B). Pub. L. 111–148, § 10105(e)(1), amended subpar. (B) generally, including dollar amount for taxable years beginning in 2010 in addition to dollar amounts for taxable years beginning in 2011, 2012, and 2013, and subsequent years.

Subsec. (g). Pub. L. 111–148, § 10105(e)(2), substituted ''2010, 2011'' for ''2011'' in heading and in introductory provisions.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title X, § 10105(e)(5), Mar. 23, 2010, 124 Stat. 907, provided that: ''The amendments made by this subsection [amending this section, section 280C of this title, and provisions set out as a note under section 38 of this title] shall take effect as if included in the enactment of section 1421 of this Act.''

EFFECTIVE DATE

Section applicable to amounts paid or incurred in taxable years beginning after Dec. 31, 2009, see section 1421(f)(1) of Pub. L. 111–148, set out as an Effective Date of 2010 Amendment note under section 38 of this title.

SUBPART E—RULES FOR COMPUTING INVESTMENT CREDIT

Sec.

46. Amount of credit.
47. Rehabilitation credit.
48. Energy credit.
48A. Qualifying advanced coal project credit.
48B. Qualifying gasification project credit.
48C. Qualifying advanced energy project credit.
48D. Qualifying therapeutic discovery project credit.
49. At-risk rules.
50. Other special rules.
[50A, 50B. Repealed.]

Sec.

AMENDMENTS

2010—Pub. L. 111–148, title IX, §9023(d), Mar. 23, 2010, 124 Stat. 881, added item 48D.

2009—Pub. L. 111–5, div. B, title I, §1302(c)(2), Feb. 17, 2009, 123 Stat. 348, added item 48C.

2005—Pub. L. 109–58, title XIII, §1307(c)(2), Aug. 8, 2005, 119 Stat. 1006, added items 48A and 48B.

2004—Pub. L. 108–357, title III, §322(d)(2)(C), Oct. 22, 2004, 118 Stat. 1475, which directed amendment of item 48 by striking out '', reforestation credit'', was executed by striking out ''; reforestation credit'' after ''Energy credit'' to reflect the probable intent of Congress.

1990—Pub. L. 101–508, title XI, §11813(a), Nov. 5, 1990, 104 Stat. 1388–536, amended heading and analysis generally, substituting in heading ''Investment Credit'' for ''Credit for Investment in Certain Depreciable Property'', in item 47 ''Rehabilitation Credit'' for ''Certain dispositions, etc., of section 38 property'', in item 48 ''Energy credit; reforestation credit'' for ''Definitions; special rules'', in item 49 ''At-risk rules'' for ''Termination of regular percentage'', and adding item 50.

1986—Pub. L. 99–514, title II, §211(c), Oct. 22, 1986, 100 Stat. 2168, added item 49.

1984—Pub. L. 98–369, div. A, title IV, §474(n)(1), July 18, 1984, 98 Stat. 833, substituted ''E'' for ''B'' as subpart designation.

1978—Pub. L. 95–600, title III, §312(c)(5), Nov. 6, 1978, 92 Stat. 2826, struck out item 49 ''Termination for period beginning April 19, 1969, and ending during 1971'' and item 50 ''Restoration of credit''.

1971—Pub. L. 92–178, title I, §101(b)(5), Dec. 10, 1971, 85 Stat. 499, substituted ''Termination for period beginning April 19, 1969, and ending during 1971'' for ''Termination of credit'' in item 49 and added item 50.

1969—Pub. L. 91–172, title VII, §703(d), Dec. 30, 1969, 83 Stat. 667, added item 49.

1962—Pub. L. 87–834, §2(b), Oct. 16, 1962, 76 Stat. 963, added subpart B.

§ 46. Amount of credit

For purposes of section 38, the amount of the investment credit determined under this section for any taxable year shall be the sum of—

(1) the rehabilitation credit,

(2) the energy credit,

(3) the qualifying advanced coal project credit,

(4) the qualifying gasification project credit[1]

(5) the qualifying advanced energy project credit, and

(6) the qualifying therapeutic discovery project credit.

(Added Pub. L. 87–834, §2(b), Oct. 16, 1962, 76 Stat. 963; amended Pub. L. 88–272, title II, §201(d)(4), Feb. 26, 1964, 78 Stat. 32; Pub. L. 89–384, §1(c)(1), Apr. 8, 1966, 80 Stat. 102; Pub. L. 89–389, §2(b)(5), Apr. 14, 1966, 80 Stat. 114; Pub. L. 89–800, §3, Nov. 8, 1966, 80 Stat. 1514; Pub. L. 90–225, §2(a), Dec. 27, 1967, 81 Stat. 731; Pub. L. 91–172, title III, §301(b)(4), title IV, §401(e)(1), title VII, §703(b), Dec. 30, 1969, 83 Stat. 585, 603, 666; Pub. L. 92–178, title I, §§102(a)(1), (b), 105(a)–(c), 106(a)–(c), 107(a)(1), 108(a), Dec. 10, 1971, 85 Stat. 499, 503, 506, 507; Pub. L. 93–406, title II, §§2001(g)(2)(B), 2002(g)(2), 2005(c)(4), Sept. 2, 1974, 88 Stat. 957, 968, 991; Pub. L. 94–12, title III, §301(a), (b)(1)–(3), 302(a), (b)(1), Mar. 29, 1975, 89 Stat. 36, 37, 40, 43; Pub. L. 94–455, title V, §503(b)(4), title VIII, §§802(a), (b)(1)–(5), 803(a), (b)(1), 805(a), title XVI, §1607(b)(1)(B), title XVII, §§1701(b), 1703, title XIX, §§1901(a)(4), (b)(1)(C), 1906(b)(13)(A), title XXI, §2112(a)(2), Oct. 4, 1976, 90 Stat. 1562, 1580–1583, 1596, 1756, 1759, 1761, 1764, 1790, 1834, 1905; Pub. L. 95–600, title I, §141(e), (f)(2), title III, §§311(a), (c), 312(a), (b), (c)(2), 313(a), 316(a), (b)(1), (2), title VII, §703(a)(1), (2), (j)(9), Nov. 6, 1978, 92 Stat. 2794, 2795, 2824–2826, 2829, 2939, 2941; Pub. L. 95–618, title II, §241(a), title III, §301(a), (c)(1), Nov. 9, 1978, 92 Stat. 3192, 3194, 3199; Pub. L. 96–222, title I, §§101(a)(7)(A), (L)(iii)(I), (v)(I), (M)(i), 103(a)(2)(A), (B)(i)–(iii), (3), (4)(A), 107(a)(3)(A), Apr. 1, 1980, 94 Stat. 197, 200, 201, 208, 209, 223; Pub. L. 96–223, title II, §§221(a), 222(e)(2), 223(b)(1), Apr. 2, 1980, 94 Stat. 260, 263, 266; Pub. L. 97–34, title II, §§207(c)(1), 211(a)(1), (b), (d), (e)(1), (2), (f)(1), 212(a)(1), (2), title III, §§302(c)(3), (d)(1), 332(a), Aug. 13, 1981, 95 Stat. 225, 227–229, 235, 236, 272, 274, 296; Pub. L. 97–248, title II, §201(d)(8)(A), formerly §201(c)(8)(A), §§205(b), 265(b)(2)(A)(i), Sept. 3, 1982, 96 Stat. 420, 430, 547, renumbered §201(d)(8)(A), Pub. L. 97–448, title III, §306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 97–354, §5(a)(4)–(6), Oct. 19, 1982, 96 Stat. 1692; Pub. L. 97–424, title V, §§541(b), 546(b), Jan. 6, 1983, 96 Stat. 2192, 2199; Pub. L. 97–448, title I, §102(e)(1), (f)(5), title II, §202(f), Jan. 12, 1983, 96 Stat. 2370, 2372, 2396; Pub. L. 98–21, title I, §122(c)(1), Apr. 20, 1983, 97 Stat. 87; Pub. L. 98–369, div. A, title I, §§16(a), 31(f), 113(b)(2)(B), title IV, §§431(a), (b)(1), (d)(1)–(3), 474(*o*)(1)–(7), title VII, §713(c)(1)(C), July 18, 1984, 98 Stat. 505, 521, 637, 805, 807, 810, 834–836, 957; Pub. L. 99–514, title II, §§201(d)(7)(B), 251(a), title IV, §421(a), (b), title XVIII, §§1802(a)(6), (8), 1844(a), (b)(3), (5), 1847(b)(11), 1848(a), Oct. 22, 1986, 100 Stat. 2141, 2183, 2229, 2789, 2855, 2857; Pub. L. 100–647, title I, §§1002(a)(4), (15), (17), (25), 1009(a)(1), 1013(a)(44), title IV, §4006, Nov. 10, 1988, 102 Stat. 3353, 3355, 3356, 3445, 3545, 3652; Pub. L. 101–239, title VII, §§7106, 7814(d), Dec. 19, 1989, 103 Stat. 2306, 2413; Pub. L. 101–508, title XI, §§11406, 11813(a), Nov. 5, 1990, 104 Stat. 1388–474, 1388–536; Pub. L. 108–357, title III, §322(d)(1), Oct. 22, 2004, 118 Stat. 1475; Pub. L. 109–58, title XIII, §1307(a), Aug. 8, 2005, 119 Stat. 999; Pub. L. 111–5, div. B, title I, §1302(a), Feb. 17, 2009, 123 Stat. 345; Pub. L. 111–148, title IX, §9023(b), Mar. 23, 2010, 124 Stat. 880.)

AMENDMENTS

2010—Par. (2). Pub. L. 111–148, §9023(b)(1), inserted a comma at end.

Par. (6). Pub. L. 111–148, §9023(b)(2), (3), added par. (6).

2009—Par. (5). Pub. L. 111–5 added par. (5).

2005—Pub. L. 109–58 struck out ''and'' at end of par. (1), struck out period at end of par. (2), and added pars. (3) and (4).

2004—Pub. L. 108–357 inserted ''and'' at end of par. (1), substituted a period for '', and'' at end of par. (2), and struck out par. (3) which read as follows: ''the reforestation credit.''

1990—Pub. L. 101–508, §11813(a), amended section generally, substituting present provisions for provisions relating to amount of investment credit, determination of percentages, qualified investments and qualified progress expenditures, limitations with respect to certain persons, a limitation in the case of certain regulated companies, a 50 percent credit in the case of certain vessels, and special rule for cooperatives.

Subsec. (b)(2)(A). Pub. L. 101–508, §11406, substituted ''Dec. 31, 1991'' for ''Sept. 30, 1990'' in table items (viii) C. and (ix) B.

1989—Subsec. (b)(2)(A). Pub. L. 101–239, §7106, substituted ''Sept. 30, 1990'' for ''Dec. 31, 1989'' in table items (viii) C., (ix) B., and (x).

[1] So in original. Probably should be followed by a comma.

Pub. L. 101–239, § 7814(d), made technical correction to language of Pub. L. 100–647, § 4006, see 1988 Amendment note below.

1988—Subsec. (b)(2)(A). Pub. L. 100–647, § 4006, as amended by Pub. L. 101–239, § 7814(d), substituted ''1989'' for ''1988'' in table items (viii) C., (ix) B., and (x).

Subsec. (c)(5)(B). Pub. L. 100–647, § 1013(a)(44), substituted ''private activity bonds'' for ''industrial development bonds'' in heading, and in text substituted ''a private activity bond (within the meaning of section 141)'' for ''an industrial development bond (within the meaning of section 103(b)(2))''.

Subsec. (c)(7). Pub. L. 100–647, § 1002(a)(17), substituted ''property to which section 168 applies'' for ''recovery property'' in heading, substituted ''property to which section 168 applies'' for ''recovery property'' and ''168(e)'' for ''168(c)'' in subpar. (A), substituted ''168(e)'' for ''168(c)'' in subpar. (B), and inserted ''(as in effect on the day before the date of the enactment of the Tax Reform Act of 1986)'' after ''section 168(f)(3)(B)'' in concluding provisions.

Subsec. (d)(1)(B)(i). Pub. L. 100–647, § 1002(a)(25)(A), substituted ''property to which section 168 applies'' for ''recovery property (within the meaning of section 168)''.

Subsec. (d)(1)(B)(ii). Pub. L. 100–647, § 1002(a)(25)(B), substituted ''to which section 168 does not apply'' for ''which is not recovery property (within the meaning of section 168)''.

Subsec. (e)(3). Pub. L. 100–647, § 1002(a)(15), substituted ''property to which section 168 applies'' for ''recovery property (within the meaning of section 168)'', ''class life'' for ''present class life'', and ''168(i)(1)'' for ''168(g)(2)''.

Subsec. (e)(4)(B). Pub. L. 100–647, § 1002(a)(4)(A), substituted ''168(i)(3)'' for ''168(j)(6)''.

Subsec. (e)(4)(C). Pub. L. 100–647, § 1009(a)(1), inserted provisions at end which provided that any such election shall terminate effective with respect to the 1st taxable year of the organization making such election which begins after 1986, and which defined ''regular investment tax credit property''.

Subsec. (e)(4)(D). Pub. L. 100–647, § 1002(a)(4)(B), substituted ''paragraphs (5) and (6) of section 168(h)'' for ''paragraphs (8) and (9) of section 168(j)''.

Subsec. (e)(4)(E). Pub. L. 100–647, § 1002(a)(4)(C), (D), substituted ''168(h)'' for ''168(j)'' and ''168(h)(2)'' for ''168(j)(4)''.

1986—Subsec. (b)(2)(A). Pub. L. 99–514, § 1847(b)(11), substituted ''48(*l*)(3)(A)(viii)'' for ''48(*l*)(3)(A)(vii)'' in table item (ii).

Pub. L. 99–514, § 421(a), inserted table items (viii) to (xi).

Subsec. (b)(2)(E). Pub. L. 99–514, § 421(b), added subpar. (E).

Subsec. (b)(4). Pub. L. 99–514, § 251(a), in amending par. (4) generally, substituted in subpar. (A) definition of ''rehabilitation percentage'' for former table specifying specific rehabilitation percentages, reenacted subpar. (B), and struck out subpar. (C) which related to definitions.

Subsec. (c)(8)(D)(v). Pub. L. 99–514, § 1844(a), substituted ''this subparagraph'' for ''clause (i)''.

Pub. L. 99–514, § 201(d)(7)(B), substituted ''section 465(b)(3)(C)'' for ''section 168(e)(4)''.

Subsec. (c)(9)(A). Pub. L. 99–514, § 1844(b)(3), substituted ''an increase in the credit base for'' for ''additional qualified investment in''.

Subsec. (c)(9)(C)(i). Pub. L. 99–514, § 1844(b)(5), substituted ''any increase in a taxpayer's credit base for any property by reason of this paragraph shall be taken into account as if it were property placed in service by the taxpayer in the taxable year in which the property referred to in subparagraph (A) was first placed in service'' for ''any increase in a taxpayer's qualified investment in property by reason of this paragraph shall be deemed to be additional qualified investment made by the taxpayer in the year in which the property referred to in subparagraph (A) was first placed in service''.

Subsec. (e)(4)(D), (E). Pub. L. 99–514, § 1802(a)(6), (8), added subpars. (D) and (E).

Subsec. (f)(9). Pub. L. 99–514, § 1848(a), struck out par. (9) which related to a special rule for additional credit.

1984—Subsec. (a). Pub. L. 98–369, § 474(*o*)(1), amended subsec. (a) generally, so as to contain provisions relating to amount of investment credit, which formerly constituted only par. (2)(A)(i), (ii), and (iv) of subsec. (a).

Subsec. (a)(4). Pub. L. 98–369, § 713(c)(1)(C), substituted ''premature distributions to key employees'' for ''premature distributions to owner-employees''.

Subsec. (b). Pub. L. 98–369, § 474(*o*)(1), amended subsec. (b) generally, substituting provisions relating to determination of percentages for purposes of subsec. (a), for provisions relating to carryback and carryover of unused credits.

Subsec. (c)(7)(A). Pub. L. 98–369, § 13(b)(2)(B), inserted ''recovery'' before first reference to ''property''.

Subsec. (c)(8). Pub. L. 98–369, § 431(a), substituted ''Certain nonrecourse financing excluded from credit base'' for ''Limitation to amount at risk'' in heading.

Subsec. (c)(8)(A). Pub. L. 98–369, § 431(a), substituted provisions reducing the credit base of any property to which this paragraph applies by the nonqualified nonrecourse financing with respect to such property for provisions relating to limitation of the basis to the amount at risk in the case of new or used section 38 property placed in service during the taxable year by a taxpayer described in section 465(a)(1) and used in connection with an activity with respect to which any loss was subject to limitation under section 465.

Subsec. (c)(8)(B). Pub. L. 98–369, § 431(a), substituted provisions relating to the property to which this paragraph applies for provisions defining ''at risk'' and stating the circumstances under which a taxpayer would be considered to be at risk for purposes of this paragraph.

Subsec. (c)(8)(C). Pub. L. 98–369, § 431(a), substituted provisions defining ''credit base'' for provisions relating to a special rule for partnerships and subchapter S corporations.

Subsec. (c)(8)(D). Pub. L. 98–369, § 431(a), substituted provisions defining ''nonqualified nonrecourse financing'' for provisions defining ''qualified person''.

Subsec. (c)(8)(D)(i)(I). Pub. L. 98–369, § 16(a), repealed amendments made by Pub. L. 97–34, § 302(c). See 1981 Amendment note below.

Subsec. (c)(8)(E). Pub. L. 98–369, § 431(a), substituted provisions relating to the application of this paragraph to partnerships and subchapter S corporations for provisions defining ''related person''.

Subsec. (c)(8)(F)(i). Pub. L. 98–369, § 431(d)(1), substituted provisions that subpar. (A) shall not apply with respect to qualified energy property for provisions that subpar. (A) would not apply to amounts borrowed with respect to qualified energy property (other than amounts described in subpar. (B)).

Subsec. (c)(8)(F)(ii)(II). Pub. L. 98–369, § 474(*o*)(2), substituted ''subsection (b)(2)'' for ''section 46(a)(2)(C)''.

Subsec. (c)(8)(F)(ii)(III). Pub. L. 98–369, § 431(d)(2), substituted provisions that qualified energy property means energy property to which (but for this subpar.) subpar. (A) applies and not more than 75 percent of the basis of which is attributable to nonqualified nonrecourse financing for provisions that qualified energy property meant energy property to which (but for this subpar.) subpar. (A) applied and with respect to which the taxpayer was at risk (within the meaning of section 465(b) without regard to par. (5) thereof) in an amount equal to at least 25 percent of the basis of the property.

Subsec. (c)(8)(F)(ii)(IV). Pub. L. 98–369, § 431(d)(3), substituted ''nonqualified nonrecourse financing'' for ''nonrecourse financing (other than financing described in section 46(c)(8)(B)(ii))''.

Subsec. (c)(9). Pub. L. 98–369, § 431(b)(1), substituted provisions relating to subsequent decreases in nonqualified nonrecourse financing with respect to the property for provisions relating to subsequent increases in the taxpayer's amount at risk with respect to the property.

Subsec. (e)(1). Pub. L. 98–369, § 474(*o*)(3)(A), struck out ''and the $25,000 amount specified under subparagraphs

(A) and (B) of subsection (a)(3)'', and substituted ''such qualified investment'' for ''such items'', in provisions following subpar. (B).

Subsec. (e)(2). Pub. L. 98–369, §474(*o*)(3)(B), substituted ''qualified investment'' for ''the items described therein'' in introductory provisions.

Subsec. (e)(4). Pub. L. 98–369, §31(b), added par. (4).

Subsec. (f)(1). Pub. L. 98–369, §474(*o*)(4)(A), substituted ''no credit determined under subsection (a) shall be allowed by section 38'' for ''no credit shall be allowed by section 38'' in introductory provisions.

Subsec. (f)(1)(A), (B). Pub. L. 98–369, §474(*o*)(4)(B), substituted ''the credit determined under subsection (a) and allowable by section 38'' for ''the credit allowable by section 38''.

Subsec. (f)(2). Pub. L. 98–369, §474(*o*)(4)(A), substituted ''no credit determined under subsection (a) shall be allowed by section 38'' for ''no credit shall be allowed by section 38'' in introductory provisions.

Subsec. (f)(2)(A), (B). Pub. L. 98–369, §474(*o*)(4)(B), substituted ''the credit determined under subsection (a) and allowable by section 38'' for ''the credit allowable by section 38''.

Subsec. (f)(4)(B). Pub. L. 98–369, §474(*o*)(4)(C), substituted ''the credit determined under subsection (a) and allowed by section 38'' for ''the credit allowed by section 38'' in introductory provisions.

Subsec. (f)(8). Pub. L. 98–369, §474(*o*)(5), substituted ''the credit determined under subsection (a) and allowable under section 38'' for ''the credit allowable under section 38'' in two places, and ''(within the meaning of the first sentence of subsection (c)(3)(B))'' for ''(within the meaning of subsection (a)(7)(C))''.

Subsec. (g)(2). Pub. L. 98–369, §474(*o*)(6), substituted ''the limitation of section 38(c)'' for ''the limitation of subsection (a)(3)''.

Subsec. (h)(1). Pub. L. 98–369, §474(*o*)(7), substituted ''the credit determined under subsection (a) and allowable to the organization under section 38'' for ''the credit allowable to the organization under section 38'' and ''the limitation contained in section 38(c)'' for ''the limitation contained in subsection (a)(3)''.

1983—Subsec. (a)(2)(C)(i). Pub. L. 97–424, §546(b), added section VII to the table.

Subsec. (a)(2)(C)(iii)(I). Pub. L. 97–448, §202(f), substituted ''before January 1, 1983, all engineering studies in connection with the commencement of the construction of the project have been completed and all environmental and construction permits required under Federal, State, or local law in connection with the commencement of the construction of the project have been applied for, and'' for ''before January 1, 1983, the taxpayer has completed all engineering studies in connection with the commencement of the construction of the project, and has applied for all environmental and construction permits required under Federal, State, or local law in connection with the commencement of the construction of the project, and''.

Subsec. (a)(2)(F)(iii)(II). Pub. L. 97–448, §102(f)(5)(A), substituted ''a qualified rehabilitated building'' for ''any building''.

Subsec. (a)(2)(F)(iii)(III). Pub. L. 97–448, §102(f)(5)(B), substituted ''means a qualified rehabilitated building which meets the requirements of section 48(g)(3)'' for ''has the meaning given to such term by section 48(g)(3)''.

Subsec. (a)(4)(B). Pub. L. 98–21 substituted ''relating to credit for the elderly and the permanently and totally disabled'' for ''relating to credit for the elderly''.

Subsec. (c)(7). Pub. L. 97–448, §102(e)(1), substituted ''in the case of property other than 3-year property (within the meaning of section 168(c))'' for ''in the case of 15-year public utility, 10-year, or 5-year property (within the meaning of section 168(c))'' in subpar. (A) and, in provisions following subpar. (B), substituted ''shall be treated as property which is not 3-year property'' for ''shall be treated as 5-year property''.

Subsec. (f)(10). Pub. L. 97–424, §541(b), added par. (10).

1982—Subsec. (a)(3)(B). Pub. L. 97–248, §205(b)(1), substituted ''85 percent'' for ''the following percentage'', substituted a period for the colon, and struck out table of percentages at end of subpar. (B).

Subsec. (a)(4). Pub. L. 97–354, §5(a)(4), substituted ''section 1374 (relating to tax on certain capital gains of S corporations)'' for ''section 1378 (relating to tax on certain capital gains of subchapter S corporations)''.

Pub. L. 97–248, §§201(d)(8)(A), formerly 201(c)(8)(A), 265(b)(2)(A), substituted ''(relating to corporate minimum tax)'' for ''(relating to minimum tax for tax preferences)'' after ''section 56'', and inserted ''section 72(q)(1) (relating to 5-percent tax on premature distributions under annuity contracts),'' after ''owner-employees)''.

Subsec. (a)(7). Pub. L. 97–248, §205(b)(2), redesignated par. (9) as (7), and, in par. (7)(B), as so redesignated, substituted reference to 85 percent for former reference to the percentage determined under subsec. (a)(3)(B) in cl. (i), struck out former cl. (ii), which provided that pars. (7) and (8) would not apply in certain instances, and redesignated former cl. (iii) as (ii). Former par. (7), which provided for alternative limitations in the case of certain utilities, was struck out.

Subsec. (a)(8). Pub. L. 97–248, §205(b)(2)(A), struck out par. (8) which provided for alternative limitations in the case of certain railroads and airlines.

Subsec. (a)(9). Pub. L. 97–248, §205(b)(2)(A), redesignated par. (9) as (7).

Subsec. (c)(8)(C). Pub. L. 97–354, §5(a)(5), substituted ''S corporation'' for ''electing small business corporation (within the meaning of section 1371(b))''.

Subsec. (e)(3). Pub. L. 97–354, §5(a)(6), substituted ''an S corporation'' for ''an electing small business corporation (as defined in section 1371)''.

1981—Subsec. (a)(2)(A)(iv). Pub. L. 97–34, §212(a)(1), added cl. (iv).

Subsec. (a)(2)(E). Pub. L. 97–34, §332(a), substituted ''December 31, 1982'' for ''December 31, 1983'' in cls. (i) and (ii) and added cl. (iii).

Subsec. (a)(2)(F). Pub. L. 97–34, §212(a)(2), added subpar. (F).

Subsec. (b)(1). Pub. L. 97–34, §207(c)(1), inserted provision after subpar. (D) directing that, in the case of an unused credit for an unused credit year ending after Dec. 31, 1973, this paragraph be applied by substituting ''15'' for ''7'' in subpar. (B) and by substituting ''18'' for ''10'' and ''17'' for ''9'' in second sentence.

Subsec. (c)(2). Pub. L. 97–34, §211(e)(1), inserted references in provisions preceding table to exceptions provided in paragraphs (3), (6), and (7).

Subsec. (c)(6)(A). Pub. L. 97–34, §211(e)(2), substituted ''Notwithstanding paragraph (2) or (3)'' for ''Notwithstanding paragraph (2)'' and inserted ''or which is recovery property (within the meaning of section 168),'' after ''3 years or more,''.

Subsec. (c)(7). Pub. L. 97–34, §211(a)(1), added par. (7).

Subsec. (c)(8). Pub. L. 97–34, §211(f)(1), added par. (8).

Subsec. (c)(8)(D)(i)(I). Pub. L. 97–34, §302(c)(3), (d)(1), provided that, applicable to taxable years beginning after Dec. 31, 1984, subsection (c)(8)(D)(i)(I) of this section (relating to limitation to amount at risk) is amended by striking out ''clause (i), (ii), or (iii) of subparagraph (A) or subparagraph (B) of section 128(c)(2)'' and inserting in lieu thereof ''subparagraph (A) or (B) of section 128(c)(1)''. Section 16(a) of Pub. L. 98–369, repealed section 302(c) of Pub. L. 97–34, and provided that this title shall be applied and administered as if section 302(c), and the amendments made by section 302(c), had not been enacted.

Subsec. (c)(9). Pub. L. 97–34, §211(f)(1), added par. (9).

Subsec. (d)(1). Pub. L. 97–34, §211(b)(1), designated existing provisions as subpar. (A), substituted ''an amount equal to the aggregate of the applicable percentage of each qualified progress expenditure for the taxable year'' for ''an amount equal to his aggregate qualified progress expenditures for the taxable year'' in subpar. (A) as so designated, and added subpar. (B).

Subsec. (d)(2)(A)(ii). Pub. L. 97–34, §211(b)(2), struck out ''having a useful life of 7 years or more'' after ''it is reasonable to believe will be new section 38 property''.

Subsec. (e)(3). Pub. L. 97–34, §211(d), in provisions following subpar. (B), inserted provision that, for purposes of subpar. (B), in the case of any recovery property (within the meaning of section 168), the useful life be the present class life for such property (as defined in section 168(g)(2)).

1980—Subsec. (a)(2)(A). Pub. L. 96–222, §101(a)(7)(L)(iii)(I), substituted ''employee plan'' for ''ESOP''.

Subsec. (a)(2)(C). Pub. L. 96–223, §221(a), revised provisions relating to energy percentage by substituting a tabular format embracing separate coverage for solar, wind, or geothermal property, ocean thermal property, qualified hydroelectric generating property, and biomass property using percentages varying between 10 and 15 percent and covering periods from Oct. 1, 1978, to Dec. 31, 1985, with longer periods for certain long-term projects and certain hydroelectric generating property for provisions that had set the energy percentage at 10 percent for the period beginning Oct. 1, 1978, and ending Dec. 31, 1982, and zero with respect to any other period.

Subsec. (a)(2)(D). Pub. L. 96–223, §222(e)(2), inserted provision that in the case of any qualified hydroelectric generating property which is a fish passageway, the special rule for certain energy property embraced in the first sentence would not apply to any period after 1979 for which the energy percentage for such property is greater than zero.

Subsec. (a)(2)(E). Pub. L. 96–222, §101(a)(7)(L)(v)(I), (M)(i), substituted in heading ''employee plan'' for ''ESOP'' and in cls. (i) and (ii) inserted ''and ending on'' before ''December 31, 1983''.

Subsec. (a)(9). Pub. L. 96–222, §103(a)(2)(B)(i), redesignated par. (10) as (9). A former par. (9) was previously repealed by section 312(b)(2) of Pub. L. 95–600.

Subsec. (a)(9)(A). Pub. L. 96–223, §223(b)(1)(A), inserted ''and'' at end of cl. (i), substituted a period for ''(other than solar wind energy property), and'' at end of cl. (ii), and struck out cl. (iii) which had provided for the application of so much of the credit allowed by section 38 as was attributable to the application of the energy percentage to solar or wind energy property.

Subsec. (a)(9)(B). Pub. L. 96–223. §223(b)(1)(B), struck out ''other than solar or wind energy property'' after ''energy property'' in heading.

Pub. L. 96–222, §103(a)(2)(B)(ii), (iii), substituted ''paragraph (3)(B) shall be applied by substituting '100 percent' for the percentage determined under the table contained in such paragraph'' for ''paragraph (3)(C) shall be applied by substituting '100 percent' for '50 percent'' in cl. (i) and ''(7) and (8)'' for ''(7), (8), and (9)'' in cl. (ii).

Subsec. (a)(9)(C). Pub. L. 96–223, §223(b)(1)(C), struck out subpar. (C) which related to a refundable credit for solar or wind energy property.

Subsec. (a)(10). Pub. L. 96–222, §103(a)(2)(B)(i), redesignated par. (10) as (9).

Subsec. (c)(5)(B). Pub. L. 96–222, §103(a)(3), inserted provisions requiring that this subparagraph not apply for purposes of applying the energy percentage.

Subsec. (e)(3). Pub. L. 96–222, §103(a)(4)(A), inserted provisions requiring that this paragraph not apply with respect to any property which is treated as section 38 property by reason of section 48(a)(1)(E).

Subsec. (f)(1), (2). Pub. L. 95–600, §312(c)(2), as amended by Pub. L. 96–222, §103(a)(2)(A), substituted '' 'described in section 50 (as in effect before its repeal by the Revenue Act of 1978)' '' for '' 'described in section 50' ''.

Subsec. (f)(8). Pub. L. 96–222, §107(a)(3)(A), substituted ''subsection (a)(7)(C)'' for ''subsection (a)(7)(D)''.

Subsec. (f)(9). Pub. L. 96–222, §101(a)(7)(A), substituted in provisions preceding subpar. (A) ''subparagraph (E) of subsection (a)(2)'' for ''subparagraph (B) of subsection (a)(2)'' and in subpar. (A) ''a tax credit employee stock ownership plan which meets the requirements of section 409A'' for ''an employee ownership plan which meets the requirements of section 301(d) of the Tax Reduction Act of 1975''.

1978—Subsec. (a)(2). Pub. L. 95–618, §301(a)(1), among other changes, inserted provisions relating to an alternative energy property tax credit which would pay for a certain percentage of the cost of equipment which uses sources of energy other than oil and gas and of associated pollution control, handling, and preparation equipment.

Subsec. (a)(2)(B). Pub. L. 95–600, §311(a), made 10 percent limitation on investment tax credit permanent.

Subsec. (a)(2)(E). Pub. L. 95–600, §141(e), (f)(2), substituted ''December 31, 1983'' for ''and ending on December 31, 1980'' wherever appearing, ''section 48(n)(1)(B)'' for ''section 301(e) of the Tax Reduction Act of 1975'' and ''section 409A'' for ''section 301(d) of the Tax Reduction Act of 1975''.

Subsec. (a)(3). Pub. L. 95–600, §312(a), increased the present 50 percent tax liability limitation to 90 percent, to be phased in at an additional 10 percentage points per year beginning with taxable years which end in 1979.

Subsec. (a)(7). Pub. L. 95–600, §312(b)(1), in subpar. (A) substituted ''the taxable year ending in 1979'' for ''a taxable year ending after calendar year 1974 and before calendar year 1981'', ''subparagraph (B)'' for ''subparagraph (C)'', and ''for '60 percent' the taxpayer's'' for ''for 50 percent his'' and inserted ''the application of this paragraph results in a percentage higher than 60 percent,'' before ''then subparagraph (B)''; in subpar. (B) substituted ''70 percent'' for ''50 percent plus the tentative percentage for such year''; struck out former subpar. (C), which related to the determination of the tentative percentage, and redesignated former subpar. (D) as (C).

Subsec. (a)(8). Pub. L. 95–600, §312(b)(2), in subpar. (A) substituted ''the taxable year ending in 1979'' for ''a taxable year ending after calendar year 1976, and before calendar year 1983'', ''subparagraph (B)'' for ''subparagraph (C)'', and ''for '60 percent' ('70 percent' in the case of a taxable year ending in 1980) the taxpayer's'' for ''for 50 percent his'' and inserted reference to airline property and ''the application of this paragraph results in a percentage higher than 60 percent (70 percent in the case of a taxable year ending in 1980),'' before ''then subparagraph (B)''; in subpar. (B) inserted reference to airline property and substituted ''90 percent (80 percent in the case of a taxable year ending in 1980)'' for ''50 percent plus the tentative percentage for such year''; in subpar. (C) table struck out tentative percentage of 50 for 1977 or 1978, 20 for 1981, and 10 for 1982; and added subpar. (E).

Subsec. (a)(9). Pub. L. 95–600, §312(b)(2), struck out par. (9) which related to the alternative limitation in the case of certain airlines.

Subsec. (a)(10). Pub. L. 95–618, §301(c)(1), added par. (10).

Subsec. (c)(3)(A). Pub. L. 95–618, §301(a)(2)(A), substituted ''For the period beginning on January 1, 1981, in the case of any property'' for ''To the extent that subsection (a)(2)(C) applies to property'' and inserted provisions that the preceding sentence not apply for purposes of applying the energy percentage.

Pub. L. 95–600, §311(c)(1), substituted ''To the extent that the credit allowed by section 38 with respect to any public utility property is determined at the rate of 7 percent'' for ''For the period beginning on January 1, 1981''.

Subsec. (c)(5). Pub. L. 95–600, §313(a), increased the investment credit available to pollution control facilities which a taxpayer has elected to amortize over a five-year period to a full investment credit from a one-half investment credit.

Subsec. (c)(6). Pub. L. 95–618, §241(a), added par. (6).

Subsec. (e)(1)(C). Pub. L. 95–600, §316(b)(1), struck out subpar. (C) which related to a cooperative organization described in section 1381(a).

Subsec. (e)(2)(C). Pub. L. 95–600, §316(b)(2), struck out subpar. (C) which related to a cooperative organization.

Subsec. (f)(1), (2). Pub. L. 95–600, §312(c)(2), struck out ''described in section 50'' after ''with respect to any property''. See 1980 Amendment note above.

Subsec. (f)(8). Pub. L. 95–618, §301(a)(2)(B), substituted '', the Tax Reform Act of 1976, and the Energy Tax Act of 1978'' for ''and the Tax Reform Act of 1976''.

Pub. L. 95–600, §§311(c)(2), 703(a)(1), substituted ''subsection (a)(7)(D)'' for ''subsection (a)(6)(D)'' and inserted reference to the Revenue Act of 1978.

Subsec. (g)(5). Pub. L. 95–600, §703(a)(2), substituted ''Merchant Marine Act, 1936'' for ''Merchant Marine Act, 1970''.

Subsec. (h). Pub. L. 95–600, §316(a), added subsec. (h).

1976—Subsec. (a)(1). Pub. L. 94–455, §802(a)(2), added par. (1) and struck out former par. (1) which related to the percentage of allowable credit under section 38.

Subsec. (a)(2). Pub. L. 94–455, §802(a)(2), added par. (2). Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 94–455, §802(a)(1), redesignated former par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (a)(4). Pub. L. 94–455, §§503(b)(4), 802(a)(1), (b)(1), 1901(a)(4)(A), (b)(1)(C), as amended by Pub. L. 95–600, §703(j)(9), redesignated former par. (3) as (4), and in par. (4) as so redesignated, redesignated former subpar. (C) as (B) and substituted in provisions preceding subpar. (A) ''paragraph (3)'' for ''paragraph (2)'', in subpar. (B) as so redesignated ''credit for the elderly'' for ''retirement income'', and in provisions following subpar. (B) ''section 408(f)'' for ''section 408(e)''. Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 94–455, §802(a)(1), (b)(1), redesignated former par. (4) as (5) and substituted ''paragraph (3)'' for ''paragraph (2)''. Former par. (5) redesignated (6).

Subsec. (a)(6). Pub. L. 94–455, §§802(a)(1), (b)(1), 1906(b)(13)(A), redesignated former par. (5) as (6) and substituted ''paragraph (3)'' for ''paragraph (2)'' and struck out ''or his delegate'' after ''Secretary''. Former par. (6) redesignated (7).

Subsec. (a)(7). Pub. L. 94–455, §802(a)(1), (b)(1), redesignated former par. (6) as (7) and substituted ''paragraph (3)'' for ''paragraph (2)''.

Subsec. (a)(8). Pub. L. 94–455, §1701(b), added par. (8).

Subsec. (a)(9). Pub. L. 94–455, §1703, added par. (9).

Subsec. (b). Pub. L. 94–455, §802(b)(2), among other changes, inserted requirement that tax credits carried over are applied first to the tax liability for that year, after which tax credits earned currently are then applied.

Subsec. (c)(3)(A). Pub. L. 94–455, §802(b)(3), substituted ''subsection (a)(2)(C)'' for ''subsection (a)(1)(C)''.

Subsec. (c)(3)(B)(iii). Pub. L. 94–455, §1901(a)(4)(B), substituted ''47 U.S.C. 222(a)(5)'' for ''47 U.S.C., sec. 222(a)(5)''.

Subsec. (c)(5). Pub. L. 94–455, §2112(a)(2), added par. (5).

Subsec. (d)(4)(D), (6). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (e)(1)(C). Pub. L. 94–455, §802(b)(4), substituted ''subsection (a)(3)'' for ''subsection (a)(2)''.

Subsec. (e)(2). Pub. L. 94–455, §1607(b)(1)(B), substituted in subpar. (B) ''857(b)(2)(B)'' for ''857(b)(2)(C)'' and inserted in provisions following subpar. (C) reference to determine without regard to any deduction for capital gains dividends (as defined in section 857(b)(3)(C)) and by excluding any net capital gain.

Subsec. (f)(1)(B), (2), (3). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (f)(4)(A). Pub. L. 94–455, §803(b)(1)(A), (B), substituted ''paragraphs (1), (2), and (9)'' for ''paragraphs (1) and (2)'' and ''paragraph (1), (2), or (9)'' for ''paragraph (1) or (2)'' wherever appearing.

Subsec. (f)(4)(B)(ii). Pub. L. 94–455, §803(b)(1)(C), substituted ''paragraph (2) or the election described in paragraph (9),'' for ''paragraph (2),''.

Subsec. (f)(7). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (f)(8). Pub. L. 94–455, §§802(b)(5), 1906(b)(13)(A), inserted reference to the Tax Reform Act of 1976 and struck out ''or his delegate'' after ''Secretary''.

Subsec. (f)(9). Pub. L. 94–455, §803(a), added par. (9).

Subsec. (g). Pub. L. 94–455, §805(a), added subsec. (g).

1975—Subsec. (a)(1). Pub. L. 94–12, §301(a), designated existing provisions as subpar. (A), substituted ''Except as otherwise provided in this paragraph, in the case of a property described in subparagraph (D), the'' for ''The'', ''10 percent'' for ''7 percent'', and ''(as determined under subsections (c) and (d))'' for ''(as defined in subsection (c))'' in subpar. (A) as so designated, and added subpars. (B), (C), and (D).

Subsec. (a)(6). Pub. L. 94–12, §301(b)(2), added par. (6).

Subsec. (c)(3)(A). Pub. L. 94–12, §301(b)(1), substituted ''To the extent that subsection (a)(1)(C) applies to property which is public utility property, the'' for ''In the case of section 38 property which is public utility property, the''.

Subsec. (c)(4). Pub. L. 94–12, §302(b)(1), added par. (4).

Subsecs. (d), (e). Pub. L. 94–12, §302(a), added subsec. (d) and redesignated former subsec. (d) as (e). Former subsec. (e) redesignated (f) and amended.

Subsec. (f). Pub. L. 94–12, §§301(b)(3), 302(a), redesignated former subsec. (e) as (f) and in subsec. (f) as so redesignated added par. (8).

1974—Subsec. (a)(3). Pub. L. 93–406 inserted reference to section 402(e) (relating to tax on lump sum distributions), section 72(m)(5)(B) (relating to 10 percent tax on premature distributions to owner-employees), and section 408(e) (relating to additional tax on income from certain retirement accounts).

1971—Subsec. (b)(1). Pub. L. 92–178, §106(b), inserted concluding sentence ''In the case of an unused credit for an unused credit year ending before January 1, 1971, which is an investment credit carryover to a taxable year beginning after December 31, 1970 (determined without regard to this sentence), this paragraph shall be applied by substituting '10 taxable years' for '7 taxable years' in subparagraph (B) and by substituting '13 taxable years' for '10 taxable years' and '12 taxable years' for '9 taxable years' in the preceding sentence.''

Subsec. (b)(3). Pub. L. 92–178, §106(a), added par. (3).

Subsec. (b)(5). Pub. L. 92–178, §106(c)(1), substituted ''Certain taxable years ending in 1969, 1970, or 1971'' for ''Taxable years beginning after December 31, 1968, and ending after April 18, 1969'' in heading; substituted ''ending after April 18, 1969, and before January 1, 1972,'' for ''ending after April 18, 1969,''; and provided that ''In the case of a taxable year ending after August 15, 1971, and before January 1, 1972, the percentage contained in the preceding sentence shall be increased by 6 percentage points for each month (or portion thereof) in the taxable year after August 15, 1971''.

Subsec. (b)(6). Pub. L. 92–178, §106(c)(2), substituted ''ending after April 18, 1969, and before January 1, 1971,'' for ''ending after April 18, 1969,'' and ''following the 7th taxable year after the unused credit year'' for ''following the last taxable year for which such portion may be added under paragraph (1)'', respectively.

Subsec. (c)(2). Pub. L. 92–178, §102(a)(1), (b), substituted ''3 years'', ''5 years'', and ''7 years'' for ''4 years'' (once), ''6 years'' (twice), and ''8 years'' (twice), respectively in tables of first sentence and substituted in second sentence ''subpart'' for ''paragraph'' and ''useful life of any property shall be the useful life used in computing the allowance for depreciation under section 167 for the taxable year in which the property is placed in service'' for ''useful life of any property shall be determined as of the time such property is placed in service by the taxpayer''.

Subsec. (c)(3)(A). Pub. L. 92–178, §105(a), substituted the fraction of ''4/7'' for ''3/7''.

Subsec. (c)(3)(B). Pub. L. 92–178, §105(b)(1), (2), struck out cl. (iii) provisions respecting telephone service, redesignated cl. (iv) as (iii), included in cl. (iii) provision of former cl. (iii) respecting telephone service, included other communication services (other than international telegraph service), and defined term ''public utility property'' to also mean communication property of type used by persons engaged in providing telephone or microwave communication services to which cl. (iii) applies, if such property is used predominantly for communication purposes, respectively.

Subsec. (c)(3)(C). Pub. L. 92–178, §105(b)(3), added subpar. (C).

Subsec. (c)(4). Pub. L. 92–178, §107(a)(1), struck out provisions respecting reduction in basis or cost of certain replacement property.

Subsec. (d)(3). Pub. L. 92–178, § 108(a), added par. (3).

Subsec. (e). Pub. L. 92–178, § 105(c), added subsec. (e).

1969—Subsec. (a)(3). Pub. L. 91–172, § 301(b)(4), inserted ''section 56 (relating to minimum tax for tax preference),''.

Subsec. (a)(5). Pub. L. 91–172, § 401(e)(1), reenacted subsection with minor changes and substituted reference to section 1563(a) for reference to section 1504.

Subsec. (b)(5), (6). Pub. L. 91–172, § 703(b), added pars. (5) and (6).

1967—Subsec. (b). Pub. L. 90–225 struck out par. (3) which provided that to the extent that the excess described in par. (1) of this subsection arises by reason of net operating loss carryback, subpar. (A) of par. (1) of this subsection shall not apply.

1966—Subsec. (a)(2). Pub. L. 89–800, § 3(a), inserted ''for taxable years ending on or before the last day of the suspension period (as defined in section 48(j)),'' at beginning of subpar. (B), and added subpar. (C) and provisions following subpar. (C) covering the application of subpar. (C) and the reduction of the amount otherwise determined under par. (2) by the credit allowable but for the application of section 48(h)(1).

Subsec. (a)(3). Pub. L. 89–389 inserted reference to tax imposed for the taxable year by section 1378 (relating to tax on certain capital gains of subchapter S corporations) in the list of taxes not to be considered tax imposed by this chapter for purposes of par. (3).

Pub. L. 89–384 added any additional tax imposed for the taxable year by section 1351 (relating to recoveries of foreign expropriation losses) to the list of taxes not to be considered a tax imposed by this chapter for purposes of par. (3).

Subsec. (b)(1). Pub. L. 89–800, § 3(b), substituted ''7 taxable years'' for ''5 taxable years'' in subpar. (B) and ''10 taxable years'' and ''other 9 taxable years'' for ''8 taxable years'' and ''other 7 taxable years'' respectively in text following subpar. (B).

1964—Subsec. (a)(3)(B) to (D). Pub. L. 88–272 struck out subpar. (B) relating to section 34, and redesignated subpars. (C) and (D) as (B) and (C), respectively.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title IX, § 9023(f), Mar. 23, 2010, 124 Stat. 883, provided that: ''The amendments made by subsections (a) through (d) of this section [enacting section 48D of this title and amending this section and sections 49 and 280C of this title] shall apply to amounts paid or incurred after December 31, 2008, in taxable years beginning after such date.''

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, § 1302(d), Feb. 17, 2009, 123 Stat. 348, provided that: ''The amendments made by this section [enacting section 48C of this title and amending this section and section 49 of this title] shall apply to periods after the date of the enactment of this Act [Feb. 17, 2009], under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990 [Nov. 5, 1990]).''

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title XIII, § 1307(d), Aug. 8, 2005, 119 Stat. 1006, provided that: ''The amendments made by this section [enacting sections 48A and 48B of this title and amending this section and section 49 of this title] shall apply to periods after the date of the enactment of this Act [Aug. 8, 2005], under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990 [Nov. 5, 1990]).''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title III, § 322(e), Oct. 22, 2004, 118 Stat. 1476, provided that: ''The amendments made by this section [amending this section and sections 48, 50, and 194 of this title] shall apply with respect to expenditures paid or incurred after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11813(a) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7814(d) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1002(a)(4), (15), (17), (25), 1009(a)(1), and 1013(a)(44) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 201(d)(7)(B) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

Section 251(d) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1002(k), Nov. 10, 1988, 102 Stat. 3371, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 48 of this title] shall apply to property placed in service after December 31, 1986, in taxable years ending after such date.

''(2) GENERAL TRANSITIONAL RULE.—The amendments made by this section and section 201 [amending this section and sections 48, 167, 168, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to any property placed in service before January 1, 1994, if such property is placed in service as part of—

''(A) a rehabilitation which was completed pursuant to a written contract which was binding on March 1, 1986, or

''(B) a rehabilitation incurred in connection with property (including any leasehold interest) acquired before March 2, 1986, or acquired on or after such date pursuant to a written contract that was binding on March 1, 1986, if—

''(i) parts 1 and 2 of the Historic Preservation Certification Application were filed with the Department of the Interior (or its designee) before March 2, 1986, or

''(ii) the lesser of $1,000,000 or 5 percent of the cost of the rehabilitation is incurred before March 2, 1986, or is required to be incurred pursuant to a written contract which was binding on March 1, 1986.

''(3) CERTAIN ADDITIONAL REHABILITATIONS.—The amendments made by this section and section 201 [amending this section and sections 48, 167, 168, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to—

''(A) the rehabilitation of 8 bathhouses within the Hot Springs National Park or of buildings in the Central Avenue Historic District at such Park,

''(B) the rehabilitation of the Upper Pontalba Building in New Orleans, Louisiana,

''(C) the rehabilitation of at least 60 buildings listed on the National Register at the Frankford Arsenal,

''(D) the rehabilitation of De Baliveriere Arcade, St. Louis Centre, and Drake Apartments in Missouri,

''(E) the rehabilitation of The Tides in Bristol, Rhode Island,

''(F) the rehabilitation and renovation of the Outlet Company building and garage in Providence, Rhode Island,

''(G) the rehabilitation of 10 structures in Harrisburg, Pennsylvania, with respect to which the Harristown Development Corporation was designated redeveloper and received an option to acquire title to the entire project site for $1 on June 27, 1984,

''(H) the rehabilitation of a project involving the renovation of 3 historic structures on the Minneapolis riverfront, with respect to which the developer of the project entered into a redevelopment agreement with a municipality dated January 4, 1985, and industrial development bonds were sold in 3 separate issues in May, July, and October 1985,

''(I) the rehabilitation of a bank's main office facilities of approximately 120,000 square feet, in connection with which the bank's board of directors authorized a $3,300,000 expenditure for the renovation and retrofit on March 20, 1984,

''(J) the rehabilitation of 10 warehouse buildings built between 1906 and 1910 and purchased under a contract dated February 17, 1986,

''(K) the rehabilitation of a facility which is customarily used for conventions and sporting events if an analysis of operations and recommendations of utilization of such facility was prepared by a certified public accounting firm pursuant to an engagement authorized on March 6, 1984, and presented on June 11, 1984, to officials of the city in which such facility is located,

''(L) Mount Vernon Mills in Columbia, South Carolina,

''(M) the Barbara Jordan II Apartments,

''(N) the rehabilitation of the Federal Building and Post Office, 120 Hanover Street, Manchester, New Hampshire,

''(O) the rehabilitation of the Charleston Waterfront project in South Carolina,

''(P) the Hayes Mansion in San Jose, California,

''(Q) the renovation of a facility owned by the National Railroad Passenger Corporation ('Amtrak') for which project Amtrak engaged a development team by letter agreement dated August 23, 1985, as modified by letter agreement dated September 9, 1985,

''(R) the rehabilitation of a structure or its components which is listed in the National Register of Historic Places, is located in Allegheny County, Pennsylvania, will be substantially rehabilitated (as defined in section 48(g)(1)(C) prior to amendment by this Act), prior to December 31, 1989; and was previously utilized as a market and an auto dealership,

''(S) The Bellevue Stratford Hotel in Philadelphia, Pennsylvania,

''(T) the Dixon Mill Housing project in Jersey City, New Jersey,

''(U) Motor Square Garden,

''(V) the Blackstone Apartments, and the Shriver-Johnson building, in Sioux Falls, South Dakota,

''(W) the Holy Name Academy in Spokane, Washington,

''(X) the Nike/Clemson Mill in Exeter, New Hampshire,

''(Y) the Central Bank Building in Grand Rapids, Michigan, and

''(Z) the Heritage Hotel, in the City of Marquette, Michigan.

''(4) ADDITIONAL REHABILITATIONS.—The amendments made by this section and section 201 [amending sections 46, 48, 167, 168, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to—

''(A) the Fort Worth Town Square Project in Texas,

''(B) the American Youth Hostel in New York, New York,

''(C) The Riverwest Loft Development (including all three phases, two of which do not involve rehabilitations),

''(D) the Gaslamp Quarter Historic District in California,

''(E) the Eberhardt & Ober Brewery, in Pennsylvania,

''(F) the Captain's Walk Limited Partnership-Harris Place Development, in Connecticut,

''(G) the Velvet Mills in Connecticut,

''(H) the Roycroft Inn, in New York,

''(I) Old Main Village, in Mankato, Minnesota,

''(J) the Washburn-Crosby A Mill, in Minneapolis, Minnesota,

''(K) the Marble Arcade office building in Lakeland, Florida,

''(L) the Willard Hotel, in Washington, D.C.,

''(M) the H. P. Lau Building in Lincoln, Nebraska,

''(N) the Starks Building, in Louisville, Kentucky,

''(O) the Bellevue High School, in Bellevue, Kentucky,

''(P) the Major Hampden Smith House, in Owensboro, Kentucky,

''(Q) the Doe Run Inn, in Brandenburg, Kentucky,

''(R) the State National Bank, in Frankfort, Kentucky,

''(S) the Captain Jack House, in Fleming, Kentucky,

''(T) the Elizabeth Arlinghaus House, in Covington, Kentucky,

''(U) Limerick Shamrock, in Louisville, Kentucky,

''(V) the Robert Mills Project, in South Carolina,

''(W) the 620 Project, consisting of 3 buildings, in Kentucky,

''(X) the Warrior Hotel, Ltd., the first two floors of the Martin Hotel, and the 105,000 square foot warehouse constructed in 1910, all in Sioux City, Iowa,

''(Y) the waterpark condominium residential project, to the extent of $2 million of expenditures,

''(Z) the Bigelow-Hartford Carpet Mill in Enfield, Connecticut,

''(AA) properties abutting 125th street in New York County from 7th Avenue west to Morningside and the pier area on the Hudson River at the end of such 125th Street,

''(BB) the City of Los Angeles Central Library project pursuant to an agreement dated December 28, 1983,

''(CC) the Warehouse Row project in Chattanooga, Tennessee,

''(DD) any project described in section 204(a)(1)(F) of this Act [26 U.S.C. 168 note],

''(EE) the Wood Street Commons project in Pittsburgh, Pennsylvania,

''(FF) any project described in section 803(d)(6) of this Act [26 U.S.C. 263A note],

''(GG) Union Station, Indianapolis, Indiana,

''(HH) the Mattress Factory project in Pittsburgh, Pennsylvania,

''(II) Union Station in Providence, Rhode Island,

''(JJ) South Pack Plaza, Asheville, North Carolina,

''(KK) Old Louisville Trust Project, Louisville, Kentucky,

''(LL) Stewarts Rehabilitation Project, Louisville, Kentucky,

''(MM) Bernheim Officenter, Louisville, Kentucky,

''(NN) Springville Mill Project, Rockville, Connecticut, and

''(OO) the D.J. Stewart Company Building, State and Main Streets, Rockford, Illinois.

''(5) REDUCTION IN CREDIT FOR PROPERTY UNDER TRANSITIONAL RULES.—In the case of property placed in service after December 31, 1986, and to which the amendments made by this section [amending this section and sections 47 and 48 of this title] do not apply, subparagraph (A) of section 46(b)(4) of the Internal Revenue Code of 1954 [now 1986] (as in effect before the enactment of this Act) shall be applied—

''(A) by substituting '10 percent' for '15 percent', and

''(B) by substituting '13 percent' for '20 percent'.

''(6) EXPENSING OF REHABILITATION EXPENSES FOR THE FRANKFORD ARSENAL.—In the case of any expenditures paid or incurred in connection with improvements (including repairs and maintenance) of the Frankford Arsenal pursuant to a contract and partnership agreement during the 8-year period specified in the contract or agreement, all such expenditures to be made during the period 1986 through and including 1993 shall—

''(A) be treated as made (and allowable as a deduction) during 1986,

''(B) be treated as qualified rehabilitation expenditures made during 1986, and

''(C) be allocated in accordance with the partnership agreement regardless of when the interest in the partnership was acquired, except that—

''(i) if the taxpayer is not the original holder of such interest, no person (other than the taxpayer) had claimed any benefits by reason of this paragraph,

''(ii) no interest under section 6611 of the 1986 Code on any refund of income taxes which is solely attributable to this paragraph shall be paid for the period—

''(I) beginning on the date which is 45 days after the later of April 15, 1987, or the date on which the return for such taxes was filed, and

''(II) ending on the date the taxpayer acquired the interest in the partnership, and

''(iii) if the expenditures to be made under this provision are not paid or incurred before January 1, 1994, then the tax imposed by chapter 1 of such Code for the taxpayer's last taxable year beginning in 1993 shall be increased by the amount of the tax benefits by reason of this paragraph which are attributable to the expenditures not so paid or incurred.

''(7) SPECIAL RULE.—In the case of the rehabilitation of the Willard Hotel in Washington, D.C., section 205(c)(1)(B)(ii) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 205(c)(1)(B)(ii) of Pub. L. 97–248, set out as a note under section 196 of this title] shall be applied by substituting '1987' for '1986'.''

Section 421(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section] shall apply to periods beginning after December 31, 1985, under rules similar to rules under section 48(m) of the Internal Revenue Code of 1986.''

Amendment by sections 1802(a)(6), (8), 1844(a), (b)(3), (5), 1847(b)(11), 1848(a) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 16 of Pub. L. 98–369 applicable to taxable years ending after Dec. 31, 1983, see section 18(a) of Pub. L. 98–369, set out as a note under section 48 of this title.

Amendment by section 31(f) of Pub. L. 98–369 effective, except as otherwise provided in section 31(g) of Pub. L. 98–369, as to property placed in service by the taxpayer after Nov. 5, 1983, in taxable years ending after such date and to property placed in service by the taxpayer on or before Nov. 5, 1983, if the lease to the organization described in section 593 of this title is entered into after Nov. 5, 1983, see section 31(g)(1), (14) of Pub. L. 98–369, set out as a note under section 168 of this title.

Amendment by section 113(b)(2)(B) of Pub. L. 98–369 applicable as if included in the amendments by sections 201(a), 211(a)(1), and 211(f)(1) of Pub. L. 97–34, which amended this section and enacted section 168 of this title, see section 113(c)(2)(B) of Pub. L. 98–369, set out as a note under section 168 of this title.

Section 431(e) of Pub. L. 98–369 provided:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 47 and 48 of this title] shall apply to property placed in service after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date; except that such amendments shall not apply to any property to which the amendments made by section 211(f) of the Economic Recovery Tax Act of 1981 [section 211(f) of Pub. L. 97–34, amending sections 46 and 47 of this title] do not apply.

''(2) AMENDMENTS MAY BE ELECTED RETROACTIVELY.—At the election of the taxpayer, the amendments made by this section shall apply as if included in the amendments made by section 211(f) of the Economic Recovery Tax Act of 1981. Any election made under the preceding sentence shall apply to all property of the taxpayer to which the amendments made by such section 211(f) apply and shall be made at such time and in such manner as the Secretary of the Treasury or his delegate may by regulations prescribe.''

Amendment by section 474(*o*)(1)–(7) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 713 of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by section 122(c)(1) of Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual's annuity starting date was deferred under section 105(d)(6) of this title as in effect on the day before Apr. 20, 1983, such deferral shall end on the first day of such individual's first taxable year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98–21, set out as a note under section 22 of this title.

Amendment by title I of Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

Amendment by section 202(f) of Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Crude Oil Windfall Profit Tax Act of 1980, Pub. L. 96–223, to which such amendment relates, see section 203(a) of Pub. L. 97–448, set out as a note under section 6652 of this title.

Section 541(c) of Pub. L. 97–424, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) GENERAL RULE.—The amendments made by subsections (a) and (b) [amending this section and sections 167 and 168 of this title] shall apply to taxable years beginning after December 31, 1979.

''(2) SPECIAL RULE FOR PERIODS BEGINNING BEFORE MARCH 1, 1980.—

''(A) IN GENERAL.—Subject to the provisions of paragraphs (3) and (4), notwithstanding the provisions of sections 167(*l*) and 46(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] and of any regulations prescribed by the Secretary of the Treasury (or his delegate) under such sections, the use for ratemaking purposes or for reflecting operating results in the taxpayer's regulated books of account, for any period before March 1, 1980, of—

''(i) any estimates or projections relating to the amounts of the taxpayer's tax expense, depreciation expense, deferred tax reserve, credit allowable under section 38 of such code, or rate base, or

''(ii) any adjustments to the taxpayer's rate of return,

shall not be treated as inconsistent with the requirements of subparagraph (G) of such section 167(*l*)(3) nor inconsistent with the requirements of paragraph (1) or (2) of such section 46(f), where such estimates or projections, or such rate of return adjustments, were included in a qualified order.

''(B) QUALIFIED ORDER DEFINED.—For purposes of this subsection, the term ''qualified order'' means an order—

''(i) by a public utility commission which was entered before March 13, 1980,

''(ii) which used the estimates, projections, or rate of return adjustments referred to in subparagraph (A) to determine the amount of the rates to be collected by the taxpayer or the amount of a refund with respect to rates previously collected, and

''(iii) which ordered such rates to be collected or refunds to be made (whether or not such order actually was implemented or enforced).

''(3) LIMITATIONS ON APPLICATION OF PARAGRAPH (2).—

''(A) PARAGRAPH (2) NOT TO APPLY TO AMOUNTS ACTUALLY FLOWED THROUGH.—Paragraph (2) shall not apply to the amount of any—

''(i) rate reduction, or

''(ii) refund,

which was actually made pursuant to a qualified order.

''(B) TAXPAYER MUST ENTER INTO CLOSING AGREEMENT BEFORE PARAGRAPH (2) APPLIES.—Paragraph (2) shall not apply to any taxpayer unless, before the later of—

''(i) July 1, 1983, or

''(ii) 6 months after the refunds or rate reductions are actually made pursuant to a qualified order.

the taxpayer enters into a closing agreement (within the meaning of section 7121 of the Internal Revenue Code of 1986) which provides for the payment by the taxpayer of the amount of which paragraph (2) does not apply by reason of subparagraph (A).

''(4) SPECIAL RULES RELATING TO PAYMENT OF REFUNDS OR INTEREST BY THE UNITED STATES OR THE TAXPAYER.—

''(A) REFUND DEFINED.—For purposes of this subsection, the term ''refund'' shall include any credit allowed by the taxpayer under a qualified order but shall not include interest payable with respect to any refund (or credit) under such order.

''(B) NO INTEREST PAYABLE BY UNITED STATES.—No interest shall be payable under section 6611 of the Internal Revenue Code of 1986 on any overpayment of tax which is attributable to the application of paragraph (2).

''(C) PAYMENTS MAY BE MADE IN TWO EQUAL INSTALLMENTS.—

''(i) IN GENERAL.—The taxpayer may make any payment required by reason of paragraph (3) in 2 equal installments, the first installment being due on the last date on which a taxpayer may enter into a closing agreement under paragraph (3)(B), and the second payment being due 1 year after the last date for the first payment.

''(ii) INTEREST PAYMENTS.—For purposes of section 6601 of such Code, the last date prescribed for payment with respect to any payment required by reason of paragraph (3) shall be the last date on which such payment is due under clause (i).

''(5) NO INFERENCE.—The application of subparagraph (G) of section 167(*l*)(3) of the Internal Revenue Code of 1986, and the application of paragraphs (1) and (2) of section 46(f) of such Code, to taxable years beginning before January 1, 1980, shall be determined without any inference drawn from the amendments made by subsections (a) and (b) of this section [amending this section and sections 167 and 168 of this title] or from the rules contained in paragraphs (2), (3), and (4). Nothing in the preceding sentence shall be construed to limit the relief provided by paragraphs (2), (3), and (4).''

EFFECTIVE DATE OF 1982 AMENDMENTS

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

Amendment by section 201(d)(8)(A), formerly section 201(c)(8)(A), of Pub. L. 97–248, applicable to taxable years beginning after Dec. 31, 1982, see section 201(e)(1) of Pub. L. 97–248, set out as a note under section 5 of this title.

Section 205(c)(2) of Pub. L. 97–248 provided that: ''The amendments made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1982.''

Amendment by section 265(b)(2)(A)(i) of Pub. L. 97–248 applicable to distributions after Dec. 31, 1982, see section 265(c)(2) of Pub. L. 97–248, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 207(c)(1) of Pub. L. 97–34 applicable to unused credit years ending after Dec. 31, 1973, see section 209(c)(2)(A) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

Section 211(i) of Pub. L. 97–34 provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 47 and 48 of this title] shall apply to property placed in service after December 31, 1980.

''(2) PROGRESS EXPENDITURES.—The amendments made by subsection (b) [amending this section] shall apply to progress expenditures made after December 31, 1980.

''(3) PETROLEUM STORAGE FACILITIES.—The amendments made by subsection (c) [amending this section] shall apply to periods after December 31, 1980, under rules similar to the rules under section 48(m).

''(4) NONCORPORATE LESSORS.—The amendments made by subsection (d) [amending this section] shall apply to leases entered into after June 25, 1981.

''(5) AT RISK RULES.—

''(A) IN GENERAL.—The amendment made by subsection (f) [amending this section and section 47 of this title] shall not apply to—

''(i) property placed in service by the taxpayer on or before February 18, 1981, and

''(ii) property placed in service by the taxpayer after February 18, 1981, where such property is acquired by the taxpayer pursuant to a binding contract entered into on or before that date.

''(B) BINDING CONTRACT.—For purposes of subparagraph (A)(ii), property acquired pursuant to a binding contract shall, under regulations prescribed by the Secretary, include property acquired in a manner so that it would have qualified as pretermination property under section 49(b) (as in effect before its repeal by the Revenue Act of 1978) [Pub. L. 95–600].

''(6) LEASED ROLLING STOCK.—The amendment made by subsection (h) [amending section 48 of this title] shall apply to taxable years beginning after December 31, 1980.''

Section 212(e) of Pub. L. 97–34, as amended by Pub. L. 97–448, title I, § 102(f)(1), Jan. 12, 1983, 96 Stat. 2371; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 48, 57, 167, 280B, 642, 1016, 1082, 1245, and 1250 of this title and repealing section 191 of this title] shall apply to expenditures incurred after December 31, 1981, in taxable years ending after such date.

''(2) TRANSITIONAL RULE.—The amendments made by this section shall not apply with respect to any rehabilitation of a building if—

''(A) the physical work on such rehabilitation began before January 1, 1982, and

''(B) such building does not meet the requirements of paragraph (1) of section 48(g) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this Act [Pub. L. 97–34]).''

Section 332(c)(1) of Pub. L. 97–34 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective on the date of enactment of this Act [Aug. 13, 1981].''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 222(e)(2) of Pub. L. 96–223 applicable to periods after Dec. 31, 1979, under rules similar to the rules of section 48(m) of this title, see section 222(j)(1) of Pub. L. 96–223, set out as a note under section 48 of this title.

Section 223(b)(3) of Pub. L. 96–223 provided that: ''The amendments made by this subsection [amending this section and section 6401 of this title] shall apply to qualified investment for taxable years beginning after December 31, 1979.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 141(e), (f)(2) of Pub. L. 95–600 effective with respect to qualified investment for taxable years beginning after Dec. 31, 1978, see section 141(g)(1) of Pub. L. 95–600, set out as an Effective Date note under section 409 of this title.

Section 312(d) of Pub. L. 95–600 provided that: ''The amendments made by this section [amending this section and sections 48 and 167 of this title and repealing sections 49 and 50 of this title] shall apply to taxable years ending after December 31, 1978.''

Section 313(b) of Pub. L. 95–600 provided that:

''The amendment made by subsection (a) [amending this section] shall apply to—

''(1) property acquired by the taxpayer after December 31, 1978, and

''(2) property the construction, reconstruction, or erection of which was completed by the taxpayer after December 31, 1978 (but only to the extent of the basis thereof attributable to construction, reconstruction, or erection after such date).''

Section 316(c) of Pub. L. 95–600 provided that: ''The amendments made by this section [amending this section and section 1388 of this title] shall apply to taxable years ending after October 31, 1978.''

Section 703(r) of Pub. L. 95–600 provided that: ''Except as otherwise provided, the amendments made by this section [amending this section and sections 48, 103, 447, 453, 501, 801, 911, 995, 996, 999, 1033, 1212, 1375, 1402, 1561, 4041, 4911, 6104, 6427, 6501, 6504, 6511, 7609 of this title and sections 402, 405, 410, and 411 of Title 42, The Public Health and Welfare, enacting provisions set out as notes under sections 103, 311, 443, 501, and 4973 of this title, and amending provisions set out as notes under section 120, 311, 907, 995, 2011, 2501, and 4940 of this title] shall take effect on October 4, 1976.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 503(b)(4) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, see section 508 of Pub. L. 94–455, set out as a note under section 3 of this title.

Section 802(c) of Pub. L. 94–455 provided that: ''The amendments made by this section [amending this section and section 48 of this title and provisions set out below] shall apply to taxable years beginning after December 31, 1975.''

Section 803(j) of Pub. L. 94–455 provided that:

''(1) GENERAL RULE.—Except as provided in paragraph (2), the amendments made by this section [see Tables for classification of section 803 of Pub. L. 94–455] shall apply for taxable years beginning after December 31, 1974.

''(2) EXCEPTIONS.—

''(A) Section 301(e) of the Tax Reduction Act of 1975 [set out below], as added by subsection (d), shall apply for taxable years beginning after December 31, 1976.

''(B) The amendments made by subsections (a) and (b)(1) shall apply for taxable years beginning after December 31, 1975.

''(C) The amendments made by subsections (b)(4) and (f) shall apply for years beginning after December 31, 1975.''

Section 805(b) of Pub. L. 94–455, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1975, in the case of property placed in service after such date.

''(2) SECTION 46(g)(4).—Section 46(g)(4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) shall apply to taxable years beginning after December 31, 1975.''

Amendment by section 1607(b)(1)(B) of Pub. L. 94–455 applicable to taxable years ending after Oct. 4, 1976, with certain exceptions, see section 1608(c) of Pub. L. 94–455, set out as a note under section 857 of this title.

Amendment by section 1901(a)(4)(A), (B), (b)(1)(C) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Section 2112(d)(1) of Pub. L. 94–455 provided that: ''The amendments made by subsection (a) [amending this section and section 48 of this title] shall apply to—

''(A) property acquired by the taxpayer after December 31, 1976, and

''(B) property the construction, reconstruction, or erection of which was completed by the taxpayer after December 31, 1976, (but only to the extent of the basis thereof attributable to construction, reconstruction, or erection after such date), in taxable years beginning after such date.''

EFFECTIVE DATE OF 1975 AMENDMENT

Section 301(b)(4) of Pub. L. 94–12 provided that: ''The amendment made by paragraph (1) of this subsection [amending this section] shall apply to property placed in service after January 21, 1975, in taxable years ending after January 21, 1975. The amendments made by paragraphs (2) and (3) [amending this section] shall apply to taxable years ending after December 31, 1974.''

Section 305(a) of Pub. L. 94–12 provided that: ''The amendments made by section 302 [amending this section and sections 47, 48, and 50B of this title] shall apply to taxable years ending after December 31, 1974.''

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 2001(g)(2)(B) of Pub. L. 93–406 applicable to distributions made in taxable years beginning after Dec. 31, 1975, see section 2001(i)(5) of Pub. L. 93–406, set out as a note under section 72 of this title.

Amendment by section 2002(g)(2) of Pub. L. 93–406 effective on Jan. 1, 1975, see section 2002(i)(2) of Pub. L. 93–406, set out as an Effective Date note under section 4973 of this title.

Amendment by section 2005(c)(4) of Pub. L. 93–406 applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 102(d)(1), (2) of Pub. L. 92–178, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) The amendments made by subsections (a) and (b) [amending this section and section 48 of this title] shall apply to property described in section 50 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

''(2) In redetermining qualified investment for purposes of section 47(a) of the Internal Revenue Code of 1986 in the case of any property which ceases to be section 38 property with respect to the taxpayer after August 15, 1971, or which becomes public utility property after such date, section 46(c)(2) of such Code shall be applied as amended by subsection (a).''

Section 105(d) of Pub. L. 92–178, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [amending this section and enacting provisions set out below] shall apply to property described in section 50 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].''

Section 106(d) of Pub. L. 92–178 provided that: ''The amendments made by subsections (a), (b), and (c)(2) [amending this section] shall apply to taxable years beginning after December 31, 1970. The amendments made by subsection (c)(1) [amending this section] shall apply to taxable years ending after August 15, 1971.''

Section 107(a)(2) of Pub. L. 92–178 provided that: ''The repeals made by paragraph (1) [amending this section

and section 47 of this title] shall apply to casualties and thefts occurring after August 15, 1971.''

Section 108(d) of Pub. L. 92–178 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 48 of this title] shall apply to leases entered into after September 22, 1971. The amendment made by subsection (c) [amending section 48 of this title] shall apply to leases entered into after November 8, 1971.''

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 301(b)(4) of Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 301(c) of Pub. L. 91–172, set out as a note under section 5 of this title.

Amendment by section 401(e)(1) of Pub. L. 91–172 applicable with respect to taxable years ending on or after Dec. 31, 1970, see section 401(h)(3) of Pub. L. 91–172, set out as a note under section 1561 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Section 2(g) of Pub. L. 90–225 provided that: ''The amendments made by this section [amending this section and sections 6411, 6501, 6511, 6601, and 6611 of this title] shall apply with respect to investment credit carrybacks attributable to net operating loss carrybacks from taxable years ending after July 31, 1967.''

EFFECTIVE DATE OF 1966 AMENDMENTS

Section 4 of Pub. L. 89–800 provided that: ''The amendments made by this Act [amending this section and sections 48 and 167 of this title] shall apply to taxable years ending after October 9, 1966, except that the amendments made by section 3(b) [amending this section] shall apply only if the fifth taxable year following the unused credit year ends after December 31, 1966.''

Section 2(c) of Pub. L. 89–389 provided that: ''The amendments made by this section [enacting section 1378 of this title and amending this section and sections 1372, 1373, and 1375 of this title] shall apply with respect to taxable years of electing small business corporations beginning after the date of enactment of this Act [Apr. 14, 1966], but such amendments shall not apply with respect to sales or exchanges occurring before February 24, 1966.''

Amendment by Pub. L. 89–384 applicable with respect to amounts received after December 31, 1964, in respect of foreign expropriation losses (as defined in section 1351(b) of this title) sustained after December 31, 1958, see section 2 of Pub. L. 89–384, set out as an Effective Date note under section 1351 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable with respect to dividends received after Dec. 31, 1964, in taxable years ending after such date, see section 201(e) of Pub. L. 88–272, set out as a note under section 22 of this title.

EFFECTIVE DATE

Section 2(h) of Pub. L. 87–834 provided that: ''The amendments made by this section [enacting this section and sections 38, 47, 48, and 181 of this title, amending sections 381, 1016, 6501, 6511, 6601, and 6611 of this title, and renumbering former section 38 as section 39 of this title] shall apply with respect to taxable years ending after December 31, 1961.''

SAVINGS PROVISION

For provisions that nothing in amendment by section 11813(a) of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

CLARIFICATION OF EFFECT OF 1984 AMENDMENT ON INVESTMENT TAX CREDIT

Section 475(c) of Pub. L. 98–369 provided that: ''Nothing in the amendments made by section 474(*o*) [amending this section and sections 47 and 48 of this title] shall be construed as reducing the amount of any credit allowable for qualified investment in taxable years beginning before January 1, 1984.''

REGULATED PUBLIC UTILITIES; SPECIAL TRANSITIONAL RULE

Section 209(d)(2) of Pub. L. 97–34, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''If, by the terms of the applicable rate order last entered before the date of the enactment of this Act [Aug. 13, 1981] by a regulatory commission having appropriate jurisdiction, a regulated public utility would (but for this provision) fail to meet the requirements of paragraph (1) or (2) of section 46(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] with respect to property for an accounting period ending after December 31, 1980, such regulated public utility shall not fail to meet such requirements if, by the terms of its first rate order determining cost of service with respect to such property which becomes effective after the date of the enactment of this Act and on or before January 1, 1983, such regulated public utility meets such requirements. This provision shall not apply to any rate order which, under the rules in effect before the date of the enactment of this Act was inconsistent with the requirements of paragraph (1) or (2) of section 46(f) of such Code (whichever would have been applicable).''

PLAN REQUIREMENTS FOR TAXPAYERS ELECTING ADDITIONAL CREDITS

Section 301(d), (e), (f) of Pub. L. 94–12, as amended by Pub. L. 94–455, §§802(b)(7), 803(c), (d), (e), relating to plan requirements for taxpayers electing additional credit, was repealed by Pub. L. 95–600, title I, §141(f)(1), Nov. 6, 1978, 92 Stat. 2795.

PUBLIC UTILITY PROPERTY SUBJECT TO SUBSEC. (e); PROVISIONS RESPECTING TREATMENT OF INVESTMENT CREDIT BY FEDERAL REGULATORY AGENCIES INAPPLICABLE

Section 105(e) of Pub. L. 92–178, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Section 203(e) of the Revenue Act of 1964 [set out as note under section 38 of this title] shall not apply to public utility property to which section 46(e) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (c)) [subsec. (e) of this section] applies.''

§ 47. Rehabilitation credit

(a) General rule

For purposes of section 46, the rehabilitation credit for any taxable year is the sum of—

(1) 10 percent of the qualified rehabilitation expenditures with respect to any qualified rehabilitated building other than a certified historic structure, and

(2) 20 percent of the qualified rehabilitation expenditures with respect to any certified historic structure.

(b) When expenditures taken into account

(1) In general

Qualified rehabilitation expenditures with respect to any qualified rehabilitated building

shall be taken into account for the taxable year in which such qualified rehabilitated building is placed in service.

(2) Coordination with subsection (d)

The amount which would (but for this paragraph) be taken into account under paragraph (1) with respect to any qualified rehabilitated building shall be reduced (but not below zero) by any amount of qualified rehabilitation expenditures taken into account under subsection (d) by the taxpayer or a predecessor of the taxpayer (or, in the case of a sale and leaseback described in section 50(a)(2)(C), by the lessee), to the extent any amount so taken into account has not been required to be recaptured under section 50(a).

(c) Definitions

For purposes of this section—

(1) Qualified rehabilitated building

(A) In general

The term ''qualified rehabilitated building'' means any building (and its structural components) if—

(i) such building has been substantially rehabilitated,

(ii) such building was placed in service before the beginning of the rehabilitation,

(iii) in the case of any building other than a certified historic structure, in the rehabilitation process—

(I) 50 percent or more of the existing external walls of such building are retained in place as external walls,

(II) 75 percent or more of the existing external walls of such building are retained in place as internal or external walls, and

(III) 75 percent or more of the existing internal structural framework of such building is retained in place, and

(iv) depreciation (or amortization in lieu of depreciation) is allowable with respect to such building.

(B) Building must be first placed in service before 1936

In the case of a building other than a certified historic structure, a building shall not be a qualified rehabilitated building unless the building was first placed in service before 1936.

(C) Substantially rehabilitated defined

(i) In general

For purposes of subparagraph (A)(i), a building shall be treated as having been substantially rehabilitated only if the qualified rehabilitation expenditures during the 24-month period selected by the taxpayer (at the time and in the manner prescribed by regulation) and ending with or within the taxable year exceed the greater of—

(I) the adjusted basis of such building (and its structural components), or

(II) $5,000.

The adjusted basis of the building (and its structural components) shall be determined as of the beginning of the 1st day of such 24-month period, or of the holding period of the building, whichever is later. For purposes of the preceding sentence, the determination of the beginning of the holding period shall be made without regard to any reconstruction by the taxpayer in connection with the rehabilitation.

(ii) Special rule for phased rehabilitation

In the case of any rehabilitation which may reasonably be expected to be completed in phases set forth in architectural plans and specifications completed before the rehabilitation begins, clause (i) shall be applied by substituting ''60-month period'' for ''24-month period''.

(iii) Lessees

The Secretary shall prescribe by regulation rules for applying this subparagraph to lessees.

(D) Reconstruction

Rehabilitation includes reconstruction.

(2) Qualified rehabilitation expenditure defined

(A) In general

The term ''qualified rehabilitation expenditure'' means any amount properly chargeable to capital account—

(i) for property for which depreciation is allowable under section 168 and which is—

(I) nonresidential real property,

(II) residential rental property,

(III) real property which has a class life of more than 12.5 years, or

(IV) an addition or improvement to property described in subclause (I), (II), or (III), and

(ii) in connection with the rehabilitation of a qualified rehabilitated building.

(B) Certain expenditures not included

The term ''qualified rehabilitation expenditure'' does not include—

(i) Straight line depreciation must be used

Any expenditure with respect to which the taxpayer does not use the straight line method over a recovery period determined under subsection (c) or (g) of section 168. The preceding sentence shall not apply to any expenditure to the extent the alternative depreciation system of section 168(g) applies to such expenditure by reason of subparagraph (B) or (C) of section 168(g)(1).

(ii) Cost of acquisition

The cost of acquiring any building or interest therein.

(iii) Enlargements

Any expenditure attributable to the enlargement of an existing building.

(iv) Certified historic structure, etc.

Any expenditure attributable to the rehabilitation of a certified historic structure or a building in a registered historic

district, unless the rehabilitation is a certified rehabilitation (within the meaning of subparagraph (C)). The preceding sentence shall not apply to a building in a registered historic district if—

(I) such building was not a certified historic structure,

(II) the Secretary of the Interior certified to the Secretary that such building is not of historic significance to the district, and

(III) if the certification referred to in subclause (II) occurs after the beginning of the rehabilitation of such building, the taxpayer certifies to the Secretary that, at the beginning of such rehabilitation, he in good faith was not aware of the requirements of subclause (II).

(v) Tax-exempt use property

(I) In general

Any expenditure in connection with the rehabilitation of a building which is allocable to the portion of such property which is (or may reasonably be expected to be) tax-exempt use property (within the meaning of section 168(h), except that ''50 percent'' shall be substituted for ''35 percent'' in paragraph (1)(B)(iii) thereof).

(II) Clause not to apply for purposes of paragraph (1)(C)

This clause shall not apply for purposes of determining under paragraph (1)(C) whether a building has been substantially rehabilitated.

(vi) Expenditures of lessee

Any expenditure of a lessee of a building if, on the date the rehabilitation is completed, the remaining term of the lease (determined without regard to any renewal periods) is less than the recovery period determined under section 168(c).

(C) Certified rehabilitation

For purposes of subparagraph (B), the term ''certified rehabilitation'' means any rehabilitation of a certified historic structure which the Secretary of the Interior has certified to the Secretary as being consistent with the historic character of such property or the district in which such property is located.

(D) Nonresidential real property; residential rental property; class life

For purposes of subparagraph (A), the terms ''nonresidential real property,'' ''residential rental property,'' and ''class life'' have the respective meanings given such terms by section 168.

(3) Certified historic structure defined

(A) In general

The term ''certified historic structure'' means any building (and its structural components) which—

(i) is listed in the National Register, or

(ii) is located in a registered historic district and is certified by the Secretary of the Interior to the Secretary as being of historic significance to the district.

(B) Registered historic district

The term ''registered historic district'' means—

(i) any district listed in the National Register, and

(ii) any district—

(I) which is designated under a statute of the appropriate State or local government, if such statute is certified by the Secretary of the Interior to the Secretary as containing criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of historic significance to the district, and

(II) which is certified by the Secretary of the Interior to the Secretary as meeting substantially all of the requirements for the listing of districts in the National Register.

(d) Progress expenditures

(1) In general

In the case of any building to which this subsection applies, except as provided in paragraph (3)—

(A) if such building is self-rehabilitated property, any qualified rehabilitation expenditure with respect to such building shall be taken into account for the taxable year for which such expenditure is properly chargeable to capital account with respect to such building, and

(B) if such building is not self-rehabilitated property, any qualified rehabilitation expenditure with respect to such building shall be taken into account for the taxable year in which paid.

(2) Property to which subsection applies

(A) In general

This subsection shall apply to any building which is being rehabilitated by or for the taxpayer if—

(i) the normal rehabilitation period for such building is 2 years or more, and

(ii) it is reasonable to expect that such building will be a qualified rehabilitated building in the hands of the taxpayer when it is placed in service.

Clauses (i) and (ii) shall be applied on the basis of facts known as of the close of the taxable year of the taxpayer in which the rehabilitation begins (or, if later, at the close of the first taxable year to which an election under this subsection applies).

(B) Normal rehabilitation period

For purposes of subparagraph (A), the term ''normal rehabilitation period'' means the period reasonably expected to be required for the rehabilitation of the building—

(i) beginning with the date on which physical work on the rehabilitation begins (or, if later, the first day of the first taxable year to which an election under this subsection applies), and

(ii) ending on the date on which it is expected that the property will be available for placing in service.

(3) Special rules for applying paragraph (1)

For purposes of paragraph (1)—

(A) Component parts, etc.

Property which is to be a component part of, or is otherwise to be included in, any building to which this subsection applies shall be taken into account—

(i) at a time not earlier than the time at which it becomes irrevocably devoted to use in the building, and

(ii) as if (at the time referred to in clause (i)) the taxpayer had expended an amount equal to that portion of the cost to the taxpayer of such component or other property which, for purposes of this subpart, is properly chargeable (during such taxable year) to capital account with respect to such building.

(B) Certain borrowing disregarded

Any amount borrowed directly or indirectly by the taxpayer from the person rehabilitating the property for him shall not be treated as an amount expended for such rehabilitation.

(C) Limitation for buildings which are not self-rehabilitated

(i) In general

In the case of a building which is not self-rehabilitated, the amount taken into account under paragraph (1)(B) for any taxable year shall not exceed the amount which represents the portion of the overall cost to the taxpayer of the rehabilitation which is properly attributable to the portion of the rehabilitation which is completed during such taxable year.

(ii) Carryover of certain amounts

In the case of a building which is not a self-rehabilitated building, if for the taxable year—

(I) the amount which (but for clause (i)) would have been taken into account under paragraph (1)(B) exceeds the limitation of clause (i), then the amount of such excess shall be taken into account under paragraph (1)(B) for the succeeding taxable year, or

(II) the limitation of clause (i) exceeds the amount taken into account under paragraph (1)(B), then the amount of such excess shall increase the limitation of clause (i) for the succeeding taxable year.

(D) Determination of percentage of completion

The determination under subparagraph (C)(i) of the portion of the overall cost to the taxpayer of the rehabilitation which is properly attributable to rehabilitation completed during any taxable year shall be made, under regulations prescribed by the Secretary, on the basis of engineering or architectural estimates or on the basis of cost accounting records. Unless the taxpayer establishes otherwise by clear and convincing evidence, the rehabilitation shall be deemed to be completed not more rapidly than ratably over the normal rehabilitation period.

(E) No progress expenditures for certain prior periods

No qualified rehabilitation expenditures shall be taken into account under this subsection for any period before the first day of the first taxable year to which an election under this subsection applies.

(F) No progress expenditures for property for year it is placed in service, etc.

In the case of any building, no qualified rehabilitation expenditures shall be taken into account under this subsection for the earlier of—

(i) the taxable year in which the building is placed in service, or

(ii) the first taxable year for which recapture is required under section 50(a)(2) with respect to such property,

or for any taxable year thereafter.

(4) Self-rehabilitated building

For purposes of this subsection, the term ''self-rehabilitated building'' means any building if it is reasonable to believe that more than half of the qualified rehabilitation expenditures for such building will be made directly by the taxpayer.

(5) Election

This subsection shall apply to any taxpayer only if such taxpayer has made an election under this paragraph. Such an election shall apply to the taxable year for which made and all subsequent taxable years. Such an election, once made, may be revoked only with the consent of the Secretary.

(Added Pub. L. 87–834, § 2(b), Oct. 16, 1962, 76 Stat. 966; amended Pub. L. 91–172, title VII, § 703(c), Dec. 30, 1969, 83 Stat. 666; Pub. L. 91–676, § 1, Jan. 12, 1971, 84 Stat. 2060; Pub. L. 92–178, title I, §§ 102(c), 107(a)(1), (b)(1), Dec. 10, 1971, 85 Stat. 500, 507; Mar. 29, 1975, Pub. L. 94–12, title III, § 302(b)(2)(A), (c)(1), (2), 89 Stat. 43, 44; Pub. L. 94–455, title VIII, § 804(b), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1594, 1834; Pub. L. 95–600, title III, § 317(a), Nov. 6, 1978, 92 Stat. 2830; Pub. L. 95–618, title II, § 241(b), Nov. 9, 1978, 92 Stat. 3193; Pub. L. 97–34, title II, § 211(f)(2), (g), Aug. 13, 1981, 95 Stat. 231, 233; Pub. L. 97–248, title II, § 208(a)(2)(B), Sept. 3, 1982, 96 Stat. 435; Pub. L. 97–448, title I, § 102(e)(3), Jan. 12, 1983, 96 Stat. 2371; Pub. L. 98–369, div. A, title IV, §§ 421(b)(7), 431(b)(2), (d)(4), (5), 474(*o*)(8), (9), July 18, 1984, 98 Stat. 794, 807, 810, 836; Pub. L. 98–443, § 9(p), Oct. 4, 1984, 98 Stat. 1708; Pub. L. 99–121, title I, § 103(b)(6), Oct. 11, 1985, 99 Stat. 510; Pub. L. 99–514, title XV, § 1511(c)(2), title XVIII, §§ 1802(a)(5)(A), 1844(b)(1), (2), (4), Oct. 22, 1986, 100 Stat. 2744, 2788, 2855; Pub. L. 100–647, title I, §§ 1002(a)(18), (26)–(28), 1007(g)(3)(A), Nov. 10, 1988, 102 Stat. 3356, 3357, 3435; Pub. L. 101–508, title XI, § 11801(c)(8)(A), 11813(a), Nov. 5, 1990, 104 Stat. 1388–524, 1388–536; Pub. L. 110–289, div. C, title I, § 3025(a), July 30, 2008, 122 Stat. 2897.)

AMENDMENTS

2008—Subsec. (c)(2)(B)(v)(I). Pub. L. 110–289 substituted ''section 168(h), except that '50 percent' shall be substituted for '35 percent' in paragraph (1)(B)(iii) thereof'' for ''section 168(h)''.

1990—Pub. L. 101–508, §11813(a), amended section generally, substituting section catchline for one which read: ''Certain dispositions, etc., of section 38 property'' and in text substituting present provisions for provisions relating to general rules regarding disposition of section 38 property, nonapplicability of section in certain cases, the treatment of any increase in tax under the section, increases in nonqualified nonrecourse financing, and transfers between spouses or incident to divorce.

Subsec. (b)(1) to (3). Pub. L. 101–508, §11801(c)(8)(A), inserted ''or'' at end of par. (1), substituted a period for '', or'' at end of par. (2), and struck out par. (3) which related to nonapplicability of subsec. (a) in the case of a transfer of section 38 property related to exchanges under final system plan for ConRail.

1988—Subsec. (a)(5)(D). Pub. L. 100–647, §1002(a)(26)(B), struck out at end ''If, prior to a disposition to which this subsection applies, any portion of any credit is not allowable with respect to any property by reason of section 168(i)(3), such portion shall be treated (for purposes of this subparagraph) as not having been used to reduce tax liability.''

Subsec. (a)(5)(E)(iii). Pub. L. 100–647, §1002(a)(26)(C), substituted ''168(e)'' for ''168(c)''.

Subsec. (a)(5)(E)(v). Pub. L. 100–647, §1002(a)(26)(A), added cl. (v).

Subsec. (a)(9)(A). Pub. L. 100–647, §1002(a)(27), substituted ''section 168(h)(2)'' for ''section 168(j)(4)(C)''.

Subsec. (c). Pub. L. 100–647, §1007(g)(3)(A), substituted ''D, or G'' for ''or D''.

Subsec. (d)(1). Pub. L. 100–647, §1002(a)(18), substituted ''section 46(c)(8)(C)'' for ''section 48(c)(8)(C)''.

Subsec. (d)(3)(C)(i). Pub. L. 100–647, §1002(a)(28), substituted ''class life (as defined in section 168(i)(1))'' for ''present class life (as defined in section 168(g)(2))'' and ''no class life'' for ''no present class life''.

1986—Subsec. (a)(9). Pub. L. 99–514, §1802(a)(5)(A), added par. (9).

Subsec. (d)(1). Pub. L. 99–514, §1844(b)(1), substituted ''reducing the credit base (as defined in section 48(c)(8)(C))'' for ''reducing the qualified investment'' and inserted ''For purposes of determining the amount of credit subject to the early disposition or cessation rules of subsection (a), the net increase in the amount of the nonqualified nonrecourse financing with respect to the property shall be treated as reducing the property's credit base (and correspondingly reducing the qualified investment in the property) in the year in which the property was first placed in service.''

Subsec. (d)(3)(E)(i). Pub. L. 99–514, §1844(b)(4), inserted ''reduced by the sum of the credit recapture amounts with respect to such property for all preceding years''.

Subsec. (d)(3)(F). Pub. L. 99–514, §1844(b)(2), struck out subpar. (F) which read as follows: ''The amount of any increase in tax under subsection (a) with respect to any property to which this paragraph applies shall be determined by reducing the qualified investment with respect to such property by the aggregate credit recapture amounts for all taxable years under this paragraph.''

Subsec. (d)(3)(G). Pub. L. 99–514, §1511(c)(2), substituted ''determined at the underpayment rate established under section 6621'' for ''determined under section 6621''.

1985—Subsec. (a)(5)(B). Pub. L. 99–121 substituted ''For property other than 3-year property'' for ''For 15-year, 10-year, and 5-year property'' in table heading.

1984—Subsec. (a)(5)(D), (6). Pub. L. 98–369, §474(*o*)(8), substituted ''under section 39'' for ''under section 46(b)''.

Subsec. (a)(7)(C). Pub. L. 98–443 substituted ''Secretary of Transportation'' for ''Civil Aeronautics Board''.

Subsec. (c). Pub. L. 98–369, §474(*o*)(9), substituted ''subpart A, B, or D'' for ''subpart A''.

Subsec. (d). Pub. L. 98–369, §431(b)(2), substituted ''Increases in nonqualified nonrecourse financing'' for ''Property ceasing to be at risk'' in heading.

Subsec. (d)(1). Pub. L. 98–369, §431(b)(2), substituted provisions relating to increases in tax liability resulting from increases in nonqualified nonrecourse financing for provisions relating to increases in tax liability resulting from the taxpayer ceasing to be at risk with respect to certain property.

Subsec. (d)(2). Pub. L. 98–369, §431(b)(2), substituted provisions that for purposes of par. (1), transfers of debt, or agreements to transfer, occurring more than one year after the initial borrowing shall not be treated as increasing nonqualified nonrecourse financing with respect to the taxpayer for provisions that for purposes of par. (1), such transfers (or agreements to transfer) by a qualified person to a nonqualified person would not cause the taxpayer to be treated as ceasing to be at risk.

Subsec. (d)(3)(A). Pub. L. 98–369, §431(d)(4), substituted ''increasing the amount of nonqualified nonrecourse financing (within the meaning of section 46(c)(8))'' for ''ceasing to be at risk''.

Subsec. (d)(3)(B)(i). Pub. L. 98–369, §431(d)(5), struck out ''other than a loan described in section 46(c)(8)(B)(ii)'' after ''section 46(c)(8)(F)(iv)''.

Subsec. (e). Pub. L. 98–369, §421(b)(7), added subsec. (e).

1983—Subsec. (d)(2). Pub. L. 97–448, §102(e)(3)(A), substituted ''section 46(c)(8)(D)'' and ''section 46(c)(8)(B)'' for ''section 48(c)(8)(D)'' and ''section 48(c)(8)(B)'', respectively.

Subsec. (d)(3)(A). Pub. L. 97–448, §102(e)(3)(B), substituted ''section 46(c)(8)(F)'' for ''section 46(c)(8)(E)''.

1982—Subsec. (a)(5)(D). Pub. L. 97–248, §208(a)(2)(B), inserted provision that if, prior to a disposition to which this subsection applies, any portion of any credit is not allowable with respect to any property by reason of section 168(i)(3), such portion shall be treated, for purposes of this subparagraph, as not having been used to reduce tax liability.

1981—Subsec. (a)(3)(D). Pub. L. 97–34, §211(g)(2)(A), inserted provisions relating to disposition, cessation, or change in expected use described in paragraph (5).

Subsec. (a)(5), (6). Pub. L. 97–34, §211(g)(1), (2)(B), added par. (5), redesignated former par. (5) as (6) and substituted ''paragraph (1), (3), or (5)'' for ''paragraph (1) or (3)''. Former par. (6) redesignated (7).

Subsec. (a)(7), (8). Pub. L. 97–34, §211(g)(1), (2)(C), redesignated former par. (6) as (7), substituted ''paragraph (6)'' for ''paragraph (5)'', and redesignated former par. (7) as (8).

Subsec. (d). Pub. L. 97–34, §211(f)(2), added subsec. (d).

1978—Subsec. (a)(4), (5). Pub. L. 95–618, §241(b)(1), added par. (4), redesignated former par. (4) as (5) and substituted ''paragraph (2) or (4)'' for ''paragraph (2)''.

Subsec. (a)(6)(B). Pub. L. 95–618, §241(b)(3), substituted ''paragraph (5)'' for ''paragraph (4)''.

Subsec. (b)(3). Pub. L. 95–600, §317(a), added par. (3).

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(A), struck out in introductory provision and in par. (3)(C) ''or his delegate'' after ''Secretary''.

Subsec. (a)(7). Pub. L. 94–455, §804(b), added par. (7).

1975—Subsec. (a)(3), (4). Pub. L. 94–12, §302(b)(2)(A), (c)(1), added par. (3), redesignated former par. (3) as (4) and substituted ''paragraph (1) or (3)'' for ''paragraph (1)''. A former par. (4), relating to increase or adjustment of tax where property is destroyed by casualty, etc., was repealed by Pub. L. 92–178.

Subsec. (a)(5), (6)(B). Pub. L. 94–12, §302(c)(2), substituted ''paragraph (4)'' for ''paragraph (3)''.

1971—Subsec. (a)(4). Pub. L. 92–178, §107(a)(1), struck out par. (4) relating to property destroyed by casualty, etc.

Subsec. (a)(5). Pub. L. 92–178, §107(b)(1), provided for the repeal of par. (5) with the repeal not to apply, however, in the case of certain replacement property. See section 107(b)(2) of Pub. L. 92–178, set out in the Effective Date of 1971 Amendment note below.

Subsec. (a)(6)(A). Pub. L. 92–178, §102(c), substituted ''3½ years'' for ''4 years''.

Subsec. (a)(6). Pub. L. 91–676 added par. (6).

1969—Subsec. (a)(5). Pub. L. 91–172, §703(c)(2), added par. (5).

Subsec. (a)(4). Pub. L. 91–172, §703(c)(1), inserted provision making subpars. (B) and (C) inapplicable to any casualty or theft occurring after April 18, 1969.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–289, div. C, title I, § 3025(b), July 30, 2008, 122 Stat. 2897, provided that: ''The amendments made by this section [amending this section] shall apply to expenditures properly taken into account for periods after December 31, 2007.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11813(a) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1511(d) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section and sections 48, 167, 644, 852, 4497, 6214, 6332, 6343, 6601, 6602, 6611, 6621, 6654, 6655, and 7426 of this title and sections 1961 and 2411 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as a note under section 6621 of this title] shall apply for purposes of determining interest for periods after December 31, 1986.''

Amendment by sections 1802(a)(5)(A) and 1844(b)(1), (2), (4) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–121 applicable as if included in the amendments made by section 111 of the Tax Reform Act of 1984, Pub. L. 98–369, see section 105(b)(4) of Pub. L. 99–121, set out as a note under section 168 of this title, and section 111(g) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 168 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

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

Amendment by section 421(b)(7) of Pub. L. 98–369 applicable to transfers after July 18, 1984, in taxable years ending after such date, subject to election to have amendment apply to transfers after 1983 or to transfers pursuant to existing decrees, see section 421(d) of Pub. L. 98–369, set out as an Effective Date note under section 1041 of this title.

Amendment by section 431(b)(2), (d)(4), (5) of Pub. L. 98–369 applicable to property placed in service after July 18, 1984, in taxable years ending after such date, but not applicable to property to which subsec. (d) of this section and section 46(c)(8), (9) of this title, as enacted by section 211(f) of Pub. L. 97–34, do not apply, with the taxpayer having an option to elect retroactive application of amendment by Pub. L. 98–369, see section 431(e) of Pub. L. 98–369, set out as a note under section 46 of this title.

Amendment by section 474(*o*)(8), (9) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to agreements entered into after July 1, 1982, or to property placed in service after that date, but not to transitional safe harbor lease property, nor to qualified leased property described in section 168(f)(8)(D)(v) of this title which is placed in service before Jan. 1, 1988, or is placed in service after such date pursuant to a binding contract or commitment entered into before April 1, 1983, and solely because of conditions which, as determined by the Secretary of the Treasury or his delegate, are not within the control of the lessor or lessee, see section 208(d)(1), (2)(A), (5) of Pub. L. 97–248, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 211(g) of Pub. L. 97–34 applicable to property placed in service after Dec. 31, 1980, see section 211(i)(1) of Pub. L. 97–34, set out in a note under section 46 of this title.

Amendment by section 211(f)(2) of Pub. L. 97–34 not to apply to property placed in service by the taxpayer on or before Feb. 18, 1981, and property placed in service by the taxpayer after Feb. 18, 1981, where such property was acquired by the taxpayer pursuant to a binding contract entered into on or before that date, see section 211(i)(5) of Pub. L. 97–34, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 317(b) of Pub. L. 95–600 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after March 31, 1976.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 804(b) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1974, see section 804(e) of Pub. L. 94–455, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–12 applicable to taxable years ending after Dec. 31, 1974, see section 305(a) of Pub. L. 94–12, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1971 AMENDMENTS

In redetermining qualified investment for purposes of subsec. (a) of this section in the case of any property which ceases to be section 38 property with respect to the taxpayer after Aug. 15, 1971, or which becomes public utility property after such date, section 46(c)(2) of this title as amended by section 102(a) of Pub. L. 92–178 as applicable, see section 102(d)(2) of Pub. L. 92–178, set out as a note under section 46 of this title.

Amendment by section 107(a)(1) of Pub. L. 92–178 applicable to casualties and thefts occurring after Aug. 15, 1971, see section 107(a)(2) of Pub. L. 92–178, set out as a note under section 46 of this title.

Section 107(b)(2) of Pub. L. 92–178, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The repeal made by paragraph (1) [repealing subsec. (a)(5) of this section] shall not apply if replacement property described in subparagraph (B) of such section 47(a)(5) is not property described in section 50 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].''

Section 102(d)(3) of Pub. L. 92–178 provided that: ''The amendment made by subsection (c) [amending this section] shall apply to leases executed after April 18, 1969.''

Section 2 of Pub. L. 91–676 provided that: ''The amendment made by the first section of this Act [amending this section] shall apply to taxable years ending after April 18, 1969.''

EFFECTIVE DATE

Section applicable with respect to taxable years ending after Dec. 31, 1961, see section 2(h) of Pub. L. 87–834, set out as a note under section 46 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

CLARIFICATION OF EFFECT OF 1984 AMENDMENT ON INVESTMENT TAX CREDIT

For provision that nothing in the amendments made by section 474(*o*) of Pub. L. 98–369, which amended this section, be construed as reducing the investment tax credit in taxable years beginning before Jan. 1, 1984, see section 475(c) of Pub. L. 98–369, set out as a note under section 46 of this title.

TRANSFER OF FUNCTIONS

Functions, powers, and duties of Federal Aviation Agency and of Administrator and other offices and officers thereof transferred by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, to Secretary of Transportation, with functions, powers, and duties of Secretary of Transportation pertaining to aviation safety to be exercised by Federal Aviation Administrator in Department of Transportation, see section 106 of Title 49, Transportation.

§ 48. Energy credit

(a) Energy credit

(1) In general

For purposes of section 46, except as provided in paragraphs (1)(B), (2)(B), (3)(B), and (4)(B)[1] of subsection (c), the energy credit for any taxable year is the energy percentage of the basis of each energy property placed in service during such taxable year.

(2) Energy percentage

(A) In general

The energy percentage is—

(i) 30 percent in the case of—

(I) qualified fuel cell property,

(II) energy property described in paragraph (3)(A)(i) but only with respect to periods ending before January 1, 2017,

(III) energy property described in paragraph (3)(A)(ii), and

(IV) qualified small wind energy property, and

(ii) in the case of any energy property to which clause (i) does not apply, 10 percent.

(B) Coordination with rehabilitation credit

The energy percentage shall not apply to that portion of the basis of any property which is attributable to qualified rehabilitation expenditures.

(3) Energy property

For purposes of this subpart, the term ''energy property'' means any property—

(A) which is—

(i) equipment which uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat, excepting property used to generate energy for the purposes of heating a swimming pool,

(ii) equipment which uses solar energy to illuminate the inside of a structure using fiber-optic distributed sunlight but only with respect to periods ending before January 1, 2017,

(iii) equipment used to produce, distribute, or use energy derived from a geothermal deposit (within the meaning of section 613(e)(2)), but only, in the case of electricity generated by geothermal power, up to (but not including) the electrical transmission stage,

(iv) qualified fuel cell property or qualified microturbine property,

(v) combined heat and power system property,

(vi) qualified small wind energy property, or

(vii) equipment which uses the ground or ground water as a thermal energy source to heat a structure or as a thermal energy sink to cool a structure, but only with respect to periods ending before January 1, 2017,

(B)(i) the construction, reconstruction, or erection of which is completed by the taxpayer, or

(ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer,

(C) with respect to which depreciation (or amortization in lieu of depreciation) is allowable, and

(D) which meets the performance and quality standards (if any) which—

(i) have been prescribed by the Secretary by regulations (after consultation with the Secretary of Energy), and

(ii) are in effect at the time of the acquisition of the property.

Such term shall not include any property which is part of a facility the production from which is allowed as a credit under section 45 for the taxable year or any prior taxable year.

(4) Special rule for property financed by subsidized energy financing or industrial development bonds

(A) Reduction of basis

For purposes of applying the energy percentage to any property, if such property is financed in whole or in part by—

[1] See References in Text note below.

(i) subsidized energy financing, or

(ii) the proceeds of a private activity bond (within the meaning of section 141) the interest on which is exempt from tax under section 103,

the amount taken into account as the basis of such property shall not exceed the amount which (but for this subparagraph) would be so taken into account multiplied by the fraction determined under subparagraph (B).

(B) Determination of fraction

For purposes of subparagraph (A), the fraction determined under this subparagraph is 1 reduced by a fraction—

(i) the numerator of which is that portion of the basis of the property which is allocable to such financing or proceeds, and

(ii) the denominator of which is the basis of the property.

(C) Subsidized energy financing

For purposes of subparagraph (A), the term ''subsidized energy financing'' means financing provided under a Federal, State, or local program a principal purpose of which is to provide subsidized financing for projects designed to conserve or produce energy.

(D) Termination

This paragraph shall not apply to periods after December 31, 2008, under rules similar to the rules of section 48(m) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

(5) Election to treat qualified facilities as energy property

(A) In general

In the case of any qualified property which is part of a qualified investment credit facility—

(i) such property shall be treated as energy property for purposes of this section, and

(ii) the energy percentage with respect to such property shall be 30 percent.

(B) Denial of production credit

No credit shall be allowed under section 45 for any taxable year with respect to any qualified investment credit facility.

(C) Qualified investment credit facility

For purposes of this paragraph, the term ''qualified investment credit facility'' means any of the following facilities if no credit has been allowed under section 45 with respect to such facility and the taxpayer makes an irrevocable election to have this paragraph apply to such facility:

(i) Wind facilities

Any qualified facility (within the meaning of section 45) described in paragraph (1) of section 45(d) if such facility is placed in service in 2009, 2010, 2011, or 2012.

(ii) Other facilities

Any qualified facility (within the meaning of section 45) described in paragraph (2), (3), (4), (6), (7), (9), or (11) of section 45(d) if such facility is placed in service in 2009, 2010, 2011, 2012, or 2013.

(D) Qualified property

For purposes of this paragraph, the term ''qualified property'' means property—

(i) which is—

(I) tangible personal property, or

(II) other tangible property (not including a building or its structural components), but only if such property is used as an integral part of the qualified investment credit facility, and

(ii) with respect to which depreciation (or amortization in lieu of depreciation) is allowable.

(b) Certain progress expenditure rules made applicable

Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of subsection (a).

(c) Definitions

For purposes of this section—

(1) Qualified fuel cell property

(A) In general

The term ''qualified fuel cell property'' means a fuel cell power plant which—

(i) has a nameplate capacity of at least 0.5 kilowatt of electricity using an electrochemical process, and

(ii) has an electricity-only generation efficiency greater than 30 percent.

(B) Limitation

In the case of qualified fuel cell property placed in service during the taxable year, the credit otherwise determined under subsection (a) for such year with respect to such property shall not exceed an amount equal to $1,500 for each 0.5 kilowatt of capacity of such property.

(C) Fuel cell power plant

The term ''fuel cell power plant'' means an integrated system comprised of a fuel cell stack assembly and associated balance of plant components which converts a fuel into electricity using electrochemical means.

(D) Termination

The term ''qualified fuel cell property'' shall not include any property for any period after December 31, 2016.

(2) Qualified microturbine property

(A) In general

The term ''qualified microturbine property'' means a stationary microturbine power plant which—

(i) has a nameplate capacity of less than 2,000 kilowatts, and

(ii) has an electricity-only generation efficiency of not less than 26 percent at International Standard Organization conditions.

(B) Limitation

In the case of qualified microturbine property placed in service during the taxable

year, the credit otherwise determined under subsection (a) for such year with respect to such property shall not exceed an amount equal[2] $200 for each kilowatt of capacity of such property.

(C) Stationary microturbine power plant

The term ''stationary microturbine power plant'' means an integrated system comprised of a gas turbine engine, a combustor, a recuperator or regenerator, a generator or alternator, and associated balance of plant components which converts a fuel into electricity and thermal energy. Such term also includes all secondary components located between the existing infrastructure for fuel delivery and the existing infrastructure for power distribution, including equipment and controls for meeting relevant power standards, such as voltage, frequency, and power factors.

(D) Termination

The term ''qualified microturbine property'' shall not include any property for any period after December 31, 2016.

(3) Combined heat and power system property

(A) Combined heat and power system property

The term ''combined heat and power system property'' means property comprising a system—

(i) which uses the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other forms of useful thermal energy (including heating and cooling applications),

(ii) which produces—

(I) at least 20 percent of its total useful energy in the form of thermal energy which is not used to produce electrical or mechanical power (or combination thereof), and

(II) at least 20 percent of its total useful energy in the form of electrical or mechanical power (or combination thereof),

(iii) the energy efficiency percentage of which exceeds 60 percent, and

(iv) which is placed in service before January 1, 2017.

(B) Limitation

(i) In general

In the case of combined heat and power system property with an electrical capacity in excess of the applicable capacity placed in service during the taxable year, the credit under subsection (a)(1) (determined without regard to this paragraph) for such year shall be equal to the amount which bears the same ratio to such credit as the applicable capacity bears to the capacity of such property.

(ii) Applicable capacity

For purposes of clause (i), the term ''applicable capacity'' means 15 megawatts or a mechanical energy capacity of more than 20,000 horsepower or an equivalent combination of electrical and mechanical energy capacities.

(iii) Maximum capacity

The term ''combined heat and power system property'' shall not include any property comprising a system if such system has a capacity in excess of 50 megawatts or a mechanical energy capacity in excess of 67,000 horsepower or an equivalent combination of electrical and mechanical energy capacities.

(C) Special rules

(i) Energy efficiency percentage

For purposes of this paragraph, the energy efficiency percentage of a system is the fraction—

(I) the numerator of which is the total useful electrical, thermal, and mechanical power produced by the system at normal operating rates, and expected to be consumed in its normal application, and

(II) the denominator of which is the lower heating value of the fuel sources for the system.

(ii) Determinations made on Btu basis

The energy efficiency percentage and the percentages under subparagraph (A)(ii) shall be determined on a Btu basis.

(iii) Input and output property not included

The term ''combined heat and power system property'' does not include property used to transport the energy source to the facility or to distribute energy produced by the facility.

(D) Systems using biomass

If a system is designed to use biomass (within the meaning of paragraphs (2) and (3) of section 45(c) without regard to the last sentence of paragraph (3)(A)) for at least 90 percent of the energy source—

(i) subparagraph (A)(iii) shall not apply, but

(ii) the amount of credit determined under subsection (a) with respect to such system shall not exceed the amount which bears the same ratio to such amount of credit (determined without regard to this subparagraph) as the energy efficiency percentage of such system bears to 60 percent.

(4) Qualified small wind energy property

(A) In general

The term ''qualified small wind energy property'' means property which uses a qualifying small wind turbine to generate electricity.

(B) Qualifying small wind turbine

The term ''qualifying small wind turbine'' means a wind turbine which has a nameplate capacity of not more than 100 kilowatts.

(C) Termination

The term ''qualified small wind energy property'' shall not include any property for any period after December 31, 2016.

[2] So in original. Probably should be followed by ''to''.

(d) Coordination with Department of Treasury grants

In the case of any property with respect to which the Secretary makes a grant under section 1603 of the American Recovery and Reinvestment Tax Act of 2009—

(1) Denial of production and investment credits

No credit shall be determined under this section or section 45 with respect to such property for the taxable year in which such grant is made or any subsequent taxable year.

(2) Recapture of credits for progress expenditures made before grant

If a credit was determined under this section with respect to such property for any taxable year ending before such grant is made—

(A) the tax imposed under subtitle A on the taxpayer for the taxable year in which such grant is made shall be increased by so much of such credit as was allowed under section 38,

(B) the general business carryforwards under section 39 shall be adjusted so as to recapture the portion of such credit which was not so allowed, and

(C) the amount of such grant shall be determined without regard to any reduction in the basis of such property by reason of such credit.

(3) Treatment of grants

Any such grant shall—

(A) not be includible in the gross income of the taxpayer, but

(B) shall[3] be taken into account in determining the basis of the property to which such grant relates, except that the basis of such property shall be reduced under section 50(c) in the same manner as a credit allowed under subsection (a).

(Added Pub. L. 87–834, §2(b), Oct. 16, 1962, 76 Stat. 967; amended Pub. L. 88–272, title II, §203(a)(1), (3)(A), (b), (c), Feb. 26, 1964, 78 Stat. 33, 34; Pub. L. 89–800, §1 Nov. 8, 1966, 80 Stat. 1508; Pub. L. 89–809, title II, §201(a), Nov. 13, 1966, 80 Stat. 1575; Pub. L. 90–26, §§1, 2(a), 3, June 13, 1967, 81 Stat. 57, 58; Pub. L. 91–172, title I, §121(d)(2)(A), title IV, §401(e)(2)–(4), Dec. 30, 1969, 83 Stat. 547, 603; Pub. L. 92–178, title I, §§102(a)(2), 103, 104(a)(1), (b)–(f)(1), (g), 108(b), (c), Dec. 10, 1971, 85 Stat. 499–502, 507; Pub. L. 94–12, title III, §§301(c)(1), 302(c)(3), title VI, §604(a), Mar. 29, 1975, 89 Stat. 38, 44, 65; Pub. L. 94–455, title VIII, §§802(b)(6), 804(a), title X, §1051(h)(1), title XIX, §§1901(a)(5), (b)(11)(A), 1906(b)(13)(A), title XXI, §2112(a)(1), Oct. 4, 1976, 90 Stat. 1583, 1591, 1647, 1764, 1795, 1834, 1905; Pub. L. 95–473, §2(a)(2)(A), Oct. 17, 1978, 92 Stat. 1464; Pub. L. 95–600, title I, §141(b), title III, §§312(c)(1)–(3), 314(a), (b), 315(a)–(c), title VII, §703(a)(3), (4), Nov. 6, 1978, 92 Stat. 2791, 2826–2829, 2939; Pub. L. 95–618, title III, §301(b), (d)(1), (2), Nov. 9, 1978, 92 Stat. 3195, 3199, 3200; Pub. L. 96–222, title I, §§101(a)(7)(G), (H), (L)(i)(I)–(IV), (ii)(III)–(VI), (iii)(II), (III), (v)(II)–(V), (M)(ii), (iii), 103(a)(2)(A), (4)(B), 108(c)(6), Apr. 1, 1980, 94 Stat. 198–201, 208, 209, 228; Pub. L. 96–223, title II, §§221(b), 222(a)–(e)(1), (f)–(i), 223(a)(1), (c)(1), Apr. 2, 1980, 94 Stat. 261–266; Pub. L. 96–451, title III, §302(a), Oct. 14, 1980, 94 Stat. 1991; Pub. L. 96–605, title I, §109(a), title II, §223(a), Dec. 28, 1980, 94 Stat. 3525, 3528; Pub. L. 97–34, title II, §§211(a)(2), (c), (e)(3), (4), (h), 212(a)(3), (b), (c), (d)(2)(A), 213(a), 214(a), (b), title III, §332(b), Aug. 13, 1981, 95 Stat. 227–229, 235, 236, 239, 240, 296; Pub. L. 97–248, title II, §§205(a)(1), (4), (5)(A), 209(c), Sept. 3, 1982, 96 Stat. 427, 429, 447; Pub. L. 97–354, §§3(d), 5(a)(7), (8), Oct. 19, 1982, 96 Stat. 1689, 1692; Pub. L. 97–362, title I, §104(a), Oct. 25, 1982, 96 Stat. 1729; Pub. L. 97–424, title V, §546(a), Jan. 6, 1983, 96 Stat. 2198; Pub. L. 97–448, title I, §102(e)(2)(A), (f)(2), (3), (6), title II, §202(c), title III, §306(a)(3), Jan. 12, 1983, 96 Stat. 2371, 2372, 2396, 2400; Pub. L. 98–369, div. A, title I, §§11, 31(b), (c), 111(e)(8), 113(a)(1), (b)(3), (4), 114(a), title IV, §§431(c), 474(*o*)(10)–(18), title VII, §§712(b), 721(x)(1), 735(c)(1), title X, §1043(a), July 18, 1984, 98 Stat. 503, 517, 518, 633, 635, 637, 638, 808, 836, 837, 946, 971, 981, 1044; Pub. L. 99–121, title I, §103(b)(5), Oct. 11, 1985, 99 Stat. 510; Pub. L. 99–514, title II, §251(b), (c), title VII, §701(e)(4)(C), title VIII, §803(b)(2)(B), title XII, §§1272(d)(5), 1275(c)(5), title XV, §1511(c)(3), title XVIII, §§1802(a)(4)(C), (5)(B), (9)(A), (B), 1809(d)(2), (e), 1847(b)(6), 1879(j)(1), Oct. 22, 1986, 100 Stat. 2184, 2186, 2343, 2355, 2594, 2599, 2745, 2788, 2789, 2821, 2856, 2908; Pub. L. 100–647, title I, §§1002(a)(14), (16)(A), (20), (29), (30), 1013(a)(41), Nov. 10, 1988, 102 Stat. 3355–3357, 3544; Pub. L. 101–508, title XI, §§11801(c)(6)(A), 11813(a), Nov. 5, 1990, 104 Stat. 1388–523, 1388–541; Pub. L. 102–227, title I, §106, Dec. 11, 1991, 105 Stat. 1687; Pub. L. 102–486, title XIX, §1916(a), Oct. 24, 1992, 106 Stat. 3024; Pub. L. 108–357, title III, §322(d)(2)(A), (B), title VII, §710(e), Oct. 22, 2004, 118 Stat. 1475, 1557; Pub. L. 109–58, title XIII, §§1336(a)–(d), 1337(a)–(c), Aug. 8, 2005, 119 Stat. 1036–1038; Pub. L. 109–135, title IV, §412(m), (n), Dec. 21, 2005, 119 Stat. 2638; Pub. L. 109–432, div. A, title II, §207, Dec. 20, 2006, 120 Stat. 2945; Pub. L. 110–172, §11(a)(8), (9), Dec. 29, 2007, 121 Stat. 2485; Pub. L. 110–343, div. B, title I, §§103(a), (c)–(e), 104(a)–(d), 105(a), Oct. 3, 2008, 122 Stat. 3811, 3813, 3814; Pub. L. 111–5, div. B, title I, §§1102(a), 1103(a), (b)(1), 1104, Feb. 17, 2009, 123 Stat. 319–321.)

[3] So in original. The word ''shall'' probably should not appear.

REFERENCES IN TEXT

Paragraph (4)(B) of subsection (c), referred to in subsec. (a)(1), was repealed and par. (4)(C) of subsec. (c) was redesignated as (4)(B) by Pub. L. 111–5, div. B, title I, §1103(a), Feb. 17, 2009, 123 Stat. 320.

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsecs. (a)(4)(D) and (b), is the date of enactment of Pub. L. 101–508, which was approved Nov. 5, 1990.

Section 1603 of the American Recovery and Reinvestment Tax Act of 2009, referred to in subsec. (d), is section 1603 of Pub. L. 111–5, which is set out as a note below.

AMENDMENTS

2009—Subsec. (a)(4)(D). Pub. L. 111–5, §1103(b)(1), added subpar. (D).

Subsec. (a)(5). Pub. L. 111–5, §1102(a), added par. (5).

Subsec. (c)(4)(B) to (D). Pub. L. 111–5, §1103(a), redesignated subpars. (C) and (D) as (B) and (C), respectively, and struck out former subpar. (B). Text of former subpar. (B) read as follows: ''In the case of qualified small wind energy property placed in service during the taxable year, the credit otherwise determined under sub-

section (a)(1) for such year with respect to all such property of the taxpayer shall not exceed $4,000.''

Subsec. (d). Pub. L. 111–5, §1104, added subsec. (d).

2008—Subsec. (a)(1). Pub. L. 110–343, §104(d), substituted ''paragraphs (1)(B), (2)(B), (3)(B), and (4)(B)'' for ''paragraphs (1)(B), (2)(B), and (3)(B)''.

Pub. L. 110–343, §103(c)(3), substituted ''paragraphs (1)(B), (2)(B), and (3)(B)'' for ''paragraphs (1)(B) and (2)(B)''.

Subsec. (a)(2)(A)(i)(II). Pub. L. 110–343, §103(a)(1), substituted ''January 1, 2017'' for ''January 1, 2009''.

Subsec. (a)(2)(A)(i)(IV). Pub. L. 110–343, §104(b), added subcl. (IV).

Subsec. (a)(3). Pub. L. 110–343, §103(e)(1), in concluding provisions, struck out ''The term 'energy property' shall not include any property which is public utility property (as defined in section 46(f)(5) as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).'' before ''Such term''.

Subsec. (a)(3)(A)(ii). Pub. L. 110–343, §103(a)(1), substituted ''January 1, 2017'' for ''January 1, 2009''.

Subsec. (a)(3)(A)(v). Pub. L. 110–343, §103(c)(1), added cl. (v).

Subsec. (a)(3)(A)(vi). Pub. L. 110–343, §104(a), added cl. (vi).

Subsec. (a)(3)(A)(vii). Pub. L. 110–343, §105(a), added cl. (vii).

Subsec. (c). Pub. L. 110–343, §103(c)(2)(A), inserted heading and struck out former heading ''Qualified fuel cell property; qualified microturbine property''.

Subsec. (c)(1)(B). Pub. L. 110–343, §103(d), substituted ''$1,500'' for ''$500''.

Subsec. (c)(1)(D). Pub. L. 110–343, §103(e)(2)(A), redesignated subpar. (E) as (D) and struck out heading and text of former subpar. (D). Text read as follows: ''The first sentence of the matter in subsection (a)(3) which follows subparagraph (D) thereof shall not apply to qualified fuel cell property which is used predominantly in the trade or business of the furnishing or sale of telephone service, telegraph service by means of domestic telegraph operations, or other telegraph services (other than international telegraph services).''

Subsec. (c)(1)(E). Pub. L. 110–343, §103(e)(2)(A), redesignated subpar. (E) as (D).

Pub. L. 110–343, §103(a)(2), substituted ''December 31, 2016'' for ''December 31, 2008''.

Subsec. (c)(2)(D). Pub. L. 110–343, §103(e)(2)(B), redesignated subpar. (E) as (D) and struck out heading and text of former subpar. (D). Text read as follows: ''The first sentence of the matter in subsection (a)(3) which follows subparagraph (D) thereof shall not apply to qualified microturbine property which is used predominantly in the trade or business of the furnishing or sale of telephone service, telegraph service by means of domestic telegraph operations, or other telegraph services (other than international telegraph services).''

Subsec. (c)(2)(E). Pub. L. 110–343, §103(e)(2)(B), redesignated subpar. (E) as (D).

Pub. L. 110–343, §103(a)(3), substituted ''December 31, 2016'' for ''December 31, 2008''.

Subsec. (c)(3). Pub. L. 110–343, §103(c)(2)(B), added par. (3).

Subsec. (c)(4). Pub. L. 110–343, §104(c), added par. (4).

2007—Subsec. (c). Pub. L. 110–172, §11(a)(8), substituted ''section'' for ''subsection'' in introductory provisions.

Subsec. (c)(1)(B), (2)(B). Pub. L. 110–172, §11(a)(9), substituted ''subsection (a)'' for ''paragraph (1)''.

2006—Subsec. (a)(2)(A)(i)(II), (3)(A)(ii). Pub. L. 109–432, §207(1), substituted ''January 1, 2009'' for ''January 1, 2008''.

Subsec. (c)(1)(E), (2)(E). Pub. L. 109–432, §207(2), substituted ''December 31, 2008'' for ''December 31, 2007''.

2005—Subsec. (a)(1). Pub. L. 109–135, §412(m), substituted ''paragraphs (1)(B) and (2)(B) of subsection (c)'' for ''paragraph (1)(B) or (2)(B) of subsection (d)''.

Pub. L. 109–58, §1336(d), inserted ''except as provided in paragraph (1)(B) or (2)(B) of subsection (d),'' before ''the energy credit''.

Subsec. (a)(2)(A). Pub. L. 109–58, §1337(a), reenacted heading without change and amended text of subpar. (A) generally. Prior to amendment, text read as follows: ''The energy percentage is—

''(i) in the case of qualified fuel cell property, 30 percent, and

''(ii) in the case of any other energy property, 10 percent.''

Pub. L. 109–58, §1336(c), reenacted heading without change and amended text of subpar. (A) generally. Prior to amendment, text read as follows: ''The energy percentage is 10 percent.''

Subsec. (a)(3)(A)(i). Pub. L. 109–58, §1337(c), inserted ''excepting property used to generate energy for the purposes of heating a swimming pool,'' after ''solar process heat,''.

Subsec. (a)(3)(A)(ii). Pub. L. 109–135, §412(n)(2), struck out ''or'' at end.

Pub. L. 109–58, §1337(b), added cl. (ii). Former cl. (ii) redesignated (iii) relating to equipment used to produce, distribute, or use energy derived from a geothermal deposit.

Subsec. (a)(3)(A)(iii). Pub. L. 109–58, §1337(b), redesignated cl. (ii) as (iii) relating to equipment used to produce, distribute, or use energy derived from a geothermal deposit.

Pub. L. 109–58, §1336(a), added cl. (iii) relating to qualified fuel cell property or qualified microturbine property.

Subsec. (a)(3)(A)(iv). Pub. L. 109–135, §412(n)(1), redesignated cl. (iii), relating to qualified fuel cell property or qualified microturbine property, as (iv).

Subsec. (c). Pub. L. 109–58, §1336(b), added subsec. (c).

2004—Pub. L. 108–357, §322(d)(2)(B), struck out ''; reforestation credit'' after ''Energy credit'' in section catchline.

Subsec. (a)(3). Pub. L. 108–357, §710(e), inserted at end of concluding provisions ''Such term shall not include any property which is part of a facility the production from which is allowed as a credit under section 45 for the taxable year or any prior taxable year.''

Subsec. (a)(5). Pub. L. 108–357, §322(d)(2)(A)(iii), redesignated subsec. (a)(5) as (b).

Pub. L. 108–357, §322(d)(2)(A)(ii), substituted ''subsection (a)'' for ''this subsection''.

Subsec. (b). Pub. L. 108–357, §322(d)(2)(A)(iii), redesignated subsec. (a)(5) as (b).

Pub. L. 108–357, §322(d)(2)(A)(i), struck out heading and text of subsec. (b). Text read as follows:

''(1) IN GENERAL.—For purposes of section 46, the reforestation credit for any taxable year is 10 percent of the portion of the amortizable basis of any qualified timber property which was acquired during such taxable year and which is taken into account under section 194 (after the application of section 194(b)(1)).

''(2) DEFINITIONS.—For purposes of this subpart, the terms 'amortizable basis' and 'qualified timber property' have the respective meanings given to such terms by section 194.''

1992—Subsec. (a)(2). Pub. L. 102–486 substituted ''The'' for ''Except as provided in subparagraph (B), the'' in subpar. (A), redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: ''(B) TERMINATION.—Effective with respect to periods after June 30, 1992, the energy percentage is zero. For purposes of the preceding sentence, rules similar to the rules of section 48(m) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply.''

1991—Subsec. (a)(2)(B). Pub. L. 102–227 substituted ''June 30, 1992'' for ''December 31, 1991''.

1990—Pub. L. 101–508, §11813(a), amended section generally, substituting section catchline for one which read: ''Definitions; special rules'' and in text substituting present provisions for provisions defining section 38 property, new section 38 property, used section 38 property, provisions relating to certain leased property, estates and trusts, special rules for qualified rehabilitated buildings, credit for movie and television films, treatment of energy property, application of certain transitional rules, definitions of certain credits, definition of single purpose agricultural or horticultural

structure, basis adjustment to section 38 property, certain section 501(d) organizations, special rules relating to sound recordings, and a cross reference to section 381 of this title.

Subsec. (a)(8). Pub. L. 101–508, §11801(c)(6)(A), struck out par. (8) ''Amortized property'' which read as follows: ''Any property with respect to which an election under section 167(k), 184, or 188 applies shall not be treated as section 38 property.''

1988—Subsec. (a)(1). Pub. L. 100–647, §1002(a)(29), which directed amendment of par. (1) by substituting ''property to which section 168 applies'' for ''recovery property (within the meaning of section 168)'' in penultimate sentence, was executed by making the substitution for ''recovery property (within the meaning of section 168'', which results in retaining remaining parenthetical material and closing parenthesis.

Subsec. (a)(5)(A)(ii). Pub. L. 100–647, §1002(a)(14)(A)–(C), substituted ''168(h)(2)(C)'' for ''168(j)(4)(C)'', ''168(h)(2)(A)(iii)'' for ''168(j)(4)(A)(iii)'', and ''168(h)(2)(B)'' for ''168(j)(4)(B)''.

Subsec. (a)(5)(B)(i). Pub. L. 100–647, §1002(a)(14)(D), substituted ''168(i)(3)'' for ''168(j)(6)''.

Subsec. (a)(5)(B)(ii). Pub. L. 100–647, §1002(a)(14)(E), substituted ''168(h)(1)(C)(ii)'' for ''168(j)(3)(C)(ii)''.

Subsec. (a)(5)(D). Pub. L. 100–647, §1002(a)(14)(F), substituted ''paragraphs (5) and (6) of section 168(h)'' for ''paragraphs (8) and (9) of section 168(j)''.

Subsec. (a)(5)(E). Pub. L. 100–647, §1002(a)(14)(G), amended subpar. (E) generally, substituting ''provision'' for ''provisions'' and ''168(h)'' for ''168(j)''.

Subsec. (*l*)(2)(C). Pub. L. 100–647, §1002(a)(30), substituted ''to which section 168 applies'' for ''which is recovery property (within the meaning of section 168)''.

Subsec. (*l*)(11)(A)(ii). Pub. L. 100–647, §1013(a)(41), substituted ''a private activity bond (within the meaning of section 141)'' for ''an industrial development bond (within the meaning of section 103(b)(2))''.

Subsec. (s). Pub. L. 100–647, §1002(a)(20), redesignated subsec. (s), relating to cross reference, as (t).

Subsec. (s)(9). Pub. L. 100–647, §1002(a)(16)(A), added par. (9).

Subsec. (t). Pub. L. 100–647, §1002(a)(20), redesignated subsec. (s), relating to cross reference, as (t).

1986—Subsec. (a)(2)(B)(vii). Pub. L. 99–514, §§1272(d)(5), 1275(c)(5), struck out ''932,'' after ''931,'' and ''or which is entitled to the benefits of section 934(b)'' after ''in effect under section 936'', and substituted ''or 933'' for '', 933, or 934(c)''.

Subsec. (a)(4). Pub. L. 99–514, §1802(a)(9)(A), substituted ''514(b)'' for ''514(c)'' and ''514(a)'' for ''514(b)''.

Subsec. (a)(5)(B)(iii). Pub. L. 99–514, §1802(a)(5)(B), struck out cl. (iii) which provided that (I) in the case of any aircraft used under a qualifying lease (as defined in section 47(a)(7)(C)) and which is leased to a foreign person or entity before January 1, 1990, clause (i) shall be applied by substituting ''3 years'' for ''6 months'' and that (II) for purposes of applying section 47(a)(1) and (5)(B) there shall not be taken into account any period of a lease to which subclause (I) applies.

Subsec. (a)(5)(D), (E). Pub. L. 99–514, §1802(a)(4)(C), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (b)(1). Pub. L. 99–514, §1809(e)(1), inserted ''Such term includes any section 38 property the reconstruction of which is completed by the taxpayer, but only with respect to that portion of the basis which is properly attributable to such reconstruction.''

Subsec. (b)(2). Pub. L. 99–514, §1809(e)(2), in introductory provisions substituted ''the first sentence of paragraph (1)'' for ''paragraph (1)'', in subpar. (B) substituted ''3 months after'' for ''3 months of'', in closing provisions substituted ''used under the leaseback (or lease) referred to in subparagraph (B)'' for ''used under the lease'' and inserted ''The preceding sentence shall not apply to any property if the lessee and lessor of such property make an election under this sentence. Such an election, once made, may be revoked only with the consent of the Secretary.''

Subsec. (d)(4)(D). Pub. L. 99–514, §701(e)(4)(C), inserted ''(as in effect on the day before the date of the enactment of the Tax Reform Act of 1986)''.

Subsec. (d)(6)(C)(ii). Pub. L. 99–514, §1511(c)(3), substituted ''the underpayment rate'' for ''the rate'' in closing provisions.

Subsec. (g)(1). Pub. L. 99–514, §251(b), amended par. (1) generally, restating in subpars. (A) to (D) provisions relating to qualified rehabilitated buildings which had in subpar. (A) provided general definition of qualified rehabilitated building, in subpar. (B) directed that 30 years must have elapsed since construction, in subpar. (C) provided general definition of substantially rehabilitated with special rule for phased rehabilitation and application of provision to lessees, and in subpar. (D) provided that rehabilitation included reconstruction, and striking out former subpar. (E) which had provided an alternative test for definition of qualified rehabilitated building.

Subsec. (g)(2). Pub. L. 99–514, §251(b), amended par. (2) generally, in subpar. (A) striking out reference to amounts ''incurred after December 31, 1981'' in introductory provision, and in cl. (i) substituting subcls. (I) to (IV) for ''for real property (or additions or improvements to real property) which have a recovery period (within the meaning of section 168) of 19 (15 years in the case of low-income housing) years,'', in subpar. (B), in cl. (i), substituting provision relating to use of straight line depreciation for provision relating to use of accelerated methods of depreciation, redesignating former cl. (vi) as (v) and substituting ''section 168(h)'' for ''section 168(j)'', redesignating former cl. (v) as (vi) and substituting ''less than the recovery period determined under section 168(c)'' for ''less than 19 years (15 years in the case of low-income housing'', restating subpar. (C) without change, and in subpar. (D) substituting provisions defining nonresidential real property, residential rental property and class life for provisions defining low-income housing.

Subsec. (g)(2)(B)(vi)(I). Pub. L. 99–514, §1802(a)(9)(B), substituted ''section 168(j)'' for ''section 168(j)(3)''.

Subsec. (g)(3). Pub. L. 99–514, §251(b), in amending par. (3) generally, inserted introductory phrase ''For purposes of this subsection—''.

Subsec. (g)(4). Pub. L. 99–514, §251(b), in amending subsec. (g) generally, reenacted par. (4) without change.

Subsec. (*l*)(5). Pub. L. 99–514, §1847(b)(6), substituted ''section 23(c)'' for ''section 44C(c)'' and ''section 23(c)(4)(A)(viii)'' for ''section 44C(c)(4)(A)(viii)''.

Subsec. (q)(3). Pub. L. 99–514, §251(c), struck out ''other than a certified historic structure'' after ''qualified rehabilitated building''.

Subsec. (q)(7). Pub. L. 99–514, §1809(d)(2), renumbered par. (6), relating to special rule for qualified films, as (7).

Subsec. (r). Pub. L. 99–514, §1879(j)(1), added subsec. (r). Former subsec. (r) redesignated (s).

Subsec. (s). Pub. L. 99–514, §1879(j)(1), redesignated former subsec. (r) as (s).

Subsec. (s)(5). Pub. L. 99–514, §803(b)(2)(B), which directed the general amendment of par. (5) of subsec. (r), was executed by amending par. (5) of subsec. (s) to reflect the probable intent of Congress and the intervening redesignation of subsec. (r) as (s) by Pub. L. 99–514, §1879(j)(1), see note above. Prior to amendment, par. (5) read as follows: ''For purposes of this subsection, the term ''sound recording'' means any sound recording described in section 280(c)(2).''

1985—Subsec. (g)(2)(A)(i), (B)(v). Pub. L. 99–121 substituted ''19'' for ''18''.

1984—Subsec. (a)(5). Pub. L. 98–369, §31(b), amended par. (5) generally, to extend its scope to encompass property used by foreign persons or entities and to create an exception for short-term leases by substituting provisions covered by subpars. (A) to (D) for former provisions which had directed that property used by the United States, any State or political subdivision thereof, any international organization, or any agency or instrumentality of any of the foregoing not be treated as section 38 property, that for purposes of that prohibition the International Telecommunications Satellite Consortium, the International Maritime Satellite Organization, and any successor organization of such

Consortium or Organization not be treated as an international organization, and that if any qualified rehabilitated building were used by the governmental unit pursuant to a lease, this paragraph would not apply to that portion of the basis of such building attributable to qualified rehabilitation expenditures.

Subsec. (b). Pub. L. 98–369, §114(a), amended subsec. (b) generally, substituting a general definition of ''new section 38 property'' for definitions which made reference to property constructed, reconstructed or erected after December 31, 1961, and adding pars. (2) and (3).

Subsec. (c)(2)(A). Pub. L. 98–369, §11(a), substituted ''$125,000 ($150,000 for taxable years beginning after 1987)'' for ''$150,000 ($125,000 for taxable years beginning in 1981, 1982, 1983, or 1984)'' in first sentence, and ''$125,000 (or $150,000'' for ''$150,000 (or $125,000'' in two places in second sentence.

Subsec. (c)(2)(B). Pub. L. 98–369, §11(b), substituted ''$62,500 ($75,000 for taxable years beginning after 1987)'' for ''$75,000 ($62,500 for taxable years beginning in 1981, 1982, 1983, or 1984)''.

Subsec. (c)(3)(B). Pub. L. 98–369, §474(*o*)(10), substituted ''section 39'' for ''section 46(b)''.

Subsec. (d)(1)(B). Pub. L. 98–369, §474(*o*)(11), substituted ''section 38(c)(3)(B)'' for ''section 46(a)(6)''.

Subsec. (d)(6). Pub. L. 98–369, §431(c), added par. (6).

Subsec. (f)(3). Pub. L. 98–369, §474(*o*)(12), struck out par. (3) which provided that the $25,000 amount specified under subparagraphs (A) and (B) of section 46(a)(3) applicable to an estate or trust be reduced to an amount which bore the same ratio to $25,000 as the amount of the qualified investment allocated to the estate or trust under paragraph (1) to the entire amount of the qualified investment.

Subsec. (g)(1)(E). Pub. L. 98–369, §1043(a), added subpar. (E).

Subsec. (g)(2)(A)(i). Pub. L. 98–369, §111(e)(8)(A), (B), substituted ''real property'' for ''property'' in two places, and ''18 (15 years in the case of low-income housing)'' for ''15''.

Subsec. (g)(2)(B)(i). Pub. L. 98–369, §31(c)(2), inserted ''The preceding sentence shall not apply to any expenditure to the extent subsection (f)(12) or (j) of section 168 applies to such expenditure.''

Subsec. (g)(2)(B)(v). Pub. L. 98–369, §111(e)(8)(C), substituted ''18 years (15 years in the case of low-income housing)'' for ''15 years''.

Subsec. (g)(2)(B)(vi). Pub. L. 98–369, §31(c)(1), added cl. (vi).

Subsec. (g)(2)(D). Pub. L. 98–369, §111(e)(8)(D), added subpar. (D).

Subsec. (k)(4). Pub. L. 98–369, §113(b)(3)(B), inserted ''or at-risk rules'' after ''test'' in heading.

Subsec. (k)(4)(A). Pub. L. 98–369, §113(b)(3)(A), inserted '', section 46(c)(8), or section 46(c)(9)''.

Subsec. (k)(4)(B). Pub. L. 98–369, §113(b)(3)(C), substituted ''used'' for ''issued''.

Subsec. (k)(5)(D)(i). Pub. L. 98–369, §721(x)(1), substituted ''S corporation'' for ''electing small business corporation''.

Subsec. (*l*)(1). Pub. L. 98–369, §474(*o*)(13), substituted ''section 46(b)(2)'' for ''section 46(a)(2)(C)''.

Subsec. (*l*)(16)(B)(i). Pub. L. 98–369, §735(c)(1), substituted ''the chassis of which is an automobile bus chassis and the body of which is an automobile bus body'' for ''the chassis and body of which is exempt under section 4063(a)(6) from the tax imposed by section 4061(a)''.

Subsec. (m). Pub. L. 98–369, §474(*o*)(14), substituted ''subsection (b)'' for ''subsection (a)(2)''.

Subsec. (n). Pub. L. 98–369, §474(*o*)(15), repealed subsec. (n). For continuing applicability of par. (4) of subsec. (n), see section 474(*o*)(15) of Pub. L. 98–369, set out in Effective Date of 1984 Amendment note below.

Subsec. (*o*)(3) to (8). Pub. L. 98–369, §474(*o*)(16), redesignated par. (8) as (3) and struck out former pars. (3) to (7) which defined ''employee plan credit'', ''basic employee plan credit'', ''matching employee plan credit'', ''basic employee plan percentage'', and ''matching employee plan percentage'', respectively.

Subsec. (q)(1), (3). Pub. L. 98–369, §474(*o*)(17)(A), substituted ''section 46(a)'' for ''section 46(a)(2)''.

Subsec. (q)(4)(A)(i). Pub. L. 98–369, §474(*o*)(17), substituted ''section 46(a)'' for ''section 46(a)(2)'' and ''section 46(b)(1)'' for ''section 46(a)(2)(B)''.

Subsec. (q)(4)(B)(ii). Pub. L. 98–369, §474(*o*)(17)(B), substituted ''section 46(b)(1)'' for ''section 46(a)(2)(B)''.

Subsec. (q)(6). Pub. L. 98–369, §712(b), added par. (6) relating to adjustment in basis of interest in partnership or S corporation.

Pub. L. 98–369, §113(b)(4), added par. (6) relating to special rule for qualified films.

Subsec. (r). Pub. L. 98–369, §113(a)(1), added subsec. (r). Former subsec. (r) redesignated (s).

Pub. L. 98–369, §474(*o*)(18), substituted ''section 381(c)(26)'' for ''section 381(c)(23)''.

Subsec. (s). Pub. L. 98–369, §113(a)(1), redesignated former subsec. (r) as (s).

1983—Subsec. (a)(1)(G). Pub. L. 97–448, §102(e)(2)(A), inserted ''(not including a building and its structural components) used in connection'' after ''storage facility''.

Subsec. (a)(10). Pub. L. 97–448, §202(c), amended directory language of Pub. L. 96–223, §223(a)(1), to correct an error, and did not involve any change in text. See 1980 Amendment note below.

Subsec. (g)(1)(C)(i). Pub. L. 97–448, §102(f)(2), (6), substituted ''the 24-month period selected by the taxpayer (at the time and in the manner prescribed by regulation) and ending with or within the taxable year'' for ''the 24-month period ending on the last day of the taxable year'' in provisions preceding subcl. (I), substituted ''adjusted basis of such building (and its structural components)'' for ''adjusted basis of such property'' both in subcl. (I) and in provision following subcl. (II), and, in provisions following subcl. (II), substituted ''holding period of the building'' for ''holding period of the property'' and inserted provision that, for purposes of the preceding sentence, the determination of the beginning of the holding period shall be made without regard to any reconstruction by the taxpayer in connection with the rehabilitation.

Subsec. (g)(5)(A). Pub. L. 97–448, §102(f)(3), substituted ''a credit is determined under section 46(a)(2)'' for ''a credit is allowed under this section'' and ''the credit so determined'' for ''the credit so allowed''. See 1982 Amendment note for subsec. (g)(5) below and see Effective Date of 1982 and 1983 Amendment notes set out under sections 1 and 196 of this title.

Subsec. (*l*)(5). Pub. L. 97–424, §546(a)(3), substituted reference to subpar. (N) for reference to subpar. (M) in provision following subparagraphs.

Subsec. (*l*)(5)(M), (N). Pub. L. 97–424, §546(a)(1), (2), added subpar. (M) and redesignated former subpar. (M) as (N).

Subsec. (q)(3). Pub. L. 97–448, §306(a)(3), substituted ''paragraphs (1) and (2) of this subsection and paragraph (5) of subsection (d)'' for ''paragraphs (1) and (2)''.

1982—Subsec. (b). Pub. L. 97–248, §209(c), inserted provision that for purposes of determining whether section 38 property subject to a lease is new section 38 property, such property shall be treated as originally placed in service not earlier than the date such property is used under the lease, but only if such property is leased within 3 months after such property is placed in service.

Subsec. (c)(2)(D). Pub. L. 97–354 substituted ''Partnerships and S corporations'' for ''Partnerships'' in subpar. heading, and inserted ''A similar rule shall apply in the case of an S corporation and its shareholders''.

Subsec. (d)(5). Pub. L. 97–248, §205(a)(4), added par. (5).

Subsec. (e). Pub. L. 97–354, §5(a)(7), struck out subsec. (e) relating to apportionment among shareholders of qualified investments by an electing small business corporation.

Subsec. (g)(5). Pub. L. 97–248, §205(a)(5)(A), struck out par. (5) which, as amended by §102(f)(3) of Pub. L. 97–448, had provided that for purposes of this subtitle, if a credit were determined under section 46(a)(2) for any qualified rehabilitation expenditure in connection

with a qualified rehabilitated building other than a certified historic structure, the increase in basis of such property which would (but for this paragraph) have resulted from such expenditure had to be reduced by the amount of the credit so determined, that if during any taxable year there was a recapture amount determined with respect to any qualified rehabilitated building the basis of which was reduced under subpar. (A), the basis of such building (immediately before the event resulting in such recapture), had to be increased by an amount equal to such recapture amount, and that for purposes of this paragraph ''recapture amount'' was defined as any increase in tax (or adjustment in carrybacks or carryovers) determined under section 47(a)(5). See 1983 Amendment note for subsec. (g)(5) above and see Effective Date of 1982 and 1983 Amendment notes set out under sections 1 and 196 of this title.

Subsec. (k)(5)(D)(i). Pub. L. 97–354, §5(a)(8), substituted ''an S corporation'' for ''an electing small business corporation (within the meaning of section 1371)''.

Subsec. (*l*)(7). Pub. L. 97–362, §104(a), temporarily substituted the qualification that such term does not include equipment for hydrogenation, refining, or other process subsequent to retorting other than hydrogenation or other process which is applied in the vicinity of the property from which the shale was extracted and which is applied to bring the shale oil to a grade and quality suitable for transportation to and processing in a refinery, for the qualification that such equipment did not include equipment for hydrogenation, refining, or other processes subsequent to retorting. See Effective and Termination Dates of 1982 Amendment note below.

Subsecs. (q), (r). Pub. L. 97–248, §205(a)(1), added subsec. (q) and redesignated former subsec. (q) as (r).

1981—Subsec. (a)(1). Pub. L. 97–34, §211(e)(4), in provisions following subpar. (G), substituted ''Such term includes only recovery property (within the meaning of section 168 without regard to any useful life) and any other property'' for ''Such term includes only property''.

Subsec. (a)(1)(G). Pub. L. 97–34, §211(c), added subpar. (G).

Subsec. (a)(2)(B)(ii). Pub. L. 97–34, §211(h), designated existing provisions as subcl. (I) and added subcl. (II).

Subsec. (a)(3)(D). Pub. L. 97–34, §212(c), added subpar. (D).

Subsec. (a)(4). Pub. L. 97–34, §214(a), inserted provision that, if any qualified rehabilitated building is used by the tax-exempt organization pursuant to a lease, this paragraph shall not apply to that portion of the basis of such building which is attributable to qualified rehabilitation expenditures.

Subsec. (a)(5). Pub. L. 97–34, §214(b), inserted provision that, if any qualified rehabilitated building is used by the governmental unit pursuant to a lease, this paragraph shall not apply to that portion of the basis of such building which is attributable to qualified rehabilitation expenditures.

Subsec. (a)(8). Pub. L. 97–34, §212(d)(2)(A), substituted ''or 188'' for ''188, or 191''.

Subsec. (a)(9). Pub. L. 97–34, §211(a)(2), struck out par. (9) which set out a special rule for the depreciation of railroad track.

Subsec. (c)(2)(A) to (C). Pub. L. 97–34, §213(a), amended subpars. (A) to (C) generally raising in subpar. (A) the existing $100,000 dollar limitation to $125,000 in 1981 and to $150,000 in 1985 and in subpar. (B) the existing $50,000 dollar limitation to $62,500 in 1981 and to $75,000 in 1985.

Subsec. (g). Pub. L. 97–34, §212(b), in amending subsec. (c) generally incorporated the concept of ''substantial rehabilitation'' into par. (1)(A), substituted ''30 years'' for ''20 years'' as the requisite period in par. (1)(B), substituted a definition of ''substantially rehabilitated'' for former provisions that a major portion could be treated as a separate building in certain cases in par. (1)(C), reenacted par. (1)(D) without change, substituted ''December 31, 1981'' for ''October 31, 1978'' in provisions of par. (2)(A) preceding cl. (i), substituted provisions for a recovery period of 15 years for provisions that had provided for a useful life of 5 years or more in cl. (i) of par. (2)(A), reenacted cl. (ii) without change, substituted provisions that accelerated methods of depreciation may not be used for provisions relating to property otherwise section 38 property in cl. (i) of par. (2)(B), reenacted cls. (ii) and (iii) without change, revised the provisions of cl. (iv) relating to certified historic structures, and added cl. (v) relating to expenditures of lessees, added par. (3), redesignated former par. (3) as (4), and added par. (5).

Subsec. (*l*)(2)(C). Pub. L. 97–34, §211(e)(3), inserted ''or which is recovery property (within the meaning of section 168)'' after ''3 years or more''.

Subsec. (n)(1)(A)(i). Pub. L. 97–34, §332(b), substituted ''which does not exceed'' for ''equal to''.

Subsec. (*o*)(8). Pub. L. 97–34, §212(a)(3), added par. (8).

1980—Subsec. (a)(1). Pub. L. 96–451 added subpar. (F) and provision for treatment of the useful life of subpar. (F) property as its normal growing period.

Subsec. (a)(2)(B)(xi). Pub. L. 96–223, §222(i)(2), added cl. (xi).

Subsec. (a)(5). Pub. L. 96–605, §109(a), included the International Maritime Satellite Organization or any successor organization within organizations not to be treated as international organizations.

Subsec. (a)(7)(B). Pub. L. 95–600, §312(c)(2), as amended by Pub. L. 96–222, §103(a)(2)(A), substituted '' 'described in section 50 (as in effect before its repeal by the Revenue Act of 1978' '' for '' 'described in section 50' ''.

Subsec. (a)(10)(A). Pub. L. 96–223, §223(a)(1), as amended by Pub. L. 97–448, §202(c), provided that ''petroleum or petroleum products'' does not include petroleum coke or petroleum pitch.

Subsec. (a)(10)(B). Pub. L. 96–222, §108(c)(6), substituted ''5'' for ''51''.

Subsec. (g)(2)(B)(i). Pub. L. 96–222, §103(a)(4)(B), substituted ''subsections (a)(1)(E) and (*l*)'' for ''subsection (a)(1)(E)''.

Subsec. (*l*)(1). Pub. L. 96–223, §221(b)(1), substituted ''For any period for which the energy percentage determined under section 46(a)(2)(C) for any energy property is greater than zero'' for ''For the period beginning on October 1, 1978, and ending on December 31, 1982'' in provisions preceding subpar. (A) and, in subpars. (A) and (B), substituted ''such energy property'' and ''such property'' for ''any energy property''.

Subsec. (*l*)(2)(A). Pub. L. 96–223, §222(a), added cls. (vii), (viii), and (ix).

Subsec. (*l*)(3)(A). Pub. L. 96–223, §222(b), (g)(2), struck out ''(other than coke or coke gas)'' after ''solid fuel'' in cl. (iii) and, in cl. (v), substituted provisions relating to equipment which converts coal into a substitute for a petroleum or natural gas derived feedstock for the manufacture of chemicals or other products and equipment which converts coal into methanol, ammonia, or hydroprocessed coal liquid or solid for provisions which had related simply to equipment which used coal as feedstock for the manufacture of chemicals or other products other than coke or coke gas, added cl. (ix), and, following cl. (ix), inserted provision that the equipment described in cl. (vii) includes equipment used for the storage of fuel derived from garbage at the site at which such fuel was produced from garbage.

Subsec. (*l*)(3)(B). Pub. L. 96–223, §222(i)(1)(A), redesignated subpar. (C) as (B). Former subpar. (B), which excluded public utility property from the terms ''alternative energy property'', ''solar or wind energy property'', or ''recycling equipment'', was struck out.

Subsec. (*l*)(3)(C), (D). Pub. L. 96–223, §222(i)(1)(A), (3), redesignated subpar. (D) as (C) and inserted following cl. (ii) provision that, for the purposes of the preceding sentence, in the case of property which is alternative energy property solely by reason of the amendments made by section 222(b) of the Crude Oil Windfall Profit Tax Act of 1980, ''January 1, 1980'' was to be substituted for ''October 1, 1978''. Former subpar. (C) redesignated (B).

Subsec. (*l*)(4)(C). Pub. L. 96–223, §222(c), added subpar. (C).

Subsec. (*l*)(5). Pub. L. 96–223, §222(d), added subpar. (L), redesignated former subpar. (L) as (M), and inserted provision that the Secretary shall not specify any property under subpar. (M) unless he determines that such specification meets the requirements of par. (9) of section 44C(c) for specification of items under section 44C(c)(4)(A)(viii).

Subsec. (*l*)(11). Pub. L. 96–223, §221(b)(2), substituted ''one-half of the energy percentage determined under section 46(a)(2)(C)'' for ''5 percent''.

Pub. L. 96–223, §223(c)(1), completely revised par. (11) to incorporate property financed by subsidized energy financing, effective with regard to periods after Dec. 31, 1982. Prior to the revision par. (11) read as follows: ''In the case of property which is financed in whole or in part by the proceeds of an industrial development bond (within the meaning of section 103(b)(2)) the interest on which is exempt from tax under section 103, the energy percentage shall be one-half of the energy percentage determined under section 46(a)(2)(C).''

Subsec. (*l*)(13). Pub. L. 96–223, §222(e)(1), added par. (13).

Subsec. (*l*)(14). Pub. L. 96–223, §222(f), added par. (14).

Subsec. (*l*)(15). Pub. L. 96–223, §222(g)(1), added par. (15).

Subsec. (*l*)(16). Pub. L. 96–223, §222(h), added par. (16).

Subsec. (*l*)(17). Pub. L. 96–223, §222(i)(1)(B), added par. (17).

Subsec. (n). Pub. L. 96–222, §101(a)(7)(G), (H), (L)(i)(I)–(IV), (ii)(III)–(VI), (iii)(II), (v)(II)–(IV), (M)(ii), amended subsec. (n) generally to reflect the renaming of an investment tax credit ESOP to a tax credit employee stock ownership plan and a leveraged employee stock ownership plan (commonly referred to as an ESOP) to an employee stock ownership plan.

Subsec. (n)(6)(B)(i). Pub. L. 96–605, §223(a), substituted ''the date on which the securities are contributed to the plan'' for ''the due date for filing the return for the taxable year (determined with regard to extensions)''.

Subsec. (*o*). Pub. L. 96–222, §101(a)(7)(L)(iii)(III), (v)(IV), (V), (M)(iii), substituted ''employee plan'' for ''ESOP'' wherever appearing and inserted ''percentage'' after ''attributable to the matching employee plan'' in par. (5).

1978—Subsec. (a)(1)(A). Pub. L. 95–618, §301(d)(1), inserted ''(other than an air conditioning or heating unit)'' after ''personal property''.

Subsec. (a)(1)(D). Pub. L. 95–600, §314(a), added par. (D).

Subsec. (a)(1)(E). Pub. L. 95–600, §315(a), added par. (E).

Subsec. (a)(2)(B)(ii). Pub. L. 95–473, §2(a)(2)(A), substituted ''providing transportation subject to subchapter I of chapter 105 of title 49'' for ''subject to part I of the Interstate Commerce Act''.

Subsec. (a)(7)(A). Pub. L. 95–600, §312(c)(3), struck out ''(other than pretermination property)'' after ''Property''.

Subsec. (a)(7)(B). Pub. L. 95–600, §312(c)(2), struck out ''described in section 50'' after ''with respect to property''. See 1980 Amendment note above.

Subsec. (a)(8). Pub. L. 95–600, §315(c), substituted ''188, or 191'' for ''or 188''.

Subsec. (a)(10). Pub. L. 95–618, §301(d)(2), added par. (10).

Subsec. (d)(1)(B). Pub. L. 95–600, §703(a)(3), substituted ''section 46(a)(6)'' for ''section 46(a)(5)''.

Subsec. (d)(4)(D). Pub. L. 95–600, §703(a)(4), substituted ''section 57(c)(1)(B)'' for ''section 57(c)(2)''.

Subsec. (g). Pub. L. 95–600, §315(b), added subsec. (g).

Subsec. (h). Pub. L. 95–600, §312(c)(1), struck out subsec. (h) which related to suspension of investment credit.

Subsec. (i). Pub. L. 95–600, §312(c)(1), struck out subsec. (i) which related to an exemption from suspension of $20,000 of investment.

Subsec. (j). Pub. L. 95–600, §312(c)(1), struck out subsec. (j) which defined ''suspension period''.

Subsecs. (*l*), (m). Pub. L. 95–618, §301(b), added subsecs. (*l*) and (m) and redesignated former subsec. (*l*) as (n).

Subsec. (n). Pub. L. 95–618, §301(b), redesignated former subsec. (*l*) as (n).

Pub. L. 95–600, §141(b), added subsec. (n). Former subsec. (n) redesignated (p).

Subsec. (*o*). Pub. L. 95–600, §141(b), added subsec. (*o*).

Subsecs. (p), (q). Pub. L. 95–600, §§141(b), 314(b), added subsec. (p). Former subsec. (n) redesignated (p) and subsequently as (q).

1976—Subsec. (a)(2)(B)(vi). Pub. L. 94–455, §1901(a)(5)(A), substituted ''(43 U.S.C. 1331))'' for ''; 43 U.S.C., sec. 1331)''.

Subsec. (a)(2)(B)(vii). Pub. L. 94–455, §1051(h)(1), substituted ''(other than a corporation which has an election in effect under section 936 or which is entitled to the benefits of section 934(b))'' for ''(other than a corporation entitled to the benefits of section 931 or 934(b))''.

Subsec. (a)(2)(B)(viii). Pub. L. 94–455, §1901(a)(5)(B), substituted ''47 U.S.C. 702'' for ''47 U.S.C., sec. 702''.

Subsec. (a)(8). Pub. L. 94–455, §§1901(b)(11)(A), 2112(a)(1), struck out ''169,'' after ''section 167(k),'', ''187,'' before ''or 188 applies'', and provisions relating to the limitation of the applicability of this paragraph on property to which section 169 applies.

Subsecs. (c)(2)(A), (d)(1), (2)(A). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (f). Pub. L. 94–455, §802(b)(6), substituted ''section 46(a)(3)'' for ''section 46(a)(2)''.

Subsec. (i)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsecs. (k), (*l*). Pub. L. 94–455, §804(a), added subsec. (k) and redesignated former subsec. (k) as subsec. (*l*).

1975—Subsec. (a)(2)(B). Pub. L. 94–12, §604(a), substituted ''territorial waters within the northern portion of the Western Hemisphere'' for ''territorial waters'' in cl. (x) and inserted definition of ''northern portion of the Western Hemisphere'' following cl. (x).

Subsec. (c)(2)(A). Pub. L. 94–12 §301(c)(1)(A), substituted ''$100,000'' for ''$50,000''.

Subsec. (c)(2)(B). Pub. L. 94–12, §301(c)(1)(A), (B), substituted ''$50,000'' for ''$25,000'' and ''$100,000'' for ''$50,000''.

Subsec. (c)(2)(C). Pub. L. 94–12, §301(c)(1)(A), substituted ''$100,000'' for ''$50,000''.

Subsec. (d)(1), (2)(A). Pub. L. 94–12, §302(c)(3), substituted ''section 46(e)(1)'' for ''section 46(d)(1)''.

1971—Subsec. (a)(1). Pub. L. 92–178, §102(a)(2), substituted ''3 years'' for ''4 years'' in second sentence.

Subsec. (a)(1)(B)(ii), (iii). Pub. L. 92–178, §104(a)(1), substituted ''research facility'' for ''research or storage facility'' in cl. (ii) and added cl. (iii).

Subsec. (a)(2)(B). Pub. L. 92–178, §104(c)(2), (3), (d), added cls. (viii) to (x), respectively.

Subsec. (a)(3)(C). Pub. L. 92–178, §104(b), added subpar. (C).

Subsec. (a)(5). Pub. L. 92–178, §104(c)(1), inserted ''(other than the International Telecommunications Satellite Consortium or any successor organization)'' after ''international organization''.

Subsec. (a)(6). Pub. L. 92–178, §104(e), substituted provisions for treatment of livestock (other than horses) acquired by the taxpayer as section 38 property, with exception provision for reduction of acquisition cost by amount equal to amount realized on sale or other disposition under certain circumstances, and for nontreatment of horses as section 38 property for former provision that livestock shall not be treated as section 38 property.

Subsec. (a)(7) to (9). Pub. L. 92–178, §§103, 104(f)(1), (g), added pars. (7) to (9), respectively.

Subsec. (d). Pub. L. 92–178, §108(b) and (c), substituted ''section 46(d)(1)'' for ''section 46(d)''; and designated as par. (1) the present first sentence, redesignated as subpars. (A) and (B) provisions formerly designated cls. (1) and (2), again substituted ''section 46(d)(1)'' for ''section 46(d)'' in par. (1) and inserted ''(other than property described in paragraph (4))'' in par. (1), added pars. (2) and (4), incorporated provisions of former second, third, and fourth sentences in provisions designated as par. (3),

substituted in par. (3) ''the lessee shall be treated for all purposes of this subpart as having acquired a fractional portion of such property equal to the fraction determined under paragraph (2)(B) with respect to such property'' for ''the lessee shall be treated for all purposes of this subpart as having acquired such property'', and struck out former fifth and sixth sentences respecting election regarding treatment of leases of suspension period property and section 38 property. See Effective Date of 1971 Amendment note below.

1969—Subsec. (a)(4). Pub. L. 91–172, § 121(d)(2)(A), inserted provision relating to the percentage of the basis or cost of debt-financed property that may be considered in computing qualified investment under section 46(c) of this title.

Subsec. (c)(2)(C). Pub. L. 91–172, § 401(e)(2), reenacted subpar. (C) with minor changes and substituted reference to controlled group for reference to affiliated group.

Subsec. (c)(3)(C). Pub. L. 91–172, § 401(e)(3), substituted definition of controlled group for definition of affiliated group.

Subsec. (d)(2). Pub. L. 91–172, § 401(e)(4), substituted reference to a component member of a controlled group for reference to a member of an affiliated group.

1967—Subsec. (a)(2)(B)(i). Pub. L. 90–26, § 3, inserted ''or is operated under contract with the United States'' after ''the United States''.

Subsec. (h)(2). Pub. L. 90–26, § 2(a), limited definition of suspension period property to section 38 property where the physical construction, reconstruction or erection was begun before May 24, 1967, pursuant to an order placed during the suspension period, subject to the proviso that in applying the definition to property the physical construction, reconstruction or erection of which was begun before May 24, 1967, only that portion of the basis properly attributable to construction, reconstruction or erection before May 24, 1967 be taken into account.

Subsec. (j). Pub. L. 90–26, § 1, substituted ''March 9, 1967'' for ''December 31, 1967''.

1966—Subsec. (a)(2)(B). Pub. L. 89–809 added cl. (vii).

Subsec. (d). Pub. L. 89–800, § 1(b), inserted provisions covering the treatment of suspension period property, and the elections to be deemed made in connection therewith.

Subsecs. (h) to (k). Pub. L. 89–800, § 1(a), added subsecs. (h) to (j) and redesignated former subsec. (h) as (k).

1964—Subsec. (a)(1)(C). Pub. L. 88–272, § 203(c)(2), added subpar. (C).

Subsec. (d). Pub. L. 88–272, § 203(a)(3)(A), (b), substituted ''except as provided in paragraph (2)'' for ''if such property was constructed by the lessor (or by a corporation which controls or is controlled by the lessor within the meaning of section 368(c))'' in par. (1), ''if such property is leased by a corporation which is a member of an affiliated group (within the meaning of section 46(a)(5) to another corporation which is a member of the same affiliated group'' for ''if paragraph (1) does not apply'' in par. (2), and deleted provisions which stated that if a lessor made an election under this subsection, subsec. (g) would not apply with respect to such property, and deductions otherwise allowable under section 162 to the lessee for amounts paid the lessor would be adjusted consistent with subsec. (g).

Subsec. (g). Pub. L. 88–272, § 203(a)(1), repealed subsec. (g) which required that the basis of section 38 property be reduced by 7 percent of the qualified investment.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, § 1102(b), Feb. 17, 2009, 123 Stat. 320, provided that: ''The amendments made by this section [amending this section] shall apply to facilities placed in service after December 31, 2008.''

Amendment by section 1103(a), (b)(1) of Pub. L. 111–5 applicable to periods after Dec. 31, 2008, under rules similar to the rules of subsec. (m) of this section as in effect on the day before Nov. 5, 1990, see section 1103(c)(1) of Pub. L. 111–5, set out as a note under section 25C of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title I, § 103(f), Oct. 3, 2008, 122 Stat. 3813, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 38 of this title] shall take effect on the date of the enactment of this Act [Oct. 3, 2008].

''(2) ALLOWANCE AGAINST ALTERNATIVE MINIMUM TAX.—The amendments made by subsection (b) [amending section 38 of this title] shall apply to credits determined under section 46 of the Internal Revenue Code of 1986 in taxable years beginning after the date of the enactment of this Act and to carrybacks of such credits.

''(3) COMBINED HEAT AND POWER AND FUEL CELL PROPERTY.—The amendments made by subsections (c) and (d) [amending this section] shall apply to periods after the date of the enactment of this Act, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990 [Nov. 5, 1990]).

''(4) PUBLIC UTILITY PROPERTY.—The amendments made by subsection (e) [amending this section] shall apply to periods after February 13, 2008, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).''

Pub. L. 110–343, div. B, title I, § 104(e), Oct. 3, 2008, 122 Stat. 3814, provided that: ''The amendments made by this section [amending this section] shall apply to periods after the date of the enactment of this Act [Oct. 3, 2008], in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990 [Nov. 5, 1990]).''

Pub. L. 110–343, div. B, title I, § 105(b), Oct. 3, 2008, 122 Stat. 3814, provided that: ''The amendments made by this section [amending this section] shall apply to periods after the date of the enactment of this Act [Oct. 3, 2008], in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990 [Nov. 5, 1990]).''

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title XIII, § 1336(e), Aug. 8, 2005, 119 Stat. 1038, provided that: ''The amendments made by this section [amending this section] shall apply to periods after December 31, 2005, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990 [Nov. 5, 1990]).''

Pub. L. 109–58, title XIII, § 1337(d), Aug. 8, 2005, 119 Stat. 1038, provided that: ''The amendments made by this section [amending this section] shall apply to periods after December 31, 2005, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990 [Nov. 5, 1990]).''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 322(d)(2)(A), (B) of Pub. L. 108–357 applicable with respect to expenditures paid or incurred after Oct. 22, 2004, see section 322(e) of Pub. L. 108–357, set out as a note under section 46 of this title.

Amendment by section 710(e) of Pub. L. 108–357 applicable, except as otherwise provided, to electricity produced and sold after Oct. 22, 2004, in taxable years ending after such date, see section 710(g) of Pub. L. 108–357, as amended, set out as a note under section 45 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1916(b) of Pub. L. 102–486 provided that: ''The amendments made by this section [amending this section] shall take effect on June 30, 1992.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11813(a) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

If any interest costs incurred after Dec. 31, 1986, are attributable to costs incurred before Jan. 1, 1987, the amendment by section 803(b)(2)(B) of Pub. L. 99–514 is applicable to such interest costs only to the extent such interest costs are attributable to costs which were required to be capitalized under section 263 of the Internal Revenue Code of 1954 and which would have been taken into account in applying section 189 of the Internal Revenue Code of 1954 (as in effect before its repeal by section 803 of Pub. L. 99–514) or, if applicable, section 266 of such Code, see section 7831(d)(2) of Pub. L. 101–239, set out as an Effective Date note under section 263A of this title.

Amendment by section 251(b), (c) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided for certain rehabilitations, see section 251(d) of Pub. L. 99–514, set out as a note under section 46 of this title.

Amendment by section 701(e)(4)(C) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

Amendment by section 803(b)(2)(B) of Pub. L. 99–514 applicable to costs incurred after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 803(d) of Pub. L. 99–514, set out as an Effective Date note under section 263A of this title.

Amendment by sections 1272(d)(5) and 1275(c)(5) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

Amendment by section 1511(c)(3) of Pub. L. 99–514 applicable for purposes of determining interest for periods after Dec. 31, 1986, see section 1511(d) of Pub. L. 99–514, set out as a note under section 47 of this title.

Section 1879(j)(2) of Pub. L. 99–514 provided that: ''The amendments made by this subsection [amending this section] shall apply to periods after December 31, 1978 (under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1954 [now 1986]), in taxable years ending after such date.''

Section 1881 of title XVIII of Pub. L. 99–514 provided that: ''Except as otherwise provided in this subtitle, any amendment made by this subtitle [subtitle A (§§ 1801–1881) of title XVIII of Pub. L. 99–514, see Tables for classification] shall take effect as if included in the provision of the Tax Reform Act of 1984 [Pub. L. 98–369, div. A] to which such amendment relates.''

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–121 applicable with respect to property placed in service by the taxpayer after May 8, 1985, with specified exceptions, but amendment of subsec. (g)(2)(B)(v) not applicable to leases entered into before May 22, 1985, if the lessee signed the lease before May 17, 1985, see section 105(b)(1), (5) of Pub. L. 99–121, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 18 of Pub. L. 98–369 provided that:

''(a) GENERAL RULE.—The amendments made by this part [part I (§§ 11–18) of subtitle A of title I of div. A of Pub. L. 98–369, amending this section and sections 41, 46, 57, 128, 168, 179, 265, 415, 854, 857, and 911 of this title, enacting provisions set out as a note under section 168 of this title, and amending provisions set out as notes under sections 128 and 168 of this title] shall apply to taxable years ending after December 31, 1983.

''(b) SPECIAL RULE FOR SECTION 14.—The amendment made by section 14 [amending section 41 of this title] shall not apply in the case of a tax credit employee stock ownership plan if—

''(1) such plan was favorably approved on September 23, 1983, by employees, and

''(2) not later than January 11, 1984, the employer of such employees was 100 percent owned by such plan.''

Amendment by section 31(b), (c)(1) of Pub. L. 98–369 effective, except as otherwise provided in section 31(g) of Pub. L. 98–369, as to property placed in service by the taxpayer after May 23, 1983, in taxable years ending after such date and to property placed in service by the taxpayer on or before May 23, 1983, if the lease to the tax-exempt entity is entered into after May 23, 1983, and amendment by section 31(c)(2) of Pub. L. 98–369, to the extent it relates to section 168(f)(12) of this title, effective as if it had been included in the amendments to section 168 of this title by section 216(a) of Pub. L. 97–248, see section 31(g)(1), (12) of Pub. L. 98–369, set out as a note under section 168 of this title.

Amendment by section 111(e)(8) of Pub. L. 98–369 applicable with respect to property placed in service by the taxpayer after Mar. 15, 1984, subject to certain exceptions, see section 111(g) of Pub. L. 98–369, set out as a note under section 168 of this title.

Amendment by section 113(b)(3) of Pub. L. 98–369 applicable as if included in the amendments made by sections 201(a), 211(a)(1), and 211(f)(1) of Pub. L. 97–34, which enacted section 168 and amended section 46 of this title, see section 113(c)(2)(B) of Pub. L. 98–369, set out as a note under section 168 of this title.

Amendment by section 113(b)(4) of Pub. L. 98–369 applicable as if included in the amendments made by section 205(a)(1) of Pub. L. 97–248, see section 113(c)(2)(C) of Pub. L. 98–369, set out as a note under section 168 of this title.

Section 113(c)(1) of Pub. L. 98–369 provided that: ''The amendments made by subsection (a) [amending this section and section 168 of this title] shall apply to property placed in service after March 15, 1984, in taxable years ending after such date.''

Section 114(b) of Pub. L. 98–369 provided that: ''The amendment made by this section [amending this section] shall apply to property originally placed in service after April 11, 1984 (determined without regard to such amendment).''

Amendment by section 431(c) of Pub. L. 98–369 applicable to property placed in service after July 18, 1984, in taxable years ending after such date, but not applicable to property to which sections 46(c)(8), (9) and 47(d) of this title, as enacted by section 211(f) of Pub. L. 97–34, do not apply, with the taxpayer having an option to elect retroactive application of amendment by Pub. L. 98–369, see section 431(e) of Pub. L. 98–369, set out as a note under section 46 of this title.

Amendment by section 474(*o*)(10)–(18) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Section 474(*o*)(15) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Subsection (n) of section 48 (relating to require-

ments for allowance of employee plan percentage) is hereby repealed; except that paragraph (4) of section 48(n) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect before its repeal by this paragraph) shall continue to apply in the case of any recapture under section 47(f) of such Code of a credit allowable for a taxable year beginning before January 1, 1984.''

Amendment by section 712(b) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

Amendment by section 721(x)(1) of Pub. L. 98–369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97–354, see section 721(y)(1) of Pub. L. 98–369, set out as a note under section 1361 of this title.

Amendment by section 735(c)(1) of Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

Section 1043(b) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall apply to expenditures incurred after December 31, 1983, in taxable years ending after such date.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by title I of Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

Amendment by section 202(c) of Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Crude Oil Windfall Profit Tax Act of 1980, Pub. L. 96–223 to which such amendment relates, see section 203(a) of Pub. L. 97–448, set out as a note under section 6652 of this title.

Amendment by section 306(a)(3) of Pub. L. 97–448 effective as if included in the provisions of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 311(d) of Pub. L. 97–448, set out as a note under section 31 of this title.

EFFECTIVE AND TERMINATION DATES OF 1982 AMENDMENTS

Section 104(b) of Pub. L. 97–362, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by this section [amending this section] shall apply to periods beginning after December 31, 1980, and before January 1, 1983, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].''

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

Amendment by section 205(a)(1), (4), (5)(A) of Pub. L. 97–248, applicable to periods after Dec. 31, 1982, under rules similar to the rules of subsec. (m) of this section, with certain exceptions and qualifications, see section 205(c)(1) of Pub. L. 97–248, set out as an Effective Date note under section 196 of this title.

Amendment by section 209(c) of Pub. L. 97–248 applicable to property placed in service after Dec. 31, 1983, but not to qualified leased property described in section 168(f)(8)(D)(v) of this title which is placed in service before Jan. 1, 1988, or is placed in service after such date pursuant to a binding contract or commitment entered into before April 1, 1983, and solely because of conditions which, as determined by the Secretary of the Treasury or his delegate, are not within the control of the lessor or lessee, see sections 208(d)(5) and 209(d)(2) of Pub. L. 97–248, set out as notes under section 168 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 213(b) of Pub. L. 97–34, as amended by Pub. L. 97–448, title I, § 102(g), Jan. 12, 1983, 96 Stat. 2372, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1980.''

Section 214(c) of Pub. L. 97–34 provided that: ''The amendments made by this section [amending this section] shall apply to uses after July 29, 1980, in taxable years ending after such date.''

Section 332(c)(2) of Pub. L. 97–34 provided that: ''The amendment made by subsection (b) [amending this section] shall apply to qualified investments made after December 31, 1981.''

Amendment by section 211(a)(2), (e)(3), (4) of Pub. L. 97–34 applicable to property placed in service after Dec. 31, 1980, see section 211(i)(1) of Pub. L. 97–34, set out as a note under section 46 of this title.

Amendment by section 211(c) of Pub. L. 97–34 applicable to periods after Dec. 31, 1980, under rules similar to the rules under subsec. (m) of this section, see section 211(i)(3) of Pub. L. 97–34, set out as a note under section 46 of this title.

Amendment by section 211(h) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1980, see section 211(i)(6) of Pub. L. 97–34, set out as a note under section 46 of this title.

Amendment by section 212(a)(3), (b), (c), (d)(2)(A) of Pub. L. 97–34 applicable to expenditures incurred after Dec. 31, 1981, in taxable years ending after such date, see section 212(e) of Pub. L. 97–34, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 109(b) of Pub. L. 96–605 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1979.''

Section 223(b) of Pub. L. 96–605 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1980.''

Section 302(b) of Pub. L. 96–451 provided that: ''The amendments made by this section [amending this section] shall apply with respect to additions to capital account made after December 31, 1979.''

Section 222(j) of Pub. L. 96–223, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 46 of this title] shall apply to periods after December 31, 1979, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

''(2) ALUMINA ELECTROLYTIC CELLS.—The amendments made by subsection (d)(1) [amending this section] shall apply to periods after September 30, 1978, under rules similar to the rules of section 48(m) of such Code.''

Section 223(a)(2) of Pub. L. 96–223, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to periods after December 31, 1979, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].''

Section 223(c)(2) of Pub. L. 96–223, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by paragraph (1) [amending this section] shall apply to periods after December 31, 1982, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].''

''(B) EARLIER APPLICATION FOR CERTAIN PROPERTY.—In the case of property which is—

''(i) qualified hydroelectric generating property (described in section 48(*l*)(2)(A)(vii) of such Code),

''(ii) cogeneration equipment (described in section 48(*l*)(2)(A)(viii) of such Code),

''(iii) qualified intercity buses (described in section 48(*l*)(2)(A)(ix) of such Code),

''(iv) ocean thermal property (described in section 48(*l*)(3)(A)(ix) of such Code), or

''(v) expanded energy credit property,

the amendment made by paragraph (1) shall apply to periods after December 31, 1979, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986.

''(C) EXPANDED ENERGY CREDIT PROPERTY.—For purposes of subparagraph (B), the term 'expanded energy credit property' means—

''(i) property to which section 48(*l*)(3)(A) of such Code applies because of the amendments made by paragraphs (1) and (2) of section 222(b) [amending this section],

''(ii) property described in section 48(*l*)(4)(C) of such Code (relating to solar process heat),

''(iii) property described in section 48(*l*)(5)(L) of such Code (relating to alumina electrolytic cells), and

''(iv) property described in the last sentence of section 48(*l*)(3)(A) of such Code (relating to storage equipment for refuse-derived fuel).

''(D) FINANCING TAKEN INTO ACCOUNT.—For the purpose of applying the provisions of section 48(*l*)(11) of such Code in the case of property financed in whole or in part by subsidized energy financing (within the meaning of section 48(*l*)(11)(C) of such Code), no financing made before January 1, 1980, shall be taken into account. The preceding sentence shall not apply to financing provided from the proceeds of any tax exempt industrial development bond (within the meaning of section 103(b)(2) of such Code).''

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

Section 108(c)(7) of Pub. L. 96–222 provided that: ''Any amendment made by this subsection [amending sections 4071, 4221, 6416, and 6421 of this title] shall take effect as if included in the provision of the Energy Tax Act of 1978 [See Short Title of 1978 Amendment note set out under section 1 of this title] to which such amendment relates; except that the amendment made by paragraph (6) [amending this section] shall take effect on the first day of the first calendar month which begins more than 10 days after the date of the enactment of this Act [Apr. 1, 1980].''

EFFECTIVE DATE OF 1978 AMENDMENTS

Section 301(d)(4) of Pub. L. 95–618 provided that:

''(A) IN GENERAL.—The amendments made by this subsection [amending this section and section 167 of this title] shall apply to property which is placed in service after September 30, 1978.

''(B) BINDING CONTRACTS.—The amendments made by this subsection [amending this section and section 167 of this title] shall not apply to property which is constructed, reconstructed, erected, or acquired pursuant to a contract which, on October 1, 1978, and at all times thereafter, was binding on the taxpayer.''

Amendment by section 141(b) of Pub. L. 95–600 effective with respect to qualified investment for taxable years beginning after Dec. 31, 1978, see section 141(g)(1) of Pub. L. 95–600, set out as an Effective Date note under section 409 of this title.

Amendment by section 312(c)(1), (2), (3) of Pub. L. 95–600 applicable to taxable years ending after Dec. 31, 1978, see section 312(d) of Pub. L. 95–600, set out as a note under section 46 of this title.

Section 314(c) of Pub. L. 95–600 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to taxable years ending after August 15, 1971.''

Section 315(d) of Pub. L. 95–600 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years ending after October 31, 1978; except that the amendment made by subsection (c) shall only apply with respect to property placed in service after such date.''

Amendment by section 703(a)(3), (4) of Pub. L. 95–600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 802(b)(6) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, see section 802(c) of Pub. L. 94–455, set out as a note under section 46 of this title.

Section 804(e) of Pub. L. 94–455, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendments made by subsections (a) and (b) [amending this section and section 47 of this title] shall apply to taxable years beginning after December 31, 1974.

''(2) ELECTION MAY ALSO APPLY TO PROPERTY DESCRIBED IN SECTION 50(a).—At the election of the taxpayer, made within 1 year after the date of the enactment of this Act [Oct. 4, 1976] in such manner as the Secretary of the Treasury or his delegate may by regulations prescribe, the amendments made by subsections (a) and (b) shall also apply to property which is property described in section 50(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] and which is placed in service in taxable years beginning before January 1, 1975.''

Amendment by section 1051(h)(1) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975 with certain exceptions, see section 1051(i) of Pub. L. 94–455, set out as a note under section 27 of this title.

Amendment by section 1901(a)(5), (b)(11)(A) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 2112(a) of Pub. L. 94–455 applicable to property acquired by the taxpayer after Dec. 31, 1976, and property, the construction, reconstruction, or erection of which was completed by the taxpayer after Dec. 31, 1976, (but only to the extent of the basis thereof attributable to construction, reconstruction, or erection after such date), in taxable years beginning after such date, see section 2112(d)(1) of Pub. L. 94–455, set out as a note under section 46 of this title.

EFFECTIVE AND TERMINATION DATES OF 1975 AMENDMENT

Section 301(c)(2) of Pub. L. 94–12, as amended by Pub. L. 94–455, title VIII, §801, Oct. 4, 1976, 90 Stat. 1580; Pub. L. 95–600, title III, §311(b), Nov. 6, 1978, 92 Stat. 2824, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply only to taxable years beginning after December 31, 1974.''

Amendment by section 302(c)(3) of Pub. L. 94–12 applicable to taxable years ending after Dec. 31, 1974, see section 305(a) of Pub. L. 94–12, set out as an Effective Date of 1975 Amendment note under section 46 of this title.

Section 604(b) of Pub. L. 94–12, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendments made by subsection (a) [amending this section] shall apply to property, the construction, reconstruction, or erection of which was completed after March 18, 1975, or the acquisition of which by the taxpayer occurred after such date.

''(2) BINDING CONTRACT.—The amendments made by subsection (a) [amending this section] shall not apply to property constructed, reconstructed, erected, or acquired pursuant to a contract which was on April 1, 1974, and at all times thereafter, binding on the taxpayer.

''(3) CERTAIN LEASE-BACK TRANSACTIONS, ETC.—Where a person who is a party to a binding contract described in paragraph (2) transfers rights in such contract (or in the property to which such contract relates) to another person but a party to such contract retains a right to use the property under a lease with such other person, then to the extent of the transferred rights such other person shall, for pur-

poses of paragraph (2), succeed to the position of the transferor with respect to such binding contract and such property. The preceding sentence shall apply, in any case in which the lessor does not make an election under section 48(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], only if a party to such contract retains a right to use the property under a long-term lease.''

EFFECTIVE DATE OF 1971 AMENDMENT

Section 104(h) of Pub. L. 92–178, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [amending this section and sections 169 and 1245 of this title] (other than by subsections (c)(1), (c)(2), and (g) [amending this section]) shall apply to property described in section 50 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]. The amendments made by subsections (c)(1), (c)(2), and (g) [amending this section] shall apply to taxable years ending after December 31, 1961.''

Amendment by section 108(b), (c) of Pub. L. 92–178, applicable to leases entered into after Sept. 22, 1971, and after Nov. 8, 1971, respectively, see section 108(d) of Pub. L. 92–178, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 121(d)(2)(A) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91–172, set out as a note under section 511 of this title.

Amendment by section 401(e)(2)–(4) of Pub. L. 91–172 applicable with respect to taxable years ending on or after Dec. 31, 1970, see section 401(h)(3) of Pub. L. 91–172, set out as a note under section 1561 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Section 4 of Pub. L. 90–26 provided that: ''The amendments made by the first three sections of this Act [amending this section and section 167 of this title] shall apply to taxable years ending after March 9, 1967.''

EFFECTIVE DATE OF 1966 AMENDMENTS

Section 201(b) of Pub. L. 89–809, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxable years ending after December 31, 1965, but only with respect to property placed in service after such date. In applying section 46(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to carryback and carryover of unused credits), the amount of any investment credit carryback to any taxable year ending on or before December 31, 1965, shall be determined without regard to the amendments made by this section.''

Amendment by Pub. L. 89–800 applicable to taxable years ending after Oct. 9, 1966, see section 4 of Pub. L. 89–800, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 203(a)(4) of Pub. L. 88–272 provided that: ''Paragraphs (1) [amending this section] and (3) [amending this section and section 1016 of this title and repealing section 181 of this title] of this subsection shall apply—

''(A) in the case of property placed in service after December 31, 1963, with respect to taxable years ending after such date, and

''(B) in the case of property placed in service before January 1, 1964, with respect to taxable years beginning after December 31, 1963.''

Section 203(f) of Pub. L. 88–272 provided that:

''(1) The amendments made by subsection (b) [amending this section] shall apply with respect to property possession of which is transferred to a lessee on or after the date of enactment of this Act [Feb. 26, 1964].

''(2) The amendments made by subsection (c) [amending this section] shall apply with respect to taxable years ending after June 30, 1963.

''(3) The amendments made by subsection (d) [amending section 1245 of this title] shall apply with respect to dispositions after December 31, 1963, in taxable years ending after such date.''

EFFECTIVE DATE

Section applicable with respect to taxable years ending after Dec. 31, 1961, see section 2(h) of Pub. L. 87–834, set out as a note under section 46 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

TRANSFER OF FUNCTIONS

Functions, powers, and duties of Federal Aviation Agency and of Administrator and other offices and officers thereof transferred by Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, to Secretary of Transportation, with functions, powers, and duties of Secretary of Transportation pertaining to aviation safety to be exercised by Federal Aviation Administrator in Department of Transportation, see section 106 of Title 49, Transportation.

GRANTS FOR SPECIFIED ENERGY PROPERTY IN LIEU OF TAX CREDITS

Pub. L. 111–5, div. B, title I, § 1603, Feb. 17, 2009, 123 Stat. 364, as amended by Pub. L. 111–312, title VII, § 707, Dec. 17, 2010, 124 Stat. 3312, provided that:

''(a) IN GENERAL.—Upon application, the Secretary of the Treasury shall, subject to the requirements of this section, provide a grant to each person who places in service specified energy property to reimburse such person for a portion of the expense of such property as provided in subsection (b). No grant shall be made under this section with respect to any property unless such property—

''(1) is placed in service during 2009, 2010, or 2011, or

''(2) is placed in service after 2011 and before the credit termination date with respect to such property, but only if the construction of such property began during 2009, 2010, or 2011.

''(b) GRANT AMOUNT.—

''(1) IN GENERAL.—The amount of the grant under subsection (a) with respect to any specified energy property shall be the applicable percentage of the basis of such property.

''(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term 'applicable percentage' means—

''(A) 30 percent in the case of any property described in paragraphs (1) through (4) of subsection (d), and

''(B) 10 percent in the case of any other property.

''(3) DOLLAR LIMITATIONS.—In the case of property described in paragraph (2), (6), or (7) of subsection (d), the amount of any grant under this section with respect to such property shall not exceed the limitation described in section 48(c)(1)(B), 48(c)(2)(B), or 48(c)(3)(B) of the Internal Revenue Code of 1986, respectively, with respect to such property.

''(c) TIME FOR PAYMENT OF GRANT.—The Secretary of the Treasury shall make payment of any grant under subsection (a) during the 60-day period beginning on the later of—

''(1) the date of the application for such grant, or

''(2) the date the specified energy property for which the grant is being made is placed in service.

''(d) SPECIFIED ENERGY PROPERTY.—For purposes of this section, the term 'specified energy property' means any of the following:

''(1) QUALIFIED FACILITIES.—Any qualified property (as defined in section 48(a)(5)(D) of the Internal Reve-

nue Code of 1986) which is part of a qualified facility (within the meaning of section 45 of such Code) described in paragraph (1), (2), (3), (4), (6), (7), (9), or (11) of section 45(d) of such Code.

''(2) QUALIFIED FUEL CELL PROPERTY.—Any qualified fuel cell property (as defined in section 48(c)(1) of such Code).

''(3) SOLAR PROPERTY.—Any property described in clause (i) or (ii) of section 48(a)(3)(A) of such Code.

''(4) QUALIFIED SMALL WIND ENERGY PROPERTY.—Any qualified small wind energy property (as defined in section 48(c)(4) of such Code).

''(5) GEOTHERMAL PROPERTY.—Any property described in clause (iii) of section 48(a)(3)(A) of such Code.

''(6) QUALIFIED MICROTURBINE PROPERTY.—Any qualified microturbine property (as defined in section 48(c)(2) of such Code).

''(7) COMBINED HEAT AND POWER SYSTEM PROPERTY.—Any combined heat and power system property (as defined in section 48(c)(3) of such Code).

''(8) GEOTHERMAL HEAT PUMP PROPERTY.—Any property described in clause (vii) of section 48(a)(3)(A) of such Code.

Such term shall not include any property unless depreciation (or amortization in lieu of depreciation) is allowable with respect to such property.

''(e) CREDIT TERMINATION DATE.—For purposes of this section, the term 'credit termination date' means—

''(1) in the case of any specified energy property which is part of a facility described in paragraph (1) of section 45(d) of the Internal Revenue Code of 1986, January 1, 2013,

''(2) in the case of any specified energy property which is part of a facility described in paragraph (2), (3), (4), (6), (7), (9), or (11) of section 45(d) of such Code, January 1, 2014, and

''(3) in the case of any specified energy property described in section 48 of such Code, January 1, 2017.

In the case of any property which is described in paragraph (3) and also in another paragraph of this subsection, paragraph (3) shall apply with respect to such property.

''(f) APPLICATION OF CERTAIN RULES.—In making grants under this section, the Secretary of the Treasury shall apply rules similar to the rules of section 50 of the Internal Revenue Code of 1986. In applying such rules, if the property is disposed of, or otherwise ceases to be specified energy property, the Secretary of the Treasury shall provide for the recapture of the appropriate percentage of the grant amount in such manner as the Secretary of the Treasury determines appropriate.

''(g) EXCEPTION FOR CERTAIN NON-TAXPAYERS.—The Secretary of the Treasury shall not make any grant under this section to—

''(1) any Federal, State, or local government (or any political subdivision, agency, or instrumentality thereof),

''(2) any organization described in section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code,

''(3) any entity referred to in paragraph (4) of section 54(j) of such Code, or

''(4) any partnership or other pass-thru entity any partner (or other holder of an equity or profits interest) of which is described in paragraph (1), (2) or (3).

''(h) DEFINITIONS.—Terms used in this section which are also used in section 45 or 48 of the Internal Revenue Code of 1986 shall have the same meaning for purposes of this section as when used in such section 45 or 48. Any reference in this section to the Secretary of the Treasury shall be treated as including the Secretary's delegate.

''(i) APPROPRIATIONS.—There is hereby appropriated to the Secretary of the Treasury such sums as may be necessary to carry out this section.

''(j) TERMINATION.—The Secretary of the Treasury shall not make any grant to any person under this section unless the application of such person for such grant is received before October 1, 2012.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(4)(C) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

SPECIAL RULE

Section 1879(j)(3) of Pub. L. 99–514 provided that: ''If refund or credit of any overpayment of tax resulting from the application of this subsection [amending this section] is prevented at any time before the close of the date which is 1 year after the date of the enactment of this Act [Oct. 22, 1986] by operation of any law or rule of law (including res judicata), refund or credit of such overpayment (to the extent attributable to the application of the amendments made by this subsection [amending this section]) may, nevertheless, be made or allowed if claim therefor is filed before the close of such 1-year period.''

CLARIFICATION OF EFFECT OF 1984 AMENDMENT ON INVESTMENT TAX CREDIT

For provision that nothing in the amendments made by section 474(*o*) of Pub. L. 98–369, which amended this section, be construed as reducing the investment tax credit in taxable years beginning before Jan. 1, 1984, see section 475(c) of Pub. L. 98–369, set out as a note under section 46 of this title.

ALTERNATIVE METHODS OF COMPUTING CREDIT FOR PAST PERIODS

Section 804(c) of Pub. L. 94–455, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) GENERAL RULE FOR DETERMINING USEFUL LIFE, PREDOMINANT FOREIGN USE, ETC.—In the case of a qualified film (within the meaning of section 48(k)(1)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) placed in service in a taxable year beginning before January 1, 1975, with respect to which neither an election under paragraph (2) of this subsection nor an election under subsection (e)(2) applies—

''(A) the applicable percentage under section 46(c)(2) of such Code shall be determined as if the useful life of the film would have expired at the close of the first taxable year by the close of which the aggregate amount allowable as a deduction under section 167 of such Code would equal or exceed 90 percent of the basis of such property (adjusted for any partial dispositions),

''(B) for purposes of section 46(c)(1) of such Code, the basis of the property shall be determined by taking into account the total production costs (within the meaning of section 48(k)(5)(B) of such Code),

''(C) for purposes of section 48(a)(2) of such Code, such film shall be considered to be used predominantly outside the United States in the first taxable year for which 50 percent or more of the gross revenues received or accrued during the taxable

year from showing the film were received or accrued from showing the film outside the United States, and

''(D) Section 47(a)(7) of such Code shall apply.

''(2) ELECTION OF 40-PERCENT METHOD.—

''(A) IN GENERAL.—A taxpayer may elect to have this paragraph apply to all qualified films placed in service during taxable years beginning before January 1, 1975 (other than films to which an election under subsection (e)(2) of this section applies).

''(B) EFFECT OF ELECTION.—If the taxpayer makes an election under this paragraph, then section 48(k) of the Internal Revenue Code of 1986 shall apply to all qualified films described in subparagraph (A) with the following modifications:

''(i) subparagraph (B) of paragraph (4) shall not apply, but in determining qualified investment under section 46(c)(1) of such Code there shall be used (in lieu of the basis of such property) an amount equal to 40 percent of the aggregate production costs (within the meaning of paragraph (5)(B) of such section 48(k)),

''(ii) paragraph (2) shall be applied by substituting '100 percent' for '66⅔ percent', and

''(iii) paragraph (3) and paragraph (5) (other than subparagraph (B)) shall not apply.

''(C) RULES RELATING TO ELECTIONS.—An election under this paragraph shall be made not later than the day which is 6 months after the date of the enactment of this Act [Oct. 4, 1976] and shall be made in such manner as the Secretary of the Treasury or his delegate shall by regulations prescribe. Such an election may be revoked only with the consent of the Secretary of the Treasury or his delegate.

''(D) THE TAXPAYER MUST CONSENT TO JOIN IN CERTAIN PROCEEDINGS.—No election may be made under this paragraph or subsection (e)(2) by any taxpayer unless he consents, under regulations prescribed by the Secretary of the Treasury or his delegate, to treat the determination of the investment credit allowable on each film subject to an election as a separate cause of action, and to join in any judicial proceeding for determining the person entitled to, and the amount of, the credit allowable under section 38 of the Internal Revenue Code of 1986 with respect to any film covered by such election.

''(3) ELECTION TO HAVE CREDIT DETERMINED IN ACCORDANCE WITH PREVIOUS LITIGATION.—

''(A) IN GENERAL.—A taxpayer described in subparagraph (B) may elect to have this paragraph apply to all films (whether or not qualified) placed in service in taxable years beginning before January 1, 1975, and with respect to which an election under subsection (e)(2) is not made.

''(B) WHO MAY ELECT.—A taxpayer may make an election under this paragraph if he has filed an action in any court of competent jurisdiction, before January 1, 1976, for a determination of such taxpayer's rights to the allowance of a credit against tax under section 38 of the Internal Revenue Code of 1986 for any taxable year beginning before January 1, 1975, with respect to any film.

''(C) EFFECT OF ELECTION.—If the taxpayer makes an election under this paragraph—

''(i) paragraphs (1) and (2) of this subsection, and subsection (d) shall not apply to any film placed in service by the taxpayer, and

''(ii) subsection 48(k) of the Internal Revenue Code of 1986 shall not apply to any film placed in service by the taxpayer in any taxable year beginning before January 1, 1975, and with respect to which an election under subsection (e)(2) is not made,

and the right of the taxpayer to the allowance of a credit against tax under section 38 of such Code with respect to any film placed in service in any taxable year beginning before January 1, 1975, and as to which an election under subsection (e)(2) is not made, shall be determined as though this section (other than this paragraph) has not been enacted.

''(D) RULES RELATING TO ELECTIONS.—An election under this paragraph shall be made not later than the day which is 90 days after the date of the enactment of this Act [Oct. 4, 1976], by filing a notification of such election with the national office of the Internal Revenue Service. Such an election, once made, shall be irrevocable.''

ENTITLEMENT TO CREDIT

Section 804(d) of Pub. L. 94–455, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Paragraph (1) of section 48(k) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to entitlement to credit) shall apply to any motion picture film or video tape placed in service in any taxable year beginning before January 1, 1975.''

INCREASE IN BASIS OF PROPERTY PLACED IN SERVICE BEFORE JANUARY 1, 1964

Section 203(a)(2) of Pub. L. 88–272, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(A) The basis of any section 38 property (as defined in section 48(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) placed in service before January 1, 1964, shall be increased, under regulations prescribed by the Secretary of the Treasury or his delegate, by an amount equal to 7 percent of the qualified investment with respect to such property under section 46(c) of the Internal Revenue Code of 1986. If there has been any increase with respect to such property under section 48(g)(2) of such Code, the increase under the preceding sentence shall be appropriately reduced therefor.

''(B) If a lessor made the election provided by section 48(d) of the Internal Revenue Code of 1986 with respect to property placed in service before January 1, 1964—

''(i) subparagraph (A) shall not apply with respect to such property, but

''(ii) under regulations prescribed by the Secretary of the Treasury or his delegate, the deductions otherwise allowable under section 162 of such Code to the lessee for amounts paid to the lessor under the lease (or, if such lessee has purchased such property, the basis of such property) shall be adjusted in a manner consistent with subparagraph (A).

''(C) The adjustments under this paragraph shall be made as of the first day of the taxpayer's first taxable year which begins after December 31, 1963.''

§ 48A. Qualifying advanced coal project credit

(a) In general

For purposes of section 46, the qualifying advanced coal project credit for any taxable year is an amount equal to—

(1) 20 percent of the qualified investment for such taxable year in the case of projects described in subsection (d)(3)(B)(i),

(2) 15 percent of the qualified investment for such taxable year in the case of projects described in subsection (d)(3)(B)(ii), and

(3) 30 percent of the qualified investment for such taxable year in the case of projects described in clause (iii) of subsection (d)(3)(B).

(b) Qualified investment

(1) In general

For purposes of subsection (a), the qualified investment for any taxable year is the basis of eligible property placed in service by the taxpayer during such taxable year which is part of a qualifying advanced coal project—

(A)(i) the construction, reconstruction, or erection of which is completed by the taxpayer, or

(ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer, and

(B) with respect to which depreciation (or amortization in lieu of depreciation) is allowable.

(2) Special rule for certain subsidized property

Rules similar to section 48(a)(4) (without regard to subparagraph (D) thereof) shall apply for purposes of this section.

(3) Certain qualified progress expenditures rules made applicable

Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this section.

(c) Definitions

For purposes of this section—

(1) Qualifying advanced coal project

The term ''qualifying advanced coal project'' means a project which meets the requirements of subsection (e).

(2) Advanced coal-based generation technology

The term ''advanced coal-based generation technology'' means a technology which meets the requirements of subsection (f).

(3) Eligible property

The term ''eligible property'' means—

(A) in the case of any qualifying advanced coal project using an integrated gasification combined cycle, any property which is a part of such project and is necessary for the gasification of coal, including any coal handling and gas separation equipment, and

(B) in the case of any other qualifying advanced coal project, any property which is a part of such project.

(4) Coal

The term ''coal'' means anthracite, bituminous coal, subbituminous coal, lignite, and peat.

(5) Greenhouse gas capture capability

The term ''greenhouse gas capture capability'' means an integrated gasification combined cycle technology facility capable of adding components which can capture, separate on a long-term basis, isolate, remove, and sequester greenhouse gases which result from the generation of electricity.

(6) Electric generation unit

The term ''electric generation unit'' means any facility at least 50 percent of the total annual net output of which is electrical power, including an otherwise eligible facility which is used in an industrial application.

(7) Integrated gasification combined cycle

The term ''integrated gasification combined cycle'' means an electric generation unit which produces electricity by converting coal to synthesis gas which is used to fuel a combined-cycle plant which produces electricity from both a combustion turbine (including a combustion turbine/fuel cell hybrid) and a steam turbine.

(d) Qualifying advanced coal project program

(1) Establishment

Not later than 180 days after the date of enactment of this section, the Secretary, in consultation with the Secretary of Energy, shall establish a qualifying advanced coal project program for the deployment of advanced coal-based generation technologies.

(2) Certification

(A) Application period

Each applicant for certification under this paragraph shall submit an application meeting the requirements of subparagraph (B). An applicant may only submit an application—

(i) for an allocation from the dollar amount specified in clause (i) or (ii) of paragraph (3)(B) during the 3-year period beginning on the date the Secretary establishes the program under paragraph (1), and

(ii) for an allocation from the dollar amount specified in paragraph (3)(B)(iii) during the 3-year period beginning at the earlier of the termination of the period described in clause (i) or the date prescribed by the Secretary.

(B) Requirements for applications for certification

An application under subparagraph (A) shall contain such information as the Secretary may require in order to make a determination to accept or reject an application for certification as meeting the requirements under subsection (e)(1). Any information contained in the application shall be protected as provided in section 552(b)(4) of title 5, United States Code.

(C) Time to act upon applications for certification

The Secretary shall issue a determination as to whether an applicant has met the requirements under subsection (e)(1) within 60 days following the date of submittal of the application for certification.

(D) Time to meet criteria for certification

Each applicant for certification shall have 2 years from the date of acceptance by the Secretary of the application during which to provide to the Secretary evidence that the criteria set forth in subsection (e)(2) have been met.

(E) Period of issuance

An applicant which receives a certification shall have 5 years from the date of issuance of the certification in order to place the project in service and if such project is not placed in service by that time period then the certification shall no longer be valid.

(3) Aggregate credits

(A) In general

The aggregate credits allowed under subsection (a) for projects certified by the Secretary under paragraph (2) may not exceed $2,550,000,000.

(B) Particular projects

Of the dollar amount in subparagraph (A), the Secretary is authorized to certify—

(i) $800,000,000 for integrated gasification combined cycle projects the application

for which is submitted during the period described in paragraph (2)(A)(i),

(ii) $500,000,000 for projects which use other advanced coal-based generation technologies the application for which is submitted during the period described in paragraph (2)(A)(i), and

(iii) $1,250,000,000 for advanced coal-based generation technology projects the application for which is submitted during the period described in paragraph (2)(A)(ii).

(4) Review and redistribution

(A) Review

Not later than 6 years after the date of enactment of this section, the Secretary shall review the credits allocated under this section as of the date which is 6 years after the date of enactment of this section.

(B) Redistribution

The Secretary may reallocate credits available under clauses (i) and (ii) of paragraph (3)(B) if the Secretary determines that—

(i) there is an insufficient quantity of qualifying applications for certification pending at the time of the review, or

(ii) any certification made pursuant to paragraph (2) has been revoked pursuant to paragraph (2)(D) because the project subject to the certification has been delayed as a result of third party opposition or litigation to the proposed project.

(C) Reallocation

If the Secretary determines that credits under clause (i) or (ii) of paragraph (3)(B) are available for reallocation pursuant to the requirements set forth in paragraph (2), the Secretary is authorized to conduct an additional program for applications for certification.

(5) Disclosure of allocations

The Secretary shall, upon making a certification under this subsection or section 48B(d), publicly disclose the identity of the applicant and the amount of the credit certified with respect to such applicant.

(e) Qualifying advanced coal projects

(1) Requirements

For purposes of subsection (c)(1), a project shall be considered a qualifying advanced coal project that the Secretary may certify under subsection (d)(2) if the Secretary determines that, at a minimum—

(A) the project uses an advanced coal-based generation technology—

(i) to power a new electric generation unit; or

(ii) to retrofit or repower an existing electric generation unit (including an existing natural gas-fired combined cycle unit);

(B) the fuel input for the project, when completed, is at least 75 percent coal;

(C) the project, consisting of one or more electric generation units at one site, will have a total nameplate generating capacity of at least 400 megawatts;

(D) the applicant provides evidence that a majority of the output of the project is reasonably expected to be acquired or utilized;

(E) the applicant provides evidence of ownership or control of a site of sufficient size to allow the proposed project to be constructed and to operate on a long-term basis;

(F) the project will be located in the United States; and

(G) in the case of any project the application for which is submitted during the period described in subsection (d)(2)(A)(ii), the project includes equipment which separates and sequesters at least 65 percent (70 percent in the case of an application for reallocated credits under subsection (d)(4)) of such project's total carbon dioxide emissions.

(2) Requirements for certification

For the purpose of subsection (d)(2)(D), a project shall be eligible for certification only if the Secretary determines that—

(A) the applicant for certification has received all Federal and State environmental authorizations or reviews necessary to commence construction of the project; and

(B) the applicant for certification, except in the case of a retrofit or repower of an existing electric generation unit, has purchased or entered into a binding contract for the purchase of the main steam turbine or turbines for the project, except that such contract may be contingent upon receipt of a certification under subsection (d)(2).

(3) Priority for certain projects

In determining which qualifying advanced coal projects to certify under subsection (d)(2), the Secretary shall—

(A) certify capacity, in accordance with the procedures set forth in subsection (d), in relatively equal amounts to—

(i) projects using bituminous coal as a primary feedstock,

(ii) projects using subbituminous coal as a primary feedstock, and

(iii) projects using lignite as a primary feedstock,

(B) give high priority to projects which include, as determined by the Secretary—

(i) greenhouse gas capture capability,

(ii) increased by-product utilization,

(iii) applicant participants who have a research partnership with an eligible educational institution (as defined in section 529(e)(5)), and

(iv) other benefits, and

(C) give highest priority to projects with the greatest separation and sequestration percentage of total carbon dioxide emissions.

(f) Advanced coal-based generation technology

(1) In general

For the purpose of this section, an electric generation unit uses advanced coal-based generation technology if—

(A) the unit—

(i) uses integrated gasification combined cycle technology, or

(ii) except as provided in paragraph (3), has a design net heat rate of 8530 Btu/kWh (40 percent efficiency), and

(B) the unit is designed to meet the performance requirements in the following table:

Performance characteristic:	Design level for project:
SO_2 (percent removal)	99 percent
NO_x (emissions)	0.07 lbs/MMBTU
PM* (emissions)	0.015 lbs/MMBTU
Hg (percent removal)	90 percent

For purposes of the performance requirement specified for the removal of SO_2 in the table contained in subparagraph (B), the SO_2 removal design level in the case of a unit designed for the use of feedstock substantially all of which is subbituminous coal shall be 99 percent SO_2 removal or the achievement of an emission level of 0.04 pounds or less of SO_2 per million Btu, determined on a 30-day average.

(2) Design net heat rate

For purposes of this subsection, design net heat rate with respect to an electric generation unit shall—

(A) be measured in Btu per kilowatt hour (higher heating value),

(B) be based on the design annual heat input to the unit and the rated net electrical power, fuels, and chemicals output of the unit (determined without regard to the cogeneration of steam by the unit),

(C) be adjusted for the heat content of the design coal to be used by the unit—

(i) if the heat content is less than 13,500 Btu per pound, but greater than 7,000 Btu per pound, according to the following formula: design net heat rate = unit net heat rate x [1–[((13,500-design coal heat content, Btu per pound)/1,000)* 0.013]], and

(ii) if the heat content is less than or equal to 7,000 Btu per pound, according to the following formula: design net heat rate = unit net heat rate x [1–[((13,500-design coal heat content, Btu per pound)/1,000)* 0.018]], and

(D) be corrected for the site reference conditions of—

(i) elevation above sea level of 500 feet,

(ii) air pressure of 14.4 pounds per square inch absolute,

(iii) temperature, dry bulb of 63°F,

(iv) temperature, wet bulb of 54°F, and

(v) relative humidity of 55 percent.

(3) Existing units

In the case of any electric generation unit in existence on the date of the enactment of this section, such unit uses advanced coal-based generation technology if, in lieu of the requirements under paragraph (1)(A)(ii), such unit achieves a minimum efficiency of 35 percent and an overall thermal design efficiency improvement, compared to the efficiency of the unit as operated, of not less than—

(A) 7 percentage points for coal of more than 9,000 Btu,

(B) 6 percentage points for coal of 7,000 to 9,000 Btu, or

(C) 4 percentage points for coal of less than 7,000 Btu.

(g) Applicability

No use of technology (or level of emission reduction solely by reason of the use of the technology), and no achievement of any emission reduction by the demonstration of any technology or performance level, by or at one or more facilities with respect to which a credit is allowed under this section, shall be considered to indicate that the technology or performance level is—

(1) adequately demonstrated for purposes of section 111 of the Clean Air Act (42 U.S.C. 7411);

(2) achievable for purposes of section 169 of that Act (42 U.S.C. 7479); or

(3) achievable in practice for purposes of section 171 of such Act (42 U.S.C. 7501).

(h) Competitive certification awards modification authority

In implementing this section or section 48B, the Secretary is directed to modify the terms of any competitive certification award and any associated closing agreement where such modification—

(1) is consistent with the objectives of such section,

(2) is requested by the recipient of the competitive certification award, and

(3) involves moving the project site to improve the potential to capture and sequester carbon dioxide emissions, reduce costs of transporting feedstock, and serve a broader customer base,

unless the Secretary determines that the dollar amount of tax credits available to the taxpayer under such section would increase as a result of the modification or such modification would result in such project not being originally certified. In considering any such modification, the Secretary shall consult with other relevant Federal agencies, including the Department of Energy.

(i) Recapture of credit for failure to sequester

The Secretary shall provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any project which fails to attain or maintain the separation and sequestration requirements of subsection (e)(1)(G).

(Added Pub. L. 109–58, title XIII, §1307(b), Aug. 8, 2005, 119 Stat. 999; amended Pub. L. 109–432, div. A, title II, §203(a), Dec. 20, 2006, 120 Stat. 2945; Pub. L. 110–172, §11(a)(10), Dec. 29, 2007, 121 Stat. 2485; Pub. L. 110–234, title XV, §15346(a), May 22, 2008, 122 Stat. 1523; Pub. L. 110–246, §4(a), title XV, §15346(a), June 18, 2008, 122 Stat. 1664, 2285; Pub. L. 110–343, div. B, title I, §111(a)–(d), Oct. 3, 2008, 122 Stat. 3822, 3823; Pub. L. 111–5, div. B, title I, §1103(b)(2)(C), Feb. 17, 2009, 123 Stat. 321.)

REFERENCES IN TEXT

The enactment of the Revenue Reconciliation Act of 1990, referred to in subsec. (b)(3), is the date of enactment of title XI of Pub. L. 101–508, which was approved Nov. 5, 1990.

The date of enactment of this section, referred to in subsecs. (d)(1), (4)(A) and (f)(3), is the date of enactment of Pub. L. 109–58, which was approved Aug. 8, 2005.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2009—Subsec. (b)(2). Pub. L. 111–5 inserted ''(without regard to subparagraph (D) thereof)'' after ''section 48(a)(4)''.

2008—Subsec. (a)(3). Pub. L. 110–343, § 111(a), added par. (3).

Subsec. (d)(2)(A). Pub. L. 110–343, § 111(c)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Each applicant for certification under this paragraph shall submit an application meeting the requirements of subparagraph (B). An applicant may only submit an application during the 3-year period beginning on the date the Secretary establishes the program under paragraph (1).''

Subsec. (d)(3)(A). Pub. L. 110–343, § 111(b), substituted ''$2,550,000,000'' for ''$1,300,000,000''.

Subsec. (d)(3)(B). Pub. L. 110–343, § 111(c)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Of the dollar amount in subparagraph (A), the Secretary is authorized to certify—

''(i) $800,000,000 for integrated gasification combined cycle projects, and

''(ii) $500,000,000 for projects which use other advanced coal-based generation technologies.''

Subsec. (d)(5). Pub. L. 110–343, § 111(d), added par. (5).

Subsec. (e)(1)(G). Pub. L. 110–343, § 111(c)(3)(A), added subpar. (G).

Subsec. (e)(3). Pub. L. 110–343, § 111(c)(5), substituted ''certain'' for ''integrated gasification combined cycle'' in heading.

Subsec. (e)(3)(B)(iii), (iv). Pub. L. 110–343, § 111(c)(4), added cl. (iii) and redesignated former cl. (iii) as (iv).

Subsec. (e)(3)(C). Pub. L. 110–343, § 111(c)(3)(B), added subpar. (C).

Subsec. (h). Pub. L. 110–246, § 15346(a), added subsec. (h).

Subsec. (i). Pub. L. 110–343, § 111(c)(3)(C), added subsec. (i).

2007—Subsec. (d)(4)(B)(ii). Pub. L. 110–172 struck out ''subsection'' before ''paragraph'' in two places.

2006—Subsec. (f)(1). Pub. L. 109–432 inserted concluding provisions.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–5 applicable to periods after Dec. 31, 2008, under rules similar to the rules of section 48(m) of this title as in effect on the day before Nov. 5, 1990, see section 1103(c)(1) of Pub. L. 111–5, set out as a note under section 25C of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title I, § 111(e), Oct. 3, 2008, 122 Stat. 3823, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section] shall apply to credits the application for which is submitted during the period described in section 48A(d)(2)(A)(ii) of the Internal Revenue Code of 1986 and which are allocated or reallocated after the date of the enactment of this Act [Oct. 3, 2008].

''(2) DISCLOSURE OF ALLOCATIONS.—The amendment made by subsection (d) [amending this section] shall apply to certifications made after the date of the enactment of this Act.

''(3) CLERICAL AMENDMENT.—The amendment made by subsection (c)(5) [amending this section] shall take effect as if included in the amendment made by section 1307(b) of the Energy Tax Incentives Act of 2005 [Pub. L. 109–58].''

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110–234, title XV, § 15346(b), May 22, 2008, 122 Stat. 1523, and Pub. L. 110–246, § 4(a), title XV, § 15346(b), June 18, 2008, 122 Stat. 1664, 2285, provided that: ''The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [June 18, 2008] and is applicable to all competitive certification awards entered into under section 48A or 48B of the Internal Revenue Code of 1986, whether such awards were issued before, on, or after such date of enactment.''

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title II, § 203(b), Dec. 20, 2006, 120 Stat. 2945, provided that: ''The amendment made by this section [amending this section] shall take apply [sic] with respect to applications for certification under section 48A(d)(2) of the Internal Revenue Code of 1986 submitted after October 2, 2006.''

EFFECTIVE DATE

Section applicable to periods after Aug. 8, 2005, under rules similar to the rules of section 48(m) of this title, as in effect on the day before Nov. 5, 1990, see section 1307(d) of Pub. L. 109–58, set out as an Effective Date of 2005 Amendment note under section 46 of this title.

§ 48B. Qualifying gasification project credit

(a) In general

For purposes of section 46, the qualifying gasification project credit for any taxable year is an amount equal to 20 percent (30 percent in the case of credits allocated under subsection (d)(1)(B)) of the qualified investment for such taxable year.

(b) Qualified investment

(1) In general

For purposes of subsection (a), the qualified investment for any taxable year is the basis of eligible property placed in service by the taxpayer during such taxable year which is part of a qualifying gasification project—

(A)(i) the construction, reconstruction, or erection of which is completed by the taxpayer, or

(ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer, and

(B) with respect to which depreciation (or amortization in lieu of depreciation) is allowable.

(2) Special rule for certain subsidized property

Rules similar to section 48(a)(4) (without regard to subparagraph (D) thereof) shall apply for purposes of this section.

(3) Certain qualified progress expenditures rules made applicable

Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this section.

(c) Definitions

For purposes of this section—

(1) Qualifying gasification project

The term ''qualifying gasification project'' means any project which—

(A) employs gasification technology,

(B) will be carried out by an eligible entity, and

(C) any portion of the qualified investment of which is certified under the qualifying gasification program as eligible for credit under this section in an amount (not to exceed $650,000,000) determined by the Secretary.

(2) Gasification technology

The term ''gasification technology'' means any process which converts a solid or liquid product from coal, petroleum residue, biomass, or other materials which are recovered for their energy or feedstock value into a synthesis gas composed primarily of carbon monoxide and hydrogen for direct use or subsequent chemical or physical conversion.

(3) Eligible property

The term ''eligible property'' means any property which is a part of a qualifying gasification project and is necessary for the gasification technology of such project.

(4) Biomass

(A) In general

The term ''biomass'' means any—

(i) agricultural or plant waste,

(ii) byproduct of wood or paper mill operations, including lignin in spent pulping liquors, and

(iii) other products of forestry maintenance.

(B) Exclusion

The term ''biomass'' does not include paper which is commonly recycled.

(5) Carbon capture capability

The term ''carbon capture capability'' means a gasification plant design which is determined by the Secretary to reflect reasonable consideration for, and be capable of, accommodating the equipment likely to be necessary to capture carbon dioxide from the gaseous stream, for later use or sequestration, which would otherwise be emitted in the flue gas from a project which uses a nonrenewable fuel.

(6) Coal

The term ''coal'' means anthracite, bituminous coal, subbituminous coal, lignite, and peat.

(7) Eligible entity

The term ''eligible entity'' means any person whose application for certification is principally intended for use in a domestic project which employs domestic gasification applications related to—

(A) chemicals,

(B) fertilizers,

(C) glass,

(D) steel,

(E) petroleum residues,

(F) forest products,

(G) agriculture, including feedlots and dairy operations, and

(H) transportation grade liquid fuels.

(8) Petroleum residue

The term ''petroleum residue'' means the carbonized product of high-boiling hydrocarbon fractions obtained in petroleum processing.

(d) Qualifying gasification project program

(1) In general

Not later than 180 days after the date of the enactment of this section, the Secretary, in consultation with the Secretary of Energy, shall establish a qualifying gasification project program to consider and award certifications for qualified investment eligible for credits under this section to qualifying gasification project sponsors under this section. The total amounts of credit that may be allocated under the program shall not exceed—

(A) $350,000,000, plus

(B) $250,000,000 for qualifying gasification projects that include equipment which separates and sequesters at least 75 percent of such project's total carbon dioxide emissions.

(2) Period of issuance

A certificate of eligibility under paragraph (1) may be issued only during the 10-fiscal year period beginning on October 1, 2005.

(3) Selection criteria

The Secretary shall not make a competitive certification award for qualified investment for credit eligibility under this section unless the recipient has documented to the satisfaction of the Secretary that—

(A) the award recipient is financially viable without the receipt of additional Federal funding associated with the proposed project,

(B) the recipient will provide sufficient information to the Secretary for the Secretary to ensure that the qualified investment is spent efficiently and effectively,

(C) a market exists for the products of the proposed project as evidenced by contracts or written statements of intent from potential customers,

(D) the fuels identified with respect to the gasification technology for such project will comprise at least 90 percent of the fuels required by the project for the production of chemical feedstocks, liquid transportation fuels, or coproduction of electricity,

(E) the award recipient's project team is competent in the construction and operation of the gasification technology proposed, with preference given to those recipients with experience which demonstrates successful and reliable operations of the technology on domestic fuels so identified, and

(F) the award recipient has met other criteria established and published by the Secretary.

(4) Selection priorities

In determining which qualifying gasification projects to certify under this section, the Secretary shall—

(A) give highest priority to projects with the greatest separation and sequestration percentage of total carbon dioxide emissions, and

(B) give high priority to applicant participants who have a research partnership with

an eligible educational institution (as defined in section 529(e)(5)).

(e) Denial of double benefit

A credit shall not be allowed under this section for any qualified investment for which a credit is allowed under section 48A.

(f) Recapture of credit for failure to sequester

The Secretary shall provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any project which fails to attain or maintain the separation and sequestration requirements for such project under subsection (d)(1).

(Added Pub. L. 109–58, title XIII, § 1307(b), Aug. 8, 2005, 119 Stat. 1004; amended Pub. L. 110–343, div. B, title I, § 112(a)–(e), Oct. 3, 2008, 122 Stat. 3824; Pub. L. 111–5, div. B, title I, § 1103(b)(2)(D), Feb. 17, 2009, 123 Stat. 321.)

REFERENCES IN TEXT

The enactment of the Revenue Reconciliation Act of 1990, referred to in subsec. (b)(3), is the date of enactment of title XI of Pub. L. 101–508, which was approved Nov. 5, 1990.

The date of the enactment of this section, referred to in subsec. (d)(1), is the date of enactment of Pub. L. 109–58, which was approved Aug. 8, 2005.

AMENDMENTS

2009—Subsec. (b)(2). Pub. L. 111–5 inserted ''(without regard to subparagraph (D) thereof)'' after ''section 48(a)(4)''.

2008—Subsec. (a). Pub. L. 110–343, § 112(a), inserted ''(30 percent in the case of credits allocated under subsection (d)(1)(B))'' after ''20 percent''.

Subsec. (c)(7)(H). Pub. L. 110–343, § 112(e), added subpar. (H).

Subsec. (d)(1). Pub. L. 110–343, § 112(b), substituted ''shall not exceed—'' for ''shall not exceed $350,000,000 under rules similar to the rules of section 48A(d)(4).'' and added subpars. (A) and (B).

Subsec. (d)(4). Pub. L. 110–343, § 112(d), added par. (4).

Subsec. (f). Pub. L. 110–343, § 112(c), added subsec. (f).

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–5 applicable to periods after Dec. 31, 2008, under rules similar to the rules of section 48(m) of this title as in effect on the day before Nov. 5, 1990, see section 1103(c)(1) of Pub. L. 111–5, set out as a note under section 25C of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title I, § 112(f), Oct. 3, 2008, 122 Stat. 3824, provided that: ''The amendments made by this section [amending this section] shall apply to credits described in section 48B(d)(1)(B) of the Internal Revenue Code of 1986 which are allocated or reallocated after the date of the enactment of this Act [Oct. 3, 2008].''

EFFECTIVE DATE

Section applicable to periods after Aug. 8, 2005, under rules similar to the rules of section 48(m) of this title, as in effect on the day before Nov. 5, 1990, see section 1307(d) of Pub. L. 109–58, set out as an Effective Date of 2005 Amendment note under section 46 of this title.

§ 48C. Qualifying advanced energy project credit

(a) In general

For purposes of section 46, the qualifying advanced energy project credit for any taxable year is an amount equal to 30 percent of the qualified investment for such taxable year with respect to any qualifying advanced energy project of the taxpayer.

(b) Qualified investment

(1) In general

For purposes of subsection (a), the qualified investment for any taxable year is the basis of eligible property placed in service by the taxpayer during such taxable year which is part of a qualifying advanced energy project.

(2) Certain qualified progress expenditures rules made applicable

Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this section.

(3) Limitation

The amount which is treated for all taxable years with respect to any qualifying advanced energy project shall not exceed the amount designated by the Secretary as eligible for the credit under this section.

(c) Definitions

(1) Qualifying advanced energy project

(A) In general

The term ''qualifying advanced energy project'' means a project—

(i) which re-equips, expands, or establishes a manufacturing facility for the production of—

(I) property designed to be used to produce energy from the sun, wind, geothermal deposits (within the meaning of section 613(e)(2)), or other renewable resources,

(II) fuel cells, microturbines, or an energy storage system for use with electric or hybrid-electric motor vehicles,

(III) electric grids to support the transmission of intermittent sources of renewable energy, including storage of such energy,

(IV) property designed to capture and sequester carbon dioxide emissions,

(V) property designed to refine or blend renewable fuels or to produce energy conservation technologies (including energy-conserving lighting technologies and smart grid technologies),

(VI) new qualified plug-in electric drive motor vehicles (as defined by section 30D), qualified plug-in electric vehicles (as defined by section 30(d)), or components which are designed specifically for use with such vehicles, including electric motors, generators, and power control units, or

(VII) other advanced energy property designed to reduce greenhouse gas emissions as may be determined by the Secretary, and

(ii) any portion of the qualified investment of which is certified by the Secretary under subsection (d) as eligible for a credit under this section.

(B) Exception

Such term shall not include any portion of a project for the production of any property

which is used in the refining or blending of any transportation fuel (other than renewable fuels).

(2) Eligible property

The term ''eligible property'' means any property—

(A) which is necessary for the production of property described in paragraph (1)(A)(i),

(B) which is—

(i) tangible personal property, or

(ii) other tangible property (not including a building or its structural components), but only if such property is used as an integral part of the qualified investment credit facility, and

(C) with respect to which depreciation (or amortization in lieu of depreciation) is allowable.

(d) Qualifying advanced energy project program

(1) Establishment

(A) In general

Not later than 180 days after the date of enactment of this section, the Secretary, in consultation with the Secretary of Energy, shall establish a qualifying advanced energy project program to consider and award certifications for qualified investments eligible for credits under this section to qualifying advanced energy project sponsors.

(B) Limitation

The total amount of credits that may be allocated under the program shall not exceed $2,300,000,000.

(2) Certification

(A) Application period

Each applicant for certification under this paragraph shall submit an application containing such information as the Secretary may require during the 2-year period beginning on the date the Secretary establishes the program under paragraph (1).

(B) Time to meet criteria for certification

Each applicant for certification shall have 1 year from the date of acceptance by the Secretary of the application during which to provide to the Secretary evidence that the requirements of the certification have been met.

(C) Period of issuance

An applicant which receives a certification shall have 3 years from the date of issuance of the certification in order to place the project in service and if such project is not placed in service by that time period, then the certification shall no longer be valid.

(3) Selection criteria

In determining which qualifying advanced energy projects to certify under this section, the Secretary—

(A) shall take into consideration only those projects where there is a reasonable expectation of commercial viability, and

(B) shall take into consideration which projects—

(i) will provide the greatest domestic job creation (both direct and indirect) during the credit period,

(ii) will provide the greatest net impact in avoiding or reducing air pollutants or anthropogenic emissions of greenhouse gases,

(iii) have the greatest potential for technological innovation and commercial deployment,

(iv) have the lowest levelized cost of generated or stored energy, or of measured reduction in energy consumption or greenhouse gas emission (based on costs of the full supply chain), and

(v) have the shortest project time from certification to completion.

(4) Review and redistribution

(A) Review

Not later than 4 years after the date of enactment of this section, the Secretary shall review the credits allocated under this section as of such date.

(B) Redistribution

The Secretary may reallocate credits awarded under this section if the Secretary determines that—

(i) there is an insufficient quantity of qualifying applications for certification pending at the time of the review, or

(ii) any certification made pursuant to paragraph (2) has been revoked pursuant to paragraph (2)(B) because the project subject to the certification has been delayed as a result of third party opposition or litigation to the proposed project.

(C) Reallocation

If the Secretary determines that credits under this section are available for reallocation pursuant to the requirements set forth in paragraph (2), the Secretary is authorized to conduct an additional program for applications for certification.

(5) Disclosure of allocations

The Secretary shall, upon making a certification under this subsection, publicly disclose the identity of the applicant and the amount of the credit with respect to such applicant.

(e) Denial of double benefit

A credit shall not be allowed under this section for any qualified investment for which a credit is allowed under section 48, 48A, or 48B.

(Added Pub. L. 111–5, div. B, title I, §1302(b), Feb. 17, 2009, 123 Stat. 345.)

REFERENCES IN TEXT

Subsections (c)(4) and (d) of section 46 (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990), referred to in subsec. (b)(2), means section 46(c)(4) and (d) as in effect before enactment of Pub. L. 101–508, which amended section 46 generally.

The date of enactment of this section, referred to in subsec. (d)(1)(A), (4)(A), is the date of enactment of Pub. L. 111–5, which was approved Feb. 17, 2009.

EFFECTIVE DATE

Section applicable to periods after Feb. 17, 2009, under rules similar to the rules of section 48(m) of this title as in effect on the day before Nov. 5, 1990, see section 1302(d) of Pub. L. 111–5, set out as an Effective Date of 2009 Amendment note under section 46 of this title.

§ 48D. Qualifying therapeutic discovery project credit

(a) In general

For purposes of section 46, the qualifying therapeutic discovery project credit for any taxable year is an amount equal to 50 percent of the qualified investment for such taxable year with respect to any qualifying therapeutic discovery project of an eligible taxpayer.

(b) Qualified investment

(1) In general

For purposes of subsection (a), the qualified investment for any taxable year is the aggregate amount of the costs paid or incurred in such taxable year for expenses necessary for and directly related to the conduct of a qualifying therapeutic discovery project.

(2) Limitation

The amount which is treated as qualified investment for all taxable years with respect to any qualifying therapeutic discovery project shall not exceed the amount certified by the Secretary as eligible for the credit under this section.

(3) Exclusions

The qualified investment for any taxable year with respect to any qualifying therapeutic discovery project shall not take into account any cost—

(A) for remuneration for an employee described in section 162(m)(3),

(B) for interest expenses,

(C) for facility maintenance expenses,

(D) which is identified as a service cost under section 1.263A–1(e)(4) of title 26, Code of Federal Regulations, or

(E) for any other expense as determined by the Secretary as appropriate to carry out the purposes of this section.

(4) Certain progress expenditure rules made applicable

In the case of costs described in paragraph (1) that are paid for property of a character subject to an allowance for depreciation, rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this section.

(5) Application of subsection

An investment shall be considered a qualified investment under this subsection only if such investment is made in a taxable year beginning in 2009 or 2010.

(c) Definitions

(1) Qualifying therapeutic discovery project

The term ''qualifying therapeutic discovery project'' means a project which is designed—

(A) to treat or prevent diseases or conditions by conducting pre-clinical activities, clinical trials, and clinical studies, or carrying out research protocols, for the purpose of securing approval of a product under section 505(b) of the Federal Food, Drug, and Cosmetic Act or section 351(a) of the Public Health Service Act,

(B) to diagnose diseases or conditions or to determine molecular factors related to diseases or conditions by developing molecular diagnostics to guide therapeutic decisions, or

(C) to develop a product, process, or technology to further the delivery or administration of therapeutics.

(2) Eligible taxpayer

(A) In general

The term ''eligible taxpayer'' means a taxpayer which employs not more than 250 employees in all businesses of the taxpayer at the time of the submission of the application under subsection (d)(2).

(B) Aggregation rules

All persons treated as a single employer under subsection (a) or (b) of section 52, or subsection (m) or (*o*) of section 414, shall be so treated for purposes of this paragraph.

(3) Facility maintenance expenses

The term ''facility maintenance expenses'' means costs paid or incurred to maintain a facility, including—

(A) mortgage or rent payments,

(B) insurance payments,

(C) utility and maintenance costs, and

(D) costs of employment of maintenance personnel.

(d) Qualifying therapeutic discovery project program

(1) Establishment

(A) In general

Not later than 60 days after the date of the enactment of this section, the Secretary, in consultation with the Secretary of Health and Human Services, shall establish a qualifying therapeutic discovery project program to consider and award certifications for qualified investments eligible for credits under this section to qualifying therapeutic discovery project sponsors.

(B) Limitation

The total amount of credits that may be allocated under the program shall not exceed $1,000,000,000 for the 2-year period beginning with 2009.

(2) Certification

(A) Application period

Each applicant for certification under this paragraph shall submit an application containing such information as the Secretary may require during the period beginning on the date the Secretary establishes the program under paragraph (1).

(B) Time for review of applications

The Secretary shall take action to approve or deny any application under subparagraph (A) within 30 days of the submission of such application.

(C) Multi-year applications

An application for certification under subparagraph (A) may include a request for an allocation of credits for more than 1 of the years described in paragraph (1)(B).

(3) Selection criteria

In determining the qualifying therapeutic discovery projects with respect to which qualified investments may be certified under this section, the Secretary—

(A) shall take into consideration only those projects that show reasonable potential—

(i) to result in new therapies—

(I) to treat areas of unmet medical need, or

(II) to prevent, detect, or treat chronic or acute diseases and conditions,

(ii) to reduce long-term health care costs in the United States, or

(iii) to significantly advance the goal of curing cancer within the 30-year period beginning on the date the Secretary establishes the program under paragraph (1), and

(B) shall take into consideration which projects have the greatest potential—

(i) to create and sustain (directly or indirectly) high quality, high-paying jobs in the United States, and

(ii) to advance United States competitiveness in the fields of life, biological, and medical sciences.

(4) Disclosure of allocations

The Secretary shall, upon making a certification under this subsection, publicly disclose the identity of the applicant and the amount of the credit with respect to such applicant.

(e) Special rules

(1) Basis adjustment

For purposes of this subtitle, if a credit is allowed under this section for an expenditure related to property of a character subject to an allowance for depreciation, the basis of such property shall be reduced by the amount of such credit.

(2) Denial of double benefit

(A) Bonus depreciation

A credit shall not be allowed under this section for any investment for which bonus depreciation is allowed under section 168(k), 1400L(b)(1), or 1400N(d)(1).

(B) Deductions

No deduction under this subtitle shall be allowed for the portion of the expenses otherwise allowable as a deduction taken into account in determining the credit under this section for the taxable year which is equal to the amount of the credit determined for such taxable year under subsection (a) attributable to such portion. This subparagraph shall not apply to expenses related to property of a character subject to an allowance for depreciation the basis of which is reduced under paragraph (1), or which are described in section 280C(g).

(C) Credit for research activities

(i) In general

Except as provided in clause (ii), any expenses taken into account under this section for a taxable year shall not be taken into account for purposes of determining the credit allowable under section 41 or 45C for such taxable year.

(ii) Expenses included in determining base period research expenses

Any expenses for any taxable year which are qualified research expenses (within the meaning of section 41(b)) shall be taken into account in determining base period research expenses for purposes of applying section 41 to subsequent taxable years.

(f) Coordination with Department of Treasury grants

In the case of any investment with respect to which the Secretary makes a grant under section 9023(e) of the Patient Protection and Affordable Care Act of 2009—

(1) Denial of credit

No credit shall be determined under this section with respect to such investment for the taxable year in which such grant is made or any subsequent taxable year.

(2) Recapture of credits for progress expenditures made before grant

If a credit was determined under this section with respect to such investment for any taxable year ending before such grant is made—

(A) the tax imposed under subtitle A on the taxpayer for the taxable year in which such grant is made shall be increased by so much of such credit as was allowed under section 38,

(B) the general business carryforwards under section 39 shall be adjusted so as to recapture the portion of such credit which was not so allowed, and

(C) the amount of such grant shall be determined without regard to any reduction in the basis of any property of a character subject to an allowance for depreciation by reason of such credit.

(3) Treatment of grants

Any such grant shall not be includible in the gross income of the taxpayer.

(Added Pub. L. 111–148, title IX, §9023(a), Mar. 23, 2010, 124 Stat. 877.)

REFERENCES IN TEXT

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsec. (b)(4), is the date of enactment of Pub. L. 101–508, which was approved Nov. 5, 1990.

Section 505(b) of the Federal Food, Drug, and Cosmetic Act, referred to in subsec. (c)(1)(A), is classified to section 355(b) of Title 21, Food and Drugs.

Section 351(a) of the Public Health Service Act, referred to in subsec. (c)(1)(A), is classified to section 262(a) of Title 42, The Public Health and Welfare.

The date of the enactment of this section, referred to in subsec. (d)(1)(A), is the date of enactment of Pub. L. 111–148, which was approved Mar. 23, 2010.

Section 9023(e) of the Patient Protection and Affordable Care Act of 2009, referred to in subsec. (f), is section 9023(e) of Pub. L. 111–148, which is set out as a note below.

EFFECTIVE DATE

Section applicable to amounts paid or incurred after Dec. 31, 2008, in taxable years beginning after such date,

see section 9023(f) of Pub. L. 111–148, set out as an Effective Date of 2010 Amendment note under section 46 of this title.

GRANTS FOR QUALIFIED INVESTMENTS IN THERAPEUTIC DISCOVERY PROJECTS IN LIEU OF TAX CREDITS

Pub. L. 111–148, title IX, § 9023(e), Mar. 23, 2010, 124 Stat. 881, provided that:

''(1) IN GENERAL.—Upon application, the Secretary of the Treasury shall, subject to the requirements of this subsection, provide a grant to each person who makes a qualified investment in a qualifying therapeutic discovery project in the amount of 50 percent of such investment. No grant shall be made under this subsection with respect to any investment unless such investment is made during a taxable year beginning in 2009 or 2010.

''(2) APPLICATION.—

''(A) IN GENERAL.—At the stated election of the applicant, an application for certification under section 48D(d)(2) of the Internal Revenue Code of 1986 for a credit under such section for the taxable year of the applicant which begins in 2009 shall be considered to be an application for a grant under paragraph (1) for such taxable year.

''(B) TAXABLE YEARS BEGINNING IN 2010.—An application for a grant under paragraph (1) for a taxable year beginning in 2010 shall be submitted—

''(i) not earlier than the day after the last day of such taxable year, and

''(ii) not later than the due date (including extensions) for filing the return of tax for such taxable year.

''(C) INFORMATION TO BE SUBMITTED.—An application for a grant under paragraph (1) shall include such information and be in such form as the Secretary may require to state the amount of the credit allowable (but for the receipt of a grant under this subsection) under section 48D for the taxable year for the qualified investment with respect to which such application is made.

''(3) TIME FOR PAYMENT OF GRANT.—

''(A) IN GENERAL.—The Secretary of the Treasury shall make payment of the amount of any grant under paragraph (1) during the 30-day period beginning on the later of—

''(i) the date of the application for such grant, or

''(ii) the date the qualified investment for which the grant is being made is made.

''(B) REGULATIONS.—In the case of investments of an ongoing nature, the Secretary shall issue regulations to determine the date on which a qualified investment shall be deemed to have been made for purposes of this paragraph.

''(4) QUALIFIED INVESTMENT.—For purposes of this subsection, the term 'qualified investment' means a qualified investment that is certified under section 48D(d) of the Internal Revenue Code of 1986 for purposes of the credit under such section 48D.

''(5) APPLICATION OF CERTAIN RULES.—

''(A) IN GENERAL.—In making grants under this subsection, the Secretary of the Treasury shall apply rules similar to the rules of section 50 of the Internal Revenue Code of 1986. In applying such rules, any increase in tax under chapter 1 of such Code by reason of an investment ceasing to be a qualified investment shall be imposed on the person to whom the grant was made.

''(B) SPECIAL RULES.—

''(i) RECAPTURE OF EXCESSIVE GRANT AMOUNTS.—If the amount of a grant made under this subsection exceeds the amount allowable as a grant under this subsection, such excess shall be recaptured under subparagraph (A) as if the investment to which such excess portion of the grant relates had ceased to be a qualified investment immediately after such grant was made.

''(ii) GRANT INFORMATION NOT TREATED AS RETURN INFORMATION.—In no event shall the amount of a grant made under paragraph (1), the identity of the person to whom such grant was made, or a description of the investment with respect to which such grant was made be treated as return information for purposes of section 6103 of the Internal Revenue Code of 1986.

''(6) EXCEPTION FOR CERTAIN NON-TAXPAYERS.—The Secretary of the Treasury shall not make any grant under this subsection to—

''(A) any Federal, State, or local government (or any political subdivision, agency, or instrumentality thereof),

''(B) any organization described in section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code,

''(C) any entity referred to in paragraph (4) of section 54(j) of such Code, or

''(D) any partnership or other pass-thru entity any partner (or other holder of an equity or profits interest) of which is described in subparagraph (A), (B) or (C).

In the case of a partnership or other pass-thru entity described in subparagraph (D), partners and other holders of any equity or profits interest shall provide to such partnership or entity such information as the Secretary of the Treasury may require to carry out the purposes of this paragraph.

''(7) SECRETARY.—Any reference in this subsection to the Secretary of the Treasury shall be treated as including the Secretary's delegate.

''(8) OTHER TERMS.—Any term used in this subsection which is also used in section 48D of the Internal Revenue Code of 1986 shall have the same meaning for purposes of this subsection as when used in such section.

''(9) DENIAL OF DOUBLE BENEFIT.—No credit shall be allowed under section 46(6) of the Internal Revenue Code of 1986 by reason of section 48D of such Code for any investment for which a grant is awarded under this subsection.

''(10) APPROPRIATIONS.—There is hereby appropriated to the Secretary of the Treasury such sums as may be necessary to carry out this subsection.

''(11) TERMINATION.—The Secretary of the Treasury shall not make any grant to any person under this subsection unless the application of such person for such grant is received before January 1, 2013.

''(12) PROTECTING MIDDLE CLASS FAMILIES FROM TAX INCREASES.—It is the sense of the Senate that the Senate should reject any procedural maneuver that would raise taxes on middle class families, such as a motion to commit the pending legislation to the Committee on Finance, which is designed to kill legislation that provides tax cuts for American workers and families, including the affordability tax credit and the small business tax credit.''

§ 49. At-risk rules

(a) General rule

(1) Certain nonrecourse financing excluded from credit base

(A) Limitation

The credit base of any property to which this paragraph applies shall be reduced by the nonqualified nonrecourse financing with respect to such credit base (as of the close of the taxable year in which placed in service).

(B) Property to which paragraph applies

This paragraph applies to any property which—

(i) is placed in service during the taxable year by a taxpayer described in section 465(a)(1), and

(ii) is used in connection with an activity with respect to which any loss is subject to limitation under section 465.

(C) Credit base defined

For purposes of this paragraph, the term ''credit base'' means—

(i) the portion of the basis of any qualified rehabilitated building attributable to qualified rehabilitation expenditures,

(ii) the basis of any energy property,

(iii) the basis of any property which is part of a qualifying advanced coal project under section 48A,

(iv) the basis of any property which is part of a qualifying gasification project under section 48B,

(v) the basis of any property which is part of a qualifying advanced energy project under section 48C, and

(vi) the basis of any property to which paragraph (1) of section 48D(e) applies which is part of a qualifying therapeutic discovery project under such section 48D.

(D) Nonqualified nonrecourse financing

(i) In general

For purposes of this paragraph and paragraph (2), the term ''nonqualified nonrecourse financing'' means any nonrecourse financing which is not qualified commercial financing.

(ii) Qualified commercial financing

For purposes of this paragraph, the term ''qualified commercial financing'' means any financing with respect to any property if—

(I) such property is acquired by the taxpayer from a person who is not a related person,

(II) the amount of the nonrecourse financing with respect to such property does not exceed 80 percent of the credit base of such property, and

(III) such financing is borrowed from a qualified person or represents a loan from any Federal, State, or local government or instrumentality thereof, or is guaranteed by any Federal, State, or local government.

Such term shall not include any convertible debt.

(iii) Nonrecourse financing

For purposes of this subparagraph, the term ''nonrecourse financing'' includes—

(I) any amount with respect to which the taxpayer is protected against loss through guarantees, stop-loss agreements, or other similar arrangements, and

(II) except to the extent provided in regulations, any amount borrowed from a person who has an interest (other than as a creditor) in the activity in which the property is used or from a related person to a person (other than the taxpayer) having such an interest.

In the case of amounts borrowed by a corporation from a shareholder, subclause (II) shall not apply to an interest as a shareholder.[1]

(iv) Qualified person

For purposes of this paragraph, the term ''qualified person'' means any person which is actively and regularly engaged in the business of lending money and which is not—

(I) a related person with respect to the taxpayer,

(II) a person from which the taxpayer acquired the property (or a related person to such person), or

(III) a person who receives a fee with respect to the taxpayer's investment in the property (or a related person to such person).

(v) Related person

For purposes of this subparagraph, the term ''related person'' has the meaning given such term by section 465(b)(3)(C). Except as otherwise provided in regulations prescribed by the Secretary, the determination of whether a person is a related person shall be made as of the close of the taxable year in which the property is placed in service.

(E) Application to partnerships and S corporations

For purposes of this paragraph and paragraph (2)—

(i) In general

Except as otherwise provided in this subparagraph, in the case of any partnership or S corporation, the determination of whether a partner's or shareholder's allocable share of any financing is nonqualified nonrecourse financing shall be made at the partner or shareholder level.

(ii) Special rule for certain recourse financing of S corporation

A shareholder of an S corporation shall be treated as liable for his allocable share of any financing provided by a qualified person to such corporation if—

(I) such financing is recourse financing (determined at the corporate level), and

(II) such financing is provided with respect to qualified business property of such corporation.

(iii) Qualified business property

For purposes of clause (ii), the term ''qualified business property'' means any property if—

(I) such property is used by the corporation in the active conduct of a trade or business,

(II) during the entire 12-month period ending on the last day of the taxable year, such corporation had at least 3 full-time employees who were not owner-employees (as defined in section 465(c)(7)(E)(i)) and substantially all the services of whom were services directly related to such trade or business, and

(III) during the entire 12-month period ending on the last day of such taxable year, such corporation had at least 1 full-time employee substantially all of the services of whom were in the active management of the trade or business.

(iv) Determination of allocable share

The determination of any partner's or shareholder's allocable share of any fi-

[1] So in original. Probably should not be hyphenated.

nancing shall be made in the same manner as the credit allowable by section 38 with respect to such property.

(F) Special rules for energy property

Rules similar to the rules of subparagraph (F) of section 46(c)(8) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this paragraph.

(2) Subsequent decreases in nonqualified nonrecourse financing with respect to the property

(A) In general

If, at the close of a taxable year following the taxable year in which the property was placed in service, there is a net decrease in the amount of nonqualified nonrecourse financing with respect to such property, such net decrease shall be taken into account as an increase in the credit base for such property in accordance with subparagraph (C).

(B) Certain transactions not taken into account

For purposes of this paragraph, nonqualified nonrecourse financing shall not be treated as decreased through the surrender or other use of property financed by nonqualified nonrecourse financing.

(C) Manner in which taken into account

(i) Credit determined by reference to taxable year property placed in service

For purposes of determining the amount of credit allowable under section 38 and the amount of credit subject to the early disposition or cessation rules under section 50(a), any increase in a taxpayer's credit base for any property by reason of this paragraph shall be taken into account as if it were property placed in service by the taxpayer in the taxable year in which the property referred to in subparagraph (A) was first placed in service.

(ii) Credit allowed for year of decrease in nonqualified nonrecourse financing

Any credit allowable under this subpart for any increase in qualified investment by reason of this paragraph shall be treated as earned during the taxable year of the decrease in the amount of nonqualified nonrecourse financing.

(b) Increases in nonqualified nonrecourse financing

(1) In general

If, as of the close of the taxable year, there is a net increase with respect to the taxpayer in the amount of nonqualified nonrecourse financing (within the meaning of subsection (a)(1)) with respect to any property to which subsection (a)(1) applied, then the tax under this chapter for such taxable year shall be increased by an amount equal to the aggregate decrease in credits allowed under section 38 for all prior taxable years which would have resulted from reducing the credit base (as defined in subsection (a)(1)(C)) taken into account with respect to such property by the amount of such net increase. For purposes of determining the amount of credit subject to the early disposition or cessation rules of section 50(a), the net increase in the amount of the nonqualified nonrecourse financing with respect to the property shall be treated as reducing the property's credit base in the year in which the property was first placed in service.

(2) Transfers of debt more than 1 year after initial borrowing not treated as increasing nonqualified nonrecourse financing

For purposes of paragraph (1), the amount of nonqualified nonrecourse financing (within the meaning of subsection (a)(1)(D)) with respect to the taxpayer shall not be treated as increased by reason of a transfer of (or agreement to transfer) any evidence of any indebtedness if such transfer occurs (or such agreement is entered into) more than 1 year after the date such indebtedness was incurred.

(3) Special rules for certain energy property

Rules similar to the rules of section 47(d)(3) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this subsection.

(4) Special rule

Any increase in tax under paragraph (1) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit allowable under this chapter.

(Added Pub. L. 99–514, title II, § 211(a), Oct. 22, 1986, 100 Stat. 2166; amended Pub. L. 100–647, title I, § 1002(e)(1)–(3), (8)(B), Nov. 10, 1988, 102 Stat. 3367, 3369; Pub. L. 101–508, title XI, § 11813(a), Nov. 5, 1990, 104 Stat. 1388–543; Pub. L. 105–206, title VI, § 6004(g)(6), July 22, 1998, 112 Stat. 796; Pub. L. 109–58, title XIII, § 1307(c)(1), Aug. 8, 2005, 119 Stat. 1006; Pub. L. 111–5, div. B, title I, § 1302(c)(1), Feb. 17, 2009, 123 Stat. 347; Pub. L. 111–148, title IX, § 9023(c)(1), Mar. 23, 2010, 124 Stat. 880.)

REFERENCES IN TEXT

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsecs. (a)(1)(F) and (b)(3), is the date of enactment of Pub. L. 101–508, which was approved Nov. 5, 1990.

PRIOR PROVISIONS

A prior section 49, Pub. L. 91–172, title VII, § 703(a), Dec. 30, 1969, 83 Stat. 660; Pub. L. 92–178, title I, § 101(b)(1)–(4), Dec. 10, 1971, 85 Stat. 498, 499, related to termination of rules for computing credit for investment in certain depreciable property for period beginning Apr. 19, 1969, and ending during 1971, prior to repeal by Pub. L. 95–600, title III, § 312(c)(1), Nov. 6, 1978, 92 Stat. 2826, applicable to taxable years ending after Dec. 31, 1978.

AMENDMENTS

2010—Subsec. (a)(1)(C)(vi). Pub. L. 111–148 added cl. (vi).

2009—Subsec. (a)(1)(C)(v). Pub. L. 111–5 added cl. (v).

2005—Subsec. (a)(1)(C)(iii), (iv). Pub. L. 109–58 added cls. (iii) and (iv) and struck out former cl. (iii) which read as follows: ''the amortizable basis of any qualified timber property.''

1998—Subsec. (b)(4). Pub. L. 105–206 substituted ''this chapter'' for ''subpart A, B, D, or G''.

1990—Pub. L. 101–508, §11813(a), amended section generally, substituting section catchline for one which read: ''Termination of regular percentage'' and in text substituting present provisions for provisions relating to the nonapplicability of the regular percentage to any property placed in service after Dec. 31, 1985, for purposes of determining the investment tax credit, exceptions to such rule, the 35 percent reduction in credit for taxable years after 1986, the full basis adjustment in determining investment tax credit, and the definition of transition property and treatment of progress expenditures.

1988—Subsec. (c)(4)(B). Pub. L. 100–647, §1002(e)(2), substituted ''years'' for ''year'' in heading and amended text generally. Prior to amendment, text read as follows: ''The amount of the reduction of the regular investment credit under paragraph (3)—

''(i) may not be carried back to any taxable year, but

''(ii) shall be added to the carryforwards from the taxable year before applying paragraph (2).''

Subsec. (c)(5)(B)(i). Pub. L. 100–647, §1002(e)(3), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''The term 'regular investment credit' has the meaning given such term by section 48(*o*)''.

Subsec. (c)(5)(C). Pub. L. 100–647, §1002(e)(8)(B), struck out subpar. (C) which related to portion of credits attributable to regular investment credit.

Subsec. (d)(1). Pub. L. 100–647, §1002(e)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''In the case of periods after December 31, 1985, section 48(q) (relating to basis adjustment to section 38 property) shall be applied with respect to transaction property—

''(A) by substituting '100 percent' for '50 percent' in paragraph (1), and

''(B) without regard to paragraph (4) thereof (relating to election of reduced credit in lieu of basis adjustment).''

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–148 applicable to amounts paid or incurred after Dec. 31, 2008, in taxable years beginning after such date, see section 9023(f) of Pub. L. 111–148, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–5 applicable to periods after Feb. 17, 2009, under rules similar to the rules of section 48(m) of this title as in effect on the day before Nov. 5, 1990, see section 1302(d) of Pub. L. 111–5, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–58 applicable to periods after Aug. 8, 2005, under rules similar to the rules of section 48(m) of this title, as in effect on the day before Nov. 5, 1990, see section 1307(d) of Pub. L. 109–58, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1002(e)(1)–(3) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 1002(e)(8)(B) of Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 1002(e)(8)(C) of Pub. L. 100–647, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 211(e) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1002(e)(4)–(7), Nov. 10, 1988, 102 Stat. 3367, 3368, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [enacting this section and provisions set out below] shall apply to property placed in service after December 31, 1985, in taxable years ending after such date. Section 49(c) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply to taxable years ending after June 30, 1987, and to amounts carried to such taxable years.

''(2) EXCEPTIONS FOR CERTAIN FILMS.—For purposes of determining whether any property is transition property within the meaning of section 49(e) of the Internal Revenue Code of 1986—

''(A) in the case of any motion picture or television film, construction shall be treated as including production for purposes of section 203(b)(1) of this Act [enacting provisions set out as a note under section 168 of this title], and written contemporary evidence of an agreement (in accordance with industry practice) shall be treated as a written binding contract for such purposes,

''(B) in the case of any television film, a license agreement or agreement for production services between a television network and a producer shall be treated as a binding contract for purposes of section 203(b)(1)(A) of this Act, and

''(C) a motion picture film shall be treated as described in section 203(b)(1)(A) of this Act if—

''(i) funds were raised pursuant to a public offering before September 26, 1985, for the production of such film,

''(ii) 40 percent of the funds raised pursuant to such public offering are being spent on films the production of which commenced before such date, and

''(iii) all of the films funded by such public offering are required to be distributed pursuant to distribution agreements entered into before September 26, 1985.

''(3) NORMALIZATION RULES.—The provisions of subsection (b) [see Normalization Rules note below] shall apply to any violation of the normalization requirements under paragraph (1) or (2) of section 46(f) of the Internal Revenue Code of 1986 occurring in taxable years ending after December 31, 1985.

''(4) ADDITIONAL EXCEPTIONS.—

''(A) Subsections (c) and (d) of section 49 of the Internal Revenue Code of 1986 shall not apply to any continuous caster facility for slabs and blooms which is subject to a lease and which is part of a project the second phase of which is a continuous slab caster which was placed in service before December 31, 1985.

''(B) For purposes of determining whether an automobile manufacturing facility (including equipment and incidental appurtenances) is transition property within the meaning of section 49(e), property with respect to which the Board of Directors of an automobile manufacturer formally approved the plan for the project on January 7, 1985 shall be treated as transition property and subsections (c) and (d) of section 49 of such Code shall not apply to such property, but only with respect to $70,000,000 of regular investment tax credits.

''(C) Any solid waste disposal facility which will process and incinerate solid waste of one or more public or private entities including Dakota County, Minnesota, and with respect to which a bond carryforward from 1985 was elected in an amount equal to $12,500,000 shall be treated as transition property within the meaning of section 49(e) of the Internal Revenue Code of 1986.

''(D) For purposes of section 49 of such Code, the following property shall be treated as transition property:

''(i) 2 catamarans built by a shipbuilder incorporated in the State of Washington in 1964, the contracts for which were signed on April 22, 1986 and November 12, 1985, and 1 barge built by such shipbuilder the contract for which was signed on August 7, 1985.

''(ii) 2 large passenger ocean-going United States flag cruise ships with a passenger rated capacity of up to 250 which are built by the shipbuilder described in clause (i), which are the first such ships built in the United States since 1952, and which were designed at the request of a Pacific Coast cruise line pursuant to a contract entered into in October 1985. This clause shall apply only to that portion of the cost of each ship which does not exceed $40,000,000.

''(iii) Property placed in service during 1986 by Satellite Industries, Inc., with headquarters in Minneapolis, Minnesota, to the extent that the cost of such property does not exceed $1,950,000.

''(E) Subsections (c) and (d) of section 49 of such Code shall not apply to property described in section 204(a)(4) of this Act [enacting provisions set out as a note under section 168 of this title].''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

NORMALIZATION RULES

Section 211(b) of Pub. L. 99–514 provided that: ''If, for any taxable year beginning after December 31, 1985, the requirements of paragraph (1) or (2) of section 46(f) of the Internal Revenue Code of 1986 are not met with respect to public utility property to which the regular percentage applied for purposes of determining the amount of the investment tax credit—

''(1) all credits for open taxable years as of the time of the final determination referred to in section 46(f)(4)(A) of such Code shall be recaptured, and

''(2) if the amount of the taxpayer's unamortized credits (or the credits not previously restored to rate base) with respect to such property (whether or not for open years) exceeds the amount referred to in paragraph (1), the taxpayer's tax for the taxable year shall be increased by the amount of such excess.

If any portion of the excess described in paragraph (2) is attributable to a credit which is allowable as a carryover to a taxable year beginning after December 31, 1985, in lieu of applying paragraph (2) with respect to such portion, the amount of such carryover shall be reduced by the amount of such portion. Rules similar to the rules of this subsection shall apply in the case of any property with respect to which the requirements of section 46(f)(9) of such Code are met.''

EXCEPTION FOR CERTAIN AIRCRAFT USED IN ALASKA

Section 211(d) of Pub. L. 99–514 provided that:

''(1) The amendments made by subsection (a) [enacting this section and provisions set out above] shall not apply to property originally placed in service after December 29, 1982, and before August 1, 1985, by a corporation incorporated in Alaska on May 21, 1953, and used by it—

''(A) in part, for the transportation of mail for the United States Postal Service in the State of Alaska, and

''(B) in part, to provide air service in the State of Alaska on routes which had previously been served by an air carrier that received compensation from the Civil Aeronautics Board for providing service.

''(2) In the case of property described in subparagraph (A)—

''(A) such property shall be treated as recovery property described in section 208(d)(5) of the Tax Equity and Fiscal Responsibility Act of 1982 ('TEFRA') [section 208(d)(5) of Pub. L. 97–248, enacting provisions set out as a note under section 168 of this title];

''(B) '48 months' shall be substituted for '3 months' each place it appears in applying—

''(i) section 48(b)(2)(B) of the Code [26 U.S.C. 48(b)(2)(B)], and

''(ii) section 168(f)(8)(D) of the Code [26 U.S.C. 168(f)(8)(D)] (as in effect after the amendments made by the Technical Corrections Act of 1982 [Pub. L. 97–448] but before the amendments made by TEFRA); and

''(C) the limitation of section 168(f)(8)(D)(ii)(III) (as then in effect) shall be read by substituting 'the lessee's original cost basis.', for 'the adjusted basis of the lessee at the time of the lease.'

''(3) The aggregate amount of property to which this paragraph shall apply shall not exceed $60,000,000.''

§ 50. Other special rules

(a) Recapture in case of dispositions, etc.

Under regulations prescribed by the Secretary—

(1) Early disposition, etc.

(A) General rule

If, during any taxable year, investment credit property is disposed of, or otherwise ceases to be investment credit property with respect to the taxpayer, before the close of the recapture period, then the tax under this chapter for such taxable year shall be increased by the recapture percentage of the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted solely from reducing to zero any credit determined under this subpart with respect to such property.

(B) Recapture percentage

For purposes of subparagraph (A), the recapture percentage shall be determined in accordance with the following table:

If the property ceases to be investment credit property within—	The recapture percentage is:
(i) One full year after placed in service	100
(ii) One full year after the close of the period described in clause (i)	80
(iii) One full year after the close of the period described in clause (ii)	60
(iv) One full year after the close of the period described in clause (iii)	40
(v) One full year after the close of the period described in clause (iv)	20

(2) Property ceases to qualify for progress expenditures

(A) In general

If during any taxable year any building to which section 47(d) applied ceases (by reason of sale or other disposition, cancellation or abandonment of contract, or otherwise) to be, with respect to the taxpayer, property which, when placed in service, will be a qualified rehabilitated building, then the tax under this chapter for such taxable year shall be increased by an amount equal to the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted solely from reducing to zero the credit determined under this subpart with respect to such building.

(B) Certain excess credit recaptured

Any amount which would have been applied as a reduction under paragraph (2) of section 47(b) but for the fact that a reduction under such paragraph cannot reduce the amount taken into account under section 47(b)(1) below zero shall be treated as an amount required to be recaptured under subparagraph (A) for the taxable year during which the building is placed in service.

(C) Certain sales and leasebacks

Under regulations prescribed by the Secretary, a sale by, and leaseback to, a taxpayer who, when the property is placed in service, will be a lessee to whom the rules referred to in subsection (d)(5) apply shall not be treated as a cessation described in subparagraph (A) to the extent that the amount which will be passed through to the lessee under such rules with respect to such property is not less than the qualified rehabilitation expenditures properly taken into account by the lessee under section 47(d) with respect to such property.

(D) Coordination with paragraph (1)

If, after property is placed in service, there is a disposition or other cessation described in paragraph (1), then paragraph (1) shall be applied as if any credit which was allowable by reason of section 47(d) and which has not been required to be recaptured before such disposition, cessation, or change in use were allowable for the taxable year the property was placed in service.

(E) Special rules

Rules similar to the rules of this paragraph shall apply in cases where qualified progress expenditures were taken into account under the rules referred to in section 48(b).

(3) Carrybacks and carryovers adjusted

In the case of any cessation described in paragraph (1) or (2), the carrybacks and carryovers under section 39 shall be adjusted by reason of such cessation.

(4) Subsection not to apply in certain cases

Paragraphs (1) and (2) shall not apply to—

(A) a transfer by reason of death, or

(B) a transaction to which section 381(a) applies.

For purposes of this subsection, property shall not be treated as ceasing to be investment credit property with respect to the taxpayer by reason of a mere change in the form of conducting the trade or business so long as the property is retained in such trade or business as investment credit property and the taxpayer retains a substantial interest in such trade or business.

(5) Definitions and special rules

(A) Investment credit property

For purposes of this subsection, the term ''investment credit property'' means any property eligible for a credit determined under this subpart.

(B) Transfer between spouses or incident to divorce

In the case of any transfer described in subsection (a) of section 1041—

(i) the foregoing provisions of this subsection shall not apply, and

(ii) the same tax treatment under this subsection with respect to the transferred property shall apply to the transferee as would have applied to the transferor.

(C) Special rule

Any increase in tax under paragraph (1) or (2) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit allowable under this chapter.

(b) Certain property not eligible

No credit shall be determined under this subpart with respect to—

(1) Property used outside United States

(A) In general

Except as provided in subparagraph (B), no credit shall be determined under this subpart with respect to any property which is used predominantly outside the United States.

(B) Exceptions

Subparagraph (A) shall not apply to any property described in section 168(g)(4).

(2) Property used for lodging

No credit shall be determined under this subpart with respect to any property which is used predominantly to furnish lodging or in connection with the furnishing of lodging. The preceding sentence shall not apply to—

(A) nonlodging commercial facilities which are available to persons not using the lodging facilities on the same basis as they are available to persons using the lodging facilities.[1]

(B) property used by a hotel or motel in connection with the trade or business of furnishing lodging where the predominant portion of the accommodations is used by transients;

(C) a certified historic structure to the extent of that portion of the basis which is attributable to qualified rehabilitation expenditures; and

[1] So in original. The period probably should be a semicolon.

(D) any energy property.

(3) Property used by certain tax-exempt organization

No credit shall be determined under this subpart with respect to any property used by an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by this chapter unless such property is used predominantly in an unrelated trade or business the income of which is subject to tax under section 511. If the property is debt-financed property (as defined in section 514(b)), the amount taken into account for purposes of determining the amount of the credit under this subpart with respect to such property shall be that percentage of the amount (which but for this paragraph would be so taken into account) which is the same percentage as is used under section 514(a), for the year the property is placed in service, in computing the amount of gross income to be taken into account during such taxable year with respect to such property. If any qualified rehabilitated building is used by the tax-exempt organization pursuant to a lease, this paragraph shall not apply for purposes of determining the amount of the rehabilitation credit.

(4) Property used by governmental units or foreign persons or entities

(A) In general

No credit shall be determined under this subpart with respect to any property used—

(i) by the United States, any State or political subdivision thereof, any possession of the United States, or any agency or instrumentality of any of the foregoing, or

(ii) by any foreign person or entity (as defined in section 168(h)(2)(C)), but only with respect to property to which section 168(h)(2)(A)(iii) applies (determined after the application of section 168(h)(2)(B)).

(B) Exception for short-term leases

This paragraph and paragraph (3) shall not apply to any property by reason of use under a lease with a term of less than 6 months (determined under section 168(i)(3)).

(C) Exception for qualified rehabilitated buildings leased to governments, etc.

If any qualified rehabilitated building is leased to a governmental unit (or a foreign person or entity) this paragraph shall not apply for purposes of determining the rehabilitation credit with respect to such building.

(D) Special rules for partnerships, etc.

For purposes of this paragraph and paragraph (3), rules similar to the rules of paragraphs (5) and (6) of section 168(h) shall apply.

(E) Cross reference

For special rules for the application of this paragraph and paragraph (3), see section 168(h).

(c) Basis adjustment to investment credit property

(1) In general

For purposes of this subtitle, if a credit is determined under this subpart with respect to any property, the basis of such property shall be reduced by the amount of the credit so determined.

(2) Certain dispositions

If during any taxable year there is a recapture amount determined with respect to any property the basis of which was reduced under paragraph (1), the basis of such property (immediately before the event resulting in such recapture) shall be increased by an amount equal to such recapture amount. For purposes of the preceding sentence, the term ''recapture amount'' means any increase in tax (or adjustment in carrybacks or carryovers) determined under subsection (a).

(3) Special rule

In the case of any energy credit—

(A) only 50 percent of such credit shall be taken into account under paragraph (1), and

(B) only 50 percent of any recapture amount attributable to such credit shall be taken into account under paragraph (2).

(4) Recapture of reductions

(A) In general

For purposes of sections 1245 and 1250, any reduction under this subsection shall be treated as a deduction allowed for depreciation.

(B) Special rule for section 1250

For purposes of section 1250(b), the determination of what would have been the depreciation adjustments under the straight line method shall be made as if there had been no reduction under this section.

(5) Adjustment in basis of interest in partnership or S corporation

The adjusted basis of—

(A) a partner's interest in a partnership, and

(B) stock in an S corporation,

shall be appropriately adjusted to take into account adjustments made under this subsection in the basis of property held by the partnership or S corporation (as the case may be).

(d) Certain rules made applicable

For purposes of this subpart, rules similar to the rules of the following provisions (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply:

(1) Section 46(e) (relating to limitations with respect to certain persons).

(2) Section 46(f) (relating to limitation in case of certain regulated companies).

(3) Section 46(h) (relating to special rules for cooperatives).

(4) Paragraphs (2) and (3) of section 48(b) (relating to special rule for sale-leasebacks).

(5) Section 48(d) (relating to certain leased property).

(6) Section 48(f) (relating to estates and trusts).

(7) Section 48(r) (relating to certain 501(d) organizations).

Paragraphs (1)(A), (2)(A), and (4) of the section 46(e) referred to in paragraph (1) of this sub-

section shall not apply to any taxable year beginning after December 31, 1995.

(Added Pub. L. 101–508, title XI, §11813(a), Nov. 5, 1990, 104 Stat. 1388–546; amended Pub. L. 104–188, title I, §§1616(b)(1), 1702(h)(11), 1704(t)(29), Aug. 20, 1996, 110 Stat. 1856, 1874, 1889; Pub. L. 105–206, title VI, §6004(g)(7), July 22, 1998, 112 Stat. 796; Pub. L. 108–357, title III, §322(d)(2)(D), Oct. 22, 2004, 118 Stat. 1475; Pub. L. 109–135, title IV, §412(*o*), Dec. 21, 2005, 119 Stat. 2638.)

REFERENCES IN TEXT

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

PRIOR PROVISIONS

A prior section 50, Pub. L. 92–178, title I, §101(a), Dec. 10, 1971, 85 Stat. 498, related to restoration of credit for investment in certain depreciable property, prior to repeal by Pub. L. 95–600, title III, §312(c)(1), Nov. 6, 1978, 92 Stat. 2826, applicable to taxable years ending after Dec. 31, 1978.

AMENDMENTS

2005—Subsec. (a)(2)(E). Pub. L. 109–135 substituted ''section 48(b)'' for ''section 48(a)(5)''.

2004—Subsec. (c)(3). Pub. L. 108–357 struck out ''or reforestation credit'' after ''energy credit'' in introductory provisions.

1998—Subsec. (a)(5)(C). Pub. L. 105–206 substituted ''this chapter'' for ''subpart A, B, D, or G''.

1996—Subsec. (a)(2)(C). Pub. L. 104–188, §1704(t)(29), substituted ''subsection (d)(5)'' for ''subsection (c)(4)''.

Subsec. (a)(2)(E). Pub. L. 104–188, §1702(h)(11), substituted ''48(a)(5)'' for ''48(a)(5)(A)''.

Subsec. (d). Pub. L. 104–188, §1616(b)(1), inserted closing provisions.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable with respect to expenditures paid or incurred after Oct. 22, 2004, see section 322(e) of Pub. L. 108–357, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1616(b)(1) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, see section 1616(c) of Pub. L. 104–188, set out as a note under section 593 of this title.

Amendment by section 1702(h)(11) of Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE

Section applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as an Effective Date of 1990 Amendment note under section 45K of this title.

SAVINGS PROVISION

For provisions that nothing in this section be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[§§ 50A, 50B. Repealed. Pub. L. 98–369, div. A, title IV, §474(m)(2), July 18, 1984, 98 Stat. 833]

Section 50A, added Pub. L. 92–178, title VI, §601(b), Dec. 10, 1971, 85 Stat. 554; amended Pub. L. 93–406, title II, §§2001(g)(2)(B), 2002(g)(2), 2005(c)(4), Sept. 2, 1974, 88 Stat. 957, 968, 991; Pub. L. 94–12, title IV, §401(a)(1), (2), Mar. 29, 1975, 89 Stat. 45; Pub. L. 94–401, §4(a), Sept. 7, 1976, 90 Stat. 1217; Pub. L. 94–455, title V, §503(b)(4), title XIX, §§1901(a)(6), (b)(1)(D), 1906(b)(13)(A), title XXI, §2107(a)(1)–(3), (b), (c), Oct. 4, 1976, 90 Stat. 1562, 1765, 1790, 1834, 1903, 1904; Pub. L. 95–600, title III, §322(a)–(c), Nov. 6, 1978, 92 Stat. 2836, 2837; Pub. L. 96–178, §6(c)(1), Jan. 2, 1980, 93 Stat. 1298; Pub. L. 96–222, title I, §103(a)(7)(D)(i), Apr. 1, 1980, 94 Stat. 211; Pub. L. 97–34, title II, §207(c)(1), Aug. 13, 1981, 95 Stat. 225; Pub. L. 97–248, title I, §265(b)(2)(A)(ii), Sept. 3, 1982, 96 Stat. 547; Pub. L. 97–354, §5(a)(9), Oct. 19, 1982, 96 Stat. 1693, provided for a credit for expenses of work incentive programs, for the determination of the amount of that credit, and for the carryover and carryback of unused credit.

Section 50B, added Pub. L. 92–178, title VI, §601(b), Dec. 10, 1971, 85 Stat. 556; amended Pub. L. 94–12, title III, §302(c)(4), title IV, §401(a)(3)–(5), Mar. 29, 1975, 89 Stat. 44, 46; Pub. L. 94–401, §4(b), Sept. 7, 1976, 90 Stat. 1218; Pub. L. 94–455, title XIX, §1906(b)(13)(A), title XXI, §2107(a)(4), (d)–(f), Oct. 4, 1976, 90 Stat. 1834, 1903, 1904; Pub. L. 95–171, §1(e), Nov. 12, 1977, 91 Stat. 1353; Pub. L. 95–600, title III, §322(d), Nov. 6, 1978, 92 Stat. 2837; Pub. L. 96–178, §§3(a)(1), (3), 6(c)(2), (3), Jan. 2, 1980, 93 Stat. 1295, 1298; Pub. L. 96–222, title I, §103(a)(5), (7)(C), (D)(ii), (iii), Apr. 1, 1980, 94 Stat. 209, 211; Pub. L. 96–272, title II, §208(b)(1), (2), June 17, 1980, 94 Stat. 526, 527; Pub. L. 97–34, title II, §261(b)(2)(B)(i), Aug. 13, 1981, 95 Stat. 261; Pub. L. 97–354, §5(a)(10), Oct. 19, 1982, 96 Stat. 1693; Pub. L. 101–239, title VII, §7644, Dec. 19, 1989, 103 Stat. 2381, provided for the definition of terms related to the expenses of work incentive programs, limitations on such expenses, and special rules to be applied in connection with the computation of the credit.

Subsequent to repeal, Pub. L. 101–239, title VII, §7644(a), Dec. 19, 1989, 103 Stat. 2381, provided that:

''(a) IN GENERAL.—So much of subparagraph (A) of section 50B(h)(1) of the Internal Revenue Code of 1954 (as in effect for taxable years beginning before January 1, 1982) as precedes clause (i) thereof is amended to read as follows:

> '''(A) who has been certified (or for whom a written request for certification has been made) on or before the day the individual began work for the taxpayer by the Secretary of Labor or by the appropriate agency of State or local government as—'.

''(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply for purposes of credits first claimed after March 11, 1987.''

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 21 of this title.

SUBPART F—RULES FOR COMPUTING WORK OPPORTUNITY CREDIT

Sec.
51. Amount of credit.

Sec.
[51A. Repealed.]
52. Special rules.

AMENDMENTS

2006—Pub. L. 109–432, div. A, title I, §105(e)(4)(B), Dec. 20, 2006, 120 Stat. 2937, struck out item 51A ''Temporary incentives for employing long-term family assistance recipients''.

1997—Pub. L. 105–34, title VIII, §801(b), Aug. 5, 1997, 111 Stat. 871, added item 51A.

1996—Pub. L. 104–188, title I, §1201(e)(2), Aug. 20, 1996, 110 Stat. 1772, substituted ''Work Opportunity Credit'' for ''Targeted Jobs Credit'' in subpart heading.

1984—Pub. L. 98–369, div. A, title IV, §474(n)(1), (2), (p)(9), July 18, 1984, 98 Stat. 833, 838, substituted ''F'' for ''D'' as subpart designation, substituted ''Rules for Computing Targeted Jobs Credit'' for ''Rules for Computing Credit for Employment of Certain New Employees'' in heading, and struck out item 53 ''Limitation based on amount of tax''.

§ 51. Amount of credit

(a) Determination of amount

For purposes of section 38, the amount of the work opportunity credit determined under this section for the taxable year shall be equal to 40 percent of the qualified first-year wages for such year.

(b) Qualified wages defined

For purposes of this subpart—

(1) In general

The term ''qualified wages'' means the wages paid or incurred by the employer during the taxable year to individuals who are members of a targeted group.

(2) Qualified first-year wages

The term ''qualified first-year wages'' means, with respect to any individual, qualified wages attributable to service rendered during the 1-year period beginning with the day the individual begins work for the employer.

(3) Limitation on wages per year taken into account

The amount of the qualified first-year wages which may be taken into account with respect to any individual shall not exceed $6,000 per year ($12,000 per year in the case of any individual who is a qualified veteran by reason of subsection (d)(3)(A)(ii)).

(c) Wages defined

For purposes of this subpart—

(1) In general

Except as otherwise provided in this subsection and subsection (h)(2), the term ''wages'' has the meaning given to such term by subsection (b) of section 3306 (determined without regard to any dollar limitation contained in such section).

(2) On-the-job training and work supplementation payments

(A) Exclusion for employers receiving on-the-job training payments

The term ''wages'' shall not include any amounts paid or incurred by an employer for any period to any individual for whom the employer receives federally funded payments for on-the-job training of such individual for such period.

(B) Reduction for work supplementation payments to employers

The amount of wages which would (but for this subparagraph) be qualified wages under this section for an employer with respect to an individual for a taxable year shall be reduced by an amount equal to the amount of the payments made to such employer (however utilized by such employer) with respect to such individual for such taxable year under a program established under section 482(e)[1] of the Social Security Act.

(3) Payments for services during labor disputes

If—

(A) the principal place of employment of an individual with the employer is at a plant or facility, and

(B) there is a strike or lockout involving employees at such plant or facility,

the term ''wages'' shall not include any amount paid or incurred by the employer to such individual for services which are the same as, or substantially similar to, those services performed by employees participating in, or affected by, the strike or lockout during the period of such strike or lockout.

(4) Termination

The term ''wages'' shall not include any amount paid or incurred to an individual who begins work for the employer—

(A) after December 31, 1994, and before October 1, 1996, or

(B) after December 31, 2011.

(5) Coordination with payroll tax forgiveness

The term ''wages'' shall not include any amount paid or incurred to a qualified individual (as defined in section 3111(d)(3)) during the 1-year period beginning on the hiring date of such individual by a qualified employer (as defined in section 3111(d)) unless such qualified employer makes an election not to have section 3111(d) apply.

(d) Members of targeted groups

For purposes of this subpart—

(1) In general

An individual is a member of a targeted group if such individual is—

(A) a qualified IV–A recipient,

(B) a qualified veteran,

(C) a qualified ex-felon,

(D) a designated community resident,

(E) a vocational rehabilitation referral,

(F) a qualified summer youth employee,

(G) a qualified supplemental nutrition assistance program benefits recipient,

(H) a qualified SSI recipient, or

(I) a long-term family assistance recipient.

(2) Qualified IV–A recipient

(A) In general

The term ''qualified IV–A recipient'' means any individual who is certified by the

[1] See References in Text note below.

designated local agency as being a member of a family receiving assistance under a IV–A program for any 9 months during the 18-month period ending on the hiring date.

(B) IV–A program

For purposes of this paragraph, the term ''IV–A program'' means any program providing assistance under a State program funded under part A of title IV of the Social Security Act and any successor of such program.

(3) Qualified veteran

(A) In general

The term ''qualified veteran'' means any veteran who is certified by the designated local agency as—

(i) being a member of a family receiving assistance under a supplemental nutrition assistance program under the Food and Nutrition Act of 2008 for at least a 3-month period ending during the 12-month period ending on the hiring date, or

(ii) entitled to compensation for a service-connected disability, and—

(I) having a hiring date which is not more that 1 year after having been discharged or released from active duty in the Armed Forces of the United States, or

(II) having aggregate periods of unemployment during the 1-year period ending on the hiring date which equal or exceed 6 months.

(B) Veteran

For purposes of subparagraph (A), the term ''veteran'' means any individual who is certified by the designated local agency as—

(i)(I) having served on active duty (other than active duty for training) in the Armed Forces of the United States for a period of more than 180 days, or

(II) having been discharged or released from active duty in the Armed Forces of the United States for a service-connected disability, and

(ii) not having any day during the 60-day period ending on the hiring date which was a day of extended active duty in the Armed Forces of the United States.

For purposes of clause (ii), the term ''extended active duty'' means a period of more than 90 days during which the individual was on active duty (other than active duty for training).

(C) Other definitions

For purposes of subparagraph (A), the terms ''compensation'' and ''service-connected'' have the meanings given such terms under section 101 of title 38, United States Code.

(4) Qualified ex-felon

The term ''qualified ex-felon'' means any individual who is certified by the designated local agency—

(A) as having been convicted of a felony under any statute of the United States or any State, and

(B) as having a hiring date which is not more than 1 year after the last date on which such individual was so convicted or was released from prison.

(5) Designated community residents

(A) In general

The term ''designated community resident'' means any individual who is certified by the designated local agency—

(i) as having attained age 18 but not age 40 on the hiring date, and

(ii) as having his principal place of abode within an empowerment zone, enterprise community, renewal community, or rural renewal county.

(B) Individual must continue to reside in zone, community, or county

In the case of a designated community resident, the term ''qualified wages'' shall not include wages paid or incurred for services performed while the individual's principal place of abode is outside an empowerment zone, enterprise community, renewal community, or rural renewal county.

(C) Rural renewal county

For purposes of this paragraph, the term ''rural renewal county'' means any county which—

(i) is outside a metropolitan statistical area (defined as such by the Office of Management and Budget), and

(ii) during the 5-year periods 1990 through 1994 and 1995 through 1999 had a net population loss.

(6) Vocational rehabilitation referral

The term ''vocational rehabilitation referral'' means any individual who is certified by the designated local agency as—

(A) having a physical or mental disability which, for such individual, constitutes or results in a substantial handicap to employment, and

(B) having been referred to the employer upon completion of (or while receiving) rehabilitative services pursuant to—

(i) an individualized written plan for employment under a State plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973,

(ii) a program of vocational rehabilitation carried out under chapter 31 of title 38, United States Code, or

(iii) an individual work plan developed and implemented by an employment network pursuant to subsection (g) of section 1148 of the Social Security Act with respect to which the requirements of such subsection are met.

(7) Qualified summer youth employee

(A) In general

The term ''qualified summer youth employee'' means any individual—

(i) who performs services for the employer between May 1 and September 15,

(ii) who is certified by the designated local agency as having attained age 16 but not 18 on the hiring date (or if later, on May 1 of the calendar year involved),

(iii) who has not been an employee of the employer during any period prior to the 90-

day period described in subparagraph (B)(i), and

(iv) who is certified by the designated local agency as having his principal place of abode within an empowerment zone, enterprise community, or renewal community.

(B) Special rules for determining amount of credit

For purposes of applying this subpart to wages paid or incurred to any qualified summer youth employee—

(i) subsection (b)(2) shall be applied by substituting ''any 90-day period between May 1 and September 15'' for ''the 1-year period beginning with the day the individual begins work for the employer'', and

(ii) subsection (b)(3) shall be applied by substituting ''$3,000'' for ''$6,000''.

The preceding sentence shall not apply to an individual who, with respect to the same employer, is certified as a member of another targeted group after such individual has been a qualified summer youth employee.

(C) Youth must continue to reside in zone or community

Paragraph (5)(B) shall apply for purposes of subparagraph (A)(iv).

(8) Qualified food stamp recipient [2]

(A) In general

The term ''qualified supplemental nutrition assistance program benefits recipient'' means any individual who is certified by the designated local agency—

(i) as having attained age 18 but not age 40 on the hiring date, and

(ii) as being a member of a family—

(I) receiving assistance under a supplemental nutrition assistance program under the Food and Nutrition Act of 2008 for the 6-month period ending on the hiring date, or

(II) receiving such assistance for at least 3 months of the 5-month period ending on the hiring date, in the case of a member of a family who ceases to be eligible for such assistance under section 6(*o*) of the Food and Nutrition Act of 2008.

(B) Participation information

Notwithstanding any other provision of law, the Secretary of the Treasury and the Secretary of Agriculture shall enter into an agreement to provide information to designated local agencies with respect to participation in the supplemental nutrition assistance program.

(9) Qualified SSI recipient

The term ''qualified SSI recipient'' means any individual who is certified by the designated local agency as receiving supplemental security income benefits under title XVI of the Social Security Act (including supplemental security income benefits of the type described in section 1616 of such Act or section 212 of Public Law 93–66) for any month ending within the 60-day period ending on the hiring date.

(10) Long-term family assistance recipient

The term ''long-term family assistance recipient'' means any individual who is certified by the designated local agency—

(A) as being a member of a family receiving assistance under a IV–A program (as defined in paragraph (2)(B)) for at least the 18-month period ending on the hiring date,

(B)(i) as being a member of a family receiving such assistance for 18 months beginning after August 5, 1997, and

(ii) as having a hiring date which is not more than 2 years after the end of the earliest such 18-month period, or

(C)(i) as being a member of a family which ceased to be eligible for such assistance by reason of any limitation imposed by Federal or State law on the maximum period such assistance is payable to a family, and

(ii) as having a hiring date which is not more than 2 years after the date of such cessation.

(11) Hiring date

The term ''hiring date'' means the day the individual is hired by the employer.

(12) Designated local agency

The term ''designated local agency'' means a State employment security agency established in accordance with the Act of June 6, 1933, as amended (29 U.S.C. 49–49n).

(13) Special rules for certifications

(A) In general

An individual shall not be treated as a member of a targeted group unless—

(i) on or before the day on which such individual begins work for the employer, the employer has received a certification from a designated local agency that such individual is a member of a targeted group, or

(ii)(I) on or before the day the individual is offered employment with the employer, a pre-screening notice is completed by the employer with respect to such individual, and

(II) not later than the 28th day after the individual begins work for the employer, the employer submits such notice, signed by the employer and the individual under penalties of perjury, to the designated local agency as part of a written request for such a certification from such agency.

For purposes of this paragraph, the term ''pre-screening notice'' means a document (in such form as the Secretary shall prescribe) which contains information provided by the individual on the basis of which the employer believes that the individual is a member of a targeted group.

(B) Incorrect certifications

If—

(i) an individual has been certified by a designated local agency as a member of a targeted group, and

[2] So in original. Probably should be ''Qualified supplemental nutrition assistance program benefits recipient''.

(ii) such certification is incorrect because it was based on false information provided by such individual,

the certification shall be revoked and wages paid by the employer after the date on which notice of revocation is received by the employer shall not be treated as qualified wages.

(C) Explanation of denial of request

If a designated local agency denies a request for certification of membership in a targeted group, such agency shall provide to the person making such request a written explanation of the reasons for such denial.

(14) Credit allowed for unemployed veterans and disconnected youth hired in 2009 or 2010

(A) In general

Any unemployed veteran or disconnected youth who begins work for the employer during 2009 or 2010 shall be treated as a member of a targeted group for purposes of this subpart.

(B) Definitions

For purposes of this paragraph—

(i) Unemployed veteran

The term ''unemployed veteran'' means any veteran (as defined in paragraph (3)(B), determined without regard to clause (ii) thereof) who is certified by the designated local agency as—

(I) having been discharged or released from active duty in the Armed Forces at any time during the 5-year period ending on the hiring date, and

(II) being in receipt of unemployment compensation under State or Federal law for not less than 4 weeks during the 1-year period ending on the hiring date.

(ii) Disconnected youth

The term ''disconnected youth'' means any individual who is certified by the designated local agency—

(I) as having attained age 16 but not age 25 on the hiring date,

(II) as not regularly attending any secondary, technical, or post-secondary school during the 6-month period preceding the hiring date,

(III) as not regularly employed during such 6-month period, and

(IV) as not readily employable by reason of lacking a sufficient number of basic skills.

(e) Credit for second-year wages for employment of long-term family assistance recipients

(1) In general

With respect to the employment of a long-term family assistance recipient—

(A) the amount of the work opportunity credit determined under this section for the taxable year shall include 50 percent of the qualified second-year wages for such year, and

(B) in lieu of applying subsection (b)(3), the amount of the qualified first-year wages, and the amount of qualified second-year wages, which may be taken into account with respect to such a recipient shall not exceed $10,000 per year.

(2) Qualified second-year wages

For purposes of this subsection, the term ''qualified second-year wages'' means qualified wages—

(A) which are paid to a long-term family assistance recipient, and

(B) which are attributable to service rendered during the 1-year period beginning on the day after the last day of the 1-year period with respect to such recipient determined under subsection (b)(2).

(3) Special rules for agricultural and railway labor

If such recipient is an employee to whom subparagraph (A) or (B) of subsection (h)(1) applies, rules similar to the rules of such subparagraphs shall apply except that—

(A) such subparagraph (A) shall be applied by substituting ''$10,000'' for ''$6,000'', and

(B) such subparagraph (B) shall be applied by substituting ''$833.33'' for ''$500''.

(f) Remuneration must be for trade or business employment

(1) In general

For purposes of this subpart, remuneration paid by an employer to an employee during any taxable year shall be taken into account only if more than one-half of the remuneration so paid is for services performed in a trade or business of the employer.

(2) Special rule for certain determination

Any determination as to whether paragraph (1), or subparagraph (A) or (B) of subsection (h)(1), applies with respect to any employee for any taxable year shall be made without regard to subsections (a) and (b) of section 52.

(g) United States Employment Service to notify employers of availability of credit

The United States Employment Service, in consultation with the Internal Revenue Service, shall take such steps as may be necessary or appropriate to keep employers apprised of the availability of the work opportunity credit determined under this subpart.

(h) Special rules for agricultural labor and railway labor

For purposes of this subpart—

(1) Unemployment insurance wages

(A) Agricultural labor

If the services performed by any employee for an employer during more than one-half of any pay period (within the meaning of section 3306(d)) taken into account with respect to any year constitute agricultural labor (within the meaning of section 3306(k)), the term ''unemployment insurance wages'' means, with respect to the remuneration paid by the employer to such employee for such year, an amount equal to so much of such remuneration as constitutes ''wages'' within the meaning of section 3121(a), except that the contribution and

benefit base for each calendar year shall be deemed to be $6,000.

(B) Railway labor

If more than one-half of remuneration paid by an employer to an employee during any year is remuneration for service described in section 3306(c)(9), the term ''unemployment insurance wages'' means, with respect to such employee for such year, an amount equal to so much of the remuneration paid to such employee during such year which would be subject to contributions under section 8(a) of the Railroad Unemployment Insurance Act (45 U.S.C. 358(a)) if the maximum amount subject to such contributions were $500 per month.

(2) Wages

In any case to which subparagraph (A) or (B) of paragraph (1) applies, the term ''wages'' means unemployment insurance wages (determined without regard to any dollar limitation).

(i) Certain individuals ineligible

(1) Related individuals

No wages shall be taken into account under subsection (a) with respect to an individual who—

(A) bears any of the relationships described in subparagraphs (A) through (G) of section 152(d)(2) to the taxpayer, or, if the taxpayer is a corporation, to an individual who owns, directly or indirectly, more than 50 percent in value of the outstanding stock of the corporation, or, if the taxpayer is an entity other than a corporation, to any individual who owns, directly or indirectly, more than 50 percent of the capital and profits interests in the entity,[3] (determined with the application of section 267(c)),

(B) if the taxpayer is an estate or trust, is a grantor, beneficiary, or fiduciary of the estate or trust, or is an individual who bears any of the relationships described in subparagraphs (A) through (G) of section 152(d)(2) to a grantor, beneficiary, or fiduciary of the estate or trust, or

(C) is a dependent (described in section 152(d)(2)(H)) of the taxpayer, or, if the taxpayer is a corporation, of an individual described in subparagraph (A), or, if the taxpayer is an estate or trust, of a grantor, beneficiary, or fiduciary of the estate or trust.

(2) Nonqualifying rehires

No wages shall be taken into account under subsection (a) with respect to any individual if, prior to the hiring date of such individual, such individual had been employed by the employer at any time.

(3) Individuals not meeting minimum employment periods

(A) Reduction of credit for individuals performing fewer than 400 hours of service

In the case of an individual who has performed at least 120 hours, but less than 400 hours, of service for the employer, subsection (a) shall be applied by substituting ''25 percent'' for ''40 percent''.

(B) Denial of credit for individuals performing fewer than 120 hours of service

No wages shall be taken into account under subsection (a) with respect to any individual unless such individual has performed at least 120 hours of service for the employer.

(j) Election to have work opportunity credit not apply

(1) In general

A taxpayer may elect to have this section not apply for any taxable year.

(2) Time for making election

An election under paragraph (1) for any taxable year may be made (or revoked) at any time before the expiration of the 3-year period beginning on the last date prescribed by law for filing the return for such taxable year (determined without regard to extensions).

(3) Manner of making election

An election under paragraph (1) (or revocation thereof) shall be made in such manner as the Secretary may by regulations prescribe.

(k) Treatment of successor employers; treatment of employees performing services for other persons

(1) Treatment of successor employers

Under regulations prescribed by the Secretary, in the case of a successor employer referred to in section 3306(b)(1), the determination of the amount of the credit under this section with respect to wages paid by such successor employer shall be made in the same manner as if such wages were paid by the predecessor employer referred to in such section.

(2) Treatment of employees performing services for other persons

No credit shall be determined under this section with respect to remuneration paid by an employer to an employee for services performed by such employee for another person unless the amount reasonably expected to be received by the employer for such services from such other person exceeds the remuneration paid by the employer to such employee for such services.

(Added Pub. L. 95–30, title II, § 202(b), May 23, 1977, 91 Stat. 141; amended Pub. L. 95–600, title III, § 321(a), Nov. 6, 1978, 92 Stat. 2830; Pub. L. 96–222, title I, § 103(a)(6)(A), (E), (F), (G)(iii)–(ix), Apr. 1, 1980, 94 Stat. 209, 210; Pub. L. 97–34, title II, § 261(a)–(b)(2)(A), (B)(ii)–(f)(1), Aug. 13, 1981, 95 Stat. 260–262; Pub. L. 97–248, title II, § 233(a)–(d), (f), Sept. 3, 1982, 96 Stat. 501, 502; Pub. L. 97–448, title I, § 102(*l*)(1), (3), (4), Jan. 12, 1983, 96 Stat. 2374; Pub. L. 98–369, div. A, title IV, § 474(p)(1)–(3), title VII, § 712(n), title X, § 1041(a), (c)(1)–(4), div. B, title VI, §§ 2638(b), 2663(j)(5)(A), July 18, 1984, 98 Stat. 837, 955, 1042, 1043, 1144, 1171; Pub. L. 99–514, title XVII, § 1701(a)–(c), title XVIII, § 1878(f)(1), Oct. 22, 1986, 100 Stat. 2772, 2904; Pub. L. 100–203, title X, § 10601(a), Dec. 22, 1987, 101 Stat. 1330–451; Pub. L. 100–485, title II, § 202(c)(6), Oct. 13, 1988, 102 Stat. 2378; Pub. L. 100–647, title

[3] So in original. The comma probably should not appear.

I, § 1017(a), title IV, § 4010(a), (c)(1), (d)(1), Nov. 10, 1988, 102 Stat. 3575, 3655; Pub. L. 101–239, title VII, § 7103(a), (c)(1), Dec. 19, 1989, 103 Stat. 2305; Pub. L. 101–508, title XI, § 11405(a), Nov. 5, 1990, 104 Stat. 1388–473; Pub. L. 102–227, title I, § 105(a), Dec. 11, 1991, 105 Stat. 1687; Pub. L. 103–66, title XIII, §§ 13102(a), 13302(d), Aug. 10, 1993, 107 Stat. 420, 556; Pub. L. 104–188, title I, § 1201(a)–(e)(1), (5), (f), Aug. 20, 1996, 110 Stat. 1768–1772; Pub. L. 104–193, title I, § 110(*l*)(1), Aug. 22, 1996, 110 Stat. 2173; Pub. L. 105–33, title V, § 5514(a)(1), Aug. 5, 1997, 111 Stat. 620; Pub. L. 105–34, title VI, § 603(a)–(d), Aug. 5, 1997, 111 Stat. 862; Pub. L. 105–277, div. J, title I, § 1002(a), title IV, § 4006(c)(1), Oct. 21, 1998, 112 Stat. 2681–888, 2681–912; Pub. L. 106–170, title V, § 505(a), (b), Dec. 17, 1999, 113 Stat. 1921; Pub. L. 106–554, § 1(a)(7) [title I, § 102(a)–(c), title III, § 316(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–600, 2763A–644; Pub. L. 107–147, title VI, § 604(a), Mar. 9, 2002, 116 Stat. 59; Pub. L. 108–311, title II, § 207(5), title III, § 303(a)(1), Oct. 4, 2004, 118 Stat. 1177, 1179; Pub. L. 109–432, div. A, title I, § 105(a)–(e)(3), Dec. 20, 2006, 120 Stat. 2936, 2937; Pub. L. 110–28, title VIII, § 8211(a)–(d), May 25, 2007, 121 Stat. 191; Pub. L. 110–234, title IV, § 4002(b)(1)(A), (B), (D), (2)(O), May 22, 2008, 122 Stat. 1095–1097; Pub. L. 110–246, § 4(a), title IV, § 4002(b)(1)(A), (B), (D), (2)(O), June 18, 2008, 122 Stat. 1664, 1857, 1858; Pub. L. 111–5, div. B, title I, § 1221(a), Feb. 17, 2009, 123 Stat. 337; Pub. L. 111–147, title I, § 101(b), Mar. 18, 2010, 124 Stat. 74; Pub. L. 111–312, title VII, § 757(a), Dec. 17, 2010, 124 Stat. 3322.)

References in Text

The Social Security Act, referred to in subsecs. (c)(2)(B) and (d)(2)(B), (6)(B)(iii), (9), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§ 601 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. Title XVI of the Act is classified generally to subchapter XVI (§ 1381 et seq.) of chapter 7 of Title 42. Section 482 of the Act, which was classified to section 682 of Title 42, was repealed by Pub. L. 104–193, title I, § 108(e), Aug. 22, 1996, 110 Stat. 2167. Sections 1148(g) and 1616 of the Act are classified to sections 1320b–19(g) and 1382e, respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Food and Nutrition Act of 2008, referred to in subsec. (d)(3)(A)(i), (8)(A)(ii), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. Section 6(*o*) of the Act is classified to section 2015(*o*) of Title 7. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

The Rehabilitation Act of 1973, referred to in subsec. (d)(6)(B)(i), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified generally to chapter 16 (§ 701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

Section 212 of Public Law 93–66, referred to in subsec. (d)(9), is set out as a note under section 1382 of Title 42, The Public Health and Welfare.

Act of June 6, 1933, referred to in subsec. (d)(12), is act June 6, 1933, ch. 49, 48 Stat. 113, as amended, popularly known as the Wagner-Peyser Act, which is classified generally to chapter 4B (§ 49 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 49 of Title 29 and Tables.

Codification

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Prior Provisions

A prior section 51, added Pub. L. 90–364, title I, § 102(a), June 28, 1968, 82 Stat. 252; amended Pub. L. 91–53, § 5(a), Aug. 7, 1969, 83 Stat. 93; Pub. L. 91–172, title III, § 301(b)(5), title VII, § 701(a), Dec. 30, 1969, 83 Stat. 585, 657, related to the imposition of a tax surcharge, prior to repeal by Pub. L. 94–455, title XIX, § 1901(a)(7), Oct. 4, 1976, 90 Stat. 1765.

Amendments

2010—Subsec. (c)(4)(B). Pub. L. 111–312 substituted ''December 31, 2011'' for ''August 31, 2011''.

Subsec. (c)(5). Pub. L. 111–147 added par. (5).

2009—Subsec. (d)(14). Pub. L. 111–5 added par. (14).

2008—Subsec. (d)(1)(G). Pub. L. 110–246, § 4002(b)(1)(D), (2)(O), substituted ''supplemental nutrition assistance program benefits'' for ''food stamp''.

Subsec. (d)(3)(A)(i). Pub. L. 110–246, § 4002(b)(1)(A), (B), (2)(O), substituted ''Food and Nutrition Act of 2008'' for ''Food Stamp Act of 1977'' and ''supplemental nutrition assistance program'' for ''food stamp program''.

Subsec. (d)(8)(A). Pub. L. 110–246, § 4002(b)(1)(D), (2)(O), substituted ''supplemental nutrition assistance program benefits'' for ''food stamp'' in introductory provisions.

Subsec. (d)(8)(A)(ii)(I). Pub. L. 110–246, § 4002(b)(1)(A), (B), (2)(O), substituted ''Food and Nutrition Act of 2008'' for ''Food Stamp Act of 1977'' and ''supplemental nutrition assistance program'' for ''food stamp program''.

Subsec. (d)(8)(A)(ii)(II). Pub. L. 110–246, § 4002(b)(1)(B), (2)(O), substituted ''Food and Nutrition Act of 2008'' for ''Food Stamp Act of 1977''.

Subsec. (d)(8)(B). Pub. L. 110–246, § 4002(b)(1)(A), (2)(O), substituted ''supplemental nutrition assistance program'' for ''food stamp program''.

2007—Subsec. (b)(3). Pub. L. 110–28, § 8211(d)(2), substituted ''Limitation on'' for ''Only first $6,000 of'' in heading and inserted ''($12,000 per year in the case of any individual who is a qualified veteran by reason of subsection (d)(3)(A)(ii))'' before period at end.

Subsec. (c)(4)(B). Pub. L. 110–28, § 8211(a), substituted ''August 31, 2011'' for ''December 31, 2007''.

Subsec. (d)(1)(D). Pub. L. 110–28, § 8211(b)(2), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''a high-risk youth,''.

Subsec. (d)(3)(A). Pub. L. 110–28, § 8211(d)(1)(A), substituted ''agency as—'' and cls. (i) and (ii) for ''agency as being a member of a family receiving assistance under a food stamp program under the Food Stamp Act of 1977 for at least a 3-month period ending during the 12-month period ending on the hiring date.''

Subsec. (d)(3)(C). Pub. L. 110–28, § 8211(d)(1)(B), added subpar. (C).

Subsec. (d)(5). Pub. L. 110–28, § 8211(b)(1), amended heading and text of par. (5) generally. Prior to amendment, text read as follows:

''(A) In general.—The term 'high-risk youth' means any individual who is certified by the designated local agency—

''(i) as having attained age 18 but not age 25 on the hiring date, and

''(ii) as having his principal place of abode within an empowerment zone, enterprise community, or renewal community.

''(B) Youth must continue to reside in zone or community.—In the case of a high-risk youth, the term 'qualified wages' shall not include wages paid or incurred for services performed while such youth's principal place of abode is outside an empowerment zone, enterprise community, or renewal community.''

Subsec. (d)(6)(B)(iii). Pub. L. 110–28, § 8211(c), added cl. (iii).

2006—Subsec. (c)(4)(B). Pub. L. 109–432, § 105(a), substituted ''2007'' for ''2005''.

Subsec. (d)(1)(I). Pub. L. 109–432, § 105(e)(1), added subpar. (I).

Subsec. (d)(4). Pub. L. 109–432, § 105(b), inserted ''and'' at end of subpar. (A), substituted a period for '', and'' at end of subpar. (B), and struck out subpar. (C) and concluding provisions which read as follows:

''(C) as being a member of a family which had an income during the 6 months immediately preceding the earlier of the month in which such income determination occurs or the month in which the hiring date occurs, which, on an annual basis, would be 70 percent or less of the Bureau of Labor Statistics lower living standard.

Any determination under subparagraph (C) shall be valid for the 45-day period beginning on the date such determination is made.''

Subsec. (d)(8)(A)(i). Pub. L. 109–432, § 105(c), substituted ''40'' for ''25''.

Subsec. (d)(10) to (12). Pub. L. 109–432, § 105(e)(2), added par. (10) and redesignated former pars. (10) and (11) as (11) and (12), respectively. Former par. (12) redesignated (13).

Subsec. (d)(12)(A)(ii)(II). Pub. L. 109–432, § 105(d), substituted ''28th day'' for ''21st day''.

Subsec. (d)(13). Pub. L. 109–432, § 105(e)(2), redesignated par. (12) as (13).

Subsec. (e). Pub. L. 109–432, § 105(e)(3), added subsec. (e).

2004—Subsec. (c)(4)(B). Pub. L. 108–311, § 303(a)(1), substituted ''2005'' for ''2003''.

Subsec. (i)(1)(A), (B). Pub. L. 108–311, § 207(5)(A), substituted ''subparagraphs (A) through (G) of section 152(d)(2)'' for ''paragraphs (1) through (8) of section 152(a)''.

Subsec. (i)(1)(C). Pub. L. 108–311, § 207(5)(B), substituted ''152(d)(2)(H)'' for ''152(a)(9)''.

2002—Subsec. (c)(4)(B). Pub. L. 107–147 substituted ''2003'' for ''2001''.

2000—Subsec. (d)(2)(B). Pub. L. 106–554, § 1(a)(7) [title III, § 316(a)], substituted ''program funded'' for ''plan approved'' and struck out ''(relating to assistance for needy families with minor children)'' after ''Social Security Act''.

Subsec. (d)(5)(A)(ii). Pub. L. 106–554, § 1(a)(7) [title I, § 102(a)], substituted ''empowerment zone, enterprise community, or renewal community'' for ''empowerment zone or enterprise community''.

Subsec. (d)(5)(B). Pub. L. 106–554, § 1(a)(7) [title I, § 102(a), (c)], inserted ''or community'' after ''zone'' in heading and substituted ''empowerment zone, enterprise community, or renewal community'' for ''empowerment zone or enterprise community'' in text.

Subsec. (d)(7)(A)(iv). Pub. L. 106–554, § 1(a)(7) [title I, § 102(b)], substituted ''empowerment zone, enterprise community, or renewal community'' for ''empowerment zone or enterprise community''.

Subsec. (d)(7)(C). Pub. L. 106–554, § 1(a)(7) [title I, § 102(c)], inserted ''or community'' after ''zone'' in heading.

1999—Subsec. (c)(4)(B). Pub. L. 106–170, § 505(a), substituted ''December 31, 2001'' for ''June 30, 1999''.

Subsec. (i)(2). Pub. L. 106–170, § 505(b), struck out ''during which he was not a member of a targeted group'' before period at end.

1998—Subsec. (c)(4)(B). Pub. L. 105–277, § 1002(a), substituted ''June 30, 1999'' for ''June 30, 1998''.

Subsec. (d)(6)(B)(i). Pub. L. 105–277, § 4006(c)(1), substituted ''plan for employment'' for ''rehabilitation plan''.

1997—Subsec. (a). Pub. L. 105–34, § 603(d)(1), substituted ''40 percent'' for ''35 percent''.

Subsec. (c)(4)(B). Pub. L. 105–34, § 603(a), substituted ''June 30, 1998'' for ''September 30, 1997''.

Subsec. (d)(1)(H). Pub. L. 105–34, § 603(c)(1), added subpar. (H).

Subsec. (d)(2)(A). Pub. L. 105–34, § 603(b)(1), substituted ''for any 9 months during the 18-month period ending on the hiring date'' for ''for at least a 9-month period ending during the 9-month period ending on the hiring date''.

Subsec. (d)(3)(A). Pub. L. 105–34, § 603(b)(2), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows: ''The term 'qualified veteran' means any veteran who is certified by the designated local agency as being—

''(i) a member of a family receiving assistance under a IV–A program (as defined in paragraph (2)(B)) for at least a 9-month period ending during the 12-month period ending on the hiring date, or

''(ii) a member of a family receiving assistance under a food stamp program under the Food Stamp Act of 1977 for at least a 3-month period ending during the 12-month period ending on the hiring date.''

Subsec. (d)(9). Pub. L. 105–34, § 603(c)(2), added par. (9). Former par. (9) redesignated (10).

Pub. L. 105–33 repealed Pub. L. 104–193, § 110(*l*)(1). See 1996 Amendment note below.

Subsec. (d)(10) to (12). Pub. L. 105–34, § 603(c)(2), redesignated pars. (9) to (11) as (10) to (12), respectively.

Subsec. (i)(3). Pub. L. 105–34, § 603(d)(2), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''No wages shall be taken into account under subsection (a) with respect to any individual unless such individual either—

''(A) is employed by the employer at least 180 days (20 days in the case of a qualified summer youth employee), or

''(B) has completed at least 400 hours (120 hours in the case of a qualified summer youth employee) of services performed for the employer.''

1996—Subsec. (a). Pub. L. 104–188, § 1201(a), (e)(1), substituted ''work opportunity credit'' for ''targeted jobs credit'' and ''35 percent'' for ''40 percent''.

Subsec. (c)(1). Pub. L. 104–188, § 1201(f), struck out '', subsection (d)(8)(D),'' after ''this subsection''.

Subsec. (c)(4). Pub. L. 104–188, § 1201(d), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''TERMINATION.—The term 'wages' shall not include any amount paid or incurred to an individual who begins work for the employer after December 31, 1994.''

Subsec. (d). Pub. L. 104–188, § 1201(b), reenacted heading without change and amended text generally, revising and restating as pars. (1) to (11) provisions formerly contained in pars. (1) to (16).

Subsec. (d)(9). Pub. L. 104–193, § 110(*l*)(1), which directed amendment of par. (9) by striking all that follows ''agency as'' and inserting ''being eligible for financial assistance under part A of title IV of the Social Security Act and as having continually received such financial assistance during the 90-day period which immediately precedes the date on which such individual is hired by the employer.'', was repealed by Pub. L. 105–33.

Subsec. (g). Pub. L. 104–188, § 1201(e)(1), substituted ''work opportunity credit'' for ''targeted jobs credit''.

Subsec. (i)(3). Pub. L. 104–188, § 1201(c), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''INDIVIDUALS NOT MEETING MINIMUM EMPLOYMENT PERIOD.—No wages shall be taken into account under subsection (a) with respect to any individual unless such individual either—

''(A) is employed by the employer at least 90 days (14 days in the case of an individual described in subsection (d)(12)), or

''(B) has completed at least 120 hours (20 hours in the case of an individual described in subsection (d)(12)) of services performed for the employer.''

Subsec. (j). Pub. L. 104–188, § 1201(e)(5), substituted ''Work opportunity credit'' for ''Targeted jobs credit'' in heading.

1993—Subsec. (c)(4). Pub. L. 103–66, § 13102(a), substituted ''December 31, 1994'' for ''June 30, 1992''.

Subsec. (i)(1)(A). Pub. L. 103–66, § 13302(d), inserted '', or, if the taxpayer is an entity other than a corporation, to any individual who owns, directly or indirectly, more than 50 percent of the capital and profits interests in the entity,'' after ''of the corporation''.

1991—Subsec. (c)(4). Pub. L. 102–227 substituted ''June 30, 1992'' for ''December 31, 1991''.

1990—Subsec. (c)(4). Pub. L. 101–508 substituted ''December 31, 1991'' for ''September 30, 1990''.

1989—Subsec. (c)(4). Pub. L. 101–239, § 7103(a), substituted ''September 30, 1990'' for ''December 31, 1989''.

Subsec. (d)(16)(C). Pub. L. 101–239, § 7103(c)(1), added subpar. (C).

1988—Subsec. (c)(2)(B). Pub. L. 100–485 substituted ''section 482(e)'' for ''section 414''.

Subsec. (c)(4). Pub. L. 100–647, § 4010(a), substituted ''1989'' for ''1988''.

Subsec. (d)(3)(B). Pub. L. 100–647, § 4010(c)(1), substituted ''age 23'' for ''age 25''.

Subsec. (d)(12)(B). Pub. L. 100–647, § 4010(d)(1), redesignated former cls. (ii) and (iii) as (i) and (ii), respectively, and struck out former cl. (i) which provided that subsection (a) shall be applied by substituting ''85 percent'' for ''40 percent''.

Pub. L. 100–647, § 1017(a), substituted ''subsection (a)'' for ''subsection (a)(1)'' in cl. (i).

1987—Subsec. (c)(3), (4). Pub. L. 100–203 added par. (3) and redesignated former par. (3) as (4).

1986—Subsec. (a). Pub. L. 99–514, § 1701(b)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''For purposes of section 38, the amount of the targeted jobs credit determined under this section for the taxable year shall be the sum of—

''(1) 50 percent of the qualified first-year wages for such year, and

''(2) 25 percent of the qualified second-year wages for such year.''

Subsec. (b)(3), (4). Pub. L. 99–514, § 1701(b)(2)(A), redesignated par. (4) as (3) and struck out '', and the amount of the qualified second-year wages,'' after ''first-year wages'' and struck out par. (3) which defined ''qualified second-year wages''.

Subsec. (c)(3). Pub. L. 99–514, § 1701(a), substituted ''December 31, 1988'' for ''December 31, 1985''.

Subsec. (d)(12)(B). Pub. L. 99–514, § 1701(b)(2)(B), in cl. (i), substituted ''40 percent'' for ''50 percent'', struck out cl. (ii) which directed that subsecs. (a)(2) and (b)(3) were not to apply, redesignated cl. (iii) as cl. (ii), redesignated cl. (iv) as cl. (iii), and in cl. (iii) as so redesignated substituted ''subsection (b)(3)'' for ''subsection (b)(4)''.

Subsec. (i)(3). Pub. L. 99–514, § 1701(c), added par. (3).

Subsec. (k). Pub. L. 99–514, § 1878(f)(1), redesignated subsec. (j) added by section 1041(c)(1) of Pub. L. 98–369 and relating to treatment of successor employers, and employees performing services for other persons, as subsec. (k).

1984—Subsec. (a). Pub. L. 98–369, § 474(p)(1), substituted ''For purposes of section 38, the amount of the targeted jobs credit determined under this section'' for ''The amount of the credit allowable by section 44B'' in introductory provisions.

Subsec. (b)(2). Pub. L. 98–369, § 1041(c)(4), struck out ''(or, in the case of a vocational rehabilitation referral, the day the individual begins work for the employer on or after the beginning of such individual's rehabilitation plan)'' after ''begins work for the employer''.

Subsec. (c)(2). Pub. L. 98–369, § 2638(b), designated existing provisions as subpar. (A), inserted par. (2) heading, and added subpar. (B).

Subsec. (c)(3). Pub. L. 98–369, § 1041(a), substituted ''December 31, 1985'' for ''December 31, 1984''.

Subsec. (d)(6)(B)(ii). Pub. L. 98–369, § 2663(j)(5)(A), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health Education and Welfare''.

Subsec. (d)(11). Pub. L. 98–369, § 712(n), made determination respecting membership of a qualified summer youth employee or youth participating in a qualified cooperative education program with respect to an employer applicable for purposes of determining whether such individual is a member of another targeted group with respect to such employer.

Subsec. (d)(12)(A)(ii). Pub. L. 98–369, § 1041(c)(3), substituted ''(or if later, on May 1 of the calendar year involved)'' for ''(as defined in paragraph (14))''.

Subsec. (d)(16)(A). Pub. L. 98–369, § 1041(c)(2), inserted ''For purposes of the preceding sentence, if on or before the day on which such individual begins work for the employer, such individual has received from a designated local agency (or other agency or organization designated pursuant to a written agreement with such designated local agency) a written preliminary determination that such individual is a member of a targeted group, then 'the fifth day' shall be substituted for 'the day' in such sentence.''

Subsec. (g). Pub. L. 98–369, § 474(p)(2), substituted ''the targeted jobs credit determined under this subpart'' for ''the credit provided by section 44B''.

Subsec. (j). Pub. L. 98–369, § 1041(c)(1), added subsec. (j) relating to treatment of successor employers, and employees performing services for other persons.

Pub. L. 98–369, § 474(p)(3), added subsec. (j) relating to election to have targeted jobs credit not apply.

1983—Subsec. (d)(8)(D). Pub. L. 97–448, § 102(*l*)(1), substituted ''clauses (i), (ii), and (iii) of subparagraph (A)'' for ''subparagraph (A)''.

Subsec. (d)(9)(B). Pub. L. 97–448, § 102(*l*)(3), substituted ''section 432(b)(1) or 445'' for ''section 432(b)(1)''.

Subsec. (d)(11). Pub. L. 97–448, § 102(*l*)(4), substituted ''the earlier of the month in which such determination occurs or the month in which the hiring date occurs'' for ''the month in which such determination occurs''.

1982—Subsec. (c)(3). Pub. L. 97–248, § 233(a), substituted ''1984'' for ''1982''.

Subsec. (d)(1)(J). Pub. L. 97–248, § 233(b)(3), added subpar. (J).

Subsec. (d)(6)(B)(i)(II). Pub. L. 97–248, § 233(d), substituted ''consists of money payments or voucher or scrip, and'' for ''consists of money payments''.

Subsec. (d)(10). Pub. L. 97–248, § 233(c), inserted provision respecting nonapplicability of paragraph to individuals who begin work for the employer after December 31, 1982.

Subsec. (d)(12) to (15). Pub. L. 97–248, § 233(b)(4), (5), added par. (12) and redesignated former pars. (12) to (15) as (13) to (16), respectively.

Subsec. (d)(16). Pub. L. 97–248, § 233(b)(4), redesignated former par. (15) as (16).

Pub. L. 97–248, § 233(f), substituted ''on or before'' for ''before'' in subpar. (A).

1981—Subsec. (c)(3), (4). Pub. L. 97–34, § 261(b)(2)(B)(ii), redesignated par. (4) as (3). Former par. (3), which excluded from term ''wages'' any amount paid or incurred by the employer to an individual with respect to whom the employer claims credit under section 40 of this title, was struck out.

Pub. L. 97–34, § 261(a), extended termination date to Dec. 31, 1982, from Dec. 31, 1981, and inserted ''to an individual who begins work for the employer'' after ''paid or incurred''.

Subsec. (d)(1)(H), (I). Pub. L. 97–34, § 261(b)(1), added subpars. (H) and (I).

Subsec. (d)(3)(A)(ii). Pub. L. 97–34, § 261(b)(2)(B)(iii), substituted ''paragraph (11)'' for ''paragraph (9)''.

Subsec. (d)(4). Pub. L. 97–34, § 261(b)(2)(B)(iii), (3), in subpar. (B) inserted ''and'' after ''States,'' in subpar. (C) substituted ''paragraph (11)'' for ''paragraph (9)'', and struck out ''(D) not having attained the age of 35 on the hiring date.''

Subsec. (d)(7)(B). Pub. L. 97–34, § 261(b)(2)(B)(iii), substituted ''paragraph (11)'' for ''paragraph (9)''.

Subsec. (d)(8)(A)(iv). Pub L. 97–34, § 261(b)(4), added cl. (iv).

Subsec. (d)(9), (10). Pub. L. 97–34, § 261(b)(2)(A), added pars. (9) and (10) and redesignated former pars. (9) and (10) as (11) and (12), respectively.

Subsec. (d)(11). Pub. L. 97–34, § 261(b)(2)(A), (c)(2), redesignated former par. (9) as (11), substituted ''70 percent or less'' for ''less than 70 percent'', and provided for validity of any determination for 45-day period beginning on the date the determination is made. Former par. (11) redesignated (13).

Subsec. (d)(12), (13). Pub. L. 97–34, § 261(b)(2)(A), redesignated former pars. (10) and (11) as pars. (12) and (13), respectively. Former par. (12) redesignated (14).

Subsec. (d)(14). Pub. L. 97–34, § 261(f)(1)(A), substituted as definition for term '' 'designated local agency' means a State employment security agency established in accordance with the Act of June 6, 1933, as amended (29 U.S.C. 49–49n)'' for '' 'designated local agency' means the agency for any locality designated jointly by the

Secretary and the Secretary of Labor to perform certification of employees for employers in that locality''.

Pub. L. 97–34, §261(b)(2)(A), redesignated former par. (12) as (14).

Subsec. (d)(15). Pub. L. 97–34, §261(c)(1), added par. (15).

Subsec. (e). Pub. L. 97–34, §261(e)(1), struck out subsec. (e) which set forth limitation that qualified first-year wages could not exceed 30 percent of FUTA wages for all employees.

Subsec. (f). Pub. L. 97–34, §261(e)(2), substituted ''any taxable year'' for ''any year'' in pars. (1) and (2) and struck out par. (3), defining ''year'' which is covered in pars. (1) and (2).

Subsec. (g). Pub. L. 97–34, §261(f)(1)(B), substituted ''United States Employment Service'' for ''Secretary of Labor'' in heading and text.

Subsec. (i). Pub. L. 97–34, §261(d), added subsec. (i).

1980—Subsec. (c)(1). Pub. L. 96–222, §103(a)(6)(E)(ii), substituted '', subsection (d)(8)(D), and subsection (h)(2)'' for ''subsection (h)(2)''.

Subsec. (c)(2). Pub. L. 96–222, §103(a)(6)(G)(iii), inserted ''or incurred'' after ''amounts paid''.

Subsec. (c)(4). Pub. L. 96–222, §103(a)(6)(A), substituted ''December 31, 1981'' for ''December 31, 1980''.

Subsec. (d)(1)(E). Pub. L. 96–222, §103(a)(6)(G)(iv), struck out ''or'' after ''recipient,''.

Subsec. (d)(4)(A)(i). Pub. L. 96–222, §103(a)(6)(G)(v), substituted ''active duty'' for ''active day''.

Subsec. (d)(4)(B). Pub. L. 96–222, §103(a)(6)(G)(vi), substituted ''preemployment'' for ''premployment''.

Subsec. (d)(5). Pub. L. 96–222, §103(a)(6)(G)(vii), substituted ''preemployment'' for ''pre-employment''.

Subsec. (d)(8)(A). Pub. L. 96–222, §103(a)(6)(F), substituted ''age 20'' for ''age 19''.

Subsec. (d)(8)(D). Pub. L. 96–222, §103(a)(6)(E)(i), in heading substituted ''Wages'' for ''Individual must be currently pursuing program'' and in text substituted ''In the case of remuneration'' for ''Wages shall be taken into account with respect to a qualified cooperative education program only if the wages are'' and inserted '', wages, and unemployment insurance wages, shall be determined without regard to section 3306(c)(10)(C)''.

Subsec. (d)(12). Pub. L. 96–222, §103(a)(6)(G)(viii), substituted ''employers'' for ''employer''.

Subsec. (e). Pub. L. 96–222, §103(a)(6)(G)(ix), inserted ''except as provided in subsection (h)(1)'' after ''the preceding sentence,''.

1978—Pub. L. 95–600 amended section generally and limited allowance of credit to the hiring of seven target groups with high unemployment rates.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §757(b), Dec. 17, 2010, 124 Stat. 3322, provided that: ''The amendment made by this section [amending this section] shall apply to individuals who begin work for the employer after the date of the enactment of this Act [Dec. 17, 2010].''

Pub. L. 111–147, title I, §101(e), Mar. 18, 2010, 124 Stat. 75, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this subsection [probably should be ''section'', amending this section and sections 3111 and 3221 of this title] shall apply to wages paid after the date of the enactment of this Act [Mar. 18, 2010].

''(2) RAILROAD RETIREMENT TAXES.—The amendments made by subsection (d) [amending section 3221 of this title] shall apply to compensation paid after the date of the enactment of this Act.''

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1221(b), Feb. 17, 2009, 123 Stat. 338, provided that: ''The amendments made by this section [amending this section] shall apply to individuals who begin work for the employer after December 31, 2008.''

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 4002(b)(1)(A), (B), (D), (2)(O) of Pub. L. 110–246 effective Oct. 1, 2008, see section 4407 of Pub. L. 110–246, set out as a note under section 1161 of Title 2, The Congress.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–28, title VIII, §8211(e), May 25, 2007, 121 Stat. 192, provided that: ''The amendments made by this section [amending this section] shall apply to individuals who begin work for the employer after the date of the enactment of this Act [May 25, 2007].''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §105(f), Dec. 20, 2006, 120 Stat. 2938, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 51A of this title and repealing section 51A of this title] shall apply to individuals who begin work for the employer after December 31, 2005.

''(2) CONSOLIDATION.—The amendments made by subsections (b), (c), (d), and (e) [amending this section and repealing section 51A of this title] shall apply to individuals who begin work for the employer after December 31, 2006.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 207(5) of Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

Pub. L. 108–311, title III, §303(b), Oct. 4, 2004, 118 Stat. 1179, provided that:''The amendments made by this section [amending this section and section 51A of this title] shall apply to individuals who begin work for the employer after December 31, 2003.''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title VI, §604(b), Mar. 9, 2002, 116 Stat. 59, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to individuals who begin work for the employer after December 31, 2001.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title I, §102(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–600, provided that: ''The amendments made by this section [amending this section] shall apply to individuals who begin work for the employer after December 31, 2001.''

Pub. L. 106–554, §1(a)(7) [title III, §316(e)], Dec. 21, 2000, 114 Stat. 2763, 2763A–645, provided that: ''The amendments made by this section [amending this section and sections 219, 401 and 1361 of this title] shall take effect as if included in the provisions of the Small Business Job Protection Act of 1996 [Pub. L. 104–188] to which they relate.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, §505(c), Dec. 17, 1999, 113 Stat. 1921, provided that: ''The amendments made by this section [amending this section and section 51A of this title] shall apply to individuals who begin work for the employer after June 30, 1999.''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. J, title I, §1002(b), Oct. 21, 1998, 112 Stat. 2681–888, provided that: ''The amendment made by this section [amending this section] shall apply to individuals who begin work for the employer after June 30, 1998.''

EFFECTIVE DATE OF 1997 AMENDMENTS

Section 603(e) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this sec-

tion] shall apply to individuals who begin work for the employer after September 30, 1997.''

Section 5518(c) of Pub. L. 105–33 provided that: ''The amendments made by section 5514(a) of this Act [amending this section and sections 3304, 6103, 6334, 6402, and 7523 of this title] shall take effect as if the amendments had been included in section 110 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104–193] at the time such section 110 became law.''

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of Title 42, The Public Health and Welfare.

Amendment by Pub. L. 104–188 applicable to individuals who begin work for the employer after Sept. 30, 1996, see section 1201(g) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13102(b) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to individuals who begin work for the employer after June 30, 1992.''

EFFECTIVE DATE OF 1991 AMENDMENT

Section 105(b) of Pub. L. 102–227 provided that: ''The amendment made by this section [amending this section] shall apply to individuals who begin work for the employer after December 31, 1991.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11405(c) of Pub. L. 101–508 provided that:

''(1) CREDIT.—The amendment made by subsection (a) [amending this section] shall apply to individuals who begin work for the employer after September 30, 1990.

''(2) AUTHORIZATION.—The amendment made by subsection (b) [amending provisions set out below] shall apply to fiscal years beginning after 1990.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7103(c)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to individuals who begin work for the employer after December 31, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by section 1017(a) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 4010(c)(2) of Pub. L. 100–647 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to individuals who begin work for the employer after December 31, 1988.''

Section 4010(d)(2) of Pub. L. 100–647 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to individuals who begin work for the employer after December 31, 1988.''

Amendment by Pub. L. 100–485 effective Oct. 1, 1990, with provision for earlier effective dates in case of States making certain changes in their State plans and formally notifying the Secretary of Health and Human Services of their desire to become subject to the amendments made by title II of Pub. L. 100–485 on the earlier effective dates, see section 204 of Pub. L. 100–485, set out as a note under section 671 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10601(b) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to amounts paid or incurred on or after January 1, 1987, for services rendered on or after such date.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1701(e) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section and provisions set out below] shall apply with respect to individuals who begin work for the employer after December 31, 1985.''

Amendment by section 1878(f)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(p)(1)–(3) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 712 of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

Section 1041(c)(5) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, title XVIII, § 1878(f)(2), Oct. 22, 1986, 100 Stat. 2095, 2904, provided that:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this section [amending this section] shall apply to individuals who begin work for the employer after the date of the enactment of this Act [July 18, 1984].

''(B) SPECIAL RULE FOR EMPLOYEES PERFORMING SERVICES FOR OTHER PERSONS.—Paragraph (2) of section 51(k) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this subsection) and the amendment made by paragraph (3) of this subsection [amending this section] shall apply to individuals who begin work for the employer after December 31, 1984.''

Section 2638(c)(2) of Pub. L. 98–369 provided that: ''The amendments made by subsection (b) [amending this section] shall apply with respect to payments made on or after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2663 of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 102(*l*)(4) of Pub. L. 97–448 provided that the amendment made by that section is effective with respect to certifications made after Jan. 12, 1983, with respect to individuals beginning work for an employer after May 11, 1982.

Amendment by title I of Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 233(f) of Pub. L. 97–248 provided that the amendments made by that section are effective only with respect to individuals who begin work for the taxpayer after May 11, 1982.

Section 233(g) of Pub. L. 97–248 provided that:

''(1) SUBSECTION (b).—The amendments made by subsection (b) [amending this section] shall apply to amounts paid or incurred after April 30, 1983, to individuals beginning work for the employer after such date.

''(2) SUBSECTION (d).—The amendments made by subsection (d) [amending this section] shall apply to amounts paid or incurred after July 1, 1982, to individuals beginning work for the employer after such date.''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 261(g) of Pub. L. 97–34, as amended by Pub. L. 97–448, title I, § 102(*l*)(2), Jan. 12, 1983, 96 Stat. 2374; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) AMENDMENTS RELATING TO MEMBERS OF TARGETED GROUPS.—

''(A) IN GENERAL.—Except as provided in subparagraphs (B), (C), and (D), the amendments made by subsections (b), (c)(2), and (d) [amending this section and section 50B of this title] shall apply to wages paid or incurred with respect to individuals first beginning work for an employer after the date of the enactment of this Act [Aug. 13, 1981] in taxable years ending after such date.

''(B) ELIGIBLE WORK INCENTIVE EMPLOYEES.—The amendments made by subsection (b)(2) [amending this section] to the extent relating to the designation of eligible work incentive employees (within the meaning of section 51(d)(9) [now 51(d)(10)] of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) as members of a targeted group and subsection (b)(2)(B)(ii) [amending this section] shall apply to taxable years beginning after December 31, 1981. In the case of an eligible work incentive employee, subsections (a) and (b) of section 51 of such Code shall be applied for taxable years beginning after December 31, 1981, as if such employees had been members of a targeted group for taxable years beginning before January 1, 1982.

''(C) COOPERATIVE EDUCATION PROGRAM PARTICIPANTS.—The amendments made by subsection (b)(4) [amending this section] shall apply to wages paid or incurred after December 31, 1981, in taxable years ending after such date.

''(D) DESIGNATED LOCAL AGENCY.—The amendments made by subsection (f)(1) [amending this section] shall take effect on the date 60 days after the date of the enactment of this act [Aug. 13, 1981].

''(2) CERTIFICATIONS.—

''(A) IN GENERAL.—The amendment made by subsection (c)(1) [amending this section] shall apply to all individuals whether such individuals began work for their employer before, on, or after the date of the enactment of this Act [Aug. 13, 1981].

''(B) SPECIAL RULE FOR INDIVIDUALS WHO BEGAN WORK FOR THE EMPLOYER BEFORE 45TH DAY BEFORE DATE OF ENACTMENT.—In the case of any individual (other than an individual described in section 51(d)(8) of the Internal Revenue Code of 1986) who began work for the employer before the date 45 days before the date of the enactment of this Act [Aug. 13, 1981], paragraph (15) of section 51(d) of the Internal Revenue Code of 1986 (as added by subsection (c)(1)) shall be applied by substituting ''July 23, 1981,'' for the day on which such individual begins work for the employer.

''(C) INDIVIDUALS WHO BEGIN WORK FOR EMPLOYER WITHIN 45 DAYS BEFORE OR AFTER DATE OF ENACTMENT.—In the case of any individual (other than an individual described in section 51(d)(8) of the Internal Revenue Code of 1986) who begins work for the employer during the 90-day period beginning with the date 45 days before the date of the enactment of this Act [Aug. 13, 1981], and in the case of an individual described in section 51(d)(8) of such Code who begins work before the end of such 90-day period, paragraph (15) of section 51(d) of such Code (as added by subsection (c)(1)) shall be applied by substituting ''the last day of the 90-day period beginning with the date 45 days before the date of the enactment of this Act'' for the day on which such individual begins work for the employer.

''(3) LIMITATION ON QUALIFIED FIRST-YEAR WAGES.—The amendment made by subsection (e) [amending this section] shall apply to taxable years beginning after December 31, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 103(b)(1) of Pub. L. 96–222 provided that: ''The amendment made by subsection (a)(5)(F) [probably means subsec. (a)(6)(F), amending this section] shall apply to wages paid or incurred on or after November 27, 1979, in taxable years ending on or after such date.''

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 321(d)(1) of Pub. L. 95–600 provided that: ''Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 44B, 52, 53, and 6501 of this title] shall apply to amounts paid or incurred after December 31, 1978, in taxable years ending after such date.''

EFFECTIVE DATE

Section 202(e) of Pub. L. 95–30 provided that: ''The amendments made by this section [enacting this section and sections 44B, 52, 53, and 280C of this title and amending sections 56, 381, 383, 6096, 6411, 6501, 6511, 6601, and 6611 of this title] shall apply to taxable years beginning after December 31, 1976, and to credit carrybacks from such years.''

REFERENCE TO PLAN FOR EMPLOYMENT

Pub. L. 105–277, div. J, title IV, § 4006(c)(1), Oct. 21, 1998, 112 Stat. 2681–912, provided that: ''The reference to 'plan for employment' in such clause [26 U.S.C. 51(d)(6)(B)(i)] shall be treated as including a reference to the rehabilitation plan referred to in such clause as in effect before the amendment made by the preceding sentence.''

AUTHORIZATION OF APPROPRIATIONS

Section 261(f)(2) of Pub. L. 97–34, as amended by Pub. L. 97–248, title II, § 233(e), Sept. 3, 1982, 96 Stat. 502; Pub. L. 98–369, div. A, title X, § 1041(b), July 18, 1984, 98 Stat. 1042; Pub. L. 99–514, title XVII, § 1701(d), Oct. 22, 1986, 100 Stat. 2772; Pub. L. 100–647, title IV, § 4010(b), Nov. 10, 1988, 102 Stat. 3655; Pub. L. 101–239, title VII, § 7103(b), Dec. 19, 1989, 103 Stat. 2305; Pub. L. 101–508, title XI, § 11405(b), Nov. 5, 1990, 104 Stat. 1388–473, provided that: ''There is authorized to be appropriated for each fiscal year such sums as may be necessary, to carry out the functions described by the amendments made by paragraph (1) [amending this section], except that, of the amounts appropriated pursuant to this paragraph—

''(A) $5,000,000 shall be used to test whether individuals certified as members of targeted groups under section 51 of such Code are eligible for such certification (including the use of statistical sampling techniques), and

''(B) the remainder shall be distributed under performance standards prescribed by the Secretary of Labor.

The Secretary of Labor shall each calendar year beginning with calendar year 1983 report to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate with respect to the results of the testing conducted under subparagraph (A) during the preceding calendar year.''

[For termination, effective May 15, 2000, of reporting provisions in section 261(f)(2) of Pub. L. 97–34, set out above, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 124 of House Document No. 103–7.]

[Amendment by Pub. L. 101–508 applicable to fiscal years beginning after 1990, see section 11405(c)(2) of Pub. L. 101–508, set out as an Effective Date of 1990 Amendment note above.]

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

SPECIAL RULES FOR NEWLY TARGETED GROUPS

Section 321(d)(2) of Pub. L. 95–600, as amended by Pub. L. 96–222, title I, § 103(a)(6)(C), (G)(xi), Apr. 1, 1980, 94 Stat. 209, 211; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(A) INDIVIDUAL MUST BE HIRED AFTER SEPTEMBER 26, 1978.—In the case of a member of a newly targeted group, for purposes of applying the amendments made by this section—

''(i) such individual shall be taken into account for purposes of the credit allowable by section 44B of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] only if such individual is first hired by the employer after September 26, 1978, and

''(ii) such individual shall be treated for purposes of such credit as having first begun work for the employer not earlier than January 1, 1979.

''(B) MEMBER OF NEWLY TARGETED GROUP DEFINED.—For purposes of subparagraph (A), an individual is a member of a newly targeted group if—

''(i) such individual meets the requirements of paragraph (1) of section 51(d) of such Code, and

''(ii) in the case of an individual meeting the requirements of subparagraph (A) of such paragraph (1), a credit was not claimed for such individual by the taxpayer for a taxable year beginning before January 1, 1979.''

CREDIT ALLOWABLE BY SECTION 44B IN CASE OF TAXABLE YEAR BEGINNING IN 1978 AND ENDING AFTER DECEMBER 31, 1978

Section 321(d)(3) of Pub. L. 95–600, as amended by Pub. L. 96–222, title I, § 103(a)(6)(D), Apr. 1, 1980, 94 Stat. 209; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of a taxable year which begins in 1978 and ends after December 31, 1978, the amount of the credit determined under section 51 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be the sum of—

''(A) the amount of the credit which would be so determined without regard to the amendments made by this section, plus

''(B) the amount of the credit which would be so determined by reason of the amendments made by this section.''

[§ 51A. Repealed. Pub. L. 109–432, div. A, title I, § 105(e)(4)(A), Dec. 20, 2006, 120 Stat. 2937]

Section, added Pub. L. 105–34, title VIII, § 801(a), Aug. 5, 1997, 111 Stat. 869; amended Pub. L. 105–277, div. J, title I, § 1003, Oct. 21, 1998, 112 Stat. 2681–888; Pub. L. 106–170, title V, § 505(a), Dec. 17, 1999, 113 Stat. 1921; Pub. L. 107–16, title IV, § 411(c), June 7, 2001, 115 Stat. 63; Pub. L. 107–147, title IV, § 417(4), title VI, § 605(a), Mar. 9, 2002, 116 Stat. 56, 60; Pub. L. 108–311, title III, § 303(a)(2), Oct. 4, 2004, 118 Stat. 1179; Pub. L. 109–432, div. A, title I, § 105(a), Dec. 20, 2006, 120 Stat. 2936, related to temporary incentives for employing long-term family assistance recipients. See section 51(e) of this title.

EFFECTIVE DATE OF REPEAL

Repeal applicable to individuals who begin work for the employer after Dec. 31, 2006, see section 105(f)(2) of Pub. L. 109–432, set out as an Effective Date of 2006 Amendment note under section 51 of this title.

§ 52. Special rules

(a) Controlled group of corporations

For purposes of this subpart, all employees of all corporations which are members of the same controlled group of corporations shall be treated as employed by a single employer. In any such case, the credit (if any) determined under section 51(a) with respect to each such member shall be its proportionate share of the wages giving rise to such credit. For purposes of this subsection, the term ''controlled group of corporations'' has the meaning given to such term by section 1563(a), except that—

(1) ''more than 50 percent'' shall be substituted for ''at least 80 percent'' each place it appears in section 1563(a)(1), and

(2) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

(b) Employees of partnerships, proprietorships, etc., which are under common control

For purposes of this subpart, under regulations prescribed by the Secretary—

(1) all employees of trades or business (whether or not incorporated) which are under common control shall be treated as employed by a single employer, and

(2) the credit (if any) determined under section 51(a) with respect to each trade or business shall be its proportionate share of the wages giving rise to such credit.

The regulations prescribed under this subsection shall be based on principles similar to the principles which apply in the case of subsection (a).

(c) Tax-exempt organizations

No credit shall be allowed under section 38 for any work opportunity credit determined under this subpart to any organization (other than a cooperative described in section 521) which is exempt from income tax under this chapter.

(d) Estates and trusts

In the case of an estate or trust—

(1) the amount of the credit determined under this subpart for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each, and

(2) any beneficiary to whom any amount has been apportioned under paragraph (1) shall be allowed, subject to section 38(c), a credit under section 38(a) for such amount.

(e) Limitations with respect to certain persons

Under regulations prescribed by the Secretary, in the case of—

(1) a regulated investment company or a real estate investment trust subject to taxation under subchapter M (section 851 and following), and

(2) a cooperative organization described in section 1381(a),

rules similar to the rules provided in subsections (e) and (h) of section 46 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply in determining the amount of the credit under this subpart.

(Added Pub. L. 95–30, title II, § 202(b), May 23, 1977, 91 Stat. 143; amended Pub. L. 95–600, title

III, § 321(c)(1), Nov. 6, 1978, 92 Stat. 2835; Pub. L. 96–222, title I, § 103(a)(5), Apr. 1, 1980, 94 Stat. 209; Pub. L. 97–354, § 5(a)(11), Oct. 19, 1982, 96 Stat. 1693; Pub. L. 98–369, div. A, title IV, § 474(p)(4)–(7), July 18, 1984, 98 Stat. 838; Pub. L. 101–508, title XI, § 11813(b)(4), Nov. 5, 1990, 104 Stat. 1388–551; Pub. L. 104–188, title I, § 1616(b)(2), Aug. 20, 1996, 110 Stat. 1856; Pub. L. 105–34, title XVI, § 1601(b), Aug. 5, 1997, 111 Stat. 1087.)

REFERENCES IN TEXT

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

AMENDMENTS

1997—Subsec. (c). Pub. L. 105–34 substituted ''work opportunity credit'' for ''targeted jobs credit''.

1996—Subsec. (e)(1) to (3). Pub. L. 104–188 redesignated pars. (2) and (3) as (1) and (2), respectively, and struck out former par. (1) which read as follows: ''an organization to which section 593 (relating to reserves for losses on loans) applies,''.

1990—Subsec. (e). Pub. L. 101–508 substituted ''section 46 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)'' for ''section 46'' in concluding provisions.

1984—Subsec. (a). Pub. L. 98–369, § 474(p)(4), substituted ''the credit (if any) determined under section 51(a) with respect to each such member'' for ''the credit (if any) allowable by section 44B to each such member''.

Subsec. (b)(2). Pub. L. 98–369, § 474(p)(5), substituted ''the credit (if any) determined under section 51(a)'' for ''the credit (if any) allowable by section 44B''.

Subsec. (c). Pub. L. 98–369, § 474(p)(6), substituted ''credit shall be allowed under section 38 for any targeted jobs credit determined under this subpart'' for ''credit shall be allowed under section 44B''.

Subsec. (d)(2). Pub. L. 98–369, § 474(p)(7), substituted '', subject to section 38(c), a credit under section 38(a)'' for '', subject to section 53 a credit under section 44B''.

1982—Subsecs. (d) to (f). Pub. L. 97–354 struck out subsec. (d) relating to apportionment of credit among shareholders, and redesignated subsecs. (e) and (f) as (d) and (e), respectively.

1980—Subsec. (f). Pub. L. 96–222 substituted ''subsections (e) and (h) of section 46'' for ''section 46(e)''.

1978—Subsecs. (a), (b). Pub. L. 95–600, § 321(c)(1)(B), substituted ''proportionate share of the wages'' for ''proportionate contribution to the increase in unemployment insurance wages''.

Subsecs. (c), (d). Pub. L. 95–600, § 321(c)(1)(A), struck out subsec. (c) which related to dispositions by an employer, and redesignated subsecs. (d) and (f) as (c) and (d), respectively.

Subsec. (e). Pub. L. 95–600, § 321(c)(1)(A), (C), redesignated subsec. (g) as (e) and struck out par. (3) which provided that the $100,000 amount specified in section 51(d) applicable to such estate or trust be reduced to an amount which bears the same ratio to $100,000 as the portion of the credit allocable to the estate or trust under paragraph (1) bears to the entire amount of such credit. Former subsec. (e), which related to a change in status from self-employed to employee, was struck out.

Subsecs. (f) to (h). Pub. L. 95–600, § 321(c)(1)(A), redesignated subsecs. (f) to (h) as (d) to (f), respectively.

Subsec. (i). Pub. L. 95–600, § 321(c)(1)(A)(i), struck out subsec. (i) which related to a $50,000 limitation in the case of married individuals filing separate returns.

Subsec. (j). Pub. L. 95–600, § 321(c)(1)(A)(i), struck out subsec. (j) which related to certain short taxable years.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 36C of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, see section 1616(c) of Pub. L. 104–188, set out as a note under section 593 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to amounts paid or incurred after Dec. 31, 1978, in taxable years ending after such date, see section 321(d)(1) of Pub. L. 95–600, set out as a note under section 51 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1976, and to credit carrybacks from such years, see section 202(e) of Pub. L. 95–30, set out as a note under section 51 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

SUBPART G—CREDIT AGAINST REGULAR TAX FOR PRIOR YEAR MINIMUM TAX LIABILITY

Sec.
53. Credit for prior year minimum tax liability.

§ 53. Credit for prior year minimum tax liability

(a) Allowance of credit

There shall be allowed as a credit against the tax imposed by this chapter for any taxable year an amount equal to the minimum tax credit for such taxable year.

(b) Minimum tax credit

For purposes of subsection (a), the minimum tax credit for any taxable year is the excess (if any) of—

(1) the adjusted net minimum tax imposed for all prior taxable years beginning after 1986, over

(2) the amount allowable as a credit under subsection (a) for such prior taxable years.

(c) Limitation

The credit allowable under subsection (a) for any taxable year shall not exceed the excess (if any) of—

(1) the regular tax liability of the taxpayer for such taxable year reduced by the sum of the credits allowable under subparts A, B, D, E, and F of this part, over

(2) the tentative minimum tax for the taxable year.

(d) Definitions

For purposes of this section—

(1) Net minimum tax

(A) In general

The term ''net minimum tax'' means the tax imposed by section 55.

(B) Credit not allowed for exclusion preferences

(i) Adjusted net minimum tax

The adjusted net minimum tax for any taxable year is—

(I) the amount of the net minimum tax for such taxable year, reduced by

(II) the amount which would be the net minimum tax for such taxable year if the only adjustments and items of tax preference taken into account were those specified in clause (ii).

(ii) Specified items

The following are specified in this clause—

(I) the adjustments provided for in subsection (b)(1) of section 56, and

(II) the items of tax preference described in paragraphs (1), (5), and (7) of section 57(a).

(iii) Credit allowable for exclusion preferences of corporations

In the case of a corporation—

(I) the preceding provisions of this subparagraph shall not apply, and

(II) the adjusted net minimum tax for any taxable year is the amount of the net minimum tax for such year.

(2) Tentative minimum tax

The term ''tentative minimum tax'' has the meaning given to such term by section 55(b).

(e) Special rule for individuals with long-term unused credits

(1) In general

If an individual has a long-term unused minimum tax credit for any taxable year beginning before January 1, 2013, the amount determined under subsection (c) for such taxable year shall not be less than the AMT refundable credit amount for such taxable year.

(2) AMT refundable credit amount

For purposes of paragraph (1), the term ''AMT refundable credit amount'' means, with respect to any taxable year, the amount (not in excess of the long-term unused minimum tax credit for such taxable year) equal to the greater of—

(A) 50 percent of the long-term unused minimum tax credit for such taxable year, or

(B) the amount (if any) of the AMT refundable credit amount determined under this paragraph for the taxpayer's preceding taxable year (determined without regard to subsection (f)(2)).

(3) Long-term unused minimum tax credit

(A) In general

For purposes of this subsection, the term ''long-term unused minimum tax credit'' means, with respect to any taxable year, the portion of the minimum tax credit determined under subsection (b) attributable to the adjusted net minimum tax for taxable years before the 3rd taxable year immediately preceding such taxable year.

(B) First-in, first-out ordering rule

For purposes of subparagraph (A), credits shall be treated as allowed under subsection (a) on a first-in, first-out basis.

(4) Credit refundable

For purposes of this title (other than this section), the credit allowed by reason of this subsection shall be treated as if it were allowed under subpart C.

(f) Treatment of certain underpayments, interest, and penalties attributable to the treatment of incentive stock options

(1) Abatement

Any underpayment of tax outstanding on the date of the enactment of this subsection which is attributable to the application of section 56(b)(3) for any taxable year ending before January 1, 2008, and any interest or penalty with respect to such underpayment which is outstanding on such date of enactment, is hereby abated. The amount determined under subsection (b)(1) shall not include any tax abated under the preceding sentence.

(2) Increase in credit for certain interest and penalties already paid

The AMT refundable credit amount, and the minimum tax credit determined under subsection (b), for the taxpayer's first 2 taxable years beginning after December 31, 2007, shall each be increased by 50 percent of the aggregate amount of the interest and penalties which were paid by the taxpayer before the date of the enactment of this subsection and which would (but for such payment) have been abated under paragraph (1).

(Added Pub. L. 99–514, title VII, §701(b), Oct. 22, 1986, 100 Stat. 2339; amended Pub. L. 100–647, title I, §1007(g)(4), title VI, §6304(a), Nov. 10, 1988, 102 Stat. 3435, 3756; Pub. L. 101–239, title VII, §§7612(a)(1), (2), (b)(1), 7811(d)(2), Dec. 19, 1989, 103 Stat. 2373, 2374, 2408; Pub. L. 102–486, title XIX, §1913(b)(2)(C), Oct. 24, 1992, 106 Stat. 3020; Pub. L. 103–66, title XIII, §§13113(b)(2), 13171(c), Aug. 10, 1993, 107 Stat. 429, 455; Pub. L. 104–188, title I, §§1205(d)(5), 1704(j)(1), Aug. 20, 1996, 110 Stat. 1776,

1881; Pub. L. 108–357, title IV, § 421(a)(2), Oct. 22, 2004, 118 Stat. 1514; Pub. L. 109–58, title XIII, § 1322(a)(3)(G), Aug. 8, 2005, 119 Stat. 1012; Pub. L. 109–432, div. A, title IV, § 402(a), Dec. 20, 2006, 120 Stat. 2953; Pub. L. 110–172, § 2(a), Dec. 29, 2007, 121 Stat. 2473; Pub. L. 110–343, div. C, title I, § 103(a), (b), Oct. 3, 2008, 122 Stat. 3863; Pub. L. 111–5, div. B, title I, § 1142(b)(4), Feb. 17, 2009, 123 Stat. 331.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (f), is the date of enactment of Pub. L. 110–343, which was approved Oct. 3, 2008.

PRIOR PROVISIONS

A prior section 53, added Pub. L. 95–30, title II, § 202(b), May 23, 1977, 91 Stat. 146; amended Pub. L. 95–600, title III, § 321(c)(2), Nov. 6, 1978, 92 Stat. 2835; Pub. L. 97–34, title II, § 207(c)(2), Aug. 13, 1981, 95 Stat. 225; Pub. L. 97–248, title II, § 201(d)(8)(A), formerly § 201(c)(8)(A), and § 265(b)(2)(A)(iii), Sept. 3, 1982, 96 Stat. 420, 547, renumbered § 201(d)(8)(A), Pub. L. 97–448, title III, § 306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; 97–354, § 5(a)(12), Oct. 19, 1982, 96 Stat. 1693; 97–448, title I, § 102(d)(3), Jan. 12, 1983, 96 Stat. 2370; Pub. L. 98–21, title I, § 122(c)(1), Apr. 20, 1983, 97 Stat. 87; Pub. L. 98–369, div. A, title VII, § 713(c)(1)(C), July 18, 1984, 98 Stat. 957, placed limitations on the amount of credit allowed by former section 44B for employment of certain new employees, prior to repeal by Pub. L. 98–369, div. A, title IV, § 474(p)(8), July 18, 1984, 98 Stat. 838, applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years.

AMENDMENTS

2009—Subsec. (d)(1)(B)(iii). Pub. L. 111–5, § 1142(b)(4)(A), redesignated cl. (iv) as (iii) and struck out former cl. (iii). Prior to amendment, text read as follows: ''The adjusted net minimum tax for the taxable year shall be increased by the amount of the credit not allowed under section 30 solely by reason of the application of section 30(b)(3)(B).''

Subsec. (d)(1)(B)(iii)(II). Pub. L. 111–5, § 1142(b)(4)(B), struck out ''increased in the manner provided in clause (iii)'' before period.

Subsec. (d)(1)(B)(iv). Pub. L. 111–5, § 1142(b)(4)(A), redesignated cl. (iv) as (iii).

2008—Subsec. (e)(2). Pub. L. 110–343, § 103(a), reenacted heading without change and amended text generally. Prior to amendment, par. (2) defined ''AMT refundable credit amount'' and provided for phaseout of AMT refundable credit amount based on adjusted gross income.

Subsec. (f). Pub. L. 110–343, § 103(b), added subsec. (f).

2007—Subsec. (e)(2)(A). Pub. L. 110–172 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'AMT refundable credit amount' means, with respect to any taxable year, the amount equal to the greater of—

''(i) the lesser of—

''(I) $5,000, or

''(II) the amount of long-term unused minimum tax credit for such taxable year, or

''(ii) 20 percent of the amount of such credit.''

2006—Subsec. (e). Pub. L. 109–432 added subsec. (e).

2005—Subsec. (d)(1)(B)(iii). Pub. L. 109–58 struck out ''under section 29 (relating to credit for producing fuel from a nonconventional source) solely by reason of the application of section 29(b)(6)(B), or not allowed'' before ''under section 30''.

2004—Subsec. (d)(1)(B)(i)(II). Pub. L. 108–357 struck out ''and if section 59(a)(2) did not apply'' before period at end.

1996—Subsec. (d)(1)(B)(iii). Pub. L. 104–188, § 1205(d)(5)(A), which directed that cl. (iii) be amended by striking out ''or not allowed under section 28 solely by reason of the application of section 28(d)(2)(B),'' was executed by striking out ''not allowed under section 28 solely by reason of the application of section 28(d)(2)(B),'' after ''29(b)(6)(B),'', to reflect the probable intent of Congress.

Subsec. (d)(1)(B)(iv)(II). Pub. L. 104–188, § 1704(j)(1), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: ''the adjusted net minimum tax for any taxable year is the amount of the net minimum tax for such year increased by the amount of any credit not allowed under section 29 solely by reason of the application of section 29(b)(5)(B) or not allowed under section 28 solely by reason of the application of section 28(d)(2)(B).''

Pub. L. 104–188, § 1205(d)(5)(B), which directed that subcl. (II) be amended by striking out ''or not allowed under section 28 solely by reason of the application of section 28(d)(2)(B)'', could not be executed because the phrase sought to be struck out did not appear in text subsequent to the general amendment of subcl. (II) by Pub. L. 104–188, § 1704(j)(1), see above, which, pursuant to section 1701 of Pub. L. 104–188, set out as a note under section 1 of this title, is treated as having been enacted before section 1205(d)(5)(B) of Pub. L. 104–188.

1993—Subsec. (d)(1)(B)(ii)(II). Pub. L. 103–66, § 13171(c), substituted ''(5), and (7)'' for ''(5), (6), and (8)''.

Pub. L. 103–66, § 13113(b)(2), substituted ''(6), and (8)'' for ''and (6)''.

1992—Subsec. (d)(1)(B)(iii). Pub. L. 102–486, § 1913(b)(2)(C)(i), substituted ''section 29(b)(6)(B),'' for ''section 29(b)(5)(B) or''.

Pub. L. 102–486, § 1913(b)(2)(C)(ii), inserted before period at end '', or not allowed under section 30 solely by reason of the application of section 30(b)(3)(B)''.

1989—Subsec. (d)(1)(B)(i)(II). Pub. L. 101–239, § 7811(d)(2), inserted before period at end ''and if section 59(a)(2) did not apply''.

Subsec. (d)(1)(B)(ii). Pub. L. 101–239, § 7612(a)(2), substituted ''subsection (b)(1)'' for ''subsections (b)(1) and (c)(3)'' in subcl. (I) and struck out at end ''In the case of taxable years beginning after 1989, the adjustments provided in section 56(g) shall be treated as specified in this clause to the extent attributable to items which are excluded from gross income for any taxable year for purposes of the regular tax, or are not deductible for any taxable year under the adjusted current earnings method of section 56(g).''

Subsec. (d)(1)(B)(iii). Pub. L. 101–239, § 7612(b)(1), which directed amendment of cl. (iii) by inserting ''or not allowed under section 28 solely by reason of the application of section 28(d)(2)(B)'' after ''section 29(d)(5)(B)'', was executed by making the insertion after ''section 29(b)(5)(B)'', as the probable intent of Congress.

Subsec. (d)(1)(B)(iv). Pub. L. 101–239, § 7612(b)(1), which directed amendment of cl. (iv) by inserting ''or not allowed under section 28 solely by reason of the application of section 28(d)(2)(B)'' after ''section 29(d)(5)(B)'', was executed by making the insertion after ''section 29(b)(5)(B)'' in subcl. (II), as the probable intent of Congress.

Pub. L. 101–239, § 7612(a)(1), added cl. (iv).

1988—Subsec. (d)(1)(B)(ii). Pub. L. 100–647, § 1007(g)(4), substituted ''current earnings'' for ''earnings and profits'' in last sentence.

Subsec. (d)(1)(B)(iii). Pub. L. 100–647, § 6304(a), added cl. (iii).

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–5 applicable to vehicles acquired after Feb. 17, 2009, see section 1142(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title I, § 103(c), Oct. 3, 2008, 122 Stat. 3864, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2007.

''(2) ABATEMENT.—Section 53(f)(1), as added by subsection (b), shall take effect on the date of the enactment of this Act [Oct. 3, 2008].''

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–172, § 2(b), Dec. 29, 2007, 121 Stat. 2474, provided that: ''The amendment made by this section [amending this section] shall take effect as if included in the provision of the Tax Relief and Health Care Act of 2006 [Pub. L. 109–432] to which it relates.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, § 402(c), Dec. 20, 2006, 120 Stat. 2954, provided that: ''The amendments made by this section [amending this section, section 6211 of this title, and section 1324 of Title 31, Money and Finance] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 20, 2006].''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–58 applicable to credits determined under the Internal Revenue Code of 1986 for taxable years ending after Dec. 31, 2005, see section 1322(c)(1) of Pub. L. 109–58, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title IV, § 421(b), Oct. 22, 2004, 118 Stat. 1514, provided that: ''The amendments made by this section [amending this section and section 59 of this title] shall apply to taxable years beginning after December 31, 2004.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1205(d)(5) of Pub. L. 104–188 applicable to amounts paid or incurred in taxable years ending after June 30, 1996, see section 1205(e) of Pub. L. 104–188, set out as a note under section 45K of this title.

Section 1704(j)(1) of Pub. L. 104–188 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1990.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13113(e) of Pub. L. 103–66 provided that: ''The amendments made by this section [enacting section 1202 of this title and amending this section and sections 57, 172, 642, 643, 691, 871, and 6652 of this title] shall apply to stock issued after the date of the enactment of this Act [Aug. 10, 1993].''

Section 13171(d) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and sections 56 and 57 of this title] shall apply to contributions made after June 30, 1992, except that in the case of any contribution of capital gain property which is not tangible personal property, such amendments shall apply only if the contribution is made after December 31, 1992.''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1702(e)(5) of Pub. L. 104–188 provided that: ''The amendment made by section 1913(b)(2)(C)(i) of the Energy Policy Act of 1992 [Pub. L. 102–486] shall apply to taxable years beginning after December 31, 1990.''

Amendment by section 1913(b)(2)(C)(ii) of Pub. L. 102–486 applicable to property placed in service after June 30, 1993, see section 1913(c) of Pub. L. 102–486, set out as an Effective Date note under section 30 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7612(a)(3) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section] shall apply for purposes of determining the adjusted net minimum tax for taxable years beginning after December 31, 1989.''

Section 7612(b)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply for purposes of determining the amount of the minimum tax credit for taxable years beginning after December 31, 1989; except that, for such purposes, section 53(b)(1) of the Internal Revenue Code of 1986 shall be applied as if such amendment had been in effect for all prior taxable years.''

Amendment by section 7811(d)(2) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1007(g)(4) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6304(b) of Pub. L. 100–647 provided that: ''The amendment made by this section [amending this section] shall take effect as if included in the amendments made by section 701 of the Tax Reform Act of 1986 [Pub. L. 99–514].''

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 55 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(b) of Pub. L. 99–514 [enacting this section] notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

SUBPART H—NONREFUNDABLE CREDIT TO HOLDERS OF CLEAN RENEWABLE ENERGY BONDS

Sec.
54. Credit to holders of clean renewable energy bonds.

AMENDMENTS

2008—Pub. L. 110–234, title XV, § 15316(c)(4), May 22, 2008, 122 Stat. 1511, and Pub. L. 110–246, title XV, § 15316(c)(4), June 18, 2008, 122 Stat. 2273, made identical amendments, substituting ''Clean Renewable Energy Bonds'' for ''Certain Bonds'' in subpart heading. The amendment by Pub. L. 110–234 was repealed by Pub. L. 110–246, § 4(a), June 18, 2008, 122 Stat. 1664.

§ 54. Credit to holders of clean renewable energy bonds

(a) Allowance of credit

If a taxpayer holds a clean renewable energy bond on one or more credit allowance dates of the bond occurring during any taxable year, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of the credits determined under subsection (b) with respect to such dates.

(b) Amount of credit

(1) In general

The amount of the credit determined under this subsection with respect to any credit allowance date for a clean renewable energy bond is 25 percent of the annual credit determined with respect to such bond.

(2) Annual credit

The annual credit determined with respect to any clean renewable energy bond is the product of—

(A) the credit rate determined by the Secretary under paragraph (3) for the day on which such bond was sold, multiplied by

(B) the outstanding face amount of the bond.

(3) Determination

For purposes of paragraph (2), with respect to any clean renewable energy bond, the Secretary shall determine daily or cause to be determined daily a credit rate which shall apply to the first day on which there is a binding, written contract for the sale or exchange of the bond. The credit rate for any day is the credit rate which the Secretary or the Secretary's designee estimates will permit the issuance of clean renewable energy bonds with a specified maturity or redemption date without discount and without interest cost to the qualified issuer.

(4) Credit allowance date

For purposes of this section, the term ''credit allowance date'' means—

(A) March 15,

(B) June 15,

(C) September 15, and

(D) December 15.

Such term also includes the last day on which the bond is outstanding.

(5) Special rule for issuance and redemption

In the case of a bond which is issued during the 3-month period ending on a credit allowance date, the amount of the credit determined under this subsection with respect to such credit allowance date shall be a ratable portion of the credit otherwise determined based on the portion of the 3-month period during which the bond is outstanding. A similar rule shall apply when the bond is redeemed or matures.

(c) Limitation based on amount of tax

The credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

(1) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

(2) the sum of the credits allowable under this part (other than subparts C, I, and J, section 1400N(*l*), and this section).

(d) Clean renewable energy bond

For purposes of this section—

(1) In general

The term ''clean renewable energy bond'' means any bond issued as part of an issue if—

(A) the bond is issued by a qualified issuer pursuant to an allocation by the Secretary to such issuer of a portion of the national clean renewable energy bond limitation under subsection (f)(2),

(B) 95 percent or more of the proceeds of such issue are to be used for capital expenditures incurred by qualified borrowers for one or more qualified projects,

(C) the qualified issuer designates such bond for purposes of this section and the bond is in registered form, and

(D) the issue meets the requirements of subsection (h).

(2) Qualified project; special use rules

(A) In general

The term ''qualified project'' means any qualified facility (as determined under section 45(d) without regard to paragraph (10) and to any placed in service date) owned by a qualified borrower.

(B) Refinancing rules

For purposes of paragraph (1)(B), a qualified project may be refinanced with proceeds of a clean renewable energy bond only if the indebtedness being refinanced (including any obligation directly or indirectly refinanced by such indebtedness) was originally incurred by a qualified borrower after the date of the enactment of this section.

(C) Reimbursement

For purposes of paragraph (1)(B), a clean renewable energy bond may be issued to reimburse a qualified borrower for amounts paid after the date of the enactment of this section with respect to a qualified project, but only if—

(i) prior to the payment of the original expenditure, the qualified borrower declared its intent to reimburse such expenditure with the proceeds of a clean renewable energy bond,

(ii) not later than 60 days after payment of the original expenditure, the qualified issuer adopts an official intent to reimburse the original expenditure with such proceeds, and

(iii) the reimbursement is made not later than 18 months after the date the original expenditure is paid.

(D) Treatment of changes in use

For purposes of paragraph (1)(B), the proceeds of an issue shall not be treated as used for a qualified project to the extent that a qualified borrower or qualified issuer takes any action within its control which causes such proceeds not to be used for a qualified project. The Secretary shall prescribe regulations specifying remedial actions that may be taken (including conditions to taking such remedial actions) to prevent an action described in the preceding sentence from causing a bond to fail to be a clean renewable energy bond.

(e) Maturity limitations

(1) Duration of term

A bond shall not be treated as a clean renewable energy bond if the maturity of such bond exceeds the maximum term determined by the Secretary under paragraph (2) with respect to such bond.

(2) Maximum term

During each calendar month, the Secretary shall determine the maximum term permitted under this paragraph for bonds issued during

the following calendar month. Such maximum term shall be the term which the Secretary estimates will result in the present value of the obligation to repay the principal on the bond being equal to 50 percent of the face amount of such bond. Such present value shall be determined without regard to the requirements of subsection (*l*)(6) and using as a discount rate the average annual interest rate of tax-exempt obligations having a term of 10 years or more which are issued during the month. If the term as so determined is not a multiple of a whole year, such term shall be rounded to the next highest whole year.

(f) Limitation on amount of bonds designated

(1) National limitation

There is a national clean renewable energy bond limitation of $1,200,000,000.

(2) Allocation by Secretary

The Secretary shall allocate the amount described in paragraph (1) among qualified projects in such manner as the Secretary determines appropriate, except that the Secretary may not allocate more than $750,000,000 of the national clean renewable energy bond limitation to finance qualified projects of qualified borrowers which are governmental bodies.

(g) Credit included in gross income

Gross income includes the amount of the credit allowed to the taxpayer under this section (determined without regard to subsection (c)) and the amount so included shall be treated as interest income.

(h) Special rules relating to expenditures

(1) In general

An issue shall be treated as meeting the requirements of this subsection if, as of the date of issuance, the qualified issuer reasonably expects—

(A) at least 95 percent of the proceeds of such issue are to be spent for one or more qualified projects within the 5-year period beginning on the date of issuance of the clean energy bond,

(B) a binding commitment with a third party to spend at least 10 percent of the proceeds of such issue will be incurred within the 6-month period beginning on the date of issuance of the clean energy bond or, in the case of a clean energy bond the proceeds of which are to be loaned to two or more qualified borrowers, such binding commitment will be incurred within the 6-month period beginning on the date of the loan of such proceeds to a qualified borrower, and

(C) such projects will be completed with due diligence and the proceeds of such issue will be spent with due diligence.

(2) Extension of period

Upon submission of a request prior to the expiration of the period described in paragraph (1)(A), the Secretary may extend such period if the qualified issuer establishes that the failure to satisfy the 5-year requirement is due to reasonable cause and the related projects will continue to proceed with due diligence.

(3) Failure to spend required amount of bond proceeds within 5 years

To the extent that less than 95 percent of the proceeds of such issue are expended by the close of the 5-year period beginning on the date of issuance (or if an extension has been obtained under paragraph (2), by the close of the extended period), the qualified issuer shall redeem all of the nonqualified bonds within 90 days after the end of such period. For purposes of this paragraph, the amount of the nonqualified bonds required to be redeemed shall be determined in the same manner as under section 142.

(i) Special rules relating to arbitrage

A bond which is part of an issue shall not be treated as a clean renewable energy bond unless, with respect to the issue of which the bond is a part, the qualified issuer satisfies the arbitrage requirements of section 148 with respect to proceeds of the issue.

(j) Cooperative electric company; qualified energy tax credit bond lender; governmental body; qualified borrower

For purposes of this section—

(1) Cooperative electric company

The term ''cooperative electric company'' means a mutual or cooperative electric company described in section 501(c)(12) or section 1381(a)(2)(C), or a not-for-profit electric utility which has received a loan or loan guarantee under the Rural Electrification Act.

(2) Clean renewable energy bond lender

The term ''clean renewable energy bond lender'' means a lender which is a cooperative which is owned by, or has outstanding loans to, 100 or more cooperative electric companies and is in existence on February 1, 2002, and shall include any affiliated entity which is controlled by such lender.

(3) Governmental body

The term ''governmental body'' means any State, territory, possession of the United States, the District of Columbia, Indian tribal government, and any political subdivision thereof.

(4) Qualified issuer

The term ''qualified issuer'' means—

(A) a clean renewable energy bond lender,

(B) a cooperative electric company, or

(C) a governmental body.

(5) Qualified borrower

The term ''qualified borrower'' means—

(A) a mutual or cooperative electric company described in section 501(c)(12) or 1381(a)(2)(C), or

(B) a governmental body.

(k) Special rules relating to pool bonds

No portion of a pooled financing bond may be allocable to any loan unless the borrower has entered into a written loan commitment for such portion prior to the issue date of such issue.

***(l)* Other definitions and special rules**

For purposes of this section—

(1) Bond

The term ''bond'' includes any obligation.

(2) Pooled financing bond

The term ''pooled financing bond'' shall have the meaning given such term by section 149(f)(6)(A).

(3) Partnership; S corporation; and other pass-thru entities

(A) In general

Under regulations prescribed by the Secretary, in the case of a partnership, trust, S corporation, or other pass-thru entity, rules similar to the rules of section 41(g) shall apply with respect to the credit allowable under subsection (a).

(B) No basis adjustment

In the case of a bond held by a partnership or an S corporation, rules similar to the rules under section 1397E(*l*) shall apply.

(4) Ratable principal amortization required

A bond shall not be treated as a clean renewable energy bond unless it is part of an issue which provides for an equal amount of principal to be paid by the qualified issuer during each calendar year that the issue is outstanding.

(5) Reporting

Issuers of clean renewable energy bonds shall submit reports similar to the reports required under section 149(e).

(m) Termination

This section shall not apply with respect to any bond issued after December 31, 2009.

(Added Pub. L. 109–58, title XIII, §1303(a), Aug. 8, 2005, 119 Stat. 992; amended Pub. L. 109–135, title I, §101(b)(1), title IV, §402(c)(1), Dec. 21, 2005, 119 Stat. 2593, 2610; Pub. L. 109–222, title V, §508(d)(3), May 17, 2006, 120 Stat. 362; Pub. L. 109–432, div. A, title I, §107(b)(2), title II, §202(a), Dec. 20, 2006, 120 Stat. 2939, 2944; Pub. L. 110–234, title XV, §15316(c)(1), May 22, 2008, 122 Stat. 1511; Pub. L. 110–246, §4(a), title XV, §15316(c)(1), June 18, 2008, 122 Stat. 1664, 2273; Pub. L. 110–343, div. B, title I, §107(c), Oct. 3, 2008, 122 Stat. 3819; Pub. L. 111–5, div. B, title I, §§1531(c)(3), 1541(b)(1), Feb. 17, 2009, 123 Stat. 360, 362.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (d)(2)(B), (C), is the date of enactment of Pub. L. 109–58, which was approved Aug. 8, 2005.

The Rural Electrification Act, referred to in subsec. (j)(1), probably means the Rural Electrification Act of 1936, act May 20, 1936, ch. 432, 49 Stat. 1363, as amended, which is classified generally to chapter 31 (§901 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 901 of Title 7 and Tables.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2009—Subsec. (c)(2). Pub. L. 111–5, §1531(c)(3), substituted '', I, and J'' for ''and I''.

Subsec. (*l*)(4) to (6). Pub. L. 111–5, §1541(b)(1), redesignated pars. (5) and (6) as (4) and (5), respectively, and struck out former par. (4). Prior to amendment, text read as follows: ''If any clean renewable energy bond is held by a regulated investment company, the credit determined under subsection (a) shall be allowed to shareholders of such company under procedures prescribed by the Secretary.''

2008—Subsec. (c)(2). Pub. L. 110–246, §15316(c)(1), substituted ''subparts C and I'' for ''subpart C''.

Subsec. (m). Pub. L. 110–343 substituted ''December 31, 2009'' for ''December 31, 2008''.

2006—Subsec. (f)(1). Pub. L. 109–432, §202(a)(1), substituted ''$1,200,000,000'' for ''$800,000,000''.

Subsec. (f)(2). Pub. L. 109–432, §202(a)(2), substituted ''$750,000,000'' for ''$500,000,000''.

Subsec. (*l*)(2). Pub. L. 109–222 substituted ''section 149(f)(6)(A)'' for ''section 149(f)(4)(A)''.

Subsec. (*l*)(3)(B). Pub. L. 109–432, §107(b)(2), substituted ''1397E(*l*)'' for ''1397E(i)''.

Subsec. (m). Pub. L. 109–432, §202(a)(3), substituted ''2008'' for ''2007''.

2005—Subsec. (c)(2). Pub. L. 109–135, §101(b)(1), inserted '', section 1400N(*l*),'' after ''subpart C''.

Subsec. (*l*)(5) to (7). Pub. L. 109–135, §402(c)(1), redesignated pars. (6) and (7) as (5) and (6), respectively, and struck out heading and text of former par. (5). Text read as follows: ''Solely for purposes of sections 6654 and 6655, the credit allowed by this section (determined without regard to subsection (c)) to a taxpayer by reason of holding a clean renewable energy bond on a credit allowance date shall be treated as if it were a payment of estimated tax made by the taxpayer on such date.''

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1531(e), Feb. 17, 2009, 123 Stat. 360, provided that: ''The amendments made by this section [enacting subpart J of this part and section 6431 of this title and amending this section, sections 54A, 1397E, 1400N, 6211, and 6401 of this title, and section 1324 of Title 31, Money and Finance] shall apply to obligations issued after the date of the enactment of this Act [Feb. 17, 2009].''

Pub. L. 111–5, div. B, title I, §1541(c), Feb. 17, 2009, 123 Stat. 362, provided that: ''The amendments made by this section [enacting section 853A of this title and amending this section and section 54A of this title] shall apply to taxable years ending after the date of the enactment of this Act [Feb. 17, 2009].''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title I, §107(d), Oct. 3, 2008, 122 Stat. 3819, provided that: ''The amendments made by this section [enacting section 54C of this title and amending this section and section 54A of this title] shall apply to obligations issued after the date of the enactment of this Act [Oct. 3, 2008].''

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110–234, title XV, §15316(d), May 22, 2008, 122 Stat. 1512, and Pub. L. 110–246, §4(a), title XV, §15316(d), June 18, 2008, 122 Stat. 1664, 2274, provided that: ''The amendments made by this section [enacting subpart I (§54A et seq.) of part IV of subchapter A of this chapter and amending this section, sections 1397E, 1400N, 6049, and 6401 of this title, and section 1324 of Title 31, Money and Finance] shall apply to obligations issued after the date of the enactment of this Act [June 18, 2008].''

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 107(b)(2) of Pub. L. 109–432 applicable to obligations issued after Dec. 20, 2006, pursu-

ant to allocations of the national zone academy bond limitation for calendar years after 2005, see section 107(c) of Pub. L. 109–432, set out as a note under section 1397E of this title.

Pub. L. 109–432, div. A, title II, §202(b), Dec. 20, 2006, 120 Stat. 2945, provided that:

''(1) IN GENERAL.—The amendments made by paragraphs (1) and (3) of subsection (a) [amending this section] shall apply to bonds issued after December 31, 2006.

''(2) ALLOCATIONS.—The amendment made by subsection (a)(2) [amending this section] shall apply to allocations or reallocations after December 31, 2006.''

Pub. L. 109–222, title V, §508(e), May 17, 2006, 120 Stat. 362, provided that: ''The amendments made by this section [amending this section and sections 148 and 149 of this title] shall apply to bonds issued after the date of the enactment of this Act [May 17, 2006].''

EFFECTIVE DATE OF 2005 AMENDMENTS

Amendment by section 101(b)(1) of Pub. L. 109–135 applicable to taxable years ending on or after Aug. 28, 2005, see section 101(c)(1) of Pub. L. 109–135, set out as an Effective Date note under section 1400N of this title.

Amendment by section 402(c) of Pub. L. 109–135 effective as if included in the provision of the Energy Policy Act of 2005, Pub. L. 109–58, to which such amendment relates, see section 402(m)(1) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 36C of this title.

EFFECTIVE DATE

Pub. L. 109–58, title XIII, §1303(e), Aug. 8, 2005, 119 Stat. 997, as amended by Pub. L. 109–135, title IV, §402(c)(2), Dec. 21, 2005, 119 Stat. 2610, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending sections 1397E, 6049, and 6401 of this title] shall apply to bonds issued after December 31, 2005.

''(2) SUBSECTION (C).—The amendments made by subsection (c) [amending sections 1397E and 6401 of this title] shall apply to taxable years beginning after December 31, 2005.''

REGULATIONS

Pub. L. 109–58, title XIII, §1303(d), Aug. 8, 2005, 119 Stat. 997, provided that: ''The Secretary of the Treasury shall issue regulations required under section 54 of the Internal Revenue Code of 1986 (as added by this section) not later than 120 days after the date of the enactment of this Act [Aug. 8, 2005].''

SUBPART I—QUALIFIED TAX CREDIT BONDS

Sec.
54A. Credit to holders of qualified tax credit bonds.
54B. Qualified forestry conservation bonds.
54C. Qualified clean renewable energy bonds.[1]
54D. Qualified energy conservation bonds.
54E. Qualified zone academy bonds.
54F. Qualified school construction bonds.

AMENDMENTS

2009—Pub. L. 111–5, div. B, title I, §1521(b)(3), Feb. 17, 2009, 123 Stat. 357, added item 54F.

2008—Pub. L. 110–343, div. B, title I, §107(b)(3), title III, §301(b)(3), div. C, title III, §313(b)(4), Oct. 3, 2008, 122 Stat. 3819, 3844, 3872, added items 54C to 54E.

§ 54A. Credit to holders of qualified tax credit bonds

(a) Allowance of credit

If a taxpayer holds a qualified tax credit bond on one or more credit allowance dates of the bond during any taxable year, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of the credits determined under subsection (b) with respect to such dates.

(b) Amount of credit

(1) In general

The amount of the credit determined under this subsection with respect to any credit allowance date for a qualified tax credit bond is 25 percent of the annual credit determined with respect to such bond.

(2) Annual credit

The annual credit determined with respect to any qualified tax credit bond is the product of—

(A) the applicable credit rate, multiplied by

(B) the outstanding face amount of the bond.

(3) Applicable credit rate

For purposes of paragraph (2), the applicable credit rate is the rate which the Secretary estimates will permit the issuance of qualified tax credit bonds with a specified maturity or redemption date without discount and without interest cost to the qualified issuer. The applicable credit rate with respect to any qualified tax credit bond shall be determined as of the first day on which there is a binding, written contract for the sale or exchange of the bond.

(4) Special rule for issuance and redemption

In the case of a bond which is issued during the 3-month period ending on a credit allowance date, the amount of the credit determined under this subsection with respect to such credit allowance date shall be a ratable portion of the credit otherwise determined based on the portion of the 3-month period during which the bond is outstanding. A similar rule shall apply when the bond is redeemed or matures.

(c) Limitation based on amount of tax

(1) In general

The credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

(B) the sum of the credits allowable under this part (other than subparts C and J and this subpart).

(2) Carryover of unused credit

If the credit allowable under subsection (a) exceeds the limitation imposed by paragraph (1) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year (determined before the application of paragraph (1) for such succeeding taxable year).

(d) Qualified tax credit bond

For purposes of this section—

(1) Qualified tax credit bond

The term ''qualified tax credit bond'' means—

[1] So in original. Does not conform to section catchline.

(A) a qualified forestry conservation bond,
(B) a new clean renewable energy bond,
(C) a qualified energy conservation bond,
(D) a qualified zone academy bond, or
(E) a qualified school construction bond,

which is part of an issue that meets requirements of paragraphs (2), (3), (4), (5), and (6).

(2) Special rules relating to expenditures

(A) In general

An issue shall be treated as meeting the requirements of this paragraph if, as of the date of issuance, the issuer reasonably expects—

(i) 100 percent or more of the available project proceeds to be spent for 1 or more qualified purposes within the 3-year period beginning on such date of issuance, and

(ii) a binding commitment with a third party to spend at least 10 percent of such available project proceeds will be incurred within the 6-month period beginning on such date of issuance.

(B) Failure to spend required amount of bond proceeds within 3 years

(i) In general

To the extent that less than 100 percent of the available project proceeds of the issue are expended by the close of the expenditure period for 1 or more qualified purposes, the issuer shall redeem all of the nonqualified bonds within 90 days after the end of such period. For purposes of this paragraph, the amount of the nonqualified bonds required to be redeemed shall be determined in the same manner as under section 142.

(ii) Expenditure period

For purposes of this subpart, the term ''expenditure period'' means, with respect to any issue, the 3-year period beginning on the date of issuance. Such term shall include any extension of such period under clause (iii).

(iii) Extension of period

Upon submission of a request prior to the expiration of the expenditure period (determined without regard to any extension under this clause), the Secretary may extend such period if the issuer establishes that the failure to expend the proceeds within the original expenditure period is due to reasonable cause and the expenditures for qualified purposes will continue to proceed with due diligence.

(C) Qualified purpose

For purposes of this paragraph, the term ''qualified purpose'' means—

(i) in the case of a qualified forestry conservation bond, a purpose specified in section 54B(e),

(ii) in the case of a new clean renewable energy bond, a purpose specified in section 54C(a)(1),

(iii) in the case of a qualified energy conservation bond, a purpose specified in section 54D(a)(1),

(iv) in the case of a qualified zone academy bond, a purpose specified in section 54E(a)(1), and

(v) in the case of a qualified school construction bond, a purpose specified in section 54F(a)(1).

(D) Reimbursement

For purposes of this subtitle, available project proceeds of an issue shall be treated as spent for a qualified purpose if such proceeds are used to reimburse the issuer for amounts paid for a qualified purpose after the date that the Secretary makes an allocation of bond limitation with respect to such issue, but only if—

(i) prior to the payment of the original expenditure, the issuer declared its intent to reimburse such expenditure with the proceeds of a qualified tax credit bond,

(ii) not later than 60 days after payment of the original expenditure, the issuer adopts an official intent to reimburse the original expenditure with such proceeds, and

(iii) the reimbursement is made not later than 18 months after the date the original expenditure is paid.

(3) Reporting

An issue shall be treated as meeting the requirements of this paragraph if the issuer of qualified tax credit bonds submits reports similar to the reports required under section 149(e).

(4) Special rules relating to arbitrage

(A) In general

An issue shall be treated as meeting the requirements of this paragraph if the issuer satisfies the requirements of section 148 with respect to the proceeds of the issue.

(B) Special rule for investments during expenditure period

An issue shall not be treated as failing to meet the requirements of subparagraph (A) by reason of any investment of available project proceeds during the expenditure period.

(C) Special rule for reserve funds

An issue shall not be treated as failing to meet the requirements of subparagraph (A) by reason of any fund which is expected to be used to repay such issue if—

(i) such fund is funded at a rate not more rapid than equal annual installments,

(ii) such fund is funded in a manner reasonably expected to result in an amount not greater than an amount necessary to repay the issue, and

(iii) the yield on such fund is not greater than the discount rate determined under paragraph (5)(B) with respect to the issue.

(5) Maturity limitation

(A) In general

An issue shall be treated as meeting the requirements of this paragraph if the maturity of any bond which is part of such issue does not exceed the maximum term determined by the Secretary under subparagraph (B).

(B) Maximum term

During each calendar month, the Secretary shall determine the maximum term

permitted under this paragraph for bonds issued during the following calendar month. Such maximum term shall be the term which the Secretary estimates will result in the present value of the obligation to repay the principal on the bond being equal to 50 percent of the face amount of such bond. Such present value shall be determined using as a discount rate the average annual interest rate of tax-exempt obligations having a term of 10 years or more which are issued during the month. If the term as so determined is not a multiple of a whole year, such term shall be rounded to the next highest whole year.

(6) Prohibition on financial conflicts of interest

An issue shall be treated as meeting the requirements of this paragraph if the issuer certifies that—

(A) applicable State and local law requirements governing conflicts of interest are satisfied with respect to such issue, and

(B) if the Secretary prescribes additional conflicts of interest rules governing the appropriate Members of Congress, Federal, State, and local officials, and their spouses, such additional rules are satisfied with respect to such issue.

(e) Other definitions

For purposes of this subchapter—

(1) Credit allowance date

The term ''credit allowance date'' means—

(A) March 15,

(B) June 15,

(C) September 15, and

(D) December 15.

Such term includes the last day on which the bond is outstanding.

(2) Bond

The term ''bond'' includes any obligation.

(3) State

The term ''State'' includes the District of Columbia and any possession of the United States.

(4) Available project proceeds

The term ''available project proceeds'' means—

(A) the excess of—

(i) the proceeds from the sale of an issue, over

(ii) the issuance costs financed by the issue (to the extent that such costs do not exceed 2 percent of such proceeds), and

(B) the proceeds from any investment of the excess described in subparagraph (A).

(f) Credit treated as interest

For purposes of this subtitle, the credit determined under subsection (a) shall be treated as interest which is includible in gross income.

(g) S Corporations and partnerships

In the case of a tax credit bond held by an S corporation or partnership, the allocation of the credit allowed by this section to the shareholders of such corporation or partners of such partnership shall be treated as a distribution.

(h) Bonds held by real estate investment trusts

If any qualified tax credit bond is held by a real estate investment trust, the credit determined under subsection (a) shall be allowed to beneficiaries of such trust (and any gross income included under subsection (f) with respect to such credit shall be distributed to such beneficiaries) under procedures prescribed by the Secretary.

(i) Credits may be stripped

Under regulations prescribed by the Secretary—

(1) In general

There may be a separation (including at issuance) of the ownership of a qualified tax credit bond and the entitlement to the credit under this section with respect to such bond. In case of any such separation, the credit under this section shall be allowed to the person who on the credit allowance date holds the instrument evidencing the entitlement to the credit and not to the holder of the bond.

(2) Certain rules to apply

In the case of a separation described in paragraph (1), the rules of section 1286 shall apply to the qualified tax credit bond as if it were a stripped bond and to the credit under this section as if it were a stripped coupon.

(Added Pub. L. 110–234, title XV, §15316(a), May 22, 2008, 122 Stat. 1505, and Pub. L. 110–246, §4(a), title XV, §15316(a), June 18, 2008, 122 Stat. 1664, 2267; amended Pub. L. 110–343, div. B, title I, §107(b)(1), (2), title III, §301(b)(1), (2), div. C, title III, §313(b)(1), (2), Oct. 3, 2008, 122 Stat. 3818, 3819, 3843, 3844, 3872; Pub. L. 111–5, div. B, title I, §§1521(b)(1), (2), 1531(c)(2), 1541(b)(2), Feb. 17, 2009, 123 Stat. 357, 360, 362.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2009—Subsec. (c)(1)(B). Pub. L. 111–5, §1531(c)(2), substituted ''subparts C and J'' for ''subpart C''.

Subsec. (d)(1)(E). Pub. L. 111–5, §1521(b)(1), added subpar. (E).

Subsec. (d)(2)(C)(v). Pub. L. 111–5, §1521(b)(2), added cl. (v).

Subsec. (h). Pub. L. 111–5, §1541(b)(2), amended subsec. (h) generally. Prior to amendment, text read as follows: ''If any qualified tax credit bond is held by a regulated investment company or a real estate investment trust, the credit determined under subsection (a) shall be allowed to shareholders of such company or beneficiaries of such trust (and any gross income included under subsection (f) with respect to such credit shall be treated as distributed to such shareholders or beneficiaries) under procedures prescribed by the Secretary.''

2008—Subsec. (d)(1). Pub. L. 110–343, §301(b)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'qualified tax credit bond' means—

''(A) a qualified forestry conservation bond, or

''(B) a new clean renewable energy bond,

which is part of an issue that meets requirements of paragraphs (2), (3), (4), (5), and (6).''

Pub. L. 110–343, §107(b)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'qualified tax credit bond' means a qualified forestry conservation

bond which is part of an issue that meets the requirements of paragraphs (2), (3), (4), (5), and (6).''

Subsec. (d)(1)(D). Pub. L. 110–343, § 313(b)(1), added subpar. (D).

Subsec. (d)(2)(C). Pub. L. 110–343, § 301(b)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of this paragraph, the term 'qualified purpose' means—

''(i) in the case of a qualified forestry conservation bond, a purpose specified in section 54B(e), and

''(ii) in the case of a new clean renewable energy bond, a purpose specified in section 54C(a)(1).''

Pub. L. 110–343, § 107(b)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of this paragraph, the term 'qualified purpose' means a purpose specified in section 54B(e).''

Subsec. (d)(2)(C)(iv). Pub. L. 110–343, § 313(b)(2), added cl. (iv).

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, § 1521(c), Feb. 17, 2009, 123 Stat. 357, provided that: ''The amendments made by this section [enacting section 54F of this title and amending this section] shall apply to obligations issued after the date of the enactment of this Act [Feb. 17, 2009].''

Amendment by section 1531(c)(2) of Pub. L. 111–5 applicable to obligations issued after Feb. 17, 2009, see section 1531(e) of Pub. L. 111–5, set out as a note under section 54 of this title.

Amendment by section 1541(b)(2) of Pub. L. 111–5 applicable to taxable years ending after Feb. 17, 2009, see section 1541(c) of Pub. L. 111–5, set out as a note under section 54 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 107(b)(1), (2) of Pub. L. 110–343 applicable to obligations issued after Oct. 3, 2008, see section 107(d) of title I of div. B of Pub. L. 110–343, set out as a note under section 54 of this title.

Pub. L. 110–343, div. B, title III, § 301(c), Oct. 3, 2008, 122 Stat. 3844, provided that: ''The amendments made by this section [enacting section 54D of this title and amending this section] shall apply to obligations issued after the date of the enactment of this Act [Oct. 3, 2008].''

Pub. L. 110–343, div. C, title III, § 313(c), Oct. 3, 2008, 122 Stat. 3872, provided that: ''The amendments made by this section [enacting section 54E of this title and amending this section and section 1397E of this title] shall apply to obligations issued after the date of the enactment of this Act [Oct. 3, 2008].''

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.

Section applicable to obligations issued after June 18, 2008, see section 15316(d) of Pub. L. 110–246, set out as an Effective Date of 2008 Amendment note under section 54 of this title.

§ 54B. Qualified forestry conservation bonds

(a) Qualified forestry conservation bond

For purposes of this subchapter, the term ''qualified forestry conservation bond'' means any bond issued as part of an issue if—

(1) 100 percent of the available project proceeds of such issue are to be used for one or more qualified forestry conservation purposes,

(2) the bond is issued by a qualified issuer, and

(3) the issuer designates such bond for purposes of this section.

(b) Limitation on amount of bonds designated

The maximum aggregate face amount of bonds which may be designated under subsection (a) by any issuer shall not exceed the limitation amount allocated to such issuer under subsection (d).

(c) National limitation on amount of bonds designated

There is a national qualified forestry conservation bond limitation of $500,000,000.

(d) Allocations

(1) In general

The Secretary shall make allocations of the amount of the national qualified forestry conservation bond limitation described in subsection (c) among qualified forestry conservation purposes in such manner as the Secretary determines appropriate so as to ensure that all of such limitation is allocated before the date which is 24 months after the date of the enactment of this section.

(2) Solicitation of applications

The Secretary shall solicit applications for allocations of the national qualified forestry conservation bond limitation described in subsection (c) not later than 90 days after the date of the enactment of this section.

(e) Qualified forestry conservation purpose

For purposes of this section, the term ''qualified forestry conservation purpose'' means the acquisition by a State or any political subdivision or instrumentality thereof or a 501(c)(3) organization (as defined in section 150(a)(4)) from an unrelated person of forest and forest land that meets the following qualifications:

(1) Some portion of the land acquired must be adjacent to United States Forest Service Land.

(2) At least half of the land acquired must be transferred to the United States Forest Service at no net cost to the United States and not more than half of the land acquired may either remain with or be conveyed to a State.

(3) All of the land must be subject to a native fish habitat conservation plan approved by the United States Fish and Wildlife Service.

(4) The amount of acreage acquired must be at least 40,000 acres.

(f) Qualified issuer

For purposes of this section, the term ''qualified issuer'' means a State or any political subdivision or instrumentality thereof or a 501(c)(3) organization (as defined in section 150(a)(4)).

(g) Special arbitrage rule

In the case of any qualified forestry conservation bond issued as part of an issue, section 54A(d)(4)(C) shall be applied to such issue without regard to clause (i).

(h) Election to treat 50 percent of bond allocation as payment of tax

(1) In general

If—

(A) a qualified issuer receives an allocation of any portion of the national qualified

forestry conservation bond limitation described in subsection (c), and

(B) the qualified issuer elects the application of this subsection with respect to such allocation,

then the qualified issuer (without regard to whether the issuer is subject to tax under this chapter) shall be treated as having made a payment against the tax imposed by this chapter, for the taxable year preceding the taxable year in which the allocation is received, in an amount equal to 50 percent of the amount of such allocation.

(2) Treatment of deemed payment

(A) In general

Notwithstanding any other provision of this title, the Secretary shall not use the payment of tax described in paragraph (1) as an offset or credit against any tax liability of the qualified issuer but shall refund such payment to such issuer.

(B) No interest

Except as provided in paragraph (3)(A), the payment described in paragraph (1) shall not be taken into account in determining any amount of interest under this title.

(3) Requirement for, and effect of, election

(A) Requirement

No election under this subsection shall take effect unless the qualified issuer certifies to the Secretary that any payment of tax refunded to the issuer under this subsection will be used exclusively for 1 or more qualified forestry conservation purposes. If the qualified issuer fails to use any portion of such payment for such purpose, the issuer shall be liable to the United States in an amount equal to such portion, plus interest at the overpayment rate under section 6621 for the period from the date such portion was refunded to the date such amount is paid. Any such amount shall be assessed and collected in the same manner as tax imposed by this chapter, except that subchapter B of chapter 63 (relating to deficiency procedures) shall not apply in respect of such assessment or collection.

(B) Effect of election on allocation

If a qualified issuer makes the election under this subsection with respect to any allocation—

(i) the issuer may issue no bonds pursuant to the allocation, and

(ii) the Secretary may not reallocate such allocation for any other purpose.

(Added Pub. L. 110–234, title XV, §15316(a), May 22, 2008, 122 Stat. 1509, and Pub. L. 110–246, §4(a), title XV, §15316(a), June 18, 2008, 122 Stat. 1664, 2271.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (d), is the date of enactment of Pub. L. 110–246, which was approved June 18, 2008.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.

Section applicable to obligations issued after June 18, 2008, see section 15316(d) of Pub. L. 110–246, set out as an Effective Date of 2008 Amendment note under section 54 of this title.

§ 54C. New clean renewable energy bonds

(a) New clean renewable energy bond

For purposes of this subpart, the term ''new clean renewable energy bond'' means any bond issued as part of an issue if—

(1) 100 percent of the available project proceeds of such issue are to be used for capital expenditures incurred by governmental bodies, public power providers, or cooperative electric companies for one or more qualified renewable energy facilities,

(2) the bond is issued by a qualified issuer, and

(3) the issuer designates such bond for purposes of this section.

(b) Reduced credit amount

The annual credit determined under section 54A(b) with respect to any new clean renewable energy bond shall be 70 percent of the amount so determined without regard to this subsection.

(c) Limitation on amount of bonds designated

(1) In general

The maximum aggregate face amount of bonds which may be designated under subsection (a) by any issuer shall not exceed the limitation amount allocated under this subsection to such issuer.

(2) National limitation on amount of bonds designated

There is a national new clean renewable energy bond limitation of $800,000,000 which shall be allocated by the Secretary as provided in paragraph (3), except that—

(A) not more than 33⅓ percent thereof may be allocated to qualified projects of public power providers,

(B) not more than 33⅓ percent thereof may be allocated to qualified projects of governmental bodies, and

(C) not more than 33⅓ percent thereof may be allocated to qualified projects of cooperative electric companies.

(3) Method of allocation

(A) Allocation among public power providers

After the Secretary determines the qualified projects of public power providers which are appropriate for receiving an allocation of the national new clean renewable energy bond limitation, the Secretary shall, to the maximum extent practicable, make allocations among such projects in such manner that the amount allocated to each such project bears the same ratio to the cost of such project as the limitation under paragraph (2)(A) bears to the cost of all such projects.

(B) Allocation among governmental bodies and cooperative electric companies

The Secretary shall make allocations of the amount of the national new clean renewable energy bond limitation described in paragraphs (2)(B) and (2)(C) among qualified projects of governmental bodies and cooperative electric companies, respectively, in such manner as the Secretary determines appropriate.

(4) Additional limitation

The national new clean renewable energy bond limitation shall be increased by $1,600,000,000. Such increase shall be allocated by the Secretary consistent with the rules of paragraphs (2) and (3).

(d) Definitions

For purposes of this section—

(1) Qualified renewable energy facility

The term ''qualified renewable energy facility'' means a qualified facility (as determined under section 45(d) without regard to paragraphs (8) and (10) thereof and to any placed in service date) owned by a public power provider, a governmental body, or a cooperative electric company.

(2) Public power provider

The term ''public power provider'' means a State utility with a service obligation, as such terms are defined in section 217 of the Federal Power Act (as in effect on the date of the enactment of this paragraph).

(3) Governmental body

The term ''governmental body'' means any State or Indian tribal government, or any political subdivision thereof.

(4) Cooperative electric company

The term ''cooperative electric company'' means a mutual or cooperative electric company described in section 501(c)(12) or section 1381(a)(2)(C).

(5) Clean renewable energy bond lender

The term ''clean renewable energy bond lender'' means a lender which is a cooperative which is owned by, or has outstanding loans to, 100 or more cooperative electric companies and is in existence on February 1, 2002, and shall include any affiliated entity which is controlled by such lender.

(6) Qualified issuer

The term ''qualified issuer'' means a public power provider, a cooperative electric company, a governmental body, a clean renewable energy bond lender, or a not-for-profit electric utility which has received a loan or loan guarantee under the Rural Electrification Act.

(Added Pub. L. 110–343, div. B, title I, § 107(a), Oct. 3, 2008, 122 Stat. 3817; amended Pub. L. 111–5, div. B, title I, § 1111, Feb. 17, 2009, 123 Stat. 322.)

REFERENCES IN TEXT

Section 217 of the Federal Power Act, referred to in subsec. (d)(2), is classified to section 824q of Title 16, Conservation.

The date of the enactment of this paragraph, referred to in subsec. (d)(2), is the date of enactment of Pub. L. 110–343, which was approved Oct. 3, 2008.

The Rural Electrification Act, referred to in subsec. (d)(6), probably means the Rural Electrification Act of 1936, act May 20, 1936, ch. 432, 49 Stat. 1363, which is classified generally to chapter 31 (§ 901 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 901 of Title 7 and Tables.

AMENDMENTS

2009—Subsec. (c)(4). Pub. L. 111–5 added par. (4).

EFFECTIVE DATE

Section applicable to obligations issued after Oct. 3, 2008, see section 107(d) of Pub. L. 110–343, set out as an Effective Date of 2008 Amendment note under section 54 of this title.

APPLICATION OF CERTAIN LABOR STANDARDS TO PROJECTS FINANCED WITH CERTAIN TAX-FAVORED BONDS

Pub. L. 111–5, div. B, title I, § 1601, Feb. 17, 2009, 123 Stat. 362, provided that: ''Subchapter IV of chapter 31 of the [sic] title 40, United States Code, shall apply to projects financed with the proceeds of—

''(1) any new clean renewable energy bond (as defined in section 54C of the Internal Revenue Code of 1986) issued after the date of the enactment of this Act [Feb. 17, 2009],

''(2) any qualified energy conservation bond (as defined in section 54D of the Internal Revenue Code of 1986) issued after the date of the enactment of this Act,

''(3) any qualified zone academy bond (as defined in section 54E of the Internal Revenue Code of 1986) issued after the date of the enactment of this Act,

''(4) any qualified school construction bond (as defined in section 54F of the Internal Revenue Code of 1986), and

''(5) any recovery zone economic development bond (as defined in section 1400U–2 of the Internal Revenue Code of 1986).''

§ 54D. Qualified energy conservation bonds

(a) Qualified energy conservation bond

For purposes of this subchapter, the term ''qualified energy conservation bond'' means any bond issued as part of an issue if—

(1) 100 percent of the available project proceeds of such issue are to be used for one or more qualified conservation purposes,

(2) the bond is issued by a State or local government, and

(3) the issuer designates such bond for purposes of this section.

(b) Reduced credit amount

The annual credit determined under section 54A(b) with respect to any qualified energy conservation bond shall be 70 percent of the amount so determined without regard to this subsection.

(c) Limitation on amount of bonds designated

The maximum aggregate face amount of bonds which may be designated under subsection (a) by any issuer shall not exceed the limitation amount allocated to such issuer under subsection (e).

(d) National limitation on amount of bonds designated

There is a national qualified energy conservation bond limitation of $3,200,000,000.

(e) Allocations

(1) In general

The limitation applicable under subsection (d) shall be allocated by the Secretary among

the States in proportion to the population of the States.

(2) Allocations to largest local governments

(A) In general

In the case of any State in which there is a large local government, each such local government shall be allocated a portion of such State's allocation which bears the same ratio to the State's allocation (determined without regard to this subparagraph) as the population of such large local government bears to the population of such State.

(B) Allocation of unused limitation to State

The amount allocated under this subsection to a large local government may be reallocated by such local government to the State in which such local government is located.

(C) Large local government

For purposes of this section, the term ''large local government'' means any municipality or county if such municipality or county has a population of 100,000 or more.

(3) Allocation to issuers; restriction on private activity bonds

Any allocation under this subsection to a State or large local government shall be allocated by such State or large local government to issuers within the State in a manner that results in not less than 70 percent of the allocation to such State or large local government being used to designate bonds which are not private activity bonds.

(4) Special rules for bonds to implement green community programs

In the case of any bond issued for the purpose of providing loans, grants, or other repayment mechanisms for capital expenditures to implement green community programs, such bond shall not be treated as a private activity bond for purposes of paragraph (3).

(f) Qualified conservation purpose

For purposes of this section—

(1) In general

The term ''qualified conservation purpose'' means any of the following:

(A) Capital expenditures incurred for purposes of—

(i) reducing energy consumption in publicly-owned buildings by at least 20 percent,

(ii) implementing green community programs (including the use of loans, grants, or other repayment mechanisms to implement such programs),

(iii) rural development involving the production of electricity from renewable energy resources, or

(iv) any qualified facility (as determined under section 45(d) without regard to paragraphs (8) and (10) thereof and without regard to any placed in service date).

(B) Expenditures with respect to research facilities, and research grants, to support research in—

(i) development of cellulosic ethanol or other nonfossil fuels,

(ii) technologies for the capture and sequestration of carbon dioxide produced through the use of fossil fuels,

(iii) increasing the efficiency of existing technologies for producing nonfossil fuels,

(iv) automobile battery technologies and other technologies to reduce fossil fuel consumption in transportation, or

(v) technologies to reduce energy use in buildings.

(C) Mass commuting facilities and related facilities that reduce the consumption of energy, including expenditures to reduce pollution from vehicles used for mass commuting.

(D) Demonstration projects designed to promote the commercialization of—

(i) green building technology,

(ii) conversion of agricultural waste for use in the production of fuel or otherwise,

(iii) advanced battery manufacturing technologies,

(iv) technologies to reduce peak use of electricity, or

(v) technologies for the capture and sequestration of carbon dioxide emitted from combusting fossil fuels in order to produce electricity.

(E) Public education campaigns to promote energy efficiency.

(2) Special rules for private activity bonds

For purposes of this section, in the case of any private activity bond, the term ''qualified conservation purposes'' shall not include any expenditure which is not a capital expenditure.

(g) Population

(1) In general

The population of any State or local government shall be determined for purposes of this section as provided in section 146(j) for the calendar year which includes the date of the enactment of this section.

(2) Special rule for counties

In determining the population of any county for purposes of this section, any population of such county which is taken into account in determining the population of any municipality which is a large local government shall not be taken into account in determining the population of such county.

(h) Application to Indian tribal governments

An Indian tribal government shall be treated for purposes of this section in the same manner as a large local government, except that—

(1) an Indian tribal government shall be treated for purposes of subsection (e) as located within a State to the extent of so much of the population of such government as resides within such State, and

(2) any bond issued by an Indian tribal government shall be treated as a qualified energy conservation bond only if issued as part of an issue the available project proceeds of which are used for purposes for which such Indian tribal government could issue bonds to which section 103(a) applies.

(Added Pub. L. 110–343, div. B, title III, §301(a), Oct. 3, 2008, 122 Stat. 3841; amended Pub. L. 111–5, div. B, title I, §1112, Feb. 17, 2009, 123 Stat. 322.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (g)(1), is the date of enactment of Pub. L. 110–343, which was approved Oct. 3, 2008.

AMENDMENTS

2009—Subsec. (d). Pub. L. 111–5, § 1112(a), substituted ''$3,200,000,000'' for ''$800,000,000''.

Subsec. (e)(4). Pub. L. 111–5, § 1112(b)(2), added par. (4).

Subsec. (f)(1)(A)(ii). Pub. L. 111–5, § 1112(b)(1), inserted ''(including the use of loans, grants, or other repayment mechanisms to implement such programs)'' after ''green community programs''.

EFFECTIVE DATE

Section applicable to obligations issued after Oct. 3, 2008, see section 301(c) of title III of div. B of Pub. L. 110–343, set out as an Effective Date of 2008 Amendment note under section 54A of this title.

§ 54E. Qualified zone academy bonds

(a) Qualified zone academy bonds

For purposes of this subchapter, the term ''qualified zone academy bond'' means any bond issued as part of an issue if—

(1) 100 percent of the available project proceeds of such issue are to be used for a qualified purpose with respect to a qualified zone academy established by an eligible local education agency,

(2) the bond is issued by a State or local government within the jurisdiction of which such academy is located, and

(3) the issuer—

(A) designates such bond for purposes of this section,

(B) certifies that it has written assurances that the private business contribution requirement of subsection (b) will be met with respect to such academy, and

(C) certifies that it has the written approval of the eligible local education agency for such bond issuance.

(b) Private business contribution requirement

For purposes of subsection (a), the private business contribution requirement of this subsection is met with respect to any issue if the eligible local education agency that established the qualified zone academy has written commitments from private entities to make qualified contributions having a present value (as of the date of issuance of the issue) of not less than 10 percent of the proceeds of the issue.

(c) Limitation on amount of bonds designated

(1) National limitation

There is a national zone academy bond limitation for each calendar year. Such limitation is $400,000,000 for 2008, $1,400,000,000 for 2009 and 2010, and $400,000,000 for 2011 and, except as provided in paragraph (4), zero thereafter.

(2) Allocation of limitation

The national zone academy bond limitation for a calendar year shall be allocated by the Secretary among the States on the basis of their respective populations of individuals below the poverty line (as defined by the Office of Management and Budget). The limitation amount allocated to a State under the preceding sentence shall be allocated by the State education agency to qualified zone academies within such State.

(3) Designation subject to limitation amount

The maximum aggregate face amount of bonds issued during any calendar year which may be designated under subsection (a) with respect to any qualified zone academy shall not exceed the limitation amount allocated to such academy under paragraph (2) for such calendar year.

(4) Carryover of unused limitation

(A) In general

If for any calendar year—

(i) the limitation amount for any State, exceeds

(ii) the amount of bonds issued during such year which are designated under subsection (a) with respect to qualified zone academies within such State,

the limitation amount for such State for the following calendar year shall be increased by the amount of such excess.

(B) Limitation on carryover

Any carryforward of a limitation amount may be carried only to the first 2 years following the unused limitation year. For purposes of the preceding sentence, a limitation amount shall be treated as used on a first-in first-out basis.

(C) Coordination with section 1397E

Any carryover determined under section 1397E(e)(4) (relating to carryover of unused limitation) with respect to any State to calendar year 2008 or 2009 shall be treated for purposes of this section as a carryover with respect to such State for such calendar year under subparagraph (A), and the limitation of subparagraph (B) shall apply to such carryover taking into account the calendar years to which such carryover relates.

(d) Definitions

For purposes of this section—

(1) Qualified zone academy

The term ''qualified zone academy'' means any public school (or academic program within a public school) which is established by and operated under the supervision of an eligible local education agency to provide education or training below the postsecondary level if—

(A) such public school or program (as the case may be) is designed in cooperation with business to enhance the academic curriculum, increase graduation and employment rates, and better prepare students for the rigors of college and the increasingly complex workforce,

(B) students in such public school or program (as the case may be) will be subject to the same academic standards and assessments as other students educated by the eligible local education agency,

(C) the comprehensive education plan of such public school or program is approved by the eligible local education agency, and

(D)(i) such public school is located in an empowerment zone or enterprise community

(including any such zone or community designated after the date of the enactment of this section), or

(ii) there is a reasonable expectation (as of the date of issuance of the bonds) that at least 35 percent of the students attending such school or participating in such program (as the case may be) will be eligible for free or reduced-cost lunches under the school lunch program established under the National School Lunch Act.

(2) Eligible local education agency

For purposes of this section, the term ''eligible local education agency'' means any local educational agency as defined in section 9101 of the Elementary and Secondary Education Act of 1965.

(3) Qualified purpose

The term ''qualified purpose'' means, with respect to any qualified zone academy—

(A) rehabilitating or repairing the public school facility in which the academy is established,

(B) providing equipment for use at such academy,

(C) developing course materials for education to be provided at such academy, and

(D) training teachers and other school personnel in such academy.

(4) Qualified contributions

The term ''qualified contribution'' means any contribution (of a type and quality acceptable to the eligible local education agency) of—

(A) equipment for use in the qualified zone academy (including state-of-the-art technology and vocational equipment),

(B) technical assistance in developing curriculum or in training teachers in order to promote appropriate market driven technology in the classroom,

(C) services of employees as volunteer mentors,

(D) internships, field trips, or other educational opportunities outside the academy for students, or

(E) any other property or service specified by the eligible local education agency.

(Added Pub. L. 110–343, div. C, title III, §313(a), Oct. 3, 2008, 122 Stat. 3869; amended Pub. L. 111–5, div. B, title I, §1522(a), Feb. 17, 2009, 123 Stat. 358; Pub. L. 111–312, title VII, §758(a), Dec. 17, 2010, 124 Stat. 3322.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (d)(1)(D)(i), is the date of enactment of Pub. L. 110–343, which was approved Oct. 3, 2008.

The National School Lunch Act, referred to in subsec. (d)(1)(D)(ii), probably means the Richard B. Russell National School Lunch Act, act June 4, 1946, ch. 281, 60 Stat. 230, which is classified generally to chapter 13 (§1751 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of Title 42 and Tables.

Section 9101 of the Elementary and Secondary Education Act of 1965, referred to in subsec. (d)(2), is classified to section 7801 of Title 20, Education.

AMENDMENTS

2010—Subsec. (c)(1). Pub. L. 111–312 substituted ''2008,'' for ''2008 and'' and inserted ''and $400,000,000 for 2011'' after ''2010,''.

2009—Subsec. (c)(1). Pub. L. 111–5 substituted ''and $1,400,000,000 for 2009 and 2010'' for ''and 2009''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §758(c), Dec. 17, 2010, 124 Stat. 3323, provided that: ''The amendments made by this section [amending this section and section 6431 of this title] shall apply to obligations issued after December 31, 2010.''

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1522(b), Feb. 17, 2009, 123 Stat. 358, provided that: ''The amendment made by this section [amending this section] shall apply to obligations issued after December 31, 2008.''

EFFECTIVE DATE

Section applicable to obligations issued after Oct. 3, 2008, see section 313(c) of title III of div. C of Pub. L. 110–343, set out as an Effective Date of 2008 Amendment note under section 54A of this title.

§54F. Qualified school construction bonds

(a) Qualified school construction bond

For purposes of this subchapter, the term ''qualified school construction bond'' means any bond issued as part of an issue if—

(1) 100 percent of the available project proceeds of such issue are to be used for the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which such a facility is to be constructed with part of the proceeds of such issue,

(2) the bond is issued by a State or local government within the jurisdiction of which such school is located, and

(3) the issuer designates such bond for purposes of this section.

(b) Limitation on amount of bonds designated

The maximum aggregate face amount of bonds issued during any calendar year which may be designated under subsection (a) by any issuer shall not exceed the limitation amount allocated under subsection (d) for such calendar year to such issuer.

(c) National limitation on amount of bonds designated

There is a national qualified school construction bond limitation for each calendar year. Such limitation is—

(1) $11,000,000,000 for 2009,

(2) $11,000,000,000 for 2010, and

(3) except as provided in subsection (e), zero after 2010.

(d) Allocation of limitation

(1) Allocation among States

Except as provided in paragraph (2)(C), the limitation applicable under subsection (c) for any calendar year shall be allocated by the Secretary among the States in proportion to the respective amounts each such State is eligible to receive under section 1124 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333) for the most recent fiscal year ending before such calendar year. The limitation amount allocated to a State under the

preceding sentence shall be allocated by the State education agency (or such other agency as is authorized under State law to make such allocation) to issuers within such State.

(2) 40 percent of limitation allocated among largest school districts

(A) In general

40 percent of the limitation applicable under subsection (c) for any calendar year shall be allocated under subparagraph (B) by the Secretary among local educational agencies which are large local educational agencies for such year.

(B) Allocation formula

The amount to be allocated under subparagraph (A) for any calendar year shall be allocated among large local educational agencies in proportion to the respective amounts each such agency received under section 1124 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333) for the most recent fiscal year ending before such calendar year.

(C) Reduction in State allocation

The allocation to any State under paragraph (1) shall be reduced by the aggregate amount of the allocations under this paragraph to large local educational agencies within such State.

(D) Allocation of unused limitation to State

The amount allocated under this paragraph to a large local educational agency for any calendar year may be reallocated by such agency to the State in which such agency is located for such calendar year. Any amount reallocated to a State under the preceding sentence may be allocated as provided in paragraph (1).

(E) Large local educational agency

For purposes of this paragraph, the term ''large local educational agency'' means, with respect to a calendar year, any local educational agency if such agency is—

(i) among the 100 local educational agencies with the largest numbers of children aged 5 through 17 from families living below the poverty level, as determined by the Secretary using the most recent data available from the Department of Commerce that are satisfactory to the Secretary, or

(ii) 1 of not more than 25 local educational agencies (other than those described in clause (i)) that the Secretary of Education determines (based on the most recent data available satisfactory to the Secretary) are in particular need of assistance, based on a low level of resources for school construction, a high level of enrollment growth, or such other factors as the Secretary deems appropriate.

(3) Allocations to certain possessions

The amount to be allocated under paragraph (1) to any possession of the United States other than Puerto Rico shall be the amount which would have been allocated if all allocations under paragraph (1) were made on the basis of respective populations of individuals below the poverty line (as defined by the Office of Management and Budget). In making other allocations, the amount to be allocated under paragraph (1) shall be reduced by the aggregate amount allocated under this paragraph to possessions of the United States.

(4) Allocations for Indian schools

In addition to the amounts otherwise allocated under this subsection, $200,000,000 for calendar year 2009, and $200,000,000 for calendar year 2010, shall be allocated by the Secretary of the Interior for purposes of the construction, rehabilitation, and repair of schools funded by the Bureau of Indian Affairs. In the case of amounts allocated under the preceding sentence, Indian tribal governments (as defined in section 7701(a)(40)) shall be treated as qualified issuers for purposes of this subchapter.

(e) Carryover of unused limitation

If for any calendar year—

(1) the amount allocated under subsection (d) to any State, exceeds

(2) the amount of bonds issued during such year which are designated under subsection (a) pursuant to such allocation,

the limitation amount under such subsection for such State for the following calendar year shall be increased by the amount of such excess. A similar rule shall apply to the amounts allocated under paragraphs (2) and (4) of subsection (d).

(Added Pub. L. 111–5, div. B, title I, § 1521(a), Feb. 17, 2009, 123 Stat. 355; amended Pub. L. 111–147, title III, § 301(b), Mar. 18, 2010, 124 Stat. 78.)

AMENDMENTS

2010—Subsec. (d)(1). Pub. L. 111–147, § 301(b)(1), substituted ''by the State education agency (or such other agency as is authorized under State law to make such allocation)'' for ''by the State''.

Subsec. (e). Pub. L. 111–147, § 301(b)(2), substituted ''paragraphs (2) and (4) of subsection (d)'' for ''subsection (d)(4)'' in concluding provisions.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–147, title III, § 301(c)(2), Mar. 18, 2010, 124 Stat. 78, provided that: ''The amendments made by subsection (b) [amending this section] shall take effect as if included in section 1521 of the American Recovery and Reinvestment Tax Act of 2009 [Pub. L. 111–5].''

EFFECTIVE DATE

Section applicable to obligations issued after Feb. 17, 2009, see section 1521(c) of Pub. L. 111–5, set out as an Effective Date of 2009 Amendment note under section 54A of this title.

SUBPART J—BUILD AMERICA BONDS

Sec.
54AA. Build America bonds.

§ 54AA. Build America bonds

(a) In general

If a taxpayer holds a build America bond on one or more interest payment dates of the bond during any taxable year, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the

sum of the credits determined under subsection (b) with respect to such dates.

(b) Amount of credit

The amount of the credit determined under this subsection with respect to any interest payment date for a build America bond is 35 percent of the amount of interest payable by the issuer with respect to such date.

(c) Limitation based on amount of tax

(1) In general

The credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

(B) the sum of the credits allowable under this part (other than subpart C and this subpart).

(2) Carryover of unused credit

If the credit allowable under subsection (a) exceeds the limitation imposed by paragraph (1) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year (determined before the application of paragraph (1) for such succeeding taxable year).

(d) Build America bond

(1) In general

For purposes of this section, the term ''build America bond'' means any obligation (other than a private activity bond) if—

(A) the interest on such obligation would (but for this section) be excludable from gross income under section 103,

(B) such obligation is issued before January 1, 2011, and

(C) the issuer makes an irrevocable election to have this section apply.

(2) Applicable rules

For purposes of applying paragraph (1)—

(A) for purposes of section 149(b), a build America bond shall not be treated as federally guaranteed by reason of the credit allowed under subsection (a) or section 6431,

(B) for purposes of section 148, the yield on a build America bond shall be determined without regard to the credit allowed under subsection (a), and

(C) a bond shall not be treated as a build America bond if the issue price has more than a de minimis amount (determined under rules similar to the rules of section 1273(a)(3)) of premium over the stated principal amount of the bond.

(e) Interest payment date

For purposes of this section, the term ''interest payment date'' means any date on which the holder of record of the build America bond is entitled to a payment of interest under such bond.

(f) Special rules

(1) Interest on build America bonds includible in gross income for Federal income tax purposes

For purposes of this title, interest on any build America bond shall be includible in gross income.

(2) Application of certain rules

Rules similar to the rules of subsections (f), (g), (h), and (i) of section 54A shall apply for purposes of the credit allowed under subsection (a).

(g) Special rule for qualified bonds issued before 2011

In the case of a qualified bond issued before January 1, 2011—

(1) Issuer allowed refundable credit

In lieu of any credit allowed under this section with respect to such bond, the issuer of such bond shall be allowed a credit as provided in section 6431.

(2) Qualified bond

For purposes of this subsection, the term ''qualified bond'' means any build America bond issued as part of an issue if—

(A) 100 percent of the excess of—

(i) the available project proceeds (as defined in section 54A) of such issue, over

(ii) the amounts in a reasonably required reserve (within the meaning of section 150(a)(3)) with respect to such issue,

are to be used for capital expenditures, and

(B) the issuer makes an irrevocable election to have this subsection apply.

(h) Regulations

The Secretary may prescribe such regulations and other guidance as may be necessary or appropriate to carry out this section and section 6431.

(Added Pub. L. 111–5, div. B, title I, §1531(a), Feb. 17, 2009, 123 Stat. 358.)

EFFECTIVE DATE

Section applicable to obligations issued after Feb. 17, 2009, see section 1531(e) of Pub. L. 111–5, set out as an Effective Date of 2009 Amendment note under section 54 of this title.

TRANSITIONAL COORDINATION WITH STATE LAW

Pub. L. 111–5, div. B, title I, §1531(d), Feb. 17, 2009, 123 Stat. 360, provided that: ''Except as otherwise provided by a State after the date of the enactment of this Act [Feb. 17, 2009], the interest on any build America bond (as defined in section 54AA of the Internal Revenue Code of 1986, as added by this section) and the amount of any credit determined under such section with respect to such bond shall be treated for purposes of the income tax laws of such State as being exempt from Federal income tax.''

[PART V—REPEALED]

CODIFICATION

Part V, consisting of a prior section 51, was repealed by Pub. L. 94–455, title XIX, §1901(a)(7), Oct. 4, 1976, 90 Stat. 1765. See Prior Provisions note set out under section 51 of this title.

PART VI—ALTERNATIVE MINIMUM TAX

Sec.

55. Alternative minimum tax imposed.
56. Adjustments in computing alternative minimum taxable income.
57. Items of tax preference.
58. Denial of certain losses.
59. Other definitions and special rules.

§ 55. Alternative minimum tax imposed

(a) General rule

There is hereby imposed (in addition to any other tax imposed by this subtitle) a tax equal to the excess (if any) of—

(1) the tentative minimum tax for the taxable year, over

(2) the regular tax for the taxable year.

(b) Tentative minimum tax

For purposes of this part—

(1) Amount of tentative tax

(A) Noncorporate taxpayers

(i) In general

In the case of a taxpayer other than a corporation, the tentative minimum tax for the taxable year is the sum of—

(I) 26 percent of so much of the taxable excess as does not exceed $175,000, plus

(II) 28 percent of so much of the taxable excess as exceeds $175,000.

The amount determined under the preceding sentence shall be reduced by the alternative minimum tax foreign tax credit for the taxable year.

(ii) Taxable excess

For purposes of this subsection, the term ''taxable excess'' means so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount.

(iii) Married individual filing separate return

In the case of a married individual filing a separate return, clause (i) shall be applied by substituting ''$87,500'' for ''$175,000'' each place it appears. For purposes of the preceding sentence, marital status shall be determined under section 7703.

(B) Corporations

In the case of a corporation, the tentative minimum tax for the taxable year is—

(i) 20 percent of so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount, reduced by

(ii) the alternative minimum tax foreign tax credit for the taxable year.

(2) Alternative minimum taxable income

The term ''alternative minimum taxable income'' means the taxable income of the taxpayer for the taxable year—

(A) determined with the adjustments provided in section 56 and section 58, and

(B) increased by the amount of the items of tax preference described in section 57.

If a taxpayer is subject to the regular tax, such taxpayer shall be subject to the tax imposed by this section (and, if the regular tax is determined by reference to an amount other than taxable income, such amount shall be treated as the taxable income of such taxpayer for purposes of the preceding sentence).

(3) Maximum rate of tax on net capital gain of noncorporate taxpayers

The amount determined under the first sentence of paragraph (1)(A)(i) shall not exceed the sum of—

(A) the amount determined under such first sentence computed at the rates and in the same manner as if this paragraph had not been enacted on the taxable excess reduced by the lesser of—

(i) the net capital gain; or

(ii) the sum of—

(I) the adjusted net capital gain, plus

(II) the unrecaptured section 1250 gain, plus

(B) 5 percent (0 percent in the case of taxable years beginning after 2007) of so much of the adjusted net capital gain (or, if less, taxable excess) as does not exceed an amount equal to the excess described in section 1(h)(1)(B), plus

(C) 15 percent of the adjusted net capital gain (or, if less, taxable excess) in excess of the amount on which tax is determined under subparagraph (B), plus

(D) 25 percent of the amount of taxable excess in excess of the sum of the amounts on which tax is determined under the preceding subparagraphs of this paragraph.

Terms used in this paragraph which are also used in section 1(h) shall have the respective meanings given such terms by section 1(h) but computed with the adjustments under this part.

(4) Maximum rate of tax on qualified timber gain of corporations

In the case of any taxable year to which section 1201(b) applies, the amount determined under clause (i)[1] of subparagraph (B) shall not exceed the sum of—

(A) 20 percent of so much of the taxable excess (if any) as exceeds the qualified timber gain (or, if less, the net capital gain), plus

(B) 15 percent of the taxable excess in excess of the amount on which a tax is determined under subparagraph (A).

Any term used in this paragraph which is also used in section 1201 shall have the meaning given such term by such section, except to the extent such term is subject to adjustment under this part.

(c) Regular tax

(1) In general

For purposes of this section, the term ''regular tax'' means the regular tax liability for the taxable year (as defined in section 26(b)) reduced by the foreign tax credit allowable under section 27(a), the section 936 credit allowable under section 27(b), and the Puerto Rico economic activity credit under section 30A. Such term shall not include any increase in tax under section 45(e)(11)(C), 49(b) or 50(a) or subsection (j) or (k) of section 42.

(2) Coordination with income averaging for farmers and fishermen

Solely for purposes of this section, section 1301 (relating to averaging of farm and fishing

[1] So in original. Subpar. (B) has no cl. (i).

income) shall not apply in computing the regular tax liability.

(3) Cross references

For provisions providing that certain credits are not allowable against the tax imposed by this section, see sections 26(a), 30C(d)(2), and 38(c).

(d) Exemption amount

For purposes of this section—

(1) Exemption amount for taxpayers other than corporations

In the case of a taxpayer other than a corporation, the term ''exemption amount'' means—

(A) $45,000 ($72,450 in the case of taxable years beginning in 2010 and $74,450 in the case of taxable years beginning in 2011) in the case of—

(i) a joint return, or

(ii) a surviving spouse,

(B) $33,750 ($47,450 in the case of taxable years beginning in 2010 and $48,450 in the case of taxable years beginning in 2011) in the case of an individual who—

(i) is not a married individual, and

(ii) is not a surviving spouse,

(C) 50 percent of the dollar amount applicable under paragraph (1)(A) in the case of a married individual who files a separate return, and

(D) $22,500 in the case of an estate or trust.

For purposes of this paragraph, the term ''surviving spouse'' has the meaning given to such term by section 2(a), and marital status shall be determined under section 7703.

(2) Corporations

In the case of a corporation, the term ''exemption amount'' means $40,000.

(3) Phase-out of exemption amount

The exemption amount of any taxpayer shall be reduced (but not below zero) by an amount equal to 25 percent of the amount by which the alternative minimum taxable income of the taxpayer exceeds—

(A) $150,000 in the case of a taxpayer described in paragraph (1)(A) or (2),

(B) $112,500 in the case of a taxpayer described in paragraph (1)(B), and

(C) $75,000 in the case of a taxpayer described in subparagraph (C) or (D) of paragraph (1).

In the case of a taxpayer described in paragraph (1)(C), alternative minimum taxable income shall be increased by the lesser of (i) 25 percent of the excess of alternative minimum taxable income (determined without regard to this sentence) over the minimum amount of such income (as so determined) for which the exemption amount under paragraph (1)(C) is zero, or (ii) such exemption amount (determined without regard to this paragraph).

(e) Exemption for small corporations

(1) In general

(A) $7,500,000 gross receipts test

The tentative minimum tax of a corporation shall be zero for any taxable year if the corporation's average annual gross receipts for all 3-taxable-year periods ending before such taxable year does not exceed $7,500,000. For purposes of the preceding sentence, only taxable years beginning after December 31, 1993, shall be taken into account.

(B) $5,000,000 gross receipts test for first 3-year period

Subparagraph (A) shall be applied by substituting ''$5,000,000'' for ''$7,500,000'' for the first 3-taxable-year period (or portion thereof) of the corporation which is taken into account under subparagraph (A).

(C) First taxable year corporation in existence

If such taxable year is the first taxable year that such corporation is in existence, the tentative minimum tax of such corporation for such year shall be zero.

(D) Special rules

For purposes of this paragraph, the rules of paragraphs (2) and (3) of section 448(c) shall apply.

(2) Prospective application of minimum tax if small corporation ceases to be small

In the case of a corporation whose tentative minimum tax is zero for any prior taxable year by reason of paragraph (1), the application of this part for taxable years beginning with the first taxable year such corporation ceases to be described in paragraph (1) shall be determined with the following modifications:

(A) Section 56(a)(1) (relating to depreciation) and section 56(a)(5) (relating to pollution control facilities) shall apply only to property placed in service on or after the change date.

(B) Section 56(a)(2) (relating to mining exploration and development costs) shall apply only to costs paid or incurred on or after the change date.

(C) Section 56(a)(3) (relating to treatment of long-term contracts) shall apply only to contracts entered into on or after the change date.

(D) Section 56(a)(4) (relating to alternative net operating loss deduction) shall apply in the same manner as if, in section 56(d)(2), the change date were substituted for ''January 1, 1987'' and the day before the change date were substituted for ''December 31, 1986'' each place it appears.

(E) Section 56(g)(2)(B) (relating to limitation on allowance of negative adjustments based on adjusted current earnings) shall apply only to prior taxable years beginning on or after the change date.

(F) Section 56(g)(4)(A) (relating to adjustment for depreciation to adjusted current earnings) shall not apply.

(G) Subparagraphs (D) and (F) of section 56(g)(4) (relating to other earnings and profits adjustments and depletion) shall apply in the same manner as if the day before the change date were substituted for ''December 31, 1989'' each place it appears therein.

(3) Exception

The modifications in paragraph (2) shall not apply to—

(A) any item acquired by the corporation in a transaction to which section 381 applies, and

(B) any property the basis of which in the hands of the corporation is determined by reference to the basis of the property in the hands of the transferor,

if such item or property was subject to any provision referred to in paragraph (2) while held by the transferor.

(4) Change date

For purposes of paragraph (2), the change date is the first day of the first taxable year for which the taxpayer ceases to be described in paragraph (1).

(5) Limitation on use of credit for prior year minimum tax liability

In the case of a taxpayer whose tentative minimum tax for any taxable year is zero by reason of paragraph (1), section 53(c) shall be applied for such year by reducing the amount otherwise taken into account under section 53(c)(1) by 25 percent of so much of such amount as exceeds $25,000. Rules similar to the rules of section 38(c)(6)(B) shall apply for purposes of the preceding sentence.

(Added and amended Pub. L. 99–514, title II, § 252(c), title VII, § 701(a), Oct. 22, 1986, 100 Stat. 2205, 2321; Pub. L. 100–647, title I, §§ 1002(*l*)(27), 1007(a), Nov. 10, 1988, 102 Stat. 3381, 3428; Pub. L. 101–508, title XI, §§ 11102(a), 11813(b)(5), Nov. 5, 1990, 104 Stat. 1388–406, 1388–551; Pub. L. 102–318, title V, § 521(b)(1), July 3, 1992, 106 Stat. 310; Pub. L. 102–486, title XIX, § 1913(b)(2)(D), Oct. 24, 1992, 106 Stat. 3020; Pub. L. 103–66, title XIII, § 13203(a)–(c)(1), Aug. 10, 1993, 107 Stat. 461, 462; Pub. L. 104–188, title I, §§ 1205(d)(6), 1401(b)(3), 1601(b)(2)(A), Aug. 20, 1996, 110 Stat. 1776, 1788, 1832; Pub. L. 105–34, title III, § 311(b)(1), (2)(A), title IV, § 401(a), title XVI, § 1601(f)(1)(C), Aug. 5, 1997, 111 Stat. 834, 835, 843, 1090; Pub. L. 105–206, title VI, §§ 6005(d)(2), 6006(a), July 22, 1998, 112 Stat. 804, 806; Pub. L. 107–16, title VII, § 701(a), (b), June 7, 2001, 115 Stat. 148; Pub. L. 108–27, title I, § 106(a), title III, § 301(a)(1), (2)(B), (b)(2), May 28, 2003, 117 Stat. 755, 758; Pub. L. 108–311, title I, § 103(a), title IV, § 406(d), Oct. 4, 2004, 118 Stat. 1168, 1189; Pub. L. 108–357, title III, § 314(a), Oct. 22, 2004, 118 Stat. 1468; Pub. L. 109–58, title XIII, §§ 1302(b), 1322(a)(3)(H), 1341(b)(3), 1342(b)(3), Aug. 8, 2005, 119 Stat. 991, 1012, 1049, 1051; Pub. L. 109–135, title IV, §§ 403(h), 412(p), Dec. 21, 2005, 119 Stat. 2624, 2638; Pub. L. 109–222, title III, § 301(a), May 17, 2006, 120 Stat. 353; Pub. L. 110–166, § 2(a), Dec. 26, 2007, 121 Stat. 2461; Pub. L. 110–234, title XV, § 15311(b), May 22, 2008, 122 Stat. 1503; Pub. L. 110–246, § 4(a), title XV, § 15311(b), June 18, 2008, 122 Stat. 1664, 2265; Pub. L. 110–343, div. C, title I, § 102(a), Oct. 3, 2008, 122 Stat. 3863; Pub. L. 111–5, div. B, title I, §§ 1012(a), 1142(b)(5), 1144(b)(3), Feb. 17, 2009, 123 Stat. 319, 331, 332; Pub. L. 111–240, title II, § 2013(b), Sept. 27, 2010, 124 Stat. 2555; Pub. L. 111–312, title II, § 201(a), Dec. 17, 2010, 124 Stat. 3299.)

AMENDMENT OF SECTION

For termination of amendment by section 105 of Pub. L. 108–311, see Effective and Termination Dates of 2004 Amendments note below.

For termination of amendment by sections 107 and 303 of Pub. L. 108–27, see Effective and Termination Dates of 2003 Amendment notes below.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

PRIOR PROVISIONS

A prior section 55, Pub. L. 95–600, title IV, § 421(a), Nov. 6, 1978, 92 Stat. 2871; amended Pub. L. 96–222, title I, § 104(a)(4)(A)–(D), (G), (H)(i), (ii), (viii), Apr. 1, 1980, 94 Stat. 215–218; Pub. L. 96–223, title II, § 232(b)(2)(A), (c)(2), Apr. 2, 1980, 94 Stat. 276, 277; Pub. L. 96–603, § 4(a), (b), Dec. 28, 1980, 94 Stat. 3513, 3514; Pub. L. 97–34, title I, § 101(d)(1), title II, § 221(b)(1)(A), title III, § 331(d)(1)(A), Aug. 13, 1981, 95 Stat. 183, 246, 294; Pub. L. 97–248, title II, § 201(a), Sept. 3, 1982, 96 Stat. 411; Pub. L. 97–354, § 5(a)(13), Oct. 19, 1982, 96 Stat. 1693; Pub. L. 97–448, title I, § 103(g)(2)(E), title III, §§ 305(c), 306(a)(1)(B), (C), Jan. 12, 1983, 96 Stat. 2379, 2399, 2400; Pub. L. 98–369, div. A, title IV, §§ 474(q), 491(d)(1), title VI, § 612(e)(3), title VII, § 711(a)(1), (4), (5), July 18, 1984, 98 Stat. 838, 849, 912, 942, 943; Pub. L. 99–514, title XVIII, § 1847(a), Oct. 22, 1986, 100 Stat. 2856, related to alternative minimum tax for taxpayers other than corporations, prior to the general revision of this part by Pub. L. 99–514, § 701(a).

AMENDMENTS

2010—Subsec. (d)(1)(A). Pub. L. 111–312, § 201(a)(1), substituted ''$72,450 in the case of taxable years beginning in 2010 and $74,450 in the case of taxable years beginning in 2011'' for ''$70,950 in the case of taxable years beginning in 2009''.

Subsec. (d)(1)(B). Pub. L. 111–312, § 201(a)(2), substituted ''$47,450 in the case of taxable years beginning in 2010 and $48,450 in the case of taxable years beginning in 2011'' for ''$46,700 in the case of taxable years beginning in 2009''.

Subsec. (e)(5). Pub. L. 111–240 substituted ''38(c)(6)(B)'' for ''38(c)(3)(B)''.

2009—Subsec. (c)(3). Pub. L. 111–5, § 1144(b)(3), struck out ''30B(g)(2),'' after ''sections 26(a),''.

Pub. L. 111–5, § 1142(b)(5), struck out ''30(b)(3),'' after ''sections 26(a),''.

Subsec. (d)(1)(A). Pub. L. 111–5, § 1012(a)(1), substituted ''($70,950 in the case of taxable years beginning in 2009)'' for ''($69,950 in the case of taxable years beginning in 2008)''.

Subsec. (d)(1)(B). Pub. L. 111–5, § 1012(a)(2), substituted ''($46,700 in the case of taxable years beginning in 2009)'' for ''($46,200 in the case of taxable years beginning in 2008)''.

2008—Subsec. (b)(4). Pub. L. 110–246, § 15311(b), added par. (4).

Subsec. (d)(1)(A). Pub. L. 110–343, § 102(a)(1), substituted ''($69,950 in the case of taxable years beginning in 2008)'' for ''($66,250 in the case of taxable years beginning in 2007)''.

Subsec. (d)(1)(B). Pub. L. 110–343, § 102(a)(2), substituted ''($46,200 in the case of taxable years beginning in 2008)'' for ''($44,350 in the case of taxable years beginning in 2007)''.

2007—Subsec. (d)(1)(A). Pub. L. 110–166, § 2(a)(1), substituted ''($66,250 in the case of taxable years beginning in 2007)'' for ''($62,550 in the case of taxable years beginning in 2006)''.

Subsec. (d)(1)(B). Pub. L. 110–166, § 2(a)(2), substituted ''($44,350 in the case of taxable years beginning in 2007)'' for ''($42,500 in the case of taxable years beginning in 2006)''.

2006—Subsec. (d)(1)(A). Pub. L. 109–222, § 301(a)(1), substituted ''$62,550 in the case of taxable years beginning in 2006'' for ''$58,000 in the case of taxable years beginning in 2003, 2004, and 2005''.

Subsec. (d)(1)(B). Pub. L. 109–222, § 301(a)(2), substituted ''$42,500 in the case of taxable years beginning

in 2006'' for ''$40,250 in the case of taxable years beginning in 2003, 2004, and 2005''.

2005—Subsec. (c)(1). Pub. L. 109–58, §1302(b), which directed amendment of par. (1) by inserting ''45(e)(11)(C),'' after ''section'' in last sentence, was executed by making the insertion after ''section'' the first place it appeared in last sentence, to reflect the probable intent of Congress.

Subsec. (c)(2). Pub. L. 109–135, §403(h), substituted ''regular tax liability'' for ''regular tax''.

Pub. L. 109–58, §1342(b)(3), which directed amendment of par. (2) by inserting ''30C(d)(2),'' after ''30B(g)(2),'', was repealed by Pub. L. 109–135, §412(p)(3).

Pub. L. 109–58, §1341(b)(3), which directed amendment of par. (2) by inserting ''30B(g)(2),'' after ''30(b)(2),'', was repealed by Pub. L. 109–135, §412(p)(2).

Subsec. (c)(3). Pub. L. 109–135, §412(p)(1), inserted ''30B(g)(2), 30C(d)(2),'' after ''30(b)(3),''.

Pub. L. 109–58, §1322(a)(3)(H), struck out ''29(b)(6),'' after ''26(a),''.

2004—Subsec. (b)(3)(B). Pub. L. 108–311, §406(d), substituted ''an amount equal to the excess described in'' for ''the amount on which a tax is determined under''.

Subsec. (c)(2), (3). Pub. L. 108–357 added par. (2) and redesignated former par. (2) as (3).

Subsec. (d)(1)(A), (B). Pub. L. 108–311, §§103(a), 105, temporarily substituted ''2003, 2004, and 2005'' for ''2003 and 2004''. See Effective and Termination Dates of 2004 Amendments note below.

2003—Subsec. (b)(3). Pub. L. 108–27, §§301(b)(2), 303, temporarily struck out first sentence of concluding provisions which read as follows: ''In the case of taxable years beginning after December 31, 2000, rules similar to the rules of section 1(h)(2) shall apply for purposes of subparagraphs (B) and (C).'' See Effective and Termination Dates of 2003 Amendment note below.

Subsec. (b)(3)(B). Pub. L. 108–27, §§301(a)(1), 303, temporarily substituted ''5 percent (0 percent in the case of taxable years beginning after 2007)'' for ''10 percent''. See Effective and Termination Dates of 2003 Amendment note below.

Subsec. (b)(3)(C). Pub. L. 108–27, §§301(a)(2)(B), 303, temporarily substituted ''15 percent'' for ''20 percent''. See Effective and Termination Dates of 2003 Amendment note below.

Subsec. (d)(1)(A). Pub. L. 108–27, §§106(a)(1), 107, temporarily substituted ''$58,000 in the case of taxable years beginning in 2003 and 2004'' for ''$49,000 in the case of taxable years beginning in 2001, 2002, 2003, and 2004''. See Effective and Termination Dates of 2003 Amendment note below.

Subsec. (d)(1)(B). Pub. L. 108–27, §§106(a)(2), 107, temporarily substituted ''$40,250 in the case of taxable years beginning in 2003 and 2004'' for ''$35,750 in the case of taxable years beginning in 2001, 2002, 2003, and 2004''. See Effective and Termination Dates of 2003 Amendment note below.

2001—Subsec. (d)(1)(A). Pub. L. 107–16, §701(a)(1), substituted ''$45,000 ($49,000 in the case of taxable years beginning in 2001, 2002, 2003, and 2004)'' for ''$45,000''.

Subsec. (d)(1)(B). Pub. L. 107–16, §701(b)(1), struck out ''and'' at end.

Pub. L. 107–16, §701(a)(2), substituted ''$33,750 ($35,750 in the case of taxable years beginning in 2001, 2002, 2003, and 2004)'' for ''$33,750''.

Subsec. (d)(1)(C), (D). Pub. L. 107–16, §701(b)(1), added subpars. (C) and (D) and struck out former subpar. (C) which read as follows: ''$22,500 in the case of—

''(i) a married individual who files a separate return, or

''(ii) an estate or trust.''

Subsec. (d)(3). Pub. L. 107–16, §701(b)(3), in concluding provisions, substituted ''paragraph (1)(C)'' for ''paragraph (1)(C)(i)'' and ''the minimum amount of such income (as so determined) for which the exemption amount under paragraph (1)(C) is zero, or (ii) such exemption amount (determined without regard to this paragraph)'' for ''$165,000 or (ii) $22,500''.

Subsec. (d)(3)(C). Pub. L. 107–16, §701(b)(2), substituted ''subparagraph (C) or (D) of paragraph (1)'' for ''paragraph (1)(C)''.

1998—Subsec. (b)(3). Pub. L. 105–206, §6005(d)(2), reenacted par. heading without change and amended text of par. (3) generally. Prior to amendment, text read as follows: ''The amount determined under the first sentence of paragraph (1)(A)(i) shall not exceed the sum of—

''(A) the amount determined under such first sentence computed at the rates and in the same manner as if this paragraph had not been enacted on the taxable excess reduced by the lesser of—

''(i) the net capital gain, or

''(ii) the sum of—

''(I) the adjusted net capital gain, plus

''(II) the unrecaptured section 1250 gain, plus

''(B) 25 percent of the lesser of—

''(i) the unrecaptured section 1250 gain, or

''(ii) the amount of taxable excess in excess of the sum of—

''(I) the adjusted net capital gain, plus

''(II) the amount on which a tax is determined under subparagraph (A), plus

''(C) 10 percent of so much of the taxpayer's adjusted net capital gain (or, if less, taxable excess) as does not exceed the amount on which a tax is determined under section 1(h)(1)(D), plus

''(D) 20 percent of the taxpayer's adjusted net capital gain (or, if less, taxable excess) in excess of the amount on which tax is determined under subparagraph (C).

In the case of taxable years beginning after December 31, 2000, rules similar to the rules of section 1(h)(2) shall apply for purposes of subparagraphs (C) and (D). Terms used in this paragraph which are also used in section 1(h) shall have the respective meanings given such terms by section 1(h).''

Subsec. (e)(1). Pub. L. 105–206, §6006(a), reenacted par. heading without change and amended text of par. (1) generally. Prior to amendment, text read as follows: ''The tentative minimum tax of a corporation shall be zero for any taxable year if—

''(A) such corporation met the $5,000,000 gross receipts test of section 448(c) for its first taxable year beginning after December 31, 1996, and

''(B) such corporation would meet such test for the taxable year and all prior taxable years beginning after such first taxable year if such test were applied by substituting '$7,500,000' for '$5,000,000'.''

1997—Subsec. (b)(1)(A)(ii). Pub. L. 105–34, §311(b)(2)(A), substituted ''this subsection'' for ''clause (i)''.

Subsec. (b)(3). Pub. L. 105–34, §311(b)(1), added par. (3).

Subsec. (c)(1). Pub. L. 105–34, §1601(f)(1)(C), substituted ''Puerto Rico'' for ''Puerto Rican''.

Subsec. (e). Pub. L. 105–34, §401(a), added subsec. (e).

1996—Subsec. (c)(1). Pub. L. 104–188, §1601(b)(2)(A), substituted '', the section 936 credit allowable under section 27(b), and the Puerto Rican economic activity credit under section 30A'' for ''and the section 936 credit allowable under section 27(b)''.

Pub. L. 104–188, §1401(b)(3), struck out ''shall not include any tax imposed by section 402(d) and'' before ''shall not include any increase in tax under section 49(b)''.

Subsec. (c)(2). Pub. L. 104–188, §1205(d)(6), struck out ''28(d)(2),'' after ''26(a),''.

1993—Subsec. (b)(1). Pub. L. 103–66, §13203(a), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''The tentative minimum tax for the taxable year is—

''(A) 20 percent (24 percent in the case of a taxpayer other than a corporation) of so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount, reduced by

''(B) the alternative minimum tax foreign tax credit for the taxable year.''

Subsec. (d)(1). Pub. L. 103–66, §13203(b), substituted ''$45,000'' for ''$40,000'' in subpar. (A), ''$33,750'' for ''$30,000'' in subpar. (B), and ''$22,500'' for ''$20,000'' in subpar. (C).

Subsec. (d)(3). Pub. L. 103–66, §13203(c)(1), substituted ''$165,000 or (ii) $22,500'' for ''$155,000 or (ii) $20,000'' in last sentence.

1992—Subsec. (c)(1). Pub. L. 102–318 substituted ''402(d)'' for ''402(e)''.

Subsec. (c)(2). Pub. L. 102–486 substituted ''29(b)(6), 30(b)(3),'' for ''29(b)(5),''.

1990—Subsec. (b)(1)(A). Pub. L. 101–508, §11102(a), substituted ''24 percent'' for ''21 percent''.

Subsec. (c)(1). Pub. L. 101–508, §11813(b)(5), substituted ''section 49(b) or 50(a)'' for ''section 47''.

1988—Subsec. (b)(2). Pub. L. 100–647, §1007(a)(2), inserted at end ''If a taxpayer is subject to the regular tax, such taxpayer shall be subject to the tax imposed by this section (and, if the regular tax is determined by reference to an amount other than taxable income, such amount shall be treated as the taxable income of such taxpayer for purposes of the preceding sentence).''

Subsec. (c)(1). Pub. L. 100–647, §1007(a)(1), inserted ''and the section 936 credit allowable under section 27(b)'' before period at end of first sentence.

Pub. L. 100–647, §1002(*l*)(27), substituted ''subsection (j) or (k) of section 42'' for ''section 42(j)''.

Subsec. (d)(3). Pub. L. 100–647, §1007(a)(3), inserted at end ''In the case of a taxpayer described in paragraph (1)(C)(i), alternative minimum taxable income shall be increased by the lesser of (i) 25 percent of the excess of alternative minimum taxable income (determined without regard to this sentence) over $155,000, or (ii) $20,000.''

1986—Subsec. (c)(1). Pub. L. 99–514, §252(c), inserted ''or section 42(j)''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title II, §201(b), Dec. 17, 2010, 124 Stat. 3299, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009.''

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1012(b), Feb. 17, 2009, 123 Stat. 319, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008.''

Amendment by section 1142(b)(5) of Pub. L. 111–5 applicable to vehicles acquired after Feb. 17, 2009, see section 1142(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Amendment by section 1144(b)(3) of Pub. L. 111–5 applicable to taxable years beginning after Dec. 31, 2008, see section 1144(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title I, §102(b), Oct. 3, 2008, 122 Stat. 3863, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2007.''

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110–234, title XV, §15311(d), May 22, 2008, 122 Stat. 1503, and Pub. L. 110–246, §4(a), title XV, §15311(d), June 18, 2008, 122 Stat. 1664, 2265, provided that: ''The amendments made by this section [amending this section and sections 857 and 1201 of this title] shall apply to taxable years ending after the date of enactment [June 18, 2008].''

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–166, §2(b), Dec. 26, 2007, 121 Stat. 2461, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–222, title III, §301(b), May 17, 2006, 120 Stat. 353, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2005.''

EFFECTIVE DATE OF 2005 AMENDMENTS

Amendment by section 403(h) of Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

Amendment by section 1302(b) of Pub. L. 109–58 applicable to taxable years of cooperative organizations ending after Aug. 8, 2005, see section 1302(c) of Pub. L. 109–58, set out as a note under section 45 of this title.

Amendment by section 1322(a)(3)(H) of Pub. L. 109–58 applicable to credits determined under the Internal Revenue Code of 1986 for taxable years ending after Dec. 31, 2005, see section 1322(c)(1) of Pub. L. 109–58, set out as a note under section 45K of this title.

Amendment by section 1342(b)(3) of Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, in taxable years ending after such date, see section 1342(c) of Pub. L. 109–58, set out as an Effective Date note under section 30C of this title.

Amendment by section 1341(b)(3) of Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, in taxable years ending after such date, see section 1341(c) of Pub. L. 109–58, set out as an Effective Date note under section 30B of this title.

EFFECTIVE AND TERMINATION DATES OF 2004 AMENDMENTS

Pub. L. 108–357, title III, §314(c), Oct. 22, 2004, 118 Stat. 1469, provided that: ''The amendments made by this section [amending this section and section 1301 of this title] shall apply to taxable years beginning after December 31, 2003.''

Pub. L. 108–311, title I, §103(b), Oct. 4, 2004, 118 Stat. 1168, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2004.''

Amendment by section 103(a) of Pub. L. 108–311 subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, §901, to the same extent and in the same manner as the provision of such Act to which such amendment relates, see section 105 of Pub. L. 108–311, set out as a note under section 1 of this title.

Pub. L. 108–311, title IV, §406(h), Oct. 4, 2004, 118 Stat. 1190, provided that: ''The amendments made by this section [amending this section and sections 246, 529, 530, 901, 1259, and 1397E of this title] shall take effect as if included in the provisions of the Taxpayer Relief Act of 1997 [Pub. L. 105–34] to which they relate.''

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

Pub. L. 108–27, title I, §106(b), May 28, 2003, 117 Stat. 755, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2002.''

Amendment by section 106(a) of Pub. L. 108–27 subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, §901, to the same extent and in the same manner as the provision of such Act to which such amendment relates, see section 107 of Pub. L. 108–27, set out as a note under section 1 of this title.

Amendment by section 301(a)(1), (2)(B), (b)(2) of Pub. L. 108–27 applicable to taxable years ending on or after May 6, 2003, see section 301(d) of Pub. L. 108–27, set out as a note under section 1 of this title.

Amendment by section 301(a)(1), (2)(B), (b)(2) of Pub. L. 108–27 inapplicable to taxable years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 303 of

Pub. L. 108–27, as amended, set out as a note under section 1 of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Pub. L. 107–16, title VII, §701(c), June 7, 2001, 115 Stat. 148, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2000.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 311(b)(1), (2)(A) of Pub. L. 105–34 applicable to taxable years ending after May 6, 1997, see section 311(d) of Pub. L. 105–34, set out as a note under section 1 of this title.

Section 401(b) of Pub. L. 105–34 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997.''

Amendment by section 1601(f)(1)(C) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 36C of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1205(d)(6) of Pub. L. 104–188 applicable to amounts paid or incurred in taxable years ending after June 30, 1996, see section 1205(e) of Pub. L. 104–188, set out as a note under section 45K of this title.

Amendment by section 1401(b)(3) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1999, with retention of certain transition rules, see section 1401(c) of Pub. L. 104–188, set out as a note under section 402 of this title.

Amendment by section 1601(b)(2)(A) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, except as otherwise provided, see section 1601(c) of Pub. L. 104–188, set out as an Effective Date note under section 30A of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13203(d) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and section 897 of this title] shall apply to taxable years beginning after December 31, 1992.''

EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by Pub. L. 102–486 applicable to property placed in service after June 30, 1993, see section 1913(c) of Pub. L. 102–486, set out as an Effective Date note under section 30 of this title.

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

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11102(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1990.''

Amendment by section 11813(b)(5) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1002(*l*)(27) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 1007(a)(3) of Pub. L. 100–647 provided that the amendment made by that section is effective with respect to taxable years ending after Nov. 10, 1988.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to buildings placed in service after Dec. 31, 1986, in taxable years ending after such date, see section 252(e) of Pub. L. 99–514, set out as an Effective Date note under section 42 of this title.

EFFECTIVE DATE

Section 701(f) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1007(f)(2), (3), Nov. 10, 1988, 102 Stat. 3433, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section and sections 53 and 56 to 59 of this title and amending sections 5, 12, 26, 28, 29, 38, 48, 173, 174, 263, 381, 443, 703, 882, 897, 904, 936, 1016, 1363, 1366, 1561, 6154, 6425, and 6655 of this title] shall apply to taxable years beginning after December 31, 1986.

''(2) ADJUSTMENT OF NET OPERATING LOSS.—

''(A) INDIVIDUALS.—In the case of a net operating loss of an individual for a taxable year beginning after December 31, 1982, and before January 1, 1987, for purposes of determining the amount of such loss which may be carried to a taxable year beginning after December 31, 1986, for purposes of the minimum tax, such loss shall be adjusted in the manner provided in section 55(d)(2) of the Internal Revenue Code of 1954 [now 1986] as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986].

''(B) CORPORATIONS.—If the minimum tax of a corporation was deferred under section 56(b) of the Internal Revenue Code of 1954 [now 1986] (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]) for any taxable year beginning before January 1, 1987, and the amount of such tax has not been paid for any taxable year beginning before January 1, 1987, the amount of the net operating loss carryovers of such corporation which may be carried to taxable years beginning after December 31, 1986, for purposes of the minimum tax shall be reduced by the amount of tax preferences a tax on which was so deferred.

''(3) INSTALLMENT SALES.—Section 56(a)(6) of the Internal Revenue Code of 1986 (as amended by this section) shall not apply to any disposition to which the amendments made by section 811 of this Act [enacting section 453C of this title] (relating to allocation of dealer's indebtedness to installment obligations) do not apply by reason of section 811(c)(2) of this Act [enacting provisions set out as a note under section 453C of this title].

''(4) EXCEPTION FOR CHARITABLE CONTRIBUTIONS BEFORE AUGUST 16, 1986.—Section 57(a)(6) of the Internal Revenue Code of 1986 (as amended by this section) shall not apply to any deduction attributable to contributions made before August 16, 1986.

''(5) BOOK INCOME.—

''(A) IN GENERAL.—In the case of a corporation to which this paragraph applies, the amount of any increase for any taxable year under section 56(c)(1)(A) of the Internal Revenue Code of 1986 (as added by this section) shall be reduced (but not below zero) by the excess (if any) of—

''(i) 50 percent of the excess of taxable income for the 5-taxable year period ending with the taxable year preceding the 1st taxable year to which such section applies over the adjusted net book income for such period, over

''(ii) the aggregate amounts taken into account under this paragraph for preceding taxable years.

''(B) TAXPAYER TO WHOM PARAGRAPH APPLIES.—This paragraph applies to a taxpayer which was incorporated in Delaware on May 31, 1912.

''(C) TERMS.—Any term used in this paragraph which is used in section 56 of such Code (as so added) shall have the same meaning as when used in such section.

''(6) CERTAIN PUBLIC UTILITY.—

''(A) In the case of investment tax credits described in subparagraph (B) or (C), subsection 38(c)(3)(A)(ii) of the Internal Revenue Code of 1986 shall be applied by substituting '25 percent' for '75 percent', and section 38(c)(3)(B) of the Internal Revenue Code of 1986 shall be applied by substituting '75 percent' for '25 percent'.

''(B) If, on September 25, 1985, a regulated electric utility owned an undivided interest, within the range of 1,111 and 1,149, in the 'maximum dependable capacity, net, megawatts electric' of an electric generating unit located in Illinois or Mississippi for which a binding written contract was in effect on December 31, 1980, then any investment tax credit with respect to such unit shall be described in this subparagraph. The aggregate amount of investment tax credits with respect to the unit in Mississippi allowed solely by reason of being described in this subparagraph shall not exceed $141,000,000.

''(C) If, on September 25, 1985, a regulated electric utility owned an undivided interest, within the range of 1,104 and 1,111, in the 'maximum dependable capacity, net, megawatts electric' of an electric generating unit located in Louisiana for which a binding written contract was in effect on December 31, 1980, then any investment tax credit of such electric utility shall be described in this subparagraph. The aggregate amount of investment tax credits allowed solely by reason of being described by this subparagraph shall not exceed $20,000,000.

''(7) AGREEMENT VESSEL DEPRECIATION ADJUSTMENT.—

''(A) For purposes of part VI of subchapter A of chapter 1 of the Internal Revenue Code of 1986, in the case of a qualified taxpayer, alternative minimum taxable income for the taxable year shall be reduced by an amount equal to the agreement vessel depreciation adjustment.

''(B) For purposes of this paragraph, the agreement vessel depreciation adjustment shall be an amount equal to the depreciation deduction that would have been allowable for such year under section 167 of such Code with respect to agreement vessels placed in service before January 1, 1987, if the basis of such vessels had not been reduced under section 607 of the Merchant Marine Act of 1936 [see 46 U.S.C. 53510], as amended, and if depreciation with respect to such vessel had been computed using the 25-year straight-line method. The aggregate amount by which basis of a qualified taxpayer is treated as not reduced by reason of this subparagraph shall not exceed $100,000,000.

''(C) For purposes of this paragraph, the term 'qualified taxpayer' means a parent corporation incorporated in the State of Delaware on December 1, 1972, and engaged in water transportation, and includes any other corporation which is a member of the affiliated group of which the parent corporation is the common parent. No taxpayer shall be treated as a qualified corporation for any taxable year beginning after December 31, 1991.''

SAVINGS PROVISION

For provisions that nothing in amendment by section 11813(b)(5) of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

TRANSITIONAL PROVISIONS

Section 1007(f)(1) of Pub. L. 100–647 provided that: ''In the case of the taxable year of an estate or trust which begins before January 1, 1987, and ends on or after such date, the items of tax preference apportioned to any beneficiary of such estate or trust under section 58(c) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986 [Oct. 22, 1986]) shall be taken into account for purposes of determining the amount of the tax imposed by section 55 of the Internal Revenue Code of 1986 (as amended by the Tax Reform Act of 1986 [Pub. L. 99–514]) on such beneficiary for such beneficiary's taxable year in which such taxable year of the estate or trust ends.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(a) of Pub. L. 99–514 [enacting this section] notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

HIGH INCOME TAXPAYER REPORT

Section 2123 of Pub. L. 94–455, as amended by Pub. L. 98–369, div. A, title IV, §441(b)(1), July 18, 1984, 98 Stat. 815, provided that: ''The Secretary of the Treasury shall publish annually information on the amount of tax paid by individual taxpayers with high total incomes. Total income for this purpose is to be calculated and set forth by adding to adjusted gross income any items of tax preference excluded from, or deducted in arriving at, adjusted gross income, and by subtracting any investment expenses incurred in the production of such income to the extent of the investment income. These data are to include the number of such individuals with total income over $200,000 who owe no Federal income tax (after credits) and the deductions, exclusions, or credits used by them to avoid tax.''

[Section 441(b)(2) of Pub. L. 98–369 provided that: ''The amendment made by paragraph (1) [amending section 2123 of Pub. L. 94–455, set out above] shall apply to information published after the date of the enactment of this Act [July 18, 1984].'']

§ 56. Adjustments in computing alternative minimum taxable income

(a) Adjustments applicable to all taxpayers

In determining the amount of the alternative minimum taxable income for any taxable year the following treatment shall apply (in lieu of the treatment applicable for purposes of computing the regular tax):

(1) Depreciation

(A) In general

(i) Property other than certain personal property

Except as provided in clause (ii), the depreciation deduction allowable under section 167 with respect to any tangible property placed in service after December 31, 1986, shall be determined under the alternative system of section 168(g). In the case of property placed in service after December 31, 1998, the preceding sentence shall not apply but clause (ii) shall continue to apply.

(ii) 150-percent declining balance method for certain property

The method of depreciation used shall be—

(I) the 150 percent declining balance method,

(II) switching to the straight line method for the 1st taxable year for which using the straight line method with respect to the adjusted basis as of the beginning of the year will yield a higher allowance.

The preceding sentence shall not apply to any section 1250 property (as defined in section 1250(c)) (and the straight line method shall be used for such section 1250 property) or to any other property if the depreciation deduction determined under section 168 with respect to such other property for purposes of the regular tax is determined by using the straight line method.

(B) Exception for certain property

This paragraph shall not apply to property described in paragraph (1), (2), (3), or (4) of section 168(f), or in section 168(e)(3)(C)(iv).

(C) Coordination with transitional rules

(i) In general

This paragraph shall not apply to property placed in service after December 31, 1986, to which the amendments made by section 201 of the Tax Reform Act of 1986 do not apply by reason of section 203, 204, or 251(d) of such Act.

(ii) Treatment of certain property placed in service before 1987

This paragraph shall apply to any property to which the amendments made by section 201 of the Tax Reform Act of 1986 apply by reason of an election under section 203(a)(1)(B) of such Act without regard to the requirement of subparagraph (A) that the property be placed in service after December 31, 1986.

(D) Normalization rules

With respect to public utility property described in section 168(i)(10), the Secretary shall prescribe the requirements of a normalization method of accounting for this section.

(2) Mining exploration and development costs

(A) In general

With respect to each mine or other natural deposit (other than an oil, gas, or geothermal well) of the taxpayer, the amount allowable as a deduction under section 616(a) or 617(a) (determined without regard to section 291(b)) in computing the regular tax for costs paid or incurred after December 31, 1986, shall be capitalized and amortized ratably over the 10-year period beginning with the taxable year in which the expenditures were made.

(B) Loss allowed

If a loss is sustained with respect to any property described in subparagraph (A), a deduction shall be allowed for the expenditures described in subparagraph (A) for the taxable year in which such loss is sustained in an amount equal to the lesser of—

(i) the amount allowable under section 165(a) for the expenditures if they had remained capitalized, or

(ii) the amount of such expenditures which have not previously been amortized under subparagraph (A).

(3) Treatment of certain long-term contracts

In the case of any long-term contract entered into by the taxpayer on or after March 1, 1986, the taxable income from such contract shall be determined under the percentage of completion method of accounting (as modified by section 460(b)). For purposes of the preceding sentence, in the case of a contract described in section 460(e)(1), the percentage of the contract completed shall be determined under section 460(b)(1) by using the simplified procedures for allocation of costs prescribed under section 460(b)(3). The first sentence of this paragraph shall not apply to any home construction contract (as defined in section 460(e)(6)).

(4) Alternative tax net operating loss deduction

The alternative tax net operating loss deduction shall be allowed in lieu of the net operating loss deduction allowed under section 172.

(5) Pollution control facilities

In the case of any certified pollution control facility placed in service after December 31, 1986, the deduction allowable under section 169 (without regard to section 291) shall be determined under the alternative system of section 168(g). In the case of such a facility placed in service after December 31, 1998, such deduction shall be determined under section 168 using the straight line method.

(6) Adjusted basis

The adjusted basis of any property to which paragraph (1) or (5) applies (or with respect to which there are any expenditures to which paragraph (2) or subsection (b)(2) applies) shall be determined on the basis of the treatment prescribed in paragraph (1), (2), or (5), or subsection (b)(2), whichever applies.

(7) Section 87 not applicable

Section 87 (relating to alcohol fuel credit) shall not apply.

(b) Adjustments applicable to individuals

In determining the amount of the alternative minimum taxable income of any taxpayer (other

than a corporation), the following treatment shall apply (in lieu of the treatment applicable for purposes of computing the regular tax):

(1) Limitation on deductions

(A) In general

No deduction shall be allowed—

(i) for any miscellaneous itemized deduction (as defined in section 67(b)), or

(ii) for any taxes described in paragraph (1), (2), or (3) of section 164(a) or clause (ii) of section 164(b)(5)(A).

Clause (ii) shall not apply to any amount allowable in computing adjusted gross income.

(B) Medical expenses

In determining the amount allowable as a deduction under section 213, subsection (a) of section 213 shall be applied by substituting ''10 percent'' for ''7.5 percent''.

(C) Interest

In determining the amount allowable as a deduction for interest, subsections (d) and (h) of section 163 shall apply, except that—

(i) in lieu of the exception under section 163(h)(2)(D), the term ''personal interest'' shall not include any qualified housing interest (as defined in subsection (e)),

(ii) sections 163(d)(6) and 163(h)(5) (relating to phase-ins) shall not apply,

(iii) interest on any specified private activity bond (and any amount treated as interest on a specified private activity bond under section 57(a)(5)(B)), and any deduction referred to in section 57(a)(5)(A), shall be treated as includible in gross income (or as deductible) for purposes of applying section 163(d),

(iv) in lieu of the exception under section 163(d)(3)(B)(i), the term ''investment interest'' shall not include any qualified housing interest (as defined in subsection (e)), and

(v) the adjustments of this section and sections 57 and 58 shall apply in determining net investment income under section 163(d).

(D) Treatment of certain recoveries

No recovery of any tax to which subparagraph (A)(ii) applied shall be included in gross income for purposes of determining alternative minimum taxable income.

(E) Standard deduction and deduction for personal exemptions not allowed

The standard deduction under section 63(c), the deduction for personal exemptions under section 151, and the deduction under section 642(b) shall not be allowed. The preceding sentence shall not apply to so much of the standard deduction as is determined under subparagraphs (D) and (E) of section 63(c)(1).

(F) Section 68 not applicable

Section 68 shall not apply.

(2) Circulation and research and experimental expenditures

(A) In general

The amount allowable as a deduction under section 173 or 174(a) in computing the regular tax for amounts paid or incurred after December 31, 1986, shall be capitalized and—

(i) in the case of circulation expenditures described in section 173, shall be amortized ratably over the 3-year period beginning with the taxable year in which the expenditures were made, or

(ii) in the case of research and experimental expenditures described in section 174(a), shall be amortized ratably over the 10-year period beginning with the taxable year in which the expenditures were made.

(B) Loss allowed

If a loss is sustained with respect to any property described in subparagraph (A), a deduction shall be allowed for the expenditures described in subparagraph (A) for the taxable year in which such loss is sustained in an amount equal to the lesser of—

(i) the amount allowable under section 165(a) for the expenditures if they had remained capitalized, or

(ii) the amount of such expenditures which have not previously been amortized under subparagraph (A).

(C) Special rule for personal holding companies

In the case of circulation expenditures described in section 173, the adjustments provided in this paragraph shall apply also to a personal holding company (as defined in section 542).

(D) Exception for certain research and experimental expenditures

If the taxpayer materially participates (within the meaning of section 469(h)) in an activity, this paragraph shall not apply to any amount allowable as a deduction under section 174(a) for expenditures paid or incurred in connection with such activity.

(3) Treatment of incentive stock options

Section 421 shall not apply to the transfer of stock acquired pursuant to the exercise of an incentive stock option (as defined in section 422). Section 422(c)(2) shall apply in any case where the disposition and the inclusion for purposes of this part are within the same taxable year and such section shall not apply in any other case. The adjusted basis of any stock so acquired shall be determined on the basis of the treatment prescribed by this paragraph.

(c) Adjustments applicable to corporations

In determining the amount of the alternative minimum taxable income of a corporation, the following treatment shall apply:

(1) Adjustment for adjusted current earnings

Alternative minimum taxable income shall be adjusted as provided in subsection (g).

(2) Merchant marine capital construction funds

In the case of a capital construction fund established under chapter 535 of title 46, United States Code—

(A) subparagraphs (A), (B), and (C) of section 7518(c)(1) (and the corresponding provi-

sions of such chapter 535) shall not apply to—

(i) any amount deposited in such fund after December 31, 1986, or

(ii) any earnings (including gains and losses) after December 31, 1986, on amounts in such fund, and

(B) no reduction in basis shall be made under section 7518(f) (or the corresponding provisions of such chapter 535) with respect to the withdrawal from the fund of any amount to which subparagraph (A) applies.

For purposes of this paragraph, any withdrawal of deposits or earnings from the fund shall be treated as allocable first to deposits made before (and earnings received or accrued before) January 1, 1987.

(3) Special deduction for certain organizations not allowed

The deduction determined under section 833(b) shall not be allowed.

(d) Alternative tax net operating loss deduction defined

(1) In general

For purposes of subsection (a)(4), the term ''alternative tax net operating loss deduction'' means the net operating loss deduction allowable for the taxable year under section 172, except that—

(A) the amount of such deduction shall not exceed the sum of—

(i) the lesser of—

(I) the amount of such deduction attributable to net operating losses (other than the deduction described in clause (ii)(I)), or

(II) 90 percent of alternative minimum taxable income determined without regard to such deduction and the deduction under section 199, plus

(ii) the lesser of—

(I) the amount of such deduction attributable to an applicable net operating loss with respect to which an election is made under section 172(b)(1)(H), or

(II) alternative minimum taxable income determined without regard to such deduction and the deduction under section 199 reduced by the amount determined under clause (i), and

(B) in determining the amount of such deduction—

(i) the net operating loss (within the meaning of section 172(c)) for any loss year shall be adjusted as provided in paragraph (2), and

(ii) appropriate adjustments in the application of section 172(b)(2) shall be made to take into account the limitation of subparagraph (A).

(2) Adjustments to net operating loss computation

(A) Post-1986 loss years

In the case of a loss year beginning after December 31, 1986, the net operating loss for such year under section 172(c) shall—

(i) be determined with the adjustments provided in this section and section 58, and

(ii) be reduced by the items of tax preference determined under section 57 for such year.

An item of tax preference shall be taken into account under clause (ii) only to the extent such item increased the amount of the net operating loss for the taxable year under section 172(c).

(B) Pre-1987 years

In the case of loss years beginning before January 1, 1987, the amount of the net operating loss which may be carried over to taxable years beginning after December 31, 1986, for purposes of paragraph (2), shall be equal to the amount which may be carried from the loss year to the first taxable year of the taxpayer beginning after December 31, 1986.

(3) Net operating loss attributable to federally declared disasters

In the case of a taxpayer which has a qualified disaster loss (as defined by section 172(b)(1)(J)) for the taxable year, paragraph (1) shall be applied by increasing the amount determined under subparagraph (A)(ii)(I) thereof by the sum of the carrybacks and carryovers of such loss.

(e) Qualified housing interest

For purposes of this part—

(1) In general

The term ''qualified housing interest'' means interest which is qualified residence interest (as defined in section 163(h)(3)) and is paid or accrued during the taxable year on indebtedness which is incurred in acquiring, constructing, or substantially improving any property which—

(A) is the principal residence (within the meaning of section 121) of the taxpayer at the time such interest accrues, or

(B) is a qualified dwelling which is a qualified residence (within the meaning of section 163(h)(4)).

Such term also includes interest on any indebtedness resulting from the refinancing of indebtedness meeting the requirements of the preceding sentence; but only to the extent that the amount of the indebtedness resulting from such refinancing does not exceed the amount of the refinanced indebtedness immediately before the refinancing.

(2) Qualified dwelling

The term ''qualified dwelling'' means any—

(A) house,

(B) apartment,

(C) condominium, or

(D) mobile home not used on a transient basis (within the meaning of section 7701(a)(19)(C)(v)),

including all structures or other property appurtenant thereto.

(3) Special rule for indebtedness incurred before July 1, 1982

The term ''qualified housing interest'' includes interest which is qualified residence interest (as defined in section 163(h)(3)) and is paid or accrued on indebtedness which—

(A) was incurred by the taxpayer before July 1, 1982, and

(B) is secured by property which, at the time such indebtedness was incurred, was—

(i) the principal residence (within the meaning of section 121) of the taxpayer, or

(ii) a qualified dwelling used by the taxpayer (or any member of his family (within the meaning of section 267(c)(4))).

[(f) Repealed. Pub. L. 101–508, title XI, § 11801(a)(3), Nov. 5, 1990, 104 Stat. 1388–520]

(g) Adjustments based on adjusted current earnings

(1) In general

The alternative minimum taxable income of any corporation for any taxable year shall be increased by 75 percent of the excess (if any) of—

(A) the adjusted current earnings of the corporation, over

(B) the alternative minimum taxable income (determined without regard to this subsection and the alternative tax net operating loss deduction).

(2) Allowance of negative adjustments

(A) In general

The alternative minimum taxable income for any corporation of any taxable year, shall be reduced by 75 percent of the excess (if any) of—

(i) the amount referred to in subparagraph (B) of paragraph (1), over

(ii) the amount referred to in subparagraph (A) of paragraph (1).

(B) Limitation

The reduction under subparagraph (A) for any taxable year shall not exceed the excess (if any) of—

(i) the aggregate increases in alternative minimum taxable income under paragraph (1) for prior taxable years, over

(ii) the aggregate reductions under subparagraph (A) of this paragraph for prior taxable years.

(3) Adjusted current earnings

For purposes of this subsection, the term ''adjusted current earnings'' means the alternative minimum taxable income for the taxable year—

(A) determined with the adjustments provided in paragraph (4), and

(B) determined without regard to this subsection and the alternative tax net operating loss deduction.

(4) Adjustments

In determining adjusted current earnings, the following adjustments shall apply:

(A) Depreciation

(i) Property placed in service after 1989

The depreciation deduction with respect to any property placed in service in a taxable year beginning after 1989 shall be determined under the alternative system of section 168(g). The preceding sentence shall not apply to any property placed in service after December 31, 1993, and the depreciation deduction with respect to such property shall be determined under the rules of subsection (a)(1)(A).

(ii) Property to which new ACRS system applies

In the case of any property to which the amendments made by section 201 of the Tax Reform Act of 1986 apply and which is placed in service in a taxable year beginning before 1990, the depreciation deduction shall be determined—

(I) by taking into account the adjusted basis of such property (as determined for purposes of computing alternative minimum taxable income) as of the close of the last taxable year beginning before January 1, 1990, and

(II) by using the straight-line method over the remainder of the recovery period applicable to such property under the alternative system of section 168(g).

(iii) Property to which original ACRS system applies

In the case of any property to which section 168 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986 and without regard to subsection (d)(1)(A)(ii) thereof) applies and which is placed in service in a taxable year beginning before 1990, the depreciation deduction shall be determined—

(I) by taking into account the adjusted basis of such property (as determined for purposes of computing the regular tax) as of the close of the last taxable year beginning before January 1, 1990, and

(II) by using the straight line method over the remainder of the recovery period which would apply to such property under the alternative system of section 168(g).

(iv) Property placed in service before 1981

In the case of any property not described in clause (i), (ii), or (iii), the amount allowable as depreciation or amortization with respect to such property shall be determined in the same manner as for purposes of computing taxable income.

(v) Special rule for certain property

In the case of any property described in paragraph (1), (2), (3), or (4) of section 168(f), the amount of depreciation allowable for purposes of the regular tax shall be treated as the amount allowable under the alternative system of section 168(g).

(B) Inclusion of items included for purposes of computing earnings and profits

(i) In general

In the case of any amount which is excluded from gross income for purposes of computing alternative minimum taxable income but is taken into account in determining the amount of earnings and profits—

(I) such amount shall be included in income in the same manner as if such

amount were includible in gross income for purposes of computing alternative minimum taxable income, and

(II) the amount of such income shall be reduced by any deduction which would have been allowable in computing alternative minimum taxable income if such amount were includible in gross income.

The preceding sentence shall not apply in the case of any amount excluded from gross income under section 108 (or the corresponding provisions of prior law) or under section 139A or 1357. In the case of any insurance company taxable under section 831(b), this clause shall not apply to any amount not described in section 834(b).

(ii) Inclusion of buildup in life insurance contracts

In the case of any life insurance contract—

(I) the income on such contract (as determined under section 7702(g)) for any taxable year shall be treated as includible in gross income for such year, and

(II) there shall be allowed as a deduction that portion of any premium which is attributable to insurance coverage.

(iii) Tax exempt interest on certain housing bonds

Clause (i) shall not apply in the case of any interest on a bond to which section 57(a)(5)(C)(iii) applies.

(iv) Tax exempt interest on bonds issued in 2009 and 2010

(I) In general

Clause (i) shall not apply in the case of any interest on a bond issued after December 31, 2008, and before January 1, 2011.

(II) Treatment of refunding bonds

For purposes of subclause (I), a refunding bond (whether a current or advance refunding) shall be treated as issued on the date of the issuance of the refunded bond (or in the case of a series of refundings, the original bond).

(III) Exception for certain refunding bonds

Subclause (II) shall not apply to any refunding bond which is issued to refund any bond which was issued after December 31, 2003, and before January 1, 2009.

(C) Disallowance of items not deductible in computing earnings and profits

(i) In general

A deduction shall not be allowed for any item if such item would not be deductible for any taxable year for purposes of computing earnings and profits.

(ii) Special rule for certain dividends

(I) In general

Clause (i) shall not apply to any deduction allowable under section 243 or 245 for any dividend which is a 100-percent dividend or which is received from a 20-percent owned corporation (as defined in section 243(c)(2)), but only to the extent such dividend is attributable to income of the paying corporation which is subject to tax under this chapter (determined after the application of sections 30A, 936 (including subsections (a)(4), (i), and (j) thereof) and 921 (as in effect before its repeal by the FSC Repeal and Extraterritorial Income Exclusion Act of 2000)).

(II) 100-percent dividend

For purposes of subclause (I), the term ''100 percent dividend'' means any dividend if the percentage used for purposes of determining the amount allowable as a deduction under section 243 or 245 with respect to such dividend is 100 percent.

(iii) Treatment of taxes on dividends from 936 corporations

(I) In general

For purposes of determining the alternative minimum foreign tax credit, 75 percent of any withholding or income tax paid to a possession of the United States with respect to dividends received from a corporation eligible for the credit provided by section 936 shall be treated as a tax paid to a foreign country by the corporation receiving the dividend.

(II) Limitation

If the aggregate amount of the dividends referred to in subclause (I) for any taxable year exceeds the excess referred to in paragraph (1), the amount treated as tax paid to a foreign country under subclause (I) shall not exceed the amount which would be so treated without regard to this subclause multiplied by a fraction the numerator of which is the excess referred to in paragraph (1) and the denominator of which is the aggregate amount of such dividends.

(III) Treatment of taxes imposed on 936 corporation

For purposes of this clause, taxes paid by any corporation eligible for the credit provided by section 936 to a possession of the United States shall be treated as a withholding tax paid with respect to any dividend paid by such corporation to the extent such taxes would be treated as paid by the corporation receiving the dividend under rules similar to the rules of section 902 (and the amount of any such dividend shall be increased by the amount so treated).

(IV) Separate application of foreign tax credit limitations

In determining the alternative minimum foreign tax credit, section 904(d) shall be applied as if dividends from a corporation eligible for the credit provided by section 936 were a separate category of income referred to in a subparagraph of section 904(d)(1).

(V) Coordination with limitation on 936 credit

Any reference in this clause to a dividend received from a corporation eligible for the credit provided by section 936 shall be treated as a reference to the portion of any such dividend for which the dividends received deduction is disallowed under clause (i) after the application of clause (ii)(I).

(VI) Application to section 30A corporations

References in this clause to section 936 shall be treated as including references to section 30A.

(iv) Special rule for certain dividends received by certain cooperatives

In the case of an organization to which part I of subchapter T (relating to tax treatment of cooperatives) applies which is engaged in the marketing of agricultural or horticultural products, clause (i) shall not apply to any amount allowable as a deduction under section 245(c).

(v) Deduction for domestic production

Clause (i) shall not apply to any amount allowable as a deduction under section 199.

(vi) Special rule for certain distributions from controlled foreign corporations

Clause (i) shall not apply to any deduction allowable under section 965.

(D) Certain other earnings and profits adjustments

(i) Intangible drilling costs

The adjustments provided in section 312(n)(2)(A) shall apply in the case of amounts paid or incurred in taxable years beginning after December 31, 1989. In the case of a taxpayer other than an integrated oil company (as defined in section 291(b)(4)), in the case of any oil or gas well, this clause shall not apply in the case of amounts paid or incurred in taxable years beginning after December 31, 1992.

(ii) Certain amortization provisions not to apply

Sections 173 and 248 shall not apply to expenditures paid or incurred in taxable years beginning after December 31, 1989.

(iii) LIFO inventory adjustments

The adjustments provided in section 312(n)(4) shall apply, but only with respect to taxable years beginning after December 31, 1989.

(iv) Installment sales

In the case of any installment sale in a taxable year beginning after December 31, 1989, adjusted current earnings shall be computed as if the corporation did not use the installment method. The preceding sentence shall not apply to the applicable percentage (as determined under section 453A) of the gain from any installment sale with respect to which section 453A(a)(1) applies.

(E) Disallowance of loss on exchange of debt pools

No loss shall be recognized on the exchange of any pool of debt obligations for another pool of debt obligations having substantially the same effective interest rates and maturities.

(F) Depletion

(i) In general

The allowance for depletion with respect to any property placed in service in a taxable year beginning after December 31, 1989, shall be cost depletion determined under section 611.

(ii) Exception for independent oil and gas producers and royalty owners

In the case of any taxable year beginning after December 31, 1992, clause (i) (and subparagraph (C)(i)) shall not apply to any deduction for depletion computed in accordance with section 613A(c).

(G) Treatment of certain ownership changes

If—

(i) there is an ownership change (within the meaning of section 382) in a taxable year beginning after 1989 with respect to any corporation, and

(ii) there is a net unrealized built-in loss (within the meaning of section 382(h)) with respect to such corporation,

then the adjusted basis of each asset of such corporation (immediately after the ownership change) shall be its proportionate share (determined on the basis of respective fair market values) of the fair market value of the assets of such corporation (determined under section 382(h)) immediately before the ownership change.

(H) Adjusted basis

The adjusted basis of any property with respect to which an adjustment under this paragraph applies shall be determined by applying the treatment prescribed in this paragraph.

(I) Treatment of charitable contributions

Notwithstanding subparagraphs (B) and (C), no adjustment related to the earnings and profits effects of any charitable contribution shall be made in computing adjusted current earnings.

(5) Other definitions

For purposes of paragraph (4)—

(A) Earnings and profits

The term ''earnings and profits'' means earnings and profits computed for purposes of subchapter C.

(B) Treatment of alternative minimum taxable income

The treatment of any item for purposes of computing alternative minimum taxable income shall be determined without regard to this subsection.

(6) Exception for certain corporations

This subsection shall not apply to any S corporation, regulated investment company, real estate investment trust, or REMIC.

(Added Pub. L. 99–514, title VII, §701(a), Oct. 22, 1986, 100 Stat. 2322; amended Pub. L. 100–203, title X, §§10202(d), 10243(a), Dec. 22, 1987, 101 Stat. 1330–392, 1330–423; Pub. L. 100–647, title I, §§1002(a)(12), 1007(b)(1)–(14)(A), (15)–(19), title II, §§2001(c)(3)(A), 2004(b)(2), (3), title V, §5041(b)(4), title VI, §§6079(a)(1), 6303(a), Nov. 10, 1988, 102 Stat. 3355, 3428–3432, 3594, 3599, 3674, 3709, 3755; Pub. L. 101–239, title VII, §§7205(b), 7611(a)–(f)(4), 7612(c)(1), (d)(1), 7811(d)(3), 7815(e)(2), (4), Dec. 19, 1989, 103 Stat. 2335, 2371–2374, 2408, 2419; Pub. L. 101–508, title XI, §§11103(b), 11301(b), 11531(a), (b)(1), 11704(a)(1), 11801(a)(3), (c)(2)(A)–(C), (9)(G), 11812(b)(4), Nov. 5, 1990, 104 Stat. 1388–406, 1388–449, 1388–488, 1388–490, 1388–518, 1388–520, 1388–522, 1388–523, 1388–526, 1388–535; Pub. L. 102–486, title XIX, §1915(a)(2), (b)(2), (c)(1), (2), Oct. 24, 1992, 106 Stat. 3023, 3024; Pub. L. 103–66, title XIII, §§13115(a), 13171(b), 13227(c), Aug. 10, 1993, 107 Stat. 432, 454, 493; Pub. L. 104–188, title I, §§1601(b)(2)(B), (C), 1621(b)(2), 1702(c)(1), (e)(1)(A), (g)(4), (h)(12), 1704(t)(1), (48), Aug. 20, 1996, 110 Stat. 1832, 1833, 1867, 1869, 1870, 1873, 1874, 1887, 1889; Pub. L. 105–34, title III, §312(d)(1), title IV, §§402, 403(a), title XII, §1212(a), Aug. 5, 1997, 111 Stat. 839, 844, 1000; Pub. L. 105–277, div. J, title IV, §4006(c)(2), Oct. 21, 1998, 112 Stat. 2681–912; Pub. L. 106–519, §4(1), Nov. 15, 2000, 114 Stat. 2432; Pub. L. 106–554, §1(a)(7) [title III, §314(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–643; Pub. L. 107–147, title I, §102(c)(1), title IV, §417(5), Mar. 9, 2002, 116 Stat. 26, 56; Pub. L. 108–173, title XII, §1202(b), Dec. 8, 2003, 117 Stat. 2480; Pub. L. 108–311, title IV, §403(b)(4), Oct. 4, 2004, 118 Stat. 1187; Pub. L. 108–357, title I, §§101(b)(4), 102(b), title II, §248(b)(1), title IV, §422(b), title VIII, §835(b)(1), Oct. 22, 2004, 118 Stat. 1423, 1428, 1457, 1519, 1593; Pub. L. 109–58, title XIII, §1326(d), Aug. 8, 2005, 119 Stat. 1017; Pub. L. 109–135, title IV, §403(a)(14), (r)(2), Dec. 21, 2005, 119 Stat. 2619, 2628; Pub. L. 109–304, §17(e)(1), Oct. 6, 2006, 120 Stat. 1707; Pub. L. 110–172, §11(g)(1), (2), Dec. 29, 2007, 121 Stat. 2489, 2490; Pub. L. 110–289, div. C, title I, §3022(a)(2), July 30, 2008, 122 Stat. 2894; Pub. L. 110–343, div. C, title VII, §§706(b)(3), 708(c), Oct. 3, 2008, 122 Stat. 3922, 3925; Pub. L. 111–5, div. B, title I, §§1008(d), 1503(b), Feb. 17, 2009, 123 Stat. 318, 354; Pub. L. 111–92, §13(b), Nov. 6, 2009, 123 Stat. 2993; Pub. L. 111–148, title IX, §9013(c), Mar. 23, 2010, 124 Stat. 868.)

AMENDMENT OF SUBSECTION (b)(1)(B)

Pub. L. 111–148, title IX, §9013(c), (d), Mar. 23, 2010, 124 Stat. 868, provided that, applicable to taxable years beginning after Dec. 31, 2012, subsection (b)(1)(B) of this section is amended by striking ''by substituting '10 percent' for '7.5 percent''' and inserting ''without regard to subsection (f) of such section''.

REFERENCES IN TEXT

Section 201 of the Tax Reform Act of 1986, referred to in subsecs. (a)(1)(C) and (g)(4)(A)(ii), is section 201 of Pub. L. 99–514, which amended sections 46, 167, 168, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title.

Sections 203, 204, and 251(d) of such Act, referred to in subsec. (a)(1)(C), are sections 203, 204, and 251(d) of the Tax Reform Act of 1986, Pub. L. 99–514. Sections 203 and 204 are set out as notes under section 168 of this title. Section 251(d) is set out as a note under section 46 of this title.

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (g)(4)(A)(iii), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

The FSC Repeal and Extraterritorial Income Exclusion Act of 2000, referred to in subsec. (g)(4)(C)(ii)(I), is Pub. L. 106–519, Nov. 15, 2000, 114 Stat. 2423. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under section 1 of this title and Tables.

PRIOR PROVISIONS

A prior section 56, added Pub. L. 91–172, title III, §301(a), Dec. 30, 1969, 83 Stat. 580; amended Pub. L. 91–614, title V, §501(a), Dec. 31, 1970, 84 Stat. 1846; Pub. L. 92–178, title VI, §601(c)(4), (5), Dec. 10, 1971, 85 Stat. 558; Pub. L. 93–406, title II, §§2001(g)(2)(D), 2002(g)(4), 2005(c)(7), Sept. 2, 1974, 88 Stat. 957, 968, 991; Pub. L. 94–12, title II, §§203(b)(2), (3), 208(d)(2), (3), Mar. 29, 1975, 89 Stat. 30, 35; Pub. L. 94–455, title III, §301(a), (b), (c)(4)(B), Oct. 4, 1976, 90 Stat. 1549, 1552; Pub. L. 95–30, title II, §202(d)(2), May 23, 1977, 91 Stat. 148; Pub. L. 95–600, title I, §141(d), Nov. 6, 1978, 92 Stat. 2794; Pub. L. 95–618, title I, §101(b)(2), Nov. 9, 1978, 92 Stat. 3179; Pub. L. 96–222, title I, §101(a)(7)(L)(iii)(IV), Apr. 1, 1980, 94 Stat. 200; Pub. L. 97–34, title III, §331(c)(2), Aug. 13, 1981, 95 Stat. 293; Pub. L. 97–248, title II, §201(d)(1), formerly §201(c)(1), Sept. 3, 1982, 96 Stat. 419, renumbered §201(d)(1), Pub. L. 97–448, title III, §306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 98–369, div. A, title IV, §474(r)(1), July 18, 1984, 98 Stat. 839; Pub. L. 99–514, title XI, §1171(b)(3), Oct. 22, 1986, 100 Stat. 2513, related to a corporate minimum tax, prior to the general revision of this part by Pub. L. 99–514, §701(a).

AMENDMENTS

2009—Subsec. (b)(1)(E). Pub. L. 111–5, §1008(d), substituted ''subparagraphs (D) and (E) of section 63(c)(1)'' for ''section 63(c)(1)(D)''.

Subsec. (d)(1)(A)(ii)(I). Pub. L. 111–92 amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ''the amount of such deduction attributable to the sum of carrybacks of net operating losses from taxable years ending during 2001 or 2002 and carryovers of net operating losses to taxable years ending during 2001 and 2002, or''.

Subsec. (g)(4)(B)(iv). Pub. L. 111–5, §1503(b), added cl. (iv).

2008—Subsec. (b)(1)(E). Pub. L. 110–343, §706(b)(3), inserted at end ''The preceding sentence shall not apply to so much of the standard deduction as is determined under section 63(c)(1)(D).''

Subsec. (d)(3). Pub. L. 110–343, §708(c), added par. (3).

Subsec. (g)(4)(B)(iii). Pub. L. 110–289 added cl. (iii).

2007—Subsec. (g)(4)(C)(ii)(I). Pub. L. 110–172, §11(g)(1), substituted ''921 (as in effect before its repeal by the FSC Repeal and Extraterritorial Income Exclusion Act of 2000)'' for ''921''.

Subsec. (g)(4)(C)(iv). Pub. L. 110–172, §11(g)(2), which directed the amendment of section 54(g)(4)(C)(iv) of this title by substituting ''an organization to which part I of subchapter T (relating to tax treatment of cooperatives) applies which is engaged in the marketing of agricultural or horticultural products'' for ''a cooperative described in section 927(a)(4)'', was executed to this section, to reflect the probable intent of Congress.

2006—Subsec. (c)(2). Pub. L. 109–304, in introductory provisions, substituted ''chapter 535 of title 46, United States Code'' for ''section 607 of the Merchant Marine Act, 1936 (46 U.S.C. 1177)'', and, in subpars. (A) and (B), substituted ''such chapter 535'' for ''such section 607''.

2005—Subsec. (a)(1)(B). Pub. L. 109–58 inserted '', or in section 168(e)(3)(C)(iv)'' before period at end.

Subsec. (b)(1)(A)(ii). Pub. L. 109–135, §403(r)(2), inserted ''or clause (ii) of section 164(b)(5)(A)'' before period at end.

Subsec. (d)(1)(A)(i)(II), (ii)(II). Pub. L. 109–135, §403(a)(14), substituted ''such deduction and the deduction under section 199'' for ''such deduction''.

2004—Subsec. (d)(1)(A)(i)(I). Pub. L. 108–311, § 403(b)(4)(A), struck out ''attributable to carryovers'' after ''other than the deduction''.

Subsec. (d)(1)(A)(ii)(I). Pub. L. 108–311, § 403(b)(4)(B), substituted ''from taxable years'' for ''for taxable years'' and ''carryovers'' for ''carryforwards''.

Subsec. (g)(4)(B)(i). Pub. L. 108–357, § 248(b)(1), inserted ''or 1357'' after ''section 139A'' in concluding provisions.

Pub. L. 108–357, § 101(b)(4), struck out ''114 or'' before ''139A'' in concluding provisions.

Subsec. (g)(4)(C)(v). Pub. L. 108–357, § 102(b), added cl. (v).

Subsec. (g)(4)(C)(vi). Pub. L. 108–357, § 422(b), added cl. (vi).

Subsec. (g)(6). Pub. L. 108–357, § 835(b)(1), substituted ''or REMIC'' for ''REMIC, or FASIT''.

2003—Subsec. (g)(4)(B)(i). Pub. L. 108–173 inserted ''or 139A'' after ''section 114'' in concluding provisions.

2002—Subsec. (a)(1)(A)(ii). Pub. L. 107–147, § 417(5), substituted ''such section 1250'' for ''such 1250'' in concluding provisions.

Subsec. (d)(1)(A). Pub. L. 107–147, § 102(c)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''the amount of such deduction shall not exceed 90 percent of alternate minimum taxable income determined without regard to such deduction, and''.

2000—Subsec. (a)(1)(A)(ii). Pub. L. 106–554 inserted ''(and the straight line method shall be used for such 1250 property)'' before ''or to any other property'' in concluding provisions.

Subsec. (g)(4)(B)(i). Pub. L. 106–519 inserted ''or under section 114'' before the period at end of first sentence in concluding provisions.

1998—Subsec. (a)(3). Pub. L. 105–277 substituted ''section 460(b)(1)'' for ''section 460(b)(2)'' and ''section 460(b)(3)'' for ''section 460(b)(4)''.

1997—Subsec. (a)(1)(A)(i). Pub. L. 105–34, § 402(a), inserted at end ''In the case of property placed in service after December 31, 1998, the preceding sentence shall not apply but clause (ii) shall continue to apply.''

Subsec. (a)(5). Pub. L. 105–34, § 402(b), inserted at end ''In the case of such a facility placed in service after December 31, 1998, such deduction shall be determined under section 168 using the straight line method.''

Subsec. (a)(6) to (8). Pub. L. 105–34, § 403(a), redesignated pars. (7) and (8) as (6) and (7), respectively, and struck out former par. (6) which read as follows:

''(6) INSTALLMENT SALES OF CERTAIN PROPERTY.—In the case of any disposition after March 1, 1986, of any property described in section 1221(1), income from such disposition shall be determined without regard to the installment method under section 453. This paragraph shall not apply to any disposition with respect to which an election is in effect under section 453(*l*)(2)(B).''

Subsec. (e)(1)(A), (3)(B)(i). Pub. L. 105–34, § 312(d)(1), substituted ''section 121'' for ''section 1034''.

Subsec. (g)(4)(B)(i). Pub. L. 105–34, § 1212(a), inserted at end of concluding provisions ''In the case of any insurance company taxable under section 831(b), this clause shall not apply to any amount not described in section 834(b).''

1996—Subsec. (b)(3). Pub. L. 104–188, § 1702(h)(12), provided that the amendment made by section 11801(c)(9)(G)(ii) of Pub. L. 101–508 shall be applied as if it struck ''Section 422A(c)(2)'' and inserted ''Section 422(c)(2)''. See 1990 Amendment note below.

Subsec. (d)(1)(B)(ii). Pub. L. 101–508, § 1702(e)(1)(A), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''in the case of taxable years beginning after December 31, 1986, section 172(b)(2) shall be applied by substituting '90 percent of alternative minimum taxable income determined without regard to the alternative tax net operating loss deduction' for 'taxable income' each place it appears.''

Subsec. (g)(1), (2)(A). Pub. L. 104–188, § 1704(t)(48), provided that section 11801(c)(2)(B) of Pub. L. 101–508 shall be applied as if ''section 56(g)'' appeared instead of ''section 59(g)''. See 1990 Amendment note below.

Subsec. (g)(4)(C)(ii)(I). Pub. L. 104–188, § 1601(b)(2)(B), inserted ''30A,'' before ''936'' and substituted '', (i), and (j)'' for ''and (i)''.

Subsec. (g)(4)(C)(ii)(II). Pub. L. 104–188, § 1704(t)(1), substituted ''of subclause'' for ''of the subclause''.

Subsec. (g)(4)(C)(iii)(VI). Pub. L. 104–188, § 1601(b)(2)(C), added subcl. (VI).

Subsec. (g)(4)(D)(iii). Pub. L. 104–188, § 1702(g)(4), inserted '', but only with respect to taxable years beginning after December 31, 1989'' before period at end.

Subsec. (g)(4)(H) to (J). Pub. L. 104–188, § 1702(c)(1), redesignated subpars. (I) and (J) as (H) and (I), respectively.

Subsec. (g)(6). Pub. L. 104–188, § 1621(b)(2), substituted ''REMIC, or FASIT'' for ''or REMIC''.

1993—Subsec. (g)(4)(A)(i). Pub. L. 103–66, § 13115(a), inserted at end ''The preceding sentence shall not apply to any property placed in service after December 31, 1993, and the depreciation deduction with respect to such property shall be determined under the rules of subsection (a)(1)(A).''

Subsec. (g)(4)(C)(ii)(I). Pub. L. 103–66, § 13227(c)(1), substituted ''sections 936 (including subsections (a)(4) and (i) thereof) and 921'' for ''sections 936 and 921''.

Subsec. (g)(4)(C)(iii)(IV), (V). Pub. L. 103–66, § 13227(c)(2), added subcls. (IV) and (V).

Subsec. (g)(4)(J). Pub. L. 103–66, § 13171(b), added subpar. (J).

1992—Subsec. (d)(1)(A). Pub. L. 102–486, § 1915(c)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''the amount of such deduction shall not exceed the excess (if any) of—

''(i) 90 percent of alternative minimum taxable income determined without regard to such deduction and the deduction under subsection (h), over

''(ii) the deduction under subsection (h), and''.

Subsec. (g)(4)(D)(i). Pub. L. 102–486, § 1915(b)(2), inserted at end ''In the case of a taxpayer other than an integrated oil company (as defined in section 291(b)(4)), in the case of any oil or gas well, this clause shall not apply in the case of amounts paid or incurred in taxable years beginning after December 31, 1992.''

Subsec. (g)(4)(F). Pub. L. 102–486, § 1915(a)(2), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: ''The allowance for depletion with respect to any property placed in service in a taxable year beginning after 1989 shall be cost depletion determined under section 611.''

Subsec. (h). Pub. L. 102–486, § 1915(c)(1), struck out subsec. (h) which related to adjustment based on energy preferences.

1990—Subsec. (a)(1)(D). Pub. L. 101–508, § 11812(b)(4), substituted ''section 168(i)(10)'' for ''section 167(*l*)(3)(A)''.

Subsec. (b)(1)(F). Pub. L. 101–508, § 11103(b), added subpar. (F).

Subsec. (b)(3). Pub. L. 101–508, § 11801(c)(9)(G)(i), substituted ''section 422'' for ''section 422A''.

Pub. L. 101–508, § 11801(c)(9)(G)(ii), which directed the substitution of ''section 422(c)(2)'' for ''section 422A(c)(2)'', was executed by substituting ''Section 422(c)(2)'' for ''Section 422A(c)(2)''. See 1996 Amendment note above.

Subsec. (c)(1). Pub. L. 101–508, § 11801(c)(2)(A), substituted heading for one which read: ''Adjustment for book income or adjusted current earnings'' and amended text generally. Prior to amendment, text read as follows:

''(A) BOOK INCOME ADJUSTMENT.—For taxable years beginning in 1987, 1988, and 1989, alternative minimum taxable income shall be adjusted as provided under subsection (f).

''(B) ADJUSTED CURRENT EARNINGS.—For taxable years beginning after 1989, alternative minimum taxable income shall be adjusted as provided under subsection (g).''

Subsec. (d)(1)(A). Pub. L. 101–508, § 11531(b)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''the amount of such deduction shall not exceed 90 percent of alternative minimum taxable income determined without regard to such deduction, and''.

Subsec. (f). Pub. L. 101–508, § 11801(a)(3), struck out subsec. (f) which related to adjustments for book in-

come of corporations with respect to minimum taxable income, adjusted net book income, adjustments for certain taxes, special rules for related corporations for consolidated returns, treatment of dividends, statements covering different periods, special rule for cooperatives, treatment and limitation of taxes on dividends from 936 corporations, rules for Alaska native corporations, special rules for life insurance companies, exclusion of certain income from transfer of stock for debt, secretarial authority to adjust items, applicable financial statements, earnings and profits used, special rules for more than one statement and exception for certain corporations.

Subsec. (g)(1), (2)(A). Pub. L. 101–508, §11801(c)(2)(B), which directed that pars. (1) and (2) ''of section 59(g) are each amended by striking 'beginning after 1989' '', was executed to pars. (1) and (2)(A) of subsec. (g) of this section after ''any taxable year''. See 1996 Amendment note above.

Subsec. (g)(4)(C)(iii). Pub. L. 101–508, §11801(c)(2)(C), substituted heading for one which read: ''Special rule for dividends from section 936 companies'' and amended text generally. Prior to amendment, text read as follows: ''In the case of any dividend received from a corporation eligible for the credit provided by section 936, rules similar to the rules of subparagraph (F) of subsection (f)(1) shall apply, except that '75 percent' shall be substituted for '50 percent' in clause (i) thereof.''

Subsec. (g)(4)(D)(ii). Pub. L. 101–508, §11704(a)(1), substituted ''years'' for ''year''.

Subsec. (g)(4)(F) to (H). Pub. L. 101–508, §11301(b), redesignated subpars. (G) and (H) as (F) and (G), respectively, and struck out former subpar. (F) which provided that acquisition expenses for life insurance companies be capitalized and amortized in accordance with the treatment generally required under generally accepted accounting principles as if this subparagraph applied to all taxable years.

Subsec. (h). Pub. L. 101–508, §11531(a), added subsec. (h).

1989—Subsec. (a)(3). Pub. L. 101–239, §7815(e)(2)(B), substituted ''The first sentence of this paragraph shall not'' for ''The preceding sentence shall not''.

Pub. L. 101–239, §7815(e)(2)(A), made clarifying amendment to directory language of Pub. L. 100–647, §5041(b)(4), see 1988 Amendment note below.

Pub. L. 101–239, §7612(c)(1), struck out ''with respect to which the requirements of clauses (i) and (ii) of section 460(e)(1)(B) are met'' after ''section 460(e)(6))''.

Subsec. (b)(2)(D). Pub. L. 101–239, §7612(d)(1), added subpar. (D).

Subsec. (b)(3). Pub. L. 101–239, §7811(d)(3), inserted after first sentence ''Section 422A(c)(2) shall apply in any case where the disposition and the inclusion for purposes of this part are within the same taxable year and such section shall not apply in any other case.'' and substituted ''this paragraph'' for ''the preceding sentence'' in last sentence.

Subsec. (g)(4)(A)(i). Pub. L. 101–239, §7611(a)(1)(A), amended cl. (i) generally. Prior to amendment cl. (i) read as follows: ''The depreciation deduction with respect to any property placed in service in a taxable year beginning after 1989 shall be determined under whichever of the following methods yields deductions with a smaller present value:

''(I) The alternative system of section 168(g), or

''(II) The method used for book purposes.''

Subsec. (g)(4)(A)(iii). Pub. L. 101–239, §7611(a)(2), inserted ''and which is placed in service in a taxable year beginning before 1990'' after ''thereof) applies''.

Subsec. (g)(4)(A)(v) to (vii). Pub. L. 101–239, §7611(a)(1)(B), redesignated cl. (vii) as (v), and struck out former cl. (v), which related to use of slower method if used for book purposes, and cl. (vi), which related to election to have cumulative limitation.

Subsec. (g)(4)(B)(i). Pub. L. 101–239, §7611(f)(2), inserted at end ''The preceding sentence shall not apply in the case of any amount excluded from gross income under section 108 (or the corresponding provisions of prior law).''

Subsec. (g)(4)(B)(iii). Pub. L. 101–239, §7611(f)(3), repealed cl. (iii) which read as follows: ''In the case of any annuity contract, the income on such contract (as determined under section 72(u)(2)) shall be treated as includible in gross income for such year. The preceding sentence shall not apply to any annuity contract which is held under a plan described in section 403(a) or which is described in section 72(u)(3)(C).''

Subsec. (g)(4)(C)(ii). Pub. L. 101–239, §7611(d), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''Clause (i) shall not apply to any deduction allowable under section 243 or 245 for a 100-percent dividend—

''(I) if the corporation receiving such dividend and the corporation paying such dividend could not be members of the same affiliated group under section 1504 by reason of section 1504(b),

''(II) but only to the extent such dividend is attributable to income of the paying corporation which is subject to tax under this chapter (determined after the application of sections 936 and 921).

For purposes of the preceding sentence, the term '100 percent dividend' means any dividend if the percentage used for purposes of determining the amount allowable as a deduction under section 243 or 245 with respect to such dividend is 100 percent.''

Subsec. (g)(4)(C)(iv). Pub. L. 101–239, §7611(e), added cl. (iv).

Subsec. (g)(4)(D). Pub. L. 101–239, §7611(b), amended subpar. (D) generally, in cl. (i), substituting provisions directing that adjustments in section 312(n)(2)(A) be applied, for provisions directing adjustments in section 312(n) be applied, with certain exceptions, in cl. (ii), substituting provisions directing that sections 173 and 248 not apply to expenditures paid or incurred in taxable years beginning after December 31, 1989, for material relating to special rule for intangible drilling costs and mineral exploration and development costs, and adding cls. (iii) and (iv).

Subsec. (g)(4)(D)(i)(IV), (V). Pub. L. 101–239, §7815(e)(4), added subcl. (IV) relating to inapplicability of pars. (6) to (8) and struck out former subcls. (IV) and (V), which read as follows:

''(IV) paragraph (6) shall apply only to contracts entered into on or after March 1, 1986, and

''(V) paragraphs (7) and (8) shall not apply.''

Subsec. (g)(4)(G). Pub. L. 101–239, §7611(c), amended subpar. (G) generally. Prior to amendment, subpar. (G) read as follows: ''The allowances for depletion with respect to any property placed in service in a taxable year beginning after 1989, shall be determined under whichever of the following methods yields deductions with a smaller present value:

''(i) cost depletion determined under section 611, or

''(ii) the method used for book purposes.''

Subsec. (g)(4)(H). Pub. L. 101–239, §7205(b), added cl. (ii) and concluding provision and struck out former cl. (ii) and concluding provision which read as follows:

''(ii)(I) the aggregate adjusted bases of the assets of such corporation (immediately after the change), exceed

''(II) the value of the stock of such corporation (as determined for purposes of section 382), properly adjusted for liabilities and other relevant items,

then the adjusted basis of each asset of such corporation (as of such time) shall be its proportionate share (determined on the basis of respective fair market values) of the amount referred to in clause (ii)(II).''

Subsec. (g)(4)(H)(i). Pub. L. 101–239, §7611(f)(1), substituted ''in a taxable year beginning after 1989'' for ''after the date of the enactment of the Tax Reform Act of 1986''.

Subsec. (g)(5)(A). Pub. L. 101–239, §7611(f)(4), redesignated subpar. (B) as (A) and struck out former subpar. (A) which defined ''book purposes''.

Subsec. (g)(5)(B). Pub. L. 101–239, §7611(f)(4), redesignated subpar. (D) as (B). Former subpar. (B) redesignated (A).

Subsec. (g)(5)(C). Pub. L. 101–239, §7611(f)(4), struck out subpar. (C) which read as follows: ''PRESENT

VALUE.—Present value shall be determined as of the time the property is placed in service (or, if later, as of the beginning of the first taxable year beginning after 1989) and under regulations prescribed by the Secretary.''

Subsec. (g)(5)(D). Pub. L. 101–239, §7611(f)(4), redesignated subpar. (D) as (B).

1988—Subsec. (a)(1)(A)(i). Pub. L. 100–647, §1007(b)(15), substituted ''personal'' for ''real'' in heading.

Subsec. (a)(1)(C)(i). Pub. L. 100–647, §1002(a)(12), inserted ''by reason of section 203, 204, or 251(d) of such Act'' after ''do not apply''.

Subsec. (a)(3). Pub. L. 100–647, §5041(b)(4), as amended by Pub. L. 101–239, §7815(e)(2)(A), inserted at end ''The preceding sentence shall not apply to any home construction contract (as defined in section 460(e)(6)) with respect to which the requirements of clauses (i) and (ii) of section 460(e)(1)(B) are met.''

Pub. L. 100–647, §1007(b)(1), inserted at end ''For purposes of the preceding sentence, in the case of a contract described in section 460(e)(1), the percentage of the contract completed shall be determined under section 460(b)(2) by using the simplified procedures for allocation of costs prescribed under section 460(b)(4).''

Subsec. (a)(8). Pub. L. 100–647, §1007(b)(19), added par. (8).

Subsec. (b)(1). Pub. L. 100–647, §1007(b)(16), struck out ''itemized'' after ''Limitation on'' in heading.

Subsec. (b)(1)(C)(ii). Pub. L. 100–647, §2004(b)(2), substituted ''163(h)(5)'' for ''163(h)(6)''.

Subsec. (b)(1)(C)(iii). Pub. L. 100–647, §1007(b)(4), substituted ''specified private activity bond'' for ''specified activity bond'' before ''under'', and ''57(a)(5)(B)'' for ''56(a)(5)(B)''.

Subsec. (b)(1)(C)(iv), (v). Pub. L. 100–647, §1007(b)(3), added cls. (iv) and (v).

Subsec. (b)(1)(E). Pub. L. 100–647, §1007(b)(2), substituted ''and deduction for personal exemptions not allowed'' for ''not allowed'' in heading and amended text generally. Prior to amendment, text read as follows: ''The standard deduction provided in section 63(c) shall not be allowed.''

Subsec. (b)(3). Pub. L. 100–647, §1007(b)(14)(A), added par. (3).

Subsec. (c)(1). Pub. L. 100–647, §1007(b)(13)(A), substituted ''adjusted current earnings'' for ''adjusted earnings and profits'' in heading.

Subsec. (c)(1)(B). Pub. L. 100–647, §1007(b)(13)(B), substituted ''Adjusted current earnings'' for ''Adjusted earnings and profits'' in heading.

Subsec. (d)(2)(A). Pub. L. 100–647, §1007(b)(5), struck out ''(other than subsection (a)(6) thereof)'' after ''for such year'' in cl. (ii) and inserted sentence at end providing that an item of tax preference shall be taken into account under clause (ii).

Subsec. (e)(1). Pub. L. 100–647, §2004(b)(3)(A), substituted ''improving'' for ''rehabilitating'' in introductory text.

Pub. L. 100–647, §1007(b)(6)(A)(i), inserted ''qualified residence interest (as defined in section 163(h)(3)) and is'' after ''interest which is'' in introductory text.

Subsec. (e)(1)(A). Pub. L. 100–647, §2004(b)(3)(B), struck out ''or is paid'' after ''accrues''.

Subsec. (e)(1)(B). Pub. L. 100–647, §1007(b)(6)(A)(ii), substituted ''section 163(h)(4)'' for ''section 163(h)(3)''.

Subsec. (e)(3). Pub. L. 100–647, §1007(b)(6)(B), substituted ''interest which is qualified residence interest (as defined in section 163(h)(3)) and is paid or accrued'' for ''interest paid or accrued''.

Subsec. (f)(2)(B). Pub. L. 100–647, §2001(c)(3)(A), inserted at end ''No adjustment shall be made under this subparagraph for the tax imposed by section 59A.''

Pub. L. 100–647, §1007(b)(7), inserted ''(otherwise eligible for the credit provided by section 901 without regard to section 901(j))'' after ''any such taxes''.

Subsec. (f)(2)(F). Pub. L. 100–647, §1007(b)(11)(A), substituted ''Treatment of taxes on dividends from 936 corporations'' for ''Treatment of dividends from 936 corporations'' in heading and amended text generally, substituting cls. (i) to (iii) for former cls. (i) and (ii).

Subsec. (f)(2)(I), (J). Pub. L. 100–647, §6303(a), added subpar. (I) and redesignated former subpar. (I) as (J).

Subsec. (f)(3)(A)(iii). Pub. L. 100–647, §1007(b)(8), inserted ''for a substantial nontax purpose'' after ''an income statement''.

Subsec. (f)(3)(B). Pub. L. 100–647, §1007(b)(9), substituted ''this subsection'' for ''paragraph (3)(A)'' in penultimate sentence.

Subsec. (f)(3)(C). Pub. L. 100–647, §1007(b)(10), inserted at end ''If the taxpayer has 2 or more statements described in the clause (or subclause) with the lowest number designation, the applicable financial statement shall be the one of such statements specified in regulations.''

Subsec. (g)(4)(A)(vi), (vii). Pub. L. 100–647, §1007(b)(17), added cls. (vi) and (vii).

Subsec. (g)(4)(B)(iii). Pub. L. 100–647, §6079(a)(1), amended last sentence generally, inserting ''which is'' after ''any annuity contract'' and ''or which is described in section 72(u)(3)(C)'' after ''in section 403(a)''.

Pub. L. 100–647, §1007(b)(12), inserted at end ''The preceding sentence shall not apply to any annuity contract held under a plan described in section 403(a).''

Subsec. (g)(4)(C)(iii). Pub. L. 100–647, §1007(b)(11)(B), substituted ''clause (i)'' for ''clause (ii)(I)''.

Subsec. (g)(4)(I). Pub. L. 100–647, §1007(b)(18), added subpar. (I).

1987—Subsec. (a)(6). Pub. L. 100–203, §10202(d), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''In the case of any—

''(A) disposition after March 1, 1986, of property described in section 1221(1), or

''(B) other disposition if an obligation arising from such disposition would be an applicable installment obligation (as defined in section 453C(e)) to which section 453C applies,

income from such disposition shall be determined without regard to the installment method under section 453 or 453A and all payments to be received for the disposition shall be deemed received in the taxable year of the disposition. This paragraph shall not apply to any disposition with respect to which an election is in effect under section 453C(e)(4).''

Subsec. (f)(2)(H), (I). Pub. L. 100–203, §10243(a), added subpar. (H) and redesignated former subpar. (H) as (I).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title IX, §9013(d), Mar. 23, 2010, 124 Stat. 868, provided that: ''The amendments made by this section [amending this section and section 213 of this title] shall apply to taxable years beginning after December 31, 2012.''

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–92, §13(e), (f), Nov. 6, 2009, 123 Stat. 2994, 2995, provided that:

''(e) EFFECTIVE DATES.—

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 172 and 810 of this title] shall apply to net operating losses arising in taxable years ending after December 31, 2007.

''(2) ALTERNATIVE TAX NET OPERATING LOSS DEDUCTION.—The amendment made by subsection (b) [amending this section] shall apply to taxable years ending after December 31, 2002.

''(3) LOSS FROM OPERATIONS OF LIFE INSURANCE COMPANIES.—The amendment made by subsection (d) [probably means subsec. (c), amending section 810 of this title] shall apply to losses from operations arising in taxable years ending after December 31, 2007.

''(4) TRANSITIONAL RULE.—In the case of any net operating loss (or, in the case of a life insurance company, any loss from operations) for a taxable year ending before the date of the enactment of this Act [Nov. 6, 2009]—

''(A) any election made under section 172(b)(3) or 810(b)(3) of the Internal Revenue Code of 1986 with respect to such loss may (notwithstanding such sec-

tion) be revoked before the due date (including extension of time) for filing the return for the taxpayer's last taxable year beginning in 2009, and

''(B) any application under section 6411(a) of such Code with respect to such loss shall be treated as timely filed if filed before such due date.

''(f) EXCEPTION FOR TARP RECIPIENTS.—The amendments made by this section [amending this section and sections 172 and 810 of this title] shall not apply to—

''(1) any taxpayer if—

''(A) the Federal Government acquired before the date of the enactment of this Act [Nov. 6, 2009] an equity interest in the taxpayer pursuant to the Emergency Economic Stabilization Act of 2008 [div. A of Pub. L. 110–343, see Tables for classification],

''(B) the Federal Government acquired before such date of enactment any warrant (or other right) to acquire any equity interest with respect to the taxpayer pursuant to the Emergency Economic Stabilization Act of 2008, or

''(C) such taxpayer receives after such date of enactment funds from the Federal Government in exchange for an interest described in subparagraph (A) or (B) pursuant to a program established under title I of division A of the Emergency Economic Stabilization Act of 2008 [see Tables for classification] (unless such taxpayer is a financial institution (as defined in section 3 of such Act [12 U.S.C. 5202]) and the funds are received pursuant to a program established by the Secretary of the Treasury for the stated purpose of increasing the availability of credit to small businesses using funding made available under such Act [Pub. L. 110–343, see Tables for classification]), or

''(2) the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, and

''(3) any taxpayer which at any time in 2008 or 2009 was or is a member of the same affiliated group (as defined in section 1504 of the Internal Revenue Code of 1986, determined without regard to subsection (b) thereof) as a taxpayer described in paragraph (1) or (2).''

Pub. L. 111–5, div. B, title I, §1008(e), Feb. 17, 2009, 123 Stat. 318, provided that: ''The amendments made by this section [amending this section and sections 63 and 164 of this title] shall apply to purchases on or after the date of the enactment of this Act [Feb. 17, 2009] in taxable years ending after such date.''

Pub. L. 111–5, div. B, title I, §1503(c), Feb. 17, 2009, 123 Stat. 355, provided that: ''The amendments made by this section [amending this section and section 57 of this title] shall apply to obligations issued after December 31, 2008.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title VII, §706(d), Oct. 3, 2008, 122 Stat. 3923, provided that:

''(1) IN GENERAL.—Except as provided by paragraph (2), the amendments made by this section [amending this section and sections 63, 139, 165, 172, 1033, and 7508A of this title] shall apply to disasters declared in taxable years beginning after December 31, 2007.

''(2) INCREASE IN LIMITATION ON INDIVIDUAL LOSS PER CASUALTY.—The amendment made by subsection (c) [amending section 165 of this title] shall apply to taxable years beginning after December 31, 2008.''

Pub. L. 110–343, div. C, title VII, §708(e), Oct. 3, 2008, 122 Stat. 3925, provided that: ''The amendments made by this section [amending this section and section 172 of this title] shall apply to losses arising in taxable years beginning after December 31, 2007, in connection with disasters declared after such date.''

Pub. L. 110–289, div. C, title I, §3022(d)(1), July 30, 2008, 122 Stat. 2894, provided that: ''The amendments made by subsection (a) [amending this section and section 57 of this title] shall apply to bonds issued after the date of the enactment of this Act [July 30, 2008].''

EFFECTIVE DATE OF 2005 AMENDMENTS

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

Pub. L. 109–58, title XIII, §1326(e), Aug. 8, 2005, 119 Stat. 1017, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 168 of this title] shall apply to property placed in service after April 11, 2005.

''(2) EXCEPTION.—The amendments made by this section [amending this section and section 168 of this title] shall not apply to any property with respect to which the taxpayer or a related party has entered into a binding contract for the construction thereof on or before April 11, 2005, or, in the case of self-constructed property, has started construction on or before such date.''

EFFECTIVE DATE OF 2004 AMENDMENTS

Pub. L. 108–357, title I, §101(c), Oct. 22, 2004, 118 Stat. 1423, provided that: ''The amendments made by this section [amending this section and sections 275, 864, 903, and 999 of this title and repealing sections 114 and 941 to 943 of this title] shall apply to transactions after December 31, 2004.''

Pub. L. 108–357, title I, §102(e), Oct. 22, 2004, 118 Stat. 1429, as amended by Pub. L. 109–135, title IV, §403(a)(19), Dec. 21, 2005, 119 Stat. 2619, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting section 199 of this title and amending this section and sections 86, 135, 137, 219, 221, 222, 246, 469, 613, and 1402 of this title] shall apply to taxable years beginning after December 31, 2004.

''(2) APPLICATION TO PASS-THRU ENTITIES, ETC.—In determining the deduction under section 199 of the Internal Revenue Code of 1986 (as added by this section), items arising from a taxable year of a partnership, S corporation, estate, or trust beginning before January 1, 2005, shall not be taken into account for purposes of subsection (d)(1) of such section.''

Pub. L. 108–357, title II, §248(c), Oct. 22, 2004, 118 Stat. 1457, provided that: ''The amendments made by this section [enacting subchapter R of this chapter and amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004].''

Pub. L. 108–357, title IV, §422(d), Oct. 22, 2004, 118 Stat. 1519, provided that: ''The amendments made by this section [enacting section 965 of this title and amending this section] shall apply to taxable years ending on or after the date of the enactment of this Act [Oct. 22, 2004].''

Pub. L. 108–357, title VIII, §835(c), Oct. 22, 2004, 118 Stat. 1594, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 382, 582, 856, 860G, 1202, and 7701 of this title and repealing part V of subchapter M of this chapter] shall take effect on January 1, 2005.

''(2) EXCEPTION FOR EXISTING FASITS.—Paragraph (1) shall not apply to any FASIT in existence on the date of the enactment of this Act [Oct. 22, 2004] to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance.''

Pub. L. 108–311, title IV, §403(f), Oct. 4, 2004, 118 Stat. 1188, provided that: ''The amendments made by this section [amending this section, sections 137, 168, 172, and 1400L of this title, section 1306 of Title 29, Labor, and provisions set out as a note under this section] shall take effect as if included in the provisions of the Job Creation and Worker Assistance Act of 2002 [Pub. L. 107–147] to which they relate.''

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title XII, §1202(d), Dec. 8, 2003, 117 Stat. 2480, provided that: ''The amendments made by this section [enacting section 139A of this title and amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Dec. 8, 2003].''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title I, § 102(c)(2), Mar. 9, 2002, 116 Stat. 26, as amended Pub. L. 108–311, title IV, § 403(b)(3), Oct. 4, 2004, 118 Stat. 1187, provided that: ''The amendment made by this subsection [amending this section] shall apply to taxable years ending after December 31, 1990.''

EFFECTIVE DATE OF 2000 AMENDMENTS

Pub. L. 106–554, § 1(a)(7) [title III, § 314(g)], Dec. 21, 2000, 114 Stat. 2763, 2763A–643, provided that: ''The amendments made by this section [amending this section and sections 403, 414, 415, 3405, 6211 and 7436 of this title and provisions set out as a note under section 1 of this title] shall take effect as if included in the provisions of the Taxpayer Relief [Act] of 1997 [Pub. L. 105–34] to which they relate.''

Pub. L. 106–519, § 5, Nov. 15, 2000, 114 Stat. 2433, as amended by Pub. L. 109–222, title V, § 513(a), May 17, 2006, 120 Stat. 366, provided that:

''(a) IN GENERAL.—The amendments made by this Act [enacting sections 114 and 941 to 943 of this title, amending this section and sections 275, 864, 903, and 999 of this title, and repealing sections 921 to 927 of this title] shall apply to transactions after September 30, 2000.

''(b) NO NEW FSCS; TERMINATION OF INACTIVE FSCS.—

''(1) NO NEW FSCS.—No corporation may elect after September 30, 2000, to be a FSC (as defined in section 922 of the Internal Revenue Code of 1986, as in effect before the amendments made by this Act).

''(2) TERMINATION OF INACTIVE FSCS.—If a FSC has no foreign trade income (as defined in section 923(b) of such Code, as so in effect) for any period of 5 consecutive taxable years beginning after December 31, 2001, such FSC shall cease to be treated as a FSC for purposes of such Code for any taxable year beginning after such period.

''(c) TRANSITION PERIOD FOR EXISTING FOREIGN SALES CORPORATIONS.—

''(1) IN GENERAL.—In the case of a FSC (as so defined) in existence on September 30, 2000, and at all times thereafter, the amendments made by this Act shall not apply to any transaction in the ordinary course of trade or business involving a FSC which occurs before January 1, 2002.

''(2) ELECTION TO HAVE AMENDMENTS APPLY EARLIER.—A taxpayer may elect to have the amendments made by this Act apply to any transaction by a FSC or any related person to which such amendments would apply but for the application of paragraph (1). Such election shall be effective for the taxable year for which made and all subsequent taxable years, and, once made, may be revoked only with the consent of the Secretary of the Treasury.

''(3) EXCEPTION FOR OLD EARNINGS AND PROFITS OF CERTAIN CORPORATIONS.—

''(A) IN GENERAL.—In the case of a foreign corporation to which this paragraph applies—

''(i) earnings and profits of such corporation accumulated in taxable years ending before October 1, 2000, shall not be included in the gross income of the persons holding stock in such corporation by reason of section 943(e)(4)(B)(i); and

''(ii) rules similar to the rules of clauses (ii), (iii), and (iv) of section 953(d)(4)(B) shall apply with respect to such earnings and profits.

The preceding sentence shall not apply to earnings and profits acquired in a transaction after September 30, 2000, to which section 381 applies unless the distributor or transferor corporation was immediately before the transaction a foreign corporation to which this paragraph applies.

''(B) EXISTING FSCS.—This paragraph shall apply to any controlled foreign corporation (as defined in section 957) if—

''(i) such corporation is a FSC (as so defined) in existence on September 30, 2000;

''(ii) such corporation is eligible to make the election under section 943(e) by reason of being described in paragraph (2)(B) of such section; and

''(iii) such corporation makes such election not later than for its first taxable year beginning after December 31, 2001.

''(C) OTHER CORPORATIONS.—This paragraph shall apply to any controlled foreign corporation (as defined in section 957), and such corporation shall (notwithstanding any provision of section 943(e)) be treated as an applicable foreign corporation for purposes of section 943(e), if—

''(i) such corporation is in existence on September 30, 2000;

''(ii) as of such date, such corporation is wholly owned (directly or indirectly) by a domestic corporation (determined without regard to any election under section 943(e));

''(iii) for each of the 3 taxable years preceding the first taxable year to which the election under section 943(e) by such controlled foreign corporation applies—

''(I) all of the gross income of such corporation is subpart F income (as defined in section 952), including by reason of section 954(b)(3)(B); and

''(II) in the ordinary course of such corporation's trade or business, such corporation regularly sold (or paid commissions) to a FSC which on September 30, 2000, was a related person to such corporation;

''(iv) such corporation has never made an election under section 922(a)(2) (as in effect before the date of the enactment of this paragraph [Nov. 15, 2000]) to be treated as a FSC; and

''(v) such corporation makes the election under section 943(e) not later than for its first taxable year beginning after December 31, 2001.

The preceding sentence shall cease to apply as of the date that the domestic corporation referred to in clause (ii) ceases to wholly own (directly or indirectly) such controlled foreign corporation.

''(4) RELATED PERSON.—For purposes of this subsection, the term 'related person' has the meaning given to such term by section 943(b)(3).

''(5) SECTION REFERENCES.—Except as otherwise expressly provided, any reference in this subsection to a section or other provision shall be considered to be a reference to a section or other provision of the Internal Revenue Code of 1986, as amended by this Act.

''(d) SPECIAL RULES RELATING TO LEASING TRANSACTIONS.—

''(1) SALES INCOME.—If foreign trade income in connection with the lease or rental of property described in section 927(a)(1)(B) of such Code (as in effect before the amendments made by this Act) is treated as exempt foreign trade income for purposes of section 921(a) of such Code (as so in effect), such property shall be treated as property described in section 941(c)(1)(B) of such Code (as added by this Act) for purposes of applying section 941(c)(2) of such Code (as so added) to any subsequent transaction involving such property to which the amendments made by this Act apply.

''(2) LIMITATION ON USE OF GROSS RECEIPTS METHOD.—If any person computed its foreign trade income from any transaction with respect to any property on the basis of a transfer price determined under the method described in section 925(a)(1) of such Code (as in effect before the amendments made by this Act), then the qualifying foreign trade income (as defined in section 941(a) of such Code, as in effect after such amendment) of such person (or any related person) with respect to any other transaction involving such property (and to which the amendments made by this Act apply) shall be zero.''

[Pub. L. 109–222, title V, § 513(c), May 17, 2006, 120 Stat. 366, provided that: ''The amendments made by this section [amending section 5 of Pub. L. 106–519, set out above, and provisions set out as a note under section 114 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [May 17, 2006].'']

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 312(d)(1) of Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 of this title.

Section 403(b) of Pub. L. 105–34 provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to dispositions in taxable years beginning after December 31, 1987.

''(2) SPECIAL RULE FOR 1987.—In the case of taxable years beginning in 1987, the last sentence of section 56(a)(6) of the Internal Revenue Code of 1986 (as in effect for such taxable years) shall be applied by inserting 'or in the case of a taxpayer using the cash receipts and disbursements method of accounting, any disposition described in section 453C(e)(1)(B)(ii)' after 'section 453C(e)(4)'.''

Section 1212(b) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1601(b)(2)(B), (C) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, except as otherwise provided, see section 1601(c) of Pub. L. 104–188, set out as an Effective Date note under section 30A of this title.

Amendment by section 1621(b)(2) of Pub. L. 104–188 effective Sept. 1, 1997, see section 1621(d) of Pub. L. 104–188, set out as a note under section 26 of this title.

Amendment by section 1702(c)(1), (e)(1)(A), (g)(4), and (h)(12) of Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13115(b) of Pub. L. 103–66 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to property placed in service after December 31, 1993.

''(2) COORDINATION WITH TRANSITIONAL RULES.—The amendments made by this section shall not apply to any property to which paragraph (1) of section 56(a) of the Internal Revenue Code of 1986 does not apply by reason of subparagraph (C)(i) thereof.''

Amendment by section 13171(b) of Pub. L. 103–66 applicable to contributions made after June 30, 1992, except that in case of any contribution of capital gain property which is not tangible personal property, such amendment applicable only if the contribution is made after Dec. 31, 1992, see section 13171(d) of Pub. L. 103–66, set out as a note under section 53 of this title.

Section 13227(f) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and sections 904, 936, and 7652 of this title] shall apply to taxable years beginning after December 31, 1993; except that the amendment made by subsection (e) [amending section 7652 of this title] shall take effect on October 1, 1993.''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1915(d) of Pub. L. 102–486 provided that: ''The amendments made by this section [amending this section and sections 57, 59, and 59A of this title] shall apply to taxable years beginning after December 31, 1992.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11103(b) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11103(e) of Pub. L. 101–508, set out as a note under section 1 of this title.

Section 11301(d)(2) of Pub. L. 101–508 provided that:

''(A) IN GENERAL.—The amendment made by subsection (b) [amending this section] shall apply to taxable years beginning on or after September 30, 1990, except that, in the case of a small insurance company, such amendment shall apply to taxable years beginning after December 31, 1989. For purposes of this paragraph, the term 'small insurance company' means any insurance company which meets the requirements of section 806(a)(3) of the Internal Revenue Code of 1986; except that paragraph (2) of section 806(c) of such Code shall not apply.

''(B) SPECIAL RULES FOR YEAR WHICH INCLUDES SEPTEMBER 30, 1990.—In the case of any taxable year which includes September 30, 1990, the amount of acquisition expenses which is required to be capitalized under section 56(g)(4)(F) of the Internal Revenue Code of 1986 (as in effect before the amendment made by subsection (b)) by a company which is not a small insurance company shall be the amount which bears the same ratio to the amount which (but for this subparagraph) would be so required to be capitalized as the number of days in such taxable year before September 30, 1990, bears to the total number of days in such taxable year. A similar reduction shall be made in the amount amortized for such taxable year under such section 56(g)(4)(F).''

Section 11531(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and sections 59 and 59A of this title] shall apply to taxable years beginning after December 31, 1990.''

Section 11704(b) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section, sections 172, 351, 413, 461, 469, 597, 857, 860D, 860G, 892, 927, 936, 1017, 1245, 1441, 2056A, 2642, 3231, 4091, 4093, 5061, 6013, 6038A, 6039D, 6045, 6323, 6332, 6655, 7519, 7522, 7608, and 7701 of this title, and provisions set out as a note under section 231n of Title 45, Railroads] shall take effect on the date of the enactment of this Act.''

Amendment by section 11812(b)(4) of Pub. L. 101–508 applicable to property placed in service after Nov. 5, 1990, but not applicable to any property to which section 168 of this title does not apply by reason of subsec. (f)(5) of section 168, and not applicable to rehabilitation expenditures described in section 252(f)(5) of Pub. L. 99–514, see section 11812(c) of Pub. L. 101–508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7205(c) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 382 of this title] shall apply to ownership changes and acquisitions after October 2, 1989, in taxable years ending after such date.

''(2) BINDING CONTRACT.—The amendments made by this section shall not apply to any ownership change or acquisition pursuant to a written binding contract in effect on October 2, 1989, and at all times thereafter before such change or acquisition.

''(3) BANKRUPTCY PROCEEDINGS.—In the case of a reorganization described in section 368(a)(1)(G) of the Internal Revenue Code of 1986, or an exchange of debt for stock in a title 11 or similar case (as defined in section 368(a)(3) of such Code), the amendments made by this section shall not apply to any ownership change resulting from such a reorganization or proceeding if a petition in such case was filed with the court before October 3, 1989.

''(4) SUBSIDIARIES OF BANKRUPT PARENT.—The amendments made by this section shall not apply to any built-in loss of a corporation which is a member (on October 2, 1989) of an affiliated group the common parent of which (on such date) was subject to title 11 or similar case (as defined in section 368(a)(3) of such Code). The preceding sentence shall apply only if the ownership change or acquisition is pursuant to the plan approved in such proceeding and is before the date 2 years after the date on which the petition which commenced such proceeding was filed.''

Section 7611(g) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section

[amending this section and sections 59 and 312 of this title] shall apply to taxable years beginning after December 31, 1989.

''(2) INTANGIBLE DRILLING COSTS.—The amendments made by subsection (f)(5) [amending sections 59 and 312 of this title] shall apply to costs paid or incurred in taxable years beginning after December 31, 1989.

''(3) REGULATIONS ON EARNINGS AND PROFITS RULES.—Not later than March 15, 1991, the Secretary of the Treasury or his delegate shall prescribe initial regulations providing guidance as to which items of income are included in adjusted current earnings under section 56(g)(4)(B)(i) of the Internal Revenue Code of 1986 and which items of deduction are disallowed under section 56(g)(4)(C) of such Code.''

Section 7612(c)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to contracts entered into in taxable years beginning after September 30, 1990.''

Section 7612(d)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1990.''

Amendment by sections 7811(d)(3) and 7815(e)(2), (4) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1007(b)(14)(C) of Pub. L. 100–647 provided that: ''The amendments made by this paragraph [amending this section and section 57 of this title] shall apply with respect to options exercised after December 31, 1987.''

Amendment by sections 1002(a)(12) and 1007(b)(1)–(13), (15)–(19) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 2001(e) of Pub. L. 100–647 provided that: ''Except as otherwise provided in this section, the amendments made by this section [amending this section, sections 59A, 882, 4041, 4081, 4091, 4662, 4672, 6416, 6421, and 6427 of this title, and provisions set out as a note under section 4081 of this title] shall take effect as if included in the provision of the Superfund Revenue Act of 1986 [Pub. L. 99–499, title V] to which it relates.''

Section 2004(u) of Pub. L. 100–647 provided that: ''Except as otherwise provided in this section, any amendment made by this section [amending this section, sections 163, 244, 280H, 301, 304, 355, 384, 444, 453, 453A, 469, 514, 811, 812, 816, 842, 904, 1201, 1363, 1503, 1561, 4093, 5113, 5123, 5276, 5881, 6427, 6655, 7519, and 7704 of this title, and provisions set out as notes under sections 21, 219, 243, 301, 304, 444, 453, 1503, and 7704 of this title] shall take effect as if included in the provisions of the Revenue Act of 1987 [Pub. L. 100–203, title X] to which such amendment relates.''

Amendment by section 5041(b)(4) of Pub. L. 100–647 applicable to contracts entered into on or after June 21, 1988, but not applicable to any contract resulting from the acceptance of a bid made before June 21, 1988, if the bid could not have been revoked or altered at any time on or after June 21, 1988, and not applicable in the case of a qualified ship contract (as defined in section 10203(b)(2)(B) of Pub. L. 100–203, set out as a note under section 460 of this title), see section 5041(e) of Pub. L. 100–647, set out as a note under section 460 of this title.

Section 6079(a)(2) of Pub. L. 100–647 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 701 of the Reform Act [Pub. L. 99–514].''

Section 6303(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1986.''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 10202(d) of Pub. L. 100–203 applicable to dispositions in taxable years beginning after Dec. 31, 1986, with coordination with Tax Reform Act of 1986, see section 10202(e)(4), (5) of Pub. L. 100–203, set out as a note under section 453 of this title.

Section 10243(b) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1987.''

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as a note under section 55 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by sections 11801 and 11812 of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

COORDINATION WITH HEARTLAND DISASTER RELIEF

Pub. L. 110–343, div. C, title VII, § 712, Oct. 3, 2008, 122 Stat. 3929, provided that: ''The amendments made by this subtitle [subtitle B (§§ 706–712) of title VII of div. C of Pub. L. 110–343, enacting section 198A of this title and amending this section and sections 63, 139, 143, 165, 168, 172, 179, 1033, and 7508A of this title], other than the amendments made by sections 706(a)(2) [amending sections 139, 165, 172, 1033, and 7508A of this title], 710 [amending section 168 of this title], and 711 [amending section 179 of this title], shall not apply to any disaster described in section 702(c)(1)(A) [section 702(c)(1) has no subpar. (A)], or to any expenditure or loss resulting from such disaster.''

APPLICATION OF SUBSECTION (g)(1) AND (3) TO TAXABLE YEARS BEGINNING IN 1991 AND 1992

Section 1702(e)(1)(B) of Pub. L. 104–188 provided that: ''For purposes of applying sections 56(g)(1) and 56(g)(3) of the Internal Revenue Code of 1986 with respect to taxable years beginning in 1991 and 1992, the reference in such sections to the alternative tax net operating loss deduction shall be treated as including a reference to the deduction under section 56(h) of such Code as in effect before the amendments made by section 1915 of the Energy Policy Act of 1992 [Pub. L. 102–486].''

INSTALLMENT SALES; TAXABLE YEARS BEGINNING IN 1987

Section 7821(a)(5) of Pub. L. 101–239 provided that: ''In the case of taxable years beginning in 1987, the reference to section 453 contained in section 56(a)(6) of the Internal Revenue Code of 1986 shall be treated as including a reference to section 453A.''

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(a) of Pub. L. 99–514 [enacting this section] notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

STUDY OF BOOK AND EARNINGS AND PROFITS ADJUSTMENTS

Section 702 of Pub. L. 99–514 required Secretary of the Treasury or his delegate to conduct a study of oper-

ation and effect of provisions of sections 56(f) and 56(g) of the Internal Revenue Code of 1986, prior to repeal by Pub. L. 101–508, title XI, § 11832(4), Nov. 5, 1990, 104 Stat. 1388–559.

§ 57. Items of tax preference

(a) General rule

For purposes of this part, the items of tax preference determined under this section are—

(1) Depletion

With respect to each property (as defined in section 614), the excess of the deduction for depletion allowable under section 611 for the taxable year over the adjusted basis of the property at the end of the taxable year (determined without regard to the depletion deduction for the taxable year). Effective with respect to taxable years beginning after December 31, 1992, this paragraph shall not apply to any deduction for depletion computed in accordance with section 613A(c).

(2) Intangible drilling costs

(A) In general

With respect to all oil, gas, and geothermal properties of the taxpayer, the amount (if any) by which the amount of the excess intangible drilling costs arising in the taxable year is greater than 65 percent of the net income of the taxpayer from oil, gas, and geothermal properties for the taxable year.

(B) Excess intangible drilling costs

For purposes of subparagraph (A), the amount of the excess intangible drilling costs arising in the taxable year is the excess of—

(i) the intangible drilling and development costs paid or incurred in connection with oil, gas, and geothermal wells (other than costs incurred in drilling a nonproductive well) allowable under section 263(c) or 291(b) for the taxable year, over

(ii) the amount which would have been allowable for the taxable year if such costs had been capitalized and straight line recovery of intangibles (as defined in subsection (b)) had been used with respect to such costs.

(C) Net income from oil, gas, and geothermal properties

For purposes of subparagraph (A), the amount of the net income of the taxpayer from oil, gas, and geothermal properties for the taxable year is the excess of—

(i) the aggregate amount of gross income (within the meaning of section 613(a)) from all oil, gas, and geothermal properties of the taxpayer received or accrued by the taxpayer during the taxable year, over

(ii) the amount of any deductions allocable to such properties reduced by the excess described in subparagraph (B) for such taxable year.

(D) Paragraph applied separately with respect to geothermal properties and oil and gas properties

This paragraph shall be applied separately with respect to—

(i) all oil and gas properties which are not described in clause (ii), and

(ii) all properties which are geothermal deposits (as defined in section 613(e)(2)).

(E) Exception for independent producers

In the case of any oil or gas well—

(i) In general

In the case of any taxable year beginning after December 31, 1992, this paragraph shall not apply to any taxpayer which is not an integrated oil company (as defined in section 291(b)(4)).

(ii) Limitation on benefit

The reduction in alternative minimum taxable income by reason of clause (i) for any taxable year shall not exceed 40 percent (30 percent in case of taxable years beginning in 1993) of the alternative minimum taxable income for such year determined without regard to clause (i) and the alternative tax net operating loss deduction under section 56(a)(4).

[(3) Repealed. Pub. L. 100–647, title I, § 1007(b)(14)(B), Nov. 10, 1988, 102 Stat. 3430]

[(4) Repealed. Pub. L. 104–188, title I, § 1616(b)(3), Aug. 20, 1996, 110 Stat. 1856]

(5) Tax-exempt interest

(A) In general

Interest on specified private activity bonds reduced by any deduction (not allowable in computing the regular tax) which would have been allowable if such interest were includible in gross income.

(B) Treatment of exempt-interest dividends

Under regulations prescribed by the Secretary, any exempt-interest dividend (as defined in section 852(b)(5)(A)) shall be treated as interest on a specified private activity bond to the extent of its proportionate share of the interest on such bonds received by the company paying such dividend.

(C) Specified private activity bonds

(i) In general

For purposes of this part, the term ''specified private activity bond'' means any private activity bond (as defined in section 141) which is issued after August 7, 1986, and the interest on which is not includible in gross income under section 103.

(ii) Exception for qualified 501(c)(3) bonds

For purposes of clause (i), the term ''private activity bond'' shall not include any qualified 501(c)(3) bond (as defined in section 145).

(iii) Exception for certain housing bonds

For purposes of clause (i), the term ''private activity bond'' shall not include any bond issued after the date of the enactment of this clause if such bond is—

(I) an exempt facility bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to

provide qualified residential rental projects (as defined in section 142(d)),

(II) a qualified mortgage bond (as defined in section 143(a)), or

(III) a qualified veterans' mortgage bond (as defined in section 143(b)).

The preceding sentence shall not apply to any refunding bond unless such preceding sentence applied to the refunded bond (or in the case of a series of refundings, the original bond).

(iv) Exception for refundings

For purposes of clause (i), the term ''private activity bond'' shall not include any refunding bond (whether a current or advance refunding) if the refunded bond (or in the case of a series of refundings, the original bond) was issued before August 8, 1986.

(v) Certain bonds issued before September 1, 1986

For purposes of this subparagraph, a bond issued before September 1, 1986, shall be treated as issued before August 8, 1986, unless such bond would be a private activity bond if—

(I) paragraphs (1) and (2) of section 141(b) were applied by substituting ''25 percent'' for ''10 percent'' each place it appears,

(II) paragraphs (3), (4), and (5) of section 141(b) did not apply, and

(III) subparagraph (B) of section 141(c)(1) did not apply.

(vi) Exception for bonds issued in 2009 and 2010

(I) In general

For purposes of clause (i), the term ''private activity bond'' shall not include any bond issued after December 31, 2008, and before January 1, 2011.

(II) Treatment of refunding bonds

For purposes of subclause (I), a refunding bond (whether a current or advance refunding) shall be treated as issued on the date of the issuance of the refunded bond (or in the case of a series of refundings, the original bond).

(III) Exception for certain refunding bonds

Subclause (II) shall not apply to any refunding bond which is issued to refund any bond which was issued after December 31, 2003, and before January 1, 2009.

(6) Accelerated depreciation or amortization on certain property placed in service before January 1, 1987

The amounts which would be treated as items of tax preference with respect to the taxpayer under paragraphs (2), (3), (4), and (12) of this subsection (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986). The preceding sentence shall not apply to any property to which section 56(a)(1) or (5) applies.

(7) Exclusion for gains on sale of certain small business stock

An amount equal to 7 percent of the amount excluded from gross income for the taxable year under section 1202.

(b) Straight line recovery of intangibles defined

For purposes of paragraph (2) of subsection (a)—

(1) In general

The term ''straight line recovery of intangibles'', when used with respect to intangible drilling and development costs for any well, means (except in the case of an election under paragraph (2)) ratable amortization of such costs over the 120-month period beginning with the month in which production from such well begins.

(2) Election

If the taxpayer elects with respect to the intangible drilling and development costs for any well, the term ''straight line recovery of intangibles'' means any method which would be permitted for purposes of determining cost depletion with respect to such well and which is selected by the taxpayer for purposes of subsection (a)(2).

(Added Pub. L. 99–514, title VII, § 701(a), Oct. 22, 1986, 100 Stat. 2333; amended Pub. L. 100–647, title I, § 1007(b)(14)(B), (c), Nov. 10, 1988, 102 Stat. 3430, 3432; Pub. L. 101–508, title XI, §§ 11344, 11801(c)(12)(A), 11815(b)(3), Nov. 5, 1990, 104 Stat. 1388–472, 1388–527, 1388–558; Pub. L. 102–227, title I, § 112, Dec. 11, 1991, 105 Stat. 1689; Pub. L. 102–486, title XIX, § 1915(a)(1), (b)(1), Oct. 24, 1992, 106 Stat. 3023, 3024; Pub. L. 103–66, title XIII, §§ 13113(b)(1), 13171(a), Aug. 10, 1993, 107 Stat. 429, 454; Pub. L. 104–188, title I, § 1616(b)(3), Aug. 20, 1996, 110 Stat. 1856; Pub. L. 105–34, title III, § 311(b)(2)(B), Aug. 5, 1997, 111 Stat. 835; Pub. L. 105–206, title VI, § 6005(d)(3), July 22, 1998, 112 Stat. 805; Pub. L. 108–27, title III, § 301(b)(3), May 28, 2003, 117 Stat. 759; Pub. L. 110–289, div. C, title I, § 3022(a)(1), July 30, 2008, 122 Stat. 2893; Pub. L. 111–5, div. B, title I, § 1503(a), Feb. 17, 2009, 123 Stat. 354.)

AMENDMENT OF SECTION

For termination of amendment by section 303 of Pub. L. 108–27, see Effective and Termination Dates of 2003 Amendment note below.

REFERENCES IN TEXT

The date of the enactment of this clause, referred to in subsec. (a)(5)(C)(iii), is the date of enactment of Pub. L. 110–289, which was approved July 30, 2008.

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (a)(6), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

PRIOR PROVISIONS

A prior section 57, added Pub. L. 91–172, title III, § 301(a), Dec. 30, 1969, 83 Stat. 581; amended Pub. L. 92–178, title III, §§ 303(b), 304(a)(1), (b)(1), (d), Dec. 10, 1971, 85 Stat. 522–524; Pub. L. 94–455, title III, § 301(c)(1)–(4)(A), (C), title XIX, §§ 1901(b)(33)(A), (B), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1550–1552, 1800, 1834; Pub. L. 95–30, title I, § 101(d)(5), title III, § 308(a), title IV, § 402(a)(5), May 23, 1977, 91 Stat. 133, 153, 155; Pub. L. 95–600, title III, § 301(b)(2), title IV, §§ 402(b)(1), 421(b), title VII, § 701(b)(1), (3), (4), (f)(3)(D), Nov. 6, 1978, 92

Stat. 2820, 2868, 2874, 2898, 2899, 2901; Pub. L. 95–618, title IV, §402(b), Nov. 9, 1978, 92 Stat. 3202; Pub. L. 96–222, title I, §§104(a)(4)(E), (F), 107(a)(1)(A), Apr. 1, 1980, 94 Stat. 217, 222; Pub. L. 96–596, §3(a), Dec. 24, 1980, 94 Stat. 3475; Pub. L. 97–34, title I, §121(c)(1), title II, §§205, 212(d)(2)(B), Aug. 13, 1981, 95 Stat. 197, 223, 239; Pub. L. 97–248, title II, §§201(b), 204(b), Sept. 3, 1982, 96 Stat. 416, 426; Pub. L. 97–354, §5(a)(14), (15), Oct. 19, 1982, 96 Stat. 1693; Pub. L. 97–448, title I, §102(b)(1)(A), (3), (4), Jan. 12, 1983, 96 Stat. 2369, 2370; Pub. L. 98–369, div. A, title I, §§16(b), 68(c), 111(e)(5)–(7), title V, §555(a)(2), title VII, §§711(a)(3)(A), 722(a)(1), July 18, 1984, 98 Stat. 505, 588, 633, 897, 942, 972; Pub. L. 99–121, title I, §103(b)(1)(B), (7), Oct. 11, 1985, 99 Stat. 509, 510; Pub. L. 99–272, title XIII, §13208(a), Apr. 7, 1986, 100 Stat. 321; Pub. L. 99–514, title XVIII, §§1804(k)(3)(B)–(D), 1809(a)(3), Oct. 22, 1986, 100 Stat. 2809, 2819, related to items of tax preference, prior to the general revision of this part by Pub. L. 99–514, §701(a).

AMENDMENTS

2009—Subsec. (a)(5)(C)(vi). Pub. L. 111–5 added cl. (vi).

2008—Subsec. (a)(5)(C)(iii) to (v). Pub. L. 110–289 added cl. (iii) and redesignated former cls. (iii) and (iv) as (iv) and (v), respectively.

2003—Subsec. (a)(7). Pub. L. 108–27, §§301(b)(3), 303, temporarily substituted ''7 percent'' for ''42 percent'' after ''An amount equal to'' and struck out last sentence which read as follows: ''In the case of stock the holding period of which begins after December 31, 2000 (determined with the application of the last sentence of section 1(h)(2)(B)), the preceding sentence shall be applied by substituting '28 percent' for '42 percent'.'' See Effective and Termination Dates of 2003 Amendment note below.

1998—Subsec. (a)(7). Pub. L. 105–206 inserted at end ''In the case of stock the holding period of which begins after December 31, 2000 (determined with the application of the last sentence of section 1(h)(2)(B)), the preceding sentence shall be applied by substituting '28 percent' for '42 percent'.''

1997—Subsec. (a)(7). Pub. L. 105–34 substituted ''42 percent'' for ''one-half''.

1996—Subsec. (a)(4). Pub. L. 104–188 struck out par. (4) which read as follows: ''RESERVES FOR LOSSES ON BAD DEBTS OF FINANCIAL INSTITUTIONS.—In the case of a financial institution to which section 593 applies, the amount by which the deduction allowable for the taxable year for a reasonable addition to a reserve for bad debts exceeds the amount that would have been allowable had the institution maintained its bad debt reserve for all taxable years on the basis of actual experience.''

1993—Subsec. (a)(6), (7). Pub. L. 103–66, §13171(a), redesignated pars. (7) and (8) as (6) and (7), respectively, and struck out heading and text of former par. (6). Text read as follows:

''(A) IN GENERAL.—The amount by which the deduction allowable under section 170 or 642(c) would be reduced if all capital gain property were taken into account at its adjusted basis.

''(B) CAPITAL GAIN PROPERTY.—For purposes of subparagraph (A), the term 'capital gain property' has the meaning given to such term by section 170(b)(1)(C)(iv). Such term shall not include any property to which an election under section 170(b)(1)(C)(iii) applies. In the case of any taxable year beginning in 1991, such term shall not include any tangible personal property. In the case of a contribution made before July 1, 1992, in a taxable year beginning in 1992, such term shall not include any tangible personal property.''

Subsec. (a)(8). Pub. L. 103–66, §13171(a), redesignated par. (8) as (7).

Pub. L. 103–66, §13113(b)(1), added par. (8).

1992—Subsec. (a)(1). Pub. L. 102–486, §1915(a)(1), inserted at end ''Effective with respect to taxable years beginning after December 31, 1992, this paragraph shall not apply to any deduction for depletion computed in accordance with section 613A(c).''

Subsec. (a)(2)(E). Pub. L. 102–486, §1915(b)(1), added subpar. (E).

1991—Subsec. (a)(6)(B). Pub. L. 102–227 inserted at end ''In the case of a contribution made before July 1, 1992, in a taxable year beginning in 1992, such term shall not include any tangible personal property.''

1990—Subsec. (a)(2)(D)(ii). Pub. L. 101–508, §11815(b)(3), substituted ''section 613(e)(2)'' for ''section 613(e)(3)''.

Subsec. (a)(4). Pub. L. 101–508, §11801(c)(12)(A), struck out ''585 or'' after ''section''.

Subsec. (a)(6)(B). Pub. L. 101–508, §11344, inserted at end ''In the case of any taxable year beginning in 1991, such term shall not include any tangible personal property.''

1988—Subsec. (a)(3). Pub. L. 100–647, §1007(b)(14)(B), struck out par. (3) which related to incentive stock options.

Subsec. (a)(5)(C)(i). Pub. L. 100–647, §1007(c)(2), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''For purposes of this part, the term 'specified private activity bonds' means any private activity bond (as defined in section 141) issued after August 7, 1986.''

Subsec. (a)(5)(C)(iii). Pub. L. 100–647, §1007(c)(1), inserted ''(whether a current or advance refunding)'' after ''any refunding bond''.

Subsec. (a)(6)(A). Pub. L. 100–647, §1007(c)(3), inserted ''or 642(c)'' after ''section 170''.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–5 applicable to obligations issued after Dec. 31, 2008, see section 1503(c) of Pub. L. 111–5, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–289 applicable to bonds issued after July 30, 2008, see section 3022(d)(1) of Pub. L. 110–289, set out as a note under section 56 of this title.

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable to dispositions on or after May 6, 2003, see section 301(d)(3) of Pub. L. 108–27, set out as a note under section 1 of this title.

Amendment by Pub. L. 108–27 inapplicable to taxable years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 303 of Pub. L. 108–27, as amended, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to taxable years ending after May 6, 1997, see section 311(d) of Pub. L. 105–34, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, see section 1616(c) of Pub. L. 104–188, set out as a note under section 593 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13113(b)(1) of Pub. L. 103–66 applicable to stock issued after Aug. 10, 1993, see section 13113(e) of Pub. L. 103–66, set out as a note under section 53 of this title.

Amendment by section 13171(a) of Pub. L. 103–66 applicable to contributions made after June 30, 1992, except that in case of any contribution of capital gain property which is not tangible personal property, such amendment applicable only if the contribution is made after Dec. 31, 1992, see section 13171(d) of Pub. L. 103–66, set out as a note under section 53 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–486 applicable to taxable years beginning after Dec. 31, 1992, see section 1915(d) of Pub. L. 102–486, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1007(b)(14)(B) of Pub. L. 100–647 applicable with respect to options exercised after Dec. 31, 1987, see section 1007(b)(14)(C) of Pub. L. 100–647, set out as a note under section 56 of this title.

Amendment by section 1007(c) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, but subsec. (a)(6) not to apply to any deduction attributable to contributions made before Aug. 16, 1986, see section 701(f) of Pub. L. 99–514, set out as a note under section 55 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by sections 11801 and 11815 of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

TRANSITIONAL PROVISIONS

Section 1007(f)(4) of Pub. L. 100–647 provided that:

''(A) If any property to which this paragraph applies is placed in service in a taxable year which begins before January 1, 1987, and ends on or after August 1, 1986, the item of tax preference determined under section 57(a) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986 [Oct. 22, 1986]) with respect to such property shall be the excess of—

''(i) the amount allowable as a deduction for depreciation or amortization for such taxable year, over

''(ii) the amount which would be determined for such taxable year under the rules of paragraph (1) or (5) (whichever is appropriate) of section 56(a) of the Internal Revenue Code of 1954 (as amended by the Tax Reform Act of 1986 [Pub. L. 99–514]).

''(B) This paragraph shall apply to any property—

''(i) which is described in paragraph (4) or (12) of section 57(a) of the Internal Revenue Code of 1954 (as so in effect), and

''(ii) to which paragraph (1) or (5) of section 56(a) of the Internal Revenue Code of 1986 would apply if the taxable year referred to in subparagraph (A) began after December 31, 1986.''

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(a) of Pub. L. 99–514 [enacting this section] notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

§ 58. Denial of certain losses

(a) Denial of farm loss

(1) In general

For purposes of computing the amount of the alternative minimum taxable income for any taxable year of a taxpayer other than a corporation—

(A) Disallowance of farm loss

No loss of the taxpayer for such taxable year from any tax shelter farm activity shall be allowed.

(B) Deduction in succeeding taxable year

Any loss from a tax shelter farm activity disallowed under subparagraph (A) shall be treated as a deduction allocable to such activity in the 1st succeeding taxable year.

(2) Tax shelter farm activity

For purposes of this subsection, the term ''tax shelter farm activity'' means—

(A) any farming syndicate as defined in section 464(c), and

(B) any other activity consisting of farming which is a passive activity (within the meaning of section 469(c)).

(3) Application to personal service corporations

For purposes of paragraph (1), a personal service corporation (within the meaning of section 469(j)(2)) shall be treated as a taxpayer other than a corporation.

(4) Determination of loss

In determining the amount of the loss from any tax shelter farm activity, the adjustments of sections 56 and 57 shall apply.

(b) Disallowance of passive activity loss

In computing the alternative minimum taxable income of the taxpayer for any taxable year, section 469 shall apply, except that in applying section 469—

(1) the adjustments of sections 56 and 57 shall apply,

(2) the provisions of section 469(m) (relating to phase-in of disallowance) shall not apply, and

(3) in lieu of applying section 469(j)(7), the passive activity loss of a taxpayer shall be computed without regard to qualified housing interest (as defined in section 56(e)).

(c) Special rules

For purposes of this section—

(1) Special rule for insolvent taxpayers

(A) In general

The amount of losses to which subsection (a) or (b) applies shall be reduced by the amount (if any) by which the taxpayer is insolvent as of the close of the taxable year.

(B) Insolvent

For purposes of this paragraph, the term ''insolvent'' means the excess of liabilities over the fair market value of assets.

(2) Loss allowed for year of disposition of farm shelter activity

If the taxpayer disposes of his entire interest in any tax shelter farm activity during any

taxable year, the amount of the loss attributable to such activity (determined after carryovers under subsection (a)(1)(B)) shall (to the extent otherwise allowable) be allowed for such taxable year in computing alternative minimum taxable income and not treated as a loss from a tax shelter farm activity.

(Added Pub. L. 99–514, title VII, §701(a), Oct. 22, 1986, 100 Stat. 2335; amended Pub. L. 100–203, title X, §10212(b), Dec. 22, 1987, 101 Stat. 1330–406; Pub. L. 100–647, title I, §1007(d), Nov. 10, 1988, 102 Stat. 3432.)

PRIOR PROVISIONS

A prior section 58, added Pub. L. 91–172, title III, §301(a), Dec. 30, 1969, 83 Stat. 583; amended Pub. L. 92–178, title III, §308(a), Dec. 10, 1971, 85 Stat. 524; Pub. L. 94–455, title III, §301(d), title XIX, §§1901(b)(40), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1553, 1803, 1834; Pub. L. 95–600, title IV, §§421(c), 423(a), title VII, §701(b)(2), Nov. 6, 1978, 92 Stat. 2875, 2877, 2898; Pub. L. 96–222, title I, §107(a)(1)(C), Apr. 1, 1980, 94 Stat. 222; Pub. L. 97–248, title II, §201(c)(1), §201(d)(3), formerly §201(c)(3), Sept. 3, 1982, 96 Stat. 417, 419, renumbered §201(d)(3), Pub. L. 97–448, title III, §306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 97–354, §§3(c), 5(a)(16), Oct. 19, 1982, 96 Stat. 1688, 1693; Pub. L. 97–448, title I, §102(b)(2), Jan. 12, 1983, 96 Stat. 2369; Pub. L. 98–369, div. A, title VII, §711(a)(2), (3)(B), July 18, 1984, 98 Stat. 942; Pub. L. 99–514, title XVIII, §1875(a), Oct. 22, 1986, 100 Stat. 2894, related to rules for application of minimum tax for tax preferences, prior to the general revision of this part by Pub. L. 99–514, §701(a).

AMENDMENTS

1988—Subsec. (a)(2). Pub. L. 100–647, §1007(d)(1), struck out ''(as modified by section 461(i)(4)(A))'' after ''section 464(c)'' in subpar. (A) and substituted ''section 469(c)'' for ''section 469(d), without regard to paragraph (1)(B) thereof'' in subpar. (B).

Subsec. (a)(3). Pub. L. 100–647, §1007(d)(2), substituted ''469(j)(2)'' for ''469(g)(1)(C)''.

Subsec. (a)(4). Pub. L. 100–647, §1007(d)(3), added par. (4).

Subsec. (b). Pub. L. 100–647, §1007(d)(4), added pars. (1) to (3) and struck out former pars. (1) to (3) which read as follows:

''(1) the adjustments of section 56 shall apply,

''(2) any deduction to the extent such deduction is an item of tax preference under section 57(a) shall not be taken into account, and

''(3) the provisions of section 469(m) (relating to phase-in of disallowance) shall not apply.''

1987—Subsec. (b)(3). Pub. L. 100–203 substituted ''section 469(m)'' for ''section 469(*l*)''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10212(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and sections 163 and 469 of this title] shall take effect as if included in the amendments made by section 501 of the Tax Reform Act of 1986 [section 501 of Pub. L. 99–514, see section 501(c) of Pub. L. 99–514, set out as an Effective Date note under section 469 of this title].''

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as a note under section 55 of this title.

APPLICABILITY OF 1986 REPEAL

Pub. L. 101–239, title VII, §7811(d)(1)(B), Dec. 19, 1989, 103 Stat. 2408, provided that: ''The repeal of section 58(h) of the Internal Revenue Code of 1954 by the Tax Reform Act of 1986 [Pub. L. 99–514] shall be effective only with respect to items of tax preference arising in taxable years beginning after December 31, 1986.''

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(a) of Pub. L. 99–514 [enacting this section] notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

§ 59. Other definitions and special rules

(a) Alternative minimum tax foreign tax credit

For purposes of this part—

(1) In general

The alternative minimum tax foreign tax credit for any taxable year shall be the credit which would be determined under section 27(a) for such taxable year if—

(A) the pre-credit tentative minimum tax were the tax against which such credit was taken for purposes of section 904 for the taxable year and all prior taxable years beginning after December 31, 1986,

(B) section 904 were applied on the basis of alternative minimum taxable income instead of taxable income, and

(C) the determination of whether any income is high-taxed income for purposes of section 904(d)(2) were made on the basis of the applicable rate specified in subparagraph (A)(i) or (B)(i) of section 55(b)(1) (whichever applies) in lieu of the highest rate of tax specified in section 1 or 11 (whichever applies).

(2) Pre-credit tentative minimum tax

For purposes of this subsection, the term ''pre-credit tentative minimum tax'' means—

(A) in the case of a taxpayer other than a corporation, the amount determined under the first sentence of section 55(b)(1)(A)(i), or

(B) in the case of a corporation, the amount determined under section 55(b)(1)(B)(i).

(3) Election to use simplified section 904 limitation

(A) In general

In determining the alternative minimum tax foreign tax credit for any taxable year to which an election under this paragraph applies—

(i) subparagraph (B) of paragraph (1) shall not apply, and

(ii) the limitation of section 904 shall be based on the proportion which—

(I) the taxpayer's taxable income (as determined for purposes of the regular tax) from sources without the United States (but not in excess of the taxpayer's entire alternative minimum taxable income), bears to

(II) the taxpayer's entire alternative minimum taxable income for the taxable year.

(B) Election

(i) In general

An election under this paragraph may be made only for the taxpayer's first taxable year which begins after December 31, 1997, and for which the taxpayer claims an alternative minimum tax foreign tax credit.

(ii) Election revocable only with consent

An election under this paragraph, once made, shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(b) Minimum tax not to apply to income eligible for credits under section 30A or 936

In the case of any corporation for which a credit is allowable for the taxable year under section 30A or 936, alternative minimum taxable income shall not include any income with respect to which a credit is determined under section 30A or 936.

(c) Treatment of estates and trusts

In the case of any estate or trust, the alternative minimum taxable income of such estate or trust and any beneficiary thereof shall be determined by applying part I of subchapter J with the adjustments provided in this part.

(d) Apportionment of differently treated items in case of certain entities

(1) In general

The differently treated items for the taxable year shall be apportioned (in accordance with regulations prescribed by the Secretary)—

(A) Regulated investment companies and real estate investment trusts

In the case of a regulated investment company to which part I of subchapter M applies or a real estate investment company to which part II of subchapter M applies, between such company or trust and shareholders and holders of beneficial interest in such company or trust.

(B) Common trust funds

In the case of a common trust fund (as defined in section 584(a)), pro rata among the participants of such fund.

(2) Differently treated items

For purposes of this section, the term ''differently treated item'' means any item of tax preference or any other item which is treated differently for purposes of this part than for purposes of computing the regular tax.

(e) Optional 10-year writeoff of certain tax preferences

(1) In general

For purposes of this title, any qualified expenditure to which an election under this paragraph applies shall be allowed as a deduction ratably over the 10-year period (3-year period in the case of circulation expenditures described in section 173) beginning with the taxable year in which such expenditure was made (or, in the case of a qualified expenditure described in paragraph (2)(C), over the 60-month period beginning with the month in which such expenditure was paid or incurred).

(2) Qualified expenditure

For purposes of this subsection, the term ''qualified expenditure'' means any amount which, but for an election under this subsection, would have been allowable as a deduction (determined without regard to section 291) for the taxable year in which paid or incurred under—

(A) section 173 (relating to circulation expenditures),

(B) section 174(a) (relating to research and experimental expenditures),

(C) section 263(c) (relating to intangible drilling and development expenditures),

(D) section 616(a) (relating to development expenditures), or

(E) section 617(a) (relating to mining exploration expenditures).

(3) Other sections not applicable

Except as provided in this subsection, no deduction shall be allowed under any other section for any qualified expenditure to which an election under this subsection applies.

(4) Election

(A) In general

An election may be made under paragraph (1) with respect to any portion of any qualified expenditure.

(B) Revocable only with consent

Any election under this subsection may be revoked only with the consent of the Secretary.

(C) Partners and shareholders of S corporations

In the case of a partnership, any election under paragraph (1) shall be made separately by each partner with respect to the partner's allocable share of any qualified expenditure. A similar rule shall apply in the case of an S corporation and its shareholders.

(5) Dispositions

(A) Application of section 1254

In the case of any disposition of property to which section 1254 applies (determined without regard to this section), any deduction under paragraph (1) with respect to amounts which are allocable to such property shall, for purposes of section 1254, be treated as a deduction allowable under section 263(c), 616(a), or 617(a), whichever is appropriate.

(B) Application of section 617(d)

In the case of any disposition of mining property to which section 617(d) applies (determined without regard to this subsection), any deduction under paragraph (1) with respect to amounts which are allocable to such property shall, for purposes of section 617(d), be treated as a deduction allowable under section 617(a).

(6) Amounts to which election apply not treated as tax preference

Any portion of any qualified expenditure to which an election under paragraph (1) applies shall not be treated as an item of tax preference under section 57(a) and section 56 shall not apply to such expenditure.

(f) Coordination with section 291

Except as otherwise provided in this part, section 291 (relating to cutback of corporate preferences) shall apply before the application of this part.

(g) Tax benefit rule

The Secretary may prescribe regulations under which differently treated items shall be properly adjusted where the tax treatment giving rise to such items will not result in the reduction of the taxpayer's regular tax for the taxable year for which the item is taken into account or for any other taxable year.

(h) Coordination with certain limitations

The limitations of sections 704(d), 465, and 1366(d) (and such other provisions as may be specified in regulations) shall be applied for purposes of computing the alternative minimum taxable income of the taxpayer for the taxable year with the adjustments of sections 56, 57, and 58.

(i) Special rule for amounts treated as tax preference

For purposes of this subtitle (other than this part), any amount shall not fail to be treated as wholly exempt from tax imposed by this subtitle solely by reason of being included in alternative minimum taxable income.

(j) Treatment of unearned income of minor children

(1) In general

In the case of a child to whom section 1(g) applies, the exemption amount for purposes of section 55 shall not exceed the sum of—

(A) such child's earned income (as defined in section 911(d)(2)) for the taxable year, plus

(B) $5,000.

(2) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 1998, the dollar amount in paragraph (1)(B) shall be increased by an amount equal to the product of—

(A) such dollar amount, and

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ''1997'' for ''1992'' in subparagraph (B) thereof.

If any increase determined under the preceding sentence is not a multiple of $50, such increase shall be rounded to the nearest multiple of $50.

(Added Pub. L. 99–514, title VII, §701(a), Oct. 22, 1986, 100 Stat. 2336; amended Pub. L. 100–647, title I, §§1007(e), 1014(e)(5)(A), Nov. 10, 1988, 102 Stat. 3432, 3561; Pub. L. 101–239, title VII, §§7611(f)(5)(B), (6), 7612(e)(1), 7811(d)(1)(A), (j)(7), Dec. 19, 1989, 103 Stat. 2373, 2374, 2408, 2412; Pub. L. 101–508, title XI, §§11101(d)(3), 11531(b)(2), 11702(d), 11801(c)(2)(D), Nov. 5, 1990, 104 Stat. 1388–405, 1388–490, 1388–514, 1388–523; Pub. L. 102–486, title XIX, §1915(c)(3), Oct. 24, 1992, 106 Stat. 3024; Pub. L. 104–188, title I, §§1601(b)(2)(D), 1702(a)(1), 1703(e), 1704(m)(3), Aug. 20, 1996, 110 Stat. 1833, 1868, 1875, 1883; Pub. L. 105–34, title X, §1057(a), title XI, §1103(a), title XII, §1201(b)(1), Aug. 5, 1997, 111 Stat. 945, 966, 994; Pub. L. 105–206, title VI, §§6011(a), 6023(2), July 22, 1998, 112 Stat. 817, 824; Pub. L. 108–357, title IV, §421(a)(1), Oct. 22, 2004, 118 Stat. 1514.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENTS

2004—Subsec. (a)(2) to (4). Pub. L. 108–357 redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which related to limitation on alternative minimum tax foreign tax credit and carryback and carryforward of excess.

1998—Subsec. (a)(3), (4). Pub. L. 105–206, §6011(a), redesignated par. (3), relating to election to use simplified section 904 limitation, as (4).

Subsec. (b). Pub. L. 105–206, §6023(2), substituted ''credits under section 30A or 936'' for ''section 936 credit'' in heading.

1997—Subsec. (a)(2)(C). Pub. L. 105–34, §1057(a), struck out subpar. (C) which read as follows:

''(C) EXCEPTION.—Subparagraph (A) shall not apply to any domestic corporation if—

''(i) more than 50 percent of the stock of such domestic corporation (by vote and value) is owned by United States persons who are not members of an affiliated group (as defined in section 1504 of such Code) which includes such corporation,

''(ii) all of the activities of such corporation are conducted in 1 foreign country with which the United States has an income tax treaty in effect and such treaty provides for the exchange of information between such foreign country and the United States,

''(iii) all of the current earnings and profits of such corporation are distributed at least annually (other than current earnings and profits retained for normal maintenance or capital replacements or improvements of an existing business), and

''(iv) all of such distributions by such corporation to United States persons are used by such persons in a trade or business conducted in the United States.''

Subsec. (a)(3). Pub. L. 105–34, §1103(a), added par. (3) relating to election to use simplified section 904 limitation.

Subsec. (j). Pub. L. 105–34, §1201(b)(1), amended subsec. (j) generally, restating limitation on exemption amount, adding provisions for inflation adjustment of such amount, and deleting provisions relating to limitation based on parental minimum tax and unused parental minimum tax exemption.

1996—Subsec. (a)(1)(A). Pub. L. 104–188, §1703(e)(1), substituted ''the pre-credit tentative minimum tax'' for ''the amount determined under section 55(b)(1)(A)''.

Subsec. (a)(1)(C). Pub. L. 104–188, §1703(e)(2), substituted ''specified in subparagraph (A)(i) or (B)(i) of section 55(b)(1) (whichever applies)'' for ''specified in section 55(b)(1)(A)''.

Subsec. (a)(2)(A)(i). Pub. L. 104–188, §1703(e)(1), substituted ''the pre-credit tentative minimum tax'' for ''the amount determined under section 55(b)(1)(A)''.

Subsec. (a)(2)(A)(ii). Pub. L. 104–188, §1703(e)(3), substituted ''which would be the pre-credit tentative minimum tax'' for ''which would be determined under section 55(b)(1)(A)''.

Subsec. (a)(3). Pub. L. 104–188, §1703(e)(4), added par. (3).

Subsec. (b). Pub. L. 104–188, §1601(b)(2)(D), substituted ''section 30A or 936, alternative minimum taxable in-

come shall not include any income with respect to which a credit is determined under section 30A or 936.'' for ''section 936, alternative minimum taxable income shall not include any amount with respect to which the requirements of subparagraph (A) or (B) of section 936(a)(1) are met.''

Subsec. (j)(1)(B). Pub. L. 104–188, §1704(m)(3), substituted ''twice the amount in effect for the taxable year under section 63(c)(5)(A)'' for ''$1,000''.

Subsec. (j)(3)(B). Pub. L. 104–188, §1702(a)(1), substituted ''section 1(g)(3)(B)'' for ''section 1(i)(3)(B)''.

1992—Subsec. (a)(2)(A)(ii). Pub. L. 102–486 substituted ''and section 57(a)(2)(E)'' for ''and the alternative tax energy preference deduction under section 56(h)''.

1990—Subsec. (a)(1)(B) to (D). Pub. L. 101–508, §11801(c)(2)(D), inserted ''and'' at end of subpar. (B), redesignated subpar. (D) as (C), and struck out former subpar. (C) which read as follows: ''for purposes of section 904, any increase in alternative minimum taxable income by reason of section 56(c)(1)(A) (relating to adjustment for book income) shall have the same proportionate source (and character) as alternative minimum taxable income determined without regard to such increase, and''.

Subsec. (a)(2)(A)(ii). Pub. L. 101–508, §11531(b)(2), inserted before period at end ''and the alternative tax energy preference deduction under section 56(h)''.

Subsec. (j). Pub. L. 101–508, §11101(d)(3)(A), substituted ''section 1(g)'' for ''section 1(i)'' in pars. (1), (2)(A), (B)(i)(I), (II), (D), and (3).

Subsec. (j)(1)(B). Pub. L. 101–508, §11702(d)(1), inserted ''(or, if greater, the child's share of the unused parental minimum tax exemption)'' before period at end.

Subsec. (j)(2)(C). Pub. L. 101–508, §11101(d)(3)(B), substituted ''section 1(g)(3)(B)'' for ''section 1(i)(3)(B)''.

Subsec. (j)(2)(D). Pub. L. 101–508, §11702(d)(3), substituted ''paragraphs (3)(D), (5), and (6)'' for ''paragraphs (5) and (6)''.

Subsec. (j)(3). Pub. L. 101–508, §11702(d)(2), added par. (3).

1989—Subsec. (a)(2)(C). Pub. L. 101–239, §7612(e)(1), added subpar. (C).

Subsec. (e)(1). Pub. L. 101–239, §7611(f)(5)(B), inserted before period at end ''(or, in the case of a qualified expenditure described in paragraph (2)(C), over the 60-month period beginning with the month in which such expenditure was paid or incurred)''.

Subsec. (g). Pub. L. 101–239, §7811(d)(1)(A), substituted ''for the taxable year for which the item is taken into account or for any other taxable year'' for ''for any taxable year''.

Subsec. (i). Pub. L. 101–239, §7611(f)(6), substituted ''amounts'' for ''interest'' in heading and ''any amount shall'' for ''interest shall'' in text.

Subsec. (j)(2)(D). Pub. L. 101–239, §7811(j)(7), substituted ''Other rules'' for ''Others rules'' in heading.

1988—Subsec. (a)(1)(D). Pub. L. 100–647, §1007(e)(3), added subpar. (D).

Subsec. (e)(2). Pub. L. 100–647, §1007(e)(1), inserted ''(determined without regard to section 291)'' after ''as a deduction''.

Subsec. (h). Pub. L. 100–647, §1007(e)(2), substituted ''taxable year with the adjustments of sections 56, 57, and 58'' for ''taxable year—

''(1) with the adjustments of section 56, and

''(2) by not taking into account any deduction to the extent such deduction is an item of tax preference under section 57(a)''.

Subsec. (i). Pub. L. 100–647, §1007(e)(4), inserted ''(other than this part)'' after ''of this subtitle'' and substituted ''subtitle'' for ''title'' before ''solely''.

Subsec. (j). Pub. L. 100–647, §1014(e)(5)(A), added subsec. (j).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2004, see section 421(b) of Pub. L. 108–357, set out as a note under section 53 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6023(2) of Pub. L. 105–206 effective July 22, 1998, see section 6023(32) of Pub. L. 105–206, set out as a note under section 34 of this title.

Amendment by section 6011(a) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1057(b) of Pub. L. 105–34 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997].''

Section 1103(b) of Pub. L. 105–34 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997.''

Section 1201(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section and sections 63 and 6103 of this title] shall apply to taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1601(b)(2)(D) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, except as otherwise provided, see section 1601(c) of Pub. L. 104–188, set out as an Effective Date note under section 30A of this title.

Amendment by section 1702(a)(1) of Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

Amendment by section 1703(e) of Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§13001–13444, to which such amendment relates, see section 1703(*o*) of Pub. L. 104–188, set out as a note under section 39 of this title.

Amendment by section 1704(m)(3) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, see section 1704(m)(4) of Pub. L. 104–188, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–486 applicable to taxable years beginning after Dec. 31, 1992, see section 1915(d) of Pub. L. 102–486, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11101(d)(3) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11101(e) of Pub. L. 101–508, set out as a note under section 1 of this title.

Amendment by section 11531(b)(2) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11531(c) of Pub. L. 101–508, set out as a note under section 56 of this title.

Section 11702(j) of Pub. L. 101–508 provided that: ''Any amendment made by this section [amending this section and sections 135, 216, 355, 367, 447, 453B, 468B, 2056, 2056A, 2523, 4980B, and 6114 of this title] shall take effect as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988 [Pub. L. 100–647] to which such amendment relates.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7611(f)(6) of Pub. L. 101–239 applicable to taxable years beginning after Dec. 31, 1989, see section 7611(g)(1) of Pub. L. 101–239, set out as a note under section 56 of this title.

Amendment by section 7611(f)(5)(B) of Pub. L. 101–239 applicable to costs paid or incurred in taxable years be-

ginning after Dec. 31, 1989, see section 7611(g)(2) of Pub. L. 101–239, set out as a note under section 56 of this title.

Section 7612(e)(2) of Pub. L. 101–239 provided that:

''(A) IN GENERAL.—The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after March 31, 1990.

''(B) SPECIAL RULE FOR YEAR WHICH INCLUDES MARCH 31, 1990.—In the case of any taxable year (of a corporation described in subparagraph (C) of section 59(a)(2) of the Internal Revenue Code of 1986 (as added by paragraph (1))) which begins after December 31, 1989, and includes March 31, 1990, the amount determined under clause (ii) of section 59(a)(2)(A) of such Code shall be an amount which bears the same ratio to the amount which would have been determined under such clause without regard to this subparagraph as the number of days in such taxable year on or before March 31, 1990, bears to the total number of days in such taxable year.''

Amendment by section 7811(d)(1)(A), (j)(7) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1007(e) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 1014(e)(5)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to taxable years beginning after December 31, 1988.''

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as a note under section 55 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by section 11801 of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

CONSIDERATION OF CERTAIN TAXES TREATED AS PAID OR ACCRUED UNDER SECTION 904(c) IN DETERMINATION OF ALTERNATIVE MINIMUM TAX FOREIGN TAX CREDIT

Section 1007(f)(5) of Pub. L. 100–647 provided that: ''In determining the amount of the alternative minimum tax foreign tax credit under section 59 of the 1986 Code, there shall not be taken into account any taxes paid or accrued in a taxable year beginning after December 31, 1986, which are treated under section 904(c) of the 1986 Code as paid or accrued in a taxable year beginning on or before December 31, 1986.''

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(a) of Pub. L. 99–514 [enacting this section] notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PART VII—ENVIRONMENTAL TAX

Sec.
59A. Environmental tax.

§ 59A. Environmental tax

(a) Imposition of tax

In the case of a corporation, there is hereby imposed (in addition to any other tax imposed by this subtitle) a tax equal to 0.12 percent of the excess of—

(1) the modified alternative minimum taxable income of such corporation for the taxable year, over

(2) $2,000,000.

(b) Modified alternative minimum taxable income

For purposes of this section, the term ''modified alternative minimum taxable income'' means alternative minimum taxable income (as defined in section 55(b)(2)) but determined without regard to—

(1) the alternative tax net operating loss deduction (as defined in section 56(d)), and

(2) the deduction allowed under section 164(a)(5).

(c) Exception for RIC's and REIT's

The tax imposed by subsection (a) shall not apply to—

(1) a regulated investment company to which part I of subchapter M applies, and

(2) a real estate investment trust to which part II of subchapter M applies.

(d) Special rules

(1) Short taxable years

The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Secretary.

(2) Section 15 not to apply

Section 15 shall not apply to the tax imposed by this section.

(e) Application of tax

(1) In general

The tax imposed by this section shall apply to taxable years beginning after December 31, 1986, and before January 1, 1996.

(2) Earlier termination

The tax imposed by this section shall not apply to taxable years—

(A) beginning during a calendar year during which no tax is imposed under section 4611(a) by reason of paragraph (2) of section 4611(e), and

(B) beginning after the calendar year which includes the termination date under paragraph (3) of section 4611(e).

(Added Pub. L. 99–499, title V, § 516(a), Oct. 17, 1986, 100 Stat. 1770; amended Pub. L. 100–647, title II, § 2001(c)(1), (3)(B), Nov. 10, 1988, 102 Stat. 3594; Pub. L. 101–508, title XI, §§ 11231(a)(1)(A), 11531(b)(3), 11801(c)(2)(E), Nov. 5, 1990, 104 Stat. 1388–444, 1388–490, 1388–523; Pub. L. 102–486, title XIX, § 1915(c)(4), Oct. 24, 1992, 106 Stat. 3024.)

AMENDMENTS

1992—Subsec. (b)(1). Pub. L. 102–486 struck out ''or the alternative tax energy preference deduction under section 56(h)'' after ''section 56(d))''.

1990—Subsec. (b)(1). Pub. L. 101–508, §11531(b)(3), inserted before comma ''or the alternative tax energy preference deduction under section 56(h)''.

Subsec. (b)(2). Pub. L. 101–508, §11801(c)(2)(E), struck out ''(and the last sentence of section 56(f)(2)(B))'' after ''section 164(a)(5)''.

Subsec. (e)(1). Pub. L. 101–508, §11231(a)(1)(A), substituted ''January 1, 1996'' for ''January 1, 1992''.

1988—Subsec. (b)(2). Pub. L. 100–647, §2001(c)(3)(B), inserted ''(and the last sentence of section 56(f)(2)(B))'' before period at end.

Subsecs. (c) to (e). Pub. L. 100–647, §2001(c)(1), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–486 applicable to taxable years beginning after Dec. 31, 1992, see section 1915(d) of Pub. L. 102–486, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11531(b)(3) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11531(c) of Pub. L. 101–508, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Superfund Revenue Act of 1986, Pub. L. 99–499, title V, to which it relates, see section 2001(e) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, see section 516(c) of Pub. L. 99–499, set out as an Effective Date of 1986 Amendment note under section 26 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by section 11801 of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[PART VIII—REPEALED]

[§ 59B. Repealed. Pub. L. 101–234, title I, § 102(a), Dec. 13, 1989, 103 Stat. 1980]

Section, added Pub. L. 100–360, title I, §111(a), July 1, 1988, 102 Stat. 690, provided for imposition of a supplemental medicare premium.

EFFECTIVE DATE OF REPEAL

Section 102(d) of Pub. L. 101–234 provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the provisions of this section [repealing section 1395i–1a of Title 42, The Public Health and Welfare, enacting provisions set out as notes under section 6050F of this title and section 1395t of Title 42, and repealing provisions set out as a note under section 1395i–1a of Title 42] shall take effect January 1, 1990.

''(2) REPEAL OF SUPPLEMENTAL MEDICARE PREMIUM.—The repeal of section 111 of MCCA [Pub. L. 100–360, which enacted this section, amended section 6050F of this title, and enacted provisions set out as notes below] shall apply to taxable years beginning after December 31, 1988.''

EFFECTIVE DATE

Section 111(e) of Pub. L. 100–360, which provided that the enactment of this section and the amendment of section 6050F of this title applied to taxable years beginning after December 31, 1988, and that in case of a taxable year beginning in 1989, the premium imposed by this section should not be treated as a tax for purposes of applying section 6654 of this title, was repealed by Pub. L. 101–234, title I, §102(a), Dec. 13, 1989, 103 Stat. 1980.

ANNOUNCEMENT OF SUPPLEMENTAL PREMIUM RATE

Section 111(d) of Pub. L. 100–360, which provided that in the case of calendar year 1993 or any calendar year thereafter (1) not later than July 1 of such calendar year, the Secretary of the Treasury or his delegate was required to make an announcement of the estimated supplemental premium rate under this section for taxable years beginning in the following calendar year, and (2) not later than October 1 of such calendar year, the Secretary of the Treasury or his delegate was required to make an announcement of the actual supplemental premium rate under this section for such taxable years, was repealed by Pub. L. 101–234, title I, §102(a), Dec. 13, 1989, 103 Stat. 1980.

Subchapter B—Computation of Taxable Income

Part

I. Definition of gross income, adjusted gross income, taxable income, etc.
II. Items specifically included in gross income.
III. Items specifically excluded from gross income.
IV. Determination of marital status.[1]
V. Deductions for personal exemptions.
VI. Itemized deductions for individuals and corporations.
VII. Additional itemized deductions for individuals.
VIII. Special deductions for corporations.
IX. Items not deductible.
X. Terminal railroad corporations and their shareholders.
XI. Special rules relating to corporate preference items.

AMENDMENTS

1982—Pub. L. 97–248, title II, §204(c)(2), Sept. 3, 1982, 96 Stat. 427, added item for part XI.

1977—Pub. L. 95–30, title I, §101(e)(3), May 23, 1977, 91 Stat. 135, substituted ''Determination of marital status'' for ''Standard deduction for individuals'' in item for part IV.

1976—Pub. L. 94–455, title XIX, §1901(b)(4)(C), Oct. 4, 1976, 90 Stat. 1793, substituted ''taxable income, etc.'' for ''and taxable income.'' in item for part I.

1962—Pub. L. 87–870, §1(b), Oct. 23, 1962, 76 Stat. 1160, added item for part X.

PART I—DEFINITION OF GROSS INCOME, ADJUSTED GROSS INCOME, TAXABLE INCOME, ETC.

Sec.

61. Gross income defined.
62. Adjusted gross income defined.
63. Taxable income defined.
64. Ordinary income defined.
65. Ordinary loss defined.
66. Treatment of community income.
67. 2-percent floor on miscellaneous itemized deductions.
68. Overall limitation on itemized deductions.

AMENDMENTS

1990—Pub. L. 101–508, title XI, §11103(d), Nov. 5, 1990, 104 Stat. 1388–407, added item 68.

1986—Pub. L. 99–514, title I, §132(d), Oct. 22, 1986, 100 Stat. 2116, added item 67.

[1] Part heading amended by Pub. L. 99–514 without corresponding amendment of analysis.

1984—Pub. L. 98–369, div. A, title IV, § 424(b)(2)(C), July 18, 1984, 98 Stat. 803, struck out ''where spouses live apart'' in item 66.

1980—Pub. L. 96–605, title I, § 101(b), Dec. 28, 1980, 94 Stat. 3522, added item 66.

1976—Pub. L. 94–455, title XIX, § 1901(b)(4)(A), (B), Oct. 4, 1976, 90 Stat. 1793, substituted ''TAXABLE INCOME, ETC.'' for ''AND TAXABLE INCOME'' in part heading, and added items 64 and 65.

§ 61. Gross income defined

(a) General definition

Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

(1) Compensation for services, including fees, commissions, fringe benefits, and similar items;

(2) Gross income derived from business;

(3) Gains derived from dealings in property;

(4) Interest;

(5) Rents;

(6) Royalties;

(7) Dividends;

(8) Alimony and separate maintenance payments;

(9) Annuities;

(10) Income from life insurance and endowment contracts;

(11) Pensions;

(12) Income from discharge of indebtedness;

(13) Distributive share of partnership gross income;

(14) Income in respect of a decedent; and

(15) Income from an interest in an estate or trust.

(b) Cross references

For items specifically included in gross income, see part II (sec. 71 and following). For items specifically excluded from gross income, see part III (sec. 101 and following).

(Aug. 16, 1954, ch. 736, 68A Stat. 17; Pub. L. 98–369, div. A, title V, § 531(c), July 18, 1984, 98 Stat. 884.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98–369 inserted reference to fringe benefits.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective Jan. 1, 1985, see section 531(h) of Pub. L. 98–369, set out as an Effective Date note under section 132 of this title.

TERMINATION DATE OF 1978 AMENDMENT

Pub. L. 95–615, § 210(a), Nov. 8, 1978, 92 Stat. 3109, provided that: ''Title I of this Act [probably means sections 1 to 8 of Pub. L. 95–615, see Short Title of 1978 Amendment note under section 1 of this title] (other than sections 4 and 5 thereof) [amending section 167 of this title, enacting provisions set out as notes under this section and sections 61 and 62 of this title, and amending provisions set out as notes under sections 117, 167, and 382 of this title] shall cease to have effect on the day after the date of the enactment of this Act [Nov. 8, 1978].''

REGULATIONS

Pub. L. 95–427, § 1, Oct. 7, 1978, 92 Stat. 996, as amended by Pub. L. 96–167, § 1, Dec. 29, 1979, 93 Stat. 1275; Pub. L. 97–34, title VIII, § 801, Aug. 13, 1981, 95 Stat. 349; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) IN GENERAL.—No fringe benefit regulation shall be issued—

''(1) in final form on or after May 1, 1978, and on or before December 31, 1983, or

''(2) in proposed or final form on or after May 1, 1978, if such regulation has an effective date on or before December 31, 1983.

''(b) DEFINITION OF FRINGE BENEFIT REGULATION.—For purposes of subsection (a), the term 'fringe benefit regulation' means a regulation providing for the inclusion of any fringe benefit in gross income by reason of section 61 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].''

Pub. L. 95–615, § 3, Nov. 8, 1978, 92 Stat. 3097, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that no regulations be issued in final form on or after Oct. 1, 1977, and before July 1, 1978, providing for inclusion of any fringe benefit in gross income by reason of section 61 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], ceased to have effect on the day after Nov. 8, 1978, pursuant to section 210(a) of that Act.

NO GAIN RECOGNIZED FROM NET GIFTS MADE BEFORE MARCH 4, 1981

Section 1026 of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) IN GENERAL.—In the case of any transfer of property subject to gift tax made before March 4, 1981, for purposes of subtitle A of the Internal Revenue Code of 1986 [formerly I.R.C. 1954, 26 U.S.C. 1 et seq.], gross income of the donor shall not include any amount attributable to the donee's payment of (or agreement to pay) any gift tax imposed with respect to such gift.

''(b) GIFT TAX DEFINED.—For purposes of subsection (a), the term 'gift tax' means—

''(1) the tax imposed by chapter 12 of such Code [26 U.S.C. 2501 et seq.], and

''(2) any tax imposed by a State (or the District of Columbia) on transfers by gifts.

''(c) STATUTE OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from subsection (a) is prevented on the date of the enactment of this Act [July 18, 1984] (or at any time within 1 year after such date) by the operation of any law or rule of law (including res judicata), refund or credit of such overpayment (to the extent attributable to subsection (a)) may nevertheless be made or allowed if claim therefor is filed within 1 year after the date of the enactment of this Act.''

PAYMENT-IN-KIND TAX TREATMENT ACT OF 1983

Pub. L. 98–4, Mar. 11, 1983, 97 Stat. 7, as amended by Pub. L. 98–369, div. A, title X, § 1061(a), July 18, 1984, 98 Stat. 1046; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–647, title VI, § 6252(a)(1), Nov. 10, 1988, 102 Stat. 3752, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Payment-in-Kind Tax Treatment Act of 1983'.

''SEC. 2. INCOME TAX TREATMENT OF AGRICULTURAL COMMODITIES RECEIVED UNDER A 1983 PAYMENT-IN-KIND PROGRAM.

''(a) INCOME TAX DEFERRAL, ETC.—Except as otherwise provided in this Act, for purposes of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]—

''(1) a qualified taxpayer shall not be treated as having realized income when he receives a commodity under a 1983 payment-in-kind program,

''(2) such commodity shall be treated as if it were produced by such taxpayer, and

''(3) the unadjusted basis of such commodity in the hands of such taxpayer shall be zero.

''(b) EFFECTIVE DATE.—This section shall apply to taxable years ending after December 31, 1982, but only with respect to commodities received for the 1983 crop year.

''SEC. 3. LAND DIVERTED UNDER 1983 PAYMENT-IN-KIND PROGRAM TREATED AS USED IN FARMING BUSINESS, ETC.

''(a) GENERAL RULE.—For purposes of the provisions specified in subsection (b), in the case of any land di-

verted from the production of an agricultural commodity under a 1983 payment-in-kind program—

''(1) such land shall be treated as used during the 1983 crop year by the qualified taxpayer in the active conduct of the trade or business of farming, and

''(2) any qualified taxpayer who materially participates in the diversion and devotion to conservation uses required under a 1983 payment-in-kind program shall be treated as materially participating in the operation of such land during such crop year.

''(b) PROVISIONS TO WHICH SUBSECTION (a) APPLIES.—The provisions specified in this subsection are—

''(1) section 2032A of the Internal Revenue Code of 1986 (relating to valuation of certain farm, etc., real property),

''(2) section 6166 of such Code (relating to extension of time for payment of estate tax where estate consists largely of interest in closely held business),

''(3) chapter 2 of such Code (relating to tax on self-employment income), and

''(4) title II of the Social Security Act [42 U.S.C. 401 et seq.] (relating to Federal old-age, survivors, and disability insurance benefits).

''SEC. 4. ANTIABUSE RULES.

''(a) GENERAL RULE.—In the case of any person, sections 2 and 3 of this Act shall not apply with respect to any land acquired by such person after February 23, 1983, unless such land was acquired in a qualified acquisition.

''(b) QUALIFIED ACQUISITION.—For purposes of this section, the term 'qualified acquisition' means any acquisition—

''(1) by reason of the death of a qualified transferor,

''(2) by reason of a gift from a qualified transferor, or

''(3) from a qualified transferor who is a member of the family of the person acquiring the land.

''(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) QUALIFIED TRANSFEROR.—The term 'qualified transferor' means any person—

''(A) who held the land on February 23, 1983, or

''(B) who acquired the land after February 23, 1983, in a qualified acquisition.

''(2) MEMBER OF FAMILY.—The term 'member of the family' has the meaning given such term by section 2032A(e)(2) of the Internal Revenue Code of 1986.

''(3) MERE CHANGE IN FORM OF BUSINESS.—Subsection (a) shall not apply to any change in ownership by reason of a mere change in the form of conducting the trade or business so long as the land is retained in such trade or business and the person holding the land before such change retains a direct or indirect 80-percent interest in such land.

''(4) TREATMENT OF CERTAIN ACQUISITIONS OF RIGHT TO THE CROP.—The acquisition of a direct or indirect interest in 80 percent or more of the crop from any land shall be treated as an acquisition of such land.

''SEC. 5. DEFINITIONS AND SPECIAL RULES.

''(a) GENERAL RULE.—For purposes of this Act—

''(1) 1983 PAYMENT-IN-KIND PROGRAM.—The term '1983 payment-in-kind program' means any program for the 1983 crop year—

''(A) under which the Secretary of Agriculture (or his delegate) makes payments in kind of any agricultural commodity to any person in return for—

''(i) the diversion of farm acreage from the production of an agricultural commodity, and

''(ii) the devotion of such acreage to conservation uses, and

''(B) which the Secretary of Agriculture certifies to the Secretary of the Treasury as being described in subparagraph (A).

''(2) CROP YEAR.—The term '1983 crop year' means the crop year for any crop the planting or harvesting period for which occurs during 1983. The term '1984 crop year' means the crop year for wheat the planting and harvesting period for which occurs during 1984.

''(3) QUALIFIED TAXPAYER.—The term 'qualified taxpayer' means any producer of agricultural commodities (within the meaning of the 1983 payment-in-kind programs) who receives any agricultural commodity in return for meeting the requirements of clauses (i) and (ii) of paragraph (1)(A).

''(4) RECEIPT INCLUDES RIGHT TO RECEIVE, ETC.—A right to receive (or other constructive receipt of) a commodity shall be treated the same as actual receipt of such commodity.

''(5) AMOUNTS RECEIVED BY THE TAXPAYER AS REIMBURSEMENT FOR STORAGE.—A qualified taxpayer reporting on the cash receipts and disbursements method of accounting shall not be treated as being entitled to receive any amount as reimbursement for storage of commodities received under a 1983 payment-in-kind program until such amount is actually received by the taxpayer.

''(6) COMMODITY CREDIT LOANS TREATED SEPARATELY.—Subsection (a) of section 2 shall apply to the receipt of any commodity under a 1983 payment-in-kind program separately from, and without taking into account, any related transaction or series of transactions involving the satisfaction of loans from the Commodity Credit Corporation.

''(b) EXTENSION TO WHEAT PLANTED AND HARVESTED IN 1984.—In the case of wheat—

''(1) any reference in this Act to the 1983 crop year shall include a reference to the 1984 crop year, and

''(2) any reference to the 1983 payment-in-kind program shall include a reference to any program for the 1984 year for wheat which meets the requirements of subparagraphs (A) and (B) of subsection (a)(1).

''(c) REGULATIONS.—The Secretary of the Treasury or his delegate (after consultation with the Secretary of Agriculture) shall prescribe such regulations as may be necessary to carry out the purposes of this Act, including (but not limited to) such regulations as may be necessary to carry out the purposes of this Act where the commodity is received by a cooperative on behalf of the qualified taxpayer.''

[Section 1061(b) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending Pub. L. 98–4 set out above] shall apply with respect to commodities received for the 1984 crop year (as defined in section 5(a)(2) of the Payment-in-Kind Tax Treatment Act of 1983 [Pub. L. 98–4, set out above] as amended by subsection (a)).'']

CANCELLATION OF CERTAIN STUDENT LOANS

Pub. L. 94–455, title XXI, §2117, Oct. 4, 1976, 90 Stat. 1911, as amended by Pub. L. 95–600, title I, §162, Nov. 6, 1978, 92 Stat. 2810; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that no amount be included in gross income of an individual for purposes of 26 U.S.C. 61 by reason of the discharge made before Jan. 1, 1983 of the indebtedness of the individual under a student loan if the discharge was pursuant to a provision of the loan under which the indebtedness of the individual would be discharged if the individual worked for a certain period of time in certain geographical areas or for certain classes of employers.

REGULATIONS RELATING TO TAX TREATMENT OF CERTAIN PREPUBLICATION EXPENDITURES OF PUBLISHERS

Pub. L. 94–455, title XXI, §2119, Oct. 4, 1976, 90 Stat. 1912, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) GENERAL RULE.—With respect to taxable years beginning on or before the date on which regulations dealing with prepublication expenditures are issued after the date of the enactment of this Act [Oct. 4, 1976], the application of sections 61 (as it relates to cost of goods sold), 162, 174, 263, and 471 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] to any prepublication expenditure shall be administered—

''(1) without regard to Revenue Ruling 73–395, and

''(2) in the manner in which such sections were applied consistently by the taxpayer to such expenditures before the date of the issuance of such revenue ruling.

''(b) REGULATIONS TO BE PROSPECTIVE ONLY.—Any regulations issued after the date of the enactment of this Act [Oct. 4, 1976] which deal with the application of sections 61 (as it relates to cost of goods sold), 162, 174, 263, and 471 of the Internal Revenue Code of 1986 to prepublication expenditures shall apply only with respect to taxable years beginning after the date on which such regulations are issued.

''(c) PREPUBLICATION EXPENDITURES DEFINED.—For purposes of this section, the term 'prepublication expenditures' means expenditures paid or incurred by the taxpayer (in connection with his trade or business of publishing) for the writing, editing, compiling, illustrating, designing, or other development or improvement of a book, teaching aid, or similar product.''

REIMBURSEMENT OF MOVING EXPENSES OF EMPLOYEES OF CERTAIN CORPORATIONS EXCLUDED FROM GROSS INCOME; CLAIM FOR REFUND OR CREDIT; LIMITATIONS; INTEREST

Pub. L. 86–780, § 5, Sept. 14, 1960, 74 Stat. 1013, provided for the exclusion from gross income of any amount received after Dec. 31, 1949, and before Oct. 1, 1955, by employees of certain corporations as reimbursement for moving expenses, and the refund or credit of any overpayments.

§ 62. Adjusted gross income defined

(a) General rule

For purposes of this subtitle, the term ''adjusted gross income'' means, in the case of an individual, gross income minus the following deductions:

(1) Trade and business deductions

The deductions allowed by this chapter (other than by part VII of this subchapter) which are attributable to a trade or business carried on by the taxpayer, if such trade or business does not consist of the performance of services by the taxpayer as an employee.

(2) Certain trade and business deductions of employees

(A) Reimbursed expenses of employees

The deductions allowed by part VI (section 161 and following) which consist of expenses paid or incurred by the taxpayer, in connection with the performance by him of services as an employee, under a reimbursement or other expense allowance arrangement with his employer. The fact that the reimbursement may be provided by a third party shall not be determinative of whether or not the preceding sentence applies.

(B) Certain expenses of performing artists

The deductions allowed by section 162 which consist of expenses paid or incurred by a qualified performing artist in connection with the performances by him of services in the performing arts as an employee.

(C) Certain expenses of officials

The deductions allowed by section 162 which consist of expenses paid or incurred with respect to services performed by an official as an employee of a State or a political subdivision thereof in a position compensated in whole or in part on a fee basis.

(D) Certain expenses of elementary and secondary school teachers

In the case of taxable years beginning during 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, or 2011, the deductions allowed by section 162 which consist of expenses, not in excess of $250, paid or incurred by an eligible educator in connection with books, supplies (other than nonathletic supplies for courses of instruction in health or physical education), computer equipment (including related software and services) and other equipment, and supplementary materials used by the eligible educator in the classroom.

(E) Certain expenses of members of reserve components of the Armed Forces of the United States

The deductions allowed by section 162 which consist of expenses, determined at a rate not in excess of the rates for travel expenses (including per diem in lieu of subsistence) authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, paid or incurred by the taxpayer in connection with the performance of services by such taxpayer as a member of a reserve component of the Armed Forces of the United States for any period during which such individual is more than 100 miles away from home in connection with such services.

(3) Losses from sale or exchange of property

The deductions allowed by part VI (sec. 161 and following) as losses from the sale or exchange of property.

(4) Deductions attributable to rents and royalties

The deductions allowed by part VI (sec. 161 and following), by section 212 (relating to expenses for production of income), and by section 611 (relating to depletion) which are attributable to property held for the production of rents or royalties.

(5) Certain deductions of life tenants and income beneficiaries of property

In the case of a life tenant of property, or an income beneficiary of property held in trust, or an heir, legatee, or devisee of an estate, the deduction for depreciation allowed by section 167 and the deduction allowed by section 611.

(6) Pension, profit-sharing, and annuity plans of self-employed individuals

In the case of an individual who is an employee within the meaning of section 401(c)(1), the deduction allowed by section 404.

(7) Retirement savings

The deduction allowed by section 219 (relating to deduction of certain retirement savings).

[(8) Repealed. Pub. L. 104–188, title I, § 1401(b)(4), Aug. 20, 1996, 110 Stat. 1788]

(9) Penalties forfeited because of premature withdrawal of funds from time savings accounts or deposits

The deductions allowed by section 165 for losses incurred in any transaction entered into for profit, though not connected with a trade or business, to the extent that such losses include amounts forfeited to a bank, mutual savings bank, savings and loan association,

building and loan association, cooperative bank or homestead association as a penalty for premature withdrawal of funds from a time savings account, certificate of deposit, or similar class of deposit.

(10) Alimony

The deduction allowed by section 215.

(11) Reforestation expenses

The deduction allowed by section 194.

(12) Certain required repayments of supplemental unemployment compensation benefits

The deduction allowed by section 165 for the repayment to a trust described in paragraph (9) or (17) of section 501(c) of supplemental unemployment compensation benefits received from such trust if such repayment is required because of the receipt of trade readjustment allowances under section 231 or 232 of the Trade Act of 1974 (19 U.S.C. 2291 and 2292).

(13) Jury duty pay remitted to employer

Any deduction allowable under this chapter by reason of an individual remitting any portion of any jury pay to such individual's employer in exchange for payment by the employer of compensation for the period such individual was performing jury duty. For purposes of the preceding sentence, the term ''jury pay'' means any payment received by the individual for the discharge of jury duty.

(14) Deduction for clean-fuel vehicles and certain refueling property

The deduction allowed by section 179A.

(15) Moving expenses

The deduction allowed by section 217.

(16) Archer MSAs

The deduction allowed by section 220.

(17) Interest on education loans

The deduction allowed by section 221.

(18) Higher education expenses

The deduction allowed by section 222.

(19) Health savings accounts

The deduction allowed by section 223.

(20) Costs involving discrimination suits, etc.

Any deduction allowable under this chapter for attorney fees and court costs paid by, or on behalf of, the taxpayer in connection with any action involving a claim of unlawful discrimination (as defined in subsection (e)) or a claim of a violation of subchapter III of chapter 37 of title 31, United States Code[1] or a claim made under section 1862(b)(3)(A) of the Social Security Act (42 U.S.C. 1395y(b)(3)(A)). The preceding sentence shall not apply to any deduction in excess of the amount includible in the taxpayer's gross income for the taxable year on account of a judgment or settlement (whether by suit or agreement and whether as lump sum or periodic payments) resulting from such claim.

(21) Attorneys fees relating to awards to whistleblowers

Any deduction allowable under this chapter for attorney fees and court costs paid by, or on behalf of, the taxpayer in connection with any award under section 7623(b) (relating to awards to whistleblowers). The preceding sentence shall not apply to any deduction in excess of the amount includible in the taxpayer's gross income for the taxable year on account of such award.

Nothing in this section shall permit the same item to be deducted more than once.

(b) Qualified performing artist

(1) In general

For purposes of subsection (a)(2)(B), the term ''qualified performing artist'' means, with respect to any taxable year, any individual if—

(A) such individual performed services in the performing arts as an employee during the taxable year for at least 2 employers,

(B) the aggregate amount allowable as a deduction under section 162 in connection with the performance of such services exceeds 10 percent of such individual's gross income attributable to the performance of such services, and

(C) the adjusted gross income of such individual for the taxable year (determined without regard to subsection (a)(2)(B)) does not exceed $16,000.

(2) Nominal employer not taken into account

An individual shall not be treated as performing services in the performing arts as an employee for any employer during any taxable year unless the amount received by such individual from such employer for the performance of such services during the taxable year equals or exceeds $200.

(3) Special rules for married couples

(A) In general

Except in the case of a husband and wife who lived apart at all times during the taxable year, if the taxpayer is married at the close of the taxable year, subsection (a)(2)(B) shall apply only if the taxpayer and his spouse file a joint return for the taxable year.

(B) Application of paragraph (1)

In the case of a joint return—

(i) paragraph (1) (other than subparagraph (C) thereof) shall be applied separately with respect to each spouse, but

(ii) paragraph (1)(C) shall be applied with respect to their combined adjusted gross income.

(C) Determination of marital status

For purposes of this subsection, marital status shall be determined under section 7703(a).

(D) Joint return

For purposes of this subsection, the term ''joint return'' means the joint return of a husband and wife made under section 6013.

(c) Certain arrangements not treated as reimbursement arrangements

For purposes of subsection (a)(2)(A), an arrangement shall in no event be treated as a re-

[1] So in original. Probably should be followed by a comma.

imbursement or other expense allowance arrangement if—

(1) such arrangement does not require the employee to substantiate the expenses covered by the arrangement to the person providing the reimbursement, or

(2) such arrangement provides the employee the right to retain any amount in excess of the substantiated expenses covered under the arrangement.

The substantiation requirements of the preceding sentence shall not apply to any expense to the extent that substantiation is not required under section 274(d) for such expense by reason of the regulations prescribed under the 2nd sentence thereof.

(d) Definition; special rules

(1) Eligible educator

(A) In general

For purposes of subsection (a)(2)(D), the term ''eligible educator'' means, with respect to any taxable year, an individual who is a kindergarten through grade 12 teacher, instructor, counselor, principal, or aide in a school for at least 900 hours during a school year.

(B) School

The term ''school'' means any school which provides elementary education or secondary education (kindergarten through grade 12), as determined under State law.

(2) Coordination with exclusions

A deduction shall be allowed under subsection (a)(2)(D) for expenses only to the extent the amount of such expenses exceeds the amount excludable under section 135, 529(c)(1), or 530(d)(2) for the taxable year.

(e) Unlawful discrimination defined

For purposes of subsection (a)(20), the term ''unlawful discrimination'' means an act that is unlawful under any of the following:

(1) Section 302 of the Civil Rights Act of 1991 (2 U.S.C. 1202).[2]

(2) Section 201, 202, 203, 204, 205, 206, or 207 of the Congressional Accountability Act of 1995 (2 U.S.C. 1311, 1312, 1313, 1314, 1315, 1316, or 1317).

(3) The National Labor Relations Act (29 U.S.C. 151 et seq.).

(4) The Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

(5) Section 4 or 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623 or 633a).

(6) Section 501 or 504 of the Rehabilitation Act of 1973 (29 U.S.C. 791 or 794).

(7) Section 510 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1140).

(8) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.).

(9) The Employee Polygraph Protection Act of 1988 (29 U.S.C. 2001 et seq.).

(10) The Worker Adjustment and Retraining Notification Act (29 U.S.C. 2102 et seq.).

(11) Section 105 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2615).

(12) Chapter 43 of title 38, United States Code (relating to employment and reemployment rights of members of the uniformed services).

(13) Section 1977, 1979, or 1980 of the Revised Statutes (42 U.S.C. 1981, 1983, or 1985).

(14) Section 703, 704, or 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2, 2000e–3, or 2000e–16).

(15) Section 804, 805, 806, 808, or 818 of the Fair Housing Act (42 U.S.C. 3604, 3605, 3606, 3608, or 3617).

(16) Section 102, 202, 302, or 503 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112, 12132, 12182, or 12203).

(17) Any provision of Federal law (popularly known as whistleblower protection provisions) prohibiting the discharge of an employee, the discrimination against an employee, or any other form of retaliation or reprisal against an employee for asserting rights or taking other actions permitted under Federal law.

(18) Any provision of Federal, State, or local law, or common law claims permitted under Federal, State, or local law—

(i) providing for the enforcement of civil rights, or

(ii) regulating any aspect of the employment relationship, including claims for wages, compensation, or benefits, or prohibiting the discharge of an employee, the discrimination against an employee, or any other form of retaliation or reprisal against an employee for asserting rights or taking other actions permitted by law.

(Aug. 16, 1954, ch. 736, 68A Stat. 17; Pub. L. 87–792, §7(b), Oct. 10, 1962, 76 Stat. 828; Pub. L. 88–272, title II, §213(b), Feb. 26, 1964, 78 Stat. 52; Pub. L. 91–172, title V, §531(b), Dec. 30, 1969, 83 Stat. 655; Pub. L. 93–406, title II, §§2002(a)(2), 2005(c)(9), Sept. 2, 1974, 88 Stat. 959, 992; Pub. L. 93–483, §6(a), Oct. 26, 1974, 88 Stat. 1458; Pub. L. 94–455, title V, §502(a), title XV, §1501(b)(1), title XIX, §1901(a)(8), (9), Oct. 4, 1976, 90 Stat. 1559, 1735, 1765; Pub. L. 95–615, §203(b), Nov. 8, 1978, 92 Stat. 3106; Pub. L. 96–451, title III, §301(b), Oct. 14, 1980, 94 Stat. 1990; Pub. L. 96–608, §3(a), Dec. 28, 1980, 94 Stat. 3551; Pub. L. 97–34, title I, §§103(b), 112(b)(2), title III, §311(h)(1), Aug. 13, 1981, 95 Stat. 187, 195, 282; Pub. L. 97–354, §5(a)(17), Oct. 19, 1982, 96 Stat. 1693; Pub. L. 98–369, div. A, title IV, §491(d)(2), July 18, 1984, 98 Stat. 849; Pub. L. 99–514, title I, §§131(b)(1), 132(b), (c), title III, §301(b)(1), title XVIII, §1875(c)(3), Oct. 22, 1986, 100 Stat. 2113, 2115, 2116, 2217, 2894; Pub. L. 100–485, title VII, §702(a), Oct. 13, 1988, 102 Stat. 2426; Pub. L. 100–647, title I, §1001(b)(3)(A), title VI, §6007(b), Nov. 10, 1988, 102 Stat. 3349, 3687; Pub. L. 101–508, title XI, §11802(e)(1), Nov. 5, 1990, 104 Stat. 1388–530; Pub. L. 102–318, title V, §521(b)(2), July 3, 1992, 106 Stat. 310; Pub. L. 102–486, title XIX, §1913(a)(2), Oct. 24, 1992, 106 Stat. 3019; Pub. L. 103–66, title XIII, §13213(c)(1), Aug. 10, 1993, 107 Stat. 474; Pub. L. 104–188, title I, §1401(b)(4), Aug. 20, 1996, 110 Stat. 1788; Pub. L. 104–191, title III, §301(b), Aug. 21, 1996, 110 Stat. 2048; Pub. L. 105–34, title II, §202(b), title IX, §975(a), Aug. 5, 1997, 111 Stat. 808, 898; Pub. L. 106–554, §1(a)(7) [title II, §202(b)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–629; Pub. L. 107–16, title IV, §431(b), June 7, 2001, 115 Stat. 68; Pub. L. 107–147, title IV, §406(a), (b), Mar. 9, 2002, 116 Stat. 43;

[2] See References in Text note below.

Pub. L. 108–121, title I, § 109(b), Nov. 11, 2003, 117 Stat. 1341; Pub. L. 108–173, title XII, § 1201(b), Dec. 8, 2003, 117 Stat. 2476; Pub. L. 108–311, title III, § 307(a), Oct. 4, 2004, 118 Stat. 1179; Pub. L. 108–357, title VII, § 703(a), (b), Oct. 22, 2004, 118 Stat. 1546, 1547; Pub. L. 109–135, title IV, § 412(q), Dec. 21, 2005, 119 Stat. 2638; Pub. L. 109–432, div. A, title I, § 108(a), title IV, § 406(a)(3), Dec. 20, 2006, 120 Stat. 2939, 2959; Pub. L. 110–343, div. C, title II, § 203(a), Oct. 3, 2008, 122 Stat. 3864; Pub. L. 111–312, title VII, § 721(a), Dec. 17, 2010, 124 Stat. 3316.)

AMENDMENT OF SECTION

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

REFERENCES IN TEXT

Section 302 of the Civil Rights Act of 1991, referred to in subsec. (e)(1), was formerly classified to section 1202 of Title 2, The Congress, and was transferred to section 2000e–16b of Title 42, The Public Health and Welfare.

The National Labor Relations Act, referred to in subsec. (e)(3), is act July 5, 1935, ch. 372, 49 Stat. 449, as amended, which is classified generally to subchapter II (§ 151 et seq.) of chapter 7 of Title 29, Labor. For complete classification of this Act to the Code, see section 167 of Title 29 and Tables.

The Fair Labor Standards Act of 1938, referred to in subsec. (e)(4), is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified generally to chapter 8 (§ 201 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see section 201 of Title 29 and Tables.

The Education Amendments of 1972, referred to in subsec. (e)(8), is Pub. L. 92–318, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Act, known as the Patsy Takemoto Mink Equal Opportunity in Education Act, is classified principally to chapter 38 (§ 1681 et seq.) of Title 20, Education. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of Title 20 and Tables.

The Employee Polygraph Protection Act of 1988, referred to in subsec. (e)(9), is Pub. L. 100–347, June 27, 1988, 102 Stat. 646, as amended, which is classified generally to chapter 22 (§ 2001 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 29 and Tables.

The Worker Adjustment and Retraining Notification Act, referred to in subsec. (e)(10), is Pub. L. 100–379, Aug. 4, 1988, 102 Stat. 890, as amended, which is classified generally to chapter 23 (§ 2101 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 2101 of Title 29 and Tables.

AMENDMENTS

2010—Subsec. (a)(2)(D). Pub. L. 111–312 substituted ''2009, 2010, or 2011'' for ''or 2009''.

2008—Subsec. (a)(2)(D). Pub. L. 110–343 substituted ''2007, 2008, or 2009'' for ''or 2007''.

2006—Subsec. (a)(2)(D). Pub. L. 109–432, § 108(a), substituted ''2005, 2006, or 2007'' for ''or 2005''.

Subsec. (a)(21). Pub. L. 109–432, § 406(a)(3), added par. (21).

2005—Subsec. (a)(19), (20). Pub. L. 109–135, § 412(q)(1), redesignated par. (19) relating to costs involving discrimination suits, etc., as par. (20) and moved to follow par. (19) relating to health savings accounts.

Subsec. (e). Pub. L. 109–135, § 412(q)(2), substituted ''subsection (a)(20)'' for ''subsection (a)(19)'' in introductory provisions.

2004—Subsec. (a)(2)(D). Pub. L. 108–311 substituted '', 2003, 2004, or 2005'' for ''or 2003''.

Subsec. (a)(19). Pub. L. 108–357, § 703(a), added par. (19) relating to costs involving discrimination suits, etc.

Subsec. (e). Pub. L. 108–357, § 703(b), added subsec. (e).

2003—Subsec. (a)(2)(E). Pub. L. 108–121 added subpar. (E).

Subsec. (a)(19). Pub. L. 108–173 added par. (19).

2002—Subsec. (a)(2)(D). Pub. L. 107–147, § 406(a), added subpar. (D).

Subsec. (d). Pub. L. 107–147, § 406(b), added subsec. (d).

2001—Subsec. (a)(18). Pub. L. 107–16, §§ 431(b), 901, temporarily added par. (18). See Effective and Termination Dates of 2001 Amendment note below.

2000—Subsec. (a)(16). Pub. L. 106–554 amended heading and text of par. (16) generally. Prior to amendment, text read as follows: ''The deduction allowed by section 220.''

1997—Subsec. (a)(2)(C). Pub. L. 105–34, § 975(a), added subpar. (C).

Subsec. (a)(17). Pub. L. 105–34, § 202(b), added par. (17).

1996—Subsec. (a)(8). Pub. L. 104–188 struck out par. (8) which read as follows: ''CERTAIN PORTION OF LUMP-SUM DISTRIBUTIONS FROM PENSION PLANS TAXED UNDER SECTION 402(D).—The deduction allowed by section 402(d)(3).''

Subsec. (a)(16). Pub. L. 104–191 added par. (16).

1993—Subsec. (a)(15). Pub. L. 103–66 added par. (15).

1992—Subsec. (a)(8). Pub. L. 102–318 substituted ''402(d)'' for ''402(e)'' in heading and in text.

Subsec. (a)(14). Pub. L. 102–486 added par. (14).

1990—Subsec. (a)(13). Pub. L. 101–508, § 11802(e)(1), amended par. (13) generally. Prior to amendment, par. (13) read as follows: ''The deduction allowed by section 220.''

1988—Subsec. (a)(2)(A). Pub. L. 100–647, § 1001(b)(3)(A), inserted at end ''The fact that the reimbursement may be provided by a third party shall not be determinative of whether or not the preceding sentence applies.''

Subsec. (a)(13). Pub. L. 100–647, § 6007(b), added par. (13).

Subsec. (c). Pub. L. 100–485 added subsec. (c).

1986—Subsec. (a). Pub. L. 99–514, § 132(b)(2)(A), designated existing provisions as subsec. (a) and added heading.

Subsec. (a)(2). Pub. L. 99–514, § 132(b)(1), amended par. (2) generally, substituting ''Certain trade'' for ''Trade'' in heading and inserting ''of employees'' in subpar. (A) heading, substituting provision relating to deduction of certain expenses of performing artists for provision relating to deduction of expenses for travel away from home in subpar. (B), and striking out subpar. (C) relating to deduction of travel expenses and subpar. (D) relating to deduction of expenses of outside salesmen.

Subsec. (a)(3) to (5). Pub. L. 99–514, § 301(b)(1), redesignated pars. (4) to (6) as (3) to (5), respectively, and struck out former par. (3) which related to long-term capital gains and read as follows: ''The deduction allowed by section 1202.''

Subsec. (a)(6). Pub. L. 99–514, § 301(b)(1), redesignated par. (7) as (6). Former par. (6) redesignated (5).

Pub. L. 99–514, § 1875(c)(3), struck out ''to the extent attributable to contributions made on behalf of such individual'' after ''section 404''.

Subsec. (a)(7). Pub. L. 99–514, § 301(b)(1), redesignated par. (10) as (7). Former par. (7) redesignated (6).

Subsec. (a)(8). Pub. L. 99–514, § 301(b)(1), redesignated par. (11) as (8). Former par. (8) struck out.

Pub. L. 99–514, § 132(c), struck out par. (8) which related to moving expense deduction and read as follows: ''The deduction allowed by section 217.''

Subsec. (a)(9) to (15). Pub. L. 99–514, § 301(b)(1), redesignated pars. (12) to (15) as (9) to (12), respectively. Former pars. (10) and (11) redesignated (7) and (8), respectively.

Subsec. (a)(16). Pub. L. 99–514, § 131(b)(1), struck out par. (16) which related to deduction for two-earner married couples and read as follows: ''The deduction allowed by section 221.''

Subsec. (b). Pub. L. 99–514, § 132(b)(2)(B), added subsec. (b).

1984—Par. (7). Pub. L. 98–369, § 491(d)(2), substituted ''and annuity'' for ''annuity, and bond purchase'' in heading, and substituted ''the deduction allowed by

section 404'' for ''the deductions allowed by section 404 and section 405(c)'' in text.

1983—Par. (9). Pub. L. 97–354 repealed par. (9) relating to the deduction allowed by section 1379(b)(3).

1981—Par. (10). Pub. L. 97–34, §311(h)(1), struck out ''and the deduction allowed by section 220 (relating to retirement savings for certain married individuals)'' after ''retirement savings''.

Par. (14). Pub. L. 97–34, §112(b)(2), redesignated par. (15) as (14). Former par. (14), relating to deduction for certain expenses of living abroad, was struck out.

Par. (15). Pub. L. 97–34, §112(b)(2), redesignated par. (16) as (15). Former par. (15) redesignated (14).

Par. (16). Pub. L. 97–34, §§103(b), 112(b)(2), added par. (16). Former par. (16) redesignated (15).

1980—Par. (15). Pub. L. 96–451 added par. (15).

Par. (16). Pub. L. 96–608 added par. (16).

1978—Par. (14). Pub. L. 95–615 added par. (14).

1976—Par. (10). Pub. L. 94–455, §1501(b)(1), inserted reference to the deduction allowed by section 220 (relating to retirement savings for certain married individuals).

Pars. (11), (12). Pub. L. 94–455, §1901(a)(8), (9), redesignated par. (11) relating to penalties forfeited because of premature withdrawal of funds from time savings accounts or deposits, as par. (12), and substituted ''trade or business, to the extent'' for ''trade or business to the extent''.

Par. (13). Pub. L. 94–455, §502(a), added par. (13).

1974—Par. (10). Pub. L. 93–406, §2002(a)(2), added par. (10).

Par. (11). Pub. L. 93–483 added par. (11) relating to penalties forfeited because of premature withdrawal of funds from time savings accounts or deposits. Another par. (11) relating to certain portions of lump-sum distributions from pension plans taxed under section 402(e) of this title, was added by Pub. L. 93–406, §2005(c)(9).

1969—Par. (9). Pub. L. 91–172 added par. (9).

1964—Par. (8). Pub. L. 88–272 added par. (8).

1962—Par. (7). Pub. L. 87–792 added par. (7).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §721(b), Dec. 17, 2010, 124 Stat. 3316, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title II, §203(b), Oct. 3, 2008, 122 Stat. 3864, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §108(b), Dec. 20, 2006, 120 Stat. 2939, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2005.''

Pub. L. 109–432, div. A, title IV, §406(d), Dec. 20, 2006, 120 Stat. 2960, provided that: ''The amendments made by subsection (a) [amending this section and sections 7443A and 7623 of this title] shall apply to information provided on or after the date of the enactment of this Act [Dec. 20, 2006].''

EFFECTIVE DATE OF 2004 AMENDMENTS

Pub. L. 108–357, title VII, §703(c), Oct. 22, 2004, 118 Stat. 1548, provided that: ''The amendments made by this section [amending this section] shall apply to fees and costs paid after the date of the enactment of this Act [Oct. 22, 2004] with respect to any judgment or settlement occurring after such date.''

Pub. L. 108–311, title III, §307(b), Oct. 4, 2004, 118 Stat. 1179, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to expenses paid or incurred in taxable years beginning after December 31, 2003.''

EFFECTIVE DATE OF 2003 AMENDMENTS

Pub. L. 108–173, title XII, §1201(k), Dec. 8, 2003, 117 Stat. 2479, provided that: ''The amendments made by this section [enacting sections 223 and 4980G of this title, amending this section and sections 106, 125, 220, 848, 3231, 3306, 3401, 4973, 4975, 6051, and 6693 of this title, and renumbering former section 223 of this title as 224] shall apply to taxable years beginning after December 31, 2003.''

Pub. L. 108–121, title I, §109(c), Nov. 11, 2003, 117 Stat. 1342, provided that: ''The amendments made by this section [amending this section and section 162 of this title] shall apply to amounts paid or incurred in taxable years beginning after December 31, 2002.''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title IV, §406(c), Mar. 9, 2002, 116 Stat. 44, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2001.''

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Pub. L. 107–16, title IV, §431(d), June 7, 2001, 115 Stat. 69, provided that: ''The amendments made by this section [enacting section 222 of this title, amending this section and sections 86, 135, 137, 219, 221, and 469 of this title, and renumbering former section 222 of this title as 223] shall apply to payments made in taxable years beginning after December 31, 2001.''

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 202(e) of Pub. L. 105–34 provided that: ''The amendments made by this section [enacting section 221 of this title, amending this section and section 6050S of this title, and renumbering former section 221 of this title as section 222 of this title] shall apply to any qualified education loan (as defined in section 221(e)(1) of the Internal Revenue Code of 1986, as added by this section) incurred on, before, or after the date of the enactment of this Act [Aug. 5, 1997], but only with respect to—

''(1) any loan interest payment due and paid after December 31, 1997, and

''(2) the portion of the 60-month period referred to in section 221(d) of the Internal Revenue Code of 1986 (as added by this section) after December 31, 1997.''

Section 975(b) of Pub. L. 105–34 provided that: ''The amendment made by this section [amending this section] shall apply to expenses paid or incurred in taxable years beginning after December 31, 1986.''

EFFECTIVE DATE OF 1996 AMENDMENTS

Section 301(j) of Pub. L. 104–191 provided that: ''The amendments made by this section [enacting sections 220 and 4980E of this title, amending this section and sections 106, 125, 848, 3231, 3306, 3401, 4973, 4975, 6051, and 6693 of this title, and renumbering section 220 of this title as section 221] shall apply to taxable years beginning after December 31, 1996.''

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1999, with retention of certain transition rules, see section 1401(c) of Pub. L. 104–188, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13213(e) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and sections 67, 82, 132, 217, 1001, 1016, and 4977 of this title] shall apply to expenses incurred after December 31, 1993; except that the amendments made by subsection (d) [amending sections 82, 132, and 4977 of this title] shall apply to reimbursements or other payments in respect of expenses incurred after such date.''

EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by Pub. L. 102–486 applicable to property placed in service after June 30, 1993, see section 1913(c)

of Pub. L. 102–486, set out as an Effective Date note under section 30 of this title.

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

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by section 1001(b)(3)(A) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6007(d) of Pub. L. 100–647 provided that: ''The amendments made by this section [enacting section 220 of this title, amending this section, and renumbering former section 220 of this title as section 221 of this title] shall apply as if included in the amendments made by section 132 of the Tax Reform Act of 1986 [Pub. L. 99–514].''

Section 702(b) of Pub. L. 100–485 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by sections 131(b)(1) and 132(b), (c) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Section 301(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section and sections 170, 172, 219, 220, 223, 642, 643, 691, 871, 1211, 1212, and 1402 of this title and repealing section 1202 of this title] shall apply to taxable years beginning after December 31, 1986.''

Section 1875(c)(12) of Pub. L. 99–514 provided that: ''The amendments made by paragraphs (3), (4), and (6) [amending this section and sections 219 and 408 of this title] shall take effect as if included in the amendments made by section 238 of the Tax Equity and Fiscal Responsibility Act of 1982 [section 238 of Pub. L. 97–248, see section 241 of Pub. L. 97–248, set out as an Effective Date note under section 416 of this title].''

EFFECTIVE DATE OF 1984 AMENDMENT

''Section 491(f)(1) of Pub. L. 98–369 provided that: ''The amendments and repeals made by subsections (a), (b), and (d) [amending this section, sections 55, 72, 172, 219, 402, 403, 406, 407, 408, 412, 414, 415, 457, 2039, 2517, 3121, 3306, 3401, 4972, 4973, 4975, 6047, 6058, 6104, 6652, 7207, 7476, and 7701 of this title, section 3107 of Title 31, Money and Finance, and section 409 of Title 42, The Public Health and Welfare, and repealing sections 405 and 409 of this title] shall apply to obligations issued after December 31, 1983.''

EFFECTIVE DATE OF 1983 AMENDMENT

Par. (9) as in effect before date of repeal by Pub. L. 97–354 to remain in effect for years beginning before Jan. 1, 1984, see section 6(b)(1) of Pub. L. 97–354, set out as an Effective Date note under section 3761 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 103(d) of Pub. L. 97–34 provided that: ''The amendments made by this section [enacting section 219 of this title and amending this section and sections 85 and 105 of this title] shall apply to taxable years beginning after December 31, 1981.''

Amendment by sections 112(b)(2) and 311(h)(1) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see sections 115 and 311(i)(1) of Pub. L. 97–34, set out as notes under sections 911 and 219, respectively, of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 3(b) of Pub. L. 96–608 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to repayments made in taxable years beginning after the date of the enactment of this Act [Dec. 28, 1980].''

Amendment by Pub. L. 96–451 applicable with respect to additions to capital account made after Dec. 31, 1979, see section 301(d) of Pub. L. 96–451, set out as an Effective Date note under section 194 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT; ELECTION OF PRIOR LAW

Amendment by Pub. L. 95–615 applicable to taxable years beginning after Dec. 31, 1977, with provision for election of prior law, see section 209 of Pub. L. 95–615, set out as a note under section 911 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 502(c) of Pub. L. 94–455 provided that: ''The amendments made by this section [amending this section and section 3402 of this title] shall apply to taxable years beginning after December 31, 1976.''

Section 1501(d) of Pub. L. 94–455 provided that: ''The amendments made by this section [enacting section 220 of this title, amending this section and sections 219, 408, 409, 3401, 4973, and 6047 of this title, and renumbering former section 220 as 221 of this title], other than the amendment made by subsection (b)(3), shall apply to taxable years beginning after December 31, 1976. The amendment made by subsection (b)(3) [amending section 415 of this title] shall apply to years beginning after December 31, 1976.''

Amendment by section 1901(a)(8), (9) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENTS

Section 6(b) of Pub. L. 93–483 provided that: ''The amendment made by this section [amending this section] applies to taxable years beginning after December 31, 1972.''

Amendment by section 2002(a)(2) of Pub. L. 93–406 applicable to taxable years beginning after Dec. 31, 1974, see section 2002(i)(1) of Pub. L. 93–406, set out as an Effective Date note under section 219 of this title.

Amendment by section 2005(c)(9) of Pub. L. 93–406 applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to taxable years of electing small business corporations beginning after Dec. 31, 1970, see section 531(d) of Pub. L. 91–172, set out as an Effective Date note under section 1379 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 213(d) of Pub. L. 88–272 provided that: ''The amendments made by subsections (a) [enacting section 217 and redesignating former section 217 as 218] and (b) [amending this section] shall apply to expenses incurred after December 31, 1963, in taxable years ending after such date. The amendment made by subsection (c) [amending section 3401 of this title] shall apply with respect to remuneration paid after the seventh day following the date of the enactment of this Act [Feb. 26, 1964].''

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of

income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

COMMUTING EXPENSES

Pub. L. 95–427, § 2, Oct. 7, 1978, 92 Stat. 996, as amended by Pub. L. 96–167, § 2, Dec. 29, 1979, 93 Stat. 1275, provided that with respect to transportation costs paid or incurred after December 31, 1976, and on or before May 31, 1981, the application of sections 62, 162, and 262 and of chapters 21, 23, and 24 of the Internal Revenue Code of 1954 [now 1986] to transportation expenses in traveling between a taxpayer's residence and place of work be determined without regard to Revenue Ruling 76–453 or any other regulation, ruling, or decision reaching the same or similar result, and with full regard to the rules in effect before that Revenue Ruling.

Pub. L. 95–615, § 2, Nov. 8, 1978, 92 Stat. 3097, provided that with respect to transportation costs paid or incurred after Dec. 31, 1976, and before Apr. 30, 1978, the application of sections 62, 162, and 262 and chapters 21, 23, and 24 of the Internal Revenue Code of 1954 [now 1986] to transportation expenses in traveling between a taxpayer's residence and place of work be determined without regard to Revenue Ruling 76–453 or any other regulation, ruling or decision reaching the same or similar result, and with full regard to the rules in effect before that Revenue Ruling, and ceased to have effect on the day after Nov. 8, 1978 pursuant to section 210(a) of that Act.

§ 63. Taxable income defined

(a) In general

Except as provided in subsection (b), for purposes of this subtitle, the term ''taxable income'' means gross income minus the deductions allowed by this chapter (other than the standard deduction).

(b) Individuals who do not itemize their deductions

In the case of an individual who does not elect to itemize his deductions for the taxable year, for purposes of this subtitle, the term ''taxable income'' means adjusted gross income, minus—

(1) the standard deduction, and

(2) the deduction for personal exemptions provided in section 151.

(c) Standard deduction

For purposes of this subtitle—

(1) In general

Except as otherwise provided in this subsection, the term ''standard deduction'' means the sum of—

(A) the basic standard deduction,

(B) the additional standard deduction,

(C) in the case of any taxable year beginning in 2008 or 2009, the real property tax deduction,

(D) the disaster loss deduction, and

(E) the motor vehicle sales tax deduction.

(2) Basic standard deduction

For purposes of paragraph (1), the basic standard deduction is—

(A) 200 percent of the dollar amount in effect under subparagraph (C) for the taxable year in the case of—

(i) a joint return, or

(ii) a surviving spouse (as defined in section 2(a)),

(B) $4,400 in the case of a head of household (as defined in section 2(b)), or

(C) $3,000 in any other case.

(3) Additional standard deduction for aged and blind

For purposes of paragraph (1), the additional standard deduction is the sum of each additional amount to which the taxpayer is entitled under subsection (f).

(4) Adjustments for inflation

In the case of any taxable year beginning in a calendar year after 1988, each dollar amount contained in paragraph (2)(B), (2)(C), or (5) or subsection (f) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting for ''calendar year 1992'' in subparagraph (B) thereof—

(i) ''calendar year 1987'' in the case of the dollar amounts contained in paragraph (2)(B), (2)(C), or (5)(A) or subsection (f), and

(ii) ''calendar year 1997'' in the case of the dollar amount contained in paragraph (5)(B).

(5) Limitation on basic standard deduction in the case of certain dependents

In the case of an individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, the basic standard deduction applicable to such individual for such individual's taxable year shall not exceed the greater of—

(A) $500, or

(B) the sum of $250 and such individual's earned income.

(6) Certain individuals, etc., not eligible for standard deduction

In the case of—

(A) a married individual filing a separate return where either spouse itemizes deductions,

(B) a nonresident alien individual,

(C) an individual making a return under section 443(a)(1) for a period of less than 12 months on account of a change in his annual accounting period, or

(D) an estate or trust, common trust fund, or partnership,

the standard deduction shall be zero.

(7) Real property tax deduction

For purposes of paragraph (1), the real property tax deduction is the lesser of—

(A) the amount allowable as a deduction under this chapter for State and local taxes described in section 164(a)(1), or

(B) $500 ($1,000 in the case of a joint return).

Any taxes taken into account under section 62(a) shall not be taken into account under this paragraph.

(8) Disaster loss deduction

For the purposes of paragraph (1), the term ''disaster loss deduction'' means the net disaster loss (as defined in section 165(h)(3)(B)).

(9) Motor vehicle sales tax deduction

For purposes of paragraph (1), the term ''motor vehicle sales tax deduction'' means the amount allowable as a deduction under section 164(a)(6). Such term shall not include any amount taken into account under section 62(a).

(d) Itemized deductions

For purposes of this subtitle, the term ''itemized deductions'' means the deductions allowable under this chapter other than—

(1) the deductions allowable in arriving at adjusted gross income, and

(2) the deduction for personal exemptions provided by section 151.

(e) Election to itemize

(1) In general

Unless an individual makes an election under this subsection for the taxable year, no itemized deduction shall be allowed for the taxable year. For purposes of this subtitle, the determination of whether a deduction is allowable under this chapter shall be made without regard to the preceding sentence.

(2) Time and manner of election

Any election under this subsection shall be made on the taxpayer's return, and the Secretary shall prescribe the manner of signifying such election on the return.

(3) Change of election

Under regulations prescribed by the Secretary, a change of election with respect to itemized deductions for any taxable year may be made after the filing of the return for such year. If the spouse of the taxpayer filed a separate return for any taxable year corresponding to the taxable year of the taxpayer, the change shall not be allowed unless, in accordance with such regulations—

(A) the spouse makes a change of election with respect to itemized deductions, for the taxable year covered in such separate return, consistent with the change of treatment sought by the taxpayer, and

(B) the taxpayer and his spouse consent in writing to the assessment (within such period as may be agreed on with the Secretary) of any deficiency, to the extent attributable to such change of election, even though at the time of the filing of such consent the assessment of such deficiency would otherwise be prevented by the operation of any law or rule of law.

This paragraph shall not apply if the tax liability of the taxpayer's spouse for the taxable year corresponding to the taxable year of the taxpayer has been compromised under section 7122.

(f) Aged or blind additional amounts

(1) Additional amounts for the aged

The taxpayer shall be entitled to an additional amount of $600—

(A) for himself if he has attained age 65 before the close of his taxable year, and

(B) for the spouse of the taxpayer if the spouse has attained age 65 before the close of the taxable year and an additional exemption is allowable to the taxpayer for such spouse under section 151(b).

(2) Additional amount for blind

The taxpayer shall be entitled to an additional amount of $600—

(A) for himself if he is blind at the close of the taxable year, and

(B) for the spouse of the taxpayer if the spouse is blind as of the close of the taxable year and an additional exemption is allowable to the taxpayer for such spouse under section 151(b).

For purposes of subparagraph (B), if the spouse dies during the taxable year the determination of whether such spouse is blind shall be made as of the time of such death.

(3) Higher amount for certain unmarried individuals

In the case of an individual who is not married and is not a surviving spouse, paragraphs (1) and (2) shall be applied by substituting ''$750'' for ''$600''.

(4) Blindness defined

For purposes of this subsection, an individual is blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(g) Marital status

For purposes of this section, marital status shall be determined under section 7703.

(Aug. 16, 1954, ch. 736, 68A Stat. 18; Pub. L. 95–30, title I, § 102(a), May 23, 1977, 91 Stat. 135; Pub. L. 95–600, title I, § 101(b), Nov. 6, 1978, 92 Stat. 2769; Pub. L. 97–34, title I, §§ 104(b), 111(b)(4), 121(b),

(c)(2), Aug. 13, 1981, 95 Stat. 189, 194, 196, 197; Pub. L. 99–514, title I, §102(a), title XII, §1272(d)(6), Oct. 22, 1986, 100 Stat. 2099, 2594; Pub. L. 100–647, title I, §1001(b)(1), Nov. 10, 1988, 102 Stat. 3349; Pub. L. 101–508, title XI, §§11101(d)(1)(D), 11801(a)(4), Nov. 5, 1990, 104 Stat. 1388–405, 1388–520; Pub. L. 103–66, title XIII, §13201(b)(3)(D), Aug. 10, 1993, 107 Stat. 459; Pub. L. 105–34, title XII, §1201(a), Aug. 5, 1997, 111 Stat. 993; Pub. L. 107–16, title III, §301(a), (b), (c)(2), June 7, 2001, 115 Stat. 53, 54; Pub. L. 107–147, title IV, §411(e), Mar. 9, 2002, 116 Stat. 46; Pub. L. 108–27, title I, §103(a), May 28, 2003, 117 Stat. 754; Pub. L. 108–311, title I, §101(b), Oct. 4, 2004, 118 Stat. 1167; Pub. L. 110–289, div. C, title I, §3012(a), (b), July 30, 2008, 122 Stat. 2891, 2892; Pub. L. 110–343, div. C, title II, §204(a), title VII, §706(b)(1), (2), Oct. 3, 2008, 122 Stat. 3865, 3922; Pub. L. 111–5, div. B, title I, §1008(c), Feb. 17, 2009, 123 Stat. 318.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENT OF SECTION

For termination of amendment by section 105 of Pub. L. 108–311, see Effective and Termination Dates of 2004 Amendment note below.

For termination of amendment by section 107 of Pub. L. 108–27, see Effective and Termination Dates of 2003 Amendment note below.

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

AMENDMENTS

2009—Subsec. (c)(1)(E). Pub. L. 111–5, §1008(c)(1), added subpar. (E).

Subsec. (c)(9). Pub. L. 111–5, §1008(c)(2), added par. (9).

2008—Subsec. (c)(1)(C). Pub. L. 110–343, §204(a), inserted ''or 2009'' after ''2008''.

Pub. L. 110–289, §3012(a), added subpar. (C).

Subsec. (c)(1)(D). Pub. L. 110–343, §706(b)(1), added subpar. (D).

Subsec. (c)(7). Pub. L. 110–289, §3012(b), added par. (7).

Subsec. (c)(8). Pub. L. 110–343, §706(b)(2), added par. (8).

2004—Subsec. (c)(2). Pub. L. 108–311, §§101(b)(1), 105, temporarily reenacted heading without change and amended text generally, substituting provisions relating to a specific percentage for provisions relating to applicable percentage in subpar. (A), redesignating subpar. (D) as (C), and deleting former subpar. (C) relating to married individuals filing separately. See Effective and Termination Dates of 2004 Amendment note below.

Subsec. (c)(4). Pub. L. 108–311, §§101(b)(2)(A), 105, temporarily substituted ''(2)(C)'' for ''(2)(D)'' in introductory provisions and in subpar. (B)(i). See Effective and Termination Dates of 2004 Amendment note below.

Subsec. (c)(7). Pub. L. 108–311, §§101(b)(2)(B), 105, temporarily struck out par. (7) which related to applicable percentage for purposes of par. (2). See Effective and Termination Dates of 2004 Amendment note below.

2003—Subsec. (c)(7). Pub. L. 108–27, §§103(a), 107, temporarily inserted table item relating to years 2003 and 2004. See Effective and Termination Dates of 2003 Amendment note below.

2002—Subsec. (c)(2). Pub. L. 107–147, §411(e)(1)(E), inserted ''If any amount determined under subparagraph (A) is not a multiple of $50, such amount shall be rounded to the next lowest multiple of $50.'' at end.

Subsec. (c)(2)(A). Pub. L. 107–147, §411(e)(1)(A), substituted ''subparagraph (D)'' for ''subparagraph (C)''.

Subsec. (c)(2)(B). Pub. L. 107–147, §411(e)(1)(B), struck out ''or'' at end.

Subsec. (c)(2)(C), (D). Pub. L. 107–147, §411(e)(1)(C), (D), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (c)(4). Pub. L. 107–147, §411(e)(2)(C), which directed amendment by striking out the flush sentence at the end added by section 301(c)(2) of Public Law 107–17, was executed by striking out ''The preceding sentence shall not apply to the amount referred to in paragraph (2)(A).'', which was inserted by section 301(c)(2) of Pub. L. 107–16, to reflect the probable intent of Congress. See 2001 Amendment note below.

Pub. L. 107–147, §411(e)(2)(A), substituted ''paragraph (2)(B), (2)(D), or (5)'' for ''paragraph (2) or (5)'' in introductory provisions.

Subsec. (c)(4)(B)(i). Pub. L. 107–147, §411(e)(2)(B), substituted ''paragraph (2)(B), (2)(D),'' for ''paragraph (2)''.

2001—Subsec. (c)(2)(A). Pub. L. 107–16, §§301(a)(1), 901, temporarily substituted ''the applicable percentage of the dollar amount in effect under subparagraph (C) for the taxable year'' for ''$5,000''. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (c)(2)(B). Pub. L. 107–16, §§301(a)(2), 901, temporarily inserted ''or'' at end. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (c)(2)(C). Pub. L. 107–16, §§301(a)(3), 901, temporarily substituted ''in any other case.'' for ''in the case of an individual who is not married and who is not a surviving spouse or head of household, or''. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (c)(2)(D). Pub. L. 107–16, §§301(a)(4), 901, temporarily struck out subpar. (D) which read as follows: ''$2,500 in the case of a married individual filing a separate return.'' See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (c)(4). Pub. L. 107–16, §§301(c)(2), 901, temporarily inserted at end ''The preceding sentence shall not apply to the amount referred to in paragraph (2)(A).'' See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (c)(7). Pub. L. 107–16, §§301(b), 901, temporarily added par. (7). See Effective and Termination Dates of 2001 Amendment note below.

1997—Subsec. (c)(4). Pub. L. 105–34, §1201(a)(2), in introductory provisions, substituted ''(5)'' for ''(5)(A)'' and, in subpar. (B), substituted ''by substituting for 'calendar year 1992' in subparagraph (B) thereof—'' for ''by substituting 'calendar year 1987' for 'calendar year 1992' in subparagraph (B) thereof'' and added cls. (i) and (ii).

Subsec. (c)(5)(B). Pub. L. 105–34, §1201(a)(1), substituted ''the sum of $250 and such individual's earned income'' for ''such individual's earned income''.

1993—Subsec. (c)(4)(B). Pub. L. 103–66 substituted ''1992'' for ''1989''.

1990—Subsec. (c)(4)(B). Pub. L. 101–508, §11101(d)(1)(D), inserted before period at end '', by substituting 'calendar year 1987' for 'calendar year 1989' in subparagraph (B) thereof''.

Subsec. (h). Pub. L. 101–508, §11801(a)(4), struck out subsec. (h) ''Transitional rule for taxable years beginning in 1987'' which read as follows: ''In the case of any taxable year beginning in 1987, paragraph (2) of subsection (c) shall be applied—

''(1) by substituting '$3,760' for '$5,000',

''(2) by substituting '$2,540' for '$4,400',

''(3) by substituting '$2,540' for '$3,000', and

''(4) by substituting '$1,880' for '$2,500'.

The preceding sentence shall not apply if the taxpayer is entitled to an additional amount determined under subsection (f) (relating to additional amount for aged and blind) for the taxable year.''

1988—Subsec. (c)(5). Pub. L. 100–647 substituted ''basic standard deduction'' for ''standard deduction'' in heading and text.

1986—Subsec. (a). Pub. L. 99–514, §102(a), substituted ''In general'' for ''Corporations'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of this subtitle, in the case of a corporation, the term 'taxable income' means gross income minus the deductions allowed by this chapter.''

Subsec. (b). Pub. L. 99–514, § 102(a), substituted ''Individuals who do not itemize their deductions'' for ''Individuals'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of this subtitle, in the case of an individual, the term 'taxable income' means adjusted gross income—

''(1) reduced by the sum of—

''(A) the excess itemized deductions,

''(B) the deductions for personal exemptions provided by section 151, and

''(C) the direct charitable deduction, and

''(2) increased (in the case of an individual for whom an unused zero bracket amount computation is provided by subsection (e)) by the unused zero bracket amount (if any).''

Subsec. (c). Pub. L. 99–514, § 102(a), substituted ''Standard deduction'' for ''Excess itemized deductions'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of this subtitle, the term 'excess itemized deductions' means the excess (if any) of—

''(1) the itemized deductions, over

''(2) the zero bracket amount.''

Subsec. (c)(6)(C) to (E). Pub. L. 99–514, § 1272(d)(6), redesignated subpars. (D) and (E) as (C) and (D), respectively, and struck out former subpar. (C) which read as follows: ''a citizen of the United States entitled to the benefits of section 931 (relating to income from sources within possessions of the United States),''.

Subsec. (d). Pub. L. 99–514, § 102(a), substituted ''Itemized deductions'' for ''Zero bracket amount'' in heading and amended text generally. Prior to amendment, subsec. (d) read as follows: ''For purposes of this subtitle, the term 'zero bracket amount' means—

''(1) in the case of an individual to whom subsection (a), (b), (c), or (d) of section 1 applies, the maximum amount of taxable income on which no tax is imposed by the applicable subsection of section 1, or

''(2) zero in any other case.''

Subsec. (e). Pub. L. 99–514, § 102(a), substituted ''Election to itemize'' for ''Unused zero bracket amount'' in heading.

Subsec. (e)(1). Pub. L. 99–514, § 102(a), substituted ''In general'' for ''Individuals for whom computation must be made'' in heading and amended text generally. Prior to amendment, text read as follows: ''A computation for the taxable year shall be made under this subsection for the following individuals:

''(A) a married individual filing a separate return where either spouse itemized deductions,

''(B) a nonresident alien individual,

''(C) a citizen of the United States entitled to the benefits of section 931 (relating to income from sources within possessions of the United States), and

''(D) an individual with respect to whom a deduction under section 151(e) is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins.''

Subsec. (e)(2). Pub. L. 99–514, § 102(a), substituted ''Time and manner of election'' for ''Computation'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of this subtitle, an individual's unused zero bracket amount for the taxable year is an amount equal to the excess (if any) of—

''(A) the zero bracket amount, over

''(B) the itemized deductions.

In the case of an individual referred to in paragraph (1)(D), if such individual's earned income (as defined in section 911(d)(2)) exceeds the itemized deductions, such earned income shall be substituted for the itemized deductions in subparagraph (B).''

Subsec. (e)(3). Pub. L. 99–514, § 102(a), in amending subsec. (e) generally, added par. (3).

Subsec. (f). Pub. L. 99–514, § 102(a), substituted ''Aged or blind additional amounts'' for ''Itemized deductions'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of this subtitle, the term 'itemized deductions' means the deductions allowable by this chapter other than—

''(1) the deductions allowable in arriving at adjusted gross income,

''(2) the deductions for personal exemptions provided by section 151, and

''(3) the direct charitable deduction.''

Subsec. (g). Pub. L. 99–514, § 102(a), amended subsec. (g) generally, substituting provision that marital status be determined under section 7703 for provisions relating to election to itemize. See subsec. (e).

Subsec. (h). Pub. L. 99–514, § 102(a), substituted ''Transitional rule for taxable years beginning in 1987'' for ''Marital status'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of this section, marital status shall be determined under section 143.''

Subsec. (i). Pub. L. 99–514, § 102(a), in amending section generally, struck out subsec. (i), ''Direct charitable deduction'', which read as follows: ''For purposes of this section, the term 'direct charitable deduction' means that portion of the amount allowable under section 170(a) which is taken as a direct charitable deduction for the taxable year under section 170(i).''

1981—Subsec. (b)(1)(C). Pub. L. 97–34, § 121(b)(1), added subpar. (C).

Subsec. (d). Pub. L. 97–34, § 104(b), substituted a blanket reference to individuals to whom subsection (a), (b), (c), or (d) of section 1 applies and the maximum amount of taxable income on which no tax is imposed by the applicable subsection of section 1 for provisions specifically referring to amounts of $3,400 in the case of (A) a joint return under section 6013, or (B) a surviving spouse (as defined in section 2(a)), $2,300 in the case of an individual who is not married and who is not a surviving spouse (as so defined), and $1,700 in the case of a married individual filing a separate return.

Subsec. (e)(2). Pub. L. 97–34, § 111(b)(4), substituted ''section 911(d)(2)'' for ''section 911(b)'' in provisions following subpar. (B).

Subsec. (f)(3). Pub. L. 97–34, § 121(c)(2), added par. (3).

Subsec. (i). Pub. L. 97–34, § 121(b)(2), added subsec. (i).

1978—Pub. L. 95–600 substituted ''$3,400'' for ''$3,200'' in par. (1), ''$2,300'' for ''$2,200'' in par. (2), and ''$1,700'' for ''$1,600'' in par. (3).

1977—Pub. L. 95–30 completely revised definition of taxable income from one using the concept of a standard deduction and consisting of subsecs. (a) and (b) entitled, respectively, ''General rule'' and ''Individuals electing standard deduction'' to definition using the concepts of zero bracket amounts and excess itemized deductions and consisting of subsecs. (a) to (h) entitled, respectively, ''Corporations'', ''Individuals'', ''Excess itemized deductions'', ''Zero bracket amount'', ''Unused zero bracket amount'', ''Itemized deductions'', ''Election to itemize'', and ''Marital status''.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–5 applicable to purchases on or after Feb. 17, 2009, in taxable years ending after such date, see section 1008(e) of Pub. L. 111–5, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title II, § 204(b), Oct. 3, 2008, 122 Stat. 3865, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008.''

Amendment by section 706(b)(1), (2) of Pub. L. 110–343 applicable to disasters declared in taxable years beginning after Dec. 31, 2007, see section 706(d)(1) of Pub. L. 110–343, set out as a note under section 56 of this title.

Pub. L. 110–289, div. C, title I, § 3012(c), July 30, 2008, 122 Stat. 2892, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2007.''

EFFECTIVE AND TERMINATION DATES OF 2004 AMENDMENT

Amendment by section 101(b) of Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2003, see

section 101(e) of Pub. L. 108–311, set out as a note under section 1 of this title.

Amendment by section 101(b) of Pub. L. 108–311 subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, §901, to the same extent and in the same manner as the provisions of such Act to which such amendments relate, see section 105 of Pub. L. 108–311, set out as a note under section 1 of this title.

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

Pub. L. 108–27, title I, §103(c), May 28, 2003, 117 Stat. 754, provided that: ''The amendments made by this section [amending this section and provisions set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title] shall apply to taxable years beginning after December 31, 2002.''

Amendments by title I of Pub. L. 108–27 subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, §901, to the same extent and in the same manner as the provisions of such Act to which such amendments relate, see section 107 of Pub. L. 108–27, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2002, see section 301(d) of Pub. L. 107–16, as amended, set out as a note under section 1 of this title.

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to taxable years beginning after Dec. 31, 1997, see section 1201(c) of Pub. L. 105–34, set out as a note under section 59 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see section 13201(c) of Pub. L. 103–66, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11101(d)(1)(D) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11101(e) of Pub. L. 101–508, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 102(a) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1272(d)(6) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 104(b) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1984, see section 104(e) of Pub. L. 97–34, set out as a note under section 1 of this title.

Amendment by section 111(b)(4) of Pub. L. 97–34 applicable with respect to taxable years beginning after Dec. 31, 1981, see section 115 of Pub. L. 97–34, set out as a note under section 911 of this title.

Amendment by section 121(b), (c)(2) of Pub. L. 97–34 applicable to contributions made after Dec. 31, 1981, in taxable years beginning after such date, see section 121(d) of Pub. L. 97–34, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective with respect to taxable years beginning after Dec. 31, 1978, see section 101(f)(1) of Pub. L. 95–600, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by section 11801 of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§ 64. Ordinary income defined

For purposes of this subtitle, the term ''ordinary income'' includes any gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231(b). Any gain from the sale or exchange of property which is treated or considered, under other provisions of this subtitle, as ''ordinary income'' shall be treated as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231(b).

(Added Pub. L. 94–455, title XIX, §1901(a)(10), Oct. 4, 1976, 90 Stat. 1765.)

§ 65. Ordinary loss defined

For purposes of this subtitle, the term ''ordinary loss'' includes any loss from the sale or exchange of property which is not a capital asset. Any loss from the sale or exchange of property which is treated or considered, under other provisions of this subtitle, as ''ordinary loss'' shall be treated as loss from the sale or exchange of property which is not a capital asset.

(Added Pub. L. 94–455, title XIX, §1901(a)(11), Oct. 4, 1976, 90 Stat. 1765.)

§ 66. Treatment of community income

(a) Treatment of community income where spouses live apart

If—

(1) 2 individuals are married to each other at any time during a calendar year;

(2) such individuals—

(A) live apart at all times during the calendar year, and

(B) do not file a joint return under section 6013 with each other for a taxable year beginning or ending in the calendar year;

(3) one or both of such individuals have earned income for the calendar year which is community income; and

(4) no portion of such earned income is transferred (directly or indirectly) between such individuals before the close of the calendar year,

then, for purposes of this title, any community income of such individuals for the calendar year shall be treated in accordance with the rules provided by section 879(a).

(b) Secretary may disregard community property laws where spouse not notified of community income

The Secretary may disallow the benefits of any community property law to any taxpayer with respect to any income if such taxpayer acted as if solely entitled to such income and failed to notify the taxpayer's spouse before the due date (including extensions) for filing the return for the taxable year in which the income was derived of the nature and amount of such income.

(c) Spouse relieved of liability in certain other cases

Under regulations prescribed by the Secretary, if—

(1) an individual does not file a joint return for any taxable year,

(2) such individual does not include in gross income for such taxable year an item of community income properly includible therein which, in accordance with the rules contained in section 879(a), would be treated as the income of the other spouse,

(3) the individual establishes that he or she did not know of, and had no reason to know of, such item of community income, and

(4) taking into account all facts and circumstances, it is inequitable to include such item of community income in such individual's gross income,

then, for purposes of this title, such item of community income shall be included in the gross income of the other spouse (and not in the gross income of the individual). Under procedures prescribed by the Secretary, if, taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under the preceding sentence, the Secretary may relieve such individual of such liability.

(d) Definitions

For purposes of this section—

(1) Earned income

The term ''earned income'' has the meaning given to such term by section 911(d)(2).

(2) Community income

The term ''community income'' means income which, under applicable community property laws, is treated as community income.

(3) Community property laws

The term ''community property laws'' means the community property laws of a State, a foreign country, or a possession of the United States.

(Added Pub. L. 96–605, title I, § 101(a), Dec. 28, 1980, 94 Stat. 3521; amended Pub. L. 98–369, div. A, title IV, § 424(b)(1)–(2)(B), July 18, 1984, 98 Stat. 802, 803; Pub. L. 101–239, title VII, § 7841(d)(8), Dec. 19, 1989, 103 Stat. 2428; Pub. L. 105–206, title III, § 3201(b), July 22, 1998, 112 Stat. 739.)

AMENDMENTS

1998—Subsec. (c). Pub. L. 105–206 inserted at end ''Under procedures prescribed by the Secretary, if, taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under the preceding sentence, the Secretary may relieve such individual of such liability.''

1989—Subsec. (d)(1). Pub. L. 101–239 substituted ''section 911(d)(2)'' for ''section 911(b)''.

1984—Pub. L. 98–369, § 424(b)(2)(A), struck out ''where spouses live apart'' in section catchline.

Subsec. (a). Pub. L. 98–369, § 424(b)(2)(B), substituted ''Treatment of community income where spouses live apart'' for ''General rule'' in heading.

Subsecs. (b) to (d). Pub. L. 98–369, § 424(b)(1), added subsecs. (b) and (c) and redesignated former subsec. (b) as (d).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 applicable to any liability for tax arising after July 22, 1998, and any liability for tax arising on or before such date but remaining unpaid as of such date, see section 3201(g)(1) of Pub. L. 105–206, set out as a note under section 6015 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to all taxable years to which the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applies with corresponding provisions deemed to be included in the Internal Revenue Code of 1939 and applicable to all taxable years to which such Code applies, except subsection (b) of this section is applicable to taxable years beginning after December 31, 1984, see section 424(c) of Pub. L. 98–369, set out as a note under section 6013 of this title.

EFFECTIVE DATE

Section 101(c) of Pub. L. 96–605 provided that: ''The amendments made by this section [enacting this section] shall apply to calendar years beginning after December 31, 1980.''

§ 67. 2-percent floor on miscellaneous itemized deductions

(a) General rule

In the case of an individual, the miscellaneous itemized deductions for any taxable year shall be allowed only to the extent that the aggregate of such deductions exceeds 2 percent of adjusted gross income.

(b) Miscellaneous itemized deductions

For purposes of this section, the term ''miscellaneous itemized deductions'' means the itemized deductions other than—

(1) the deduction under section 163 (relating to interest),

(2) the deduction under section 164 (relating to taxes),

(3) the deduction under section 165(a) for casualty or theft losses described in paragraph (2) or (3) of section 165(c) or for losses described in section 165(d),

(4) the deductions under section 170 (relating to charitable, etc., contributions and gifts) and section 642(c) (relating to deduction for amounts paid or permanently set aside for a charitable purpose),

(5) the deduction under section 213 (relating to medical, dental, etc., expenses),

(6) any deduction allowable for impairment-related work expenses,

(7) the deduction under section 691(c) (relating to deduction for estate tax in case of income in respect of the decedent),

(8) any deduction allowable in connection with personal property used in a short sale,

(9) the deduction under section 1341 (relating to computation of tax where taxpayer restores substantial amount held under claim of right),

(10) the deduction under section 72(b)(3) (relating to deduction where annuity payments cease before investment recovered),

(11) the deduction under section 171 (relating to deduction for amortizable bond premium), and

(12) the deduction under section 216 (relating to deductions in connection with cooperative housing corporations).

(c) Disallowance of indirect deduction through pass-thru entity

(1) In general

The Secretary shall prescribe regulations which prohibit the indirect deduction through pass-thru entities of amounts which are not allowable as a deduction if paid or incurred directly by an individual and which contain such reporting requirements as may be necessary to carry out the purposes of this subsection.

(2) Treatment of publicly offered regulated investment companies

(A) In general

Paragraph (1) shall not apply with respect to any publicly offered regulated investment company.

(B) Publicly offered regulated investment companies

For purposes of this subsection—

(i) In general

The term ''publicly offered regulated investment company'' means a regulated investment company the shares of which are—

(I) continuously offered pursuant to a public offering (within the meaning of section 4 of the Securities Act of 1933, as amended (15 U.S.C. 77a to 77aa)),

(II) regularly traded on an established securities market, or

(III) held by or for no fewer than 500 persons at all times during the taxable year.

(ii) Secretary may reduce 500 person requirement

The Secretary may by regulation decrease the minimum shareholder requirement of clause (i)(III) in the case of regulated investment companies which experience a loss of shareholders through net redemptions of their shares.

(3) Treatment of certain other entities

Paragraph (1) shall not apply—

(A) with respect to cooperatives and real estate investment trusts, and

(B) except as provided in regulations, with respect to estates and trusts.

(d) Impairment-related work expenses

For purposes of this section, the term ''impairment-related work expenses'' means expenses—

(1) of a handicapped individual (as defined in section 190(b)(3)) for attendant care services at the individual's place of employment and other expenses in connection with such place of employment which are necessary for such individual to be able to work, and

(2) with respect to which a deduction is allowable under section 162 (determined without regard to this section).

(e) Determination of adjusted gross income in case of estates and trusts

For purposes of this section, the adjusted gross income of an estate or trust shall be computed in the same manner as in the case of an individual, except that—

(1) the deductions for costs which are paid or incurred in connection with the administration of the estate or trust and which would not have been incurred if the property were not held in such trust or estate, and

(2) the deductions allowable under sections 642(b), 651, and 661,

shall be treated as allowable in arriving at adjusted gross income. Under regulations, appropriate adjustments shall be made in the application of part I of subchapter J of this chapter to take into account the provisions of this section.

(f) Coordination with other limitation

This section shall be applied before the application of the dollar limitation of the second sentence of section 162(a) (relating to trade or business expenses).

(Added Pub. L. 99–514, title I, §132(a), Oct. 22, 1986, 100 Stat. 2113; amended Pub. L. 100–647, title I, §1001(f), title IV, §4011(a), Nov. 10, 1988, 102 Stat. 3351, 3655; Pub. L. 101–239, title VII, §7814(f), Dec. 19, 1989, 103 Stat. 2414; Pub. L. 103–66, title XIII, §13213(c)(2), Aug. 10, 1993, 107 Stat. 474; Pub. L. 105–277, div. J, title IV, §4004(b)(1), Oct. 21, 1998, 112 Stat. 2681–910; Pub. L. 106–554, §1(a)(7) [title III, §319(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–646.)

REFERENCES IN TEXT

Section 4 of the Securities Act of 1933, referred to in subsec. (c)(2)(B)(i)(I), is classified to section 77d of Title 15, Commerce and Trade.

AMENDMENTS

2000—Subsec. (f). Pub. L. 106–554 substituted ''the second sentence'' for ''the last sentence''.

1998—Subsec. (b)(3). Pub. L. 105–277 substituted ''for casualty or theft losses described in paragraph (2) or (3) of section 165(c) or for losses described in section

165(d)'' for ''for losses described in subsection (c)(3) or (d) of section 165''.

1993—Subsec. (b)(6) to (13). Pub. L. 103–66 redesignated pars. (7) to (13) as (6) to (12), respectively, and struck out former par. (6) which read as follows: ''the deduction under section 217 (relating to moving expenses),''.

1989—Subsec. (c)(4). Pub. L. 101–239 struck out par. (4) which read as follows: ''TERMINATION.—This subsection shall not apply to any taxable year beginning after December 31, 1989.''

1988—Subsec. (b)(4). Pub. L. 100–647, § 1001(f)(2), substituted ''deductions'' for ''deduction'' and inserted before comma at end ''and section 642(c) (relating to deduction for amounts paid or permanently set aside for a charitable purpose)''.

Subsec. (c). Pub. L. 100–647, § 4011(a), amended subsec. (c) generally. Prior to amendment subsec. (c) read as follows: ''The Secretary shall prescribe regulations which prohibit the indirect deduction through pass-thru entities of amounts which are not allowable as a deduction if paid or incurred directly by an individual and which contain such reporting requirements as may be necessary to carry out the purposes of this subsection. The preceding sentence shall not apply—

''(1) with respect to cooperatives and real estate investment trusts, and

''(2) except as provided in regulations, with respect to estates and trusts.''

Pub. L. 100–647, § 1001(f)(4), amended last sentence generally. Prior to amendment, last sentence read as follows: ''The preceding sentence shall not apply with respect to estates, trusts, cooperatives, and real estate investment trusts.''

Subsec. (e). Pub. L. 100–647, § 1001(f)(3), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''For purposes of this section, the adjusted gross income of an estate or trust shall be computed in the same manner as in the case of an individual, except that the deductions for costs which are paid or incurred in connection with the administration of the estate or trust and would not have been incurred if the property were not held in such trust or estate shall be treated as allowable in arriving at adjusted gross income.''

Subsec. (f). Pub. L. 100–647, § 1001(f)(1), added subsec. (f).

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. J, title IV, § 4004(c)(2), Oct. 21, 1998, 112 Stat. 2681–911, provided that: ''The amendment made by subsection (b)(1) [amending this section] shall apply to taxable years beginning after December 31, 1986.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to expenses incurred after Dec. 31, 1993, see section 13213(e) of Pub. L. 103–66 set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1001(f) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 4011(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1987.''

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 1 of this title.

1-YEAR DELAY IN TREATMENT OF PUBLICLY OFFERED REGULATED INVESTMENT COMPANIES UNDER 2-PERCENT FLOOR

Pub. L. 100–203, title X, § 10104(a), Dec. 22, 1987, 101 Stat. 1330–386, provided that:

''(1) GENERAL RULE.—Section 67(c) of the Internal Revenue Code of 1986 to the extent it relates to indirect deductions through a publicly offered regulated investment company shall apply only to taxable years beginning after December 31, 1987.

''(2) PUBLICLY OFFERED REGULATED INVESTMENT COMPANY DEFINED.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'publicly offered regulated investment company' means a regulated investment company the shares of which are—

''(i) continuously offered pursuant to a public offering (within the meaning of section 4 of the Securities Act of 1933, as amended (15 U.S.C. 77a to 77aa) [15 U.S.C. 77d]),

''(ii) regularly traded on an established securities market, or

''(iii) held by or for no fewer than 500 persons at all times during the taxable year.

''(B) SECRETARY MAY REDUCE 500 PERSON REQUIREMENT.—The Secretary of the Treasury or his delegate may by regulation decrease the minimum shareholder requirement of subparagraph (A)(iii) in the case of regulated investment companies which experience a loss of shareholders through net redemptions of their shares.''

§ 68. Overall limitation on itemized deductions

(a) General rule

In the case of an individual whose adjusted gross income exceeds the applicable amount, the amount of the itemized deductions otherwise allowable for the taxable year shall be reduced by the lesser of—

(1) 3 percent of the excess of adjusted gross income over the applicable amount, or

(2) 80 percent of the amount of the itemized deductions otherwise allowable for such taxable year.

(b) Applicable amount

(1) In general

For purposes of this section, the term ''applicable amount'' means $100,000 ($50,000 in the case of a separate return by a married individual within the meaning of section 7703).

(2) Inflation adjustments

In the case of any taxable year beginning in a calendar year after 1991, each dollar amount contained in paragraph (1) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting ''calendar year 1990'' for ''calendar year 1992'' in subparagraph (B) thereof.

(c) Exception for certain itemized deductions

For purposes of this section, the term ''itemized deductions'' does not include—

(1) the deduction under section 213 (relating to medical, etc. expenses),

(2) any deduction for investment interest (as defined in section 163(d)), and

(3) the deduction under section 165(a) for casualty or theft losses described in paragraph (2)

or (3) of section 165(c) or for losses described in section 165(d).

(d) Coordination with other limitations

This section shall be applied after the application of any other limitation on the allowance of any itemized deduction.

(e) Exception for estates and trusts

This section shall not apply to any estate or trust.

(f) Phaseout of limitation

(1) In general

In the case of taxable years beginning after December 31, 2005, and before January 1, 2010, the reduction under subsection (a) shall be equal to the applicable fraction of the amount which would (but for this subsection) be the amount of such reduction.

(2) Applicable fraction

For purposes of paragraph (1), the applicable fraction shall be determined in accordance with the following table:

For taxable years beginning in calendar year—	The applicable fraction is—
2006 and 2007	⅔
2008 and 2009	⅓.

(g) Termination

This section shall not apply to any taxable year beginning after December 31, 2009.

(Added Pub. L. 101–508, title XI, §11103(a), Nov. 5, 1990, 104 Stat. 1388–406; amended Pub. L. 103–66, title XIII, §§13201(b)(3)(E), 13204, Aug. 10, 1993, 107 Stat. 459, 462; Pub. L. 105–277, div. J, title IV, §4004(b)(2), Oct. 21, 1998, 112 Stat. 2681–911; Pub. L. 107–16, title I, §103(a), June 7, 2001, 115 Stat. 44.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENT OF SECTION

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

AMENDMENTS

2001—Subsecs. (f), (g). Pub. L. 107—16, §§103(a), 901, temporarily added subsecs. (f) and (g). See Effective and Termination Dates of 2001 Amendment note below.

1998—Subsec. (c)(3). Pub. L. 105–277 substituted ''for casualty or theft losses described in paragraph (2) or (3) of section 165(c) or for losses described in section 165(d)'' for ''for losses described in subsection (c)(3) or (d) of section 165''.

1993—Subsec. (b)(2)(B). Pub. L. 103–66, §13201(b)(3)(E), substituted ''1992'' for ''1989''.

Subsec. (f). Pub. L. 103–66, §13204, struck out heading and text of subsec. (f). Text read as follows: ''This section shall not apply to any taxable year beginning after December 31, 1995.''

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Pub. L. 107–16, title I, §103(b), June 7, 2001, 115 Stat. 45, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2005.''

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. J, title IV, §4004(c)(3), Oct. 21, 1998, 112 Stat. 2681–911, provided that: ''The amendment made by subsection (b)(2) [amending this section] shall apply to taxable years beginning after December 31, 1990.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13201(b)(3)(E) of Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see section 13201(c) of Pub. L. 103–66, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1990, see section 11103(e) of Pub. L. 101–508, set out as an Effective Date of 1990 Amendment note under section 1 of this title.

PART II—ITEMS SPECIFICALLY INCLUDED IN GROSS INCOME

Sec.
71. Alimony and separate maintenance payments.
72. Annuities; certain proceeds of endowment and life insurance contracts.
73. Services of child.
74. Prizes and awards.
75. Dealers in tax-exempt securities.
[76. Repealed.]
77. Commodity credit loans.
78. Dividends received from certain foreign corporations by domestic corporations choosing foreign tax credit.
79. Group-term life insurance purchased for employees.
80. Restoration of value of certain securities.
[81. Repealed.]
82. Reimbursement of moving expenses.[1]
83. Property transferred in connection with performance of services.
84. Transfer of appreciated property to political organizations.[1]
85. Unemployment compensation.
86. Social security and tier 1 railroad retirement benefits.
87. Alcohol and biodiesel fuels credits.
88. Certain amounts with respect to nuclear decommissioning costs.
[89. Repealed.]
90. Illegal Federal irrigation subsidies.

AMENDMENTS

2004—Pub. L. 108–357, title III, §302(c)(1)(B), Oct. 22, 2004, 118 Stat. 1465, substituted ''and biodiesel fuels credits'' for ''fuel credit'' in item 87.

1989—Pub. L. 101–239, title VII, §7822(c), Dec. 19, 1989, 103 Stat. 2425, substituted ''Illegal Federal irrigation'' for ''Federal irrigation'' in item 90.

Pub. L. 101–140, title II, §202(b), Nov. 8, 1989, 103 Stat. 830, struck out item 89 ''Benefits provided under certain employee benefit plans''.

1987—Pub. L. 100–203, title X, §§10201(b)(6), 10611(b), Dec. 22, 1987, 101 Stat. 1330–387, 1330–452, struck out item 81 ''Increase in vacation pay suspense account'' and added item 90.

1986—Pub. L. 99–514, title VIII, §805(c)(1)(B), title XI, §1151(j)(1), Oct. 22, 1986, 100 Stat. 2362, 2508, substituted ''Increase in vacation pay suspense account'' for ''Cer-

[1] So in original. Does not conform to section catchline.

tain increases in suspense accounts'' in item 81, and added item 89.

1984—Pub. L. 98–369, div. A, title I, § 91(f)(2), July 18, 1984, 98 Stat. 608, added item 88.

1983—Pub. L. 98–21, title I, § 121(f)(3), Apr. 20, 1983, 97 Stat. 84, added item 86 and redesignated former item 86 as 87.

1980—Pub. L. 96–223, title II, § 232(c)(3), Apr. 2, 1980, 94 Stat. 277, added item 86.

1978—Pub. L. 95–600, title I, § 112(c)(1), Nov. 6, 1978, 92 Stat. 2778, added item 85.

1976—Pub. L. 94–455, title XIX, § 1901(b)(5), Oct. 4, 1976, 90 Stat. 1793, struck out item 76 ''Mortgages made or obligations issued by joint-stock land banks''.

1975—Pub. L. 93–625, §§ 4(c)(2), 13(a)(2), Jan. 3, 1975, 88 Stat. 2111, 2121, substituted ''Certain increases in suspense accounts'' for ''Increases in suspense account under section 166(g)'' in item 81, and added item 84.

1969—Pub. L. 91–172, title II, § 231(c)(1), title III, § 321(c), Dec. 30, 1969, 83 Stat. 579, 591, added items 82, 83.

1966—Pub. L. 89–722, § 1(b)(2), Nov. 2, 1966, 80 Stat. 1152, added item 81.

Pub. L. 89–384, § 1(b)(2), Apr. 8, 1966, 80 Stat. 102, added item 80.

1964—Pub. L. 88–272, title II, § 204(a)(2), Feb. 26, 1964, 78 Stat. 36, added item 79.

1962—Pub. L. 87–834, § 9(d)(1), Oct. 16, 1962, 76 Stat. 1001, added item 78.

§ 71. Alimony and separate maintenance payments

(a) General rule

Gross income includes amounts received as alimony or separate maintenance payments.

(b) Alimony or separate maintenance payments defined

For purposes of this section—

(1) In general

The term ''alimony or separate maintenance payment'' means any payment in cash if—

(A) such payment is received by (or on behalf of) a spouse under a divorce or separation instrument,

(B) the divorce or separation instrument does not designate such payment as a payment which is not includible in gross income under this section and not allowable as a deduction under section 215,

(C) in the case of an individual legally separated from his spouse under a decree of divorce or of separate maintenance, the payee spouse and the payor spouse are not members of the same household at the time such payment is made, and

(D) there is no liability to make any such payment for any period after the death of the payee spouse and there is no liability to make any payment (in cash or property) as a substitute for such payments after the death of the payee spouse.

(2) Divorce or separation instrument

The term ''divorce or separation instrument'' means—

(A) a decree of divorce or separate maintenance or a written instrument incident to such a decree,

(B) a written separation agreement, or

(C) a decree (not described in subparagraph (A)) requiring a spouse to make payments for the support or maintenance of the other spouse.

(c) Payments to support children

(1) In general

Subsection (a) shall not apply to that part of any payment which the terms of the divorce or separation instrument fix (in terms of an amount of money or a part of the payment) as a sum which is payable for the support of children of the payor spouse.

(2) Treatment of certain reductions related to contingencies involving child

For purposes of paragraph (1), if any amount specified in the instrument will be reduced—

(A) on the happening of a contingency specified in the instrument relating to a child (such as attaining a specified age, marrying, dying, leaving school, or a similar contingency), or

(B) at a time which can clearly be associated with a contingency of a kind specified in subparagraph (A),

an amount equal to the amount of such reduction will be treated as an amount fixed as payable for the support of children of the payor spouse.

(3) Special rule where payment is less than amount specified in instrument

For purposes of this subsection, if any payment is less than the amount specified in the instrument, then so much of such payment as does not exceed the sum payable for support shall be considered a payment for such support.

(d) Spouse

For purposes of this section, the term ''spouse'' includes a former spouse.

(e) Exception for joint returns

This section and section 215 shall not apply if the spouses make a joint return with each other.

(f) Recomputation where excess front-loading of alimony payments

(1) In general

If there are excess alimony payments—

(A) the payor spouse shall include the amount of such excess payments in gross income for the payor spouse's taxable year beginning in the 3rd post-separation year, and

(B) the payee spouse shall be allowed a deduction in computing adjusted gross income for the amount of such excess payments for the payee's taxable year beginning in the 3rd post-separation year.

(2) Excess alimony payments

For purposes of this subsection, the term ''excess alimony payments'' mean the sum of—

(A) the excess payments for the 1st post-separation year, and

(B) the excess payments for the 2nd post-separation year.

(3) Excess payments for 1st post-separation year

For purposes of this subsection, the amount of the excess payments for the 1st post-separation year is the excess (if any) of—

(A) the amount of the alimony or separate maintenance payments paid by the payor

spouse during the 1st post-separation year, over

(B) the sum of—

(i) the average of—

(I) the alimony or separate maintenance payments paid by the payor spouse during the 2nd post-separation year, reduced by the excess payments for the 2nd post-separation year, and

(II) the alimony or separate maintenance payments paid by the payor spouse during the 3rd post-separation year, plus

(ii) $15,000.

(4) Excess payments for 2nd post-separation year

For purposes of this subsection, the amount of the excess payments for the 2nd post-separation year is the excess (if any) of—

(A) the amount of the alimony or separate maintenance payments paid by the payor spouse during the 2nd post-separation year, over

(B) the sum of—

(i) the amount of the alimony or separate maintenance payments paid by the payor spouse during the 3rd post-separation year, plus

(ii) $15,000.

(5) Exceptions

(A) Where payment ceases by reason of death or remarriage

Paragraph (1) shall not apply if—

(i) either spouse dies before the close of the 3rd post-separation year, or the payee spouse remarries before the close of the 3rd post-separation year, and

(ii) the alimony or separate maintenance payments cease by reason of such death or remarriage.

(B) Support payments

For purposes of this subsection, the term ''alimony or separate maintenance payment'' shall not include any payment received under a decree described in subsection (b)(2)(C).

(C) Fluctuating payments not within control of payor spouse

For purposes of this subsection, the term ''alimony or separate maintenance payment'' shall not include any payment to the extent it is made pursuant to a continuing liability (over a period of not less than 3 years) to pay a fixed portion or portions of the income from a business or property or from compensation for employment or self-employment.

(6) Post-separation years

For purposes of this subsection, the term ''1st post-separation years'' means the 1st calendar year in which the payor spouse paid to the payee spouse alimony or separate maintenance payments to which this section applies. The 2nd and 3rd post-separation years shall be the 1st and 2nd succeeding calendar years, respectively.

(g) Cross references

(1) For deduction of alimony or separate maintenance payments, see section 215.

(2) For taxable status of income of an estate or trust in the case of divorce, etc., see section 682.

(Aug. 16, 1954, ch. 736, 68A Stat. 19; Pub. L. 98–369, div. A, title IV, § 422(a), July 18, 1984, 98 Stat. 795; Pub. L. 99–514, title XVIII, § 1843(a)–(c)(1), (d), Oct. 22, 1986, 100 Stat. 2853, 2855.)

AMENDMENTS

1986—Subsec. (b)(1)(D). Pub. L. 99–514, § 1843(b), struck out ''(and the divorce or separation instrument states that there is no such liability)'' after ''for such payments after the death of the payee spouse''.

Subsec. (c)(2)(B). Pub. L. 99–514, § 1843(d), substituted ''specified in subparagraph (A)'' for ''specified in paragraph (1)''.

Subsec. (f). Pub. L. 99–514, § 1843(c)(1), amended subsec. (f) generally, substituting provisions for the recomputation of liability where there has been excess front-loading of alimony payments for provisions setting forth special rules to prevent excess front-loading of alimony payments.

Subsec. (g). Pub. L. 99–514, § 1843(a), added subsec. (g).

1984—Pub. L. 98–369 amended section generally, substituting present provisions for provisions which had declared in: subsec. (a), a general rule as to decree of divorce or separate maintenance in par. (1), written separation agreement in par. (2), and decree for support in par. (3); subsec. (b), payments to support minor children; subsec. (c), principal sum paid in installments, par. (1) stating a general rule and par. (2) the rule where period for payment is more than 10 years; subsec. (d), the rule for husband in case of transferred property; and subsec. (e), cross references to sections 7701(a)(17), 215, and 682.

EFFECTIVE DATE OF 1986 AMENDMENT; TRANSITIONAL RULE

Section 1843(c)(2), (3) of Pub. L. 99–514 provided that: ''(2) EFFECTIVE DATES.—

''(A) IN GENERAL.—The amendment made by paragraph (1) [amending this section] shall apply with respect to divorce or separation instruments (as defined in section 71(b)(2)) of the Internal Revenue Code of 1986 executed after December 31, 1986.

''(B) MODIFICATIONS OF INSTRUMENTS EXECUTED BEFORE JANUARY 1, 1987.—The amendments made by paragraph (1) [amending this section] shall also apply to any divorce or separation instrument (as so defined) executed before January 1, 1987, but modified on or after such date if the modification expressly provides that the amendments made by paragraph (1) shall apply to such modification.

''(3) TRANSITIONAL RULE.—In the case of any instrument to which the amendment made by paragraph (1) [amending this section] does not apply, paragraph (2) of section 71(f) of the Internal Revenue Code of 1954 [now 1986] (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]) shall apply only with respect to the first 3 post-separation years.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 422(e) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 215, 219, 682, 6676, and 7701 of this title] shall apply with respect to divorce or separation instruments (as defined in section 71(b)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended by this section) executed after December 31, 1984.

''(2) MODIFICATIONS OF INSTRUMENTS EXECUTED BEFORE JANUARY 1, 1985.—The amendments made by this section shall also apply to any divorce or separation instrument (as so defined) executed before January 1, 1985, but modified on or after such date if the modification expressly provides that the amendments made by this section shall apply to such modification.

''(3) REQUIREMENT OF IDENTIFICATION NUMBER.—Section 215(c) of the Internal Revenue Code of 1986 (as amended by subsection (b)) and the amendments made by subsection (c) [amending section 6676 of this title] shall apply to payments made after December 31, 1984.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 72. Annuities; certain proceeds of endowment and life insurance contracts

(a) General rules for annuities

(1) Income inclusion

Except as otherwise provided in this chapter, gross income includes any amount received as an annuity (whether for a period certain or during one or more lives) under an annuity, endowment, or life insurance contract.

(2) Partial annuitization

If any amount is received as an annuity for a period of 10 years or more or during one or more lives under any portion of an annuity, endowment, or life insurance contract—

(A) such portion shall be treated as a separate contract for purposes of this section,

(B) for purposes of applying subsections (b), (c), and (e), the investment in the contract shall be allocated pro rata between each portion of the contract from which amounts are received as an annuity and the portion of the contract from which amounts are not received as an annuity, and

(C) a separate annuity starting date under subsection (c)(4) shall be determined with respect to each portion of the contract from which amounts are received as an annuity.

(b) Exclusion ratio

(1) In general

Gross income does not include that part of any amount received as an annuity under an annuity, endowment, or life insurance contract which bears the same ratio to such amount as the investment in the contract (as of the annuity starting date) bears to the expected return under the contract (as of such date).

(2) Exclusion limited to investment

The portion of any amount received as an annuity which is excluded from gross income under paragraph (1) shall not exceed the unrecovered investment in the contract immediately before the receipt of such amount.

(3) Deduction where annuity payments cease before entire investment recovered

(A) In general

If—

(i) after the annuity starting date, payments as an annuity under the contract cease by reason of the death of an annuitant, and

(ii) as of the date of such cessation, there is unrecovered investment in the contract,

the amount of such unrecovered investment (in excess of any amount specified in subsection (e)(5) which was not included in gross income) shall be allowed as a deduction to the annuitant for his last taxable year.

(B) Payments to other persons

In the case of any contract which provides for payments meeting the requirements of subparagraphs (B) and (C) of subsection (c)(2), the deduction under subparagraph (A) shall be allowed to the person entitled to such payments for the taxable year in which such payments are received.

(C) Net operating loss deductions provided

For purposes of section 172, a deduction allowed under this paragraph shall be treated as if it were attributable to a trade or business of the taxpayer.

(4) Unrecovered investment

For purposes of this subsection, the unrecovered investment in the contract as of any date is—

(A) the investment in the contract (determined without regard to subsection (c)(2)) as of the annuity starting date, reduced by

(B) the aggregate amount received under the contract on or after such annuity starting date and before the date as of which the determination is being made, to the extent such amount was excludable from gross income under this subtitle.

(c) Definitions

(1) Investment in the contract

For purposes of subsection (b), the investment in the contract as of the annuity starting date is—

(A) the aggregate amount of premiums or other consideration paid for the contract, minus

(B) the aggregate amount received under the contract before such date, to the extent that such amount was excludable from gross income under this subtitle or prior income tax laws.

(2) Adjustment in investment where there is refund feature

If—

(A) the expected return under the contract depends in whole or in part on the life expectancy of one or more individuals;

(B) the contract provides for payments to be made to a beneficiary (or to the estate of an annuitant) on or after the death of the annuitant or annuitants; and

(C) such payments are in the nature of a refund of the consideration paid,

then the value (computed without discount for interest) of such payments on the annuity starting date shall be subtracted from the amount determined under paragraph (1). Such value shall be computed in accordance with actuarial tables prescribed by the Secretary. For purposes of this paragraph and of sub-

section (e)(2)(A), the term ''refund of the consideration paid'' includes amounts payable after the death of an annuitant by reason of a provision in the contract for a life annuity with minimum period of payments certain, but (if part of the consideration was contributed by an employer) does not include that part of any payment to a beneficiary (or to the estate of the annuitant) which is not attributable to the consideration paid by the employee for the contract as determined under paragraph (1)(A).

(3) Expected return

For purposes of subsection (b), the expected return under the contract shall be determined as follows:

(A) Life expectancy

If the expected return under the contract, for the period on and after the annuity starting date, depends in whole or in part on the life expectancy of one or more individuals, the expected return shall be computed with reference to actuarial tables prescribed by the Secretary.

(B) Installment payments

If subparagraph (A) does not apply, the expected return is the aggregate of the amounts receivable under the contract as an annuity.

(4) Annuity starting date

For purposes of this section, the annuity starting date in the case of any contract is the first day of the first period for which an amount is received as an annuity under the contract; except that if such date was before January 1, 1954, then the annuity starting date is January 1, 1954.

(d) Special rules for qualified employer retirement plans

(1) Simplified method of taxing annuity payments

(A) In general

In the case of any amount received as an annuity under a qualified employer retirement plan—

(i) subsection (b) shall not apply, and

(ii) the investment in the contract shall be recovered as provided in this paragraph.

(B) Method of recovering investment in contract

(i) In general

Gross income shall not include so much of any monthly annuity payment under a qualified employer retirement plan as does not exceed the amount obtained by dividing—

(I) the investment in the contract (as of the annuity starting date), by

(II) the number of anticipated payments determined under the table contained in clause (iii) (or, in the case of a contract to which subsection (c)(3)(B) applies, the number of monthly annuity payments under such contract).

(ii) Certain rules made applicable

Rules similar to the rules of paragraphs (2) and (3) of subsection (b) shall apply for purposes of this paragraph.

(iii) Number of anticipated payments

If the annuity is payable over the life of a single individual, the number of anticipated payments shall be determined as follows:

If the age of the annuitant on the annuity starting date is:	The number of anticipated payments is:
Not more than 55	360
More than 55 but not more than 60	310
More than 60 but not more than 65	260
More than 65 but not more than 70	210
More than 70	160.

(iv) Number of anticipated payments where more than one life

If the annuity is payable over the lives of more than 1 individual, the number of anticipated payments shall be determined as follows:

If the combined ages of annuitants are:	The number is:
Not more than 110	410
More than 110 but not more than 120	360
More than 120 but not more than 130	310
More than 130 but not more than 140	260
More than 140	210.

(C) Adjustment for refund feature not applicable

For purposes of this paragraph, investment in the contract shall be determined under subsection (c)(1) without regard to subsection (c)(2).

(D) Special rule where lump sum paid in connection with commencement of annuity payments

If, in connection with the commencement of annuity payments under any qualified employer retirement plan, the taxpayer receives a lump-sum payment—

(i) such payment shall be taxable under subsection (e) as if received before the annuity starting date, and

(ii) the investment in the contract for purposes of this paragraph shall be determined as if such payment had been so received.

(E) Exception

This paragraph shall not apply in any case where the primary annuitant has attained age 75 on the annuity starting date unless there are fewer than 5 years of guaranteed payments under the annuity.

(F) Adjustment where annuity payments not on monthly basis

In any case where the annuity payments are not made on a monthly basis, appropriate adjustments in the application of this paragraph shall be made to take into account the period on the basis of which such payments are made.

(G) Qualified employer retirement plan

For purposes of this paragraph, the term ''qualified employer retirement plan'' means any plan or contract described in paragraph (1), (2), or (3) of section 4974(c).

(2) Treatment of employee contributions under defined contribution plans

For purposes of this section, employee contributions (and any income allocable thereto) under a defined contribution plan may be treated as a separate contract.

(e) Amounts not received as annuities

(1) Application of subsection

(A) In general

This subsection shall apply to any amount which—

(i) is received under an annuity, endowment, or life insurance contract, and

(ii) is not received as an annuity,

if no provision of this subtitle (other than this subsection) applies with respect to such amount.

(B) Dividends

For purposes of this section, any amount received which is in the nature of a dividend or similar distribution shall be treated as an amount not received as an annuity.

(2) General rule

Any amount to which this subsection applies—

(A) if received on or after the annuity starting date, shall be included in gross income, or

(B) if received before the annuity starting date—

(i) shall be included in gross income to the extent allocable to income on the contract, and

(ii) shall not be included in gross income to the extent allocable to the investment in the contract.

(3) Allocation of amounts to income and investment

For purposes of paragraph (2)(B)—

(A) Allocation to income

Any amount to which this subsection applies shall be treated as allocable to income on the contract to the extent that such amount does not exceed the excess (if any) of—

(i) the cash value of the contract (determined without regard to any surrender charge) immediately before the amount is received, over

(ii) the investment in the contract at such time.

(B) Allocation to investment

Any amount to which this subsection applies shall be treated as allocable to investment in the contract to the extent that such amount is not allocated to income under subparagraph (A).

(4) Special rules for application of paragraph (2)(B)

For purposes of paragraph (2)(B)—

(A) Loans treated as distributions

If, during any taxable year, an individual—

(i) receives (directly or indirectly) any amount as a loan under any contract to which this subsection applies, or

(ii) assigns or pledges (or agrees to assign or pledge) any portion of the value of any such contract,

such amount or portion shall be treated as received under the contract as an amount not received as an annuity. The preceding sentence shall not apply for purposes of determining investment in the contract, except that the investment in the contract shall be increased by any amount included in gross income by reason of the amount treated as received under the preceding sentence.

(B) Treatment of policyholder dividends

Any amount described in paragraph (1)(B) shall not be included in gross income under paragraph (2)(B)(i) to the extent such amount is retained by the insurer as a premium or other consideration paid for the contract.

(C) Treatment of transfers without adequate consideration

(i) In general

If an individual who holds an annuity contract transfers it without full and adequate consideration, such individual shall be treated as receiving an amount equal to the excess of—

(I) the cash surrender value of such contract at the time of transfer, over

(II) the investment in such contract at such time,

under the contract as an amount not received as an annuity.

(ii) Exception for certain transfers between spouses or former spouses

Clause (i) shall not apply to any transfer to which section 1041(a) (relating to transfers of property between spouses or incident to divorce) applies.

(iii) Adjustment to investment in contract of transferee

If under clause (i) an amount is included in the gross income of the transferor of an annuity contract, the investment in the contract of the transferee in such contract shall be increased by the amount so included.

(5) Retention of existing rules in certain cases

(A) In general

In any case to which this paragraph applies—

(i) paragraphs (2)(B) and (4)(A) shall not apply, and

(ii) if paragraph (2)(A) does not apply,

the amount shall be included in gross income, but only to the extent it exceeds the investment in the contract.

(B) Existing contracts

This paragraph shall apply to contracts entered into before August 14, 1982. Any amount allocable to investment in the contract after August 13, 1982, shall be treated as from a contract entered into after such date.

(C) Certain life insurance and endowment contracts

Except as provided in paragraph (10) and except to the extent prescribed by the Secretary by regulations, this paragraph shall apply to any amount not received as an annuity which is received under a life insurance or endowment contract.

(D) Contracts under qualified plans

Except as provided in paragraph (8), this paragraph shall apply to any amount received—

(i) from a trust described in section 401(a) which is exempt from tax under section 501(a),

(ii) from a contract—

(I) purchased by a trust described in clause (i),

(II) purchased as part of a plan described in section 403(a),

(III) described in section 403(b), or

(IV) provided for employees of a life insurance company under a plan described in section 818(a)(3), or

(iii) from an individual retirement account or an individual retirement annuity.

Any dividend described in section 404(k) which is received by a participant or beneficiary shall, for purposes of this subparagraph, be treated as paid under a separate contract to which clause (ii)(I) applies.

(E) Full refunds, surrenders, redemptions, and maturities

This paragraph shall apply to—

(i) any amount received, whether in a single sum or otherwise, under a contract in full discharge of the obligation under the contract which is in the nature of a refund of the consideration paid for the contract, and

(ii) any amount received under a contract on its complete surrender, redemption, or maturity.

In the case of any amount to which the preceding sentence applies, the rule of paragraph (2)(A) shall not apply.

(6) Investment in the contract

For purposes of this subsection, the investment in the contract as of any date is—

(A) the aggregate amount of premiums or other consideration paid for the contract before such date, minus

(B) the aggregate amount received under the contract before such date, to the extent that such amount was excludable from gross income under this subtitle or prior income tax laws.

[(7) Repealed. Pub. L. 100–647, title I, § 1011A(b)(9)(A), Nov. 10, 1988, 102 Stat. 3474]

(8) Extension of paragraph (2)(b)[1] to qualified plans

(A) In general

Notwithstanding any other provision of this subsection, in the case of any amount received before the annuity starting date from a trust or contract described in paragraph (5)(D), paragraph (2)(B) shall apply to such amounts.

(B) Allocation of amount received

For purposes of paragraph (2)(B), the amount allocated to the investment in the contract shall be the portion of the amount described in subparagraph (A) which bears the same ratio to such amount as the investment in the contract bears to the account balance. The determination under the preceding sentence shall be made as of the time of the distribution or at such other time as the Secretary may prescribe.

(C) Treatment of forfeitable rights

If an employee does not have a nonforfeitable right to any amount under any trust or contract to which subparagraph (A) applies, such amount shall not be treated as part of the account balance.

(D) Investment in the contract before 1987

In the case of a plan which on May 5, 1986, permitted withdrawal of any employee contributions before separation from service, subparagraph (A) shall apply only to the extent that amounts received before the annuity starting date (when increased by amounts previously received under the contract after December 31, 1986) exceed the investment in the contract as of December 31, 1986.

(9) Extension of paragraph (2)(B) to qualified tuition programs and Coverdell education savings accounts

Notwithstanding any other provision of this subsection, paragraph (2)(B) shall apply to amounts received under a qualified tuition program (as defined in section 529(b)) or under a Coverdell education savings account (as defined in section 530(b)). The rule of paragraph (8)(B) shall apply for purposes of this paragraph.

(10) Treatment of modified endowment contracts

(A) In general

Notwithstanding paragraph (5)(C), in the case of any modified endowment contract (as defined in section 7702A)—

(i) paragraphs (2)(B) and (4)(A) shall apply, and

(ii) in applying paragraph (4)(A), ''any person'' shall be substituted for ''an individual''.

(B) Treatment of certain burial contracts

Notwithstanding subparagraph (A), paragraph (4)(A) shall not apply to any assignment (or pledge) of a modified endowment contract if such assignment (or pledge) is solely to cover the payment of expenses referred to in section 7702(e)(2)(C)(iii) and if the maximum death benefit under such contract does not exceed $25,000.

(11) Special rules for certain combination contracts providing long-term care insurance

Notwithstanding paragraphs (2), (5)(C), and (10), in the case of any charge against the cash

[1] So in original. Probably should be paragraph ''(2)(B)''.

value of an annuity contract or the cash surrender value of a life insurance contract made as payment for coverage under a qualified long-term care insurance contract which is part of or a rider on such annuity or life insurance contract—

(A) the investment in the contract shall be reduced (but not below zero) by such charge, and

(B) such charge shall not be includible in gross income.

(12) Anti-abuse rules

(A) In general

For purposes of determining the amount includible in gross income under this subsection—

(i) all modified endowment contracts issued by the same company to the same policyholder during any calendar year shall be treated as 1 modified endowment contract, and

(ii) all annuity contracts issued by the same company to the same policyholder during any calendar year shall be treated as 1 annuity contract.

The preceding sentence shall not apply to any contract described in paragraph (5)(D).

(B) Regulatory authority

The Secretary may by regulations prescribe such additional rules as may be necessary or appropriate to prevent avoidance of the purposes of this subsection through serial purchases of contracts or otherwise.

(f) Special rules for computing employees' contributions

In computing, for purposes of subsection (c)(1)(A), the aggregate amount of premiums or other consideration paid for the contract, and for purposes of subsection (e)(6), the aggregate premiums or other consideration paid, amounts contributed by the employer shall be included, but only to the extent that—

(1) such amounts were includible in the gross income of the employee under this subtitle or prior income tax laws; or

(2) if such amounts had been paid directly to the employee at the time they were contributed, they would not have been includible in the gross income of the employee under the law applicable at the time of such contribution.

Paragraph (2) shall not apply to amounts which were contributed by the employer after December 31, 1962, and which would not have been includible in the gross income of the employee by reason of the application of section 911 if such amounts had been paid directly to the employee at the time of contribution. The preceding sentence shall not apply to amounts which were contributed by the employer, as determined under regulations prescribed by the Secretary, to provide pension or annuity credits, to the extent such credits are attributable to services performed before January 1, 1963, and are provided pursuant to pension or annuity plan provisions in existence on March 12, 1962, and on that date applicable to such services, or to the extent such credits are attributable to services performed as a foreign missionary (within the meaning of section 403(b)(2)(D)(iii), as in effect before the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001).

(g) Rules for transferee where transfer was for value

Where any contract (or any interest therein) is transferred (by assignment or otherwise) for a valuable consideration, to the extent that the contract (or interest therein) does not, in the hands of the transferee, have a basis which is determined by reference to the basis in the hands of the transferor, then—

(1) for purposes of this section, only the actual value of such consideration, plus the amount of the premiums and other consideration paid by the transferee after the transfer, shall be taken into account in computing the aggregate amount of the premiums or other consideration paid for the contract;

(2) for purposes of subsection (c)(1)(B), there shall be taken into account only the aggregate amount received under the contract by the transferee before the annuity starting date, to the extent that such amount was excludable from gross income under this subtitle or prior income tax laws; and

(3) the annuity starting date is January 1, 1954, or the first day of the first period for which the transferee received an amount under the contract as an annuity, whichever is the later.

For purposes of this subsection, the term ''transferee'' includes a beneficiary of, or the estate of, the transferee.

(h) Option to receive annuity in lieu of lump sum

If—

(1) a contract provides for payment of a lump sum in full discharge of an obligation under the contract, subject to an option to receive an annuity in lieu of such lump sum;

(2) the option is exercised within 60 days after the day on which such lump sum first became payable; and

(3) part or all of such lump sum would (but for this subsection) be includible in gross income by reason of subsection (e)(1),

then, for purposes of this subtitle, no part of such lump sum shall be considered as includible in gross income at the time such lump sum first became payable.

[(i) Repealed. Pub. L. 94–455, title XIX, § 1951(b)(1)(A), Oct. 4, 1976, 90 Stat. 1836]

(j) Interest

Notwithstanding any other provision of this section, if any amount is held under an agreement to pay interest thereon, the interest payments shall be included in gross income.

[(k) Repealed. Pub. L. 98–369, div. A, title IV, § 421(b)(1), July 18, 1984, 98 Stat. 794]

***(l)* Face-amount certificates**

For purposes of this section, the term ''endowment contract'' includes a face-amount certificate, as defined in section 2(a)(15) of the Investment Company Act of 1940 (15 U.S.C., sec. 80a–2), issued after December 31, 1954.

(m) Special rules applicable to employee annuities and distributions under employee plans

[(1) Repealed. Pub. L. 93–406, title II, § 2001(h)(2), Sept. 2, 1974, 88 Stat. 957]

(2) Computation of consideration paid by the employee

In computing—

(A) the aggregate amount of premiums or other consideration paid for the contract for purposes of subsection (c)(1)(A) (relating to the investment in the contract), and

(B) the aggregate premiums or other consideration paid for purposes of subsection (e)(6) (relating to certain amounts not received as an annuity),

any amount allowed as a deduction with respect to the contract under section 404 which was paid while the employee was an employee within the meaning of section 401(c)(1) shall be treated as consideration contributed by the employer, and there shall not be taken into account any portion of the premiums or other consideration for the contract paid while the employee was an owner-employee which is properly allocable (as determined under regulations prescribed by the Secretary) to the cost of life, accident, health, or other insurance.

(3) Life insurance contracts

(A) This paragraph shall apply to any life insurance contract—

(i) purchased as a part of a plan described in section 403(a), or

(ii) purchased by a trust described in section 401(a) which is exempt from tax under section 501(a) if the proceeds of such contract are payable directly or indirectly to a participant in such trust or to a beneficiary of such participant.

(B) Any contribution to a plan described in subparagraph (A)(i) or a trust described in subparagraph (A)(ii) which is allowed as a deduction under section 404, and any income of a trust described in subparagraph (A)(ii), which is determined in accordance with regulations prescribed by the Secretary to have been applied to purchase the life insurance protection under a contract described in subparagraph (A), is includible in the gross income of the participant for the taxable year when so applied.

(C) In the case of the death of an individual insured under a contract described in subparagraph (A), an amount equal to the cash surrender value of the contract immediately before the death of the insured shall be treated as a payment under such plan or a distribution by such trust, and the excess of the amount payable by reason of the death of the insured over such cash surrender value shall not be includible in gross income under this section and shall be treated as provided in section 101.

[(4) Repealed. Pub. L. 97–248, title II, § 236(b)(1), Sept. 3, 1982, 96 Stat. 510]

(5) Penalties applicable to certain amounts received by 5-percent owners

(A) This paragraph applies to amounts which are received from a qualified trust described in section 401(a) or under a plan described in section 403(a) at any time by an individual who is, or has been, a 5-percent owner, or by a successor of such an individual, but only to the extent such amounts are determined, under regulations prescribed by the Secretary, to exceed the benefits provided for such individual under the plan formula.

(B) If a person receives an amount to which this paragraph applies, his tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of the amount so received which is includible in his gross income for such taxable year.

(C) For purposes of this paragraph, the term ''5-percent owner'' means any individual who, at any time during the 5 plan years preceding the plan year ending in the taxable year in which the amount is received, is a 5-percent owner (as defined in section 416(i)(1)(B)).

(6) Owner-employee defined

For purposes of this subsection, the term ''owner-employee'' has the meaning assigned to it by section 401(c)(3) and includes an individual for whose benefit an individual retirement account or annuity described in section 408(a) or (b) is maintained. For purposes of the preceding sentence, the term ''owner-employee'' shall include an employee within the meaning of section 401(c)(1).

(7) Meaning of disabled

For purposes of this section, an individual shall be considered to be disabled if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration. An individual shall not be considered to be disabled unless he furnishes proof of the existence thereof in such form and manner as the Secretary may require.

[(8) Repealed. Pub. L. 97–248, title II, § 236(b)(1), Sept. 3, 1982, 96 Stat. 510]

[(9) Repealed. Pub. L. 98–369, div. A, title VII, § 713(d)(1), July 18, 1984, 98 Stat. 957]

(10) Determination of investment in the contract in the case of qualified domestic relations orders

Under regulations prescribed by the Secretary, in the case of a distribution or payment made to an alternate payee who is the spouse or former spouse of the participant pursuant to a qualified domestic relations order (as defined in section 414(p)), the investment in the contract as of the date prescribed in such regulations shall be allocated on a pro rata basis between the present value of such distribution or payment and the present value of all other benefits payable with respect to the participant to which such order relates.

(n) Annuities under retired serviceman's family protection plan or survivor benefit plan

Subsection (b) shall not apply in the case of amounts received after December 31, 1965, as an

annuity under chapter 73 of title 10 of the United States Code, but all such amounts shall be excluded from gross income until there has been so excluded (under section 122(b)(1) or this section, including amounts excluded before January 1, 1966) an amount equal to the consideration for the contract (as defined by section 122(b)(2)), plus any amount treated pursuant to section 101(b)(2)(D) (as in effect on the day before the date of the enactment of the Small Business Job Protection Act of 1996) as additional consideration paid by the employee. Thereafter all amounts so received shall be included in gross income.

(*o*) Special rules for distributions from qualified plans to which employee made deductible contributions

(1) Treatment of contributions

For purposes of this section and sections 402 and 403, notwithstanding section 414(h), any deductible employee contribution made to a qualified employer plan or government plan shall be treated as an amount contributed by the employer which is not includible in the gross income of the employee.

[(2) Repealed. Pub. L. 100–647, title I, § 1011A(c)(8), Nov. 10, 1988, 102 Stat. 3476]

(3) Amounts constructively received

(A) In general

For purposes of this subsection, rules similar to the rules provided by subsection (p) (other than the exception contained in paragraph (2) thereof) shall apply.

(B) Purchase of life insurance

To the extent any amount of accumulated deductible employee contributions of an employee are applied to the purchase of life insurance contracts, such amount shall be treated as distributed to the employee in the year so applied.

(4) Special rule for treatment of rollover amounts

For purposes of sections 402(c), 403(a)(4), and 403(b)(8), 408(d)(3), and 457(e)(16), the Secretary shall prescribe regulations providing for such allocations of amounts attributable to accumulated deductible employee contributions, and for such other rules, as may be necessary to insure that such accumulated deductible employee contributions do not become eligible for additional tax benefits (or freed from limitations) through the use of rollovers.

(5) Definitions and special rules

For purposes of this subsection—

(A) Deductible employee contributions

The term ''deductible employee contributions'' means any qualified voluntary employee contribution (as defined in section 219(e)(2)) made after December 31, 1981, in a taxable year beginning after such date and made for a taxable year beginning before January 1, 1987, and allowable as a deduction under section 219(a) for such taxable year.

(B) Accumulated deductible employee contributions

The term ''accumulated deductible employee contributions'' means the deductible employee contributions—

(i) increased by the amount of income and gain allocable to such contributions, and

(ii) reduced by the sum of the amount of loss and expense allocable to such contributions and the amounts distributed with respect to the employee which are attributable to such contributions (or income or gain allocable to such contributions).

(C) Qualified employer plan

The term ''qualified employer plan'' has the meaning given to such term by subsection (p)(3)(A)(i).

(D) Government plan

The term ''government plan'' has the meaning given such term by subsection (p)(3)(B).

(6) Ordering rules

Unless the plan specifies otherwise, any distribution from such plan shall not be treated as being made from the accumulated deductible employee contributions, until all other amounts to the credit of the employee have been distributed.

(p) Loans treated as distributions

For purposes of this section—

(1) Treatment as distributions

(A) Loans

If during any taxable year a participant or beneficiary receives (directly or indirectly) any amount as a loan from a qualified employer plan, such amount shall be treated as having been received by such individual as a distribution under such plan.

(B) Assignments or pledges

If during any taxable year a participant or beneficiary assigns (or agrees to assign) or pledges (or agrees to pledge) any portion of his interest in a qualified employer plan, such portion shall be treated as having been received by such individual as a loan from such plan.

(2) Exception for certain loans

(A) General rule

Paragraph (1) shall not apply to any loan to the extent that such loan (when added to the outstanding balance of all other loans from such plan whether made on, before, or after August 13, 1982), does not exceed the lesser of—

(i) $50,000, reduced by the excess (if any) of—

(I) the highest outstanding balance of loans from the plan during the 1-year period ending on the day before the date on which such loan was made, over

(II) the outstanding balance of loans from the plan on the date on which such loan was made, or

(ii) the greater of (I) one-half of the present value of the nonforfeitable accrued benefit of the employee under the plan, or (II) $10,000.

For purposes of clause (ii), the present value of the nonforfeitable accrued benefit shall be determined without regard to any accumulated deductible employee contributions (as defined in subsection (*o*)(5)(B)).

(B) Requirement that loan be repayable within 5 years

(i) In general

Subparagraph (A) shall not apply to any loan unless such loan, by its terms, is required to be repaid within 5 years.

(ii) Exception for home loans

Clause (i) shall not apply to any loan used to acquire any dwelling unit which within a reasonable time is to be used (determined at the time the loan is made) as the principal residence of the participant.

(C) Requirement of level amortization

Except as provided in regulations, this paragraph shall not apply to any loan unless substantially level amortization of such loan (with payments not less frequently than quarterly) is required over the term of the loan.

(D) Related employers and related plans

For purposes of this paragraph—

(i) the rules of subsections (b), (c), and (m) of section 414 shall apply, and

(ii) all plans of an employer (determined after the application of such subsections) shall be treated as 1 plan.

(3) Denial of interest deductions in certain cases

(A) In general

No deduction otherwise allowable under this chapter shall be allowed under this chapter for any interest paid or accrued on any loan to which paragraph (1) does not apply by reason of paragraph (2) during the period described in subparagraph (B).

(B) Period to which subparagraph (A) applies

For purposes of subparagraph (A), the period described in this subparagraph is the period—

(i) on or after the 1st day on which the individual to whom the loan is made is a key employee (as defined in section 416(i)), or

(ii) such loan is secured by amounts attributable to elective deferrals described in subparagraph (A) or (C) of section 402(g)(3).

(4) Qualified employer plan, etc.

For purposes of this subsection—

(A) Qualified employer plan

(i) In general

The term ''qualified employer plan'' means—

(I) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

(II) an annuity plan described in section 403(a), and

(III) a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b).

(ii) Special rule

The term ''qualified employer plan'' shall include any plan which was (or was determined to be) a qualified employer plan or a government plan.

(B) Government plan

The term ''government plan'' means any plan, whether or not qualified, established and maintained for its employees by the United States, by a State or political subdivision thereof, or by an agency or instrumentality of any of the foregoing.

(5) Special rules for loans, etc., from certain contracts

For purposes of this subsection, any amount received as a loan under a contract purchased under a qualified employer plan (and any assignment or pledge with respect to such a contract) shall be treated as a loan under such employer plan.

(q) 10-percent penalty for premature distributions from annuity contracts

(1) Imposition of penalty

If any taxpayer receives any amount under an annuity contract, the taxpayer's tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of such amount which is includible in gross income.

(2) Subsection not to apply to certain distributions

Paragraph 1 shall not apply to any distribution—

(A) made on or after the date on which the taxpayer attains age 59½,

(B) made on or after the death of the holder (or, where the holder is not an individual, the death of the primary annuitant (as defined in subsection (s)(6)(B))),

(C) attributable to the taxpayer's becoming disabled within the meaning of subsection (m)(7),

(D) which is a part of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the taxpayer or the joint lives (or joint life expectancies) of such taxpayer and his designated beneficiary,

(E) from a plan, contract, account, trust, or annuity described in subsection (e)(5)(D),

(F) allocable to investment in the contract before August 14, 1982, or[2]

(G) under a qualified funding asset (within the meaning of section 130(d), but without regard to whether there is a qualified assignment),

(H) to which subsection (t) applies (without regard to paragraph (2) thereof),

[2] So in original. The word ''or'' probably should not appear.

(I) under an immediate annuity contract (within the meaning of section 72(u)(4)), or

(J) which is purchased by an employer upon the termination of a plan described in section 401(a) or 403(a) and which is held by the employer until such time as the employee separates from service.

(3) Change in substantially equal payments

If—

(A) paragraph (1) does not apply to a distribution by reason of paragraph (2)(D), and

(B) the series of payments under such paragraph are subsequently modified (other than by reason of death or disability)—

(i) before the close of the 5-year period beginning on the date of the first payment and after the taxpayer attains age 59½, or

(ii) before the taxpayer attains age 59½,

the taxpayer's tax for the 1st taxable year in which such modification occurs shall be increased by an amount, determined under regulations, equal to the tax which (but for paragraph (2)(D)) would have been imposed, plus interest for the deferral period (within the meaning of subsection (t)(4)(B)).

(r) Certain railroad retirement benefits treated as received under employer plans

(1) In general

Notwithstanding any other provision of law, any benefit provided under the Railroad Retirement Act of 1974 (other than a tier 1 railroad retirement benefit) shall be treated for purposes of this title as a benefit provided under an employer plan which meets the requirements of section 401(a).

(2) Tier 2 taxes treated as contributions

(A) In general

For purposes of paragraph (1)—

(i) the tier 2 portion of the tax imposed by section 3201 (relating to tax on employees) shall be treated as an employee contribution,

(ii) the tier 2 portion of the tax imposed by section 3211 (relating to tax on employee representatives) shall be treated as an employee contribution, and

(iii) the tier 2 portion of the tax imposed by section 3221 (relating to tax on employers) shall be treated as an employer contribution.

(B) Tier 2 portion

For purposes of subparagraph (A)—

(i) After 1984

With respect to compensation paid after 1984, the tier 2 portion shall be the taxes imposed by sections 3201(b), 3211(b), and 3221(b).

(ii) After September 30, 1981, and before 1985

With respect to compensation paid before 1985 for services rendered after September 30, 1981, the tier 2 portion shall be—

(I) so much of the tax imposed by section 3201 as is determined at the 2 percent rate, and

(II) so much of the taxes imposed by sections 3211 and 3221 as is determined at the 11.75 percent rate.

With respect to compensation paid for services rendered after December 31, 1983, and before 1985, subclause (I) shall be applied by substituting ''2.75 percent'' for ''2 percent'', and subclause (II) shall be applied by substituting ''12.75 percent'' for ''11.75 percent''.

(iii) Before October 1, 1981

With respect to compensation paid for services rendered during any period before October 1, 1981, the tier 2 portion shall be the excess (if any) of—

(I) the tax imposed for such period by section 3201, 3211, or 3221, as the case may be (other than any tax imposed with respect to man-hours), over

(II) the tax which would have been imposed by such section for such period had the rates of the comparable taxes imposed by chapter 21 for such period applied under such section.

(C) Contributions not allocable to supplemental annuity or windfall benefits

For purposes of paragraph (1), no amount treated as an employee contribution under this paragraph shall be allocated to—

(i) any supplemental annuity paid under section 2(b) of the Railroad Retirement Act of 1974, or

(ii) any benefit paid under section 3(h), 4(e), or 4(h) of such Act.

(3) Tier 1 railroad retirement benefit

For purposes of paragraph (1), the term ''tier 1 railroad retirement benefit'' has the meaning given such term by section 86(d)(4).

(s) Required distributions where holder dies before entire interest is distributed

(1) In general

A contract shall not be treated as an annuity contract for purposes of this title unless it provides that—

(A) if any holder of such contract dies on or after the annuity starting date and before the entire interest in such contract has been distributed, the remaining portion of such interest will be distributed at least as rapidly as under the method of distributions being used as of the date of his death, and

(B) if any holder of such contract dies before the annuity starting date, the entire interest in such contract will be distributed within 5 years after the death of such holder.

(2) Exception for certain amounts payable over life of beneficiary

If—

(A) any portion of the holder's interest is payable to (or for the benefit of) a designated beneficiary,

(B) such portion will be distributed (in accordance with regulations) over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary), and

(C) such distributions begin not later than 1 year after the date of the holder's death or

such later date as the Secretary may by regulations prescribe,

then for purposes of paragraph (1), the portion referred to in subparagraph (A) shall be treated as distributed on the day on which such distributions begin.

(3) Special rule where surviving spouse beneficiary

If the designated beneficiary referred to in paragraph (2)(A) is the surviving spouse of the holder of the contract, paragraphs (1) and (2) shall be applied by treating such spouse as the holder of such contract.

(4) Designated beneficiary

For purposes of this subsection, the term ''designated beneficiary'' means any individual designated a beneficiary by the holder of the contract.

(5) Exception for certain annuity contracts

This subsection shall not apply to any annuity contract—

(A) which is provided—

(i) under a plan described in section 401(a) which includes a trust exempt from tax under section 501, or

(ii) under a plan described in section 403(a),

(B) which is described in section 403(b),

(C) which is an individual retirement annuity or provided under an individual retirement account or annuity, or

(D) which is a qualified funding asset (as defined in section 130(d), but without regard to whether there is a qualified assignment).

(6) Special rule where holder is corporation or other non-individual

(A) In general

For purposes of this subsection, if the holder of the contract is not an individual, the primary annuitant shall be treated as the holder of the contract.

(B) Primary annuitant

For purposes of subparagraph (A), the term ''primary annuitant'' means the individual, the events in the life of whom are of primary importance in affecting the timing or amount of the payout under the contract.

(7) Treatment of changes in primary annuitant where holder of contract is not an individual

For purposes of this subsection, in the case of a holder of an annuity contract which is not an individual, if there is a change in a primary annuitant (as defined in paragraph (6)(B)), such change shall be treated as the death of the holder.

(t) 10-percent additional tax on early distributions from qualified retirement plans

(1) Imposition of additional tax

If any taxpayer receives any amount from a qualified retirement plan (as defined in section 4974(c)), the taxpayer's tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of such amount which is includible in gross income.

(2) Subsection not to apply to certain distributions

Except as provided in paragraphs (3) and (4), paragraph (1) shall not apply to any of the following distributions:

(A) In general

Distributions which are—

(i) made on or after the date on which the employee attains age 59½,

(ii) made to a beneficiary (or to the estate of the employee) on or after the death of the employee,

(iii) attributable to the employee's being disabled within the meaning of subsection (m)(7),

(iv) part of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of such employee and his designated beneficiary,

(v) made to an employee after separation from service after attainment of age 55,

(vi) dividends paid with respect to stock of a corporation which are described in section 404(k), or

(vii) made on account of a levy under section 6331 on the qualified retirement plan.

(B) Medical expenses

Distributions made to the employee (other than distributions described in subparagraph (A), (C), or (D)) to the extent such distributions do not exceed the amount allowable as a deduction under section 213 to the employee for amounts paid during the taxable year for medical care (determined without regard to whether the employee itemizes deductions for such taxable year).

(C) Payments to alternate payees pursuant to qualified domestic relations orders

Any distribution to an alternate payee pursuant to a qualified domestic relations order (within the meaning of section 414(p)(1)).

(D) Distributions to unemployed individuals for health insurance premiums

(i) In general

Distributions from an individual retirement plan to an individual after separation from employment—

(I) if such individual has received unemployment compensation for 12 consecutive weeks under any Federal or State unemployment compensation law by reason of such separation,

(II) if such distributions are made during any taxable year during which such unemployment compensation is paid or the succeeding taxable year, and

(III) to the extent such distributions do not exceed the amount paid during the taxable year for insurance described in section 213(d)(1)(D) with respect to the

individual and the individual's spouse and dependents (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof).

(ii) Distributions after reemployment

Clause (i) shall not apply to any distribution made after the individual has been employed for at least 60 days after the separation from employment to which clause (i) applies.

(iii) Self-employed individuals

To the extent provided in regulations, a self-employed individual shall be treated as meeting the requirements of clause (i)(I) if, under Federal or State law, the individual would have received unemployment compensation but for the fact the individual was self-employed.

(E) Distributions from individual retirement plans for higher education expenses

Distributions to an individual from an individual retirement plan to the extent such distributions do not exceed the qualified higher education expenses (as defined in paragraph (7)) of the taxpayer for the taxable year. Distributions shall not be taken into account under the preceding sentence if such distributions are described in subparagraph (A), (C), or (D) or to the extent paragraph (1) does not apply to such distributions by reason of subparagraph (B).

(F) Distributions from certain plans for first home purchases

Distributions to an individual from an individual retirement plan which are qualified first-time homebuyer distributions (as defined in paragraph (8)). Distributions shall not be taken into account under the preceding sentence if such distributions are described in subparagraph (A), (C), (D), or (E) or to the extent paragraph (1) does not apply to such distributions by reason of subparagraph (B).

(G) Distributions from retirement plans to individuals called to active duty

(i) In general

Any qualified reservist distribution.

(ii) Amount distributed may be repaid

Any individual who receives a qualified reservist distribution may, at any time during the 2-year period beginning on the day after the end of the active duty period, make one or more contributions to an individual retirement plan of such individual in an aggregate amount not to exceed the amount of such distribution. The dollar limitations otherwise applicable to contributions to individual retirement plans shall not apply to any contribution made pursuant to the preceding sentence. No deduction shall be allowed for any contribution pursuant to this clause.

(iii) Qualified reservist distribution

For purposes of this subparagraph, the term ''qualified reservist distribution'' means any distribution to an individual if—

(I) such distribution is from an individual retirement plan, or from amounts attributable to employer contributions made pursuant to elective deferrals described in subparagraph (A) or (C) of section 402(g)(3) or section 501(c)(18)(D)(iii),

(II) such individual was (by reason of being a member of a reserve component (as defined in section 101 of title 37, United States Code)) ordered or called to active duty for a period in excess of 179 days or for an indefinite period, and

(III) such distribution is made during the period beginning on the date of such order or call and ending at the close of the active duty period.

(iv) Application of subparagraph

This subparagraph applies to individuals ordered or called to active duty after September 11, 2001. In no event shall the 2-year period referred to in clause (ii) end before the date which is 2 years after the date of the enactment of this subparagraph.

(3) Limitations

(A) Certain exceptions not to apply to individual retirement plans

Subparagraphs (A)(v) and (C) of paragraph (2) shall not apply to distributions from an individual retirement plan.

(B) Periodic payments under qualified plans must begin after separation

Paragraph (2)(A)(iv) shall not apply to any amount paid from a trust described in section 401(a) which is exempt from tax under section 501(a) or from a contract described in section 72(e)(5)(D)(ii) unless the series of payments begins after the employee separates from service.

(4) Change in substantially equal payments

(A) In general

If—

(i) paragraph (1) does not apply to a distribution by reason of paragraph (2)(A)(iv), and

(ii) the series of payments under such paragraph are subsequently modified (other than by reason of death or disability)—

(I) before the close of the 5-year period beginning with the date of the first payment and after the employee attains age 59½, or

(II) before the employee attains age 59½,

the taxpayer's tax for the 1st taxable year in which such modification occurs shall be increased by an amount, determined under regulations, equal to the tax which (but for paragraph (2)(A)(iv)) would have been imposed, plus interest for the deferral period.

(B) Deferral period

For purposes of this paragraph, the term ''deferral period'' means the period beginning with the taxable year in which (without

regard to paragraph (2)(A)(iv)) the distribution would have been includible in gross income and ending with the taxable year in which the modification described in subparagraph (A) occurs.

(5) Employee

For purposes of this subsection, the term ''employee'' includes any participant, and in the case of an individual retirement plan, the individual for whose benefit such plan was established.

(6) Special rules for simple retirement accounts

In the case of any amount received from a simple retirement account (within the meaning of section 408(p)) during the 2-year period beginning on the date such individual first participated in any qualified salary reduction arrangement maintained by the individual's employer under section 408(p)(2), paragraph (1) shall be applied by substituting ''25 percent'' for ''10 percent''.

(7) Qualified higher education expenses

For purposes of paragraph (2)(E)—

(A) In general

The term ''qualified higher education expenses'' means qualified higher education expenses (as defined in section 529(e)(3)) for education furnished to—

(i) the taxpayer,

(ii) the taxpayer's spouse, or

(iii) any child (as defined in section 152(f)(1)) or grandchild of the taxpayer or the taxpayer's spouse,

at an eligible educational institution (as defined in section 529(e)(5)).

(B) Coordination with other benefits

The amount of qualified higher education expenses for any taxable year shall be reduced as provided in section 25A(g)(2).

(8) Qualified first-time homebuyer distributions

For purposes of paragraph (2)(F)—

(A) In general

The term ''qualified first-time homebuyer distribution'' means any payment or distribution received by an individual to the extent such payment or distribution is used by the individual before the close of the 120th day after the day on which such payment or distribution is received to pay qualified acquisition costs with respect to a principal residence of a first-time homebuyer who is such individual, the spouse of such individual, or any child, grandchild, or ancestor of such individual or the individual's spouse.

(B) Lifetime dollar limitation

The aggregate amount of payments or distributions received by an individual which may be treated as qualified first-time homebuyer distributions for any taxable year shall not exceed the excess (if any) of—

(i) $10,000, over

(ii) the aggregate amounts treated as qualified first-time homebuyer distributions with respect to such individual for all prior taxable years.

(C) Qualified acquisition costs

For purposes of this paragraph, the term ''qualified acquisition costs'' means the costs of acquiring, constructing, or reconstructing a residence. Such term includes any usual or reasonable settlement, financing, or other closing costs.

(D) First-time homebuyer; other definitions

For purposes of this paragraph—

(i) First-time homebuyer

The term ''first-time homebuyer'' means any individual if—

(I) such individual (and if married, such individual's spouse) had no present ownership interest in a principal residence during the 2-year period ending on the date of acquisition of the principal residence to which this paragraph applies, and

(II) subsection (h) or (k) of section 1034[3] (as in effect on the day before the date of the enactment of this paragraph) did not suspend the running of any period of time specified in section 1034[3] (as so in effect) with respect to such individual on the day before the date the distribution is applied pursuant to subparagraph (A).

(ii) Principal residence

The term ''principal residence'' has the same meaning as when used in section 121.

(iii) Date of acquisition

The term ''date of acquisition'' means the date—

(I) on which a binding contract to acquire the principal residence to which subparagraph (A) applies is entered into, or

(II) on which construction or reconstruction of such a principal residence is commenced.

(E) Special rule where delay in acquisition

If any distribution from any individual retirement plan fails to meet the requirements of subparagraph (A) solely by reason of a delay or cancellation of the purchase or construction of the residence, the amount of the distribution may be contributed to an individual retirement plan as provided in section 408(d)(3)(A)(i) (determined by substituting ''120th day'' for ''60th day'' in such section), except that—

(i) section 408(d)(3)(B) shall not be applied to such contribution, and

(ii) such amount shall not be taken into account in determining whether section 408(d)(3)(B) applies to any other amount.

(9) Special rule for rollovers to section 457 plans

For purposes of this subsection, a distribution from an eligible deferred compensation plan (as defined in section 457(b)) of an eligible

[3] See References in Text note below.

employer described in section 457(e)(1)(A) shall be treated as a distribution from a qualified retirement plan described in 4974(c)(1) to the extent that such distribution is attributable to an amount transferred to an eligible deferred compensation plan from a qualified retirement plan (as defined in section 4974(c)).

(10) Distributions to qualified public safety employees in governmental plans

(A) In general

In the case of a distribution to a qualified public safety employee from a governmental plan (within the meaning of section 414(d)) which is a defined benefit plan, paragraph (2)(A)(v) shall be applied by substituting ''age 50'' for ''age 55''.

(B) Qualified public safety employee

For purposes of this paragraph, the term ''qualified public safety employee'' means any employee of a State or political subdivision of a State who provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State or political subdivision.

(u) Treatment of annuity contracts not held by natural persons

(1) In general

If any annuity contract is held by a person who is not a natural person—

(A) such contract shall not be treated as an annuity contract for purposes of this subtitle (other than subchapter L), and

(B) the income on the contract for any taxable year of the policyholder shall be treated as ordinary income received or accrued by the owner during such taxable year.

For purposes of this paragraph, holding by a trust or other entity as an agent for a natural person shall not be taken into account.

(2) Income on the contract

(A) In general

For purposes of paragraph (1), the term ''income on the contract'' means, with respect to any taxable year of the policyholder, the excess of—

(i) the sum of the net surrender value of the contract as of the close of the taxable year plus all distributions under the contract received during the taxable year or any prior taxable year, reduced by

(ii) the sum of the amount of net premiums under the contract for the taxable year and prior taxable years and amounts includible in gross income for prior taxable years with respect to such contract under this subsection.

Where necessary to prevent the avoidance of this subsection, the Secretary may substitute ''fair market value of the contract'' for ''net surrender value of the contract'' each place it appears in the preceding sentence.

(B) Net premiums

For purposes of this paragraph, the term ''net premiums'' means the amount of premiums paid under the contract reduced by any policyholder dividends.

(3) Exceptions

This subsection shall not apply to any annuity contract which—

(A) is acquired by the estate of a decedent by reason of the death of the decedent,

(B) is held under a plan described in section 401(a) or 403(a), under a program described in section 403(b), or under an individual retirement plan,

(C) is a qualified funding asset (as defined in section 130(d), but without regard to whether there is a qualified assignment),

(D) is purchased by an employer upon the termination of a plan described in section 401(a) or 403(a) and is held by the employer until all amounts under such contract are distributed to the employee for whom such contract was purchased or the employee's beneficiary, or

(E) is an immediate annuity.

(4) Immediate annuity

For purposes of this subsection, the term ''immediate annuity'' means an annuity—

(A) which is purchased with a single premium or annuity consideration,

(B) the annuity starting date (as defined in subsection (c)(4)) of which commences no later than 1 year from the date of the purchase of the annuity, and

(C) which provides for a series of substantially equal periodic payments (to be made not less frequently than annually) during the annuity period.

(v) 10-percent additional tax for taxable distributions from modified endowment contracts

(1) Imposition of additional tax

If any taxpayer receives any amount under a modified endowment contract (as defined in section 7702A), the taxpayer's tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of such amount which is includible in gross income.

(2) Subsection not to apply to certain distributions

Paragraph (1) shall not apply to any distribution—

(A) made on or after the date on which the taxpayer attains age 59½,

(B) which is attributable to the taxpayer's becoming disabled (within the meaning of subsection (m)(7)), or

(C) which is part of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the taxpayer or the joint lives (or joint life expectancies) of such taxpayer and his beneficiary.

(w) Application of basis rules to nonresident aliens

(1) In general

Notwithstanding any other provision of this section, for purposes of determining the portion of any distribution which is includible in

gross income of a distributee who is a citizen or resident of the United States, the investment in the contract shall not include any applicable nontaxable contributions or applicable nontaxable earnings.

(2) Applicable nontaxable contribution

For purposes of this subsection, the term ''applicable nontaxable contribution'' means any employer or employee contribution—

(A) which was made with respect to compensation—

(i) for labor or personal services performed by an employee who, at the time the labor or services were performed, was a nonresident alien for purposes of the laws of the United States in effect at such time, and

(ii) which is treated as from sources without the United States, and

(B) which was not subject to income tax (and would have been subject to income tax if paid as cash compensation when the services were rendered) under the laws of the United States or any foreign country.

(3) Applicable nontaxable earnings

For purposes of this subsection, the term ''applicable nontaxable earnings'' means earnings—

(A) which are paid or accrued with respect to any employer or employee contribution which was made with respect to compensation for labor or personal services performed by an employee,

(B) with respect to which the employee was at the time the earnings were paid or accrued a nonresident alien for purposes of the laws of the United States, and

(C) which were not subject to income tax under the laws of the United States or any foreign country.

(4) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this subsection, including regulations treating contributions and earnings as not subject to tax under the laws of any foreign country where appropriate to carry out the purposes of this subsection.

(x) Cross reference

For limitation on adjustments to basis of annuity contracts sold, see section 1021.

(Aug. 16, 1954, ch. 736, 68A Stat. 20; Pub. L. 87–792, §4(a), (b), Oct. 10, 1962, 76 Stat. 821; Pub. L. 87–834, §11(b), Oct. 16, 1962, 76 Stat. 1005; Pub. L. 88–272, title II, §232(b), Feb. 26, 1964, 78 Stat. 110; Pub. L. 89–44, title VIII, §809(d)(2), June 21, 1965, 79 Stat. 167; Pub. L. 89–97, title I, §106(d)(2), July 30, 1965, 79 Stat. 337; Pub. L. 89–365, §1(b), Mar. 8, 1966, 80 Stat. 32; Pub. L. 91–172, title V, §515(b), Dec. 30, 1969, 83 Stat. 644; Pub. L. 93–406, title II, §§2001(e)(5), (g)(1), (2)(A), (h)(2), (3), 2002(g)(10), 2005(c)(3), 2007(b)(2), Sept. 2, 1974, 88 Stat. 955, 957, 970, 991, 994; Pub. L. 94–455, title XIX, §§1901(a)(12), (13), 1906(b)(13)(A), 1951(b)(1)(A), Oct. 4, 1976, 90 Stat. 1765, 1834, 1836; Pub. L. 97–34, title III, §§311(b)(1), 312(d), (e)(1), Aug. 13, 1981, 95 Stat. 278, 284; Pub. L. 97–248, title II, §§236(a), (b), 237(d), 265(a), (b)(1), Sept. 3, 1982, 96 Stat. 509–511, 544–546; Pub. L. 97–448, title I, §103(c)(3)(B)(i), (6), Jan. 12, 1983, 96 Stat. 2376; Pub. L. 98–76, title II, §224(a), Aug. 12, 1983, 97 Stat. 421; Pub. L. 98–369, div. A, title II, §§211(b)(1), 222(a), (b), title IV, §§421(b)(1), 491(d)(3), (4), title V, §§521(d), 523(a), (b), title VII, §713(b)(1)–(c)(1)(B), (d)(1), July 18, 1984, 98 Stat. 754, 774, 794, 849, 868, 871, 872, 956, 957; Pub. L. 98–397, title II, §204(c)(2), Aug. 23, 1984, 98 Stat. 1448; Pub. L. 99–514, title XI, §§1101(b)(2)(B), (C), 1122(c), 1123(a), (b), (d)(1), 1134(a)–(d), 1135(a), title XVIII, §§1826(a), (b)(1)–(3), (c), (d), 1852(a)(2), (c)(1)–(4), 1854(b)(1), 1898(c)(1)(B), Oct. 22, 1986, 100 Stat. 2413, 2414, 2467, 2472, 2474, 2475, 2483, 2484, 2848–2850, 2864, 2867, 2878, 2951; Pub. L. 100–647, title I, §§1011A(b)(1)(A), (B), (2), (9), (c)(1)–(8), (h), (i), 1018(k), (t)(1)(A), (B), (u)(8), title V, §5012(a), (b)(1), (d), Nov. 10, 1988, 102 Stat. 3472, 3474–3476, 3482, 3583, 3587, 3590, 3661, 3662, 3664; Pub. L. 101–239, title VII, §§7811(m)(4), 7815(a)(3), (5), Dec. 19, 1989, 103 Stat. 2412, 2414; Pub. L. 101–508, title XI, §11802(a), Nov. 5, 1990, 104 Stat. 1388–529; Pub. L. 102–318, title V, §521(b)(3), July 3, 1992, 106 Stat. 310; Pub. L. 104–188, title I, §§1403(a), 1421(b)(4)(A), 1463(a), 1704(*l*)(1), (t)(2), (77), Aug. 20, 1996, 110 Stat. 1790, 1796, 1824, 1882, 1887, 1891; Pub. L. 104–191, title III, §361(a)–(c), Aug. 21, 1996, 110 Stat. 2071, 2072; Pub. L. 105–34, title II, §203(a), (b), title III, §303(a), (b), title X, §1075(a), (b), Aug. 5, 1997, 111 Stat. 809, 829, 949; Pub. L. 105–206, title III, §3436(a), title VI, §§6004(d)(3)(B), 6005(c)(1), 6023(3), (4), July 22, 1998, 112 Stat. 761, 794, 800, 824; Pub. L. 107–16, title IV, §402(a)(4)(A), (B), title VI, §§632(a)(3)(A), 641(a)(2)(C), (e)(1), June 7, 2001, 115 Stat. 60, 61, 113, 120; Pub. L. 107–22, §1(b)(1)(A), (3)(A), July 26, 2001, 115 Stat. 196, 197; Pub. L. 107–90, title II, §204(e)(2), Dec. 21, 2001, 115 Stat. 893; Pub. L. 108–311, title II, §207(6), (7), title IV, §408(a)(4), (b)(3), Oct. 4, 2004, 118 Stat. 1177, 1191, 1192; Pub. L. 108–357, title VIII, §906(a), Oct. 22, 2004, 118 Stat. 1653; Pub. L. 109–280, title VIII, §§827(a), 828(a), 844(a), Aug. 17, 2006, 120 Stat. 999, 1001, 1010; Pub. L. 110–245, title I, §107(a), June 17, 2008, 122 Stat. 1631; Pub. L. 110–458, title I, §108(e), Dec. 23, 2008, 122 Stat. 5109; Pub. L. 111–240, title II, §2113(a), Sept. 27, 2010, 124 Stat. 2566.)

REFERENCES IN TEXT

The enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001, referred to in subsec. (f), means the enactment of Pub. L. 107–16, which was approved June 7, 2001.

The date of the enactment of the Small Business Job Protection Act of 1996, referred to in subsec. (n), is the date of enactment of Pub. L. 104–188, which was approved Aug. 20, 1996.

The Railroad Retirement Act of 1974, referred to in subsec. (r)(1), (2)(C)(i), (ii), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45, Railroads. Sections 2(b), 3(h), and 4(e) and (h) of the Act are classified to sections 231a(b), 231b(h), and 231c(e) and (h), respectively, of Title 45. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

The date of the enactment of this subparagraph, referred to in subsec. (t)(2)(G)(iv), is the date of enactment of Pub. L. 109–280, which was approved Aug. 17, 2006.

Section 1034 (as in effect on the day before the date of the enactment of this paragraph), referred to in sub-

sec. (t)(8)(D)(i)(II), means section 1034 of this title as in effect on the day before Aug. 5, 1997. Section 1034 was repealed by Pub. L. 105–34, title III, §312(b), Aug. 5, 1997, 111 Stat. 839.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–240 amended subsec. (a) generally. Prior to amendment, text read as follows: ''Except as otherwise provided in this chapter, gross income includes any amount received as an annuity (whether for a period certain or during one or more lives) under an annuity, endowment, or life insurance contract.''

2008—Subsec. (t)(2)(G)(iv). Pub. L. 110–245, which directed amendment by striking out '', and before December 31, 2007'' after ''September 11, 2001'', was executed by striking out '', and on or before December 31, 2007'' after ''September 11, 2001'', to reflect the probable intent of Congress and the intervening amendment by Pub. L. 110–458. See Amendment note and Effective Date of 2008 Amendment note below.

Pub. L. 110–458 inserted ''on or'' before ''before'' in first sentence.

2006—Subsec. (e)(11), (12). Pub. L. 109–280, §844(a), added par. (11) and redesignated former par. (11) as (12).

Subsec. (t)(2)(G). Pub. L. 109–280, §827(a), added subpar. (G).

Subsec. (t)(10). Pub. L. 109–280, §828(a), added par. (10).

2004—Subsec. (e)(9). Pub. L. 108–311, §408(b)(3), amended Pub. L. 107–22, §1(b)(3)(A). See 2001 Amendment note below.

Subsec. (f). Pub. L. 108–311, §408(a)(4), substituted ''Economic Growth and Tax Relief Reconciliation Act of 2001)'' for ''Economic Growth and Tax Relief Reconciliation Act of 2001'' in concluding provisions.

Subsec. (t)(2)(D)(i)(III). Pub. L. 108–311, §207(6), inserted '', determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof'' after ''section 152''.

Subsec. (t)(7)(A)(iii). Pub. L. 108–311, §207(7), substituted ''152(f)(1)'' for ''151(c)(3)''.

Subsecs. (w), (x). Pub. L. 108–357 added subsec. (w) and redesignated former subsec. (w) as (x).

2001—Subsec. (e)(9). Pub. L. 107–22, §1(b)(3)(A), as amended by Pub. L. 108–311, §408(b)(3), substituted ''Coverdell education savings'' for ''educational individual retirement'' in heading.

Pub. L. 107–22, §1(b)(1)(A), substituted ''a Coverdell education savings'' for ''an education individual retirement''.

Pub. L. 107–16, §402(a)(4)(A), (B), substituted ''qualified tuition'' for ''qualified State tuition'' in heading and text.

Subsec. (f). Pub. L. 107–16, §632(a)(3)(A), substituted ''section 403(b)(2)(D)(iii), as in effect before the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001'' for ''section 403(b)(2)(D)(iii))'' in concluding provisions.

Subsec. (*o*)(4). Pub. L. 107–16, §641(e)(1), substituted ''403(b)(8), 408(d)(3), and 457(e)(16)'' for ''and 408(d)(3)''.

Subsec. (r)(2)(B)(i). Pub. L. 107–90 substituted ''3211(b)'' for ''3211(a)(2)''.

Subsec. (t)(9). Pub. L. 107–16, §641(a)(2)(C), added par. (9).

1998—Subsec. (e)(9). Pub. L. 105–206, §6004(d)(3)(B), added par. (9).

Subsec. (n). Pub. L. 105–206, §6023(3), inserted ''(as in effect on the day before the date of the enactment of the Small Business Job Protection Act of 1996)'' after ''section 101(b)(2)(D)''.

Subsec. (t)(2)(A)(iv). Pub. L. 105–206, §3436(a), which directed amendment of cl. (iv) by striking out ''or'' at end, could not be executed because the word ''or'' did not appear at end.

Subsec. (t)(2)(A)(vii). Pub. L. 105–206, §3436(a), added cl. (vii).

Subsec. (t)(3)(A). Pub. L. 105–206, §6023(4), substituted ''(A)(v)'' for ''(A)(v),''.

Subsec. (t)(8)(E). Pub. L. 105–206, §6005(c)(1), in introductory provisions, substituted ''120th day'' for ''120 days'' and ''60th day'' for ''60 days''.

1997—Subsec. (d)(1)(B)(iii). Pub. L. 105–34, §1075(b), inserted ''If the annuity is payable over the life of a single individual, the number of anticipated payments shall be determined as follows:'' before table and struck out ''primary'' after ''If the age of the'' in table.

Subsec. (d)(1)(B)(iv). Pub. L. 105–34, §1075(a), added cl. (iv).

Subsec. (t)(2)(E). Pub. L. 105–34, §203(a), added subpar. (E).

Subsec. (t)(2)(F). Pub. L. 105–34, §303(a), added subpar. (F).

Subsec. (t)(7). Pub. L. 105–34, §203(b), added par. (7).

Subsec. (t)(8). Pub. L. 105–34, §303(b), added par. (8).

1996—Subsec. (b)(4)(A). Pub. L. 104–188, §1704(*l*)(1), inserted ''(determined without regard to subsection (c)(2))'' after ''contract''.

Subsec. (d). Pub. L. 104–188, §1403(a), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''TREATMENT OF EMPLOYEE CONTRIBUTIONS UNDER DEFINED CONTRIBUTION PLANS AS SEPARATE CONTRACTS.—For purposes of this section, employee contributions (and any income allocable thereto) under a defined contribution plan may be treated as a separate contract.''

Subsec. (f). Pub. L. 104–188, §1463(a), in closing provisions, inserted before period at end '', or to the extent such credits are attributable to services performed as a foreign missionary (within the meaning of section 403(b)(2)(D)(iii))''.

Subsec. (m)(2)(A) to (C). Pub. L. 104–188, §1704(t)(2), inserted ''and'' at end of subpar. (A), redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: ''the consideration for the contract contributed by the employee for purposes of subsection (d)(1) (relating to employee's contributions recoverable in 3 years) and subsection (e)(7) (relating to plans where substantially all contributions are employee contributions), and''.

Subsec. (p)(4)(A)(ii). Pub. L. 104–188, §1704(t)(77), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''SPECIAL RULES.—The term 'qualified employer plan'—

''(I) shall include any plan which was (or was determined to be) a qualified employer plan or a government plan, but

''(II) shall not include a plan described in subsection (e)(7).''

Subsec. (t)(2)(B). Pub. L. 104–191, §361(c), substituted '', (C), or (D)'' for ''or (C)''.

Subsec. (t)(2)(D). Pub. L. 104–191, §361(b), added subpar. (D).

Subsec. (t)(3)(A). Pub. L. 104–191, §361(a), struck out ''(B),'' after ''Subparagraphs (A)(v),''.

Subsec. (t)(6). Pub. L. 104–188, §1421(b)(4)(A), added par. (6).

1992—Subsec. (*o*)(4). Pub. L. 102–318 substituted ''402(c)'' for ''402(a)(5), 402(a)(7)''.

1990—Subsec. (t)(2)(C), (D). Pub. L. 101–508, §11802(a)(1), (2), redesignated subpar. (D) as (C) and struck out former subpar. (C) ''Exceptions for distributions from employee stock ownership plans'' which read as follows: ''Any distribution made before January 1, 1990, to an employee from an employee stock ownership plan (as defined in section 4975(e)(7)) or a tax credit employee stock ownership plan (as defined in section 409) if—

''(i) such distribution is attributable to assets which have been invested in employer securities (within the meaning of section 409(*l*)) at all times during the 5-plan-year period preceding the plan year in which the distribution is made, and

''(ii) at all times during such period the requirements of sections 401(a)(28) and 409 (as in effect at such times) are met with respect to such employer securities.''

Subsec. (t)(3)(A). Pub. L. 101–508, §11802(a)(3), substituted ''and (C)'' for ''(C), and (D)''.

1989—Subsec. (e)(11)(A). Pub. L. 101–239, §7815(a)(3), (5), substituted ''calendar year'' for ''12-month period'' in cls. (i) and (ii), and inserted at end ''The preceding

sentence shall not apply to any contract described in paragraph (5)(D).''

Subsec. (q)(2)(B). Pub. L. 101–239, §7811(m)(4), inserted an additional closing parenthesis after ''subsection (s)(6)(B))''.

1988—Subsec. (d). Pub. L. 100–647, §1011A(b)(2)(A), added subsec. (d).

Subsec. (e)(4)(A). Pub. L. 100–647, §5012(d)(1), inserted at end ''The preceding sentence shall not apply for purposes of determining investment in the contract, except that the investment in the contract shall be increased by any amount included in gross income by reason of the amount treated as received under the preceding sentence.''

Subsec. (e)(5)(C). Pub. L. 100–647, §5012(a)(2), substituted ''Except as provided in paragraph (10) and except to the extent'' for ''Except to the extent''.

Subsec. (e)(5)(D). Pub. L. 100–647, §1011A(b)(9)(B), substituted ''paragraph (8)'' for ''paragraphs (7) and (8)''.

Subsec. (e)(7). Pub. L. 100–647, §1011A(b)(9)(A), struck out par. (7) which related to special rules for plans where substantially all contributions are employee contributions.

Subsec. (e)(8)(A). Pub. L. 100–647, §1011A(b)(9)(C), struck out ''(other than paragraph (7))'' after ''this subsection''.

Subsec. (e)(9). Pub. L. 100–647, §1011A(b)(2)(B), struck out par. (9) which related to treatment of employee contributions as separate contract.

Subsec. (e)(10). Pub. L. 100–647, §5012(a)(1), added par. (10).

Subsec. (e)(11). Pub. L. 100–647, §5012(d)(2), added par. (11).

Subsec. (f). Pub. L. 100–647, §1011A(b)(1)(A), struck out ''for purposes of subsections (d)(1) and (e)(7), the consideration for the contract contributed by the employee,'' after ''contract,'' in introductory provisions.

Subsec. (n). Pub. L. 100–647, §1011A(b)(1)(B), substituted ''Subsection (b)'' for ''Subsections (b) and (d)''.

Subsec. (*o*)(2). Pub. L. 100–647, §1011A(c)(8), struck out par. (2) which related to additional tax if amount received before age 59½.

Subsec. (p)(3)(A). Pub. L. 100–647, §1011A(h)(1), inserted ''to which paragraph (1) does not apply by reason of paragraph (2) during the period'' after ''loan''.

Subsec. (p)(3)(B). Pub. L. 100–647, §1011A(h)(2), substituted ''Period'' for ''Loans'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of subparagraph (A), a loan is described in this subparagraph—

''(i) if paragraph (1) does not apply to such loan by reason of paragraph (2), and

''(ii) if—

''(I) such loan is made to a key employee (as defined in section 416(i)), or

''(II) such loan is secured by amounts attributable to elective 401(k) or 403(b) deferrals (as defined in section 402(g)(3)).''

Subsec. (q)(2)(B). Pub. L. 100–647, §1018(t)(1)(B), substituted ''subsection (s)(6)(B))'' for ''subsection (s)(6)(B)))''.

Subsec. (q)(2)(D). Pub. L. 100–647, §1011A(c)(7), inserted ''designated'' before ''beneficiary''.

Pub. L. 100–647, §§1011A(c)(4), 1018(u)(8), amended subpar. (D) identically, substituting a comma for period at end.

Subsec. (q)(2)(E). Pub. L. 100–647, §1011A(b)(9)(D), struck out ''(determined without regard to subsection (e)(7))'' after ''subsection (e)(5)(D)''.

Subsec. (q)(2)(G). Pub. L. 100–647, §1011A(c)(4), substituted a comma for period at end.

Subsec. (q)(2)(H). Pub. L. 100–647, §1011A(c)(6), added subpar. (H).

Subsec. (q)(3)(B). Pub. L. 100–647, §1011A(c)(5), substituted ''taxpayer'' for ''employee'' in cls. (i) and (ii).

Subsec. (s)(5). Pub. L. 100–647, §1018(k)(2), substituted ''certain annuity contracts'' for ''annuity contracts which are part of qualified plans'' in heading.

Subsec. (s)(5)(D). Pub. L. 100–647, §1018(k)(1), added subpar. (D).

Subsec. (s)(7). Pub. L. 100–647, §1018(t)(1)(A), substituted ''primary annuitant'' for ''primary annuity''.

Subsec. (t)(2)(A)(iv). Pub. L. 100–647, §1011A(c)(7), inserted ''designated'' before ''beneficiary''.

Subsec. (t)(2)(A)(v). Pub. L. 100–647, §1011A(c)(1), struck out ''on account of early retirement under the plan'' after ''separation from service''.

Subsec. (t)(2)(C). Pub. L. 100–647, §1011A(c)(2), substituted ''Exceptions for distributions from employee stock ownership plans'' for ''Certain plans'' in heading and amended text generally. Prior to amendment, text read as follows:

''(i) IN GENERAL.—Except as provided in clause (ii), any distribution made before January 1, 1990, to an employee from an employee stock ownership plan defined in section 4975(e)(7) to the extent that, on average, a majority of assets in the plan have been invested in employer securities (as defined in section 409(*l*)) for the 5-plan-year period preceding the plan year in which the distribution is made.

''(ii) BENEFITS DISTRIBUTED MUST BE INVESTED IN EMPLOYER SECURITIES FOR 5 YEARS.—Clause (i) shall not apply to any distribution which is attributable to assets which have not been invested in employer securities at all times during the period referred to in clause (i).''

Subsec. (t)(3)(A). Pub. L. 100–647, §1011A(c)(3), substituted ''(C), and (D)'' for ''and (C)''.

Subsec. (u)(1)(A). Pub. L. 100–647, §1011A(i)(1), inserted ''(other than subchapter L)'' after ''subtitle''.

Subsec. (u)(3)(D). Pub. L. 100–647, §1011A(i)(3), substituted ''is purchased'' for ''which is purchased'' and ''is held'' for ''which is held''.

Pub. L. 100–647, §1011A(i)(2), substituted ''until all amounts under such contract are distributed to the employee for whom such contract was purchased or the employee's beneficiary'' for ''until such time as the employee separates from service''.

Subsec. (u)(3)(E). Pub. L. 100–647, §1011A(i)(3), substituted ''is'' for ''which is''.

Subsec. (u)(4)(C). Pub. L. 100–647, §1011A(i)(4), added subpar. (C).

Subsecs. (v), (w). Pub. L. 100–647, §5012(b)(1), added subsec. (v) and redesignated former subsec. (v) as (w).

1986—Subsec. (b). Pub. L. 99–514, §1122(c)(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Gross income does not include that part of any amount received as an annuity under an annuity, endowment, or life insurance contract which bears the same ratio to such amount as the investment in the contract (as of the annuity starting date) bears to the expected return under the contract (as of such date). This subsection shall not apply to any amount to which subsection (d)(1) (relating to certain employee annuities) applies.''

Subsec. (d). Pub. L. 99–514, §1122(c)(1), struck out subsec. (d) which related to employee's annuities where the employee's contributions were recoverable in 3 years.

Subsec. (e)(4)(C). Pub. L. 99–514, §1826(b)(3), added subpar. (C).

Subsec. (e)(5)(D). Pub. L. 99–514, §1122(c)(3)(B), substituted ''paragraphs (7) and (8)'' for ''paragraph (7)'' in introductory provisions.

Pub. L. 99–514, §1854(b)(1), inserted closing provisions which read as follows: ''Any dividend described in section 404(k) which is received by a participant or beneficiary shall, for purposes of this subparagraph, be treated as paid under a separate contract to which clause (ii)(I) applies.''

Subsec. (e)(7)(B). Pub. L. 99–514, §1852(c)(1), in introductory provisions substituted ''any plan or contract'' for ''any trust or contract'', in cl. (ii) substituted ''85 percent or more of'' for ''85 percent of'', and inserted closing provision: ''For purposes of clause (ii), deductible employee contributions (as defined in subsection (*o*)(5)(A)) shall not be taken into account.''

Subsec. (e)(8), (9). Pub. L. 99–514, §1122(c)(3)(A), added pars. (8) and (9).

Subsec. (f). Pub. L. 99–514, §1852(c)(3), in introductory provisions, substituted ''subsections (d)(1) and (e)(7)''

for ''subsection (d)(1)'' and ''subsection (e)(6)'' for ''subsection (e)(1)(B)''.

Subsec. (m)(2)(B). Pub. L. 99–514, §1852(c)(4)(A), inserted ''and subsection (e)(7) (relating to plans where substantially all contributions are employee contributions)''.

Subsec. (m)(2)(C). Pub. L. 99–514, §1852(c)(4)(B), substituted ''subsection (e)(6)'' for ''subsection (e)(1)(B)''.

Subsec. (m)(5). Pub. L. 99–514, §1852(a)(2)(C), which directed that par. (5) be amended by substituting ''5-percent owners'' for ''owner-employees'' in heading, was executed by substituting ''5-percent owners'' for ''key employees'', to reflect the probable intent of Congress and intervening amendment by section 713(c)(1)(B) of Pub. L. 98–369.

Subsec. (m)(5)(A). Pub. L. 99–514, §1123(d)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''This subparagraph shall apply—

''(i) to amounts which—

''(I) are received from a qualified trust described in section 401(a) or under a plan described in section 403(a), and

''(II) are received by a 5-percent owner before such owner attains the age of 59½ years, for any reason other than such owner becoming disabled (within the meaning of paragraph (7) of this section), and

''(ii) to amounts which are received from a qualified trust described in section 401(a) or under a plan described in section 403(a) at any time by a 5-percent owner, or by the successor of such owner, but only to the extent that such amounts are determined (under regulations prescribed by the Secretary) to exceed the benefits provided for such individual under the plan formula.

Clause (i) shall not apply to any amount received by an individual in his capacity as a policyholder of an annuity, endowment, or life insurance contract which is in the nature of a dividend or similar distribution and clause (i) shall not apply to amounts attributable to benefits accrued before January 1, 1985.''

Pub. L. 99–514, §1852(a)(2)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''This paragraph shall apply—

''(i) to amounts (other than any amount received by an individual in his capacity as a policyholder of an annuity, endowment, or life insurance contract which is in the nature of a dividend or similar distribution) which are received from a qualified trust described in section 401(a) or under a plan described in section 403(a) and which are received by an individual, who is, or has been, a 5-percent owner, before such individual attains the age of 59½ years, for any reason other than the individual's becoming disabled (within the meaning of paragraph (7) of this subsection), but only to the extent that such amounts are attributable to contributions paid on behalf of such individual (other than contributions made by him as a 5-percent owner) while he was a 5-percent owner, and

''(ii) to amounts which are received from a qualified trust described in section 401(a) or under a plan described in section 403(a) at any time by an individual who is, or has been, a 5-percent owner or by the successor of such individual, but only to the extent that such amounts are determined, under regulations prescribed by the Secretary, to exceed the benefits provided for such individual under the plan formula.''

Subsec. (m)(5)(C). Pub. L. 99–514, §1852(a)(2)(B), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''For purposes of this paragraph, the term '5 percent owner' have the same meanings as when used in section 416.''

Subsec. (m)(10). Pub. L. 99–514, §1898(c)(1)(B), inserted ''who is the spouse or former spouse of the participant''.

Subsec. (*o*)(5). Pub. L. 99–514, §1101(b)(2)(C), inserted ''and made for a taxable year beginning before January 1, 1987,'' in subpar. (A), substituted ''subsection (p)(3)(A)(i)'' for ''section 219(e)(3)'' in subpar. (C), and substituted ''subsection (p)(3)(B)'' for ''section 219(e)(4)'' in subpar. (D).

Subsec. (p)(2)(A)(i). Pub. L. 99–514, §1134(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''$50,000, or''.

Subsec. (p)(2)(B)(ii). Pub. L. 99–514, §1134(d), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''Clause (i) shall not apply to any loan used to acquire, construct, reconstruct, or substantially rehabilitate any dwelling unit which within a reasonable time is to be used (determined at the time the loan is made) as a principal residence of the participant or a member of the family (within the meaning of section 267(c)(4)) of the participant.''

Subsec. (p)(2)(C), (D). Pub. L. 99–514, §1134(b), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (p)(3). Pub. L. 99–514, §1134(c), added par. (3) and redesignated former par. (3) as (4).

Pub. L. 99–514, §1101(b)(2)(B), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''For purposes of this subsection, the term 'qualified employer plan' means any plan which was (or was determined to be) a qualified employer plan (as defined in section 219(e)(3) other than a plan described in subsection (e)(7)). For purposes of this subsection, such term includes any government plan (as defined in section 219(e)(4)).''

Subsec. (p)(4), (5). Pub. L. 99–514, §1134(c), redesignated former pars. (3) and (4) as (4) and 5, respectively.

Subsec. (q). Pub. L. 99–514, §1123(b)(1)(B), substituted ''10-percent'' for ''5-percent'' in heading.

Subsec. (q)(1). Pub. L. 99–514, §1123(b)(1)(A), substituted ''10 percent'' for ''5 percent''.

Subsec. (q)(2). Pub. L. 99–514, §1123(b)(3), substituted ''Paragraph (1)'' for ''This subsection'' in introductory provisions.

Subsec. (q)(2)(B). Pub. L. 99–514, §1826(c), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''made to a beneficiary (or to the estate of an annuitant) on or after the death of an annuitant,''.

Subsec. (q)(2)(D). Pub. L. 99–514, §1123(b)(2), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''which is one of a series of substantially equal periodic payments made for the life of a taxpayer or over a period extending for at least 60 months after the annuity starting date,''.

Subsec. (q)(2)(E). Pub. L. 99–514, §1852(c)(2), inserted ''(determined without regard to subsection (e)(7))''.

Subsec. (q)(2)(G). Pub. L. 99–514, §1826(d), added subpar. (G).

Subsec. (q)(2)(I), (J). Pub. L. 99–514, §1123(b)(4), which added subpars. (I) and (J) directed the amendment of subpar. (G) by striking out ''or'' at the end thereof, and of subpar. (H) by striking out the period at the end thereof, could not be executed to subpars. (G) and (H) because subpar. (G) does not contain ''or'', and no subpar. (H) was enacted.

Subsec. (q)(3). Pub. L. 99–514, §1123(b)(3), added par. (3).

Subsec. (s)(1). Pub. L. 99–514, §1826(b)(2), substituted ''any holder of such contract'' for ''the holder of such contract'' in subpars. (A) and (B).

Subsec. (s)(5). Pub. L. 99–514, §1826(a), added par. (5).

Subsec. (s)(6), (7). Pub. L. 99–514, §1826(b)(1), added pars. (6) and (7).

Subsec. (t). Pub. L. 99–514, §1123(a), added subsec. (t) and redesignated former subsec. (t) as (u).

Subsecs. (u), (v). Pub. L. 99–514, §1135(a), added subsec. (u) and redesignated former subsec. (u) as (v).

1984—Subsec. (e)(5)(D). Pub. L. 98–369, §523(b)(1), substituted ''Except as provided in paragraph (7), this'' for ''This''.

Subsec. (e)(5)(D)(ii)(IV). Pub. L. 98–369, §211(b)(1), which directed substitution of ''section 818(a)(3)'' for ''805(d)(3)'' in subpar. (D)(i)(IV), was executed to subpar. (D)(ii)(IV) to reflect the probable intent of Congress.

Subsec. (e)(7). Pub. L. 98–369, §523(a), added par. (7).

Subsec. (k). Pub. L. 98–369, §421(b)(1), repealed subsec. (k) relating to payments in discharge of alimony.

Subsec. (m)(5). Pub. L. 98–369, §713(c)(1)(B), substituted ''key employees'' for ''owner-employees'' in heading.

Subsec. (m)(5)(A). Pub. L. 98–369, §521(d)(1), (2), substituted ''5-percent owner'' for ''key employee'' wherever appearing and struck out ''in a top-heavy plan'' at end of cl. (i).

Pub. L. 98–369, §713(c)(1)(A), substituted ''as a key employee'' for ''as an owner-employee'' in cl. (i).

Subsec. (m)(5)(C). Pub. L. 98–369, §521(d)(3), substituted ''the term '5 percent owner'' for ''the terms 'key employee' and 'top-heavy plan' ''.

Subsec. (m)(9). Pub. L. 98–369, §713(d)(1), repealed par. (9) relating to return of excess contributions before due date of return.

Subsec. (m)(10). Pub. L. 98–397 added par. (10).

Subsec. (*o*)(1). Pub. L. 98–369, §491(d)(3), substituted ''402 and 403'' for ''402, 403, and 405''.

Subsec. (*o*)(3)(A). Pub. L. 98–369, §713(b)(1)(A), inserted ''(other than the exception contained in paragraph (2) thereof)''.

Subsec. (*o*)(4). Pub. L. 98–369, §491(d)(4), substituted ''and 408(d)(3)'' for ''408(d)(3), and 409(b)(3)(C)''.

Subsec. (p)(2)(A). Pub. L. 98–369, §713(b)(1)(B), inserted at end ''For purposes of clause (ii), the present value of the nonforfeitable accrued benefit shall be determined without regard to any accumulated deductible employee contributions (as defined in subsection (*o*)(5)(B)).''

Subsec. (p)(2)(A)(ii). Pub. L. 98–369, §713(b)(4), substituted as cl. (ii) ''the greater of (I) one-half of the present value of the nonforfeitable accrued benefit of the employee under the plan, or (II) $10,000'' for ''½ of the present value of the nonforfeitable accrued benefit of the employee under the plan (but not less than $10,000)''.

Subsec. (p)(3). Pub. L. 98–369, §523(b)(2), inserted ''other than a plan described in subsection (e)(7)''.

Subsec. (q)(1). Pub. L. 98–369, §222(a), amended par. (1) generally, striking out designation ''(A) In general.—'' preceding text, substituting ''which is includible in gross income'' for ''includible in gross income which is properly allocable to any investment in the annuity contract made during the 10-year period ending on the date such amount was received by the taxpayer'', and striking out former subpar. (B), which had provided that for purposes of subpar. (A), the amount includible in gross income would be allocated to the earliest investment in the contract with respect to which amounts had not been previously fully allocated under this par.

Subsecs. (s), (t). Pub. L. 98–369, §222(b), added subsec. (s) and redesignated former subsec. (s) as (t).

1983—Subsec. (*o*)(2)(A). Pub. L. 97–448, §103(c)(6), struck out ''to which the employee made one or more deductible employee contributions'' after ''from a qualified employer plan or government plan''.

Subsec. (p)(3). Pub. L. 97–448, §103(c)(3)(B)(i), struck out ''without regard to subparagraph (D) thereof'' after ''as defined in section 219(e)(3)''.

Subsecs. (r), (s). Pub. L. 98–76 added subsec. (r) and redesignated former subsec. (r) as (s).

1982—Subsec. (e). Pub. L. 97–248, §265(a), in par. (1) substituted provisions relating to the application of this subsection to amounts received under annuity, endowment, or life insurance contracts which are not received as annuities and to amounts received as dividends for provisions which stated a general rule relating to the includability as gross income of amounts that were received under annuity, endowment, or life insurance contracts which were not received as annuities and also stated that for the purposes of this section amounts which were received as dividends would be treated as amounts not received as an annuity, in par. (2) substituted provisions stating a general rule as to the includability as gross income of amounts received before or after the annuity starting date for provisions which set out those amounts which would be treated as amounts not received as an annuity, and added pars. (3) to (6).

Subsec. (m)(4). Pub. L. 97–248, §236(b)(1), struck out par. (4) which related to amounts constructively received with respect to assignments or pledges, and loans on contracts.

Subsec. (m)(5). Pub. L. 97–248, §237(d)(1), (2), in subpar. (A) substituted applicability to key employees for applicability to owner-employees and added subpar. (C).

Subsec. (m)(6). Pub. L. 97–248, §237(d)(3), struck out ''except in applying paragraph (5),'' after ''shall''.

Subsec. (m)(8). Pub. L. 97–248, §236(b)(1), struck out par. (8) which related to loans to owner-employees.

Subsec. (*o*)(3)(A). Pub. L. 97–248, §236(b)(2), substituted reference to subsec. (p) of this section for references to subsec. (m)(4) and (8) of this section.

Subsec. (p). Pub. L. 97–248, §236(a), added subsec. (p). Former subsec. (p) redesignated (q).

Subsec. (q). Pub. L. 97–248, §265(b)(1), added subsec. (q). Former subsec. (q) redesignated (r).

Pub. L. 97–248, §236(a), redesignated former subsec. (p) as (q).

Subsec. (r). Pub. L. 97–248, §§236(a), 265(b)(1), redesignated former subsec. (p) as (r).

1981—Subsec. (m)(6). Pub. L. 97–34, §312(d)(1), expanded definition of ''owner-employee'' to include an employee within the meaning of section 401(c)(1) except in applying paragraph (5).

Subsec. (m)(8). Pub. L. 97–34, §312(d)(2), added par. (8).

Subsec. (m)(9). Pub. L. 97–34, §312(e)(1), added par. (9).

Subsecs. (*o*), (p). Pub. L. 97–34, §311(b)(1), added subsec. (*o*) and redesignated former subsec. (*o*) as (p).

1976—Subsec. (c)(2), (3)(A). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d)(1). Pub. L. 94–455, §1901(a)(12), struck out in subpar. (B) ''(whether or not before January 1, 1954)'' after ''beginning on the date'', and in provisions following subpar. (B) struck out ''(under this paragraph and prior income tax laws)'' after ''until there has been so excluded''.

Subsec. (f). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (i). Pub. L. 94–455, §1951(b)(1)(A), struck out subsec. (i) which related to joint annuities where first annuitant died in 1951, 1952, or 1953.

Subsec. (m)(2), (3). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (m)(4)(A). Pub. L. 94–455, §1901(a)(13), substituted ''an individual retirement account'' for ''an individual retirement amount''.

Subsec. (m)(5)(A)(ii), (7). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

1974—Subsec. (m)(1). Pub. L. 93–406, §2001(h)(2), struck out par. (1) which related to certain amounts received before annuity starting date.

Subsec. (m)(4)(A). Pub. L. 93–406, §2002(g)(10)(A), inserted references to an individual retirement amount described in section 408(a) and an individual retirement annuity described in section 408(b).

Subsec. (m)(5)(A). Pub. L. 93–406, §2001(e)(5), (h)(3), substituted ''(other than contributions made by him as an owner-employee)'' for ''(whether or not paid by him)'' in cl. (i), and struck out cl. (iii) which had made reference to amounts which were received, by an individual who was or had been, an owner-employee, by reason of the distribution under the provisions of section 401(e)(2)(E) of his entire interest in all qualified trusts described in section 401(a) and in all plans described in section 403(a).

Subsec. (m)(5)(B). Pub. L. 93–406, §2001(g)(1), substituted provisions that if a person receives an amount to which subsec. (m)(5) applies, his tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of the amount so received which is includible in his gross income for such taxable year for provisions that if the aggregate amounts to which subsec. (m)(5) applied received by any person in his taxable year equalled or exceeded $2,500, the increase in his tax for the taxable year in which such amounts were received and attributable to such amounts could not be less than 110 percent of the aggregate increase in taxes, for the taxable year and the 4 immediately preceding taxable years, which would have resulted if such

amounts had been included in such person's gross income ratably over such taxable years, with provision for alternate computation if deductions had been allowed under section 404 for contributions paid for a number of prior taxable years less than 4.

Subsec. (m)(5)(C) to (E). Pub. L. 93–406, § 2001(g)(2)(A), struck out subpars. (C) to (E) which contained special rules for the application of subsec. (m)(5).

Subsec. (m)(6). Pub. L. 93–406, § 2002(g)(10)(B), inserted reference to an individual for whose benefit an individual retirement account or annuity described in section 408(a) or (b) is maintained.

Subsec. (n). Pub. L. 93–406, §§ 2005(c)(3), 2007(b)(2), redesignated former subsec. (*o*) as (n) and in heading of subsec. (n) as so redesignated inserted reference to survivor benefit plan. Former subsec. (n), which set out provisions covering the treatment to be accorded total distributions, was struck out.

Subsec. (*o*). Pub. L. 93–406, § 2005(c)(3), redesignated former subsec. (p) as (*o*). Former subsec. (*o*) redesignated (n) and amended.

Subsec. (p). Pub. L. 93–406, § 2005(c)(3), redesignated subsec. (p) as (*o*).

1969—Subsec. (n)(1). Pub. L. 91–172, § 515(b)(1), altered section to accommodate the insertion into sections 402 and 403 of provisions under which employer contributions to qualified pension, profit sharing, stock bonus, and annuity plans for plan years beginning after 1969 are to be treated as ordinary income when received in a lump sum distribution, but with such amounts to be eligible for a special averaging procedure.

Subsec. (n)(4). Pub. L. 91–172, § 515(b)(2), added par. (4).

1966—Subsecs. (*o*), (p). Pub. L. 89–365 added subsec. (*o*) and redesignated former subsec. (*o*) as (p).

1965—Subsec. (m)(5)(A)(i). Pub. L. 89–97, § 106(d)(2)(A), substituted ''paragraph (7) of this subsection'' for ''section 213(g)(3)''.

Subsec. (m)(7). Pub. L. 89–97, § 106(d)(2)(B), added par. (7).

Subsec. (n)(1). Pub. L. 89–97, § 106(d)(2)(C), substituted in subpars. (A)(iii) and (B)(iii) ''subsection (m)(7)'' for ''section 213(g)(3)''.

Subsec. (n)(3). Pub. L. 89–44 substituted ''sections 31 and 39'' for ''section 31'' in sentence following subpar. (B).

1964—Subsec. (e)(3). Pub. L. 88–272 struck out par. (3) which provided for a limit on the tax attributable to the receipt of a lump sum.

1962—Subsec. (d)(2). Pub. L. 87–792, § 4(a), designated existing provisions as cl. (A) and added cl. (B).

Subsec. (f). Pub. L. 87–834 inserted sentence providing that par. (2) shall not apply to amounts which were contributed by the employer after Dec. 31, 1962, and which would not have been includible in the gross income of the employee by reason of the application of Section 911 if such amounts had been paid directly to the employee at the time of contribution, and making such sentence inapplicable to amounts which were contributed by the employer, as determined under regulations, to provide pension or annuity credits, to the extent such credits are attributable to services performed before Jan. 1, 1963, and are provided pursuant to pension or annuity plan provisions in existence on Mar. 12, 1962, and on that date applicable to such services.

Subsecs. (m) to (*o*). Pub. L. 87–792, § 4(b), added subsecs. (m) and (n) and redesignated former subsec. (m) as (*o*).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title II, § 2113(b), Sept. 27, 2010, 124 Stat. 2567, provided that: ''The amendment made by this section [amending this section] shall apply to amounts received in taxable years beginning after December 31, 2010.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–458, title I, § 112, Dec. 23, 2008, 122 Stat. 5113, provided that: ''Except as otherwise provided in this subtitle [subtitle A (§§ 101–112) of title I of Pub. L. 110–458, see Tables for classification], the amendments made by this subtitle shall take effect as if included in the provisions of the 2006 Act [Pub. L. 109–280] to which the amendments relate.''

Pub. L. 110–245, title I, § 107(b), June 17, 2008, 122 Stat. 1631, provided that: ''The amendment made by this section [amending this section] shall apply to individuals ordered or called to active duty on or after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, § 827(c), Aug. 17, 2006, 120 Stat. 1001, provided that:

''(1) EFFECTIVE DATE.—The amendment made by this section [amending this section and sections 401 and 403 of this title] shall apply to distributions after September 11, 2001.

''(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amendments made by this section is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act [Aug. 17, 2006] by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period.''

Pub. L. 109–280, title VIII, § 828(b), Aug. 17, 2006, 120 Stat. 1001, provided that: ''The amendment made by this section [amending this section] shall apply to distributions after the date of the enactment of this Act [Aug. 17, 2006].''

Pub. L. 109–280, title VIII, § 844(g), Aug. 17, 2006, 120 Stat. 1013, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting section 6050U of this title and amending this section and sections 848, 1035, 6724, and 7702B of this title] shall apply to contracts issued after December 31, 1996, but only with respect to taxable years beginning after December 31, 2009.

''(2) TAX-FREE EXCHANGES.—The amendments made by subsection (b) [amending section 1035 of this title] shall apply with respect to exchanges occurring after December 31, 2009.

''(3) INFORMATION REPORTING.—The amendments made by subsection (d) [enacting section 6050U of this title and amending section 6724 of this title] shall apply to charges made after December 31, 2009.

''(4) POLICY ACQUISITION EXPENSES.—The amendment made by subsection (e) [amending section 848 of this title] shall apply to specified policy acquisition expenses determined for taxable years beginning after December 31, 2009.

''(5) TECHNICAL AMENDMENT.—The amendment made by subsection (f) [amending section 7702B of this title] shall take effect as if included in section 321(a) of the Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104–191].''

EFFECTIVE DATE OF 2004 AMENDMENTS

Pub. L. 108–357, title VIII, § 906(c), Oct. 22, 2004, 118 Stat. 1654, provided that: ''The amendments made by this section [amending this section and section 83 of this title] shall apply to distributions on or after the date of the enactment of this Act [Oct. 22, 2004].''

Amendment by section 207(6), (7) of Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 2001 AMENDMENTS

Amendment by Pub. L. 107–90 applicable to calendar years beginning after Dec. 31, 2001, see section 204(f) of Pub. L. 107–90, set out as an Effective and Termination Dates of 2001 Amendment note under section 24 of this title.

Amendment by Pub. L. 107–22 effective July 26, 2001, see section 1(c) of Pub. L. 107–22, set out as an Effective and Termination Dates of 2001 Amendment note under section 26 of this title.

Pub. L. 107–16, title IV, § 402(h), June 7, 2001, 115 Stat. 63, provided that: ''The amendments made by this section [amending this section and sections 135, 221, 529, 530, 4973, and 6693 of this title] shall apply to taxable years beginning after December 31, 2001.''

Pub. L. 107–16, title VI, § 632(a)(4), June 7, 2001, 115 Stat. 115, provided that: ''The amendments made by this subsection [amending this section and sections 402, 403, 404, 415, and 664 of this title] shall apply to years beginning after December 31, 2001.''

Amendment by section 641(a)(2)(C), (e)(1) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107–16, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title III, § 3436(b), July 22, 1998, 112 Stat. 761, provided that: ''The amendments made by this section [amending this section] shall apply to distributions after December 31, 1999.''

Amendment by section 6023(3), (4) of Pub. L. 105–206 effective July 22, 1998, see section 6023(32) of Pub. L. 105–206, set out as a note under section 34 of this title.

Amendment by sections 6004(d)(3)(B) and 6005(c)(1) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 203(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply to distributions after December 31, 1997, with respect to expenses paid after such date (in taxable years ending after such date), for education furnished in academic periods beginning after such date.''

Section 303(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply to payments and distributions in taxable years beginning after December 31, 1997.''

Section 1075(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply with respect to annuity starting dates beginning after December 31, 1997.''

EFFECTIVE DATE OF 1996 AMENDMENTS

Section 361(d) of Pub. L. 104–191 provided that: ''The amendments made by this section [amending this section] shall apply to distributions after December 31, 1996.''

Section 1403(b) of Pub. L. 104–188 provided that: ''The amendment made by this section [amending this section] shall apply in cases where the annuity starting date is after the 90th day after the date of the enactment of this Act [Aug. 20, 1996].''

Section 1421(e) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section, sections 219, 280G, 402, 404, 408, 414, 416, 457, 3121, 3306, 3401, 4972, and 6693 of this title, sections 1021 and 1104 of Title 29, Labor, and section 409 of Title 42, The Public Health and Welfare] shall apply to taxable years beginning after December 31, 1996.''

Section 1463(b) of Pub. L. 104–188 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1996.''

Section 1704(*l*)(2) of Pub. L. 104–188 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 1122(c) of the Tax Reform Act of 1986 [Pub. L. 99–514].''

EFFECTIVE DATE OF 1992 AMENDMENT

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

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1011A(b)(1)(A), (B), (2), (9), (c)(1)–(8), (h), (i), and 1018(k), (t)(1)(A), (B), and (u)(8) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 5012(a), (b)(1), (d) of Pub. L. 100–647 applicable to contracts entered into on or after June 21, 1988, with special rule where death benefit increases by more than $150,000, certain other material changes taken into account, certain exchanges permitted, and special rule in the case of annuity contracts, see section 5012(e) of Pub. L. 100–647, set out as an Effective Date note under section 7702A of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1101(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section and section 219 of this title] shall apply to contributions for taxable years beginning after December 31, 1986.''

Amendment by section 1122(c)(1) of Pub. L. 99–514 applicable to individuals whose annuity starting date is after July 1, 1986, amendment by section 1122(c)(2) of Pub. L. 99–514 applicable to individuals whose annuity starting date is after Dec. 31, 1986, and amendment by section 1122(c)(3) of Pub. L. 99–514 applicable to amounts received after July 1, 1986, in the case of any plan not described in section 72(e)(8)(D) of this title, see section 1122(h)(2) of Pub. L. 99–514, set out as a note under section 402 of this title.

Section 1123(e) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1011A(c)(11), (12), Nov. 10, 1988, 102 Stat. 3476, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 403 and 408 of this title] shall apply to taxable years beginning after December 31, 1986.

''(2) SUBSECTION (c).—The amendments made by subsection (c) [amending section 403 of this title] shall apply to years beginning after December 31, 1988, but only with respect to distributions from contracts described in section 403(b) of the Internal Revenue Code of 1986 which are attributable to assets other than assets held as of the close of the last year beginning before January 1, 1989.

''(3) EXCEPTION WHERE DISTRIBUTION COMMENCES.—The amendments made by this section shall not apply to distributions to any employee from a plan maintained by any employer if—

''(A) as of March 1, 1986, the employee separated from service with the employer,

''(B) as of March 1, 1986, the accrued benefit of the employee was in pay status pursuant to a written election providing a specific schedule for the distribution of the entire accrued benefit of the employee, and

''(C) such distribution is made pursuant to such written election.

''(4) TRANSITION RULE.—The amendments made by this section shall not apply with respect to any benefits with respect to which a designation is in effect under section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 242(b)(2) of Pub. L. 97–248, formerly set out as an Effective Date of 1982 Amendment note under section 401 of this title].

''(5) SPECIAL RULE FOR DISTRIBUTIONS UNDER AN ANNUITY CONTRACT.—The amendments made by paragraphs (1), (2), and (3) of subsection (b) [amending this section] shall not apply to any distribution under an annuity contract if—

''(A) as of March 1, 1986, payments were being made under such contract pursuant to a written election providing a specific schedule for the distribution of the taxpayer's interest in such contract, and

''(B) such distribution is made pursuant to such written election.''

Section 1134(e) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section] shall apply to loans made, renewed, renegotiated, modified, or extended after December 31, 1986.''

Section 1135(b) of Pub. L. 99–514 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to contributions to annuity contracts after February 28, 1986.''

Amendment by sections 1826(a), (d), 1852(a)(2), (c)(1)–(4), and 1854(b)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Section 1826(b)(4) of Pub. L. 99–514 provided that: ''The amendments made by this subsection [amending this section] shall apply to contracts issued after the date which is 6 months after the date of the enactment of this Act [Oct. 22, 1986] in taxable years ending after such date.''

Section 1826(c) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1018(t)(1)(D), Nov. 10, 1988, 102 Stat. 3587, provided that the amendment made by section 1826(c) of Pub. L. 99–514 is effective with respect to distributions commencing after the date 6 months after Oct. 22, 1986.

Section 1854(b)(6) of Pub. L. 99–514 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and section 404 of this title] shall not apply to dividends paid before January 1, 1986, if the taxpayer treated such dividends in a manner inconsistent with such amendments on a return filed with the Secretary before the date of the enactment of this Act [Oct. 22, 1986].''

Section 1898(c)(1)(C) of Pub. L. 99–514 provided that: ''The amendments made by this paragraph [amending this section and section 402 of this title] shall apply to payments made after the date of the enactment of this Act [Oct. 22, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–397 effective Jan. 1, 1985, except as otherwise provided, see section 303(d) of Pub. L. 98–397, set out as a note under section 1001 of Title 29, Labor.

Amendment by section 211(b)(1) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

Section 222(c) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to contracts issued after the day which is 6 months after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

''(2) TRANSITIONAL RULES FOR CONTRACTS ISSUED BEFORE EFFECTIVE DATE.—In the case of any contract (other than a single premium contract) which is issued on or before the day which is 6 months after the date of the enactment of this Act, for purposes of section 72(q)(1)(A) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect on the day before the date of the enactment of this Act), any investment in such contract which is made during any calendar year shall be treated as having been made on January 1 of such calendar year.''

Amendment by section 421(b)(1) of Pub. L. 98–369 applicable to transfers after July 18, 1984, in taxable years ending after such date, subject to election to have repeal apply to transfers after 1983 or to transfers pursuant to existing decrees, see section 421(d) of Pub. L. 98–369, set out as an Effective Date note under section 1041 of this title.

Amendment by section 491(d)(3), (4) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Amendment by section 521(d) of Pub. L. 98–369 applicable to years beginning after Dec. 31, 1984, see section 521(e) of Pub. L. 98–369, set out as a note under section 401 of this title.

Section 523(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall apply to any amount received or loan made after the 90th day after the date of enactment of this Act [July 18, 1984].''

Amendment by section 713(b)(1), (4), (c)(1)(A), (B) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

Section 713(d)(1) of Pub. L. 98–369, as amended by Pub. L. 99–514, title XVIII, § 1875(c)(5), Oct. 22, 1986, 100 Stat. 2895, provided that the amendment made by section 713(d)(1) of Pub. L. 98–369 is effective with respect to contributions made in taxable years beginning after Dec. 31, 1983.

EFFECTIVE DATE OF 1983 AMENDMENTS

Section 227(b) of Pub. L. 98–76, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by section 224 [enacting section 6050G of this title, amending this section and section 86 of this title, and enacting provisions set out as a note under section 231n of Title 45, Railroads] shall apply to benefits received after December 31, 1983, in taxable years ending after such date.

''(2) TREATMENT OF CERTAIN LUMP-SUM PAYMENTS RECEIVED AFTER DECEMBER 31, 1983.—The amendments made by section 224 shall not apply to any portion of a lump-sum payment received after December 31, 1983, if the generally applicable payment date for such portion was before January 1, 1984.

''(3) NO FRESH START.—For purposes of determining whether any benefit received after December 31, 1983, is includible in gross income by reason of section 72(r) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as added by this Act, the amendments made by section 224 be treated as having been in effect during all periods before 1984.''

Section 103(c)(3)(B)(ii) of Pub. L. 97–448 provided that: ''The amendment made by clause (i) [amending this section] shall take effect as if the matter struck out had never been included in such paragraph.''

Amendment by title I of Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 236(c) of Pub. L. 97–248, as amended by Pub. L. 97–448, title III, § 306(a)(11), Jan. 12, 1983, 96 Stat. 2404; Pub. L. 98–369, div. A, title V, § 554, title VII, § 713(b)(2), July 18, 1984, 98 Stat. 897, 957; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to loans, assignments, and pledges made after August 13, 1982. For purposes of the preceding sentence, the outstanding balance of any loan which is renegotiated, extended, renewed, or revised after such date shall be treated as an amount received as a loan on the date of such renegotiation, extension, renewal, or revision.

''(2) EXCEPTION FOR CERTAIN LOANS USED TO REPAY OUTSTANDING OBLIGATIONS.—

''(A) IN GENERAL.—Any qualified refunding loan shall not be treated as a distribution by reason of the amendments made by this section to the extent such loan is repaid before August 14, 1983.

''(B) QUALIFIED REFUNDING LOAN.—For purposes of subparagraph (A), the term 'qualified refunding loan' means any loan made after August 13, 1982, and before August 14, 1983, to the extent such loan is used to make a required principal payment.

''(C) REQUIRED PRINCIPAL PAYMENT.—For purposes of subparagraph (B), the term 'required principal payment' means any principal repayment on a loan made under the plan which was outstanding on August 13, 1982, if such repayment is required to be made after August 13, 1982, and before August 14, 1983 or if such loan was payable on demand.

''(D) SPECIAL RULE FOR NON-KEY EMPLOYEES.—In the case of a non-key employee (within the meaning of section 416(i)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]), this paragraph shall be applied by substituting 'January 1, 1985' for 'August 14, 1983' each place it appears.

''(3) TREATMENT OF CERTAIN RENEGOTIATIONS.—If—

''(A) the taxpayer after August 13, 1982, and before September 4, 1982, borrows money from a government plan (as defined in section 219(e)(4) of the Internal Revenue Code of 1986),

''(B) under the applicable State law, such loan requires the renegotiation of all outstanding prior loans made to the taxpayer under such plan, and

''(C) the renegotiation described in subparagraph (B) does not change the interest rate on, or extend the duration of, any such outstanding prior loan,

then the renegotiation described in subparagraph (B) shall not be treated as a renegotiation, extension, renewal, or revision for purposes of paragraph (1). If the renegotiation described in subparagraph (B) does not meet the requirements of subparagraph (C) solely because it extends the duration of any such outstanding prior loan, the requirements of subparagraph (C) shall be treated as met with respect to such renegotiation if, before April 1, 1983, such extension is eliminated.''

Section 265(c) of Pub. L. 97–248 provided that:

''(1) SUBSECTION (a).—The amendments made by subsection (a) [amending this section] shall take effect on August 13, 1982.

''(2) SUBSECTION (b).—The amendments made by subsection (b) [amending this section and sections 46, 50A, 53, 901, 1302, and 1304 of this title] shall apply to distributions after December 31, 1982.''

Amendment by section 237(d) of Pub. L. 97–248 applicable to years beginning after Dec. 31, 1983, see section 241 of Pub. L. 97–248, set out as an Effective Date note under section 416 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 312(f) of Pub. L. 97–34, as amended by Pub. L. 97–448, title I, § 103(d)(3), 96 Stat. 2378, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 219, 401, 404, 408, 1379, and 4972 of this title] shall apply to taxable years beginning after December 31, 1981.

''(2) TRANSITIONAL RULE.—The amendments made by subsection (d) [amending this section] shall not apply to any loan from a plan to a self-employed individual who is an employee within the meaning of section 401(c)(1) which is outstanding on December 31, 1981. For purposes of the preceding sentence, any loan which is renegotiated, extended, renewed, or revised after such date shall be treated as a new loan.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(12), (13) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Section 1951(d) of Pub. L. 94–455 provided that: ''Except as otherwise expressly provided, the amendments made by this section [see Tables for classification of section 1951 of Pub. L. 94–455] shall apply with respect to taxable years beginning after December 31, 1976.''

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 2001(e)(5) of Pub. L. 93–406 applicable to contributions made in taxable years beginning after Dec. 31, 1975, see section 2001(i)(4) of Pub. L. 93–406, set out as a note under section 401 of this title.

Section 2001(i)(5), (6) of Pub. L. 93–406 provided that:

''(5) The amendments made by subsection (g) [amending this section and sections 46, 50A, 56, 404, and 901 of this title] apply to distributions made in taxable years beginning after December 31, 1975.

''(6) The amendments made by subsection (h) [amending this section and section 401 of this title] apply to taxable years ending after the date of enactment of this Act [Sept. 2, 1974].''

Amendment by section 2002(g)(10) of Pub. L. 93–406 effective on Jan. 1, 1975, see section 2002(i)(2) of Pub. L. 93–406, set out as an Effective Date note under section 4973 of this title.

Amendment by section 2005(c)(3) of Pub. L. 93–406, applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

Amendment by section 2007(b)(2) of Pub. L. 93–406 applicable to taxable years ending on or after Sept. 21, 1972, see section 2007(c) of Pub. L. 93–406, set out as a note under section 122 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 515(d) of Pub. L. 91–172, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–365 applicable with respect to taxable years ending after Dec. 31, 1965, see section 1(d) of Pub. L. 89–365, set out as an Effective Date note under section 122 of this title.

EFFECTIVE DATE OF 1965 AMENDMENTS

Amendment by Pub. L. 89–97 applicable to taxable years beginning after Dec. 31, 1966, see section 106(e) of Pub. L. 89–97, set out as a note under section 213 of this title.

Amendment by Pub. L. 89–44 applicable to taxable years beginning on or after July 1, 1965, see section 809(f) of Pub. L. 89–44, set out as a note under section 6420 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 232(g) of Pub. L. 88–272, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Section 11(c)(2) of Pub. L. 87–834 provided that: ''The amendment made by subsection (b) [amending this section] shall apply to taxable years ending after December 31, 1962.''

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

Section 1951(b)(1)(B) of Pub. L. 94–455 provided that: ''Notwithstanding subparagraph (A) [repealing subsec. (i) of this section], if the provisions of section 72(i) applied to amounts received in taxable years beginning before January 1, 1977, under an annuity contract, then amounts received under such contract on or after such date shall be treated as if such provisions were not repealed.''

APPLICABILITY OF SUBSECTION (t)

Section 1011A(c)(13) of Pub. L. 100–647 provided that: ''Section 72(t) of the 1986 Code shall apply to any distribution without regard to whether such distribution is made without the consent of the participant pursuant to section 411(a)(11) or section 417(e) of the 1986 Code.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

DEFINITION OF TERMS USED IN TITLE I OF PUB. L. 110–458

Pub. L. 110–458, title I, §100, Dec. 23, 2008, 122 Stat. 5093, provided that: ''For purposes of this title [see Tables for classification]:

''(1) AMENDMENT OF 1986 CODE.—The term '1986 Code' means the Internal Revenue Code of 1986.

''(2) AMENDMENT OF ERISA.—The term 'ERISA' means the Employee Retirement Income Security Act of 1974 [Pub. L. 93–406; see Short Title note under section 1001 of Title 29, Labor].

''(3) 2006 ACT.—The term '2006 Act' means the Pension Protection Act of 2006 [Pub. L. 109–280; see Short Title of 2006 Amendment note under section 1001 of Title 29, Labor].''

§ 73. Services of child

(a) Treatment of amounts received

Amounts received in respect of the services of a child shall be included in his gross income and not in the gross income of the parent, even though such amounts are not received by the child.

(b) Treatment of expenditures

All expenditures by the parent or the child attributable to amounts which are includible in the gross income of the child (and not of the parent) solely by reason of subsection (a) shall be treated as paid or incurred by the child.

(c) Parent defined

For purposes of this section, the term ''parent'' includes an individual who is entitled to the services of a child by reason of having parental rights and duties in respect of the child.

(d) Cross reference

For assessment of tax against parent in certain cases, see section 6201(c).

(Aug. 16, 1954, ch. 736, 68A Stat. 24.)

§ 74. Prizes and awards

(a) General rule

Except as otherwise provided in this section or in section 117 (relating to qualified scholarships), gross income includes amounts received as prizes and awards.

(b) Exception for certain prizes and awards transferred to charities

Gross income does not include amounts received as prizes and awards made primarily in recognition of religious, charitable, scientific, educational, artistic, literary, or civic achievement, but only if—

(1) the recipient was selected without any action on his part to enter the contest or proceeding;

(2) the recipient is not required to render substantial future services as a condition to receiving the prize or award; and

(3) the prize or award is transferred by the payor to a governmental unit or organization described in paragraph (1) or (2) of section 170(c) pursuant to a designation made by the recipient.

(c) Exception for certain employee achievement awards

(1) In general

Gross income shall not include the value of an employee achievement award (as defined in section 274(j)) received by the taxpayer if the cost to the employer of the employee achievement award does not exceed the amount allowable as a deduction to the employer for the cost of the employee achievement award.

(2) Excess deduction award

If the cost to the employer of the employee achievement award received by the taxpayer exceeds the amount allowable as a deduction to the employer, then gross income includes the greater of—

(A) an amount equal to the portion of the cost to the employer of the award that is not allowable as a deduction to the employer (but not in excess of the value of the award), or

(B) the amount by which the value of the award exceeds the amount allowable as a deduction to the employer.

The remaining portion of the value of such award shall not be included in the gross income of the recipient.

(3) Treatment of tax-exempt employers

In the case of an employer exempt from taxation under this subtitle, any reference in this subsection to the amount allowable as a deduction to the employer shall be treated as a reference to the amount which would be allowable as a deduction to the employer if the employer were not exempt from taxation under this subtitle.

(4) Cross reference

For provisions excluding certain de minimis fringes from gross income, see section 132(e).

(Aug. 16, 1954, ch. 736, 68A Stat. 24; Pub. L. 99–514, title I, §§122(a)(1), 123(b)(1), Oct. 22, 1986, 100 Stat. 2109, 2113.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–514, §123(b)(1), which directed that subsec. (a) be amended by substituting ''(relating to qualified scholarships)'' for ''(relating to scholarship and fellowship grants)'', was executed by making the substitution for ''(relating to scholarships and fellowship grants)'' to reflect the probable intent of Congress.

Pub. L. 99–514, §122(a)(1)(A), substituted ''Except as otherwise provided in this section or'' for ''Except as provided in subsection (b) and''.

Subsec. (b). Pub. L. 99–514, §122(a)(1)(B), (C), inserted ''for certain prizes and awards transferred to charities'' in heading and added par. (3).

Subsec. (c). Pub. L. 99–514, §122(a)(1)(D), added subsec. (c).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 122(a)(1) of Pub. L. 99–514 applicable to prizes and awards granted after Dec. 31, 1986, see section 151(c) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 123(b)(1) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, but only in the case of scholarships and fellowships granted after Aug. 16, 1986, see section 151(d) of Pub. L. 99–514, set out as a note under section 1 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUBLIC LAW 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 123(b)(1) of Pub. L. 99–514 to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, see section 1012(aa)(3) of Pub. L. 100–647, set out as a note under section 861 of this title.

§ 75. Dealers in tax-exempt securities

(a) Adjustment for bond premium

In computing the gross income of a taxpayer who holds during the taxable year a short-term municipal bond (as defined in subsection (b)(1) primarily for sale to customers in the ordinary course of his trade or business—

(1) if the gross income of the taxpayer from such trade or business is computed by the use of inventories and his inventories are valued on any basis other than cost, the cost of securities sold (as defined in subsection (b)(2) during such year shall be reduced by an amount equal to the amortizable bond premium which would be disallowed as a deduction for such year by section 171(a)(2) (relating to deduction for amortizable bond premium) if the definition in section 171(d) of the term ''bond'' did not exclude such municipal bond; or

(2) if the gross income of the taxpayer from such trade or business is computed without the use of inventories, or by use of inventories valued at cost, and the municipal bond is sold or otherwise disposed of during such year, the adjusted basis (computed without regard to this paragraph) of the municipal bond shall be reduced by the amount of the adjustment which would be required under section 1016(a)(5) (relating to adjustment to basis for amortizable bond premium) if the definition in section 171(d) of the term ''bond'' did not exclude such municipal bond.

Notwithstanding the provisions of paragraph (1), no reduction to the cost of securities sold during the taxable year shall be made in respect of any obligation described in subsection (b)(1)(A)(ii) which is held by the taxpayer at the close of the taxable year; but in the taxable year in which any such obligation is sold or otherwise disposed of, if such obligation is a municipal bond (as defined in subsection (b)(1)), the cost of securities sold during such year shall be reduced by an amount equal to the adjustment described in paragraph (2), without regard to the fact that the taxpayer values his inventories on any basis other than cost.

(b) Definitions

For purposes of subsection (a)—

(1) The term ''municipal bond'' means any obligation issued by a government or political subdivision thereof if the interest on such obligation is excludable from gross income; but such term does not include such an obligation if—

(A)(i) it is sold or otherwise disposed of by the taxpayer within 30 days after the date of its acquisition by him, or

(ii) its earliest maturity or call date is a date more than 5 years from the date on which it was acquired by the taxpayer; and

(B) when it is sold or otherwise disposed of by the taxpayer—

(i) in the case of a sale, the amount realized, or

(ii) in the case of any other disposition, its fair market value at the time of such disposition,

is higher than its adjusted basis (computed without regard to this section and section 1016(a)(6)).

Determinations under subparagraph (B) shall be exclusive of interest.

(2) The term ''cost of securities sold'' means the amount ascertained by subtracting the inventory value of the closing inventory of a taxable year from the sum of—

(A) the inventory value of the opening inventory for such year, and

(B) the cost of securities and other property purchased during such year which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year.

(Aug. 16, 1954, ch. 736, 68A Stat. 25; Pub. L. 85–866, title I, §2(a), Sept. 2, 1958, 72 Stat. 1606.)

AMENDMENTS

1958—Subsec. (a). Pub. L. 85–866, §2(a)(2), (3), struck out ''short-term'' each place it appeared, and inserted sentence to provide that no reduction to cost of securities sold during taxable year shall be made in respect of subsec. (b)(1)(A)(ii) obligations held at close of year, and to permit reduction in cost of securities sold in taxable year sold if obligation is municipal bond.

Subsec. (b)(1). Pub. L. 85–866, §2(a)(1), substituted ''municipal bond'' for ''short-term municipal bond'', designated former subpars. (A) and (B) as (A)(i) and (ii), respectively, and added subpar. (B).

EFFECTIVE DATE OF 1958 AMENDMENT

Section 2(c) of Pub. L. 85–866 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1016 of this title] shall apply with respect to taxable years ending after December 31, 1957, but only with respect to obligations acquired after such date.''

[§ 76. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(14), Oct. 4, 1976, 90 Stat. 1765]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 25, related to inclusion in gross of all income derived from mortgages made, or obligations issued, by a joint-stock land bank.

§ 77. Commodity credit loans

(a) Election to include loans in income

Amounts received as loans from the Commodity Credit Corporation shall, at the election of the taxpayer, be considered as income and shall be included in gross income for the taxable year in which received.

(b) Effect of election on adjustments for subsequent years

If a taxpayer exercises the election provided for in subsection (a) for any taxable year, then the method of computing income so adopted shall be adhered to with respect to all subsequent taxable years unless with the approval of the Secretary a change to a different method is authorized.

(Aug. 16, 1954, ch. 736, 68A Stat. 25; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

§ 78. Dividends received from certain foreign corporations by domestic corporations choosing foreign tax credit

If a domestic corporation chooses to have the benefits of subpart A of part III of subchapter N (relating to foreign tax credit) for any taxable year, an amount equal to the taxes deemed to be paid by such corporation under section 902(a) (relating to credit for corporate stockholder in foreign corporation) or under section 960(a)(1) (relating to taxes paid by foreign corporation) for such taxable year shall be treated for purposes of this title (other than section 245) as a dividend received by such domestic corporation from the foreign corporation.

(Added Pub. L. 87–834, § 9(b), Oct. 16, 1962, 76 Stat. 1001; amended Pub. L. 94–455, title X, § 1033(b)(1), Oct. 4, 1976, 90 Stat. 1628.)

AMENDMENTS

1976—Pub. L. 94–455 substituted ''section 902(a)'' for ''section 902(a)(1)'' and ''section 960(a)(1)'' for ''section 960(a)(1)(C)''.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable on different dates depending on the date the distributions were received, see section 1033(c) of Pub. L. 94–455, set out as a note under section 902 of this title.

EFFECTIVE DATE

Section applicable in respect of any distribution received by a domestic corporation after Dec. 31, 1964, and in respect of any distribution received by a domestic corporation before Jan. 1, 1965, in a taxable year of such corporation beginning after Dec. 31, 1962, but only to the extent that such distribution is made out of the accumulated profits of a foreign corporation for a taxable year (of such foreign corporation) beginning after Dec. 31, 1962, see section 9(e) of Pub. L. 87–834, set out as an Effective Date of 1962 Amendment note under section 902 of this title.

§ 79. Group-term life insurance purchased for employees

(a) General rule

There shall be included in the gross income of an employee for the taxable year an amount equal to the cost of group-term life insurance on his life provided for part or all of such year under a policy (or policies) carried directly or indirectly by his employer (or employers); but only to the extent that such cost exceeds the sum of—

(1) the cost of $50,000 of such insurance, and

(2) the amount (if any) paid by the employee toward the purchase of such insurance.

(b) Exceptions

Subsection (a) shall not apply to—

(1) the cost of group-term life insurance on the life of an individual which is provided under a policy carried directly or indirectly by an employer after such individual has terminated his employment with such employer and is disabled (within the meaning of section 72(m)(7)),

(2) the cost of any portion of the group-term life insurance on the life of an employee provided during part or all of the taxable year of the employee under which—

(A) the employer is directly or indirectly the beneficiary, or

(B) a person described in section 170(c) is the sole beneficiary,

for the entire period during such taxable year for which the employee receives such insurance, and

(3) the cost of any group-term life insurance which is provided under a contract to which section 72(m)(3) applies.

(c) Determination of cost of insurance

For purposes of this section and section 6052, the cost of group-term insurance on the life of an employee provided during any period shall be determined on the basis of uniform premiums (computed on the basis of 5-year age brackets) prescribed by regulations by the Secretary.

(d) Nondiscrimination requirements

(1) In general

In the case of a discriminatory group-term life insurance plan—

(A) subsection (a)(1) shall not apply with respect to any key employee, and

(B) the cost of group-term life insurance on the life of any key employee shall be the greater of—

(i) such cost determined without regard to subsection (c), or

(ii) such cost determined with regard to subsection (c).

(2) Discriminatory group-term life insurance plan

For purposes of this subsection, the term ''discriminatory group-term life insurance plan'' means any plan of an employer for providing group-term life insurance unless—

(A) the plan does not discriminate in favor of key employees as to eligibility to participate, and

(B) the type and amount of benefits available under the plan do not discriminate in favor of participants who are key employees.

(3) Nondiscriminatory eligibility classification

(A) In general

A plan does not meet requirements of subparagraph (A) of paragraph (2) unless—

(i) such plan benefits 70 percent or more of all employees of the employer,

(ii) at least 85 percent of all employees who are participants under the plan are not key employees,

(iii) such plan benefits such employees as qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of key employees, or

(iv) in the case of a plan which is part of a cafeteria plan, the requirements of section 125 are met.

(B) Exclusion of certain employees

For purposes of subparagraph (A), there may be excluded from consideration—

(i) employees who have not completed 3 years of service;

(ii) part-time or seasonal employees;

(iii) employees not included in the plan who are included in a unit of employees covered by an agreement between employee representatives and one or more employers which the Secretary finds to be a collective bargaining agreement, if the benefits provided under the plan were the subject of good faith bargaining between such employee representatives and such employer or employers; and

(iv) employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)).

(4) Nondiscriminatory benefits

A plan does not meet the requirements of paragraph (2)(B) unless all benefits available to participants who are key employees are available to all other participants.

(5) Special rule

A plan shall not fail to meet the requirements of paragraph (2)(B) merely because the amount of life insurance on behalf of the employees under the plan bears a uniform relationship to the total compensation or the basic or regular rate of compensation of such employees.

(6) Key employee defined

For purposes of this subsection, the term ''key employee'' has the meaning given to such term by paragraph (1) of section 416(i). Such term also includes any former employee if such employee when he retired or separated from service was a key employee.

(7) Exemption for church plans

(A) In general

This subsection shall not apply to a church plan maintained for church employees.

(B) Definitions

For purposes of subparagraph (A), the terms ''church plan'' and ''church employee'' have the meaning given such terms by paragraphs (1) and (3)(B) of section 414(e), respectively, except that—

(i) section 414(e) shall be applied by substituting ''section 501(c)(3)'' for ''section 501'' each place it appears, and

(ii) the term ''church employee'' shall not include an employee of—

(I) an organization described in section 170(b)(1)(A)(ii) above the secondary school level (other than a school for religious training),

(II) an organization described in section 170(b)(1)(A)(iii), and

(III) an organization described in section 501(c)(3), the basis of the exemption for which is substantially similar to the basis for exemption of an organization described in subclause (II).

(8) Treatment of former employees

To the extent provided in regulations, this subsection shall be applied separately with respect to former employees.

(e) Employee includes former employee

For purposes of this section, the term ''employee'' includes a former employee.

(Added Pub. L. 88–272, title II, §204(a)(1), Feb. 26, 1964, 78 Stat. 36; amended Pub. L. 89–97, title I, §106(d)(3), July 30, 1965, 79 Stat. 337; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–248, title II, §244(a), Sept. 3, 1982, 96 Stat. 523; Pub. L. 98–369, div. A, title II, §223(a), (b), July 18, 1984, 98 Stat. 775; Pub. L. 99–514, title XI, §1151(c)(1), title XVIII, §1827(a)(1), (c), (d), Oct. 22, 1986, 100 Stat. 2503, 2850, 2851; Pub. L. 100–647, title V, §5013(a), Nov. 10, 1988, 102 Stat. 3666; Pub. L. 101–140, title II, §203(a)(1), (b)(1)(A), Nov. 8, 1989, 103 Stat. 830, 831; Pub. L. 101–508, title XI, §11703(e)(1), Nov. 5, 1990, 104 Stat. 1388–517.)

AMENDMENTS

1990—Subsec. (d)(6). Pub. L. 101–508 substituted ''any former employee'' for ''any retired employee''.

1989—Subsec. (d). Pub. L. 101–140, §203(a)(1), amended subsec. (d) to read as if amendments by Pub. L. 99–514, §1151(c)(1), had not been enacted, see 1986 Amendment note below.

Subsec. (d)(7). Pub. L. 101–140, §203(b)(1)(A), amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''All employees who are treated as employed by a single employer under subsection (b), (c), or (m) of section 414 shall be treated as employed by a single employer for purposes of this section.''

1988—Subsec. (c). Pub. L. 100–647 struck out at end ''In the case of an employee who has attained age 64, the cost prescribed shall not exceed the cost with respect to such individual if he were age 63.''

1986—Subsec. (d). Pub. L. 99–514, §1151(c)(1), amended subsec. (d) generally, substituting ''In the case of a group-term life insurance plan which is a discriminatory employee benefit plan, subsection (a)(1) shall apply only to the extent provided in section 89.'' for

provisions formerly designated as pars. (1)(A) and (B) that in the case of a discriminatory group-term life insurance plan subsec. (a)(1) shall not apply with respect to any key employee and the cost of group-term life insurance on the life of any key employee shall be determined without regard to subsec. (c), and striking out pars. (2) to (7) relating to classifications and eligibility classifications of nondiscriminatory plans.

Subsec. (d)(1)(B). Pub. L. 99–514, §1827(a)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the cost of group-term life insurance on the life of any key employee shall be determined without regard to subsection (c).''

Subsec. (d)(6). Pub. L. 99–514, §1827(c), struck out '', except that subparagraph (A)(iv) of such paragraph shall be applied by not taking into account employees described in paragraph (3)(B) who are not participants in the plan'' from first sentence and inserted provision that such term also includes any retired employee if such employee when he retired or separated from service was a key employee.

Subsec. (d)(8). Pub. L. 99–514, §1827(d), added par. (8).

1984—Subsec. (b)(1). Pub. L. 98–369, §223(a)(2), struck out ''either has reached the retirement age with respect to such employer or'' before ''is disabled''.

Subsec. (d)(1). Pub. L. 98–369, §223(b), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (e). Pub. L. 98–369, §223(a)(1), added subsec. (e).

1982—Subsec. (d). Pub. L. 97–248 added subsec. (d).

1976—Subsec. (c). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1965—Subsec. (b)(1). Pub. L. 89–97 substituted ''section 72(m)(7)'' for ''paragraph (3) of section 213(g), determined without regard to paragraph (4) thereof''.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11703(e)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to employees separating from service after the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 203(c) of Pub. L. 101–140 provided that: ''The amendments made by this section [amending this section and sections 105, 117, 120, 125, 127, 129, 132, 162, 401, 414, 505, 3121, 3231, 3306, 3401, 4976, and 6652 of this title, section 409 of title 42, The Public Health and Welfare, and provisions set out as notes under sections 89 and 3121 of this title] shall take effect as if included in section 1151 of the Tax Reform Act of 1986 [Pub. L. 99–514, see section 1151(k) set out below].''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 5013(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1151(k) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1011B(a)(25), (26), Nov. 10, 1988, 102 Stat. 3486, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting section 89 of this title and amending this section and sections 105, 106, 117, 120, 125, 127, 129, 132, 414, 505, 6039D, and 6652 of this title] shall apply to years beginning after the later of—

''(A) December 31, 1987, or

''(B) the earlier of—

''(i) the date which is 3 months after the date on which the Secretary of the Treasury or his delegate issues such regulations as are necessary to carry out the provisions of section 89 of the Internal Revenue Code of 1986 (as added by this section), or

''(ii) December 31, 1988.

Notwithstanding the preceding sentence, the amendments made by subsections (e)(1) and (i)(3)(C) [amending section 414 of this title] shall, to the extent they relate to sections 106, 162(i)(2), and 162(k) of the Internal Revenue Code of 1986, apply to years beginning after 1986.

''(2) SPECIAL RULE FOR COLLECTIVE BARGAINING PLAN.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section [enacting section 89 of this title and amending this section and sections 105, 106, 117, 120, 125, 127, 129, 132, 414, 505, 6039D, and 6652 of this title] shall not apply to employees covered by such an agreement in years beginning before the earlier of—

''(A) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

''(B) January 1, 1991.

A plan shall not be required to take into account employees to which the preceding sentence applies for purposes of applying section 89 of the Internal Revenue Code of 1986 (as added by this section) to employees to which the preceding sentence does not apply for any year preceding the year described in the preceding sentence.

''(3) EXCEPTION FOR CERTAIN GROUP-TERM INSURANCE PLANS.—In the case of a plan described in section 223(d)(2) of the Tax Reform Act of 1984 [section 232(d)(2) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note below], such plan shall be treated as meeting the requirements of section 89 of the Internal Revenue Code of 1986 (as added by this section) with respect to individuals described in section 223(d)(2) of such Act. An employer may elect to disregard such individuals in applying section 89 of such Code (as so added) to other employees of the employer.

''(4) SPECIAL RULE FOR CHURCH PLANS.—In the case of a church plan (within the meaning of section 414(e)(3) of the Internal Revenue Code of 1986) maintaining an insured accident and health plan, the amendments made by this section [enacting section 89 of this title and amending this section and sections 105, 106, 117, 120, 125, 127, 129, 132, 414, 505, 6039D, and 6652 of this title] shall apply to years beginning after December 31, 1988.

''(5) CAFETERIA PLANS.—The amendments made by subsection (d)(2) [amending sections 3121 and 3306 of this title and section 409 of Title 42, The Public Health and Welfare] shall apply to taxable years beginning after December 31, 1983.

''(6) CERTAIN PLANS MAINTAINED BY EDUCATIONAL INSTITUTIONS.—If an educational organization described in section 170(b)(1)(A)(ii) of the Internal Revenue Code of 1986 makes an election under this paragraph with respect to a plan described in section 125(c)(2)(C) of such Code, the amendments made by this section shall apply with respect to such plan for plan years beginning after the date of the enactment of this Act [Oct. 22, 1986].''

Section 1827(a)(2) of Pub. L. 99–514 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 22, 1986].''

Amendment by section 1827(c), (d) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 223(d) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, title XVIII, §1827(b), Oct. 22, 1986, 100 Stat. 2095, 2850, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 83 of this title] shall apply to taxable years beginning after December 31, 1983.

''(2) INCLUSION OF FORMER EMPLOYEES IN THE CASE OF EXISTING GROUP-TERM INSURANCE PLANS.—

''(A) IN GENERAL.—The amendments made by subsection (a) [amending this section] shall not apply—

''(i) to any group-term life insurance plan of the employer in existence on January 1, 1984, or

''(ii) to any group-term life insurance plan of the employer (or a successor employer) which is a comparable successor to a plan described in clause (i),

but only with respect to an individual who attained age 55 on or before January 1, 1984, and was employed by such employer (or a predecessor employer) at any time during 1983. Such amendments also shall not apply to any employee who retired from employment on or before January 1, 1984, and who, when he retired, was covered by the plan (or a predecessor plan).

''(B) SPECIAL RULE IN THE CASE OF DISCRIMINATORY GROUP-TERM LIFE INSURANCE PLAN.—In the case of any plan which, after December 31, 1986, is a discriminatory group-term life insurance plan (as defined in section 79(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]), subparagraph (A) shall not apply in the case of any individual retiring under such plan after December 31, 1986.

''(C) BENEFITS TO CERTAIN RETIRED INDIVIDUALS NOT TAKEN INTO ACCOUNT FOR PURPOSES OF DETERMINING WHETHER PLAN IS DISCRIMINATORY.—For purposes of determining whether a plan described in subparagraph (A) meets the requirements of section 79(d) of the Internal Revenue Code of 1986 with respect to group-term life insurance for former employees, coverage provided to employees who retired on or before December 31, 1986, may, at the employer's election, be disregarded.

''(D) COMPARABLE SUCCESSOR PLANS.—For purposes of subparagraph (A), a plan shall not fail to be treated as a comparable successor to a plan described in subparagraph (A)(i) with respect to any employee whose benefits do not increase under the successor plan.''

EFFECTIVE DATE OF 1982 AMENDMENT

Section 244(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1983.''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–97 applicable to taxable years beginning after Dec. 31, 1966, see section 106(e) of Pub. L. 89–97, set out as a note under section 213 of this title.

EFFECTIVE DATE

Section 204(d) of Pub. L. 88–272, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by subsections (a) [amending this section and section 7701 of this title] and (c) [amending sections 6052 and 6678 of this title] and paragraph (3) of section 6652(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by section 221(b)(2) of this Act), shall apply with respect to group-term life insurance provided after December 31, 1963, in taxable years ending after such date. The amendments made by subsection (b) [amending section 3401 of this title] shall apply with respect to remuneration paid after December 31, 1963, in the form of group-term life insurance provided after such date. In applying section 79(b) of the Internal Revenue Code of 1986 (as added by subsection (a)(1) of this section) to a taxable year beginning before May 1, 1964, if paragraph (2)(B) of such section applies with respect to an employee for the period beginning May 1, 1964, and ending with the close of his first taxable year ending after April 30, 1964, such paragraph (2)(B) shall be treated as applying with respect to such employee for the period beginning January 1, 1964, and ending April 30, 1964.''

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 80. Restoration of value of certain securities

(a) General rule

In the case of a domestic corporation subject to the tax imposed by section 11 or 801, if the value of any security (as defined in section 165(g)(2))—

(1) which became worthless by reason of the expropriation, intervention, seizure, or similar taking by the government of any foreign country, any political subdivision thereof, or any agency or instrumentality of the foregoing of property to which such security was related, and

(2) which was taken into account as a loss from the sale or exchange of a capital asset or with respect to which a deduction for a loss was allowed under section 165,

is restored in whole or in part during any taxable year by reason of any recovery of money or other property in respect of the property to which such security was related, the value so restored (to the extent that, when added to the value so restored during prior taxable years, it does not exceed the amount of the loss described in paragraph (2)) shall, except as provided in subsection (b), be included in gross income for the taxable year in which such restoration occurs.

(b) Reduction for failure to receive tax benefit

The amount otherwise includible in gross income under subsection (a) in respect of any security shall be reduced by an amount equal to the amount (if any) of the loss described in subsection (a)(2) which did not result in a reduction of the taxpayer's tax under this subtitle for any taxable year, determined under regulations prescribed by the Secretary.

(c) Character of income

For purposes of this subtitle—

(1) Except as provided in paragraph (2), the amount included in gross income under this section shall be treated as ordinary income.

(2) If the loss described in subsection (a)(2) was taken into account as a loss from the sale or exchange of a capital asset, the amount included in gross income under this section shall be treated as long-term capital gain.

(d) Treatment under foreign expropriation loss recovery provisions

This section shall not apply to any recovery of a foreign expropriation loss to which section 1351 applies.

(Added Pub. L. 89–384, § 1(b)(1), Apr. 8, 1966, 80 Stat. 101; amended Pub. L. 94–455, title XIX, §§ 1901(b)(3)(K), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat.

1793, 1834; Pub. L. 98–369, div. A, title II, § 211(b)(2), July 18, 1984, 98 Stat. 754.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–369 substituted ''801'' for ''802''.

1976—Subsec. (b). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(1). Pub. L. 94–455, § 1901(b)(3)(K), substituted ''ordinary income'' for ''gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(3)(K) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section 1(b)(3) of Pub. L. 89–384, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this subsection [enacting this section] shall apply to taxable years beginning after December 31, 1965, but only with respect to losses described in section 80(a)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by paragraph (1) of this subsection) which were sustained after December 31, 1958.''

[§ 81. Repealed. Pub. L. 100–203, title X, § 10201(b)(1), Dec. 22, 1987, 101 Stat. 1330–387]

Section, added Pub. L. 89–722, § 1(b)(1), Nov. 2, 1966, 80 Stat. 1152; amended Pub. L. 93–625, § 4(c)(1), Jan. 3, 1975, 88 Stat. 2111; Pub. L. 94–455, title VI, § 605(b), Oct. 4, 1976, 90 Stat. 1575; Pub. L. 99–514, title VIII, § 805(c)(1)(A), Oct. 22, 1986, 100 Stat. 2362, included increase in vacation pay suspense account in gross income.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1987, see section 10201(c)(1) of Pub. L. 100–203, set out as an Effective Date of 1987 Amendment note under section 404 of this title.

§ 82. Reimbursement for expenses of moving

Except as provided in section 132(a)(6), there shall be included in gross income (as compensation for services) any amount received or accrued, directly or indirectly, by an individual as a payment for or reimbursement of expenses of moving from one residence to another residence which is attributable to employment or self-employment.

(Added Pub. L. 91–172, title II, § 231(b), Dec. 30, 1969, 83 Stat. 579; amended Pub. L. 103–66, title XIII, § 13213(d)(3)(A), Aug. 10, 1993, 107 Stat. 474.)

AMENDMENTS

1993—Pub. L. 103–66 substituted ''Except as provided in section 132(a)(6), there shall'' for ''There shall''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to reimbursements or other payments in respect of expenses incurred after Dec. 31, 1993, see section 13213(e) of Pub. L. 103–66, set out as a note under section 62 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after December 31, 1969, except that it does not apply to moving expenses paid or incurred before July 1, 1970, in connection with the commencement of work by the taxpayer as an employee at a new principal place of work of which the taxpayer had been notified by his employer on or before December 19, 1969, see section 231(d) of Pub. L. 91–172, set out as an Effective Date of 1969 Amendment note under section 217 of this title.

MOVING EXPENSES OF MEMBERS OF THE UNIFORMED SERVICES

Withholding, reporting, inclusion within adjusted gross income, and deduction for reimbursement for moving expenses of members of the uniformed services, see section 2 of Pub. L. 93–490, Oct. 26, 1974, 88 Stat. 1466, set out as a note under section 217 of this title.

§ 83. Property transferred in connection with performance of services

(a) General rule

If, in connection with the performance of services, property is transferred to any person other than the person for whom such services are performed, the excess of—

(1) the fair market value of such property (determined without regard to any restriction other than a restriction which by its terms will never lapse) at the first time the rights of the person having the beneficial interest in such property are transferable or are not subject to a substantial risk of forfeiture, whichever occurs earlier, over

(2) the amount (if any) paid for such property, shall be included in the gross income of the person who performed such services in the first taxable year in which the rights of the person having the beneficial interest in such property are transferable or are not subject to a substantial risk of forfeiture, whichever is applicable. The preceding sentence shall not apply if such person sells or otherwise disposes of such property in an arm's length transaction before his rights in such property become transferable or not subject to a substantial risk of forfeiture.

(b) Election to include in gross income in year of transfer

(1) In general

Any person who performs services in connection with which property is transferred to any person may elect to include in his gross income for the taxable year in which such property is transferred, the excess of—

(A) the fair market value of such property at the time of transfer (determined without regard to any restriction other than a restriction which by its terms will never lapse), over

(B) the amount (if any) paid for such property.

If such election is made, subsection (a) shall not apply with respect to the transfer of such property, and if such property is subsequently forfeited, no deduction shall be allowed in respect of such forfeiture.

(2) Election

An election under paragraph (1) with respect to any transfer of property shall be made in

such manner as the Secretary prescribes and shall be made not later than 30 days after the date of such transfer. Such election may not be revoked except with the consent of the Secretary.

(c) Special rules

For purposes of this section—

(1) Substantial risk of forfeiture

The rights of a person in property are subject to a substantial risk of forfeiture if such person's rights to full enjoyment of such property are conditioned upon the future performance of substantial services by any individual.

(2) Transferability of property

The rights of a person in property are transferable only if the rights in such property of any transferee are not subject to a substantial risk of forfeiture.

(3) Sales which may give rise to suit under section 16(b) of the Securities Exchange Act of 1934

So long as the sale of property at a profit could subject a person to suit under section 16(b) of the Securities Exchange Act of 1934, such person's rights in such property are—

(A) subject to a substantial risk of forfeiture, and

(B) not transferable.

(4) For purposes of determining an individual's basis in property transferred in connection with the performance of services, rules similar to the rules of section 72(w) shall apply.

(d) Certain restrictions which will never lapse

(1) Valuation

In the case of property subject to a restriction which by its terms will never lapse, and which allows the transferee to sell such property only at a price determined under a formula, the price so determined shall be deemed to be the fair market value of the property unless established to the contrary by the Secretary, and the burden of proof shall be on the Secretary with respect to such value.

(2) Cancellation

If, in the case of property subject to a restriction which by its terms will never lapse, the restriction is canceled, then, unless the taxpayer establishes—

(A) that such cancellation was not compensatory, and

(B) that the person, if any, who would be allowed a deduction if the cancellation were treated as compensatory, will treat the transaction as not compensatory, as evidenced in such manner as the Secretary shall prescribe by regulations,

the excess of the fair market value of the property (computed without regard to the restrictions) at the time of cancellation over the sum of—

(C) the fair market value of such property (computed by taking the restriction into account) immediately before the cancellation, and

(D) the amount, if any, paid for the cancellation,

shall be treated as compensation for the taxable year in which such cancellation occurs.

(e) Applicability of section

This section shall not apply to—

(1) a transaction to which section 421 applies,

(2) a transfer to or from a trust described in section 401(a) or a transfer under an annuity plan which meets the requirements of section 404(a)(2),

(3) the transfer of an option without a readily ascertainable fair market value,

(4) the transfer of property pursuant to the exercise of an option with a readily ascertainable fair market value at the date of grant, or

(5) group-term life insurance to which section 79 applies.

(f) Holding period

In determining the period for which the taxpayer has held property to which subsection (a) applies, there shall be included only the period beginning at the first time his rights in such property are transferable or are not subject to a substantial risk of forfeiture, whichever occurs earlier.

(g) Certain exchanges

If property to which subsection (a) applies is exchanged for property subject to restrictions and conditions substantially similar to those to which the property given in such exchange was subject, and if section 354, 355, 356, or 1036 (or so much of section 1031 as relates to section 1036) applied to such exchange, or if such exchange was pursuant to the exercise of a conversion privilege—

(1) such exchange shall be disregarded for purposes of subsection (a), and

(2) the property received shall be treated as property to which subsection (a) applies.

(h) Deduction by employer

In the case of a transfer of property to which this section applies or a cancellation of a restriction described in subsection (d), there shall be allowed as a deduction under section 162, to the person for whom were performed the services in connection with which such property was transferred, an amount equal to the amount included under subsection (a), (b), or (d)(2) in the gross income of the person who performed such services. Such deduction shall be allowed for the taxable year of such person in which or with which ends the taxable year in which such amount is included in the gross income of the person who performed such services.

(Added Pub. L. 91–172, title III, §321(a), Dec. 30, 1969, 83 Stat. 588; amended Pub. L. 94–455, title XIX, §§1901(a)(15), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1765, 1834; Pub. L. 97–34, title II, §252(a), Aug. 13, 1981, 95 Stat. 260; Pub. L. 97–448, title I, §102(k)(1), Jan. 12, 1983, 96 Stat. 2374; Pub. L. 98–369, div. A, title II, §223(c), July 18, 1984, 98 Stat. 775; Pub. L. 99–514, title XVIII, §1827(e), Oct. 22, 1986, 100 Stat. 2851; Pub. L. 101–508, title XI, §11801(a)(5), Nov. 5, 1990, 104 Stat. 1388–520; Pub. L. 108–357, title VIII, §906(b), Oct. 22, 2004, 118 Stat. 1654.)

REFERENCES IN TEXT

Section 16(b) of the Securities Exchange Act of 1934, referred to in subsec. (c)(3), is classified to section 78p(b) of Title 15, Commerce and Trade.

AMENDMENTS

2004—Subsec. (c)(4). Pub. L. 108–357 added par. (4).

1990—Subsec. (i). Pub. L. 101–508 struck out subsec. (i) ''Transition rules'' which read as follows: ''This section shall apply to property transferred after June 30, 1969, except that this section shall not apply to property transferred—

''(1) pursuant to a binding written contract entered into before April 22, 1969,

''(2) upon the exercise of an option granted before April 22, 1969,

''(3) before May 1, 1970, pursuant to a written plan adopted and approved before July 1, 1969,

''(4) before January 1, 1973, upon the exercise of an option granted pursuant to a binding written contract entered into before April 22, 1969, between a corporation and the transferor requiring the transferor to grant options to employees of such corporation (or a subsidiary of such corporation) to purchase a determinable number of shares of stock of such corporation, but only if the transferee was an employee of such corporation (or a subsidiary of such corporation) on or before April 22, 1969, or

''(5) in exchange for (or pursuant to the exercise of a conversion privilege contained in) property transferred before July 1, 1969, or for property to which this section does not apply (by reason of paragraphs (1), (2), (3), or (4)), if section 354, 355, 356, or 1036 (or so much of section 1031 as relates to section 1036) applies, or if gain or loss is not otherwise required to be recognized upon the exercise of such conversion privilege, and if the property received in such exchange is subject to restrictions and conditions substantially similar to those to which the property given in such exchange was subject.''

1986—Subsec. (e)(5). Pub. L. 99–514 struck out ''the cost of'' before ''group-life insurance''.

1984—Subsec. (e)(5). Pub. L. 98–369 added par. (5).

1983—Subsec. (c)(3). Pub. L. 97–448 substituted ''Securities Exchange Act of 1934'' for ''Securities and Exchange Act of 1934'' in heading and text.

1981—Subsec. (c)(3). Pub. L. 97–34 added par. (3).

1976—Subsec. (b)(2). Pub. L. 94–455, § 1901(a)(15), struck out ''(or, if later, 30 days after the date of the enactment of the Tax Reform Act of 1969)'' after ''after the date of such transfer'', and § 1906(b)(13)(A), ''or his delegate'' after ''Secretary'' wherever appearing.

Subsec. (d)(1), (2)(B). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to distributions on or after Oct. 22, 2004, see section 906(c) of Pub. L. 108–357, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 223(d)(1) of Pub. L. 98–369, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 252(c) of Pub. L. 97–34, as amended by Pub. L. 97–448, title I, § 102(k)(2), 96 Stat. 2374, provided that: ''The amendment made by subsection (a) [amending this section] and the provisions of subsection (b) [set out below] shall apply to transfers after December 31, 1981.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(15) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section 321(d) of Pub. L. 91–172 provided that: ''The amendments made by subsections (a) and (c) [amending sections 402, 403, and 404 of this title] shall apply to taxable years ending after June 30, 1969. The amendments made by subsection (b) [enacting this section] shall apply with respect to contributions made and premiums paid after August 1, 1969.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

APPLICATION OF AMENDMENTS MADE BY SECTION 252 OF PUB. L. 97–34

Section 1879(p) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1018(q)(3), Nov. 10, 1988, 102 Stat. 3585, provided that:

''(1) Notwithstanding subsection (c) of section 252 of the Economic Recovery Tax Act of 1981 [section 252(c) of Pub. L. 97–34, set out above], the amendment made by subsection (a) of such section 252 [amending this section] (and the provisions of subsection (b) of such section 252 [set out below]) shall apply to any transfer of stock to any person if—

''(A) such transfer occurred in November or December of 1973 and was pursuant to the exercise of an option granted in November or December of 1971,

''(B) in December 1973 the corporation granting the option was acquired by another corporation in a transaction qualifying as a reorganization under section 368 of the Internal Revenue Code of 1954 [now 1986],

''(C) the fair market value (as of July 1, 1974) of the stock received by such person in the reorganization in exchange for the stock transferred to him pursuant to the exercise of such option was less than 50 percent of the fair market value of the stock so received (as of December 4, 1973),

''(D) in 1975 or 1976 such person sold substantially all of the stock received in such reorganization, and

''(E) such person makes an election under this section at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe.

''(2) LIMITATION ON AMOUNT OF BENEFIT.—Paragraph (1) shall not apply to transfers with respect to any employee to the extent that the application of paragraph (1) with respect to such employee would (but for this paragraph) result in a reduction in liability for income tax with respect to such employee for all taxable years in excess of $100,000 (determined without regard to any interest).

''(3) STATUTE OF LIMITATIONS.—

''(A) OVERPAYMENTS.—If refund or credit of any overpayment of tax resulting from the application of paragraph (1) is prevented on the date of the enactment of this Act [Oct. 22, 1986] (or at any time within 6 months after such date of enactment) by the operation of any law or rule of law, refund or credit of such overpayment (to the extent attributable to the application of paragraph (1)) may, nevertheless, be made or allowed if claim therefor is filed before the close of such 6-month period.

''(B) DEFICIENCIES.—If the assessment of any deficiency of tax resulting from the application of paragraph (1) is prevented on the date of the enactment of this Act [Oct. 22, 1986] (or at any time within 6 months after such date of enactment) by the operation of any law or rule of law, assessment of such deficiency (to the extent attributable to the application of paragraph (1)) may, nevertheless, be made within such 6-month period.''

TIME FOR MAKING CERTAIN SECTION 83(b) ELECTIONS

Section 556 of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, title XVIII, § 1855(b), Oct. 22, 1986, 100 Stat. 2095, 2882, provided that: ''In the case of any transfer of property in connection with the performance of services on or before November 18, 1982, the election permitted by section 83(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] may be made, notwithstanding paragraph (2) of such section 83(b), with the income tax return for any taxable year ending after July 18, 1984, and beginning before the date of the enactment of the Tax Reform Act of 1986 [Oct. 22, 1986 if—

''(1) the amount paid for such property was not less than its fair market value at the time of transfer (determined without regard to any restriction other than a restriction which by its terms will never lapse), and

''(2) the election is consented to by the person transferring such property.

The election shall contain that information required by the Secretary of the Treasury or his delegate for elections permitted by such section 83(b). The period for assessing any tax attributable to a transfer of property which is the subject of an election made pursuant to this section shall not expire before the date which is 3 years after the date such election was made.''

PROPERTY SUBJECT TO TRANSFER RESTRICTIONS TO COMPLY WITH ''POOLING-OF-INTERESTS ACCOUNTING'' RULES

Section 252(b) of Pub. L. 97–34, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided, effective with respect to taxable years ending after Dec. 31, 1981, that: ''For purposes of section 83 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], property is subject to substantial risk of forfeiture and is not transferable so long as such property is subject to a restriction on transfer to comply with the ''Pooling-of-Interests Accounting'' rules set forth in Accounting Series Release Numbered 130 ((10/5/72) 37 FR 20937; 17 CFR 211.130) and Accounting Series Release Numbered 135 ((1/18/73) 38 FR 1734; 17 CFR 211.135).''

§ 84. Transfer of appreciated property to political organization

(a) General rule

If—

(1) any person transfers property to a political organization, and

(2) the fair market value of such property exceeds its adjusted basis,

then for purposes of this chapter the transferor shall be treated as having sold such property to the political organization on the date of the transfer, and the transferor shall be treated as having realized an amount equal to the fair market value of such property on such date.

(b) Basis of property

In the case of a transfer of property to a political organization to which subsection (a) applies, the basis of such property in the hands of the political organization shall be the same as it would be in the hands of the transferor, increased by the amount of gain recognized to the transferor by reason of such transfer.

(c) Political organization defined

For purposes of this section, the term ''political organization'' has the meaning given to such term by section 527(e)(1).

(Added Pub. L. 93–625, § 13(a)(1), Jan. 3, 1975, 88 Stat. 2120.)

EFFECTIVE DATE

Section 13(b) of Pub. L. 93–625 provided that: ''The amendments made by subsection (a) [enacting this section] shall apply to transfers made after May 7, 1974, in taxable years ending after such date.''

NONRECOGNITION OF GAIN OR LOSS WHERE ORGANIZATION SOLD CONTRIBUTED PROPERTY BEFORE AUGUST 2, 1973

Section 13(c) of Pub. L. 93–625 provided that in the case of the sale or exchange of property before Aug. 2, 1973, which was acquired by the exempt political organization by contribution, no gain or loss shall be recognized by such organization.

§ 85. Unemployment compensation

(a) General rule

In the case of an individual, gross income includes unemployment compensation.

(b) Unemployment compensation defined

For purposes of this section, the term ''unemployment compensation'' means any amount received under a law of the United States or of a State which is in the nature of unemployment compensation.

(c) Special rule for 2009

In the case of any taxable year beginning in 2009, gross income shall not include so much of the unemployment compensation received by an individual as does not exceed $2,400.

(Added Pub. L. 95–600, title I, § 112(a), Nov. 6, 1978, 92 Stat. 2777; amended Pub. L. 97–34, title I, § 103(c)(1), Aug. 13, 1981, 95 Stat. 188; Pub. L. 97–248, title VI, § 611(a), Sept. 3, 1982, 96 Stat. 706; Pub. L. 98–21, title I, §§ 121(f)(1), 122(c)(2), Apr. 20, 1983, 97 Stat. 84, 87; Pub. L. 99–514, title I, § 121, Oct. 22, 1986, 100 Stat. 2109; Pub. L. 111–5, div. B, title I, § 1007(a), Feb. 17, 2009, 123 Stat. 317.)

AMENDMENTS

2009—Subsec. (c). Pub. L. 111–5 added subsec. (c).

1986—Subsec. (a). Pub. L. 99–514 substituted ''General rule'' for ''In general'' in heading and amended text generally. Prior to amendment, text read as follows: ''If the sum for the taxable year of the adjusted gross in-

come of the taxpayer (determined without regard to this section, section 86 and section 221) and the unemployment compensation exceeds the base amount, gross income for the taxable year includes unemployment compensation in an amount equal to the lesser of—

''(1) one-half of the amount of the excess of such sum over the base amount, or

''(2) the amount of the unemployment compensation.''

Subsecs. (b), (c). Pub. L. 99–514, in amending section generally, redesignated former subsec. (c) as (b) and struck out former subsec. (b), ''Base amount defined'', which read as follows: ''For purposes of this section, the term 'base amount' means—

''(1) except as provided in paragraphs (2) and (3), $12,000,

''(2) $18,000, in the case of a joint return under section 6013, or

''(3) zero, in the case of a taxpayer who—

''(A) is married at the close of the taxable year (within the meaning of section 143) but does not file a joint return for such year, and

''(B) does not live apart from his spouse at all times during the taxable year.''

1983—Subsec. (a). Pub. L. 98–21, §122(c)(2), struck out '', section 105(d),'' after ''section 86''.

Pub. L. 98–21, §121(f)(1), inserted ''section 86,'' after ''this section,''.

1982—Subsec. (b)(1). Pub. L. 97–248, §611(a)(1), substituted ''$12,000'' for ''$20,000''.

Subsec. (b)(2). Pub. L. 97–248, §611(a)(2), substituted ''$18,000'' for ''$25,000''.

1981—Subsec. (a). Pub. L. 97–34 substituted ''this section, section 105(d), and section 221'' for ''this section and without regard to section 105(d)'' in parenthetical provision preceding par. (1).

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1007(b), Feb. 17, 2009, 123 Stat. 317, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to amounts received after Dec. 31, 1986, in taxable years ending after such date, see section 151(b) of Pub. L. 99–514, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 121(f)(1) of Pub. L. 98–21 applicable to benefits received after Dec. 31, 1983, in taxable years ending after such date, except for any portion of a lump-sum payment of social security benefits received after Dec. 31, 1983, if the generally applicable payment date for such portion was before Jan. 1, 1984, see section 121(g) of Pub. L. 98–21, set out as an Effective Date note under section 86 of this title.

Amendment by section 122(c)(2) of Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual's annuity starting date was deferred under section 105(d)(6) of this title as in effect on the day before Apr. 20, 1983, such deferral shall end on the first day of such individual's first taxable year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98–21, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 611(b) of Pub. L. 97–248, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) COMPENSATION PAID AFTER 1981.—The amendments made by this section [amending this section] shall apply to payments of unemployment compensation made after December 31, 1981, in taxable years ending after such date.

''(2) NO ADDITION TO TAX FOR UNDERPAYMENT OF ESTIMATED TAX ATTRIBUTABLE TO APPLICATION OF AMENDMENTS TO COMPENSATION PAID IN 1982.—No addition to tax shall be made under section 6654 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] with respect to any underpayment to the extent such underpayment is attributable to unemployment compensation which is received during 1982 and which (but for the amendments made by subsection (a)) would not be includable in gross income.

''(3) SPECIAL RULE FOR FISCAL YEAR TAXPAYERS.—In the case of a taxable year (other than a calendar year) which includes January 1, 1982—

''(A) the amendments made by this section shall be applied by taking into account the entire amount of unemployment compensation received during such taxable year, but

''(B) the increase in gross income for such taxable year as a result of such amendments shall not exceed the amount of unemployment compensation paid after December 31, 1981.

''(4) UNEMPLOYMENT COMPENSATION DEFINED.—For purposes of this subsection, the term 'unemployment compensation' has the meaning given to such term by section 85(c) of the Internal Revenue Code of 1986.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 103(d) of Pub. L. 97–34, set out as a note under section 62 of this title.

EFFECTIVE DATE

Section 112(d) of Pub. L. 95–600, as amended by Pub. L. 98–369, div. A, title X, §1075(a), July 18, 1984, 98 Stat. 1053, provided that: ''The amendments made by this section [enacting this section and section 6050B of this title] shall apply to payments of unemployment compensation made after December 31, 1978, in taxable years ending after such date, except that such amendments shall not apply to payments made for weeks of unemployment ending before December 1, 1978.''

WAIVER OF STATUTE OF LIMITATIONS

Pub. L. 98–369, div. A, title X, §1075(b), July 18, 1984, 98 Stat. 1053, provided that: ''If credit or refund of any overpayment of tax resulting from the amendment made by subsection (a) [amending section 112(d) of Pub. L. 95–600, set out as an Effective Date note above] is barred on the date of the enactment of this Act [July 18, 1984] or at any time during the 1-year period beginning on the date of the enactment of this Act by the operation of any law or rule of law (including res judicata), refund or credit of such overpayment (to the extent attributable to the amendment made by subsection (a)) may, nevertheless, be made or allowed if claim therefor is filed before the close of such 1-year period.''

§ 86. Social security and tier 1 railroad retirement benefits

(a) In general

(1) In general

Except as provided in paragraph (2), gross income for the taxable year of any taxpayer described in subsection (b) (notwithstanding section 207 of the Social Security Act) includes social security benefits in an amount equal to the lesser of—

(A) one-half of the social security benefits received during the taxable year, or

(B) one-half of the excess described in subsection (b)(1).

(2) Additional amount

In the case of a taxpayer with respect to whom the amount determined under subsection (b)(1)(A) exceeds the adjusted base amount, the amount included in gross income under this section shall be equal to the lesser of—

(A) the sum of—

(i) 85 percent of such excess, plus

(ii) the lesser of the amount determined under paragraph (1) or an amount equal to one-half of the difference between the adjusted base amount and the base amount of the taxpayer, or

(B) 85 percent of the social security benefits received during the taxable year.

(b) Taxpayers to whom subsection (a) applies

(1) In general

A taxpayer is described in this subsection if—

(A) the sum of—

(i) the modified adjusted gross income of the taxpayer for the taxable year, plus

(ii) one-half of the social security benefits received during the taxable year, exceeds

(B) the base amount.

(2) Modified adjusted gross income

For purposes of this subsection, the term ''modified adjusted gross income'' means adjusted gross income—

(A) determined without regard to this section and sections 135, 137, 199, 221, 222, 911, 931, and 933, and

(B) increased by the amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax.

(c) Base amount and adjusted base amount

For purposes of this section—

(1) Base amount

The term ''base amount'' means—

(A) except as otherwise provided in this paragraph, $25,000,

(B) $32,000 in the case of a joint return, and

(C) zero in the case of a taxpayer who—

(i) is married as of the close of the taxable year (within the meaning of section 7703) but does not file a joint return for such year, and

(ii) does not live apart from his spouse at all times during the taxable year.

(2) Adjusted base amount

The term ''adjusted base amount'' means—

(A) except as otherwise provided in this paragraph, $34,000,

(B) $44,000 in the case of a joint return, and

(C) zero in the case of a taxpayer described in paragraph (1)(C).

(d) Social security benefit

(1) In general

For purposes of this section, the term ''social security benefit'' means any amount received by the taxpayer by reason of entitlement to—

(A) a monthly benefit under title II of the Social Security Act, or

(B) a tier 1 railroad retirement benefit.

(2) Adjustment for repayments during year

(A) In general

For purposes of this section, the amount of social security benefits received during any taxable year shall be reduced by any repayment made by the taxpayer during the taxable year of a social security benefit previously received by the taxpayer (whether or not such benefit was received during the taxable year).

(B) Denial of deduction

If (but for this subparagraph) any portion of the repayments referred to in subparagraph (A) would have been allowable as a deduction for the taxable year under section 165, such portion shall be allowable as a deduction only to the extent it exceeds the social security benefits received by the taxpayer during the taxable year (and not repaid during such taxable year).

(3) Workmen's compensation benefits substituted for social security benefits

For purposes of this section, if, by reason of section 224 of the Social Security Act (or by reason of section 3(a)(1) of the Railroad Retirement Act of 1974), any social security benefit is reduced by reason of the receipt of a benefit under a workmen's compensation act, the term ''social security benefit'' includes that portion of such benefit received under the workmen's compensation act which equals such reduction.

(4) Tier 1 railroad retirement benefit

For purposes of paragraph (1), the term ''tier 1 railroad retirement benefit'' means—

(A) the amount of the annuity under the Railroad Retirement Act of 1974 equal to the amount of the benefit to which the taxpayer would have been entitled under the Social Security Act if all of the service after December 31, 1936, of the employee (on whose employment record the annuity is being paid) had been included in the term ''employment'' as defined in the Social Security Act, and

(B) a monthly annuity amount under section 3(f)(3) of the Railroad Retirement Act of 1974.

(5) Effect of early delivery of benefit checks

For purposes of subsection (a), in any case where section 708 of the Social Security Act causes social security benefit checks to be delivered before the end of the calendar month for which they are issued, the benefits involved shall be deemed to have been received in the succeeding calendar month.

(e) Limitation on amount included where taxpayer receives lump-sum payment

(1) Limitation

If—

(A) any portion of a lump-sum payment of social security benefits received during the taxable year is attributable to prior taxable years, and

(B) the taxpayer makes an election under this subsection for the taxable year,

then the amount included in gross income under this section for the taxable year by reason of the receipt of such portion shall not exceed the sum of the increases in gross income under this chapter for prior taxable years which would result

solely from taking into account such portion in the taxable years to which it is attributable.

(2) Special rules

(A) Year to which benefit attributable

For purposes of this subsection, a social security benefit is attributable to a taxable year if the generally applicable payment date for such benefit occurred during such taxable year.

(B) Election

An election under this subsection shall be made at such time and in such manner as the Secretary shall by regulations prescribe. Such election, once made, may be revoked only with the consent of the Secretary.

(f) Treatment as pension or annuity for certain purposes

For purposes of—

(1) section 22(c)(3)(A) (relating to reduction for amounts received as pension or annuity),

(2) section 32(c)(2) (defining earned income),

(3) section 219(f)(1) (defining compensation), and

(4) section 911(b)(1) (defining foreign earned income),

any social security benefit shall be treated as an amount received as a pension or annuity.

(Added and amended Pub. L. 98–21, title I, §121(a), title III, §335(b)(2)(A), Apr. 20, 1983, 97 Stat. 80, 130; Pub. L. 98–76, title II, §224(d), Aug. 12, 1983, 97 Stat. 424; Pub. L. 98–369, div. A, title IV, §474(r)(2), div. B, title VI, §2661(*o*)(1), July 18, 1984, 98 Stat. 839, 1158; Pub. L. 99–272, title XII, §12111(b), title XIII, §13204(a), Apr. 7, 1986, 100 Stat. 287, 313; Pub. L. 99–514, title I, §131(b)(2), title XIII, §1301(j)(8), title XVIII, §1847(b)(2), Oct. 22, 1986, 100 Stat. 2113, 2658, 2856; Pub. L. 100–647, title I, §1001(e), title VI, §6009(c)(1), Nov. 10, 1988, 102 Stat. 3351, 3690; Pub. L. 103–66, title XIII, §13215(a), (b), Aug. 10, 1993, 107 Stat. 475, 476; Pub. L. 103–296, title III, §309(d), Aug. 15, 1994, 108 Stat. 1523; Pub. L. 104–188, title I, §§1704(t)(3), 1807(c)(2), Aug. 20, 1996, 110 Stat. 1887, 1902; Pub. L. 105–277, div. J, title IV, §4003(a)(2)(B), Oct. 21, 1998, 112 Stat. 2681–908; Pub. L. 107–16, title IV, §431(c)(1), June 7, 2001, 115 Stat. 68; Pub. L. 108–357, title I, §102(d)(1), Oct. 22, 2004, 118 Stat. 1428.)

AMENDMENT OF SECTION

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(1) and (d)(1)(A), (3), (4)(A), (5), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. Title II of the Act is classified generally to subchapter II (§401 et seq.) of Title 42. Sections 207, 224, and 708 of the Act are classified to sections 407, 424a, and 909 of Title 42, respectively. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Railroad Retirement Act of 1974, referred to in subsec. (d)(3), (4), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45, Railroads. Section 3(a)(1), (f)(3) of the Act is classified to section 231b(a)(1), (f)(3) of Title 45. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

PRIOR PROVISIONS

A prior section 86 was renumbered section 87 of this title.

AMENDMENTS

2004—Subsec. (b)(2)(A). Pub. L. 108–357 inserted ''199,'' before ''221''.

2001—Subsec. (b)(2)(A). Pub. L. 107–16, §§431(c)(1), 901, temporarily inserted ''222,'' after ''221,''. See Effective and Termination Dates of 2001 Amendment note below.

1998—Subsec. (b)(2)(A). Pub. L. 105–277 inserted ''221,'' after ''137,''.

1996—Subsec. (b)(2). Pub. L. 104–188, §1704(t)(3), substituted ''means adjusted'' for ''means adusted'' in introductory provisions.

Subsec. (b)(2)(A). Pub. L. 104–188, §1807(c)(2), inserted ''137,'' before ''911''.

1994—Subsec. (d)(1). Pub. L. 103–296 struck out at end ''For purposes of the preceding sentence, the amount received by any taxpayer shall be determined as if the Social Security Act did not contain section 203(i) thereof.''

1993—Subsec. (a). Pub. L. 103–66, §13215(a), designated existing provisions as par. (1), inserted par. (1) heading, substituted ''Except as provided in paragraph (2), gross'' for ''Gross'', redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

Subsec. (c). Pub. L. 103–66, §13215(b), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: ''For purposes of this section, the term 'base amount' means—

''(1) except as otherwise provided in this subsection, $25,000,

''(2) $32,000, in the case of a joint return, and

''(3) zero, in the case of a taxpayer who—

''(A) is married at the close of the taxable year (within the meaning of section 7703) but does not file a joint return for such year, and

''(B) does not live apart from his spouse at all times during the taxable year.''

1988—Subsec. (b)(2)(A). Pub. L. 100–647, §6009(c)(1), inserted ''135,'' before ''911''.

Subsec. (f)(4), (5). Pub. L. 100–647, §1001(e), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: ''section 221(b)(2) (defining earned income), and''.

1986—Subsec. (b)(2)(A). Pub. L. 99–514, §131(b)(2), substituted ''sections'' for ''sections 221,''.

Subsec. (c)(3)(A). Pub. L. 99–514, §1301(j)(8), substituted ''section 7703'' for ''section 143''.

Subsec. (d)(4). Pub. L. 99–272, §13204(a), in amending par. (4) generally, designated existing provisions as introductory clause of par. (4), struck out ''a monthly benefit under section 3(a), 3(f)(3), 4(a), or 4(f) of the Railroad Retirement Act of 1974'', and added cls. (A) and (B).

Subsec. (d)(5). Pub. L. 99–272, §12111(b), added par. (5).

Subsec. (f)(1). Pub. L. 99–514, §1847(b)(2), substituted ''section 22(c)(3)(A)'' for ''section 37(c)(3)(A)''.

1984—Subsec. (f)(1). Pub. L. 98–369, §2661(*o*)(1), added par. (1). Former par. (1) redesignated par. (2).

Pub. L. 98–369, §474(r)(2), substituted ''section 32(c)(2)'' for ''section 43(c)(2)''.

Subsec. (f)(2)–(5). Pub. L. 98–369, §2661(*o*)(1), redesignated pars. (1) to (4) as (2) to (5), respectively.

1983—Subsec. (a). Pub. L. 98–21, §335(b)(2)(A), inserted ''(notwithstanding section 207 of the Social Security Act)''.

Subsec. (d)(4). Pub. L. 98–76 inserted ''3(f)(3),'' after ''3(a),''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2004, see section 102(e) of

Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to payments made in taxable years beginning after Dec. 31, 2001, see section 431(d) of Pub. L. 107–16, set out as a note under section 62 of this title.

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. J, title IV, §4003(*l*), Oct. 21, 1998, 112 Stat. 2681–910, provided that: ''The amendments made by this section [amending this section and sections 135, 137, 163, 172, 219, 221, 264, 351, 368, 469, 954, 2001, 6311, 6404, and 9510 of this title and amending provisions set out as a note under section 7508A of this title] shall take effect as if included in the provisions of the 1997 Act [Pub. L. 105–34] to which they relate.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1807(c)(2) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1807(e) of Pub. L. 104–188, set out as an Effective Date note under section 36C of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 309(e)(2) of Pub. L. 103–296 provided that: ''The amendment made by subsection (d) [amending this section] shall apply with respect to benefits received after December 31, 1995, in taxable years ending after such date.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13215(d) of Pub. L. 103–66 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to taxable years beginning after December 31, 1993.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1001(e) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6009(d) of Pub. L. 100–647 provided that: ''The amendments made by this section [enacting section 135 of this title, amending this section and sections 219 and 469 of this title, and renumbering former section 135 as section 136 of this title] shall apply to taxable years beginning after December 31, 1989.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 131(b)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1301(j)(8) of Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311–1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

Amendment by section 1847(b)(2) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Amendment by section 12111(b) of Pub. L. 99–272 applicable with respect to benefit checks issued for months ending after Apr. 7, 1986, see section 12111(c) of Pub. L. 99–272, set out as a note under section 909 of Title 42, The Public Health and Welfare.

Section 13204(b) of Pub. L. 99–272 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to any monthly benefit for which the generally applicable payment date is after December 31, 1985.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(2) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 2661 of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–76 applicable to benefits received after Dec. 31, 1983, in taxable years ending after such date, except for portions of lump-sum payments received after Dec. 31, 1983, if the generally applicable payment date for such portion was before Jan. 1, 1984, see section 227(b) of Pub. L. 98–76 set out as a note under section 72 of this title.

EFFECTIVE DATE

Section 121(g) of Pub. L. 98–21, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and section 6050F of this title, amending sections 85, 128, 861, 871, 1441, and 6103 of this title and section 3413 of Title 12, Banks and Banking, and enacting provisions set out as a note under section 401 of Title 42, The Public Health and Welfare] shall apply to benefits received after December 31, 1983, in taxable years ending after such date.

''(2) TREATMENT OF CERTAIN LUMP-SUM PAYMENTS RECEIVED AFTER DECEMBER 31, 1983.—The amendments made by this section shall not apply to any portion of a lump-sum payment of social security benefits (as defined in section 86(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) received after December 31, 1983, if the generally applicable payment date for such portion was before January 1, 1984.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 87. Alcohol and biodiesel fuels credits

Gross income includes—

(1) the amount of the alcohol fuel credit determined with respect to the taxpayer for the taxable year under section 40(a), and

(2) the biodiesel fuels credit determined with respect to the taxpayer for the taxable year under section 40A(a).

(Added Pub. L. 96–223, title II, §232(c)(1), Apr. 2, 1980, 94 Stat. 276, §86; renumbered §87, Pub. L. 98–21, title I, §121(a), Apr. 20, 1983, 97 Stat. 80; amended Pub. L. 98–369, div. A, title IV, §474(r)(3), July 18, 1984, 98 Stat. 839; Pub. L. 108–357, title III, §302(c)(1)(A), Oct. 22, 2004, 118 Stat. 1465.)

AMENDMENTS

2004—Pub. L. 108–357 amended section catchline and text generally. Prior to amendment, text read as follows: ''Gross income includes the amount of the alcohol fuel credit determined with respect to the taxpayer for the taxable year under section 40(a).''

1984—Pub. L. 98–369 amended section generally, substituting ''the amount of the alcohol fuel credit determined with respect to the taxpayer for the taxable year under section 40(a)'' for ''an amount equal to the amount of the credit allowable to the taxpayer under section 44E for the taxable year (determined without regard to subsection (e) thereof)''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to fuel produced, and sold or used, after Dec. 31, 2004, in taxable years ending after such date, see section 302(d) of Pub. L. 108–357, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE

Section applicable to sales or uses after Sept. 30, 1980, in taxable years ending after such date, see section 232(h)(1) of Pub. L. 96–223, set out as a note under section 40 of this title.

§ 88. Certain amounts with respect to nuclear decommissioning costs

In the case of any taxpayer who is required to include the amount of any nuclear decommissioning costs in the taxpayer's cost of service for ratemaking purposes, there shall be includible in the gross income of such taxpayer the amount so included for any taxable year.

(Added Pub. L. 98–369, div. A, title I, § 91(f)(1), July 18, 1984, 98 Stat. 607; amended Pub. L. 99–514, title XVIII, § 1807(a)(4)(E)(vii), Oct. 22, 1986, 100 Stat. 2813.)

AMENDMENTS

1986—Pub. L. 99–514 substituted ''for ratemaking purposes'' for ''of ratemaking purposes''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section effective July 18, 1984, with respect to taxable years ending after such date, see section 91(g)(5) of Pub. L. 98–369, as amended, set out as an Effective Date of 1984 Amendment note under section 461 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[§ 89. Repealed. Pub. L. 101–140, title II, § 202(a), Nov. 8, 1989, 103 Stat. 830]

Section, added Pub. L. 99–514, title XI, § 1151(a), Oct. 22, 1986, 100 Stat. 2494; amended Pub. L. 100–647, title I, § 1011B(a)(1)–(9), (21), (28), (29), (34), title III, § 3021(a)(1)(A), (B), (2)(A), (3)–(9), (11)–(13)(A), (b)(2)(B), (3), title VI, § 6051(a), Nov. 10, 1988, 102 Stat. 3483–3485, 3487, 3488, 3625–3632, 3695, related to nondiscrimination rules regarding benefits provided under employee benefit plans.

EFFECTIVE DATE OF REPEAL

Section 202(c) of Pub. L. 101–140 provided that: ''The amendments made by this section [repealing this section] shall take effect as if included in section 1151 of the Tax Reform Act of 1986 [Pub. L. 99–514, see section 1151(k) set out as a note under section 79 of this title].''

NONENFORCEMENT OF SECTION FOR FISCAL YEAR 1990

Pub. L. 101–136, title V, § 528, Nov. 3, 1989, 103 Stat. 816, provided that: ''No monies appropriated by this Act [see Tables for classification] may be used to implement or enforce section 1151 of the Tax Reform Act of 1986 or the amendments made by such section [section 1151 of Pub. L. 99–514, which enacted section 89 of this title, amended sections 79, 105, 106, 117, 120, 125, 127, 129, 132, 414, 505, 3121, 3306, 6039D, and 6652 of this title and section 409 of Title 42, The Public Health and Welfare, and enacted provisions set out as a note under section 89 of this title].''

TRANSITIONAL PROVISIONS

Section 3021(c) of Pub. L. 100–647 provided for the first issue of valuation rules, the interim impact on former employees, the meeting of the written requirement for covered plans in connection with implementation of section 89 of the Code, and the issuance by Nov. 15, 1988, of rules necessary to carry out section 89, prior to repeal by Pub. L. 101–140, title II, § 203(a)(7), Nov. 8, 1989, 103 Stat. 831.

PART-TIME EMPLOYEE DEFINED FOR PURPOSES OF SUBSECTION (f)

Section 6070 of Pub. L. 100–647 increased the number of employees who would be excluded from consideration under this section during plan years 1989 and 1990, in the case of a plan maintained by an employer which employs fewer than 10 employees on a normal working day during a plan year, prior to repeal by Pub. L. 101–140, title II, § 203(a)(7), Nov. 8, 1989, 103 Stat. 831.

§ 90. Illegal Federal irrigation subsidies

(a) General rule

Gross income shall include an amount equal to any illegal Federal irrigation subsidy received by the taxpayer during the taxable year.

(b) Illegal Federal irrigation subsidy

For purposes of this section—

(1) In general

The term ''illegal Federal irrigation subsidy'' means the excess (if any) of—

(A) the amount required to be paid for any Federal irrigation water delivered to the taxpayer during the taxpayer year, over

(B) the amount paid for such water.

(2) Federal irrigation water

The term ''Federal irrigation water'' means any water made available for agricultural purposes from the operation of any reclamation or irrigation project referred to in paragraph (8) of section 202 of the Reclamation Reform Act of 1982.

(c) Denial of deduction

No deduction shall be allowed under this subtitle by reason of any inclusion in gross income under subsection (a).

(Added Pub. L. 100–203, title X, §10611(a), Dec. 22, 1987, 101 Stat. 1330–451.)

REFERENCES IN TEXT

Section 202 of the Reclamation Reform Act of 1982, referred to in subsec. (b)(2), is classified to section 390bb of Title 43, Public Lands.

EFFECTIVE DATE

Section 10611(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [enacting this section] shall apply to water delivered to the taxpayer in months beginning after the date of the enactment of this Act [Dec. 22, 1987].''

PART III—ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

Sec.

101. Certain death payments.[1]
102. Gifts and inheritances.
103. Interest on State and local bonds.
[103A. Repealed.]
104. Compensation for injuries or sickness.
105. Amounts received under accident and health plans.
106. Contributions by employer to accident and health plans.
107. Rental value of parsonages.
108. Income from discharge of indebtedness.
109. Improvements by lessee on lessor's property.
110. Qualified lessee construction allowances for short-term leases.
111. Recovery of tax benefit items.
112. Certain combat zone compensation of members of the Armed Forces.
[113, 114. Repealed.]
115. Income of States, municipalities, etc.
[116. Repealed.]
117. Qualified scholarships.
118. Contributions to the capital of a corporation.
119. Meals or lodging furnished for convenience of employer.[1]
120. Amounts received under qualified group legal services plans.
121. Exclusion of gain from sale of principal residence.
122. Certain reduced uniformed services retirement pay.
123. Amounts received under insurance contracts for certain living expenses.
[124. Repealed.]
125. Cafeteria plans.
126. Certain cost-sharing payments.
127. Educational assistance programs.
[128. Repealed.]
129. Dependent care assistance programs.[2]
130. Certain personal injury liability assignments.
131. Certain foster care payments.
132. Certain fringe benefits.
[133. Repealed.]
134. Certain military benefits.
135. Income from United States savings bonds used to pay higher education tuition and fees.
136. Energy conservation subsidies provided by public utilities.
137. Adoption assistance programs.
138. Medicare Advantage MSA.
139. Disaster relief payments.
139A. Federal subsidies for prescription drug plans.
139B. Benefits provided to volunteer firefighters and emergency medical responders.
139C. COBRA premium assistance.
139D. Free choice vouchers.[3]
139D. Indian health care benefits.[3]
140. Cross references to other Acts.

AMENDMENTS

2010—Pub. L. 111–148, title X, §10108(f)(2), Mar. 23, 2010, 124 Stat. 913, added item 139D relating to free choice vouchers.

Pub. L. 111–148, title IX, §9021(b), Mar. 23, 2010, 124 Stat. 874, added item 139D relating to Indian health care benefits.

2009—Pub. L. 111–5, div. B, title III, §3001(a)(15)(B), Feb. 17, 2009, 123 Stat. 465, added item 139C.

2007—Pub. L. 110–142, §5(b), Dec. 20, 2007, 121 Stat. 1806, added item 139B.

2004—Pub. L. 108–357, title I, §101(b)(3), Oct. 22, 2004, 118 Stat. 1423, struck out item 114 ''Extraterritorial income''.

Pub. L. 108–311, title IV, §408(a)(5)(G), Oct. 4, 2004, 118 Stat. 1191, substituted ''Medicare Advantage MSA'' for ''Medicare+Choice MSA'' in item 138.

2003—Pub. L. 108–173, title XII, §1202(c), Dec. 8, 2003, 117 Stat. 2480, added item 139A.

2002—Pub. L. 107–134, title I, §111(b), Jan. 23, 2002, 115 Stat. 2433, added item 139 and redesignated former item 139 as 140.

2000—Pub. L. 106–519, §4(6), Nov. 15, 2000, 114 Stat. 2433, added item 114.

1997—Pub. L. 105–34, title III, §312(d)(14), title XII, §1213(d), Aug. 5, 1997, 111 Stat. 841, 1001, added item 110 and substituted ''Exclusion of gain from sale of principal residence'' for ''One-time exclusion of gain from sale of principal residence by individual who has attained age 55'' in item 121.

Pub. L. 105–33, title IV, §4006(b)(3), Aug. 5, 1997, 111 Stat. 334, added items 138 and 139 and struck out former item 138 ''Cross reference to other Acts''.

1996—Pub. L. 104–188, title I, §§1602(b)(8), 1704(t)(4)(B), 1807(c)(7), Aug. 20, 1996, 110 Stat. 1834, 1887, 1902, substituted ''combat zone compensation'' for ''combat pay'' in item 112, struck out item 133 ''Interest on certain loans used to acquire employer securities'', added items 137 and 138, and struck out former item 137 ''Cross reference to other Acts''.

1992—Pub. L. 102–486, title XIX, §1912(b), Oct. 24, 1992, 106 Stat. 3016, added items 136 and 137 and struck out former item 136 ''Cross references to other Acts''.

1990—Pub. L. 101–508, title XI, §11801(b)(2), Nov. 5, 1990, 104 Stat. 1388–522, struck out item 110 ''Income taxes paid by lessee corporation'', item 113 ''Mustering-out payments for members of the Armed Forces'', item 114 ''Sports programs conducted for the American National Red Cross'', item 124 ''Qualified transportation provided by employer'', and item 128 ''Interest on certain savings certificates''.

1988—Pub. L. 100–647, title I, §1013(a)(37), title VI, §6009(c)(4), Nov. 10, 1988, 102 Stat. 3544, 3690, substituted ''Interest on State and local bonds'' for ''Interest on certain governmental obligations'' in item 103, struck out item 103A ''Mortgage subsidy bonds'', added item 135 and redesignated former item 135 ''Cross references to other Acts'' as item 136.

1986—Pub. L. 99–514, title I, §123(b)(4), title VI, §612(b)(8), title XI, §1168(b), Oct. 22, 1986, 100 Stat. 2113, 2251, 2512, struck out item 116 ''Partial exclusion of dividends received by individuals'', substituted in item 117 ''Qualified scholarships'' for ''Scholarships and fellowship grants'', added item 134, and redesignated former item 134 as 135.

1984—Pub. L. 98–369, div. A, title I, §171(b), title V, §§531(a)(2), 543(b), July 18, 1984, 98 Stat. 699, 881, 892, substituted ''Recovery of tax benefit items'' for ''Recovery of bad debts, prior taxes, and delinquency amounts'' in

[1] So in original. Does not conform to section catchline.

[2] Editorially supplied. Section 129 added by Pub. L. 97–34 without corresponding amendment of part analysis.

[3] So in original. Two sections 139D have been enacted.

item 111, added items 132 (relating to certain fringe benefits) and 133 (relating to interest on certain loans used to acquire employer securities), and redesignated former item 132 (relating to cross references to other Acts) as item 134.

Pub. L. 98–369, div. A, title I, § 16(a), July 18, 1984, 98 Stat. 505, repealed an amendment made by Pub. L. 97–34, § 302(c). See 1981 Amendment note below.

1983—Pub. L. 97–473, title I, § 101(b)(2), Jan. 14, 1983, 96 Stat. 2606, purported to strike out the item relating to section 130, and added items 130 (relating to certain personal injury liability assignments) and 131 (relating to cross references to other Acts).

Pub. L. 97–473, title I, § 102(b), Jan. 14, 1983, 96 Stat. 2607, struck out item 131 (relating to cross references to other Acts) and added items 131 (relating to certain foster care payments) and 132 (relating to cross references to other Acts).

1981—Pub. L. 97–34, title III, §§ 301(b)(1), 302(c)(1), (d)(1), Aug. 13, 1981, 95 Stat. 270, 272, 274, effective with regard to taxable years beginning after Sept. 30, 1981, redesignated item 128 ''Cross References to other Acts'' as 129 and added item 128 ''Interest on certain savings certificates'' and, section 302(c)(1), with regard to taxable years beginning after Dec. 31, 1984, provided that ''Partial exclusion of interest'' is substituted for ''Interest on certain savings certificates'' in item 128. Section 16(a) of Pub. L. 98–369, repealed section 302(c) of Pub. L. 97–34, and provided that this title shall be applied and administered as if section 302(c), and the amendments made by section 302(c), had not been enacted.

1980—Pub. L. 96–499, title XI, § 1102(b), Dec. 5, 1980, 94 Stat. 2669, added item 103A.

Pub. L. 96–223, title IV, § 404(b)(1), Apr. 2, 1980, 94 Stat. 306, inserted ''and interest'' after ''dividends'' in item 116.

1978—Pub. L. 95–618, title II, § 242(b), Nov. 9, 1978, 92 Stat. 3194, redesignated former item 124 as 125 and added item 124.

Pub. L. 95–600, title I, §§ 134(b), 164(c), title IV, § 404(c)(3), title V, § 543(b), Nov. 6, 1978, 92 Stat. 2785, 2814, 2870, 2890, in item 121 substituted ''One-time exclusion of gain from sale of principal residence by individual who has attained age 55'' for ''Gain from sale of exchange of residence of individual who has attained age 65'', redesignated former item 124 as 128, and added items 125 to 127.

1976—Pub. L. 94–455, title XXI, § 2134(c), Oct. 4, 1976, 90 Stat. 1928, added item 120.

1969—Pub. L. 91–172, title IX, § 901(b), Dec. 30, 1969, 83 Stat. 709, redesignated former item 123 as 124, and added item 123.

1966—Pub. L. 89–365, § 1(a)(2), Mar. 8, 1966, 80 Stat. 32, redesignated former item 122 as 123, and added item 122.

1964—Pub. L. 88–272, title II, § 206(b)(2), Feb. 26, 1964, 78 Stat. 40, redesignated former item 121 as 122, and added item 121.

1958—Pub. L. 85–866, title I, § 3(b), Sept. 2, 1958, 72 Stat. 1607, struck out item 120 ''Statutory subsistence allowance received by police''.

NO FEDERAL INCOME TAX ON RESTITUTION RECEIVED BY VICTIMS OF THE NAZI REGIME OR THEIR HEIRS OR ESTATES

Pub. L. 107–16, title VIII, § 803, June 7, 2001, 115 Stat. 149, provided that:

''(a) IN GENERAL.—For purposes of the Internal Revenue Code of 1986, any excludable restitution payments received by an eligible individual (or the individual's heirs or estate) and any excludable interest—

''(1) shall not be included in gross income; and

''(2) shall not be taken into account for purposes of applying any provision of such Code which takes into account excludable income in computing adjusted gross income, including section 86 of such Code (relating to taxation of Social Security benefits).

For purposes of such Code, the basis of any property received by an eligible individual (or the individual's heirs or estate) as part of an excludable restitution payment shall be the fair market value of such property as of the time of the receipt.

''(b) ELIGIBLE INDIVIDUAL.—For purposes of this section, the term 'eligible individual' means a person who was persecuted on the basis of race, religion, physical or mental disability, or sexual orientation by Nazi Germany, any other Axis regime, or any other Nazi-controlled or Nazi-allied country.

''(c) EXCLUDABLE RESTITUTION PAYMENT.—For purposes of this section, the term 'excludable restitution payment' means any payment or distribution to an individual (or the individual's heirs or estate) which—

''(1) is payable by reason of the individual's status as an eligible individual, including any amount payable by any foreign country, the United States of America, or any other foreign or domestic entity, or a fund established by any such country or entity, any amount payable as a result of a final resolution of a legal action, and any amount payable under a law providing for payments or restitution of property;

''(2) constitutes the direct or indirect return of, or compensation or reparation for, assets stolen or hidden from, or otherwise lost to, the individual before, during, or immediately after World War II by reason of the individual's status as an eligible individual, including any proceeds of insurance under policies issued on eligible individuals by European insurance companies immediately before and during World War II; or

''(3) consists of interest which is payable as part of any payment or distribution described in paragraph (1) or (2).

''(d) EXCLUDABLE INTEREST.—For purposes of this section, the term 'excludable interest' means any interest earned by—

''(1) escrow accounts or settlement funds established pursuant to the settlement of the action entitled 'In re: Holocaust Victim Assets Litigation,' (E.D.N.Y.) C.A. No. 96–4849,

''(2) funds to benefit eligible individuals or their heirs created by the International Commission on Holocaust Insurance Claims as a result of the Agreement between the Government of the United States of America and the Government of the Federal Republic of Germany concerning the Foundation 'Remembrance, Responsibility, and Future,' dated July 17, 2000, or

''(3) similar funds subject to the administration of the United States courts created to provide excludable restitution payments to eligible individuals (or eligible individuals' heirs or estates).

''(e) EFFECTIVE DATE.—

''(1) IN GENERAL.—This section shall apply to any amount received on or after January 1, 2000.

''(2) NO INFERENCE.—Nothing in this Act [see Tables for classification] shall be construed to create any inference with respect to the proper tax treatment of any amount received before January 1, 2000.''

§ 101. Certain death benefits

(a) Proceeds of life insurance contracts payable by reason of death

(1) General rule

Except as otherwise provided in paragraph (2), subsection (d), subsection (f), and subsection (j), gross income does not include amounts received (whether in a single sum or otherwise) under a life insurance contract, if such amounts are paid by reason of the death of the insured.

(2) Transfer for valuable consideration

In the case of a transfer for a valuable consideration, by assignment or otherwise, of a life insurance contract or any interest therein, the amount excluded from gross income by paragraph (1) shall not exceed an amount

equal to the sum of the actual value of such consideration and the premiums and other amounts subsequently paid by the transferee. The preceding sentence shall not apply in the case of such a transfer—

(A) if such contract or interest therein has a basis for determining gain or loss in the hands of a transferee determined in whole or in part by reference to such basis of such contract or interest therein in the hands of the transferor, or

(B) if such transfer is to the insured, to a partner of the insured, to a partnership in which the insured is a partner, or to a corporation in which the insured is a shareholder or officer.

The term ''other amounts'' in the first sentence of this paragraph includes interest paid or accrued by the transferee on indebtedness with respect to such contract or any interest therein if such interest paid or accrued is not allowable as a deduction by reason of section 264(a)(4).

[(b) Repealed. Pub. L. 104–188, title I, § 1402(a), Aug. 20, 1996, 110 Stat. 1789]

(c) Interest

If any amount excluded from gross income by subsection (a) is held under an agreement to pay interest thereon, the interest payments shall be included in gross income.

(d) Payment of life insurance proceeds at a date later than death

(1) General rule

The amounts held by an insurer with respect to any beneficiary shall be prorated (in accordance with such regulations as may be prescribed by the Secretary) over the period or periods with respect to which such payments are to be made. There shall be excluded from the gross income of such beneficiary in the taxable year received any amount determined by such proration. Gross income includes, to the extent not excluded by the preceding sentence, amounts received under agreements to which this subsection applies.

(2) Amount held by an insurer

An amount held by an insurer with respect to any beneficiary shall mean an amount to which subsection (a) applies which is—

(A) held by any insurer under an agreement provided for in the life insurance contract, whether as an option or otherwise, to pay such amount on a date or dates later than the death of the insured, and

(B) equal to the value of such agreement to such beneficiary

(i) as of the date of death of the insured (as if any option exercised under the life insurance contract were exercised at such time), and

(ii) as discounted on the basis of the interest rate used by the insurer in calculating payments under the agreement and mortality tables prescribed by the Secretary.

(3) Application of subsection

This subsection shall not apply to any amount to which subsection (c) is applicable.

[(e) Repealed. Pub. L. 98–369, div. A, title IV, § 421(b)(2), July 18, 1984, 98 Stat. 794]

(f) Proceeds of flexible premium contracts issued before January 1, 1985 payable by reason of death

(1) In general

Any amount paid by reason of the death of the insured under a flexible premium life insurance contract issued before January 1, 1985 shall be excluded from gross income only if—

(A) under such contract—

(i) the sum of the premiums paid under such contract does not at any time exceed the guideline premium limitation as of such time, and

(ii) any amount payable by reason of the death of the insured (determined without regard to any qualified additional benefit) is not at any time less than the applicable percentage of the cash value of such contract at such time, or

(B) by the terms of such contract, the cash value of such contract may not at any time exceed the net single premium with respect to the amount payable by reason of the death of the insured (determined without regard to any qualified additional benefit) at such time.

(2) Guideline premium limitation

For purposes of this subsection—

(A) Guideline premium limitation

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

(i) the guideline single premium, or

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

(B) Guideline single premium

The term ''guideline single premium'' means the premium at issue with respect to future benefits under the contract (without regard to any qualified additional benefit), and with respect to any charges for qualified additional benefits, at the time of a determination under subparagraph (A) or (E) and which is based on—

(i) the mortality and other charges guaranteed under the contract, and

(ii) interest at the greater of an annual effective rate of 6 percent or the minimum rate or rates guaranteed upon issue of the contract.

(C) Guideline level premium

The term ''guideline level premium'' means the level annual amount, payable over the longest period permitted under the contract (but ending not less than 20 years from date of issue or not later than age 95, if earlier), computed on the same basis as the guideline single premium, except that subparagraph (B)(ii) shall be applied by substituting ''4 percent'' for ''6 percent''.

(D) Computational rules

In computing the guideline single premium or guideline level premium under subparagraph (B) or (C)—

(i) the excess of the amount payable by reason of the death of the insured (deter-

mined without regard to any qualified additional benefit) over the cash value of the contract shall be deemed to be not greater than such excess at the time the contract was issued,

(ii) the maturity date shall be the latest maturity date permitted under the contract, but not less than 20 years after the date of issue or (if earlier) age 95, and

(iii) the amount of any endowment benefit (or sum of endowment benefits) shall be deemed not to exceed the least amount payable by reason of the death of the insured (determined without regard to any qualified additional benefit) at any time under the contract.

(E) Adjustments

The guideline single premium and guideline level premium shall be adjusted in the event of a change in the future benefits or any qualified additional benefit under the contract which was not reflected in any guideline single premiums or guideline level premium previously determined.

(3) Other definitions and special rules

For purposes of this subsection—

(A) Flexible premium life insurance contract

The terms ''flexible premium life insurance contract'' and ''contract'' mean a life insurance contract (including any qualified additional benefits) which provides for the payment of one or more premiums which are not fixed by the insurer as to both timing and amount. Such terms do not include that portion of any contract which is treated under State law as providing any annuity benefits other than as a settlement option.

(B) Premiums paid

The term ''premiums paid'' means the premiums paid under the contract less any amounts (other than amounts includible in gross income) to which section 72(e) applies. If, in order to comply with the requirements of paragraph (1)(A), any portion of any premium paid during any contract year is returned by the insurance company (with interest) within 60 days after the end of a contract year—

(i) the amount so returned (excluding interest) shall be deemed to reduce the sum of the premiums paid under the contract during such year, and

(ii) notwithstanding the provisions of section 72(e), the amount of any interest so returned shall be includible in the gross income of the recipient.

(C) Applicable percentage

The term ''applicable percentage'' means—

(i) 140 percent in the case of an insured with an attained age at the beginning of the contract year of 40 or less, and

(ii) in the case of an insured with an attained age of more than 40 as of the beginning of the contract year, 140 percent reduced (but not below 105 percent) by one percent for each year in excess of 40.

(D) Cash value

The cash value of any contract shall be determined without regard to any deduction for any surrender charge or policy loan.

(E) Qualified additional benefits

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

(i) guaranteed insurability,

(ii) accidental death benefit,

(iii) family term coverage, or

(iv) waiver of premium.

(F) Premium payments not disqualifying contract

The payment of a premium which would result in the sum of the premiums paid exceeding the guideline premium limitation shall be disregarded for purposes of paragraph (1)(A)(i) if the amount of such premium does not exceed the amount necessary to prevent the termination of the contract without cash value on or before the end of the contract year.

(G) Net single premium

In computing the net single premium under paragraph (1)(B)—

(i) the mortality basis shall be that guaranteed under the contract (determined by reference to the most recent mortality table allowed under all State laws on the date of issuance),

(ii) interest shall be based on the greater of—

(I) an annual effective rate of 4 percent (3 percent for contracts issued before July 1, 1983), or

(II) the minimum rate or rates guaranteed upon issue of the contract, and

(iii) the computational rules of paragraph (2)(D) shall apply, except that the maturity date referred to in clause (ii) thereof shall not be earlier than age 95.

(H) Correction of errors

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

(i) the requirements described in paragraph (1) for any contract year was not satisfied due to reasonable error, and

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

the Secretary may waive the failure to satisfy such requirements.

(I) Regulations

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

(g) Treatment of certain accelerated death benefits

(1) In general

For purposes of this section, the following amounts shall be treated as an amount paid by reason of the death of an insured:

(A) Any amount received under a life insurance contract on the life of an insured who is a terminally ill individual.

(B) Any amount received under a life insurance contract on the life of an insured who is a chronically ill individual.

(2) Treatment of viatical settlements

(A) In general

If any portion of the death benefit under a life insurance contract on the life of an insured described in paragraph (1) is sold or assigned to a viatical settlement provider, the amount paid for the sale or assignment of such portion shall be treated as an amount paid under the life insurance contract by reason of the death of such insured.

(B) Viatical settlement provider

(i) In general

The term ''viatical settlement provider'' means any person regularly engaged in the trade or business of purchasing, or taking assignments of, life insurance contracts on the lives of insureds described in paragraph (1) if—

(I) such person is licensed for such purposes (with respect to insureds described in the same subparagraph of paragraph (1) as the insured) in the State in which the insured resides, or

(II) in the case of an insured who resides in a State not requiring the licensing of such persons for such purposes with respect to such insured, such person meets the requirements of clause (ii) or (iii), whichever applies to such insured.

(ii) Terminally ill insureds

A person meets the requirements of this clause with respect to an insured who is a terminally ill individual if such person—

(I) meets the requirements of sections 8 and 9 of the Viatical Settlements Model Act of the National Association of Insurance Commissioners, and

(II) meets the requirements of the Model Regulations of the National Association of Insurance Commissioners (relating to standards for evaluation of reasonable payments) in determining amounts paid by such person in connection with such purchases or assignments.

(iii) Chronically ill insureds

A person meets the requirements of this clause with respect to an insured who is a chronically ill individual if such person—

(I) meets requirements similar to the requirements referred to in clause (ii)(I), and

(II) meets the standards (if any) of the National Association of Insurance Commissioners for evaluating the reasonableness of amounts paid by such person in connection with such purchases or assignments with respect to chronically ill individuals.

(3) Special rules for chronically ill insureds

In the case of an insured who is a chronically ill individual—

(A) In general

Paragraphs (1) and (2) shall not apply to any payment received for any period unless—

(i) such payment is for costs incurred by the payee (not compensated for by insurance or otherwise) for qualified long-term care services provided for the insured for such period, and

(ii) the terms of the contract giving rise to such payment satisfy—

(I) the requirements of section 7702B(b)(1)(B), and

(II) the requirements (if any) applicable under subparagraph (B).

For purposes of the preceding sentence, the rule of section 7702B(b)(2)(B) shall apply.

(B) Other requirements

The requirements applicable under this subparagraph are—

(i) those requirements of section 7702B(g) and section 4980C which the Secretary specifies as applying to such a purchase, assignment, or other arrangement,

(ii) standards adopted by the National Association of Insurance Commissioners which specifically apply to chronically ill individuals (and, if such standards are adopted, the analogous requirements specified under clause (i) shall cease to apply), and

(iii) standards adopted by the State in which the policyholder resides (and if such standards are adopted, the analogous requirements specified under clause (i) and (subject to section 4980C(f)) standards under clause (ii), shall cease to apply).

(C) Per diem payments

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

(D) Limitation on exclusion for periodic payments

For limitation on amount of periodic payments which are treated as described in paragraph (1), see section 7702B(d).

(4) Definitions

For purposes of this subsection—

(A) Terminally ill individual

The term ''terminally ill individual'' means an individual who has been certified by a physician as having an illness or physical condition which can reasonably be expected to result in death in 24 months or less after the date of the certification.

(B) Chronically ill individual

The term ''chronically ill individual'' has the meaning given such term by section 7702B(c)(2); except that such term shall not include a terminally ill individual.

(C) Qualified long-term care services

The term ''qualified long-term care services'' has the meaning given such term by section 7702B(c).

(D) Physician

The term ''physician'' has the meaning given to such term by section 1861(r)(1) of the Social Security Act (42 U.S.C. 1395x(r)(1)).

(5) Exception for business-related policies

This subsection shall not apply in the case of any amount paid to any taxpayer other than the insured if such taxpayer has an insurable interest with respect to the life of the insured by reason of the insured being a director, officer, or employee of the taxpayer or by reason of the insured being financially interested in any trade or business carried on by the taxpayer.

(h) Survivor benefits attributable to service by a public safety officer who is killed in the line of duty

(1) In general

Gross income shall not include any amount paid as a survivor annuity on account of the death of a public safety officer (as such term is defined in section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968) killed in the line of duty—

(A) if such annuity is provided, under a governmental plan which meets the requirements of section 401(a), to the spouse (or a former spouse) of the public safety officer or to a child of such officer; and

(B) to the extent such annuity is attributable to such officer's service as a public safety officer.

(2) Exceptions

Paragraph (1) shall not apply with respect to the death of any public safety officer if, as determined in accordance with the provisions of the Omnibus Crime Control and Safe Streets Act of 1968—

(A) the death was caused by the intentional misconduct of the officer or by such officer's intention to bring about such officer's death;

(B) the officer was voluntarily intoxicated (as defined in section 1204 of such Act) at the time of death;

(C) the officer was performing such officer's duties in a grossly negligent manner at the time of death; or

(D) the payment is to an individual whose actions were a substantial contributing factor to the death of the officer.

(i) Certain employee death benefits payable by reason of death of certain terrorist victims or astronauts

(1) In general

Gross income does not include amounts (whether in a single sum or otherwise) paid by an employer by reason of the death of an employee who is a specified terrorist victim (as defined in section 692(d)(4)).

(2) Limitation

(A) In general

Subject to such rules as the Secretary may prescribe, paragraph (1) shall not apply to amounts which would have been payable after death if the individual had died other than as a specified terrorist victim (as so defined).

(B) Exception

Subparagraph (A) shall not apply to incidental death benefits paid from a plan described in section 401(a) and exempt from tax under section 501(a).

(3) Treatment of self-employed individuals

For purposes of paragraph (1), the term ''employee'' includes a self-employed individual (as defined in section 401(c)(1)).

(4) Relief with respect to astronauts

The provisions of this subsection shall apply to any astronaut whose death occurs in the line of duty.

(j) Treatment of certain employer-owned life insurance contracts

(1) General rule

In the case of an employer-owned life insurance contract, the amount excluded from gross income of an applicable policyholder by reason of paragraph (1) of subsection (a) shall not exceed an amount equal to the sum of the premiums and other amounts paid by the policyholder for the contract.

(2) Exceptions

In the case of an employer-owned life insurance contract with respect to which the notice and consent requirements of paragraph (4) are met, paragraph (1) shall not apply to any of the following:

(A) Exceptions based on insured's status

Any amount received by reason of the death of an insured who, with respect to an applicable policyholder—

(i) was an employee at any time during the 12-month period before the insured's death, or

(ii) is, at the time the contract is issued—

(I) a director,

(II) a highly compensated employee within the meaning of section 414(q) (without regard to paragraph (1)(B)(ii) thereof), or

(III) a highly compensated individual within the meaning of section 105(h)(5), except that ''35 percent'' shall be substituted for ''25 percent'' in subparagraph (C) thereof.

(B) Exception for amounts paid to insured's heirs

Any amount received by reason of the death of an insured to the extent—

(i) the amount is paid to a member of the family (within the meaning of section 267(c)(4)) of the insured, any individual who is the designated beneficiary of the insured under the contract (other than the applicable policyholder), a trust established for the benefit of any such member of the family or designated beneficiary, or the estate of the insured, or

(ii) the amount is used to purchase an equity (or capital or profits) interest in the applicable policyholder from any person described in clause (i).

(3) Employer-owned life insurance contract

(A) In general

For purposes of this subsection, the term ''employer-owned life insurance contract'' means a life insurance contract which—

(i) is owned by a person engaged in a trade or business and under which such person (or a related person described in subparagraph (B)(ii)) is directly or indirectly a beneficiary under the contract, and

(ii) covers the life of an insured who is an employee with respect to the trade or business of the applicable policyholder on the date the contract is issued.

For purposes of the preceding sentence, if coverage for each insured under a master contract is treated as a separate contract for purposes of sections 817(h), 7702, and 7702A, coverage for each such insured shall be treated as a separate contract.

(B) Applicable policyholder

For purposes of this subsection—

(i) In general

The term ''applicable policyholder'' means, with respect to any employer-owned life insurance contract, the person described in subparagraph (A)(i) which owns the contract.

(ii) Related persons

The term ''applicable policyholder'' includes any person which—

(I) bears a relationship to the person described in clause (i) which is specified in section 267(b) or 707(b)(1), or

(II) is engaged in trades or businesses with such person which are under common control (within the meaning of subsection (a) or (b) of section 52).

(4) Notice and consent requirements

The notice and consent requirements of this paragraph are met if, before the issuance of the contract, the employee—

(A) is notified in writing that the applicable policyholder intends to insure the employee's life and the maximum face amount for which the employee could be insured at the time the contract was issued,

(B) provides written consent to being insured under the contract and that such coverage may continue after the insured terminates employment, and

(C) is informed in writing that an applicable policyholder will be a beneficiary of any proceeds payable upon the death of the employee.

(5) Definitions

For purposes of this subsection—

(A) Employee

The term ''employee'' includes an officer, director, and highly compensated employee (within the meaning of section 414(q)).

(B) Insured

The term ''insured'' means, with respect to an employer-owned life insurance contract, an individual covered by the contract who is a United States citizen or resident. In the case of a contract covering the joint lives of 2 individuals, references to an insured include both of the individuals.

(Aug. 16, 1954, ch. 736, 68A Stat. 26; Pub. L. 85–866, title I, §23(d), Sept. 2, 1958, 72 Stat. 1622; Pub. L. 87–792, §7(c), Oct. 10, 1962, 76 Stat. 829; Pub. L. 89–365, §1(c), Mar. 8, 1966, 80 Stat. 32; Pub. L. 91–172, title I, §101(j)(l), Dec. 30, 1969, 83 Stat. 526; Pub. L. 93–406, title II, §§2005(c)(15), 2007(b)(3), Sept. 2, 1974, 88 Stat. 992, 994; Pub. L. 94–455, title XIX, §§1901(a)(16), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1765, 1834; Pub. L. 97–248, title II, §§239, 266(a), (b), Sept. 3, 1982, 96 Stat. 514, 547, 550; Pub. L. 98–369, div. A, title II, §221(b)(2), title IV, §421(b)(2), title VII, §713(e), July 18, 1984, 98 Stat. 772, 794, 958; Pub. L. 99–514, title X, §1001(a)–(c), Oct. 22, 1986, 100 Stat. 2387; Pub. L. 104–188, title I, §1402(a), (b)(1), Aug. 20, 1996, 110 Stat. 1789; Pub. L. 104–191, title III, §331(a), Aug. 21, 1996, 110 Stat. 2067; Pub. L. 105–34, title X, §1084(b)(2), title XV, §1528(a), Aug. 5, 1997, 111 Stat. 952, 1074; Pub. L. 107–134, title I, §102(a), Jan. 23, 2002, 115 Stat. 2429; Pub. L. 108–121, title I, §110(b)(1), (2), Nov. 11, 2003, 117 Stat. 1342; Pub. L. 109–280, title VIII, §863(a), (c)(1), Aug. 17, 2006, 120 Stat. 1021, 1024.)

REFERENCES IN TEXT

The Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (h), is Pub. L. 90–351, June 19, 1968, 82 Stat. 197, as amended. Section 1204 of the Act is classified to section 3796b of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 3711 of Title 42 and Tables.

CODIFICATION

Another section 1084(b) of Pub. L. 105–34 amended sections 805, 807, 812, and 832 of this title.

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–280, §863(c)(1), substituted ''subsection (f), and subsection (j)'' for ''and subsection (f)''.

Subsec. (j). Pub. L. 109–280, §863(a), added subsec. (j).

2003—Subsec. (i). Pub. L. 108–121, §110(b)(2), inserted ''or astronauts'' after ''victims'' in heading.

Subsec. (i)(4). Pub. L. 108–121, §110(b)(1), added par. (4).

2002—Subsec. (i). Pub. L. 107–134 added subsec. (i).

1997—Subsec. (a)(2). Pub. L. 105–34, §1084(b)(2), inserted at end ''The term 'other amounts' in the first sentence of this paragraph includes interest paid or accrued by the transferee on indebtedness with respect to such contract or any interest therein if such interest paid or accrued is not allowable as a deduction by reason of section 264(a)(4).''

Subsec. (h). Pub. L. 105–34, §1528(a), added subsec. (h).

1996—Subsec. (b). Pub. L. 104–188, §1402(a), struck out subsec. (b) which related to employees' death benefits.

Subsec. (c). Pub. L. 104–188, §1402(b)(1), substituted ''subsection (a)'' for ''subsection (a) or (b)''.

Subsec. (g). Pub. L. 104–191 added subsec. (g).

1986—Subsec. (d)(1). Pub. L. 99–514, §1001(a), amended second sentence generally, which prior to amendment read as follows: ''There shall be excluded from the gross income of such beneficiary in the taxable year received—

''(A) any amount determined by such proration, and

''(B) in the case of the surviving spouse of the insured, that portion of the excess of the amounts received under one or more agreements specified in paragraph (2)(A) (whether or not payment of any part of such amounts is guaranteed by the insurer) over the amount determined in subparagraph (A) of this paragraph which is not greater than $1,000 with respect to any insured.''

Subsec. (d)(2)(B). Pub. L. 99–514, §1001(c)(2), substituted ''equal'' for ''is equal'' in introductory provisions.

Subsec. (d)(2)(B)(ii). Pub. L. 99–514, §1001(b), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as

follows: ''as discounted on the basis of the interest rate and mortality tables used by the insurer in calculating payments under the agreement.''

Subsec. (d)(3), (4). Pub. L. 99–514, § 1001(c)(1), redesignated par. (4) as (3), and struck out former par. (3), ''Surviving spouse'', which read as follows: ''For purposes of this subsection, the term 'surviving spouse' means the spouse of the insured as of the date of death, including a spouse legally separated but not under a decree of absolute divorce.''

1984—Subsec. (b)(3)(B). Pub. L. 98–369, § 713(e), amended subpar. (B) generally, substituting ''certain distributions'' for ''certain lump sum distributions'' in heading, substituting ''amount paid or distributed'' for ''lump sum distribution described in the second sentence of paragraph (2)(B)'' in introductory text and adding cls. (i) and (ii).

Subsec. (e). Pub. L. 98–369, § 421(b)(2), repealed subsec. (e) relating to payments of alimony or of income of an estate or trust in case of divorce, etc.

Subsec. (f). Pub. L. 98–369, § 221(b)(2)(B), inserted ''issued before January 1, 1985'' in heading.

Subsec. (f)(1). Pub. L. 98–369, § 221(b)(2)(A), inserted ''issued before January 1, 1985'' in introductory text.

1982—Subsec. (a)(1). Pub. L. 97–248, § 266(b), substituted '', subsection (d), and subsection (f)'' for ''and in subsection (d)''.

Subsec. (b)(3). Pub. L. 97–248, § 239, amended par. (3) generally, substituting ''Treatment of self-employed individuals'' for ''Self-employed individual not considered an employee'' in heading, designating existing provisions as subparagraph (A) and, as so designated, adding heading and exception for subpar. (B), and adding subparagraph (B).

Subsec. (f). Pub. L. 97–248, § 266(a), added subsec. (f).

1976—Subsec. (d)(1). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (f). Pub. L. 94–455, § 1901(a)(16), struck out subsec. (f) relating to effective date of section.

1974—Subsec. (b)(2)(B). Pub. L. 93–406, § 2005(c)(15), substituted ''a lump sum distribution (as defined in section 402(e)(4)'' for ''total distributions payable (as defined in section 402(a)(3)) which are paid to a distributee within one taxable year of the distributee by reason of the employee's death''.

Subsec. (b)(2)(D). Pub. L. 93–406, § 2007(b)(3), substituted ''if the member or former member of the uniformed services by reason of whose death such annuity is payable'' for ''if the individual who made the election under such chapter''.

1969—Subsec. (b)(2)(B)(iii). Pub. L. 91–172 substituted references to section 170(b)(1)(A) (ii) and (vi), and to religious organizations, for references to section 503(b)(1), (2), or (3).

1966—Subsec. (b)(2)(D). Pub. L. 89–365 provided that par. (1) shall not apply in the case of an annuity under chapter 73 of title 10 if the individual who made the election under that chapter died after attaining retirement age.

1962—Subsec. (b)(2)(B)(ii). Pub. L. 87–792, § 7(c)(1), substituted ''described in section 403(a)'' for ''which meets the requirements of paragraphs (3), (4), (5), and (6) of section 401(a)''.

Subsec. (b)(3). Pub. L. 87–792, § 7(c)(2), added par. (3).

1958—Subsec. (b)(2)(B). Pub. L. 85–866 substituted ''This subparagraph shall not apply to total distributions payable (as defined in section 402(a)(3) which are paid to a distributee within one taxable year of the distributee by reason of the employee's death—'' for ''(other than total distributions payable, as defined in section 402(a)(3), which are paid to distributee, by a stock bonus, pension, or profit-sharing trust described in section 401(a) which is exempt from tax under section 501(a), or under an annuity contract under a plan which meets the requirements of paragraphs (3), (4), (5), and (6) of section 401(a), within one taxable year of the distributee by reason of the employee's death)'', and added cls. (i), (ii), and (iii).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, § 863(d), Aug. 17, 2006, 120 Stat. 1024, provided that: ''The amendments made by this section [enacting section 6039I of this title and amending this section] shall apply to life insurance contracts issued after the date of the enactment of this Act [Aug. 17, 2006], except for a contract issued after such date pursuant to an exchange described in section 1035 of the Internal Revenue Code of 1986 for a contract issued on or prior to that date. For purposes of the preceding sentence, any material increase in the death benefit or other material change shall cause the contract to be treated as a new contract except that, in the case of a master contract (within the meaning of section 264(f)(4)(E) of such Code), the addition of covered lives shall be treated as a new contract only with respect to such additional covered lives.''

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–121, title I, § 110(b)(3), Nov. 11, 2003, 117 Stat. 1342, provided that: ''The amendments made by this subsection [amending this section] shall apply to amounts paid after December 31, 2002, with respect to deaths occurring after such date.''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–134, title I, § 102(b), Jan. 23, 2002, 115 Stat. 2429, provided that:

''(1) EFFECTIVE DATE.—The amendment made by this section [amending this section] shall apply to taxable years ending before, on, or after September 11, 2001.

''(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amendments made by this section is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act [Jan. 23, 2002] by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1084(d) of Pub. L. 105–34, as amended by Pub. L. 105–206, title VI, § 6010(*o*)(3)(B), July 22, 1998, 112 Stat. 816, provided that: ''The amendments made by this section [amending this section and sections 264, 265, 805, 807, 812, and 832 of this title] shall apply to contracts issued after June 8, 1997, in taxable years ending after such date. For purposes of the preceding sentence, any material increase in the death benefit or other material change in the contract shall be treated as a new contract except that, in the case of a master contract (within the meaning of section 264(f)(4)(E) of the Internal Revenue Code of 1986), the addition of covered lives shall be treated as a new contract only with respect to such additional covered lives. For purposes of this subsection, an increase in the death benefit under a policy or contract issued in connection with a lapse described in section 501(d)(2) of the Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104–191, set out as a note under section 264 of this title] shall not be treated as a new contract.''

Section 1528(b) of Pub. L. 105–34, as amended by Pub. L. 107–15, § 2, June 5, 2001, 115 Stat. 37, provided that: ''The amendments made by this section [amending this section] shall apply to amounts received in taxable years beginning after December 31, 1996, with respect to individuals dying after such date, and to amounts received in taxable years beginning after December 31, 2001, with respect to individuals dying on or before December 31, 1996.''

EFFECTIVE DATE OF 1996 AMENDMENTS

Section 331(b) of Pub. L. 104–191 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to amounts received after December 31, 1996.''

Section 1402(c) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section and sections 406, 407, and 7701 of this title] shall apply with respect to decedents dying after the date of the enactment of this Act [Aug. 20, 1996].''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1001(d) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section] shall apply to amounts received with respect to deaths occurring after the date of the enactment of this section [Oct. 22, 1986] in taxable years ending after such date.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 221(b)(2) of Pub. L. 98–369 effective Jan. 1, 1984, see section 221(d)(4) of Pub. L. 98–369, set out as an Effective Date note under section 7702 of this title.

Amendment by section 421(b)(2) of Pub. L. 98–369 applicable to transfers after July 18, 1984, in taxable years ending after such date, subject to election to have repeal apply to transfers after 1983 or to transfers pursuant to existing decrees, see section 421(d) of Pub. L. 98–369, set out as an Effective Date note under section 1041 of this title.

Amendment by section 713 of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENTS

Section 266(c)(1) of Pub. L. 97–248, as amended by Pub. L. 98–369, div. A, title II, § 221(b)(1), July 18, 1984, 98 Stat. 772, provided that: ''The amendments made by this section [amending this section] shall apply to contracts entered into before January 1, 1985.''

Amendment by section 239 of Pub. L. 97–248 applicable to decedents dying after Dec. 31, 1983, see section 241(b) of Pub. L. 97–248, set out as an Effective Date note under section 416 of this title. Such amendment is applicable, in the case of amounts received under the plan of an S corporation, with respect to decedents dying after Dec. 31, 1982, notwithstanding section 241(b) of Pub. L. 97–248, see section 6(b)(2) of Pub. L. 97–354, Oct. 19, 1982, 96 Stat. 1697, set out as a note under section 1361 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(16) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 1906(b)(13)(A) of Pub. L. 94–455 effective Feb. 1, 1977, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 2005(c)(15) of Pub. L. 93–406 applicable only with respect to distributions and payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

Amendment by section 2007(b)(3) of Pub. L. 93–406 applicable to taxable years ending on or after Sept. 21, 1972, with respect to individuals dying on or after Sept. 21, 1972, see section 2007(c) of Pub. L. 93–406, set out as a note under section 122 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–365 applicable with respect to individuals making an election under chapter 73 of Title 10 who died after Dec. 31, 1965, see section 1(d) of Pub. L. 89–365, set out as an Effective Date note under section 122 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1957, see section 23(g) of Pub. L. 85–866, set out as a note under section 403 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

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

FLEXIBLE PREMIUM CONTRACTS ISSUED DURING 1984 WHICH MEET REQUIREMENTS OF SECTION 7702 TREATED AS MEETING REQUIREMENTS OF SECTION 101(f)

Flexible premium contracts issued during 1984 which meet requirements of section 7702 of this title treated as meeting requirements of subsec. (f) of this section, see section 221(b)(3) of Pub. L. 98–369, as added by Pub. L. 99–514, set out as a note under section 7702 of this title.

SPECIAL RULES FOR CONTRACTS ENTERED INTO BEFORE JANUARY 1, 1983

Section 266(c)(2), (3) of Pub. L. 97–248, as amended by Pub. L. 97–448, title III, § 306(a)(13), Jan. 12, 1983, 96 Stat. 2405; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(2) SPECIAL RULE FOR CONTRACTS ENTERED INTO BEFORE JANUARY 1, 1983.—Any contract entered into before January 1, 1983, which meets the requirements of section 101(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] on the date which is 1 year after the date of the enactment of this Act [Sept. 3, 1982] shall be treated as meeting the requirements of such section for any period before the date on which such contract meets such requirements. Any death benefits paid under a flexible premium life insurance contract (within the meaning of section 101(f)(3)(A) of such Code) before the date which is 1 year after such date of enactment [Sept. 3, 1982] shall be excluded from gross income.

''(3) SPECIAL RULE FOR CERTAIN CONTRACTS.—Any contract entered into before January 1, 1983, shall be treated as meeting the requirements of subparagraph (A) of section 101(f)(1) of such Code if such contract would meet such requirements if section 101(f)(2)(C) of such Code were applied by substituting '3 percent' for '4 percent'.''

§ 102. Gifts and inheritances

(a) General rule

Gross income does not include the value of property acquired by gift, bequest, devise, or inheritance.

(b) Income

Subsection (a) shall not exclude from gross income—

(1) the income from any property referred to in subsection (a); or

(2) where the gift, bequest, devise, or inheritance is of income from property, the amount of such income.

Where, under the terms of the gift, bequest, devise, or inheritance, the payment, crediting, or distribution thereof is to be made at intervals, then, to the extent that it is paid or credited or to be distributed out of income from property, it shall be treated for purposes of paragraph (2) as a gift, bequest, devise, or inheritance of income

from property. Any amount included in the gross income of a beneficiary under subchapter J shall be treated for purposes of paragraph (2) as a gift, bequest, devise, or inheritance of income from property.

(c) Employee gifts

(1) In general

Subsection (a) shall not exclude from gross income any amount transferred by or for an employer to, or for the benefit of, an employee.

(2) Cross references

For provisions excluding certain employee achievement awards from gross income, see section 74(c).

For provisions excluding certain de minimis fringes from gross income, see section 132(e).

(Aug. 16, 1954, ch. 736, 68A Stat. 28; Pub. L. 99–514, title I, § 122(b), Oct. 22, 1986, 100 Stat. 2110.)

AMENDMENTS

1986—Subsec. (c). Pub. L. 99–514 added subsec. (c).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to prizes and awards granted after Dec. 31, 1986, see section 151(c) of Pub. L. 99–514, set out as a note under section 1 of this title.

§ 103. Interest on State and local bonds

(a) Exclusion

Except as provided in subsection (b), gross income does not include interest on any State or local bond.

(b) Exceptions

Subsection (a) shall not apply to—

(1) Private activity bond which is not a qualified bond

Any private activity bond which is not a qualified bond (within the meaning of section 141).

(2) Arbitrage bond

Any arbitrage bond (within the meaning of section 148).

(3) Bond not in registered form, etc.

Any bond unless such bond meets the applicable requirements of section 149.

(c) Definitions

For purposes of this section and part IV—

(1) State or local bond

The term ''State or local bond'' means an obligation of a State or political subdivision thereof.

(2) State

The term ''State'' includes the District of Columbia and any possession of the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 29; Pub. L. 90–364, title I, § 107(a), June 28, 1968, 82 Stat. 266; Pub. L. 90–634, title IV, § 401(a), Oct. 24, 1968, 82 Stat. 1349; Pub. L. 91–172, title VI, § 601(a), Dec. 30, 1969, 83 Stat. 656; Pub. L. 92–178, title III, § 315(a), (b), Dec. 10, 1971, 85 Stat. 529; Pub. L. 94–164, § 7(a), Dec. 23, 1975, 89 Stat. 976; Pub. L. 94–182, title III, § 301(a), Dec. 31, 1975, 89 Stat. 1056; Pub. L. 94–455, title XIX, §§ 1901(a)(17), (b)(8)(B), 1906(b)(13)(A), title XXI, §§ 2105(a)–(c), 2137(d), Oct. 4, 1976, 90 Stat. 1765, 1766, 1794, 1834, 1902, 1931; Pub. L. 95–339, title II, § 201(a), Aug. 8, 1978, 92 Stat. 467; Pub. L. 95–600, title III, §§ 331(a), (b), 332(a), 333(a), 334(a), (b), title VII, § 703(j)(1), (q)(1), Nov. 6, 1978, 92 Stat. 2839–2841, 2941, 2944; Pub. L. 96–222, title I, § 107(a)(3)(C), Apr. 1, 1980, 94 Stat. 223; Pub. L. 96–223, title II, §§ 241(a), 242(a), 244(a), Apr. 2, 1980, 94 Stat. 281, 283, 286; Pub. L. 96–499, title XI, § 1103, Dec. 5, 1980, 94 Stat. 2669; Pub. L. 97–34, title VIII, §§ 811(a), (b), 812(a), Aug. 13, 1981, 95 Stat. 349, 350; Pub. L. 97–248, title II, §§ 214(a)–(e), 215(a), (b), 217(a)–(d), 219(a), 221(a), (b), (c)(1), title III, § 310(b)(1), (c)(1), (2), Sept. 3, 1982, 96 Stat. 466–469, 472–474, 477, 478, 596, 599; Pub. L. 97–424, title V, § 547(a), Jan. 6, 1983, 96 Stat. 2199; Pub. L. 97–473, title II, § 202(b)(2), Jan. 14, 1983, 96 Stat. 2609; Pub. L. 98–369, div. A, title IV, § 474(r)(4), title VI, §§ 621–624(a), (b)(2), (3), 626(a), 627, 628(a), (c)–(e), (g), 630, July 18, 1984, 98 Stat. 839, 915–922, 924, 926, 928, 931–933; Pub. L. 99–272, title XIII, § 13209(e), Apr. 7, 1986, 100 Stat. 323; Pub. L. 99–514, title XIII, § 1301(a), title XVIII, §§ 1864(a)(1), (b)–(e), 1865(a), 1869(a), (b), 1870, 1871(a)(1), (b), 1899A(2)–(4), Oct. 22, 1986, 100 Stat. 2602, 2885, 2886, 2888, 2890, 2891, 2958; Pub. L. 100–647, title I, § 1013(a)(34)(A), (c)(12)(A), Nov. 10, 1988, 102 Stat. 3544, 3547.)

AMENDMENTS

1988—Subsec. (b)(6)(N). Pub. L. 100–647, § 1013(c)(12)(A), amended subpar. (N), as in effect on the day before the date of the enactment of Pub. L. 99–514 [Oct. 22, 1986], by redesignating cls. (ii) and (iii) as (iii) and (iv), respectively, and by striking out cl. (i) and inserting in lieu thereof the following new cls.:

''(i) IN GENERAL.—Except as provided in clause (ii), this paragraph shall not apply to any obligation issued after December 31, 1986.

''(ii) CERTAIN REFUNDINGS.—This paragraph shall apply to any obligation (or series of obligations) issued to refund an obligation issued on or before December 31, 1986, if—

''(I) the average maturity date of the issue of which the refunding obligation is a part is not later than the average maturity date of the obligations to be refunded by such issue,

''(II) the amount of the refunding obligation does not exceed the outstanding amount of the refunded obligation, and

''(III) the proceeds of the refunding obligation are used to redeem the refunded obligation not later than 90 days after the date of the issuance of the refunding obligation.

For purposes of subclause (I), average maturity shall be determined in accordance with subsection (b)(14)(B)(i).''

Subsec. (c)(7). Pub. L. 100–647, § 1013(a)(34)(A), amended par. (7), as in effect on the day before the date of the enactment of Pub. L. 99–514 [Oct. 22, 1986], by substituting ''necessary'' for ''necessary''.

1986—Pub. L. 99–514, § 1301(a), in amending section generally, substituted ''Interest on State and local bonds'' for ''Interest on certain governmental obligations'' in section catchline.

Subsec. (a). Pub. L. 99–514, § 1301(a), substituted ''Exclusion'' for ''General rule'' in heading and amended text generally. Prior to amendment, text read as follows: ''Gross income does not include interest on—

''(1) the obligations of a State, a Territory, or a possession of the United States, or any political subdivision of any of the foregoing, or of the District of Columbia; and

''(2) qualified scholarship funding bonds.''

Subsec. (b). Pub. L. 99–514, § 1301(a), in amending section generally, substituted provision relating to exceptions for provision relating to industrial development bonds.

Subsec. (b)(11). Pub. L. 99–272 struck out par. (11) relating to pollution control facilities acquired by regional pollution control authorities.

Subsec. (b)(13), (14)(A). Pub. L. 99–514, § 1871(b), substituted ''and (6)'' for ''(6), and (7)''.

Subsec. (b)(16)(A). Pub. L. 99–514, § 1870, substituted ''clause (ii)'' for ''clause (i)''.

Subsec. (b)(17)(A). Pub. L. 99–514, § 1871(b), substituted ''and (6)'' for ''(6), and (7)''.

Subsec. (c). Pub. L. 99–514, § 1301(a), in amending section generally, substituted provision relating to definitions for provision relating to arbitrage.

Subsecs. (d) to (g). Pub. L. 99–514, § 1301(a), in amending section generally, struck out subsecs. (d) to (g) which related to certain irrigation dams, qualified scholarship funding bonds, certain federally guaranteed obligations, and qualified steam-generating or alcohol-producing facilities, respectively.

Subsec. (h). Pub. L. 99–514, § 1301(a), in amending section generally, struck out subsec. (h) which provided that obligations must not be guaranteed.

Subsec. (h)(2)(A). Pub. L. 99–514, § 1899A(2), substituted ''guaranteed'' for ''guaranted''.

Subsec. (h)(5)(A). Pub. L. 99–514, § 1865(a), struck out ''the United States,'' after ''program of''.

Subsecs. (i) to (k). Pub. L. 99–514, § 1301(a), in amending section generally, struck out subsecs. (i) to (k) which related to obligations of certain volunteer fire departments, provided that obligations must be in registered form to be tax-exempt, and required public approval for industrial development bonds, respectively.

Subsec. (*l*). Pub. L. 99–514, § 1301(a), in amending section generally, struck out subsec. (*l*) which related to information reporting requirements for certain bonds.

Subsec. (*l*)(2)(F). Pub. L. 99–514, § 1864(d), added subpar. (F) which read: ''if such obligation is a private activity bond (as defined in subsection (n)(7)), such information as the Secretary may require for purposes of determining whether the requirements of subsection (n) are met with respect to such obligation.''

Subsec. (m). Pub. L. 99–514, § 1301(a), in amending section generally, struck out subsec. (m) which related to obligations exempt other than under this title.

Subsec. (m)(1). Pub. L. 99–514, § 1871(a)(1), substituted ''(j), (k), (*l*), (n), and (*o*)'' for ''(k), (*l*), and (n)''.

Subsec. (m)(3)(B). Pub. L. 99–514, § 1899A(3), substituted ''608(a)(6)(A)'' for ''608(6)(A)''.

Subsec. (n). Pub. L. 99–514, § 1301(a), in amending section generally, struck out subsec. (n) which related to limitation on aggregate amount of private activity bonds issued during any calendar year.

Subsec. (n)(6)(A), (B)(i). Pub. L. 99–514, § 1864(b), substituted ''governmental units or other authorities'' for ''governmental units''.

Subsec. (n)(7)(C)(i). Pub. L. 99–514, § 1864(c), substituted ''all of the property to be financed by the obligation'' for ''the property described in such paragraph''.

Subsec. (n)(10)(B). Pub. L. 99–514, § 1864(e), substituted ''identify project'' for ''specify project'' in heading and ''identify (with reasonable specificity) the project'' for ''specify the project'' in text of subpar. (B)(i).

Subsec. (n)(10)(D). Pub. L. 99–514, § 1864(e)(2), substituted ''any identification or specification'' for ''any specification''.

Subsec. (n)(13). Pub. L. 99–514, § 1864(a)(1), added par. (13).

Subsec. (*o*). Pub. L. 99–514, § 1301(a), in amending section generally, struck out subsec. (*o*) relating to consumer loan bonds.

Pub. L. 99–514, § 1869(a), (b)(1), substituted ''Private loan bonds'' for ''Consumer loan bonds'' in subsection and par. (2) headings, ''private loan bond'' for ''consumer loan bond'' in text of pars. (1), (2)(A) and (B), and ''subsection (c)(6)(H)(i)'' for ''subsection (c)(6)(G)(i)'' in par. (2)(C)(ii).

Pub. L. 99–514, § 1869(b)(2), redesignated subsec. (*o*), relating to cross references, as (p).

Subsec. (p). Pub. L. 99–514, § 1301(a), in amending section generally, struck out subsec. (p) which related to cross references.

Pub. L. 99–514, § 1869(b)(2), redesignated former subsec. (*o*), relating to cross references, as (p).

Subsec. (p)(4). Pub. L. 99–514, § 1899A(4), substituted ''October 27, 1949 (48 U.S.C. 1403)'' for ''October 27, 1919 (48 U.S.C. 1403)''.

1984—Subsec. (b)(4). Pub. L. 98–369, § 628(e), inserted ''For purposes of subparagraph (A), any property shall not be treated as failing to be residential rental property merely because part of the building in which such property is located is used for purposes other than residential rental purposes.''

Subsec. (b)(6)(F)(iv). Pub. L. 98–369, § 474(r)(4), substituted ''section 30(b)(2)(A)'' for ''section 44F(b)(2)(A)''.

Subsec. (b)(6)(N). Pub. L. 98–369, § 630, designated existing provisions as cl. (i) and added cls. (ii) and (iii).

Subsec. (b)(6)(P). Pub. L. 98–369, § 628(c), added subpar. (P).

Subsec. (b)(7). Pub. L. 98–369, § 628(g), repealed par. (7) which related to advance refunding of qualified public facilities.

Subsec. (b)(13). Pub. L. 98–369, § 628(d), inserted ''For purposes of this paragraph— (A) a partnership and each of its partners (and their spouses and minor children) shall be treated as related persons, and (B) an S corporation and each of its shareholders (and their spouses and minor children) shall be treated as related persons.''

Subsec. (b)(15). Pub. L. 98–369, § 623, added par. (15).

Subsec. (b)(16) to (18). Pub. L. 98–369, § 627, added pars. (16) to (18).

Subsec. (c). Pub. L. 98–369, § 624(b)(2), struck out ''bonds'' after ''Arbitrage'' in heading.

Subsec. (c)(1). Pub. L. 98–369, § 624(b)(3), inserted ''to arbitrage bonds'' in heading.

Subsec. (c)(6), (7). Pub. L. 98–369, § 624(a), added par. (6) and redesignated former par. (6) as (7).

Subsec. (h). Pub. L. 98–369, § 622, amended subsec. (h) generally, in par. (1) substituting provisions that obligations are not included in the section if they are federally guaranteed for provisions which excluded obligations guaranteed, in whole or part, by the U.S. under a program to conserve energy, or under other Federal or State programs, in par. (2) substituting provisions defining ''federally guaranteed'' for provisions setting forth obligations to which this subsection applies, and adding pars. (3) to (5).

Subsec. (m)(1). Pub. L. 98–369, § 628(a)(1), inserted ''In the case of an obligation issued after December 31, 1983, such obligation shall not be treated as described in this paragraph unless the appropriate requirements of subsections (b), (c), (h), (k), (*l*), and (n) of this section and section 103A are met with respect to such obligation. For purposes of applying such requirements, a possession of the United States shall be treated as a State; except that clause (ii) of subsection (n)(4)(A) shall not apply.''

Subsec. (m)(2)(B). Pub. L. 98–369, § 628(a)(2), substituted ''is exempt from tax under this title without regard to any provision of law which is not contained in this title and which is not contained in a revenue Act'' for ''is exempt from taxation under any provision of this title''.

Subsec. (m)(3). Pub. L. 98–369, § 628(a)(3), added par. (3).

Subsec. (n). Pub. L. 98–369, § 621, added subsec. (n). Former subsec. (n), relating to cross references, redesignated (*o*).

Subsec. (*o*). Pub. L. 98–369, § 626(a), added subsec. (*o*) relating to consumer loan bonds.

Pub. L. 98–369, § 621, redesignated subsec. (n), relating to cross references, as (*o*).

1983—Subsec. (m). Pub. L. 97–424, § 547(a), added subsec. (m). Former subsec. (m) redesignated (n).

Pub. L. 97–473 amended subsec. (m) generally, adding pars. (1) and (2), redesignating former pars. (1) to (3) as

(3) to (5), respectively, and striking out par. (24) which had provided reference regarding exempt-interest dividends to section 852(b)(5)(B.) See section 722(b) of Pub. L. 98–369, set out as a note below.

Subsec. (n). Pub. L. 97–424, § 547(a), redesignated former subsec. (m), relating to cross references, as (n).

1982—Subsec. (b)(2). Pub. L. 97–248, § 215(b)(2), substituted ''For purposes of this section'' for ''For purposes of this subsection''.

Subsec. (b)(4). Pub. L. 97–248, §§ 217(a)(1), (b), 221(a), (c)(1), 310(c)(1), in subpar. (A) substituted ''if at all times during the qualified project period'' for ''if each obligation issued pursuant to the issue is in registered form and if'' after ''residential rental property'', and struck out ''(within the meaning of section 167(k)(3)(B))'' after ''low or moderate income'', added subpar. (J), struck out provision that for purposes of subpar. (A), ''targeted area project'' meant a project located in a qualified census tract (within the meaning of section 103A(k)(2)) or an area of chronic economic distress (within the meaning of section 103A(k)(3)) and, in last sentence, substituted ''electric energy or gas from'' for ''electric energy from''.

Subsec. (b)(6)(C). Pub. L. 97–248, § 217(a)(3), substituted ''paragraph (13)'' for ''paragraph (7)''.

Subsec. (b)(6)(F)(iv). Pub. L. 97–248, § 214(d), added cl. (iv).

Subsec. (b)(6)(K) to (O). Pub. L. 97–248, § 214(a)–(c), (e), added subpars. (K) to (O).

Subsec. (b)(9)(A). Pub. L. 97–248, § 217(c), inserted ''ferry,'' after ''rail car'' in provisions preceding cl. (i), and in cl. (ii), inserted ''(or, in the case of a ferry, mass transportation services)'' after ''mass commuting services''.

Subsec. (b)(10). Pub. L. 97–248, § 217(a)(2), added par. (10). Former par. (10) redesignated (13).

Subsec. (b)(11). Pub. L. 97–248, § 217(d), added par. (11).

Subsec. (b)(12). Pub. L. 97–248, § 221(b), added par. (12). [Provisions of par. (12)(A) were formerly contained, as undesignated provisions, in par. (4).]

Subsec. (b)(13). Pub. L. 97–248, § 217(a)(2), redesignated former par. (10) as (13).

Subsec. (b)(14). Pub. L. 97–248, § 219(a), added par. (14).

Subsec. (h). Pub. L. 97–248, § 310(c)(2), substituted ''must not be guaranteed or subsidized'' for ''must be in registered form and not guaranteed or subsidized'' in heading, and in par. (1) struck out subpar. (A) reading ''such obligation is not issued in registered form'', and redesignated subpars. (B) and (C) as (A) and (B), respectively.

Subsec. (j). Pub. L. 97–248, § 310(b)(1), added subsec. (j). Former subsec. (j), relating to cross references, redesignated (m).

Subsec. (k). Pub. L. 97–248, § 215(a), added subsec. (k).

Subsec. (*l*). Pub. L. 97–248, § 215(b)(1), added subsec. (*l*).

Subsec. (m). Pub. L. 97–248, §§ 215(a), (b)(1), 310(b)(1), redesignated former subsec. (j), relating to cross references, as (m).

1981—Subsec. (b)(4)(I). Pub. L. 97–34, § 811(a), added subpar. (I).

Subsec. (b)(9), (10). Pub. L. 97–34, § 811(b), added par. (9) and redesignated former par. (9) as (10).

Subsecs. (i), (j). Pub. L. 97–34, § 812(a), added subsec. (i) and redesignated former subsec. (i) as (j).

1980—Subsec. (b)(4). Pub. L. 96–499, § 1103(b), inserted before last sentence provisions defining ''targeted area project'' for purposes of subpar. (A).

Subsec. (b)(4)(A). Pub. L. 96–499, § 1103(a), substituted provisions relating to low or moderate income residential rental property for provisions relating to residential real property for family units.

Subsec. (b)(4)(H). Pub. L. 96–223, § 242(a)(1), added subpar. (H).

Subsec. (b)(6)(J). Pub. L. 96–499, § 1103(c), added subpar. (J).

Subsec. (b)(8), (9). Pub. L. 96–223, § 242(a)(2), added par. (8) and redesignated former par. (8) as (9).

Subsec. (c)(5). Pub. L. 96–222, § 107(a)(3)(C), amended the directory language of Pub. L. 96–500, § 703(q)(1). See 1978 Amendment note below for subsec. (c)(5).

Subsec. (g). Pub. L. 96–223, § 241(a), added subsec. (g). Former subsec. (g) redesignated (i).

Subsec. (h). Pub. L. 96–223, § 244(a), added subsec. (h).

Subsec. (i). Pub. L. 96–223, §§ 241(a), 244(a), redesignated former subsec. (g) as (i).

1978—Subsec. (b)(1). Pub. L. 95–600, § 703(j)(1)(A), substituted ''subsection (a)(1) or (2)'' for ''subsection (a)(1)'' in heading.

Subsec. (b)(4). Pub. L. 95–600, §§ 332(a), 333(a), in subpar. (G)(i) inserted reference to electric utility, industrial, agricultural, or commercial users and added subpar. (G)(ii) and provision following subpar. (G)(ii) relating to the local furnishing of electric energy.

Subsec. (b)(6)(D). Pub. L. 95–600, § 331(a), substituted in heading and cl. (i) ''$10,000,000'' for ''$5,000,000''.

Subsec. (b)(6)(I). Pub. L. 95–600, § 331(b), added subpar. (I).

Subsec. (b)(7), (8). Pub. L. 95–600, § 334(a), (b), added par. (7), redesignated former par. (7) as (8) and, as so redesignated, substituted ''(6), and (7)'' for ''and (6)''.

Subsec. (c)(1). Pub. L. 95–600, § 703(j)(1)(B), substituted in heading and text ''(a)(1) or (2)'' for ''(a)(1) or (4)''.

Subsec. (c)(2)(A). Pub. L. 95–600, § 703(j)(1)(C), substituted ''subsection (a)(1) or (2)'' for ''subsection (a)(1) or (2) or (4)''.

Subsec. (c)(5). Pub. L. 95–600, § 703(j)(1)(D), (q)(1), as amended by Pub. L. 96–222, § 107(a)(3)(C), substituted ''section 438 of the Higher Education Act of 1965'' for ''section 2 of the Emergency Insured Student Loan Act of 1969'' and ''paragraph (2)(A)'' for ''subsection (d)(2)(A)''.

Subsec. (d). Pub. L. 95–600, § 703(j)(1)(E), substituted ''subsection (b)(4)(G)'' for ''subsection (c)(4)(G)''.

Subsec. (e). Pub. L. 95–339 redesignated second subsec. (e), relating to cross references, as (g).

Subsec. (f). Pub. L. 95–339 added subsec. (f).

Subsec. (g). Pub. L. 95–339 redesignated second subsec. (e), relating to cross references, as (g).

1976—Subsec. (a). Pub. L. 94–455, §§ 1901(a)(17)(A), 2105(a), added par. (2) relating to qualified scholarship funding bonds. Former pars. (2) and (3), relating to obligations of the United States and to the obligations of corporations organized under an Act of Congress, were struck out.

Subsec. (b). Pub. L. 94–455, § 1901(a)(17)(B), (C), redesignated subsec. (c) as (b) and in par. (1) of subsec. (b) as so redesignated substituted ''subsection (a)(1) or (2)'' for ''subsection (a)(1)''. Former subsec. (b), which created an exception to the rule that gross income did not include interest on obligations of the United States, by providing that the exception did not apply to obligations of the United States (with specified exceptions) unless under the authorizing Acts such interest is wholly exempt from the taxes imposed by this subtitle, was struck out.

Subsec. (c). Pub. L. 94–455, §§ 1901(a)(17)(B), (D), (b)(8)(B), 1906(b)(13)(A), 2105(c), redesignated subsec. (d) as (c) and, in subsec. (c) as so redesignated, substituted ''(a)(1) or (4)'' for ''(a)(1)'' in par. (1) and ''(a)(1) or (2) or (4)'' for ''(a)(1)'' in par. (2)(A), substituted ''educational organization described in section 170(b)(1)(A)(ii)'' for ''educational institution (within the meaning of section 151(e)(4))'' in par. (3)(A), added par. (5), redesignated former par. (5) as (6), and in par. (6) as so redesignated substituted ''Secretary'' for ''Secretary or his delegate''. Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 94–455, § 1901(a)(17)(B), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 94–455, §§ 1901(a)(17)(B), (E), 2105(b), 2137(d), added subsec. (e) relating to qualified scholarship funding bonds, redesignated former subsec. (f) relating to cross references as a second subsec. (e), reduced the number of cross references in subsec. (e) as so redesignated from twenty-three (which made reference to various obligations of the United States and of corporations organized under Acts of Congress) to three, relating, respectively, to Puerto Rican bonds, Virgin Islands insular and municipal bonds, and certain obligations issued under title I of the Housing Act of

1949, and inserted a fourth cross reference, designated as par. (24) relating to the treatment of exempt-interest dividends. Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 94–455, §1901(a)(17)(B), redesignated subsec. (f), relating to cross references, as (e).

1975—Subsecs. (e), (f). Pub. L. 94–182 and Pub. L. 94–164 made identical amendments, adding subsec. (e) and redesignating former subsec. (e) as (f).

1971—Subsec. (c)(4)(E). Pub. L. 92–178, §315(a)(1), substituted ''energy or gas,'' for ''energy, gas, or water or''.

Subsec. (c)(4)(F). Pub. L. 92–178, §315(a)(2), substituted '', or'' for a period.

Subsec. (c)(4)(G). Pub. L. 92–178, §315(a)(3), added subpar. (G).

Subsec. (c)(6)(F)(iii). Pub. L. 92–178, §315(b), substituted ''$1,000,000'' for ''$250,000''.

1969—Subsecs. (d), (e). Pub. L. 91–172 added subsec. (d) and redesignated former subsec. (d) as (e).

1968—Subsec. (c). Pub. L. 90–364 added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (c)(6)(D) to (H). Pub. L. 90–634 added subpars. (D) to (H).

Subsec. (d). Pub. L. 90–364 redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1013(a)(34)(B) of Pub. L. 100–647 provided that: ''Subparagraph (A) [amending this section] shall apply to obligations sold after May 2, 1978, and to which Treasury regulation section 1.103–13 (1979) was provided to apply.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1301(a) of Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

Amendment by sections 1864(b)–(e), 1865(a), 1869(a), (b), 1870, and 1871(b) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Section 1864(a)(2) of Pub. L. 99–514 provided that:

''(A) Except as provided in subparagraph (B), the amendment made by paragraph (1) [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Oct. 22, 1986] in taxable years ending after such date.

''(B) At the election of the issuer (made at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe), the amendment made by paragraph (1) shall apply to any obligation issued on or before the date of the enactment of this Act.''

Section 1871(a)(2) of Pub. L. 99–514 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to obligations issued after March 28, 1985, in taxable years ending after such date.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(4) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Section 624(c) of Pub. L. 98–369, as amended by Pub. L. 99–514, title XVIII, §1867(a), Oct. 22, 1986, 100 Stat. 2888, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 103A of this title] shall apply with respect to bonds issued after December 31, 1984.

''(2) EXCEPTION.—The amendments made by this section shall not apply to obligations issued for the Essex County New Jersey Resource Recovery Project authorized by the Port Authority of New York and New Jersey on November 10, 1983, as part of an agreement approved by Essex County, New Jersey, on July 7, 1981, and approved by the State of New Jersey on December 31, 1981. The aggregate face amount of bonds to which this paragraph applies shall not exceed $350,000,000.''

Section 626(b) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, title XIII, §1317(22), title XVIII, §1869(c)(5), Oct. 22, 1986, 100 Stat. 2095, 2698, 2890; Pub. L. 100–647, title I, §1013(g)(24), Nov. 10, 1988, 102 Stat. 3554, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection the amendment made by subsection (a) [amending this section] shall apply to obligations issued after the date of enactment of this Act [July 18, 1984].

''(2) EXCEPTIONS FOR CERTAIN STUDENT LOAN PROGRAMS.—

''(A) IN GENERAL.—The amendments made by this section [amending this section] shall not apply to obligations issued by a program described in the following table to the extent the aggregate face amount of such obligations does not exceed the amount of allowable obligations specified in the following table with respect to such program:

Program	Amount of Allowable Obligations
Colorado Student Obligation Bond Authority	$60 million
Connecticut Higher Education Supplementary Loan Authority	$15.5 million
District of Columbia	$50 million
Illinois Higher Education Authority	$70 million
State of Iowa	$16 million
Louisiana Public Facilities Authority	$75 million
Maine Health and Higher Education Facilities Authority	$5 million
Maryland Higher Education Supplemental Loan Program	$24 million
Massachusetts College Student Loan Authority	$90 million
Minnesota Higher Education Coordinating Board	$60 million
New Hampshire Higher Education and Health Facilities Authority	$39 million
New York Dormitory Authority	$120 million
Pennsylvania Higher Education Assistance Agency	$300 million
Georgia Private Colleges and University Authority	$31 million
Wisconsin State Building Commission	$60 million
South Dakota Health and Educational Facilities Authority	$6 million

''(B) PENNSYLVANIA HIGHER EDUCATION ASSISTANCE AGENCY.—Subparagraph (A) shall apply to obligations issued by the Pennsylvania Higher Education Assistance Agency only if such obligations are issued solely for the purpose of refunding student loan bonds outstanding on March 15, 1984.

''(3) CERTAIN TAX-EXEMPT MORTGAGE SUBSIDY BONDS.—For purposes of applying section 103(*o*) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the term 'consumer loan bond' shall not include any mortgage subsidy bond (within the meaning of section 103A(b) of such Code) to which the amendments made by section 1102 of the Mortgage Subsidy Bond Tax Act of 1980 [enacting section 103A of this title] do not apply.

''(4) REFUNDING EXCEPTION.—The amendments made by this section [amending this section] shall not apply to any obligation or series of obligations the proceeds of which are used exclusively to refund obligations issued before March 15, 1984, except that—

''(A) the amount of the refunding obligations may not exceed 101 percent of the aggregate face amount of the refunded obligations, and

''(B) the maturity date of any refunding obligation may not be later than the date which is 17 years after the date on which the refunded obligation was issued (or, in the case of a series of refundings, the date on which the original obligation was issued).

''(5) EXCEPTION FOR CERTAIN ESTABLISHED PROGRAMS.—The amendments made by this section [amending this section] shall not apply to any obligation substantially all of the proceeds of which are used to carry out a program established under State law which has been in ef-

fect in substantially the same form during the 30-year period ending on the date of enactment of this Act [July 18, 1984], but only if such proceeds are used to make loans or to fund similar obligations—

''(A) in the same manner in which,

''(B) in the same (or lesser) amount per participant, and

''(C) for the same purposes for which,

such program was operated on March 15, 1984. This subparagraph shall not apply to obligations issued on or after March 15, 1987.

''(6) CERTAIN BONDS FOR RENEWABLE ENERGY PROPERTY.—The amendments made by this section [amending this section] shall not apply to any obligations described in section 243 of the Crude Oil Windfall Profit Tax Act of 1980 [Pub. L. 96–223, set out as a note below].

''(7) EXCEPTION FOR CERTAIN DOWNTOWN REDEVELOPMENT PROJECT.—The amendments made by this section [amending this section] shall not apply to any obligation which is issued as part of an issue 95 percent or more of the proceeds of which are to be used to provide a project to acquire and redevelop a downtown area if—

''(A) on August 15, 1985, a downtown redevelopment authority adopted a resolution to issue obligations for such project,

''(B) before September 26, 1985, the city expended, or entered into binding contracts to expend, more than $10,000,000 in connection with such project, and

''(C) the State supreme court issued a ruling regarding the proposed financing structure for such project on December 11, 1985.

The aggregate face amount of obligations to which this paragraph applies shall not exceed $85,000,000 and such obligations must be issued before January 1, 1992.''

Section 631 of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, title XIII, §§ 1316(j), 1317(43), title XVIII, § 1872(a)–(c)(1), Oct. 22, 1986, 100 Stat. 2095, 2670, 2708, 2891, 2892; Pub. L. 100–647, title I, § 1013(f)(8), (g)(40), Nov. 10, 1988, 102 Stat. 3549, 3557, provided that:

''(a) PRIVATE ACTIVITY BOND CAP.—

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendment made by section 621 [amending this section] shall apply to obligations issued after December 31, 1983.

''(2) INDUCEMENT RESOLUTION BEFORE JUNE 19, 1984.—The amendment made by section 621 shall not apply to any issue of obligations if—

''(A) there was an inducement resolution (or other comparable preliminary approval) for the issue before June 19, 1984, and

''(B) the issue is issued before January 1, 1985.

''(3) CERTAIN PROJECTS PRELIMINARILY APPROVED BEFORE OCTOBER 19, 1983, GIVEN APPROVAL.—If—

''(A) there was an inducement resolution (or other comparable preliminary approval) for a project before October 19, 1983, by any issuing authority,

''(B) a substantial user of such project notifies the issuing authority within 30 days after the date of the enactment of this Act [July 18, 1984] that it intends to claim its rights under this paragraph, and

''(C) construction of such project began before October 19, 1983, or the substantial user was under a binding contract on such date to incur significant expenditures with respect to such project,

such issuing authority shall allocate its share of the limitation under section 103(n) of such Code for the calendar year during which the obligations were to be issued pursuant to such resolution (or other approval) first to such project. If the amount of obligations required by all projects which meet the requirements of the preceding sentence exceeds the issuing authority's share of the limitation under section 103(n) of such Code, priority under the preceding sentence shall be provided first to those projects for which substantial expenditures were incurred before October 19, 1983. If any issuing authority fails to meet the requirements of this paragraph, the limitation under section 103(n) of such Code for the issuing authority for the calendar year following such failure shall be reduced by the amount of obligations with respect to which such failure occurred.

''(3) [(4)] EXCEPTION FOR CERTAIN BONDS FOR A CONVENTION CENTER AND RESOURCE RECOVERY PROJECT.—In the case of any city, if—

''(A) the city council of such city authorized a feasibility study for a convention center on June 10, 1982, and

''(B) on November 4, 1983, a municipal authority acting for such city accepted a proposal for the construction of a facility that is capable of generating steam and electricity through the combustion of municipal waste,

the amendment made by section 621 shall not apply to any issue, issued during 1984, 1985, 1986, or 1987 and substantially all of the proceeds of which are to be used to finance the convention center (or access ramps and parking facilities therefor) described in subparagraph (A) or the facility described in subparagraph (B).

''(b) PROPERTY FINANCED WITH TAX-EXEMPT BONDS REQUIRED TO BE DEPRECIATED ON STRAIGHT-LINE BASIS.—

''(1) IN GENERAL.—Except as otherwise provided in this section, the amendments made by section 628(b) [amending section 168 of this title] shall apply to property placed in service after December 31, 1983, to the extent such property is financed by the proceeds of an obligation (including a refunding obligation) issued after October 18, 1983.

''(2) EXCEPTIONS.—

''(A) CONSTRUCTION OR BINDING AGREEMENT.—The amendments made by section 628(b) shall not apply with respect to facilities—

''(i) the original use of which commences with the taxpayer and the construction, reconstruction, or rehabilitation of which began before October 19, 1983, or

''(ii) with respect to which a binding contract to incur significant expenditures was entered into before October 19, 1983.

''(B) REFUNDING.—

''(i) IN GENERAL.—Except as provided in clause (ii), in the case of property placed in service after December 31, 1983, which is financed by the proceeds of an obligation which is issued solely to refund another obligation which was issued before October 19, 1983, the amendments made by section 628(b) shall apply only with respect to an amount equal to the basis in such property which has not been recovered before the date such refunded obligation is issued.

''(ii) SIGNIFICANT EXPENDITURES.—In the case of facilities the original use of which commences with the taxpayer and with respect to which significant expenditures are made before January 1, 1984, the amendments made by section 628(b) shall not apply with respect to such facilities to the extent such facilities are financed by the proceeds of an obligation issued solely to refund another obligation which was issued before October 19, 1983.

''(C) FACILITIES.—In the case of an inducement resolution or other comparable preliminary approval adopted by an issuing authority before October 19, 1983, for purposes of applying subparagraphs (A)(i) and (B)(ii) with respect to obligations described in such resolution, the term 'facilities' means the facilities described in such resolution.

''(c) OTHER PROVISIONS RELATING TO TAX-EXEMPT BONDS.—

''(1) IN GENERAL.—Except as otherwise provided in this subtitle, the amendments made by sections 622, 623, 627, and 628(c), (d), and (e) (and the provisions of sections 625(c), 628(f), and 629(b)) [amending this section and enacting provisions set out as notes under this section] shall apply to obligations issued after December 31, 1983.

''(2) OBLIGATIONS INVESTED IN FEDERALLY INSURED DEPOSITS.—Notwithstanding any other provision of

this section, clause (ii) of section 103(h)(2)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this subtitle) shall apply to obligations issued after April 14, 1983; except that such clause shall not apply to any obligation issued pursuant to a binding contract in effect on March 4, 1983.

''(3) EXCEPTIONS.—

''(A) CONSTRUCTION OR BINDING AGREEMENT.—The amendments (and provisions) referred to in paragraph (1) shall not apply to obligations with respect to facilities—

''(i) the original use of which commences with the taxpayer and the construction, reconstruction, or rehabilitation of which began before October 19, 1983, and was completed on or after such date,

''(ii) the original use of which commences with the taxpayer and with respect to which a binding contract to incur significant expenditures for construction, reconstruction, or rehabilitation was entered into before October 19, 1983, and some of such expenditures are incurred on or after such date, or

''(iii) acquired after October 19, 1983, pursuant to a binding contract entered into on or before such date.

''(B) FACILITIES.—Subparagraph (C) of subsection (b)(2) shall apply for purposes of subparagraph (A) of this paragraph.

''(C) EXCEPTION.—Subparagraph (A) shall not apply with respect to the amendment made by section 628(e) and the provisions of sections 628(f) and 629(b) [amending this section and enacting provisions set out as notes under this section].

''(4) REPEAL OF ADVANCE REFUNDING OF QUALIFIED PUBLIC FACILITIES.—The amendment made by section 628(g) [amending this section] shall apply to refunding obligations issued after the date of the enactment of this Act [July 18, 1984]; except that if substantially all the proceeds of the refunded issue were used to provide airports or docks, such amendment shall only apply to refunding obligations issued after December 31, 1984. In the case of refunding obligations not to exceed $100,000,000 issued after October 21, 1986, by Dade County, Florida, for the purpose of advance refunding its Aviation Revenue Bonds (Series J), the first sentence of this paragraph shall be applied by substituting 'the date which is 1 year after the date of the enactment of the Technical and Miscellaneous Revenue Act of 1988 [Nov. 10, 1988]' for 'December 31, 1984' and the amendments made by section 1301 of the Tax Reform Act of 1986 [section 1301 of Pub. L. 99–514, enacting sections 141 to 150 and 7703 of this title, amending this section and sections 2, 22, 25, 32, 86, 105, 152, 153, 163, 194, 269A, 414, 879, 1398, 3402, 4701, 4940, 4942, 4988, 6362, 6652, and 7871 of this title, repealing section 103A of this title, enacting provisions set out as notes under sections 141 and 148 of this title, and amending provisions set out as a note under section 103A of this title] shall not apply. In the case of refunding obligations not exceeding $100,000,000 issued by the Alabama State Docks Department, the first sentence of this paragraph shall be applied by substituting 'December 31, 1987' for 'December 31, 1984' and the Internal Revenue Code of 1986 shall be applied without regard to section 149(d)(2)..[sic]

''(5) SPECIAL RULE FOR HEALTH CLUB FACILITIES.—In the case of any health club facility, with respect to the amendment made by section 627(c) [amending this section]—

''(A) paragraph (1) shall be applied by substituting 'April 12, 1984' for 'December 31, 1983', and

''(B) paragraph (3) shall be applied by substituting 'April 13, 1984' for 'October 19, 1983' each place it appears.

''(d) PROVISIONS OF THIS SUBTITLE NOT TO APPLY TO CERTAIN PROPERTY.—The amendments made by this subtitle [sections 621–632 of Pub. L. 98–369, amending this section and sections 103A and 168 of this title and enacting provisions set out as notes under this section] shall not apply to any property (and shall not apply to obligations issued to finance such property) if such property is described in any of the following paragraphs:

''(1) Any property described in paragraph (5), (6), or (7) of section 31(g) of this Act [set out as an Effective Date of 1984 Amendment note under section 168 of this title].

''(2) Any property described in paragraph (4), (8), or (17) of section 31(g) of this Act [set out as an Effective Date of 1984 Amendment note under section 168 of this title] but only if the obligation is issued before January 1, 1985, and only if before June 19, 1984, the issuer had evidenced an intent to issue obligations exempt from taxation under the Internal Revenue Code of 1986 in connection with such property.

''(3) Any property described in paragraph (3) of section 216(b) of the Tax Equity and Fiscal Responsibility Act of 1982 [set out as an Effective Date of 1982 Amendment note under section 168 of this title].

''(4) Any solid waste disposal facility described in section 103(b)(4)(E) of the Internal Revenue Code of 1986 if—

''(A) a State public authority created pursuant to State legislation which took effect on June 18, 1973, took formal action before October 19, 1983, to commit development funds for such facility.

''(B) such authority issues obligations for any such facility before January 1, 1987, and

''(C) expenditures have been made for the development of any such facility before October 19, 1983.

''(5) Any solid waste disposal facility described in section 103(b)(4)(E) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] if—

''(A) a city government, by resolutions adopted on April 10, 1980, and December 27, 1982, took formal action to authorize the submission of a proposal for a feasibility study for such facility and to authorize the presentation to the Department of the Army (U.S. Army Missile Command) of a proposed agreement to jointly pursue construction and operation of such facility,

''(B) such city government (or a public authority on its behalf) issues obligations for such facility before January 1, 1988, and

''(C) expenditures have been made for the development of such facility before October 19, 1983. Notwithstanding the foregoing provisions of this subsection, the amendments made by section 624 [amending sections 103 and 103A of this title and enacting provisions set out as a note under this section] (relating to arbitrage) shall apply to obligations issued to finance property described in paragraph (5).

''(e) DETERMINATION OF SIGNIFICANT EXPENDITURE.—

''(1) IN GENERAL.—For purposes of this section, the term 'significant expenditures' means expenditures which equal or exceed the lesser of—

''(A) $15,000,000, or

''(B) 20 percent of the estimated cost of the facilities.

''(2) CERTAIN GRANTS TREATED AS EXPENDITURES.—For purposes of paragraph (1), the amount of any UDAG grant preliminarily approved on May 5, 1981, or April 4, 1983, shall be treated as an expenditure with respect to the facility for which such grant was so approved.

''(f) EXCEPTIONS FOR CERTAIN OTHER AMENDMENTS.—If—

''(1) there was an inducement resolution (or other comparable preliminary approval) for an issue before June 19, 1984, by any issuing authority, and

''(2) such issue is issued before January 1, 1985, the following amendments shall not apply:

''(A) the amendments made by section 623 [amending this section],

''(B) the amendments made by subsections (a) and (b) of section 627 [amending this section] (except to the extent such amendments relate to farm land),

''(C) in the case of a race track, the amendment made by section 627(c) [amending this section], and

''(D) the amendments made by section 628(c) [amending this section].''

[Section 1872(a)(2)(B) of Pub. L. 99–514 provided that the amendment of section 631(c)(3) of Pub. L. 98–369, set out above, made by section 1872(a)(2)(B) of Pub. L. 99–514 is effective with respect to obligations issued after Mar. 28, 1985.]

EFFECTIVE DATE OF 1983 AMENDMENT

For effective date of amendment by Pub. L. 97–473, see section 204(2) of Pub. L. 97–473, set out as an Effective Date note under section 7871 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 214(f) of Pub. L. 97–248 provided that:

''(1) COMPOSITE ISSUES; SMALL ISSUE EXEMPTION.—The amendments made by subsections (a) and (b) [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Sept. 3, 1982].

''(2) TERMINATION.—The amendment made by subsection (c) [amending this section] shall take effect on the date of the enactment of this Act [Sept. 3, 1982].

''(3) RESEARCH EXPENDITURES.—The amendment made by subsection (d) [amending this section] shall apply with respect to expenditures made after the date of the enactment of this Act [Sept. 3, 1982].

''(4) CERTAIN FACILITIES.—The amendment made by subsection (e) [amending this section] shall apply to obligations issued after December 31, 1982.''

Section 215(c) of Pub. L. 97–248 provided that:

''(1) PUBLIC APPROVAL.—The amendment made by subsection (a) [amending this section] shall apply to obligations issued after December 31, 1982, other than obligations issued solely to refund any obligation which—

''(A) was issued before July 1, 1982, and

''(B) has a maturity which does not exceed 3 years.

''(2) INFORMATION REPORTING.—The amendments made by subsection (b) [amending this section] shall apply to obligations issued after December 31, 1982 (including any obligation issued to refund an obligation issued before such date).''

Section 217(e) of Pub. L. 97–248, as amended by Pub. L. 98–369, div. A, title VII, § 712(h), July 18, 1984, 98 Stat. 947; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Sept. 3, 1982]. For purposes of applying section 168(f)(8)(D)(v) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the amendments made by subsection (c) [amending this section] shall apply to agreements entered into after the date of the enactment of this Act.''

Section 219(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to obligations issued after December 31, 1982.''

Section 221(d) of Pub. L. 97–248 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1104 of Pub. L. 96–499, formerly set out as a note under section 103A of this title] shall apply to obligations issued after the date of the enactment of this Act [Sept. 3, 1982].

''(2) EXCEPTION.—The amendments made by this section shall not apply with respect to any obligation to which the amendments made by section 1103 of the Mortgage Subsidy Bond Tax Act of 1980 [section 1103 of Pub. L. 96–499, amending this section] do not apply by reason of section 1104 of such Act [section 1104 of Pub. L. 96–499, formerly set out as a note under section 103A of this title].''

Section 310(d) of Pub. L. 97–248, as amended by Pub. L. 97–448, title III, § 306(b)(2), 96 Stat. 2405; Pub. L. 98–216, § 6(b), Feb. 14, 1984, 98 Stat. 8; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting section 4701 of this title and section 757c–5 of former Title 31, Money and Finance, and amending this section and sections 103A, 163, 165, 312, and 1232 of this title] shall apply to obligations issued after December 31, 1982.

''(2) [Repealed. Pub. L. 98–216, § 6(b), Feb. 14, 1984, 98 Stat. 8.]

''(3) EXCEPTION FOR CERTAIN WARRANTS, ETC.—The amendments made by subsection (b) [enacting section 4701 of this title and amending this section and sections 163, 165, 312, and 1232 of this title] shall not apply to any obligations issued after December 31, 1982, on the exercise of a warrant or the conversion of a convertible obligation if such warrant or obligation was offered or sold outside the United States without registration under the Securities Act of 1933 [15 U.S.C. 77a et seq.] and was issued before August 10, 1982. A rule similar to the rule of the preceding sentence shall also apply in the case of any regulations issued under section 163(f)(2)(C) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this section) except that the date on which such regulations take effect shall be substituted for 'August 10, 1982'.

''(4) [Repealed. Pub. L. 98–216, § 6(b), Feb. 14, 1984, 98 Stat. 8.]''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 811(c) of Pub. L. 97–34 provided that: ''The amendments made by this section [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Aug. 13, 1981].''

Section 812(b)(1) of Pub. L. 97–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to obligations issued after December 31, 1980.''

EFFECTIVE DATE OF 1980 AMENDMENTS

For effective date of amendment by Pub. L. 96–499, see section 1104 of Pub. L. 96–499, set out as an Effective Date note under section 103A of this title.

Section 241(d) of Pub. L. 96–223 provided that: ''The amendments made by subsection (a) [amending this section] and the provisions of subsections (b) and (c) [set out as notes under this section] shall apply with respect to obligations issued after October 18, 1979.''

Section 242(c) of Pub. L. 96–223 provided that: ''The amendments made by subsection (a) [amending this section] and the provisions of subsection (b) [set out as a note under this section] shall apply with respect to obligations issued after October 18, 1979.''

Section 244(b) of Pub. L. 96–223 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to obligations issued on or after October 18, 1979.''

EFFECTIVE DATE OF 1978 AMENDMENTS

Section 201(c) of Pub. L. 95–339 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Aug. 8, 1978].''

Section 331(c) of Pub. L. 95–600 provided that:

''(1) The amendments made by subsection (a) [amending this section] shall apply to—

''(A) obligations issued after December 31, 1978, in taxable years ending after such date, and

''(B) capital expenditures made after December 31, 1978, with respect to obligations issued before January 1, 1979.

''(2) The amendment made by subsection (b) [amending this section] shall apply to—

''(A) obligations issued after September 30, 1979, in taxable years ending after such date, and

''(B) capital expenditures made after September 30, 1979, with respect to obligations issued after such date.''

Section 332(b) of Pub. L. 95–600 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after April 30, 1968, but only with respect to obligations issued after such date.''

Section 333(b) of Pub. L. 95–600 provided that: ''The amendment made by subsection (a) [amending this sec-

tion] shall apply to obligations issued after the date of the enactment of this Act [Nov. 6, 1978] in taxable years ending after such date.''

Section 334(c) of Pub. L. 95–600 provided that: ''The amendments made by this section [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Nov. 6, 1978].''

Section 703(q)(2) of Pub. L. 95–600 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply with respect to payments made by the Commissioner of Education after December 31, 1976.''

Amendment by section 703(j)(1) of Pub. L. 95–600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(17), (b)(8)(B) of Pub. L. 94–455 applicable with respect to taxable years ending after Oct. 4, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 1906(b)(13)(A) of Pub. L. 94–455 effective Feb. 1, 1977, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

Section 2105(d) of Pub. L. 94–455 provided that: ''The amendments made by this section [amending this section] apply to obligations issued on or after the date of the enactment of this Act [Oct. 4, 1976].''

Amendment by section 2137(d) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, see section 2137(e) of Pub. L. 94–455, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 1975 AMENDMENTS

Section 301(b) of Pub. L. 94–182 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Dec. 31, 1975].''

Section 7(b) of Pub. L. 94–164 provided that: ''The amendments made by this section [amending this section] shall apply to obligations issued after the date of enactment of this Act [Dec. 23, 1975].''

EFFECTIVE DATE OF 1971 AMENDMENT

Section 315(c) of Pub. L. 92–178 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to obligations issued after January 1, 1969. The amendment made by subsection (b) [amending this section] shall apply with respect to expenditures incurred after the date of the enactment of this Act [Dec. 10, 1971].''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 601(b) of Pub. L. 91–172 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to obligations issued after October 9, 1969.''

EFFECTIVE DATE OF 1968 AMENDMENT

Section 401(b) of Pub. L. 90–634 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to obligations issued after the date of the enactment of this Act [Oct. 24, 1968].''

Section 107(b)(1) of Pub. L. 90–364 provided that: ''Except as provided by paragraph (2) [set out as a note below], the amendment made by subsection (a) [amending this section] shall apply to taxable years ending after April 30, 1968, but only with respect to obligations issued after such date.''

TRANSFER OF FUNCTIONS

Functions of Commissioner of Education transferred to Secretary of Education by section 3441(a)(1) of Title 20, Education.

COORDINATION OF CERTAIN AMENDMENTS MADE BY PUB. L. 97–424 AND PUB. L. 97–473

Section 722(b) of Pub. L. 98–369 provided that: ''For purposes of applying the amendments made by section 547 of the Highway Revenue Act of 1982 [Pub. L. 97–424, amending this section] and the amendment made by section 202(b)(2) of Public Law 97–473 [amending this section], Public Law 97–473 shall be deemed to have been enacted immediately before the Highway Revenue Act of 1982.''

VALIDATION OF SINKING FUND REGULATIONS

Section 1013(a)(35) of Pub. L. 100–647 provided that:

''(A) Treasury Regulation section 1.103–13(g) (1979) is hereby enacted into positive law.

''(B)(i) Except as provided in clause (ii), subparagraph (A) shall apply to obligations sold after May 2, 1978, and to which such regulation was provided to apply.

''(ii) Treasury Regulation section 1.103–13(g) (1979) as enacted into positive law by subparagraph (A) shall cease to apply to the extent hereafter modified by the Secretary of the Treasury or his delegate by regulations.''

BONDS ISSUED TO REFUND SUBSECTION (*o*)(3) OBLIGATIONS

Section 1013(c)(15) of Pub. L. 100–647 provided that: ''A bond issued to refund an obligation described in section 103(*o*)(3) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986 [Oct. 22, 1986]) shall not be treated as described in section 144(b) of the 1986 Code unless it is described in section 144(b)(1)(A) of the 1986 Code.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TREATMENT OF CERTAIN GUARANTEES BY FARMERS HOME ADMINISTRATION

Section 1865(b) of Pub. L. 99–514 provided that: ''An obligation shall not be treated as federally guaranteed for purposes of section 103(h) of the Internal Revenue Code of 1954 [now 1986] by reason of a guarantee by the Farmers Home Administration if—

''(1) such guarantee is pursuant to a commitment made by the Farmers Home Administration before July 1, 1984, and

''(2) such obligation is issued to finance a convention center project in Carbondale, Illinois.''

TREATMENT OF CERTAIN OBLIGATIONS USED TO FINANCE SOLID WASTE DISPOSAL FACILITY

Section 1865(c) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—Any obligation which is part of an issue a substantial portion of the proceeds of which is to be used to finance a solid waste disposal facility described in paragraph (2) shall not, for purposes of section 103(h) of the Internal Revenue Code of 1954 [now 1986], be treated as an obligation which is federally guaranteed by reason of the sale of fuel, steam, electricity, or other forms of usable energy to the Federal Government or any agency or instrumentality thereof.

''(2) SOLID WASTE DISPOSAL FACILITY.—A solid waste disposal facility is described in this paragraph if such facility is described in section 103(b)(4)(E) of such Code and—

''(A) if—

''(i) a public State authority created pursuant to State legislation which took effect on July 1, 1980, took formal action before October 19, 1983, to commit development funds for such facility,

''(ii) such authority issues obligations for such facility before January 1, 1988, and

''(iii) expenditures have been made for the development of such facility before October 19, 1983,

''(B) if—

''(i) such facility is operated by the South Eastern Public Service Authority of Virginia, and

''(ii) on December 20, 1984, the Internal Revenue Service issued a ruling concluding that a portion of the obligations with respect to such facility would not be treated as federally guaranteed under section 103(h) of such Code by reason of the transitional rule contained in section 631(c)(3)(A)(i) of the Tax Reform Act of 1984 [section 631(c)(3)(A)(i) of Pub. L. 98–369, set out as a note above],

''(C) if—

''(i) a political subdivision of a State took formal action on April 1, 1980, to commit development funds for such facility,

''(ii) such facility has a contract to sell steam to a naval base,

''(iii) such political subdivision issues obligations for such facility before January 1, 1988, and

''(iv) expenditures have been made for the development of such facility before October 19, 1983, or

''(D) if—

''(i) such facility is a thermal transfer facility,

''(ii) is to be built and operated by the Elk Regional Resource Authority, and

''(iii) is to be on land leased from the United States Air Force at Arnold Engineering Development Center near Tullahoma, Tennessee.

''(3) LIMITATIONS.—

''(A) In the case of a solid waste disposal facility described in paragraph (2)(A), the aggregate face amount of obligations to which paragraph (1) applies shall not exceed $65,000,000.

''(B) In the case of a solid waste disposal facility described in paragraph (2)(B), the aggregate face amount of obligations to which paragraph (1) applies shall not exceed $20,000,000. Such amount shall be in addition to the amount permitted under the Internal Revenue Service ruling referred to in paragraph (2)(B)(ii).

''(C) In the case of a solid waste disposal facility described in paragraph (2)(C), the aggregate face amount of obligations to which paragraph (1) applies shall not exceed $75,000,000.

''(D) In the case of a solid waste disposal facility described in paragraph (2)(D), the aggregate face amount of obligations to which paragraph (1) applies shall not exceed $25,000,000.''

TRANSITIONAL RULE FOR LIMIT ON SMALL ISSUE EXCEPTION

Section 1866 of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1018(m)(1)–(4), Nov. 10, 1988, 102 Stat. 3584, provided that: ''The amendment made by section 623 of the Tax Reform Act of 1984 [section 623 of Pub. L. 98–369, amending this section] shall not apply to any obligation (or series of obligations) issued to refund another tax-exempt IDB to which the amendment made by such section 623 did not apply if—

''(1) the average maturity of the issue of which the refunding obligation is a part does not exceed the average maturity of the obligations to be refunded by such issue,

''(2) the amount of the refunding obligation does not exceed the amount of the refunded obligation, and

''(3) the proceeds of the refunding obligation are used to redeem the refunded obligation not later than 90 days after the date of the issuance of the refunding obligation.

For purposes of the preceding sentence, the term 'tax-exempt IDB' means any industrial development bond (as defined in section 103(b) of the Internal Revenue Code of 1954 [now 1986]) the interest on which is exempt from tax under section 103(a) of such Code. For purposes of paragraph (1), average maturity shall be determined in accordance with subsection (b)(14)(B)(i) of such Code.''

[Section 1018(m)(5) of Pub. L. 100–647 provided that: ''A refunding obligation issued before July 1, 1987, shall be treated as meeting the requirement of paragraph (1) of section 1866 of the Reform Act [Pub. L. 99–514, set out above] if such obligation met the requirement of such paragraph as enacted by the Reform Act [Pub. L. 99–514].'']

EXCEPTION FROM 1984 AMENDMENT FOR DOWNTOWN MUSKOGEE REVITALIZATION PROJECT

Section 1867(b) of Pub. L. 99–514 provided that: ''The amendment made by section 624 of the Tax Reform Act of 1984 [amending sections 103 and 103A of this title and enacting provisions set out as a note under this section] shall not apply to obligations issued with respect to the Downtown Muskogee Revitalization Project for which a UDAG grant was preliminarily approved on May 5, 1981, if—

''(1) such obligation is issued before January 1, 1986, or

''(2) such obligation is issued after such date to provide additional financing for such project except that the aggregate amount of obligations to which this subsection applies shall not exceed $10,000,000.''

TRANSITIONAL RULES

Section 1869(c)(1)–(4) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1018(n), Nov. 10, 1988, 102 Stat. 3584, provided that:

''(1) TREATMENT OF CERTAIN OBLIGATIONS ISSUED BY THE CITY OF BALTIMORE.—Obligations issued by the city of Baltimore, Maryland, after June 30, 1985, shall not be treated as private loan bonds for purposes of section 103(*o*) of the Internal Revenue Code of 1954 [now 1986] (or as private activity bonds for purposes of section 103 and part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986, as amended by title XIII of this Act [sections 1301 to 1318 of Pub. L. 99–514]) by reason of the use of a portion of the proceeds of such obligations to finance or refinance temporary advances made by the city of Baltimore in connection with loans to persons who are not exempt persons (within the meaning of section 103(b)(3) of such Code) if—

''(A) such obligations are not industrial development bonds (within the meaning of section 103(b)(2) of the Internal Revenue Code of 1954 [now 1986]),

''(B) the portion of the proceeds of such obligations so used is attributable to debt approved by voter referendum on or before November 2, 1982,

''(C) the loans to such nonexempt persons were approved by the Board of Estimates of the city of Baltimore on or before October 19, 1983, and

''(D) the aggregate amount of such temporary advances financed or refinanced by such obligations does not exceed $27,000,000.

''(2) WHITE PINE POWER PROJECT.—The amendment made by section 626(a) of the Tax Reform Act of 1984 [section 626(a) of Pub. L. 98–369, amending this section] shall not apply to any obligation issued during 1984 to provide financing for the White Pine Power Project in Nevada.

''(3) TAX INCREMENT BONDS.—The amendment made by section 626(a) of the Tax Reform Act of 1984 shall not apply to any tax increment financing obligation issued before August 16, 1986, if—

''(A) substantially all of the proceeds of the issue are to be used to finance—

''(i) sewer, street, lighting, or other governmental improvements to real property,

''(ii) the acquisition of any interest in real property (by a governmental unit having the power to exercise eminent domain), the preparation of such property for new use, or the transfer of such interest to a private developer, or

''(iii) payments of reasonable relocation costs of prior users of such real property,

''(B) all of the activities described in subparagraph (A) are pursuant to a redevelopment plan adopted by the issuing authority before the issuance of such issue,

''(C) repayment of such issue is secured exclusively by pledges of that portion of any increase in real

property tax revenues (or their equivalent) attributable to the redevelopment resulting from the issue (or similar issues), and

''(D) none of the property described in subparagraph (A) is subject to a real property or other tax based on a rate or valuation method which differs from the rate and valuation method applicable to any other similar property located within the jurisdiction of the issuing authority.

''(4) EASTERN MAINE ELECTRIC COOPERATIVE.—The amendment made by section 626(a) of the Tax Reform Act of 1984 shall not apply to obligations issued by Massachusetts Municipal Wholesale Electric Company Project No. 6 if—

''(A) such obligation is issued before January 1, 1986,

''(B) such obligation is issued after such date to refund a prior obligation for such project, except that the aggregate amount of obligations to which this subparagraph applies shall not exceed $100,000,000, or

''(C) such obligation is issued after such date to provide additional financing for such project except that the aggregate amount of obligations to which this subparagraph applies shall not exceed $45,000,000.

Subparagraph (B) shall not apply to any obligation issued for the advance refunding of any obligation.''

TREATMENT OF OBLIGATIONS TO FINANCE ST. JOHNS RIVER POWER PARK

Section 1869(c)(6) of Pub. L. 99–514 provided that:

''(A) IN GENERAL.—The amendment made by section 626(a) of the Tax Reform Act of 1984 [section 626(a) of Pub. L. 98–369, amending this section] shall not apply to any obligation issued to finance the project described in subparagraph (B) if—

''(i) such obligation is issued before September 27, 1985,

''(ii) such obligation is issued after such date to refund a prior tax exemption obligation for such project, the amount of such obligation does not exceed the outstanding amount of the refunded obligation, and such prior tax exempt obligation is retired not later than the date 30 days after the issuance of the refunding obligation, or

''(iii) such obligation is issued after such date to provide additional financing for such project except that the aggregate amount of obligations to which this clause applies shall not exceed $150,000,000.

Clause (ii) shall not apply to any obligation issued for the advance refunding of any obligation.

''(B) DESCRIPTION OF PROJECT.—The project described in this subparagraph in the St. Johns River Power Park system in Florida which was authorized by legislation enacted by the Florida Legislature in February of 1982.''

CERTAIN PUBLIC UTILITIES TREATED AS EXEMPTED PERSONS UNDER SECTION 103(b); SPECIAL RULES FOR CERTAIN RAILROADS

Section 629 of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, title XIII, § 1316(g)(8)(B), Oct. 22, 1986, 100 Stat. 2095, 2670, provided that:

''(a) CERTAIN PUBLIC UTILITIES.—For purposes of applying section 103(b)(3) of the Internal Revenue Code [of 1986] with respect to—

''(1) any obligations issued after the date of enactment of this Act [July 18, 1984], and

''(2) any obligations issued after December 31, 1969, which were treated as obligations described in section 103(a) of such Code on the day on which such obligations were issued,

the term 'exempt person' shall include a regulated public utility having any customer service area within a State served by a public power authority which was required as a condition of a Federal Power Commission license specified by an Act of Congress enacted prior to the enactment of section 107 of the Revenue and Expenditure Control Act of 1968 (Public Law 90–364) [June 28, 1968] to contract to sell power to one such utility and which is authorized by State law to sell power to other such utilities, but only with respect to the purchase by any such utility and resale to its customers of any output of any electrical generation facility or any portion thereof or any use of any electrical transmission facility or any portion thereof financed by such power authority and owned by it or by such State, and provided that by agreement between such power authority and any such utility there shall be no markup in the resale price charged by such utility of that component of the resale price which represents the price paid by such utility for such output or use. The preceding sentence shall be applied by inserting 'and a rural electric cooperative utility' after 'regulated public utility' but only if not more than 1 percent of the load of the public power authority is sold to such rural electric cooperative utility.

''(b) CERTAIN RAILROADS.—Section 103(b)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall not apply to any obligation which is described in section 103(b)(6)(A) of such Code if—

''(1) substantially all of the proceeds of such obligation are used to acquire railroad track and right-of-way from a railroad involved in a title 11 or similar proceeding (within the meaning of section 368(a)(3)(A) of such Code), and

''(2) the Federal Railroad Administration provides joint financing for such acquisitions.

''(c) SPECIAL RULES FOR SUBSECTION (a).—

''(1) OBLIGATIONS SUBJECT TO CAP.—Any obligation described in subsection (a) shall be treated as a private activity bond for purposes of section 103(n) of the Internal Revenue Code of 1986.

''(2) LIMITATION ON AMOUNT OF OBLIGATIONS TO WHICH SUBSECTION (a)(1) APPLIES—The aggregate amount of obligations to which subsection (a)(1) applies shall not exceed $911,000,000.

''(3) LIMITATION ON PURPOSES.—Subsection (a)(1) shall only apply to obligations issued as part of an issue substantially all the proceeds of which are used to provide 1 or more of the following:

''(A) Cable facilities.

''(B) Small hydroelectric facilities.

''(C) The acquisition of an interest in an electrical generating facility.

''(D) Improvements to existing generating facilities.

''(E) Transmission lines.

''(F) Electric generating facilities.''

TREATMENT OF CERTAIN RESIDENTIAL REAL PROPERTY AS RESIDENTIAL RENTAL PROPERTY

Treatment of Pub. L. 98–369, § 631(d)(3), residential real property as residential rental property, see section 1809(a)(4)(C) of Pub. L. 99–514, set out as a note under section 168 of this title.

PUBLIC APPROVAL REQUIREMENT IN THE CASE OF PUBLIC AIRPORT

Section 628(f) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''If—

''(1) the proceeds of any issue are to be used to finance a facility or facilities located on a public airport, and

''(2) the governmental unit issuing such obligations is the owner or operator of such airport,

such governmental unit shall be deemed to be the only governmental unit having jurisdiction over such airport for purposes of subsection (k) of section 103 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to public approval for industrial development bonds).''

SMALL ISSUE LIMIT IN CASE OF CERTAIN URBAN DEVELOPMENT ACTION GRANTS

Section 628(h) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of any obligation issued on December 11,

1981, section 103(b)(6)(I) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be applied by substituting '$15,000,000' for '$10,000,000' if—

''(1) such obligation is part of an issue,

''(2) substantially all of the proceeds of such issue are used to provide facilities with respect to which an urban development action grant under section 119 of the Housing and Community Development Act of 1974 [42 U.S.C. 5318] was preliminarily approved by the Secretary of Housing and Urban Development on January 10, 1980, and

''(3) the Secretary of Housing and Urban Development determines, at the time such grant is approved, that the amount of such grant will equal or exceed 5 percent of the total capital expenditures incurred with respect to such facilities.''

STUDENT LOAN BONDS

Pub. L. 98–369, div. A, title VI, § 625, July 18, 1984, 98 Stat. 924, as amended by Pub. L. 99–514, § 2, title XVIII, § 1868, Oct. 22, 1986, 100 Stat. 2095, 2888, provided that:

''(a) ARBITRAGE REGULATIONS.—

''(1) IN GENERAL.—The Secretary shall prescribe regulations which specify the circumstances under which a qualified student loan bond shall be treated as an arbitrage bond for purposes of section 103 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]. Such regulations may provide that—

''(A) paragraphs (4) and (5) of section 103(c) of such Code shall not apply, and

''(B) rules similar to section 103(c)(6) shall apply, to qualified student loan bonds.

''(2) DEFINITIONS.—For purposes of this subsection—

''(A) QUALIFIED STUDENT LOAN BOND.—The term 'qualified student loan bond' has the meaning given to such term by section 103(*o*)(3) of the Internal Revenue Code of 1986 (as amended by this Act).

''(B) ARBITRAGE BOND.—The term 'arbitrage bond' has the meaning given to such term by section 103(c)(2).

''(3) EFFECTIVE DATE.—

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, any regulations prescribed by the Secretary under paragraph (1) shall apply to obligations issued after the qualified date.

''(B) QUALIFIED DATE.—

''(i) IN GENERAL.—For purposes of this paragraph, the term 'qualified date' means the earlier of—

''(I) the date on which the Higher Education Act of 1965 [20 U.S.C. 1001 et seq., 42 U.S.C. 2751 et seq.] expires, or

''(II) the date, after the date of enactment of this Act [July 18, 1984], on which the Higher Education Act of 1965 is reauthorized.

''(ii) PUBLICATION OF REGULATIONS.—Notwithstanding clause (i), the qualified date shall not be a date which is prior to the date that is 6 months after the date on which the regulations prescribed under paragraph (1) are published in the Federal Register.

''(C) REFUNDING OBLIGATIONS.—Regulations prescribed by the Secretary under paragraph (1) shall not apply to any obligation (or series of refunding obligations) issued exclusively to refund any qualified student loan bond which was issued before the qualified date, except that the requirements of subparagraphs (A) and (B) of section 626(b)(4) of this Act [set out in Effective Date of 1984 Amendment note above] must be met with respect to such refunding.

''(D) FULFILLMENT OF COMMITMENTS.—Regulations prescribed by the Secretary under paragraph (1) shall not apply to any obligations which are needed to fulfill written commitments to acquire or finance student loans which are originated after June 30, 1984, and before the qualified date, but only if—

''(i) such commitments are binding on the qualified date, and

''(ii) the amount of such commitments is consistent with practices of the issuer which were in effect on March 15, 1984, with respect to establishing secondary markets for student loans.

''(b) ARBITRAGE LIMITATION ON STUDENT LOAN BONDS WHICH ARE NOT QUALIFIED STUDENT LOAN BONDS.—Under regulations prescribed by the Secretary of the Treasury or his delegate, any student loan bond (other than a qualified student loan bond) issued after December 31, 1985, shall be treated as an obligation not described in subsection (a)(1) or (2) of section 103 of the Internal Revenue Code of 1986 unless the issue of which such obligation is a part meets requirements similar to those of sections 103(c)(6) and 103A(i) of such Code.

''(c) ISSUANCE OF STUDENT LOAN BONDS WHICH ARE NOT TAX-EXEMPT.—Any issuer who may issue obligations described in section 103(a) of the Internal Revenue Code of 1986 may elect to issue student loan bonds which are not described in such section 103(a) of such Code without prejudice to—

''(1) the status of any other obligations issued, or to be issued, by such issuer as obligations described in section 103(a) of such Code, or

''(2) the status of the issuer as an organization exempt from taxation under such Code.

''(d) FEDERAL EXECUTIVE BRANCH JURISDICTION OVER TAX-EXEMPT STATUS.—For purposes of Federal law, any determination by the executive branch of the Federal Government of whether interest on any obligation is exempt from taxation under the Internal Revenue Code of 1986 shall be exclusively within the jurisdiction of the Department of the Treasury.

''(e) STUDY ON TAX-EXEMPT STUDENT LOAN BONDS.—

''(1) IN GENERAL.—The Comptroller General of the United States and the Director of the Congressional Budget Office, shall conduct studies of—

''(A) the appropriate role of tax-exempt bonds which are issued in connection with the guaranteed student loan program and the PLUS program established under the Higher Education Act of 1965 [20 U.S.C. 1001 et seq., 42 U.S.C. 2751 et seq.], and

''(B) the appropriate arbitrage rules for such bonds.

''(2) REPORT.—The Comptroller General of the United States and the Director of the Congressional Budget Office, shall submit to the Committee on Finance and the Committee on Labor and Human Resources [now Committee on Health, Education, Labor, and Pensions] of the Senate and the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives reports on the studies conducted under paragraph (1) by no later than 9 months after the date of enactment of this Act [July 18, 1984].''

OBLIGATIONS ISSUED TO PROVIDE SOLID WASTE-ENERGY PRODUCING FACILITIES

Section 241(b) of Pub. L. 96–223, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) GENERAL RULE.—For purposes of section 103 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], any obligation issued by an authority for 2 or more political subdivisions of a State which is part of an issue substantially all of the proceeds of which are to be used to provide solid waste-energy producing facilities shall be treated as an obligation of a political subdivision of a State which meets the requirements of section 103(b)(4)(E) of such Code (relating to solid waste disposal, etc., facilities). Nothing in the preceding sentence shall be construed to override the limitations of section 103(c) of such Code (relating to arbitrage bonds).

''(2) SOLID WASTE-ENERGY PRODUCING FACILITIES.—For purposes of paragraph (1), the term 'solid waste-energy producing facilities' means any solid waste disposal facility and any facility for the production of steam and electrical energy if—

''(A) substantially all of the fuel for the facility producing steam and electrical energy is derived from solid waste from such solid waste disposal facility,

''(B) both such solid waste disposal facility and the facility producing steam and electrical energy are owned and operated by the authority referred to in paragraph (1), and

''(C) all of the electrical energy and steam produced by the facility for producing steam and electricity which is not used by such facility is sold, for purposes other than resale, to an agency or instrumentality of the United States.

''(3) SOLID WASTE DISPOSAL FACILITY.—For purposes of paragraph (2), the term 'solid waste disposal facility' means any solid waste disposal facility within the meaning of section 103(b)(4)(E) of the Internal Revenue Code of 1986 (determined without regard to section 103(g) of such Code).

''(4) OBLIGATIONS MUST BE IN REGISTERED FORM.—This subsection shall not apply to any obligation which is not issued in registered form.''

ALCOHOL-PRODUCING FACILITIES

Section 241(c) of Pub. L. 96–223, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Subparagraph (C) of section 103(g)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) shall not apply to any facility for the production of alcohol from solid waste if—

''(A) substantially all of the solid waste derived feedstock for such facility is produced at a facility which—

''(i) went into full production in 1977,

''(ii) is located within the limits of a city, and

''(iii) is located in the same metropolitan area as the alcohol-producing facility, and

''(B) before March 1, 1980, there were negotiations between a governmental body and an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 with respect to the utilization of a special process for the production of alcohol at such alcohol-producing facility.

''(2) LIMITATION.—The aggregate amount of obligations which may be issued by reason of paragraph (1) with respect to any project shall not exceed $30,000,000.

''(3) TERMINATION.—This subsection shall not apply to obligations issued after December 31, 1985.''

HYDROELECTRIC GENERATING FACILITIES

Section 242(b) of Pub. L. 96–223, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—For purposes of section 103(b)(4)(H) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to qualified hydroelectric generating facilities), in the case of a hydroelectric generating facility described in paragraph (2)—

''(A) the facility shall be treated as a qualified hydroelectric generating facility (as defined in section 103(b)(8)(A) of such Code) without regard to clause (ii) of section 48(*l*)(13)(B) of such Code (relating to maximum generating capacity), and

''(B) the fraction referred to in subparagraph (C) of section 103(b)(8) of such Code shall be deemed to be 1.

''(2) FACILITIES TO WHICH PARAGRAPH (1) APPLIES.—A facility is described in this paragraph if—

''(A) it would be a qualified hydroelectric generating facility (as defined in section 103(b)(8)(A) of such Code) if clause (ii) of section 48(*l*)(13)(B) did not apply,

''(B) it constitutes an expansion of generating capacity at an existing hydroelectric generating facility,

''(C) such facility is located at 1 of 2 dams located in the same county where—

''(i) the rated capacity of the hydroelectric generating facilities at each such dam on October 18, 1979, was more than 750 megawatts,

''(ii) the construction of the first such dam began in 1956, power at such first dam was first generated in 1959, and full power production at such first dam began in 1961, and

''(iii) the construction of the second such dam began in 1959, power at such second dam was first generated in 1963, and full power production at such second dam began in 1964,

''(D) acquisition or construction of the existing facility referred to in subparagraph (B) was financed with the proceeds of an obligation described in section 103(a)(1) of such Code,

''(E) the existing facility is owned and operated by a State, political subdivision of a State, or agency or instrumentality of any of the foregoing,

''(F) no more than 60 percent of the electric power and energy produced by such existing facility and of the qualified hydroelectric generating facility is to be sold to anyone other than an exempt person (within the meaning of section 103(b)(3) of such Code), and

''(G) the agency of the State in which the facility is located which has jurisdiction over water rights had granted, before October 18, 1979, a water right under which expanded power and energy generating capacity for the facility was contemplated.''

STATE OBLIGATIONS FOR RENEWABLE ENERGY PROPERTY

Section 243 of Pub. L. 96–223, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) CERTAIN STATE OBLIGATIONS FOR RENEWABLE ENERGY PROPERTY.—

''(1) IN GENERAL.—Paragraph (1) of subsection (b) of section 103 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall not apply to any obligation issued as part of an issue substantially all of the proceeds of which are to be used to provide renewable energy property, if—

''(A) the obligations are general obligations of a State,

''(B) the authority for the issuance of the obligations requires that taxes be levied in sufficient amount to provide for the payment of principal and interest on such obligations,

''(C) the amount of such obligations, when added to the sum of the amounts of all such obligations previously issued by the State which are outstanding, does not exceed the smaller of—

''(i) $500,000,000 or

''(ii) one-half of 1 percent of the value of all property in the State,

''(D) such obligations are issued pursuant to a program to provide financing for small scale energy projects which was established by a State the legislature of which, before October 18, 1979, approved a constitutional amendment to provide for such a program, and

''(E) such obligations meet the requirements of paragraph (1) of section 103(h) of the Internal Revenue Code of 1986.

''(2) RENEWABLE ENERGY PROPERTY.—For purposes of this subsection, the term 'renewable energy property' means property used to produce energy (including heat, electricity, and substitute fuels) from renewable energy sources (including wind, solar, and geothermal energy, waste heat, biomass, and water).

''(b) EFFECTIVE DATE.—Subsection (a) shall apply with respect to obligations issued after the date of enactment of this Act [Apr. 2, 1980].''

DISPOSITION OF AMOUNTS GENERATED BY ADVANCE REFUNDING OF CERTAIN GOVERNMENTAL OBLIGATIONS

Section 337 of Pub. L. 95–600, as amended by Pub. L. 96–222, title I, §103(a)(8), Apr. 1, 1980, 94 Stat. 212; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) GENERAL RULE.—The payment to a charitable organization of a refund profit held in a trust fund or escrow arrangement, or held by an underwriter or other person under a qualified agreement in accordance with that agreement—

''(1) shall not cause the refunding obligations out of which the refund profit arose to be treated as arbitrage bonds (within the meaning of section 103(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) and

''(2) may be paid without penalty imposed on the issuer of such obligations.

''(b) RULE FOR GOVERNMENTS WHICH HAVE ALREADY PAID ARBITRAGE PROFITS TO THE UNITED STATES.—In the case of a State or local government which, before January 1, 1977—

''(1) requested in writing a rule by the Internal Revenue Service with respect to the tax consequences of paying refund profit to charitable organizations,

''(2) failed to receive a favorable ruling and did not pay the refund profit to a charitable organization, and

which accounted to the United States for refund profit by direct payment to the United States, or by the purchase of low-interest United States obligations, the Secretary of the Treasury shall pay, out of any amounts in the Treasury not otherwise appropriated, an amount equal to the refund profit for which the State or local government has accounted to the United States. Amounts paid to a State or local government under this subsection shall be distributed to such charitable organizations within 90 days after the date on which the payment is received by the State or local government in the same manner as if the refund profit had not been paid to the United States and met the requirements of subsection (a).

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

''(1) REFUND PROFIT.—The term 'Refund profit' means interest, profit, or other amounts generated by, or arising out of, the advance refunding, before September 24, 1976, of an obligation of a State or local government described in section 103 of such Code.

''(2) CHARITABLE ORGANIZATION.—The term 'charitable organization' means an organization described in section 501(c)(3) of such Code and exempt from taxation under section 501(a) of such Code other than an organization described in section 509(a) of such Code.

''(3) QUALIFIED AGREEMENT.—The term 'qualified agreement' means an agreement (whether or not enforceable) which provides for, or contemplates, the payment of refund profit to one or more charitable organizations.

''(4) LOW-INTEREST UNITED STATES OBLIGATIONS.—The term 'low-interest United States obligations' means United States obligations which bear an interest rate lower than the highest rate of interest borne by public debt securities generally available for purchase at the time such obligations were purchased.''

TRANSITIONAL PROVISIONS FOR INDUSTRIAL DEVELOPMENT BONDS ISSUED BEFORE JANUARY 1, 1969

Section 107(b)(2) of Pub. L. 90–364, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Section 103(c)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended by subsection (a) [subsec. (b)(1), formerly subsec. (c)(1) of this section], shall not apply with respect to any obligation issued before January 1, 1969, if before May 1, 1968—

''(A) the issuance of the obligation (or the project in connection with which the proceeds of the obligations are to be used) was authorized or approved by the governing body of the governmental unit issuing the obligation or by the voters of such governmental unit;

''(B) in connection with the issuance of such obligation or with the use of the proceeds to be derived from the sale of such obligation or the property to be acquired or improved with such proceeds, a governmental unit has made a significant financial commitment;

''(C) any person (other than a governmental unit) who will use the proceeds to be derived from the sale of such obligation or the property to be acquired or improved with such proceeds has expended (or has entered into a binding contract to expend) for purposes which are related to the use of such proceeds or property, an amount equal to or in excess of 20 percent of such proceeds; or

''(D) in the case of an obligation issued in conjunction with a project where financial assistance will be provided by a governmental agency concerned with economic development, such agency has approved the project or an application for financial assistance is pending.''

[§ 103A. Repealed. Pub. L. 99–514, title XIII, § 1301(j)(1), Oct. 22, 1986, 100 Stat. 2657]

Section, added Pub. L. 96–499, title XI, § 1102(a), Dec. 5, 1980, 94 Stat. 2660; amended Pub. L. 96–595, § 5(a), (b), Dec. 24, 1980, 94 Stat. 3467; Pub. L. 97–248, title II, § 220(a)–(e), title III, § 310(c)(3), (4), Sept. 3, 1982, 96 Stat. 475, 476, 599; Pub. L. 98–369, div. A, title I, § 42(a)(2), title VI, §§ 611(a)–(c), 612(b), 624(b)(1), July 18, 1984, 98 Stat. 556, 901–903, 911, 924; Pub. L. 99–514, title XVIII, § 1861, Oct. 22, 1986, 100 Stat. 2883, related to mortgage subsidy bonds. See section 143 of this title.

EFFECTIVE DATE OF REPEAL

Repeal applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

§ 104. Compensation for injuries or sickness

(a) In general

Except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc., expenses) for any prior taxable year, gross income does not include—

(1) amounts received under workmen's compensation acts as compensation for personal injuries or sickness;

(2) the amount of any damages (other than punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal physical injuries or physical sickness;

(3) amounts received through accident or health insurance (or through an arrangement having the effect of accident or health insurance) for personal injuries or sickness (other than amounts received by an employee, to the extent such amounts (A) are attributable to contributions by the employer which were not includible in the gross income of the employee, or (B) are paid by the employer);

(4) amounts received as a pension, annuity, or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country or in the Coast and Geodetic Survey or the Public Health Service, or as a disability annuity payable under the provisions of section 808 of the Foreign Service Act of 1980; and

(5) amounts received by an individual as disability income attributable to injuries incurred as a direct result of a terroristic or military action (as defined in section 692(c)(2)).

For purposes of paragraph (3), in the case of an individual who is, or has been, an employee within the meaning of section 401(c)(1) (relating to self-employed individuals), contributions made on behalf of such individual while he was such an employee to a trust described in section 401(a) which is exempt from tax under section 501(a), or under a plan described in section 403(a), shall, to the extent allowed as deductions under section 404, be treated as contributions by the employer which were not includible in the

gross income of the employee. For purposes of paragraph (2), emotional distress shall not be treated as a physical injury or physical sickness. The preceding sentence shall not apply to an amount of damages not in excess of the amount paid for medical care (described in subparagraph (A) or (B) of section 213(d)(1)) attributable to emotional distress.

(b) Termination of application of subsection (a)(4) in certain cases

(1) In general

Subsection (a)(4) shall not apply in the case of any individual who is not described in paragraph (2).

(2) Individuals to whom subsection (a)(4) continues to apply

An individual is described in this paragraph if—

(A) on or before September 24, 1975, he was entitled to receive any amount described in subsection (a)(4),

(B) on September 24, 1975, he was a member of any organization (or reserve component thereof) referred to in subsection (a)(4) or under a binding written commitment to become such a member,

(C) he receives an amount described in subsection (a)(4) by reason of a combat-related injury, or

(D) on application therefor, he would be entitled to receive disability compensation from the Veterans' Administration.

(3) Special rules for combat-related injuries

For purposes of this subsection, the term ''combat-related injury'' means personal injury or sickness—

(A) which is incurred—

(i) as a direct result of armed conflict,

(ii) while engaged in extrahazardous service, or

(iii) under conditions simulating war; or

(B) which is caused by an instrumentality of war.

In the case of an individual who is not described in subparagraph (A) or (B) of paragraph (2), except as provided in paragraph (4), the only amounts taken into account under subsection (a)(4) shall be the amounts which he receives by reason of a combat-related injury.

(4) Amount excluded to be not less than veterans' disability compensation

In the case of any individual described in paragraph (2), the amounts excludable under subsection (a)(4) for any period with respect to any individual shall not be less than the maximum amount which such individual, on application therefor, would be entitled to receive as disability compensation from the Veterans' Administration.

(c) Application of prior law in certain cases

The phrase ''(other than punitive damages)'' shall not apply to punitive damages awarded in a civil action—

(1) which is a wrongful death action, and

(2) with respect to which applicable State law (as in effect on September 13, 1995 and without regard to any modification after such date) provides, or has been construed to provide by a court of competent jurisdiction pursuant to a decision issued on or before September 13, 1995, that only punitive damages may be awarded in such an action.

This subsection shall cease to apply to any civil action filed on or after the first date on which the applicable State law ceases to provide (or is no longer construed to provide) the treatment described in paragraph (2).

(d) Cross references

(1) For exclusion from employee's gross income of employer contributions to accident and health plans, see section 106.

(2) For exclusion of part of disability retirement pay from the application of subsection (a)(4) of this section, see section 1403 of title 10, United States Code (relating to career compensation laws).

(Aug. 16, 1954, ch. 736, 68A Stat. 30; Pub. L. 86–723, §51, Sept. 8, 1960, 74 Stat. 847; Pub. L. 87–792, §7(d), Oct. 10, 1962, 76 Stat. 829; Pub. L. 94–455, title V, §505(b), (e)(1), title XIX, §1901(a)(18), Oct. 4, 1976, 90 Stat. 1567, 1568, 1766; Pub. L. 96–465, title II, §2206(e)(1), Oct. 17, 1980, 94 Stat. 2162; Pub. L. 97–473, title I, §101(a), Jan. 14, 1983, 96 Stat. 2605; Pub. L. 101–239, title VII, §7641(a), Dec. 19, 1989, 103 Stat. 2379; Pub. L. 104–188, title I, §1605(a)–(c), Aug. 20, 1996, 110 Stat. 1838; Pub. L. 104–191, title III, §311(b), Aug. 21, 1996, 110 Stat. 2053; Pub. L. 107–134, title I, §113(a), Jan. 23, 2002, 115 Stat. 2435.)

REFERENCES IN TEXT

Section 808 of the Foreign Service Act of 1980, referred to in subsec. (a)(4), is Pub. L. 96–465, title I, §808, Oct. 17, 1980, 94 Stat. 2110, which is classified to section 4048 of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

2002—Subsec. (a)(5). Pub. L. 107–134 substituted ''a terroristic or military action (as defined in section 692(c)(2)).'' for ''a violent attack which the Secretary of State determines to be a terrorist attack and which occurred while such individual was an employee of the United States engaged in the performance of his official duties outside the United States.''

1996—Subsec. (a). Pub. L. 104–188, §1605(b), in closing provisions, substituted ''For purposes of paragraph (2), emotional distress shall not be treated as a physical injury or physical sickness. The preceding sentence shall not apply to an amount of damages not in excess of the amount paid for medical care (described in subparagraph (A) or (B) of section 213(d)(1)) attributable to emotional distress.'' for ''Paragraph (2) shall not apply to any punitive damages in connection with a case not involving physical injury or physical sickness.''

Subsec. (a)(2). Pub. L. 104–188, §1605(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''the amount of any damages received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal injuries or sickness;''.

Subsec. (a)(3). Pub. L. 104–191 inserted ''(or through an arrangement having the effect of accident or health insurance)'' after ''accident or health insurance''.

Subsecs. (c), (d). Pub. L. 104–188, §1605(c), added subsec. (c) and redesignated former subsec. (c) as (d).

1989—Subsec. (a). Pub. L. 101–239 inserted at end ''Paragraph (2) shall not apply to any punitive damages in connection with a case not involving physical injury or physical sickness.''

1983—Subsec. (a)(2). Pub. L. 97–473 substituted ''whether by suit or agreement and whether as lump

sums or as periodic payments'' for ''whether by suit or agreement''.

1980—Subsec. (a)(4). Pub. L. 96–465 substituted reference to section 808 of the Foreign Service Act of 1980 for reference to section 831 of the Foreign Service Act of 1946.

1976—Subsec. (a)(4). Pub. L. 94–455, § 1901(a)(18)(A), struck out ''; 60 Stat. 1021'' after ''(22 U.S.C. 1081''.

Subsec. (a)(5). Pub. L. 94–455, § 505(e)(1), added par. (5).

Subsecs. (b), (c). Pub. L. 94–455, § 505(b), added subsec. (b), redesignated former subsec. (b) as (c) and, as so redesignated, § 1901(a)(18)(B), substituted ''1403 of title 10, United States Code (relating to career compensation laws)'' for ''402(h) of the Career Compensation Act of 1949 (37 U.S.C. 272(h))''.

1962—Subsec. (a). Pub. L. 87–792 inserted sentence requiring contributions made on behalf of an individual who is, or has been, an employee within the meaning of section 401(c)(1), while he was such an employee to a trust which is exempt from tax, or under a plan described in section 403(a), to be treated as contributions by the employer which were not includible in the gross income of the employee.

1960—Subsec. (a)(4). Pub. L. 86–723 provided for exclusion from gross income of amounts received as a disability annuity payable under the provisions of section 831 of the Foreign Service Act of 1946, as amended.

CHANGE OF NAME

Reference to Veterans' Administration deemed to refer to Department of Veterans Affairs pursuant to section 10 of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

Coast and Geodetic Survey consolidated with National Weather Bureau in 1965 to form Environmental Science Services Administration by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 FR 8819, 79 Stat. 1318. Environmental Science Services Administration abolished in 1970 and its personnel, property, records, etc., transferred to National Oceanic and Atmospheric Administration by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 FR 15627, 84 Stat. 2090. By order of Acting Associate Administrator of National Oceanic and Atmospheric Administration, 35 FR 19249, Dec. 19, 1970, Coast and Geodetic Survey redesignated National Ocean Survey. See notes under section 311 of Title 15, Commerce and Trade.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–134, title I, § 113(c), Jan. 23, 2002, 115 Stat. 2435, provided that: ''The amendments made by this section [amending this section and section 692 of this title] shall apply to taxable years ending on or after September 11, 2001.''

EFFECTIVE DATE OF 1996 AMENDMENTS

Section 311(c) of Pub. L. 104–191 provided that: ''The amendments made by this section [amending this section and section 162 of this title] shall apply to taxable years beginning after December 31, 1996.''

Section 1605(d) of Pub. L. 104–188 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to amounts received after the date of the enactment of this Act [Aug. 20, 1996], in taxable years ending after such date.

''(2) EXCEPTION.—The amendments made by this section shall not apply to any amount received under a written binding agreement, court decree, or mediation award in effect on (or issued on or before) September 13, 1995.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7641(b) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to amounts received after July 10, 1989, in taxable years ending after such date.

''(2) EXCEPTION.—The amendment made by subsection (a) shall not apply to any amount received—

''(A) under any written binding agreement, court decree, or mediation award in effect on (or issued on or before) July 10, 1989, or

''(B) pursuant to any suit filed on or before July 10, 1989.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96–465, set out as an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 505(b) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, see section 508 of Pub. L. 94–455, set out as a note under section 3 of this title.

Section 505(e)(2) of Pub. L. 94–455 provided that: ''The amendments made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 1976.''

Amendment by section 1901(a)(18)(A) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 56(e) of Pub. L. 86–723 provided that: ''The amendment made by section 51 of this Act [amending this section] shall be effective with respect to taxable years ending after the date of enactment of this Act [Sept. 8, 1960].''

TRANSFER OF FUNCTIONS

Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 3508 of Title 20, Education.

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by 1966 Reorg. Plan No. 3, 31 F.R. 8855, 80 Stat. 1610, effective June 25, 1966, set out in the Appendix to Title 5, Government Organization and Employees.

§ 105. Amounts received under accident and health plans

(a) Amounts attributable to employer contributions

Except as otherwise provided in this section, amounts received by an employee through accident or health insurance for personal injuries or sickness shall be included in gross income to the extent such amounts (1) are attributable to contributions by the employer which were not includible in the gross income of the employee, or (2) are paid by the employer.

(b) Amounts expended for medical care

Except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc., expenses) for any prior taxable year, gross income does not include amounts referred to in subsection (a) if such amounts are paid, directly or indirectly, to the taxpayer to reimburse the taxpayer for expenses incurred by him for the medi-

cal care (as defined in section 213(d)) of the taxpayer, his spouse, his dependents (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof), and any child (as defined in section 152(f)(1)) of the taxpayer who as of the end of the taxable year has not attained age 27. Any child to whom section 152(e) applies shall be treated as a dependent of both parents for purposes of this subsection.

(c) Payments unrelated to absence from work

Gross income does not include amounts referred to in subsection (a) to the extent such amounts—

(1) constitute payment for the permanent loss or loss of use of a member or function of the body, or the permanent disfigurement, of the taxpayer, his spouse, or a dependent (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof), and

(2) are computed with reference to the nature of the injury without regard to the period the employee is absent from work.

[(d) Repealed. Pub. L. 98–21, title I, § 122(b), Apr. 20, 1983, 97 Stat. 87]

(e) Accident and health plans

For purposes of this section and section 104—

(1) amounts received under an accident or health plan for employees, and

(2) amounts received from a sickness and disability fund for employees maintained under the law of a State or the District of Columbia,

shall be treated as amounts received through accident or health insurance.

(f) Rules for application of section 213

For purposes of section 213(a) (relating to medical, dental, etc., expenses) amounts excluded from gross income under subsection (c) or (d) shall not be considered as compensation (by insurance or otherwise) for expenses paid for medical care.

(g) Self-employed individual not considered an employee

For purposes of this section, the term ''employee'' does not include an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals).

(h) Amount paid to highly compensated individuals under a discriminatory self-insured medical expense reimbursement plan

(1) In general

In the case of amounts paid to a highly compensated individual under a self-insured medical reimbursement plan which does not satisfy the requirements of paragraph (2) for a plan year, subsection (b) shall not apply to such amounts to the extent they constitute an excess reimbursement of such highly compensated individual.

(2) Prohibition of discrimination

A self-insured medical reimbursement plan satisfies the requirements of this paragraph only if—

(A) the plan does not discriminate in favor of highly compensated individuals as to eligibility to participate; and

(B) the benefits provided under the plan do not discriminate in favor of participants who are highly compensated individuals.

(3) Nondiscriminatory eligibility classifications

(A) In general

A self-insured medical reimbursement plan does not satisfy the requirements of subparagraph (A) of paragraph (2) unless such plan benefits—

(i) 70 percent or more of all employees, or 80 percent or more of all the employees who are eligible to benefit under the plan if 70 percent or more of all employees are eligible to benefit under the plan; or

(ii) such employees as qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of highly compensated individuals.

(B) Exclusion of certain employees

For purposes of subparagraph (A), there may be excluded from consideration—

(i) employees who have not completed 3 years of service;

(ii) employees who have not attained age 25;

(iii) part-time or seasonal employees;

(iv) employees not included in the plan who are included in a unit of employees covered by an agreement between employee representatives and one or more employers which the Secretary finds to be a collective bargaining agreement, if accident and health benefits were the subject of good faith bargaining between such employee representatives and such employer or employers; and

(v) employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)).

(4) Nondiscriminatory benefits

A self-insured medical reimbursement plan does not meet the requirements of subparagraph (B) of paragraph (2) unless all benefits provided for participants who are highly compensated individuals are provided for all other participants.

(5) Highly compensated individual defined

For purposes of this subsection, the term ''highly compensated individual'' means an individual who is—

(A) one of the 5 highest paid officers,

(B) a shareholder who owns (with the application of section 318) more than 10 percent in value of the stock of the employer, or

(C) among the highest paid 25 percent of all employees (other than employees described in paragraph (3)(B) who are not participants).

(6) Self-insured medical reimbursement plan

The term ''self-insured medical reimbursement plan'' means a plan of an employer to re-

imburse employees for expenses referred to in subsection (b) for which reimbursement is not provided under a policy of accident and health insurance.

(7) Excess reimbursement of highly compensated individual

For purposes of this section, the excess reimbursement of a highly compensated individual which is attributable to a self-insured medical reimbursement plan is—

(A) in the case of a benefit available to highly compensated individuals but not to all other participants (or which otherwise fails to satisfy the requirements of paragraph (2)(B)), the amount reimbursed under the plan to the employee with respect to such benefit, and

(B) in the case of benefits (other than benefits described in subparagraph (A)[1] paid to a highly compensated individual by a plan which fails to satisfy the requirements of paragraph (2), the total amount reimbursed to the highly compensated individual for the plan year multiplied by a fraction—

(i) the numerator of which is the total amount reimbursed to all participants who are highly compensated individuals under the plan for the plan year, and

(ii) the denominator of which is the total amount reimbursed to all employees under the plan for such plan year.

In determining the fraction under subparagraph (B), there shall not be taken into account any reimbursement which is attributable to a benefit described in subparagraph (A).

(8) Certain controlled groups, etc.

All employees who are treated as employed by a single employer under subsection (b), (c), or (m) of section 414 shall be treated as employed by a single employer for purposes of this section.

(9) Regulations

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

(10) Time of inclusion

Any amount paid for a plan year that is included in income by reason of this subsection shall be treated as received or accrued in the taxable year of the participant in which the plan year ends.

(i) Sick pay under Railroad Unemployment Insurance Act

Notwithstanding any other provision of law, gross income includes benefits paid under section 2(a) of the Railroad Unemployment Insurance Act for days of sickness; except to the extent such sickness (as determined in accordance with standards prescribed by the Railroad Retirement Board) is the result of on-the-job injury.

(j) Special rule for certain governmental plans

(1) In general

For purposes of subsection (b), amounts paid (directly or indirectly) to the taxpayer from an accident or health plan described in paragraph (2) shall not fail to be excluded from gross income solely because such plan, on or before January 1, 2008, provides for reimbursements of health care expenses of a deceased plan participant's beneficiary.

(2) Plan described

An accident or health plan is described in this paragraph if such plan is funded by a medical trust that is established in connection with a public retirement system and that—

(A) has been authorized by a State legislature, or

(B) has received a favorable ruling from the Internal Revenue Service that the trust's income is not includible in gross income under section 115.

(Aug. 16, 1954, ch. 736, 68A Stat. 30; Pub. L. 87–792, § 7(e), Oct. 10, 1962, 76 Stat. 829; Pub. L. 88–272, title II, § 205(a), Feb. 26, 1964, 78 Stat. 38; Pub. L. 94–455, title V, § 505(a), title XIX, § 1901(c)(2), Oct. 4, 1976, 90 Stat. 1566, 1803; Pub. L. 95–600, title III, § 366(a), title VII, § 701(c)(1), Nov. 6, 1978, 92 Stat. 2855, 2899; Pub. L. 96–222, title I, § 103(a)(13)(B), (C), Apr. 1, 1980, 94 Stat. 213; Pub. L. 96–605, title II, § 201(b)(1), Dec. 28, 1980, 94 Stat. 3527; Pub. L. 96–613, § 5(b)(1), Dec. 28, 1980, 94 Stat. 3581; Pub. L. 97–34, title I, §§ 103(c)(2), 111(b)(4), Aug. 13, 1981, 95 Stat. 188, 194; Pub. L. 97–248, title II, § 202(b)(3)(C), Sept. 3, 1982, 96 Stat. 421; Pub. L. 98–21, title I, § 122(b), Apr. 20, 1983, 97 Stat. 87; Pub. L. 98–76, title II, § 241(a), Aug. 12, 1983, 97 Stat. 430; Pub. L. 98–369, div. A, title IV, § 423(b)(2), July 18, 1984, 98 Stat. 800; Pub. L. 99–514, title XI, § 1151(c)(2), title XIII, § 1301(j)(9), Oct. 22, 1986, 100 Stat. 2503, 2658; Pub. L. 101–140, title II, § 203(a)(1), Nov. 8, 1989, 103 Stat. 830; Pub. L. 108–311, title II, § 207(9), Oct. 4, 2004, 118 Stat. 1177; Pub. L. 110–458, title I, § 124(a), Dec. 23, 2008, 122 Stat. 5114; Pub. L. 111–152, title I, § 1004(d)(1), Mar. 30, 2010, 124 Stat. 1035.)

REFERENCES IN TEXT

Section 2(a) of the Railroad Unemployment Insurance Act, referred to in subsec. (i), is classified to section 352(a) of Title 45, Railroads.

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–152 substituted ''his dependents'' for ''and his dependents'' and inserted '', and any child (as defined in section 152(f)(1)) of the taxpayer who as of the end of the taxable year has not attained age 27'' after ''thereof)''.

2008—Subsec. (j). Pub. L. 110–458 added subsec. (j).

2004—Subsecs. (b), (c)(1). Pub. L. 108–311 inserted '', determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof'' after ''section 152''.

1989—Subsecs. (h), (i). Pub. L. 101–140 amended subsecs. (h) and (i) to read as if amendments by Pub. L. 99–514, § 1151(c)(2), had not been enacted, see 1986 Amendment note below.

1986—Subsec. (d)(5)(C). Pub. L. 99–514, § 1301(j)(9), which directed that subpar. (C) be amended by substituting ''section 7703(a)'' for ''section 143(a)'', could not be executed because subsec. (d) was previously repealed by Pub. L. 98–21. See 1983 Amendment note below.

Subsecs. (h), (i). Pub. L. 99–514, § 1151(c)(2), redesignated subsec. (i) as (h) and struck out former subsec. (h) which related to amount paid to highly compensated individuals under a discriminatory self-insured medical expense reimbursement plan.

1984—Subsec. (b). Pub. L. 98–369 inserted ''Any child to whom section 152(e) applies shall be treated as a de-

[1] So in original. Probably should be followed by a closing parenthesis.

pendent of both parents for purposes of this subsection.''

1983—Subsec. (d). Pub. L. 98–21 struck out subsec. (d) which provided that no deduction or credit would be allowed with respect to any expenditure which is properly associated with any amount excluded from gross income under subsec. (a).

Subsec. (i). Pub. L. 98–76 added subsec. (i).

1982—Subsec. (b). Pub. L. 97–248 substituted ''section 213(d)'' for ''section 213(e)''.

1981—Subsec. (d)(3). Pub. L. 97–34, §103(c)(2), substituted ''this subsection and section 221'' for ''this subsection'' in parenthetical provision.

Subsec. (h)(3)(B)(v). Pub. L. 97–34, §111(b)(4), substituted ''section 911(d)(2)'' for ''section 911(b)''.

1980—Subsec. (h)(3)(A). Pub. L. 96–222, §103(a)(13)(B), substituted ''highly compensated individuals'' for ''highly compensated participants''.

Subsec. (h)(7)(A). Pub. L. 96–222, §103(a)(13)(C), substituted ''highly compensated individuals but not to all other participants (or which otherwise fails to satisfy the requirements of paragraph (2)(B))'' for ''a highly compensated individual but not to a broad cross-section of employees''.

Subsec. (h)(8). Pub. L. 96–613 and Pub. L. 96–605 made identical amendments by substituting in heading ''controlled groups, etc.'' for ''controlled groups'', and by substituting in text ''subsection (b), (c), or (m) of section 414'' for ''subsection (b) or (c) of section 414''.

1978—Subsec. (d)(4). Pub. L. 95–600, §701 (c)(1), redesignated par. (5) as (4). Former par. (4) redesignated (5)(A) and (C).

Subsec. (d)(5). Pub. L. 95–600, §701(c)(1), added heading and subpar. (B), redesignated former par. (4) as subpars. (A) and (C), adding subpar. (C) heading and substituting ''section 143(a)'' for ''section 143''; and redesignated former par. (6) as subpar. (D), inserting ''defined'' in heading.

Subsec. (d)(6), (7). Pub. L. 95–600, §701(c)(1), redesignated par. (7) as (6). Former par. (6) redesignated (5)(D).

Subsec. (h). Pub. L. 95–600, §366(a), added subsec. (h).

1976—Subsec. (d). Pub. L. 94–455, §505(a), substituted provisions relating to an exclusion of up to $5,200 a year for taxpayers retiring on disability prior to age 65; dollar-for-dollar phase out of exclusion for adjusted annual gross income (including disability income) in excess of $15,000; requirement that married couple must file joint return; defined ''permanent and total disability'' and ''joint return''; and inserted special rule for coordination with section 72 of this title for provisions relating to wage continuation plans.

Subsec. (e)(2). Pub. L. 94–455, §1901(c)(2), struck out ''a territory'' after ''of a State''.

1964—Subsec. (d). Pub. L. 88–272 substituted provisions stating that ''The preceding sentence shall not apply to amounts attributable to the first 30'' days if the amounts exceed 75 percent of regular weekly wages, and if they do not exceed said 75 percent, the first sentence of this subsection shall not apply to the extent the amounts exceed $75 weekly and shall not apply to amounts attributable to the first 7 calendar days unless the employee is hospitalized for injury or sickness for at least 1 day in such period, for provisions stating that said ''preceding sentence'' did not apply in cases of sickness, to amounts attributable to the first 7 days unless the employee was hospitalized for sickness for at least 1 day during such period.

1962—Subsec. (g). Pub. L. 87–792 added subsec. (g).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–458, title I, §124(b), Dec. 23, 2008, 122 Stat. 5115, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to payments before, on, or after the date of the enactment of this Act [Dec. 23, 2008].''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1151(c)(2) of Pub. L. 99–514 applicable, with certain qualifications and exceptions, to years beginning after Dec. 31, 1988, see section 1151(k) of Pub. L. 99–514, as amended, set out as a note under section 79 of this title.

Amendment by section 1301(j)(9) of Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1984, see section 423(d) of Pub. L. 98–369, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Section 241(b) of Pub. L. 98–76 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to amounts received after December 31, 1983, in taxable years ending after such date.''

Amendment by Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual's annuity starting date was deferred under subsec. (d)(6) as in effect the day before Apr. 20, 1983, such deferral shall end on the first day of such individual's first taxable year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98–21 set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1983, see section 202(c) of Pub. L. 97–248, set out as a note under section 213 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see sections 103(d) and 115 of Pub. L. 97–34, set out as notes under sections 62 and 911, respectively, of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendments by Pub. L. 96–605 and 96–613 applicable to years ending after Nov. 30, 1980, except in the case of a plan in existence on Nov. 30, 1980, where amendments applicable to plan years beginning after Nov. 30, 1980, see section 201(c) of Pub. L. 96–605 and section 5(c) of Pub. L. 96–613, set out as a note under section 414 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 366(b) of Pub. L. 95–600, as amended by Pub. L. 96–222, title I, §103(a)(13)(D), Apr. 1, 1980, 94 Stat. 213, provided that: ''The amendment made by this section [amending this section] shall apply to amounts reimbursed after December 31, 1979. For purposes of applying such amendment, there shall not be taken into account any amount reimbursed before January 1, 1980.''

Section 701(c)(3) of Pub. L. 95–600, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(A) The amendments made by paragraphs (1) and (2)(A) [amending this section and provisions set out as

a note under this section] shall take effect as if included in section 105(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as such section was amended by section 505(a) of the Tax Reform Act of 1976.

''(B) The amendments made by paragraph (2)(B) [amending provisions set out as notes under this section] shall take effect as if included in section 301 of the Tax Reduction and Simplification Act of 1977 [Pub. L. 95–30, title III, § 301, May 23, 1977, 91 Stat. 152].''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 505(f) of Pub. L. 94–455, as added by Pub. L. 95–30, title III, § 301(a), May 23, 1977, 91 Stat. 151, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1976.''

Amendment by section 1901(c)(2) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 205(b) of Pub. L. 88–272 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to amounts attributable to periods of absence commencing after December 31, 1963.''

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

REVOCATION OF ELECTION

Pub. L. 95–30, title III, § 301(c), May 23, 1977, 91 Stat. 151, as amended by Pub. L. 95–600, title VII, § 701(c)(2)(B), Nov. 6, 1978, 92 Stat. 2900; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Any election made under section 105(d)(6) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] or under section 505(d) of the Tax Reform Act of 1976 [set out below] for a taxable year beginning in 1976 may be revoked (in such manner as may be prescribed by regulations) at any time before the expiration of the period for assessing a deficiency with respect to such taxable year (determined without regard to subsection (d) of this section) [set out below].''

PERIOD FOR ASSESSING DEFICIENCY

Pub. L. 95–30, title III, § 301(d), May 23, 1977, 91 Stat. 152, provided that: ''In the case of any revocation made under subsection (c) [set out above], the period for assessing a deficiency with respect to any taxable year affected by the revocation shall not expire before the date which is 1 year after the date of the making of the revocation, and, notwithstanding any law or rule of law, such deficiency, to the extent attributable to such revocation, may be assessed at any time during such 1-year period.''

EFFECTIVE DATE OF CHANGES IN EXCLUSION FOR SICK PAY

Pub. L. 95–30, title III, § 301(e), May 23, 1977, 91 Stat. 152, as amended by Pub. L. 95–600, title VII, § 701(c)(2)(B), Nov. 6, 1978, 92 Stat. 2900; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [enacting and amending provisions set out as notes under this section] shall take effect on October 4, 1976, but shall not apply—

''(1) with respect to any taxpayer who makes or has made an election under section 105(d)(6) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] or under section 505(d) of the Tax Reform Act of 1976 [set out below] (as such sections were in effect before the enactment of this Act [May 23, 1977]) for a taxable year beginning in 1976, if such election is not revoked under subsection (c) of this section [set out above], and

''(2) with respect to any taxpayer (other than a taxpayer described in paragraph (1)) who has an annuity starting date at the beginning of a taxable year beginning in 1976 by reason of the amendments made by section 505 of the Tax Reform Act of 1976 [amending this section and section 104 of this title and enacting provisions set out as notes under this section] (as in effect before the enactment of this Act [May 23, 1977]), unless such person elects (in such manner as the Secretary of the Treasury or his delegate may by regulations prescribe) to have such amendments apply.''

SPECIAL RULE FOR EXISTING PERMANENT AND TOTAL DISABILITY CASES

Section 505(c) of Pub. L. 94–455, as amended by Pub. L. 95–30, title III, § 301(b)(1), (2), May 23, 1977, 91 Stat. 151; Pub. L. 95–600, title VII, § 701(c)(2)(A), Nov. 6, 1978, 92 Stat. 2900; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of any individual who—

''(1) retired before January 1, 1977,

''(2) either retired on disability or was entitled to retire on disability, and

''(3) on January 1, 1976, or January 1, 1977, was permanently and totally disabled (within the meaning of section 105(d)(4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]),

such individual shall be deemed to have met the requirements of section 105(d)(1)(B) of such Code (as amended by subsection (a) of this section).''

SPECIAL RULE FOR COORDINATION WITH SECTION 72 OF THIS TITLE

Section 505(d) of Pub. L. 94–455, as amended by Pub. L. 95–30, title III, § 301(b)(3)–(5), May 23, 1977, 91 Stat. 151; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of an individual who—

''(1) retired on disability before January 1, 1977, and

''(2) on December 31, 1975, or December 31, 1976, was entitled to exclude any amount with respect to such retirement disability from gross income under section 105(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954],

for purposes of section 72 the annuity starting date shall not be deemed to occur before the beginning of the taxable year in which the taxpayer attains age 65, or before the beginning of an earlier taxable year for which the taxpayer makes an irrevocable election not to seek the benefits of such section 105(d) for such year and all subsequent years.''

§ 106. Contributions by employer to accident and health plans

(a) General rule

Except as otherwise provided in this section, gross income of an employee does not include employer-provided coverage under an accident or health plan.

(b) Contributions to Archer MSAs

(1) In general

In the case of an employee who is an eligible individual, amounts contributed by such employee's employer to any Archer MSA of such employee shall be treated as employer-provided coverage for medical expenses under an accident or health plan to the extent such amounts do not exceed the limitation under

section 220(b)(1) (determined without regard to this subsection) which is applicable to such employee for such taxable year.

(2) No constructive receipt

No amount shall be included in the gross income of any employee solely because the employee may choose between the contributions referred to in paragraph (1) and employer contributions to another health plan of the employer.

(3) Special rule for deduction of employer contributions

Any employer contribution to an Archer MSA, if otherwise allowable as a deduction under this chapter, shall be allowed only for the taxable year in which paid.

(4) Employer MSA contributions required to be shown on return

Every individual required to file a return under section 6012 for the taxable year shall include on such return the aggregate amount contributed by employers to the Archer MSAs of such individual or such individual's spouse for such taxable year.

(5) MSA contributions not part of COBRA coverage

Paragraph (1) shall not apply for purposes of section 4980B.

(6) Definitions

For purposes of this subsection, the terms ''eligible individual'' and ''Archer MSA'' have the respective meanings given to such terms by section 220.

(7) Cross reference

For penalty on failure by employer to make comparable contributions to the Archer MSAs of comparable employees, see section 4980E.

(c) Inclusion of long-term care benefits provided through flexible spending arrangements

(1) In general

Effective on and after January 1, 1997, gross income of an employee shall include employer-provided coverage for qualified long-term care services (as defined in section 7702B(c)) to the extent that such coverage is provided through a flexible spending or similar arrangement.

(2) Flexible spending arrangement

For purposes of this subsection, a flexible spending arrangement is a benefit program which provides employees with coverage under which—

(A) specified incurred expenses may be reimbursed (subject to reimbursement maximums and other reasonable conditions), and

(B) the maximum amount of reimbursement which is reasonably available to a participant for such coverage is less than 500 percent of the value of such coverage.

In the case of an insured plan, the maximum amount reasonably available shall be determined on the basis of the underlying coverage.

(d) Contributions to health savings accounts

(1) In general

In the case of an employee who is an eligible individual (as defined in section 223(c)(1)), amounts contributed by such employee's employer to any health savings account (as defined in section 223(d)) of such employee shall be treated as employer-provided coverage for medical expenses under an accident or health plan to the extent such amounts do not exceed the limitation under section 223(b) (determined without regard to this subsection) which is applicable to such employee for such taxable year.

(2) Special rules

Rules similar to the rules of paragraphs (2), (3), (4), and (5) of subsection (b) shall apply for purposes of this subsection.

(3) Cross reference

For penalty on failure by employer to make comparable contributions to the health savings accounts of comparable employees, see section 4980G.

(e) FSA and HRA terminations to fund HSAs

(1) In general

A plan shall not fail to be treated as a health flexible spending arrangement or health reimbursement arrangement under this section or section 105 merely because such plan provides for a qualified HSA distribution.

(2) Qualified HSA distribution

The term ''qualified HSA distribution'' means a distribution from a health flexible spending arrangement or health reimbursement arrangement to the extent that such distribution—

(A) does not exceed the lesser of the balance in such arrangement on September 21, 2006, or as of the date of such distribution, and

(B) is contributed by the employer directly to the health savings account of the employee before January 1, 2012.

Such term shall not include more than 1 distribution with respect to any arrangement.

(3) Additional tax for failure to maintain high deductible health plan coverage

(A) In general

If, at any time during the testing period, the employee is not an eligible individual, then the amount of the qualified HSA distribution—

(i) shall be includible in the gross income of the employee for the taxable year in which occurs the first month in the testing period for which such employee is not an eligible individual, and

(ii) the tax imposed by this chapter for such taxable year on the employee shall be increased by 10 percent of the amount which is so includible.

(B) Exception for disability or death

Clauses (i) and (ii) of subparagraph (A) shall not apply if the employee ceases to be an eligible individual by reason of the death of the employee or the employee becoming disabled (within the meaning of section 72(m)(7)).

(4) Definitions and special rules

For purposes of this subsection—

(A) Testing period

The term ''testing period'' means the period beginning with the month in which the qualified HSA distribution is contributed to the health savings account and ending on the last day of the 12th month following such month.

(B) Eligible individual

The term ''eligible individual'' has the meaning given such term by section 223(c)(1).

(C) Treatment as rollover contribution

A qualified HSA distribution shall be treated as a rollover contribution described in section 223(f)(5).

(5) Tax treatment relating to distributions

For purposes of this title—

(A) In general

A qualified HSA distribution shall be treated as a payment described in subsection (d).

(B) Comparability excise tax

(i) In general

Except as provided in clause (ii), section 4980G shall not apply to qualified HSA distributions.

(ii) Failure to offer to all employees

In the case of a qualified HSA distribution to any employee, the failure to offer such distribution to any eligible individual covered under a high deductible health plan of the employer shall (notwithstanding section 4980G(d)) be treated for purposes of section 4980G as a failure to meet the requirements of section 4980G(b).

(f) Reimbursements for medicine restricted to prescribed drugs and insulin

For purposes of this section and section 105, reimbursement for expenses incurred for a medicine or a drug shall be treated as a reimbursement for medical expenses only if such medicine or drug is a prescribed drug (determined without regard to whether such drug is available without a prescription) or is insulin.

(Aug. 16, 1954, ch. 736, 68A Stat. 32; Pub. L. 99–272, title X, § 10001(b), Apr. 7, 1986, 100 Stat. 223; Pub. L. 99–514, title XI, §§ 1114(b)(1), 1151(j)(2), Oct. 22, 1986, 100 Stat. 2450, 2508; Pub. L. 100–647, title I, § 1018(t)(7)(A), title III, § 3011(b)(1), Nov. 10, 1988, 102 Stat. 3589, 3624; Pub. L. 101–239, title VII, § 7862(c)(1)(A), Dec. 19, 1989, 103 Stat. 2432; Pub. L. 104–191, title III, §§ 301(c)(1), 321(c)(2), Aug. 21, 1996, 110 Stat. 2048, 2058; Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(2), (b)(2)(A), (6), (10)], Dec. 21, 2000, 114 Stat. 2763, 2763A–628, 2763A–629; Pub. L. 108–173, title XII, § 1201(d)(1), Dec. 8, 2003, 117 Stat. 2476; Pub. L. 109–432, div. A, title III, § 302(a), Dec. 20, 2006, 120 Stat. 2948; Pub. L. 111–148, title IX, § 9003(c), Mar. 23, 2010, 124 Stat. 854.)

REFERENCES IN TEXT

COBRA, referred to in the heading for subsec. (b)(5), probably means the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, Apr. 7, 1986, 100 Stat. 82, as amended. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2010—Subsec. (f). Pub. L. 111–148 added subsec. (f).

2006—Subsec. (e). Pub. L. 109–432 added subsec. (e).

2003—Subsec. (d). Pub. L. 108–173 added subsec. (d).

2000—Subsec. (b). Pub. L. 106–554 § 1(a)(7) [title II, § 202(b)(6)], substituted ''Archer MSAs'' for ''medical savings accounts'' in heading.

Subsec. (b)(1). Pub. L. 106–554 § 1(a)(7) [title II, § 202(a)(2)], substituted ''Archer MSA'' for ''medical savings account''.

Subsec. (b)(3). Pub. L. 106–554 § 1(a)(7) [title II, § 202(b)(10)], substituted ''an Archer MSA'' for ''a Archer MSA''.

Pub. L. 106–554 § 1(a)(7) [title II, § 202(a)(2)], substituted ''Archer MSA'' for ''medical savings account''.

Subsec. (b)(4). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(2)(A)], substituted ''Archer MSAs'' for ''medical savings accounts''.

Subsec. (b)(6). Pub. L. 106–554 § 1(a)(7) [title II, § 202(a)(2)], substituted ''Archer MSA'' for ''medical savings account''.

Subsec. (b)(7). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(2)(A)], substituted ''Archer MSAs'' for ''medical savings accounts''.

1996—Pub. L. 104–191, § 301(c)(1), amended text generally. Prior to amendment, text read as follows: ''Gross income of an employee does not include employer-provided coverage under an accident or health plan.''

Subsec. (c). Pub. L. 104–191, § 321(c)(2), added subsec. (c).

1989—Subsec. (b)(2). Pub. L. 101–239 amended subsec. (b)(2) as it existed prior to general amendment by Pub. L. 100–647 by striking out the last sentence which read as follows: ''Under regulations, rules similar to the rules of subsections (a) and (b) of section 52 (relating to employers under common control) shall apply for purposes of subparagraph (A).'' See Effective Date of 1989 Amendment note below.

1988—Pub. L. 100–647, § 3011(b)(1), amended section generally, substituting a single undesignated par. for former subsec. (a) providing that gross income does not include employer-provided coverage under an accident or health plan and subsec. (b) providing for an exception for highly compensated individuals where a plan fails to provide certain continuation coverage.

Subsec. (b)(1). Pub. L. 100–647, § 1018(t)(7)(A), substituted ''any employer-provided coverage'' for ''any amount contributed by an employer'' and ''under a group'' for ''to a group''.

1986—Pub. L. 99–272 designated existing provisions as subsec. (a) and added subsec. (a) heading and subsec. (b).

Subsec. (a). Pub. L. 99–514, § 1151(j)(2), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Gross income does not include contributions by the employer to accident or health plans for compensation (through insurance or otherwise) to his employees for personal injuries or sickness.''

Subsec. (b)(1). Pub. L. 99–514, § 1114(b)(1), substituted ''highly compensated employee (within the meaning of section 414(q))'' for ''highly compensated individual (within the meaning of section 105(h)(5))''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title IX, § 9003(d)(2), Mar. 23, 2010, 124 Stat. 854, provided that: ''The amendment made by subsection (c) [amending this section] shall apply to expenses incurred with respect to taxable years beginning after December 31, 2010.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title III, § 302(c)(1), Dec. 20, 2006, 120 Stat. 2949, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to distributions on or after the date of the enactment of this Act [Dec. 20, 2006].''

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–173 applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of

Pub. L. 108–173, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 301(c)(1) of Pub. L. 104–191 applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104–191, set out as a note under section 62 of this title.

Amendment by section 321(c)(2) of Pub. L. 104–191 applicable to contracts issued after Dec. 31, 1996, see section 321(f) of Pub. L. 104–191, set out as an Effective Date note under section 7702B of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7862(c)(1)(C) of Pub. L. 101–239 provided that: ''The amendments made by this paragraph [amending this section and section 1161 of Title 29, Labor] shall apply to years beginning after December 31, 1986.''

Section 7863 of Pub. L. 101–239 provided that: ''Except as otherwise provided in this subpart any amendment made by this subpart [subpart A (§§ 7861–7863) of part V of title VII of Pub. L. 101–239, amending this section and sections 162, 411, 417, and 4980B of this title and sections 1052 to 1055, 1161, 1162, 1167, 1398, and 1461 of Title 29, Labor, enacting provisions set out as notes under this section and sections 162, 417, 1167, 4980, and 4980B of this title, and amending provisions set out as notes under sections 401 and 411 of this title and sections 1001 and 1054 of Title 29], shall take effect as if included in the provision of the Reform Act [Pub. L. 99–514] to which such amendment relates.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1018(t)(7)(A) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 3011(b)(1) of Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1988, but not applicable to any plan for any plan year to which section 162(k) of this title (as in effect on the day before Nov. 10, 1988) did not apply by reason of section 10001(e)(2) of Pub. L. 99–272, see section 3011(d) of Pub. L. 100–647, set out as a note under section 162 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1114(b)(1) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1114(c)(1) of Pub. L. 99–514, set out as a note under section 414 of this title.

Amendment by section 1151(j)(2) of Pub. L. 99–514 applicable, with certain qualifications and exceptions, to years beginning after Dec. 31, 1988, see section 1151(k) of Pub. L. 99–514, as amended, set out as a note under section 79 of this title.

Section 10001(e) of Pub. L. 99–272 provided that:

''(1) GENERAL RULE.—The amendments made by this section [amending this section and section 162 of this title] shall apply to plan years beginning on or after July 1, 1986.

''(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a group health plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of the enactment of this Act [Apr. 7, 1986], the amendments made by this section shall not apply to plan years beginning before the later of—

''(A) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

''(B) January 1, 1987.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.''

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 107. Rental value of parsonages

In the case of a minister of the gospel, gross income does not include—

(1) the rental value of a home furnished to him as part of his compensation; or

(2) the rental allowance paid to him as part of his compensation, to the extent used by him to rent or provide a home and to the extent such allowance does not exceed the fair rental value of the home, including furnishings and appurtenances such as a garage, plus the cost of utilities.

(Aug. 16, 1954, ch. 736, 68A Stat. 32; Pub. L. 107–181, § 2(a), May 20, 2002, 116 Stat. 583.)

AMENDMENTS

2002—Par. (2). Pub. L. 107–181 inserted ''and to the extent such allowance does not exceed the fair rental value of the home, including furnishings and appurtenances such as a garage, plus the cost of utilities'' before period at end.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–181, § 2(b), May 20, 2002, 116 Stat. 583, provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2001.

''(2) RETURNS POSITIONS.—The amendment made by this section also shall apply to any taxable year beginning before January 1, 2002, for which the taxpayer—

''(A) on a return filed before April 17, 2002, limited the exclusion under section 107 of the Internal Revenue Code of 1986 as provided in such amendment, or

''(B) filed a return after April 16, 2002.

''(3) OTHER YEARS BEFORE 2002.—Except as provided in paragraph (2), notwithstanding any prior regulation, revenue ruling, or other guidance issued by the Internal Revenue Service, no person shall be subject to the limitations added to section 107 of such Code by this Act for any taxable year beginning before January 1, 2002.''

§ 108. Income from discharge of indebtedness

(a) Exclusion from gross income

(1) In general

Gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge (in whole or in part) of indebtedness of the taxpayer if—

(A) the discharge occurs in a title 11 case,

(B) the discharge occurs when the taxpayer is insolvent,

(C) the indebtedness discharged is qualified farm indebtedness,

(D) in the case of a taxpayer other than a C corporation, the indebtedness discharged is qualified real property business indebtedness, or

(E) the indebtedness discharged is qualified principal residence indebtedness which is discharged before January 1, 2013.

(2) Coordination of exclusions

(A) Title 11 exclusion takes precedence

Subparagraphs (B), (C), (D), and (E) of paragraph (1) shall not apply to a discharge which occurs in a title 11 case.

(B) Insolvency exclusion takes precedence over qualified farm exclusion and qualified real property business exclusion

Subparagraphs (C) and (D) of paragraph (1) shall not apply to a discharge to the extent the taxpayer is insolvent.

(C) Principal residence exclusion takes precedence over insolvency exclusion unless elected otherwise

Paragraph (1)(B) shall not apply to a discharge to which paragraph (1)(E) applies unless the taxpayer elects to apply paragraph (1)(B) in lieu of paragraph (1)(E).

(3) Insolvency exclusion limited to amount of insolvency

In the case of a discharge to which paragraph (1)(B) applies, the amount excluded under paragraph (1)(B) shall not exceed the amount by which the taxpayer is insolvent.

(b) Reduction of tax attributes

(1) In general

The amount excluded from gross income under subparagraph (A), (B), or (C) of subsection (a)(1) shall be applied to reduce the tax attributes of the taxpayer as provided in paragraph (2).

(2) Tax attributes affected; order of reduction

Except as provided in paragraph (5), the reduction referred to in paragraph (1) shall be made in the following tax attributes in the following order:

(A) NOL

Any net operating loss for the taxable year of the discharge, and any net operating loss carryover to such taxable year.

(B) General business credit

Any carryover to or from the taxable year of a discharge of an amount for purposes for determining the amount allowable as a credit under section 38 (relating to general business credit).

(C) Minimum tax credit

The amount of the minimum tax credit available under section 53(b) as of the beginning of the taxable year immediately following the taxable year of the discharge.

(D) Capital loss carryovers

Any net capital loss for the taxable year of the discharge, and any capital loss carryover to such taxable year under section 1212.

(E) Basis reduction

(i) In general

The basis of the property of the taxpayer.

(ii) Cross reference

For provisions for making the reduction described in clause (i), see section 1017.

(F) Passive activity loss and credit carryovers

Any passive activity loss or credit carryover of the taxpayer under section 469(b) from the taxable year of the discharge.

(G) Foreign tax credit carryovers

Any carryover to or from the taxable year of the discharge for purposes of determining the amount of the credit allowable under section 27.

(3) Amount of reduction

(A) In general

Except as provided in subparagraph (B), the reductions described in paragraph (2) shall be one dollar for each dollar excluded by subsection (a).

(B) Credit carryover reduction

The reductions described in subparagraphs (B), (C), and (G) shall be 33⅓ cents for each dollar excluded by subsection (a). The reduction described in subparagraph (F) in any passive activity credit carryover shall be 33⅓ cents for each dollar excluded by subsection (a).

(4) Ordering rules

(A) Reductions made after determination of tax for year

The reductions described in paragraph (2) shall be made after the determination of the tax imposed by this chapter for the taxable year of the discharge.

(B) Reductions under subparagraph (A) or (D) of paragraph (2)

The reductions described in subparagraph (A) or (D) of paragraph (2) (as the case may be) shall be made first in the loss for the taxable year of the discharge and then in the carryovers to such taxable year in the order of the taxable years from which each such carryover arose.

(C) Reductions under subparagraphs (B) and (G) of paragraph (2)

The reductions described in subparagraphs (B) and (G) of paragraph (2) shall be made in the order in which carryovers are taken into

account under this chapter for the taxable year of the discharge.

(5) Election to apply reduction first against depreciable property

(A) In general

The taxpayer may elect to apply any portion of the reduction referred to in paragraph (1) to the reduction under section 1017 of the basis of the depreciable property of the taxpayer.

(B) Limitation

The amount to which an election under subparagraph (A) applies shall not exceed the aggregate adjusted bases of the depreciable property held by the taxpayer as of the beginning of the taxable year following the taxable year in which the discharge occurs.

(C) Other tax attributes not reduced

Paragraph (2) shall not apply to any amount to which an election under this paragraph applies.

(c) Treatment of discharge of qualified real property business indebtedness

(1) Basis reduction

(A) In general

The amount excluded from gross income under subparagraph (D) of subsection (a)(1) shall be applied to reduce the basis of the depreciable real property of the taxpayer.

(B) Cross reference

For provisions making the reduction described in subparagraph (A), see section 1017.

(2) Limitations

(A) Indebtedness in excess of value

The amount excluded under subparagraph (D) of subsection (a)(1) with respect to any qualified real property business indebtedness shall not exceed the excess (if any) of—

(i) the outstanding principal amount of such indebtedness (immediately before the discharge), over

(ii) the fair market value of the real property described in paragraph (3)(A) (as of such time), reduced by the outstanding principal amount of any other qualified real property business indebtedness secured by such property (as of such time).

(B) Overall limitation

The amount excluded under subparagraph (D) of subsection (a)(1) shall not exceed the aggregate adjusted bases of depreciable real property (determined after any reductions under subsections (b) and (g)) held by the taxpayer immediately before the discharge (other than depreciable real property acquired in contemplation of such discharge).

(3) Qualified real property business indebtedness

The term ''qualified real property business indebtedness'' means indebtedness which—

(A) was incurred or assumed by the taxpayer in connection with real property used in a trade or business and is secured by such real property,

(B) was incurred or assumed before January 1, 1993, or if incurred or assumed on or after such date, is qualified acquisition indebtedness, and

(C) with respect to which such taxpayer makes an election to have this paragraph apply.

Such term shall not include qualified farm indebtedness. Indebtedness under subparagraph (B) shall include indebtedness resulting from the refinancing of indebtedness under subparagraph (B) (or this sentence), but only to the extent it does not exceed the amount of the indebtedness being refinanced.

(4) Qualified acquisition indebtedness

For purposes of paragraph (3)(B), the term ''qualified acquisition indebtedness'' means, with respect to any real property described in paragraph (3)(A), indebtedness incurred or assumed to acquire, construct, reconstruct, or substantially improve such property.

(5) Regulations

The Secretary shall issue such regulations as are necessary to carry out this subsection, including regulations preventing the abuse of this subsection through cross-collateralization or other means.

(d) Meaning of terms; special rules relating to certain provisions

(1) Indebtedness of taxpayer

For purposes of this section, the term ''indebtedness of the taxpayer'' means any indebtedness—

(A) for which the taxpayer is liable, or

(B) subject to which the taxpayer holds property.

(2) Title 11 case

For purposes of this section, the term ''title 11 case'' means a case under title 11 of the United States Code (relating to bankruptcy), but only if the taxpayer is under the jurisdiction of the court in such case and the discharge of indebtedness is granted by the court or is pursuant to a plan approved by the court.

(3) Insolvent

For purposes of this section, the term ''insolvent'' means the excess of liabilities over the fair market value of assets. With respect to any discharge, whether or not the taxpayer is insolvent, and the amount by which the taxpayer is insolvent, shall be determined on the basis of the taxpayer's assets and liabilities immediately before the discharge.

[(4) Repealed. Pub. L. 99–514, title VIII, § 822(b)(3)(A), Oct. 22, 1986, 100 Stat. 2373]

(5) Depreciable property

The term ''depreciable property'' has the same meaning as when used in section 1017.

(6) Certain provisions to be applied at partner level

In the case of a partnership, subsections (a), (b), (c), and (g) shall be applied at the partner level.

(7) Special rules for S corporation

(A) Certain provisions to be applied at corporate level

In the case of an S corporation, subsections (a), (b), (c), and (g) shall be applied at the corporate level, including by not taking into account under section 1366(a) any amount excluded under subsection (a) of this section.

(B) Reduction in carryover of disallowed losses and deductions

In the case of an S corporation, for purposes of subparagraph (A) of subsection (b)(2), any loss or deduction which is disallowed for the taxable year of the discharge under section 1366(d)(1) shall be treated as a net operating loss for such taxable year. The preceding sentence shall not apply to any discharge to the extent that subsection (a)(1)(D) applies to such discharge.

(C) Coordination with basis adjustments under section 1367(b)(2)

For purposes of subsection (e)(6), a shareholder's adjusted basis in indebtedness of an S corporation shall be determined without regard to any adjustments made under section 1367(b)(2).

(8) Reductions of tax attributes in title 11 cases of individuals to be made by estate

In any case under chapter 7 or 11 of title 11 of the United States Code to which section 1398 applies, for purposes of paragraphs (1) and (5) of subsection (b) the estate (and not the individual) shall be treated as the taxpayer. The preceding sentence shall not apply for purposes of applying section 1017 to property transferred by the estate to the individual.

(9) Time for making election, etc.

(A) Time

An election under paragraph (5) of subsection (b) or under paragraph (3)(C) of subsection (c) shall be made on the taxpayer's return for the taxable year in which the discharge occurs or at such other time as may be permitted in regulations prescribed by the Secretary.

(B) Revocation only with consent

An election referred to in subparagraph (A), once made, may be revoked only with the consent of the Secretary.

(C) Manner

An election referred to in subparagraph (A) shall be made in such manner as the Secretary may by regulations prescribe.

(10) Cross reference

For provision that no reduction is to be made in the basis of exempt property of an individual debtor, see section 1017(c)(1).

(e) General rules for discharge of indebtedness (including discharges not in title 11 cases or insolvency)

For purposes of this title—

(1) No other insolvency exception

Except as otherwise provided in this section, there shall be no insolvency exception from the general rule that gross income includes income from the discharge of indebtedness.

(2) Income not realized to extent of lost deductions

No income shall be realized from the discharge of indebtedness to the extent that payment of the liability would have given rise to a deduction.

(3) Adjustments for unamortized premium and discount

The amount taken into account with respect to any discharge shall be properly adjusted for unamortized premium and unamortized discount with respect to the indebtedness discharged.

(4) Acquisition of indebtedness by person related to debtor

(A) Treated as acquisition by debtor

For purposes of determining income of the debtor from discharge of indebtedness, to the extent provided in regulations prescribed by the Secretary, the acquisition of outstanding indebtedness by a person bearing a relationship to the debtor specified in section 267(b) or 707(b)(1) from a person who does not bear such a relationship to the debtor shall be treated as the acquisition of such indebtedness by the debtor. Such regulations shall provide for such adjustments in the treatment of any subsequent transactions involving the indebtedness as may be appropriate by reason of the application of the preceding sentence.

(B) Members of family

For purposes of this paragraph, sections 267(b) and 707(b)(1) shall be applied as if section 267(c)(4) provided that the family of an individual consists of the individual's spouse, the individual's children, grandchildren, and parents, and any spouse of the individual's children or grandchildren.

(C) Entities under common control treated as related

For purposes of this paragraph, two entities which are treated as a single employer under subsection (b) or (c) of section 414 shall be treated as bearing a relationship to each other which is described in section 267(b).

(5) Purchase-money debt reduction for solvent debtor treated as price reduction

If—

(A) the debt of a purchaser of property to the seller of such property which arose out of the purchase of such property is reduced,

(B) such reduction does not occur—

(i) in a title 11 case, or

(ii) when the purchaser is insolvent, and

(C) but for this paragraph, such reduction would be treated as income to the purchaser from the discharge of indebtedness,

then such reduction shall be treated as a purchase price adjustment.

(6) Indebtedness contributed to capital

Except as provided in regulations, for purposes of determining income of the debtor

from discharge of indebtedness, if a debtor corporation acquires its indebtedness from a shareholder as a contribution to capital—

(A) section 118 shall not apply, but

(B) such corporation shall be treated as having satisfied the indebtedness with an amount of money equal to the shareholder's adjusted basis in the indebtedness.

(7) Recapture of gain on subsequent sale of stock

(A) In general

If a creditor acquires stock of a debtor corporation in satisfaction of such corporation's indebtedness, for purposes of section 1245—

(i) such stock (and any other property the basis of which is determined in whole or in part by reference to the adjusted basis of such stock) shall be treated as section 1245 property,

(ii) the aggregate amount allowed to the creditor—

(I) as deductions under subsection (a) or (b) of section 166 (by reason of the worthlessness or partial worthlessness of the indebtedness), or

(II) as an ordinary loss on the exchange,

shall be treated as an amount allowed as a deduction for depreciation, and

(iii) an exchange of such stock qualifying under section 354(a), 355(a), or 356(a) shall be treated as an exchange to which section 1245(b)(3) applies.

The amount determined under clause (ii) shall be reduced by the amount (if any) included in the creditor's gross income on the exchange.

(B) Special rule for cash basis taxpayers

In the case of any creditor who computes his taxable income under the cash receipts and disbursements method, proper adjustment shall be made in the amount taken into account under clause (ii) of subparagraph (A) for any amount which was not included in the creditor's gross income but which would have been included in such gross income if such indebtedness had been satisfied in full.

(C) Stock of parent corporation

For purposes of this paragraph, stock of a corporation in control (within the meaning of section 368(c)) of the debtor corporation shall be treated as stock of the debtor corporation.

(D) Treatment of successor corporation

For purposes of this paragraph, the term ''debtor corporation'' includes a successor corporation.

(E) Partnership rule

Under regulations prescribed by the Secretary, rules similar to the rules of the foregoing subparagraphs of this paragraph shall apply with respect to the indebtedness of a partnership.

(8) Indebtedness satisfied by corporate stock or partnership interest

For purposes of determining income of a debtor from discharge of indebtedness, if—

(A) a debtor corporation transfers stock, or

(B) a debtor partnership transfers a capital or profits interest in such partnership,

to a creditor in satisfaction of its recourse or nonrecourse indebtedness, such corporation or partnership shall be treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the stock or interest. In the case of any partnership, any discharge of indebtedness income recognized under this paragraph shall be included in the distributive shares of taxpayers which were the partners in the partnership immediately before such discharge.

(9) Discharge of indebtedness income not taken into account in determining whether entity meets REIT qualifications

Any amount included in gross income by reason of the discharge of indebtedness shall not be taken into account for purposes of paragraphs (2) and (3) of section 856(c).

(10) Indebtedness satisfied by issuance of debt instrument

(A) In general

For purposes of determining income of a debtor from discharge of indebtedness, if a debtor issues a debt instrument in satisfaction of indebtedness, such debtor shall be treated as having satisfied the indebtedness with an amount of money equal to the issue price of such debt instrument.

(B) Issue price

For purposes of subparagraph (A), the issue price of any debt instrument shall be determined under sections 1273 and 1274. For purposes of the preceding sentence, section 1273(b)(4) shall be applied by reducing the stated redemption price of any instrument by the portion of such stated redemption price which is treated as interest for purposes of this chapter.

(f) Student loans

(1) In general

In the case of an individual, gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge (in whole or in part) of any student loan if such discharge was pursuant to a provision of such loan under which all or part of the indebtedness of the individual would be discharged if the individual worked for a certain period of time in certain professions for any of a broad class of employers.

(2) Student loan

For purposes of this subsection, the term ''student loan'' means any loan to an individual to assist the individual in attending an educational organization described in section 170(b)(1)(A)(ii) made by—

(A) the United States, or an instrumentality or agency thereof,

(B) a State, territory, or possession of the United States, or the District of Columbia, or any political subdivision thereof,

(C) a public benefit corporation—

(i) which is exempt from taxation under section 501(c)(3),

(ii) which has assumed control over a State, county, or municipal hospital, and

(iii) whose employees have been deemed to be public employees under State law, or

(D) any educational organization described in section 170(b)(1)(A)(ii) if such loan is made—

(i) pursuant to an agreement with any entity described in subparagraph (A), (B), or (C) under which the funds from which the loan was made were provided to such educational organization, or

(ii) pursuant to a program of such educational organization which is designed to encourage its students to serve in occupations with unmet needs or in areas with unmet needs and under which the services provided by the students (or former students) are for or under the direction of a governmental unit or an organization described in section 501(c)(3) and exempt from tax under section 501(a).

The term ''student loan'' includes any loan made by an educational organization described in section 170(b)(1)(A)(ii) or by an organization exempt from tax under section 501(a) to refinance a loan to an individual to assist the individual in attending any such educational organization but only if the refinancing loan is pursuant to a program of the refinancing organization which is designed as described in subparagraph (D)(ii).

(3) Exception for discharges on account of services performed for certain lenders

Paragraph (1) shall not apply to the discharge of a loan made by an organization described in paragraph (2)(D) if the discharge is on account of services performed for either such organization.

(4) Payments under national health service corps loan repayment program and certain state loan repayment programs

In the case of an individual, gross income shall not include any amount received under section 338B(g) of the Public Health Service Act, under a State program described in section 338I of such Act, or under any other State loan repayment or loan forgiveness program that is intended to provide for the increased availability of health care services in underserved or health professional shortage areas (as determined by such State).

(g) Special rules for discharge of qualified farm indebtedness

(1) Discharge must be by qualified person

(A) In general

Subparagraph (C) of subsection (a)(1) shall apply only if the discharge is by a qualified person.

(B) Qualified person

For purposes of subparagraph (A), the term ''qualified person'' has the meaning given to such term by section 49(a)(1)(D)(iv); except that such term shall include any Federal, State, or local government or agency or instrumentality thereof.

(2) Qualified farm indebtedness

For purposes of this section, indebtedness of a taxpayer shall be treated as qualified farm indebtedness if—

(A) such indebtedness was incurred directly in connection with the operation by the taxpayer of the trade or business of farming, and

(B) 50 percent or more of the aggregate gross receipts of the taxpayer for the 3 taxable years preceding the taxable year in which the discharge of such indebtedness occurs is attributable to the trade or business of farming.

(3) Amount excluded cannot exceed sum of tax attributes and business and investment assets

(A) In general

The amount excluded under subparagraph (C) of subsection (a)(1) shall not exceed the sum of—

(i) the adjusted tax attributes of the taxpayer, and

(ii) the aggregate adjusted bases of qualified property held by the taxpayer as of the beginning of the taxable year following the taxable year in which the discharge occurs.

(B) Adjusted tax attributes

For purposes of subparagraph (A), the term ''adjusted tax attributes'' means the sum of the tax attributes described in subparagraphs (A), (B), (C), (D), (F), and (G) of subsection (b)(2) determined by taking into account $3 for each $1 of the attributes described in subparagraphs (B), (C), and (G) of subsection (b)(2) and the attribute described in subparagraph (F) of subsection (b)(2) to the extent attributable to any passive activity credit carryover.

(C) Qualified property

For purposes of this paragraph, the term ''qualified property'' means any property which is used or is held for use in a trade or business or for the production of income.

(D) Coordination with insolvency exclusion

For purposes of this paragraph, the adjusted basis of any qualified property and the amount of the adjusted tax attributes shall be determined after any reduction under subsection (b) by reason of amounts excluded from gross income under subsection (a)(1)(B).

(h) Special rules relating to qualified principal residence indebtedness

(1) Basis reduction

The amount excluded from gross income by reason of subsection (a)(1)(E) shall be applied to reduce (but not below zero) the basis of the principal residence of the taxpayer.

(2) Qualified principal residence indebtedness

For purposes of this section, the term ''qualified principal residence indebtedness''

means acquisition indebtedness (within the meaning of section 163(h)(3)(B), applied by substituting ''$2,000,000 ($1,000,000'' for ''$1,000,000 ($500,000'' in clause (ii) thereof) with respect to the principal residence of the taxpayer.

(3) Exception for certain discharges not related to taxpayer's financial condition

Subsection (a)(1)(E) shall not apply to the discharge of a loan if the discharge is on account of services performed for the lender or any other factor not directly related to a decline in the value of the residence or to the financial condition of the taxpayer.

(4) Ordering rule

If any loan is discharged, in whole or in part, and only a portion of such loan is qualified principal residence indebtedness, subsection (a)(1)(E) shall apply only to so much of the amount discharged as exceeds the amount of the loan (as determined immediately before such discharge) which is not qualified principal residence indebtedness.

(5) Principal residence

For purposes of this subsection, the term ''principal residence'' has the same meaning as when used in section 121.

(i) Deferral and ratable inclusion of income arising from business indebtedness discharged by the reacquisition of a debt instrument

(1) In general

At the election of the taxpayer, income from the discharge of indebtedness in connection with the reacquisition after December 31, 2008, and before January 1, 2011, of an applicable debt instrument shall be includible in gross income ratably over the 5-taxable-year period beginning with—

(A) in the case of a reacquisition occurring in 2009, the fifth taxable year following the taxable year in which the reacquisition occurs, and

(B) in the case of a reacquisition occurring in 2010, the fourth taxable year following the taxable year in which the reacquisition occurs.

(2) Deferral of deduction for original issue discount in debt for debt exchanges

(A) In general

If, as part of a reacquisition to which paragraph (1) applies, any debt instrument is issued for the applicable debt instrument being reacquired (or is treated as so issued under subsection (e)(4) and the regulations thereunder) and there is any original issue discount determined under subpart A of part V of subchapter P of this chapter with respect to the debt instrument so issued—

(i) except as provided in clause (ii), no deduction otherwise allowable under this chapter shall be allowed to the issuer of such debt instrument with respect to the portion of such original issue discount which—

(I) accrues before the 1st taxable year in the 5-taxable-year period in which income from the discharge of indebtedness attributable to the reacquisition of the debt instrument is includible under paragraph (1), and

(II) does not exceed the income from the discharge of indebtedness with respect to the debt instrument being reacquired, and

(ii) the aggregate amount of deductions disallowed under clause (i) shall be allowed as a deduction ratably over the 5-taxable-year period described in clause (i)(I).

If the amount of the original issue discount accruing before such 1st taxable year exceeds the income from the discharge of indebtedness with respect to the applicable debt instrument being reacquired, the deductions shall be disallowed in the order in which the original issue discount is accrued.

(B) Deemed debt for debt exchanges

For purposes of subparagraph (A), if any debt instrument is issued by an issuer and the proceeds of such debt instrument are used directly or indirectly by the issuer to reacquire an applicable debt instrument of the issuer, the debt instrument so issued shall be treated as issued for the debt instrument being reacquired. If only a portion of the proceeds from a debt instrument are so used, the rules of subparagraph (A) shall apply to the portion of any original issue discount on the newly issued debt instrument which is equal to the portion of the proceeds from such instrument used to reacquire the outstanding instrument.

(3) Applicable debt instrument

For purposes of this subsection—

(A) Applicable debt instrument

The term ''applicable debt instrument'' means any debt instrument which was issued by—

(i) a C corporation, or

(ii) any other person in connection with the conduct of a trade or business by such person.

(B) Debt instrument

The term ''debt instrument'' means a bond, debenture, note, certificate, or any other instrument or contractual arrangement constituting indebtedness (within the meaning of section 1275(a)(1)).

(4) Reacquisition

For purposes of this subsection—

(A) In general

The term ''reacquisition'' means, with respect to any applicable debt instrument, any acquisition of the debt instrument by—

(i) the debtor which issued (or is otherwise the obligor under) the debt instrument, or

(ii) a related person to such debtor.

(B) Acquisition

The term ''acquisition'' shall, with respect to any applicable debt instrument, include an acquisition of the debt instrument for cash, the exchange of the debt instrument for another debt instrument (including an

exchange resulting from a modification of the debt instrument), the exchange of the debt instrument for corporate stock or a partnership interest, and the contribution of the debt instrument to capital. Such term shall also include the complete forgiveness of the indebtedness by the holder of the debt instrument.

(5) Other definitions and rules

For purposes of this subsection—

(A) Related person

The determination of whether a person is related to another person shall be made in the same manner as under subsection (e)(4).

(B) Election

(i) In general

An election under this subsection with respect to any applicable debt instrument shall be made by including with the return of tax imposed by chapter 1 for the taxable year in which the reacquisition of the debt instrument occurs a statement which—

(I) clearly identifies such instrument, and

(II) includes the amount of income to which paragraph (1) applies and such other information as the Secretary may prescribe.

(ii) Election irrevocable

Such election, once made, is irrevocable.

(iii) Pass-thru entities

In the case of a partnership, S corporation, or other pass-thru entity, the election under this subsection shall be made by the partnership, the S corporation, or other entity involved.

(C) Coordination with other exclusions

If a taxpayer elects to have this subsection apply to an applicable debt instrument, subparagraphs (A), (B), (C), and (D) of subsection (a)(1) shall not apply to the income from the discharge of such indebtedness for the taxable year of the election or any subsequent taxable year.

(D) Acceleration of deferred items

(i) In general

In the case of the death of the taxpayer, the liquidation or sale of substantially all the assets of the taxpayer (including in a title 11 or similar case), the cessation of business by the taxpayer, or similar circumstances, any item of income or deduction which is deferred under this subsection (and has not previously been taken into account) shall be taken into account in the taxable year in which such event occurs (or in the case of a title 11 or similar case, the day before the petition is filed).

(ii) Special rule for pass-thru entities

The rule of clause (i) shall also apply in the case of the sale or exchange or redemption of an interest in a partnership, S corporation, or other pass-thru entity by a partner, shareholder, or other person holding an ownership interest in such entity.

(6) Special rule for partnerships

In the case of a partnership, any income deferred under this subsection shall be allocated to the partners in the partnership immediately before the discharge in the manner such amounts would have been included in the distributive shares of such partners under section 704 if such income were recognized at such time. Any decrease in a partner's share of partnership liabilities as a result of such discharge shall not be taken into account for purposes of section 752 at the time of the discharge to the extent it would cause the partner to recognize gain under section 731. Any decrease in partnership liabilities deferred under the preceding sentence shall be taken into account by such partner at the same time, and to the extent remaining in the same amount, as income deferred under this subsection is recognized.

(7) Secretarial authority

The Secretary may prescribe such regulations, rules, or other guidance as may be necessary or appropriate for purposes of applying this subsection, including—

(A) extending the application of the rules of paragraph (5)(D) to other circumstances where appropriate,

(B) requiring reporting of the election (and such other information as the Secretary may require) on returns of tax for subsequent taxable years, and

(C) rules for the application of this subsection to partnerships, S corporations, and other pass-thru entities, including for the allocation of deferred deductions.

(Aug. 16, 1954, ch. 736, 68A Stat. 32; June 29, 1956, ch. 463, § 5, 70 Stat. 403; Pub. L. 88–496, § 1(a), June 8, 1960, 74 Stat. 164; Pub. L. 94–455, title XIX, §§ 1906(b)(13)(A), 1951(b)(2)(A), Oct. 4, 1976, 90 Stat. 1834, 1836; Pub. L. 96–589, § 2(a), Dec. 24, 1980, 94 Stat. 3389; Pub. L. 97–354, § 3(e), Oct. 19, 1982, 96 Stat. 1689; Pub. L. 97–448, title I, § 102(h)(1), title III, § 304(d), Jan. 12, 1983, 96 Stat. 2372, 2398; Pub. L. 98–369, div. A, title I, § 59(a), (b)(1), title IV, § 474(r)(5), title VII, § 721(b)(2), title X, § 1076(a), July 18, 1984, 98 Stat. 576, 839, 966, 1053; Pub. L. 99–514, title I, § 104(b)(2), title II, § 231(d)(3)(D), title IV, § 405(a), title VI, § 621(e)(1), title VIII, §§ 805(c)(2)–(4), 822(a), (b)(1)–(3), title XI, § 1171(b)(4), title XVIII, § 1847(b)(7), Oct. 22, 1986, 100 Stat. 2105, 2179, 2224, 2266, 2362, 2373, 2513, 2856; Pub. L. 100–647, title I, § 1004(a)(1)–(4), (6), Nov. 10, 1988, 102 Stat. 3385, 3387; Pub. L. 101–508, title XI, §§ 11325(a)(1), (b), 11813(b)(6), Nov. 5, 1990, 104 Stat. 1388–466, 1388–551; Pub. L. 103–66, title XIII, §§ 13150(a)–(c)(5), 13226(a)(1), (2)(B), (b)(1)–(3), Aug. 10, 1993, 107 Stat. 446–448, 487, 488; Pub. L. 104–188, title I, § 1703(n)(2), Aug. 20, 1996, 110 Stat. 1877; Pub. L. 105–34, title II, § 225(a), Aug. 5, 1997, 111 Stat. 820; Pub. L. 105–206, title VI, § 6004(f), July 22, 1998, 112 Stat. 795; Pub. L. 107–147, title IV, § 402(a), Mar. 9, 2002, 116 Stat. 40; Pub. L. 108–357, title III, § 320(a), title VIII, § 896(a), Oct. 22, 2004, 118 Stat. 1473, 1648; Pub. L. 110–142, § 2(a)–(c), Dec. 20, 2007, 121 Stat. 1803, 1804; Pub. L. 110–343, div. A, title III, § 303(a), Oct. 3, 2008, 122 Stat. 3807; Pub. L. 111–5, div. B, title I, § 1231(a), Feb. 17, 2009, 123 Stat. 338; Pub. L. 111–148, title X, § 10908(a), Mar. 23, 2010, 124 Stat. 1021.)

REFERENCES IN TEXT

Sections 338B(g) and 338I of the Public Health Service Act, referred to in subsec. (f)(4), are classified to sections 254*l*–1(g) and 254q–1, respectively, of Title 42, The Public Health and Welfare.

AMENDMENTS

2010—Subsec. (f)(4). Pub. L. 111–148 amended par. (4) generally. Prior to amendment, text read as follows: ''In the case of an individual, gross income shall not include any amount received under section 338B(g) of the Public Health Service Act or under a State program described in section 338I of such Act.''

2009—Subsec. (i). Pub. L. 111–5 added subsec. (i).

2008—Subsec. (a)(1)(E). Pub. L. 110–343 substituted ''January 1, 2013'' for ''January 1, 2010''.

2007—Subsec. (a)(1)(E). Pub. L. 110–142, §2(a), added subpar. (E).

Subsec. (a)(2)(A). Pub. L. 110–142, §2(c)(1), substituted ''(D), and (E)'' for ''and (D)''.

Subsec. (a)(2)(C). Pub. L. 110–142, §2(c)(2), added subpar. (C).

Subsec. (h). Pub. L. 110–142, §2(b), added subsec. (h).

2004—Subsec. (e)(8). Pub. L. 108–357, §896(a), amended heading and text of par. (8) generally. Prior to amendment, text read as follows: ''For purposes of determining income of a debtor from discharge of indebtedness, if a debtor corporation transfers stock to a creditor in satisfaction of its indebtedness, such corporation shall be treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the stock.''

Subsec. (f)(4). Pub. L. 108–357, §320(a), added par. (4).

2002—Subsec. (d)(7)(A). Pub. L. 107–147 inserted '', including by not taking into account under section 1366(a) any amount excluded under subsection (a) of this section'' before period at end.

1998—Subsec. (f)(2). Pub. L. 105–206, §6004(f)(1), amended concluding provisions generally. Prior to amendment, concluding provisions read as follows: ''The term 'student loan' includes any loan made by an educational organization so described or by an organization exempt from tax under section 501(a) to refinance a loan meeting the requirements of the preceding sentence.''

Subsec. (f)(3). Pub. L. 105–206, §6004(f)(2), struck out ''(or by an organization described in paragraph (2)(E) from funds provided by an organization described in paragraph (2)(D))'' after ''paragraph (2)(D)''.

1997—Subsec. (f)(2). Pub. L. 105–34, §225(a)(1), added subpar. (D) and concluding provisions and struck out former subpar. (D) which read as follows: ''any educational organization so described pursuant to an agreement with any entity described in subparagraph (A), (B), or (C) under which the funds from which the loan was made were provided to such educational organization.''

Subsec. (f)(2)(B). Pub. L. 105–34, §225(a)(1), struck out ''or'' at end.

Subsec. (f)(3). Pub. L. 105–34, §225(a)(2), added par. (3).

1996—Subsec. (d)(9)(A). Pub. L. 104–188 substituted ''paragraph (3)(C)'' for ''paragraph (3)(B)''.

1993—Subsec. (a)(1)(D). Pub. L. 103–66, §13150(a), added subpar. (D).

Subsec. (a)(2)(A). Pub. L. 103–66, §13150(c)(1), substituted '', (C), and (D)'' for ''and (C)''.

Subsec. (a)(2)(B). Pub. L. 103–66, §13150(c)(2), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''Subparagraph (C) of paragraph (1) shall not apply to a discharge to the extent the taxpayer is insolvent.''

Subsec. (b)(2)(C) to (E). Pub. L. 103–66, §13226(b)(1), added subpar. (C) and redesignated former subpars. (C) and (D) as (D) and (E), respectively. Former subpar. (E) redesignated (F).

Subsec. (b)(2)(F). Pub. L. 103–66, §13226(b)(2), added subpar. (F). Former subpar. (F) redesignated (G).

Pub. L. 103–66, §13226(b)(1), redesignated subpar. (E) as (F).

Subsec. (b)(2)(G). Pub. L. 103–66, §13226(b)(2), redesignated subpar. (F) as (G).

Subsec. (b)(3)(B). Pub. L. 103–66, §13226(b)(3)(A), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''The reductions described in subparagraphs (B) and (E) of paragraph (2) shall be 33⅓ cents for each dollar excluded by subsection (a).''

Subsec. (b)(4)(B). Pub. L. 103–66, §13226(b)(3)(B), substituted ''(D)'' for ''(C)'' in heading and text.

Subsec. (b)(4)(C). Pub. L. 103–66, §13226(b)(3)(C), substituted ''(G)'' for ''(E)'' in heading and text.

Subsec. (c). Pub. L. 103–66, §13150(b), added subsec. (c).

Subsec. (d). Pub. L. 103–66, §13150(c)(3)(B), substituted ''certain provisions'' for ''subsections (a), (b) and (g)'' in heading.

Subsec. (d)(6), (7)(A). Pub. L. 103–66, §13150(c)(3)(A), (C), substituted ''Certain provisions'' for ''Subsections (a), (b) and (g)'' in heading and ''subsections (a), (b), (c), and (g)'' for ''subsections (a), (b), and (g)'' in text.

Subsec. (d)(7)(B). Pub. L. 103–66, §13150(c)(4), inserted at end ''The preceding sentence shall not apply to any discharge to the extent that subsection (a)(1)(D) applies to such discharge.''

Subsec. (d)(9)(A). Pub. L. 103–66, §13150(c)(5), inserted ''or under paragraph (3)(B) of subsection (c)'' after ''subsection (b)''.

Subsec. (e)(6). Pub. L. 103–66, §13226(a)(2)(B), substituted ''Except as provided in regulations, for'' for ''For''.

Subsec. (e)(8). Pub. L. 103–66, §13226(a)(1)(B), amended heading and text of par. (8) generally. Prior to amendment, text read as follows: ''For purposes of determining income of the debtor from discharge of indebtedness, the stock for debt exception shall not apply—

''(A) to the issuance of nominal or token shares, or

''(B) with respect to an unsecured creditor, where the ratio of the value of the stock received by such unsecured creditor to the amount of his indebtedness cancelled or exchanged for stock in the workout is less than 50 percent of a similar ratio computed for all unsecured creditors participating in the workout. Any stock which is disqualified stock (as defined in paragraph (10)(B)(ii)) shall not be treated as stock for purposes of this paragraph.''

Subsec. (e)(10), (11). Pub. L. 103–66, §13226(a)(1)(A), redesignated par. (11) as (10) and struck out former par. (10) which related to satisfaction of indebtedness by transfer of corporation's stock.

Subsec. (g)(3)(B). Pub. L. 103–66, §13226(b)(3)(D), substituted ''subparagraphs (A), (B), (C), (D), (F), and (G)'' for ''subparagraphs (A), (B), (C), and (E)'' and ''subparagraphs (B), (C), and (G)'' for ''subparagraphs (B) and (E)'' and inserted before period at end ''and the attribute described in subparagraph (F) of subsection (b)(2) to the extent attributable to any passive activity credit carryover''.

1990—Subsec. (e)(8). Pub. L. 101–508, §11325(b)(2), inserted provision at end that any stock which is a disqualified stock, as so defined, not be treated as stock for purposes of this paragraph.

Subsec. (e)(10)(B). Pub. L. 101–508, §11325(b)(1), substituted heading for one which read: ''Exception for title 11 cases and insolvent debtors'' and amended text generally. Prior to amendment, text read as follows: ''Subparagraph (A) shall not apply in the case of a debtor in a title 11 case or to the extent the debtor is insolvent.''

Subsec. (e)(11). Pub. L. 101–508, §11325(a)(1), added par. (11).

Subsec. (g)(1)(B). Pub. L. 101–508, §11813(b)(6), substituted ''section 49(a)(1)(D)(iv)'' for ''section 46(c)(8)(D)(iv)''.

1988—Subsec. (a)(1)(C). Pub. L. 100–647, §1004(a)(1), added subpar. (C).

Subsec. (a)(2). Pub. L. 100–647, §1004(a)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Subparagraph (B) of paragraph (1) shall not apply to a discharge which occurs in a title 11 case.''

Subsec. (b). Pub. L. 100–647, §1004(a)(3), struck out ''in title 11 case or insolvency'' after ''Reduction of tax at-

tributes'' in heading and substituted ''subparagraph (A), (B), or (C)'' for ''subparagraph (A) or (B)'' in text of par. (1).

Subsec. (d). Pub. L. 100–647, §1004(a)(6)(B), which directed amendment of subsec. (d) heading by substituting ''subsections (a), (b), and (g)'' for ''subsections (a), and (b)'', was executed by making the substitution for ''subsections (a) and (b)'' as the probable intent of Congress.

Subsec. (d)(6). Pub. L. 100–647, §1004(a)(6)(A), (C), substituted ''Subsections (a), (b), and (g)'' for ''Subsections (a) and (b)'' in heading and ''subsections (a), (b), and (g)'' for ''subsections (a) and (b)'' in text.

Subsec. (d)(7)(A). Pub. L. 100–647, §1004(a)(6)(A), (C), substituted ''Subsections (a), (b), and (g)'' for ''Subsections (a) and (b)'' in heading and ''subsections (a), (b), and (g)'' for ''subsections (a) and (b)'' in text.

Subsec. (g). Pub. L. 100–647, §1004(a)(4), substituted ''indebtedness'' for ''indebtedness of solvent farmers'' in heading and amended text generally. Prior to amendment, text read as follows:

''(1) IN GENERAL.—For purposes of this section and section 1017, the discharge by a qualified person of qualified farm indebtedness of a taxpayer who is not insolvent at the time of the discharge shall be treated in the same manner as if the discharge had occurred when the taxpayer was insolvent.

''(2) QUALIFIED FARM INDEBTEDNESS.—For purposes of this subsection, indebtedness of a taxpayer shall be treated as qualified farm indebtedness if—

''(A) such indebtedness was incurred directly in connection with the operation by the taxpayer of the trade or business of farming, and

''(B) 50 percent or more of the average annual gross receipts of the taxpayer for the 3 taxable years preceding the taxable year in which the discharge of such indebtedness occurs is attributable to the trade or business of farming.

''(3) QUALIFIED PERSON.—For purposes of this subsection, the term 'qualified person' means a person described in section 46(c)(8)(D)(iv).''

1986—Subsec. (a)(1)(C). Pub. L. 99–514, §822(a), struck out subpar. (C) relating to exclusion from gross income if the indebtedness discharged is qualified business indebtedness.

Subsec. (a)(2). Pub. L. 99–514, §822(b)(1), substituted ''Subparagraph (B) of paragraph (1)'' for ''Subparagraphs (B) and (C) of paragraph (1)'' in subpar. (A), struck out subpar. (A) designation and heading, and struck out subpar. (B) providing that insolvency exclusion takes precedence over qualified business exclusion.

Subsec. (b)(2)(B). Pub. L. 99–514, §231(d)(3)(D), substituted ''General business credit'' for ''Research credit and general business credit'' in heading and amended text, as amended by this Act (Pub. L. 99–514, §1171(b)(4) (see below)), generally. Prior to amendment, text read as follows: ''Any carryover to or from the taxable year of a discharge of an amount for purposes of determining the amount allowable as a credit under—

''(i) section 30 (relating to credit for increasing research activities), or

''(ii) section 38 (relating to general business credit). For purposes of this subparagraph, there shall not be taken into account any portion of a carryover which is attributable to the employee stock ownership credit determined under section 41.''

Pub. L. 99–514, §1171(b)(4), struck out last sentence which had been eliminated by the general amendment of subpar. (B) by Pub. L. 99–514, §231(d)(3)(D). See above.

Subsec. (b)(2)(E). Pub. L. 99–514, §1847(b)(7), substituted ''section 27'' for ''section 33''.

Subsec. (b)(3). Pub. L. 99–514, §104(b)(2), substituted ''33⅓ cents'' for ''50 cents''.

Subsec. (c). Pub. L. 99–514, §822(b)(2), struck out subsec. (c) relating to tax treatment of discharge of qualified business indebtedness.

Subsec. (d). Pub. L. 99–514, §822(b)(3)(B), struck out reference to subsec. (c) in heading.

Subsec. (d)(4). Pub. L. 99–514, §822(b)(3)(A), struck out par. (4) relating to treatment of indebtedness as qualified business indebtedness.

Subsec. (d)(6), (7)(A). Pub. L. 99–514, §822(b)(3)(B), struck out reference to subsec. (c) in heading and text.

Subsec. (d)(7)(B). Pub. L. 99–514, §822(b)(3)(C), struck out ''The preceding sentence shall not apply to any discharge to the extent that subsection (a)(1)(C) applies to such discharge.''

Subsec. (d)(9)(A). Pub. L. 99–514, §822(b)(3)(D), struck out ''under paragraph (4) of this subsection or'' after ''An election''.

Subsec. (e)(7)(A)(ii)(I). Pub. L. 99–514, §805(c)(2), substituted ''subsection (a) or (b) of section 166'' for ''subsection (a), (b), or (c) of section 166''.

Subsec. (e)(7)(B) to (D). Pub. L. 99–514, §805(c)(3), redesignated subpars. (C) to (E) as (B) to (D), respectively, and struck out former subpar. (B) which related to taxpayers on reserve method.

Subsec. (e)(7)(E), (F). Pub. L. 99–514, §805(c)(3), (4), redesignated subpar. (F) as (E) and substituted ''the foregoing subparagraphs'' for ''subparagraphs (A), (B), (C), (D), and (E)''. Former subpar. (E) redesignated (D).

Subsec. (e)(10)(C). Pub. L. 99–514, §621(e), repealed the amendment by Pub. L. 98–369, §59(b)(1), which had added subpar. (C) creating an exception for transfers in certain workouts of the satisfaction of indebtedness by corporation's stock. See 1984 Amendment note below.

Subsec. (g). Pub. L. 99–514, §405(a), added subsec. (g).

1984—Subsec. (b)(2)(B). Pub. L. 98–369, §474(r)(5), substituted provisions relating to research credits and general business credits covering carryovers to or from the taxable year of a discharge of an amount for purposes of determining the amount allowable as a credit under section 30 (relating to credit for increasing research activities), or section 38 (relating to general business credit), and directing that there shall not be taken into account any portion of a carryover which is attributable to the employee stock ownership credit determined under section 41 for former provisions covering carryovers to or from the taxable year of the discharge of an amount for purposes of determining the amount of a credit allowable under section 38 (relating to investment in certain depreciable property), section 40 (relating to expenses of work incentive programs), section 44B (relating to credit for employment of certain new employees), section 44E (relating to alcohol used as a fuel), or section 44F (relating to credit for increasing research activities), and directing that, for purposes of clause (i), there could not be taken into account any portion of a carryover which was attributable to the employee plan credit (within the meaning of section 48(*o*)(3)).

Subsec. (d)(6). Pub. L. 98–369, §721(b)(2), struck out ''or S corporation shareholder level'' in heading and second sentence which provided that ''In the case of an S corporation, subsections (a), (b), and (c) shall apply at the shareholder level.''. See par. (7)(A).

Subsec. (d)(7) to (10). Pub. L. 98–369, §721(b)(2), added par. (7) and redesignated former pars. (7) to (9) as (8) to (10), respectively.

Subsec. (e)(10). Pub. L. 98–369, §59(a), added par. (10).

Subsec. (e)(10)(C). Pub. L. 98–369, §59(b)(1), which added subpar. (C), effective as if included in the amendments made by section 806(e) and (f) of Pub. L. 94–455, was repealed by Pub. L. 99–514, §621(e), (f)(2), eff. Jan. 1, 1986, with certain exceptions, see Effective Date of 1986 Amendment note below.

Subsec. (f). Pub. L. 98–369, §1076(a), added subsec. (f).

1983—Subsec. (b)(2)(B)(v). Pub. L. 97–448, §102(h)(1), added cl. (v).

Subsec. (e)(7)(A)(iii). Pub. L. 97–448, §304(d), added cl. (iii).

1982—Subsec. (d)(6). Pub. L. 97–354 inserted ''or S corporation shareholder level'' in heading and inserted ''In the case of an S corporation, subsections (a), (b), and (c) shall be applied at the shareholder level.''

1980—Pub. L. 96–589 completely revised and expanded provisions by specifying the types of indebtedness and by setting out priorities among the exclusions, to reflect the revision of Title 11, Bankruptcy, in 1978.

1976—Pub. L. 94–455, §1951(b)(2)(A), struck out ''(a) Special rule of exclusion.—'' after ''Income from dis-

charge of indebtedness'' and struck out subsec. (b) which related to discharge, cancellation, or modification of indebtedness of certain railroad corporations.

Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

1960—Subsec. (b). Pub. L. 86–496 provided that if the discharge, cancellation, or modification of any indebtedness is effected pursuant to a court order in a receivership proceeding or in a proceeding under section 77 of the Bankruptcy Act, commenced before Jan. 1, 1960, then no amount is to be included in gross income with respect to it, and struck out provisions which made subsection inapplicable to discharges occurring in a taxable year beginning after Dec. 31, 1957.

1956—Subsec. (b). Act June 29, 1956, substituted ''December 31, 1957'' for ''December 31, 1955''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title X, § 10908(b), Mar. 23, 2010, 124 Stat. 1021, provided that: ''The amendment made by this section [amending this section] shall apply to amounts received by an individual in taxable years beginning after December 31, 2008.''

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, § 1231(b), Feb. 17, 2009, 123 Stat. 341, provided that: ''The amendments made by this section [amending this section] shall apply to discharges in taxable years ending after December 31, 2008.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. A, title III, § 303(b), Oct. 3, 2008, 122 Stat. 3807, provided that: ''The amendment made by this section [amending this section] shall apply to discharges of indebtedness occurring on or after January 1, 2010.''

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–142, § 2(d), Dec. 20, 2007, 121 Stat. 1804, provided that: ''The amendments made by this section [amending this section] shall apply to discharges of indebtedness on or after January 1, 2007.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title III, § 320(c), Oct. 22, 2004, 118 Stat. 1473, provided that: ''The amendments made by this section [amending this section, sections 3121, 3231, 3306, and 3401 of this title, and section 409 of Title 42, The Public Health and Welfare] shall apply to amounts received by an individual in taxable years beginning after December 31, 2003.''

Pub. L. 108–357, title VIII, § 896(b), Oct. 22, 2004, 118 Stat. 1649, provided that: ''The amendment made by this section [amending this section] shall apply with respect to cancellations of indebtedness occurring on or after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title IV, § 402(b), Mar. 9, 2002, 116 Stat. 40, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by this section [amending this section] shall apply to discharges of indebtedness after October 11, 2001, in taxable years ending after such date.

''(2) EXCEPTION.—The amendment made by this section shall not apply to any discharge of indebtedness before March 1, 2002, pursuant to a plan of reorganization filed with a bankruptcy court on or before October 11, 2001.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 225(b) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply to discharges of indebtedness after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§ 13001–13444, to which such amendment relates, see section 1703(*o*) of Pub. L. 104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13150(d) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and sections 703 and 1017 of this title] shall apply to discharges after December 31, 1992, in taxable years ending after such date.''

Section 13226(a)(3) of Pub. L. 103–66 provided that:

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by this subsection [amending this section and section 382 of this title] shall apply to stock transferred after December 31, 1994, in satisfaction of any indebtedness.

''(B) EXCEPTION FOR TITLE 11 CASES.—The amendments made by this subsection shall not apply to stock transferred in satisfaction of any indebtedness if such transfer is in a title 11 or similar case (as defined in section 368(a)(3)(A) of the Internal Revenue Code of 1986) which was filed on or before December 31, 1993.''

Section 13226(b)(4) of Pub. L. 103–66 provided that: ''The amendments made by this subsection [amending this section] shall apply to discharges of indebtedness in taxable years beginning after December 31, 1993.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11325(c) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1275 of this title] shall apply to debt instruments issued, and stock transferred, after October 9, 1990, in satisfaction of any indebtedness.

''(2) EXCEPTIONS.—The amendments made by this section shall not apply to any debt instrument issued, or stock transferred, in satisfaction of any indebtedness if such issuance or transfer (as the case may be)—

''(A) is in a title 11 or similar case (as defined in section 368(a)(3)(A) of the Internal Revenue Code of 1986) which was filed on or before October 9, 1990,

''(B) is pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such issuance or transfer,

''(C) is pursuant to a transaction which was described in documents filed with the Securities and Exchange Commission on or before October 9, 1990, or

''(D) is pursuant to a transaction—

''(i) the material terms of which were described in a written public announcement on or before October 9, 1990,

''(ii) which was the subject of a prior filing with the Securities and Exchange Commission, and

''(iii) which is the subject of a subsequent filing with the Securities and Exchange Commission before January 1, 1991.''

Amendment by section 11813(b)(6) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of

the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 231(d)(3)(D) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1985, see section 231(g) of Pub. L. 99–514, set out as a note under section 41 of this title.

Section 405(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section and section 1017 of this title] shall apply to discharges of indebtedness occurring after April 9, 1986, in taxable years ending after such date.''

Repeal by section 621(e)(1) of Pub. L. 99–514 of amendment by section 59(b)(1) of Pub. L. 99–369, which was effective as if included in the amendments made by section 806(e) and (f) of Pub. L. 94–455, effective Jan. 1, 1986, with certain exceptions, see section 621(f)(2) of Pub. L. 99–514, set out as a note under section 382 of this title.

Amendment by section 805(c)(2), (4) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain changes required in method of accounting, see section 805(d) of Pub. L. 99–514, set out as a note under section 166 of this title.

Section 822(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section and section 1017 of this title] shall apply to discharges after December 31, 1986.''

Amendment by section 1171(b)(4) of Pub. L. 99–514 applicable to compensation paid or accrued after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 1171(c) of Pub. L. 99–514, set out as a note under section 38 of this title.

Amendment by section 1847(b)(7) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 59(b)(2) of Pub. L. 98–369 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if it had been included in the amendments made by subsections (e) and (f) of section 806 of the Tax Reform Act of 1976 [Pub. L. 94–455].'' See Effective Date of 1976 Amendment note set out under section 382 of this title.

Section 59(b)[(c)] of Pub. L. 98–369 provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendment made by subsection (a) [amending this section] shall apply to transfers after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

''(2) TRANSITIONAL RULE.—The amendment made by subsection (a) shall not apply to the transfer by a corporation of its stock in exchange for debt of the corporation after the date of the enactment of this Act if such transfer is—

''(A) pursuant to a written contract requiring such transfer which was binding on the corporation at all times on June 7, 1984, and at all times after such date but only if the transfer takes place before January 1, 1985, and only if the transferee held the debt at all times on June 7, 1984, or

''(B) pursuant to the exercise of an option to exchange debt for stock but only if such option was in effect at all times on June 7, 1984, and at all times after such date and only if at all times on June 7, 1984, the option and the debt were held by the same person.

''(3) CERTAIN TRANSFERS TO CONTROLLING SHAREHOLDER.—The amendment made by subsection (a) shall not apply to any transfer before January 1, 1985, by a corporation of its stock in exchange for debt of such corporation if—

''(A) such transfer is to another corporation which at all times on June 7, 1984, owned 75 percent or more of the total value of the stock of the corporation making such transfer, and

''(B) immediately after such transfer, the transferee corporation owns 80 percent or more of the total value of the stock of the transferor corporation.

''(4) CERTAIN TRANSFERS PURSUANT TO DEBT RESTRUCTURE AGREEMENT.—The amendment made by subsection (a) shall not apply to the transfer by a corporation of its stock in exchange for debt of the corporation after the date of the enactment of this Act and before January 1, 1985, if—

''(A) such transfer is covered by a debt restructure agreement entered into by the corporation during November 1983, and

''(B) such agreement was specified in a registration statement filed with the Securities and Exchange Commission by the corporation on March 7, 1984.''

Amendment by section 474(r)(5) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 721(b) of Pub. L. 98–369 applicable to contributions to capital after Dec. 31, 1980, in taxable years ending after such date, see section 721(y)(2) of Pub. L. 98–369, set out as a note under section 1361 of this title.

Section 1076(b) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall apply to discharges of indebtedness made on or after January 1, 1983.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by title I of Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 7 of Pub. L. 96–589, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) FOR SECTION 2 (RELATING TO TAX TREATMENT OF DISCHARGE OF INDEBTEDNESS).—

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by section 2 [amending this section and sections 111, 118, 382, 703 and 1017 of this title] shall apply to any transaction which occurs after December 31, 1980, other than a transaction which occurs in a proceeding in a bankruptcy case or similar judicial proceeding (or in a proceeding under the Bankruptcy Act) [Title 11, Bankruptcy] commencing on or before December 31, 1980.

''(2) TRANSITIONAL RULE.—In the case of any discharge of indebtedness to which subparagraph (A) or (B) of section 108(a)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to exclusion from gross income), as amended by section 2, applies and which occurs before January 1, 1982, or which occurs in a proceeding in a bankruptcy case or similar judicial proceedings commencing before January 1, 1982, then—

''(A) section 108(b)(2) of the such Code (relating to reduction of tax attributes), as so amended, shall be applied without regard to subparagraphs (A), (B), (C), and (E) thereof, and

''(B) the basis of any property shall not be reduced under section 1017 of such Code (relating to

reduction in basis in connection with discharges of indebtedness), as so amended, below the fair market value of such property on the date the debt is discharged.

''(b) FOR SECTION 3 (RELATING TO RULES RELATING TO TITLE 11 CASES FOR INDIVIDUALS).—The amendments made by section 3 [enacting sections 1398 and 1399 of this title and amending sections 443, 6012 and 6103 of this title] shall apply to any bankruptcy case commencing more than 90 days after the date of the enactment of this Act [Dec. 24, 1980].

''(c) FOR SECTION 4 (RELATING TO CORPORATE REORGANIZATION PROVISIONS).—

''(1) IN GENERAL.—The amendments made by section 4 [enacting section 370 of this title and amending sections 354, 355, 357, 368 and 381 of this title] shall apply to any bankruptcy case or similar judicial proceeding commencing after December 31, 1980.

''(2) EXCHANGES OF PROPERTY FOR ACCRUED INTEREST.—The amendments made by subsection (e) of section 4 [amending sections 354 and 355 of this title] (relating to treatment of property attributable to accrued interest) shall also apply to any exchange—

''(A) which occurs after December 31, 1980, and

''(B) which does not occur in a bankruptcy case or similar judicial proceeding (or in a proceeding under the Bankruptcy Act) commenced on or before December 31, 1980.

''(d) FOR SECTION 5 (RELATING TO MISCELLANEOUS CORPORATE AMENDMENTS).—

''(1) FOR SUBSECTION (a) (RELATING TO EXEMPTION FROM PERSONAL HOLDING COMPANY TAX).—The amendments made by subsection (a) of section 5 [amending section 542 of this title] shall apply to any bankruptcy case or similar judicial proceeding commenced after December 31, 1980.

''(2) FOR SUBSECTION (b) (RELATING TO REPEAL OF SPECIAL TREATMENT FOR CERTAIN RAILROAD REDEMPTIONS).—The amendments made by subsection (b) of section 5 [amending section 302 of this title] shall apply to stock which is issued after December 31, 1980 (other than stock issued pursuant to a plan of reorganization approved on or before that date).

''(3) FOR SUBSECTION (c) (RELATING TO APPLICATION OF 12-MONTH LIQUIDATION RULE).—The amendment made by subsection (c) of section 5 [amending section 337 of this title] shall apply to any bankruptcy case or similar judicial proceeding commenced after December 31, 1980.

''(4) FOR SUBSECTION (d) (RELATING TO PERMITTING BANKRUPTCY ESTATE TO BE SUBCHAPTER S SHAREHOLDER).—The amendment made by subsection (d) of section 5 [amending section 1371 of this title] shall apply to any bankruptcy case commenced on or after October 1, 1979.

''(5) FOR SUBSECTION (e) (RELATING TO CERTAIN TRANSFERS TO CONTROLLED CORPORATIONS).—The amendments made by subsection (e) of section 5 [amending section 351 of this title] shall apply as provided in subsection (a) of this section.

''(6) FOR SUBSECTION (f) (RELATING TO EFFECT OF DEBT DISCHARGE ON EARNINGS AND PROFITS).—The amendment made by subsection (f) of section 5 [amending section 312 of this title] shall apply as provided in subsection (a) of this section.

''(e) FOR SECTION 6 (RELATING TO CHANGES IN TAX PROCEDURES).—The amendments made by section 6 [enacting sections 6658 and 7464 of this title, amending sections 128, 354, 422, 1023, 3302, 6012, 6036, 6155, 6161, 6212, 6213, 6216, 6326 [now 6327], 6404, 6503, 6512, 6532, 6871, 6872, 6873, 7430, and 7508 of this title, repealing section 1018 of this title, and redesignating former section 7464 of this title as 7465] shall take effect on October 1, 1979, but shall not apply to any proceeding under the Bankruptcy Act [Title 11] commenced before October 1, 1979.

''(f) ELECTION TO SUBSTITUTE SEPTEMBER 30, 1979, FOR DECEMBER 31, 1980.—

''(1) IN GENERAL.—The debtor (or debtors) in a bankruptcy case or similar judicial proceeding may (with the approval of the court) elect to apply subsections (a), (c), and (d) by substituting 'September 30, 1979' for 'December 31, 1980' each place it appears in such subsections.

''(2) EFFECT OF ELECTION.—Any election made under paragraph (1) with respect to any proceeding shall apply to all parties to the proceeding.

''(3) REVOCATION ONLY WITH CONSENT.—Any election under this subsection may be revoked only with the consent of the Secretary of the Treasury or his delegate.

''(4) TIME AND MANNER OF ELECTION.—Any election under this subsection shall be made at such time, and in such manner, as the Secretary of the Treasury or his delegate may by regulations prescribe.

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

''(1) BANKRUPTCY CASE.—The term 'bankruptcy case' means any case under title 11 of the United States Code (as recodified by Public Law 95–598).

''(2) SIMILAR JUDICIAL PROCEEDING.—The term 'similar judicial proceeding' means a receivership, foreclosure, or similar proceeding in a Federal or State court (as modified by section 368(a)(3)(D) of the Internal Revenue Code of 1986).''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1951(b)(2)(A) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1951(d) of Pub. L. 94–455, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 1(b) of Pub. L. 86–496 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after December 31, 1959, but only with respect to discharges occurring after such date.''

SAVINGS PROVISION

For provisions that nothing in amendment by section 11813 of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

Section 1951(b)(2)(B) of Pub. L. 94–455 provided that: ''If any discharge, cancellation, or modification of indebtedness of a railroad corporation occurs in a taxable year beginning after December 31, 1976, pursuant to an order of a court in a proceeding referred to in section 108(b)(A) or (B) which commenced before January 1, 1960, then, notwithstanding the amendments made by subparagraph (A) [amending this section] the provisions of subsection (b) of section 108 shall be considered as not repealed with respect to such discharge, cancellation, or modification of indebtedness.''

EXCLUSION OF CERTAIN CANCELLATIONS OF INDEBTEDNESS

Pub. L. 107–134, title I, §105, Jan. 23, 2002, 115 Stat. 2432, provided that:

''(a) IN GENERAL.—For purposes of the Internal Revenue Code of 1986—

''(1) gross income shall not include any amount which (but for this section) would be includible in gross income by reason of the discharge (in whole or in part) of indebtedness of any taxpayer if the discharge is by reason of the death of an individual incurred as the result of the terrorist attacks against the United States on September 11, 2001, or as the result of illness incurred as a result of an attack involving anthrax occurring on or after September 11, 2001, and before January 1, 2002; and

''(2) return requirements under section 6050P of such Code shall not apply to any discharge described in paragraph (1).

''(b) EFFECTIVE DATE.—This section shall apply to discharges made on or after September 11, 2001, and before January 1, 2002.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 109. Improvements by lessee on lessor's property

Gross income does not include income (other than rent) derived by a lessor of real property on the termination of a lease, representing the value of such property attributable to buildings erected or other improvements made by the lessee.

(Aug. 16, 1954, ch. 736, 68A Stat. 33.)

§ 110. Qualified lessee construction allowances for short-term leases

(a) In general

Gross income of a lessee does not include any amount received in cash (or treated as a rent reduction) by a lessee from a lessor—

(1) under a short-term lease of retail space, and

(2) for the purpose of such lessee's constructing or improving qualified long-term real property for use in such lessee's trade or business at such retail space,

but only to the extent that such amount does not exceed the amount expended by the lessee for such construction or improvement.

(b) Consistent treatment by lessor

Qualified long-term real property constructed or improved in connection with any amount excluded from a lessee's income by reason of subsection (a) shall be treated as nonresidential real property of the lessor (including for purposes of section 168(i)(8)(B)).

(c) Definitions

For purposes of this section—

(1) Qualified long-term real property

The term ''qualified long-term real property'' means nonresidential real property which is part of, or otherwise present at, the retail space referred to in subsection (a) and which reverts to the lessor at the termination of the lease.

(2) Short-term lease

The term ''short-term lease'' means a lease (or other agreement for occupancy or use) of retail space for 15 years or less (as determined under the rules of section 168(i)(3)).

(3) Retail space

The term ''retail space'' means real property leased, occupied, or otherwise used by a lessee in its trade or business of selling tangible personal property or services to the general public.

(d) Information required to be furnished to Secretary

Under regulations, the lessee and lessor described in subsection (a) shall, at such times and in such manner as may be provided in such regulations, furnish to the Secretary—

(1) information concerning the amounts received (or treated as a rent reduction) and expended as described in subsection (a), and

(2) any other information which the Secretary deems necessary to carry out the provisions of this section.

(Added Pub. L. 105–34, title XII, § 1213(a), Aug. 5, 1997, 111 Stat. 1000.)

PRIOR PROVISIONS

A prior section 110, act Aug. 16, 1954, ch. 736, 68A Stat. 33, related to income taxes paid by lessee corporations, prior to repeal by Pub. L. 101–508, title XI, § 11801(a)(6), Nov. 5, 1990, 104 Stat. 1388–520.

EFFECTIVE DATE

Section 1213(e) of Pub. L. 105–34 provided that: ''The amendments made by this section [enacting this section and amending sections 168 and 6724 of this title] shall apply to leases entered into after the date of the enactment of this Act [Aug. 5, 1997].''

§ 111. Recovery of tax benefit items

(a) Deductions

Gross income does not include income attributable to the recovery during the taxable year of any amount deducted in any prior taxable year to the extent such amount did not reduce the amount of tax imposed by this chapter.

(b) Credits

(1) In general

If—

(A) a credit was allowable with respect to any amount for any prior taxable year, and

(B) during the taxable year there is a downward price adjustment or similar adjustment,

the tax imposed by this chapter for the taxable year shall be increased by the amount of the credit attributable to the adjustment.

(2) Exception where credit did not reduce tax

Paragraph (1) shall not apply to the extent that the credit allowable for the recovered amount did not reduce the amount of tax imposed by this chapter.

(3) Exception for investment tax credit and foreign tax credit

This subsection shall not apply with respect to the credit determined under section 46 and the foreign tax credit.

(c) Treatment of carryovers

For purposes of this section, an increase in a carryover which has not expired before the beginning of the taxable year in which the recovery or adjustment takes place shall be treated as reducing tax imposed by this chapter.

(d) Special rules for accumulated earnings tax and for personal holding company tax

In applying subsection (a) for the purpose of determining the accumulated earnings tax under section 531 or the tax under section 541 (relating to personal holding companies)—

(1) any excluded amount under subsection (a) allowed for the purposes of this subtitle (other than section 531 or section 541) shall be

allowed whether or not such amount resulted in a reduction of the tax under section 531 or the tax under section 541 for the prior taxable year; and

(2) where any excluded amount under subsection (a) was not allowable as a deduction for the prior taxable year for purposes of this subtitle other than of section 531 or section 541 but was allowable for the same taxable year under section 531 or section 541, then such excluded amount shall be allowable if it did not result in a reduction of the tax under section 531 or the tax under section 541.

(Aug. 16, 1954, ch. 736, 68A Stat. 33; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–589, § 2(c), Dec. 24, 1980, 94 Stat. 3396; Pub. L. 98–369, div. A, title I, § 171(a), July 18, 1984, 98 Stat. 698; Pub. L. 99–514, title XVIII, § 1812(a)(1), (2), Oct. 22, 1986, 100 Stat. 2833.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–514, § 1812(a)(1), substituted ''did not reduce the amount of tax imposed by this chapter'' for ''did not reduce income subject to tax''.

Subsec. (c). Pub. L. 99–514, § 1812(a)(2), substituted ''reducing tax imposed by this chapter'' for ''reducing income subject to tax or reducing tax imposed by this chapter, as the case may be''.

1984—Pub. L. 98–369 amended section generally, substituting provisions relating to recovery of tax benefit items for provisions relating to recovery of bad debts, prior taxes, and delinquency amounts.

1980—Subsec. (d). Pub. L. 96–589 added subsec. (d).

1976—Subsec. (b)(4). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 171(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall apply to amounts recovered after December 31, 1983, in taxable years ending after such date.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 applicable to transactions which occur after Dec. 31, 1980, other than transactions which occur in a proceeding in a bankruptcy case or similar judicial proceeding or in a proceeding under Title 11 commencing on or after Dec. 31, 1980, with an exception permitting the debtor to make the amendment applicable to transactions occurring after Sept. 30, 1979, in a specified manner, see section 7(a)(1), (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 112. Certain combat zone compensation of members of the Armed Forces

(a) Enlisted personnel

Gross income does not include compensation received for active service as a member below the grade of commissioned officer in the Armed Forces of the United States for any month during any part of which such member—

(1) served in a combat zone, or

(2) was hospitalized as a result of wounds, disease, or injury incurred while serving in a combat zone; but this paragraph shall not apply for any month beginning more than 2 years after the date of the termination of combatant activities in such zone.

With respect to service in the combat zone designated for purposes of the Vietnam conflict, paragraph (2) shall not apply to any month after January 1978.

(b) Commissioned officers

Gross income does not include so much of the compensation as does not exceed the maximum enlisted amount received for active service as a commissioned officer in the Armed Forces of the United States for any month during any part of which such officer—

(1) served in a combat zone, or

(2) was hospitalized as a result of wounds, disease, or injury incurred while serving in a combat zone; but this paragraph shall not apply for any month beginning more than 2 years after the date of the termination of combatant activities in such zone.

With respect to service in the combat zone designated for purposes of the Vietnam conflict, paragraph (2) shall not apply to any month after January 1978.

(c) Definitions

For purposes of this section—

(1) The term ''commissioned officer'' does not include a commissioned warrant officer.

(2) The term ''combat zone'' means any area which the President of the United States by Executive Order designates, for purposes of this section or corresponding provisions of prior income tax laws, as an area in which Armed Forces of the United States are or have (after June 24, 1950) engaged in combat.

(3) Service is performed in a combat zone only if performed on or after the date designated by the President by Executive Order as the date of the commencing of combatant activities in such zone, and on or before the date designated by the President by Executive Order as the date of the termination of combatant activities in such zone; except that June 25, 1950, shall be considered the date of the commencing of combatant activities in the combat zone designated in Executive Order 10195.

(4) The term ''compensation'' does not include pensions and retirement pay.

(5) The term ''maximum enlisted amount'' means, for any month, the sum of—

(A) the highest rate of basic pay payable for such month to any enlisted member of the Armed Forces of the United States at the highest pay grade applicable to enlisted members, and

(B) in the case of an officer entitled to special pay under section 310 of title 37, United States Code, for such month, the amount of such special pay payable to such officer for such month.

(d) Prisoners of war, etc.

(1) Members of the Armed Forces

Gross income does not include compensation received for active service as a member of the Armed Forces of the United States for any month during any part of which such member is in a missing status (as defined in section 551(2) of title 37, United States Code) during the Vietnam conflict as a result of such conflict, other than a period with respect to which it is officially determined under section 552(c) of such title 37 that he is officially absent from his post of duty without authority.

(2) Civilian employees

Gross income does not include compensation received for active service as an employee for any month during any part of which such employee is in a missing status during the Vietnam conflict as a result of such conflict. For purposes of this paragraph, the terms ''active service'', ''employee'', and ''missing status'' have the respective meanings given to such terms by section 5561 of title 5 of the United States Code.

(3) Period of conflict

For purposes of this subsection, the Vietnam conflict began February 28, 1961, and ends on the date designated by the President by Executive order as the date of the termination of combatant activities in Vietnam. For purposes of this subsection, an individual is in a missing status as a result of the Vietnam conflict if immediately before such status began he was performing service in Vietnam or was performing service in Southeast Asia in direct support of military operations in Vietnam.

(Aug. 16, 1954, ch. 736, 68A Stat. 34; Pub. L. 89–739, § 1, Nov. 2, 1966, 80 Stat. 1165; Pub. L. 92–279, § 1, Apr. 26, 1972, 86 Stat. 124; Pub. L. 93–597, § 2(a), (b), Jan. 2, 1975, 88 Stat. 1950; Pub. L. 94–569, § 3(b), Oct. 20, 1976, 90 Stat. 2699; Pub. L. 104–117, § 1(d), Mar. 20, 1996, 110 Stat. 828; Pub. L. 104–188, title I, § 1704(t)(4)(A), Aug. 20, 1996, 110 Stat. 1887.)

AMENDMENTS

1996—Pub. L. 104–188 substituted ''combat zone compensation'' for ''combat pay'' in section catchline.

Subsec. (b). Pub. L. 104–117, § 1(d)(1), substituted ''the maximum enlisted amount'' for ''$500'' in introductory provisions.

Subsec. (c)(5). Pub. L. 104–117, § 1(d)(2), added par. (5).

1976—Subsec. (a). Pub. L. 94–569 substituted ''after January 1978'' for ''beginning more than 2 years after the date of the enactment of this sentence'' after ''With respect to service in the combat zone designated for purposes of the Vietnam conflict, paragraph (2) shall not apply to any month''.

Subsec. (b). Pub. L. 94–569 substituted ''after January 1978'' for ''beginning more than 2 years after the date of enactment of this sentence'' after ''With respect to service in the combat zone designated for purposes of the Vietnam conflict, paragraph (2) shall not apply to any month''.

1975—Subsec. (a). Pub. L. 93–597, § 2(a)(3), inserted provision relating to the applicability of par. (2) with respect to service in the combat zone designated for purposes of the Vietnam conflict.

Subsec. (a)(1). Pub. L. 93–597, § 2(a)(1), struck out ''during an induction period'' after ''served in a combat zone''.

Subsec. (a)(2). Pub. L. 93–597, § 2(a)(2), substituted ''; but this paragraph shall not apply for any month beginning more than 2 years after the date of the termination of combatant activities in such zone'' for ''during an induction period; but this paragraph shall not apply for any month during any part of which there are no combatant activities in any combat zone as determined under subsection (c)(3) of this section''.

Subsec. (b). Pub. L. 93–597, § 2(a)(3), inserted provision relating to applicability of par. (2) with respect to service in the combat zone designated for purposes of the Vietnam conflict.

Subsec. (b)(1). Pub. L. 93–597, § 2(a)(1), struck out ''during an induction period'' after ''served in a combat zone''.

Subsec. (b)(2). Pub. L. 93–597, § 2(a)(2), substituted ''; but this paragraph shall not apply for any month beginning more than 2 years after the date of the termination of combatant activities in such zone'' for ''during an induction period; but this paragraph shall not apply for any month during any part of which there are no combatant activities in any combat zone as determined under subsection (c)(3) of this section''.

Subsec. (c)(5). Pub. L. 93–597, § 2(b), struck out par. (5) which defined ''induction period''.

1972—Subsec. (d). Pub. L. 92–279 added subsec. (d).

1966—Subsec. (b). Pub. L. 89–739 substituted ''$500'' for ''$200''.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 2(c) of Pub. L. 93–597 provided that: ''The amendments made by this section [amending this section] shall take effect on July 1, 1973.''

EFFECTIVE DATE OF 1972 AMENDMENT

Section 3(a)(1) of Pub. L. 92–279 provided that: ''The amendment made by the first section of this Act [amending this section] shall apply to taxable years ending on or after February 28, 1961.''

EFFECTIVE DATE OF 1966 AMENDMENT

Section 2 of Pub. L. 89–739 provided that: ''The amendment made by the first section of this Act [amending this section] shall apply with respect to compensation received in taxable years ending after December 31, 1965, for periods of active service after such date.''

SENSE OF CONGRESS REGARDING TAX TREATMENT OF MEMBERS RECEIVING SPECIAL PAY FOR DUTY SUBJECT TO HOSTILE FIRE OR IMMINENT DANGER

Pub. L. 106–398, § 1 [[div. A], title X, § 1089], Oct. 30, 2000, 114 Stat. 1654, 1654A–294, provided that: ''It is the sense of Congress that members of the Armed Forces who receive special pay under section 310 of title 37, United States Code, for duty subject to hostile fire or imminent danger should receive the same treatment under Federal income tax laws as members serving in combat zones.''

SENSE OF CONGRESS REGARDING TREATMENT UNDER INTERNAL REVENUE CODE OF MEMBERS RECEIVING HOSTILE FIRE OR IMMINENT DANGER SPECIAL PAY DURING CONTINGENCY OPERATIONS

Pub. L. 106–65, div. A, title VI, § 677, Oct. 5, 1999, 113 Stat. 676, provided that: ''It is the sense of Congress that a member of the Armed Forces who is receiving special pay under section 310 of title 37, United States Code, while assigned to duty in support of a contingency operation should be treated under the Internal Revenue Code of 1986 in the same manner as a member of the Armed Forces serving in a combat zone (as defined in section 112 of the Internal Revenue Code of 1986).''

AVAILABILITY OF CERTAIN TAX BENEFITS FOR SERVICES AS PART OF OPERATION ALLIED FORCE

Pub. L. 106–21, §1, Apr. 19, 1999, 113 Stat. 34, provided that:

''(a) GENERAL RULE.—For purposes of the following provisions of the Internal Revenue Code of 1986, a qualified hazardous duty area shall be treated in the same manner as if it were a combat zone (as determined under section 112 of such Code):

''(1) Section 2(a)(3) (relating to special rule where deceased spouse was in missing status).

''(2) Section 112 (relating to the exclusion of certain combat pay of members of the Armed Forces).

''(3) Section 692 (relating to income taxes of members of Armed Forces on death).

''(4) Section 2201 (relating to members of the Armed Forces dying in combat zone or by reason of combat-zone-incurred wounds, etc.).

''(5) Section 3401(a)(1) (defining wages relating to combat pay for members of the Armed Forces).

''(6) Section 4253(d) (relating to the taxation of phone service originating from a combat zone from members of the Armed Forces).

''(7) Section 6013(f)(1) (relating to joint return where individual is in missing status).

''(8) Section 7508 (relating to time for performing certain acts postponed by reason of service in combat zone).

''(b) QUALIFIED HAZARDOUS DUTY AREA.—For purposes of this section, the term 'qualified hazardous duty area' means any area of the Federal Republic of Yugoslavia (Serbia/Montenegro), Albania, the Adriatic Sea, and the northern Ionian Sea (above the 39th parallel) during the period (which includes the date of the enactment of this Act [Apr. 19, 1999]) that any member of the Armed Forces of the United States is entitled to special pay under section 310 of title 37, United States Code (relating to special pay: duty subject to hostile fire or imminent danger) for services performed in such area.

''(c) SPECIAL RULE FOR SECTION 7508.—Solely for purposes of applying section 7508 of the Internal Revenue Code of 1986, in the case of an individual who is performing services as part of Operation Allied Force outside the United States while deployed away from such individual's permanent duty station, the term 'qualified hazardous duty area' includes, during the period for which the entitlement referred to in subsection (b) is in effect, any area in which such services are performed.

''(d) EFFECTIVE DATES.—

''(1) IN GENERAL.—Except as provided in paragraph (2), this section shall take effect on March 24, 1999.

''(2) WITHHOLDING.—Subsection (a)(5) shall apply to remuneration paid after the date of the enactment of this Act [Apr. 19, 1999].''

TREATMENT OF CERTAIN INDIVIDUALS PERFORMING SERVICES IN CERTAIN HAZARDOUS DUTY AREAS; EFFECTIVE DATE

Section 1 of Pub. L. 104–117 provided that:

''(a) GENERAL RULE.—For purposes of the following provisions of the Internal Revenue Code of 1986, a qualified hazardous duty area shall be treated in the same manner as if it were a combat zone (as determined under section 112 of such Code):

''(1) Section 2(a)(3) (relating to special rule where deceased spouse was in missing status).

''(2) Section 112 (relating to the exclusion of certain combat pay of members of the Armed Forces).

''(3) Section 692 (relating to income taxes of members of Armed Forces on death).

''(4) Section 2201 (relating to members of the Armed Forces dying in combat zone or by reason of combat-zone-incurred wounds, etc.).

''(5) Section 3401(a)(1) (defining wages relating to combat pay for members of the Armed Forces).

''(6) Section 4253(d) (relating to the taxation of phone service originating from a combat zone from members of the Armed Forces).

''(7) Section 6013(f)(1) (relating to joint return where individual is in missing status).

''(8) Section 7508 (relating to time for performing certain acts postponed by reason of service in combat zone).

''(b) QUALIFIED HAZARDOUS DUTY AREA.—For purposes of this section, the term 'qualified hazardous duty area' means Bosnia and Herzegovina, Croatia, or Macedonia, if as of the date of the enactment of this section [Mar. 20, 1996] any member of the Armed Forces of the United States is entitled to special pay under section 310 of title 37, United States Code (relating to special pay; duty subject to hostile fire or imminent danger) for services performed in such country. Such term includes any such country only during the period such entitlement is in effect. Solely for purposes of applying section 7508 of the Internal Revenue Code of 1986, in the case of an individual who is performing services as part of Operation Joint Endeavor outside the United States while deployed away from such individual's permanent duty station, the term 'qualified hazardous duty area' includes, during the period for which such entitlement is in effect, any area in which such services are performed.

''(c) EXCLUSION OF COMBAT PAY FROM WITHHOLDING LIMITED TO AMOUNT EXCLUDABLE FROM GROSS INCOME.—[Amended section 3401 of this title.]

''(d) INCREASE IN COMBAT PAY EXCLUSION FOR OFFICERS TO HIGHEST AMOUNT APPLICABLE TO ENLISTED PERSONNEL.—

''(1) IN GENERAL.—[Amended this section.]

''(2) MAXIMUM ENLISTED AMOUNT.—[Amended this section.]

''(e) EFFECTIVE DATE.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the provisions of and amendments made by this section shall take effect on November 21, 1995.

''(2) WITHHOLDING.—Subsection (a)(5) and the amendment made by subsection (c) shall apply to remuneration paid after the date of the enactment of this Act [Mar. 20, 1996].''

REFUND OR CREDIT OF OVERPAYMENT; APPLICABLE PERIOD

Section 3(a)(2), (3) of Pub. L. 92–279, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(2) If refund or credit of any overpayment for any taxable year resulting from the application of the amendment made by the first section of this Act [amending this section] (including interest, additions to the tax, and additional amounts) is prevented at any time before the expiration of the applicable period specified in paragraph (3) by the operation of any law or rule of law, such refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed before the expiration of such applicable period.

''(3) For purposes of paragraph (2), the applicable period for any individual with respect to any compensation is the period ending on whichever of the following days is the later:

''(A) the day which is one year after the date of the enactment of this Act [Apr. 26, 1972], or

''(B) the day which is 2 years after the date on which it is determined that the individual's missing status (within the meaning of section 112(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) has terminated for purposes of such section 112.''

EX. ORD. NO. 10585. TERMINATION OF COMBATANT ACTIVITIES IN KOREA

Ex. Ord. No. 10585, Jan. 1, 1955, 20 F.R. 17, provided:

By virtue of the authority vested in me by section 112(c)(3) of the Internal Revenue Code of 1954 [now I.R.C. 1986], January 31, 1955, as of midnight thereof, is hereby designated as the date of termination of combatant activities in the zone comprised of the area described in Executive Order No. 10195 of December 20, 1950 (15 F.R. 9177).

DWIGHT D. EISENHOWER.

EX. ORD. NO. 11216. DESIGNATION OF VIETNAM AND ADJACENT WATERS AS COMBAT ZONE

Ex. Ord. No. 11216, Apr. 24, 1965, 30 F.R. 5817, provided:

Pursuant to the authority vested in me by section 112 of the Internal Revenue Code of 1954 [now I.R.C. 1986], I hereby designate, for the purposes of that section, as an area in which Armed Forces of the United States are and have been engaged in combat:

Vietnam, including the waters adjacent thereto within the following-described limits: From a point on the East Coast of Vietnam at the juncture of Vietnam with China southeastward to 21° N Lat., 108°15′ E Long.; thence southward to 18° N Lat., 108°15′ E Long.; thence southeastward to 17°30 N Lat., 111° E Long.; thence southward to 11° N Lat., 111° E Long.; thence southwestward to 7° N Lat., 105° E Long.; thence westward to 7° N Lat., 103° E Long.; thence northward to 9°30′ N Lat., 103° E Long.; thence northeastward to 10°15′ N Lat., 104°27′ E Long.; thence northward to a point on the West Coast of Vietnam at the juncture of Vietnam with Cambodia.

The date of the commencing of combatant activities in such area is hereby designated as January 1, 1964.

LYNDON B. JOHNSON.

EX. ORD. NO. 12744. DESIGNATION OF ARABIAN PENINSULA AREAS, AIRSPACE, AND ADJACENT WATERS AS COMBAT ZONE

Ex. Ord. No. 12744, Jan. 21, 1991, 56 F.R. 2663, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 112 of the Internal Revenue Code of 1986 (26 U.S.C. 112), I hereby designate, for purposes of that section, the following locations, including the airspace above such locations, as an area in which Armed Forces of the United States are and have been engaged in combat:

—the Persian Gulf
—the Red Sea
—the Gulf of Oman
—that portion of the Arabian Sea that lies north of 10 degrees north latitude and west of 68 degrees east longitude
—the Gulf of Aden
—the total land areas of Iraq, Kuwait, Saudi Arabia, Oman, Bahrain, Qatar, and the United Arab Emirates.

For the purposes of this order, the date of the commencing of combatant activities in such zone is hereby designated as January 17, 1991.

GEORGE BUSH.

EX. ORD. NO. 13002. TERMINATION OF COMBAT ZONE DESIGNATION IN VIETNAM AND WATERS ADJACENT THERETO

Ex. Ord. No. 13002, May 13, 1996, 61 F.R. 24665, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 112(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 112(c)(3)), June 30, 1996, as of midnight thereof, is hereby designated as the date of termination of combatant activities in the zone comprised of the area described in Executive Order No. 11216 of April 24, 1965 [set out above].

WILLIAM J. CLINTON.

EX. ORD. NO. 13119. DESIGNATION OF FEDERAL REPUBLIC OF YUGOSLAVIA (SERBIA/MONTENEGRO), ALBANIA, THE AIRSPACE ABOVE, AND ADJACENT WATERS AS A COMBAT ZONE

Ex. Ord. No. 13119, April 13, 1999, 64 F.R. 18797, provided:

Pursuant to the authority vested in me as President by the Constitution and laws of the United States of America, including section 112 of the Internal Revenue Code of 1986 (26 U.S.C. 112), I designate, for the purposes of that section, the following locations, including the airspace above such locations, as an area in which Armed Forces of the United States are and have been engaged in combat:

—The Federal Republic of Yugoslavia (Serbia/Montenegro);
—Albania;
—the Adriatic Sea;
—the Ionian Sea north of the 39th parallel.

For the purposes of this order, I designate March 24, 1999, as the date of the commencement of combatant activities in such zone.

WILLIAM J. CLINTON.

EX. ORD. NO. 13239. DESIGNATION OF AFGHANISTAN AND THE AIRSPACE ABOVE AS A COMBAT ZONE

Ex. Ord. No. 13239, Dec. 12, 2001, 66 F.R. 64907, provided:

Pursuant to the authority vested in me as President by the Constitution and the laws of the United States of America, including section 112 of the Internal Revenue Code of 1986 (26 U.S.C. 112), I designate, for purposes of that section, Afghanistan, including the airspace above, as an area in which Armed Forces of the United States are and have been engaged in combat.

For purposes of this order, I designate September 19, 2001, as the date of the commencement of combatant activities in such zone.

GEORGE W. BUSH.

[§ 113. Repealed. Pub. L. 101–508, title XI, § 11801(a)(7), Nov. 5, 1990, 104 Stat. 1388–520]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 35, related to mustering-out payments for members of Armed Forces.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[§ 114. Repealed. Pub. L. 108–357, title I, § 101(a), Oct. 22, 2004, 118 Stat. 1423]

Section, added Pub. L. 106–519, § 3(a), Nov. 15, 2000, 114 Stat. 2423, related to exclusion of extraterritorial income from gross income.

A prior section 114, act Aug. 16, 1954, ch. 736, 68A Stat. 35, related to sports programs conducted for American National Red Cross, prior to repeal by Pub. L. 101–508, title XI, § 11801(a)(8), Nov. 5, 1990, 104 Stat. 1388–520.

EFFECTIVE DATE OF REPEAL

Repeal applicable to transactions after Dec. 31, 2004, see section 101(c) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendments note under section 56 of this title.

TRANSITION PROVISIONS

Pub. L. 108–357, title I, § 101(d)–(f), Oct. 22, 2004, 118 Stat. 1423, 1424, as amended by Pub. L. 109–222, title V, § 513(b), May 17, 2006, 120 Stat. 366, provided that:

''(d) TRANSITIONAL RULE FOR 2005 AND 2006.—

''(1) IN GENERAL.—In the case of transactions during 2005 or 2006, the amount includible in gross income by reason of the amendments made by this section [amending sections 56, 275, 864, 903, and 999 of this title and repealing this section and sections 941 to 943 of this title] shall not exceed the applicable percentage of the amount which would have been so included but for this subsection.

''(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage shall be as follows:

''(A) For 2005, the applicable percentage shall be 20 percent.

''(B) For 2006, the applicable percentage shall be 40 percent.

''(e) REVOCATION OF ELECTION TO BE TREATED AS DOMESTIC CORPORATION.—If, during the 1-year period beginning on the date of the enactment of this Act [Oct. 22, 2004], a corporation for which an election is in effect under section 943(e) of the Internal Revenue Code of 1986 revokes such election, no gain or loss shall be recognized with respect to property treated as transferred under clause (ii) of section 943(e)(4)(B) of such Code to the extent such property—

''(1) was treated as transferred under clause (i) thereof, or

''(2) was acquired during a taxable year to which such election applies and before May 1, 2003, in the ordinary course of its trade or business.

The Secretary of the Treasury (or such Secretary's delegate) may prescribe such regulations as may be necessary to prevent the abuse of the purposes of this subsection.

''[(f) Repealed. Pub. L. 109–222, title V, §513(b), May 17, 2006, 120 Stat. 366.]''

§ 115. Income of States, municipalities, etc.

Gross income does not include—

(1) income derived from any public utility or the exercise of any essential governmental function and accruing to a State or any political subdivision thereof, or the District of Columbia; or

(2) income accruing to the government of any possession of the United States, or any political subdivision thereof.

(Aug. 16, 1954, ch. 736, 68A Stat. 35; Pub. L. 94–455, title XIX, §1901(a)(19), Oct. 4, 1976, 90 Stat. 1766.)

AMENDMENTS

1976—Pub. L. 94–455 struck out ''(a) General rule'' before ''Gross income does not include'', struck out subsecs. (b) and (c) which related to contracts concerning public utilities made before Sept. 8, 1916, and contracts concerning bridge acquisition made before May 29, 1928, respectively, and in par. (1) of former subsec. (a), struck out ''or territory'' after ''accruing to a State''.

EFFECTIVE DATE OF 1976 AMENDMENT

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

TAX TREATMENT OF STATE OWNERSHIP OF RAILROAD REAL ESTATE INVESTMENT TRUST

Pub. L. 109–59, title XI, §11146, Aug. 10, 2005, 119 Stat. 1966, provided that:

''(a) IN GENERAL.—If a State owns all of the outstanding stock of a corporation—

''(1) which is a real estate investment trust on the date of the enactment of this Act [Aug. 10, 2005],

''(2) which is a non-operating class III railroad, and

''(3) substantially all of the activities of which consist of the ownership, leasing, and operation by such corporation of facilities, equipment, and other property used by the corporation or other persons for railroad transportation and for economic development purposes for the benefit of the State and its citizens, then, to the extent such activities are of a type which are an essential governmental function within the meaning of section 115 of the Internal Revenue Code of 1986, income derived from such activities by the corporation shall be treated as accruing to the State for purposes of section 115 of such Code.

''(b) GAIN OR LOSS NOT RECOGNIZED ON CONVERSION.—Notwithstanding section 337(d) of the Internal Revenue Code of 1986—

''(1) no gain or loss shall be recognized under section 336 or 337 of such Code, and

''(2) no change in basis of the property of such corporation shall occur, because of any change of status of a corporation to a tax-exempt entity by reason of the application of subsection (a).

''(c) TAX-EXEMPT FINANCING.—

''(1) IN GENERAL.—Any obligation issued by a corporation described in subsection (a) at least 95 percent of the net proceeds (as defined in section 150(a) of the Internal Revenue Code of 1986) of which are to be used to provide for the acquisition, construction, or improvement of railroad transportation infrastructure (including railroad terminal facilities)—

''(A) shall be treated as a State or local bond (within the meaning of section 103(c) of such Code), and

''(B) shall not be treated as a private activity bond (within the meaning of section 103(b)(1) of such Code) solely by reason of the ownership or use of such railroad transportation infrastructure by the corporation.

''(2) NO INFERENCE.—Except as provided in paragraph (1), nothing in this subsection shall be construed to affect the treatment of the private use of proceeds or property financed with obligations issued by the corporation for purposes of section 103 of the Internal Revenue Code of 1986 and part IV of subchapter B [probably means part IV of subchapter B of chapter 1] of such Code.

''(d) DEFINITIONS.—For purposes of this section:

''(1) REAL ESTATE INVESTMENT TRUST.—The term 'real estate investment trust' has the meaning given such term by section 856(a) of the Internal Revenue Code of 1986.

''(2) NON-OPERATING CLASS III RAILROAD.—The term 'non-operating class III railroad' has the meaning given such term by part A of subtitle IV of title 49, United States Code (49 U.S.C. 10101 et seq.), and the regulations thereunder.

''(3) STATE.—The term 'State' includes—

''(A) the District of Columbia and any possession of the United States, and

''(B) any authority, agency, or public corporation of a State.

''(e) APPLICABILITY.—

''(1) IN GENERAL.—Except as provided in paragraph (2), this section shall apply on and after the date on which a State becomes the owner of all of the outstanding stock of a corporation described in subsection (a) through action of such corporation's board of directors.

''(2) EXCEPTION.—This section shall not apply to any State which—

''(A) becomes the owner of all of the voting stock of a corporation described in subsection (a) after December 31, 2003, or

''(B) becomes the owner of all of the outstanding stock of a corporation described in subsection (a) after December 31, 2006.''

[§ 116. Repealed. Pub. L. 99–514, title VI, § 612(a), Oct. 22, 1986, 100 Stat. 2250]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 37; June 25, 1959, Pub. L. 86–69, §3(a)(2), 73 Stat. 139; Sept. 14, 1960, Pub. L. 86–779, §10(f), 74 Stat. 1009; Feb. 26, 1964, Pub. L. 88–272, title II, §201(c), (d)(6)(C), 78 Stat. 32; Nov. 13, 1966, Pub. L. 89–809, title I, §103(g), 80 Stat. 1552; Oct. 4, 1976, Pub. L. 94–455, title X, §§1051(h)(2), 1053(d)(1), title XIX, §1901(a)(20), 90 Stat. 1647, 1649, 1766; Apr. 2, 1980, Pub. L. 96–223, title IV, §404(a), 94 Stat. 305; Aug. 13, 1981, Pub. L. 97–34, title III, §302(b)(2), 95 Stat. 272; July 18, 1984, Pub. L. 98–369, div. A, title V, §542(b), 98 Stat. 891, authorized partial exclusion of dividends received by individuals.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1986, see section 612(c) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 301 of this title.

§ 117. Qualified scholarships

(a) General rule

Gross income does not include any amount received as a qualified scholarship by an individual who is a candidate for a degree at an educational organization described in section 170(b)(1)(A)(ii).

(b) Qualified scholarship

For purposes of this section—

(1) In general

The term ''qualified scholarship'' means any amount received by an individual as a scholarship or fellowship grant to the extent the individual establishes that, in accordance with the conditions of the grant, such amount was used for qualified tuition and related expenses.

(2) Qualified tuition and related expenses

For purposes of paragraph (1), the term ''qualified tuition and related expenses'' means—

(A) tuition and fees required for the enrollment or attendance of a student at an educational organization described in section 170(b)(1)(A)(ii), and

(B) fees, books, supplies, and equipment required for courses of instruction at such an educational organization.

(c) Limitation

(1) In general

Except as provided in paragraph (2), subsections (a) and (d) shall not apply to that portion of any amount received which represents payment for teaching, research, or other services by the student required as a condition for receiving the qualified scholarship or qualified tuition reduction.

(2) Exceptions

Paragraph (1) shall not apply to any amount received by an individual under—

(A) the National Health Service Corps Scholarship Program under section 338A(g)(1)(A) of the Public Health Service Act, or

(B) the Armed Forces Health Professions Scholarship and Financial Assistance program under subchapter I of chapter 105 of title 10, United States Code.

(d) Qualified tuition reduction

(1) In general

Gross income shall not include any qualified tuition reduction.

(2) Qualified tuition reduction

For purposes of this subsection, the term ''qualified tuition reduction'' means the amount of any reduction in tuition provided to an employee of an organization described in section 170(b)(1)(A)(ii) for the education (below the graduate level) at such organization (or another organization described in section 170(b)(1)(A)(ii)) of—

(A) such employee, or

(B) any person treated as an employee (or whose use is treated as an employee use) under the rules of section 132(h).

(3) Reduction must not discriminate in favor of highly compensated, etc.

Paragraph (1) shall apply with respect to any qualified tuition reduction provided with respect to any highly compensated employee only if such reduction is available on substantially the same terms to each member of a group of employees which is defined under a reasonable classification set up by the employer which does not discriminate in favor of highly compensated employees (within the meaning of section 414(q)). For purposes of this paragraph, the term ''highly compensated employee'' has the meaning given such term by section 414(q).

[(4) Repealed. Pub. L. 101–140, title II, § 203(a)(1), (2), Nov. 8, 1989, 103 Stat. 830]

(5) Special rules for teaching and research assistants

In the case of the education of an individual who is a graduate student at an educational organization described in section 170(b)(1)(A)(ii) and who is engaged in teaching or research activities for such organization, paragraph (2) shall be applied as if it did not contain the phrase ''(below the graduate level)''.

(Aug. 16, 1954, ch. 736, 68A Stat. 38; Pub. L. 87–256, § 110(a), Sept. 21, 1961, 75 Stat. 535; Pub. L. 94–455, title XIX, § 1901(b)(8)(A), (c)(3), Oct. 4, 1976, 90 Stat. 1794, 1803; Pub. L. 96–541, § 5(a)(1), Dec. 17, 1980, 94 Stat. 3205; Pub. L. 98–369, div. A, title V, § 532(a), July 18, 1984, 98 Stat. 887; Pub. L. 99–514, title I, § 123(a), title XI, §§ 1114(b)(2), 1151(g)(2), Oct. 22, 1986, 100 Stat. 2112, 2450, 2506; Pub. L. 100–647, title I, § 1011B(a)(31)(B), title IV, § 4001(b)(2), Nov. 10, 1988, 102 Stat. 3488, 3643; Pub. L. 101–140, title II, § 203(a)(1), (2), Nov. 8, 1989, 103 Stat. 830; Pub. L. 104–188, title I, § 1703(n)(14), Aug. 20, 1996, 110 Stat. 1878; Pub. L. 107–16, title IV, § 413(a), June 7, 2001, 115 Stat. 64.)

AMENDMENT OF SECTION

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

REFERENCES IN TEXT

Section 338A(g)(1)(A) of the Public Health Service Act, referred to in subsec. (c)(2)(A), is classified to section 254*l*(g)(1)(A) of Title 42, The Public Health and Welfare.

AMENDMENTS

2001—Subsec. (c). Pub. L. 107–16, §§ 413(a), 901, temporarily designated existing provisions as par. (1), inserted par. heading, substituted ''Except as provided in paragraph (2), subsections (a)'' for ''Subsections (a)'', and added par. (2). See Effective and Termination Dates of 2001 Amendment note below.

1996—Subsec. (d)(2)(B). Pub. L. 104–188 substituted ''section 132(h)'' for ''section 132(f)''.

1989—Subsec. (d)(4). Pub. L. 101–140, § 203(a)(2), amended par. (4) to read as if amendments by Pub. L. 100–647, § 1011B(a)(31)(B), had not been enacted, see 1988 Amendment note below.

Pub. L. 101–140, § 203(a)(1), amended subsec. (d) to read as if amendments by Pub. L. 99–514, § 1151(g)(2), which added par. (4), had not been enacted, see 1986 Amendment note below.

1988—Subsec. (d)(4). Pub. L. 100–647, § 1011B(a)(31)(B), substituted ''there shall'' for ''there may'' and ''who are'' for ''who may be''.

Subsec. (d)(5). Pub. L. 100–647, §4001(b)(2), added par. (5).

1986—Pub. L. 99–514, §123(a), in amending section generally, substituted ''Qualified scholarships'' for ''Scholarships and fellowship grants'' in section catchline.

Subsec. (a). Pub. L. 99–514, §123(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''In the case of an individual, gross income does not include—

''(1) any amount received—

''(A) as a scholarship at an educational organization described in section 170(b)(1)(A)(ii), or

''(B) as a fellowship grant, including the value of contributed services and accommodations; and

''(2) any amount received to cover expenses for—

''(A) travel,

''(B) research,

''(C) clerical help, or

''(D) equipment,

which are incident to such a scholarship or to a fellowship grant, but only to the extent that the amount is so expended by the recipient.''

Subsec. (b). Pub. L. 99–514, §123(a), in amending subsec. (b) generally, substituted qualified scholarship provision for former limitations provision, which related in par. (1) to individuals who were candidates for degrees, and in par. (2) to individuals who were not candidates for degrees, describing in subpar. (A) conditions for exclusion and in subpar. (B) extent of exclusion, such detailed provision now covered in subsec. (c).

Subsec. (c). Pub. L. 99–514, §123(a), in amending subsec. (c) generally, substituted limitation provision for former provision relating to Federal grants for tuition and related expenses not includable merely because there was requirement of future service as Federal employee.

Subsec. (d). Pub. L. 99–514, §123(a), in amending subsec. (d) generally, substituted ''reduction'' for ''reductions'' in heading and inserted ''(within the meaning of section 414(q))'' after ''highly compensated employees'' in par. (3).

Subsec. (d)(3). Pub. L. 99–514, §1114(b)(2), struck out ''officer, owner, or'' after ''with respect to any'' and ''officers, owners, or'' after ''in favor of'' and inserted at end ''For purposes of this paragraph, the term 'highly compensated employee' has the meaning given such term by section 414(q).''

Subsec. (d)(4). Pub. L. 99–514, §1151(g)(2), added par. (4).

1984—Subsec. (d). Pub. L. 98–369 added subsec. (d).

1980—Subsec. (c). Pub. L. 96–541 added subsec. (c).

1976—Subsecs. (a)(1)(A), (b)(1), (2). Pub. L. 94–455, §1901(b)(8)(A), substituted ''educational organization described in section 170(b)(1)(A)(ii)'' for ''educational institution (as defined in section 151(e)(4))'' after ''scholarship at an''.

Subsec. (b)(2)(A)(iv). Pub. L. 94–455, §1901(c)(3), struck out ''a territory'' after ''or a State''.

Subsec. (b)(2)(B). Pub. L. 94–455, §1901(b)(8)(A), substituted ''educational organization described in section 170(b)(1)(A)(ii)'' for ''educational institution (as defined in section 151(e)(4))'' after ''degree at an''.

1961—Subsec. (b)(2)(A). Pub. L. 87–256 included cases where the grantor of the scholarship or fellowship grant is a foreign government, an international organization, or a binational or multinational educational and cultural foundation or commission created or continued pursuant to the Mutual Educational and Cultural Exchange Act of 1961.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Pub. L. 107–16, title IV, §413(b), June 7, 2001, 115 Stat. 64, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to amounts received in taxable years beginning after December 31, 2001.''

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§13001–13444, to which such amendment relates, see section 1703(*o*) of Pub. L. 104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011B(a)(31)(B) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 4001(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section and section 127 of this title] shall apply to taxable years beginning after December 31, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 123(a) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, but only in the case of scholarships and fellowships granted after Aug. 16, 1986, see section 151(d) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1114(b)(2) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1987, see section 1114(c)(2) of Pub. L. 99–514, set out as a note under section 414 of this title.

Amendment by section 1151(g)(2) of Pub. L. 99–514 applicable, with certain qualifications and exceptions, to years beginning after Dec. 31, 1988, see section 1151(k) of Pub. L. 99–514, as amended, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 532(b) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by this section [amending this section] shall apply to qualified tuition reductions (as defined in section 117(d)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) for education furnished after June 30, 1985, in taxable years ending after such date.''

Provisions of subsec. (d) treated as in effect on and after Jan. 1, 1984, in case of education described in section 127(c)(8) of this title, see section 1(g)(5) of Pub. L. 98–611, set out as a note under section 127 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 5(a)(2) of Pub. L. 96–541 provided: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1980.''

EFFECTIVE DATE OF 1976 AMENDMENT

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

EFFECTIVE DATE OF 1961 AMENDMENT

Section 110(h)(1) of Pub. L. 87–256 provided that: ''The amendments made by subsections (a), (b), and (c) of this section [amending this section and sections 871 and 872 of this title] shall apply to taxable years beginning after December 31, 1961.''

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amend-

ments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUBLIC LAW 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 123(a) of Pub. L. 99–514 to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TRANSITIONAL RULES FOR TREATMENT OF CERTAIN REDUCTIONS IN TUITION

Section 1853(f) of Pub. L. 99–514 provided that:

''(1) A tuition reduction plan shall be treated as meeting the requirements of section 117(d)(3) of the Internal Revenue Code of 1954 [now 1986] if—

''(A) such plan would have met the requirements of such section (as amended by this section but without regard to the lack of evidence that benefits under such plan were the subject of good faith bargaining) on the day on which eligibility to participate in the plan was closed,

''(B) at all times thereafter, the tuition reductions available under such plan are available on substantially the same terms to all employees eligible to participate in such plan, and

''(C) the eligibility to participate in such plan closed on June 30, 1972, June 30, 1974, or December 31, 1975.

''(2) For purposes of applying section 117(d)(3) of the Internal Revenue Code of 1954 [now 1986] to all tuition reduction plans of an employer with at least 1 such plan described in paragraph (1) of this subsection, there shall be excluded from consideration employees not included in the plan who are included in a unit of employees covered by an agreement that the Secretary of the Treasury or his delegate finds to be a collective bargaining agreement between employee representatives and 1 or more employers, if, with respect to plans other than plans described in paragraph (1), there is evidence that such benefits were the subject of good faith bargaining.

''(3) Any reduction in tuition provided with respect to a full-time course of education furnished at the graduate level before July 1, 1988, shall not be included in gross income if—

''(A) such reduction would not be included in gross income under the Internal Revenue Service regulations in effect on the date of the enactment of the Tax Reform Act of 1984 [July 18, 1984], and

''(B) such reduction is provided with respect to a student who was accepted for admission to such course of education before July 1, 1984, and began such course of education before June 30, 1985.''

NATIONAL RESEARCH SERVICE AWARDS

Pub. L. 95–600, title I, § 161(b), Nov. 6, 1978, 92 Stat. 2810, as amended by Pub. L. 96–167, § 9(b), Dec. 29, 1979, 93 Stat. 1278; Pub. L. 96–541, § 5(b), Dec. 17, 1980, 94 Stat. 3206; Pub. L. 97–248, title II, § 285, Sept. 3, 1982, 96 Stat. 569; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that any amount paid to, or on behalf of, an individual as a national research service award under former section 289*l*–1 of title 42 during calendar years 1974 through 1983 was to be treated as a scholarship or fellowship grant under this section.

SCHOLARSHIP PROGRAMS FOR MEMBERS OF THE UNIFORMED SERVICES

Pub. L. 93–483, § 4, Oct. 26, 1974, 88 Stat. 1458, as amended Pub. L. 94–455, title XXI, § 2130, Oct. 4, 1976, 90 Stat. 1922; Pub. L. 95–171, § 5, Nov. 12, 1977, 91 Stat. 1355; Pub. L. 95–600, title I, § 161(a), Nov. 6, 1978, 92 Stat. 2810; Pub. L. 95–615, title I, § 6, Nov. 8, 1978, 92 Stat. 3098; Pub. L. 96–167, § 9(a), Dec. 29, 1979, 93 Stat. 1278; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) IN GENERAL.—Any amount received from appropriated funds as a scholarship, including the value of contributed services and accommodations, by a member of a uniformed service who is receiving training under the Armed Forces Health Professions Scholarship Program (or any other program determined by the Secretary of the Treasury or his delegate to have substantially similar objectives) from an educational institution (as defined in section 151(e)(4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) [see section 170(b)(1)(A)(ii) of this title] shall be treated as a scholarship under section 117 of such Code [this section], whether that member is receiving training while on active duty or in an off-duty or inactive status, and without regard to whether a period of active duty is required of the member as a condition of receiving those payments.

''(b) DEFINITION OF UNIFORMED SERVICES.—For purposes of this section, the term 'uniformed service' has the meaning given it by section 101(3) of title 37, United States Code.

''(c) EFFECTIVE DATE.—The provisions of this section shall apply with respect to amounts received during calendar years 1973, 1974, and 1975, and, in the case of a member of a uniformed service receiving training after 1975 and before 1981 in programs described in subsection (a), with respect to amounts received after 1975 and before 1985.''

[Section 6 of Pub. L. 95–615, which reenacted § 4(c) of Pub. L. 93–483 without change, to cease to have effect on the day after Nov. 8, 1978, see section 210(a) of Pub. L. 95–615, set out as a note under section 61 of this title.]

§ 118. Contributions to the capital of a corporation

(a) General rule

In the case of a corporation, gross income does not include any contribution to the capital of the taxpayer.

(b) Contributions in aid of construction, etc.

For purposes of subsection (a), except as provided in subsection (c), the term ''contribution to the capital of the taxpayer'' does not include any contribution in aid of construction or any other contribution as a customer or potential customer.

(c) Special rules for water and sewerage disposal utilities

(1) General rule

For purposes of this section, the term ''contribution to the capital of the taxpayer'' includes any amount of money or other property

received from any person (whether or not a shareholder) by a regulated public utility which provides water or sewerage disposal services if—

(A) such amount is a contribution in aid of construction,

(B) in the case of contribution of property other than water or sewerage disposal facilities, such amount meets the requirements of the expenditure rule of paragraph (2), and

(C) such amount (or any property acquired or constructed with such amount) is not included in the taxpayer's rate base for rate-making purposes.

(2) Expenditure rule

An amount meets the requirements of this paragraph if—

(A) an amount equal to such amount is expended for the acquisition or construction of tangible property described in section 1231(b)—

(i) which is the property for which the contribution was made or is of the same type as such property, and

(ii) which is used predominantly in the trade or business of furnishing water or sewerage disposal services,

(B) the expenditure referred to in subparagraph (A) occurs before the end of the second taxable year after the year in which such amount was received, and

(C) accurate records are kept of the amounts contributed and expenditures made, the expenditures to which contributions are allocated, and the year in which the contributions and expenditures are received and made.

(3) Definitions

For purposes of this subsection—

(A) Contribution in aid of construction

The term ''contribution in aid of construction'' shall be defined by regulations prescribed by the Secretary, except that such term shall not include amounts paid as service charges for starting or stopping services.

(B) Predominantly

The term ''predominantly'' means 80 percent or more.

(C) Regulated public utility

The term ''regulated public utility'' has the meaning given such term by section 7701(a)(33), except that such term shall not include any utility which is not required to provide water or sewerage disposal services to members of the general public in its service area.

(4) Disallowance of deductions and credits; adjusted basis

Notwithstanding any other provision of this subtitle, no deduction or credit shall be allowed for, or by reason of, any expenditure which constitutes a contribution in aid of construction to which this subsection applies. The adjusted basis of any property acquired with contributions in aid of construction to which this subsection applies shall be zero.

(d) Statute of limitations

If the taxpayer for any taxable year treats an amount as a contribution to the capital of the taxpayer described in subsection (c), then—

(1) the statutory period for the assessment of any deficiency attributable to any part of such amount shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of—

(A) the amount of the expenditure referred to in subparagraph (A) of subsection (c)(2),

(B) the taxpayer's intention not to make the expenditures referred to in such subparagraph, or

(C) a failure to make such expenditure within the period described in subparagraph (B) of subsection (c)(2), and

(2) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(e) Cross references

(1) For basis of property acquired by a corporation through a contribution to its capital, see section 362.

(2) For special rules in the case of contributions of indebtedness, see section 108(e)(6).

(Aug. 16, 1954, ch. 736, 68A Stat. 39; Pub. L. 94–455, title XXI, §2120(a), Oct. 4, 1976, 90 Stat. 1912; Pub. L. 95–600, title III, §364(a), Nov. 6, 1978, 92 Stat. 2854; Pub. L. 96–589, §2(e)(2), Dec. 24, 1980, 94 Stat. 3396; Pub. L. 98–369, div. A, title I, §163(a), July 18, 1984, 98 Stat. 697; Pub. L. 99–514, title VIII, §824(a), Oct. 22, 1986, 100 Stat. 2374; Pub. L. 104–188, title I, §1613(a)(1), (2), Aug. 20, 1996, 110 Stat. 1848–1850.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–188, §1613(a)(2), inserted ''except as provided in subsection (c),'' before ''the term''.

Subsecs. (c) to (e). Pub. L. 104–188, §1613(a)(1), added subsecs. (c) and (d) and redesignated former subsec. (c) as (e).

1986—Subsec. (b). Pub. L. 99–514, §824(a), added subsec. (b) and struck out former subsec. (b) relating to contributions in aid of construction, containing par. (1) general rule, par. (2) expenditure rule, par. (3) definitions, and par. (4) disallowance of deductions and investment credit; adjusted basis.

Subsecs. (c), (d). Pub. L. 99–514, §824(a), redesignated former subsec. (d) as (c) and struck out former subsec. (c), statute of limitations, which read as follows: ''If the taxpayer for any taxable year treats an amount as a contribution to the capital of the taxpayer described in subsection (b), then—

''(1) the statutory period for the assessment of any deficiency attributable to any part of such amount shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of—

''(A) the amount of the expenditure referred to in subparagraph (A) of subsection (b)(2),

''(B) the taxpayer's intention not to make the expenditures referred to in such subparagraph, or

''(C) a failure to make such expenditure within the period described in subparagraph (B) of subsection (b)(2); and

''(2) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.''

1984—Subsecs. (c), (d). Pub. L. 98–369 added subsec. (c) and redesignated former subsec. (c) as (d).

1980—Subsec. (c). Pub. L. 96–589 designated existing provisions as par. (1) and added par. (2).

1978—Subsec. (b)(1). Pub. L. 95–600, § 364(a)(1), (2), substituted in provisions preceding subpar. (A) ''electric energy, gas (through a local distribution system or transportation by pipeline), water,'' for ''water'' and in subpar. (B) ''electric energy, gas, steam, water,'' for ''water''.

Subsec. (b)(2)(A)(ii). Pub. L. 95–600, § 364(a)(3), substituted ''electric energy, gas, steam, water,'' for ''water''.

Subsec. (b)(3)(A). Pub. L. 95–600, § 364(a)(4), substituted ''line to an electric line, a gas main, a steam line, or a main water or sewer line'' for ''property to a main water or sewer line''.

Subsec. (b)(3)(C). Pub. L. 95–600, § 364(a)(5), substituted ''electric energy, gas, water,'' for ''water'' and inserted ''(including in the case of a gas transmission utility, the provision of gas services by sale for resale to the general public)'' after ''members of the general public''.

1976—Subsecs. (b), (c). Pub. L. 94–455, § 2120(a), added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1613(a)(3) of Pub. L. 104–188 provided that: ''The amendments made by this subsection [amending this section] shall apply to amounts received after June 12, 1996.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 824(c) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1008(j)(2), Nov. 10, 1988, 102 Stat. 3445, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 362 of this title] shall apply to amounts received after December 31, 1986, in taxable years ending after such date.

''(2) TREATMENT OF CERTAIN WATER SUPPLY PROJECTS.—The amendments made by this section shall not apply to amounts which are paid by the New Jersey Department of Environmental Protection for construction of alternative water supply projects in zones of drinking water contamination and which are designated by such department as being taken into account under this paragraph. Not more than $4,631,000 of such amounts may be designated under the preceding sentence.

''(3) TREATMENT OF CERTAIN CONTRIBUTIONS BY TRANSPORTATION AUTHORITY.—The amendments made by this section shall not apply to contributions in aid of construction by a qualified transportation authority which were clearly identified in a master plan in existence on September 13, 1984, and which are designated by such authority as being taken into account under this paragraph. Not more than $68,000,000 of such contributions may be designated under the preceding sentence. For purposes of this paragraph, a qualified transportation authority is an entity which was created on February 20, 1967, and which was established by an interstate compact and consented to by Congress in Public Law 89–774, 80 Stat. 1324 (1966).

''(4) TREATMENT OF CERTAIN PARTNERSHIPS.—In the case of a partnership with a taxable year beginning May 1, 1986, if such partnership realized net capital gain during the period beginning on the 1st day of such taxable year and ending on May 29, 1986, pursuant to an underwriting agreement dated May 6, 1986, then such partnership may elect to treat each asset to which such net capital gain relates as having been distributed to the partners of such partnership in proportion to their distributive share of the capital gain or loss realized by the partnership with respect to such asset and to treat each such asset as having been sold by each partner on the date of the sale of the asset by the partnership. If such an election is made, the consideration received by the partnership in connection with the sale of such assets shall be treated as having been received by the partners in connection with the deemed sale of such assets. In the case of a tiered partnership, for purposes of this paragraph each partnership shall be treated as having realized net capital gain equal to its proportionate share of the net capital gain of each partnership in which it is a partner, and the election provided by this paragraph shall apply to each tier.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 163(c) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [amending this section and sections 6501 and 6511 of this title] shall apply to expenditures with respect to which the second taxable year described in section 118(b)(2)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] ends after December 31, 1984.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 applicable to transactions which occur after Dec. 31, 1980, other than transactions which occur in a proceeding in a bankruptcy case or similar judicial proceeding or in a proceeding under Title 11 commencing on or after Dec. 31, 1980, with an exception permitting the debtor to make the amendment applicable to transactions occurring after Sept. 30, 1979, in a specified manner, see section 7(a)(1), (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 364(b) of Pub. L. 95–600 provided that: ''The amendments made by this section [amending this section] shall apply to contributions made after January 31, 1976.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2120(c) of Pub. L. 94–455 provided that: ''The amendments made by this section [amending this section and section 362 of this title] apply to contributions made after January 31, 1976.''

§ 119. Meals or lodging furnished for the convenience of the employer

(a) Meals and lodging furnished to employee, his spouse, and his dependents, pursuant to employment

There shall be excluded from gross income of an employee the value of any meals or lodging furnished to him, his spouse, or any of his dependents by or on behalf of his employer for the convenience of the employer, but only if—

(1) in the case of meals, the meals are furnished on the business premises of the employer, or

(2) in the case of lodging, the employee is required to accept such lodging on the business premises of his employer as a condition of his employment.

(b) Special rules

For purposes of subsection (a)—

(1) Provisions of employment contract or State statute not to be determinative

In determining whether meals or lodging are furnished for the convenience of the employer, the provisions of an employment contract or of a State statute fixing terms of employment shall not be determinative of whether the meals or lodging are intended as compensation.

(2) Certain factors not taken into account with respect to meals

In determining whether meals are furnished for the convenience of the employer, the fact

that a charge is made for such meals, and the fact that the employee may accept or decline such meals, shall not be taken into account.

(3) Certain fixed charges for meals

(A) In general

If—

(i) an employee is required to pay on a periodic basis a fixed charge for his meals, and

(ii) such meals are furnished by the employer for the convenience of the employer,

there shall be excluded from the employee's gross income an amount equal to such fixed charge.

(B) Application of subparagraph (A)

Subparagraph (A) shall apply—

(i) whether the employee pays the fixed charge out of his stated compensation or out of his own funds, and

(ii) only if the employee is required to make the payment whether he accepts or declines the meals.

(4) Meals furnished to employees on business premises where meals of most employees are otherwise excludable

All meals furnished on the business premises of an employer to such employer's employees shall be treated as furnished for the convenience of the employer if, without regard to this paragraph, more than half of the employees to whom such meals are furnished on such premises are furnished such meals for the convenience of the employer.

(c) Employees living in certain camps

(1) In general

In the case of an individual who is furnished lodging in a camp located in a foreign country by or on behalf of his employer, such camp shall be considered to be part of the business premises of the employer.

(2) Camp

For purposes of this section, a camp constitutes lodging which is—

(A) provided by or on behalf of the employer for the convenience of the employer because the place at which such individual renders services is in a remote area where satisfactory housing is not available on the open market,

(B) located, as near as practicable, in the vicinity of the place at which such individual renders services, and

(C) furnished in a common area (or enclave) which is not available to the public and which normally accommodates 10 or more employees.

(d) Lodging furnished by certain educational institutions to employees

(1) In general

In the case of an employee of an educational institution, gross income shall not include the value of qualified campus lodging furnished to such employee during the taxable year.

(2) Exception in cases of inadequate rent

Paragraph (1) shall not apply to the extent of the excess of—

(A) the lesser of—

(i) 5 percent of the appraised value of the qualified campus lodging, or

(ii) the average of the rentals paid by individuals (other than employees or students of the educational institution) during such calendar year for lodging provided by the educational institution which is comparable to the qualified campus lodging provided to the employee, over

(B) the rent paid by the employee for the qualified campus lodging during such calendar year.

The appraised value under subparagraph (A)(i) shall be determined as of the close of the calendar year in which the taxable year begins, or, in the case of a rental period not greater than 1 year, at any time during the calendar year in which such period begins.

(3) Qualified campus lodging

For purposes of this subsection, the term ''qualified campus lodging'' means lodging to which subsection (a) does not apply and which is—

(A) located on, or in the proximity of, a campus of the educational institution, and

(B) furnished to the employee, his spouse, and any of his dependents by or on behalf of such institution for use as a residence.

(4) Educational institution, etc.

For purposes of this subsection—

(A) In general

The term ''educational institution'' means—

(i) an institution described in section 170(b)(1)(A)(ii) (or an entity organized under State law and composed of public institutions so described), or

(ii) an academic health center.

(B) Academic health center

For purposes of subparagraph (A), the term ''academic health center'' means an entity—

(i) which is described in section 170(b)(1)(A)(iii),

(ii) which receives (during the calendar year in which the taxable year of the taxpayer begins) payments under subsection (d)(5)(B) or (h) of section 1886 of the Social Security Act (relating to graduate medical education), and

(iii) which has as one of its principal purposes or functions the providing and teaching of basic and clinical medical science and research with the entity's own faculty.

(Aug. 16, 1954, ch. 736, 68A Stat. 39; Pub. L. 95–427, §4(a), Oct. 7, 1978, 92 Stat. 997; Pub. L. 95–615, title II, §205, Nov. 8, 1978, 92 Stat. 3107; Pub. L. 96–222, title I, §108(a)(1)(G), Apr. 1, 1980, 94 Stat. 225; Pub. L. 97–34, title I, §113, Aug. 13, 1981, 95 Stat. 195; Pub. L. 99–514, title XI, §1164(a), Oct. 22, 1986, 100 Stat. 2511; Pub. L. 100–647, title I, §1011B(d), Nov. 10, 1988, 102 Stat. 3489; Pub. L. 104–188, title I, §1123(a), Aug. 20, 1996, 110 Stat. 1768; Pub. L. 105–206, title V, §5002(a), July 22, 1998, 112 Stat. 788.)

REFERENCES IN TEXT

Section 1886(d)(5)(B) or (h) of the Social Security Act, referred to in subsec. (d)(4)(B)(ii), is classified to sec-

tion 1395ww(d)(5)(B) or (h) of Title 42, The Public Health and Welfare.

AMENDMENTS

1998—Subsec. (b)(4). Pub. L. 105–206 added par. (4).

1996—Subsec. (d)(4). Pub. L. 104–188 amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''EDUCATIONAL INSTITUTION.—For purposes of this paragraph, the term 'educational institution' means an institution described in section 170(b)(1)(A)(ii).''

1988—Subsec. (d). Pub. L. 100–647 struck out ''(as of the close of the calendar year in which the taxable year begins)'' after ''appraised value'' in par. (2)(A)(i) and inserted at end ''The appraised value under subparagraph (A)(i) shall be determined as of the close of the calendar year in which the taxable year begins, or, in the case of a rental period not greater than 1 year, at any time during the calendar year in which such period begins.'' as concluding provision.

1986—Subsec. (d). Pub. L. 99–514 added subsec. (d).

1981—Subsec. (c). Pub. L. 97–34 added subsec. (c).

1980—Subsec. (a). Pub. L. 96–222 struck out ''General rule'' in subsec. (a) as in effect on the day before the date of enactment of the Foreign Earned Income Act of 1978 to correct a legislative oversight in the amendment of subsec. (a) of this section by section 205 of Pub. L. 95–615. The amendment by Pub. L. 95–615, however, was executed without reference to ''General rule'' as the probable intent of Congress, thereby requiring no change in text.

1978—Subsec. (a). Pub. L. 95–615 designated existing provisions as subsec. (a), added subsec. (a) heading, and substituted ''furnished to him, his spouse, or any of his dependents by or on behalf of his employer for the convenience of the employer'' for ''furnished to him by his employer for the convenience of the employer''.

Pub. L. 95–427 inserted provisions relating to factors not taken into account with respect to meals and certain fixed charges for meals.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title v, § 5002(b), July 22, 1998, 112 Stat. 789, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning before, on, or after the date of the enactment of this Act [July 22, 1998].''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1123(b) of Pub. L. 104–188 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1995.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1164(b) of Pub. L. 99–514 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1985.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to taxable years beginning after Dec. 31, 1981, see section 115 of Pub. L. 97–34, set out as a note under section 911 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective as if included in the Foreign Earned Income Act of 1978, Pub. L. 95–615, see section 108(a)(2)(A) of Pub. L. 96–222, set out as a note under section 3 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 4(b) of Pub. L. 95–427 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954.''

EFFECTIVE DATE OF 1978 AMENDMENT; ELECTION OF PRIOR LAW

Amendment by Pub. L. 95–615 applicable to taxable years beginning after Dec. 31, 1977, with provision for election of prior law, see section 209 of Pub. L. 95–615, set out as a note under section 911 of this title.

STATUTE OF LIMITATIONS

Pub. L. 96–605, title I, § 107(b), Dec. 28, 1980, 94 Stat. 3524, provided that: ''In the case of any allowance received during calendar year 1974, 1975, 1976, or 1977, subsections (a)(2) and (e) of such section 3 [section 3 of Pub. L. 95–427, set out below] shall be applied by substituting the date one year after the date of the enactment of this Act [Dec. 28, 1980] for 'April 15, 1979' each place it appears.''

TREATMENT OF CERTAIN STATUTORY SUBSISTENCE ALLOWANCES OR SUBSISTENCE ALLOWANCES NEGOTIATED IN ACCORDANCE WITH STATE LAW RECEIVED BY STATE POLICE OFFICERS BEFORE JANUARY 1, 1978

Section 3 of Pub. L. 95–427, as amended by Pub. L. 96–605, title I, § 107(a), Dec. 28, 1980, 94 Stat. 3524; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) GENERAL RULE.—If—

''(1) an individual who was employed as a State police officer received a statutory subsistence allowance or a subsistence allowance negotiated in accordance with State law while so employed,

''(2) such individual elects, on or before April 15, 1979, and in such manner and form as the Secretary of the Treasury may prescribe, to have this section apply to such allowance, and

''(3) this section applies to such allowance,

then, for purposes of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], such allowance shall not be included in such individual's gross income.

''(b) ALLOWANCES TO WHICH SECTION APPLIES.—For purposes of this section, this section applies to any statutory subsistence allowance or subsistence allowance negotiated in accordance with State law which was received—

''(1) after December 31, 1969, and before January 1, 1974, to the extent such individual did not include such allowance in gross income on his income tax return for the taxable year in which such allowance was received, or

''(2) during the calendar year 1974, 1975, 1976, or 1977.

''(c) OTHER DEFINITIONS.—For purposes of this section—

''(1) STATE POLICE OFFICER.—The term 'State police officer' means any police officer (including a highway patrolman) employed by a State (or the District of Columbia) on a full-time basis with the power to arrest.

''(2) INCOME TAX RETURN.—The term 'income tax return' means the return of the taxes imposed by subtitle A of the Internal Revenue Code of 1986. If an individual filed before November 29, 1977, an amended return for any taxable year, such amended return shall be treated as the return for such taxable year.

''(d) LIMITATION ON DEDUCTION.—If any individual receives a subsistence allowance which is excluded from gross income under subsection (a), no deduction shall be allowed under any provision of chapter 1 of the Internal Revenue Code of 1986 for expenses in respect of which he has received such allowance, except to the extent that such expenses exceed the amount excludable from gross income under subsection (a) and the excess is otherwise allowed as a deduction under such chapter 1.

''(e) STATUTE OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the application of this section is prevented at any time on or before April 15, 1979, by the operation of any law or rule of law

(including res judicata), refund or credit of such overpayment (to the extent attributable to the application of this section) may, nevertheless, be made or allowed if claim therefor is filed on or before April 15, 1979.''

§ 120. Amounts received under qualified group legal services plans

(a) Exclusion by employee for contributions and legal services provided by employer

Gross income of an employee, his spouse, or his dependents, does not include—

(1) amounts contributed by an employer on behalf of an employee, his spouse, or his dependents under a qualified group legal services plan (as defined in subsection (b)); or

(2) the value of legal services provided, or amounts paid for legal services, under a qualified group legal services plan (as defined in subsection (b)) to, or with respect to, an employee, his spouse, or his dependents.

No exclusion shall be allowed under this section with respect to an individual for any taxable year to the extent that the value of insurance (whether through an insurer or self-insurance) against legal costs incurred by the individual (or his spouse or dependents) provided under a qualified group legal services plan exceeds $70.

(b) Qualified group legal services plan

For purposes of this section, a qualified group legal services plan is a separate written plan of an employer for the exclusive benefit of his employees or their spouses or dependents to provide such employees, spouses, or dependents with specified benefits consisting of personal legal services through prepayment of, or provision in advance for, legal fees in whole or in part by the employer, if the plan meets the requirements of subsection (c).

(c) Requirements

(1) Discrimination

The contributions or benefits provided under the plan shall not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)).

(2) Eligibility

The plan shall benefit employees who qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of employees who are described in paragraph (1). For purposes of this paragraph, there shall be excluded from consideration employees not included in the plan who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that group legal services plan benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.

(3) Contribution limitation

Not more than 25 percent of the amounts contributed under the plan during the year may be provided for the class of individuals who are shareholders or owners (or their spouses or dependents), each of whom (on any day of the year) owns more than 5 percent of the stock or of the capital or profits interest in the employer.

(4) Notification

The plan shall give notice to the Secretary, in such manner as the Secretary may by regulations prescribe, that it is applying for recognition of the status of a qualified group legal services plan.

(5) Contributions

Amounts contributed under the plan shall be paid only (A) to insurance companies, or to organizations or persons that provide personal legal services, or indemnification against the cost of personal legal services, in exchange for a prepayment or payment of a premium, (B) to organizations or trusts described in section 501(c)(20), (C) to organizations described in section 501(c) which are permitted by that section to receive payments from an employer for support of one or more qualified group legal services plan or plans, except that such organizations shall pay or credit the contribution to an organization or trust described in section 501(c)(20), (D) as prepayments to providers of legal services under the plan, or (E) a combination of the above.

(d) Other definitions and special rules

For purposes of this section—

(1) Employee

The term ''employee'' includes, for any year, an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals).

(2) Employer

An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (1).

(3) Allocations

Allocations of amounts contributed under the plan shall be made in accordance with regulations prescribed by the Secretary and shall take into account the expected relative utilization of benefits to be provided from such contributions or plan assets and the manner in which any premium or other charge was developed.

(4) Dependent

The term ''dependent'' has the meaning given to it by section 152 (determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof).

(5) Exclusive benefit

In the case of a plan to which contributions are made by more than one employer, in determining whether the plan is for the exclusive benefit of an employer's employees or their spouses or dependents, the employees of any employer who maintains the plan shall be considered to be the employees of each employer who maintains the plan.

(6) Attribution rules

For purposes of this section—

(A) ownership of stock in a corporation shall be determined in accordance with the rules provided under subsections (d) and (e) of section 1563 (without regard to section 1563(e)(3)(C)), and

(B) the interest of an employee in a trade or business which is not incorporated shall be determined in accordance with regulations prescribed by the Secretary, which shall be based on principles similar to the principles which apply in the case of subparagraph (A).

(7) Time of notice to Secretary

A plan shall not be a qualified group legal services plan for any period prior to the time notification was provided to the Secretary in accordance with subsection (c)(4), if such notice is given after the time prescribed by the Secretary by regulations for giving such notice.

(e) Termination

This section and section 501(c)(20) shall not apply to taxable years beginning after June 30, 1992.

(f) Cross reference

For reporting and recordkeeping requirements, see section 6039D.

(Added Pub. L. 94–455, title XXI, § 2134(a), Oct. 4, 1976, 90 Stat. 1926; amended Pub. L. 97–34, title VIII, § 802(a), Aug. 13, 1981, 95 Stat. 349; Pub. L. 97–448, title I, § 108(a), Jan. 12, 1983, 96 Stat. 2391; Pub. L. 98–612, § 1(a), (b)(3)(A), Oct. 31, 1984, 98 Stat. 3180, 3181; Pub. L. 99–514, title XI, §§ 1114(b)(3), 1151(c)(3), (g)(1), 1162(b), Oct. 22, 1986, 100 Stat. 2450, 2503, 2506, 2510; Pub. L. 100–647, title I, § 1011B(a)(31)(B), title IV, § 4002(a), (b)(1), Nov. 10, 1988, 102 Stat. 3488, 3643; Pub. L. 101–140, title II, § 203(a)(1), (2), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101–239, title VII, § 7102(a)(1), Dec. 19, 1989, 103 Stat. 2305; Pub. L. 101–508, title XI, § 11404(a), Nov. 5, 1990, 104 Stat. 1388–473; Pub. L. 102–227, title I, § 104(a)(1), Dec. 11, 1991, 105 Stat. 1687; Pub. L. 108–311, title II, § 207(10), Oct. 4, 2004, 118 Stat. 1177.)

PRIOR PROVISIONS

A prior section 120, act Aug. 16, 1954, ch. 736, 68A Stat. 39, related to statutory subsistence allowance received by police, prior to repeal by Pub. L. 85–866, title I, § 3(a), (c), Sept. 2, 1958, 72 Stat. 1607, effective with respect to taxable years ending after Sept. 30, 1958, but only with respect to amounts received as a statutory subsistence allowance for any day after Sept. 30, 1958.

AMENDMENTS

2004—Subsec. (d)(4). Pub. L. 108–311 inserted ''(determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof)'' after ''section 152''.

1991—Subsec. (e). Pub. L. 102–227 substituted ''June 30, 1992'' for ''December 31, 1991''.

1990—Subsec. (e). Pub. L. 101–508 substituted ''December 31, 1991'' for ''September 30, 1990''.

1989—Subsec. (b). Pub. L. 101–140, § 203(a)(1), amended subsec. (b) to read as if amendments by Pub. L. 99–514, § 1151(c)(3), had not been enacted, see 1986 Amendment note below.

Subsec. (c)(2). Pub. L. 101–140, § 203(a)(2), amended par. (2) to read as if amendments by Pub. L. 100–647, § 1011B(a)(31)(B), had not been enacted, see 1988 Amendment note below.

Pub. L. 101–140, § 203(a)(1), amended par. (2) to read as if amendments by Pub. L. 99–514, § 1151(g)(1), had not been enacted, see 1986 Amendment note below.

Subsec. (e). Pub. L. 101–239 substituted ''taxable years beginning after September 30, 1990'' for ''taxable years ending after December 31, 1988''.

1988—Subsec. (a). Pub. L. 100–647, § 4002(b)(1), inserted at end ''No exclusion shall be allowed under this section with respect to an individual for any taxable year to the extent that the value of insurance (whether through an insurer or self-insurance) against legal costs incurred by the individual (or his spouse or dependents) provided under a qualified group legal services plan exceeds $70.''

Subsec. (c)(2). Pub. L. 100–647, § 1011B(a)(31)(B), substituted ''there shall'' for ''there may'' and ''who are'' for ''who may be''.

Subsec. (e). Pub. L. 100–647, § 4002(a), substituted ''1988'' for ''1987''.

1986—Subsec. (b). Pub. L. 99–514, § 1151(c)(3), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''For purposes of this section, a qualified group legal services plan is a separate written plan of an employer for the exclusive benefit of his employees or their spouses or dependents to provide such employees, spouses, or dependents with specified benefits consisting of personal legal services through prepayment of, or provision in advance for, legal fees in whole or in part by the employer, if the plan meets the requirements of subsection (c).''

Subsec. (c)(1). Pub. L. 99–514, § 1114(b)(3)(A), substituted ''highly compensated employees (within the meaning of section 414(q))'' for ''officers, shareholders, self-employed individuals, or highly compensated''.

Subsec. (c)(2). Pub. L. 99–514, § 1151(g)(1), substituted ''For purposes of this paragraph, there may be excluded from consideration employees who may be excluded from consideration under section 89(h).'' for ''For purposes of this paragraph, there shall be excluded from consideration employees not included in the plan who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that group legal services plan benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.''

Subsec. (d)(1). Pub. L. 99–514, § 1114(b)(3)(B), struck out reference to self-employed individuals in heading, and substituted ''The'' for ''The term 'self-employed individual' means, and the'' in text.

Subsec. (e). Pub. L. 99–514, § 1162(b), substituted ''December 31, 1987'' for ''December 31, 1985''.

1984—Subsec. (e). Pub. L. 98–612, § 1(a), substituted ''December 31, 1985'' for ''December 31, 1984''.

Subsec. (f). Pub. L. 98–612, § 1(b)(3)(A), added subsec. (f).

1983—Subsec. (e). Pub. L. 97–448 substituted ''This section and section 501(c)(20) shall not apply'' for ''This section shall not apply''.

1981—Subsec. (e). Pub. L. 97–34 added subsec. (e).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 104(b) of Pub. L. 102–227 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1991.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11404(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and repealing provisions set out below] shall apply to taxable years beginning after December 31, 1989.''

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 7102(b) of Pub. L. 101–239 provided that: ''The amendment made by subsection (a) [amending this sec-

tion] shall apply to taxable years ending after December 31, 1988.''

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011B(a)(31)(B) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 4002(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section and section 125 of this title] shall apply to taxable years ending after December 31, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1114(b)(3) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1987, see section 1114(c)(2) of Pub. L. 99–514, set out as a note under section 414 of this title.

Amendment by section 1151(c)(3), (g)(1) of Pub. L. 99–514 applicable, with certain qualifications and exceptions, to years beginning after Dec. 31, 1988, see section 1151(k) of Pub. L. 99–514, as amended, set out as a note under section 79 of this title.

Section 1162(c) of Pub. L. 99–514 provided that:

''(1) SUBSECTION (a).—The amendments made by subsection (a) [amending section 127 of this title] shall apply to taxable years beginning after December 31, 1985.

''(2) SUBSECTION (b).—The amendment made by subsection (b) [amending this section] shall apply to years ending after December 31, 1985.

''(3) CAFETERIA PLAN WITH GROUP LEGAL BENEFITS.—If, within 60 days after the date of the enactment of this Act [Oct. 22, 1986], an employee elects under a cafeteria plan under section 125 of the Internal Revenue Code of 1986 coverage for group legal benefits to which section 120 of such Code applies, such election may, at the election of the taxpayer, apply to all legal services provided during 1986. The preceding sentence shall not apply to any plan which on August 16, 1986, offered such group legal benefits under such plan.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1(d)(1) of Pub. L. 98–612 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after December 31, 1984.''

Amendment by section 1(b)(3)(A) of Pub. L. 98–612 effective Jan. 1, 1985, see section 1(d)(2) of Pub. L. 98–612.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section 2134(e) of Pub. L. 94–455, as amended by Pub. L. 95–600, title VII, § 703(b)(1), Nov. 6, 1978, 92 Stat. 2939; Pub. L. 97–34, title VIII, § 802(b), Aug. 13, 1981, 95 Stat. 349; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and section 501 of this title] shall apply to taxable years beginning after December 31, 1976.

''(2) NOTICE REQUIREMENT.—For purposes of section 120(d)(7) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] the time prescribed by the Secretary of the Treasury by regulations for giving the notice required by section 120(c)(4) of such Code shall not expire before the 90th day after the day on which regulations prescribed under such section 120(c)(4) first become final.

''(3) EXISTING PLANS.—

''(A) For purposes of section 120 of the Internal Revenue Code of 1986, a written group legal services plan which was in existence on June 4, 1976, shall be considered as satisfying the requirements of subsections (b) and (c) of such section 120 for the period ending with the compliance date (determined under subparagraph (B)).

''(B) COMPLIANCE DATE.—For purposes of this paragraph, the term 'compliance date' means—

''(i) the date occurring 180 days after the date of the enactment of this Act [Oct. 4, 1976], or

''(ii) if later, in the case of a plan which is maintained pursuant to one or more agreements which the Secretary of Labor finds to be collective bargaining agreements, the earlier of December 31, 1981, or the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act [Oct. 4, 1976]).''

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

EXTENSION OF EMPLOYER-PROVIDED GROUP LEGAL SERVICES

Section 104(a)(2) of Pub. L. 102–227 provided that: ''In the case of any taxable year beginning in 1992, only amounts paid before July 1, 1992, by the employer for coverage for the employee, his spouse, or his dependents, under a qualified group legal services plan for periods before July 1, 1992, shall be taken into account in determining the amount excluded under section 120 of the Internal Revenue Code of 1986 with respect to such employee for such taxable year.''

SPECIAL RULE FOR TAXABLE YEARS BEGINNING IN 1990

Section 7102(a)(2) of Pub. L. 101–239 provided that in the case of any taxable year beginning in 1990, only amounts paid before October 1, 1990, by the employer for coverage for the employee, his spouse, or his dependents under a qualified group legal services plan for periods before October 1, 1990, would be taken into account in determining the amount excluded under this section with respect to such employee for such taxable year, prior to repeal by Pub. L. 101–508, title XI, § 11404(b), Nov. 5, 1990, 104 Stat. 1388–473.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

STUDY AND REPORT

Section 2134(d) of Pub. L. 94–455 provided that a complete study and investigation with respect to the desir-

ability and feasibility of continuing the exclusion from income of certain prepaid group legal services benefits under section 120 of the Internal Revenue Code of 1954 be made by the Secretary of Labor and the Secretary of the Treasury, with a report to the President and the Congress not later than Dec. 31, 1980.

§ 121. Exclusion of gain from sale of principal residence

(a) Exclusion

Gross income shall not include gain from the sale or exchange of property if, during the 5-year period ending on the date of the sale or exchange, such property has been owned and used by the taxpayer as the taxpayer's principal residence for periods aggregating 2 years or more.

(b) Limitations

(1) In general

The amount of gain excluded from gross income under subsection (a) with respect to any sale or exchange shall not exceed $250,000.

(2) Special rules for joint returns

In the case of a husband and wife who make a joint return for the taxable year of the sale or exchange of the property—

(A) $500,000 Limitation for certain joint returns

Paragraph (1) shall be applied by substituting ''$500,000'' for ''$250,000'' if—

(i) either spouse meets the ownership requirements of subsection (a) with respect to such property;

(ii) both spouses meet the use requirements of subsection (a) with respect to such property; and

(iii) neither spouse is ineligible for the benefits of subsection (a) with respect to such property by reason of paragraph (3).

(B) Other joint returns

If such spouses do not meet the requirements of subparagraph (A), the limitation under paragraph (1) shall be the sum of the limitations under paragraph (1) to which each spouse would be entitled if such spouses had not been married. For purposes of the preceding sentence, each spouse shall be treated as owning the property during the period that either spouse owned the property.

(3) Application to only 1 sale or exchange every 2 years

(A) In general

Subsection (a) shall not apply to any sale or exchange by the taxpayer if, during the 2-year period ending on the date of such sale or exchange, there was any other sale or exchange by the taxpayer to which subsection (a) applied.

(B) Pre-May 7, 1997, sales not taken into account

Subparagraph (A) shall be applied without regard to any sale or exchange before May 7, 1997.

(4) [1] Special rule for certain sales by surviving spouses

In the case of a sale or exchange of property by an unmarried individual whose spouse is deceased on the date of such sale, paragraph (1) shall be applied by substituting ''$500,000'' for ''$250,000'' if such sale occurs not later than 2 years after the date of death of such spouse and the requirements of paragraph (2)(A) were met immediately before such date of death.

(4) [1] Exclusion of gain allocated to nonqualified use

(A) In general

Subsection (a) shall not apply to so much of the gain from the sale or exchange of property as is allocated to periods of nonqualified use.

(B) Gain allocated to periods of nonqualified use

For purposes of subparagraph (A), gain shall be allocated to periods of nonqualified use based on the ratio which—

(i) the aggregate periods of nonqualified use during the period such property was owned by the taxpayer, bears to

(ii) the period such property was owned by the taxpayer.

(C) Period of nonqualified use

For purposes of this paragraph—

(i) In general

The term ''period of nonqualified use'' means any period (other than the portion of any period preceding January 1, 2009) during which the property is not used as the principal residence of the taxpayer or the taxpayer's spouse or former spouse.

(ii) Exceptions

The term ''period of nonqualified use'' does not include—

(I) any portion of the 5-year period described in subsection (a) which is after the last date that such property is used as the principal residence of the taxpayer or the taxpayer's spouse,

(II) any period (not to exceed an aggregate period of 10 years) during which the taxpayer or the taxpayer's spouse is serving on qualified official extended duty (as defined in subsection (d)(9)(C)) described in clause (i), (ii), or (iii) of subsection (d)(9)(A), and

(III) any other period of temporary absence (not to exceed an aggregate period of 2 years) due to change of employment, health conditions, or such other unforeseen circumstances as may be specified by the Secretary.

(D) Coordination with recognition of gain attributable to depreciation

For purposes of this paragraph—

(i) subparagraph (A) shall be applied after the application of subsection (d)(6), and

(ii) subparagraph (B) shall be applied without regard to any gain to which subsection (d)(6) applies.

(c) Exclusion for taxpayers failing to meet certain requirements

(1) In general

In the case of a sale or exchange to which this subsection applies, the ownership and use

[1] So in original. Two pars. (4) have been enacted.

requirements of subsection (a), and subsection (b)(3), shall not apply; but the dollar limitation under paragraph (1) or (2) of subsection (b), whichever is applicable, shall be equal to—

(A) the amount which bears the same ratio to such limitation (determined without regard to this paragraph) as

(B)(i) the shorter of—

(I) the aggregate periods, during the 5-year period ending on the date of such sale or exchange, such property has been owned and used by the taxpayer as the taxpayer's principal residence; or

(II) the period after the date of the most recent prior sale or exchange by the taxpayer to which subsection (a) applied and before the date of such sale or exchange, bears to

(ii) 2 years.

(2) Sales and exchanges to which subsection applies

This subsection shall apply to any sale or exchange if—

(A) subsection (a) would not (but for this subsection) apply to such sale or exchange by reason of—

(i) a failure to meet the ownership and use requirements of subsection (a), or

(ii) subsection (b)(3), and

(B) such sale or exchange is by reason of a change in place of employment, health, or, to the extent provided in regulations, unforeseen circumstances.

(d) Special rules

(1) Joint returns

If a husband and wife make a joint return for the taxable year of the sale or exchange of the property, subsections (a) and (c) shall apply if either spouse meets the ownership and use requirements of subsection (a) with respect to such property.

(2) Property of deceased spouse

For purposes of this section, in the case of an unmarried individual whose spouse is deceased on the date of the sale or exchange of property, the period such unmarried individual owned and used such property shall include the period such deceased spouse owned and used such property before death.

(3) Property owned by spouse or former spouse

For purposes of this section—

(A) Property transferred to individual from spouse or former spouse

In the case of an individual holding property transferred to such individual in a transaction described in section 1041(a), the period such individual owns such property shall include the period the transferor owned the property.

(B) Property used by former spouse pursuant to divorce decree, etc.

Solely for purposes of this section, an individual shall be treated as using property as such individual's principal residence during any period of ownership while such individual's spouse or former spouse is granted use of the property under a divorce or separation instrument (as defined in section 71(b)(2)).

(4) Tenant-stockholder in cooperative housing corporation

For purposes of this section, if the taxpayer holds stock as a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), then—

(A) the holding requirements of subsection (a) shall be applied to the holding of such stock, and

(B) the use requirements of subsection (a) shall be applied to the house or apartment which the taxpayer was entitled to occupy as such stockholder.

(5) Involuntary conversions

(A) In general

For purposes of this section, the destruction, theft, seizure, requisition, or condemnation of property shall be treated as the sale of such property.

(B) Application of section 1033

In applying section 1033 (relating to involuntary conversions), the amount realized from the sale or exchange of property shall be treated as being the amount determined without regard to this section, reduced by the amount of gain not included in gross income pursuant to this section.

(C) Property acquired after involuntary conversion

If the basis of the property sold or exchanged is determined (in whole or in part) under section 1033(b) (relating to basis of property acquired through involuntary conversion), then the holding and use by the taxpayer of the converted property shall be treated as holding and use by the taxpayer of the property sold or exchanged.

(6) Recognition of gain attributable to depreciation

Subsection (a) shall not apply to so much of the gain from the sale of any property as does not exceed the portion of the depreciation adjustments (as defined in section 1250(b)(3)) attributable to periods after May 6, 1997, in respect of such property.

(7) Determination of use during periods of out-of-residence care

In the case of a taxpayer who—

(A) becomes physically or mentally incapable of self-care, and

(B) owns property and uses such property as the taxpayer's principal residence during the 5-year period described in subsection (a) for periods aggregating at least 1 year,

then the taxpayer shall be treated as using such property as the taxpayer's principal residence during any time during such 5-year period in which the taxpayer owns the property and resides in any facility (including a nursing home) licensed by a State or political subdivision to care for an individual in the taxpayer's condition.

(8) Sales of remainder interests

For purposes of this section—

(A) In general

At the election of the taxpayer, this section shall not fail to apply to the sale or exchange of an interest in a principal residence by reason of such interest being a remainder interest in such residence, but this section shall not apply to any other interest in such residence which is sold or exchanged separately.

(B) Exception for sales to related parties

Subparagraph (A) shall not apply to any sale to, or exchange with, any person who bears a relationship to the taxpayer which is described in section 267(b) or 707(b).

(9) Uniformed services, Foreign Service, and intelligence community

(A) In general

At the election of an individual with respect to a property, the running of the 5-year period described in subsections (a) and (c)(1)(B) and paragraph (7) of this subsection with respect to such property shall be suspended during any period that such individual or such individual's spouse is serving on qualified official extended duty—

(i) as a member of the uniformed services,

(ii) as a member of the Foreign Service of the United States, or

(iii) as an employee of the intelligence community.

(B) Maximum period of suspension

The 5-year period described in subsection (a) shall not be extended more than 10 years by reason of subparagraph (A).

(C) Qualified official extended duty

For purposes of this paragraph—

(i) In general

The term ''qualified official extended duty'' means any extended duty while serving at a duty station which is at least 50 miles from such property or while residing under Government orders in Government quarters.

(ii) Uniformed services

The term ''uniformed services'' has the meaning given such term by section 101(a)(5) of title 10, United States Code, as in effect on the date of the enactment of this paragraph.

(iii) Foreign Service of the United States

The term ''member of the Foreign Service of the United States'' has the meaning given the term ''member of the Service'' by paragraph (1), (2), (3), (4), or (5) of section 103 of the Foreign Service Act of 1980, as in effect on the date of the enactment of this paragraph.

(iv) Employee of intelligence community

The term ''employee of the intelligence community'' means an employee (as defined by section 2105 of title 5, United States Code) of—

(I) the Office of the Director of National Intelligence,

(II) the Central Intelligence Agency,

(III) the National Security Agency,

(IV) the Defense Intelligence Agency,

(V) the National Geospatial-Intelligence Agency,

(VI) the National Reconnaissance Office,

(VII) any other office within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs,

(VIII) any of the intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Federal Bureau of Investigation, the Department of Treasury, the Department of Energy, and the Coast Guard,

(IX) the Bureau of Intelligence and Research of the Department of State, or

(X) any of the elements of the Department of Homeland Security concerned with the analyses of foreign intelligence information.

(v) Extended duty

The term ''extended duty'' means any period of active duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period.

(D) Special rules relating to election

(i) Election limited to 1 property at a time

An election under subparagraph (A) with respect to any property may not be made if such an election is in effect with respect to any other property.

(ii) Revocation of election

An election under subparagraph (A) may be revoked at any time.

(10) Property acquired in like-kind exchange

If a taxpayer acquires property in an exchange with respect to which gain is not recognized (in whole or in part) to the taxpayer under subsection (a) or (b) of section 1031, subsection (a) shall not apply to the sale or exchange of such property by such taxpayer (or by any person whose basis in such property is determined, in whole or in part, by reference to the basis in the hands of such taxpayer) during the 5-year period beginning with the date of such acquisition.

[(11) Repealed. Pub. L. 111–312, title III, § 301(a), Dec. 17, 2010, 124 Stat. 3300]

(12) Peace Corps

(A) In general

At the election of an individual with respect to a property, the running of the 5-year period described in subsections (a) and (c)(1)(B) and paragraph (7) of this subsection with respect to such property shall be suspended during any period that such individual or such individual's spouse is serving outside the United States—

(i) on qualified official extended duty (as defined in paragraph (9)(C)) as an employee of the Peace Corps, or

(ii) as an enrolled volunteer or volunteer leader under section 5 or 6 (as the case

may be) of the Peace Corps Act (22 U.S.C. 2504, 2505).

(B) Applicable rules

For purposes of subparagraph (A), rules similar to the rules of subparagraphs (B) and (D)[2] shall apply.

(e) Denial of exclusion for expatriates

This section shall not apply to any sale or exchange by an individual if the treatment provided by section 877(a)(1) applies to such individual.

(f) Election to have section not apply

This section shall not apply to any sale or exchange with respect to which the taxpayer elects not to have this section apply.

(g) Residences acquired in rollovers under section 1034

For purposes of this section, in the case of property the acquisition of which by the taxpayer resulted under section 1034[3] (as in effect on the day before the date of the enactment of this section) in the nonrecognition of any part of the gain realized on the sale or exchange of another residence, in determining the period for which the taxpayer has owned and used such property as the taxpayer's principal residence, there shall be included the aggregate periods for which such other residence (and each prior residence taken into account under section 1223(6) in determining the holding period of such property) had been so owned and used.

(Added Pub. L. 88–272, title II, §206(a), Feb. 26, 1964, 78 Stat. 38; amended Pub. L. 94–455, title XIV, §1404(a), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1733, 1834; Pub. L. 95–600, title IV, §404(a)–(c)(2), Nov. 6, 1978, 92 Stat. 2869, 2870; Pub. L. 97–34, title I, §123(a), Aug. 13, 1981, 95 Stat. 197; Pub. L. 100–647, title VI, §6011(a), Nov. 10, 1988, 102 Stat. 3691; Pub. L. 105–34, title III, §312(a), Aug. 5, 1997, 111 Stat. 836; Pub. L. 105–206, title VI, §6005(e)(1), (2), July 22, 1998, 112 Stat. 805; Pub. L. 107–16, title V, §542(c), June 7, 2001, 115 Stat. 84; Pub. L. 108–121, title I, §101(a), Nov. 11, 2003, 117 Stat. 1336; Pub. L. 108–357, title VIII, §840(a), Oct. 22, 2004, 118 Stat. 1597; Pub. L. 109–135, title IV, §§402(a)(3), 403(ee), Dec. 21, 2005, 119 Stat. 2610, 2631; Pub. L. 109–432, div. A, title IV, §417(a)–(d), Dec. 20, 2006, 120 Stat. 2965, 2966; Pub. L. 110–142, §7(a), Dec. 20, 2007, 121 Stat. 1806; Pub. L. 110–172, §11(a)(11)(A), Dec. 29, 2007, 121 Stat. 2485; Pub. L. 110–245, title I, §§110(a), 113(a), (b), June 17, 2008, 122 Stat. 1633, 1635; Pub. L. 110–289, div. C, title III, §3092(a), July 30, 2008, 122 Stat. 2911; Pub. L. 111–312, title III, §301(a), Dec. 17, 2010, 124 Stat. 3300.)

AMENDMENT OF SECTION

For termination of amendment by section 304 of Pub. L. 111–312, see Effective and Termination Dates of 2010 Amendment note below.

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

[2] So in original.

[3] See References in Text note below.

REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (d)(9)(C)(ii), (iii), is the date of enactment of Pub. L. 108–121, which was approved Nov. 11, 2003.

Section 103 of the Foreign Service Act of 1980, referred to in subsec. (d)(9)(C)(iii), is classified to section 3903 of Title 22, Foreign Relations and Intercourse.

Section 1034 (as in effect on the day before the date of the enactment of this section), referred to in subsec. (g), probably means section 1034 of this title as in effect on the day before the date of enactment of Pub. L. 105–34 which amended this section generally and was approved Aug. 5, 1997. Section 1034 was repealed by Pub. L. 105–34, title III, §312(b), Aug. 5, 1997, 111 Stat. 839.

CODIFICATION

Pub. L. 109–135, title IV, §403(ee)(1), (nn), Dec. 21, 2005, 119 Stat. 2631, 2632, which directed that subsec. (d) of this section be amended by redesignating the paragraph (10) relating to property acquired from a decedent as paragraph (11), effective as if included in the provisions to which such amendment relates of the American Jobs Creation Act of 2004, Pub. L. 108–357, was executed as the probable intent of Congress by redesignating as paragraph (11) the paragraph (10) directed to be added to subsec. (d) of this section by Pub. L. 107–16, §542(c), (f)(1), applicable to estates of decedents dying after Dec. 31, 2009. See Codification note, 2001, 2003, and 2005 Amendment notes, and Effective Date of 2005 Amendment note below.

Pub. L. 108–121, title I, §101(a), (b)(1), Nov. 11, 2003, 117 Stat. 1336, which directed that subsec. (d) of this section be amended by redesignating paragraph (9) as (10) and adding a new paragraph (9), effective as if included in the amendments made by section 312 of the Taxpayer Relief Act of 1997, Pub. L. 105–34, could not literally be executed insofar as it directed the redesignation because subsec. (d), as amended by Pub. L. 105–34, did not contain a paragraph (9). However, to reflect the probable intent of Congress, the amendment was executed by redesignating as paragraph (10) the paragraph (9) directed to be added to subsec. (d) of this section by Pub. L. 107–16, §542(c), (f)(1), applicable to estates of decedents dying after Dec. 31, 2009. See Codification note above and 2001, 2003, and 2005 Amendment notes and Effective Date of 2003 Amendment note below.

PRIOR PROVISIONS

A prior section 121 was renumbered section 140 of this title.

AMENDMENTS

2010—Subsec. (d)(11). Pub. L. 111–312, §§301(a), 304, temporarily amended subsec. (d) to read as if amendment by Pub. L. 107–16, §542(c), which originally added par. (9), had never been enacted. See Codification notes above and 2001 Amendment note and Effective and Termination Dates of 2010 Amendment note below. Prior to amendment, par. (11) read as follows: ''PROPERTY ACQUIRED FROM A DECEDENT.—The exclusion under this section shall apply to property sold by—

''(A) the estate of a decedent,

''(B) any individual who acquired such property from the decedent (within the meaning of section 1022), and

''(C) a trust which, immediately before the death of the decedent, was a qualified revocable trust (as defined in section 645(b)(1)) established by the decedent, determined by taking into account the ownership and use by the decedent.''

2008—Subsec. (b)(4). Pub. L. 110–289 added par. (4) relating to exclusion of gain allocated to nonqualified use.

Subsec. (d)(9)(C)(vi). Pub. L. 110–245, §113(b), struck out heading and text of cl. (vi). Text read as follows: ''An employee of the intelligence community shall not be treated as serving on qualified extended duty unless such duty is at a duty station located outside the United States.''

Subsec. (d)(9)(E). Pub. L. 110–245, § 113(a), struck out heading and text of subpar. (E). Text read as follows: ''Clause (iii) of subparagraph (A) shall not apply with respect to any sale or exchange after December 31, 2010.''

Subsec. (d)(12). Pub. L. 110–245, § 110(a), added par. (12).

2007—Subsec. (b)(4). Pub. L. 110–142 added par. (4) relating to special rule for certain sales by surviving spouses.

Subsec. (d)(9)(E). Pub. L. 110–172 added subpar. (E).

2006—Subsec. (d)(9). Pub. L. 109–432, § 417(d), substituted ''Uniformed services, Foreign Service, and intelligence community'' for ''Members of uniformed services and Foreign Service'' in heading.

Subsec. (d)(9)(A). Pub. L. 109–432, § 417(a), substituted ''duty—

''(i) as a member of the uniformed services,

''(ii) as a member of the Foreign Service of the United States, or

''(iii) as an employee of the intelligence community.''

for ''duty as a member of the uniformed services or of the Foreign Service of the United States.''

Subsec. (d)(9)(C)(iv), (v). Pub. L. 109–432, § 417(b), added cl. (iv) and redesignated former cl. (iv) as (v).

Subsec. (d)(9)(C)(vi). Pub. L. 109–432, § 417(c), added cl. (vi).

2005—Subsec. (d)(10). Pub. L. 109–135, § 403(ee)(2), amended heading and text of par. (10) relating to property acquired in like-kind exchange generally. Prior to amendment, text read as follows: ''If a taxpayer acquired property in an exchange to which section 1031 applied, subsection (a) shall not apply to the sale or exchange of such property if it occurs during the 5-year period beginning with the date of the acquisition of such property.''

Subsec. (d)(11). Pub. L. 109–135, § 403(ee)(1), redesignated par. (10), formerly par. (9), as temporarily added by Pub. L. 107–16, as (11). See Codification notes above and 2001 and 2003 Amendment notes and Effective and Termination Dates of 2001 Amendment note below.

Subsec. (g). Pub. L. 109–135, § 402(a)(3), substituted ''section 1223(6)'' for ''section 1223(7)''.

2004—Subsec. (d)(10). Pub. L. 108–357 added par. (10) relating to property acquired in like-kind exchange.

2003—Subsec. (d)(9), (10). Pub. L. 108–121 added par. (9) and redesignated former par. (9), as temporarily added by Pub. L. 107–16, as (10). See Codification notes above and 2001 Amendment note and Effective and Termination Dates of 2001 Amendment note below.

2001—Subsec. (d)(9). Pub. L. 107–16, §§ 542(c), 901, temporarily added par. (9). See Codification notes above and Effective and Termination Dates of 2001 Amendment note below.

1998—Subsec. (b)(2). Pub. L. 105–206, § 6005(e)(1), substituted ''Special rules for joint returns'' for ''$500,000 limitation for certain joint returns'' in heading and amended text generally. Prior to amendment, text read as follows: ''Paragraph (1) shall be applied by substituting '$500,000' for '$250,000' if—

''(A) a husband and wife make a joint return for the taxable year of the sale or exchange of the property,

''(B) either spouse meets the ownership requirements of subsection (a) with respect to such property,

''(C) both spouses meet the use requirements of subsection (a) with respect to such property, and

''(D) neither spouse is ineligible for the benefits of subsection (a) with respect to such property by reason of paragraph (3).''

Subsec. (c)(1). Pub. L. 105–206, § 6005(e)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''In the case of a sale or exchange to which this subsection applies, the ownership and use requirements of subsection (a) shall not apply and subsection (b)(3) shall not apply; but the amount of gain excluded from gross income under subsection (a) with respect to such sale or exchange shall not exceed—

''(A) the amount which bears the same ratio to the amount which would be so excluded under this section if such requirements had been met, as

''(B) the shorter of—

''(i) the aggregate periods, during the 5-year period ending on the date of such sale or exchange, such property has been owned and used by the taxpayer as the taxpayer's principal residence, or

''(ii) the period after the date of the most recent prior sale or exchange by the taxpayer to which subsection (a) applied and before the date of such sale or exchange,

bears to 2 years.''

1997—Pub. L. 105–34 amended section catchline and text generally. Prior to amendment, section related to one-time exclusion of gain from sale of principal residence by individual who had attained age 55.

1988—Subsec. (d)(9). Pub. L. 100–647 added par. (9).

1981—Subsec. (b)(1). Pub. L. 97–34 substituted ''$125,000 ($62,500'' for ''$100,000 ($50,000''.

1978—Pub. L. 95–600, § 404(a), substituted ''One-time exclusion of gain from sale of principal residence by individual who has attained age 55'' for ''Gain from sale or exchange of residence of individual who has attained age 65'' in section catchline.

Subsec. (a). Pub. L. 95–600, § 404(a), substituted ''55'' for ''65'', ''5-year'' for ''8-year'', and ''3 years'' for ''5 years''.

Subsec. (b). Pub. L. 95–600, § 404(a), in par. (1) substituted provisions respecting dollar limitations for amount of gain for provisions setting forth applicable limitations where the adjusted sales price exceeds $35,000 and added par. (3).

Subsec. (d)(2). Pub. L. 95–600, § 404(c)(1), substituted ''5-year period'' for ''8-year period''.

Subsec. (d)(5). Pub. L. 95–600, § 404(c)(2), substituted ''5-year period'' for ''8-year period'' and ''3 years'' for ''5 years''.

Subsec. (d)(8). Pub. L. 95–600, § 404(b), added par. (8).

1976—Subsec. (b)(1). Pub. L. 94–455, § 1404(a), substituted ''$35,000'' for ''$20,000'' in three places.

Subsecs. (c), (d)(5). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Pub. L. 111–312, title III, § 301(e), Dec. 17, 2010, 124 Stat. 3301, provided that: ''Except as otherwise provided in this section, the amendments made by this section [amending this section and sections 170, 684, 1014, 1040, 1221, 1246, 1291, 1296, 2505, 4947, 6018, 6019, 6075, and 7701 of this title and repealing sections 1022, 2210, 2664, and 6716 of this title] shall apply to estates of decedents dying, and transfers made, after December 31, 2009.''

Pub. L. 111–312, title III, § 304, Dec. 17, 2010, 124 Stat. 3304, provided that: ''Section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16, set out as a note under section 1 of this title] shall apply to the amendments made by this title [amending this section and sections 170, 684, 1014, 1040, 1221, 1246, 1291, 1296, 2001, 2010, 2502, 2505, 2511, 2631, 4947, 6018, 6019, 6075, and 7701 of this title and repealing sections 1022, 2210, 2664, and 6716 of this title].''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–289, div. C, title III, § 3092(b), July 30, 2008, 122 Stat. 2912, provided that: ''The amendment made by this section [amending this section] shall apply to sales and exchanges after December 31, 2008.''

Pub. L. 110–245, title I, § 110(b), June 17, 2008, 122 Stat. 1634, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2007.''

Pub. L. 110–245, title I, § 113(c), June 17, 2008, 122 Stat. 1635, provided that: ''The amendments made by this section [amending this section] shall apply to sales or exchanges after the date of the enactment of this Act [June 17, 2008].''

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–142, § 7(b), Dec. 20, 2007, 121 Stat. 1806, provided that: ''The amendment made by this section

[amending this section] shall apply to sales or exchanges after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §417(e), Dec. 20, 2006, 120 Stat. 2966, as amended by Pub. L. 110–172, §11(a)(11)(B), Dec. 29, 2007, 121 Stat. 2485, provided that: ''The amendments made by this section [amending this section] shall apply to sales or exchanges after the date of the enactment of this Act [Dec. 20, 2006].''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 402(a)(3) of Pub. L. 109–135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which it relates, but not applicable with respect to any transaction ordered in compliance with the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) before its repeal, see section 402(m) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 36C of this title.

Amendment by section 403(ee) of Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §840(b), Oct. 22, 2004, 118 Stat. 1597, provided that: ''The amendment made by this section [amending this section] shall apply to sales or exchanges after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–121, title I, §101(b), Nov. 11, 2003, 117 Stat. 1336, provided that:

''(1) EFFECTIVE DATE.—The amendments made by this section [amending this section] shall take effect as if included in the amendments made by section 312 of the Taxpayer Relief Act of 1997 [Pub. L. 105–34].

''(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amendments made by this section [amending this section] is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act [Nov. 11, 2003] by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period.''

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Pub. L. 107–16, title V, §542(f), June 7, 2001, 115 Stat. 86, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting sections 1022 and 6716 of this title and amending this section and sections 170, 684, 1040, 1221, 1246, 1291, 1296, 4947, 6018, 6019, 6075, and 7701 of this title] shall apply to estates of decedents dying after December 31, 2009.

''(2) TRANSFERS TO NONRESIDENTS.—The amendments made by subsection (e)(1) [amending section 684 of this title] shall apply to transfers after December 31, 2009.

''(3) SECTION 4947.—The amendment made by subsection (e)(4) [amending section 4947 of this title] shall apply to deductions for taxable years beginning after December 31, 2009.''

Amendment by Pub. L. 107–16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 312(d) of Pub. L. 105–34, as amended by Pub. L. 105–206, title VI, §6005(e)(3), July 22, 1998, 112 Stat. 806, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 25, 32, 56, 143, 163, 215, 280A, 464, 512, 1016, 1033, 1038, 1223, 1250, 1274, 6012, 6045, 6212, 6334, 6504, and 7872 of this title and repealing section 1034 of this title] shall apply to sales and exchanges after May 6, 1997.

''(2) SALES ON OR BEFORE DATE OF ENACTMENT.—At the election of the taxpayer, the amendments made by this section shall not apply to any sale or exchange on or before the date of the enactment of this Act [Aug. 5, 1997].

''(3) CERTAIN SALES WITHIN 2 YEARS AFTER DATE OF ENACTMENT.—Section 121 of the Internal Revenue Code of 1986 (as amended by this section) shall be applied without regard to subsection (c)(2)(B) thereof in the case of any sale or exchange of property during the 2-year period beginning on the date of the enactment of this Act if the taxpayer held such property on the date of the enactment of this Act and fails to meet the ownership and use requirements of subsection (a) thereof with respect to such property.

''(4) BINDING CONTRACTS.—At the election of the taxpayer, the amendments made by this section shall not apply to a sale or exchange after the date of the enactment of this Act, if—

''(A) such sale or exchange is pursuant to a contract which was binding on such date, or

''(B) without regard to such amendments, gain would not be recognized under section 1034 of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act) on such sale or exchange by reason of a new residence acquired on or before such date or with respect to the acquisition of which by the taxpayer a binding contract was in effect on such date.

This paragraph shall not apply to any sale or exchange by an individual if the treatment provided by section 877(a)(1) of the Internal Revenue Code of 1986 applies to such individual.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 6011(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to any sale or exchange after September 30, 1988, in taxable years ending after such date.''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 123(b) of Pub. L. 97–34 provided that: ''The amendment made by this section [amending this section] shall apply to residences sold or exchanged after July 20, 1981.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 404(d)(1) of Pub. L. 95–600 provided that: ''The amendments made by this section [amending this section and sections 1033, 1034, 1038, 1250, and 6012 of this title] shall apply to sales or exchanges after July 26, 1978, in taxable years ending after such date.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1404(b) of Pub. L. 94–455 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1976.''

EFFECTIVE DATE

Section 206(c) of Pub. L. 88–272 provided that: ''The amendments made by this section [enacting this section, redesignating former section 121 as 122, and

amending sections 1033, 1034, and 6012 of this title] shall apply to dispositions after Dec. 31, 1963, in taxable years ending after such date.''

SENSE OF CONGRESS CONCERNING TAX TREATMENT OF PRINCIPAL RESIDENCE OF MEMBERS OF ARMED FORCES WHILE AWAY FROM HOME ON ACTIVE DUTY

Pub. L. 105–261, div. A, title X, § 1074, Oct. 17, 1998, 112 Stat. 2138, provided that: ''It is the sense of Congress that a member of the Armed Forces should be treated for purposes of section 121 of the Internal Revenue Code of 1986 as using property as a principal residence during any continuous period that the member is serving on active duty for 180 days or more with the Armed Forces, but only if the member used the property as a principal residence for any period during or immediately before that period of active duty.''

TRANSITIONAL RULE IN CASE OF SALE OR EXCHANGE OF RESIDENCE BEFORE JULY 26, 1981

Section 404(d)(2) of Pub. L. 95–600, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of a sale or exchange of a residence before July 26, 1981, a taxpayer who has attained age 65 on the date of such sale or exchange may elect to have section 121 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applied by substituting '8-year period' for '5-year period' and '5 years' for '3 years' in subsections (a), (d)(2), and (d)(5) of such section.''

§ 122. Certain reduced uniformed services retirement pay

(a) General rule

In the case of a member or former member of the uniformed services of the United States, gross income does not include the amount of any reduction in his retired or retainer pay pursuant to the provisions of chapter 73 of title 10, United States Code.

(b) Special rule

(1) Amount excluded from gross income

In the case of any individual referred to in subsection (a), all amounts received after December 31, 1965, as retired or retainer pay shall be excluded from gross income until there has been so excluded an amount equal to the consideration for the contract. The preceding sentence shall apply only to the extent that the amounts received would, but for such sentence, be includible in gross income.

(2) Consideration for the contract

For purposes of paragraph (1) and section 72(n), the term ''consideration for the contract'' means, in respect of any individual, the sum of—

(A) the total amount of the reductions before January 1, 1966, in his retired or retainer pay by reason of an election under chapter 73 of title 10 of the United States Code, and

(B) any amounts deposited at any time by him pursuant to section 1438 or 1452(d) of such title 10.

(Added Pub. L. 89–365, § 1(a)(1), Mar. 8, 1966, 80 Stat. 32; amended Pub. L. 93–406, title II, §§ 2005(c)(10), 2007(a), (b)(1), Sept. 2, 1974, 88 Stat. 992, 994.)

PRIOR PROVISIONS

A prior section 122 was renumbered section 140 of this title.

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–406, § 2007(a), substituted ''United States, gross income does not include the amount of any reduction in his retired or retainer pay pursuant to the provisions of chapter 73 of title 10, United States Code'' for ''United States who has made an election under chapter 73 of title 10 of the United States Code to receive a reduced amount of retired or retainer pay, gross income does not include the amount of any reduction after December 31, 1965, in his retired or retainer pay by reason of such election''.

Subsec. (b)(2). Pub. L. 93–406, § 2005(c)(10), substituted ''72(n)'' for ''72(*o*)''.

Subsec. (b)(2)(B). Pub. L. 93–406, § 2007(b)(1), inserted reference to section 1452(d) of title 10.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 2005(c)(10) of Pub. L. 93–406 applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

Section 2007(c) of Pub. L. 93–406 provided that: ''The amendments made by this section [amending this section and sections 72, 101, and 2039 of this title] apply to taxable years ending on or after September 21, 1972. The amendments made by paragraphs (3) and (4) of subsection (b) [amending sections 101 and 2039 of this title] apply with respect to individuals dying on or after such date''.

EFFECTIVE DATE

Section 1(d) of Pub. L. 89–365 provided that: ''The amendments made by subsections (a) and (b) [enacting this section and amending section 72 of this title] shall apply with respect to taxable years ending after December 31, 1965. The amendment made by subsection (c) [amending section 101 of this title] shall apply with respect to individuals making an election under chapter 73 of title 10 of the United States Code who die after December 31, 1965.''

§ 123. Amounts received under insurance contracts for certain living expenses

(a) General rule

In the case of an individual whose principal residence is damaged or destroyed by fire, storm, or other casualty, or who is denied access to his principal residence by governmental authorities because of the occurrence or threat of occurrence of such a casualty, gross income does not include amounts received by such individual under an insurance contract which are paid to compensate or reimburse such individual for living expenses incurred for himself and members of his household resulting from the loss of use or occupancy of such residence.

(b) Limitation

Subsection (a) shall apply to amounts received by the taxpayer for living expenses incurred during any period only to the extent the amounts received do not exceed the amount by which—

(1) the actual living expenses incurred during such period for himself and members of his household resulting from the loss of use or occupancy of their residence, exceed

(2) the normal living expenses which would have been incurred for himself and members of his household during such period.

(Added Pub. L. 91–172, title IX, § 901(a), Dec. 30, 1969, 83 Stat. 709.)

PRIOR PROVISIONS

A prior section 123 was renumbered section 140 of this title.

EFFECTIVE DATE

Section 901(c) of Pub. L. 91–172 provided that: ''The amendments made by this section [enacting this section] shall apply with respect to amounts received on or after January 1, 1969.''

[§ 124. Repealed. Pub. L. 101–508, title XI, § 11801(a)(9), Nov. 5, 1990, 104 Stat. 1388–520]

Section, added Pub. L. 95–618, title II, § 242(a), Nov. 9, 1978, 92 Stat. 3193, related to qualified transportation provided by employers.

A prior section 124 was renumbered section 140 of this title.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§ 125. Cafeteria plans

(a) General rule

Except as provided in subsection (b), no amount shall be included in the gross income of a participant in a cafeteria plan solely because, under the plan, the participant may choose among the benefits of the plan.

(b) Exception for highly compensated participants and key employees

(1) Highly compensated participants

In the case of a highly compensated participant, subsection (a) shall not apply to any benefit attributable to a plan year for which the plan discriminates in favor of—

(A) highly compensated individuals as to eligibility to participate, or

(B) highly compensated participants as to contributions and benefits.

(2) Key employees

In the case of a key employee (within the meaning of section 416(i)(1)), subsection (a) shall not apply to any benefit attributable to a plan for which the statutory nontaxable benefits provided to key employees exceed 25 percent of the aggregate of such benefits provided for all employees under the plan. For purposes of the preceding sentence, statutory nontaxable benefits shall be determined without regard to the second sentence of subsection (f).

(3) Year of inclusion

For purposes of determining the taxable year of inclusion, any benefit described in paragraph (1) or (2) shall be treated as received or accrued in the taxable year of the participant or key employee in which the plan year ends.

(c) Discrimination as to benefits or contributions

For purposes of subparagraph (B) of subsection (b)(1), a cafeteria plan does not discriminate where qualified benefits and total benefits (or employer contributions allocable to qualified benefits and employer contributions for total benefits) do not discriminate in favor of highly compensated participants.

(d) Cafeteria plan defined

For purposes of this section—

(1) In general

The term ''cafeteria plan'' means a written plan under which—

(A) all participants are employees, and

(B) the participants may choose among 2 or more benefits consisting of cash and qualified benefits.

(2) Deferred compensation plans excluded

(A) In general

The term ''cafeteria plan'' does not include any plan which provides for deferred compensation.

(B) Exception for cash and deferred arrangements

Subparagraph (A) shall not apply to a profit-sharing or stock bonus plan or rural cooperative plan (within the meaning of section 401(k)(7)) which includes a qualified cash or deferred arrangement (as defined in section 401(k)(2)) to the extent of amounts which a covered employee may elect to have the employer pay as contributions to a trust under such plan on behalf of the employee.

(C) Exception for certain plans maintained by educational institutions

Subparagraph (A) shall not apply to a plan maintained by an educational organization described in section 170(b)(1)(A)(ii) to the extent of amounts which a covered employee may elect to have the employer pay as contributions for post-retirement group life insurance if—

(i) all contributions for such insurance must be made before retirement, and

(ii) such life insurance does not have a cash surrender value at any time.

For purposes of section 79, any life insurance described in the preceding sentence shall be treated as group-term life insurance.

(D) Exception for health savings accounts

Subparagraph (A) shall not apply to a plan to the extent of amounts which a covered employee may elect to have the employer pay as contributions to a health savings account established on behalf of the employee.

(e) Highly compensated participant and individual defined

For purposes of this section—

(1) Highly compensated participant

The term ''highly compensated participant'' means a participant who is—

(A) an officer,

(B) a shareholder owning more than 5 percent of the voting power or value of all classes of stock of the employer,

(C) highly compensated, or

(D) a spouse or dependent (within the meaning of section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of an individual described in subparagraph (A), (B), or (C).

(2) Highly compensated individual

The term ''highly compensated individual'' means an individual who is described in sub-

paragraphs[1] (A), (B), (C), or (D) of paragraph (1).

(f) Qualified benefits defined

For purposes of this section, the term ''qualified benefit'' means any benefit which, with the application of subsection (a), is not includible in the gross income of the employee by reason of an express provision of this chapter (other than section 106(b), 117, 127, or 132). Such term includes any group term life insurance which is includible in gross income only because it exceeds the dollar limitation of section 79 and such term includes any other benefit permitted under regulations. Such term shall not include any product which is advertised, marketed, or offered as long-term care insurance.

(g) Special rules

(1) Collectively bargained plan not considered discriminatory

For purposes of this section, a plan shall not be treated as discriminatory if the plan is maintained under an agreement which the Secretary finds to be a collective bargaining agreement between employee representatives and one or more employers.

(2) Health benefits

For purposes of subparagraph (B) of subsection (b)(1), a cafeteria plan which provides health benefits shall not be treated as discriminatory if—

(A) contributions under the plan on behalf of each participant include an amount which—

(i) equals 100 percent of the cost of the health benefit coverage under the plan of the majority of the highly compensated participants similarly situated, or

(ii) equals or exceeds 75 percent of the cost of the health benefit coverage of the participant (similarly situated) having the highest cost health benefit coverage under the plan, and

(B) contributions or benefits under the plan in excess of those described in subparagraph (A) bear a uniform relationship to compensation.

(3) Certain participation eligibility rules not treated as discriminatory

For purposes of subparagraph (A) of subsection (b)(1), a classification shall not be treated as discriminatory if the plan—

(A) benefits a group of employees described in section 410(b)(2)(A)(i), and

(B) meets the requirements of clauses (i) and (ii):

(i) No employee is required to complete more than 3 years of employment with the employer or employers maintaining the plan as a condition of participation in the plan, and the employment requirement for each employee is the same.

(ii) Any employee who has satisfied the employment requirement of clause (i) and who is otherwise entitled to participate in the plan commences participation no later than the first day of the first plan year beginning after the date the employment requirement was satisfied unless the employee was separated from service before the first day of that plan year.

(4) Certain controlled groups, etc.

All employees who are treated as employed by a single employer under subsection (b), (c), or (m) of section 414 shall be treated as employed by a single employer for purposes of this section.

(h) Special rule for unused benefits in health flexible spending arrangements of individuals called to active duty

(1) In general

For purposes of this title, a plan or other arrangement shall not fail to be treated as a cafeteria plan or health flexible spending arrangement merely because such arrangement provides for qualified reservist distributions.

(2) Qualified reservist distribution

For purposes of this subsection, the term ''qualified reservist distribution'' means,[2] any distribution to an individual of all or a portion of the balance in the employee's account under such arrangement if—

(A) such individual was (by reason of being a member of a reserve component (as defined in section 101 of title 37, United States Code)) ordered or called to active duty for a period in excess of 179 days or for an indefinite period, and

(B) such distribution is made during the period beginning on the date of such order or call and ending on the last date that reimbursements could otherwise be made under such arrangement for the plan year which includes the date of such order or call.

(i) Limitation on health flexible spending arrangements

For purposes of this section, if a benefit is provided under a cafeteria plan through employer contributions to a health flexible spending arrangement, such benefit shall not be treated as a qualified benefit unless the cafeteria plan provides that an employee may not elect for any taxable year to have salary reduction contributions in excess of $2,500 made to such arrangement.

(j) Simple cafeteria plans for small businesses

(1) In general

An eligible employer maintaining a simple cafeteria plan with respect to which the requirements of this subsection are met for any year shall be treated as meeting any applicable nondiscrimination requirement during such year.

(2) Simple cafeteria plan

For purposes of this subsection, the term ''simple cafeteria plan'' means a cafeteria plan—

(A) which is established and maintained by an eligible employer, and

(B) with respect to which the contribution requirements of paragraph (3), and the eligi-

[1] So in original. Probably should be ''subparagraph''.

[2] So in original. The comma probably should not appear.

bility and participation requirements of paragraph (4), are met.

(3) Contribution requirements

(A) In general

The requirements of this paragraph are met if, under the plan the employer is required, without regard to whether a qualified employee makes any salary reduction contribution, to make a contribution to provide qualified benefits under the plan on behalf of each qualified employee in an amount equal to—

(i) a uniform percentage (not less than 2 percent) of the employee's compensation for the plan year, or

(ii) an amount which is not less than the lesser of—

(I) 6 percent of the employee's compensation for the plan year, or

(II) twice the amount of the salary reduction contributions of each qualified employee.

(B) Matching contributions on behalf of highly compensated and key employees

The requirements of subparagraph (A)(ii) shall not be treated as met if, under the plan, the rate of contributions with respect to any salary reduction contribution of a highly compensated or key employee at any rate of contribution is greater than that with respect to an employee who is not a highly compensated or key employee.

(C) Additional contributions

Subject to subparagraph (B), nothing in this paragraph shall be treated as prohibiting an employer from making contributions to provide qualified benefits under the plan in addition to contributions required under subparagraph (A).

(D) Definitions

For purposes of this paragraph—

(i) Salary reduction contribution

The term ''salary reduction contribution'' means, with respect to a cafeteria plan, any amount which is contributed to the plan at the election of the employee and which is not includible in gross income by reason of this section.

(ii) Qualified employee

The term ''qualified employee'' means, with respect to a cafeteria plan, any employee who is not a highly compensated or key employee and who is eligible to participate in the plan.

(iii) Highly compensated employee

The term ''highly compensated employee'' has the meaning given such term by section 414(q).

(iv) Key employee

The term ''key employee'' has the meaning given such term by section 416(i).

(4) Minimum eligibility and participation requirements

(A) In general

The requirements of this paragraph shall be treated as met with respect to any year if, under the plan—

(i) all employees who had at least 1,000 hours of service for the preceding plan year are eligible to participate, and

(ii) each employee eligible to participate in the plan may, subject to terms and conditions applicable to all participants, elect any benefit available under the plan.

(B) Certain employees may be excluded

For purposes of subparagraph (A)(i), an employer may elect to exclude under the plan employees—

(i) who have not attained the age of 21 before the close of a plan year,

(ii) who have less than 1 year of service with the employer as of any day during the plan year,

(iii) who are covered under an agreement which the Secretary of Labor finds to be a collective bargaining agreement if there is evidence that the benefits covered under the cafeteria plan were the subject of good faith bargaining between employee representatives and the employer, or

(iv) who are described in section 410(b)(3)(C) (relating to nonresident aliens working outside the United States).

A plan may provide a shorter period of service or younger age for purposes of clause (i) or (ii).

(5) Eligible employer

For purposes of this subsection—

(A) In general

The term ''eligible employer'' means, with respect to any year, any employer if such employer employed an average of 100 or fewer employees on business days during either of the 2 preceding years. For purposes of this subparagraph, a year may only be taken into account if the employer was in existence throughout the year.

(B) Employers not in existence during preceding year

If an employer was not in existence throughout the preceding year, the determination under subparagraph (A) shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current year.

(C) Growing employers retain treatment as small employer

(i) In general

If—

(I) an employer was an eligible employer for any year (a ''qualified year''), and

(II) such employer establishes a simple cafeteria plan for its employees for such year,

then, notwithstanding the fact the employer fails to meet the requirements of subparagraph (A) for any subsequent year, such employer shall be treated as an eligible employer for such subsequent year with respect to employees (whether or not employees during a qualified year) of any

trade or business which was covered by the plan during any qualified year.

(ii) Exception

This subparagraph shall cease to apply if the employer employs an average of 200 or more employees on business days during any year preceding any such subsequent year.

(D) Special rules

(i) Predecessors

Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

(ii) Aggregation rules

All persons treated as a single employer under subsection (a) or (b) of section 52, or subsection (n) or (*o*) of section 414, shall be treated as one person.

(6) Applicable nondiscrimination requirement

For purposes of this subsection, the term ''applicable nondiscrimination requirement'' means any requirement under subsection (b) of this section, section 79(d), section 105(h), or paragraph (2), (3), (4), or (8) of section 129(d).

(7) Compensation

The term ''compensation'' has the meaning given such term by section 414(s).

(k) Cross reference

For reporting and recordkeeping requirements, see section 6039D.

(*l*) Regulations

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

(Added Pub. L. 95–600, title I, §134(a), Nov. 6, 1978, 92 Stat. 2783; amended Pub. L. 96–222, title I, §101(a)(6)(A), Apr. 1, 1980, 94 Stat. 196; Pub. L. 96–605, title II, §§201(b)(2), 226(a), Dec. 28, 1980, 94 Stat. 3527, 3529; Pub. L. 96–613, §5(b)(2), Dec. 28, 1980, 94 Stat. 3581; Pub. L. 98–369, div. A, title V, §531(b)(1)–(4)(A), July 18, 1984, 98 Stat. 881, 882; Pub. L. 98–611, §1(d)(3)(A), Oct. 31, 1984, 98 Stat. 3177; Pub. L. 98–612, §1(b)(3)(B), Oct. 31, 1984, 98 Stat. 3181; Pub. L. 99–514, title XI, §1151(d)(1), title XVIII, §1853(b)(1), Oct. 22, 1986, 100 Stat. 2504, 2870; Pub. L. 100–647, title I, §§1011B(a)(11)–(13), 1018(t)(6), title IV, §4002(b)(2), title VI, §6051(b), Nov. 10, 1988, 102 Stat. 3484, 3485, 3589, 3643, 3696; Pub. L. 101–140, title II, §203(a)(1), (3), (b)(2), Nov. 8, 1989, 103 Stat. 830, 831; Pub. L. 101–239, title VII, §7814(b), Dec. 19, 1989, 103 Stat. 2413; Pub. L. 101–508, title XI, §11801(c)(3), Nov. 5, 1990, 104 Stat. 1388–523; Pub. L. 104–191, title III, §§301(d), 321(c)(1), Aug. 21, 1996, 110 Stat. 2051, 2058; Pub. L. 108–173, title XII, §1201(i), Dec. 8, 2003, 117 Stat. 2479; Pub. L. 108–311, title II, §207(11), Oct. 4, 2004, 118 Stat. 1177; Pub. L. 110–172, §11(a)(12), Dec. 29, 2007, 121 Stat. 2485; Pub. L. 110–245, title I, §114(a), June 17, 2008, 122 Stat. 1636; Pub. L. 111–148, title I, §1515(a), (b), title IX, §§9005(a), 9022(a), title X, §10902(a), Mar. 23, 2010, 124 Stat. 258, 854, 874, 1016; Pub. L. 111–152, title I, §1403(b), Mar. 30, 2010, 124 Stat. 1063.)

AMENDMENT OF SUBSECTION (f)

Pub. L. 111–148, title I, §1515, Mar. 23, 2010, 124 Stat. 258, provided that, applicable to taxable years beginning after Dec. 31, 2013, subsection (f) of this section is amended as follows:

(1) by striking ''For purposes of this section, the term'' and inserting ''For purposes of this section—

''(1) In general

''The term'';

(2) by striking ''Such term shall not include'' and inserting the following:

''(2) Long-term care insurance not qualified

''The term 'qualified benefit' shall not include''; and

(3) by adding at the end the following new paragraph:

(3) Certain exchange-participating qualified health plans not qualified

(A) In general

The term ''qualified benefit'' shall not include any qualified health plan (as defined in section 1301(a) of the Patient Protection and Affordable Care Act) offered through an Exchange established under section 1311 of such Act.

(B) Exception for exchange-eligible employers

Subparagraph (A) shall not apply with respect to any employee if such employee's employer is a qualified employer (as defined in section 1312(f)(2) of the Patient Protection and Affordable Care Act) offering the employee the opportunity to enroll through such an Exchange in a qualified health plan in a group market.

AMENDMENT OF SUBSECTION (i)

Pub. L. 111–148, title X, §10902, Mar. 23, 2010, 124 Stat. 1016; Pub. L. 111–152, title I, §1403, Mar. 30, 2010, 124 Stat. 1063, provided that, applicable to taxable years beginning after Dec. 31, 2012, subsection (i) of this section is amended to read as follows:

(i) Limitation on health flexible spending arrangements

(1) In general

For purposes of this section, if a benefit is provided under a cafeteria plan through employer contributions to a health flexible spending arrangement, such benefit shall not be treated as a qualified benefit unless the cafeteria plan provides that an employee may not elect for any taxable year to have salary reduction contributions in excess of $2,500 made to such arrangement.

(2) Adjustment for inflation

In the case of any taxable year beginning after December 31, 2013, the dollar amount in paragraph (1) shall be increased by an amount equal to—

(A) such amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which such taxable year begins by substituting ''calendar year 2012'' for ''calendar year 1992'' in subparagraph (B) thereof.

If any increase determined under this paragraph is not a multiple of $50, such increase shall be rounded to the next lowest multiple of $50.

CODIFICATION

Pub. L. 101–140, §203(a)(1), amended this section to read as if the amendments made by section 1151(d)(1) of

Pub. L. 99–514 (amending this section generally) had not been enacted. Subsequent to amendment by Pub. L. 99–514, this section was amended by Pub. L. 100–647 and Pub. L. 101–239. See 1989 and 1988 Amendment notes below.

PRIOR PROVISIONS

A prior section 125 was renumbered section 140 of this title.

AMENDMENTS

2010—Subsec. (i). Pub. L. 111–148, §9005(a)(2), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 111–148, §9022(a), added subsec. (j). Former subsec. (j) redesignated (k).

Pub. L. 111–148, §9005(a)(1), redesignated subsec. (j) as (k).

Subsec. (k). Pub. L. 111–148, §9022(a), redesignated subsec. (j) as (k). Former subsec. (k) redesignated (*l*).

Pub. L. 111–148, §9005(a)(1), redesignated subsec. (j) as (k).

Subsec. (*l*). Pub. L. 111–148, §9022(a), redesignated subsec. (k) as (*l*).

2008—Subsecs. (h) to (j). Pub. L. 110–245 added subsec. (h) and redesignated former subsecs. (h) and (i) as (i) and (j), respectively.

2007—Subsec. (b)(2). Pub. L. 110–172 substituted ''second sentence'' for ''last sentence''.

2004—Subsec. (e)(1)(D). Pub. L. 108–311 inserted '', determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof'' after ''section 152''.

2003—Subsec. (d)(2)(D). Pub. L. 108–173, which directed the amendment of section 125(d)(2) by adding subpar. (D), was executed to this section, which is section 125(d)(2) of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

1996—Subsec. (f). Pub. L. 104–191, §321(c)(1), inserted at end ''Such term shall not include any product which is advertised, marketed, or offered as long-term care insurance.''

Pub. L. 104–191, §301(d), inserted ''106(b),'' before ''117''.

1990—Subsec. (f). Pub. L. 101–508 substituted ''section 117,'' for ''section 117, 124,''.

1989—Pub. L. 101–140, §203(a)(1), amended section to read as if amendments by Pub. L. 99–514, §1151(d)(1), had not been enacted, see 1986 Amendment note below.

Subsec. (d)(2). Pub. L. 101–140, §203(b)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The term 'cafeteria plan' does not include any plan which provides for deferred compensation. The preceding sentence shall not apply in the case of a profit-sharing or stock bonus plan which includes a qualified cash or deferred arrangement (as defined in section 401(k)(2)) to the extent of amounts which a covered employee may elect to have the employer pay as contributions to a trust under such plan on behalf of the employee.''

Subsec. (e)(2)(A). Pub. L. 101–239 substituted ''includible only because'' for ''includable only because'', see Codification note above.

Subsec. (g)(3)(A). Pub. L. 101–140, §203(a)(3), substituted ''section 410(b)(2)(A)(i)'' for ''subparagraph (B) of section 410(b)(1)''.

1988—Subsec. (a). Pub. L. 100–647, §1011B(a)(11)(A), amended subsec. (a) generally, see Codification note above. Prior to amendment, subsec. (a) read as follows: ''In the case of a cafeteria plan—

''(1) amounts shall not be included in gross income of a participant in such plan solely because, under the plan, the participant may choose among the benefits of the plan, and

''(2) if the plan fails to meet the requirements of subsection (b) for any plan year—

''(A) paragraph (1) shall not apply, and

''(B) notwithstanding any other provision of part III of this subchapter, any qualified benefits received under such cafeteria plan by a highly compensated employee for such plan year shall be included in the gross income of such employee for the taxable year with or within which such plan year ends.''

Subsec. (b)(1). Pub. L. 100–647, §1011B(a)(11)(B), substituted ''In the case of a highly compensated employee, subsection (a) shall not apply to any benefit attributable to a plan year'' for ''A plan shall be treated as failing to meet the requirements of this subsection'', see Codification note above.

Subsec. (b)(2). Pub. L. 100–647, §1011B(a)(11)(C), substituted ''subsection (a) shall not apply to any plan year'' for ''a plan shall be treated as failing to meet the requirements of this subsection'' in first sentence, see Codification note above.

Pub. L. 100–647, §1011B(a)(13)(B), substituted ''shall not include benefits which (without regard to this paragraph) are includible in gross income'' for ''shall be determined without regard to the last sentence of subsection (e)'', see Codification note above.

Subsec. (c)(1)(B). Pub. L. 100–647, §1011B(a)(12), amended subpar. (B) generally, see Codification note above. Prior to amendment, subpar. (B) read as follows: ''the participants may choose—

''(i) among 2 or more benefits consisting of cash and qualified benefits, or

''(ii) among 2 or more qualified benefits.''

Subsec. (c)(2)(B). Pub. L. 100–647, §1018(t)(6), inserted ''or rural electric cooperative plan (within the meaning of section 401(k)(7))'' after ''stock bonus plan'', see Codification note above.

Subsec. (c)(2)(C). Pub. L. 100–647, §6051(b), inserted at end ''In applying section 89 to a plan described in this subparagraph, contributions under the plan shall be tested as of the time the contributions were made.'', see Codification note above.

Subsec. (e)(1). Pub. L. 100–647, §1011B(a)(13)(A), inserted ''and without regard to section 89(a)'' after ''subsection (a)'', see Codification note above.

Subsec. (e)(2)(A). Pub. L. 100–647, §4002(b)(2), inserted ''or any insurance under a qualified group legal services plan the value of which is so includable only because it exceeds the limitation of section 120(a)'' after ''section 79'', see Codification note above.

1986—Pub. L. 99–514, §1151(d)(1), amended section generally, revising and restating as subsecs. (a) to (g) provisions of former subsecs. (a) to (i) so as to coincide with the coming into effect of section 89 of this title.

Subsecs. (c), (d)(1)(B). Pub. L. 99–514, §1853(b)(1)(A), substituted ''qualified benefits'' for ''statutory nontaxable benefits'' wherever appearing.

Subsec. (f). Pub. L. 99–514, §1853(b)(1)(B), substituted ''Qualified benefits defined'' for ''Statutory nontaxable benefits defined'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of this section, the term 'statutory nontaxable benefit' means any benefit which, with the application of subsection (a) is not includible in the gross income of the employee by reason of an express provision of this chapter (other than section 117, 124, 127, or 132). Such term includes any group term life insurance which is includible in gross income only because it exceeds the dollar limitation of section 79.''

1984—Subsec. (b). Pub. L. 98–369, §531(b)(3), amended subsec. (b) generally, substituting ''and key employees'' for ''where plan is discriminatory'' in heading and ''Highly compensated participants'' for ''In general'' in par. (1) heading, adding par. (2), redesignating former par. (2) as (3), and inserting therein references to par. (2) and to taxable year of key employee.

Subsec. (c). Pub. L. 98–369, §531(b)(2)(B), inserted ''statutory'' before ''nontaxable benefits'' in two places.

Subsec. (d)(1). Pub. L. 98–369, §531(b)(1), substituted ''among 2 or more benefits consisting of cash and statutory nontaxable benefits'' for ''among two or more benefits'' in cl. (B) and struck out ''The benefits which may be chosen may be nontaxable benefits, or cash, property, or other taxable benefits.''

Subsec. (f). Pub. L. 98–369, §531(b)(2)(A), amended subsec. (f) generally, inserting ''Statutory'' in heading and

''statutory'' before ''nontaxable benefit'' in text, providing that the benefit be excluded by reason of an express provision of this chapter (other than section 117, 124, 127, or 132), and extending the benefit to include group term life insurance.

Subsec. (h). Pub. L. 98–611 and Pub. L. 98–612, made identical amendments, substituting cross reference provision for reporting requirements provisions.

Pub. L. 98–369, § 531(b)(4)(A), added subsec. (h) relating to reporting requirements provisions. Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 98–369, § 531(b)(4)(A), redesignated subsec. (h) as (i).

1980—Subsec. (d)(2). Pub. L. 96–605, § 226(a), inserted provision that the sentence excluding deferred compensation plans not apply in the case of a profit-sharing or stock bonus plan which includes a qualified cash or deferred arrangement, as defined in section 401(k)(2) to the extent of amounts which a covered employee may elect to have the employer pay as contributions to a trust under such plan on behalf of the employee.

Subsec. (g)(3)(B). Pub. L. 96–222 substituted ''employment requirement'' for ''service requirement'' in cls. (i) and (ii).

Subsec. (g)(4). Pub. L. 96–613, § 5(b)(2), and Pub. L. 96–605, § 201(b)(2), made identical amendments by substituting ''controlled groups, etc.'' for ''controlled groups'' in heading, and by substituting ''subsection (b), (c), or (m) of section 414'' for ''subsection (b) or (c) of section 414'' in text.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title I, § 1515(c), Mar. 23, 2010, 124 Stat. 258, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2013.''

Pub. L. 111–148, title IX, § 9005(b), Mar. 23, 2010, 124 Stat. 855, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2010.''

Pub. L. 111–148, title IX, § 9022(b), Mar. 23, 2010, 124 Stat. 876, provided that: ''The amendments made by this section [amending this section] shall apply to years beginning after December 31, 2010.''

Pub. L. 111–148, title X, § 10902(b), Mar. 23, 2010, 124 Stat. 1016, as amended by Pub. L. 111–152, title I, § 1403(a), Mar. 30, 2010, 124 Stat. 1063, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2012.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–245, title I, § 114(b), June 17, 2008, 122 Stat. 1636, provided that: ''The amendment made by this section [amending this section] shall apply to distributions made after the date of the enactment of this Act [June 17, 2008].''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–173 applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108–173, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 301(d) of Pub. L. 104–191 applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104–191, set out as a note under section 62 of this title.

Amendment by section 321(c)(1) of Pub. L. 104–191 applicable to contracts issued after Dec. 31, 1996, see section 321(f) of Pub. L. 104–191, set out as an Effective Date note under section 7702B of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

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

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1011B(a)(11)–(13) and 1018(t)(6) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 4002(b)(2) of Pub. L. 100–647 applicable to taxable years ending after Dec. 31, 1987, see section 4002(c) of Pub. L. 100–647, set out as a note under section 120 of this title.

Section 6051(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section and section 89 of this title] shall take effect as if included in the amendments made by section 1151 of the Reform Act [Pub. L. 99–514, see Effective Date of 1986 Amendment note set out under section 79 of this title].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1151(d)(1) of Pub. L. 99–514 applicable, with certain qualifications and exceptions, to years beginning after Dec. 31, 1988, see section 1151(k) of Pub. L. 99–514, as amended, set out as a note under section 79 of this title.

Amendment by section 1853(b)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–612 effective Jan. 1, 1985, see section 1(d)(2) of Pub. L. 98–612.

Amendment by Pub. L. 98–611 effective Jan. 1, 1985, see section 1(g)(2) of Pub. L. 98–611, set out as a note under section 127 of this title.

Amendment by Pub. L. 98–369 effective Jan. 1, 1985, see section 531(h) of Pub. L. 98–369, set out as an Effective Date note under section 132 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendments by section 201(b)(2) of Pub. L. 96–605 and section 5(b)(2) of Pub. L. 96–613 applicable to years ending after Nov. 30, 1980, except in the case of a plan in existence on Nov. 30, 1980 where amendments by section 201(b)(2) of Pub. L. 96–605 and section 5(b)(2) of Pub. L. 96–613 applicable to plan years beginning after Nov. 30, 1980, see section 201(c) of Pub. L. 96–605 and section 5(c) of Pub. L. 96–613, set out as a note under section 414 of this title.

Section 226(b) of Pub. L. 96–605 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1980.''

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 134(c) of Pub. L. 95–600, as amended by Pub. L. 96–222, title I, § 101(a)(6)(B), Apr. 1, 1980, 94 Stat. 197, provided that: ''The amendments made by this section

[enacting this section] shall apply to plan years beginning after December 31, 1978.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

TREATMENT OF PRE-1989 ELECTIONS FOR DEPENDENT CARE ASSISTANCE UNDER CAFETERIA PLANS

Section 6063 of Pub. L. 100–647 provided that: ''For purposes of section 125 of the 1986 Code, a plan shall not be treated as failing to be a cafeteria plan solely because under the plan a participant elected before January 1, 1989, to receive reimbursement under the plan for dependent care assistance for periods after December 31, 1988, and such assistance is includible in gross income under the provisions of the Family Support Act of 1988 [Pub. L. 100–485, see Tables for classification].''

For provision that for purposes of section 125 of the Internal Revenue Code of 1986, a plan shall not be treated as failing to be a cafeteria plan solely because under the plan a participant elected before January 1, 1988, to receive reimbursement under the plan for dependent care assistance for periods after December 31, 1987, and such assistance included reimbursement for expenses at a camp where the dependent stays overnight, see section 10101(b)(2) of Pub. L. 100–203, as added by Pub. L. 100–647, set out as an Effective Date of 1987 Amendment note under section 21 of this title.

EXCEPTION FOR CERTAIN CAFETERIA PLANS AND BENEFITS

Section 531(b)(5) of Pub. L. 98–369, as amended by Pub. L. 99–514, title XVIII, §1853(b)(2), (3), Oct. 22, 1986, 100 Stat. 2870, 2871, provided that:

''(A) GENERAL TRANSITIONAL RULE.—Any cafeteria plan in existence on February 10, 1984, which failed as of such date and continued to fail thereafter to satisfy the rules relating to section 125 under proposed Treasury regulations, and any benefit offered under such a cafeteria plan which failed as of such date and continued to fail thereafter to satisfy the rules of section 105, 106, 120, or 129 under proposed Treasury regulations, will not fail to be a cafeteria plan under section 125 or a nontaxable benefit under section 105, 106, 120, or 129 solely because of such failures. The preceding sentence shall apply only with respect to cafeteria plans and benefits provided under cafeteria plans before the earlier of—

''(i) January 1, 1985, or

''(ii) the effective date of any modification to provide additional benefits after February 10, 1984.

''(B) SPECIAL TRANSITION RULE FOR ADVANCE ELECTION BENEFIT BANKS.—Any benefit offered under a cafeteria plan in existence on February 10, 1984, which failed as of such date and continued to fail thereafter to satisfy the rules of section 105, 106, 120, or 129 under proposed Treasury regulations because an employee was assured of receiving (in cash or any other benefit) amounts available but unused for covered reimbursement during the year without regard to whether he incurred covered expenses, will not fail to be a nontaxable benefit under such applicable section solely because of such failure. The preceding sentence shall apply only with respect to benefits provided under cafeteria plans before the earlier of—

''(i) July 1, 1985, or

''(ii) the effective date of any modification to provide additional benefits after February 10, 1984.

Except as provided in Treasury regulations, the special transition rule is available only for benefits with respect to which, after December 31, 1984, contributions are fixed before the period of coverage and taxable cash is not available until the end of such period of coverage.

''(C) PLANS FOR WHICH SUBSTANTIAL IMPLEMENTATION COSTS WERE INCURRED.—For purposes of this paragraph, any plan with respect to which substantial implementation costs had been incurred before February 10, 1984, shall be treated as in existence on February 10, 1984.

''(D) COLLECTIVE BARGAINING AGREEMENTS.—In the case of any cafeteria plan in existence on February 10, 1984, and maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers, the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof agreed to after July 18, 1984) shall be substituted for 'January 1, 1985' in subparagraph (A) and for 'July 1, 1985' in subparagraph (B). For purposes of the preceding sentence, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section (or any requirement in the regulations under section 125 of the Internal Revenue Code of 1954 [now 1986] proposed on May 6, 1984) shall not be treated as a termination of such collective bargaining agreement.

''(E) SPECIAL RULE WHERE CONTRIBUTIONS OR REIMBURSEMENTS SUSPENDED.—For purposes of subparagraphs (A) and (B), a plan shall not be treated as not continuing to fail to satisfy the rules referred to in such subparagraphs with respect to any benefit provided in the form of a flexible spending arrangement merely because contributions or reimbursements (or both) with respect to such plan were suspended before January 1, 1985.''

§ 126. Certain cost-sharing payments

(a) General rule

Gross income does not include the excludable portion of payments received under—

(1) The rural clean water program authorized by section 208(j) of the Federal Water Pollution Control Act (33 U.S.C. 1288(j)).

(2) The rural abandoned mine program authorized by section 406 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1236).

(3) The water bank program authorized by the Water Bank Act (16 U.S.C. 1301 et seq.).

(4) The emergency conservation measures program authorized by title IV of the Agricultural Credit Act of 1978.

(5) The agricultural conservation program authorized by the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590a).

(6) The great plains conservation program authorized by section 16[1] of the Soil Conservation and Domestic Policy Act (16 U.S.C. 590p(b)).

(7) The resource conservation and development program authorized by the Bankhead-Jones Farm Tenant Act and by the Soil Conservation and Domestic Allotment Act (7 U.S.C. 1010; 16 U.S.C. 590a et seq.).

(8) The forestry incentives program authorized by section 4 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103).

[1] See References in Text note below.

(9) Any small watershed program administered by the Secretary of Agriculture which is determined by the Secretary of the Treasury or his delegate to be substantially similar to the type of programs described in paragraphs (1) through (8).

(10) Any program of a State, possession of the United States, a political subdivision of any of the foregoing, or the District of Columbia under which payments are made to individuals primarily for the purpose of conserving soil, protecting or restoring the environment, improving forests, or providing a habitat for wildlife.

(b) Excludable portion

For purposes of this section—

(1) In general

The term ''excludable portion'' means that portion (or all) of a payment made to any person under any program described in subsection (a) which—

(A) is determined by the Secretary of Agriculture to be made primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, or providing a habitat for wildlife, and

(B) is determined by the Secretary of the Treasury or his delegate as not increasing substantially the annual income derived from the property.

(2) Payments not chargeable to capital account

The term ''excludable portion'' does not include that portion of any payment which is properly associated with an amount which is allowable as a deduction for the taxable year in which such amount is paid or incurred.

(c) Election for section not to apply

(1) In general

The taxpayer may elect not to have this section (and section 1255) apply to any excludable portion (or portion thereof).

(2) Manner and time for making election

Any election under paragraph (1) shall be made in the manner prescribed by the Secretary by regulations and shall be made not later than the due date prescribed by law (including extensions) for filing the return of tax under this chapter for the taxable year in which the payment was received or accrued.

(d) Denial of double benefits

No deduction or credit shall be allowed with respect to any expenditure which is properly associated with any amount excluded from gross income under subsection (a).

(e) Basis of property not increased by reason of excludable payments

Notwithstanding any provision of section 1016 to the contrary, no adjustment to basis shall be made with respect to property acquired or improved through the use of any payment, to the extent that such adjustment would reflect any amount which is excluded from gross income under subsection (a).

(Added Pub. L. 95–600, title V, § 543(a), Nov. 6, 1978, 92 Stat. 2888; amended Pub. L. 96–222, title I, § 105(a)(7)(A), (C), (E), Apr. 1, 1980, 94 Stat. 220, 221.)

REFERENCES IN TEXT

The Water Bank Act, referred to in subsec. (a)(3), is Pub. L. 91–559, Dec. 19, 1970, 84 Stat. 1468, as amended, which is classified generally to chapter 29 (§ 1301 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of Title 16 and Tables.

The Agricultural Credit Act of 1978, referred to in subsec. (a)(4), is Pub. L. 95–334, Aug. 4, 1978, 92 Stat. 420, as amended. Title IV of the Agricultural Credit Act of 1978 is classified generally to chapter 42 (§ 2201 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Tables.

The Soil Conservation and Domestic Allotment Act, referred to in subsec. (a)(5), (7), is act Apr. 27, 1935, ch. 85, 49 Stat. 163, as amended, which is classified generally to chapter 3B (§ 590a et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see section 590q of Title 16 and Tables.

Section 16 of the Soil Conservation and Domestic Policy Act, referred to in subsec. (a)(6), probably means section 16 of the Soil Conservation and Domestic Allotment Act, which was classified to section 590p of Title 16, Conservation, prior to repeal by Pub. L. 104–127, title III, § 336(b)(1), Apr. 4, 1996, 110 Stat. 1006.

The Bankhead-Jones Farm Tenant Act, referred to in subsec. (a)(7), is act July 22, 1937, ch. 517, 50 Stat. 522, as amended, which is classified generally to chapter 33 (§ 1000 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1000 of Title 7 and Tables.

PRIOR PROVISIONS

A prior section 126 was renumbered section 140 of this title.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–222, § 105(a)(7)(C), (E), inserted in par. (9) ''or his delegate'' after ''Secretary of the Treasury'' and substituted in par. (10) ''Any program of a State, possession of the United States, a political subdivision of any of the foregoing, or the District of Columbia'' for ''Any State program''.

Subsec. (b). Pub. L. 96–222, § 105(a)(7)(A), inserted provisions relating to payments not chargeable to capital account.

Subsec. (c). Pub. L. 96–222, § 105(a)(7)(A), substituted provisions allowing the taxpayer to elect not to have this section apply to any excludable portion for provisions relating to the application of subsec. (a) of this section with other sections.

Subsecs. (d), (e). Pub. L. 96–222, § 105(a)(7)(A), added subsecs. (d) and (e).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE

Section 543(d) of Pub. L. 95–600 provided that: ''The amendments made by this section [enacting this section and section 1255 of this title] shall apply with respect to grants made under the programs after September 30, 1979.''

§ 127. Educational assistance programs

(a) Exclusion from gross income

(1) In general

Gross income of an employee does not include amounts paid or expenses incurred by

the employer for educational assistance to the employee if the assistance is furnished pursuant to a program which is described in subsection (b).

(2) $5,250 maximum exclusion

If, but for this paragraph, this section would exclude from gross income more than $5,250 of educational assistance furnished to an individual during a calendar year, this section shall apply only to the first $5,250 of such assistance so furnished.

(b) Educational assistance program

(1) In general

For purposes of this section an educational assistance program is a separate written plan of an employer for the exclusive benefit of his employees to provide such employees with educational assistance. The program must meet the requirements of paragraphs (2) through (6) of this subsection.

(2) Eligibility

The program shall benefit employees who qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of employees who are highly compensated employees (within the meaning of section 414(q)) or their dependents. For purposes of this paragraph, there shall be excluded from consideration employees not included in the program who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that educational assistance benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.

(3) Principal shareholders or owners

Not more than 5 percent of the amounts paid or incurred by the employer for educational assistance during the year may be provided for the class of individuals who are shareholders or owners (or their spouses or dependents), each of whom (on any day of the year) owns more than 5 percent of the stock or of the capital or profits interest in the employer.

(4) Other benefits as an alternative

A program must not provide eligible employees with a choice between educational assistance and other remuneration includible in gross income. For purposes of this section, the business practices of the employer (as well as the written program) will be taken into account.

(5) No funding required

A program referred to in paragraph (1) is not required to be funded.

(6) Notification of employees

Reasonable notification of the availability and terms of the program must be provided to eligible employees.

(c) Definitions; special rules

For purposes of this section—

(1) Educational assistance

The term ''educational assistance'' means—

(A) the payment, by an employer, of expenses incurred by or on behalf of an employee for education of the employee (including, but not limited to, tuition, fees, and similar payments, books, supplies, and equipment), and

(B) the provision, by an employer, of courses of instruction for such employee (including books, supplies, and equipment),

but does not include payment for, or the provision of, tools or supplies which may be retained by the employee after completion of a course of instruction, or meals, lodging, or transportation. The term ''educational assistance'' also does not include any payment for, or the provision of any benefits with respect to, any course or other education involving sports, games, or hobbies.

(2) Employee

The term ''employee'' includes, for any year, an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals).

(3) Employer

An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (2).

(4) Attribution rules

(A) Ownership of stock

Ownership of stock in a corporation shall be determined in accordance with the rules provided under subsections (d) and (e) of section 1563 (without regard to section 1563(e)(3)(C)).

(B) Interest in unincorporated trade or business

The interest of an employee in a trade or business which is not incorporated shall be determined in accordance with regulations prescribed by the Secretary, which shall be based on principles similar to the principles which apply in the case of subparagraph (A).

(5) Certain tests not applicable

An educational assistance program shall not be held or considered to fail to meet any requirements of subsection (b) merely because—

(A) of utilization rates for the different types of educational assistance made available under the program; or

(B) successful completion, or attaining a particular course grade, is required for or considered in determining reimbursement under the program.

(6) Relationship to current law

This section shall not be construed to affect the deduction or inclusion in income of amounts (not within the exclusion under this section) which are paid or incurred, or received as reimbursement, for educational expenses under section 117, 162 or 212.

(7) Disallowance of excluded amounts as credit or deduction

No deduction or credit shall be allowed to the employee under any other section of this

chapter for any amount excluded from income by reason of this section.

(d) Cross reference

For reporting and recordkeeping requirements, see section 6039D.

(Added Pub. L. 95–600, title I, § 164(a), Nov. 6, 1978, 92 Stat. 2811; amended Pub. L. 98–611, § 1(a)–(c), (d)(3)(B), (e), Oct. 31, 1984, 98 Stat. 3176–3178; Pub. L. 99–514, title XI, §§ 1114(b)(4), 1151(c)(4), (g)(3), 1162(a), Oct. 22, 1986, 100 Stat. 2450, 2503, 2507, 2510; Pub. L. 100–647, title I, § 1011B(a)(31)(B), title IV, § 4001(a), (b)(1), Nov. 10, 1988, 102 Stat. 3488, 3643; Pub. L. 101–140, title II, § 203(a)(1), (2), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101–239, title VII, §§ 7101(a)(1), 7814(a), Dec. 19, 1989, 103 Stat. 2304, 2413; Pub. L. 101–508, title XI, § 11403(a), (b), Nov. 5, 1990, 104 Stat. 1388–473; Pub. L. 102–227, title I, § 103(a)(1), Dec. 11, 1991, 105 Stat. 1687; Pub. L. 103–66, title XIII, § 13101(a)(1), Aug. 10, 1993, 107 Stat. 420; Pub. L. 104–188, title I, § 1202(a), (b), Aug. 20, 1996, 110 Stat. 1772, 1773; Pub. L. 105–34, title II, § 221(a), Aug. 5, 1997, 111 Stat. 818; Pub. L. 106–170, title V, § 506(a), Dec. 17, 1999, 113 Stat. 1922; Pub. L. 107–16, title IV, § 411(a), (b), June 7, 2001, 115 Stat. 63.)

AMENDMENT OF SECTION

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

PRIOR PROVISIONS

A prior section 127 was renumbered section 140 of this title.

AMENDMENTS

2001—Subsec. (c)(1). Pub. L. 107–16, §§ 411(b), 901, temporarily struck out before period at end ", and such term also does not include any payment for, or the provision of any benefits with respect to, any graduate level course of a kind normally taken by an individual pursuing a program leading to a law, business, medical, or other advanced academic or professional degree". See Effective and Termination Dates of 2001 Amendment note below.

Subsecs. (d), (e). Pub. L. 107–16, §§ 411(a), 901, temporarily redesignated subsec. (e) as (d) and struck out heading and text of former subsec. (d). Text read as follows: "This section shall not apply to expenses paid with respect to courses beginning after December 31, 2001." See Effective and Termination Dates of 2001 Amendment note below.

1999—Subsec. (d). Pub. L. 106–170 substituted "December 31, 2001" for "May 31, 2000".

1997—Subsec. (d). Pub. L. 105–34 amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: "This section shall not apply to taxable years beginning after May 31, 1997. In the case of any taxable year beginning in 1997, only expenses paid with respect to courses beginning before July 1, 1997, shall be taken into account in determining the amount excluded under this section."

1996—Subsec. (c)(1). Pub. L. 104–188, § 1202(b), in closing provisions, inserted before period at end ", and such term also does not include any payment for, or the provision of any benefits with respect to, any graduate level course of a kind normally taken by an individual pursuing a program leading to a law, business, medical, or other advanced academic or professional degree".

Subsec. (d). Pub. L. 104–188, § 1202(a), substituted "May 31, 1997. In the case of any taxable year beginning in 1997, only expenses paid with respect to courses beginning before July 1, 1997, shall be taken into account in determining the amount excluded under this section." for "December 31, 1994."

1993—Subsec. (d). Pub. L. 103–66 substituted "December 31, 1994" for "June 30, 1992".

1991—Subsec. (d). Pub. L. 102–227 substituted "June 30, 1992" for "December 31, 1991".

1990—Subsec. (c)(1). Pub. L. 101–508, § 11403(b), struck out at end "The term 'educational assistance' also does not include any payment for, or the provision of any benefits with respect to, any graduate level course of a kind normally taken by an individual pursuing a program leading to a law, business, medical, or other advanced academic or professional degree."

Subsec. (d). Pub. L. 101–508, § 11403(a), substituted "December 31, 1991" for "September 30, 1990".

1989—Subsec. (b)(1). Pub. L. 101–140, § 203(a)(1), amended par. (1) to read as if amendments by Pub. L. 99–514, § 1151(c)(4)(A), had not been enacted, see 1986 Amendment note below.

Subsec. (b)(2). Pub. L. 101–140, § 203(a)(2), amended par. (2) to read as if amendments by Pub. L. 100–647, § 1011B(a)(31)(B), had not been enacted, see 1988 Amendment note below.

Pub. L. 101–140, § 203(a)(1), amended par. (2) to read as if amendments by Pub. L. 99–514, § 1151(g)(3), had not been enacted, see 1986 Amendment note below.

Subsec. (b)(6). Pub. L. 101–140, § 203(a)(1), amended par. (6) to read as if amendments by Pub. L. 99–514, § 1151(c)(4)(B), had not been enacted, see 1986 Amendment note below.

Subsec. (c)(8). Pub. L. 101–239, § 7814(a), struck out par. (8) which read as follows: "COORDINATION WITH SECTION 117(d).—In the case of the education of an individual who is a graduate student at an educational organization described in section 170(b)(1)(A)(ii) and who is engaged in teaching or research activities for such organization, section 117(d)(2) shall be applied as if it did not contain the phrase '(below the graduate level)'."

Subsec. (d). Pub. L. 101–239, § 7101(a)(1), substituted "September 30, 1990" for "December 31, 1988".

1988—Subsec. (b)(2). Pub. L. 100–647, § 1011B(a)(31)(B), substituted "there shall" for "there may" and "who are" for "who may be" in last sentence.

Subsec. (c)(1). Pub. L. 100–647, § 4001(b)(1), inserted at end "The term 'educational assistance' also does not include any payment for, or the provision of any benefits with respect to, any graduate level course of a kind normally taken by an individual pursuing a program leading to a law, business, medical, or other advanced academic or professional degree."

Subsec. (d). Pub. L. 100–647, § 4001(a), substituted "1988" for "1987".

1986—Subsec. (a)(2). Pub. L. 99–514, § 1162(a)(2), substituted "$5,250" for "$5,000" in heading and twice in text.

Subsec. (b)(1). Pub. L. 99–514, § 1151(c)(4)(A), added par. (1) and struck out former par (1) which read as follows: "For purposes of this section an educational assistance program is a separate written plan of an employer for the exclusive benefit of his employees to provide such employees with educational assistance. The program must meet the requirements of paragraphs (2) through (6) of this subsection."

Subsec. (b)(2). Pub. L. 99–514, § 1151(g)(3), substituted "For purposes of this paragraph, there may be excluded from consideration employees who may be excluded from consideration under section 89(h)." for "For purposes of this paragraph, there shall be excluded from consideration employees not included in the program who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that educational assistance benefits were the subject of good faith bargaining between such employee representatives and such employer or employers."

Pub. L. 99–514, § 1114(b)(4), substituted "highly compensated employees (within the meaning of section 414(q))" for "officers, owners, or highly compensated,".

Subsec. (b)(6). Pub. L. 99–514, § 1151(c)(4)(B), struck out par. (6) which read as follows: "NOTIFICATION OF EMPLOYEES.—Reasonable notification of the availability

and terms of the program must be provided to eligible employees.''

Subsec. (d). Pub. L. 99–514, §1162(a)(1), substituted ''December 31, 1987'' for ''December 31, 1985''.

1984—Subsec. (a). Pub. L. 98–611, §1(b), amended subsec. generally, substituting ''Exclusion from gross income'' for ''General rule'' in heading, designating existing provision as par. ''(1) In general'' and adding par. (2).

Subsec. (c)(7). Pub. L. 98–611, §1(e), substituted ''allowed to the employee'' for ''allowed''.

Subsec. (c)(8). Pub. L. 98–611, §1(c), added par. (8).

Subsec. (d). Pub. L. 98–611, §1(a), substituted ''December 31, 1985'' for ''December 31, 1983''.

Subsec. (e). Pub. L. 98–611, §1(d)(3)(B), added subsec. (e).

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Pub. L. 107–16, title IV, §411(d), June 7, 2001, 115 Stat. 63, provided that: ''The amendments made by this section [amending this section and former section 51A of this title] shall apply with respect to expenses relating to courses beginning after December 31, 2001.''

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, §506(b), Dec. 17, 1999, 113 Stat. 1922, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to courses beginning after May 31, 2000.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 221(b) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1996.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1202(c)(1), (2) of Pub. L. 104–188 provided that:

''(1) EXTENSION.—The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1994.

''(2) GRADUATE EDUCATION.—The amendment made by subsection (b) [amending this section] shall apply with respect to expenses relating to courses beginning after June 30, 1996.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13101(c)(1) of Pub. L. 103–66 provided that: ''The amendments made by subsection (a) [amending this section and repealing provisions set out below] shall apply to taxable years ending after June 30, 1992.''

EFFECTIVE DATE OF 1991 AMENDMENT

Section 103(b) of Pub. L. 102–227 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1991.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11403(d) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and repealing provisions set out below] shall apply to taxable years beginning after December 31, 1989.

''(2) SUBSECTION (b).—The amendment made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1990.''

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 7101(c) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section and section 132 of this title] shall apply to taxable years beginning after December 31, 1988.''

Amendment by section 7814(a) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011B(a)(31)(B) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 4001(a), (b)(1) of Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1987, see section 4001(c) of Pub. L. 100–647, set out as a note under section 117 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1114(b)(4) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1987, see section 1114(c)(2) of Pub. L. 99–514, set out as a note under section 414 of this title.

Amendment by section 1151(c)(4), (g)(3) of Pub. L. 99–514 applicable, with certain qualifications and exceptions, to years beginning after Dec. 31, 1988, see section 1151(k) of Pub. L. 99–514, as amended, set out as a note under section 79 of this title.

Amendment by section 1162(a) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1985, see section 1162(c) of Pub. L. 99–514, set out as a note under section 120 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1(g) of Pub. L. 98–611, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting section 6039D of this title and amending this section and sections 125, 3231, and 6652 of this title] shall apply to taxable years beginning after December 31, 1983.

''(2) SUBSECTION (d).—The amendments made by subsection (d) [enacting section 6039D and amending this section and sections 125 and 6652 of this title] shall take effect on January 1, 1985.

''(3) SUBSECTION (f).—The amendment made by subsection (f) [amending section 3231 of this title] shall apply to remuneration paid after December 31, 1984.

''(4) NO PENALTIES OR INTEREST ON FAILURE TO WITHHOLD.—No penalty or interest shall be imposed on any failure to withhold under subtitle C of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to employment taxes) with respect to amounts excluded from gross income under section 127 of such Code (as amended by this section and determined without regard to subsection (a)(2) thereof) with respect to periods during 1984.

''(5) COORDINATION WITH SECTION 117(d).—In the case of education described in section 127(c)(8) of the Internal Revenue Code of 1986, as added by this section, section 117(d) of such Code shall be treated as in effect on and after January 1, 1984.''

EFFECTIVE DATE

Section 164(d) of Pub. L. 95–600 provided that: ''The amendments made by this section [enacting this section and amending sections 3121, 3306, and 3401 of this title and section 409 of Title 42, The Public Health and Welfare] shall apply with respect to taxable years beginning after December 31, 1978.''

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amend-

ments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

EXPEDITED PROCEDURES FOR REFUNDS OF OVERPAYMENTS

Section 1202(c)(3) of Pub. L. 104–188 provided that: ''The Secretary of the Treasury shall establish expedited procedures for the refund of any overpayment of taxes imposed by the Internal Revenue Code of 1986 which is attributable to amounts excluded from gross income during 1995 or 1996 under section 127 of such Code, including procedures waiving the requirement that an employer obtain an employee's signature where the employer demonstrates to the satisfaction of the Secretary that any refund collected by the employer on behalf of the employee will be paid to the employee.''

SPECIAL RULE FOR CERTAIN TAXABLE YEARS

Section 103(a)(2) of Pub. L. 102–227 provided that, in the case of any taxable year beginning in 1992, only amounts paid before July 1, 1992, by employer for educational assistance for employee be taken into account in determining amount excluded under this section with respect to such employee for such taxable year, prior to repeal by Pub. L. 103–66, title XIII, § 13101(a)(2), Aug. 10, 1993, 107 Stat. 420.

Section 7101(a)(2) of Pub. L. 101–239 provided that, in the case of any taxable year beginning in 1990, only amounts paid before Oct. 1, 1990, by employer for educational assistance for employee be taken into account in determining amount excluded under this section with respect to such employee for such taxable year, prior to repeal by Pub. L. 101–508, title XI, § 11403(c), Nov. 5, 1990, 104 Stat. 1388–473.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[§ 128. Repealed. Pub. L. 101–508, title XI, § 11801(a)(10), Nov. 5, 1990, 104 Stat. 1388–520]

Section, added and amended Pub. L. 97–34, title III, §§ 301(a), 302(a), (d)(1), Aug. 13, 1981, 95 Stat. 267, 270, 274; Pub. L. 97–448, title I, §§ 103(a)(1), (5), (b), 109, Jan. 12, 1983, 96 Stat. 2374, 2375, 2391; Pub. L. 98–21, title I, §§ 121(f)(2), (g), 122(c)(3), (d), Apr. 20, 1983, 97 Stat. 84, 87; Pub. L. 98–369, div. A, title I, § 16(a), July 18, 1984, 98 Stat. 505, related to interest on certain savings certificates.

A prior section 128 was renumbered section 140 of this title.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§ 129. Dependent care assistance programs

(a) Exclusion

(1) In general

Gross income of an employee does not include amounts paid or incurred by the employer for dependent care assistance provided to such employee if the assistance is furnished pursuant to a program which is described in subsection (d).

(2) Limitation of exclusion

(A) In general

The amount which may be excluded under paragraph (1) for dependent care assistance with respect to dependent care services provided during a taxable year shall not exceed $5,000 ($2,500 in the case of a separate return by a married individual).

(B) Year of inclusion

The amount of any excess under subparagraph (A) shall be included in gross income in the taxable year in which the dependent care services were provided (even if payment of dependent care assistance for such services occurs in a subsequent taxable year).

(C) Marital status

For purposes of this paragraph, marital status shall be determined under the rules of paragraphs (3) and (4) of section 21(e).

(b) Earned income limitation

(1) In general

The amount excluded from the income of an employee under subsection (a) for any taxable year shall not exceed—

(A) in the case of an employee who is not married at the close of such taxable year, the earned income of such employee for such taxable year, or

(B) in the case of an employee who is married at the close of such taxable year, the lesser of—

(i) the earned income of such employee for such taxable year, or

(ii) the earned income of the spouse of such employee for such taxable year.

(2) Special rule for certain spouses

For purposes of paragraph (1), the provisions of section 21(d)(2) shall apply in determining the earned income of a spouse who is a student or incapable of caring for himself.

(c) Payments to related individuals

No amount paid or incurred during the taxable year of an employee by an employer in providing dependent care assistance to such employee shall be excluded under subsection (a) if such amount was paid or incurred to an individual—

(1) with respect to whom, for such taxable year, a deduction is allowable under section 151(c) (relating to personal exemptions for dependents) to such employee or the spouse of such employee, or

(2) who is a child of such employee (within the meaning of section 152(f)(1)) under the age of 19 at the close of such taxable year.

(d) Dependent care assistance program

(1) In general

For purposes of this section a dependent care assistance program is a separate written

plan of an employer for the exclusive benefit of his employees to provide such employees with dependent care assistance which meets the requirements of paragraphs (2) through (8) of this subsection. If any plan would qualify as a dependent care assistance program but for a failure to meet the requirements of this subsection, then, notwithstanding such failure, such plan shall be treated as a dependent care assistance program in the case of employees who are not highly compensated employees.

(2) Discrimination

The contributions or benefits provided under the plan shall not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)) or their dependents.

(3) Eligibility

The program shall benefit employees who qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of employees described in paragraph (2), or their dependents.

(4) Principal shareholders or owners

Not more than 25 percent of the amounts paid or incurred by the employer for dependent care assistance during the year may be provided for the class of individuals who are shareholders or owners (or their spouses or dependents), each of whom (on any day of the year) owns more than 5 percent of the stock or of the capital or profits interest in the employer.

(5) No funding required

A program referred to in paragraph (1) is not required to be funded.

(6) Notification of eligible employees

Reasonable notification of the availability and terms of the program shall be provided to eligible employees.

(7) Statement of expenses

The plan shall furnish to an employee, on or before January 31, a written statement showing the amounts paid or expenses incurred by the employer in providing dependent care assistance to such employee during the previous calendar year.

(8) Benefits

(A) In general

A plan meets the requirements of this paragraph if the average benefits provided to employees who are not highly compensated employees under all plans of the employer is at least 55 percent of the average benefits provided to highly compensated employees under all plans of the employer.

(B) Salary reduction agreements

For purposes of subparagraph (A), in the case of any benefits provided through a salary reduction agreement, a plan may disregard any employees whose compensation is less than $25,000. For purposes of this subparagraph, the term ''compensation'' has the meaning given such term by section 414(q)(4), except that, under rules prescribed by the Secretary, an employer may elect to determine compensation on any other basis which does not discriminate in favor of highly compensated employees.

(9) Excluded employees

For purposes of paragraphs (3) and (8), there shall be excluded from consideration—

(A) subject to rules similar to the rules of section 410(b)(4), employees who have not attained the age of 21 and completed 1 year of service (as defined in section 410(a)(3)), and

(B) employees not included in a dependent care assistance program who are included in a unit of employees covered by an agreement which the Secretary finds to be a collective bargaining agreement between employee representatives and 1 or more employees, if there is evidence that dependent care benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.

(e) Definitions and special rules

For purposes of this section—

(1) Dependent care assistance

The term ''dependent care assistance'' means the payment of, or provision of, those services which if paid for by the employee would be considered employment-related expenses under section 21(b)(2) (relating to expenses for household and dependent care services necessary for gainful employment).

(2) Earned income

The term ''earned income'' shall have the meaning given such term in section 32(c)(2), but such term shall not include any amounts paid or incurred by an employer for dependent care assistance to an employee.

(3) Employee

The term ''employee'' includes, for any year, an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals).

(4) Employer

An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (3).

(5) Attribution rules

(A) Ownership of stock

Ownership of stock in a corporation shall be determined in accordance with the rules provided under subsections (d) and (e) of section 1563 (without regard to section 1563(e)(3)(C)).

(B) Interest in unincorporated trade or business

The interest of an employee in a trade or business which is not incorporated shall be determined in accordance with regulations prescribed by the Secretary, which shall be based on principles similar to the principles which apply in the case of subparagraph (A).

(6) Utilization test not applicable

A dependent care assistance program shall not be held or considered to fail to meet any

requirements of subsection (d) (other than paragraphs (4) and (8) thereof) merely because of utilization rates for the different types of assistance made available under the program.

(7) Disallowance of excluded amounts as credit or deduction

No deduction or credit shall be allowed to the employee under any other section of this chapter for any amount excluded from the gross income of the employee by reason of this section.

(8) Treatment of onsite facilities

In the case of an onsite facility maintained by an employer, except to the extent provided in regulations, the amount of dependent care assistance provided to an employee excluded with respect to any dependent shall be based on—

(A) utilization of the facility by a dependent of the employee, and

(B) the value of the services provided with respect to such dependent.

(9) Identifying information required with respect to service provider

No amount paid or incurred by an employer for dependent care assistance provided to an employee shall be excluded from the gross income of such employee unless—

(A) the name, address, and taxpayer identification number of the person performing the services are included on the return to which the exclusion relates, or

(B) if such person is an organization described in section 501(c)(3) and exempt from tax under section 501(a), the name and address of such person are included on the return to which the exclusion relates.

In the case of a failure to provide the information required under the preceding sentence, the preceding sentence shall not apply if it is shown that the taxpayer exercised due diligence in attempting to provide the information so required.

(Added Pub. L. 97–34, title I, § 124(e)(1), Aug. 13, 1981, 95 Stat. 198; amended Pub. L. 97–448, title I, § 101(e), Jan. 12, 1983, 96 Stat. 2366; Pub. L. 98–369, div. A, title IV, § 474(r)(6), July 18, 1984, 98 Stat. 839; Pub. L. 99–514, title I, § 104(b)(1), title XI, §§ 1114(b)(4), 1151(c)(5), (f), (g)(4), 1163(a), (b), Oct. 22, 1986, 100 Stat. 2104, 2450, 2503, 2506, 2507, 2510; Pub. L. 100–485, title VII, § 703(c)(2), Oct. 13, 1988, 102 Stat. 2427; Pub. L. 100–647, title I, § 1011B(a)(14), (15), (18), (30), (31)(A), (c)(1), (2)(A), title III, § 3021(a)(14), Nov. 10, 1988, 102 Stat. 3485, 3487–3489, 3631; Pub. L. 101–140, title II, §§ 203(a)(1), (2), 204(a)(1)–(3)(C), Nov. 8, 1989, 103 Stat. 830, 832; Pub. L. 101–239, title VII, § 7811(h)(2), Dec. 19, 1989, 103 Stat. 2409; Pub. L. 104–188, title I, § 1431(c)(1)(B), Aug. 20, 1996, 110 Stat. 1803; Pub. L. 108–311, title II, § 207(12), Oct. 4, 2004, 118 Stat. 1177.)

CODIFICATION

Pub. L. 101–140, § 203(a)(1), amended this section to read as if the amendments made by section 1151(c)(5)(A) of Pub. L. 99–514 (amending subsec. (d)(1)) had not been enacted. Subsequent to amendment by Pub. L. 99–514, subsec. (d)(1) was amended by Pub. L. 100–647. See 1988 Amendment note below.

PRIOR PROVISIONS

A prior section 129 was renumbered section 140 of this title.

AMENDMENTS

2004—Subsec. (c)(2). Pub. L. 108–311 substituted ''152(f)(1)'' for ''151(c)(3)''.

1996—Subsec. (d)(8)(B). Pub. L. 104–188 substituted ''section 414(q)(4)'' for ''section 414(q)(7)''.

1989—Subsec. (a). Pub. L. 101–239 struck out at end ''For purposes of the preceding sentence, marital status shall be determined under the rules of paragraphs (3) and (4) of section 21(e).''

Subsec. (d)(1). Pub. L. 101–140, § 204(a)(3)(B), substituted ''paragraphs (2) through (8)'' for ''paragraphs (2) through (7)''.

Pub. L. 101–140, § 204(a)(1), inserted at end ''If any plan would qualify as a dependent care assistance program but for a failure to meet the requirements of this subsection, then, notwithstanding such failure, such plan shall be treated as a dependent care assistance program in the case of employees who are not highly compensated employees.''

Pub. L. 101–140, § 203(a)(1), amended par. (1) to read as if the amendments by Pub. L. 99–514, § 1151(c)(5)(A), had not been enacted, see 1986 Amendment note below.

Subsec. (d)(3). Pub. L. 101–140, § 204(a)(2)(B), struck out at end ''For purposes of this paragraph, there may be excluded from consideration employees who may be excluded from consideration under section 89(h).'' for ''For purposes of this paragraph, there shall be excluded from consideration employees not included in the program who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that dependent care benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.''

Pub. L. 101–140, § 203(a)(2), amended par. (3) to read as if amendments by Pub. L. 100–647, § 1011B(a)(31)(A)(i), had not been enacted, see 1988 Amendment note below.

Pub. L. 101–140, § 203(a)(1), amended par. (3) to read as if amendments by Pub. L. 99–514, § 1151(g)(4), had not been enacted, see 1986 Amendment note below.

Subsec. (d)(6). Pub. L. 101–140, § 203(a)(1), amended par. (6) to read as if amendments by Pub. L. 99–514, § 1151(c)(5)(B), had not been enacted, see 1986 Amendment note below.

Subsec. (d)(7). Pub. L. 101–140, § 204(a)(3)(A), redesignated par. (7) as (8).

Pub. L. 101–140, § 203(a)(1), amended par. (7) to read as if amendments by Pub. L. 99–514, § 1151(c)(5)(B), had not been enacted, see 1986 Amendment note below.

Subsec. (d)(8). Pub. L. 101–140, § 204(a)(3)(A), redesignated par. (7) as (8).

Pub. L. 101–140, § 203(a)(2), amended par. (8) to read as if amendments by Pub. L. 100–647, § 1011B(a)(31)(A)(ii), had not been enacted, see 1988 Amendment note below.

Subsec. (d)(9). Pub. L. 101–140, § 204(a)(2)(A), added par. (9).

Subsec. (e)(6). Pub. L. 101–140, § 204(a)(3)(C), substituted ''(8)'' for ''(7)''.

1988—Subsec. (a)(2). Pub. L. 100–647, § 1011B(c)(2)(A), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The aggregate amount excluded from the gross income of the taxpayer under this section for any taxable year shall not exceed $5,000 ($2,500 in the case of a separate return by a married individual).''

Subsec. (d)(1)(B). Pub. L. 100–647, § 1011B(a)(30), substituted ''(7)'' for ''(6)'', see Codification note above.

Subsec. (d)(3). Pub. L. 100–647, § 1011B(a)(31)(A)(i), struck out at end ''For purposes of this paragraph, there may be excluded from consideration employees who may be excluded from consideration under section 89(h).''

Subsec. (d)(7). Pub. L. 100–647, § 1011B(a)(14), redesignated par. (8) as (7).

Subsec. (d)(7)(A). Pub. L. 100–647, §1011B(a)(15)(A), inserted ''under all plans of the employer'' after second and third reference to ''employees''.

Subsec. (d)(7)(B). Pub. L. 100–647, §3021(a)(14), struck out ''(within the meaning of section 414(q)(7))'' after ''whose compensation'' and inserted at end ''For purposes of this subparagraph, the term 'compensation' has the meaning given such term by section 414(q)(7), except that, under rules prescribed by the Secretary, an employer may elect to determine compensation on any other basis which does not discriminate in favor of highly compensated employees.''

Pub. L. 100–647, §1011B(a)(15)(B), (C), substituted ''a plan may disregard'' for ''there shall be disregarded'' and ''414(q)(7)'' for ''415(q)(7)''.

Subsec. (d)(8). Pub. L. 100–647, §1011B(a)(31)(A)(ii), added par. (8). Former par. (8) redesignated (7).

Subsec. (e)(6). Pub. L. 100–647, §1011B(a)(18), inserted ''(other than paragraphs (4) and (7) thereof)'' after ''subsection (d)''.

Subsec. (e)(8). Pub. L. 100–647, §1011B(c)(1), in introductory provisions, inserted ''maintained by an employer'' after ''onsite facility'' and ''of dependent care assistance provided to an employee'' after ''the amount'', in subpar. (A), inserted ''of the facility by a dependent of the employee'' after ''utilization'', and in subpar. (B), inserted ''with respect to such dependent'' after ''provided''.

Subsec. (e)(9). Pub. L. 100–485 added par. (9).

1986—Subsec. (a). Pub. L. 99–514, §1163(a), substituted ''Exclusion'' for ''In general'' in heading and amended text generally. Prior to amendment, text read as follows: ''Gross income of an employee does not include amounts paid or incurred by the employer for dependent care assistance provided to such employee if the assistance is furnished pursuant to a program which is described in subsection (d).''

Subsec. (c)(1). Pub. L. 99–514, §104(b)(1)(A), substituted ''section 151(c)'' for ''section 151(e)''.

Subsec. (c)(2). Pub. L. 99–514, §104(b)(1)(B), substituted ''section 151(c)(3)'' for ''section 151(e)(3)''.

Subsec. (d)(1). Pub. L. 99–514, §1151(c)(5)(A), added par. (1) and struck out former par. (1) which read as follows: ''For purposes of this section a dependent care assistance program is a separate written plan of an employer for the exclusive benefit of his employees to provide such employees with dependent care assistance which meets the requirements of paragraphs (2) through (7) of this subsection.''

Subsec. (d)(2). Pub. L. 99–514, §1114(b)(4), substituted ''highly compensated employees (within the meaning of section 414(q))'' for ''officers, owners, or highly compensated,''.

Subsec. (d)(3). Pub. L. 99–514, §1151(g)(4), substituted ''For purposes of this paragraph, there may be excluded from consideration employees who may be excluded from consideration under section 89(h).'' for ''For purposes of this paragraph, there shall be excluded from consideration employees not included in the program who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that dependent care benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.''

Subsec. (d)(6), (7). Pub. L. 99–514, §1151(c)(5)(B), redesignated par. (7) as (6) and struck out former par. (6) which read as follows: ''NOTIFICATION OF ELIGIBLE EMPLOYEES.—Reasonable notification of the availability and terms of the program shall be provided to eligible employees.''

Subsec. (d)(8). Pub. L. 99–514, §1151(f), added par. (8).

Subsec. (e)(8). Pub. L. 99–514, §1163(b), added par. (8).

1984—Subsec. (b)(2). Pub. L. 98–369, §474(r)(6)(A), substituted ''section 21(d)(2)'' for ''section 44A(e)(2)''.

Subsec. (e)(1). Pub. L. 98–369, §474(r)(6)(B), substituted ''section 21(b)(2)'' for ''section 44A(c)(2)''.

Subsec. (e)(2). Pub. L. 98–369, §474(r)(6)(C), substituted ''section 32(c)(2)'' for ''section 43(c)(2)''.

1983—Subsec. (d)(1). Pub. L. 97–448, §101(e)(1)(C), substituted ''paragraphs (2) through (7)'' for ''paragraphs (2) through (6)''.

Subsec. (d)(2). Pub. L. 97–448, §101(e)(1)(A), added par. (2). Former par. (2) redesignated (3).

Subsec. (d)(3). Pub. L. 97–448, §101(e)(1)(A), (B), redesignated former par. (2) as (3) and substituted ''employees described in paragraph (2), or their dependents'' for ''employees who are officers, owners, or highly compensated, or their dependents''. Former par. (3) redesignated (4).

Subsec. (d)(4) to (7). Pub. L. 97–448, §101(e)(1)(A), redesignated former pars. (3) to (6) as (4) to (7), respectively.

Subsec. (e)(7). Pub. L. 97–448, §101(e)(2), substituted ''shall be allowed to the employee under any other section of this chapter for any amount excluded from the gross income of the employee'' for ''shall be allowed under any other section of this chapter for any amount excluded from income''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to years beginning after Dec. 31, 1996, except that in determining whether an employee is a highly compensated employee for years beginning in 1997, such amendment to be treated as having been in effect for years beginning in 1996, see section 1431(d)(1) of Pub. L. 104–188, set out as a note under section 414 of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

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

Amendment by section 203(a)(1), (2) of Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

Section 204(a)(3)(D) of Pub. L. 101–140 provided that: ''Section 129(d)(8) (as redesignated by subparagraph (A)) shall apply to plan years beginning after December 31, 1989.''

Section 204(d)(1), (2) of Pub. L. 101–140 provided that:

''(1) The amendments made by subsections (a)(1), (a)(2), and (b)(2) [amending this section and section 414 of this title] shall apply to years beginning after December 31, 1988.

''(2) The amendments made by subsection (a)(3) [amending this section] shall apply to plan years beginning after December 31, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by section 1011B(a)(14), (15), (18), (30), (31)(A), (c)(1) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 1011B(c)(2)(C) of Pub. L. 100–647 provided that:

''(i) Except as provided in this subparagraph, the amendments made by this paragraph [amending this section and section 6051 of this title] shall apply to taxable years beginning after December 31, 1987.

''(ii) A taxpayer may elect to have the amendment made by subparagraph (A) [amending this section] apply to taxable years beginning in 1987.

''(iii) In the case of a taxpayer not making an election under clause (ii), any dependent care assistance provided in a taxable year beginning in 1987 with respect to which reimbursement was not received in such

taxable year shall be treated as provided in the taxpayer's first taxable year beginning after December 31, 1987.''

Section 3021(d) of Pub. L. 100–647 provided that:

''(1) SUBSECTION (a).—The amendments made by subsection (a) [amending this section and sections 89, 410, 4976, 6039D, and 6652 of this title] shall take effect as if included in the amendments made by section 1151 of the Tax Reform Act of 1986 [Pub. L. 99–514, see Effective Date note below]; except that the amendment made by subsection (a)(8) [amending section 89 of this title] shall apply to testing years beginning after December 31, 1989.

''(2) SUBSECTION (b).—The amendments made by subsection (b) [amending sections 89 and 414 of this title] shall apply to years beginning after December 31, 1986.''

Amendment by Pub. L. 100–485 applicable to taxable years beginning after Dec. 31, 1988, see section 703(d) of Pub. L. 100–485, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(1) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1114(b)(4) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1987, see section 1114(c)(2) of Pub. L. 99–514, set out as a note under section 414 of this title.

Amendment by section 1151(c)(5), (f), (g)(4) of Pub. L. 99–514 applicable, with certain qualifications and exceptions, to years beginning after Dec. 31, 1988, see section 1151(k) of Pub. L. 99–514, as amended, set out as a note under section 79 of this title.

Section 1163(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1981, see section 124(f) of Pub. L. 97–34, set out as an Effective Date of 1981 Amendment note under section 21 of this title.

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 130. Certain personal injury liability assignments

(a) In general

Any amount received for agreeing to a qualified assignment shall not be included in gross income to the extent that such amount does not exceed the aggregate cost of any qualified funding assets.

(b) Treatment of qualified funding asset

In the case of any qualified funding asset—

(1) the basis of such asset shall be reduced by the amount excluded from gross income under subsection (a) by reason of the purchase of such asset, and

(2) any gain recognized on a disposition of such asset shall be treated as ordinary income.

(c) Qualified assignment

For purposes of this section, the term ''qualified assignment'' means any assignment of a liability to make periodic payments as damages (whether by suit or agreement), or as compensation under any workmen's compensation act, on account of personal injury or sickness (in a case involving physical injury or physical sickness)—

(1) if the assignee assumes such liability from a person who is a party to the suit or agreement, or the workmen's compensation claim, and

(2) if—

(A) such periodic payments are fixed and determinable as to amount and time of payment,

(B) such periodic payments cannot be accelerated, deferred, increased, or decreased by the recipient of such payments,

(C) the assignee's obligation on account of the personal injuries or sickness is no greater than the obligation of the person who assigned the liability, and

(D) such periodic payments are excludable from the gross income of the recipient under paragraph (1) or (2) of section 104(a).

The determination for purposes of this chapter of when the recipient is treated as having received any payment with respect to which there has been a qualified assignment shall be made without regard to any provision of such assignment which grants the recipient rights as a creditor greater than those of a general creditor.

(d) Qualified funding asset

For purposes of this section, the term ''qualified funding asset'' means any annuity contract

issued by a company licensed to do business as an insurance company under the laws of any State, or any obligation of the United States, if—

(1) such annuity contract or obligation is used by the assignee to fund periodic payments under any qualified assignment,

(2) the periods of the payments under the annuity contract or obligation are reasonably related to the periodic payments under the qualified assignment, and the amount of any such payment under the contract or obligation does not exceed the periodic payment to which it relates,

(3) such annuity contract or obligation is designated by the taxpayer (in such manner as the Secretary shall by regulations prescribe) as being taken into account under this section with respect to such qualified assignment, and

(4) such annuity contract or obligation is purchased by the taxpayer not more than 60 days before the date of the qualified assignment and not later than 60 days after the date of such assignment.

(Added Pub. L. 97–473, title I, §101(b)(1), Jan. 14, 1983, 96 Stat. 2605; amended Pub. L. 99–514, title X, §1002(a), Oct. 22, 1986, 100 Stat. 2388; Pub. L. 100–647, title VI, §6079(b)(1), Nov. 10, 1988, 102 Stat. 3709; Pub. L. 105–34, title IX, §962(a), Aug. 5, 1997, 111 Stat. 891.)

PRIOR PROVISIONS

A prior section 130 was renumbered section 140 of this title.

AMENDMENTS

1997—Subsec. (c). Pub. L. 105–34, §962(a)(1), inserted '', or as compensation under any workmen's compensation act,'' after ''(whether by suit or agreement)'' in introductory provisions.

Subsec. (c)(1). Pub. L. 105–34, §962(a)(2), inserted ''or the workmen's compensation claim,'' after ''agreement,''.

Subsec. (c)(2)(D). Pub. L. 105–34, §962(a)(3), substituted ''paragraph (1) or (2) of section 104(a)'' for ''section 104(a)(2)''.

1988—Subsec. (c). Pub. L. 100–647, in par. (2), redesignated subpars. (D) and (E) as (C) and (D), respectively, struck out former subpar. (C) which provided that the assignee does not provide to the recipient of such payments rights against the assignee which are greater than those of a general creditor, and as concluding provisions, inserted at end ''The determination for purposes of this chapter of when the recipient is treated as having received any payment with respect to which there has been a qualified assignment shall be made without regard to any provision of such assignment which grants the recipient rights as a creditor greater than those of a general creditor.''

1986—Subsec. (c). Pub. L. 99–514 inserted ''(in a case involving physical injury or physical sickness)''.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 962(b) of Pub. L. 105–34 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to claims under workmen's compensation acts filed after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 6079(b)(2) of Pub. L. 100–647 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to assignments after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1002(b) of Pub. L. 99–514 provided that: ''The amendment made by this section [amending this section] shall apply to assignments entered into after December 31, 1986, in taxable years ending after such date.''

EFFECTIVE DATE

Section 101(c) of Pub. L. 97–473 provided that: ''The amendments made by this section [enacting this section and amending section 104 of this title] shall apply to taxable years ending after December 31, 1982.''

§ 131. Certain foster care payments

(a) General rule

Gross income shall not include amounts received by a foster care provider during the taxable year as qualified foster care payments.

(b) Qualified foster care payment defined

For purposes of this section—

(1) In general

The term ''qualified foster care payment'' means any payment made pursuant to a foster care program of a State or political subdivision thereof—

(A) which is paid by—

(i) a State or political subdivision thereof, or

(ii) a qualified foster care placement agency, and

(B) which is—

(i) paid to the foster care provider for caring for a qualified foster individual in the foster care provider's home, or

(ii) a difficulty of care payment.

(2) Qualified foster individual

The term ''qualified foster individual'' means any individual who is living in a foster family home in which such individual was placed by—

(A) an agency of a State or political subdivision thereof, or

(B) a qualified foster care placement agency.

(3) Qualified foster care placement agency

The term ''qualified foster care placement agency'' means any placement agency which is licensed or certified by—

(A) a State or political subdivision thereof, or

(B) an entity designated by a State or political subdivision thereof,

for the foster care program of such State or political subdivision to make foster care payments to providers of foster care.

(4) Limitation based on number of individuals over the age of 18

In the case of any foster home in which there is a qualified foster care individual who has attained age 19, foster care payments (other than difficulty of care payments) for any period to which such payments relate shall not be excludable from gross income under subsection (a) to the extent such payments are made for more than 5 such qualified foster individuals.

(c) Difficulty of care payments

For purposes of this section—

(1) Difficulty of care payments

The term ''difficulty of care payments'' means payments to individuals which are not described in subsection (b)(1)(B)(i), and which—

(A) are compensation for providing the additional care of a qualified foster individual which is—

(i) required by reason of a physical, mental, or emotional handicap of such individual with respect to which the State has determined that there is a need for additional compensation, and

(ii) provided in the home of the foster care provider, and

(B) are designated by the payor as compensation described in subparagraph (A).

(2) Limitation based on number of individuals

In the case of any foster home, difficulty of care payments for any period to which such payments relate shall not be excludable from gross income under subsection (a) to the extent such payments are made for more than—

(A) 10 qualified foster individuals who have not attained age 19, and

(B) 5 qualified foster individuals not described in subparagraph (A).

(Added Pub. L. 97–473, title I, § 102(a), Jan. 14, 1983, 96 Stat. 2606; amended Pub. L. 99–514, title XVII, § 1707(a), Oct. 22, 1986, 100 Stat. 2781; Pub. L. 107–147, title IV, § 404(a)–(c), Mar. 9, 2002, 116 Stat. 41.)

PRIOR PROVISIONS

A prior section 131 was renumbered section 140 of this title.

AMENDMENTS

2002—Subsec. (b)(1). Pub. L. 107–147, § 404(a), amended provisions preceding subpar. (B) generally. Prior to amendment, text of such provisions read as follows: ''The term 'qualified foster care payment' means any amount—

''(A) which is paid by a State or political subdivision thereof or by a placement agency which is described in section 501(c)(3) and exempt from tax under section 501(a), and''.

Subsec. (b)(2)(B). Pub. L. 107–147, § 404(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''in the case of an individual who has not attained age 19, an organization which is licensed by a State (or political subdivision thereof) as a placement agency and which is described in section 501(c)(3) and exempt from tax under section 501(a).''

Subsec. (b)(3), (4). Pub. L. 107–147, § 404(c), added par. (3) and redesignated former par. (3) as (4).

1986—Subsec. (a). Pub. L. 99–514 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Gross income shall not include amounts received by a foster parent during the taxable year as qualified foster care payments.''

Subsec. (b). Pub. L. 99–514 amended subsec. (b) generally. Prior to amendment, par. (1) ''In general'' read as follows: ''The term 'qualified foster care payment' means any amount—

''(A) which is paid by a State or political subdivision thereof or by a child-placing agency which is described in section 501(c)(3) and exempt from tax under section 501(a), and

''(B) which is—

''(i) paid to reimburse the foster parent for the expenses of caring for a qualified foster child in the foster parent's home, or

''(ii) a difficulty of care payment.''

and par. (2) ''Qualified foster child'' read as follows: ''The term 'qualified foster child' means any individual who—

''(A) has not attained age 19, and

''(B) is living in a foster family home in which such individual was placed by—

''(i) an agency of a State or political subdivision thereof, or

''(ii) an organization which is licensed by a State (or political subdivision thereof) as a child-placing agency and which is described in section 501(c)(3) and exempt from tax under section 501(a).''

Subsec. (c). Pub. L. 99–514, in amending subsec. (c) generally, in par. (1)(A), substituted references to ''qualified foster individual'', ''such individual'', and ''foster care provider'' for references to ''qualified foster child'', ''such child'', and ''foster parent'', respectively, and in par. (2) substituted ''more than (A) 10 qualified foster individuals who have not attained age 19, and (B) 5 qualified foster individuals not described in subparagraph (A)'' for ''more than 10 qualified foster children''.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title IV, § 404(d), Mar. 9, 2002, 116 Stat. 42, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2001.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1707(b) of Pub. L. 99–514 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1985.''

EFFECTIVE DATE

Section 102(c) of Pub. L. 97–473 provided that: ''The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1978.''

§ 132. Certain fringe benefits

(a) Exclusion from gross income

Gross income shall not include any fringe benefit which qualifies as a—

(1) no-additional-cost service,
(2) qualified employee discount,
(3) working condition fringe,
(4) de minimis fringe,
(5) qualified transportation fringe,
(6) qualified moving expense reimbursement,
(7) qualified retirement planning services, or
(8) qualified military base realignment and closure fringe.

(b) No-additional-cost service defined

For purposes of this section, the term ''no-additional-cost service'' means any service provided by an employer to an employee for use by such employee if—

(1) such service is offered for sale to customers in the ordinary course of the line of business of the employer in which the employee is performing services, and

(2) the employer incurs no substantial additional cost (including forgone revenue) in providing such service to the employee (determined without regard to any amount paid by the employee for such service).

(c) Qualified employee discount defined

For purposes of this section—

(1) Qualified employee discount

The term ''qualified employee discount'' means any employee discount with respect to

qualified property or services to the extent such discount does not exceed—

(A) in the case of property, the gross profit percentage of the price at which the property is being offered by the employer to customers, or

(B) in the case of services, 20 percent of the price at which the services are being offered by the employer to customers.

(2) Gross profit percentage

(A) In general

The term ''gross profit percentage'' means the percent which—

(i) the excess of the aggregate sales price of property sold by the employer to customers over the aggregate cost of such property to the employer, is of

(ii) the aggregate sale price of such property.

(B) Determination of gross profit percentage

Gross profit percentage shall be determined on the basis of—

(i) all property offered to customers in the ordinary course of the line of business of the employer in which the employee is performing services (or a reasonable classification of property selected by the employer), and

(ii) the employer's experience during a representative period.

(3) Employee discount defined

The term ''employee discount'' means the amount by which—

(A) the price at which the property or services are provided by the employer to an employee for use by such employee, is less than

(B) the price at which such property or services are being offered by the employer to customers.

(4) Qualified property or services

The term ''qualified property or services'' means any property (other than real property and other than personal property of a kind held for investment) or services which are offered for sale to customers in the ordinary course of the line of business of the employer in which the employee is peforming[1] services.

(d) Working condition fringe defined

For purposes of this section, the term ''working condition fringe'' means any property or services provided to an employee of the employer to the extent that, if the employee paid for such property or services, such payment would be allowable as a deduction under section 162 or 167.

(e) De minimis fringe defined

For purposes of this section—

(1) In general

The term ''de minimis fringe'' means any property or service the value of which is (after taking into account the frequency with which similar fringes are provided by the employer to the employer's employees) so small as to make accounting for it unreasonable or administratively impracticable.

(2) Treatment of certain eating facilities

The operation by an employer of any eating facility for employees shall be treated as a de minimis fringe if—

(A) such facility is located on or near the business premises of the employer, and

(B) revenue derived from such facility normally equals or exceeds the direct operating costs of such facility.

The preceding sentence shall apply with respect to any highly compensated employee only if access to the facility is available on substantially the same terms to each member of a group of employees which is defined under a reasonable classification set up by the employer which does not discriminate in favor of highly compensated employees. For purposes of subparagraph (B), an employee entitled under section 119 to exclude the value of a meal provided at such facility shall be treated as having paid an amount for such meal equal to the direct operating costs of the facility attributable to such meal.

(f) Qualified transportation fringe

(1) In general

For purposes of this section, the term ''qualified transportation fringe'' means any of the following provided by an employer to an employee:

(A) Transportation in a commuter highway vehicle if such transportation is in connection with travel between the employee's residence and place of employment.

(B) Any transit pass.

(C) Qualified parking.

(D) Any qualified bicycle commuting reimbursement.

(2) Limitation on exclusion

The amount of the fringe benefits which are provided by an employer to any employee and which may be excluded from gross income under subsection (a)(5) shall not exceed—

(A) $100 per month in the case of the aggregate of the benefits described in subparagraphs (A) and (B) of paragraph (1),

(B) $175 per month in the case of qualified parking, and

(C) the applicable annual limitation in the case of any qualified bicycle commuting reimbursement.

In the case of any month beginning on or after the date of the enactment of this sentence and before January 1, 2012, subparagraph (A) shall be applied as if the dollar amount therein were the same as the dollar amount in effect for such month under subparagraph (B).

(3) Cash reimbursements

For purposes of this subsection, the term ''qualified transportation fringe'' includes a cash reimbursement by an employer to an employee for a benefit described in paragraph (1). The preceding sentence shall apply to a cash reimbursement for any transit pass only if a voucher or similar item which may be exchanged only for a transit pass is not readily available for direct distribution by the employer to the employee.

[1] So in original. Probably should be ''performing''.

(4) No constructive receipt

No amount shall be included in the gross income of an employee solely because the employee may choose between any qualified transportation fringe (other than a qualified bicycle commuting reimbursement) and compensation which would otherwise be includible in gross income of such employee.

(5) Definitions

For purposes of this subsection—

(A) Transit pass

The term ''transit pass'' means any pass, token, farecard, voucher, or similar item entitling a person to transportation (or transportation at a reduced price) if such transportation is—

(i) on mass transit facilities (whether or not publicly owned), or

(ii) provided by any person in the business of transporting persons for compensation or hire if such transportation is provided in a vehicle meeting the requirements of subparagraph (B)(i).

(B) Commuter highway vehicle

The term ''commuter highway vehicle'' means any highway vehicle—

(i) the seating capacity of which is at least 6 adults (not including the driver), and

(ii) at least 80 percent of the mileage use of which can reasonably be expected to be—

(I) for purposes of transporting employees in connection with travel between their residences and their place of employment, and

(II) on trips during which the number of employees transported for such purposes is at least ½ of the adult seating capacity of such vehicle (not including the driver).

(C) Qualified parking

The term ''qualified parking'' means parking provided to an employee on or near the business premises of the employer or on or near a location from which the employee commutes to work by transportation described in subparagraph (A), in a commuter highway vehicle, or by carpool. Such term shall not include any parking on or near property used by the employee for residential purposes.

(D) Transportation provided by employer

Transportation referred to in paragraph (1)(A) shall be considered to be provided by an employer if such transportation is furnished in a commuter highway vehicle operated by or for the employer.

(E) Employee

For purposes of this subsection, the term ''employee'' does not include an individual who is an employee within the meaning of section 401(c)(1).

(F) Definitions related to bicycle commuting reimbursement

(i) Qualified bicycle commuting reimbursement

The term ''qualified bicycle commuting reimbursement'' means, with respect to any calendar year, any employer reimbursement during the 15-month period beginning with the first day of such calendar year for reasonable expenses incurred by the employee during such calendar year for the purchase of a bicycle and bicycle improvements, repair, and storage, if such bicycle is regularly used for travel between the employee's residence and place of employment.

(ii) Applicable annual limitation

The term ''applicable annual limitation'' means, with respect to any employee for any calendar year, the product of $20 multiplied by the number of qualified bicycle commuting months during such year.

(iii) Qualified bicycle commuting month

The term ''qualified bicycle commuting month'' means, with respect to any employee, any month during which such employee—

(I) regularly uses the bicycle for a substantial portion of the travel between the employee's residence and place of employment, and

(II) does not receive any benefit described in subparagraph (A), (B), or (C) of paragraph (1).

(6) Inflation adjustment

(A) In general

In the case of any taxable year beginning in a calendar year after 1999, the dollar amounts contained in subparagraphs (A) and (B) of paragraph (2) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting ''calendar year 1998'' for ''calendar year 1992''.

In the case of any taxable year beginning in a calendar year after 2002, clause (ii) shall be applied by substituting ''calendar year 2001'' for ''calendar year 1998'' for purposes of adjusting the dollar amount contained in paragraph (2)(A).

(B) Rounding

If any increase determined under subparagraph (A) is not a multiple of $5, such increase shall be rounded to the next lowest multiple of $5.

(7) Coordination with other provisions

For purposes of this section, the terms ''working condition fringe'' and ''de minimis fringe'' shall not include any qualified transportation fringe (determined without regard to paragraph (2)).

(g) Qualified moving expense reimbursement

For purposes of this section, the term ''qualified moving expense reimbursement'' means any

amount received (directly or indirectly) by an individual from an employer as a payment for (or a reimbursement of) expenses which would be deductible as moving expenses under section 217 if directly paid or incurred by the individual. Such term shall not include any payment for (or reimbursement of) an expense actually deducted by the individual in a prior taxable year.

(h) Certain individuals treated as employees for purposes of subsections (a)(1) and (2)

For purposes of paragraphs (1) and (2) of subsection (a)—

(1) Retired and disabled employees and surviving spouse of employee treated as employee

With respect to a line of business of an employer, the term ''employee'' includes—

(A) any individual who was formerly employed by such employer in such line of business and who separated from service with such employer in such line of business by reason of retirement or disability, and

(B) any widow or widower of any individual who died while employed by such employer in such line of business or while an employee within the meaning of subparagraph (A).

(2) Spouse and dependent children

(A) In general

Any use by the spouse or a dependent child of the employee shall be treated as use by the employee.

(B) Dependent child

For purposes of subparagraph (A), the term ''dependent child'' means any child (as defined in section 152(f)(1)) of the employee—

(i) who is a dependent of the employee, or

(ii) both of whose parents are deceased and who has not attained age 25.

For purposes of the preceding sentence, any child to whom section 152(e) applies shall be treated as the dependent of both parents.

(3) Special rule for parents in the case of air transportation

Any use of air transportation by a parent of an employee (determined without regard to paragraph (1)(B)) shall be treated as use by the employee.

(i) Reciprocal agreements

For purposes of paragraph (1) of subsection (a), any service provided by an employer to an employee of another employer shall be treated as provided by the employer of such employee if—

(1) such service is provided pursuant to a written agreement between such employers, and

(2) neither of such employers incurs any substantial additional costs (including foregone revenue) in providing such service or pursuant to such agreement.

(j) Special rules

(1) Exclusions under subsection (a)(1) and (2) apply to highly compensated employees only if no discrimination

Paragraphs (1) and (2) of subsection (a) shall apply with respect to any fringe benefit described therein provided with respect to any highly compensated employee only if such fringe benefit is available on substantially the same terms to each member of a group of employees which is defined under a reasonable classification set up by the employer which does not discriminate in favor of highly compensated employees.

(2) Special rule for leased sections of department stores

(A) In general

For purposes of paragraph (2) of subsection (a), in the case of a leased section of a department store—

(i) such section shall be treated as part of the line of business of the person operating the department store, and

(ii) employees in the leased section shall be treated as employees of the person operating the department store.

(B) Leased section of department store

For purposes of subparagraph (A), a leased section of a department store is any part of a department store where over-the-counter sales of property are made under a lease or similar arrangement where it appears to the general public that individuals making such sales are employed by the person operating the department store.

(3) Auto salesmen

(A) In general

For purposes of subsection (a)(3), qualified automobile demonstration use shall be treated as a working condition fringe.

(B) Qualified automobile demonstration use

For purposes of subparagraph (A), the term ''qualified automobile demonstration use'' means any use of an automobile by a full-time automobile salesman in the sales area in which the automobile dealer's sales office is located if—

(i) such use is provided primarily to facilitate the salesman's performance of services for the employer, and

(ii) there are substantial restrictions on the personal use of such automobile by such salesman.

(4) On-premises gyms and other athletic facilities

(A) In general

Gross income shall not include the value of any on-premises athletic facility provided by an employer to his employees.

(B) On-premises athletic facility

For purposes of this paragraph, the term ''on-premises athletic facility'' means any gym or other athletic facility—

(i) which is located on the premises of the employer,

(ii) which is operated by the employer, and

(iii) substantially all the use of which is by employees of the employer, their spouses, and their dependent children (within the meaning of subsection (h)).

(5) Special rule for affiliates of airlines

(A) In general

If—

(i) a qualified affiliate is a member of an affiliated group another member of which operates an airline, and

(ii) employees of the qualified affiliate who are directly engaged in providing airline-related services are entitled to no-additional-cost service with respect to air transportation provided by such other member,

then, for purposes of applying paragraph (1) of subsection (a) to such no-additional-cost service provided to such employees, such qualified affiliate shall be treated as engaged in the same line of business as such other member.

(B) Qualified affiliate

For purposes of this paragraph, the term ''qualified affiliate'' means any corporation which is predominantly engaged in airline-related services.

(C) Airline-related services

For purposes of this paragraph, the term ''airline-related services'' means any of the following services provided in connection with air transportation:

(i) Catering.

(ii) Baggage handling.

(iii) Ticketing and reservations.

(iv) Flight planning and weather analysis.

(v) Restaurants and gift shops located at an airport.

(vi) Such other similar services provided to the airline as the Secretary may prescribe.

(D) Affiliated group

For purposes of this paragraph, the term ''affiliated group'' has the meaning given such term by section 1504(a).

(6) Highly compensated employee

For purposes of this section, the term ''highly compensated employee'' has the meaning given such term by section 414(q).

(7) Air cargo

For purposes of subsection (b), the transportation of cargo by air and the transportation of passengers by air shall be treated as the same service.

(8) Application of section to otherwise taxable educational or training benefits

Amounts paid or expenses incurred by the employer for education or training provided to the employee which are not excludable from gross income under section 127 shall be excluded from gross income under this section if (and only if) such amounts or expenses are a working condition fringe.

(k) Customers not to include employees

For purposes of this section (other than subsection (c)(2)), the term ''customers'' shall only include customers who are not employees.

***(l)* Section not to apply to fringe benefits expressly provided for elsewhere**

This section (other than subsections (e) and (g)) shall not apply to any fringe benefits of a type the tax treatment of which is expressly provided for in any other section of this chapter.

(m) Qualified retirement planning services

(1) In general

For purposes of this section, the term ''qualified retirement planning services'' means any retirement planning advice or information provided to an employee and his spouse by an employer maintaining a qualified employer plan.

(2) Nondiscrimination rule

Subsection (a)(7) shall apply in the case of highly compensated employees only if such services are available on substantially the same terms to each member of the group of employees normally provided education and information regarding the employer's qualified employer plan.

(3) Qualified employer plan

For purposes of this subsection, the term ''qualified employer plan'' means a plan, contract, pension, or account described in section 219(g)(5).

(n) Qualified military base realignment and closure fringe

For purposes of this section—

(1) In general

The term ''qualified military base realignment and closure fringe'' means 1 or more payments under the authority of section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3374) (as in effect on the date of the enactment of the American Recovery and Reinvestment Tax Act of 2009).

(2) Limitation

With respect to any property, such term shall not include any payment referred to in paragraph (1) to the extent that the sum of all of such payments related to such property exceeds the maximum amount described in subsection (c) of such section (as in effect on such date).

***(o)* Regulations**

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

(Added Pub. L. 98–369, div. A, title V, § 531(a)(1), July 18, 1984, 98 Stat. 877; amended Pub. L. 99–272, title XIII, § 13207(a)(1), (b)(1), Apr. 7, 1986, 100 Stat. 319; Pub. L. 99–514, title XI, §§ 1114(b)(5), 1151(e)(2)(A), (g)(5), title XVIII, §§ 1853(a), 1899A(5), Oct. 22, 1986, 100 Stat. 2451, 2506, 2507, 2870, 2958; Pub. L. 100–647, title I, § 1011B(a)(31)(B), title VI, § 6066(a), Nov. 10, 1988, 102 Stat. 3488, 3702; Pub. L. 101–140, title II, § 203(a)(1), (2), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101–239, title VII, §§ 7101(b), 7841(d)(7), (19), Dec. 19, 1989, 103 Stat. 2304, 2428, 2429; Pub. L. 102–486, title XIX, § 1911(a)–(c), Oct. 24, 1992, 106 Stat. 3012–3014; Pub. L. 103–66, title XIII, §§ 13101(b), 13201(b)(3)(F), 13213(d)(1), (2), (3)(B), (C), Aug. 10, 1993, 107 Stat. 420, 459, 474; Pub. L. 105–34, title IX, § 970(a), title X, § 1072(a), Aug. 5, 1997, 111 Stat. 897, 948; Pub. L. 105–178, title IX, § 9010(a)(1), (b)(1), (2), (c)(1), (2), June 9, 1998, 112

Stat. 507, 508; Pub. L. 107–16, title VI, § 665(a), (b), June 7, 2001, 115 Stat. 143; Pub. L. 108–121, title I, § 103(a), (b), Nov. 11, 2003, 117 Stat. 1337; Pub. L. 108–311, title II, § 207(13), Oct. 4, 2004, 118 Stat. 1177; Pub. L. 110–343, div. B, title II, § 211(a)–(d), Oct. 3, 2008, 122 Stat. 3840, 3841; Pub. L. 111–5, div. B, title I, § 1151(a), Feb. 17, 2009, 123 Stat. 333; Pub. L. 111–92, § 14(a), Nov. 6, 2009, 123 Stat. 2995; Pub. L. 111–312, title VII, § 727(a), Dec. 17, 2010, 124 Stat. 3317.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

REFERENCES IN TEXT

The date of the enactment of this sentence, referred to in subsec. (f)(2), is the date of enactment of Pub. L. 111–5, which was approved Feb. 17, 2009.

The date of the enactment of the American Recovery and Reinvestment Tax Act of 2009, referred to in subsec. (n)(1), is the date of enactment of Pub. L. 111–5, which was approved Feb. 17, 2009.

PRIOR PROVISIONS

A prior section 132 was renumbered section 140 of this title.

AMENDMENTS

2010—Subsec. (f)(2). Pub. L. 111–312 substituted ''January 1, 2012'' for ''January 1, 2011'' in concluding provisions.

2009—Subsec. (f)(2). Pub. L. 111–5 inserted concluding provisions.

Subsec. (n)(1). Pub. L. 111–92, § 14(a)(1), substituted ''the American Recovery and Reinvestment Tax Act of 2009)'' for ''this subsection) to offset the adverse effects on housing values as a result of a military base realignment or closure''.

Subsec. (n)(2). Pub. L. 111–92, § 14(a)(2), struck out ''clause (1) of'' before ''subsection (c)''.

2008—Subsec. (f)(1)(D). Pub. L. 110–343, § 211(a), added subpar. (D).

Subsec. (f)(2)(C). Pub. L. 110–343, § 211(b), added subpar. (C).

Subsec. (f)(4). Pub. L. 110–343, § 211(d), inserted ''(other than a qualified bicycle commuting reimbursement)'' after ''qualified transportation fringe''.

Subsec. (f)(5)(F). Pub. L. 110–343, § 211(c), added subpar. (F).

2004—Subsec. (h)(2)(B). Pub. L. 108–311 substituted ''152(f)(1)'' for ''151(c)(3)'' in introductory provisions.

2003—Subsec. (a)(8). Pub. L. 108–121, § 103(a), added par. (8).

Subsecs. (n), (*o*). Pub. L. 108–121, § 103(b), added subsec. (n) and redesignated former subsec. (n) as (*o*).

2001—Subsec. (a)(7). Pub. L. 107–16, § 665(a), added par. (7).

Subsecs. (m), (n). Pub. L. 107–16, § 665(b), added subsec. (m) and redesignated former subsec. (m) as (n).

1998—Subsec. (f)(2)(A). Pub. L. 105–178, § 9010(c)(1), substituted ''$100'' for ''$65''.

Pub. L. 105–178, § 9010(b)(2)(A), substituted ''$65'' for ''$60''.

Subsec. (f)(2)(B). Pub. L. 105–178, § 9010(b)(2)(B), substituted ''$175'' for ''$155''.

Subsec. (f)(4). Pub. L. 105–178, § 9010(a)(1), amended heading and text of par. (4) generally. Prior to amendment, text read as follows: ''Subsection (a)(5) shall not apply to any qualified transportation fringe unless such benefit is provided in addition to (and not in lieu of) any compensation otherwise payable to the employee. This paragraph shall not apply to any qualified parking provided in lieu of compensation which otherwise would have been includible in gross income of the employee, and no amount shall be included in the gross income of the employee solely because the employee may choose between the qualified parking and compensation.''

Subsec. (f)(6). Pub. L. 105–178, § 9010(b)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''In the case of any taxable year beginning in a calendar year after 1993, the dollar amounts contained in paragraph (2)(A) and (B) shall be increased by an amount equal to—

''(A) such dollar amount, multiplied by

''(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins.

If any increase determined under the preceding sentence is not a multiple of $5, such increase shall be rounded to the next lowest multiple of $5.''

Subsec. (f)(6)(A). Pub. L. 105–178, § 9010(c)(2), inserted concluding provisions.

1997—Subsec. (e)(2). Pub. L. 105–34, § 970(a), inserted at end of concluding provisions ''For purposes of subparagraph (B), an employee entitled under section 119 to exclude the value of a meal provided at such facility shall be treated as having paid an amount for such meal equal to the direct operating costs of the facility attributable to such meal.''

Subsec. (f)(4). Pub. L. 105–34, § 1072(a), inserted at end ''This paragraph shall not apply to any qualified parking provided in lieu of compensation which otherwise would have been includible in gross income of the employee, and no amount shall be included in the gross income of the employee solely because the employee may choose between the qualified parking and compensation.''

1993—Subsec. (a)(6). Pub. L. 103–66, § 13213(d)(1), added par. (6).

Subsec. (f)(6)(B). Pub. L. 103–66, § 13201(b)(3)(F), struck out before period at end '', determined by substituting 'calendar year 1992' for 'calendar year 1989' in subparagraph (B) thereof''.

Subsecs. (g), (h). Pub. L. 103–66, § 13213(d)(2), added subsec. (g) and redesignated former subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 103–66, § 13213(d)(2), redesignated subsec. (h) as (i). Former subsec. (i) redesignated (j).

Subsec. (i)(8). Pub. L. 103–66, § 13101(b), amended heading and text of par. (8) generally. Prior to amendment, text read as follows: ''Amounts which would be excludible from gross income under section 127 but for subsection (a)(2) thereof or the last sentence of subsection (c)(1) thereof shall be excluded from gross income under this section if (and only if) such amounts are a working condition fringe.''

Subsec. (j). Pub. L. 103–66, § 13213(d)(2), redesignated subsec. (i) as (j). Former subsec. (j) redesignated (k).

Subsec. (j)(4)(B)(iii). Pub. L. 103–66, § 13213(d)(3)(B), substituted ''subsection (h)'' for ''subsection (f)''.

Subsec. (k). Pub. L. 103–66, § 13213(d)(2), redesignated subsec. (j) as (k). Former subsec. (k) redesignated (*l*).

Subsec. (*l*). Pub. L. 103–66, § 13213(d)(2), (3)(C), redesignated subsec. (k) as (*l*) and substituted ''subsections (e) and (g)'' for ''subsection (e)''. Former subsec. (*l*) redesignated (m).

Subsec. (m). Pub. L. 103–66, § 13213(d)(2), redesignated subsec. (*l*) as (m).

1992—Subsec. (a)(5). Pub. L. 102–486, § 1911(a), added par. (5).

Subsecs. (f) to (h). Pub. L. 102–486, § 1911(b), added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively. Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 102–486, § 1911(b), (c), redesignated subsec. (h) as (i), redesignated pars. (5) to (9) as (4) to (8), respectively, and struck out former par. (4), ''Parking'', which read as follows: ''The term 'working condition fringe' includes parking provided to an employee on or near the business premises of the employer.'' Former subsec. (i) redesignated (j).

Subsecs. (j) to (*l*). Pub. L. 102–486, § 1911(b), redesignated subsecs. (i) to (k) as (j) to (*l*), respectively.

1989—Subsec. (f)(2)(B). Pub. L. 101–239, § 7841(d)(19), substituted ''section 151(c)(3)'' for ''section 151(e)(3)'' in introductory provisions.

Subsec. (h)(1). Pub. L. 101–239, § 7841(d)(7), substituted ''to highly compensated employees'' for ''to officers, etc.,'' in heading.

Pub. L. 101–140, § 203(a)(2), amended par. (1) to read as if amendments by Pub. L. 100–647, § 1011B(a)(31)(B), had not been enacted, see 1988 Amendment note below.

Pub. L. 101–140, § 203(a)(1), amended par. (1) to read as if amendments by Pub. L. 99–514, § 1151(g)(5), had not been enacted, see 1986 Amendment note below.

Subsec. (h)(9). Pub. L. 101–239, § 7101(b), added par. (9).

1988—Subsec. (h)(1). Pub. L. 100–647, § 1011B(a)(31)(B), substituted ''there shall'' for ''there may be'' and ''who are'' for ''who may be'' in last sentence.

Subsec. (h)(8). Pub. L. 100–647, § 6066(a), added par. (8).

1986—Subsec. (c)(3)(A). Pub. L. 99–514, § 1853(a)(2), substituted ''are provided by the employer to an employee for use by such employee'' for ''are provided to the employee by the employer''.

Subsec. (e)(2). Pub. L. 99–514, § 1114(b)(5)(A), struck out ''officer, owner, or'' before ''highly compensated employee'' and ''officers, owners, or'' before ''highly compensated employees'' in last sentence.

Subsec. (f)(2)(B)(ii). Pub. L. 99–514, § 1853(a)(1), substituted ''are deceased and who has not attained age 25'' for ''are deceased''.

Subsec. (f)(3). Pub. L. 99–272, § 13207(a)(1), added par. (3).

Subsec. (g). Pub. L. 99–514, § 1151(e)(2)(A), in amending subsec. (g) generally, designated par. (2) as the entire subsection, struck out former subsec. heading, ''Special rules relating to employer'', struck out ''For purposes of this section—'', and struck out par. (1) which read as follows: ''All employees treated as employed by a single employer under subsection (b), (c), or (m) of section 414 shall be treated as employed by a single employer for purposes of this section.''

Subsec. (h)(1). Pub. L. 99–514, § 1151(g)(5), inserted ''For purposes of this paragraph and subsection (e), there may be excluded from consideration employees who may be excluded from consideration under section 89(h).''

Pub. L. 99–514, § 1114(b)(5)(A), struck out ''officer, owner, or'' before ''highly compensated employee'' and ''officers, owners, or'' before ''highly compensated employees''.

Subsec. (h)(3)(B)(i). Pub. L. 99–514, § 1899A(5), substituted ''such use is'' for ''such use in''.

Subsec. (h)(6). Pub. L. 99–272, § 13207(b)(1), added par. (6).

Subsec. (h)(7). Pub. L. 99–514, § 1114(b)(5)(B), added par. (7).

Subsec. (i). Pub. L. 99–514, § 1853(a)(3), substituted ''subsection (c)(2)'' for ''subsection (c)(2)(B)''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, § 727(b), Dec. 17, 2010, 124 Stat. 3317, provided that: ''The amendment made by this section [amending this section] shall apply to months after December 31, 2010.''

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–92, § 14(b), Nov. 6, 2009, 123 Stat. 2996, provided that: ''The amendments made by this act [probably should be ''this section'', amending this section] shall apply to payments made after February 17, 2009.''

Pub. L. 111–5, div. B, title I, § 1151(b), Feb. 17, 2009, 123 Stat. 333, provided that: ''The amendment made by this section [amending this section] shall apply to months beginning on or after the date of the enactment of this section [Feb. 17, 2009].''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title II, § 211(e), Oct. 3, 2008, 122 Stat. 3841, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–121, title I, § 103(c), Nov. 11, 2003, 117 Stat. 1338, provided that: ''The amendments made by this section [amending this section] shall apply to payments made after the date of the enactment of this Act [Nov. 11, 2003].''

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title VI, § 665(c), June 7, 2001, 115 Stat. 143, provided that: ''The amendments made by this section [amending this section] shall apply to years beginning after December 31, 2001.''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–178, title IX, § 9010(a)(2), June 9, 1998, 112 Stat. 507, provided that: ''The amendment made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 1997.''

Pub. L. 105–178, title IX, § 9010(b)(3), June 9, 1998, 112 Stat. 508, provided that: ''The amendments made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 1998.''

Pub. L. 105–178, title IX, § 9010(c)(3), June 9, 1998, 112 Stat. 508, provided that: ''The amendments made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 2001.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 970(b) of Pub. L. 105–34 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997.''

Section 1072(b) of Pub. L. 105–34 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13101(c)(2) of Pub. L. 103–66 provided that: ''The amendment made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1988.''

Amendment by section 13201(b)(3)(F) of Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see section 13201(c) of Pub. L. 103–66, set out as a note under section 1 of this title.

Amendment by section 13213(d)(1), (2), (3)(B) and (C) of Pub. L. 103–66 applicable to reimbursements or other payments in respect of expenses incurred after Dec. 31, 1993, see section 13213(e) of Pub. L. 103–66, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1911(d) of Pub. L. 102–486 provided that: ''The amendments made by this section [amending this section] shall apply to benefits provided after December 31, 1992.''

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by section 7101(b) of Pub. L. 101–239 applicable to taxable years beginning after Dec. 31, 1988, see section 7101(c) of Pub. L. 101–239, set out as a note under section 127 of this title.

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011B(a)(31)(B) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6066(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to transportation furnished after December 31, 1987, in taxable years ending after such date.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1114(b)(5) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1987, see section 1114(c)(2) of Pub. L. 99–514, set out as a note under section 414 of this title.

Amendment by section 1151(e)(2)(A), (g)(5) of Pub. L. 99–514 applicable, with certain qualifications and exceptions, to years beginning after Dec. 31, 1988, see section 1151(k) of Pub. L. 99–514, as amended, set out as a note under section 79 of this title.

Amendment by section 1853(a) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Section 13207(a)(2) of Pub. L. 99–272 provided that: ''The amendment made by this subsection [amending this section] shall take effect on January 1, 1985.''

Section 13207(b)(2) of Pub. L. 99–272 provided that: ''The amendment made by this subsection [amending this section] shall take effect on January 1, 1985.''

EFFECTIVE DATE

Section 531(i) of Pub. L. 98–369, formerly §531(h), as redesignated by Pub. L. 99–272, title XIII, §13207(d), Apr. 7, 1986, 100 Stat. 320, provided that: ''The amendments made by this section [enacting this section and section 4977 of this title, amending sections 61, 125, 3121, 3231, 3306, 3401, 3501, and 6652 of this title and section 409 of Title 42, The Public Health and Welfare, redesignating former section 132 of this title as 133, and enacting provisions set out as notes under this section and section 125 of this title] shall take effect on January 1, 1985.''

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

CERTAIN RECORDKEEPING REQUIREMENTS

Section 1567 of Pub. L. 99–514 provided that:

''(a) IN GENERAL.—For purposes of sections 132 and 274 of the Internal Revenue Code of 1954 [now 1986], use of an automobile by a special agent of the Internal Revenue Service shall be treated in the same manner as use of an automobile by an officer of any other law enforcement agency.

''(b) EFFECTIVE DATE.—The provisions of this section shall take effect on January 1, 1985.''

TREATMENT OF CERTAIN LEASED OPERATIONS OF DEPARTMENT STORES

Section 1853(e) of Pub. L. 99–514 provided that: ''For purposes of section 132(h)(2)(B) [now 132(j)(2)(B)] of the Internal Revenue Code of 1954 [now 1986], a leased section of a department store which, in connection with the offering of beautician services, customarily makes sales of beauty aids in the ordinary course of business shall be treated as engaged in over-the-counter sales of property.''

TRANSITIONAL RULE FOR DETERMINATION OF LINE OF BUSINESS IN CASE OF AFFILIATED GROUP OPERATING AIRLINE

Section 13207(c) of Pub. L. 99–272, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''If, as of September 12, 1984—

''(1) an individual—

''(A) was an employee (within the meaning of section 132 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], including subsection (f) [now (h)] thereof) of one member of an affiliated group (as defined in section 1504 of such Code), hereinafter referred to as the 'first corporation', and

''(B) was eligible for no-additional-cost service in the form of air transportation provided by another member of such affiliated group, hereinafter referred to as the 'second corporation',

''(2) at least 50 percent of the individuals performing service for the first corporation were or had been employees of, or had previously performed services for, the second corporation, and

''(3) the primary business of the affiliated group was air transportation of passengers,

then, for purposes of applying paragraphs (1) and (2) of section 132(a) of the Internal Revenue Code of 1986, with respect to no-additional-cost services and qualified employee discounts provided after December 31, 1984, for such individual by the second corporation, the first corporation shall be treated as engaged in the same air transportation line of business as the second corporation. For purposes of the preceding sentence, an employee of the second corporation who is performing services for the first corporation shall also be treated as an employee of the first corporation.''

SPECIAL RULE FOR SERVICES RELATED TO PROVIDING AIR TRANSPORTATION

Section 531(g) of Pub. L. 98–369, as added by Pub. L. 99–272, title XIII, §13207(d), Apr. 7, 1986, 100 Stat. 320; amended Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—If—

''(A) an individual performs services for a qualified air transportation organization, and

''(B) such services are performed primarily for persons engaged in providing air transportation and are of the kind which (if performed on September 12, 1984) would qualify such individual for no-additional-cost services in the form of air transportation,

then, with respect to such individual, such qualified air transportation organization shall be treated as engaged in the line of business of providing air transportation.

''(2) QUALIFIED AIR TRANSPORTATION ORGANIZATION.—For purposes of paragraph (1), the term 'qualified air transportation organization' means any organization—

''(A) if such organization (or a predecessor) was in existence on September 12, 1984,

''(B) if—

''(i) such organization is described in section 501(c)(6) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] and the membership of such organization is limited to entities engaged in the transportation by air of individuals or property for compensation or hire, or

''(ii) such organization is a corporation all the stock of which is owned entirely by entities referred to in clause (i), and

''(C) if such organization is operated in furtherance of the activities of its members or owners.''

DETERMINATION OF LINE OF BUSINESS IN CASE OF AFFILIATED GROUP OPERATING RETAIL DEPARTMENT STORES

Section 531(f) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''If—

''(1) as of October 5, 1983, the employees of one member of an affiliated group (as defined in section 1504 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] without regard to subsections (b)(2) and (b)(4) thereof) were entitled to employee discounts at the retail department stores operated by another member of such affiliated group, and

''(2) the primary business of the affiliated group is the operation of retail department stores,

then, for purpose of applying section 132(a)(2) of the Internal Revenue Code of 1986, with respect to discounts provided for such employees at the retail department stores operated by such other member, the employer shall be treated as engaged in the same line of business as such other member.''

[§ 133. Repealed. Pub. L. 104–188, title I, § 1602(a), Aug. 20, 1996, 110 Stat. 1833]

Section, added Pub. L. 98–369, div. A, title V, §543(a), July 18, 1984, 98 Stat. 891; amended Pub. L. 99–514, title XI, §1173(b)(1)(A), (2), title XVIII, §1854(c)(2)(A), (C), (D), Oct. 22, 1986, 100 Stat. 2515, 2879; Pub. L. 100–647, title I, §1011B(h)(1), (2), Nov. 10, 1988, 102 Stat. 3490; Pub. L. 101–239, title VII, §7301(a)–(c), Dec. 19, 1989, 103 Stat. 2346, 2347, prior to repeal, read as follows:

§ 133. Interest on certain loans used to acquire employer securities

(a) IN GENERAL

Gross income does not include 50 percent of the interest received by—

(1) a bank (within the meaning of section 581),

(2) an insurance company to which subchapter L applies,

(3) a corporation actively engaged in the business of lending money, or

(4) a regulated investment company (as defined in section 851),

with respect to a securities acquisition loan.

(b) SECURITIES ACQUISITION LOAN

(1) IN GENERAL

For purposes of this section, the term ''securities acquisition loan'' means—

(A) any loan to a corporation or to an employee stock ownership plan to the extent that the proceeds are used to acquire employer securities for the plan, or

(B) any loan to a corporation to the extent that, within 30 days, employer securities are transferred to the plan in an amount equal to the proceeds of such loan and such securities are allocable to accounts of plan participants within 1 year of the date of such loan.

For purposes of this paragraph, the term ''employer securities'' has the meaning given such term by section 409(*l*). The term ''securities acquisition loan'' shall not include a loan with a term greater than 15 years.

(2) LOANS BETWEEN RELATED PERSONS

The term ''securities acquisition loan'' shall not include—

(A) any loan made between corporations which are members of the same controlled group of corporations, or

(B) any loan made between an employee stock ownership plan and any person that is—

(i) the employer of any employees who are covered by the plan; or

(ii) a member of a controlled group of corporations which includes such employer.

For purposes of this paragraph, subparagraphs (A) and (B) shall not apply to any loan which, but for such subparagraphs, would be a securities acquisition loan if such loan was not originated by the employer of any employees who are covered by the plan or by any member of the controlled group of corporations which includes such employer, except that this section shall not apply to any interest received on such loan during such time as such loan is held by such employer (or any member of such controlled group).

(3) TERMS APPLICABLE TO CERTAIN SECURITIES ACQUISITION LOANS

A loan to a corporation shall not fail to be treated as a securities acquisition loan merely because the proceeds of such loan are lent to an employee stock ownership plan sponsored by such corporation (or by any member of the controlled group of corporations which includes such corporation) if such loan includes—

(A) repayment terms which are substantially similar to the terms of the loan of such corporation from a lender described in subsection (a), or

(B) repayment terms providing for more rapid repayment of principal or interest on such loan, but only if allocations under the plan attributable to such repayment do not discriminate in favor of highly compensated employees (within the meaning of section 414(q)).

(4) CONTROLLED GROUP OF CORPORATIONS

For purposes of this paragraph, the term ''controlled group of corporations'' has the meaning given such term by section 409(*l*)(4).

(5) TREATMENT OF REFINANCINGS

The term ''securities acquisition loan'' shall include any loan which—

(A) is (or is part of a series of loans) used to refinance a loan described in subparagraph (A) or (B) of paragraph (1), and

(B) meets the requirements of paragraphs (2) and (3).

(6) PLAN MUST HOLD MORE THAN 50 PERCENT OF STOCK AFTER ACQUISITION OR TRANSFER

(A) IN GENERAL

A loan shall not be treated as a securities acquisition loan for purposes of this section unless, immediately after the acquisition or transfer referred to in subparagraph (A) or (B) of paragraph (1), respectively, the employee stock ownership plan owns more than 50 percent of—

(i) each class of outstanding stock of the corporation issuing the employer securities, or

(ii) the total value of all outstanding stock of the corporation.

(B) FAILURE TO RETAIN MINIMUM STOCK INTEREST

(i) IN GENERAL

Subsection (a) shall not apply to any interest received with respect to a securities acquisition loan which is allocable to any period during which the employee stock ownership plan does not own stock meeting the requirements of subparagraph (A).

(ii) EXCEPTION

To the extent provided by the Secretary, clause (i) shall not apply to any period if, within 90 days of the first date on which the failure occurred (or such longer period not in excess of 180 days as the Secretary may prescribe), the plan acquires stock which results in its meeting the requirements of subparagraph (A).

(C) STOCK

For purposes of subparagraph (A)—

(i) IN GENERAL

The term ''stock'' means stock other than stock described in section 1504(a)(4).

(ii) TREATMENT OF CERTAIN RIGHTS

The Secretary may provide that warrants, options, contracts to acquire stock, convertible debt interests and other similar interests be treated as stock for 1 or more purposes under subparagraph (A).

(D) AGGREGATION RULE

For purposes of determining whether the requirements of subparagraph (A) are met, an employee stock ownership plan shall be treated as owning stock in the corporation issuing the employer securities which is held by any other employee stock ownership plan which is maintained by—

(i) the employer maintaining the plan, or

(ii) any member of a controlled group of corporations (within the meaning of section 409(*l*)(4)) of which the employer described in clause (i) is a member.

(7) VOTING RIGHTS OF EMPLOYER SECURITIES

A loan shall not be treated as a securities acquisition loan for purposes of this section unless—

(A) the employee stock ownership plan meets the requirements of section 409(e)(2) with respect to all employer securities acquired by, or transferred to, the plan in connection with such loan (without regard to whether or not the employer has a registration-type class of securities), and

(B) no stock described in section 409(*l*)(3) is acquired by, or transferred to, the plan in connection with such loan unless—

(i) such stock has voting rights equivalent to the stock to which it may be converted, and

(ii) the requirements of subparagraph (A) are met with respect to such voting rights.

(c) EMPLOYEE STOCK OWNERSHIP PLAN

For purposes of this section, the term ''employee stock ownership plan'' has the meaning given to such term by section 4975(e)(7).

(d) APPLICATION WITH SECTION 483 AND ORIGINAL ISSUE DISCOUNT RULES

In applying section 483 and subpart A of part V of subchapter P to any obligation to which this section applies, appropriate adjustments shall be made to the applicable Federal rate to take into account the exclusion under subsection (a).

(e) PERIOD TO WHICH INTEREST EXCLUSION APPLIES

(1) IN GENERAL

In the case of—

(A) an original securities acquisition loan, and

(B) any securities acquisition loan (or series of such loans) used to refinance the original securities acquisition loan,

subsection (a) shall apply only to interest accruing during the excludable period with respect to the original securities acquisition loan.

(2) EXCLUDABLE PERIOD

For purposes of this subsection, the term ''excludable period'' means, with respect to any original securities acquisition loan—

(A) IN GENERAL

The 7-year period beginning on the date of such loan.

(B) LOANS DESCRIBED IN SUBSECTION (b)(1)(A)

If the term of an original securities acquisition loan described in subsection (b)(1)(A) is greater than 7 years, the term of such loan. This subparagraph shall not apply to a loan described in subsection (b)(3)(B).

(3) ORIGINAL SECURITIES ACQUISITION LOAN

For the purposes of this subsection, the term ''original securities acquisition loan'' means a securities acquisition loan described in subparagraph (A) or (B) of subsection (b)(1).

PRIOR PROVISIONS

A prior section 133 was renumbered section 140 of this title.

EFFECTIVE DATE OF REPEAL

Section 1602(c) of Pub. L. 104–188 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending sections 291, 812, 852, 4978, 6047, and 7872 of this title and repealing this section and section 4978B of this title] shall apply to loans made after the date of the enactment of this Act [Aug. 20, 1996].

''(2) REFINANCINGS.—The amendments made by this section shall not apply to loans made after the date of the enactment of this Act to refinance securities acquisition loans (determined without regard to section 133(b)(1)(B) of the Internal Revenue Code of 1986, as in effect on the day before the date of the enactment of this Act) [set out above] made on or before such date or to refinance loans described in this paragraph if—

''(A) the refinancing loans meet the requirements of section 133 of such Code (as so in effect),

''(B) immediately after the refinancing the principal amount of the loan resulting from the refinancing does not exceed the principal amount of the refinanced loan (immediately before the refinancing), and

''(C) the term of such refinancing loan does not extend beyond the last day of the term of the original securities acquisition loan.

For purposes of this paragraph, the term 'securities acquisition loan' includes a loan from a corporation to an employee stock ownership plan described in section 133(b)(3) of such Code (as so in effect).

''(3) EXCEPTION.—Any loan made pursuant to a binding written contract in effect before June 10, 1996, and at all times thereafter before such loan is made, shall be treated for purposes of paragraphs (1) and (2) as a loan made on or before the date of the enactment of this Act.''

§ 134. Certain military benefits

(a) General rule

Gross income shall not include any qualified military benefit.

(b) Qualified military benefit

For purposes of this section—

(1) In general

The term ''qualified military benefit'' means any allowance or in-kind benefit (other than personal use of a vehicle) which—

(A) is received by any member or former member of the uniformed services of the United States or any dependent of such member by reason of such member's status or service as a member of such uniformed services, and

(B) was excludable from gross income on September 9, 1986, under any provision of law, regulation, or administrative practice which was in effect on such date (other than a provision of this title).

(2) No other benefit to be excludable except as provided by this title

Notwithstanding any other provision of law, no benefit shall be treated as a qualified military benefit unless such benefit—

(A) is a benefit described in paragraph (1), or

(B) is excludable from gross income under this title without regard to any provision of law which is not contained in this title and which is not contained in a revenue Act.

(3) Limitations on modifications

(A) In general

Except as provided in subparagraphs (B) and (C) and paragraphs (4) and (5), no modification or adjustment of any qualified military benefit after September 9, 1986, shall be taken into account.

(B) Exception for certain adjustments to cash benefits

Subparagraph (A) shall not apply to any adjustment to any qualified military benefit payable in cash which—

(i) is pursuant to a provision of law or regulation (as in effect on September 9, 1986), and

(ii) is determined by reference to any fluctuation in cost, price, currency, or other similar index.

(C) Exception for death gratuity adjustments made by law

Subparagraph (A) shall not apply to any adjustment to the amount of death gratuity payable under chapter 75 of title 10, United States Code, which is pursuant to a provision of law enacted after September 9, 1986.

(4) Clarification of certain benefits

For purposes of paragraph (1), such term includes any dependent care assistance program (as in effect on the date of the enactment of this paragraph) for any individual described in paragraph (1)(A).

(5) Travel benefits under operation hero miles

The term ''qualified military benefit'' includes a travel benefit provided under section 2613 of title 10, United States Code (as in effect on the date of the enactment of this paragraph).

(6) Certain State payments

The term ''qualified military benefit'' includes any bonus payment by a State or political subdivision thereof to any member or former member of the uniformed services of the United States or any dependent of such member only by reason of such member's service in an[1] combat zone (as defined in section 112(c)(2), determined without regard to the parenthetical).

(Added Pub. L. 99–514, title XI, § 1168(a), Oct. 22, 1986, 100 Stat. 2512; amended Pub. L. 100–647, title I, § 1011B(f)(1), (2)(A), (3), Nov. 10, 1988, 102 Stat. 3489, 3490; Pub. L. 108–121, title I, §§ 102(b)(1), (2), 106(a), (b)(1), Nov. 11, 2003, 117 Stat. 1337–1339; Pub. L. 108–375, div. A, title V, § 585(b)(1), (2)(A), Oct. 28, 2004, 118 Stat. 1931, 1932; Pub. L. 110–245, title I, § 112(a), June 17, 2008, 122 Stat. 1635.)

REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (b)(4), is the date of enactment of Pub. L. 108–121, which was approved Nov. 11, 2003.

The date of the enactment of this paragraph, referred to in subsec. (b)(5), is the date of enactment of Pub. L. 108–375, which was approved Oct. 28, 2004.

PRIOR PROVISIONS

A prior section 134 was renumbered section 140 of this title.

AMENDMENTS

2008—Subsec. (b)(6). Pub. L. 110–245 added par. (6).

2004—Subsec. (b)(3)(A). Pub. L. 108–375, § 585(b)(2)(A), substituted ''paragraphs (4) and (5)'' for ''paragraph (4)''.

Subsec. (b)(5). Pub. L. 108–375, § 585(b)(1), added par. (5).

2003—Subsec. (b)(3)(A). Pub. L. 108–121, § 106(b)(1), inserted ''and paragraph (4)'' after ''subparagraphs (B) and (C)''.

Pub. L. 108–121, § 102(b)(2), substituted ''subparagraphs (B) and (C)'' for ''subparagraph (B)''.

Subsec. (b)(3)(C). Pub. L. 108–121, § 102(b)(1), added subpar. (C).

Subsec. (b)(4). Pub. L. 108–121, § 106(a), added par. (4).

1988—Subsec. (b)(1). Pub. L. 100–647, § 1011B(f)(2)(A), inserted ''(other than personal use of a vehicle)'' after ''in-kind benefit'' in introductory text.

Subsec. (b)(1)(B). Pub. L. 100–647, § 1011B(f)(1), substituted '', regulation, or administrative practice'' for ''or regulation thereunder''.

Subsec. (b)(3)(A). Pub. L. 100–647, § 1011B(f)(3), struck out ''under any provision of law or regulation described in paragraph (1)'' after ''September 9, 1986,''.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–245, title I, § 112(b), June 17, 2008, 122 Stat. 1635, provided that: ''The amendment made by this section [amending this section] shall apply to payments made before, on, or after the date of the enactment of this Act [June 17, 2008].''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–375, div. A, title V, § 585(b)(3), Oct. 28, 2004, 118 Stat. 1932, provided that: ''The amendments made by this subsection [amending this section and sections 3121, 3306, and 3401 of this title] shall apply to travel benefits provided after the date of the enactment of this Act [Oct. 28, 2004].''

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–121, title I, § 102(b)(3), Nov. 11, 2003, 117 Stat. 1337, provided that: ''The amendments made by this subsection [amending this section] shall apply with respect to deaths occurring after September 10, 2001.''

Pub. L. 108–121, title I, § 106(c), Nov. 11, 2003, 117 Stat. 1339, provided that: ''The amendments made by this section [amending this section and sections 3121, 3306, and 3401 of this title] shall apply to taxable years beginning after December 31, 2002.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1011B(f)(2)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to taxable years beginning after December 31, 1986.''

Amendment by section 1011B(f)(1), (3) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section 1168(c) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1011B(f)(4), Nov. 10, 1988, 102 Stat. 3490, provided that: ''The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1984.''

NO INFERENCE TO BE DRAWN FROM AMENDMENT BY PUB. L. 108–121

Pub. L. 108–121, title I, § 106(d), Nov. 11, 2003, 117 Stat. 1339, provided that: ''No inference may be drawn from the amendments made by this section [amending this section and sections 3121, 3306, and 3401 of this title] with respect to the tax treatment of any amounts under the program described in section 134(b)(4) of the Internal Revenue Code of 1986 (as added by this section) for any taxable year beginning before January 1, 2003.''

§ 135. Income from United States savings bonds used to pay higher education tuition and fees

(a) General rule

In the case of an individual who pays qualified higher education expenses during the taxable year, no amount shall be includible in gross income by reason of the redemption during such

[1] So in original. Probably should be ''a''.

year of any qualified United States savings bond.

(b) Limitations

(1) Limitation where redemption proceeds exceed higher education expenses

(A) In general

If—

(i) the aggregate proceeds of qualified United States savings bonds redeemed by the taxpayer during the taxable year exceed

(ii) the qualified higher education expenses paid by the taxpayer during such taxable year,

the amount excludable from gross income under subsection (a) shall not exceed the applicable fraction of the amount excludable from gross income under subsection (a) without regard to this subsection.

(B) Applicable fraction

For purposes of subparagraph (A), the term ''applicable fraction'' means the fraction the numerator of which is the amount described in subparagraph (A)(ii) and the denominator of which is the amount described in subparagraph (A)(i).

(2) Limitation based on modified adjusted gross income

(A) In general

If the modified adjusted gross income of the taxpayer for the taxable year exceeds $40,000 ($60,000 in the case of a joint return), the amount which would (but for this paragraph) be excludable from gross income under subsection (a) shall be reduced (but not below zero) by the amount which bears the same ratio to the amount which would be so excludable as such excess bears to $15,000 ($30,000 in the case of a joint return).

(B) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 1990, the $40,000 and $60,000 amounts contained in subparagraph (A) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ''calendar year 1989'' for ''calendar year 1992'' in subparagraph (B) thereof.

(C) Rounding

If any amount as adjusted under subparagraph (B) is not a multiple of $50, such amount shall be rounded to the nearest multiple of $50 (or if such amount is a multiple of $25, such amount shall be rounded to the next highest multiple of $50).

(c) Definitions

For purposes of this section—

(1) Qualified United States savings bond

The term ''qualified United States savings bond'' means any United States savings bond issued—

(A) after December 31, 1989,

(B) to an individual who has attained age 24 before the date of issuance, and

(C) at discount under section 3105 of title 31, United States Code.

(2) Qualified higher education expenses

(A) In general

The term ''qualified higher education expenses'' means tuition and fees required for the enrollment or attendance of—

(i) the taxpayer,

(ii) the taxpayer's spouse, or

(iii) any dependent of the taxpayer with respect to whom the taxpayer is allowed a deduction under section 151,

at an eligible educational institution.

(B) Exception for education involving sports, etc.

Such term shall not include expenses with respect to any course or other education involving sports, games, or hobbies other than as part of a degree program.

(C) Contributions to qualified tuition program and Coverdell education savings accounts

Such term shall include any contribution to a qualified tuition program (as defined in section 529) on behalf of a designated beneficiary (as defined in such section), or to a Coverdell education savings account (as defined in section 530) on behalf of an account beneficiary, who is an individual described in subparagraph (A); but there shall be no increase in the investment in the contract for purposes of applying section 72 by reason of any portion of such contribution which is not includible in gross income by reason of this subparagraph.

(3) Eligible educational institution

The term ''eligible educational institution'' has the meaning given such term by section 529(e)(5).

(4) Modified adjusted gross income

The term ''modified adjusted gross income'' means the adjusted gross income of the taxpayer for the taxable year determined—

(A) without regard to this section and sections 137, 199, 221, 222, 911, 931, and 933, and

(B) after the application of sections 86, 469, and 219.

(d) Special rules

(1) Adjustment for certain scholarships and veterans benefits

The amount of qualified higher education expenses otherwise taken into account under subsection (a) with respect to the education of an individual shall be reduced (before the application of subsection (b)) by the sum of the amounts received with respect to such individual for the taxable year as—

(A) a qualified scholarship which under section 117 is not includable in gross income,

(B) an educational assistance allowance under chapter 30, 31, 32, 34, or 35 of title 38, United States Code,

(C) a payment (other than a gift, bequest, devise, or inheritance within the meaning of

section 102(a)) for educational expenses, or attributable to attendance at an eligible educational institution, which is exempt from income taxation by any law of the United States, or

(D) a payment, waiver, or reimbursement of qualified higher education expenses under a qualified tuition program (within the meaning of section 529(b)).

(2) Coordination with other higher education benefits

The amount of the qualified higher education expenses otherwise taken into account under subsection (a) with respect to the education of an individual shall be reduced (before the application of subsection (b)) by—

(A) the amount of such expenses which are taken into account in determining the credit allowed to the taxpayer or any other person under section 25A with respect to such expenses; and

(B) the amount of such expenses which are taken into account in determining the exclusions under sections 529(c)(3)(B) and 530(d)(2).

(3) No exclusion for married individuals filing separate returns

If the taxpayer is a married individual (within the meaning of section 7703), this section shall apply only if the taxpayer and his spouse file a joint return for the taxable year.

(4) Regulations

The Secretary may prescribe such regulations as may be necessary or appropriate to carry out this section, including regulations requiring record keeping and information reporting.

(Added Pub. L. 100–647, title VI, § 6009(a), Nov. 10, 1988, 102 Stat. 3688; amended Pub. L. 101–239, title VII, § 7816(c)(2), Dec. 19, 1989, 103 Stat. 2420; Pub. L. 101–508, title XI, §§ 11101(d)(1)(E), 11702(h), Nov. 5, 1990, 104 Stat. 1388–405, 1388–516; Pub. L. 104–188, title I, §§ 1703(d), 1806(b)(1), 1807(c)(2), Aug. 20, 1996, 110 Stat. 1875, 1898, 1902; Pub. L. 105–34, title II, §§ 201(d), 211(c), 213(e)(2), Aug. 5, 1997, 111 Stat. 805, 811, 817; Pub. L. 105–206, title VI, § 6004(c)(1), (d)(4), (9), July 22, 1998, 112 Stat. 793–795; Pub. L. 105–277, div. J, title IV, § 4003(a)(2)(B), Oct. 21, 1998, 112 Stat. 2681–908; Pub. L. 107–16, title IV, §§ 401(g)(2)(B), 402(a)(4)(A), (B), (b)(2)(A), 431(c)(1), June 7, 2001, 115 Stat. 59–62, 68; Pub. L. 107–22, § 1(b)(1)(B), (3)(B), July 26, 2001, 115 Stat. 197; Pub. L. 108–357, title I, § 102(d)(1), Oct. 22, 2004, 118 Stat. 1428.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENT OF SECTION

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendments note below.

PRIOR PROVISIONS

A prior section 135 was renumbered section 140 of this title.

AMENDMENTS

2004—Subsec. (c)(4)(A). Pub. L. 108–357 inserted ''199,'' before ''221''.

2001—Subsec. (c)(2)(C). Pub. L. 107–22, in heading substituted ''Coverdell education savings'' for ''education individual retirement'' and in text substituted ''a Coverdell education savings'' for ''an education individual retirement''.

Pub. L. 107–16, § 402(a)(4)(A), (B), substituted ''qualified tuition'' for ''qualified State tuition'' in heading and text.

Subsec. (c)(4)(A). Pub. L. 107–16, §§ 431(c)(1), 901, temporarily inserted ''222,'' after ''221,''. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (d)(1)(D). Pub. L. 107–16, § 402(a)(4)(A), substituted ''qualified tuition'' for ''qualified State tuition''.

Subsec. (d)(2)(A). Pub. L. 107–16, §§ 401(g)(2)(B), 901, temporarily substituted ''allowed'' for ''allowable''. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (d)(2)(B). Pub. L. 107–16, § 402(b)(2)(A), substituted ''the exclusions under sections 529(c)(3)(B) and 530(d)(2)'' for ''the exclusion under section 530(d)(2)''.

1998—Subsec. (c)(2)(C). Pub. L. 105–206, § 6004(d)(9), inserted ''and education individual retirement accounts'' after ''program'' in heading and substituted ''section 72'' for ''section 529(c)(3)(A)'' in text.

Subsec. (c)(3). Pub. L. 105–206, § 6004(c)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'eligible educational institution' means—

''(A) an institution described in section 1201(a) or subparagraph (C) or (D) of section 481(a)(1) of the Higher Education Act of 1965 (as in effect on October 21, 1988), and

''(B) an area vocational education school (as defined in subparagraph (C) or (D) of section 521(3) of the Carl D. Perkins Vocational Education Act) which is in any State (as defined in section 521(27) of such Act), as such sections are in effect on October 21, 1988.''

Subsec. (c)(4)(A). Pub. L. 105–277 inserted ''221,'' after ''137,''.

Subsec. (d)(2). Pub. L. 105–206, § 6004(d)(4), substituted ''other higher education benefits'' for ''higher education credit'' in heading and amended text of par. (2) generally. Prior to amendment, text read as follows: ''The amount of the qualified higher education expenses otherwise taken into account under subsection (a) with respect to the education of an individual shall be reduced (before the application of subsection (b)) by the amount of such expenses which are taken into account in determining the credit allowable to the taxpayer or any other person under section 25A with respect to such expenses.''

1997—Subsec. (c)(2)(C). Pub. L. 105–34, § 213(e)(2), inserted '', or to an education individual retirement account (as defined in section 530) on behalf of an account beneficiary,'' after ''(as defined in such section)''.

Pub. L. 105–34, § 211(c), added subpar. (C).

Subsec. (d)(2) to (4). Pub. L. 105–34, § 201(d), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

1996—Subsec. (b)(2)(B)(ii). Pub. L. 104–188, § 1703(d), inserted '', determined by substituting 'calendar year 1989' for 'calendar year 1992' in subparagraph (B) thereof'' before period at end.

Subsec. (c)(4)(A). Pub. L. 104–188, § 1807(c)(2), inserted ''137,'' before ''911''.

Subsec. (d)(1)(D). Pub. L. 104–188, § 1806(b)(1), added subpar. (D).

1990—Subsec. (b)(2)(B). Pub. L. 101–508, § 11702(h)(1), substituted ''the $40,000 and $60,000 amounts'' for ''each dollar amount'' in introductory provisions.

Subsec. (b)(2)(B)(ii). Pub. L. 101–508, § 11101(d)(1)(E), struck out before period at end '', determined by substituting 'calendar year 1989' for 'calendar year 1987' in subparagraph (B) thereof''.

Subsec. (b)(2)(C). Pub. L. 101–508, § 11702(h)(2), struck out ''(A) or'' after ''subparagraph''.

1989—Subsec. (d)(1). Pub. L. 101–239 substituted ''subsection (a) with respect to'' for ''subsection (a) respect to''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2004, see section 102(e) of Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENTS

Amendment by Pub. L. 107–22 effective July 26, 2001, see section 1(c) of Pub. L. 107–22, set out as a note under section 26 of this title.

Amendment by section 401(g)(2)(B) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 401(h) of Pub. L. 107–16, set out as a note under section 25A of this title.

Amendment by section 402(a)(4)(A), (B), (b)(2)(A) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 402(h) of Pub. L. 107–16, set out as an Effective Date of 2001 Amendment note under section 72 of this title.

Amendment by section 431(c)(1) of Pub. L. 107–16 applicable to payments made in taxable years beginning after Dec. 31, 2001, see section 431(d) of Pub. L. 107–16, set out as a note under section 62 of this title.

Amendment by sections 401(g)(2)(B) and 431(c)(1) of Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105–277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 4003(*l*) of Pub. L. 105–277, set out as a note under section 86 of this title.

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 201(d) of Pub. L. 105–34 applicable to expenses paid after Dec. 31, 1997 (in taxable years ending after such date), for education furnished in academic periods beginning after such date, see section 201(f) of Pub. L. 105–34, set out as an Effective Date note under section 25A of this title.

Amendment by section 211(c) of Pub. L. 105–34 applicable to taxable years beginning after Dec. 31, 1997, see section 211(f) of Pub. L. 105–34, set out as a note under section 529 of this title.

Amendment by section 213(e)(2) of Pub. L. 105–34 applicable to taxable years beginning after Dec. 31, 1997, see section 213(f) of Pub. L. 105–34, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1703(d) of Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§13001–13444, to which such amendment relates, see section 1703(*o*) of Pub. L. 104–188, set out as a note under section 39 of this title.

Amendment by section 1806(b)(1) of Pub. L. 104–188 applicable to taxable years ending after Aug. 20, 1996, with transition rules applicable where States or agencies or instrumentalities thereof maintain on such date programs under which persons may purchase tuition credits or certificates on behalf of, or make contributions for education expenses of, designated beneficiaries, see section 1806(c) of Pub. L. 104–188, set out as an Effective Date note under section 529 of this title.

Amendment by section 1807(c)(2) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1807(e) of Pub. L. 104–188, set out as an Effective Date note under section 36C of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11101(d)(1)(E) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11101(e) of Pub. L. 101–508, set out as a note under section 1 of this title.

Amendment by section 11702(h) of Pub. L. 101–508 effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 11702(j) of Pub. L. 101–508, set out as a note under section 59 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1989, see section 6009(d) of Pub. L. 100–647, set out as an Effective Date of 1988 Amendment note under section 86 of this title.

PROMOTION OF PUBLIC AWARENESS OF PROGRAM

Section 6009(b) of Pub. L. 100–647 provided that: ''The Secretary of the Treasury or his delegate shall take such actions as may be necessary to make the general public aware of the program established by this section [enacting this section, amending sections 86, 219, and 469 of this title, renumbering former section 135 of this title as section 136 of this title, and enacting provisions set out as notes below and under section 86 of this title].''

PARENTAL ASSISTANCE WITH TUITION STAMP STUDY

Section 6009(e) of Pub. L. 100–647 directed Secretary of the Treasury or his delegate, after consultation with Secretary of Education or his delegate, to conduct a study of feasibility of using stamps or similar programs to encourage and facilitate savings by parents towards purchase of Series EE bonds eligible for exclusion and to submit, not later than Dec. 31, 1989, results of such study, together with any recommendations deemed appropriate, to Committee on Ways and Means of House of Representatives and Committee on Finance of Senate.

§ 136. Energy conservation subsidies provided by public utilities

(a) Exclusion

Gross income shall not include the value of any subsidy provided (directly or indirectly) by a public utility to a customer for the purchase or installation of any energy conservation measure.

(b) Denial of double benefit

Notwithstanding any other provision of this subtitle, no deduction or credit shall be allowed for, or by reason of, any expenditure to the extent of the amount excluded under subsection (a) for any subsidy which was provided with respect to such expenditure. The adjusted basis of any property shall be reduced by the amount excluded under subsection (a) which was provided with respect to such property.

(c) Energy conservation measure

(1) In general

For purposes of this section, the term ''energy conservation measure'' means any instal-

lation or modification primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand with respect to a dwelling unit.

(2) Other definitions

For purposes of this subsection—

(A) Dwelling unit

The term ''dwelling unit'' has the meaning given such term by section 280A(f)(1).

(B) Public utility

The term ''public utility'' means a person engaged in the sale of electricity or natural gas to residential, commercial, or industrial customers for use by such customers. For purposes of the preceding sentence, the term ''person'' includes the Federal Government, a State or local government or any political subdivision thereof, or any instrumentality of any of the foregoing.

(d) Exception

This section shall not apply to any payment to or from a qualified cogeneration facility or qualifying small power production facility pursuant to section 210 of the Public Utility Regulatory Policy Act of 1978.

(Added Pub. L. 102–486, title XIX, § 1912(a), Oct. 24, 1992, 106 Stat. 3014; amended Pub. L. 104–188, title I, § 1617(a), (b), Aug. 20, 1996, 110 Stat. 1858.)

REFERENCES IN TEXT

Section 210 of the Public Utility Regulatory Policy Act of 1978, referred to in subsec. (d), probably means section 210 of the Public Utility Regulatory Policies Act of 1978, Pub. L. 95–617, which is classified to section 824a–3 of Title 16, Conservation.

PRIOR PROVISIONS

A prior section 136 was renumbered section 140 of this title.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–188, § 1617(b)(1), reenacted heading without change and amended text generally, substituting present provisions for former provisions which consisted of general exclusion in par. (1) and limitation for exclusion on nonresidential property in par. (2).

Subsec. (c)(1). Pub. L. 104–188, § 1617(a), substituted ''energy demand with respect to a dwelling unit.'' for ''energy demand—

''(A) with respect to a dwelling unit, and

''(B) on or after January 1, 1995, with respect to property other than dwelling units.

The purchase and installation of specially defined energy property shall be treated as an energy conservation measure described in subparagraph (B).''

Subsec. (c)(2). Pub. L. 104–188, § 1617(b)(2), struck out ''and special rules'' after ''definitions'' in heading, redesignated subpars. (B) and (C) as (A) and (B), respectively, and struck out former subpar. (A) which related to ''specially defined energy property''.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1617(c) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section] shall apply to amounts received after December 31, 1996, unless received pursuant to a written binding contract in effect on September 13, 1995, and at all times thereafter.''

EFFECTIVE DATE

Section 1912(c) of Pub. L. 102–486 provided that: ''The amendments made by this section [enacting this section and renumbering former section 136 as 137] shall apply to amounts received after December 31, 1992.''

§ 137. Adoption assistance programs

(a) Exclusion

(1) In general

Gross income of an employee does not include amounts paid or expenses incurred by the employer for qualified adoption expenses in connection with the adoption of a child by an employee if such amounts are furnished pursuant to an adoption assistance program.

(2) $13,170 exclusion for adoption of child with special needs regardless of expenses

In the case of an adoption of a child with special needs which becomes final during a taxable year, the qualified adoption expenses with respect to such adoption for such year shall be increased by an amount equal to the excess (if any) of $13,170 over the actual aggregate qualified adoption expenses with respect to such adoption during such taxable year and all prior taxable years.

(b) Limitations

(1) Dollar limitation

The aggregate of the amounts paid or expenses incurred which may be taken into account under subsection (a) for all taxable years with respect to the adoption of a child by the taxpayer shall not exceed $13,170.

(2) Income limitation

The amount excludable from gross income under subsection (a) for any taxable year shall be reduced (but not below zero) by an amount which bears the same ratio to the amount so excludable (determined without regard to this paragraph but with regard to paragraph (1)) as—

(A) the amount (if any) by which the taxpayer's adjusted gross income exceeds $150,000, bears to

(B) $40,000.

(3) Determination of adjusted gross income

For purposes of paragraph (2), adjusted gross income shall be determined—

(A) without regard to this section and sections 199, 221, 222, 911, 931, and 933, and

(B) after the application of sections 86, 135, 219, and 469.

(c) Adoption assistance program

For purposes of this section, an adoption assistance program is a separate written plan of an employer for the exclusive benefit of such employer's employees—

(1) under which the employer provides such employees with adoption assistance, and

(2) which meets requirements similar to the requirements of paragraphs (2), (3), (5), and (6) of section 127(b).

An adoption reimbursement program operated under section 1052 of title 10, United States Code (relating to armed forces) or section 514 of title 14, United States Code (relating to members of the Coast Guard) shall be treated as an adoption assistance program for purposes of this section.

(d) Qualified adoption expenses

For purposes of this section, the term ''qualified adoption expenses'' has the meaning given

such term by section 36C(d) (determined without regard to reimbursements under this section).

(e) Certain rules to apply

Rules similar to the rules of subsections (e), (f), and (g) of section 36C shall apply for purposes of this section.

(f) Adjustments for inflation

(1) Dollar limitations

In the case of a taxable year beginning after December 31, 2010, each of the dollar amounts in subsections (a)(2) and (b)(1) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ''calendar year 2009'' for ''calendar year 1992'' in subparagraph (B) thereof.

If any amount as increased under the preceding sentence is not a multiple of $10, such amount shall be rounded to the nearest multiple of $10.

(2) Income limitation

In the case of a taxable year beginning after December 31, 2002, the dollar amount in subsection (b)(2)(A) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ''calendar year 2001'' for ''calendar year 1992'' in subparagraph[1] thereof.

If any amount as increased under the preceding sentence is not a multiple of $10, such amount shall be rounded to the nearest multiple of $10.

(Added Pub. L. 104–188, title I, §1807(b), Aug. 20, 1996, 110 Stat. 1901; amended Pub. L. 105–34, title XVI, §1601(h)(2)(C), Aug. 5, 1997, 111 Stat. 1092; Pub. L. 105–277, div. J, title IV, §4003(a)(2)(C), Oct. 21, 1998, 112 Stat. 2681–908; Pub. L. 107–16, title II, §202(a)(2), (b)(1)(B), (2)(B), (d)(2), (e)(2), title IV, §431(c)(1), June 7, 2001, 115 Stat. 47, 48, 68; Pub. L. 107–147, title IV, §§411(c)(2), 418(a)(2), Mar. 9, 2002, 116 Stat. 45, 57; Pub. L. 108–311, title IV, §403(e), Oct. 4, 2004, 118 Stat. 1188; Pub. L. 108–357, title I, §102(d)(1), Oct. 22, 2004, 118 Stat. 1428; Pub. L. 111–148, title X, §10909(a)(2), (b)(2)(J), (c), Mar. 23, 2010, 124 Stat. 1022, 1023; Pub. L. 111–312, title I, §101(b)(1), Dec. 17, 2010, 124 Stat. 3298.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENT OF SECTION

For termination of amendment by section 10909(c) of Pub. L. 111–148, see Effective and Termination Dates of 2010 Amendment note below.

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

PRIOR PROVISIONS

A prior section 137 was renumbered section 140 of this title.

AMENDMENTS

2010—Subsec. (a)(2). Pub. L. 111–148, §10909(a)(2)(B), (c), as amended by Pub. L. 111–312, temporarily substituted ''$13,170'' for ''$10,000'' in heading and text. See Effective and Termination Dates of 2010 Amendment note below.

Subsec. (b)(1). Pub. L. 111–148, §10909(a)(2)(A), (c), as amended by Pub. L. 111–312, temporarily substituted ''$13,170'' for ''$10,000''. See Effective and Termination Dates of 2010 Amendment note below.

Subsec. (d). Pub. L. 111–148, §10909(b)(2)(J)(i), (c), as amended by Pub. L. 111–312, temporarily substituted ''section 36C(d)'' for ''section 23(d)''. See Effective and Termination Dates of 2010 Amendment note below.

Subsec. (e). Pub. L. 111–148, §10909(b)(2)(J)(ii), (c), as amended by Pub. L. 111–312, temporarily substituted ''section 36C'' for ''section 23''. See Effective and Termination Dates of 2010 Amendment note below.

Subsec. (f). Pub. L. 111–148, §10909(a)(2)(C), (c), as amended by Pub. L. 111–312, temporarily amended subsec. (f) generally. See Effective and Termination Dates of 2010 Amendment note below. Prior to amendment subsec. (f) read as follows: ''ADJUSTMENTS FOR INFLATION.—In the case of a taxable year beginning after December 31, 2002, each of the dollar amounts in subsection (a)(2) and paragraphs (1) and (2)(A) of subsection (b) shall be increased by an amount equal to—

''(1) such dollar amount, multiplied by

''(2) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 2001' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as increased under the preceding sentence is not a multiple of $10, such amount shall be rounded to the nearest multiple of $10.''

2004—Subsec. (b)(1). Pub. L. 108–311 amended directory language of Pub. L. 107–147, §411(c)(2)(B). See 2002 Amendment note below.

Subsec. (b)(3)(A). Pub. L. 108–357 inserted ''199,'' before ''221''.

2002—Subsec. (a). Pub. L. 107–147, §411(c)(2)(A), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''Gross income of an employee does not include amounts paid or expenses incurred by the employer for adoption expenses in connection with the adoption of a child by an employee if such amounts are furnished pursuant to an adoption assistance program. The amount of the exclusion shall be—

''(1) in the case of an adoption of a child other than a child with special needs, the amount of the qualified adoption expenses paid or incurred by the taxpayer, and

''(2) in the case of an adoption of a child with special needs, $10,000.''

Subsec. (b)(1). Pub. L. 107–147, §411(c)(2)(B), as amended by Pub. L. 108–311, substituted ''subsection (a)'' for ''subsection (a)(1)''.

Subsec. (f). Pub. L. 107–147, §418(a)(2), inserted at end ''If any amount as increased under the preceding sentence is not a multiple of $10, such amount shall be rounded to the nearest multiple of $10.''

2001—Subsec. (a). Pub. L. 107–16, §§202(a)(2), 901, temporarily reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Gross income of an employee does not include amounts paid or expenses incurred by the employer for qualified adoption expenses in connection with the adoption of a child by an employee if such amounts are furnished pursuant to an adoption assistance pro-

[1] So in original. Probably should be followed by ''(B)''.

gram.'' See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (b)(1). Pub. L. 107–16, §§ 202(b)(1)(B), 901, temporarily substituted ''subsection (a)(1)'' for ''subsection (a)'' and ''$10,000'' for ''$5,000 ($6,000, in the case of a child with special needs)''. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (b)(2)(A). Pub. L. 107–16, §§ 202(b)(2)(B), 901, temporarily substituted ''$150,000'' for ''$75,000''. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (b)(3)(A). Pub. L. 107–16, §§ 431(c)(1), 901, temporarily inserted ''222,'' after ''221,''. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (f). Pub. L. 107–16, §§ 202(d)(2), (e)(2), 901, temporarily added subsec. (f) and struck out heading and text of former subsec. (f). Text read as follows: ''This section shall not apply to amounts paid or expenses incurred after December 31, 2001.'' See Effective and Termination Dates of 2001 Amendment note below.

1998—Subsec. (b)(3)(A). Pub. L. 105–277 inserted ''221,'' after ''and sections''.

1997—Subsec. (b)(1). Pub. L. 105–34 substituted ''of the amounts paid or expenses incurred which may be taken into account'' for ''amount excludable from gross income''.

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Amendment by Pub. L. 111–148 terminated applicable to taxable years beginning after Dec. 31, 2011, and section is amended to read as if such amendment had never been enacted, see section 10909(c) of Pub. L. 111–148, set out as a note under section 1 of this title.

Amendment by Pub. L. 111–148 applicable to taxable years beginning after Dec. 31, 2009, see section 10909(d) of Pub. L. 111–148, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2004 AMENDMENTS

Amendment by Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2004, see section 102(e) of Pub. L. 108–357, set out as a note under section 56 of this title.

Amendment by Pub. L. 108–311 effective as if included in the provisions of the Job Creation and Worker Assistance Act of 2002, Pub. L. 107–147, to which such amendment relates, see section 403(f) of Pub. L. 108–311, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by section 411(c)(2) of Pub. L. 107–147 applicable to taxable years beginning after Dec. 31, 2002, except that amendment by section 411(c)(2)(B) applicable to taxable years beginning after Dec. 31, 2001, see section 411(c)(3) of Pub. L. 107–147, set out as a note under section 36C of this title.

Amendment by section 418(a)(2) of Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 418(c) of Pub. L. 107–147, set out as a note under section 21 of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by section 202(b)(1)(B), (2)(B), (d)(2), (e)(2) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 202(g)(1) of Pub. L. 107–16, set out as a note under section 36C of this title.

Amendment by section 202(a)(2) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2002, see section 202(g)(2) of Pub. L. 107–16, set out as a note under section 36C of this title.

Amendment by section 431(c)(1) of Pub. L. 107–16 applicable to payments made in taxable years beginning after Dec. 31, 2001, see section 431(d) of Pub. L. 107–16, set out as a note under section 62 of this title.

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 4003(*l*) of Pub. L. 105–277, set out as a note under section 86 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 36C of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1996, see section 1807(e) of Pub. L. 104–188, set out as a note under section 36C of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 138. Medicare Advantage MSA

(a) Exclusion

Gross income shall not include any payment to the Medicare Advantage MSA of an individual by the Secretary of Health and Human Services under part C of title XVIII of the Social Security Act.

(b) Medicare Advantage MSA

For purposes of this section, the term ''Medicare Advantage MSA'' means an Archer MSA (as defined in section 220(d))—

(1) which is designated as a Medicare Advantage MSA,

(2) with respect to which no contribution may be made other than—

(A) a contribution made by the Secretary of Health and Human Services pursuant to part C of title XVIII of the Social Security Act, or

(B) a trustee-to-trustee transfer described in subsection (c)(4),

(3) the governing instrument of which provides that trustee-to-trustee transfers described in subsection (c)(4) may be made to and from such account, and

(4) which is established in connection with an MSA plan described in section 1859(b)(3) of the Social Security Act.

(c) Special rules for distributions

(1) Distributions for qualified medical expenses

In applying section 220 to a Medicare Advantage MSA—

(A) qualified medical expenses shall not include amounts paid for medical care for any individual other than the account holder, and

(B) section 220(d)(2)(C) shall not apply.

(2) Penalty for distributions from Medicare Advantage MSA not used for qualified medical expenses if minimum balance not maintained

(A) In general

The tax imposed by this chapter for any taxable year in which there is a payment or distribution from a Medicare Advantage MSA which is not used exclusively to pay the qualified medical expenses of the account holder shall be increased by 50 percent of the excess (if any) of—

(i) the amount of such payment or distribution, over

(ii) the excess (if any) of—

(I) the fair market value of the assets in such MSA as of the close of the calendar year preceding the calendar year in which the taxable year begins, over

(II) an amount equal to 60 percent of the deductible under the Medicare Advantage MSA plan covering the account holder as of January 1 of the calendar year in which the taxable year begins.

Section 220(f)(4) shall not apply to any payment or distribution from a Medicare Advantage MSA.

(B) Exceptions

Subparagraph (A) shall not apply if the payment or distribution is made on or after the date the account holder—

(i) becomes disabled within the meaning of section 72(m)(7), or

(ii) dies.

(C) Special rules

For purposes of subparagraph (A)—

(i) all Medicare Advantage MSAs of the account holder shall be treated as 1 account,

(ii) all payments and distributions not used exclusively to pay the qualified medical expenses of the account holder during any taxable year shall be treated as 1 distribution, and

(iii) any distribution of property shall be taken into account at its fair market value on the date of the distribution.

(3) Withdrawal of erroneous contributions

Section 220(f)(2) and paragraph (2) of this subsection shall not apply to any payment or distribution from a Medicare Advantage MSA to the Secretary of Health and Human Services of an erroneous contribution to such MSA and of the net income attributable to such contribution.

(4) Trustee-to-trustee transfers

Section 220(f)(2) and paragraph (2) of this subsection shall not apply to any trustee-to-trustee transfer from a Medicare Advantage MSA of an account holder to another Medicare Advantage MSA of such account holder.

(d) Special rules for treatment of account after death of account holder

In applying section 220(f)(8)(A) to an account which was a Medicare Advantage MSA of a decedent, the rules of section 220(f) shall apply in lieu of the rules of subsection (c) of this section with respect to the spouse as the account holder of such Medicare Advantage MSA.

(e) Reports

In the case of a Medicare Advantage MSA, the report under section 220(h)—

(1) shall include the fair market value of the assets in such Medicare Advantage MSA as of the close of each calendar year, and

(2) shall be furnished to the account holder—

(A) not later than January 31 of the calendar year following the calendar year to which such reports relate, and

(B) in such manner as the Secretary prescribes in such regulations.

(f) Coordination with limitation on number of taxpayers having Archer MSAs

Subsection (i) of section 220 shall not apply to an individual with respect to a Medicare Advantage MSA, and Medicare Advantage MSAs shall not be taken into account in determining whether the numerical limitations under section 220(j) are exceeded.

(Added Pub. L. 105–33, title IV, §4006(a), Aug. 5, 1997, 111 Stat. 332; amended Pub. L. 106–554, §1(a)(7) [title II, §202(a)(3), (b)(6), (10)], Dec. 21, 2000, 114 Stat. 2763, 2763A–628, 2763A–629; Pub. L. 108–311, title IV, §408(a)(5)(A)–(F), Oct. 4, 2004, 118 Stat. 1191.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a) and (b)(2)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part C of title XVIII of the Act is classified generally to part C (§1395w–21 et seq.) of subchapter XVIII of chapter 7 of Title 42, The Public Health and Welfare. Section 1859 of the Act is classified to section 1395w–28 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 138 was renumbered section 140 of this title.

AMENDMENTS

2004—Pub. L. 108–311, §408(a)(5)(A)–(D), substituted ''Medicare Advantage'' for ''Medicare+Choice'' wherever appearing in section catchline, headings, and text.

Subsec. (c)(2)(C)(i). Pub. L. 108–311, §408(a)(5)(E), substituted ''Medicare Advantage MSAs'' for ''Medicare+Choice MSAs''.

Subsec. (f). Pub. L. 108–311, §408(a)(5)(F), substituted ''Medicare Advantage MSAs'' for ''Medicare+Choice MSA's''.

2000—Subsec. (b). Pub. L. 106–554, §1(a)(7) [title II, §202(b)(10)], substituted ''an Archer MSA'' for ''a Archer MSA'' in introductory provisions.

Pub. L. 106–554, §1(a)(7) [title II, §202(a)(3)], substituted ''Archer MSA'' for ''medical savings account'' in introductory provisions.

Subsec. (f). Pub. L. 106–554, §1(a)(7) [title II, §202(b)(6)], substituted ''Archer MSAs'' for ''medical savings accounts'' in heading.

EFFECTIVE DATE

Section 4006(c) of Pub. L. 105–33 provided that: ''The amendments made by this section [enacting this section, amending sections 220 and 4973 of this title, and renumbering former section 138 of this title as section 139 of this title] shall apply to taxable years beginning after December 31, 1998.''

§ 139. Disaster relief payments

(a) General rule

Gross income shall not include any amount received by an individual as a qualified disaster relief payment.

(b) Qualified disaster relief payment defined

For purposes of this section, the term ''qualified disaster relief payment'' means any amount paid to or for the benefit of an individual—

(1) to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster,

(2) to reimburse or pay reasonable and necessary expenses incurred for the repair or rehabilitation of a personal residence or repair or replacement of its contents to the extent that the need for such repair, rehabilitation, or replacement is attributable to a qualified disaster,

(3) by a person engaged in the furnishing or sale of transportation as a common carrier by reason of the death or personal physical injuries incurred as a result of a qualified disaster, or

(4) if such amount is paid by a Federal, State, or local government, or agency or instrumentality thereof, in connection with a qualified disaster in order to promote the general welfare,

but only to the extent any expense compensated by such payment is not otherwise compensated for by insurance or otherwise.

(c) Qualified disaster defined

For purposes of this section, the term ''qualified disaster'' means—

(1) a disaster which results from a terroristic or military action (as defined in section 692(c)(2)),

(2) federally [1] declared disaster (as defined by section 165(h)(3)(C)(i)),

(3) a disaster which results from an accident involving a common carrier, or from any other event, which is determined by the Secretary to be of a catastrophic nature, or

(4) with respect to amounts described in subsection (b)(4), a disaster which is determined by an applicable Federal, State, or local authority (as determined by the Secretary) to warrant assistance from the Federal, State, or local government or agency or instrumentality thereof.

(d) Coordination with employment taxes

For purposes of chapter 2 and subtitle C, qualified disaster relief payments and qualified disaster mitigation payments shall not be treated as net earnings from self-employment, wages, or compensation subject to tax.

(e) No relief for certain individuals

Subsections (a), (f), and (g) shall not apply with respect to any individual identified by the Attorney General to have been a participant or conspirator in a terroristic action (as so defined), or a representative of such individual.

(f) Exclusion of certain additional payments

Gross income shall not include any amount received as payment under section 406 of the Air Transportation Safety and System Stabilization Act.

(g) Qualified disaster mitigation payments

(1) In general

Gross income shall not include any amount received as a qualified disaster mitigation payment.

(2) Qualified disaster mitigation payment defined

For purposes of this section, the term ''qualified disaster mitigation payment'' means any amount which is paid pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (as in effect on the date of the enactment of this subsection) or the National Flood Insurance Act (as in effect on such date) to or for the benefit of the owner of any property for hazard mitigation with respect to such property. Such term shall not include any amount received for the sale or disposition of any property.

(3) No increase in basis

Notwithstanding any other provision of this subtitle, no increase in the basis or adjusted basis of any property shall result from any amount excluded under this subsection with respect to such property.

(h) Denial of double benefit

Notwithstanding any other provision of this subtitle, no deduction or credit shall be allowed (to the person for whose benefit a qualified disaster relief payment or qualified disaster mitigation payment is made) for, or by reason of, any expenditure to the extent of the amount excluded under this section with respect to such expenditure.

(Added Pub. L. 107–134, title I, § 111(a), Jan. 23, 2002, 115 Stat. 2432; amended Pub. L. 109–7, § 1(a), Apr. 15, 2005, 119 Stat. 21; Pub. L. 110–343, div. C, title VII, § 706(a)(2)(D)(iv), Oct. 3, 2008, 122 Stat. 3922.)

REFERENCES IN TEXT

Section 406 of the Air Transportation Safety and System Stabilization Act, referred to in subsec. (f), is section 406 of Pub. L. 107–42, which is set out as a note under section 40101 of Title 49, Transportation.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (g)(2), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to chapter 68 (§ 5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

The date of the enactment of this subsection, referred to in subsec. (g)(2), is the date of enactment of Pub. L. 109–7, which was approved Apr. 15, 2005.

The National Flood Insurance Act, referred to in subsec. (g)(2), probably means the National Flood Insurance Act of 1968, title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, as amended, which is classified principally to chapter 50 (§ 4001 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 139 was renumbered section 140 of this title.

[1] So in original. Probably should be preceded by ''a''.

AMENDMENTS

2008—Subsec. (c)(2). Pub. L. 110–343 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''a Presidentially declared disaster (as defined in section 1033(h)(3)),''.

2005—Subsec. (d). Pub. L. 109–7, §1(a)(2)(A), substituted ''qualified disaster relief payments and qualified disaster mitigation payments'' for ''a qualified disaster relief payment''.

Subsec. (e). Pub. L. 109–7, §1(a)(2)(B), substituted '', (f), and (g)'' for ''and (f)''.

Subsecs. (g), (h). Pub. L. 109–7, §1(a)(1), added subsecs. (g) and (h).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–343 applicable to disasters declared in taxable years beginning after Dec. 31, 2007, see section 706(d)(1) of Pub. L. 110–343, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–7, §1(c)(1), Apr. 15, 2005, 119 Stat. 22, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to amounts received before, on, or after the date of the enactment of this Act [Apr. 15, 2005].''

EFFECTIVE DATE

Pub. L. 107–134, title I, §111(c), Jan. 23, 2002, 115 Stat. 2433, provided that: ''The amendments made by this section [enacting this section and renumbering former section 139 as section 140 of this title] shall apply to taxable years ending on or after September 11, 2001.''

§ 139A. Federal subsidies for prescription drug plans

Gross income shall not include any special subsidy payment received under section 1860D–22 of the Social Security Act. This section shall not be taken into account for purposes of determining whether any deduction is allowable with respect to any cost taken into account in determining such payment.

(Added Pub. L. 108–173, title XII, §1202(a), Dec. 8, 2003, 117 Stat. 2480; amended Pub. L. 111–148, title IX, §9012(a), Mar. 23, 2010, 124 Stat. 868.)

AMENDMENT OF SECTION

Pub. L. 111–148, title IX, §9012, Mar. 23, 2010, 124 Stat. 868, as amended by Pub. L. 111–152, title I, §1407, Mar. 30, 2010, 124 Stat. 1067, provided that, applicable to taxable years beginning after Dec. 31, 2012, this section is amended by striking the second sentence.

REFERENCES IN TEXT

Section 1860D–22 of the Social Security Act, referred to in text, is classified to section 1395w–132 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title IX, §9012(b), Mar. 23, 2010, 124 Stat. 868, as amended by Pub. L. 111–152, title I, §1407, Mar. 30, 2010, 124 Stat. 1067, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2012.''

EFFECTIVE DATE

Section applicable to taxable years ending after Dec. 8, 2003, see section 1202(d) of Pub. L. 108–173, set out as an Effective Date of 2003 Amendment note under section 56 of this title.

§ 139B. Benefits provided to volunteer firefighters and emergency medical responders

(a) In general

In the case of any member of a qualified volunteer emergency response organization, gross income shall not include—

(1) any qualified State and local tax benefit, and

(2) any qualified payment.

(b) Denial of double benefits

In the case of any member of a qualified volunteer emergency response organization—

(1) the deduction under 164 shall be determined with regard to any qualified State and local tax benefit, and

(2) expenses paid or incurred by the taxpayer in connection with the performance of services as such a member shall be taken into account under section 170 only to the extent such expenses exceed the amount of any qualified payment excluded from gross income under subsection (a).

(c) Definitions

For purposes of this section—

(1) Qualified State and local tax benefit

The term ''qualified state and local tax benefit'' means any reduction or rebate of a tax described in paragraph (1), (2), or (3) of section 164(a) provided by a State or political division thereof on account of services performed as a member of a qualified volunteer emergency response organization.

(2) Qualified payment

(A) In general

The term ''qualified payment'' means any payment (whether reimbursement or otherwise) provided by a State or political division thereof on account of the performance of services as a member of a qualified volunteer emergency response organization.

(B) Applicable dollar limitation

The amount determined under subparagraph (A) for any taxable year shall not exceed $30 multiplied by the number of months during such year that the taxpayer performs such services.

(3) Qualified volunteer emergency response organization

The term ''qualified volunteer emergency response organization'' means any volunteer organization—

(A) which is organized and operated to provide firefighting or emergency medical services for persons in the State or political subdivision, as the case may be, and

(B) which is required (by written agreement) by the State or political subdivision to furnish firefighting or emergency medical services in such State or political subdivision.

(d) Termination

This section shall not apply with respect to taxable years beginning after December 31, 2010.

(Added Pub. L. 110–142, §5(a), Dec. 20, 2007, 121 Stat. 1805.)

EFFECTIVE DATE

Pub. L. 110–142, § 5(c), Dec. 20, 2007, 121 Stat. 1806, provided that: ''The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 2007.''

§ 139C. COBRA premium assistance

In the case of an assistance eligible individual (as defined in section 3001 of title III of division B of the American Recovery and Reinvestment Act of 2009), gross income does not include any premium reduction provided under subsection (a) of such section.

(Added Pub. L. 111–5, div. B, title III, § 3001(a)(15)(A), Feb. 17, 2009, 123 Stat. 465; amended Pub. L. 111–144, § 3(b)(5)(B), Mar. 2, 2010, 124 Stat. 44.)

REFERENCES IN TEXT

Section 3001 of title III of division B of the American Recovery and Reinvestment Act of 2009, referred to in text, is section 3001 of Pub. L. 111–5, div. B, title III, Feb. 17, 2009, 123 Stat. 455, which is set out as a note under section 6432 of this title.

AMENDMENTS

2010—Pub. L. 111–144 substituted ''section 3001 of title III of division B of the American Recovery and Reinvestment Act of 2009'' for ''section 3002 of the Health Insurance Assistance for the Unemployed Act of 2009''.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–144 effective as if included in the provisions of section 3001 of Pub. L. 111–5 to which it relates, see section 3(c) of Pub. L. 111–144, set out as a note under section 6432 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after Feb. 17, 2009, see section 3001(a)(15)(C) of Pub. L. 111–5, set out as a Premium Assistance for COBRA Benefits note under section 6432 of this title.

§ 139D.[1] Free choice vouchers

Gross income shall not include the amount of any free choice voucher provided by an employer under section 10108 of the Patient Protection and Affordable Care Act to the extent that the amount of such voucher does not exceed the amount paid for a qualified health plan (as defined in section 1301 of such Act) by the taxpayer.

(Added Pub. L. 111–148, title X, § 10108(f)(1), Mar. 23, 2010, 124 Stat. 913.)

REFERENCES IN TEXT

Section 10108 of the Patient Protection and Affordable Care Act, referred to in text, is section 10108 of Pub. L. 111–148, which enacted this section and section 18101 of Title 42, The Public Health and Welfare, amended sections 36B, 162, 4980H, 6056, and 6724 of this title and section 218b of Title 29, Labor, and enacted provisions set out as notes under this section and sections 36B, 162, 4980H, and 6056 of this title. For complete classification of section 10108 to the Code, see Tables.

Section 1301 of the Patient Protection and Affordable Care Act, referred to in text, is classified to section 18021 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Pub. L. 111–148, title X, § 10108(f)(3), Mar. 23, 2010, 124 Stat. 913, provided that: ''The amendments made by this subsection [enacting this section] shall apply to vouchers provided after December 31, 2013.''

[1] Another section 139D is set out following this section.

§ 139D.[1] Indian health care benefits

(a) General rule

Except as otherwise provided in this section, gross income does not include the value of any qualified Indian health care benefit.

(b) Qualified Indian health care benefit

For purposes of this section, the term ''qualified Indian health care benefit'' means—

(1) any health service or benefit provided or purchased, directly or indirectly, by the Indian Health Service through a grant to or a contract or compact with an Indian tribe or tribal organization, or through a third-party program funded by the Indian Health Service,

(2) medical care provided or purchased by, or amounts to reimburse for such medical care provided by, an Indian tribe or tribal organization for, or to, a member of an Indian tribe, including a spouse or dependent of such a member,

(3) coverage under accident or health insurance (or an arrangement having the effect of accident or health insurance), or an accident or health plan, provided by an Indian tribe or tribal organization for medical care to a member of an Indian tribe, include a spouse or dependent of such a member, and

(4) any other medical care provided by an Indian tribe or tribal organization that supplements, replaces, or substitutes for a program or service relating to medical care provided by the Federal government to Indian tribes or members of such a tribe.

(c) Definitions

For purposes of this section—

(1) Indian tribe

The term ''Indian tribe'' has the meaning given such term by section 45A(c)(6).

(2) Tribal organization

The term ''tribal organization'' has the meaning given such term by section 4(*l*) of the Indian Self-Determination and Education Assistance Act.

(3) Medical care

The term ''medical care'' has the same meaning as when used in section 213.

(4) Accident or health insurance; accident or health plan

The terms ''accident or health insurance'' and ''accident or health plan'' have the same meaning as when used in section 105.

(5) Dependent

The term ''dependent'' has the meaning given such term by section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof.

(d) Denial of double benefit

Subsection (a) shall not apply to the amount of any qualified Indian health care benefit which is not includible in gross income of the bene-

[1] Another section 139D is set out preceding this section.

ficiary of such benefit under any other provision of this chapter, or to the amount of any such benefit for which a deduction is allowed to such beneficiary under any other provision of this chapter.

(Pub. L. 111–148, title IX, §9021(a), Mar. 23, 2010, 124 Stat. 873.)

REFERENCES IN TEXT

Section 4(*l*) of the Indian Self-Determination and Education Assistance Act, referred to in subsec. (c)(2), is classified to section 450b(*l*) of Title 25, Indians.

EFFECTIVE DATE

Pub. L. 111–148, title IX, §9021(c), Mar. 23, 2010, 124 Stat. 874, provided that: ''The amendments made by this section [enacting this section] shall apply to benefits and coverage provided after the date of the enactment of this Act [Mar. 23, 2010].''

NO INFERENCE WITH RESPECT TO EXCLUSION FROM GROSS INCOME OF CERTAIN BENEFITS

Pub. L. 111–148, title IX, §9021(d), Mar. 23, 2010, 124 Stat. 874, provided that: ''Nothing in the amendments made by this section [enacting this section] shall be construed to create an inference with respect to the exclusion from gross income of—

''(1) benefits provided by an Indian tribe or tribal organization that are not within the scope of this section, and

''(2) benefits provided prior to the date of the enactment of this Act [Mar. 23, 2010].''

§ 140. Cross references to other Acts

(a) For exemption of—

(1) Allowances and expenditures to meet losses sustained by persons serving the United States abroad, due to appreciation of foreign currencies, see section 5943 of title 5, United States Code.

(2) Amounts credited to the Maritime Administration under section 9(b)(6) of the Merchant Ship Sales Act of 1946, see section 9(c)(1) of that Act (50 U.S.C. App. 1742).[1]

(3) Benefits under laws administered by the Veterans' Administration, see section 5301 of title 38, United States Code.

(4) Earnings of ship contractors deposited in special reserve funds, see section 53507 of title 46, United States Code.

(5) Income derived from Federal Reserve banks, including capital stock and surplus, see section 7 of the Federal Reserve Act (12 U.S.C. 531).

(6) Special pensions of persons on Army and Navy medal of honor roll, see 38 U.S.C. 1562(a)–(c).

(b) For extension of military income tax-exemption benefits to commissioned officers of Public Health Service in certain circumstances, see section 212 of the Public Health Service Act (42 U.S.C. 213).

(Aug. 16, 1954, ch. 736, 68A Stat. 39, §121; Aug. 1, 1956, ch. 837, title V, §501(t), 70 Stat. 885; Pub. L. 85–56, title XXII, §2201(25), June 17, 1957, 71 Stat. 160; Pub. L. 85–857, §13(t), Sept. 2, 1958, 72 Stat. 1266; renumbered §122, Pub. L. 88–272, title II, §206(a), Feb. 26, 1964, 78 Stat. 38; renumbered §123, Pub. L. 89–365, §1(a)(1), Mar. 8, 1966, 80 Stat. 32; renumbered §124, Pub. L. 91–172, title IX, §901(a), Dec. 30, 1969, 83 Stat. 709; amended Pub. L. 94–455, title XIX, §1901(a)(21), Oct. 4, 1976, 90 Stat. 1766; renumbered §125, Pub. L. 95–618, title II, §242(a), Nov. 9, 1978, 92 Stat. 3193; renumbered §126, renumbered §127, renumbered §128, Pub. L. 95–600, title I, §§134(a), 164(a), title V, 543(a), Nov. 6, 1978, 92 Stat. 2783, 2811, 2888; amended Pub. L. 96–222, title I, §101(a)(3), Apr. 1, 1980, 94 Stat. 195; Pub. L. 96–589, §6(i)(1), Dec. 24, 1980, 94 Stat. 3410; renumbered §129, renumbered §130, Pub. L. 97–34, title I, §124(e)(1), title III, §301(a), Aug. 13, 1981, 95 Stat. 198, 267; renumbered §131, renumbered §132, Pub. L. 97–473, title I, §§101(b)(1), 102(a), Jan. 14, 1983, 96 Stat. 2605, 2606; renumbered §133, renumbered §134 and amended Pub. L. 98–369, div. A, title V, §§531(a)(1), 543(a), div. B, title VI, §2661(*o*)(2), July 18, 1984, 98 Stat. 877, 891, 1159; renumbered §135, Pub. L. 99–514, title XI, §1168(a), Oct. 22, 1986, 100 Stat. 2512; renumbered §136, Pub. L. 100–647, title VI, §6009(a), Nov. 10, 1988, 102 Stat. 3688; Pub. L. 102–40, title IV, §402(d)(2), May 7, 1991, 105 Stat. 239; Pub. L. 102–83, §5(c)(2), Aug. 6, 1991, 105 Stat. 406; renumbered §137, Pub. L. 102–486, title XIX, §1912(a), Oct. 24, 1992, 106 Stat. 3014; renumbered §138, Pub. L. 104–188, title I, §1807(b), Aug. 20, 1996, 110 Stat. 1901; renumbered §139, Pub. L. 105–33, title IV, §4006(a), Aug. 5, 1997, 111 Stat. 331; renumbered §140, Pub. L. 107–134, title I, §111(a), Jan. 23, 2002, 115 Stat. 2432; Pub. L. 109–304, §17(e)(2), Oct. 6, 2006, 120 Stat. 1708.)

REFERENCES IN TEXT

Section 9 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1742), referred to in subsec. (a)(2), was repealed by Pub. L. 94–412, title V, §501(g), Sept. 14, 1976, 90 Stat. 1258.

AMENDMENTS

2006—Subsec. (a)(4). Pub. L. 109–304 substituted ''section 53507 of title 46, United States Code'' for ''section 607(d) of the Merchant Marine Act, 1936 (46 U.S.C. 1177)''.

2002—Pub. L. 107–134 renumbered section 139 of this title as this section.

1997—Pub. L. 105–33 renumbered section 138 of this title as this section.

1996—Pub. L. 104–188 renumbered section 137 of this title as this section.

1992—Pub. L. 102–486 renumbered section 136 of this title as this section.

1991—Subsec. (a)(3). Pub. L. 102–40 substituted ''5301'' for ''3101''.

Subsec. (a)(6). Pub. L. 102–83 substituted ''1562(a)–(c)'' for ''562(a)–(c)''.

1988—Pub. L. 100–647 renumbered section 135 of this title as this section.

1986—Pub. L. 99–514 renumbered section 134 of this title as this section.

1984—Pub. L. 98–369, §§531(a)(1), 543(a), successively renumbered sections 132 and 133 of this title as this section.

Subsec. (a)(6) to (8). Pub. L. 98–369, §2661(*o*)(2), struck out par. (6) relating to railroad retirement annuities and pensions, struck out par. (7) relating to railroad unemployment benefits, and redesignated par. (8) as (6).

1983—Pub. L. 97–473 successively renumbered sections 130 and 131 of this title as this section.

1981—Pub. L. 97–34 successively renumbered sections 128 and 129 of this title as this section.

1980—Subsec. (a). Pub. L. 96–589 redesignated pars. (2) to (9) as (1) to (8), respectively. Former par. (1), relating to section 1079 of title 11 for adjustments of indebtedness under wage earners' plans, was struck out.

Subsec. (a)(8). Pub. L. 96–222 substituted ''benefits which are not includible in gross income under section 85,'' for ''benefits, see''.

1978—Pub. L. 95–600 successively renumbered sections 125, 126, and 127 of this title as this section.

Pub. L. 95–618 renumbered section 124 of this title as this section.

1976—Subsec. (a). Pub. L. 94–455, §1901(a)(21), struck out pars. (4), (5), (6), (9), (10), (11), (12), (13), and (17) re-

[1] See References in Text note below.

lating to: benefits under World War Adjustment Compensation Act; benefits under World War Veteran's Act 1924; dividends and interest derived from certain preferred stock by Reconstruction Finance Corporation; income derived from Ogdensburg bridge; income derived from Owensburg bridge and ferries; income from Saint Clair River bridge and ferries; leave compensation payments under section 6 of Armed Forces Leave Act of 1946; mustering-out payments under Mustering-Out Payment Act of 1944; and gain derived from sale or other disposition of Treasury Bills issued after June 17, 1930, under the Second Liberty Bond Act, respectively, renumbered pars. (7), (8), (14), (15), (16), and (18) as pars. (5), (6), (7), (8), (9), and (4), respectively, struck out references to Statutes at Large, and updated cross references to the United States Code.

Subsec. (b). Pub. L. 94–455, § 1901(a)(21), struck out ''58 Stat. 689;'' after ''Health Service Act''.

1969—Pub. L. 91–172 renumbered section 123 of this title as this section.

1966—Pub. L. 89–365 renumbered section 122 of this title as this section.

1964—Pub. L. 88–272 renumbered section 121 of this title as this section.

1958—Subsec. (a)(18). Pub. L. 85–857 substituted ''section 3101 of title 38, United States Code'' for ''section 1001 of the Veterans' Benefits Act of 1957''.

1957—Subsec. (a)(18). Pub. L. 85–56 substituted provisions relating to benefits under laws administered by Veterans' Administration, for provisions which related to dependency and indemnity compensation.

1956—Subsec. (a). Act Aug. 1, 1956, added par. (18) relating to dependency and indemnity compensation.

CHANGE OF NAME

Reference to Veterans' Administration deemed to refer to Department of Veterans Affairs pursuant to section 10 of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2661(*o*)(2) of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–589 effective Oct. 1, 1979, but not to apply to proceedings under Title 11 commenced before Oct. 1, 1979, see section 7 of Pub. L. 96–589, set out as a note under section 108 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

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

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–857 effective Jan. 1, 1959, see section 2 of Pub. L. 85–857, set out as an Effective Date note preceding Part I of Title 38, Veterans' Benefits.

PART IV—TAX EXEMPTION REQUIREMENTS FOR STATE AND LOCAL BONDS

Subpart

A. Private activity bonds.
B. Requirements applicable to all State and local bonds.
C. Definitions and special rules.

AMENDMENTS

1986—Pub. L. 99–514, title XIII, § 1301(b), Oct. 22, 1986, 100 Stat. 2603, in amending part IV generally, substituted ''TAX EXEMPTION REQUIREMENTS FOR STATE AND LOCAL BONDS'' for ''DETERMINATION OF MARITAL STATUS'' as heading for part IV and added part analysis.

1977—Pub. L. 95–30, title I, § 101(e)(2), May 23, 1977, 91 Stat. 134, substituted ''DETERMINATION OF MARITAL STATUS'' for ''STANDARD DEDUCTION FOR INDIVIDUALS'' as heading for part IV.

SUBPART A—PRIVATE ACTIVITY BONDS

Sec.

141. Private activity bond; qualified bond.
142. Exempt facility bond.
143. Mortgage revenue bonds: qualified mortgage and qualified veterans' mortgage bond.[1]
144. Qualified small issue bond; qualified student loan bond; qualified redevelopment bond.
145. Qualified 501(c)(3) bond.
146. Volume cap.
147. Other requirements applicable to certain private activity bonds.

AMENDMENTS

1986—Pub. L. 99–514, title XIII, § 1301(b), Oct. 22, 1986, 100 Stat. 2603, in amending part IV generally, added subpart heading and analysis and struck out item 143 ''Determination of marital status''.

1977—Pub. L. 95–30, title I, § 101(e)(2), May 23, 1977, 91 Stat. 134, struck out items 141 ''Standard deduction'', 142 ''Individuals not eligible for standard deduction'', 144 ''Election of standard deduction'', and 145 ''Cross reference''.

§ 141. Private activity bond; qualified bond

(a) Private activity bond

For purposes of this title, the term ''private activity bond'' means any bond issued as part of an issue—

(1) which meets—

(A) the private business use test of paragraph (1) of subsection (b), and

(B) the private security or payment test of paragraph (2) of subsection (b), or

(2) which meets the private loan financing test of subsection (c).

(b) Private business tests

(1) Private business use test

Except as otherwise provided in this subsection, an issue meets the test of this paragraph if more than 10 percent of the proceeds of the issue are to be used for any private business use.

(2) Private security or payment test

Except as otherwise provided in this subsection, an issue meets the test of this paragraph if the payment of the principal of, or the interest on, more than 10 percent of the proceeds of such issue is (under the terms of such issue or any underlying arrangement) directly or indirectly—

(A) secured by any interest in—

(i) property used or to be used for a private business use, or

(ii) payments in respect of such property, or

[1] So in original. Does not conform to section catchline.

(B) to be derived from payments (whether or not to the issuer) in respect of property, or borrowed money, used or to be used for a private business use.

(3) 5 percent test for private business use not related or disproportionate to government use financed by the issue

(A) In general

An issue shall be treated as meeting the tests of paragraphs (1) and (2) if such tests would be met if such paragraphs were applied—

(i) by substituting ''5 percent'' for ''10 percent'' each place it appears, and

(ii) by taking into account only—

(I) the proceeds of the issue which are to be used for any private business use which is not related to any government use of such proceeds,

(II) the disproportionate related business use proceeds of the issue, and

(III) payments, property, and borrowed money with respect to any use of proceeds described in subclause (I) or (II).

(B) Disproportionate related business use proceeds

For purposes of subparagraph (A), the disproportionate related business use proceeds of an issue is an amount equal to the aggregate of the excesses (determined under the following sentence) for each private business use of the proceeds of an issue which is related to a government use of such proceeds. The excess determined under this sentence is the excess of—

(i) the proceeds of the issue which are to be used for the private business use, over

(ii) the proceeds of the issue which are to be used for the government use to which such private business use relates.

(4) Lower limitation for certain output facilities

An issue 5 percent or more of the proceeds of which are to be used with respect to any output facility (other than a facility for the furnishing of water) shall be treated as meeting the tests of paragraphs (1) and (2) if the nonqualified amount with respect to such issue exceeds the excess of—

(A) $15,000,000, over

(B) the aggregate nonqualified amounts with respect to all prior tax-exempt issues 5 percent or more of the proceeds of which are or will be used with respect to such facility (or any other facility which is part of the same project).

There shall not be taken into account under subparagraph (B) any bond which is not outstanding at the time of the later issue or which is to be redeemed (other than in an advance refunding) from the net proceeds of the later issue.

(5) Coordination with volume cap where nonqualified amount exceeds $15,000,000

If the nonqualified amount with respect to an issue—

(A) exceeds $15,000,000, but

(B) does not exceed the amount which would cause a bond which is part of such issue to be treated as a private activity bond without regard to this paragraph,

such bond shall nonetheless be treated as a private activity bond unless the issuer allocates a portion of its volume cap under section 146 to such issue in an amount equal to the excess of such nonqualified amount over $15,000,000.

(6) Private business use defined

(A) In general

For purposes of this subsection, the term ''private business use'' means use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit. For purposes of the preceding sentence, use as a member of the general public shall not be taken into account.

(B) Clarification of trade or business

For purposes of the 1st sentence of subparagraph (A), any activity carried on by a person other than a natural person shall be treated as a trade or business.

(7) Government use

The term ''government use'' means any use other than a private business use.

(8) Nonqualified amount

For purposes of this subsection, the term ''nonqualified amount'' means, with respect to an issue, the lesser of—

(A) the proceeds of such issue which are to be used for any private business use, or

(B) the proceeds of such issue with respect to which there are payments (or property or borrowed money) described in paragraph (2).

(9) Exception for qualified 501(c)(3) bonds

There shall not be taken into account under this subsection or subsection (c) the portion of the proceeds of an issue which (if issued as a separate issue) would be treated as a qualified 501(c)(3) bond if the issuer elects to treat such portion as a qualified 501(c)(3) bond.

(c) Private loan financing test

(1) In general

An issue meets the test of this subsection if the amount of the proceeds of the issue which are to be used (directly or indirectly) to make or finance loans (other than loans described in paragraph (2)) to persons other than governmental units exceeds the lesser of—

(A) 5 percent of such proceeds, or

(B) $5,000,000.

(2) Exception for tax assessment, etc., loans

For purposes of paragraph (1), a loan is described in this paragraph if such loan—

(A) enables the borrower to finance any governmental tax or assessment of general application for a specific essential governmental function,

(B) is a nonpurpose investment (within the meaning of section 148(f)(6)(A)), or

(C) is a qualified natural gas supply contract (as defined in section 148(b)(4)).

(d) Certain issues used to acquire nongovernmental output property treated as private activity bonds

(1) In general

For purposes of this title, the term ''private activity bond'' includes any bond issued as

part of an issue if the amount of the proceeds of the issue which are to be used (directly or indirectly) for the acquisition by a governmental unit of nongovernmental output property exceeds the lesser of—

(A) 5 percent of such proceeds, or

(B) $5,000,000.

(2) Nongovernmental output property

Except as otherwise provided in this subsection, for purposes of paragraph (1), the term ''nongovernmental output property'' means any property (or interest therein) which before such acquisition was used (or held for use) by a person other than a governmental unit in connection with an output facility (within the meaning of subsection (b)(4)) (other than a facility for the furnishing of water). For purposes of the preceding sentence, use (or the holding for use) before October 14, 1987, shall not be taken into account.

(3) Exception for property acquired to provide output to certain areas

For purposes of paragraph (1)—

(A) In general

The term ''nongovernmental output property'' shall not include any property which is to be used in connection with an output facility 95 percent or more of the output of which will be consumed in—

(i) a qualified service area of the governmental unit acquiring the property, or

(ii) a qualified annexed area of such unit.

(B) Definitions

For purposes of subparagraph (A)—

(i) Qualified service area

The term ''qualified service area'' means, with respect to the governmental unit acquiring the property, any area throughout which such unit provided (at all times during the 10-year period ending on the date such property is acquired by such unit) output of the same type as the output to be provided by such property. For purposes of the preceding sentence, the period before October 14, 1987, shall not be taken into account.

(ii) Qualified annexed area

The term ''qualified annexed area'' means, with respect to the governmental unit acquiring the property, any area if—

(I) such area is contiguous to, and annexed for general governmental purposes into, a qualified service area of such unit,

(II) output from such property is made available to all members of the general public in the annexed area, and

(III) the annexed area is not greater than 10 percent of such qualified service area.

(C) Limitation on size of annexed area not to apply where output capacity does not increase by more than 10 percent

Subclause (III) of subparagraph (B)(ii) shall not apply to an annexation of an area by a governmental unit if the output capacity of the property acquired in connection with the annexation, when added to the output capacity of all other property which is not treated as nongovernmental output property by reason of subparagraph (A)(ii) with respect to such annexed area, does not exceed 10 percent of the output capacity of the property providing output of the same type to the qualified service area into which it is annexed.

(D) Rules for determining relative size, etc.

For purposes of subparagraphs (B)(ii) and (C)—

(i) The size of any qualified service area and the output capacity of property serving such area shall be determined as the close of the calendar year preceding the calendar year in which the acquisition of nongovernmental output property or the annexation occurs.

(ii) A qualified annexed area shall be treated as part of the qualified service area into which it is annexed for purposes of determining whether any other area annexed in a later year is a qualified annexed area.

(4) Exception for property converted to non-output use

For purposes of paragraph (1)—

(A) In general

The term ''nongovernmental output property'' shall not include any property which is to be converted to a use not in connection with an output facility.

(B) Exception

Subparagraph (A) shall not apply to any property which is part of the output function of a nuclear power facility.

(5) Special rules

In the case of a bond which is a private activity bond solely by reason of this subsection—

(A) subsections (c) and (d) of section 147 (relating to limitations on acquisition of land and existing property) shall not apply, and

(B) paragraph (8) of section 142(a) shall be applied as if it did not contain ''local''.

(6) Treatment of joint action agencies

With respect to nongovernmental output property acquired by a joint action agency the members of which are governmental units, this subsection shall be applied at the member level by treating each member as acquiring its proportionate share of such property.

(7) Exception for qualified electric and natural gas supply contracts

The term ''nongovernmental output property'' shall not include any contract for the prepayment of electricity or natural gas which is not investment property under section 148(b)(2).

(e) Qualified bond

For purposes of this part, the term ''qualified bond'' means any private activity bond if—

(1) In general

Such bond is—

(A) an exempt facility bond,
(B) a qualified mortgage bond,
(C) a qualified veterans' mortgage bond,
(D) a qualified small issue bond,
(E) a qualified student loan bond,
(F) a qualified redevelopment bond, or
(G) a qualified 501(c)(3) bond.

(2) Volume cap

Such bond is issued as part of an issue which meets the applicable requirements of section 146, and[1]

(3) Other requirements

Such bond meets the applicable requirements of each subsection of section 147.

(Added Pub. L. 99–514, title XIII, §1301(b), Oct. 22, 1986, 100 Stat. 2603; amended Pub. L. 100–203, title X, §10631(a), Dec. 22, 1987, 101 Stat. 1330–453; Pub. L. 100–647, title I, §1013(a)(38), Nov. 10, 1988, 102 Stat. 3544; Pub. L. 109–58, title XIII, §1327(b), (c), Aug. 8, 2005, 119 Stat. 1019.)

PRIOR PROVISIONS

A prior section 141, acts Aug. 16, 1954, ch. 736, 68A Stat. 40; Feb. 26, 1964, Pub. L. 88–272, title I, §112(a), 78 Stat. 23; Dec. 30, 1969, Pub. L. 91–172, title VIII, §802(a), (c)(4), (e), 83 Stat. 676, 678; Dec. 10, 1971, Pub. L. 92–178, title II, §§202, 203(a)–(c), title III, §301(a), 85 Stat. 511, 520; Mar. 29, 1975, Pub. L. 94–12, title II, §§201(a), 202(a), 89 Stat. 28, 29; Dec. 23, 1975, Pub. L. 94–164, §2(a)(1), (b)(1), 89 Stat. 970, 971; Oct. 4, 1976, Pub. L. 94–455, title IV, §401(b)(1), (2), title XIX, §1906(b)(13)(A), 90 Stat. 1556, 1834, provided for standard deduction, prior to repeal by Pub. L. 95–30, title I, §101(d)(1), May 23, 1977, 91 Stat. 133, applicable to taxable years beginning after Dec. 31, 1976.

AMENDMENTS

2005—Subsec. (c)(2)(C). Pub. L. 109–58, §1327(b), added subpar. (C).

Subsec. (d)(7). Pub. L. 109–58, §1327(c), added par. (7).

1988—Subsec. (b)(5)(B). Pub. L. 100–647 substituted ''cause a bond'' for ''cause bond''.

1987—Subsecs. (d), (e). Pub. L. 100–203 added subsec. (d) and redesignated former subsec. (d) as (e).

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title XIII, §1327(d), Aug. 8, 2005, 119 Stat. 1019, provided that: ''The amendments made by this section [amending this section and section 148 of this title] shall apply to obligations issued after the date of the enactment of this Act [Aug. 8, 2005].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10631(c) of Pub. L. 100–203 provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 142 and 146 of this title] shall apply to bonds issued after October 13, 1987 (other than bonds issued to refund bonds issued on or before such date).

''(2) BINDING AGREEMENTS.—The amendments made by this section shall not apply to bonds (other than advance refunding bonds) with respect to a facility acquired after October 13, 1987, pursuant to a binding contract entered into on or before such date.

''(3) TRANSITIONAL RULE.—The amendments made by this section shall not apply to bonds issued—

''(A) after October 13, 1987, by an authority created by a statute—

''(i) approved by the State Governor on July 24, 1986, and

''(ii) sections 1 through 10 of which became effective on January 15, 1987, and

''(B) to provide facilities serving the area specified in such statute on the date of its enactment.''

EFFECTIVE DATE; TRANSITIONAL RULES

Subtitle B (§§1311–1318) of title XIII of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1013(b), (c)(1), (2)(A), (3)–(11)(D), (13), (14)(A), (d), (e)(1), (2)(A), (f)(1)(A), (2)–(7)(A), (8), (9), (11), (g), (h), Nov. 10, 1988, 102 Stat. 3545–3550, 3558; Pub. L. 101–239, title VII, §7831(e), Dec. 19, 1989, 103 Stat. 2427, provided that:

''SEC. 1311. GENERAL EFFECTIVE DATES.

''(a) IN GENERAL.—Except as otherwise provided in this subtitle, the amendments made by section 1301 [enacting sections 141 to 150 and 7703 of this title, amending sections 2, 22, 25, 32, 86, 103, 105, 152, 153, 163, 194, 269A, 414, 879, 1398, 3402, 4701, 4940, 4942, 4988, 6362, 6652, and 7871 of this title, repealing section 103A of this title, omitting former section 143 of this title, enacting provisions set out as notes under sections 141 and 148 of this title, and amending provisions set out as a note under section 103A of this title] shall apply to bonds issued after August 15, 1986.

''(b) SECTION 1301(f).—

''(1) INCREASE IN TRADE-IN RATE.—The amendments made by paragraph (1) of section 1301(f) [amending section 25 of this title] shall apply to nonissued bond amounts elected after August 15, 1986.

''(2) CERTIFICATES.—The amendments made by paragraph (2) of section 1301(f) [amending section 25 of this title] shall apply to certificates issued with respect to non-issued bond amounts elected after August 15, 1986.

''(c) CHANGES IN USE, ETC., OF FACILITIES FINANCED WITH PRIVATE ACTIVITY BONDS.—Subsection (b) of section 150 of the 1986 Code shall apply to changes in use (and ownership) after August 15, 1986, but only with respect to financing (including refinancings) provided after such date.

''(d) PUBLIC APPROVAL AND INFORMATION REPORTING.—Sections 147(f) and 149(e) of the 1986 Code shall apply to bonds issued after December 31, 1986.

''(e) REBATE REQUIREMENT FOR QUALIFIED SCHOLARSHIP FUNDING BONDS.—Section 150(d) of the 1986 Code shall apply to payments made after August 15, 1986.

''(f) SECTION 1303.—The amendments made by section 1303 [amending sections 172, 1016, and 3402 of this title and repealing sections 1391 to 1397 and 6039B of this title] shall take effect on the date of the enactment of this Act [Oct. 22, 1986].

''SEC. 1312. TRANSITIONAL RULES FOR CONSTRUCTION OR BINDING AGREEMENTS AND CERTAIN GOVERNMENT BONDS ISSUED AFTER AUGUST 15, 1986.

''(a) EXCEPTION FOR CONSTRUCTION OR BINDING AGREEMENTS.—

''(1) IN GENERAL.—The amendments made by section 1301 [for classification see section 1311(a) of this note] shall not apply to bonds (other than a refunding bond) with respect to a facility—

''(A)(i) the original use of which commences with the taxpayer, and the construction, reconstruction, or rehabilitation of which began before September 26, 1985, and was completed on or after such date,

''(ii) the original use of which begins with the taxpayer and with respect to which a binding contract to incur significant expenditures for construction, reconstruction, or rehabilitation was entered into before September 26, 1985, and some of such expenditures are incurred on or after such date, or

''(iii) acquired on or after September 26, 1985, pursuant to a binding contract entered into before such date, and

[1] So in original. Probably should end with a period after ''146''.

''(B) described in an inducement resolution or other comparable preliminary approval adopted by an issuing authority (or by a voter referendum) before September 26, 1985.

''(2) SIGNIFICANT EXPENDITURES.—For purposes of paragraph (1)(A), the term 'significant expenditures' means expenditures greater than 10 percent of the reasonably anticipated cost of the construction, reconstruction, or rehabilitation of the facility involved.

''(b) CERTAIN AMENDMENTS TO APPLY TO BONDS UNDER SUBSECTION (a) TRANSITIONAL RULE.—

''(1) IN GENERAL.—In the case of a bond issued after August 15, 1986, and to which subsection (a) of this section applies, the requirements of the following provisions shall be treated as included in section 103 and section 103A (as appropriate) of the 1954 Code:

''(A) The requirement that 95 percent or more of the net proceeds of an issue are to be used for a purpose described in section 103(b)(4) or (5) of such Code in order for section 103(b)(4) or (5) of such Code to apply, including the application of section 142(b)(2) of the 1986 Code (relating to limitation on office space).

''(B) The requirement that 95 percent or more of the net proceeds of an issue are to be used for a purpose described in section 103(b)(6)(A) of the 1954 Code in order for section 103(b)(6)(A) of such Code to apply.

''(C) The requirements of section 143 of the 1986 Code (relating to qualified mortgage bonds and qualified veterans' mortgage bonds) in order for section 103A(b)(2) of the 1954 Code to apply.

''(D) The requirements of section 144(a)(11) of the 1986 Code (relating to limitation on acquisition of depreciable farm property) in order for section 103(b)(6)(A) of the 1954 Code to apply.

''(E) The requirements of section 147(b) of the 1986 Code (relating to maturity may not exceed 120 percent of economic life).

''(F) The requirements of section 147(f) of the 1986 Code (relating to public approval required for private activity bonds).

''(G) The requirements of section 147(g) of the 1986 Code (relating to restriction on issuance costs financed by issue).

''(H) The requirements of section 148 of the 1986 Code (relating to arbitrage).

''(I) The requirements of section 149(e) of the 1986 Code (relating to information reporting).

''(J) The provisions of section 150(b) of the 1986 Code (relating to changes in use).

''(2) CERTAIN REQUIREMENTS APPLY ONLY TO BONDS ISSUED AFTER DECEMBER 31, 1986.—In the case of subparagraphs (F) and (I) of paragraphs (1), paragraph (1) shall be applied by substituting 'December 31, 1986' for 'August 15, 1986'.

''(3) APPLICATION OF VOLUME CAP.—Except as provided in section 1315, any bond to which this subsection applies shall be treated as a private activity bond for purposes of section 146 of the 1986 Code if such bond would have been taken into account under section 103(n) or 103A(g) of the 1954 Code (determined without regard to any carryforward election) were such bond issued before August 16, 1986.

''(4) APPLICATION OF PROVISIONS.—For purposes of applying the requirements referred to in any subparagraph of paragraph (1) or of subsection (a)(3) or (b)(3) of section 1313 to any bond, such bond shall be treated as described in the subparagraph of section 141(d)(1) of the 1986 Code to which the use of the proceeds of such bond most closely relates.

''(c) SPECIAL RULES FOR CERTAIN GOVERNMENT BONDS ISSUED AFTER AUGUST 15, 1986.—

''(1) IN GENERAL.—In the case of any bond described in paragraph (2)—

''(A) section 1311(a) and (c) and subsection (b) of this section shall be applied by substituting 'August 31, 1986' for 'August 15, 1986' each place it appears,

''(B) subsection (b)(1) shall be applied without regard to subparagraphs (F), (G), and (J), and

''(C) such bond shall not be treated as a private activity bond for purposes of applying the requirements referred to in subparagraphs (H) and (I) of subsection (b)(1).

''(2) BOND DESCRIBED.—A bond is described in this paragraph if such bond is not—

''(A) an industrial development bond, as defined in section 103(b)(2) of the 1954 Code but determined—

''(i) by inserting 'directly or indirectly' after 'is' in the material preceding clause (i) of subparagraph (B) thereof, and

''(ii) without regard to subparagraph (B) of section 103(b)(3) of such Code,

''(B) a mortgage subsidy bond (as defined in section 103A(b)(1) of such Code, without regard to any exception from such definition), or

''(C) a private loan bond (as defined in section 103(*o*)(2)(A) of such Code, without regard to any exception from such definition other than section 103(*o*)(2)(C) of such Code).

''(d) ELECTION OUT.—This section shall not apply to any issue with respect to which the issuer elects not to have this section apply.

''SEC. 1313. TRANSITIONAL RULES RELATING TO REFUNDINGS.

''(a) CERTAIN CURRENT REFUNDINGS.—

''(1) IN GENERAL.—Except as provided in paragraph (3), the amendments made by section 1301 [for classification see section 1311(a) of this note] shall not apply to any bond the proceeds of which are used exclusively to refund (other than to advance refund) a qualified bond (or a bond which is part of a series of refundings of a qualified bond) if—

''(A) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

''(B)(i) the average maturity of the issue of which the refunding bond is a part does not exceed 120 percent of the average reasonably expected economic life of the facilities being financed with the net proceeds of such issue (determined under section 147(b) of the 1986 Code), or

''(ii) the refunding bond has a maturity date not later than the date which is 17 years after the date on which the qualified bond was issued.

In the case of a qualified bond which was (when issued) a qualified mortgage bond or a qualified veterans' mortgage bond, subparagraph (B)(i) shall not apply and subparagraph (B)(ii) shall be applied by substituting '32 years' for '17 years'.

''(2) QUALIFIED BOND.—For purposes of paragraph (1), the term 'qualified bond' means any bond (other than a refunding bond)—

''(A) issued before August 16, 1986, or

''(B) issued after August 15, 1986, if section 1312(a) applies to such bond.

''(3) CERTAIN AMENDMENTS TO APPLY.—The following provisions of the 1986 Code shall be treated as included in section 103 and section 103A (as appropriate) of the 1954 Code and shall apply to refunding bonds described in paragraph (1):

''(A) The requirements of section 147(f) (relating to public approval required for private activity bonds) but only if the maturity date of the refunding bond is later than the maturity date of the refunded bond.

''(B) The requirements of section 147(g) (relating to restriction on issuance costs financed by issue).

''(C) The requirements of sections 143(g) and 148 (relating to arbitrage).

''(D) The requirements of section 149(e) (relating to information reporting).

''(E) The provisions of section 150(b) (relating to changes in use).

Subparagraphs (A) and (D) shall apply only if the refunding bond is issued after December 31, 1986. In the

case of a refunding bond described in paragraph (1) with respect to a qualified bond described in paragraph (2)(B), the requirements of section 1312(b)(1) which applied to such qualified bond shall be treated as specified in this paragraph with respect to such refunding bond.

''(4) SPECIAL RULES FOR CERTAIN GOVERNMENT BONDS ISSUED AFTER AUGUST 15, 1986.—In the case of any bond described in section 1312(c)(2)—

''(A) paragraph (2) of this subsection shall be applied by substituting 'August 31, 1986' for 'August 15, 1986' and by substituting 'September 1, 1986' for 'August 16, 1986',

''(B) paragraph (3) shall be applied without regard to subparagraphs (A), (B), and (E), and

''(C) such bond shall not be treated as a private activity bond for purposes of applying the requirements referred to in subparagraphs (C) and (D) of paragraph (3).

''(b) CERTAIN ADVANCE REFUNDINGS.—

''(1) IN GENERAL.—Except as provided in paragraph (3), the amendments made by section 1301 [for classification see section 1311(a) of this note] shall not apply to any bond the proceeds of which are used exclusively to advance refund a bond if—

''(A) the refunded bond is described in paragraph (2), and

''(B) the requirements of subsection (a)(1)(B) are met.

''(2) NON-IDB'S, ETC.—A bond is described in this paragraph if such bond is not described in subsection (b)(2) or (*o*)(2)(A) of section 103 of the 1954 Code and was issued (or was issued to refund a bond issued) before August 16, 1986. For purposes of the preceding sentence, the determination of whether a bond is described in such subsection (*o*)(2)(A) shall be made without regard to any exception other than section 103(*o*)(2)(C) of such Code.

''(3) CERTAIN AMENDMENTS TO APPLY.—The following provisions of the 1986 Code shall be treated as included in section 103 and section 103A (as appropriate) of the 1954 Code and shall apply to refunding bonds described in paragraph (1):

''(A) The requirements of section 147(f) (relating to public approval required for private activity bonds).

''(B) The requirements of section 147(g) (relating to restriction on issuance costs financed by issue).

''(C) The requirements of section 148 (relating to arbitrage), except that section 148(d)(3) shall not apply to proceeds of such bonds to be used to discharge the refunded bonds.

''(D) The requirements of paragraphs (3) and (4) of section 149(d) (relating to advance refundings).

''(E) The requirements of section 149(e) (relating to information reporting).

''(F) The provisions of section 150(b) (relating to changes in use).

''(G) Except as provided in the last sentence of subsection (c)(2) of this section, the requirements of section 145(b) (relating to $150,000,000 limitation on bonds other than hospital bonds).

Subparagraphs (A) and (E) shall apply only if the refunding bond is issued after December 31, 1986.

''(4) SPECIAL RULE FOR CERTAIN GOVERNMENT BONDS ISSUED AFTER AUGUST 15, 1986.—In the case of any bond described in section 1312(c)(2)—

''(A) paragraph (2) of this subsection shall be applied by substituting 'September 1, 1986' for 'August 16, 1986',

''(B) paragraph (3) shall be applied without regard to subparagraphs (A), (B), and (F), and

''(C) such bond shall not be treated as a private activity bond for purposes of applying the requirements referred to in subparagraphs (C) and (E).

''(5) CERTAIN REFUNDING BONDS SUBJECT TO VOLUME CAP.—Any refunding bond described in paragraph (1) the proceeds of which are used to refund a bond issued as part of an issue 5 percent or more of the net proceeds of which are or will be used to provide an output facility (within the meaning of section 141(b)(4) of the 1986 Code) shall be treated as a private activity bond for purposes of section 146 of the 1986 Code (to the extent of the nongovernmental use of such issue, under rules similar to the rules of section 146(m)(2) of such Code). For purposes of the preceding sentence, use by a 501(c)(3) organization with respect to its activities which do not constitute unrelated trades or businesses (determined by applying section 513(a) of the 1986 Code) shall not be taken into account.

''(c) TREATMENT OF CERTAIN REFUNDINGS OF CERTAIN IDB'S AND 501(c)(3) BONDS.—

''(1) $40,000,000 LIMIT FOR CERTAIN SMALL ISSUE BONDS.—Paragraph (10) of section 144(a) of the 1986 Code shall not apply to any bond (or series of bonds) the proceeds of which are used exclusively to refund a tax-exempt bond to which such paragraph and the corresponding provision of prior law did not apply if—

''(A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

''(B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

''(C) the net proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

For purposes of subparagraph (A), average maturity shall be determined in accordance with section 147(b)(2)(A) of the 1986 Code.

''(2) $150,000,000 LIMITATION FOR CERTAIN 501(c)(3) BONDS.—Subsection (b) of section 145 of the 1986 Code (relating to $150,000,000 limitation for nonhospital bonds) shall not apply to any bond (or series of bonds) the proceeds of which are used exclusively to refund a tax-exempt bond to which such subsection did not apply if—

''(A)(i) the average maturity of the issue of which the refunding bond is a part does not exceed 120 percent of the average reasonably expected economic life of the facilities being financed with the net proceeds of such issue (determined under section 147(b) of the 1986 Code), or

''(ii) the refunding bond has a maturity date not later than the later of the date which is 17 years after the date on which the qualified bond (as defined in subsection (a)(2)) was issued, and

''(B) the requirements of subparagraphs (B) and (C) of paragraph (1) are met with respect to the refunding bond.

Subsection (b) of section 145 of the 1986 Code shall not apply to the 1st advance refunding after March 14, 1986, of a bond issued before January 1, 1986.

''(3) APPLICATION TO LATER ISSUES.—Any bond to which section 144(a)(10) or 145(b) of the 1986 Code does not apply by reason of this section shall be taken into account in determining whether such section applies to any later issue.

''(d) MORTGAGE AND STUDENT LOAN TARGETING RULES TO APPLY TO LOANS MADE MORE THAN 3 YEARS AFTER THE DATE OF THE ORIGINAL ISSUE.—Subsections (a)(3) and (b)(3) shall be treated as including the requirements of subsections (e) and (f) of section 143 and paragraphs (3) and (4) of section 144(b) of the 1986 Code with respect to bonds the proceeds of which are used to finance loans made more than 3 years after the date of the issuance of the original bond.

''SEC. 1314. SPECIAL RULES WHICH OVERRIDE OTHER RULES IN THIS SUBTITLE.

''(a) ARBITRAGE RESTRICTION ON INVESTMENTS IN ANNUITIES.—In the case of a bond issued after September 25, 1985, section 103(c) of the 1954 Code shall be applied by treating the reference to securities in paragraph (2) thereof as including a reference to an annuity contract. The preceding sentence shall not apply to the first advance refunding after September 25, 1985, if a bond issued before September 26, 1985.

''(b) TEMPORARY PERIOD FOR ADVANCE REFUNDINGS.—In the case of a bond issued after December 31, 1985, to advance refund a bond, the initial temporary period under section 103(c) of the 1954 Code with respect to the proceeds of the refunding bond shall end not later than 30 days after the date of issue of the refunding bond.

''(c) DETERMINATION OF YIELD.—In the case of a bond issued after December 31, 1985, for purposes of section 103(c) of the 1954 Code, the yield on an issue shall be determined on the basis of the issue price (within the meaning of sections 1273 and 1274 of the 1986 Code).

''(d) ARBITRAGE REBATE REQUIREMENT.—

''(1) IN GENERAL.—Except as otherwise provided in this subsection, in the case of a bond issued after December 31, 1985, section 103 of the 1954 Code shall be treated as including the requirements of section 148(f) of the 1986 Code in order for section 103(a) of the 1954 Code to apply.

''(2) GOVERNMENT BONDS.—In the case of a bond described in section 1312(c)(2) (and not described in paragraph (3) of this subsection), paragraph (1) shall be applied by substituting 'August 31, 1986' for 'December 31, 1985'.

''(3) CERTAIN POOLS.—

''(A) IN GENERAL.—In the case of a bond described in section 1312(c)(2) and issued as part of an issue described in subparagraph (B), (C), (D), or (E), paragraph (1) shall be applied by substituting '3 p.m. E.D.T., July 17, 1986' for 'December 31, 1985'. Such a bond shall not be treated as a private activity bond for purposes of applying section 148(f) of the 1986 Code.

''(B) LOANS TO UNRELATED GOVERNMENTAL UNITS.—An issue is described in this subparagraph if any portion of the proceeds of the issue is to be used to make or finance loans to any governmental unit other than any governmental unit which is subordinate to the issuer and the jurisdiction of which is within—

''(i) the jurisdiction of the issuer, or

''(ii) the jurisdiction of the governmental unit on behalf of which such issuer issued the issue.

''(C) LESS THAN 75 PERCENT OF PROJECTS IDENTIFIED.—An issue is described in this subparagraph if less than 75 percent of the proceeds of the issue is to be used to make or finance loans to initial borrowers to finance projects identified (with specificity) by the issuer, on or before the date of issuance of the issue, as projects to be financed with the proceeds of the issue.

''(D) LESS THAN 25 PERCENT OF FUNDS COMMITTED TO BE BORROWED.—An issue is described in this subparagraph if, on or before the date of issuance of the issue, commitments have not been entered into by initial borrowers to borrow at least 25 percent of the proceeds of the issue.

''(E) CERTAIN LONG MATURITY ISSUES.—An issue is described in this subparagraph if—

''(i) the maturity date of any bond issued as part of such issue exceeds 30 years, and

''(ii) any principal payment on any loan made or financed by the proceeds of the issue is to be used to make or finance additional loans.

''(F) SPECIAL RULES.—

''(i) EXCEPTION FROM SUBPARAGRAPHS (C) AND (D) WHERE SIMILAR POOLS ISSUED BY ISSUER.—An issue shall not be treated as described in subparagraph (C) or (D) with respect to any issue to make or finance loans to governmental units if—

''(I) the issuer, before 1986, issued 1 or more similar issues to make or finance loans to governmental units, and

''(II) the aggregate face amount of such issues issued during 1986 does not exceed 250 percent of the average of the annual aggregate face amounts of such similar issues issued during 1983, 1984, or 1985.

''(ii) DETERMINATION OF ISSUANCE.—For purposes of subparagraph (A), an issue shall not be treated as issued until—

''(I) the bonds issued as part of such issue are offered to the public (pursuant to final offering materials), and

''(II) at least 25 percent of such bonds is sold to the public.

For purposes of the preceding sentence, the sale of a bond to a securities firm, broker, or other person acting in the capacity of an underwriter or wholesaler shall not be treated as a sale to the public.

''(e) INFORMATION REPORTING.—In the case of a bond issued after December 31, 1986, nothing in section 103(a) of the 1986 Code or any other provision of law shall be construed to provide an exemption from Federal income tax for interest on any bond unless such bond satisfies the requirements of section 149(e) of the 1986 Code. A bond described in section 1312(c)(2) shall not be treated as a private activity bond for purposes of applying such requirements.

''(f) ABUSIVE TRANSACTION LIMITATION ON ADVANCE REFUNDINGS TO APPLY.—In the case of a bond issued after August 31, 1986, nothing in section 103(a) of the 1986 Code or any other provision of law shall be construed to provide an exemption from Federal income tax for interest on any bond if the issue of which such bond is a part is described in paragraph (4) of section 149(d) of the 1986 Code (relating to abusive transactions).

''(g) TERMINATION OF MORTGAGE BOND POLICY STATEMENT REQUIREMENT.—Paragraph (5) of section 103A(j) of the 1954 Code (relating to policy statement) shall not apply to any bond issued after August 15, 1986, and shall not apply to nonissued bond amounts elected under section 25 of the 1986 Code after such date.

''(h) ARBITRAGE RESTRICTION ON INVESTMENTS IN INVESTMENT-TYPE PROPERTY.—In the case of a bond issued before August 16, 1986 (September 1, 1986 in the case of a bond described in section 1312(c)(2)), section 103(c) of the 1954 Code shall be applied by treating the reference to securities in paragraph (2) thereof as including a reference to investment-type property but only for purposes of determining whether any bond issued after October 16, 1987, to advance refund such bond (or a bond which is part of a series of refundings of such bond) is an arbitrage bond (within the meaning of section 148(a) of the 1986 Code).

''(i) SECTION TO OVERRIDE OTHER RULES.—Except as otherwise expressly provided by reference to a provision to which a subsection of this section applies, nothing in any other section of this subtitle shall be construed as exempting any bond from the application of such provision.

''SEC. 1315. TRANSITIONAL RULES RELATING TO VOLUME CAP.

''(a) IN GENERAL.—Except as otherwise provided in this section, section 146(f) of the 1986 Code shall not apply with respect to an issuing authority's volume cap under section 103(n) of the 1954 Code, and no carryforward under such section 103(n) shall be recognized for bonds issued after August 15, 1986.

''(b) CERTAIN BONDS FOR CARRYFORWARD PROJECTS OUTSIDE OF VOLUME CAP.—Bonds issued pursuant to an election under section 103(n)(10) of the 1954 Code (relating to elective carryforward of unused limitation for specified project) made before November 1, 1985, shall not be taken into account under section 146 of the 1986 Code if the carryforward project is a facility to which the amendments made by section 1301 [for classification see section 1311(a) of this note] do not apply by reason of section 1312(a) of this Act.

''(c) VOLUME CAP NOT TO APPLY WITH RESPECT TO CERTAIN FACILITIES AND PURPOSES.—Section 146 of the 1986 Code shall not apply to any bond issued with respect to any facility or purpose described in a paragraph of subsection (d) if—

''(1) such bond would not have been taken into account under section 103(n) of the 1954 Code for calendar year 1986 (determined without regard to any carryforward election) were such bond issued on August 15, 1986, or

''(2) such bond would not have been taken into account under section 103(n) of the 1954 Code for calendar year 1986 (determined with regard to any carryforward election made before January 1, 1986) were such bond issued on August 15, 1986.

The preceding sentence shall not apply to the extent section 1313(b)(5) treats any bond as a private activity bond for purposes of section 146 of the 1986 Code.

''(d) FACILITIES AND PURPOSES DESCRIBED.—

''(1) A facility is described in this paragraph if the amendments made by section 201 of this Act [amending sections 46, 167, 168, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] (relating to depreciation) do not apply to such facility by reason of section 204(a)(8) of this Act [set out as a note under section 168 of this title] (or, in the case of a facility which is governmentally owned, would not apply to such facility were it owned by a nongovernmental person).

''(2) A facility or purpose is described in this paragraph if the facility or purpose is described in a paragraph of section 1317.

''(3) A facility is described in this paragraph if the facility—

''(A) serves Los Osos, California, and

''(B) would be described in paragraph (1) were it a solid waste disposal facility.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $35,000,000.

''(4) A facility is described in this paragraph if it is a sewage disposal facility with respect to which—

''(A) on September 13, 1985, the State public facilities authority took official action authorizing the issuance of bonds for such facility, and

''(B) on December 30, 1985, there was an executive order of the State Governor granting allocation of the State ceiling under section 103(n) of the 1954 Code in the amount of $250,000,000 to the Industrial Development Board of the Parish of East Baton Rouge, Louisiana.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $98,500,000.

''(5) A facility is described in this paragraph if—

''(A) such facility is a solid waste disposal facility in Charleston, South Carolina, and

''(B) a State political subdivision took formal action on April 1, 1980, to commit development funds for such facility.

For purposes of determining whether a bond issued as part of an issue for a facility described in the preceding sentence is an exempt facility bond for purposes of part IV of subchapter B of chapter 1 of the 1986 Code, '90 percent' shall be substituted for '95 percent' in section 142(a) of the 1986 Code.

''The aggregate face amount of bonds to which this paragraph applies shall not exceed $75,000,000.

''(6) A facility is described in this paragraph if—

''(A) such facility is a wastewater treatment facility for which site preparation commenced before September 1985, and

''(B) a parish council approved a service agreement with respect to such facility on December 4, 1985.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $120,000,000.

''(e) TREATMENT OF REDEVELOPMENT BONDS.—Any bond to which section 1317(6) of this Act applies shall be treated for purposes of this section as described in subsection (c)(1). The preceding sentence shall not apply to any bond which (if issued on August 15, 1986) would have been an industrial development bond (as defined in section 103(b)(2) of the 1954 Code).

''SEC. 1316. PROVISIONS RELATING TO CERTAIN ESTABLISHED STATE PROGRAMS.

''(a) CERTAIN LOANS TO VETERANS FOR THE PURCHASE OF LAND.—

''(1) IN GENERAL.—A bond described in paragraph (2) shall be treated as described in section 141(d)(1) of the 1986 Code and as having a carryforward purpose described in section 146(f)(5) of such Code, but subsections (a), (b), (c), and (d) of section 147 of such Code shall not apply to such bond.

''(2) BOND DESCRIBED.—A bond is described in this paragraph if—

''(A) such bond is a private activity bond solely by reason of section 141(c) of such Code, and

''(B) such bond is issued as part of an issue 95 percent or more of the net proceeds of which are to be used to carry out a program established under State law to provide loans to veterans for the purchase of land and which has been in effect in substantially the same form during the 30-year period ending on July 18, 1984, but only if such proceeds are used to make loans or to fund similar obligations—

''(i) in the same manner in which,

''(ii) in the same (or lesser) amount or multiple of acres per participant, and

''(iii) for the same purposes for which,

such program was operated on March 15, 1984.

''(b) RENEWABLE ENERGY PROPERTY.—

''(1) IN GENERAL.—A bond described in paragraph (2) shall be treated as described in section 141(d)(1) of the 1986 Code and as having a carryforward purpose described in section 146(f)(5) of such Code.

''(2) BOND DESCRIBED.—A bond is described in this paragraph if paragraph (1) of section 103(b) of the 1954 Code would not (without regard to the amendments made by this title) have applied to such bond by reason of section 243 of the Crude Oil Windfall Profit Tax Act of 1980 [section 243 of Pub. L. 96–223, set out as a note under section 103 of this title] if—

''(A) such section 243 were applied by substituting '95 percent or more of the net proceeds' for 'substantially all of the proceeds' in subsection (a)(1) thereof, and

''(B) subparagraph (E) of subsection (a)(1) thereof referred to section 149(b) of the 1986 Code.

''(c) CERTAIN STATE PROGRAMS.—

''(1) IN GENERAL.—A bond described in paragraph (2) shall be treated as described in section 141(d)(1) of the 1986 Code and as having a carryforward purpose described in section 146(f)(5) of such Code.

''(2) BOND DESCRIBED.—A bond is described in this paragraph if such bond is issued as part of an issue 95 percent or more of the net proceeds of which are to be used to carry out a program established under sections 280A, 280B, and 280C of the Iowa Code, but only if—

''(A) such program has been in effect in substantially the same form since July 1, 1983, and

''(B) such proceeds are to be used to make loans or fund similar obligations for the same purposes as permitted under such program on July 1, 1986.

''(3) $100,000,000 LIMITATION.—The aggregate face amount of outstanding bonds to which this subsection applies shall not exceed $100,000,000.

''(4) APPLICATION OF SECTION 147(b).—A bond to which this subsection applies (other than a refunding bond) shall be treated as meeting the requirements of section 147(b) of the 1986 Code if the average maturity (determined in accordance with section 147(b)(2)(A) of such Code) of the issue of which such bond is a part does not exceed 20 years. A bond issued to refund (or which is part of a series of bonds issued to refund) a bond described in the preceding sentence shall be treated as meeting the requirements of such section if the refunding bond has a maturity date not later than the date which is 20 years after the date on which the original bond was issued.

''(d) USE BY CERTAIN FEDERAL INSTRUMENTALITIES TREATED AS USE BY GOVERNMENTAL UNITS.—Use by an instrumentality of the United States shall be treated as use by a State or local governmental unit for purposes of section 103, and part IV of subchapter B of chapter 1, of the 1986 Code with respect to a program approved by Congress before August 3, 1972, but only if—

''(1) a portion of such program has been financed by bonds issued before such date, to which section 103(a)

of the 1954 Code applied pursuant to a ruling issued by the Commissioner of the Internal Revenue Service, and

''(2) construction of 1 or more facilities comprising a part of such program commenced before such date.

''(e) REFUNDING PERMITTED OF CERTAIN BONDS INVESTED IN FEDERALLY INSURED DEPOSITS.—

''(1) IN GENERAL.—Section 149(b)(2)(B)(ii) of the 1986 Code (and section 103(h)(2)(B)(ii) of the 1954 Code) shall not apply to any bond issued to refund a bond—

''(A) which, when issued, would have been treated as federally guaranteed by reason of being described in clause (ii) of section 103(h)(2)(B) of the 1954 Code if such section had applied to such bond, and

''(B)(i) which was issued before April 15, 1983, or

''(ii) to which such clause did not apply by reason of the except clause in section 631(c)(2) of the Tax Reform Act of 1984 [section 631(c)(2) of Pub. L. 98–369, set out as a note under section 103 of this title].

Section 147(c) of the 1986 Code (and section 103(b)(16) of the 1954 Code) shall not apply to any refunding bond permitted under the preceding sentence if section 103(b)(16) of the 1954 Code did not apply to the refunded bond when issued.

''(2) REQUIREMENTS.—A refunding bond meets the requirements of this paragraph if—

''(A) the refunding bond has a maturity date not later than the maturity date of the refunded bond,

''(B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond,

''(C) the weighted average interest rate on the refunding bond is lower than the weighted average interest rate on the refunded bond, and

''(D) the net proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

''(f) CERTAIN HYDROELECTRIC GENERATING PROPERTY.—

''(1) IN GENERAL.—A bond described in paragraph (2) shall be treated as described in section 141(d)(1) of the 1986 Code and as having a carryforward purpose described in section 146(f)(5) of such Code.

''(2) DESCRIPTION.—A bond is described in this paragraph if such bond is issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide a facility described in section 103(b)(4)(H) of the 1954 Code determined—

''(A) by substituting 'an application for a license' for 'an application' in section 103(b)(8)(E)(ii) of the 1954 Code, and

''(B) by applying the requirements of section 142(b)(2) of the 1986 Code.

''(g) TREATMENT OF BONDS SUBJECT TO TRANSITIONAL RULES UNDER TAX REFORM ACT OF 1984.—

''(1) Subsections (d)(3) and (f) of section 148 of the 1986 Code shall not apply to any bond described in section 624(c)(2) of the Tax Reform Act of 1984 [section 624(c)(2) of Pub. L. 98–369, set out as a note under section 103 of this title].

''(2)(A) There shall not be taken into account under section 146 of the 1986 Code any bond issued to provide a facility described in paragraph (3) of section 631(a) of the Tax Reform Act of 1984 [section 631(a)(3) of Pub. L. 98–369, set out as a note under section 103 of this title] relating to exception for certain bonds for a convention center and resource recovery project.

''(B) If a bond issued as part of an issue substantially all of the proceeds of which are used to provide the convention center to which such paragraph (3) applies, such bond shall be treated as an exempt facility bond as defined in section 142(a) of the 1986 Code.

''(C) If a bond which is issued as part of an issue substantially all of the proceeds of which are used to provide the resource recovery project to which such paragraph (3) applies, such bond shall be treated as an exempt facility bond as defined in section 142(a) of the 1986 Code and section 149(b) of such Code shall not apply.

''(3) The amendments made by section 1301 [for classification see section 1311(a) of this note] shall not apply to bonds issued to finance any property described in section 631(d)(4) of the Tax Reform Act of 1984 [section 631(d)(4) of Pub. L. 98–369, set out as a note under section 103 of this title].

''(4) The amendments made by section 1301 [for classification see section 1311(a) of this note] shall not apply to—

''(A) any bond issued to finance property described in section 631(d)(5) of the Tax Reform Act of 1984 [section 631(d)(5) of Pub. L. 98–369, set out as a note under section 103 of this title],

''(B) any bond described in paragraph (2), (3), (4), (5), (6), or (7) of section 632(a), or section 632(b), of such Act [Pub. L. 98–369, div. A, title VI, § 632, July 18, 1984, 98 Stat. 937], and

''(C) any bond to which section 632(g)(2) of such Act applies.

In the case of bonds to which this paragraph applies, the requirements of sections 148 and 149(d) shall be treated as included in section 103 of the 1954 Code and shall apply to such bonds.

''(5) The preceding provisions of this subsection shall not apply to any bond issued after December 31, 1988.

''(6) The amendments made by section 1301 [for classification see section 1311(a) of this note] (and the provisions of section 1314) shall not apply to any bond issued to finance property described in section 216(b)(3) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 216(b)(3) of Pub. L. 97–248, set out as a note under section 168 of this title].

''(7) In the case of a bond described in section 632(d) of the Tax Reform Act of 1984 [Pub. L. 98–369, div. A, title VI, § 632(d), July 18, 1984, 98 Stat. 938]—

''(A) section 141 of the 1986 Code shall be applied without regard to subsection (a)(2) and paragraphs (4) and (5) of subsection (b),

''(B) paragraphs (1) and (2) of section 141(b) of the 1986 Code shall be applied by substituting '25 percent' for '10 percent' each place it appears, and

''(C) section 149(b) of the 1986 Code shall not apply.

This paragraph shall not apply to any bond issued after December 31, 1990.

''(8)(A) The amendments made by section 1301 [for classification see section 1311(a) of this note] shall not apply to any bond to which section 629(a)(1) of the Tax Reform Act of 1984 [section 629(a)(1) of Pub. L. 98–369, set out as a note under section 103 of this title] applies, but such bond shall be treated as a private activity bond for purposes of section 146 of the 1986 Code and as having a carryforward purpose described in section 146(f)(5) of such Code.

''(B) Section 629 of the Tax Reform Act of 1984 [section 629 of Pub. L. 98–369, set out as a note under section 103 of this title] is amended—

''(i) in subsection (c)(2), by striking out '$625,000,000' and inserting in lieu thereof '$911,000,000',

''(ii) in subsection (c)(3), by adding at the end thereof the following new subparagraphs:

'''(D) Improvements to existing generating facilities.

'''(E) Transmission lines.

'''(F) Electric generating facilities.', and

''(iii) in subsection (a), by adding at the end thereof the following new sentence: 'The preceding sentence shall be applied by inserting ''and a rural electric cooperative utility'' after ''regulated public utility'' but only if not more than 1 percent of the load of the public power authority is sold to such rural electric cooperative utility.'

''(h) CERTAIN POLLUTION BONDS.—Any bond which is treated as described in section 103(b)(4)(F) of the 1954 Code by reason of section 13209 of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99–272,

title XIII, §13209, Apr. 7, 1986, 100 Stat. 322] shall be treated as an exempt facility bond for purposes of part IV of subchapter B of chapter 1 of the 1986 Code, and section 147(d) of the 1986 Code shall not apply to such bond.

''(i) TRANSITION RULE FOR AGGREGATE LIMIT PER TAXPAYER.—For purposes of section 144(a)(10) of the 1986 Code, tax increment bonds described in section 1869(c)(3) of this Act [set out as a note under section 103 of this title] which are issued before August 16, 1986, shall not be taken into account under subparagraph (B)(ii) thereof.

''(j) EXTENSION OF ADVANCE REFUNDING EXCEPTION FOR QUALIFIED PUBLIC FACILITY.—Paragraph (4) of section 631(c) of the Tax Reform Act of 1984 [section 631(c)(4) of Pub. L. 98–369, set out as a note under section 103 of this title] is amended—

''(1) by striking out 'or the Dade County, Florida, airport' in the last sentence, and

''(2) by adding at the end thereof the following new sentence: 'In the case of refunding obligations not to exceed $100,000,000 issued after October 21, 1986, by Dade County, Florida, for the purpose of advance refunding its Aviation Revenue Bonds (Series J), the first sentence of this paragraph shall be applied by substituting ''the date which is 1 year after the date of the enactment of the Technical and Miscellaneous Revenue Act of 1988'' [Nov. 10, 1988] for ''December 31, 1984'' and the amendments made by section 1301 of the Tax Reform Act of 1986 shall not apply.'

''(k) EXPANSION OF EXCEPTION FOR RIVER PLACE PROJECT.—Section 1104 of the Mortgage Subsidy Bond Tax Act of 1980 [section 1104 of Pub. L. 96–499, formerly set out as a note under section 103A of this title], as added by the Tax Reform Act of 1984, is amended—

''(1) by striking out 'December 31, 1984,' in subsection (p) and inserting in lieu thereof 'December 31, 1984 (other than obligations described in subsection (r)(1)),', and

''(2) by striking out '$55,000,000,' in subsection (r)(1)(B) and inserting in lieu thereof '$110,000,000 of which no more than $55,000,000 shall be outstanding later than November 1, 1987'.

''SEC. 1317. TRANSITIONAL RULES FOR SPECIFIC FACILITIES.

''(1) DOCKS AND WHARVES.—A bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide any dock or wharf (within the meaning of section 103(b)(4)(D) of the 1954 Code) shall be treated as an exempt facility bond (for a facility described in section 142(a)(2) of the 1986 Code) for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if such dock or wharf is described in any of the following subparagraphs:

''(A) A dock or wharf is described in this subparagraph if—

''(i) the issue to finance such dock or wharf was approved by official city action on September 3, 1985, and by voters on November 5, 1985, and

''(ii) such dock or wharf is for a slack water harbor with respect to which a Corps of Engineers grant of approximately $2,000,000 has been made under section 107 of the Rivers and Harbors Act [33 U.S.C. 577].

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $2,500,000.

''(B) A dock or wharf is described in this subparagraph if—

''(i) inducement resolutions were adopted on May 23, 1985, September 18, 1985, and September 24, 1985, for the issuance of the bonds to finance such dock or wharf,

''(ii) a harbor dredging contract with respect thereto was entered into on August 2, 1985, and

''(iii) a construction management and joint venture agreement with respect thereto was entered into on October 1, 1984.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $625,000,000.

''(C) A facility is described in this subparagraph if—

''(i) the legislature first authorized on June 29, 1981, the State agency issuing the bond to issue at least $30,000,000 of bonds,

''(ii) the developer of the facility was selected on April 26, 1985, and

''(iii) an inducement resolution for the issuance of such issue was adopted on October 9, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $200,000,000.

''(D) A facility is described in this subparagraph if—

''(i) an inducement resolution was adopted on October 17, 1985, for such issue, and

''(ii) the city council for the city in which the facility is to be located approved on July 30, 1985, an application for an urban development action grant with respect to such facility.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $36,500,000. A facility shall be treated as described in this subparagraph if it would be so described if '90 percent' were substituted for '95 percent' in the material preceding subparagraph (A) of this paragraph.

''(2) POLLUTION CONTROL FACILITIES.—A bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide air or water pollution control facilities (within the meaning of section 103(b)(4)(F) of the 1954 Code) shall be treated as an exempt facility bond for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if such facility is described in any of the following subparagraphs:

''(A) A facility is described in this subparagraph if—

''(i) inducement resolutions with respect to such facility were adopted on September 23, 1974, and on April 5, 1985,

''(ii) a bond resolution for such facility was adopted on September 6, 1985, and

''(iii) the issuance of the bonds to finance such facility was delayed by action of the Securities and Exchange Commission (file number 70–7127).

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $120,000,000.

''(B) A facility is described in this subparagraph if—

''(i) there was an inducement resolution for such facility on November 19, 1985, and

''(ii) design and engineering studies for such facility were completed in March of 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $25,000,000.

''(C) A facility is described in this subparagraph if—

''(i) a resolution was adopted by the county board of supervisors pertaining to an issuance of bonds with respect to such facility on April 10, 1974, and

''(ii) such facility was placed in service on June 12, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $90,000,000. For purposes of this subparagraph, a pollution control facility includes a sewage or solid waste disposal facility (within the meaning of section 103(b)(4)(E) of the 1954 Code).

''(D) A facility is described in this subparagraph if—

''(i) the issuance of the bonds for such facility was approved by a State agency on August 22, 1979, and

''(ii) the authority to issue such bonds was scheduled to expire (under terms of the State approval) on August 22, 1989.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $198,000,000.

''(E) A facility is described in this subparagraph if—

''(i) such facility is 1 of 4 such facilities in 4 States with respect to which the Ball Corporation transmitted a letter of intent to purchase such facilities on February 26, 1986, and

''(ii) inducement resolutions were issued on December 30, 1985, January 15, 1986, January 22, 1986, and March 17, 1986 with respect to bond issuance in the 4 respective States.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $6,000,000.

''(F) A facility is described in this subparagraph if—

''(i) inducement resolutions for bonds with respect to such facility were adopted on September 27, 1977, May 27, 1980, and October 8, 1981, and

''(ii) such facility is located at a geothermal power complex owned and operated by a single investor-owned utility.

For purposes of this subparagraph and section 103 of the 1986 Code, all hydrogen sulfide air and water pollution control equipment, together with functionally related and subordinate equipment and structures, located or to be located at such power complex shall be treated as a single pollution control facility. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $600,000,000.

''(G) A facility is described in this subparagraph if—

''(i) such facility is an air pollution control facility approved by a State bureau of pollution control on July 10, 1986, and by a State board of economic development on July 17, 1986, and

''(ii) on August 15, 1986, the State bond attorney gave notice to the clerk to initiate validation proceedings with respect to such issue and on August 28, 1986, the validation decree was entered.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $900,000.

''(I) A facility is described in this subparagraph if—

''(i) a private company met with a State air control board on November 14, 1985, to propose construction of a sulften unit, and

''(ii) the sulften unit is being constructed under a letter of intent to construct which was signed on April 8, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $11,000,000.

''(J) A facility is described in this subparagraph if it is part of a 250 megawatt coal-fired electric plant in northeastern Nevada on which the Sierra Pacific Power Company, a subsidiary of Sierra Pacific Resources, began in 1980 work to design, finance, construct, and operate. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $200,000,000.

''(K) A facility is described in this subparagraph if—

''(i) there was an inducement resolution adopted by a State industrial development authority on January 14, 1976, and

''(ii) such facility is named in a resolution of such authority relating to carryforward of the State's unused 1985 private activity bond limit passed by such industrial development authority on December 18, 1985.

This subparagraph shall apply only to obligations issued at the request of the party pursuant to whose request the January 14, 1976, inducement was given. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $75,000,000.

''(L) A facility is described in this subparagraph if a city council passed an ordinance (ordinance number 4626) agreeing to issue bonds for such project, December 16, 1985. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $45,000,000.

''(3) SPORTS FACILITIES.—A bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide sports facilities (within the meaning of section 103(b)(4)(B) of the 1954 Code) shall be treated as an exempt facility bond for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if such facilities are described in any of the following subparagraphs:

''(A) A facility is described in this subparagraph if it is a stadium—

''(i) which was the subject of a city ordinance passed on September 23, 1985,

''(ii) for which a loan of approximately $4,000,000 for land acquisition was approved on October 28, 1985, by the State Controlling Board, and

''(iii) a stadium operating corporation with respect to which was incorporated on March 20, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $200,000,000.

''(B) A facility is described in this subparagraph if—

''(i) it is a stadium with respect to which a lease agreement for the ground on which the stadium is to be built was entered into between a county and the stadium corporation for such stadium on July 3, 1984,

''(ii) there was a resolution approved on November 14, 1984, by an industrial development authority setting forth the terms under which the bonds to be issued to finance such stadium would be issued, and

''(iii) there was an agreement for consultant and engineering services for such stadium entered into on September 28, 1984.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $90,000,000.

''(C) A facility is described in this subparagraph if—

''(i) it is one or more stadiums to be used either by an American League baseball team or a National Football League team currently using a stadium in a city having a population in excess of 2,500,000 and described in section 146(d)(3) of the 1986 Code,

''(ii) the bonds to be used to provide financing for one or more such stadiums are issued by a political subdivision or a State agency pursuant to a resolution approving an inducement resolution adopted by a State agency on November 20, 1985, as it may be amended (whether or not the beneficiaries of such issue or issues are the beneficiaries (if any) specified in such inducement resolution and whether or not the number of such stadiums and the locations thereof are as specified in such inducement resolution) or pursuant to P.A. 84–1470 of the State in which such city is located (and by an agency created thereby), and

''(iii) such stadium or stadiums are located in the city described in (i).

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $250,000,000. In the case of any carryforward of volume cap for one or more stadiums described in the first sentence of this subparagraph, such carryforward shall be valid with respect to bonds issued for such stadiums notwithstanding any other provision of the 1986 Code or the 1954 Code, and whether or not (i) there is a change in the number of stadiums or the beneficiaries or sites of the stadium or stadiums and (ii) the bonds are issued by either of the state agencies described in the first sentence of this subparagraph.

''(D) A facility is described in this subparagraph if—

''(i) such facility is a stadium or sports arena for Memphis, Tennessee,

''(ii) there was an inducement resolution adopted on November 12, 1985, for the issuance of bonds to expand or renovate an existing stadium and sports arena and/or to construct a new arena, and

''(iii) the city council for such city adopted a resolution on April 19, 1983, to include funds in the capital budget of the city for such facility or facilities.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $35,000,000.

''(E) A facility is described in this subparagraph if such facility is a baseball stadium located in Bergen, Essex, Union, Middlesex, or Hudson County, New Jersey with respect to which governmental action occurred on November 7, 1985. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $150,000,000.

''(F) A facility is described in this subparagraph if—

''(i) it is a facility with respect to which—

''(I) an inducement resolution dated December 24, 1985, was adopted by the county industrial development authority,

''(II) a public hearing of the county industrial development authority was held on February 6, 1986, regarding such facility, and

''(III) a contract was entered into by the county, dated February 19, 1986, for engineering serv-

ices for a highway improvement in connection with such project, or

''(ii) it is a domed football stadium adjacent to Cervantes Convention Center in St. Louis, Missouri, with respect to which a proposal to evaluate market demand, financial operations, and economic impact was dated May 9, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $175,000,000.

''(G) A project to provide a roof or dome for an existing sports facility is described in this subparagraph if—

''(i) in December 1984 the county sports complex authority filed a carryforward election under section 103(n) of the 1954 Code with respect to such project,

''(ii) in January 1985, the State authorized issuance of $30,000,000 in bonds in the next 3 years for such project, and

''(iii) an 11-member task force was appointed by the county executive in June 1985, to further study the feasibility of the project.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $30,000,000.

''(H) A sports facility renovation or expansion project is described in this subparagraph if—

''(i) an amendment to the sports team's lease agreement for such facility was entered into on May 23, 1985, and

''(ii) the lease agreement had previously been amended in January 1976, on July 6, 1984, on April 1, 1985, and on May 7, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $20,000,000.

''(I) A facility is described in this subparagraph if—

''(i) an appraisal for such facility was completed on March 6, 1985,

''(ii) an inducement resolution was adopted with respect to such facility on June 7, 1985, and

''(iii) a State bond commission granted preliminary approval for such project on September 3, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $3,200,000.

''(J) A sports facility renovation or expansion project is described in this subparagraph if—

''(i) such facility is a domed stadium which commenced operations in 1965,

''(ii) such facility has been the subject of an ongoing construction, expansion, or renovation program of planned improvements,

''(iii) part 1 of such improvements began in 1982 with a preliminary renovation program financed by tax-exempt bonds,

''(iv) part 2 of such program was previously scheduled for a bond election on February 25, 1986, pursuant to a Commissioners Court Order of November 5, 1985, and

''(v) the bond election for improvements to such facility was subsequently postponed on December 10, 1985, in order to provide for more comprehensive construction planning.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $60,000,000.

''(K) A facility is described in this subparagraph if—

''(i) the 1985 State legislature appropriated a maximum sum of $22,500,000 to the State urban development corporation to be made available for such project, and

''(ii) a development and operation agreement was entered into among such corporation, the city, the State budget director, and the county industrial development agency, as of March 1, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $28,000,000.

''(L) A facility is described in this subparagraph if—

''(i) it is to consist of 1 or 2 stadiums appropriate for football games and baseball games with related structures and facilities,

''(ii) governmental action was taken on August 7, 1985, by the county commission, and on December 19, 1985, by the city council, concerning such facility, and

''(iii) such facility is located in a city having a National League baseball team.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $200,000,000.

''(M) A facility is described in this subparagraph if—

''(i) such facility consists of 1 or 2 stadium projects (1 of which may be a stadium renovation or expansion project) with related structures and facilities,

''(ii) a special advisory commission commissioned a study by a national accounting firm with respect to a project for such facility, which study was released in September 1985, and recommended construction of either a new multipurpose or a new baseball-only stadium,

''(iii) a nationally recognized design and architectural firm released a feasibility study with respect to such project in April 1985, and

''(iv) the metropolitan area in which the facility is located is presently the home of an American League baseball team.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $200,000,000.

''(N) A facility is described in this subparagraph if—

''(i) it is to consist of 1 or 2 stadiums appropriate for football games and baseball games with related structures and facilities,

''(ii) the site for such facility was approved by the council of the city in which such facility is to be located on July 9, 1985, and

''(iii) the request for proposals process was authorized by the council of the city in which such facility is to be located on November 5, 1985, and such requests were distributed to potential developers on November 15, 1985, with responses due by February 14, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $200,000,000.

''(O) A facility is described in this subparagraph if—

''(i) such facility is described in a feasibility study dated September 1985, and

''(ii) resolutions were adopted or other actions taken on February 21, 1985, July 18, 1985, August 8, 1985, October 17, 1985, and November 7, 1985, by the Board of Supervisors of the county in which such facility will be located with respect to such feasibility study, appropriations to obtain land for such facility, and approving the location of such facility in the county.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $20,000,000.

''(P) A facility is described in this subparagraph if such facility constructed on a site acquired with the sale of revenue bonds authorized by a city council on December 2, 1985, (Ordinances No. 669 and 670, series 1985). The aggregate face amount of bonds to which this subparagraph applies shall not exceed $90,000,000.

''(Q) A facility is described in this subparagraph if—

''(i) resolutions were adopted approving a ground lease dated June 27, 1983, by a sports authority (created by a State legislature) with respect to the land on which the facility will be erected,

''(ii) such facility is described in a market study dated June 13, 1983, and

''(iii) such facility was the subject of an Act of the State legislature which was signed on July 1, 1983.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $81,000,000.

''(R) A facility is described in this subparagraph if such facility is a baseball stadium and adjacent parking facilities with respect to which a city made a carryforward election of $52,514,000 on February 25, 1985. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $50,000,000.

''(S) A facility is described in this subparagraph if—

''(i) such facility is to be used by both a National Hockey League team and a National Basketball Association team,

''(ii) such facility is to be constructed on a platform using air rights over land acquired by a State authority and identified as site B in a report dated May 30, 1984, prepared for a State urban development corporation, and

''(iii) such facility is eligible for real property tax (and power and energy) benefits pursuant to State legislation approved and effective as of July 7, 1982.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $225,000,000.

''(T) A facility is described in this subparagraph if—

''(i) a resolution authorizing the financing of the facility through an issuance of revenue bonds was adopted by the City Commission on August 5, 1986, and

''(ii) the metropolitan area in which the facility is to be located is currently the spring training home of an American league baseball team located during the regular season in a city described in subparagraph (C).

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $10,000,000.

''(U) A facility is described in this subparagraph if it is a football stadium located in Oakland, California, with respect to which a design was completed by a nationally recognized architectural firm for a stadium seating approximately 72,000, to be located on property adjacent to an existing coliseum complex, or is a renovation of an existing stadium located in Oakland, California, and used by an American League baseball team. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $100,000,000.

''(V) A facility is described in this subparagraph if it is a sports arena (and related parking facility) for Grand Rapids, Michigan. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $80,000,000.

''(W) A facility is described in this subparagraph if such facility is located adjacent to the Anacostia River in the District of Columbia. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $25,000,000.

''(X) A facility is described in this subparagraph if it is a spectator sports facility for the City of San Antonio, Texas. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $125,000,000.

''(Y) A facility is described in this subparagraph if it will be part of, or adjacent to, an existing stadium which has been owned and operated by a State university and if—

''(i) the stadium was the subject of a feasibility report by a certified public accounting firm which is dated December 28, 1984, and

''(ii) a report by an independent research organization was prepared in December 1985 demonstrating support among donors and season ticket holders for the addition of a dome to the stadium.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $50,000,000.

''(Z) A facility is described in this subparagraph if—

''(i) such facility was a redevelopment project that was approved in concept by the city council sitting as the redevelopment agency in October 1984, and

''(ii) $20,000,000 in funds for such facility was identified in a 5-year budget approved by the city redevelopment agency on October 25, 1984.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $80,000,000.

''(4) RESIDENTIAL RENTAL PROPERTY.—A bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to finance a residential rental project within the meaning of section 103(b)(4) of the 1954 Code shall be treated as an exempt facility bond within the meaning of section 142(a)(7) of the 1986 Code if the facility with respect to the bond is issued satisfies all low-income occupancy requirements applicable to such bonds before August 15, 1986, and the bonds are issued pursuant to—

''(A) a contract to purchase such property dated August 12, 1985;

''(B) the county housing authority approved the property and the financing thereof on September 24, 1985, and

''(C) there was an inducement resolution adopted on October 10, 1985, by the county industrial development authority.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $25,400,000.

''(5) AIRPORTS.—A bond issued as a part of an issue 95 percent or more of the net proceeds of which are to be used to provide an airport (within the meaning of section 103(b)(4)(D) of the 1954 Code) shall be treated as an exempt facility bond (for facilities described in section 142(a)(1) of the 1986 Code) for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if the facility is described in any of the following subparagraphs:

''(A) A facility is described in this subparagraph if such facility is a hotel at an airport facility serving a city described in section 631(a)(3) of the Tax Reform Act of 1984 [section 631(a)(3) of Pub. L. 98–369, set out as a note under section 103 of this title] (relating to certain bonds for a convention center and resource recovery project). The aggregate face amount of bonds to which this subparagraph applies shall not exceed $40,000,000.

''(B) A facility is described in this subparagraph if such facility is the primary airport for a city described in paragraph (3)(C). The aggregate face amount of bonds to which this subparagraph applies shall not exceed $500,000,000. Section 148(d)(2) of the 1986 Code shall not apply to any issue to which this subparagraph applies. A facility shall be described in this subparagraph if it would be so described if '90 percent' were substituted for '95 percent' in the material preceding subparagraph (A).

''(C) A facility is described in this subparagraph if such facility is a hotel at Logan airport and such hotel is located on land leased from a State authority under a lease contemplating development of such hotel dated May 1, 1983, or under an amendment, renewal, or extension of such a lease. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $40,000,000.

''(D) A facility is described in this subparagraph if such facility is the airport for the County of Sacramento, California. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $150,000,000.

''(6) REDEVELOPMENT PROJECTS.—A bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to finance redevelopment activities as part of a project within a specific designated area shall be treated as a qualified redevelopment bond for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if such project is described in any of the following subparagraphs:

''(A) A project is described in this subparagraph if it was the subject of a city ordinance numbered 82–115 and adopted on December 2, 1982, or numbered 9590 and adopted on April 6, 1983. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $9,000,000.

''(B) A project is described in this subparagraph if it is a redevelopment project for an area in a city described in paragraph (3)(C) which was designated as commercially blighted on November 14, 1975, by the city council and the redevelopment plan for which will be approved by the city council before January 31, 1987. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $20,000,000.

''(C) A project is described in this subparagraph if it is a redevelopment project for an area in a city described in paragraph (3)(C) which was designated as commercially blighted on March 28, 1979, by the city council and the redevelopment plan for which was approved by the city council on June 20, 1984. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $100,000,000.

''(D) A project is described in this subparagraph if it is any one of three redevelopment projects in areas in a city described in paragraph (3)(C) designated as blighted by a city council before January 31, 1987 and with respect to which the redevelopment plan is approved by the city council before January 31, 1987. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $20,000,000.

''(E) A project is described in this subparagraph if such project is for public improvements (including street reconstruction and improvement of underground utilities) for Great Falls, Montana, with respect to which engineering estimates are due on October 1, 1986. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $3,000,000.

''(F) A project is described in this subparagraph if—

''(i) such project is located in an area designated as blighted by the governing body of the city on February 15, 1983 (Resolution No. 4573), and

''(ii) such project is developed pursuant to a redevelopment plan adopted by the governing body of the city on March 1, 1983 (Ordinance No. 15073).

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $5,000,000.

''(G) A project is described in this subparagraph if—

''(i) such project is located in an area designated by the governing body of the city in 1983,

''(ii) such project is described in a letter dated August 8, 1985, from the developer's legal counsel to the development agency of the city, and

''(iii) such project consists primarily of retail facilities to be built by the developer named in a resolution of the governing body of the city on August 30, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $75,000,000.

''(H) A project is described in this subparagraph if—

''(i) such project is a project for research and development facilities to be used primarily to benefit a State university and related hospital, with respect to which an urban renewal district was created by the city council effective October 11, 1985, and

''(ii) such project was announced by the university and the city in March 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $40,000,000.

''(I) A project is described in this subparagraph if such project is a downtown redevelopment project with respect to which—

''(i) an urban development action grant was made, but only if such grant was preliminarily approved on November 3, 1983, and received final approval before June 1, 1984, and

''(ii) the issuer of bonds with respect to such facility adopted a resolution indicating the issuer's intent to adopt such redevelopment project on October 6, 1981, and the issuer adopted an ordinance adopting such redevelopment project on December 13, 1983.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $10,000,000.

''(J) A project is described in this subparagraph if—

''(i) with respect to such project the city council adopted on December 16, 1985, an ordinance directing the urban renewal authority to study blight and produce an urban renewal plan,

''(ii) the blight survey was accepted and approved by the urban renewal authority on March 20, 1986, and

''(iii) the city planning board approved the urban renewal plan on May 7, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $60,000,000.

''(K) A project is described in this subparagraph if—

''(i) the city redevelopment agency approved resolutions authorizing issuance of land acquisition and public improvements bonds with respect to such project on August 8, 1978,

''(ii) such resolutions were later amended in June 1979, and

''(iii) the State Supreme Court upheld a lower court decree validating the bonds on December 11, 1980.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $380,000,000.

''(L) A project is described in this subparagraph if it is a mixed use redevelopment project either—

''(i) in an area (known as the Near South Development Area) with respect to which the planning department of a city described in paragraph 3(C) promulgated a draft development plan dated March 1986, and which was the subject of public hearings held by a subcommittee of the plan commission of such city on May 28, 1986, and June 10, 1986, or

''(ii) in an area located within the boundaries of any 1 or more census tracts which are directly adjacent to a river whose course runs through such city.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $75,000,000.

''(M) A project is described in this subparagraph if it is a redevelopment project for an area in a city described in paragraph 3(C) and such area—

''(i) was the subject of a report released in May 1986, prepared by the National Park Service, and

''(ii) was the subject of a report released January 1986, prepared by a task force appointed by the Mayor of such city.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $75,000,000.

''(N) A project is described in this subparagraph if it is a city-university redevelopment project approved by a city ordinance No. 152–0–84 and the development plan for which was adopted on January 28, 1985. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $23,760,000.

''(O) A project is described in this subparagraph if—

''(i) an inducement resolution was passed on March 9, 1984, for issuance of bonds with respect to such project,

''(ii) such resolution was extended by resolutions passed on August 14, 1984, April 2, 1985, August 13, 1985, and July 8, 1986,

''(iii) an urban development action grant was preliminarily approved for part or all of such project on July 3, 1986, and

''(iv) the project is located in a district designated as the Peabody-Gayoso District.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $140,000,000.

''(P) A project is described in this subparagraph if the project is a 1-block area of a central business district containing a YMCA building with respect to which—

''(i) the city council adopted a resolution expressing an intent to issue bonds for the project on September 27, 1985,

''(ii) the city council approved project guidelines for the project on December 20, 1985, and

''(iii) the city council by resolution (adopted on July 30, 1986) directed completion of a development agreement.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $26,000,000.

''(Q) A project is described in this subparagraph if the project is a 2-block area of a central business district designated as blocks E and F with respect to which—

''(i) the city council adopted guidelines and criteria and authorized a request for development proposals on July 22, 1985,

''(ii) the city council adopted a resolution expressing an intent to issue bonds for the project on September 27, 1985, and

''(iii) the city issued requests for development proposals on March 28, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $47,000,000.

''(R) A project is described in this subparagraph if the project is an urban renewal project covering ap-

proximately 5.9 acres of land in the Shaw area of the northwest section of the District of Columbia and the 1st portion of such project was the subject of a District of Columbia public hearing on June 2, 1986. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $10,000,000.

''(S) A project is described in this subparagraph if such project is a hotel, commercial, and residential project on the east bank of the Grand River in Grand Rapids, Michigan, with respect to which a developer was selected by the city in June 1985 and a planning agreement was executed in August 1985. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $39,000,000.

''(T) A project is described in this subparagraph if such project is the Wurzburg Block Redevelopment Project in Grand Rapids, Michigan. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $60,000,000.

''(U) A project is described in this subparagraph if such project is consistent with an urban renewal plan adopted or ordered prepared before August 28, 1986, by the city council of the most populous city in a state which entered the Union on February 14, 1859. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $83,000,000.

''(V) A project is described in this subparagraph if such project is consistent with an urban renewal plan which was adopted (or ordered prepared) before August 13, 1985, by an appropriate jurisdiction of a state which entered the Union on February 14, 1859. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $135,000,000 and the limitation on the period during which bonds under this section may be issued shall not apply to such bonds.

''(W) A project is described in this subparagraph if such project is—

''(i) a part of the Kenosha Downtown Redevelopment project, and

''(ii) located in an area bounded—

''(I) on the east by the east wall of the Army Corps of Engineers Confined Disposal Facility (extended),

''(II) on the north by 48th Street (extended),

''(III) on the west by the present Chicago & Northwestern Railroad tracks, and

''(IV) on the south by the north line of Eichelman Park (60th Street) (extended).

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $105,000,000.

''(X) A project is described in this subparagraph if a redevelopment plan for such project was approved by the city council of Bell Gardens, California, on June 12, 1979. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $10,000,000.

''(Y) Nothing in this paragraph shall be construed as having the effect of exempting from tax interest on any bond issued after June 10, 1987, if such interest would not have been exempt from tax were such bond issued on August 15, 1986.

''(Z) Any designated area with respect to which a project is described in any subparagraph of this paragraph shall be taken into account in applying section 144(c)(4)(C) of the 1986 Code in determining whether other areas (not so described) may be designated.

''(7) CONVENTION CENTERS.—A bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide any convention or trade show facility (within the meaning of section 103(b)(4)(C) of the 1954 Code) shall be treated as an exempt facility bond for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if such facility is described in any of the following subparagraphs:

''(A) A facility is described in this subparagraph if—

''(i) a feasibility consultant and a design consultant were hired on April 3, 1985, with respect to such facility, and

''(ii) a draft feasibility report with respect to such facility was presented on November 3, 1985, to the Mayor of the city in which such facility is to be located.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $190,000,000. For purposes of this subparagraph, not more than $20,000,000 of bonds issued to advance refund existing convention facility bonds sold on May 12, 1978, shall be treated as bonds described in this subparagraph and section 149(d)(2) of the 1986 Code shall not apply to bonds so treated.

''(B) A facility is described in this subparagraph if—

''(i) an application for a State loan for such facility was approved by the city council on March 4, 1985, and

''(ii) the city council of the city in which such facility is to be located approved on March 25, 1985, an application for an urban development action grant.

The aggregate face amount of bonds which this subparagraph applies shall not exceed $10,000,000.

''(C) A facility is described in this subparagraph if—

''(i) on November 1, 1983, a convention development tax took effect and was dedicated to financing such facility,

''(ii) the State supreme court of the State in which the facility is to be located validated such tax on February 8, 1985, and

''(iii) an agreement was entered into on November 14, 1985, between the city and county in which such facility is to be located on the terms of the bonds to be issued with respect to such facility.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $66,000,000.

''(D) A facility is described in this subparagraph if—

''(i) it is a convention, trade, or spectator facility,

''(ii) a regional convention, trade, and spectator facilities study committee was created before March 19, 1985, with respect to such facility, and

''(iii) feasibility and preliminary design consultants were hired on May 1, 1985, and October 31, 1985, with respect to such facility.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed the excess of $175,000,000 over the amount of bonds to which paragraph (48)(B) applies.

''(E) A facility is described in this subparagraph if—

''(i) such facility is meeting rooms for a convention center, and

''(ii) resolutions and ordinances were adopted with respect to such meeting rooms on January 17, 1983, July 11, 1983, December 17, 1984, and September 23, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $75,000,000.

''(F) A facility is described in this subparagraph if it is an international trade center which is part of the 125th Street redevelopment project in New York, New York. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $165,000,000.

''(G) A facility is described in this subparagraph if—

''(i) such facility is located in a city which was the subject of a convention center market analysis or study dated March 1983, and prepared by a nationally recognized accounting firm,

''(ii) such facility's location was approved in December 1985 by a task force created jointly by the Governor of the State within which such facility will be located and the mayor of the capital city of such State, and

''(iii) the size of such facility is not more than 200,000 square feet.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $70,000,000.

''(H) A facility is described in this subparagraph if an analysis of operations and recommendations of utilization of such facility was prepared by a certified public accounting firm pursuant to an engagement authorized on March 6, 1984, and presented on June 11, 1984, to officials of the city in which such facility is

located. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $75,000,000.

''(I) A facility is described in this subparagraph if—

''(i) voters approved a bond issue to finance the acquisition of the site for such facility on May 4, 1985,

''(ii) title of the property was transferred from the Illinois Center Gulf Railroad to the city on September 30, 1985, and

''(iii) a United States judge rendered a decision regarding the fair market value of the site of such facility on December 30, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $131,000,000.

''(J) A facility is described in this subparagraph if—

''(i) such facility is to be used for an annual aqua-festival,

''(ii) a referendum was held on April 6, 1985, in which voters permitted the city council to lease 130 acres of dedicated parkland for the purpose of constructing such facility, and

''(iii) the city council passed an inducement resolution on June 19, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $10,000,000.

''(K) A facility is described in this subparagraph if—

''(i) voters approved a bond issued to finance a portion of the cost of such facility on December 1, 1984, and

''(ii) such facility was the subject of a market study and financial projections dated March 21, 1986, prepared by a nationally recognized accounting firm.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $5,000,000.

''(L) A facility is described in this subparagraph if—

''(i) on July 12, 1984, the city council passed a resolution increasing the local hotel and motel tax to 7 percent to assist in paying for such facility,

''(ii) on October 25, 1984, the city council selected a consulting firm for such facility, and

''(iii) with respect to such facility, the city council appropriated funds for additional work on February 7, 1985, October 3, 1985, and June 26, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $120,000,000.

''(M) A facility is described in this subparagraph if—

''(i) a board of county commissioners, in an action dated January 21, 1986, supported an application for official approval of the facility, and

''(ii) the State economic development commission adopted a resolution dated February 25, 1986, determining the facility to be an eligible facility pursuant to State law and the rules adopted by the commission.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $7,500,000.

''(8) SPORTS OR CONVENTION FACILITIES.—A bond issued as a part of an issue 95 percent or more of the net proceeds of which are to be used to provide either a sports facility (within the meaning of section 103(b)(4)(B) of the 1954 Code) or a convention facility (within the meaning of section 103(b)(4)(C) of the 1954 Code) shall be treated as an exempt facility bond for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if such facility is described in any of the following subparagraphs:

''(A) A combined convention and arena facility, or any part thereof (whether on the same or different sites), is described in this subparagraph if—

''(i) bonds for the expansion, acquisition, or construction of such combined facility are payable from a tax and are issued under a plan initially approved by the voters of the taxing authority on April 25, 1978, and

''(ii) such bonds were authorized for expanding a convention center, for acquiring an arena site, and for building an arena or any of the foregoing pursuant to a resolution adopted by the governing body of the bond issuer on March 17, 1986, and superseded by a resolution adopted by such governing body on May 27, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $160,000,000.

''(B) A sports or convention facility is described in this subparagraph if—

''(i) on March 4, 1986, county commissioners held public hearings on creation of a county convention facilities authority, and

''(ii) on March 7, 1986, the county commissioners voted to create a county convention facilities authority and to submit to county voters a ½ cent sales and use tax to finance such facility.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $150,000,000.

''(C) A sports or convention facility is described in this subparagraph if—

''(i) a feasibility consultant and a design consultant were hired prior to October 1980 with respect to such facility,

''(ii) a feasibility report dated October 1980 with respect to such facility was presented to a city or county in which such facility is to be located, and

''(iii) on September 7, 1982, a joint city/county resolution appointed a committee which was charged with the task of independently reviewing the studies and present need for the facility.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $60,000,000.

''(D) A sports or convention facility is described in this subparagraph if—

''(i) such facility is a multipurpose coliseum facility for which, before January 1, 1985, a city, an auditorium district created by the State legislature within which such facility will be located, and a limited partnership executed an enforceable contract,

''(ii) significant governmental action regarding such facility was taken before May 23, 1983, and

''(iii) inducement resolutions were passed for issuance of bonds with respect to such facility on May 26, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $25,000,000.

''(9) PARKING FACILITIES.—A bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide a parking facility (within the meaning of section 103(b)(4)(D) of the 1954 Code) shall be treated as an exempt facility bond for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if such facility is described in any of the following subparagraphs:

''(A) A facility is described in this subparagraph if—

''(i) there was an inducement resolution on March 9, 1984, for the issuance of bonds with respect to such facility, and

''(ii) such resolution was extended by resolutions passed on August 14, 1984, April 2, 1985, August 13, 1985, and July 8, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $30,000,000.

''(B) A facility is described in this subparagraph if—

''(i) such facility is for a university medical school,

''(ii) the last parcel of land necessary for such facility was purchased on February 4, 1985, and

''(iii) the amount of bonds to be issued with respect to such facility was increased by the State legislature of the State in which the facility is to be located as part of its 1983–1984 general appropriations act.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $9,000,000.

''(C) A facility is described in this subparagraph if—

''(i) the development agreement with respect to the project of which such facility is a part was entered into during May 1984, and

''(ii) an inducement resolution was passed on October 9, 1985, for the issuance of bonds with respect to the facility.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $35,000,000.

''(D) A facility is described in this subparagraph if the city council approved a resolution of intent to issue tax-exempt bonds (Resolution 34083) for such facility on April 30, 1986. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $8,000,000. Solely for purposes of this subparagraph, a heliport constructed as part of such facility shall be deemed to be functionally related and subordinate to such facility.

''(E) A facility is described in this subparagraph if—

''(i) resolutions were adopted by a public joint powers authority relating to such facility on March 6, 1985, May 1, 1985, October 2, 1985, December 4, 1985, and February 5, 1986; and

''(ii) such facility is to be located at an exposition park which includes a coliseum and sports arena.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $150,000,000.

''(F) A facility is described in this subparagraph if—

''(i) it is to be constructed as part of an overall development that is the subject of a development agreement dated October 1, 1983, between a developer and an organization described in section 501(c)(3) of the 1986 Code, and

''(ii) an environmental notification form with respect to the overall development was filed with a State environmental agency on February 28, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $60,000,000.

''(G) A facility is described in this subparagraph if—

''(i) an inducement resolution was passed by the city redevelopment agency on December 3, 1984, and a resolution to carryforward the private activity bond limit was passed by such agency on December 21, 1984, with respect to such facility, and

''(ii) the owner participation agreement with respect to such facility was entered into on July 30, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $18,000,000.

''(H) A facility is described in this subparagraph if—

''(i) an application (dated August 28, 1986) for financial assistance was submitted to the county industrial development agency with respect to such facility, and

''(ii) the inducement resolution for such facility was passed by the industrial development agency on September 10, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $8,000,000.

''(I) A facility is described in this subparagraph if—

''(i) it is located in a city the parking needs of which were comprehensively described in a 'Downtown Parking Plan' dated January 1983, and approved by the city's City Plan Commission on June 1, 1983, and

''(ii) obligations with respect to the construction of which are issued on behalf of a State or local governmental unit by a corporation empowered to issue the same which was created by the legislative body of a State by an Act introduced on May 21, 1985, and thereafter passed, which Act became effective without the governor's signature on June 26, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $50,000,000.

''(J) A facility is described in this subparagraph if—

''(i) such facility is located in a city which was the subject of a convention center market analysis or study dated March 1983 and prepared by a nationally recognized accounting firm,

''(ii) such facility is intended for use by, among others, persons attending a convention center located within the same town or city, and

''(iii) such facility's location was approved in December 1985 by a task force created jointly by the governor of the State within which such facility will be located and the mayor of the capital city of such State.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $30,000,000.

''(K) A facility is described in this subparagraph if—

''(i) scale and components for the facility were determined by a city downtown plan adopted October 31, 1984 (resolution number 3882), and

''(ii) the site area for the facility is approximately 51,200 square feet.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $5,000,000.

''(L) A facility is described in this subparagraph if—

''(i) the property for such facility was offered for development by a city renewal agency on March 19, 1986 (resolution number 920), and

''(ii) the site area for the facility is approximately 25,600 square feet.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $5,000,000.

''(M) A facility is described in this subparagraph if such facility was approved by official action of the city council on July 26, 1984 (resolution number 33718), and is for the Moyer Theatre. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $8,000,000.

''(N) A facility is described in this subparagraph if it is part of a renovation project involving the Outlet Company building in Providence, Rhode Island. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $6,000,000.

''(10) CERTAIN ADVANCE REFUNDINGS.—

''(A) Section 149(d)(3) of the 1986 Code shall not apply to a bond issued by a State admitted to the Union on November 16, 1907, for the advance refunding of not more than $186,000,000 State turnpike obligations.

''(B) A refunding of the Charleston, West Virginia Town Center Garage Bonds shall not be treated for purposes of part IV of subchapter A of chapter 1 of the 1986 Code as an advance refunding if it would not be so treated if '100' were substituted for '90' in section 149(d)(5) of such Code.

''(11) PRINCIPAL USER PROVISIONS.—

''(A) In the case of a bond issued as part of an issue the proceeds of which are to be used to provide a facility described in subparagraph (B) or (C), the determination of whether such bond is an exempt facility bond shall be made by substituting '90 percent' for '95 percent' in section 142(a) of the 1986 Code.

''(B) A facility is described in this subparagraph if—

''(i) it is a waste-to-energy project for which a contract for the sale of electricity was executed in September 1984, and

''(ii) the design, construction, and operation contract for such project was signed in March 1985 and the order to begin construction was issued on March 31, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $29,100,000.

''(C) A facility is described in this subparagraph if it is described in section 1865(c)(2)(C) of this Act [set out as a note under section 103 of this title].

''(12) QUALIFIED SCHOLARSHIP FUNDING BONDS.—Subsections (d)(3) and (f) of section 148 of the 1986 Code shall not apply to any bond or series of bonds the proceeds of which are used exclusively to refund qualified scholarship funding bonds (as defined in section 150 of the 1986 Code) issued before January 1, 1986, if—

''(A) the amount of the refunding bonds does not exceed the aggregate face amount of the refunded bonds,

''(B) the maturity date of such refunding bond is not later than later of—

''(i) the maturity date of the bond to be refunded, or

''(ii) the date which is 15 years after the date on which the refunded bond was issued (or, in the case of a series of refundings, the date on which the original bond was issued),

''(C) the bonds to be refunded were issued by the California Student Loan Finance Corporation, and

''(D) the face amount of the refunding bonds does not exceed $175,000,000.

''(13) RESIDENTIAL RENTAL PROPERTY PROJECTS.—A bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide a project for residential rental property which satisfies the requirements of section 103(b)(4)(A) of the 1954 Code shall be treated as an exempt facility bond (for projects described in section 142(a)(7) of the 1986 Code) for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if the project is described in any of the following subparagraphs:

''(A) A residential rental property project is described in this subparagraph if—

''(i) a public building development corporation was formed on June 6, 1984, with respect to such project,

''(ii) a partnership of which the corporation is a general partner was formed on June 8, 1984, and

''(iii) the partnership entered into a preliminary agreement with the State public facilities authority effective as of May 4, 1984, with respect to the issuance of the bonds for such project.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $6,200,000.

''(B) A residential rental property project is described in this subparagraph if—

''(i) the Board of Commissioners of the city housing authority officially selected such project's developer on December 19, 1985,

''(ii) the Board of the City Redevelopment Commission agreed on February 13, 1986, to conduct a public hearing with respect to the project on March 6, 1986,

''(iii) an official action resolution for such project was adopted on March 6, 1986, and

''(iv) an allocation of a portion of the State ceiling was made with respect to such project on July 29, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $10,000,000.

''(C) A residential rental property project is described in this subparagraph if—

''(i) the issuance of $1,289,882 of bonds for such project was approved by a State agency on September 11, 1985, and

''(ii) the authority to issue such bonds was scheduled to expire (under the terms of the State approval) on September 9, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $1,300,000.

''(D) A residential rental property project is described in this subparagraph if—

''(i) the issuance of $7,020,000 of bonds for such project was approved by a State agency on October 10, 1985, and

''(ii) the authority to issue such bonds was scheduled to expire (under the terms of the State approval) on October 9, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $7,020,000.

''(E) A residential rental property project is described in this subparagraph if—

''(i) it is to be located in a city urban renewal project area which was established pursuant to an urban renewal plan adopted by the city council on May 17, 1960,

''(ii) the urban renewal plan was revised in 1972 to permit multifamily dwellings in areas of the urban renewal project designated as a central business district,

''(iii) an inducement resolution was adopted for such project on December 14, 1984, and

''(iv) the city council approved on November 6, 1985, an agreement which provides for conveyance to the city of fee title to such project site.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $60,000,000.

''(F) A residential rental property project is described in this subparagraph if—

''(i) such project is to be located in a city urban renewal project area which was established pursuant to an urban renewal plan adopted by the city council on May 17, 1960,

''(ii) the urban renewal plan was revised in 1972 to permit multifamily dwellings in areas of the urban renewal project designated as a central business district,

''(iii) the amended urban renewal plan adopted by the city council on May 19, 1972, also provides for the conversion of any public area site in Block J of the urban renewal project area for the development of residential facilities, and

''(iv) acquisition of all of the parcels comprising the Block J project site was completed by the city on December 28, 1984.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $60,000,000.

''(G) A residential rental property project is described in this subparagraph if—

''(i) such project is to be located on a city-owned site which is to become available for residential development upon the relocation of a bus maintenance facility,

''(ii) preliminary design studies for such project site were completed in December 1985, and

''(iii) such project is located in the same State as the projects described in subparagraphs (E) and (F).

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $100,000,000.

''(H) A residential rental property project is described in this subparagraph if—

''(i) at least 20 percent of the residential units in such project are to be utilized to fulfill the requirements of a unilateral agreement date July 21, 1983, relating to the provision of low- and moderate-income housing,

''(ii) the unilateral agreement was incorporated into ordinance numbers 83–49 and 83–50, adopted by the city council and approved by the mayor on August 24, 1983, and

''(iii) an inducement resolution was adopted for such project on September 25, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $8,000,000.

''(I) A residential rental property project is described in this subparagraph if—

''(i) a letter of understanding was entered into on December 11, 1985, between the city and county housing and community development office and the project developer regarding the conveyance of land for such project, and

''(ii) such project is located in the same State as the projects described in subparagraphs (E), (F), (G), and (H).

The aggregate face amount of bonds to which this subparagraph applies shall not exceed an amount which, together with the amounts allowed under subparagraphs (E), (F), (G), and (H), does not exceed $250,000,000.

''(J) A residential rental property project is described in this subparagraph if it is a multifamily residential development located in Arrowhead Springs, within the county of San Bernardino, California, and a portion of the site of which currently is owned by the Campus Crusade for Christ. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $350,000,000.

''(K) A residential rental property project is described in this subparagraph if—

''(i) it is a new residential development with approximately 309 dwelling units located in census tract No. 3202, and

''(ii) there was an inducement ordinance for such project adopted by a city council on November 20, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $32,000,000.

''(L) A residential rental property project is described in this subparagraph if—

''(i) it is a new residential development with approximately 70 dwelling units located in census tract No. 3901, and

''(ii) there was an inducement ordinance for such project adopted by a city council on August 14, 1984.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $4,000,000.

''(M) A residential rental property project is described in this subparagraph if—

''(i) it is a new residential development with approximately 98 dwelling units located in census tract No. 4701, and

''(ii) there was an inducement ordinance for such project adopted by a city council on August 14, 1984.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $7,000,000.

''(N) A project or projects are described in this subparagraph if they are part of the Willow Road residential improvement plan in Menlo Park, California. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $9,000,000.

''(O) A residential rental property project is described in this subparagraph if—

''(i) an inducement resolution for such project was approved on July 18, 1985, by the city council,

''(ii) such project was approved by such council on August 11, 1986, and

''(iii) such project consists of approximately 22 duplexes to be used for housing qualified low and moderate income tenants.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $1,500,000.

''(P) A residential rental property project is described in this subparagraph if—

''(i) an inducement resolution for such project was approved on April 22, 1986, by the city council,

''(ii) such project was approved by such council on August 11, 1986, and

''(iii) such project consists of a unit apartment complex (having approximately 60 units) to be used for housing qualified low and moderate income tenants.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $1,625,000.

''(Q) A residential rental property project is described in this subparagraph if—

''(i) a State housing authority granted a notice of official action for the project on May 24, 1985, and

''(ii) a binding agreement was executed for such project with the State housing finance authority on May 14, 1986, and such agreement was accepted by the State housing authority on June 5, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $7,800,000.

''(R) A residential rental property project is described in this subparagraph if such project is either of 2 projects (located in St. Louis, Missouri) which received commitments to provide construction and permanent financing through the issuance of bonds in principal amounts of up to $242,130 and $654,045, on July 16, 1986. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $1,000,000.

''(S) A residential rental property project is described in this subparagraph if—

''(i) a local housing authority approved an inducement resolution for such project on January 28, 1985, and

''(ii) a suit relating to such project was dismissed without right of further appeal on April 4, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $13,200,000.

''(T) A residential rental property project is described in this subparagraph if—

''(i) such project is the renovation of a hotel for residents for senior citizens,

''(ii) an inducement resolution for such project was adopted on November 20, 1985, by the State Development Finance Authority, and

''(iii) such project is to be located in the metropolitan area of the city described in paragraph (3)(C).

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $9,500,000.

''(U) A residential rental property project is described in this subparagraph if—

''(i) such project is the renovation of apartment housing,

''(ii) an inducement resolution for such project was adopted on December 20, 1985, by the State Housing Development Authority, and

''(iii) such project is to be located in the metropolitan area of the city described in paragraph (3)(C).

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $12,000,000.

''(V) A residential rental project is described in this subparagraph if it is a renovation and construction project for low-income housing in central Louisville, Kentucky, and local board approval for such project was granted April 22, 1986. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $500,000.

''(W) A residential rental project is described in this subparagraph if—

''(i) such project is 1 of 6 residential rental projects having in the aggregate approximately 1,010 units,

''(ii) inducement resolutions for such projects were adopted by the county residential finance authority on November 21, 1985, and

''(iii) a public hearing of the county residential finance authority was held by such authority on December 19, 1985, regarding such projects to be constructed by an in-commonwealth developer.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $62,000,000.

''(X) A residential rental project is described in this subparagraph if—

''(i) an inducement resolution with respect to such project was adopted by the State housing development authority on January 25, 1985, and

''(ii) the issuance of bonds for such project was the subject of a law suit filed on October 25, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $64,000,000.

''(Y) A project or projects are described in this subparagraph if they are financed with bonds issued by the Tulare, California, County Housing Authority. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $8,000,000.

''(Z) A residential rental project is described in this subparagraph if such project is a multifamily mixed-use housing project located in a city described in paragraph (3)(C), the zoning for which was changed to residential-business planned development on November 26, 1985, and with respect to which both the city on December 4, 1985, and the state housing finance agency on December 20, 1985, adopted inducement resolutions. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $90,000,000.

''(AA) A residential rental property project is described in this subparagraph if it is the Carriage Trace residential rental project in Clinton, Tennessee. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $10,000,000.

''(BB) A residential rental property project is described in this subparagraph if—

''(i) a contract to purchase such property was dated as of August 9, 1985,

''(ii) there was an inducement resolution adopted on September 27, 1985, for the issuance of obligations to finance such property,

''(iii) there was a State court final validation of such financing on November 15, 1985, and

''(iv) the certificate of nonappeal from such validation was available on December 15, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $27,750,000.

''(14) QUALIFIED STUDENT LOANS.—The amendments made by section 1301 [for classification see section

1311(a) of this note] shall not apply to any qualified student loan bonds (as defined in section 144 of the 1986 Code) issued by the Volunteer State Student Assistance Corporation incorporated on February 20, 1985. The aggregate face amount of bonds to which this paragraph applies shall not exceed $130,000,000. In the case of bonds to which this paragraph applies, the requirements of sections 148 and 149(d) of the 1986 Code shall be treated as included in section 103 of the 1954 Code and shall apply to such bonds.

''(15) ANNUITY CONTRACTS.—The treatment of annuity contracts as investment property under section 148(b)(2) of the 1986 Code shall not apply to any bond described in any of the following subparagraphs:

''(A) A bond is described in this subparagraph if such bond is issued by a city located in a noncontiguous State if—

''(i) the authority to acquire such a contract was approved on September 24, 1985, by city ordinance A085–176, and

''(ii) formal bid requests for such contracts were mailed to insurance companies on September 6, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $57,000,000.

''(B) A bond is described in this subparagraph if—

''(i) on or before May 12, 1985, the governing board of the city pension fund authorized an agreement with an underwriter to provide planning and financial guidance for a possible bond issue, and

''(ii) the proceeds of the sale of such bond issue are to be used to purchase an annuity to fund the unfunded liability of the City of Berkeley, California's Safety Members Pension Fund.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $40,000,000.

''(C) A bond is described in this subparagraph if such bond is issued by the South Dakota Building Authority if on September 18, 1985, representatives of such authority and its underwriters met with bond counsel and approved financing the purchase of an annuity contract through the sale and leaseback of State properties. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $175,000,000.

''(D) A bond is described in this subparagraph if—

''(i) such bond is issued by Los Angeles County, and

''(ii) such county, before September 25, 1985, paid or incurred at least $50,000 of costs related to the issuance of such bonds.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $500,000,000.

''(16) SOLID WASTE DISPOSAL FACILITY.—The amendments made by section 1301 [for classification see section 1311(a) of this note] shall not apply to any solid waste disposal facility if—

''(A) construction of such facility was approved by State law I.C. 36–9–31,

''(B) there was an inducement resolution on November 19, 1984, for the bonds with respect to such facility, and

''(C) a carryforward election of unused 1984 volume cap was made for such project on February 25, 1985.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $120,000,000.

''(17) REFUNDING OF BOND ANTICIPATION NOTES.—There shall not be taken into account under section 146 of the 1986 Code any refunding of bond anticipation notes—

''(A) issued in December of 1984 by the Rhode Island Housing and Mortgage Finance Corporation,

''(B) which mature in December of 1986,

''(C) which is not an advance refunding within the meaning of section 149(d)(5) of the 1986 Code (determined by substituting '180 days' for '90 days' therein), and

''(D) the aggregate face amount of the refunding bonds does not exceed $25,500,000.

''(18) CERTAIN AIRPORTS.—The amendments made by section 1301 [for classification see section 1311(a) of this note] shall not apply to a bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide any airport (within the meaning of section 103(b)(4)(D) of the 1954 Code) if such airport is a mid-field airport terminal and accompanying facilities at a major air carrier airport which during April 1980 opened a new precision instrument approach runway 10R28L. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $425,000,000.

''(19) MASS COMMUTING FACILITIES.—A bond issued as a part of an issue 95 percent or more of the net proceeds of which are to be used to provide a mass commuting facility (within the meaning of section 103(b)(4)(D) of the 1954 Code) shall be treated as an exempt facility bond (for facilities described in section 142(a)(3) of the 1986 Code) for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if such facility is described in 1 of the following subparagraphs:

''(A) A facility is described in this subparagraph if—

''(i) such facility provides access to an international airport,

''(ii) a corporation was formed in connection with such project in September 1984,

''(iii) the Board of Directors of such corporation authorized the hiring of various firms to conduct a feasibility study with respect to such project in April 1985, and

''(iv) such feasibility study was completed in November 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $150,000,000.

''(B) A facility is described in this subparagraph if—

''(i) enabling legislation with respect to such project was approved by the State legislature in 1979,

''(ii) a 1-percent local sales tax assessment to be dedicated to the financing of such project was approved by the voters on August 13, 1983, and

''(iii) a capital fund with respect to such project was established upon the issuance of $90,000,000 of notes on October 22, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $200,000,000 and such bonds must be issued before January 1, 1996.

''(C) A facility is described in this subparagraph if—

''(i) bonds issued therefor are issued by or on behalf of an authority organized in 1979 pursuant to enabling legislation originally enacted by the State legislature in 1973, and

''(ii) such facility is part of a system connector described in a resolution adopted by the board of directors of the authority on March 27, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $400,000,000. Notwithstanding the last paragraph of this subsection, this subparagraph shall apply to bonds issued before January 1, 1996.

''(D) A facility is described in this subparagraph if—

''(i) the facility is a fixed guideway project,

''(ii) enabling legislation with respect to the issuing authority was approved by the State legislature in May 1973,

''(iii) on October 28, 1985, a board issued a request for consultants to conduct a feasibility study on mass transit corridor analysis in connection with the facility, and

''(iv) on May 12, 1986, a board approved a further binding contract for expenditures of approximately $1,494,963, to be expended on a facility study.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $250,000,000. Notwithstanding the last paragraph of this subsection, this subparagraph shall apply to bonds issued before January 1, 1996.

''(20) PRIVATE COLLEGES.—Subsections (c)(2) and (f) of section 148 of the 1986 Code shall not apply to any bond which is issued as part of an issue if such bond—

''(A) is issued by a political subdivision pursuant to home rule and interlocal cooperation powers con-

ferred by the constitution and laws of a State to provide funds to finance the costs of the purchase and construction of educational facilities for private colleges and universities, and

''(B) was the subject of a resolution of official action by such political subdivision (Resolution No. 86–1039) adopted by the governing body of such political subdivision on March 18, 1986.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $100,000,000.

''(21) POOLED FINANCING PROGRAMS.—

''(A) Section 147(b) of the 1986 Code shall not apply to any hospital pooled financing program with respect to which—

''(i) a formal presentation was made to a city hospital facilities authority on January 14, 1986, and

''(ii) such authority passed a resolution approving the bond issue in principle on February 5, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $95,000,000.

''(B) Subsections (c)(2) and (f) of section 148 of the 1986 Code shall not apply to bonds for which closing occurred on July 16, 1986, and for which a State municipal league served as administrator for use in a State described in section 103A(g)(5)(C) of the Internal Revenue Code of 1954. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $585,000,000.

''(22) DOWNTOWN REDEVELOPMENT PROJECT.—Subsection (b) of section 626 of the Tax Reform Act of 1984 [section 626(b) of Pub. L. 98–369, set out as a note under section 103 of this title] is amended by adding at the end thereof the following new paragraph:

'' '(7) EXCEPTION FOR CERTAIN DOWNTOWN REDEVELOPMENT PROJECT.—The amendments made by this section shall not apply to any obligation which is issued as part of an issue 95 percent or more of the proceeds of which are to be used to provide a project to acquire and redevelop a downtown area if—

'' '(A) on August 15, 1985, a downtown redevelopment authority adopted a resolution to issue obligations for such project,

'' '(B) before September 26, 1985, the city expended, or entered into binding contracts to expend, more than $10,000,000 in connection with such project, and

'' '(C) the State supreme court issued a ruling regarding the proposed financing structure for such project on December 11, 1985.

The aggregate face amount of obligations to which this paragraph applies shall not exceed $85,000,000 and such obligations must be issued before January 1, 1992.'

''(23) MASS COMMUTING AND PARKING FACILITIES.—A bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide any mass commuting facility or parking facility (within the meaning of section 103(b)(4)(D) of the 1954 Code) shall be treated as an exempt facility bond for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if such facility is provided in connection with the rehabilitation, renovation, or other improvement to an existing railroad station owned on the date of the enactment of this Act [Oct. 22, 1986] by the National Railroad Passenger Corporation in the Northeast Corridor and which was placed in partial service in 1934 and was placed in the National Register of Historic Places in 1978. The aggregate face amount of bonds to which this paragraph applies shall not exceed $30,000,000.

''(24) TAX-EXEMPT STATUS OF BONDS OF CERTAIN EDUCATIONAL ORGANIZATIONS.—

''(A) IN GENERAL.—For purposes of section 103 and part IV of subchapter B of chapter 1 of the 1986 Code, a qualified educational organization shall be treated as a governmental unit, but only with respect to a trade or business carried on by such organization which is not an unrelated trade or business (determined by applying section 513(a) of such Code to such organization). The last paragraph of this section shall not apply to the treatment under the preceding sentence.

''(B) QUALIFIED EDUCATIONAL ORGANIZATION.—For purposes of subparagraph (A), the term 'qualified educational organization' means a college or university—

''(i) which was reincorporated and renewed with perpetual existence as a corporation by specific act of the legislature of the State within which such college or university is located on March 19, 1913, or

''(ii) which—

''(I) was initially incorporated or created on February 28, 1787, on April 29, 1854, or on May 14, 1888, and

''(II) as an instrumentality of the State, serves as a 'State-related' university by a specific act of the legislature of the State within which such college or university is located.

''(25) TAX-EXEMPT STATUS OF BONDS OF CERTAIN PUBLIC UTILITIES.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), a bond shall be treated as a qualified bond for purposes of section 103 of the 1986 Code if such bond is issued after the date of the enactment of this Act [Oct. 22, 1986] with respect to a public utility facility if such facility is—

''(i) located at any non-federally owned dam (or on project waters or adjacent lands) located wholly or partially in 1 or more of 3 counties, 2 of which are contiguous to the third, where the rated capacity of the hydroelectric generating facilities at 5 of such dams on October 18, 1979, was more than 650 megawatts each,

''(ii) located at a dam (or on the project waters or adjacent lands) at which hydroelectric generating facilities were financed with the proceeds of tax-exempt obligations before December 31, 1968,

''(iii) owned and operated by a State, political subdivision of a State, or any agency or instrumentality of any of the foregoing, and

''(iv) located at a dam (or on project waters or adjacent lands) where the general public has access for recreational purposes to such dam or to such project waters or adjacent lands.

''(B) SPECIAL RULES FOR SUBPARAGRAPH (A).—

''(i) BONDS SUBJECT TO CAP.—Section 146 of the 1986 Code shall apply to any bond described in subparagraph (A) which (without regard to subparagraph (A)) is a private activity bond. For purposes of applying section 146(k) of the 1986 Code, the public utility facility described in subparagraph (A) shall be treated as described in paragraph (2) of such section and such paragraph shall be applied without regard to the requirement that the issuer establish that a State's share of the use of a facility (or its output) will equal or exceed the State's share of the private activity bonds issued to finance the facility.

''(ii) LIMITATION ON AMOUNT OF BONDS TO WHICH SUBPARAGRAPH (A) APPLIES.—The aggregate face amount of bonds to which subparagraph (A) applies shall not exceed $750,000,000, not more than $350,000,000 of which may be issued before January 1, 1992.

''(iii) LIMITATION ON PURPOSES.—Subparagraph (A) shall only apply to bonds issued as part of an issue 95 percent or more of the net proceeds of which are used to provide 1 or more of the following:

''(I) A fish by-pass facility or fisheries enhancement facility.

''(II) A recreational facility or other improvement which is required by Federal licensing terms and conditions or other Federal, State, or local law requirements.

''(III) A project of repair, maintenance, renewal, or replacement, and safety improvement.

''(IV) Any reconstruction, replacement, or improvement, including any safety improvement, which increases, or allows an increase in, the capacity, efficiency, or productivity of the existing generating equipment.

''(26) CONVENTION AND PARKING FACILITIES.—A bond shall not be treated as a private activity bond for purposes of section 103 and part IV of subchapter B of chapter 1 of the 1986 Code if—

''(A) such bond is issued to provide a sports or convention facility described in section 103(b)(4)(B) or (C) of the 1954 Code,

''(B) such bond is not described in section 103(b)(2) or (*o*)(2)(A) of such Code,

''(C) legislation by a State legislature in connection with such facility was enacted on July 19, 1985, and was designated Chapter 375 of the Laws of 1985, and

''(D) legislation by a State legislature in connection with the appropriation of funds to a State public benefit corporation for loans in connection with the construction of such facility was enacted on April 17, 1985, and was designated Chapter 41 of the Laws of 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $35,000,000.

''(27) SMALL ISSUE TERMINATION.—Section 144(a)(12) of the 1986 Code shall not apply to any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide a facility described in any of the following subparagraphs:

''(A) A facility is described in this subparagraph if—

''(i) the facility is a hotel and office facility located in a State capital,

''(ii) the economic development corporation of the city in which the facility is located adopted an initial inducement resolution on October 30, 1985, and

''(iii) a feasibility consultant was retained on February 21, 1986, with respect to such facility.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $10,000,000.

''(B) A facility is described in this subparagraph if such facility is financed by bonds issued by a State finance authority which was created in April 1985 by Act 1062 of the State General Assembly, and the Bond Guarantee Act (Act 505 of 1985) allowed such authority to pledge the interest from investment of the State's general fund as a guarantee for bonds issued by such authority. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $75,000,000.

''(C) A facility is described in this subparagraph if such facility is a downtown mall and parking project for Holland, Michigan, with respect to which an initial agreement was formulated with the city in May 1985 and a formal memorandum of understanding was executed on July 2, 1986. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $18,200,000.

''(D) A facility is described in this subparagraph if such facility is a downtown mall and parking ramp project for Traverse City, Michigan, with respect to which a final development agreement was signed in June 1986. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $21,500,000.

''(E) A facility is described in this subparagraph if such facility is the rehabilitation of the Heritage Hotel in Marquette, Michigan. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $5,000,000.

''(F) A facility is described in this subparagraph if it is the Lakeland Center Hotel in Lakeland, Florida. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $10,000,000.

''(G) A facility is described in this subparagraph if it is the Marble Arcade office building renovation project in Lakeland, Florida. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $5,900,000.

''(H) A facility is described in this subparagraph if it is a medical office building in Bradenton, Florida, with respect to which—

''(i) a memorandum of agreement was entered into on October 17, 1985, and

''(ii) the city council held a public hearing and approved issuance of the bonds on November 13, 1985.

The aggregate face amount of obligations to which this subparagraph applies shall not exceed $8,500,000.

''(I) A facility is described in this subparagraph if it consists of the rehabilitation of the Andover Town Hall in Andover, Massachusetts. The provisions of section 149(b) of the 1986 Code (relating to federally guaranteed obligations) shall not apply to obligations to finance such project solely as a result of the occupation of a portion of such building by a United States Post Office. For purposes of determining whether any bond to which this subparagraph applies is a qualified small issue bond, there shall not be taken into account under section 144(a) of the 1986 Code capital expenditures with respect to any facility of the United States Government and there shall not be taken into account any bond allocable to the United States Government.

''(J) A facility is described in this subparagraph if it is the Central Bank Building renovation project in Grand Rapids, Michigan. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $1,000,000.

''(28) CERTAIN PRIVATE LOANS NOT TAKEN INTO ACCOUNT.—For purposes of determining whether any bond is a private activity bond, an amount of loans (but not in excess of $75,000,000) provided from the proceeds of 1 or more issues shall not be taken into account if such loans are provided in furtherance of—

''(A) a city Emergency Conservation Plan as set forth in an ordinance adopted by the city council of such city on February 17, 1983, or

''(B) a resolution adopted by the city council of such city on March 10, 1983, committing such city to a goal of reducing the peak load of such city's electric generation and distribution system by 553 megawatts in 15 years.

''(29) CERTAIN PRIVATE BUSINESS USE NOT TAKEN INTO ACCOUNT.—

''(A) The nonqualified amount of the proceeds of an issue shall not be taken into account under section 141(b)(5) of the 1986 Code or in determining whether a bond described in subparagraph (B) (which is part of such issue) is a private activity bond for purposes of section 103 and part IV of subchapter B of chapter 1 of the 1986 Code.

''(B) A bond is described in this subparagraph if—

''(i) such bond is issued before January 1, 1993, by the State of Connecticut, and

''(ii) such bond is issued pursuant to a resolution of the State Bond Commission adopted before September 26, 1985.

''(C) The nonqualified amount to which this paragraph applies shall not exceed $150,000,000.

''(D) For purposes of this paragraph, the term 'nonqualified amount' has the meaning given such term by section 141(b)(8) of the 1986 Code, except that such term shall include the amount of the proceeds of an issue which is to be used (directly or indirectly) to make or finance loans (other than loans described in section 141(c)(2) of the 1986 Code) to persons other than governmental units.

''(30) VOLUME CAP NOT TO APPLY TO CERTAIN FACILITIES.—For purposes of section 146 of the 1986 Code, any exempt facility bond for the following facility shall not be taken into account: The facility is a facility for the furnishing of water which was authorized under Public Law 90–537 [43 U.S.C. 1501 et seq.] of the United States if—

''(A) construction of such facility began on May 6, 1973, and

''(B) forward funding will be provided for the remainder of the project pursuant to a negotiated agreement between State and local water users and the Secretary of the Interior signed April 15, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $391,000,000.

''(31) CERTAIN HYDROELECTRIC GENERATING PROPERTY.—A bond shall be treated as described in paragraph (2) of section 1316(f) of this Act if—

''(A) such bond would be so described but for the substitution specified in such paragraph,

''(B) on January 7, 1983, an application for a preliminary permit was filed for the project for which such bond is issued and received docket no. 6986, and

''(C) on September 20, 1983, the Federal Energy Regulatory Commission issued an order granting the preliminary permit for the project.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $12,000,000.

''(32) VOLUME CAP.—The State ceiling applicable under section 146 of the 1986 Code for calendar year 1987 for the State which ratified the United States Constitution on May 29, 1790, shall be $150,000,000 higher than the State ceiling otherwise applicable under such section for such year.

''(33) APPLICATION OF $150,000,000 LIMITATION FOR CERTAIN QUALIFIED 501(c)(3) BONDS.—Proceeds of an issue described in any of the following subparagraphs shall not be taken into account under section 145(b) of the 1986 Code.

''(A) Proceeds of an issue are described in this subparagraph if—

''(i) such proceeds are used to provide medical school facilities or medical research and clinical facilities for a university medical center,

''(ii) such proceeds are of—

''(I) a $21,550,000 issue dated August 1, 1980,

''(II) a $84,400,000 issue dated September 1, 1984, and

''(III) a $48,500,000 issue (Series 1985 A and 1985 B) dated on December 1, 1985, and

''(iii) the issuer of all such issues is the same.

''(B) Proceeds of an issue are described in this subparagraph if such proceeds are for use by Yale University and—

''(i) the bonds are issued after August 8, 1986, by the State of Connecticut Health and Educational Facilities Authority, or

''(ii) the bonds are the 1st or 2nd refundings (including advance refundings) of the bonds described in clause (i) or of original bonds issued before August 7, 1986, by such Authority.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $90,000,000.

''(C) Proceeds of an issue are described in this subparagraph if—

''(i) such issue is issued on behalf of a university established by Charter granted by King George II of England on October 31, 1754, to accomplish a refunding (including an advance refunding) of bonds issued to finance 1 or more projects, and

''(ii) the application or other request for the issuance of the issue to the appropriate State issuer was made by or on behalf of such university before February 26, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $250,000,000.

''(D) Proceeds of an issue are described in this subparagraph if—

''(i) such proceeds are to be used for finance construction of a new student recreation center,

''(ii) a contract for the development phase of the project was signed by the university on May 21, 1986, with a private company for 5 percent of the costs of the project, and

''(iii) a committee of the university board of administrators approved the major program elements for the center on August 11, 1986.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $25,000,000.

''(E) Proceeds of an issue are described in this subparagraph if—

''(i) such proceeds are to be used in the construction of new life sciences facilities for a university for medical research and education,

''(ii) the president of the university authorized a faculty/administration planning committee for such facilities on September 17, 1982,

''(iii) the trustees of such university authorized site and architect selection on October 30, 1984, and

''(iv) the university negotiated a $2,600,000 contract with the architect on August 9, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $47,500,000.

''(F) Proceeds of an issue are described in this subparagraph if such proceeds are to be used to renovate undergraduate chemistry and engineering laboratories, and to rehabilitate other basic science facilities, for an institution of higher education in Philadelphia, Pennsylvania, chartered by legislative Acts of the Commonwealth of Pennsylvania, including an Act dated September 30, 1791. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $6,500,000.

''(G) Proceeds of an issue are described in this subparagraph if such proceeds are of bonds which are the first advance refunding of bonds issued during 1985 for the development of a computer network, and construction and renovation or rehabilitation of other facilities, for an institution of higher education described in subparagraph (F). The aggregate face amount of bonds to which this subparagraph applies shall not exceed $80,000,000.

''(H) Proceeds of an issue are described in this subparagraph if—

''(i) the issue is issued on behalf of a university founded in 1789, and

''(ii) the proceeds of the issue are to be used to finance projects (to be determined by such university and the issuer) which are similar to those projects intended to be financed by bonds that were the subject of a request transmitted to Congress on November 7, 1985[.]

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $200,000,000. Bonds to which this subparagraph applies shall be treated as qualified 501(c)(3) bonds if such bonds would not (if issued on August 15, 1986) be industrial development bonds (as defined in section 103(b)(2) of the 1954 Code), and section 147(f) of the 1986 Code shall not apply to the issue of which such bonds are a part. Bonds issued to finance facilities described in this subparagraph shall be treated as issued to finance such facilities notwithstanding the fact that a period in excess of 1 year has expired since the facilities were placed in service.

''(I) Proceeds of an issue are described in this subparagraph if the issue is issued on behalf of a university established on August 6, 1872, for a project approved by the trustees thereof on November 1, 1985. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $100,000,000.

''(J) Proceeds of an issue are described in this subparagraph if—

''(i) the issue is issued on behalf of a university for which the founding grant was signed on November 11, 1885, and

''(ii) such bond is issued for the purpose of providing a Near West Campus Redevelopment Project and a Student Housing Project.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $105,000,000.

''(J) Proceeds of an issue are described in this subparagraph if—

''(i) they are the proceeds of advance refunding obligations issued on behalf of a university established on April 21, 1831, and

''(ii) the application or other request for the issuance of such obligations was made to the appropriate State issuer before July 12, 1986.

The aggregate face amount of obligations to which this subparagraph applies shall not exceed $175,000,000.

''(K) Proceeds of an issue are described in this subparagraph if—

''(i) the issue or issues are for the purpose of financing or refinancing costs associated with university facilities including at least 900 units of housing for students, faculty, and staff in up to two buildings and an office building containing up to 245,000 square feet of space, and

''(ii) a bond act authorizing the issuance of such bonds for such project was adopted on July 8, 1986, and such act under Federal law was required to be transmitted to Congress.

The aggregate face amount of obligations to which this subparagraph applies shall not exceed $112,000,000.

''(L) Proceeds of an issue are described in this subparagraph if such issue is for Cornell University in an aggregate face amount of not more than $150,000,000.

''(M) Proceeds of an issue are described in this subparagraph if such issue is issued on behalf of the Society of the New York Hospital to finance completion of a project commenced by such hospital in 1981 for construction of a diagnostic and treatment center or to refund bonds issued on behalf of such hospital in connection with the construction of such diagnostic and treatment center or to finance construction and renovation projects associated with an inpatient psychiatric care facility. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $150,000,000.

''(N) Any bond to which section 145(b) of the 1986 Code does not apply by reason of this paragraph (other than subparagraph (A) thereof) shall be taken into account in determining whether such section applies to any later issue.

''(O) In the case of any refunding bond—

''(i) to which any subparagraph of this paragraph applies, and

''(ii) to which the last sentence of section 1313(c)(2) applies,

such bond shall be treated as having such subparagraph apply (and the refunding bond shall be treated for purposes of such section as issued before January 1, 1986, and as not being an advance refunding) unless the issuer elects the opposite result.

''(34) ARBITRAGE REBATE.—Section 148(f) of the 1986 Code shall not apply to any period before October 1, 1990, with respect to any bond the proceeds of which are to be used to provide a high-speed rail system for the State of Ohio. The aggregate face amount of bonds to which this paragraph applies shall not exceed $2,000,000,000.

''(35) EXTENSION OF CARRYFORWARD PERIOD.—

''(A) In the case of a carryforward under section 103(n)(10) of the 1954 Code of $170,000,000 of bond limit for calendar year 1984 for a project described in subparagraph (B), clause (i) of section 103(n)(10)(C) of the 1954 Code shall be applied by substituting '6 calendar years' for '3 calendar years', and such carryforward may be used by any authority designated by the State in which the facility is located.

''(B) A project is described in this subparagraph if—

''(i) such project is a facility for local furnishing of electricity described in section 645 of the Tax Reform Act of 1984 [Pub. L. 98–369, div. A, title VI, § 645, July 18, 1984, 98 Stat. 940], and

''(ii) construction of such facility commenced within the 3-year period following the calendar year in which the carryforward arose.

''(36) POWER PURCHASE BONDS.—A bond issued to finance purchase of power from a power facility at a dam being renovated pursuant to P.L. 98–381 [43 U.S.C. 619 et seq.] shall not be treated as a private activity bond if it would not be such under section 141(b)(1) and (2) of the 1986 Code if 25 percent were substituted for 10 percent and the provisions of section 141(b)(3), (4), and (5) of the 1986 Code did not apply. The aggregate face amount of bonds to which this paragraph applies shall not exceed $400,000,000.

''(37) QUALIFIED MORTGAGE BONDS.—A bond issued as part of either of 2 issues no later than September 8, 1986, shall be treated as a qualified mortgage bond within the meaning of section 141(d)(1)(B) of the 1986 Code if it satisfies the requirements of section 103A of the 1954 Code and if the issues are issued by the two most populous cities in the Tar Heel State. The aggregate face amount of bonds to which this paragraph applies shall not exceed $4,000,000.

''(38) EXEMPT FACILITY BONDS.—A bond shall be treated as an exempt facility bond within the meaning of section 142(a) of the 1986 Code if it is issued to fund residential, office, retail, light industrial, recreational and parking development known as Tobacco Row. Such bond shall be subject to section 146 of the 1986 Code. The aggregate face amount of bonds to which this paragraph applies shall not exceed $100,000,000.

''(39) CERTAIN BONDS TREATED AS QUALIFIED 501(c)(3) BONDS.—A bond issued as part of an issue shall be treated for purposes of part IV of subchapter B of chapter 1 of the 1986 Code as a qualified 501(c)(3) bond if—

''(A) such bond would not (if issued on August 15, 1986) be an industrial development bond (as defined in section 103(b)(2) of the 1954 Code), and

''(B) such issue was approved by city voters on January 19, 1985, for construction or renovation of facilities for the cultural and performing arts.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $5,000,000.

''(40) CERTAIN LIBRARY BONDS.—In the case of a bond issued before January 1, 1986, by the City of Los Angeles Community Redevelopment Agency to provide the library and related structures associated with the City of Los Angeles Central Library Project, the ownership and use of the land and facilities associated with such project by persons which are not governmental units (or payments from such persons) shall not adversely affect the exclusion from gross income under section 103 of the 1954 Code of interest on such bonds.

''(41) CERTAIN REFUNDING OBLIGATIONS FOR CERTAIN POWER FACILITIES.—With respect to 2 net billed nuclear power facilities located in the State of Washington on which construction has been suspended, the requirements of section 147(b) of the 1986 Code shall be treated as satisfied with respect to refunding bonds issued before 1992 if—

''(A) each refunding bond has a maturity date not later than the maturity date of the refunded bond, and

''(B) the facilities have not been placed in service as of the date of issuance of the refunding bond.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $2,000,000,000. Section 146 of the 1986 Code and the last paragraph of this section shall not apply to bonds to which this paragraph applies.

''(42) RESIDENTIAL RENTAL PROPERTY.—A bond issued to finance a residential rental project within the meaning of 103(b)(4) of the 1954 Code shall be treated as an exempt facility bond within the meaning of section 142(a)(7) of the 1986 Code if the county housing finance authority adopted an inducement resolution with respect to the project on May 8, 1985, and the project is located in Polk County, Florida. The aggregate face amount of bonds to which this paragraph applies shall not exceed $4,100,000.

''(43) EXTENSION OF ADVANCE REFUNDING FOR CERTAIN FACILITIES.—Paragraph (4) of section 631(c) of the Tax Reform Act of 1984 [section 631(c)(4) of Pub. L. 98–369, set out as a note under section 103 of this title] is amended—

''(A) by striking out the second sentence thereof,

''(B) by adding at the end thereof the following new sentence: 'In the case of refunding obligations not exceeding $100,000,000 issued by the Alabama State Docks Department, the first sentence of this paragraph shall be applied by substituting ''December 31, 1987'' for ''December 31, 1984''.'

''(44) POOL BONDS.—The following amounts of pool bonds are exempt from the arbitrage rebate requirement of section 148(f) of the 1986 Code and the temporary period limitation of section 148(c)(2) of the 1986 Code:

Pool	Maximum Bond Amount
Tennessee Utility Districts Pool	$80,000,000
New Mexico Hospital Equipment Loan Council	$35,000,000
Pennsylvania Local Government Investment Trust Pool	$375,000,000
Indiana Bond Bank Pool	$240,000,000

Pool	Maximum Bond Amount
Hernando County, Florida Bond Pool	$300,000,000
Utah Municipal Finance Cooperative Pool	$262,000,000
North Carolina League of Municipalities Pool	$200,000,000
Kentucky Municipal League Bond Pool	$170,000,000
Kentucky Association of Counties Bond Pool	$200,000,000
Homewood Municipal Bond Pool	$50,000,000
Colorado Association of School Boards Pool	$300,000,000
Tennessee Municipal League Pooled Bonds	$75,000,000
Georgia Municipal Association Pool	$130,000,000

''(45) CERTAIN CARRYFORWARD ELECTIONS.—Notwithstanding any other provision of this title [enacting this section and sections 142 to 150 and 7703 of this title, amending sections 2, 22, 25, 32, 86, 103, 105, 152, 153, 163, 172, 194, 269A, 414, 879, 1016, 1398, 3402, 4701, 4940, 4942, 4988, 6362, 6652, and 7871 of this title, repealing sections 103A, 1391 to 1397, and 6039B of this title, omitting former section 143 of this title, enacting provisions set out as notes under this section and sections 148 and 501 of this title, and amending provisions set out as a note under section 103A of this title]—

''(A) In the case of a metropolitan service district created pursuant to State revised statutes, chapter 268, up to $100,000,000 unused 1985 bond authority may be carried forward to any year until 1989 (regardless of the date on which such carryforward election is made).

''(B) If—

''(i) official action was taken by an industrial development board on September 16, 1985, with respect to the issuance of not more than $98,500,000, of waste water treatment revenue bonds, and

''(ii) an executive order of the governor granted a carryforward of State bond authority for such project on December 30, 1985,

such carryforward election shall be valid for any year through 1988. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $98,500,000.

''(46) TREATMENT OF CERTAIN OBLIGATIONS TO FINANCE HYDROELECTRIC GENERATING FACILITY.—If—

''(A) obligations are issued in an amount not exceeding $5,000,000 to finance the construction of a hydroelectric generating facility located on the North Fork of Cache Creek in Lake County, California, which was the subject of a preliminary resolution of the issuer of the obligations on June 29, 1982, or are issued to refund any of such obligations,

''(B) substantially all of the electrical power generated by such facility is to be sold to a nongovernmental person pursuant to a long-term power sales agreement in accordance with the Public Utility Regulatory Policies Act of 1978 [Pub. L. 95–617, see Short Title note set out under 16 U.S.C. 2601], and

''(C) the initially issued obligations are issued on or before December 31, 1986, and any of such refunding obligations are issued on or before December 31, 1996,

then the person referred to in subparagraph (B) shall not be treated as a principal user of such facilities by reason of such sales for purposes of subparagraphs (D) and (E) of section 103(b)(6) of the 1954 Code.

''(47) TREATMENT OF CERTAIN OBLIGATIONS TO FINANCE STEAM AND ELECTRIC COGENERATION FACILITY.—If—

''(A) obligations are issued on or before December 31, 1986, in an amount not exceeding $4,400,000 to finance a facility for the generation and transmission of steam and electricity having a maximum electrical capacity of approximately 5.3 megawatts and located within the City of San Jose, California, or are issued to refund any of such obligations,

''(B) substantially all of the electrical power generated by such facility that is not sold to an institution of higher education created by statute of the State of California is to be sold to a nongovernmental person pursuant to a long-term power sales agreement in accordance with the Public Utility Regulatory Policies Act of 1978 [Pub. L. 95–617, see Short Title note set out under 16 U.S.C. 2601], and

''(C) the initially issued obligations are issued on or before December 31, 1986, and any of such refunding obligations are issued on or before December 31, 1996,

then the nongovernmental person referred to in subparagraph (B) shall not be treated as a principal user of such facilities by reason of such sales for purposes of subparagraphs (D) and (E) of section 103(b)(6) of the Internal Revenue Code of 1954.

''(48) TREATMENT OF CERTAIN OBLIGATIONS.—A bond which is not an industrial development bond under section 103(b)(2) of the Internal Revenue Code of 1954 shall not be treated as a private activity bond for purposes of part IV of subchapter B of chapter 1 of the 1986 Code if 95 percent or more of the net proceeds of the issue of which such bond is a part are used to provide facilities described in any of the following subparagraphs:

''(A) A facility is described in this subparagraph if it is a governmentally-owned and operated State fair and exposition center with respect to which—

''(i) the 1985 session of the State legislature authorized revenue bonds to be issued in a maximum amount of $10,000,000, and

''(ii) a market feasibility study dated June 30, 1986, relating to a major capital improvemental program at the facility was prepared for the advisory board of the State fair and exposition center by a certified public accounting firm.

The aggregate face amount of obligations to which this subparagraph applies shall not exceed $10,000,000.

''(B) A facility is described in this subparagraph if it is a convention, trade, or spectator facility which is to be located in the State with respect to which paragraph (6)(U) applies and with respect to which feasibility and preliminary design consultants were hired on May 1, 1985 and October 31, 1985. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $175,000,000.

''(C) A facility which is part of a project described in paragraph (6)(O). The aggregate face amount of bonds to which this subparagraph applies shall not exceed $20,000,000.

''(49) TRANSITION RULE FOR REFUNDING CERTAIN HOUSING BONDS.—Sections 146 and 149(d)(2) of the 1986 Code shall not apply to the refunding of any bond issued under section 11(b) of the United States Housing Act of 1937 [42 U.S.C. 1437i(b)] before December 31, 1983, if—

''(A) the bond has an original term to maturity of at least 40 years,

''(B) the maturity date of the refunding bonds does not exceed the maturity date of the refunded bonds,

''(C) the amount of the refunding bonds does not exceed the outstanding amount of the refunded bonds,

''(D) the interest rate on the refunding bonds is lower than the interest rate of the refunded bonds, and

''(E) the refunded bond is required to be redeemed not later than the earliest date on which such bond could be redeemed at par.

''(50) TRANSITIONED BONDS SUBJECT TO CERTAIN RULES.—In the case of any bond to which any provision of this section applies, except as otherwise expressly provided, sections 103 and 103A of the 1954 Code shall be applied as if the requirements of sections 147(g), 148, and 149(d) of the 1986 Code were included in each such section.

''(51) CERTAIN ADDITIONAL PROJECTS.—Section 141(b) of the 1986 Code shall be applied by substituting '25' for '10' each place it appears and by not applying sections 141(b)(3) and 141(c)(1)(B) to bonds substantially all of the proceeds are used for—

''(A) A project is described in this subparagraph if it consists of a capital improvements program for a metropolitan sewer district, with respect to which a proposition was submitted to voters on August 7,

1984. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $60,000,000.

''(B) Facilities described in this subparagraph if it consists of additions, extensions, and improvements to the wastewater system for Lakeland, Florida. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $20,000,000.

''(C) A project is described in this subparagraph if it is the Central Valley Water Reclamation Project in Utah. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $100,000,000.

''(D) A project is described in this subparagraph if it is a project to construct approximately 26 miles of toll expressways, with respect to which any appeal to validation was filed July 11, 1986. The aggregate face amount of obligations to which this subparagraph applies shall not exceed $450,000,000.

''(52) TERMINATION.—Except as otherwise provided in this section, this section shall not apply to any bond issued after December 31, 1990.

''SEC. 1318. DEFINITIONS, ETC., RELATING TO EFFECTIVE DATES AND TRANSITIONAL RULES.

''(a) DEFINITIONS.—For purposes of this subtitle—

''(1) 1954 CODE.—The term '1954 Code' means the Internal Revenue Code of 1954 as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986].

''(2) 1986 CODE.—The term '1986 Code' means the Internal Revenue Code of 1986 as amended by this Act [see Tables for classification].

''(3) BOND.—The term 'bond' includes any obligation.

''(4) ADVANCE REFUND.—A bond shall be treated as issued to advance refund another bond if it is issued more than 90 days before the redemption of the refunded bond.

''(5) NET PROCEEDS.—The term 'net proceeds' has the meaning given such term by section 150(a) of the 1986 Code.

''(6) CONTINUED APPLICATION OF THE 1954 CODE.—Nothing in this subtitle shall be construed to exempt any bond from any provision of the 1954 Code by reason of a delay in (or exemption from) the application of any amendment made by subtitle A [sections 1301 to 1303 of Pub. L. 99–514, enacting this section and sections 142 to 150 and 7703 of this title, amending sections 2, 22, 25, 32, 86, 103, 105, 152, 153, 163, 172, 194, 269A, 414, 879, 1016, 1398, 3402, 4701, 4940, 4942, 4988, 6362, 6652, and 7871 of this title, repealing sections 103A, 1391 to 1397, and 6039B of this title, omitting former section 143 of this title, enacting provisions set out as notes under this section and sections 148 and 501 of this title, and amending provisions set out as a note under section 103A of this title].

''(7) TREATMENT AS EXEMPT FACILITY.—Any bond which is treated as an exempt facility bond by section 1316 or 1317 shall not fail to be so treated by reason of subsection (b) of section 142 of the 1986 Code.

''(8) APPLICATION OF FUTURE LEGISLATION TO TRANSITIONED BONDS.—In the case of any bond to which the amendments made by section 1301 [for classification see section 1311(a) of this note] do not apply by reason of a provision of this Act [see Tables for classification], any amendment of the 1986 Code (and any other provision applicable to such Code) included in any law enacted after October 22, 1986, shall be treated as included in section 103 and section 103A (as appropriate) of the 1954 Code with respect to such bond unless—

''(A) such law expressly provides that such amendment (or other provision) shall not apply to such bond, or

''(B) such amendment (or other provision) applies to a provision of the 1986 Code—

''(i) for which there is no corresponding provision in section 103 and section 103A (as appropriate) of the 1954 Code, and

''(ii) which is not otherwise treated as included in such sections 103 and 103A with respect to such bond.

''(b) MINIMUM TAX TREATMENT.—

''(1) IN GENERAL.—Any bond described in paragraph (2) shall not be treated as a private activity bond for purposes of section 57 of the 1986 Code unless such bond would (if issued on August 7, 1986) be—

''(A) an industrial development bond (as defined in section 103(b)(2) of the 1954 Code), or

''(B) a private loan bond (as defined in section 103(*o*)(2)(A) of the 1954 Code, without regard to any exception from such definition other than section 103(*o*)(2)(C) of such Code).

''(2) BONDS DESCRIBED.—For purposes of paragraph (1), a bond is described in this paragraph if—

''(A) the amendments made by section 1301 [for classification see section 1311(a) of this note] do not apply to such bond by reason of section 1312 or 1316(g),

''(B) any provision of section 1317 applies to such bond, or

''(C) the proceeds of such bond are used to refund any bond referred to in subparagraph (A) or (B) (or any bond which is part of a series of refundings of such a bond) if the requirements of paragraphs (1), (2), and (3) of subsection (c) are met with respect to the refunding bond.

''(c) CURRENT REFUNDINGS NOT TAKEN INTO ACCOUNT IN APPLYING AGGREGATE LIMIT ON BONDS TO WHICH TRANSITIONAL RULES APPLY.—The limitation on the aggregate face amount of bonds to which any provision of section 1316(g) or 1317 applies shall not be reduced by the face amount of any bond the proceeds of which are to be used exclusively to refund any bond to which such provision applies (or any bond which is part of a series of refundings of such bond) if—

''(1) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

''(2) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

''(3) the net proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

For purposes of paragraph (1), average maturity shall be determined in accordance with section 147(b)(2)(A) of the 1986 Code. No limitation in section 1316(g) or 1317 on the period during which bonds may be issued under such section shall apply to any refunding bond which meets the requirements of this subsection.

''(d) SPECIAL RULE PERMITTING CARRYFORWARD OF VOLUME CAP FOR CERTAIN TRANSITIONED PROJECTS.—A bond to which section 1312 or 1317 applies shall be treated as having a carryforward purpose described in section 146(f)(5) of the 1986 Code, and the requirement of section 146(f)(2)(A) of the 1986 Code shall be treated as met if such project is identified with reasonable specificity. The preceding sentence shall not apply so as to permit a carryforward with respect to any qualified small issue bond.''

[Section 1013(c)(2)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending section 1313(a)(3)(C) of Pub. L. 99–514, set out above] shall apply to bonds issued after June 30, 1987''.]

[Section 1013(c)(11)(E) of Pub. L. 100–647 provided that: ''A refunding bond issued before July 1, 1987, shall be treated as meeting the requirement of subparagraph (A) of section 1313(c)(1) of the Reform Act [Pub. L. 99–514, set out above] if such bond met the requirement of such subparagraph as in effect before the amendments made by this paragraph [amending section 1313(c) of Pub. L. 99–514, set out above].''']

[Section 1013(c)(14)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending section 1313 of Pub. L. 99–514, set out above] shall apply with respect to refunding bonds issued after October 16, 1987.''']

[Section 1013(e)(2)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending section 1315(e) of Pub. L. 99–514, set out above] shall apply to bonds issued after June 10, 1987.'']

[Section 1013(f)(1)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending section 1316 of Pub. L. 99–514, set out above] shall apply only with respect to carryforwards of volume cap for years after 1986.'']

[Section 1013(f)(7)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending section 1316(g)(8) of Pub. L. 99–514, set out above] shall apply only with respect to carryforwards of volume cap for years after 1986.'']

REGULATIONS

Section 1301(i) of Pub. L. 99–514 provided that: ''The Secretary of the Treasury or his delegate shall amend the provision in the Federal income tax regulations relating to when use pursuant to certain output contracts is considered to satisfy the private business tests of paragraphs (1) and (2) of section 141(b) of the Internal Revenue Code of 1986 to eliminate the requirement of a 3 percent guaranteed minimum payment.''

APPLICATION OF SECURITY INTEREST TEST TO BOND FINANCING OF HAZARDOUS WASTE CLEAN-UP ACTIVITIES

Section 6179 of Pub. L. 100–647 provided that: ''Before January 1, 1989, the Secretary of the Treasury or his delegate shall issue guidance concerning the application of the private security or payment test under section 141(b)(2) of the Internal Revenue Code of 1986 to tax-exempt bond financing by State and local governments of hazardous waste clean-up activities conducted by such governments where some of the activities occur on privately owned land.''

STATE AND LOCAL GOVERNMENT SERIES MODIFICATIONS

Section 1301(d) of Pub. L. 99–514 provided that: ''Notwithstanding any other provision of law or any regulations promulgated thereunder (including the provisions of 31 CFR part 344) the Secretary of the Treasury shall extend by January 1, 1987, the State and Local Government Series program to provide—

''(1) instruments allowing flexible investment of bond proceeds in a manner eliminating the earning of rebatable arbitrage,

''(2) demand deposits under such program by eliminating advance notice and minimum maturity requirements related to the purchase of bonds,

''(3) operation of such program at no net cost to the Federal Government, and

''(4) deposits for a stated maturity under reasonable advance notice requirements.''

MANAGEMENT CONTRACTS

Section 1301(e) of Pub. L. 99–514 provided that: ''The Secretary of the Treasury or his delegate shall modify the Secretary's advance ruling guidelines relating to when use of property pursuant to a management contract is not considered a trade or business use by a private person for purposes of section 141(a) of the Internal Revenue Code of 1986 to provide that use pursuant to a management contract generally shall not be treated as trade or business use as long as—

''(1) the term of such contract (including renewal options) does not exceed 5 years,

''(2) the exempt owner has the option to cancel such contract at the end of any 3-year period,

''(3) the manager under the contract is not compensated (in whole or in part) on the basis of a share of net profits, and

''(4) at least 50 percent of the annual compensation of the manager under such contract is based on a periodic fixed fee.''

§ 142. Exempt facility bond

(a) General rule

For purposes of this part, the term ''exempt facility bond'' means any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide—

(1) airports,

(2) docks and wharves,

(3) mass commuting facilities,

(4) facilities for the furnishing of water,

(5) sewage facilities,

(6) solid waste disposal facilities,

(7) qualified residential rental projects,

(8) facilities for the local furnishing of electric energy or gas,

(9) local district heating or cooling facilities,

(10) qualified hazardous waste facilities,

(11) high-speed intercity rail facilities,

(12) environmental enhancements of hydroelectric generating facilities,

(13) qualified public educational facilities,

(14) qualified green building and sustainable design projects, or

(15) qualified highway or surface freight transfer facilities.

(b) Special exempt facility bond rules

For purposes of subsection (a)—

(1) Certain facilities must be governmentally owned

(A) In general

A facility shall be treated as described in paragraph (1), (2), (3), or (12) of subsection (a) only if all of the property to be financed by the net proceeds of the issue is to be owned by a governmental unit.

(B) Safe harbor for leases and management contracts

For purposes of subparagraph (A), property leased by a governmental unit shall be treated as owned by such governmental unit if—

(i) the lessee makes an irrevocable election (binding on the lessee and all successors in interest under the lease) not to claim depreciation or an investment credit with respect to such property,

(ii) the lease term (as defined in section 168(i)(3)) is not more than 80 percent of the reasonably expected economic life of the property (as determined under section 147(b)), and

(iii) the lessee has no option to purchase the property other than at fair market value (as of the time such option is exercised).

Rules similar to the rules of the preceding sentence shall apply to management contracts and similar types of operating agreements.

(2) Limitation on office space

An office shall not be treated as described in a paragraph of subsection (a) unless—

(A) the office is located on the premises of a facility described in such a paragraph, and

(B) not more than a de minimis amount of the functions to be performed at such office is not directly related to the day-to-day operations at such facility.

(c) Airports, docks and wharves, mass commuting facilities and high-speed intercity rail facilities

For purposes of subsection (a)—

(1) Storage and training facilities

Storage or training facilities directly related to a facility described in paragraph (1), (2), (3) or (11) of subsection (a) shall be treated as described in the paragraph in which such facility is described.

(2) Exception for certain private facilities

Property shall not be treated as described in paragraph (1), (2), (3) or (11) of subsection (a) if such property is described in any of the following subparagraphs and is to be used for any private business use (as defined in section 141(b)(6)).

(A) Any lodging facility.

(B) Any retail facility (including food and beverage facilities) in excess of a size necessary to serve passengers and employees at the exempt facility.

(C) Any retail facility (other than parking) for passengers or the general public located outside the exempt facility terminal.

(D) Any office building for individuals who are not employees of a governmental unit or of the operating authority for the exempt facility.

(E) Any industrial park or manufacturing facility.

(d) Qualified residential rental project

For purposes of this section—

(1) In general

The term ''qualified residential rental project'' means any project for residential rental property if, at all times during the qualified project period, such project meets the requirements of subparagraph (A) or (B), whichever is elected by the issuer at the time of the issuance of the issue with respect to such project:

(A) 20–50 test

The project meets the requirements of this subparagraph if 20 percent or more of the residential units in such project are occupied by individuals whose income is 50 percent or less of area median gross income.

(B) 40–60 test

The project meets the requirements of this subparagraph if 40 percent or more of the residential units in such project are occupied by individuals whose income is 60 percent or less of area median gross income.

For purposes of this paragraph, any property shall not be treated as failing to be residential rental property merely because part of the building in which such property is located is used for purposes other than residential rental purposes.

(2) Definitions and special rules

For purposes of this subsection—

(A) Qualified project period

The term ''qualified project period'' means the period beginning on the 1st day on which 10 percent of the residential units in the project are occupied and ending on the latest of—

(i) the date which is 15 years after the date on which 50 percent of the residential units in the project are occupied,

(ii) the 1st day on which no tax-exempt private activity bond issued with respect to the project is outstanding, or

(iii) the date on which any assistance provided with respect to the project under section 8 of the United States Housing Act of 1937 terminates.

(B) Income of individuals; area median gross income

(i) In general

The income of individuals and area median gross income shall be determined by the Secretary in a manner consistent with determinations of lower income families and area median gross income under section 8 of the United States Housing Act of 1937 (or, if such program is terminated, under such program as in effect immediately before such termination). Determinations under the preceding sentence shall include adjustments for family size. Subsections (g) and (h) of section 7872 shall not apply in determining the income of individuals under this subparagraph.

(ii) Special rule relating to basic housing allowances

For purposes of determining income under this subparagraph, payments under section 403 of title 37, United States Code, as a basic pay allowance for housing shall be disregarded with respect to any qualified building.

(iii) Qualified building

For purposes of clause (ii), the term ''qualified building'' means any building located—

(I) in any county in which is located a qualified military installation to which the number of members of the Armed Forces of the United States assigned to units based out of such qualified military installation, as of June 1, 2008, has increased by not less than 20 percent, as compared to such number on December 31, 2005, or

(II) in any county adjacent to a county described in subclause (I).

(iv) Qualified military installation

For purposes of clause (iii), the term ''qualified military installation'' means any military installation or facility the number of members of the Armed Forces of the United States assigned to which, as of June 1, 2008, is not less than 1,000.

(C) Students

Rules similar to the rules of 42(i)(3)(D)[1] shall apply for purposes of this subsection.

(D) Single-room occupancy units

A unit shall not fail to be treated as a residential unit merely because such unit is a single-room occupancy unit (within the meaning of section 42).

[1] So in original. Probably should be ''section 42(i)(3)(D)''.

(E) Hold harmless for reductions in area median gross income

(i) In general

Any determination of area median gross income under subparagraph (B) with respect to any project for any calendar year after 2008 shall not be less than the area median gross income determined under such subparagraph with respect to such project for the calendar year preceding the calendar year for which such determination is made.

(ii) Special rule for certain census changes

In the case of a HUD hold harmless impacted project, the area median gross income with respect to such project for any calendar year after 2008 (hereafter in this clause referred to as the current calendar year) shall be the greater of the amount determined without regard to this clause or the sum of—

(I) the area median gross income determined under the HUD hold harmless policy with respect to such project for calendar year 2008, plus

(II) any increase in the area median gross income determined under subparagraph (B) (determined without regard to the HUD hold harmless policy and this subparagraph) with respect to such project for the current calendar year over the area median gross income (as so determined) with respect to such project for calendar year 2008.

(iii) HUD hold harmless policy

The term ''HUD hold harmless policy'' means the regulations under which a policy similar to the rules of clause (i) applied to prevent a change in the method of determining area median gross income from resulting in a reduction in the area median gross income determined with respect to certain projects in calendar years 2007 and 2008.

(iv) HUD hold harmless impacted project

The term ''HUD hold harmless impacted project'' means any project with respect to which area median gross income was determined under subparagraph (B) for calendar year 2007 or 2008 if such determination would have been less but for the HUD hold harmless policy.

(3) Current income determinations

For purposes of this subsection—

(A) In general

The determination of whether the income of a resident of a unit in a project exceeds the applicable income limit shall be made at least annually on the basis of the current income of the resident. The preceding sentence shall not apply with respect to any project for any year if during such year no residential unit in the project is occupied by a new resident whose income exceeds the applicable income limit.

(B) Continuing resident's income may increase above the applicable limit

If the income of a resident of a unit in a project did not exceed the applicable income limit upon commencement of such resident's occupancy of such unit (or as of any prior determination under subparagraph (A)), the income of such resident shall be treated as continuing to not exceed the applicable income limit. The preceding sentence shall cease to apply to any resident whose income as of the most recent determination under subparagraph (A) exceeds 140 percent of the applicable income limit if after such determination, but before the next determination, any residential unit of comparable or smaller size in the same project is occupied by a new resident whose income exceeds the applicable income limit.

(C) Exception for projects with respect to which affordable housing credit is allowed

In the case of a project with respect to which credit is allowed under section 42, the second sentence of subparagraph (B) shall be applied by substituting ''building (within the meaning of section 42)'' for ''project''.

(4) Special rule in case of deep rent skewing

(A) In general

In the case of any project described in subparagraph (B), the 2d sentence of subparagraph (B) of paragraph (3) shall be applied by substituting—

(i) ''170 percent'' for ''140 percent'', and

(ii) ''any low-income unit in the same project is occupied by a new resident whose income exceeds 40 percent of area median gross income'' for ''any residential unit of comparable or smaller size in the same project is occupied by a new resident whose income exceeds the applicable income limit''.

(B) Deep rent skewed project

A project is described in this subparagraph if the owner of the project elects to have this paragraph apply and, at all times during the qualified project period, such project meets the requirements of clauses (i), (ii), and (iii):

(i) The project meets the requirements of this clause if 15 percent or more of the low-income units in the project are occupied by individuals whose income is 40 percent or less of area median gross income.

(ii) The project meets the requirements of this clause if the gross rent with respect to each low-income unit in the project does not exceed 30 percent of the applicable income limit which applies to individuals occupying the unit.

(iii) The project meets the requirements of this clause if the gross rent with respect to each low-income unit in the project does not exceed ½ of the average gross rent with respect to units of comparable size which are not occupied by individuals who meet the applicable income limit.

(C) Definitions applicable to subparagraph (B)

For purposes of subparagraph (B)—

(i) Low-income unit

The term ''low-income unit'' means any unit which is required to be occupied by

individuals who meet the applicable income limit.

(ii) Gross rent

The term ''gross rent'' includes—

(I) any payment under section 8 of the United States Housing Act of 1937, and

(II) any utility allowance determined by the Secretary after taking into account such determinations under such section 8.

(5) Applicable income limit

For purposes of paragraphs (3) and (4), the term ''applicable income limit'' means—

(A) the limitation under subparagraph (A) or (B) of paragraph (1) which applies to the project, or

(B) in the case of a unit to which paragraph (4)(B)(i) applies, the limitation which applies to such unit.

(6) Special rule for certain high cost housing area

In the case of a project located in a city having 5 boroughs and a population in excess of 5,000,000, subparagraph (B) of paragraph (1) shall be applied by substituting ''25 percent'' for ''40 percent''.

(7) Certification to Secretary

The operator of any project with respect to which an election was made under this subsection shall submit to the Secretary (at such time and in such manner as the Secretary shall prescribe) an annual certification as to whether such project continues to meet the requirements of this subsection. Any failure to comply with the provisions of the preceding sentence shall not affect the tax-exempt status of any bond but shall subject the operator to penalty, as provided in section 6652(j).

(e) Facilities for the furnishing of water

For purposes of subsection (a)(4), the term ''facilities for the furnishing of water'' means any facility for the furnishing of water if—

(1) the water is or will be made available to members of the general public (including electric utility, industrial, agricultural, or commercial users), and

(2) either the facility is operated by a governmental unit or the rates for the furnishing or sale of the water have been established or approved by a State or political subdivision thereof, by an agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof.

(f) Local furnishing of electric energy or gas

For purposes of subsection (a)(8)—

(1) In general

The local furnishing of electric energy or gas from a facility shall only include furnishing solely within the area consisting of—

(A) a city and 1 contiguous county, or

(B) 2 contiguous counties.

(2) Treatment of certain electric energy transmitted outside local area

(A) In general

A facility shall not be treated as failing to meet the local furnishing requirement of subsection (a)(8) by reason of electricity transmitted pursuant to an order of the Federal Energy Regulatory Commission under section 211 or 213 of the Federal Power Act (as in effect on the date of the enactment of this paragraph) if the portion of the cost of the facility financed with tax-exempt bonds is not greater than the portion of the cost of the facility which is allocable to the local furnishing of electric energy (determined without regard to this paragraph).

(B) Special rule for existing facilities

In the case of a facility financed with bonds issued before the date of an order referred to in subparagraph (A) which would (but for this subparagraph) cease to be tax-exempt by reason of subparagraph (A), such bonds shall not cease to be tax-exempt bonds (and section 150(b)(4) shall not apply) if, to the extent necessary to comply with subparagraph (A)—

(i) an escrow to pay principal of, premium (if any), and interest on the bonds is established within a reasonable period after the date such order becomes final, and

(ii) bonds are redeemed not later than the earliest date on which such bonds may be redeemed.

(3) Termination of future financing

For purposes of this section, no bond may be issued as part of an issue described in subsection (a)(8) with respect to a facility for the local furnishing of electric energy or gas on or after the date of the enactment of this paragraph unless—

(A) the facility will—

(i) be used by a person who is engaged in the local furnishing of that energy source on January 1, 1997, and

(ii) be used to provide service within the area served by such person on January 1, 1997 (or within a county or city any portion of which is within such area), or

(B) the facility will be used by a successor in interest to such person for the same use and within the same service area as described in subparagraph (A).

(4) Election to terminate tax-exempt bond financing by certain furnishers

(A) In general

In the case of a facility financed with bonds issued before the date of the enactment of this paragraph which would cease to be tax-exempt by reason of the failure to meet the local furnishing requirement of subsection (a)(8) as a result of a service area expansion, such bonds shall not cease to be tax-exempt bonds (and section 150(b)(4) shall not apply) if the person engaged in such local furnishing by such facility makes an election described in subparagraph (B).

(B) Election

An election is described in this subparagraph if it is an election made in such manner as the Secretary prescribes, and such person (or its predecessor in interest) agrees that—

(i) such election is made with respect to all facilities for the local furnishing of electric energy or gas, or both, by such person,

(ii) no bond exempt from tax under section 103 and described in subsection (a)(8) may be issued on or after the date of the enactment of this paragraph with respect to all such facilities of such person,

(iii) any expansion of the service area—

(I) is not financed with the proceeds of any exempt facility bond described in subsection (a)(8), and

(II) is not treated as a nonqualifying use under the rules of paragraph (2), and

(iv) all outstanding bonds used to finance the facilities for such person are redeemed not later than 6 months after the later of—

(I) the earliest date on which such bonds may be redeemed, or

(II) the date of the election.

(C) Related persons

For purposes of this paragraph, the term ''person'' includes a group of related persons (within the meaning of section 144(a)(3)) which includes such person.

(g) Local district heating or cooling facility

(1) In general

For purposes of subsection (a)(9), the term ''local district heating or cooling facility'' means property used as an integral part of a local district heating or cooling system.

(2) Local district heating or cooling system

(A) In general

For purposes of paragraph (1), the term ''local district heating or cooling system'' means any local system consisting of a pipeline or network (which may be connected to a heating or cooling source) providing hot water, chilled water, or steam to 2 or more users for—

(i) residential, commercial, or industrial heating or cooling, or

(ii) process steam.

(B) Local system

For purposes of this paragraph, a local system includes facilities furnishing heating and cooling to an area consisting of a city and 1 contiguous county.

(h) Qualified hazardous waste facilities

For purposes of subsection (a)(10), the term ''qualified hazardous waste facility'' means any facility for the disposal of hazardous waste by incineration or entombment but only if—

(1) the facility is subject to final permit requirements under subtitle C of title II of the Solid Waste Disposal Act (as in effect on the date of the enactment of the Tax Reform Act of 1986), and

(2) the portion of such facility which is to be provided by the issue does not exceed the portion of the facility which is to be used by persons other than—

(A) the owner or operator of such facility, and

(B) any related person (within the meaning of section 144(a)(3)) to such owner or operator.

(i) High-speed intercity rail facilities

(1) In general

For purposes of subsection (a)(11), the term ''high-speed intercity rail facilities'' means any facility (not including rolling stock) for the fixed guideway rail transportation of passengers and their baggage between metropolitan statistical areas (within the meaning of section 143(k)(2)(B)) using vehicles that are reasonably expected to be capable of attaining a maximum speed in excess of 150 miles per hour between scheduled stops, but only if such facility will be made available to members of the general public as passengers.

(2) Election by nongovernmental owners

A facility shall be treated as described in subsection (a)(11) only if any owner of such facility which is not a governmental unit irrevocably elects not to claim—

(A) any deduction under section 167 or 168, and

(B) any credit under this subtitle,

with respect to the property to be financed by the net proceeds of the issue.

(3) Use of proceeds

A bond issued as part of an issue described in subsection (a)(11) shall not be considered an exempt facility bond unless any proceeds not used within a 3-year period of the date of the issuance of such bond are used (not later than 6 months after the close of such period) to redeem bonds which are part of such issue.

(j) Environmental enhancements of hydroelectric generating facilities

(1) In general

For purposes of subsection (a)(12), the term ''environmental enhancements of hydroelectric generating facilities'' means property—

(A) the use of which is related to a federally licensed hydroelectric generating facility owned and operated by a governmental unit, and

(B) which—

(i) protects or promotes fisheries or other wildlife resources, including any fish by-pass facility, fish hatchery, or fisheries enhancement facility, or

(ii) is a recreational facility or other improvement required by the terms and conditions of any Federal licensing permit for the operation of such generating facility.

(2) Use of proceeds

A bond issued as part of an issue described in subsection (a)(12) shall not be considered an exempt facility bond unless at least 80 percent of the net proceeds of the issue of which it is a part are used to finance property described in paragraph (1)(B)(i).

(k) Qualified public educational facilities

(1) In general

For purposes of subsection (a)(13), the term ''qualified public educational facility'' means any school facility which is—

(A) part of a public elementary school or a public secondary school, and

(B) owned by a private, for-profit corporation pursuant to a public-private partnership agreement with a State or local educational agency described in paragraph (2).

(2) Public-private partnership agreement described

A public-private partnership agreement is described in this paragraph if it is an agreement—

(A) under which the corporation agrees—

(i) to do 1 or more of the following: construct, rehabilitate, refurbish, or equip a school facility, and

(ii) at the end of the term of the agreement, to transfer the school facility to such agency for no additional consideration, and

(B) the term of which does not exceed the term of the issue to be used to provide the school facility.

(3) School facility

For purposes of this subsection, the term ''school facility'' means—

(A) any school building,

(B) any functionally related and subordinate facility and land with respect to such building, including any stadium or other facility primarily used for school events, and

(C) any property, to which section 168 applies (or would apply but for section 179), for use in a facility described in subparagraph (A) or (B).

(4) Public schools

For purposes of this subsection, the terms ''elementary school'' and ''secondary school'' have the meanings given such terms by section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801), as in effect on the date of the enactment of this subsection.

(5) Annual aggregate face amount of tax-exempt financing

(A) In general

An issue shall not be treated as an issue described in subsection (a)(13) if the aggregate face amount of bonds issued by the State pursuant thereto (when added to the aggregate face amount of bonds previously so issued during the calendar year) exceeds an amount equal to the greater of—

(i) $10 multiplied by the State population, or

(ii) $5,000,000.

(B) Allocation rules

(i) In general

Except as otherwise provided in this subparagraph, the State may allocate the amount described in subparagraph (A) for any calendar year in such manner as the State determines appropriate.

(ii) Rules for carryforward of unused limitation

A State may elect to carry forward an unused limitation for any calendar year for 3 calendar years following the calendar year in which the unused limitation arose under rules similar to the rules of section 146(f), except that the only purpose for which the carryforward may be elected is the issuance of exempt facility bonds described in subsection (a)(13).

***(l)* Qualified green building and sustainable design projects**

(1) In general

For purposes of subsection (a)(14), the term ''qualified green building and sustainable design project'' means any project which is designated by the Secretary, after consultation with the Administrator of the Environmental Protection Agency, as a qualified green building and sustainable design project and which meets the requirements of clauses (i), (ii), (iii), and (iv) of paragraph (4)(A).

(2) Designations

(A) In general

Within 60 days after the end of the application period described in paragraph (3)(A), the Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall designate qualified green building and sustainable design projects. At least one of the projects designated shall be located in, or within a 10-mile radius of, an empowerment zone as designated pursuant to section 1391, and at least one of the projects designated shall be located in a rural State. No more than one project shall be designated in a State. A project shall not be designated if such project includes a stadium or arena for professional sports exhibitions or games.

(B) Minimum conservation and technology innovation objectives

The Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall ensure that, in the aggregate, the projects designated shall—

(i) reduce electric consumption by more than 150 megawatts annually as compared to conventional generation,

(ii) reduce daily sulfur dioxide emissions by at least 10 tons compared to coal generation power,

(iii) expand by 75 percent the domestic solar photovoltaic market in the United States (measured in megawatts) as compared to the expansion of that market from 2001 to 2002, and

(iv) use at least 25 megawatts of fuel cell energy generation.

(3) Limited designations

A project may not be designated under this subsection unless—

(A) the project is nominated by a State or local government within 180 days of the enactment of this subsection, and

(B) such State or local government provides written assurances that the project will satisfy the eligibility criteria described in paragraph (4).

(4) Application

(A) In general

A project may not be designated under this subsection unless the application for such

designation includes a project proposal which describes the energy efficiency, renewable energy, and sustainable design features of the project and demonstrates that the project satisfies the following eligibility criteria:

(i) Green building and sustainable design

At least 75 percent of the square footage of commercial buildings which are part of the project is registered for United States Green Building Council's LEED certification and is reasonably expected (at the time of the designation) to receive such certification. For purposes of determining LEED certification as required under this clause, points shall be credited by using the following:

(I) For wood products, certification under the Sustainable Forestry Initiative Program and the American Tree Farm System.

(II) For renewable wood products, as credited for recycled content otherwise provided under LEED certification.

(III) For composite wood products, certification under standards established by the American National Standards Institute, or such other voluntary standards as published in the Federal Register by the Administrator of the Environmental Protection Agency.

(ii) Brownfield redevelopment

The project includes a brownfield site as defined by section 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601), including a site described in subparagraph (D)(ii)(II)(aa) thereof.

(iii) State and local support

The project receives specific State or local government resources which will support the project in an amount equal to at least $5,000,000. For purposes of the preceding sentence, the term ''resources'' includes tax abatement benefits and contributions in kind.

(iv) Size

The project includes at least one of the following:

(I) At least 1,000,000 square feet of building.

(II) At least 20 acres.

(v) Use of tax benefit

The project proposal includes a description of the net benefit of the tax-exempt financing provided under this subsection which will be allocated for financing of one or more of the following:

(I) The purchase, construction, integration, or other use of energy efficiency, renewable energy, and sustainable design features of the project.

(II) Compliance with certification standards cited under clause (i).

(III) The purchase, remediation, and foundation construction and preparation of the brownfields site.

(vi) Prohibited facilities

An issue shall not be treated as an issue described in subsection (a)(14) if any proceeds of such issue are used to provide any facility the principal business of which is the sale of food or alcoholic beverages for consumption on the premises.

(vii) Employment

The project is projected to provide permanent employment of at least 1,500 full time equivalents (150 full time equivalents in rural States) when completed and construction employment of at least 1,000 full time equivalents (100 full time equivalents in rural States).

The application shall include an independent analysis which describes the project's economic impact, including the amount of projected employment.

(B) Project description

Each application described in subparagraph (A) shall contain for each project a description of—

(i) the amount of electric consumption reduced as compared to conventional construction,

(ii) the amount of sulfur dioxide daily emissions reduced compared to coal generation,

(iii) the amount of the gross installed capacity of the project's solar photovoltaic capacity measured in megawatts, and

(iv) the amount, in megawatts, of the project's fuel cell energy generation.

(5) Certification of use of tax benefit

No later than 30 days after the completion of the project, each project must certify to the Secretary that the net benefit of the tax-exempt financing was used for the purposes described in paragraph (4).

(6) Definitions

For purposes of this subsection—

(A) Rural State

The term ''rural State'' means any State which has—

(i) a population of less than 4,500,000 according to the 2000 census,

(ii) a population density of less than 150 people per square mile according to the 2000 census, and

(iii) increased in population by less than half the rate of the national increase between the 1990 and 2000 censuses.

(B) Local government

The term ''local government'' has the meaning given such term by section 1393(a)(5).

(C) Net benefit of tax-exempt financing

The term ''net benefit of tax-exempt financing'' means the present value of the interest savings (determined by a calculation established by the Secretary) which result from the tax-exempt status of the bonds.

(7) Aggregate face amount of tax-exempt financing

(A) In general

An issue shall not be treated as an issue described in subsection (a)(14) if the aggre-

gate face amount of bonds issued by the State or local government pursuant thereto for a project (when added to the aggregate face amount of bonds previously so issued for such project) exceeds an amount designated by the Secretary as part of the designation.

(B) Limitation on amount of bonds

The Secretary may not allocate authority to issue qualified green building and sustainable design project bonds in an aggregate face amount exceeding $2,000,000,000.

(8) Termination

Subsection (a)(14) shall not apply with respect to any bond issued after September 30, 2012.

(9) Treatment of current refunding bonds

Paragraphs (7)(B) and (8) shall not apply to any bond (or series of bonds) issued to refund a bond issued under subsection (a)(14) before October 1, 2012, if—

(A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

(B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

(C) the net proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

For purposes of subparagraph (A), average maturity shall be determined in accordance with section 147(b)(2)(A).

(m) Qualified highway or surface freight transfer facilities

(1) In general

For purposes of subsection (a)(15), the term ''qualified highway or surface freight transfer facilities'' means—

(A) any surface transportation project which receives Federal assistance under title 23, United States Code (as in effect on the date of the enactment of this subsection),

(B) any project for an international bridge or tunnel for which an international entity authorized under Federal or State law is responsible and which receives Federal assistance under title 23, United States Code (as so in effect), or

(C) any facility for the transfer of freight from truck to rail or rail to truck (including any temporary storage facilities directly related to such transfers) which receives Federal assistance under either title 23 or title 49, United States Code (as so in effect).

(2) National limitation on amount of tax-exempt financing for facilities

(A) National limitation

The aggregate amount allocated by the Secretary of Transportation under subparagraph (C) shall not exceed $15,000,000,000.

(B) Enforcement of national limitation

An issue shall not be treated as an issue described in subsection (a)(15) if the aggregate face amount of bonds issued pursuant to such issue for any qualified highway or surface freight transfer facility (when added to the aggregate face amount of bonds previously so issued for such facility) exceeds the amount allocated to such facility under subparagraph (C).

(C) Allocation by Secretary of Transportation

The Secretary of Transportation shall allocate the amount described in subparagraph (A) among qualified highway or surface freight transfer facilities in such manner as the Secretary determines appropriate.

(3) Expenditure of proceeds

An issue shall not be treated as an issue described in subsection (a)(15) unless at least 95 percent of the net proceeds of the issue is expended for qualified highway or surface freight transfer facilities within the 5-year period beginning on the date of issuance. If at least 95 percent of such net proceeds is not expended within such 5-year period, an issue shall be treated as continuing to meet the requirements of this paragraph if the issuer uses all unspent proceeds of the issue to redeem bonds of the issue within 90 days after the end of such 5-year period. The Secretary, at the request of the issuer, may extend such 5-year period if the issuer establishes that any failure to meet such period is due to circumstances beyond the control of the issuer.

(4) Exception for current refunding bonds

Paragraph (2) shall not apply to any bond (or series of bonds) issued to refund a bond issued under subsection (a)(15) if—

(A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

(B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

(C) the refunded bond is redeemed not later than 90 days after the date of the issuance of the refunding bond.

For purposes of subparagraph (A), average maturity shall be determined in accordance with section 147(b)(2)(A).

(Added Pub. L. 99–514, title XIII, §1301(b), Oct. 22, 1986, 100 Stat. 2606; amended Pub. L. 100–647, title I, §1013(a)(1), (39), title VI, §6180(a)–(b)(2), Nov. 10, 1988, 102 Stat. 3537, 3544, 3727, 3728; Pub. L. 101–239, title VII, §§7108(e)(3), (n)(1), 7816(s)(1), Dec. 19, 1989, 103 Stat. 2313, 2318, 2423; Pub. L. 102–486, title XIX, §§1919(a), 1921(a), (b)(1), (2), Oct. 24, 1992, 106 Stat. 3025, 3027, 3028; Pub. L. 104–188, title I, §§1608(a), 1704(j)(7), Aug. 20, 1996, 110 Stat. 1840, 1882; Pub. L. 105–206, title VI, §6023(5), July 22, 1998, 112 Stat. 825; Pub. L. 107–16, title IV, §422(a), (b), June 7, 2001, 115 Stat. 65; Pub. L. 108–357, title VII, §701(a), (b), Oct. 22, 2004, 118 Stat. 1536; Pub. L. 109–59, title XI, §11143(a), (b), Aug. 10, 2005, 119 Stat. 1963; Pub. L. 109–222, title II, §209(b)(2), May 17, 2006, 120 Stat. 352; Pub. L. 110–289, div. C, title I, §§3005(a), 3008(a)–(c), 3009(a), 3010(a), July 30, 2008, 122 Stat. 2885–2888; Pub. L. 110–343, div. B, title III, §307(a), (b), Oct. 3, 2008, 122 Stat. 3849; Pub. L. 111–5, div. B, title I, §1504(a), Feb. 17, 2009, 123 Stat. 355.)

AMENDMENT OF SECTION

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

REFERENCES IN TEXT

Section 8 of the United States Housing Act of 1937, referred to in subsec. (d)(2)(A)(iii), (B)(i), (4)(C)(ii), is classified to section 1437f of Title 42, The Public Health and Welfare.

Sections 211 and 213 of the Federal Power Act, referred to in subsec. (f)(2)(A), are classified to sections 824j and 824*l*, respectively, of Title 16, Conservation.

The date of the enactment of this paragraph, referred to in subsec. (f)(2)(A), is the date of enactment of Pub. L. 102–486, which was approved Oct. 24, 1992.

The date of the enactment of this paragraph, referred to in subsec. (f)(3), (4)(A), (B)(ii), is the date of enactment of Pub. L. 104–188, which was approved Aug. 20, 1996.

The Solid Waste Disposal Act, referred to in subsec. (h)(1), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795. Subtitle C of the Solid Waste Disposal Act is classified generally to subchapter III (§ 6921 et seq.) of chapter 82 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of Title 42 and Tables.

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (h)(1), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

Section 14101 of the Elementary and Secondary Education Act of 1965, referred to in subsec. (k)(4), is section 14101 of Pub. L. 89–10, which was classified to section 8801 of Title 20, Education, prior to repeal by Pub. L. 107–110, title X, § 1011(5)(C), Jan. 8, 2002, 115 Stat. 1986.

The date of the enactment of this subsection, referred to in subsec. (k)(4), means the date of enactment of Pub. L. 107–16, which was approved June 7, 2001.

The enactment of this subsection, referred to in subsec. (*l*)(3)(A), probably means the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

The date of the enactment of this subsection, referred to in subsec. (m)(1)(A), is the date of enactment of Pub. L. 109–59, which was approved Aug. 10, 2005.

PRIOR PROVISIONS

A prior section 142, act Aug. 16, 1954, ch. 736, 68A Stat. 40, enumerated individuals not eligible for standard deduction, prior to repeal by Pub. L. 95–30, title I, § 101(d)(1), May 23, 1977, 91 Stat. 133, applicable to taxable years beginning after Dec. 31, 1976.

AMENDMENTS

2009—Subsec. (i)(1). Pub. L. 111–5 substituted ''be capable of attaining a maximum speed in excess of'' for ''operate at speeds in excess of''.

2008—Subsec. (d)(2)(B). Pub. L. 110–289, § 3005(a), designated existing provisions as cl. (i), inserted heading, and added cls. (ii) to (iv).

Subsec. (d)(2)(C). Pub. L. 110–289, § 3008(b), added subpar. (C).

Subsec. (d)(2)(D). Pub. L. 110–289, § 3008(c), added subpar. (D).

Subsec. (d)(2)(E). Pub. L. 110–289, § 3009(a), added subpar. (E).

Subsec. (d)(3)(A). Pub. L. 110–289, § 3010(a), inserted at end ''The preceding sentence shall not apply with respect to any project for any year if during such year no residential unit in the project is occupied by a new resident whose income exceeds the applicable income limit.''

Subsec. (d)(3)(C). Pub. L. 110–289, § 3008(a), added subpar. (C).

Subsec. (*l*)(8). Pub. L. 110–343, § 307(a), substituted ''September 30, 2012'' for ''September 30, 2009''.

Subsec. (*l*)(9). Pub. L. 110–343, § 307(b), substituted ''October 1, 2012'' for ''October 1, 2009''.

2006—Subsec. (d)(2)(B). Pub. L. 109–222 substituted ''Subsections (g) and (h) of section 7872'' for ''Section 7872(g)''.

2005—Subsec. (a)(15). Pub. L. 109–59, § 11143(a), added par. (15).

Subsec. (m). Pub. L. 109–59, § 11143(b), added subsec. (m).

2004—Subsec. (a)(14). Pub. L. 108–357, § 701(a), added par. (14).

Subsec. (*l*). Pub. L. 108–357, § 701(b), added subsec. (*l*).

2001—Subsec. (a)(13). Pub. L. 107–16, §§ 422(a), 901, temporarily added par. (13). See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (k). Pub. L. 107–16, §§ 422(b), 901, temporarily added subsec. (k). See Effective and Termination Dates of 2001 Amendment note below.

1998—Subsec. (f)(3)(A)(ii). Pub. L. 105–206 struck out comma after ''1997''.

1996—Subsec. (b)(1)(A). Pub. L. 104–188, § 1704(j)(7), provided that section 1921(b)(2) of Pub. L. 102–486 shall be applied as if a comma appeared after ''(2)'' in the material proposed to be stricken. See 1992 Amendment note below.

Subsec. (f)(3), (4). Pub. L. 104–188, § 1608(a), added pars. (3) and (4).

1992—Subsec. (a)(12). Pub. L. 102–486, § 1921(a), added par. (12).

Subsec. (b)(1)(A). Pub. L. 102–486, § 1921(b)(2), which directed the substitution of ''(2), (3), or (12)'' for ''(2) or (3)'', was executed by making the substitution for ''(2), or (3)''. See 1996 Amendment note above.

Subsec. (f). Pub. L. 102–486, § 1919(a), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: ''For purposes of subsection (a)(8), the local furnishing of electric energy or gas from a facility shall only include furnishing solely within the area consisting of—

''(1) a city and 1 contiguous county, or

''(2) 2 contiguous counties.''

Subsec. (j). Pub. L. 102–486, § 1921(b)(1), added subsec. (j).

1989—Subsec. (d)(2)(B). Pub. L. 101–239, § 7108(e)(3), inserted at end ''Section 7872(g) shall not apply in determining the income of individuals under this subparagraph.''

Subsec. (d)(4)(B)(iii). Pub. L. 101–239, § 7108(n)(1), substituted ''exceed ½'' for ''exceed ⅓''.

Subsec. (i)(1). Pub. L. 101–239, § 7816(s)(1), inserted heading ''In general''.

1988—Subsec. (a)(11). Pub. L. 100–647, § 6180(a), added par. (11).

Subsec. (b)(1)(B)(ii). Pub. L. 100–647, § 1013(a)(39), inserted ''section'' before ''168(i)(3)''.

Subsec. (c). Pub. L. 100–647, § 6180(b)(2), substituted ''mass commuting facilities and high-speed intercity rail facilities'' for ''and mass commuting facilities'' in heading and substituted ''paragraph (1), (2), (3) or (11) of subsection (a)'' for ''paragraph (1), (2), or (3) of subsection (a)'' in par. (1) and in introductory text of par. (2).

Subsec. (d)(4)(B)(iii). Pub. L. 100–647, § 1013(a)(1), substituted ''average gross rent'' for ''average rent''.

Subsec. (i). Pub. L. 100–647, § 6180(b)(1), added subsec. (i).

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, § 1504(b), Feb. 17, 2009, 123 Stat. 355, provided that: ''The amendment made by this section [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Feb. 17, 2009].''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–289, div. C, title I, § 3005(b), July 30, 2008, 122 Stat. 2885, provided that: ''The amendments made by this section [amending this section] shall apply to—

''(1) determinations made after the date of the enactment of this Act [July 30, 2008] and before January 1, 2012, in the case of any qualified building (as de-

fined in section 142(d)(2)(B)(iii) of the Internal Revenue Code of 1986)—

''(A) with respect to which housing credit dollar amounts have been allocated on or before the date of the enactment of this Act [July 30, 2008], or

''(B) with respect to buildings placed in service before such date of enactment, to the extent paragraph (1) of section 42(h) of such Code does not apply to such building by reason of paragraph (4) thereof, but only with respect to bonds issued before such date of enactment, and

''(2) determinations made after the date of enactment of this Act [July 30, 2008], in the case of qualified buildings (as so defined)—

''(A) with respect to which housing credit dollar amounts are allocated after the date of the enactment of this Act [July 30, 2008] and before January 1, 2012, or

''(B) with respect to which buildings placed in service after the date of enactment of this Act [July 30, 2008] and before January 1, 2012, to the extent paragraph (1) of section 42(h) of such Code does not apply to such building by reason of paragraph (4) thereof, but only with respect to bonds issued after such date of enactment and before January 1, 2012.''

Pub. L. 110–289, div. C, title I, §3008(d), July 30, 2008, 122 Stat. 2887, provided that: ''The amendments made by this section [amending this section] shall apply to determinations of the status of qualified residential rental projects for periods beginning after the date of the enactment of this Act [July 30, 2008], with respect to bonds issued before, on, or after such date.''

Pub. L. 110–289, div. C, title I, §3009(b), July 30, 2008, 122 Stat. 2888, provided that: ''The amendment made by this section [amending this section] shall apply to determinations of area median gross income for calendar years after 2008.''

Pub. L. 110–289, div. C, title I, §3010(b), July 30, 2008, 122 Stat. 2888, provided that: ''The amendment made by this section [amending this section] shall apply to years ending after the date of the enactment of this Act [July 30, 2008].''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–222, title II, §209(c), May 17, 2006, 120 Stat. 352, provided that: ''The amendment made by this section [amending this section and section 7872 of this title] shall apply to calendar years beginning after December 31, 2005, with respect to loans made before, on, or after such date.''

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–59, title XI, §11143(d), Aug. 10, 2005, 119 Stat. 1965, provided that: ''The amendments made by this section [amending this section and section 146 of this title] apply to bonds issued after the date of the enactment of this Act [Aug. 10, 2005].''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VII, §701(e), Oct. 22, 2004, 118 Stat. 1540, provided that: ''The amendments made by this section [amending this section and section 146 of this title] shall apply to bonds issued after December 31, 2004.''

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Pub. L. 107–16, title IV, §422(f), June 7, 2001, 115 Stat. 66, provided that: ''The amendments made by this section [amending this section and sections 146 and 147 of this title] shall apply to bonds issued after December 31, 2001.''

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1919(b) of Pub. L. 102–486 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to obligations issued before, on, or after the date of the enactment of this Act [Oct. 24, 1992].''

Section 1921(c) of Pub. L. 102–486 provided that: ''The amendments made by this section [amending this section and section 146 of this title] shall apply to bonds issued after the date of the enactment of this Act [Oct. 24, 1992].''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7108(e)(3), (n)(1) of Pub. L. 101–239 applicable, except as otherwise provided, to determinations under section 42 of this title with respect to housing credit dollar amounts allocated from State housing credit ceilings for calendar years after 1989, see section 7108(r) of Pub. L. 101–239, set out as a note under section 42 of this title.

Amendment by section 7816(s) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1013(a)(1), (39) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6180(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending sections 142, 146, and 147 of this title] shall apply to bonds issued after the date of enactment of this Act [Nov. 10, 1988].''

ACCOUNTABILITY

Pub. L. 108–357, title VII, §701(d), Oct. 22, 2004, 118 Stat. 1539, as amended by Pub. L. 110–343, div. B, title III, §307(c), Oct. 3, 2008, 122 Stat. 3849, provided that: ''Each issuer shall maintain, on behalf of each project, an interest bearing reserve account equal to 1 percent of the net proceeds of any bond issued under this section for such project. Not later than 5 years after the date of issuance of the last issue with respect to such project, the Secretary of the Treasury, after consultation with the Administrator of the Environmental Protection Agency, shall determine whether the project financed with such bonds has substantially complied with the terms and conditions described in section 142(*l*)(4) of the Internal Revenue Code of 1986 (as added by this section). If the Secretary, after such consultation, certifies that the project has substantially complied with such terms and conditions and meets the commitments set forth in the application for such project described in section 142(*l*)(4) of such Code, amounts in the reserve account, including all interest, shall be released to the project. If the Secretary determines that the project has not substantially complied with such terms and conditions, amounts in the reserve account, including all interest, shall be paid to the United States Treasury.''

NO INFERENCE WITH RESPECT TO OUTSTANDING BONDS FROM USE OF TERM ''PERSON''

Section 1608(b) of Pub. L. 104–188 provided that: ''The use of the term 'person' in section 142(f)(3) of the Internal Revenue Code of 1986, as added by subsection (a), shall not be construed to affect the tax-exempt status of interest on any bonds issued before the date of the enactment of this Act [Aug. 20, 1996].''

TAX-EXEMPT BONDS FOR SALE OF ALASKA POWER ADMINISTRATION FACILITY

Section 1804 of Pub. L. 104–188 provided that: ''Sections 142(f)(3) (as added by section 1608) and 147(d) of the

Internal Revenue Code of 1986 shall not apply in determining whether any private activity bond issued after the date of the enactment of this Act [Aug. 20, 1996] and used to finance the acquisition of the Snettisham hydroelectric project from the Alaska Power Administration is a qualified bond for purposes of such Code.''

§ 143. Mortgage revenue bonds: qualified mortgage bond and qualified veterans' mortgage bond

(a) Qualified mortgage bond

(1) Qualified mortgage bond defined

For purposes of this title, the term ''qualified mortgage bond'' means a bond which is issued as part of a qualified mortgage issue.

(2) Qualified mortgage issue defined

(A) Definition

For purposes of this title, the term ''qualified mortgage issue'' means an issue by a State or political subdivision thereof of 1 or more bonds, but only if—

(i) all proceeds of such issue (exclusive of issuance costs and a reasonably required reserve) are to be used to finance owner-occupied residences,

(ii) such issue meets the requirements of subsections (c), (d), (e), (f), (g), (h), (i), and (m)(7),

(iii) such issue does not meet the private business tests of paragraphs (1) and (2) of section 141(b), and

(iv) except as provided in subparagraph (D)(ii), repayments of principal on financing provided by the issue are used not later than the close of the 1st semiannual period beginning after the date the prepayment (or complete repayment) is received to redeem bonds which are part of such issue.

Clause (iv) shall not apply to amounts received within 10 years after the date of issuance of the issue (or, in the case of refunding bond, the date of issuance of the original bond).

(B) Good faith effort to comply with mortgage eligibility requirements

An issue which fails to meet 1 or more of the requirements of subsections (c), (d), (e), (f), and (i) shall be treated as meeting such requirements if—

(i) the issuer in good faith attempted to meet all such requirements before the mortgages were executed,

(ii) 95 percent or more of the proceeds devoted to owner-financing was devoted to residences with respect to which (at the time the mortgages were executed) all such requirements were met, and

(iii) any failure to meet the requirements of such subsections is corrected within a reasonable period after such failure is first discovered.

(C) Good faith effort to comply with other requirements

An issue which fails to meet 1 or more of the requirements of subsections (g), (h), and (m)(7) shall be treated as meeting such requirements if—

(i) the issuer in good faith attempted to meet all such requirements, and

(ii) any failure to meet such requirements is due to inadvertent error after taking reasonable steps to comply with such requirements.

(D) Proceeds must be used within 42 months of date of issuance

(i) In general

Except as otherwise provided in this subparagraph, an issue shall not meet the requirement of subparagraph (A)(i) unless—

(I) all proceeds of the issue required to be used to finance owner-occupied residences are so used within the 42-month period beginning on the date of issuance of the issue (or, in the case of a refunding bond, within the 42-month period beginning on the date of issuance of the original bond) or, to the extent not so used within such period, are used within such period to redeem bonds which are part of such issue, and

(II) no portion of the proceeds of the issue are used to make or finance any loan (other than a loan which is a nonpurpose investment within the meaning of section 148(f)(6)(A)) after the close of such period.

(ii) Exception

Clause (i) (and clause (iv) of subparagraph (A)) shall not be construed to require amounts of less than $250,000 to be used to redeem bonds. The Secretary may by regulation treat related issues as 1 issue for purposes of the preceding sentence.

(b) Qualified veterans' mortgage bond defined

For purposes of this part, the term ''qualified veterans' mortgage bond'' means any bond—

(1) which is issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide residences for veterans,

(2) the payment of the principal and interest on which is secured by the general obligation of a State,

(3) which is part of an issue which meets the requirements of subsections (c), (g), (i)(1), and (*l*), and

(4) which is part of an issue which does not meet the private business tests of paragraphs (1) and (2) of section 141(b).

Rules similar to the rules of subparagraphs (B) and (C) of subsection (a)(2) shall apply to the requirements specified in paragraph (3) of this subsection.

(c) Residence requirements

(1) For a residence

A residence meets the requirements of this subsection only if—

(A) it is a single-family residence which can reasonably be expected to become the principal residence of the mortgagor within a reasonable time after the financing is provided, and

(B) it is located within the jurisdiction of the authority issuing the bond.

(2) For an issue

An issue meets the requirements of this subsection only if all of the residences for which

owner-financing is provided under the issue meet the requirements of paragraph (1).

(d) 3-year requirement

(1) In general

An issue meets the requirements of this subsection only if 95 percent or more of the net proceeds of such issue are used to finance the residences of mortgagors who had no present ownership interest in their principal residences at any time during the 3-year period ending on the date their mortgage is executed.

(2) Exceptions

For purposes of paragraph (1), the proceeds of an issue which are used to provide—

(A) financing with respect to targeted area residences,

(B) qualified home improvement loans and qualified rehabilitation loans,

(C) financing with respect to land described in subsection (i)(1)(C) and the construction of any residence thereon, and

(D) in the case of bonds issued after the date of the enactment of this subparagraph, financing of any residence for a veteran (as defined in section 101 of title 38, United States Code), if such veteran has not previously qualified for and received such financing by reason of this subparagraph,

shall be treated as used as described in paragraph (1).

(3) Mortgagor's interest in residence being financed

For purposes of paragraph (1), a mortgagor's interest in the residence with respect to which the financing is being provided shall not be taken into account.

(e) Purchase price requirement

(1) In general

An issue meets the requirements of this subsection only if the acquisition cost of each residence the owner-financing of which is provided under the issue does not exceed 90 percent of the average area purchase price applicable to such residence.

(2) Average area purchase price

For purposes of paragraph (1), the term ''average area purchase price'' means, with respect to any residence, the average purchase price of single family residences (in the statistical area in which the residence is located) which were purchased during the most recent 12-month period for which sufficient statistical information is available. The determination under the preceding sentence shall be made as of the date on which the commitment to provide the financing is made (or, if earlier, the date of the purchase of the residence).

(3) Separate application to new residences and old residences

For purposes of this subsection, the determination of average area purchase price shall be made separately with respect to—

(A) residences which have not been previously occupied, and

(B) residences which have been previously occupied.

(4) Special rule for 2 to 4 family residences

For purposes of this subsection, to the extent provided in regulations, the determination of average area purchase price shall be made separately with respect to 1 family, 2 family, 3 family, and 4 family residences.

(5) Special rule for targeted area residences

In the case of a targeted area residence, paragraph (1) shall be applied by substituting ''110 percent'' for ''90 percent''.

(6) Exception for qualified home improvement loans

Paragraph (1) shall not apply with respect to any qualified home improvement loan.

(f) Income requirements

(1) In general

An issue meets the requirements of this subsection only if all owner-financing provided under the issue is provided for mortgagors whose family income is 115 percent or less of the applicable median family income.

(2) Determination of family income

For purposes of this subsection, the family income of mortgagors, and area median gross income, shall be determined by the Secretary after taking into account the regulations prescribed under section 8 of the United States Housing Act of 1937 (or, if such program is terminated, under such program as in effect immediately before such termination).

(3) Special rule for applying paragraph (1) in the case of targeted area residences

In the case of any financing provided under any issue for targeted area residences—

(A) ⅓ of the amount of such financing may be provided without regard to paragraph (1), and

(B) paragraph (1) shall be treated as satisfied with respect to the remainder of the owner financing if the family income of the mortgagor is 140 percent or less of the applicable median family income.

(4) Applicable median family income

For purposes of this subsection, the term ''applicable median family income'' means, with respect to a residence, whichever of the following is the greater:

(A) the area median gross income for the area in which such residence is located, or

(B) the statewide median gross income for the State in which such residence is located.

(5) Adjustment of income requirement based on relation of high housing costs to income

(A) In general

If the residence (for which financing is provided under the issue) is located in a high housing cost area and the limitation determined under this paragraph is greater than the limitation otherwise applicable under paragraph (1), there shall be substituted for the income limitation in paragraph (1), a limitation equal to the percentage determined under subparagraph (B) of the area median gross income for such area.

(B) Income requirements for residences in high housing cost area

The percentage determined under this subparagraph for a residence located in a high

housing cost area is the percentage (not greater than 140 percent) equal to the product of—

(I) 115 percent, and

(II) the amount by which the housing cost/income ratio for such area exceeds 0.2.

(C) High housing cost areas

For purposes of this paragraph, the term ''high housing cost area'' means any statistical area for which the housing cost/income ratio is greater than 1.2.

(D) Housing cost/income ratio

For purposes of this paragraph—

(i) In general

The term ''housing cost/income ratio'' means, with respect to any statistical area, the number determined by dividing—

(I) the applicable housing price ratio for such area, by

(II) the ratio which the area median gross income for such area bears to the median gross income for the United States.

(ii) Applicable housing price ratio

For purposes of clause (i), the applicable housing price ratio for any area is the new housing price ratio or the existing housing price ratio, whichever results in the housing cost/income ratio being closer to 1.

(iii) New housing price ratio

The new housing price ratio for any area is the ratio which—

(I) the average area purchase price (as defined in subsection (e)(2)) for residences described in subsection (e)(3)(A) which are located in such area bears to

(II) the average purchase price (determined in accordance with the principles of subsection (e)(2)) for residences so described which are located in the United States.

(iv) Existing housing price ratio

The existing housing price ratio for any area is the ratio determined in accordance with clause (iii) but with respect to residences described in subsection (e)(3)(B).

(6) Adjustment to income requirements based on family size

In the case of a mortgagor having a family of fewer than 3 individuals, the preceding provisions of this subsection shall be applied by substituting—

(A) ''100 percent'' for ''115 percent'' each place it appears, and

(B) ''120 percent'' for ''140 percent'' each place it appears.

(g) Requirements related to arbitrage

(1) In general

An issue meets the requirements of this subsection only if such issue meets the requirements of paragraph (2) of this subsection and, in the case of an issue described in subsection (b)(1), such issue also meets the requirements of paragraph (3) of this subsection. Such requirements shall be in addition to the requirements of section 148.

(2) Effective rate of mortgage interest cannot exceed bond yield by more than 1.125 percentage points

(A) In general

An issue shall be treated as meeting the requirements of this paragraph only if the excess of—

(i) the effective rate of interest on the mortgages provided under the issue, over

(ii) the yield on the issue,

is not greater than 1.125 percentage points.

(B) Effective rate of mortgage interest

(i) In general

In determining the effective rate of interest on any mortgage for purposes of this paragraph, there shall be taken into account all fees, charges, and other amounts borne by the mortgagor which are attributable to the mortgage or to the bond issue.

(ii) Specification of some of the amounts to be treated as borne by the mortgagor

For purposes of clause (i), the following items (among others) shall be treated as borne by the mortgagor:

(I) all points or similar charges paid by the seller of the property, and

(II) the excess of the amounts received from any person other than the mortgagor by any person in connection with the acquisition of the mortgagor's interest in the property over the usual and reasonable acquisition costs of a person acquiring like property where owner-financing is not provided through the use of qualified mortgage bonds or qualified veterans' mortgage bonds.

(iii) Specification of some of the amounts to be treated as not borne by the mortgagor

For purposes of clause (i), the following items shall not be taken into account:

(I) any expected rebate of arbitrage profits, and

(II) any application fee, survey fee, credit report fee, insurance charge, or similar amount to the extent such amount does not exceed amounts charged in such area in cases where owner-financing is not provided through the use of qualified mortgage bonds or qualified veterans' mortgage bonds.

Subclause (II) shall not apply to origination fees, points, or similar amounts.

(iv) Prepayment assumptions

In determining the effective rate of interest—

(I) it shall be assumed that the mortgage prepayment rate will be the rate set forth in the most recent applicable mortgage maturity experience table published by the Federal Housing Administration, and

(II) prepayments of principal shall be treated as received on the last day of the month in which the issuer reasonably expects to receive such prepayments.

The Secretary may by regulation adjust the mortgage prepayment rate otherwise used in determining the effective rate of interest to the extent the Secretary determines that such an adjustment is appropriate by reason of the impact of subsection (m).

(C) Yield on the issue

For purposes of this subsection, the yield on an issue shall be determined on the basis of—

(i) the issue price (within the meaning of sections 1273 and 1274), and

(ii) an expected maturity for the bonds which is consistent with the assumptions required under subparagraph (B)(iv).

(3) Arbitrage and investment gains to be used to reduce costs of owner-financing

(A) In general

An issue shall be treated as meeting the requirements of this paragraph only if an amount equal to the sum of—

(i) the excess of—

(I) the amount earned on all nonpurpose investments (other than investments attributable to an excess described in this clause), over

(II) the amount which would have been earned if such investments were invested at a rate equal to the yield on the issue, plus

(ii) any income attributable to the excess described in clause (i),

is paid or credited to the mortgagors as rapidly as may be practicable.

(B) Investment gains and losses

For purposes of subparagraph (A), in determining the amount earned on all nonpurpose investments, any gain or loss on the disposition of such investments shall be taken into account.

(C) Reduction where issuer does not use full 1.125 percentage points under paragraph (2)

(i) In general

The amount required to be paid or credited to mortgagors under subparagraph (A) (determined under this paragraph without regard to this subparagraph) shall be reduced by the unused paragraph (2) amount.

(ii) Unused paragraph (2) amount

For purposes of clause (i), the unused paragraph (2) amount is the amount which (if it were treated as an interest payment made by mortgagors) would result in the excess referred to in paragraph (2)(A) being equal to 1.125 percentage points. Such amount shall be fixed and determined as of the yield determination date.

(D) Election to pay United States

Subparagraph (A) shall be satisfied with respect to any issue if the issuer elects before issuing the bonds to pay over to the United States—

(i) not less frequently than once each 5 years after the date of issue, an amount equal to 90 percent of the aggregate amount which would be required to be paid or credited to mortgagors under subparagraph (A) (and not theretofore paid to the United States), and

(ii) not later than 60 days after the redemption of the last bond, 100 percent of such aggregate amount not theretofore paid to the United States.

(E) Simplified accounting

The Secretary shall permit any simplified system of accounting for purposes of this paragraph which the issuer establishes to the satisfaction of the Secretary will assure that the purposes of this paragraph are carried out.

(F) Nonpurpose investment

For purposes of this paragraph, the term ''nonpurpose investment'' has the meaning given such term by section 148(f)(6)(A).

(h) Portion of loans required to be placed in targeted areas

(1) In general

An issue meets the requirements of this subsection only if at least 20 percent of the proceeds of the issue which are devoted to providing owner-financing is made available (with reasonable diligence) for owner-financing of targeted area residences for at least 1 year after the date on which owner-financing is first made available with respect to targeted area residences.

(2) Limitation

Nothing in paragraph (1) shall be treated as requiring the making available of an amount which exceeds 40 percent of the average annual aggregate principal amount of mortgages executed during the immediately preceding 3 calendar years for single-family, owner-occupied residences located in targeted areas within the jurisdiction of the issuing authority.

(i) Other requirements

(1) Mortgages must be new mortgages

(A) In general

An issue meets the requirements of this subsection only if no part of the proceeds of such issue is used to acquire or replace existing mortgages.

(B) Exceptions

Under regulations prescribed by the Secretary, the replacement of—

(i) construction period loans,

(ii) bridge loans or similar temporary initial financing, and

(iii) in the case of a qualified rehabilitation, an existing mortgage,

shall not be treated as the acquisition or replacement of an existing mortgage for purposes of subparagraph (A).

(C) Exception for certain contract for deed agreements

(i) In general

In the case of land possessed under a contract for deed by a mortgagor—

(I) whose principal residence (within the meaning of section 121) is located on such land, and

(II) whose family income (as defined in subsection (f)(2)) is not more than 50 percent of applicable median family income (as defined in subsection (f)(4)),

the contract for deed shall not be treated as an existing mortgage for purposes of subparagraph (A).

(ii) Contract for deed defined

For purposes of this subparagraph, the term ''contract for deed'' means a seller-financed contract for the conveyance of land under which—

(I) legal title does not pass to the purchaser until the consideration under the contract is fully paid to the seller, and

(II) the seller's remedy for nonpayment is forfeiture rather than judicial or nonjudicial foreclosure.

(2) Certain requirements must be met where mortgage is assumed

An issue meets the requirements of this subsection only if each mortgage with respect to which owner-financing has been provided under such issue may be assumed only if the requirements of subsections (c), (d), and (e), and the requirements of paragraph (1) or (3)(B) of subsection (f) (whichever applies), are met with respect to such assumption.

(j) Targeted area residences

(1) In general

For purposes of this section, the term ''targeted area residence'' means a residence in an area which is either—

(A) a qualified census tract, or

(B) an area of chronic economic distress.

(2) Qualified census tract

(A) In general

For purposes of paragraph (1), the term ''qualified census tract'' means a census tract in which 70 percent or more of the families have income which is 80 percent or less of the statewide median family income.

(B) Data used

The determination under subparagraph (A) shall be made on the basis of the most recent decennial census for which data are available.

(3) Area of chronic economic distress

(A) In general

For purposes of paragraph (1), the term ''area of chronic economic distress'' means an area of chronic economic distress—

(i) designated by the State as meeting the standards established by the State for purposes of this subsection, and

(ii) the designation of which has been approved by the Secretary and the Secretary of Housing and Urban Development.

(B) Criteria to be used in approving State designations

The criteria used by the Secretary and the Secretary of Housing and Urban Development in evaluating any proposed designation of an area for purposes of this subsection shall be—

(i) the condition of the housing stock, including the age of the housing and the number of abandoned and substandard residential units,

(ii) the need of area residents for owner-financing under this section, as indicated by low per capita income, a high percentage of families in poverty, a high number of welfare recipients, and high unemployment rates,

(iii) the potential for use of owner-financing under this section to improve housing conditions in the area, and

(iv) the existence of a housing assistance plan which provides a displacement program and a public improvements and services program.

(k) Other definitions and special rules

For purposes of this section—

(1) Mortgage

The term ''mortgage'' means any owner-financing.

(2) Statistical area

(A) In general

The term ''statistical area'' means—

(i) a metropolitan statistical area, and

(ii) any county (or the portion thereof) which is not within a metropolitan statistical area.

(B) Metropolitan statistical area

The term ''metropolitan statistical area'' includes the area defined as such by the Secretary of Commerce.

(C) Designation where adequate statistical information not available

For purposes of this paragraph, if there is insufficient recent statistical information with respect to a county (or portion thereof) described in subparagraph (A)(ii), the Secretary may substitute for such county (or portion thereof) another area for which there is sufficient recent statistical information.

(D) Designation where no county

In the case of any portion of a State which is not within a county, subparagraphs (A)(ii) and (C) shall be applied by substituting for ''county'' an area designated by the Secretary which is the equivalent of a county.

(3) Acquisition cost

(A) In general

The term ''acquisition cost'' means the cost of acquiring the residence as a completed residential unit.

(B) Exceptions

The term ''acquisition cost'' does not include—

(i) usual and reasonable settlement or financing costs,

(ii) the value of services performed by the mortgagor or members of his family in completing the residence, and

(iii) the cost of land (other than land described in subsection (i)(1)(C)(i)) which has been owned by the mortgagor for at least

2 years before the date on which construction of the residence begins.

(C) Special rule for qualified rehabilitation loans

In the case of a qualified rehabilitation loan, for purposes of subsection (e), the term ''acquisition cost'' includes the cost of the rehabilitation.

(4) Qualified home improvement loan

The term ''qualified home improvement loan'' means the financing (in an amount which does not exceed $15,000)—

(A) of alterations, repairs, and improvements on or in connection with an existing residence by the owner thereof, but

(B) only of such items as substantially protect or improve the basic livability or energy efficiency of the property.

(5) Qualified rehabilitation loan

(A) In general

The term ''qualified rehabilitation loan'' means any owner-financing provided in connection with—

(i) a qualified rehabilitation, or

(ii) the acquisition of a residence with respect to which there has been a qualified rehabilitation,

but only if the mortgagor to whom such financing is provided is the first resident of the residence after the completion of the rehabilitation.

(B) Qualified rehabilitation

For purposes of subparagraph (A), the term ''qualified rehabilitation'' means any rehabilitation of a building if—

(i) there is a period of at least 20 years between the date on which the building was first used and the date on which the physical work on such rehabilitation begins,

(ii) in the rehabilitation process—

(I) 50 percent or more of the existing external walls of such building are retained in place as external walls,

(II) 75 percent or more of the existing external walls of such building are retained in place as internal or external walls, and

(III) 75 percent or more of the existing internal structural framework of such building is retained in place, and

(iii) the expenditures for such rehabilitation are 25 percent or more of the mortgagor's adjusted basis in the residence.

For purposes of clause (iii), the mortgagor's adjusted basis shall be determined as of the completion of the rehabilitation or, if later, the date on which the mortgagor acquires the residence.

(6) Determinations on actuarial basis

All determinations of yield, effective interest rates, and amounts required to be paid or credited to mortgagors or paid to the United States under subsection (g) shall be made on an actuarial basis taking into account the present value of money.

(7) Single-family and owner-occupied residences include certain residences with 2 to 4 units

Except for purposes of subsection (h)(2), the terms ''single-family'' and ''owner-occupied'', when used with respect to residences, include 2, 3, or 4 family residences—

(A) one unit of which is occupied by the owner of the units, and

(B) which were first occupied at least 5 years before the mortgage is executed.

Subparagraph (B) shall not apply to any 2-family residence if the residence is a targeted area residence and the family income of the mortgagor meets the requirement of subsection (f)(3)(B).

(8) Cooperative housing corporations

(A) In general

In the case of any cooperative housing corporation—

(i) each dwelling unit shall be treated as if it were actually owned by the person entitled to occupy such dwelling unit by reason of his ownership of stock in the corporation, and

(ii) any indebtedness of the corporation allocable to the dwelling unit shall be treated as if it were indebtedness of the shareholder entitled to occupy the dwelling unit.

(B) Adjustment to targeted area requirement

In the case of any issue to provide financing to a cooperative housing corporation with respect to cooperative housing not located in a targeted area, to the extent provided in regulations, such issue may be combined with 1 or more other issues for purposes of determining whether the requirements of subsection (h) are met.

(C) Cooperative housing corporation

The term ''cooperative housing corporation'' has the meaning given to such term by section 216(b)(1).

(9) Treatment of limited equity cooperative housing

(A) Treatment as residential rental property

Except as provided in subparagraph (B), for purposes of this part—

(i) any limited equity cooperative housing shall be treated as residential rental property and not as owner-occupied housing, and

(ii) bonds issued to provide such housing shall be subject to the same requirements and limitations as bonds the proceeds of which are to be used to provide qualified residential rental projects (as defined in section 142(d)).

(B) Bonds subject to qualified mortgage bond termination date

Subparagraph (A) shall not apply to any bond issued after the date specified in subsection (a)(1)(B).

(C) Limited equity cooperative housing

For purposes of this paragraph, the term ''limited equity cooperative housing'' means

any dwelling unit which a person is entitled to occupy by reason of his ownership of stock in a qualified cooperative housing corporation.

(D) Qualified cooperative housing corporation

For purposes of this paragraph, the term ''qualified cooperative housing corporation'' means any cooperative housing corporation (as defined in section 216(b)(1)) if—

(i) the consideration paid for stock held by any stockholder entitled to occupy any house or apartment in a building owned or leased by the corporation may not exceed the sum of—

(I) the consideration paid for such stock by the first such stockholder, as adjusted by a cost-of-living adjustment determined by the Secretary,

(II) payments made by any stockholder for improvements to such house or apartment, and

(III) payments (other than amounts taken into account under subclause (I) or (II)) attributable to any stockholder to amortize the principal of the corporation's indebtedness arising from the acquisition or development of real property, including improvements thereof,

(ii) the value of the corporation's assets (reduced by any corporate liabilities), to the extent such value exceeds the combined transfer values of the outstanding corporate stock, shall be used only for public benefit or charitable purposes, or directly to benefit the corporation itself, and shall not be used directly to benefit any stockholder, and

(iii) at the time of issuance of the issue, such corporation makes an election under this paragraph.

(E) Effect of election

If a cooperative housing corporation makes an election under this paragraph, section 216 shall not apply with respect to such corporation (or any successor thereof) during the qualified project period (as defined in section 142(d)(2)).

(F) Corporation must continue to be qualified cooperative

Subparagraph (A)(i) shall not apply to limited equity cooperative housing unless the cooperative housing corporation continues to be a qualified cooperative housing corporation at all times during the qualified project period (as defined in section 142(d)(2)).

(G) Election irrevocable

Any election under this paragraph, once made, shall be irrevocable.

(10) Treatment of resale price control and subsidy lien programs

(A) In general

In the case of a residence which is located in a high housing cost area (as defined in section 143(f)(5)), the interest of a governmental unit in such residence by reason of financing provided under any qualified program shall not be taken into account under this section (other than subsection (m)), and the acquisition cost of the residence which is taken into account under subsection (e) shall be such cost reduced by the amount of such financing.

(B) Qualified program

For purposes of subparagraph (A), the term ''qualified program'' means any governmental program providing mortgage loans (other than 1st mortgage loans) or grants—

(i) which restricts (throughout the 9-year period beginning on the date the financing is provided) the resale of the residence to a purchaser qualifying under this section and to a price determined by an index that reflects less than the full amount of any appreciation in the residence's value, or

(ii) which provides for deferred or reduced interest payments on such financing and grants the governmental unit a share in the appreciation of the residence,

but only if such financing is not provided directly or indirectly through the use of any tax-exempt private activity bond.

(11) Special rules for residences located in disaster areas

In the case of a residence located in an area determined by the President to warrant assistance from the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (as in effect on the date of the enactment of the Taxpayer Relief Act of 1997), this section shall be applied with the following modifications to financing provided with respect to such residence within 2 years after the date of the disaster declaration:

(A) Subsection (d) (relating to 3-year requirement) shall not apply.

(B) Subsections (e) and (f) (relating to purchase price requirement and income requirement) shall be applied as if such residence were a targeted area residence.

The preceding sentence shall apply only with respect to bonds issued after May 1, 2008, and before January 1, 2010.

(12)[1] Special rules for subprime refinancings

(A) In general

Notwithstanding the requirements of subsection (i)(1), the proceeds of a qualified mortgage issue may be used to refinance a mortgage on a residence which was originally financed by the mortgagor through a qualified subprime loan.

(B) Special rules

In applying subparagraph (A) to any refinancing—

(i) subsection (a)(2)(D)(i) shall be applied by substituting ''12-month period'' for ''42-month period'' each place it appears,

(ii) subsection (d) (relating to 3-year requirement) shall not apply, and

(iii) subsection (e) (relating to purchase price requirement) shall be applied by

[1] So in original. Two pars. (12) have been enacted.

using the market value of the residence at the time of refinancing in lieu of the acquisition cost.

(C) Qualified subprime loan

The term ''qualified subprime loan'' means an adjustable rate single-family residential mortgage loan made after December 31, 2001, and before January 1, 2008, that the bond issuer determines would be reasonably likely to cause financial hardship to the borrower if not refinanced.

(D) Termination

This paragraph shall not apply to any bonds issued after December 31, 2010.

(12)[1] Special rules for residences destroyed in federally declared disasters

(A) Principal residence destroyed

At the election of the taxpayer, if the principal residence (within the meaning of section 121) of such taxpayer is—

(i) rendered unsafe for use as a residence by reason of a federally declared disaster occurring before January 1, 2010, or

(ii) demolished or relocated by reason of an order of the government of a State or political subdivision thereof on account of a federally declared disaster occurring before such date,

then, for the 2-year period beginning on the date of the disaster declaration, subsection (d)(1) shall not apply with respect to such taxpayer and subsection (e) shall be applied by substituting ''110'' for ''90'' in paragraph (1) thereof.

(B) Principal residence damaged

(i) In general

At the election of the taxpayer, if the principal residence (within the meaning of section 121) of such taxpayer was damaged as the result of a federally declared disaster occurring before January 1, 2010, any owner-financing provided in connection with the repair or reconstruction of such residence shall be treated as a qualified rehabilitation loan.

(ii) Limitation

The aggregate owner-financing to which clause (i) applies shall not exceed the lesser of—

(I) the cost of such repair or reconstruction, or

(II) $150,000.

(C) Federally declared disaster

For purposes of this paragraph, the term ''federally declared disaster'' has the meaning given such term by section 165(h)(3)(C)(i).

(D) Election; denial of double benefit

(i) Election

An election under this paragraph may not be revoked except with the consent of the Secretary.

(ii) Denial of double benefit

If a taxpayer elects the application of this paragraph, paragraph (11) shall not apply with respect to the purchase or financing of any residence by such taxpayer.

***(l)* Additional requirements for qualified veterans' mortgage bonds**

An issue meets the requirements of this subsection only if it meets the requirements of paragraphs (1), (2), and (3).

(1) Veterans to whom financing may be provided

An issue meets the requirements of this paragraph only if each mortgagor to whom financing is provided under the issue is a qualified veteran.

(2) Requirement that State program be in effect before June 22, 1984

An issue meets the requirements of this paragraph only if it is a general obligation of a State which issued qualified veterans' mortgage bonds before June 22, 1984.

(3) Volume limitation

(A) In general

An issue meets the requirements of this paragraph only if the aggregate amount of bonds issued pursuant thereto (when added to the aggregate amount of qualified veterans' mortgage bonds previously issued by the State during the calendar year) does not exceed the State veterans limit for such calendar year.

(B) State veterans limit

(i) In general

In the case of any State to which clause (ii) does not apply, the State veterans limit for any calendar year is the amount equal to—

(I) the aggregate amount of qualified veterans bonds issued by such State during the period beginning on January 1, 1979, and ending on June 22, 1984 (not including the amount of any qualified veterans bond issued by such State during the calendar year (or portion thereof) in such period for which the amount of such bonds so issued was the lowest), divided by

(II) the number (not to exceed 5) of calendar years after 1979 and before 1985 during which the State issued qualified veterans bonds (determined by only taking into account bonds issued on or before June 22, 1984).

(ii) Alaska, Oregon, and Wisconsin

In the case of the following States, the State veterans limit for any calendar year is the amount equal to—

(I) $100,000,000 for the State of Alaska,

(II) $100,000,000 for the State of Oregon, and

(III) $100,000,000 for the State of Wisconsin.

(iii) Phasein

In the case of calendar years beginning before 2010, clause (ii) shall be applied by substituting for each of the dollar amounts therein an amount equal to the applicable percentage of such dollar amount. For pur-

poses of the preceding sentence, the applicable percentage shall be determined in accordance with the following table:

For Calendar Year:	Applicable percentage is:
2006	20 percent
2007	40 percent
2008	60 percent
2009	80 percent.

(C) Treatment of refunding issues

(i) In general

For purposes of subparagraph (A), the term ''qualified veterans' mortgage bond'' shall not include any bond issued to refund another bond but only if the maturity date of the refunding bond is not later than the later of—

(I) the maturity date of the bond to be refunded, or

(II) the date 32 years after the date on which the refunded bond was issued (or in the case of a series of refundings, the date on which the original bond was issued).

The preceding sentence shall apply only to the extent that the amount of the refunding bond does not exceed the outstanding amount of the refunded bond.

(ii) Exception for advance refunding

Clause (i) shall not apply to any bond issued to advance refund another bond.

(4) Qualified veteran

For purposes of this subsection, the term ''qualified veteran'' means any veteran who—

(A) served on active duty, and

(B) applied for the financing before the date 25 years after the last date on which such veteran left active service.

(5) Special rule for certain short-term bonds

In the case of any bond—

(A) which has a term of 1 year or less,

(B) which is authorized to be issued under O.R.S. 407.435 (as in effect on the date of the enactment of this subsection), to provide financing for property taxes, and

(C) which is redeemed at the end of such term,

the amount taken into account under this subsection with respect to such bond shall be 1/15 of its principal amount.

(m) Recapture of portion of Federal subsidy from use of qualified mortgage bonds and mortgage credit certificates

(1) In general

If, during the taxable year, any taxpayer disposes of an interest in a residence with respect to which there is or was any federally-subsidized indebtedness for the payment of which the taxpayer was liable in whole or part, then the taxpayer's tax imposed by this chapter for such taxable year shall be increased by the lesser of—

(A) the recapture amount with respect to such indebtedness, or

(B) 50 percent of the gain (if any) on the disposition of such interest.

(2) Exceptions

Paragraph (1) shall not apply to—

(A) any disposition by reason of death, and

(B) any disposition which is more than 9 years after the testing date.

(3) Federally-subsidized indebtedness

For purposes of this subsection—

(A) In general

The term ''federally-subsidized indebtedness'' means any indebtedness if—

(i) financing for the indebtedness was provided in whole or part from the proceeds of any tax-exempt qualified mortgage bond, or

(ii) any credit was allowed under section 25 (relating to interest on certain home mortgages) to the taxpayer for interest paid or incurred on such indebtedness.

(B) Exception for home improvement loans

Such term shall not include any indebtedness to the extent such indebtedness is federally-subsidized indebtedness solely by reason of being a qualified home improvement loan (as defined in subsection (k)(4)).

(4) Recapture amount

For purposes of this subsection—

(A) In general

The recapture amount with respect to any indebtedness is the amount equal to the product of—

(i) the federally-subsidized amount with respect to the indebtedness,

(ii) the holding period percentage, and

(iii) the income percentage.

(B) Federally-subsidized amount

The federally-subsidized amount with respect to any indebtedness is the amount equal to 6.25 percent of the highest principal amount of the indebtedness for which the taxpayer was liable.

(C) Holding period percentage

(i) In general

The term ''holding period percentage'' means the percentage determined in accordance with the following table:

If the disposition occurs during a year after the testing date which is:	The holding period percentage is:
The 1st such year	20
The 2d such year	40
The 3d such year	60
The 4th such year	80
The 5th such year	100
The 6th such year	80
The 7th such year	60
The 8th such year	40
The 9th such year	20.

(ii) Retirements of indebtedness

If the federally-subsidized indebtedness is completely repaid during any year of the 4-year period beginning on the testing date, the holding period percentage for succeeding years shall be determined by reducing ratably to zero over the succeeding 5 years the holding period percentage

which would have been determined under this subparagraph had the taxpayer disposed of his interest in the residence on the date of the repayment.

(D) Testing date

The term ''testing date'' means the earliest date on which all of the following requirements are met:

(i) The indebtedness is federally-subsidized indebtedness.

(ii) The taxpayer is liable in whole or part for payment of the indebtedness.

(E) Income percentage

The term ''income percentage'' means the percentage (but not greater than 100 percent) which—

(i) the excess of—

(I) the modified adjusted gross income of the taxpayer for the taxable year in which the disposition occurs, over

(II) the adjusted qualifying income for such taxable year, bears to

(ii) $5,000.

The percentage determined under the preceding sentence shall be rounded to the nearest whole percentage point (or, if it includes a half of a percentage point, shall be increased to the nearest whole percentage point).

(5) Adjusted qualifying income; modified adjusted gross income

(A) Adjusted qualifying income

For purposes of paragraph (4), the term ''adjusted qualifying income'' means the product of—

(i) the highest family income which (as of the date the financing was provided) would have met the requirements of subsection (f) with respect to the residents, and

(ii) 1.05 to the nth power where ''n'' equals the number of full years during the period beginning on the date the financing was provided and ending on the date of the disposition.

For purposes of clause (i), highest family income shall be determined without regard to subsection (f)(3)(A) and on the basis of the number of members of the taxpayer's family as of the date of the disposition.

(B) Modified adjusted gross income

For purposes of paragraph (4), the term ''modified adjusted gross income'' means adjusted gross income—

(i) increased by the amount of interest received or accrued by the taxpayer during the taxable year which is excluded from gross income under section 103, and

(ii) decreased by the amount of gain (if any) included in gross income of the taxpayer by reason of the disposition to which this subsection applies.

(6) Special rules relating to limitation on recapture amount based on gain realized

(A) In general

For purposes of paragraph (1), gain shall be taken into account whether or not recognized, and the adjusted basis of the taxpayer's interest in the residence shall be determined without regard to sections 1033(b) and 1034(e) (as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997) for purposes of determining gain.

(B) Dispositions other than sales, exchanges, and involuntary conversions

In the case of a disposition other than a sale, exchange, or involuntary conversion, gain shall be determined as if the interest had been sold for its fair market value.

(C) Involuntary conversions resulting from casualties

In the case of property which (as a result of its destruction in whole or in part by fire, storm, or other casualty) is compulsorily or involuntarily converted, paragraph (1) shall not apply to such conversion if the taxpayer purchases (during the period specified in section 1033(a)(2)(B)) property for use as his principal residence on the site of the converted property. For purposes of subparagraph (A), the adjusted basis of the taxpayer in the residence shall not be adjusted for any gain or loss on a conversion to which this subparagraph applies.

(7) Issuer to inform mortgagor of federally-subsidized amount and family income limits

The issuer of the issue which provided the federally-subsidized indebtedness to the mortgagor shall—

(A) at the time of settlement, provide a written statement informing the mortgagor of the potential recapture under this subsection, and

(B) not later than 90 days after the date such indebtedness is provided, provide a written statement to the mortgagor specifying—

(i) the federally-subsidized amount with respect to such indebtedness, and

(ii) the adjusted qualifying income (as defined in paragraph (5)) for each category of family size for each year of the 9-year period beginning on the date the financing was provided.

(8) Special rules

(A) No basis adjustment

No adjustment shall be made to the basis of any property for the increase in tax under this subsection.

(B) Special rule where 2 or more persons hold interests in residence

Except as provided in subparagraph (C) and in regulations prescribed by the Secretary, if 2 or more persons hold interests in any residence and are jointly liable for the federally-subsidized indebtedness, the recapture amount shall be determined separately with respect to their respective interests in the residence.

(C) Transfers to spouses and former spouses

Paragraph (1) shall not apply to any transfer on which no gain or loss is recognized under section 1041. In any such case, the transferee shall be treated under this sub-

section in the same manner as the transferor would have been treated had such transfer not occurred.

(D) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this subsection, including regulations dealing with dispositions of partial interests in a residence.

(Added Pub. L. 99–514, title XIII, § 1301(b), Oct. 22, 1986, 100 Stat. 2610; amended Pub. L. 100–647, title I, § 1013(a)(2), (3), title IV, § 4005(a)(1), (b)–(d)(1), (e)–(g)(2), (6), Nov. 10, 1988, 102 Stat. 3537, 3645–3651; Pub. L. 101–239, title VII, § 7104(a), Dec. 19, 1989, 103 Stat. 2305; Pub. L. 101–508, title XI, § 11408(a), (c), Nov. 5, 1990, 104 Stat. 1388–477; Pub. L. 102–227, title I, § 108(a), Dec. 11, 1991, 105 Stat. 1688; Pub. L. 103–66, title XIII, § 13141(a), (c)–(e), Aug. 10, 1993, 107 Stat. 436, 437; Pub. L. 104–188, title I, §§ 1702(d)(2), 1703(n)(3), Aug. 20, 1996, 110 Stat. 1870, 1877; Pub. L. 105–34, title III, § 312(d)(1), (3), title IX, § 914, Aug. 5, 1997, 111 Stat. 839, 840, 878; Pub. L. 109–222, title II, § 203(a)(1), (b)(1), May 17, 2006, 120 Stat. 348, 349; Pub. L. 109–432, div. A, title IV, §§ 411(a), 416(a), Dec. 20, 2006, 120 Stat. 2963, 2965; Pub. L. 110–245, title I, § 103(a)–(c), June 17, 2008, 122 Stat. 1625; Pub. L. 110–289, div. C, title I, §§ 3021(b)(1), 3026(a), July 30, 2008, 122 Stat. 2893, 2897; Pub. L. 110–343, div. C, title VII, § 709(a), Oct. 3, 2008, 122 Stat. 3925.)

REFERENCES IN TEXT

The date of the enactment of this subparagraph, referred to in subsec. (d)(2)(D), is the date of enactment of Pub. L. 109–432, which was approved Dec. 20, 2006.

Section 8 of the United States Housing Act of 1937, referred to in subsec. (f)(2), is classified to section 1437f of Title 42, The Public Health and Welfare.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (k)(11), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as in effect on the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997. The Act is classified principally to chapter 68 (§ 5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

The date of the enactment of this subsection, referred to in subsec. (*l*)(5)(B), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

Section 1034(e) (as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997), referred to in subsec. (m)(6)(A), means section 1034(e) of this title as in effect on the day before the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997. Section 1034 was repealed by Pub. L. 105–34, title III, § 312(b), Aug. 5, 1997, 111 Stat. 839.

PRIOR PROVISIONS

A prior section 143, acts Aug. 16, 1954, ch. 736, 68A Stat. 41; Dec. 30, 1969, Pub. L. 91–172, title VIII, § 802(b), 83 Stat. 677; Oct. 4, 1976, Pub. L. 94–455, title XIX, § 1901(a)(22), 90 Stat. 1767; May 23, 1977, Pub. L. 95–30, title I, § 101(d)(4), 91 Stat. 133; July 18, 1984, Pub. L. 98–369, div. A, title IV, § 423(c)(1), 98 Stat. 800, related to determination of marital status, prior to the general revision of this part by Pub. L. 99–514. See section 7703 of this title.

Provisions similar to this section were contained in section 103A of this title prior to repeal by Pub. L. 99–514.

AMENDMENTS

2008—Subsec. (d)(2)(D). Pub. L. 110–245, § 103(a), struck out ''and before January 1, 2008'' after ''enactment of this subparagraph''.

Subsec. (k)(11). Pub. L. 110–289, § 3026(a), substituted ''May 1, 2008'' for ''December 31, 1996'' and ''January 1, 2010'' for ''January 1, 1999'' in concluding provisions.

Subsec. (k)(12). Pub. L. 110–343 added par. (12) relating to special rules for residences destroyed in federally declared disasters.

Pub. L. 110–289, § 3021(b)(1), added par. (12) relating to special rules for subprime refinancings.

Subsec. (*l*)(3)(B)(ii). Pub. L. 110–245, § 103(b), substituted ''$100,000,000'' for ''$25,000,000'' wherever appearing.

Subsec. (*l*)(4). Pub. L. 110–245, § 103(c), reenacted heading without change and amended text generally. Prior to amendment, par. (4) defined ''qualified veteran'' differently with respect to different States.

2006—Subsec. (d)(2)(D). Pub. L. 109–432, § 416(a), added subpar. (D).

Subsec. (*l*)(3)(B). Pub. L. 109–222, § 203(b)(1), reenacted heading without change, substituted introductory provisions of cl. (i) for ''A State veterans limit for any calendar year is the amount equal to—'' and inserted heading, redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, of cl. (i) and adjusted margins, and added cls. (ii) to (iv).

Subsec. (*l*)(3)(B)(iv). Pub. L. 109–432, § 411(a), struck out heading and text of cl. (iv). Text read as follows: ''The State veterans limit for the States specified in clause (ii) for any calendar year after 2010 is zero.''

Subsec. (*l*)(4). Pub. L. 109–222, § 203(a)(1), amended par. (4) generally. Prior to amendment, par. (4) defined the term ''qualified veteran''.

1997—Subsec. (i)(1)(C)(i)(I). Pub. L. 105–34, § 312(d)(1), substituted ''section 121'' for ''section 1034''.

Subsec. (k)(11). Pub. L. 105–34, § 914, added par. (11).

Subsec. (m)(6)(A). Pub. L. 105–34, § 312(d)(3), inserted ''(as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997)'' after ''1034(e)''.

1996—Subsec. (d)(2)(C). Pub. L. 104–188, § 1703(n)(3), substituted ''thereon,'' for ''thereon.''.

Subsec. (m)(4)(C)(ii). Pub. L. 104–188, § 1702(d)(2), substituted ''any year of the 4-year period'' for ''any month of the 10-year period'', ''succeeding years'' for ''succeeding months'', and ''to zero over the succeeding 5 years'' for ''over the remainder of such period (or, if lesser, over 5 years)''.

1993—Subsec. (a)(1). Pub. L. 103–66, § 13141(a), amended heading and text of par. (1) generally. Prior to amendment, text read as follows:

''(A) IN GENERAL.—For purposes of this title, the term 'qualified mortgage bond' means a bond which is issued as part of a qualified mortgage issue.

''(B) TERMINATION ON JUNE 30, 1992.—No bond issued after June 30, 1992, may be treated as a qualified mortgage bond.''

Subsec. (d)(2)(C). Pub. L. 103–66, § 13141(d)(1), added subpar. (C).

Subsec. (i)(1)(C). Pub. L. 103–66, § 13141(d)(2), added subpar. (C).

Subsec. (k)(3)(B)(iii). Pub. L. 103–66, § 13141(d)(3), inserted ''(other than land described in subsection (i)(1)(C)(i))'' after ''cost of land''.

Subsec. (k)(7). Pub. L. 103–66, § 13141(e), inserted at end ''Subparagraph (B) shall not apply to any 2-family residence if the residence is a targeted area residence and the family income of the mortgagor meets the requirement of subsection (f)(3)(B).''

Subsec. (k)(10). Pub. L. 103–66, § 13141(c), added par. (10).

1991—Subsec. (a)(1)(B). Pub. L. 102–227 substituted ''June 30, 1992'' for ''December 31, 1991'' in heading and text.

1990—Subsec. (a)(1)(B). Pub. L. 101–508, § 11408(a), substituted ''December 31, 1991'' for ''September 30, 1990'' in heading and text.

Subsec. (m)(1). Pub. L. 101–508, §11408(c)(3)(A), substituted ''increased by the lesser of—'' and subpars. (A) and (B) for ''increased by the recapture amount with respect to such indebtedness.''

Subsec. (m)(2)(B). Pub. L. 101–508, §11408(c)(1)(C), substituted ''9 years'' for ''10 years''.

Subsec. (m)(4)(A)(iii). Pub. L. 101–508, §11408(c)(2)(A), added cl. (iii).

Subsec. (m)(4)(C)(i). Pub. L. 101–508, §11408(c)(1)(A), substituted heading for one which read: ''Dispositions during 1st 5 years'' and amended text generally. Prior to amendment, text read as follows: ''If the disposition of the taxpayer's interest in the residence occurs during the 5-year period beginning on the testing date, the holding period percentage is the percentage determined by dividing the number of full months during which the requirements of subparagraph (D) were met by 60.''

Subsec. (m)(4)(C)(ii), (iii). Pub. L. 101–508, §11408(c)(1)(B), redesignated cl. (iii) as (ii) and struck out former cl. (ii) ''Dispositions during 2d 5 years'' which read as follows: ''If the disposition of the taxpayer's interest in the residence occurs during the 5-year period following the 5-year period described in clause (i), the holding period percentage is the percentage determined by dividing—

''(I) the excess of 120 over the number of full months during which such requirements were met by

''(II) 60.''

Subsec. (m)(4)(E). Pub. L. 101–508, §11408(c)(2)(B), added subpar. (E).

Subsec. (m)(5). Pub. L. 101–508, §11408(c)(2)(C)(i), added heading and struck out former heading which read: ''Reduction of recapture amount if taxpayer meets certain income limitations''.

Subsec. (m)(5)(A). Pub. L. 101–508, §11408(c)(2)(C)(i), added subpar. (A) and struck out former subpar. (A) ''In general'' which read as follows: ''The recapture amount which would (but for this paragraph) apply with respect to any disposition during a taxable year shall be reduced (but not below zero) by 2 percent of such amount for each $100 by which adjusted qualifying income exceeds the modified adjusted gross income of the taxpayer for such year.''

Subsec. (m)(5)(B), (C). Pub. L. 101–508, §11408(c)(2)(C), redesignated subpar. (C) as (B), substituted ''paragraph (4)'' for ''this paragraph'' in introductory provisions, and struck out former subpar. (B) ''Adjusted qualifying income'' which read as follows: ''For purposes of this paragraph, the term 'adjusted qualifying income' means the amount equal to the sum of—

''(i) $5,000, plus

''(ii) the product of—

''(I) the highest family income which (as of the date the financing was provided) would have met the requirement of subsection (f) with respect to the residence, and

''(II) the percentage equal to the sum of 100 percent plus 5 percent for each full year during the period beginning on such date and ending on the date of the disposition.

For purposes of clause (ii)(I), highest family income shall be determined without regard to subsection (f)(3)(A) and on the basis of the number of members of the taxpayer's family as of the date of the disposition.''

Subsec. (m)(6). Pub. L. 101–508, §11408(c)(3)(B)(i), substituted ''Special rules relating to limitation'' for ''Limitation'' in heading.

Subsec. (m)(6)(A). Pub. L. 101–508, §11408(c)(3)(B)(ii), (iii), struck out at beginning ''In no event shall the recapture amount of the taxpayer with respect to any indebtedness exceed 50 percent of the gain (if any) on the disposition of the taxpayer's interest in the residence.'' and substituted ''paragraph (1)'' for ''the preceding sentence''.

Subsec. (m)(7)(B)(ii). Pub. L. 101–508, §11408(c)(3)(C), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''the amounts described in paragraph (5)(B)(ii) for each category of family size for each year of the 10-year period beginning on the date the financing was provided.''

1989—Subsec. (a)(1)(B). Pub. L. 101–239 substituted ''September 30, 1990'' for ''December 31, 1989'' in heading and in text.

1988—Subsec. (a)(1)(B). Pub. L. 100–647, §4005(a)(1), substituted ''1989'' for ''1988'' in heading and in text.

Subsec. (a)(2)(A). Pub. L. 100–647, §4005(f), inserted sentence at end relating to application of cl. (iv).

Subsec. (a)(2)(A)(ii). Pub. L. 100–647, §4005(g)(1), substituted ''(i), and (m)(7)'' for ''and (i)''.

Subsec. (a)(2)(A)(iii). Pub. L. 100–647, §1013(a)(2), substituted ''such issue does not meet'' for ''no bond which is part of such issue meets''.

Subsec. (a)(2)(A)(iv). Pub. L. 100–647, §4005(f), added cl. (iv).

Subsec. (a)(2)(C). Pub. L. 100–647, §4005(g)(2)(B), substituted '', (h), and (m)(7)'' for ''and (h)'' in introductory text.

Subsec. (a)(2)(D). Pub. L. 100–647, §4005(e), added subpar. (D).

Subsec. (b)(4). Pub. L. 100–647, §1013(a)(3), inserted ''is part of an issue which'' after ''which''.

Subsec. (f)(5). Pub. L. 100–647, §4005(b), added par. (5).

Subsec. (f)(6). Pub. L. 100–647, §4005(c), added par. (6).

Subsec. (g)(1). Pub. L. 100–647, §4005(d)(1), substituted ''paragraph (2) of this subsection and, in the case of an issue described in subsection (b)(1), such issue also meets the requirements of paragraph (3) of this subsection'' for ''paragraphs (2) and (3) of this subsection'' and struck out ''(other than subsection (f) thereof)'' before period at end.

Subsec. (g)(2)(B)(iv). Pub. L. 100–647, §4005(g)(6), inserted at end ''The Secretary may by regulation adjust the mortgage prepayment rate otherwise used in determining the effective rate of interest to the extent the Secretary determines that such an adjustment is appropriate by reason of the impact of subsection (m).''

Subsec. (m). Pub. L. 100–647, §4005(g)(1), added subsec. (m).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title VII, §709(b), Oct. 3, 2008, 122 Stat. 3926, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to disasters occurring after December 31, 2007.''

Pub. L. 110–289, div. C, title I, §3021(c), July 30, 2008, 122 Stat. 2893, provided that: ''The amendments made by this section [amending this section and section 146 of this title] shall apply to bonds issued after the date of the enactment of this Act [July 30, 2008].''

Pub. L. 110–289, div. C, title I, §3026(b), July 30, 2008, 122 Stat. 2897, provided that: ''The amendments made by this section [amending this section] shall apply to bonds issued after May 1, 2008.''

Pub. L. 110–245, title I, §103(d), June 17, 2008, 122 Stat. 1626, provided that: ''The amendments made by this section [amending this section] shall apply to bonds issued after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §411(b), Dec. 20, 2006, 120 Stat. 2963, provided that: ''The amendment made by this section [amending this section] shall take effect as if included in section 203 [probably means 203(b)] of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109–222].''

Pub. L. 109–432, div. A, title IV, §416(b), Dec. 20, 2006, 120 Stat. 2965, provided that: ''The amendments made by this section [amending this section] shall apply to bonds issued after the date of the enactment of this Act [Dec. 20, 2006].''

Pub. L. 109–222, title II, §203(a)(2), May 17, 2006, 120 Stat. 349, provided that: ''The amendments made by this subsection [amending this section] shall apply to bonds issued on or after the date of the enactment of this Act [May 17, 2006].''

Pub. L. 109–222, title II, §203(b)(2), May 17, 2006, 120 Stat. 350, provided that: ''The amendments made by this subsection [amending this section] shall apply to allocations of State volume limit after April 5, 2006.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 312(d)(1), (3) of Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1702(d)(2) of Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

Amendment by section 1703(n)(3) of Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§ 13001–13444, to which such amendment relates, see section 1703(*o*) of Pub. L. 104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13141(f)(1) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to bonds issued after June 30, 1992.''

Section 13141(f)(3) of Pub. L. 103–66 provided that: ''The amendments made by subsections (c) and (e) [amending this section] shall apply to qualified mortgage bonds issued and mortgage credit certificates provided on or after the date of enactment of this Act [Aug. 10, 1993].''

Section 13141(f)(4) of Pub. L. 103–66 provided that: ''The amendments made by subsection (d) [amending this section] shall apply to loans originated and credit certificates provided after the date of the enactment of this Act [Aug. 10, 1993].''

EFFECTIVE DATE OF 1991 AMENDMENT

Section 108(c)(1) of Pub. L. 102–227 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to bonds issued after December 31, 1991.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11408(d) of Pub. L. 101–508 provided that:

''(1) BONDS.—The amendment made by subsection (a) [amending this section] shall apply to bonds issued after September 30, 1990.

''(2) CERTIFICATES.—The amendment made by subsection (b) [amending section 25 of this title] shall apply to elections for periods after September 30, 1990.

''(3) SIMPLIFICATION.—The amendment made by subsection (c) [amending this section] shall take effect as if included in the amendments made by section 4005 of the Technical and Miscellaneous Revenue Act of 1988 [Pub. L. 100–647].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1013(a)(2), (3) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 4005(h) of Pub. L. 100–647 provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 25, 26, 148, 6045, and 6654 of this title] shall apply to bonds issued, and nonissued bond amounts elected, after December 31, 1988.

''(2) SPECIAL RULES RELATING TO CERTAIN REQUIREMENTS AND REFUNDING BONDS.—In the case of a bond issued to refund (or which is part of a series of bonds issued to refund) a bond issued before January 1, 1989—

''(A) the amendments made by subsections (b) and (c) [amending this section] shall apply to financing provided after the date of issuance of the refunding issue, and

''(B) the amendment made by subsection (f) [amending this section] shall apply to payments (including on loans made before such date of issuance) received on or after such date of issuance.

''(3) SUBSECTION (g).—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by subsection (g) [amending this section and sections 25, 26, 6045, and 6654 of this title] shall apply to financing provided, and mortgage credit certificates issued, after December 31, 1990.

''(B) EXCEPTION.—The amendments made by subsection (g) shall not apply to financing provided pursuant to a binding contract (entered into before June 23, 1988) with a homebuilder, lender, or mortgagor if the bonds (the proceeds of which are used to provide such financing) are issued—

''(i) before June 23, 1988, or

''(ii) before August 1, 1988, pursuant to a written application (made before July 1, 1988) for State bond volume authority.''

TRANSITION RULE

Pub. L. 110–245, title I, § 103(e), June 17, 2008, 122 Stat. 1626, provided that: ''In the case of any bond issued after December 31, 2007, and before the date of the enactment of this Act [June 17, 2008], subparagraph (B) of section 143(*l*)(4) of the Internal Revenue Code of 1986, as amended by this section, shall be applied by substituting '30 years' for '25 years'.''

TERMINATION DATE FOR OBLIGATIONS TREATED AS QUALIFIED MORTGAGE BONDS UNDER FORMER SECTION 103A

Section 1013(a)(27) of Pub. L. 100–647 provided that: ''The date contained in [former] section 143(a)(1)(B) of the 1986 Code shall be treated as contained in section 103A(c)(1)(B) of the Internal Revenue Code of 1954, as in effect on the day before the date of the enactment of the Reform Act [Oct. 22, 1986], for purposes of any bond issued to refund a bond to which such [section] 103A(c)(1) applies.''

STUDY OF RECAPTURE PROVISIONS

Section 4005(i) of Pub. L. 100–647 provided that: ''The Comptroller General of the United States shall conduct a study of section 143(m) of the 1986 Code (as added by this section) and of alternatives to accomplish the purposes of such section. A report of such study shall be submitted not later than July 1, 1990, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.''

§ 144. Qualified small issue bond; qualified student loan bond; qualified redevelopment bond

(a) Qualified small issue bond

(1) In general

For purposes of this part, the term ''qualified small issue bond'' means any bond issued as part of an issue the aggregate authorized face amount of which is $1,000,000 or less and 95 percent or more of the net proceeds of which are to be used—

(A) for the acquisition, construction, reconstruction, or improvement of land or property of a character subject to the allowance for depreciation, or

(B) to redeem part or all of a prior issue which was issued for purposes described in subparagraph (A) or this subparagraph.

(2) Certain prior issues taken into account

If—

(A) the proceeds of 2 or more issues of bonds (whether or not the issuer of each

such issue is the same) are or will be used primarily with respect to facilities located in the same incorporated municipality or located in the same county (but not in any incorporated municipality),

(B) the principal user of such facilities is or will be the same person or 2 or more related persons, and

(C) but for this paragraph, paragraph (1) (or the corresponding provision of prior law) would apply to each such issue,

then, for purposes of paragraph (1), in determining the aggregate face amount of any later issue there shall be taken into account the aggregate face amount of tax-exempt bonds issued under all prior such issues and outstanding at the time of such later issue (not including as outstanding any bond which is to be redeemed (other than in an advance refunding) from the net proceeds of the later issue).

(3) Related persons

For purposes of this subsection, a person is a related person to another person if—

(A) the relationship between such persons would result in a disallowance of losses under section 267 or 707(b), or

(B) such persons are members of the same controlled group of corporations (as defined in section 1563(a), except that ''more than 50 percent'' shall be substituted for ''at least 80 percent'' each place it appears therein).

(4) $10,000,000 limit in certain cases

(A) In general

At the election of the issuer with respect to any issue, this subsection shall be applied—

(i) by substituting ''$10,000,000'' for ''$1,000,000'' in paragraph (1), and

(ii) in determining the aggregate face amount of such issue, by taking into account not only the amount described in paragraph (2), but also the aggregate amount of capital expenditures with respect to facilities described in subparagraph (B) paid or incurred during the 6-year period beginning 3 years before the date of such issue and ending 3 years after such date (and financed otherwise than out of the proceeds of outstanding tax-exempt issues to which paragraph (1) (or the corresponding provision of prior law) applied), as if the aggregate amount of such capital expenditures constituted the face amount of a prior outstanding issue described in paragraph (2).

(B) Facilities taken into account

For purposes of subparagraph (A)(ii), the facilities described in this subparagraph are facilities—

(i) located in the same incorporated municipality or located in the same county (but not in any incorporated municipality), and

(ii) the principal user of which is or will be the same person or 2 or more related persons.

For purposes of clause (i), the determination of whether or not facilities are located in the same governmental unit shall be made as of the date of issue of the issue in question.

(C) Certain capital expenditures not taken into account

For purposes of subparagraph (A)(ii), any capital expenditure—

(i) to replace property destroyed or damaged by fire, storm, or other casualty, to the extent of the fair market value of the property replaced,

(ii) required by a change made after the date of issue of the issue in question in a Federal or State law or local ordinance of general application or required by a change made after such date in rules and regulations of general application issued under such a law or ordinance,

(iii) required by circumstances which could not be reasonably foreseen on such date of issue or arising out of a mistake of law or fact (but the aggregate amount of expenditures not taken into account under this clause with respect to any issue shall not exceed $1,000,000), or

(iv) described in clause (i) or (ii) of section 41(b)(2)(A) for which a deduction was allowed under section 174(a),

shall not be taken into account.

(D) Limitation on loss of tax exemption

In applying subparagraph (A)(ii) with respect to capital expenditures made after the date of any issue, no bond issued as a part of such issue shall cease to be treated as a qualified small issue bond by reason of any such expenditure for any period before the date on which such expenditure is paid or incurred.

(E) Certain refinancing issues

In the case of any issue described in paragraph (1)(B), an election may be made under subparagraph (A) of this paragraph only if all of the prior issues being redeemed are issues to which paragraph (1) (or the corresponding provision of prior law) applied. In applying subparagraph (A)(ii) with respect to such a refinancing issue, capital expenditures shall be taken into account only for purposes of determining whether the prior issues being redeemed qualified (and would have continued to qualify) under paragraph (1) (or the corresponding provision of prior law).

(F) Aggregate amount of capital expenditures where there is urban development action grant

In the case of any issue 95 percent or more of the net proceeds of which are to be used to provide facilities with respect to which an urban development action grant has been made under section 119 of the Housing and Community Development Act of 1974, capital expenditures of not to exceed $10,000,000 shall not be taken into account for purposes of applying subparagraph (A)(ii). This subparagraph shall not apply to bonds issued after December 31, 2006.

(G) Additional capital expenditures not taken into account

With respect to bonds issued after December 31, 2006, in addition to any capital expenditure described in subparagraph (C), capital expenditures of not to exceed $10,000,000 shall not be taken into account for purposes of applying subparagraph (A)(ii).

(5) Issues for residential purposes

This subsection shall not apply to any bond issued as part of an issue 5 percent or more of the net proceeds of which are to be used directly or indirectly to provide residential real property for family units.

(6) Limitations on treatment of bonds as part of the same issue

(A) In general

For purposes of this subsection, separate lots of bonds which (but for this subparagraph) would be treated as part of the same issue shall be treated as separate issues unless the proceeds of such lots are to be used with respect to 2 or more facilities—

(i) which are located in more than 1 State, or

(ii) which have, or will have, as the same principal user the same person or related persons.

(B) Franchises

For purposes of subparagraph (A), a person (other than a governmental unit) shall be considered a principal user of a facility if such person (or a group of related persons which includes such person)—

(i) guarantees, arranges, participates in, or assists with the issuance (or pays any portion of the cost of issuance) of any bond the proceeds of which are to be used to finance or refinance such facility, and

(ii) provides any property, or any franchise, trademark, or trade name (within the meaning of section 1253), which is to be used in connection with such facility.

(7) Subsection not to apply if bonds issued with certain other tax-exempt bonds

This subsection shall not apply to any bond issued as part of an issue (other than an issue to which paragraph (4) applies) if the interest on any other bond which is part of such issue is excluded from gross income under any provision of law other than this subsection.

(8) Restrictions on financing certain facilities

This subsection shall not apply to an issue if—

(A) more than 25 percent of the net proceeds of the issue are to be used to provide a facility the primary purpose of which is one of the following: retail food and beverage services, automobile sales or service, or the provision of recreation or entertainment; or

(B) any portion of the proceeds of the issue is to be used to provide the following: any private or commercial golf course, country club, massage parlor, tennis club, skating facility (including roller skating, skateboard, and ice skating), racquet sports facility (including any handball or racquetball court), hot tub facility, suntan facility, or racetrack.

(9) Aggregation of issues with respect to single project

For purposes of this subsection, 2 or more issues part or all of the net proceeds of which are to be used with respect to a single building, an enclosed shopping mall, or a strip of offices, stores, or warehouses using substantial common facilities shall be treated as 1 issue (and any person who is a principal user with respect to any of such issues shall be treated as a principal user with respect to the aggregated issue).

(10) Aggregate limit per taxpayer

(A) In general

This subsection shall not apply to any issue if the aggregate authorized face amount of such issue allocated to any test-period beneficiary (when increased by the outstanding tax-exempt facility-related bonds of such beneficiary) exceeds $40,000,000.

(B) Outstanding tax-exempt facility-related bonds

(i) In general

For purposes of applying subparagraph (A) with respect to any issue, the outstanding tax-exempt facility-related bonds of any person who is a test-period beneficiary with respect to such issue is the aggregate amount of tax-exempt bonds referred to in clause (ii)—

(I) which are allocated to such beneficiary, and

(II) which are outstanding at the time of such later issue (not including as outstanding any bond which is to be redeemed (other than in an advance refunding) from the net proceeds of the later issue).

(ii) Bonds taken into account

For purposes of clause (i), the bonds referred to in this clause are—

(I) exempt facility bonds, qualified small issue bonds, and qualified redevelopment bonds, and

(II) industrial development bonds (as defined in section 103(b)(2), as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) to which section 141(a) does not apply.

(C) Allocation of face amount of issue

(i) In general

Except as otherwise provided in regulations, the portion of the face amount of an issue allocated to any test-period beneficiary of a facility financed by the proceeds of such issue (other than an owner of such facility) is an amount which bears the same relationship to the entire face amount of such issue as the portion of such facility used by such beneficiary bears to the entire facility.

(ii) Owners

Except as otherwise provided in regulations, the portion of the face amount of an

issue allocated to any test-period beneficiary who is an owner of a facility financed by the proceeds of such issue is an amount which bears the same relationship to the entire face amount of such issue as the portion of such facility owned by such beneficiary bears to the entire facility.

(D) Test-period beneficiary

For purposes of this paragraph, except as provided in regulations, the term ''test-period beneficiary'' means any person who is an owner or a principal user of facilities being financed by the issue at any time during the 3-year period beginning on the later of—

(i) the date such facilities were placed in service, or

(ii) the date of issue.

(E) Treatment of related persons

For purposes of this paragraph, all persons who are related (within the meaning of paragraph (3)) to each other shall be treated as 1 person.

(11) Limitation on acquisition of depreciable farm property

(A) In general

This subsection shall not apply to any issue if more than $250,000 of the net proceeds of such issue are to be used to provide depreciable farm property with respect to which the principal user is or will be the same person or 2 or more related persons.

(B) Depreciable farm property

For purposes of this paragraph, the term ''depreciable farm property'' means property of a character subject to the allowance for depreciation which is to be used in a trade or business of farming.

(C) Prior issues taken into account

In determining the amount of proceeds of an issue to be used as described in subparagraph (A), there shall be taken into account the aggregate amount of each prior issue to which paragraph (1) (or the corresponding provisions of prior law) applied which were or will be so used.

(12) Termination dates

(A) In general

This subsection shall not apply to—

(i) any bond (other than a bond described in clause (ii)) issued after December 31, 1986, or

(ii) any bond (or series of bonds) issued to refund a bond issued on or before such date unless—

(I) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

(II) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

(III) the net proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

For purposes of clause (ii)(I), average maturity shall be determined in accordance with section 147(b)(2)(A).

(B) Bonds issued to finance manufacturing facilities and farm property

Subparagraph (A) shall not apply to any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide—

(i) any manufacturing facility, or

(ii) any land or property in accordance with section 147(c)(2).

(C) Manufacturing facility

For purposes of this paragraph—

(i) In general

The term ''manufacturing facility'' means any facility which is used in the manufacturing or production of tangible personal property (including the processing resulting in a change in the condition of such property). A rule similar to the rule of section 142(b)(2) shall apply for purposes of the preceding sentence.

(ii) Certain facilities included

Such term includes facilities which are directly related and ancillary to a manufacturing facility (determined without regard to this clause) if—

(I) such facilities are located on the same site as the manufacturing facility, and

(II) not more than 25 percent of the net proceeds of the issue are used to provide such facilities.

(iii) Special rules for bonds issued in 2009 and 2010

In the case of any issue made after the date of enactment of this clause and before January 1, 2011, clause (ii) shall not apply and the net proceeds from a bond shall be considered to be used to provide a manufacturing facility if such proceeds are used to provide—

(I) a facility which is used in the creation or production of intangible property which is described in section 197(d)(1)(C)(iii), or

(II) a facility which is functionally related and subordinate to a manufacturing facility (determined without regard to this subclause) if such facility is located on the same site as the manufacturing facility.

(b) Qualified student loan bond

For purposes of this part—

(1) In general

The term ''qualified student loan bond'' means any bond issued as part of an issue the applicable percentage or more of the net proceeds of which are to be used directly or indirectly to make or finance student loans under—

(A) a program of general application to which the Higher Education Act of 1965 applies if—

(i) limitations are imposed under the program on—

(I) the maximum amount of loans outstanding to any student, and

(II) the maximum rate of interest payable on any loan,

(ii) the loans are directly or indirectly guaranteed by the Federal Government,

(iii) the financing of loans under the program is not limited by Federal law to the proceeds of tax-exempt bonds, and

(iv) special allowance payments under section 438 of the Higher Education Act of 1965—

(I) are authorized to be paid with respect to loans made under the program, or

(II) would be authorized to be made with respect to loans under the program if such loans were not financed with the proceeds of tax-exempt bonds, or

(B) a program of general application approved by the State if no loan under such program exceeds the difference between the total cost of attendance and other forms of student assistance (not including loans pursuant to section 428B(a)(1) of the Higher Education Act of 1965 (relating to parent loans) or subpart I[1] of part C of title VII of the Public Health Service Act (relating to student assistance)) for which the student borrower may be eligible. A program shall not be treated as described in this subparagraph if such program is described in subparagraph (A).

A bond shall not be treated as a qualified student loan bond if the issue of which such bond is a part meets the private business tests of paragraphs (1) and (2) of section 141(b) (determined by treating 501(c)(3) organizations as governmental units with respect to their activities which do not constitute unrelated trades or businesses, determined by applying section 513(a)).

(2) Applicable percentage

For purposes of paragraph (1), the term ''applicable percentage'' means—

(A) 90 percent in the case of the program described in paragraph (1)(A), and

(B) 95 percent in the case of the program described in paragraph (1)(B).

(3) Student borrowers must be residents of issuing State, etc.

A student loan shall be treated as being made or financed under a program described in paragraph (1) with respect to an issue only if the student is—

(A) a resident of the State from which the volume cap under section 146 for such loan was derived, or

(B) enrolled at an educational institution located in such State.

(4) Discrimination on basis of school location not permitted

A program shall not be treated as described in paragraph (1)(A) if such program discriminates on the basis of the location (in the United States) of the educational institution in which the student is enrolled.

(c) Qualified redevelopment bond

For purposes of this part—

(1) In general

The term ''qualified redevelopment bond'' means any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used for 1 or more redevelopment purposes in any designated blighted area.

(2) Additional requirements

A bond shall not be treated as a qualified redevelopment bond unless—

(A) the issue described in paragraph (1) is issued pursuant to—

(i) a State law which authorizes the issuance of such bonds for redevelopment purposes in blighted areas, and

(ii) a redevelopment plan which is adopted before such issuance by the governing body described in paragraph (4)(A) with respect to the designated blighted area,

(B)(i) the payment of the principal and interest on such issue is primarily secured by taxes of general applicability imposed by a general purpose governmental unit, or

(ii) any increase in real property tax revenues (attributable to increases in assessed value) by reason of the carrying out of such purposes in such area is reserved exclusively for debt service on such issue (and similar issues) to the extent such increase does not exceed such debt service,

(C) each interest in real property located in such area—

(i) which is acquired by a governmental unit with the proceeds of the issue, and

(ii) which is transferred to a person other than a governmental unit,

is transferred for fair market value,

(D) the financed area with respect to such issue meets the no additional charge requirements of paragraph (5), and

(E) the use of the proceeds of the issue meets the requirements of paragraph (6).

(3) Redevelopment purposes

For purposes of paragraph (1)—

(A) In general

The term ''redevelopment purposes'' means, with respect to any designated blighted area—

(i) the acquisition (by a governmental unit having the power to exercise eminent domain) of real property located in such area,

(ii) the clearing and preparation for redevelopment of land in such area which was acquired by such governmental unit,

(iii) the rehabilitation of real property located in such area which was acquired by such governmental unit, and

(iv) the relocation of occupants of such real property.

(B) New construction not permitted

The term ''redevelopment purposes'' does not include the construction (other than the

[1] See References in Text note below.

rehabilitation) of any property or the enlargement of an existing building.

(4) Designated blighted area

For purposes of this subsection—

(A) In general

The term ''designated blighted area'' means any blighted area designated by the governing body of a local general purpose governmental unit in the jurisdiction of which such area is located.

(B) Blighted area

The term ''blighted area'' means any area which the governing body described in subparagraph (A) determines to be a blighted area on the basis of the substantial presence of factors such as excessive vacant land on which structures were previously located, abandoned or vacant buildings, substandard structures, vacancies, and delinquencies in payment of real property taxes.

(C) Designated areas may not exceed 20 percent of total assessed value of real property in government's jurisdiction

(i) In general

An area may be designated by a governmental unit as a blighted area only if the designation percentage with respect to such area, when added to the designation percentages of all other designated blighted areas within the jurisdiction of such governmental unit, does not exceed 20 percent.

(ii) Designation percentage

For purposes of this subparagraph, the term ''designation percentage'' means, with respect to any area, the percentage (determined at the time such area is designated) which the assessed value of real property located in such area is of the total assessed value of all real property located within the jurisdiction of the governmental unit which designated such area.

(iii) Exception where bonds not outstanding

The designation percentage of a previously designated blighted area shall not be taken into account under clause (i) if no qualified redevelopment bond (or similar bond) is or will be outstanding with respect to such area.

(D) Minimum designated area

(i) In general

Except as provided in clause (ii), an area shall not be treated as a designated blighted area for purposes of this subsection unless such area is contiguous and compact and its area equals or exceeds 100 acres.

(ii) 10-acre minimum in certain cases

Clause (i) shall be applied by substituting ''10 acres'' for ''100 acres'' if not more than 25 percent of the financed area is to be provided (pursuant to the issue and all other such issues) to 1 person. For purposes of the preceding sentence, all related persons (as defined in subsection (a)(3)) shall be treated as 1 person. For purposes of this clause, an area provided to a developer on a short-term interim basis shall not be treated as provided to such developer.

(5) No additional charge requirements

The financed area with respect to any issue meets the requirements of this paragraph if, while any bond which is part of such issue is outstanding—

(A) no owner or user of property located in the financed area is subject to a charge or fee which similarly situated owners or users of comparable property located outside such area are not subject, and

(B) the assessment method or rate of real property taxes with respect to property located in the financed area does not differ from the assessment method or rate of real property taxes with respect to comparable property located outside such area.

For purposes of the preceding sentence, the term ''comparable property'' means property which is of the same type as the property to which it is being compared and which is located within the jurisdiction of the designating governmental unit.

(6) Use of proceeds requirements

The use of the proceeds of an issue meets the requirements of this paragraph if—

(A) not more than 25 percent of the net proceeds of such issue are to be used to provide (including the provision of land for) facilities described in subsection (a)(8) or section 147(e), and

(B) no portion of the proceeds of such issue is to be used to provide (including the provision of land for) any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

(7) Financed area

For purposes of this subsection, the term ''financed area'' means, with respect to any issue, the portion of the designated blighted area with respect to which the proceeds of such issue are to be used.

(8) Restriction on acquisition of land not to apply

Section 147(c) (other than paragraphs (1)(B) and (2) thereof) shall not apply to any qualified redevelopment bond.

(Added Pub. L. 99–514, title XIII, §1301(b), Oct. 22, 1986, 100 Stat. 2621; amended Pub. L. 100–647, title I, §1013(a)(4)(A), (B)(i), (ii), (C), (5), title VI, §6176(a), Nov. 10, 1988, 102 Stat. 3537, 3538, 3726; Pub. L. 101–239, title VII, §7105, Dec. 19, 1989, 103 Stat. 2306; Pub. L. 101–508, title XI, §11409(a), Nov. 5, 1990, 104 Stat. 1388–478; Pub. L. 102–227, title I, §109(a), Dec. 11, 1991, 105 Stat. 1688; Pub. L. 103–66, title XIII, §13122(a), Aug. 10, 1993, 107 Stat. 432; Pub. L. 108–357, title III, §340, Oct. 22, 2004, 118 Stat. 1485; Pub. L. 109–222, title II, §208,

May 17, 2006, 120 Stat. 351; Pub. L. 111–5, div. B, title I, § 1301(a), Feb. 17, 2009, 123 Stat. 344.)

REFERENCES IN TEXT

Section 119 of the Housing and Community Development Act of 1974, referred to in subsec. (a)(4)(F), is classified to section 5318 of Title 42, The Public Health and Welfare.

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (a)(10)(B)(ii)(II), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

The date of enactment of this clause, referred to in subsec. (a)(12)(C)(iii), is the date of enactment of Pub. L. 111–5, which was approved Feb. 17, 2009.

The Higher Education Act of 1965, referred to in subsec. (b)(1), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, which is classified generally to chapter 28 (§ 1001 et seq.) of Title 20, Education, and part C (§ 2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. Section 428B(a) of that Act as enacted in the general amendment of part B of title IV of that Act by Pub. L. 99–498, title IV, § 402(a), Oct. 17, 1986, 100 Stat. 1386, which is classified to section 1078–2 of Title 20, does not contain a par. (1). Section 438 of that Act is classified to section 1087–1 of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

The Public Health Service Act, referred to in subsec. (b)(1)(B), is act July 1, 1944, ch. 373, 58 Stat. 682. Subpart I of part C of title VII of the Act was classified generally to subpart I (§ 294 et seq.) of part C of subchapter V of chapter 6A of Title 42, The Public Health and Welfare, prior to the general revision of subchapter V of chapter 6A by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994. See subpart I (§ 292 et seq.) of part A of revised subchapter V of chapter 6A of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 144, acts Aug. 16, 1954, ch. 736, 68A Stat. 41; Feb. 26, 1964, Pub. L. 88–272, title I, § 112(c), title II, § 232(c), 78 Stat. 24, 110; Dec. 10, 1971, Pub. L. 92–178, title II, § 206, title III, § 301(c), 85 Stat. 511, 520; Oct. 4, 1976, Pub. L. 94–455, title V, § 501(b)(3)–(5), title XIX, § 1906(b)(13)(A), 90 Stat. 1558, 1559, 1834, related to method for electing to take standard deduction, prior to repeal by Pub. L. 95–30, title I, § 101(d)(1), May 23, 1977, 91 Stat. 133, applicable to taxable years beginning after Dec. 31, 1976.

AMENDMENTS

2009—Subsec. (a)(12)(C). Pub. L. 111–5 substituted dash for comma after ''For purposes of this paragraph'', designated remainder of first sentence and second sentence of existing provisions as cl. (i) and inserted heading, substituted ''The term'' for ''the term'', added cls. (ii) and (iii), and struck out former last sentence which read as follows: ''For purposes of the 1st sentence of this subparagraph, the term 'manufacturing facility' includes facilities which are directly related and ancillary to a manufacturing facility (determined without regard to this sentence) if—

''(i) such facilities are located on the same site as the manufacturing facility, and

''(ii) not more than 25 percent of the net proceeds of the issue are used to provide such facilities.''

2006—Subsec. (a)(4)(F), (G). Pub. L. 109–222 substituted ''December 31, 2006'' for ''September 30, 2009''.

2004—Subsec. (a)(4)(F). Pub. L. 108–357, § 340(b), inserted at end ''This subparagraph shall not apply to bonds issued after September 30, 2009.''

Subsec. (a)(4)(G). Pub. L. 108–357, § 340(a), added subpar. (G).

1993—Subsec. (a)(12)(B). Pub. L. 103–66 amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''In the case of any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide—

''(i) any manufacturing facility, or

''(ii) any land or property in accordance with section 147(c)(2),

subparagraph (A) shall be applied by substituting 'June 30, 1992' for 'December 31, 1986'.''

1991—Subsec. (a)(12)(B). Pub. L. 102–227 substituted ''June 30, 1992'' for ''December 31, 1991''.

1990—Subsec. (a)(12)(B). Pub. L. 101–508 substituted ''December 31, 1991'' for ''September 30, 1990''.

1989—Subsec. (a)(12)(B). Pub. L. 101–239 substituted ''by substituting 'September 30, 1990' for 'December 31, 1986' '' for ''by substituting '1989' for '1986' ''.

1988—Subsec. (a)(12)(A). Pub. L. 100–647, § 1013(a)(4)(B)(ii), inserted sentence at end that for purposes of cl. (ii)(I), average maturity be determined in accordance with section 147(b)(2)(A).

Subsec. (a)(12)(A)(ii). Pub. L. 100–647, § 1013(a)(4)(A), inserted ''(or series of bonds)'' before ''issued to refund'' in introductory text.

Subsec. (a)(12)(A)(ii)(I). Pub. L. 100–647, § 1013(a)(4)(B)(i), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ''the refunding bond has a maturity date not later than the maturity date of the refunded bond,''.

Subsec. (a)(12)(A)(ii)(III), (IV). Pub. L. 100–647, § 1013(a)(4)(C), redesignated subcl. (IV) as (III) and struck out former subcl. (III) which provided that this subsection apply when the interest rate on the refunding bond is lower than the interest rate on the refunded bond.

Subsec. (a)(12)(C). Pub. L. 100–647, § 6176(a), inserted sentence at end defining ''manufacturing facility''.

Subsec. (b)(1). Pub. L. 100–647, § 1013(a)(5), in subpar. (B) struck out ''to which part B of title IV of the Higher Education Act of 1965 (relating to guaranteed student loans) does not apply'' after ''by the State'', substituted ''of the Higher Education Act of 1965'' for ''of such Act'', amended last sentence generally, and inserted a new flush sentence at end of par. (1). Prior to amendment, last sentence of subpar. (B) read as follows: ''A bond issued as part of an issue shall be treated as a qualified student loan bond only if no bond which is part of such issue meets the private business tests of paragraphs (1) and (2) of section 141(b).''

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, § 1301(b), Feb. 17, 2009, 123 Stat. 345, provided that: ''The amendments made by this section [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Feb. 17, 2009].''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13122(b) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to bonds issued after June 30, 1992.''

EFFECTIVE DATE OF 1991 AMENDMENT

Section 109(b) of Pub. L. 102–227 provided that: ''The amendment made by this section [amending this section] shall apply to bonds issued after December 31, 1991.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11409(b) of Pub. L. 101–508 provided that: ''The amendment made by this section [amending this section] shall apply to bonds issued after September 30, 1990.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1013(a)(4)(A), (B)(i), (ii), (C), (5) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6176(b) of Pub. L. 100–647 provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to bonds issued after the date of the enactment of this Act [Nov. 10, 1988].

''(2) REFUNDINGS.—The amendment made by subsection (a) shall not apply to any bond issued to refund (or which is part of a series of bonds issued to refund) a bond issued on or before the date of the enactment of this Act if—

''(A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue, and

''(B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond.

For purposes of subparagraph (A), average maturity shall be determined in accordance with section 147(b) of the 1986 Code.''

APPLICATION OF SUBSECTION (a)(12)(A)(ii)(I) TO REFUNDING BONDS ISSUED BEFORE JULY 1, 1987

Section 1013(a)(4)(B)(iii) of Pub. L. 100–647 provided that: ''A refunding bond issued before July 1, 1987, shall be treated as meeting the requirement of subclause (I) of section 144(a)(12)(A)(ii) of the 1986 Code if such bond met the requirement of such subclause as in effect before the amendments made by this subparagraph [amending this section].''

TERMINATION DATE FOR EXEMPTION FOR CERTAIN SMALL ISSUES UNDER SECTION 103(b)(6)

Section 1013(c)(12)(B) of Pub. L. 100–647 provided that: ''The date applicable under section 144(a)(12)(B) of the 1986 Code shall be treated as contained in section 103(b)(6)(N)(iii) of the Internal Revenue Code of 1954, as in effect on the day before the date of the enactment of the Reform Act [Oct. 22, 1986], for purposes of any bond issued to refund a bond to which such section 103(b)(6)(N)(iii) applies.''

§ 145. Qualified 501(c)(3) bond

(a) In general

For purposes of this part, except as otherwise provided in this section, the term ''qualified 501(c)(3) bond'' means any private activity bond issued as part of an issue if—

(1) all property which is to be provided by the net proceeds of the issue is to be owned by a 501(c)(3) organization or a governmental unit, and

(2) such bond would not be a private activity bond if—

(A) 501(c)(3) organizations were treated as governmental units with respect to their activities which do not constitute unrelated trades or businesses, determined by applying section 513(a), and

(B) paragraphs (1) and (2) of section 141(b) were applied by substituting ''5 percent'' for ''10 percent'' each place it appears and by substituting ''net proceeds'' for ''proceeds'' each place it appears.

(b) $150,000,000 limitation on bonds other than hospital bonds

(1) In general

A bond (other than a qualified hospital bond) shall not be treated as a qualified 501(c)(3) bond if the aggregate authorized face amount of the issue (of which such bond is a part) allocated to any 501(c)(3) organization which is a test-period beneficiary (when increased by the outstanding tax-exempt nonhospital bonds of such organization) exceeds $150,000,000.

(2) Outstanding tax-exempt nonhospital bonds

(A) In general

For purposes of applying paragraph (1) with respect to any issue, the outstanding tax-exempt nonhospital bonds of any organization which is a test-period beneficiary with respect to such issue is the aggregate amount of tax-exempt bonds referred to in subparagraph (B)—

(i) which are allocated to such organization, and

(ii) which are outstanding at the time of such later issue (not including as outstanding any bond which is to be redeemed (other than in an advance refunding) from the net proceeds of the later issue).

(B) Bonds taken into account

For purposes of subparagraph (A), the bonds referred to in this subparagraph are—

(i) any qualified 501(c)(3) bond other than a qualified hospital bond, and

(ii) any bond to which section 141(a) does not apply if—

(I) such bond would have been an industrial development bond (as defined in section 103(b)(2), as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) if 501(c)(3) organizations were not exempt persons, and

(II) such bond was not described in paragraph (4), (5), or (6) of such section 103(b) (as in effect on the date such bond was issued).

(C) Only nonhospital portion of bonds taken into account

(i) In general

A bond shall be taken into account under subparagraph (B) only to the extent that the proceeds of the issue of which such bond is a part are not used with respect to a hospital.

(ii) Special rule

If 90 percent or more of the net proceeds of an issue are used with respect to a hospital, no bond which is part of such issue shall be taken into account under subparagraph (B)(ii).

(3) Aggregation rule

For purposes of this subsection, 2 or more organizations under common management or control shall be treated as 1 organization.

(4) Allocation of face amount of issue; test-period beneficiary

Rules similar to the rules of subparagraphs (C), (D), and (E) of section 144(a)(10) shall apply for purposes of this subsection.

(5) Termination of limitation

This subsection shall not apply with respect to bonds issued after the date of the enactment of this paragraph as part of an issue 95 percent or more of the net proceeds of which are to be used to finance capital expenditures incurred after such date.

(c) Qualified hospital bond

For purposes of this section, the term ''qualified hospital bond'' means any bond issued as

part of an issue 95 percent or more of the net proceeds of which are to be used with respect to a hospital.

(d) Restrictions on bonds used to provide residential rental housing for family units

(1) In general

Except as otherwise provided in this subsection, a bond which is part of an issue shall not be a qualified 501(c)(3) bond if any portion of the net proceeds of the issue are to be used directly or indirectly to provide residential rental property for family units.

(2) Exception for bonds used to provide qualified residential rental projects

Paragraph (1) shall not apply to any bond issued as part of an issue if the portion of such issue which is to be used as described in paragraph (1) is to be used to provide—

(A) a residential rental property for family units if the first use of such property is pursuant to such issue,

(B) qualified residential rental projects (as defined in section 142(d)), or

(C) property which is to be substantially rehabilitated in a rehabilitation beginning within the 2-year period ending 1 year after the date of the acquisition of such property.

(3) Certain property treated as new property

Solely for purposes of determining under paragraph (2)(A) whether the 1st use of property is pursuant to tax-exempt financing—

(A) In general

If—

(i) the 1st use of property is pursuant to taxable financing,

(ii) there was a reasonable expectation (at the time such taxable financing was provided) that such financing would be replaced by tax-exempt financing, and

(iii) the taxable financing is in fact so replaced within a reasonable period after the taxable financing was provided,

then the 1st use of such property shall be treated as being pursuant to the tax-exempt financing.

(B) Special rule where no operating State or local program for tax-exempt financing

If, at the time of the 1st use of property, there was no operating State or local program for tax-exempt financing of the property, the 1st use of the property shall be treated as pursuant to the 1st tax-exempt financing of the property.

(C) Definitions

For purposes of this paragraph—

(i) Tax-exempt financing

The term ''tax-exempt financing'' means financing provided by tax-exempt bonds.

(ii) Taxable financing

The term ''taxable financing'' means financing which is not tax-exempt financing.

(4) Substantial rehabilitation

(A) In general

Except as provided in subparagraph (B), rules similar to the rules of section 47(c)(1)(C) shall apply in determining for purposes of paragraph (2)(C) whether property is substantially rehabilitated.

(B) Exception

For purposes of subparagraph (A), clause (ii) of section 47(c)(1)(C) shall not apply, but the Secretary may extend the 24-month period in section 47(c)(1)(C)(i) where appropriate due to circumstances not within the control of the owner.

(e) Election out

This section shall not apply to an issue if—

(1) the issuer elects not to have this section apply to such issue, and

(2) such issue is an issue of exempt facility bonds, or qualified redevelopment bonds, to which section 146 applies.

(Added Pub. L. 99–514, title XIII, § 1301(b), Oct. 22, 1986, 100 Stat. 2629; amended Pub. L. 100–647, title I, § 1013(a)(6)–(8), title V, § 5053(a), Nov. 10, 1988, 102 Stat. 3538, 3677; Pub. L. 101–239, title VII, § 7815(f), Dec. 19, 1989, 103 Stat. 2419; Pub. L. 101–508, title XI, § 11813(b)(7), Nov. 5, 1990, 104 Stat. 1388–551; Pub. L. 105–34, title II, § 222, Aug. 5, 1997, 111 Stat. 818.)

REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (b)(2)(B)(ii)(I), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

The date of the enactment of this paragraph, referred to in subsec. (b)(5), is the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

PRIOR PROVISIONS

A prior section 145, act Aug. 16, 1954, ch. 736, 68A Stat. 42, made a cross reference to section 36 of this title, prior to repeal by Pub. L. 95–30, title I, § 101(d)(1), May 23, 1977, 91 Stat. 133, applicable to taxable years beginning after Dec. 31, 1976.

AMENDMENTS

1997—Subsec. (b)(5). Pub. L. 105–34 added par. (5).

1990—Subsec. (d)(4). Pub. L. 101–508 substituted ''section 47(c)(1)(C)'' for ''section 48(g)(1)(C)'' wherever appearing and ''section 47(c)(1)(C)(i)'' for ''section 48(g)(1)(C)(i)''.

1989—Subsec. (d)(3), (4). Pub. L. 101–239 added par. (3) and redesignated former par. (3) as (4).

1988—Subsec. (b)(2)(B)(ii)(I). Pub. L. 100–647, § 1013(a)(6), substituted ''section 103(b)(2)'' for ''section 103(b)''.

Subsec. (b)(2)(C)(i). Pub. L. 100–647, § 1013(a)(7), substituted ''subparagraph (B)'' for ''subparagraph (B)(ii)''.

Subsec. (b)(4). Pub. L. 100–647, § 1013(a)(8), substituted ''subparagraphs (C), (D), and (E)'' for ''subparagraphs (C) and (D)''.

Subsecs. (d), (e). Pub. L. 100–647, § 5053(a), added subsec. (d) and redesignated former subsec. (d) as (e).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of

the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1013(a)(6)–(8) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 5053(c) of Pub. L. 100–647 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 148 of this title] shall apply to obligations issued after October 21, 1988.

''(2) EXCEPTION FOR CONSTRUCTION OR BINDING AGREEMENT.—

''(A) The amendments made by this section shall not apply to bonds (other than refunding bonds) with respect to a facility—

''(i)(I) the original use of which begins with the taxpayer, and the construction, reconstruction, or rehabilitation of which began before July 14, 1988, and was completed on or after such date, or

''(II) the original use of which begins with the taxpayer and with respect to which a binding contract to incur significant expenditures for construction, reconstruction, or rehabilitation was entered into before July 14, 1988, and some of such expenditures are incurred on or after such date, and

''(ii) described in an inducement resolution or other comparable preliminary approval adopted by an issuing authority (or by a voter referendum) before July 14, 1988.

For purposes of the preceding sentence, the term 'significant expenditures' means expenditures greater than 10 percent of the reasonably anticipated cost of the construction, reconstruction, or rehabilitation of the facility involved.

''(B) Subparagraph (A) shall not apply to any bond issued after December 31, 1989, and shall not apply unless it is reasonably expected (at the time of issuance of the bond) that the facility will be placed in service before January 1, 1990.

''(3) REFUNDINGS.—The amendments made by this section shall not apply to any bond issued to refund (or which is part of a series of bonds issued to refund) a bond issued before July 15, 1988, if—

''(A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

''(B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

''(C) the proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

For purposes of subparagraph (A), average maturity shall be determined in accordance with section 147(b) of the 1986 Code.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§ 146. Volume cap

(a) General rule

A private activity bond issued as part of an issue meets the requirements of this section if the aggregate face amount of the private activity bonds issued pursuant to such issue, when added to the aggregate face amount of tax-exempt private activity bonds previously issued by the issuing authority during the calendar year, does not exceed such authority's volume cap for such calendar year.

(b) Volume cap for State agencies

For purposes of this section—

(1) In general

The volume cap for any agency of the State authorized to issue tax-exempt private activity bonds for any calendar year shall be 50 percent of the State ceiling for such calendar year.

(2) Special rule where State has more than 1 agency

If more than 1 agency of the State is authorized to issue tax-exempt private activity bonds, all such agencies shall be treated as a single agency.

(c) Volume cap for other issuers

For purposes of this section—

(1) In general

The volume cap for any issuing authority (other than a State agency) for any calendar year shall be an amount which bears the same ratio to 50 percent of the State ceiling for such calendar year as—

(A) the population of the jurisdiction of such issuing authority, bears to

(B) the population of the entire State.

(2) Overlapping jurisdictions

For purposes of paragraph (1)(A), if an area is within the jurisdiction of 2 or more governmental units, such area shall be treated as only within the jurisdiction of the unit having jurisdiction over the smallest geographical area unless such unit agrees to surrender all or part of such jurisdiction for such calendar year to the unit with overlapping jurisdiction which has the next smallest geographical area.

(d) State ceiling

For purposes of this section—

(1) In general

The State ceiling applicable to any State for any calendar year shall be the greater of—

(A) an amount equal to $75 ($62.50 in the case of calendar year 2001) multiplied by the State population, or

(B) $225,000,000 ($187,500,000 in the case of calendar year 2001).

(2) Cost-of-living adjustment

In the case of a calendar year after 2002, each of the dollar amounts contained in paragraph (1) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting ''calendar year 2001'' for ''calendar year 1992'' in subparagraph (B) thereof.

If any increase determined under the preceding sentence is not a multiple of $5 ($5,000 in the case of the dollar amount in paragraph (1)(B)), such increase shall be rounded to the nearest multiple thereof.

(3) Special rule for States with constitutional home rule cities

For purposes of this section—

(A) In general

The volume cap for any constitutional home rule city for any calendar year shall be determined under paragraph (1) of subsection (c) by substituting ''100 percent'' for ''50 percent''.

(B) Coordination with other allocations

In the case of any State which contains 1 or more constitutional home rule cities, for purposes of applying subsections (b) and (c) with respect to issuing authorities in such State other than constitutional home rule cities, the State ceiling for any calendar year shall be reduced by the aggregate volume caps determined for such year for all constitutional home rule cities in such State.

(C) Constitutional home rule city

For purposes of this section, the term ''constitutional home rule city'' means, with respect to any calendar year, any political subdivision of a State which, under a State constitution which was adopted in 1970 and effective on July 1, 1971, had home rule powers on the 1st day of the calendar year.

(4) Special rule for possessions with populations of less than the population of the least populous State

(A) In general

If the population of any possession of the United States for any calendar year is less than the population of the least populous State (other than a possession) for such calendar year, the limitation under paragraph (1)(A) shall not be less than the amount determined under subparagraph (B) for such calendar year.

(B) Limitation

The limitation determined under this subparagraph, with respect to a possession, for any calendar year is an amount equal to the product of—

(i) the fraction—

(I) the numerator of which is the amount applicable under paragraph (1)(B) for such calendar year, and

(II) the denominator of which is the State population of the least populous State (other than a possession) for such calendar year, and

(ii) the population of such possession for such calendar year.

(5) Increase and set aside for housing bonds for 2008

(A) Increase for 2008

In the case of calendar year 2008, the State ceiling for each State shall be increased by an amount equal to $11,000,000,000 multiplied by a fraction—

(i) the numerator of which is the State ceiling applicable to the State for calendar year 2008, determined without regard to this paragraph, and

(ii) the denominator of which is the sum of the State ceilings determined under clause (i) for all States.

(B) Set aside

(i) In general

Any amount of the State ceiling for any State which is attributable to an increase under this paragraph shall be allocated solely for one or more qualified housing issues.

(ii) Qualified housing issue

For purposes of this paragraph, the term ''qualified housing issue'' means—

(I) an issue described in section 142(a)(7) (relating to qualified residential rental projects), or

(II) a qualified mortgage issue (determined by substituting ''12-month period'' for ''42-month period'' each place it appears in section 143(a)(2)(D)(i)).

(e) State may provide for different allocation

For purposes of this section—

(1) In general

Except as provided in paragraph (3), a State may, by law provide a different formula for allocating the State ceiling among the governmental units (or other authorities) in such State having authority to issue tax-exempt private activity bonds.

(2) Interim authority for Governor

(A) In general

Except as otherwise provided in paragraph (3), the Governor of any State may proclaim a different formula for allocating the State ceiling among the governmental units (or other authorities) in such State having authority to issue private activity bonds.

(B) Termination of authority

The authority provided in subparagraph (A) shall not apply to bonds issued after the earlier of—

(i) the last day of the 1st calendar year after 1986 during which the legislature of the State met in regular session, or

(ii) the effective date of any State legislation with respect to the allocation of the State ceiling.

(3) State may not alter allocation to constitutional home rule cities

Except as otherwise provided in a State constitutional amendment (or law changing the home rule provision adopted in the manner provided by the State constitution), the authority provided in this subsection shall not apply to that portion of the State ceiling which is allocated to any constitutional home rule city in the State unless such city agrees to such different allocation.

(f) Elective carryforward of unused limitation for specified purpose

(1) In general

If—

(A) an issuing authority's volume cap for any calendar year after 1985, exceeds

(B) the aggregate amount of tax-exempt private activity bonds issued during such calendar year by such authority,

such authority may elect to treat all (or any portion) of such excess as a carryforward for 1 or more carryforward purposes.

(2) Election must identify purpose

In any election under paragraph (1), the issuing authority shall—

(A) identify the purpose for which the carryforward is elected, and

(B) specify the portion of the excess described in paragraph (1) which is to be a carryforward for each such purpose.

(3) Use of carryforward

(A) In general

If any issuing authority elects a carryforward under paragraph (1) with respect to any carryforward purpose, any private activity bonds issued by such authority with respect to such purpose during the 3 calendar years following the calendar year in which the carryforward arose shall not be taken into account under subsection (a) to the extent the amount of such bonds does not exceed the amount of the carryforward elected for such purpose.

(B) Order in which carryforward used

Carryforwards elected with respect to any purpose shall be used in the order of the calendar years in which they arose.

(4) Election

Any election under this paragraph (and any identification or specification contained therein), once made, shall be irrevocable.

(5) Carryforward purpose

The term ''carryforward purpose'' means—

(A) the purpose of issuing exempt facility bonds described in 1 of the paragraphs of section 142(a),

(B) the purpose of issuing qualified mortgage bonds or mortgage credit certificates,

(C) the purpose of issuing qualified student loan bonds, and

(D) the purpose of issuing qualified redevelopment bonds.

(6) Special rules for increased volume cap under subsection (d)(5)

No amount which is attributable to the increase under subsection (d)(5) may be used—

(A) for any issue other than a qualified housing issue (as defined in subsection (d)(5)), or

(B) to issue any bond after calendar year 2010.

(g) Exception for certain bonds

Only for purposes of this section, the term ''private activity bond'' shall not include—

(1) any qualified veterans' mortgage bond,

(2) any qualified 501(c)(3) bond,

(3) any exempt facility bond issued as part of an issue described in paragraph (1), (2), (12), (13), (14), or (15) of section 142(a), and

(4) 75 percent of any exempt facility bond issued as part of an issue described in paragraph (11) of section 142(a) (relating to high-speed intercity rail facilities).

Paragraph (4) shall be applied without regard to ''75 percent of'' if all of the property to be financed by the net proceeds of the issue is to be owned by a governmental unit (within the meaning of section 142(b)(1)).

(h) Exception for government-owned solid waste disposal facilities

(1) In general

Only for purposes of this section, the term ''private activity bond'' shall not include any exempt facility bond described in section 142(a)(6) which is issued as part of an issue if all of the property to be financed by the net proceeds of such issue is to be owned by a governmental unit.

(2) Safe harbor for determination of government ownership

In determining ownership for purposes of paragraph (1), section 142(b)(1)(B) shall apply, except that a lease term shall be treated as satisfying clause (ii) thereof if it is not more than 20 years.

(i) Treatment of refunding issues

For purposes of the volume cap imposed by this section—

(1) In general

The term ''private activity bond'' shall not include any bond which is issued to refund another bond to the extent that the amount of such bond does not exceed the outstanding amount of the refunded bond.

(2) Special rules for student loan bonds

In the case of any qualified student loan bond, paragraph (1) shall apply only if the maturity date of the refunding bond is not later than the later of—

(A) the average maturity date of the qualified student loan bonds to be refunded by the issue of which the refunding bond is a part, or

(B) the date 17 years after the date on which the refunded bond was issued (or in the case of a series of refundings, the date on which the original bond was issued).

(3) Special rules for qualified mortgage bonds

In the case of any qualified mortgage bond, paragraph (1) shall apply only if the maturity date of the refunding bond is not later than the later of—

(A) the average maturity date of the qualified mortgage bonds to be refunded by the issue of which the refunding bond is a part, or

(B) the date 32 years after the date on which the refunded bond was issued (or in the case of a series of refundings, the date on which the original bond was issued).

(4) Average maturity

For purposes of paragraphs (2) and (3), average maturity shall be determined in accordance with section 147(b)(2)(A).

(5) Exception for advance refunding

This subsection shall not apply to any bond issued to advance refund another bond.

(6) Treatment of certain residential rental project bonds as refunding bonds irrespective of obligor

(A) In general

If, during the 6-month period beginning on the date of a repayment of a loan financed by an issue 95 percent or more of the net proceeds of which are used to provide projects described in section 142(d), such repayment is used to provide a new loan for any project so described, any bond which is issued to refinance such issue shall be treated as a refunding issue to the extent the principal amount of such refunding issue does not exceed the principal amount of the bonds refunded.

(B) Limitations

Subparagraph (A) shall apply to only one refunding of the original issue and only if—

(i) the refunding issue is issued not later than 4 years after the date on which the original issue was issued,

(ii) the latest maturity date of any bond of the refunding issue is not later than 34 years after the date on which the refunded bond was issued, and

(iii) the refunding issue is approved in accordance with section 147(f) before the issuance of the refunding issue.

(j) Population

For purposes of this section, determinations of the population of any State (or issuing authority) shall be made with respect to any calendar year on the basis of the most recent census estimate of the resident population of such State (or issuing authority) released by the Bureau of Census before the beginning of such calendar year.

(k) Facility must be located within State

(1) In general

Except as provided in paragraphs (2) and (3), no portion of the State ceiling applicable to any State for any calendar year may be used with respect to financing for a facility located outside such State.

(2) Exception for certain facilities where State will get proportionate share of benefits

Paragraph (1) shall not apply to any exempt facility bond described in paragraph (4), (5), (6), or (10) of section 142(a) if the issuer establishes that the State's share of the use of the facility (or its output) will equal or exceed the State's share of the private activity bonds issued to finance the facility.

(3) Treatment of governmental bonds to which volume cap allocated

Paragraph (1) shall not apply to any bond to which volume cap is allocated under section 141(b)(5)—

(A) for an output facility, or

(B) for a facility of a type described in paragraph (4), (5), (6), or (10) of section 142(a),

if the issuer establishes that the State's share of the private business use (as defined by section 141(b)(6)) of the facility will equal or exceed the State's share of the volume cap allocated with respect to bonds issued to finance the facility.

(*l*) Issuer of qualified scholarship funding bonds

In the case of a qualified scholarship funding bond, such bond shall be treated for purposes of this section as issued by a State or local issuing authority (whichever is appropriate).

(m) Treatment of amounts allocated to private activity portion of government use bonds

(1) In general

The volume cap of an issuer shall be reduced by the amount allocated by the issuer to an issue under section 141(b)(5).

(2) Advance refundings

Except as otherwise provided by the Secretary, any advance refunding of any part of an issue to which an amount was allocated under section 141(b)(5) (or would have been allocated if such section applied to such issue) shall be taken into account under this section to the extent of the amount of the volume cap which was (or would have been) so allocated.

(n) Reduction for mortgage credit certificates, etc.

The volume cap of any issuing authority for any calendar year shall be reduced by the sum of—

(1) the amount of qualified mortgage bonds which such authority elects not to issue under section 25(c)(2)(A)(ii) during such year, plus

(2) the amount of any reduction in such ceiling under section 25(f) applicable to such authority for such year.

(Added Pub. L. 99–514, title XIII, § 1301(b), Oct. 22, 1986, 100 Stat. 2630; amended Pub. L. 100–203, title X, § 10631(b), Dec. 22, 1987, 101 Stat. 1330–455; Pub. L. 100–647, title I, § 1013(a)(9), (10), (28), (40), title VI, § 6180(b)(3), Nov. 10, 1988, 102 Stat. 3538, 3543, 3544, 3728; Pub. L. 101–239, title VII, § 7816(s)(2), Dec. 19, 1989, 103 Stat. 2423; Pub. L. 102–486, title XIX, § 1921(b)(3), Oct. 24, 1992, 106 Stat. 3028; Pub. L. 103–66, title XIII, § 13121(a), Aug. 10, 1993, 107 Stat. 432; Pub. L. 105–277, div. J, title II, § 2021(a), Oct. 21, 1998, 112 Stat. 2681–903; Pub. L. 106–554, § 1(a)(7) [title I, § 161(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–624; Pub. L. 107–16, title IV, § 422(c), June 7, 2001, 115 Stat. 66; Pub. L. 108–357, title VII, § 701(c), Oct. 22, 2004, 118 Stat. 1539; Pub. L. 109–59, title XI, § 11143(c), Aug. 10, 2005, 119 Stat. 1965; Pub. L. 110–289, div. C, title I, §§ 3007(a), 3021(a), July 30, 2008, 122 Stat. 2886, 2892.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENT OF SECTION

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

AMENDMENTS

2008—Subsec. (d)(5). Pub. L. 110–289, § 3021(a)(1), added par. (5).

Subsec. (f)(6). Pub. L. 110–289, § 3021(a)(2), added par. (6).

Subsec. (i)(6). Pub. L. 110–289, § 3007(a), added par. (6).

2005—Subsec. (g)(3). Pub. L. 109–59 substituted ''(14), or (15) of section 142(a), and'' for ''or (14) of section 142(a) (relating to airports, docks and wharves, environmental enhancements of hydroelectric generating facilities, qualified public educational facilities, and qualified green building and sustainable design projects), and''.

2004—Subsec. (g)(3). Pub. L. 108–357 substituted ''(13), or (14)'' for ''or (13)'' and ''qualified public educational facilities, and qualified green building and sustainable design projects'' for ''and qualified public educational facilities''.

2001—Subsec. (g)(3). Pub. L. 107–16, §§ 422(c), 901, temporarily substituted ''(12), or (13)'' for ''or (12)'' and ''environmental enhancements of hydroelectric generating facilities, and qualified public educational facilities'' for ''and environmental enhancements of hydroelectric generating facilities''. See Effective and Termination Dates of 2001 Amendment note below.

2000—Subsec. (d)(1), (2). Pub. L. 106–554 amended pars. (1) and (2) generally. Prior to amendment, pars. (1) and (2) provided for State ceilings based on the per capita limits and aggregate limits set out in an included table.

1998—Subsec. (d)(1). Pub. L. 105–277 added par. (1) and struck out heading and text of former par. (1). Text read as follows: ''The State ceiling applicable to any State for any calendar year shall be the greater of—

''(A) an amount equal to $75 multiplied by the State population, or

''(B) $250,000,000.

Subparagraph (B) shall not apply to any possession of the United States.''

Subsec. (d)(2). Pub. L. 105–277 added par. (2) and struck out heading and text of former par. (2). Text read as follows: ''In the case of calendar years after 1987, paragraph (1) shall be applied by substituting—

''(A) '$50' for '$75', and

''(B) '$150,000,000' for '$250,000,000'.''

1993—Subsec. (g). Pub. L. 103–66, which directed the amendment of par. (4) by adding at the end thereof the following flush sentence: ''Paragraph (4) shall be applied without regard to '75 percent of' if all of the property to be financed by the net proceeds of the issue is to be owned by a governmental unit (within the meaning of section 142(b)(1)).'', was executed by inserting the sentence at the end of subsec. (g), to reflect the probable intent of Congress.

1992—Subsec. (g)(3). Pub. L. 102–486 substituted '', (2), or (12)'' for ''or (2)'' and '', docks and wharves, and environmental enhancements of hydroelectric generating facilities'' for ''and docks and wharves''.

1989—Subsec. (g)(3), (4). Pub. L. 101–239 redesignated par. (3), relating to exempt facility bonds issued as part of an issue described in par. (11) of section 142(a), as (4).

1988—Subsec. (d)(4)(B). Pub. L. 100–647, §1013(a)(40), substituted ''respect to a'' for ''respect a''.

Subsec. (f)(5)(A). Pub. L. 100–647, §1013(a)(9), amended subpar. (A) generally, as in effect before amendment by Pub. L. 100–203. Before amendment by Pub. L. 100–203, subpar. (A) read as follows: ''the purpose of issuing bonds referred to in one of the clauses of section 141(d)(1)(A),''.

Subsec. (g)(3). Pub. L. 100–647, §6180(b)(3), added par. (3) relating to exempt facility bonds issued as part of an issue described in par. (11) of section 142(a).

Subsec. (i)(2)(A). Pub. L. 100–647, §1013(a)(28)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''the maturity date of the bond to be refunded, or''.

Subsec. (i)(3)(A). Pub. L. 100–647, §1013(a)(28)(B), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''the maturity date of the bond to be refunded, or''.

Subsec. (i)(4), (5). Pub. L. 100–647, §1013(a)(28)(C), added par. (4) and redesignated former par. (4) as (5).

Subsec. (k)(1). Pub. L. 100–647, §1013(a)(10)(A), substituted ''paragraphs (2) and (3)'' for ''paragraph (2)''.

Subsec. (k)(3). Pub. L. 100–647, §1013(a)(10)(B), added par. (3).

1987—Subsec. (f)(5)(A). Pub. L. 100–203 amended subpar. (A) generally, as amended by Pub. L. 100–647, §1013(a)(9), restating it without change. See 1988 Amendment note above.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 3007(a) of Pub. L. 110–289 applicable to repayments of loans received after July 30, 2008, see section 3007(c) of Pub. L. 110–289, set out as a note under section 42 of this title.

Amendment by section 3021(a) of Pub. L. 110–289 applicable to bonds issued after July 30, 2008, see section 3021(c) of Pub. L. 110–289, set out as a note under section 143 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–59 applicable to bonds issued after Aug. 10, 2005, see section 11143(d) of Pub. L. 109–59, set out as a note under section 142 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to bonds issued after Dec. 31, 2004, see section 701(e) of Pub. L. 108–357, set out as a note under section 142 of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to bonds issued after Dec. 31, 2001, see section 422(f) of Pub. L. 107–16, set out as a note under section 142 of this title.

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title I, §161(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–624, provided that: ''The amendment made by this section [amending this section] shall apply to calendar years after 2000.''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. J, title II, §2021(b), Oct. 21, 1998, 112 Stat. 2681–903, provided that: ''The amendment made by this section [amending this section] shall apply to calendar years after 1998.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13121(b) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to bonds issued after December 31, 1993.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–486 applicable to bonds issued after Oct. 24, 1992, see section 1921(c) of Pub. L. 102–486, set out as a note under section 142 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1013(a)(9), (10), (28), (40) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 6180(b)(3) of Pub. L. 100–647 applicable to bonds issued after Nov. 10, 1988, see section

6180(c) of Pub. L. 100–647, set out as a note under section 142 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable, with certain exceptions, to bonds issued after Oct. 13, 1987 (other than bonds issued to refund bonds issued on or before such date), see section 10631(c) of Pub. L. 100–203, set out as a note under section 141 of this title.

§ 147. Other requirements applicable to certain private activity bonds

(a) Substantial user requirement

(1) In general

Except as provided in subsection (h), a private activity bond shall not be a qualified bond for any period during which it is held by a person who is a substantial user of the facilities or by a related person of such a substantial user.

(2) Related person

For purposes of paragraph (1), the following shall be treated as related persons—

(A) 2 or more persons if the relationship between such persons would result in a disallowance of losses under section 267 or 707(b),

(B) 2 or more persons which are members of the same controlled group of corporations (as defined in section 1563(a), except that ''more than 50 percent'' shall be substituted for ''at least 80 percent'' each place it appears therein),

(C) a partnership and each of its partners (and their spouses and minor children), and

(D) an S corporation and each of its shareholders (and their spouses and minor children).

(b) Maturity may not exceed 120 percent of economic life

(1) General rule

Except as provided in subsection (h), a private activity bond shall not be a qualified bond if it is issued as part of an issue and—

(A) the average maturity of the bonds issued as part of such issue, exceeds

(B) 120 percent of the average reasonably expected economic life of the facilities being financed with the net proceeds of such issue.

(2) Determination of averages

For purposes of paragraph (1)—

(A) the average maturity of any issue shall be determined by taking into account the respective issue prices of the bonds issued as part of such issue, and

(B) the average reasonably expected economic life of the facilities being financed with any issue shall be determined by taking into account the respective cost of such facilities.

(3) Special rules

(A) Determination of economic life

For purposes of this subsection, the reasonably expected economic life of any facility shall be determined as of the later of—

(i) the date on which the bonds are issued, or

(ii) the date on which the facility is placed in service (or expected to be placed in service).

(B) Treatment of land

(i) Land not taken into account

Except as provided in clause (ii), land shall not be taken into account under paragraph (1)(B).

(ii) Issues where 25 percent or more of proceeds used to finance land

If 25 percent or more of the net proceeds of any issue is to be used to finance land, such land shall be taken into account under paragraph (1)(B) and shall be treated as having an economic life of 30 years.

(4) Special rule for pooled financing of 501(c)(3) organization

(A) In general

At the election of the issuer, a qualified 501(c)(3) bond shall be treated as meeting the requirements of paragraph (1) if such bond meets the requirements of subparagraph (B).

(B) Requirements

A qualified 501(c)(3) bond meets the requirements of this subparagraph if—

(i) 95 percent or more of the net proceeds of the issue of which such bond is a part are to be used to make or finance loans to 2 or more 501(c)(3) organizations or governmental units for acquisition of property to be used by such organizations,

(ii) each loan described in clause (i) satisfies the requirements of paragraph (1) (determined by treating each loan as a separate issue),

(iii) before such bond is issued, a demand survey was conducted which shows a demand for financing greater than an amount equal to 120 percent of the lendable proceeds of such issue, and

(iv) 95 percent or more of the net proceeds of such issue are to be loaned to 501(c)(3) organizations or governmental units within 1 year of issuance and, to the extent there are any unspent proceeds after such 1-year period, bonds issued as part of such issue are to be redeemed as soon as possible thereafter (and in no event later than 18 months after issuance).

A bond shall not meet the requirements of this subparagraph if the maturity date of any bond issued as part of such issue is more than 30 years after the date on which the bond was issued (or, in the case of a refunding or series of refundings, the date on which the original bond was issued).

(5) Special rule for certain FHA insured loans

Paragraph (1) shall not apply to any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to finance mortgage loans insured under FHA 242 or under a similar Federal Housing Administration program (as in effect on the date of the enactment of the Tax Reform Act of 1986) where the loan term approved by such Administration plus the maximum maturity of debentures which could be issued by such Admin-

istration in satisfaction of its obligations exceeds the term permitted under paragraph (1).

(c) Limitation on use for land acquisition

(1) In general

Except as provided in subsection (h), a private activity bond shall not be a qualified bond if—

(A) it is issued as part of an issue and 25 percent or more of the net proceeds of such issue are to be used (directly or indirectly) for the acquisition of land (or an interest therein), or

(B) any portion of the proceeds of such issue is to be used (directly or indirectly) for the acquisition of land (or an interest therein) to be used for farming purposes.

(2) Exception for first-time farmers

(A) In general

If the requirements of subparagraph (B) are met with respect to any land, paragraph (1) shall not apply to such land, and subsection (d) shall not apply to property to be used thereon for farming purposes, but only to the extent of expenditures (financed with the proceeds of the issue) not in excess of $450,000.

(B) Acquisition by first-time farmers

The requirements of this subparagraph are met with respect to any land if—

(i) such land is to be used for farming purposes, and

(ii) such land is to be acquired by an individual who is a first-time farmer, who will be the principal user of such land, and who will materially and substantially participate on the farm of which such land is a part in the operation of such farm.

(C) First-time farmer

For purposes of this paragraph—

(i) In general

The term ''first-time farmer'' means any individual if such individual—

(I) has not at any time had any direct or indirect ownership interest in substantial farmland in the operation of which such individual materially participated, and

(II) has not received financing under this paragraph in an amount which, when added to the financing to be provided under this paragraph, exceeds the amount in effect under subparagraph (A).

(ii) Aggregation rules

Any ownership or material participation, or financing received, by an individual's spouse or minor child shall be treated as ownership and material participation, or financing received, by the individual.

(iii) Insolvent farmer

For purposes of clause (i), farmland which was previously owned by the individual and was disposed of while such individual was insolvent shall be disregarded if section 108 applied to indebtedness with respect to such farmland.

(D) Farm

For purposes of this paragraph, the term ''farm'' has the meaning given such term by section 6420(c)(2).

(E) Substantial farmland

For purposes of this paragraph, the term ''substantial farmland'' means any parcel of land unless such parcel is smaller than 30 percent of the median size of a farm in the county in which such parcel is located.

(F) Used equipment limitation

For purposes of this paragraph, in no event may the amount of financing provided by reason of this paragraph to a first-time farmer for personal property—

(i) of a character subject to the allowance for depreciation,

(ii) the original use of which does not begin with such farmer, and

(iii) which is to be used for farming purposes,

exceed $62,500. A rule similar to the rule of subparagraph (C)(ii) shall apply for purposes of the preceding sentence.

(G) Acquisition from related person

For purposes of this paragraph and section 144(a), the acquisition by a first-time farmer of land or personal property from a related person (within the meaning of section 144(a)(3)) shall not be treated as an acquisition from a related person, if—

(i) the acquisition price is for the fair market value of such land or property, and

(ii) subsequent to such acquisition, the related person does not have a financial interest in the farming operation with respect to which the bond proceeds are to be used.

(H) Adjustments for inflation

In the case of any calendar year after 2008, the dollar amount in subparagraph (A) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year, determined by substituting ''calendar year 2007'' for ''calendar year 1992'' in subparagraph (B) thereof.

If any amount as increased under the preceding sentence is not a multiple of $100, such amount shall be rounded to the nearest multiple of $100.

(3) Exception for certain land acquired for environmental purposes, etc.

Any land acquired by a governmental unit (or issuing authority) in connection with an airport, mass commuting facility, high-speed intercity rail facility, dock, or wharf shall not be taken into account under paragraph (1) if—

(A) such land is acquired for noise abatement or wetland preservation, or for future use as an airport, mass commuting facility, high-speed intercity rail facility, dock, or wharf, and

(B) there is not other significant use of such land.

(d) Acquisition of existing property not permitted

(1) In general

Except as provided in subsection (h), a private activity bond shall not be a qualified bond if issued as part of an issue and any portion of the net proceeds of such issue is to be used for the acquisition of any property (or an interest therein) unless the 1st use of such property is pursuant to such acquisition.

(2) Exception for certain rehabilitations

Paragraph (1) shall not apply with respect to any building (and the equipment therefor) if—

(A) the rehabilitation expenditures with respect to such building, equal or exceed

(B) 15 percent of the portion of the cost of acquiring such building (and equipment) financed with the net proceeds of the issue.

A rule similar to the rule of the preceding sentence shall apply in the case of structures other than a building except that subparagraph (B) shall be applied by substituting ''100 percent'' for ''15 percent''.

(3) Rehabilitation expenditures

For purposes of this subsection—

(A) In general

Except as provided in this paragraph, the term ''rehabilitation expenditures'' means any amount properly chargeable to capital account which is incurred by the person acquiring the building for property (or additions or improvements to property) in connection with the rehabilitation of a building. In the case of an integrated operation contained in a building before its acquisition, such term includes rehabilitating existing equipment in such building or replacing it with equipment having substantially the same function. For purposes of this subparagraph, any amount incurred by a successor to the person acquiring the building or by the seller under a sales contract with such person shall be treated as incurred by such person.

(B) Certain expenditures not included

The term ''rehabilitation expenditures'' does not include any expenditure described in section 47(c)(2)(B).

(C) Period during which expenditures must be incurred

The term ''rehabilitation expenditures'' shall not include any amount which is incurred after the date 2 years after the later of—

(i) the date on which the building was acquired, or

(ii) the date on which the bond was issued.

(4) Special rule for certain projects

In the case of a project involving 2 or more buildings, this subsection shall be applied on a project basis.

(e) No portion of bonds may be issued for skyboxes, airplanes, gambling establishments, etc.

A private activity bond shall not be a qualified bond if issued as part of an issue and any portion of the proceeds of such issue is to be used to provide any airplane, skybox or other private luxury box, health club facility, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises.

(f) Public approval required for private activity bonds

(1) In general

A private activity bond shall not be a qualified bond unless such bond satisfies the requirements of paragraph (2).

(2) Public approval requirement

(A) In general

A bond shall satisfy the requirements of this paragraph if such bond is issued as a part of an issue which has been approved by—

(i) the governmental unit—

(I) which issued such bond, or

(II) on behalf of which such bond was issued, and

(ii) each governmental unit having jurisdiction over the area in which any facility, with respect to which financing is to be provided from the net proceeds of such issue, is located (except that if more than 1 governmental unit within a State has jurisdiction over the entire area within such State in which such facility is located, only 1 such unit need approve such issue).

(B) Approval by a governmental unit

For purposes of subparagraph (A), an issue shall be treated as having been approved by any governmental unit if such issue is approved—

(i) by the applicable elected representative of such governmental unit after a public hearing following reasonable public notice, or

(ii) by voter referendum of such governmental unit.

(C) Special rules for approval of facility

If there has been public approval under subparagraph (A) of the plan for financing a facility, such approval shall constitute approval under subparagraph (A) for any issue—

(i) which is issued pursuant to such plan within 3 years after the date of the 1st issue pursuant to the approval, and

(ii) all or substantially all of the proceeds of which are to be used to finance such facility or to refund previous financing under such plan.

(D) Refunding bonds

No approval under subparagraph (A) shall be necessary with respect to any bond which is issued to refund (other than to advance refund) a bond approved under subparagraph (A) (or treated as approved under subparagraph (C)) unless the average maturity date of the issue of which the refunding bond is a part is later than the average maturity date of the bonds to be refunded by such issue. For purposes of the preceding sentence, average maturity shall be determined in accordance with subsection (b)(2)(A).

(E) Applicable elected representative

For purposes of this paragraph—

(i) In general

The term ''applicable elected representative'' means with respect to any governmental unit—

(I) an elected legislative body of such unit, or

(II) the chief elected executive officer, the chief elected State legal officer of the executive branch, or any other elected official of such unit designated for purposes of this paragraph by such chief elected executive officer or by State law.

If the office of any elected official described in subclause (II) is vacated and an individual is appointed by the chief elected executive officer of the governmental unit and confirmed by the elected legislative body of such unit (if any) to serve the remaining term of the elected official, the individual so appointed shall be treated as the elected official for such remaining term.

(ii) No applicable elected representative

If (but for this clause) a governmental unit has no applicable elected representative, the applicable elected representative for purposes of clause (i) shall be the applicable elected representative of the governmental unit—

(I) which is the next higher governmental unit with such a representative, and

(II) from which the authority of the governmental unit with no such representative is derived.

(3) Special rule for approval of airports or high-speed intercity rail facilities

If—

(A) the proceeds of an issue are to be used to finance a facility or facilities located at an airport or high-speed intercity rail facilities, and

(B) the governmental unit issuing such bonds is the owner or operator of such airport or high-speed intercity rail facilities,

such governmental unit shall be deemed to be the only governmental unit having jurisdiction over such airport or high-speed intercity rail facilities for purposes of this subsection.

(4) Special rules for scholarship funding bond issues and volunteer fire department bond issues

(A) Scholarship funding bonds

In the case of a qualified scholarship funding bond, any governmental unit which made a request described in section 150(d)(2)(B) with respect to the issuer of such bond shall be treated for purposes of paragraph (2) of this subsection as the governmental unit on behalf of which such bond was issued. Where more than one governmental unit within a State has made a request described in section 150(d)(2)(B), the State may also be treated for purposes of paragraph (2) of this subsection as the governmental unit on behalf of which such bond was issued.

(B) Volunteer fire department bonds

In the case of a bond of a volunteer fire department which meets the requirements of section 150(e), the political subdivision described in section 150(e)(2)(B) with respect to such department shall be treated for purposes of paragraph (2) of this subsection as the governmental unit on behalf of which such bond was issued.

(g) Restriction on issuance costs financed by issue

(1) In general

A private activity bond shall not be a qualified bond if the issuance costs financed by the issue (of which such bond is a part) exceed 2 percent of the proceeds of the issue.

(2) Special rule for small mortgage revenue bond issues

In the case of an issue of qualified mortgage bonds or qualified veterans' mortgage bonds, paragraph (1) shall be applied by substituting ''3.5 percent'' for ''2 percent'' if the proceeds of the issue do not exceed $20,000,000.

(h) Certain rules not to apply to certain bonds

(1) Mortgage revenue bonds and qualified student loan bonds

Subsections (a), (b), (c), and (d) shall not apply to any qualified mortgage bond, qualified veterans' mortgage bond, or qualified student loan bond.

(2) Qualified 501(c)(3) bonds

Subsections (a), (c), and (d) shall not apply to any qualified 501(c)(3) bond and subsection (e) shall be applied as if it did not contain ''health club facility'' with respect to such a bond.

(3) Exempt facility bonds for qualified public-private schools

Subsection (c) shall not apply to any exempt facility bond issued as part of an issue described in section 142(a)(13) (relating to qualified public educational facilities).

(Added Pub. L. 99–514, title XIII, §1301(b), Oct. 22, 1986, 100 Stat. 2635; amended Pub. L. 100–647, title I, §1013(a)(11)–(13)(B), (29), (36), title VI, §6180(b)(4), (5), Nov. 10, 1988, 102 Stat. 3539, 3543, 3544, 3728; Pub. L. 101–239, title VII, §7816(s)(3), Dec. 19, 1989, 103 Stat. 2423; Pub. L. 101–508, title XI, §11813(b)(8), Nov. 5, 1990, 104 Stat. 1388–552; Pub. L. 104–188, title I, §1117(a), (b), Aug. 20, 1996, 110 Stat. 1764; Pub. L. 107–16, title IV, §422(d), (e), June 7, 2001, 115 Stat. 66; Pub. L. 110–234, title XV, §15341(a)–(d), May 22, 2008, 122 Stat. 1517; Pub. L. 110–246, §4(a), title XV, §15341(a)–(d), June 18, 2008, 122 Stat. 1664, 2279.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENT OF SECTION

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (b)(5), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Subsec. (c)(2)(A). Pub. L. 110–246, § 15341(a), substituted ''$450,000'' for ''$250,000''.

Subsec. (c)(2)(C)(i)(II). Pub. L. 110–246, § 15341(d), substituted ''the amount in effect under subparagraph (A)'' for ''$250,000''.

Subsec. (c)(2)(E). Pub. L. 110–246, § 15341(c), substituted ''unless such parcel is smaller than 30 percent of the median size of a farm in the county in which such parcel is located.'' for ''unless—

''(i) such parcel is smaller than 30 percent of the median size of a farm in the county in which such parcel is located, and

''(ii) the fair market value of the land does not at any time while held by the individual exceed $125,000.''

Subsec. (c)(2)(H). Pub. L. 110–246, § 15341(b), added subpar. (H).

2001—Subsec. (h). Pub. L. 107–16, §§ 422(e), 901, temporarily substituted ''certain bonds'' for ''mortgage revenue bonds, qualified student loan bonds, and qualified 501(c)(3) bonds'' in heading. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (h)(3). Pub. L. 107–16, §§ 422(d), 901, temporarily added par. (3). See Effective and Termination Dates of 2001 Amendment note below.

1996—Subsec. (c)(2)(E)(i). Pub. L. 104–188, § 1117(b), substituted ''30 percent'' for ''15 percent''.

Subsec. (c)(2)(G). Pub. L. 104–188, § 1117(a), added subpar. (G).

1990—Subsec. (d)(3)(B). Pub. L. 101–508 substituted ''section 47(c)(2)(B)'' for ''section 48(g)(2)(B)''.

1989—Subsec. (c)(3). Pub. L. 101–239 inserted a comma after ''mass commuting facility'' in introductory provisions and in subpar. (A).

1988—Subsec. (c)(3). Pub. L. 100–647, § 6180(b)(4), inserted ''high-speed intercity rail facility'' after ''mass commuting facility'' in introductory text and in subpar. (A).

Subsec. (e). Pub. L. 100–647, § 1013(a)(11), struck out ''treated as'' after ''shall not be''.

Subsec. (f)(2)(D). Pub. L. 100–647, § 1013(a)(29), substituted ''the average maturity date of the issue of which the refunding bond is a part is later than the average maturity date of the bonds to be refunded by such issue. For purposes of the preceding sentence, average maturity shall be determined in accordance with subsection (b)(2)(A)'' for ''the maturity date of such bond is later than the maturity date of the bond to be refunded''.

Subsec. (f)(2)(E)(i). Pub. L. 100–647, § 1013(a)(36), inserted sentence at end relating to treatment of an individual appointed to fill a vacancy in the office of an elected official.

Subsec. (f)(3). Pub. L. 100–647, § 6180(b)(5), inserted ''or high-speed intercity rail facilities'' after ''airports'' in heading and after ''airport'' in subpars. (A) and (B) and in last sentence.

Subsec. (f)(4). Pub. L. 100–647, § 1013(a)(12), added par. (4).

Subsec. (g)(1). Pub. L. 100–647, § 1013(a)(13)(A), substituted ''proceeds'' for ''aggregate face amount''.

Subsec. (g)(2). Pub. L. 100–647, § 1013(a)(13)(B), substituted ''proceeds'' for ''aggregate authorized face amount'' and ''do'' for ''does''.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110–234, title XV, § 15341(e), May 22, 2008, 122 Stat. 1517, and Pub. L. 110–246, § 4(a), title XV, § 15341(e), June 18, 2008, 122 Stat. 1664, 2279, provided that: ''The amendments made by this section [amending this section] shall apply to bonds issued after the date of the enactment of this Act [June 18, 2008].''

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to bonds issued after Dec. 31, 2001, see section 422(f) of Pub. L. 107–16, set out as a note under section 142 of this title.

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1117(c) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section] shall apply to bonds issued after the date of the enactment of this Act [Aug. 20, 1996].''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1013(a)(13)(C) of Pub. L. 100–647 provided that: ''The amendments made by this paragraph [amending this section] shall apply to bonds issued after June 30, 1987.''

Amendment by section 1013(a)(11), (12), (29), (36) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 6180(b)(4), (5) of Pub. L. 100–647 applicable to bonds issued after Nov. 10, 1988, see section 6180(c) of Pub. L. 100–647, set out as a note under section 142 of this title.

EFFECTIVE DATE

Subsec. (f) applicable to bonds issued after Dec. 31, 1986, see section 1311(d) of Pub. L. 99–514, as amended, set out as an Effective Date; Transitional Rules note under section 141 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain

transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

SUBPART B—REQUIREMENTS APPLICABLE TO ALL STATE AND LOCAL BONDS

Sec.
148. Arbitrage.
149. Bonds must be registered to be tax exempt; other requirements.

§ 148. Arbitrage

(a) Arbitrage bond defined

For purposes of section 103, the term ''arbitrage bond'' means any bond issued as part of an issue any portion of the proceeds of which are reasonably expected (at the time of issuance of the bond) to be used directly or indirectly—

(1) to acquire higher yielding investments, or

(2) to replace funds which were used directly or indirectly to acquire higher yielding investments.

For purposes of this subsection, a bond shall be treated as an arbitrage bond if the issuer intentionally uses any portion of the proceeds of the issue of which such bond is a part in a manner described in paragraph (1) or (2).

(b) Higher yielding investments

For purposes of this section—

(1) In general

The term ''higher yielding investments'' means any investment property which produces a yield over the term of the issue which is materially higher than the yield on the issue.

(2) Investment property

The term ''investment property'' means—

(A) any security (within the meaning of section 165(g)(2)(A) or (B)),

(B) any obligation,

(C) any annuity contract,

(D) any investment-type property, or

(E) in the case of a bond other than a private activity bond, any residential rental property for family units which is not located within the jurisdiction of the issuer and which is not acquired to implement a court ordered or approved housing desegregation plan.

(3) Alternative minimum tax bonds treated as investment property in certain cases

(A) In general

Except as provided in subparagraph (B), the term ''investment property'' does not include any tax-exempt bond.

(B) Exception

With respect to an issue other than an issue a part of which is a specified private activity bond (as defined in section 57(a)(5)(C)), the term ''investment property'' includes a specified private activity bond (as so defined).

(4) Safe harbor for prepaid natural gas

(A) In general

The term ''investment-type property'' does not include a prepayment under a qualified natural gas supply contract.

(B) Qualified natural gas supply contract

For purposes of this paragraph, the term ''qualified natural gas supply contract'' means any contract to acquire natural gas for resale by a utility owned by a governmental unit if the amount of gas permitted to be acquired under the contract by the utility during any year does not exceed the sum of—

(i) the annual average amount during the testing period of natural gas purchased (other than for resale) by customers of such utility who are located within the service area of such utility, and

(ii) the amount of natural gas to be used to transport the prepaid natural gas to the utility during such year.

(C) Natural gas used to generate electricity

Natural gas used to generate electricity shall be taken into account in determining the average under subparagraph (B)(i)—

(i) only if the electricity is generated by a utility owned by a governmental unit, and

(ii) only to the extent that the electricity is sold (other than for resale) to customers of such utility who are located within the service area of such utility.

(D) Adjustments for changes in customer base

(i) New business customers

If—

(I) after the close of the testing period and before the date of issuance of the issue, the utility owned by a governmental unit enters into a contract to supply natural gas (other than for resale) for a business use at a property within the service area of such utility, and

(II) the utility did not supply natural gas to such property during the testing period or the ratable amount of natural gas to be supplied under the contract is significantly greater than the ratable amount of gas supplied to such property during the testing period,

then a contract shall not fail to be treated as a qualified natural gas supply contract by reason of supplying the additional natural gas under the contract referred to in subclause (I).

(ii) Lost customers

The average under subparagraph (B)(i) shall not exceed the annual amount of natural gas reasonably expected to be purchased (other than for resale) by persons who are located within the service area of such utility and who, as of the date of issuance of the issue, are customers of such utility.

(E) Ruling requests

The Secretary may increase the average under subparagraph (B)(i) for any period if

the utility owned by the governmental unit establishes to the satisfaction of the Secretary that, based on objective evidence of growth in natural gas consumption or population, such average would otherwise be insufficient for such period.

(F) Adjustment for natural gas otherwise on hand

(i) In general

The amount otherwise permitted to be acquired under the contract for any period shall be reduced by—

(I) the applicable share of natural gas held by the utility on the date of issuance of the issue, and

(II) the natural gas (not taken into account under subclause (I)) which the utility has a right to acquire during such period (determined as of the date of issuance of the issue).

(ii) Applicable share

For purposes of the clause (i), the term ''applicable share'' means, with respect to any period, the natural gas allocable to such period if the gas were allocated ratably over the period to which the prepayment relates.

(G) Intentional acts

Subparagraph (A) shall cease to apply to any issue if the utility owned by the governmental unit engages in any intentional act to render the volume of natural gas acquired by such prepayment to be in excess of the sum of—

(i) the amount of natural gas needed (other than for resale) by customers of such utility who are located within the service area of such utility, and

(ii) the amount of natural gas used to transport such natural gas to the utility.

(H) Testing period

For purposes of this paragraph, the term ''testing period'' means, with respect to an issue, the most recent 5 calendar years ending before the date of issuance of the issue.

(I) Service area

For purposes of this paragraph, the service area of a utility owned by a governmental unit shall be comprised of—

(i) any area throughout which such utility provided at all times during the testing period—

(I) in the case of a natural gas utility, natural gas transmission or distribution services, and

(II) in the case of an electric utility, electricity distribution services,

(ii) any area within a county contiguous to the area described in clause (i) in which retail customers of such utility are located if such area is not also served by another utility providing natural gas or electricity services, as the case may be, and

(iii) any area recognized as the service area of such utility under State or Federal law.

(c) Temporary period exception

(1) In general

For purposes of subsection (a), a bond shall not be treated as an arbitrage bond solely by reason of the fact that the proceeds of the issue of which such bond is a part may be invested in higher yielding investments for a reasonable temporary period until such proceeds are needed for the purpose for which such issue was issued.

(2) Limitation on temporary period for pooled financings

(A) In general

The temporary period referred to in paragraph (1) shall not exceed 6 months with respect to the proceeds of an issue which are to be used to make or finance loans (other than nonpurpose investments) to 2 or more persons.

(B) Shorter temporary period for loan repayments, etc.

Subparagraph (A) shall be applied by substituting ''3 months'' for ''6 months'' with respect to the proceeds from the sale or repayment of any loan which are to be used to make or finance any loan. For purposes of the preceding sentence, a nonpurpose investment shall not be treated as a loan.

(C) Bonds used to provide construction financing

In the case of an issue described in subparagraph (A) any portion of which is used to make or finance loans for construction expenditures (within the meaning of subsection (f)(4)(C)(iv))—

(i) rules similar to the rules of subsection (f)(4)(C)(v) shall apply, and

(ii) subparagraph (A) shall be applied with respect to such portion by substituting ''2 years'' for ''6 months''.

(D) Exception for mortgage revenue bonds

This paragraph shall not apply to any qualified mortgage bond or qualified veterans' mortgage bond.

(d) Special rules for reasonably required reserve or replacement fund

(1) In general

For purposes of subsection (a), a bond shall not be treated as an arbitrage bond solely by reason of the fact that an amount of the proceeds of the issue of which such bond is a part may be invested in higher yielding investments which are part of a reasonably required reserve or replacement fund. The amount referred to in the preceding sentence shall not exceed 10 percent of the proceeds of such issue unless the issuer establishes to the satisfaction of the Secretary that a higher amount is necessary.

(2) Limitation on amount in reserve or replacement fund which may be financed by issue

A bond issued as part of an issue shall be treated as an arbitrage bond if the amount of the proceeds from the sale of such issue which is part of any reserve or replacement fund exceeds 10 percent of the proceeds of the issue

(or such higher amount which the issuer establishes is necessary to the satisfaction of the Secretary).

(e) Minor portion may be invested in higher yielding investments

Notwithstanding subsections (a), (c), and (d), a bond issued as part of an issue shall not be treated as an arbitrage bond solely by reason of the fact that an amount of the proceeds of such issue (in addition to the amounts under subsections (c) and (d)) is invested in higher yielding investments if such amount does not exceed the lesser of—

(1) 5 percent of the proceeds of the issue, or

(2) $100,000.

(f) Required rebate to the United States

(1) In general

A bond which is part of an issue shall be treated as an arbitrage bond if the requirements of paragraphs (2) and (3) are not met with respect to such issue. The preceding sentence shall not apply to any qualified veterans' mortgage bond.

(2) Rebate to United States

An issue shall be treated as meeting the requirements of this paragraph only if an amount equal to the sum of—

(A) the excess of—

(i) the amount earned on all nonpurpose investments (other than investments attributable to an excess described in this subparagraph), over

(ii) the amount which would have been earned if such nonpurpose investments were invested at a rate equal to the yield on the issue, plus

(B) any income attributable to the excess described in subparagraph (A),

is paid to the United States by the issuer in accordance with the requirements of paragraph (3).

(3) Due date of payments under paragraph (2)

Except to the extent provided by the Secretary, the amount which is required to be paid to the United States by the issuer shall be paid in installments which are made at least once every 5 years. Each installment shall be in an amount which ensures that 90 percent of the amount described in paragraph (2) with respect to the issue at the time payment of such installment is required will have been paid to the United States. The last installment shall be made no later than 60 days after the day on which the last bond of the issue is redeemed and shall be in an amount sufficient to pay the remaining balance of the amount described in paragraph (2) with respect to such issue. A series of issues which are redeemed during a 6-month period (or such longer period as the Secretary may prescribe) shall be treated (at the election of the issuer) as 1 issue for purposes of the preceding sentence if no bond which is part of any issue in such series has a maturity of more than 270 days or is a private activity bond. In the case of a tax and revenue anticipation bond, the last installment shall not be required to be made before the date 8 months after the date of issuance of the issue of which the bond is a part.

(4) Special rules for applying paragraph (2)

(A) In general

In determining the aggregate amount earned on nonpurpose investments for purposes of paragraph (2)—

(i) any gain or loss on the disposition of a nonpurpose investment shall be taken into account, and

(ii) any amount earned on a bona fide debt service fund shall not be taken into account if the gross earnings on such fund for the bond year is less than $100,000.

In the case of an issue no bond of which is a private activity bond, clause (ii) shall be applied without regard to the dollar limitation therein if the average maturity of the issue (determined in accordance with section 147(b)(2)(A)) is at least 5 years and the rates of interest on bonds which are part of the issue do not vary during the term of the issue.

(B) Temporary investments

Under regulations prescribed by the Secretary—

(i) In general

An issue shall, for purposes of this subsection, be treated as meeting the requirements of paragraph (2) if—

(I) the gross proceeds of such issue are expended for the governmental purposes for which the issue was issued no later than the day which is 6 months after the date of issuance of the issue, and

(II) the requirements of paragraph (2) are met with respect to amounts not required to be spent as provided in subclause (I) (other than earnings on amounts in any bona fide debt service fund).

Gross proceeds which are held in a bona fide debt service fund or a reasonably required reserve or replacement fund, and gross proceeds which arise after such 6 months and which were not reasonably anticipated as of the date of issuance, shall not be considered gross proceeds for purposes of subclause (I) only.

(ii) Additional period for certain bonds

(I) In general

In the case of an issue described in subclause (II), clause (i) shall be applied by substituting ''1 year'' for ''6 months'' each place it appears with respect to the portion of the proceeds of the issue which are not expended in accordance with clause (i) if such portion does not exceed 5 percent of the proceeds of the issue.

(II) Issues to which subclause (I) applies

An issue is described in this subclause if no bond which is part of such issue is a private activity bond (other than a qualified 501(c)(3) bond) or a tax or revenue anticipation bond.

(iii) Safe harbor for determining when proceeds of tax and revenue anticipation bonds are expended

(I) In general

For purposes of clause (i), in the case of an issue of tax or revenue anticipation bonds, the net proceeds of such issue (including earnings thereon) shall be treated as expended for the governmental purpose of the issue on the 1st day after the date of issuance that the cumulative cash flow deficit to be financed by such issue exceeds 90 percent of the proceeds of such issue.

(II) Cumulative cash flow deficit

For purposes of subclause (I), the term ''cumulative cash flow deficit'' means, as of the date of computation, the excess of the expenses paid during the period described in subclause (III) which would ordinarily be paid out of or financed by anticipated tax or other revenues over the aggregate amount available (other than from the proceeds of the issue) during such period for the payment of such expenses.

(III) Period involved

For purposes of subclause (II), the period described in this subclause is the period beginning on the date of issuance of the issue and ending on the earlier of the date 6 months after such date of issuance or the date of the computation of cumulative cash flow deficit.

(iv) Payments of principal not to affect requirements

For purposes of this subparagraph, payments of principal on the bonds which are part of an issue shall not be treated as expended for the governmental purposes of the issue.

(C) Exception from rebate for certain proceeds to be used to finance construction expenditures

(i) In general

In the case of a construction issue, paragraph (2) shall not apply to the available construction proceeds of such issue if the spending requirements of clause (ii) are met.

(ii) Spending requirements

The spending requirements of this clause are met if at least—

(I) 10 percent of the available construction proceeds of the construction issue are spent for the governmental purposes of the issue within the 6-month period beginning on the date the bonds are issued,

(II) 45 percent of such proceeds are spent for such purposes within the 1-year period beginning on such date,

(III) 75 percent of such proceeds are spent for such purposes within the 18-month period beginning on such date, and

(IV) 100 percent of such proceeds are spent for such purposes within the 2-year period beginning on such date.

(iii) Exception for reasonable retainage

The spending requirement of clause (ii)(IV) shall be treated as met if—

(I) such requirement would be met at the close of such 2-year period but for a reasonable retainage (not exceeding 5 percent of the available construction proceeds of the construction issue), and

(II) 100 percent of the available construction proceeds of the construction issue are spent for the governmental purposes of the issue within the 3-year period beginning on the date the bonds are issued.

(iv) Construction issue

For purposes of this subparagraph, the term ''construction issue'' means any issue if—

(I) at least 75 percent of the available construction proceeds of such issue are to be used for construction expenditures with respect to property which is to be owned by a governmental unit or a 501(c)(3) organization, and

(II) all of the bonds which are part of such issue are qualified 501(c)(3) bonds, bonds which are not private activity bonds, or private activity bonds issued to finance property to be owned by a governmental unit or a 501(c)(3) organization.

For purposes of this subparagraph, the term ''construction'' includes reconstruction and rehabilitation, and rules similar to the rules of section 142(b)(1)(B) shall apply.

(v) Portions of issues used for construction

If—

(I) all of the construction expenditures to be financed by an issue are to be financed from a portion thereof, and

(II) the issuer elects to treat such portion as a construction issue for purposes of this subparagraph,

then, for purposes of this subparagraph and subparagraph (B), such portion shall be treated as a separate issue.

(vi) Available construction proceeds

For purposes of this subparagraph—

(I) In general

The term ''available construction proceeds'' means the amount equal to the issue price (within the meaning of sections 1273 and 1274) of the construction issue, increased by earnings on the issue price, earnings on amounts in any reasonably required reserve or replacement fund not funded from the issue, and earnings on all of the foregoing earnings, and reduced by the amount of the issue price in any reasonably required reserve or replacement fund and the issuance costs financed by the issue.

(II) Earnings on reserve included only for certain periods

The term ''available construction proceeds'' shall not include amounts earned

on any reasonably required reserve or replacement fund after the earlier of the close of the 2-year period described in clause (ii) or the date the construction is substantially completed.

(III) Payments on acquired purpose obligations excluded

The term ''available construction proceeds'' shall not include payments on any obligation acquired to carry out the governmental purposes of the issue and shall not include earnings on such payments.

(IV) Election to rebate on earnings on reserve

At the election of the issuer, the term ''available construction proceeds'' shall not include earnings on any reasonably required reserve or replacement fund.

(vii) Election to pay penalty in lieu of rebate

(I) In general

At the election of the issuer, paragraph (2) shall not apply to available construction proceeds which do not meet the spending requirements of clause (ii) if the issuer pays a penalty, with respect to each 6-month period after the date the bonds were issued, equal to 1½ percent of the amount of the available construction proceeds of the issue which, as of the close of such 6-month period, is not spent as required by clause (ii).

(II) Termination

The penalty imposed by this clause shall cease to apply only as provided in clause (viii) or after the latest maturity date of any bond in the issue (including any refunding bond with respect thereto).

(viii) Election to terminate 1½ percent penalty

At the election of the issuer (made not later than 90 days after the earlier of the end of the initial temporary period or the date the construction is substantially completed), the penalty under clause (vii) shall not apply to any 6-month period after the initial temporary period under subsection (c) if the requirements of subclauses (I), (II), and (III) are met.

(I) 3 percent penalty

The requirement of this subclause is met if the issuer pays a penalty equal to 3 percent of the amount of available construction proceeds of the issue which is not spent for the governmental purposes of the issue as of the close of such initial temporary period multiplied by the number of years (including fractions thereof) in the initial temporary period.

(II) Yield restriction at close of temporary period

The requirement of this subclause is met if the amount of the available construction proceeds of the issue which is not spent for the governmental purposes of the issue as of the close of such initial temporary period is invested at a yield not exceeding the yield on the issue or which is invested in any tax-exempt bond which is not investment property.

(III) Redemption of bonds at earliest call date

The requirement of this subclause is met if the amount of the available construction proceeds of the issue which is not spent for the governmental purposes of the issue as of the earliest date on which bonds may be redeemed is used to redeem bonds on such date.

(ix) Election to terminate 1½ percent penalty before end of temporary period

If—

(I) the construction to be financed by a construction issue is substantially completed before the end of the initial temporary period,

(II) the issuer identifies an amount of available construction proceeds which will not be spent for the governmental purposes of the issue,

(III) the issuer has made the election under clause (viii), and

(IV) the issuer makes an election under this clause before the close of the initial temporary period and not later than 90 days after the date the construction is substantially completed,

then clauses (vii) and (viii) shall be applied to the available construction proceeds so identified as if the initial temporary period ended as of the date the election is made.

(x) Failure to pay penalties

In the case of a failure (which is not due to willful neglect) to pay any penalty required to be paid under clause (vii) or (viii) in the amount or at the time prescribed therefor, the Secretary may treat such failure as not occurring if, in addition to paying such penalty, the issuer pays a penalty equal to the sum of—

(I) 50 percent of the amount which was not paid in accordance with clauses (vii) and (viii), plus

(II) interest (at the underpayment rate established under section 6621) on the portion of the amount which was not paid on the date required for the period beginning on such date.

The Secretary may waive all or any portion of the penalty under this clause. Bonds which are part of an issue with respect to which there is a failure to pay the amount required under this clause (and any refunding bond with respect thereto) shall be treated as not being, and as never having been, tax-exempt bonds.

(xi) Election for pooled financing bonds

At the election of the issuer of an issue the proceeds of which are to be used to make or finance loans (other than nonpur-

pose investments) to 2 or more persons, the periods described in clauses (ii) and (iii) shall begin on—

(I) the date the loan is made, in the case of loans made within the 1-year period after the date the bonds are issued, and

(II) the date following such 1-year period, in the case of loans made after such 1-year period.

If such an election applies to an issue, the requirements of paragraph (2) shall apply to amounts earned before the beginning of the periods determined under the preceding sentence.

(xii) Payments of principal not to affect requirements

For purposes of this subparagraph, payments of principal on the bonds which are part of the construction issue shall not be treated as an expenditure of the available construction proceeds of the issue.

(xiii) Refunding bonds

(I) In general

Except as provided in this clause, clause (vii)(II), and the last sentence of clause (x), this subparagraph shall not apply to any refunding bond and no proceeds of a refunded bond shall be treated for purposes of this subparagraph as proceeds of a refunding bond.

(II) Determination of construction portion of issue

For purposes of clause (v), any portion of an issue which is used to refund any issue (or portion thereof) shall be treated as a separate issue.

(III) Coordination with rebate requirement on refunding bonds

The requirements of paragraph (2) shall be treated as met with respect to earnings for any period if a penalty is paid under clause (vii) or (viii) with respect to such earnings for such period.

(xiv) Determination of initial temporary period

For purposes of this subpargraph,[1] the end of the initial temporary period shall be determined without regard to section 149(d)(3)(A)(iv).

(xv) Elections

Any election under this subparagraph (other than clauses (viii) and (ix)) shall be made on or before the date the bonds are issued; and, once made, shall be irrevocable.

(xvi) Time for payment of penalties

Any penalty under this subparagraph shall be paid to the United States not later than 90 days after the period to which the penalty relates.

(xvii) Treatment of bona fide debt service funds

If the spending requirements of clause (ii) are met with respect to the available construction proceeds of a construction issue, then paragraph (2) shall not apply to earnings on a bona fide debt service fund for such issue.

(D) Exception for governmental units issuing $5,000,000 or less of bonds

(i) In general

An issue shall, for purposes of this subsection, be treated as meeting the requirements of paragraphs (2) and (3) if—

(I) the issue is issued by a governmental unit with general taxing powers,

(II) no bond which is part of such issue is a private activity bond,

(III) 95 percent or more of the net proceeds of such issue are to be used for local governmental activities of the issuer (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the issuer), and

(IV) the aggregate face amount of all tax-exempt bonds (other than private activity bonds) issued by such unit during the calendar year in which such issue is issued is not reasonably expected to exceed $5,000,000.

(ii) Aggregation of issuers

For purposes of subclause (IV) of clause (i)—

(I) an issuer and all entities which issue bonds on behalf of such issuer shall be treated as 1 issuer,

(II) all bonds issued by a subordinate entity shall, for purposes of applying such subclause to each other entity to which such entity is subordinate, be treated as issued by such other entity, and

(III) an entity formed (or, to the extent provided by the Secretary, availed of) to avoid the purposes of such subclause (IV) and all other entities benefiting thereby shall be treated as 1 issuer.

(iii) Certain refunding bonds not taken into account in determining small issuer status

There shall not be taken into account under subclause (IV) of clause (i) any bond issued to refund (other than to advance refund) any bond to the extent the amount of the refunding bond does not exceed the outstanding amount of the refunded bond.

(iv) Certain issues issued by subordinate governmental units, etc., exempt from rebate requirement

An issue issued by a subordinate entity of a governmental unit with general taxing powers shall be treated as described in clause (i)(I) if the aggregate face amount of such issue does not exceed the lesser of—

(I) $5,000,000, or

(II) the amount which, when added to the aggregate face amount of other issues issued by such entity, does not exceed the portion of the $5,000,000 limitation under clause (i)(IV) which such governmental unit allocates to such entity.

[1] So in original. Probably should be ''subparagraph,''.

For purposes of the preceding sentence, an entity which issues bonds on behalf of a governmental unit with general taxing powers shall be treated as a subordinate entity of such unit. An allocation shall be taken into account under subclause (II) only if it is irrevocable and made before the issuance date of such issue and only to the extent that the limitation so allocated bears a reasonable relationship to the benefits received by such governmental unit from issues issued by such entity.

(v) Determination of whether refunding bonds eligible for exception from rebate requirement

If any portion of an issue is issued to refund other bonds, such portion shall be treated as a separate issue which does not meet the requirements of paragraphs (2) and (3) by reason of this subparagraph unless—

(I) the aggregate face amount of such issue does not exceed $5,000,000,

(II) each refunded bond was issued as part of an issue which was treated as meeting the requirements of paragraphs (2) and (3) by reason of this subparagraph,

(III) the average maturity date of the refunding bonds issued as part of such issue is not later than the average maturity date of the bonds to be refunded by such issue, and

(IV) no refunding bond has a maturity date which is later than the date which is 30 years after the date the original bond was issued.

Subclause (III) shall not apply if the average maturity of the issue of which the original bond was a part (and of the issue of which the bonds to be refunded are a part) is 3 years or less. For purposes of this clause, average maturity shall be determined in accordance with section 147(b)(2)(A).

(vi) Refundings of bonds issued under law prior to Tax Reform Act of 1986

If section 141(a) did not apply to any refunded bond, the issue of which such refunded bond was a part shall be treated as meeting the requirements of subclause (II) of clause (v) if—

(I) such issue was issued by a governmental unit with general taxing powers,

(II) no bond issued as part of such issue was an industrial development bond (as defined in section 103(b)(2), but without regard to subparagraph (B) of section 103(b)(3)) or a private loan bond (as defined in section 103(*o*)(2)(A), but without regard to any exception from such definition other than section 103(*o*)(2)(C)), and

(III) the aggregate face amount of all tax-exempt bonds (other than bonds described in subclause (II)) issued by such unit during the calendar year in which such issue was issued did not exceed $5,000,000.

References in subclause (II) to section 103 shall be to such section as in effect on the day before the date of the enactment of the Tax Reform Act of 1986. Rules similar to the rules of clauses (ii) and (iii) shall apply for purposes of subclause (III). For purposes of subclause (II) of clause (i), bonds described in subclause (II) of this clause to which section 141(a) does not apply shall not be treated as private activity bonds.

(vii) Increase in exception for bonds financing public school capital expenditures

Each of the $5,000,000 amounts in the preceding provisions of this subparagraph shall be increased by the lesser of $10,000,000 or so much of the aggregate face amount of the bonds as are attributable to financing the construction (within the meaning of subparagraph (C)(iv)) of public school facilities.

(5) Exemption from gross income of sum rebated

Gross income shall not include the sum described in paragraph (2). Notwithstanding any other provision of this title, no deduction shall be allowed for any amount paid to the United States under paragraph (2).

(6) Definitions

For purposes of this subsection and subsections (c) and (d)—

(A) Nonpurpose investment

The term ''nonpurpose investment'' means any investment property which—

(i) is acquired with the gross proceeds of an issue, and

(ii) is not acquired in order to carry out the governmental purpose of the issue.

(B) Gross proceeds

Except as otherwise provided by the Secretary, the gross proceeds of an issue include—

(i) amounts received (including repayments of principal) as a result of investing the original proceeds of the issue, and

(ii) amounts to be used to pay debt service on the issue.

(7) Penalty in lieu of loss of tax exemption

In the case of an issue which would (but for this paragraph) fail to meet the requirements of paragraph (2) or (3), the Secretary may treat such issue as not failing to meet such requirements if—

(A) no bond which is part of such issue is a private activity bond (other than a qualified 501(c)(3) bond),

(B) the failure to meet such requirements is not due to willful neglect, and

(C) the issuer pays to the United States a penalty in an amount equal to the sum of—

(i) 50 percent of the amount which was not paid in accordance with paragraphs (2) and (3), plus

(ii) interest (at the underpayment rate established under section 6621) on the portion of the amount which was not paid on

the date required under paragraph (3) for the period beginning on such date.

The Secretary may waive all or any portion of the penalty under this paragraph.

(g) Student loan incentive payments

Except to the extent otherwise provided in regulations, payments made by the Secretary of Education pursuant to section 438 of the Higher Education Act of 1965 are not to be taken into account, for purposes of subsection (a)(1), in determining yields on student loan notes.

(h) Determinations of yield

For purposes of this section, the yield on an issue shall be determined on the basis of the issue price (within the meaning of sections 1273 and 1274).

(i) Regulations

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

(Added Pub. L. 99–514, title XIII, § 1301(b), Oct. 22, 1986, 100 Stat. 2641; amended Pub. L. 100–647, title I, § 1013(a)(14)–(16)(A), (17)(A), (B), (18), (19), (43)(A), (B), title IV, § 4005(d)(2), title V, § 5053(b), title VI, §§ 6177(a), (b), 6181(a), (b), 6183(a), Nov. 10, 1988, 102 Stat. 3539, 3540, 3542, 3545, 3646, 3678, 3726, 3727, 3729; Pub. L. 101–239, title VII, §§ 7652(a)–(d), 7814(c)(2), 7816(r), (t), Dec. 19, 1989, 103 Stat. 2385–2387, 2413, 2423; Pub. L. 101–508, title XI, § 11701(j)(1)–(6), Nov. 5, 1990, 104 Stat. 1388–508 to 1388–513; Pub. L. 105–34, title II, § 223(a), title XIV, §§ 1441–1444, Aug. 5, 1997, 111 Stat. 818, 1053, 1054; Pub. L. 107–16, title IV, § 421(a), June 7, 2001, 115 Stat. 64; Pub. L. 109–58, title XIII, § 1327(a), Aug. 8, 2005, 119 Stat. 1017; Pub. L. 109–222, title V, § 508(c), May 17, 2006, 120 Stat. 362.)

AMENDMENT OF SECTION

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (f)(4)(C)(vi), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

Section 438 of the Higher Education Act of 1965, referred to in subsec. (g), is classified to section 1087–1 of Title 20, Education.

AMENDMENTS

2006—Subsec. (f)(4)(D)(ii)(II) to (IV). Pub. L. 109–222 redesignated subcls. (III) and (IV) as (II) and (III), respectively, and struck out former subcl. (II) which read as follows: ''all bonds issued by a governmental unit to make loans to other governmental units with general taxing powers not subordinate to such unit shall, for purposes of applying such subclause to such unit, be treated as not issued by such unit.''

2005—Subsec. (b)(4). Pub. L. 109–58 added par. (4).

2001—Subsec. (f)(4)(D)(vii). Pub. L. 107–16, §§ 421(a), 901, temporarily substituted ''the lesser of $10,000,000'' for ''the lesser of $5,000,000''. See Effective and Termination Dates of 2001 Amendment note below.

1997—Subsec. (c)(2)(B) to (E). Pub. L. 105–34, § 1444(a), redesignated subpars. (C) to (E) as (B) to (D), respectively, and struck out heading and text of former subpar. (B). Text read as follows: ''In the case of the proceeds of an issue to be used to make or finance loans under a program described in section 144(b)(1)(A), subparagraph (A) shall be applied by substituting '18 months' for '6 months'. The preceding sentence shall not apply to any bond issued after December 31, 1988.''

Subsec. (d)(3). Pub. L. 105–34, § 1443, struck out par. (3) which related to limitations on investment in nonpurpose investments.

Subsec. (f)(4)(B)(ii)(I). Pub. L. 105–34, § 1441, substituted ''5 percent of the proceeds of the issue'' for ''the lesser of 5 percent of the proceeds of the issue or $100,000''.

Subsec. (f)(4)(C)(xvii). Pub. L. 105–34, § 1442, added cl. (xvii).

Subsec. (f)(4)(D)(vii). Pub. L. 105–34, § 223(a), added cl. (vii).

Subsec. (f)(4)(E). Pub. L. 105–34, § 1444(b), struck out subpar. (E) which related to exception for certain qualified student loan bonds.

1990—Subsec. (c)(2)(D). Pub. L. 101–508, § 11701(j)(5), substituted ''subsection (f)(4)(C)(iv)'' for ''subsection (f)(4)(B)(iv)(IV)'' in introductory provisions and ''subsection (f)(4)(C)(v)'' for ''subsection (f)(4)(B)(iv)(VIII)'' in cl. (i).

Subsec. (c)(2)(D), (E). Pub. L. 101–508, § 11701(j)(6), made technical amendment to Pub. L. 101–239, § 7652(c). See 1989 Amendment note below.

Subsec. (f)(4)(B)(i). Pub. L. 101–508, § 11701(j)(2), substituted in last sentence ''replacement fund, and gross proceeds which arise after such 6 months and which were not reasonably anticipated as of the date of issuance, shall not be considered gross proceeds for purposes of subclause (I) only'' for ''replacement fund shall not be considered gross proceeds for purposes of this subparagraph only'' in concluding provisions.

Subsec. (f)(4)(B)(i)(II). Pub. L. 101–508, § 11701(j)(1), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: ''the requirements of paragraph (2) are met after such 6 months with respect to earnings on amounts in any reasonably required reserve or replacement fund.''

Subsec. (f)(4)(B)(iv). Pub. L. 101–508, § 11701(j)(4), amended cl. (iv) generally, substituting present provisions for provisions which provided for a special rule to be applied during a 2-year period for certain construction bonds from issues in which at least 75 percent of the net proceeds of the issue were to be used for construction expenditures with respect to property which was owned by a governmental unit or a 501(c)(3) organization.

Subsec. (f)(4)(C) to (E). Pub. L. 101–508, § 11701(j)(3)(A), (B), added subpar. (C) and redesignated former subpars. (C) and (D) as (D) and (E), respectively.

1989—Subsec. (c)(2)(D), (E). Pub. L. 101–239, § 7652(c), as amended by Pub. L. 101–508, § 11701(j)(6), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (d)(3)(E)(ii). Pub. L. 101–239, § 7814(c)(2), struck out ''a qualified mortgage bond or'' after ''in the case of''.

Subsec. (f)(4)(B)(i). Pub. L. 101–239, § 7652(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''An issue shall, for purposes of this subsection, be treated as meeting the requirements of paragraph (2) if the gross proceeds of such issue are expended for the governmental purpose for which the issue was issued by no later than the day which is 6 months after the date of issuance of such issue. Gross proceeds which are held in a bona fide debt service fund shall not be considered gross proceeds for purposes of this subparagraph only.''

Subsec. (f)(4)(B)(ii)(I). Pub. L. 101–239, § 7652(d), inserted ''each place it appears'' after '' '6 months' ''.

Subsec. (f)(4)(B)(iii)(III). Pub. L. 101–239, § 7816(r), substituted ''such date of issuance or the date'' for ''such date of issuance. or the date''.

Subsec. (f)(4)(B)(iv). Pub. L. 101–239, § 7652(b), added cl. (iv).

Subsec. (f)(4)(C)(ii)(II). Pub. L. 101–239, § 7816(t), substituted ''to make loans to'' for ''on behalf of''.

1988—Subsec. (b)(2). Pub. L. 100–647, § 1013(a)(43)(B), struck out at end ''Such term shall not include any tax-exempt bond.''

Subsec. (b)(2)(E). Pub. L. 100–647, § 5053(b), added subpar. (E).

Subsec. (b)(3). Pub. L. 100–647, § 1013(a)(43)(A), added par. (3).

Subsec. (d)(2). Pub. L. 100–647, § 1013(a)(14), substituted ''any reserve or replacement fund'' for ''any fund described in paragraph (1)''.

Subsec. (f)(1). Pub. L. 100–647, § 4005(d)(2), struck out ''qualified mortgage bond or'' after ''apply to any''.

Subsec. (f)(3). Pub. L. 100–647, § 6177(b), inserted at end ''In the case of a tax and revenue anticipation bond, the last installment shall not be required to be made before the date 8 months after the date of issuance of the issue of which the bond is a part.''

Pub. L. 100–647, § 1013(a)(15), inserted ''A series of issues which are redeemed during a 6-month period (or such longer period as the Secretary may prescribe) shall be treated (at the election of the issuer) as 1 issue for purposes of the preceding sentence if no bond which is part of any issue in such series has a maturity of more than 270 days or is a private activity bond.''

Subsec. (f)(4)(A). Pub. L. 100–647, § 6181(a), (b), struck out ''unless the issuer otherwise elects,'' before ''any amount earned'' in cl. (ii) and inserted at end of subpar. (A) ''In the case of an issue no bond of which is a private activity bond, clause (ii) shall be applied without regard to the dollar limitation therein if the average maturity of the issue (determined in accordance with section 147(b)(2)(A)) is at least 5 years and the rates of interest on bonds which are part of the issue do not vary during the term of the issue.''

Subsec. (f)(4)(B)(iii)(I). Pub. L. 100–647, § 1013(a)(16)(A), substituted ''proceeds'' for ''aggregate face amount''.

Subsec. (f)(4)(B)(iii)(III). Pub. L. 100–647, § 6177(a), substituted ''the earlier of the date 6 months after such date of issuance.'' for ''the earliest of the maturity date of the issue, the date 6 months after such date of issuance,''.

Subsec. (f)(4)(C). Pub. L. 100–647, § 1013(a)(17)(A), in heading substituted ''governmental units issuing $5,000,000 or less of bonds'' for ''small governmental units'', designated existing provision as cl. (i), inserted heading ''In general'', redesignated existing cls. (i) to (iv) as subcls. (I) to (IV) and realigned their margins, struck out last sentence providing that cl. (iv) not take into account any bond which is not outstanding at the time of a later issue or which is redeemed, other than in an advance refunding, from the net proceeds of the later issue, and added cls. (ii) to (vi).

Subsec. (f)(4)(C)(i)(IV). Pub. L. 100–647, § 1013(a)(17)(B), struck out ''(and all subordinate entities thereof)'' after ''such unit''.

Subsec. (f)(4)(C)(ii). Pub. L. 100–647, § 6183(a), added subcl. (II) and redesignated former subcls. (II) and (III) as (III) and (IV), respectively.

Subsec. (f)(4)(D)(i). Pub. L. 100–647, § 1013(a)(18), inserted ''for a program'' before ''described in section 144(b)(1)(A)'' in introductory text, substituted ''such program'' for ''such a program'' in subcl. (I), and inserted at end ''Amounts designated as interest on student loans shall not be taken into account in determining whether the issuer is reimbursed for such costs. Except as otherwise hereafter provided in regulations prescribed by the Secretary, costs described in subclause (I) paid from amounts earned as described in the first sentence of this clause may also be taken into account in determining the yield on the student loans under a program described in section 144(b)(1)(A).''

Subsec. (f)(7)(B). Pub. L. 100–647, § 1013(a)(19), substituted ''not due'' for ''due to reasonable cause and not''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–222 applicable to bonds issued after May 17, 2006, see section 508(e) of Pub. L. 109–222, set out as a note under section 54 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–58 applicable to obligations issued after Aug. 8, 2005, see section 1327(d) of Pub. L. 109–58, set out as a note under section 141 of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Pub. L. 107–16, title IV, § 421(b), June 7, 2001, 115 Stat. 65, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to obligations issued in calendar years beginning after December 31, 2001.''

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 223(b) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply to bonds issued after December 31, 1997.''

Section 1445 of title XIV of Pub. L. 105–34 provided that: ''The amendments made by this subtitle [subtitle B (§§ 1441–1445) of title XIV of Pub. L. 105–34, amending this section] shall apply to bonds issued after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective, except as otherwise provided, as if included in the provision of the Revenue Reconciliation Act of 1989, Pub. L. 101–239, title VII, to which such amendment relates, see section 11701(n) of Pub. L. 101–508, set out as a note under section 42 of this title.

Section 11701(j)(8) of Pub. L. 101–508 provided that: ''Section 148(f)(4)(C)(xiii)(II) of such Code (as added by this subsection) shall apply only to refunding bonds issued after August 3, 1990.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7652(e) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section] shall apply to bonds issued after the date of the enactment of this Act [Dec. 19, 1989].''

Amendment by sections 7814(c)(2) and 7816(r), (t) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1013(a)(16)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to bonds issued after June 30, 1987.''

Section 1013(a)(17)(C) of Pub. L. 100–647 provided that: ''(i) Except as provided in clause (ii), the amendments made by this paragraph [amending this section] shall apply to bonds issued after June 30, 1987.

''(ii) At the election of an issuer (made at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe), the amendments made by this paragraph shall apply to such issuer as if included in the amendments made by section 1301(a) of the Tax Reform Act of 1986 [amending section 103 of this title].''

Section 1013(a)(43)(C) of Pub. L. 100–647 provided that: ''The amendments made by this paragraph [amending this section] shall apply to obligations issued after March 31, 1988.''

Amendment by section 1013(a)(14), (15), (18), (19) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 4005(d)(2) of Pub. L. 100–647 applicable to bonds issued, and nonissued bond amounts

elected, after Dec. 31, 1988, see section 4005(h)(1) of Pub. L. 100–647, set out as a note under section 143 of this title.

Amendment by section 5053(b) of Pub. L. 100–647 applicable, with certain exceptions, to obligations issued after Oct. 21, 1988, see section 5053(c) of Pub. L. 100–647, set out as a note under section 145 of this title.

Section 6177(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section] shall apply to bonds issued after the date of the enactment of this Act [Nov. 10, 1988].''

Section 6181(c) of Pub. L. 100–647 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to bonds issued after the date of the enactment of this Act [Nov. 10, 1988].

''(2) ELECTION FOR OUTSTANDING BONDS.—Any issue of bonds other than private activity bonds outstanding as of the date of the enactment of this Act shall be allowed a 1-time election to apply the amendments made by subsection (b) [amending this section] to amounts deposited after such date in bona fide debt service funds of such bonds.

''(3) DEFINITION OF PRIVATE ACTIVITY BOND.—For purposes of this section and the last sentence of section 148(f)(4)(A) of the 1986 Code (as added by subsection (b)), the term 'private activity bond' shall include any qualified 501(c)(3) bond (as defined under section 145 of the 1986 Code).''

Section 6183(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to bonds issued after December 31, 1988.''

EFFECTIVE DATE

Subpart applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EXTENSION OF PERIOD TO ELECT TO TERMINATE PERCENT PENALTY FOR BONDS ISSUED BEFORE NOVEMBER 5, 1990

Section 11701(j)(7) of Pub. L. 101–508 provided that: ''In the case of a bond issued before the date of the enactment of this Act [Nov. 5, 1990], the period for making the election under section 148(f)(4)(C)(viii) of the Internal Revenue Code of 1986 (as added by this subsection) shall not expire before the date which is 180 days after such date of enactment.''

AMENDMENT TO ARBITRAGE REGULATIONS

Section 1301(c) of Pub. L. 99–514 provided that: ''The provision in the Federal income tax regulations relating to the arbitrage requirements which permits a higher yield on acquired obligations if the issuer elects to waive the benefits of the temporary period provisions shall not apply to bonds issued after August 31, 1986.''

§ 149. Bonds must be registered to be tax exempt; other requirements

(a) Bonds must be registered to be tax exempt

(1) General rule

Nothing in section 103(a) or in any other provision of law shall be construed to provide an exemption from Federal income tax for interest on any registration-required bond unless such bond is in registered form.

(2) Registration-required bond

For purposes of paragraph (1), the term ''registration-required bond'' means any bond other than a bond which—

(A) is not of a type offered to the public,

(B) has a maturity (at issue) of not more than 1 year, or

(C) is described in section 163(f)(2)(B).

(3) Special rules

(A) Book entries permitted

For purposes of paragraph (1), a book entry bond shall be treated as in registered form if the right to the principal of, and stated interest on, such bond may be transferred only through a book entry consistent with regulations prescribed by the Secretary.

(B) Nominees

The Secretary shall prescribe such regulations as may be necessary to carry out the purpose of paragraph (1) where there is a nominee or chain of nominees.

(b) Federally guaranteed bond is not tax exempt

(1) In general

Section 103(a) shall not apply to any State or local bond if such bond is federally guaranteed.

(2) Federally guaranteed defined

For purposes of paragraph (1), a bond is federally guaranteed if—

(A) the payment of principal or interest with respect to such bond is guaranteed (in whole or in part) by the United States (or any agency or instrumentality thereof),

(B) such bond is issued as part of an issue and 5 percent or more of the proceeds of such issue is to be—

(i) used in making loans the payment of principal or interest with respect to which are to be guaranteed (in whole or in part) by the United States (or any agency or instrumentality thereof), or

(ii) invested (directly or indirectly) in federally insured deposits or accounts, or

(C) the payment of principal or interest on such bond is otherwise indirectly guaranteed (in whole or in part) by the United States (or an agency or instrumentality thereof).

(3) Exceptions

(A) Certain insurance programs

A bond shall not be treated as federally guaranteed by reason of—

(i) any guarantee by the Federal Housing Administration, the Veterans' Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association,

(ii) any guarantee of student loans and any guarantee by the Student Loan Marketing Association to finance student loans,

(iii) any guarantee by the Bonneville Power Authority pursuant to the Northwest Power Act (16 U.S.C. 839d) as in effect on the date of the enactment of the Tax Reform Act of 1984, or

(iv) subject to subparagraph (E), any guarantee by a Federal home loan bank made in connection with the original issuance of a bond during the period beginning on the date of the enactment of this clause and ending on December 31, 2010 (or a renewal or extension of a guarantee so made).

(B) Debt service, etc.

Paragraph (1) shall not apply to—

(i) proceeds of the issue invested for an initial temporary period until such proceeds are needed for the purpose for which such issue was issued,

(ii) investments of a bona fide debt service fund,

(iii) investments of a reserve which meet the requirements of section 148(d),

(iv) investments in bonds issued by the United States Treasury, or

(v) other investments permitted under regulations.

(C) Exception for housing programs

(i) In general

Except as provided in clause (ii), paragraph (1) shall not apply to—

(I) a private activity bond for a qualified residential rental project or a housing program obligation under section 11(b) of the United States Housing Act of 1937,

(II) a qualified mortgage bond, or

(III) a qualified veterans' mortgage bond.

(ii) Exception not to apply where bond invested in federally insured deposits or accounts

Clause (i) shall not apply to any bond which is federally guaranteed within the meaning of paragraph (2)(B)(ii).

(D) Loans to, or guarantees by, financial institutions

Except as provided in paragraph (2)(B)(ii), a bond which is issued as part of an issue shall not be treated as federally guaranteed merely by reason of the fact that the proceeds of such issue are used in making loans to a financial institution or there is a guarantee by a financial institution unless such guarantee constitutes a federally insured deposit or account.

(E) Safety and soundness requirements for Federal home loan banks

Clause (iv) of subparagraph (A) shall not apply to any guarantee by a Federal home loan bank unless such bank meets safety and soundness collateral requirements for such guarantees which are at least as stringent as such requirements which apply under regulations applicable to such guarantees by Federal home loan banks as in effect on April 9, 2008.

(4) Definitions

For purposes of this subsection—

(A) Treatment of certain entities with authority to borrow from United States

To the extent provided in regulations prescribed by the Secretary, any entity with statutory authority to borrow from the United States shall be treated as an instrumentality of the United States. Except in the case of an exempt facility bond, a qualified small issue bond, and a qualified student loan bond, nothing in the preceding sentence shall be construed as treating the District of Columbia or any possession of the United States as an instrumentality of the United States.

(B) Federally insured deposit or account

The term ''federally insured deposit or account'' means any deposit or account in a financial institution to the extent such deposit or account is insured under Federal law by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the National Credit Union Administration, or any similar federally chartered corporation.

(c) Tax exemption must be derived from this title

(1) General rule

Except as provided in paragraph (2), no interest on any bond shall be exempt from taxation under this title unless such interest is exempt from tax under this title without regard to any provision of law which is not contained in this title and which is not contained in a revenue Act.

(2) Certain prior exemptions

(A) Prior exemptions continued

For purposes of this title, notwithstanding any provision of this part, any bond the interest on which is exempt from taxation under this title by reason of any provision of law (other than a provision of this title) which is in effect on January 6, 1983, shall be treated as a bond described in section 103(a).

(B) Additional requirements for bonds issued after 1983

Subparagraph (A) shall not apply to a bond (not described in subparagraph (C)) issued after 1983 if the appropriate requirements of this part (or the corresponding provisions of prior law) are not met with respect to such bond.

(C) Description of bond

A bond is described in this subparagraph (and treated as described in subparagraph (A)) if—

(i) such bond is issued pursuant to the Northwest Power Act (16 U.S.C. 839d), as in effect on July 18, 1984;

(ii) such bond is issued pursuant to section 608(a)(6)(A) of Public Law 97–468, as in effect on the date of the enactment of the Tax Reform Act of 1986; or

(iii) such bond is issued before June 19, 1984 under section 11(b) of the United States Housing Act of 1937.

(d) Advance refundings

(1) In general

Nothing in section 103(a) or in any other provision of law shall be construed to provide an exemption from Federal income tax for interest on any bond issued as part of an issue described in paragraph (2), (3), or (4).

(2) Certain private activity bonds

An issue is described in this paragraph if any bond (issued as part of such issue) is issued to advance refund a private activity bond (other than a qualified 501(c)(3) bond).

(3) Other bonds

(A) In general

An issue is described in this paragraph if any bond (issued as part of such issue), hereinafter in this paragraph referred to as the ''refunding bond'', is issued to advance refund a bond unless—

(i) the refunding bond is only—

(I) the 1st advance refunding of the original bond if the original bond is issued after 1985, or

(II) the 1st or 2nd advance refunding of the original bond if the original bond was issued before 1986,

(ii) in the case of refunded bonds issued before 1986, the refunded bond is redeemed not later than the earliest date on which such bond may be redeemed at par or at a premium of 3 percent or less,

(iii) in the case of refunded bonds issued after 1985, the refunded bond is redeemed not later than the earliest date on which such bond may be redeemed,

(iv) the initial temporary period under section 148(c) ends—

(I) with respect to the proceeds of the refunding bond not later than 30 days after the date of issue of such bond, and

(II) with respect to the proceeds of the refunded bond on the date of issue of the refunding bond, and

(v) in the case of refunded bonds to which section 148(e) did not apply, on and after the date of issue of the refunding bond, the amount of proceeds of the refunded bond invested in higher yielding investments (as defined in section 148(b)) which are nonpurpose investments (as defined in section 148(f)(6)(A)) does not exceed—

(I) the amount so invested as part of a reasonably required reserve or replacement fund or during an allowable temporary period, and

(II) the amount which is equal to the lesser of 5 percent of the proceeds of the issue of which the refunded bond is a part or $100,000 (to the extent such amount is allocable to the refunded bond).

(B) Special rules for redemptions

(i) Issuer must redeem only if debt service savings

Clause (ii) and (iii) of subparagraph (A) shall apply only if the issuer may realize present value debt service savings (determined without regard to administrative expenses) in connection with the issue of which the refunding bond is a part.

(ii) Redemptions not required before 90th day

For purposes of clauses (ii) and (iii) of subparagraph (A), the earliest date referred to in such clauses shall not be earlier than the 90th day after the date of issuance of the refunding bond.

(4) Abusive transactions prohibited

An issue is described in this paragraph if any bond (issued as part of such issue) is issued to advance refund another bond and a device is employed in connection with the issuance of such issue to obtain a material financial advantage (based on arbitrage) apart from savings attributable to lower interest rates.

(5) Advance refunding

For purposes of this part, a bond shall be treated as issued to advance refund another bond if it is issued more than 90 days before the redemption of the refunded bond.

(6) Special rules for purposes of paragraph (3)

For purposes of paragraph (3), bonds issued before the date of the enactment of this subsection shall be taken into account under subparagraph (A)(i) thereof except—

(A) a refunding which occurred before 1986 shall be treated as an advance refunding only if the refunding bond was issued more than 180 days before the redemption of the refunded bond, and

(B) a bond issued before 1986, shall be treated as advance refunded no more than once before March 15, 1986.

(7) Regulations

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

(e) Information reporting

(1) In general

Nothing in section 103(a) or any other provision of law shall be construed to provide an exemption from Federal income tax for interest on any bond unless such bond satisfies the requirements of paragraph (2).

(2) Information reporting requirements

A bond satisfies the requirements of this paragraph if the issuer submits to the Secretary, not later than the 15th day of the 2d calendar month after the close of the calendar quarter in which the bond is issued (or such later time as the Secretary may prescribe with respect to any portion of the statement), a statement concerning the issue of which the bond is a part which contains—

(A) the name and address of the issuer,

(B) the date of issue, the amount of net proceeds of the issue, the stated interest rate, term, and face amount of each bond which is part of the issue, the amount of issuance costs of the issue, and the amount of reserves of the issue,

(C) where required, the name of the applicable elected representative who approved the issue, or a description of the voter referendum by which the issue was approved,

(D) the name, address, and employer identification number of—

(i) each initial principal user of any facility provided with the proceeds of the issue,

(ii) the common parent of any affiliated group of corporations (within the meaning of section 1504(a)) of which such initial principal user is a member, and

(iii) if the issue is treated as a separate issue under section 144(a)(6)(A), any person treated as a principal user under section 144(a)(6)(B),

(E) a description of any property to be financed from the proceeds of the issue,

(F) a certification by a State official designated by State law (or, where there is no such official, the Governor) that the bond meets the requirements of section 146 (relating to cap on private activity bonds), if applicable, and

(G) such other information as the Secretary may require.

Subparagraphs (C) and (D) shall not apply to any bond which is not a private activity bond. The Secretary may provide that certain information specified in the 1st sentence need not be included in the statement with respect to an issue where the inclusion of such information is not necessary to carry out the purposes of this subsection.

(3) Extension of time

The Secretary may grant an extension of time for the filing of any statement required under paragraph (2) if the failure to file in a timely fashion is not due to willful neglect.

(f) Treatment of certain pooled financing bonds

(1) In general

Section 103(a) shall not apply to any pooled financing bond unless, with respect to the issue of which such bond is a part, the requirements of paragraphs (2), (3), (4), and (5) are met.

(2) Reasonable expectation requirement

(A) In general

The requirements of this paragraph are met with respect to an issue if the issuer reasonably expects that—

(i) as of the close of the 1-year period beginning on the date of issuance of the issue, at least 30 percent of the net proceeds of the issue (as of the close of such period) will have been used directly or indirectly to make or finance loans to ultimate borrowers, and

(ii) as of the close of the 3-year period beginning on such date of issuance, at least 95 percent of the net proceeds of the issue (as of the close of such period) will have been so used.

(B) Certain factors may not be taken into account in determining expectations

Expectations as to changes in interest rates or in the provisions of this title (or in the regulations or rulings thereunder) may not be taken into account in determining whether expectations are reasonable for purposes of this paragraph.

(C) Net proceeds

For purposes of subparagraph (A), the term ''net proceeds'' has the meaning given such term by section 150 but shall not include proceeds used to finance issuance costs and shall not include proceeds necessary to pay interest (during such period) on the bonds which are part of the issue.

(D) Refunding bonds

For purposes of subparagraph (A), in the case of a refunding bond, the date of issuance taken into account is the date of issuance of the original bond.

(3) Cost of issuance payment requirements

The requirements of this paragraph are met with respect to an issue if—

(A) the payment of legal and underwriting costs associated with the issuance of the issue is not contingent, and

(B) at least 95 percent of the reasonably expected legal and underwriting costs associated with the issuance of the issue are paid not later than the 180th day after the date of the issuance of the issue.

(4) Written loan commitment requirement

(A) In general

The requirement of this paragraph is met with respect to an issue if the issuer receives prior to issuance written loan commitments identifying the ultimate potential borrowers of at least 30 percent of the net proceeds of such issue.

(B) Exception

Subparagraph (A) shall not apply with respect to any issuer which—

(i) is a State (or an integral part of a State) issuing pooled financing bonds to make or finance loans to subordinate governmental units of such State, or

(ii) is a State-created entity providing financing for water-infrastructure projects through the federally-sponsored State revolving fund program.

(5) Redemption requirement

The requirement of this paragraph is met if to the extent that less than the percentage of the proceeds of an issue required to be used under clause (i) or (ii) of paragraph (2)(A) is used by the close of the period identified in such clause, the issuer uses an amount of proceeds equal to the excess of—

(A) the amount required to be used under such clause, over

(B) the amount actually used by the close of such period,

to redeem outstanding bonds within 90 days after the end of such period.

(6) Pooled financing bond

For purposes of this subsection—

(A) In general

The term ''pooled financing bond'' means any bond issued as part of an issue more than $5,000,000 of the proceeds of which are reasonably expected (at the time of the issuance of the bonds) to be used (or are intentionally used) directly or indirectly to make or finance loans to 2 or more ultimate borrowers.

(B) Exceptions

Such term shall not include any bond if—

(i) section 146 applies to the issue of which such bond is a part (other than by reason of section 141(b)(5)) or would apply but for section 146(i), or

(ii) section 143(*l*)(3) applies to such issue.

(7) Definition of loan; treatment of mixed use issues

(A) Loan

For purposes of this subsection, the term ''loan'' does not include—

(i) any loan which is a nonpurpose investment (within the meaning of section 148(f)(6)(A), determined without regard to section 148(b)(3)), and

(ii) any use of proceeds by an agency of the issuer unless such agency is a political subdivision or instrumentality of the issuer.

(B) Portion of issue to be used for loans treated as separate issue

If only a portion of the proceeds of an issue is reasonably expected (at the time of issuance of the bond) to be used (or is intentionally used) as described in paragraph (6)(A), such portion and the other portion of such issue shall be treated as separate issues for purposes of determining whether such portion meets the requirements of this subsection.

(g) Treatment of hedge bonds

(1) In general

Section 103(a) shall not apply to any hedge bond unless, with respect to the issue of which such bond is a part—

(A) the requirement of paragraph (2) is met, and

(B) the requirement of subsection (f)(3) is met.

(2) Reasonable expectations as to when proceeds will be spent

An issue meets the requirement of this paragraph if the issuer reasonably expects that—

(A) 10 percent of the spendable proceeds of the issue will be spent for the governmental purposes of the issue within the 1-year period beginning on the date the bonds are issued,

(B) 30 percent of the spendable proceeds of the issue will be spent for such purposes within the 2-year period beginning on such date,

(C) 60 percent of the spendable proceeds of the issue will be spent for such purposes within the 3-year period beginning on such date, and

(D) 85 percent of the spendable proceeds of the issue will be spent for such purposes within the 5-year period beginning on such date.

(3) Hedge bond

(A) In general

For purposes of this subsection, the term ''hedge bond'' means any bond issued as part of an issue unless—

(i) the issuer reasonably expects that 85 percent of the spendable proceeds of the issue will be used to carry out the governmental purposes of the issue within the 3-year period beginning on the date the bonds are issued, and

(ii) not more than 50 percent of the proceeds of the issue are invested in nonpurpose investments (as defined in section 148(f)(6)(A)) having a substantially guaranteed yield for 4 years or more.

(B) Exception for investment in tax-exempt bonds not subject to minimum tax

(i) In general

Such term shall not include any bond issued as part of an issue 95 percent of the net proceeds of which are invested in bonds—

(I) the interest on which is not includible in gross income under section 103, and

(II) which are not specified private activity bonds (as defined in section 57(a)(5)(C)).

(ii) Amounts in bona fide debt service fund

Amounts in a bona fide debt service fund shall be treated as invested in bonds described in clause (i).

(iii) Amounts held pending reinvestment or redemption

Amounts held for not more than 30 days pending reinvestment or bond redemption shall be treated as invested in bonds described in clause (i).

(C) Exception for refunding bonds

(i) In general

A refunding bond shall be treated as meeting the requirements of this subsection only if the original bond met such requirements.

(ii) General rule for refunding of pre-effective date bonds

A refunding bond shall be treated as meeting the requirements of this subsection if—

(I) this subsection does not apply to the original bond,

(II) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue, and

(III) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond.

(iii) Refunding of pre-effective date bonds entitled to 5-year temporary period

A refunding bond shall be treated as meeting the requirements of this subsection if—

(I) this subsection does not apply to the original bond,

(II) the issuer reasonably expected that 85 percent of the spendable proceeds of the issue of which the original bond is a part would be used to carry out the governmental purposes of the issue within the 5-year period beginning on the date the original bonds were issued but did not reasonably expect that 85 percent of such proceeds would be so spent within the 3-year period beginning on such date, and

(III) at least 85 percent of the spendable proceeds of the original issue (and

all other prior original issues issued to finance the governmental purposes of such issue) were spent before the date the refunding bonds are issued.

(4) Special rules

For purposes of this subsection—

(A) Construction period in excess of 5 years

The Secretary may, at the request of any issuer, provide that the requirement of paragraph (2) shall be treated as met with respect to the portion of the spendable proceeds of an issue which is to be used for any construction project having a construction period in excess of 5 years if it is reasonably expected that such proceeds will be spent over a reasonable construction schedule specified in such request.

(B) Rules for determining expectations

The rules of subsection (f)(2)(B) shall apply.

(5) Regulations

The Secretary may prescribe regulations to prevent the avoidance of the rules of this subsection, including through the aggregation of projects within a single issue.

(Added Pub. L. 99–514, title XIII, §1301(b), Oct. 22, 1986, 100 Stat. 2646; amended Pub. L. 100–647, title I, §1013(a)(20)–(22), title V, §5051(a), Nov. 10, 1988, 102 Stat. 3542, 3676; Pub. L. 101–239, title VII, §7651(a), Dec. 19, 1989, 103 Stat. 2383; Pub. L. 104–188, title I, §1704(b)(1), Aug. 20, 1996, 110 Stat. 1878; Pub. L. 109–222, title V, §508(a), (b), (d)(1), (2), May 17, 2006, 120 Stat. 361, 362; Pub. L. 110–289, div. C, title I, §3023(a), (b), July 30, 2008, 122 Stat. 2894, 2895; Pub. L. 111–147, title V, §502(a)(2)(A), Mar. 18, 2010, 124 Stat. 107.)

AMENDMENT OF SUBSECTION (a)(2)

Pub. L. 111–147, title V, §502(a)(2)(A), (f), Mar. 18, 2010, 124 Stat. 107, 108, provided that, applicable to obligations issued after the date which is 2 years after Mar. 18, 2010, subsection (a)(2) of this section is amended by inserting ''or'' at the end of subparagraph (A), by substituting a period for '', or'' at the end of subparagraph (B), and by striking subparagraph (C).

REFERENCES IN TEXT

The Northwest Power Act, referred to in subsecs. (b)(3)(A)(iii) and (c)(2)(C)(i), probably means the Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96–501, Dec. 5, 1980, 94 Stat 2697, which is classified principally to chapter 12H (§839 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 839 of Title 16 and Tables.

The date of the enactment of the Tax Reform Act of 1984, referred to in subsec. (b)(3)(A)(iii), is the date of enactment of Pub. L. 98–369, div. A, which was approved July 18, 1984.

The date of the enactment of this clause, referred to in subsec. (b)(3)(A)(iv), is the date of enactment of Pub. L. 110–289, which was approved July 30, 2008.

Section 11(b) of the United States Housing Act of 1937, referred to in subsecs. (b)(3)(C)(i)(I) and (c)(2)(C)(iii), is classified to section 1473i(b) of Title 42, The Public Health and Welfare.

Section 608(a)(6)(A) of Pub. L. 97–468, referred to in subsec. (c)(2)(C)(ii), is classified to section 1207(a)(6)(A) of Title 45, Railroads.

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (c)(2)(C)(ii), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

The date of the enactment of this subsection, referred to in subsec. (d)(6), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

AMENDMENTS

2008—Subsec. (b)(3)(A)(iv). Pub. L. 110–289, §3023(a), added cl. (iv).

Subsec. (b)(3)(E). Pub. L. 110–289, §3023(b), added subpar. (E).

2006—Subsec. (f)(1). Pub. L. 109–222, §508(d)(1), substituted ''paragraphs (2), (3), (4), and (5)'' for ''paragraphs (2) and (3)''.

Subsec. (f)(2)(A). Pub. L. 109–222, §508(a), amended subpar. (A) generally. Prior to amendment, text read as follows: ''The requirements of this paragraph are met with respect to an issue if the issuer reasonably expects that as of the close of the 3-year period beginning on the date of issuance of the issue, at least 95 percent of the net proceeds of the issue (as of the close of such period) will have been used directly or indirectly to make or finance loans to ultimate borrowers.''

Subsec. (f)(4) to (6). Pub. L. 109–222, §508(b), added pars. (4) and (5) and redesignated former par. (4) as (6). Former par. (5) redesignated (7).

Subsec. (f)(7). Pub. L. 109–222, §508(b), redesignated par. (5) as (7).

Subsec. (f)(7)(B). Pub. L. 109–222, §508(d)(2), substituted ''paragraph (6)(A)'' for ''paragraph (4)(A)''.

1996—Subsec. (g)(3)(B)(iii). Pub. L. 104–188 amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''INVESTMENT EARNINGS HELD PENDING REINVESTMENT.—Investment earnings held for not more than 30 days pending reinvestment shall be treated as invested in bonds described in clause (i).''

1989—Subsec. (g). Pub. L. 101–239 added subsec. (g).

1988—Subsec. (b)(3)(A)(iii). Pub. L. 100–647, §1013(a)(20), struck out ''with respect to any bond issued before July 1, 1989'' after ''1984''.

Subsec. (b)(4)(A). Pub. L. 100–647, §1013(a)(21), substituted ''and a qualified student loan bond'' for ''a qualified student loan bond, and a qualified redevelopment bond''.

Subsec. (e)(3). Pub. L. 100–647, §1013(a)(22), substituted ''the failure to file in a timely fashion is not due to willful neglect'' for ''there is reasonable cause for the failure to file such statement in a timely fashion''.

Subsec. (f). Pub. L. 100–647, §5051(a), added subsec. (f).

CHANGE OF NAME

Reference to Veterans' Administration deemed to refer to Department of Veterans Affairs pursuant to section 10 of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–147, title V, §502(f), Mar. 18, 2010, 124 Stat. 108, provided that: ''The amendments made by this section [amending this section, sections 163, 165, 871, 881, 1287, and 4701 of this title, and section 3121 of Title 31, Money and Finance] shall apply to obligations issued after the date which is 2 years after the date of the enactment of this Act [Mar. 18, 2010].''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–289, div. C, title I, §3023(c), July 30, 2008, 122 Stat. 2895, provided that: ''The amendments made by this section [amending this section] shall apply to guarantees made after the date of the enactment of this Act [July 30, 2008].''

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–222 applicable to bonds issued after May 17, 2006, see section 508(e) of Pub. L. 109–222, set out as a note under section 54 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1704(b)(2) of Pub. L. 104–188 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 7651 of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239].''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7651(b) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendment made by subsection (a) [amending this section] shall apply to bonds issued after September 14, 1989.

''(2) BONDS SOLD BEFORE SEPTEMBER 15, 1989.—The amendment made by subsection (a) shall not apply to any bond sold before September 15, 1989, and issued before October 15, 1989.

''(3) BONDS WITH RESPECT TO WHICH PRELIMINARY OFFERING MATERIALS MAILED.—The amendment made by subsection (a) shall not apply to any issue issued after the date of the enactment of this Act [Dec. 19, 1989] if the preliminary offering materials with respect to such issue were mailed (or otherwise delivered) to members of the underwriting syndicate before September 15, 1989.

''(4) CERTAIN OTHER BONDS.—In the case of a bond issued before January 1, 1991, with respect to which official action was taken (or a series of official actions were taken), or other comparable preliminary approval was given, before November 18, 1989, demonstrating an intent to issue such bonds in a maximum specified amount for such issue or with a maximum specified amount of net proceeds of such issue, the issuer may elect to apply section 149(g)(2) of the Internal Revenue Code of 1986 (as added by this section) by substituting '15 percent' for '10 percent' in subparagraph (A) and '50 percent' for '60 percent' in subparagraph (C).

''(5) BONDS ISSUED TO FINANCE SELF-INSURANCE FUNDS.—The amendment made by subsection (a) shall not apply to any bonds issued before July 1, 1990, to finance a self-insurance fund if official action was taken (or a series of official actions were taken), or other comparable preliminary approval was given, before September 15, 1989, demonstrating an intent to issue such bonds in a maximum specified amount for such issue or with a maximum specified amount of net proceeds of such issue.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1013(a)(20)–(22) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 5051(b) of Pub. L. 100–647 provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to bonds issued after October 21, 1988.

''(2) SPECIAL RULE FOR REFUNDING BONDS.—In the case of a bond issued to refund a bond issued before October 22, 1988—

''(A) if the 3-year period described in section 149(f)(2)(A) of the 1986 Code would (but for this paragraph) expire on or before October 22, 1989, such period shall expire on October 21, 1990, and

''(B) if such period expires after October 22, 1989, the portion of the proceeds of the issue of which the refunded bond is a part which is available (on the date of issuance of the refunding issue) to provide loans shall be treated as proceeds of a separate issue (issued after October 21, 1988) for purposes of applying section 149(f) of the 1986 Code.''

EFFECTIVE DATE

Subsec. (e) applicable to bonds issued after Dec. 31, 1986, see section 1311(d) of Pub. L. 99–514, as amended, set out as an Effective Date; Transitional Rules note under section 141 of this title.

TRANSFER OF FUNCTIONS

Federal Savings and Loan Insurance Corporation abolished and its functions transferred, see sections 401 to 406 of Pub. L. 101–73 set out as a note under section 1437 of Title 12, Banks and Banking.

SUBPART C—DEFINITIONS AND SPECIAL RULES

Sec.
150. Definitions and special rules.

§ 150. Definitions and special rules

(a) General rule

For purposes of this part—

(1) Bond

The term ''bond'' includes any obligation.

(2) Governmental unit not to include Federal Government

The term ''governmental unit'' does not include the United States or any agency or instrumentality thereof.

(3) Net proceeds

The term ''net proceeds'' means, with respect to any issue, the proceeds of such issue reduced by amounts in a reasonably required reserve or replacement fund.

(4) 501(c)(3) organization

The term ''501(c)(3) organization'' means any organization described in section 501(c)(3) and exempt from tax under section 501(a).

(5) Ownership of property

Property shall be treated as owned by a governmental unit if it is owned on behalf of such unit.

(6) Tax-exempt bond

The term ''tax-exempt'' means, with respect to any bond (or issue), that the interest on such bond (or on the bonds issued as part of such issue) is excluded from gross income.

(b) Change in use of facilities financed with tax-exempt private activity bonds

(1) Mortgage revenue bonds

(A) In general

In the case of any residence with respect to which financing is provided from the proceeds of a tax-exempt qualified mortgage bond or qualified veterans' mortgage bond, if there is a continuous period of at least 1 year during which such residence is not the principal residence of at least 1 of the mortgagors who received such financing, then no deduction shall be allowed under this chapter for interest on such financing which accrues on or after the date such period began and before the date such residence is again the principal residence of at least 1 of the mortgagors who received such financing.

(B) Exception

Subparagraph (A) shall not apply to the extent the Secretary determines that its application would result in undue hardship and that the failure to meet the requirements of subparagraph (A) resulted from circumstances beyond the mortgagor's control.

(2) Qualified residential rental projects

In the case of any project for residential rental property—

(A) with respect to which financing is provided from the proceeds of any private activity bond which, when issued, purported to be a tax-exempt bond described in paragraph (7) of section 142(a), and

(B) which does not meet the requirements of section 142(d),

no deduction shall be allowed under this chapter for interest on such financing which accrues during the period beginning on the 1st day of the taxable year in which such project fails to meet such requirements and ending on the date such project meets such requirements. If the provisions of prior law corresponding to section 142(d) apply to a refunded bond, such provisions shall apply (in lieu of section 142(d)) to the refunding bond.

(3) Qualified 501(c)(3) bonds

(A) In general

In the case of any facility with respect to which financing is provided from the proceeds of any private activity bond which, when issued, purported to be a tax-exempt qualified 501(c)(3) bond, if any portion of such facility—

(i) is used in a trade or business of any person other than a 501(c)(3) organization or a governmental unit, but

(ii) continues to be owned by a 501(c)(3) organization,

then the owner of such portion shall be treated for purposes of this title as engaged in an unrelated trade or business (as defined in section 513) with respect to such portion. The amount of gross income attributable to such portion for any period shall not be less than the fair rental value of such portion for such period.

(B) Denial of deduction for interest

No deduction shall be allowed under this chapter for interest on financing described in subparagraph (A) which accrues during the period beginning on the date such facility is used as described in subparagraph (A)(i) and ending on the date such facility is not so used.

(4) Certain exempt facility bonds and small issue bonds

(A) In general

In the case of any facility with respect to which financing is provided from the proceeds of any private activity bond to which this paragraph applies, if such facility is not used for a purpose for which a tax-exempt bond could be issued on the date of such issue, no deduction shall be allowed under this chapter for interest on such financing which accrues during the period beginning on the date such facility is not so used and ending on the date such facility is so used.

(B) Bonds to which paragraph applies

This paragraph applies to any private activity bond which, when issued, purported to be a tax-exempt exempt facility bond described in a paragraph (other than paragraph (7)) of section 142(a) or a qualified small issue bond.

(5) Facilities required to be owned by governmental units or 501(c)(3) organizations

If—

(A) financing is provided with respect to any facility from the proceeds of any private activity bond which, when issued, purported to be a tax-exempt bond,

(B) such facility is required to be owned by a governmental unit or a 501(c)(3) organization as a condition of such tax exemption, and

(C) such facility is not so owned,

then no deduction shall be allowed under this chapter for interest on such financing which accrues during the period beginning on the date such facility is not so owned and ending on the date such facility is so owned.

(6) Small issue bonds which exceed capital expenditure limitation

In the case of any financing provided from the proceeds of any bond which, when issued, purported to be a qualified small issue bond, no deduction shall be allowed under this chapter for interest on such financing which accrues during the period such bond is not a qualified small issue bond.

(c) Exception and special rules for purposes of subsection (b)

For purposes of subsection (b)—

(1) Exception

Any use with respect to facilities financed with proceeds of an issue which are not required to be used for the exempt purpose of such issue shall not be taken into account.

(2) Treatment of amounts other than interest

If the amounts payable for the use of a facility are not interest, subsection (b) shall apply to such amounts as if they were interest but only to the extent such amounts for any period do not exceed the amount of interest accrued on the bond financing for such period.

(3) Use of portion of facility

In the case of any person which uses only a portion of the facility, only the interest accruing on the financing allocable to such portion shall be taken into account by such person.

(4) Cessation with respect to portion of facility

In the case of any facility where part but not all of the facility is not used for an exempt purpose, only the interest accruing on the financing allocable to such part shall be taken into account.

(5) Regulations

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

(d) Qualified scholarship funding bond

For purposes of this part and section 103—

(1) Treatment as State or local bond

A qualified scholarship funding bond shall be treated as a State or local bond.

(2) Qualified scholarship funding bond defined

The term ''qualified scholarship funding bond'' means a bond issued by a corporation which—

(A) is a corporation not for profit established and operated exclusively for the purpose of acquiring student loan notes incurred under the Higher Education Act of 1965, and

(B) is organized at the request of the State or 1 or more political subdivisions thereof or is requested to exercise such power by 1 or more political subdivisions and required by its corporate charter and bylaws, or required by State law, to devote any income (after payment of expenses, debt service, and the creation of reserves for the same) to the purchase of additional student loan notes or to pay over any income to the United States.

(3) Election to cease status as qualified scholarship funding corporation

(A) In general

Any qualified scholarship funding bond, and qualified student loan bond, outstanding on the date of the issuer's election under this paragraph (and any bond (or series of bonds) issued to refund such a bond) shall not fail to be a tax-exempt bond solely because the issuer ceases to be described in subparagraphs (A) and (B) of paragraph (2) if the issuer meets the requirements of subparagraphs (B) and (C) of this paragraph.

(B) Assets and liabilities of issuer transferred to taxable subsidiary

The requirements of this subparagraph are met by an issuer if—

(i) all of the student loan notes of the issuer and other assets pledged to secure the repayment of qualified scholarship funding bond indebtedness of the issuer are transferred to another corporation within a reasonable period after the election is made under this paragraph;

(ii) such transferee corporation assumes or otherwise provides for the payment of all of the qualified scholarship funding bond indebtedness of the issuer within a reasonable period after the election is made under this paragraph;

(iii) to the extent permitted by law, such transferee corporation assumes all of the responsibilities, and succeeds to all of the rights, of the issuer under the issuer's agreements with the Secretary of Education in respect of student loans;

(iv) immediately after such transfer, the issuer, together with any other issuer which has made an election under this paragraph in respect of such transferee, hold all of the senior stock in such transferee corporation; and

(v) such transferee corporation is not exempt from tax under this chapter.

(C) Issuer to operate as independent organization described in section 501(c)(3)

The requirements of this subparagraph are met by an issuer if, within a reasonable period after the transfer referred to in subparagraph (B)—

(i) the issuer is described in section 501(c)(3) and exempt from tax under section 501(a);

(ii) the issuer no longer is described in subparagraphs (A) and (B) of paragraph (2); and

(iii) at least 80 percent of the members of the board of directors of the issuer are independent members.

(D) Senior stock

For purposes of this paragraph, the term ''senior stock'' means stock—

(i) which participates pro rata and fully in the equity value of the corporation with all other common stock of the corporation but which has the right to payment of liquidation proceeds prior to payment of liquidation proceeds in respect of other common stock of the corporation;

(ii) which has a fixed right upon liquidation and upon redemption to an amount equal to the greater of—

(I) the fair market value of such stock on the date of liquidation or redemption (whichever is applicable); or

(II) the fair market value of all assets transferred in exchange for such stock and reduced by the amount of all liabilities of the corporation which has made an election under this paragraph assumed by the transferee corporation in such transfer;

(iii) the holder of which has the right to require the transferee corporation to redeem on a date that is not later than 10 years after the date on which an election under this paragraph was made and pursuant to such election such stock was issued; and

(iv) in respect of which, during the time such stock is outstanding, there is not outstanding any equity interest in the corporation having any liquidation, redemption or dividend rights in the corporation which are superior to those of such stock.

(E) Independent member

The term ''independent member'' means a member of the board of directors of the issuer who (except for services as a member of such board) receives no compensation directly or indirectly—

(i) for services performed in connection with such transferee corporation, or

(ii) for services as a member of the board of directors or as an officer of such transferee corporation.

For purposes of clause (ii), the term ''officer'' includes any individual having powers or responsibilities similar to those of officers.

(F) Coordination with certain private foundation taxes

For purposes of sections 4942 (relating to the excise tax on a failure to distribute income) and 4943 (relating to the excise tax on excess business holdings), the transferee corporation referred to in subparagraph (B) shall be treated as a functionally related business (within the meaning of section 4942(j)(4)) with respect to the issuer during the period commencing with the date on which an election is made under this paragraph and ending on the date that is the earlier of—

(i) the last day of the last taxable year for which more than 50 percent of the gross income of such transferee corporation is derived from, or more than 50 percent of the assets (by value) of such transferee corporation consists of, student loan notes incurred under the Higher Education Act of 1965; or

(ii) the last day of the taxable year of the issuer during which occurs the date which is 10 years after the date on which the election under this paragraph is made.

(G) Election

An election under this paragraph may be revoked only with the consent of the Secretary.

(e) Bonds of certain volunteer fire departments

For purposes of this part and section 103—

(1) In general

A bond of a volunteer fire department shall be treated as a bond of a political subdivision of a State if—

(A) such department is a qualified volunteer fire department with respect to an area within the jurisdiction of such political subdivision, and

(B) such bond is issued as part of an issue 95 percent or more of the net proceeds of which are to be used for the acquisition, construction, reconstruction, or improvement of a firehouse (including land which is functionally related and subordinate thereto) or firetruck used or to be used by such department.

(2) Qualified volunteer fire department

For purposes of this subsection, the term ''qualified volunteer fire department'' means, with respect to a political subdivision of a State, any organization—

(A) which is organized and operated to provide firefighting or emergency medical services for persons in an area (within the jurisdiction of such political subdivision) which is not provided with any other firefighting services, and

(B) which is required (by written agreement) by the political subdivision to furnish firefighting services in such area.

For purposes of subparagraph (A), other firefighting services provided in an area shall be disregarded in determining whether an organization is a qualified volunteer fire department if such other firefighting services are provided by a qualified volunteer fire department (determined with the application of this sentence) and such organization and the provider of such other services have been continuously providing firefighting services to such area since January 1, 1981.

(3) Treatment as private activity bonds only for certain purposes

Bonds which are part of an issue which meets the requirements of paragraph (1) shall not be treated as private activity bonds except for purposes of sections 147(f) and 149(d).

(Added Pub. L. 99–514, title XIII, §1301(b), Oct. 22, 1986, 100 Stat. 2651; amended Pub. L. 100–647, title I, §1013(a)(23), (24)(A), (30)–(33), title VI, §6182(a), (b), Nov. 10, 1988, 102 Stat. 3542, 3543, 3729; Pub. L. 104–188, title I, §1614(a), Aug. 20, 1996, 110 Stat. 1851.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (d)(2)(A), (3)(F)(i), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, which is classified generally to chapter 28 (§1001 et seq.) of Title 20, Education, and part C (§2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

AMENDMENTS

1996—Subsec. (d)(3). Pub. L. 104–188 added par. (3).

1988—Subsec. (b)(1)(A). Pub. L. 100–647, §1013(a)(23)(C), inserted ''tax-exempt'' before ''qualified mortgage bond''.

Pub. L. 100–647, §1013(a)(30), inserted before period at end ''and before the date such residence is again the principal residence of at least 1 of the mortgagors who received such financing''.

Subsec. (b)(2). Pub. L. 100–647, §1013(a)(32), inserted at end ''If the provisions of prior law corresponding to section 142(d) apply to a refunded bond, such provisions shall apply (in lieu of section 142(d)) to the refunding bond.''

Subsec. (b)(2)(A). Pub. L. 100–647, §1013(a)(31), substituted ''described in paragraph'' for ''described paragraph''.

Subsec. (b)(4). Pub. L. 100–647, §1013(a)(23)(A), (B), inserted ''and small issue bonds'' after ''bonds'' in heading, and ''or a qualified small issue bond'' before period at end of subpar. (B).

Subsec. (b)(6). Pub. L. 100–647, §1013(a)(33), added par. (6).

Subsec. (e)(1)(B). Pub. L. 100–647, §6182(b), inserted ''(including land which is functionally related and subordinate thereto)'' after ''a firehouse''.

Subsec. (e)(2). Pub. L. 100–647, §6182(a), inserted at end ''For purposes of subparagraph (A), other firefighting services provided in an area shall be disregarded in determining whether an organization is a qualified volunteer fire department if such other firefighting services are provided by a qualified volunteer fire department (determined with the application of this sentence) and such organization and the provider of such other services have been continuously providing firefighting services to such area since January 1, 1981.''

Subsec. (e)(3). Pub. L. 100–647, §1013(a)(24)(A), added par. (3).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1614(b) of Pub. L. 104–188 provided that: ''The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 20, 1996].''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1013(a)(24)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to bonds issued after October 21, 1988.''

Amendment by section 1013(a)(23), (30)–(33) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6182(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section] shall apply to bonds issued after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE

Section applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, with subsec. (b) applica-

ble to changes in use (and ownership) after Aug. 15, 1986, but only with respect to financing (including refinancings) provided after such date, and with subsec. (d) applicable to payments made after Aug. 15, 1986, see sections 1311 to 1318 of Pub. L. 99–514, as amended, set out as an Effective Date; Transitional Rules note under section 141 of this title.

PART V—DEDUCTIONS FOR PERSONAL EXEMPTIONS

Sec.
151. Allowance of deductions for personal exemptions.
152. Dependent defined.
153. Cross references.

AMENDMENTS

1976—Pub. L. 94–455, title XIX, § 1901(b)(7)(A)(ii), Oct. 4, 1976, 90 Stat. 1794, redesignated item 154 as 153 and struck out former item 153 ''Determination of marital status''.

§ 151. Allowance of deductions for personal exemptions

(a) Allowance of deductions

In the case of an individual, the exemptions provided by this section shall be allowed as deductions in computing taxable income.

(b) Taxpayer and spouse

An exemption of the exemption amount for the taxpayer; and an additional exemption of the exemption amount for the spouse of the taxpayer if a joint return is not made by the taxpayer and his spouse, and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(c) Additional exemption for dependents

An exemption of the exemption amount for each individual who is a dependent (as defined in section 152) of the taxpayer for the taxable year.

(d) Exemption amount

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the term ''exemption amount'' means $2,000.

(2) Exemption amount disallowed in case of certain dependents

In the case of an individual with respect to whom a deduction under this section is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, the exemption amount applicable to such individual for such individual's taxable year shall be zero.

(3) Phaseout

(A) In general

In the case of any taxpayer whose adjusted gross income for the taxable year exceeds the threshold amount, the exemption amount shall be reduced by the applicable percentage.

(B) Applicable percentage

For purposes of subparagraph (A), the term ''applicable percentage'' means 2 percentage points for each $2,500 (or fraction thereof) by which the taxpayer's adjusted gross income for the taxable year exceeds the threshold amount. In the case of a married individual filing a separate return, the preceding sentence shall be applied by substituting ''$1,250'' for ''$2,500''. In no event shall the applicable percentage exceed 100 percent.

(C) Threshold amount

For purposes of this paragraph, the term ''threshold amount'' means—

(i) $150,000 in the case of a joint return or a surviving spouse (as defined in section 2(a)),

(ii) $125,000 in the case of a head of a household (as defined in section 2(b),[1]

(iii) $100,000 in the case of an individual who is not married and who is not a surviving spouse or head of a household, and

(iv) $75,000 in the case of a married individual filing a separate return.

For purposes of this paragraph, marital status shall be determined under section 7703.

(D) Coordination with other provisions

The provisions of this paragraph shall not apply for purposes of determining whether a deduction under this section with respect to any individual is allowable to another taxpayer for any taxable year.

(E) Reduction of phaseout

(i) In general

In the case of taxable years beginning after December 31, 2005, and before January 1, 2010, the reduction under subparagraph (A) shall be equal to the applicable fraction of the amount which would (but for this subparagraph) be the amount of such reduction.

(ii) Applicable fraction

For purposes of clause (i), the applicable fraction shall be determined in accordance with the following table:

For taxable years beginning in calendar year—	The applicable fraction is—
2006 and 2007	2/3
2008 and 2009	1/3.

(F) Termination

This paragraph shall not apply to any taxable year beginning after December 31, 2009.

(4) Inflation adjustments

(A) Adjustment to basic amount of exemption

In the case of any taxable year beginning in a calendar year after 1989, the dollar amount contained in paragraph (1) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting ''calendar year 1988'' for ''calendar year 1992'' in subparagraph (B) thereof.

[1] So in original. A closing parenthesis probably should precede the comma.

(B) Adjustment to threshold amounts for years after 1991

In the case of any taxable year beginning in a calendar year after 1991, each dollar amount contained in paragraph (3)(C) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting ''calendar year 1990'' for ''calendar year 1992'' in subparagraph (B) thereof.

(e) Identifying information required

No exemption shall be allowed under this section with respect to any individual unless the TIN of such individual is included on the return claiming the exemption.

(Aug. 16, 1954, ch. 736, 68A Stat. 42; Pub. L. 91–172, title VIII, §801(a)(1), (b)(1), (c)(1), (d)(1), title IX, §941(b), Dec. 30, 1969, 83 Stat. 675, 676, 726; Pub. L. 92–178, title II, §201(a)(1), (b)(1), (c), Dec. 10, 1971, 85 Stat. 510, 511; Pub. L. 94–455, title XIX, §1901(a)(23), Oct. 4, 1976, 90 Stat. 1767; Pub. L. 95–600, title I, §102(a), Nov. 6, 1978, 92 Stat. 2771; Pub. L. 97–34, title I, §104(c), Aug. 13, 1981, 95 Stat. 189; Pub. L. 98–369, div. A, title IV, §426(a), July 18, 1984, 98 Stat. 804; Pub. L. 99–514, title I, §103, title XVIII, §1847(b)(3), Oct. 22, 1986, 100 Stat. 2102, 2856; Pub. L. 100–647, title VI, §6010(a), Nov. 10, 1988, 102 Stat. 3691; Pub. L. 101–508, title XI, §§11101(d)(1)(F), 11104(a), Nov. 5, 1990, 104 Stat. 1388–405, 1388–407; Pub. L. 102–318, title V, §511, July 3, 1992, 106 Stat. 300; Pub. L. 103–66, title XIII, §§13201(b)(3)(G), 13205, Aug. 10, 1993, 107 Stat. 459, 462; Pub. L. 104–188, title I, §§1615(a)(1), 1702(a)(2), Aug. 20, 1996, 110 Stat. 1853, 1868; Pub. L. 106–554, §1(a)(7) [title III, §306(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–634; Pub. L. 107–16, title I, §102(a), June 7, 2001, 115 Stat. 44; Pub. L. 107–147, title IV, §§412(b), 417(6), Mar. 9, 2002, 116 Stat. 53, 56; Pub. L. 108–311, title II, §206, Oct. 4, 2004, 118 Stat. 1176.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENT OF SECTION

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–311 reenacted heading without change and amended text generally. Prior to amendment, text consisted of pars. (1) to (6) relating to additional exemption for dependents in general, exemption denied in case of certain married dependents, child defined, student defined, certain income of handicapped dependents not taken into account, and treatment of missing children, respectively.

2002—Subsec. (c)(6)(B)(iii). Pub. L. 107–147, §417(6), inserted ''as'' before ''such terms''.

Subsec. (c)(6)(C). Pub. L. 107–147, §412(b), substituted ''for principal place of abode requirements'' for ''for earned income credit'' in heading, ''An'' for ''For purposes of section 32, an'' in introductory provisions, and ''principal place of abode requirements of section 2(a)(1)(B), section 2(b)(1)(A), and section 32(c)(3)(A)(ii)'' for ''requirement of section 32(c)(3)(A)(ii)'' in concluding provisions.

2001—Subsec. (d)(3)(E), (F). Pub. L. 107—16, §§102(a), 901, temporarily added subpars. (E) and (F). See Effective and Termination Dates of 2001 Amendment note below.

2000—Subsec. (c)(6). Pub. L. 106–554 added par. (6).

1996—Subsec. (d)(3)(C)(i). Pub. L. 104–188, §1702(a)(2), substituted ''joint return'' for ''joint of a return''.

Subsec. (e). Pub. L. 104–188, §1615(a)(1), added subsec. (e).

1993—Subsec. (d)(3)(E). Pub. L. 103–66, §13205, struck out heading and text of subpar. (E). Text read as follows: ''This paragraph shall not apply to any taxable year beginning after December 31, 1996.''

Subsec. (d)(4)(A)(ii), (B)(ii). Pub. L. 103–66, §13201(b)(3)(G), substituted ''1992'' for ''1989''.

1992—Subsec. (d)(3)(E). Pub. L. 102–318 substituted ''1996'' for ''1995''.

1990—Subsec. (d). Pub. L. 101–508, §11104(a), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''For purposes of this section—

''(1) IN GENERAL.—Except as provided in paragraph (2), the term 'exemption amount' means—

''(A) $1,900 for taxable years beginning during 1987,

''(B) $1,950 for taxable years beginning during 1988, and

''(C) $2,000 for taxable years beginning after December 31, 1988.

''(2) EXEMPTION AMOUNT DISALLOWED IN THE CASE OF CERTAIN DEPENDENTS.—In the case of an individual with respect to whom a deduction under this section is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, the exemption amount applicable to such individual for such individual's taxable year shall be zero.

''(3) INFLATION ADJUSTMENT FOR YEARS AFTER 1989.—In the case of any taxable year beginning in a calendar year after 1989, the dollar amount contained in paragraph (1)(C) shall be increased by an amount equal to—

''(A) such dollar amount, multiplied by

''(B) the cost-of-living adjustment determined under section 1(f)(3), for the calendar year in which the taxable year begins, by substituting 'calendar year 1988' for 'calendar year 1987' in subparagraph (B) thereof.''

Subsec. (d)(3)(B). Pub. L. 101–508, §11101(d)(1)(F), substituted ''1989'' for ''1987''.

1988—Subsec. (c)(1)(B)(ii). Pub. L. 100–647 inserted ''who has not attained the age of 24 at the close of such calendar year'' after ''student''.

1986—Subsec. (c). Pub. L. 99–514, §103(b), redesignated subsec. (e) as (c) and struck out former subsec. (c) which provided for an additional exemption for taxpayer or spouse aged 65 or more.

Subsec. (d). Pub. L. 99–514, §103(b), redesignated subsec. (f) as (d) and struck out former subsec. (d) which provided for an additional exemption for blindness of taxpayer or spouse.

Subsec. (e). Pub. L. 99–514, §103(b), redesignated subsec. (e) as (c).

Pub. L. 99–514, §1847(b)(3), substituted ''section 22(e)'' for ''section 37(e)'' in par. (5)(C).

Subsec. (f). Pub. L. 99–514, §103(b), redesignated subsec. (f) as (d).

Pub. L. 99–514, §103(a), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: ''For purposes of this section, the term 'exemption amount' means, with respect to any taxable year, $1,000 increased by an amount equal to $1,000 multiplied by the cost-of-living adjustment (as defined in section 1(f)(3)) for the calendar year in which the taxable year begins. If the amount determined under the preceding sentence is not a multiple of $10, such amount shall be rounded to the nearest multiple of $10 (or if such amount is a multiple of $5, such amount shall be increased to the next highest multiple of $10).''

1984—Subsec. (e)(5). Pub. L. 98–369 added par. (5).

1981—Subsecs. (b), (c), (d)(1), (2), (e)(1). Pub. L. 97–34, §104(c)(1), substituted ''the exemption amount'' for ''$1,000'' wherever appearing.

Subsec. (f). Pub. L. 97–34, § 104(c)(2), added subsec. (f).

1978—Pub. L. 95–600 increased exemption from $750 to $1,000 with respect to taxable years beginning after Dec. 31, 1978.

1976—Subsec. (e)(4). Pub. L. 94–455 struck out ''and educational institution'' after ''Student'' in heading, substituted in subpars. (A) and (B) ''organization described in section 170(b)(1)(A)(ii)'' for ''institution'', and struck out provisions following subpar. (B) defining educational institution.

1971—Pub. L. 92–178 increased exemption from $650 to $675 with respect to taxable years beginning after Dec. 31, 1970, and before Jan. 1, 1972, and from $675 to $750 with respect to taxable years beginning after Dec. 31, 1971.

1969—Pub. L. 91–172, § 801(a)(1), (b)(1), (c)(1), (d)(1), increased exemption from $600 to $625 with respect to taxable years beginning after Dec. 31, 1969, and before Jan. 1, 1971, from $625 to $650 for taxable years beginning after Dec. 31, 1970, and before Jan. 1, 1972, from $650 to $700 for taxable years beginning after Dec. 31, 1971, and before Jan. 1, 1973, and from $700 to $750 for taxable years beginning after Dec. 31, 1972.

Subsecs. (b), (c), Pub. L. 91–172, § 941(b), substituted ''if a joint return is not made by the taxpayer and his spouse'' for ''if a separate return is made by the taxpayer''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title IV, § 412(e), Mar. 9, 2002, 116 Stat. 54, provided that: ''The amendments made by this section [amending this section and sections 358, 469, 1091, 1233, 1234A, and 1234B of this title] shall take effect as if included in the provisions of the Community Renewal Tax Relief Act of 2000 [H.R. 5662, as enacted by section 1(a)(7) of Pub. L. 106–554, Dec. 21, 2000, 114 Stat. 2763, 2763A–587] to which they relate.''

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Pub. L. 107–16, title I, § 102(b), June 7, 2001, 115 Stat. 44, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2005.''

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(7) [title III, § 306(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–635, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Dec. 21, 2000].''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1615(a)(1) of Pub. L. 104–188 applicable with respect to returns the due date for which, without regard to extensions, is on or after the 30th day after Aug. 20, 1996, with special rule for 1995 and 1996, see section 1615(d) of Pub. L. 104–188, set out as a note under section 21 of this title.

Amendment by section 1702(a)(2) of Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13201(b)(3)(G) of Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see section 13201(c) of Pub. L. 103–66, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11101(d)(1)(F) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11101(e) of Pub. L. 101–508, set out as a note under section 1 of this title.

Amendment by section 11104(a) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11104(c) of Pub. L. 101–508, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 6010(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 103 of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1847(b)(3) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 426(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1984.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1984, see section 104(e) of Pub. L. 97–34, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 102(d)(1) of Pub. L. 95–600 provided that: ''The amendments made by subsections (a) and (b) [amending this section and sections 6012 and 6013 of this title] shall apply to taxable years beginning after December 31, 1978.''

EFFECTIVE DATE OF 1976 AMENDMENT

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

EFFECTIVE DATE OF 1971 AMENDMENT

Section 201(a), (b) of Pub. L. 92–178 provided in part that the increase in exemption from $650 to $675 was effective with respect to taxable years beginning after Dec. 31, 1970, and before Jan. 1, 1972, and from $675 to $750 was effective with respect to taxable years beginning after Dec. 31, 1971.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 801(a)(1) of Pub. L. 91–172 provided in part that the increase in exemption from $600 to $625 is effective with respect to taxable years beginning after Dec. 31, 1969, and before Jan. 1, 1971.

Section 801(b)(1) of Pub. L. 91–172 provided in part that the increase in the exemption from $625 to $650 is effective with respect to taxable years beginning after Dec. 31, 1970, and before Jan. 1, 1972.

Section 941(c) of Pub. L. 91–172 provided that: ''The amendments made by subsections (a) [amending section 6012 of this title] and (b) [amending this section] shall apply to taxable years beginning after December 31, 1969.''

REPEALS

Section 801(c)(1), (d)(1) of Pub. L. 91–172 provided for an increase in the personal exemption to $700, effective with respect to taxable years beginning after Dec. 31, 1971, and before Jan. 1, 1973, and to $750, effective with respect to taxable years beginning after Dec. 31, 1972, prior to repeal by section 201(c) of Pub. L. 92–178.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 152. Dependent defined

(a) In general

For purposes of this subtitle, the term ''dependent'' means—

(1) a qualifying child, or

(2) a qualifying relative.

(b) Exceptions

For purposes of this section—

(1) Dependents ineligible

If an individual is a dependent of a taxpayer for any taxable year of such taxpayer beginning in a calendar year, such individual shall be treated as having no dependents for any taxable year of such individual beginning in such calendar year.

(2) Married dependents

An individual shall not be treated as a dependent of a taxpayer under subsection (a) if such individual has made a joint return with the individual's spouse under section 6013 for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

(3) Citizens or nationals of other countries

(A) In general

The term ''dependent'' does not include an individual who is not a citizen or national of the United States unless such individual is a resident of the United States or a country contiguous to the United States.

(B) Exception for adopted child

Subparagraph (A) shall not exclude any child of a taxpayer (within the meaning of subsection (f)(1)(B)) from the definition of ''dependent'' if—

(i) for the taxable year of the taxpayer, the child has the same principal place of abode as the taxpayer and is a member of the taxpayer's household, and

(ii) the taxpayer is a citizen or national of the United States.

(c) Qualifying child

For purposes of this section—

(1) In general

The term ''qualifying child'' means, with respect to any taxpayer for any taxable year, an individual—

(A) who bears a relationship to the taxpayer described in paragraph (2),

(B) who has the same principal place of abode as the taxpayer for more than one-half of such taxable year,

(C) who meets the age requirements of paragraph (3),

(D) who has not provided over one-half of such individual's own support for the calendar year in which the taxable year of the taxpayer begins, and

(E) who has not filed a joint return (other than only for a claim of refund) with the individual's spouse under section 6013 for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

(2) Relationship

For purposes of paragraph (1)(A), an individual bears a relationship to the taxpayer described in this paragraph if such individual is—

(A) a child of the taxpayer or a descendant of such a child, or

(B) a brother, sister, stepbrother, or stepsister of the taxpayer or a descendant of any such relative.

(3) Age requirements

(A) In general

For purposes of paragraph (1)(C), an individual meets the requirements of this paragraph if such individual is younger than the taxpayer claiming such individual as a qualifying child and—

(i) has not attained the age of 19 as of the close of the calendar year in which the taxable year of the taxpayer begins, or

(ii) is a student who has not attained the age of 24 as of the close of such calendar year.

(B) Special rule for disabled

In the case of an individual who is permanently and totally disabled (as defined in section 22(e)(3)) at any time during such calendar year, the requirements of subparagraph (A) shall be treated as met with respect to such individual.

(4) Special rule relating to 2 or more who can claim the same qualifying child

(A) In general

Except as provided in subparagraphs (B) and (C), if (but for this paragraph) an individual may be claimed as a qualifying child by 2 or more taxpayers for a taxable year beginning in the same calendar year, such individual shall be treated as the qualifying child of the taxpayer who is—

(i) a parent of the individual, or

(ii) if clause (i) does not apply, the taxpayer with the highest adjusted gross income for such taxable year.

(B) More than 1 parent claiming qualifying child

If the parents claiming any qualifying child do not file a joint return together, such child shall be treated as the qualifying child of—

(i) the parent with whom the child resided for the longest period of time during the taxable year, or

(ii) if the child resides with both parents for the same amount of time during such taxable year, the parent with the highest adjusted gross income.

(C) No parent claiming qualifying child

If the parents of an individual may claim such individual as a qualifying child but no parent so claims the individual, such individual may be claimed as the qualifying child of another taxpayer but only if the adjusted gross income of such taxpayer is higher than the highest adjusted gross income of any parent of the individual.

(d) Qualifying relative

For purposes of this section—

(1) In general

The term ''qualifying relative'' means, with respect to any taxpayer for any taxable year, an individual—

(A) who bears a relationship to the taxpayer described in paragraph (2),

(B) whose gross income for the calendar year in which such taxable year begins is less than the exemption amount (as defined in section 151(d)),

(C) with respect to whom the taxpayer provides over one-half of the individual's support for the calendar year in which such taxable year begins, and

(D) who is not a qualifying child of such taxpayer or of any other taxpayer for any taxable year beginning in the calendar year in which such taxable year begins.

(2) Relationship

For purposes of paragraph (1)(A), an individual bears a relationship to the taxpayer described in this paragraph if the individual is any of the following with respect to the taxpayer:

(A) A child or a descendant of a child.

(B) A brother, sister, stepbrother, or stepsister.

(C) The father or mother, or an ancestor of either.

(D) A stepfather or stepmother.

(E) A son or daughter of a brother or sister of the taxpayer.

(F) A brother or sister of the father or mother of the taxpayer.

(G) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law.

(H) An individual (other than an individual who at any time during the taxable year was the spouse, determined without regard to section 7703, of the taxpayer) who, for the taxable year of the taxpayer, has the same principal place of abode as the taxpayer and is a member of the taxpayer's household.

(3) Special rule relating to multiple support agreements

For purposes of paragraph (1)(C), over one-half of the support of an individual for a calendar year shall be treated as received from the taxpayer if—

(A) no one person contributed over one-half of such support,

(B) over one-half of such support was received from 2 or more persons each of whom, but for the fact that any such person alone did not contribute over one-half of such support, would have been entitled to claim such individual as a dependent for a taxable year beginning in such calendar year,

(C) the taxpayer contributed over 10 percent of such support, and

(D) each person described in subparagraph (B) (other than the taxpayer) who contributed over 10 percent of such support files a written declaration (in such manner and form as the Secretary may by regulations prescribe) that such person will not claim such individual as a dependent for any taxable year beginning in such calendar year.

(4) Special rule relating to income of handicapped dependents

(A) In general

For purposes of paragraph (1)(B), the gross income of an individual who is permanently and totally disabled (as defined in section 22(e)(3)) at any time during the taxable year shall not include income attributable to services performed by the individual at a sheltered workshop if—

(i) the availability of medical care at such workshop is the principal reason for the individual's presence there, and

(ii) the income arises solely from activities at such workshop which are incident to such medical care.

(B) Sheltered workshop defined

For purposes of subparagraph (A), the term ''sheltered workshop'' means a school—

(i) which provides special instruction or training designed to alleviate the disability of the individual, and

(ii) which is operated by an organization described in section 501(c)(3) and exempt from tax under section 501(a), or by a State, a possession of the United States, any political subdivision of any of the foregoing, the United States, or the District of Columbia.

(5) Special rules for support

For purposes of this subsection—

(A) payments to a spouse which are includible in the gross income of such spouse under section 71 or 682 shall not be treated as a payment by the payor spouse for the support of any dependent, and

(B) in the case of the remarriage of a parent, support of a child received from the parent's spouse shall be treated as received from the parent.

(e) Special rule for divorced parents, etc.

(1) In general

Notwithstanding subsection (c)(1)(B), (c)(4), or (d)(1)(C), if—

(A) a child receives over one-half of the child's support during the calendar year from the child's parents—

(i) who are divorced or legally separated under a decree of divorce or separate maintenance,

(ii) who are separated under a written separation agreement, or

(iii) who live apart at all times during the last 6 months of the calendar year, and—

(B) such child is in the custody of 1 or both of the child's parents for more than one-half of the calendar year, such child shall be treated as being the qualifying child or qualifying relative of the noncustodial parent for a calendar year if the requirements described in paragraph (2) or (3) are met.

(2) Exception where custodial parent releases claim to exemption for the year

For purposes of paragraph (1), the requirements described in this paragraph are met with respect to any calendar year if—

(A) the custodial parent signs a written declaration (in such manner and form as the Secretary may by regulations prescribe) that such custodial parent will not claim such child as a dependent for any taxable year beginning in such calendar year, and

(B) the noncustodial parent attaches such written declaration to the noncustodial parent's return for the taxable year beginning during such calendar year.

(3) Exception for certain pre-1985 instruments

(A) In general

For purposes of paragraph (1), the requirements described in this paragraph are met with respect to any calendar year if—

(i) a qualified pre-1985 instrument between the parents applicable to the taxable year beginning in such calendar year provides that the noncustodial parent shall be entitled to any deduction allowable under section 151 for such child, and

(ii) the noncustodial parent provides at least $600 for the support of such child during such calendar year.

For purposes of this subparagraph, amounts expended for the support of a child or children shall be treated as received from the noncustodial parent to the extent that such parent provided amounts for such support.

(B) Qualified pre-1985 instrument

For purposes of this paragraph, the term ''qualified pre-1985 instrument'' means any decree of divorce or separate maintenance or written agreement—

(i) which is executed before January 1, 1985,

(ii) which on such date contains the provision described in subparagraph (A)(i), and

(iii) which is not modified on or after such date in a modification which expressly provides that this paragraph shall not apply to such decree or agreement.

(4) Custodial parent and noncustodial parent

For purposes of this subsection—

(A) Custodial parent

The term ''custodial parent'' means the parent having custody for the greater portion of the calendar year.

(B) Noncustodial parent

The term ''noncustodial parent'' means the parent who is not the custodial parent.

(5) Exception for multiple-support agreement

This subsection shall not apply in any case where over one-half of the support of the child is treated as having been received from a taxpayer under the provision of subsection (d)(3).

(6) Special rule for support received from new spouse of parent

For purposes of this subsection, in the case of the remarriage of a parent, support of a child received from the parent's spouse shall be treated as received from the parent.

(f) Other definitions and rules

For purposes of this section—

(1) Child defined

(A) In general

The term ''child'' means an individual who is—

(i) a son, daughter, stepson, or stepdaughter of the taxpayer, or

(ii) an eligible foster child of the taxpayer.

(B) Adopted child

In determining whether any of the relationships specified in subparagraph (A)(i) or paragraph (4) exists, a legally adopted individual of the taxpayer, or an individual who is lawfully placed with the taxpayer for legal adoption by the taxpayer, shall be treated as a child of such individual by blood.

(C) Eligible foster child

For purposes of subparagraph (A)(ii), the term ''eligible foster child'' means an individual who is placed with the taxpayer by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.

(2) Student defined

The term ''student'' means an individual who during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins—

(A) is a full-time student at an educational organization described in section 170(b)(1)(A)(ii), or

(B) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational organization described in section 170(b)(1)(A)(ii) or of a State or political subdivision of a State.

(3) Determination of household status

An individual shall not be treated as a member of the taxpayer's household if at any time during the taxable year of the taxpayer the relationship between such individual and the taxpayer is in violation of local law.

(4) Brother and sister

The terms ''brother'' and ''sister'' include a brother or sister by the half blood.

(5) Special support test in case of students

For purposes of subsections (c)(1)(D) and (d)(1)(C), in the case of an individual who is—

(A) a child of the taxpayer, and

(B) a student,

amounts received as scholarships for study at an educational organization described in section 170(b)(1)(A)(ii) shall not be taken into account.

(6) Treatment of missing children

(A) In general

Solely for the purposes referred to in subparagraph (B), a child of the taxpayer—

(i) who is presumed by law enforcement authorities to have been kidnapped by someone who is not a member of the family of such child or the taxpayer, and

(ii) who had, for the taxable year in which the kidnapping occurred, the same principal place of abode as the taxpayer for more than one-half of the portion of such year before the date of the kidnapping,

shall be treated as meeting the requirement of subsection (c)(1)(B) with respect to a taxpayer for all taxable years ending during the period that the child is kidnapped.

(B) Purposes

Subparagraph (A) shall apply solely for purposes of determining—

(i) the deduction under section 151(c),

(ii) the credit under section 24 (relating to child tax credit),

(iii) whether an individual is a surviving spouse or a head of a household (as such terms are defined in section 2), and

(iv) the earned income credit under section 32.

(C) Comparable treatment of certain qualifying relatives

For purposes of this section, a child of the taxpayer—

(i) who is presumed by law enforcement authorities to have been kidnapped by someone who is not a member of the family of such child or the taxpayer, and

(ii) who was (without regard to this paragraph) a qualifying relative of the taxpayer for the portion of the taxable year before the date of the kidnapping,

shall be treated as a qualifying relative of the taxpayer for all taxable years ending during the period that the child is kidnapped.

(D) Termination of treatment

Subparagraphs (A) and (C) shall cease to apply as of the first taxable year of the taxpayer beginning after the calendar year in which there is a determination that the child is dead (or, if earlier, in which the child would have attained age 18).

(7) Cross references

For provision treating child as dependent of both parents for purposes of certain provisions, see sections 105(b), 132(h)(2)(B), and 213(d)(5).

(Aug. 16, 1954, ch. 736, 68A Stat. 43; Aug. 9, 1955, ch. 693, § 2, 69 Stat. 626; Pub. L. 85–866, title I, § 4(a)–(c), Sept. 2, 1958, 72 Stat. 1607; Pub. L. 86–376, § 1(a), Sept. 23, 1959, 73 Stat. 699; Pub. L. 90–78, § 1, Aug. 31, 1967, 81 Stat. 191; Pub. L. 91–172, title IX, § 912(a), Dec. 30, 1969, 83 Stat. 722; Pub. L. 92–580, § 1(a), Oct. 27, 1972, 86 Stat. 1276; Pub. L. 94–455, title XIX, §§ 1901(a)(24), (b)(7)(B), (8)(A), 1906(b)(13)(A), title XXI, § 2139(a), Oct. 4, 1976, 90 Stat. 1767, 1794, 1834, 1932; Pub. L. 98–369, div. A, title IV, §§ 423(a), 482(b)(2), July 18, 1984, 98 Stat. 799, 848; Pub. L. 99–514, title I, § 104(b)(1)(B), (3), title XIII, § 1301(j)(8), Oct. 22, 1986, 100 Stat. 2104, 2105, 2658; Pub. L. 108–311, title II, § 201, Oct. 4, 2004, 118 Stat. 1169; Pub. L. 109–135, title IV, § 404(a), Dec. 21, 2005, 119 Stat. 2632; Pub. L. 110–351, title V, § 501(a), (b), (c)(2), Oct. 7, 2008, 122 Stat. 3979, 3980.)

AMENDMENTS

2008—Subsec. (c)(1)(E). Pub. L. 110–351, § 501(b), added subpar. (E).

Subsec. (c)(3)(A). Pub. L. 110–351, § 501(a), inserted ''is younger than the taxpayer claiming such individual as a qualifying child and'' after ''such individual'' in introductory provisions.

Subsec. (c)(4). Pub. L. 110–351, § 501(c)(2)(B)(ii), substituted ''who can claim the same'' for ''claiming'' in heading.

Subsec. (c)(4)(A). Pub. L. 110–351, § 501(c)(2)(B)(i), substituted ''Except as provided in subparagraphs (B) and (C), if (but for this paragraph) an individual may be claimed as a qualifying child by 2 or more taxpayers'' for ''Except as provided in subparagraph (B), if (but for this paragraph) an individual may be and is claimed as a qualifying child by 2 or more taxpayers'' in introductory provisions.

Subsec. (c)(4)(C). Pub. L. 110–351, § 501(c)(2)(A), added subpar. (C).

2005—Subsec. (e). Pub. L. 109–135 amended heading and text of subsec. (e) generally. Prior to amendment, text consisted of pars. (1) to (4) relating to special rule for divorced parents, requirements for divorced parents, definitions of custodial and noncustodial parent, and exception for multiple-support agreements.

2004—Pub. L. 108–311 reenacted section catchline without change and amended text generally. Prior to amendment, section consisted of subsecs. (a) to (e) relating to general definition of dependent, rules relating to general definition, multiple support agreements, special support test in case of students, and support test in case of child of divorced parents, etc., respectively.

1986—Subsec. (a)(9). Pub. L. 99–514, § 1301(j)(8), substituted ''section 7703'' for ''section 143''.

Subsec. (d)(2). Pub. L. 99–514, § 104(b)(3), substituted ''section 151(c)(4)'' for ''section 151(e)(4)''.

Subsec. (e)(1)(A). Pub. L. 99–514, § 104(b)(1)(B), substituted ''section 151(c)(3)'' for ''section 151(e)(3)''.

1984—Subsec. (e). Pub. L. 98–369, § 423(a), amended subsec. (e) generally, and in substantially revising support test provisions, enacted par. (1) custodial parent exemption, former par. (1) declaring the general rule that where a child received over one-half of his calendar year support from parents who were divorced or legally separated under a decree of divorce or separate maintenance, or were separated under a written separation agreement and the child was in the custody of one or both parents for more than one-half of the calendar year, the child would be treated as receiving over half of his support from the parent having custody for a greater portion of the calendar year unless treated under special rule provision as having received over half of his support from the parent not having custody; enacted par. (2) release of custodial parent exemption for the year, former par. (2) declaring the special rule that parent without custody would be deemed as furnishing over half of the support where the decree of divorce or separate maintenance, or written agreement, covering the taxable year, provided that parent without custody should be entitled to the section 151 deduction for the child and such parent provided at least $600 calendar year support, or alternatively, such parent without custody provided $1,200 or more calendar year support and the parent with custody did not establish more support of the child than the parent without custody; redesignated as par. (3) former par. (4) provision respecting exception for multiple-support agreement, deleting former par. (3) respecting requirement of an itemized statement of expenditures to resolve more

support claims; added par. (4) respecting exception for certain pre-1985 instruments; added par. (5) enunciating special rule for support received from new spouse of parent, deleting former par. (5) regulations prescription provision; and added par. (6) cross reference provision.

Subsec. (e)(6). Pub. L. 98–369, §482(b)(2), substituted ''section 213(d)(5)'' for ''section 213(d)(4)''.

1976—Subsec. (a)(9). Pub. L. 94–455, §1901(b)(7)(B), substituted ''section 143'' for ''section 153''.

Subsec. (a)(10). Pub. L. 94–455, §1901(a)(24)(A), struck out par. (10) relating to descendents of a taxpayer, who were members of taxpayer's household, before receiving institutional care.

Subsec. (b)(3). Pub. L. 94–455, §1901(a)(24)(B), among other changes struck out ''of the Canal Zone, or of the Republic of Panama'' after ''country contiguous to the United States,'' and provisions relating to children born or adopted in Philippines.

Subsec. (c)(4). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d). Pub. L. 94–455, §1901(b)(8)(A), substituted ''organization described in section 170(b)(1)(A)(ii)'' for ''institution (as defined in section 151(e)(4))''.

Subsec. (e)(2)(B)(i). Pub. L. 94–455, §2139(a), substituted ''each'' for ''all''.

Subsec. (e)(3), (5). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

1972—Subsec. (b)(3). Pub. L. 92–580 substituted ''citizen or national of the United States'' for ''citizen of the United States'' in two places.

1969—Subsec. (b)(2). Pub. L. 91–172 inserted reference to foster children who satisfy requirements of subsec. (a)(9) of this section.

1967—Subsec. (a). Pub. L. 90–78, §1(b), inserted ''or (e)'' after ''subsection (c)''.

Subsec. (e). Pub. L. 90–78, §1(a), added subsec. (e).

1959—Subsec. (b)(2). Pub. L. 86–376 provided that a child who is a member of an individual's household if placed with such individual by an authorized placement agency for legal adoption by such individual shall be treated as a child by blood.

1958—Subsec. (a)(9). Pub. L. 85–866, §4(a), inserted ''(other than an individual who at any time during the taxable year was the spouse, determined without regard to section 153, of the taxpayer)''.

Subsec. (b)(3). Pub. L. 85–866, §4(b), among other changes, struck out provision that ''dependent'' does not include any individual who is not a United States citizen unless such individual is a resident of United States or of a contiguous country, or of Canal Zone or Panama, and inserted provision barring exclusion from definition of ''dependent'' any child of taxpayer, legally adopted by him, if, for taxable year of taxpayer, child's principal place of abode is taxpayer's home and child is member of taxpayer's household, if taxpayer is United States citizen.

Subsec. (b)(5). Pub. L. 85–866, §4(c), added par. (5).

1955—Subsec. (b)(3). Act Aug. 9, 1955, substituted ''January 1, 1956'' for ''July 5, 1946''.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–351 applicable to taxable years beginning after Dec. 31, 2008, see section 501(d) of Pub. L. 110–351, set out as an Effective and Termination Dates of 2008 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provisions of the Working Families Tax Relief Act of 2004, Pub. L. 108–311, to which such amendment relates, see section 404(d) of Pub. L. 109–135, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(1)(B), (3) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1301(j)(8) of Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 423(a) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1984, see section 423(d) of Pub. L. 98–369, set out as a note under section 2 of this title.

Amendment by section 482(b)(2) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 482(c) of Pub. L. 98–369, set out as a note under section 213 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(24), (b)(7)(B), (8)(A) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Section 2139(b) of Pub. L. 94–455 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 4, 1976].''

EFFECTIVE DATE OF 1972 AMENDMENT

Section 1(c) of Pub. L. 92–580 provided that: ''The amendments made by subsections (a) [amending this section] and (b) [amending section 873 of this title] shall apply to taxable years beginning after December 31, 1971.''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 912(b) of Pub. L. 91–172 provided that: ''The amendment made by subsection (a) of this section [amending this section] shall apply to taxable years beginning after December 31, 1969.''

EFFECTIVE DATE OF 1967 AMENDMENT

Section 2 of Pub. L. 90–78 provided that: ''The amendments made by the first section of this Act [amending this section] shall apply with respect to taxable years beginning after December 31, 1966.''

EFFECTIVE DATE OF 1959 AMENDMENT

Section 1(b) of Pub. L. 86–376 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1958.''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 4(a), (c) of Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

Section 4(d) of Pub. L. 85–866 provided that: ''The amendment made by subsection (b) [amending this section] shall apply with respect to taxable years beginning after December 31, 1957.''

EFFECTIVE DATE OF 1955 AMENDMENT

Section 3(b) of act Aug. 9, 1955, provided that: ''The amendment made by section 2 of this Act [amending this section] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954.''

§ 153. Cross references

(1) For deductions of estates and trusts, in lieu of the exemptions under section 151, see section 642(b).

(2) For exemptions of nonresident aliens, see section 873(b)(3).

(3) For determination of marital status, see section 7703.

(Aug. 16, 1954, ch. 736, 68A Stat. 45, §154; Pub. L. 89–809, title I, §103(c)(2), Nov. 13, 1966, 80 Stat. 1551; renumbered §153 and amended Pub. L. 94–455, title XIX, §1901(b)(7)(A)(i), (C), Oct. 4, 1976, 90 Stat. 1794; Pub. L. 99–514, title XII, §1272(d)(7), title XIII, §1301(j)(8), Oct. 22, 1986, 100 Stat. 2594, 2658; Pub. L. 108–311, title II, §207(14), Oct. 4, 2004, 118 Stat. 1177.)

PRIOR PROVISIONS

A prior section 153, act Aug. 16, 1954, ch. 736, 68A Stat. 45, related to determination of marital status, prior to repeal by Pub. L. 94–455, title XIX, §1901(b)(7)(A)(i), (d), Oct. 4, 1976, 90 Stat. 1794, 1803, applicable with respect to taxable years beginning after Dec. 31, 1976. See section 143 of this title.

AMENDMENTS

2004—Pars. (1) to (4). Pub. L. 108–311 redesignated pars. (2) to (4) as (1) to (3), respectively, and struck out former par. (1) which read as follows: ''For definitions of 'husband' and 'wife', as used in section 152(b)(4), see section 7701(a)(17).''

1986—Par. (4). Pub. L. 99–514, §1272(d)(7), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: ''For exemptions of citizens deriving income mainly from sources within possessions of the United States, see section 931(e).''

Par. (5). Pub. L. 99–514, §1272(d)(7), redesignated par. (5) as (4).

Pub. L. 99–514, §1301(j)(8), substituted ''section 7703'' for ''section 143''.

1976—Par. (5). Pub. L. 94–455, §1901(b)(7)(C), added par. (5).

1966—Par. (3). Pub. L. 89–809 substituted ''873(b)(3)'' for ''873(d)''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1272(d)(7) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

Amendment by section 1301(j)(8) of Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

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

EFFECTIVE DATE OF 1966 AMENDMENT

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

PART VI—ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS

Sec.
161. Allowance of deductions.
162. Trade or business expenses.
163. Interest.
164. Taxes.
165. Losses.
166. Bad debts.
167. Depreciation.
168. Accelerated cost recovery system.
169. Amortization of pollution control facilities.
170. Charitable, etc., contributions and gifts.
171. Amortizable bond premium.
172. Net operating loss deduction.
173. Circulation expenditures.
174. Research and experimental expenditures.
175. Soil and water conservation expenditures; endangered species recovery expenditures.
176. Payments with respect to employees of certain foreign corporations.
[177. Repealed.]
178. Amortization of cost of acquiring a lease.
179. Election to expense certain depreciable business assets.
179A. Deduction for clean-fuel vehicles and certain refueling property.
179B. Deduction for capital costs incurred in complying with Environmental Protection Agency sulfur regulations.
179C. Election to expense certain refineries.
179D. Energy efficient commercial buildings deduction.
179E. Election to expense advanced mine safety equipment.
180. Expenditures by farmers for fertilizer, etc.
181. Treatment of certain qualified film and television productions.
[182. Repealed.]
183. Activities not engaged in for profit.
[184, 185. Repealed.]
186. Recoveries of damages for antitrust violations, etc.
[187 to 189. Repealed.]
190. Expenditures to remove architectural and transportation barriers to the handicapped and elderly.
191. Amortization of certain rehabilitation expenditures for certified historic structures.[1]
192. Contributions to black lung benefit trust.
193. Tertiary injectants.
194. Treatment of reforestation expenditures.
194A. Contributions to employer liability trusts.
195. Start-up expenditures.
196. Deduction for certain unused business credits.
197. Amortization of goodwill and certain other intangibles.
198. Expensing of environmental remediation costs.
198A. Expensing of Qualified Disaster Expenses.[2]
199. Income attributable to domestic production activities.

AMENDMENTS

2008—Pub. L. 110–343, div. C, title VII, §707(b), Oct. 3, 2008, 122 Stat. 3924, added item 198A.

Pub. L. 110–234, title XV, §15303(a)(2)(C), May 22, 2008, 122 Stat. 1501, and Pub. L. 110–246, title XV, §15303(a)(2)(C), June 18, 2008, 122 Stat. 2263, made identical amendments, inserting ''; endangered species recovery expenditures'' after ''conservation expenditures'' in item 175. The amendment by Pub. L. 110–234 was repealed by Pub. L. 110–246, §4(a), June 18, 2008, 122 Stat. 1664.

2006—Pub. L. 109–432, div. A, title IV, §404(b)(4), Dec. 20, 2006, 120 Stat. 2956, added item 179E.

2005—Pub. L. 109–58, title XIII, §§1323(b)(4), 1331(c), Aug. 8, 2005, 119 Stat. 1015, 1024, added items 179C and 179D.

[1] Section 191 was repealed by Pub. L. 97–34 without corresponding amendment of part analysis.

[2] So in original. The words ''Qualified Disaster Expenses'' probably should not be capitalized.

2004—Pub. L. 108–357, title I, §102(d)(8), title II, §244(b), title III, §§322(c)(5), 338(b)(6), Oct. 22, 2004, 118 Stat. 1429, 1446, 1475, 1481, added items 179B, 181, and 199, and substituted ''Treatment'' for ''Amortization'' in item 194.

1997—Pub. L. 105–34, title IX, §941(b), Aug. 5, 1997, 111 Stat. 885, added item 198.

1993—Pub. L. 103–66, title XIII, §13261(f)(6), Aug. 10, 1993, 107 Stat. 539, added item 197.

1992—Pub. L. 102–486, title XIX, §1913(a)(3)(B), Oct. 24, 1992, 106 Stat. 3019, added item 179A.

1990—Pub. L. 101–508, title XI, §11801(b)(3), Nov. 5, 1990, 104 Stat. 1388–522, struck out item 184 ''Amortization of certain railroad rolling stock'' and item 188 ''Amortization of certain expenditures for child care facilities''.

1986—Pub. L. 99–514, title II, §§201(d)(2)(B), 241(b)(3), 242(b)(3), title IV, §402(b)(3), title VIII, §803(c)(2), Oct. 22, 1986, 100 Stat. 2139, 2181, 2221, 2356, substituted ''Amortization of cost of acquiring a lease'' for ''Depreciation or amortization of improvements made by lessee on lessor's property'' in item 178, and struck out items 177 ''Trademark and trade name expenditures'', 182 ''Expenditures by farmers for clearing land'', 185 ''Amortization of railroad grading and tunnel bores'', and 189 ''Amortization of real property construction period interest and taxes''.

1984—Pub. L. 98–369, div. A, title I, §94(b), title IV, §474(r)(8)(B), July 18, 1984, 98 Stat. 615, 841, reenacted item 195 without change, and substituted ''business credits'' for ''investment credits'' in item 196.

1983—Pub. L. 97–448, title III, §305(b)(2), Jan. 12, 1983, 96 Stat. 2399, redesignated item 194 (relating to contributions to employer liability trusts) as 194A.

1982—Pub. L. 97–248, title II, §205(a)(5)(C), Sept. 3, 1982, 96 Stat. 430, added item 196.

1981—Pub. L. 97–34, title II, §§201(d), 202(d)(3), Aug. 13, 1981, 95 Stat. 219, 221, added item 168 and substituted ''Election to expense certain depreciable business assets'' for ''Additional first-year depreciation allowance for small business'' in item 179.

1980—Pub. L. 96–605, title I, §102(b), Dec. 28, 1980, 94 Stat. 3522, added item 195.

Pub. L. 96–451, title III, §301(c)(2), Oct. 14, 1980, 94 Stat. 1991, added item 194 relating to amortization of reforestation expenditures.

Pub. L. 96–364, title II, §209(c)(2), Sept. 26, 1980, 94 Stat. 1291, added item 194 relating to contributions to employer liability trusts.

Pub. L. 96–223, title II, §251(a)(2)(A), Apr. 2, 1980, 94 Stat. 287, added item 193.

1978—Pub. L. 95–227, §4(b)(2), Feb. 10, 1978, 95 Stat. 17, added item 192.

1977—Pub. L. 95–30, title IV, §402(a)(4), May 23, 1977, 91 Stat. 155, struck out ''on-the-job training and'' after ''certain expenditures for'' in item 188.

1976—Pub. L. 94–455, title II, §201(b), title XIX, §§1901(b)(11)(B), 1951(c)(2)(D), title XXI, §§2122(b)(1), 2124(a)(3)(A), Oct. 4, 1976, 90 Stat. 1527, 1795, 1841, 1915, 1917, struck out item 168 ''Amortization of emergency facilities'' and item 187 ''Amortization of certain coal mine safety equipment'' and added items 189, 190, and 191.

1971—Pub. L. 92–178, title III, §303(c)(6), Dec. 10, 1971, 85 Stat. 522, added item 188.

1969—Pub. L. 91–172, title II, §213(c)(1), title VII, §§704(b)(1), 705(b), 707(b), title IX, §904(b), Dec. 30, 1969, 83 Stat. 572, 669, 674, 675, 712, substituted reference to pollution control facilities for reference to grain storage facilities in item 169, and added items 183 to 187.

1964—Pub. L. 88–272, title II, §203(a)(3)(D). Feb. 26, 1964, 78 Stat. 34, struck out item 181 ''Deduction for certain unused investment credit''.

1962—Pub. L. 87–834, §§2(g)(3), 21(c), Oct. 16, 1962, 76 Stat. 973, 1064, added items 181, 182.

1960—Pub. L. 86–779, §6(b), Sept. 14, 1960, 74 Stat. 1001, added item 180.

1958—Pub. L. 85–866, title I, §15(b), title II, §204(b), Sept. 2, 1958, 72 Stat. 1613, 1680, added items 178 and 179.

1956—Act June 29, 1956, ch. 464, §4(b), 70 Stat. 406, added item 177.

1954—Act Sept. 1, 1954, ch. 1206, title II, §210(b), 68 Stat. 1097, added item 176.

§ 161. Allowance of deductions

In computing taxable income under section 63, there shall be allowed as deductions the items specified in this part, subject to the exceptions provided in part IX (sec. 261 and following, relating to items not deductible).

(Aug. 16, 1954, ch. 736, 68A Stat. 45; Pub. L. 95–30, title I, §102(b)(1), May 23, 1977, 91 Stat. 137.)

AMENDMENTS

1977—Pub. L. 95–30 substituted ''section 63'' for ''section 63(a)''.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

§ 162. Trade or business expenses

(a) In general

There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including—

(1) a reasonable allowance for salaries or other compensation for personal services actually rendered;

(2) traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business; and

(3) rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

For purposes of the preceding sentence, the place of residence of a Member of Congress (including any Delegate and Resident Commissioner) within the State, congressional district, or possession which he represents in Congress shall be considered his home, but amounts expended by such Members within each taxable year for living expenses shall not be deductible for income tax purposes in excess of $3,000. For purposes of paragraph (2), the taxpayer shall not be treated as being temporarily away from home during any period of employment if such period exceeds 1 year. The preceding sentence shall not apply to any Federal employee during any period for which such employee is certified by the Attorney General (or the designee thereof) as traveling on behalf of the United States in temporary duty status to investigate or prosecute, or provide support services for the investigation or prosecution of, a Federal crime.

(b) Charitable contributions and gifts excepted

No deduction shall be allowed under subsection (a) for any contribution or gift which would be allowable as a deduction under section 170 were it not for the percentage limitations, the dollar limitations, or the requirements as to the time of payment, set forth in such section.

(c) Illegal bribes, kickbacks, and other payments

(1) Illegal payments to government officials or employees

No deduction shall be allowed under subsection (a) for any payment made, directly or indirectly, to an official or employee of any government, or of any agency or instrumentality of any government, if the payment constitutes an illegal bribe or kickback or, if the payment is to an official or employee of a foreign government, the payment is unlawful under the Foreign Corrupt Practices Act of 1977. The burden of proof in respect of the issue, for the purposes of this paragraph, as to whether a payment constitutes an illegal bribe or kickback (or is unlawful under the Foreign Corrupt Practices Act of 1977) shall be upon the Secretary to the same extent as he bears the burden of proof under section 7454 (concerning the burden of proof when the issue relates to fraud).

(2) Other illegal payments

No deduction shall be allowed under subsection (a) for any payment (other than a payment described in paragraph (1)) made, directly or indirectly, to any person, if the payment constitutes an illegal bribe, illegal kickback, or other illegal payment under any law of the United States, or under any law of a State (but only if such State law is generally enforced), which subjects the payor to a criminal penalty or the loss of license or privilege to engage in a trade or business. For purposes of this paragraph, a kickback includes a payment in consideration of the referral of a client, patient, or customer. The burden of proof in respect of the issue, for purposes of this paragraph, as to whether a payment constitutes an illegal bribe, illegal kickback, or other illegal payment shall be upon the Secretary to the same extent as he bears the burden of proof under section 7454 (concerning the burden of proof when the issue relates to fraud).

(3) Kickbacks, rebates, and bribes under medicare and medicaid

No deduction shall be allowed under subsection (a) for any kickback, rebate, or bribe made by any provider of services, supplier, physician, or other person who furnishes items or services for which payment is or may be made under the Social Security Act, or in whole or in part out of Federal funds under a State plan approved under such Act, if such kickback, rebate, or bribe is made in connection with the furnishing of such items or services or the making or receipt of such payments. For purposes of this paragraph, a kickback includes a payment in consideration of the referral of a client, patient, or customer.

(d) Capital contributions to Federal National Mortgage Association

For purposes of this subtitle, whenever the amount of capital contributions evidenced by a share of stock issued pursuant to section 303(c) of the Federal National Mortgage Association Charter Act (12 U.S.C., sec. 1718) exceeds the fair market value of the stock as of the issue date of such stock, the initial holder of the stock shall treat the excess as ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business.

(e) Denial of deduction for certain lobbying and political expenditures

(1) In general

No deduction shall be allowed under subsection (a) for any amount paid or incurred in connection with—

(A) influencing legislation,

(B) participation in, or intervention in, any political campaign on behalf of (or in opposition to) any candidate for public office,

(C) any attempt to influence the general public, or segments thereof, with respect to elections, legislative matters, or referendums, or

(D) any direct communication with a covered executive branch official in an attempt to influence the official actions or positions of such official.

(2) Exception for local legislation

In the case of any legislation of any local council or similar governing body—

(A) paragraph (1)(A) shall not apply, and

(B) the deduction allowed by subsection (a) shall include all ordinary and necessary expenses (including, but not limited to, traveling expenses described in subsection (a)(2) and the cost of preparing testimony) paid or incurred during the taxable year in carrying on any trade or business—

(i) in direct connection with appearances before, submission of statements to, or sending communications to the committees, or individual members, of such council or body with respect to legislation or proposed legislation of direct interest to the taxpayer, or

(ii) in direct connection with communication of information between the taxpayer and an organization of which the taxpayer is a member with respect to any such legislation or proposed legislation which is of direct interest to the taxpayer and to such organization,

and that portion of the dues so paid or incurred with respect to any organization of which the taxpayer is a member which is attributable to the expenses of the activities described in clauses (i) and (ii) carried on by such organization.

(3) Application to dues of tax-exempt organizations

No deduction shall be allowed under subsection (a) for the portion of dues or other similar amounts paid by the taxpayer to an organization which is exempt from tax under this subtitle which the organization notifies the taxpayer under section 6033(e)(1)(A)(ii) is allocable to expenditures to which paragraph (1) applies.

(4) Influencing legislation

For purposes of this subsection—

(A) In general

The term ''influencing legislation'' means any attempt to influence any legislation

through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of legislation.

(B) Legislation

The term ''legislation'' has the meaning given such term by section 4911(e)(2).

(5) Other special rules

(A) Exception for certain taxpayers

In the case of any taxpayer engaged in the trade or business of conducting activities described in paragraph (1), paragraph (1) shall not apply to expenditures of the taxpayer in conducting such activities directly on behalf of another person (but shall apply to payments by such other person to the taxpayer for conducting such activities).

(B) De minimis exception

(i) In general

Paragraph (1) shall not apply to any in-house expenditures for any taxable year if such expenditures do not exceed $2,000. In determining whether a taxpayer exceeds the $2,000 limit under this clause, there shall not be taken into account overhead costs otherwise allocable to activities described in paragraphs (1)(A) and (D).

(ii) In-house expenditures

For purposes of clause (i), the term ''in-house expenditures'' means expenditures described in paragraphs (1)(A) and (D) other than—

(I) payments by the taxpayer to a person engaged in the trade or business of conducting activities described in paragraph (1) for the conduct of such activities on behalf of the taxpayer, or

(II) dues or other similar amounts paid or incurred by the taxpayer which are allocable to activities described in paragraph (1).

(C) Expenses incurred in connection with lobbying and political activities

Any amount paid or incurred for research for, or preparation, planning, or coordination of, any activity described in paragraph (1) shall be treated as paid or incurred in connection with such activity.

(6) Covered executive branch official

For purposes of this subsection, the term ''covered executive branch official'' means—

(A) the President,

(B) the Vice President,

(C) any officer or employee of the White House Office of the Executive Office of the President, and the 2 most senior level officers of each of the other agencies in such Executive Office, and

(D)(i) any individual serving in a position in level I of the Executive Schedule under section 5312 of title 5, United States Code, (ii) any other individual designated by the President as having Cabinet level status, and (iii) any immediate deputy of an individual described in clause (i) or (ii).

(7) Special rule for Indian tribal governments

For purposes of this subsection, an Indian tribal government shall be treated in the same manner as a local council or similar governing body.

(8) Cross reference

For reporting requirements and alternative taxes related to this subsection, see section 6033(e).

(f) Fines and penalties

No deduction shall be allowed under subsection (a) for any fine or similar penalty paid to a government for the violation of any law.

(g) Treble damage payments under the antitrust laws

If in a criminal proceeding a taxpayer is convicted of a violation of the antitrust laws, or his plea of guilty or nolo contendere to an indictment or information charging such a violation is entered or accepted in such a proceeding, no deduction shall be allowed under subsection (a) for two-thirds of any amount paid or incurred—

(1) on any judgment for damages entered against the taxpayer under section 4 of the Act entitled ''An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes'', approved October 15, 1914 (commonly known as the Clayton Act), on account of such violation or any related violation of the antitrust laws which occurred prior to the date of the final judgment of such conviction, or

(2) in settlement of any action brought under such section 4 on account of such violation or related violation.

The preceding sentence shall not apply with respect to any conviction or plea before January 1, 1970, or to any conviction or plea on or after such date in a new trial following an appeal of a conviction before such date.

(h) State legislators' travel expenses away from home

(1) In general

For purposes of subsection (a), in the case of any individual who is a State legislator at any time during the taxable year and who makes an election under this subsection for the taxable year—

(A) the place of residence of such individual within the legislative district which he represented shall be considered his home,

(B) he shall be deemed to have expended for living expenses (in connection with his trade or business as a legislator) an amount equal to the sum of the amounts determined by multiplying each legislative day of such individual during the taxable year by the greater of—

(i) the amount generally allowable with respect to such day to employees of the State of which he is a legislator for per diem while away from home, to the extent such amount does not exceed 110 percent of the amount described in clause (ii) with respect to such day, or

(ii) the amount generally allowable with respect to such day to employees of the executive branch of the Federal Government

for per diem while away from home but serving in the United States, and

(C) he shall be deemed to be away from home in the pursuit of a trade or business on each legislative day.

(2) Legislative days

For purposes of paragraph (1), a legislative day during any taxable year for any individual shall be any day during such year on which—

(A) the legislature was in session (including any day in which the legislature was not in session for a period of 4 consecutive days or less), or

(B) the legislature was not in session but the physical presence of the individual was formally recorded at a meeting of a committee of such legislature.

(3) Election

An election under this subsection for any taxable year shall be made at such time and in such manner as the Secretary shall by regulations prescribe.

(4) Section not to apply to legislators who reside near capitol

For taxable years beginning after December 31, 1980, this subsection shall not apply to any legislator whose place of residence within the legislative district which he represents is 50 or fewer miles from the capitol building of the State.

[(i) Repealed. Pub. L. 101–239, title VI, § 6202(b)(3)(A), Dec. 19, 1989, 103 Stat. 2233]

(j) Certain foreign advertising expenses

(1) In general

No deduction shall be allowed under subsection (a) for any expenses of an advertisement carried by a foreign broadcast undertaking and directed primarily to a market in the United States. This paragraph shall apply only to foreign broadcast undertakings located in a country which denies a similar deduction for the cost of advertising directed primarily to a market in the foreign country when placed with a United States broadcast undertaking.

(2) Broadcast undertaking

For purposes of paragraph (1), the term ''broadcast undertaking'' includes (but is not limited to) radio and television stations.

(k) Stock reacquisition expenses

(1) In general

Except as provided in paragraph (2), no deduction otherwise allowable shall be allowed under this chapter for any amount paid or incurred by a corporation in connection with the reacquisition of its stock or of the stock of any related person (as defined in section 465(b)(3)(C)).

(2) Exceptions

Paragraph (1) shall not apply to—

(A) Certain specific deductions

Any—

(i) deduction allowable under section 163 (relating to interest),

(ii) deduction for amounts which are properly allocable to indebtedness and amortized over the term of such indebtedness, or

(iii) deduction for dividends paid (within the meaning of section 561).

(B) Stock of certain regulated investment companies

Any amount paid or incurred in connection with the redemption of any stock in a regulated investment company which issues only stock which is redeemable upon the demand of the shareholder.

***(l)* Special rules for health insurance costs of self-employed individuals**

(1) Allowance of deduction

In the case of a taxpayer who is an employee within the meaning of section 401(c)(1), there shall be allowed as a deduction under this section an amount equal to the amount paid during the taxable year for insurance which constitutes medical care for—

(A) the taxpayer,

(B) the taxpayer's spouse,

(C) the taxpayer's dependents, and

(D) any child (as defined in section 152(f)(1)) of the taxpayer who as of the end of the taxable year has not attained age 27.

(2) Limitations

(A) Dollar amount

No deduction shall be allowed under paragraph (1) to the extent that the amount of such deduction exceeds the taxpayer's earned income (within the meaning of section 401(c)) derived by the taxpayer from the trade or business with respect to which the plan providing the medical care coverage is established.

(B) Other coverage

Paragraph (1) shall not apply to any taxpayer for any calendar month for which the taxpayer is eligible to participate in any subsidized health plan maintained by any employer of the taxpayer or of the spouse of, or any dependent, or individual described in subparagraph (D) of paragraph (1) with respect to, the taxpayer. The preceding sentence shall be applied separately with respect to—

(i) plans which include coverage for qualified long-term care services (as defined in section 7702B(c)) or are qualified long-term care insurance contracts (as defined in section 7702B(b)), and

(ii) plans which do not include such coverage and are not such contracts.

(C) Long-term care premiums

In the case of a qualified long-term care insurance contract (as defined in section 7702B(b)), only eligible long-term care premiums (as defined in section 213(d)(10)) shall be taken into account under paragraph (1).

(3) Coordination with medical deduction

Any amount paid by a taxpayer for insurance to which paragraph (1) applies shall not be taken into account in computing the

amount allowable to the taxpayer as a deduction under section 213(a).

(4) Deduction not allowed for self-employment tax purposes

The deduction allowable by reason of this subsection shall not be taken into account in determining an individual's net earnings from self-employment (within the meaning of section 1402(a)) for purposes of chapter 2 for taxable years beginning before January 1, 2010, or after December 31, 2010.

(5) Treatment of certain S corporation shareholders

This subsection shall apply in the case of any individual treated as a partner under section 1372(a), except that—

(A) for purposes of this subsection, such individual's wages (as defined in section 3121) from the S corporation shall be treated as such individual's earned income (within the meaning of section 401(c)(1)), and

(B) there shall be such adjustments in the application of this subsection as the Secretary may by regulations prescribe.

(m) Certain excessive employee remuneration

(1) In general

In the case of any publicly held corporation, no deduction shall be allowed under this chapter for applicable employee remuneration with respect to any covered employee to the extent that the amount of such remuneration for the taxable year with respect to such employee exceeds $1,000,000.

(2) Publicly held corporation

For purposes of this subsection, the term ''publicly held corporation'' means any corporation issuing any class of common equity securities required to be registered under section 12 of the Securities Exchange Act of 1934.

(3) Covered employee

For purposes of this subsection, the term ''covered employee'' means any employee of the taxpayer if—

(A) as of the close of the taxable year, such employee is the chief executive officer of the taxpayer or is an individual acting in such a capacity, or

(B) the total compensation of such employee for the taxable year is required to be reported to shareholders under the Securities Exchange Act of 1934 by reason of such employee being among the 4 highest compensated officers for the taxable year (other than the chief executive officer).

(4) Applicable employee remuneration

For purposes of this subsection—

(A) In general

Except as otherwise provided in this paragraph, the term ''applicable employee remuneration'' means, with respect to any covered employee for any taxable year, the aggregate amount allowable as a deduction under this chapter for such taxable year (determined without regard to this subsection) for remuneration for services performed by such employee (whether or not during the taxable year).

(B) Exception for remuneration payable on commission basis

The term ''applicable employee remuneration'' shall not include any remuneration payable on a commission basis solely on account of income generated directly by the individual performance of the individual to whom such remuneration is payable.

(C) Other performance-based compensation

The term ''applicable employee remuneration'' shall not include any remuneration payable solely on account of the attainment of one or more performance goals, but only if—

(i) the performance goals are determined by a compensation committee of the board of directors of the taxpayer which is comprised solely of 2 or more outside directors,

(ii) the material terms under which the remuneration is to be paid, including the performance goals, are disclosed to shareholders and approved by a majority of the vote in a separate shareholder vote before the payment of such remuneration, and

(iii) before any payment of such remuneration, the compensation committee referred to in clause (i) certifies that the performance goals and any other material terms were in fact satisfied.

(D) Exception for existing binding contracts

The term ''applicable employee remuneration'' shall not include any remuneration payable under a written binding contract which was in effect on February 17, 1993, and which was not modified thereafter in any material respect before such remuneration is paid.

(E) Remuneration

For purposes of this paragraph, the term ''remuneration'' includes any remuneration (including benefits) in any medium other than cash, but shall not include—

(i) any payment referred to in so much of section 3121(a)(5) as precedes subparagraph (E) thereof, and

(ii) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from gross income under this chapter.

For purposes of clause (i), section 3121(a)(5) shall be applied without regard to section 3121(v)(1).

(F) Coordination with disallowed golden parachute payments

The dollar limitation contained in paragraph (1) shall be reduced (but not below zero) by the amount (if any) which would have been included in the applicable employee remuneration of the covered employee for the taxable year but for being disallowed under section 280G.

(G) Coordination with excise tax on specified stock compensation

The dollar limitation contained in paragraph (1) with respect to any covered em-

ployee shall be reduced (but not below zero) by the amount of any payment (with respect to such employee) of the tax imposed by section 4985 directly or indirectly by the expatriated corporation (as defined in such section) or by any member of the expanded affiliated group (as defined in such section) which includes such corporation.

(5) Special rule for application to employers participating in the Troubled Assets Relief Program

(A) In general

In the case of an applicable employer, no deduction shall be allowed under this chapter—

(i) in the case of executive remuneration for any applicable taxable year which is attributable to services performed by a covered executive during such applicable taxable year, to the extent that the amount of such remuneration exceeds $500,000, or

(ii) in the case of deferred deduction executive remuneration for any taxable year for services performed during any applicable taxable year by a covered executive, to the extent that the amount of such remuneration exceeds $500,000 reduced (but not below zero) by the sum of—

(I) the executive remuneration for such applicable taxable year, plus

(II) the portion of the deferred deduction executive remuneration for such services which was taken into account under this clause in a preceding taxable year.

(B) Applicable employer

For purposes of this paragraph—

(i) In general

Except as provided in clause (ii), the term ''applicable employer'' means any employer from whom 1 or more troubled assets are acquired under a program established by the Secretary under section 101(a) of the Emergency Economic Stabilization Act of 2008 if the aggregate amount of the assets so acquired for all taxable years exceeds $300,000,000.

(ii) Disregard of certain assets sold through direct purchase

If the only sales of troubled assets by an employer under the program described in clause (i) are through 1 or more direct purchases (within the meaning of section 113(c) of the Emergency Economic Stabilization Act of 2008), such assets shall not be taken into account under clause (i) in determining whether the employer is an applicable employer for purposes of this paragraph.

(iii) Aggregation rules

Two or more persons who are treated as a single employer under subsection (b) or (c) of section 414 shall be treated as a single employer, except that in applying section 1563(a) for purposes of either such subsection, paragraphs (2) and (3) thereof shall be disregarded.

(C) Applicable taxable year

For purposes of this paragraph, the term ''applicable taxable year'' means, with respect to any employer—

(i) the first taxable year of the employer—

(I) which includes any portion of the period during which the authorities under section 101(a) of the Emergency Economic Stabilization Act of 2008 are in effect (determined under section 120 thereof), and

(II) in which the aggregate amount of troubled assets acquired from the employer during the taxable year pursuant to such authorities (other than assets to which subparagraph (B)(ii) applies), when added to the aggregate amount so acquired for all preceding taxable years, exceeds $300,000,000, and

(ii) any subsequent taxable year which includes any portion of such period.

(D) Covered executive

For purposes of this paragraph—

(i) In general

The term ''covered executive'' means, with respect to any applicable taxable year, any employee—

(I) who, at any time during the portion of the taxable year during which the authorities under section 101(a) of the Emergency Economic Stabilization Act of 2008 are in effect (determined under section 120 thereof), is the chief executive officer of the applicable employer or the chief financial officer of the applicable employer, or an individual acting in either such capacity, or

(II) who is described in clause (ii).

(ii) Highest compensated employees

An employee is described in this clause if the employee is 1 of the 3 highest compensated officers of the applicable employer for the taxable year (other than an individual described in clause (i)(I)), determined—

(I) on the basis of the shareholder disclosure rules for compensation under the Securities Exchange Act of 1934 (without regard to whether those rules apply to the employer), and

(II) by only taking into account employees employed during the portion of the taxable year described in clause (i)(I).

(iii) Employee remains covered executive

If an employee is a covered executive with respect to an applicable employer for any applicable taxable year, such employee shall be treated as a covered executive with respect to such employer for all subsequent applicable taxable years and for all subsequent taxable years in which deferred deduction executive remuneration with respect to services performed in all such applicable taxable years would (but for this paragraph) be deductible.

(E) Executive remuneration

For purposes of this paragraph, the term ''executive remuneration'' means the applicable employee remuneration of the covered executive, as determined under paragraph (4) without regard to subparagraphs (B), (C), and (D) thereof. Such term shall not include any deferred deduction executive remuneration with respect to services performed in a prior applicable taxable year.

(F) Deferred deduction executive remuneration

For purposes of this paragraph, the term ''deferred deduction executive remuneration'' means remuneration which would be executive remuneration for services performed in an applicable taxable year but for the fact that the deduction under this chapter (determined without regard to this paragraph) for such remuneration is allowable in a subsequent taxable year.

(G) Coordination

Rules similar to the rules of subparagraphs (F) and (G) of paragraph (4) shall apply for purposes of this paragraph.

(H) Regulatory authority

The Secretary may prescribe such guidance, rules, or regulations as are necessary to carry out the purposes of this paragraph and the Emergency Economic Stabilization Act of 2008, including the extent to which this paragraph applies in the case of any acquisition, merger, or reorganization of an applicable employer.

(6) Special rule for application to certain health insurance providers

(A) In general

No deduction shall be allowed under this chapter—

(i) in the case of applicable individual remuneration which is for any disqualified taxable year beginning after December 31, 2012, and which is attributable to services performed by an applicable individual during such taxable year, to the extent that the amount of such remuneration exceeds $500,000, or

(ii) in the case of deferred deduction remuneration for any taxable year beginning after December 31, 2012, which is attributable to services performed by an applicable individual during any disqualified taxable year beginning after December 31, 2009, to the extent that the amount of such remuneration exceeds $500,000 reduced (but not below zero) by the sum of—

(I) the applicable individual remuneration for such disqualified taxable year, plus

(II) the portion of the deferred deduction remuneration for such services which was taken into account under this clause in a preceding taxable year (or which would have been taken into account under this clause in a preceding taxable year if this clause were applied by substituting ''December 31, 2009'' for ''December 31, 2012'' in the matter preceding subclause (I)).

(B) Disqualified taxable year

For purposes of this paragraph, the term ''disqualified taxable year'' means, with respect to any employer, any taxable year for which such employer is a covered health insurance provider.

(C) Covered health insurance provider

For purposes of this paragraph—

(i) In general

The term ''covered health insurance provider'' means—

(I) with respect to taxable years beginning after December 31, 2009, and before January 1, 2013, any employer which is a health insurance issuer (as defined in section 9832(b)(2)) and which receives premiums from providing health insurance coverage (as defined in section 9832(b)(1)), and

(II) with respect to taxable years beginning after December 31, 2012, any employer which is a health insurance issuer (as defined in section 9832(b)(2)) and with respect to which not less than 25 percent of the gross premiums received from providing health insurance coverage (as defined in section 9832(b)(1)) is from minimum essential coverage (as defined in section 5000A(f)).

(ii) Aggregation rules

Two or more persons who are treated as a single employer under subsection (b), (c), (m), or (*o*) of section 414 shall be treated as a single employer, except that in applying section 1563(a) for purposes of any such subsection, paragraphs (2) and (3) thereof shall be disregarded.

(D) Applicable individual remuneration

For purposes of this paragraph, the term ''applicable individual remuneration'' means, with respect to any applicable individual for any disqualified taxable year, the aggregate amount allowable as a deduction under this chapter for such taxable year (determined without regard to this subsection) for remuneration (as defined in paragraph (4) without regard to subparagraphs (B), (C), and (D) thereof) for services performed by such individual (whether or not during the taxable year). Such term shall not include any deferred deduction remuneration with respect to services performed during the disqualified taxable year.

(E) Deferred deduction remuneration

For purposes of this paragraph, the term ''deferred deduction remuneration'' means remuneration which would be applicable individual remuneration for services performed in a disqualified taxable year but for the fact that the deduction under this chapter (determined without regard to this paragraph) for such remuneration is allowable in a subsequent taxable year.

(F) Applicable individual

For purposes of this paragraph, the term ''applicable individual'' means, with respect to any covered health insurance provider for

any disqualified taxable year, any individual—

(i) who is an officer, director, or employee in such taxable year, or

(ii) who provides services for or on behalf of such covered health insurance provider during such taxable year.

(G) Coordination

Rules similar to the rules of subparagraphs (F) and (G) of paragraph (4) shall apply for purposes of this paragraph.

(H) Regulatory authority

The Secretary may prescribe such guidance, rules, or regulations as are necessary to carry out the purposes of this paragraph.

(n) Special rule for certain group health plans

(1) In general

No deduction shall be allowed under this chapter to an employer for any amount paid or incurred in connection with a group health plan if the plan does not reimburse for inpatient hospital care services provided in the State of New York—

(A) except as provided in subparagraphs (B) and (C), at the same rate as licensed commercial insurers are required to reimburse hospitals for such services when such reimbursement is not through such a plan,

(B) in the case of any reimbursement through a health maintenance organization, at the same rate as health maintenance organizations are required to reimburse hospitals for such services for individuals not covered by such a plan (determined without regard to any government-supported individuals exempt from such rate), or

(C) in the case of any reimbursement through any corporation organized under Article 43 of the New York State Insurance Law, at the same rate as any such corporation is required to reimburse hospitals for such services for individuals not covered by such a plan.

(2) State law exception

Paragraph (1) shall not apply to any group health plan which is not required under the laws of the State of New York (determined without regard to this subsection or other provisions of Federal law) to reimburse at the rates provided in paragraph (1).

(3) Group health plan

For purposes of this subsection, the term ''group health plan'' means a plan of, or contributed to by, an employer or employee organization (including a self-insured plan) to provide health care (directly or otherwise) to any employee, any former employee, the employer, or any other individual associated or formerly associated with the employer in a business relationship, or any member of their family.

(*o*) Treatment of certain expenses of rural mail carriers

(1) General rule

In the case of any employee of the United States Postal Service who performs services involving the collection and delivery of mail on a rural route and who receives qualified reimbursements for the expenses incurred by such employee for the use of a vehicle in performing such services—

(A) the amount allowable as a deduction under this chapter for the use of a vehicle in performing such services shall be equal to the amount of such qualified reimbursements; and

(B) such qualified reimbursements shall be treated as paid under a reimbursement or other expense allowance arrangement for purposes of section 62(a)(2)(A) (and section 62(c) shall not apply to such qualified reimbursements).

(2) Special rule where expenses exceed reimbursements

Notwithstanding paragraph (1)(A), if the expenses incurred by an employee for the use of a vehicle in performing services described in paragraph (1) exceed the qualified reimbursements for such expenses, such excess shall be taken into account in computing the miscellaneous itemized deductions of the employee under section 67.

(3) Definition of qualified reimbursements

For purposes of this subsection, the term ''qualified reimbursements'' means the amounts paid by the United States Postal Service to employees as an equipment maintenance allowance under the 1991 collective bargaining agreement between the United States Postal Service and the National Rural Letter Carriers' Association. Amounts paid as an equipment maintenance allowance by such Postal Service under later collective bargaining agreements that supersede the 1991 agreement shall be considered qualified reimbursements if such amounts do not exceed the amounts that would have been paid under the 1991 agreement, adjusted for changes in the Consumer Price Index (as defined in section 1(f)(5)) since 1991.

(p) Treatment of expenses of members of reserve component of Armed Forces of the United States

For purposes of subsection (a)(2), in the case of an individual who performs services as a member of a reserve component of the Armed Forces of the United States at any time during the taxable year, such individual shall be deemed to be away from home in the pursuit of a trade or business for any period during which such individual is away from home in connection with such service.

(q) Cross reference

(1) For special rule relating to expenses in connection with subdividing real property for sale, see section 1237.

(2) For special rule relating to the treatment of payments by a transferee of a franchise, trademark, or trade name, see section 1253.

(3) For special rules relating to—

(A) funded welfare benefit plans, see section 419, and

(B) deferred compensation and other deferred benefits, see section 404.

(Aug. 16, 1954, ch. 736, 68A Stat. 45; Pub. L. 85–866, title I, § 5(a), Sept. 2, 1958, 72 Stat. 1608; Pub. L.

86–779, §§ 7(b), 8(a), Sept. 14, 1960, 74 Stat. 1002, 1003; Pub. L. 87–834, §§ 3(a), 4(b), Oct. 16, 1962, 76 Stat. 973, 976; Pub. L. 91–172, title V, § 516(c)(2)(A), title IX, § 902(a), (b), Dec. 30, 1969, 83 Stat. 648, 710; Pub. L. 92–178, title III, § 310(a), Dec. 10, 1971, 85 Stat. 525; Pub. L. 94–455, title XIX, §§ 1901(c)(4), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1803, 1834; Pub. L. 97–34, title I, § 127(a), Aug. 13, 1981, 95 Stat. 202; Pub. L. 97–35, title XXI, § 2146(b), Aug. 13, 1981, 95 Stat. 801; Pub. L. 97–51, § 139(b)(1), Oct. 1, 1981, 95 Stat. 967; Pub. L. 97–216, title II, § 215(a), July 18, 1982, 96 Stat. 194; Pub. L. 97–248, title I, § 128(b), title II, § 288(a), Sept. 3, 1982, 96 Stat. 366, 571; Pub. L. 98–369, div. A, title V, § 512(b), div. B, title III, § 2354(d), July 18, 1984, 98 Stat. 863, 1102; Pub. L. 98–573, title II, § 232(a), Oct. 30, 1984, 98 Stat. 2991; Pub. L. 99–272, title X, § 10001(a), (c), (d), Apr. 7, 1986, 100 Stat. 222, 223, 227; Pub. L. 99–509, title IX, §§ 9307(c)(2)(B), 9501(a)(1), (b)(1)(A), (2)(A), (c)(1), (d)(1), Oct. 21, 1986, 100 Stat. 1995, 2075–2077; Pub. L. 99–514, title VI, § 613(a), title XI, § 1161(a), title XVIII, § 1895(d)(1)(A), (2)(A), (3)(A), (4)(A), (5)(A), (6)(A), (7), Oct. 22, 1986, 100 Stat. 2251, 2509, 2936–2940; Pub. L. 100–647, title I, §§ 1011B(b)(1)–(3), 1018(t)(7)(B), title III, § 3011(b)(2), (3), Nov. 10, 1988, 102 Stat. 3488, 3589, 3624, 3625; Pub. L. 101–140, title II, § 203(a)(4), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101–239, title VI, § 6202(b)(3)(A), title VII, §§ 7107(a)(1), (b), 7862(c)(3)(A), Dec. 19, 1989, 103 Stat. 2233, 2306, 2432; Pub. L. 101–508, title XI, §§ 11111(d)(2), 11410(a), Nov. 5, 1990, 104 Stat. 1388–413, 1388–479; Pub. L. 102–227, title I, § 110(a)(1), Dec. 11, 1991, 105 Stat. 1688; Pub. L. 102–486, title XIX, § 1938(a), Oct. 24, 1992, 106 Stat. 3033; Pub. L. 103–66, title XIII, §§ 13131(d)(2), 13174(a)(1), (b)(1), 13211(a), 13222(a), 13442(a), Aug. 10, 1993, 107 Stat. 435, 457, 469, 477, 568; Pub. L. 104–7, § 1(a), (b), Apr. 11, 1995, 109 Stat. 93; Pub. L. 104–188, title I, § 1704(p)(1)–(3), Aug. 20, 1996, 110 Stat. 1886; Pub. L. 104–191, title III, §§ 311(a), 322(b)(2)(B), Aug. 21, 1996, 110 Stat. 2053, 2060; Pub. L. 105–34, title IX, § 934(a), title XII, §§ 1203(a), 1204(a), title XVI, § 1602(c), Aug. 5, 1997, 111 Stat. 882, 994, 995, 1094; Pub. L. 105–206, title VI, § 6012(a), July 22, 1998, 112 Stat. 818; Pub. L. 105–277, div. J, title II, § 2002(a), Oct. 21, 1998, 112 Stat. 2681–901; Pub. L. 108–121, title I, § 109(a), Nov. 11, 2003, 117 Stat. 1341; Pub. L. 108–357, title III, § 318(a), (b), title VIII, § 802(b)(2), Oct. 22, 2004, 118 Stat. 1470, 1568; Pub. L. 110–343, div. A, title III, § 302(a), Oct. 3, 2008, 122 Stat. 3803; Pub. L. 111–148, title IX, § 9014(a), title X, § 10108(g)(1), Mar. 23, 2010, 124 Stat. 868, 913; Pub. L. 111–152, title I, § 1004(d)(2), (3), Mar. 30, 2010, 124 Stat. 1035; Pub. L. 111–240, title II, § 2042(a), Sept. 27, 2010, 124 Stat. 2560.)

AMENDMENT OF SUBSECTION (a)

Pub. L. 111–148, title X, § 10108(g), Mar. 23, 2010, 124 Stat. 913, provided that, applicable to vouchers provided after Dec. 31, 2013, subsection (a) of this section is amended by adding at the end ''For purposes of paragraph (1), the amount of a free choice voucher provided under section 10108 of the Patient Protection and Affordable Care Act shall be treated as an amount for compensation for personal services actually rendered.''

REFERENCES IN TEXT

The Foreign Corrupt Practices Act of 1977, referred to in subsec. (c)(1), is title I of Pub. L. 95–213, Dec. 19, 1977, 91 Stat. 1494, as amended, which enacted sections 78dd–1 to 78dd–3 of Title 15, Commerce and Trade, and amended sections 78m and 78ff of Title 15. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 78a of Title 15 and Tables.

The Social Security Act, referred to in subsec. (c)(3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 4 of the Clayton Act, referred to in subsec. (g)(1), is classified to section 15 of Title 15, Commerce and Trade.

The Securities Exchange Act of 1934, referred to in subsec. (m)(2), (3)(B), (5)(D)(ii)(I), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. Section 12 of the Act is classified to section 78*l* of Title 15. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Emergency Economic Stabilization Act of 2008, referred to in subsec. (m)(5), is div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, which is classified principally to chapter 52 (§ 5201 et seq.) of Title 12, Banks and Banking. Section 101(a) of the Act enacted section 5211(a) of Title 12 and amended section 5315 of Title 5, Government Organization and Employees, and section 301 of Title 31, Money and Finance. Section 113(c) of the Act is classified to section 5223(c) of Title 12. Section 120 of the Act is classified to section 5230 of Title 12. For complete classification of this Act to the Code, see Short Title note set out under section 5201 of Title 12 and Tables.

AMENDMENTS

2010—Subsec. (*l*)(1). Pub. L. 111–152, § 1004(d)(2), amended par. (1) generally. Prior to amendment, par. (1) authorized a deduction in an amount equal to the applicable percentage of the amount paid during the taxable year for insurance which constitutes medical care for the taxpayer, his spouse, and dependents.

Subsec. (*l*)(2)(B). Pub. L. 111–152, § 1004(d)(3), inserted '', or any dependent, or individual described in subparagraph (D) of paragraph (1) with respect to,'' after ''spouse of'' in introductory provisions.

Subsec. (*l*)(4). Pub. L. 111–240 inserted ''for taxable years beginning before January 1, 2010, or after December 31, 2010'' before period at end.

Subsec. (m)(6). Pub. L. 111–148, § 9014(a), added par. (6).

2008—Subsec. (m)(5). Pub. L. 110–343 added par. (5).

2004—Subsec. (m)(4)(G). Pub. L. 108–357, § 802(b)(2), added subpar. (G).

Subsec. (*o*). Pub. L. 108–357, § 318(b), struck out ''reimbursed'' before ''expenses'' in heading.

Subsec. (*o*)(2), (3). Pub. L. 108–357, § 318(a), added par. (2) and redesignated former par. (2) as (3).

2003—Subsecs. (p), (q). Pub. L. 108–121 added subsec. (p) and redesignated former subsec. (p) as (q).

1998—Subsec. (a). Pub. L. 105–206, in last sentence, substituted ''investigate or prosecute, or provide support services for the investigation or prosecution of, a Federal crime.'' for ''investigate, or provide support services for the investigation of, a Federal crime.''

Subsec. (*l*)(1)(B). Pub. L. 105–277 amended table in subpar. (B) generally. Prior to amendment, table read as follows:

''For taxable years beginning in calendar year—	**The applicable percentage is—**
1997	40
1998 and 1999	45
2000 and 2001	50
2002	60
2003 through 2005	80

"For taxable years beginning in calendar year—	The applicable percentage is—
2006	90
2007 and thereafter	100.''

1997—Subsec. (a). Pub. L. 105–34, §1204(a), inserted at end of concluding provisions ''The preceding sentence shall not apply to any Federal employee during any period for which such employee is certified by the Attorney General (or the designee thereof) as traveling on behalf of the United States in temporary duty status to investigate, or provide support services for the investigation of, a Federal crime.''

Subsec. (*l*)(1)(B). Pub. L. 105–34, §934(a), amended table generally. Prior to amendment, table read as follows:

"For taxable years beginning in calendar year—	The applicable percentage is—
1997	40 percent
1998 through 2002	45 percent
2003	50 percent
2004	60 percent
2005	70 percent
2006 or thereafter	80 percent.''

Subsec. (*l*)(2)(B). Pub. L. 105–34, §1602(c), inserted ''The preceding sentence shall be applied separately with respect to—'' at end and added cls. (i) and (ii).

Subsecs. (*o*), (p). Pub. L. 105–34, §1203(a), added subsec. (*o*) and redesignated former subsec. (*o*) as (p).

1996—Subsec. (k). Pub. L. 104–188, §1704(p)(3), substituted ''reaquisition'' for ''redemption'' in heading.

Subsec. (k)(1). Pub. L. 104–188, §1704(p)(1), substituted ''the reacquisition of its stock or of the stock of any related person (as defined in section 465(b)(3)(C))'' for ''the redemption of its stock''.

Subsec. (k)(2)(A). Pub. L. 104–188, §1704(p)(2), struck out ''or'' at end of cl. (i), added cl. (ii), and redesignated former cl. (ii) as (iii).

Subsec. (*l*)(1). Pub. L. 104–191, §311(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows:

''(1) IN GENERAL.—In the case of an individual who is an employee within the meaning of section 401(c)(1), there shall be allowed as a deduction under this section an amount equal to 30 percent of the amount paid during the taxable year for insurance which constitutes medical care for the taxpayer, his spouse, and dependents.''

Subsec. (*l*)(2)(C). Pub. L. 104–191, §322(b)(2)(B), added subpar. (C).

1995—Subsec. (*l*)(1). Pub. L. 104–7, §1(b), substituted ''30 percent'' for ''25 percent''.

Subsec. (*l*)(6). Pub. L. 104–7, §1(a), struck out par. (6) ''Termination'' which read as follows: ''This subsection shall not apply to any taxable year beginning after December 31, 1993.''

1993—Subsec. (e). Pub. L. 103–66, §13222(a), amended heading and text generally. Prior to amendment, text consisted of pars. (1) and (2) relating to deduction of ordinary and necessary expenses paid or incurred in connection with certain activities relating to congressional, State, and local legislation.

Subsec. (*l*)(2)(B). Pub. L. 103–66, §13174(b)(1), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''Paragraph (1) shall not apply to any taxpayer who is eligible to participate in any subsidized health plan maintained by any employer of the taxpayer or of the spouse of the taxpayer.''

Subsec. (*l*)(3). Pub. L. 103–66, §13131(d)(2), amended heading and text of par. (3) generally. Prior to amendment, text read as follows:

''(A) MEDICAL DEDUCTION.—Any amount paid by a taxpayer for insurance to which paragraph (1) applies shall not be taken into account in computing the amount allowable to the taxpayer as a deduction under section 213(a).

''(B) HEALTH INSURANCE CREDIT.—The amount otherwise taken into account under paragraph (1) as paid for insurance which constitutes medical care shall be reduced by the amount (if any) of the health insurance credit allowable to the taxpayer for the taxable year under section 32.''

Subsec. (*l*)(6). Pub. L. 103–66, §13174(a)(1), substituted ''December 31, 1993'' for ''June 30, 1992''.

Subsec. (m). Pub. L. 103–66, §13211(a), added subsec. (m). Former subsec. (m) redesignated (n).

Subsec. (n). Pub. L. 103–66, §13442(a), added subsec. (n). Former subsec. (n) redesignated (*o*).

Pub. L. 103–66, §13211(a), redesignated subsec. (m) as (n).

Subsec. (*o*). Pub. L. 103–66, §13442(a), redesignated subsec. (n) as (*o*).

1992—Subsec. (a). Pub. L. 102–486 inserted at end ''For purposes of paragraph (2), the taxpayer shall not be treated as being temporarily away from home during any period of employment if such period exceeds 1 year.''

1991—Subsec. (*l*)(6). Pub. L. 102–227 substituted ''June 30, 1992'' for ''December 31, 1991''.

1990—Subsec. (*l*)(3). Pub. L. 101–508, §11111(d)(2), substituted heading for one which read: ''Coordination with medical deduction'' and amended text generally. Prior to amendment, text read as follows: ''Any amount paid by a taxpayer for insurance to which paragraph (1) applies shall not be taken into account in computing the amount allowable to the taxpayer as a deduction under section 213(a).''

Subsec. (*l*)(6). Pub. L. 101–508, §11410(a), substituted ''December 31, 1991'' for ''September 30, 1990''.

1989—Subsec. (i). Pub. L. 101–239, §6202(b)(3)(A), struck out subsec. (i) which read as follows:

''(1) COVERAGE RELATING TO END STAGE RENAL DISEASE.—The expenses paid or incurred by an employer for a group health plan shall not be allowed as a deduction under this section if the plan differentiates in the benefits it provides between individuals having end stage renal disease and other individuals covered by such plan on the basis of the existence of end stage renal disease, the need for renal dialysis, or in any other manner.

''(2) GROUP HEALTH PLAN.—For purposes of this subsection the term 'group health plan' means any plan of, or contributed to by, an employer to provide medical care (as defined in section 213(d) to his employees, former employees, or the families of such employees or former employees, directly or through insurance, reimbursement, or otherwise.''

Subsec. (k)(2)(B)(iv). Pub. L. 101–239, §7862(c)(3)(A), amended cl. (iv) as it existed prior to repeal of subsec. (k) by Pub. L. 100–647, by substituting ''entitlement'' for ''eligibility'' in heading and inserting ''which does not contain any exclusion or limitation with respect to any preexisting condition of such beneficiary'' after ''or otherwise)'' in subclause (I).

Subsec. (*l*)(2). Pub. L. 101–140 redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: ''REQUIRED COVERAGE.—Paragraph (1) shall not apply to any taxpayer for any taxable year unless coverage is provided under 1 or more plans meeting the requirements of section 89, treating such coverage as an employer-provided benefit.''

Subsec. (*l*)(5). Pub. L. 101–239, §7107(b), added par. (5). Former par. (5) redesignated (6).

Pub. L. 101–239, §7107(a)(1), substituted ''September 30, 1990'' for ''December 31, 1989''.

Subsec. (*l*)(6). Pub. L. 101–239, §7107(b), redesignated former par. (5) as (6).

1988—Subsec. (i)(2), (3). Pub. L. 100–647, §3011(b)(2), redesignated par. (3) as (2) and struck out former par. (2) which required plans to provide continuation coverage to certain individuals.

Subsec. (k). Pub. L. 100–647, §3011(b)(3), redesignated subsec. (*l*), relating to stock redemption expenses, as (k) and struck out former subsec. (k) which related to continuation coverage requirements of group health plans.

Subsec. (k)(5)(B). Pub. L. 100–647, §1018(t)(7)(B), made amendment identical to Pub. L. 99–509, §9307(c)(2)(B),

which amended directory language of Pub. L. 99–514, §1895(d)(5)(A), by substituting ''section 162(k)(5)'' for ''section 162(k)(2)''. See 1986 Amendment note below.

Subsec . (*l*). Pub. L. 100–647, §3011(b)(3)(A), (B), redesignated subsec. (m), relating to special rules for health insurance costs of self-employed individuals, as (*l*). Former subsec. (*l*), relating to stock redemption expenses, redesignated (k).

Subsec. (m). Pub. L. 100–647, §3011(b)(3)(B), (C), redesignated subsec. (n), relating to cross references, as (m). Former subsec. (m), relating to special rules for health insurance costs of self-employed individuals, redesignated (*l*).

Pub. L. 100–647, §1011B(b)(2), redesignated subsec. (m), relating to cross references, as (n).

Subsec. (m)(2)(A). Pub. L. 100–647, §1011B(b)(3), inserted ''derived by the taxpayer from the trade or business with respect to which the plan providing the medical care coverage is established'' after ''401(c))''.

Subsec. (m)(4), (5). Pub. L. 100–647, §1011B(b)(1), added par. (4) and redesignated former par. (4) as (5).

Subsec. (n). Pub. L. 100–647, §3011(b)(3)(C), redesignated subsec. (n) as (m).

Pub. L. 100–647, §1011B(b)(2), redesignated subsec. (m), relating to cross references, as (n).

1986—Subsec. (i)(1). Pub. L. 99–272, §10001(d), substituted ''Coverage relating to end stage renal disease'' for ''General rule'' in heading.

Subsec. (i)(2), (3). Pub. L. 99–272, §10001(a), added par. (2) and redesignated former par. (2) as (3).

Subsec. (k). Pub. L. 99–272, §10001(c), added subsec. (k). Former subsec. (k) redesignated (*l*).

Subsec. (k)(2)(A). Pub. L. 99–514, §1895(d)(1)(A), inserted ''If coverage under the plan is modified for any group of similarly situated beneficiaries, the coverage shall also be modified in the same manner for all individuals who are qualified beneficiaries under the plan pursuant to this subsection in connection with such group.''

Subsec. (k)(2)(B)(i). Pub. L. 99–514, §1895(d)(2)(A), substituted ''Maximum required period'' for ''Maximum period'' in heading and amended text generally. Prior to amendment, text read as follows: ''In the case of—

''(I) a qualifying event described in paragraph (3)(B) (relating to terminations and reduced hours), the date which is 18 months after the date of the qualifying event, and

''(II) any qualifying event not described in subclause (I), the date which is 36 months after the date of the qualifying event.''

Subsec. (k)(2)(B)(i)(II). Pub. L. 99–509, §9501(b)(1)(A)(i), inserted ''(other than a qualifying event described in paragraph (3)(F))''.

Subsec. (k)(2)(B)(i)(III), (IV). Pub. L. 99–509, §9501(b)(1)(A)(ii)–(iv), added subcl. (III), redesignated former subcl. (III) as (IV), and inserted ''or (3)(F)''.

Subsec. (k)(2)(B)(iii). Pub. L. 99–514, §1895(d)(3)(A), inserted ''The payment of any premium (other than any payment referred to in the last sentence of subparagraph (C)) shall be considered to be timely if made within 30 days after the date due or within such longer period as applies to or under the plan.''

Subsec. (k)(2)(B)(iv). Pub. L. 99–514, §1895(d)(4)(A)(iii), substituted ''Group health plan coverage'' for ''Reemployment'' in heading.

Subsec. (k)(2)(B)(iv)(I). Pub. L. 99–514, §1895(d)(4)(A)(ii), substituted ''covered under any other group health plan (as an employee or otherwise)'' for ''a covered employee under any other group health plan''.

Subsec. (k)(2)(B)(iv)(II). Pub. L. 99–509, §9501(b)(2)(A), inserted ''in the case of a qualified beneficiary other than a qualified beneficiary described in paragraph (7)(B)(iv),''.

Subsec. (k)(2)(B)(v). Pub. L. 99–514, §1895(d)(4)(A)(i), struck out cl. (v), remarriage of spouse, which read as follows: ''In the case of an individual who is a qualified beneficiary by reason of being the spouse of a covered employee, the date on which the beneficiary remarries and becomes covered under a group health plan.''

Subsec. (k)(3). Pub. L. 99–509, §9501(a)(1), added subpar. (F) and concluding provisions.

Subsec. (k)(5)(B). Pub. L. 99–514, §1895(d)(5)(A), as amended by Pub. L. 99–509, §9307(c)(2)(B), and Pub. L. 100–647, §1018(t)(7)(B), inserted ''of continuation coverage'' and ''If there is a choice among types of coverage under the plan, each qualified beneficiary is entitled to make a separate selection among such types of coverage.'' See 1988 Amendment note above.

Subsec. (k)(6)(B). Pub. L. 99–509, §9501(d)(1), substituted ''(D), or (F)'' for ''or (D)''.

Subsec. (k)(6)(C). Pub. L. 99–514, §1895(d)(6)(A), inserted ''within 60 days after the date of the qualifying event''.

Subsec. (k)(6)(D)(i). Pub. L. 99–509, §9501(d)(1), substituted ''(D), or (F)'' for ''or (D)''.

Subsec. (k)(7)(B)(iii). Pub. L. 99–514, §1895(d)(7), added cl. (iii).

Subsec. (k)(7)(B)(iv). Pub. L. 99–509, §9501(c)(1), added cl. (iv).

Subsec. (*l*). Pub. L. 99–514, §613(a), added subsec. (*l*). Former subsec. (*l*) redesignated (m).

Pub. L. 99–272, §10001(c), redesignated former subsec. (k), relating to cross references, as (*l*).

Subsec. (m). Pub. L. 99–514, §1161(a), added subsec. (m) relating to special rules for health insurance costs of self-employed individuals, and further directed that this section be amended ''by redesignating subsection (n) as subsection (m)'', which directory language could not be executed because this section does not contain a subsec. (n).

Pub. L. 99–514, §613(a), redesignated subsec. (*l*), relating to cross references, as (m).

1984—Subsec. (i)(2). Pub. L. 98–369, §2354(d), substituted ''section 213(d)'' for ''section 213(e)''.

Subsec. (j). Pub. L. 98–573 added subsec. (j). Former subsec. (j) redesignated (k).

Subsec. (j)(3). Pub. L. 98–369, §512(b), added par. (3).

Subsec. (k). Pub. L. 98–573 redesignated former subsec. (j) as (k).

1982—Subsec. (a). Pub. L. 97–216 inserted provisions under which amounts expended by Members of Congress within each taxable year for living expenses shall not be deductible for income tax purposes in excess of $3,000.

Subsec. (c)(1). Pub. L. 97–248, §288(a), substituted ''is unlawful under the Foreign Corrupt Practices Act of 1977'' for ''would be unlawful under the laws of the United States if such laws were applicable to such payment and to such official or employee'' after ''government, the payment'', and ''(or is unlawful under the Foreign Corrupt Practices Act of 1977)'' for ''(or would be unlawful under the laws of the United States)'' before ''shall be upon the Secretary''.

Subsec. (h). Pub. L. 97–248, §128(b)(2), redesignated subsec. (i), relating to State legislators' travel expenses away from home, as (h). Former subsec. (h), relating to group health plans, redesignated (i).

Subsec. (i). Pub. L. 97–248, §128(b)(2), redesignated former subsec. (h), relating to group health plans, as (i). Former subsec. (i), relating to State legislators' travel expenses away from home, redesignated (h). Former subsec. (i), relating to cross references, redesignated (j).

Subsec. (j). Pub. L. 97–248, §128(b)(1), redesignated former subsec. (i), relating to cross references, as (j).

1981—Subsec. (a). Pub L. 97–51 struck out provisions under which amounts expended by Members of Congress within each taxable year for living expenses could not be deductible for income tax purposes in excess of $3,000.

Subsec. (h). Pub. L. 97–35 added subsec. (h) relating to group health plans. Former subsec. (h), as added by Pub. L. 97–34 and relating to State legislators' travel expenses away from home, redesignated (i). See 1982 Amendment note above.

Pub. L. 97–34 added subsec. (h) relating to State legislators' travel expenses away from home. Former subsec. (h), relating to cross references, redesignated (i). See 1982 Amendment note above.

Subsec. (i). Pub. L. 97–35 redesignated former subsec. (h), as added by Pub. L. 97–34 and relating to State leg-

islators' travel expenses away from home, as (i). See 1982 Amendment note above.

Pub. L. 97–34 redesignated former subsec. (h), relating to cross references, as (i). See 1982 Amendment note above.

1976—Subsec. (a). Pub. L. 94–455, § 1901(c)(4), struck out reference to Territory in provisions following par. (3).

Subsec. (c). Pub. L. 94–455, § 1906(b)(13)(A), struck out in pars. (1) and (2) ''or his delegate'' after ''Secretary''.

1971—Subsec. (c). Pub. L. 92–178, § 310(a)(2), substituted ''Illegal bribes, kickbacks, and other payments'' for ''Bribes and illegal kickbacks'' in heading.

Subsec. (c)(2). Pub. L. 92–178, § 310(a)(1), substituted provisions respecting ''Other illegal payments'' for former provisions on ''Other bribes or kickbacks'' reading ''If in a criminal proceeding a taxpayer is convicted of making a payment (other than a payment described in paragraph (1) which is an illegal bribe or kickback, or his plea of guilty or nolo contendere to an indictment or information charging the making of such a payment is entered or accepted in such a proceeding, no deduction shall be allowed under subsection (a) on account of such payment or any related payment made prior to the date of the final judgment in such proceeding.''

Subsec. (c)(3). Pub. L. 92–178, § 310(a)(1), substituted provisions respecting kickbacks, rebates, and bribes under medicare and medicaid for former statute of limitations provisions.

1969—Subsec. (c). Pub. L. 91–172, § 902(b), designated existing provisions as par. (1), extended the applicability of nondeductible expenses for payments to any official or employee of any government, or of any agency or instrumentality of any government, and added pars. (2) and (3).

Subsecs. (f), (g). Pub. L. 91–172, § 902(a), added subsecs. (f) and (g). Former subsec. (f) redesignated (h).

Subsec. (h). Pub. L. 91–172, §§ 516(c)(2)(A), 902(a), redesignated former subsec. (f) as (h), substituted ''(1) For'' for ''For'', and inserted reference to section 1253 for special rule relating to the treatment of payments by a transferee of a franchise, trademark, or trade name.

1962—Subsec. (a)(2). Pub. L. 87–834, § 4(b), substituted ''(including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances)'' for ''including the entire amount expended for meals and lodging)''.

Subsecs. (e), (f). Pub. L. 87–834, § 3(a), added subsec. (e) and redesignated former subsec. (e) as (f).

1960—Subsec. (b). Pub. L. 86–779, § 7(b), inserted ''the dollar limitations,'' after ''the percentage limitations,''.

Subsecs. (d), (e). Pub. L. 86–779, § 8(a), added subsec. (d) and redesignated former subsec. (d) as (e).

1958—Subsecs. (c), (d). Pub. L. 85–866, § 5(a), added subsec. (c) and redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title II, § 2042(b), Sept. 27, 2010, 124 Stat. 2560, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009.''

Pub. L. 111–148, title IX, § 9014(b), Mar. 23, 2010, 124 Stat. 870, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009, with respect to services performed after such date.''

Pub. L. 111–148, title X, § 10108(g)(2), Mar. 23, 2010, 124 Stat. 914, provided that: ''The amendments made by this subsection [amending this section] shall apply to vouchers provided after December 31, 2013.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. A, title III, § 302(c)(1), Oct. 3, 2008, 122 Stat. 3806, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending on or after the date of the enactment of this Act [Oct. 3, 2008].''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title III, § 318(c), Oct. 22, 2004, 118 Stat. 1470, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2003.''

Amendment by section 802(b)(2) of Pub. L. 108–357 effective Mar. 4, 2003, see section 802(d) of Pub. L. 108–357, set out as an Effective Date note under section 4985 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–121 applicable to amounts paid or incurred in taxable years beginning after Dec. 31, 2002, see section 109(c) of Pub. L. 108–121, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1998 AMENDMENTS

Pub. L. 105–277, div. J, title II, § 2002(b), Oct. 21, 1998, 112 Stat. 2681–901, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1998.''

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 934(b) of Pub. L. 105–34 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1996.''

Section 1203(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section and repealing provisions set out as a note below] shall apply to taxable years beginning after December 31, 1997.''

Section 1204(b) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to amounts paid or incurred with respect to taxable years ending after the date of the enactment of this Act [Aug. 5, 1997].''

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

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by section 311(a) of Pub. L. 104–191 applicable to taxable years beginning after Dec. 31, 1996, see section 311(c) of Pub. L. 104–191, set out as a note under section 104 of this title.

Section 322(c) of Pub. L. 104–191 provided that: ''The amendments made by this section [amending this section and section 213 of this title] shall apply to taxable years beginning after December 31, 1996.''

Section 1704(p)(4) of Pub. L. 104–188 provided that:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection [amending this section] shall apply to amounts paid or incurred after September 13, 1995, in taxable years ending after such date.

''(B) PARAGRAPH (2).—The amendment made by paragraph (2) [amending this section] shall take effect as if included in the amendment made by section 613 of the Tax Reform Act of 1986 [Pub. L. 99–514].''

EFFECTIVE DATE OF 1995 AMENDMENT

Section 1(c) of Pub. L. 104–7 provided that:

''(1) EXTENSION.—The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1993.

''(2) INCREASE.—The amendment made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1994.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13131(d)(2) of Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1993, see section 13131(e) of Pub. L. 103–66, set out as a note under section 32 of this title.

Section 13174(a)(3) of Pub. L. 103–66 provided that: ''The amendments made by this subsection [amending this section and repealing provisions set out below] shall apply to taxable years ending after June 30, 1992.''

Section 13174(b)(2) of Pub. L. 103–66 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1992.''

Section 13211(b) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to amounts which would otherwise be deductible for taxable years beginning on or after January 1, 1994.''

Section 13222(e) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and sections 170, 6033, and 7871 of this title] shall apply to amounts paid or incurred after December 31, 1993.''

Section 13442(b) of Pub. L. 103–66, as amended by Pub. L. 104–7, §5, Apr. 11, 1995, 109 Stat. 96, provided that: ''The provisions of this section [amending this section] shall apply to services provided after February 2, 1993, and on or before December 31, 1995.''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1938(b) of Pub. L. 102–486 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to costs paid or incurred after December 31, 1992.''

EFFECTIVE DATE OF 1991 AMENDMENT

Section 110(b) of Pub. L. 102–227 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1991.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11111(d)(2) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11111(f) of Pub. L. 101–508, set out as a note under section 32 of this title.

Section 11410(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and repealing provisions set out below] shall apply to taxable years beginning after December 31, 1989.''

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 6202(b)(5) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section, sections 4980B and 5000 of this title, sections 623 and 631 of Title 29, Labor, and sections 1395p, 1395r, and 1395y of Title 42, The Public Health and Welfare] shall apply to items and services furnished after the date of the enactment of this Act [Dec. 19, 1989].''

Section 7107(c) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1989.''

Section 7862(c)(3)(D) of Pub. L. 101–239 provided that: ''The amendments made by this paragraph [amending this section, section 4980B of this title, and section 1162 of Title 29, Labor] shall apply to—

''(i) qualifying events occurring after December 31, 1989, and

''(ii) in the case of qualified beneficiaries who elected continuation coverage after December 31, 1988, the period for which the required premium was paid (or was attempted to be paid but was rejected as such).''

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1011B(b)(1)–(3) and 1018(t)(7)(B) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 3011(d) of Pub. L. 100–647 provided that: ''The amendments made by this section [enacting section 4980B of this title, and amending this section, sections 106 and 414 of this title, section 1167 of Title 29, Labor, and section 300bb–8 of Title 42, The Public Health and Welfare] shall apply to taxable years beginning after December 31, 1988, but shall not apply to any plan for any plan year to which section 162(k) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act [Nov. 10, 1988]) did not apply by reason of section 10001(e)(2) of the Consolidated Omnibus Budget Reconciliation Act of 1985 [section 10001(e)(2) of Pub. L. 99–272, set out as an Effective Date of 1986 Amendment note under section 106 of this title].''

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 613(b) of Pub. L. 99–514 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to any amount paid or incurred after February 28, 1986, in taxable years ending after such date.''

Section 1161(b) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.

''(2) TRANSITIONAL RULE.—In the case of any year to which section 89 of the Internal Revenue Code of 1986 does not apply, [former] section 162(m)(2)(B) of such Code shall be applied by substituting any nondiscrimination requirements otherwise applicable for the requirements of section 89 of such Code.

''(3) ASSISTANCE.—The Secretary of the Treasury or his delegate shall provide guidance to self-employed individuals to assist them in meeting the requirements of section 89 of the Internal Revenue Code of 1986 with respect to coverage required by the amendments made by this section [amending this section].''

Section 1895(d)(6)(D) of Pub. L. 99–514 provided that: ''The amendments made by this paragraph [amending this section, section 1166 of Title 29, Labor, and section 300bb–6 of Title 42, The Public Health and Welfare] shall only apply with respect to qualifying events occurring after the date of the enactment of this Act [Oct. 22, 1986].''

Section 1895(e) of Pub. L. 99–514 provided that: ''Except as otherwise provided in this section, the amendments made by this section [amending this section, section 3121 of this title, sections 1162 and 1165 to 1167 of Title 29, sections 300bb–2, 300bb–5, 300bb–6, 410, 1301, 1320c–13, 1395p, 1395u, 1395cc, 1395dd, 1395mm, 1395ww, 1395yy, 1396a, 1396b, 1396d, and 1396s of Title 42, enacting provisions set out as notes under this section, section 3121 of this title, section 1167 of Title 29, and sections 1395u, 1395y, 1395ww, and 1395yy of Title 42, and amending provisions set out as notes under sections 403, 1395u, 1395cc, 1395mm, 1395ww, 1395yy, and 1396b of Title 42] shall be effective as if included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99–272].''

Amendment by section 9307(c)(2)(B) of Pub. L. 99–509 effective as if included in the enactment of Tax Reform Act of 1986, Pub. L. 99–514, see section 9307(c)(2) of Pub. L. 99–509, set out as a note under section 1395u of Title 42.

Section 9501(e) of Pub. L. 99–509 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 1162, 1163, 1166, and 1167 of Title 29, Labor] shall take effect as if included in title X of the Consolidated Omnibus Budget Reconciliation Act of 1985 [sections 10001 to 10003 of Pub. L. 99–272].

''(2) TREATMENT OF CERTAIN BANKRUPTCY PROCEEDINGS.—Notwithstanding paragraph (1), section 10001(e) of the Consolidated Omnibus Budget Reconciliation Act of 1985 [set out as a note under section 106 of this

title], and section 10002(d) of such Act [set out as a note under section 1161 of Title 29], the amendments made by this section [amending this section and sections 1162, 1163, 1166, and 1167 of Title 29] and by sections 10001 and 10002 of such Act [enacting sections 1161 to 1168 of Title 29, amending this section, section 106 of this title, and section 1132 of Title 29, and enacting provisions set out as notes under section 106 of this title and sections 1161 and 1166 of Title 29] shall apply in the case of plan years ending during the 12-month period beginning July 1, 1986, but only with respect to—

''(A) a qualifying event described in section 162(k)(3)(F) of the Internal Revenue Code of 1986 or section 603(6) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1163(6)], and

''(B) a qualifying event described in section 162(k)(3)(A) of the Internal Revenue Code of 1986 or section 603(1) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1163(1)] relating to the death of a retired employee occurring after the date of the qualifying event described in subparagraph (A).

''(3) TREATMENT OF CURRENT RETIREES.—Section 162(k)(3)(F) of the Internal Revenue Code of 1986 and section 603(6) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1163(6)] apply to covered employees who retired before, on, or after the date of the enactment of this Act [Oct. 21, 1986].

''(4) NOTICE.—In the case of a qualifying event described in section 603(6) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1163(6)] that occurred before the date of the enactment of this Act [Oct. 21, 1986], the notice required under section 606(2) of such Act [29 U.S.C. 1166(2)] (and under section 162(k)(6)(B) of the Internal Revenue Code of 1986) with respect to such event shall be provided no later than 30 days after the date of the enactment of this Act [Oct. 21, 1986].''

Amendment by Pub. L. 99–272 applicable to plan years beginning on or after July 1, 1986, with special rule for collective bargaining agreements, see section 10001(e) of Pub. L. 99–272, set out as a note under section 106 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 232(b) of Pub. L. 98–573 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 30, 1984].''

Amendment by section 512(b) of Pub. L. 98–369 applicable to amounts paid or incurred after July 18, 1984, in taxable years ending after such date, subject to an exception for certain extended vacation pay plans, see section 512(c) of Pub. L. 98–369, set out as a note under section 404 of this title.

Amendment by section 2354(d) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e) of Pub. L. 98–369, set out as a note under section 1320a–1 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1982 AMENDMENTS

Section 288(c) of Pub. L. 97–248 provided that: ''The amendments made by this section [amending this section and sections 952 and 964 of this title] shall apply to payments made after the date of the enactment of this Act [Sept. 3, 1982].''

Amendment by section 128(b) of Pub. L. 97–248 effective as if such amendment had been originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 128(e)(2) of Pub. L. 97–248, set out as a note under section 1395x of Title 42, The Public Health and Welfare.

Section 215(d) of Pub. L. 97–216 provided that: ''The amendments made by this section [amending this section and section 280A of this title and repealing provisions set out as a note under this section] shall apply to taxable years beginning after December 31, 1981.''

EFFECTIVE DATE OF 1981 AMENDMENTS

Section 139(b)(3) of Pub. L. 97–51, as amended by Pub. L. 97–92, § 133a, Dec. 15, 1981, 95 Stat. 1199, provided that: ''The amendments made by this subsection [amending this section and repealing section 31c of Title 2, The Congress] shall apply to taxable years beginning after December 31, 1980.''

Section 2146(c)(2) of Pub. L. 97–35 provided that: ''The amendments made by subsection (b) [amending this section] shall be effective with respect to taxable years beginning on or after January 1, 1982.''

Section 127(b) of Pub. L. 97–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning on or after January 1, 1976.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(c)(4) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 310(b) of Pub. L. 92–178 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to payments after December 30, 1969, except that section 162(c)(3) of the Internal Revenue Act of 1954 (as added by subsection (a)) shall apply only with respect to kickbacks, rebates, and bribes payment of which is made on or after the date of the enactment of this Act [Dec. 10, 1971].''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 902(c) of Pub. L. 91–172, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Section 162(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) shall apply to all taxable years to which such Code applies. Section 162(g) of such Code (as added by subsection (a)) shall apply with respect to amounts paid or incurred after December 31, 1969. Section 162(c)(1) of such Code (as amended by subsection (b)) shall apply to all taxable years to which such Code applies. Sections 162(c)(2) and (3) of such Code (as amended by subsection (b)) shall apply with respect to payments made after the date of the enactment of this Act [Dec. 30, 1969].''

Amendment by section 516(c)(2)(A) of Pub. L. 91–172 applicable to transfers after Dec. 31, 1969, see section 516(d)(3) of Pub. L. 91–172, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 4(c) of Pub. L. 87–834 provided that: ''The amendments made by this section [amending this section and enacting section 274 of this title] shall apply with respect to taxable years ending after December 31, 1962, but only in respect of periods after such date.''

Section 3(b) of Pub. L. 87–834 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1962.''

EFFECTIVE DATE OF 1960 AMENDMENT

Section 7(c) of Pub. L. 86–779 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 170 of this title] shall apply with respect to taxable years beginning after December 31, 1959.''

Section 8(d) of Pub. L. 86–779 provided that: ''The amendments made by subsections (a), (b), and (c) [amending this section and section 1054 of this title and amending table of sections for Part IV by adding item 1054 and numbering former item 1054 as 1055] shall apply with respect to taxable years beginning after December 31, 1959.''

EFFECTIVE DATE OF 1958 AMENDMENT

Section 5(b) of Pub. L. 85–866 provided that: ''The amendment made by subsection (a) [amending this sec-

tion] shall apply only with respect to expenses paid or incurred after the date of the enactment of this Act [Sept. 2, 1958]. The determination as to whether any expense paid or incurred on or before the date of the enactment of this Act shall be allowed as a deduction shall be made as if this section had not been enacted and without inference drawn from the fact that this section is not made applicable with respect to expenses paid or incurred on or before the date of the enactment of this Act.''

DEDUCTION FOR SPECIAL ASSESSMENTS

Pub. L. 104–208, div. A, title II, §2711, Sept. 30, 1996, 110 Stat. 3009–498, provided that, for purposes of subtitle A of this title, the amount allowed as a deduction under this section for a taxable year would include any amount paid during that year by reason of an assessment under section 2702 of Pub. L. 104–208, formerly set out as a note under section 1817 of Title 12, Banks and Banking, and that section 172(f) of this title would not apply to that deduction.

SPECIAL RULE FOR DEDUCTIONS UNDER SUBSECTION (*l*) FOR CERTAIN TAXABLE YEARS

Section 110(a)(2) of Pub. L. 102–227 provided that, in the case of any taxable year beginning in 1992 only amounts paid before July 1, 1992, by the individual for insurance coverage for periods before July 1, 1992, would be taken into account in determining the amount deductible under subsec. (*l*) of this section with respect to such individual for such taxable year, and that for purposes of subparagraph (A) of subsec. (*l*)(2) of this section, the amount of the earned income described in such subparagraph taken into account for such taxable year would be the amount which bears the same ratio to the total amount of such earned income as the number of months in such taxable year ending before July 1, 1992, bears to the number of months in such taxable year, prior to repeal by Pub. L. 103–66, title XIII, §13174(a)(2), Aug. 10, 1993, 107 Stat. 457.

Section 7107(a)(2) of Pub. L. 101–239 provided that, in the case of any taxable year beginning in 1990 only amounts paid before Oct. 1, 1990, by the individual for insurance coverage for periods before Oct. 1, 1990, would be taken into account in determining the amount deductible under subsec. (*l*) of this section with respect to such individual for such taxable year, and that for purposes of subsec. (*l*)(2)(A) of this section, the amount of the earned income described in such paragraph taken into account for such taxable year would be the amount which bears the same ratio to the total amount of such earned income as the number of months in such taxable year ending before Oct. 1, 1990, bears to the number of months in such taxable year, prior to repeal by Pub. L. 101–508, title XI, §11410(b), Nov. 5, 1990, 104 Stat. 1388–479.

BUSINESS USE OF AUTOMOBILES BY RURAL MAIL CARRIERS

Section 6008 of Pub. L. 100–647 provided that in the case of any employee of the United States Postal Service who performed services involving the collection and delivery of mail on a rural route, such employee was permitted to compute the amount allowable as a deduction under this chapter for the use of an automobile in performing such services by using a standard mileage rate for all miles of such use equal to 150 percent of the basic standard rate, prior to repeal by Pub. L. 105–34, title XII, §1203(b), Aug. 5, 1997, 111 Stat. 995. See subsec. (*o*) of this section.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

LIVING EXPENSES OF MEMBERS OF CONGRESS WHILE AWAY FROM HOME; SENSE OF CONGRESS

Section 139(a) of Pub. L. 97–51, which expressed the sense of Congress that the dollar limits on tax deductions for living expenses of Members of Congress while away from home be the same as such limits for businessmen and other private citizens, was repealed by Pub. L. 97–216, title II, §215(c), July 18, 1982, 96 Stat. 194.

STATE LEGISLATORS' TRAVEL EXPENSES AWAY FROM HOME

Section 604 of Pub. L. 94–455, as amended by Pub. L. 95–30, title III, §307, May 23, 1977, 91 Stat. 153; Pub. L. 95–258, §2, Apr. 7, 1978, 92 Stat. 195; Pub. L. 96–167, §3, Dec. 29, 1979, 93 Stat. 1275; Pub. L. 96–178, §1, Jan. 2, 1980, 93 Stat. 1295; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) IN GENERAL.—For purposes of section 162(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], in the case of any individual who was a State legislator at any time during any taxable year beginning before January 1, 1981, and who, for the taxable year, elects the application of this section, for any period during such a taxable year in which he was a State legislator—

''(1) the place of residence of such individual within the legislative district which he represented shall be considered his home, and

''(2) he shall be deemed to have expended for living expenses (in connection with his trade or business as a legislator) an amount equal to the sum of the amounts determined by multiplying each legislative day of such individual during the taxable year by the amount generally allowable with respect to such day to employees of the executive branch of the Federal Government for per diem while away from home but serving in the United States.

''(b) LEGISLATIVE DAYS.—For purposes of subsection (a), a legislative day during any taxable year for any individual shall be any day during such year on which (1) the legislature was in session (including any day in which the legislature was not in session for a period of 4 consecutive days or less), or (2) the legislature was not in session but the physical presence of the individual was formally recorded at a meeting of a committee of such legislature.

''(c) LIMITATION.—The amount taken into account as living expenses attributable to a trade or business as a State legislator for any taxable year beginning before January 1, 1976, under an election made under this section shall not exceed the amount claimed for such purpose under a return (or amended return) filed before May 21, 1976.

''(d) MAKING AND EFFECT OF ELECTION.—An election under this section shall be made at such time and in such manner as the Secretary of the Treasury or his delegate shall by regulations prescribe.''

[Amendment of section 604 of Pub. L. 94–455 by section 1 of Pub. L. 96–178, which purported to substitute ''January 1, 1979'' for ''January 1, 1978'', was not executed because of the prior amendment by section 3(a)(2), (b) of Pub. L. 96–167 which substituted ''January 1, 1981'' for ''January 1, 1978'' in subsec. (a) and which struck out the last sentence of subsec. (d).]

DENIAL OF DEDUCTION FOR AMOUNTS PAID OR INCURRED ON JUDGMENTS IN SUITS BROUGHT TO RECOVER PRICE INCREASES IN PURCHASE OF NEW PRINCIPAL RESIDENCE

No deductions to be allowed in computing taxable income for two-thirds of any amount paid or incurred on a judgment entered against any person in a suit brought under section 208(b) of Pub. L. 94–12, see section 208(c) of Pub. L. 94–12, title II, Mar. 29, 1975, 89 Stat. 35, set out as a note under section 44 of this title.

DEDUCTIBILITY OF ACCRUED VACATION PAY

Section 97 of Pub. L. 85–866, as amended by Pub. L. 86–496, §2, June 8, 1960, 74 Stat. 164; Pub. L. 88–153, Oct.

17, 1963, 77 Stat. 272; Pub. L. 88–554, §1, Aug. 31, 1964, 78 Stat. 761; Pub. L. 89–692, Oct. 15, 1966, 80 Stat. 1025; Pub. L. 91–172, title IX, §903, Dec. 30, 1969, 83 Stat. 711; Pub. L. 92–580, §3, Oct. 27, 1972, 86 Stat. 1276, provided that deductions for accrued vacation pay under this section would not be denied for any taxable year ending before Jan. 1, 1973, so long as the employee at the time of accrual of pay has performed the necessary qualifying service under an appropriate plan.

INVESTIGATION OF, AND REPORTS ON, TREATMENT OF ENTERTAINMENT AND CERTAIN OTHER EXPENSES

Pub. L. 86–564, title III, §301, June 30, 1960, 74 Stat. 291, authorized the Joint Committee on Internal Revenue Taxation to investigate and report on the use of entertainment and certain other expense deductions to the 87th Congress and authorized the Secretary of the Treasury to report to the 87th Congress on the enforcement program of the Internal Revenue Service relating to such deductions.

FILING OF CLAIMS FOR REFUNDS OF OVERPAYMENTS

Extension of time for filing of claims for refunds or credit of overpayments of income tax resulting from application of this section, see section 96 of Pub. L. 85–866, set out as a note under section 6511 of this title.

§ 163. Interest

(a) General rule

There shall be allowed as a deduction all interest paid or accrued within the taxable year on indebtedness.

(b) Installment purchases where interest charge is not separately stated

(1) General rule

If personal property or educational services are purchased under a contract—

(A) which provides that payment of part or all of the purchase price is to be made in installments, and

(B) in which carrying charges are separately stated but the interest charge cannot be ascertained,

then the payments made during the taxable year under the contract shall be treated for purposes of this section as if they included interest equal to 6 percent of the average unpaid balance under the contract during the taxable year. For purposes of the preceding sentence, the average unpaid balance is the sum of the unpaid balance outstanding on the first day of each month beginning during the taxable year, divided by 12. For purposes of this paragraph, the term ''educational services'' means any service (including lodging) which is purchased from an educational organization described in section 170(b)(1)(A)(ii) and which is provided for a student of such organization.

(2) Limitation

In the case of any contract to which paragraph (1) applies, the amount treated as interest for any taxable year shall not exceed the aggregate carrying charges which are properly attributable to such taxable year.

(c) Redeemable ground rents

For purposes of this subtitle, any annual or periodic rental under a redeemable ground rent (excluding amounts in redemption thereof) shall be treated as interest on an indebtedness secured by a mortgage.

(d) Limitation on investment interest

(1) In general

In the case of a taxpayer other than a corporation, the amount allowed as a deduction under this chapter for investment interest for any taxable year shall not exceed the net investment income of the taxpayer for the taxable year.

(2) Carryforward of disallowed interest

The amount not allowed as a deduction for any taxable year by reason of paragraph (1) shall be treated as investment interest paid or accrued by the taxpayer in the succeeding taxable year.

(3) Investment interest

For purposes of this subsection—

(A) In general

The term ''investment interest'' means any interest allowable as a deduction under this chapter (determined without regard to paragraph (1)) which is paid or accrued on indebtedness properly allocable to property held for investment.

(B) Exceptions

The term ''investment interest'' shall not include—

(i) any qualified residence interest (as defined in subsection (h)(3)), or

(ii) any interest which is taken into account under section 469 in computing income or loss from a passive activity of the taxpayer.

(C) Personal property used in short sale

For purposes of this paragraph, the term ''interest'' includes any amount allowable as a deduction in connection with personal property used in a short sale.

(4) Net investment income

For purposes of this subsection—

(A) In general

The term ''net investment income'' means the excess of—

(i) investment income, over

(ii) investment expenses.

(B) Investment income

The term ''investment income'' means the sum of—

(i) gross income from property held for investment (other than any gain taken into account under clause (ii)(I)),

(ii) the excess (if any) of—

(I) the net gain attributable to the disposition of property held for investment, over

(II) the net capital gain determined by only taking into account gains and losses from dispositions of property held for investment, plus

(iii) so much of the net capital gain referred to in clause (ii)(II) (or, if lesser, the net gain referred to in clause (ii)(I)) as the taxpayer elects to take into account under this clause.

Such term shall include qualified dividend income (as defined in section 1(h)(11)(B))

only to the extent the taxpayer elects to treat such income as investment income for purposes of this subsection.

(C) Investment expenses

The term ''investment expenses'' means the deductions allowed under this chapter (other than for interest) which are directly connected with the production of investment income.

(D) Income and expenses from passive activities

Investment income and investment expenses shall not include any income or expenses taken into account under section 469 in computing income or loss from a passive activity.

(E) Reduction in investment income during phase-in of passive loss rules

Investment income of the taxpayer for any taxable year shall be reduced by the amount of the passive activity loss to which section 469(a) does not apply for such taxable year by reason of section 469(m). The preceding sentence shall not apply to any portion of such passive activity loss which is attributable to a rental real estate activity with respect to which the taxpayer actively participates (within the meaning of section 469(i)(6)) during such taxable year.

(5) Property held for investment

For purposes of this subsection—

(A) In general

The term ''property held for investment'' shall include—

(i) any property which produces income of a type described in section 469(e)(1), and

(ii) any interest held by a taxpayer in an activity involving the conduct of a trade or business—

(I) which is not a passive activity, and

(II) with respect to which the taxpayer does not materially participate.

(B) Investment expenses

In the case of property described in subparagraph (A)(i), expenses shall be allocated to such property in the same manner as under section 469.

(C) Terms

For purposes of this paragraph, the terms ''activity'', ''passive activity'', and ''materially participate'' have the meanings given such terms by section 469.

(6) Phase-in of disallowance

In the case of any taxable year beginning in calendar years 1987 through 1990—

(A) In general

The amount of interest paid or accrued during any such taxable year which is disallowed under this subsection shall not exceed the sum of—

(i) the amount which would be disallowed under this subsection if—

(I) paragraph (1) were applied by substituting ''the sum of the ceiling amount and the net investment income'' for ''the net investment income'', and

(II) paragraphs (4)(E) and (5)(A)(ii) did not apply, and

(ii) the applicable percentage of the excess of—

(I) the amount which (without regard to this paragraph) is not allowable as a deduction under this subsection for the taxable year, over

(II) the amount described in clause (i).

The preceding sentence shall not apply to any interest treated as paid or accrued during the taxable year under paragraph (2).

(B) Applicable percentage

For purposes of this paragraph, the applicable percentage shall be determined in accordance with the following table:

In the case of taxable years beginning in:	The applicable percentage is:
1987	35
1988	60
1989	80
1990	90.

(C) Ceiling amount

For purposes of this paragraph, the term ''ceiling amount'' means—

(i) $10,000 in the case of a taxpayer not described in clause (ii) or (iii),

(ii) $5,000 in the case of a married individual filing a separate return, and

(iii) zero in the case of a trust.

(e) Original issue discount

(1) In general

In the case of any debt instrument issued after July 1, 1982, the portion of the original issue discount with respect to such debt instrument which is allowable as a deduction to the issuer for any taxable year shall be equal to the aggregate daily portions of the original issue discount for days during such taxable year.

(2) Definitions and special rules

For purposes of this subsection—

(A) Debt instrument

The term ''debt instrument'' has the meaning given such term by section 1275(a)(1).

(B) Daily portions

The daily portion of the original issue discount for any day shall be determined under section 1272(a) (without regard to paragraph (7) thereof and without regard to section 1273(a)(3)).

(C) Short-term obligations

In the case of an obligor of a short-term obligation (as defined in section 1283(a)(1)(A)) who uses the cash receipts and disbursements method of accounting, the original issue discount (and any other interest payable) on such obligation shall be deductible only when paid.

(3) Special rule for original issue discount on obligation held by related foreign person

(A) In general

If any debt instrument having original issue discount is held by a related foreign

person, any portion of such original issue discount shall not be allowable as a deduction to the issuer until paid. The preceding sentence shall not apply to the extent that the original issue discount is effectively connected with the conduct by such foreign related person of a trade or business within the United States unless such original issue discount is exempt from taxation (or is subject to a reduced rate of tax) pursuant to a treaty obligation of the United States.

(B) Special rule for certain foreign entities

(i) In general

In the case of any debt instrument having original issue discount which is held by a related foreign person which is a controlled foreign corporation (as defined in section 957) or a passive foreign investment company (as defined in section 1297), a deduction shall be allowable to the issuer with respect to such original issue discount for any taxable year before the taxable year in which paid only to the extent such original issue discount is includible (determined without regard to properly allocable deductions and qualified deficits under section 952(c)(1)(B)) during such prior taxable year in the gross income of a United States person who owns (within the meaning of section 958(a)) stock in such corporation.

(ii) Secretarial authority

The Secretary may by regulation exempt transactions from the application of clause (i), including any transaction which is entered into by a payor in the ordinary course of a trade or business in which the payor is predominantly engaged.

(C) Related foreign person

For purposes of subparagraph (A), the term ''related foreign person'' means any person—

(i) who is not a United States person, and

(ii) who is related (within the meaning of section 267(b)) to the issuer.

(4) Exceptions

This subsection shall not apply to any debt instrument described in—

(A) subparagraph (D) of section 1272(a)(2) (relating to obligations issued by natural persons before March 2, 1984), and

(B) subparagraph (E) of section 1272(a)(2) (relating to loans between natural persons).

(5) Special rules for original issue discount on certain high yield obligations

(A) In general

In the case of an applicable high yield discount obligation issued by a corporation—

(i) no deduction shall be allowed under this chapter for the disqualified portion of the original issue discount on such obligation, and

(ii) the remainder of such original issue discount shall not be allowable as a deduction until paid.

For purposes of this paragraph, rules similar to the rules of subsection (i)(3)(B) shall apply in determining the amount of the original issue discount and when the original issue discount is paid.

(B) Disqualified portion treated as stock distribution for purposes of dividend received deduction

(i) In general

Solely for purposes of sections 243, 245, 246, and 246A, the dividend equivalent portion of any amount includible in gross income of a corporation under section 1272(a) in respect of an applicable high yield discount obligation shall be treated as a dividend received by such corporation from the corporation issuing such obligation.

(ii) Dividend equivalent portion

For purposes of clause (i), the dividend equivalent portion of any amount includible in gross income under section 1272(a) in respect of an applicable high yield discount obligation is the portion of the amount so includible—

(I) which is attributable to the disqualified portion of the original issue discount on such obligation, and

(II) which would have been treated as a dividend if it had been a distribution made by the issuing corporation with respect to stock in such corporation.

(C) Disqualified portion

(i) In general

For purposes of this paragraph, the disqualified portion of the original issue discount on any applicable high yield discount obligation is the lesser of—

(I) the amount of such original issue discount, or

(II) the portion of the total return on such obligation which bears the same ratio to such total return as the disqualified yield on such obligation bears to the yield to maturity on such obligation.

(ii) Definitions

For purposes of clause (i), the term ''disqualified yield'' means the excess of the yield to maturity on the obligation over the sum referred to[1] subsection (i)(1)(B) plus 1 percentage point, and the term ''total return'' is the amount which would have been the original issue discount on the obligation if interest described in the parenthetical in section 1273(a)(2) were included in the stated redemption price at maturity.

(D) Exception for S corporations

This paragraph shall not apply to any obligation issued by any corporation for any period for which such corporation is an S corporation.

(E) Effect on earnings and profits

This paragraph shall not apply for purposes of determining earnings and profits; except that, for purposes of determining the

[1] So in original. Probably should be followed by ''in''.

dividend equivalent portion of any amount includible in gross income under section 1272(a) in respect of an applicable high yield discount obligation, no reduction shall be made for any amount attributable to the disqualified portion of any original issue discount on such obligation.

(F) Suspension of application of paragraph

(i) Temporary suspension

This paragraph shall not apply to any applicable high yield discount obligation issued during the period beginning on September 1, 2008, and ending on December 31, 2009, in exchange (including an exchange resulting from a modification of the debt instrument) for an obligation which is not an applicable high yield discount obligation and the issuer (or obligor) of which is the same as the issuer (or obligor) of such applicable high yield discount obligation. The preceding sentence shall not apply to any obligation the interest on which is interest described in section 871(h)(4) (without regard to subparagraph (D) thereof) or to any obligation issued to a related person (within the meaning of section 108(e)(4)).

(ii) Successive application

Any obligation to which clause (i) applies shall not be treated as an applicable high yield discount obligation for purposes of applying this subparagraph to any other obligation issued in exchange for such obligation.

(iii) Secretarial authority to suspend application

The Secretary may apply this paragraph with respect to debt instruments issued in periods following the period described in clause (i) if the Secretary determines that such application is appropriate in light of distressed conditions in the debt capital markets.

(G) Cross reference

For definition of applicable high yield discount obligation, see subsection (i).

(6) Cross references

For provision relating to deduction of original issue discount on tax-exempt obligation, see section 1288.

For special rules in the case of the borrower under certain loans for personal use, see section 1275(b).

(f) Denial of deduction for interest on certain obligations not in registered form

(1) In general

Nothing in subsection (a) or in any other provision of law shall be construed to provide a deduction for interest on any registration-required obligation unless such obligation is in registered form.

(2) Registration-required obligation

For purposes of this section—

(A) In general

The term ''registration-required obligation'' means any obligation (including any obligation issued by a governmental entity) other than an obligation which—

(i) is issued by a natural person,

(ii) is not of a type offered to the public,

(iii) has a maturity (at issue) of not more than 1 year, or

(iv) is described in subparagraph (B).

(B) Certain obligations not included

An obligation is described in this subparagraph if—

(i) there are arrangements reasonably designed to ensure that such obligation will be sold (or resold in connection with the original issue) only to a person who is not a United States person, and

(ii) in the case of an obligation not in registered form—

(I) interest on such obligation is payable only outside the United States and its possessions, and

(II) on the face of such obligation there is a statement that any United States person who holds such obligation will be subject to limitations under the United States income tax laws.

(C) Authority to include other obligations

Clauses (ii) and (iii) of subparagraph (A), and subparagraph (B), shall not apply to any obligation if—

(i) in the case of—

(I) subparagraph (A), such obligation is of a type which the Secretary has determined by regulations to be used frequently in avoiding Federal taxes, or

(II) subparagraph (B), such obligation is of a type specified by the Secretary in regulations, and

(ii) such obligation is issued after the date on which the regulations referred to in clause (i) take effect.

(3) Book entries permitted, etc.

For purposes of this subsection, rules similar to the rules of section 149(a)(3) shall apply.

(g) Reduction of deduction where section 25 credit taken

The amount of the deduction under this section for interest paid or accrued during any taxable year on indebtedness with respect to which a mortgage credit certificate has been issued under section 25 shall be reduced by the amount of the credit allowable with respect to such interest under section 25 (determined without regard to section 26).

(h) Disallowance of deduction for personal interest

(1) In general

In the case of a taxpayer other than a corporation, no deduction shall be allowed under this chapter for personal interest paid or accrued during the taxable year.

(2) Personal interest

For purposes of this subsection, the term ''personal interest'' means any interest allowable as a deduction under this chapter other than—

(A) interest paid or accrued on indebtedness properly allocable to a trade or business

(other than the trade or business of performing services as an employee),

(B) any investment interest (within the meaning of subsection (d)),

(C) any interest which is taken into account under section 469 in computing income or loss from a passive activity of the taxpayer,

(D) any qualified residence interest (within the meaning of paragraph (3)),

(E) any interest payable under section 6601 on any unpaid portion of the tax imposed by section 2001 for the period during which an extension of time for payment of such tax is in effect under section 6163, and

(F) any interest allowable as a deduction under section 221 (relating to interest on educational loans).

(3) Qualified residence interest

For purposes of this subsection—

(A) In general

The term ''qualified residence interest'' means any interest which is paid or accrued during the taxable year on—

(i) acquisition indebtedness with respect to any qualified residence of the taxpayer, or

(ii) home equity indebtedness with respect to any qualified residence of the taxpayer.

For purposes of the preceding sentence, the determination of whether any property is a qualified residence of the taxpayer shall be made as of the time the interest is accrued.

(B) Acquisition indebtedness

(i) In general

The term ''acquisition indebtedness'' means any indebtedness which—

(I) is incurred in acquiring, constructing, or substantially improving any qualified residence of the taxpayer, and

(II) is secured by such residence.

Such term also includes any indebtedness secured by such residence resulting from the refinancing of indebtedness meeting the requirements of the preceding sentence (or this sentence); but only to the extent the amount of the indebtedness resulting from such refinancing does not exceed the amount of the refinanced indebtedness.

(ii) $1,000,000 limitation

The aggregate amount treated as acquisition indebtedness for any period shall not exceed $1,000,000 ($500,000 in the case of a married individual filing a separate return).

(C) Home equity indebtedness

(i) In general

The term ''home equity indebtedness'' means any indebtedness (other than acquisition indebtedness) secured by a qualified residence to the extent the aggregate amount of such indebtedness does not exceed—

(I) the fair market value of such qualified residence, reduced by

(II) the amount of acquisition indebtedness with respect to such residence.

(ii) Limitation

The aggregate amount treated as home equity indebtedness for any period shall not exceed $100,000 ($50,000 in the case of a separate return by a married individual).

(D) Treatment of indebtedness incurred on or before October 13, 1987

(i) In general

In the case of any pre-October 13, 1987, indebtedness—

(I) such indebtedness shall be treated as acquisition indebtedness, and

(II) the limitation of subparagraph (B)(ii) shall not apply.

(ii) Reduction in $1,000,000 limitation

The limitation of subparagraph (B)(ii) shall be reduced (but not below zero) by the aggregate amount of outstanding pre-October 13, 1987, indebtedness.

(iii) Pre-October 13, 1987, indebtedness

The term ''pre-October 13, 1987, indebtedness'' means—

(I) any indebtedness which was incurred on or before October 13, 1987, and which was secured by a qualified residence on October 13, 1987, and at all times thereafter before the interest is paid or accrued, or

(II) any indebtedness which is secured by the qualified residence and was incurred after October 13, 1987, to refinance indebtedness described in subclause (I) (or refinanced indebtedness meeting the requirements of this subclause) to the extent (immediately after the refinancing) the principal amount of the indebtedness resulting from the refinancing does not exceed the principal amount of the refinanced indebtedness (immediately before the refinancing).

(iv) Limitation on period of refinancing

Subclause (II) of clause (iii) shall not apply to any indebtedness after—

(I) the expiration of the term of the indebtedness described in clause (iii)(I), or

(II) if the principal of the indebtedness described in clause (iii)(I) is not amortized over its term, the expiration of the term of the 1st refinancing of such indebtedness (or if earlier, the date which is 30 years after the date of such 1st refinancing).

(E) Mortgage insurance premiums treated as interest

(i) In general

Premiums paid or accrued for qualified mortgage insurance by a taxpayer during the taxable year in connection with acquisition indebtedness with respect to a qualified residence of the taxpayer shall be treated for purposes of this section as interest which is qualified residence interest.

(ii) Phaseout

The amount otherwise treated as interest under clause (i) shall be reduced (but

not below zero) by 10 percent of such amount for each $1,000 ($500 in the case of a married individual filing a separate return) (or fraction thereof) that the taxpayer's adjusted gross income for the taxable year exceeds $100,000 ($50,000 in the case of a married individual filing a separate return).

(iii) Limitation

Clause (i) shall not apply with respect to any mortgage insurance contracts issued before January 1, 2007.

(iv) Termination

Clause (i) shall not apply to amounts—

(I) paid or accrued after December 31, 2011, or

(II) properly allocable to any period after such date.

(4) Other definitions and special rules

For purposes of this subsection—

(A) Qualified residence

(i) In general

The term ''qualified residence'' means—

(I) the principal residence (within the meaning of section 121) of the taxpayer, and

(II) 1 other residence of the taxpayer which is selected by the taxpayer for purposes of this subsection for the taxable year and which is used by the taxpayer as a residence (within the meaning of section 280A(d)(1)).

(ii) Married individuals filing separate returns

If a married couple does not file a joint return for the taxable year—

(I) such couple shall be treated as 1 taxpayer for purposes of clause (i), and

(II) each individual shall be entitled to take into account 1 residence unless both individuals consent in writing to 1 individual taking into account the principal residence and 1 other residence.

(iii) Residence not rented

For purposes of clause (i)(II), notwithstanding section 280A(d)(1), if the taxpayer does not rent a dwelling unit at any time during a taxable year, such unit may be treated as a residence for such taxable year.

(B) Special rule for cooperative housing corporations

Any indebtedness secured by stock held by the taxpayer as a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as so defined) shall be treated as secured by the house or apartment which the taxpayer is entitled to occupy as such a tenant-stockholder. If stock described in the preceding sentence may not be used to secure indebtedness, indebtedness shall be treated as so secured if the taxpayer establishes to the satisfaction of the Secretary that such indebtedness was incurred to acquire such stock.

(C) Unenforceable security interests

Indebtedness shall not fail to be treated as secured by any property solely because, under any applicable State or local homestead or other debtor protection law in effect on August 16, 1986, the security interest is ineffective or the enforceability of the security interest is restricted.

(D) Special rules for estates and trusts

For purposes of determining whether any interest paid or accrued by an estate or trust is qualified residence interest, any residence held by such estate or trust shall be treated as a qualified residence of such estate or trust if such estate or trust establishes that such residence is a qualified residence of a beneficiary who has a present interest in such estate or trust or an interest in the residuary of such estate or trust.

(E) Qualified mortgage insurance

The term ''qualified mortgage insurance'' means—

(i) mortgage insurance provided by the Veterans Administration, the Federal Housing Administration, or the Rural Housing Administration, and

(ii) private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901), as in effect on the date of the enactment of this subparagraph).

(F) Special rules for prepaid qualified mortgage insurance

Any amount paid by the taxpayer for qualified mortgage insurance that is properly allocable to any mortgage the payment of which extends to periods that are after the close of the taxable year in which such amount is paid shall be chargeable to capital account and shall be treated as paid in such periods to which so allocated. No deduction shall be allowed for the unamortized balance of such account if such mortgage is satisfied before the end of its term. The preceding sentences shall not apply to amounts paid for qualified mortgage insurance provided by the Veterans Administration or the Rural Housing Administration.

(5) Phase-in of limitation

In the case of any taxable year beginning in calendar years 1987 through 1990, the amount of interest with respect to which a deduction is disallowed under this subsection shall be equal to the applicable percentage (within the meaning of subsection (d)(6)(B)) of the amount which (but for this paragraph) would have been so disallowed.

(i) Applicable high yield discount obligation

(1) In general

For purposes of this section, the term ''applicable high yield discount obligation'' means any debt instrument if—

(A) the maturity date of such instrument is more than 5 years from the date of issue,

(B) the yield to maturity on such instrument equals or exceeds the sum of—

(i) the applicable Federal rate in effect under section 1274(d) for the calendar month in which the obligation is issued, plus

(ii) 5 percentage points, and

(C) such instrument has significant original issue discount.

For purposes of subparagraph (B)(i), the Secretary may by regulation (i) permit a rate to be used with respect to any debt instrument which is higher than the applicable Federal rate if the taxpayer establishes to the satisfaction of the Secretary that such higher rate is based on the same principles as the applicable Federal rate and is appropriate for the term of the instrument, or (ii) permit, on a temporary basis, a rate to be used with respect to any debt instrument which is higher than the applicable Federal rate if the Secretary determines that such rate is appropriate in light of distressed conditions in the debt capital markets.

(2) Significant original issue discount

For purposes of paragraph (1)(C), a debt instrument shall be treated as having significant original issue discount if—

(A) the aggregate amount which would be includible in gross income with respect to such instrument for periods before the close of any accrual period (as defined in section 1272(a)(5)) ending after the date 5 years after the date of issue, exceeds—

(B) the sum of—

(i) the aggregate amount of interest to be paid under the instrument before the close of such accrual period, and

(ii) the product of the issue price of such instrument (as defined in sections 1273(b) and 1274(a)) and its yield to maturity.

(3) Special rules

For purposes of determining whether a debt instrument is an applicable high yield discount obligation—

(A) any payment under the instrument shall be assumed to be made on the last day permitted under the instrument, and

(B) any payment to be made in the form of another obligation of the issuer (or a related person within the meaning of section 453(f)(1)) shall be assumed to be made when such obligation is required to be paid in cash or in property other than such obligation.

Except for purposes of paragraph (1)(B), any reference to an obligation in subparagraph (B) of this paragraph shall be treated as including a reference to stock.

(4) Debt instrument

For purposes of this subsection, the term ''debt instrument'' means any instrument which is a debt instrument as defined in section 1275(a).

(5) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this subsection and subsection (e)(5), including—

(A) regulations providing for modifications to the provisions of this subsection and subsection (e)(5) in the case of varying rates of interest, put or call options, indefinite maturities, contingent payments, assumptions of debt instruments, conversion rights, or other circumstances where such modifications are appropriate to carry out the purposes of this subsection and subsection (e)(5), and

(B) regulations to prevent avoidance of the purposes of this subsection and subsection (e)(5) through the use of issuers other than C corporations, agreements to borrow amounts due under the debt instrument, or other arrangements.

(j) Limitation on deduction for interest on certain indebtedness

(1) Limitation

(A) In general

If this subsection applies to any corporation for any taxable year, no deduction shall be allowed under this chapter for disqualified interest paid or accrued by such corporation during such taxable year. The amount disallowed under the preceding sentence shall not exceed the corporation's excess interest expense for the taxable year.

(B) Disallowed amount carried to succeeding taxable year

Any amount disallowed under subparagraph (A) for any taxable year shall be treated as disqualified interest paid or accrued in the succeeding taxable year (and clause (ii) of paragraph (2)(A) shall not apply for purposes of applying this subsection to the amount so treated).

(2) Corporations to which subsection applies

(A) In general

This subsection shall apply to any corporation for any taxable year if—

(i) such corporation has excess interest expense for such taxable year, and

(ii) the ratio of debt to equity of such corporation as of the close of such taxable year (or on any other day during the taxable year as the Secretary may by regulations prescribe) exceeds 1.5 to 1.

(B) Excess interest expense

(i) In general

For purposes of this subsection, the term ''excess interest expense'' means the excess (if any) of—

(I) the corporation's net interest expense, over

(II) the sum of 50 percent of the adjusted taxable income of the corporation plus any excess limitation carryforward under clause (ii).

(ii) Excess limitation carryforward

If a corporation has an excess limitation for any taxable year, the amount of such excess limitation shall be an excess limitation carryforward to the 1st succeeding taxable year and to the 2nd and 3rd succeeding taxable years to the extent not previously taken into account under this clause. The amount of such a carryforward taken into account for any such succeeding taxable year shall not exceed the excess interest expense for such succeeding

taxable year (determined without regard to the carryforward from the taxable year of such excess limitation).

(iii) Excess limitation

For purposes of clause (ii), the term ''excess limitation'' means the excess (if any) of—

(I) 50 percent of the adjusted taxable income of the corporation, over

(II) the corporation's net interest expense.

(C) Ratio of debt to equity

For purposes of this paragraph, the term ''ratio of debt to equity'' means the ratio which the total indebtedness of the corporation bears to the sum of its money and all other assets reduced (but not below zero) by such total indebtedness. For purposes of the preceding sentence—

(i) the amount taken into account with respect to any asset shall be the adjusted basis thereof for purposes of determining gain,

(ii) the amount taken into account with respect to any indebtedness with original issue discount shall be its issue price plus the portion of the original issue discount previously accrued as determined under the rules of section 1272 (determined without regard to subsection (a)(7) or (b)(4) thereof), and

(iii) there shall be such other adjustments as the Secretary may by regulations prescribe.

(3) Disqualified interest

For purposes of this subsection, the term ''disqualified interest'' means—

(A) any interest paid or accrued by the taxpayer (directly or indirectly) to a related person if no tax is imposed by this subtitle with respect to such interest,

(B) any interest paid or accrued by the taxpayer with respect to any indebtedness to a person who is not a related person if—

(i) there is a disqualified guarantee of such indebtedness, and

(ii) no gross basis tax is imposed by this subtitle with respect to such interest, and

(C) any interest paid or accrued (directly or indirectly) by a taxable REIT subsidiary (as defined in section 856(*l*)) of a real estate investment trust to such trust.

(4) Related person

For purposes of this subsection—

(A) In general

Except as provided in subparagraph (B), the term ''related person'' means any person who is related (within the meaning of section 267(b) or 707(b)(1)) to the taxpayer.

(B) Special rule for certain partnerships

(i) In general

Any interest paid or accrued to a partnership which (without regard to this subparagraph) is a related person shall not be treated as paid or accrued to a related person if less than 10 percent of the profits and capital interests in such partnership are held by persons with respect to whom no tax is imposed by this subtitle on such interest. The preceding sentence shall not apply to any interest allocable to any partner in such partnership who is a related person to the taxpayer.

(ii) Special rule where treaty reduction

If any treaty between the United States and any foreign country reduces the rate of tax imposed by this subtitle on a partner's share of any interest paid or accrued to a partnership, such partner's interests in such partnership shall, for purposes of clause (i), be treated as held in part by a tax-exempt person and in part by a taxable person under rules similar to the rules of paragraph (5)(B).

(5) Special rules for determining whether interest is subject to tax

(A) Treatment of pass-thru entities

In the case of any interest paid or accrued to a partnership, the determination of whether any tax is imposed by this subtitle on such interest shall be made at the partner level. Rules similar to the rules of the preceding sentence shall apply in the case of any pass-thru entity other than a partnership and in the case of tiered partnerships and other entities.

(B) Interest treated as tax-exempt to extent of treaty reduction

If any treaty between the United States and any foreign country reduces the rate of tax imposed by this subtitle on any interest paid or accrued by the taxpayer, such interest shall be treated as interest on which no tax is imposed by this subtitle to the extent of the same proportion of such interest as—

(i) the rate of tax imposed without regard to such treaty, reduced by the rate of tax imposed under the treaty, bears to

(ii) the rate of tax imposed without regard to the treaty.

(6) Other definitions and special rules

For purposes of this subsection—

(A) Adjusted taxable income

The term ''adjusted taxable income'' means the taxable income of the taxpayer—

(i) computed without regard to—

(I) any deduction allowable under this chapter for the net interest expense,

(II) the amount of any net operating loss deduction under section 172,

(III) any deduction allowable under section 199, and

(IV) any deduction allowable for depreciation, amortization, or depletion, and

(ii) computed with such other adjustments as the Secretary may by regulations prescribe.

(B) Net interest expense

The term ''net interest expense'' means the excess (if any) of—

(i) the interest paid or accrued by the taxpayer during the taxable year, over

(ii) the amount of interest includible in the gross income of such taxpayer for such taxable year.

The Secretary may by regulations provide for adjustments in determining the amount of net interest expense.

(C) Treatment of affiliated group

All members of the same affiliated group (within the meaning of section 1504(a)) shall be treated as 1 taxpayer.

(D) Disqualified guarantee

(i) In general

Except as provided in clause (ii), the term ''disqualified guarantee'' means any guarantee by a related person which is—

(I) an organization exempt from taxation under this subtitle, or

(II) a foreign person.

(ii) Exceptions

The term ''disqualified guarantee'' shall not include a guarantee—

(I) in any circumstances identified by the Secretary by regulation, where the interest on the indebtedness would have been subject to a net basis tax if the interest had been paid to the guarantor, or

(II) if the taxpayer owns a controlling interest in the guarantor.

For purposes of subclause (II), except as provided in regulations, the term ''a controlling interest'' means direct or indirect ownership of at least 80 percent of the total voting power and value of all classes of stock of a corporation, or 80 percent of the profit and capital interests in any other entity. For purposes of the preceding sentence, the rules of paragraphs (1) and (5) of section 267(c) shall apply; except that such rules shall also apply to interest in entities other than corporations.

(iii) Guarantee

Except as provided in regulations, the term ''guarantee'' includes any arrangement under which a person (directly or indirectly through an entity or otherwise) assures, on a conditional or unconditional basis, the payment of another person's obligation under any indebtedness.

(E) Gross basis and net basis taxation

(i) Gross basis tax

The term ''gross basis tax'' means any tax imposed by this subtitle which is determined by reference to the gross amount of any item of income without any reduction for any deduction allowed by this subtitle.

(ii) Net basis tax

The term ''net basis tax'' means any tax imposed by this subtitle which is not a gross basis tax.

(7) Coordination with passive loss rules, etc.

This subsection shall be applied before sections 465 and 469.

(8) Treatment of corporate partners

Except to the extent provided by regulations, in applying this subsection to a corporation which owns (directly or indirectly) an interest in a partnership—

(A) such corporation's distributive share of interest income paid or accrued to such partnership shall be treated as interest income paid or accrued to such corporation,

(B) such corporation's distributive share of interest paid or accrued by such partnership shall be treated as interest paid or accrued by such corporation, and

(C) such corporation's share of the liabilities of such partnership shall be treated as liabilities of such corporation.

(9) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this subsection, including—

(A) such regulations as may be appropriate to prevent the avoidance of the purposes of this subsection,

(B) regulations providing such adjustments in the case of corporations which are members of an affiliated group as may be appropriate to carry out the purposes of this subsection,

(C) regulations for the coordination of this subsection with section 884, and

(D) regulations providing for the reallocation of shares of partnership indebtedness, or distributive shares of the partnership's interest income or interest expense.

(k) Section 6166 interest

No deduction shall be allowed under this section for any interest payable under section 6601 on any unpaid portion of the tax imposed by section 2001 for the period during which an extension of time for payment of such tax is in effect under section 6166.

***(l)* Disallowance of deduction on certain debt instruments of corporations**

(1) In general

No deduction shall be allowed under this chapter for any interest paid or accrued on a disqualified debt instrument.

(2) Disqualified debt instrument

For purposes of this subsection, the term ''disqualified debt instrument'' means any indebtedness of a corporation which is payable in equity of the issuer or a related party or equity held by the issuer (or any related party) in any other person.

(3) Special rules for amounts payable in equity

For purposes of paragraph (2), indebtedness shall be treated as payable in equity of the issuer or any other person only if—

(A) a substantial amount of the principal or interest is required to be paid or converted, or at the option of the issuer or a related party is payable in, or convertible into, such equity,

(B) a substantial amount of the principal or interest is required to be determined, or at the option of the issuer or a related party is determined, by reference to the value of such equity, or

(C) the indebtedness is part of an arrangement which is reasonably expected to result

in a transaction described in subparagraph (A) or (B).

For purposes of this paragraph, principal or interest shall be treated as required to be so paid, converted, or determined if it may be required at the option of the holder or a related party and there is a substantial certainty the option will be exercised.

(4) Capitalization allowed with respect to equity of persons other than issuer and related parties

If the disqualified debt instrument of a corporation is payable in equity held by the issuer (or any related party) in any other person (other than a related party), the basis of such equity shall be increased by the amount not allowed as a deduction by reason of paragraph (1) with respect to the instrument.

(5) Exception for certain instruments issued by dealers in securities

For purposes of this subsection, the term ''disqualified debt instrument'' does not include indebtedness issued by a dealer in securities (or a related party) which is payable in, or by reference to, equity (other than equity of the issuer or a related party) held by such dealer in its capacity as a dealer in securities. For purposes of this paragraph, the term ''dealer in securities'' has the meaning given such term by section 475.

(6) Related party

For purposes of this subsection, a person is a related party with respect to another person if such person bears a relationship to such other person described in section 267(b) or 707(b).

(7) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including regulations preventing avoidance of this subsection through the use of an issuer other than a corporation.

(m) Interest on unpaid taxes attributable to nondisclosed reportable transactions

No deduction shall be allowed under this chapter for any interest paid or accrued under section 6601 on any underpayment of tax which is attributable to the portion of any reportable transaction understatement (as defined in section 6662A(b)) with respect to which the requirement of section 6664(d)(2)(A)[2] is not met.

(n) Cross references

(1) For disallowance of certain amounts paid in connection with insurance, endowment, or annuity contracts, see section 264.

(2) For disallowance of deduction for interest relating to tax-exempt income, see section 265(a)(2).

(3) For disallowance of deduction for carrying charges chargeable to capital account, see section 266.

(4) For disallowance of interest with respect to transactions between related taxpayers, see section 267.

(5) For treatment of redeemable ground rents and real property held subject to liabilities under redeemable ground rents, see section 1055.

[2] See References in Text note below.

(Aug. 16, 1954, ch. 736, 68A Stat. 46; Pub. L. 88–9, § 1(a), (c), Apr. 10, 1963, 77 Stat. 6, 7; Pub. L. 88–272, title II, § 224(c), Feb. 26, 1964, 78 Stat. 79; Pub. L. 91–172, title II, § 221(a), Dec. 30, 1969, 83 Stat. 574; Pub. L. 92–178, title III, § 304(a)(2), (b)(2), (d), Dec. 10, 1971, 85 Stat. 523, 524; Pub. L. 94–455, title II, §§ 205(c)(3), 209(a), title XIX, §§ 1901(b)(3)(K), (8)(C), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1535, 1542, 1793, 1794, 1834; Pub. L. 97–248, title II, § 231(b), title III, § 310(b)(2), Sept. 3, 1982, 96 Stat. 498, 596; Pub. L. 97–354, § 5(a)(18), Oct. 19, 1982, 96 Stat. 1693; Pub. L. 98–369, div. A, title I, §§ 42(a)(3), 56(b), 127(f), 128(c), title VI, § 612(c), July 18, 1984, 98 Stat. 556, 574, 652, 654, 911; Pub. L. 99–514, title V, § 511(a), (b), title IX, § 902(e)(1), title XIII, § 1301(j)(3), title XVIII, §§ 1803(a)(4), 1810(e)(1), Oct. 22, 1986, 100 Stat. 2244, 2246, 2382, 2657, 2793, 2825; Pub. L. 100–203, title X, §§ 10102(a), (b), 10212(b), Dec. 22, 1987, 101 Stat. 1330–384, 1330–386, 1330–406; Pub. L. 100–647, title I, §§ 1005(c)(1)–(9), (12), 1006(u)(1), 1009(b)(6), title II, § 2004(b)(1), Nov. 10, 1988, 102 Stat. 3390–3392, 3427, 3449, 3598; Pub. L. 101–239, title VII, §§ 7202(a), (b), 7210(a), Dec. 19, 1989, 103 Stat. 2330, 2331, 2339; Pub. L. 101–508, title XI, § 11701(b), (c), Nov. 5, 1990, 104 Stat. 1388–507; Pub. L. 103–66, title XIII, §§ 13206(d)(1), 13228(a)–(c), Aug. 10, 1993, 107 Stat. 467, 494, 495; Pub. L. 104–188, title I, §§ 1703(n)(4), 1704(f)(2)(A), (B), Aug. 20, 1996, 110 Stat. 1877, 1879; Pub. L. 105–34, title III, § 312(d)(1), title V, § 503(b)(2), title X, § 1005(a), title XVI, § 1604(g)(1), Aug. 5, 1997, 111 Stat. 839, 853, 911, 1099; Pub. L. 105–277, div. J, title IV, § 4003(a)(1), Oct. 21, 1998, 112 Stat. 2681–908; Pub. L. 106–170, title V, § 544, Dec. 17, 1999, 113 Stat. 1944; Pub. L. 108–27, title III, § 302(b), May 28, 2003, 117 Stat. 762; Pub. L. 108–357, title VIII, §§ 838(a), 841(a), 845(a)–(d), Oct. 22, 2004, 118 Stat. 1596, 1597, 1600, 1601; Pub. L. 109–135, title IV, § 403(a)(15), Dec. 21, 2005, 119 Stat. 2619; Pub. L. 109–222, title V, § 501(a), (b), May 17, 2006, 120 Stat. 354; Pub. L. 109–432, div. A, title IV, § 419(a), (b), Dec. 20, 2006, 120 Stat. 2967; Pub. L. 110–142, § 3(a), Dec. 20, 2007, 121 Stat. 1804; Pub. L. 111–5, div. B, title I, § 1232(a), (b), Feb. 17, 2009, 123 Stat. 341; Pub. L. 111–147, title V, § 502(a)(1), (2)(B), (C), (c), Mar. 18, 2010, 124 Stat. 107, 108; Pub. L. 111–312, title VII, § 759(a), Dec. 17, 2010, 124 Stat. 3323.)

AMENDMENT OF SECTION

Pub. L. 111–147, title V, § 502(a)(1), (2)(B), (C), (c), (f), Mar. 18, 2010, 124 Stat. 107, 108, provided that, applicable to obligations issued after the date which is 2 years after Mar. 18, 2010, subsection (f) of this section is amended as follows:

(1) in paragraph (2):

(A) in subparagraph (A), by inserting ''or'' at the end of clause (ii), by striking '', or'' at the end of clause (iii) and inserting a period, and by striking clause (iv);

(B) by striking out subparagraph (B) and redesignating subparagraph (C) as (B);

(C) by striking out '', and subparagraph (B),'' in introductory provisions of subparagraph (B), as resdesignated; and

(D) by amending clause (i) of subparagraph (B), as redesignated, to read as follows:

''(i) such obligation is of a type which the Secretary has determined by regulations to be used frequently in avoiding Federal taxes, and''; and

(2) in paragraph (3), by inserting before the period at the end the following: '', except that a dematerialized book entry system or other book entry system specified by the Secretary shall be treated as a book entry system described in such section''.

For termination of amendment by section 303 of Pub. L. 108–27, see Effective and Termination Dates of 2003 Amendment note below.

REFERENCES IN TEXT

The date of the enactment of this subparagraph, referred to in subsec. (h)(4)(E)(ii), is the date of enactment of Pub. L. 109–432, which was approved Dec. 20, 2006.

Section 6664(d)(2)(A), referred to in subsec. (m), was redesignated as section 6664(d)(3)(A) by Pub. L. 111–152, title I, §1409(c)(2)(A), Mar. 30, 2010, 124 Stat. 1069.

AMENDMENTS

2010—Subsec. (h)(3)(E)(iv)(I). Pub. L. 111–312 substituted ''December 31, 2011'' for ''December 31, 2010''.

2009—Subsec. (e)(5)(F), (G). Pub. L. 111–5, §1232(a), added subpar. (F) and redesignated former subpar. (F) as (G).

Subsec. (i)(1). Pub. L. 111–5, §1232(b), in concluding provisions, inserted ''(i)'' before ''permit a rate'' and '', or (ii) permit, on a temporary basis, a rate to be used with respect to any debt instrument which is higher than the applicable Federal rate if the Secretary determines that such rate is appropriate in light of distressed conditions in the debt capital markets'' before period at end.

2007—Subsec. (h)(3)(E)(iv)(I). Pub. L. 110–142 substituted ''December 31, 2010'' for ''December 31, 2007''.

2006—Subsec. (h)(3)(E). Pub. L. 109–432, §419(a), added subpar. (E).

Subsec. (h)(4)(E), (F). Pub. L. 109–432, §419(b), added subpars. (E) and (F).

Subsec. (j)(8). Pub. L. 109–222, §501(a), added par. (8). Former par. (8) redesignated (9).

Subsec. (j)(9). Pub. L. 109–222 redesignated par. (8) as (9) and added subpar. (D).

2005—Subsec. (j)(6)(A)(i)(III), (IV). Pub. L. 109–135 added subcl. (III) and redesignated former subcl. (III) as (IV).

2004—Subsec. (e)(3)(B), (C). Pub. L. 108–357, §841(a), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (*l*)(2). Pub. L. 108–357, §845(a), inserted ''or equity held by the issuer (or any related party) in any other person'' after ''or a related party''.

Subsec. (*l*)(3). Pub. L. 108–357, §845(d), substituted ''or any other person'' for ''or a related party'' in introductory provisions.

Subsec. (*l*)(4) to (7). Pub. L. 108–357, §845(b), (c), added pars. (4) and (5) and redesignated former pars. (4) and (5) as (6) and (7), respectively.

Subsecs. (m), (n). Pub. L. 108–357, §838(a), added subsec. (m) and redesignated former subsec. (m) as (n).

2003—Subsec. (d)(4)(B). Pub. L. 108–27, §§302(b), 303, temporarily inserted at end ''Such term shall include qualified dividend income (as defined in section 1(h)(11)(B)) only to the extent the taxpayer elects to treat such income as investment income for purposes of this subsection.'' See Effective and Termination Dates of 2003 Amendment note below.

1999—Subsec. (j)(3)(C). Pub. L. 106–170 added subpar. (C).

1998—Subsec. (h)(2)(F). Pub. L. 105–277 added subpar. (F).

1997—Subsec. (h)(2)(E). Pub. L. 105–34, §503(b)(2)(B), struck out ''or 6166 or under section 6166A (as in effect before its repeal by the Economic Recovery Tax Act of 1981)'' after ''section 6163''.

Subsec. (h)(4)(A)(i)(I). Pub. L. 105–34, §312(d)(1), substituted ''section 121'' for ''section 1034''.

Subsec. (j)(2)(B)(iii). Pub. L. 105–34, §1604(g)(1), substituted ''clause (ii)'' for ''clause (i)'' in introductory provisions.

Subsec. (k). Pub. L. 105–34, §503(b)(2)(A), added subsec. (k). Former subsec. (k) redesignated (*l*).

Subsec. (*l*). Pub. L. 105–34, §1005(a), added subsec. (*l*). Former subsec. (*l*) redesignated (m).

Pub. L. 105–34, §503(b)(2)(A), redesignated subsec. (k) as (*l*).

Subsec. (m). Pub. L. 105–34, §1005(a), redesignated subsec. (*l*) as (m).

1996—Subsec. (j)(1)(B). Pub. L. 104–188, §1704(f)(2)(A), inserted before period at end ''(and clause (ii) of paragraph (2)(A) shall not apply for purposes of applying this subsection to the amount so treated)''.

Subsec. (j)(6)(E)(ii). Pub. L. 104–188, §1703(n)(4), which directed that cl. (ii) be amended by substituting ''which is'' for ''which is a'', could not be executed, because ''which is a'' does not appear.

Subsec. (j)(7), (8). Pub. L. 104–188, §1704(f)(2)(B), added par. (7) and redesignated former par. (7) as (8).

1993—Subsec. (d)(4)(B). Pub. L. 103–66, §13206(d)(1), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''The term 'investment income' means the sum of—

''(i) gross income (other than gain taken into account under clause (ii)) from property held for investment, and

''(ii) any net gain attributable to the disposition of property held for investment.''

Subsec. (j). Pub. L. 103–66, §13228(c)(2), substituted ''for interest on certain indebtedness'' for ''for certain interest paid by corporation to related person'' in heading.

Subsec. (j)(3). Pub. L. 103–66, §13228(a), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''For purposes of this subsection—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'disqualified interest' means any interest paid or accrued by the taxpayer (directly or indirectly) to a related person if no tax is imposed by this subtitle with respect to such interest.

''(B) EXCEPTION FOR CERTAIN EXISTING INDEBTEDNESS.—The term 'disqualified interest' does not include any interest paid or accrued under indebtedness with a fixed term—

''(i) which was issued on or before July 10, 1989, or

''(ii) which was issued after such date pursuant to a written binding contract in effect on such date and all times thereafter before such indebtedness was issued.''

Subsec. (j)(5)(B). Pub. L. 103–66, §13228(c)(1), struck out ''to a related person'' after ''by the taxpayer'' in introductory provisions.

Subsec. (j)(6)(D), (E). Pub. L. 103–66, §13228(b), added subpars. (D) and (E).

1990—Subsec. (e)(5)(A). Pub. L. 101–508, §11701(b)(1), amended last sentence generally. Prior to amendment, last sentence read as follows: ''For purposes of clause (ii), rules similar to the rules of subsection (i)(3)(B) shall apply in determining the time when the original issue discount is paid.''

Subsec. (i)(3). Pub. L. 101–508, §11701(b)(2)(B), inserted sentence at end.

Subsec. (i)(3)(B). Pub. L. 101–508, §11701(b)(2)(A), struck out ''(or stock)'' after ''obligation'' wherever appearing.

Subsec. (j)(2)(A)(ii). Pub. L. 101–508, §11701(c)(2), substituted ''or on any other day'' for ''and on such other days''.

Subsec. (j)(2)(C). Pub. L. 101–508, §11701(c)(1), substituted ''reduced (but not below zero) by such'' for ''less such'' in introductory provisions.

1989—Subsec. (e)(5), (6). Pub. L. 101–239, §7202(a), added par. (5) and redesignated former par. (5) as (6).

Subsec. (i). Pub. L. 101–239, §7202(b), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 101–239, §7210(a), added subsec. (j). Former subsec. (j) redesignated (k).

Pub. L. 101–239, §7202(b), redesignated subsec. (i) as (j).

Subsec. (k). Pub. L. 101–239, §7210(a), redesignated subsec. (j) as (k).

1988—Subsec. (d)(3)(A). Pub. L. 100–647, §1005(c)(1), substituted ''properly allocable to'' for ''incurred or continued to purchase or carry''.

Subsec. (d)(4)(B). Pub. L. 100–647, §1005(c)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The term 'investment income' means the sum of—

''(i) gross income (other than gain described in clause (ii)) from property held for investment, and

''(ii) any net gain attributable to the disposition of property held for investment,

but only to the extent such amounts are not derived from the conduct of a trade or business.''

Subsec. (d)(6)(A). Pub. L. 100–647, §1005(c)(3), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''The amount of interest disallowed under this subsection for any such taxable year shall be equal to the sum of—

''(i) the applicable percentage of the amount which (without regard to this paragraph) is not allowed as a deduction under this subsection for the taxable year to the extent such amount does not exceed the ceiling amount,

''(ii) the amount which (without regard to this paragraph) is not allowed as a deduction under this subsection in excess of the ceiling amount, plus

''(iii) the amount of any carryforward to such taxable year under paragraph (2) with respect to which a deduction was disallowed under this subsection for a preceding taxable year.

For purposes of this subparagraph, the amount under clause (i) or (ii) shall be computed without regard to the amount described in clause (iii).''

Subsec. (e)(2)(B). Pub. L. 100–647, §1006(u)(1), substituted ''paragraph (7)'' for ''paragraph (6)''.

Subsec. (h)(2)(A). Pub. L. 100–647, §1005(c)(4), substituted ''properly allocable to'' for ''incurred or continued in connection with the conduct of''.

Subsec. (h)(2)(E). Pub. L. 100–647, §1005(c)(12), inserted ''or under section 6166A (as in effect before its repeal by the Economic Recovery Tax Act of 1981)'' before period at end.

Subsec. (h)(3)(C). Pub. L. 100–647, §1005(c)(5), effective as if enacted immediately before enactment of Pub. L. 100–203 (see 1987 Amendment note below), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''The amount under subparagraph (B)(ii)(I) at any time after August 16, 1986, shall not be less than the outstanding aggregate principal amount (as of such time) of indebtedness which was incurred on or before August 16, 1986, and which was secured by the qualified residence on August 16, 1986.''

Subsec. (h)(4). Pub. L. 100–647, §1005(c)(6)(A), effective as if enacted immediately before enactment of Pub. L. 100–203 (redesignating par. (5) as (4), see 1987 Amendment note below), amended heading by substituting ''Other definitions and special rules—For purposes of this subsection—'' for ''Other definitions and special rules''.

Subsec. (h)(4)(A). Pub. L. 100–647, §1005(c)(6)(B)(i), (7), effective as if enacted immediately before enactment of Pub. L. 100–203 (redesignating par. (5) as (4), see 1987 Amendment note below), amended subpar. (A) by striking out ''For purposes of this subsection—'' after ''Qualified residence'' in introductory provisions, ''used or'' after ''Residence not'' in cl. (iii) heading, and ''or use'' after ''does not rent'' in cl. (iii) text.

Subsec. (h)(4)(B). Pub. L. 100–647, §1005(c)(6)(B)(ii), effective as if enacted immediately before enactment of Pub. L. 100–203 (redesignating par. (5) as (4), see 1987 Amendment note below), amended subpar. (B) by substituting ''Any'' for ''For purposes of this paragraph, any''.

Subsec. (h)(4)(C), (D). Pub. L. 100–647, §1005(c)(8), effective as if enacted immediately before enactment of Pub. L. 100–203 (redesignating par. (5) as (4), see 1987 Amendment note below), par. (4) added subpars. (C) and (D).

Subsec. (h)(5). Pub. L. 100–647, §2004(b)(1), redesignated par. (6) as (5).

Subsec. (h)(6). Pub. L. 100–647, §2004(b)(1), redesignated par. (6) as (5).

Pub. L. 100–647, §1005(c)(9), substituted ''but for this paragraph'' for ''but for this subsection''.

Subsec. (i)(2). Pub. L. 100–647, §1009(b)(6), made technical correction to directory language of Pub. L. 99–514, §902(e)(1), see 1986 Amendment note below.

1987—Subsec. (d)(4)(E). Pub. L. 100–203, §10212(b), substituted ''section 469(m)'' for ''section 469(*l*)''.

Subsec. (h)(3). Pub. L. 100–203, §10102(a), amended par. (3) generally. Prior to amendment (see 1988 Amendment note above), par. (3) read as follows: ''For purposes of this subsection—

''(A) IN GENERAL.—The term 'qualified residence interest' means interest which is paid or accrued during the taxable year on indebtedness which is secured by any property which (at the time such interest is paid or accrued) is a qualified residence of the taxpayer.

''(B) LIMITATION ON AMOUNT OF INTEREST.—The term 'qualified residence interest' shall not include any interest paid or accrued on indebtedness secured by any qualified residence which is allocable to that portion of the principal amount of such indebtedness which, when added to the outstanding aggregate principal amount of all other indebtedness previously incurred and secured by such qualified residence, exceeds the lesser of—

''(i) the fair market value of such qualified residence, or

''(ii) the sum of—

''(I) the taxpayer's basis in such qualified residence (adjusted only by the cost of any improvements to such residence), plus

''(II) the aggregate amount of qualified indebtedness of the taxpayer with respect to such qualified residence.

''(C) COST NOT LESS THAN BALANCE OF INDEBTEDNESS INCURRED ON OR BEFORE AUGUST 16, 1986.—

''(i) IN GENERAL.—The amount under subparagraph (B)(ii)(I) at any time after August 16, 1986, shall not be less than the outstanding principal amount (as of such time) of indebtedness—

''(I) which was incurred on or before August 16, 1986, and which was secured by the qualified residence on August 16, 1986, or

''(II) which is secured by the qualified residence and was incurred after August 16, 1986, to refinance indebtedness described in subclause (I) (or refinanced indebtedness meeting the requirements of this subclause) to the extent (immediately after the refinancing) the principal amount of the indebtedness resulting from the refinancing does not exceed the principal amount of the refinanced indebtedness (immediately before the refinancing).

''(ii) LIMITATION ON PERIOD OF REFINANCING.—Subclause (II) of clause (i) shall not apply to any indebtedness after—

''(I) the expiration of the term of the indebtedness described in clause (i)(I), or

''(II) if the principal of the indebtedness described in clause (i)(I) is not amortized over its term, the expiration of the term of the 1st refinancing of such indebtedness (or if earlier, the date which is 30 years after the date of such refinancing).

''(D) TIME FOR DETERMINATION.—Except as provided in regulations, any determination under subparagraph (B) shall be made as of the time the indebtedness is incurred.''

Subsec. (h)(4), (5). Pub. L. 100–203, §10102(b), redesignated par. (5) as (4) and struck out former par. (4) which defined ''qualified indebtedness'' for purposes of this subsection.

1986—Subsec. (d). Pub. L. 99–514, §511(a), substituted ''Limitation on investment interest'' for ''Limitation on interest on investment indebtedness'' in heading, and amended text generally, revising and restating as pars. (1) to (6) provisions of former pars. (1) to (7).

Subsec. (e)(2)(C). Pub. L. 99–514, §1803(a)(4), added subpar. (C).

Subsec. (e)(3)(A). Pub. L. 99–514, § 1810(e)(1)(A), inserted ''The preceding sentence shall not apply to the extent that the original issue discount is effectively connected with the conduct by such foreign related person of a trade or business within the United States unless such original issue discount is exempt from taxation (or is subject to a reduced rate of tax) pursuant to a treaty obligation of the United States.''

Subsec. (e)(5). Pub. L. 99–514, § 1810(e)(1)(B), redesignated par. (4), relating to cross references, as (5).

Subsec. (f)(3). Pub. L. 99–514, § 1301(j)(3), substituted ''section 149(a)(3)'' for ''section 103(j)(3)''.

Subsec. (h). Pub. L. 99–514, § 511(b), added subsec. (h). Former subsec. (h) redesignated (i).

Subsec. (i)(2). Pub. L. 99–514, § 902(e)(1), as amended by Pub. L. 100–647, § 1009(b)(6), substituted ''section 265(a)(2)'' for ''section 265(2)''.

Pub. L. 99–514, § 511(b), redesignated former subsec. (h) as (i).

1984—Subsec. (d)(3)(D). Pub. L. 98–369, § 56(b), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (e)(1). Pub. L. 98–369, § 42(a)(3), substituted ''debt instrument'' for ''bond'' in two places and struck out ''by an issuer (other than a natural person)'' before '', the portion of the original issue''.

Subsec. (e)(2). Pub. L. 98–369, § 42(a)(3), substituted provisions relating to debt instruments for provisions relating to bonds.

Subsec. (e)(3). Pub. L. 98–369, § 128(c), added par. (3) relating to special rule for original issue discount on obligation held by related foreign person. Former par. (3), relating to exceptions, redesignated (4).

Pub. L. 98–369, § 42(a)(3), added par. (3) relating to exceptions.

Subsec. (e)(4). Pub. L. 98–369, § 128(c), redesignated par. (3), relating to exceptions, as (4).

Pub. L. 98–369, § 42(a)(3), added par. (4) relating to cross references.

Subsec. (f)(2)(C)(i). Pub. L. 98–369, § 127(f), redesignated existing provision as subcl. (I), and in subcl. (I) as so redesignated, inserted reference to subpar. (A) and substituted ''or'' for ''and'', and added subcl. (II).

Subsecs. (g), (h). Pub. L. 98–369, § 612(c), added subsec. (g) and redesignated former subsec. (g) as (h).

1982—Subsec. (d)(4). Pub. L. 97–354 redesignated subpar. (D) as (B). Former subpars. (B) and (C), relating to partnerships and shareholders of electing small business corporations, respectively, were struck out.

Subsec. (e). Pub. L. 97–248, § 231(b), added subsec. (e) relating to original issue discount. Former subsec. (e), setting forth cross references, redesignated (f).

Pub. L. 97–248, § 231(b), redesignated former subsec. (e), setting forth cross references, as (f).

Subsec. (f). Pub. L. 97–248, § 310(b)(2), added subsec. (f) relating to the requirement that obligations be in registered form to be tax-exempt. Former subsec. (f), setting forth cross references, redesignated (g).

Subsec. (g). Pub. L. 97–248, § 310(b)(2), redesignated former subsec. (f), setting forth cross references, as (g).

1976—Subsec. (b)(1). Pub. L. 94–455, § 1901(b)(8)(C), substituted ''organization described in section 170(b)(1)(A)(ii) and which is provided for a student of such organization'' for ''institution (as defined in section 151(e)(4)) and which is provided for a student of such institution''.

Subsec. (d)(1). Pub. L. 94–455, § 209(a)(1), among other changes, substituted in subpar. (A) ''$10,000'' for ''$25,000'' and ''$5,000'' for ''$12,500'', struck out subpar. (C) relating to the excess of net long-term capital gain over short-term capital loss and subpar. (D) relating to the excess of investment interest over amounts in subpar. (A), and in provisions following lettered paragraphs substituted ''$10,000'' for ''$25,000'' and struck out provisions relating to the determination of the amount referred to in subpar. (C).

Subsec. (d)(2). Pub. L. 94–455, § 209(a)(1), among other changes, struck out provisions relating to the limitation on the amount of interest allowable by this par. and to reduction of disallowed investment interest for capital gain deduction purposes.

Subsec. (d)(3)(A). Pub. L. 94–455, § 209(a)(2), inserted provision relating to determination of the amount of net investment income where taxpayer has investment interest for taxable year to which this subsection applies.

Subsec. (d)(3)(B)(iii). Pub. L. 94–455, §§ 205(c)(3), 1901(b)(3)(K), substituted ''1250, and 1254'' for ''and 1250'', and ''ordinary income'' for ''gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231''. Section 205(c)(3) of Pub. L. 94–455, which directed the amendment of subsec. (d)(3)(A)(iii), was executed by amending subsec. (d)(3)(B)(iii) to reflect the probable intent of Congress.

Subsec. (d)(3)(E). Pub. L. 94–455, § 209(a)(3), substituted ''limitation in paragraph (1)'' for ''limitations in paragraphs (1) and (2)(A)''.

Subsec. (d)(4)(B), (C). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d)(5). Pub. L. 94–455, § 209(a)(4), (5), redesignated par. (6) as (5) and inserted provision relating to the application of this paragraph after Dec. 31, 1975, on an allocation basis rather than a specific item basis. Former par. (5), relating to capital gains treatment of investment interest, was struck out.

Pub. L. 94–455, § 1901(b)(3)(K), directed the amendment of par. (5) by substituting ''ordinary income'' for ''gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231'', such par. (5) having been struck out by Pub. L. 94–455, § 209(a)(4).

Subsec. (d)(6). Pub. L. 94–455, §§ 209(a)(4), 1906(b)(13)(A), redesignated par. (7) as (6) and struck out in provision following subpar. (B) ''or his delegate'' after ''Secretary''. Former par. (6) redesignated (5).

Subsec. (d)(7). Pub. L. 94–455, § 209(a)(6), added par. (7). Former par. (7) redesignated (6).

1971—Subsec. (d)(1)(B). Pub. L. 92–178, § 304(b)(2), inserted ''the amount (if any) by which the deductions allowable under this section (determined without regard to this subsection) and sections 162, 164(a)(1) or (2), or 212 attributable to property of the taxpayer subject to a net lease exceeds the rental income produced by such property for the property year, plus'' after ''plus''.

Subsec. (d)(3)(C). Pub. L. 92–178, § 304(d), inserted reference to section 162.

Subsec. (d)(4)(A)(i). Pub. L. 92–178, § 304(a)(2)(A), inserted ''of the lessor'' after ''deductions'' and ''(other than rents and reimbursed amounts with respect to such property)'' after ''section 162''.

Subsec. (d)(7). Pub. L. 92–178, § 304(a)(2)(B), added par. (7).

1969—Subsecs. (d), (e). Pub. L. 91–172 added subsec. (d). Former subsec. (d) redesignated (e).

1964—Subsec. (b)(1). Pub. L. 88–272 included the purchase of educational services, and defined ''educational services''.

1963—Subsecs. (c), (d). Pub. L. 88–9, § 1(a), (c), added subsec. (c), redesignated former subsec. (c) as (d) and added par. (5).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, § 759(b), Dec. 17, 2010, 124 Stat. 3323, provided that: ''The amendment made by this section [amending this section] shall apply to amounts paid or accrued after December 31, 2010.''

Amendment by Pub. L. 111–147 applicable to obligations issued after the date which is 2 years after Mar. 18, 2010, see section 502(f) of Pub. L. 111–147, set out as a note under section 149 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, § 1232(c), Feb. 17, 2009, 123 Stat. 341, provided that:

''(1) SUSPENSION.—The amendments made by subsection (a) [amending this section] shall apply to obligations issued after August 31, 2008, in taxable years ending after such date.

''(2) INTEREST RATE AUTHORITY.—The amendments made by subsection (b) [amending this section] shall

apply to obligations issued after December 31, 2009, in taxable years ending after such date.''

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–142, §3(b), Dec. 20, 2007, 121 Stat. 1804, provided that: ''The amendment made by this section [amending this section] shall apply to amounts paid or accrued after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §419(d), Dec. 20, 2006, 120 Stat. 2968, provided that: ''The amendments made by this section [amending this section and section 6050H of this title] shall apply to amounts paid or accrued after December 31, 2006.''

Pub. L. 109–222, title V, §501(c), May 17, 2006, 120 Stat. 354, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning on or after the date of the enactment of this Act [May 17, 2006].''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §838(b), Oct. 22, 2004, 118 Stat. 1597, provided that: ''The amendments made by this section [amending this section] shall apply to transactions in taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004].''

Pub. L. 108–357, title VIII, §841(c), Oct. 22, 2004, 118 Stat. 1598, provided that: ''The amendments made by this section [amending this section and section 267 of this title] shall apply to payments accrued on or after the date of the enactment of this Act [Oct. 22, 2004].''

Pub. L. 108–357, title VIII, §845(e), Oct. 22, 2004, 118 Stat. 1601, provided that: ''The amendments made by this section [amending this section] shall apply to debt instruments issued after October 3, 2004.''

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as a note under section 1 of this title.

Amendment by Pub. L. 108–27 inapplicable to taxable years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 303 of Pub. L. 108–27, as amended, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to taxable years beginning after Dec. 31, 2000, see section 546(a) of Pub. L. 106–170, set out as a note under section 856 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 4003(*l*) of Pub. L. 105–277, set out as a note under section 86 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 312(d)(1) of Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 of this title.

Section 503(d) of Pub. L. 105–34 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 2053, 6166, and 6601 of this title] shall apply to estates of decedents dying after December 31, 1997.

''(2) ELECTION.—In the case of the estate of any decedent dying before January 1, 1998, with respect to which there is an election under section 6166 of the Internal Revenue Code of 1986, the executor of the estate may elect to have the amendments made by this section apply with respect to installments due after the effective date of the election; except that the 2-percent portion of such installments shall be equal to the amount which would be the 4-percent portion of such installments without regard to such election. Such an election shall be made before January 1, 1999 in the manner prescribed by the Secretary of the Treasury and, once made, is irrevocable.''

Section 1005(b) of Pub. L. 105–34 provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to disqualified debt instruments issued after June 8, 1997.

''(2) TRANSITION RULE.—The amendment made by this section shall not apply to any instrument issued after June 8, 1997, if such instrument is—

''(A) issued pursuant to a written agreement which was binding on such date and at all times thereafter,

''(B) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

''(C) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission required solely by reason of the issuance.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1703(n)(4) of Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§13001–13444, to which such amendment relates, see section 1703(*o*) of Pub. L. 104–188, set out as a note under section 39 of this title.

Section 1704(f)(2)(C) of Pub. L. 104–188 provided that: ''The amendments made by this paragraph [amending this section] shall apply as if included in the amendments made by section 7210(a) of the Revenue Reconciliation Act of 1989 [Pub. L. 101–239].''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13206(d)(1) of Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see section 13206(d)(3) of Pub. L. 103–66 set out as a note under section 1 of this title.

Section 13228(d) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section] shall apply to interest paid or accrued in taxable years beginning after December 31, 1993.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective, except as otherwise provided, as if included in the provision of the Revenue Reconciliation Act of 1989, Pub. L. 101–239, title VII, to which such amendment relates, see section 11701(n) of Pub. L. 101–508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7202(c) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to instruments issued after July 10, 1989.

''(2) EXCEPTIONS.—

''(A) The amendments made by this section shall not apply to any instrument if—

''(i) such instrument is issued in connection with an acquisition—

''(I) which is made on or before July 10, 1989,

''(II) for which there was a written binding contract in effect on July 10, 1989, and at all times thereafter before such acquisition, or

''(III) for which a tender offer was filed with the Securities and Exchange Commission on or before July 10, 1989,

''(ii) the term of such instrument is not greater than—

''(I) the term specified in the written documents described in clause (iii), or

''(II) if no term is determined under subclause (I), 10 years, and

''(iii) the use of such instrument in connection with such acquisition (and the maximum amount of proceeds from such instrument) was determined on or before July 10, 1989, and such determination is evidenced by written documents—

''(I) which were transmitted on or before July 10, 1989, between the issuer and any governmental regulatory bodies or prospective parties to the issuance or acquisition, and

''(II) which are customarily used for the type of acquisition or financing involved.

''(B) The amendments made by this section shall not apply to any instrument issued pursuant to the terms of a debt instrument issued on or before July 10, 1989, or described in subparagraph (A) or (D).

''(C) The amendments made by this section shall not apply to any instrument issued to refinance an original issue discount debt instrument to which the amendments made by this section do not apply if—

''(i) the maturity date of the refinancing instrument is not later than the maturity date of the refinanced instrument,

''(ii) the issue price of the refinancing instrument does not exceed the adjusted issue price of the refinanced instrument,

''(iii) the stated redemption price at maturity of the refinancing instrument is not greater than the stated redemption price at maturity of the refinanced instrument, and

''(iv) the interest payments required under the refinancing instrument before maturity are not less than (and are paid not later than) the interest payments required under the refinanced instrument.

''(D) The amendments made by this section shall not apply to instruments issued after July 10, 1989, pursuant to a reorganization plan in a title 11 or similar case (as defined in section 368(a)(3) of the Internal Revenue Code of 1986) if the amount of proceeds of such instruments, and the maturities of such instruments, do not exceed the amount or maturities specified in the last reorganization plan filed in such case on or before July 10, 1989.''

Section 7210(b) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to interest paid or accrued in taxable years beginning after July 10, 1989.

''(2) SPECIAL RULE FOR DEMAND LOANS, ETC.—In the case of any demand loan (or other loan without a fixed term) which was outstanding on July 10, 1989, interest on such loan to the extent attributable to periods before September 1, 1989, shall not be treated as disqualified interest for purposes of section 163(j) of the Internal Revenue Code of 1986 (as added by subsection (a)).''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1005(c)(13) of Pub. L. 100–647 provided that: ''For purposes of applying the amendments made by this subsection [amending this section and sections 467, 1255, and 7872 of this title] and the amendments made by section 10102 of the Revenue Act of 1987 [section 10102 of Pub. L. 100–203, amending this section], the provisions of this subsection shall be treated as having been enacted immediately before the enactment of the Revenue Act of 1987.''

Amendment by sections 1006(u)(1) and 1009(b)(6) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 2004(b)(1) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10102(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1987.''

Amendment by section 10212(b) of Pub. L. 100–203 effective as if included in the amendments made by section 501 of the Tax Reform Act of 1986, Pub. L. 99–514, see section 10212(c) of Pub. L. 100–203, set out as a note under section 58 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 511(e) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section and sections 467, 703, 1255, 1363, and 7872 of this title] shall apply to taxable years beginning after December 31, 1986.''

Amendment by section 902(e)(1) of Pub. L. 99–514 applicable to taxable years ending after Dec. 31, 1986, with certain exceptions and qualifications, see section 902(f) of Pub. L. 99–514, set out as a note under section 265 of this title.

Amendment by section 1301(j)(3) of Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

Amendment by sections 1803(a)(4) and 1810(e)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 42(a)(3) of Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

Section 56(d) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and sections 263 and 265 of this title] shall apply to short sales after the date of enactment of this Act [July 18, 1984] in taxable years ending after such date.''

Amendment by section 127(f) of Pub. L. 98–369 applicable to interest received after July 18, 1984, with respect to obligations issued after such date, in taxable years ending after such date, see section 127(g)(1) of Pub. L. 98–369, set out as a note under section 871 of this title.

Amendment by section 128(c) of Pub. L. 98–369 applicable to obligations issued after June 9, 1984, see section 128(d)(2) of Pub. L. 98–369, set out as a note under section 871 of this title.

Amendment by section 612(c) of Pub. L. 98–369 applicable to interest paid or accrued after Dec. 31, 1984, on indebtedness incurred after Dec. 31, 1984, see section 612(g) of Pub. L. 98–369, set out as an Effective Date note under section 25 of this title.

EFFECTIVE DATE OF 1982 AMENDMENTS

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

Amendment by Pub. L. 97–248 applicable to obligations issued after Dec. 31, 1982, with exceptions for certain warrants, see section 310(d) of Pub. L. 97–248, set out as a note under section 103 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 205(c)(3) of Pub. L. 94–455 applicable with respect to taxable years ending after Dec. 31, 1975, see section 205(e) of Pub. L. 94–455, set out as an Effective Date note under section 1254 of this title.

Section 209(b) of Pub. L. 94–455, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1975.

''(2) INDEBTEDNESS INCURRED BEFORE SEPTEMBER 11, 1975.—In the case of indebtedness attributable to a specific item of property which—

''(A) is for a specified term, and

''(B) was incurred before September 11, 1975, or is incurred after September 10, 1975, pursuant to a written contract or commitment which on September 11, 1975, and at all times thereafter before the incurring of such indebtedness, is binding on the taxpayer,

the amendments made by this section shall not apply, but section 163(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect before the enactment of this Act [Oct. 4, 1976]) shall apply. For purposes of the preceding sentence, so much of the net investment income (as defined in section 163(d)(3)(A) of such Code) for any taxable year as is not taken into account under section 163(d) of such Code, as amended by this Act, by reason of the last sentence of section 163(d)(3)(A) of such Code, shall be taken into account for purposes of applying such section as in effect before the date of enactment of this Act [Oct. 4, 1976] with respect to interest on indebtedness referred to in the preceding sentence.''

Amendment by section 1901(b)(8)(C), (3)(K) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 304(e) of Pub. L. 92–178 provided that: ''The amendments made by this section to section 57 of the Internal Revenue Code of 1954 shall apply to taxable years beginning after December 31, 1969. The amendments made by this section to section 163 of such Code shall apply to taxable years beginning after December 31, 1971.''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 221(b) of Pub. L. 91–172 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1971.''

EFFECTIVE DATE OF 1964 AMENDMENT

Section 224(d) of Pub. L. 88–272 provided that: ''The amendments made by subsections (a) [enacting section 483 of this title] and (b) [amending the analysis preceding section 481 of this title] shall apply to payments made after December 31, 1963, on account of sales or exchanges of property occurring after June 30, 1963, other than any sale or exchange made pursuant to a binding written contract (including an irrevocable written option) entered into before July 1, 1963. The amendments made by subsection (c) [amending this section] shall apply to payments made during taxable years beginning after December 31, 1963.''

EFFECTIVE DATE OF 1963 AMENDMENT

Subsec. (c) effective as of Jan. 1, 1962, and applicable with respect to taxable years ending on or after such date, see section 2 of Pub. L. 88–9, set out as an Effective Date note under section 1055 of this title.

APPLICATION OF SUBSECTION (h) TO TAXABLE YEARS BEGINNING IN 1987

Section 1005(c)(14) of Pub. L. 100–647 provided that:

''(A) For purposes of applying section 163(h) of the 1986 Code to any taxable year beginning during 1987, if, incident to a divorce or legal separation—

''(i) an individual acquires the interest of a spouse or former spouse in a qualified residence in a transfer to which section 1041 of the 1986 Code applies, and

''(ii) such individual incurs indebtedness which is secured by such qualified residence,

the amount determined under paragraph (3)(B)(ii)(I) of section 163(h) of the 1986 Code (as in effect before the amendments made by the Revenue Act of 1987 [Pub. L. 100–203, title X]) with respect to such qualified residence shall be increased by the amount determined under subparagraph (B).

''(B) The amount determined under this subparagraph shall be equal to the excess (if any) of—

''(i) the lesser of the amount of the indebtedness described in subparagraph (A)(ii), or the fair market value of the spouse's or former spouse's interest in the qualified residence as of the time of the transfer, over

''(ii) the basis of the spouse or former spouse in such interest in such residence (adjusted only by the cost of any improvements to such residence).''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TRANSITIONAL RULE FOR TREATMENT OF CERTAIN INCOME FROM S CORPORATIONS

Section 1066 of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) IN GENERAL.—If—

''(1) a corporation had an election in effect under subchapter S of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for the taxable years of such corporation beginning in 1982, 1983, and 1984, and

''(2) a shareholder of such corporation makes an election to have this section apply,

then any qualified income which such shareholder takes into account by reason of holding stock in such corporation for any taxable year of such corporation beginning in 1983 or 1984 shall be treated for purposes of section 163(d) of the Internal Revenue Code of 1986 as such income would have been treated but for the enactment of the Subchapter S Revision Act of 1982 [Pub. L. 97–354, see Tables for classification].

''(b) QUALIFIED INCOME.—For purposes of subsection (a), the term 'qualified income' means any income other than income which is attributable to personal services performed by the shareholder for the corporation.

''(c) ELECTION.—The election under subsection (a)(2) shall be made at such time and in such manner as the Secretary of the Treasury or his delegate may by regulations prescribe.''

TRANSITIONAL RULE

For provision that, for purposes of amendments by section 231(b) of Pub. L. 97–248, any evidence of indebtedness issued pursuant to a written commitment which was binding on July 1, 1982, and at all times thereafter be treated as issued on July 1, 1982, see section 231(e) of Pub. L. 97–248, set out as a note under section 1232A of this title.

§ 164. Taxes

(a) General rule

Except as otherwise provided in this section, the following taxes shall be allowed as a deduction for the taxable year within which paid or accrued:

(1) State and local, and foreign, real property taxes.

(2) State and local personal property taxes.

(3) State and local, and foreign, income, war profits, and excess profits taxes.

(4) The GST tax imposed on income distributions.

(5) The environmental tax imposed by section 59A.

(6) Qualified motor vehicle taxes.

In addition, there shall be allowed as a deduction State and local, and foreign, taxes not described in the preceding sentence which are paid or accrued within the taxable year in carrying on a trade or business or an activity described in section 212 (relating to expenses for production of income). Notwithstanding the preceding sentence, any tax (not described in the first sentence of this subsection) which is paid or accrued by the taxpayer in connection with an acquisition or disposition of property shall be treated as part of the cost of the acquired property or, in the case of a disposition, as a reduction in the amount realized on the disposition.

(b) Definitions and special rules

For purposes of this section—

(1) Personal property taxes

The term ''personal property tax'' means an ad valorem tax which is imposed on an annual basis in respect of personal property.

(2) State or local taxes

A State or local tax includes only a tax imposed by a State, a possession of the United States, or a political subdivision of any of the foregoing, or by the District of Columbia.

(3) Foreign taxes

A foreign tax includes only a tax imposed by the authority of a foreign country.

(4) Special rules for GST tax

(A) In general

The GST tax imposed on income distributions is—

(i) the tax imposed by section 2601, and

(ii) any State tax described in section 2604,

but only to the extent such tax is imposed on a transfer which is included in the gross income of the distributee and to which section 666 does not apply.

(B) Special rule for tax paid before due date

Any tax referred to in subparagraph (A) imposed with respect to a transfer occurring during the taxable year of the distributee (or, in the case of a taxable termination, the trust) which is paid not later than the time prescribed by law (including extensions) for filing the return with respect to such transfer shall be treated as having been paid on the last day of the taxable year in which the transfer was made.

(5) General sales taxes

For purposes of subsection (a)—

(A) Election to deduct State and local sales taxes in lieu of State and local income taxes

At the election of the taxpayer for the taxable year, subsection (a) shall be applied—

(i) without regard to the reference to State and local income taxes, and

(ii) as if State and local general sales taxes were referred to in a paragraph thereof.

(B) Definition of general sales tax

The term ''general sales tax'' means a tax imposed at one rate with respect to the sale at retail of a broad range of classes of items.

(C) Special rules for food, etc.

In the case of items of food, clothing, medical supplies, and motor vehicles—

(i) the fact that the tax does not apply with respect to some or all of such items shall not be taken into account in determining whether the tax applies with respect to a broad range of classes of items, and

(ii) the fact that the rate of tax applicable with respect to some or all of such items is lower than the general rate of tax shall not be taken into account in determining whether the tax is imposed at one rate.

(D) Items taxed at different rates

Except in the case of a lower rate of tax applicable with respect to an item described in subparagraph (C), no deduction shall be allowed under this paragraph for any general sales tax imposed with respect to an item at a rate other than the general rate of tax.

(E) Compensating use taxes

A compensating use tax with respect to an item shall be treated as a general sales tax. For purposes of the preceding sentence, the term ''compensating use tax'' means, with respect to any item, a tax which—

(i) is imposed on the use, storage, or consumption of such item, and

(ii) is complementary to a general sales tax, but only if a deduction is allowable under this paragraph with respect to items sold at retail in the taxing jurisdiction which are similar to such item.

(F) Special rule for motor vehicles

In the case of motor vehicles, if the rate of tax exceeds the general rate, such excess shall be disregarded and the general rate shall be treated as the rate of tax.

(G) Separately stated general sales taxes

If the amount of any general sales tax is separately stated, then, to the extent that the amount so stated is paid by the consumer (other than in connection with the consumer's trade or business) to the seller, such amount shall be treated as a tax imposed on, and paid by, such consumer.

(H) Amount of deduction may be determined under tables

(i) In general

At the election of the taxpayer for the taxable year, the amount of the deduction allowed under this paragraph for such year shall be—

(I) the amount determined under this paragraph (without regard to this subparagraph) with respect to motor vehicles, boats, and other items specified by the Secretary, and

(II) the amount determined under tables prescribed by the Secretary with

respect to items to which subclause (I) does not apply.

(ii) Requirements for tables

The tables prescribed under clause (i)—

(I) shall reflect the provisions of this paragraph,

(II) shall be based on the average consumption by taxpayers on a State-by-State basis (as determined by the Secretary) of items to which clause (i)(I) does not apply, taking into account filing status, number of dependents, adjusted gross income, and rates of State and local general sales taxation, and

(III) need only be determined with respect to adjusted gross incomes up to the applicable amount (as determined under section 68(b)).

(I) Application of paragraph

This paragraph shall apply to taxable years beginning after December 31, 2003, and before January 1, 2012.

(6) Qualified motor vehicle taxes

(A) In general

For purposes of this section, the term ''qualified motor vehicle taxes'' means any State or local sales or excise tax imposed on the purchase of a qualified motor vehicle.

(B) Limitation based on vehicle price

The amount of any State or local sales or excise tax imposed on the purchase of a qualified motor vehicle taken into account under subparagraph (A) shall not exceed the portion of such tax attributable to so much of the purchase price as does not exceed $49,500.

(C) Income limitation

The amount otherwise taken into account under subparagraph (A) (after the application of subparagraph (B)) for any taxable year shall be reduced (but not below zero) by the amount which bears the same ratio to the amount which is so treated as—

(i) the excess (if any) of—

(I) the taxpayer's modified adjusted gross income for such taxable year, over

(II) $125,000 ($250,000 in the case of a joint return), bears to

(ii) $10,000.

For purposes of the preceding sentence, the term ''modified adjusted gross income'' means the adjusted gross income of the taxpayer for the taxable year (determined without regard to sections 911, 931, and 933).

(D) Qualified motor vehicle

For purposes of this paragraph—

(i) In general

The term ''qualified motor vehicle'' means—

(I) a passenger automobile or light truck which is treated as a motor vehicle for purposes of title II of the Clean Air Act, the gross vehicle weight rating of which is not more than 8,500 pounds, and the original use of which commences with the taxpayer,

(II) a motorcycle the gross vehicle weight rating of which is not more than 8,500 pounds and the original use of which commences with the taxpayer, and

(III) a motor home the original use of which commences with the taxpayer.

(ii) Other terms

The terms ''motorcycle'' and ''motor home'' have the meanings given such terms under section 571.3 of title 49, Code of Federal Regulations (as in effect on the date of the enactment of this paragraph).

(E) Qualified motor vehicle taxes not included in cost of acquired property

The last sentence of subsection (a) shall not apply to any qualified motor vehicle taxes.

(F) Coordination with general sales tax

This paragraph shall not apply in the case of a taxpayer who makes an election under paragraph (5) for the taxable year.

(G) Termination

This paragraph shall not apply to purchases after December 31, 2009.

(c) Deduction denied in case of certain taxes

No deduction shall be allowed for the following taxes:

(1) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed; but this paragraph shall not prevent the deduction of so much of such taxes as is properly allocable to maintenance or interest charges.

(2) Taxes on real property, to the extent that subsection (d) requires such taxes to be treated as imposed on another taxpayer.

(d) Apportionment of taxes on real property between seller and purchaser

(1) General rule

For purposes of subsection (a), if real property is sold during any real property tax year, then—

(A) so much of the real property tax as is properly allocable to that part of such year which ends on the day before the date of the sale shall be treated as a tax imposed on the seller, and

(B) so much of such tax as is properly allocable to that part of such year which begins on the date of the sale shall be treated as a tax imposed on the purchaser.

(2) Special rules

(A) in the case of any sale of real property, if—

(i) a taxpayer may not, by reason of his method of accounting, deduct any amount for taxes unless paid, and

(ii) the other party to the sale is (under the law imposing the real property tax) liable for the real property tax for the real property tax year,

then for purposes of subsection (a) the taxpayer shall be treated as having paid, on the date of the sale, so much of such tax as, under paragraph (1) of this subsection, is treated as imposed on the taxpayer. For pur-

poses of the preceding sentence, if neither party is liable for the tax, then the party holding the property at the time the tax becomes a lien on the property shall be considered liable for the real property tax for the real property tax year.

(B) In the case of any sale of real property, if the taxpayer's taxable income for the taxable year during which the sale occurs is computed under an accrual method of accounting, and if no election under section 461(c) (relating to the accrual of real property taxes) applies, then, for purposes of subsection (a), that portion of such tax which—

(i) is treated, under paragraph (1) of this subsection, as imposed on the taxpayer, and

(ii) may not, by reason of the taxpayer's method of accounting, be deducted by the taxpayer for any taxable year,

shall be treated as having accrued on the date of the sale.

(e) Taxes of shareholder paid by corporation

Where a corporation pays a tax imposed on a shareholder on his interest as a shareholder, and where the shareholder does not reimburse the corporation, then—

(1) the deduction allowed by subsection (a) shall be allowed to the corporation; and

(2) no deduction shall be allowed the shareholder for such tax.

(f) Deduction for one-half of self-employment taxes

(1) In general

In the case of an individual, in addition to the taxes described in subsection (a), there shall be allowed as a deduction for the taxable year an amount equal to one-half of the taxes imposed by section 1401 for such taxable year.

(2) Deduction treated as attributable to trade or business

For purposes of this chapter, the deduction allowed by paragraph (1) shall be treated as attributable to a trade or business carried on by the taxpayer which does not consist of the performance of services by the taxpayer as an employee.

(g) Cross references

(1) For provisions disallowing any deduction for certain taxes, see section 275.

(2) For treatment of taxes imposed by Indian tribal governments (or their subdivisions), see section 7871.

(Aug. 16, 1954, ch. 736, 68A Stat. 47; Pub. L. 85–866, title I, §6(a), Sept. 2, 1958, 72 Stat. 1608; Pub. L. 88–272, title II, §207(a), (b)(1), (2), Feb. 26, 1964, 78 Stat. 40–42; Pub. L. 92–580, §4(a), Oct. 27, 1972, 86 Stat. 1277; Pub. L. 94–455, title XIX, §§1901(a)(25), 1951(b)(3)(A), Oct. 4, 1976, 90 Stat. 1767, 1837; Pub. L. 95–600, title I, §111(a), (b), Nov. 6, 1978, 92 Stat. 2777; Pub. L. 96–223, title I, §101(b), Apr. 2, 1980, 94 Stat. 250; Pub. L. 97–473, title II, §202(b)(3), Jan. 14, 1983, 96 Stat. 2609; Pub. L. 98–21, title I, §124(c)(1), Apr. 20, 1983, 97 Stat. 90; Pub. L. 98–369, div. A, title IV, §474(r)(29)(F), July 18, 1984, 98 Stat. 844; Pub. L. 99–499, title V, §516(b)(2)(A), Oct. 17, 1986, 100 Stat. 1771; Pub. L. 99–514, title I, §134, title XIV, §1432(a)(1), (2), Oct. 22, 1986, 100 Stat. 2116, 2729; Pub. L. 100–418, title I, §1941(b)(2)(A), Aug. 23, 1988, 102 Stat. 1323; Pub. L. 100–647, title I, §1018(u)(11), Nov. 10, 1988, 102 Stat. 3590; Pub. L. 104–188, title I, §1704(t)(79), Aug. 20, 1996, 110 Stat. 1891; Pub. L. 108–357, title V, §501(a), Oct. 22, 2004, 118 Stat. 1520; Pub. L. 109–135, title IV, §403(r)(1), Dec. 21, 2005, 119 Stat. 2628; Pub. L. 109–432, div. A, title I, §103(a), Dec. 20, 2006, 120 Stat. 2934; Pub. L. 110–343, div. C, title II, §201(a), Oct. 3, 2008, 122 Stat. 3864; Pub. L. 111–5, div. B, title I, §1008(a), (b), Feb. 17, 2009, 123 Stat. 317; Pub. L. 111–148, title IX, §9015(b)(2)(A), Mar. 23, 2010, 124 Stat. 871; Pub. L. 111–312, title VII, §722(a), Dec. 17, 2010, 124 Stat. 3316.)

AMENDMENT OF SUBSECTION (f)

Pub. L. 111–148, title IX, §9015(b)(2)(A), (c), Mar. 23, 2010, 124 Stat. 871, 872, provided that, applicable with respect to remuneration received, and taxable years beginning, after Dec. 31, 2012, subsection (f) of this section is amended by inserting ''(other than the taxes imposed by section 1401(b)(2))'' after ''section 1401)''.

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (b)(6)(D)(i)(I), is act July 14, 1955, ch. 360, 69 Stat. 322. Title II of the Act, known as the National Emission Standards Act, is classified generally to subchapter II (§7521 et seq.) of chapter 85 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

The date of the enactment of this paragraph, referred to in subsec. (b)(6)(D)(ii), is the date of enactment of Pub. L. 111–5, which was approved Feb. 17, 2009.

AMENDMENTS

2010—Subsec. (b)(5)(I). Pub. L. 111–312 substituted ''January 1, 2012'' for ''January 1, 2010''.

2009—Subsec. (a)(6). Pub. L. 111–5, §1008(a), added par. (6).

Subsec. (b)(6). Pub. L. 111–5, §1008(b), added par. (6).

2008—Subsec. (b)(5)(I). Pub. L. 110–343 substituted ''January 1, 2010'' for ''January 1, 2008''.

2006—Subsec. (b)(5)(I). Pub. L. 109–432 substituted ''2008'' for ''2006''.

2005—Subsec. (b)(5)(A). Pub. L. 109–135 reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

''(i) IN GENERAL.—At the election of the taxpayer for the taxable year, subsection (a) shall be applied—

''(I) without regard to the reference to State and local income taxes, and

''(II) as if State and local general sales taxes were referred to in a paragraph thereof.''

2004—Subsec. (b)(5). Pub. L. 108–357 added par. (5).

1996—Subsec. (a)(4), (5). Pub. L. 104–188 added pars. (4) and (5) and struck out former pars. (4) and (5) which read as follows:

''(4) The environmental tax imposed by section 59A.

''(5) The GST tax imposed on income distributions.''

1988—Subsec. (a)(4). Pub. L. 100–418 struck out par. (4) relating to windfall profit tax imposed by section 4986 and redesignated par. (5) relating to environmental tax as (4).

Subsec. (a)(5). Pub. L. 100–647 substituted ''The GST'' for ''the GST''.

Pub. L. 100–418 redesignated par. (5), relating to environmental tax, as (4).

1986—Subsec. (a). Pub. L. 99–514, §134(a)(2), inserted ''Notwithstanding the preceding sentence, any tax (not described in the first sentence of this subsection) which is paid or accrued by the taxpayer in connection with an acquisition or disposition of property shall be treat-

ed as part of the cost of the acquired property or, in the case of a disposition, as a reduction in the amount realized on the disposition.''

Subsec. (a)(4). Pub. L. 99–514, §134(a)(1), struck out par. (4) relating to ''State and local general sales taxes'' and redesignated as par. (4) former par. (5) relating to windfall profit tax.

Subsec. (a)(5). Pub. L. 99–514, §1432(a)(1), added par. (5) relating to GST tax imposed on income distributions.

Pub. L. 99–499 added par. (5) relating to environmental tax.

Subsec. (b)(2). Pub. L. 99–514, §134(b)(1), (2), redesignated par. (3) as (2) and struck out former par. (2), general sales taxes provisions, subpars. (A) to (E) of which covered in general rule, special rules for food, etc., items taxed at different rates, compensating use taxes, and special rules for motor vehicles, respectively.

Subsec. (b)(3). Pub. L. 99–514, §134(b)(2), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (b)(4). Pub. L. 99–514, §1432(a)(2), added par. (4).

Pub. L. 99–514, §134(b)(2), redesignated par. (4) as (3).

Subsec. (b)(5). Pub. L. 99–514, §134(b)(1), struck out par. (5), separately stated general sales taxes, which read as follows: ''If the amount of any general sales tax is separately stated, then, to the extent that the amount so stated is paid by the consumer (otherwise than in connection with the consumer's trade or business) to his seller, such amount shall be treated as a tax imposed on, and paid by, such consumer.''

1984—Subsec. (f). Pub. L. 98–369 redesignated pars. (2) and (3) as pars. (1) and (2), respectively. Former par. (1), which referred to section 1451 for provisions disallowing any deduction for the payment of the tax imposed by subchapter B of chapter 3 (relating to tax-free covenant bonds), was struck out.

1983—Subsec. (f). Pub. L. 98–21 added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (f)(3). Pub. L. 97–473 added par. (3).

Subsec. (g). Pub. L. 98–21 redesignated subsec. (f) as (g).

1980—Subsec. (a)(5). Pub. L. 96–223 added par. (5).

1978—Subsec. (a)(5). Pub. L. 95–600, §111(a), struck out par. (5) relating to a deduction for State and local taxes on the sale of gasoline, diesel fuel, and other motor fuels.

Subsec. (b)(5). Pub. L. 95–600, §111(b), struck out in heading ''and gasoline taxes'' after ''sales taxes'', and in text ''or of any tax on the sale of gasoline, diesel fuel, or other motor fuel'' after ''sales tax''.

1976—Subsec. (d)(2). Pub. L. 94–455, §1901(a)(25), redesignated subpar. (D) as (B), and struck out subpar. (B) which related to the taxable years that subsec. (d)(1) applied and subpar. (C) which related to the limitations on subsec. (d)(1) where real property tax was allowable as a deduction under the Internal Revenue Code of 1939.

Subsecs. (f), (g). Pub. L. 94–455, §1951(b)(3)(A), redesignated subsec. (g) as (f). Former subsec. (f), which related to payments for municipal services in atomic energy communities, was struck out.

1972—Subsec. (b)(2)(E). Pub. L. 92–580 added subpar. (E).

1964—Subsec. (a). Pub. L. 88–272, §207(a), limited the subsection to State, local and foreign real property, income, war profits, excess profits, and unspecified taxes, on a business or activity described in section 212, and to State and local personal property, general sales, gasoline, diesel fuel and other motor fuel taxes.

Subsec. (b). Pub. L. 88–272, §207(a), added subsec. (b). Former subsec. (b), which denied the deduction for certain Federal income taxes, for Federal war profits and excess profits taxes, import duties, excise and stamp taxes, and estate, inheritance, legacy, succession and gift taxes, local assessments against benefits increasing property values, and certain taxes imposed by any foreign country or possession of the United States if the taxpayer chose to benefit by section 901 relating to foreign tax credit, and for taxes on real property to the extent that they are treated as imposed on another taxpayer, was struck out.

Subsec. (c). Pub. L. 88–272, §207(a), substituted provisions denying the deduction for taxes assessed against local benefits which increase property value, except for so much as is properly allocable to maintenance or interest charges, and for real property taxes to the extent they are treated as imposed on another taxpayer, for provisions relating to certain retail sales taxes and gasoline taxes, the extent to which they were deductible, and to definition of ''state or local sales tax''.

Subsec. (f). Pub. L. 88–272, §207(b)(1), inserted ''State'' before ''real property taxes''.

Subsec. (g). Pub. L. 88–272, §207(b)(2), designated existing provisions as par. (1), substituted ''1451'' for ''1451(f)'' and added par. (2).

1958—Subsecs. (f), (g). Pub. L. 85–866, §6(a), added subsec. (f) and redesignated former subsec. (f) as (g).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §722(b), Dec. 17, 2010, 124 Stat. 3316, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009.''

Pub. L. 111–148, title IX, §9015(c), Mar. 23, 2010, 124 Stat. 872, provided that: ''The amendments made by this section [amending this section and sections 1401, 1402, 3101, and 3102 of this title] shall apply with respect to remuneration received, and taxable years beginning, after December 31, 2012.''

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–5 applicable to purchases on or after Feb. 17, 2009, in taxable years ending after such date, see section 1008(e) of Pub. L. 111–5, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title II, §201(b), Oct. 3, 2008, 122 Stat. 3864, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §103(b), Dec. 20, 2006, 120 Stat. 2934, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2005.''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title V, §501(b), Oct. 22, 2004, 118 Stat. 1521, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2003.''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 1941(c) of Pub. L. 100–418 provided that: ''The amendments made by this section [amending this section and sections 193, 291, 6161, 6211, 6212, 6213, 6214, 6302, 6344, 6501, 6511, 6512, 6611, 6654, 6655, 6724, 6862, 7422, and 7512 of this title, and repealing sections 280D, 4986 to 4998, 6050C, 6076, 6232, 6429, 6430, and 7241 of this title] shall apply to crude oil removed from the premises on or after the date of the enactment of this Act [Aug. 23, 1988].''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 134 of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see sec-

tion 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1432(a)(1), (2) of Pub. L. 99–514 applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99–514, set out as an Effective Date note under section 2601 of this title.

Amendment by Pub. L. 99–499 applicable to taxable years beginning after Dec. 31, 1986, see section 516(c) of Pub. L. 99–499, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

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

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1989, see section 124(d)(2) of Pub. L. 98–21, set out as a note under section 1401 of this title.

For effective date of amendment by Pub. L. 97–473, see section 204(1) of Pub. L. 97–473, set out as an Effective Date note under section 7871 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 applicable to periods after Feb. 29, 1980, see section 101(i) of Pub. L. 96–223, set out as an Effective Date note under section 6161 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 111(c) of Pub. L. 95–600 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1978.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see sections 1901(d) and 1951(d) of Pub. L. 94–455, set out as notes under sections 2 and 72 of this title, respectively.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 4(b) of Pub. L. 92–580 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending on or after January 1, 1971.''

EFFECTIVE DATE OF 1964 AMENDMENT

Section 207(c) of Pub. L. 88–272, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) GENERAL RULE.—Except as provided in paragraph (2), the amendments made by this section [enacting section 275 of this title and amending this section and sections 535, 545, 556, 901, and 903 of this title] shall apply to taxable years beginning after December 31, 1963.

''(2) SPECIAL TAXING DISTRICTS.—Section 164(c)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (a)) shall not prevent the deduction under section 164 of such Code (as so amended) of taxes levied by a special taxing district which is described in section 164(b)(5) of such Code (as in effect for a taxable year ending on December 31, 1963) and which was in existence on December 31, 1963, for the purpose of retiring indebtedness existing on such date.''

EFFECTIVE DATE OF 1958 AMENDMENT

Section 6(b) of Pub. L. 85–866 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1957.''

SAVINGS PROVISION

Section 1951(b)(3)(B) of Pub. L. 94–455 provided that: ''Notwithstanding subparagraph (A) [amending this section], any amount paid or accrued in a taxable year beginning after December 31, 1976, to the Atomic Energy Commission or its successors for municipal-type services shall be allowed as a deduction under section 164 if such amount would have been deductible by reason of section 164(f) (as in effect for a taxable year ending on December 31, 1976) and if the amount is paid or accrued with respect to real property in a community (within the meaning of section 21(b) of the Atomic Energy Community Act of 1955 (42 U.S.C. 2304(b))) in which the Commission on December 31, 1976, was rendering municipal-type services for which it received compensation from the owners of property within such community.''

§ 165. Losses

(a) General rule

There shall be allowed as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise.

(b) Amount of deduction

For purposes of subsection (a), the basis for determining the amount of the deduction for any loss shall be the adjusted basis provided in section 1011 for determining the loss from the sale or other disposition of property.

(c) Limitation on losses of individuals

In the case of an individual, the deduction under subsection (a) shall be limited to—

(1) losses incurred in a trade or business;

(2) losses incurred in any transaction entered into for profit, though not connected with a trade or business; and

(3) except as provided in subsection (h), losses of property not connected with a trade or business or a transaction entered into for profit, if such losses arise from fire, storm, shipwreck, or other casualty, or from theft.

(d) Wagering losses

Losses from wagering transactions shall be allowed only to the extent of the gains from such transactions.

(e) Theft losses

For purposes of subsection (a), any loss arising from theft shall be treated as sustained during the taxable year in which the taxpayer discovers such loss.

(f) Capital losses

Losses from sales or exchanges of capital assets shall be allowed only to the extent allowed in sections 1211 and 1212.

(g) Worthless securities

(1) General rule

If any security which is a capital asset becomes worthless during the taxable year, the loss resulting therefrom shall, for purposes of this subtitle, be treated as a loss from the sale or exchange, on the last day of the taxable year, of a capital asset.

(2) Security defined

For purposes of this subsection, the term ''security'' means—

(A) a share of stock in a corporation;

(B) a right to subscribe for, or to receive, a share of stock in a corporation; or

(C) a bond, debenture, note, or certificate, or other evidence of indebtedness, issued by

a corporation or by a government or political subdivision thereof, with interest coupons or in registered form.

(3) Securities in affiliated corporation

For purposes of paragraph (1), any security in a corporation affiliated with a taxpayer which is a domestic corporation shall not be treated as a capital asset. For purposes of the preceding sentence, a corporation shall be treated as affiliated with the taxpayer only if—

(A) the taxpayer owns directly stock in such corporation meeting the requirements of section 1504(a)(2), and

(B) more than 90 percent of the aggregate of its gross receipts for all taxable years has been from sources other than royalties, rents (except rents derived from rental of properties to employees of the corporation in the ordinary course of its operating business), dividends, interest (except interest received on deferred purchase price of operating assets sold), annuities, and gains from sales or exchanges of stocks and securities.

In computing gross receipts for purposes of the preceding sentence, gross receipts from sales or exchanges of stocks and securities shall be taken into account only to the extent of gains therefrom.

(h) Treatment of casualty gains and losses

(1) $100 limitation per casualty

Any loss of an individual described in subsection (c)(3) shall be allowed only to the extent that the amount of the loss to such individual arising from each casualty, or from each theft, exceeds $500 ($100 for taxable years beginning after December 31, 2009).

(2) Net casualty loss allowed only to the extent it exceeds 10 percent of adjusted gross income

(A) In general

If the personal casualty losses for any taxable year exceed the personal casualty gains for such taxable year, such losses shall be allowed for the taxable year only to the extent of the sum of—

(i) the amount of the personal casualty gains for the taxable year, plus

(ii) so much of such excess as exceeds 10 percent of the adjusted gross income of the individual.

(B) Special rule where personal casualty gains exceed personal casualty losses

If the personal casualty gains for any taxable year exceed the personal casualty losses for such taxable year—

(i) all such gains shall be treated as gains from sales or exchanges of capital assets, and

(ii) all such losses shall be treated as losses from sales or exchanges of capital assets.

(3) Special rule for losses in federally declared disasters

(A) In general

If an individual has a net disaster loss for any taxable year, the amount determined under paragraph (2)(A)(ii) shall be the sum of—

(i) such net disaster loss, and

(ii) so much of the excess referred to in the matter preceding clause (i) of paragraph (2)(A) (reduced by the amount in clause (i) of this subparagraph) as exceeds 10 percent of the adjusted gross income of the individual.

(B) Net disaster loss

For purposes of subparagraph (A), the term ''net disaster loss'' means the excess of—

(i) the personal casualty losses—

(I) attributable to a federally declared disaster occurring before January 1, 2010, and

(II) occurring in a disaster area, over

(ii) personal casualty gains.

(C) Federally declared disaster

For purposes of this paragraph—

(i) Federally declared disaster

The term ''federally declared disaster'' means any disaster subsequently determined by the President of the United States to warrant assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

(ii) Disaster area

The term ''disaster area'' means the area so determined to warrant such assistance.

(4) Definitions of personal casualty gain and personal casualty loss

For purposes of this subsection—

(A) Personal casualty gain

The term ''personal casualty gain'' means the recognized gain from any involuntary conversion of property which is described in subsection (c)(3) arising from fire, storm, shipwreck, or other casualty, or from theft.

(B) Personal casualty loss

The term ''personal casualty loss'' means any loss described in subsection (c)(3). For purposes of paragraphs (2) and (3), the amount of any personal casualty loss shall be determined after the application of paragraph (1).

(5) Special rules

(A) Personal casualty losses allowable in computing adjusted gross income to the extent of personal casualty gains

In any case to which paragraph (2)(A) applies, the deduction for personal casualty losses for any taxable year shall be treated as a deduction allowable in computing adjusted gross income to the extent such losses do not exceed the personal casualty gains for the taxable year.

(B) Joint returns

For purposes of this subsection, a husband and wife making a joint return for the taxable year shall be treated as 1 individual.

(C) Determination of adjusted gross income in case of estates and trusts

For purposes of paragraph (2), the adjusted gross income of an estate or trust shall be

computed in the same manner as in the case of an individual, except that the deductions for costs paid or incurred in connection with the administration of the estate or trust shall be treated as allowable in arriving at adjusted gross income.

(D) Coordination with estate tax

No loss described in subsection (c)(3) shall be allowed if, at the time of filing the return, such loss has been claimed for estate tax purposes in the estate tax return.

(E) Claim required to be filed in certain cases

Any loss of an individual described in subsection (c)(3) to the extent covered by insurance shall be taken into account under this section only if the individual files a timely insurance claim with respect to such loss.

(i) Disaster losses

(1) Election to take deduction for preceding year

Notwithstanding the provisions of subsection (a), any loss occurring in a disaster area (as defined by clause (ii) of subsection (h)(3)(C)) and attributable to a federally declared disaster (as defined by clause (i) of such subsection) may, at the election of the taxpayer, be taken into account for the taxable year immediately preceding the taxable year in which the disaster occurred.

(2) Year of loss

If an election is made under this subsection, the casualty resulting in the loss shall be treated for purposes of this title as having occurred in the taxable year for which the deduction is claimed.

(3) Amount of loss

The amount of the loss taken into account in the preceding taxable year by reason of paragraph (1) shall not exceed the uncompensated amount determined on the basis of the facts existing at the date the taxpayer claims the loss.

(4) Use of disaster loan appraisals to establish amount of loss

Nothing in this title shall be construed to prohibit the Secretary from prescribing regulations or other guidance under which an appraisal for the purpose of obtaining a loan of Federal funds or a loan guarantee from the Federal Government as a result of a federally declared disaster (as defined by subsection (h)(3)(C)(i)[1] may be used to establish the amount of any loss described in paragraph (1) or (2).

(j) Denial of deduction for losses on certain obligations not in registered form

(1) In general

Nothing in subsection (a) or in any other provision of law shall be construed to provide a deduction for any loss sustained on any registration-required obligation unless such obligation is in registered form (or the issuance of such obligation was subject to tax under section 4701).

(2) Definitions

For purposes of this subsection—

(A) Registration-required obligation

The term ''registration-required obligation'' has the meaning given to such term by section 163(f)(2) except that clause (iv) of subparagraph (A), and subparagraph (B), of such section shall not apply.

(B) Registered form

The term ''registered form'' has the same meaning as when used in section 163(f).

(3) Exceptions

The Secretary may, by regulations, provide that this subsection and section 1287 shall not apply with respect to obligations held by any person if—

(A) such person holds such obligations in connection with a trade or business outside the United States,

(B) such person holds such obligations as a broker dealer (registered under Federal or State law) for sale to customers in the ordinary course of his trade or business,

(C) such person complies with reporting requirements with respect to ownership, transfers, and payments as the Secretary may require, or

(D) such person promptly surrenders the obligation to the issuer for the issuance of a new obligation in registered form,

but only if such obligations are held under arrangements provided in regulations or otherwise which are designed to assure that such obligations are not delivered to any United States person other than a person described in subparagraph (A), (B), or (C).

(k) Treatment as disaster loss where taxpayer ordered to demolish or relocate residence in disaster area because of disaster

In the case of a taxpayer whose residence is located in an area which has been determined by the President of the United States to warrant assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, if—

(1) not later than the 120th day after the date of such determination, the taxpayer is ordered, by the government of the State or any political subdivision thereof in which such residence is located, to demolish or relocate such residence, and

(2) the residence has been rendered unsafe for use as a residence by reason of the disaster,

any loss attributable to such disaster shall be treated as a loss which arises from a casualty and which is described in subsection (i).

***(l)* Treatment of certain losses in insolvent financial institutions**

(1) In general

If—

(A) as of the close of the taxable year, it can reasonably be estimated that there is a loss on a qualified individual's deposit in a qualified financial institution, and

[1] So in original. Probably should be followed by a second closing parenthesis.

(B) such loss is on account of the bankruptcy or insolvency of such institution,

then the taxpayer may elect to treat the amount so estimated as a loss described in subsection (c)(3) incurred during the taxable year.

(2) Qualified individual defined

For purposes of this subsection, the term ''qualified individual'' means any individual, except an individual—

(A) who owns at least 1 percent in value of the outstanding stock of the qualified financial institution,

(B) who is an officer of the qualified financial institution,

(C) who is a sibling (whether by the whole or half blood), spouse, aunt, uncle, nephew, niece, ancestor, or lineal descendant of an individual described in subparagraph (A) or (B), or

(D) who otherwise is a related person (as defined in section 267(b)) with respect to an individual described in subparagraph (A) or (B).

(3) Qualified financial institution

For purposes of this subsection, the term ''qualified financial institution'' means—

(A) any bank (as defined in section 581),

(B) any institution described in section 591,

(C) any credit union the deposits or accounts in which are insured under Federal or State law or are protected or guaranteed under State law, or

(D) any similar institution chartered and supervised under Federal or State law.

(4) Deposit

For purposes of this subsection, the term ''deposit'' means any deposit, withdrawable account, or withdrawable or repurchasable share.

(5) Election to treat as ordinary loss

(A) In general

In lieu of any election under paragraph (1), the taxpayer may elect to treat the amount referred to in paragraph (1) for the taxable year as an ordinary loss described in subsection (c)(2) incurred during the taxable year.

(B) Limitations

(i) Deposit may not be federally insured

No election may be made under subparagraph (A) with respect to any loss on a deposit in a qualified financial institution if part or all of such deposit is insured under Federal law.

(ii) Dollar limitation

With respect to each financial institution, the aggregate amount of losses attributable to deposits in such financial institution to which an election under subparagraph (A) may be made by the taxpayer for any taxable year shall not exceed $20,000 ($10,000 in the case of a separate return by a married individual). The limitation of the preceding sentence shall be reduced by the amount of any insurance proceeds under any State law which can reasonably be expected to be received with respect to losses on deposits in such institution.

(6) Election

Any election by the taxpayer under this subsection for any taxable year—

(A) shall apply to all losses for such taxable year of the taxpayer on deposits in the institution with respect to which such election was made, and

(B) may be revoked only with the consent of the Secretary.

(7) Coordination with section 166

Section 166 shall not apply to any loss to which an election under this subsection applies.

(m) Cross references

(1) For special rule for banks with respect to worthless securities, see section 582.

(2) For disallowance of deduction for worthlessness of securities to which subsection (g)(2)(C) applies, if issued by a political party or similar organization, see section 271.

(3) For special rule for losses on stock in a small business investment company, see section 1242.

(4) For special rule for losses of a small business investment company, see section 1243.

(5) For special rule for losses on small business stock, see section 1244.

(Aug. 16, 1954, ch. 736, 68A Stat. 49; Pub. L. 85–866, title I, §§7, 57(c)(1), title II, §202(a), Sept. 2, 1958, 72 Stat. 1608, 1646, 1676; Pub. L. 87–426, §2(a), Mar. 31, 1962, 76 Stat. 51; Pub. L. 88–272, title II, §§208(a), 238, Feb. 26, 1964, 78 Stat. 43, 128; Pub. L. 88–348, §3(a), June 30, 1964, 78 Stat. 237; Pub. L. 91–606, title III, §301(h), Dec. 31, 1970, 84 Stat. 1759; Pub. L. 91–677, §1(a), Jan. 12, 1971, 84 Stat. 2061; Pub. L. 91–687, §1, Jan. 12, 1971, 84 Stat. 2071; Pub. L. 92–336, §2(a), July 1, 1972, 86 Stat. 406; Pub. L. 92–418, §2(a), Aug. 29, 1972, 86 Stat. 656, 657; Pub. L. 93–288, title VII, §702(h), formerly title VI, §602(h), May 22, 1974, 88 Stat. 164, renumbered title VII, §702(h), Pub. L. 103–337, div. C, title XXXIV, §3411(a)(1), (2), Oct. 5, 1994, 108 Stat. 3100; Pub. L. 94–455, title XIX, §1901(a)(26), Oct. 4, 1976, 90 Stat. 1767; Pub. L. 97–248, title II, §203(a), (b), title III, §310(b)(5), Sept. 3, 1982, 96 Stat. 422, 598; Pub. L. 98–369, div. A, title I, §42(a)(4), title VII, §711(c)(1), (2)(A)(i), (ii), title X, §1051(a), July 18, 1984, 98 Stat. 556, 943, 1044; Pub. L. 99–514, title IX, §905(a), title X, §1004(a), Oct. 22, 1986, 100 Stat. 2385, 2388; Pub. L. 100–647, title I, §1009(d)(1), Nov. 10, 1988, 102 Stat. 3449; Pub. L. 100–707, title I, §109(*l*), Nov. 23, 1988, 102 Stat. 4709; Pub. L. 105–34, title IX, §912(a), Aug. 5, 1997, 111 Stat. 878; Pub. L. 106–554, §1(a)(7) [title III, §318(b)(1), (2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–645; Pub. L. 108–311, title IV, §408(a)(7)(A), (B), Oct. 4, 2004, 118 Stat. 1191; Pub. L. 110–343, div. C, title VII, §706(a)(1), (2)(A)–(C), (c), Oct. 3, 2008, 122 Stat. 3921–3923; Pub. L. 111–147, title V, §502(a)(2)(D), Mar. 18, 2010, 124 Stat. 107.)

AMENDMENT OF SUBSECTION (j)(2)(A)

Pub. L. 111–147, title V, §502(a)(2)(D), (f), Mar. 18, 2010, 124 Stat. 107, 108, provided that, applicable to obligations issued after the date

which is 2 years after Mar. 18, 2010, subsection (j)(2)(A) of this section is amended by striking ''except that clause (iv) of subparagraph (A), and subparagraph (B), of such section shall not apply''.

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsecs. (h)(3)(C)(i) and (k), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, which is classified principally to chapter 68 (§5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

AMENDMENTS

2008—Subsec. (h)(1). Pub. L. 110–343, §706(c), substituted ''$500 ($100 for taxable years beginning after December 31, 2009)'' for ''$100''.

Subsec. (h)(3). Pub. L. 110–343, §706(a)(1), added par. (3). Former par. (3) redesignated (4).

Subsec. (h)(4). Pub. L. 110–343, §706(a)(1), redesignated par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (h)(4)(B). Pub. L. 110–343, §706(a)(2)(A), substituted ''paragraphs (2) and (3)'' for ''paragraph (2)''.

Subsec. (h)(5). Pub. L. 110–343, §706(a)(1), redesignated par. (4) as (5).

Subsec. (i)(1). Pub. L. 110–343, §706(a)(2)(B), substituted ''loss occurring in a disaster area (as defined by clause (ii) of subsection (h)(3)(C)) and attributable to a federally declared disaster (as defined by clause (i) of such subsection)'' for ''loss attributable to a disaster occurring in an area subsequently determined by the President of the United States to warrant assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act''.

Subsec. (i)(4). Pub. L. 110–343, §706(a)(2)(C), substituted ''federally declared disaster (as defined by subsection (h)(3)(C)(i)'' for ''Presidentially declared disaster (as defined by section 1033(h)(3))''.

2004—Subsecs. (i)(1), (k). Pub. L. 108–311 inserted ''Robert T. Stafford'' before ''Disaster Relief and Emergency Assistance Act''.

2000—Subsec. (g)(3). Pub. L. 106–554, §1(a)(7) [title III, §318(b)(2)], struck out last sentence of concluding provisions which read as follows: ''As used in subparagraph (A), the term 'stock' does not include nonvoting stock which is limited and preferred as to dividends.''

Subsec. (g)(3)(A). Pub. L. 106–554, §1(a)(7) [title III, §318(b)(1)], amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''stock possessing at least 80 percent of the voting power of all classes of its stock and at least 80 percent of each class of its nonvoting stock is owned directly by the taxpayer, and''.

1997—Subsec. (i)(4). Pub. L. 105–34 added par. (4).

1988—Subsecs. (i)(1), (k). Pub. L. 100–707 substituted ''and Emergency Assistance Act'' for ''Act of 1974''.

Subsec. (*l*)(5) to (7). Pub. L. 100–647 added pars. (5) and (6), redesignated former par. (6) as (7), and struck out former par. (5) which read as follows: ''ELECTION.—Any election by the taxpayer under this subsection may be revoked only with the consent of the Secretary and shall apply to all losses of the taxpayer on deposits in the institution with respect to which such election was made.''

1986—Subsec. (h)(4)(E). Pub. L. 99–514, §1004(a), added subpar. (E).

Subsecs. (*l*), (m). Pub. L. 99–514, §905(a), added subsec. (*l*) and redesignated former subsec. (*l*) as (m).

1984—Subsec. (c)(3). Pub. L. 98–369, §711(c)(2)(A)(i), extended limitation to losses of property not connected with a transaction entered into for profit.

Subsec. (h). Pub. L. 98–369, §711(c)(2)(A)(ii), substituted heading ''Treatment of casualty gains and losses'' for ''Casualty and theft losses''; substituted par. (1) ''$100 limitation per casualty'' provision for former par. (1) ''General rule'' provision stating that: ''Any loss of an individual described in subsection (c)(3) shall be allowed for any taxable year only to the extent that—

''(A) the amount of loss to such individual arising from each casualty, or from each theft, exceeds $100, and

''(B) the aggregate amount of all such losses sustained by such individual during the taxable year (determined after application of subparagraph (A) exceeds 10 percent of the adjusted gross income of the individual.'';

added par. (2) ''Net casualty loss allowed only to the extent it exceeds 10 percent of adjusted gross income'' provision and par. (3) ''Definitions of personal casualty gain and personal casualty loss'' provisions; redesignated as par. (4) former par. (2) catchline; added par. (4)(A) ''Personal casualty losses allowable in computing adjusted gross income to the extent of personal casualty gains'' provision; redesignated as par. (4)(B) former par. (2)(A) joint returns provision, substituting ''For purposes of this section'' for ''For purposes of the $100 and 10 percent limitations described in paragraph (1)'' and ''individual'' for ''one individual''; redesignated as par. (4)(C) former par. (2)(B), substituting therein paragraph ''(2)'' for ''(1)''; and redesignated as par. (4)(D) former par. (2)(C).

Pub. L. 98–369, §711(c)(1), amended par. (2) by redesignating subpar. (B) as (C) and by adding a new subpar. (B) relating to the determination of adjusted gross income in case of estates and trusts.

Subsec. (j)(3). Pub. L. 98–369, §42(a)(4), substituted ''section 1287'' for ''subsection (d) of section 1232''.

Subsecs. (k), (*l*). Pub. L. 98–369, §1051(a), added subsec. (k) and redesignated former subsec. (k) as (*l*).

1982—Subsec. (c)(3). Pub. L. 97–248, §203(b), inserted ''except as provided in subsection (h),'' before ''losses of property'' and struck out provisions that a loss described in this paragraph would be allowed only to the extent that the amount of loss to such individual arising from each casualty, or from each theft, exceeded $100, that, for purposes of the $100 limitation, a husband and wife making a joint return under section 6013 for the taxable year in which the loss was allowed as a deduction would be treated as one individual, and that no loss described in this paragraph would be allowed if, at the time of filing the return, such loss had been claimed for estate tax purposes in the estate tax return.

Subsec. (h). Pub. L. 97–248, §203(a), added subsec. (h) relating to casualty and theft losses. Former subsec. (h), relating to disaster losses, redesignated (i).

Subsec. (i). Pub. L. 97–248, §203(a), redesignated former subsec. (h), relating to disaster losses, as (i), in subsec. (i), as so redesignated, further redesignated existing unnumbered provisions as pars. (1) and (2), in par. (1), as so redesignated, substituted ''be taken into account for the taxable year'' for ''be deducted for the taxable year'', in par. (2), as so redesignated, substituted ''shall be treated for purposes of this title as having occurred'' for ''will be deemed to have occurred'', added par. (3), and struck out provision that a deduction under this subsection could not be in excess of so much of the loss as would have been deductible in the taxable year in which the casualty occurred, based on facts existing at the date the taxpayer claimed the loss. Former subsec. (i), setting forth cross references, redesignated (j).

Subsec. (j). Pub. L. 97–248, §310(b)(5), added subsec. (j) relating to denial of deduction for losses on certain obligations not in registered form. Former subsec. (j), setting forth cross references, redesignated (k).

Pub. L. 97–248, §203(a), redesignated former subsec. (i), setting forth cross references, as (j).

Subsec. (k). Pub. L. 97–248, §310(b)(5), redesignated former subsec. (j), setting forth cross references, as (k).

1976—Subsecs. (i), (j). Pub. L. 94–455 redesignated subsec. (j) as subsec. (i). Former subsec. (i), which related to property confiscated by Cuba, was struck out.

1974—Subsec. (h). Pub. L. 93–288 substituted ''Disaster Relief Act of 1974'' for ''Disaster Relief Act of 1970''.

1972—Subsec. (h). Pub. L. 92–418 struck out par. (1) provisions relating to losses attributable to a disaster occurring during period following close of taxable year and on or before time prescribed by law for filing the income tax return for the taxable year without regard to any extension of time, struck out par. (2) designation, and inserted ''attributable to a disaster'' before ''occurring in an area'', and at end of second sentence, inserted ''based on facts existing at the date the taxpayer claims the loss''.

Subsec. (h)(1). Pub. L. 92–336 substituted provisions relating to losses attributable to a disaster which occurs during the period after the close of the taxable year and on or before the last day of the 6th calendar month beginning after the close of the taxable year, for provisions relating to losses attributable to a disaster which occurs during the period following the close of the taxable year and on or before the time prescribed by law for filing the income tax return for the taxable year, determined without regard to any extension of time.

1971—Subsec. (g)(3). Pub. L. 91–687 substituted ''stock possessing at least 80 percent of the voting power of all classes of its stock and at least 80 percent of each class of its nonvoting stock'' for ''at least 95 percent of each class of its stock'' in subpar. (A), and inserted at the end of the subsection the sentence providing that the term ''stock'', as used in subpar. (A), does not include nonvoting stock which is limited and preferred as to dividends.

Subsec. (i)(1). Pub. L. 91–677, §1(a)(1), (2), struck out ''or (2)'' after ''paragraph (1)'' in cl. (B), and substituted ''one or more days in the period beginning on December 31, 1958, and ending on May 16, 1959'' for ''December 31, 1958''.

Subsec. (i)(2)(B). Pub. L. 91–677, §1(a)(3), substituted ''one or more days during the period beginning on December 31, 1958, and ending on May 16, 1959'' for ''December 31, 1958'' and ''the first day in such period on which the property was held by the taxpayer'' for ''December 31, 1958''.

Subsec. (i)(3). Pub. L. 91–677, §1(a)(4), struck out subsec. (i)(3) which authorized a refund or credit to be given for any overpayment attributable to the application of par. (1), provided that a claim was filed for such refund or credit before Jan. 1, 1965.

1970—Subsec. (h)(2). Pub. L. 91–606 substituted ''the Disaster Relief Act of 1970'' for ''sections 1855–1855g of title 42''.

1964—Subsec. (c)(3). Pub. L. 88–272, §208(a), inserted requirement that losses must exceed $100 to be deductible.

Subsec. (i). Pub. L. 88–348 designated existing provisions as par. (1), substituted provisions permitting individuals who were citizens of the United States or resident aliens on Dec. 31, 1958, who sustained any loss of property prior to Jan. 1, 1964, and which was not a loss described in par. (1) or (2) of subsec. (c), to treat such loss as a loss under subsec. (c)(3), except that in cases of tangible property, the property had to be held by the taxpayer, and located in Cuba, on Dec. 31, 1958, for provisions which permitted any loss of tangible property to be treated as a loss from a casualty within subsec. (c)(3), therein, and added pars. (2) and (3).

Pub. L. 88–272, §238, added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 88–272, §238, redesignated former subsec. (i) as (j).

1962—Subsecs. (h), (i). Pub. L. 87–426 added subsec. (h) and redesignated former subsec. (h) as (i).

1958—Subsec. (g)(3)(B). Pub. L. 85–866, §7, substituted ''rental of'' for ''rental from''.

Subsec. (h)(3), (4). Pub. L. 85–866, §57(c)(1), added pars. (3) and (4).

Subsec. (h)(5). Pub. L. 85–866, §202(a), added par. (5).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–147 applicable to obligations issued after the date which is 2 years after Mar. 18, 2010, see section 502(f) of Pub. L. 111–147, set out as a note under section 149 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 706(a)(1), (2)(A)–(C) of Pub. L. 110–343 applicable to disasters declared in taxable years beginning after Dec. 31, 2007, see section 706(d)(1) of Pub. L. 110–343, set out as a note under section 56 of this title.

Amendment by section 706(c) of Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2008, see section 706(d)(2) of Pub. L. 110–343, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title III, §318(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–645, provided that: ''The amendments made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 1984.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 912(b) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 905(a) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1981, see section 905(c)(1) of Pub. L. 99–514, as amended, set out as a note under section 451 of this title.

Section 1004(b) of Pub. L. 99–514 provided that: ''The amendment made by this section [amending this section] shall apply to losses sustained in taxable years beginning after December 31, 1986.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 42(a)(4) of Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

Amendment by section 711(c)(1) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

Section 711(c)(2)(A)(v) of Pub. L. 98–369 provided that: ''The amendments made by this subparagraph [amending this section and sections 873, 931, and 1231 of this title] shall apply to taxable years beginning after December 31, 1983.''

Section 1051(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after December 31, 1981, with respect to residences in areas determined by the President of the United States, after such date, to warrant assistance by the Federal Government under the Disaster Relief Act of 1974 [42 U.S.C. 5121 et seq.].''

EFFECTIVE DATE OF 1982 AMENDMENT

Section 203(c) of Pub. L. 97–248, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1982. Such amendments shall also apply to the taxpayer's last taxable year beginning before January 1, 1983, solely for purposes of determining the amount allowable as a deduction with respect to any loss taken into account for such year by reason of an election under section 165(i) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this section).''

Amendment by section 310(b)(5) of Pub. L. 97–248 applicable to obligations issued after Dec. 31, 1982, with exceptions for certain warrants, see section 310(d) of Pub. L. 97–248, set out as a note under section 103 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

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

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–288 effective Apr. 1, 1974, see section 605 of Pub. L. 93–288, formerly set out as an Effective Date note under section 5121 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1972 AMENDMENTS

Section 2(c) of Pub. L. 92–418 provided in part that: ''The amendment made by subsection (a) [amending this section] shall apply to disasters occurring after December 31, 1971, in taxable years ending after such date.''

Section 2(b) of Pub. L. 92–336 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to disasters occurring after December 31, 1971, in taxable years ending after such date.''

EFFECTIVE DATE OF 1971 AMENDMENTS

Section 2 of Pub. L. 91–687 provided that: ''The amendments made by this Act [amending this section] shall apply with respect to taxable years beginning on or after January 1, 1970.''

Section 1(b)(1) of Pub. L. 91–677 provided that: ''The amendments made by subsection (a) [amending this section] shall apply in respect of losses sustained in taxable years ending after December 31, 1958.''

EFFECTIVE DATE OF 1970 AMENDMENT

Section 304 of Pub. L. 91–606 provided that: ''This Act [enacting sections 4401 to 4485 of Title 42, The Public Health and Welfare, amending this section, sections 5064 and 5708 of this title, sections 1706e, 1709, 1715*l* of Title 12, Banks and Banking, sections 241–1, 646 and 758 of Title 20, Education, section 1820 [now 3720] of Title 38, Veterans' Benefits, section 461 of former Title 40, Public Buildings, Property, and Works, section 1681 note of Title 42, repealing sections 1855 to 1855g, 1855aa, 1855aa note, 1855bb to 1855ii, 1855aaa, 1855aaa note, 1855bbb to 1855nnn of Title 42, and section 1926 of Title 7, Agriculture, and enacting provisions set out as notes under section 4401 and section 4434 of Title 42] shall take effect immediately upon its enactment [Dec. 31, 1970], except that sections 226(b), 237, 241, 252(a), and 254 [sections 4436(b), 4456, 4460, 4482(a), and 4484 of Title 42, respectively] shall take effect as of August 1, 1969, and sections 231, 232, and 233 [sections 4451, 4452 of Title 42 and amendments to section 1820 [now 3720] of Title 38, respectively] shall take effect as of April 1, 1970.''

EFFECTIVE DATE OF 1964 AMENDMENTS

Section 208(b) of Pub. L. 88–272 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to losses sustained after December 31, 1963, in taxable years ending after such date.''

Section 3(b) of Pub. L. 88–348 provided that: ''The amendment made by subsection (a) [amending this section] shall apply in respect of losses sustained in taxable years ending after December 31, 1958.''

EFFECTIVE DATE OF 1962 AMENDMENT

Section 2(b) of Pub. L. 87–426 provided that: ''The amendments made by this section [amending this section] shall be effective with respect to any disaster occurring after December 31, 1961.''

EFFECTIVE DATE OF 1958 AMENDMENT

Section 1(c) of title I of Pub. L. 85–866, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Except as otherwise expressly provided—

''(1) amendments made by this title to subtitle A of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to income taxes) [enacting section 558 of this title and amending this section and sections 152, 166, 168, 170, 172, 213, 337, 404, 421, 535, 545, 556, 582, 611, 613, 851, 1015, 1031, 1033, 1034, 1053, 1232, 1233, 1234, 1237, 1341, and 1347 of this title] shall apply to taxable years beginning after December 31, 1953, and ending after August 16, 1954; and

''(2) amendments made by this title to subtitle F of such Code (relating to procedure and administration) [enacting sections 7513 and 7514 of this title and amending sections 6013, 6015, 6212, 6325, 6338, 6339, 6501, 6504, 6511, 6601, 6652, 6653, 6851, 6871, 7213, 7324, 7325, and 7422 of this title] shall take effect as of August 17, 1954, and such subtitle, as so amended, shall apply as provided in section 7851 of the Internal Revenue Code of 1986''.

Amendment by section 57(c)(1) of Pub. L. 85–866 applicable with respect to taxable years beginning after Sept. 2, 1958, see section 57(d) of Pub. L. 85–866, set out as a note under section 243 of this title.

TRANSITIONAL RULE FOR 1984 AMENDMENT

Section 711(c)(2)(B) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of taxable years beginning before January 1, 1984—

''(i) For purposes of paragraph (1)(B) of section 165(h) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], adjusted gross income shall be determined without regard to the application of section 1231 of such Code to any gain or loss from an involuntary conversion of property described in subsection (c)(3) of section 165 of such Code arising from fire, storm, shipwreck, or other casualty or from theft.

''(ii) Section 1231 of such Code shall be applied after the application of paragraph (1) of section 165(h) of such Code.''

CLARIFICATION OF TREATMENT OF CERTAIN FSLIC FINANCIAL ASSISTANCE

Pub. L. 103–66, title XIII, § 13224, Aug. 10, 1993, 107 Stat. 485, provided that:

''(a) GENERAL RULE.—For purposes of chapter 1 of the Internal Revenue Code of 1986—

''(1) any FSLIC assistance with respect to any loss of principal, capital, or similar amount upon the disposition of any asset shall be taken into account as compensation for such loss for purposes of section 165 of such Code, and

''(2) any FSLIC assistance with respect to any debt shall be taken into account for purposes of section 166, 585, or 593 of such Code in determining whether such debt is worthless (or the extent to which such debt is worthless) and in determining the amount of any addition to a reserve for bad debts arising from the worthlessness or partial worthlessness of such debts.

''(b) FSLIC ASSISTANCE.—For purposes of this section, the term 'FSLIC assistance' means any assistance (or right to assistance) with respect to a domestic building and loan association (as defined in section 7701(a)(19) of such Code without regard to subparagraph (C) thereof) under section 406(f) of the National Housing Act [former 12 U.S.C. 1729(f)] or section 21A of the Federal Home Loan Bank Act [12 U.S.C. 1441a] (or under any similar provision of law).

''(c) EFFECTIVE DATE.—

''(1) IN GENERAL.—Except as otherwise provided in this subsection—

''(A) The provisions of this section shall apply to taxable years ending on or after March 4, 1991, but only with respect to FSLIC assistance not credited before March 4, 1991.

''(B) If any FSLIC assistance not credited before March 4, 1991, is with respect to a loss sustained or charge-off in a taxable year ending before March 4, 1991, for purposes of determining the amount of any

net operating loss carryover to a taxable year ending on or after March 4, 1991, the provisions of this section shall apply to such assistance for purposes of determining the amount of the net operating loss for the taxable year in which such loss was sustained or debt written off. Except as provided in the preceding sentence, this section shall not apply to any FSLIC assistance with respect to a loss sustained or charge-off in a taxable year ending before March 4, 1991.

''(2) EXCEPTIONS.—The provisions of this section shall not apply to any assistance to which the amendments made by section 1401(a)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [Pub. L. 101–73, amending section 597 of this title and repealing provisions set out as a note under section 597 of this title] apply.''

OVERPAYMENTS OR UNDERPAYMENTS OF TAX ATTRIBUTABLE TO CERTAIN AMENDMENTS BY PUB. L. 99–514 OR PUB. L. 100–647

Section 1009(d)(4) of Pub. L. 100–647 provided that: ''If on the date of the enactment of this Act [Nov. 10, 1988] (or at any time before the date 1 year after such date of enactment) credit or refund of any overpayment of tax attributable to amendments made by section 905 of the Reform Act [section 905 of Pub. L. 99–514, amending this section and section 451 of this title] or by this subsection [amending this section and section 451 of this title and provisions set out as a note under section 451 of this title] (or the assessment of any underpayment of tax so attributable) is barred by any law or rule of law—

''(A) credit or refund of any such overpayment may nevertheless be made if claim therefore [sic] is filed before the date 1 year after such date of enactment, and

''(B) assessment of any such underpayment may nevertheless be made if made before the date 1 year after such date of enactment.''

DEDUCTION FOR BUS AND FREIGHT FORWARDER OPERATING AUTHORITY

Section 243 of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1002(j), Nov. 10, 1988, 102 Stat. 3371, provided that:

''(a) BUS OPERATING AUTHORITY.—

''(1) IN GENERAL.—Subject to the modifications contained in paragraph (2), section 266 of the Economic Recovery Tax Act of 1981 [section 266 of Pub. L. 97–34, set out below] shall be applied as if the term 'motor carrier operating authority' included a bus operating authority.

''(2) MODIFICATIONS.—For purposes of paragraph (1), section 266 of such Act shall be applied—

''(A) by substituting 'November 19, 1982' for 'July 1, 1980' each place it appears, and

''(B) by substituting 'November 1982' for 'July 1980' in subsection (a) thereof.

''(3) BUS OPERATING AUTHORITY DEFINED.—For purposes of this subsection and section 266 of such Act, the term 'bus operating authority' means—

''(A) a certificate or permit held by a motor common or contract carrier of passengers which was issued pursuant to subchapter II of chapter 109 of title 49, United States Code, and

''(B) a certificate or permit held by a motor carrier authorizing the transportation of passengers, as a common carrier, over regular routes in intrastate commerce which was issued by the appropriate State agency.

''(b) FREIGHT FORWARDER OPERATING AUTHORITY.—

''(1) IN GENERAL.—Subject to the modifications contained in paragraph (2), section 266 of the Economic Recovery Tax Act of 1981 [section 266 of Pub. L. 97–34, set out below] shall be applied as if subsection (b) thereof contained 'or a freight forwarder' after 'contract carrier of property'.

''(2) MODIFICATIONS.—The modifications referred to in this paragraph are:

''(A) 60-MONTH PERIOD.—The 60-month period referred to in section 266(a) of such Act shall begin with the later of—

''(i) the deregulation month, or

''(ii) at the election of the taxpayer, the 1st month of the taxpayer's 1st taxable year beginning after the deregulation month.

''(B) AUTHORITY MUST BE HELD AS OF BEGINNING OF 60-MONTH PERIOD.—A motor carrier operating authority shall not be taken into account unless such authority is held by the taxpayer at the beginning of the 60-month period applicable to the taxpayer under subparagraph (A).

''(C) ADJUSTED BASIS NOT TO EXCEED ADJUSTED BASIS AT BEGINNING OF 60-MONTH PERIOD.—The adjusted basis taken into account with respect to any motor carrier operating authority shall not exceed the adjusted basis of such authority as of the beginning of the 60-month period applicable to the taxpayer under subparagraph (A).

''(3) DEREGULATION MONTH.—For purposes of this section, the term 'deregulation month' means the month in which the Secretary of the Treasury or his delegate determines that a Federal law has been enacted which deregulates the freight forwarding industry.

''(c) SPECIAL RULE FOR MOTOR CARRIER OPERATING AUTHORITY.—In the case of a corporation which was incorporated on December 29, 1969, in the State of Delaware, notwithstanding any other provision of law, there shall be allowed as a deduction for the taxable year of the taxpayer beginning in 1980 an amount equal to $2,705,188 for its entire loss due to a decline in value of its motor carrier operating authority by reason of deregulation.

''(d) APPLICATION OF SECTION 334(b)(2).—For purposes of subsections (a) and (b), the reference to section 334(b)(2) in section 266(c)(2)(A)(ii) of the Economic Recovery Tax Act of 1981 [section 266(c)(2)(A)(ii) of Pub. L. 97–34, set out below] shall be a reference to such section as in effect before its repeal.

''(e) EFFECTIVE DATES.—

''(1) BUS OPERATING AUTHORITY.—

''(A) IN GENERAL.—Subsection (a) shall apply to taxable years ending after November 18, 1982.

''(B) STATUTE OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from subsection (a) is prevented at any time on or before the date which is 1 year after the date of the enactment of this Act [Oct. 22, 1986] by the operation of any law or rule of law (including res judicata), refund or credit of such overpayment (to the extent attributable to the application of such subsection) may, notwithstanding such law or rule of law, be made or allowed if claim therefore [sic] is filed on or before the date which is 18 months after such date of enactment.

''(2) FREIGHT FORWARDER OPERATING AUTHORITY.—Subsection (b) shall apply to taxable years ending after the month preceding the deregulation month.''

DEDUCTION FOR MOTOR CARRIER OPERATING AUTHORITY

Pub. L. 97–34, title II, §266, Aug. 13, 1981, 95 Stat. 265, as amended by Pub. L. 97–424, title V, §517(a), Jan. 6, 1983, 96 Stat. 2183; Pub. L. 97–448, title I, §102(n), Jan. 12, 1983, 96 Stat. 2374; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) GENERAL RULE.—For purposes of chapter 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [this chapter], in computing the taxable income of a taxpayer who, on July 1, 1980, held one or more motor carrier operating authorities, an amount equal to the aggregate adjusted basis of all motor carrier operating authorities held by the taxpayer on July 1, 1980, or acquired subsequent thereto pursuant to a binding contract in effect on July 1, 1980, shall be allowed as a deduction ratably over a period of 60 months. Such 60-month period shall begin with the month of July 1980 (or if later, the month in which acquired), or at the election of the taxpayer, the first month of the taxpayer's first taxable year beginning after July 1, 1980.

''(b) DEFINITION OF MOTOR CARRIER OPERATING AUTHORITY.—For purposes of this section, the term 'motor carrier operating authority' means a certificate or permit held by a motor common or contract carrier of property and issued pursuant to subchapter II of chapter 109 of title 49 of the United States Code.

''(c) SPECIAL RULES.—

''(1) ADJUSTED BASIS.—For purposes of the Internal Revenue Code of 1986, proper adjustments shall be made in the adjusted basis of any motor carrier operating authority held by the taxpayer on July 1, 1980, for the amounts allowable as a deduction under this section.

''(2) CERTAIN STOCK ACQUISITIONS.—

''(A) IN GENERAL.—Under regulations prescribed by the Secretary of the Treasury or his delegate, and at the election of the holder of the authority, in any case in which a corporation—

''(i) on or before July 1, 1980 (or after such date pursuant to a binding contract in effect on such date), acquired stock in a corporation which held, directly or indirectly, any motor carrier operating authority at the time of such acquisition, and

''(ii) would have been able to allocate to the basis of such authority that portion of the acquiring corporation's cost basis in such stock attributable to such authority if the acquiring corporation had received such authority in the liquidation of the acquired corporation immediately following such acquisition and such allocation would have been proper under section 334(b)(2) of such Code,

the holder of the authority may, for purposes of this section, allocate a portion of the basis of the acquiring corporation in the stock of the acquired corporation to the basis of such authority in such manner as the Secretary may prescribe in such regulations.

''(B) TREATMENT OF CERTAIN NONCORPORATE TAXPAYERS.—Under regulations prescribed by the Secretary of the Treasury or his delegate, and at the election of the holder of the authority, in any case in which—

''(i) a noncorporate taxpayer or group of noncorporate taxpayers on or before July 1, 1980, acquired in one purchase stock in a corporation which held, directly or indirectly, any motor carrier operating authority at the time of such acquisition, and

''(ii) the acquisition referred to in clause (i) would have satisfied the requirements of subparagraph (A) if the stock had been acquired by a corporation,

then, for purposes of subparagraphs (A) and (C), the noncorporate taxpayer or group of noncorporate taxpayers referred to in clause (i) shall be treated as a corporation. The preceding sentence shall apply only if such noncorporate taxpayer (or group of noncorporate taxpayers) on July 1, 1980, held stock constituting control (within the meaning of section 368(c) of the Internal Revenue Code of 1986) of the corporation holding (directly or indirectly) the motor carrier operating authority.

''(C) ADJUSTMENT TO BASIS.—Under regulations prescribed by the Secretary of the Treasury or his delegate, proper adjustment shall be made to the basis of the stock or other assets in the manner provided by such regulations to take into account any allocation under subparagraph (A).

''(3) SECTION 381 OF THE INTERNAL REVENUE CODE OF 1986 TO APPLY.—For purposes of section 381 of the Internal Revenue Code of 1986, any item described in this section shall be treated as an item described in subsection (c) of such section 381.

''(d) EFFECTIVE DATE.—The provisions of this section shall apply to taxable years ending after June 30, 1980.''

[Section 517(b) of Pub. L. 97–424 provided that: ''The amendment made by subsection (a) [adding subsec. (c)(2)(B) of this note] shall apply to taxable years ending after July 30, 1980.'']

TAX TREATMENT OF CERTAIN 1972 DISASTER LOANS

Section 2103 of Pub. L. 94–455, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) APPLICATION OF SECTION.—This section shall apply to any individual—

''(1) who was allowed a deduction under section 165 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to losses) for a loss attributable to a disaster occurring during calendar year 1972 which was determined by the President, under section 102 of the Disaster Relief Act of 1970, to warrant disaster assistance by the Federal Government.

''(2) who in connection with such disaster—

''(A) received income in the form of cancellation of a disaster loan under section 7 of the Small Business Act [section 636 of Title 15, Commerce and Trade] or an emergency loan under subtitle C of the Consolidated Farm and Rural Development Act [section 1961 et seq. of Title 7, Agriculture], or

''(B) received income in the form of compensation (not taken into account in computing the amount of the deduction) for such loss in settlement of any claim of the taxpayer against a person for that person's liability in tort for the damage or destruction of that taxpayer's property in connection with the disaster, and

''(3) who elects (at such time and in such manner as the Secretary of the Treasury or his delegate may by regulations prescribe) to take the benefits of this section.

''(b) EFFECT OF ELECTION.—In the case of any individual to whom this section applies—

''(1) the tax imposed by chapter 1 of the Internal Revenue Code of 1986 for the taxable year in which the income taken into account is received or accrued which is attributable to such income shall not exceed the additional tax under such chapter which would have been payable for the year in which the deduction for the loss was taken if such deduction had not been taken for such year,

''(2) any amount of tax imposed by chapter 1 attributable to the income taken into account which, on October 1, 1975, was unpaid may be paid in 3 equal annual installments (with the first such installment due and payable on April 15, 1977), and

''(3) no interest on any deficiency shall be payable for any period before April 16, 1977, to the extent such deficiency is attributable to the receipt of such compensation, and no interest on any installment referred to in paragraph (2) shall be payable for any period before the due date of such installment.

''(c) INCOME TAKEN INTO ACCOUNT.—For purposes of this section, the income taken into account is—

''(1) in the case of an individual described in subsection (a)(2)(A), the amount of income (not in excess of $5,000) attributable to the cancellation of a disaster loan under section 7 of the Small Business Act or an emergency loan under subtitle C of the Consolidated Farm and Rural Development Act received by reason of the disaster described in subsection (a)(1), or

''(2) in the case of an individual described in subsection (a)(2)(B), the amount of compensation (not in excess of $5,000) for the loss in settlement of any claim of the taxpayer against a person for that person's liability in tort for the damage or destruction of that taxpayer's property in connection with the disaster described in subsection (a)(1).

''(d) PHASEOUT WHERE ADJUSTED GROSS INCOME EXCEEDS $15,000.—If for the taxable year for which the deduction for the loss was taken the individual's adjusted gross income exceeded $15,000, the $5,000 limit set forth in paragraph (1) or (2) of subsection (c) (whichever applies) shall be reduced by one dollar for each full dollar that such adjusted gross income exceeds $15,000. In the case of a married individual filing a separate return, the preceding sentence shall be applied by substituting '$7,500' for '$15,000'.

''(e) STATUTE OF LIMITATIONS.—If refund or credit of any overpayment of income tax resulting from an elec-

tion made under this section is prevented on the date of the enactment of this Act [Oct. 4, 1976], or at any time within one year after such date, by the operation of any law, or rule of law, refund or credit of such overpayment (to the extent attributable to such election) may, nevertheless, be made or allowed if claim therefor is filed within one year after such date. If the taxpayer makes an election under this section and if assessment of any deficiency for any taxable year resulting from such election is prevented on the date of the enactment of this Act [Oct. 4, 1976], or at any time within one year after such date, by the operation of any law or rule of law, such assessment (to the extent attributable to such election) may, nevertheless, be made if made within one year after such date.''

REFUND OR CREDIT OF OVERPAYMENT; TIME FOR FILING CLAIM; INTEREST

Section 1(b)(2) of Pub. L. 91–677 authorized refund or credit of overpayment attributable to the amendments made by subsec. (a) to subsec. (i) of this section if claim therefor was filed after Jan. 12, 1971, and before July 1, 1971, without interest for any period before Jan. 1, 1972.

§ 166. Bad debts

(a) General rule

(1) Wholly worthless debts

There shall be allowed as a deduction any debt which becomes worthless within the taxable year.

(2) Partially worthless debts

When satisfied that a debt is recoverable only in part, the Secretary may allow such debt, in an amount not in excess of the part charged off within the taxable year, as a deduction.

(b) Amount of deduction

For purposes of subsection (a), the basis for determining the amount of the deduction for any bad debt shall be the adjusted basis provided in section 1011 for determining the loss from the sale or other disposition of property.

[(c) Repealed. Pub. L. 99–514, title VIII, § 805(a), Oct. 22, 1986, 100 Stat. 2361]

(d) Nonbusiness debts

(1) General rule

In the case of a taxpayer other than a corporation—

(A) subsection (a) shall not apply to any nonbusiness debt; and

(B) where any nonbusiness debt becomes worthless within the taxable year, the loss resulting therefrom shall be considered a loss from the sale or exchange, during the taxable year, of a capital asset held for not more than 1 year.

(2) Nonbusiness debt defined

For purposes of paragraph (1), the term ''nonbusiness debt'' means a debt other than—

(A) a debt created or acquired (as the case may be) in connection with a trade or business of the taxpayer; or

(B) a debt the loss from the worthlessness of which is incurred in the taxpayer's trade or business.

(e) Worthless securities

This section shall not apply to a debt which is evidenced by a security as defined in section 165(g)(2)(C).

(f) Cross references

(1) For disallowance of deduction for worthlessness of debts owed by political parties and similar organizations, see section 271.

(2) For special rule for banks with respect to worthless securities, see section 582.

(Aug. 16, 1954, ch. 736, 68A Stat. 50; Pub. L. 85–866, title I, § 8, Sept. 2, 1958, 72 Stat. 1608; Pub. L. 89–722, § 1(a), Nov. 2, 1966, 80 Stat. 1151; Pub. L. 91–172, title IV, § 431(c)(1), Dec. 30, 1969, 83 Stat. 619; Pub. L. 94–455, title VI, § 605(a), title XIV, § 1402(b)(1)(A), (2), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1575, 1731, 1732, 1834; Pub. L. 98–369, div. A, title X, § 1001(b)(1), (e), July 18, 1984, 98 Stat. 1011, 1012; Pub. L. 99–514, title VIII, § 805(a), (b), title IX, § 901(d)(4)(A), Oct. 22, 1986, 100 Stat. 2361, 2379; Pub. L. 100–647, title I, § 1008(d)(1), (2), Nov. 10, 1988, 102 Stat. 3439.)

AMENDMENTS

1988—Subsec. (d)(1)(A). Pub. L. 100–647, § 1008(d)(1), substituted ''subsection (a)'' for ''subsections (a) and (c)''.

Subsecs. (f), (g). Pub. L. 100–647, § 1008(d)(2), made clarifying amendment to directory language of Pub. L. 99–514, § 805(b), see 1986 Amendment note below.

1986—Subsec. (c). Pub. L. 99–514, § 805(a), struck out subsec. (c), reserve for bad debts, which read as follows: ''In lieu of any deduction under subsection (a), there shall be allowed (in the discretion of the Secretary) a deduction for a reasonable addition to a reserve for bad debts.''

Subsec. (f). Pub. L. 99–514, § 805(b), as amended by Pub. L. 100–647, § 1008(d)(2), redesignated subsec. (g) as (f) and struck out former subsec. (f) which related to reserve for certain guaranteed debt obligations, par. (1) thereof providing for allowance of deduction, par. (2) disallowing deduction in other cases, par. (3) relating to opening balance of reserve, and par. (4) relating to suspense account.

Subsec. (g). Pub. L. 99–514, § 805(b), as amended by Pub. L. 100–647, § 1008(d)(2), redesignated subsec. (g) as (f).

Pub. L. 99–514, § 901(d)(4)(A), struck out pars. (3) and (4) which read as follows:

''(3) For special rule for bad debt reserves of certain mutual savings banks, domestic building and loan associations, and cooperative banks, see section 593.

''(4) For special rule for bad debt reserves of banks, small business investment-companies, etc., see sections 585 and 586.''

1984—Subsec. (d)(1)(B). Pub. L. 98–369 substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

1976—Subsecs. (a)(2), (c). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d)(1)(B). Pub. L. 94–455, § 1401(b)(1)(A), (2), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977, and ''9 months'' would be changed to ''1 year'' for taxable years beginning after Dec. 31, 1977.

Subsec. (f). Pub. L. 94–455, §§ 605(a), 1906(b)(13)(A), redesignated subsec. (g) as (f) and struck out ''or his delegate'' after ''Secretary'' in pars. (1), (3) and (4)(D). Former subsec. (f), which related to treatment of payments made by guarantors of certain noncorporate obligations, was struck out.

Subsecs. (g), (h). Pub. L. 94–455, § 605(a), redesignated subsecs. (g) and (h) as (f) and (g), respectively.

1969—Subsec. (h)(4). Pub. L. 91–172 added par. (4).

1966—Subsecs. (g), (h). Pub. L. 89–722 added subsec. (g) and redesignated former subsec. (g) as (h).

1958—Subsec. (d)(2)(A). Pub. L. 85–866 substituted ''a trade or business of the taxpayer'' for ''a taxpayer's trade or business''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 805(d) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 81, 108, 461, and 805 of this title] shall apply to taxable years beginning after December 31, 1986.

''(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer who maintained a reserve for bad debts for such taxpayer's last taxable year beginning before January 1, 1987, and who is required by the amendments made by this section to change its method of accounting for any taxable year—

''(A) such change shall be treated as initiated by the taxpayer,

''(B) such change shall be treated as made with the consent of the Secretary, and

''(C) the net amount of adjustments required by section 481 of the Internal Revenue Code of 1986 to be taken into account by the taxpayer shall—

''(i) in the case of a taxpayer maintaining a reserve under section 166(f), be reduced by the balance in the suspense account under section 166(f)(4) of such Code as of the close of such last taxable year, and

''(ii) be taken into account ratably in each of the first 4 taxable years beginning after December 31, 1986.''

Section 901(e) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section and sections 172, 291, 582, 585, 593, 596, 856, 1277, and 1361 of this title and repealing section 586 of this title] shall apply to taxable years beginning after December 31, 1986.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1001(e) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and sections 341, 402, 403, 423, 582, 584, 631, 642, 702, 818, 852, 856, 857, 1222, 1223, 1231, 1232, 1233, 1234, 1235, 1246, 1247, 1248, 1251, and 1278 of this title] shall apply to property acquired after June 22, 1984, and before January 1, 1988.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 605(c) of Pub. L. 94–455 provided that: ''The amendments made by this section [amending this section and section 81 of this title] shall apply to guarantees made after December 31, 1975, in taxable years beginning after such date.''

Section 1402(b)(1) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Section 1402(b)(2) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after July 11, 1969, see section 431(d) of Pub. L. 91–172, set out as an Effective Date note under section 585 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 2 of Pub. L. 89–722, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) Except as provided in subsections (b) and (c), the amendments made by the first section of this Act [amending this section and section 81 of this title] shall apply to taxable years ending after October 21, 1965.

''(b) If—

''(1) the taxpayer before October 22, 1965, claimed a deduction, for a taxable year ending before such date, under section 166(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for an addition to a reserve for bad debts on account of debt obligations described in section 166(g)(1)(A) of such Code (as amended by the first section of this Act), and

''(2) the assessment of a deficiency of the tax imposed by chapter 1 of such Code for such taxable year and each subsequent taxable year ending before October 22, 1965, is not prevented on December 31, 1966, by the operation of any law or rule of law,

then such deduction on account of such debt obligations shall be allowed for each such taxable year under such section 166(c) to the extent that the deduction would have been allowable under the provisions of such section 166(g)(1)(A) if such provisions applied to such taxable years.

''(c) Section 166(g)(2) of the Internal Revenue Code of 1986 (as amended by the first section of this Act) shall apply to taxable years beginning after December 31, 1953, and ending after August 16, 1954.''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

ESTABLISHMENT OF RESERVE FOR TAXABLE YEAR ENDING AFTER OCT. 21, 1965, AND BEGINNING BEFORE AUG. 2, 1966

Section 1(c) of Pub. L. 89–722, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''If the taxpayer establishes a reserve described in section 166(g)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (a) of this section) for a taxable year ending after October 21, 1965, and beginning before August 2, 1966, the establishment of such reserve shall not be considered as a change in method of accounting for purposes of section 446(e) of such Code.''

§ 167. Depreciation

(a) General rule

There shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence)—

(1) of property used in the trade or business, or

(2) of property held for the production of income.

(b) Cross reference

For determination of depreciation deduction in case of property to which section 168 applies, see section 168.

(c) Basis for depreciation

(1) In general

The basis on which exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be the adjusted basis provided in section 1011, for the purpose of determining the gain on the sale or other disposition of such property.

(2) Special rule for property subject to lease

If any property is acquired subject to a lease—

(A) no portion of the adjusted basis shall be allocated to the leasehold interest, and

(B) the entire adjusted basis shall be taken into account in determining the depreciation deduction (if any) with respect to the property subject to the lease.

(d) Life tenants and beneficiaries of trusts and estates

In the case of property held by one person for life with remainder to another person, the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. In the case of property held in trust, the allowable deduction shall be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each. In the case of an estate, the allowable deduction shall be apportioned between the estate and the heirs, legatees, and devisees on the basis of the income of the estate allocable to each.

(e) Certain term interests not depreciable

(1) In general

No depreciation deduction shall be allowed under this section (and no depreciation or amortization deduction shall be allowed under any other provision of this subtitle) to the taxpayer for any term interest in property for any period during which the remainder interest in such property is held (directly or indirectly) by a related person.

(2) Coordination with other provisions

(A) Section 273

This subsection shall not apply to any term interest to which section 273 applies.

(B) Section 305(e)

This subsection shall not apply to the holder of the dividend rights which were separated from any stripped preferred stock to which section 305(e)(1) applies.

(3) Basis adjustments

If, but for this subsection, a depreciation or amortization deduction would be allowable to the taxpayer with respect to any term interest in property—

(A) the taxpayer's basis in such property shall be reduced by any depreciation or amortization deductions disallowed under this subsection, and

(B) the basis of the remainder interest in such property shall be increased by the amount of such disallowed deductions (properly adjusted for any depreciation deductions allowable under subsection (d) to the taxpayer).

(4) Special rules

(A) Denial of increase in basis of remainderman

No increase in the basis of the remainder interest shall be made under paragraph (3)(B) for any disallowed deductions attributable to periods during which the term interest was held—

(i) by an organization exempt from tax under this subtitle, or

(ii) by a nonresident alien individual or foreign corporation but only if income from the term interest is not effectively connected with the conduct of a trade or business in the United States.

(B) Coordination with subsection (d)

If, but for this subsection, a depreciation or amortization deduction would be allowable to any person with respect to any term interest in property, the principles of subsection (d) shall apply to such person with respect to such term interest.

(5) Definitions

For purposes of this subsection—

(A) Term interest in property

The term ''term interest in property'' has the meaning given such term by section 1001(e)(2).

(B) Related person

The term ''related person'' means any person bearing a relationship to the taxpayer described in subsection (b) or (e) of section 267.

(6) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations preventing avoidance of this subsection through cross-ownership arrangements or otherwise.

(f) Treatment of certain property excluded from section 197

(1) Computer software

(A) In general

If a depreciation deduction is allowable under subsection (a) with respect to any computer software, such deduction shall be computed by using the straight line method and a useful life of 36 months.

(B) Computer software

For purposes of this section, the term ''computer software'' has the meaning given to such term by section 197(e)(3)(B); except that such term shall not include any such software which is an amortizable section 197 intangible.

(C) Tax-exempt use property subject to lease

In the case of computer software which would be tax-exempt use property as defined in subsection (h) of section 168 if such section applied to computer software, the useful life under subparagraph (A) shall not be less than 125 percent of the lease term (within the meaning of section 168(i)(3)).

(2) Certain interests or rights acquired separately

If a depreciation deduction is allowable under subsection (a) with respect to any property described in subparagraph (B), (C), or (D) of section 197(e)(4), such deduction shall be computed in accordance with regulations prescribed by the Secretary. If such property would be tax-exempt use property as defined in subsection (h) of section 168 if such section applied to such property, the useful life under such regulations shall not be less than 125 percent of the lease term (within the meaning of section 168(i)(3)).

(3) Mortgage servicing rights

If a depreciation deduction is allowable under subsection (a) with respect to any right

described in section 197(e)(6), such deduction shall be computed by using the straight line method and a useful life of 108 months.

(g) Depreciation under income forecast method

(1) In general

If the depreciation deduction allowable under this section to any taxpayer with respect to any property is determined under the income forecast method or any similar method—

(A) the income from the property to be taken into account in determining the depreciation deduction under such method shall be equal to the amount of income earned in connection with the property before the close of the 10th taxable year following the taxable year in which the property was placed in service,

(B) the adjusted basis of the property shall only include amounts with respect to which the requirements of section 461(h) are satisfied,

(C) the depreciation deduction under such method for the 10th taxable year beginning after the taxable year in which the property was placed in service shall be equal to the adjusted basis of such property as of the beginning of such 10th taxable year, and

(D) such taxpayer shall pay (or be entitled to receive) interest computed under the look-back method of paragraph (2) for any recomputation year.

(2) Look-back method

The interest computed under the look-back method of this paragraph for any recomputation year shall be determined by—

(A) first determining the depreciation deductions under this section with respect to such property which would have been allowable for prior taxable years if the determination of the amounts so allowable had been made on the basis of the sum of the following (instead of the estimated income from such property)—

(i) the actual income earned in connection with such property for periods before the close of the recomputation year, and

(ii) an estimate of the future income to be earned in connection with such property for periods after the recomputation year and before the close of the 10th taxable year following the taxable year in which the property was placed in service,

(B) second, determining (solely for purposes of computing such interest) the overpayment or underpayment of tax for each such prior taxable year which would result solely from the application of subparagraph (A), and

(C) then using the adjusted overpayment rate (as defined in section 460(b)(7)), compounded daily, on the overpayment or underpayment determined under subparagraph (B).

For purposes of the preceding sentence, any cost incurred after the property is placed in service (which is not treated as a separate property under paragraph (5)) shall be taken into account by discounting (using the Federal mid-term rate determined under section 1274(d) as of the time such cost is incurred) such cost to its value as of the date the property is placed in service. The taxpayer may elect with respect to any property to have the preceding sentence not apply to such property.

(3) Exception from look-back method

Paragraph (1)(D) shall not apply with respect to any property which had a cost basis of $100,000 or less.

(4) Recomputation year

For purposes of this subsection, except as provided in regulations, the term ''recomputation year'' means, with respect to any property, the 3d and the 10th taxable years beginning after the taxable year in which the property was placed in service, unless the actual income earned in connection with the property for the period before the close of such 3d or 10th taxable year is within 10 percent of the income earned in connection with the property for such period which was taken into account under paragraph (1)(A).

(5) Special rules

(A) Certain costs treated as separate property

For purposes of this subsection, the following costs shall be treated as separate properties:

(i) Any costs incurred with respect to any property after the 10th taxable year beginning after the taxable year in which the property was placed in service.

(ii) Any costs incurred after the property is placed in service and before the close of such 10th taxable year if such costs are significant and give rise to a significant increase in the income from the property which was not included in the estimated income from the property.

(B) Syndication income from television series

In the case of property which is 1 or more episodes in a television series, income from syndicating such series shall not be required to be taken into account under this subsection before the earlier of—

(i) the 4th taxable year beginning after the date the first episode in such series is placed in service, or

(ii) the earliest taxable year in which the taxpayer has an arrangement relating to the future syndication of such series.

(C) Special rules for financial exploitation of characters, etc.

For purposes of this subsection, in the case of television and motion picture films, the income from the property shall include income from the exploitation of characters, designs, scripts, scores, and other incidental income associated with such films, but only to the extent that such income is earned in connection with the ultimate use of such items by, or the ultimate sale of merchandise to, persons who are not related persons (within the meaning of section 267(b)) to the taxpayer.

(D) Collection of interest

For purposes of subtitle F (other than sections 6654 and 6655), any interest required to be paid by the taxpayer under paragraph (1) for any recomputation year shall be treated as an increase in the tax imposed by this chapter for such year.

(E) Treatment of distribution costs

For purposes of this subsection, the income with respect to any property shall be the taxpayer's gross income from such property.

(F) Determinations

For purposes of paragraph (2), determinations of the amount of income earned in connection with any property shall be made in the same manner as for purposes of applying the income forecast method; except that any income from the disposition of such property shall be taken into account.

(G) Treatment of pass-thru entities

Rules similar to the rules of section 460(b)(4) shall apply for purposes of this subsection.

(6) Limitation on property for which income forecast method may be used

The depreciation deduction allowable under this section may be determined under the income forecast method or any similar method only with respect to—

(A) property described in paragraph (3) or (4) of section 168(f),

(B) copyrights,

(C) books,

(D) patents, and

(E) other property specified in regulations.

Such methods may not be used with respect to any amortizable section 197 intangible (as defined in section 197(c)).

(7) Treatment of participations and residuals

(A) In general

For purposes of determining the depreciation deduction allowable with respect to a property under this subsection, the taxpayer may include participations and residuals with respect to such property in the adjusted basis of such property for the taxable year in which the property is placed in service, but only to the extent that such participations and residuals relate to income estimated (for purposes of this subsection) to be earned in connection with the property before the close of the 10th taxable year referred to in paragraph (1)(A).

(B) Participations and residuals

For purposes of this paragraph, the term ''participations and residuals'' means, with respect to any property, costs the amount of which by contract varies with the amount of income earned in connection with such property.

(C) Special rules relating to recomputation years

If the adjusted basis of any property is determined under this paragraph, paragraph (4) shall be applied by substituting ''for each taxable year in such period'' for ''for such period''.

(D) Other special rules

(i) Participations and residuals

Notwithstanding subparagraph (A), the taxpayer may exclude participations and residuals from the adjusted basis of such property and deduct such participations and residuals in the taxable year that such participations and residuals are paid.

(ii) Coordination with other rules

Deductions computed in accordance with this paragraph shall be allowable notwithstanding paragraph (1)(B), section 263, 263A, 404, 419, or 461(h).

(E) Authority to make adjustments

The Secretary shall prescribe appropriate adjustments to the basis of property and to the look-back method for the additional amounts allowable as a deduction solely by reason of this paragraph.

(8) Special rules for certain musical works and copyrights

(A) In general

If an election is in effect under this paragraph for any taxable year, then, notwithstanding paragraph (1), any expense which—

(i) is paid or incurred by the taxpayer in creating or acquiring any applicable musical property placed in service during the taxable year, and

(ii) is otherwise properly chargeable to capital account,

shall be amortized ratably over the 5-year period beginning with the month in which the property was placed in service. The preceding sentence shall not apply to any expense which, without regard to this paragraph, would not be allowable as a deduction.

(B) Exclusive method

Except as provided in this paragraph, no depreciation or amortization deduction shall be allowed with respect to any expense to which subparagraph (A) applies.

(C) Applicable musical property

For purposes of this paragraph—

(i) In general

The term ''applicable musical property'' means any musical composition (including any accompanying words), or any copyright with respect to a musical composition, which is property to which this subsection applies without regard to this paragraph.

(ii) Exceptions

Such term shall not include any property—

(I) with respect to which expenses are treated as qualified creative expenses to which section 263A(h) applies,

(II) to which a simplified procedure established under section 263A(i)(2) applies, or

(III) which is an amortizable section 197 intangible (as defined in section 197(c)).

(D) Election

An election under this paragraph shall be made at such time and in such form as the Secretary may prescribe and shall apply to all applicable musical property placed in service during the taxable year for which the election applies.

(E) Termination

An election may not be made under this paragraph for any taxable year beginning after December 31, 2010.

(h) Amortization of geological and geophysical expenditures

(1) In general

Any geological and geophysical expenses paid or incurred in connection with the exploration for, or development of, oil or gas within the United States (as defined in section 638) shall be allowed as a deduction ratably over the 24-month period beginning on the date that such expense was paid or incurred.

(2) Half-year convention

For purposes of paragraph (1), any payment paid or incurred during the taxable year shall be treated as paid or incurred on the mid-point of such taxable year.

(3) Exclusive method

Except as provided in this subsection, no depreciation or amortization deduction shall be allowed with respect to such payments.

(4) Treatment upon abandonment

If any property with respect to which geological and geophysical expenses are paid or incurred is retired or abandoned during the 24-month period described in paragraph (1), no deduction shall be allowed on account of such retirement or abandonment and the amortization deduction under this subsection shall continue with respect to such payment.

(5) Special rule for major integrated oil companies

(A) In general

In the case of a major integrated oil company, paragraphs (1) and (4) shall be applied by substituting ''7-year'' for ''24 month''.

(B) Major integrated oil company

For purposes of this paragraph, the term ''major integrated oil company'' means, with respect to any taxable year, a producer of crude oil—

(i) which has an average daily worldwide production of crude oil of at least 500,000 barrels for the taxable year,

(ii) which had gross receipts in excess of $1,000,000,000 for its last taxable year ending during calendar year 2005, and

(iii) to which subsection (c) of section 613A does not apply by reason of paragraph (4) of section 613A(d), determined—

(I) by substituting ''15 percent'' for ''5 percent'' each place it occurs in paragraph (3) of section 613A(d), and

(II) without regard to whether subsection (c) of section 613A does not apply by reason of paragraph (2) of section 613A(d).

For purposes of clauses (i) and (ii), all persons treated as a single employer under subsections (a) and (b) of section 52 shall be treated as 1 person and, in case of a short taxable year, the rule under section 448(c)(3)(B) shall apply.

(i) Cross references

(1) For additional rule applicable to depreciation of improvements in the case of mines, oil and gas wells, other natural deposits, and timber, see section 611.

(2) For amortization of goodwill and certain other intangibles, see section 197.

(Aug. 16, 1954, ch. 736, 68A Stat. 51; Pub. L. 85–866, title I, § 89(b), Sept. 2, 1958, 72 Stat. 1665; Pub. L. 87–834, § 13(b), (c)(1), Oct. 16, 1962, 76 Stat. 1034; Pub. L. 89–800, § 2, Nov. 8, 1966, 80 Stat. 1513; Pub. L. 90–26, §§ 1, 2(b), June 13, 1967, 81 Stat. 57, 58; Pub. L. 91–172, title IV, § 441(a), title V, § 521(a), (d), Dec. 30, 1969, 83 Stat. 625, 649, 653; Pub. L. 92–178, title I, § 109(a), Dec. 10, 1971, 85 Stat. 508; Pub. L. 93–625, § 3(c), Jan. 3, 1975, 88 Stat. 2109; Pub. L. 94–455, title II, §§ 202(c)(3), 203(a), title XIX, §§ 1901(a)(27), 1906(b)(13)(A), title XXI, § 2124(c)(1), (d)(1), Oct. 4, 1976, 90 Stat. 1530, 1768, 1834, 1918; Pub. L. 95–171, § 4(a), Nov. 12, 1977, 91 Stat. 1355; Pub. L. 95–600, title III, §§ 312(c)(4), 367, title VII, § 701(f)(4), (6), Nov. 6, 1978, 92 Stat. 2826, 2857, 2901, 2902; Pub. L. 95–615, § 7(a), Nov. 8, 1978, 92 Stat. 3098; Pub. L. 95–618, title III, § 301(d)(3), (e)(1), Nov. 9, 1978, 92 Stat. 3200, 3201; Pub. L. 96–541, §§ 2(c), (d), 3, Dec. 17, 1980, 94 Stat. 3204, 3205; Pub. L. 96–613, § 2(a), Dec. 28, 1980, 94 Stat. 3579; Pub. L. 97–34, title II, §§ 203(a)–(c)(1), (d), 209(d)(3), 212(d)(1), 264(a), Aug. 13, 1981, 95 Stat. 221, 222, 227, 239, 264; Pub. L. 97–424, title V, § 541(a)(2), Jan. 6, 1983, 96 Stat. 2192; Pub. L. 98–369, div. A, title X, § 1064, July 18, 1984, 98 Stat. 1047; Pub. L. 99–514, title II, § 201(d)(1), title XV, § 1511(c)(4), title XVIII, § 1809(d)(1), Oct. 22, 1986, 100 Stat. 2139, 2745, 2821; Pub. L. 100–647, title I, § 1002(a)(22), (24), (31), (i)(1), Nov. 10, 1988, 102 Stat. 3356, 3357, 3370; Pub. L. 101–239, title VII, §§ 7622(b)(1) [(d)(1)], 7645(a), Dec. 19, 1989, 103 Stat. 2378, 2381; Pub. L. 101–508, title XI, § 11812(a), (b)(1), Nov. 5, 1990, 104 Stat. 1388–534; Pub. L. 103–66, title XIII, §§ 13206(c)(2), 13261(b), (f)(1), Aug. 10, 1993, 107 Stat. 466, 538, 539; Pub. L. 104–188, title I, § 1604(a), Aug. 20, 1996, 110 Stat. 1836; Pub. L. 105–34, title X, § 1086(a), Aug. 5, 1997, 111 Stat. 957; Pub. L. 108–357, title II, § 242(a), (b), title VIII, § 847(b)(1), (2), Oct. 22, 2004, 118 Stat. 1438, 1439, 1601; Pub. L. 109–58, title XIII, § 1329(a), Aug. 8, 2005, 119 Stat. 1020; Pub. L. 109–135, title IV, § 412(r), Dec. 21, 2005, 119 Stat. 2638; Pub. L. 109–222, title II, § 207(a), title V, § 503(a), May 17, 2006, 120 Stat. 350, 354; Pub. L. 110–140, title XV, § 1502(a), Dec. 19, 2007, 121 Stat. 1800; Pub. L. 110–172, § 11(a)(13), Dec. 29, 2007, 121 Stat. 2485.)

AMENDMENTS

2007—Subsec. (g)(8)(C)(ii)(II). Pub. L. 110–172 substituted ''section 263A(i)(2)'' for ''section 263A(j)(2)''.

Subsec. (h)(5)(A). Pub. L. 110–140 substituted ''7-year'' for ''5-year''.

2006—Subsec. (g)(8). Pub. L. 109–222, § 207(a), added par. (8).

Subsec. (h)(5). Pub. L. 109–222, § 503(a), added par. (5).

2005—Subsec. (f)(3). Pub. L. 109–135 substituted ''section 197(e)(6)'' for ''section 197(e)(7)''.

Subsecs. (h), (i). Pub. L. 109–58 added subsec. (h) and redesignated former subsec. (h) as (i).

2004—Subsec. (f)(1)(C). Pub. L. 108–357, § 847(b)(1), added subpar. (C).

Subsec. (f)(2). Pub. L. 108–357, § 847(b)(2), inserted at end ''If such property would be tax-exempt use property as defined in subsection (h) of section 168 if such section applied to such property, the useful life under such regulations shall not be less than 125 percent of the lease term (within the meaning of section 168(i)(3)).''

Subsec. (g)(5)(E) to (G). Pub. L. 108–357, § 242(b), added subpar. (E) and redesignated former subpars. (E) and (F) as (F) and (G), respectively.

Subsec. (g)(7). Pub. L. 108–357, § 242(a), added par. (7).

1997—Subsec. (g)(6). Pub. L. 105–34 added par. (6).

1996—Subsecs. (g), (h). Pub. L. 104–188 added subsec. (g) and redesignated former subsec. (g) as (h).

1993—Subsec. (c). Pub. L. 103–66, § 13261(b)(2), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: ''The basis on which exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be the adjusted basis provided in section 1011 for the purpose of determining the gain on the sale or other disposition of such property.''

Subsec. (e)(2). Pub. L. 103–66, § 13206(c)(2), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''This subsection shall not apply to any term interest to which section 273 applies.''

Subsec. (f). Pub. L. 103–66, § 13261(b)(1), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 103–66, § 13261(b)(1), (f)(1), redesignated subsec. (f) as (g) and amended heading and text generally, designating existing provisions of text as par. (1) and adding par. (2).

1990—Subsec. (b). Pub. L. 101–508, § 11812(a), added subsec. (b) and struck out former subsec. (b) ''Use of certain methods and rates'' which read as follows: ''For taxable years ending after December 31, 1953, the term 'reasonable allowance' as used in subsection (a) shall include (but shall not be limited to) an allowance computed in accordance with regulations prescribed by the Secretary, under any of the following methods:

''(1) the straight line method,

''(2) the declining balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in paragraph (1),

''(3) the sum of the years-digits method, and

''(4) any other consistent method productive of an annual allowance which, when added to all allowances for the period commencing with the taxpayer's use of the property and including the taxable year, does not, during the first two-thirds of the useful life of the property, exceed the total of such allowances which would have been used had such allowances been computed under the method described in paragraph (2).

Nothing in this subsection shall be construed to limit or reduce an allowance otherwise allowable under subsection (a).''

Subsec. (c). Pub. L. 101–508, § 11812(a)(1), redesignated subsec. (g) as (c) and struck out former subsec. (c) ''Limitations on use of certain methods and rates'' which read as follows: ''Paragraphs (2), (3), and (4) of subsection (b) shall apply only in the case of property (other than intangible property) described in subsection (a) with a useful life of 3 years or more—

''(1) the construction, reconstruction, or erection of which is completed after December 31, 1953, and then only to that portion of the basis which is properly attributable to such construction, reconstruction, or erection after December 31, 1953, or

''(2) acquired after December 31, 1953, if the original use of such property commences with the taxpayer and commences after such date.

Paragraphs (2), (3), and (4) of subsection (b) shall not apply to any motion picture film, video tape, or sound recording.''

Subsec. (d). Pub. L. 101–508, § 11812(a)(1), redesignated subsec. (h) as (d) and struck out former subsec. (d) ''Agreement as to useful life on which depreciation rate is based'' which read as follows: ''Where, under regulations prescribed by the Secretary, the taxpayer and the Secretary have, after August 16, 1954, entered into an agreement in writing specifically dealing with the useful life and rate of depreciation of any property, the rate so agreed upon shall be binding on both the taxpayer and the Secretary in the absence of facts or circumstances not taken into consideration in the adoption of such agreement. The responsibility of establishing the existence of such facts and circumstances shall rest with the party initiating the modification. Any change in the agreed rate and useful life specified in the agreement shall not be effective for taxable years before the taxable year in which notice in writing by certified mail or registered mail is served by the party to the agreement initiating such change. This subsection shall not apply with respect to property to which section 168 applies.''

Subsec. (e). Pub. L. 101–508, § 11812(a)(1), redesignated subsec. (r) as (e) and struck out former subsec. (e) which related to changes in method of depreciation from declining balance method and changes with respect to sections 1245 and 1250 property.

Subsec. (e)(3)(B). Pub. L. 101–508, § 11812(b)(1) substituted ''(d)'' for ''(h)''.

Subsec. (e)(4)(B). Pub. L. 101–508, § 11812(b)(1), substituted ''(d)'' for ''(h)'' in heading and text.

Subsec. (f). Pub. L. 101–508, § 11812(a)(1), redesignated subsec. (s) as (f) and struck out former subsec. (f) ''Salvage value'' which read as follows:

''(1) GENERAL RULE.—Under regulations prescribed by the Secretary, a taxpayer may, for purposes of computing the allowance under subsection (a) with respect to personal property, reduce the amount taken into account as salvage value by an amount which does not exceed 10 percent of the basis of such property (as determined under subsection (g) as of the time as of which such salvage value is required to be determined).

''(2) PERSONAL PROPERTY DEFINED.—For purposes of this subsection, the term 'personal property' means depreciable personal property (other than livestock) with a useful life of 3 years or more acquired after October 16, 1962.''

Subsecs. (g), (h). Pub. L. 101–508, § 11812(a)(1), redesignated subsecs. (g) and (h) as (c) and (d), respectively.

Subsec. (j). Pub. L. 101–508, § 11812(a)(1), struck out subsec. (j) which related to special rules for section 1250 property including residential rental property and change in method of depreciation.

Subsec. (k). Pub. L. 101–508, § 11812(a)(1), struck out subsec. (k) which related to depreciation of expenditures to rehabilitate low-income rental housing.

Subsec. (*l*). Pub. L. 101–508, § 11812(a)(1), struck out subsec. (*l*) which related to reasonable allowance in case of property of certain utilities, pre-1970 public utility property and post-1969 public utility property.

Subsec. (m). Pub. L. 101–508, § 11812(a)(1), struck out subsec. (m) which related to class lives.

Subsec. (p). Pub. L. 101–508, § 11812(a)(1), struck out subsec. (p) which related to straight line method for boilers fueled by oil or gas.

Subsec. (q). Pub. L. 101–508, § 11812(a)(1), struck out subsec. (q) which related to retirement or replacement of certain boilers, etc., fueled by oil or gas.

Subsecs. (r), (s). Pub. L. 101–508, § 11812(a)(1), redesignated subsecs. (r) and (s) as (e) and (f), respectively.

1989—Subsec. (r). Pub. L. 101–239, § 7645(a), added subsec. (r).

Pub. L. 101–239, § 7622(b)(1) [(d)(1)], repealed subsec. (r) which provided that trademark or trade name expenditures were not depreciable.

1988—Subsec. (a). Pub. L. 100–647, § 1002(a)(24), struck out at end ''In the case of recovery property (within the meaning of section 168), the deduction allowable under

section 168 shall be deemed to constitute the reasonable allowance provided by this section, except with respect to that portion of the basis of such property to which subsection (k) applies.''

Subsec. (d). Pub. L. 100–647, §1002(a)(31), substituted ''property to which section 168 applies'' for ''recovery property defined in section 168''.

Subsec. (*l*)(3)(G). Pub. L. 100–647, §1002(a)(22), substituted ''section 168(i)(9)(B)'' for ''section 168(e)(3)(C)'' in last sentence.

Subsecs. (r), (s). Pub. L. 100–647, §1002(i)(1), added subsec. (r) and redesignated former subsec. (r) as (s).

1986—Subsec. (c). Pub. L. 99–514, §1809(d)(1), inserted ''Paragraphs (2), (3), and (4) of subsection (b) shall not apply to any motion picture film, video tape, or sound recording.''

Subsec. (m)(4). Pub. L. 99–514, §201(d)(1), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''This subsection shall not apply with respect to recovery property (within the meaning of section 168) placed in service after December 31, 1980.''

Subsec. (q)(2)(B). Pub. L. 99–514, §1511(c)(4), substituted ''at the underpayment rate established under section 6621'' for ''at the rate determined under section 6621''.

1984—Subsec. (k)(1), (3)(D). Pub. L. 98–369 substituted ''January 1, 1987'' for ''January 1, 1984'' wherever appearing.

1983—Subsec. (*l*)(3)(G). Pub. L. 97–424 inserted provision that, for the purposes of this paragraph, rules similar to the rules of section 168(e)(3)(C) of this title shall apply.

1981—Subsec. (a). Pub. L. 97–34, §203(a), inserted provision that, in the case of recovery property (within the meaning of section 168), the deduction allowable under section 168 shall be deemed to constitute the reasonable allowance provided by this section, except with respect to that portion of the basis of such property to which subsection (k) applies.

Subsec. (d). Pub. L. 97–34, §203(d), provided that subsec. (d) did not apply with respect to recovery property defined in section 168.

Subsec. (k)(2). Pub. L. 97–34, §264(a), substituted ''Except as provided in subparagraph (B), the aggregate amount'' for ''The aggregate amount'' in subpar. (A), added subpar. (B), and redesignated former subpar. (B) as (C).

Subsec. (*l*)(3)(C). Pub. L. 97–34, §209(d)(3), inserted ''and which is placed in service before January 1, 1981'' after ''pre-1970 public utility property''.

Subsec. (m)(4). Pub. L. 97–34, §203(b), added par. (4).

Subsecs. (n), (*o*). Pub. L. 97–34, §212(d)(1), struck out subsec. (n) which dealt with the use of the straight line method of depreciation in certain cases, and subsec. (*o*) which dealt with the method of depreciation to be used in the case of substantially rehabilitated historic property.

Subsec. (r). Pub. L. 97–34, §203(c)(1), redesignated subsec. (s) as (r). Former subsec. (r), relating to the retirement-replacement-betterment method of calculating depreciation, was struck out.

Subsec. (s). Pub. L. 97–34, §203(c)(1), redesignated subsec. (s) as (r).

1980—Subsec. (k). Pub. L. 96–541, §3, substituted in pars. (1) and (3)(D) ''January 1, 1984'' for ''January 1, 1982'' wherever appearing.

Subsec. (n)(4). Pub. L. 96–541, §2(c), added par. (4).

Subsec. (*o*)(3). Pub. L. 96–541, §2(d), added par. (3).

Subsecs. (r), (s). Pub. L. 96–613 added subsec. (r) and redesignated former subsec. (r) as (s).

1978—Subsec. (i). Pub. L. 95–600, §312(c)(4), struck out subsec. (i) which related to a limitation in the case of property constructed or acquired during the suspension period.

Subsec. (k)(1), (3)(D). Pub. L. 95–615 substituted ''January 1, 1979'' for ''January 1, 1978'' wherever appearing.

Pub. L. 95–600, §367, substituted ''January 1, 1982'' for ''January 1, 1979'' wherever appearing.

Subsec. (n). Pub. L. 95–600, §701(f)(4), in par. (1), substituted ''occupied by a certified historic structure (or by any structure in a registered historic district) which is demolished or substantially altered after such date'' for ''occupied by a certified historic structure (as defined in section 191(d)(1)) which is demolished or substantially altered (other than by virtue of a certified rehabilitation as defined in section 191(d)(3) after such date'', inserted ''and'' preceding subpar. (B), substituted ''means'' for ''shall mean'' in subpar. (B), and inserted provision that ''The preceding sentence shall not apply if the last substantial alteration of the structure is a certified rehabilitation.''; in par. (2), substituted heading ''Exceptions'' for ''Exception'', designated existing text as subpar. (A), and added subpar. (B); and added par. (3).

Subsec. (*o*). Pub. L. 95–600, §701(f)(6), inserted in par. (1) ''(other than property with respect to which an amortization deduction has been allowed to the taxpayer under section 191)'' after ''substantially rehabilitated historic property'' and substituted in par. (2) ''section 191(d)(4)'' for ''section 191(d)(3)''.

Subsec. (p). Pub. L. 95–618, §301(d)(3), added subsec. (p). Former subsec. (p) redesignated (r).

Subsec. (q). Pub. L. 95–618, §301(e)(1), added subsec. (q).

Subsec. (r). Pub. L. 95–618, §301(d)(3), redesignated former subsec. (p) as (r).

1977—Subsec. (k). Pub. L. 95–171 substituted ''January 1, 1979'' for ''January 1, 1978'' wherever appearing in pars. (1) and (3)(D).

1976—Subsec. (b). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d). Pub. L. 94–455, §§1901(a)(27)(A), 1906(b)(13)(A), substituted ''after August 16, 1954'' for ''after the date of enactment of this title'' and struck out ''or his delegate'' after ''Secretary'' in first sentence before ''shall be binding''.

Subsec. (e). Pub. L. 94–455, §§202(c)(3), 1906(b)(13)(A), substituted in par. (3) ''beginning after December 31, 1975'' for ''beginning after July 24, 1969'' and in pars. (1) to (3) struck out ''or his delegate'' after ''Secretary''.

Subsec. (f)(1). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (f)(2). Pub. L. 94–455, §1901(a)(27)(B), substituted ''October 16, 1962'' for ''the date of enactment of the Revenue Act of 1962''.

Subsec. (i). Pub. L. 94–455, §1906(b)(13)(A), struck out in pars. (1) and (2) ''or his delegate'' after ''Secretary''.

Subsec. (j). Pub. L. 94–455, §1906(b)(13)(A), struck out in pars. (1), (4)(B), (5)(C), and (6)(A) ''or his delegate'' after ''Secretary''.

Subsec. (k)(1). Pub. L. 94–455, §§203(a)(1), 1906(b)(13)(A), substituted reference to January 1, 1978 for reference to January 1, 1976 and struck out ''or his delegate'' after ''Secretary''.

Subsec. (k)(2)(A). Pub. L. 94–455, §203(a)(2), substituted ''$20,000'' for ''$15,000''.

Subsec. (k)(3)(B). Pub. L. 94–455, §§203(a)(3), 1906(b)(13)(A), substituted ''the Leased Housing Program under section 8 of the United States Housing Act of 1937'' for ''the policies of the Housing and Urban Development Act of 1968'' and struck out ''or his delegate'' after ''Secretary''.

Subsec. (k)(3)(D). Pub. L. 94–455, §203(a)(4), added subpar. (D).

Subsec. (*l*)(3)(F). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (*l*)(4)(A). Pub. L. 94–455, §§1901(a)(27)(C), 1906(b)(13)(A), substituted ''before June 29, 1970,'' for ''within 180 days after the date of the enactment of this subparagraph'' and struck out ''or his delegate'' after ''Secretary''.

Subsec. (*l*)(5). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (m). Pub. L. 94–455, §1906(b)(13)(A), struck out in pars. (1) and (3) ''or his delegate'' after ''Secretary''.

Subsec. (n). Pub. L. 94–455, §2124(c)(1), added subsec. (n). Former subsec. (n) redesignated (p).

Subsec. (*o*). Pub. L. 94–455, §2124(d)(1), added subsec. (*o*).

Subsec. (p). Pub. L. 94–455, §2124(c)(1), redesignated former subsec. (n) as (p).

1975—Subsec. (k)(1). Pub. L. 93–625 substituted ''January 1, 1976'' for ''January 1, 1975''.

1971—Subsecs. (m), (n). Pub. L. 92–178 added subsec. (m) and redesignated former subsec. (m) as (n).

1969—Subsec. (e)(3). Pub. L. 91–172, § 521(d), added par. (3).

Subsecs. (j), (k). Pub. L. 91–172, § 521(a), added subsecs. (j) and (k). Former subsec. (j) redesignated (m).

Subsec. (*l*). Pub. L. 91–172, § 441(a), added subsec. (*l*).

Subsec. (m). Pub. L. 91–172, § 521(a), redesignated former subsec. (j) as (m).

1967—Subsec. (i)(1). Pub. L. 90–26, § 2(b), provided that accelerated depreciation was not to apply if the physical construction, reconstruction or erection by any person was begun during the suspension period or begun, pursuant to an order placed during such period, before May 24, 1967, subject to the proviso that only that portion of the basis which was properly attributable to construction, reconstruction or erection before May 24, 1967, shall be affected by the applicability of the suspension period.

Subsec. (i)(3). Pub. L. 90–26, § 1, substituted ''March 9, 1967'' for ''December 31, 1967''.

1966—Subsecs. (i), (j). Pub. L. 89–800 added subsec. (i) and redesignated former subsec. (i) as (j).

1962—Subsec. (e). Pub. L. 87–834, § 13(b), designated existing provisions as par. (1) and added par. (2).

Subsecs. (f) to (i). Pub. L. 87–834, § 13(c)(1), added subsec. (f) and redesignated former subsecs. (f), (g), and (h) as (g), (h), and (i), respectively.

1958—Subsec. (d). Pub. L. 85–866 inserted ''certified mail or'' before ''registered mail''.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–140, title XV, § 1502(b), Dec. 19, 2007, 121 Stat. 1800, provided that: ''The amendment made by this section [amending this section] shall apply to amounts paid or incurred after the date of the enactment of this Act [Dec. 19, 2007].''

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–222, title II, § 207(b), May 17, 2006, 120 Stat. 351, provided that: ''The amendments made by this section [amending this section] shall apply to expenses paid or incurred with respect to property placed in service in taxable years beginning after December 31, 2005.''

Pub. L. 109–222, title V, § 503(b), May 17, 2006, 120 Stat. 355, provided that: ''The amendment made by this section [amending this section] shall apply to amounts paid or incurred after the date of the enactment of this Act [May 17, 2006].''

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title XIII, § 1329(c), Aug. 8, 2005, 119 Stat. 1020, provided that: ''The amendments made by this section [amending this section and section 263A of this title] shall apply to amounts paid or incurred in taxable years beginning after the date of the enactment of this Act [Aug. 8, 2005].''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, § 242(c), Oct. 22, 2004, 118 Stat. 1439, provided that: ''The amendments made by this section [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Oct. 22, 2004].''

Amendment by section 847(b)(1) of Pub. L. 108–357 applicable to leases entered into after Mar. 12, 2004, and amendment by section 847(b)(2) of Pub. L. 108–357 applicable to leases entered into after Oct. 3, 2004, except that such amendments inapplicable to qualified transportation property, see section 849 of Pub. L. 108–357, set out as an Effective Date note under section 470 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1086(c) of Pub. L. 105–34 provided that: ''The amendment made by this section [amending this section and section 168 of this title] shall apply to property placed in service after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1604(b) of Pub. L. 104–188, as amended by Pub. L. 105–206, title VI, § 6018(d), July 22, 1998, 112 Stat. 823, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to property placed in service after September 13, 1995.

''(2) BINDING CONTRACTS.—The amendment made by subsection (a) shall not apply to any property produced or acquired by the taxpayer pursuant to a written contract which was binding on September 13, 1995, and at all times thereafter before such production or acquisition.

''(3) UNDERPAYMENTS OF INCOME TAX.—No addition to tax shall be made under section 6662 of the Internal Revenue Code of 1986 as a result of the application of subsection (d) of that section (relating to substantial understatements of income tax) with respect to any underpayment of income tax for any taxable year ending before the date of the enactment of this Act [Aug. 20, 1996], to the extent such underpayment was created or increased by the amendments made by subsection (a).''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13206(c)(3) of Pub. L. 103–66 provided that: ''The amendments made by this subsection [amending this section and section 305 of this title] shall take effect on April 30, 1993.''

Amendment by section 13261(b) and (f)(1) of Pub. L. 103–66 applicable, except as otherwise provided, with respect to property acquired after Aug. 10, 1993, see section 13261(g) of Pub. L. 103–66, set out as an Effective Date note under section 197 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

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

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7622(c)[(e)] of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 1245 and 1253 of this title] shall apply to transfers after October 2, 1989.

''(2) BINDING CONTRACT.—The amendments made by this section shall not apply to any transfer pursuant to a written binding contract in effect on October 2, 1989, and at all times thereafter before the transfer.''

Section 7645(b) of Pub. L. 101–239 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to interests created or acquired after July 27, 1989, in taxable years ending after such date.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 201(d)(1) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with excep-

tions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

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

Amendment by section 1511(c)(4) of Pub. L. 99–514 applicable for purposes of determining interest for periods after Dec. 31, 1986, see section 1511(d) of Pub. L. 99–514, set out as a note under section 47 of this title.

Section 1809(d)(1) of Pub. L. 99–514 provided that subsec. (c) is amended except with respect to property placed in service by the taxpayer on or before Mar. 28, 1985.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–424 applicable to taxable years beginning after Dec. 31, 1979, with a special rule for periods beginning before Mar. 1, 1980, see section 541(c) of Pub. L. 97–424, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 264(b) of Pub. L. 97–34 provided that: ''The amendments made by this section [amending this section] shall apply with respect to rehabilitation expenditures incurred after December 31, 1980.''

Amendment by sections 203 and 209 of Pub. L. 97–34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, except that amendment by section 203(c) of Pub. L. 97–34 effective Jan. 1, 1981, and applicable with respect to taxable years ending after that date, see section 209(a), (b) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

Amendment by section 212(d)(1) of Pub. L. 97–34 applicable to expenditures incurred after Dec. 31, 1981, in taxable years ending after that date, see section 212(e) of Pub. L. 97–34, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 2(b) of Pub. L. 96–613 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years ending after December 31, 1953.''

EFFECTIVE AND TERMINATION DATES OF 1978 AMENDMENTS

Amendment by section 312(c)(4) of Pub. L. 95–600 applicable to taxable years ending after Dec. 31, 1978, see section 312(d) of Pub. L. 95–600, set out as an Effective Date of 1978 Amendment note under section 46 of this title.

Section 701(f)(8) of Pub. L. 95–600, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this subsection [amending this section and sections 57, 191, 280B, 1245, and 1250 of this title] shall take effect as if included in the respective provisions of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] to which such amendments relate, as such provision[s] were added to such Code, or amended, by section 2124 of the Tax Reform Act of 1976 [Pub. L. 94–455, title XXI, § 2124, Oct. 4, 1976, 90 Stat. 1916].''

Amendment by Pub. L. 95–615 to cease to have effect on the day after Nov. 8, 1978, see section 210(a) of Pub. L. 95–615, set out as a Termination Date of 1978 Amendment note under section 61 of this title.

Amendment by section 301(d)(3) of Pub. L. 95–618 applicable to property which is placed in service after Sept. 30, 1978, but not to property which is constructed, reconstructed, erected, or acquired pursuant to a contract which, on Oct. 1, 1978, and at all times thereafter, was binding on the taxpayer, see section 301(d)(4) of Pub. L. 95–618, set out as an Effective Date of 1978 Amendment note under section 48 of this title.

Section 301(e)(2) of Pub. L. 95–618 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years ending after the date of enactment of this Act [Nov. 9, 1978].''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(27)(A) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 202(c)(3) of Pub. L. 94–455 applicable for taxable years ending after Dec. 31, 1975, see section 202(d) of Pub. L. 94–455, set out as a note under section 1250 of this title.

Section 203(b) of Pub. L. 94–455, as amended by Pub. L. 95–171, § 4(b), Nov. 12, 1977, 91 Stat. 1355; Pub. L. 95–615, § 7(b), Nov. 8, 1978, 92 Stat. 3098, provided that: ''The amendments made by paragraphs (1), (3), and (4) of subsection (a) [amending this section] shall apply to expenditures paid or incurred after December 31, 1975. The amendment made by paragraph (2) of subsection (a) [amending this section] shall apply to expenditures incurred after December 31, 1975.''

[Section 7(b) of Pub. L. 95–615 [which amended section 203(b) of Pub. L. 94–455 exactly as that section 203(b) had been amended by Pub. L. 95–171] to cease to have effect on the day after Nov. 8, 1978, see section 210(a) of Pub. L. 95–615, set out as a Termination Date of 1978 Amendment note under section 61 of this title.]

Section 2124(c)(2), (d)(2) of Pub. L. 94–455, which provided that the amendment of this section was applicable to that portion of the basis attributable to construction, reconstruction, or erection after Dec. 31, 1975, and before Jan. 1, 1981, and with respect to additions to capital account occurring after June 30, 1976, and before July 1, 1981, was repealed by section 2(e)(3), (4) of Pub. L. 96–541.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 5(d) of Pub. L. 93–625 provided that: ''The amendments made by this section [amending section 1250 of this title and enacting and repealing provisions set out as notes under this section] shall apply with respect to property placed in service after December 31, 1973.''

EFFECTIVE DATE OF 1971 AMENDMENT

Section 109(d)(1) of Pub. L. 92–178 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to property placed in service after December 31, 1970.''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 441(b) of Pub. L. 91–172 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to all taxable years for which a return has not been filed before August 1, 1969.''

Section 521(g) of Pub. L. 91–172 provided that: ''The amendments made by this section [amending this section and sections 381 and 1250 of this title] shall apply with respect to taxable years ending after July 24, 1969.''

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–26 applicable with respect to taxable years ending after March 9, 1967, see section 4 of Pub. L. 90–26, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–800 applicable to taxable years ending after Oct. 9, 1966, see section 4 of Pub. L. 89–800, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 13(b) of Pub. L. 87–834 applicable to taxable years beginning after Dec. 31, 1962, and

amendment by section 13(c)(1) of Pub. L. 87–834 applicable to taxable years beginning after Dec. 31, 1961, and ending after Oct. 16, 1962, see section 13(g) of Pub. L. 87–834, set out as an Effective Date note under section 1245 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable only if mailing occurs after Sept. 2, 1958, see section 89(d) of Pub. L. 85–866, set out as a note under section 7502 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

DISCONTINUATION OF RETIREMENT-REPLACEMENT-BETTERMENT METHOD OF DEPRECIATION; TRANSITIONAL RULE

Section 203(c)(2), (3) of Pub. L. 97–34, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(2) CHANGE IN METHOD OF ACCOUNTING.—Sections 446 and 481 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall not apply to the change in the method of depreciation to comply with the provisions of this subsection [which struck out subsec. (r) of this section relating to the retirement-replacement-betterment method of accounting].

''(3) TRANSITIONAL RULE.—The adjusted basis of RRB property (as defined in section 168(g)(6) of such Code) as of December 31, 1980, shall be depreciated using a useful life of no less than 5 years and no more than 50 years and a method described in section 167(b) of such Code, including the method described in section 167(b)(2) of such Code, switching to the method described in section 167(b)(3) of such Code at a time to maximize the deduction.''

INTERNAL REVENUE CODE PROVISIONS RELATING TO DEPRECIATION AS NOT APPLICABLE TO CALCULATIONS OF SECRETARY OF HEALTH AND HUMAN SERVICES IN DETERMINING COSTS OF PROGRAMS

Section 203(e) of Pub. L. 97–34, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The Secretary of Health and Human Services is not required to apply any provision of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended, in calculating depreciation (for the purpose of determining any cost under a program administered by the Secretary), unless a provision of law requires so expressly.''

CLASS LIFE SYSTEM; APPLICATION TO REAL PROPERTY; GENERAL RULE

Section 5(a) of Pub. L. 93–625, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of buildings and other items of section 1250 property (within the meaning of section 1250(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) placed in service before the effective date of the class lives first prescribed by the Secretary of the Treasury or his delegate under section 167(m) of such Code for the class in which such property falls, if an election under such section 167(m) applies to the taxpayer for the taxable year in which such property is placed in service, the taxpayer may, in accordance with regulations prescribed by the Secretary of the Treasury or his delegate, elect to determine the useful life of such property—

''(1) under Revenue Procedure 62–21 (as amended and supplemented) as in effect on December 31, 1970, or

''(2) on the facts and circumstances.''

TRANSITIONAL RULES FOR REASONABLE ALLOWANCE FOR DEPRECIATION

Section 109(e) of Pub. L. 92–178, as amended by Pub. L. 93–625, § 5(b), Jan. 3, 1975, 88 Stat. 2112; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) [Repealed. Pub. L. 93–625, § 5(b), Jan. 3, 1975, 88 Stat. 2112.]

''(2) SUBSIDIARY ASSETS.—If a significant portion of a class of property first prescribed by the Secretary of the Treasury or his delegate under section 167(m) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] consists of subsidiary assets, all such subsidiary assets in such class placed in service by the taxpayer during the period beginning on January 1, 1971, and ending on December 31, 1973 (or such earlier date on which a class which includes such subsidiary assets subsequently prescribed by the Secretary of the Treasury or his delegate under such section becomes effective), may, in accordance with regulations prescribed by the Secretary of the Treasury or his delegate, be excluded by the taxpayer from an election under such section.''

REHABILITATION EXPENDITURES FOR LOW INCOME RENTAL HOUSING INCURRED AFTER DECEMBER 31, 1974, AND BEFORE JANUARY 1, 1978, PURSUANT TO CONTRACT ENTERED BEFORE DECEMBER 31, 1974

Pub. L. 93–482, § 4, Oct. 26, 1974, 88 Stat. 1456, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Notwithstanding the provisions of section 167(k)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to depreciation of expenditures to rehabilitate low income rental housing), the provisions of section 167(k) shall apply with respect to rehabilitation expenditures incurred with respect to low income rental housing after December 31, 1974, and before January 1, 1978, if such expenditures are incurred pursuant to a binding contract entered into before December 31, 1974.''

§ 168. Accelerated cost recovery system

(a) General rule

Except as otherwise provided in this section, the depreciation deduction provided by section 167(a) for any tangible property shall be determined by using—

(1) the applicable depreciation method,

(2) the applicable recovery period, and

(3) the applicable convention.

(b) Applicable depreciation method

For purposes of this section—

(1) In general

Except as provided in paragraphs (2) and (3), the applicable depreciation method is—

(A) the 200 percent declining balance method,

(B) switching to the straight line method for the 1st taxable year for which using the straight line method with respect to the adjusted basis as of the beginning of such year will yield a larger allowance.

(2) 150 percent declining balance method in certain cases

Paragraph (1) shall be applied by substituting ''150 percent'' for ''200 percent'' in the case of—

(A) any 15-year or 20-year property not referred to in paragraph (3),

(B) any property used in a farming business (within the meaning of section 263A(e)(4)),

(C) any property (other than property described in paragraph (3)) which is a qualified smart electric meter or qualified smart electric grid system, or

(D) any property (other than property described in paragraph (3)) with respect to which the taxpayer elects under paragraph (5) to have the provisions of this paragraph apply.

(3) Property to which straight line method applies

The applicable depreciation method shall be the straight line method in the case of the following property:

(A) Nonresidential real property.

(B) Residential rental property.

(C) Any railroad grading or tunnel bore.

(D) Property with respect to which the taxpayer elects under paragraph (5) to have the provisions of this paragraph apply.

(E) Property described in subsection (e)(3)(D)(ii).

(F) Water utility property described in subsection (e)(5).

(G) Qualified leasehold improvement property described in subsection (e)(6).

(H) Qualified restaurant property described in subsection (e)(7).

(I) Qualified retail improvement property described in subsection (e)(8).

(4) Salvage value treated as zero

Salvage value shall be treated as zero.

(5) Election

An election under paragraph (2)(C) or (3)(D) may be made with respect to 1 or more classes of property for any taxable year and once made with respect to any class shall apply to all property in such class placed in service during such taxable year. Such an election, once made, shall be irrevocable.

(c) Applicable recovery period

For purposes of this section, the applicable recovery period shall be determined in accordance with the following table:

In the case of:	The applicable recovery period is:
3-year property	3 years
5-year property	5 years
7-year property	7 years
10-year property	10 years
15-year property	15 years
20-year property	20 years
Water utility property	25 years
Residential rental property	27.5 years
Nonresidential real property	39 years.
Any railroad grading or tunnel bore	50 years.

(d) Applicable convention

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the applicable convention is the half-year convention.

(2) Real property

In the case of—

(A) nonresidential real property,

(B) residential rental property, and

(C) any railroad grading or tunnel bore,

the applicable convention is the mid-month convention.

(3) Special rule where substantial property placed in service during last 3 months of taxable year

(A) In general

Except as provided in regulations, if during any taxable year—

(i) the aggregate bases of property to which this section applies placed in service during the last 3 months of the taxable year, exceed

(ii) 40 percent of the aggregate bases of property to which this section applies placed in service during such taxable year,

the applicable convention for all property to which this section applies placed in service during such taxable year shall be the mid-quarter convention.

(B) Certain property not taken into account

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

(i) any nonresidential real property[1] residential rental property, and railroad grading or tunnel bore, and

(ii) any other property placed in service and disposed of during the same taxable year.

(4) Definitions

(A) Half-year convention

The half-year convention is a convention which treats all property placed in service during any taxable year (or disposed of during any taxable year) as placed in service (or disposed of) on the mid-point of such taxable year.

(B) Mid-month convention

The mid-month convention is a convention which treats all property placed in service during any month (or disposed of during any month) as placed in service (or disposed of) on the mid-point of such month.

(C) Mid-quarter convention

The mid-quarter convention is a convention which treats all property placed in service during any quarter of a taxable year (or disposed of during any quarter of a taxable year) as placed in service (or disposed of) on the mid-point of such quarter.

(e) Classification of property

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, property shall be classified under the following table:

[1] So in original. Probably should be ''property,''.

Property shall be treated as:	If such property has a class life (in years) of:
3-year property	4 or less
5-year property	More than 4 but less than 10
7-year property	10 or more but less than 16
10-year property	16 or more but less than 20
15-year property	20 or more but less than 25
20-year property	25 or more.

(2) Residential rental or nonresidential real property

(A) Residential rental property

(i) Residential rental property

The term ''residential rental property'' means any building or structure if 80 percent or more of the gross rental income from such building or structure for the taxable year is rental income from dwelling units.

(ii) Definitions

For purposes of clause (i)—

(I) the term ''dwelling unit'' means a house or apartment used to provide living accommodations in a building or structure, but does not include a unit in a hotel, motel, or other establishment more than one-half of the units in which are used on a transient basis, and

(II) if any portion of the building or structure is occupied by the taxpayer, the gross rental income from such building or structure shall include the rental value of the portion so occupied.

(B) Nonresidential real property

The term ''nonresidential real property'' means section 1250 property which is not—

(i) residential rental property, or

(ii) property with a class life of less than 27.5 years.

(3) Classification of certain property

(A) 3-year property

The term ''3-year property'' includes—

(i) any race horse—

(I) which is placed in service before January 1, 2014, and

(II) which is placed in service after December 31, 2013, and which is more than 2 years old at the time such horse is placed in service by such purchaser,

(ii) any horse other than a race horse which is more than 12 years old at the time it is placed in service, and

(iii) any qualified rent-to-own property.

(B) 5-year property

The term ''5-year property'' includes—

(i) any automobile or light general purpose truck,

(ii) any semi-conductor manufacturing equipment,

(iii) any computer-based telephone central office switching equipment,

(iv) any qualified technological equipment,

(v) any section 1245 property used in connection with research and experimentation,

(vi) any property which—

(I) is described in subparagraph (A) of section 48(a)(3) (or would be so described if ''solar or wind energy'' were substituted for ''solar energy'' in clause (i) thereof and the last sentence of such section did not apply to such subparagraph),

(II) is described in paragraph (15) of section 48(*l*) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) and is a qualifying small power production facility within the meaning of section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)), as in effect on September 1, 1986, or

(III) is described in section 48(*l*)(3)(A)(ix) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990), and

(vii) any machinery or equipment (other than any grain bin, cotton ginning asset, fence, or other land improvement) which is used in a farming business (as defined in section 263A(e)(4)), the original use of which commences with the taxpayer after December 31, 2008, and which is placed in service before January 1, 2010.

Nothing in any provision of law shall be construed to treat property as not being described in clause (vi)(I) (or the corresponding provisions of prior law) by reason of being public utility property (within the meaning of section 48(a)(3)).

(C) 7-year property

The term ''7-year property'' includes—

(i) any railroad track, and[2]

(ii) any motorsports entertainment complex,

(iii) any Alaska natural gas pipeline,

(iv) any natural gas gathering line the original use of which commences with the taxpayer after April 11, 2005, and

(v) any property which—

(I) does not have a class life, and

(II) is not otherwise classified under paragraph (2) or this paragraph.

(D) 10-year property

The term ''10-year property'' includes—

(i) any single purpose agricultural or horticultural structure (within the meaning of subsection (i)(13)),

(ii) any tree or vine bearing fruit or nuts,

(iii) any qualified smart electric meter, and

(iv) any qualified smart electric grid system.

(E) 15-year property

The term ''15-year property'' includes—

(i) any municipal wastewater treatment plant,

(ii) any telephone distribution plant and comparable equipment used for 2-way exchange of voice and data communications,

(iii) any section 1250 property which is a retail motor fuels outlet (whether or not

[2] So in original. The word ''and'' probably should not appear.

food or other convenience items are sold at the outlet),

(iv) any qualified leasehold improvement property placed in service before January 1, 2012,

(v) any qualified restaurant property placed in service before January 1, 2012,

(vi) initial clearing and grading land improvements with respect to gas utility property,

(vii) any section 1245 property (as defined in section 1245(a)(3)) used in the transmission at 69 or more kilovolts of electricity for sale and the original use of which commences with the taxpayer after April 11, 2005,

(viii) any natural gas distribution line the original use of which commences with the taxpayer after April 11, 2005, and which is placed in service before January 1, 2011, and

(ix) any qualified retail improvement property placed in service after December 31, 2008, and before January 1, 2012.

(F) 20-year property

The term ''20-year property'' means initial clearing and grading land improvements with respect to any electric utility transmission and distribution plant.

(4) Railroad grading or tunnel bore

The term ''railroad grading or tunnel bore'' means all improvements resulting from excavations (including tunneling), construction of embankments, clearings, diversions of roads and streams, sodding of slopes, and from similar work necessary to provide, construct, reconstruct, alter, protect, improve, replace, or restore a roadbed or right-of-way for railroad track.

(5) Water utility property

The term ''water utility property'' means property—

(A) which is an integral part of the gathering, treatment, or commercial distribution of water, and which, without regard to this paragraph, would be 20-year property, and

(B) any municipal sewer.

(6) Qualified leasehold improvement property

The term ''qualified leasehold improvement property'' has the meaning given such term in section 168(k)(3) except that the following special rules shall apply:

(A) Improvements made by lessor

In the case of an improvement made by the person who was the lessor of such improvement when such improvement was placed in service, such improvement shall be qualified leasehold improvement property (if at all) only so long as such improvement is held by such person.

(B) Exception for changes in form of business

Property shall not cease to be qualified leasehold improvement property under subparagraph (A) by reason of—

(i) death,

(ii) a transaction to which section 381(a) applies,

(iii) a mere change in the form of conducting the trade or business so long as the property is retained in such trade or business as qualified leasehold improvement property and the taxpayer retains a substantial interest in such trade or business,

(iv) the acquisition of such property in an exchange described in section 1031, 1033, or 1038 to the extent that the basis of such property includes an amount representing the adjusted basis of other property owned by the taxpayer or a related person, or

(v) the acquisition of such property by the taxpayer in a transaction described in section 332, 351, 361, 721, or 731 (or the acquisition of such property by the taxpayer from the transferee or acquiring corporation in a transaction described in such section), to the extent that the basis of the property in the hands of the taxpayer is determined by reference to its basis in the hands of the transferor or distributor.

(7) Qualified restaurant property

(A) In general

The term ''qualified restaurant property'' means any section 1250 property which is—

(i) a building, or

(ii) an improvement to a building,

if more than 50 percent of the building's square footage is devoted to preparation of, and seating for on-premises consumption of, prepared meals.

(B) Exclusion from bonus depreciation

Property described in this paragraph shall not be considered qualified property for purposes of subsection (k).

(8) Qualified retail improvement property

(A) In general

The term ''qualified retail improvement property'' means any improvement to an interior portion of a building which is nonresidential real property if—

(i) such portion is open to the general public and is used in the retail trade or business of selling tangible personal property to the general public, and

(ii) such improvement is placed in service more than 3 years after the date the building was first placed in service.

(B) Improvements made by owner

In the case of an improvement made by the owner of such improvement, such improvement shall be qualified retail improvement property (if at all) only so long as such improvement is held by such owner. Rules similar to the rules under paragraph (6)(B) shall apply for purposes of the preceding sentence.

(C) Certain improvements not included

Such term shall not include any improvement for which the expenditure is attributable to—

(i) the enlargement of the building,

(ii) any elevator or escalator,

(iii) any structural component benefitting a common area, or

(iv) the internal structural framework of the building.

(D) Exclusion from bonus depreciation

Property described in this paragraph shall not be considered qualified property for purposes of subsection (k).

(f) Property to which section does not apply

This section shall not apply to—

(1) Certain methods of depreciation

Any property if—

(A) the taxpayer elects to exclude such property from the application of this section, and

(B) for the 1st taxable year for which a depreciation deduction would be allowable with respect to such property in the hands of the taxpayer, the property is properly depreciated under the unit-of-production method or any method of depreciation not expressed in a term of years (other than the retirement-replacement-betterment method or similar method).

(2) Certain public utility property

Any public utility property (within the meaning of subsection (i)(10)) if the taxpayer does not use a normalization method of accounting.

(3) Films and video tape

Any motion picture film or video tape.

(4) Sound recordings

Any works which result from the fixation of a series of musical, spoken, or other sounds, regardless of the nature of the material (such as discs, tapes, or other phonorecordings) in which such sounds are embodied.

(5) Certain property placed in service in churning transactions

(A) In general

Property—

(i) described in paragraph (4) of section 168(e) (as in effect before the amendments made by the Tax Reform Act of 1986), or

(ii) which would be described in such paragraph if such paragraph were applied by substituting ''1987'' for ''1981'' and ''1986'' for ''1980'' each place such terms appear.

(B) Subparagraph (A)(ii) not to apply

Clause (ii) of subparagraph (A) shall not apply to—

(i) any residential rental property or nonresidential real property,

(ii) any property if, for the 1st taxable year in which such property is placed in service—

(I) the amount allowable as a deduction under this section (as in effect before the date of the enactment of this paragraph) with respect to such property is greater than,

(II) the amount allowable as a deduction under this section (as in effect on or after such date and using the half-year convention) for such taxable year, or

(iii) any property to which this section (as amended by the Tax Reform Act of 1986) applied in the hands of the transferor.

(C) Special rule

In the case of any property to which this section would apply but for this paragraph, the depreciation deduction under section 167 shall be determined under the provisions of this section as in effect before the amendments made by section 201 of the Tax Reform Act of 1986.

(g) Alternative depreciation system for certain property

(1) In general

In the case of—

(A) any tangible property which during the taxable year is used predominantly outside the United States,

(B) any tax-exempt use property,

(C) any tax-exempt bond financed property,

(D) any imported property covered by an Executive order under paragraph (6), and

(E) any property to which an election under paragraph (7) applies,

the depreciation deduction provided by section 167(a) shall be determined under the alternative depreciation system.

(2) Alternative depreciation system

For purposes of paragraph (1), the alternative depreciation system is depreciation determined by using—

(A) the straight line method (without regard to salvage value),

(B) the applicable convention determined under subsection (d), and

(C) a recovery period determined under the following table:

In the case of:	The recovery period shall be:
(i) Property not described in clause (ii) or (iii)	The class life.
(ii) Personal property with no class life	12 years.
(iii) Nonresidential real and residential rental property	40 years.
(iv) Any railroad grading or tunnel bore or water utility property	50 years.

(3) Special rules for determining class life

(A) Tax-exempt use property subject to lease

In the case of any tax-exempt use property subject to a lease, the recovery period used for purposes of paragraph (2) shall (notwithstanding any other subparagraph of this paragraph) in no event be less than 125 percent of the lease term.

(B) Special rule for certain property assigned to classes

For purposes of paragraph (2), in the case of property described in any of the following subparagraphs of subsection (e)(3), the class life shall be determined as follows:

If property is described in subparagraph:	The class life is:
(A)(iii)	4
(B)(ii)	5

If property is described in subparagraph:	The class life is:
(B)(iii)	9.5
(B)(vii)	10
(C)(i)	10
(C)(iii)	22
(C)(iv)	14
(D)(i)	15
(D)(ii)	20
(E)(i)	24
(E)(ii)	24
(E)(iii)	20
(E)(iv)	39
(E)(v)	39
(E)(vi)	20
(E)(vii)	30
(E)(viii)	35
(E)(ix)	39
(F)	25

(C) Qualified technological equipment

In the case of any qualified technological equipment, the recovery period used for purposes of paragraph (2) shall be 5 years.

(D) Automobiles, etc.

In the case of any automobile or light general purpose truck, the recovery period used for purposes of paragraph (2) shall be 5 years.

(E) Certain real property

In the case of any section 1245 property which is real property with no class life, the recovery period used for purposes of paragraph (2) shall be 40 years.

(4) Exception for certain property used outside United States

Subparagraph (A) of paragraph (1) shall not apply to—

(A) any aircraft which is registered by the Administrator of the Federal Aviation Agency and which is operated to and from the United States or is operated under contract with the United States;

(B) rolling stock which is used within and without the United States and which is—

(i) of a rail carrier subject to part A of subtitle IV of title 49, or

(ii) of a United States person (other than a corporation described in clause (i)) but only if the rolling stock is not leased to one or more foreign persons for periods aggregating more than 12 months in any 24-month period;

(C) any vessel documented under the laws of the United States which is operated in the foreign or domestic commerce of the United States;

(D) any motor vehicle of a United States person (as defined in section 7701(a)(30)) which is operated to and from the United States;

(E) any container of a United States person which is used in the transportation of property to and from the United States;

(F) any property (other than a vessel or an aircraft) of a United States person which is used for the purpose of exploring for, developing, removing, or transporting resources from the outer Continental Shelf (within the meaning of section 2 of the Outer Continental Shelf Lands Act, as amended and supplemented; (43 U.S.C. 1331));

(G) any property which is owned by a domestic corporation (other than a corporation which has an election in effect under section 936) or by a United States citizen (other than a citizen entitled to the benefits of section 931 or 933) and which is used predominantly in a possession of the United States by such a corporation or such a citizen, or by a corporation created or organized in, or under the law of, a possession of the United States;

(H) any communications satellite (as defined in section 103(3) of the Communications Satellite Act of 1962, 47 U.S.C. 702(3)), or any interest therein, of a United States person;

(I) any cable, or any interest therein, of a domestic corporation engaged in furnishing telephone service to which section 168(i)(10)(C) applies (or of a wholly owned domestic subsidiary of such a corporation), if such cable is part of a submarine cable system which constitutes part of a communication link exclusively between the United States and one or more foreign countries;

(J) any property (other than a vessel or an aircraft) of a United States person which is used in international or territorial waters within the northern portion of the Western Hemisphere for the purpose of exploring for, developing, removing, or transporting resources from ocean waters or deposits under such waters;

(K) any property described in section 48(*l*)(3)(A)(ix) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) which is owned by a United States person and which is used in international or territorial waters to generate energy for use in the United States; and

(L) any satellite (not described in subparagraph (H)) or other spacecraft (or any interest therein) held by a United States person if such satellite or other spacecraft was launched from within the United States.

For purposes of subparagraph (J), the term ''northern portion of the Western Hemisphere'' means the area lying west of the 30th meridian west of Greenwich, east of the international dateline, and north of the Equator, but not including any foreign country which is a country of South America.

(5) Tax-exempt bond financed property

For purposes of this subsection—

(A) In general

Except as otherwise provided in this paragraph, the term ''tax-exempt bond financed property'' means any property to the extent such property is financed (directly or indirectly) by an obligation the interest on which is exempt from tax under section 103(a).

(B) Allocation of bond proceeds

For purposes of subparagraph (A), the proceeds of any obligation shall be treated as used to finance property acquired in connection with the issuance of such obligation in the order in which such property is placed in service.

(C) Qualified residential rental projects

The term ''tax-exempt bond financed property'' shall not include any qualified residential rental project (within the meaning of section 142(a)(7)).

(6) Imported property

(A) Countries maintaining trade restrictions or engaging in discriminatory acts

If the President determines that a foreign country—

(i) maintains nontariff trade restrictions, including variable import fees, which substantially burden United States commerce in a manner inconsistent with provisions of trade agreements, or

(ii) engages in discriminatory or other acts (including tolerance of international cartels) or policies unjustifiably restricting United States commerce,

the President may by Executive order provide for the application of paragraph (1)(D) to any article or class of articles manufactured or produced in such foreign country for such period as may be provided by such Executive order. Any period specified in the preceding sentence shall not apply to any property ordered before (or the construction, reconstruction, or erection of which began before) the date of the Executive order unless the President determines an earlier date to be in the public interest and specifies such date in the Executive order.

(B) Imported property

For purposes of this subsection, the term ''imported property'' means any property if—

(i) such property was completed outside the United States, or

(ii) less than 50 percent of the basis of such property is attributable to value added within the United States.

For purposes of this subparagraph, the term ''United States'' includes the Commonwealth of Puerto Rico and the possessions of the United States.

(7) Election to use alternative depreciation system

(A) In general

If the taxpayer makes an election under this paragraph with respect to any class of property for any taxable year, the alternative depreciation system under this subsection shall apply to all property in such class placed in service during such taxable year. Notwithstanding the preceding sentence, in the case of nonresidential real property or residential rental property, such election may be made separately with respect to each property.

(B) Election irrevocable

An election under subparagraph (A), once made, shall be irrevocable.

(h) Tax-exempt use property

(1) In general

For purposes of this section—

(A) Property other than nonresidential real property

Except as otherwise provided in this subsection, the term ''tax-exempt use property'' means that portion of any tangible property (other than nonresidential real property) leased to a tax-exempt entity.

(B) Nonresidential real property

(i) In general

In the case of nonresidential real property, the term ''tax-exempt use property'' means that portion of the property leased to a tax-exempt entity in a disqualified lease.

(ii) Disqualified lease

For purposes of this subparagraph, the term ''disqualified lease'' means any lease of the property to a tax-exempt entity, but only if—

(I) part or all of the property was financed (directly or indirectly) by an obligation the interest on which is exempt from tax under section 103(a) and such entity (or a related entity) participated in such financing,

(II) under such lease there is a fixed or determinable price purchase or sale option which involves such entity (or a related entity) or there is the equivalent of such an option,

(III) such lease has a lease term in excess of 20 years, or

(IV) such lease occurs after a sale (or other transfer) of the property by, or lease of the property from, such entity (or a related entity) and such property has been used by such entity (or a related entity) before such sale (or other transfer) or lease.

(iii) 35-percent threshold test

Clause (i) shall apply to any property only if the portion of such property leased to tax-exempt entities in disqualified leases is more than 35 percent of the property.

(iv) Treatment of improvements

For purposes of this subparagraph, improvements to a property (other than land) shall not be treated as a separate property.

(v) Leasebacks during 1st 3 months of use not taken into account

Subclause (IV) of clause (ii) shall not apply to any property which is leased within 3 months after the date such property is first used by the tax-exempt entity (or a related entity).

(C) Exception for short-term leases

(i) In general

Property shall not be treated as tax-exempt use property merely by reason of a short-term lease.

(ii) Short-term lease

For purposes of clause (i), the term ''short-term lease'' means any lease the term of which is—

(I) less than 3 years, and

(II) less than the greater of 1 year or 30 percent of the property's present class life.

In the case of nonresidential real property and property with no present class life, subclause (II) shall not apply.

(D) Exception where property used in unrelated trade or business

The term ''tax-exempt use property'' shall not include any portion of a property if such portion is predominantly used by the tax-exempt entity (directly or through a partnership of which such entity is a partner) in an unrelated trade or business the income of which is subject to tax under section 511. For purposes of subparagraph (B)(iii), any portion of a property so used shall not be treated as leased to a tax-exempt entity in a disqualified lease.

(E) Nonresidential real property defined

For purposes of this paragraph, the term ''nonresidential real property'' includes residential rental property.

(2) Tax-exempt entity

(A) In general

For purposes of this subsection, the term ''tax-exempt entity'' means—

(i) the United States, any State or political subdivision thereof, any possession of the United States, or any agency or instrumentality of any of the foregoing,

(ii) an organization (other than a cooperative described in section 521) which is exempt from tax imposed by this chapter,

(iii) any foreign person or entity, and

(iv) any Indian tribal government described in section 7701(a)(40).

For purposes of applying this subsection, any Indian tribal government referred to in clause (iv) shall be treated in the same manner as a State.

(B) Exception for certain property subject to United States tax and used by foreign person or entity

Clause (iii) of subparagraph (A) shall not apply with respect to any property if more than 50 percent of the gross income for the taxable year derived by the foreign person or entity from the use of such property is—

(i) subject to tax under this chapter, or

(ii) included under section 951 in the gross income of a United States shareholder for the taxable year with or within which ends the taxable year of the controlled foreign corporation in which such income was derived.

For purposes of the preceding sentence, any exclusion or exemption shall not apply for purposes of determining the amount of the gross income so derived, but shall apply for purposes of determining the portion of such gross income subject to tax under this chapter.

(C) Foreign person or entity

For purposes of this paragraph, the term ''foreign person or entity'' means—

(i) any foreign government, any international organization, or any agency or instrumentality of any of the foregoing, and

(ii) any person who is not a United States person.

Such term does not include any foreign partnership or other foreign pass-thru entity.

(D) Treatment of certain taxable instrumentalities

For purposes of this subsection, a corporation shall not be treated as an instrumentality of the United States or of any State or political subdivision thereof if—

(i) all of the activities of such corporation are subject to tax under this chapter, and

(ii) a majority of the board of directors of such corporation is not selected by the United States or any State or political subdivision thereof.

(E) Certain previously tax-exempt organizations

(i) In general

For purposes of this subsection, an organization shall be treated as an organization described in subparagraph (A)(ii) with respect to any property (other than property held by such organization) if such organization was an organization (other than a cooperative described in section 521) exempt from tax imposed by this chapter at any time during the 5-year period ending on the date such property was first used by such organization. The preceding sentence and subparagraph (D)(ii) shall not apply to the Federal Home Loan Mortgage Corporation.

(ii) Election not to have clause (i) apply

(I) In general

In the case of an organization formerly exempt from tax under section 501(a) as an organization described in section 501(c)(12), clause (i) shall not apply to such organization with respect to any property if such organization elects not to be exempt from tax under section 501(a) during the tax-exempt use period with respect to such property.

(II) Tax-exempt use period

For purposes of subclause (I), the term ''tax-exempt use period'' means the period beginning with the taxable year in which the property described in subclause (I) is first used by the organization and ending with the close of the 15th taxable year following the last taxable year of the applicable recovery period of such property.

(III) Election

Any election under subclause (I), once made, shall be irrevocable.

(iii) Treatment of successor organizations

Any organization which is engaged in activities substantially similar to those engaged in by a predecessor organization shall succeed to the treatment under this

subparagraph of such predecessor organization.

(iv) First used

For purposes of this subparagraph, property shall be treated as first used by the organization—

(I) when the property is first placed in service under a lease to such organization, or

(II) in the case of property leased to (or held by) a partnership (or other pass-thru entity) in which the organization is a member, the later of when such property is first used by such partnership or pass-thru entity or when such organization is first a member of such partnership or pass-thru entity.

(3) Special rules for certain high technology equipment

(A) Exemption where lease term is 5 years or less

For purposes of this section, the term ''tax-exempt use property'' shall not include any qualified technological equipment if the lease to the tax-exempt entity has a lease term of 5 years or less. Notwithstanding subsection (i)(3)(A)(i), in determining a lease term for purposes of the preceding sentence, there shall not be taken into account any option of the lessee to renew at the fair market value rent determined at the time of renewal; except that the aggregate period not taken into account by reason of this sentence shall not exceed 24 months.

(B) Exception for certain property

(i) In general

For purposes of subparagraph (A), the term ''qualified technological equipment'' shall not include any property leased to a tax-exempt entity if—

(I) part or all of the property was financed (directly or indirectly) by an obligation the interest on which is exempt from tax under section 103(a),

(II) such lease occurs after a sale (or other transfer) of the property by, or lease of such property from, such entity (or related entity) and such property has been used by such entity (or a related entity) before such sale (or other transfer) or lease, or

(III) such tax-exempt entity is the United States or any agency or instrumentality of the United States.

(ii) Leasebacks during 1st 3 months of use not taken into account

Subclause (II) of clause (i) shall not apply to any property which is leased within 3 months after the date such property is first used by the tax-exempt entity (or a related entity).

(4) Related entities

For purposes of this subsection—

(A)(i) Each governmental unit and each agency or instrumentality of a governmental unit is related to each other such unit, agency, or instrumentality which directly or indirectly derives its powers, rights, and duties in whole or in part from the same sovereign authority.

(ii) For purposes of clause (i), the United States, each State, and each possession of the United States shall be treated as a separate sovereign authority.

(B) Any entity not described in subparagraph (A)(i) is related to any other entity if the 2 entities have—

(i) significant common purposes and substantial common membership, or

(ii) directly or indirectly substantial common direction or control.

(C)(i) An entity is related to another entity if either entity owns (directly or through 1 or more entities) a 50 percent or greater interest in the capital or profits of the other entity.

(ii) For purposes of clause (i), entities treated as related under subparagraph (A) or (B) shall be treated as 1 entity.

(D) An entity is related to another entity with respect to a transaction if such transaction is part of an attempt by such entities to avoid the application of this subsection.

(5) Tax-exempt use of property leased to partnerships, etc., determined at partner level

For purposes of this subsection—

(A) In general

In the case of any property which is leased to a partnership, the determination of whether any portion of such property is tax-exempt use property shall be made by treating each tax-exempt entity partner's proportionate share (determined under paragraph (6)(C)) of such property as being leased to such partner.

(B) Other pass-thru entities; tiered entities

Rules similar to the rules of subparagraph (A) shall also apply in the case of any pass-thru entity other than a partnership and in the case of tiered partnerships and other entities.

(C) Presumption with respect to foreign entities

Unless it is otherwise established to the satisfaction of the Secretary, it shall be presumed that the partners of a foreign partnership (and the beneficiaries of any other foreign pass-thru entity) are persons who are not United States persons.

(6) Treatment of property owned by partnerships, etc.

(A) In general

For purposes of this subsection, if—

(i) any property which (but for this subparagraph) is not tax-exempt use property is owned by a partnership which has both a tax-exempt entity and a person who is not a tax-exempt entity as partners, and

(ii) any allocation to the tax-exempt entity of partnership items is not a qualified allocation,

an amount equal to such tax-exempt entity's proportionate share of such property shall

(except as provided in paragraph (1)(D)) be treated as tax-exempt use property.

(B) Qualified allocation

For purposes of subparagraph (A), the term ''qualified allocation'' means any allocation to a tax-exempt entity which—

(i) is consistent with such entity's being allocated the same distributive share of each item of income, gain, loss, deduction, credit, and basis and such share remains the same during the entire period the entity is a partner in the partnership, and

(ii) has substantial economic effect within the meaning of section 704(b)(2).

For purposes of this subparagraph, items allocated under section 704(c) shall not be taken into account.

(C) Determination of proportionate share

(i) In general

For purposes of subparagraph (A), a tax-exempt entity's proportionate share of any property owned by a partnership shall be determined on the basis of such entity's share of partnership items of income or gain (excluding gain allocated under section 704(c)), whichever results in the largest proportionate share.

(ii) Determination where allocations vary

For purposes of clause (i), if a tax-exempt entity's share of partnership items of income or gain (excluding gain allocated under section 704(c)) may vary during the period such entity is a partner in the partnership, such share shall be the highest share such entity may receive.

(D) Determination of whether property used in unrelated trade or business

For purposes of this subsection, in the case of any property which is owned by a partnership which has both a tax-exempt entity and a person who is not a tax-exempt entity as partners, the determination of whether such property is used in an unrelated trade or business of such an entity shall be made without regard to section 514.

(E) Other pass-thru entities; tiered entities

Rules similar to the rules of subparagraphs (A), (B), (C), and (D) shall also apply in the case of any pass-thru entity other than a partnership and in the case of tiered partnerships and other entities.

(F) Treatment of certain taxable entities

(i) In general

For purposes of this paragraph and paragraph (5), except as otherwise provided in this subparagraph, any tax-exempt controlled entity shall be treated as a tax-exempt entity.

(ii) Election

If a tax-exempt controlled entity makes an election under this clause—

(I) such entity shall not be treated as a tax-exempt entity for purposes of this paragraph and paragraph (5), and

(II) any gain recognized by a tax-exempt entity on any disposition of an interest in such entity (and any dividend or interest received or accrued by a tax-exempt entity from such tax-exempt controlled entity) shall be treated as unrelated business taxable income for purposes of section 511.

Any such election shall be irrevocable and shall bind all tax-exempt entities holding interests in such tax-exempt controlled entity. For purposes of subclause (II), there shall only be taken into account dividends which are properly allocable to income of the tax-exempt controlled entity which was not subject to tax under this chapter.

(iii) Tax-exempt controlled entity

(I) In general

The term ''tax-exempt controlled entity'' means any corporation (which is not a tax-exempt entity determined without regard to this subparagraph and paragraph (2)(E)) if 50 percent or more (in value) of the stock in such corporation is held by 1 or more tax-exempt entities (other than a foreign person or entity).

(II) Only 5-percent shareholders taken into account in case of publicly traded stock

For purposes of subclause (I), in the case of a corporation the stock of which is publicly traded on an established securities market, stock held by a tax-exempt entity shall not be taken into account unless such entity holds at least 5 percent (in value) of the stock in such corporation. For purposes of this subclause, related entities (within the meaning of paragraph (4)) shall be treated as 1 entity.

(III) Section 318 to apply

For purposes of this clause, a tax-exempt entity shall be treated as holding stock which it holds through application of section 318 (determined without regard to the 50-percent limitation contained in subsection (a)(2)(C) thereof).

(G) Regulations

For purposes of determining whether there is a qualified allocation under subparagraph (B), the regulations prescribed under paragraph (8) for purposes of this paragraph—

(i) shall set forth the proper treatment for partnership guaranteed payments, and

(ii) may provide for the exclusion or segregation of items.

(7) Lease

For purposes of this subsection, the term ''lease'' includes any grant of a right to use property.

(8) Regulations

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

(i) Definitions and special rules

For purposes of this section—

(1) Class life

Except as provided in this section, the term ''class life'' means the class life (if any) which

would be applicable with respect to any property as of January 1, 1986, under subsection (m) of section 167 (determined without regard to paragraph (4) and as if the taxpayer had made an election under such subsection). The Secretary, through an office established in the Treasury, shall monitor and analyze actual experience with respect to all depreciable assets. The reference in this paragraph to subsection (m) of section 167 shall be treated as a reference to such subsection as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990.

(2) Qualified technological equipment

(A) In general

The term ''qualified technological equipment'' means—

(i) any computer or peripheral equipment,

(ii) any high technology telephone station equipment installed on the customer's premises, and

(iii) any high technology medical equipment.

(B) Computer or peripheral equipment defined

For purposes of this paragraph—

(i) In general

The term ''computer or peripheral equipment'' means—

(I) any computer, and

(II) any related peripheral equipment.

(ii) Computer

The term ''computer'' means a programmable electronically activated device which—

(I) is capable of accepting information, applying prescribed processes to the information, and supplying the results of these processes with or without human intervention, and

(II) consists of a central processing unit containing extensive storage, logic, arithmetic, and control capabilities.

(iii) Related peripheral equipment

The term ''related peripheral equipment'' means any auxiliary machine (whether on-line or off-line) which is designed to be placed under the control of the central processing unit of a computer.

(iv) Exceptions

The term ''computer or peripheral equipment'' shall not include—

(I) any equipment which is an integral part of other property which is not a computer,

(II) typewriters, calculators, adding and accounting machines, copiers, duplicating equipment, and similar equipment, and

(III) equipment of a kind used primarily for amusement or entertainment of the user.

(C) High technology medical equipment

For purposes of this paragraph, the term ''high technology medical equipment'' means any electronic, electromechanical, or computer-based high technology equipment used in the screening, monitoring, observation, diagnosis, or treatment of patients in a laboratory, medical, or hospital environment.

(3) Lease term

(A) In general

In determining a lease term—

(i) there shall be taken into account options to renew,

(ii) the term of a lease shall include the term of any service contract or similar arrangement (whether or not treated as a lease under section 7701(e))—

(I) which is part of the same transaction (or series of related transactions) which includes the lease, and

(II) which is with respect to the property subject to the lease or substantially similar property, and

(iii) 2 or more successive leases which are part of the same transaction (or a series of related transactions) with respect to the same or substantially similar property shall be treated as 1 lease.

(B) Special rule for fair rental options on nonresidential real property or residential rental property

For purposes of clause (i) of subparagraph (A), in the case of nonresidential real property or residential rental property, there shall not be taken into account any option to renew at fair market value, determined at the time of renewal.

(4) General asset accounts

Under regulations, a taxpayer may maintain 1 or more general asset accounts for any property to which this section applies. Except as provided in regulations, all proceeds realized on any disposition of property in a general asset account shall be included in income as ordinary income.

(5) Changes in use

The Secretary shall, by regulations, provide for the method of determining the deduction allowable under section 167(a) with respect to any tangible property for any taxable year (and the succeeding taxable years) during which such property changes status under this section but continues to be held by the same person.

(6) Treatments of additions or improvements to property

In the case of any addition to (or improvement of) any property—

(A) any deduction under subsection (a) for such addition or improvement shall be computed in the same manner as the deduction for such property would be computed if such property had been placed in service at the same time as such addition or improvement, and

(B) the applicable recovery period for such addition or improvement shall begin on the later of—

(i) the date on which such addition (or improvement) is placed in service, or

(ii) the date on which the property with respect to which such addition (or improvement) was made is placed in service.

(7) Treatment of certain transferees

(A) In general

In the case of any property transferred in a transaction described in subparagraph (B), the transferee shall be treated as the transferor for purposes of computing the depreciation deduction determined under this section with respect to so much of the basis in the hands of the transferee as does not exceed the adjusted basis in the hands of the transferor. In any case where this section as in effect before the amendments made by section 201 of the Tax Reform Act of 1986 applied to the property in the hands of the transferor, the reference in the preceding sentence to this section shall be treated as a reference to this section as so in effect.

(B) Transactions covered

The transactions described in this subparagraph are—

(i) any transaction described in section 332, 351, 361, 721, or 731, and

(ii) any transaction between members of the same affiliated group during any taxable year for which a consolidated return is made by such group.

Subparagraph (A) shall not apply in the case of a termination of a partnership under section 708(b)(1)(B).

(C) Property reacquired by the taxpayer

Under regulations, property which is disposed of and then reacquired by the taxpayer shall be treated for purposes of computing the deduction allowable under subsection (a) as if such property had not been disposed of.

(8) Treatment of leasehold improvements

(A) In general

In the case of any building erected (or improvements made) on leased property, if such building or improvement is property to which this section applies, the depreciation deduction shall be determined under the provisions of this section.

(B) Treatment of lessor improvements which are abandoned at termination of lease

An improvement—

(i) which is made by the lessor of leased property for the lessee of such property, and

(ii) which is irrevocably disposed of or abandoned by the lessor at the termination of the lease by such lessee,

shall be treated for purposes of determining gain or loss under this title as disposed of by the lessor when so disposed of or abandoned.

(C) Cross reference

For treatment of qualified long-term real property constructed or improved in connection with cash or rent reduction from lessor to lessee, see section 110(b).

(9) Normalization rules

(A) In general

In order to use a normalization method of accounting with respect to any public utility property for purposes of subsection (f)(2)—

(i) the taxpayer must, in computing its tax expense for purposes of establishing its cost of service for ratemaking purposes and reflecting operating results in its regulated books of account, use a method of depreciation with respect to such property that is the same as, and a depreciation period for such property that is no shorter than, the method and period used to compute its depreciation expense for such purposes; and

(ii) if the amount allowable as a deduction under this section with respect to such property differs from the amount that would be allowable as a deduction under section 167 using the method (including the period, first and last year convention, and salvage value) used to compute regulated tax expense under clause (i), the taxpayer must make adjustments to a reserve to reflect the deferral of taxes resulting from such difference.

(B) Use of inconsistent estimates and projections, etc.

(i) In general

One way in which the requirements of subparagraph (A) are not met is if the taxpayer, for ratemaking purposes, uses a procedure or adjustment which is inconsistent with the requirements of subparagraph (A).

(ii) Use of inconsistent estimates and projections

The procedures and adjustments which are to be treated as inconsistent for purposes of clause (i) shall include any procedure or adjustment for ratemaking purposes which uses an estimate or projection of the taxpayer's tax expense, depreciation expense, or reserve for deferred taxes under subparagraph (A)(ii) unless such estimate or projection is also used, for ratemaking purposes, with respect to the other 2 such items and with respect to the rate base.

(iii) Regulatory authority

The Secretary may by regulations prescribe procedures and adjustments (in addition to those specified in clause (ii)) which are to be treated as inconsistent for purposes of clause (i).

(C) Public utility property which does not meet normalization rules

In the case of any public utility property to which this section does not apply by reason of subsection (f)(2), the allowance for depreciation under section 167(a) shall be an amount computed using the method and period referred to in subparagraph (A)(i).

(10) Public utility property

The term ''public utility property'' means property used predominantly in the trade or business of the furnishing or sale of—

(A) electrical energy, water, or sewage disposal services,

(B) gas or steam through a local distribution system,

(C) telephone services, or other communication services if furnished or sold by the Communications Satellite Corporation for purposes authorized by the Communications Satellite Act of 1962 (47 U.S.C. 701), or

(D) transportation of gas or steam by pipeline,

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

(11) Research and experimentation

The term ''research and experimentation'' has the same meaning as the term research and experimental has under section 174.

(12) Section 1245 and 1250 property

The terms ''section 1245 property'' and ''section 1250 property'' have the meanings given such terms by sections 1245(a)(3) and 1250(c), respectively.

(13) Single purpose agricultural or horticultural structure

(A) In general

The term ''single purpose agricultural or horticultural structure'' means—

(i) a single purpose livestock structure, and

(ii) a single purpose horticultural structure.

(B) Definitions

For purposes of this paragraph—

(i) Single purpose livestock structure

The term ''single purpose livestock structure'' means any enclosure or structure specifically designed, constructed, and used—

(I) for housing, raising, and feeding a particular type of livestock and their produce, and

(II) for housing the equipment (including any replacements) necessary for the housing, raising, and feeding referred to in subclause (I).

(ii) Single purpose horticultural structure

The term ''single purpose horticultural structure'' means—

(I) a greenhouse specifically designed, constructed, and used for the commercial production of plants, and

(II) a structure specifically designed, constructed, and used for the commercial production of mushrooms.

(iii) Structures which include work space

An enclosure or structure which provides work space shall be treated as a single purpose agricultural or horticultural structure only if such work space is solely for—

(I) the stocking, caring for, or collecting of livestock or plants (as the case may be) or their produce,

(II) the maintenance of the enclosure or structure, and

(III) the maintenance or replacement of the equipment or stock enclosed or housed therein.

(iv) Livestock

The term ''livestock'' includes poultry.

(14) Qualified rent-to-own property

(A) In general

The term ''qualified rent-to-own property'' means property held by a rent-to-own dealer for purposes of being subject to a rent-to-own contract.

(B) Rent-to-own dealer

The term ''rent-to-own dealer'' means a person that, in the ordinary course of business, regularly enters into rent-to-own contracts with customers for the use of consumer property, if a substantial portion of those contracts terminate and the property is returned to such person before the receipt of all payments required to transfer ownership of the property from such person to the customer.

(C) Consumer property

The term ''consumer property'' means tangible personal property of a type generally used within the home for personal use.

(D) Rent-to-own contract

The term ''rent-to-own contract'' means any lease for the use of consumer property between a rent-to-own dealer and a customer who is an individual which—

(i) is titled ''Rent-to-Own Agreement'' or ''Lease Agreement with Ownership Option,'' or uses other similar language,

(ii) provides for level (or decreasing where no payment is less than 40 percent of the largest payment), regular periodic payments (for a payment period which is a week or month),

(iii) provides that legal title to such property remains with the rent-to-own dealer until the customer makes all the payments described in clause (ii) or early purchase payments required under the contract to acquire legal title to the item of property,

(iv) provides a beginning date and a maximum period of time for which the contract may be in effect that does not exceed 156 weeks or 36 months from such beginning date (including renewals or options to extend),

(v) provides for payments within the 156-week or 36-month period that, in the aggregate, generally exceed the normal retail price of the consumer property plus interest,

(vi) provides for payments under the contract that, in the aggregate, do not exceed $10,000 per item of consumer property,

(vii) provides that the customer does not have any legal obligation to make all the payments referred to in clause (ii) set forth under the contract, and that at the end of each payment period the customer

may either continue to use the consumer property by making the payment for the next payment period or return such property to the rent-to-own dealer in good working order, in which case the customer does not incur any further obligations under the contract and is not entitled to a return of any payments previously made under the contract, and

(viii) provides that the customer has no right to sell, sublease, mortgage, pawn, pledge, encumber, or otherwise dispose of the consumer property until all the payments stated in the contract have been made.

(15) Motorsports entertainment complex

(A) In general

The term ''motorsports entertainment complex'' means a racing track facility which—

(i) is permanently situated on land, and

(ii) during the 36-month period following the first day of the month in which the asset is placed in service, hosts 1 or more racing events for automobiles (of any type), trucks, or motorcycles which are open to the public for the price of admission.

(B) Ancillary and support facilities

Such term shall include, if owned by the taxpayer who owns the complex and provided for the benefit of patrons of the complex—

(i) ancillary facilities and land improvements in support of the complex's activities (including parking lots, sidewalks, waterways, bridges, fences, and landscaping),

(ii) support facilities (including food and beverage retailing, souvenir vending, and other nonlodging accommodations), and

(iii) appurtenances associated with such facilities and related attractions and amusements (including ticket booths, race track surfaces, suites and hospitality facilities, grandstands and viewing structures, props, walls, facilities that support the delivery of entertainment services, other special purpose structures, facades, shop interiors, and buildings).

(C) Exception

Such term shall not include any transportation equipment, administrative services assets, warehouses, administrative buildings, hotels, or motels.

(D) Termination

Such term shall not include any property placed in service after December 31, 2011.

(16) Alaska natural gas pipeline

The term ''Alaska natural gas pipeline'' means the natural gas pipeline system located in the State of Alaska which—

(A) has a capacity of more than 500,000,000,000 Btu of natural gas per day, and

(B) is—

(i) placed in service after December 31, 2013, or

(ii) treated as placed in service on January 1, 2014, if the taxpayer who places such system in service before January 1, 2014, elects such treatment.

Such term includes the pipe, trunk lines, related equipment, and appurtenances used to carry natural gas, but does not include any gas processing plant.

(17) Natural gas gathering line

The term ''natural gas gathering line'' means—

(A) the pipe, equipment, and appurtenances determined to be a gathering line by the Federal Energy Regulatory Commission, and

(B) the pipe, equipment, and appurtenances used to deliver natural gas from the wellhead or a commonpoint to the point at which such gas first reaches—

(i) a gas processing plant,

(ii) an interconnection with a transmission pipeline for which a certificate as an interstate transmission pipeline has been issued by the Federal Energy Regulatory Commission,

(iii) an interconnection with an intrastate transmission pipeline, or

(iv) a direct interconnection with a local distribution company, a gas storage facility, or an industrial consumer.

(18) Qualified smart electric meters

(A) In general

The term ''qualified smart electric meter'' means any smart electric meter which—

(i) is placed in service by a taxpayer who is a supplier of electric energy or a provider of electric energy services, and

(ii) does not have a class life (determined without regard to subsection (e)) of less than 10 years.

(B) Smart electric meter

For purposes of subparagraph (A), the term ''smart electric meter'' means any time-based meter and related communication equipment which is capable of being used by the taxpayer as part of a system that—

(i) measures and records electricity usage data on a time-differentiated basis in at least 24 separate time segments per day,

(ii) provides for the exchange of information between supplier or provider and the customer's electric meter in support of time-based rates or other forms of demand response,

(iii) provides data to such supplier or provider so that the supplier or provider can provide energy usage information to customers electronically, and

(iv) provides net metering.

(19) Qualified smart electric grid systems

(A) In general

The term ''qualified smart electric grid system'' means any smart grid property which—

(i) is used as part of a system for electric distribution grid communications, mon-

itoring, and management placed in service by a taxpayer who is a supplier of electric energy or a provider of electric energy services, and

(ii) does not have a class life (determined without regard to subsection (e)) of less than 10 years.

(B) Smart grid property

For the purposes of subparagraph (A), the term ''smart grid property'' means electronics and related equipment that is capable of—

(i) sensing, collecting, and monitoring data of or from all portions of a utility's electric distribution grid,

(ii) providing real-time, two-way communications to monitor or manage such grid, and

(iii) providing real time analysis of and event prediction based upon collected data that can be used to improve electric distribution system reliability, quality, and performance.

(j) Property on Indian reservations

(1) In general

For purposes of subsection (a), the applicable recovery period for qualified Indian reservation property shall be determined in accordance with the table contained in paragraph (2) in lieu of the table contained in subsection (c).

(2) Applicable recovery period for Indian reservation property

For purposes of paragraph (1)—

In the case of:	The applicable recovery period is:
3-year property	2 years
5-year property	3 years
7-year property	4 years
10-year property	6 years
15-year property	9 years
20-year property	12 years
Nonresidential real property	22 years.

(3) Deduction allowed in computing minimum tax

For purposes of determining alternative minimum taxable income under section 55, the deduction under subsection (a) for property to which paragraph (1) applies shall be determined under this section without regard to any adjustment under section 56.

(4) Qualified Indian reservation property defined

For purposes of this subsection—

(A) In general

The term ''qualified Indian reservation property'' means property which is property described in the table in paragraph (2) and which is—

(i) used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation,

(ii) not used or located outside the Indian reservation on a regular basis,

(iii) not acquired (directly or indirectly) by the taxpayer from a person who is related to the taxpayer (within the meaning of section 465(b)(3)(C)), and

(iv) not property (or any portion thereof) placed in service for purposes of conducting or housing class I, II, or III gaming (as defined in section 4 of the Indian Regulatory Act (25 U.S.C. 2703)).

(B) Exception for alternative depreciation property

The term ''qualified Indian reservation property'' does not include any property to which the alternative depreciation system under subsection (g) applies, determined—

(i) without regard to subsection (g)(7) (relating to election to use alternative depreciation system), and

(ii) after the application of section 280F(b) (relating to listed property with limited business use).

(C) Special rule for reservation infrastructure investment

(i) In general

Subparagraph (A)(ii) shall not apply to qualified infrastructure property located outside of the Indian reservation if the purpose of such property is to connect with qualified infrastructure property located within the Indian reservation.

(ii) Qualified infrastructure property

For purposes of this subparagraph, the term ''qualified infrastructure property'' means qualified Indian reservation property (determined without regard to subparagraph (A)(ii)) which—

(I) benefits the tribal infrastructure,

(II) is available to the general public, and

(III) is placed in service in connection with the taxpayer's active conduct of a trade or business within an Indian reservation.

Such term includes, but is not limited to, roads, power lines, water systems, railroad spurs, and communications facilities.

(5) Real estate rentals

For purposes of this subsection, the rental to others of real property located within an Indian reservation shall be treated as the active conduct of a trade or business within an Indian reservation.

(6) Indian reservation defined

For purposes of this subsection, the term ''Indian reservation'' means a reservation, as defined in—

(A) section 3(d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d)), or

(B) section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)).

For purposes of the preceding sentence, such section 3(d) shall be applied by treating the term ''former Indian reservations in Oklahoma'' as including only lands which are within the jurisdictional area of an Oklahoma Indian tribe (as determined by the Secretary of the Interior) and are recognized by such Secretary as eligible for trust land status under 25

CFR Part 151 (as in effect on the date of the enactment of this sentence).

(7) Coordination with nonrevenue laws

Any reference in this subsection to a provision not contained in this title shall be treated for purposes of this subsection as a reference to such provision as in effect on the date of the enactment of this paragraph.

(8) Termination

This subsection shall not apply to property placed in service after December 31, 2011.

(k) Special allowance for certain property acquired after December 31, 2007, and before January 1, 2013

(1) Additional allowance

In the case of any qualified property—

(A) the depreciation deduction provided by section 167(a) for the taxable year in which such property is placed in service shall include an allowance equal to 50 percent of the adjusted basis of the qualified property, and

(B) the adjusted basis of the qualified property shall be reduced by the amount of such deduction before computing the amount otherwise allowable as a depreciation deduction under this chapter for such taxable year and any subsequent taxable year.

(2) Qualified property

For purposes of this subsection—

(A) In general

The term ''qualified property'' means property—

(i)(I) to which this section applies which has a recovery period of 20 years or less,

(II) which is computer software (as defined in section 167(f)(1)(B)) for which a deduction is allowable under section 167(a) without regard to this subsection,

(III) which is water utility property, or

(IV) which is qualified leasehold improvement property,

(ii) the original use of which commences with the taxpayer after December 31, 2007,

(iii) which is—

(I) acquired by the taxpayer after December 31, 2007, and before January 1, 2013, but only if no written binding contract for the acquisition was in effect before January 1, 2008, or

(II) acquired by the taxpayer pursuant to a written binding contract which was entered into after December 31, 2007, and before January 1, 2013, and

(iv) which is placed in service by the taxpayer before January 1, 2013, or, in the case of property described in subparagraph (B) or (C), before January 1, 2014.

(B) Certain property having longer production periods treated as qualified property

(i) In general

The term ''qualified property'' includes any property if such property—

(I) meets the requirements of clauses (i), (ii), (iii), and (iv) of subparagraph (A),

(II) has a recovery period of at least 10 years or is transportation property,

(III) is subject to section 263A, and

(IV) meets the requirements of clause (iii) of section 263A(f)(1)(B) (determined as if such clauses also apply to property which has a long useful life (within the meaning of section 263A(f))).

(ii) Only pre-January 1, 2013, basis eligible for additional allowance

In the case of property which is qualified property solely by reason of clause (i), paragraph (1) shall apply only to the extent of the adjusted basis thereof attributable to manufacture, construction, or production before January 1, 2013.

(iii) Transportation property

For purposes of this subparagraph, the term ''transportation property'' means tangible personal property used in the trade or business of transporting persons or property.

(iv) Application of subparagraph

This subparagraph shall not apply to any property which is described in subparagraph (C).

(C) Certain aircraft

The term ''qualified property'' includes property—

(i) which meets the requirements of clauses (ii), (iii), and (iv) of subparagraph (A),

(ii) which is an aircraft which is not a transportation property (as defined in subparagraph (B)(iii)) other than for agricultural or firefighting purposes,

(iii) which is purchased and on which such purchaser, at the time of the contract for purchase, has made a nonrefundable deposit of the lesser of—

(I) 10 percent of the cost, or

(II) $100,000, and

(iv) which has—

(I) an estimated production period exceeding 4 months, and

(II) a cost exceeding $200,000.

(D) Exceptions

(i) Alternative depreciation property

The term ''qualified property'' shall not include any property to which the alternative depreciation system under subsection (g) applies, determined—

(I) without regard to paragraph (7) of subsection (g) (relating to election to have system apply), and

(II) after application of section 280F(b) (relating to listed property with limited business use).

(ii) Qualified New York Liberty Zone leasehold improvement property

The term ''qualified property'' shall not include any qualified New York Liberty Zone leasehold improvement property (as defined in section 1400L(c)(2)).

(iii) Election out

If a taxpayer makes an election under this clause with respect to any class of property for any taxable year, this sub-

section shall not apply to all property in such class placed in service during such taxable year.

(E) Special rules

(i) Self-constructed property

In the case of a taxpayer manufacturing, constructing, or producing property for the taxpayer's own use, the requirements of clause (iii) of subparagraph (A) shall be treated as met if the taxpayer begins manufacturing, constructing, or producing the property after December 31, 2007, and before January 1, 2013.

(ii) Sale-leasebacks

For purposes of clause (iii) and subparagraph (A)(ii), if property is—

(I) originally placed in service after December 31, 2007, by a person, and

(II) sold and leased back by such person within 3 months after the date such property was originally placed in service,

such property shall be treated as originally placed in service not earlier than the date on which such property is used under the leaseback referred to in subclause (II).

(iii) Syndication

For purposes of subparagraph (A)(ii), if—

(I) property is originally placed in service after December 31, 2007, by the lessor of such property,

(II) such property is sold by such lessor or any subsequent purchaser within 3 months after the date such property was originally placed in service (or, in the case of multiple units of property subject to the same lease, within 3 months after the date the final unit is placed in service, so long as the period between the time the first unit is placed in service and the time the last unit is placed in service does not exceed 12 months), and

(III) the user of such property after the last sale during such 3-month period remains the same as when such property was originally placed in service,

such property shall be treated as originally placed in service not earlier than the date of such last sale.

(iv) Limitations related to users and related parties

The term ''qualified property'' shall not include any property if—

(I) the user of such property (as of the date on which such property is originally placed in service) or a person which is related (within the meaning of section 267(b) or 707(b)) to such user or to the taxpayer had a written binding contract in effect for the acquisition of such property at any time on or before December 31, 2007, or

(II) in the case of property manufactured, constructed, or produced for such user's or person's own use, the manufacture, construction, or production of such property began at any time on or before December 31, 2007.

(F) Coordination with section 280F

For purposes of section 280F—

(i) Automobiles

In the case of a passenger automobile (as defined in section 280F(d)(5)) which is qualified property, the Secretary shall increase the limitation under section 280F(a)(1)(A)(i) by $8,000.

(ii) Listed property

The deduction allowable under paragraph (1) shall be taken into account in computing any recapture amount under section 280F(b)(2).

(G) Deduction allowed in computing minimum tax

For purposes of determining alternative minimum taxable income under section 55, the deduction under subsection (a) for qualified property shall be determined under this section without regard to any adjustment under section 56.

(3) Qualified leasehold improvement property

For purposes of this subsection—

(A) In general

The term ''qualified leasehold improvement property'' means any improvement to an interior portion of a building which is nonresidential real property if—

(i) such improvement is made under or pursuant to a lease (as defined in subsection (h)(7))—

(I) by the lessee (or any sublessee) of such portion, or

(II) by the lessor of such portion,

(ii) such portion is to be occupied exclusively by the lessee (or any sublessee) of such portion, and

(iii) such improvement is placed in service more than 3 years after the date the building was first placed in service.

(B) Certain improvements not included

Such term shall not include any improvement for which the expenditure is attributable to—

(i) the enlargement of the building,

(ii) any elevator or escalator,

(iii) any structural component benefiting a common area, and

(iv) the internal structural framework of the building.

(C) Definitions and special rules

For purposes of this paragraph—

(i) Commitment to lease treated as lease

A commitment to enter into a lease shall be treated as a lease, and the parties to such commitment shall be treated as lessor and lessee, respectively.

(ii) Related persons

A lease between related persons shall not be considered a lease. For purposes of the preceding sentence, the term ''related persons'' means—

(I) members of an affiliated group (as defined in section 1504), and

(II) persons having a relationship described in subsection (b) of section 267; except that, for purposes of this clause, the phrase ''80 percent or more'' shall be substituted for the phrase ''more than 50 percent'' each place it appears in such subsection.

(4) Election to accelerate the AMT and research credits in lieu of bonus depreciation

(A) In general

If a corporation elects to have this paragraph apply for the first taxable year of the taxpayer ending after March 31, 2008, in the case of such taxable year and each subsequent taxable year—

(i) paragraph (1) shall not apply to any eligible qualified property placed in service by the taxpayer,

(ii) the applicable depreciation method used under this section with respect to such property shall be the straight line method, and

(iii) each of the limitations described in subparagraph (B) for any such taxable year shall be increased by the bonus depreciation amount which is—

(I) determined for such taxable year under subparagraph (C), and

(II) allocated to such limitation under subparagraph (E).

(B) Limitations to be increased

The limitations described in this subparagraph are—

(i) the limitation imposed by section 38(c), and

(ii) the limitation imposed by section 53(c).

(C) Bonus depreciation amount

For purposes of this paragraph—

(i) In general

The bonus depreciation amount for any taxable year is an amount equal to 20 percent of the excess (if any) of—

(I) the aggregate amount of depreciation which would be allowed under this section for eligible qualified property placed in service by the taxpayer during such taxable year if paragraph (1) applied to all such property, over

(II) the aggregate amount of depreciation which would be allowed under this section for eligible qualified property placed in service by the taxpayer during such taxable year if paragraph (1) did not apply to any such property.

The aggregate amounts determined under subclauses (I) and (II) shall be determined without regard to any election made under subsection (b)(2)(C), (b)(3)(D), or (g)(7) and without regard to subparagraph (A)(ii).

(ii) Maximum amount

The bonus depreciation amount for any taxable year shall not exceed the maximum increase amount under clause (iii), reduced (but not below zero) by the sum of the bonus depreciation amounts for all preceding taxable years.

(iii) Maximum increase amount

For purposes of clause (ii), the term ''maximum increase amount'' means, with respect to any corporation, the lesser of—

(I) $30,000,000, or

(II) 6 percent of the sum of the business credit increase amount, and the AMT credit increase amount, determined with respect to such corporation under subparagraph (E).

(iv) Aggregation rule

All corporations which are treated as a single employer under section 52(a) shall be treated—

(I) as 1 taxpayer for purposes of this paragraph, and

(II) as having elected the application of this paragraph if any such corporation so elects.

(D) Eligible qualified property

For purposes of this paragraph, the term ''eligible qualified property'' means qualified property under paragraph (2), except that in applying paragraph (2) for purposes of this paragraph—

(i) ''March 31, 2008'' shall be substituted for ''December 31, 2007'' each place it appears in subparagraph (A) and clauses (i) and (ii) of subparagraph (E) thereof,

(ii) ''April 1, 2008'' shall be substituted for ''January 1, 2008'' in subparagraph (A)(iii)(I) thereof, and

(iii) only adjusted basis attributable to manufacture, construction, or production—

(I) after March 31, 2008, and before January 1, 2010, and

(II) after December 31, 2010, and before January 1, 2013,

shall be taken into account under subparagraph (B)(ii) thereof.

(E) Allocation of bonus depreciation amounts

(i) In general

Subject to clauses (ii) and (iii), the taxpayer shall, at such time and in such manner as the Secretary may prescribe, specify the portion (if any) of the bonus depreciation amount for the taxable year which is to be allocated to each of the limitations described in subparagraph (B) for such taxable year.

(ii) Limitation on allocations

The portion of the bonus depreciation amount which may be allocated under clause (i) to the limitations described in subparagraph (B) for any taxable year shall not exceed—

(I) in the case of the limitation described in subparagraph (B)(i), the excess of the business credit increase amount over the bonus depreciation amount allocated to such limitation for all preceding taxable years, and

(II) in the case of the limitation described in subparagraph (B)(ii), the excess of the AMT credit increase amount over the bonus depreciation amount allo-

cated to such limitation for all preceding taxable years.

(iii) Business credit increase amount

For purposes of this paragraph, the term ''business credit increase amount'' means the amount equal to the portion of the credit allowable under section 38 (determined without regard to subsection (c) thereof) for the first taxable year ending after March 31, 2008, which is allocable to business credit carryforwards to such taxable year which are—

(I) from taxable years beginning before January 1, 2006, and

(II) properly allocable (determined under the rules of section 38(d)) to the research credit determined under section 41(a).

(iv) AMT credit increase amount

For purposes of this paragraph, the term ''AMT credit increase amount'' means the amount equal to the portion of the minimum tax credit under section 53(b) for the first taxable year ending after March 31, 2008, determined by taking into account only the adjusted minimum tax for taxable years beginning before January 1, 2006. For purposes of the preceding sentence, credits shall be treated as allowed on a first-in, first-out basis.

(F) Credit refundable

For purposes of section 6401(b), the aggregate increase in the credits allowable under part IV of subchapter A for any taxable year resulting from the application of this paragraph shall be treated as allowed under subpart C of such part (and not any other subpart).

(G) Other rules

(i) Election

Any election under this paragraph (including any allocation under subparagraph (E)) may be revoked only with the consent of the Secretary.

(ii) Partnerships with electing partners

In the case of a corporation making an election under subparagraph (A) and which is a partner in a partnership, for purposes of determining such corporation's distributive share of partnership items under section 702—

(I) paragraph (1) shall not apply to any eligible qualified property, and

(II) the applicable depreciation method used under this section with respect to such property shall be the straight line method.

(iii) Special rule for passenger aircraft

In the case of any passenger aircraft, the written binding contract limitation under paragraph (2)(A)(iii)(I) shall not apply for purposes of subparagraphs (C)(i)(I) and (D).

(H) Special rules for extension property

(i) Taxpayers previously electing acceleration

In the case of a taxpayer who made the election under subparagraph (A) for its first taxable year ending after March 31, 2008—

(I) the taxpayer may elect not to have this paragraph apply to extension property, but

(II) if the taxpayer does not make the election under subclause (I), in applying this paragraph to the taxpayer a separate bonus depreciation amount, maximum amount, and maximum increase amount shall be computed and applied to eligible qualified property which is extension property and to eligible qualified property which is not extension property.

(ii) Taxpayers not previously electing acceleration

In the case of a taxpayer who did not make the election under subparagraph (A) for its first taxable year ending after March 31, 2008—

(I) the taxpayer may elect to have this paragraph apply to its first taxable year ending after December 31, 2008, and each subsequent taxable year, and

(II) if the taxpayer makes the election under subclause (I), this paragraph shall only apply to eligible qualified property which is extension property.

(iii) Extension property

For purposes of this subparagraph, the term ''extension property'' means property which is eligible qualified property solely by reason of the extension of the application of the special allowance under paragraph (1) pursuant to the amendments made by section 1201(a) of the American Recovery and Reinvestment Tax Act of 2009 (and the application of such extension to this paragraph pursuant to the amendment made by section 1201(b)(1) of such Act).

(I) Special rules for round 2 extension property

(i) In general

In the case of round 2 extension property, this paragraph shall be applied without regard to—

(I) the limitation described in subparagraph (B)(i) thereof, and

(II) the business credit increase amount under subparagraph (E)(iii) thereof.

(ii) Taxpayers previously electing acceleration

In the case of a taxpayer who made the election under subparagraph (A) for its first taxable year ending after March 31, 2008, or a taxpayer who made the election under subparagraph (H)(ii) for its first taxable year ending after December 31, 2008—

(I) the taxpayer may elect not to have this paragraph apply to round 2 extension property, but

(II) if the taxpayer does not make the election under subclause (I), in applying this paragraph to the taxpayer the bonus depreciation amount, maximum amount,

and maximum increase amount shall be computed and applied to eligible qualified property which is round 2 extension property.

The amounts described in subclause (II) shall be computed separately from any amounts computed with respect to eligible qualified property which is not round 2 extension property.

(iii) Taxpayers not previously electing acceleration

In the case of a taxpayer who neither made the election under subparagraph (A) for its first taxable year ending after March 31, 2008, nor made the election under subparagraph (H)(ii) for its first taxable year ending after December 31, 2008—

(I) the taxpayer may elect to have this paragraph apply to its first taxable year ending after December 31, 2010, and each subsequent taxable year, and

(II) if the taxpayer makes the election under subclause (I), this paragraph shall only apply to eligible qualified property which is round 2 extension property.

(iv) Round 2 extension property

For purposes of this subparagraph, the term ''round 2 extension property'' means property which is eligible qualified property solely by reason of the extension of the application of the special allowance under paragraph (1) pursuant to the amendments made by section 401(a) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (and the application of such extension to this paragraph pursuant to the amendment made by section 401(c)(1) of such Act).

(5) Special rule for property acquired during certain pre-2012 periods

In the case of qualified property acquired by the taxpayer (under rules similar to the rules of clauses (ii) and (iii) of paragraph (2)(A)) after September 8, 2010, and before January 1, 2012, and which is placed in service by the taxpayer before January 1, 2012 (January 1, 2013, in the case of property described in subparagraph (2)(B) or (2)(C)), paragraph (1)(A) shall be applied by substituting ''100 percent'' for ''50 percent''.

(*l*) Special allowance for cellulosic biofuel plant property

(1) Additional allowance

In the case of any qualified cellulosic biofuel plant property—

(A) the depreciation deduction provided by section 167(a) for the taxable year in which such property is placed in service shall include an allowance equal to 50 percent of the adjusted basis of such property, and

(B) the adjusted basis of such property shall be reduced by the amount of such deduction before computing the amount otherwise allowable as a depreciation deduction under this chapter for such taxable year and any subsequent taxable year.

(2) Qualified cellulosic biofuel plant property

The term ''qualified cellulosic biofuel plant property'' means property of a character subject to the allowance for depreciation—

(A) which is used in the United States solely to produce cellulosic biofuel,

(B) the original use of which commences with the taxpayer after the date of the enactment of this subsection,

(C) which is acquired by the taxpayer by purchase (as defined in section 179(d)) after the date of the enactment of this subsection, but only if no written binding contract for the acquisition was in effect on or before the date of the enactment of this subsection, and

(D) which is placed in service by the taxpayer before January 1, 2013.

(3) Cellulosic biofuel

The term ''cellulosic biofuel'' means any liquid fuel which is produced from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis.

(4) Exceptions

(A) Bonus depreciation property under subsection (k)

Such term shall not include any property to which section 168(k) applies.

(B) Alternative depreciation property

Such term shall not include any property described in section 168(k)(2)(D)(i).

(C) Tax-exempt bond-financed property

Such term shall not include any property any portion of which is financed with the proceeds of any obligation the interest on which is exempt from tax under section 103.

(D) Election out

If a taxpayer makes an election under this subparagraph with respect to any class of property for any taxable year, this subsection shall not apply to all property in such class placed in service during such taxable year.

(5) Special rules

For purposes of this subsection, rules similar to the rules of subparagraph (E) of section 168(k)(2) shall apply, except that such subparagraph shall be applied—

(A) by substituting ''the date of the enactment of subsection (*l*)'' for ''December 31, 2007'' each place it appears therein, and

(B) by substituting ''qualified cellulosic biofuel plant property'' for ''qualified property'' in clause (iv) thereof.

(6) Allowance against alternative minimum tax

For purposes of this subsection, rules similar to the rules of section 168(k)(2)(G) shall apply.

(7) Recapture

For purposes of this subsection, rules similar to the rules under section 179(d)(10) shall apply with respect to any qualified cellulosic biofuel plant property which ceases to be qualified cellulosic biofuel plant property.

(8) Denial of double benefit

Paragraph (1) shall not apply to any qualified cellulosic biofuel plant property with re-

spect to which an election has been made under section 179C (relating to election to expense certain refineries).

(m) Special allowance for certain reuse and recycling property

(1) In general

In the case of any qualified reuse and recycling property—

(A) the depreciation deduction provided by section 167(a) for the taxable year in which such property is placed in service shall include an allowance equal to 50 percent of the adjusted basis of the qualified reuse and recycling property, and

(B) the adjusted basis of the qualified reuse and recycling property shall be reduced by the amount of such deduction before computing the amount otherwise allowable as a depreciation deduction under this chapter for such taxable year and any subsequent taxable year.

(2) Qualified reuse and recycling property

For purposes of this subsection—

(A) In general

The term ''qualified reuse and recycling property'' means any reuse and recycling property—

(i) to which this section applies,

(ii) which has a useful life of at least 5 years,

(iii) the original use of which commences with the taxpayer after August 31, 2008, and

(iv) which is—

(I) acquired by purchase (as defined in section 179(d)(2)) by the taxpayer after August 31, 2008, but only if no written binding contract for the acquisition was in effect before September 1, 2008, or

(II) acquired by the taxpayer pursuant to a written binding contract which was entered into after August 31, 2008.

(B) Exceptions

(i) Bonus depreciation property under subsection (k)

The term ''qualified reuse and recycling property'' shall not include any property to which section 168(k) applies.

(ii) Alternative depreciation property

The term ''qualified reuse and recycling property'' shall not include any property to which the alternative depreciation system under subsection (g) applies, determined without regard to paragraph (7) of subsection (g) (relating to election to have system apply).

(iii) Election out

If a taxpayer makes an election under this clause with respect to any class of property for any taxable year, this subsection shall not apply to all property in such class placed in service during such taxable year.

(C) Special rule for self-constructed property

In the case of a taxpayer manufacturing, constructing, or producing property for the taxpayer's own use, the requirements of clause (iv) of subparagraph (A) shall be treated as met if the taxpayer begins manufacturing, constructing, or producing the property after August 31, 2008.

(D) Deduction allowed in computing minimum tax

For purposes of determining alternative minimum taxable income under section 55, the deduction under subsection (a) for qualified reuse and recycling property shall be determined under this section without regard to any adjustment under section 56.

(3) Definitions

For purposes of this subsection—

(A) Reuse and recycling property

(i) In general

The term ''reuse and recycling property'' means any machinery and equipment (not including buildings or real estate), along with all appurtenances thereto, including software necessary to operate such equipment, which is used exclusively to collect, distribute, or recycle qualified reuse and recyclable materials.

(ii) Exclusion

Such term does not include rolling stock or other equipment used to transport reuse and recyclable materials.

(B) Qualified reuse and recyclable materials

(i) In general

The term ''qualified reuse and recyclable materials'' means scrap plastic, scrap glass, scrap textiles, scrap rubber, scrap packaging, recovered fiber, scrap ferrous and nonferrous metals, or electronic scrap generated by an individual or business.

(ii) Electronic scrap

For purposes of clause (i), the term ''electronic scrap'' means—

(I) any cathode ray tube, flat panel screen, or similar video display device with a screen size greater than 4 inches measured diagonally, or

(II) any central processing unit.

(C) Recycling or recycle

The term ''recycling'' or ''recycle'' means that process (including sorting) by which worn or superfluous materials are manufactured or processed into specification grade commodities that are suitable for use as a replacement or substitute for virgin materials in manufacturing tangible consumer and commercial products, including packaging.

(n) Special allowance for qualified disaster assistance property

(1) In general

In the case of any qualified disaster assistance property—

(A) the depreciation deduction provided by section 167(a) for the taxable year in which such property is placed in service shall include an allowance equal to 50 percent of the adjusted basis of the qualified disaster assistance property, and

(B) the adjusted basis of the qualified disaster assistance property shall be reduced by the amount of such deduction before computing the amount otherwise allowable as a depreciation deduction under this chapter for such taxable year and any subsequent taxable year.

(2) Qualified disaster assistance property

For purposes of this subsection—

(A) In general

The term ''qualified disaster assistance property'' means any property—

(i)(I) which is described in subsection (k)(2)(A)(i), or

(II) which is nonresidential real property or residential rental property,

(ii) substantially all of the use of which is—

(I) in a disaster area with respect to a federally declared disaster occurring before January 1, 2010, and

(II) in the active conduct of a trade or business by the taxpayer in such disaster area,

(iii) which—

(I) rehabilitates property damaged, or replaces property destroyed or condemned, as a result of such federally declared disaster, except that, for purposes of this clause, property shall be treated as replacing property destroyed or condemned if, as part of an integrated plan, such property replaces property which is included in a continuous area which includes real property destroyed or condemned, and

(II) is similar in nature to, and located in the same county as, the property being rehabilitated or replaced,

(iv) the original use of which in such disaster area commences with an eligible taxpayer on or after the applicable disaster date,

(v) which is acquired by such eligible taxpayer by purchase (as defined in section 179(d)) on or after the applicable disaster date, but only if no written binding contract for the acquisition was in effect before such date, and

(vi) which is placed in service by such eligible taxpayer on or before the date which is the last day of the third calendar year following the applicable disaster date (the fourth calendar year in the case of nonresidential real property and residential rental property).

(B) Exceptions

(i) Other bonus depreciation property

The term ''qualified disaster assistance property'' shall not include—

(I) any property to which subsection (k) (determined without regard to paragraph (4)), (*l*), or (m) applies,

(II) any property to which section 1400N(d) applies, and

(III) any property described in section 1400N(p)(3).

(ii) Alternative depreciation property

The term ''qualified disaster assistance property'' shall not include any property to which the alternative depreciation system under subsection (g) applies, determined without regard to paragraph (7) of subsection (g) (relating to election to have system apply).

(iii) Tax-exempt bond financed property

Such term shall not include any property any portion of which is financed with the proceeds of any obligation the interest on which is exempt from tax under section 103.

(iv) Qualified revitalization buildings

Such term shall not include any qualified revitalization building with respect to which the taxpayer has elected the application of paragraph (1) or (2) of section 1400I(a).

(v) Election out

If a taxpayer makes an election under this clause with respect to any class of property for any taxable year, this subsection shall not apply to all property in such class placed in service during such taxable year.

(C) Special rules

For purposes of this subsection, rules similar to the rules of subparagraph (E) of subsection (k)(2) shall apply, except that such subparagraph shall be applied—

(i) by substituting ''the applicable disaster date'' for ''December 31, 2007'' each place it appears therein,

(ii) without regard to ''and before January 1, 2013'' in clause (i) thereof, and

(iii) by substituting ''qualified disaster assistance property'' for ''qualified property'' in clause (iv) thereof.

(D) Allowance against alternative minimum tax

For purposes of this subsection, rules similar to the rules of subsection (k)(2)(G) shall apply.

(3) Other definitions

For purposes of this subsection—

(A) Applicable disaster date

The term ''applicable disaster date'' means, with respect to any federally declared disaster, the date on which such federally declared disaster occurs.

(B) Federally declared disaster

The term ''federally declared disaster'' has the meaning given such term under section 165(h)(3)(C)(i).

(C) Disaster area

The term ''disaster area'' has the meaning given such term under section 165(h)(3)(C)(ii).

(D) Eligible taxpayer

The term ''eligible taxpayer'' means a taxpayer who has suffered an economic loss attributable to a federally declared disaster.

(4) Recapture

For purposes of this subsection, rules similar to the rules under section 179(d)(10) shall

apply with respect to any qualified disaster assistance property which ceases to be qualified disaster assistance property.

(Added Pub. L. 97–34, title II, § 201(a), Aug. 13, 1981, 95 Stat. 203; amended Pub. L. 97–248, title II, §§ 206, 208(a)(1), (2)(A), (b), 209(a), (b), 216(a), 224(c)(1), (2), Sept. 3, 1982, 96 Stat. 431, 432, 435, 442, 445, 470, 489; Pub. L. 97–354, § 5(a)(19), (20), Oct. 19, 1982, 96 Stat. 1693, 1694; Pub. L. 97–424, title V, § 541(a)(1), Jan. 6, 1983, 96 Stat. 2192; Pub. L. 97–448, title I, § 102(a)(1)–(5), (8)–(10)(A), (f)(4), Jan. 12, 1983, 96 Stat. 2367, 2368, 2371; Pub. L. 98–369, div. A, title I, §§ 12(a)(3), 31(a), (d), 32(a), 111(a)–(e)(4), (9), 113(a)(2), (b)(1), (2)(A), title IV, § 474(r)(7), title VI, §§ 612(e)(4), (5), 628(b), July 18, 1984, 98 Stat. 503, 509, 518, 530, 631–633, 636, 637, 840, 912, 931; Pub. L. 99–121, title I, § 103(a), (b)(1)(A), (2)–(4), Oct. 11, 1985, 99 Stat. 509; Pub. L. 99–514, title II, § 201(a), title XVIII, §§ 1802(a)(1)–(2)(E)(i), (G), (3), (4)(A), (B), (7), (b)(1), 1809(a)(1)–(2)(C)(i), (4)(A), (B), (b)(1), (2), Oct. 22, 1986, 100 Stat. 2121, 2786–2789, 2791, 2818–2821; Pub. L. 100–647, title I, §§ 1002(a)(5)–(8), (11), (16)(B), (21), (23)(A), (i)(2)(A)–(G), 1018(b)(2), title VI, §§ 6027(a), (b), 6028(a), 6029(a)–(c), 6253, Nov. 10, 1988, 102 Stat. 3353–3356, 3370, 3371, 3577, 3693, 3694, 3753; Pub. L. 101–239, title VII, § 7816(e), (f), (w), Dec. 19, 1989, 103 Stat. 2421, 2423; Pub. L. 101–508, title XI, §§ 11801(c)(8)(B), 11812(b)(2), 11813(b)(9), Nov. 5, 1990, 104 Stat. 1388–524, 1388–534, 1388–552; Pub. L. 103–66, title XIII, §§ 13151(a), 13321(a), Aug. 10, 1993, 107 Stat. 448, 558; Pub. L. 104–88, title III, § 304(a), Dec. 29, 1995, 109 Stat. 943; Pub. L. 104–188, title I, §§ 1120(a), (b), 1121(a), 1613(b)(1)–(4), 1702(h)(1), 1704(t)(54), Aug. 20, 1996, 110 Stat. 1765, 1766, 1850, 1873, 1890; Pub. L. 105–34, title X, § 1086(b), title XII, § 1213(c), title XVI, § 1604(c)(1), Aug. 5, 1997, 111 Stat. 957, 1001, 1097; Pub. L. 105–206, title VI, § 6006(b), July 22, 1998, 112 Stat. 806; Pub. L. 107–147, title I, § 101(a), title VI, § 613(b), Mar. 9, 2002, 116 Stat. 22, 61; Pub. L. 108–27, title II, § 201(a)–(c)(1), May 28, 2003, 117 Stat. 756, 757; Pub. L. 108–311, title III, § 316, title IV, §§ 403(a), 408(a)(6), (8), Oct. 4, 2004, 118 Stat. 1181, 1186, 1191; Pub. L. 108–357, title II, § 211(a)–(e), title III, §§ 336(a), (b), 337(a), title VII, §§ 704(a), (b), 706(a)–(c), title VIII, §§ 847(a), (c)–(e), 901(a)–(c), Oct. 22, 2004, 118 Stat. 1429, 1430, 1479, 1480, 1548–1550, 1601, 1602, 1650; Pub. L. 109–58, title XIII, §§ 1301(f)(5), 1308(a), (b), 1325(a), (b), 1326(a)–(c), Aug. 8, 2005, 119 Stat. 990, 1006, 1016, 1017; Pub. L. 109–135, title IV, §§ 403(j), 405(a)(1), 410(a), 412(s), Dec. 21, 2005, 119 Stat. 2625, 2634, 2636, 2638; Pub. L. 109–432, div. A, title I, §§ 112(a), 113(a), title II, § 209(a), Dec. 20, 2006, 120 Stat. 2940, 2946; Pub. L. 110–172, § 11(b)(1), Dec. 29, 2007, 121 Stat. 2488; Pub. L. 110–185, title I, § 103(a)–(c)(7), (11), (12), Feb. 13, 2008, 122 Stat. 618, 619; Pub. L. 110–234, title XV, § 15344(a), May 22, 2008, 122 Stat. 1520; Pub. L. 110–246, § 4(a), title XV, § 15344(a), June 18, 2008, 122 Stat. 1664, 2282; Pub. L. 110–289, div. C, title III, § 3081(a), July 30, 2008, 122 Stat. 2903; Pub. L. 110–343, div. B, title II, § 201(a), (b), title III, §§ 306(a)–(c), 308(a), div. C, title III, §§ 305(a)(1), (b)(1), (c)(1)–(4), 315(a), 317(a), title V, § 505(a), (b), title VII, § 710(a), Oct. 3, 2008, 122 Stat. 3832, 3848, 3849, 3867, 3868, 3872, 3873, 3879, 3926; Pub. L. 111–5, div. B, title I, § 1201(a)(1), (2)(A)–(D), (3)(A), (b)(1), Feb. 17, 2009, 123 Stat. 333, 334; Pub. L. 111–240, title II, § 2022(a)–(b)(5), Sept. 27, 2010, 124 Stat. 2558; Pub. L. 111–312, title IV, § 401(a)–(d)(5), title VII, §§ 737(a)–(b)(2), 738(a), 739(a), Dec. 17, 2010, 124 Stat. 3304–3306, 3318, 3319.)

REFERENCES IN TEXT

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsecs. (e)(3)(B)(vi)(II), (III), (g)(4)(K), and (i)(1), is the date of enactment of Pub. L. 101–508, which was approved Nov. 5, 1990.

Section 168(e) as in effect before the amendments made by the Tax Reform Act of 1986, referred to in subsec. (f)(5)(A)(i), is subsec. (e) of this section prior to the general amendment of this section by Pub. L. 99–514.

The date of the enactment of this paragraph, referred to in subsec. (f)(5)(B)(ii)(I), probably means the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

The Tax Reform Act of 1986, referred to in subsecs. (f)(5)(B)(iii), (C) and (i)(7)(A), is Pub. L. 99–514, section 201(a) of which amended this section generally.

The Communications Satellite Act of 1962, referred to in subsec. (i)(10)(C), is Pub. L. 87–624, Aug. 31, 1962, 76 Stat. 419, as amended, which is classified generally to chapter 6 (§ 701 et seq.) of Title 47, Telegraphs, Telephones, and Radiotelegraphs. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 47 and Tables.

The date of the enactment of this sentence, referred to in subsec. (j)(6), is the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

The date of the enactment of this paragraph, referred to in subsec. (j)(7), is the date of enactment of Pub. L. 103–66, which was approved Aug. 10, 1993.

Section 1201(a), (b)(1) of the American Recovery and Reinvestment Tax Act of 2009, referred to in subsec. (k)(4)(H)(iii), is section 1201(a), (b)(1) of Pub. L. 111–5, which amended this section and sections 1400N and 6211 of this title.

Section 401(a), (c)(1) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, referred to in subsec. (k)(4)(I)(iv), is section 401(a), (c)(1) of Pub. L. 111–312, which amended this section.

The date of the enactment of this subsection and the date of the enactment of subsection (*l*), referred to in subsec. (*l*)(2)(B), (C), (5)(A), is the date of enactment of Pub. L. 109–432, which was approved Dec. 20, 2006.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

PRIOR PROVISIONS

A prior section 168, acts Aug. 16, 1954, ch. 746, 68A Stat. 52; Aug. 26, 1957, Pub. L. 85–165, § 4, 71 Stat. 414; Sept. 2, 1958, Pub. L. 85–866, title I, § 9(a), (b), 72 Stat. 1608, 1609, related to deductions with respect to amortization of emergency facilities, prior to repeal by Pub. L. 94–455, title XIX, § 1951(b)(4)(A), Oct. 4, 1976, 90 Stat. 1837.

Section 1951(b)(4)(B) of Pub. L. 94–455 provided that: ''Notwithstanding the repeal made by subparagraph (A) [repealing former section 168], if a certificate was issued before January 1, 1960, with respect to an emergency facility which is or has been placed in service before the date of the enactment of this Act [Oct. 4, 1976], the provisions of [former] section 168 shall not, with respect to such facility, be considered repealed. The benefit of deductions by reason of the preceding sentence shall be allowed to estates and trusts in the same manner as in the case of an individual. The allowable deduction shall be apportioned between the income beneficiaries and the fiduciary in accordance with regulations prescribed under section 642(f).''

AMENDMENTS

2010—Subsec. (e)(3)(E)(iv), (v), (ix). Pub. L. 111–312, § 737(a), substituted ''January 1, 2012'' for ''January 1, 2010''.

Subsec. (e)(7)(A)(i). Pub. L. 111–312, § 737(b)(1), struck out ''if such building is placed in service after December 31, 2008, and before January 1, 2010,'' after ''building,''.

Subsec. (e)(8)(E). Pub. L. 111–312, § 737(b)(2), struck out subpar. (E). Text read as follows: ''Such term shall not include any improvement placed in service after December 31, 2009.''

Subsec. (i)(15)(D). Pub. L. 111–312, § 738(a), substituted ''December 31, 2011'' for ''December 31, 2009''.

Subsec. (j)(8). Pub. L. 111–312, § 739(a), substituted ''December 31, 2011'' for ''December 31, 2009''.

Subsec. (k). Pub. L. 111–312, § 401(d)(1), substituted ''January 1, 2013'' for ''January 1, 2011'' in heading.

Pub. L. 111–240, § 2022(b)(1), substituted ''January 1, 2011'' for ''January 1, 2010'' in heading.

Subsec. (k)(2)(A)(iii). Pub. L. 111–312, § 401(a)(2), substituted ''January 1, 2013'' for ''January 1, 2011'' in subcls. (I) and (II).

Pub. L. 111–240, § 2022(a)(2), substituted ''January 1, 2011'' for ''January 1, 2010'' in subcls. (I) and (II).

Subsec. (k)(2)(A)(iv). Pub. L. 111–312, § 401(a), substituted ''January 1, 2013'' for ''January 1, 2011'' and ''January 1, 2014'' for ''January 1, 2012''.

Pub. L. 111–240, § 2022(a), substituted ''January 1, 2011'' for ''January 1, 2010'' and ''January 1, 2012'' for ''January 1, 2011''.

Subsec. (k)(2)(B)(ii). Pub. L. 111–312, § 401(a)(2), (d)(2), substituted ''pre-January 1, 2013'' for ''pre-January 1, 2011'' in heading and ''January 1, 2013'' for ''January 1, 2011'' in text.

Pub. L. 111–240, § 2022(a)(2), (b)(2), substituted ''pre-January 1, 2011'' for ''pre-January 1, 2010'' in heading and ''January 1, 2011'' for ''January 1, 2010'' in text.

Subsec. (k)(2)(E)(i). Pub. L. 111–312, § 401(a)(2), substituted ''January 1, 2013'' for ''January 1, 2011''.

Pub. L. 111–240, § 2022(a)(2), substituted ''January 1, 2011'' for ''January 1, 2010''.

Subsec. (k)(4)(D)(ii). Pub. L. 111–312, § 401(d)(3)(B), inserted ''and'' at the end.

Subsec. (k)(4)(D)(iii). Pub. L. 111–312, § 401(d)(3)(C), substituted period for comma at the end.

Pub. L. 111–312, § 401(c)(1), substituted ''or production—'' for ''or production after March 31, 2008, and before January 1, 2010, shall be taken into account under subparagraph (B)(ii) thereof,'' and added subcls. (I) and (II) and concluding provisions.

Subsec. (k)(4)(D)(iv), (v). Pub. L. 111–312, § 401(d)(3)(A), struck out cls. (iv) and (v) which read as follows:

''(iv) 'January 1, 2011' shall be substituted for 'January 1, 2012' in subparagraph (A)(iv) thereof, and

''(v) 'January 1, 2010' shall be substituted for 'January 1, 2011' each place it appears in subparagraph (A) thereof.''

Pub. L. 111–240, § 2022(b)(3), added cls. (iv) and (v).

Subsec. (k)(4)(I). Pub. L. 111–312, § 401(c)(2), added subpar. (I).

Subsec. (k)(5). Pub. L. 111–312, § 401(b), added par. (5).

Subsec. (*l*)(5)(A). Pub. L. 111–312, § 401(d)(4)(A), inserted ''and'' at the end.

Subsec. (*l*)(5)(B). Pub. L. 111–312, § 401(d)(4)(B), (C), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: ''by substituting 'January 1, 2013' for 'January 1, 2011' in clause (i) thereof, and''.

Pub. L. 111–240, § 2022(b)(4), substituted ''January 1, 2011'' for ''January 1, 2010''.

Subsec. (*l*)(5)(C). Pub. L. 111–312, § 401(d)(4)(C), redesignated subpar. (C) as (B).

Subsec. (n)(2)(C)(ii). Pub. L. 111–312, § 401(d)(5), substituted ''January 1, 2013'' for ''January 1, 2011''.

Pub. L. 111–240, § 2022(b)(5), substituted ''January 1, 2011'' for ''January 1, 2010''.

2009—Subsec. (k). Pub. L. 111–5, § 1201(a)(2)(A), substituted ''January 1, 2010'' for ''January 1, 2009'' in heading.

Subsec. (k)(2)(A)(iii)(I), (II). Pub. L. 111–5, § 1201(a)(1)(B), substituted ''January 1, 2010'' for ''January 1, 2009''.

Subsec. (k)(2)(A)(iv). Pub. L. 111–5, § 1201(a)(1), substituted ''January 1, 2010,'' for ''January 1, 2009,'' and ''January 1, 2011.'' for ''January 1, 2010.''

Subsec. (k)(2)(B)(ii). Pub. L. 111–5, § 1201(a)(1)(B), (2)(B), substituted ''pre-January 1, 2010'' for ''pre-January 1, 2009'' in heading and ''January 1, 2010'' for ''January 1, 2009'' in text.

Subsec. (k)(2)(E)(i). Pub. L. 111–5, § 1201(a)(1)(B), substituted ''January 1, 2010'' for ''January 1, 2009''.

Subsec. (k)(4)(D)(ii). Pub. L. 111–5, § 1201(a)(3)(A)(i), (iii), added cl. (ii). Former cl. (ii) redesignated (iii).

Subsec. (k)(4)(D)(iii). Pub. L. 111–5, § 1201(b)(1)(A), substituted ''2010'' for ''2009''.

Pub. L. 111–5, § 1201(a)(3)(A)(ii), redesignated cl. (ii) as (iii).

Subsec. (k)(4)(H). Pub. L. 111–5, § 1201(b)(1)(B), added subpar. (H).

Subsec. (*l*)(5)(B). Pub. L. 111–5, § 1201(a)(2)(C), substituted ''January 1, 2010'' for ''January 1, 2009''.

Subsec. (n)(2)(C)(ii). Pub. L. 111–5, § 1201(a)(2)(D), substituted ''January 1, 2010'' for ''January 1, 2009''.

2008—Subsec. (b)(2)(C), (D). Pub. L. 110–343, § 306(c), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (b)(3)(I). Pub. L. 110–343, § 305(c)(3), added subpar. (I).

Subsec. (e)(3)(A)(i). Pub. L. 110–246, § 15344(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''any race horse which is more than 2 years old at the time it is placed in service,''.

Subsec. (e)(3)(B)(vii). Pub. L. 110–343, § 505(a), added cl. (vii).

Subsec. (e)(3)(D)(iii), (iv). Pub. L. 110–343, § 306(a), added cls. (iii) and (iv).

Subsec. (e)(3)(E)(iv), (v). Pub. L. 110–343, § 305(a)(1), substituted ''January 1, 2010'' for ''January 1, 2008''.

Subsec. (e)(3)(E)(ix). Pub. L. 110–343, § 305(c)(1), added cl. (ix).

Subsec. (e)(7). Pub. L. 110–343, § 305(b)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'qualified restaurant property' means any section 1250 property which is an improvement to a building if—

''(A) such improvement is placed in service more than 3 years after the date such building was first placed in service, and

''(B) more than 50 percent of the building's square footage is devoted to preparation of, and seating for on-premises consumption of, prepared meals.''

Subsec. (e)(8). Pub. L. 110–343, § 305(c)(2), added par. (8).

Subsec. (g)(3)(B). Pub. L. 110–343, § 505(b), inserted table item relating to subpar. (B)(vii).

Pub. L. 110–343, § 305(c)(4), inserted table item relating to subpar. (E)(ix).

Subsec. (i)(15)(D). Pub. L. 110–343, § 317(a), substituted ''December 31, 2009'' for ''December 31, 2007''.

Subsec. (i)(18), (19). Pub. L. 110–343, § 306(b), added pars. (18) and (19).

Subsec. (j)(8). Pub. L. 110–343, § 315(a), substituted ''December 31, 2009'' for ''December 31, 2007''.

Subsec. (k). Pub. L. 110–185, § 103(c)(11), substituted ''December 31, 2007'' for ''September 10, 2001'' and ''January 1, 2009'' for ''January 1, 2005'' in heading.

Pub. L. 110–185, § 103(a)(1), (3), substituted ''December 31, 2007'' for ''September 10, 2001'' and ''January 1, 2009'' for ''January 1, 2005'' wherever appearing in text.

Subsec. (k)(1)(A). Pub. L. 110–185, § 103(b), substituted ''50 percent'' for ''30 percent''.

Subsec. (k)(2)(A)(iii)(I). Pub. L. 110–185, § 103(a)(2), substituted ''January 1, 2008'' for ''September 11, 2001''.

Subsec. (k)(2)(A)(iv). Pub. L. 110–185, § 103(a)(4), substituted ''January 1, 2010'' for ''January 1, 2006''.

Subsec. (k)(2)(B)(i)(I). Pub. L. 110–185, § 103(c)(1), substituted ''(iii), and (iv)'' for ''and (iii)''.

Subsec. (k)(2)(B)(i)(IV). Pub. L. 110–185, § 103(c)(2), which directed substitution of ''clause (iii)'' for ''clauses (ii) and (iii)'', was executed by substituting ''clause (iii)'' for ''clause (ii) or (iii)'' to reflect the probable intent of Congress.

Subsec. (k)(2)(B)(ii). Pub. L. 110–185, § 103(c)(12), substituted ''pre-January 1, 2009'' for ''pre-January 1, 2005'' in heading.

Subsec. (k)(2)(C)(i). Pub. L. 110–185, §103(c)(3), substituted ‘‘, (iii), and (iv)’’ for ‘‘and (iii)’’.

Subsec. (k)(2)(D)(iii). Pub. L. 110–185, §103(c)(5)(B), struck out last sentence which read as follows: ‘‘The preceding sentence shall be applied separately with respect to property treated as qualified property by paragraph (4) and other qualified property.’’

Subsec. (k)(2)(F)(i). Pub. L. 110–185, §103(c)(4), substituted ‘‘$8,000’’ for ‘‘$4,600’’.

Subsec. (k)(4). Pub. L. 110–289 added par. (4).

Pub. L. 110–185, §103(c)(5)(A), struck out par. (4) which related to treatment of 50-percent bonus depreciation for certain property.

Subsec. (k)(4)(B)(iii). Pub. L. 110–185, §103(a)(4), substituted ‘‘January 1, 2010’’ for ‘‘January 1, 2006’’.

Subsec. (*l*). Pub. L. 110–343, §201(b)(1), (2), substituted ‘‘cellulosic biofuel’’ for ‘‘cellulosic biomass ethanol’’ in heading and wherever appearing in text.

Subsec. (*l*)(2). Pub. L. 110–343, §201(b)(3), substituted ‘‘cellulosic biofuel’’ for ‘‘cellulosic biomass ethanol’’ in heading.

Subsec. (*l*)(3). Pub. L. 110–343, §201(a), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ‘‘For purposes of this subsection, the term ‘cellulosic biomass ethanol’ means ethanol produced by hydrolysis of any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis.’’

Subsec. (*l*)(4). Pub. L. 110–185, §103(c)(6), added subpar. (A) and redesignated former subpars. (A) to (C) as (B) to (D), respectively.

Subsec. (*l*)(5)(A). Pub. L. 110–185, §103(c)(7)(A), substituted ‘‘December 31, 2007’’ for ‘‘September 10, 2001’’.

Subsec. (*l*)(5)(B). Pub. L. 110–185, §103(c)(7)(B), substituted ‘‘January 1, 2009’’ for ‘‘January 1, 2005’’.

Subsec. (m). Pub. L. 110–343, §308(a), added subsec. (m).

Subsec. (n). Pub. L. 110–343, §710(a), added subsec. (n).

2007—Subsec. (*l*)(3). Pub. L. 110–172 struck out ‘‘enzymatic’’ before ‘‘hydrolysis’’.

2006—Subsec. (e)(3)(E)(iv), (v). Pub. L. 109–432, §113(a), substituted ‘‘2008’’ for ‘‘2006’’.

Subsec. (j)(8). Pub. L. 109–432, §112(a), substituted ‘‘2007’’ for ‘‘2005’’.

Subsec. (*l*). Pub. L. 109–432, §209(a), added subsec. (*l*).

2005—Subsec. (e)(3)(B)(vi)(I). Pub. L. 109–135, §410(a), substituted ‘‘if ‘solar or wind energy’ were substituted for ‘solar energy’ in clause (i) thereof’’ for ‘‘if ‘solar and wind’ were substituted for ‘solar’ in clause (i) thereof’’.

Pub. L. 109–58, §1301(f)(5), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ‘‘is described in subparagraph (A) of section 48(a)(3) (or would be so described if ‘solar and wind’ were substituted for ‘solar’ in clause (i) thereof),’’.

Subsec. (e)(3)(C)(iv), (v). Pub. L. 109–58, §1326(a), added cl. (iv) and redesignated former cl. (iv) as (v).

Subsec. (e)(3)(E)(vii). Pub. L. 109–58, §1308(a), added cl. (vii).

Subsec. (e)(3)(E)(viii). Pub. L. 109–58, §1325(a), added cl. (viii).

Subsec. (g)(3)(B). Pub. L. 109–58, §1326(c), inserted table item relating to subpar. (C)(iv).

Pub. L. 109–58, §1325(b), inserted table item relating to subpar. (E)(viii).

Pub. L. 109–58, §1308(b), inserted table item relating to subpar. (E)(vii).

Subsec. (i)(15)(D). Pub. L. 109–135, §412(s), substituted ‘‘Such term shall not include’’ for ‘‘This paragraph shall not apply to’’.

Subsec. (i)(17). Pub. L. 109–58, §1326(b), added par. (17).

Subsec. (k)(2)(A)(iv). Pub. L. 109–135, §403(j)(1), substituted ‘‘subparagraph (B) or (C)’’ for ‘‘subparagraphs (B) and (C)’’.

Subsec. (k)(4)(B)(ii). Pub. L. 109–135, §405(a)(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ‘‘which is acquired by the taxpayer after May 5, 2003, and before January 1, 2005, but only if no written binding contract for the acquisition was in effect before May 6, 2003, and’’.

Subsec. (k)(4)(B)(iii). Pub. L. 109–135, §403(j)(2), substituted ‘‘or paragraph (2)(C) (as so modified)’’ for ‘‘and paragraph (2)(C)’’.

2004—Subsec. (b)(2)(A). Pub. L. 108–357, §211(d)(2), inserted ‘‘not referred to in paragraph (3)’’ before comma at end.

Subsec. (b)(3)(G), (H). Pub. L. 108–357, §211(d)(1), added subpars. (G) and (H).

Subsec. (e)(3)(C)(ii). Pub. L. 108–357, §704(a), added cl. (ii). Former cl. (ii) redesignated (iii).

Subsec. (e)(3)(C)(iii). Pub. L. 108–357, §706(a), added cl. (iii). Former cl. (iii) redesignated (iv).

Pub. L. 108–357, §704(a), redesignated cl. (ii) as (iii).

Subsec. (e)(3)(C)(iv). Pub. L. 108–357, §706(a), redesignated cl. (iii) as (iv).

Subsec. (e)(3)(E)(iv), (v). Pub. L. 108–357, §211(a), added cls. (iv) and (v).

Subsec. (e)(3)(E)(vi). Pub. L. 108–357, §901(a), added cl. (vi).

Subsec. (e)(3)(F). Pub. L. 108–357, §901(b), added subpar. (F).

Subsec. (e)(6), (7). Pub. L. 108–357, §211(b), (c), added pars. (6) and (7).

Subsec. (g)(3)(A). Pub. L. 108–357, §847(a), inserted ‘‘(notwithstanding any other subparagraph of this paragraph)’’ after ‘‘shall’’.

Subsec. (g)(3)(B). Pub. L. 108–357, §901(c), inserted table items relating to subpars. (E)(vi) and (F).

Pub. L. 108–357, §706(c), which directed amendment of table by inserting item relating to subpar. (C)(iii) after item relating to subpar. (C)(ii), was executed by making the insertion after item relating to subpar. (C)(i) to reflect the probable intent of Congress.

Pub. L. 108–357, §211(e), inserted table items relating to subpars. (E)(iv) and (E)(v).

Subsec. (h)(2)(A). Pub. L. 108–357, §847(e), added cl. (iv) and concluding provisions.

Subsec. (h)(3)(A). Pub. L. 108–357, §847(d), inserted at end ‘‘Notwithstanding subsection (i)(3)(A)(i), in determining a lease term for purposes of the preceding sentence, there shall not be taken into account any option of the lessee to renew at the fair market value rent determined at the time of renewal; except that the aggregate period not taken into account by reason of this sentence shall not exceed 24 months.’’

Subsec. (i)(3)(A)(ii), (iii). Pub. L. 108–357, §847(c), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (i)(15). Pub. L. 108–357, §704(b), added par. (15).

Subsec. (i)(16). Pub. L. 108–357, §706(b), added par. (16).

Subsec. (j)(8). Pub. L. 108–311, §316, substituted ‘‘2005’’ for ‘‘2004’’.

Subsec. (k)(2)(A)(iv). Pub. L. 108–357, §336(a)(2), substituted ‘‘subparagraphs (B) and (C)’’ for ‘‘subparagraph (B)’’.

Subsec. (k)(2)(B)(i). Pub. L. 108–311, §403(a)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ‘‘The term ‘qualified property’ includes property—

‘‘(I) which meets the requirements of clauses (i), (ii), and (iii) of subparagraph (A),

‘‘(II) which has a recovery period of at least 10 years or is transportation property, and

‘‘(III) which is subject to section 263A by reason of clause (ii) or (iii) of subsection (f)(1)(B) thereof.’’

Subsec. (k)(2)(B)(iv). Pub. L. 108–357, §336(b)(1), added cl. (iv).

Subsec. (k)(2)(C). Pub. L. 108–357, §336(a)(1), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (k)(2)(D). Pub. L. 108–357, §336(a)(1), redesignated subpar. (C) as (D). Former subpar. (D) redesignated (E).

Subsec. (k)(2)(D)(ii). Pub. L. 108–311, §408(a)(6)(A), inserted ‘‘is’’ after ‘‘if property’’ in introductory provisions.

Pub. L. 108–311, §403(a)(2)(B), inserted ‘‘clause (iii) and’’ before ‘‘subparagraph (A)(ii)’’ in introductory provisions.

Subsec. (k)(2)(D)(ii)(I). Pub. L. 108–311, §408(a)(6)(B), struck out ‘‘is’’ before ‘‘originally’’.

Subsec. (k)(2)(D)(iii), (iv). Pub. L. 108–311, §403(a)(2)(A), added cls. (iii) and (iv).

Subsec. (k)(2)(E). Pub. L. 108–357, §336(a)(1), redesignated subpar. (D) as (E). Former subpar. (E) redesignated (F).

Subsec. (k)(2)(E)(iii)(II). Pub. L. 108–357, §337(a), which directed amendment of subcl. (II) by inserting before comma at end ''(or, in the case of multiple units of property subject to the same lease, within 3 months after the date the final unit is placed in service, so long as the period between the time the first unit is placed in service and the time the last unit is placed in service does not exceed 12 months)'', was executed by making the insertion before '', and'' to reflect the probable intent of Congress.

Subsec. (k)(2)(F). Pub. L. 108–357, §336(a)(1), redesignated subpar. (E) as (F). Former subpar. (F) redesignated (G).

Pub. L. 108–311, §408(a)(8), substituted ''minimum'' for ''miniumum'' in heading.

Subsec. (k)(2)(G). Pub. L. 108–357, §336(a)(1), redesignated subpar. (F) as (G).

Subsec. (k)(4)(A)(ii). Pub. L. 108–357, §336(b)(2), substituted ''paragraph (2)(D)'' for ''paragraph (2)(C)''.

Subsec. (k)(4)(B)(iii). Pub. L. 108–357, §336(b)(3), inserted ''and paragraph (2)(C)'' after ''of this paragraph)''.

Subsec. (k)(4)(C). Pub. L. 108–357, §336(b)(4), substituted ''subparagraphs (B), (C), and (E)'' for ''subparagraphs (B) and (D)''.

Subsec. (k)(4)(D). Pub. L. 108–357, §336(b)(5), substituted ''Paragraph (2)(F)'' for ''Paragraph (2)(E)''.

2003—Subsec. (k). Pub. L. 108–27, §201(c)(1), substituted ''January 1, 2005'' for ''September 11, 2004'' in heading.

Subsec. (k)(2)(A)(iii). Pub. L. 108–27, §201(b)(2), substituted ''January 1, 2005'' for ''September 11, 2004'' in subcls. (I) and (II).

Subsec. (k)(2)(B)(ii). Pub. L. 108–27, §201(b)(1), substituted ''pre-January 1, 2005'' for ''pre-September 11, 2004'' in heading and ''January 1, 2005'' for ''September 11, 2004'' in text.

Subsec. (k)(2)(C)(iii). Pub. L. 108–27, §201(b)(3), inserted at end ''The preceding sentence shall be applied separately with respect to property treated as qualified property by paragraph (4) and other qualified property.''

Subsec. (k)(2)(D)(i). Pub. L. 108–27, §201(b)(1)(A), substituted ''January 1, 2005'' for ''September 11, 2004''.

Subsec. (k)(4). Pub. L. 108–27, §201(a), added par. (4).

2002—Subsec. (j)(8). Pub. L. 107–147, §613(b), substituted ''December 31, 2004'' for ''December 31, 2003''.

Subsec. (k). Pub. L. 107–147, §101(a), added subsec. (k).

1998—Subsec. (c). Pub. L. 105–206, §6006(b)(2), reenacted subsec. heading without change and substituted ''For purposes of this section, the applicable recovery period shall be determined in accordance with the following table:'' for ''For purposes of this section—

''(1) IN GENERAL.—Except as provided in paragraph (2), the applicable recovery period shall be determined in accordance with the following table:''.

Subsec. (c)(2). Pub. L. 105–206, §6006(b)(1), struck out heading and text of par. (2). Text read as follows: ''In the case of property to which an election under subsection (b)(2)(C) applies, the applicable recovery period shall be determined under the table contained in subsection (g)(2)(C).''

1997—Subsec. (e)(3)(A)(iii). Pub. L. 105–34, §1086(b)(1), added cl. (iii).

Subsec. (g)(3)(B). Pub. L. 105–34, §1086(b)(2), inserted table item relating to subpar. (A)(iii).

Subsec. (i)(8)(C). Pub. L. 105–34, §1213(c), added subpar. (C).

Subsec. (i)(14). Pub. L. 105–34, §1086(b)(3), added par. (14).

Subsec. (j)(6). Pub. L. 105–34, §1604(c)(1), inserted concluding provisions ''For purposes of the preceding sentence, such section 3(d) shall be applied by treating the term 'former Indian reservations in Oklahoma' as including only lands which are within the jurisdictional area of an Oklahoma Indian tribe (as determined by the Secretary of the Interior) and are recognized by such Secretary as eligible for trust land status under 25 CFR Part 151 (as in effect on the date of the enactment of this sentence).''

1996—Subsec. (b)(3)(F). Pub. L. 104–188, §1613(b)(1), added subpar. (F).

Subsec. (c)(1). Pub. L. 104–188, §1613(b)(2), inserted table item relating to water utility property.

Subsec. (e)(3)(B). Pub. L. 104–188, §1702(h)(1)(B), inserted closing provisions.

Subsec. (e)(3)(B)(vi)(I). Pub. L. 104–188, §1704(t)(54), provided that section 11813(b)(9)(A)(i) of Pub. L. 101–508 shall be applied as if a comma appeared after ''(3)(A)(ix)'' in the material proposed to be stricken. See 1990 Amendment note below.

Subsec. (e)(3)(B)(vi)(III). Pub. L. 104–188, §1702(h)(1)(A), added subcl. (III).

Subsec. (e)(3)(E)(iii). Pub. L. 104–188, §1120(a), added cl. (iii).

Subsec. (e)(3)(F). Pub. L. 104–188, §1613(b)(3)(B)(i), struck out subpar. (F) which read as follows: ''20-YEAR PROPERTY.—The term '20-year property' includes any municipal sewers.''

Subsec. (e)(5). Pub. L. 104–188, §1613(b)(3)(A), added par. (5).

Subsec. (g)(2)(C)(iv). Pub. L. 104–188, §1613(b)(4), inserted ''or water utility property'' after ''tunnel bore''.

Subsec. (g)(3)(B). Pub. L. 104–188, §1120(b), inserted table item relating to subpar. (E)(iii).

Pub. L. 104–188, §1613(b)(3)(B)(ii), struck out table item relating to subpar. (F) for which the class life was 50.

Subsec. (g)(4)(K). Pub. L. 104–188, §1702(h)(1)(C), substituted ''section 48(*l*)(3)(A)(ix) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)'' for ''section 48(a)(3)(A)(iii)''.

Subsec. (i)(8). Pub. L. 104–188, §1121(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''In the case of any building erected (or improvements made) on leased property, if such building or improvement is property to which this section applies, the depreciation deduction shall be determined under the provisions of this section.''

1995—Subsec. (g)(4)(B)(i). Pub. L. 104–88 substituted ''rail carrier subject to part A of subtitle IV'' for ''domestic railroad corporation providing transportation subject to subchapter I of chapter 105''.

1993—Subsec. (c)(1). Pub. L. 103–66, §13151(a), substituted ''39 years'' for ''31.5 years'' in table item relating to nonresidential real property.

Subsec. (j). Pub. L. 103–66, §13321(a), added subsec. (j).

1990—Subsec. (e)(2)(A). Pub. L. 101–508, §11812(b)(2)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''The term 'residential rental property' has the meaning given such term by section 167(j)(2)(B).''

Subsec. (e)(3)(B)(vi)(I). Pub. L. 101–508, §11813(b)(9)(A)(i), which directed the substitution of ''subparagraph (A) of section 48(a)(3) (or would be so described if 'solar and wind' were substituted for 'solar' in clause (i) thereof)'' for ''paragraph (3)(A)(viii), (3)(A)(ix) or (4) of section 48(*l*)'' was executed by making the substitution for ''paragraph (3)(A)(viii), (3)(A)(ix), or (4) of section 48(*l*)''. See 1996 Amendment note above.

Subsec. (e)(3)(B)(vi)(II). Pub. L. 101–508, §11813(b)(9)(A)(ii), inserted ''(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)'' after ''48(*l*)''.

Subsec. (e)(3)(D)(i). Pub. L. 101–508, §11813(b)(9)(B)(i), substituted ''subsection (i)(13)'' for ''section 48(p)''.

Subsec. (f)(2). Pub. L. 101–508, §11812(b)(2)(C), substituted ''subsection (i)(10)'' for ''section 167(*l*)(3)(A).''

Subsec. (g)(4). Pub. L. 101–508, §11813(b)(9)(C), substituted heading for one which read: ''Property used predominantly outside the United States'' and amended text generally. Prior to amendment, text read as follows: ''For purposes of this subsection, rules similar to the rules under section 48(a)(2) (including the exceptions contained in subparagraph (B) thereof) shall apply in determining whether property is used predominantly outside the United States. In addition to the exceptions contained in such subparagraph (B), there shall be excepted any satellite or other spacecraft (or

any interest therein) held by a United States person if such satellite or spacecraft was launched from within the United States.''

Subsec. (i)(1). Pub. L. 101–508, §11812(b)(2)(D), inserted at end ''The reference in this paragraph to subsection (m) of section 167 shall be treated as a reference to such subsection as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990.''

Subsec. (i)(7)(B)(i). Pub. L. 101–508, §11801(c)(8)(B), struck out, ''371(a), 374(a),'' after ''361,''.

Subsec. (i)(9)(A)(ii). Pub. L. 101–508, §11812(b)(2)(E), struck out ''(determined without regard to section 167(*l*))'' after ''section 167''.

Subsec. (i)(10). Pub. L. 101–508, §11812(b)(2)(B), amended par. (10) generally. Prior to amendment, par. (10) read as follows: ''The term 'public utility property' has the meaning given such term by section 167(*l*)(3)(A).''

Subsec. (i)(13). Pub. L. 101–508, §11813(b)(9)(B)(ii), added par. (13).

1989—Subsec. (b)(3)(D), (E). Pub. L. 101–239, §7816(f), redesignated subpar. (D), relating to property described in subsec. (e)(3)(D)(ii), as (E).

Subsec. (b)(5). Pub. L. 101–239, §7816(e)(1), substituted ''paragraph (2)(C)'' for ''paragraph (2)(B)''.

Subsec. (c)(2). Pub. L. 101–239, §7816(e)(2), substituted ''subsection (b)(2)(C)'' for ''subsection (b)(2)(B)''.

Subsec. (i)(1). Pub. L. 101–239, §7816(w), made clarifying amendment to directory language of Pub. L. 100–647, §6253, see 1988 Amendment note below.

1988—Subsec. (b)(2). Pub. L. 100–647, §1002(a)(11)(A), substituted ''150 percent declining balance method in certain cases'' for ''15-year and 20-year property'' in heading and amended text generally. Prior to amendment, text read as follows: ''In the case of 15-year and 20-year property, paragraph (1) shall be applied by substituting '150 percent' for '200 percent'.''

Subsec. (b)(2)(B), (C). Pub. L. 100–647, §6028(a), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (b)(3)(C). Pub. L. 100–647, §1002(i)(2)(B)(i), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (b)(3)(D). Pub. L. 100–647, §6029(b), added subpar. (D) relating to property described in subsec. (e)(3)(D)(ii).

Pub. L. 100–647, §1002(i)(2)(B)(i), redesignated subpar. (C), relating to property with respect to which the taxpayer elects under par. (5), as (D).

Subsec. (b)(5). Pub. L. 100–647, §1002(i)(2)(B)(ii), substituted ''paragraph (3)(D)'' for ''paragraph (3)(C)''.

Pub. L. 100–647, §1002(a)(11)(B), substituted ''paragraph (2)(B) or (3)(C)'' for ''paragraph (3)(C)''.

Subsec. (c). Pub. L. 100–647, §1002(a)(11)(C), amended subsec. (c) generally, designating existing provisions as par. (1) and adding par. (2).

Subsec. (c)(1). Pub. L. 100–647, §1002(i)(2)(A), inserted table item relating to any railroad grading or tunnel bore.

Subsec. (d)(2)(C). Pub. L. 100–647, §1002(i)(2)(D), added subpar. (C).

Subsec. (d)(3)(A)(i). Pub. L. 100–647, §1002(a)(5), struck out ''and which are'' after ''this section applies''.

Subsec. (d)(3)(B). Pub. L. 100–647, §1002(a)(23)(A), struck out ''real'' after ''Certain'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of subparagraph (A), nonresidential real property and residential rental property shall not be taken into account.''

Subsec. (d)(3)(B)(i). Pub. L. 100–647, §1002(i)(2)(E), substituted ''residential rental property, and railroad grading or tunnel bore'' for ''and residential rental property''.

Subsec. (e)(3)(B)(v). Pub. L. 100–647, §1002(a)(21), substituted ''any section 1245 property'' for ''any property''.

Subsec. (e)(3)(C). Pub. L. 100–647, §6027(b)(1)(C), redesignated cl. (iii) as (ii), and struck out former cl. (ii) which read as follows: ''any single-purpose agricultural or horticultural structure (within the meaning of section 48(p)), and''.

Subsec. (e)(3)(D). Pub. L. 100–647, §6029(a), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''The term '10-year property' includes any single purpose agricultural or horticultural structure (within the meaning of section 48(p)).''

Pub. L. 100–647, §6027(a), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (e)(3)(E), (F). Pub. L. 100–647, §6027(a), redesignated former subpars. (D) and (E) as (E) and (F), respectively.

Subsec. (e)(4). Pub. L. 100–647, §1002(i)(2)(C), added par. (4).

Subsec. (f)(4). Pub. L. 100–647, §1002(a)(16)(B), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''Any sound recording described in section 48(r)(5).''

Subsec. (f)(5)(B)(ii). Pub. L. 100–647, §1002(a)(6)(A)(i), substituted ''1st taxable year'' for ''1st full taxable year''.

Subsec. (f)(5)(B)(iii). Pub. L. 100–647, §1002(a)(6)(A)(ii), added cl. (iii).

Subsec. (f)(5)(C). Pub. L. 100–647, §100–647, §1002(a)(6)(B), added subpar. (C).

Subsec. (g)(2)(C). Pub. L. 100–647, §1002(i)(2)(F), added item (iv) in table.

Subsec. (g)(3)(B). Pub. L. 100–647, §6029(c), substituted ''(D)(i)'' for ''(D)'' and added item for ''(D)(ii)'' in table.

Pub. L. 100–647, §6027(b)(2), substituted ''(D)'' for ''(C)(ii)'', ''(E)(i)'' for ''(D)(i)'', ''(E)(ii)'' for ''(D)(ii)'', and ''(F)'' for ''(E)'' in table.

Subsec. (h)(2)(B). Pub. L. 100–647, §1002(a)(8), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows:

''(i) INCOME FROM PROPERTY SUBJECT TO UNITED STATES TAX.—Clause (iii) of subparagraph (A) shall not apply with respect to any property if more than 50 percent of the gross income for the taxable year derived by the foreign person or entity from the use of such property is—

''(I) subject to tax under this chapter, or

''(II) included under section 951 in the gross income of a United States shareholder for the taxable year with or within which ends the taxable year of the controlled foreign corporation in which such income was derived.

For purposes of the preceding sentence, any exclusion or exemption shall not apply for purposes of determining the amount of the gross income so derived, but shall apply for purposes of determining the portion of such gross income subject to tax under this chapter.

''(ii) MOVIES AND SOUND RECORDINGS.—Clause (iii) of subparagraph (A) shall not apply with respect to any qualified film (as defined in section 48(k)(1)(B)) or any sound recording (as defined in section 48(r)(5)).''

Subsec. (i)(1). Pub. L. 100–647, §6253, as amended by Pub. L. 101–239, §7816(w), amended par. (1) generally, substituting a single par. relating to class life for former subpar. (A) relating to class life generally, (B) relating to Secretarial authority, (C) relating to effect of modification, (D) prohibiting modification of assigned property before January 1, 1992, and (E) relating to assigned property and item.

Subsec. (i)(1)(E)(iii). Pub. L. 100–647, §1002(i)(2)(G), added cl. (iii), which provided: ''SPECIAL RULE FOR RAILROAD GRADING OR TUNNEL BORES.—In the case of any property which is a railroad grading or tunnel bore—

''(I) such property shall be treated as an assigned property,

''(II) the recovery period applicable to such property shall be treated as an assigned item, and

''(III) clause (ii) of subparagraph (D) shall not apply.''

Subsec. (i)(7)(A). Pub. L. 100–647, §1002(a)(7)(A), inserted at end ''In any case where this section as in effect before the amendments made by section 201 of the Tax Reform Act of 1986 applied to the property in the hands of the transferor, the reference in the preceding sentence to this section shall be treated as a reference to this section as so in effect.''

Subsec. (i)(7)(B). Pub. L. 100–647, §1002(a)(7)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The transactions described

in this subparagraph are any transaction described in section 332, 351, 361, 371(a), 374(a), 721, or 731. Subparagraph (A) shall not apply in the case of a termination of a partnership under section 708(b)(1)(B).''

Subsec. (i)(7)(D). Pub. L. 100–647, §1002(a)(7)(C), struck out subpar. (D) which read as follows: ''This paragraph shall not apply to any transaction to which subsection (f)(5) applies (relating to churning transactions).''

Subsec. (j)(9)(E). Pub. L. 100–647, §1018(b)(2), amended subpar. (E), as amended by section 1802(a)(2) of Pub. L. 99–514 and as in effect before the general amendment by section 201(a) of Pub. L. 99–514, by substituting ''this paragraph and paragraph (8)'' for ''this paragraph'' in cls. (i) and (ii)(I) and by striking out cl. (iii) and inserting a new cl. (iii) which read as follows: ''TAX-EXEMPT CONTROLLED ENTITY.—

''(I) IN GENERAL.—The term 'tax-exempt controlled entity' means any corporation (which is not a tax-exempt entity determined without regard to this subparagraph and paragraph (4)(E)) if 50 percent or more (in value) of the stock in such corporation is held by 1 or more tax-exempt entities (other than a foreign person or entity).

''(II) ONLY 5-PERCENT SHAREHOLDERS TAKEN INTO ACCOUNT IN CASE OF PUBLICLY TRADED STOCK.—For purposes of subclause (I), in the case of a corporation the stock of which is publicly traded on an established securities market, stock held by a tax-exempt entity shall not be taken into account unless such entity holds at least 5 percent (in value) of the stock in such corporation. For purposes of this subclause, related entities (within the meaning of paragraph (7)) shall be treated as 1 entity.

''(III) SECTION 318 TO APPLY.—For purposes of this clause, a tax-exempt entity shall be treated as holding stock which it holds through application of section 318 (determined without regard to the 50-percent limitation contained in subsection (a)(2)(C) thereof).''

1986—Pub. L. 99–514, §201(a), amended section generally, applicable, with exceptions enumerated in sections 203, 204, and 251(d) of Pub. L. 99–514 [set out as notes below and under section 46 of this title], to property placed in service after Dec. 31, 1986, modifying existing accelerated cost recovery system by substituting new subsecs. (a) to (i) for former subsecs. (a) to (k). See following paragraphs of 1986 Amendment note for amendments to former text by sections 1802 and 1809 of Pub. L. 99–514.

Subsec. (b)(2)(A). Pub. L. 99–514, §1809(a)(2)(A)(i)(I), struck out closing provisions relating to determination, in the case of 19-year real property, of applicable percentage in taxable year in which the property is placed in service.

Subsec. (b)(2)(B). Pub. L. 99–514, §1809(a)(2)(A)(i)(II), substituted ''Mid-month convention for 19-year real property'' for ''Special rule for year of disposition'' in heading and amended text generally, substituting ''In the case of 19-year real property, the amount of the deduction determined under any provision of this section (or for purposes of section 57(a)(12)(B) or 312(k)) for any taxable year shall be determined on the basis of the number of months (using a mid-month convention) in which the property is in service.'' for prior provisions.

Subsec. (b)(3)(A). Pub. L. 99–514, §1809(a)(1)(A), which directed that the table be amended by striking ''and low-income housing'' in last item, was executed by striking ''and low-income housing'' after ''19-year real property'' in next-to-the-last item, to reflect the probable intent of Congress, because that phrase did not appear in last item.

Pub. L. 99–514, §1809(a)(1)(B), inserted at the end item for low-income housing with recovery periods of 15, 35, or 45 years.

Subsec. (b)(4)(B). Pub. L. 99–514, §1809(a)(2)(B), substituted ''Monthly convention'' for ''Special rule for year of disposition'' in heading and amended text generally, substituting ''In the case of low-income housing, the amount of the deduction determined under any provision of this section (or for purposes of section 57(a)(12)(B) or 312(k)) for any taxable year shall be determined on the basis of the number of months (treating all property placed in service or disposed of during any month as placed in service or disposed of on the first day of such month) in which the property is in service.'' for prior provisions.

Subsec. (f)(2)(B). Pub. L. 99–514, §1809(a)(2)(A)(ii), redesignated existing provisions as entire subpar. (B), struck out ''(i) In general'', redesignated subcls. (I) and (II) as cls. (i) and (ii), and in cl. (ii) struck out ''(taking into account the next to the last sentence of subsection (b)(2)(A))'' after ''assign percentages'' and struck out heading, ''(ii) Special rule for disposition'' and text, ''In the case of a disposition of 19-year real property or low-income housing described in clause (i), subsection (b)(2)(B) shall apply.''

Subsec. (f)(10)(A). Pub. L. 99–514, §1809(b)(1), amended subpar. (A) generally, substituting ''In the case of recovery property transferred in a transaction described in subparagraph (B), for purposes of computing the deduction allowable under subsection (a) with respect to so much of the basis in the hands of the transferee as does not exceed the adjusted basis in the hands of the transferor—

''(i) if the transaction is described in subparagraph (B)(i), the transferee shall be treated in the same manner as the transferor, or

''(ii) if the transaction is described in clause (ii) or (iii) of subparagraph (B) and the transferor made an election with respect to such property under subsection (b)(3) or (f)(2)(C), the transferee shall be treated as having made the same election (or its equivalent).''

for prior provisions.

Subsec. (f)(10)(B). Pub. L. 99–514, §1809(b)(2), inserted at end ''Clause (i) shall not apply in the case of the termination of a partnership under section 708(b)(1)(B).''

Subsec. (f)(12)(B)(ii). Pub. L. 99–514, §1809(a)(4)(A), amended cl. (ii) generally, substituting ''In the case of 19-year real property, the amount of the deduction allowed shall be determined by using the straight-line method (without regard to salvage value) and a recovery period of 19 years.'' for prior provisions.

Subsec. (f)(12)(C). Pub. L. 99–514, §1809(a)(4)(B), substituted ''Exception for low- and moderate-income housing'' for ''Exception for projects for residential rental property'' in heading and amended text generally, substituting ''Subparagraph (A) shall not apply to—

''(i) any low-income housing, and

''(ii) any other recovery property which is placed in service in connection with projects for residential rental property financed by the proceeds of obligations described in section 103(b)(4)(A).''

for prior provisions.

Subsec. (f)(14), (15). Pub. L. 99–514, §1802(b)(1), redesignated the par. (13) relating to motor vehicle operating leases as (14) and redesignated former par. (14) as (15).

Subsec. (j)(2)(B)(ii). Pub. L. 99–514, §1809(a)(2)(C)(i), substituted ''Cross reference'' for ''19-year real property'' in heading and amended text generally, substituting ''For other applicable conventions, see paragraphs (2)(B) and (4)(B) of subsection (b).'' for prior provisions.

Subsec. (j)(3)(D). Pub. L. 99–514, §1802(a)(1), inserted at end ''For purposes of subparagraph (B)(iii), any portion of a property so used shall not be treated as leased to a tax-exempt entity in a disqualified lease.''

Subsec. (j)(4)(E)(i). Pub. L. 99–514, §1802(a)(2)(A), (G), substituted ''any property (other than property held by such organization)'' for ''any property of which such organization is the lessee'', ''first used by'' for ''first leased to'', and ''preceding sentence and subparagraph (D)(ii)'' for ''preceding sentence''.

Subsec. (j)(4)(E)(ii). Pub. L. 99–514, §1802(a)(2)(B), (C), struck out ''of which such organization is the lessee'' after ''respect to any property'' in subcl. (I) and substituted ''is first used by the organization'' for ''is placed in service under the lease'' in subcl. (II).

Subsec. (j)(4)(E)(iv). Pub. L. 99–514, §1802(a)(2)(D), added cl. (iv), first used, which read as follows: ''For

purposes of this subparagraph, property shall be treated as first used by the organization—

''(I) when the property is first placed in service under a lease to such organization, or

''(II) in the case of property leased to (or held by) a partnership (or other pass-thru entity) in which the organization is a member, the later of when such property is first used by such partnership or pass-thru entity or when such organization is first a member of such partnership or pass-thru entity.''

Subsec. (j)(5)(C)(iv). Pub. L. 99–514, §1802(a)(3), struck out cl. (iv), relating to exclusion of property not subject to rapid obsolescence.

Subsec. (j)(8), (9)(A). Pub. L. 99–514, §1802(a)(4)(A), (B)(i), struck out ''and paragraphs (4) and (5) of section 48(a)'' after ''For purposes of this subsection'' in introductory provisions.

Subsec. (j)(9)(B)(i). Pub. L. 99–514, §1802(a)(4)(B)(ii), inserted a comma between ''loss'' and ''deduction''.

Subsec. (j)(9)(D). Pub. L. 99–514, §1802(a)(7)(A), added subpar. (D), determination of whether property used in unrelated trade or business, which read as follows: ''For purposes of this subsection, in the case of any property which is owned by a partnership which has both a tax-exempt entity and a person who is not a tax-exempt entity as partners, the determination of whether such property is used in an unrelated trade or business of such an entity shall be made without regard to section 514.'' Former subpar. (D) was redesignated (E).

Subsec. (j)(9)(E). Pub. L. 99–514, §1802(a)(7), redesignated former subpar. (D) as (E) and substituted ''(C), and (D)'' for ''and (C)''. Former subpar. (E), was redesignated (F).

Pub. L. 99–514, §1802(a)(2)(E)(i), added subpar. (E), treatment of certain taxable entities, consisting of cl. (i), in general, which read: ''For purposes of this paragraph, except as otherwise provided in this subparagraph, any tax-exempt controlled entity shall be treated as a tax-exempt entity.'', cl. (ii), election, which read: ''If a tax-exempt controlled entity makes an election under this clause—

''(I) such entity shall not be treated as a tax-exempt entity for purposes of this paragraph, and

''(II) any gain recognized by a tax-exempt entity on any disposition of an interest in such entity (and any dividend or interest received or accrued by a tax-exempt entity from such tax-exempt controlled entity) shall be treated as unrelated business taxable income for purposes of section 511.

Any such election shall be irrevocable and shall bind all tax-exempt entities holding interests in such tax-exempt controlled entity. For purposes of subclause (II), there shall only be taken into account dividends which are properly allocable to income of the tax-exempt controlled entity which was not subject to tax under this chapter.'', and cl. (iii), tax-exempt controlled entity, which read ''The term 'tax-exempt controlled entity' means any corporation (which is not a tax-exempt entity determined without regard to this subparagraph and paragraph (4)(E)) if 50 percent or more (by value) of the stock in such corporation is held (directly or through the application of section 318 determined without regard to the 50-percent limitation contained in subsection (a)(2)(C) thereof) by 1 or more tax-exempt entities.'' Former subpar. (E) was redesignated (F).

Subsec. (j)(9)(F). Pub. L. 99–514, §1802(a)(7)(A), redesignated former subpar. (E) as (F). Former subpar. (F) redesignated (G).

Pub. L. 99–514, §1802(a)(2)(E)(i), redesignated former subpar. (E) as (F).

Subsec. (j)(9)(G). Pub. L. 99–514, §1802(a)(7)(A), redesignated former subpar. (F) as (G).

1985—Subsec. (b)(2). Pub. L. 99–121, §103(b)(1)(A), substituted ''19-year real property'' for ''18-year real property'' in heading and wherever appearing in text.

Subsec. (b)(2)(A)(i). Pub. L. 99–121, §103(a), substituted ''19-year recovery period'' for ''18-year recovery period''.

Subsec.(b)(3)(A). Pub. L. 99–121, §103(b)(1)(A), substituted ''19-year real property'' for ''18-year real property'' in table.

Pub. L. 99–121, §103(b)(2), substituted ''19, 35, or 45 years'' for ''18, 35, or 45'' in table.

Subsec. (b)(3)(B)(ii), (iii). Pub. L. 99–121, §103(b)(1)(A), substituted ''19-year real property'' for ''18-year real property'' wherever appearing.

Subsec. (c)(2)(D). Pub. L. 99–121, §103(b)(1)(A), substituted ''19-year real property'' for ''18-year real property'' in heading and in text.

Subsec. (d)(2)(B). Pub. L. 99–121, §103(b)(1)(A), substituted ''19-year real property'' for ''18-year real property''.

Subsec. (f)(1)(B)(ii). Pub. L. 99–121, §103(b)(3)(B), substituted ''March 15, 1984, and before May, 9, 1985, the'' for ''March 15, 1984, the''.

Subsec. (f)(1)(B)(iii), (iv). Pub. L. 99–121, §103(b)(3)(A), (C), added cl. (iii), redesignated former cl. (iii) as (iv), and in cl. (iv) substituted '', (ii), or (iii)'' for ''or (ii)''.

Subsec. (f)(2), (5). Pub. L. 99–121, §103(b)(1)(A), substituted ''19-year real property'' for ''18-year real property'' wherever appearing.

Subsec. (f)(12)(B)(ii). Pub. L. 99–121, §103(b)(4), substituted ''19-year real property'' for ''15-year real property'' in heading and wherever appearing in text, and substituted ''19 years'' for ''15 years''.

Subsec. (j). Pub. L. 99–121, §103(b)(1)(A), substituted ''19-year real property'' for ''18-year real property'' wherever appearing in headings, table, and text.

1984—Subsec. (b)(2). Pub. L. 98–369, §111(a)(1), substituted ''18-year real property'' for ''15-year real property'' in heading and wherever appearing in text.

Pub. L. 98–369, §111(d), inserted in provision following cl. (ii) ''(using a mid-month convention)''.

Subsec. (b)(2)(A). Pub. L. 98–369, §111(b)(3)(A), struck out in text following cl. (ii) provision that for purposes of this subparagraph ''low-income housing'' means property described in section 1250(a)(1)(B)(i), (ii), (iii), or (iv).

Subsec. (b)(2)(A)(i). Pub. L. 98–369, §111(a)(2), substituted ''18-year recovery period'' for ''15-year recovery period''.

Subsec. (b)(2)(A)(ii). Pub. L. 98–369, §111(a)(3), struck out ''(200 percent declining balance method in the case of low-income housing)'' after ''declining balance method''.

Subsec. (b)(2)(B). Pub. L. 98–369, §111(d), inserted ''(using a mid-month convention)''.

Subsec. (b)(3)(A). Pub. L. 98–369, §111(e)(9)(A), substituted ''under paragraph (1), (2), or (4)'' for ''under paragraphs (1) and (2)''.

Pub. L. 98–369, §111(e)(9)(B), substituted in table ''18-year real property and low-income housing'' for ''15-year real property'' and ''18'' for ''15'' and struck out ''years'' after ''45''.

Subsec. (b)(3)(B)(ii). Pub. L. 98–369, §111(e)(2), substituted ''18-year real property or low-income housing,'' for ''15-year real property''.

Subsec. (b)(3)(B)(iii). Pub. L. 98–369, §111(e)(1), substituted ''18-year real property or low-income housing'' for ''15-year real property''.

Subsec. (b)(4). Pub. L. 98–369, §111(b)(1), added par. (4).

Subsec. (c)(2)(D). Pub. L. 98–369, §111(b)(3)(B), amended subpar. (D) generally, substituting ''18-year real property'' for ''15-year real property'' in heading and text and including within such definition section 1250 property which is not low-income housing.

Subsec. (c)(2)(F), (G). Pub. L. 98–369, §111(b)(2), added subpar. (F) and redesignated former subpar. (F) as (G).

Subsec. (d)(2)(B). Pub. L. 98–369, §111(e)(3), substituted ''18-year real property or low-income housing'' for ''15-year real property''.

Subsec. (e). Pub. L. 98–369, §113(b)(2)(A), substituted ''title'' for ''section'' in provision preceding par. (1).

Subsec. (e)(5). Pub. L. 98–369, §113(b)(1), added par. (5).

Subsec. (f)(1)(B). Pub. L. 98–369, §111(c), designated existing provision as cl. (i), inserted heading, inserted '', and before March 16, 1984,'' and struck out provision that for the purposes of the preceding sentence, the method of computing the deduction allowable with respect to such first component be determined as if it were a separate building, which provision is covered in cl. (iii), and added cls. (ii) and (iii).

Subsec. (f)(2)(B). Pub. L. 98–369, § 111(e)(1), substituted ''18-year real property or low-income housing'' for ''15-year real property'' wherever appearing.

Subsec. (f)(2)(C)(i). Pub. L. 98–369, § 111(e)(4), substituted in table ''18-year real property or low-income housing'' for ''15-year real property''.

Subsec. (f)(2)(C)(ii)(II), (E), (5). Pub. L. 98–369, § 111(e)(1), substituted ''18-year real property or low-income housing'' for ''15-year real property''.

Subsec. (f)(8)(B)(ii)(I). Pub. L. 98–369, § 12(a)(3)(A), in par. (8) as amended by section 209(a) of Pub. L. 97–248, substituted ''1990'' for ''1986''.

Subsec. (f)(12)(C). Pub. L. 98–369, § 628(b)(1), designated provisions preceding cl. (i) and cl. (i) as subpar. (C), and struck out cls. (ii), (iii), and (iv) which dealt with the application of subpar. (A) to a sewage or solid waste disposal facility, an air or water pollution control facility or a facility which has received an urban development action grant under section 119 of the Housing and Community Development Act of 1974.

Subsec. (f)(12)(D), (E). Pub. L. 98–369, § 628(b)(2), redesignated subpar. (E) as (D) and struck out former subpar. (D) which read as follows: ''For purposes of this paragraph, the term 'existing facility' means a plant or property in operation before July 1, 1982.''

Subsec. (f)(13). Pub. L. 98–369, § 32(a), added second par. (13) relating to motor vehicle operating leases.

Subsec. (f)(14). Pub. L. 98–369, § 113(a)(2), added par. (14).

Subsec. (g)(2). Pub. L. 98–369, § 31(d), inserted ''If any property (other than section 1250 class property) does not have a present class life within the meaning of the preceding sentence, the Secretary may prescribe a present class life for such property which reasonably reflects the anticipated useful life of such property to the industry or other group.''

Subsec. (i)(1)(D)(i). Pub. L. 98–369, § 474(r)(7)(D), in subsec. (i) as amended by section 209(b) of Pub. L. 97–248, substituted ''subparts A, B, and D of part IV'' for ''subpart A of part IV''.

Pub. L. 98–369, § 474(r)(7)(A), in subsec. (i) as added by section 208(a)(1) of Pub. L. 97–248, substituted ''subparts A, B, and D of part IV'' for ''subpart A of part IV''.

Subsec. (i)(1)(D)(iii). Pub. L. 98–369, § 612(e)(5), in subsec. (i) as amended by section 209(b) of Pub. L. 97–248, substituted ''section 26(b)(2)'' for ''section 25(b)(2)''.

Pub. L. 98–369, § 612(e)(4), in subsec. (i) as added by section 208(a)(1) of Pub. L. 97–248, substituted ''section 26(b)(2)'' for ''section 25(b)(2)''.

Pub. L. 98–369, § 474(r)(7)(E), in subsec. (i) as amended by section 209(b) of Pub. L. 97–248, substituted ''section 25(b)(2)'' for ''the last sentence of section 53(a)''.

Pub. L. 98–369, § 474(r)(7)(B), in subsec. (i) as added by section 208(a)(1) of Pub. L. 97–248, substituted ''section 25(b)(2)'' for ''the last sentence of section 53(a)''.

Subsec. (i)(4)(A). Pub. L. 98–369, § 12(a)(3)(B), in subsec. (i) as amended by section 209(b) of Pub. L. 97–248, substituted ''1989'' for ''1985'' in cls. (i) and (ii).

Pub. L. 98–369, § 474(r)(7)(C), in subsec. (i) as added by section 208(a)(1) of Pub. L. 97–248, substituted ''section 38'' for ''subpart A of part IV of subchapter A of this chapter''.

Subsecs. (j), (k). Pub. L. 98–369, § 31(a), added subsec. (j) and redesignated former subsec. (j) as (k).

1983—Subsec. (b)(2)(A). Pub. L. 97–448, § 102(a)(5), substituted ''In the case of 15-year real property'' for ''For purposes of this subparagraph'' in third sentence.

Subsec. (c)(2)(F). Pub. L. 97–448, § 102(a)(8), added subpar. (F).

Subsec. (d)(2)(B). Pub. L. 97–448, § 102(a)(2), substituted ''paragraph (7) or (10) of subsection (f)'' for ''subsection (f)(7)''.

Subsec. (e)(3)(C), (D). Pub. L. 97–424, § 541(a)(1), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (e)(4)(D). Pub. L. 97–448, § 102(a)(9)(A), inserted provision that, in the case of the acquisition of property by any partnership which results from the termination of another partnership under section 708(b)(1)(B), the determination of whether the acquiring partnership is related to the other partnership shall be made immediately before the event resulting in such termination occurs.

Subsec. (e)(4)(H), (I). Pub. L. 97–448, § 102(a)(9)(B), added subpars. (H) and (I).

Subsec. (f)(4)(B). Pub. L. 97–448, § 102(f)(4), substituted ''Election made on return'' for ''Made on return'' as the subpar. (B) heading, designated existing provisions as cl. (i), added heading for cl. (i), substituted ''Except as provided in clause (ii), any election'' for ''Any election'', in cl. (i) as so designated, and added cl. (ii).

Subsec. (f)(5). Pub. L. 97–448, § 102(a)(1), inserted provision that, in the case of 15-year real property, the first sentence of this paragraph shall not apply to the taxable year in which the property is placed in service or disposed of.

Subsec. (f)(8)(D). Pub. L. 97–448, § 102(a)(10)(A), amended subpar. (D), as in effect before the amendments made by the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248], by inserting at end thereof the following new sentence: ''Under regulations prescribed by the Secretary, public utility property shall not be treated as qualified leased property unless the requirements of rules similar to the rules of subsection (e)(3) of this section and section 46(f) are met with respect to such property.'' See 1982 Amendment note below for subsec. (f)(8)(D).

Subsec. (f)(13). Pub. L. 97–448, § 102(a)(3), added par. (13).

Subsec. (g)(8)(A). Pub. L. 97–448, § 102(a)(4)(B), substituted ''Qualified coal utilization property'' for ''In general'' in heading.

Subsec. (g)(8)(B). Pub. L. 97–448, § 102(a)(4)(C), substituted ''Coal utilization property'' for ''In general'' in heading.

Subsec. (h)(4). Pub. L. 97–448, § 102(a)(4)(A), substituted ''coal utilization property which would otherwise be 15-year public utility property'' for ''coal utilization property which is not 3-year property, 5-year property, or 10-year property (determined without regard to this paragraph)''.

1982—Subsec. (b)(1). Pub. L. 97–248, § 206(a), substituted ''table'' for ''tables'' in introductory provisions, struck out designation ''(A)'' preceding the table and struck out subpar. (A) heading which had limited the application of the table to property placed in service after Dec. 31, 1980, and before Jan. 1, 1985, and struck out subpars. (B) and (C), which had provided tables, respectively, for property placed in service in 1985 and for property placed in service after Dec. 31, 1985.

Subsec. (e)(4). Pub. L. 97–248, §§ 206(b), 224(c)(1), substituted ''1981'' for ''1986'' in heading, in subpar. (E) inserted provision that a similar rule shall apply in the case of a deemed liquidation under section 338, and struck out former subpar. (H) which had provided for special rules for property placed in service before certain percentages took effect.

Subsec. (f)(8). Pub. L. 97–248, § 209(a), amended par. (8) generally, substituting provisions relating to special rules for finance leases for provisions relating to special rule for leases.

Subsec. (f)(8)(A). Pub. L. 97–248, § 208(a)(2)(A), inserted ''except as provided in subsection (i),'' before ''for purposes of this subtitle''.

Subsec. (f)(8)(B)(i)(I). Pub. L. 97–354, § 5(a)(19), substituted ''an S corporation'' for ''an electing small business corporation (within the meaning of section 1371(b))'' in subsec. (f)(8)(B)(i)(I) as in effect before the enactment of the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248].

Pub. L. 97–248, § 208(b)(1), inserted ''which is not a related person with respect to the lessee''.

Subsec. (f)(8)(B)(iii). Pub. L. 97–248, § 208(b)(2), in subcl. (I) substituted ''120 percent of the present class life of the property, or'' for ''90 percent of the useful life of such property for purposes of section 167, or'', and in subcl. II substituted ''the period equal to the recovery period determined with respect to such property under subsection (i)(2)'' for ''150 percent of the present class life of such property''.

Subsec. (f)(8)(C)(i). Pub. L. 97–354, § 5(a)(20), in par. (8) as amended by section 209(a) of Pub. L. 97–248, substituted ''an S corporation'' for ''an electing small business corporation within the meaning of section 1371(b)''.

Subsec. (f)(8)(D). Pub. L. 97–248, § 208(b)(3), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows:

''(D) QUALIFIED LEASED PROPERTY DEFINED.—For purposes of subparagraph (A), the term 'qualified leased property' means recovery property (other than a qualified rehabilitated building within the meaning of section 48(g)(1)) which is—

''(i) new section 38 property (as defined in section 48(b)) of the lessor which is leased within 3 months after such property was placed in service and which, if acquired by the lessee, would have been new section 38 property of the lessee,

''(ii) property—

''(I) which was new section 38 property of the lessee,

''(II) which was leased within 3 months after such property was placed in service by the lessee, and

''(III) with respect to which the adjusted basis of the lessor does not exceed the adjusted basis of the lessee at the time of the lease, or

''(iii) property which is a qualified mass commuting vehicle (as defined in section 103(b)(9)) and which is financed in whole or in part by obligations the interest on which is excludable from income under section 103(a).

For purposes of this title (other than this subparagraph), any property described in clause (i) or (ii) to which subparagraph (A) applies shall be deemed originally placed in service not earlier than the date such property is used under the lease. In the case of property placed in service after December 31, 1980, and before the date of the enactment of this subparagraph, this subparagraph shall be applied by submitting 'the date of the enactment of this subparagraph' for 'such property was placed in service'.'' See 1983 Amendment note above for subsec. (f)(8)(D).

Subsec. (f)(8)(H) to (K). Pub. L. 97–248, § 208(b)(4), added subpars. (H) to (J) and redesignated former subpar. (H) as (K).

Subsec. (f)(10)(B)(i). Pub. L. 97–248, § 224(c)(2), struck out ''(other than a transaction with respect to which the basis is determined under section 334(b)(2))'' after ''section 332''.

Subsec. (f)(12). Pub. L. 97–248, § 216(a), added par. (12).

Subsec. (i). Pub. L. 97–248, § 209(b), amended subsec. (i) generally, substituting provisions concerning limitations relating to leases of finance lease property for provisions concerning limitations relating to lease of qualified leased property.

Pub. L. 97–248, § 208(a)(1), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 97–248, § 208(a)(1), redesignated former subsec. (i) as (j).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title IV, § 401(e), Dec. 17, 2010, 124 Stat. 3306, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 1400L and 1400N of this title] shall apply to property placed in service after December 31, 2010, in taxable years ending after such date.

''(2) TEMPORARY 100 PERCENT EXPENSING.—The amendment made by subsection (b) [amending this section] shall apply to property placed in service after September 8, 2010, in taxable years ending after such date.''

Pub. L. 111–312, title VII, § 737(c), Dec. 17, 2010, 124 Stat. 3318, provided that: ''The amendments made by this section [amending this section and section 179 of this title] shall apply to property placed in service after December 31, 2009.''

Pub. L. 111–312, title VII, § 738(b), Dec. 17, 2010, 124 Stat. 3318, provided that: ''The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2009.''

Pub. L. 111–312, title VII, § 739(b), Dec. 17, 2010, 124 Stat. 3319, provided that: ''The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2009.''

Pub. L. 111–240, title II, § 2022(c), Sept. 27, 2010, 124 Stat. 2559, provided that: ''The amendments made by this section [amending this section and sections 1400L and 1400N of this title] shall apply to property placed in service after December 31, 2009, in taxable years ending after such date.''

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, § 1201(c), Feb. 17, 2009, 123 Stat. 334, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 1400N and 6211 of this title] shall apply to property placed in service after December 31, 2008, in taxable years ending after such date.

''(2) TECHNICAL AMENDMENTS.—The amendments made by subsections (a)(3) [amending this section and section 6211 of this title] and (b)(2) [amending section 6211 of this title] shall apply to taxable years ending after March 31, 2008.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title II, § 201(c), Oct. 3, 2008, 122 Stat. 3832, provided that: ''The amendments made by this section [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Oct. 3, 2008], in taxable years ending after such date.''

Pub. L. 110–343, div. B, title III, § 306(d), Oct. 3, 2008, 122 Stat. 3849, provided that: ''The amendments made by this section [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Oct. 3, 2008].''

Pub. L. 110–343, div. B, title III, § 308(b), Oct. 3, 2008, 122 Stat. 3851, provided that: ''The amendment made by this section [amending this section] shall apply to property placed in service after August 31, 2008.''

Pub. L. 110–343, div. C, title III, § 305(a)(2), Oct. 3, 2008, 122 Stat. 3867, provided that: ''The amendments made by this subsection [amending this section] shall apply to property placed in service after December 31, 2007.''

Pub. L. 110–343, div. C, title III, § 305(b)(2), Oct. 3, 2008, 122 Stat. 3867, provided that: ''The amendment made by this subsection [amending this section] shall apply to property placed in service after December 31, 2008.''

Pub. L. 110–343, div. C, title III, § 305(c)(5), Oct. 3, 2008, 122 Stat. 3868, provided that: ''The amendments made by this subsection [amending this section] shall apply to property placed in service after December 31, 2008.''

Pub. L. 110–343, div. C, title III, § 315(b), Oct. 3, 2008, 122 Stat. 3872, provided that: ''The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2007.''

Pub. L. 110–343, div. C, title III, § 317(b), Oct. 3, 2008, 122 Stat. 3873, provided that: ''The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2007.''

Pub. L. 110–343, div. C, title V, § 505(c), Oct. 3, 2008, 122 Stat. 3880, provided that: ''The amendments made by this section [amending this section] shall apply to property placed in service after December 31, 2008.''

Pub. L. 110–343, div. C, title VII, § 710(b), Oct. 3, 2008, 122 Stat. 3928, provided that: ''The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2007, with respect [to] disasters declared after such date.''

Pub. L. 110–289, div. C, title III, § 3081(d), July 30, 2008, 122 Stat. 2907, provided that: ''The amendments made by this section [amending this section and section 1324 of Title 31, Money and Finance] shall apply to taxable years ending after March 31, 2008.''

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out

as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110–234, title XV, §15344(b), May 22, 2008, 122 Stat. 1520, and Pub. L. 110–246, §4(a), title XV, §15344(b), June 18, 2008, 122 Stat. 1664, 2282, provided that: ''The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2008.''

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

Pub. L. 110–185, title I, §103(d), Feb. 13, 2008, 122 Stat. 619, provided that: ''The amendments made by this section [amending this section and sections 1400L and 1400N of this title] shall apply to property placed in service after December 31, 2007, in taxable years ending after such date.''

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–172, §11(b)(3), Dec. 29, 2007, 121 Stat. 2488, provided that: ''The amendments made by this subsection [amending this section and section 6724 of this title] shall take effect as if included in the provision of the Tax Relief and Health Care Act of 2006 [Pub. L. 109–432] to which they relate.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §112(b), Dec. 20, 2006, 120 Stat. 2940, provided that: ''The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2005.''

Pub. L. 109–432, div. A, title I, §113(b), Dec. 20, 2006, 120 Stat. 2940, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to property placed in service after December 31, 2005.''

Pub. L. 109–432, div. A, title II, §209(b), Dec. 20, 2006, 120 Stat. 2947, provided that: ''The amendment made by this section [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Dec. 20, 2006] in taxable years ending after such date.''

EFFECTIVE DATE OF 2005 AMENDMENTS

Amendment by section 403(j) of Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

Pub. L. 109–135, title IV, §405(b), Dec. 21, 2005, 119 Stat. 2634, provided that: ''The amendments made by this section [amending this section and section 1400L of this title] shall take effect as if included in section 201 of the Jobs and Growth Tax Relief and Reconciliation Act of 2003 [probably means the Jobs and Growth Tax Relief Reconciliation Act of 2003, Pub. L. 108–27].''

Pub. L. 109–135, title IV, §410(b), Dec. 21, 2005, 119 Stat. 2636, provided that: ''The amendment made by this section [amending this section] shall take effect as if included in section 11813 of the Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101–508].''

Amendment by section 1301(f)(5) of Pub. L. 109–58 effective as if included in the amendments made by section 710 of the American Jobs Creation Act of 2004, Pub. L. 108–357, see section 1301(g) of Pub. L. 109–58, set out as a note under section 45 of this title.

Pub. L. 109–58, title XIII, §1308(c), Aug. 8, 2005, 119 Stat. 1006, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to property placed in service after April 11, 2005.

''(2) EXCEPTION.—The amendments made by this section [amending this section] shall not apply to any property with respect to which the taxpayer or a related party has entered into a binding contract for the construction thereof on or before April 11, 2005, or, in the case of self-constructed property, has started construction on or before such date.''

Pub. L. 109–58, title XIII, §1325(c), Aug. 8, 2005, 119 Stat. 1016, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to property placed in service after April 11, 2005.

''(2) EXCEPTION.—The amendments made by this section [amending this section] shall not apply to any property with respect to which the taxpayer or a related party has entered into a binding contract for the construction thereof on or before April 11, 2005, or, in the case of self-constructed property, has started construction on or before such date.''

Amendment by section 1326(a)–(c) of Pub. L. 109–58 applicable to property placed in service after Apr. 11, 2005, with exception for property with respect to which the taxpayer or a related party has entered into a binding contract for the construction thereof on or before Apr. 11, 2005, or, in the case of self-constructed property, has started construction on or before such date, see section 1326(e) of Pub. L. 109–58, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2004 AMENDMENTS

Pub. L. 108–357, title II, §211(f), Oct. 22, 2004, 118 Stat. 1430, provided that: ''The amendments made by this section [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Oct. 22, 2004].''

Pub. L. 108–357, title III, §336(c), Oct. 22, 2004, 118 Stat. 1480, provided that: ''The amendments made by this section [amending this section] shall take effect as if included in the amendments made by section 101 of the Job Creation and Worker Assistance Act of 2002 [Pub. L. 107–147].''

Pub. L. 108–357, title III, §337(b), Oct. 22, 2004, 118 Stat. 1480, provided that: ''The amendment made by this section [amending this section] shall apply to property sold after June 4, 2004.''

Pub. L. 108–357, title VII, §704(c), Oct. 22, 2004, 118 Stat. 1548, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to any property placed in service after the date of the enactment of this Act [Oct. 22, 2004].

''(2) SPECIAL RULE FOR ASSET CLASS 80.0.—In the case of race track facilities placed in service after the date of the enactment of this Act, such facilities shall not be treated as theme and amusement facilities classified under asset class 80.0.

''(3) NO INFERENCE.—Nothing in this section or the amendments made by this section shall be construed to affect the treatment of property placed in service on or before the date of the enactment of this Act.''

Pub. L. 108–357, title VII, §706(d), Oct. 22, 2004, 118 Stat. 1550, provided that: ''The amendments made by this section [amending this section] shall apply to property placed in service after December 31, 2004.''

Amendment by section 847(a), (c), (d) of Pub. L. 108–357 applicable to leases entered into after Mar. 12, 2004, and amendment by section 847(e) of Pub. L. 108–357 applicable to leases entered into after Oct. 3, 2004, except that such amendments inapplicable to qualified transportation property, see section 849 of Pub. L. 108–357, set out as an Effective Date note under section 470 of this title.

Pub. L. 108–357, title VIII, §901(d), Oct. 22, 2004, 118 Stat. 1651, provided that: ''The amendments made by this section [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Oct. 22, 2004].''

Amendment by section 403(a) of Pub. L. 108–311 effective as if included in the provisions of the Job Creation and Worker Assistance Act of 2002, Pub. L. 107–147, to which such amendment relates, see section 403(f) of Pub. L. 108–311, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–27, title II, §201(d), May 28, 2003, 117 Stat. 757, provided that: ''The amendments made by this section [amending this section and section 1400L of this

title] shall apply to taxable years ending after May 5, 2003.''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title I, §101(b), Mar. 9, 2002, 116 Stat. 25, provided that: ''The amendments made by this section [amending this section] shall apply to property placed in service after September 10, 2001, in taxable years ending after such date.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1086(b) of Pub. L. 105–34 applicable to property placed in service after Aug. 5, 1997, see section 1086(c) of Pub. L. 105–34, set out as a note under section 167 of this title.

Amendment by section 1213(c) of Pub. L. 105–34 applicable to leases entered into after Aug. 5, 1997, see section 1213(e) of Pub. L. 105–34, set out as an Effective Date note under section 110 of this title.

Section 1604(c)(2) of Pub. L. 105–34 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply as if included in the amendments made by section 13321 of the Omnibus Budget Reconciliation Act of 1993 [Pub. L. 103–66], except that such amendment shall not apply—

''(A) with respect to property (with an applicable recovery period under section 168(j) of the Internal Revenue Code of 1986 of 6 years or less) held by the taxpayer if the taxpayer claimed the benefits of section 168(j) of such Code with respect to such property on a return filed before March 18, 1997, but only if such return is the first return of tax filed for the taxable year in which such property was placed in service, or

''(B) with respect to wages for which the taxpayer claimed the benefits of section 45A of such Code for a taxable year on a return filed before March 18, 1997, but only if such return was the first return of tax filed for such taxable year.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1120(c) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section] shall apply to property which is placed in service on or after the date of the enactment of this Act [Aug. 20, 1996] and to which section 168 of the Internal Revenue Code of 1986 applies after the amendment made by section 201 of the Tax Reform Act of 1986 [Pub. L. 99–514]. A taxpayer may elect (in such form and manner as the Secretary of the Treasury may prescribe) to have such amendments apply with respect to any property placed in service before such date and to which such section so applies.''

Section 1121(b) of Pub. L. 104–188 provided that: ''Subparagraph (B) of section 168(i)(8) of the Internal Revenue Code of 1986, as added by the amendment made by subsection (a), shall apply to improvements disposed of or abandoned after June 12, 1996.''

Section 1613(b)(5) of Pub. L. 104–188 provided that: ''The amendments made by this subsection [amending this section] shall apply to property placed in service after June 12, 1996, other than property placed in service pursuant to a binding contract in effect before June 10, 1996, and at all times thereafter before the property is placed in service.''

Amendment by section 1702(h)(1) of Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1995 AMENDMENT

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

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13151(b) of Pub. L. 103–66 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to property placed in service by the taxpayer on or after May 13, 1993.

''(2) EXCEPTION.—The amendments made by this section [amending this section] shall not apply to property placed in service by the taxpayer before January 1, 1994, if—

''(A) the taxpayer or a qualified person entered into a binding written contract to purchase or construct such property before May 13, 1993, or

''(B) the construction of such property was commenced by or for the taxpayer or a qualified person before May 13, 1993.

For purposes of this paragraph, the term 'qualified person' means any person who transfers his rights in such a contract or such property to the taxpayer but only if the property is not placed in service by such person before such rights are transferred to the taxpayer.''

Section 13321(b) of Pub. L. 103–66 provided that: ''The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 1993.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11812(b)(2) of Pub. L. 101–508 applicable to property placed in service after Nov. 5, 1990, but not applicable to any property to which section 168 of this title does not apply by reason of subsec. (f)(5) of section 168, and not applicable to rehabilitation expenditures described in section 252(f)(5) of Pub. L. 99–514, see section 11812(c) of Pub. L. 101–508, set out as a note under section 42 of this title.

Amendment by section 11813(b)(9) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1002(a)(23)(B) of Pub. L. 100–647 provided that: ''Clause (ii) of section 168(d)(3)(B) of the 1986 Code (as added by subparagraph (A)) shall apply to taxable years beginning after March 31, 1988, unless the taxpayer elects, at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe, to have such clause apply to taxable years beginning on or before such date.''

Amendment by sections 1002(a)(5)–(8), (11), (16)(B), (21), (i)(2)(A)–(G), and 1018(b)(2) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6027(c) of Pub. L. 100–647 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this

section] shall apply to property placed in service after December 31, 1988.

''(2) EXCEPTION.—The amendments made by this section shall not apply to any property if such property is placed in service before January 1, 1990, and if such property—

''(A) is constructed, reconstructed, or acquired by the taxpayer pursuant to a written contract which was binding on July 14, 1988, or

''(B) is constructed or reconstructed by the taxpayer and such construction or reconstruction began by July 14, 1988.''

Section 6028(b) of Pub. L. 100–647 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to property placed in service after December 31, 1988.

''(2) EXCEPTION.—The amendments made by this section shall not apply to any property if such property is placed in service before July 1, 1989, and if such property—

''(A) is constructed, reconstructed, or acquired by the taxpayer pursuant to a written contract which was binding on July 14, 1988, or

''(B) is constructed or reconstructed by the taxpayer and such construction or reconstruction began by July 14, 1988.''

Section 6029(d) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section] shall apply to property placed in service after December 31, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENT; TRANSITIONAL RULES

Sections 203 and 204 of Pub. L. 99–514, as amended by Pub. L. 99–509, title VIII, §8071, Oct. 21, 1986, 100 Stat. 1964; Pub. L. 100–647, title I, §1002(c)(1), (2), (4)–(8), (d)(1)–(7)(A), (8)–(35), Nov. 10, 1988, 102 Stat. 3358–3367, provided that:

''SEC. 203. EFFECTIVE DATES; GENERAL TRANSITIONAL RULES.

''(a) GENERAL EFFECTIVE DATES.—

''(1) SECTION 201.—

''(A) IN GENERAL.—Except as provided in this section, section 204, and section 251(d) [set out as a note under section 46 of this title], the amendments made by section 201 [amending sections 46, 167, 168, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall apply to property placed in service after December 31, 1986, in taxable years ending after such date.

''(B) ELECTION TO HAVE AMENDMENTS MADE BY SECTION 201 APPLY.—A taxpayer may elect (at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe) to have the amendments made by section 201 apply to any property placed in service after July 31, 1986, and before January 1, 1987. No election may be made under this subparagraph with respect to property to which section 168 of the Internal Revenue Code of 1986 would not apply by reason of section 168(f)(5) of such Code if such property were placed in service after December 31, 1986.

''(2) SECTION 202.—

''(A) IN GENERAL.—The amendments made by section 202 [amending section 179 of this title] shall apply to property placed in service after December 31, 1986, in taxable years ending after such date.

''(B) SPECIAL RULE FOR FISCAL YEARS INCLUDING JANUARY 1, 1987.—In the case of any taxable year (other than a calendar year) which includes January 1, 1987, for purposes of applying the amendments made by section 202 to property placed in service during such taxable year and after December 31, 1986—

''(i) the limitation of section 179(b)(1) of the Internal Revenue Code of 1986 (as amended by section 202) shall be reduced by the aggregate deduction under section 179 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986 [Oct. 22, 1986]) for section 179 property placed in service during such taxable year and before January 1, 1987,

''(ii) the limitation of section 179(b)(2) of such Code (as so amended) shall be applied by taking into account the cost of all section 179 property placed in service during such taxable year, and

''(iii) the limitation of section 179(b)(3) of such Code shall be applied by taking into account the taxable income for the entire taxable year reduced by the amount of any deduction under section 179 of such Code for property placed in service during such taxable year and before January 1, 1987.

''(b) GENERAL TRANSITIONAL RULE.—

''(1) IN GENERAL.—The amendments made by section 201 [amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to—

''(A) any property which is constructed, reconstructed, or acquired by the taxpayer pursuant to a written contract which was binding on March 1, 1986,

''(B) property which is constructed or reconstructed by the taxpayer if—

''(i) the lesser of (I) $1,000,000, or (II) 5 percent of the cost of such property has been incurred or committed by March 1, 1986, and

''(ii) the construction or reconstruction of such property began by such date, or

''(C) an equipped building or plant facility if construction has commenced as of March 1, 1986, pursuant to a written specific plan and more than one-half of the cost of such equipped building or facility has been incurred or committed by such date.

For purposes of this paragraph, all members of the same affiliated group of corporations (within the meaning of section 1504 of the Internal Revenue Code of 1986) filing a consolidated return shall be treated as one taxpayer.

''(2) REQUIREMENT THAT CERTAIN PROPERTY BE PLACED IN SERVICE BEFORE CERTAIN DATE.—

''(A) IN GENERAL.—Paragraph (1) and section 204(a) (other than paragraph (8) or (12) thereof) shall not apply to any property unless such property has a class life of at least 7 years and is placed in service before the applicable date determined under the following table:

"In the case of property with a class life of:	**The applicable date is:**
At least 7 but less than 20 years	January 1, 1989
20 years or more	January 1, 1991.

''(B) RESIDENTIAL RENTAL AND NONRESIDENTIAL REAL PROPERTY.—In the case of residential rental property and nonresidential real property, the applicable date is January 1, 1991.

''(C) CLASS LIVES.—For purposes of subparagraph (A)—

''(i) the class life of property to which section 168(g)(3)(B) of the Internal Revenue Code of 1986 (as added by section 201) applies shall be the class life in effect on January 1, 1986, except that computer-based telephone central office switching equipment described in section 168(e)(3)(B)(iii) of such Code shall be treated as having a class life of 6 years,

''(ii) property described in section 204(a) shall be treated as having a class life of 20 years, and

''(iii) property with no class life shall be treated as having a class life of 12 years.

''(D) SUBSTITUTION OF APPLICABLE DATES.—If any provision of this Act [see Tables for classification] substitutes a date for an applicable date, this paragraph shall be applied by using such date.

''(3) PROPERTY QUALIFIES IF SOLD AND LEASED BACK IN 3 MONTHS.—Property shall be treated as meeting

the requirements of paragraphs (1) and (2) or section 204(a) with respect to any taxpayer if such property is acquired by the taxpayer from a person—

''(A) in whose hands such property met the requirements of paragraphs (1) and (2) or section 204(a) (or would have met such requirements if placed in service by such person), or

''(B) who placed the property in service before January 1, 1987,

and such property is leased back by the taxpayer to such person, or is leased to such person, not later than the earlier of the applicable date under paragraph (2) or the day which is 3 months after such property was placed in service.

''(4) PLANT FACILITY.—For purposes of paragraph (1), the term 'plant facility' means a facility which does not include any building (or with respect to which buildings constitute an insignificant portion) and which is—

''(A) a self-contained single operating unit or processing operation,

''(B) located on a single site, and

''(C) identified as a single unitary project as of March 1, 1986.

''(c) PROPERTY FINANCED WITH TAX-EXEMPT BONDS.—

''(1) IN GENERAL.—Except as otherwise provided in this subsection or section 204, subparagraph (C) of section 168(g)(1) of the Internal Revenue Code of 1986 (as added by this Act) shall apply to property placed in service after December 31, 1986, in taxable years ending after such date, to the extent such property is financed by the proceeds of an obligation (including a refunding obligation) issued after March 1, 1986.

''(2) EXCEPTIONS.—

''(A) CONSTRUCTION OR BINDING AGREEMENTS.—Subparagraph (C) of section 168(g)(1) of such Code (as so added) shall not apply to obligations with respect to a facility—

''(i)(I) the original use of which commences with the taxpayer, and the construction, reconstruction, or rehabilitation of which began before March 2, 1986, and was completed on or after such date,

''(II) with respect to which a binding contract to incur significant expenditures for construction, reconstruction, or rehabilitation was entered into before March 2, 1986, and some of such expenditures are incurred on or after such date, or

''(III) acquired on or after March 2, 1986, pursuant to a binding contract entered into before such date, and

''(ii) described in an inducement resolution or other comparable preliminary approval adopted by the issuing authority (or by a voter referendum) before March 2, 1986.

''(B) REFUNDING.—

''(i) IN GENERAL.—Except as provided in clause (ii), in the case of property placed in service after December 31, 1986, which is financed by the proceeds of an obligation which is issued solely to refund another obligation which was issued before March 2, 1986, subparagraph (C) of section 168(g)(1) of such Code (as so added) shall apply only with respect to an amount equal to the basis in such property which has not been recovered before the date such refunded obligation is issued.

''(ii) SIGNIFICANT EXPENDITURES.—In the case of facilities the original use of which commences with the taxpayer and with respect to which significant expenditures are made before January 1, 1987, subparagraph (C) of section 168(g)(1) of such Code (as so added) shall not apply with respect to such facilities to the extent such facilities are financed by the proceeds of an obligation issued solely to refund another obligation which was issued before March 2, 1986.

''(C) FACILITIES.—In the case of an inducement resolution or other comparable preliminary approval adopted by an issuing authority before March 2, 1986, for purposes of subparagraphs (A) and (B)(ii) with respect to obligations described in such resolution, the term 'facilities' means the facilities described in such resolution.

''(D) SIGNIFICANT EXPENDITURES.—For purposes of this paragraph, the term 'significant expenditures' means expenditures greater than 10 percent of the reasonably anticipated cost of the construction, reconstruction, or rehabilitation of the facility involved.

''(d) MID-QUARTER CONVENTION.—In the case of any taxable year beginning before October 1, 1987 in which property to which the amendments made by section 201 [amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] do not apply is placed in service, such property shall be taken into account in determining whether section 168(d)(3) of the Internal Revenue Code of 1986 (as added by section 201) applies for such taxable year to property to which such amendments apply. The preceding sentence shall only apply to property which would be taken into account if such amendments did apply.

''(e) NORMALIZATION REQUIREMENTS.—

''(1) IN GENERAL.—A normalization method of accounting shall not be treated as being used with respect to any public utility property for purposes of section 167 or 168 of the Internal Revenue Code of 1986 if the taxpayer, in computing its cost of service for ratemaking purposes and reflecting operating results in its regulated books of account, reduces the excess tax reserve more rapidly or to a greater extent than such reserve would be reduced under the average rate assumption method.

''(2) DEFINITIONS.—For purposes of this subsection—

''(A) EXCESS TAX RESERVE.—The term 'excess tax reserve' means the excess of—

''(i) the reserve for deferred taxes (as described in section 167(*l*)(3)(G)(ii) or 168(e)(3)(B)(ii) of the Internal Revenue Code of 1954 as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]), over

''(ii) the amount which would be the balance in such reserve if the amount of such reserve were determined by assuming that the corporate rate reductions provided in this Act [see Tables for classification] were in effect for all prior periods.

''(B) AVERAGE RATE ASSUMPTION METHOD.—The average rate assumption method is the method under which the excess in the reserve for deferred taxes is reduced over the remaining lives of the property as used in its regulated books of account which gave rise to the reserve for deferred taxes. Under such method, if timing differences for the property reverse, the amount of the adjustment to the reserve for the deferred taxes is calculated by multiplying—

''(i) the ratio of the aggregate deferred taxes for the property to the aggregate timing differences for the property as of the beginning of the period in question, by

''(ii) the amount of the timing differences which reverse during such period.

''SEC. 204. ADDITIONAL TRANSITIONAL RULES.

''(a) OTHER TRANSITIONAL RULES.—

''(1) URBAN RENOVATION PROJECTS.—

''(A) IN GENERAL.—The amendments made by section 201 [amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to any property which is an integral part of any qualified urban renovation project.

''(B) QUALIFIED URBAN RENOVATION PROJECT.—For purposes of subparagraph (A), the term 'qualified urban renovation project' means any project—

''(i) described in subparagraph (C), (D), (E), or (G) which before March 1, 1986, was publicly announced by a political subdivision of a State for a renovation of an urban area within its jurisdiction,

''(ii) described in subparagraph (C), (D) or (G) which before March 1, 1986, was identified as a single unitary project in the internal financing plans of the primary developer of the project,

''(iii) described in subparagraph (C) or (D), which is not substantially modified on or after March 1, 1986, and

''(iv) described in subparagraph (F) or (H).

''(C) PROJECT WHERE AGREEMENT ON DECEMBER 19, 1984.—A project is described in this subparagraph if—

''(i) a political subdivision granted on July 11, 1985, development rights to the primary developer-purchaser of such project, and

''(ii) such project was the subject of a development agreement between a political subdivision and a bridge authority on December 19, 1984.

For purposes of this subparagraph, section 203(b)(2) shall be applied by substituting 'January 1, 1994' for 'January 1, 1991' each place it appears.

''(D) CERTAIN ADDITIONAL PROJECTS.—A project is described in this subparagraph if it is described in any of the following clauses of this subparagraph and the primary developer of all such projects is the same person:

''(i) A project is described in this clause if the development agreement with respect thereto was entered into during April 1984 and the estimated cost of the project is approximately $194,000,000.

''(ii) A project is described in this clause if the development agreement with respect thereto was entered into during May 1984 and the estimated cost of the project is approximately $190,000,000.

''(iii) A project is described in this clause if the project has an estimated cost of approximately $92,000,000 and at least $7,000,000 was spent before September 26, 1985, with respect to such project.

''(iv) A project is described in this clause if the estimated project cost is approximately $39,000,000 and at least $2,000,000 of construction cost for such project were incurred before September 26, 1985.

''(v) A project is described in this clause if the development agreement with respect thereto was entered into before September 26, 1985, and the estimated cost of the project is approximately $150,000,000.

''(vi) A project is described in this clause if the board of directors of the primary developer approved such project in December 1982, and the estimated cost of such project is approximately $107,000,000.

''(vii) A project is described in this clause if the board of directors of the primary developer approved such project in December 1982, and the estimated cost of such project is approximately $59,000,000.

''(viii) A project is described in this clause if the Board of Directors of the primary developer approved such project in December 1983, following selection of the developer by a city council on September 26, 1983, and the estimated cost of such project is approximately $107,000,000.

''(E) PROJECT WHERE PLAN CONFIRMED ON OCTOBER 4, 1984.—A project is described in this subparagraph if—

''(i) a State or an agency, instrumentality, or political subdivision thereof approved the filing of a general project plan on June 18, 1981, and on October 4, 1984, a State or an agency, instrumentality, or political subdivision thereof confirmed such plan,

''(ii) the project plan as confirmed on October 4, 1984, included construction or renovation of office buildings, a hotel, a trade mart, theaters, and a subway complex, and

''(iii) significant segments of such project were the subject of one or more conditional designations granted by a State or an agency, instrumentality, or political subdivision thereof to one or more developers before January 1, 1985.

The preceding sentence shall apply with respect to a property only to the extent that a building on such property site was identified as part of the project plan before September 26, 1985, and only to the extent that the size of the building on such property site was not substantially increased by reason of a modification to the project plan with respect to such property on or after such date. For purposes of this subparagraph, section 203(b)(2) shall be applied by substituting 'January 1, 1998' for 'January 1, 1991' each place it appears.

''(F) A project is described in this subparagraph if it is a sports and entertainment facility which—

''(i) is to be used by both a National Hockey League team and a National Basketball Association team;

''(ii) is to be constructed on a platform utilizing air rights over land acquired by a State authority and identified as site B in a report dated May 30, 1984, prepared for a State urban development corporation; and

''(iii) is eligible for real property tax, and power and energy benefits pursuant to the provisions of State legislation approved and effective July 7, 1982.

A project is also described in this subparagraph if it is a mixed-use development which is—

''(I) to be constructed above a public railroad station utilized by the national railroad passenger corporation and commuter railroads serving two States; and

''(II) will include the reconstruction of such station so as to make it a more efficient transportation center and to better integrate the station with the development above, such reconstruction plans to be prepared in cooperation with a State transportation authority.

For purposes of this subparagraph, section 203(b)(2) shall be applied by substituting 'January 1, 1998' for the applicable date that would otherwise apply.

''(G) A project is described in this subparagraph if—

''(i) an inducement resolution was passed on March 9, 1984, for the issuance of obligations with respect to such project,

''(ii) such resolution was extended by resolutions passed on August 14, 1984, April 2, 1985, August 13, 1985, and July 8, 1986,

''(iii) an application was submitted on January 31, 1984, for an Urban Development Action Grant with respect to such project, and

''(iv) an Urban Development Action Grant was preliminarily approved for all or part of such project on July 3, 1986.

''(H) A project is described in this subparagraph if it is a redevelopment project, with respect to which $10,000,000 in industrial revenue bonds were approved by a State Development Finance Authority on January 15, 1986, a village transferred approximately $4,000,000 of bond volume authority to the State in June 1986, and a binding Redevelopment Agreement was executed between a city and the development team on June 30, 1986.

''(2) CERTAIN PROJECTS GRANTED FERC LICENSES, ETC.—The amendments made by section 201 [amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to any property which is part of a project—

''(A) which is certified by the Federal Energy Regulatory Commission before March 2, 1986, as a qualifying facility for purposes of the Public Utility Regulatory Policies Act of 1978 [see Short Title note set out under 16 U.S.C. 2601],

''(B) which was granted before March 2, 1986, a hydroelectric license for such project by the Federal Energy Regulatory Commission, or

''(C) which is a hydroelectric project of less than 80 megawatts that filed an application for a permit, exemption, or license with the Federal Energy Regulatory Commission before March 2, 1986.

''(3) SUPPLY OR SERVICE CONTRACTS.—The amendments made by section 201 shall not apply to any property which is readily identifiable with and necessary to carry out a written supply or service contract, or agreement to lease, which was binding on March 1, 1986.

''(4) PROPERTY TREATED UNDER PRIOR TAX ACTS.—The amendments made by section 201 shall not apply—

''(A) to property described in section 12(c)(2) (as amended by the Technical and Miscellaneous Revenue Act of 1988), 31(g)(5), or 31(g)(17)(J) of the Tax Reform Act of 1984 [sections 12(c)(2) and 31(g)(5), (17)(J) of Pub. L. 98–369, set out below],

''(B) to property described in section 209(d)(1)(B) of the Tax Equity and Fiscal Responsibility Act of 1982, as amended by the Tax Reform Act of 1984 [section 209(d)(1)(B) of Pub. L. 97–248, as amended, set out below], and

''(C) to property described in section 216(b)(3) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 216(b)(3) of Pub. L. 97–248, set out below].

''(5) SPECIAL RULES FOR PROPERTY INCLUDED IN MASTER PLANS OF INTEGRATED PROJECTS.—The amendments made by section 201 shall not apply to any property placed in service pursuant to a master plan which is clearly identifiable as of March 1, 1986, for any project described in any of the following subparagraphs of this paragraph:

''(A) A project is described in this subparagraph if—

''(i) the project involves production platforms for offshore drilling, oil and gas pipeline to shore, process and storage facilities, and a marine terminal, and

''(ii) at least $900,000,000 of the costs of such project were incurred before September 26, 1985.

''(B) A project is described in this subparagraph if—

''(i) such project involves a fiber optic network of at least 20,000 miles, and

''(ii) before September 26, 1985, construction commenced pursuant to the master plan and at least $85,000,000 was spent on construction.

''(C) A project is described in this subparagraph if—

''(i) such project passes through at least 10 States and involves intercity communication links (including one or more repeater sites, terminals and junction stations for microwave transmissions, regenerators or fiber optics and other related equipment),

''(ii) the lesser of $150,000,000 or 5 percent of the total project cost has been expended, incurred, or committed before March 2, 1986, by one or more taxpayers each of which is a member of the same affiliated group (as defined in section 1504(a) [of the Internal Revenue Code of 1986]), and

''(iii) such project consists of a comprehensive plan for meeting network capacity requirements as encompassed within either:

''(I) a November 5, 1985, presentation made to and accepted by the Chairman of the Board and the president of the taxpayer, or

''(II) the approvals by the Board of Directors of the parent company of the taxpayer on May 3, 1985, and September 22, 1985, and of the executive committee of said board on December 23, 1985.

''(D) A project is described in this subparagraph if—

''(i) such project is part of a flat rolled product modernization plan which was initially presented to the Board of Directors of the taxpayer on July 8, 1983,

''(ii) such program will be carried out at 3 locations, and

''(iii) such project will involve a total estimated minimum capital cost of at least $250,000,000.

''(E) A project is described in this subparagraph if the project is being carried out by a corporation engaged in the production of paint, chemicals, fiberglass, and glass, and if—

''(i) the project includes a production line which applies a thin coating to glass in the manufacture of energy efficient residential products, if approved by the management committee of the corporation on January 29, 1986,

''(ii) the project is a turbogenerator which was approved by the president of such corporation and at least $1,000,000 of the cost of which was incurred or committed before such date,

''(iii) the project is a waste-to-energy disposal system which was initially approved by the management committee of the corporation on March 29, 1982, and at least $5,000,000 of the cost of which was incurred before September 26, 1985,

''(iv) the project, which involves the expansion of an existing service facility and the addition of new lab facilities needed to accommodate topcoat and undercoat production needs of a nearby automotive assembly plant, was approved by the corporation's management committee on March 5, 1986, or

''(v) the project is part of a facility to consolidate and modernize the silica production of such corporation and the project was approved by the president of such corporation on August 19, 1985.

''(F) A project is described in this subparagraph if—

''(i) such project involves a port terminal and oil pipeline extending generally from the area of Los Angeles, California, to the area of Midland, Texas, and

''(ii) before September 26, 1985, there is a binding contract for dredging and channeling with respect thereto and a management contract with a construction manager for such project.

''(G) A project is described in this subparagraph if—

''(i) the project is a newspaper printing and distribution plant project with respect to which a contract for the purchase of 8 printing press units and related equipment to be installed in a single press line was entered into on January 8, 1985, and

''(ii) the contract price for such units and equipment represents at least 50 percent of the total cost of such project.

''(H) A project is described in this subparagraph if it is the second phase of a project involving direct current transmission lines spanning approximately 190 miles from the United States-Canadian border to Ayer, Massachusetts, alternating current transmission lines in Massachusetts from Ayers to Millbury to West Medway, DC–AC converted terminals to Monroe, New Hampshire, and Ayer, Massachusetts, and other related equipment and facilities.

''(I) A project is described in this subparagraph if it involves not more than two natural gas-fired combined cycle electric generating units each having a net electrical capability of approximately 233 megawatts, and a sales contract for approximately one-half of the output of the 1st unit was entered into in December 1985.

''(J) A project is described in this subparagraph if—

''(i) the project involves an automobile manufacturing facility (including equipment and incidental appurtenances) to be located in the United States, and

''(ii) either—

''(I) the project was the subject of a memorandum of understanding between 2 automobile manufacturers that was signed before September 25, 1985, the automobile manufacturing facility (including equipment and incidental appurtenances) will involve a total estimated cost of approximately $750,000,000, and will have an annual production capacity of approximately 240,000 vehicles or

''(II) the Board of Directors of an automobile manufacturer approved a written plan for the conversion of existing facilities to produce new models of a vehicle not currently produced in the United States, such facilities will be placed in service by July 1, 1987, and such Board action occurred in July 1985 with respect to a $602,000,000 expenditure, a $438,000,000 expenditure, and a $321,000,000 expenditure.

''(K) A project is described in this subparagraph if—

''(i) the project involves a joint venture between a utility company and a paper company for a supercalendered paper mill, and at least $50,000,000 was incurred or committed with respect to such project before March 1, 1986, or

''(ii) the project involves a paper mill for the manufacture of newsprint (including a cogeneration facility) is generally based on a written design and feasibility study that was completed on December 15, 1981, and will be placed in service before January 1, 1991, or

''(iii) the project is undertaken by a Maine corporation and involves the modernization of pulp and paper mills in Millinocket and/or East Millinocket, Maine, or

''(iv) the project involves the installation of a paper machine for production of coated publication papers, the modernization of a pulp mill, and the installation of machinery and equipment with respect to related processes, as of December 31, 1985, in excess of $50,000,000 was incurred for the project, as of July 1986, in excess of $150,000,000 was incurred for the project, and the project is located in Pine Bluff, Arkansas, or

''(v) the project involves property of a type described in ADR classes 26.1, 26.2, 25, 00.3 and 00.4 included in a paper plant which will manufacture and distribute tissue, towel or napkin products; is located in Effingham County, Georgia; and is generally based upon a written General Description which was submitted to the Georgia Department of Revenue on or about June 13, 1985.

''(L) A project is described in this subparagraph if—

''(i) a letter of intent with respect to such project was executed on June 4, 1985, and

''(ii) a 5-percent downpayment was made in connection with such project for 2 10-unit press lines and related equipment.

''(M) A project is described in this subparagraph if—

''(i) the project involves the retrofit of ammonia plants,

''(ii) as of March 1, 1986, more than $390,000 had been expended for engineering and equipment, and

''(iii) more than $170,000 was expensed in 1985 as a portion of preliminary engineering expense.

''(N) A project is described in this subparagraph if the project involves bulkhead intermodal flat cars which are placed in service before January 1, 1987, and either—

''(i) more than $2,290,000 of expenditures were made before March 1, 1986, with respect to a project involving up to 300 platforms, or

''(ii) more than $95,000 of expenditures were made before March 1, 1986, with respect to a project involving up to 850 platforms.

''(O) A project is described in this subparagraph if—

''(i) the project involves the production and transportation of oil and gas from a well located north of the Arctic Circle, and

''(ii) more than $200,000,000 of cost had been incurred or committed before September 26, 1985.

''(P) A project is described in this subparagraph if—

''(i) a commitment letter was entered into with a financial institution on January 23, 1986, for the financing of the project,

''(ii) the project involves intercity communication links (including microwave and fiber optics communications systems and related property),

''(iii) the project consists of communications links between—

''(I) Omaha, Nebraska, and Council Bluffs, Iowa,

''(II) Waterloo, Iowa and Sioux City, Iowa,

''(III) Davenport, Iowa and Springfield, Illinois, and

''(iv) the estimated cost of such project is approximately $13,000,000.

''(Q) A project is described in this subparagraph if—

''(i) such project is a mining modernization project involving mining, transport, and milling operations,

''(ii) before September 26, 1985, at least $20,000,000 was expended for engineering studies which were approved by the Board of Directors of the taxpayer on January 27, 1983, and

''(iii) such project will involve a total estimated minimum cost of $350,000,000.

''(R) A project is described in this subparagraph if—

''(i) such project is a dragline acquired in connection with a 3-stage program which began in 1980 to increase production from a coal mine,

''(ii) at least $35,000,000 was spent before September 26, 1985, on the 1st 2 stages of the program, and

''(iii) at least $4,000,000 was spent to prepare the mine site for the dragline.

''(S) A project is described in this subparagraph if—it is a project consisting of a mineral processing facility using a heap leaching system (including waste dumps, low-grade dumps, a leaching area, and mine roads) and if—

''(i) convertible subordinated debentures were issued in August 1985, to finance the project,

''(ii) construction of the project was authorized by the Board of Directors of the taxpayer on or before December 31, 1985,

''(iii) at least $750,000 was paid or incurred with respect to the project on or before December 31, 1985, and

''(iv) the project is placed in service on or before December 31, 1986.

''(T) A project is described in this subparagraph if it is a plant facility on Alaska's North Slope which is placed in service before January 1, 1988, and—

''(i) the approximate cost of which is $675,000,000, of which approximately $400,000,000 was spent on off-site construction,

''(ii) the approximate cost of which is $445,000,000, of which approximately $400,000,000 was spent on off-site construction and more than 50 percent of the project cost was spent prior to December 31, 1985, or

''(iii) the approximate cost of which is $375,000,000, of which approximately $260,000,000 was spent on off-site construction.

''(U) A project is described in this subparagraph if it involves the connecting of existing retail stores in the downtown area of a city to a new covered area, the total project will be 250,000 square feet, a formal Memorandum of Understanding relating to development of the project was executed with the city on July 2, 1986, and the estimated cost of the project is $18,186,424.

''(V) A project is described in this subparagraph if it includes a 200,000 square foot office tower, a 200-room hotel, a 300,000 square foot retail center, an 800-space parking facility, the total cost is projected to be $60,000,000, and $1,250,000 was expended with respect to the site before August 25, 1986.

''(W) A project is described in this subparagraph if it is a joint use and development project including an integrated hotel, convention center, office, related retail facilities and public mass transpor-

tation terminal, and vehicle parking facilities which satisfies the following conditions:

''(i) is developed within certain air space rights and upon real property exchanged for such joint use and development project which is owned or acquired by a state department of transportation, a regional mass transit district in a county with a population of at least 5,000,000 and a community redevelopment agency;

''(ii) such project affects an existing, approximately 40 acre public mass transportation busway terminal facility located adjacent to an interstate highway;

''(iii) a memorandum of understanding with respect to such joint use and development project is executed by a state department of transportation, such a county regional mass transit district and a community redevelopment agency on or before December 31, 1986, and

''(iv) a major portion of such joint use and development project is placed in service by December 31, 1990.

''(X) A project is described in this subparagraph if—

''(i) it is an $8,000,000 project to provide advanced control technology for adipic acid at a plant, which was authorized by the company's Board of Directors in October 1985, at December 31, 1985, $1,400,000 was committed and $400,000 expended with respect to such project, or

''(ii) it is an $8,300,000 project to achieve compliance with State and Federal regulations for particulates emissions, which was authorized by the company's Board of Directors in December 1985, by March 31, 1986, $250,000 was committed and $250,000 was expended with respect to such project, or

''(iii) it is a $22,000,000 project for the retrofit of a plant that makes a raw material for aspartame, which was approved in the company's December 1985 capital budget, if approximately $3,000,000 of the $22,000,000 was spent before August 1, 1986.

''(Y) A project is described in this subparagraph if such project passes through at least 9 States and involves an intercity communication link (including multiple repeater sites and junction stations for microwave transmissions and amplifiers for fiber optics); the link from Buffalo to New York/Elizabeth was completed in 1984; the link from Buffalo to Chicago was completed in 1985; and the link from New York to Washington is completed in 1986.

''(Z) A project is described in this subparagraph if—

''(i) such project involves a fiber optic network of at least 475 miles, passing through Minnesota and Wisconsin; and

''(ii) before January 1, 1986, at least $15,000,000 was expended or committed for electronic equipment or fiber optic cable to be used in constructing the network.

''(6) NATURAL GAS PIPELINE.—The amendments made by section 201 [amending sections 46, 167, 168, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to any interstate natural gas pipeline (and related equipment) if—

''(A) 3 applications for the construction of such pipeline were filed with the Federal Energy Regulatory Commission before November 22, 1985 (and 2 of which were filed before September 26, 1985), and

''(B) such pipeline has 1 of its terminal points near Bakersfield, California.

''(7) CERTAIN LEASEHOLD IMPROVEMENTS.—The amendments made by section 201 shall not apply to any reasonable leasehold improvements, equipment and furnishings placed in service by a lessee or its affiliates if—

''(A) the lessee or an affiliate is the original lessee of each building in which such property is to be used,

''(B) such lessee is obligated to lease the building under an agreement to lease entered into before September 26, 1985, and such property is provided for such building, and

''(C) such buildings are to serve as world headquarters of the lessee and its affiliates.

For purposes of this paragraph, a corporation is an affiliate of another corporation if both corporations are members of a controlled group of corporations within the meaning of section 1563(a) of the Internal Revenue Code of 1954 without regard to section 1563(b)(2) of such Code. Such lessee shall include a securities firm that meets the requirements of subparagraph (A), except the lessee is obligated to lease the building under a lease entered into on June 18, 1986.

''(8) SOLID WASTE DISPOSAL FACILITIES.—The amendments made by section 201 [amending sections 46, 167, 168, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to the taxpayer who originally places in service any qualified solid waste disposal facility (as defined in section 7701(e)(3)(B) of the Internal Revenue Code of 1986) if before March 2, 1986—

''(A) there is a binding written contract between a service recipient and a service provider with respect to the operation of such facility to pay for the services to be provided by such facility,

''(B) a service recipient or governmental unit (or any entity related to such recipient or unit) made a financial commitment of at least $200,000 for the financing or construction of such facility,

''(C) such facility is the Tri-Cities Solid Waste Recovery Project involving Fremont, Newark, and Union City, California, and has received an authority to construct from the Environmental Protection Agency or from a State or local agency authorized by the Environmental Protection Agency to issue air quality permits under the Clean Air Act [42 U.S.C. 7401 et seq.],

''(D) a bond volume carryforward election was made for the facility and the facility is for Chattanooga, Knoxville, or Kingsport, Tennessee, or

''(E) such facility is to serve Haverhill, Massachusetts.

''(9) CERTAIN SUBMERSIBLE DRILLING UNITS.—In the case of a binding contract entered into on October 30, 1984, for the purchase of 6 semi-submersible drilling units at a cost of $425,000,000, such units shall be treated as having an applicable date under subsection [section] 203(b)(2) of January 1, 1991.

''(10) WASTEWATER OR SEWAGE TREATMENT FACILITY.—The amendments made by section 201 [amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to any property which is part of a wastewater or sewage treatment facility if—

''(A) site preparation for such facility commenced before September 1985, and a parish council approved a service agreement with respect to such facility on December 4, 1985;

''(B) a city-parish advertised in September 1985, for bids for construction of secondary treatment improvements for such facility, in May 1985, the city-parish received statements from 16 firms interested in privatizing the wastewater treatment facilities, and the metropolitan council selected a privatizer at its meeting on November 20, 1985, and adopted a resolution authorizing the Mayor to enter into contractual negotiation with the selected privatizer;

''(C) the property is part of a wastewater treatment facility serving Greenville, South Carolina with respect to which a binding service agreement between a privatizer and the Western Carolina Regional Sewer Authority with respect to such facility was signed before January 1, 1986; or

''(D) such property is part of a wastewater treatment facility (located in Cameron County, Texas, within one mile of the City of Harlingen), an application for a wastewater discharge permit was filed

with respect to such facility on December 4, 1985, and a City Commission approved a letter of intent relating to a service agreement with respect to such facility on August 7, 1986; or a wastewater facility (located in Harlingen, Texas) which is a subject of such letter of intent and service agreement and the design of which was contracted for in a letter of intent dated January 23, 1986.

''(11) CERTAIN AIRCRAFT.—The amendments made by section 201 [amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to any new aircraft with 19 or fewer passenger seats if—

''(A) the aircraft is manufactured in the United States. For purposes of this subparagraph, an aircraft is 'manufactured' at the point of its final assembly,

''(B) the aircraft was in inventory or in the planned production schedule of the final assembly manufacturer, with orders placed for the engine(s) on or before August 16, 1986, and

''(C) the aircraft is purchased or subject to a binding contract on or before December 31, 1986, and is delivered and placed in service by the purchaser, before July 1, 1987.

''(12) CERTAIN SATELLITES.—The amendments made by section 201 shall not apply to any satellite with respect to which—

''(A) on or before January 28, 1986, there was a binding contract to construct or acquire a satellite, and

''(i) an agreement to launch was in existence on that date, or

''(ii) on or before August 5, 1983, the Federal Communications Commission had authorized the construction and for which the authorized party has a specific although undesignated agreement to launch in existence on January 28, 1986;

''(B) by order adopted on July 25, 1985, the Federal Communications Commission granted the taxpayer an orbital slot and authorized the taxpayer to launch and operate 2 satellites with a cost of approximately $300,000,000; or

''(C) the International Telecommunications Satellite Organization or the International Maritime Satellite Organization entered into written binding contracts before May 1, 1985.

''(13) CERTAIN NONWIRE LINE CELLULAR TELEPHONE SYSTEMS.—The amendments made by section 201 shall not apply to property that is part of a nonwire line system in the Domestic Public Cellular Radio Telecommunications Service for which the Federal Communications Commission has issued a construction permit before September 26, 1985, but only if such property is placed in service before January 1, 1987.

''(14) CERTAIN COGENERATION FACILITIES.—The amendments made by section 201 shall not apply to projects consisting of 1 or more facilities for the cogeneration and distribution of electricity and steam or other forms of thermal energy if—

''(A) at least $100,000 was paid or incurred with respect to the project before March 1, 1986, a memorandum of understanding was executed on September 13, 1985, and the project is placed in service before January 1, 1989,

''(B) at least $500,000 was paid or incurred with respect to the projects before May 6, 1986, the projects involve a 22-megawatt combined cycle gas turbine plant and a 45-megawatt coal waste plant, and applications for qualifying facility status were filed with the Federal Energy Regulatory Commission on March 5, 1986,

''(C) the project cost approximates $125,000,000 to $140,000,000 and an application was made to the Federal Energy Regulatory Commission in July 1985,

''(D) an inducement resolution for such facility was adopted on September 10, 1985, a development authority was given an inducement date of September 10, 1985, for a loan not to exceed $80,000,000 with respect to such facility, and such facility is expected to have a capacity of approximately 30 megawatts of electric power and 70,000 pounds of steam per hour,

''(E) at least $1,000,000 was incurred with respect to the project before May 6, 1986, the project involves a 52-megawatt combined cycle gas turbine plant and a petition was filed with the Connecticut Department of Public Utility Control to approve a power sales agreement with respect to the project on March 27, 1986,

''(F) the project has a planned scheduled capacity of approximately 38,000 kilowatts, the project property is placed in service before January 1, 1991, and the project is operated, established, or constructed pursuant to certain agreements, the negotiation of which began before 1986, with public or municipal utilities conducting business in Massachusetts, or

''(G) the Board of Regents of Oklahoma State University took official action on July 25, 1986, with respect to the project.

In the case of the project described in subparagraph (F), section 203(b)(2)(A) shall be applied by substituting 'January 1, 1991' for 'January 1, 1989'.

''(15) CERTAIN ELECTRIC GENERATING STATIONS.—The amendments made by section 201 shall not apply to a project located in New Mexico consisting of a coal-fired electric generating station (including multiple generating units, coal mine equipment, and transmission facilities) if—

''(A) a tax-exempt entity will own an equity interest in all property included in the project (except the coal mine equipment), and

''(B) at least $72,000,000 was expended in the acquisition of coal leases, land and water rights, engineering studies, and other development costs before May 6, 1986.

For purposes of this paragraph, section 203(b)(2) shall be applied by substituting 'January 1, 1996' for 'January 1, 1991' each place it appears.

''(16) SPORTS ARENAS.—

''(A) INDOOR SPORTS FACILITY.—The amendments made by section 201 shall not apply to up to $20,000,000 of improvements made by a lessee of any indoor sports facility pursuant to a lease from a State commission granting the right to make limited and specified improvements (including planned seat explanations), if architectural renderings of the project were commissioned and received before December 22, 1985.

''(B) METROPOLITAN SPORTS ARENA.—The amendments made by section 201 shall not apply to any property which is part of an arena constructed for professional sports activities in a metropolitan area, provided that such arena is capable of seating no less than 18,000 spectators and a binding contract to incur significant expenditures for its construction was entered into before June 1, 1986.

''(17) CERTAIN WASTE-TO-ENERGY FACILITIES.—The amendments made by section 201 shall not apply to 2 agricultural waste-to-energy powerplants (and required transmission facilities), in connection with which a contract to sell 100 megawatts of electricity to a city was executed in October 1984.

''(18) CERTAIN COAL-FIRED PLANTS.—The amendments made by section 201 shall not apply to one of three 540 megawatt coal-fired plants that are placed in service after a sale leaseback occurring after January 1, 1986, if—

''(A) the Board of Directors of an electric power cooperation authorized the investigation of a sale leaseback of a nuclear generation facility by resolution dated January 22, 1985, and

''(B) a loan was extended by the Rural Electrification Administration on February 20, 1986, which contained a covenant with respect to used property leasing from unit II.

''(19) CERTAIN RAIL SYSTEMS.—

''(A) The amendments made by section 201 shall not apply to a light rail transit system, the approximate cost of which is $235,000,000, if, with respect

to which, the board of directors of a corporation (formed in September 1984 for the purpose of developing, financing, and operating the system) authorized a $300,000 expenditure for a feasibility study in April 1985.

''(B) The amendments made by section 201 shall not apply to any project for rehabilitation of regional railroad rights of way and properties including grade crossings which was authorized by the Board of Directors of such company prior to October 1985; and/or was modified, altered or enlarged as a result of termination of company contracts, but approved by said Board of Directors no later than January 30, 1986, and which is in the public interest, and which is subject to binding contracts or substantive commitments by December 31, 1987.

''(20) CERTAIN DETERGENT MANUFACTURING FACILITY.—The amendments made by section 201 shall not apply to a laundry detergent manufacturing facility, the approximate cost of which is $13,200,000, with respect to which a project agreement was fully executed on March 17, 1986.

''(21) CERTAIN RESOURCE RECOVERY FACILITY.—The amendments made by section 201 shall not apply to any of 3 resource recovery plants, the aggregate cost of which approximates $300,000,000, if an industrial development authority adopted a bond resolution with respect to such facilities on December 17, 1984, and the projects were approved by the department of commerce of a Commonwealth on December 27, 1984.

''(22) The amendments made by section 201 shall not apply to a computer and office support center building in Minneapolis, with respect to which the first contract, with an architecture firm, was signed on April 30, 1985, and a construction contract was signed on March 12, 1986.

''(23) CERTAIN DISTRICT HEATING AND COOLING FACILITIES.—The amendments made by section 201 shall not apply to pipes, mains, and related equipment included in district heating and cooling facilities, with respect to which the development authority of a State approved the project through an inducement resolution adopted on October 8, 1985, and in connection with which approximately $11,000,000 of tax-exempt bonds are to be issued.

''(24) CERTAIN VESSELS.—

''(A) CERTAIN OFFSHORE VESSELS.—The amendments made by section 201 shall not apply to any offshore vessel the construction contract for which was signed on February 28, 1986, and the approximate cost of which is $9,000,000.

''(B) CERTAIN INLAND RIVER VESSEL.—The amendments made by section 201 shall not apply to a project involving the reconstruction of an inland river vessel docked on the Mississippi River at St. Louis, Missouri, on July 14, 1986, and with respect to which:

''(i) the estimated cost of reconstruction is approximately $39,000,000;

''(ii) reconstruction was commenced prior to December 1, 1985;

''(iii) at least $17,000,000 was expended before December 31, 1985; and

''(C) SPECIAL AUTOMOBILE CARRIER VESSELS.—The amendments made by section 201 shall not apply to two new automobile carrier vessels which will cost approximately $47,000,000 and will be constructed by a United States-flag carrier to operate, under the United States-flag and with an American crew, to transport foreign automobiles to the United States, in a case where negotiations for such transportation arrangements commenced in April 1985, formal contract bids were submitted prior to the end of 1985, and definitive transportation contracts were awarded in May 1986.

''(D) The amendments made by section 201 shall not apply to a 562-foot passenger cruise ship, which was purchased in 1980 for the purpose of returning the vessel to United States service, the approximate cost of refurbishment of which is approximately $47,000,000.

''(E) The amendments made by section 201 shall not apply to the Muskegon, Michigan, Cross-Lake Ferry project having a projected cost of approximately $7,200,000.

''(F) The amendments made by section 201 shall not apply to a new automobile carrier vessel, the contract price for which is no greater than $28,000,000, and which will be constructed for and placed in service by OSG Car Carriers, Inc., to transport, under the United States flag and with an American crew, foreign automobiles to North America in a case where negotiations for such transportation arrangements commenced in 1985, and definitive transportation contracts were awarded before June 1986.

''(25) CERTAIN WOOD ENERGY PROJECTS.—The amendments made by section 201 shall not apply to two wood energy projects for which applications with the Federal Energy Regulatory Commission were filed before January 1, 1986, which are described as follows:

''(A) a 26.5 megawatt plant in Fresno, California, and

''(B) a 26.5 megawatt plant in Rocklin, California.

''(26) The amendments made by section 201 shall not apply to property which is a geothermal project of less than 20 megawatts that was certified by the Federal Energy Regulatory Commission on July 14, 1986, as a qualifying small power production facility for purposes of the Public Utility Regulatory Policies Act of 1978 [see Short Title note set out under 16 U.S.C. 2601] pursuant to an application filed with the Federal Energy Regulatory Commission on April 17, 1986.

''(27) CERTAIN ECONOMIC DEVELOPMENT PROJECTS.—The amendments made by section 201 shall not apply to any of the following projects:

''(A) A mixed use development on the East River the total cost of which is approximately $400,000,000, with respect to which a letter of intent was executed on January 24, 1984, and with respect to which approximately $2.5 million had been spent by March 1, 1986.

''(B) A 356-room hotel, banquet, and conference facility (including 540,000 square feet of office space) the approximate cost of which is $158,000,000, with respect to which a letter of intent was executed on June 1, 1984, and with respect to which an inducement resolution and bond resolution was adopted on August 20, 1985.

''(C) Phase 1 of a 4-phase project involving the construction of laboratory space and ground-floor retail space the estimated cost of which is $22,000,000 and with respect to which a memoradum [sic] of understanding was made on August 29, 1983.

''(D) A project involving the development of a 490,000 square foot mixed-use building at 152 W. 57th Street, New York, New York, the estimated cost of which is $100,000,000, and with respect to which a building permit application was filed in May 1986.

''(E) A mixed-use project containing a 300 unit, 12-story hotel, garage, two multi-rise office buildings, and also included a park, renovated riverboat, and barge with festival marketplace, the capital outlays for which approximate $68,000,000.

''(F) The construction of a three-story office building that will serve as the home office for an insurance group and its affiliated companies, with respect to which a city agreed to transfer its ownership of the land for the project in a Redevelopment Agreement executed on September 18, 1985, once certain conditions are met.

''(G) A commercial bank formed under the laws of the State of New York which entered into an agreement on September 5, 1985, to construct its headquarters at 60 Wall Street, New York, New York, with respect to such headquarters.

''(H) Any property which is part of a commercial and residential project, the first phase of which is currently under construction, to be developed on land which is the subject of an ordinance passed on

July 20, 1981, by the city council of the city in which such land is located, designating such land and the improvements to be placed thereon as a residential-business planned development, which development is being financed in part by the proceeds of industrial development bonds in the amount of $62,600,000 issued on December 4, 1985.

''(I) A 600,000 square foot mixed use building known as Flushing Center with respect to which a letter of intent was executed on March 26, 1986.

In the case of the building described in subparagraph (I), section 203(b)(2)(A) shall be applied by substituting 'January 1, 1993' for the applicable date which would otherwise apply.

''(28) The amendments made by section 201 shall not apply to an $80,000,000 capital project steel seamless tubular casings minimill and melting facility located in Youngstown, Ohio, which was purchased by the taxpayer in April 1985, and—

''(A) the purchase and renovation of which was approved by a committee of the Board of Directors on February 22, 1985, and

''(B) as of December 31, 1985, more than $20,000,000 was incurred or committed with respect to the renovation.

''(29) The amendments made by section 201 shall not apply to any project for residential rental property if—

''(A) an inducement resolution with respect to such project was adopted by the State housing development authority on January 25, 1985, and

''(B) such project was the subject of a law suit filed on October 25, 1985.

''(30) The amendments made by section 201 shall not apply to a 30 megawatt electric generating facility fueled by geothermal and wood waste, the approximate cost of which is $55,000,000, and with respect to which a 30-year power sales contract was executed on March 22, 1985.

''(31) The amendments made by section 201 shall not apply to railroad maintenance-of-way equipment, with respect to which a Boston bank entered into a firm binding contract with a major northeastern railroad before March 2, 1986, to finance $10,500,000 of such equipment, if all of the equipment was placed in service before August 1, 1986.

''(32) The amendment made by section 201 shall not apply to—

''(A) a facility constructed on approximately seven acres of land located on Ogle's Poso Creek Oil field, the primary fuel of which will be bituminous coal from Utah or Wyoming, with respect to which an application for an authority to construct was filed on December 26, 1985, an authority to construct was issued on July 2, 1986, and a prevention of significant deterioration permit application was submitted in May 1985,

''(B) a facility constructed on approximately seven acres of land located on Teorco's Jasmin oil field, the primary fuel of which will be bituminous coal from Utah or Wyoming, with respect to which an authority to construct was filed on December 26, 1985, an authority to construct was issued on July 2, 1986, and a prevention of significant deterioration permit application was submitted in July 1985,

''(C) the Mountain View Apartments, in Hadley, Massachusetts,

''(D) a facility expected to have a capacity of not less than 65 megawatts of electricity, the steam from which is to be sold to a pulp and paper mill, with respect to which application was made to the Federal Regulatory Commission for certification as a qualified facility on November 1, 1985, and received such certification on January 24, 1986,

''(E) $5,000,000 of equipment ordered in 1986, in connection with a 60,000 square foot plant in Masontown, Pennsylvania, that was completed in 1983,

''(F) a magnetic resonance imaging machine, with respect to which a binding contract to purchase was entered into in April 1986, in connection with the construction of a magnetic resonance imaging clinic with respect to which a Determination of Need certification was obtained from a State Department of Public Health on October 22, 1985, if such property is placed in service before December 31, 1986,

''(G) a company located in Salina, Kansas, which has been engaged in the construction of highways and city streets since 1946, but only to the extent of $1,410,000 of investment in new section 38 property,

''(H) a $300,000 project undertaken by a small metal finishing company located in Minneapolis, Minnesota, the first parts of which were received and paid for in January 1986, with respect to which the company received Board approval to purchase the largest piece of machinery it has ever ordered in 1985,

''(I) A $1,200,000 finishing machine that was purchased on April 2, 1986 and placed into service in September 1986 by a company located in Davenport, Iowa,

''(J) A 25 megawatt small power production facility, with respect to which Qualifying Facility status numbered QF86–593–000 was granted on March 5, 1986,

''(K) A 250 megawatt coal-fired electric plant in northeastern Nevada estimated to cost $600,000,000 and known as the Thousand Springs project, on which the Sierra Pacific Power Company, a subsidiary of Sierra Pacific Resources, began in 1980 work to design, finance, construct, and operate (and section 203(b)(2) shall be applied with respect to such plant by substituting 'January 1, 1995' for 'January 1, 1991'),

''(L) 128 units of rental housing in connection with the Point Gloria Limited Partnership,

''(M) property which is part of the Kenosha Downtown Redevelopment Project and which is financed with the proceeds of bonds issued pursuant to section 1317(6)(W) [set out as a note under section 141 of this title],

''(N) Lakeland Park Phase II, in Baton Rouge, Louisiana,

''(O) the Santa Rosa Hotel, in Pensacola, Florida,

''(P) the Sheraton Baton Rouge, in Baton Rouge, Louisiana,

''(Q) $300,000 of equipment placed in service in 1986, in connection with the renovation of the Best Western Townhouse Convention Center in Cedar Rapids, Iowa,

''(R) the segment of a nationwide fiber optics telecommunications network placed in service by SouthernNet, the total estimated cost of which is $37,000,000,

''(S) two cogeneration facilities, to be placed in service by the Reading Anthracite Coal Company (or any subsidiary thereof), costing approximately $110,000,000 each, with respect to which filings were made with the Federal Energy Regulatory Commission by December 31, 1985, and which are located in Pennsylvania,

''(T) a portion of a fiber optics network placed in service by LDX NET after December 31, 1988, but only to the extent the cost of such portion does not exceed $25,000,000,

''(U) 3 newly constructed fishing vessels, and one vessel that is overhauled, constructed by Mid Coast Marine, but only to the extent of $6,700,000 of investment,

''(V) $350,000 of equipment acquired in connection with the reopening of a plant in Bristol, Rhode Island, which plant was purchased by Buttonwoods, Ltd., Associates on February 7, 1986,

''(W) $4,046,000 of equipment placed in service by Brendle's Incorporated, acquired in connection with a Distribution Center,

''(X) a multi-family mixed-use housing project located in a home rule city, the zoning for which was changed to residential business planned develop-

ment on November 26, 1985, and with respect to which both the home rule city on December 4, 1985, and the State housing finance agency on December 20, 1985, adopted inducement resolutions,

''(Y) the Myrtle Beach Convention Center, in South Carolina, to the extent of $25,000,000 of investment, and

''(Z) railroad cars placed in service by the Pullman Leasing Company, pursuant to an April 3, 1986 purchase order, costing approximately $10,000,000.

''(33) The amendments made by section 201 [amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to—

''(A) $400,000 of equipment placed in service by Super Key Market, if such equipment is placed in service before January 1, 1987,

''(B) the Trolley Square project, the total project cost of which is $24,500,000, and the amount of depreciable real property of which is $14,700,000.

''(C)(i) a waste-to-energy project in Derry, New Hampshire, costing approximately $60,000,000, and

''(ii) a waste-to-energy project in Manchester, New Hampshire, costing approximately $60,000,000,

''(D) the City of Los Angeles Co-composting project, the estimated cost of which is $62,000,000, with respect to which, on July 17, 1985, the California Pollution Control Financing Authority issued an initial resolution in the maximum amount of $75,000,000 to finance this project,

''(E) the St. Charles, Missouri Mixed-Use Center,

''(F) Oxford Place in Tulsa, Oklahoma,

''(G) an amount of investment generating $20,000,000 of investment tax credits attributable to property used on the Illinois Diversatech Campus,

''(H) $25,000,000 of equipment used in the Melrose Park Engine Plant that is sold and leased back by Navistar,

''(I) 80,000 vending machines, for a cost approximating $3,400,000 placed into service by Folz Vending Co.,

''(J) A 25.85 megawatt alternative energy facility located in Deblois, Maine, with respect to which certification by the Federal Energy Regulatory Commission was made on April 3, 1986,

''(K) Burbank Manors, in Illinois, and

''(L) a cogeneration facility to be built at a paper company in Turners Falls, Massachusetts, with respect to which a letter of intent was executed on behalf of the paper company on September 26, 1985.

''(40) [Par. (40) probably should follow par. (39).] CERTAIN TRUCKS, ETC.—The amendments made by section 201 shall not apply to trucks, tractor units, and trailers which a privately held truck leasing company headquartered in Des Moines, Iowa, contracted to purchase in September 1985 but only to the extent the aggregate reduction in Federal tax liability by reason of the application of this paragraph does not exceed $8,500,000.

''(34) The amendments made by section 201 shall not apply to an approximately 240,000 square foot beverage container manufacturing plant located in Batesville, Mississippi, or plant equipment used exclusively on the plant premises if—

''(A) a 2-year supply contract was signed by the taxpayer and a customer on November 1, 1985,

''(B) such contract further obligated the customer to purchase beverage containers for an additional 5-year period if physical signs of construction of the plant are present before September 1986,

''(C) ground clearing for such plant began before August 1986, and

''(D) construction is completed, the equipment is installed, and operations are commenced before July 1, 1987.

''(35) The amendments made by section 201 shall not apply to any property which is part of the multifamily housing at the Columbia Point Project in Boston, Massachusetts. A project shall be treated as not described in the preceding sentence and as not described in section 252(f)(1)(D) [set out as a note under section 42 of this title] unless such project includes at substantially all times throughout the compliance period (within the meaning of section 42(i)(1) of the Internal Revenue Code of 1986), a facility which provides health services to the residents of such project for fees commensurate with the ability of such individuals to pay for such services.

''(36) The amendments made by section 201 shall not apply to any ethanol facility located in Blair, Nebraska, if—

''(A) in July of 1984 an initial binding construction contract was entered into for such facility,

''(B) in June of 1986, certain Department of Energy recommended contract changes required a change of contractor, and

''(C) in September of 1986, a new contract to construct such facility, consistent with such recommended changes, was entered into.

''(37) The amendments made by section 201 shall not apply to any property which is part of a sewage treatment facility if, prior to January 1, 1986, the City of Conyers, Georgia, selected a privatizer to construct such facility, received a guaranteed maximum price bid for the construction of such facility, signed a letter of intent and began substantial negotiations of a service agreement with respect to such facility.

''(38) The amendments made by section 201 shall not apply to—

''(A) a $28,000,000 wood resource complex for which construction was authorized by the Board of Directors on August 9, 1985,

''(B) an electrical cogeneration plant in Bethel, Maine which is to generate 2 megawatts of electricity from the burning of wood residues, with respect to which a contract was entered into on July 10, 1984, and with respect to which $200,000 of the expected $2,000,000 cost had been committed before June 15, 1986,

''(C) a mixed income housing project in Portland, Maine which is known as the Back Bay Tower and which is expected to cost $17,300,000,

''(D) the Eastman Place project and office building in Rochester, New York, which is projected to cost $20,000,000, with respect to which an inducement resolution was adopted in December 1986, and for which a binding contract of $500,000 was entered into on April 30, 1986,

''(E) the Marquis Two project in Atlanta, Georgia which has a total budget of $72,000,000 and the construction phase of which began under a contract entered into on March 26, 1986,

''(F) a 166-unit continuing care retirement center in New Orleans, Louisiana, the construction contract for which was signed on February 12, 1986, and is for a maximum amount not to exceed $8,500,000,

''(G) the expansion of the capacity of an oil refining facility in Rosemont, Minnesota from 137,000 to 207,000 barrels per day which is expected to be completed by December 31, 1990, and

''(H) a project in Ransom, Pennsylvania which will burn coal waste (known as 'culm') with an approximate cost of $64,000,000 and for which a certification from the Federal Energy Regulatory Commission was received on March 11, 1986.

''(39) The amendments made by section 201 shall not apply to any facility for the manufacture of an improved particle board if a binding contract to purchase such equipment was executed March 3, 1986, such equipment will be placed in service by January 1, 1988, and such facility is located in or near Moncure, North Carolina.

''(b) SPECIAL RULE FOR CERTAIN PROPERTY.—The provisions of section 168(f)(8) of the Internal Revenue Code of 1954 (as amended by section 209 of the Tax Equity and Fiscal Responsibility Act of 1982) shall continue to apply to any transaction permitted by reason of section 12(c)(2) of the Tax Reform Act of 1984 or section 209(d)(1)(B) of the Tax Equity and Fiscal Responsibility Act of 1982 (as amended by the Tax Reform Act of 1984)

[section 12(c)(2) of Pub. L. 98–369 and section 209(d)(1)(B) of Pub. L. 97–248, respectively, set out below].

''(c) APPLICABLE DATE IN CERTAIN CASES.—

''(1) Section 203(b)(2) shall be applied by substituting 'January 1, 1992' for 'January 1, 1991' in the following cases.

''(A) in the case of a 2-unit nuclear powered electric generating plant (and equipment and incidental appurtenances), located in Pennsylvania and constructed pursuant to contracts entered into by the owner operator of the facility before December 31, 1975, including contracts with the engineer/constructor and the nuclear steam system supplier, such contracts shall be treated as contracts described in section 203(b)(1)(A),

''(B) a cogeneration facility with respect to which an application with the Federal Energy Regulatory Commission was filed on August 2, 1985, and approved October 15, 1985.

''(C) in the case of a 1,300 megawatt coal-fired steam powered electric generating plant (and related equipment and incidental appurtenances), which the three owners determined in 1984 to convert from nuclear power to coal power and for which more than $600,000,000 had been incurred or committed for construction before September 25, 1985, except that no investment tax credit will be allowable under section 49(d)(3) added by section 211(a) of this Act [section 49(d) of this title does not contain a par. (3)] for any qualified progress expenditures made after December 31, 1990.

''(2) Section 203(b)(2) shall be applied by substituting 'April 1, 1992' for the applicable date that would otherwise apply, in the case of the second unit of a twin steam electric generating facility and related equipment which was granted a certificate of public convenience and necessity by a public service commission prior to January 1, 1982, if the first unit of the facility was placed in service prior to January 1, 1985, and before September 26, 1985, more than $100,000,000 had been expended toward the construction of the second unit.

''(3) Section 203(b)(2) shall be applied by substituting 'January 1, 1990,' (or, in the case of a project described in subparagraph (B), by substituting 'April 1, 1992') for the applicable date that would otherwise apply in the case of—

''(A) new commercial passenger aircraft used by a domestic airline, if a binding contract with respect to such aircraft was entered into on or before April 1, 1986, and such aircraft has a present class life of 12 years,

''(B) a pumped storage hydroelectric project with respect to which an application was made to the Federal Energy Regulatory Commission for a license on February 4, 1974, and license was issued August 1, 1977, the project number of which is 2740, and

''(C) a newsprint mill in Pend Oreille county, Washington, costing about $290,000,000.

In the case of an aircraft described in subparagraph (A), section 203(b)(1)(A) shall be applied by substituting 'April 1, 1986' for 'March 1, 1986' and section 49(e)(1)(B) of the Internal Revenue Code of 1986 shall not apply.

''(4) The amendments made by section 201 [amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall not apply to a limited amount of the following property or a limited amount of property set forth in a submission before September 16, 1986, by the following taxpayers:

''(A) Arena project, Michigan, but only with respect to $78,000,000 of investments.

''(B) Campbell Soup Company, Pennsylvania, California, North Carolina, Ohio, Maryland, Florida, Nebraska, Michigan, South Carolina, Texas, New Jersey, and Delaware, but only with respect to $9,329,000 of regular investment tax credits.

''(C) The Southeast Overtown/Park West development, Florida, but only with respect to $200,000,000 of investments.

''(D) Equipment placed in service and operated by Leggett and Platt before July 1, 1987, but only with respect to $2,000,000 of regular investment tax credits, and subsections (c) and (d) of section 49 of the Internal Revenue Code of 1986 shall not apply to such equipment.

''(E) East Bank Housing Project.

''(F) $1,561,215 of investments by Standard Telephone Company.

''(G) Five aircraft placed in service before January 1, 1987, by Presidential Air.

''(H) A rehabilitation project by Ann Arbor Railroad, but only with respect to $2,900,000 of investments.

''(I) Property that is part of a cogeneration project located in Ada, Michigan, but only with respect to $30,000,000 of investments.

''(J) Anchor Store Project, Michigan, but only with respect to $21,000,000 of investments.

''(K) A waste-fired electrical generating facility of Biogen Power, but only with respect to $34,000,000 of investments.

''(L) $14,000,000 of television transmitting towers placed in service by Media General, Inc., which were subject to binding contracts as of January 21, 1986, and will be placed in service before January 1, 1988,

''(M) Interests of Samuel A. Hardage (whether owned individually or in partnership form).

''(N) Two aircraft of Mesa Airlines with an aggregate cost of $5,723,484.

''(O) Yarn-spinning equipment used at Spray Cotton Mills, but only with respect to $3,000,000 of investments.

''(P) 328 units of low-income housing at Angelus Plaza, but only with respect to $20,500,000 of investments.

''(Q) One aircraft of Continental Aviation Services with a cost of approximately $15,000,000 that was purchased pursuant to a contract entered into during March of 1983 and that is placed in service by December 31, 1988.

''(d) RAILROAD GRADING AND TUNNEL BORES.—

''(1) IN GENERAL.—In the case of expenditures for railroad grading and tunnel bores which were incurred by a common carrier by railroad to replace property destroyed in a disaster occurring on or about April 17, 1983, near Thistle, Utah, such expenditures, to the extent not in excess of $15,000,000, shall be treated as recovery property which is 5-year property under section 168 of the Internal Revenue Code of 1954 (as in effect before the amendments made by this Act) and which is placed in service at the time such expenditures were incurred.

''(2) BUSINESS INTERRUPTION PROCEEDS.—Business interruption proceeds received for loss of use, revenues, or profits in connection with the disaster described in paragraph (1) and devoted by the taxpayer described in paragraph (1) to the construction of replacement track and related grading and tunnel bore expenditures shall be treated as constituting an amount received from the involuntary conversion of property under section 1033(a)(2) of such Code.

''(3) EFFECTIVE DATE.—This subsection shall apply to taxable years ending after April 17, 1983.

''(e) TREATMENT OF CERTAIN DISASTER LOSSES.—

''(1) IN GENERAL.—In the case of a disaster described in paragraph (2), at the election of the taxpayer, the amendments made by section 201 of this Act [amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title]—

''(A) shall not apply to any property placed in service during 1987 or 1988, or

''(B) shall apply to any property placed in service during 1985 or 1986,

which is property to replace property lost, damaged, or destroyed in such disaster.

''(2) DISASTER TO WHICH SECTION APPLIES.—This section shall apply to a flood which occurred on Novem-

ber 3 through 7, 1985, and which was declared a natural disaster area by the President of the United States.''

Section 1002(c)(3) of Pub. L. 100–647 provided that: ''Notwithstanding section 203 of the Reform Act [section 203 of Pub. L. 99–514, set out above], the amendments made by section 201 of the Reform Act [section 201 of Pub. L. 99–514, amending this section and sections 46, 167, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] shall apply to any real property which was acquired before January 1, 1987, and was converted on or after such date from personal use to a use for which depreciation is allowable.''

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

Amendment by sections 1802(a)(1)–(2)(D), (G), (3), (4)(A), (B), (7), (b)(1), 1809(a)(1)–(2)(B), (4)(A), (B) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Section 1802(a)(2)(E)(ii) of Pub. L. 99–514 provided that:

''(I) Except as otherwise provided in this clause, the amendment made by clause (i) [amending this section] shall apply to property placed in service after September 27, 1985; except that such amendment shall not apply to any property acquired pursuant to a binding written contract in effect on such date (and at all times thereafter).

''(II) If an election under this subclause is made with respect to any property, the amendment made by clause (i) shall apply to such property whether or not placed in service on or before September 27, 1985.''

Section 1809(a)(2)(C)(i) of Pub. L. 99–514 provided in part that amendment by section 1809(a)(2)(C)(i) of Pub. L. 99–514 is effective on and after Oct. 22, 1986.

Section 1809(b)(3) of Pub. L. 99–514 provided that: ''The amendments made by this subsection [amending this section] shall apply to property placed in service by the transferee after December 31, 1985, in taxable years ending after such date.''

EFFECTIVE DATE OF 1985 AMENDMENT

Section 105(b) of Pub. L. 99–121, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by section 103 [amending this section and sections 47, 48, 57, 312, and 1245 of this title] shall apply with respect to property placed in service by the taxpayer after May 8, 1985.

''(2) EXCEPTION.—The amendments made by section 103 shall not apply to property placed in service by the taxpayer before January 1, 1987, if—

''(A) the taxpayer or a qualified person entered into a binding contract to purchase or construct such property before May 9, 1985, or

''(B) construction of such property was commenced by or for the taxpayer or a qualified person before May 9, 1985.

For purposes of this paragraph, the term 'qualified person' means any person whose rights in such a contract or such property are transferred to the taxpayer, but only if such property is not placed in service before such rights are transferred to the taxpayer.

''(3) SPECIAL RULE FOR COMPONENTS.—For purposes of applying section 168(f)(1)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by section 103) to components placed in service after December 31, 1986, property to which paragraph (2) of this subsection applies shall be treated as placed in service by the taxpayer before May 9, 1985.

''(4) TECHNICAL CORRECTION.—The amendment made by paragraph (6) of section 103(b) [amending section 47 of this title] shall apply as if included in the amendments made by section 111 of the Tax Reform Act of 1984 [Pub. L. 98–369, see Effective Date of 1984 Amendment note below].

''(5) SPECIAL RULE FOR LEASING OF QUALIFIED REHABILITATED BUILDINGS.—The amendment made by paragraph (5) of section 103(b) to section 48(g)(2)(B)(v) of the Internal Revenue Code of 1986 shall not apply to leases entered into before May 22, 1985, but only if the lessee signed the lease before May 17, 1985.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 12 of Pub. L. 98–369 applicable to taxable years ending after Dec. 31, 1983, see section 18(a) of Pub. L. 98–369, set out as a note under section 48 of this title.

Section 31(g) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, title XVIII, §1802(a)(2)(F), (10)(A)–(D)(i), (E)–(G), Oct. 22, 1986, 100 Stat. 2095, 2788, 2790, 2791; Pub. L. 100–647, title I, §1018(b)(1), Nov. 10, 1988, 102 Stat. 3577, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 46, 48, and 7701 of this title] shall apply—

''(A) to property placed in service by the taxpayer after May 23, 1983, in taxable years ending after such date, and

''(B) to property placed in service by the taxpayer on or before May 23, 1983, if the lease to the tax-exempt entity is entered into after May 23, 1983.

''(2) LEASES ENTERED INTO ON OR BEFORE MAY 23, 1983.—The amendments made by this section shall not apply with respect to any property leased to a tax-exempt entity if the property is leased pursuant to—

''(A) a lease entered into on or before May 23, 1983 (or a sublease under such a lease), or

''(B) any renewal or extension of a lease entered into on or before May 23, 1983, if such renewal or extension is pursuant to an option exercisable by the tax-exempt entity which was held by the tax-exempt entity on May 23, 1983.

''(3) BINDING CONTRACTS, ETC.—

''(A) The amendments made by this section shall not apply with respect to any property leased to a tax-exempt entity if such lease is pursuant to 1 or more written binding contracts which, on May 23, 1983, and at all times thereafter, required—

''(i) the taxpayer (or his predecessor in interest under the contract) to acquire, construct, reconstruct, or rehabilitate such property, and

''(ii) the tax-exempt entity (or a tax-exempt predecessor thereof) to be the lessee of such property.

''(B) Paragraph (9) of section 168(j) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this section) shall not apply with respect to any property owned by a partnership if—

''(i) such property was acquired by such partnership on or before October 21, 1983, or

''(ii) such partnership entered into a written binding contract which, on October 21, 1983, and at all times thereafter, required the partnership to acquire or construct such property.

''(C) The amendments made by this section shall not apply with respect to any property leased to a tax-exempt entity (other than any foreign person or entity)—

''(i) if—

''(I) on or before May 23, 1983, the taxpayer (or his predecessor in interest under the contract) or the tax-exempt entity entered into a written binding contract to acquire, construct, reconstruct, or rehabilitate such property and such property had not previously been used by the tax-exempt entity, or

''(II) the taxpayer or the tax-exempt entity acquired the property after June 30, 1982, and on or before May 23, 1983, or completed the construction, reconstruction, or rehabilitation of the property after December 31, 1982, and on or before May 23, 1983, and

''(ii) if such lease is pursuant to a written binding contract entered into before January 1, 1985, which requires the tax-exempt entity to be the lessee of such property.

''(4) OFFICIAL GOVERNMENTAL ACTION ON OR BEFORE NOVEMBER 1, 1983.—

''(A) IN GENERAL.—The amendments made by this section shall not apply with respect to any property leased to a tax-exempt entity (other than the United States, any agency or instrumentality thereof, or any foreign person or entity) if—

''(i) on or before November 1, 1983, there was significant official governmental action with respect to the project or its design, and

''(ii) the lease to the tax-exempt entity is pursuant to a written binding contract entered into before January 1, 1985, which requires the tax-exempt entity to be the lessee of the property.

''(B) SIGNIFICANT OFFICIAL GOVERNMENTAL ACTION.—For purposes of subparagraph (A), the term 'significant official governmental action' does not include granting of permits, zoning changes, environmental impact statements, or similar governmental actions.

''(C) SPECIAL RULE FOR CREDIT UNIONS.—In the case of any property leased to a credit union pursuant to a written binding contract with an expiration date of December 31, 1984, which was entered into by such organization on August 23, 1984—

''(i) such credit union shall not be treated as an agency or instrumentality of the United States; and

''(ii) clause (ii) of subparagraph (A) shall be applied by substituting 'January 1, 1987' for 'January 1, 1985'.

''(D) SPECIAL RULE FOR GREENVILLE AUDITORIUM BOARD.—For purposes of this paragraph, significant official governmental action taken by the Greenville County Auditorium Board of Greenville, South Carolina, before May 23, 1983, shall be treated as significant official governmental action with respect to the coliseum facility subject to a binding contract to lease which was in effect on January 1, 1985.

''(E) TREATMENT OF CERTAIN HISTORIC STRUCTURES.—If—

''(i) on June 16, 1982, the legislative body of the local governmental unit adopted a bond ordinance to provide funds to renovate elevators in a deteriorating building owned by the local governmental unit and listed in the National Register, and

''(ii) the chief executive officer of the local governmental unit, in connection with the renovation of such building, made an application on June 1, 1983, to a State agency for a Federal historic preservation grant and made an application on June 17, 1983, to the Economic Development Administration of the United States Department of Commerce for a grant,

the requirements of clauses (i) and (ii) of subparagraph (A) shall be treated as met.

''(5) MASS COMMUTING VEHICLES.—The amendments made by this section shall not apply to any qualified mass commuting vehicle (as defined in section 103(b)(9) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) which is financed in whole or in part by obligations the interest on which is excludable from gross income under section 103(a) of such Code if—

''(A) such vehicle is placed in service before January 1, 1988, or

''(B) such vehicle is placed in service on or after such date—

''(i) pursuant to a binding contract or commitment entered into before April 1, 1983, and

''(ii) solely because of conditions which, as determined by the Secretary of the Treasury or his delegate, are not within the control of the lessor or lessee.

''(6) CERTAIN TURBINES AND BOILERS.—The amendments made by this section shall not apply to any property described in section 208(d)(3)(E) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 208(d)(3)(E) of Pub. L. 97–248, set out as an Effective Date of 1982 Amendments note below].

''(7) CERTAIN FACILITIES FOR WHICH RULING REQUESTS FILED ON OR BEFORE MAY 23, 1983.—The amendments made by this section shall not apply with respect to any facilities described in clause (ii) of section 168(f)(12)(C) of the Internal Revenue Code of 1986 (relating to certain sewage or solid waste disposal facilities), as in effect on the day before the date of the enactment of this Act [July 18, 1984], if a ruling request with respect to the lease of such facility to the tax-exempt entity was filed with the Internal Revenue Service on or before May 23, 1983.

''(8) RECOVERY PERIOD FOR CERTAIN QUALIFIED SEWAGE FACILITIES.—

''(A) IN GENERAL.—In the case of any property (other than 15-year real property) which is part of a qualified sewage facility, the recovery period used for purposes of paragraph (1) of section 168(j) of the Internal Revenue Code of 1986 (as added by this section) shall be 12 years. For purposes of the preceding sentence, the term '15-year real property' includes 18-year real property.

''(B) QUALIFIED SEWAGE FACILITY.—For purposes of subparagraph (A), the term 'qualified sewage facility' means any facility which is part of the sewer system of a city, if—

''(i) on June 15, 1983, the City Council approved a resolution under which the city authorized the procurement of equity investments for such facility, and

''(ii) on July 12, 1983, the Industrial Development Board of the city approved a resolution to issue a $100,000,000 industrial development bond issue to provide funds to purchase such facility.

''(9) PROPERTY USED BY THE POSTAL SERVICE.—In the case of property used by the United States Postal Service, paragraphs (1) and (2) shall be applied by substituting 'October 31' for 'May 23'.

''(10) EXISTING APPROPRIATIONS.—The amendments made by this section shall not apply to personal property leased to or used by the United States if—

''(A) an express appropriation has been made for rentals under such lease for the fiscal year 1983 before May 23, 1983, and

''(B) the United States or an agency or instrumentality thereof has not provided an indemnification against the loss of all or a portion of the tax benefits claimed under the lease or service contract.

''(11) SPECIAL RULE FOR CERTAIN PARTNERSHIPS.—

''(A) PARTNERSHIPS FOR WHICH QUALIFYING ACTION EXISTED BEFORE OCTOBER 21, 1983.—Paragraph (9) of section 168(j) of the Internal Revenue Code of 1986 (as added by this section) shall not apply to any property acquired, directly or indirectly, before January 1, 1985, by any partnership described in subparagraph (B).

''(B) APPLICATION FILED BEFORE OCTOBER 21, 1983.—A partnership is described in this subparagraph if—

''(i) before October 21, 1983, the partnership was organized, a request for exemption with respect to such partnership was filed with the Department of Labor, and a private placement memorandum stating the maximum number of units in the partnership that would be offered had been circulated,

''(ii) the interest in the property to be acquired, directly or indirectly (including through acquiring an interest in another partnership) by such partnership was described in such private placement memorandum, and

''(iii) the marketing of partnership units in such partnership is completed not later than two years after the later of the date of the enactment of this Act [July 18, 1984] or the date of publication in the Federal Register of such exemption by the Department of Labor and the aggregate number of units in such partnership sold does not exceed the amount described in clause (i).

''(C) PARTNERSHIPS FOR WHICH QUALIFYING ACTION EXISTED BEFORE MARCH 6, 1984.—Paragraph (9) of sec-

tion 168(j) of the Internal Revenue Code of 1986 (as added by this section) shall not apply to any property acquired directly or indirectly, before January 1, 1986, by any partnership described in subparagraph (D). For purposes of this subparagraph, property shall be deemed to have been acquired prior to January 1, 1986, if the partnership had entered into a written binding contract to acquire such property prior to January 1, 1986 and the closing of such contract takes place within 6 months of the date of such contract (24 months in the case of new construction).

''(D) PARTNERSHIP ORGANIZED BEFORE MARCH 6, 1984.—A partnership is described in this subparagraph if—

''(i) before March 6, 1984, the partnership was organized and publicly announced the maximum amount (as shown in the registration statement, prospectus or partnership agreement, whichever is greater) of interests which would be sold in the partnership, and

''(ii) the marketing or partnership interests in such partnership was completed not later than the 90th day after the date of the enactment of this Act [July 18, 1984] and the aggregate amount of interest in such partnership sold does not exceed the maximum amount described in clause (i).

''(12) SPECIAL RULE FOR AMENDMENT MADE BY SUBSECTION (C)(2).—The amendment made by subsection (c)(2) [amending section 48(g)(2)(B)(i) of this title] to the extent it relates to subsection (f)(12) of section 168 of the Internal Revenue Code of 1986 shall take effect as if it had been included in the amendments made by section 216(a) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 216(a) of Pub. L. 97–248, which amended this section].

''(13) SPECIAL RULE FOR SERVICE CONTRACTS NOT INVOLVING TAX-EXEMPT ENTITIES.—In the case of a service contract or other arrangement described in section 7701(e) of the Internal Revenue Code of 1986 (as added by this section) with respect to which no party is a tax-exempt entity, such section 7701(e) shall not apply to—

''(A) such contract or other arrangement if such contract or other arrangement was entered into before November 5, 1983, or

''(B) any renewal or other extension of such contract or other arrangement pursuant to an option contained in such contract or other arrangement on November 5, 1983.

''(14) PROPERTY LEASED TO SECTION 593 ORGANIZATIONS.—For purposes of the amendment made by subsection (f) [enacting section 46(e)(4) of this title], paragraphs (1), (2), and (4) shall be applied by substituting—

''(A) 'November 5, 1983' for 'May 23, 1983' and 'November 1, 1983', as the case may be, and

''(B) 'organization described in section 593 of the Internal Revenue Code of 1986' for 'tax-exempt entity'.

''(15) SPECIAL RULES RELATING TO FOREIGN PERSONS OR ENTITIES.—

''(A) IN GENERAL.—In the case of tax-exempt use property which is used by a foreign person or entity, the amendments made by this section shall not apply to any property which—

''(i) is placed in service by the taxpayer before January 1, 1984, and

''(ii) is used by such foreign person or entity pursuant to a lease entered into before January 1, 1984.

''(B) SPECIAL RULE FOR SUBLEASES.—If tax-exempt use property is being used by a foreign person or entity pursuant to a sublease under a lease described in subparagraph (A)(ii), subparagraph (A) shall apply to such property only if such property was used before January 1, 1984, by any foreign person or entity pursuant to such lease.

''(C) BINDING CONTRACTS, ETC.—The amendments made by this section shall not apply with respect to any property (other than aircraft described in subparagraph (D)) leased to a foreign person or entity—

''(i) if—

''(I) on or before May 23, 1983, the taxpayer (or a predecessor in interest under the contract) or the foreign person or entity entered into a written binding contract to acquire, construct, or rehabilitate such property and such property had not previously been used by the foreign person or entity, or

''(II) the taxpayer or the foreign person or entity acquired the property or completed the construction, reconstruction, or rehabilitation of the property after December 31, 1982 and on or before May 23, 1983, and

''(ii) if such lease is pursuant to a written binding contract entered into before January 1, 1984, which requires the foreign person or entity to be the lessee of such property.

''(D) CERTAIN AIRCRAFT.—The amendments made by this section shall not apply with respect to any widebody, four-engine, commercial aircraft used by a foreign person or entity if—

''(i) on or before November 1, 1983, the foreign person or entity entered into a written binding contract to acquire such aircraft, and

''(ii) such aircraft is originally placed in service by such foreign person or entity (or its successor in interest under the contract) after May 23, 1983, and before January 1, 1986.

''(E) USE AFTER 1983.—Qualified container equipment placed in service before January 1, 1984, which is used before such date by a foreign person shall not, for purposes of section 47 of the Internal Revenue Code of 1986, be treated as ceasing to be section 38 property by reason of the use of such equipment before January 1, 1985, by a foreign person or entity. For purposes of this subparagraph, the term 'qualified container equipment' means any container, container chassis, or container trailer of a United States person with a present class life of not more than 6 years.

''(16) ORGANIZATIONS ELECTING EXEMPTION FROM RULES RELATING TO PREVIOUSLY TAX-EXEMPT ORGANIZATIONS MUST ELECT TAXATION OF EXEMPT ARBITRAGE PROFITS.—

''(A) IN GENERAL.—An organization may make the election under section 168(j)(4)(E)(ii) of the Internal Revenue Code of 1986 (relating to election not to have rules relating to previously tax-exempt organizations apply) only if such organization elects the tax treatment of exempt arbitrage profits described in subparagraph (B).

''(B) TAXATION OF EXEMPT ARBITRAGE PROFITS.—

''(i) IN GENERAL.—In the case of an organization which elects the application of this subparagraph, there is hereby imposed a tax on the exempt arbitrage profits of such organization.

''(ii) RATE OF TAX, ETC.—The tax imposed by clause (i)—

''(I) shall be the amount of tax which would be imposed by section 11 of such Code if the exempt arbitrage profits were taxable income (and there were no other taxable income), and

''(II) shall be imposed for the first taxable year of the tax-exempt use period (as defined in section 168(j)(4)(E)(ii) of such Code).

''(C) EXEMPT ARBITRAGE PROFITS.—

''(i) IN GENERAL.—For purposes of this paragraph, the term exempt arbitrage profits means the aggregate amount described in clauses (i) and (ii) of subparagraph (D) of section 103(c)(6) of such Code for all taxable years for which the organization was exempt from tax under section 501(a) of such Code with respect to obligations—

''(I) associated with property described in section 168(j)(4)(E)(i), and

''(II) issued before January 1, 1985.

''(ii) APPLICATION OF SECTION 103(b)(6).—For purposes of this paragraph, section 103(b)(6) of such Code shall apply to obligations issued before January 1, 1985, but the amount described in clauses (i) and (ii) of subparagraph (D) thereof shall be determined without regard to clauses (i)(II) and (ii) of subparagraph (F) thereof.

''(D) OTHER LAWS APPLICABLE.—

''(i) IN GENERAL.—Except as provided in clause (ii), all provisions of law, including penalties, appli-

cable with respect to the tax imposed by section 11 of such Code shall apply with respect to the tax imposed by this paragraph.

''(ii) NO CREDITS AGAINST TAX, ETC.—The tax imposed by this paragraph shall not be treated as imposed by section 11 of such Code for purposes of—

''(I) part VI of subchapter A of chapter 1 of such Code (relating to minimum tax for tax preferences), and

''(II) determining the amount of any credit allowable under subpart A of part IV of such subchapter.

''(E) ELECTION.—Any election under subparagraph (A)—

''(i) shall be made at such time and in such manner as the Secretary may prescribe,

''(ii) shall apply to any successor organization which is engaged in substantially similar activities, and

''(iii) once made, shall be irrevocable.

''(17) CERTAIN TRANSITIONAL LEASED PROPERTY.—The amendments made by this section shall not apply to property described in section 168(c)(2)(D) of the Internal Revenue Code of 1986, as in effect on the day before the date of the enactment of this Act [July 18, 1984], and which is described in any of the following subparagraphs:

''(A) Property is described in this subparagraph if such property is leased to a university, and—

''(i) on June 16, 1983, the Board of Administrators of the university adopted a resolution approving the rehabilitation of the property in connection with an overall campus development program; and

''(ii) the property houses a basketball arena and university offices.

''(B) Property is described in this subparagraph if such property is leased to a charitable organization, and—

''(i) on August 21, 1981, the charitable organization acquired the property, with a view towards rehabilitating the property; and

''(ii) on June 12, 1982, an arson fire caused substantial damage to the property, delaying the planned rehabilitation.

''(C) Property is described in this subparagraph if such property is leased to a corporation that is described in section 501(c)(3) of the Internal Revenue Code of 1986 (relating to organizations exempt from tax) pursuant to a contract—

''(i) which was entered into on August 3, 1983; and

''(ii) under which the corporation first occupied the property on December 22, 1983.

''(D) Property is described in this subparagraph if such property is leased to an educational institution for use as an Arts and Humanities Center and with respect to which—

''(i) in November 1982, an architect was engaged to design a planned renovation;

''(ii) in January 1983, the architectural plans were completed;

''(iii) in December 1983, a demolition contract was entered into; and

''(iv) in March 1984, a renovation contract was entered into.

''(E) Property is described in this subparagraph if such property is used by a college as a dormitory, and—

''(i) in October 1981, the college purchased the property with a view towards renovating the property;

''(ii) renovation plans were delayed because of a zoning dispute; and

''(iii) in May 1983, the court of highest jurisdiction in the State in which the college is located resolved the zoning dispute in favor of the college.

''(F) Property is described in this subparagraph if such property is a fraternity house related to a university with respect to which—

''(i) in August 1982, the university retained attorneys to advise the university regarding the rehabilitation of the property;

''(ii) on January 21, 1983, the governing body of the university established a committee to develop rehabilitation plans;

''(iii) on January 10, 1984, the governor of the state in which the university is located approved historic district designation for an area that includes the property; and

''(iv) on February 2, 1984, historic preservation certification applications for the property were filed with a historic landmarks commission.

''(G) Property is described in this subparagraph if such property is leased to a retirement community with respect to which—

''(i) on January 5, 1977, a certificate of incorporation was filed with the appropriate authority of the state in which the retirement community is located; and

''(ii) on November 22, 1983, the Board of Trustees adopted a resolution evidencing the intention to begin immediate construction of the property.

''(H) Property is described in this subparagraph if such property is used by a university, and—

''(i) in July 1982, the Board of Trustees of the university adopted a master plan for the financing of the property; and

''(ii) as of August 1, 1983, at least $60,000 in private expenditures had been expended in connection with the property.

In the case of Clemson University, the preceding sentence applies only to the Continuing Education Center and the component housing project.

''(I) Property is described in this subparagraph if such property is used by a university as a fine arts center and the Board of Trustees of such university authorized the sale-leaseback agreement with respect to such property on March 7, 1984.

''(J) Property is described in this subparagraph if such property is used by a tax-exempt entity as an international trade center, and

''(i) prior to 1982, an environmental impact study for such property was completed;

''(ii) on June 24, 1981, a developer made a written commitment to provide one-third of the financing for the development of such property; and

''(iii) on October 20, 1983, such developer was approved by the Board of Directors of the tax-exempt entity.

''(K) Property is described in this subparagraph if such property is used by university of osteopathic medicine and health sciences, and on or before December 31, 1983, the Board of Trustees of such university approved the construction of such property.

''(L) Property is described in this subparagraph if such property is used by a tax-exempt entity, and—

''(i) such use is pursuant to a lease with a taxpayer which placed substantial improvements in service;

''(ii) on May 23, 1983, there existed architectural plans and specifications (within the meaning of sec. 48(g)(1)(C)(ii) of the Internal Revenue Code of 1986); and

''(iii) prior to May 23, 1983, at least 10 percent of the total cost of such improvements was actually paid or incurred.

Property is described in this subparagraph if such property was leased to a tax-exempt entity pursuant to a lease recorded in the Register of Deed of Essex County, New Jersey, on May 7, 1984, and a deed of such property was recorded in the Register of Deed of Essex County, New Jersey, on May 7, 1984.

''(M) Property is described in this subparagraph if such property is used as a convention center and on June 2, 1983, the City Council of the city in which the center is located provided for over $6 million for the project.

''(18) SPECIAL RULE FOR AMENDMENT MADE BY SUBSECTION (c)(1).—

''(A) IN GENERAL.—The amendment made by subsection (c)(1) [enacting section 48(g)(2)(B)(vi) of this title] shall not apply to property—

''(i) leased by the taxpayer on or before November 1, 1983, or

''(ii) leased by the taxpayer after November 1, 1983, if on or before such date the taxpayer entered into a written binding contract requiring the taxpayer to lease such property.

''(B) LIMITATION.—Subparagraph (A) shall apply to the amendment made by subsection (c)(1) only to the extent such amendment relates to property described in subclause (II), (III), or (IV) of section 168(j)(3)(B)(ii) of the Internal Revenue Code of 1986 (as added by this section).

''(19) SPECIAL RULE FOR CERTAIN ENERGY MANAGEMENT CONTRACTS.—

''(A) IN GENERAL.—The amendments made by subsection (e) [amending section 7701 of this title] shall not apply to property used pursuant to an energy management contract that was entered into prior to May 1, 1984.

''(B) DEFINITION OF ENERGY MANAGEMENT CONTRACT.—For purposes of subparagraph (A), the term 'energy management contract' means a contract for the providing of energy conservation or energy management services.

''(20) DEFINITIONS.—For purposes of this subsection—

''(A) TAX-EXEMPT ENTITY.—The term 'tax-exempt entity' has the same meaning as when used in section 168(j) of the Internal Revenue Code of 1986 (as added by this section), except that such term shall include any related entity (within the meaning of such section).

''(B) TREATMENT OF IMPROVEMENTS.—

''(i) IN GENERAL.—For purposes of this subsection, an improvement to property shall not be treated as a separate property unless such improvement is a substantial improvement with respect to such property.

''(ii) SUBSTANTIAL IMPROVEMENT.—For purposes of clause (i), the term 'substantial improvement' has the meaning given such term by section 168(f)(1)(C) of such Code determined—

''(I) by substituting 'property' for 'building' each place it appears therein,

''(II) by substituting '20 percent' for '25 percent' in clause (ii) thereof, and

''(III) without regard to clause (iii) thereof.

''(C) FOREIGN PERSON OR ENTITY.—The term 'foreign person or entity' has the meaning given to such term by subparagraph (C) of section 168(j)(4) of such Code (as added by this section). For purposes of this subparagraph and subparagraph (A), such subparagraph (C) shall be applied without regard to the last sentence thereof.

''(D) LEASES AND SUBLEASES.—The determination of whether there is a lease or sublease to a tax-exempt entity shall take into account sections 168(j)(6)(A), 168(j)(8)(A), and 7701(e) of the Internal Revenue Code of 1986 (as added by this section).''

[Section 1802(a)(10)(B) of Pub. L. 99–514 provided in part that amendment by section 1802(a)(10)(B) of Pub. L. 99–514, amending section 31(g)(15)(D)(ii) of Pub. L. 98–369, set out above, is effective with respect to property placed in service by the taxpayer after July 18, 1984.]

[Section 1802(a)(10)(D)(ii) of Pub. L. 99–514 provided that: ''The amendment made by clause (i) [amending section 31(g)(20)(B)(ii) of Pub. L. 98–369, set out above] shall not apply to any property if—

''(I) on or before March 28, 1985, the taxpayer (or a predecessor in interest under the contract) or the tax-exempt entity entered into a written binding contract to acquire, construct, or rehabilitate the property, or

''(II) the taxpayer or the tax-exempt entity began the construction, reconstruction, or rehabilitation of the property on or before March 28, 1985.'']

Section 32(c) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, title XVIII, § 1802(b)(2), Oct. 22, 1986, 100 Stat. 2095, 2791, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to agreements described in section 168(f)(14) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) entered into more than 90 days after the date of the enactment of this Act [July 18, 1984].''

Section 111(g) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 48, 51, 312, and 1245 of this title] shall apply with respect to property placed in service by the taxpayer after March 15, 1984.

''(2) EXCEPTION.—The amendments made by this section shall not apply to property placed in service by the taxpayer before January 1, 1987, if—

''(A) the taxpayer or a qualified person entered into a binding contract to purchase or construct such property before March 16, 1984, or

''(B) construction of such property was commenced by or for the taxpayer or a qualified person before March 16, 1984.

For purposes of this paragraph the term 'qualified person' means any person who transfers his rights in such a contract or such property to the taxpayer, but only if such property is not placed in service by such person before such rights are transferred to the taxpayer.

''(3) SPECIAL RULES FOR APPLICATION OF PARAGRAPH (2).—

''(A) CERTAIN INVENTORY.—In the case of any property which—

''(i) is held by a person as property described in section 1221(1) [26 U.S.C. 1221(1)], and

''(ii) is disposed of by such person before January 1, 1985,

such person shall not, for purposes of paragraph (2), be treated as having placed such property in service before such property is disposed of merely because such person rented such property or held such property for rental. No deduction for depreciation or amortization shall be allowed to such person with respect to such property,

''(B) CERTAIN PROPERTY FINANCED BY BONDS.—In the case of any property with respect to which—

''(i) bonds were issued to finance such property before 1984, and

''(ii) an architectural contract was entered into before March 16, 1984,

paragraph (2) shall be applied by substituting 'May 2' for 'March 16'.

''(4) SPECIAL RULE FOR COMPONENTS.—For purposes of applying section 168(f)(1)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this section) to components placed in service after December 31, 1986, property to which paragraph (2) applies shall be treated as placed in service by the taxpayer before March 16, 1984.

''(5) SPECIAL RULE FOR MID-MONTH CONVENTION.—In the case of the amendment made by subsection (d) [amending subsec. (b)(2)(A), (B) of this section]—

''(A) paragraph (1) shall be applied by substituting 'June 22, 1984' for 'March 15, 1984', and

''(B) paragraph (2) shall be applied by substituting 'June 23, 1984' for 'March 15, 1984' each place it appears.''

Amendment by section 113(a)(2) of Pub. L. 98–369 applicable to property placed in service after Mar. 15, 1984, in taxable years ending after such date, see section 113(c)(1) of Pub. L. 98–369, set out as a note under section 48 of this title.

Section 113(c)(2) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(A) The amendments made by paragraphs (1) of subsection (b) [amending this section] shall apply to any motion picture film or video tape placed in service before, on, or after the date of the enactment of this Act [July 18, 1984], except that such amendment shall not apply to—

''(i) any qualified film placed in service by the taxpayer before March 15, 1984, if the taxpayer treated such film as recovery property for purposes of section

168 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] on a return of tax under chapter 1 of such Code filed before March 16, 1984, or

''(ii) any qualified film placed in service by the taxpayer before January 1, 1985, if—

''(I) 20 percent or more of the production costs of such film were incurred before March 16, 1984, and

''(II) the taxpayer treats such film as recovery property for purposes of section 168 of such Code.

No credit shall be allowable under section 38 of such Code with respect to any qualified film described in clause (ii), except to the extent provided in section 48(k) of such Code.

''(B) The amendment made by paragraph (2) and (3) of subsection (b) [amending this section and sections 46 and 48 of this title] shall apply as if included in the amendments made by section 201(a), 211(a)(1), and 211(f)(1) of the Economic Recovery Tax Act of 1981 [sections 201(a), 211(a)(1), and 211(f)(1) of Pub. L. 97–34, enacting this section and amending section 46 of this title].

''(C) The amendment made by paragraph (4) of subsection (b) [amending section 48 of this title] shall take effect as if included in the amendments made by section 205(a)(1) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 205(a)(1) of Pub. L. 97–248, amending section 48 of this title].

''(D) For purposes of this paragraph, the terms 'qualified film' and 'production costs' have the same respective meanings as when used in section 48(k) of the Internal Revenue Code of 1986.''

Amendment by section 474(r)(7) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 612(e) of Pub. L. 98–369 applicable to interest paid or accrued after Dec. 31, 1984, on indebtedness incurred after Dec. 31, 1984, see section 612(g) of Pub. L. 98–369, set out as an Effective Date note under section 25 of this title.

Amendment by section 628(b) of Pub. L. 98–369 applicable to property placed in service after Dec. 31, 1983, with certain conditions and exceptions, see section 631(b) of Pub. L. 98–369, set out as a note under section 103 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by title I of Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

Section 102(a)(10)(B) of Pub. L. 97–448, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply with respect to property to which the provisions of section 168(f)(8) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect before the amendments made by the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248]) apply.''

Amendment by section 541 of Pub. L. 97–424 applicable to taxable years beginning after Dec. 31, 1979, with a special rule for periods beginning before Mar. 1, 1980, see section 541(c) of Pub. L. 97–424, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1982 AMENDMENTS

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

Section 208(d) of Pub. L. 97–248, as amended by Pub. L. 97–448, title III, § 306(a)(4), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 98–369, div. A, title X, § 1067(a), July 18, 1984, 98 Stat. 1048; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by subsections (a) and (b) of this section [amending this section and section 47 of this title] shall apply to agreements entered into after July 1, 1982, or to property placed in service after July 1, 1982.

''(2) TRANSITIONAL RULE FOR CERTAIN SAFE HARBOR LEASE PROPERTY.—

''(A) IN GENERAL.—The amendments made by subsections (a) and (b) [amending this section and section 47 of this title] shall not apply to transitional safe harbor lease property.

''(B) SPECIAL RULE FOR CERTAIN PROVISIONS.—Subparagraph (A) shall not apply with respect to the provisions of paragraph (6) of section 168(i) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)(1)), to the provisions of section 168(f)(8)(J) of such Code (as added by subsection (b)(4)), or to the amendment made by subsection (b)(1).

''(3) TRANSITIONAL SAFE HARBOR LEASE PROPERTY.—For purposes of this subsection, the term 'transitional safe harbor lease property' means property described in any of the following subparagraphs:

''(A) IN GENERAL.—Property is described in this subparagraph if such property is placed in service before January 1, 1983, if—

''(i) with respect to such property a binding contract to acquire or to construct such property was entered into by the lessee after December 31, 1980, and before July 2, 1982, or

''(ii) such property was acquired by the lessee, or construction of such property was commenced by or for the lessee, after December 31, 1980, and before July 2, 1982.

''(B) CERTAIN QUALIFIED LESSEES.—Property is described in this subparagraph if such property is placed in service before July 1, 1982, and with respect to which—

''(i) an agreement to which section 168(f)(8)(A) of the Internal Revenue Code of 1986 applies was entered into before August 15, 1982, and

''(ii) the lessee under such agreement is a qualified lessee (within the meaning of paragraph (6)).

''(C) AUTOMOTIVE MANUFACTURING PROPERTY.—

''(i) IN GENERAL.—Property is described in this subparagraph if—

''(I) such property is used principally by the taxpayer directly in connection with the trade or business of the taxpayer of the manufacture of automobiles or light-duty trucks,

''(II) such property is automotive manufacturing property, and

''(III) such property would be described in subparagraph (A) if 'October 1' were substituted for 'January 1'.

''(ii) LIGHT-DUTY TRUCK.—For purposes of this subparagraph, the term 'light-duty truck' means any truck with a gross vehicle weight of 13,000 pounds or less. Such term shall not include any truck tractor.

''(iii) AUTOMOTIVE MANUFACTURING PROPERTY.—For purposes of this subparagraph, the term 'automotive manufacturing property' means machinery, equipment, and special tools of the type included in the former asset depreciation range guideline classes 37.11 and 37.12.

''(iv) SPECIAL TOOLS USED BY CERTAIN VENDORS.—For purposes of this subparagraph, any special tools owned by a taxpayer described in subclause (I) of clause (i) which are used by a vendor solely for the production of component parts for sale to the taxpayer shall be treated as automotive manufacturing property used directly by such taxpayer.

''(D) CERTAIN AIRCRAFT.—Property is described in this subparagraph if such property—

''(i) is a commercial passenger aircraft (other than a helicopter), and

''(ii) would be described in subparagraph (A) if 'January 1, 1984' were substituted for 'January 1, 1983'.

For purposes of determining whether property described in this subparagraph is described in subparagraph (A), subparagraph (A)(ii) shall be applied by substituting 'June 25, 1981' for 'December 31, 1980' and by substituting 'February 20, 1982' for 'July 2, 1982' and construction of the aircraft shall be treated as having been begun during the period referred to in subparagraph (A)(ii) if during such period construction or reconstruction of a subassembly was commenced, or the stub wing join occurred.

''(E) TURBINES AND BOILERS.—Property is described in this subparagraph if such property—

''(i) is a turbine or boiler of a cooperative organization engaged in the furnishing of electric energy to persons in rural areas, and

''(ii) would be property described in subparagraph (A) if 'July 1' were substituted for 'January 1'.

For purposes of determining whether property described in this subparagraph is described in subparagraph (A), such property shall be treated as having been acquired during the period referred to in subparagraph (A)(ii) if at least 20 percent of the cost of such property is paid during such period.

''(F) PROPERTY USED IN THE PRODUCTION OF STEEL.—Property is described in this subparagraph if such property—

''(i) is used by the taxpayer directly in connection with the trade or business of the taxpayer of the manufacture or production of steel, and

''(ii) would be described in subparagraph (A) if 'January 1, 1984' were substituted for 'January 1, 1983'.

''(G) COAL GASIFICATION FACILITIES.—

''(i) IN GENERAL.—Property is described in this subparagraph if such property—

''(I) is used directly in connection with the manufacture or production of low sulfur gaseous fuel from coal, and

''(II) would be described in subparagraph (A) if 'July 1, 1984' were substituted for 'January 1, 1983'.

''(ii) SPECIAL RULE.—For purposes of determining whether property described in this subparagraph is described in subparagraph (A), such property shall be treated as having been acquired during the period referred to in subparagraph (A)(ii) if at least 20 percent of the cost of such property is paid during such period.

''(iii) LIMITATION ON AMOUNT.—Clause (i) shall only apply to the lease of an undivided interest in the property in an amount which does not exceed the lesser of—

''(I) 50 percent of the cost basis of such property, or

''(II) $67,500,000.

''(iv) PLACED IN SERVICE.—In the case of property to which this subparagraph applies—

''(I) such property shall be treated as placed in service when the taxpayer receives an operating permit with respect to such property from a State environmental protection agency, and

''(II) the term of the lease with respect to such property shall be treated as being 5 years.

''(4) SPECIAL RULE FOR ANTIAVOIDANCE PROVISIONS.—The provisions of paragraph (6) of section 168(i) of such Code (as added by subsection (a)(1)), and the amendment made by subsection (b)(1) [amending this section] shall apply to leases entered into after February 19, 1982, in taxable years ending after such date.

''(5) SPECIAL RULE FOR MASS COMMUTING VEHICLES.—The amendments made by this section (other than section 168(i)(1) and (7) of such Code, as added by subsection (a)(1) or section 168(f)(8)(J) of such Code, as added by subsection (b)(4)) and section 209 [amending this section and section 48 of this title] shall not apply to qualified leased property described in section 168(f)(8)(D)(V) of such Code (as in effect after the amendments made by this section) which—

''(A) is placed in service before January 1, 1988, or

''(B) is placed in service after such date—

''(i) pursuant to a binding contract or commitment entered into before April 1, 1983, and

''(ii) solely because of conditions which, as determined by the Secretary of the Treasury or his delegate, are not within the control of the lessor or lessee.

''(6) QUALIFIED LESSEE DEFINED.—

''(A) IN GENERAL.—The term 'qualified lessee' means a taxpayer which is a lessee of an agreement to which section 168(f)(8)(A) of such Code applies and which—

''(i) had net operating losses in each of the three most recent taxable years ending before July 1, 1982, and had an aggregate net operating loss for the five most recent taxable years ending before July 1, 1982, and

''(ii) which uses the property subject to the agreement to manufacture and produce within the United States a class of products in an industry with respect to which—

''(I) the taxpayer produced less than 5 percent of the total number of units (or value) of such products during the period covering the three most recent taxable years of the taxpayer ending before July 1, 1982, and

''(II) four or fewer United States persons (including as one person an affiliated group as defined in section 1504(a)) other than the taxpayer manufactured 85 percent or more of the total number of all units (or value) within such class of products manufactured and produced in the United States during such period.

''(B) CLASS OF PRODUCTS.—For purposes of subparagraph (A)—

''(i) the term 'class of products' means any of the categories designated and numbered as a 'class of products' in the 1977 Census of Manufacturers compiled and published by the Secretary of Commerce under title 13 of the United States Code, and

''(ii) information—

''(I) compiled or published by the Secretary of Commerce, as part of or in connection with the Statistical Abstract of the United States or the Census of Manufacturers, regarding the number of units (or value) of a class of products manufactured and produced in the United States during any period, or

''(II) if information under subclause (I) is not available, so compiled or published with respect to the number of such units shipped or sold by such manufacturers during any period,

shall constitute prima facie evidence of the total number of all units of such class of products manufactured and produced in the United States in such period.

''(6) UNDERPAYMENTS OF TAX FOR 1982.—No addition to the tax shall be made under section 6655 of the Internal Revenue Code of 1954 (relating to failure by corporation to pay estimated income tax) for any period before October 15, 1982, with respect to any underpayment of estimated tax by a taxpayer with respect to any tax imposed by chapter 1 of such Code to the extent that such underpayment was created or increased by any provision of this section.

''(7) COORDINATION WITH AT RISK RULES.—Subparagraph (J) of section 168(f)(8) of the Internal Revenue Code of 1986 (as added by subsection (b)(4)) shall take effect as provided in such subparagraph (J).''

[Section 1067(c) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [enacting section 208(d)(3)(G) of Pub. L. 97–248, set out above] shall take effect as if included in the provision of section 208(d)(3) of the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248].''

Section 209(d) of Pub. L. 97–248; as amended by Pub. L. 98–369, div. A, title I, §12(a)(1), (2), July 18, 1984, 98 Stat. 503, provided that:

''(1) SUBSECTION (a).—

''(A) IN GENERAL.—Except as provided in subparagraph (B) and paragraph (2), the amendments made

by this section [amending this section and section 48 of this title] shall apply to agreements entered into after December 31, 1987.

''(B) SPECIAL RULE FOR FARM PROPERTY AGGREGATING $150,000 OR LESS.—

''(i) IN GENERAL.—The amendments made by subsection (a) [amending this section] shall also apply to any agreement entered into after July 1, 1982, and before January 1, 1988, if the property subject to such agreement is section 38 property which is used for farming purposes (within the meaning of section 2032A(e)(5)).

''(ii) $150,000 LIMITATION.—The provisions of clause (i) shall not apply to any agreement if the sum of—

''(I) the cost basis of the property subject to the agreement, plus

''(II) the cost basis of any property subject to an agreement to which this subparagraph previously applied, which was entered into during the same calendar year, and with respect to which the lessee was the lessee of the agreement described in subclause (I) (or any related person within the meaning of section 168(e)(4)(D)),

exceeds $150,000. For purposes of subclause (II), in the case of an individual, there shall not be taken into account any agreement of any individual who is a related person involving property which is used in a trade or business of farming of such related person which is separate from the trade or business of farming of the lessee described in subclause (II).

''(2) SPECIAL RULE FOR DEFINITION OF NEW SECTION 38 PROPERTY.—The amendment made by subsection (c) [amending section 48 of this title] shall apply to property placed in service after December 31, 1983.''

Section 216(b) of Pub. L. 97–248, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section] shall apply with respect to property placed in service after December 31, 1982, to the extent such property is financed by the proceeds of an obligation (including a refunding obligation) issued after June 30, 1982.

''(2) EXCEPTIONS.—

''(A) CONSTRUCTION OR BINDING AGREEMENT.—The amendments made by this section [amending this section] shall not apply with respect to facilities the original use of which commences with the taxpayer and—

''(i) the construction, reconstruction, or rehabilitation of which began before July 1, 1982, or

''(ii) with respect to which a binding agreement to incur significant expenditures was entered into before July 1, 1982.

''(B) REFUNDING.—

''(i) IN GENERAL.—Except as provided in clause (ii), in the case of property placed in service after December 31, 1982 which is financed by the proceeds of an obligation which is issued solely to refund another obligation which was issued before July 1, 1982, the amendments made by this section [amending this section] shall apply only with respect to the basis in such property which has not been recovered before the date such refunding obligation is issued.

''(ii) SIGNIFICANT EXPENDITURES.—In the case of facilities the original use of which commences with the taxpayer and with respect to which significant expenditures are made before January 1, 1983, the amendments made by this section shall not apply with respect to such facilities to the extent such facilities are financed by the proceeds of an obligation issued solely to refund another obligation which was issued before July 1, 1982.

In the case of an inducement resolution adopted by an issuing authority before July 1, 1982, for purposes of applying subparagraphs (A)(i) and (B)(ii) with respect to obligations described in such resolution, the term 'facilities' means the facilities described in such resolution.

''(3) CERTAIN PROJECTS FOR RESIDENTIAL REAL PROPERTY.—For purposes of clause (i) of section 168(f)(12)(C) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this section), any obligation issued to finance a project described in the table contained in paragraph (1) of section 1104(n) of the Mortgage Subsidy Bond Tax Act of 1980 [section 1104(n) of Pub. L. 96–499, set out as a note under section 103A of this title] shall be treated as an obligation described in section 103(b)(4)(A) of the Internal Revenue Code of 1986.''

Amendment by section 224(c)(1), (2) of Pub. L. 97–248 to apply to any target corporation, within the meaning of section 338 of this title, with respect to which the acquisition date, within the meaning of such section, occurs after Aug. 31, 1982, and also to apply to certain acquisitions before September 1, 1982, but not to apply in the case of certain acquisitions of financial institutions, see section 224(d) of Pub. L. 97–248, set out as an Effective Date note under section 338 of this title.

EFFECTIVE DATE

Section 209(a)–(c) of Pub. L. 97–34, as amended by Pub. L. 97–448, title I, § 102(d)(1), (g), Jan. 12, 1983, 96 Stat. 2370; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this subtitle [subtitle A (§§ 201–209) of title II of Pub. L. 97–34, enacting this section, amending sections 44E, 46, 50A, 53, 57, 167, 172, 179, 263, 312, 381, 453, 812, 825, 964, 1033, 1245, and 1250 of this title, and enacting provisions set out as notes under this section and sections 46 and 167 of this title] shall apply to property placed in service after December 31, 1980, in taxable years ending after such date.

''(b) SPECIAL RULE FOR RRB PROPERTY.—The amendment made by subsection (c) of section 203 [amending section 167 of this title and enacting provisions set out as notes under section 167 of this title] shall take effect on January 1, 1981, and shall apply with respect to taxable years ending after such date.

''(c) SPECIAL RULE FOR CARRYOVERS.—

''(1)(A) Except as provided in subparagraph (B), the amendments made by subsections (a) and (b) of section 207 [amending sections 172, 812, and 825 of this title] shall apply to net operating losses in taxable years ending after December 31, 1975.

''(B) The amendments made by subparagraph (B)(i) of section 207(a)(2) [amending section 172 of this title] shall take effect as if they had been included in the amendments made by section 1(a) of Public Law 96–595 [amending section 172 of this title]; except that the amendments made by such subparagraph shall apply only to net operating losses in taxable years ending after December 31, 1972.

''(C) If any net operating loss for any taxable year ending on or before December 31, 1975, could be a net operating loss carryover to a taxable year ending in 1981 by reason of subclause (II) of section 172(b)(1)(E)(ii) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect on the day before the date of the enactment of this Act [Aug. 13, 1981] and as modified by section 1(b) of Public Law 96–595 [set out as an Effective Date of 1980 Amendment note under section 172 of this title]), such net operating loss shall be a net operating loss carryover under section 172 of such Code to each of the 15 taxable years following the taxable year of such loss.

''(2)(A) The amendments made by subsection (c)(1) of section 207 [amending sections 46 and 50A of this title] shall apply to unused credit years ending after December 31, 1973.

''(B) The amendment made by subsection (c)(2) of section 207 [amending section 53 of this title] shall apply to unused credit years beginning after December 31, 1976.

''(C) The amendments made by subsection (c)(3) of section 207 [amending section 44E of this title] shall apply to unused credit years ending after September 30, 1980.

''(3) CARRYOVER MUST HAVE BEEN ALIVE IN 1981.—The amendments made by subsections (a), (b), and (c) of

section 207 [amending sections 44E, 46, 50A, 53, 172, 812, and 825 of this title] shall not apply to any amount which, under the law in effect on the day before the date of the enactment of this Act [Aug. 13, 1981], could not be carried to a taxable year ending in 1981.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

DEPRECIATION STUDY

Pub. L. 105–277, div. J, title II, §2022, Oct. 21, 1998, 112 Stat. 2681–903, provided that: ''The Secretary of the Treasury (or the Secretary's delegate)—

''(1) shall conduct a comprehensive study of the recovery periods and depreciation methods under section 168 of the Internal Revenue Code of 1986, and

''(2) not later than March 31, 2000, shall submit the results of such study, together with recommendations for determining such periods and methods in a more rational manner, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TREATMENT OF CERTAIN FARM FINANCE LEASES

Section 1801(a)(2) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1018(a), Nov. 10, 1988, 102 Stat. 3577, provided that:

''(A) IN GENERAL.—If—

''(i) any partnership or grantor trust is the lessor under a specified agreement,

''(ii) such partnership or grantor trust met the requirements of section 168(f)(8)(C)(i) of the Internal Revenue Code of 1954 (relating to special rules for finance leases) when the agreement was entered into, and

''(iii) a person became a partner in such partnership (or a beneficiary in such trust) after its formation but before September 26, 1985,

then, for purposes of applying the revenue laws of the United States in respect to such agreement, the portion of the property allocable to partners (or beneficiaries) not described in clause (iii) shall be treated as if it were subject to a separate agreement and the portion of such property allocable to the partner or beneficiary described in clause (iii) shall be treated as if it were subject to a separate agreement.

''(B) SPECIFIED AGREEMENT.—For purposes of subparagraph (A), the term 'specified agreement' means an agreement to which subparagraph (B) of section 209(d)[(1)] of the Tax Equity and Fiscal Responsibility Act of 1982 [section 209(d)(1) of Pub. L. 97–248, set out as a note above] applies which is—

''(i) an agreement dated as of December 20, 1982, as amended and restated as of February 1, 1983, involving approximately $8,734,000 of property at December 31, 1983,

''(ii) an agreement dated as of December 15, 1983, as amended and restated as of January 3, 1984, involving approximately $13,199,000 of property at December 31, 1984, or

''(iii) an agreement dated as of October 25, 1984, as amended and restated as of December 1, 1984, involving approximately $966,000 of property at December 31, 1984.''

CERTAIN RESIDENTIAL REAL PROPERTY TREATED AS RESIDENTIAL RENTAL PROPERTY

Section 1809(a)(4)(C) of Pub. L. 99–514 provided that: ''Any property described in paragraph (3) of section 631(d) of the Tax Reform Act of 1984 [section 631(d) of Pub. L. 99–369, set out as a note under section 103 of this title] shall be treated as property described in clause (ii) of section 168(f)(12)(C) of the Internal Revenue Code of 1954 [now 1986] as amended by subparagraph (B).''

COORDINATION WITH IMPUTED INTEREST CHANGES

Section 1809(a)(5) of Pub. L. 99–514 provided that: ''In the case of any property placed in service before May 9, 1985 (or treated as placed in service before such date by section 105(b)(3) of Public Law 99–121 [set out as a note above])—

''(A) any reference in any amendment made by this subsection [amending this section and sections 57 and 312 of this title] to 19-year real property shall be treated as a reference to 18-year real property, and

''(B) section 168(f)(12)(B)(ii) of the Internal Revenue Code of 1954 [now 1986] (as amended by paragraph (4)(A)) shall be applied by substituting '18 years' for '19 years'.''

TERMINATION OF SAFE HARBOR LEASING RULES

Section 12(b) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Paragraph (8) of section 168(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to special rules for leasing), as in effect after the amendments made by section 208 of the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248] but before the amendments made by section 209 of such Act, shall not apply to agreements entered into after December 31, 1983. The preceding sentence shall not apply to property described in paragraph (3)(G) or (5) of section 208(d) of such Act [set out as an Effective Date of 1982 Amendments note above].''

TRANSITIONAL RULES FOR 1984 AMENDMENT

Section 12(c) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, title XVIII, §1801(a)(1), Oct. 22, 1986, 100 Stat. 2095, 2785; Pub. L. 100–647, title I, §1002(d)(7)(B), Nov. 10, 1988, 102 Stat. 3360, provided that:

''(1) IN GENERAL.—The amendments made by subsection (a) [amending this section and section 208(d) of Pub. L. 97–248, set out as an Effective Date of 1982 Amendments note above] shall not apply with respect to any property if—

''(A) a binding contract to acquire or to construct such property was entered into by or for the lessee before March 7, 1984, or

''(B) such property was acquired by the lessee, or the construction of such property was begun, by or for the lessee, before March 7, 1984.

The preceding sentence shall not apply to any property with respect to which an election is made under this sentence at such time after the date of the enactment of the Tax Reform Act of 1986 [Oct. 22, 1986] as the Secretary of the Treasury or his delegate may prescribe.

''(2) SPECIAL RULE FOR CERTAIN AUTOMOTIVE PROPERTY.—

''(A) IN GENERAL.—The amendments made by subsection (a) shall not apply to property—

''(i) which is automotive manufacturing property, and

''(ii) with respect to which the lessee is a qualified lessee (within the meaning of section 208(d)(6) of the Tax Equity and Fiscal Responsibility Act of 1982) [Pub. L. 97–248, set out as an Effective Date of 1982 Amendments note above].

''(B) $150,000,000 LIMITATION.—The provisions of subparagraph (A) shall not apply to any agreement if the sum of—

''(i) the cost basis of the property subject to the agreement, plus

''(ii) the cost basis of any property subject to an agreement to which subparagraph (A) previously applied and with respect to which the lessee was the lessee under the agreement described in clause (i) (or any related person within the meaning of section 168(e)(4)(D) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]),

exceeds $150,000,000.

''(C) AUTOMOTIVE MANUFACTURING PROPERTY.—For purposes of this paragraph, the term 'automotive manufacturing property' means—

''(i) property used principally by the taxpayer directly in connection with the trade or business of the taxpayer of the manufacturing of automobiles or trucks (other than truck tractors) with a gross vehicle weight of 13,000 pounds or less,

''(ii) machinery, equipment, and special tools of the type included in former depreciation range guideline classes 37.11 and 37.12, and

''(iii) any special tools owned by the taxpayer which are used by a vendor solely for the production of component parts for sale to the taxpayer.

''(3) SPECIAL RULE FOR CERTAIN COGENERATION FACILITIES.—The amendments made by subsection (a) shall not apply with respect to any property which is part of a coal-fired cogeneration facility—

''(A) for which an application for certification was filed with the Federal Energy Regulatory Commission on December 30, 1983,

''(B) for which an application for a construction permit was filed with a State environmental protection agency on February 20, 1984, and

''(C) which is placed in service before January 1, 1988.''

SPECIAL LEASING RULE REGARDING COAL GASIFICATION FACILITIES

Section 1067(b) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amount of any recapture under section 47 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] with respect to the credit allowed under section 38 of such Code with respect to progress expenditures (within the meaning of section 46(d) of such Code) shall apply only to the percentage of the cost basis of the coal gasification facility to which the amendment made by subsection (a) [amending section 208(d) of Pub. L. 97–248, set out as an Effective Date of 1982 Amendments note above] applies.''

CERTAIN LEASES BEFORE OCTOBER 20, 1981, TREATED AS QUALIFIED LEASES

Section 208(c) of Pub. L. 97–248, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Nothing in paragraph (8) of section 168(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], or in any regulations prescribed thereunder, shall be treated as making such paragraph inapplicable to any agreement entered into before October 20, 1981, solely because under such agreement 1 party to such agreement is entitled to the credit allowable under section 38 of such Code with respect to property and another party to such agreement is entitled to the deduction allowable under section 168 of such Code with respect to such property. Section 168(f)(8)(B)(ii) of such Code shall not apply to the party entitled to such credit.''

MOTOR VEHICLE OPERATING LEASES

Section 210 of Pub. L. 97–248, as amended by Pub. L. 98–369, div. A, title I, § 32(b), title VII, § 712(d), July 18, 1984, 98 Stat. 531, 947; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) IN GENERAL.—In the case of any qualified motor vehicle agreement entered into on or before the 90th day after the date of the enactment of the Tax Reform Act of 1984 [July 18, 1984], the fact that such agreement contains a terminal rental adjustment clause shall not be taken into account in determining whether such agreement is a lease.

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

''(1) QUALIFIED MOTOR VEHICLE AGREEMENT.—The term 'qualified motor vehicle agreement' means any agreement with respect to a motor vehicle (including a trailer)—

''(A) which was entered into before—

''(i) the enactment of any law, or

''(ii) the publication by the Secretary of the Treasury or his delegate of any regulation,

which provides that any agreement with a terminal rental adjustment clause is not a lease,

''(B) with respect to which the lessor under the agreement—

''(i) is personally liable for the repayment of, or

''(ii) has pledged property (but only to the extent of the net fair market value of the lessor's interest in such property), other than property subject to the agreement or property directly or indirectly financed by indebtedness secured by property subject to the agreement, as security for,

all amounts borrowed to finance the acquisition of property subject to the agreement, and

''(C) with respect to which the lessee under the agreement uses the property subject to the agreement in a trade or business or for the production of income.

''(2) TERMINAL RENTAL ADJUSTMENT CLAUSE.—The term 'terminal rental adjustment clause' means a provision of an agreement which permits or requires the rental price to be adjusted upward or downward by reference to the amount realized by the lessor under the agreement upon sale or other disposition of such property. Such term also includes a provision of an agreement which requires a lessee who is a dealer in motor vehicles to purchase the motor vehicle for a predetermined price and then resell such vehicle where such provision achieves substantially the same results as a provision described in the preceding sentence.

''(c) EXCEPTION WHERE LESSEE TOOK POSITION ON RETURN.—Subsection (a) shall not apply to deny a deduction for interest paid or accrued claimed by a lessee with respect to a qualified motor vehicle agreement on a return of tax imposed by chapter 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] which was filed before the date of the enactment of this Act [Sept. 3, 1982] or to deny a credit for investment in depreciable property claimed by the lessee on such a return pursuant to an agreement with the lessor that the lessor would not claim the credit.''

INFORMATION RETURNS WITH RESPECT TO SAFE HARBOR LEASES

Pub. L. 97–119, title I, § 112, Dec. 29, 1981, 95 Stat. 1640, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) REQUIREMENT OF RETURN.—

''(1) IN GENERAL.—Except as provided in paragraph (2), paragraph (8) of section 168(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to special rule for leases) shall not apply with respect to an agreement unless a return, signed by the lessor and lessee and containing the information required to be included in the return pursuant to subsection (b), has been filed with the Internal Revenue Service not later than the 30th day after the date on which the agreement is executed.

''(2) SPECIAL RULES FOR AGREEMENTS EXECUTED BEFORE JANUARY 1, 1982.—

''(A) IN GENERAL.—In the case of an agreement executed before January 1, 1982, such agreement shall cease on February 1, 1982, to be treated as a lease under section 168(f)(8) unless a return, signed by the lessor and containing the information required to be included in subsection (b), has been filed with the Internal Revenue Service not later than January 31, 1982.

''(B) FILING BY LESSEE.—If the lessor does not file a return under subparagraph (A), the return requirement under subparagraph (A) shall be satisfied if such return is filed by the lessee before January 31, 1982.

''(3) CERTAIN FAILURE TO FILE.—If—

''(A) a lessor or lessee fails to file any return within the time prescribed by this subsection, and

''(B) such failure is shown to be due to reasonable cause and not due to willful neglect,

the lessor or lessee shall be treated as having filed a timely return if a return is filed within a reasonable time after the failure is ascertained.

''(b) INFORMATION REQUIRED.—The information required to be included in the return pursuant to this subsection is as follows:

''(1) The name, address, and taxpayer identifying number of the lessor and the lessee (and parent company if a consolidated return is filed);

''(2) The district director's office with which the income tax returns of the lessor and lessee are filed;

''(3) A description of each individual property with respect to which the election is made;

''(4) The date on which the lessee places the property in service, the date on which the lease begins and the term of the lease;

''(5) The recovery property class and the ADR midpoint life of the leased property;

''(6) The payment terms between the parties to the lease transaction;

''(7) Whether the ACRS deductions and the investment tax credit are allowable to the same taxpayer;

''(8) The aggregate amount paid to outside parties to arrange or carry out the transaction;

''(9) For the lessor only: the unadjusted basis of the property as defined in section 168(d)(1);

''(10) For the lessor only: if the lessor is a partnership or a grantor trust, the name, address, and taxpayer identifying number of the partners or the beneficiaries, and the district director's office with which the income tax return of each partner or beneficiary is filed; and

''(11) Such other information as may be required by the return or its instructions.

Paragraph (8) shall not apply with respect to any person for any calendar year if it is reasonable to estimate that the aggregate adjusted basis of the property of such person which will be subject to subsection (a) for such year is $1,000,000 or less.

''(c) COORDINATION WITH OTHER INFORMATION REQUIREMENTS.—In the case of agreements executed after December 31, 1982, to the extent provided in regulations prescribed by the Secretary of the Treasury or his delegate, the provisions of this section shall be modified to coordinate such provisions with the other information requirements of the Internal Revenue Code of 1986.''

REGULATED PUBLIC UTILITIES; SPECIAL TRANSITIONAL RULE FOR NORMALIZATION REQUIREMENTS

Section 209(d)(1) of Pub. L. 97–34, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''If, by the terms of the applicable rate order last entered before the date of the enactment of this Act [Aug. 13, 1981] by a regulatory commission having appropriate jurisdiction, a regulated public utility would (but for this provision) fail to meet the requirements of section 168(e)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] with respect to property because, for an accounting period ending after December 31, 1980, such public utility used a method of accounting other than a normalization method of accounting, such regulated public utility shall not fail to meet such requirements if, by the terms of its first rate order determining cost of service with respect to such property which becomes effective after the date of the enactment of this Act and on or before January 1, 1983, such regulated public utility uses a normalization method of accounting. This provision shall not apply to any rate order which, under the rules in effect before the date of the enactment of this Act, required a regulated public utility to use a method of accounting with respect to the deduction allowable by section 167 which, under section 167(*l*), it was not permitted to use.''

INTERIM REGULATIONS WITH RESPECT TO NORMALIZATION; AUTHORITY TO PRESCRIBE

Section 209(d)(4) of Pub. L. 97–34, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Until Congress acts further, the Secretary of the Treasury or his delegate may prescribe such interim regulations as may be necessary or appropriate to determine whether the requirements of section 168(e)(3)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] have been met with respect to property placed in service after December 31, 1980.''

§ 169. Amortization of pollution control facilities

(a) Allowance of deduction

Every person, at his election, shall be entitled to a deduction with respect to the amortization of the amortizable basis of any certified pollution control facility (as defined in subsection (d)), based on a period of 60 months. Such amortization deduction shall be an amount, with respect to each month of such period within the taxable year, equal to the amortizable basis of the pollution control facility at the end of such month divided by the number of months (including the month for which the deduction is computed) remaining in the period. Such amortizable basis at the end of the month shall be computed without regard to the amortization deduction for such month. The amortization deduction provided by this section with respect to any month shall be in lieu of the depreciation deduction with respect to such pollution control facility for such month provided by section 167. The 60-month period shall begin, as to any pollution control facility, at the election of the taxpayer, with the month following the month in which such facility was completed or acquired, or with the succeeding taxable year.

(b) Election of amortization

The election of the taxpayer to take the amortization deduction and to begin the 60-month period with the month following the month in which the facility is completed or acquired, or with the taxable year succeeding the taxable year in which such facility is completed or acquired, shall be made by filing with the Secretary, in such manner, in such form, and within such time, as the Secretary may by regulations prescribe, a statement of such election.

(c) Termination of amortization deduction

A taxpayer which has elected under subsection (b) to take the amortization deduction provided in subsection (a) may, at any time after making such election, discontinue the amortization deduction with respect to the remainder of the amortization period, such discontinuance to begin as of the beginning of any month specified by the taxpayer in a notice in writing filed with the Secretary before the beginning of such month. The depreciation deduction provided under section 167 shall be allowed, beginning with the first month as to which the amortization deduction does not apply, and the taxpayer shall not be entitled to any further amortization deduction under this section with respect to such pollution control facility.

(d) Definitions and special rules

For purposes of this section—

(1) Certified pollution control facility

The term ''certified pollution control facility'' means a new identifiable treatment facility which is used, in connection with a plant or other property in operation before January 1, 1976, to abate or control water or atmospheric pollution or contamination by removing, altering, disposing, storing, or preventing the creation or omission of pollutants, contaminants, wastes, or heat and which—

(A) the State certifying authority having jurisdiction with respect to such facility has certified to the Federal certifying authority as having been constructed, reconstructed, erected, or acquired in conformity with the State program or requirements for abatement or control of water or atmospheric pollution or contamination;

(B) the Federal certifying authority has certified to the Secretary (i) as being in compliance with the applicable regulations of Federal agencies and (ii) as being in furtherance of the general policy of the United States for cooperation with the States in the prevention and abatement of water pollution under the Federal Water Pollution Control Act, as amended (33 U.S.C. 466 et seq.), or in the prevention and abatement of atmospheric pollution and contamination under the Clean Air Act, as amended (42 U.S.C. 1857 et seq.); and

(C) does not significantly—

(i) increase the output or capacity, extend the useful life, or reduce the total operating costs of such plant or other property (or any unit thereof), or

(ii) alter the nature of the manufacturing or production process or facility.

(2) State certifying authority

The term ''State certifying authority'' means, in the case of water pollution, the State water pollution control agency as defined in section 13(a) of the Federal Water Pollution Control Act and, in the case of air pollution, the air pollution control agency as defined in section 302(b) of the Clean Air Act. The term ''State certifying authority'' includes any interstate agency authorized to act in place of a certifying authority of the State.

(3) Federal certifying authority

The term ''Federal certifying authority'' means, in the case of water pollution, the Secretary of the Interior and, in the case of air pollution, the Secretary of Health and Human Services.

(4) New identifiable treatment facility

(A) In general

For purposes of paragraph (1), the term ''new identifiable treatment facility'' includes only tangible property (not including a building and its structural components, other than a building which is exclusively a treatment facility) which is of a character subject to the allowance for depreciation provided in section 167, which is identifiable as a treatment facility, and which is property—

(i) the construction, reconstruction, or erection of which is completed by the taxpayer after December 31, 1968, or

(ii) acquired after December 31, 1968, if the original use of the property commences with the taxpayer and commences after such date.

In applying this section in the case of property described in clause (i) there shall be taken into account only that portion of the basis which is properly attributable to construction, reconstruction, or erection after December 31, 1968.

(B) Certain facilities placed in operation after April 11, 2005

In the case of any facility described in paragraph (1) solely by reason of paragraph (5), subparagraph (A) shall be applied by substituting ''April 11, 2005'' for ''December 31, 1968'' each place it appears therein.

(5) Special rule relating to certain atmospheric pollution control facilities

In the case of any atmospheric pollution control facility which is placed in service after April 11, 2005, and used in connection with an electric generation plant or other property which is primarily coal fired—

(A) paragraph (1) shall be applied without regard to the phrase ''in operation before January 1, 1976'', and

(B) in the case of facility[1] placed in service in connection with a plant or other property placed in operation after December 31, 1975, this section shall be applied by substituting ''84'' for ''60'' each place it appears in subsections (a) and (b).

(e) Profitmaking abatement works, etc.

The Federal certifying authority shall not certify any property under subsection (d)(1)(B) to the extent it appears that by reason of profits derived through the recovery of wastes or otherwise in the operation of such property, its costs will be recovered over its actual useful life.

(f) Amortizable basis

(1) Defined

For purposes of this section, the term ''amortizable basis'' means that portion of the adjusted basis (for determining gain) of a certified pollution control facility which may be amortized under this section.

(2) Special rules

(A) If a certified pollution control facility has a useful life (determined as of the first day of the first month for which a deduction is allowable under this section) in excess of 15 years, the amortizable basis of such facility shall be equal to an amount which bears the same ratio to the portion of the adjusted basis of such facility, which would be eligible for amortization but for the application of this subparagraph, as 15 bears to the number of years of useful life of such facility.

(B) The amortizable basis of a certified pollution control facility with respect to which an election under this section is in ef-

[1] So in original. Probably should be ''a facility''.

fect shall not be increased, for purposes of this section, for additions or improvements after the amortization period has begun.

(g) Depreciation deduction

The depreciation deduction provided by section 167 shall, despite the provisions of subsection (a), be allowed with respect to the portion of the adjusted basis which is not the amortizable basis.

[(h) Repealed. Pub. L. 92–178, title I, § 104(f)(2), Dec. 10, 1971, 85 Stat. 502]

(i) Life tenant and remainderman

In the case of property held by one person for life with remainder to another person, the deduction under this section shall be computed as if the life tenant were the absolute owner of the property and shall be allowable to the life tenant.

(j) Cross reference

For special rule with respect to certain gain derived from the disposition of property the adjusted basis of which is determined with regard to this section, see section 1245.

(Added Pub. L. 91–172, title VII, § 704(a), Dec. 30, 1969, 83 Stat. 667; amended Pub. L. 92–178, title I, § 104(f)(2), Dec. 10, 1971, 85 Stat. 502; Pub. L. 93–625, § 3(a), Jan. 3, 1975, 88 Stat. 2109; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), title XXI, § 2112(b), (c), Oct. 4, 1976, 90 Stat. 1834, 1906; Pub. L. 109–58, title XIII, § 1309(a)–(d), Aug. 8, 2005, 119 Stat. 1007; Pub. L. 109–135, title IV, § 402(e), Dec. 21, 2005, 119 Stat. 2611.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act, as amended (33 U.S.C. 466 et seq.), referred to in subsec. (d)(1)(B), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. The subject matter of section 13(a) of the act, referred to in subsec. (d)(2), is covered by section 1362(1) of Title 33. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Clean Air Act, referred to in subsec. (d)(1)(B), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

Section 302(b) of the Clean Air Act, referred to in subsec. (d)(2), formerly classified to section 1857h(b) of Title 42, was reclassified to section 7602(b) of Title 42 on enactment of Pub. L. 95–95.

PRIOR PROVISIONS

A prior section 169, act Aug. 16, 1954, ch. 736, 68A Stat. 55, related to amortization of grain-storage facilities, prior to the reorganization of part VI of subchapter B of chapter 1 of this title by Pub. L. 91–172.

AMENDMENTS

2005—Subsec. (d). Pub. L. 109–58, § 1309(c), inserted ''and special rules'' after ''Definitions'' in heading.

Subsec. (d)(3). Pub. L. 109–58, § 1309(d), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (d)(4)(B). Pub. L. 109–58, § 1309(b), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''In the case of any treatment facility used in connection with any plant or other property not in operation before January 1, 1969, the preceding sentence shall be applied by substituting December 31, 1975, for December 31, 1968.''

Subsec. (d)(5). Pub. L. 109–58, § 1309(a), added par. (5).

Subsec. (d)(5)(B). Pub. L. 109–135 inserted ''in the case of facility placed in service in connection with a plant or other property placed in operation after December 31, 1975,'' before ''this section''.

1976—Subsecs. (b), (c). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d)(1). Pub. L. 94–455, §§ 1906(b)(13)(A), 2112(b), substituted in provisions preceding subpar. (A) ''January 1, 1976,'' for ''January 1, 1969,'' and ''storing, or preventing the creation or emission of'' for ''or storing'', struck out in subpar. (B) ''or his delegate'' after ''Secretary'', and added subpar. (C).

Subsec. (d)(4). Pub. L. 94–455, § 2112(c), among other changes, struck out provisions relating to treatment facilities placed in service by taxpayer before Jan. 1, 1976, and inserted provisions that in case of treatment facilities used in connection with any plan or other property not in operation before Jan. 1, 1969, Dec. 31, 1975, shall be substituted for Dec. 31, 1968, as the cut-off date for taking into account that portion of the basis which is attributable to construction, reconstruction, or erection.

1975—Subsec. (d)(4)(B). Pub. L. 93–625 substituted ''January 1, 1976'' for ''January 1, 1975''.

1971—Subsec. (h). Pub. L. 92–178 struck out provision that investment credit not be allowed. See section 48(a)(8) of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the Energy Policy Act of 2005, Pub. L. 109–58, to which such amendment relates, see section 402(m)(1) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 36C of this title.

Pub. L. 109–58, title XIII, § 1309(e), Aug. 8, 2005, 119 Stat. 1007, provided that: ''The amendments made by this section [amending this section] shall apply to facilities placed in service after April 11, 2005.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2112(d)(2) of Pub. L. 94–455, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1975. Such amendments shall not apply in the case of any property with respect to which the amortization period under section 169 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] has begun before January 1, 1976.''

EFFECTIVE DATE

Section 704(c) of Pub. L. 91–172 provided that: ''The amendments made by this section [enacting this section and amending sections 642, 1082, 1245, and 1250 of this title] shall apply with respect to taxable years ending after December 31, 1968.''

TRANSFER OF FUNCTIONS

Functions vested in Secretary of the Interior and Secretary of Health, Education, and Welfare by subsec. (d)(1)(B), (3) of this section transferred to Administrator of Environmental Protection Agency by Reorg. Plan No. 3, of 1970, § 2(a)(9), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2086, set out in the Appendix to Title 5, Government Organization and Employees.

§ 170. Charitable, etc., contributions and gifts

(a) Allowance of deduction

(1) General rule

There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. A charitable contribution

shall be allowable as a deduction only if verified under regulations prescribed by the Secretary.

(2) Corporations on accrual basis

In the case of a corporation reporting its taxable income on the accrual basis, if—

(A) the board of directors authorizes a charitable contribution during any taxable year, and

(B) payment of such contribution is made after the close of such taxable year and on or before the 15th day of the third month following the close of such taxable year,

then the taxpayer may elect to treat such contribution as paid during such taxable year. The election may be made only at the time of the filing of the return for such taxable year, and shall be signified in such manner as the Secretary shall by regulations prescribe.

(3) Future interests in tangible personal property

For purposes of this section, payment of a charitable contribution which consists of a future interest in tangible personal property shall be treated as made only when all intervening interests in, and rights to the actual possession or enjoyment of, the property have expired or are held by persons other than the taxpayer or those standing in a relationship to the taxpayer described in section 267(b) or 707(b). For purposes of the preceding sentence, a fixture which is intended to be severed from the real property shall be treated as tangible personal property.

(b) Percentage limitations

(1) Individuals

In the case of an individual, the deduction provided in subsection (a) shall be limited as provided in the succeeding subparagraphs.

(A) General rule

Any charitable contribution to—

(i) a church or a convention or association of churches,

(ii) an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on,

(iii) an organization the principal purpose or functions of which are the providing of medical or hospital care or medical education or medical research, if the organization is a hospital, or if the organization is a medical research organization directly engaged in the continuous active conduct of medical research in conjunction with a hospital, and during the calendar year in which the contribution is made such organization is committed to spend such contributions for such research before January 1 of the fifth calendar year which begins after the date such contribution is made,

(iv) an organization which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a)) from the United States or any State or political subdivision thereof or from direct or indirect contributions from the general public, and which is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a college or university which is an organization referred to in clause (ii) of this subparagraph and which is an agency or instrumentality of a State or political subdivision thereof, or which is owned or operated by a State or political subdivision thereof or by an agency or instrumentality of one or more States or political subdivisions,

(v) a governmental unit referred to in subsection (c)(1),

(vi) an organization referred to in subsection (c)(2) which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a)) from a governmental unit referred to in subsection (c)(1) or from direct or indirect contributions from the general public,

(vii) a private foundation described in subparagraph (F), or

(viii) an organization described in section 509(a)(2) or (3),

shall be allowed to the extent that the aggregate of such contributions does not exceed 50 percent of the taxpayer's contribution base for the taxable year.

(B) Other contributions

Any charitable contribution other than a charitable contribution to which subparagraph (A) applies shall be allowed to the extent that the aggregate of such contributions does not exceed the lesser of—

(i) 30 percent of the taxpayer's contribution base for the taxable year, or

(ii) the excess of 50 percent of the taxpayer's contribution base for the taxable year over the amount of charitable contributions allowable under subparagraph (A) (determined without regard to subparagraph (C)).

If the aggregate of such contributions exceeds the limitation of the preceding sentence, such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution (to which subparagraph (A) does not apply) in each of the 5 succeeding taxable years in order of time.

(C) Special limitation with respect to contributions described in subparagraph (A) of certain capital gain property

(i) In the case of charitable contributions described in subparagraph (A) of capital gain property to which subsection (e)(1)(B) does not apply, the total amount

of contributions of such property which may be taken into account under subsection (a) for any taxable year shall not exceed 30 percent of the taxpayer's contribution base for such year. For purposes of this subsection, contributions of capital gain property to which this subparagraph applies shall be taken into account after all other charitable contributions (other than charitable contributions to which subparagraph (D) applies).

(ii) If charitable contributions described in subparagraph (A) of capital gain property to which clause (i) applies exceeds 30 percent of the taxpayer's contribution base for any taxable year, such excess shall be treated, in a manner consistent with the rules of subsection (d)(1), as a charitable contribution of capital gain property to which clause (i) applies in each of the 5 succeeding taxable years in order of time.

(iii) At the election of the taxpayer (made at such time and in such manner as the Secretary prescribes by regulations), subsection (e)(1) shall apply to all contributions of capital gain property (to which subsection (e)(1)(B) does not otherwise apply) made by the taxpayer during the taxable year. If such an election is made, clauses (i) and (ii) shall not apply to contributions of capital gain property made during the taxable year, and, in applying subsection (d)(1) for such taxable year with respect to contributions of capital gain property made in any prior contribution year for which an election was not made under this clause, such contributions shall be reduced as if subsection (e)(1) had applied to such contributions in the year in which made.

(iv) For purposes of this paragraph, the term ''capital gain property'' means, with respect to any contribution, any capital asset the sale of which at its fair market value at the time of the contribution would have resulted in gain which would have been long-term capital gain. For purposes of the preceding sentence, any property which is property used in the trade or business (as defined in section 1231(b)) shall be treated as a capital asset.

(D) Special limitation with respect to contributions of capital gain property to organizations not described in subparagraph (A)

(i) In general

In the case of charitable contributions (other than charitable contributions to which subparagraph (A) applies) of capital gain property, the total amount of such contributions of such property taken into account under subsection (a) for any taxable year shall not exceed the lesser of—

(I) 20 percent of the taxpayer's contribution base for the taxable year, or

(II) the excess of 30 percent of the taxpayer's contribution base for the taxable year over the amount of the contributions of capital gain property to which subparagraph (C) applies.

For purposes of this subsection, contributions of capital gain property to which this subparagraph applies shall be taken into account after all other charitable contributions.

(ii) Carryover

If the aggregate amount of contributions described in clause (i) exceeds the limitation of clause (i), such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution of capital gain property to which clause (i) applies in each of the 5 succeeding taxable years in order of time.

(E) Contributions of qualified conservation contributions

(i) In general

Any qualified conservation contribution (as defined in subsection (h)(1)) shall be allowed to the extent the aggregate of such contributions does not exceed the excess of 50 percent of the taxpayer's contribution base over the amount of all other charitable contributions allowable under this paragraph.

(ii) Carryover

If the aggregate amount of contributions described in clause (i) exceeds the limitation of clause (i), such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution to which clause (i) applies in each of the 15 succeeding years in order of time.

(iii) Coordination with other subparagraphs

For purposes of applying this subsection and subsection (d)(1), contributions described in clause (i) shall not be treated as described in subparagraph (A), (B), (C), or (D) and such subparagraphs shall apply without regard to such contributions.

(iv) Special rule for contribution of property used in agriculture or livestock production

(I) In general

If the individual is a qualified farmer or rancher for the taxable year for which the contribution is made, clause (i) shall be applied by substituting ''100 percent'' for ''50 percent''.

(II) Exception

Subclause (I) shall not apply to any contribution of property made after the date of the enactment of this subparagraph which is used in agriculture or livestock production (or available for such production) unless such contribution is subject to a restriction that such property remain available for such production. This subparagraph shall be applied separately with respect to property to which subclause (I) does not apply by reason of the preceding sentence prior to its application to property to which subclause (I) does apply.

(v) Definition

For purposes of clause (iv), the term ''qualified farmer or rancher'' means a taxpayer whose gross income from the trade or business of farming (within the meaning of section 2032A(e)(5)) is greater than 50 percent of the taxpayer's gross income for the taxable year.

(vi) Termination

This subparagraph shall not apply to any contribution made in taxable years beginning after December 31, 2011.

(F) Certain private foundations

The private foundations referred to in subparagraph (A)(vii) and subsection (e)(1)(B) are—

(i) a private operating foundation (as defined in section 4942(j)(3)),

(ii) any other private foundation (as defined in section 509(a)) which, not later than the 15th day of the third month after the close of the foundation's taxable year in which contributions are received, makes qualifying distributions (as defined in section 4942(g), without regard to paragraph (3) thereof), which are treated, after the application of section 4942(g)(3), as distributions out of corpus (in accordance with section 4942(h)) in an amount equal to 100 percent of such contributions, and with respect to which the taxpayer obtains adequate records or other sufficient evidence from the foundation showing that the foundation made such qualifying distributions, and

(iii) a private foundation all of the contributions to which are pooled in a common fund and which would be described in section 509(a)(3) but for the right of any substantial contributor (hereafter in this clause called ''donor'') or his spouse to designate annually the recipients, from among organizations described in paragraph (1) of section 509(a), of the income attributable to the donor's contribution to the fund and to direct (by deed or by will) the payment, to an organization described in such paragraph (1), of the corpus in the common fund attributable to the donor's contribution; but this clause shall apply only if all of the income of the common fund is required to be (and is) distributed to one or more organizations described in such paragraph (1) not later than the 15th day of the third month after the close of the taxable year in which the income is realized by the fund and only if all of the corpus attributable to any donor's contribution to the fund is required to be (and is) distributed to one or more of such organizations not later than one year after his death or after the death of his surviving spouse if she has the right to designate the recipients of such corpus.

(G) Contribution base defined

For purposes of this section, the term ''contribution base'' means adjusted gross income (computed without regard to any net operating loss carryback to the taxable year under section 172).

(2) Corporations

In the case of a corporation—

(A) In general

The total deductions under subsection (a) for any taxable year (other than for contributions to which subparagraph (B) applies) shall not exceed 10 percent of the taxpayer's taxable income.

(B) Qualified conservation contributions by certain corporate farmers and ranchers

(i) In general

Any qualified conservation contribution (as defined in subsection (h)(1))—

(I) which is made by a corporation which, for the taxable year during which the contribution is made, is a qualified farmer or rancher (as defined in paragraph (1)(E)(v)) and the stock of which is not readily tradable on an established securities market at any time during such year, and

(II) which, in the case of contributions made after the date of the enactment of this subparagraph, is a contribution of property which is used in agriculture or livestock production (or available for such production) and which is subject to a restriction that such property remain available for such production,

shall be allowed to the extent the aggregate of such contributions does not exceed the excess of the taxpayer's taxable income over the amount of charitable contributions allowable under subparagraph (A).

(ii) Carryover

If the aggregate amount of contributions described in clause (i) exceeds the limitation of clause (i), such excess shall be treated (in a manner consistent with the rules of subsection (d)(2)) as a charitable contribution to which clause (i) applies in each of the 15 succeeding years in order of time.

(iii) Termination

This subparagraph shall not apply to any contribution made in taxable years beginning after December 31, 2011.

(C) Taxable income

For purposes of this paragraph, taxable income shall be computed without regard to—

(i) this section,

(ii) part VIII (except section 248),

(iii) any net operating loss carryback to the taxable year under section 172,

(iv) section 199, and

(v) any capital loss carryback to the taxable year under section 1212(a)(1).

(3) Temporary suspension of limitations on charitable contributions

In the case of a qualified farmer or rancher (as defined in paragraph (1)(E)(v)), any charitable contribution of food—

(A) to which subsection (e)(3)(C) applies (without regard to clause (ii) thereof), and

(B) which is made during the period beginning on the date of the enactment of this paragraph and before January 1, 2009,

shall be treated for purposes of paragraph (1)(E) or (2)(B), whichever is applicable, as if it were a qualified conservation contribution which is made by a qualified farmer or rancher and which otherwise meets the requirements of such paragraph.

(c) Charitable contribution defined

For purposes of this section, the term ''charitable contribution'' means a contribution or gift to or for the use of—

(1) A State, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes.

(2) A corporation, trust, or community chest, fund, or foundation—

(A) created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States;

(B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals;

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and

(D) which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

A contribution or gift by a corporation to a trust, chest, fund, or foundation shall be deductible by reason of this paragraph only if it is to be used within the United States or any of its possessions exclusively for purposes specified in subparagraph (B). Rules similar to the rules of section 501(j) shall apply for purposes of this paragraph.

(3) A post or organization of war veterans, or an auxiliary unit or society of, or trust or foundation for, any such post or organization—

(A) organized in the United States or any of its possessions, and

(B) no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(4) In the case of a contribution or gift by an individual, a domestic fraternal society, order, or association, operating under the lodge system, but only if such contribution or gift is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals.

(5) A cemetery company owned and operated exclusively for the benefit of its members, or any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, if such company or corporation is not operated for profit and no part of the net earnings of such company or corporation inures to the benefit of any private shareholder or individual.

For purposes of this section, the term ''charitable contribution'' also means an amount treated under subsection (g) as paid for the use of an organization described in paragraph (2), (3), or (4).

(d) Carryovers of excess contributions

(1) Individuals

(A) In general

In the case of an individual, if the amount of charitable contributions described in subsection (b)(1)(A) payment of which is made within a taxable year (hereinafter in this paragraph referred to as the ''contribution year'') exceeds 50 percent of the taxpayer's contribution base for such year, such excess shall be treated as a charitable contribution described in subsection (b)(1)(A) paid in each of the 5 succeeding taxable years in order of time, but, with respect to any such succeeding taxable year, only to the extent of the lesser of the two following amounts:

(i) the amount by which 50 percent of the taxpayer's contribution base for such succeeding taxable year exceeds the sum of the charitable contributions described in subsection (b)(1)(A) payment of which is made by the taxpayer within such succeeding taxable year (determined without regard to this subparagraph) and the charitable contributions described in subsection (b)(1)(A) payment of which was made in taxable years before the contribution year which are treated under this subparagraph as having been paid in such succeeding taxable year; or

(ii) in the case of the first succeeding taxable year, the amount of such excess, and in the case of the second, third, fourth, or fifth succeeding taxable year, the portion of such excess not treated under this subparagraph as a charitable contribution described in subsection (b)(1)(A) paid in any taxable year intervening between the contribution year and such succeeding taxable year.

(B) Special rule for net operating loss carryovers

In applying subparagraph (A), the excess determined under subparagraph (A) for the contribution year shall be reduced to the extent that such excess reduces taxable income (as computed for purposes of the second sentence of section 172(b)(2)) and increases the net operating loss deduction for a taxable year succeeding the contribution year.

(2) Corporations

(A) In general

Any contribution made by a corporation in a taxable year (hereinafter in this paragraph

referred to as the ''contribution year'') in excess of the amount deductible for such year under subsection (b)(2)(A) shall be deductible for each of the 5 succeeding taxable years in order of time, but only to the extent of the lesser of the two following amounts: (i) the excess of the maximum amount deductible for such succeeding taxable year under subsection (b)(2)(A) over the sum of the contributions made in such year plus the aggregate of the excess contributions which were made in taxable years before the contribution year and which are deductible under this subparagraph for such succeeding taxable year; or (ii) in the case of the first succeeding taxable year, the amount of such excess contribution, and in the case of the second, third, fourth, or fifth succeeding taxable year, the portion of such excess contribution not deductible under this subparagraph for any taxable year intervening between the contribution year and such succeeding taxable year.

(B) Special rule for net operating loss carryovers

For purposes of subparagraph (A), the excess of—

(i) the contributions made by a corporation in a taxable year to which this section applies, over

(ii) the amount deductible in such year under the limitation in subsection (b)(2)(A),

shall be reduced to the extent that such excess reduces taxable income (as computed for purposes of the second sentence of section 172(b)(2)) and increases a net operating loss carryover under section 172 to a succeeding taxable year.

(e) Certain contributions of ordinary income and capital gain property

(1) General rule

The amount of any charitable contribution of property otherwise taken into account under this section shall be reduced by the sum of—

(A) the amount of gain which would not have been long-term capital gain (determined without regard to section 1221(b)(3)) if the property contributed had been sold by the taxpayer at its fair market value (determined at the time of such contribution), and

(B) in the case of a charitable contribution—

(i) of tangible personal property—

(I) if the use by the donee is unrelated to the purpose or function constituting the basis for its exemption under section 501 (or, in the case of a governmental unit, to any purpose or function described in subsection (c)), or

(II) which is applicable property (as defined in paragraph (7)(C), but without regard to clause (ii) thereof) which is sold, exchanged, or otherwise disposed of by the donee before the last day of the taxable year in which the contribution was made and with respect to which the donee has not made a certification in accordance with paragraph (7)(D),

(ii) to or for the use of a private foundation (as defined in section 509(a)), other than a private foundation described in subsection (b)(1)(F),

(iii) of any patent, copyright (other than a copyright described in section 1221(a)(3) or 1231(b)(1)(C)), trademark, trade name, trade secret, know-how, software (other than software described in section 197(e)(3)(A)(i)), or similar property, or applications or registrations of such property, or

(iv) of any taxidermy property which is contributed by the person who prepared, stuffed, or mounted the property or by any person who paid or incurred the cost of such preparation, stuffing, or mounting,

the amount of gain which would have been long-term capital gain if the property contributed had been sold by the taxpayer at its fair market value (determined at the time of such contribution).

For purposes of applying this paragraph (other than in the case of gain to which section 617(d)(1), 1245(a), 1250(a), 1252(a), or 1254(a) applies), property which is property used in the trade or business (as defined in section 1231(b)) shall be treated as a capital asset. For purposes of applying this paragraph in the case of a charitable contribution of stock in an S corporation, rules similar to the rules of section 751 shall apply in determining whether gain on such stock would have been long-term capital gain if such stock were sold by the taxpayer.

(2) Allocation of basis

For purposes of paragraph (1), in the case of a charitable contribution of less than the taxpayer's entire interest in the property contributed, the taxpayer's adjusted basis in such property shall be allocated between the interest contributed and any interest not contributed in accordance with regulations prescribed by the Secretary.

(3) Special rule for certain contributions of inventory and other property

(A) Qualified contributions

For purposes of this paragraph, a qualified contribution shall mean a charitable contribution of property described in paragraph (1) or (2) of section 1221(a), by a corporation (other than a corporation which is an S corporation) to an organization which is described in section 501(c)(3) and is exempt under section 501(a) (other than a private foundation, as defined in section 509(a), which is not an operating foundation, as defined in section 4942(j)(3)), but only if—

(i) the use of the property by the donee is related to the purpose or function constituting the basis for its exemption under section 501 and the property is to be used by the donee solely for the care of the ill, the needy, or infants;

(ii) the property is not transferred by the donee in exchange for money, other property, or services;

(iii) the taxpayer receives from the donee a written statement representing

that its use and disposition of the property will be in accordance with the provisions of clauses (i) and (ii); and

(iv) in the case where the property is subject to regulation under the Federal Food, Drug, and Cosmetic Act, as amended, such property must fully satisfy the applicable requirements of such Act and regulations promulgated thereunder on the date of transfer and for one hundred and eighty days prior thereto.

(B) Amount of reduction

The reduction under paragraph (1)(A) for any qualified contribution (as defined in subparagraph (A)) shall be no greater than the sum of—

(i) one-half of the amount computed under paragraph (1)(A) (computed without regard to this paragraph), and

(ii) the amount (if any) by which the charitable contribution deduction under this section for any qualified contribution (computed by taking into account the amount determined in clause (i), but without regard to this clause) exceeds twice the basis of such property.

(C) Special rule for contributions of food inventory

(i) General rule

In the case of a charitable contribution of food from any trade or business of the taxpayer, this paragraph shall be applied—

(I) without regard to whether the contribution is made by a C corporation, and

(II) only to food that is apparently wholesome food.

(ii) Limitation

In the case of a taxpayer other than a C corporation, the aggregate amount of such contributions for any taxable year which may be taken into account under this section shall not exceed 10 percent of the taxpayer's aggregate net income for such taxable year from all trades or businesses from which such contributions were made for such year, computed without regard to this section.

(iii) Apparently wholesome food

For purposes of this subparagraph, the term ''apparently wholesome food'' has the meaning given to such term by section 22(b)(2) of the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791(b)(2)), as in effect on the date of the enactment of this subparagraph.

(iv) Termination

This subparagraph shall not apply to contributions made after December 31, 2011.

(D) Special rule for contributions of book inventory to public schools

(i) Contributions of book inventory

In determining whether a qualified book contribution is a qualified contribution, subparagraph (A) shall be applied without regard to whether the donee is an organization described in the matter preceding clause (i) of subparagraph (A).

(ii) Qualified book contribution

For purposes of this paragraph, the term ''qualified book contribution'' means a charitable contribution of books to a public school which is an educational organization described in subsection (b)(1)(A)(ii) and which provides elementary education or secondary education (kindergarten through grade 12).

(iii) Certification by donee

Subparagraph (A) shall not apply to any contribution of books unless (in addition to the certifications required by subparagraph (A) (as modified by this subparagraph)), the donee certifies in writing that—

(I) the books are suitable, in terms of currency, content, and quantity, for use in the donee's educational programs, and

(II) the donee will use the books in its educational programs.

(iv) Termination

This subparagraph shall not apply to contributions made after December 31, 2011.

(E) This paragraph shall not apply to so much of the amount of the gain described in paragraph (1)(A) which would be long-term capital gain but for the application of sections 617, 1245, 1250, or 1252.

(4) Special rule for contributions of scientific property used for research

(A) Limit on reduction

In the case of a qualified research contribution, the reduction under paragraph (1)(A) shall be no greater than the amount determined under paragraph (3)(B).

(B) Qualified research contributions

For purposes of this paragraph, the term ''qualified research contribution'' means a charitable contribution by a corporation of tangible personal property described in paragraph (1) of section 1221(a), but only if—

(i) the contribution is to an organization described in subparagraph (A) or subparagraph (B) of section 41(e)(6),

(ii) the property is constructed or assembled by the taxpayer,

(iii) the contribution is made not later than 2 years after the date the construction or assembly of the property is substantially completed,

(iv) the original use of the property is by the donee,

(v) the property is scientific equipment or apparatus substantially all of the use of which by the donee is for research or experimentation (within the meaning of section 174), or for research training, in the United States in physical or biological sciences,

(vi) the property is not transferred by the donee in exchange for money, other property, or services, and

(vii) the taxpayer receives from the donee a written statement representing that its use and disposition of the property will be in accordance with the provisions of clauses (v) and (vi).

(C) Construction of property by taxpayer

For purposes of this paragraph, property shall be treated as constructed by the taxpayer only if the cost of the parts used in the construction of such property (other than parts manufactured by the taxpayer or a related person) do not exceed 50 percent of the taxpayer's basis in such property.

(D) Corporation

For purposes of this paragraph, the term ''corporation'' shall not include—

(i) an S corporation,

(ii) a personal holding company (as defined in section 542), and

(iii) a service organization (as defined in section 414(m)(3)).

(5) Special rule for contributions of stock for which market quotations are readily available

(A) In general

Subparagraph (B)(ii) of paragraph (1) shall not apply to any contribution of qualified appreciated stock.

(B) Qualified appreciated stock

Except as provided in subparagraph (C), for purposes of this paragraph, the term ''qualified appreciated stock'' means any stock of a corporation—

(i) for which (as of the date of the contribution) market quotations are readily available on an established securities market, and

(ii) which is capital gain property (as defined in subsection (b)(1)(C)(iv)).

(C) Donor may not contribute more than 10 percent of stock of corporation

(i) In general

In the case of any donor, the term ''qualified appreciated stock'' shall not include any stock of a corporation contributed by the donor in a contribution to which paragraph (1)(B)(ii) applies (determined without regard to this paragraph) to the extent that the amount of the stock so contributed (when increased by the aggregate amount of all prior such contributions by the donor of stock in such corporation) exceeds 10 percent (in value) of all of the outstanding stock of such corporation.

(ii) Special rule

For purposes of clause (i), an individual shall be treated as making all contributions made by any member of his family (as defined in section 267(c)(4)).

(6) Special rule for contributions of computer technology and equipment for educational purposes

(A) Limit on reduction

In the case of a qualified computer contribution, the reduction under paragraph (1)(A) shall be no greater than the amount determined under paragraph (3)(B).

(B) Qualified computer contribution

For purposes of this paragraph, the term ''qualified computer contribution'' means a charitable contribution by a corporation of any computer technology or equipment, but only if—

(i) the contribution is to—

(I) an educational organization described in subsection (b)(1)(A)(ii),

(II) an entity described in section 501(c)(3) and exempt from tax under section 501(a) (other than an entity described in subclause (I)) that is organized primarily for purposes of supporting elementary and secondary education, or

(III) a public library (within the meaning of section 213(1)(A) of the Library Services and Technology Act (20 U.S.C. 9122(1)(A))),[1] as in effect on the date of the enactment of the Community Renewal Tax Relief Act of 2000), established and maintained by an entity described in subsection (c)(1),

(ii) the contribution is made not later than 3 years after the date the taxpayer acquired the property (or in the case of property constructed or assembled by the taxpayer, the date the construction or assembling of the property is substantially completed),

(iii) the original use of the property is by the donor or the donee,

(iv) substantially all of the use of the property by the donee is for use within the United States for educational purposes that are related to the purpose or function of the donee,

(v) the property is not transferred by the donee in exchange for money, other property, or services, except for shipping, installation and transfer costs,

(vi) the property will fit productively into the donee's education plan,

(vii) the donee's use and disposition of the property will be in accordance with the provisions of clauses (iv) and (v), and

(viii) the property meets such standards, if any, as the Secretary may prescribe by regulation to assure that the property meets minimum functionality and suitability standards for educational purposes.

(C) Contribution to private foundation

A contribution by a corporation of any computer technology or equipment to a private foundation (as defined in section 509) shall be treated as a qualified computer contribution for purposes of this paragraph if—

(i) the contribution to the private foundation satisfies the requirements of clauses (ii) and (v) of subparagraph (B), and

(ii) within 30 days after such contribution, the private foundation—

(I) contributes the property to a donee described in clause (i) of subparagraph

[1] So in original. The third closing parenthesis probably should not appear.

(B) that satisfies the requirements of clauses (iv) through (vii) of subparagraph (B), and

(II) notifies the donor of such contribution.

(D) Donations of property reacquired by manufacturer

In the case of property which is reacquired by the person who constructed or assembled the property—

(i) subparagraph (B)(ii) shall be applied to a contribution of such property by such person by taking into account the date that the original construction or assembly of the property was substantially completed, and

(ii) subparagraph (B)(iii) shall not apply to such contribution.

(E) Special rule relating to construction of property

For the purposes of this paragraph, the rules of paragraph (4)(C) shall apply.

(F) Definitions

For the purposes of this paragraph—

(i) Computer technology or equipment

The term ''computer technology or equipment'' means computer software (as defined by section 197(e)(3)(B)), computer or peripheral equipment (as defined by section 168(i)(2)(B)), and fiber optic cable related to computer use.

(ii) Corporation

The term ''corporation'' has the meaning given to such term by paragraph (4)(D).

(G) Termination

This paragraph shall not apply to any contribution made during any taxable year beginning after December 31, 2011.

(7) Recapture of deduction on certain dispositions of exempt use property

(A) In general

In the case of an applicable disposition of applicable property, there shall be included in the income of the donor of such property for the taxable year of such donor in which the applicable disposition occurs an amount equal to the excess (if any) of—

(i) the amount of the deduction allowed to the donor under this section with respect to such property, over

(ii) the donor's basis in such property at the time such property was contributed.

(B) Applicable disposition

For purposes of this paragraph, the term ''applicable disposition'' means any sale, exchange, or other disposition by the donee of applicable property—

(i) after the last day of the taxable year of the donor in which such property was contributed, and

(ii) before the last day of the 3-year period beginning on the date of the contribution of such property,

unless the donee makes a certification in accordance with subparagraph (D).

(C) Applicable property

For purposes of this paragraph, the term ''applicable property'' means charitable deduction property (as defined in section 6050L(a)(2)(A))—

(i) which is tangible personal property the use of which is identified by the donee as related to the purpose or function constituting the basis of the donee's exemption under section 501, and

(ii) for which a deduction in excess of the donor's basis is allowed.

(D) Certification

A certification meets the requirements of this subparagraph if it is a written statement which is signed under penalty of perjury by an officer of the donee organization and—

(i) which—

(I) certifies that the use of the property by the donee was substantial and related to the purpose or function constituting the basis for the donee's exemption under section 501, and

(II) describes how the property was used and how such use furthered such purpose or function, or

(ii) which—

(I) states the intended use of the property by the donee at the time of the contribution, and

(II) certifies that such intended use has become impossible or infeasible to implement.

(f) Disallowance of deduction in certain cases and special rules

(1) In general

No deduction shall be allowed under this section for a contribution to or for the use of an organization or trust described in section 508(d) or 4948(c)(4) subject to the conditions specified in such sections.

(2) Contributions of property placed in trust

(A) Remainder interest

In the case of property transferred in trust, no deduction shall be allowed under this section for the value of a contribution of a remainder interest unless the trust is a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664), or a pooled income fund (described in section 642(c)(5)).

(B) Income interests, etc.

No deduction shall be allowed under this section for the value of any interest in property (other than a remainder interest) transferred in trust unless the interest is in the form of a guaranteed annuity or the trust instrument specifies that the interest is a fixed percentage distributed yearly of the fair market value of the trust property (to be determined yearly) and the grantor is treated as the owner of such interest for purposes of applying section 671. If the donor ceases to be treated as the owner of such an interest for purposes of applying section 671, at the time the donor ceases to be so treat-

ed, the donor shall for purposes of this chapter be considered as having received an amount of income equal to the amount of any deduction he received under this section for the contribution reduced by the discounted value of all amounts of income earned by the trust and taxable to him before the time at which he ceases to be treated as the owner of the interest. Such amounts of income shall be discounted to the date of the contribution. The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph.

(C) Denial of deduction in case of payments by certain trusts

In any case in which a deduction is allowed under this section for the value of an interest in property described in subparagraph (B), transferred in trust, no deduction shall be allowed under this section to the grantor or any other person for the amount of any contribution made by the trust with respect to such interest.

(D) Exception

This paragraph shall not apply in a case in which the value of all interests in property transferred in trust are deductible under subsection (a).

(3) Denial of deduction in case of certain contributions of partial interests in property

(A) In general

In the case of a contribution (not made by a transfer in trust) of an interest in property which consists of less than the taxpayer's entire interest in such property, a deduction shall be allowed under this section only to the extent that the value of the interest contributed would be allowable as a deduction under this section if such interest had been transferred in trust. For purposes of this subparagraph, a contribution by a taxpayer of the right to use property shall be treated as a contribution of less than the taxpayer's entire interest in such property.

(B) Exceptions

Subparagraph (A) shall not apply to—

(i) a contribution of a remainder interest in a personal residence or farm,

(ii) a contribution of an undivided portion of the taxpayer's entire interest in property, and

(iii) a qualified conservation contribution.

(4) Valuation of remainder interest in real property

For purposes of this section, in determining the value of a remainder interest in real property, depreciation (computed on the straight line method) and depletion of such property shall be taken into account, and such value shall be discounted at a rate of 6 percent per annum, except that the Secretary may prescribe a different rate.

(5) Reduction for certain interest

If, in connection with any charitable contribution, a liability is assumed by the recipient or by any other person, or if a charitable contribution is of property which is subject to a liability, then, to the extent necessary to avoid the duplication of amounts, the amount taken into account for purposes of this section as the amount of the charitable contribution—

(A) shall be reduced for interest (i) which has been paid (or is to be paid) by the taxpayer, (ii) which is attributable to the liability, and (iii) which is attributable to any period after the making of the contribution, and

(B) in the case of a bond, shall be further reduced for interest (i) which has been paid (or is to be paid) by the taxpayer on indebtedness incurred or continued to purchase or carry such bond, and (ii) which is attributable to any period before the making of the contribution.

The reduction pursuant to subparagraph (B) shall not exceed the interest (including interest equivalent) on the bond which is attributable to any period before the making of the contribution and which is not (under the taxpayer's method of accounting) includible in the gross income of the taxpayer for any taxable year. For purposes of this paragraph, the term ''bond'' means any bond, debenture, note, or certificate or other evidence of indebtedness.

(6) Deductions for out-of-pocket expenditures

No deduction shall be allowed under this section for an out-of-pocket expenditure made by any person on behalf of an organization described in subsection (c) (other than an organization described in section 501(h)(5) (relating to churches, etc.)) if the expenditure is made for the purpose of influencing legislation (within the meaning of section 501(c)(3)).

(7) Reformations to comply with paragraph (2)

(A) In general

A deduction shall be allowed under subsection (a) in respect of any qualified reformation (within the meaning of section 2055(e)(3)(B)).

(B) Rules similar to section 2055(e)(3) to apply

For purposes of this paragraph, rules similar to the rules of section 2055(e)(3) shall apply.

(8) Substantiation requirement for certain contributions

(A) General rule

No deduction shall be allowed under subsection (a) for any contribution of $250 or more unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgment of the contribution by the donee organization that meets the requirements of subparagraph (B).

(B) Content of acknowledgement

An acknowledgement meets the requirements of this subparagraph if it includes the following information:

(i) The amount of cash and a description (but not value) of any property other than cash contributed.

(ii) Whether the donee organization provided any goods or services in consideration, in whole or in part, for any property described in clause (i).

(iii) A description and good faith estimate of the value of any goods or services referred to in clause (ii) or, if such goods or services consist solely of intangible religious benefits, a statement to that effect.

For purposes of this subparagraph, the term ''intangible religious benefit'' means any intangible religious benefit which is provided by an organization organized exclusively for religious purposes and which generally is not sold in a commercial transaction outside the donative context.

(C) Contemporaneous

For purposes of subparagraph (A), an acknowledgment shall be considered to be contemporaneous if the taxpayer obtains the acknowledgment on or before the earlier of—

(i) the date on which the taxpayer files a return for the taxable year in which the contribution was made, or

(ii) the due date (including extensions) for filing such return.

(D) Substantiation not required for contributions reported by the donee organization

Subparagraph (A) shall not apply to a contribution if the donee organization files a return, on such form and in accordance with such regulations as the Secretary may prescribe, which includes the information described in subparagraph (B) with respect to the contribution.

(E) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations that may provide that some or all of the requirements of this paragraph do not apply in appropriate cases.

(9) Denial of deduction where contribution for lobbying activities

No deduction shall be allowed under this section for a contribution to an organization which conducts activities to which section 162(e)(1) applies on matters of direct financial interest to the donor's trade or business, if a principal purpose of the contribution was to avoid Federal income tax by securing a deduction for such activities under this section which would be disallowed by reason of section 162(e) if the donor had conducted such activities directly. No deduction shall be allowed under section 162(a) for any amount for which a deduction is disallowed under the preceding sentence.

(10) Split-dollar life insurance, annuity, and endowment contracts

(A) In general

Nothing in this section or in section 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522 shall be construed to allow a deduction, and no deduction shall be allowed, for any transfer to or for the use of an organization described in subsection (c) if in connection with such transfer—

(i) the organization directly or indirectly pays, or has previously paid, any premium on any personal benefit contract with respect to the transferor, or

(ii) there is an understanding or expectation that any person will directly or indirectly pay any premium on any personal benefit contract with respect to the transferor.

(B) Personal benefit contract

For purposes of subparagraph (A), the term ''personal benefit contract'' means, with respect to the transferor, any life insurance, annuity, or endowment contract if any direct or indirect beneficiary under such contract is the transferor, any member of the transferor's family, or any other person (other than an organization described in subsection (c)) designated by the transferor.

(C) Application to charitable remainder trusts

In the case of a transfer to a trust referred to in subparagraph (E), references in subparagraphs (A) and (F) to an organization described in subsection (c) shall be treated as a reference to such trust.

(D) Exception for certain annuity contracts

If, in connection with a transfer to or for the use of an organization described in subsection (c), such organization incurs an obligation to pay a charitable gift annuity (as defined in section 501(m)) and such organization purchases any annuity contract to fund such obligation, persons receiving payments under the charitable gift annuity shall not be treated for purposes of subparagraph (B) as indirect beneficiaries under such contract if—

(i) such organization possesses all of the incidents of ownership under such contract,

(ii) such organization is entitled to all the payments under such contract, and

(iii) the timing and amount of payments under such contract are substantially the same as the timing and amount of payments to each such person under such obligation (as such obligation is in effect at the time of such transfer).

(E) Exception for certain contracts held by charitable remainder trusts

A person shall not be treated for purposes of subparagraph (B) as an indirect beneficiary under any life insurance, annuity, or endowment contract held by a charitable remainder annuity trust or a charitable remainder unitrust (as defined in section 664(d)) solely by reason of being entitled to any payment referred to in paragraph (1)(A) or (2)(A) of section 664(d) if—

(i) such trust possesses all of the incidents of ownership under such contract, and

(ii) such trust is entitled to all the payments under such contract.

(F) Excise tax on premiums paid

(i) In general

There is hereby imposed on any organization described in subsection (c) an excise

tax equal to the premiums paid by such organization on any life insurance, annuity, or endowment contract if the payment of premiums on such contract is in connection with a transfer for which a deduction is not allowable under subparagraph (A), determined without regard to when such transfer is made.

(ii) Payments by other persons

For purposes of clause (i), payments made by any other person pursuant to an understanding or expectation referred to in subparagraph (A) shall be treated as made by the organization.

(iii) Reporting

Any organization on which tax is imposed by clause (i) with respect to any premium shall file an annual return which includes—

(I) the amount of such premiums paid during the year and the name and TIN of each beneficiary under the contract to which the premium relates, and

(II) such other information as the Secretary may require.

The penalties applicable to returns required under section 6033 shall apply to returns required under this clause. Returns required under this clause shall be furnished at such time and in such manner as the Secretary shall by forms or regulations require.

(iv) Certain rules to apply

The tax imposed by this subparagraph shall be treated as imposed by chapter 42 for purposes of this title other than subchapter B of chapter 42.

(G) Special rule where State requires specification of charitable gift annuitant in contract

In the case of an obligation to pay a charitable gift annuity referred to in subparagraph (D) which is entered into under the laws of a State which requires, in order for the charitable gift annuity to be exempt from insurance regulation by such State, that each beneficiary under the charitable gift annuity be named as a beneficiary under an annuity contract issued by an insurance company authorized to transact business in such State, the requirements of clauses (i) and (ii) of subparagraph (D) shall be treated as met if—

(i) such State law requirement was in effect on February 8, 1999,

(ii) each such beneficiary under the charitable gift annuity is a bona fide resident of such State at the time the obligation to pay a charitable gift annuity is entered into, and

(iii) the only persons entitled to payments under such contract are persons entitled to payments as beneficiaries under such obligation on the date such obligation is entered into.

(H) Member of family

For purposes of this paragraph, an individual's family consists of the individual's grandparents, the grandparents of such individual's spouse, the lineal descendants of such grandparents, and any spouse of such a lineal descendant.

(I) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations to prevent the avoidance of such purposes.

(11) Qualified appraisal and other documentation for certain contributions

(A) In general

(i) Denial of deduction

In the case of an individual, partnership, or corporation, no deduction shall be allowed under subsection (a) for any contribution of property for which a deduction of more than $500 is claimed unless such person meets the requirements of subparagraphs (B), (C), and (D), as the case may be, with respect to such contribution.

(ii) Exceptions

(I) Readily valued property

Subparagraphs (C) and (D) shall not apply to cash, property described in subsection (e)(1)(B)(iii) or section 1221(a)(1), publicly traded securities (as defined in section 6050L(a)(2)(B)), and any qualified vehicle described in paragraph (12)(A)(ii) for which an acknowledgement under paragraph (12)(B)(iii) is provided.

(II) Reasonable cause

Clause (i) shall not apply if it is shown that the failure to meet such requirements is due to reasonable cause and not to willful neglect.

(B) Property description for contributions of more than $500

In the case of contributions of property for which a deduction of more than $500 is claimed, the requirements of this subparagraph are met if the individual, partnership or corporation includes with the return for the taxable year in which the contribution is made a description of such property and such other information as the Secretary may require. The requirements of this subparagraph shall not apply to a C corporation which is not a personal service corporation or a closely held C corporation.

(C) Qualified appraisal for contributions of more than $5,000

In the case of contributions of property for which a deduction of more than $5,000 is claimed, the requirements of this subparagraph are met if the individual, partnership, or corporation obtains a qualified appraisal of such property and attaches to the return for the taxable year in which such contribution is made such information regarding such property and such appraisal as the Secretary may require.

(D) Substantiation for contributions of more than $500,000

In the case of contributions of property for which a deduction of more than $500,000 is

claimed, the requirements of this subparagraph are met if the individual, partnership, or corporation attaches to the return for the taxable year a qualified appraisal of such property.

(E) Qualified appraisal and appraiser

For purposes of this paragraph—

(i) Qualified appraisal

The term ''qualified appraisal'' means, with respect to any property, an appraisal of such property which—

(I) is treated for purposes of this paragraph as a qualified appraisal under regulations or other guidance prescribed by the Secretary, and

(II) is conducted by a qualified appraiser in accordance with generally accepted appraisal standards and any regulations or other guidance prescribed under subclause (I).

(ii) Qualified appraiser

Except as provided in clause (iii), the term ''qualified appraiser'' means an individual who—

(I) has earned an appraisal designation from a recognized professional appraiser organization or has otherwise met minimum education and experience requirements set forth in regulations prescribed by the Secretary,

(II) regularly performs appraisals for which the individual receives compensation, and

(III) meets such other requirements as may be prescribed by the Secretary in regulations or other guidance.

(iii) Specific appraisals

An individual shall not be treated as a qualified appraiser with respect to any specific appraisal unless—

(I) the individual demonstrates verifiable education and experience in valuing the type of property subject to the appraisal, and

(II) the individual has not been prohibited from practicing before the Internal Revenue Service by the Secretary under section 330(c) of title 31, United States Code, at any time during the 3-year period ending on the date of the appraisal.

(F) Aggregation of similar items of property

For purposes of determining thresholds under this paragraph, property and all similar items of property donated to 1 or more donees shall be treated as 1 property.

(G) Special rule for pass-thru entities

In the case of a partnership or S corporation, this paragraph shall be applied at the entity level, except that the deduction shall be denied at the partner or shareholder level.

(H) Regulations

The Secretary may prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations that may provide that some or all of the requirements of this paragraph do not apply in appropriate cases.

(12) Contributions of used motor vehicles, boats, and airplanes

(A) In general

In the case of a contribution of a qualified vehicle the claimed value of which exceeds $500—

(i) paragraph (8) shall not apply and no deduction shall be allowed under subsection (a) for such contribution unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgement of the contribution by the donee organization that meets the requirements of subparagraph (B) and includes the acknowledgement with the taxpayer's return of tax which includes the deduction, and

(ii) if the organization sells the vehicle without any significant intervening use or material improvement of such vehicle by the organization, the amount of the deduction allowed under subsection (a) shall not exceed the gross proceeds received from such sale.

(B) Content of acknowledgement

An acknowledgement meets the requirements of this subparagraph if it includes the following information:

(i) The name and taxpayer identification number of the donor.

(ii) The vehicle identification number or similar number.

(iii) In the case of a qualified vehicle to which subparagraph (A)(ii) applies—

(I) a certification that the vehicle was sold in an arm's length transaction between unrelated parties,

(II) the gross proceeds from the sale, and

(III) a statement that the deductible amount may not exceed the amount of such gross proceeds.

(iv) In the case of a qualified vehicle to which subparagraph (A)(ii) does not apply—

(I) a certification of the intended use or material improvement of the vehicle and the intended duration of such use, and

(II) a certification that the vehicle would not be transferred in exchange for money, other property, or services before completion of such use or improvement.

(v) Whether the donee organization provided any goods or services in consideration, in whole or in part, for the qualified vehicle.

(vi) A description and good faith estimate of the value of any goods or services referred to in clause (v) or, if such goods or services consist solely of intangible religious benefits (as defined in paragraph (8)(B)), a statement to that effect.

(C) Contemporaneous

For purposes of subparagraph (A), an acknowledgement shall be considered to be contemporaneous if the donee organization provides it within 30 days of—

(i) the sale of the qualified vehicle, or

(ii) in the case of an acknowledgement including a certification described in subparagraph (B)(iv), the contribution of the qualified vehicle.

(D) Information to Secretary

A donee organization required to provide an acknowledgement under this paragraph shall provide to the Secretary the information contained in the acknowledgement. Such information shall be provided at such time and in such manner as the Secretary may prescribe.

(E) Qualified vehicle

For purposes of this paragraph, the term ''qualified vehicle'' means any—

(i) motor vehicle manufactured primarily for use on public streets, roads, and highways,

(ii) boat, or

(iii) airplane.

Such term shall not include any property which is described in section 1221(a)(1).

(F) Regulations or other guidance

The Secretary shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this paragraph. The Secretary may prescribe regulations or other guidance which exempts sales by the donee organization which are in direct furtherance of such organization's charitable purpose from the requirements of subparagraphs (A)(ii) and (B)(iv)(II).

(13) Contributions of certain interests in buildings located in registered historic districts

(A) In general

No deduction shall be allowed with respect to any contribution described in subparagraph (B) unless the taxpayer includes with the return for the taxable year of the contribution a $500 filing fee.

(B) Contribution described

A contribution is described in this subparagraph if such contribution is a qualified conservation contribution (as defined in subsection (h)) which is a restriction with respect to the exterior of a building described in subsection (h)(4)(C)(ii) and for which a deduction is claimed in excess of $10,000.

(C) Dedication of fee

Any fee collected under this paragraph shall be used for the enforcement of the provisions of subsection (h).

(14) Reduction for amounts attributable to rehabilitation credit

In the case of any qualified conservation contribution (as defined in subsection (h)), the amount of the deduction allowed under this section shall be reduced by an amount which bears the same ratio to the fair market value of the contribution as—

(A) the sum of the credits allowed to the taxpayer under section 47 for the 5 preceding taxable years with respect to any building which is a part of such contribution, bears to

(B) the fair market value of the building on the date of the contribution.

(15) Special rule for taxidermy property

(A) Basis

For purposes of this section and notwithstanding section 1012, in the case of a charitable contribution of taxidermy property which is made by the person who prepared, stuffed, or mounted the property or by any person who paid or incurred the cost of such preparation, stuffing, or mounting, only the cost of the preparing, stuffing, or mounting shall be included in the basis of such property.

(B) Taxidermy property

For purposes of this section, the term ''taxidermy property'' means any work of art which—

(i) is the reproduction or preservation of an animal, in whole or in part,

(ii) is prepared, stuffed, or mounted for purposes of recreating one or more characteristics of such animal, and

(iii) contains a part of the body of the dead animal.

(16) Contributions of clothing and household items

(A) In general

In the case of an individual, partnership, or corporation, no deduction shall be allowed under subsection (a) for any contribution of clothing or a household item unless such clothing or household item is in good used condition or better.

(B) Items of minimal value

Notwithstanding subparagraph (A), the Secretary may by regulation deny a deduction under subsection (a) for any contribution of clothing or a household item which has minimal monetary value.

(C) Exception for certain property

Subparagraphs (A) and (B) shall not apply to any contribution of a single item of clothing or a household item for which a deduction of more than $500 is claimed if the taxpayer includes with the taxpayer's return a qualified appraisal with respect to the property.

(D) Household items

For purposes of this paragraph—

(i) In general

The term ''household items'' includes furniture, furnishings, electronics, appliances, linens, and other similar items.

(ii) Excluded items

Such term does not include—

(I) food,

(II) paintings, antiques, and other objects of art,

(III) jewelry and gems, and

(IV) collections.

(E) Special rule for pass-thru entities

In the case of a partnership or S corporation, this paragraph shall be applied at the entity level, except that the deduction shall be denied at the partner or shareholder level.

(17) Recordkeeping

No deduction shall be allowed under subsection (a) for any contribution of a cash, check, or other monetary gift unless the donor maintains as a record of such contribution a bank record or a written communication from the donee showing the name of the donee organization, the date of the contribution, and the amount of the contribution.

(18) Contributions to donor advised funds

A deduction otherwise allowed under subsection (a) for any contribution to a donor advised fund (as defined in section 4966(d)(2)) shall only be allowed if—

(A) the sponsoring organization (as defined in section 4966(d)(1)) with respect to such donor advised fund is not—

(i) described in paragraph (3), (4), or (5) of subsection (c), or

(ii) a type III supporting organization (as defined in section 4943(f)(5)(A)) which is not a functionally integrated type III supporting organization (as defined in section 4943(f)(5)(B)), and

(B) the taxpayer obtains a contemporaneous written acknowledgment (determined under rules similar to the rules of paragraph (8)(C)) from the sponsoring organization (as so defined) of such donor advised fund that such organization has exclusive legal control over the assets contributed.

(g) Amounts paid to maintain certain students as members of taxpayer's household

(1) In general

Subject to the limitations provided by paragraph (2), amounts paid by the taxpayer to maintain an individual (other than a dependent, as defined in section 152 (determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof), or a relative of the taxpayer) as a member of his household during the period that such individual is—

(A) a member of the taxpayer's household under a written agreement between the taxpayer and an organization described in paragraph (2), (3), or (4) of subsection (c) to implement a program of the organization to provide educational opportunities for pupils or students in private homes, and

(B) a full-time pupil or student in the twelfth or any lower grade at an educational organization described in section 170(b)(1)(A)(ii) located in the United States,

shall be treated as amounts paid for the use of the organization.

(2) Limitations

(A) Amount

Paragraph (1) shall apply to amounts paid within the taxable year only to the extent that such amounts do not exceed $50 multiplied by the number of full calendar months during the taxable year which fall within the period described in paragraph (1). For purposes of the preceding sentence, if 15 or more days of a calendar month fall within such period such month shall be considered as a full calendar month.

(B) Compensation or reimbursement

Paragraph (1) shall not apply to any amount paid by the taxpayer within the taxable year if the taxpayer receives any money or other property as compensation or reimbursement for maintaining the individual in his household during the period described in paragraph (1).

(3) Relative defined

For purposes of paragraph (1), the term ''relative of the taxpayer'' means an individual who, with respect to the taxpayer, bears any of the relationships described in subparagraphs (A) through (G) of section 152(d)(2).

(4) No other amount allowed as deduction

No deduction shall be allowed under subsection (a) for any amount paid by a taxpayer to maintain an individual as a member of his household under a program described in paragraph (1)(A) except as provided in this subsection.

(h) Qualified conservation contribution

(1) In general

For purposes of subsection (f)(3)(B)(iii), the term ''qualified conservation contribution'' means a contribution—

(A) of a qualified real property interest,

(B) to a qualified organization,

(C) exclusively for conservation purposes.

(2) Qualified real property interest

For purposes of this subsection, the term ''qualified real property interest'' means any of the following interests in real property:

(A) the entire interest of the donor other than a qualified mineral interest,

(B) a remainder interest, and

(C) a restriction (granted in perpetuity) on the use which may be made of the real property.

(3) Qualified organization

For purposes of paragraph (1), the term ''qualified organization'' means an organization which—

(A) is described in clause (v) or (vi) of subsection (b)(1)(A), or

(B) is described in section 501(c)(3) and—

(i) meets the requirements of section 509(a)(2), or

(ii) meets the requirements of section 509(a)(3) and is controlled by an organization described in subparagraph (A) or in clause (i) of this subparagraph.

(4) Conservation purpose defined

(A) In general

For purposes of this subsection, the term ''conservation purpose'' means—

(i) the preservation of land areas for outdoor recreation by, or the education of, the general public,

(ii) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,

(iii) the preservation of open space (including farmland and forest land) where such preservation is—

(I) for the scenic enjoyment of the general public, or

(II) pursuant to a clearly delineated Federal, State, or local governmental conservation policy,

and will yield a significant public benefit, or

(iv) the preservation of an historically important land area or a certified historic structure.

(B) Special rules with respect to buildings in registered historic districts

In the case of any contribution of a qualified real property interest which is a restriction with respect to the exterior of a building described in subparagraph (C)(ii), such contribution shall not be considered to be exclusively for conservation purposes unless—

(i) such interest—

(I) includes a restriction which preserves the entire exterior of the building (including the front, sides, rear, and height of the building), and

(II) prohibits any change in the exterior of the building which is inconsistent with the historical character of such exterior,

(ii) the donor and donee enter into a written agreement certifying, under penalty of perjury, that the donee—

(I) is a qualified organization (as defined in paragraph (3)) with a purpose of environmental protection, land conservation, open space preservation, or historic preservation, and

(II) has the resources to manage and enforce the restriction and a commitment to do so, and

(iii) in the case of any contribution made in a taxable year beginning after the date of the enactment of this subparagraph, the taxpayer includes with the taxpayer's return for the taxable year of the contribution—

(I) a qualified appraisal (within the meaning of subsection (f)(11)(E)) of the qualified property interest,

(II) photographs of the entire exterior of the building, and

(III) a description of all restrictions on the development of the building.

(C) Certified historic structure

For purposes of subparagraph (A)(iv), the term ''certified historic structure'' means—

(i) any building, structure, or land area which is listed in the National Register, or

(ii) any building which is located in a registered historic district (as defined in section 47(c)(3)(B)) and is certified by the Secretary of the Interior to the Secretary as being of historic significance to the district.

A building, structure, or land area satisfies the preceding sentence if it satisfies such sentence either at the time of the transfer or on the due date (including extensions) for filing the transferor's return under this chapter for the taxable year in which the transfer is made.

(5) Exclusively for conservation purposes

For purposes of this subsection—

(A) Conservation purpose must be protected

A contribution shall not be treated as exclusively for conservation purposes unless the conservation purpose is protected in perpetuity.

(B) No surface mining permitted

(i) In general

Except as provided in clause (ii), in the case of a contribution of any interest where there is a retention of a qualified mineral interest, subparagraph (A) shall not be treated as met if at any time there may be extraction or removal of minerals by any surface mining method.

(ii) Special rule

With respect to any contribution of property in which the ownership of the surface estate and mineral interests has been and remains separated, subparagraph (A) shall be treated as met if the probability of surface mining occurring on such property is so remote as to be negligible.

(6) Qualified mineral interest

For purposes of this subsection, the term ''qualified mineral interest'' means—

(A) subsurface oil, gas, or other minerals, and

(B) the right to access to such minerals.

(i) Standard mileage rate for use of passenger automobile

For purposes of computing the deduction under this section for use of a passenger automobile, the standard mileage rate shall be 14 cents per mile.

(j) Denial of deduction for certain travel expenses

No deduction shall be allowed under this section for traveling expenses (including amounts expended for meals and lodging) while away from home, whether paid directly or by reimbursement, unless there is no significant element of personal pleasure, recreation, or vacation in such travel.

(k) Disallowance of deductions in certain cases

For disallowance of deductions for contributions to or for the use of communist controlled organizations, see section 11(a)[2] of the Internal Security Act of 1950 (50 U.S.C. 790).

***(l)* Treatment of certain amounts paid to or for the benefit of institutions of higher education**

(1) In general

For purposes of this section, 80 percent of any amount described in paragraph (2) shall be treated as a charitable contribution.

(2) Amount described

For purposes of paragraph (1), an amount is described in this paragraph if—

(A) the amount is paid by the taxpayer to or for the benefit of an educational organization—

(i) which is described in subsection (b)(1)(A)(ii), and

[2] See References in Text note below.

(ii) which is an institution of higher education (as defined in section 3304(f)), and

(B) such amount would be allowable as a deduction under this section but for the fact that the taxpayer receives (directly or indirectly) as a result of paying such amount the right to purchase tickets for seating at an athletic event in an athletic stadium of such institution.

If any portion of a payment is for the purchase of such tickets, such portion and the remaining portion (if any) of such payment shall be treated as separate amounts for purposes of this subsection.

(m) Certain donee income from intellectual property treated as an additional charitable contribution

(1) Treatment as additional contribution

In the case of a taxpayer who makes a qualified intellectual property contribution, the deduction allowed under subsection (a) for each taxable year of the taxpayer ending on or after the date of such contribution shall be increased (subject to the limitations under subsection (b)) by the applicable percentage of qualified donee income with respect to such contribution which is properly allocable to such year under this subsection.

(2) Reduction in additional deductions to extent of initial deduction

With respect to any qualified intellectual property contribution, the deduction allowed under subsection (a) shall be increased under paragraph (1) only to the extent that the aggregate amount of such increases with respect to such contribution exceed the amount allowed as a deduction under subsection (a) with respect to such contribution determined without regard to this subsection.

(3) Qualified donee income

For purposes of this subsection, the term ''qualified donee income'' means any net income received by or accrued to the donee which is properly allocable to the qualified intellectual property.

(4) Allocation of qualified donee income to taxable years of donor

For purposes of this subsection, qualified donee income shall be treated as properly allocable to a taxable year of the donor if such income is received by or accrued to the donee for the taxable year of the donee which ends within or with such taxable year of the donor.

(5) 10-year limitation

Income shall not be treated as properly allocable to qualified intellectual property for purposes of this subsection if such income is received by or accrued to the donee after the 10-year period beginning on the date of the contribution of such property.

(6) Benefit limited to life of intellectual property

Income shall not be treated as properly allocable to qualified intellectual property for purposes of this subsection if such income is received by or accrued to the donee after the expiration of the legal life of such property.

(7) Applicable percentage

For purposes of this subsection, the term ''applicable percentage'' means the percentage determined under the following table which corresponds to a taxable year of the donor ending on or after the date of the qualified intellectual property contribution:

Taxable Year of Donor Ending on or After Date of Contribution:	Applicable Percentage:
1st	100
2nd	100
3rd	90
4th	80
5th	70
6th	60
7th	50
8th	40
9th	30
10th	20
11th	10
12th	10.

(8) Qualified intellectual property contribution

For purposes of this subsection, the term ''qualified intellectual property contribution'' means any charitable contribution of qualified intellectual property—

(A) the amount of which taken into account under this section is reduced by reason of subsection (e)(1), and

(B) with respect to which the donor informs the donee at the time of such contribution that the donor intends to treat such contribution as a qualified intellectual property contribution for purposes of this subsection and section 6050L.

(9) Qualified intellectual property

For purposes of this subsection, the term ''qualified intellectual property'' means property described in subsection (e)(1)(B)(iii) (other than property contributed to or for the use of an organization described in subsection (e)(1)(B)(ii)).

(10) Other special rules

(A) Application of limitations on charitable contributions

Any increase under this subsection of the deduction provided under subsection (a) shall be treated for purposes of subsection (b) as a deduction which is attributable to a charitable contribution to the donee to which such increase relates.

(B) Net income determined by donee

The net income taken into account under paragraph (3) shall not exceed the amount of such income reported under section 6050L(b)(1).

(C) Deduction limited to 12 taxable years

Except as may be provided under subparagraph (D)(i), this subsection shall not apply with respect to any qualified intellectual property contribution for any taxable year of the donor after the 12th taxable year of the donor which ends on or after the date of such contribution.

(D) Regulations

The Secretary may issue regulations or other guidance to carry out the purposes of

this subsection, including regulations or guidance—

(i) modifying the application of this subsection in the case of a donor or donee with a short taxable year, and

(ii) providing for the determination of an amount to be treated as net income of the donee which is properly allocable to qualified intellectual property in the case of a donee who uses such property to further a purpose or function constituting the basis of the donee's exemption under section 501 (or, in the case of a governmental unit, any purpose described in section 170(c)) and does not possess a right to receive any payment from a third party with respect to such property.

(n) Expenses paid by certain whaling captains in support of Native Alaskan subsistence whaling

(1) In general

In the case of an individual who is recognized by the Alaska Eskimo Whaling Commission as a whaling captain charged with the responsibility of maintaining and carrying out sanctioned whaling activities and who engages in such activities during the taxable year, the amount described in paragraph (2) (to the extent such amount does not exceed $10,000 for the taxable year) shall be treated for purposes of this section as a charitable contribution.

(2) Amount described

(A) In general

The amount described in this paragraph is the aggregate of the reasonable and necessary whaling expenses paid by the taxpayer during the taxable year in carrying out sanctioned whaling activities.

(B) Whaling expenses

For purposes of subparagraph (A), the term ''whaling expenses'' includes expenses for—

(i) the acquisition and maintenance of whaling boats, weapons, and gear used in sanctioned whaling activities,

(ii) the supplying of food for the crew and other provisions for carrying out such activities, and

(iii) storage and distribution of the catch from such activities.

(3) Sanctioned whaling activities

For purposes of this subsection, the term ''sanctioned whaling activities'' means subsistence bowhead whale hunting activities conducted pursuant to the management plan of the Alaska Eskimo Whaling Commission.

(4) Substantiation of expenses

The Secretary shall issue guidance requiring that the taxpayer substantiate the whaling expenses for which a deduction is claimed under this subsection, including by maintaining appropriate written records with respect to the time, place, date, amount, and nature of the expense, as well as the taxpayer's eligibility for such deduction, and that (to the extent provided by the Secretary) such substantiation be provided as part of the taxpayer's return of tax.

***(o)* Special rules for fractional gifts**

(1) Denial of deduction in certain cases

(A) In general

No deduction shall be allowed for a contribution of an undivided portion of a taxpayer's entire interest in tangible personal property unless all interests in the property are held immediately before such contribution by—

(i) the taxpayer, or

(ii) the taxpayer and the donee.

(B) Exceptions

The Secretary may, by regulation, provide for exceptions to subparagraph (A) in cases where all persons who hold an interest in the property make proportional contributions of an undivided portion of the entire interest held by such persons.

(2) Valuation of subsequent gifts

In the case of any additional contribution, the fair market value of such contribution shall be determined by using the lesser of—

(A) the fair market value of the property at the time of the initial fractional contribution, or

(B) the fair market value of the property at the time of the additional contribution.

(3) Recapture of deduction in certain cases; addition to tax

(A) Recapture

The Secretary shall provide for the recapture of the amount of any deduction allowed under this section (plus interest) with respect to any contribution of an undivided portion of a taxpayer's entire interest in tangible personal property—

(i) in any case in which the donor does not contribute all of the remaining interests in such property to the donee (or, if such donee is no longer in existence, to any person described in section 170(c)) on or before the earlier of—

(I) the date that is 10 years after the date of the initial fractional contribution, or

(II) the date of the death of the donor, and

(ii) in any case in which the donee has not, during the period beginning on the date of the initial fractional contribution and ending on the date described in clause (i)—

(I) had substantial physical possession of the property, and

(II) used the property in a use which is related to a purpose or function constituting the basis for the organizations' exemption under section 501.

(B) Addition to tax

The tax imposed under this chapter for any taxable year for which there is a recapture under subparagraph (A) shall be increased by 10 percent of the amount so recaptured.

(4) Definitions

For purposes of this subsection—

(A) Additional contribution

The term ''additional contribution'' means any charitable contribution by the taxpayer of any interest in property with respect to which the taxpayer has previously made an initial fractional contribution.

(B) Initial fractional contribution

The term ''initial fractional contribution'' means, with respect to any taxpayer, the first charitable contribution of an undivided portion of the taxpayer's entire interest in any tangible personal property.

(p) Other cross references

(1) For treatment of certain organizations providing child care, see section 501(k).

(2) For charitable contributions of estates and trusts, see section 642(c).

(3) For nondeductibility of contributions by common trust funds, see section 584.

(4) For charitable contributions of partners, see section 702.

(5) For charitable contributions of nonresident aliens, see section 873.

(6) For treatment of gifts for benefit of or use in connection with the Naval Academy as gifts to or for use of the United States, see section 6973 of title 10, United States Code.

(7) For treatment of gifts accepted by the Secretary of State, the Director of the International Communication Agency, or the Director of the United States International Development Cooperation Agency, as gifts to or for the use of the United States, see section 25 of the State Department Basic Authorities Act of 1956.

(8) For treatment of gifts of money accepted by the Attorney General for credit to the "Commissary Funds Federal Prisons" as gifts to or for the use of the United States, see section 4043 of title 18, United States Code.

(9) For charitable contributions to or for the use of Indian tribal governments (or their subdivisions), see section 7871.

(Aug. 16, 1954, ch. 736, 68A Stat. 58; Aug. 7, 1956, ch. 1031, §1, 70 Stat. 1117; Pub. L. 85–866, title I, §§10(a), 11, 12(a), Sept. 2, 1958, 72 Stat. 1609, 1610; Pub. L. 86–779, §7(a), Sept. 14, 1960, 74 Stat. 1002; Pub. L. 87–834, §13(d), Oct. 16, 1962, 76 Stat. 1034; Pub. L. 87–858, §2(a), (b), Oct. 23, 1962, 76 Stat. 1134; Pub. L. 88–272, title II, §§209(a), (b), (c)(1), (d)(1), (e), 231(b)(1), Feb. 26, 1964, 78 Stat. 43, 45–47, 105; Pub. L. 89–570, §1(b)(1), Sept. 12, 1966, 80 Stat. 762; Pub. L. 91–172, title I, §101(j)(2), title II, §201(a)(1), (2)(A), (h)(1), Dec. 30, 1969, 83 Stat. 526, 549, 558, 565; Pub. L. 94–455, title II, §205(c)(1)(A), title X, §1052(c)(2), title XIII, §§1307(c), (d)(1)(B)(i), 1313(b)(1), title XIX, §§1901(a)(28), (b)(8)(A), 1906(b)(13)(A), title XXI, §§2124(e)(1), 2135(a), Oct. 4, 1976, 90 Stat. 1535, 1648, 1726, 1727, 1730, 1768, 1794, 1834, 1919, 1928; Pub. L. 95–30, title III, §309(a), May 23, 1977, 91 Stat. 154; Pub. L. 95–600, title IV, §§402(b)(2), 403(c)(1), Nov. 6, 1978, 92 Stat. 2868; Pub. L. 96–465, title II, §2206(e)(2), Oct. 17, 1980, 94 Stat. 2162; Pub. L. 96–541, §6(a), (b), Dec. 17, 1980, 94 Stat. 3206; Pub. L. 97–34, title I, §121(a), title II, §§222(a), 263(a), Aug. 13, 1981, 95 Stat. 196, 248, 264; Pub. L. 97–248, title II, §286(b)(1), Sept. 3, 1982, 96 Stat. 570; Pub. L. 97–258, §3(f)(1), Sept. 13, 1982, 96 Stat. 1064; Pub. L. 97–354, §5(a)(21), Oct. 19, 1982, 96 Stat. 1694; Pub. L. 97–448, title I, §102(f)(7), Jan. 12, 1983, 96 Stat. 2372; Pub. L. 97–473, title II, §202(b)(4), Jan. 14, 1983, 96 Stat. 2609; Pub. L. 98–369, div. A, title I, §174(b)(5)(A), title III, §301(a)–(c), title IV, §492(b)(1), title X, §§1022(b), 1031(a), 1032(b)(1), 1035(a), July 18, 1984, 98 Stat. 707, 777, 778, 854, 1028, 1033, 1042; Pub. L. 99–514, title I, §142(d), title II, §231(f), title III, §301(b)(2), title XVIII, §1831, Oct. 22, 1986, 100 Stat. 2120, 2180, 2217, 2851; Pub. L. 100–203, title X, §10711(a)(1), Dec. 22, 1987, 101 Stat. 1330–464; Pub. L. 100–647, title VI, §6001(a), Nov. 10, 1988, 102 Stat. 3683; Pub. L. 101–508, title XI, §§11801(a)(11), (c)(5), 11813(b)(10), Nov. 5, 1990, 104 Stat. 1388–520, 1388–523, 1388–554; Pub. L. 103–66, title XIII, §§13172(a), 13222(b), Aug. 10, 1993, 107 Stat. 455, 479; Pub. L. 104–188, title I, §§1206(a), 1316(b), Aug. 20, 1996, 110 Stat. 1776, 1786; Pub. L. 105–34, title II, §224(a), title V, §508(d), title VI, §602(a), title IX, §973(a), Aug. 5, 1997, 111 Stat. 818, 860, 862, 898; Pub. L. 105–206, title VI, §6004(e), July 22, 1998, 112 Stat. 795; Pub. L. 105–277, div. J, title I, §1004(a)(1), Oct. 21, 1998, 112 Stat. 2681–888; Pub. L. 106–170, title V, §§532(c)(1)(A), (B), 537(a), Dec. 17, 1999, 113 Stat. 1930, 1936; Pub. L. 106–554, §1(a)(7) [title I, §165(a)–(e)], Dec. 21, 2000, 114 Stat. 2763, 2763A–626; Pub. L. 107–16, title V, §542(e)(2)(B), June 7, 2001, 115 Stat. 85; Pub. L. 107–147, title IV, §417(7), (22), Mar. 9, 2002, 116 Stat. 56, 57; Pub. L. 108–81, title V, §503, Sept. 25, 2003, 117 Stat. 1003; Pub. L. 108–311, title II, §207(15), (16), title III, §306(a), Oct. 4, 2004, 118 Stat. 1177, 1179; Pub. L. 108–357, title III, §335(a), title IV, §413(c)(30), title VIII, §§882(a), (b), (d), 883(a), 884(a), Oct. 22, 2004, 118 Stat. 1478, 1509, 1627, 1631, 1632; Pub. L. 109–73, title III, §§305(a), 306(a), Sept. 23, 2005, 119 Stat. 2025; Pub. L. 109–135, title IV, §403(a)(16), (gg), Dec. 21, 2005, 119 Stat. 2619, 2631; Pub. L. 109–222, title II, §204(b), May 17, 2006, 120 Stat. 350; Pub. L. 109–280, title XII, §§1202(a), 1204(a), 1206(a), (b)(1), 1213(a)–(d), 1214(a), (b), 1215(a), 1216(a), 1217(a), 1218(a), 1219(c)(1), 1234(a), Aug. 17, 2006, 120 Stat. 1066, 1068, 1069, 1075–1077, 1079, 1080, 1084, 1100; Pub. L. 109–432, div. A, title I, §116(a)(1), (b)(1), (2), Dec. 20, 2006, 120 Stat. 2941; Pub. L. 110–172, §§3(c), 11(a)(14)(A), (B), (15), (16), Dec. 29, 2007, 121 Stat. 2474, 2485; Pub. L. 110–234, title XV, §15302(a), May 22, 2008, 122 Stat. 1501; Pub. L. 110–246, §4(a), title XV, §15302(a), June 18, 2008, 122 Stat. 1664, 2263; Pub. L. 110–343, div. C, title III, §§321(a), 323(a)(1), (b)(1), 324(a), (b), Oct. 3, 2008, 122 Stat. 3873–3875; Pub. L. 111–312, title III, §301(a), title VII, §§723(a), (b), 740(a), 741(a), 742(a), Dec. 17, 2010, 124 Stat. 3300, 3316, 3319.)

AMENDMENT OF SECTION

For termination of amendment by section 304 of Pub. L. 111–312, see Effective and Termination Dates of 2010 Amendment note below.

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

REFERENCES IN TEXT

The date of the enactment of this subparagraph, referred to in subsecs. (b)(1)(E)(iv)(II), (2)(B)(i)(II) and (h)(4)(B)(iii), is the date of enactment of Pub. L. 109–280, which was approved Aug. 17, 2006.

The date of the enactment of this paragraph, referred to in subsec. (b)(3)(B), is the date of enactment of Pub. L. 110–343, which was approved Oct. 3, 2008.

The Federal Food, Drug, and Cosmetic Act, as amended, referred to in subsec. (e)(3)(A)(iv), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classi-

fied generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

The date of the enactment of this subparagraph, referred to in subsec. (e)(3)(C)(iii), is the date of enactment of Pub. L. 109–73, which was approved Sept. 23, 2005.

The date of the enactment of the Community Renewal Tax Relief Act of 2000, referred to in subsec. (e)(6)(B)(i)(III), is the date of enactment of H.R. 5662, as enacted by Pub. L. 106–554, which was approved Dec. 21, 2000.

Section 11(a) of the Internal Security Act of 1950 (50 U.S.C. 790), referred to in subsec. (k), was repealed by Pub. L. 103–199, title VIII, § 803(1), Dec. 17, 1993, 107 Stat. 2329.

Section 25 of the State Department Basic Authorities Act of 1956, referred to in subsec. (p)(7), is classified to section 2697 of Title 22, Foreign Relations and Intercourse.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Sections 1202(a), 1204(a), 1206(a), (b)(1), 1213(a)–(d), 1214(a), (b), 1215(a), 1216(a), 1217(a), 1218(a), 1219(c)(1), and 1234(a) of Pub. L. 109–280, which directed the amendment of section 170 without specifying the act to be amended, were executed to this section which is section 170 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–312, § 723(a), (b), substituted ''December 31, 2011'' for ''December 31, 2009'' in pars. (1)(E)(vi) and (2)(B)(iii).

Subsec. (e)(1). Pub. L. 111–312, §§ 301(a), 304, temporarily amended subsec. (e)(1) to read as if amendment by Pub. L. 107–16, § 542(e)(2)(B), had never been enacted. See 2001 Amendment note and Effective and Termination Dates of 2010 Amendment note below.

Subsec. (e)(3)(C)(iv). Pub. L. 111–312, § 740(a), substituted ''December 31, 2011'' for ''December 31, 2009''.

Subsec. (e)(3)(D)(iv). Pub. L. 111–312, § 741(a), substituted ''December 31, 2011'' for ''December 31, 2009''.

Subsec. (e)(6)(G). Pub. L. 111–312, § 742(a), substituted ''December 31, 2011'' for ''December 31, 2009''.

2008—Subsec. (b). Pub. L. 110–246, § 15302(a), substituted ''December 31, 2009'' for ''December 31, 2007'' in pars. (1)(E)(vi) and (2)(B)(iii).

Subsec. (b)(3). Pub. L. 110–343, § 323(b)(1), added par. (3).

Subsec. (e)(3)(C)(iv). Pub. L. 110–343, § 323(a)(1), substituted ''December 31, 2009'' for ''December 31, 2007''.

Subsec. (e)(3)(D)(iii). Pub. L. 110–343, § 324(b), inserted ''of books'' after ''to any contribution'' in introductory provisions.

Subsec. (e)(3)(D)(iv). Pub. L. 110–343, § 324(a), substituted ''December 31, 2009'' for ''December 31, 2007''.

Subsec. (e)(6)(G). Pub. L. 110–343, § 321(a), substituted ''December 31, 2009'' for ''December 31, 2007''.

2007—Subsec. (b)(1)(A)(vii). Pub. L. 110–172, § 11(a)(14)(A), substituted ''subparagraph (F)'' for ''subparagraph (E)''.

Subsec. (e)(1)(B)(i)(II). Pub. L. 110–172, § 11(a)(15), inserted '', but without regard to clause (ii) thereof'' after ''paragraph (7)(C)''.

Subsec. (e)(1)(B)(ii). Pub. L. 110–172, § 11(a)(14)(B), substituted ''subsection (b)(1)(F)'' for ''subsection (b)(1)(E)''.

Subsec. (e)(7)(D)(i)(I). Pub. L. 110–172, § 3(c), substituted ''substantial and related'' for ''related''.

Subsec. (*o*)(1)(A). Pub. L. 110–172, § 11(a)(16)(A), in introductory provisions, substituted ''all interests in the property are'' for ''all interest in the property is''.

Subsec. (*o*)(3)(A)(i). Pub. L. 110–172, § 11(a)(16)(B), in introductory provisions, substituted ''interests'' for ''interest'' and ''on or before'' for ''before''.

2006—Subsec. (b)(1)(E) to (G). Pub. L. 109–280, § 1206(a)(1), added subpar. (E) and redesignated former subpars. (E) and (F) as (F) and (G), respectively. See Codification note above.

Subsec. (b)(2). Pub. L. 109–280, § 1206(a)(2), reenacted heading without change and amended text of par. (2) generally. Prior to amendment, text read as follows: ''In the case of a corporation, the total deductions under subsection (a) for any taxable year shall not exceed 10 percent of the taxpayer's taxable income computed without regard to—

''(A) this section,

''(B) part VIII (except section 248),

''(C) section 199,

''(D) any net operating loss carryback to the taxable year under section 172, and

''(E) any capital loss carryback to the taxable year under section 1212(a)(1).''

See Codification note above.

Subsec. (d)(2). Pub. L. 109–280, § 1206(b)(1), substituted ''subsection (b)(2)(A)'' for ''subsection (b)(2)'' wherever appearing. See Codification note above.

Subsec. (e)(1)(A). Pub. L. 109–222 inserted ''(determined without regard to section 1221(b)(3))'' after ''long-term capital gain''.

Subsec. (e)(1)(B)(i). Pub. L. 109–280, § 1215(a)(1), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''of tangible personal property, if the use by the donee is unrelated to the purpose or function constituting the basis for its exemption under section 501 (or, in the case of a governmental unit, to any purpose or function described in subsection (c)),''. See Codification note above.

Subsec. (e)(1)(B)(iv). Pub. L. 109–280, § 1214(a), added cl. (iv). See Codification note above.

Subsec. (e)(3)(C)(iv). Pub. L. 109–280, § 1202(a), substituted ''2007'' for ''2005''. See Codification note above.

Subsec. (e)(3)(D)(iv). Pub. L. 109–280, § 1204(a), substituted ''2007'' for ''2005''. See Codification note above.

Subsec. (e)(4)(B)(ii). Pub. L. 109–432, § 116(b)(1)(A), inserted ''or assembled'' after ''constructed''.

Subsec. (e)(4)(B)(iii). Pub. L. 109–432, § 116(b)(1)(B), inserted ''or assembly'' after ''construction''.

Subsec. (e)(6)(B)(ii). Pub. L. 109–432, § 116(b)(2)(A), inserted ''or assembled'' after ''constructed'' and ''or assembling'' after ''construction''.

Subsec. (e)(6)(D). Pub. L. 109–432, § 116(b)(2)(B), inserted ''or assembled'' after ''constructed'' in introductory provisions and ''or assembly'' after ''construction'' in cl. (i).

Subsec. (e)(6)(G). Pub. L. 109–432, § 116(a)(1), substituted ''2007'' for ''2005''.

Subsec. (e)(7). Pub. L. 109–280, § 1215(a)(2), added par. (7). See Codification note above.

Subsec. (f)(11)(E). Pub. L. 109–280, § 1219(c)(1), amended heading and text of subpar. (E) generally. Prior to amendment, text read as follows: ''For purposes of this paragraph, the term 'qualified appraisal' means, with respect to any property, an appraisal of such property which is treated for purposes of this paragraph as a qualified appraisal under regulations or other guidance prescribed by the Secretary.'' See Codification note above.

Subsec. (f)(13). Pub. L. 109–280, § 1213(c), added par. (13). See Codification note above.

Subsec. (f)(14). Pub. L. 109–280, § 1213(d), added par. (14). See Codification note above.

Subsec. (f)(15). Pub. L. 109–280, § 1214(b), added par. (15). See Codification note above.

Subsec. (f)(16). Pub. L. 109–280, § 1216(a), added par. (16). See Codification note above.

Subsec. (f)(17). Pub. L. 109–280, § 1217(a), added par. (17). See Codification note above.

Subsec. (f)(18). Pub. L. 109–280, § 1234(a), added par. (18). See Codification note above.

Subsec. (h)(4)(B). Pub. L. 109–280, § 1213(a)(1), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (h)(4)(C). Pub. L. 109–280, § 1213(a)(1), (b), redesignated subpar. (B) as (C), struck out ''any building, structure, or land area which'' after ''means'' in intro-

ductory provisions, inserted ''any building, structure, or land area which'' before ''is listed'' in cl. (i), and inserted ''any building which'' before ''is located'' in cl. (ii). See Codification note above.

Subsecs. (*o*), (p). Pub. L. 109–280, §1218(a), added subsec. (*o*) and redesignated former subsec. (*o*) as (p). See Codification note above.

2005—Subsec. (b)(2)(C) to (E). Pub. L. 109–135, §403(a)(16), added subpar. (C) and redesignated former subpars. (C) and (D) as (D) and (E), respectively.

Subsec. (e)(3)(C). Pub. L. 109–73, §305(a), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (e)(3)(D). Pub. L. 109–73, §306(a), added subpar. (D). Former subpar. (D) redesignated (E).

Pub. L. 109–73, §305(a), redesignated subpar. (C) as (D).

Subsec. (e)(3)(E). Pub. L. 109–73, §306(a), redesignated subpar. (D) as (E).

Subsec. (f)(12)(B)(v), (vi). Pub. L. 109–135, §403(gg), added cls. (v) and (vi).

2004—Subsec. (e)(1)(B)(iii). Pub. L. 108–357, §882(a), added cl. (iii).

Subsec. (e)(6)(G). Pub. L. 108–311, §306(a), substituted ''2005'' for ''2003''.

Subsec. (f)(10)(A). Pub. L. 108–357, §413(c)(30), struck out ''556(b)(2),'' after ''545(b)(2),'' in introductory provisions.

Subsec. (f)(11). Pub. L. 108–357, §883(a), added par. (11).

Subsec. (f)(11)(A)(ii)(I). Pub. L. 108–357, §882(d), inserted ''subsection (e)(1)(B)(iii) or'' before ''section 1221(a)(1)''.

Subsec. (f)(12). Pub. L. 108–357, §884(a), added par. (12).

Subsec. (g)(1). Pub. L. 108–311, §207(15), inserted ''(determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof)'' after ''section 152'' in introductory provisions.

Subsec. (g)(3). Pub. L. 108–311, §207(16), substituted ''subparagraphs (A) through (G) of section 152(d)(2)'' for ''paragraphs (1) through (8) of section 152(a)''.

Subsec. (m). Pub. L. 108–357, §882(b), added subsec. (m). Former subsec. (m) redesignated (n).

Subsec. (n). Pub. L. 108–357, §335(a), added subsec. (n). Former subsec. (n) redesignated (*o*).

Pub. L. 108–357, §882(b), redesignated subsec. (m) as (n). Amendment was executed before the amendment by Pub. L. 108–357, §335(a). See note below.

Subsec. (*o*). Pub. L. 108–357, §335(a), redesignated subsec. (n) as (*o*).

2003—Subsec. (e)(6)(B)(i)(III). Pub. L. 108–81 substituted ''section 213(1)(A) of the Library Services and Technology Act (20 U.S.C. 9122(1)(A))'' for ''section 213(2)(A) of the Library Services and Technology Act (20 U.S.C. 9122(2)(A))''.

2002—Subsec. (e)(6)(B)(i)(III). Pub. L. 107–147, §417(7), substituted ''2000),'' for '' 2000,''.

Subsec. (e)(6)(B)(iv). Pub. L. 107–147, §417(22), provided that the amendment made by section 165(b)(1) of the Community Renewal Tax Relief Act of 2000 [Pub. L. 106–554, §1(a)(7)[title I, §165(b)(1)]] shall be applied as if it struck ''in any of the grades K–12''. See 2000 Amendment note below.

2001—Subsec. (e)(1). Pub. L. 107–16, §§542(e)(2)(B), 901, temporarily inserted at end ''For purposes of this paragraph, the determination of whether property is a capital asset shall be made without regard to the exception contained in section 1221(a)(3)(C) for basis determined under section 1022.'' See Effective and Termination Dates of 2001 Amendment note below.

2000—Subsec. (e)(6). Pub. L. 106–554, §1(a)(7) [title I, §165(b)(2)], substituted ''educational purposes'' for ''elementary or secondary school purposes'' in heading.

Subsec. (e)(6)(A), (B). Pub. L. 106–554, §1(a)(7) [title I, §165(a)(1)], substituted ''qualified computer contribution'' for ''qualified elementary or secondary educational contribution'' in subpar. (A) and in heading and introductory provisions of subpar. (B).

Subsec. (e)(6)(B)(i)(III). Pub. L. 106–554, §1(a)(7) [title I, §165(a)(2)], added subcl. (III).

Subsec. (e)(6)(B)(ii). Pub. L. 106–554, §1(a)(7) [title I, §165(a)(3)], substituted ''3 years'' for ''2 years''.

Subsec. (e)(6)(B)(iv). Pub. L. 106–554, §1(a)(7) [title I, §165(b)(1)], which directed the amendment of cl. (iv) by striking ''in any grades of the K–12'', was executed by striking out ''in any of the grades K–12'' after ''educational purposes''. See 2002 Amendment note above.

Subsec. (e)(6)(B)(viii). Pub. L. 106–554, §1(a)(7) [title I, §165(d)], added cl. (viii).

Subsec. (e)(6)(C). Pub. L. 106–554, §1(a)(7) [title I, §165(a)(1)], substituted ''qualified computer contribution'' for ''qualified elementary or secondary educational contribution'' in introductory provisions.

Subsec. (e)(6)(D), (E). Pub. L. 106–554, §1(a)(7) [title I, §165(e)], added subpar. (D) and redesignated former subpar. (D) as (E). Former subpar. (E) redesignated (F).

Subsec. (e)(6)(F). Pub. L. 106–554, §1(a)(7) [title I, §165(e)], redesignated subpar. (E) as (F). Former subpar. (F) redesignated (G).

Pub. L. 106–554, §1(a)(7) [title I, §165(c)], substituted ''December 31, 2003'' for ''December 31, 2000''.

Subsec. (e)(6)(G). Pub. L. 106–554, §1(a)(7) [title I, §165(e)], redesignated subpar. (F) as (G).

1999—Subsec. (e)(3)(A), (4)(B). Pub. L. 106–170, §532(c)(1)(A), (B), substituted ''section 1221(a)'' for ''section 1221''.

Subsec. (f)(10). Pub. L. 106–170, §537(a), added par. (10).

1998—Subsec. (e)(5)(D). Pub. L. 105–277 struck out heading and text of subpar. (D). Text read as follows: ''This paragraph shall not apply to contributions made—

''(i) after December 31, 1994, and before July 1, 1996, or

''(ii) after June 30, 1998.''

Subsec. (e)(6)(B)(iv). Pub. L. 105–206, §6004(e)(2), substituted ''function of the donee'' for ''function of the organization or entity''.

Subsec. (e)(6)(B)(vi), (vii). Pub. L. 105–206, §6004(e)(1), substituted ''donee's'' for ''entity's''.

Subsec. (e)(6)(C)(ii)(I). Pub. L. 105–206, §6004(e)(3), substituted ''a donee'' for ''an entity''.

Subsec. (e)(6)(F). Pub. L. 105–206, §6004(e)(4), substituted ''2000'' for ''1999''.

1997—Subsec. (e)(5)(D)(ii). Pub. L. 105–34, §602(a), substituted ''June 30, 1998'' for ''May 31, 1997''.

Subsec. (e)(6). Pub. L. 105–34, §224(a), added par. (6).

Subsec. (h)(5)(B)(ii). Pub. L. 105–34, §508(d), amended heading and text of cl. (ii) generally. Prior to amendment, text read as follows: ''With respect to any contribution of property in which the ownership of the surface estate and mineral interests were separated before June 13, 1976, and remain so separated, subparagraph (A) shall be treated as met if the probability of surface mining occurring on such property is so remote as to be negligible.''

Subsec. (i). Pub. L. 105–34, §973(a), amended heading and text of subsec. (i) generally. Prior to amendment, text read as follows: ''For purposes of computing the deduction under this section for use of a passenger automobile the standard mileage rate shall be 12 cents per mile.''

1996—Subsec. (e)(1). Pub. L. 104–188, §1316(b), inserted at end ''For purposes of applying this paragraph in the case of a charitable contribution of stock in an S corporation, rules similar to the rules of section 751 shall apply in determining whether gain on such stock would have been long-term capital gain if such stock were sold by the taxpayer.''

Subsec. (e)(5)(D). Pub. L. 104–188, §1206(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''This paragraph shall not apply to contributions made after December 31, 1994.''

1993—Subsec. (f)(8). Pub. L. 103–66, §13172(a), added par. (8).

Subsec. (f)(9). Pub. L. 103–66, §13222(b), added par. (9).

1990—Subsec. (h)(4)(B)(ii). Pub. L. 101–508, §11813(b)(10), substituted ''section 47(c)(3)(B)'' for ''section 48(g)(3)(B)''.

Subsec. (i). Pub. L. 101–508, §11801(a)(11), (c)(5), redesignated subsec. (j) as (i) and struck out former subsec. (i) which related to rule for nonitemization of deductions, applicable percentage for individuals, limitation for taxable years beginning before 1985, and termination.

Subsecs. (j) to (n). Pub. L. 101–508, § 11801(c)(5), redesignated subsecs. (j) to (n) as (i) to (m), respectively.

1988—Subsecs. (m), (n). Pub. L. 100–647 added subsec. (m) and redesignated former subsec. (m) as (n).

1987—Subsec. (c)(2)(D). Pub. L. 100–203 inserted ''(or in opposition to)'' after ''on behalf of''.

1986—Subsec. (b)(1)(C)(iv). Pub. L. 99–514, § 1831, substituted ''this paragraph'' for ''this subparagraph''.

Subsec. (e)(1)(B). Pub. L. 99–514, § 301(b)(2), in closing provisions, struck out ''40 percent (28⅘6 in the case of a corporation) of'' before ''the amount of gain''.

Subsec. (e)(4)(B)(i). Pub. L. 99–514, § 231(f), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''the contribution is to an educational organization which is described in subsection (b)(1)(A)(ii) of this section and which is an institution of higher education (as defined in section 3304(f)),''.

Subsecs. (k) to (m). Pub. L. 99–514, § 142(d), added subsec. (k) and redesignated former subsecs. (k) and (*l*) as (*l*) and (m), respectively.

1984—Subsec. (a)(3). Pub. L. 98–369, § 174(b)(5)(A), substituted ''section 267(b) or 707(b)'' for ''section 267(b)''.

Subsec. (b)(1)(A)(vii). Pub. L. 98–369, § 301(c)(2)(A), substituted ''subparagraph (E)'' for ''subparagraph (D)''.

Subsec. (b)(1)(B). Pub. L. 98–369, § 301(a)(2), inserted at end ''If the aggregate of such contributions exceeds the limitation of the preceding sentence, such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution (to which subparagraph (A) does not apply) in each of the 5 succeeding taxable years in order of time.''

Subsec. (b)(1)(B)(i). Pub. L. 98–369, § 301(a)(1), substituted ''30 percent'' for ''20 percent''.

Subsec. (b)(1)(C). Pub. L. 98–369, § 301(c)(2)(B), inserted ''described in subparagraph (A)'' in subpar. (C) heading, and in text of cl. (i) substituted ''In the case of charitable contributions described in subparagraph (A) of capital gain property to which subsection (e)(1)(B) does not apply, the total amount of contributions of such property which may be taken into account under subsection (a) for any taxable year shall not exceed 30 percent of the taxpayer's contribution base for such year. For purposes of this subsection, contributions of capital gain property to which this subparagraph applies shall be taken into account after all other charitable contributions (other than charitable contributions to which subparagraph (D) applies)'' for ''In the case of charitable contributions of capital gain property to which subsection (e)(1)(B) does not apply, the total amount of contributions of such property which may be taken into account under subsection (a) for any taxable year shall not exceed 30 percent of the taxpayer's contribution base for such year. For purposes of this subsection, contributions of capital gain property to which this paragraph applies shall be taken into account after all other charitable contributions''.

Subsec. (b)(1)(D) to (F). Pub. L. 98–369, § 301(c)(1), added subpar. (D) and redesignated former subpars. (D) and (E) as (E) and (F), respectively.

Subsec. (e)(1). Pub. L. 98–369, § 492(b)(1)(A), struck out in provision following subpar. (B) ''1251(c),'' after ''1250(a)''.

Subsec. (e)(1)(B)(ii). Pub. L. 98–369, § 301(c)(2)(C), substituted ''subsection (b)(1)(E)'' for ''subsection (b)(1)(D)''.

Subsec. (e)(3)(C). Pub. L. 98–369, § 492(b)(1)(B), struck out ''1251,'' after ''1250,''.

Subsec. (e)(5). Pub. L. 98–369, § 301(b), added par. (5).

Subsec. (f)(7). Pub. L. 98–369, § 1022(b), added par. (7).

Subsec. (h)(5)(B). Pub. L. 98–369, § 1035(a), designated existing provisions as cl. (i), inserted ''Except as provided in clause (ii)'', and added cl. (ii).

Subsec. (j). Pub. L. 98–369, § 1031(a), added subsec. (j). Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 98–369, § 1031(a), redesignated subsec. (j) as (k). Former subsec. (k) redesignated (*l*).

Subsec. (*l*). Pub. L. 98–369, § 1032(b)(1), added par. (1) and redesignated former pars. (1) to (8) as (2) to (9), respectively.

Pub. L. 98–369, § 1031(a), redesignated subsec. (k) as (*l*).

1983—Subsec. (h)(4)(B)(ii). Pub. L. 97–448 substituted ''section 48(g)(3)(B)'' for ''section 191(d)(2)''.

Subsec. (k)(8). Pub. L. 97–473 added par. (8).

1982—Subsec. (c)(2). Pub. L. 97–248 inserted provision that rules similar to the rules of section 501(j) of this title shall apply for purposes of this paragraph.

Subsec. (e)(3)(A). Pub. L. 97–354, § 5(a)(21)(A), substituted ''an S corporation'' for ''an electing small business corporation within the meaning of section 1371(b)''.

Subsec. (e)(4)(D)(i). Pub. L. 97–354, § 5(a)(21)(B), substituted ''an S corporation'' for ''an electing small business corporation (as defined in section 1371(b))''.

Subsec. (k)(7). Pub. L. 97–258 substituted ''section 4043 of title 18, United States Code'' for ''section 2 of the Act of May 15, 1952, as amended by the Act of July 9, 1952 (31 U.S.C. 725s–4)''.

1981—Subsec. (b)(2). Pub. L. 97–34, § 263(a), increased to 10 from 5 percent deduction allowable to a corporation in any taxable year for charitable contributions.

Subsec. (e)(4). Pub. L. 97–34, § 222(a), added par. (4).

Subsec. (i). Pub. L. 97–34, § 121(a), added subsec. (i). Former subsec. (i) redesignated (j).

Subsecs. (j), (k). Pub. L. 97–34, § 121(a), redesignated former subsecs. (i) and (j) as (j) and (k), respectively.

1980—Subsec. (f)(3). Pub. L. 96–541, § 6(a), reenacted subpar. (B), cls. (i) and (ii), substituted cl. (B)(iii) relating to qualified conservation contribution for prior cl. (B)(iii) relating to contribution of a lease on, option to purchase, or easement with respect to real property granted in perpetuity to a subsec. (b)(1)(A) organization exclusively for conservation purposes, deleted cl. (B)(iv) respecting contribution of a remainder interest in real property granted to a subsec. (b)(1)(A) organization exclusively for conservation purposes, and deleted subpar. (C) definition of ''conservation purposes'', now covered in an expanded subsec. (h)(4)(A).

Subsecs. (h), (i). Pub. L. 96–541, § 6(b), added subsec. (h) and redesignated former subsec. (h) as (i). Former subsec. (i) redesignated (j).

Subsec. (i)(6). Pub. L. 96–465, among other changes, inserted references to Director of the International Communication Agency and the Director of the United States International Development Cooperation Agency, and substituted reference to section 25 of the State Department Basic Authorities Act of 1956 for reference to section 1021(e) of the Foreign Service Act of 1946.

Subsec. (j). Pub. L. 96–541, § 6(b), redesignated former subsec. (i) as (j).

1978—Subsec. (e)(1)(B). Pub. L. 95–600 substituted ''40 percent'' for ''50 percent'' and ''28⅘6'' for ''62½ percent''.

1977—Subsec. (f)(3)(B)(iii). Pub. L. 95–30 substituted ''real property granted in perpetuity to an organization'' for ''real property of not less than 30 years' duration granted to an organization''.

1976—Subsec. (a). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (b)(1)(A)(vii). Pub. L. 94–455, § 1901(a)(28)(A)(iii), substituted ''subparagraph (D)'' for ''subparagraph (E)'' after ''described in''.

Subsec. (b)(1)(B)(ii). Pub. L. 94–455, § 1901(a)(28)(A)(iv), substituted ''subparagraph (C)'' for ''subparagraph (D)'' after ''without regard to''.

Subsec. (b)(1)(C). Pub. L. 94–455, § 1901(a)(28)(A)(ii), struck out subpar. (C) which related to unlimited deductions for certain individuals, redesignated subpar. (D) as (C) and, as so redesignated, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' in cl. (iii).

Subsec. (b)(1)(D) to (F). Pub. L. 94–455, § 1901(a)(28)(A)(ii), redesignated subpars. (D) to (F) as (C) to (E), respectively.

Subsec. (b)(2). Pub. L. 95–455, § 1052(c)(2), struck out subpar. (D) which related to a special deduction for Western Hemisphere trade corporations, and redesignated subpar. (E) as (D).

Subsec. (c). Pub. L. 94–455, § 1901(a)(28)(A)(v), substituted ''subsection (g)'' for ''subsection (h)'' after ''amount treated under''.

Subsec. (c)(2)(B). Pub. L. 94–455, § 1313(b)(1), inserted ''or to foster national or international amateur sports

competition (but only if no part of its activities involves the provision of athletic facilities or equipment)'' after ''or educational purposes''.

Subsec. (c)(2)(D). Pub. L. 94–445, §1307(d)(1)(B)(i), substituted ''which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation'' for ''no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation'' after ''(D)''.

Subsec. (d)(1)(A). Pub. L. 94–455, §1901(a)(28)(B), struck out ''(30 percent in the case of a contribution year beginning before January 1, 1970)'' after ''exceeds 50 percent''.

Subsec. (e)(1). Pub. L. 94–455, §205(c)(1)(A), substituted ''1252(a), or 1254(a)'' for ''or 1252(a)'' after ''1251(c)''.

Subsec. (e)(1)(B)(ii). Pub. L. 94–455, §1901(a)(28)(A)(vi), substituted ''subsection (b)(1)(D)'' for ''subsection (b)(1)(E)'' after ''foundation described in''.

Subsec. (e)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (e)(3). Pub. L. 94–455, §2135(a), added par. (3).

Subsec. (f)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (f)(3). Pub. L. 94–455, §2124(e)(1), added subpars. (B)(iii), (iv), and (C).

Subsec. (f)(4). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (f)(6). Pub. L. 94–455, §§1307(c), 1901(a)(28)(A)(i), added par. (6). Former par. (6), which related to the partial reduction of unlimited deduction and definitions for transitional income and deduction percentages, was struck out. Section 1901(a)(28)(A)(i) of Pub. L. 94–455 struck out par. (6) a second time.

Subsec. (g). Pub. L. 94–455, §1901(a)(28)(A)(i), struck out subsec. (g) which related to application of unlimited charitable contribution deductions allowed for taxable years beginning before January 1, 1975, and redesignated subsecs. (h), (i), and (j) as (g), (h), and (i), respectively. Section 1901(a)(28)(A)(i) also struck out former subsec. (f)(6) but this direction was not executed as such former subsec. (f)(6) had previously been stricken by section 1307(c) of Pub. L. 94–455.

Subsec. (g)(1)(B). Pub. L. 94–455, §1901(b)(8)(A), substituted ''educational organization described in section 170(b)(1)(A)(ii)'' for ''educational institution (as defined in section 151(e)(4)'' after ''grade at an''.

Subsec. (h). Pub. L. 94–455, §1901(a)(28)(A)(i), (C), redesignated subsec. (i) as (h), and struck out ''64 Stat. 996'' after ''Act of 1950''. Former subsec. (h) redesignated (g).

Subsec. (i). Pub. L. 94–455, §1901(a)(28)(A)(i), (D), redesignated subsec. (j) as (i) and substituted ''6973 of title 10, United States Code'' for ''3 of the Act of March 31, 1944 (58 Stat. 135; 34 U.S.C. 1115b)'' after ''see section'' in par. (5); struck out par. (6) relating to gifts to library of Post Office Department; struck out ''60 Stat. 924'' after ''1946'' in par. (7); substituted ''as amended by the Act of July 9, 1952 (3 U.S.C. 725s–4)'' for ''(66 Stat. 73, as amended by Act of July 9, 1952, 66 Stat. 479, 31 U.S.C. 725s–4)'' after ''May 15, 1952'' in par. (8); and redesignated pars. (7) and (8) as pars. (6) and (7), respectively. Former subsec. (i) redesignated (h).

Subsec. (j). Pub. L. 94–455, §1901(a)(28)(A)(i), redesignated subsec. (j) as (i).

1969—Subsec. (a)(3). Pub. L. 91–172, §201(a)(1)(B), added par. (3).

Subsec. (b). Pub. L. 91–172, §201(a)(1)(B), (h)(1), increased the general limitation on the charitable contributions deduction for individual taxpayers from 30 percent of adjusted gross income to 50 percent of his contribution base and provided that where a taxpayer makes a contribution to a public charity of property which has appreciated in value the taxpayer could deduct such contributions of property under the 50 percent limitation if he elects to take the unrealized appreciation in value into account for the tax purposes, the unlimited charitable deduction is phased out over a 5-year period and contributions to a private operating foundation and contributions to a private nonoperating foundation distributing such contributions to public charities or private operating foundations within two and half months following the year of receipt are also subjected to 50 percent limitation (30 percent in the case of gifts of appreciated property), and, in par. (1)(C), inserted provisions relating to the determination of the amount of charitable contributions and taxes paid by a married individual who previously filed a joint return with a former deceased spouse.

Subsec. (c). Pub. L. 91–172, §201(a)(1)(B), struck out references to ''Territory'' in pars. (1) and (2)(A), and inserted reference to participation in or intervention in any political campaign on behalf of any candidate for public office in par. (2)(D).

Subsec. (d). Pub. L. 91–172, §201(a)(1)(B), added subsec. (d) consisting of provisions substantially transferred from subsec. (b) in the general amendment of subsec. (b) by Pub. L. 91–172. Former subsec. (d) redesignated (b).

Subsec. (e). Pub. L. 91–172, §201(a)(1)(B), substituted provisions covering certain contributions of ordinary income and capital gain property for provisions setting out a special rule for charitable contributions.

Subsec. (f). Pub. L. 91–172, §201(a)(1)(B), substituted provisions for the disallowance of the deduction in specified cases for provision covering future interests in tangible personal property.

Subsec. (g). Pub. L. 91–172, §201(a)(2)(A), substituted ''subsection (d)(1)'' for ''subsection (b)(5)'' in two places in par. (1) and struck out par. (2)(B) covering contributions to organizations substantially more than half of the assets and the total income were devoted to charitable purposes.

Subsec. (h). Pub. L. 91–172, §201(a)(1)(A), redesignated subsec. (d) as (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 91–172, §§101(j)(2), 201(a)(1)(A), redesignated former subsec. (h) as (i), struck out par. (1) covering disallowance of deductions for gifts to charitable organizations engaging in prohibited transactions, and removed the par. (2) designation from the provisions covering disallowance of deductions for use of communist controlled organizations. Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 91–172, §201(a)(1)(A), redesignated former subsec. (i) as (j).

1966—Subsec. (e). Pub. L. 89–570 inserted reference to section 617(d)(1).

1964—Subsec. (b)(1)(A)(v), (vi), (2), (5). Pub. L. 88–272, §209 (a), (c)(1), (d)(1), added cls. (v) and (vi) in par. (1)(A), and par. (5), and in par. (2), extended the 2-year carryforward of unused charitable contributions to 5 years and changed the method of computation by including the aggregate of the excess contributions made in taxable years before the contribution year, in cl. (i), and references to third, fourth or fifth succeeding years in cl. (ii).

Subsec. (e). Pub. L. 88–272, §231(b)(1), substituted ''certain property'' for ''section 1245 property'' in heading, and inserted reference to section 1250(a) in text.

Subsec. (f). Pub. L. 88–272, §209(e), added subsec. (f). Former subsec. (f) redesignated (h).

Subsec. (g). Pub. L. 88–272, §209(b), added subsec. (g). Former subsec. (g) redesignated (i).

Subsecs. (h), (i). Pub. L. 88–272, §209(e), redesignated former subsecs. (f) and (g) as (h) and (i), respectively.

1962—Subsec. (b)(1)(A)(iv). Pub. L. 87–858, §2(a), added cl. (iv).

Subsec. (b)(1)(B). Pub. L. 87–858, §2(b), substituted ''any charitable contributions described in subparagraph (A)'' for ''any charitable contributions to the organizations described in clauses (i), (ii), and (iii)''.

Subsecs. (e) to (g). Pub. L. 87–834 added subsec. (e) and redesignated former subsecs. (e) and (f) as (f) and (g), respectively.

1960—Subsec. (c). Pub. L. 86–779, §7(a)(1), inserted sentence additionally defining ''charitable contribution'' for purposes of the section.

Subsecs. (d) to (f). Pub. L. 86–779, §7(a)(2), added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

1958—Subsec. (b)(1)(C). Pub. L. 85–866, §10(a), inserted sentence allowing substitution, in lieu of amount of tax

paid during year, amount of tax paid in respect of such year, provided amount so included in the year in respect of which payment was made be not included in any other year.

Subsec. (b)(3). Pub. L. 85–866, § 11, added par. (3).

Subsec. (b)(4). Pub. L. 85–866, § 12, added par. (4).

1956—Subsec. (b)(1)(A)(iii). Act Aug. 7, 1956, § 1, provided for the allowance, as deductions, of contributions to medical research organizations.

CHANGE OF NAME

International Communication Agency, and Director thereof, redesignated United States Information Agency, and Director thereof, by section 303 of Pub. L. 97–241, title III, Aug. 24, 1982, 96 Stat. 291, set out as a note under section 1461 of Title 22, Foreign Relations and Intercourse. United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau) abolished and functions transferred to Secretary of State, see sections 6531 and 6532 of Title 22.

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Amendment by section 301(a) of Pub. L. 111–312 applicable to estates of decedents dying, and transfers made after Dec. 31, 2009, except as otherwise provided, see section 301(e) of Pub. L. 111–312, set out as a note under section 121 of this title.

Section 901 of Pub. L. 107–16 applicable to amendments by section 301(a) of Pub. L. 111–312, see section 304 of Pub. L. 111–312, set out as a note under section 121 of this title.

Pub. L. 111–312, title VII, § 723(c), Dec. 17, 2010, 124 Stat. 3316, provided that: ''The amendments made by this section [amending this section] shall apply to contributions made in taxable years beginning after December 31, 2009.''

Pub. L. 111–312, title VII, § 740(b), Dec. 17, 2010, 124 Stat. 3319, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made after December 31, 2009.''

Pub. L. 111–312, title VII, § 741(b), Dec. 17, 2010, 124 Stat. 3319, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made after December 31, 2009.''

Pub. L. 111–312, title VII, § 742(b), Dec. 17, 2010, 124 Stat. 3319, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made in taxable years beginning after December 31, 2009.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, § 321(b), Oct. 3, 2008, 122 Stat. 3873, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made during taxable years beginning after December 31, 2007.''

Pub. L. 110–343, div. C, title III, § 323(a)(2), Oct. 3, 2008, 122 Stat. 3874, provided that: ''The amendment made by this subsection [amending this section] shall apply to contributions made after December 31, 2007.''

Pub. L. 110–343, div. C, title III, § 323(b)(2), Oct. 3, 2008, 122 Stat. 3875, provided that: ''The amendment made by this subsection [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 3, 2008].''

Pub. L. 110–343, div. C, title III, § 324(c), Oct. 3, 2008, 122 Stat. 3875, provided that: ''The amendments made by this section [amending this section] shall apply to contributions made after December 31, 2007.''

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110–234, title XV, § 15302(b), May 22, 2008, 122 Stat. 1501, and Pub. L. 110–246, § 4(a), title XV, § 15302(b), June 18, 2008, 122 Stat. 1664, 2263, provided that: ''The amendments made by this section [amending this section] shall apply to contributions made in taxable years beginning after December 31, 2007.''

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–172, § 3(j), Dec. 29, 2007, 121 Stat. 2475, provided that: ''The amendments made by this section [amending this section and sections 408, 1366, 2055, 2522, 4940, 4958, 4962, 6104, 6695A, and 6696 of this title] shall take effect as if included in the provisions of the Pension Protection Act of 2006 [Pub. L. 109–280] to which they relate.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, § 116(a)(2), Dec. 20, 2006, 120 Stat. 2941, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to contributions made in taxable years beginning after December 31, 2005.''

Pub. L. 109–432, div. A, title I, § 116(b)(3), Dec. 20, 2006, 120 Stat. 2941, provided that: ''The amendments made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 2005.''

Pub. L. 109–280, title XII, § 1202(b), Aug. 17, 2006, 120 Stat. 1066, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made after December 31, 2005.''

Pub. L. 109–280, title XII, § 1204(b), Aug. 17, 2006, 120 Stat. 1066, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made after December 31, 2005.''

Pub. L. 109–280, title XII, § 1206(c), Aug. 17, 2006, 120 Stat. 1070, provided that: ''The amendments made by this section [amending this section and section 545 of this title] shall apply to contributions made in taxable years beginning after December 31, 2005.''

Pub. L. 109–280, title XII, § 1213(e), Aug. 17, 2006, 120 Stat. 1076, provided that:

''(1) SPECIAL RULES FOR BUILDINGS IN REGISTERED HISTORIC DISTRICTS.—The amendments made by subsection (a) [amending this section] shall apply to contributions made after July 25, 2006.

''(2) DISALLOWANCE OF DEDUCTION FOR STRUCTURES AND LAND; REDUCTION FOR REHABILITATION CREDIT.—The amendments made by subsections (b) and (d) [amending this section] shall apply to contributions made after the date of the enactment of this Act [Aug. 17, 2006].

''(3) FILING FEE.—The amendment made by subsection (c) [amending this section] shall apply to contributions made 180 days after the date of the enactment of this Act [Aug. 17, 2006].''

Pub. L. 109–280, title XII, § 1214(c), Aug. 17, 2006, 120 Stat. 1077, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made after July 25, 2006.''

Pub. L. 109–280, title XII, § 1215(d)(1), Aug. 17, 2006, 120 Stat. 1079, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to contributions after September 1, 2006.''

Pub. L. 109–280, title XII, § 1216(b), Aug. 17, 2006, 120 Stat. 1080, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made after the date of enactment of this Act [Aug. 17, 2006].''

Pub. L. 109–280, title XII, § 1217(b), Aug. 17, 2006, 120 Stat. 1080, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made in taxable years beginning after the date of the enactment of this Act [Aug. 17, 2006].''

Pub. L. 109–280, title XII, § 1218(d), Aug. 17, 2006, 120 Stat. 1083, provided that: ''The amendments made by this section [amending this section and sections 2055 and 2522 of this title] shall apply to contributions, bequests, and gifts made after the date of the enactment of this Act [Aug. 17, 2006].''

Pub. L. 109–280, title XII, §1219(e), Aug. 17, 2006, 120 Stat. 1085, provided that:

''(1) MISSTATEMENT PENALTIES.—Except as provided in paragraph (3), the amendments made by subsection (a) [amending sections 6662 and 6664 of this title] shall apply to returns filed after the date of the enactment of this Act [Aug. 17, 2006].

''(2) APPRAISER PROVISIONS.—Except as provided in paragraph (3), the amendments made by subsections (b), (c), and (d) [enacting section 6695A of this title and amending this section, sections 6664 and 6696 of this title, and section 330 of Title 31, Money and Finance] shall apply to appraisals prepared with respect to returns or submissions filed after the date of the enactment of this Act [Aug. 17, 2006].

''(3) SPECIAL RULE FOR CERTAIN EASEMENTS.—In the case of a contribution of a qualified real property interest which is a restriction with respect to the exterior of a building described in section 170(h)(4)(C)(ii) of the Internal Revenue Code of 1986, and an appraisal with respect to the contribution, the amendments made by subsections (a) and (b) [enacting section 6695A of this title and amending sections 6662, 6664, and 6696 of this title] shall apply to returns filed after July 25, 2006.''

Pub. L. 109–280, title XII, §1234(d), Aug. 17, 2006, 120 Stat. 1101, provided that: ''The amendments made by this section [amending this section and sections 2055 and 2522 of this title] shall apply to contributions made after the date which is 180 days after the date of the enactment of this Act [Aug. 17, 2006].''

Pub. L. 109–222, title II, §204(c), May 17, 2006, 120 Stat. 350, provided that: ''The amendments made by this section [amending this section and section 1221 of this title] shall apply to sales and exchanges in taxable years beginning after the date of the enactment of this Act [May 17, 2006].''

EFFECTIVE DATE OF 2005 AMENDMENTS

Amendments by Pub. L. 109–135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which they relate, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

Pub. L. 109–73, title III, §305(b), Sept. 23, 2005, 119 Stat. 2025, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made on or after August 28, 2005, in taxable years ending after such date.''

Pub. L. 109–73, title III, §306(b), Sept. 23, 2005, 119 Stat. 2026, provided that: ''The amendments made by this section [amending this section] shall apply to contributions made on or after August 28, 2005, in taxable years ending after such date.''

EFFECTIVE DATE OF 2004 AMENDMENTS

Pub. L. 108–357, title III, §335(b), Oct. 22, 2004, 118 Stat. 1479, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to contributions made after December 31, 2004.''

Amendment by section 413(c)(30) of Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

Pub. L. 108–357, title VIII, §882(f), Oct. 22, 2004, 118 Stat. 1631, provided that: ''The amendments made by this section [amending this section and section 6050L of this title] shall apply to contributions made after June 3, 2004.''

Pub. L. 108–357, title VIII, §883(b), Oct. 22, 2004, 118 Stat. 1632, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made after June 3, 2004.''

Pub. L. 108–357, title VIII, §884(c), Oct. 22, 2004, 118 Stat. 1634, provided that: ''The amendments made by this section [enacting section 6720 of this title and amending this section] shall apply to contributions made after December 31, 2004.''

Amendment by section 207(15), (16) of Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

Pub. L. 108–311, title III, §306(b), Oct. 4, 2004, 118 Stat. 1179, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made in taxable years beginning after December 31, 2003.''

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to estates of decedents dying after Dec. 31, 2009, see section 542(f)(1) of Pub. L. 107–16, set out as a note under section 121 of this title.

Amendment by Pub. L. 107–16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title I, §165(f)], Dec. 21, 2000, 114 Stat. 2763, 2763A–627, provided that: ''The amendments made by this section [amending this section] shall apply to contributions made after December 31, 2000.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, §532(d), Dec. 17, 1999, 113 Stat. 1931, provided that: ''The amendments made by this section [amending this section and sections 198, 263A, 267, 341, 367, 475, 543, 751, 775, 818, 856, 857, 864, 865, 871, 954, 988, 995, 1017, 1092, 1221, 1231, 1234, 1256, 1362, 1397B, 4662, and 7704 of this title] shall apply to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after the date of the enactment of this Act [Dec. 17, 1999].''

Pub. L. 106–170, title V, §537(b), Dec. 17, 1999, 113 Stat. 1938, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this section [amending this section], the amendment made by this section shall apply to transfers made after February 8, 1999.

''(2) EXCISE TAX.—Except as provided in paragraph (3) of this subsection, section 170(f)(10)(F) of the Internal Revenue Code of 1986 (as added by this section) shall apply to premiums paid after the date of the enactment of this Act [Dec. 17, 1999].

''(3) REPORTING.—Clause (iii) of such section 170(f)(10)(F) shall apply to premiums paid after February 8, 1999 (determined as if the tax imposed by such section applies to premiums paid after such date).''

EFFECTIVE DATE OF 1998 AMENDMENTS

Pub. L. 105–277, div. J, title I, §1004(a)(2), Oct. 21, 1998, 112 Stat. 2681–888, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to contributions made after June 30, 1998.''

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 224(b) of Pub. L. 105–34 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997.''

Section 508(e)(2) of Pub. L. 105–34 provided that: ''The amendments made by subsections (c) and (d) [amending this section and section 2032A of this title] shall apply to easements granted after December 31, 1997.''

Section 602(b) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to contributions made after May 31, 1997.''

Section 973(b) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1206(b) of Pub. L. 104–188 provided that: ''The amendment made by this section [amending this section] shall apply to contributions made after June 30, 1996.''

Section 1316(f) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section and sections 404, 512, 1042, and 1361 of this title] shall apply to taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13172(b) of Pub. L. 103–66 provided that: ''The provisions of this section [amending this section] shall apply to contributions made on or after January 1, 1994.''

Amendment by section 13222(b) of Pub. L. 103–66 applicable to amounts paid or incurred after Dec. 31, 1993, see section 13222(e) of Pub. L. 103–66 set out as a note under section 162 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11813(b)(10) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 6001(b) of Pub. L. 100–647 provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1983.

''(2) WAIVER OF STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act [Nov. 10, 1988] (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of section 170(m) of the 1986 Code (as added by subsection (a)) is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefore [sic] is filed before the date 1 year after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10711(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and sections 501, 504, 2055, 2106, and 2522 of this title] shall apply with respect to activities after the date of the enactment of this Act [Dec. 22, 1987].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 142(d) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 231(f) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1985, see section 231(g) of Pub. L. 99–514, set out as a note under section 41 of this title.

Amendment by section 301(b)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 301(c) of Pub. L. 99–514, set out as a note under section 62 of this title.

Amendment by section 1831 of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 174(b)(5)(A) of Pub. L. 98–369, applicable to transactions after Dec. 31, 1983, in taxable years ending after that date, see section 174(c)(2)(A) of Pub. L. 98–369, set out as a note under section 267 of this title.

Section 301(d) of Pub. L. 98–369 provided that:

''(1) SUBSECTIONS (a) AND (c).—The amendments made by subsections (a) and (c) [amending this section] shall apply to contributions made in taxable years ending after the date of the enactment of this Act [July 18, 1984].

''(2) SUBSECTION (b).—The amendment made by subsection (b) [amending this section] shall apply to contributions made after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.''

Section 492(d) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and sections 341, 453B, 751, and 1252 of this title and repealing section 1251 of this title] shall apply to taxable years beginning after December 31, 1983.''

Amendment by section 1022(b) of Pub. L. 98–369 applicable to reformations after Dec. 31, 1978, except inapplicable to any reformation to which section 2055(e)(3) of this title as in effect before July 18, 1984, applies, see section 1022(e)(1) of Pub. L. 98–369, set out as a note under section 2055 of this title.

Section 1031(b) of Pub. L. 98–369 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1984.''

Section 1032(c) of Pub. L. 98–369 provided that: ''The amendments made by subsections (a) and (b) [amending this section and sections 501, 2055, and 2522 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [July 18, 1984].''

Section 1035(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to contributions made after the date of the enactment of this Act [July 18, 1984].''

EFFECTIVE DATE OF 1983 AMENDMENTS

For effective date of amendment by Pub. L. 97–473, see section 204(1) of Pub. L. 97–473, set out as an Effective Date note under section 7871 of this title.

Amendment by title I of Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENTS

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

Amendment by Pub. L. 97–248 effective Oct. 5, 1976, see section 286(c) of Pub. L. 97–248, set out as a note under section 501 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 121(d) of Pub. L. 97–34 provided that: ''The amendments made by this section [amending this section and sections 3, 57, and 63 of this title] shall apply to contributions made after December 31, 1981, in taxable years beginning after such date.''

Section 222(b) of Pub. L. 97–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to charitable contributions made after the date of the enactment of this Act [Aug. 13, 1981], in taxable years ending after such date.''

Section 263(b) of Pub. L. 97–34 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 6(d) of Pub. L. 96–541 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to transfers made after the date of the enactment of this Act [Dec. 17, 1980] in taxable years ending after such date.''

Amendment by Pub. L. 96–465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96–465, set out as an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 402(c)(2) of Pub. L. 95–600 provided that: ''The amendment made by subsection (b)(2) [amending this section by substituting ''40 percent'' for ''50 percent''] shall apply to contributions made after October 31, 1978.''

Section 403(d)(2) of Pub. L. 95–600 provided that: ''The amendment made by paragraph (1) of subsection (c) [amending this section by substituting ''28⅜₆'' for ''62½ percent''] shall apply to gifts made after December 31, 1978.''

EFFECTIVE DATE OF 1977 AMENDMENT

Section 309(b)(1) of Pub. L. 95–30, as amended by Pub. L. 96–541, §6(c), Dec. 17, 1980, 94 Stat. 3207, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to contributions or transfers made after June 13, 1977.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1052(d) of Pub. L. 94–455 provided that: ''The amendments made by subsection (a) and paragraph (1) of subsection (c) [amending section 922 of this title] shall apply with respect to taxable years beginning after December 31, 1975. The amendments made by subsection (b) [repealing sections 921 and 922 of this title] and by subsection (c) (other than paragraph (1)) [amending this section and sections 172, 907, 1503, and 6091 of this title] shall apply with respect to taxable years beginning after December 31, 1979.''

Amendment by section 1307 (d)(1)(B)(i), (c) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1307(e) of Pub. L. 94–455, set out as a note under section 501 of this title.

Amendment by section 1313(b)(1) of Pub. L. 94–455 effective Oct. 5, 1976, see section 1313(e) of Pub. L. 94–455, set out as a note under section 501 of this title.

Amendment by section 1901(a)(28) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Section 2124(e)(4) of Pub. L. 94–455, as amended by Pub. L. 95–30, title III, §309(b)(2), May 23, 1977, 91 Stat. 154; Pub. L. 96–541, §6(c), Dec. 17, 1980, 94 Stat. 3207, provided that: ''The amendments made by this subsection [amending this section and sections 2055 and 2522 of this title] shall apply with respect to contributions or transfers made after June 13, 1976.''

Section 2135(b) of Pub. L. 94–455 provided that: ''The amendment made by this section [amending this section] applies to charitable contributions made after the date of enactment of this Act [Oct. 4, 1976], in taxable years ending after such date.''

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 101(j)(2) of Pub. L. 91–172 to take effect on Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

Section 201(g) of Pub. L. 91–172, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1)(A) Except as provided in subparagraphs (B) and (C), the amendments made by subsection (a) [amending this section and sections 545, 556, and 809 of this title] shall apply to taxable years beginning after December 31, 1969.

''(B) Subsections (e) and (f)(1) of section 170 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (a)) shall apply to contributions paid after December 31, 1969, except that, with respect to a letter or memorandum or similar property described in section 1221(3) of such Code (as amended by section 514 of this Act), such subsection (e) shall apply to contributions paid after July 25, 1969.

''(C) Paragraphs (2), (3), and (4) of section 170(f) of such Code (as amended by subsection (a)) shall apply to transfers in trust and contributions made after July 31, 1969.

''(D) For purposes of applying section 170(d) of such Code (as amended by subsection (a)) with respect to contributions paid in a taxable year beginning before January 1, 1970, subsection (b)(1)(D), subsection (e), and paragraphs (1), (2), (3), and (4) of subsection (f) of section 170 of such Code shall not apply.

''(2) The amendments made by subsection (b) [amending section 642 of this title] shall apply with respect to amounts paid, permanently set aside, or to be used for a charitable purpose in taxable years beginning after December 31, 1969, except that section 642(c)(5) of the Internal Revenue Code of 1986 (as added by subsection (b)) shall apply to transfers in trust made after July 31, 1969.

''(3) The amendment made by subsection (c) [amending section 673 of this title] shall apply to transfers in trust made after April 22, 1969.

''(4)(A) Except as provided in subparagraphs (B) and (C), the amendments made by paragraphs (1) and (2) of subsection (d) [amending sections 2055 and 2126 of this title] shall apply in the case of decedents dying after December 31, 1969.

''(B) Such amendments shall not apply in the case of property passing under the terms of a will executed on or before October 9, 1969—

''(i) if the decedent dies before October 9, 1972, without having republished the will after October 9, 1969, by codicil or otherwise,

''(ii) if the decedent at no time after October 9, 1969, had the right to change the portions of the will which pertain to the passing of the property to, or for the use of, an organization described in section 2055(a) [section 2055(a) of this title], or

''(iii) if the will is not republished by codicil or otherwise before October 9, 1972, and the decedent is on such date and at all times thereafter under a mental disability to republish the will by codicil or otherwise.

''(C) Such amendments shall not apply in the case of property transferred in trust on or before October 9, 1969—

''(i) if the decedent dies before October 9, 1972, without having amended after October 9, 1969, the instrument governing the disposition of the property,

''(ii) if the property transferred was an irrevocable interest to, or for the use of, an organization described in section 2055(a), or

''(iii) if the instrument governing the disposition of the property was not amended by the decedent before October 9, 1972, and the decedent is on such date and at all times thereafter under a mental disability to change the disposition of the property.

''(D) The amendment made by paragraph (3) of subsection (d) [amending section 2522 of this title] shall apply to gifts made after December 31, 1969, except that the amendments made to section 2522(c)(2) of the Internal Revenue Code of 1986 shall apply to gifts made after July 31, 1969.

''(E) The amendments made by paragraph (4) of subsection (d) [amending sections 2055, 2106, and 2522 of this title] shall apply to gifts and transfers made after December 31, 1969.

''(5) The amendment made by subsection (e) [enacting section 664 of this title] shall apply to transfers in trust made after July 31, 1969.

''(6) The amendments made by subsection (f) [amending section 1011 of this title] shall apply with respect to sales made after December 19, 1969.''

Section 201(h)(2) of Pub. L. 91–172 provided that: ''The amendment made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 1968.''

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–570 applicable to taxable years ending after Sept. 12, 1966, but only in respect of expenditures paid or incurred after such date, see section 3 of Pub. L. 89–570, set out as an Effective Date note under section 617 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 209(f) of Pub. L. 88–272, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) The amendments made by subsections (a), (b), and (c) [amending this section and sections 545 and 556 of this title], shall apply with respect to contributions which are paid in taxable years beginning after December 31, 1963.

''(2) The amendments made by subsection (d) [amending this section and section 381 of this title] shall apply to taxable years beginning after December 31, 1963, with respect to contributions which are paid (or treated as paid under section 170(a)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) in taxable years beginning after December 31, 1961.

''(3) The amendments made by subsection (e) [amending this section] shall apply to transfers of future interests made after December 31, 1963, in taxable years ending after such date, except that such amendments shall not apply to any transfer of a future interest made before July 1, 1964, where—

''(A) the sole intervening interest or right is a nontransferable life interest reserved by the donor, or

''(B) in the case of a joint gift by husband and wife, the sole intervening interest or right is a nontransferable life interest reserved by the donors which expires not later than the death of whichever of such donors dies later.

For purposes of the exception contained in the preceding sentence, a right to make a transfer of the reserved life interest to the donee of the future interest shall not be treated as making a life interest transferable.''

Amendment by section 231(b)(1) of Pub. L. 88–272 applicable to dispositions after Dec. 31, 1963, in taxable years ending after such date, see section 231(c) of Pub. L. 88–272, set out as an Effective Date note under section 1250 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Section 2(c) of Pub. L. 87–858 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to taxable years beginning after December 31, 1960.''

Amendment by Pub. L. 87–834 applicable to taxable years beginning after Dec. 31, 1962, see section 13(g) of Pub. L. 87–834, set out as an Effective Date note under section 1245 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–779 applicable with respect to taxable years beginning after Dec. 31, 1959, see section 7(c) of Pub. L. 86–779, set out as a note under section 162 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 10(b) of Pub. L. 85–866 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1957.''

Amendment by section 11 of Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

Section 12(b) of Pub. L. 85–866 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after December 31, 1957, but only with respect to charitable contributions made after such date.''

EFFECTIVE DATE OF 1956 AMENDMENT

Section 2 of act Aug. 7, 1956, provided that: ''The amendment made by this Act [amending this section] shall apply only with respect to taxable years beginning after December 31, 1955.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

TRANSFER OF FUNCTIONS

United States International Development Cooperation Agency (other than Agency for International Development and Overseas Private Investment Corporation) abolished and functions and authorities transferred, see sections 6561 and 6562 of Title 22, Foreign Relations and Intercourse.

ANTI-ABUSE RULES

Pub. L. 108–357, title VIII, § 882(e), Oct. 22, 2004, 118 Stat. 1631, provided that: ''The Secretary of the Treasury may prescribe such regulations or other guidance as may be necessary or appropriate to prevent the avoidance of the purposes of section 170(e)(1)(B)(iii) of the Internal Revenue Code of 1986 (as added by subsection (a)), including preventing—

''(1) the circumvention of the reduction of the charitable deduction by embedding or bundling the patent or similar property as part of a charitable contribution of property that includes the patent or similar property,

''(2) the manipulation of the basis of the property to increase the amount of the charitable deduction through the use of related persons, pass-thru entities, or other intermediaries, or through the use of any provision of law or regulation (including the consolidated return regulations), and

''(3) a donor from changing the form of the patent or similar property to property of a form for which different deduction rules would apply.''

AUTHORITY TO WAIVE APPRAISAL REQUIREMENT FOR CERTAIN CHARITABLE CONTRIBUTIONS OF PROPERTY

Section 6281 of Pub. L. 100–647 provided that: ''Notwithstanding paragraph (2) of section 155(a) of the Tax Reform Act of 1984 [section 155(a)(2) of Pub. L. 98–369, set out below], the Secretary of the Treasury or his delegate may in the regulations prescribed pursuant to such section waive the requirement of a qualified appraisal in the case of a qualified contribution (within the meaning of section 170(e)(3)(A) of the 1986 Code) of property described in section 1221(1) [probably means section 1221(1) of the 1986 Code] with a claimed value in excess of $5,000.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TREATMENT OF CERTAIN AMOUNTS PAID TO OR FOR THE BENEFIT OF CERTAIN INSTITUTIONS OF HIGHER EDUCATION

Section 1608 of Pub. L. 99–514, which related to treatment of certain amounts paid to or for the benefit of

certain institutions of higher education, was repealed by Pub. L. 100–647, title I, §1016(b), Nov. 10, 1988, 102 Stat. 3575.

SUBSTANTIATION OF CHARITABLE CONTRIBUTIONS OF PROPERTY

Section 155(a) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Not later than December 31, 1984, the Secretary shall prescribe regulations under section 170(a)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], which require any individual, closely held corporation, or personal service corporation claiming a deduction under section 170 of such Code for a contribution described in paragraph (2)—

''(A) to obtain a qualified appraisal for the property contributed,

''(B) to attach an appraisal summary to the return on which such deduction is first claimed for such contribution, and

''(C) to include on such return such additional information (including the cost basis and acquisition date of the contributed property) as the Secretary may prescribe in such regulations.

Such regulations shall require the taxpayer to retain any qualified appraisal.

''(2) CONTRIBUTIONS TO WHICH PARAGRAPH (1) APPLIES.—For purposes of paragraph (1), a contribution is described in this paragraph—

''(A) if such contribution is of property (other than publicly traded securities), and

''(B) if the claimed value of such property (plus the claimed value of all similar items of property donated to 1 or more donees) exceeds $5,000.

In the case of any property which is nonpublicly traded stock, subparagraph (B) shall be applied by substituting '$10,000' for '$5,000'.

''(3) APPRAISAL SUMMARY.—For purposes of this subsection, the appraisal summary shall be in such form and include such information as the Secretary prescribes by regulations. Such summary shall be signed by the qualified appraiser preparing the qualified appraisal and shall contain the TIN of such appraiser. Such summary shall be acknowledged by the donee of the property appraised in such manner as the Secretary prescribes in such regulations.

''(4) QUALIFIED APPRAISAL.—The term 'qualified appraisal' means an appraisal prepared by a qualified appraiser which includes—

''(A) a description of the property appraised,

''(B) the fair market value of such property on the date of contribution and the specific basis for the valuation,

''(C) a statement that such appraisal was prepared for income tax purposes,

''(D) the qualifications of the qualified appraiser,

''(E) the signature and TIN of such appaiser, [sic] and

''(F) such additional information as the Secretary prescribes in such regulations.

''(5) QUALIFIED APPRAISER.—

''(A) IN GENERAL.—For purposes of this subsection, the term 'qualified appraiser' means an appraiser qualified to make appraisals of the type of property donated, who is not—

''(i) the taxpayer,

''(ii) a party to the transaction in which the taxpayer acquired the property,

''(iii) the donee,

''(iv) any person employed by any of the foregoing persons or related to any of the foregoing persons under section 267(b) of the Internal Revenue Code of 1986, or

''(v) to the extent provided in such regulations, any person whose relationship to the taxpayer would cause a reasonable person to question the independence of such appraiser.

''(B) APPRAISAL FEES.—For purposes of this subsection, an appraisal shall not be treated as a qualified appraisal if all or part of the fee paid for such appraisal is based on a percentage of the appraised value of the property. The preceding sentence shall not apply to fees based on a sliding scale that are paid to a generally recognized association regulating appraisers.

''(6) OTHER DEFINITIONS.—For purposes of this subsection—

''(A) CLOSELY HELD CORPORATION.—The term 'closely held corporation' means any corporation (other than an S corporation) with respect to which the stock ownership requirement of paragraph (2) of section 542(a) of such Code is met.

''(B) PERSONAL SERVICE CORPORATION.—The term 'personal service corporation' means any corporation (other than an S corporation) which is a service organization (within the meaning of section 414(m)(3) of such Code).

''(C) PUBLICLY TRADED SECURITIES.—The term 'publicly traded securities' means securities for which (as of the date of the contribution) market quotations are readily available on an established securities market.

''(D) NONPUBLICLY TRADED STOCK.—The term 'nonpublicly traded stock' means any stock of a corporation which is not a publicly traded security.

''(E) THE SECRETARY.—The term 'Secretary' means the Secretary of the Treasury or his delegate.''

CHARITABLE LEAD TRUSTS AND CHARITABLE REMAINDER TRUSTS IN CASE OF INCOME AND GIFT TAXES

For includibility of provisions comparable to section 2055(e)(3) of this title in this section, see section 514(b) of Pub. L. 95–600, set out as a note under section 2055 of this title.

DEDUCTION OF CONTRIBUTIONS TO CERTAIN ORGANIZATIONS FOR JUDICIAL REFORM

Section 29 of Pub. L. 87–834, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''For purposes of section 170 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to deduction for charitable, etc., contributions and gifts), a contribution or gift made after December 31, 1961, with respect to a referendum occurring during the calendar year 1962 to or for the use of any nonprofit organization created and operated exclusively—

''(1) to consider proposals for the reorganization of the judicial branch of the government of any State of the United States or political subdivision of such State, and

''(2) to provide information, make recommendations, and seek public support or opposition as to such proposals,

shall be treated as a charitable contribution if no part of the net earnings of such organization inures to the benefit of any private shareholder or individual. The provisions of the preceding sentence shall not apply to any organization which participates in, or intervenes in, any political campaign on behalf of any candidate for public office.''

§ 171. Amortizable bond premium

(a) General rule

In the case of any bond, as defined in subsection (d), the following rules shall apply to the amortizable bond premium (determined under subsection (b)) on the bond:

(1) Taxable bonds

In the case of a bond (other than a bond the interest on which is excludable from gross income), the amount of the amortizable bond premium for the taxable year shall be allowed as a deduction.

(2) Tax-exempt bonds

In the case of any bond the interest on which is excludable from gross income, no deduction

shall be allowed for the amortizable bond premium for the taxable year.

(3) Cross reference

For adjustment to basis on account of amortizable bond premium, see section 1016(a)(5).

(b) Amortizable bond premium

(1) Amount of bond premium

For purposes of paragraph (2), the amount of bond premium, in the case of the holder of any bond, shall be determined—

(A) with reference to the amount of the basis (for determining loss on sale or exchange) of such bond,

(B)(i) with reference to the amount payable on maturity or on earlier call date, in the case of any bond other than a bond to which clause (ii) applies, or and[1]

(ii) with reference to the amount payable on maturity (or if it results in a smaller amortizable bond premium attributable to the period to earlier call date, with reference to the amount payable on earlier call date), in the case of any bond described in subsection (a)(1) which is acquired after December 31, 1957, and

(C) with adjustments proper to reflect unamortized bond premium, with respect to the bond, for the period before the date as of which subsection (a) becomes applicable with respect to the taxpayer with respect to such bond.

In no case shall the amount of bond premium on a convertible bond include any amount attributable to the conversion features of the bond.

(2) Amount amortizable

The amortizable bond premium of the taxable year shall be the amount of the bond premium attributable to such year. In the case of a bond to which paragraph (1)(B)(ii) applies and which has a call date, the amount of bond premium attributable to the taxable year in which the bond is called shall include an amount equal to the excess of the amount of the adjusted basis (for determining loss on sale or exchange) of such bond as of the beginning of the taxable year over the amount received on redemption of the bond or (if greater) the amount payable on maturity.

(3) Method of determination

(A) In general

Except as provided in regulations prescribed by the Secretary, the determinations required under paragraphs (1) and (2) shall be made on the basis of the taxpayer's yield to maturity determined by—

(i) using the taxpayer's basis (for purposes of determining loss on sale or exchange) of the obligation, and

(ii) compounding at the close of each accrual period (as defined in section 1272(a)(5)).

(B) Special rule where earlier call date is used

For purposes of subparagraph (A), if the amount payable on an earlier call date is used under paragraph (1)(B)(ii) in determining the amortizable bond premium attributable to the period before the earlier call date, such bond shall be treated as maturing on such date for the amount so payable and then reissued on such date for the amount so payable.

(4) Treatment of certain bonds acquired in exchange for other property

(A) In general

If—

(i) a bond is acquired by any person in exchange for other property, and

(ii) the basis of such bond is determined (in whole or in part) by reference to the basis of such other property,

for purposes of applying this subsection to such bond while held by such person, the basis of such bond shall not exceed its fair market value immediately after the exchange. A similar rule shall apply in the case of such bond while held by any other person whose basis is determined (in whole or in part) by reference to the basis in the hands of the person referred to in clause (i).

(B) Special rule where bond exchanged in reorganization

Subparagraph (A) shall not apply to an exchange by the taxpayer of a bond for another bond if such exchange is a part of a reorganization (as defined in section 368). If any portion of the basis of the taxpayer in a bond transferred in such an exchange is not taken into account in determining bond premium by reason of this paragraph, such portion shall not be taken into account in determining the amount of bond premium on any bond received in the exchange.

(c) Election as to taxable bonds

(1) Eligibility to elect; bonds with respect to which election permitted

In the case of bonds the interest on which is not excludible from gross income, this section shall apply only if the taxpayer has so elected.

(2) Manner and effect of election

The election authorized under this subsection shall be made in accordance with such regulations as the Secretary shall prescribe. If such election is made with respect to any bond (described in paragraph (1)) of the taxpayer, it shall also apply to all such bonds held by the taxpayer at the beginning of the first taxable year to which the election applies and to all such bonds thereafter acquired by him and shall be binding for all subsequent taxable years with respect to all such bonds of the taxpayer, unless, on application by the taxpayer, the Secretary permits him, subject to such conditions as the Secretary deems necessary, to revoke such election. In the case of bonds held by a common trust fund, as defined in section 584(a), the election authorized under this subsection shall be exercisable with respect to such bonds only by the common trust fund. In case of bonds held by an estate or trust, the election authorized under this subsection shall be exercisable with respect to such bonds only by the fiduciary.

[1] So in original.

(d) Bond defined

For purposes of this section, the term ''bond'' means any bond, debenture, note, or certificate or other evidence of indebtedness, but does not include any such obligation which constitutes stock in trade of the taxpayer or any such obligation of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or any such obligation held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business.

(e) Treatment as offset to interest payments

Except as provided in regulations, in the case of any taxable bond—

(1) the amount of any bond premium shall be allocated among the interest payments on the bond under rules similar to the rules of subsection (b)(3), and

(2) in lieu of any deduction under subsection (a), the amount of any premium so allocated to any interest payment shall be applied against (and operate to reduce) the amount of such interest payment.

For purposes of the preceding sentence, the term ''taxable bond'' means any bond the interest of which is not excludable from gross income.

(f) Dealers in tax-exempt securities

For special rules applicable, in the case of dealers in securities, with respect to premium attributable to certain wholly tax-exempt securities, see section 75.

(Aug. 16, 1954, ch. 736, 68A Stat. 61; Pub. L. 85–866, title I, §13(a), Sept. 2, 1958, 72 Stat. 1610; Pub. L. 94–455, title XIX, §§1901(b)(1)(E), 1906(b)(13)(A), 1951(b)(5)(A), Oct. 4, 1976, 90 Stat. 1790, 1834, 1837; Pub. L. 99–514, title VI, §643(a), title XVIII, §1803(a)(11)(A), (B), (12)(A), Oct. 22, 1986, 100 Stat. 2285, 2795; Pub. L. 100–647, title I, §1006(j)(1)(A), Nov. 10, 1988, 102 Stat. 3411; Pub. L. 108–357, title IV, §413(c)(2), Oct. 22, 2004, 118 Stat. 1507.)

AMENDMENTS

2004—Subsec. (c)(2). Pub. L. 108–357, §413(c)(2)(B), which directed amendment of par. (2) by striking out '', or foreign personal holding company'', was executed by striking out ''or foreign personal holding company'' after ''the common trust fund'', to reflect the probable intent of Congress.

Pub. L. 108–357, §413(c)(2)(A), struck out '', or by a foreign personal holding company, as defined in section 552'' after ''section 584(a)''.

1988—Subsec. (e). Pub. L. 100–647 substituted ''Treatment as offset to interest payments'' for ''Treatment as interest'' in heading and amended text generally. Prior to amendment, text read as follows: ''Except as provided in regulations, the amount of any amortizable bond premium with respect to which a deduction is allowed under subsection (a)(1) for any taxable year shall be treated as interest for purposes of this title.''

1986—Subsec. (b)(3). Pub. L. 99–514, §1803(a)(11)(A), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The determinations required under paragraphs (1) and (2) shall be made—

''(A) in accordance with the method of amortizing bond premium regularly employed by the holder of the bond, if such method is reasonable;

''(B) in all other cases, in accordance with regulations prescribing reasonable methods of amortizing bond premium prescribed by the Secretary.''

Subsec. (b)(4). Pub. L. 99–514, §1803(a)(12)(A), added par. (4).

Subsec. (d). Pub. L. 99–514, §1803(a)(11)(B), struck out ''issued by any corporation and bearing interest (including any like obligation issued by a government or political subdivision thereof),'' after ''evidence of indebtedness,''.

Subsecs. (e), (f). Pub. L. 99–514, §643(a), added subsec. (e) and redesignated former subsec. (e) as (f).

1976—Subsec. (a)(1). Pub. L. 94–455, §1901(b)(1)(E)(i), substituted ''Taxable bonds'' for ''Interest wholly or partially taxable'' after ''(1)''.

Subsec. (a)(2). Pub. L. 94–455, §1901(b)(1)(E)(ii), substituted ''Tax-exempt bonds'' for ''Interest wholly tax-exempt'' after ''(2)''.

Subsec. (a)(3). Pub. L. 94–455, §1901(b)(1)(E)(iii), redesignated par. (4) as (3). Former par. (3), relating to adjustment of credit or deduction for interest partially tax-exempt, was struck out.

Subsec. (a)(4). Pub. L. 94–455, §1901(b)(1)(E)(iii), redesignated par. (4) as par. (3).

Subsec. (b)(1)(B)(i). Pub. L. 94–455, §1951(b)(5)(A)(ii), substituted ''clause (ii) applies, or'' for ''clause (ii) or (iii) applies'' after ''bond to which'' and inserted ''and'' at the end.

Subsec. (b)(1)(B)(ii). Pub. L. 94–455, §§1901(b)(1)(E)(iv), 1951(b)(5)(A)(iii), substituted ''subsection (a)(1)'' for ''subsection (c)(1)(B)'' after ''bond described in'' and ''and'' for ''or'' after ''1957''.

Subsec. (b)(1)(B)(iii). Pub. L. 94–455, §1951(b)(5)(A)(i), struck out cl. (iii) relating to certain bonds acquired before 1958.

Subsec. (b)(2). Pub. L. 94–455, §1951(b)(5)(A)(iv), struck out ''or (iii)'' after ''paragraph (1)(B)(ii)''.

Subsec. (b)(3)(B). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(1). Pub. L. 94–455, §1901(b)(1)(E)(v), substituted ''In the case of bonds the interest on which is not excludible from gross income, this section shall apply only if the taxpayer has so elected'' for ''This section shall apply with respect to the following classes of taxpayers with respect to the following classes of bonds only if the taxpayer has elected to have this section apply'' after ''election permitted'', and struck out subpars. (A) and (B) relating to partially tax-exempt, and wholly taxable, bonds.

Subsec. (c)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' in three places after ''Secretary''.

1958—Subsec. (b)(1)(B). Pub. L. 85–866, §13(a)(1), substituted '', in the case of any bond other than a bond to which clause (ii) or (iii) applies'' for ''(but in the case of bonds described in subsection (c)(1)(B) issued after January 22, 1951, and acquired after January 22, 1954, only if such earlier call date is a date more than 3 years after the date of such issue), and'', designated such provision as cl. (i), and added cl. (ii) and (iii).

Subsec. (b)(2). Pub. L. 85–866, §13(a)(2), substituted ''In the case of a bond to which paragraph (1)(B)(ii) or (iii) applies and which has a call date,'' for ''In the case of a bond described in subsection (c)(1)(B) issued after January 22, 1951, and acquired after January 22, 1954, which has a call date not more than 3 years after the date of such issue,'' in second sentence.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1006(j)(1)(C) of Pub. L. 100–647 provided that: ''The amendments made by this paragraph [amending this section and section 1016 of this title] shall apply in the case of obligations acquired after December 31, 1987; except that the taxpayer may elect to have such amendment apply to obligations acquired after October 22, 1986.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 643(b) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1006(j)(2), Nov. 10, 1988, 102 Stat. 3411, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to obligations acquired after the date of the enactment of this Act [Oct. 22, 1986], in taxable years ending after such date.

''(2) REVOCATION OF ELECTION.—In the case of a taxpayer with respect to whom an election is in effect on the date of enactment of this Act [Oct. 22, 1986], under section 171(c) of the Internal Revenue Code of 1986, such election shall apply to obligations acquired after the date of the enactment of this Act only if the taxpayer chooses (at such time and in such manner as may be prescribed by the Secretary of the Treasury or his delegate) to have such election apply with respect to such obligations.''

Section 1803(a)(11)(C) of Pub. L. 99–514 provided that:

''(i) The amendments made by this paragraph [amending this section] shall apply to obligations issued after September 27, 1985.

''(ii) In the case of a taxpayer with respect to whom an election is in effect on the date of the enactment of this Act [Oct. 22, 1986] under section 171(c) of the Internal Revenue Code of 1954 [now 1986], such election shall apply to obligations issued after September 27, 1985, only if the taxpayer chooses (at such time and in such manner as may be prescribed by the Secretary of the Treasury or his delegate) to have such election apply with respect to such obligations.''

Section 1803(a)(12)(B) of Pub. L. 99–514 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to exchanges after May 6, 1986.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(1)(E)(iii)–(v) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 1951(b)(5)(A)(i) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1951(d) of Pub. L. 94–455, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 13(b) of Pub. L. 85–866 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years ending after December 31, 1957.''

SAVINGS PROVISION

Section 1951(b)(5)(B) of Pub. L. 94–455 provided that: ''Notwithstanding the amendments made by subparagraph (A) [amending this section], in the case of a bond the interest on which is not excludable from gross income—

''(i) which was issued after January 22, 1951, with a call date not more than 3 years after the date of such issue, and

''(ii) which was acquired by the taxpayer after January 22, 1954, and before January 1, 1958,

the bond premium for a taxable year beginning after December 31, 1975, shall not be determined under section 171(b)(1)(B)(i) but shall be determined with reference to the amount payable on maturity, and if the bond is called before its maturity, the bond premium for the year in which the bond is called shall be determined in accordance with the provisions of section 171(b)(2).''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 172. Net operating loss deduction

(a) Deduction allowed

There shall be allowed as a deduction for the taxable year an amount equal to the aggregate of (1) the net operating loss carryovers to such year, plus (2) the net operating loss carrybacks to such year. For purposes of this subtitle, the term ''net operating loss deduction'' means the deduction allowed by this subsection.

(b) Net operating loss carrybacks and carryovers

(1) Years to which loss may be carried

(A) General rule

Except as otherwise provided in this paragraph, a net operating loss for any taxable year—

(i) shall be a net operating loss carryback to each of the 2 taxable years preceding the taxable year of such loss, and

(ii) shall be a net operating loss carryover to each of the 20 taxable years following the taxable year of the loss.

(B) Special rules for REIT's

(i) In general

A net operating loss for a REIT year shall not be a net operating loss carryback to any taxable year preceding the taxable year of such loss.

(ii) Special rule

In the case of any net operating loss for a taxable year which is not a REIT year, such loss shall not be carried back to any taxable year which is a REIT year.

(iii) REIT year

For purposes of this subparagraph, the term ''REIT year'' means any taxable year for which the provisions of part II of subchapter M (relating to real estate investment trusts) apply to the taxpayer.

(C) Specified liability losses

In the case of a taxpayer which has a specified liability loss (as defined in subsection (f)) for a taxable year, such specified liability loss shall be a net operating loss carryback to each of the 10 taxable years preceding the taxable year of such loss.

(D) Bad debt losses of commercial banks

In the case of any bank (as defined in section 585(a)(2)), the portion of the net operating loss for any taxable year beginning after December 31, 1986, and before January 1, 1994, which is attributable to the deduction allowed under section 166(a) shall be a net operating loss carryback to each of the 10 taxable years preceding the taxable year of the loss and a net operating loss carryover to each of the 5 taxable years following the taxable year of such loss.

(E) Excess interest loss

(i) In general

If—

(I) there is a corporate equity reduction transaction, and

(II) an applicable corporation has a corporate equity reduction interest loss for any loss limitation year ending after August 2, 1989,

then the corporate equity reduction interest loss shall be a net operating loss carryback and carryover to the taxable years described in subparagraph (A), except that such loss shall not be carried back to a taxable year preceding the taxable year in which the corporate equity reduction transaction occurs.

(ii) Loss limitation year

For purposes of clause (i) and subsection (h), the term ''loss limitation year'' means, with respect to any corporate equity reduction transaction, the taxable year in which such transaction occurs and each of the 2 succeeding taxable years.

(iii) Applicable corporation

For purposes of clause (i), the term ''applicable corporation'' means—

(I) a C corporation which acquires stock, or the stock of which is acquired in a major stock acquisition,

(II) a C corporation making distributions with respect to, or redeeming, its stock in connection with an excess distribution, or

(III) a C corporation which is a successor of a corporation described in subclause (I) or (II).

(iv) Other definitions

For definitions of terms used in this subparagraph, see subsection (h).

(F) Retention of 3-year carryback in certain cases

(i) In general

Subparagraph (A)(i) shall be applied by substituting ''3 taxable years'' for ''2 taxable years'' with respect to the portion of the net operating loss for the taxable year which is an eligible loss with respect to the taxpayer.

(ii) Eligible loss

For purposes of clause (i), the term ''eligible loss'' means—

(I) in the case of an individual, losses of property arising from fire, storm, shipwreck, or other casualty, or from theft,

(II) in the case of a taxpayer which is a small business, net operating losses attributable to federally declared disasters (as defined by subsection (h)(3)(C)(i)),[1] and

(III) in the case of a taxpayer engaged in the trade or business of farming (as defined in section 263A(e)(4)), net operating losses attributable to such federally declared disasters.

Such term shall not include any farming loss (as defined in subsection (i)) or qualified disaster loss (as defined in subsection (j)).

(iii) Small business

For purposes of this subparagraph, the term ''small business'' means a corporation or partnership which meets the gross receipts test of section 448(c) for the taxable year in which the loss arose (or, in the case of a sole proprietorship, which would meet such test if such proprietorship were a corporation).

(iv) Coordination with paragraph (2)

For purposes of applying paragraph (2), an eligible loss for any taxable year shall be treated in a manner similar to the manner in which a specified liability loss is treated.

(G) Farming losses

In the case of a taxpayer which has a farming loss (as defined in subsection (i)) for a taxable year, such farming loss shall be a net operating loss carryback to each of the 5 taxable years preceding the taxable year of such loss.

(H) Carryback for 2008 or 2009 net operating losses

(i) In general

In the case of an applicable net operating loss with respect to which the taxpayer has elected the application of this subparagraph—

(I) subparagraph (A)(i) shall be applied by substituting any whole number elected by the taxpayer which is more than 2 and less than 6 for ''2'',

(II) subparagraph (E)(ii) shall be applied by substituting the whole number which is one less than the whole number substituted under subclause (I) for ''2'', and

(III) subparagraph (F) shall not apply.

(ii) Applicable net operating loss

For purposes of this subparagraph, the term ''applicable net operating loss'' means the taxpayer's net operating loss for a taxable year ending after December 31, 2007, and beginning before January 1, 2010.

(iii) Election

(I) In general

Any election under this subparagraph may be made only with respect to 1 taxable year.

(II) Procedure

Any election under this subparagraph shall be made in such manner as may be prescribed by the Secretary, and shall be made by the due date (including extension of time) for filing the return for the taxpayer's last taxable year beginning in 2009. Any such election, once made, shall be irrevocable.

(iv) Limitation on amount of loss carryback to 5th preceding taxable year

(I) In general

The amount of any net operating loss which may be carried back to the 5th

[1] So in original. Probably means subsection (h)(3)(C)(i) of section 165 of this title.

taxable year preceding the taxable year of such loss under clause (i) shall not exceed 50 percent of the taxpayer's taxable income (computed without regard to the net operating loss for the loss year or any taxable year thereafter) for such preceding taxable year.

(II) Carrybacks and carryovers to other taxable years

Appropriate adjustments in the application of the second sentence of paragraph (2) shall be made to take into account the limitation of subclause (I).

(III) Exception for 2008 elections by small businesses

Subclause (I) shall not apply to any loss of an eligible small business with respect to any election made under this subparagraph as in effect on the day before the date of the enactment of the Worker, Homeownership, and Business Assistance Act of 2009.

(v) Special rules for small business

(I) In general

In the case of an eligible small business which made or makes an election under this subparagraph as in effect on the day before the date of the enactment of the Worker, Homeownership, and Business Assistance Act of 2009, clause (iii)(I) shall be applied by substituting ''2 taxable years'' for ''1 taxable year''.

(II) Eligible small business

For purposes of this subparagraph, the term ''eligible small business'' has the meaning given such term by subparagraph (F)(iii), except that in applying such subparagraph, section 448(c) shall be applied by substituting ''$15,000,000'' for ''$5,000,000'' each place it appears.

(I) Transmission property and pollution control investment

(i) In general

At the election of the taxpayer for any taxable year ending after December 31, 2005, and before January 1, 2009, in the case of a net operating loss for a taxable year ending after December 31, 2002, and before January 1, 2006, there shall be a net operating loss carryback to each of the 5 taxable years preceding the taxable year of such loss to the extent that such loss does not exceed 20 percent of the sum of the electric transmission property capital expenditures and the pollution control facility capital expenditures of the taxpayer for the taxable year preceding the taxable year for which such election is made.

(ii) Limitations

For purposes of this subsection—

(I) not more than one election may be made under clause (i) with respect to any net operating loss for a taxable year, and

(II) an election may not be made under clause (i) for more than 1 taxable year beginning in any calendar year.

(iii) Coordination with ordering rule

For purposes of applying subsection (b)(2), the portion of any loss which is carried back 5 years by reason of clause (i) shall be treated in a manner similar to the manner in which a specified liability loss is treated.

(iv) Special rules relating to credit or refund

In the case of the portion of the loss which is carried back 5 years by reason of clause (i)—

(I) an application under section 6411(a) with respect to such portion shall not fail to be treated as timely filed if filed within 24 months after the due date specified under such section, and

(II) references in sections 6501(h), 6511(d)(2)(A), and 6611(f)(1) to the taxable year in which such net operating loss arises or results in a net operating loss carryback shall be treated as references to the taxable year for which such election is made.

(v) Definitions

For purposes of this subparagraph—

(I) Electric transmission property capital expenditures

The term ''electric transmission property capital expenditures'' means any expenditure, chargeable to capital account, made by the taxpayer which is attributable to electric transmission property used by the taxpayer in the transmission at 69 or more kilovolts of electricity for sale. Such term shall not include any expenditure which may be refunded or the purpose of which may be modified at the option of the taxpayer so as to cease to be treated as an expenditure within the meaning of such term.

(II) Pollution control facility capital expenditures

The term ''pollution control facility capital expenditures'' means any expenditure, chargeable to capital account, made by an electric utility company (as defined in section 2(3) of the Public Utility Holding Company Act[2] (15 U.S.C. 79b(3)), as in effect on the day before the date of the enactment of the Energy Tax Incentives Act of 2005) which is attributable to a facility which will qualify as a certified pollution control facility as determined under section 169(d)(1) by striking ''before January 1, 1976,'' and by substituting ''an identifiable'' for ''a new identifiable''. Such term shall not include any expenditure which may be refunded or the purpose of which may be modified at the option of the taxpayer so as to cease to be treated as an expenditure within the meaning of such term.

[2] So in original. Probably should be followed by ''of 1935''.

(J) Certain losses attributable[3] federally declared disasters

In the case of a taxpayer who has a qualified disaster loss (as defined in subsection (j)), such loss shall be a net operating loss carryback to each of the 5 taxable years preceding the taxable year of such loss.

(2) Amount of carrybacks and carryovers

The entire amount of the net operating loss for any taxable year (hereinafter in this section referred to as the ''loss year'') shall be carried to the earliest of the taxable years to which (by reason of paragraph (1)) such loss may be carried. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the taxable income for each of the prior taxable years to which such loss may be carried. For purposes of the preceding sentence, the taxable income for any such prior taxable year shall be computed—

(A) with the modifications specified in subsection (d) other than paragraphs (1), (4), and (5) thereof, and

(B) by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss year or for any taxable year thereafter,

and the taxable income so computed shall not be considered to be less than zero.

(3) Election to waive carryback

Any taxpayer entitled to a carryback period under paragraph (1) may elect to relinquish the entire carryback period with respect to a net operating loss for any taxable year. Such election shall be made in such manner as may be prescribed by the Secretary, and shall be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable year of the net operating loss for which the election is to be in effect. Such election, once made for any taxable year, shall be irrevocable for such taxable year.

(c) Net operating loss defined

For purposes of this section, the term ''net operating loss'' means the excess of the deductions allowed by this chapter over the gross income. Such excess shall be computed with the modifications specified in subsection (d).

(d) Modifications

The modifications referred to in this section are as follows:

(1) Net operating loss deduction

No net operating loss deduction shall be allowed.

(2) Capital gains and losses of taxpayers other than corporations

In the case of a taxpayer other than a corporation—

(A) the amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includable on account of gains from sales or exchanges of capital assets; and

(B) the exclusion provided by section 1202 shall not be allowed.

(3) Deduction for personal exemptions

No deduction shall be allowed under section 151 (relating to personal exemptions). No deduction in lieu of any such deduction shall be allowed.

(4) Nonbusiness deductions of taxpayers other than corporations

In the case of a taxpayer other than a corporation, the deductions allowable by this chapter which are not attributable to a taxpayer's trade or business shall be allowed only to the extent of the amount of the gross income not derived from such trade or business. For purposes of the preceding sentence—

(A) any gain or loss from the sale or other disposition of—

(i) property, used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 167, or

(ii) real property used in the trade or business,

shall be treated as attributable to the trade or business;

(B) the modifications specified in paragraphs (1), (2)(B), and (3) shall be taken into account;

(C) any deduction for casualty or theft losses allowable under paragraph (2) or (3) of section 165(c) shall be treated as attributable to the trade or business; and

(D) any deduction allowed under section 404 to the extent attributable to contributions which are made on behalf of an individual who is an employee within the meaning of section 401(c)(1) shall not be treated as attributable to the trade or business of such individual.

(5) Computation of deduction for dividends received, etc.

The deductions allowed by sections 243 (relating to dividends received by corporations), 244 (relating to dividends received on certain preferred stock of public utilities), and 245 (relating to dividends received from certain foreign corporations) shall be computed without regard to section 246(b) (relating to limitation on aggregate amount of deductions); and the deduction allowed by section 247 (relating to dividends paid on certain preferred stock of public utilities) shall be computed without regard to subsection (a)(1)(B) of such section.

(6) Modifications related to real estate investment trusts

In the case of any taxable year for which part II of subchapter M (relating to real estate investment trusts) applies to the taxpayer—

(A) the net operating loss for such taxable year shall be computed by taking into account the adjustments described in section 857(b)(2) (other than the deduction for dividends paid described in section 857(b)(2)(B)); and

(B) where such taxable year is a ''prior taxable year'' referred to in paragraph (2) of subsection (b), the term ''taxable income'' in

[3] So in original. Probably should be followed by ''to''.

such paragraph shall mean ''real estate investment trust taxable income'' (as defined in section 857(b)(2)).

(7) Manufacturing deduction

The deduction under section 199 shall not be allowed.

(e) Law applicable to computations

In determining the amount of any net operating loss carryback or carryover to any taxable year, the necessary computations involving any other taxable year shall be made under the law applicable to such other taxable year.

(f) Rules relating to specified liability loss

For purposes of this section—

(1) In general

The term ''specified liability loss'' means the sum of the following amounts to the extent taken into account in computing the net operating loss for the taxable year:

(A) Any amount allowable as a deduction under section 162 or 165 which is attributable to—

(i) product liability, or

(ii) expenses incurred in the investigation or settlement of, or opposition to, claims against the taxpayer on account of product liability.

(B)(i) Any amount allowable as a deduction under this chapter (other than section 468(a)(1) or 468A(a)) which is in satisfaction of a liability under a Federal or State law requiring—

(I) the reclamation of land,

(II) the decommissioning of a nuclear power plant (or any unit thereof),

(III) the dismantlement of a drilling platform,

(IV) the remediation of environmental contamination, or

(V) a payment under any workers compensation act (within the meaning of section 461(h)(2)(C)(i)).

(ii) A liability shall be taken into account under this subparagraph only if—

(I) the act (or failure to act) giving rise to such liability occurs at least 3 years before the beginning of the taxable year, and

(II) the taxpayer used an accrual method of accounting throughout the period or periods during which such act (or failure to act) occurred.

(2) Limitation

The amount of the specified liability loss for any taxable year shall not exceed the amount of the net operating loss for such taxable year.

(3) Special rule for nuclear powerplants

Except as provided in regulations prescribed by the Secretary, that portion of a specified liability loss which is attributable to amounts incurred in the decommissioning of a nuclear powerplant (or any unit thereof) may, for purposes of subsection (b)(1)(C), be carried back to each of the taxable years during the period—

(A) beginning with the taxable year in which such plant (or unit thereof) was placed in service, and

(B) ending with the taxable year preceding the loss year.

(4) Product liability

The term ''product liability'' means—

(A) liability of the taxpayer for damages on account of physical injury or emotional harm to individuals, or damage to or loss of the use of property, on account of any defect in any product which is manufactured, leased, or sold by the taxpayer, but only if

(B) such injury, harm, or damage arises after the taxpayer has completed or terminated operations with respect to, and has relinquished possession of, such product.

(5) Coordination with subsection (b)(2)

For purposes of applying subsection (b)(2), a specified liability loss for any taxable year shall be treated as a separate net operating loss for such taxable year to be taken into account after the remaining portion of the net operating loss for such taxable year.

(6) Election

Any taxpayer entitled to a 10-year carryback under subsection (b)(1)(C) from any loss year may elect to have the carryback period with respect to such loss year determined without regard to subsection (b)(1)(C). Such election shall be made in such manner as may be prescribed by the Secretary and shall be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable year of the net operating loss. Such election, once made for any taxable year, shall be irrevocable for that taxable year.

(g) Rules relating to bad debt losses of commercial banks

For purposes of this section—

(1) Portion attributable to deduction for bad debts

The portion of the net operating loss for any taxable year which is attributable to the deduction allowed under section 166(a) shall be the excess of—

(i) the net operating loss for such taxable year, over

(ii) the net operating loss for such taxable year determined without regard to the amount allowed as a deduction under section 166(a) for such taxable year.

(2) Coordination with subsection (b)(2)

For purposes of subsection (b)(2), the portion of a net operating loss for any taxable year which is attributable to the deduction allowed under section 166(a) shall be treated in a manner similar to the manner in which a specified liability loss is treated.

(h) Corporate equity reduction interest losses

For purposes of this section—

(1) In general

The term ''corporate equity reduction interest loss'' means, with respect to any loss limitation year, the excess (if any) of—

(A) the net operating loss for such taxable year, over

(B) the net operating loss for such taxable year determined without regard to any allo-

cable interest deductions otherwise taken into account in computing such loss.

(2) Allocable interest deductions

(A) In general

The term ''allocable interest deductions'' means deductions allowed under this chapter for interest on the portion of any indebtedness allocable to a corporate equity reduction transaction.

(B) Method of allocation

Except as provided in regulations and subparagraph (E), indebtedness shall be allocated to a corporate equity reduction transaction in the manner prescribed under clause (ii) of section 263A(f)(2)(A) (without regard to clause (i) thereof).

(C) Allocable deductions not to exceed interest increases

Allocable interest deductions for any loss limitation year shall not exceed the excess (if any) of—

(i) the amount allowable as a deduction for interest paid or accrued by the taxpayer during the loss limitation year, over

(ii) the average of such amounts for the 3 taxable years preceding the taxable year in which the corporate equity reduction transaction occurred.

(D) De minimis rule

A taxpayer shall be treated as having no allocable interest deductions for any taxable year if the amount of such deductions (without regard to this subparagraph) is less than $1,000,000.

(E) Special rule for certain unforeseeable events

If an unforeseeable extraordinary adverse event occurs during a loss limitation year but after the corporate equity reduction transaction—

(i) indebtedness shall be allocated in the manner described in subparagraph (B) to unreimbursed costs paid or incurred in connection with such event before being allocated to the corporate equity reduction transaction, and

(ii) the amount determined under subparagraph (C)(i) shall be reduced by the amount of interest on indebtedness described in clause (i).

(F) Transition rule

If any of the 3 taxable years described in subparagraph (C)(ii) end on or before August 2, 1989, the taxpayer may substitute for the amount determined under such subparagraph an amount equal to the interest paid or accrued (determined on an annualized basis) during the taxpayer's taxable year which includes August 3, 1989, on indebtedness of the taxpayer outstanding on August 2, 1989.

(3) Corporate equity reduction transaction

(A) In general

The term ''corporate equity reduction transaction'' means—

(i) a major stock acquisition, or

(ii) an excess distribution.

(B) Major stock acquisition

(i) In general

The term ''major stock acquisition'' means the acquisition by a corporation pursuant to a plan of such corporation (or any group of persons acting in concert with such corporation) of stock in another corporation representing 50 percent or more (by vote or value) of the stock in such other corporation.

(ii) Exception

The term ''major stock acquisition'' does not include a qualified stock purchase (within the meaning of section 338) to which an election under section 338 applies.

(C) Excess distribution

The term ''excess distribution'' means the excess (if any) of—

(i) the aggregate distributions (including redemptions) made during a taxable year by a corporation with respect to its stock, over

(ii) the greater of—

(I) 150 percent of the average of such distributions during the 3 taxable years immediately preceding such taxable year, or

(II) 10 percent of the fair market value of the stock of such corporation as of the beginning of such taxable year.

(D) Rules for applying subparagraph (B)

For purposes of subparagraph (B)—

(i) Plans to acquire stock

All plans referred to in subparagraph (B) by any corporation (or group of persons acting in concert with such corporation) with respect to another corporation shall be treated as 1 plan.

(ii) Acquisitions during 24-month period

All acquisitions during any 24-month period shall be treated as pursuant to 1 plan.

(E) Rules for applying subparagraph (C)

For purposes of subparagraph (C)—

(i) Certain preferred stock disregarded

Stock described in section 1504(a)(4), and distributions (including redemptions) with respect to such stock, shall be disregarded.

(ii) Issuance of stock

The amounts determined under clauses (i) and (ii)(I) of subparagraph (C) shall be reduced by the aggregate amount of stock issued by the corporation during the applicable period in exchange for money or property other than stock in the corporation.

(4) Other rules

(A) Ordering rule

For purposes of paragraph (1), in determining the allocable interest deductions taken into account in computing the net operating loss for any taxable year, taxable income for such taxable year shall be treated as having

been computed by taking allocable interest deductions into account after all other deductions.

(B) Coordination with subsection (b)(2)

For purposes of subsection (b)(2)—

(i) a corporate equity reduction interest loss shall be treated in a manner similar to the manner in which a specified liability loss is treated, and

(ii) in determining the net operating loss deduction for any prior taxable year referred to in the 3rd sentence of subsection (b)(2), the portion of any net operating loss which may not be carried to such taxable year under subsection (b)(1)(E) shall not be taken into account.

(C) Members of affiliated groups

Except as provided by regulations, all members of an affiliated group filing a consolidated return under section 1501 shall be treated as 1 taxpayer for purposes of this subsection and subsection (b)(1)(E).

(5) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations—

(A) for applying this subsection to successor corporations and in cases where a taxpayer becomes, or ceases to be, a member of an affiliated group filing a consolidated return under section 1501,

(B) to prevent the avoidance of this subsection through related parties, pass-through entities, and intermediaries, and

(C) for applying this subsection where more than 1 corporation is involved in a corporate equity reduction transaction.

(i) Rules relating to farming losses

For purposes of this section—

(1) In general

The term ''farming loss'' means the lesser of—

(A) the amount which would be the net operating loss for the taxable year if only income and deductions attributable to farming businesses (as defined in section 263A(e)(4)) are taken into account, or

(B) the amount of the net operating loss for such taxable year.

Such term shall not include any qualified disaster loss (as defined in subsection (j)).

(2) Coordination with subsection (b)(2)

For purposes of applying subsection (b)(2), a farming loss for any taxable year shall be treated in a manner similar to the manner in which a specified liability loss is treated.

(3) Election

Any taxpayer entitled to a 5-year carryback under subsection (b)(1)(G) from any loss year may elect to have the carryback period with respect to such loss year determined without regard to subsection (b)(1)(G). Such election shall be made in such manner as may be prescribed by the Secretary and shall be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable year of the net operating loss. Such election, once made for any taxable year, shall be irrevocable for such taxable year.

(j) Rules relating to qualified disaster losses

For purposes of this section—

(1) In general

The term ''qualified disaster loss'' means the lesser of—

(A) the sum of—

(i) the losses allowable under section 165 for the taxable year—

(I) attributable to a federally declared disaster (as defined in section 165(h)(3)(C)(i)) occurring before January 1, 2010, and

(II) occurring in a disaster area (as defined in section 165(h)(3)(C)(ii)), and

(ii) the deduction for the taxable year for qualified disaster expenses which is allowable under section 198A(a) or which would be so allowable if not otherwise treated as an expense, or

(B) the net operating loss for such taxable year.

(2) Coordination with subsection (b)(2)

For purposes of applying subsection (b)(2), a qualified disaster loss for any taxable year shall be treated in a manner similar to the manner in which a specified liability loss is treated.

(3) Election

Any taxpayer entitled to a 5-year carryback under subsection (b)(1)(J) from any loss year may elect to have the carryback period with respect to such loss year determined without regard to subsection (b)(1)(J). Such election shall be made in such manner as may be prescribed by the Secretary and shall be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable year of the net operating loss. Such election, once made for any taxable year, shall be irrevocable for such taxable year.

(4) Exclusion

The term ''qualified disaster loss'' shall not include any loss with respect to any property described in section 1400N(p)(3).

(k) Cross references

(1) For treatment of net operating loss carryovers in certain corporate acquisitions, see section 381.

(2) For special limitation on net operating loss carryovers in case of a corporate change of ownership, see section 382.

(Aug. 16, 1954, ch. 736, 68A Stat. 63; Pub. L. 85–866, title I, §§14(a), (b), 64(b), title II, §203(a), (b), Sept. 2, 1958, 72 Stat. 1611, 1656, 1678; Pub. L. 87–710, §1, Sept. 27, 1962, 76 Stat. 648; Pub. L. 87–792, §7(f), Oct. 10, 1962, 76 Stat. 829; Pub. L. 87–794, title III, §317(b), Oct. 11, 1962, 76 Stat. 889; Pub. L. 88–272, title II, §§210(a), (b), 234(b)(5), Feb. 26, 1964, 78 Stat. 47, 48, 115; Pub. L. 90–225, §3(a), Dec. 27, 1967, 81 Stat. 732; Pub. L. 91–172, title IV, §431(b), Dec. 30, 1969, 83 Stat. 619; Pub. L. 91–677, §2(a)–(c), Jan. 12, 1971, 84 Stat. 2061; Pub. L. 94–455, title VIII, §806(a)–(c), title X,

§ 1052(c)(3), title XVI, § 1606(b), (c), title XIX, §§ 1901(a)(29), 1906(b)(13)(A), title XXI, § 2126, Oct. 4, 1976, 90 Stat. 1598, 1648, 1755, 1756, 1769, 1834, 1920; Pub. L. 95–30, title I, § 102(b)(2), May 23, 1977, 91 Stat. 137; Pub. L. 95–600, title III, § 371(a), (b), title VI, § 601(b)(1), title VII, §§ 701(d)(1), 703(p)(1), Nov. 6, 1978, 92 Stat. 2859, 2896, 2900, 2943; Pub. L. 96–222, title I, §§ 103(a)(15), 106(a)(1), (6), (7), Apr. 1, 1980, 94 Stat. 214, 221; Pub. L. 96–595, § 1(a), Dec. 24, 1980, 94 Stat. 3464; Pub. L. 97–34, title II, § 207(a), Aug. 13, 1981, 95 Stat. 225; Pub. L. 97–354, § 5(a)(22), Oct. 19, 1982, 96 Stat. 1694; Pub. L. 97–362, title I, § 102(a)–(c), Oct. 25, 1982, 96 Stat. 1727, 1728; Pub. L. 98–369, div. A, title I, §§ 91(d), 177(c), title IV, § 491(d)(5), title VII, § 722(a)(4), July 18, 1984, 98 Stat. 606, 710, 849, 973; Pub. L. 99–514, title I, § 104(b)(4), title III, § 301(b)(3), title IX, §§ 901(d)(4)(B), 903(a), (b), title XIII, § 1303(b)(1), (2), title XVIII, § 1899A(6), Oct. 22, 1986, 100 Stat. 2105, 2217, 2380, 2383, 2658, 2958; Pub. L. 100–647, title I, §§ 1003(a)(1), 1009(c), Nov. 10, 1988, 102 Stat. 3382, 3449; Pub. L. 101–239, title VII, § 7211(a), (b), Dec. 19, 1989, 103 Stat. 2342, 2343; Pub. L. 101–508, title XI, §§ 11324(a), 11701(d), 11704(a)(2), 11811(a)–(b)(2)(A), (3), (4), Nov. 5, 1990, 104 Stat. 1388–465, 1388–507, 1388–518, 1388–530, 1388–532 to 1388–534; Pub. L. 103–66, title XIII, § 13113(d)(1), Aug. 10, 1993, 107 Stat. 429; Pub. L. 104–188, title I, §§ 1702(h)(2), (16), 1704(t)(5), (30), Aug. 20, 1996, 110 Stat. 1873, 1874, 1887, 1889; Pub. L. 105–34, title X, § 1082(a), (b), Aug. 5, 1997, 111 Stat. 950; Pub. L. 105–277, div. J, title II, § 2013(a)–(c), title III, § 3004(a), title IV, §§ 4003(h), 4004(a), Oct. 21, 1998, 112 Stat. 2681–902, 2681–905, 2681–910; Pub. L. 107–147, title I, § 102(a), (b), title IV, § 417(8), Mar. 9, 2002, 116 Stat. 25, 56; Pub. L. 108–311, title IV, § 403(b)(1), Oct. 4, 2004, 118 Stat. 1187; Pub. L. 109–58, title XIII, § 1311, Aug. 8, 2005, 119 Stat. 1009; Pub. L. 109–135, title IV, §§ 402(f), 403(a)(17), Dec. 21, 2005, 119 Stat. 2611, 2619; Pub. L. 110–343, div. C, title VII, §§ 706(a)(2)(D)(v), (vi), 708(a), (b), (d), Oct. 3, 2008, 122 Stat. 3922, 3924, 3925; Pub. L. 111–5, div. B, title I, § 1211(a), (b), Feb. 17, 2009, 123 Stat. 335, 336; Pub. L. 111–92, § 13(a), Nov. 6, 2009, 123 Stat. 2992.)

REFERENCES IN TEXT

The date of the enactment of the Worker, Homeownership, and Business Assistance Act of 2009, referred to in subsec. (b)(1)(H)(iv)(III), (v)(I), is the date of enactment of Pub. L. 111–92, which was approved Nov. 6, 2009.

The date of the enactment of the Energy Tax Incentives Act of 2005, referred to in subsec. (b)(1)(I)(v)(II), is the date of enactment of title XIII of Pub. L. 109–58, which was approved Aug. 8, 2005.

AMENDMENTS

2009—Subsec. (b)(1)(H). Pub. L. 111–92 amended subpar. (H) generally. Prior to amendment, subpar. (H) provided for carryback for 2008 net operating losses of small businesses.

Pub. L. 111–5, § 1211(a), amended subpar. (H) generally. Prior to amendment, subpar. (H) read as follows: ''In the case of a net operating loss for any taxable year ending during 2001 or 2002, subparagraph (A)(i) shall be applied by substituting '5' for '2' and subparagraph (F) shall not apply.''

Subsecs. (k), (*l*). Pub. L. 111–5, § 1211(b), redesignated subsec. (*l*) as (k) and struck out former subsec. (k). Prior to amendment, text read as follows: ''Any taxpayer entitled to a 5-year carryback under subsection (b)(1)(H) from any loss year may elect to have the carryback period with respect to such loss year determined without regard to subsection (b)(1)(H). Such election shall be made in such manner as may be prescribed by the Secretary and shall be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable year of the net operating loss. Such election, once made for any taxable year, shall be irrevocable for such taxable year.''

2008—Subsec. (b)(1)(F)(ii). Pub. L. 110–343, § 708(d)(1), inserted ''or qualified disaster loss (as defined in subsection (j))'' before period at end of concluding provisions.

Subsec. (b)(1)(F)(ii)(II). Pub. L. 110–343, § 706(a)(2)(D)(v), substituted ''federally declared disasters (as defined by subsection (h)(3)(C)(i))'' for ''Presidentially declared disasters (as defined in section 1033(h)(3))''.

Subsec. (b)(1)(F)(ii)(III). Pub. L. 110–343, § 706(a)(2)(D)(vi), substituted ''federally declared disasters'' for ''Presidentially declared disasters''.

Subsec. (b)(1)(J). Pub. L. 110–343, § 708(a), added subpar. (J).

Subsec. (i)(1). Pub. L. 110–343, § 708(d)(2), inserted concluding provisions.

Subsecs. (j) to (*l*). Pub. L. 110–343, § 708(b), added subsec. (j) and redesignated former subsecs. (j) and (k) as (k) and (*l*), respectively.

2005—Subsec. (b)(1)(I). Pub. L. 109–58 added subpar. (I).

Subsec. (b)(1)(I)(i). Pub. L. 109–135, § 402(f)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''At the election of the taxpayer in any taxable year ending after December 31, 2005, and before January 1, 2009, in the case of a net operating loss in a taxable year ending after December 31, 2002, and before January 1, 2006, there shall be a net operating loss carryback to each of the 5 years preceding the taxable year of such loss to the extent that such loss does not exceed 20 percent of the sum of electric transmission property capital expenditures and pollution control facility capital expenditures of the taxpayer for the taxable year preceding the taxable year in which such election is made.''

Subsec. (b)(1)(I)(ii)(I). Pub. L. 109–135, § 402(f)(2), substituted ''for a taxable year'' for ''in a taxable year''.

Subsec. (b)(1)(I)(iv) to (vi). Pub. L. 109–135, § 402(f)(3), added cl. (iv), redesignated cl. (vi) as (v), and struck out former cls. (iv) and (v) which read as follows:

''(iv) APPLICATION FOR ADJUSTMENT.—In the case of any portion of a net operating loss to which an election under clause (i) applies, an application under section 6411(a) with respect to such loss shall not fail to be treated as timely filed if filed within 24 months after the due date specified under such section.

''(v) SPECIAL RULES RELATING TO REFUND.—For purposes of a net operating loss to which an election under clause (i) applies, references in sections 6501(h), 6511(d)(2)(A), and 6611(f)(1) to the taxable year in which such net operating loss arises or result in a net loss carryback shall be treated as references to the taxable year in which such election occurs.''

Subsec. (d)(7). Pub. L. 109–135, § 403(a)(17), added par. (7).

2004—Subsec. (b)(1)(H). Pub. L. 108–311 struck out ''a taxpayer which has'' after ''In the case of''.

2002—Subsec. (b)(1)(F)(i). Pub. L. 107–147, § 417(8), substituted ''3 taxable years'' for ''3 years'' and ''2 taxable years'' for '2 years''.

Subsec. (b)(1)(H). Pub. L. 107–147, § 102(a), added subpar. (H).

Subsecs. (j), (k). Pub. L. 107–147, § 102(b), added subsec. (j) and redesignated former subsec. (j) as (k).

1998—Subsec. (b)(1)(F)(ii). Pub. L. 105–277, § 2013(c), inserted concluding provisions.

Subsec. (b)(1)(F)(iv). Pub. L. 105–277, § 4003(h), added cl. (iv).

Subsec. (b)(1)(G). Pub. L. 105–277, § 2013(a), added subpar. (G).

Subsec. (d)(4)(C). Pub. L. 105–277, § 4004(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''any deduction allowable under section 165(c)(3) (relating to casualty losses) shall not be taken into account; and''.

Subsec. (f)(1)(B). Pub. L. 105–277, § 3004(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Any amount (not described in subparagraph (A)) allowable as a deduction under this chapter with respect to a liability which arises under a Federal or State law or out of any tort of the taxpayer if—

''(i) in the case of a liability arising out of a Federal or State law, the act (or failure to act) giving rise to such liability occurs at least 3 years before the beginning of the taxable year, or

''(ii) in the case of a liability arising out of a tort, such liability arises out of a series of actions (or failures to act) over an extended period of time a substantial portion of which occurs at least 3 years before the beginning of the taxable year.

A liability shall not be taken into account under subparagraph (B) unless the taxpayer used an accrual method of accounting throughout the period or periods during which the acts or failures to act giving rise to such liability occurred.''

Subsecs. (i), (j). Pub. L. 105–277, § 2013(b), added subsec. (i) and redesignated former subsec. (i) as (j).

1997—Subsec. (b)(1)(A)(i). Pub. L. 105–34, § 1082(a)(1), substituted ''2'' for ''3''.

Subsec. (b)(1)(A)(ii). Pub. L. 105–34, § 1082(a)(2), substituted ''20'' for ''15''.

Subsec. (b)(1)(F). Pub. L. 105–34, § 1082(b), added subpar. (F).

1996—Subsec. (b)(1)(E)(ii). Pub. L. 104–188, § 1702(h)(2), substituted ''subsection (h)'' for ''subsection (m)''.

Subsec. (h)(3)(B)(i). Pub. L. 104–188, § 1704(t)(5), substituted ''corporation.'' for ''corporation,'' at end.

Subsec. (h)(4)(B). Pub. L. 104–188, § 1704(t)(30), substituted ''For purposes of subsection (b)(2)—'' for ''For purposes of subsection (b)(2)'' in introductory provisions.

Subsec. (h)(4)(C). Pub. L. 104–188, § 1702(h)(16), substituted ''(b)(1)(E)'' for ''(b)(1)(M)''.

1993—Subsec. (d)(2). Pub. L. 103–66, § 13113(d)(1)(A), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''In the case of a taxpayer other than a corporation, the amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includible on account of gains from sales or exchanges of capital assets.''

Subsec. (d)(4)(B). Pub. L. 103–66, § 13113(d)(1)(B), which directed the insertion of '', (2)(B),'' after ''paragraph (1)'', was executed by making the insertion after ''paragraphs (1)'' to reflect the probable intent of Congress.

1990—Subsec. (b). Pub. L. 101–508, § 11811(a), amended subsec. (b) generally, substituting present provisions for provisions delineating years to which loss may be carried, relating to amount of carrybacks and carryovers, and providing for special rules for foreign expropriation losses.

Subsec. (b)(1)(M)(iii). Pub. L. 101–508, § 11701(d), struck out ''a C corporation'' after ''means'' in introductory provisions, substituted ''a C corporation which acquires'' for ''which acquires'' in subcl. (I), ''a C corporation'' for ''a corporation'' in subcl. (II), and ''any C corporation which is a successor'' for ''any successor corporation'' in subcl. (III).

Subsec. (f). Pub. L. 101–508, § 11811(b)(1), (2)(A), redesignated subsec. (j) as (f), substituted heading for one which read: ''Rules relating to product liability losses'', and amended text generally, substituting present provisions for provisions defining terms ''product liability loss'' and ''product liability'', and providing for an election with respect to carrybacks of such losses.

Subsec. (g). Pub. L. 101–508, § 11811(b)(1), redesignated subsec. (*l*) as (g) and struck out former subsec. (g) which related to carryover of net operating losses for certain regulated transportation corporations.

Subsec. (g)(2). Pub. L. 101–508, § 11811(b)(3), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''In applying paragraph (2) of subsection (b), the portion of the net operating loss for any taxable year which is attributable to the deduction allowed under section 166(a) shall be treated in a manner similar to the manner in which a foreign expropriation loss is treated.''

Subsec. (h). Pub. L. 101–508, § 11811(b)(1), redesignated subsec. (m) as (h) and struck out former subsec. (h) which defined ''foreign expropriation loss''.

Subsec. (h)(3)(B)(ii). Pub. L. 101–508, § 11324(a), in par. (3)(B)(ii), formerly subsec. (m)(3)(B)(ii), substituted heading for one which read: ''Exceptions'' and amended text generally. Prior to amendment, text read as follows: ''The term 'major stock acquisition' shall not include—

''(I) a qualified stock purchase (within the meaning of section 338) to which an election under section 338 applies, or

''(II) except as provided in regulations, an acquisition in which a corporation acquires stock of another corporation which, immediately before the acquisition, was a member of an affiliated group (within the meaning of section 1504(a)) other than the common parent of such group.''

Subsec. (h)(4)(B). Pub. L. 101–508, § 11811(b)(4), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''In applying paragraph (2) of subsection (b), the corporate equity reduction interest loss shall be treated in a manner similar to the manner in which a foreign expropriation loss is treated.''

Pub. L. 101–508, § 11704(a)(2), substituted ''subsection (b)(2)'' for ''subsection (B)(2)'' in heading.

Subsec. (i). Pub. L. 101–508, § 11811(b)(1), redesignated subsec. (n) as (i) and struck out former subsec. (i) which provided for rules relating to mortgage disposition losses of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

Subsec. (j). Pub. L. 101–508, § 11811(b)(1), redesignated subsec. (j) as (f).

Subsec. (k). Pub. L. 101–508, § 11811(b)(1), struck out subsec. (k) which related to definitions and special rules relating to deferred statutory or tort liability losses.

Subsecs. (*l*) to (n). Pub. L. 101–508, § 11811(b)(1), redesignated subsecs. (*l*) to (n) as (g) to (i), respectively.

1989—Subsec. (b)(1)(M). Pub. L. 101–239, § 7211(a), added subpar. (M).

Subsecs. (m), (n). Pub. L. 101–239, § 7211(b), added subsec. (m) and redesignated former subsec. (m) as (n).

1988—Subsec. (b)(1)(A). Pub. L. 100–647, § 1009(c)(2), substituted ''Except as otherwise provided in this paragraph, a net operating loss'' for ''Except as provided in subparagraphs (D), (E), (F), (G), (H), (I), (J), (K), (L), and (M), a net operating loss''.

Subsec. (b)(1)(B). Pub. L. 100–647, § 1009(c)(3), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Except as provided in subparagraphs (C), (D), and (E), a net operating loss for any taxable year ending after December 31, 1955, shall be a net operating loss carryover to each of the 5 taxable years following the taxable year of such loss. Except as provided in subparagraphs (C), (D), (E), (F), (G), (H), (J), (L), and (M), a net operating loss for any taxable year ending after December 31, 1975, shall be a net operating loss carryover to each of the 15 taxable years following the taxable year of such loss.''

Subsec. (b)(1)(K) to (M). Pub. L. 100–647, § 1009(c)(1), redesignated subpars. (L) and (M) as (K) and (L), respectively.

Subsec. (d)(4)(B). Pub. L. 100–647, § 1003(a)(1), substituted ''paragraphs (1) and (3)'' for ''paragraphs (1), (2)(B), and (3)''.

1986—Subsec. (b)(1)(A), (B). Pub. L. 99–514, § 903(b)(2)(A), (B), inserted reference to subpars. (L) and (M).

Subsec. (b)(1)(F). Pub. L. 99–514, § 903(a)(1), inserted ''and before January 1, 1987,''.

Pub. L. 99–514, § 901(d)(4)(B), substituted ''referred to in section 582(c)(5)'' for ''to which section 585, 586, or 593 applies''.

Subsec. (b)(1)(G). Pub. L. 99–514, § 903(a)(2), inserted ''and before January 1, 1987,''.

Subsec. (b)(1)(H). Pub. L. 99–514, § 903(a)(3)(A), struck out ''after December 31, 1981,'' and inserted ''after December 31, 1981, and before January 1, 1987,''.

Pub. L. 99–514, § 903(a)(3)(B), which directed that subpar. (H) be amended by striking out ''after December 31, 1984,'' and inserting ''after December 31, 1984, and before January 1, 1987,'', was executed by striking out ''after December 31, 1984'' and inserting ''after December 31, 1984, and before January 1, 1987'', to reflect the probable intent of Congress and the fact that no comma appeared after ''1984'' and was not necessary after ''1987''.

Subsec. (b)(1)(J), (K). Pub. L. 99–514, § 1303(b)(1), redesignated subpar. (K) as (J) and struck out former subpar. (J) which read as follows: ''In the case of an electing GSOC which has a net operating loss for any taxable year such loss shall not be a net operating loss carryback to any taxable year preceding the year of such loss, but shall be a net operating loss carryover to each of the 10 taxable years following the year of such loss.''

Subsec. (b)(1)(L), (M). Pub. L. 99–514, § 903(b)(1), added subpars. (L) and (M).

Subsec. (d)(2). Pub. L. 99–514, § 301(b)(3), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''In the case of a taxpayer other than a corporation—

''(A) the amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includible on account of gains from sales or exchanges of capital assets; and

''(B) the deduction for long-term capital gains provided by section 1202 shall not be allowed.''

Subsec. (d)(6). Pub. L. 99–514, § 1899A(6), added heading.

Subsec. (d)(7). Pub. L. 99–514, § 104(b)(4), struck out par. (7), zero bracket amount, which read as follows: ''In the case of a taxpayer other than a corporation, the zero bracket amount shall be treated as a deduction allowed by this chapter. For purposes of subsection (c)—

''(A) the deduction provided by the preceding sentence shall be in lieu of any itemized deductions of the taxpayer, and

''(B) such sentence shall not apply to an individual who elects to itemize deductions.''

Subsec. (k)(2), (4). Pub. L. 99–514, § 1303(b)(2), substituted ''subsection (b)(1)(J)'' for ''subsection (b)(1)(K)''.

Subsecs. (*l*), (m). Pub. L. 99–514, § 903(b)(2)(C), added subsec. (*l*) and redesignated former subsec. (*l*) as (m).

1984—Subsec. (b)(1)(A). Pub. L. 98–369, § 91(d)(3)(A), substituted ''(J), and (K)'' for ''and (J)''.

Subsec. (b)(1)(H). Pub. L. 98–369, § 177(c)(1)(A), inserted '', or a net operating loss of the Federal Home Loan Mortgage Corporation for any taxable year beginning after December 31, 1984'' in introductory provisions.

Subsec. (b)(1)(H)(i), (ii). Pub. L. 98–369, § 177(c)(1)(B), (C), struck out ''FNMA'' before ''mortgage disposition loss''.

Subsec. (b)(1)(K). Pub. L. 98–369, § 91(d)(1), added subpar. (K).

Subsec. (b)(2)(A). Pub. L. 98–369, § 722(a)(4)(A), substituted ''and (5)'' for ''and (6)''.

Subsec. (d)(4)(D). Pub. L. 98–369, § 491(d)(5), struck out ''or section 405(c)'' after ''section 404''.

Subsec. (d)(6) to (8). Pub. L. 98–369, § 722(a)(4)(B), redesignated pars. (7) and (8) as (6) and (7), respectively.

Subsec. (h). Pub. L. 98–369, § 91(d)(3)(B), substituted ''this section'' for ''subsection (b)'' in introductory provisions.

Subsec. (i). Pub. L. 98–369, § 177(c)(2), substituted ''Mortgage disposition loss of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation'' for ''FNMA mortgage disposition loss'' in heading and struck out ''FNMA'' before ''mortgage disposition loss'' wherever appearing in text.

Subsec. (j). Pub. L. 98–369, § 91(d)(3)(B), substituted ''this section'' for ''subsection (b)'' in introductory provisions.

Subsecs. (k), (*l*). Pub. L. 98–369, § 91(d)(2), added subsec. (k) and redesignated former subsec. (k) as (*l*).

1982—Subsec. (b)(1)(A). Pub. L. 97–362, § 102(c)(1), substituted ''(H), (I), and (J)'' for ''(H), and (I)''.

Subsec. (b)(1)(B). Pub. L. 97–362, § 102(c)(2), substituted ''(H), and (J)'' for ''and (I)''.

Subsec. (b)(1)(H). Pub. L. 97–362, § 102(a), added subpar. (H). Former subpar. (H) redesignated (I).

Subsec. (b)(1)(I). Pub. L. 97–362, § 102(a), (c)(3), redesignated former subpar. (H) as (I) and substituted ''subsection (j)'' for ''subsection (i)''. Former subpar. (I) redesignated (J).

Subsec. (b)(1)(J). Pub. L. 97–362, § 102(a), redesignated former subpar. (I) as (J).

Subsec. (f). Pub. L. 97–354 struck out subsec. (f) relating to net operating loss of electing small business corporation.

Subsec. (i). Pub. L. 97–362, § 102(b), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 97–362, § 102(b), (c)(4), redesignated former subsec. (i) as (j) and, in par. (3) of subsec. (j) as so redesignated, substituted ''subsection (b)(1)(I)'' for ''subsection (b)(1)(H)'' wherever appearing. Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 97–362, § 102(b), redesignated former subsec. (j) as (k).

1981—Subsec. (b)(1)(B). Pub. L. 97–34, § 207(a)(1), substituted ''15 taxable years'' for ''7 taxable years''.

Subsec. (b)(1)(C). Pub. L. 97–34, § 207(a)(2)(A), substituted ''ending after December 31, 1955, and before January 1, 1976, shall'' for ''ending after December 31, 1955, shall'' and struck out provision that, for any taxable year ending after Dec. 31, 1975, the preceding sentence was to be applied by substituting ''9 taxable years'' for ''7 taxable years''.

Subsec. (b)(1)(E)(i)(II). Pub. L. 97–34, § 207(a)(2)(B)(i), substituted ''15'' for ''8''.

Subsec. (b)(1)(E)(ii). Pub. L. 97–34, § 207(a)(2)(B)(ii), struck out designation subclause ''(I)'' for provisions prohibiting a loss carryback to any taxable year which is a REIT year and struck out provision formerly designated as subclause (II) directing that the number of taxable years to which a loss could be a net operating loss carryover under subparagraph (B) be increased (to a number not greater than 8) by the number of taxable years to which such loss could not be a net operating loss carryback by reason of subclause (I).

Subsec. (g)(3)(C). Pub. L. 97–34, § 207(a)(2)(C), struck out subpar. (C) which provided that, in the case of a net operating loss carryover from a loss year ending after Dec. 31, 1975, subpars. (A) and (B) were to be applied by substituting ''8th taxable year'' for ''6th taxable year'' and ''9th taxable year'' for ''7th taxable year''.

1980—Subsec. (b)(1)(A). Pub. L. 96–222, § 106(a)(6), substituted '', (H), and (I)'' for ''and (H)''.

Pub. L. 96–222, § 103(a)(15), amended directory language of Pub. L. 95–600, § 371(a)(2), to correct an error, and did not involve any change in text. See 1978 Amendment note for subsec. (b)(1)(A) below.

Subsec. (b)(1)(B). Pub. L. 96–222, § 106(a)(7), substituted ''(G), and (I)'' for ''and (G)''.

Subsec. (b)(1)(E). Pub. L. 96–595 generally revised subpar. (E) to permit a trust which was formerly a real estate investment trust an additional year of carryforward of net operating losses for each year it was denied a net operating loss carryback because of its status as a real estate investment trust, and removed the restriction that a net operating loss incurred before 1976 can be carried forward to the 6th, 7th, or 8th year only if it qualified as a real estate investment trust for all years from the loss year through the carryover year.

Subsec. (b)(1)(I). Pub. L. 96–222, § 106(a)(1), redesignated former subpar. (H), added by section 601(b) of Pub. L. 95–600 relating to an electing GSOC, as (I).

1978—Subsec. (b)(1)(A). Pub. L. 95–600, § 371(a)(2), as amended by Pub. L. 96–222, § 103(a)(15), substituted ''(G), and (H)'' for ''and (G)''.

Pub. L. 95–600, § 703(p)(1)(A), struck out provisions relating to net operating loss carryback with respect to a taxable year ending on or after Dec. 31, 1962, for which a certification has been issued under section 317 of the Trade Expansion Act of 1962.

Subsec. (b)(1)(B). Pub. L. 95–600, § 701(d)(1), inserted reference to subpar. (G).

Subsec. (b)(1)(H). Pub. L. 95–600, § 371(a)(1), added subpar. (H) relating to product liability losses.

Pub. L. 95–600, § 601(b)(1), added subpar. (H) relating to an electing GSOC.

Subsec. (b)(3)(A). Pub. L. 95–600, § 703(p)(1)(B), redesignated subpar. (C) as (A). Former subpar. (A), which related to conditions for application of paragraph (1)(A)(ii), was struck out.

Subsec. (b)(3)(B). Pub. L. 95–600, § 703(p)(1)(B), (C), redesignated subpar. (D) as (B) and substituted ''subparagraph (A)(iii)'' for ''subparagraph (C)(iii)''. Former subpar. (B), which related to the applicability of paragraph (1)(A)(ii) to partnerships and electing small business corporations, was struck out.

Subsec. (b)(3)(C). Pub. L. 95–600, § 703(p)(1)(B), redesignated subpar. (E) as (C). Former subpar. (C) redesignated (A).

Subsec. (b)(3)(D), (E). Pub. L. 95–600, § 703(p)(1)(B), redesignated subpars. (D) and (E) as (B) and (C), respectively.

Subsecs. (i), (j). Pub. L. 95–600, § 371(b), added subsec. (i) and redesignated former subsec. (i) as (j).

1977—Subsec. (d)(8). Pub. L. 95–30 added par. (8).

1976—Subsec. (b)(1)(B). Pub. L. 94–455, § 806(a), inserted ''Except as provided in subparagraphs (C), (D), (E), and (F), a net operating loss for any taxable year ending after December 31, 1975, shall be a net operating loss carryover to each of the 7 taxable years following the taxable year of such loss'' after ''year of such loss''.

Subsec. (b)(1)(C). Pub. L. 94–455, §§ 806(b)(1), 1901(a)(29)(C)(ii), inserted ''For any taxable year ending after December 31, 1975, the preceding sentence shall be applied by substituting '9 taxable years' for '7 taxable years'' after ''year of such loss'', substituted ''subsection (g)(1)'' for ''subsection (j)(1)'' after ''as defined in'' and ''subsection (g)'' for ''subsection (j)'' after ''as provided in''.

Subsec. (b)(1)(D). Pub. L. 94–455, §§ 1901(a)(29)(C)(iii), 2126, substituted ''subsection (h)'' for ''subsection (k)'' after ''as defined in'' and ''20'' for ''15'' after ''expropriation loss, to each of the''.

Subsec. (b)(1)(E). Pub. L. 94–455, § 1606(b), added subpar. (E).

Subsec. (b)(2). Pub. L. 94–455, § 1901(a)(29)(C)(iv), substituted ''subsection (g)'' for ''subsections (i) and (j)'' after ''provided in''.

Subsec. (b)(3). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (b)(3)(A)(i), (ii). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' in two places after ''Secretary''.

Subsec. (b)(3)(C)(i). Pub. L. 94–455, § 1901(a)(29)(C)(iii), substituted ''subsection (h)'' for ''subsection (k)'' after ''as defined in''.

Subsec. (b)(3)(C)(ii), (iii). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''Or his delegate'' in two places after ''Secretary''.

Subsec. (b)(3)(E). Pub. L. 94–455, §§ 806(c), 1901(a)(29)(A)(ii), added subpar. (E). Former subpar. (E), which related to applicability of special rules in computing taxpayer's net operating loss deduction, was struck out.

Subsec. (b)(3)(F). Pub. L. 94–455, § 1901(a)(29)(A)(ii), struck out subpar. (F) which defined ''class of products'' and provided for the use of information compiled or published by Secretary of Commerce or manufacturers as prima facie evidence of the total number of units of such class of products manufactured and produced in the United States in a calendar year.

Subsec. (c). Pub. L. 94–455, § 1901(a)(29)(B), struck out ''(for any taxable year ending after December 31, 1953)'' after ''means''.

Subsec. (d)(5), (6). Pub. L. 94–455, § 1052(c)(3), struck out par. (5) relating to special deductions for corporations concerning partially tax-exempt interest and Western Hemisphere corporations, and redesignated par. (6) as (5).

Subsec. (d)(7). Pub. L. 94–455, § 1606(c), added par. (7).

Subsec. (e). Pub. L. 94–455, § 1901(a)(29)(D), struck out ''The preceding sentence shall apply with respect to all taxable years, whether they begin before, on, or after January 1, 1954'' after ''applicable to such other taxable year''.

Subsec. (f). Pub. L. 94–455, § 1901(a)(29)(C)(i), redesignated subsec. (h) as (f). Former subsec. (f), relating to net operating loss deduction for taxable years beginning in 1953 and ending in 1954, was struck out.

Subsec. (g). Pub. L. 94–455, § 1901(a)(29)(C)(i), redesignated subsec. (j) as (g). Former subsec. (g), relating to special transitional rules to be applied to net operating loss deductions, was struck out.

Subsec. (g)(3)(C). Pub. L. 94–455, § 806(b)(2), added subpar. (C).

Subsec. (g)(4). Pub. L. 94–455, § 1901(a)(29)(E), struck out par. (4) relating to carryover of net operating loss for certain regulated transportation corporations for taxable years beginning in 1955 and ending in 1956.

Subsec. (h). Pub. L. 94–455, § 1901(a)(29)(C)(i), redesignated subsec. (k) as (h). Former subsec. (h) redesignated (f).

Subsec. (i). Pub. L. 94–455, § 1901(a)(29)(C)(i), redesignated subsec. (*l*) as (i). Former subsec. (i), relating to carryback of net operating loss for taxable years beginning in 1957 and ending in 1958, was struck out.

Subsecs. (j) to (*l*). Pub. L. 94–455, § 1901(a)(29)(C)(i), redesignated subsecs. (j) to (*l*) as (g) to (i), respectively.

1971—Subsec. (b)(1)(D). Pub. L. 91–677, § 2(a), inserted ''(or, with respect to that portion of the net operating loss for such year attributable to a Cuban expropriation loss, to each of the 15 taxable years following the taxable year of such loss)'' after ''the 10 taxable years following the taxable year of such loss''.

Subsec. (b)(2). Pub. L. 91–677, § 2(b), inserted provisions relating to treatment of Cuban expropriation losses.

Subsec. (k)(3). Pub. L. 91–677, § 2(c), added par. (3).

1969—Subsec. (b)(1). Pub. L. 91–172 substituted ''(E), (F), and (G)'', for ''and (E)'' in subpar. (A)(i) and added subpars. (F) and (G).

1967—Subsec. (b)(1). Pub. L. 90–225, § 3(a)(1)–(3), inserted reference to subpar. (E) in subpars. (A)(i) and (B), and added subpar. (E).

Subsec. (b)(3)(E), (F). Pub. L. 90–225, § 3(a)(4), added subpars. (E) and (F).

1964—Subsec. (b). Pub. L. 88–272, § 210(a)(1)–(4), (b), inserted subpar. (D) in par. (1), references to such subpar. (D) in par. (1)(A)(i) and (1)(B), subpars. (C) and (D) in par. (3), provided that the net operating loss deduction in par. (2)(B) be determined without regard to that portion of a net operating loss due to a foreign expropriation loss, if such portion may not, under par. (1)(D), be carried back to such prior taxable year, and that if a portion of the net operating loss is attributable to foreign expropriation to which par. (1)(D) applied, such portion shall be considered a separate loss for such year to be applied after the other portion of such net operating loss.

Subsec. (j)(1), (2), Pub. L. 88–272, § 234(b)(5), substituted references to section 7701(a)(33) for references to section 1503(c)(1) or (2), wherever appearing.

Subsecs. (k), (*l*). Pub. L. 88–272, § 210(a)(5), added subsec. (k) and redesignated former subsec. (k) as (*l*).

1962—Subsec. (b)(1). Pub. L. 87–794 designated existing provisions as cl. (A)(i) and struck out provisions therefrom which authorized a net operating loss for any taxable year ending after Dec. 31, 1957, to be a net operating loss carryover to each of the 5 taxable years following the taxable year of such loss, and added cls. (A)(ii), (B), and (C).

Subsec. (b)(2). Pub. L. 87–794 inserted reference to subsection (j), and substituted ''shall be carried to the earliest of the taxable years to which (by reason of paragraph (1))'' for ''shall be carried to the earliest of the 8 taxable years to which (by reason of subparagraphs (A) and (B) of paragraph (1))'', and ''each of the other taxable years'' for ''each of the other 7 taxable years''.

Subsec. (b)(3). Pub. L. 87–794 added par. (3).

Pub. L. 87–710, § 1(a), authorized a carryover of a net operating loss for any taxable year ending after Dec. 31, 1955, to each of the 5 taxable years following the taxable year of loss, or when such loss occurs in the case of regulated transportation corporation, except as pro-

vided in subsec. (j), then to each of the 7 taxable years following the taxable year of loss, and struck out provisions authorizing a net operating loss for any taxable years ending Dec. 31, 1957, to be carried over to each of the 5 taxable years following the taxable year of such loss, in par. (1), and inserted reference to subsec. (j) in par. (2).

Subsec. (d)(4)(D). Pub. L. 87–792 added subpar. (D).

Subsecs. (j), (k). Pub. L. 87–710, §1(b), added subsec. (j) and redesignated former subsec. (j) as (k).

1958—Subsec. (b). Pub. L. 85–866, §203(a), substituted ''1957'' for ''1953'', and ''3'' for ''2'' in par. (1), and substituted ''subsection (i)'' for ''subsection (f)'', ''8'' for ''7'', and ''7'' for ''6'' in par. (2).

Subsecs. (f)(3), (4). Pub. L. 85–866, §14(a), added pars. (3) and (4).

Subsec. (g)(3), (4). Pub. L. 85–866, §14(b), added par. (3) and redesignated former par. (3) as (4).

Subsecs. (h) to (j). Pub. L. 85–866, §§64(b), 203(b), added subsecs. (h) and (i) and redesignated former subsec. (h) as (j).

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–92 applicable to net operating losses arising in taxable years ending after Dec. 31, 2007, with transition provisions and exception for TARP recipients, see section 13(e), (f) of Pub. L. 111–92, set out as a note under section 56 of this title.

Pub. L. 111–5, div. B, title I, §1211(d), Feb. 17, 2009, 123 Stat. 336, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section] shall apply to net operating losses arising in taxable years ending after December 31, 2007.

''(2) TRANSITIONAL RULE.—In the case of a net operating loss for a taxable year ending before the date of the enactment of this Act [Feb. 17, 2009]—

''(A) any election made under section 172(b)(3) of the Internal Revenue Code of 1986 with respect to such loss may (notwithstanding such section) be revoked before the applicable date,

''(B) any election made under section 172(b)(1)(H) of such Code with respect to such loss shall (notwithstanding such section) be treated as timely made if made before the applicable date, and

''(C) any application under section 6411(a) of such Code with respect to such loss shall be treated as timely filed if filed before the applicable date.

For purposes of this paragraph, the term 'applicable date' means the date which is 60 days after the date of the enactment of this Act [Feb. 17, 2009].''

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 706(a)(2)(D)(v), (vi) of Pub. L. 110–343 applicable to disasters declared in taxable years beginning after Dec. 31, 2007, see section 706(d)(1) of Pub. L. 110–343, set out as a note under section 56 of this title.

Amendment by section 708(a), (b), (d) of Pub. L. 110–343 applicable to losses arising in taxable years beginning after Dec. 31, 2007, in connection with disasters declared after such date, see section 708(e) of Pub. L. 110–343, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by 402(f) of Pub. L. 109–135 effective as if included in the provision of the Energy Policy Act of 2005, Pub. L. 109–58, to which such amendment relates, see section 402(m)(1) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 36C of this title.

Amendment by section 403(a)(17) of Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 effective as if included in the provisions of the Job Creation and Worker Assistance Act of 2002, Pub. L. 107–147, to which such amendment relates, see section 403(f) of Pub. L. 108–311, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title I, §102(d), Mar. 9, 2002, 116 Stat. 26, provided that: ''Except as provided in subsection (c) [amending section 56 of this title and enacting provisions set out as a note under section 56 of this title], the amendments made by this section [amending this section and section 56 of this title] shall apply to net operating losses for taxable years ending after December 31, 2000.''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. J, title II, §2013(d), Oct. 21, 1998, 112 Stat. 2681–903, provided that: ''The amendments made by this section [amending this section] shall apply to net operating losses for taxable years beginning after December 31, 1997.''

Pub. L. 105–277, div. J, title III, §3004(b), Oct. 21, 1998, 112 Stat. 2681–906, provided that: ''The amendment made by this section [amending this section] shall apply to net operating losses arising in taxable years ending after the date of the enactment of this Act [Oct. 21, 1998].''

Amendment by section 4003(h) of Pub. L. 105–277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 4003(*l*) of Pub. L. 105–277, set out as a note under section 86 of this title.

Pub. L. 105–277, div. J, title IV, §4004(c)(1), Oct. 21, 1998, 112 Stat. 2681–911, provided that: ''The amendments made by subsections (a) and (b)(3) [amending this section and section 873 of this title] shall apply to taxable years beginning after December 31, 1983.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1082(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply to net operating losses for taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1702(h)(2), (16) of Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to stock issued after Aug. 10, 1993, see section 13113(e) of Pub. L. 103–66, set out as a note under section 53 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11324(b) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to acquisitions after October 9, 1990.

''(2) BINDING CONTRACT EXCEPTION.—The amendment made by subsection (a) shall not apply to any acquisition pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such acquisition.''

Amendment by section 11701(d) of Pub. L. 101–508 effective, except as otherwise provided, as if included in the provision of the Revenue Reconciliation Act of 1989, Pub. L. 101–239, title VII, to which such amendment relates, see section 11701(n) of Pub. L. 101–508, set out as a note under section 42 of this title.

Section 11811(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section] shall apply to net operating losses for taxable years beginning after December 31, 1990.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7211(c) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section] shall apply to corporate equity reduction transactions occurring after August 2, 1989, in taxable years ending after August 2, 1989.

''(2) EXCEPTIONS.—In determining whether a corporate equity reduction transaction has occurred after August 2, 1989, there shall not be taken into account—

''(A) acquisitions or redemptions of stock, or distributions with respect to stock, occurring on or before August 2, 1989,

''(B) acquisitions or redemptions of stock after August 2, 1989, pursuant to a binding written contract (or tender offer filed with the Securities and Exchange Commission) in effect on August 2, 1989, and at all times thereafter before such acquisition or redemption, or

''(C) any distribution with respect to stock after August 2, 1989, which was declared on or before August 2, 1989.

Any distribution to which the preceding sentence applies shall be taken into account under section 172(m)(3)(C)(ii)(I) of the Internal Revenue Code of 1986 (relating to base period for distributions).''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(4) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 301(b)(3) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 301(c) of Pub. L. 99–514, set out as a note under section 62 of this title.

Amendment by section 901(d)(4)(B) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 901(e) of Pub. L. 99–514, set out as a note under section 166 of this title.

Section 903(c) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to losses incurred in taxable years beginning after December 31, 1986.

''(2) ADDITIONAL CARRYFORWARD PERIOD FOR LOSSES OF THRIFT INSTITUTIONS.—Subparagraph (M) of section 172(b)(1) of the Internal Revenue Code of 1986 (as added by this section) shall apply to losses incurred in taxable years beginning after December 31, 1981.''

Amendment by section 1303(b)(1), (2) of Pub. L. 99–514 effective Oct. 22, 1986, see section 1311(f) of Pub. L. 99–514, as amended, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 91(d) of Pub. L. 98–369 applicable to losses for taxable years beginning after Dec. 31, 1983, see section 91(g)(6) of Pub. L. 98–369, as amended, set out as a note under section 461 of this title.

Section 177(d) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, title XVIII, § 1812(d)(2), Oct. 22, 1986, 100 Stat. 2095, 2836, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 246 of this title and section 1452 of Title 12, Banks and Banking] shall take effect on January 1, 1985.

''(2) ADJUSTED BASIS OF ASSETS.—

''(A) IN GENERAL.—Except as otherwise provided in subparagraph (B), the adjusted basis of any asset of the Federal Home Loan Mortgage Corporation held on January 1, 1985, shall—

''(i) for purposes of determining any loss, be equal to the lesser of the adjusted basis of such asset or the fair market value of such asset as of such date, and

''(ii) for purposes of determining any gain, be equal to the higher of the adjusted basis of such asset or the fair market value of such asset as of such date.

''(B) SPECIAL RULE FOR TANGIBLE DEPRECIABLE PROPERTY.—In the case of any tangible property which—

''(i) is of a character subject to the allowance for depreciation provided by section 167 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], and

''(ii) is held by the Federal Home Loan Mortgage Corporation on January 1, 1985,

the adjusted basis of such property shall be equal to the lesser of the basis of such property or the fair market value of such property as of such date.

''(3) TREATMENT OF PARTICIPATION CERTIFICATES.—

''(A) IN GENERAL.—Paragraph (2) shall not apply to any right to receive income with respect to any mortgage pool participation certificate or other similar interest in any mortgage (not including any mortgage).

''(B) TREATMENT OF CERTAIN SALES AFTER MARCH 15, 1984, AND BEFORE JANUARY 1, 1985.—If any gain is realized on the sale or exchange of any right described in subparagraph (A) after March 15, 1984, and before January 1, 1985, the gain shall not be recognized when realized but shall be recognized on January 1, 1985.

''(4) CLARIFICATION OF EARNINGS AND PROFITS OF FEDERAL HOME LOAN MORTGAGE CORPORATION.—

''(A) TREATMENT OF DISTRIBUTION OF PREFERRED STOCK, ETC.—For purposes of the Internal Revenue Code of 1986, the distribution of preferred stock by the Federal Home Loan Mortgage Corporation during December of 1984, and the other distributions of such stock by Federal Home Loan Banks during January of 1985, shall be treated as if they were distributions of money equal to the fair market value of the stock on the date of the distribution by the Federal Home Loan Banks (and such stock shall be treated as if it were purchased with the money treated as so distributed). No deduction shall be allowed under section 243 of the Internal Revenue Code of 1986 with respect to any dividend paid by the Federal Home Loan Mortgage Corporation out of earnings and profits accumulated before January 1, 1985.

''(B) SECTION 246(a) NOT TO APPLY TO DISTRIBUTIONS OUT OF EARNINGS AND PROFITS ACCUMULATED DURING 1985.—Subsection (a) of section 246 of the Internal Revenue Code of 1986 shall not apply to any dividend paid by the Federal Home Loan Mortgage Corporation during 1985 out of earnings and profits accumulated after December 31, 1984.

''(5) ADJUSTED BASIS.—For purposes of this subsection, the adjusted basis of any asset shall be determined under part II of subchapter O of the Internal Revenue Code of 1986.

''(6) NO CARRYBACKS FOR YEARS BEFORE 1985.—No net operating loss, capital loss, or excess credit of the Federal Home Loan Mortgage Corporation for any taxable year beginning after December 31, 1984, shall be allowed as a carryback to any taxable year beginning before January 1, 1985.

''(7) NO DEDUCTION ALLOWED FOR INTEREST ON REPLACEMENT OBLIGATIONS.—

''(A) IN GENERAL.—The Federal Home Loan Mortgage Corporation shall not be allowed any deduction for interest accruing after December 31, 1984, on any replacement obligation.

''(B) REPLACEMENT OBLIGATION DEFINED.—For purposes of subparagraph (A), the term 'replacement obligation' means any obligation to any person created after March 15, 1984, which the Secretary of the Treasury or his delegate determines replaces any equity or debt interest of a Federal Home Loan Bank or any other person in the Federal Home Loan Mortgage Corporation existing on such date. The preceding sentence shall not apply to any obligation with respect

to which the Federal Home Loan Mortgage Corporation establishes that there is no tax avoidance effect.''

Amendment by section 491(d)(5) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Section 722(a)(6) of Pub. L. 98–369 provided that: ''Any amendment made by this subsection [amending this section and sections 57, 1256, and 5684 of this title, and provisions set out as a note under section 338 of this title] shall take effect as if included in the provisions of the Technical Corrections Act of 1982 [Pub. L. 97–448] to which such amendment relates.''

EFFECTIVE DATE OF 1982 AMENDMENTS

Section 102(d) of Pub. L. 97–362 provided that: ''The amendments made by this section [amending this section] shall apply to net operating losses for taxable years beginning after December 31, 1981.''

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to net operating losses in taxable years ending after Dec. 31, 1975, with special effective date for the amendment by section 207(a)(2)(B)(i) of Pub. L. 97–34, and net operating loss for any taxable year ending on or before Dec. 31, 1975, which could be a net operating loss carryover to a taxable year ending in 1981 by reason of subsec. (b)(1)(E)(ii) (as in effect before the date of enactment of Pub. L. 97–34 and as modified by section 1(b) of Pub. L. 96–595), to be a net operating loss carryover under this section to each of the 15 taxable years following the taxable year of such loss, see section 209(c)(1) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 1(b) of Pub. L. 96–595, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to the determination of the net operating loss deduction for taxable years ending after October 4, 1976. For purposes of applying the preceding sentence to any net operating loss for a taxable year which is not a REIT year and which ends on or before October 4, 1976, subclause (II) of section 172(b)(1)(E)(ii) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be applied by substituting ''the number of REIT years to which such loss was a net operating loss carryback'' for ''the number of taxable years to which such loss may not be a net operating loss carryback by reason of subclause (I)''. In the case of a net operating loss for a taxable year described in the preceding sentence, subclause (II) of section 172(b)(1)(E)(ii) of such Code shall not apply to any taxpayer which acted so as to cause it to cease to qualify as a ''real estate investment trust'' within the meaning of section 856 of such Code if the principal purpose for such action was to secure the benefit of the allowance of a net operating loss carryover under section 172(b)(1)(B) of such Code.''

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 371(d) of Pub. L. 95–600 provided that: ''The amendments made by this section [amending this section and section 537 of this title] shall apply with respect to taxable years beginning after September 30, 1979.''

Section 601(d) of Pub. L. 95–600 provided that: ''The amendments made by this section [enacting sections 1391 to 1397 and 6039B of this title and amending this section and sections 1016 and 3402 of this title] shall apply with respect to corporations chartered after December 31, 1978, and before January 1, 1984.''

Section 701(d)(2) of Pub. L. 95–600 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to losses incurred in taxable years ending after December 31, 1975.''

Section 703(p)(4) of Pub. L. 95–600 provided that: ''The amendments made by this subsection [amending this section and sections 6501 and 6511 of this title] shall apply with respect to losses sustained in taxable years ending after the date of the enactment of this Act [Nov. 6, 1978].''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 806(g)(1) of Pub. L. 94–455 provided that: ''The amendments made by subsections (a), (b), (c), and (d) [amending this section and sections 812 and 825 of this title] shall apply to losses incurred in taxable years ending after December 31, 1975.''

Amendment by section 1052(c)(3) of Pub. L. 94–455 effective with respect to taxable years beginning after December 31, 1979, see section 1052(d) of Pub. L. 94–455, set out as a note under section 170 of this title.

Amendment by section 1606(b), (c) of Pub. L. 94–455 effective for taxable years ending after Oct. 4, 1976, see section 1608(c) of Pub. L. 94–455, set out as a note under section 857 of this title.

Amendment by section 1901(a)(29) of Pub. L. 94–455 effective for taxable years ending after Oct. 4, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 2(d) of Pub. L. 91–677 provided that: ''The amendments made by this section [amending this section] shall apply in respect of foreign expropriation losses sustained in taxable years ending after December 31, 1958.''

EFFECTIVE DATE OF 1967 AMENDMENT

Section 3(b) of Pub. L. 90–225 provided that: ''No interest shall be paid or allowed with respect to any overpayment of tax resulting from the application of the amendments made by subsection (a) [amending this section] for any period prior to the date of the enactment of this Act [Dec. 27, 1967].''

Section 3(c) of Pub. L. 90–225 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to net operating losses sustained in taxable years ending after December 31, 1966.''

EFFECTIVE DATE OF 1964 AMENDMENT

Section 210(c) of Pub. L. 88–272, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [amending this section] shall apply in respect of foreign expropriation losses (as defined in section 172(k) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended by subsection (a)(5) of this section), sustained in taxable years ending after December 31, 1958.''

Amendment by section 234(b)(5) of Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 234(c) of Pub. L. 88–272, set out as a note under section 1503 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Section 317(b) of Pub. L. 87–794 provided that the amendment made by that section is effective with respect to net operating losses for taxable years ending after Dec. 31, 1955.

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

Section 2 of Pub. L. 87–710 provided that: ''The amendments made by the first section of this Act [amending this section] shall apply only with respect to net operating losses for taxable years ending after December 31, 1955.''

EFFECTIVE DATE OF 1958 AMENDMENT

Section 203(c) of Pub. L. 85–866 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply in respect of net operating losses for taxable years ending after December 31, 1957.''

Amendment by section 14(a), (b) of Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

Section 64(e) of Pub. L. 85–866 provided that: ''The amendments made by this section [enacting sections 1371 to 1377 and 6037 of this title, amending this section and sections 1016 and 1504, and renumbering former section 6037 as 6038 of this title] shall apply only with respect to taxable years beginning after December 31, 1957''.

ANTI-ABUSE RULES

Pub. L. 111–92, § 13(d), Nov. 6, 2009, 123 Stat. 2994, provided that: ''The Secretary of [the] Treasury or the Secretary's designee shall prescribe such rules as are necessary to prevent the abuse of the purposes of the amendments made by this section [amending this section and sections 56 and 810 of this title], including anti-stuffing rules, anti-churning rules (including rules relating to sale-leasebacks), and rules similar to the rules under section 1091 of the Internal Revenue Code of 1986 relating to losses from wash sales.''

Pub. L. 111–5, div. B, title I, § 1211(c), Feb. 17, 2009, 123 Stat. 336, provided that: ''The Secretary of [the] Treasury or the Secretary's designee shall prescribe such rules as are necessary to prevent the abuse of the purposes of the amendments made by this section [amending this section], including anti-stuffing rules, anti-churning rules (including rules relating to sale-leasebacks), and rules similar to the rules under section 1091 of the Internal Revenue Code of 1986 relating to losses from wash sales.''

SAVINGS PROVISION

For provisions that nothing in amendment by section 11811 of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

NET OPERATING LOSS CARRYBACK FOR TAXABLE YEAR ENDING DURING 2001 OR 2002

Pub. L. 108–311, title IV, § 403(b)(2), Oct. 4, 2004, 118 Stat. 1187, provided that: ''In the case of a net operating loss for a taxable year ending during 2001 or 2002—

''(A) an application under section 6411(a) of the Internal Revenue Code of 1986 with respect to such loss shall not fail to be treated as timely filed if filed before November 1, 2002,

''(B) any election made under section 172(b)(3) of such Code may (notwithstanding such section) be revoked before November 1, 2002, and

''(C) any election made under section 172(j) [now 172(k)] of such Code shall (notwithstanding such section) be treated as timely made if made before November 1, 2002.''

AMTRAK REFORM LEGISLATION

Pub. L. 105–134, title III, § 301(b), Dec. 2, 1997, 111 Stat. 2585, provided that: ''This Act [see Short Title of 1997 Amendment note set out under section 20101 of Title 49, Transportation] constitutes Amtrak reform legislation within the meaning of section 977(f)(1) of the Taxpayer Relief Act of 1997 [Pub. L. 105–34, set out as a note below].''

ELECTIVE CARRYBACK OF EXISTING CARRYOVERS OF NATIONAL RAILROAD PASSENGER CORPORATION

Section 977 of Pub. L. 105–34, as amended by Pub. L. 105–178, title IX, § 9007(a), June 9, 1998, 112 Stat. 506; Pub. L. 105–206, title VI, § 6009(e), July 22, 1998, 112 Stat. 812, provided that:

''(a) ELECTIVE CARRYBACK.—

''(1) IN GENERAL.—If the National Railroad Passenger Corporation (in this section referred to as the 'Corporation')—

''(A) makes an election under this section for its first taxable year ending after September 30, 1997, and

''(B) agrees to the conditions specified in paragraph (2),

then the Corporation shall be treated as having made a payment of the tax imposed by chapter 1 of the Internal Revenue Code of 1986 for such first taxable year and the succeeding taxable year in an amount (for each such taxable year) equal to 50 percent of the amount determined under paragraph (3). Each such payment shall be treated as having been made by the Corporation on the last day prescribed by law (without regard to extensions) for filing its return of tax under chapter 1 of such Code for the taxable year to which such payment relates.

''(2) CONDITIONS.—

''(A) IN GENERAL.—This section shall only apply to the Corporation if it agrees (in such manner as the Secretary of the Treasury or his delegate may prescribe) to—

''(i) except as provided in clause (ii), use any refund of the payment described in paragraph (1) (and any interest thereon) solely to finance qualified expenses of the Corporation, and

''(ii) make the payments to non-Amtrak States as described in subsection (c).

''(B) REPAYMENT.—

''(i) IN GENERAL.—The Corporation shall repay to the United States any amount not used in accordance with this paragraph and any amount remaining unused as of January 1, 2010.

''(ii) SPECIAL RULES.—For purposes of clause (i)—

''(I) no amount shall be treated as remaining unused as of January 1, 2010, if it is obligated as of such date for a qualified expense, and

''(II) the Corporation shall not be treated as failing to meet the requirements of clause (i) by reason of investing any amount for a temporary period.

''(3) AMOUNT.—For purposes of paragraph (1)—

''(A) IN GENERAL.—The amount determined under this paragraph shall be the lesser of—

''(i) 35 percent of the Corporation's existing qualified carryovers, or

''(ii) the Corporation's net tax liability for the carryback period.

''(B) DOLLAR LIMIT.—Such amount shall not exceed $2,323,000,000.

''(b) EXISTING QUALIFIED CARRYOVERS; NET TAX LIABILITY.—For purposes of this section—

''(1) EXISTING QUALIFIED CARRYOVERS.—The term 'existing qualified carryovers' means the aggregate of the amounts which are net operating loss carryovers under section 172(b) of the Internal Revenue Code of 1986 to the Corporation's first taxable year ending after September 30, 1997.

''(2) NET TAX LIABILITY FOR CARRYBACK PERIOD.—

''(A) IN GENERAL.—The Corporation's net tax liability for the carryback period is the aggregate of the net tax liability of the Corporation's railroad predecessors for taxable years in the carryback period.

''(B) NET TAX LIABILITY.—The term 'net tax liability' means, with respect to any taxable year, the amount of the tax imposed by chapter 1 of the Internal Revenue Code of 1986 (or any corresponding provision of prior law) for such taxable year, reduced by the sum of the credits allowable against such tax under such Code (or any corresponding provision of prior law).

''(C) CARRYBACK PERIOD.—The term 'carryback period' means the period—

''(i) which begins with the first taxable year of any railroad predecessor beginning before January 1, 1971, for which there is a net tax liability, and

''(ii) which ends with the last taxable year of any railroad predecessor beginning before January 1, 1971.

''(3) RAILROAD PREDECESSOR.—

''(A) IN GENERAL.—The term 'railroad predecessor' means—

''(i) any railroad which entered into a contract under section 401 or 404(a) of the Rail Passenger Service Act of 1970 [former sections 561 and 564(a) of Title 45, Railroads] relieving the railroad of its entire responsibility for the provision of intercity rail passenger service, and

''(ii) any predecessor thereof.

''(B) CONSOLIDATED RETURNS.—If any railroad described in subparagraph (A) was a member of an affiliated group which filed a consolidated return for any taxable year in the carryback period, each member of such group shall be treated as a railroad predecessor for such year.

''(c) PAYMENTS TO NON-AMTRAK STATES.—

''(1) IN GENERAL.—Within 30 days after receipt of any refund of any payment described in subsection (a)(1), the Corporation shall pay to each non-Amtrak State an amount equal to 1 percent of the amount of such refund.

''(2) USE OF PAYMENT.—Each non-Amtrak State shall use the payment described in paragraph (1) (and any interest thereon) solely to finance qualified expenses of the State.

''(3) REPAYMENT.—A non-Amtrak State shall pay to the United States—

''(A) any portion of the payment received by the State under paragraph (1) (and any interest thereon) which is used for a purpose other than to finance qualified expenses of the State or which remains unused as of January 1, 2010, or

''(B) if such State ceases to be a non-Amtrak State, the portion of such payment (and any interest thereon) remaining as of the date of the cessation.

Rules similar to the rules of subsection (a)(2)(B) shall apply for purposes of this paragraph.

''(d) TAX CONSEQUENCES.—

''(1) REDUCTION IN CARRYOVERS.—If the Corporation elects the application of this section, the Corporation's existing qualified carryovers shall be reduced by an amount equal to the amount determined under subsection (a)(3) divided by 0.35.

''(2) REDUCTION IN TAX PAID BY RAILROAD PREDECESSORS.—

''(A) IN GENERAL.—The Secretary of the Treasury or his delegate shall appropriately adjust the tax account of each railroad predecessor to reduce the net tax liability of such predecessor for taxable years beginning in the carryback period which is offset by reason of the application of this section.

''(B) FIFO ORDERING RULE.—The Secretary shall make the adjustments under subparagraph (A) first for the earliest year in the carryback period and then for each subsequent year in such period.

''(C) NO EFFECT ON OTHER TAXPAYERS.—In no event shall any taxpayer other than the Corporation be allowed a refund or credit by reason of this section.

''(D) WAIVER OF LIMITATIONS.—If the adjustment under subparagraph (A) is barred by the operation of any law or rule of law, such law or rule of law shall be waived solely for purposes of making such adjustment.

''(3) TAX TREATMENT OF EXPENDITURES.—With respect to any payment by the Corporation of qualified expenses described in subsection (e)(1)(A) during any taxable year from the amount of any refund of the payment described in subsection (a)(1)—

''(A) no deduction shall be allowed to the Corporation with respect to any amount paid or incurred which is attributable to such amount, and

''(B) the basis of any property shall be reduced by the portion of the cost of such property which is attributable to such amount.

''(4) PAYMENTS TO A NON-AMTRAK STATE.—No deduction shall be allowed to the Corporation under chapter 1 of the Internal Revenue Code of 1986 for any payment to a non-Amtrak State required under subsection (a)(2)(A)(ii).

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

''(1) QUALIFIED EXPENSES.—The term 'qualified expenses' means expenses incurred for—

''(A) in the case of the Corporation—

''(i) the acquisition of equipment, rolling stock, and other capital improvements, the upgrading of maintenance facilities, and the maintenance of existing equipment, in intercity passenger rail service, and

''(ii) the payment of interest and principal on obligations incurred for such acquisition, upgrading, and maintenance, and

''(B) in the case of a non-Amtrak State—

''(i) the acquisition of equipment, rolling stock, and other capital improvements, the upgrading of maintenance facilities, and the maintenance of existing equipment, in intercity passenger rail service,

''(ii) the acquisition of equipment, rolling stock, and other capital improvements, the upgrading of maintenance facilities, and the maintenance of existing equipment, in intercity bus service,

''(iii) the purchase of intercity passenger rail services from the Corporation,

''(iv) capital expenditures related to State-owned rail operations in the State,

''(v) any project that is eligible to receive funding under section 5309, 5310, or 5311 of title 49, United States Code,

''(vi) any project that is eligible to receive funding under section 103, 130, 133, 144, 149, or 152 of title 23, United States Code,

''(vii) the upgrading and maintenance of intercity primary and rural air service facilities, and the purchase of intercity air service between primary and rural airports and regional hubs,

''(viii) the provision of passenger ferryboat service within the State,

''(ix) the provision of harbor improvements within the State, and

''(x) the payment of interest and principal on obligations incurred for such acquisition, upgrading, maintenance, purchase, expenditures, provision, and projects.

In the case of a non-Amtrak State which provides its own intercity passenger rail service on the date of the enactment of this paragraph [Aug. 5, 1997], subparagraph (B) shall be applied by only taking into account clauses (i) and (iv).

''(2) NON-AMTRAK STATE.—The term 'non-Amtrak State' means any State which is not receiving intercity passenger rail service from the Corporation as of the date of the enactment of this Act [Aug. 5, 1997].

''(f) AUTHORIZING REFORM REQUIRED.—

''(1) IN GENERAL.—The Secretary of the Treasury shall not make payment of any refund of any payment described in subsection (a)(1) earlier than the date of the enactment of Federal legislation, other than legislation included in this section, which is enacted after July 29, 1997, and which authorizes reforms of the National Railroad Passenger Corporation.

''(2) NO INTEREST.—Notwithstanding any other provision of law, if the payment of any refund is delayed by reason of paragraph (1), no interest shall accrue with respect to such payment prior to the 45th day following the date of the enactment of Federal legislation described in paragraph (1).

''(3) ESTIMATE OF REVENUE.—For purposes of estimating revenues under budget reconciliation, the impact of this section on Federal revenues shall be determined without regard to this subsection.''

[Pub. L. 105–178, title IX, §9007(b), June 9, 1998, 112 Stat. 506, provided that: ''The amendments made by this section [amending section 977 of Pub. L. 105–34, set out above] shall take effect as if included in the enactment of section 977 of the Taxpayer Relief Act of 1997 [Pub. L. 105–34].'']

DEDUCTION FOR SPECIAL ASSESSMENTS

Subsec. (f) of this section not applicable to deduction for special assessments, see section 2711(2) of Pub. L. 104–208, set out as a note under section 162 of this title.

CARRYBACK OF DEFERRED STATUTORY OR TORT LIABILITY LOSS TO TAXABLE YEAR BEGINNING BEFORE JANUARY 1, 1984

Section 11811(b)(2)(B) of Pub. L. 101–508 provided that: ''The portion of any loss which is attributable to a deferred statutory or tort liability loss (as defined in section 172(k) of the Internal Revenue Code of 1986 as in effect on the day before the date of the enactment of this Act [Nov. 5, 1990]) may not be carried back to any taxable year beginning before January 1, 1984, by reason of the amendment made by subparagraph (A) [amending this section].''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

REFUND OR CREDIT OF OVERPAYMENT; LIMITATIONS; INTEREST

Section 14 of Pub. L. 85–866 provided that if any refund or credit of any overpayment resulting from application of subsecs. (a) and (b) of Pub. L. 85–866, amending former subsecs. (f)(3), (4) and (g)(3), (4), was prevented on Sept. 2, 1958 or 6 months thereafter, by operation of any law or rule of law, refund was to be allowed if a claim was filed within six months of the date of such date but such refund was to be without interest.

INTEREST ATTRIBUTABLE TO NET OPERATING LOSS CARRYBACK FOR CERTAIN TAXABLE YEARS ENDING IN 1954

For payment of interest attributable to net operating loss carryback, see section 83(e) of Pub. L. 85–866, set out as a note under section 6601 of this title.

§ 173. Circulation expenditures

(a) General rule

Notwithstanding section 263, all expenditures (other than expenditures for the purchase of land or depreciable property or for the acquisition of circulation through the purchase of any part of the business of another publisher of a newspaper, magazine, or other periodical) to establish, maintain, or increase the circulation of a newspaper, magazine, or other periodical shall be allowed as a deduction; except that the deduction shall not be allowed with respect to the portion of such expenditures as, under regulations prescribed by the Secretary, is chargeable to capital account if the taxpayer elects, in accordance with such regulations, to treat such portion as so chargeable. Such election, if made, must be for the total amount of such portion of the expenditures which is so chargeable to capital account, and shall be binding for all subsequent taxable years unless, upon application by the taxpayer, the Secretary permits a revocation of such election subject to such conditions as he deems necessary.

(b) Cross reference

For election of 3-year amortization of expenditures allowable as a deduction under subsection (a), see section 59(e).

(Aug. 16, 1954, ch. 736, 68A Stat. 65; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–248, title II, §201(d)(9)(A), formerly §201(c)(9)(A), Sept. 3, 1982, 96 Stat. 420, renumbered §201(d)(9)(A), Pub. L. 97–448, title III, §306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 98–369, div. A, title VII, §711(a)(3)(C), July 18, 1984, 98 Stat. 942; Pub. L. 99–514, title VII, §701(e)(4)(D), Oct. 22, 1986, 100 Stat. 2343; Pub. L. 100–647, title I, §1007(g)(5), Nov. 10, 1988, 102 Stat. 3435.)

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–647 substituted ''section 59(e)'' for ''section 59(d)''.

1986—Subsec. (b). Pub. L. 99–514 substituted ''section 59(d)'' for ''section 58(i)''.

1984—Subsec. (b). Pub. L. 98–369 substituted ''3-year'' for ''10-year''.

1982—Pub. L. 97–248, §201(d)(9)(A), designated existing provisions as subsec. (a), added subsec. (a) heading, and added subsec. (b).

1976—Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary'' in two places.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

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

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for

such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

§ 174. Research and experimental expenditures

(a) Treatment as expenses

(1) In general

A taxpayer may treat research or experimental expenditures which are paid or incurred by him during the taxable year in connection with his trade or business as expenses which are not chargeable to capital account. The expenditures so treated shall be allowed as a deduction.

(2) When method may be adopted

(A) Without consent

A taxpayer may, without the consent of the Secretary, adopt the method provided in this subsection for his first taxable year—

(i) which begins after December 31, 1953, and ends after August 16, 1954, and

(ii) for which expenditures described in paragraph (1) are paid or incurred.

(B) With consent

A taxpayer may, with the consent of the Secretary, adopt at any time the method provided in this subsection.

(3) Scope

The method adopted under this subsection shall apply to all expenditures described in paragraph (1). The method adopted shall be adhered to in computing taxable income for the taxable year and for all subsequent taxable years unless, with the approval of the Secretary, a change to a different method is authorized with respect to part or all of such expenditures.

(b) Amortization of certain research and experimental expenditures

(1) In general

At the election of the taxpayer, made in accordance with regulations prescribed by the Secretary, research or experimental expenditures which are—

(A) paid or incurred by the taxpayer in connection with his trade or business,

(B) not treated as expenses under subsection (a), and

(C) chargeable to capital account but not chargeable to property of a character which is subject to the allowance under section 167 (relating to allowance for depreciation, etc.) or section 611 (relating to allowance for depletion),

may be treated as deferred expenses. In computing taxable income, such deferred expenses shall be allowed as a deduction ratably over such period of not less than 60 months as may be selected by the taxpayer (beginning with the month in which the taxpayer first realizes benefits from such expenditures). Such deferred expenses are expenditures properly chargeable to capital account for purposes of section 1016(a)(1) (relating to adjustments to basis of property).

(2) Time for and scope of election

The election provided by paragraph (1) may be made for any taxable year beginning after December 31, 1953, but only if made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof). The method so elected, and the period selected by the taxpayer, shall be adhered to in computing taxable income for the taxable year for which the election is made and for all subsequent taxable years unless, with the approval of the Secretary, a change to a different method (or to a different period) is authorized with respect to part or all of such expenditures. The election shall not apply to any expenditure paid or incurred during any taxable year before the taxable year for which the taxpayer makes the election.

(c) Land and other property

This section shall not apply to any expenditure for the acquisition or improvement of land, or for the acquisition or improvement of property to be used in connection with the research or experimentation and of a character which is subject to the allowance under section 167 (relating to allowance for depreciation, etc.) or section 611 (relating to allowance for depletion); but for purposes of this section allowances under section 167, and allowances under section 611, shall be considered as expenditures.

(d) Exploration expenditures

This section shall not apply to any expenditure paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral (including oil and gas).

(e) Only reasonable research expenditures eligible

This section shall apply to a research or experimental expenditure only to the extent that the amount thereof is reasonable under the circumstances.

(f) Cross references

(1) For adjustments to basis of property for amounts allowed as deductions as deferred expenses under subsection (b), see section 1016(a)(14).

(2) For election of 10-year amortization of expenditures allowable as a deduction under subsection (a), see section 59(e).

(Aug. 16, 1954, ch. 736, 68A Stat. 66; Pub. L. 94–455, title XIX, §§1901(a)(30), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1769, 1834; Pub. L. 97–248, title II, §201(d)(9)(B) formerly §201(c)(9)(B), Sept. 3, 1982, 96 Stat. 420, renumbered §201(d)(9)(B), Pub. L. 97–448, title III, §306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; amended Pub. L. 99–514, title VII, §701(e)(4)(D), Oct. 22, 1986, 100 Stat. 2343; Pub. L. 100–647, title I, §1007(g)(5), Nov. 10, 1988, 102 Stat. 3435; Pub. L. 101–239, title VII, §7110(d), Dec. 19, 1989, 103 Stat. 2325.)

AMENDMENTS

1989—Subsecs. (e), (f). Pub. L. 101–239 added subsec. (e) and redesignated former subsec. (e) as (f).

1988—Subsec. (e)(2). Pub. L. 100–647 substituted ''section 59(e)'' for ''section 59(d)''.

1986—Subsec. (e)(2). Pub. L. 99–514 substituted ''section 59(d)'' for ''section 58(i)''.

1982—Subsec. (e). Pub. L. 97–248, §201(d)(9)(B), substituted ''Cross references'' for ''Cross reference'' in

heading, designated existing provisions as par. (1), and added par. (2).

1976—Subsec. (a)(2)(A). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (a)(2)(A)(i). Pub. L. 94–455, § 1901(a)(30), substituted ''August 16, 1954'' for ''the date on which this title is enacted'' after ''ends after''.

Subsecs. (a)(3), (b)(1), (2). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to taxable years beginning after Dec. 31, 1989, see section 7110(e) of Pub. L. 101–239, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

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

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

ALLOCATION OR APPORTIONMENT TO SOURCES WITHIN UNITED STATES OF RESEARCH AND EXPERIMENTAL EXPENDITURES PAID OR INCURRED FOR RESEARCH ACTIVITIES CONDUCTED IN UNITED STATES; 2-YEAR PROGRAM

Pub. L. 97–34, title II, § 223(a), Aug. 13, 1981, 95 Stat. 249, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of the taxpayer's first 2 taxable years beginning within 2 years after the date of the enactment of this Act [Aug. 13, 1981], all research and experimental expenditures (within the meaning of section 174 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) which are paid or incurred in such year for research activities conducted in the United States shall be allocated or apportioned to sources within the United States.''

§ 175. Soil and water conservation expenditures; endangered species recovery expenditures

(a) In general

A taxpayer engaged in the business of farming may treat expenditures which are paid or incurred by him during the taxable year for the purpose of soil or water conservation in respect of land used in farming, or for the prevention of erosion of land used in farming, or for endangered species recovery, as expenses which are not chargeable to capital account. The expenditures so treated shall be allowed as a deduction.

(b) Limitation

The amount deductible under subsection (a) for any taxable year shall not exceed 25 percent of the gross income derived from farming during the taxable year. If for any taxable year the total of the expenditures treated as expenses which are not chargeable to capital account exceeds 25 percent of the gross income derived from farming during the taxable year, such excess shall be deductible for succeeding taxable years in order of time; but the amount deductible under this section for any one such succeeding taxable year (including the expenditures actually paid or incurred during the taxable year) shall not exceed 25 percent of the gross income derived from farming during the taxable year.

(c) Definitions

For purposes of subsection (a)—

(1) The term ''expenditures which are paid or incurred by him during the taxable year for the purpose of soil or water conservation in respect of land used in farming, or for the prevention of erosion of land used in farming, or for endangered species recovery'' means expenditures paid or incurred for the treatment or moving of earth, including (but not limited to) leveling, grading and terracing, contour furrowing, the construction, control, and protection of diversion channels, drainage ditches, earthen dams, watercourses, outlets, and ponds, the eradication of brush, and the planting of windbreaks. Such term shall include expenditures paid or incurred for the purpose of achieving site-specific management actions recommended in recovery plans approved pursuant to the Endangered Species Act of 1973. Such term does not include—

(A) the purchase, construction, installation, or improvement of structures, appliances, or facilities which are of a character which is subject to the allowance for depreciation provided in section 167, or

(B) any amount paid or incurred which is allowable as a deduction without regard to this section.

Notwithstanding the preceding sentences, such term also includes any amount, not otherwise allowable as a deduction, paid or incurred to satisfy any part of an assessment levied by a soil or water conservation or drainage district to defray expenditures made by such district (i) which, if paid or incurred by the taxpayer, would without regard to this sentence constitute expenditures deductible under this section, or (ii) for property of a character subject to the allowance for depreciation provided in section 167 and used in the soil or water conservation or drainage district's business as such (to the extent that the taxpayer's share of the assessment levied on the members of the district for such property does not exceed 10 percent of such assessment).

(2) The term ''land used in farming'' means land used (before or simultaneously with the expenditures described in paragraph (1)) by the taxpayer or his tenant for the production of crops, fruits, or other agricultural products or for the sustenance of livestock.

(3) ADDITIONAL LIMITATIONS.—

(A) EXPENDITURES MUST BE CONSISTENT WITH SOIL CONSERVATION PLAN OR ENDANGERED SPECIES RECOVERY PLAN.—Notwithstanding any other provision of this section, subsection (a) shall not apply to any expenditures unless such expenditures are consistent with—

(i) the plan (if any) approved by the Soil Conservation Service of the Department of Agriculture or the recovery plan approved pursuant to the Endangered Species Act of 1973 for the area in which the land is located, or

(ii) if there is no plan described in clause (i), any soil conservation plan of a comparable State agency.

(B) CERTAIN WETLAND, ETC., ACTIVITIES NOT QUALIFIED.—Subsection (a) shall not apply to any expenditures in connection with the draining or filling of wetlands or land preparation for center pivot irrigation systems.

(d) When method may be adopted

(1) Without consent

A taxpayer may, without the consent of the Secretary, adopt the method provided in this section for his first taxable year—

(A) which begins after December 31, 1953, and ends after August 16, 1954, and

(B) for which expenditures described in subsection (a) are paid or incurred.

(2) With consent

A taxpayer may, with the consent of the Secretary, adopt at any time the method provided in this section.

(e) Scope

The method adopted under this section shall apply to all expenditures described in subsection (a). The method adopted shall be adhered to in computing taxable income for the taxable year and for all subsequent taxable years unless, with the approval of the Secretary, a change to a different method is authorized with respect to part or all of such expenditures.

(f) Rules applicable to assessments for depreciable property

(1) Amounts treated as paid or incurred over 9-year period

In the case of an assessment levied to defray expenditures for property described in clause (ii) of the last sentence of subsection (c)(1), if the amount of such assessment paid or incurred by the taxpayer during the taxable year (determined without the application of this paragraph) is in excess of an amount equal to 10 percent of the aggregate amounts which have been and will be assessed as the taxpayer's share of the expenditures by the district for such property, and if such excess is more than $500, the entire excess shall be treated as paid or incurred ratably over each of the 9 succeeding taxable years.

(2) Disposition of land during 9-year period

If paragraph (1) applies to an assessment and the land with respect to which such assessment was made is sold or otherwise disposed of by the taxpayer (other than by the reason of his death) during the 9 succeeding taxable years, any amount of the excess described in paragraph (1) which has not been treated as paid or incurred for a taxable year ending on or before the sale or other disposition shall be added to the adjusted basis of such land immediately prior to its sale or other disposition and shall not thereafter be treated as paid or incurred ratably under paragraph (1).

(3) Disposition by reason of death

If paragraph (1) applies to an assessment and the taxpayer dies during the 9 succeeding taxable years, any amount of the excess described in paragraph (1) which has not been treated as paid or incurred for a taxable year ending before his death shall be treated as paid or incurred in the taxable year in which he dies.

(Aug. 16, 1954, ch. 736, 68A Stat. 67; Pub. L. 90–630, §5(a), (b), Oct. 22, 1968, 82 Stat. 1329; Pub. L. 94–455, title XIX, §§1901(a)(30), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1769, 1834; Pub. L. 99–514, title IV, §401(a), Oct. 22, 1986, 100 Stat. 2221; Pub. L. 110–234, title XV, §15303(a)(1)–(2)(B), (b), May 22, 2008, 122 Stat. 1501, 1502; Pub. L. 110–246, §4(a), title XV, §15303(a)(1)–(2)(B), (b), June 18, 2008, 122 Stat. 1664, 2263, 2264.)

REFERENCES IN TEXT

The Endangered Species Act of 1973, referred to in subsec. (c)(1), (3)(A)(i), is Pub. L. 93–205, Dec. 28, 1973, 87 Stat. 884, which is classified principally to chapter 35 (§1531 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of Title 16 and Tables.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Pub. L. 110–246, §15303(a)(2)(B), inserted ''; endangered species recovery expenditures'' after ''conservation expenditures'' in section catchline.

Subsec. (a). Pub. L. 110–246, §15303(a)(2)(A), inserted '', or for endangered species recovery'' after ''erosion of land used in farming''.

Subsec. (c)(1). Pub. L. 110–246, §15303(a)(1), (2)(A), in introductory provisions, inserted '', or for endangered species recovery'' after ''erosion of land used in farming'' and ''Such term shall include expenditures paid or incurred for the purpose of achieving site-specific management actions recommended in recovery plans approved pursuant to the Endangered Species Act of 1973.'' after first sentence.

Subsec. (c)(3)(A). Pub. L. 110–246, §15303(b)(1), inserted ''or endangered species recovery plan'' after ''conservation plan'' in heading.

Subsec. (c)(3)(A)(i). Pub. L. 110–246, §15303(b)(2), inserted ''or the recovery plan approved pursuant to the Endangered Species Act of 1973'' after ''Department of Agriculture''.

1986—Subsec. (c)(3). Pub. L. 99–514 added par. (3).

1976—Subsec. (d)(1). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d)(1)(A). Pub. L. 94–455, §1901(a)(30), substituted ''August 16, 1954'' for ''the date on which this title is enacted'' after ''and ends after''.

Subsecs. (d)(2), (e). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

1968—Subsec. (c)(1). Pub. L. 90–630, §5(a), in text following subpar. (B), designated as cl. (i) existing provisions covering amounts which, if paid or incurred by the taxpayer, would without regard to the exception constitute deductible expenditures, and added cl. (ii).

Subsec. (f). Pub. L. 90–630, § 5(b), added subsec. (f).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110–234, title XV, § 15303(c), May 22, 2008, 122 Stat. 1502, and Pub. L. 110–246, § 4(a), title XV, § 15303(c), June 18, 2008, 122 Stat. 1664, 2264, provided that: ''The amendments made by this section [amending this section] shall apply to expenditures paid or incurred after December 31, 2008.''

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

EFFECTIVE DATE OF 1986 AMENDMENT

Section 401(b) of Pub. L. 99–514 provided that: ''The amendment made by this section [amending this section] shall apply to amounts paid or incurred after December 31, 1986, in taxable years ending after such date.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(30) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 5(c) of Pub. L. 90–630 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to assessments levied after the date of the enactment of this Act [Oct. 22, 1968] in taxable years ending after such date.''

§ 176. Payments with respect to employees of certain foreign corporations

In the case of a domestic corporation, there shall be allowed as a deduction amounts (to the extent not compensated for) paid or incurred pursuant to an agreement entered into under section 3121(*l*) with respect to services performed by United States citizens employed by foreign subsidiary corporations. Any reimbursement of any amount previously allowed as a deduction under this section shall be included in gross income for the taxable year in which received.

(Added Sept. 1, 1954, ch. 1206, title II, § 210(a), 68 Stat. 1096.)

[§ 177. Repealed. Pub. L. 99–514, title II, § 241(a), Oct. 22, 1986, 100 Stat. 2181]

Section, added June 29, 1956, ch. 464, § 4(a), 70 Stat. 406; amended Oct. 4, 1976, Pub. L. 94–455, title XIX, § 1906(b)(13)(A), 90 Stat. 1834, related to deductions for trademark and trade name expenditures.

EFFECTIVE DATE OF REPEAL

Section 241(c) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending sections 312 and 1016 of this title and repealing this section] shall apply to expenditures paid or incurred after December 31, 1986.

''(2) TRANSITIONAL RULE.—The amendments made by this section shall not apply to any expenditure incurred—

''(A) pursuant to a binding contract entered into before March 2, 1986, or

''(B) with respect to the development, protection, expansion, registration, or defense of a trademark or trade name commenced before March 2, 1986, but only if not less than the lesser of $1,000,000 or 5 percent of the aggregate cost of such development, protection, expansion, registration, or defense has been incurred or committed before such date.

The preceding sentence shall not apply to any expenditure with respect to a trademark or trade name placed in service after December 31, 1987.''

§ 178. Amortization of cost of acquiring a lease

(a) General rule

In determining the amount of the deduction allowable to a lessee for exhaustion, wear and tear, obsolescence, or amortization in respect of any cost of acquiring the lease, the term of the lease shall be treated as including all renewal options (and any other period for which the parties reasonably expect the lease to be renewed) if less than 75 percent of such cost is attributable to the period of the term of the lease remaining on the date of its acquisition.

(b) Certain periods excluded

For purposes of subsection (a), in determining the period of the term of the lease remaining on the date of acquisition, there shall not be taken into account any period for which the lease may subsequently be renewed, extended, or continued pursuant to an option exercisable by the lessee.

(Added Pub. L. 85–866, title I, § 15(a), Sept. 2, 1958, 72 Stat. 1612; amended Pub. L. 99–514, title II, § 201(d)(2)(A), title XVIII, § 1812(c)(4)(B), Oct. 22, 1986, 100 Stat. 2139, 2835; Pub. L. 100–647, title I, § 1002(a)(9), Nov. 10, 1988, 102 Stat. 3354.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–647 substituted ''the deduction allowable to a lessee for exhaustion, wear and tear, obsolescence, or amortization'' for ''the deduction allowable to a lessee of a lease for any taxable year for amortization under section 167, 169, 179, 185, 190, 193, or 194''.

1986—Pub. L. 99–514, § 201(d)(2)(A), in amending section generally, substituted provision relating to amortization of cost of acquiring a lease, subsec. (a) setting out a general rule and subsec. (b) excluding certain periods, for former provision for depreciation or amortization of improvements made by lessee on lessor's property, subsec. (a) setting out a general rule, subsec. (b), in case of related lessee and lessor, setting out a general rule in par. (1) and defining related persons in par. (2), and subsec. (c) setting out a reasonable certainty test.

Subsec. (b)(2)(B). Pub. L. 99–514, § 1812(c)(4)(B), inserted before the period ''and subsection (f)(1)(A) of such section shall not apply''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 201(d)(2)(A) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

Amendment by section 201(d)(2)(A) of Pub. L. 99–514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3)

of Pub. L. 99–514, set out as a note under section 46 of this title.

Amendment by section 1812(c)(4)(B) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section 15(c) of Pub. L. 85–866 provided that: ''The amendments made by this section [enacting this section and amending analysis preceding section 161 of this title] shall apply with respect to costs of acquiring a lease incurred, and improvements begun, after July 28, 1958 (other than improvements which, on July 28, 1958, and at all times thereafter, the lessee was under a binding legal obligation to make).''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 179. Election to expense certain depreciable business assets

(a) Treatment as expenses

A taxpayer may elect to treat the cost of any section 179 property as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which the section 179 property is placed in service.

(b) Limitations

(1) Dollar limitation

The aggregate cost which may be taken into account under subsection (a) for any taxable year shall not exceed—

(A) $250,000 in the case of taxable years beginning after 2007 and before 2010,

(B) $500,000 in the case of taxable years beginning in 2010 or 2011, and

(C) $25,000 in the case of taxable years beginning after 2011.

(2) Reduction in limitation

The limitation under paragraph (1) for any taxable year shall be reduced (but not below zero) by the amount by which the cost of section 179 property placed in service during such taxable year exceeds—

(A) $800,000 in the case of taxable years beginning after 2007 and before 2010,

(B) $2,000,000 in the case of taxable years beginning in 2010 or 2011, and

(C) $200,000 in the case of taxable years beginning after 2011.

(3) Limitation based on income from trade or business

(A) In general

The amount allowed as a deduction under subsection (a) for any taxable year (determined after the application of paragraphs (1) and (2)) shall not exceed the aggregate amount of taxable income of the taxpayer for such taxable year which is derived from the active conduct by the taxpayer of any trade or business during such taxable year.

(B) Carryover of disallowed deduction

The amount allowable as a deduction under subsection (a) for any taxable year shall be increased by the lesser of—

(i) the aggregate amount disallowed under subparagraph (A) for all prior taxable years (to the extent not previously allowed as a deduction by reason of this subparagraph), or

(ii) the excess (if any) of—

(I) the limitation of paragraphs (1) and (2) (or if lesser, the aggregate amount of taxable income referred to in subparagraph (A)), over

(II) the amount allowable as a deduction under subsection (a) for such taxable year without regard to this subparagraph.

(C) Computation of taxable income

For purposes of this paragraph, taxable income derived from the conduct of a trade or business shall be computed without regard to the deduction allowable under this section.

(4) Married individuals filing separately

In the case of a husband and wife filing separate returns for the taxable year—

(A) such individuals shall be treated as 1 taxpayer for purposes of paragraphs (1) and (2), and

(B) unless such individuals elect otherwise, 50 percent of the cost which may be taken into account under subsection (a) for such taxable year (before application of paragraph (3)) shall be allocated to each such individual.

(5) Limitation on cost taken into account for certain passenger vehicles

(A) In general

The cost of any sport utility vehicle for any taxable year which may be taken into account under this section shall not exceed $25,000.

(B) Sport utility vehicle

For purposes of subparagraph (A)—

(i) In general

The term ''sport utility vehicle'' means any 4-wheeled vehicle—

(I) which is primarily designed or which can be used to carry passengers over public streets, roads, or highways (except any vehicle operated exclusively on a rail or rails),

(II) which is not subject to section 280F, and

(III) which is rated at not more than 14,000 pounds gross vehicle weight.

(ii) Certain vehicles excluded

Such term does not include any vehicle which—

(I) is designed to have a seating capacity of more than 9 persons behind the driver's seat,

(II) is equipped with a cargo area of at least 6 feet in interior length which is an open area or is designed for use as an open area but is enclosed by a cap and is not readily accessible directly from the passenger compartment, or

(III) has an integral enclosure, fully enclosing the driver compartment and load carrying device, does not have seating rearward of the driver's seat, and has no body section protruding more than 30 inches ahead of the leading edge of the windshield.

(c) Election

(1) In general

An election under this section for any taxable year shall—

(A) specify the items of section 179 property to which the election applies and the portion of the cost of each of such items which is to be taken into account under subsection (a), and

(B) be made on the taxpayer's return of the tax imposed by this chapter for the taxable year.

Such election shall be made in such manner as the Secretary may by regulations prescribe.

(2) Election irrevocable

Any election made under this section, and any specification contained in any such election, may not be revoked except with the consent of the Secretary. Any such election or specification with respect to any taxable year beginning after 2002 and before 2012 may be revoked by the taxpayer with respect to any property, and such revocation, once made, shall be irrevocable.

(d) Definitions and special rules

(1) Section 179 property

For purposes of this section, the term ''section 179 property'' means property—

(A) which is—

(i) tangible property (to which section 168 applies), or

(ii) computer software (as defined in section 197(e)(3)(B)) which is described in section 197(e)(3)(A)(i), to which section 167 applies, and which is placed in service in a taxable year beginning after 2002 and before 2012,

(B) which is section 1245 property (as defined in section 1245(a)(3)), and

(C) which is acquired by purchase for use in the active conduct of a trade or business.

Such term shall not include any property described in section 50(b) and shall not include air conditioning or heating units.

(2) Purchase defined

For purposes of paragraph (1), the term ''purchase'' means any acquisition of property, but only if—

(A) the property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under section 267 or 707(b) (but, in applying section 267(b) and (c) for purposes of this section, paragraph (4) of section 267(c) shall be treated as providing that the family of an individual shall include only his spouse, ancestors, and lineal descendants),

(B) the property is not acquired by one component member of a controlled group from another component member of the same controlled group, and

(C) the basis of the property in the hands of the person acquiring it is not determined—

(i) in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or

(ii) under section 1014(a) (relating to property acquired from a decedent).

(3) Cost

For purposes of this section, the cost of property does not include so much of the basis of such property as is determined by reference to the basis of other property held at any time by the person acquiring such property.

(4) Section not to apply to estates and trusts

This section shall not apply to estates and trusts.

(5) Section not to apply to certain noncorporate lessors

This section shall not apply to any section 179 property which is purchased by a person who is not a corporation and with respect to which such person is the lessor unless—

(A) the property subject to the lease has been manufactured or produced by the lessor, or

(B) the term of the lease (taking into account options to renew) is less than 50 percent of the class life of the property (as defined in section 168(i)(1)), and for the period consisting of the first 12 months after the date on which the property is transferred to the lessee the sum of the deductions with respect to such property which are allowable to the lessor solely by reason of section 162 (other than rents and reimbursed amounts with respect to such property) exceeds 15 percent of the rental income produced by such property.

(6) Dollar limitation of controlled group

For purposes of subsection (b) of this section—

(A) all component members of a controlled group shall be treated as one taxpayer, and

(B) the Secretary shall apportion the dollar limitation contained in subsection (b)(1) among the component members of such controlled group in such manner as he shall by regulations prescribe.

(7) Controlled group defined

For purposes of paragraphs (2) and (6), the term ''controlled group'' has the meaning assigned to it by section 1563(a), except that, for such purposes, the phrase ''more than 50 percent'' shall be substituted for the phrase ''at least 80 percent'' each place it appears in section 1563(a)(1).

(8) Treatment of partnerships and S corporations

In the case of a partnership, the limitations of subsection (b) shall apply with respect to the partnership and with respect to each partner. A similar rule shall apply in the case of an S corporation and its shareholders.

(9) Coordination with section 38

No credit shall be allowed under section 38 with respect to any amount for which a deduction is allowed under subsection (a).

(10) Recapture in certain cases

The Secretary shall, by regulations, provide for recapturing the benefit under any deduction allowable under subsection (a) with respect to any property which is not used predominantly in a trade or business at any time.

(e) Special rules for qualified disaster assistance property

(1) In general

For purposes of this section—

(A) the dollar amount in effect under subsection (b)(1) for the taxable year shall be increased by the lesser of—

(i) $100,000, or

(ii) the cost of qualified section 179 disaster assistance property placed in service during the taxable year, and

(B) the dollar amount in effect under subsection (b)(2) for the taxable year shall be increased by the lesser of—

(i) $600,000, or

(ii) the cost of qualified section 179 disaster assistance property placed in service during the taxable year.

(2) Qualified section 179 disaster assistance property

For purposes of this subsection, the term ''qualified section 179 disaster assistance property'' means section 179 property (as defined in subsection (d)) which is qualified disaster assistance property (as defined in section 168(n)(2)).

(3) Coordination with empowerment zones and renewal communities

For purposes of sections 1397A and 1400J, qualified section 179 disaster assistance property shall not be treated as qualified zone property or qualified renewal property, unless the taxpayer elects not to take such qualified section 179 disaster assistance property into account for purposes of this subsection.

(4) Recapture

For purposes of this subsection, rules similar to the rules under subsection (d)(10) shall apply with respect to any qualified section 179 disaster assistance property which ceases to be qualified section 179 disaster assistance property.

(f) Special rules for qualified real property

(1) In general

If a taxpayer elects the application of this subsection for any taxable year beginning in 2010 or 2011, the term ''section 179 property'' shall include any qualified real property which is—

(A) of a character subject to an allowance for depreciation,

(B) acquired by purchase for use in the active conduct of a trade or business, and

(C) not described in the last sentence of subsection (d)(1).

(2) Qualified real property

For purposes of this subsection, the term ''qualified real property'' means—

(A) qualified leasehold improvement property described in section 168(e)(6),

(B) qualified restaurant property described in section 168(e)(7), and

(C) qualified retail improvement property described in section 168(e)(8).

(3) Limitation

For purposes of applying the limitation under subsection (b)(1)(B), not more than $250,000 of the aggregate cost which is taken into account under subsection (a) for any taxable year may be attributable to qualified real property.

(4) Carryover limitation

(A) In general

Notwithstanding subsection (b)(3)(B), no amount attributable to qualified real property may be carried over to a taxable year beginning after 2011.

(B) Treatment of disallowed amounts

Except as provided in subparagraph (C), to the extent that any amount is not allowed to be carried over to a taxable year beginning after 2011 by reason of subparagraph (A), this title shall be applied as if no election under this section had been made with respect to such amount.

(C) Amounts carried over from 2010

If subparagraph (B) applies to any amount (or portion of an amount) which is carried over from a taxable year other than the taxpayer's last taxable year beginning in 2011, such amount (or portion of an amount) shall be treated for purposes of this title as attributable to property placed in service on the first day of the taxpayer's last taxable year beginning in 2011.

(D) Allocation of amounts

For purposes of applying this paragraph and subsection (b)(3)(B) to any taxable year, the amount which is disallowed under subsection (b)(3)(A) for such taxable year which is attributed to qualified real property shall be the amount which bears the same ratio to the total amount so disallowed as—

(i) the aggregate amount attributable to qualified real property placed in service during such taxable year, increased by the portion of any amount carried over to such taxable year from a prior taxable year which is attributable to such property, bears to

(ii) the total amount of section 179 property placed in service during such taxable year, increased by the aggregate amount carried over to such taxable year from any prior taxable year.

For purposes of the preceding sentence, only section 179 property with respect to which

an election was made under subsection (c)(1) (determined without regard to subparagraph (B) of this paragraph) shall be taken into account.

(Added Pub. L. 85–866, title II, § 204(a), Sept. 2, 1958, 72 Stat. 1679; amended Pub. L. 87–834, § 13(c)(2), Oct. 16, 1962, 76 Stat. 1034; Pub. L. 91–172, title IV, § 401(f), Dec. 30, 1969, 83 Stat. 603; Pub. L. 94–455, title II, § 213(a), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1547, 1834; Pub. L. 97–34, title II, § 202(a), Aug. 13, 1981, 95 Stat. 219; Pub. L. 97–354, § 3(f), Oct. 19, 1982, 96 Stat. 1689; Pub. L. 97–448, title I, § 102(aa), Jan. 12, 1983, 96 Stat. 2369; Pub. L. 98–369, div. A, title I, § 13, July 18, 1984, 98 Stat. 505; Pub. L. 99–514, title II, §§ 201(d)(3), 202, Oct. 22, 1986, 100 Stat. 2139, 2142; Pub. L. 100–647, title I, § 1002(a)(19), (b)(1), Nov. 10, 1988, 102 Stat. 3356, 3357; Pub. L. 101–508, title XI, § 11813(b)(11), Nov. 5, 1990, 104 Stat. 1388–554; Pub. L. 103–66, title XIII, § 13116(a), Aug. 10, 1993, 107 Stat. 432; Pub. L. 104–188, title I, §§ 1111(a), 1702(h)(10), (19), Aug. 20, 1996, 110 Stat. 1758, 1874; Pub. L. 108–27, title II, § 202(a)–(e), May 28, 2003, 117 Stat. 757, 758; Pub. L. 108–357, title II, § 201, title VIII, § 910(a), Oct. 22, 2004, 118 Stat. 1429, 1659; Pub. L. 109–222, title I, § 101, May 17, 2006, 120 Stat. 346; Pub. L. 110–28, title VIII, § 8212(a)–(c), May 25, 2007, 121 Stat. 192; Pub. L. 110–185, title I, § 102(a), Feb. 13, 2008, 122 Stat. 618; Pub. L. 110–343, div. C, title VII, § 711(a), Oct. 3, 2008, 122 Stat. 3928; Pub. L. 111–5, div. B, title I, § 1202(a), Feb. 17, 2009, 123 Stat. 335; Pub. L. 111–147, title II, § 201(a), Mar. 18, 2010, 124 Stat. 77; Pub. L. 111–240, title II, § 2021(a)–(d), Sept. 27, 2010, 124 Stat. 2556, 2558; Pub. L. 111–312, title IV, § 402(a)–(e), title VII, § 737(b)(3), Dec. 17, 2010, 124 Stat. 3306, 3307, 3318.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENT OF SECTION

Pub. L. 111–312, title IV, § 402, Dec. 17, 2010, 124 Stat. 3306, provided that, applicable to taxable years beginning after Dec. 31, 2011, this section is amended as follows:

(1) in subsection (b)—

(A) in paragraph (1), by striking ''and'' at the end of subparagraph (B) and by striking subparagraph (C) and inserting the following new subparagraphs:

''(C) $125,000 in the case of taxable years beginning in 2012, and

''(D) $25,000 in the case of taxable years beginning after 2012.'';

(B) in paragraph (2), by striking ''and'' at the end of subparagraph (B) and by striking subparagraph (C) and inserting the following new subparagraphs:

''(C) $500,000 in the case of taxable years beginning in 2012, and

''(D) $200,000 in the case of taxable years beginning after 2012.''; and

(C) by adding at the end the following new paragraph:

''(6) Inflation adjustment

''(A) In general

''In the case of any taxable year beginning in calendar year 2012, the $125,000 and $500,000 amounts in paragraphs (1)(C) and (2)(C) shall each be increased by an amount equal to—

''(i) such dollar amount, multiplied by

''(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting 'calendar year 2006' for 'calendar year 1992' in subparagraph (B) thereof.

''(B) Rounding

''(i) Dollar limitation

''If the amount in paragraph (1) as increased under subparagraph (A) is not a multiple of $1,000, such amount shall be rounded to the nearest multiple of $1,000.

''(ii) Phaseout amount

''If the amount in paragraph (2) as increased under subparagraph (A) is not a multiple of $10,000, such amount shall be rounded to the nearest multiple of $10,000.'';

(2) in subsection (c)(2), by striking ''2012'' and inserting ''2013''; and

(3) in subsection (d)(1)(A)(ii), by striking ''2012'' and inserting ''2013''.

AMENDMENTS

2010—Subsec. (b)(1). Pub. L. 111–240, § 2021(a)(1), substituted ''shall not exceed—'' for ''shall not exceed $25,000 ($250,000 in the case of taxable years beginning after 2007 and before 2011).'' and added subpars. (A) to (C).

Pub. L. 111–147, § 201(a)(1), substituted ''($250,000 in the case of taxable years beginning after 2007 and before 2011)'' for ''($125,000 in the case of taxable years beginning after 2006 and before 2011)''.

Subsec. (b)(2). Pub. L. 111–240, § 2021(a)(2), substituted ''exceeds—'' for ''exceeds $200,000 ($800,000 in the case of taxable years beginning after 2007 and before 2011).'' and added subpars. (A) to (C).

Pub. L. 111–147, § 201(a)(2), substituted ''($800,000 in the case of taxable years beginning after 2007 and before 2011)'' for ''($500,000 in the case of taxable years beginning after 2006 and before 2011)''.

Subsec. (b)(5), (6). Pub. L. 111–147, § 201(a)(3), (4), redesignated par. (6) as (5) and struck out former par. (5) which related to inflation adjustments.

Subsec. (b)(7). Pub. L. 111–147, § 201(a)(3), struck out par. (7) which related to increase in limitations for 2008 and 2009.

Subsec. (c)(2). Pub. L. 111–240, § 2021(c), substituted ''2012'' for ''2011''.

Subsec. (d)(1)(A)(ii). Pub. L. 111–240, § 2021(d), substituted ''2012'' for ''2011''.

Subsec. (f). Pub. L. 111–240, § 2021(b), added subsec. (f).

Subsec. (f)(2)(B). Pub. L. 111–312, § 737(b)(3)(A), struck out ''(without regard to the dates specified in subparagraph (A)(i) thereof)'' after ''section 168(e)(7)''.

Subsec. (f)(2)(C). Pub. L. 111–312, § 737(b)(3)(B), struck out ''(without regard to subparagraph (E) thereof)'' after ''section 168(e)(8)''.

2009—Subsec. (b)(7). Pub. L. 111–5 substituted ''2008, and 2009'' for ''2008'' in heading and ''2008, or 2009'' for ''2008'' in introductory provisions.

2008—Subsec. (b)(7). Pub. L. 110–185 added par. (7).

Subsec. (e). Pub. L. 110–343 added subsec. (e).

2007—Subsec. (b)(1). Pub. L. 110–28, § 8212(a), (b)(1), substituted ''$125,000 in the case of taxable years beginning after 2006'' for ''$100,000 in the case of taxable years beginning after 2002'' and ''2011'' for ''2010''.

Subsec. (b)(2). Pub. L. 110–28, § 8212(a), (b)(2), substituted ''$500,000 in the case of taxable years beginning after 2006'' for ''$400,000 in the case of taxable years beginning after 2002'' and ''2011'' for ''2010''.

Subsec. (b)(5)(A). Pub. L. 110–28, § 8212(a), (c)(1), (2), in introductory provisions, substituted ''2007'' for ''2003'',

''2011'' for ''2010'', and ''$125,000 and $500,000'' for ''$100,000 and $400,000''.

Subsec. (b)(5)(A)(ii). Pub. L. 110–28, §8212(c)(3), substituted ''2006'' for ''2002''.

Subsecs. (c)(2), (d)(1)(A)(ii). Pub. L. 110–28, §8212(a), substituted ''2011'' for ''2010''.

2006—Subsecs. (b)(1), (2), (5)(A), (c)(2), (d)(1)(A)(ii). Pub. L. 109–222 substituted ''2010'' for ''2008''.

2004—Subsec. (b)(1), (2), (5)(A). Pub. L. 108–357, §201, substituted ''2008'' for ''2006''.

Subsec. (b)(6). Pub. L. 108–357, §910(a), added par. (6).

Subsecs. (c)(2), (d)(1)(A)(ii). Pub. L. 108–357, §201, substituted ''2008'' for ''2006''.

2003—Subsec. (b)(1). Pub. L. 108–27, §202(a), reenacted heading without change and amended text generally. Prior to amendment, par. (1) contained a table specifying the maximum amounts for taxable years 1997 to 2003 and thereafter which could be taken into account as the aggregate costs under subsec. (a).

Subsec. (b)(2). Pub. L. 108–27, §202(b), inserted ''($400,000 in the case of taxable years beginning after 2002 and before 2006)'' after ''$200,000''.

Subsec. (b)(5). Pub. L. 108–27, §202(d), added par. (5).

Subsec. (c)(2). Pub. L. 108–27, §202(e), inserted at end ''Any such election or specification with respect to any taxable year beginning after 2002 and before 2006 may be revoked by the taxpayer with respect to any property, and such revocation, once made, shall be irrevocable.''

Subsec. (d)(1). Pub. L. 108–27, §202(c), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of this section, the term 'section 179 property' means any tangible property (to which section 168 applies) which is section 1245 property (as defined in section 1245(a)(3)) and which is acquired by purchase for use in the active conduct of a trade or business. Such term shall not include any property described in section 50(b) and shall not include air conditioning or heating units.''

1996—Subsec. (b)(1). Pub. L. 104–188, §1111(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The aggregate cost which may be taken into account under subsection (a) for any taxable year shall not exceed $17,500.''

Subsec. (d)(1). Pub. L. 104–188, §1702(h)(10), struck out ''in'' before ''a trade or business''.

Pub. L. 104–188, §1702(h)(19), inserted at end ''Such term shall not include any property described in section 50(b) and shall not include air conditioning or heating units.''

1993—Subsec. (b)(1). Pub. L. 103–66 substituted ''$17,500'' for ''$10,000''.

1990—Subsec. (d)(1). Pub. L. 101–508, §11813(b)(11)(A), substituted ''section 1245 property (as defined in section 1245(a)(3))'' for ''section 38 property''.

Subsec. (d)(5). Pub. L. 101–508, §11813(b)(11)(B), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''This section shall not apply to any section 179 property purchased by any person described in section 46(e)(3) unless the credit under section 38 is allowable with respect to such person for such property (determined without regard to this section).''

1988—Subsec. (b)(3). Pub. L. 100–647, §1002(b)(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows:

''(A) IN GENERAL.—The aggregate cost of section 179 property taken into account under subsection (a) for any taxable year shall not exceed the aggregate amount of taxable income of the taxpayer for such taxable year which is derived from the active conduct by the taxpayer of any trade or business during such taxable year.

''(B) CARRYOVER OF UNUSED COST.—The amount of any cost which (but for subparagraph (A)) would have been allowed as a deduction under subsection (a) for any taxable year shall be carried to the succeeding taxable year and added to the amount allowable as a deduction under subsection (a) for such succeeding taxable year.

''(C) COMPUTATION OF TAXABLE INCOME.—For purposes of this paragraph, taxable income derived from the conduct of a trade or business shall be computed without regard to the cost of any section 179 property.''

Subsec. (d)(1). Pub. L. 100–647, §1002(a)(19), substituted ''tangible property (to which section 168 applies)'' for ''recovery property''.

1986—Subsec. (b). Pub. L. 99–514, §202(a), in amending subsec. (b) generally, substituted ''Limitations'' for ''Dollar limitation'' in heading, in par. (1) substituted as heading ''Dollar limitation'' for ''In general'' and in text ''shall not exceed $10,000'' for ''shall not exceed the following applicable amount:'' and a table specifying amounts for specific years, added pars. (2) to (4), and struck out former par. (2) which read as follows: ''In the case of a husband and wife filing separate returns for a taxable year, the applicable amount under paragraph (1) shall be equal to 50 percent of the amount otherwise determined under paragraph (1).''

Subsec. (d)(1). Pub. L. 99–514, §202(b), inserted ''in the active conduct of''.

Subsec. (d)(8). Pub. L. 99–514, §201(d)(3), substituted ''Treatment of'' for ''Dollar limitation in case of'' in heading and amended text generally. Prior to amendment, text read as follows: ''In the case of a partnership, the dollar limitation contained in subsection (b)(1) shall apply with respect to the partnership and with respect to each partner. A similar rule shall apply in the case of an S corporation and its shareholders.''

Subsec. (d)(10). Pub. L. 99–514, §202(c), struck out ''before the close of the second taxable year following the taxable year in which it is placed in service by the taxpayer'' after ''at any time''.

1984—Subsec. (b)(1). Pub. L. 98–369 amended table by dropping items setting applicable amounts of $0 for 1981 and $5,000 for 1982, substituting an applicable amount of $5,000 for 1983, 1984, 1985, 1986, and 1987 for former table items which had set applicable amounts of $5,000 for 1983, $7,500 for 1984, $7,500 for 1985, and $10,000 for 1986 or thereafter, and added items setting applicable amounts of $7,500 for 1988 or 1989, and $10,000 for 1990 or thereafter.

1983—Subsec. (d)(10). Pub. L. 97–448 added par. (10).

1982—Subsec. (d)(8). Pub. L. 97–354 substituted ''partnerships and S corporations'' for ''partnerships'' in heading, and inserted ''A similar rule shall apply in the case of an S corporation and its shareholders.''

1981—Pub. L. 97–34 amended section generally, changing its content from provisions that formerly made available an additional first-year depreciation allowance for small businesses to provisions allowing a taxpayer to elect to treat the cost of section 179 property as an expense which is not chargeable to capital account, with any cost so treated to be allowed as a deduction for the taxable year in which the section 179 property is placed in service.

1976—Subsecs. (c)(1), (2), (d)(6)(B). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d)(8), (9). Pub. L. 94–455, §213(a), added par. (8) and redesignated former par. (8) as par. (9).

Subsec. (e). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

1969—Subsec. (d). Pub. L. 91–172 substituted reference to component members of a controlled group for reference to members of an affiliated group in pars. (2)(B) and (b), and substituted definition of controlled group for definition of affiliated group in par. (7).

1962—Subsec. (d)(5). Pub. L. 87–834, §13(c)(2)(A), substituted ''section 167(h)'' for ''section 167(g)''.

Subsec. (d)(8). Pub. L. 87–834, §13(c)(2)(B), substituted ''section 167(g)'' for ''section 167(f)''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title IV, §402(f), Dec. 17, 2010, 124 Stat. 3307, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2011.''

Amendment by section 737(b)(3) of Pub. L. 111–312 applicable to property placed in service after Dec. 31, 2009, see section 737(c) of Pub. L. 111–312, set out as a note under section 168 of this title.

Pub. L. 111–240, title II, § 2021(e), Sept. 27, 2010, 124 Stat. 2558, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to property placed in service after December 31, 2009, in taxable years beginning after such date.

''(2) EXTENSIONS.—The amendments made by subsections (c) and (d) shall apply to taxable years beginning after December 31, 2010.''

Pub. L. 111–147, title II, § 201(b), Mar. 18, 2010, 124 Stat. 77, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009.''

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, § 1202(b), Feb. 17, 2009, 123 Stat. 335, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title VII, § 711(b), Oct. 3, 2008, 122 Stat. 3929, provided that: ''The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2007, with respect [to] disasters declared after such date.''

Pub. L. 110–185, title I, § 102(b), Feb. 13, 2008, 122 Stat. 618, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2007.''

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–28, title VIII, § 8212(d), May 25, 2007, 121 Stat. 193, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, § 910(b), Oct. 22, 2004, 118 Stat. 1660, provided that: ''The amendment made by this section [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–27, title II, § 202(f), May 28, 2003, 117 Stat. 758, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2002.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1111(b) of Pub. L. 104–188 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1996.''

Amendment by section 1702(h)(10), (19) of Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13116(b) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1992.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 201(d)(3) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

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

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years ending after Dec. 31, 1983, see section 18(a) of Pub. L. 98–369, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, see section 209(a) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 213(a) of Pub. L. 94–455 applicable in the case of partnership taxable years beginning after Dec. 31, 1975, see section 213(f) of Pub. L. 94–455, set out as an Effective Date note under section 709 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to taxable years ending on or after Dec. 31, 1970, see section 401(h)(3) of Pub. L. 91–172, set out as a note under section 1561 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable to taxable years beginning after Dec. 31, 1961, and ending after Oct. 16, 1962, see section 13(g) of Pub. L. 87–834, set out as an Effective Date note under section 1245 of this title.

EFFECTIVE DATE

Section 204(c) of Pub. L. 85–866 provided that: ''The amendments made by this section [enacting this section] shall apply with respect to taxable years ending after June 30, 1958.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain

transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§ 179A. Deduction for clean-fuel vehicles and certain refueling property

(a) Allowance of deduction

(1) In general

There shall be allowed as a deduction an amount equal to the cost of—

(A) any qualified clean-fuel vehicle property, and

(B) any qualified clean-fuel vehicle refueling property.

The deduction under the preceding sentence with respect to any property shall be allowed for the taxable year in which such property is placed in service.

(2) Incremental cost for certain vehicles

If a vehicle may be propelled by both a clean-burning fuel and any other fuel, only the incremental cost of permitting the use of the clean-burning fuel shall be taken into account.

(b) Limitations

(1) Qualified clean-fuel vehicle property

(A) In general

The cost which may be taken into account under subsection (a)(1)(A) with respect to any motor vehicle shall not exceed—

(i) in the case of a motor vehicle not described in clause (ii) or (iii), $2,000,

(ii) in the case of any truck or van with a gross vehicle weight rating greater than 10,000 pounds but not greater than 26,000 pounds, $5,000, or

(iii) $50,000 in the case of—

(I) a truck or van with a gross vehicle weight rating greater than 26,000 pounds, or

(II) any bus which has a seating capacity of at least 20 adults (not including the driver).

(B) Phaseout

In the case of any qualified clean-fuel vehicle property placed in service after December 31, 2005, the limit otherwise allowable under subparagraph (A) shall be reduced by 75 percent.

(2) Qualified clean-fuel vehicle refueling property

(A) In general

The aggregate cost which may be taken into account under subsection (a)(1)(B) with respect to qualified clean-fuel vehicle refueling property placed in service during the taxable year at a location shall not exceed the excess (if any) of—

(i) $100,000, over

(ii) the aggregate amount taken into account under subsection (a)(1)(B) by the taxpayer (or any related person or predecessor) with respect to property placed in service at such location for all preceding taxable years.

(B) Related person

For purposes of this paragraph, a person shall be treated as related to another person if such person bears a relationship to such other person described in section 267(b) or 707(b)(1).

(C) Election

If the limitation under subparagraph (A) applies for any taxable year, the taxpayer shall, on the return of tax for such taxable year, specify the items of property (and the portion of costs of such property) which are to be taken into account under subsection (a)(1)(B).

(c) Qualified clean-fuel vehicle property defined

For purposes of this section—

(1) In general

The term ''qualified clean-fuel vehicle property'' means property which is acquired for use by the taxpayer and not for resale, the original use of which commences with the taxpayer, with respect to which the environmental standards of paragraph (2) are met, and which is described in either of the following subparagraphs:

(A) Retrofit parts and components

Any property installed on a motor vehicle which is propelled by a fuel which is not a clean-burning fuel for purposes of permitting such vehicle to be propelled by a clean-burning fuel—

(i) if the property is an engine (or modification thereof) which may use a clean-burning fuel, or

(ii) to the extent the property is used in the storage or delivery to the engine of such fuel, or the exhaust of gases from combustion of such fuel.

(B) Original equipment manufacturer's vehicles

A motor vehicle produced by an original equipment manufacturer and designed so that the vehicle may be propelled by a clean-burning fuel, but only to the extent of the portion of the basis of such vehicle which is attributable to an engine which may use such fuel, to the storage or delivery to the engine of such fuel, or to the exhaust of gases from combustion of such fuel.

(2) Environmental standards

Property shall not be treated as qualified clean-fuel vehicle property unless—

(A) the motor vehicle of which it is a part meets any applicable Federal or State emissions standards with respect to each fuel by which such vehicle is designed to be propelled, or

(B) in the case of property described in paragraph (1)(A), such property meets applicable Federal and State emissions-related certification, testing, and warranty requirements.

(3) Exception for qualified electric vehicles

The term ''qualified clean-fuel vehicle property'' does not include any qualified electric vehicle (as defined in section 30(c)).

(d) Qualified clean-fuel vehicle refueling property defined

For purposes of this section, the term ''qualified clean-fuel vehicle refueling property'' means any property (not including a building and its structural components) if—

(1) such property is of a character subject to the allowance for depreciation,

(2) the original use of such property begins with the taxpayer, and

(3) such property is—

(A) for the storage or dispensing of a clean-burning fuel into the fuel tank of a motor vehicle propelled by such fuel, but only if the storage or dispensing of the fuel is at the point where such fuel is delivered into the fuel tank of the motor vehicle, or

(B) for the recharging of motor vehicles propelled by electricity, but only if the property is located at the point where the motor vehicles are recharged.

(e) Other definitions and special rules

For purposes of this section—

(1) Clean-burning fuel

The term ''clean-burning fuel'' means—

(A) natural gas,

(B) liquefied natural gas,

(C) liquefied petroleum gas,

(D) hydrogen,

(E) electricity, and

(F) any other fuel at least 85 percent of which is 1 or more of the following: methanol, ethanol, any other alcohol, or ether.

(2) Motor vehicle

The term ''motor vehicle'' means any vehicle which is manufactured primarily for use on public streets, roads, and highways (not including a vehicle operated exclusively on a rail or rails) and which has at least 4 wheels.

(3) Cost of retrofit parts includes cost of installation

The cost of any qualified clean-fuel vehicle property referred to in subsection (c)(1)(A) shall include the cost of the original installation of such property.

(4) Recapture

The Secretary shall, by regulations, provide for recapturing the benefit of any deduction allowable under subsection (a) with respect to any property which ceases to be property eligible for such deduction.

(5) Property used outside United States, etc., not qualified

No deduction shall be allowed under subsection (a) with respect to any property referred to in section 50(b) or with respect to the portion of the cost of any property taken into account under section 179.

(6) Basis reduction

(A) In general

For purposes of this title, the basis of any property shall be reduced by the portion of the cost of such property taken into account under subsection (a).

(B) Ordinary income recapture

For purposes of section 1245, the amount of the deduction allowable under subsection (a) with respect to any property which is of a character subject to the allowance for depreciation shall be treated as a deduction allowed for depreciation under section 167.

(f) Termination

This section shall not apply to any property placed in service after December 31, 2005.

(Added Pub. L. 102–486, title XIX, § 1913(a)(1), Oct. 24, 1992, 106 Stat. 3016; amended Pub. L. 104–188, title I, § 1704(j)(2), Aug. 20, 1996, 110 Stat. 1881; Pub. L. 107–147, title VI, § 606(a), Mar. 9, 2002, 116 Stat. 60; Pub. L. 108–311, title III, § 319(a), Oct. 4, 2004, 118 Stat. 1182; Pub. L. 109–58, title XIII, § 1348, Aug. 8, 2005, 119 Stat. 1056.)

AMENDMENTS

2005—Subsec. (f). Pub. L. 109–58 substituted ''December 31, 2005'' for ''December 31, 2006''.

2004—Subsec. (b)(1)(B). Pub. L. 108–311 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''In the case of any qualified clean-fuel vehicle property placed in service after December 31, 2003, the limit otherwise applicable under subparagraph (A) shall be reduced by—

''(i) 25 percent in the case of property placed in service in calendar year 2004,

''(ii) 50 percent in the case of property placed in service in calendar year 2005, and

''(iii) 75 percent in the case of property placed in service in calendar year 2006.''

2002—Subsec. (b)(1)(B). Pub. L. 107–147, § 606(a)(1)(A), substituted ''December 31, 2003,'' for ''December 31, 2001,'' in introductory provisions.

Subsec. (b)(1)(B)(i). Pub. L. 107–147, § 606(a)(1)(B), substituted ''2004'' for ''2002''

Subsec. (b)(1)(B)(ii). Pub. L. 107–147, § 606(a)(1)(B), substituted ''2005'' for ''2003''.

Subsec. (b)(1)(B)(iii). Pub. L. 107–147, § 606(a)(1)(B), substituted ''2006'' for ''2004''.

Subsec. (f). Pub. L. 107–147, § 606(a)(2), substituted ''December 31, 2006'' for ''December 31, 2004''.

1996—Subsecs. (f), (g). Pub. L. 104–188 redesignated subsec. (g) as (f).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title III, § 319(b), Oct. 4, 2004, 118 Stat. 1182, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to property placed in service after December 31, 2003.''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title VI, § 606(b), Mar. 9, 2002, 116 Stat. 60, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to property placed in service after December 31, 2001.''

EFFECTIVE DATE

Section applicable to property placed in service after June 30, 1993, see section 1913(c) of Pub. L. 102–486, set out as a note under section 30 of this title.

§ 179B. Deduction for capital costs incurred in complying with Environmental Protection Agency sulfur regulations

(a) Allowance of deduction

In the case of a small business refiner (as defined in section 45H(c)(1)) which elects the application of this section, there shall be allowed as a deduction an amount equal to 75 percent of qualified costs (as defined in section 45H(c)(2)) which are paid or incurred by the taxpayer during the taxable year and which are properly chargeable to capital account.

(b) Reduced percentage

In the case of a small business refiner with average daily domestic refinery runs for the 1-year period ending on December 31, 2002, in excess of 155,000 barrels, the number of percentage points described in subsection (a) shall be reduced (not below zero) by the product of such number (before the application of this subsection) and the ratio of such excess to 50,000 barrels.

(c) Basis reduction

(1) In general

For purposes of this title, the basis of any property shall be reduced by the portion of the cost of such property taken into account under subsection (a).

(2) Ordinary income recapture

For purposes of section 1245, the amount of the deduction allowable under subsection (a) with respect to any property which is of a character subject to the allowance for depreciation shall be treated as a deduction allowed for depreciation under section 167.

(d) Coordination with other provisions

Section 280B shall not apply to amounts which are treated as expenses under this section.

(e) Election to allocate deduction to cooperative owner

(1) In general

If—

(A) a small business refiner to which subsection (a) applies is an organization to which part I of subchapter T applies, and

(B) one or more persons directly holding an ownership interest in the refiner are organizations to which part I of subchapter T apply,

the refiner may elect to allocate all or a portion of the deduction allowable under subsection (a) to such persons. Such allocation shall be equal to the person's ratable share of the total amount allocated, determined on the basis of the person's ownership interest in the taxpayer. The taxable income of the refiner shall not be reduced under section 1382 by reason of any amount to which the preceding sentence applies.

(2) Form and effect of election

An election under paragraph (1) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.

(3) Written notice to owners

If any portion of the deduction available under subsection (a) is allocated to owners under paragraph (1), the cooperative shall provide any owner receiving an allocation written notice of the amount of the allocation. Such notice shall be provided before the date on which the return described in paragraph (2) is due.

(Added Pub. L. 108–357, title III, §338(a), Oct. 22, 2004, 118 Stat. 1480; amended Pub. L. 109–58, title XIII, §1324(a), Aug. 8, 2005, 119 Stat. 1015; Pub. L. 110–172, §7(a)(3)(A), (C), Dec. 29, 2007, 121 Stat. 2482.)

AMENDMENTS

2007—Subsec. (a). Pub. L. 110–172 substituted ''qualified costs'' for ''qualified capital costs'' and inserted ''and which are properly chargeable to capital account'' before period at end.

2005—Subsec. (e). Pub. L. 109–58 added subsec. (e).

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 7(e) of Pub. L. 110–172, set out as a note under section 1092 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title XIII, §1324(b), Aug. 8, 2005, 119 Stat. 1015, provided that: ''The amendment made by this section [amending this section] shall take effect as if included in the amendment made by section 338(a) of the American Jobs Creation Act of 2004 [Pub. L. 108–357, enacting this section].''

EFFECTIVE DATE

Pub. L. 108–357, title III, §338(c), Oct. 22, 2004, 118 Stat. 1481, provided that: ''The amendment made by this section [enacting this section and amending sections 263, 263A, 312, 1016, and 1245 of this title] shall apply to expenses paid or incurred after December 31, 2002, in taxable years ending after such date.''

§ 179C. Election to expense certain refineries

(a) Treatment as expenses

A taxpayer may elect to treat 50 percent of the cost of any qualified refinery property as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which the qualified refinery property is placed in service.

(b) Election

(1) In general

An election under this section for any taxable year shall be made on the taxpayer's return of the tax imposed by this chapter for the taxable year. Such election shall be made in such manner as the Secretary may by regulations prescribe.

(2) Election irrevocable

Any election made under this section may not be revoked except with the consent of the Secretary.

(c) Qualified refinery property

(1) In general

The term ''qualified refinery property'' means any portion of a qualified refinery—

(A) the original use of which commences with the taxpayer,

(B) which is placed in service by the taxpayer after the date of the enactment of this section and before January 1, 2014,

(C) in the case any portion of a qualified refinery (other than a qualified refinery which is separate from any existing refinery), which meets the requirements of subsection (e),

(D) which meets all applicable environmental laws in effect on the date such portion was placed in service,

(E) no written binding contract for the construction of which was in effect on or before June 14, 2005, and

(F)(i) the construction of which is subject to a written binding construction contract entered into before January 1, 2010,

(ii) which is placed in service before January 1, 2010, or

(iii) in the case of self-constructed property, the construction of which began after June 14, 2005, and before January 1, 2010.

(2) Special rule for sale-leasebacks

For purposes of paragraph (1)(A), if property is—

(A) originally placed in service after the date of the enactment of this section by a person, and

(B) sold and leased back by such person within 3 months after the date such property was originally placed in service,

such property shall be treated as originally placed in service not earlier than the date on which such property is used under the leaseback referred to in subparagraph (B).

(3) Effect of waiver under Clean Air Act

A waiver under the Clean Air Act shall not be taken into account in determining whether the requirements of paragraph (1)(D) are met.

(d) Qualified refinery

For purposes of this section, the term ''qualified refinery'' means any refinery located in the United States which is designed to serve the primary purpose of processing liquid fuel from crude oil or qualified fuels (as defined in section 45K(c)), or directly from shale or tar sands.

(e) Production capacity

The requirements of this subsection are met if the portion of the qualified refinery—

(1) enables the existing qualified refinery to increase total volume output (determined without regard to asphalt or lube oil) by 5 percent or more on an average daily basis, or

(2) enables the existing qualified refinery to process shale, tar sands, or qualified fuels (as defined in section 45K(c)) at a rate which is equal to or greater than 25 percent of the total throughput of such qualified refinery on an average daily basis.

(f) Ineligible refinery property

No deduction shall be allowed under subsection (a) for any qualified refinery property—

(1) the primary purpose of which is for use as a topping plant, asphalt plant, lube oil facility, crude or product terminal, or blending facility, or

(2) which is built solely to comply with consent decrees or projects mandated by Federal, State, or local governments.

(g) Election to allocate deduction to cooperative owner

(1) In general

If—

(A) a taxpayer to which subsection (a) applies is an organization to which part I of subchapter T applies, and

(B) one or more persons directly holding an ownership interest in the taxpayer are organizations to which part I of subchapter T apply,

the taxpayer may elect to allocate all or a portion of the deduction allowable under subsection (a) to such persons. Such allocation shall be equal to the person's ratable share of the total amount allocated, determined on the basis of the person's ownership interest in the taxpayer. The taxable income of the taxpayer shall not be reduced under section 1382 by reason of any amount to which the preceding sentence applies.

(2) Form and effect of election

An election under paragraph (1) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.

(3) Written notice to owners

If any portion of the deduction available under subsection (a) is allocated to owners under paragraph (1), the cooperative shall provide any owner receiving an allocation written notice of the amount of the allocation. Such notice shall be provided before the date on which the return described in paragraph (2) is due.

(h) Reporting

No deduction shall be allowed under subsection (a) to any taxpayer for any taxable year unless such taxpayer files with the Secretary a report containing such information with respect to the operation of the refineries of the taxpayer as the Secretary shall require.

(Added Pub. L. 109–58, title XIII, § 1323(a), Aug. 8, 2005, 119 Stat. 1013; amended Pub. L. 110–343, div. B, title II, § 209(a), (b), Oct. 3, 2008, 122 Stat. 3840.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (c)(1)(B), (2)(A), is the date of enactment of Pub. L. 109–58, which was approved Aug. 8, 2005.

The Clean Air Act, referred to in subsec. (c)(3), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

AMENDMENTS

2008—Subsec. (c)(1)(B). Pub. L. 110–343, § 209(a)(1), substituted ''January 1, 2014'' for ''January 1, 2012''.

Subsec. (c)(1)(F). Pub. L. 110–343, § 209(a)(2), substituted ''January 1, 2010'' for ''January 1, 2008'' wherever appearing.

Subsec. (d). Pub. L. 110–343, § 209(b)(1), inserted '', or directly from shale or tar sands'' after ''(as defined in section 45K(c))''.

Subsec. (e)(2). Pub. L. 110–343, § 209(b)(2), inserted ''shale, tar sands, or'' before ''qualified fuels''.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title II, § 209(c), Oct. 3, 2008, 122 Stat. 3840, provided that: ''The amendments made by this section [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Oct. 3, 2008].''

EFFECTIVE DATE

Pub. L. 109–58, title XIII, § 1323(c), Aug. 8, 2005, 119 Stat. 1015, provided that: ''The amendments made by this section [enacting this section and amending sections 263, 312, and 1245 of this title] shall apply to properties placed in service after the date of the enactment of this Act [Aug. 8, 2005].''

§ 179D. Energy efficient commercial buildings deduction

(a) In general

There shall be allowed as a deduction an amount equal to the cost of energy efficient commercial building property placed in service during the taxable year.

(b) Maximum amount of deduction

The deduction under subsection (a) with respect to any building for any taxable year shall not exceed the excess (if any) of—

(1) the product of—

(A) $1.80, and

(B) the square footage of the building, over

(2) the aggregate amount of the deductions under subsection (a) with respect to the building for all prior taxable years.

(c) Definitions

For purposes of this section—

(1) Energy efficient commercial building property

The term ''energy efficient commercial building property'' means property—

(A) with respect to which depreciation (or amortization in lieu of depreciation) is allowable,

(B) which is installed on or in any building which is—

(i) located in the United States, and

(ii) within the scope of Standard 90.1–2001,

(C) which is installed as part of—

(i) the interior lighting systems,

(ii) the heating, cooling, ventilation, and hot water systems, or

(iii) the building envelope, and

(D) which is certified in accordance with subsection (d)(6) as being installed as part of a plan designed to reduce the total annual energy and power costs with respect to the interior lighting systems, heating, cooling, ventilation, and hot water systems of the building by 50 percent or more in comparison to a reference building which meets the minimum requirements of Standard 90.1–2001 using methods of calculation under subsection (d)(2).

(2) Standard 90.1–2001

The term ''Standard 90.1–2001'' means Standard 90.1–2001 of the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America (as in effect on April 2, 2003).

(d) Special rules

(1) Partial allowance

(A) In general

Except as provided in subsection (f), if—

(i) the requirement of subsection (c)(1)(D) is not met, but

(ii) there is a certification in accordance with paragraph (6) that any system referred to in subsection (c)(1)(C) satisfies the energy-savings targets established by the Secretary under subparagraph (B) with respect to such system,

then the requirement of subsection (c)(1)(D) shall be treated as met with respect to such system, and the deduction under subsection (a) shall be allowed with respect to energy efficient commercial building property installed as part of such system and as part of a plan to meet such targets, except that subsection (b) shall be applied to such property by substituting ''$.60'' for ''$1.80''.

(B) Regulations

The Secretary, after consultation with the Secretary of Energy, shall establish a target for each system described in subsection (c)(1)(C) which, if such targets were met for all such systems, the building[1] would meet the requirements of subsection (c)(1)(D).

(2) Methods of calculation

The Secretary, after consultation with the Secretary of Energy, shall promulgate regulations which describe in detail methods for calculating and verifying energy and power consumption and cost, based on the provisions of the 2005 California Nonresidential Alternative Calculation Method Approval Manual.

(3) Computer software

(A) In general

Any calculation under paragraph (2) shall be prepared by qualified computer software.

(B) Qualified computer software

For purposes of this paragraph, the term ''qualified computer software'' means software—

(i) for which the software designer has certified that the software meets all procedures and detailed methods for calculating energy and power consumption and costs as required by the Secretary,

(ii) which provides such forms as required to be filed by the Secretary in connection with energy efficiency of property and the deduction allowed under this section, and

(iii) which provides a notice form which documents the energy efficiency features of the building and its projected annual energy costs.

(4) Allocation of deduction for public property

In the case of energy efficient commercial building property installed on or in property owned by a Federal, State, or local government or a political subdivision thereof, the Secretary shall promulgate a regulation to allow the allocation of the deduction to the person primarily responsible for designing the property in lieu of the owner of such property. Such person shall be treated as the taxpayer for purposes of this section.

(5) Notice to owner

Each certification required under this section shall include an explanation to the building owner regarding the energy efficiency features of the building and its projected annual energy costs as provided in the notice under paragraph (3)(B)(iii).

[1] So in original.

(6) Certification

(A) In general

The Secretary shall prescribe the manner and method for the making of certifications under this section.

(B) Procedures

The Secretary shall include as part of the certification process procedures for inspection and testing by qualified individuals described in subparagraph (C) to ensure compliance of buildings with energy-savings plans and targets. Such procedures shall be comparable, given the difference between commercial and residential buildings, to the requirements in the Mortgage Industry National Accreditation Procedures for Home Energy Rating Systems.

(C) Qualified individuals

Individuals qualified to determine compliance shall be only those individuals who are recognized by an organization certified by the Secretary for such purposes.

(e) Basis reduction

For purposes of this subtitle, if a deduction is allowed under this section with respect to any energy efficient commercial building property, the basis of such property shall be reduced by the amount of the deduction so allowed.

(f) Interim rules for lighting systems

Until such time as the Secretary issues final regulations under subsection (d)(1)(B) with respect to property which is part of a lighting system—

(1) In general

The lighting system target under subsection (d)(1)(A)(ii) shall be a reduction in lighting power density of 25 percent (50 percent in the case of a warehouse) of the minimum requirements in Table 9.3.1.1 or Table 9.3.1.2 (not including additional interior lighting power allowances) of Standard 90.1–2001.

(2) Reduction in deduction if reduction less than 40 percent

(A) In general

If, with respect to the lighting system of any building other than a warehouse, the reduction in lighting power density of the lighting system is not at least 40 percent, only the applicable percentage of the amount of deduction otherwise allowable under this section with respect to such property shall be allowed.

(B) Applicable percentage

For purposes of subparagraph (A), the applicable percentage is the number of percentage points (not greater than 100) equal to the sum of—

(i) 50, and

(ii) the amount which bears the same ratio to 50 as the excess of the reduction of lighting power density of the lighting system over 25 percentage points bears to 15.

(C) Exceptions

This subsection shall not apply to any system—

(i) the controls and circuiting of which do not comply fully with the mandatory and prescriptive requirements of Standard 90.1–2001 and which do not include provision for bilevel switching in all occupancies except hotel and motel guest rooms, store rooms, restrooms, and public lobbies, or

(ii) which does not meet the minimum requirements for calculated lighting levels as set forth in the Illuminating Engineering Society of North America Lighting Handbook, Performance and Application, Ninth Edition, 2000.

(g) Regulations

The Secretary shall promulgate such regulations as necessary—

(1) to take into account new technologies regarding energy efficiency and renewable energy for purposes of determining energy efficiency and savings under this section, and

(2) to provide for a recapture of the deduction allowed under this section if the plan described in subsection (c)(1)(D) or (d)(1)(A) is not fully implemented.

(h) Termination

This section shall not apply with respect to property placed in service after December 31, 2013.

(Added Pub. L. 109–58, title XIII, § 1331(a), Aug. 8, 2005, 119 Stat. 1020; amended Pub. L. 109–432, div. A, title II, § 204, Dec. 20, 2006, 120 Stat. 2945; Pub. L. 110–343, div. B, title III, § 303, Oct. 3, 2008, 122 Stat. 3845.)

AMENDMENTS

2008—Subsec. (h). Pub. L. 110–343 substituted ''December 31, 2013'' for ''December 31, 2008''.

2006—Subsec. (h). Pub. L. 109–432 substituted ''2008'' for ''2007''.

EFFECTIVE DATE

Pub. L. 109–58, title XIII, § 1331(d), Aug. 8, 2005, 119 Stat. 1024, provided that: ''The amendments made by this section [enacting this section and amending sections 263, 312, 1016, 1245, and 1250 of this title] shall apply to property placed in service after December 31, 2005.''

§ 179E. Election to expense advanced mine safety equipment

(a) Treatment as expenses

A taxpayer may elect to treat 50 percent of the cost of any qualified advanced mine safety equipment property as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which the qualified advanced mine safety equipment property is placed in service.

(b) Election

(1) In general

An election under this section for any taxable year shall be made on the taxpayer's return of the tax imposed by this chapter for the taxable year. Such election shall specify the advanced mine safety equipment property to which the election applies and shall be made in such manner as the Secretary may by regulations prescribe.

(2) Election irrevocable

Any election made under this section may not be revoked except with the consent of the Secretary.

(c) Qualified advanced mine safety equipment property

For purposes of this section, the term ''qualified advanced mine safety equipment property'' means any advanced mine safety equipment property for use in any underground mine located in the United States—

(1) the original use of which commences with the taxpayer, and

(2) which is placed in service by the taxpayer after the date of the enactment of this section.

(d) Advanced mine safety equipment property

For purposes of this section, the term ''advanced mine safety equipment property'' means any of the following:

(1) Emergency communication technology or device which is used to allow a miner to maintain constant communication with an individual who is not in the mine.

(2) Electronic identification and location device which allows an individual who is not in the mine to track at all times the movements and location of miners working in or at the mine.

(3) Emergency oxygen-generating, self-rescue device which provides oxygen for at least 90 minutes.

(4) Pre-positioned supplies of oxygen which (in combination with self-rescue devices) can be used to provide each miner on a shift, in the event of an accident or other event which traps the miner in the mine or otherwise necessitates the use of such a self-rescue device, the ability to survive for at least 48 hours.

(5) Comprehensive atmospheric monitoring system which monitors the levels of carbon monoxide, methane, and oxygen that are present in all areas of the mine and which can detect smoke in the case of a fire in a mine.

(e) Coordination with section 179

No expenditures shall be taken into account under subsection (a) with respect to the portion of the cost of any property specified in an election under section 179.

(f) Reporting

No deduction shall be allowed under subsection (a) to any taxpayer for any taxable year unless such taxpayer files with the Secretary a report containing such information with respect to the operation of the mines of the taxpayer as the Secretary shall require.

(g) Termination

This section shall not apply to property placed in service after December 31, 2011.

(Added Pub. L. 109–432, div. A, title IV, §404(a), Dec. 20, 2006, 120 Stat. 2955; amended Pub. L. 110–343, div. C, title III, §311, Oct. 3, 2008, 122 Stat. 3869; Pub. L. 111–312, title VII, §743(a), Dec. 17, 2010, 124 Stat. 3319.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (c)(2), is the date of enactment of Pub. L. 109–432, which was approved Dec. 20, 2006.

AMENDMENTS

2010—Subsec. (g). Pub. L. 111–312 substituted ''December 31, 2011'' for ''December 31, 2009''.

2008—Subsec. (g). Pub. L. 110–343 substituted ''December 31, 2009'' for ''December 31, 2008''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §743(b), Dec. 17, 2010, 124 Stat. 3319, provided that: ''The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2009.''

EFFECTIVE DATE

Pub. L. 109–432, div. A, title IV, §404(c), Dec. 20, 2006, 120 Stat. 2957, provided that: ''The amendments made by this section [enacting this section and amending sections 263, 312, and 1245 of this title] shall apply to costs paid or incurred after the date of the enactment of this Act [Dec. 20, 2006].''

§ 180. Expenditures by farmers for fertilizer, etc.

(a) In general

A taxpayer engaged in the business of farming may elect to treat as expenses which are not chargeable to capital account expenditures (otherwise chargeable to capital account) which are paid or incurred by him during the taxable year for the purchase or acquisition of fertilizer, lime, ground limestone, marl, or other materials to enrich, neutralize, or condition land used in farming, or for the application of such materials to such land. The expenditures so treated shall be allowed as a deduction.

(b) Land used in farming

For purposes of subsection (a), the term ''land used in farming'' means land used (before or simultaneously with the expenditures described in subsection (a)) by the taxpayer or his tenant for the production of crops, fruits, or other agricultural products or for the sustenance of livestock.

(c) Election

The election under subsection (a) for any taxable year shall be made within the time prescribed by law (including extensions thereof) for filing the return for such taxable year. Such election shall be made in such manner as the Secretary may by regulations prescribe. Such election may not be revoked except with the consent of the Secretary.

(Added Pub. L. 86–779, §6(a), Sept. 14, 1960, 74 Stat. 1001; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (c). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE

Section 6(d) of Pub. L. 86–779 provided that: ''The amendments made by subsections (a), (b), and (c) [enacting this section and amending section 263 of this title] shall apply to taxable years beginning after December 31, 1959.''

§ 181. Treatment of certain qualified film and television productions

(a) Election to treat costs as expenses

(1) In general

A taxpayer may elect to treat the cost of any qualified film or television production as

an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction.

(2) Dollar limitation

(A) In general

Paragraph (1) shall not apply to so much of the aggregate cost of any qualified film or television production as exceeds $15,000,000.

(B) Higher dollar limitation for productions in certain areas

In the case of any qualified film or television production the aggregate cost of which is significantly incurred in an area eligible for designation as—

(i) a low-income community under section 45D, or

(ii) a distressed county or isolated area of distress by the Delta Regional Authority established under section 2009aa–1 of title 7, United States Code,

subparagraph (A) shall be applied by substituting ''$20,000,000'' for ''$15,000,000''.

(b) No other deduction or amortization deduction allowable

With respect to the basis of any qualified film or television production to which an election is made under subsection (a), no other depreciation or amortization deduction shall be allowable.

(c) Election

(1) In general

An election under this section with respect to any qualified film or television production shall be made in such manner as prescribed by the Secretary and by the due date (including extensions) for filing the taxpayer's return of tax under this chapter for the taxable year in which costs of the production are first incurred.

(2) Revocation of election

Any election made under this section may not be revoked without the consent of the Secretary.

(d) Qualified film or television production

For purposes of this section—

(1) In general

The term ''qualified film or television production'' means any production described in paragraph (2) if 75 percent of the total compensation of the production is qualified compensation.

(2) Production

(A) In general

A production is described in this paragraph if such production is property described in section 168(f)(3).

(B) Special rules for television series

In the case of a television series—

(i) each episode of such series shall be treated as a separate production, and

(ii) only the first 44 episodes of such series shall be taken into account.

(C) Exception

A production is not described in this paragraph if records are required under section 2257 of title 18, United States Code, to be maintained with respect to any performer in such production.

(3) Qualified compensation

For purposes of paragraph (1)—

(A) In general

The term ''qualified compensation'' means compensation for services performed in the United States by actors, production personnel, directors, and producers.

(B) Participations and residuals excluded

The term ''compensation'' does not include participations and residuals (as defined in section 167(g)(7)(B)).

(e) Application of certain other rules

For purposes of this section, rules similar to the rules of subsections (b)(2) and (c)(4) of section 194 shall apply.

(f) Termination

This section shall not apply to qualified film and television productions commencing after December 31, 2011.

(Added Pub. L. 108–357, title II, § 244(a), Oct. 22, 2004, 118 Stat. 1445; amended Pub. L. 109–135, title IV, § 403(e)(1), Dec. 21, 2005, 119 Stat. 2623; Pub. L. 110–343, div. C, title V, § 502(a), (b), (d), Oct. 3, 2008, 122 Stat. 3876, 3877; Pub. L. 111–312, title VII, § 744(a), Dec. 17, 2010, 124 Stat. 3319.)

PRIOR PROVISIONS

A prior section 181, Pub. L. 87–834, § 2(c), Oct. 16, 1962, 76 Stat. 970, related to a deduction for unused investment credit, prior to repeal by Pub. L. 88–272, title II, § 203(a)(3)(B), (4), Feb. 26, 1964, 78 Stat. 34, applicable in case of property placed in service after Dec. 31, 1963, with respect to taxable years ending after such date, and in case of property placed in service before Jan. 1, 1964, with respect to taxable years beginning after Dec. 31, 1963.

AMENDMENTS

2010—Subsec. (f). Pub. L. 111–312 substituted ''December 31, 2011'' for ''December 31, 2009''.

2008—Subsec. (a)(2)(A). Pub. L. 110–343, § 502(b), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Paragraph (1) shall not apply to any qualified film or television production the aggregate cost of which exceeds $15,000,000.''

Subsec. (d)(3)(A). Pub. L. 110–343, § 502(d), substituted ''actors, production personnel, directors, and producers.'' for ''actors, directors, producers, and other relevant production personnel.''

Subsec. (f). Pub. L. 110–343, § 502(a), substituted ''December 31, 2009'' for ''December 31, 2008''.

2005—Subsec. (d)(2). Pub. L. 109–135 struck out ''For purposes of a television series, only the first 44 episodes of such series may be taken into account.'' at end of subpar. (A), added subpar. (B), and redesignated former subpar. (B) as (C).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, § 744(b), Dec. 17, 2010, 124 Stat. 3319, provided that: ''The amendment made by this section [amending this section] shall apply to productions commencing after December 31, 2009.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title V, § 502(e), Oct. 3, 2008, 122 Stat. 3877, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section

[amending this section and section 199 of this title] shall apply to qualified film and television productions commencing after December 31, 2007.

''(2) DEDUCTION.—The amendments made by subsection (c) [amending section 199 of this title] shall apply to taxable years beginning after December 31, 2007.''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE

Pub. L. 108–357, title II, §244(c), Oct. 22, 2004, 118 Stat. 1447, provided that: ''The amendments made by this section [enacting this section] shall apply to qualified film and television productions (as defined in section 181(d)(1) of the Internal Revenue Code of 1986, as added by this section) commencing after the date of the enactment of this Act [Oct. 22, 2004].''

[§ 182. Repealed. Pub. L. 99–514, title IV, § 402(a), Oct. 22, 1986, 100 Stat. 2221]

Section, added Pub. L. 87–834, §21(a), Oct. 16, 1962, 76 Stat. 1063; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, authorized deduction of expenditures by farmers for clearing land.

EFFECTIVE DATE OF REPEAL

Section 402(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending sections 263 and 1252 of this title and repealing this section] shall apply to amounts paid or incurred after December 31, 1985, in taxable years ending after such date.''

§ 183. Activities not engaged in for profit

(a) General rule

In the case of an activity engaged in by an individual or an S corporation, if such activity is not engaged in for profit, no deduction attributable to such activity shall be allowed under this chapter except as provided in this section.

(b) Deductions allowable

In the case of an activity not engaged in for profit to which subsection (a) applies, there shall be allowed—

(1) the deductions which would be allowable under this chapter for the taxable year without regard to whether or not such activity is engaged in for profit, and

(2) a deduction equal to the amount of the deductions which would be allowable under this chapter for the taxable year only if such activity were engaged in for profit, but only to the extent that the gross income derived from such activity for the taxable year exceeds the deductions allowable by reason of paragraph (1).

(c) Activity not engaged in for profit defined

For purposes of this section, the term ''activity not engaged in for profit'' means any activity other than one with respect to which deductions are allowable for the taxable year under section 162 or under paragraph (1) or (2) of section 212.

(d) Presumption

If the gross income derived from an activity for 3 or more of the taxable years in the period of 5 consecutive taxable years which ends with the taxable year exceeds the deductions attributable to such activity (determined without regard to whether or not such activity is engaged in for profit), then, unless the Secretary establishes to the contrary, such activity shall be presumed for purposes of this chapter for such taxable year to be an activity engaged in for profit. In the case of an activity which consists in major part of the breeding, training, showing, or racing of horses, the preceding sentence shall be applied by substituting ''2'' for ''3'' and ''7'' for ''5''.

(e) Special rule

(1) In general

A determination as to whether the presumption provided by subsection (d) applies with respect to any activity shall, if the taxpayer so elects, not be made before the close of the fourth taxable year (sixth taxable year, in the case of an activity described in the last sentence of such subsection) following the taxable year in which the taxpayer first engages in the activity. For purposes of the preceding sentence, a taxpayer shall be treated as not having engaged in an activity during any taxable year beginning before January 1, 1970.

(2) Initial period

If the taxpayer makes an election under paragraph (1), the presumption provided by subsection (d) shall apply to each taxable year in the 5-taxable year (or 7-taxable year) period beginning with the taxable year in which the taxpayer first engages in the activity, if the gross income derived from the activity for 3 (or 2 if applicable) or more of the taxable years in such period exceeds the deductions attributable to the activity (determined without regard to whether or not the activity is engaged in for profit).

(3) Election

An election under paragraph (1) shall be made at such time and manner, and subject to such terms and conditions, as the Secretary may prescribe.

(4) Time for assessing deficiency attributable to activity

If a taxpayer makes an election under paragraph (1) with respect to an activity, the statutory period for the assessment of any deficiency attributable to such activity shall not expire before the expiration of 2 years after the date prescribed by law (determined without extensions) for filing the return of tax under chapter 1 for the last taxable year in the period of 5 taxable years (or 7 taxable years) to which the election relates. Such deficiency may be assessed notwithstanding the provisions of any law or rule of law which would otherwise prevent such an assessment.

(Added Pub. L. 91–172, title II, §213(a), Dec. 30, 1969, 83 Stat. 571; amended Pub. L. 92–178, title III, §311(a), Dec. 10, 1971, 85 Stat. 525; Pub. L. 94–455, title II, §214(a), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1549, 1834; Pub. L. 97–354, §5(a)(23), Oct. 19, 1982, 96 Stat. 1694; Pub. L. 99–514, title I, §143(a), Oct. 22, 1986, 100 Stat. 2120; Pub. L. 100–647, title I, §1001(h)(3), Nov. 10, 1988, 102 Stat. 3352.)

AMENDMENTS

1988—Subsec. (e)(2). Pub. L. 100–647 substituted ''activity for 3 (or 2 if applicable)'' for ''activity for 2''.

1986—Subsec. (d). Pub. L. 99–514 substituted ''3'' for ''2'' before ''or more'' in first sentence and '' '2' for '3' and '7' for '5' '' for ''the period of 7 consecutive taxable years for the period of 5 consecutive taxable years'' in second sentence.

1982—Subsec. (a). Pub. L. 97–354 substituted ''an S corporation'' for ''an electing small business corporation (as defined in section 1371(b))''.

1976—Subsecs. (d), (e)(3). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (e)(4). Pub. L. 94–455, § 214(a), added par. (4).

1971—Subsec. (e). Pub. L. 92–178 added subsec. (e).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 214(c) of Pub. L. 94–455 provided that: ''The amendments made by this section [amending this section and section 6212 of this title] shall apply with respect to taxable years beginning after December 31, 1969; except that such amendments shall not apply to any taxable year ending before the date of the enactment of this Act [Oct. 4, 1976] with respect to which the period for assessing a deficiency has expired before such date of enactment.''

EFFECTIVE DATE OF 1971 AMENDMENT

Section 311(b) of Pub. L. 92–178 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1969.''

EFFECTIVE DATE

Section 213(d) of Pub. L. 91–172 provided that: ''The amendments made by this section [enacting this section, amending section 6504 of this title, and repealing section 270 of this title] shall apply to taxable years beginning after December 31, 1969.''

[§ 184. Repealed. Pub. L. 101–508, title XI, § 11801(a)(12), Nov. 5, 1990, 104 Stat. 1388–520]

Section, added Pub. L. 91–172, title VII, § 705(a), Dec. 30, 1969, 83 Stat. 670; amended Pub. L. 93–625, § 3(b), Jan. 3, 1975, 88 Stat. 2109; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to amortization of certain railroad rolling stock.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[§ 185. Repealed. Pub. L. 99–514, title II, § 242(a), Oct. 22, 1986, 100 Stat. 2181]

Section, added Pub. L. 91–172, title VII, § 705(a), Dec. 30, 1969, 83 Stat. 672; amended Pub. L. 94–455, title XVII, § 1702, title XIX, § 1906(b) (13)(A), Oct. 4, 1976, 90 Stat. 1760, 1834; Pub. L. 95–473, § 2(a)(2)(B), Oct. 17, 1978, 92 Stat. 1464, related to amortization of railroad grading and tunnel bores.

EFFECTIVE DATE OF REPEAL

Section 242(c) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending sections 1082 and 1250 of this title and repealing this section] shall apply to that portion of the basis of any property which is attributable to expenditures paid or incurred after December 31, 1986.

''(2) TRANSITIONAL RULE.—The amendments made by this section shall not apply to any expenditure incurred—

''(A) pursuant to a binding contract entered into before March 2, 1986, or

''(B) with respect to any improvement commenced before March 2, 1986, but only if not less than the lesser of $1,000,000 or 5 percent of the aggregate cost of such improvement has been incurred or committed before such date.

The preceding sentence shall not apply to any expenditure with respect to an improvement placed in service after December 31, 1987.''

§ 186. Recoveries of damages for antitrust violations, etc.

(a) Allowance of deduction

If a compensatory amount which is included in gross income is received or accrued during the taxable year for a compensable injury, there shall be allowed as a deduction for the taxable year an amount equal to the lesser of—

(1) the amount of such compensatory amount, or

(2) the amount of the unrecovered losses sustained as a result of such compensable injury.

(b) Compensable injury

For purposes of this section, the term ''compensable injury'' means—

(1) injuries sustained as a result of an infringement of a patent issued by the United States,

(2) injuries sustained as a result of a breach of contract or a breach of fiduciary duty or relationship, or

(3) injuries sustained in business, or to property, by reason of any conduct forbidden in the antitrust laws for which a civil action may be brought under section 4 of the Act entitled ''An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes'', approved October 15, 1914 (commonly known as the Clayton Act).

(c) Compensatory amount

For purposes of this section, the term ''compensatory amount'' means the amount received or accrued during the taxable year as damages as a result of an award in, or in settlement of, a civil action for recovery for a compensable injury, reduced by any amounts paid or incurred in the taxable year in securing such award or settlement.

(d) Unrecovered losses

(1) In general

For purposes of this section, the amount of any unrecovered loss sustained as a result of any compensable injury is—

(A) the sum of the amount of the net operating losses (as determined under section 172) for each taxable year in whole or in part within the injury period, to the extent that such net operating losses are attributable to such compensable injury, reduced by

(B) the sum of—

(i) the amount of the net operating losses described in subparagraph (A) which were allowed for any prior taxable year as a deduction under section 172 as a net operating loss carryback or carryover to such taxable year, and

(ii) the amounts allowed as a deduction under subsection (a) for any prior taxable year for prior recoveries of compensatory amounts for such compensable injury.

(2) Injury period

For purposes of paragraph (1), the injury period is—

(A) with respect to any infringement of a patent, the period in which such infringement occurred,

(B) with respect to a breach of contract or breach of fiduciary duty or relationship, the period during which amounts would have been received or accrued but for the breach of contract or breach of fiduciary duty or relationship, and

(C) with respect to injuries sustained by reason of any conduct forbidden in the antitrust laws, the period in which such injuries were sustained.

(3) Net operating losses attributable to compensable injuries

For purposes of paragraph (1)—

(A) a net operating loss for any taxable year shall be treated as attributable to a compensable injury to the extent of the compensable injury sustained during such taxable year, and

(B) if only a portion of a net operating loss for any taxable year is attributable to a compensable injury, such portion shall (in applying section 172 for purposes of this section) be considered to be a separate net operating loss for such year to be applied after the other portion of such net operating loss.

(e) Effect on net operating loss carryovers

If for the taxable year in which a compensatory amount is received or accrued any portion of a net operating loss carryover to such year is attributable to the compensable injury for which such amount is received or accrued, such portion of such net operating loss carryover shall be reduced by an amount equal to—

(1) the deduction allowed under subsection (a) with respect to such compensatory amount, reduced by

(2) any portion of the unrecovered losses sustained as a result of the compensable injury with respect to which the period for carryover under section 172 has expired.

(Added Pub. L. 91–172, title IX, §904(a), Dec. 30, 1969, 83 Stat. 711.)

REFERENCES IN TEXT

Section 4 of the Clayton Act, referred to in subsec. (b)(3), is classified to section 15 of Title 15.

EFFECTIVE DATE

Section 904(c) of Pub. L. 91–172 provided that: ''The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1968.''

[§ 187. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(31), Oct. 4, 1976, 90 Stat. 1769]

Section, added Pub. L. 91–172, title VII, §707(a), Dec. 30, 1969, 83 Stat. 674; amended Pub. L. 93–625, §3(d), Jan. 3, 1975, 88 Stat. 2109, provided for an allowance of an amortization deduction for certain coal mine safety equipment, the method of election and termination of such deduction, the definition of term ''certified coal mine safety equipment'', and special rules applicable to the amortization deduction.

EFFECTIVE DATE OF REPEAL

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

[§ 188. Repealed. Pub. L. 101–508, title XI, § 11801(a)(13), Nov. 5, 1990, 104 Stat. 1388–520]

Section, added Pub. L. 92–178, title III, §303(a), Dec. 10, 1971, 85 Stat. 521; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–30, title IV, §402(a)(1)–(3), May 23, 1977, 91 Stat. 155, related to amortization of certain expenditures for child care facilities.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[§ 189. Repealed. Pub. L. 99–514, title VIII, § 803(b)(1), Oct. 22, 1986, 100 Stat. 2355]

Section, added Pub. L. 94–455, title II, §201(a), Oct. 4, 1976, 90 Stat. 1525; amended Pub. L. 95–600, title VII, §701(m)(1), Nov. 6, 1978, 92 Stat. 2907; Pub. L. 97–34, title II, §262(a), (b), Aug. 13, 1981, 95 Stat. 264; Pub. L. 97–248, title II, §207(a)–(d), Sept. 3, 1982, 96 Stat. 431, 432; Pub. L. 97–354, §5(a)(24), Oct. 19, 1982, 96 Stat. 1694; Pub. L. 98–369, div. A, title I, §93(a), title VII, §712(c), July 18, 1984, 98 Stat. 614, 947, related to amortization of real property construction period interest and taxes.

EFFECTIVE DATE OF REPEAL

If any interest costs incurred after Dec. 31, 1986, are attributable to costs incurred before Jan. 1, 1987, the repeal of this section is applicable to such interest costs only to the extent such interest costs are attributable to costs which were required to be capitalized under section 263 of the Internal Revenue Code of 1954 and which would have been taken into account in applying this section (as in effect before its repeal) or, if applicable, section 266 of such Code, see section 7831(d)(2) of Pub. L. 101–239, set out as an Effective Date note under section 263A of this title.

Repeal applicable to costs incurred after Dec. 31, 1986, in taxable years ending after such date, except as

otherwise provided, see section 803(d) of Pub. L. 99–514, set out as an Effective Date note under section 263A of this title.

§ 190. Expenditures to remove architectural and transportation barriers to the handicapped and elderly

(a) Treatment as expenses

(1) In general

A taxpayer may elect to treat qualified architectural and transportation barrier removal expenses which are paid or incurred by him during the taxable year as expenses which are not chargeable to capital account. The expenditures so treated shall be allowed as a deduction.

(2) Election

An election under paragraph (1) shall be made at such time and in such manner as the Secretary prescribes by regulations.

(b) Definitions

For purposes of this section—

(1) Architectural and transportation barrier removal expenses

The term ''architectural and transportation barrier removal expenses'' means an expenditure for the purpose of making any facility or public transportation vehicle owned or leased by the taxpayer for use in connection with his trade or business more accessible to, and usable by, handicapped and elderly individuals.

(2) Qualified architectural and transportation barrier removal expenses

The term ''qualified architectural and transportation barrier removal expense'' means, with respect to any such facility or public transportation vehicle, an architectural or transportation barrier removal expense with respect to which the taxpayer establishes, to the satisfaction of the Secretary, that the resulting removal of any such barrier meets the standards promulgated by the Secretary with the concurrence of the Architectural and Transportation Barriers Compliance Board and set forth in regulations prescribed by the Secretary.

(3) Handicapped individual

The term ''handicapped individual'' means any individual who has a physical or mental disability (including, but not limited to, blindness or deafness) which for such individual constitutes or results in a functional limitation to employment, or who has any physical or mental impairment (including, but not limited to, a sight or hearing impairment) which substantially limits one or more major life activities of such individual.

(c) Limitation

The deduction allowed by subsection (a) for any taxable year shall not exceed $15,000.

(Added Pub. L. 94–455, title XXI, § 2122(a), Oct. 4, 1976, 90 Stat. 1914; amended Pub. L. 98–369, div. A, title X, § 1062(a)(1), (b), July 18, 1984, 98 Stat. 1047; Pub. L. 99–514, title II, § 244, Oct. 22, 1986, 100 Stat. 2183; Pub. L. 101–508, title XI, §§ 11611(c), 11801(a)(14), Nov. 5, 1990, 104 Stat. 1388–503, 1388–520.)

AMENDMENTS

1990—Subsec. (c). Pub. L. 101–508, § 11611(c), substituted ''$15,000'' for ''$35,000''.

Subsec. (d). Pub. L. 101–508, § 11801(a)(14), struck out subsec. (d) which related to application of section to taxable years beginning after Dec. 31, 1976, and before Jan. 1, 1983, and to taxable years beginning after Dec. 31, 1983.

1986—Subsec. (d)(2). Pub. L. 99–514 substituted ''1983'' for ''1983, and before January 1, 1986''.

1984—Subsec. (c). Pub. L. 98–369, § 1062(b), substituted ''$35,000'' for ''$25,000''.

Subsec. (d). Pub. L. 98–369, § 1062(a)(1), amended subsec. (d) generally, substituting provisions that this section shall apply to taxable years beginning after December 31, 1976, and before January 1, 1983, and to taxable years beginning after December 31, 1983, and before January 1, 1986 for provisions which had required the Secretary to prescribe such regulations as might be necessary to carry out this section within 180 days after October 4, 1976.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11611(c) of Pub. L. 101–508 applicable to taxable years beginning after Nov. 5, 1990, see section 11611(e)(2) of Pub. L. 101–508, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1062(c) of Pub. L. 98–369 provided that: ''The amendment made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1983.''

EFFECTIVE DATE

Section 2122(c) of Pub. L. 94–455, as amended by Pub. L. 96–167, § 9(c), Dec. 29, 1979, 93 Stat. 1278; Pub. L. 98–369, div. A, title X, § 1062(a)(2), July 18, 1984, 98 Stat. 1047, provided that: ''The amendments made by this section [enacting this section and amending sections 263, 1245, and 1250 of this title] shall apply to taxable years beginning after December 31, 1976.''

SAVINGS PROVISION

For provisions that nothing in amendment by section 11801(a)(14) of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[§ 191. Repealed. Pub. L. 97–34, title II, § 212(d)(1), Aug. 13, 1981, 95 Stat. 239]

Section, added Pub. L. 94–455, title XXI, § 2124(a)(1), Oct. 4, 1976, 90 Stat. 1916; amended Pub. L. 95–600, title VII, § 701(f)(1), (2), (7), Nov. 6, 1978, 92 Stat. 2900–2902; Pub. L. 96–222, title I, § 107(a)(1)(E)(ii), Apr. 1, 1980, 94 Stat. 222; Pub. L. 96–541, § 2(a), Dec. 17, 1980, 94 Stat. 3204, related to amortization of certain rehabilitation expenditures for certified historic structures.

EFFECTIVE DATE OF REPEAL

Repeal applicable to expenditures incurred after Dec. 31, 1981, in taxable years ending after such date, with exceptions, see section 212(e) of Pub. L. 97–34, set out as an Effective Date of 1981 Amendment note under section 46 of this title.

§ 192. Contributions to black lung benefit trust

(a) Allowance of deduction

There is allowed as a deduction for the taxable year an amount equal to the sum of the amounts contributed by the taxpayer during the taxable year to or under a trust or trusts described in section 501(c)(21).

(b) Limitation

The maximum amount of the deduction allowed by subsection (a) for any taxpayer for any taxable year shall not exceed the greater of—

(1) the amount necessary to fund (with level funding) the remaining unfunded liability of the taxpayer for black lung claims filed (or expected to be filed) by (or with respect to) past or present employees of the taxpayer, or

(2) the aggregate amount necessary to increase each trust described in section 501(c)(21) to the amount required to pay all amounts payable out of such trust for the taxable year.

(c) Special rules

(1) Method of determining amounts referred to in subsection (b)

(A) In general

The amounts described in subsection (b) shall be determined by using reasonable actuarial methods and assumptions which are not inconsistent with regulations prescribed by the Secretary.

(B) Funding period

Except as provided in subparagraph (C), the funding period for purposes of subsection (b)(1) shall be the greater of—

(i) the average remaining working life of miners who are present employees of the taxpayer, or

(ii) 10 taxable years.

For purposes of the preceding sentence, the term ''miner'' has the same meaning as such term has when used in section 402(d) of the Black Lung Benefits Act (30 U.S.C. 902(d)).

(C) Different funding periods

To the extent that—

(i) regulations prescribed by the Secretary provide for a different period, or

(ii) the Secretary consents to a different period proposed by the taxpayer,

such different period shall be substituted for the funding period provided in subparagraph (B).

(2) Benefit payments taken into account

In determining the amounts described in subsection (b), only those black lung benefit claims the payment of which is expected to be made from the trust shall be taken into account.

(3) Time when contributions deemed made

For purposes of this section, a taxpayer shall be deemed to have made a payment of a contribution on the last day of a taxable year if the payment is on account of that taxable year and is made not later than the time prescribed by law for filing the return for that taxable year (including extensions thereof).

(4) Contributions to be in cash or certain other items

No deduction shall be allowed under subsection (a) with respect to any contribution to a trust described in section 501(c)(21) other than a contribution in cash or in items in which such trust may invest under subclause (II) of section 501(c)(21)(A)(ii).

(5) Denial of section 162 deduction with respect to liability

No deduction shall be allowed under section 162(a) with respect to any liability taken into account in determining the deduction under subsection (a) of this section of the taxpayer (or a predecessor).

(d) Carryover of excess contributions

If the amount of the deduction determined under subsection (a) for the taxable year (without regard to the limitation imposed by subsection (b)) with respect to a trust exceeds the limitation imposed by subsection (b) for the taxable year, the excess shall be carried over to the succeeding taxable year and treated as contributed to the trust during that year.

(e) Definition of black lung benefit claim

For purposes of this section, the term ''black lung benefit claim'' means a claim for compensation for disability or death due to pneumoconiosis under part C of title IV of the Federal Mine Safety and Health Act of 1977 or under any State law providing for such compensation.

(Added Pub. L. 95–227, §4(b)(1), Feb. 10, 1978, 92 Stat. 16; amended Pub. L. 95–488, §1(a)–(c), Oct. 20, 1978, 92 Stat. 1637; Pub. L. 96–222, title I, §108(b)(2)(B), Apr. 1, 1980, 94 Stat. 226; Pub. L. 102–486, title XIX, §1940(c), Oct. 24, 1992, 106 Stat. 3035.)

REFERENCES IN TEXT

The Federal Mine Safety and Health Act of 1977, referred to in subsec. (e), is Pub. L. 91–173, Dec. 30, 1969, 83 Stat. 742, as amended by Pub. L. 95–164, Nov. 9, 1977, 91 Stat. 1290. Part C of title IV of the Federal Mine Safety and Health Act of 1977 is classified generally to part C of subchapter IV of chapter 22 (§931 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 30 and Tables.

AMENDMENTS

1992—Subsec. (c)(4). Pub. L. 102–486 substituted ''subclause (II) of section 501(c)(21)(A)(ii)'' for ''clause (ii) of section 501(c)(21)(B)''.

1980—Subsec. (e). Pub. L. 96–222 substituted ''Federal Mine Safety and Health Act of 1977'' for ''Federal Coal Mine Health and Safety Act of 1969''.

1978—Subsec. (b). Pub. L. 95–488, §1(a), substituted provision limiting the allowable deduction to the greater of the amount necessary to fund the remaining unfunded liability of the taxpayer for the black lung claims filed or expected to be filed by past or present employees of the taxpayer or the aggregate amount necessary to increase each trust described in section 501(c)(21) to the amount required to pay all amounts payable out of such trust for the taxable year for provision limiting the allowable deduction to the amount necessary, when added to the fair market value of trust assets at the beginning of the taxable year, to fund the greater of current year obligations or certain future obligations.

Subsec. (c)(1). Pub. L. 95–488, §1(b), substituted ''Method of determining amounts referred to in subsection (b)'' for ''Determination of expected future payments'' in heading and in text inserted provisions establishing the funding period as the greater of the average remaining working life of miners who are present employees of the taxpayer or 10 taxable years and permitting a different funding period if prescribed or consented to by the Secretary.

Subsec. (c)(5). Pub. L. 95–488, §1(c), added par. (5).

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1940(d) of Pub. L. 102–486 provided that: ''The amendments made by this section [amending this sec-

tion and sections 501 and 4951 of this title] shall apply to taxable years beginning after December 31, 1991.''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 108(b)(4) of Pub. L. 96–222 provided that: ''Any amendment made by this subsection [amending this section, sections 6503, 6511, 6862, 7422, and 7454 of this title, and sections 934 and 934a of Title 30, Mineral Lands and Mining] shall take effect as if included in the provision of the Black Lung Benefits Revenue Act of 1977 [see Short Title of 1978 Amendments note set out under section 1 of this title] to which such amendment relates.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 1(e) of Pub. L. 95–488, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [amending this section and section 6104 of this title] shall apply to taxable years beginning after December 31, 1977. Nothing in the amendments made by subsection (d) to section 6104 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be construed to permit the disclosure under such section 6104 of confidential business information of contributors to any trust described in section 501(c)(21) of such Code.''

EFFECTIVE DATE

Section 4(f) of Pub. L. 95–227 provided that: ''The amendments made by this section [enacting this section and sections 4951 to 4953 and amending sections 501, 4946, 6104, 6213, 6405, 6501, 6503, and 7451 of this title] shall apply with respect to contributions, acts, and expenditures made after December 31, 1977, in and for taxable years beginning after such date.''

§ 193. Tertiary injectants

(a) Allowance of deduction

There shall be allowed as a deduction for the taxable year an amount equal to the qualified tertiary injectant expenses of the taxpayer for tertiary injectants injected during such taxable year.

(b) Qualified tertiary injectant expenses

For purposes of this section—

(1) In general

The term ''qualified tertiary injectant expenses'' means any cost paid or incurred (whether or not chargeable to capital account) for any tertiary injectant (other than a hydrocarbon injectant which is recoverable) which is used as a part of a tertiary recovery method.

(2) Hydrocarbon injectant

The term ''hydrocarbon injectant'' includes natural gas, crude oil, and any other injectant which is comprised of more than an insignificant amount of natural gas or crude oil. The term does not include any tertiary injectant which is hydrocarbon-based, or a hydrocarbon-derivative, and which is comprised of no more than an insignificant amount of natural gas or crude oil. For purposes of this paragraph, that portion of a hydrocarbon injectant which is not a hydrocarbon shall not be treated as a hydrocarbon injectant.

(3) Tertiary recovery method

The term ''tertiary recovery method'' means—

(A) any method which is described in subparagraphs (1) through (9) of section 212.78(c) of the June 1979 energy regulations (as defined by section 4996(b)(8)(C) as in effect before its repeal), or

(B) any other method to provide tertiary enhanced recovery which is approved by the Secretary for purposes of this section.

(c) Application with other deductions

No deduction shall be allowed under subsection (a) with respect to any expenditure—

(1) with respect to which the taxpayer has made an election under section 263(c), or

(2) with respect to which a deduction is allowed or allowable to the taxpayer under any other provision of this chapter.

(Added Pub. L. 96–223, title II, § 251(a)(1), Apr. 2, 1980, 94 Stat. 286; amended Pub. L. 97–448, title II, § 202(b), Jan. 12, 1983, 96 Stat. 2396; Pub. L. 100–418, title I, § 1941(b)(7), Aug. 23, 1988, 102 Stat. 1324.)

REFERENCES IN TEXT

Section 4996(b)(8)(C), referred to in subsec. (b)(3)(A), was repealed by Pub. L. 100–418, title I, § 1941(a), Aug. 23, 1988, 102 Stat. 1322.

AMENDMENTS

1988—Subsec. (b)(3)(A). Pub. L. 100–418 substituted ''section 4996(b)(8)(C) as in effect before its repeal'' for ''section 4996(b)(8)(C)''.

1983—Subsec. (b)(1). Pub. L. 97–448 struck out ''during the taxable year'' after ''any cost paid or incurred''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 applicable to crude oil removed from the premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100–418, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Crude Oil Windfall Profit Tax Act of 1980, Pub. L. 96–223, to which such amendment relates, see section 203(a) of Pub. L. 97–448, set out as a note under section 6652 of this title.

EFFECTIVE DATE

Section 251(b) of Pub. L. 96–223 provided that: ''The amendments made by this section [enacting this section and amending sections 263, 1245, and 1250 of this title] shall apply to taxable years beginning after December 31, 1979.''

§ 194. Treatment of reforestation expenditures

(a) Allowance of deduction

In the case of any qualified timber property with respect to which the taxpayer has made (in accordance with regulations prescribed by the Secretary) an election under this subsection, the taxpayer shall be entitled to a deduction with respect to the amortization of the amortizable basis of qualified timber property based on a period of 84 months. Such amortization deduction shall be an amount, with respect to each month of such period within the taxable year, equal to the amortizable basis at the end of such month divided by the number of months (including the month for which the deduction is computed) remaining in the period. Such amortizable basis at the end of the month shall be computed without regard to the amortization deduction for such month. The 84-month period shall begin on the

first day of the first month of the second half of the taxable year in which the amortizable basis is acquired.

(b) Treatment as expenses

(1) Election to treat certain reforestation expenditures as expenses

(A) In general

In the case of any qualified timber property with respect to which the taxpayer has made (in accordance with regulations prescribed by the Secretary) an election under this subsection, the taxpayer shall treat reforestation expenditures which are paid or incurred during the taxable year with respect to such property as an expense which is not chargeable to capital account. The reforestation expenditures so treated shall be allowed as a deduction.

(B) Dollar limitation

The aggregate amount of reforestation expenditures which may be taken into account under subparagraph (A) with respect to each qualified timber property for any taxable year shall not exceed—

(i) except as provided in clause (ii) or (iii), $10,000,

(ii) in the case of a separate return by a married individual (as defined in section 7703), $5,000, and

(iii) in the case of a trust, zero.

(2) Allocation of dollar limit

(A) Controlled group

For purposes of applying the dollar limitation under paragraph (1)(B)—

(i) all component members of a controlled group shall be treated as one taxpayer, and

(ii) the Secretary shall, under regulations prescribed by him, apportion such dollar limitation among the component members of such controlled group.

For purposes of the preceding sentence, the term ''controlled group'' has the meaning assigned to it by section 1563(a), except that the phrase ''more than 50 percent'' shall be substituted for the phrase ''at least 80 percent'' each place it appears in section 1563(a)(1).

(B) Partnerships and S corporations

In the case of a partnership, the dollar limitation contained in paragraph (1)(B) shall apply with respect to the partnership and with respect to each partner. A similar rule shall apply in the case of an S corporation and its shareholders.

(c) Definitions and special rule

For purposes of this section—

(1) Qualified timber property

The term ''qualified timber property'' means a woodlot or other site located in the United States which will contain trees in significant commercial quantities and which is held by the taxpayer for the planting, cultivating, caring for, and cutting of trees for sale or use in the commercial production of timber products.

(2) Amortizable basis

The term ''amortizable basis'' means that portion of the basis of the qualified timber property attributable to reforestation expenditures which have not been taken into account under subsection (b).

(3) Reforestation expenditures

(A) In general

The term ''reforestation expenditures'' means direct costs incurred in connection with forestation or reforestation by planting or artificial or natural seeding, including costs—

(i) for the preparation of the site;

(ii) of seeds or seedlings; and

(iii) for labor and tools, including depreciation of equipment such as tractors, trucks, tree planters, and similar machines used in planting or seeding.

(B) Cost-sharing programs

Reforestation expenditures shall not include any expenditures for which the taxpayer has been reimbursed under any governmental reforestation cost-sharing program unless the amounts reimbursed have been included in the gross income of the taxpayer.

(4) Treatment of trusts and estates

The aggregate amount of reforestation expenditures incurred by any trust or estate shall be apportioned between the income beneficiaries and the fiduciary under regulations prescribed by the Secretary. Any amount so apportioned to a beneficiary shall be taken into account as expenditures incurred by such beneficiary in applying this section to such beneficiary.

(5) Application with other deductions

No deduction shall be allowed under any other provision of this chapter with respect to any expenditure with respect to which a deduction is allowed or allowable under this section to the taxpayer.

(d) Life tenant and remainderman

In the case of property held by one person for life with remainder to another person, the deduction under this section shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant.

(Added Pub. L. 96–451, title III, § 301(a), Oct. 14, 1980, 94 Stat. 1989; amended Pub. L. 97–354, § 3(g), Oct. 19, 1982, 96 Stat. 1689; Pub. L. 99–514, title XIII, § 1301(j)(8), Oct. 22, 1986, 100 Stat. 2658; Pub. L. 108–357, title III, § 322(a)–(c)(4), Oct. 22, 2004, 118 Stat. 1474, 1475; Pub. L. 109–135, title IV, § 403(i)(1), Dec. 21, 2005, 119 Stat. 2624.)

PRIOR PROVISIONS

A prior section 194 was renumbered section 194A of this title.

AMENDMENTS

2005—Subsec. (b)(1)(B). Pub. L. 109–135, § 403(i)(1)(A), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The aggregate amount of reforestation expenditures which may be taken into account under subparagraph (A) with respect to each qualified timber property for any taxable year shall not exceed $10,000 ($5,000 in the case of a separate return by a married individual (as defined in section 7703)).''

Subsec. (c)(4). Pub. L. 109–135, § 403(i)(1)(B), reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

''(A) IN GENERAL.—Except as provided in subparagraph (B), this section shall not apply to trusts and estates.

''(B) AMORTIZATION DEDUCTION ALLOWED TO ESTATES.—The benefit of the deduction for amortization provided by subsection (a) shall be allowed to estates in the same manner as in the case of an individual. The allowable deduction shall be apportioned between the income beneficiary and the fiduciary under regulations prescribed by the Secretary. Any amount so apportioned to a beneficiary shall be taken into account for purposes of determining the amount allowable as a deduction under subsection (a) to such beneficiary.''

2004—Pub. L. 108–357, § 322(c)(4), substituted ''Treatment'' for ''Amortization'' in section catchline.

Subsec. (b). Pub. L. 108–357, § 322(a), substituted ''Treatment as expenses'' for ''Limitations'' in heading.

Subsec. (b)(1). Pub. L. 108–357, § 322(a), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''The aggregate amount of amortizable basis acquired during the taxable year which may be taken into account under subsection (a) for such taxable year shall not exceed $10,000 ($5,000 in the case of a separate return by a married individual (as defined in section 7703)).''

Subsec. (b)(2). Pub. L. 108–357, § 322(c)(2), substituted ''paragraph (1)(B)'' for ''paragraph (1)'' in introductory provisions of subpar. (A) and in subpar. (B).

Subsec. (b)(3), (4). Pub. L. 108–357, § 322(c)(1), struck out pars. (3) and (4) which related to inapplicability of section to trusts and applicability of section to estates, respectively.

Subsec. (c)(2). Pub. L. 108–357, § 322(b), inserted ''which have not been taken into account under subsection (b)'' after ''expenditures''.

Subsec. (c)(4), (5). Pub. L. 108–357, § 322(c)(3), added pars. (4) and (5) and struck out former par. (4) which related to basis allocation if the amount of the amortizable basis acquired during the taxable year of all qualified timber property with respect to which the taxpayer had made an election under subsec. (a) exceeded the amount of the limitation under subsec. (b)(1).

1986—Subsec. (b)(1). Pub. L. 99–514 substituted ''section 7703'' for ''section 143''.

1982—Subsec. (b)(2)(B). Pub. L. 97–354 substituted ''Partnerships and S corporations'' for ''Partnerships'' in heading, and inserted ''A similar rule shall apply in the case of an S corporation and its shareholders.''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendments by Pub. L. 109–135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which they relate, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable with respect to expenditures paid or incurred after Oct. 22, 2004, see section 322(e) of Pub. L. 108–357, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE

Section 301(d) of Pub. L. 96–451 provided that: ''The amendments made by this section [enacting this section and amending sections 62 and 1245 of this title] shall apply with respect to additions to capital account made after December 31, 1979.''

§ 194A. Contributions to employer liability trusts

(a) Allowance of deduction

There shall be allowed as a deduction for the taxable year an amount equal to the amount—

(1) which is contributed by an employer to a trust described in section 501(c)(22) (relating to withdrawal liability payment fund) which meets the requirements of section 4223(h) of the Employee Retirement Income Security Act of 1974, and

(2) which is properly allocable to such taxable year.

(b) Allocation to taxable year

In the case of a contribution described in subsection (a) which relates to any specified period of time which includes more than one taxable year, the amount properly allocable to any taxable year in such period shall be determined by prorating such amounts to such taxable years under regulations prescribed by the Secretary.

(c) Disallowance of deduction

No deduction shall be allowed under subsection (a) with respect to any contribution described in subsection (a) which does not relate to any specified period of time.

(Added Pub. L. 96–364, title II, § 209(c)(1), Sept. 26, 1980, 94 Stat. 1290, § 194; renumbered § 194A, Pub. L. 97–448, title III, § 305(b)(1), Jan. 12, 1983, 96 Stat. 2399.)

REFERENCES IN TEXT

Section 4223(h) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (a), is classified to section 1403(h) of Title 29, Labor.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 311(c)(2) of Pub. L. 97–448 provided that: ''The amendments made by subsection (b) of section 305 [redesignating section 194 of this title, relating to contributions to employer liability trusts, as this section] shall take effect on October 14, 1980.''

EFFECTIVE DATE

Section applicable to taxable years ending after Sept. 26, 1980, see section 210(c) of Pub. L. 96–364, set out as a note under section 418 of this title.

§ 195. Start-up expenditures

(a) Capitalization of expenditures

Except as otherwise provided in this section, no deduction shall be allowed for start-up expenditures.

(b) Election to deduct

(1) Allowance of deduction

If a taxpayer elects the application of this subsection with respect to any start-up expenditures—

(A) the taxpayer shall be allowed a deduction for the taxable year in which the active trade or business begins in an amount equal to the lesser of—

(i) the amount of start-up expenditures with respect to the active trade or business, or

(ii) $5,000, reduced (but not below zero) by the amount by which such start-up expenditures exceed $50,000, and

(B) the remainder of such start-up expenditures shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the active trade or business begins.

(2) Dispositions before close of amortization period

In any case in which a trade or business is completely disposed of by the taxpayer before the end of the period to which paragraph (1) applies, any deferred expenses attributable to such trade or business which were not allowed as a deduction by reason of this section may be deducted to the extent allowable under section 165.

(3) Special rule for taxable years beginning in 2010

In the case of a taxable year beginning in 2010, paragraph (1)(A)(ii) shall be applied—

(A) by substituting ''$10,000'' for ''$5,000'', and

(B) by substituting ''$60,000'' for ''$50,000''.

(c) Definitions

For purposes of this section—

(1) Start-up expenditures

The term ''start-up expenditure'' means any amount—

(A) paid or incurred in connection with—

(i) investigating the creation or acquisition of an active trade or business, or

(ii) creating an active trade or business, or

(iii) any activity engaged in for profit and for the production of income before the day on which the active trade or business begins, in anticipation of such activity becoming an active trade or business, and

(B) which, if paid or incurred in connection with the operation of an existing active trade or business (in the same field as the trade or business referred to in subparagraph (A)), would be allowable as a deduction for the taxable year in which paid or incurred.

The term ''start-up expenditure'' does not include any amount with respect to which a deduction is allowable under section 163(a), 164, or 174.

(2) Beginning of trade or business

(A) In general

Except as provided in subparagraph (B), the determination of when an active trade or business begins shall be made in accordance with such regulations as the Secretary may prescribe.

(B) Acquired trade or business

An acquired active trade or business shall be treated as beginning when the taxpayer acquires it.

(d) Election

(1) Time for making election

An election under subsection (b) shall be made not later than the time prescribed by law for filing the return for the taxable year in which the trade or business begins (including extensions thereof).

(2) Scope of election

The period selected under subsection (b) shall be adhered to in computing taxable income for the taxable year for which the election is made and all subsequent taxable years.

(Added Pub. L. 96–605, title I, §102(a), Dec. 28, 1980, 94 Stat. 3522; amended Pub. L. 98–369, div. A, title I, §94(a), July 18, 1984, 98 Stat. 614; Pub. L. 108–357, title VIII, §902(a), Oct. 22, 2004, 118 Stat. 1651; Pub. L. 111–240, title II, §2031(a), Sept. 27, 2010, 124 Stat. 2559.)

AMENDMENTS

2010—Subsec. (b)(3). Pub. L. 111–240 added par. (3).

2004—Subsec. (b). Pub. L. 108–357, §902(a)(2), substituted ''deduct'' for ''amortize'' in heading.

Subsec. (b)(1). Pub. L. 108–357, §902(a)(1), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''Start-up expenditures may, at the election of the taxpayer, be treated as deferred expenses. Such deferred expenses shall be allowed as a deduction prorated equally over such period of not less than 60 months as may be selected by the taxpayer (beginning with the month in which the active trade or business begins).''

1984—Subsec. (a). Pub. L. 98–369 amended subsec. (a) generally, substituting provisions dealing with capitalization of expenditures for provisions dealing with election to amortize.

Subsec. (b). Pub. L. 98–369 amended subsec. (b) generally, substituting provisions dealing with election to amortize for provisions dealing with start-up expenditures.

Subsec. (c). Pub. L. 98–369 amended subsec. (c) generally, substituting provisions setting forth definitions for provisions dealing with election.

Subsec. (d). Pub. L. 98–369 amended subsec. (d) generally, substituting provisions dealing with election for provisions dealing with business beginning.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title II, §2031(b), Sept. 27, 2010, 124 Stat. 2559, provided that: ''The amendment made by this section [amending this section] shall apply to amounts paid or incurred in taxable years beginning after December 31, 2009.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §902(d), Oct. 22, 2004, 118 Stat. 1652, provided that: ''The amendments made by this section [amending this section and sections 248 and 709 of this title] shall apply to amounts paid or incurred after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 94(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after June 30, 1984.''

EFFECTIVE DATE

Section 102(c) of Pub. L. 96–605 provided that: ''The amendments made by this section [enacting this section] shall apply to amounts paid or incurred after July 29, 1980, in taxable years ending after such date.''

§196. Deduction for certain unused business credits

(a) Allowance of deduction

If any portion of the qualified business credits determined for any taxable year has not, after

the application of section 38(c), been allowed to the taxpayer as a credit under section 38 for any taxable year, an amount equal to the credit not so allowed shall be allowed to the taxpayer as a deduction for the first taxable year following the last taxable year for which such credit could, under section 39, have been allowed as a credit.

(b) Taxpayer's dying or ceasing to exist

If a taxpayer dies or ceases to exist before the first taxable year following the last taxable year for which the qualified business credits could, under section 39, have been allowed as a credit, the amount described in subsection (a) (or the proper portion thereof) shall, under regulations prescribed by the Secretary, be allowed to the taxpayer as a deduction for the taxable year in which such death or cessation occurs.

(c) Qualified business credits

For purposes of this section, the term ''qualified business credits'' means—

(1) the investment credit determined under section 46 (but only to the extent attributable to property the basis of which is reduced by section 50(c)),

(2) the work opportunity credit determined under section 51(a),

(3) the alcohol fuels credit determined under section 40(a),

(4) the research credit determined under section 41(a) (other than such credit determined under section 280C(c)(3)) for taxable years beginning after December 31, 1988,

(5) the enhanced oil recovery credit determined under section 43(a),

(6) the empowerment zone employment credit determined under section 1396(a),

(7) the Indian employment credit determined under section 45A(a),

(8) the employer Social Security credit determined under section 45B(a),

(9) the new markets tax credit determined under section 45D(a),

(10) the small employer pension plan startup cost credit determined under section 45E(a),

(11) the biodiesel fuels credit determined under section 40A(a),

(12) the low sulfur diesel fuel production credit determined under section 45H(a),

(13) the new energy efficient home credit determined under section 45L(a), and

(14) the small employer health insurance credit determined under section 45R(a).

(d) Special rule for investment tax credit and research credit

Subsection (a) shall be applied by substituting ''an amount equal to 50 percent of'' for ''an amount equal to'' in the case of—

(1) the investment credit determined under section 46 (other than the rehabilitation credit), and

(2) the research credit determined under section 41(a) for a taxable year beginning before January 1, 1990.

(Added Pub. L. 97–248, title II, § 205(a)(2), Sept. 3, 1982, 96 Stat. 428; amended Pub. L. 98–369, div. A, title IV, § 474(r)(8)(A), July 18, 1984, 98 Stat. 840; Pub. L. 100–647, title IV, § 4008(b)(2), Nov. 10, 1988, 102 Stat. 3653; Pub. L. 101–239, title VII, §§ 7110(c)(2), 7814(e)(1), (2)(D), Dec. 19, 1989, 103 Stat. 2325, 2413, 2414; Pub. L. 101–508, title XI, §§ 11511(b)(3), 11813(b)(12), Nov. 5, 1990, 104 Stat. 1388–485, 1388–554; Pub. L. 103–66, title XIII, §§ 13302(b)(2), 13322(c)(2), Aug. 10, 1993, 107 Stat. 555, 563; Pub. L. 104–188, title I, § 1201(e)(1), Aug. 20, 1996, 110 Stat. 1772; Pub. L. 105–206, title VI, § 6020(a), July 22, 1998, 112 Stat. 823; Pub. L. 106–554, § 1(a)(7) [title I, § 121(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–610; Pub. L. 107–16, title VI, § 619(c)(2), June 7, 2001, 115 Stat. 110; Pub. L. 108–357, title III, §§ 302(c)(2), 339(e), Oct. 22, 2004, 118 Stat. 1465, 1484; Pub. L. 109–58, title XIII, § 1332(d), Aug. 8, 2005, 119 Stat. 1026; Pub. L. 111–148, title I, § 1421(d)(2), Mar. 23, 2010, 124 Stat. 242.)

CODIFICATION

Another section 339(e) of Pub. L. 108–357 amended the table of sections for subpart D of part IV of subchapter A of this chapter.

AMENDMENTS

2010—Subsec. (c)(14). Pub. L. 111–148 added par. (14).

2005—Subsec. (c)(13). Pub. L. 109–58 added par. (13).

2004—Subsec. (c)(11). Pub. L. 108–357, § 302(c)(2), added par. (11).

Subsec. (c)(12). Pub. L. 108–357, § 339(e), added par. (12).

2001—Subsec. (c)(10). Pub. L. 107–16 added par. (10).

2000—Subsec. (c)(9). Pub. L. 106–554 added par. (9).

1998—Subsec. (c)(8). Pub. L. 105–206 added par. (8).

1996—Subsec. (c)(2). Pub. L. 104–188 substituted ''work opportunity credit'' for ''targeted jobs credit''.

1993—Subsec. (c)(6). Pub. L. 103–66, § 13302(b)(2), added par. (6).

Subsec. (c)(7). Pub. L. 103–66, § 13322(c)(2), added par. (7).

1990—Subsec. (c)(1). Pub. L. 101–508, § 11813(b)(12)(A), substituted ''section 46'' for ''section 46(a)'' and ''section 50(c)'' for ''section 48(q)''.

Subsec. (c)(5). Pub. L. 101–508, § 11511(b)(3), added par. (5).

Subsec. (d)(1). Pub. L. 101–508, § 11813(b)(12)(B), substituted ''section 46'' for ''section 46(a)'' and ''other than the rehabilitation credit'' for ''other than a credit to which section 48(q)(3) applies''.

1989—Subsec. (c)(4). Pub. L. 101–239, § 7814(e)(2)(D), inserted ''(other than such credit determined under section 280C(c)(3))'' after ''section 41(a)''.

Subsec. (d). Pub. L. 101–239, § 7814(e)(1), substituted ''substituting 'an amount equal to 50 percent of' for 'an amount equal to' in the case of'' for ''substituting an amount equal to 50 percent of for an amount equal to in the case of'' in introductory provisions.

Subsec. (d)(2). Pub. L. 101–239, § 7110(c)(2), inserted ''for a taxable year beginning before January 1, 1990'' after ''under section 41(a)''.

1988—Subsec. (c)(4). Pub. L. 100–647, § 4008(b)(2)(A), added par. (4).

Subsec. (d). Pub. L. 100–647, § 4008(b)(2)(B), inserted ''and research credit'' after ''tax credit'' in heading and amended text generally. Prior to amendment, text read as follows: ''In the case of the investment credit determined under section 46(a) (other than a credit to which section 48(q)(3) applies), subsection (a) shall be applied by substituting 'an amount equal to 50 percent of' for 'an amount equal to'.''

1984—Pub. L. 98–369 amended section generally, substituting provisions relating to deduction for certain unused business credits for provisions relating to deduction for certain unused investment credits.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–148 applicable to amounts paid or incurred in taxable years beginning after Dec. 31, 2009, see section 1421(f)(1) of Pub. L. 111–148, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–58 applicable to qualified new energy efficient homes acquired after Dec. 31, 2005, in taxable years ending after such date, see section 1332(f) of Pub. L. 109–58, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 302(c)(2) of Pub. L. 108–357 applicable to fuel produced, and sold or used, after Dec. 31, 2004, in taxable years ending after such date, see section 302(d) of Pub. L. 108–357, set out as a note under section 38 of this title.

Amendment by section 339(e) of Pub. L. 108–357 applicable to expenses paid or incurred after Dec. 31, 2002, in taxable years ending after such date, see section 339(f) of Pub. L. 108–357, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to costs paid or incurred in taxable years beginning after Dec. 31, 2001, with respect to qualified employer plans first effective after such date, see section 619(d) of Pub. L. 107–16, set out as an Effective and Termination Dates of 2001 Amendment note under section 38 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 applicable to investments made after Dec. 31, 2000, see §1(a)(7) [title I, §121(e)] of Pub. L. 106–554, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title VI, §6020(b), July 22, 1998, 112 Stat. 823, provided that: ''The amendment made by this section [amending this section] shall take effect as if included in the amendments made by section 13443 of the Revenue Reconciliation Act of 1993 [see section 13443(d) of Pub. L. 103–66, set out as an Effective Date of 1993 Amendment note under section 38 of this title].''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to individuals who begin work for the employer after Sept. 30, 1996, see section 1201(g) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13322(c)(2) of Pub. L. 103–66 applicable to wages paid or incurred after Dec. 31, 1993, see section 13322(f) of Pub. L. 103–66, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11511(b)(3) of Pub. L. 101–508 applicable to costs paid or incurred in taxable years beginning after Dec. 31, 1990, see section 11511(d)(1) of Pub. L. 101–508, set out as an Effective Date note under section 43 of this title.

Amendment by section 11813(b)(12) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7110(c)(2) of Pub. L. 101–239 applicable to taxable years beginning after Dec. 31, 1989, see section 7110(e) of Pub. L. 101–239, set out as a note under section 41 of this title.

Amendment by section 7814(e)(1), (2)(D) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1988, see section 4008(d) of Pub. L. 100–647, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE

Section 205(c)(1) of Pub. L. 97–248, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(A) GENERAL RULE.—Except as otherwise provided in this paragraph, the amendments made by subsection (a) [enacting this section and amending sections 48, 312, and 1016 of this title] shall apply to periods after December 31, 1982, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

''(B) EXCEPTION.—The amendments made by subsection (a) shall not apply to any property which—

''(i) is constructed, reconstructed, erected, or acquired pursuant to a contract which was entered into after August 13, 1981, and was, on July 1, 1982, and at all times thereafter, binding on the taxpayer,

''(ii) is placed in service after December 31, 1982, and before January 1, 1986,

''(iii) with respect to which an election under section 168(f)(8)(A) of such Code is not in effect at any time, and

''(iv) is not described in section 167(*l*)(3)(A) of such Code.

''(C) SPECIAL RULE FOR INTEGRATED MANUFACTURING FACILITIES.—

''(i) IN GENERAL.—In the case of any integrated manufacturing facility, the requirements of clause (i) of subparagraph (B) shall be treated as met if—

''(I) the on-site construction of the facility began before July 1, 1982, and

''(II) during the period beginning after August 13, 1981, and ending on July 1, 1982, the taxpayer constructed (or entered into binding contracts for the construction of) more than 20 percent of the cost of such facility.

''(ii) INTEGRATED MANUFACTURING FACILITY.—For purposes of clause (i), the term 'integrated manufacturing facility' means 1 or more facilities—

''(I) located on a single site,

''(II) for the manufacture of 1 or more manufactured products from raw materials by the application of 2 or more integrated manufacturing processes.

''(D) SPECIAL RULE FOR HISTORIC STRUCTURES.—In the case of any certified historic structure (as defined in section 48(g)(3) of the Internal Revenue Code of 1986), clause (i) of subparagraph (B) shall be applied by substituting 'December 31, 1980' for 'August 13, 1981.'

''(E) CERTAIN PROJECTS WITH RESPECT TO HISTORIC STRUCTURES.—In the case of any certified historic structure (as so defined), the requirements of clause (i) of subparagraph (B) shall be treated as met with respect to such property—

''(i) if the rehabilitation begins after December 31, 1980, and before July 1, 1982, or

''(ii) if—

''(I) before July 1, 1982, a public offering with respect to interests in such property was registered with the Securities and Exchange Commission,

''(II) before such date an application with respect to such property was filed under section 8 of the United States Housing Act of 1937 [section 1437f of Title 42, The Public Health and Welfare], and

''(III) such property is placed in service before July 1, 1984.''

SAVINGS PROVISION

For provisions that nothing in amendment by section 11813(b)(12) of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§ 197. Amortization of goodwill and certain other intangibles

(a) General rule

A taxpayer shall be entitled to an amortization deduction with respect to any amortizable section 197 intangible. The amount of such deduction shall be determined by amortizing the adjusted basis (for purposes of determining gain) of such intangible ratably over the 15-year period beginning with the month in which such intangible was acquired.

(b) No other depreciation or amortization deduction allowable

Except as provided in subsection (a), no depreciation or amortization deduction shall be allowable with respect to any amortizable section 197 intangible.

(c) Amortizable section 197 intangible

For purposes of this section—

(1) In general

Except as otherwise provided in this section, the term ''amortizable section 197 intangible'' means any section 197 intangible—

(A) which is acquired by the taxpayer after the date of the enactment of this section, and

(B) which is held in connection with the conduct of a trade or business or an activity described in section 212.

(2) Exclusion of self-created intangibles, etc.

The term ''amortizable section 197 intangible'' shall not include any section 197 intangible—

(A) which is not described in subparagraph (D), (E), or (F) of subsection (d)(1), and

(B) which is created by the taxpayer.

This paragraph shall not apply if the intangible is created in connection with a transaction (or series of related transactions) involving the acquisition of assets constituting a trade or business or substantial portion thereof.

(3) Anti-churning rules

For exclusion of intangibles acquired in certain transactions, see subsection (f)(9).

(d) Section 197 intangible

For purposes of this section—

(1) In general

Except as otherwise provided in this section, the term ''section 197 intangible'' means—

(A) goodwill,

(B) going concern value,

(C) any of the following intangible items:

(i) workforce in place including its composition and terms and conditions (contractual or otherwise) of its employment,

(ii) business books and records, operating systems, or any other information base (including lists or other information with respect to current or prospective customers),

(iii) any patent, copyright, formula, process, design, pattern, knowhow, format, or other similar item,

(iv) any customer-based intangible,

(v) any supplier-based intangible, and

(vi) any other similar item,

(D) any license, permit, or other right granted by a governmental unit or an agency or instrumentality thereof,

(E) any covenant not to compete (or other arrangement to the extent such arrangement has substantially the same effect as a covenant not to compete) entered into in connection with an acquisition (directly or indirectly) of an interest in a trade or business or substantial portion thereof, and

(F) any franchise, trademark, or trade name.

(2) Customer-based intangible

(A) In general

The term ''customer-based intangible'' means—

(i) composition of market,

(ii) market share, and

(iii) any other value resulting from future provision of goods or services pursuant to relationships (contractual or otherwise) in the ordinary course of business with customers.

(B) Special rule for financial institutions

In the case of a financial institution, the term ''customer-based intangible'' includes deposit base and similar items.

(3) Supplier-based intangible

The term ''supplier-based intangible'' means any value resulting from future acquisitions of goods or services pursuant to relationships (contractual or otherwise) in the ordinary course of business with suppliers of goods or services to be used or sold by the taxpayer.

(e) Exceptions

For purposes of this section, the term ''section 197 intangible'' shall not include any of the following:

(1) Financial interests

Any interest—

(A) in a corporation, partnership, trust, or estate, or

(B) under an existing futures contract, foreign currency contract, notional principal contract, or other similar financial contract.

(2) Land

Any interest in land.

(3) Computer software

(A) In general

Any—

(i) computer software which is readily available for purchase by the general public, is subject to a nonexclusive license, and has not been substantially modified, and

(ii) other computer software which is not acquired in a transaction (or series of related transactions) involving the acquisition of assets constituting a trade or business or substantial portion thereof.

(B) Computer software defined

For purposes of subparagraph (A), the term ''computer software'' means any program designed to cause a computer to perform a desired function. Such term shall not include any data base or similar item unless the data base or item is in the public domain and is incidental to the operation of otherwise qualifying computer software.

(4) Certain interests or rights acquired separately

Any of the following not acquired in a transaction (or series of related transactions) involving the acquisition of assets constituting a trade business or substantial portion thereof:

(A) Any interest in a film, sound recording, video tape, book, or similar property.

(B) Any right to receive tangible property or services under a contract or granted by a governmental unit or agency or instrumentality thereof.

(C) Any interest in a patent or copyright.

(D) To the extent provided in regulations, any right under a contract (or granted by a governmental unit or an agency or instrumentality thereof) if such right—

(i) has a fixed duration of less than 15 years, or

(ii) is fixed as to amount and, without regard to this section, would be recoverable under a method similar to the unit-of-production method.

(5) Interests under leases and debt instruments

Any interest under—

(A) an existing lease of tangible property, or

(B) except as provided in subsection (d)(2)(B), any existing indebtedness.

(6) Mortgage servicing

Any right to service indebtedness which is secured by residential real property unless such right is acquired in a transaction (or series of related transactions) involving the acquisition of assets (other than rights described in this paragraph) constituting a trade or business or substantial portion thereof.

(7) Certain transaction costs

Any fees for professional services, and any transaction costs, incurred by parties to a transaction with respect to which any portion of the gain or loss is not recognized under part III of subchapter C.

(f) Special rules

(1) Treatment of certain dispositions, etc.

(A) In general

If there is a disposition of any amortizable section 197 intangible acquired in a transaction or series of related transactions (or any such intangible becomes worthless) and one or more other amortizable section 197 intangibles acquired in such transaction or series of related transactions are retained—

(i) no loss shall be recognized by reason of such disposition (or such worthlessness), and

(ii) appropriate adjustments to the adjusted bases of such retained intangibles shall be made for any loss not recognized under clause (i).

(B) Special rule for covenants not to compete

In the case of any section 197 intangible which is a covenant not to compete (or other arrangement) described in subsection (d)(1)(E), in no event shall such covenant or other arrangement be treated as disposed of (or becoming worthless) before the disposition of the entire interest described in such subsection in connection with which such covenant (or other arrangement) was entered into.

(C) Special rule

All persons treated as a single taxpayer under section 41(f)(1) shall be so treated for purposes of this paragraph.

(2) Treatment of certain transfers

(A) In general

In the case of any section 197 intangible transferred in a transaction described in subparagraph (B), the transferee shall be treated as the transferor for purposes of applying this section with respect to so much of the adjusted basis in the hands of the transferee as does not exceed the adjusted basis in the hands of the transferor.

(B) Transactions covered

The transactions described in this subparagraph are—

(i) any transaction described in section 332, 351, 361, 721, 731, 1031, or 1033, and

(ii) any transaction between members of the same affiliated group during any taxable year for which a consolidated return is made by such group.

(3) Treatment of amounts paid pursuant to covenants not to compete, etc.

Any amount paid or incurred pursuant to a covenant or arrangement referred to in subsection (d)(1)(E) shall be treated as an amount chargeable to capital account.

(4) Treatment of franchises, etc.

(A) Franchise

The term ''franchise'' has the meaning given to such term by section 1253(b)(1).

(B) Treatment of renewals

Any renewal of a franchise, trademark, or trade name (or of a license, a permit, or other right referred to in subsection (d)(1)(D)) shall be treated as an acquisition. The preceding sentence shall only apply with respect to costs incurred in connection with such renewal.

(C) Certain amounts not taken into account

Any amount to which section 1253(d)(1) applies shall not be taken into account under this section.

(5) Treatment of certain reinsurance transactions

In the case of any amortizable section 197 intangible resulting from an assumption reinsurance transaction, the amount taken into account as the adjusted basis of such intangible under this section shall be the excess of—

(A) the amount paid or incurred by the acquirer under the assumption reinsurance transaction, over

(B) the amount required to be capitalized under section 848 in connection with such transaction.

Subsection (b) shall not apply to any amount required to be capitalized under section 848.

(6) Treatment of certain subleases

For purposes of this section, a sublease shall be treated in the same manner as a lease of the underlying property involved.

(7) Treatment as depreciable

For purposes of this chapter, any amortizable section 197 intangible shall be treated as property which is of a character subject to the allowance for depreciation provided in section 167.

(8) Treatment of certain increments in value

This section shall not apply to any increment in value if, without regard to this section, such increment is properly taken into account in determining the cost of property which is not a section 197 intangible.

(9) Anti-churning rules

For purposes of this section—

(A) In general

The term ''amortizable section 197 intangible'' shall not include any section 197 intangible which is described in subparagraph (A) or (B) of subsection (d)(1) (or for which depreciation or amortization would not have been allowable but for this section) and which is acquired by the taxpayer after the date of the enactment of this section, if—

(i) the intangible was held or used at any time on or after July 25, 1991, and on or before such date of enactment by the taxpayer or a related person,

(ii) the intangible was acquired from a person who held such intangible at any time on or after July 25, 1991, and on or before such date of enactment, and, as part of the transaction, the user of such intangible does not change, or

(iii) the taxpayer grants the right to use such intangible to a person (or a person related to such person) who held or used such intangible at any time on or after July 25, 1991, and on or before such date of enactment.

For purposes of this subparagraph, the determination of whether the user of property changes as part of a transaction shall be determined in accordance with regulations prescribed by the Secretary. For purposes of this subparagraph, deductions allowable under section 1253(d) shall be treated as deductions allowable for amortization.

(B) Exception where gain recognized

If—

(i) subparagraph (A) would not apply to an intangible acquired by the taxpayer but for the last sentence of subparagraph (C)(i), and

(ii) the person from whom the taxpayer acquired the intangible elects, notwithstanding any other provision of this title—

(I) to recognize gain on the disposition of the intangible, and

(II) to pay a tax on such gain which, when added to any other income tax on such gain under this title, equals such gain multiplied by the highest rate of income tax applicable to such person under this title,

then subparagraph (A) shall apply to the intangible only to the extent that the taxpayer's adjusted basis in the intangible exceeds the gain recognized under clause (ii)(I).

(C) Related person defined

For purposes of this paragraph—

(i) Related person

A person (hereinafter in this paragraph referred to as the ''related person'') is related to any person if—

(I) the related person bears a relationship to such person specified in section 267(b) or section 707(b)(1), or

(II) the related person and such person are engaged in trades or businesses under common control (within the meaning of subparagraphs (A) and (B) of section 41(f)(1)).

For purposes of subclause (I), in applying section 267(b) or 707(b)(1), ''20 percent'' shall be substituted for ''50 percent''.

(ii) Time for making determination

A person shall be treated as related to another person if such relationship exists immediately before or immediately after the acquisition of the intangible involved.

(D) Acquisitions by reason of death

Subparagraph (A) shall not apply to the acquisition of any property by the taxpayer if the basis of the property in the hands of the taxpayer is determined under section 1014(a).

(E) Special rule for partnerships

With respect to any increase in the basis of partnership property under section 732, 734, or 743, determinations under this paragraph shall be made at the partner level and each partner shall be treated as having owned and used such partner's proportionate share of the partnership assets.

(F) Anti-abuse rules

The term ''amortizable section 197 intangible'' does not include any section 197 intangible acquired in a transaction, one of the principal purposes of which is to avoid the requirement of subsection (c)(1) that the intangible be acquired after the date of the enactment of this section or to avoid the provisions of subparagraph (A).

(10) Tax-exempt use property subject to lease

In the case of any section 197 intangible which would be tax-exempt use property as defined in subsection (h) of section 168 if such section applied to such intangible, the amortization period under this section shall not be less than 125 percent of the lease term (within the meaning of section 168(i)(3)).

(g) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including such regulations as may be appropriate to prevent avoidance of the purposes of this section through related persons or otherwise.

(Added Pub. L. 103–66, title XIII, §13261(a), Aug. 10, 1993, 107 Stat. 532; amended Pub. L. 108–357, title VIII, §§847(b)(3), 886(a), Oct. 22, 2004, 118 Stat. 1602, 1641.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsecs. (c)(1)(A) and (f)(9)(A), (F), is the date of enactment of Pub. L. 103–66, which was approved Aug. 10, 1993.

AMENDMENTS

2004—Subsec. (e)(6) to (8). Pub. L. 108–357, §886(a), redesignated pars. (7) and (8) as (6) and (7), respectively, and struck out heading and text of former par. (6). Text read as follows: ''A franchise to engage in professional football, basketball, baseball, or other professional sport, and any item acquired in connection with such a franchise.''

Subsec. (f)(10). Pub. L. 108–357, §847(b)(3), added par. (10).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 847(b)(3) of Pub. L. 108–357 applicable to leases entered into after Oct. 3, 2004, see section 849(b)(4) of Pub. L. 108–357, set out as an Effective Date note under section 470 of this title.

Pub. L. 108–357, title VIII, §886(c), Oct. 22, 2004, 118 Stat. 1641, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 1245 and 1253 of this title and repealing section 1056 of this title] shall apply to property acquired after the date of the enactment of this Act [Oct. 22, 2004].

''(2) SECTION 1245.—The amendment made by subsection (b)(2) [amending section 1245 of this title] shall apply to franchises acquired after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE

Section 13261(g) of Pub. L. 103–66, as amended by Pub. L. 104–188, title I, §1703(*l*), Aug. 20, 1996, 110 Stat. 1877, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section and amending sections 167, 642, 848, 1016, 1060, 1245, and 1253 of this title] shall apply with respect to property acquired after the date of the enactment of this Act [Aug. 10, 1993].

''(2) ELECTION TO HAVE AMENDMENTS APPLY TO PROPERTY ACQUIRED AFTER JULY 25, 1991.—

''(A) IN GENERAL.—If an election under this paragraph applies to the taxpayer—

''(i) the amendments made by this section shall apply to property acquired by the taxpayer after July 25, 1991,

''(ii) subsection (c)(1)(A) of section 197 of the Internal Revenue Code of 1986 (as added by this section) (and so much of subsection (f)(9)(A) of such section 197 as precedes clause (i) thereof) shall be applied with respect to the taxpayer by treating July 25, 1991, as the date of the enactment of such section, and

''(iii) in applying subsection (f)(9) of such section, with respect to any property acquired by the taxpayer or a related person on or before the date of the enactment of this Act, only holding or use on July 25, 1991, shall be taken into account.

''(B) ELECTION.—An election under this paragraph shall be made at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe. Such an election by any taxpayer, once made—

''(i) may be revoked only with the consent of the Secretary, and

''(ii) shall apply to the taxpayer making such election and any other taxpayer under common control with the taxpayer (within the meaning of subparagraphs (A) and (B) of section 41(f)(1) of such Code) at any time after August 2, 1993, and on or before the date on which such election is made.

''(3) ELECTIVE BINDING CONTRACT EXCEPTION.—

''(A) IN GENERAL.—The amendments made by this section shall not apply to any acquisition of property by the taxpayer if—

''(i) such acquisition is pursuant to a written binding contract in effect on the date of the enactment of this Act and at all times thereafter before such acquisition,

''(ii) an election under paragraph (2) does not apply to the taxpayer, and

''(iii) the taxpayer makes an election under this paragraph with respect to such contract.

''(B) ELECTION.—An election under this paragraph shall be made at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe. Such an election, once made—

''(i) may be revoked only with the consent of the Secretary, and

''(ii) shall apply to all property acquired pursuant to the contract with respect to which such election was made.''

§ 198. Expensing of environmental remediation costs

(a) In general

A taxpayer may elect to treat any qualified environmental remediation expenditure which is paid or incurred by the taxpayer as an expense which is not chargeable to capital account. Any expenditure which is so treated shall be allowed as a deduction for the taxable year in which it is paid or incurred.

(b) Qualified environmental remediation expenditure

For purposes of this section—

(1) In general

The term ''qualified environmental remediation expenditure'' means any expenditure—

(A) which is otherwise chargeable to capital account, and

(B) which is paid or incurred in connection with the abatement or control of hazardous substances at a qualified contaminated site.

(2) Special rule for expenditures for depreciable property

Such term shall not include any expenditure for the acquisition of property of a character subject to the allowance for depreciation which is used in connection with the abatement or control of hazardous substances at a qualified contaminated site; except that the

portion of the allowance under section 167 for such property which is otherwise allocated to such site shall be treated as a qualified environmental remediation expenditure.

(c) Qualified contaminated site

For purposes of this section—

(1) In general

The term ''qualified contaminated site'' means any area—

(A) which is held by the taxpayer for use in a trade or business or for the production of income, or which is property described in section 1221(a)(1) in the hands of the taxpayer, and

(B) at or on which there has been a release (or threat of release) or disposal of any hazardous substance.

(2) National priorities listed sites not included

Such term shall not include any site which is on, or proposed for, the national priorities list under section 105(a)(8)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as in effect on the date of the enactment of this section).

(3) Taxpayer must receive statement from State environmental agency

An area shall be treated as a qualified contaminated site with respect to expenditures paid or incurred during any taxable year only if the taxpayer receives a statement from the appropriate agency of the State in which such area is located that such area meets the requirement of paragraph (1)(B).

(4) Appropriate State agency

For purposes of paragraph (3), the chief executive officer of each State may, in consultation with the Administrator of the Environmental Protection Agency, designate the appropriate State environmental agency within 60 days of the date of the enactment of this section. If the chief executive officer of a State has not designated an appropriate environmental agency within such 60-day period, the appropriate environmental agency for such State shall be designated by the Administrator of the Environmental Protection Agency.

(d) Hazardous substance

For purposes of this section—

(1) In general

The term ''hazardous substance'' means—

(A) any substance which is a hazardous substance as defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980,

(B) any substance which is designated as a hazardous substance under section 102 of such Act, and

(C) any petroleum product (as defined in section 4612(a)(3)).

(2) Exception

Such term shall not include any substance with respect to which a removal or remedial action is not permitted under section 104 of such Act by reason of subsection (a)(3) thereof.

(e) Deduction recaptured as ordinary income on sale, etc.

Solely for purposes of section 1245, in the case of property to which a qualified environmental remediation expenditure would have been capitalized but for this section—

(1) the deduction allowed by this section for such expenditure shall be treated as a deduction for depreciation, and

(2) such property (if not otherwise section 1245 property) shall be treated as section 1245 property solely for purposes of applying section 1245 to such deduction.

(f) Coordination with other provisions

Sections 280B and 468 shall not apply to amounts which are treated as expenses under this section.

(g) Regulations

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

(h) Termination

This section shall not apply to expenditures paid or incurred after December 31, 2011.

(Added Pub. L. 105–34, title IX, § 941(a), Aug. 5, 1997, 111 Stat. 882; amended Pub. L. 106–170, title V, §§ 511, 532(c)(2)(A), Dec. 17, 1999, 113 Stat. 1924, 1930; Pub. L. 106–554, § 1(a)(7) [title I, § 162(a), (b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–625; Pub. L. 108–311, title III, § 308(a), Oct. 4, 2004, 118 Stat. 1179; Pub. L. 109–432, div. A, title I, § 109(a), (b), Dec. 20, 2006, 120 Stat. 2939; Pub. L. 110–343, div. C, title III, § 318(a), Oct. 3, 2008, 122 Stat. 3873; Pub. L. 111–312, title VII, § 745(a), Dec. 17, 2010, 124 Stat. 3319.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (c)(2), (4), is the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

Sections 101(14), 102, 104, and 105(a)(8)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in subsecs. (c)(2) and (d), are classified to sections 9601(14), 9602, 9604, and 9605(a)(8)(B), respectively, of Title 42, The Public Health and Welfare.

AMENDMENTS

2010—Subsec. (h). Pub. L. 111–312 substituted ''December 31, 2011'' for ''December 31, 2009''.

2008—Subsec. (h). Pub. L. 110–343 substituted ''December 31, 2009'' for ''December 31, 2007''.

2006—Subsec. (d)(1)(C). Pub. L. 109–432, § 109(b), added subpar. (C).

Subsec. (h). Pub. L. 109–432, § 109(a), substituted ''2007'' for ''2005''.

2004—Subsec. (h). Pub. L. 108–311 substituted ''2005'' for ''2003''.

2000—Subsec. (c). Pub. L. 106–554, § 1(a)(7) [title I, § 162(a)], amended subsec. (c) generally. Prior to amendment, subsec. (c) defined the term ''qualified contaminated site'' to include certain property described in section 1221(a)(1) of this title, within a targeted area, and at which there had been a release or disposal of any hazardous substance, provided that an area could be treated as a qualified contaminated site only if the taxpayer received a certain statement from an appropriate State agency, provided for designation of appropriate State agencies, and defined targeted area.

Subsec. (h). Pub. L. 106–554, § 1(a)(7) [title I, § 162(b)], substituted ''2003'' for ''2001''.

1999—Subsec. (c)(1)(A)(i). Pub. L. 106–170, § 532(c)(2)(A), substituted ''section 1221(a)(1)'' for ''section 1221(1)''.

Subsec. (h). Pub. L. 106–170, § 511, substituted ''2001'' for ''2000''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, § 745(b), Dec. 17, 2010, 124 Stat. 3319, provided that: ''The amendment made by this section [amending this section] shall apply to expenditures paid or incurred after December 31, 2009.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, § 318(b), Oct. 3, 2008, 122 Stat. 3873, provided that: ''The amendment made by this section [amending this section] shall apply to expenditures paid or incurred after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, § 109(c), Dec. 20, 2006, 120 Stat. 2939, provided that: ''The amendments made by this section [amending this section] shall apply to expenditures paid or incurred after December 31, 2005.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title III, § 308(b), Oct. 4, 2004, 118 Stat. 1179, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to expenditures paid or incurred after December 31, 2003.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(7) [title I, § 162(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–625, provided that: ''The amendments made by this section [amending this section] shall apply to expenditures paid or incurred after the date of the enactment of this Act [Dec. 21, 2000].''

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 532(c)(2)(A) of Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE

Section 941(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [enacting this section] shall apply to expenditures paid or incurred after the date of the enactment of this Act [Aug. 5, 1997], in taxable years ending after such date.''

§ 198A. Expensing of qualified disaster expenses

(a) In general

A taxpayer may elect to treat any qualified disaster expenses which are paid or incurred by the taxpayer as an expense which is not chargeable to capital account. Any expense which is so treated shall be allowed as a deduction for the taxable year in which it is paid or incurred.

(b) Qualified disaster expense

For purposes of this section, the term ''qualified disaster expense'' means any expenditure—

(1) which is paid or incurred in connection with a trade or business or with business-related property,

(2) which is—

(A) for the abatement or control of hazardous substances that were released on account of a federally declared disaster occurring before January 1, 2010,

(B) for the removal of debris from, or the demolition of structures on, real property which is business-related property damaged or destroyed as a result of a federally declared disaster occurring before such date, or

(C) for the repair of business-related property damaged as a result of a federally declared disaster occurring before such date, and

(3) which is otherwise chargeable to capital account.

(c) Other definitions

For purposes of this section—

(1) Business-related property

The term ''business-related property'' means property—

(A) held by the taxpayer for use in a trade or business or for the production of income, or

(B) described in section 1221(a)(1) in the hands of the taxpayer.

(2) Federally declared disaster

The term ''federally declared disaster'' has the meaning given such term by section 165(h)(3)(C)(i).

(d) Deduction recaptured as ordinary income on sale, etc.

Solely for purposes of section 1245, in the case of property to which a qualified disaster expense would have been capitalized but for this section—

(1) the deduction allowed by this section for such expense shall be treated as a deduction for depreciation, and

(2) such property (if not otherwise section 1245 property) shall be treated as section 1245 property solely for purposes of applying section 1245 to such deduction.

(e) Coordination with other provisions

Sections 198, 280B, and 468 shall not apply to amounts which are treated as expenses under this section.

(f) Regulations

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

(Added Pub. L. 110–343, div. C, title VII, § 707(a), Oct. 3, 2008, 122 Stat. 3923.)

EFFECTIVE DATE

Pub. L. 110–343, div. C, title VII, § 707(c), Oct. 3, 2008, 122 Stat. 3924, provided that: ''The amendments made by this section [enacting this section] shall apply to amounts paid or incurred after December 31, 2007[,] in connection with disaster[s] declared after such date.''

§ 199. Income attributable to domestic production activities

(a) Allowance of deduction

(1) In general

There shall be allowed as a deduction an amount equal to 9 percent of the lesser of—

(A) the qualified production activities income of the taxpayer for the taxable year, or

(B) taxable income (determined without regard to this section) for the taxable year.

(2) Phasein

In the case of any taxable year beginning after 2004 and before 2010, paragraph (1) shall be applied by substituting for the percentage

contained therein the transition percentage determined under the following table:

For taxable years beginning in:	The transition percentage is:
2005 or 2006	3
2007, 2008, or 2009	6.

(b) Deduction limited to wages paid

(1) In general

The amount of the deduction allowable under subsection (a) for any taxable year shall not exceed 50 percent of the W–2 wages of the taxpayer for the taxable year.

(2) W–2 wages

For purposes of this section—

(A) In general

The term ''W–2 wages'' means, with respect to any person for any taxable year of such person, the sum of the amounts described in paragraphs (3) and (8) of section 6051(a) paid by such person with respect to employment of employees by such person during the calendar year ending during such taxable year.

(B) Limitation to wages attributable to domestic production

Such term shall not include any amount which is not properly allocable to domestic production gross receipts for purposes of subsection (c)(1).

(C) Return requirement

Such term shall not include any amount which is not properly included in a return filed with the Social Security Administration on or before the 60th day after the due date (including extensions) for such return.

(D) Special rule for qualified film

In the case of a qualified film, such term shall include compensation for services performed in the United States by actors, production personnel, directors, and producers.

(3) Acquisitions and dispositions

The Secretary shall provide for the application of this subsection in cases where the taxpayer acquires, or disposes of, the major portion of a trade or business or the major portion of a separate unit of a trade or business during the taxable year.

(c) Qualified production activities income

For purposes of this section—

(1) In general

The term ''qualified production activities income'' for any taxable year means an amount equal to the excess (if any) of—

(A) the taxpayer's domestic production gross receipts for such taxable year, over

(B) the sum of—

(i) the cost of goods sold that are allocable to such receipts, and

(ii) other expenses, losses, or deductions (other than the deduction allowed under this section), which are properly allocable to such receipts.

(2) Allocation method

The Secretary shall prescribe rules for the proper allocation of items described in paragraph (1) for purposes of determining qualified production activities income. Such rules shall provide for the proper allocation of items whether or not such items are directly allocable to domestic production gross receipts.

(3) Special rules for determining costs

(A) In general

For purposes of determining costs under clause (i) of paragraph (1)(B), any item or service brought into the United States shall be treated as acquired by purchase, and its cost shall be treated as not less than its value immediately after it entered the United States. A similar rule shall apply in determining the adjusted basis of leased or rented property where the lease or rental gives rise to domestic production gross receipts.

(B) Exports for further manufacture

In the case of any property described in subparagraph (A) that had been exported by the taxpayer for further manufacture, the increase in cost or adjusted basis under subparagraph (A) shall not exceed the difference between the value of the property when exported and the value of the property when brought back into the United States after the further manufacture.

(4) Domestic production gross receipts

(A) In general

The term ''domestic production gross receipts'' means the gross receipts of the taxpayer which are derived from—

(i) any lease, rental, license, sale, exchange, or other disposition of—

(I) qualifying production property which was manufactured, produced, grown, or extracted by the taxpayer in whole or in significant part within the United States,

(II) any qualified film produced by the taxpayer, or

(III) electricity, natural gas, or potable water produced by the taxpayer in the United States,

(ii) in the case of a taxpayer engaged in the active conduct of a construction trade or business, construction of real property performed in the United States by the taxpayer in the ordinary course of such trade or business, or

(iii) in the case of a taxpayer engaged in the active conduct of an engineering or architectural services trade or business, engineering or architectural services performed in the United States by the taxpayer in the ordinary course of such trade or business with respect to the construction of real property in the United States.

(B) Exceptions

Such term shall not include gross receipts of the taxpayer which are derived from—

(i) the sale of food and beverages prepared by the taxpayer at a retail establishment,

(ii) the transmission or distribution of electricity, natural gas, or potable water, or

(iii) the lease, rental, license, sale, exchange, or other disposition of land.

(C) Special rule for certain Government contracts

Gross receipts derived from the manufacture or production of any property described in subparagraph (A)(i)(I) shall be treated as meeting the requirements of subparagraph (A)(i) if—

(i) such property is manufactured or produced by the taxpayer pursuant to a contract with the Federal Government, and

(ii) the Federal Acquisition Regulation requires that title or risk of loss with respect to such property be transferred to the Federal Government before the manufacture or production of such property is complete.

(D) Partnerships owned by expanded affiliated groups

For purposes of this paragraph, if all of the interests in the capital and profits of a partnership are owned by members of a single expanded affiliated group at all times during the taxable year of such partnership, the partnership and all members of such group shall be treated as a single taxpayer during such period.

(5) Qualifying production property

The term ''qualifying production property'' means—

(A) tangible personal property,

(B) any computer software, and

(C) any property described in section 168(f)(4).

(6) Qualified film

The term ''qualified film'' means any property described in section 168(f)(3) if not less than 50 percent of the total compensation relating to the production of such property is compensation for services performed in the United States by actors, production personnel, directors, and producers. Such term does not include property with respect to which records are required to be maintained under section 2257 of title 18, United States Code. A qualified film shall include any copyrights, trademarks, or other intangibles with respect to such film. The methods and means of distributing a qualified film shall not affect the availability of the deduction under this section.

(7) Related persons

(A) In general

The term ''domestic production gross receipts'' shall not include any gross receipts of the taxpayer derived from property leased, licensed, or rented by the taxpayer for use by any related person.

(B) Related person

For purposes of subparagraph (A), a person shall be treated as related to another person if such persons are treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (*o*) of section 414, except that determinations under subsections (a) and (b) of section 52 shall be made without regard to section 1563(b).

(d) Definitions and special rules

(1) Application of section to pass-thru entities

(A) Partnerships and S corporations

In the case of a partnership or S corporation—

(i) this section shall be applied at the partner or shareholder level,

(ii) each partner or shareholder shall take into account such person's allocable share of each item described in subparagraph (A) or (B) of subsection (c)(1) (determined without regard to whether the items described in such subparagraph (A) exceed the items described in such subparagraph (B)),

(iii) each partner or shareholder shall be treated for purposes of subsection (b) as having W-2 wages for the taxable year in an amount equal to such person's allocable share of the W-2 wages of the partnership or S corporation for the taxable year (as determined under regulations prescribed by the Secretary), and

(iv) in the case of each partner of a partnership, or shareholder of an S corporation, who owns (directly or indirectly) at least 20 percent of the capital interests in such partnership or of the stock of such S corporation—

(I) such partner or shareholder shall be treated as having engaged directly in any film produced by such partnership or S corporation, and

(II) such partnership or S corporation shall be treated as having engaged directly in any film produced by such partner or shareholder.

(B) Trusts and estates

In the case of a trust or estate—

(i) the items referred to in subparagraph (A)(ii) (as determined therein) and the W–2 wages of the trust or estate for the taxable year, shall be apportioned between the beneficiaries and the fiduciary (and among the beneficiaries) under regulations prescribed by the Secretary, and

(ii) for purposes of paragraph (2), adjusted gross income of the trust or estate shall be determined as provided in section 67(e) with the adjustments described in such paragraph.

(C) Regulations

The Secretary may prescribe rules requiring or restricting the allocation of items and wages under this paragraph and may prescribe such reporting requirements as the Secretary determines appropriate.

(2) Application to individuals

In the case of an individual, subsections (a)(1)(B) and (d)(9)(A)(iii) shall be applied by substituting ''adjusted gross income'' for ''taxable income''. For purposes of the preceding sentence, adjusted gross income shall be determined—

(A) after application of sections 86, 135, 137, 219, 221, 222, and 469, and

(B) without regard to this section.

(3) Agricultural and horticultural cooperatives

(A) Deduction allowed to patrons

Any person who receives a qualified payment from a specified agricultural or horticultural cooperative shall be allowed for the taxable year in which such payment is received a deduction under subsection (a) equal to the portion of the deduction allowed under subsection (a) to such cooperative which is—

(i) allowed with respect to the portion of the qualified production activities income to which such payment is attributable, and

(ii) identified by such cooperative in a written notice mailed to such person during the payment period described in section 1382(d).

(B) Cooperative denied deduction for portion of qualified payments

The taxable income of a specified agricultural or horticultural cooperative shall not be reduced under section 1382 by reason of that portion of any qualified payment as does not exceed the deduction allowable under subparagraph (A) with respect to such payment.

(C) Taxable income of cooperatives determined without regard to certain deductions

For purposes of this section, the taxable income of a specified agricultural or horticultural cooperative shall be computed without regard to any deduction allowable under subsection (b) or (c) of section 1382 (relating to patronage dividends, per-unit retain allocations, and nonpatronage distributions).

(D) Special rule for marketing cooperatives

For purposes of this section, a specified agricultural or horticultural cooperative described in subparagraph (F)(ii) shall be treated as having manufactured, produced, grown, or extracted in whole or significant part any qualifying production property marketed by the organization which its patrons have so manufactured, produced, grown, or extracted.

(E) Qualified payment

For purposes of this paragraph, the term ''qualified payment'' means, with respect to any person, any amount which—

(i) is described in paragraph (1) or (3) of section 1385(a),

(ii) is received by such person from a specified agricultural or horticultural cooperative, and

(iii) is attributable to qualified production activities income with respect to which a deduction is allowed to such cooperative under subsection (a).

(F) Specified agricultural or horticultural cooperative

For purposes of this paragraph, the term ''specified agricultural or horticultural cooperative'' means an organization to which part I of subchapter T applies which is engaged—

(i) in the manufacturing, production, growth, or extraction in whole or significant part of any agricultural or horticultural product, or

(ii) in the marketing of agricultural or horticultural products.

(4) Special rule for affiliated groups

(A) In general

All members of an expanded affiliated group shall be treated as a single corporation for purposes of this section.

(B) Expanded affiliated group

For purposes of this section, the term ''expanded affiliated group'' means an affiliated group as defined in section 1504(a), determined—

(i) by substituting ''more than 50 percent'' for ''at least 80 percent'' each place it appears, and

(ii) without regard to paragraphs (2) and (4) of section 1504(b).

(C) Allocation of deduction

Except as provided in regulations, the deduction under subsection (a) shall be allocated among the members of the expanded affiliated group in proportion to each member's respective amount (if any) of qualified production activities income.

(5) Trade or business requirement

This section shall be applied by only taking into account items which are attributable to the actual conduct of a trade or business.

(6) Coordination with minimum tax

For purposes of determining alternative minimum taxable income under section 55—

(A) qualified production activities income shall be determined without regard to any adjustments under sections 56 through 59, and

(B) in the case of a corporation, subsection (a)(1)(B) shall be applied by substituting ''alternative minimum taxable income'' for ''taxable income''.

(7) Unrelated business taxable income

For purposes of determining the tax imposed by section 511, subsection (a)(1)(B) shall be applied by substituting ''unrelated business taxable income'' for ''taxable income''.

(8) Treatment of activities in Puerto Rico

(A) In general

In the case of any taxpayer with gross receipts for any taxable year from sources within the Commonwealth of Puerto Rico, if all of such receipts are taxable under section 1 or 11 for such taxable year, then for purposes of determining the domestic production gross receipts of such taxpayer for such taxable year under subsection (c)(4), the term ''United States'' shall include the Commonwealth of Puerto Rico.

(B) Special rule for applying wage limitation

In the case of any taxpayer described in subparagraph (A), for purposes of applying the limitation under subsection (b) for any taxable year, the determination of W–2 wages of such taxpayer shall be made without regard to any exclusion under section

3401(a)(8) for remuneration paid for services performed in Puerto Rico.

(C) Termination

This paragraph shall apply only with respect to the first 6 taxable years of the taxpayer beginning after December 31, 2005, and before January 1, 2012.

(9) Special rule for taxpayers with oil related qualified production activities income

(A) In general

If a taxpayer has oil related qualified production activities income for any taxable year beginning after 2009, the amount otherwise allowable as a deduction under subsection (a) shall be reduced by 3 percent of the least of—

(i) the oil related qualified production activities income of the taxpayer for the taxable year,

(ii) the qualified production activities income of the taxpayer for the taxable year, or

(iii) taxable income (determined without regard to this section).

(B) Oil related qualified production activities income

For purposes of this paragraph, the term ''oil related qualified production activities income'' means for any taxable year the qualified production activities income which is attributable to the production, refining, processing, transportation, or distribution of oil, gas, or any primary product thereof during such taxable year.

(C) Primary product

For purposes of this paragraph, the term ''primary product'' has the same meaning as when used in section 927(a)(2)(C), as in effect before its repeal.

(10) Regulations

The Secretary shall prescribe such regulations as are necessary to carry out the purposes of this section, including regulations which prevent more than 1 taxpayer from being allowed a deduction under this section with respect to any activity described in subsection (c)(4)(A)(i).

(Added Pub. L. 108–357, title I, §102(a), Oct. 22, 2004, 118 Stat. 1424; amended Pub. L. 109–135, title IV, §403(a)(1)–(13), Dec. 21, 2005, 119 Stat. 2615–2619; Pub. L. 109–222, title V, §514(a), (b), May 17, 2006, 120 Stat. 366; Pub. L. 109–432, div. A, title IV, §401(a), Dec. 20, 2006, 120 Stat. 2953; Pub. L. 110–343, div. B, title IV, §401(a), (b), div. C, title III, §312(a), title V, §502(c), Oct. 3, 2008, 122 Stat. 3851, 3869, 3876; Pub. L. 111–312, title VII, §746(a), Dec. 17, 2010, 124 Stat. 3319.)

REFERENCES IN TEXT

Section 927(a)(2)(C) of this title, referred to in subsec. (d)(9)(C), was repealed by Pub. L. 106–519, §2, Nov. 15, 2000, 114 Stat. 2423.

AMENDMENTS

2010—Subsec. (d)(8)(C). Pub. L. 111–312 substituted ''first 6 taxable years'' for ''first 4 taxable years'' and ''January 1, 2012'' for ''January 1, 2010''.

2008—Subsec. (b)(2)(D). Pub. L. 110–343, §502(c)(1), added subpar. (D).

Subsec. (c)(6). Pub. L. 110–343, §502(c)(2), inserted at end ''A qualified film shall include any copyrights, trademarks, or other intangibles with respect to such film. The methods and means of distributing a qualified film shall not affect the availability of the deduction under this section.''

Subsec. (d)(1)(A)(iv). Pub. L. 110–343, §502(c)(3), added cl. (iv).

Subsec. (d)(2). Pub. L. 110–343, §401(b), substituted ''subsections (a)(1)(B) and (d)(9)(A)(iii)'' for ''subsection (a)(1)(B)'' in introductory provisions.

Subsec. (d)(8)(C). Pub. L. 110–343, §312(a), substituted ''first 4 taxable years'' for ''first 2 taxable years'' and ''January 1, 2010'' for ''January 1, 2008''.

Subsec. (d)(9), (10). Pub. L. 110–343, §401(a), added par. (9) and redesignated former par. (9) as (10).

2006—Subsec. (a)(2). Pub. L. 109–222, §514(b)(2), struck out ''and subsection (d)(1)'' after ''paragraph (1)''.

Subsec. (b)(2). Pub. L. 109–222, §514(a), amended par. (2) generally. Prior to amendment, text read as follows: ''For purposes of this section, the term 'W–2 wages' means, with respect to any person for any taxable year of such person, the sum of the amounts described in paragraphs (3) and (8) of section 6051(a) paid by such person with respect to employment of employees by such person during the calendar year ending during such taxable year. Such term shall not include any amount which is not properly included in a return filed with the Social Security Administration on or before the 60th day after the due date (including extensions) for such return.''

Subsec. (d)(1)(A)(iii). Pub. L. 109–222, §514(b)(1), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''each partner or shareholder shall be treated for purposes of subsection (b) as having W–2 wages for the taxable year in an amount equal to the lesser of—

''(I) such person's allocable share of the W–2 wages of the partnership or S corporation for the taxable year (as determined under regulations prescribed by the Secretary), or

''(II) 2 times 9 percent of so much of such person's qualified production activities income as is attributable to items allocated under clause (ii) for the taxable year.''

Subsec. (d)(8), (9). Pub. L. 109–432 added par. (8) and redesignated former par. (8) as (9).

2005—Subsec. (a)(2). Pub. L. 109–135, §403(a)(11)(B), substituted ''subsection (d)(1)'' for ''subsections (d)(1) and (d)(6)''.

Subsec. (b)(1). Pub. L. 109–135, §403(a)(1), substituted ''the taxpayer'' for ''the employer''.

Subsec. (b)(2). Pub. L. 109–135, §403(a)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of paragraph (1), the term 'W–2 wages' means the sum of the aggregate amounts the taxpayer is required to include on statements under paragraphs (3) and (8) of section 6051(a) with respect to employment of employees of the taxpayer during the calendar year ending during the taxpayer's taxable year.''

Subsec. (c)(1)(B). Pub. L. 109–135, §403(a)(3), inserted ''and'' at end of cl. (i), added cl. (ii), and struck out former cls. (ii) and (iii) which read as follows:

''(ii) other deductions, expenses, or losses directly allocable to such receipts, and

''(iii) a ratable portion of other deductions, expenses, and losses that are not directly allocable to such receipts or another class of income.''

Subsec. (c)(2). Pub. L. 109–135, §403(a)(4), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The Secretary shall prescribe rules for the proper allocation of items of income, deduction, expense, and loss for purposes of determining income attributable to domestic production activities.''

Subsec. (c)(4)(A)(ii), (iii). Pub. L. 109–135, §403(a)(5), added cls. (ii) and (iii) and struck out former cls. (ii) and (iii) which read as follows:

''(ii) construction performed in the United States, or

''(iii) engineering or architectural services performed in the United States for construction projects in the United States.''

Subsec. (c)(4)(B)(iii). Pub. L. 109–135, § 403(a)(6), added cl. (iii).

Subsec. (c)(4)(C), (D). Pub. L. 109–135, § 403(a)(7), added subpars. (C) and (D).

Subsec. (d)(1). Pub. L. 109–135, § 403(a)(8), reenacted heading without change and amended text generally. Prior to amendment, text consisted of subpars. (A) and (B) relating to general application of section to pass-thru entities and application of wage limitation.

Subsec. (d)(3). Pub. L. 109–135, § 403(a)(9), amended heading and text of par. (3) generally. Prior to amendment, text related to deductions allowed to patrons of agricultural and horticultural cooperatives.

Subsec. (d)(4)(B)(i). Pub. L. 109–135, § 403(a)(10), substituted ''more than 50 percent'' for ''50 percent'' and ''at least 80 percent'' for ''80 percent''.

Subsec. (d)(6). Pub. L. 109–135, § 403(a)(11)(A), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The deduction under this section shall be allowed for purposes of the tax imposed by section 55; except that for purposes of section 55, the deduction under subsection (a) shall be 9 percent of the lesser of—

''(A) qualified production activities income (determined without regard to part IV of subchapter A), or

''(B) alternative minimum taxable income (determined without regard to this section) for the taxable year.

In the case of an individual, subparagraph (B) shall be applied by substituting 'adjusted gross income' for 'alternative minimum taxable income'. For purposes of the preceding sentence, adjusted gross income shall be determined in the same manner as provided in paragraph (2).''

Subsec. (d)(7). Pub. L. 109–135, § 403(a)(12), added par. (7). Former par. (7) redesignated (8).

Subsec. (d)(8). Pub. L. 109–135, § 403(a)(12), (13), redesignated par. (7) as (8) and inserted before period at end '', including regulations which prevent more than 1 taxpayer from being allowed a deduction under this section with respect to any activity described in subsection (c)(4)(A)(i)''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, § 746(b), Dec. 17, 2010, 124 Stat. 3320, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title IV, § 401(c), Oct. 3, 2008, 122 Stat. 3851, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008.''

Pub. L. 110–343, div. C, title III, § 312(b), Oct. 3, 2008, 122 Stat. 3869, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2007.''

Amendment by section 502(c) of Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2007, see section 502(e)(2) of Pub. L. 110–343, set out as a note under section 181 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, § 401(b), Dec. 20, 2006, 120 Stat. 2953, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2005.''

Pub. L. 109–222, title V, § 514(c), May 17, 2006, 120 Stat. 367, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [May 17, 2006].''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendments by Pub. L. 109–135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which they relate, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 2004, subject to transition rule, see section 102(e) of Pub. L. 108–357, as amended, set out as an Effective Date of 2004 Amendments note under section 56 of this title.

PART VII—ADDITIONAL ITEMIZED DEDUCTIONS FOR INDIVIDUALS

Sec.
211. Allowance of deductions.
212. Expenses for production of income.
213. Medical, dental, etc., expenses.
[214. Repealed.]
215. Alimony, etc., payments.
216. Deduction of taxes, interest, and business depreciation by cooperative housing corporation tenant-stockholder.
217. Moving expenses.
[218. Repealed.]
219. Retirement savings.
220. Archer MSAs.
221. Interest on education loans.
222. Qualified tuition and related expenses.
223. Health savings accounts.
224. Cross reference.

AMENDMENT OF ANALYSIS

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note set out under section 1 of this title.

AMENDMENTS

2003—Pub. L. 108–173, title XII, § 1201(j), Dec. 8, 2003, 117 Stat. 2479, added items 223 and 224 and struck out former item 223 ''Cross reference''.

2001—Pub. L. 107–16, title IV, § 431(c)(4), title IX, § 901, June 7, 2001, 115 Stat. 68, 150, temporarily added items 222 and 223 and struck out former item 222 ''Cross reference''.

2000—Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(9)], Dec. 21, 2000, 114 Stat. 2763, 2763A–629, substituted ''Archer MSAs'' for ''Medical savings accounts'' in item 220.

1997—Pub. L. 105–34, title II, § 202(d), Aug. 5, 1997, 111 Stat. 809, added items 221 and 222 and struck out former item 221 ''Cross reference''.

1996—Pub. L. 104–191, title III, § 301(i), Aug. 21, 1996, 110 Stat. 2052, added items 220 and 221 and struck out former item 220 ''Cross reference''.

1990—Pub. L. 101–508, title XI, § 11802(e)(3), Nov. 5, 1990, 104 Stat. 1388–530, added item 220 and struck out former items 220 ''Jury duty pay remitted to employer'' and 221 ''Cross references''.

1988—Pub. L. 100–647, title VI, § 6007(c), Nov. 10, 1988, 102 Stat. 3687, added item 220 and redesignated former item 220 as 221.

1986—Pub. L. 99–514, title I, §§ 131(b)(3), 135(b)(2), title III, § 301(b)(5)(B), Oct. 22, 1986, 100 Stat. 2113, 2116, 2217, added item 220, struck out items 221 ''Deduction for two-earner married couples'' and 222 ''Adoption expenses'', substituted ''reference'' for ''references'' in item 223, and struck out item 223 ''Cross reference''.

1981—Pub. L. 97–34, title I, §§ 103(c)(3), 125(b), title III, § 311(h)(11), Aug. 13, 1981, 95 Stat. 188, 201, 282, repealed item 220 ''Retirement savings for certain married individuals'', added items 221 and 222 and redesignated former item 221 as 223.

1978—Pub. L. 95–600, title I, § 113(a)(2)(A), Nov. 6, 1978, 92 Stat. 2778, struck out item 218 ''Contributions to candidates for public office''.

1976—Pub. L. 94–455, title V, § 504(b)(2), Oct. 4, 1976, 90 Stat. 1565, struck out item 214 ''Expenses for household and dependent care services necessary for gainful employment''.

Pub. L. 94–455, title XV, §1501(c), Oct. 4, 1976, 90 Stat. 1737, added item 220 and redesignated former item 220 as 221.

1974—Pub. L. 93–406, title II, §2002(h)(1), Sept. 2, 1974, 88 Stat. 970, added item 219 and redesignated former item 219 as 220.

1971—Pub. L. 92–178, title II, §210(b), title VII, §702(c), Dec. 10, 1971, 85 Stat. 520, 562, substituted ''Expenses for household and dependent care services necessary for gainful employment'' for ''expenses for care of certain dependents'' in item 214, added item 218, and redesignated former item 218 as 219.

1964—Pub. L. 88–272, title II, §213(a)(2), Feb. 26, 1964, 78 Stat. 52, added item 217 and redesignated former item 217 as 218.

1962—Pub. L. 87–834, §28(b), Oct. 16, 1962, 76 Stat. 1068, substituted ''Deduction of taxes, interest, and business depreciation by cooperative housing corporation tenant-stockholder'' for ''Amounts representing taxes and interest paid to cooperative housing corporation'' in item 216.

§ 211. Allowance of deductions

In computing taxable income under section 63, there shall be allowed as deductions the items specified in this part, subject to the exceptions provided in part IX (section 261 and following, relating to items not deductible).

(Aug. 16, 1954, ch. 736, 68A Stat. 69; Pub. L. 95–30, title I, §102(b)(3), May 23, 1977, 91 Stat. 137.)

AMENDMENTS

1977—Pub. L. 95–30 substituted ''section 63'' for ''section 63(a)''.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

§ 212. Expenses for production of income

In the case of an individual, there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year—

(1) for the production or collection of income;

(2) for the management, conservation, or maintenance of property held for the production of income; or

(3) in connection with the determination, collection, or refund of any tax.

(Aug. 16, 1954, ch. 736, 68A Stat. 69.)

DENIAL OF DEDUCTION FOR AMOUNTS PAID OR INCURRED ON JUDGMENTS IN SUITS BROUGHT TO RECOVER PRICE INCREASES IN PURCHASE OF NEW PRINCIPAL RESIDENCE

No deductions to be allowed in computing taxable income for two-thirds of any amount paid or incurred on a judgment entered against any person in a suit brought under section 208(b) of Pub. L. 94–12, see section 208(c) of Pub. L. 94–12, set out as a note under section 44 of this title.

§ 213. Medical, dental, etc., expenses

(a) Allowance of deduction

There shall be allowed as a deduction the expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse, or a dependent (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof), to the extent that such expenses exceed 7.5 percent of adjusted gross income.

(b) Limitation with respect to medicine and drugs

An amount paid during the taxable year for medicine or a drug shall be taken into account under subsection (a) only if such medicine or drug is a prescribed drug or is insulin.

(c) Special rule for decedents

(1) Treatment of expenses paid after death

For purposes of subsection (a), expenses for the medical care of the taxpayer which are paid out of his estate during the 1-year period beginning with the day after the date of his death shall be treated as paid by the taxpayer at the time incurred.

(2) Limitation

Paragraph (1) shall not apply if the amount paid is allowable under section 2053 as a deduction in computing the taxable estate of the decedent, but this paragraph shall not apply if (within the time and in the manner and form prescribed by the Secretary) there is filed—

(A) a statement that such amount has not been allowed as a deduction under section 2053, and

(B) a waiver of the right to have such amount allowed at any time as a deduction under section 2053.

(d) Definitions

For purposes of this section—

(1) The term ''medical care'' means amounts paid—

(A) for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body,

(B) for transportation primarily for and essential to medical care referred to in subparagraph (A),

(C) for qualified long-term care services (as defined in section 7702B(c)), or

(D) for insurance (including amounts paid as premiums under part B of title XVIII of the Social Security Act, relating to supplementary medical insurance for the aged) covering medical care referred to in subparagraphs (A) and (B) or for any qualified long-term care insurance contract (as defined in section 7702B(b)).

In the case of a qualified long-term care insurance contract (as defined in section 7702B(b)), only eligible long-term care premiums (as defined in paragraph (10)) shall be taken into account under subparagraph (D).

(2) AMOUNTS PAID FOR CERTAIN LODGING AWAY FROM HOME TREATED AS PAID FOR MEDICAL CARE.—Amounts paid for lodging (not lavish or extravagant under the circumstances) while away from home primarily for and essential to medical care referred to in paragraph (1)(A) shall be treated as amounts paid for medical care if—

(A) the medical care referred to in paragraph (1)(A) is provided by a physician in a licensed hospital (or in a medical care facil-

ity which is related to, or the equivalent of, a licensed hospital), and

(B) there is no significant element of personal pleasure, recreation, or vacation in the travel away from home.

The amount taken into account under the preceding sentence shall not exceed $50 for each night for each individual.

(3) PRESCRIBED DRUG.—The term ''prescribed drug'' means a drug or biological which requires a prescription of a physician for its use by an individual.

(4) PHYSICIAN.—The term ''physician'' has the meaning given to such term by section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)).

(5) SPECIAL RULE IN THE CASE OF CHILD OF DIVORCED PARENTS, ETC.—Any child to whom section 152(e) applies shall be treated as a dependent of both parents for purposes of this section.

(6) In the case of an insurance contract under which amounts are payable for other than medical care referred to in subparagraphs (A), (B), and (C) of paragraph (1)—

(A) no amount shall be treated as paid for insurance to which paragraph (1)(D) applies unless the charge for such insurance is either separately stated in the contract, or furnished to the policyholder by the insurance company in a separate statement,

(B) the amount taken into account as the amount paid for such insurance shall not exceed such charge, and

(C) no amount shall be treated as paid for such insurance if the amount specified in the contract (or furnished to the policyholder by the insurance company in a separate statement) as the charge for such insurance is unreasonably large in relation to the total charges under the contract.

(7) Subject to the limitations of paragraph (6), premiums paid during the taxable year by a taxpayer before he attains the age of 65 for insurance covering medical care (within the meaning of subparagraphs (A), (B), and (C) of paragraph (1)) for the taxpayer, his spouse, or a dependent after the taxpayer attains the age of 65 shall be treated as expenses paid during the taxable year for insurance which constitutes medical care if premiums for such insurance are payable (on a level payment basis) under the contract for a period of 10 years or more or until the year in which the taxpayer attains the age of 65 (but in no case for a period of less than 5 years).

(8) The determination of whether an individual is married at any time during the taxable year shall be made in accordance with the provisions of section 6013(d) (relating to determination of status as husband and wife).

(9) COSMETIC SURGERY.—

(A) IN GENERAL.—The term ''medical care'' does not include cosmetic surgery or other similar procedures, unless the surgery or procedure is necessary to ameliorate a deformity arising from, or directly related to, a congenital abnormality, a personal injury resulting from an accident or trauma, or disfiguring disease.

(B) COSMETIC SURGERY DEFINED.—For purposes of this paragraph, the term ''cosmetic surgery'' means any procedure which is directed at improving the patient's appearance and does not meaningfully promote the proper function of the body or prevent or treat illness or disease.

(10) ELIGIBLE LONG-TERM CARE PREMIUMS.—

(A) IN GENERAL.—For purposes of this section, the term ''eligible long-term care premiums'' means the amount paid during a taxable year for any qualified long-term care insurance contract (as defined in section 7702B(b)) covering an individual, to the extent such amount does not exceed the limitation determined under the following table:

In the case of an individual with an attained age before the close of the taxable year of:	The limitation is:
40 or less	$ 200
More than 40 but not more than 50	375
More than 50 but not more than 60	750
More than 60 but not more than 70	2,000
More than 70	2,500 .

(B) INDEXING.—

(i) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 1997, each dollar amount contained in subparagraph (A) shall be increased by the medical care cost adjustment of such amount for such calendar year. If any increase determined under the preceding sentence is not a multiple of $10, such increase shall be rounded to the nearest multiple of $10.

(ii) MEDICAL CARE COST ADJUSTMENT.—For purposes of clause (i), the medical care cost adjustment for any calendar year is the percentage (if any) by which—

(I) the medical care component of the Consumer Price Index (as defined in section 1(f)(5)) for August of the preceding calendar year, exceeds

(II) such component for August of 1996.

The Secretary shall, in consultation with the Secretary of Health and Human Services, prescribe an adjustment which the Secretary determines is more appropriate for purposes of this paragraph than the adjustment described in the preceding sentence, and the adjustment so prescribed shall apply in lieu of the adjustment described in the preceding sentence.

(11) CERTAIN PAYMENTS TO RELATIVES TREATED AS NOT PAID FOR MEDICAL CARE.—An amount paid for a qualified long-term care service (as defined in section 7702B(c)) provided to an individual shall be treated as not paid for medical care if such service is provided—

(A) by the spouse of the individual or by a relative (directly or through a partnership, corporation, or other entity) unless the service is provided by a licensed professional with respect to such service, or

(B) by a corporation or partnership which is related (within the meaning of section 267(b) or 707(b)) to the individual.

For purposes of this paragraph, the term ''relative'' means an individual bearing a relation-

ship to the individual which is described in any of subparagraphs (A) through (G) of section 152(d)(2). This paragraph shall not apply for purposes of section 105(b) with respect to reimbursements through insurance.

(e) Exclusion of amounts allowed for care of certain dependents

Any expense allowed as a credit under section 21 shall not be treated as an expense paid for medical care.

(Aug. 16, 1954, ch. 736, 68A Stat. 69; Pub. L. 85–866, title I, §§16, 17(a), (b), Sept. 2, 1958, 72 Stat. 1613, 1614; Pub. L. 86–470, §3(a), May 14, 1960, 74 Stat. 133; Pub. L. 87–863, §1(a), (b), Oct. 23, 1962, 76 Stat. 1141; Pub. L. 88–272, title II, §211(a), Feb. 26, 1964, 78 Stat. 49; Pub. L. 89–97, title I, §106(a)–(d)(1), July 30, 1965, 79 Stat. 336, 337; Pub. L. 94–455, title V, §504(c)(1), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1565, 1834; Pub. L. 97–248, title II, §202(a)–(b)(3)(B), Sept. 3, 1982, 96 Stat. 421; Pub. L. 98–369, div. A, title IV, §§423(b)(1), (3), 474(r)(9), 482(a), (b)(1), title VII, §711(b), July 18, 1984, 98 Stat. 800, 841, 847, 848, 943; Pub. L. 99–514, title I, §133, Oct. 22, 1986, 100 Stat. 2116; Pub. L. 101–508, title XI, §§11111(d)(1), 11342(a), Nov. 5, 1990, 104 Stat. 1388–412, 1388–471; Pub. L. 103–66, title XIII, §13131(d)(3), Aug. 10, 1993, 107 Stat. 435; Pub. L. 104–191, title III, §322(a)–(b)(2)(A), (C), (3), (4), Aug. 21, 1996, 110 Stat. 2060–2062; Pub. L. 108–311, title II, §207(17), (18), Oct. 4, 2004, 118 Stat. 1177; Pub. L. 111–148, title IX, §9013(a), (b), Mar. 23, 2010, 124 Stat. 868.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENT OF SECTION

Pub. L. 111–148, title IX, §9013(a), (b), (d), Mar. 23, 2010, 124 Stat. 868, provided that, applicable to taxable years beginning after Dec. 31, 2012, this section is amended (1) in subsection (a), by striking ''7.5 percent'' and inserting ''10 percent''; and (2) by adding at the end the following new subsection:

(f) Special rule for 2013, 2014, 2015, and 2016

In the case of any taxable year beginning after December 31, 2012, and ending before January 1, 2017, subsection (a) shall be applied with respect to a taxpayer by substituting ''7.5 percent'' for ''10 percent'' if such taxpayer or such taxpayer's spouse has attained age 65 before the close of such taxable year.

REFERENCES IN TEXT

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

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–311, §207(17), inserted '', determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof'' after ''section 152''.

Subsec. (d)(11). Pub. L. 108–311, §207(18), substituted ''subparagraphs (A) through (G) of section 152(d)(2)'' for ''paragraphs (1) through (8) of section 152(a)'' in concluding provisions.

1996—Subsec. (d)(1). Pub. L. 104–191, §322(b)(2)(A), inserted concluding provisions ''In the case of a qualified long-term care insurance contract (as defined in section 7702B(b)), only eligible long-term care premiums (as defined in paragraph (10)) shall be taken into account under subparagraph (D).''

Subsec. (d)(1)(B). Pub. L. 104–191, §322(a), struck out ''or'' at end.

Subsec. (d)(1)(C). Pub. L. 104–191, §322(a), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (d)(1)(D). Pub. L. 104–191, §322(b)(1), inserted before period ''or for any qualified long-term care insurance contract (as defined in section 7702B(b))''.

Pub. L. 104–191, §322(a), redesignated subpar. (C) as (D).

Subsec. (d)(6). Pub. L. 104–191, §322(b)(3)(A), substituted ''subparagraphs (A), (B), and (C)'' for ''subparagraphs (A) and (B)'' in introductory provisions.

Subsec. (d)(6)(A). Pub. L. 104–191, §322(b)(3)(B), substituted ''paragraph (1)(D)'' for ''paragraph (1)(C)''.

Subsec. (d)(7). Pub. L. 104–191, §322(b)(4), substituted ''subparagraphs (A), (B), and (C)'' for ''subparagraphs (A) and (B)''.

Subsec. (d)(10), (11). Pub. L. 104–191, §322(b)(2)(C), added pars. (10) and (11).

1993—Subsec. (f). Pub. L. 103–66 struck out heading and text of subsec. (f). Text read as follows: ''The amount otherwise taken into account under subsection (a) as expenses paid for medical care shall be reduced by the amount (if any) of the health insurance credit allowable to the taxpayer for the taxable year under section 32.''

1990—Subsec. (d)(9). Pub. L. 101–508, §11342(a), added par. (9).

Subsec. (f). Pub. L. 101–508, §11111(d)(1), added subsec. (f).

1986—Subsec. (a). Pub. L. 99–514 substituted ''7.5 percent'' for ''5 percent''.

1984—Subsec. (d)(2), (3). Pub. L. 98–369, §482(a), added par. (2) and redesignated former par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (d)(4). Pub. L. 98–369, §482(a), redesignated par. (3) as (4). Former par. (4), as added by Pub. L. 98–369, §423(b)(1), redesignated (5).

Pub. L. 98–369, §423(b)(1), added par. (4). Former par. (4) redesignated (5).

Subsec. (d)(5). Pub. L. 98–369, §482(a), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Pub. L. 98–369, §423(b)(1), redesignated former par. (4) as (5). Former par. (5) redesignated (6).

Pub. L. 98–369, §711(b), substituted ''paragraph (4)'' for ''paragraph (2)''.

Subsec. (d)(6). Pub. L. 98–369, §482(a), redesignated par. (5) as (6). Former par. (6) redesignated (7).

Pub. L. 98–369, §423(b)(1), (3), redesignated former par. (5) as (6) and substituted therein ''limitations of paragraph (5)'' for ''limitations of paragraph (4)''. Former par. (6) redesignated (7).

Subsec. (d)(7). Pub. L. 98–369, §482(a), (b)(1), redesignated par. (6) as (7) and substituted therein ''paragraph (6)'' for ''paragraph (5)''. Former par. (7) redesignated (8).

Pub. L. 98–369, §423(b)(1), redesignated former par. (6) as (7).

Subsec. (d)(8). Pub. L. 98–369, §482(a), redesignated par. (7) as (8).

Subsec. (e). Pub. L. 98–369, §474(r)(9), substituted ''section 21'' for ''section 44A''.

1982—Subsec. (a). Pub. L. 97–248, §202(a), substituted provisions that there shall be allowed as a deduction the expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse, or a dependent (as defined in section 152), to the extent that such expenses exceed 5 percent of adjusted gross income, for provision allowing as deductions the amount by which the amount of the expenses paid during the taxable year (reduced by any amount deductible under paragraph (2)) for medical care of the taxpayer, his spouse, and dependents (as defined in section 152) exceeded 3 percent

of the adjusted gross income, and an amount (not in excess of $150) equal to one-half of the expenses paid during the taxable year for insurance which constituted medical care for the taxpayer, his spouse, and dependents.

Subsec. (b). Pub. L. 97–248, § 202(b)(1), amended subsec. (b) generally, substituting provision that an amount paid during the taxable year for medicine or a drug shall be taken into account under subsec. (a) only if such medicine or drug is a prescribed drug or is insulin for former provision that amounts paid during the taxable year for medicine and drugs which (but for this subsection) would have been taken into account in computing the deduction under subsec. (a) would be taken into account only to the extent that the aggregate of such amounts exceeded 1 percent of the adjusted gross income.

Subsec. (c). Pub. L. 97–248, § 202(b)(3)(B), redesignated subsec. (d) as (c). Former subsec. (c) was repealed by Pub. L. 89–97.

Subsec. (d). Pub. L. 97–248, § 202(b)(2), (3)(A), (B), redesignated subsec. (e) as (d), added pars. (2) and (3), and redesignated former pars. (2), (3), and (4) as (4), (5), and (6), respectively. Former subsec. (d) redesignated (c).

Subsecs. (e), (f). Pub. L. 97–248, § 202(b)(3)(B), redesignated subsecs. (e) and (f) as (d) and (e), respectively.

1976—Subsec. (d)(2). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (f). Pub. L. 94–455, § 504(c)(1), substituted ''a credit under section 44A'' for ''a deduction under section 214'' after ''allowed as''.

1965—Subsec. (a). Pub. L. 89–97, § 106(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''There shall be allowed as a deduction the following amounts of the expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse, or a dependent (as defined in section 152):

''(1) If neither the taxpayer nor his spouse has attained the age of 65 before the close of the taxable year—

''(A) the amount of such expenses for the care of any dependent who—

''(i) is the mother or father of the taxpayer or of his spouse, and

''(ii) has attained the age of 65 before the close of the taxable year, and

''(B) the amount by which such expenses for the care of the taxpayer, his spouse, and such dependents (other than any dependent described in subparagraph (A)) exceed 3 percent of the adjusted gross income.

''(2) If either the taxpayer or his spouse has attained the age of 65 before the close of the taxable year—

''(A) the amount of such expenses for the care of the taxpayer and his spouse.

''(B) the amount of such expenses for the care of any dependent described in paragraph (1)(A), and

''(C) the amount by which such expenses for the care of such dependents (other than any dependent described in paragraph (1)(A)) exceed 3 percent of the adjusted gross income.''

Subsec. (b). Pub. L. 89–97, § 106(b), struck out second sentence which read: ''The preceding sentence shall not apply to amounts paid for the care of—

''(1) the taxpayer and his spouse, if either of them has attained the age of 65 before the close of the taxable year, or

''(2) any dependent described in subsection (a)(1)(A).''

Subsec. (c). Pub. L. 89–97, § 106(d)(1), struck out subsec. (c) relating to maximum limitations on medical and dental expenses under this section.

Subsec. (e). Pub. L. 89–97, § 106(c), struck out from par. (1)(A) ''including amounts paid for accident or health insurance'' after ''function of the body'', added pars. (1)(C), (2), and (3), and renumbered former par. (2) as (4).

Subsec. (g). Pub. L. 89–97, § 106(d)(1), struck out provisions relating to maximum limitation if taxpayer or spouse has attained age 65 and is disabled, special rule, amounts taken into account, meaning of disabled, and determination of status.

1964—Subsec. (b). Pub. L. 88–272 excluded persons attaining age 65 before the close of the taxable year from the limitation, whether they are the taxpayer and his spouse, or the mother or father of the taxpayer and his spouse.

1962—Subsec. (c). Pub. L. 87–863, § 1(a), substituted ''$5,000'' for ''$2,500'', ''$10,000'' for ''$5,000'', and ''$20,000'' for ''$10,000''.

Subsec. (g). Pub. L. 87–863, § 1(b), substituted ''$20,000'' for ''$15,000'' in three places, and ''$40,000'' for ''$30,000''.

1960—Subsec. (a). Pub. L. 86–470 authorized a taxpayer to deduct medical care expenses for dependent parents of the taxpayer or his spouse who have attained the age of 65 before the close of the taxable year without applying the three percent limitation.

1958—Subsec. (c). Pub. L. 85–866, § 17(b), substituted ''Except as provided in subsection (g), the'' for ''The''.

Subsec. (d)(2)(A). Pub. L. 85–866, § 16, struck out ''claimed or'' before ''allowed''.

Subsec. (g). Pub. L. 85–866, § 17(A), added subsec. (g).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–148 applicable to taxable years beginning after Dec. 31, 2012, see section 9013(d) of Pub. L. 111–148, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–191 applicable to taxable years beginning after Dec. 31, 1996, see section 322(c) of Pub. L. 104–191, set out as a note under section 162 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1993, see section 13131(e) of Pub. L. 103–66, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11111(d)(1) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11111(f) of Pub. L. 101–508, set out as a note under section 32 of this title.

Section 11342(b) of Pub. L. 101–508 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1990.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 423(b) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1984, see section 423(d) of Pub. L. 98–369, set out as a note under section 2 of this title.

Amendment by section 474(r)(9) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Section 482(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and section 152 of this title] shall apply to taxable years beginning after December 31, 1983.''

Amendment by section 711(b) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 202(c) of Pub. L. 97–248 provided that:

''(1) SUBSECTION (a).—The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1982.

''(2) SUBSECTION (b).—The amendments made by subsection (b) [amending this section and section 105 of this title] shall apply to taxable years beginning after December 31, 1983.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 504(c)(1) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, see section 508 of Pub. L. 94–455, set out as a note under section 3 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 106(e) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section and sections 72, 79, 401, and 405 of this title] shall apply to taxable years beginning after December 31, 1966.''

EFFECTIVE DATE OF 1964 AMENDMENT

Section 211(b) of Pub. L. 88–272 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1963.''

EFFECTIVE DATE OF 1962 AMENDMENT

Section 1(c) of Pub. L. 87–863 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply only with respect to taxable years beginning after December 31, 1961.''

EFFECTIVE DATE OF 1960 AMENDMENT

Section 3(b) of Pub. L. 86–470 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1959.''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 16 of Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

Section 17(c) of Pub. L. 85–866 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply only with respect to taxable years beginning after December 31, 1957.''

[§ 214. Repealed. Pub. L. 94–455, title V, § 504(b)(1), Oct. 4, 1976, 90 Stat. 1565]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 70; Apr. 2, 1963, Pub. L. 88–4, § 1, 77 Stat. 4; Feb. 26, 1964, Pub. L. 88–272, title II, § 212(a), 78 Stat. 49; Dec. 10, 1971, Pub. L. 92–178, title II, § 210(a), 85 Stat. 518; Mar. 29, 1975, Pub. L. 94–12, title II, § 206, 89 Stat. 32, provided for allowance of deduction for household and dependent care services necessary for gainful employment; defined ''qualifying individual'', ''employment-related expenses'', ''maintaining a household''; limitation on deductible amount; income limitation; and special rules and regulations applicable in the determination and allowance of deduction.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1975, see section 508 of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 3 of this title.

§ 215. Alimony, etc., payments

(a) General rule

In the case of an individual, there shall be allowed as a deduction an amount equal to the alimony or separate maintenance payments paid during such individual's taxable year.

(b) Alimony or separate maintenance payments defined

For purposes of this section, the term ''alimony or separate maintenance payment'' means any alimony or separate maintenance payment (as defined in section 71(b)) which is includible in the gross income of the recipient under section 71.

(c) Requirement of identification number

The Secretary may prescribe regulations under which—

(1) any individual receiving alimony or separate maintenance payments is required to furnish such individual's taxpayer identification number to the individual making such payments, and

(2) the individual making such payments is required to include such taxpayer identification number on such individual's return for the taxable year in which such payments are made.

(d) Coordination with section 682

No deduction shall be allowed under this section with respect to any payment if, by reason of section 682 (relating to income of alimony trusts), the amount thereof is not includible in such individual's gross income.

(Aug. 16, 1954, ch. 736, 68A Stat. 71; Pub. L. 98–369, div. A, title IV, § 422(b), July 18, 1984, 98 Stat. 797.)

AMENDMENTS

1984—Pub. L. 98–369 amended section generally, substituting present provisions for provisions which had declared in: subsec. (a) a general rule as to allowance of deduction for amounts includible under section 71 in the gross income of the wife, payment of which was made within husband's taxable year, and prohibited any deduction with respect to any payment where by reason of section 71(d) or 682 the amount thereof was not includible in husband's gross income; and subsec. (b) cross reference to definitions of husband and wife in section 7701(a)(17).

EFFECTIVE DATE OF 1984 AMENDMENT

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

§ 216. Deduction of taxes, interest, and business depreciation by cooperative housing corporation tenant-stockholder

(a) Allowance of deduction

In the case of a tenant-stockholder (as defined in subsection (b)(2)), there shall be allowed as a deduction amounts (not otherwise deductible) paid or accrued to a cooperative housing corporation within the taxable year, but only to

the extent that such amounts represent the tenant-stockholder's proportionate share of—

(1) the real estate taxes allowable as a deduction to the corporation under section 164 which are paid or incurred by the corporation on the houses or apartment building and on the land on which such houses (or building) are situated, or

(2) the interest allowable as a deduction to the corporation under section 163 which is paid or incurred by the corporation on its indebtedness contracted—

(A) in the acquisition, construction, alteration, rehabilitation, or maintenance of the houses or apartment building, or

(B) in the acquisition of the land on which the houses (or apartment building) are situated.

(b) Definitions

For purposes of this section—

(1) Cooperative housing corporation

The term ''cooperative housing corporation'' means a corporation—

(A) having one and only one class of stock outstanding,

(B) each of the stockholders of which is entitled, solely by reason of his ownership of stock in the corporation, to occupy for dwelling purposes a house, or an apartment in a building, owned or leased by such corporation,

(C) no stockholder of which is entitled (either conditionally or unconditionally) to receive any distribution not out of earnings and profits of the corporation except on a complete or partial liquidation of the corporation, and

(D) meeting 1 or more of the following requirements for the taxable year in which the taxes and interest described in subsection (a) are paid or incurred:

(i) 80 percent or more of the corporation's gross income for such taxable year is derived from tenant-stockholders.

(ii) At all times during such taxable year, 80 percent or more of the total square footage of the corporation's property is used or available for use by the tenant-stockholders for residential purposes or purposes ancillary to such residential use.

(iii) 90 percent or more of the expenditures of the corporation paid or incurred during such taxable year are paid or incurred for the acquisition, construction, management, maintenance, or care of the corporation's property for the benefit of the tenant-stockholders.

(2) Tenant-stockholder

The term ''tenant-stockholder'' means a person who is a stockholder in a cooperative housing corporation, and whose stock is fully paid-up in an amount not less than an amount shown to the satisfaction of the Secretary as bearing a reasonable relationship to the portion of the value of the corporation's equity in the houses or apartment building and the land on which situated which is attributable to the house or apartment which such person is entitled to occupy.

(3) Tenant-stockholder's proportionate share

(A) In general

Except as provided in subparagraph (B), the term ''tenant-stockholder's proportionate share'' means that proportion which the stock of the cooperative housing corporation owned by the tenant-stockholder is of the total outstanding stock of the corporation (including any stock held by the corporation).

(B) Special rule where allocation of taxes or interest reflect cost to corporation of stockholder's unit

(i) In general

If, for any taxable year—

(I) each dwelling unit owned or leased by a cooperative housing corporation is separately allocated a share of such corporation's real estate taxes described in subsection (a)(1) or a share of such corporation's interest described in subsection (a)(2), and

(II) such allocations reasonably reflect the cost to such corporation of such taxes, or of such interest, attributable to the tenant-stockholder's dwelling unit (and such unit's share of the common areas),

then the term ''tenant-stockholder's proportionate share'' means the shares determined in accordance with the allocations described in subclause (II).

(ii) Election by corporation required

Clause (i) shall apply with respect to any cooperative housing corporation only if such corporation elects its application. Such an election, once made, may be revoked only with the consent of the Secretary.

(4) Stock owned by governmental units

For purposes of this subsection, in determining whether a corporation is a cooperative housing corporation, stock owned and apartments leased by the United States or any of its possessions, a State or any political subdivision thereof, or any agency or instrumentality of the foregoing empowered to acquire shares in a cooperative housing corporation for the purpose of providing housing facilities, shall not be taken into account.

(5) Prior approval of occupancy

For purposes of this section, in the following cases there shall not be taken into account the fact that (by agreement with the cooperative housing corporation) the person or his nominee may not occupy the house or apartment without the prior approval of such corporation:

(A) In any case where a person acquires stock of a cooperative housing corporation by operation of law.

(B) In any case where a person other than an individual acquires stock of a cooperative housing corporation.

(C) In any case where the original seller acquires any stock of the cooperative housing corporation from the corporation not

later than 1 year after the date on which the apartments or houses (or leaseholds therein) are transferred by the original seller to the corporation.

(6) Original seller defined

For purposes of paragraph (5), the term ''original seller'' means the person from whom the corporation has acquired the apartments or houses (or leaseholds therein).

(c) Treatment as property subject to depreciation

(1) In general

So much of the stock of a tenant-stockholder in a cooperative housing corporation as is allocable, under regulations prescribed by the Secretary, to a proprietary lease or right of tenancy in property subject to the allowance for depreciation under section 167(a) shall, to the extent such proprietary lease or right of tenancy is used by such tenant-stockholder in a trade or business or for the production of income, be treated as property subject to the allowance for depreciation under section 167(a). The preceding sentence shall not be construed to limit or deny a deduction for depreciation under section 167(a) by a cooperative housing corporation with respect to property owned by such a corporation and leased to tenant-stockholders.

(2) Deduction limited to adjusted basis in stock

(A) In general

The amount of any deduction for depreciation allowable under section 167(a) to a tenant-stockholder with respect to any stock for any taxable year by reason of paragraph (1) shall not exceed the adjusted basis of such stock as of the close of the taxable year of the tenant-stockholder in which such deduction was incurred.

(B) Carryforward of disallowed amount

The amount of any deduction which is not allowed by reason of subparagraph (A) shall, subject to the provisions of subparagraph (A), be treated as a deduction allowable under section 167(a) in the succeeding taxable year.

(d) Disallowance of deduction for certain payments to the corporation

No deduction shall be allowed to a stockholder in a cooperative housing corporation for any amount paid or accrued to such corporation during any taxable year (in excess of the stockholder's proportionate share of the items described in subsections (a)(1) and (a)(2)) to the extent that, under regulations prescribed by the Secretary, such amount is properly allocable to amounts paid or incurred at any time by the corporation which are chargeable to the corporation's capital account. The stockholder's adjusted basis in the stock in the corporation shall be increased by the amount of such disallowance.

(e) Distributions by cooperative housing corporations

Except as provided in regulations no gain or loss shall be recognized on the distribution by a cooperative housing corporation of a dwelling unit to a stockholder in such corporation if such distribution is in exchange for the stockholder's stock in such corporation and such dwelling unit is used as his principal residence (within the meaning of section 121).

(Aug. 16, 1954, ch. 736, 68A Stat. 71; Pub. L. 87–834, §28(a), Oct. 16, 1962, 76 Stat. 1068; Pub. L. 91–172, title IX, §913(a), Dec. 30, 1969, 83 Stat. 723; Pub. L. 94–455, title XIX, §1906(b)(13)(A), title XXI, §2101(b), (f)(1), Oct. 4, 1976, 90 Stat. 1834, 1899; Pub. L. 95–600, title V, §531(a), Nov. 6, 1978, 92 Stat. 2886; Pub. L. 96–222, title I, §105(a)(6), Apr. 1, 1980, 94 Stat. 219; Pub. L. 99–514, title VI, §644(a)–(d), Oct. 22, 1986, 100 Stat. 2285, 2286; Pub. L. 100–647, title VI, §6282(a), Nov. 10, 1988, 102 Stat. 3755; Pub. L. 101–508, title XI, §11702(i), Nov. 5, 1990, 104 Stat. 1388–516; Pub. L. 105–34, title III, §312(d)(4), Aug. 5, 1997, 111 Stat. 840; Pub. L. 110–142, §4(a), Dec. 20, 2007, 121 Stat. 1804.)

AMENDMENTS

2007—Subsec. (b)(1)(D). Pub. L. 110–142 amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''80 percent or more of the gross income of which for the taxable year in which the taxes and interest described in subsection (a) are paid or incurred is derived from tenant-stockholders.''

1997—Subsec. (e). Pub. L. 105–34 substituted ''such dwelling unit is used as his principal residence (within the meaning of section 121)'' for ''such exchange qualifies for nonrecognition of gain under section 1034(f)''.

1990—Subsec. (e). Pub. L. 101–508 substituted ''corporations'' for ''associations'' in heading and ''corporation'' for ''association'' after ''housing'' in text.

1988—Subsec. (e). Pub. L. 100–647 added subsec. (e).

1986—Subsec. (b)(2). Pub. L. 99–514, §644(a)(1), substituted ''a person'' and ''such person'' for ''an individual'' and ''such individual'', respectively.

Subsec. (b)(3). Pub. L. 99–514, §644(d), added heading and amended text generally. Prior to amendment, text read as follows: ''The term 'tenant-stockholder's proportionate share' means that proportion which the stock of the cooperative housing corporation owned by the tenant-stockholder is of the total outstanding stock of the corporation (including any stock held by the corporation).''

Subsec. (b)(5). Pub. L. 99–514, §644(a)(2), substituted ''Prior approval of occupancy'' for ''Stock acquired through foreclosure by lending institution'' in heading and amended text generally. Prior to amendment, text read as follows: ''If a bank or other lending institution acquires by foreclosure (or by instrument in lieu of foreclosure) the stock of a tenant-stockholder, and a lease or the right to occupy an apartment or house to which such stock is appurtenant, such bank or other lending institution shall be treated as a tenant-stockholder for a period not to exceed three years from the date of acquisition. The preceding sentence shall apply even though, by agreement with the cooperative housing corporation, the bank (or other lending institution) or its nominee may not occupy the house or apartment without the prior approval of such corporation.''

Subsec. (b)(6). Pub. L. 99–514, §644(a)(2), amended par. (6) generally, substituting provisions defining ''original seller'' for purposes of par. (5) for provisions relating to stock owned by person from whom corporation acquired its property, subpar. (A) thereof providing for general rule, subpar. (B) providing that stock acquisition must take place not later than 1 year after transfer of dwelling units, subpar. (C) providing that original seller must have right to occupy apartment or house, and subpar. (D) defining ''original seller'' for purposes of former par. (6).

Subsec. (c). Pub. L. 99–514, §644(b), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as

follows: ''So much of the stock of a tenant-stockholder in a cooperative housing corporation as is allocable, under regulations prescribed by the Secretary, to a proprietary lease or right of tenancy in property subject to the allowance for depreciation under section 167(a) shall, to the extent such proprietary lease or right of tenancy is used by such tenant-stockholder in a trade or business or for the production of income, be treated as property subject to the allowance for depreciation under section 167(a). The preceding sentence shall not be construed to limit or deny a deduction for depreciation under 167(a) by a cooperative housing corporation with respect to property owned by such a corporation and leased to tenant-stockholders.''

Subsec. (d). Pub. L. 99–514, § 644(c), added subsec. (d).

1980—Subsec. (b)(6)(A). Pub. L. 96–222, § 105(a)(6)(A), added subpar. (A). Former subpar. (A), which required the original seller who acquired stock of the corporation from the corporation by purchase or foreclosure to be treated as a tenant-stockholder for a period not to exceed 3 years from the date of acquisition, was struck out.

Subsec. (b)(6)(B) to (D). Pub. L. 96–222, § 105(a)(6)(A), (B), added subpar. (B), redesignated former subpars. (B) and (C) as (C) and (D), and, in subpar. (D) as so redesignated, inserted provisions requiring that the estate of the original seller succeed to, and take into account, the tax treatment of the original seller under this paragraph.

1978—Subsec. (b)(6). Pub. L. 95–600, added par. (6).

1976—Subsec. (b)(2). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (b)(5). Pub. L. 94–455, § 2101(f), added par. (5).

Subsec. (c). Pub. L. 94–455, §§ 1906(b)(13)(A), 2101(b), struck out ''or his delegate'' after ''Secretary'' and inserted at end ''The preceding sentence shall not be construed to limit or deny a deduction for depreciation under 167(a) by a cooperative housing corporation with respect to property owned by such corporation and leased to tenant-stockholders.''

1969—Subsec. (b)(4). Pub. L. 91–172 added par. (4).

1962—Pub. L. 87–834 substituted ''Deduction of taxes, interest, and business depreciation by cooperative housing corporation tenant-stockholders'' for ''Amounts representing taxes and interest paid to cooperative housing corporation'' in section catchline, and added subsec. (c).

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–142, § 4(b), Dec. 20, 2007, 121 Stat. 1804, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Dec. 20, 2007].''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d)[(e)] of Pub. L. 105–34, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 11702(j) of Pub. L. 101–508, set out as a note under section 59 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 6282(b) of Pub. L. 100–647 provided that: ''The amendment made by this section [amending this section] shall take effect as if included in the amendments made by section 631 of the Tax Reform Act of 1986 [section 631 of Pub. L. 99–514, see Tables for classification].''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 644(f) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.

''(2) SUBSECTION (e).—

''(A) Except as provided in subparagraph (B), subsection (e) [set out below] shall apply to taxable years beginning before January 1, 1986.

''(B) Subsection (e)(7) [set out below] shall apply to amounts paid or incurred, and property acquired, in taxable years beginning, after December 31, 1985.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 531(b) of Pub. L. 95–600 provided that: ''The amendment made by this section [amending this section] shall apply to stock acquired after the date of the enactment of this Act [Nov. 6, 1978].''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2101(f)(2) of Pub. L. 94–455 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to stock acquired by banks or other lending institutions after the date of the enactment of this Act [Oct. 4, 1976].''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 913(b) of Pub. L. 91–172 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1969.''

EFFECTIVE DATE OF 1962 AMENDMENT

Section 28(c) of Pub. L. 87–834 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective with respect to taxable years beginning after December 31, 1961.''

TREATMENT OF AMOUNTS RECEIVED IN CONNECTION WITH REFINANCING OF INDEBTEDNESS OF CERTAIN COOPERATIVE HOUSING CORPORATIONS; TREATMENT OF AMOUNTS PAID FROM QUALIFIED REFINANCING-RELATED RESERVE

Section 644(e) of Pub. L. 99–514 provided that:

''(1) PAYMENT OF CLOSING COSTS AND CREATION OF RESERVE EXCLUDED FROM GROSS INCOME.—For purposes of the Internal Revenue Code of 1954 [now 1986], no amount shall be included in the gross income of a qualified cooperative housing corporation by reason of the payment or reimbursement by a city housing development agency or corporation of amounts for—

''(A) closing costs, or

''(B) the creation of reserves for the qualified cooperative housing corporation,

in connection with a qualified refinancing.

''(2) INCOME FROM RESERVE FUND TREATED AS MEMBER INCOME.—

''(A) IN GENERAL.—Income from a qualified refinancing-related reserve shall be treated as derived from its members for purposes of—

''(i) section 216 of the Internal Revenue Code of 1954 [now 1986] (relating to deduction of taxes, interest, and business depreciation by cooperative housing corporation tenant-stockholder), and

''(ii) section 277 of such Code (relating to deductions incurred by certain membership organizations in transactions with members).

''(B) NO INFERENCE.—Nothing in the provisions of this paragraph shall be construed to infer that a change in law is intended with respect to the treatment of deductions under section 277 of the Internal Revenue Code of 1954 [now 1986] with respect to cooperative housing corporations, and any determination of such issue shall be made as if such provisions had not been enacted.

''(3) TREATMENT OF CERTAIN INTEREST CLAIMED AS DEDUCTION.—Any amount—

''(A) claimed (on a return of tax imposed by chapter 1 of the Internal Revenue Code of 1954 [now 1986]) as a deduction by a qualified cooperative housing corporation for interest for any taxable year beginning before January 1, 1986, on a second mortgage loan made by a city housing development agency or corporation in connection with a qualified refinancing, and

''(B) reported (before April 16, 1986) by the qualified cooperative housing corporation to its tenant-stockholders as interest described in section 216(a)(2) of such Code,

shall be treated for purposes of such Code as if such amount were paid by such qualified cooperative housing corporation during such taxable year.

''(4) QUALIFIED COOPERATIVE HOUSING CORPORATION.—

''(A) IN GENERAL.—For purposes of this subsection, the term 'qualified cooperative housing corporation' means any corporation if—

''(i) such corporation is, after the application of paragraphs (1) and (2), a cooperative housing corporation (as defined in section 216(b) of the Internal Revenue Code of 1954 [now 1986]),

''(ii) such corporation is subject to a qualified limited-profit housing companies law, and

''(iii) such corporation either—

''(I) filed for incorporation on July 22, 1965, or

''(II) filed for incorporation on March 5, 1964.

''(B) QUALIFIED LIMITED-PROFIT HOUSING COMPANIES LAW.—For purposes of subparagraph (A), the term 'qualified limited-profit housing companies law' means any limited-profit housing companies law which limits the resale price for a tenant-stockholder's stock in a cooperative housing corporation to the sum of his basis for such stock plus his proportionate share of part or all of the amortization of any mortgage on the building owned by such corporation.

''(5) QUALIFIED REFINANCING.—For purposes of this subsection, the term 'qualified refinancing' means any refinancing—

''(A) which occurred—

''(i) with respect to a qualified cooperative housing corporation described in paragraph (4)(A)(iii)(I) on September 20, 1978, or

''(ii) with respect to a qualified cooperative housing corporation described in paragraph (4)(A)(iii)(II) on November 21, 1978, and

''(B) in which a qualified cooperative housing corporation refinanced a first mortgage loan made to such corporation by a city housing development agency with a first mortgage loan made by a city housing development corporation and insured by an agency of the Federal Government and a second mortgage loan made by such city housing development agency, in the process of which a reserve was created (as required by such Federal agency) and closing costs were paid or reimbursed by such city housing development agency or corporation.

''(6) QUALIFIED REFINANCING-RELATED RESERVE.—For purposes of this subsection, the term 'qualified refinancing-related reserve' means any reserve of a qualified cooperative housing corporation with respect to the creation of which no amount was included in the gross income of such corporation by reason of paragraph (a).

''(7) TREATMENT OF AMOUNTS PAID FROM QUALIFIED REFINANCING-RELATED RESERVE.—

''(A) IN GENERAL.—With respect to any payment from a qualified refinancing-related reserve out of amounts excluded from gross income by reason of paragraph (1)—

''(i) no deduction shall be allowed under chapter 1 of such Code, and

''(ii) the basis of any property acquired with such payment (determined without regard to this subparagraph) shall be reduced by the amount of such payment.

''(B) ORDERING RULES.—For purposes of subparagraph (A), payments from a reserve shall be treated as being made—

''(i) first from amounts excluded from gross income by reason of paragraph (1) to the extent thereof, and

''(ii) then from other amounts in the reserve.''

§ 217. Moving expenses

(a) Deduction allowed

There shall be allowed as a deduction moving expenses paid or incurred during the taxable year in connection with the commencement of work by the taxpayer as an employee or as a self-employed individual at a new principal place of work.

(b) Definition of moving expenses

(1) In general

For purposes of this section, the term ''moving expenses'' means only the reasonable expenses—

(A) of moving household goods and personal effects from the former residence to the new residence, and

(B) of traveling (including lodging) from the former residence to the new place of residence.

Such term shall not include any expenses for meals.

(2) Individuals other than taxpayer

In the case of any individual other than the taxpayer, expenses referred to in paragraph (1) shall be taken into account only if such individual has both the former residence and the new residence as his principal place of abode and is a member of the taxpayer's household.

(c) Conditions for allowance

No deduction shall be allowed under this section unless—

(1) the taxpayer's new principal place of work—

(A) is at least 50 miles farther from his former residence than was his former principal place of work, or

(B) if he had no former principal place of work, is at least 50 miles from his former residence, and

(2) either—

(A) during the 12-month period immediately following his arrival in the general location of his new principal place of work, the taxpayer is a full-time employee, in such general location, during at least 39 weeks, or

(B) during the 24-month period immediately following his arrival in the general location of his new principal place of work, the taxpayer is a full-time employee or performs services as a self-employed individual on a full-time basis, in such general location, during at least 78 weeks, of which not less than 39 weeks are during the 12-month period referred to in subparagraph (A).

For purposes of paragraph (1), the distance between two points shall be the shortest of the more commonly traveled routes between such two points.

(d) Rules for application of subsection (c)(2)

(1) The condition of subsection (c)(2) shall not apply if the taxpayer is unable to satisfy such condition by reason of—

(A) death or disability, or

(B) involuntary separation (other than for willful misconduct) from the service of, or transfer for the benefit of, an employer after obtaining full-time employment in which the taxpayer could reasonably have been expected to satisfy such condition.

(2) If a taxpayer has not satisfied the condition of subsection (c)(2) before the time prescribed by law (including extensions thereof) for filing the return for the taxable year during which he paid or incurred moving expenses which would otherwise be deductible under this section, but may still satisfy such condition, then such expenses may (at the election of the taxpayer) be deducted for such taxable year notwithstanding subsection (c)(2).

(3) If—

(A) for any taxable year moving expenses have been deducted in accordance with the rule provided in paragraph (2), and

(B) the condition of subsection (c)(2) cannot be satisfied at the close of a subsequent taxable year,

then an amount equal to the expenses which were so deducted shall be included in gross income for the first such subsequent taxable year.

[(e) Repealed. Pub. L. 103–66, title XIII, § 13213(a)(2)(A), Aug. 10, 1993, 107 Stat. 473]

(f) Self-employed individual

For purposes of this section, the term ''self-employed individual'' means an individual who performs personal services—

(1) as the owner of the entire interest in an unincorporated trade or business, or

(2) as a partner in a partnership carrying on a trade or business.

(g) Rules for members of the Armed Forces of the United States

In the case of a member of the Armed Forces of the United States on active duty who moves pursuant to a military order and incident to a permanent change of station—

(1) the limitations under subsection (c) shall not apply;

(2) any moving and storage expenses which are furnished in kind (or for which reimbursement or an allowance is provided, but only to the extent of the expenses paid or incurred) to such member, his spouse, or his dependents, shall not be includible in gross income, and no reporting with respect to such expenses shall be required by the Secretary of Defense or the Secretary of Transportation, as the case may be; and

(3) if moving and storage expenses are furnished in kind (or if reimbursement or an allowance for such expenses is provided) to such member's spouse and his dependents with regard to moving to a location other than the one to which such member moves (or from a location other than the one from which such member moves), this section shall apply with respect to the moving expenses of his spouse and dependents—

(A) as if his spouse commenced work as an employee at a new principal place of work at such location; and

(B) without regard to the limitations under subsection (c).

(h) Special rules for foreign moves

(1) Allowance of certain storage fees

In the case of a foreign move, for purposes of this section, the moving expenses described in subsection (b)(1)(A) include the reasonable expenses—

(A) of moving household goods and personal effects to and from storage, and

(B) of storing such goods and effects for part or all of the period during which the new place of work continues to be the taxpayer's principal place of work.

(2) Foreign move

For purposes of this subsection, the term ''foreign move'' means the commencement of work by the taxpayer at a new principal place of work located outside the United States.

(3) United States defined

For purposes of this subsection and subsection (i), the term ''United States'' includes the possessions of the United States.

(i) Allowance of deductions in case of retirees or decedents who were working abroad

(1) In general

In the case of any qualified retiree moving expenses or qualified survivor moving expenses—

(A) this section (other than subsection (h)) shall be applied with respect to such expenses as if they were incurred in connection with the commencement of work by the taxpayer as an employee at a new principal place of work located within the United States, and

(B) the limitations of subsection (c)(2) shall not apply.

(2) Qualified retiree moving expenses

For purposes of paragraph (1), the term ''qualified retiree moving expenses'' means any moving expenses—

(A) which are incurred by an individual whose former principal place of work and former residence were outside the United States, and

(B) which are incurred for a move to a new residence in the United States in connection with the bona fide retirement of the individual.

(3) Qualified survivor moving expenses

For purposes of paragraph (1), the term ''qualified survivor moving expenses'' means moving expenses—

(A) which are paid or incurred by the spouse or any dependent of any decedent who (as of the time of his death) had a principal place of work outside the United States, and

(B) which are incurred for a move which begins within 6 months after the death of such decedent and which is to a residence in the United States from a former residence outside the United States which (as of the time of the decedent's death) was the residence of such decedent and the individual paying or incurring the expense.

(j) Regulations

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

(Added Pub. L. 88–272, title II, § 213(a)(1), Feb. 26, 1964, 78 Stat. 50; amended Pub. L. 91–172, title II, § 231(a), Dec. 30, 1969, 83 Stat. 577; Pub. L. 94–455, title V, § 506 (a)–(c), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1568, 1834; Pub. L. 95–615, title II, § 204, Nov. 8, 1978, 92 Stat. 3106; Pub. L. 103–66, title XIII, § 13213(a)(1)–(2)(D), (b), Aug. 10, 1993, 107 Stat. 473, 474.)

PRIOR PROVISIONS

A prior section 217 was renumbered section 224 of this title.

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–66, § 13213(a)(1), amended subsec. (b) generally, restating former par. (1)(A) and (B) as par. (1) and former par. (3)(C) as par. (2) and striking out former par. (1)(C) to (E) which included certain traveling, meals, lodging, and residence sale, purchase, and lease expenses in the term ''moving expenses'', par. (2) which defined ''qualified residence sale, purchase, or lease expenses'', and par. (3)(A) and (B) which placed dollar limits on the amount allowed to be deducted as moving expenses.

Subsec. (c)(1). Pub. L. 103–66, § 13213(b), substituted ''50 miles'' for ''35 miles'' in subpars. (A) and (B).

Subsec. (e). Pub. L. 103–66, § 13213(a)(2)(A), struck out heading and text of subsec. (e). Text read as follows: ''The amount realized on the sale of the residence described in subparagraph (A) of subsection (b)(2) shall not be decreased by the amount of any expenses described in such subparagraph which are allowed as a deduction under subsection (a), and the basis of a residence described in subparagraph (B) of subsection (b)(2) shall not be increased by the amount of any expenses described in such subparagraph which are allowed as a deduction under subsection (a). This subsection shall not apply to any expenses with respect to which an amount is included in gross income under subsection (d)(3).''

Subsec. (f). Pub. L. 103–66, § 13213(a)(2)(B), amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows:

''(1) DEFINITION.—For purposes of this section, the term 'self-employed individual' means an individual who performs personal services—

''(A) as the owner of the entire interest in an unincorporated trade or business, or

''(B) as a partner in a partnership carrying on a trade or business.

''(2) RULE FOR APPLICATION OF SUBSECTIONS (b)(1)(C) AND (D).—For purposes of subparagraphs (C) and (D) of subsection (b)(1), an individual who commences work at a new principal place of work as a self-employed individual shall be treated as having obtained employment when he has made substantial arrangements to commence such work.''

Subsec. (g)(3). Pub. L. 103–66, § 13213(a)(2)(C), inserted ''and'' at end of subpar. (A), redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: ''for purposes of subsection (b)(3), as if such place of work was within the same general location as the member's new principal place of work, and''.

Subsec. (h). Pub. L. 103–66, § 13213(a)(2)(D), redesignated pars. (2) to (4) as (1) to (3), respectively, and struck out heading and text of former par. (1). Text read as follows: ''In the case of a foreign move—

''(A) subsection (b)(1)(D) shall be applied by substituting '90 consecutive days' for '30 consecutive days',

''(B) subsection (b)(3)(A) shall be applied by substituting '$4,500' for '$1,500' and by substituting '$6,000' for '$3,000', and

''(C) subsection (b)(3)(B) shall be applied as if the last sentence of such subsection read as follows: 'In the case of a husband and wife filing separate returns, subparagraph (A) shall be applied by substituting ''$2,250'' for ''$4,500'', and by substituting ''$3,000'' for ''$6,000''.' ''

1978—Subsecs. (h) to (j). Pub. L. 95–615 added subsecs. (h) and (i) and redesignated former subsec. (h) as (j).

1976—Subsec. (b)(3)(A). Pub. L. 94–455, § 506(b)(1), (2), substituted ''$1,500'' for ''$1,000'' after ''(1) shall not exceed'' and ''$3,000'' for ''$2,500'' after ''lease expenses shall not exceed''.

Subsec. (b)(3)(B). Pub. L. 94–455, § 506(b)(3), substituted '' '$750' for '$1,500' '' for '' '$500' for '$1,000' '' after ''applied by substituting'' and '' '$1,500' for '$3,000' '' for '' '$1,250' for '$2,500' '' after ''and by substituting''.

Subsec. (c)(1)(A), (B). Pub. L. 94–455, § 506(a), substituted ''35'' for ''50'' after ''at least''.

Subsecs. (g), (h). Pub. L. 94–455, §§ 506(c), 1906(b)(13)(A), added subsec. (g), redesignated former subsec. (g) as (h) and struck out ''or his delegate'' after ''Secretary''.

1969—Pub. L. 91–172 substantially reenacted existing provisions and extended the coverage to self-employed persons working at the new location for 78 weeks, made it a requirement that the new principal place of work be located 50 miles from the former residence, and redefined the deduction to include costs of house-hunting trips, temporary living expenses prior to locating a new home, and expenses of selling an old home or buying a new one.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to expenses incurred after Dec. 31, 1993, see section 13213(e) of Pub. L. 103–66 set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT; ELECTION OF PRIOR LAW

Amendment by Pub. L. 95–615 applicable to taxable years beginning after Dec. 31, 1977, with provision for election of prior law, see section 209 of Pub. L. 95–615, set out as an Effective Date of 1978 Amendment note under section 911 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 506(d) of Pub. L. 94–455 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to taxable years beginning after December 31, 1976.''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 231(d) of Pub. L. 91–172, as amended by Pub. L. 91–642, § 2, Dec. 31, 1970, 84 Stat. 1880; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [enacting section 82 of this title and amending this section and sections 1001 and 1016 of this title] shall apply to taxable years beginning after December 31, 1969, except that—

''(1) section 217 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (a)) shall not apply to any item to the extent that the taxpayer received or accrued reimbursement or other expense allowance for such item in a taxable year beginning on or before December 31, 1969, which was not included in his gross income; and

''(2) the amendments made by this section shall not apply (at the election of the taxpayer made at such time and manner as the Secretary of the Treasury or his delegate prescribes) with respect to moving expenses paid or incurred before January 1, 1971, in connection with the commencement of work by the taxpayer as an employee at a new principal place of work of which the taxpayer had been notified by his employer on or before December 19, 1969.''

EFFECTIVE DATE

Section applicable to expenses incurred after Dec. 31, 1963, in taxable years ending after such date, see section 213(d) of Pub. L. 88–272, set out as an Effective Date of 1964 Amendment note under section 62 of this title.

MOVING EXPENSES OF MEMBERS OF THE UNIFORMED SERVICES

Pub. L. 93–490, § 2, Oct. 26, 1974, 88 Stat. 1466, authorized the Secretary of the Treasury, applicable with respect to taxable years ending before January 1, 1976, to:

(1) enter into an agreement with the Secretary concerned under which the Secretary concerned would not be required to withhold tax on, or to report, moving expense reimbursements made to members of the armed forces;

(2) permit any taxpayer who was a member of the armed forces not to include in adjusted gross income the amount of any reimbursement in kind of moving expenses made by the Secretary concerned; and

(3) permit any taxpayer who was a member of the armed forces to deduct any amount paid by him as moving expenses in connection with any move required by the Secretary concerned, in excess of any reimbursement received for such expenses, without regard to the provisions of subsec. (c) of this section, to the extent it was otherwise deductible under this section.

[§ 218. Repealed. Pub. L. 95–600, title I, § 113(a)(1), Nov. 6, 1978, 92 Stat. 2778]

Section, added Pub. L. 92–178, title VII, § 702(a), Dec. 10, 1971, 85 Stat. 561; amended Pub. L. 93–625, §§ 11(d), 12(b), Jan. 3, 1975, 88 Stat. 2120; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to contributions to candidates for public office.

A prior section 218 was renumbered section 224 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to contributions the payment of which is made after Dec. 31, 1978, in taxable years beginning after such date, see section 113(d) of Pub. L. 95–600, set out as an Effective Date of 1978 Amendment note under section 24 of this title.

§ 219. Retirement savings

(a) Allowance of deduction

In the case of an individual, there shall be allowed as a deduction an amount equal to the qualified retirement contributions of the individual for the taxable year.

(b) Maximum amount of deduction

(1) In general

The amount allowable as a deduction under subsection (a) to any individual for any taxable year shall not exceed the lesser of—

(A) the deductible amount, or

(B) an amount equal to the compensation includible in the individual's gross income for such taxable year.

(2) Special rule for employer contributions under simplified employee pensions

This section shall not apply with respect to an employer contribution to a simplified employee pension.

(3) Plans under section 501(c)(18)

Notwithstanding paragraph (1), the amount allowable as a deduction under subsection (a) with respect to any contributions on behalf of an employee to a plan described in section 501(c)(18) shall not exceed the lesser of—

(A) $7,000, or

(B) an amount equal to 25 percent of the compensation (as defined in section 415(c)(3)) includible in the individual's gross income for such taxable year.

(4) Special rule for simple retirement accounts

This section shall not apply with respect to any amount contributed to a simple retirement account established under section 408(p).

(5) Deductible amount

For purposes of paragraph (1)(A)—

(A) In general

The deductible amount shall be determined in accordance with the following table:

For taxable years beginning in:	The deductible amount is:
2002 through 2004	$3,000
2005 through 2007	$4,000
2008 and thereafter	$5,000.

(B) Catch-up contributions for individuals 50 or older

(i) In general

In the case of an individual who has attained the age of 50 before the close of the taxable year, the deductible amount for such taxable year shall be increased by the applicable amount.

(ii) Applicable amount

For purposes of clause (i), the applicable amount shall be the amount determined in accordance with the following table:

For taxable years beginning in:	The applicable amount is:
2002 through 2005	$500
2006 and thereafter	$1,000.

(C) Catchup contributions for certain individuals

(i) In general

In the case of an applicable individual who elects to make a qualified retirement contribution in addition to the deductible amount determined under subparagraph (A)—

(I) the deductible amount for any taxable year shall be increased by an amount equal to 3 times the applicable amount determined under subparagraph (B) for such taxable year, and

(II) subparagraph (B) shall not apply.

(ii) Applicable individual

For purposes of this subparagraph, the term ''applicable individual'' means, with respect to any taxable year, any individual who was a qualified participant in a qualified cash or deferred arrangement (as defined in section 401(k)) of an employer described in clause (iii) under which the employer matched at least 50 percent of the employee's contributions to such arrangement with stock of such employer.

(iii) Employer described

An employer is described in this clause if, in any taxable year preceding the taxable year described in clause (ii)—

(I) such employer (or any controlling corporation of such employer) was a debtor in a case under title 11 of the United States Code, or similar Federal or State law, and

(II) such employer (or any other person) was subject to an indictment or conviction resulting from business transactions related to such case.

(iv) Qualified participant

For purposes of clause (ii), the term ''qualified participant'' means any applicable individual who was a participant in the cash or deferred arrangement described in such clause on the date that is 6 months before the filing of the case described in clause (iii).

(v) Termination

This subparagraph shall not apply to taxable years beginning after December 31, 2009.

(D) Cost-of-living adjustment

(i) In general

In the case of any taxable year beginning in a calendar year after 2008, the $5,000 amount under subparagraph (A) shall be increased by an amount equal to—

(I) such dollar amount, multiplied by

(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ''calendar year 2007'' for ''calendar year 1992'' in subparagraph (B) thereof.

(ii) Rounding rules

If any amount after adjustment under clause (i) is not a multiple of $500, such amount shall be rounded to the next lower multiple of $500.

(c) Special rules for certain married individuals

(1) In general

In the case of an individual to whom this paragraph applies for the taxable year, the limitation of paragraph (1) of subsection (b) shall be equal to the lesser of—

(A) the dollar amount in effect under subsection (b)(1)(A) for the taxable year, or

(B) the sum of—

(i) the compensation includible in such individual's gross income for the taxable year, plus

(ii) the compensation includible in the gross income of such individual's spouse for the taxable year reduced by—

(I) the amount allowed as a deduction under subsection (a) to such spouse for such taxable year,

(II) the amount of any designated nondeductible contribution (as defined in section 408(*o*)) on behalf of such spouse for such taxable year, and

(III) the amount of any contribution on behalf of such spouse to a Roth IRA under section 408A for such taxable year.

(2) Individuals to whom paragraph (1) applies

Paragraph (1) shall apply to any individual if—

(A) such individual files a joint return for the taxable year, and

(B) the amount of compensation (if any) includible in such individual's gross income for the taxable year is less than the compensation includible in the gross income of such individual's spouse for the taxable year.

(d) Other limitations and restrictions

(1) Beneficiary must be under age 70½

No deduction shall be allowed under this section with respect to any qualified retirement contribution for the benefit of an individual if such individual has attained age 70½ before the close of such individual's taxable year for which the contribution was made.

(2) Recontributed amounts

No deduction shall be allowed under this section with respect to a rollover contribution described in section 402(c), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16).

(3) Amounts contributed under endowment contract

In the case of an endowment contract described in section 408(b), no deduction shall be allowed under this section for that portion of the amounts paid under the contract for the taxable year which is properly allocable, under regulations prescribed by the Secretary, to the cost of life insurance.

(4) Denial of deduction for amount contributed to inherited annuities or accounts

No deduction shall be allowed under this section with respect to any amount paid to an inherited individual retirement account or individual retirement annuity (within the meaning of section 408(d)(3)(C)(ii)).

(e) Qualified retirement contribution

For purposes of this section, the term ''qualified retirement contribution'' means—

(1) any amount paid in cash for the taxable year by or on behalf of an individual to an individual retirement plan for such individual's benefit, and

(2) any amount contributed on behalf of any individual to a plan described in section 501(c)(18).

(f) Other definitions and special rules

(1) Compensation

For purposes of this section, the term ''compensation'' includes earned income (as defined in section 401(c)(2)). The term ''compensation'' does not include any amount received as a pension or annuity and does not include any amount received as deferred compensation. The term ''compensation'' shall include any amount includible in the individual's gross income under section 71 with respect to a divorce or separation instrument described in subparagraph (A) of section 71(b)(2). For purposes of this paragraph, section 401(c)(2) shall be applied as if the term trade or business for purposes of section 1402 included service described in subsection (c)(6). The term compensation[1] includes any differential wage payment (as defined in section 3401(h)(2)).

(2) Married individuals

The maximum deduction under subsection (b) shall be computed separately for each indi-

[1] So in original. Probably should be set off by quotation marks.

vidual, and this section shall be applied without regard to any community property laws.

(3) Time when contributions deemed made

For purposes of this section, a taxpayer shall be deemed to have made a contribution to an individual retirement plan on the last day of the preceding taxable year if the contribution is made on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (not including extensions thereof).

(4) Reports

The Secretary shall prescribe regulations which prescribe the time and the manner in which reports to the Secretary and plan participants shall be made by the plan administrator of a qualified employer or government plan receiving qualified voluntary employee contributions.

(5) Employer payments

For purposes of this title, any amount paid by an employer to an individual retirement plan shall be treated as payment of compensation to the employee (other than a self-employed individual who is an employee within the meaning of section 401(c)(1)) includible in his gross income in the taxable year for which the amount was contributed, whether or not a deduction for such payment is allowable under this section to the employee.

(6) Excess contributions treated as contribution made during subsequent year for which there is an unused limitation

(A) In general

If for the taxable year the maximum amount allowable as a deduction under this section for contributions to an individual retirement plan exceeds the amount contributed, then the taxpayer shall be treated as having made an additional contribution for the taxable year in an amount equal to the lesser of—

(i) the amount of such excess, or

(ii) the amount of the excess contributions for such taxable year (determined under section 4973(b)(2) without regard to subparagraph (C) thereof).

(B) Amount contributed

For purposes of this paragraph, the amount contributed—

(i) shall be determined without regard to this paragraph, and

(ii) shall not include any rollover contribution.

(C) Special rule where excess deduction was allowed for closed year

Proper reduction shall be made in the amount allowable as a deduction by reason of this paragraph for any amount allowed as a deduction under this section for a prior taxable year for which the period for assessing deficiency has expired if the amount so allowed exceeds the amount which should have been allowed for such prior taxable year.

(7) Special rule for compensation earned by members of the Armed Forces for service in a combat zone.

For purposes of subsections (b)(1)(B) and (c), the amount of compensation includible in an individual's gross income shall be determined without regard to section 112.

(8) Election not to deduct contributions

For election not to deduct contributions to individual retirement plans, see section 408(*o*)(2)(B)(ii).

(g) Limitation on deduction for active participants in certain pension plans

(1) In general

If (for any part of any plan year ending with or within a taxable year) an individual or the individual's spouse is an active participant, each of the dollar limitations contained in subsections (b)(1)(A) and (c)(1)(A) for such taxable year shall be reduced (but not below zero) by the amount determined under paragraph (2).

(2) Amount of reduction

(A) In general

The amount determined under this paragraph with respect to any dollar limitation shall be the amount which bears the same ratio to such limitation as—

(i) the excess of—

(I) the taxpayer's adjusted gross income for such taxable year, over

(II) the applicable dollar amount, bears to

(ii) $10,000 ($20,000 in the case of a joint return for a taxable year beginning after December 31, 2006).

(B) No reduction below $200 until complete phase-out

No dollar limitation shall be reduced below $200 under paragraph (1) unless (without regard to this subparagraph) such limitation is reduced to zero.

(C) Rounding

Any amount determined under this paragraph which is not a multiple of $10 shall be rounded to the next lowest $10.

(3) Adjusted gross income; applicable dollar amount

For purposes of this subsection—

(A) Adjusted gross income

Adjusted gross income of any taxpayer shall be determined—

(i) after application of sections 86 and 469, and

(ii) without regard to sections 135, 137, 199, 221, 222, and 911 or the deduction allowable under this section.

(B) Applicable dollar amount

The term ''applicable dollar amount'' means the following:

(i) In the case of a taxpayer filing a joint return:

For taxable years beginning in:	The applicable dollar amount

	is:
1998	$50,000
1999	$51,000
2000	$52,000
2001	$53,000
2002	$54,000
2003	$60,000
2004	$65,000
2005	$70,000
2006	$75,000
2007 and thereafter	$80,000.

(ii) In the case of any other taxpayer (other than a married individual filing a separate return):

For taxable years beginning in:	The applicable dollar amount is:
1998	$30,000
1999	$31,000
2000	$32,000
2001	$33,000
2002	$34,000
2003	$40,000
2004	$45,000
2005 and thereafter	$50,000.

(iii) In the case of a married individual filing a separate return, zero.

(4) Special rule for married individuals filing separately and living apart

A husband and wife who—

(A) file separate returns for any taxable year, and

(B) live apart at all times during such taxable year,

shall not be treated as married individuals for purposes of this subsection.

(5) Active participant

For purposes of this subsection, the term ''active participant'' means, with respect to any plan year, an individual—

(A) who is an active participant in—

(i) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

(ii) an annuity plan described in section 403(a),

(iii) a plan established for its employees by the United States, by a State or political subdivision thereof, or by an agency or instrumentality of any of the foregoing,

(iv) an annuity contract described in section 403(b),

(v) a simplified employee pension (within the meaning of section 408(k)), or

(vi) any simple retirement account (within the meaning of section 408(p)), or

(B) who makes deductible contributions to a trust described in section 501(c)(18).

The determination of whether an individual is an active participant shall be made without regard to whether or not such individual's rights under a plan, trust, or contract are nonforfeitable. An eligible deferred compensation plan (within the meaning of section 457(b)) shall not be treated as a plan described in subparagraph (A)(iii).

(6) Certain individuals not treated as active participants

For purposes of this subsection, any individual described in any of the following subparagraphs shall not be treated as an active participant for any taxable year solely because of any participation so described:

(A) Members of reserve components

Participation in a plan described in subparagraph (A)(iii) of paragraph (5) by reason of service as a member of a reserve component of the Armed Forces (as defined in section 10101 of title 10), unless such individual has served in excess of 90 days on active duty (other than active duty for training) during the year.

(B) Volunteer firefighters

A volunteer firefighter—

(i) who is a participant in a plan described in subparagraph (A)(iii) of paragraph (5) based on his activity as a volunteer firefighter, and

(ii) whose accrued benefit as of the beginning of the taxable year is not more than an annual benefit of $1,800 (when expressed as a single life annuity commencing at age 65).

(7) Special rule for spouses who are not active participants

If this subsection applies to an individual for any taxable year solely because their spouse is an active participant, then, in applying this subsection to the individual (but not their spouse)—

(A) the applicable dollar amount under paragraph (3)(B)(i) shall be $150,000; and

(B) the amount applicable under paragraph (2)(A)(ii) shall be $10,000.

(8) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 2006, the dollar amount in the last row of the table contained in paragraph (3)(B)(i), the dollar amount in the last row of the table contained in paragraph (3)(B)(ii), and the dollar amount contained in paragraph (7)(A), shall each be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ''calendar year 2005'' for ''calendar year 1992'' in subparagraph (B) thereof.

Any increase determined under the preceding sentence shall be rounded to the nearest multiple of $1,000.

(h) Cross reference

For failure to provide required reports, see section 6652(g).

(Added Pub. L. 93–406, title II, §2002(a)(1), Sept. 2, 1974, 88 Stat. 958; amended Pub. L. 94–455, title XV, §§1501(b)(4), 1503(a), title XIX, §§ 1901(a)(32), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1736, 1738, 1769, 1834; Pub. L. 95–600, title I, §§152(c), 156(c)(3), 157(a)(1), (b)(1), title VII, §703(c)(1), Nov. 6, 1978, 92 Stat. 2798, 2803, 2939; Pub. L. 96–222, title I,

§ 101(a)(10)(D), (14)(B), Apr. 1, 1980, 94 Stat. 202, 204; Pub. L. 97–34, title III, §§ 311(a), 312(c)(1), 313(b)(2), Aug. 13, 1981, 95 Stat. 274, 284, 286; Pub. L. 97–248, title II, § 243(b)(2), Sept. 3, 1982, 96 Stat. 523; Pub. L. 97–448, title I, § 103(c)(1), (2), (3)(A), (4), (5), (12)(A), Jan. 12, 1983, 96 Stat. 2375–2377; Pub. L. 98–369, div. A, title I, § 147(c), title IV, §§ 422(d)(1), 491(d)(6)–(8), title V, § 529(a), (b), title VII, § 713(d)(2), July 18, 1984, 98 Stat. 687, 798, 849, 877, 957; Pub. L. 99–514, title III, § 301(b)(4), title XI, §§ 1101(a), (b)(1), (2)(A), 1102(f), 1103(a), 1108(g)(2), (3), 1109(b), title XV, § 1501(d)(1)(B), title XVIII, § 1875(c)(4), (6)(B), Oct. 22, 1986, 100 Stat. 2217, 2411, 2413, 2417, 2434, 2435, 2740, 2894, 2895; Pub. L. 100–647, title I, § 1011(a)(1), title VI, § 6009(c)(2), Nov. 10, 1988, 102 Stat. 3456, 3690; Pub. L. 101–239, title VII, §§ 7816(c)(1), 7841(c)(1), Dec. 19, 1989, 103 Stat. 2420, 2428; Pub. L. 102–318, title V, § 521(b)(4), July 3, 1992, 106 Stat. 310; Pub. L. 103–337, div. A, title XVI, § 1677(c), Oct. 5, 1994, 108 Stat. 3020; Pub. L. 104–188, title I, §§ 1421(b)(1), 1427(a)–(b)(2), 1807(c)(3), Aug. 20, 1996, 110 Stat. 1795, 1802, 1902; Pub. L. 105–34, title III, §§ 301(a), (b), 302(c), Aug. 5, 1997, 111 Stat. 824, 825, 829; Pub. L. 105–206, title VI, §§ 6005(a), 6018(f)(2), July 22, 1998, 112 Stat. 796, 823; Pub. L. 105–277, div. J, title IV, § 4003(a)(2)(B), Oct. 21, 1998, 112 Stat. 2681–908; Pub. L. 106–554, § 1(a)(7) [title III, § 316(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–644; Pub. L. 107–16, title IV, § 431(c)(1), title VI, §§ 601(a), 641(e)(2), June 7, 2001, 115 Stat. 68, 94, 120; Pub. L. 108–357, title I, § 102(d)(1), Oct. 22, 2004, 118 Stat. 1428; Pub. L. 109–227, § 2(a), May 29, 2006, 120 Stat. 385; Pub. L. 109–280, title VIII, §§ 831(a), 833(b), Aug. 17, 2006, 120 Stat. 1002, 1004; Pub. L. 110–245, title I, § 105(b)(2), June 17, 2008, 122 Stat. 1629.)

Inflation Adjusted Items for Certain Years

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title and Internal Revenue Notices listed in a table under section 401 of this title.

Amendment of Section

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

Prior Provisions

A prior section 219 was renumbered section 224 of this title.

Amendments

2008—Subsec. (f)(1). Pub. L. 110–245 inserted at end ''The term compensation includes any differential wage payment (as defined in section 3401(h)(2)).''

2006—Subsec. (b)(5)(C), (D). Pub. L. 109–280, § 831(a), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (f)(7), (8). Pub. L. 109–227 added par. (7) and redesignated former par. (7) as (8).

Subsec. (g)(8). Pub. L. 109–280, § 833(b), added par. (8).

2004—Subsec. (g)(3)(A)(ii). Pub. L. 108–357 inserted ''199,'' before ''221''.

2001—Subsec. (b)(1)(A). Pub. L. 107–16, § 601(a)(1), substituted ''the deductible amount'' for ''$2,000''.

Subsec. (b)(5). Pub. L. 107–16, § 601(a)(2), added par. (5).

Subsec. (d)(2). Pub. L. 107–16, § 641(e)(2), substituted ''408(d)(3), or 457(e)(16)'' for ''or 408(d)(3)''.

Subsec. (g)(3)(A)(ii). Pub. L. 107–16, §§ 431(c)(1), 901, temporarily inserted ''222,'' after ''221,''. See Effective and Termination Dates of 2001 Amendment note below.

2000—Subsec. (c)(1)(B)(ii)(II), (III). Pub. L. 106–554 added subcl. (II) and redesignated former subcl. (II) as (III).

1998—Subsec. (g)(1). Pub. L. 105–206, § 6005(a)(1)(A), inserted ''or the individual's spouse'' after ''individual''.

Subsec. (g)(2)(A)(ii). Pub. L. 105–206, § 6005(a)(2), made technical amendment to directory language of Pub. L. 105–34, § 301(a)(2). See 1997 Amendment note below.

Subsec. (g)(3)(A)(ii). Pub. L. 105–277 inserted ''221,'' after ''137,''.

Pub. L. 105–206, § 6018(f)(2), made technical amendment to directory language of Pub. L. 104–188, § 1807(c)(3). See 1996 Amendment note below.

Subsec. (g)(7). Pub. L. 105–206, § 6005(a)(1)(B), added par. (7) and struck out heading and text of former par. (7). Text read as follows: ''In the case of an individual who is an active participant at no time during any plan year ending with or within the taxable year but whose spouse is an active participant for any part of any such plan year—

''(A) the applicable dollar amount under paragraph (3)(B)(i) with respect to the taxpayer shall be $150,000, and

''(B) the amount applicable under paragraph (2)(A)(ii) shall be $10,000.''

1997—Subsec. (c)(1)(B)(ii). Pub. L. 105–34, § 302(c), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''the compensation includible in the gross income of such individual's spouse for the taxable year reduced by the amount allowed as a deduction under subsection (a) to such spouse for such taxable year.''

Subsec. (g)(1). Pub. L. 105–34, § 301(b)(1), struck out ''or the individual's spouse'' after ''an individual''.

Subsec. (g)(2)(A)(ii). Pub. L. 105–34, § 301(a)(2), as amended by Pub. L. 105–206, § 6005(a)(2), inserted ''($20,000 in the case of a joint return for a taxable year beginning after December 31, 2006)'' after ''$10,000''.

Subsec. (g)(3)(B). Pub. L. 105–34, § 301(a)(1), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''The term 'applicable dollar amount' means—

''(i) in the case of a taxpayer filing a joint return, $40,000,

''(ii) in the case of any other taxpayer (other than a married individual filing a separate return), $25,000, and

''(iii) in the case of a married individual filing a separate return, zero.''

Subsec. (g)(7). Pub. L. 105–34, § 301(b)(2), added par. (7).

1996—Subsec. (b)(4). Pub. L. 104–188, § 1421(b)(1)(A), added par. (4).

Subsec. (c). Pub. L. 104–188, § 1427(a), amended subsec. (c) generally, substituting present provisions for former provisions relating to special rules for certain married individuals which set out general provisions in par. (1) and a limitation in par. (2).

Subsec. (f)(2). Pub. L. 104–188, § 1427(b)(1), substituted ''subsection (b)'' for ''subsections (b) and (c)''.

Subsec. (g)(1). Pub. L. 104–188, § 1427(b)(2), substituted ''(c)(1)(A)'' for ''(c)(2)''.

Subsec. (g)(3)(A)(ii). Pub. L. 104–188, § 1807(c)(3), as amended by Pub. L. 105–206, § 6018(f)(2), inserted '', 137,'' before ''and 911''.

Subsec. (g)(5)(A)(vi). Pub. L. 104–188, § 1421(b)(1)(B), added cl. (vi).

1994—Subsec. (g)(6)(A). Pub. L. 103–337 substituted ''section 10101 of title 10'' for ''section 261(a) of title 10''.

1992—Subsec. (d)(2). Pub. L. 102–318 substituted ''402(c)'' for ''402(a)(5), 402(a)(7)''.

1989—Subsec. (f)(1). Pub. L. 101–239, § 7841(c)(1), inserted at end ''For purposes of this paragraph, section 401(c)(2) shall be applied as if the term trade or business for purposes of section 1402 included service described in subsection (c)(6).''

Subsec. (g)(3)(A)(ii). Pub. L. 101–239, § 7816(c)(1), made technical correction to directory language of Pub. L. 100–647, § 6009(c)(2), see 1988 Amendment note below.

1988—Subsec. (g)(3)(A)(ii). Pub. L. 100–647, § 6009(c)(2), as amended by Pub. L. 101–239, § 7816(c)(1), substituted ''sections 135 and 911'' for ''section 911''.

Subsec. (g)(4). Pub. L. 100–647, §1011(a)(1), inserted ''and living apart'' after ''filing separately'' in heading and amended text generally. Prior to amendment, text read as follows: ''In the case of a married individual filing a separate return for any taxable year, paragraph (1) shall be applied without regard to whether such individual's spouse is an active participant for any plan year ending with or within such taxable year.''

1986—Subsec. (b)(2). Pub. L. 99–514, §1108(g)(2), amended par. (2) generally, substituting provision that this section shall not apply with respect to an employer contribution to a simplified employee pension for former provisions consisting of subpars. (A), (B), and (C) which set out detailed limits on deductibility of employer contributions.

Subsec. (b)(2)(C). Pub. L. 99–514, §1875(c)(6)(B), substituted ''the dollar limitation in effect under section 415(c)(1)(A)'' for ''the $15,000 amount specified in subparagraph (A)(ii)''.

Subsec. (b)(3). Pub. L. 99–514, §1109(b), added par. (3).

Pub. L. 99–514, §1101(b)(2)(A), struck out par. (3), special rule for individual retirement plans, which read as follows: ''If the individual has paid any qualified voluntary employee contributions for the taxable year, the amount of the qualified retirement contributions (other than employer contributions to a simplified employee pension) which are paid for the taxable year to an individual retirement plan and which are allowable as a deduction under subsection (a) for such taxable year shall not exceed—

''(A) the amount determined under paragraph (1) for such taxable year, reduced by

''(B) the amount of the qualified voluntary employee contributions for the taxable year.''

Subsec. (c)(1)(B). Pub. L. 99–514, §1103(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''whose spouse has no compensation (determined without regard to section 911) for such taxable year,''.

Subsec. (c)(2)(B). Pub. L. 99–514, §1108(g)(3), struck out ''(determined without regard to so much of the employer contributions to a simplified employee pension as is allowable by reason of paragraph (2) of subsection (b))'' after ''for the taxable year''.

Subsec. (e). Pub. L. 99–514, §1101(b)(1), amended subsec. (e) generally, revising the definition of ''qualified retirement contribution''.

Subsec. (f)(1). Pub. L. 99–514, §301(b)(4), which directed that par. (1) be amended by substituting ''paragraph (6)'' for ''paragraph (7)'', could not be executed because prior amendment by Pub. L. 99–514, §1875(c)(4), see below, struck out language which included phrase ''paragraph (7)''.

Pub. L. 99–514, §1875(c)(4), struck out ''reduced by any amount allowable as a deduction to the individual in computing adjusted gross income under paragraph (7) of section 62'' after ''(as defined in section 401(c)(2))''.

Subsec. (f)(3). Pub. L. 99–514, §1101(a)(2), in amending par. (3) generally, reenacted existing provision without its subpar. ''(A) Individual retirement plans'' designation, and struck out subpar. (B) relating to time when contributions deemed made with respect to qualified employer or government plans.

Subsec. (f)(7). Pub. L. 99–514, §1102(f), added par. (7).

Subsec. (g). Pub. L. 99–514, §1101(a)(1), added subsec. (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 99–514, §1501(d)(1)(B), which directed that subsec. (g) be amended by substituting ''6652(g)'' for ''6652(h)'', was executed by making the substitution in subsec. (h) to reflect the probable intent of Congress and the prior redesignation of former subsec. (g) as (h) by Pub. L. 99–514, §1101(a)(1).

Pub. L. 99–514, §1101(a)(1), redesignated former subsec. (g) as (h).

1984—Subsec. (b)(2)(A)(ii). Pub. L. 98–369, §713(d)(2), substituted ''not in excess of the limitation in effect under section 415(c)(1)(A)'' for ''not in excess of $15,000''.

Subsec. (b)(4). Pub. L. 98–369, §529(b), struck out par. (4) which related to a deduction for qualified retirement savings of certain divorced individuals.

Subsec. (b)(4)(B). Pub. L. 98–369, §422(d)(1), substituted ''gross income under section 71 (relating to alimony and separate maintenance payments) by reason of a payment under a decree of divorce or separate maintenance or a written agreement incident to such a decree'' for ''gross income under paragraph (1) of section 71(a) (relating to decree of divorce or separate maintenance)''.

Subsec. (d)(2). Pub. L. 98–369, §491(d)(6), substituted ''or 408(d)(3)'' for ''405(d)(3), 408(d)(3), or 409(b)(3)(C)''.

Subsec. (e)(1). Pub. L. 98–369, §491(d)(7), struck out concluding provision that for the purposes of the preceding sentence, the term ''individual retirement plan'' includes retirement bonds described in section 409 only if the bond was not redeemed within 12 months of its issuance.

Subsec. (e)(3). Pub. L. 98–369, §491(d)(8), struck out subpar. (C) which included a qualified bond purchase plan described in section 405(a) within term ''qualified employer plan'', and redesignated subpar. (D) as (C).

Subsec. (f)(1). Pub. L. 98–369, §529(a), inserted provision that ''compensation'' shall include any amount includible in the individual's gross income under section 71 with respect to a divorce or separation instrument described in subparagraph (A) of section 71(b)(2).

Subsec. (f)(3)(A). Pub. L. 98–369, §147(c), substituted ''not including'' for ''including''.

1983—Subsec. (b)(2)(A). Pub. L. 97–448, §103(c)(12)(A), inserted a close parenthesis after ''allowable under paragraph (1)'' in introductory provisions.

Subsec. (c)(2)(B). Pub. L. 97–448, §103(c)(1), substituted ''the amount allowable as a deduction under subsection (a) for the taxable year (determined without regard to so much of the employer contributions to a simplified employee pension as is allowable by reason of paragraph (2) of subsection (b))'' for ''the amount allowed as a deduction under subsection (a) for the taxable year''.

Subsec. (d)(1). Pub. L. 97–448, §103(c)(2), substituted ''Beneficiary must be under age 70½'' for ''Individuals who have attained age 70½'' as par. (1) heading and, in text, substituted ''qualified retirement contribution for the benefit of an individual if such individual has attained age 70½ before the close of such individual's taxable year for which the contribution was made'' for ''qualified retirement contribution which is made for a taxable year of an individual if such individual has attained age 70½ before the close of such taxable year''.

Subsec. (e)(3)(D), (E). Pub. L. 97–448, §103(c)(3)(A), redesignated subpar. (E) as (D). Former subpar. (D), which related to simplified employee pension (within the meaning of section 408(k)), was struck out.

Subsec. (f)(1). Pub. L. 97–448, §103(c)(4), substituted ''earned income (as defined in section 401(c)(2)) reduced by any amount allowable as a deduction to the individual in computing adjusted gross income under paragraph (7) of section 62'' for ''earned income as defined in section 401(c)(2)'' and inserted provision that ''compensation'' does not include any amount received as a pension or annuity and does not include any amount received as deferred compensation.

Subsec. (f)(3)(B). Pub. L. 97–448, §103(c)(5), substituted ''if the contribution is made on account of the taxable year which includes such last day and by April 15 of the calendar year'' for ''if the contribution is made by April 15 of the calendar year''.

1982—Subsec. (d)(4). Pub. L. 97–248 added par. (4).

1981—Subsec. (a). Pub. L. 97–34, §311(a), amended subsec. (a) generally, substituting in heading ''Allowance of deduction'' for ''Deduction allowed'' and in text ''shall be allowed'' for ''is allowed'', allowed as a deduction an amount equal to the qualified retirement contributions of the individual for the taxable year, eliminated part of first sentence for allowance as a deduction amounts paid in cash for the taxable year by or on behalf of the individual for his benefit—(1) to an individual retirement annuity described in section 408(a), (2) for an individual retirement annuity described in section 408(b), or (3) for a retirement bond described in section 409 (but only if the bond is not redeemed within 12 months of the date of its issuance), covered in sub-

sec. (e)(1) and (5) of this section, and eliminated second sentence respecting employer payments, covered in subsec. (f)(5) of this section.

Subsec. (b). Pub. L. 97–34, §311(a), in heading substituted ''Maximum amount of deduction'' for ''Limitations and restrictions''.

Subsec. (b)(1). Pub. L. 97–34, §311(a), amended par. (1) generally, substituting ''In general'' for ''Maximum deduction'' in heading and in text provision for allowance of a deduction not to exceed the lesser of (A) $2,000, or (B) an amount equal to the compensation includible in the individual's gross income for such taxable year, for provision for an amount not to exceed amount equal to 15 percent of the compensation includible in gross income for the taxable year, or $1,500, whichever is less.

Subsec. (b)(2)(A)(ii), (C). Pub. L. 97–34, §312(c)(1), substituted ''$15,000'' for ''$7,500''.

Pub. L. 97–34, §311(a), redesignated par. (7) as (2), substituted in heading ''rules for employer contributions under'' for ''rules in case of'', substituted in subpar. (A) introductory text ''an employee shall be allowed as a deduction under subsection (a) (in addition to the amount allowable under paragraph (1) an amount equal to the lesser of'' for ''the limitation under paragraph (1) shall be the lesser of'', inserted in subpar. (A)(i) ''from such employer'' before ''includible'' and substituted therein ''without regard'' for ''with regard'', substituted in subpar. (A)(ii) ''the amount contributed by such employer to the simplified employee pension and included in gross income (but not in excess of $7,500'' for ''the sum of—(I) the amount contributed by the employer to the simplified employee pension and included in gross income (but not in excess of $7,500), and (II) $1,500, reduced (but not below zero) by the amount described in subclause (I)'', and substituted in subpar. (B) ''Paragraph (1) of this subsection and paragraph (1) of subsection (d)'' for ''Paragraphs (2) and (3)''. Former subsec. (b)(2) provisions which disallowed any deduction under subsec. (a) for an individual for the taxable year if for any part of such year (A) he was an active participant in (i) a plan described in section 401(a), (ii) an annuity plan described in section 403(a), (iii) a qualified bond purchase plan described in section 405(a), or (iv) a plan established for its employees by the United States, by a State or political subdivision thereof, or by an agency or instrumentality of any of the foregoing, or (B) amounts were contributed by his employer for an annuity contract described in section 403(b), are now covered by subsec. (e)(3) and (4) of this section.

Subsec. (b)(3) to (5). Pub. L. 97–34, §311(a), added pars. (3) and (4). Former pars. (3) to (5) redesignated subsec. (d)(1) to (3).

Subsec. (b)(6). Pub. L. 97–34, §311(a), struck out par. (6) which set forth alternative deduction provisions which disallowed a deduction for the taxable year if the individual claimed the deduction allowed by section 220 for the taxable year.

Subsec. (b)(7). Pub. L. 97–34, §311(a), redesignated par. (7) as (2).

Subsec. (c). Pub. L. 97–34, §311(a), added subsec. (c). Former subsec. (c)(1) to (3) and (5) redesignated subsec. (f)(1), (2), (3)(A), and (6). Former subsec. (c)(4), which provided for participation in governmental plans by certain individuals, with subpars. (A) and (B) covering members of reserve components and volunteer firefighters, was struck out.

Subsec. (d). Pub. L. 97–34, §311(a), in heading redesignated former subsec. (b) heading as subsec. (d) heading and inserted ''Other'' before ''limitations''.

Subsec. (d)(1). Pub. L. 97–34, §311(a), redesignated former subsec. (b)(3) as par. (1), substituted as heading ''Individuals who have attained age 70½'' for ''Contributions after age 70½'' and in text ''shall be allowed under this section'' for ''is allowed under subsection (a)'', ''qualified retirement contribution'' for ''payment described in subsection (a)'', and ''made for a taxable year of an individual if such individual has attained'' for ''made during the taxable year of an individual who has attained''.

Subsec. (d)(2). Pub. L. 97–34, §313(b)(2), inserted reference to section 405(d)(3).

Pub. L. 97–34, §311(a), redesignated former subsec. (b)(4) as par. (2) and substituted ''shall be allowed'' for ''is allowed''.

Subsec. (d)(3). Pub. L. 97–34, §311(a), redesignated former subsec. (b)(5) as par. (3) and, as so redesignated, substituted ''shall be allowed under this section'' for ''is allowed under subsection (a)'' and ''year which is properly allocable'' for ''year properly allocable''.

Subsec. (e). Pub. L. 97–34, §311(a), added subsec. (e) incorporating former provisions of subsecs. (a) and (b)(2) as pars. (1), and (3) and (4) and, among other changes, inserted provisions relating to a qualified employee pension.

Subsec. (f)(1). Pub. L. 97–34, §311(a), redesignated former subsec. (c)(1) as par. (1).

Subsec. (f)(2). Pub. L. 97–34, §311(a), redesignated former subsec. (c)(2) as par. (2) and, as so redesignated, substituted ''deduction under subsections (b) and (c)'' for ''deduction under subsection (b)(1)'', and struck out provision that for purposes of this section, the determination of whether an individual is married shall be made in accordance with the provisions of section 143(a).

Subsec. (f)(3). Pub. L. 97–34, §311(a), redesignated former subsec. (c)(3) as subpar. (A) and, as so redesignated, added subpar. (A) heading ''Individual retirement plans'', and ''to an individual retirement plan'' before ''on the last day'' in text, and added subpar. (B).

Subsec. (f)(4). Pub. L. 97–34, §311(a), added par. (4).

Subsec. (f)(5). Pub. L. 97–34, §311(a), redesignated former provisions of subsec. (a) as par. (5), added par. (5) heading ''Employer payments'', substituted ''to an individual retirement plan shall be treated as payment of compensation to the employee'' for ''to such a retirement account, or for such a retirement annuity or retirement bond constitutes payment of compensation to the employee'', and ''in the taxable year for which the amount was contributed'' after ''gross income'', and struck out ''after the application of subsection (b)'' after ''under this section to the employee''.

Subsec. (f)(6). Pub. L. 97–34, §311(a), redesignated former subsec. (c)(5) as par. (6), inserted ''for contributions to an individual retirement plan'' after ''under this section'' in subpar. (A), and struck out in subpar. (C) ''or section 220'' after ''under this section''.

Subsec. (g). Pub. L. 97–34, §311(a), added subsec. (g).

1980—Subsec. (b)(4). Pub. L. 96–222, §101(a)(14)(B), inserted ''402(a)(7),'' after ''section 402(a)(5)''.

Subsec. (b)(7). Pub. L. 96–222, §101(a)(10)(D), amended par. (7) generally, including provision requiring that paragraph (3) not apply with respect to employer contribution to a simplified employee pension.

1978—Subsec. (b)(4). Pub. L. 95–600, §156(c)(3), inserted ''403(b)(8)'' after ''403(a)(4)''.

Subsec. (b)(7). Pub. L. 95–600, §152(c), added par. (7).

Subsec. (c)(3). Pub. L. 95–600, §157(a)(1), substituted ''not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof)'' for ''not later than 45 days after the end of such taxable year''.

Subsec. (c)(4). Pub. L. 95–600, §703(c)(1), substituted ''subsection (b)(2)(A)(iv)'' for ''subsection (b)(3)(A)(iv)'' wherever appearing.

Subsec. (c)(5). Pub. L. 95–600, §157(b)(1), added par. (5).

1976—Subsec. (a). Pub. L. 94–455, §1501(b)(4)(B), substituted ''for'' for ''during'' after ''paid in cash''.

Subsec. (b)(2)(A)(iv). Pub. L. 94–455, §1901(a)(32), substituted ''subdivision'' for ''division'' after ''State or political''.

Subsec. (b)(5). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (b)(6). Pub. L. 94–455, §1501(b)(4)(B), added par. (6).

Subsec. (c)(2). Pub. L. 94–455, §1501(b)(4)(C), inserted ''For purposes of this section, the determination of whether an individual is married shall be made in accordance with the provisions of section 143(a)'' after ''community property laws''.

Subsec. (c)(3). Pub. L. 94–455, §1501(b)(4)(D), added par. (3).

Subsec. (c)(4). Pub. L. 94–455, §1503(a), added par. (4).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–245, title I, §105(b)(3), June 17, 2008, 122 Stat. 1629, provided that: ''The amendments made by this subsection [amending this section and section 414 of this title] shall apply to years beginning after December 31, 2008.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, §831(b), Aug. 17, 2006, 120 Stat. 1003, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006.''

Amendment by section 833(b) of Pub. L. 109–280 applicable to taxable years beginning after 2006, see section 833(d) of Pub. L. 109–280, set out as a note under section 25B of this title.

Pub. L. 109–227, §2(b), May 29, 2006, 120 Stat. 385, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2003.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2004, see section 102(e) of Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by section 431(c)(1) of Pub. L. 107–16 applicable to payments made in taxable years beginning after Dec. 31, 2001, see section 431(d) of Pub. L. 107–16, set out as a note under section 62 of this title.

Pub. L. 107–16, title VI, §601(c), June 7, 2001, 115 Stat. 95, provided that: ''The amendments made by this section [amending this section and section 408 of this title] shall apply to taxable years beginning after December 31, 2001.''

Amendment by section 641(e)(2) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107–16, set out as an Effective Date of 2001 Amendment note under section 402 of this title.

Amendment by section 431(c)(1) of Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which such amendment relates, see section §1(a)(7) [title III, §316(e)] of Pub. L. 106–554, set out as a note under section 51 of this title.

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105–277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 4003(*l*) of Pub. L. 105–277, set out as a note under section 86 of this title.

Amendment by section 6018(f)(2) of Pub. L. 105–206 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which such amendment relates, see section 6018(h) of Pub. L. 105–206, set out as a note under section 36C of this title.

Amendment by section 6005(a) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 301(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997.''

Section 302(f) of Pub. L. 105–34 provided that: ''The amendments made by this section [enacting section 408A of this title and amending this section and sections 408 and 4973 of this title] shall apply to taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1421(b)(1) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104–188, set out as a note under section 72 of this title.

Section 1427(c) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section and section 408 of this title] shall apply to taxable years beginning after December 31, 1996.''

Amendment by section 1807(c)(3) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1807(e) of Pub. L. 104–188, set out as an Effective Date note under section 36C of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1992 AMENDMENT

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

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7816(c)(1) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Section 7841(c)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to contributions after the date of the enactment of this Act [Dec. 19, 1989] in taxable years ending after such date.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1011(a)(2) of Pub. L. 100–647 provided that:

''(A) Except as provided in subparagraph (B), the amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1987.

''(B) A taxpayer may elect to have the amendment made by paragraph (1) apply to any taxable year beginning in 1987.''

Amendment by section 6009(c)(2) of Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1989, see section 6009(d) of Pub. L. 100–647, set out as a note under section 86 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 301(b)(4) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 301(c) of Pub. L. 99–514, set out as a note under section 62 of this title.

Amendment by section 1101(a), (b)(1), (2)(A) of Pub. L. 99–514 applicable to contributions for taxable years beginning after Dec. 31, 1986, see section 1101(c) of Pub. L. 99–514, set out as a note under section 72 of this title.

Section 1102(g) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section and sections 408, 3405, 4973, and 6693 of this title] shall apply to contributions and distributions for taxable years beginning after December 31, 1986.''

Section 1103(b) of Pub. L. 99–514 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning before, on, or after December 31, 1985.''

Section 1108(h) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1011(f)(7), Nov. 10, 1988, 102 Stat. 3463, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 402, 404, 408, 415, 3121, and 3306 of this title] shall apply to years beginning after December 31, 1986.

''(2) INTEGRATION RULES.—Subparagraphs (D) and (E) of section 408(k)(3) of the Internal Revenue Code of 1954 (as in effect before the amendments made by this section) shall continue to apply for years beginning after December 31, 1986, and before January 1, 1989, except that employer contributions under an arrangement under section 408(k)(6) of the Internal Revenue Code of 1986 (as added by this section) may not be integrated under such subparagraphs.''

Section 1109(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section and section 501 of this title] shall apply to taxable years beginning after December 31, 1986.''

Amendment by section 1501(d)(1)(B) of Pub. L. 99–514, applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1986, see section 1501(e) of Pub. L. 99–514, set out as an Effective Date note under section 6721 of this title.

Amendment by section 1875(c)(4), (6)(B) of Pub. L. 99–514 effective as if included in the amendments made by section 238 of Pub. L. 97–248, which amended sections 401, 404, 408, 415, and 1379 of this title, see section 1875(c)(12) of Pub. L. 99–514, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 147(d) of Pub. L. 98–369 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 408 of this title] shall apply to contributions made after December 31, 1984.

''(2) SUBSECTION (b).—The amendment made by subsection (b) [amending section 6693 of this title] shall apply to failures occurring after the date of the enactment of this Act [July 18, 1984].''

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

Amendment by section 491(d)(6)–(8) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Section 529(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1984.''

Amendment by section 713(d)(2) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to with respect to individuals dying after Dec. 31, 1983, see section 243(c) of Pub. L. 97–248, as amended, set out as a note under section 408 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 311(i) of Pub. L. 97–34, as amended by Pub. L. 97–448, title I, § 103(c)(11), Jan. 12, 1983, 96 Stat. 2377; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 62, 72, 402, 403, 408, 409, 415, 2039, 2503, 2517, 3401, 4973, 6047, and 6652 of this title and repealing section 220 of this title] shall apply to taxable years beginning after December 31, 1981.

''(2) TRANSITIONAL RULE.—For purposes of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], any amount allowed as a deduction under section 220 of such Code (as in effect before its repeal by this Act) shall be treated as if it were allowed by section 219 of such Code.

''(3) CERTAIN BOND ROLLOVER PROVISIONS.—The amendment made by subsection (g)(3) [amending section 409 of this title] shall apply to taxable years beginning after December 31, 1974.

''(4) SECTION 415 AMENDMENTS.—The amendments made by subsections (g)(4) and (h)(3) [amending section 415 of this title] shall apply to years after December 31, 1981.

''(5) ESTATE AND GIFT TAX PROVISIONS.—

''(A) ESTATE TAX.—The amendments made by subsections (d)(1) and (h)(4) [amending section 2039 of this title] shall apply to the estates of decedents dying after December 31, 1981.

''(B) GIFT TAX.—The amendments made by subsections (d)(2) and (h)(5) [amending sections 2503 and 2517 of this title] shall apply to transfers after December 31, 1981.''

Amendment by section 312(c)(1) of Pub. L. 97–34 applicable to plans which include employees within the meaning of section 401(c)(1) of this title with respect to taxable years beginning after Dec. 31, 1981, see section 312(f)(1) of Pub. L. 97–34, set out as a note under section 72 of this title.

Section 313(c) of Pub. L. 97–34 provided that: ''The amendments made by this section [amending this section and sections 405, 408, 2039, and 4973 of this title] shall apply to redemptions after the date of the enactment of this Act [Aug. 13, 1981] in taxable years ending after such date.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600 to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 152(c) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 152(h) of Pub. L. 95–600, set out as a note under section 408 of this title.

Amendment by section 156(c)(3) of Pub. L. 95–600 applicable to distributions or transfers made after Dec. 31, 1977, in taxable years beginning after such date, see section 156(d) of Pub. L. 95–600 set out as a note under section 403 of this title.

Section 157(a)(3) of Pub. L. 95–600 provided that: ''The amendments made by this subsection [amending this section and section 220 of this title] shall apply to taxable years beginning after December 31, 1977.''

Section 157(b)(4)(A) of Pub. L. 95–600 provided that: ''The amendments made by this subsection [amending this section and sections 220 and 4973 of this title] shall apply to the determination of deductions for taxable years beginning after December 31, 1975.''

Section 703(c)(5) of Pub. L. 95–600 provided that: ''The amendments made by this subsection [amending this section and sections 220 and 408 of this title] shall apply to taxable years beginning after December 31, 1976.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1501(b)(4) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1976, see section 1501(d) of Pub. L. 94–455, set out as an Effective Date note under section 62 of this title.

Section 1503(b) of Pub. L. 94–455 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1975.''

Amendment by section 1901(a)(32) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

EFFECTIVE DATE

Section 2002(i)(1) of Pub. L. 93–406 provided that: ''The amendments made by subsections (a), (b), and (c) [of section 2002 of Pub. L. 93–406, enacting this section and sections 408 and 409 of this title and amending section 62 of this title] apply to taxable years beginning after December 31, 1974.''

CONTRIBUTIONS FOR TAXABLE YEARS ENDING BEFORE MAY 29, 2006

Pub. L. 109–227, §2(c), May 29, 2006, 120 Stat. 385, provided that:

''(1) IN GENERAL.—In the case of any taxpayer with respect to whom compensation was excluded from gross income under section 112 of the Internal Revenue Code of 1986 for any taxable year beginning after December 31, 2003, and ending before the date of the enactment of this Act [May 29, 2006], any contribution to an individual retirement plan made on account of such taxable year and not later than the last day of the 3-year period beginning on the date of the enactment of this Act shall be treated, for purposes of such Code, as having been made on the last day of such taxable year.

''(2) WAIVER OF LIMITATIONS.—

''(A) CREDIT OR REFUND.—If the credit or refund of any overpayment of tax resulting from a contribution to which paragraph (1) applies is prevented at any time by the operation of any law or rule of law (including res judicata), such credit or refund may nevertheless be allowed or made if the claim therefor is filed before the close of the 1-year period beginning on the date that such contribution is made (determined without regard to paragraph (1)).

''(B) ASSESSMENT OF DEFICIENCY.—The period for assessing a deficiency attributable to a contribution to which paragraph (1) applies shall not expire before the close of the 3-year period beginning on the date that such contribution is made. Such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

''(3) INDIVIDUAL RETIREMENT PLAN DEFINED.—For purposes of this subsection, the term 'individual retirement plan' has the meaning given such term by section 7701(a)(37) of such Code.''

CLARIFICATION OF TREATMENT OF FEDERAL JUDGES

Pub. L. 100–203, title X, §10103, Dec. 22, 1987, 101 Stat. 1330–386, as amended by Pub. L. 100–647, title II, §2004(c), Nov. 10, 1988, 102 Stat. 3599, provided that:

''(a) GENERAL RULE.—A Federal judge—

''(1) shall be treated as an active participant in a plan established for its employees by the United States for purposes of section 219(g) of the Internal Revenue Code of 1986, and

''(2) shall be treated as an employee for purposes of chapter 1 of such Code.

''(b) EFFECTIVE DATE.—The provisions of subsection (a) shall apply to taxable years beginning after December 31, 1987.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TRANSITIONAL RULES FOR ALLOWABLE DEDUCTIONS FOR FIRST TAXABLE YEAR BEGINNING IN 1978

Section 157(b)(4)(B) of Pub. L. 95–600, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''If, but for this subparagraph, an amount would be allowable as a deduction by reason of section 219(c)(5) or 220(c)(6) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for a taxable year beginning before January 1, 1978, such amount shall be allowable only for the taxpayer's first taxable year beginning in 1978.''

§ 220. Archer MSAs

(a) Deduction allowed

In the case of an individual who is an eligible individual for any month during the taxable year, there shall be allowed as a deduction for the taxable year an amount equal to the aggregate amount paid in cash during such taxable year by such individual to an Archer MSA of such individual.

(b) Limitations

(1) In general

The amount allowable as a deduction under subsection (a) to an individual for the taxable year shall not exceed the sum of the monthly limitations for months during such taxable year that the individual is an eligible individual.

(2) Monthly limitation

The monthly limitation for any month is the amount equal to 1/12 of—

(A) in the case of an individual who has self-only coverage under the high deductible health plan as of the first day of such month, 65 percent of the annual deductible under such coverage, and

(B) in the case of an individual who has family coverage under the high deductible health plan as of the first day of such month, 75 percent of the annual deductible under such coverage.

(3) Special rule for married individuals

In the case of individuals who are married to each other, if either spouse has family coverage—

(A) both spouses shall be treated as having only such family coverage (and if such

spouses each have family coverage under different plans, as having the family coverage with the lowest annual deductible), and

(B) the limitation under paragraph (1) (after the application of subparagraph (A) of this paragraph) shall be divided equally between them unless they agree on a different division.

(4) Deduction not to exceed compensation

(A) Employees

The deduction allowed under subsection (a) for contributions as an eligible individual described in subclause (I) of subsection (c)(1)(A)(iii) shall not exceed such individual's wages, salaries, tips, and other employee compensation which are attributable to such individual's employment by the employer referred to in such subclause.

(B) Self-employed individuals

The deduction allowed under subsection (a) for contributions as an eligible individual described in subclause (II) of subsection (c)(1)(A)(iii) shall not exceed such individual's earned income (as defined in section 401(c)(1)) derived by the taxpayer from the trade or business with respect to which the high deductible health plan is established.

(C) Community property laws not to apply

The limitations under this paragraph shall be determined without regard to community property laws.

(5) Coordination with exclusion for employer contributions

No deduction shall be allowed under this section for any amount paid for any taxable year to an Archer MSA of an individual if—

(A) any amount is contributed to any Archer MSA of such individual for such year which is excludable from gross income under section 106(b), or

(B) if such individual's spouse is covered under the high deductible health plan covering such individual, any amount is contributed for such year to any Archer MSA of such spouse which is so excludable.

(6) Denial of deduction to dependents

No deduction shall be allowed under this section to any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins.

(7) Medicare eligible individuals

The limitation under this subsection for any month with respect to an individual shall be zero for the first month such individual is entitled to benefits under title XVIII of the Social Security Act and for each month thereafter.

(c) Definitions

For purposes of this section—

(1) Eligible individual

(A) In general

The term ''eligible individual'' means, with respect to any month, any individual if—

(i) such individual is covered under a high deductible health plan as of the 1st day of such month,

(ii) such individual is not, while covered under a high deductible health plan, covered under any health plan—

(I) which is not a high deductible health plan, and

(II) which provides coverage for any benefit which is covered under the high deductible health plan, and

(iii)(I) the high deductible health plan covering such individual is established and maintained by the employer of such individual or of the spouse of such individual and such employer is a small employer, or

(II) such individual is an employee (within the meaning of section 401(c)(1)) or the spouse of such an employee and the high deductible health plan covering such individual is not established or maintained by any employer of such individual or spouse.

(B) Certain coverage disregarded

Subparagraph (A)(ii) shall be applied without regard to—

(i) coverage for any benefit provided by permitted insurance, and

(ii) coverage (whether through insurance or otherwise) for accidents, disability, dental care, vision care, or long-term care.

(C) Continued eligibility of employee and spouse establishing Archer MSAs

If, while an employer is a small employer—

(i) any amount is contributed to an Archer MSA of an individual who is an employee of such employer or the spouse of such an employee, and

(ii) such amount is excludable from gross income under section 106(b) or allowable as a deduction under this section,

such individual shall not cease to meet the requirement of subparagraph (A)(iii)(I) by reason of such employer ceasing to be a small employer so long as such employee continues to be an employee of such employer.

(D) Limitations on eligibility

For limitations on number of taxpayers who are eligible to have Archer MSAs, see subsection (i).

(2) High deductible health plan

(A) In general

The term ''high deductible health plan'' means a health plan—

(i) in the case of self-only coverage, which has an annual deductible which is not less than $1,500 and not more than $2,250,

(ii) in the case of family coverage, which has an annual deductible which is not less than $3,000 and not more than $4,500, and

(iii) the annual out-of-pocket expenses required to be paid under the plan (other than for premiums) for covered benefits does not exceed—

(I) $3,000 for self-only coverage, and

(II) $5,500 for family coverage.

(B) Special rules

(i) Exclusion of certain plans

Such term does not include a health plan if substantially all of its coverage is coverage described in paragraph (1)(B).

(ii) Safe harbor for absence of preventive care deductible

A plan shall not fail to be treated as a high deductible health plan by reason of failing to have a deductible for preventive care if the absence of a deductible for such care is required by State law.

(3) Permitted insurance

The term ''permitted insurance'' means—

(A) insurance if substantially all of the coverage provided under such insurance relates to—

(i) liabilities incurred under workers' compensation laws,

(ii) tort liabilities,

(iii) liabilities relating to ownership or use of property, or

(iv) such other similar liabilities as the Secretary may specify by regulations,

(B) insurance for a specified disease or illness, and

(C) insurance paying a fixed amount per day (or other period) of hospitalization.

(4) Small employer

(A) In general

The term ''small employer'' means, with respect to any calendar year, any employer if such employer employed an average of 50 or fewer employees on business days during either of the 2 preceding calendar years. For purposes of the preceding sentence, a preceding calendar year may be taken into account only if the employer was in existence throughout such year.

(B) Employers not in existence in preceding year

In the case of an employer which was not in existence throughout the 1st preceding calendar year, the determination under subparagraph (A) shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

(C) Certain growing employers retain treatment as small employer

The term ''small employer'' includes, with respect to any calendar year, any employer if—

(i) such employer met the requirement of subparagraph (A) (determined without regard to subparagraph (B)) for any preceding calendar year after 1996,

(ii) any amount was contributed to the Archer MSA of any employee of such employer with respect to coverage of such employee under a high deductible health plan of such employer during such preceding calendar year and such amount was excludable from gross income under section 106(b) or allowable as a deduction under this section, and

(iii) such employer employed an average of 200 or fewer employees on business days during each preceding calendar year after 1996.

(D) Special rules

(i) Controlled groups

For purposes of this paragraph, all persons treated as a single employer under subsection (b), (c), (m), or (*o*) of section 414 shall be treated as 1 employer.

(ii) Predecessors

Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

(5) Family coverage

The term ''family coverage'' means any coverage other than self-only coverage.

(d) Archer MSA

For purposes of this section—

(1) Archer MSA

The term ''Archer MSA'' means a trust created or organized in the United States as a medical savings account exclusively for the purpose of paying the qualified medical expenses of the account holder, but only if the written governing instrument creating the trust meets the following requirements:

(A) Except in the case of a rollover contribution described in subsection (f)(5), no contribution will be accepted—

(i) unless it is in cash, or

(ii) to the extent such contribution, when added to previous contributions to the trust for the calendar year, exceeds 75 percent of the highest annual limit deductible permitted under subsection (c)(2)(A)(ii) for such calendar year.

(B) The trustee is a bank (as defined in section 408(n)), an insurance company (as defined in section 816), or another person who demonstrates to the satisfaction of the Secretary that the manner in which such person will administer the trust will be consistent with the requirements of this section.

(C) No part of the trust assets will be invested in life insurance contracts.

(D) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

(E) The interest of an individual in the balance in his account is nonforfeitable.

(2) Qualified medical expenses

(A) In general

The term ''qualified medical expenses'' means, with respect to an account holder, amounts paid by such holder for medical care (as defined in section 213(d)) for such individual, the spouse of such individual, and any dependent (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of such individual, but only to the extent such amounts are not compensated for by insurance or otherwise. Such term shall include an amount paid for medicine or a drug only

if such medicine or drug is a prescribed drug (determined without regard to whether such drug is available without a prescription) or is insulin.

(B) Health insurance may not be purchased from account

(i) In general

Subparagraph (A) shall not apply to any payment for insurance.

(ii) Exceptions

Clause (i) shall not apply to any expense for coverage under—

(I) a health plan during any period of continuation coverage required under any Federal law,

(II) a qualified long-term care insurance contract (as defined in section 7702B(b)), or

(III) a health plan during a period in which the individual is receiving unemployment compensation under any Federal or State law.

(C) Medical expenses of individuals who are not eligible individuals

Subparagraph (A) shall apply to an amount paid by an account holder for medical care of an individual who is not described in clauses (i) and (ii) of subsection (c)(1)(A) for the month in which the expense for such care is incurred only if no amount is contributed (other than a rollover contribution) to any Archer MSA of such account holder for the taxable year which includes such month. This subparagraph shall not apply to any expense for coverage described in subclause (I) or (III) of subparagraph (B)(ii).

(3) Account holder

The term ''account holder'' means the individual on whose behalf the Archer MSA was established.

(4) Certain rules to apply

Rules similar to the following rules shall apply for purposes of this section:

(A) Section 219(d)(2) (relating to no deduction for rollovers).

(B) Section 219(f)(3) (relating to time when contributions deemed made).

(C) Except as provided in section 106(b), section 219(f)(5) (relating to employer payments).

(D) Section 408(g) (relating to community property laws).

(E) Section 408(h) (relating to custodial accounts).

(e) Tax treatment of accounts

(1) In general

An Archer MSA is exempt from taxation under this subtitle unless such account has ceased to be an Archer MSA. Notwithstanding the preceding sentence, any such account is subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc. organizations).

(2) Account terminations

Rules similar to the rules of paragraphs (2) and (4) of section 408(e) shall apply to Archer MSAs, and any amount treated as distributed under such rules shall be treated as not used to pay qualified medical expenses.

(f) Tax treatment of distributions

(1) Amounts used for qualified medical expenses

Any amount paid or distributed out of an Archer MSA which is used exclusively to pay qualified medical expenses of any account holder shall not be includible in gross income.

(2) Inclusion of amounts not used for qualified medical expenses

Any amount paid or distributed out of an Archer MSA which is not used exclusively to pay the qualified medical expenses of the account holder shall be included in the gross income of such holder.

(3) Excess contributions returned before due date of return

(A) In general

If any excess contribution is contributed for a taxable year to any Archer MSA of an individual, paragraph (2) shall not apply to distributions from the Archer MSAs of such individual (to the extent such distributions do not exceed the aggregate excess contributions to all such accounts of such individual for such year) if—

(i) such distribution is received by the individual on or before the last day prescribed by law (including extensions of time) for filing such individual's return for such taxable year, and

(ii) such distribution is accompanied by the amount of net income attributable to such excess contribution.

Any net income described in clause (ii) shall be included in the gross income of the individual for the taxable year in which it is received.

(B) Excess contribution

For purposes of subparagraph (A), the term ''excess contribution'' means any contribution (other than a rollover contribution) which is neither excludable from gross income under section 106(b) nor deductible under this section.

(4) Additional tax on distributions not used for qualified medical expenses

(A) In general

The tax imposed by this chapter on the account holder for any taxable year in which there is a payment or distribution from an Archer MSA of such holder which is includible in gross income under paragraph (2) shall be increased by 20 percent of the amount which is so includible.

(B) Exception for disability or death

Subparagraph (A) shall not apply if the payment or distribution is made after the account holder becomes disabled within the meaning of section 72(m)(7) or dies.

(C) Exception for distributions after medicare eligibility

Subparagraph (A) shall not apply to any payment or distribution after the date on

which the account holder attains the age specified in section 1811 of the Social Security Act.

(5) Rollover contribution

An amount is described in this paragraph as a rollover contribution if it meets the requirements of subparagraphs (A) and (B).

(A) In general

Paragraph (2) shall not apply to any amount paid or distributed from an Archer MSA to the account holder to the extent the amount received is paid into an Archer MSA or a health savings account (as defined in section 223(d)) for the benefit of such holder not later than the 60th day after the day on which the holder receives the payment or distribution.

(B) Limitation

This paragraph shall not apply to any amount described in subparagraph (A) received by an individual from an Archer MSA if, at any time during the 1-year period ending on the day of such receipt, such individual received any other amount described in subparagraph (A) from an Archer MSA which was not includible in the individual's gross income because of the application of this paragraph.

(6) Coordination with medical expense deduction

For purposes of determining the amount of the deduction under section 213, any payment or distribution out of an Archer MSA for qualified medical expenses shall not be treated as an expense paid for medical care.

(7) Transfer of account incident to divorce

The transfer of an individual's interest in an Archer MSA to an individual's spouse or former spouse under a divorce or separation instrument described in subparagraph (A) of section 71(b)(2) shall not be considered a taxable transfer made by such individual notwithstanding any other provision of this subtitle, and such interest shall, after such transfer, be treated as an Archer MSA with respect to which such spouse is the account holder.

(8) Treatment after death of account holder

(A) Treatment if designated beneficiary is spouse

If the account holder's surviving spouse acquires such holder's interest in an Archer MSA by reason of being the designated beneficiary of such account at the death of the account holder, such Archer MSA shall be treated as if the spouse were the account holder.

(B) Other cases

(i) In general

If, by reason of the death of the account holder, any person acquires the account holder's interest in an Archer MSA in a case to which subparagraph (A) does not apply—

(I) such account shall cease to be an Archer MSA as of the date of death, and

(II) an amount equal to the fair market value of the assets in such account on such date shall be includible if such person is not the estate of such holder, in such person's gross income for the taxable year which includes such date, or if such person is the estate of such holder, in such holder's gross income for the last taxable year of such holder.

(ii) Special rules

(I) Reduction of inclusion for pre-death expenses

The amount includible in gross income under clause (i) by any person (other than the estate) shall be reduced by the amount of qualified medical expenses which were incurred by the decedent before the date of the decedent's death and paid by such person within 1 year after such date.

(II) Deduction for estate taxes

An appropriate deduction shall be allowed under section 691(c) to any person (other than the decedent or the decedent's spouse) with respect to amounts included in gross income under clause (i) by such person.

(g) Cost-of-living adjustment

In the case of any taxable year beginning in a calendar year after 1998, each dollar amount in subsection (c)(2) shall be increased by an amount equal to—

(1) such dollar amount, multiplied by

(2) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which such taxable year begins by substituting ''calendar year 1997'' for ''calendar year 1992'' in subparagraph (B) thereof.

If any increase under the preceding sentence is not a multiple of $50, such increase shall be rounded to the nearest multiple of $50.

(h) Reports

The Secretary may require the trustee of an Archer MSA to make such reports regarding such account to the Secretary and to the account holder with respect to contributions, distributions, and such other matters as the Secretary determines appropriate. The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by the Secretary.

(i) Limitation on number of taxpayers having Archer MSAs

(1) In general

Except as provided in paragraph (5), no individual shall be treated as an eligible individual for any taxable year beginning after the cut-off year unless—

(A) such individual was an active MSA participant for any taxable year ending on or before the close of the cut-off year, or

(B) such individual first became an active MSA participant for a taxable year ending after the cut-off year by reason of coverage under a high deductible health plan of an MSA-participating employer.

(2) Cut-off year

For purposes of paragraph (1), the term ''cut-off year'' means the earlier of—

(A) calendar year 2007, or

(B) the first calendar year before 2007 for which the Secretary determines under subsection (j) that the numerical limitation for such year has been exceeded.

(3) Active MSA participant

For purposes of this subsection—

(A) In general

The term ''active MSA participant'' means, with respect to any taxable year, any individual who is the account holder of any Archer MSA into which any contribution was made which was excludable from gross income under section 106(b), or allowable as a deduction under this section, for such taxable year.

(B) Special rule for cut-off years before 2007

In the case of a cut-off year before 2007—

(i) an individual shall not be treated as an eligible individual for any month of such year or an active MSA participant under paragraph (1)(A) unless such individual is, on or before the cut-off date, covered under a high deductible health plan, and

(ii) an employer shall not be treated as an MSA-participating employer unless the employer, on or before the cut-off date, offered coverage under a high deductible health plan to any employee.

(C) Cut-off date

For purposes of subparagraph (B)—

(i) In general

Except as otherwise provided in this subparagraph, the cut-off date is October 1 of the cut-off year.

(ii) Employees with enrollment periods after October 1

In the case of an individual described in subclause (I) of subsection (c)(1)(A)(iii), if the regularly scheduled enrollment period for health plans of the individual's employer occurs during the last 3 months of the cut-off year, the cut-off date is December 31 of the cut-off year.

(iii) Self-employed individuals

In the case of an individual described in subclause (II) of subsection (c)(1)(A)(iii), the cut-off date is November 1 of the cut-off year.

(iv) Special rules for 1997

If 1997 is a cut-off year by reason of subsection (j)(1)(A)—

(I) each of the cut-off dates under clauses (i) and (iii) shall be 1 month earlier than the date determined without regard to this clause, and

(II) clause (ii) shall be applied by substituting ''4 months'' for ''3 months''.

(4) MSA-participating employer

For purposes of this subsection, the term ''MSA-participating employer'' means any small employer if—

(A) such employer made any contribution to the Archer MSA of any employee during the cut-off year or any preceding calendar year which was excludable from gross income under section 106(b), or

(B) at least 20 percent of the employees of such employer who are eligible individuals for any month of the cut-off year by reason of coverage under a high deductible health plan of such employer each made a contribution of at least $100 to their Archer MSAs for any taxable year ending with or within the cut-off year which was allowable as a deduction under this section.

(5) Additional eligibility after cut-off year

If the Secretary determines under subsection (j)(2)(A) that the numerical limit for the calendar year following a cut-off year described in paragraph (2)(B) has not been exceeded—

(A) this subsection shall not apply to any otherwise eligible individual who is covered under a high deductible health plan during the first 6 months of the second calendar year following the cut-off year (and such individual shall be treated as an active MSA participant for purposes of this subsection if a contribution is made to any Archer MSA with respect to such coverage), and

(B) any employer who offers coverage under a high deductible health plan to any employee during such 6-month period shall be treated as an MSA-participating employer for purposes of this subsection if the requirements of paragraph (4) are met with respect to such coverage.

For purposes of this paragraph, subsection (j)(2)(A) shall be applied for 1998 by substituting ''750,000'' for ''600,000''.

(j) Determination of whether numerical limits are exceeded

(1) Determination of whether limit exceeded for 1997

The numerical limitation for 1997 is exceeded if, based on the reports required under paragraph (4), the number of Archer MSAs established as of—

(A) April 30, 1997, exceeds 375,000, or

(B) June 30, 1997, exceeds 525,000.

(2) Determination of whether limit exceeded for 1998, 1999, 2001, 2002, 2004, 2005, or 2006

(A) In general

The numerical limitation for 1998, 1999, 2001, 2002, 2004, 2005, or 2006 is exceeded if the sum of—

(i) the number of MSA returns filed on or before April 15 of such calendar year for taxable years ending with or within the preceding calendar year, plus

(ii) the Secretary's estimate (determined on the basis of the returns described in clause (i)) of the number of MSA returns for such taxable years which will be filed after such date,

exceeds 750,000 (600,000 in the case of 1998). For purposes of the preceding sentence, the term ''MSA return'' means any return on which any exclusion is claimed under sec-

tion 106(b) or any deduction is claimed under this section.

(B) Alternative computation of limitation

The numerical limitation for 1998, 1999, 2001, 2002, 2004, 2005, or 2006 is also exceeded if the sum of—

(i) 90 percent of the sum determined under subparagraph (A) for such calendar year, plus

(ii) the product of 2.5 and the number of Archer MSAs established during the portion of such year preceding July 1 (based on the reports required under paragraph (4)) for taxable years beginning in such year,

exceeds 750,000.

(C) No limitation for 2000 or 2003

The numerical limitation shall not apply for 2000 or 2003.

(3) Previously uninsured individuals not included in determination

(A) In general

The determination of whether any calendar year is a cut-off year shall be made by not counting the Archer MSA of any previously uninsured individual.

(B) Previously uninsured individual

For purposes of this subsection, the term ''previously uninsured individual'' means, with respect to any Archer MSA, any individual who had no health plan coverage (other than coverage referred to in subsection (c)(1)(B)) at any time during the 6-month period before the date such individual's coverage under the high deductible health plan commences.

(4) Reporting by MSA trustees

(A) In general

Not later than August 1 of 1997, 1998, 1999, 2001, 2002, 2004, 2005, and 2006, each person who is the trustee of an Archer MSA established before July 1 of such calendar year shall make a report to the Secretary (in such form and manner as the Secretary shall specify) which specifies—

(i) the number of Archer MSAs established before such July 1 (for taxable years beginning in such calendar year) of which such person is the trustee,

(ii) the name and TIN of the account holder of each such account, and

(iii) the number of such accounts which are accounts of previously uninsured individuals.

(B) Additional report for 1997

Not later than June 1, 1997, each person who is the trustee of an Archer MSA established before May 1, 1997, shall make an additional report described in subparagraph (A) but only with respect to accounts established before May 1, 1997.

(C) Penalty for failure to file report

The penalty provided in section 6693(a) shall apply to any report required by this paragraph, except that—

(i) such section shall be applied by substituting ''$25'' for ''$50'', and

(ii) the maximum penalty imposed on any trustee shall not exceed $5,000.

(D) Aggregation of accounts

To the extent practicable, in determining the number of Archer MSAs on the basis of the reports under this paragraph, all Archer MSAs of an individual shall be treated as 1 account and all accounts of individuals who are married to each other shall be treated as 1 account.

(5) Date of making determinations

Any determination under this subsection that a calendar year is a cut-off year shall be made by the Secretary and shall be published not later than October 1 of such year.

(Added Pub. L. 104–191, title III, §301(a), Aug. 21, 1996, 110 Stat. 2037; amended Pub. L. 105–33, title IV, §4006(b)(2), Aug. 5, 1997, 111 Stat. 333; Pub. L. 105–34, title XVI, §1602(a)(2), (3), Aug. 5, 1997, 111 Stat. 1093, 1094; Pub. L. 106–554, §1(a)(7) [title II, §§201(a), (b), 202(a)(4), (b)(2)(B), (3)–(8), (10), (11)], Dec. 21, 2000, 114 Stat. 2763, 2763A–628, 2763A–629; Pub. L. 107–147, title VI, §612(a), (b), Mar. 9, 2002, 116 Stat. 61; Pub. L. 108–173, title XII, §1201(c), Dec. 8, 2003, 117 Stat. 2476; Pub. L. 108–311, title II, §207(19), title III, §322(a), (b), Oct. 4, 2004, 118 Stat. 1178, 1183; Pub. L. 109–432, div. A, title I, §117(a), (b), Dec. 20, 2006, 120 Stat. 2941; Pub. L. 111–148, title IX, §§9003(b), 9004(b), Mar. 23, 2010, 124 Stat. 854.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (b)(7) and (f)(4)(C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Section 1811 of the Act is classified to section 1395c of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 220 was renumbered 224 of this title.

Another prior section 220, added Pub. L. 100–647, title VI, §6007(a), Nov. 10, 1988, 102 Stat. 3687, related to jury duty pay remitted to employer, prior to repeal by Pub. L. 101–508, title XI, §11802(e)(2), Nov. 5, 1990, 104 Stat. 1388–530.

Another prior section 220, added Pub. L. 94–455, title XV, §1501(a), Oct. 4, 1976, 90 Stat. 1734; amended Pub. L. 95–600, title I, §§156(c)(3), 157(a)(2), (b)(2), title VII, §703(c)(2), (3), Nov. 6, 1978, 92 Stat. 2803, 2804, 2939; Pub. L. 96–222, title I, §101(a)(14)(B), Apr. 1, 1980, 94 Stat. 204, related to retirement savings for certain married individuals, prior to repeal by Pub. L. 97–34, title III, §311(e), Aug. 13, 1981, 95 Stat. 280, applicable to taxable years beginning after Dec. 31, 1981, and deductions allowed under section 220 of this title, as in effect prior to its repeal, treated as deductions under section 219 of this title.

AMENDMENTS

2010—Subsec. (d)(2)(A). Pub. L. 111–148, §9003(b), inserted at end ''Such term shall include an amount paid for medicine or a drug only if such medicine or drug is a prescribed drug (determined without regard to wheth-

er such drug is available without a prescription) or is insulin.''

Subsec. (f)(4)(A). Pub. L. 111–148, § 9004(b), substituted ''20 percent'' for ''15 percent''.

2006—Subsec. (i)(2), (3)(B). Pub. L. 109–432, § 117(a), substituted ''2007'' for ''2005'' wherever appearing in headings and text.

Subsec. (j)(2). Pub. L. 109–432, § 117(b)(1), substituted ''2004, 2005, or 2006'' for ''or 2004'' in heading and in introductory provisions of subpars. (A) and (B).

Subsec. (j)(4)(A). Pub. L. 109–432, § 117(b)(2), substituted ''2004, 2005, and 2006'' for ''and 2004'' in introductory provisions.

2004—Subsec. (d)(2)(A). Pub. L. 108–311, § 207(19), inserted '', determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof'' after ''section 152''.

Subsec. (i)(2), (3)(B). Pub. L. 108–311, § 322(a), substituted ''2005'' for ''2003'' wherever appearing in headings and text.

Subsec. (j)(2). Pub. L. 108–311, § 322(b)(1)(B), substituted ''2002, or 2004'' for ''or 2002'' in heading.

Subsec. (j)(2)(A), (B). Pub. L. 108–311, § 322(b)(1)(A), substituted ''2002, or 2004'' for ''or 2002'' in introductory provisions.

Subsec. (j)(2)(C). Pub. L. 108–311, § 322(b)(3), amended heading and text of subpar. (C) generally. Prior to amendment text read as follows: ''The numerical limitation shall not apply for 2000.''

Subsec. (j)(4)(A). Pub. L. 108–311, § 322(b)(2), substituted ''2002, and 2004'' for ''and 2002'' in introductory provisions.

2003—Subsec. (f)(5)(A). Pub. L. 108–173 inserted ''or a health savings account (as defined in section 223(d))'' after ''paid into an Archer MSA''.

2002—Subsec. (i)(2). Pub. L. 107–147, § 612(a), substituted ''2003'' for ''2002'' in subpars. (A) and (B).

Subsec. (i)(3)(B). Pub. L. 107–147, § 612(a), substituted ''2003'' for ''2002'' in heading and introductory provisions.

Subsec. (j)(2). Pub. L. 107–147, § 612(b)(1), substituted ''1998, 1999, 2001, or 2002'' for ''1998, 1999, or 2001'' wherever appearing in heading and text.

Subsec. (j)(4)(A). Pub. L. 107–147, § 612(b)(2), substituted ''2001, and 2002'' for ''and 2001''.

2000—Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(8)], substituted ''Archer MSAs'' for ''Medical savings accounts'' in section catchline.

Subsecs. (a), (b)(5). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(10)], substituted ''an Archer MSA'' for ''a Archer MSA''.

Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(4)], substituted ''Archer MSA'' for ''medical savings account'' wherever appearing.

Subsec. (c)(1)(C). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(7)], substituted ''Archer MSAs'' for ''medical savings accounts'' in heading.

Subsec. (c)(1)(C)(i). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(10)], substituted ''an Archer MSA'' for ''a Archer MSA''.

Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(4)], substituted ''Archer MSA'' for ''medical savings account''.

Subsec. (c)(1)(D). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(2)(B)], substituted ''Archer MSAs'' for ''medical savings accounts''.

Subsec. (c)(4)(C)(ii). Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(4)], substituted ''Archer MSA'' for ''medical savings account''.

Subsec. (d). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(4)], substituted ''Archer MSA'' for ''Medical savings account'' in heading.

Subsec. (d)(1). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(5)], substituted ''Archer MSA'' for ''Medical savings account'' in heading.

Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(4), (b)(3)], in introductory provisions, substituted ''Archer MSA'' for ''medical savings account'' and inserted ''as a medical savings account'' after ''United States''.

Subsec. (d)(2)(C), (3). Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(4)], substituted ''Archer MSA'' for ''medical savings account''.

Subsec. (e)(1). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(10), (11)], substituted ''An Archer MSA is exempt'' for ''A Archer MSA is exempt'' and ''ceased to be an Archer MSA'' for ''ceased to be a Archer MSA''.

Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(4)], substituted ''Archer MSA'' for ''medical savings account'' in two places.

Subsec. (e)(2). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(2)(B)], substituted ''Archer MSAs'' for ''medical savings accounts''.

Subsec. (f). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(10)], substituted ''an Archer MSA'' for ''a Archer MSA'' wherever appearing.

Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(4), (b)(2)(B)], substituted ''Archer MSA'' for ''medical savings account'' wherever appearing and ''Archer MSAs'' for ''medical savings accounts'' in introductory provisions of par. (3)(A).

Subsec. (h). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(10)], substituted ''an Archer MSA'' for ''a Archer MSA''.

Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(4)], substituted ''Archer MSA'' for ''medical savings account''.

Subsec. (i). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(6)], substituted ''Archer MSAs'' for ''medical savings accounts'' in heading.

Subsec. (i)(2)(A), (B). Pub. L. 106–554, § 1(a)(7) [title II, § 201(a)], substituted ''2002'' for ''2000''.

Subsec. (i)(3)(A). Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(4)], substituted ''Archer MSA'' for ''medical savings account''.

Subsec. (i)(3)(B). Pub. L. 106–554, § 1(a)(7) [title II, § 201(a)], substituted ''2002'' for ''2000'' in heading and introductory provisions.

Subsec. (i)(4)(A). Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(4)], substituted ''Archer MSA'' for ''medical savings account''.

Subsec. (i)(4)(B). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(2)(B)], substituted ''Archer MSAs'' for ''medical savings accounts''.

Subsec. (i)(5)(A). Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(4)], substituted ''Archer MSA'' for ''medical savings account''.

Subsec. (j)(1). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(2)(B)], substituted ''Archer MSAs'' for ''medical savings accounts'' in introductory provisions.

Subsec. (j)(2). Pub. L. 106–554, § 1(a)(7) [title II, § 201(b)(1)(A)], substituted ''1998, 1999, or 2001'' for ''1998 or 1999'' in heading and in introductory provisions of subpars. (A) and (B).

Subsec. (j)(2)(A). Pub. L. 106–554, § 1(a)(7) [title II, § 201(b)(1)(B)], substituted ''750,000 (600,000 in the case of 1998)'' for ''600,000 (750,000 in the case of 1999)'' in concluding provisions.

Subsec. (j)(2)(B)(ii). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(2)(B)], substituted ''Archer MSAs'' for ''medical savings accounts''.

Subsec. (j)(2)(C). Pub. L. 106–554, § 1(a)(7) [title II, § 201(b)(1)(C)], added subpar. (C).

Subsec. (j)(3)(A), (B). Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(4)], substituted ''Archer MSA'' for ''medical savings account''.

Subsec. (j)(4)(A). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(10)], substituted ''an Archer MSA'' for ''a Archer MSA'' in introductory provisions.

Pub. L. 106–554, § 1(a)(7) [title II, §§ 201(b)(2), 202(a)(4)], in introductory provisions, substituted ''1999, and 2001'' for ''and 1999'' and ''Archer MSA'' for ''medical savings account''.

Subsec. (j)(4)(A)(i). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(2)(B)], substituted ''Archer MSAs'' for ''medical savings accounts''.

Subsec. (j)(4)(B). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(10)], substituted ''an Archer MSA'' for ''a Archer MSA''.

Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(4)], substituted ''Archer MSA'' for ''medical savings account''.

Subsec. (j)(4)(D). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(2)(B)], substituted ''Archer MSAs'' for ''medical savings accounts'' in two places.

1997—Subsec. (b)(7). Pub. L. 105–33 added par. (7).

Subsec. (c)(3). Pub. L. 105–34, §1602(a)(2), redesignated subpars. (B) to (D) as (A) to (C), respectively, and struck out former subpar. (A) which read as follows: ''Medicare supplemental insurance,''.

Subsec. (d)(2)(C). Pub. L. 105–34, §1602(a)(3), substituted ''described in clauses (i) and (ii) of subsection (c)(1)(A)'' for ''an eligible individual''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title IX, §9003(d)(1), Mar. 23, 2010, 124 Stat. 854, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 223 of this title] shall apply to amounts paid with respect to taxable years beginning after December 31, 2010.''

Pub. L. 111–148, title IX, §9004(c), Mar. 23, 2010, 124 Stat. 854, provided that: ''The amendments made by this section [amending this section and section 223 of this title] shall apply to distributions made after December 31, 2010.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 207(19) of Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

Pub. L. 108–311, title III, §322(c), Oct. 4, 2004, 118 Stat. 1183, provided that: ''The amendments made by this section [amending this section] shall take effect on January 1, 2004.''

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–173 applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108–173, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title VI, §612(c), Mar. 9, 2002, 116 Stat. 61, provided that: ''The amendments made by this section [amending this section] shall take effect on January 1, 2002.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title II, §201(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–628, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Dec. 21, 2000].''

EFFECTIVE DATE OF 1997 AMENDMENTS

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

Amendment by Pub. L. 105–33 applicable to taxable years beginning after Dec. 31, 1998, see section 4006(c) of Pub. L. 105–33, set out as an Effective Date note under section 138 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104–191, set out as an Effective Date of 1996 Amendment note under section 62 of this title.

TIME FOR FILING REPORTS, ETC.

Pub. L. 109–432, div. A, title I, §117(c), Dec. 20, 2006, 120 Stat. 2942, provided that:

''(1) The report required by section 220(j)(4) of the Internal Revenue Code of 1986 to be made on August 1, 2005, or August 1, 2006, as the case may be, shall be treated as timely if made before the close of the 90-day period beginning on the date of the enactment of this Act [Dec. 20, 2006].

''(2) The determination and publication required by section 220(j)(5) of such Code with respect to calendar year 2005 or calendar year 2006, as the case may be, shall be treated as timely if made before the close of the 120-day period beginning on the date of the enactment of this Act. If the determination under the preceding sentence is that 2005 or 2006 is a cut-off year under section 220(i) of such Code, the cut-off date under such section 220(i) shall be the last day of such 120-day period.''

Pub. L. 108–311, title III, §322(d), Oct. 4, 2004, 118 Stat. 1183, provided that:

''(1) The report required by section 220(j)(4) of the Internal Revenue Code of 1986 to be made on August 1, 2004, shall be treated as timely if made before the close of the 90-day period beginning on the date of the enactment of this Act [Oct. 4, 2004].

''(2) The determination and publication required by section 220(j)(5) of such Code with respect to calendar year 2004 shall be treated as timely if made before the close of the 120-day period beginning on the date of the enactment of this Act. If the determination under the preceding sentence is that 2004 is a cut-off year under section 220(i) of such Code, the cut-off date under such section 220(i) shall be the last day of such 120-day period.''

MONITORING OF PARTICIPATION IN MEDICAL SAVINGS ACCOUNTS

Section 301(k) of Pub. L. 104–191 provided that: ''The Secretary of the Treasury or his delegate shall—

''(1) during 1997, 1998, 1999, and 2000, regularly evaluate the number of individuals who are maintaining medical savings accounts and the reduction in revenues to the United States by reason of such accounts, and

''(2) provide such reports of such evaluations to Congress as such Secretary determines appropriate.''

STUDY OF EFFECTS OF MEDICAL SAVINGS ACCOUNTS ON SMALL GROUP MARKET

Section 301(*l*) of Pub. L. 104–191 provided that: ''The Comptroller General of the United States shall enter into a contract with an organization with expertise in health economics, health insurance markets, and actuarial science to conduct a comprehensive study regarding the effects of medical savings accounts in the small group market on—

''(1) selection, including adverse selection,

''(2) health costs, including any impact on premiums of individuals with comprehensive coverage,

''(3) use of preventive care,

''(4) consumer choice,

''(5) the scope of coverage of high deductible plans purchased in conjunction with such accounts, and

''(6) other relevant items.

A report on the results of the study conducted under this subsection shall be submitted to the Congress no later than January 1, 1999.''

§ 221. Interest on education loans

(a) Allowance of deduction

In the case of an individual, there shall be allowed as a deduction for the taxable year an amount equal to the interest paid by the taxpayer during the taxable year on any qualified education loan.

(b) Maximum deduction

(1) In general

Except as provided in paragraph (2), the deduction allowed by subsection (a) for the taxable year shall not exceed the amount determined in accordance with the following table:

In the case of taxable years beginning in:	The dollar amount is:

1998	$1,000
1999	$1,500
2000	$2,000
2001 or thereafter	$2,500.

(2) Limitation based on modified adjusted gross income

(A) In general

The amount which would (but for this paragraph) be allowable as a deduction under this section shall be reduced (but not below zero) by the amount determined under subparagraph (B).

(B) Amount of reduction

The amount determined under this subparagraph is the amount which bears the same ratio to the amount which would be so taken into account as—

(i) the excess of—

(I) the taxpayer's modified adjusted gross income for such taxable year, over

(II) $50,000 ($100,000 in the case of a joint return), bears to

(ii) $15,000 ($30,000 in the case of a joint return).

(C) Modified adjusted gross income

The term ''modified adjusted gross income'' means adjusted gross income determined—

(i) without regard to this section and sections 199, 222, 911, 931, and 933, and

(ii) after application of sections 86, 135, 137, 219, and 469.

(c) Dependents not eligible for deduction

No deduction shall be allowed by this section to an individual for the taxable year if a deduction under section 151 with respect to such individual is allowed to another taxpayer for the taxable year beginning in the calendar year in which such individual's taxable year begins.

(d) Definitions

For purposes of this section—

(1) Qualified education loan

The term ''qualified education loan'' means any indebtedness incurred by the taxpayer solely to pay qualified higher education expenses—

(A) which are incurred on behalf of the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer as of the time the indebtedness was incurred,

(B) which are paid or incurred within a reasonable period of time before or after the indebtedness is incurred, and

(C) which are attributable to education furnished during a period during which the recipient was an eligible student.

Such term includes indebtedness used to refinance indebtedness which qualifies as a qualified education loan. The term ''qualified education loan'' shall not include any indebtedness owed to a person who is related (within the meaning of section 267(b) or 707(b)(1)) to the taxpayer or to any person by reason of a loan under any qualified employer plan (as defined in section 72(p)(4)) or under any contract referred to in section 72(p)(5).

(2) Qualified higher education expenses

The term ''qualified higher education expenses'' means the cost of attendance (as defined in section 472 of the Higher Education Act of 1965, 20 U.S.C. 1087*ll*, as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997) at an eligible educational institution, reduced by the sum of—

(A) the amount excluded from gross income under section 127, 135, 529, or 530 by reason of such expenses, and

(B) the amount of any scholarship, allowance, or payment described in section 25A(g)(2).

For purposes of the preceding sentence, the term ''eligible educational institution'' has the same meaning given such term by section 25A(f)(2), except that such term shall also include an institution conducting an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility which offers postgraduate training.

(3) Eligible student

The term ''eligible student'' has the meaning given such term by section 25A(b)(3).

(4) Dependent

The term ''dependent'' has the meaning given such term by section 152 (determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof).

(e) Special rules

(1) Denial of double benefit

No deduction shall be allowed under this section for any amount for which a deduction is allowable under any other provision of this chapter.

(2) Married couples must file joint return

If the taxpayer is married at the close of the taxable year, the deduction shall be allowed under subsection (a) only if the taxpayer and the taxpayer's spouse file a joint return for the taxable year.

(3) Marital status

Marital status shall be determined in accordance with section 7703.

(f) Inflation adjustments

(1) In general

In the case of a taxable year beginning after 2002, the $50,000 and $100,000 amounts in subsection (b)(2) shall each be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ''calendar year 2001'' for ''calendar year 1992'' in subparagraph (B) thereof.

(2) Rounding

If any amount as adjusted under paragraph (1) is not a multiple of $5,000, such amount shall be rounded to the next lowest multiple of $5,000.

(Added Pub. L. 105–34, title II, § 202(a), Aug. 5, 1997, 111 Stat. 806; amended Pub. L. 105–206, title

VI, § 6004(b), July 22, 1998, 112 Stat. 792; Pub. L. 105–277, div. J, title IV, § 4003(a)(2)(A), (3), Oct. 21, 1998, 112 Stat. 2681–908; Pub. L. 107–16, title IV, §§ 402(b)(2)(B), 412(a)(1), (b)(1), (2), 431(c)(2), June 7, 2001, 115 Stat. 62–64, 68; Pub. L. 108–311, title II, § 207(20), title IV, § 408(b)(5), Oct. 4, 2004, 118 Stat. 1178, 1192; Pub. L. 108–357, title I, § 102(d)(2), Oct. 22, 2004, 118 Stat. 1428; Pub. L. 109–135, title IV, § 412(t), Dec. 21, 2005, 119 Stat. 2638.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENT OF SECTION

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

REFERENCES IN TEXT

The date of the enactment of the Taxpayer Relief Act of 1997, referred to in subsec. (d)(2), is the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

PRIOR PROVISIONS

A prior section 221 was renumbered section 224 of this title.

Another prior section 221, added Pub. L. 97–34, title I, § 103(a), Aug. 13, 1981, 95 Stat. 187; amended Pub. L. 97–448, title III, § 305(d)(4), Jan. 12, 1983, 96 Stat. 2400, related to deduction for two-earner married couples, prior to repeal by Pub. L. 99–514, title I, § 131(a), Oct. 22, 1986, 100 Stat. 2113, applicable to taxable years beginning after Dec. 31, 1986.

AMENDMENTS

2005—Subsec. (d)(2). Pub. L. 109–135 substituted ''the Taxpayer Relief Act of 1997'' for ''this Act''.

2004—Subsec. (b)(2)(C)(i). Pub. L. 108–357 inserted ''199,'' before ''222''.

Subsec. (d)(4). Pub. L. 108–311, § 207(20), inserted ''(determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof)'' after ''section 152''.

Subsec. (f)(1). Pub. L. 108–311, § 408(b)(5), amended directory language of Pub. L. 107–16, § 412(b)(2). See 2001 Amendment note below.

2001—Subsec. (b)(2)(B)(i), (ii). Pub. L. 107–16, §§ 412(b)(1), 901, temporarily amended cls. (i) and (ii) generally. Prior to amendment, cls. (i) and (ii) read as follows:

''(i) the excess of—

''(I) the taxpayer's modified adjusted gross income for such taxable year, over

''(II) $40,000 ($60,000 in the case of a joint return), bears to

''(ii) $15,000.''

See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (b)(2)(C)(i). Pub. L. 107–16, §§ 431(c)(2), 901, temporarily inserted ''222,'' before ''911''. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (d). Pub. L. 107–16, §§ 412(a)(1), 901, temporarily redesignated subsec. (e) as (d), and struck out heading and text of former subsec. (d). Text read as follows: ''A deduction shall be allowed under this section only with respect to interest paid on any qualified education loan during the first 60 months (whether or not consecutive) in which interest payments are required. For purposes of this paragraph, any loan and all refinancings of such loan shall be treated as 1 loan. Such 60 months shall be determined in the manner prescribed by the Secretary in the case of multiple loans which are refinanced by, or serviced as, a single loan and in the case of loans incurred before the date of the enactment of this section.'' See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (e). Pub. L. 107–16, §§ 412(a)(1), 901, temporarily redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d). See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (e)(2)(A). Pub. L. 107–16, § 402(b)(2)(B), inserted ''529,'' after ''135,''.

Subsec. (f). Pub. L. 107–16, §§ 412(a)(1), 901, temporarily redesignated former subsec. (g) as (f). Former subsec. (f) redesignated (e). See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (f)(1). Pub. L. 107–16, §§ 412(b)(2), 901, as amended by Pub. L. 108–311, § 408(b)(5), temporarily substituted ''$50,000 and $100,000 amounts'' for ''$40,000 and $60,000 amounts''. See above and Effective and Termination Dates of 2001 Amendment note below.

Subsec. (g). Pub. L. 107–16, §§ 412(a)(1), 901, temporarily redesignated former subsec. (g) as (f). See Effective and Termination Dates of 2001 Amendment note below.

1998—Subsec. (b)(2)(C). Pub. L. 105–277, § 4003(a)(2)(A)(iii), struck out concluding provisions which read as follows: ''For purposes of sections 86, 135, 137, 219, and 469, adjusted gross income shall be determined without regard to the deduction allowed under this section.''

Subsec. (b)(2)(C)(i). Pub. L. 105–277, § 4003(a)(2)(A)(i), struck out ''135, 137,'' after ''sections''.

Subsec. (b)(2)(C)(ii). Pub. L. 105–277, § 4003(a)(2)(A)(ii), inserted ''135, 137,'' after ''sections 86,''.

Subsec. (d). Pub. L. 105–206, § 6004(b)(2), inserted at end ''Such 60 months shall be determined in the manner prescribed by the Secretary in the case of multiple loans which are refinanced by, or serviced as, a single loan and in the case of loans incurred before the date of the enactment of this section.''

Subsec. (e)(1). Pub. L. 105–277, § 4003(a)(3), inserted before period at end ''or to any person by reason of a loan under any qualified employer plan (as defined in section 72(p)(4)) or under any contract referred to in section 72(p)(5)''.

Pub. L. 105–206, § 6004(b)(1), inserted ''by the taxpayer solely'' after ''incurred'' in introductory provisions.

EFFECTIVE DATE OF 2004 AMENDMENTS

Amendment by Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2004, see section 102(e) of Pub. L. 108–357, set out as a note under section 56 of this title.

Amendment by section 207(20) of Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by section 402(b)(2)(B) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 402(h) of Pub. L. 107–16, set out as an Effective Date of 2001 Amendment note under section 72 of this title.

Pub. L. 107–16, title IV, § 412(a)(3), June 7, 2001, 115 Stat. 64, provided that: ''The amendments made by this subsection [amending this section and section 6050S of this title] shall apply with respect to any loan interest paid after December 31, 2001, in taxable years ending after such date.''

Pub. L. 107–16, title IV, § 412(b)(3), June 7, 2001, 115 Stat. 64, provided that: ''The amendments made by this subsection [amending this section] shall apply to taxable years ending after December 31, 2001.''

Amendment by section 431(c)(2) of Pub. L. 107–16 applicable to payments made in taxable years beginning after Dec. 31, 2001, see section 431(d) of Pub. L. 107–16, set out as a note under section 62 of this title.

Amendment by sections 412(a)(1), (b)(1), (2) and 431(c)(2) of Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had

never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105–277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 4003(*l*) of Pub. L. 105–277, set out as a note under section 86 of this title.

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to any qualified education loan (as defined in subsec. (e)(1) of this section) incurred on, before, or after Aug. 5, 1997, but only with respect to any loan interest payment due and paid after Dec. 31, 1997, and to the portion of the 60-month period referred to in subsec. (d) of this section after Dec. 31, 1997, see section 202(e) of Pub. L. 105–34, set out as an Effective Date of 1997 Amendment note under section 62 of this title.

§ 222. Qualified tuition and related expenses

(a) Allowance of deduction

In the case of an individual, there shall be allowed as a deduction an amount equal to the qualified tuition and related expenses paid by the taxpayer during the taxable year.

(b) Dollar limitations

(1) In general

The amount allowed as a deduction under subsection (a) with respect to the taxpayer for any taxable year shall not exceed the applicable dollar limit.

(2) Applicable dollar limit

(A) 2002 and 2003

In the case of a taxable year beginning in 2002 or 2003, the applicable dollar limit shall be equal to—

(i) in the case of a taxpayer whose adjusted gross income for the taxable year does not exceed $65,000 ($130,000 in the case of a joint return), $3,000, and—

(ii) in the case of any other taxpayer, zero.

(B) After 2003

In the case of any taxable year beginning after 2003, the applicable dollar amount shall be equal to—

(i) in the case of a taxpayer whose adjusted gross income for the taxable year does not exceed $65,000 ($130,000 in the case of a joint return), $4,000,

(ii) in the case of a taxpayer not described in clause (i) whose adjusted gross income for the taxable year does not exceed $80,000 ($160,000 in the case of a joint return), $2,000, and

(iii) in the case of any other taxpayer, zero.

(C) Adjusted gross income

For purposes of this paragraph, adjusted gross income shall be determined—

(i) without regard to this section and sections 199, 911, 931, and 933, and

(ii) after application of sections 86, 135, 137, 219, 221, and 469.

(c) No double benefit

(1) In general

No deduction shall be allowed under subsection (a) for any expense for which a deduction is allowed to the taxpayer under any other provision of this chapter.

(2) Coordination with other education incentives

(A) Denial of deduction if credit elected

No deduction shall be allowed under subsection (a) for a taxable year with respect to the qualified tuition and related expenses with respect to an individual if the taxpayer or any other person elects to have section 25A apply with respect to such individual for such year.

(B) Coordination with exclusions

The total amount of qualified tuition and related expenses shall be reduced by the amount of such expenses taken into account in determining any amount excluded under section 135, 529(c)(1), or 530(d)(2). For purposes of the preceding sentence, the amount taken into account in determining the amount excluded under section 529(c)(1) shall not include that portion of the distribution which represents a return of any contributions to the plan.

(3) Dependents

No deduction shall be allowed under subsection (a) to any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins.

(d) Definitions and special rules

For purposes of this section—

(1) Qualified tuition and related expenses

The term ''qualified tuition and related expenses'' has the meaning given such term by section 25A(f). Such expenses shall be reduced in the same manner as under section 25A(g)(2).

(2) Identification requirement

No deduction shall be allowed under subsection (a) to a taxpayer with respect to the qualified tuition and related expenses of an individual unless the taxpayer includes the name and taxpayer identification number of the individual on the return of tax for the taxable year.

(3) Limitation on taxable year of deduction

(A) In general

A deduction shall be allowed under subsection (a) for qualified tuition and related expenses for any taxable year only to the extent such expenses are in connection with enrollment at an institution of higher education during the taxable year.

(B) Certain prepayments allowed

Subparagraph (A) shall not apply to qualified tuition and related expenses paid during a taxable year if such expenses are in connection with an academic term beginning during such taxable year or during the first 3 months of the next taxable year.

(4) No deduction for married individuals filing separate returns

If the taxpayer is a married individual (within the meaning of section 7703), this section shall apply only if the taxpayer and the taxpayer's spouse file a joint return for the taxable year.

(5) Nonresident aliens

If the taxpayer is a nonresident alien individual for any portion of the taxable year, this section shall apply only if such individual is treated as a resident alien of the United States for purposes of this chapter by reason of an election under subsection (g) or (h) of section 6013.

(6) Regulations

The Secretary may prescribe such regulations as may be necessary or appropriate to carry out this section, including regulations requiring recordkeeping and information reporting.

(e) Termination

This section shall not apply to taxable years beginning after December 31, 2011.

(Added Pub. L. 107–16, title IV, § 431(a), June 7, 2001, 115 Stat. 66; amended Pub. L. 108–357, title I, § 102(d)(3), Oct. 22, 2004, 118 Stat. 1429; Pub. L. 109–432, div. A, title I, § 101(a), (b), Dec. 20, 2006, 120 Stat. 2933; Pub. L. 110–343, div. C, title II, § 202(a), Oct. 3, 2008, 122 Stat. 3864; Pub. L. 111–312, title VII, § 724(a), Dec. 17, 2010, 124 Stat. 3316.)

TERMINATION OF SECTION

For termination of section by section 901 of Pub. L. 107–16, see Effective and Termination Dates note below.

PRIOR PROVISIONS

A prior section 222 was renumbered section 224 of this title.

Another prior section 222, added Pub. L. 97–34, title I, § 125(a), Aug. 13, 1981, 95 Stat. 201; amended Pub. L. 97–448, title I, § 101(f), Jan. 12, 1983, 96 Stat. 2367, related to deduction of adoption expenses, prior to repeal by Pub. L. 99–514, title I, §§ 135(a), 151(a), Oct. 22, 1986, 100 Stat. 2116, 2121, applicable to taxable years beginning after Dec. 31, 1986.

AMENDMENTS

2010—Subsec. (e). Pub. L. 111–312 substituted ''December 31, 2011'' for ''December 31, 2009''.

2008—Subsec. (e). Pub. L. 110–343 substituted ''December 31, 2009'' for ''December 31, 2007''.

2006—Subsec. (b)(2)(B). Pub. L. 109–432, § 101(b), substituted ''After 2003'' for ''2004 and 2005'' in heading and ''any taxable year beginning after 2003'' for ''a taxable year beginning in 2004 or 2005'' in introductory provisions.

Subsec. (e). Pub. L. 109–432, § 101(a), substituted ''2007'' for ''2005''.

2004—Subsec. (b)(2)(C)(i). Pub. L. 108–357 inserted ''199,'' before ''911''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, § 724(b), Dec. 17, 2010, 124 Stat. 3316, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title II, § 202(b), Oct. 3, 2008, 122 Stat. 3864, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, § 101(c), Dec. 20, 2006, 120 Stat. 2933, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2005.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2004, see section 102(e) of Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE AND TERMINATION DATES

Section applicable to payments made in taxable years beginning after Dec. 31, 2001, see section 431(d) of Pub. L. 107–16, set out as an Effective and Termination Dates of 2001 Amendment note under section 62 of this title.

Section inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if it had never been enacted, see section 901 of Pub. L. 107–16, set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title.

§ 223. Health savings accounts

(a) Deduction allowed

In the case of an individual who is an eligible individual for any month during the taxable year, there shall be allowed as a deduction for the taxable year an amount equal to the aggregate amount paid in cash during such taxable year by or on behalf of such individual to a health savings account of such individual.

(b) Limitations

(1) In general

The amount allowable as a deduction under subsection (a) to an individual for the taxable year shall not exceed the sum of the monthly limitations for months during such taxable year that the individual is an eligible individual.

(2) Monthly limitation

The monthly limitation for any month is 1/12 of—

(A) in the case of an eligible individual who has self-only coverage under a high deductible health plan as of the first day of such month, $2,250.

(B) in the case of an eligible individual who has family coverage under a high deductible health plan as of the first day of such month, $4,500.

(3) Additional contributions for individuals 55 or older

(A) In general

In the case of an individual who has attained age 55 before the close of the taxable year, the applicable limitation under subparagraphs (A) and (B) of paragraph (2) shall be increased by the additional contribution amount.

(B) Additional contribution amount

For purposes of this section, the additional contribution amount is the amount deter-

mined in accordance with the following table:

For taxable years beginning in:	The additional contribution amount is:
2004	$500
2005	$600
2006	$700
2007	$800
2008	$900
2009 and thereafter	$1,000.

(4) Coordination with other contributions

The limitation which would (but for this paragraph) apply under this subsection to an individual for any taxable year shall be reduced (but not below zero) by the sum of—

(A) the aggregate amount paid for such taxable year to Archer MSAs of such individual,

(B) the aggregate amount contributed to health savings accounts of such individual which is excludable from the taxpayer's gross income for such taxable year under section 106(d) (and such amount shall not be allowed as a deduction under subsection (a)), and

(C) the aggregate amount contributed to health savings accounts of such individual for such taxable year under section 408(d)(9) (and such amount shall not be allowed as a deduction under subsection (a)).

Subparagraph (A) shall not apply with respect to any individual to whom paragraph (5) applies.

(5) Special rule for married individuals

In the case of individuals who are married to each other, if either spouse has family coverage—

(A) both spouses shall be treated as having only such family coverage (and if such spouses each have family coverage under different plans, as having the family coverage with the lowest annual deductible), and

(B) the limitation under paragraph (1) (after the application of subparagraph (A) and without regard to any additional contribution amount under paragraph (3))—

(i) shall be reduced by the aggregate amount paid to Archer MSAs of such spouses for the taxable year, and

(ii) after such reduction, shall be divided equally between them unless they agree on a different division.

(6) Denial of deduction to dependents

No deduction shall be allowed under this section to any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins.

(7) Medicare eligible individuals

The limitation under this subsection for any month with respect to an individual shall be zero for the first month such individual is entitled to benefits under title XVIII of the Social Security Act and for each month thereafter.

(8) Increase in limit for individuals becoming eligible individuals after the beginning of the year

(A) In general

For purposes of computing the limitation under paragraph (1) for any taxable year, an individual who is an eligible individual during the last month of such taxable year shall be treated—

(i) as having been an eligible individual during each of the months in such taxable year, and

(ii) as having been enrolled, during each of the months such individual is treated as an eligible individual solely by reason of clause (i), in the same high deductible health plan in which the individual was enrolled for the last month of such taxable year.

(B) Failure to maintain high deductible health plan coverage

(i) In general

If, at any time during the testing period, the individual is not an eligible individual, then—

(I) gross income of the individual for the taxable year in which occurs the first month in the testing period for which such individual is not an eligible individual is increased by the aggregate amount of all contributions to the health savings account of the individual which could not have been made but for subparagraph (A), and

(II) the tax imposed by this chapter for any taxable year on the individual shall be increased by 10 percent of the amount of such increase.

(ii) Exception for disability or death

Subclauses (I) and (II) of clause (i) shall not apply if the individual ceased to be an eligible individual by reason of the death of the individual or the individual becoming disabled (within the meaning of section 72(m)(7)).

(iii) Testing period

The term ''testing period'' means the period beginning with the last month of the taxable year referred to in subparagraph (A) and ending on the last day of the 12th month following such month.

(c) Definitions and special rules

For purposes of this section—

(1) Eligible individual

(A) In general

The term ''eligible individual'' means, with respect to any month, any individual if—

(i) such individual is covered under a high deductible health plan as of the 1st day of such month, and

(ii) such individual is not, while covered under a high deductible health plan, covered under any health plan—

(I) which is not a high deductible health plan, and

(II) which provides coverage for any benefit which is covered under the high deductible health plan.

(B) Certain coverage disregarded

Subparagraph (A)(ii) shall be applied without regard to—

(i) coverage for any benefit provided by permitted insurance,

(ii) coverage (whether through insurance or otherwise) for accidents, disability, dental care, vision care, or long-term care, and

(iii) for taxable years beginning after December 31, 2006, coverage under a health flexible spending arrangement during any period immediately following the end of a plan year of such arrangement during which unused benefits or contributions remaining at the end of such plan year may be paid or reimbursed to plan participants for qualified benefit expenses incurred during such period if—

(I) the balance in such arrangement at the end of such plan year is zero, or

(II) the individual is making a qualified HSA distribution (as defined in section 106(e)) in an amount equal to the remaining balance in such arrangement as of the end of such plan year, in accordance with rules prescribed by the Secretary.

(2) High deductible health plan

(A) In general

The term ''high deductible health plan'' means a health plan—

(i) which has an annual deductible which is not less than—

(I) $1,000 for self-only coverage, and

(II) twice the dollar amount in subclause (I) for family coverage, and

(ii) the sum of the annual deductible and the other annual out-of-pocket expenses required to be paid under the plan (other than for premiums) for covered benefits does not exceed—

(I) $5,000 for self-only coverage, and

(II) twice the dollar amount in subclause (I) for family coverage.

(B) Exclusion of certain plans

Such term does not include a health plan if substantially all of its coverage is coverage described in paragraph (1)(B).

(C) Safe harbor for absence of preventive care deductible

A plan shall not fail to be treated as a high deductible health plan by reason of failing to have a deductible for preventive care (within the meaning of section 1871 of the Social Security Act, except as otherwise provided by the Secretary).

(D) Special rules for network plans

In the case of a plan using a network of providers—

(i) Annual out-of-pocket limitation

Such plan shall not fail to be treated as a high deductible health plan by reason of having an out-of-pocket limitation for services provided outside of such network which exceeds the applicable limitation under subparagraph (A)(ii).

(ii) Annual deductible

Such plan's annual deductible for services provided outside of such network shall not be taken into account for purposes of subsection (b)(2).

(3) Permitted insurance

The term ''permitted insurance'' means—

(A) insurance if substantially all of the coverage provided under such insurance relates to—

(i) liabilities incurred under workers' compensation laws,

(ii) tort liabilities,

(iii) liabilities relating to ownership or use of property, or

(iv) such other similar liabilities as the Secretary may specify by regulations,

(B) insurance for a specified disease or illness, and

(C) insurance paying a fixed amount per day (or other period) of hospitalization.

(4) Family coverage

The term ''family coverage'' means any coverage other than self-only coverage.

(5) Archer MSA

The term ''Archer MSA'' has the meaning given such term in section 220(d).

(d) Health savings account

For purposes of this section—

(1) In general

The term ''health savings account'' means a trust created or organized in the United States as a health savings account exclusively for the purpose of paying the qualified medical expenses of the account beneficiary, but only if the written governing instrument creating the trust meets the following requirements:

(A) Except in the case of a rollover contribution described in subsection (f)(5) or section 220(f)(5), no contribution will be accepted—

(i) unless it is in cash, or

(ii) to the extent such contribution, when added to previous contributions to the trust for the calendar year, exceeds the sum of—

(I) the dollar amount in effect under subsection (b)(2)(B), and

(II) the dollar amount in effect under subsection (b)(3)(B).

(B) The trustee is a bank (as defined in section 408(n)), an insurance company (as defined in section 816), or another person who demonstrates to the satisfaction of the Secretary that the manner in which such person will administer the trust will be consistent with the requirements of this section.

(C) No part of the trust assets will be invested in life insurance contracts.

(D) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

(E) The interest of an individual in the balance in his account is nonforfeitable.

(2) Qualified medical expenses

(A) In general

The term ''qualified medical expenses'' means, with respect to an account beneficiary, amounts paid by such beneficiary for medical care (as defined in section 213(d)[1] for such individual, the spouse of such individual, and any dependent (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of such individual, but only to the extent such amounts are not compensated for by insurance or otherwise. Such term shall include an amount paid for medicine or a drug only if such medicine or drug is a prescribed drug (determined without regard to whether such drug is available without a prescription) or is insulin.

(B) Health insurance may not be purchased from account

Subparagraph (A) shall not apply to any payment for insurance.

(C) Exceptions

Subparagraph (B) shall not apply to any expense for coverage under—

(i) a health plan during any period of continuation coverage required under any Federal law,

(ii) a qualified long-term care insurance contract (as defined in section 7702B(b)),

(iii) a health plan during a period in which the individual is receiving unemployment compensation under any Federal or State law, or

(iv) in the case of an account beneficiary who has attained the age specified in section 1811 of the Social Security Act, any health insurance other than a medicare supplemental policy (as defined in section 1882 of the Social Security Act).

(3) Account beneficiary

The term ''account beneficiary'' means the individual on whose behalf the health savings account was established.

(4) Certain rules to apply

Rules similar to the following rules shall apply for purposes of this section:

(A) Section 219(d)(2) (relating to no deduction for rollovers).

(B) Section 219(f)(3) (relating to time when contributions deemed made).

(C) Except as provided in section 106(d), section 219(f)(5) (relating to employer payments).

(D) Section 408(g) (relating to community property laws).

(E) Section 408(h) (relating to custodial accounts).

(e) Tax treatment of accounts

(1) In general

A health savings account is exempt from taxation under this subtitle unless such account has ceased to be a health savings account. Notwithstanding the preceding sentence, any such account is subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc. organizations).

(2) Account terminations

Rules similar to the rules of paragraphs (2) and (4) of section 408(e) shall apply to health savings accounts, and any amount treated as distributed under such rules shall be treated as not used to pay qualified medical expenses.

(f) Tax treatment of distributions

(1) Amounts used for qualified medical expenses

Any amount paid or distributed out of a health savings account which is used exclusively to pay qualified medical expenses of any account beneficiary shall not be includible in gross income.

(2) Inclusion of amounts not used for qualified medical expenses

Any amount paid or distributed out of a health savings account which is not used exclusively to pay the qualified medical expenses of the account beneficiary shall be included in the gross income of such beneficiary.

(3) Excess contributions returned before due date of return

(A) In general

If any excess contribution is contributed for a taxable year to any health savings account of an individual, paragraph (2) shall not apply to distributions from the health savings accounts of such individual (to the extent such distributions do not exceed the aggregate excess contributions to all such accounts of such individual for such year) if—

(i) such distribution is received by the individual on or before the last day prescribed by law (including extensions of time) for filing such individual's return for such taxable year, and

(ii) such distribution is accompanied by the amount of net income attributable to such excess contribution.

Any net income described in clause (ii) shall be included in the gross income of the individual for the taxable year in which it is received.

(B) Excess contribution

For purposes of subparagraph (A), the term ''excess contribution'' means any contribution (other than a rollover contribution described in paragraph (5) or section 220(f)(5)) which is neither excludable from gross income under section 106(d) nor deductible under this section.

(4) Additional tax on distributions not used for qualified medical expenses

(A) In general

The tax imposed by this chapter on the account beneficiary for any taxable year in which there is a payment or distribution from a health savings account of such bene-

[1] So in original. Probably should be followed by a second closing parenthesis.

ficiary which is includible in gross income under paragraph (2) shall be increased by 20 percent of the amount which is so includible.

(B) Exception for disability or death

Subparagraph (A) shall not apply if the payment or distribution is made after the account beneficiary becomes disabled within the meaning of section 72(m)(7) or dies.

(C) Exception for distributions after medicare eligibility

Subparagraph (A) shall not apply to any payment or distribution after the date on which the account beneficiary attains the age specified in section 1811 of the Social Security Act.

(5) Rollover contribution

An amount is described in this paragraph as a rollover contribution if it meets the requirements of subparagraphs (A) and (B).

(A) In general

Paragraph (2) shall not apply to any amount paid or distributed from a health savings account to the account beneficiary to the extent the amount received is paid into a health savings account for the benefit of such beneficiary not later than the 60th day after the day on which the beneficiary receives the payment or distribution.

(B) Limitation

This paragraph shall not apply to any amount described in subparagraph (A) received by an individual from a health savings account if, at any time during the 1-year period ending on the day of such receipt, such individual received any other amount described in subparagraph (A) from a health savings account which was not includible in the individual's gross income because of the application of this paragraph.

(6) Coordination with medical expense deduction

For purposes of determining the amount of the deduction under section 213, any payment or distribution out of a health savings account for qualified medical expenses shall not be treated as an expense paid for medical care.

(7) Transfer of account incident to divorce

The transfer of an individual's interest in a health savings account to an individual's spouse or former spouse under a divorce or separation instrument described in subparagraph (A) of section 71(b)(2) shall not be considered a taxable transfer made by such individual notwithstanding any other provision of this subtitle, and such interest shall, after such transfer, be treated as a health savings account with respect to which such spouse is the account beneficiary.

(8) Treatment after death of account beneficiary

(A) Treatment if designated beneficiary is spouse

If the account beneficiary's surviving spouse acquires such beneficiary's interest in a health savings account by reason of being the designated beneficiary of such account at the death of the account beneficiary, such health savings account shall be treated as if the spouse were the account beneficiary.

(B) Other cases

(i) In general

If, by reason of the death of the account beneficiary, any person acquires the account beneficiary's interest in a health savings account in a case to which subparagraph (A) does not apply—

(I) such account shall cease to be a health savings account as of the date of death, and

(II) an amount equal to the fair market value of the assets in such account on such date shall be includible if such person is not the estate of such beneficiary, in such person's gross income for the taxable year which includes such date, or if such person is the estate of such beneficiary, in such beneficiary's gross income for the last taxable year of such beneficiary.

(ii) Special rules

(I) Reduction of inclusion for predeath expenses

The amount includible in gross income under clause (i) by any person (other than the estate) shall be reduced by the amount of qualified medical expenses which were incurred by the decedent before the date of the decedent's death and paid by such person within 1 year after such date.

(II) Deduction for estate taxes

An appropriate deduction shall be allowed under section 691(c) to any person (other than the decedent or the decedent's spouse) with respect to amounts included in gross income under clause (i) by such person.

(g) Cost-of-living adjustment

(1) In general

Each dollar amount in subsections (b)(2) and (c)(2)(A) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which such taxable year begins determined by substituting for ''calendar year 1992'' in subparagraph (B) thereof—

(i) except as provided in clause (ii), ''calendar year 1997'', and

(ii) in the case of each dollar amount in subsection (c)(2)(A), ''calendar year 2003''.

In the case of adjustments made for any taxable year beginning after 2007, section 1(f)(4) shall be applied for purposes of this paragraph by substituting ''March 31'' for ''August 31'', and the Secretary shall publish the adjusted amounts under subsections (b)(2) and (c)(2)(A) for taxable years beginning in any calendar year no later than June 1 of the preceding calendar year.

(2) Rounding

If any increase under paragraph (1) is not a multiple of $50, such increase shall be rounded to the nearest multiple of $50.

(h) Reports

The Secretary may require—

(1) the trustee of a health savings account to make such reports regarding such account to the Secretary and to the account beneficiary with respect to contributions, distributions, the return of excess contributions, and such other matters as the Secretary determines appropriate, and

(2) any person who provides an individual with a high deductible health plan to make such reports to the Secretary and to the account beneficiary with respect to such plan as the Secretary determines appropriate.

The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by the Secretary.

(Added Pub. L. 108–173, title XII, § 1201(a), Dec. 8, 2003, 117 Stat. 2469; amended Pub. L. 109–135, title IV, § 404(c), Dec. 21, 2005, 119 Stat. 2634; Pub. L. 109–432, div. A, title III, §§ 302(b), 303(a), (b), 304, 305(a), 307(b), Dec. 20, 2006, 120 Stat. 2949, 2950, 2953; Pub. L. 111–148, title IX, §§ 9003(a), 9004(a), Mar. 23, 2010, 124 Stat. 854.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table below and under section 1 of this title.

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (b)(7), (c)(2)(C), (d)(2)(C)(iv), (f)(4)(C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Sections 1811, 1871, and 1882 of the Act are classified to sections 1395c, 1395hh, and 1395ss, respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 223 was renumbered section 224 of this title.

AMENDMENTS

2010—Subsec. (d)(2)(A). Pub. L. 111–148, § 9003(a), inserted at end ''Such term shall include an amount paid for medicine or a drug only if such medicine or drug is a prescribed drug (determined without regard to whether such drug is available without a prescription) or is insulin.''

Subsec. (f)(4)(A). Pub. L. 111–148, § 9004(a), substituted ''20 percent'' for ''10 percent''.

2006—Subsec. (b)(2)(A). Pub. L. 109–432, § 303(a)(1), substituted ''$2,250.'' for ''the lesser of—

''(i) the annual deductible under such coverage, or

''(ii) $2,250, or''.

Subsec. (b)(2)(B). Pub. L. 109–432, § 303(a)(2), substituted ''$4,500.'' for ''the lesser of—

''(i) the annual deductible under such coverage, or

''(ii) $4,500.''

Subsec. (b)(4)(C). Pub. L. 109–432, § 307(b), added subpar. (C).

Subsec. (b)(8). Pub. L. 109–432, § 305(a), added par. (8).

Subsec. (c)(1)(B)(iii). Pub. L. 109–432, § 302(b), added cl. (iii).

Subsec. (d)(1)(A)(ii)(I). Pub. L. 109–432, § 303(b), substituted ''subsection (b)(2)(B)'' for ''subsection (b)(2)(B)(ii)''.

Subsec. (g)(1). Pub. L. 109–432, § 304, inserted concluding provisions.

2005—Subsec. (d)(2)(A). Pub. L. 109–135 inserted '', determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof'' after ''section 152''.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 9003(a) of Pub. L. 111–148 applicable to amounts paid with respect to taxable years beginning after Dec. 31, 2010, see section 9003(d)(1) of Pub. L. 111–148, set out as a note under section 220 of this title.

Amendment by section 9004(a) of Pub. L. 111–148 applicable to distributions made after Dec. 31, 2010, see section 9004(c) of Pub. L. 111–148, set out as a note under section 220 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title III, § 302(c)(2), Dec. 20, 2006, 120 Stat. 2949, provided that: ''The amendment made by subsection (b) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 20, 2006].''

Pub. L. 109–432, div. A, title III, § 303(c), Dec. 20, 2006, 120 Stat. 2950, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006.''

Pub. L. 109–432, div. A, title III, § 305(b), Dec. 20, 2006, 120 Stat. 2951, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006.''

Pub. L. 109–432, div. A, title III, § 307(c), Dec. 20, 2006, 120 Stat. 2953, provided that: ''The amendments made by this section [amending this section and section 408 of this title] shall apply to taxable years beginning after December 31, 2006.''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provisions of the Working Families Tax Relief Act of 2004, Pub. L. 108–311, to which such amendment relates, see section 404(d) of Pub. L. 109–135, set out as a note under section 21 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108–173, set out as an Effective Date of 2003 Amendment note under section 62 of this title.

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

Provisions relating to inflation adjustment of items in this section for certain years were contained in the following:

2011—Revenue Procedure 2010–22.
2010—Revenue Procedure 2009–29.
2009—Revenue Procedure 2008–29.
2008—Revenue Procedure 2007–36.

§ 224. Cross reference

For deductions in respect of a decedent, see section 691.

(Aug. 16, 1954, ch. 736, 68A Stat. 72, § 217; renumbered § 218, Pub. L. 88–272, title II, § 213(a)(1), Feb. 26, 1964, 78 Stat. 50; renumbered § 219, Pub. L. 92–178, title VII, § 702(a), Dec. 10, 1971, 85 Stat. 561; renumbered § 220, Pub. L. 93–406, title II, § 2002(a)(1), Sept. 2, 1974, 88 Stat. 958; renumbered § 221, Pub. L. 94–455, title XV, § 1501(a), Oct. 4, 1976, 90 Stat. 1734; renumbered § 222, renumbered § 223, Pub. L. 97–34, title I, §§ 103(a), 125(a), Aug. 13, 1981, 95 Stat. 187, 201; renumbered § 220 and amended Pub. L. 99–514, title I, § 135(b)(1), title

III, § 301(b)(5)(A), Oct. 22, 1986, 100 Stat. 2116, 2217; renumbered § 221, Pub. L. 100–647, title VI, § 6007(a), Nov. 10, 1988, 102 Stat. 3687; renumbered § 220, Pub. L. 101–508, title XI, § 11802(e)(2), Nov. 5, 1990, 104 Stat. 1388–530; renumbered § 221, Pub. L. 104–191, title III, § 301(a), Aug. 21, 1996, 110 Stat. 2037; renumbered § 222, Pub. L. 105–34, title II, § 202(a), Aug. 5, 1997, 111 Stat. 806; renumbered § 223, Pub. L. 107–16, title IV, § 431(a), June 7, 2001, 115 Stat. 66; renumbered § 224, Pub. L. 108–173, title XII, § 1201(a), Dec. 8, 2003, 117 Stat. 2469.)

AMENDMENT OF SECTION

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

AMENDMENTS

2003—Pub. L. 108–173 renumbered section 223 of this title as this section.

2001—Pub. L. 107–16, §§ 431(a), 901, temporarily renumbered section 222 as this section. See Effective and Termination Dates of 2001 Amendment note below.

1997—Pub. L. 105–34 renumbered section 221 of this title as this section.

1996—Pub. L. 104–191 renumbered section 220 of this title as this section.

1990—Pub. L. 101–508 renumbered section 221 of this title as this section.

1986—Pub. L. 99–514, § 135(b)(1), renumbered section 223 of this title as this section.

Pub. L. 99–514, § 301(b)(5)(A), amended section generally, substituting ''reference'' for ''references'' in section catchline, striking out par. (1) which referred to section 1202 for deduction for long-term capital gains in the case of a taxpayer other than a corporation, and striking out par. (2) designation.

1981—Pub. L. 97–34 successively renumbered sections 221 and 222 of this title as this section.

1976—Pub. L. 94–455 renumbered section 220 of this title as this section.

1974—Pub. L. 93–406 renumbered section 219 of this title as this section.

1971—Pub. L. 92–178 renumbered section 218 of this title as this section.

1964—Pub. L. 88–272 renumbered section 217 of this title as this section.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–173 applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108–173, set out as a note under section 62 of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to payments made in taxable years beginning after Dec. 31, 2001, see section 431(d) of Pub. L. 107–16, set out as a note under section 62 of this title.

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 301(b)(5)(A) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 301(c) of Pub. L. 99–514, set out as a note under section 62 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by section 11802(e)(2) of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PART VIII—SPECIAL DEDUCTIONS FOR CORPORATIONS

Sec.
241. Allowance of special deductions.
[242. Repealed.]
243. Dividends received by corporations.
244. Dividends received on certain preferred stock.
245. Dividends received from certain foreign corporations.
246. Rules applying to deductions for dividends received.
246A. Dividends received deduction reduced where portfolio stock is debt financed.
247. Dividends paid on certain preferred stock of public utilities.
248. Organizational expenditures.
249. Limitation on deduction of bond premium on repurchase.
[250. Repealed.]

AMENDMENTS

1990—Pub. L. 101–508, title XI, § 11801(b)(4), Nov. 5, 1990, 104 Stat. 1388–522, struck out item 250 ''Certain payments to the National Railroad Passenger Corporation''.

1984—Pub. L. 98–369, div. A, title I, § 51(b), July 18, 1984, 98 Stat. 564, added item 246A.

1976—Pub. L. 94–455, title XIX, § 1901(b)(1)(AA), Oct. 4, 1976, 90 Stat. 1792, struck out item 242 ''Partially tax-exempt interest''.

1970—Pub. L. 91–518, title IX, § 901(b), Oct. 30, 1970, 84 Stat. 1342, added item 250.

1969—Pub. L. 91–172, title IV, § 414(b), Dec. 30, 1969, 83 Stat. 613, added item 249.

§ 241. Allowance of special deductions

In addition to the deductions provided in part VI (sec. 161 and following), there shall be allowed as deductions in computing taxable income the items specified in this part.

(Aug. 16, 1954, ch. 736, 68A Stat. 72.)

[§ 242. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(33), Oct. 4, 1976, 90 Stat. 1769]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 72; Feb. 26, 1964, Pub. L. 88–272, title I, § 123(c), 78 Stat. 30, allowed to corporations as a deduction the amount received as interest on obligations of the United States or on obligations of corporations organized under Acts of Congress which are instrumentalities of the United States under certain conditions.

EFFECTIVE DATE OF REPEAL

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

§ 243. Dividends received by corporations

(a) General rule

In the case of a corporation, there shall be allowed as a deduction an amount equal to the following percentages of the amount received as dividends from a domestic corporation which is subject to taxation under this chapter:

(1) 70 percent, in the case of dividends other than dividends described in paragraph (2) or (3);

(2) 100 percent, in the case of dividends received by a small business investment company operating under the Small Business Investment Act of 1958 (15 U.S.C. 661 and following); and

(3) 100 percent, in the case of qualifying dividends (as defined in subsection (b)(1)).

(b) Qualifying dividends

(1) In general

For purposes of this section, the term ''qualifying dividend'' means any dividend received by a corporation—

(A) if at the close of the day on which such dividend is received, such corporation is a member of the same affiliated group as the corporation distributing such dividend, and

(B) if—

(i) such dividend is distributed out of the earnings and profits of a taxable year of the distributing corporation which ends after December 31, 1963, for which an election under section 1562 was not in effect, and on each day of which the distributing corporation and the corporation receiving the dividend were members of such affiliated group, or

(ii) such dividend is paid by a corporation with respect to which an election under section 936 is in effect for the taxable year in which such dividend is paid.

(2) Affiliated group

For purposes of this subsection:

(A) In general

The term ''affiliated group'' has the meaning given such term by section 1504(a), except that for such purposes sections 1504(b)(2), 1504(b)(4), and 1504(c) shall not apply.

(B) Group must be consistent in foreign tax treatment

The requirements of paragraph (1)(A) shall not be treated as being met with respect to any dividend received by a corporation if, for any taxable year which includes the day on which such dividend is received—

(i) 1 or more members of the affiliated group referred to in paragraph (1)(A) choose to any extent to take the benefits of section 901, and

(ii) 1 or more other members of such group claim to any extent a deduction for taxes otherwise creditable under section 901.

(3) Special rule for groups which include life insurance companies

(A) In general

In the case of an affiliated group which includes 1 or more insurance companies under section 801, no dividend by any member of such group shall be treated as a qualifying dividend unless an election under this paragraph is in effect for the taxable year in which the dividend is received. The preceding sentence shall not apply in the case of a dividend described in paragraph (1)(B)(ii).

(B) Effect of election

If an election under this paragraph is in effect with respect to any affiliated group—

(i) part II of subchapter B of chapter 6 (relating to certain controlled corporations) shall be applied with respect to the members of such group without regard to sections 1563(a)(4) and 1563(b)(2)(D), and

(ii) for purposes of this subsection, a distribution by any member of such group which is subject to tax under section 801 shall not be treated as a qualifying dividend if such distribution is out of earnings and profits for a taxable year for which an election under this paragraph is not effective and for which such distributing corporation was not a component member of a controlled group of corporations within the meaning of section 1563 solely by reason of section 1563(b)(2)(D).

(C) Election

An election under this paragraph shall be made by the common parent of the affiliated group and at such time and in such manner as the Secretary shall by regulations prescribe. Any such election shall be binding on all members of such group and may be revoked only with the consent of the Secretary.

(c) Retention of 80-percent dividends received deduction for dividends from 20-percent owned corporations

(1) In general

In the case of any dividend received from a 20-percent owned corporation—

(A) subsection (a)(1) of this section, and

(B) subsections (a)(3) and (b)(2) of section 244,

shall be applied by substituting ''80 percent'' for ''70 percent''.

(2) 20-percent owned corporation

For purposes of this section, the term ''20-percent owned corporation'' means any corporation if 20 percent or more of the stock of such corporation (by vote and value) is owned by the taxpayer. For purposes of the preceding sentence, stock described in section 1504(a)(4) shall not be taken into account.

(d) Special rules for certain distributions

For purposes of subsection (a)—

(1) Any amount allowed as a deduction under section 591 (relating to deduction for dividends paid by mutual savings banks, etc.) shall not be treated as a dividend.

(2) A dividend received from a regulated investment company shall be subject to the limitations prescribed in section 854.

(3) Any dividend received from a real estate investment trust which, for the taxable year of the trust in which the dividend is paid, qualifies under part II of subchapter M (section 856 and following) shall not be treated as a dividend.

(4) Any dividend received which is described in section 244 (relating to dividends received on preferred stock of a public utility) shall not be treated as a dividend.

(e) Certain dividends from foreign corporations

For purposes of subsection (a) and for purposes of section 245, any dividend from a foreign cor-

poration from earnings and profits accumulated by a domestic corporation during a period with respect to which such domestic corporation was subject to taxation under this chapter (or corresponding provisions of prior law) shall be treated as a dividend from a domestic corporation which is subject to taxation under this chapter.

(Aug. 16, 1954, ch. 736, 68A Stat. 73; Pub. L. 85–866, title I, § 57(b), Sept. 2, 1958, 72 Stat. 1645; Pub. L. 86–779, §§ 3(a), 10(g), Sept. 14, 1960, 74 Stat. 998, 1009; Pub. L. 88–272, title II, § 214(a), Feb. 26, 1964, 78 Stat. 52; Pub. L. 90–364, title I, § 103(e)(2), June 28, 1968, 82 Stat. 264; Pub. L. 91–172, title V, § 504(c)(1), Dec. 30, 1969, 83 Stat. 633; Pub. L. 94–12, title III, § 304(b), Mar. 29, 1975, 89 Stat. 45; Pub. L. 94–455, title X, §§ 1031(b)(2), 1051(f)(1), (2), title XIX, §§ 1901(a)(34), (b)(1)(J)(ii), (21)(A)(i), 1906(b)(3)(C)(ii), (13)(A), Oct. 4, 1976, 90 Stat. 1622, 1646, 1769, 1791, 1797, 1833, 1834; Pub. L. 97–34, title II, § 232(b)(2), Aug. 13, 1981, 95 Stat. 250; Pub. L. 98–369, div. A, title II, § 211(b)(3), July 18, 1984, 98 Stat. 754; Pub. L. 99–514, title IV, § 411(b)(2)(C)(iv), title VI, § 611(a)(1), Oct. 22, 1986, 100 Stat. 2227, 2249; Pub. L. 100–203, title X, § 10221(a)(1), (b), Dec. 22, 1987, 101 Stat. 1330–408; Pub. L. 100–647, title I, § 1010(f)(4), Nov. 10, 1988, 102 Stat. 3454; Pub. L. 101–508, title XI, § 11814(a), Nov. 5, 1990, 104 Stat. 1388–556; Pub. L. 104–188, title I, § 1702(h)(4), (8), Aug. 20, 1996, 110 Stat. 1873, 1874.)

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in subsec. (a)(2), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§ 661 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 661 of Title 15 and Tables.

Section 1562, referred to in subsec. (b)(1)(B)(i), was repealed by Pub. L. 91–172, title IV, § 401(a)(2), Dec. 30, 1969, 83 Stat. 600.

AMENDMENTS

1996—Subsec. (b)(2). Pub. L. 104–188, § 1702(h)(8), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of this subsection, the term 'affiliated group' has the meaning given such term by section 1504(a), except that for such purposes sections 1504(b)(2), 1504(b)(4), and 1504(c) shall not apply.''

Subsec. (b)(3)(A). Pub. L. 104–188, § 1702(h)(4), inserted ''of'' after ''In the case''.

1990—Subsec. (b). Pub. L. 101–508 amended subsec. (b) generally, substituting present provisions for provisions defining ''qualifying dividends'', providing for an election by or for an affiliated group, the effect of an election, and the termination of an election, defining an ''affiliated group'', and providing special rules for insurance companies.

1988—Subsec. (b)(6). Pub. L. 100–647 substituted ''section 801'' for ''section 801 or 821''.

1987—Subsec. (a)(1). Pub. L. 100–203, § 10221(a)(1), substituted ''70 percent'' for ''80 percent''.

Subsecs. (c) to (e). Pub. L. 100–203, § 10221(b), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

1986—Subsec. (a)(1). Pub. L. 99–514, § 611(a)(1), substituted ''80 percent'' for ''85 percent''.

Subsec. (b)(3)(C). Pub. L. 99–514, § 411(b)(2)(C)(iv), inserted ''and'' at end of cl. (i), redesignated cl. (iii) as (ii), and struck out former cl. (ii) which read as follows: ''$400,000 limitation for certain exploration expenditures under section 617(h)(1), and''.

1984—Subsec. (b)(3)(C). Pub. L. 98–369, § 211(b)(3)(A), inserted ''and'' at end of cl. (ii), struck out cl. (iii) which provided for a $25,000 limitation on small business deduction of life insurance companies under sections 804(a)(3) and 809(d)(10), and redesignated cl. (iv) as (iii).

Subsec. (b)(6). Pub. L. 98–369, § 211(b)(3)(B), substituted ''section 801'' for ''section 802''.

1981—Subsec. (b)(3)(C)(i). Pub. L. 97–34 struck out ''$150,000'' before ''minimum accumulated earnings credit''.

1976—Subsec. (a)(2). Pub. L. 94–455, § 1901(a)(34)(A), inserted ''(15 U.S.C. 661 and following)'' after ''Small Business Investment Act of 1958''.

Subsec. (b)(1). Pub. L. 94–455, § 1051(f)(1), inserted ''either'' at end of subpar. (A), substituted a comma for a period and inserted ''or'' at end of subpar. (B), and added subpar. (C).

Subsec. (b)(2), (3), (4). Pub. L. 94–455, title XIX, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (b)(2)(A). Pub. L. 94–455, § 1901(a)(34)(B), struck out ''(except that in the case of a taxable year of a member beginning in 1963 and ending in 1964, if the election is effective for the taxable year of the common parent corporation which includes the last day of such taxable year of such member, such election shall be effective for such taxable year of such member, if such member consents to such election with respect to such taxable year)'' after ''with respect to which the election is made''.

Subsec. (b)(3)(B). Pub. L. 94–455, § 1031(b)(2), substituted ''election under section 901(a) (relating to allowance of foreign tax credit)'' for ''elections under section 901(a) (relating to allowance of foreign tax credit) and section 904(b)(1) (relating to election of overall limitation)''.

Subsec. (b)(3)(C). Pub. L. 94–455, §§ 1901(b)(1)(J)(ii), (21)(A)(i), 1906(b)(3)(C)(ii), struck out cl. (ii) which set a $100,000 limitation for exploration expenditures under section 615 (a) and (b), redesignated former cls. (iii), (iv), and (v) as cls. (ii), (iii), and (iv), respectively, and substituted ''certain exploration expenditures under section 617(h)(1)'' for ''exploration expenditures under sections 615(c)(1) and 617(h)(1)'' in cl. (ii) as so redesignated, ''804(a)(3)'' for ''804(a)(4)'' in cl. (iii) as so redesignated, and ''section 6154(c)(2) and section 6655(e)(2)'' for ''sections 6154(c)(2) and (3) and sections 6655(e)(2) and (3)'' in cl. (iv) as so redesignated.

Subsec. (b)(5). Pub. L. 94–455, § 1051(f)(2), inserted '', 1504(b)(4),'' after ''sections 1504(b)(2)''.

1975—Subsec. (b)(3)(C)(i). Pub. L. 94–12 substituted ''$150,000'' for ''$100,000''.

1969—Subsec. (b)(3)(C)(iii). Pub. L. 91–172 substituted ''sections 615(c)(1) and 617(h)(1)'' for ''section 615(c)(1)''.

1968—Subsec. (b)(3)(C)(v). Pub. L. 90–364 substituted ''surtax exemption, and one amount under section 6154(c)(2) and (3) and sections 6655(e)(2) and (3), for purposes of estimated tax payment requirements under section 6154'' for ''$100,000 exemption for purposes of estimated tax filing requirements under section 6016''.

1964—Subsec. (a). Pub. L. 88–272 substituted provisions permitting a deduction for 85 percent of dividends received except that it shall be 100 percent when received by a small business investment company operating under the Small Business Investment Act of 1958, and 100 percent in case of qualifying dividends, for provisions permitting an 85 percent deduction for corporations other than one operating under the Small Business Investment Act of 1958, and for other than dividends described in section 244(1) of this title.

Subsec. (b). Pub. L. 88–272 added subsec. (b) and omitted a prior subsec. (b) which allowed a 100 percent deduction of dividends received by a small business investment company operating under the Small Business Investment Act of 1958, other than dividends described in section 244(1) of this title.

Subsec. (c). Pub. L. 88–272 substituted ''subsection (a)'' for ''subsections (a) and (b)'' and added par. (4).

Subsec. (d). Pub. L. 88–272 substituted ''subsection (a)'' for ''subsections (a) and (b)''.

1960—Subsec. (c)(3). Pub. L. 86–779, § 10(g), added par. (3).

Subsec. (d). Pub. L. 86–779, § 3(a), added subsec. (d).

1958—Subsec. (a). Pub. L. 85–866, § 57(b)(1), inserted ''(other than a small business investment company operating under the Small Business Investment Act of 1958)''.

Subsecs. (b), (c). Pub. L. 85–866, § 57(b)(2), (3), added subsec. (b), redesignated former subsec. (b) as (c), and substituted ''subsections (a) and (b)'' for ''subsection (a)''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11814(c) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 1504 of this title] shall apply to taxable years beginning after December 31, 1990.

''(2) TREATMENT OF OLD ELECTIONS.—For purposes of section 243(b)(3) of the Internal Revenue Code of 1986 (as amended by subsection (a)), any reference to an election under such section shall be treated as including a reference to an election under section 243(b) of such Code (as in effect on the day before the date of the enactment of this Act [Nov. 5, 1990]).''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10221(e) of Pub. L. 100–203, as amended by Pub. L. 100–647, title II, § 2004(i)(1), Nov. 10, 1988, 102 Stat. 3603, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 244 to 246A, 805, 854, and 861 of this title] shall apply to dividends received or accrued after December 31, 1987, in taxable years ending after such date.

''(2) AMENDMENTS RELATING TO LIMITATIONS.—The amendments made by subsection (c) [amending sections 246 and 805 of this title] shall apply to taxable years beginning after December 31, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 411(b)(2)(C)(iv) of Pub. L. 99–514 applicable, except as otherwise provided, to costs paid or incurred after Dec. 31, 1986, in taxable years ending after such date, see section 411(c) of Pub. L. 99–514 set out as a note under section 263 of this title.

Amendment by section 611(a)(1) of Pub. L. 99–514 applicable to dividends received or accrued after Dec. 31, 1986, in taxable years ending after such date, see section 611(b) of Pub. L. 99–514, set out as a note under section 246 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 232(c) of Pub. L. 97–34, set out as a note under section 535 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1031(b)(2) of Pub. L. 94–455, see section 1031(c) of Pub. L. 94–455, set out as a note set out under section 904 of this title.

For effective date of amendment by section 1051(f)(1), (2) of Pub. L. 94–455, see section 1051(i) of Pub. L. 94–455, set out as a note under section 27 of this title.

Amendment by section 1901(a)(34), (b)(1), (21) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

For effective date of amendment by section 1906(b)(3)(C)(ii) of Pub. L. 94–455, see section 1906(d) of Pub. L. 94–455, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–12 applicable to taxable years beginning after Dec. 31, 1974, see section 305(c) of Pub. L. 94–12, set out as a note under section 535 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 504(d) of Pub. L. 91–172, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 381, 615, 617, 703, and 1016 of this title] shall apply with respect to exploration expenditures paid or incurred after December 31, 1969.

''(2) PRESUMPTION OF ELECTION UNDER SECTION 617.—For purposes of section 617 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], an election under section 615(e) of such Code, which is effective with respect to exploration expenditures paid or incurred before January 1, 1970, shall be treated as an election under section 617(a) of such Code with respect to exploration expenditures paid or incurred after December 31, 1969. The preceding sentence shall not apply to any taxpayer who notifies the Secretary of the Treasury or his delegate (at such time and in such manner as the Secretary or his delegate prescribes by regulations) that he does not desire his election under section 615(e) to be so treated.''

EFFECTIVE DATE OF 1968 AMENDMENT

Section 103(f) of Pub. L. 90–364 provided that: ''Except as provided by section 104 [formerly set out as notes under sections 51 and 6154 of this title], the amendments made by this section [enacting section 6425, amending this section and sections 6020, 6154, 6651, 6655, 7203, and 7701, and repealing sections 6016 and 6074 of this title] shall apply with respect to taxable years beginning after December 31, 1967.''

EFFECTIVE DATE OF 1964 AMENDMENT

Section 214(c) of Pub. L. 88–272 provided that: ''The amendments made by subsections (a) [amending this section] and (b) [amending sections 244, 246, 804, and 809 of this title] shall apply with respect to dividends received in taxable years ending after December 31, 1963.''

EFFECTIVE DATE OF 1960 AMENDMENT

Section 3(c) of Pub. L. 86–779 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 861 of this title] shall apply to dividends received after December 31, 1959, in taxable years ending after such date.''

Amendment by section 10(g) of Pub. L. 86–779 applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86–779, set out as an Effective Date note under section 856 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 57(d) of Pub. L. 85–866 provided that: ''The amendments made by this section [enacting sections 1242 and 1243 and amending this section and sections 165

and 246 of this title] shall apply with respect to taxable years beginning after the date of the enactment of this Act [Sept. 2, 1958].''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§ 244. Dividends received on certain preferred stock

(a) General rule

In the case of a corporation, there shall be allowed as a deduction an amount computed as follows:

(1) First determine the amount received as dividends on the preferred stock of a public utility which is subject to taxation under this chapter and with respect to which the deduction provided in section 247 for dividends paid is allowable.

(2) Then multiply the amount determined under paragraph (1) by the fraction—

(A) the numerator of which is 14 percent, and

(B) the denominator of which is that percentage which equals the highest rate of tax specified in section 11(b).

(3) Finally ascertain the amount which is 70 percent of the excess of—

(A) the amount determined under paragraph (1), over

(B) the amount determined under paragraph (2).

(b) Exception

If the dividends described in subsection (a)(1) are qualifying dividends (as defined in section 243(b)(1), but determined without regard to section 243(d)(4))—

(1) subsection (a) shall be applied separately to such qualifying dividends, and

(2) for purposes of subsection (a)(3), the percentage applicable to such qualifying dividends shall be 100 percent in lieu of 70 percent.

(Aug. 16, 1954, ch. 736, 68A Stat. 73; Pub. L. 88–272, title II, § 214(b)(1), Feb. 26, 1964, 78 Stat. 55; Pub. L. 95–600, title III, § 301(b)(3), Nov. 6, 1978, 92 Stat. 2820; Pub. L. 99–514, title VI, § 611(a)(2), Oct. 22, 1986, 100 Stat. 2249; Pub. L. 100–203, title X, § 10221(a)(2), Dec. 22, 1987, 101 Stat. 1330–408; Pub. L. 100–647, title II, § 2004(i)(2), Nov. 10, 1988, 102 Stat. 3603.)

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–647 substituted ''section 243(d)(4)'' for ''section 243(c)(4)''.

1987—Subsecs. (a)(3), (b)(2). Pub. L. 100–203 substituted ''70 percent'' for ''80 percent''.

1986—Subsecs. (a)(3), (b)(2). Pub. L. 99–514 substituted ''80 percent'' for ''85 percent''.

1978—Subsec. (a)(2)(B). Pub. L. 95–600 substituted ''the highest rate of tax specified in section 11(b)'' for ''the sum of the normal tax rate and the surtax rate for the taxable year prescribed by section 11''.

1964—Pub. L. 88–272 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to dividends received or accrued after Dec. 31, 1987, in taxable years ending after such date, see section 10221(e)(1) of Pub. L. 100–203, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to dividends received or accrued after Dec. 31, 1986, in taxable years ending after such date, see section 611(b) of Pub. L. 99–514, set out as a note under section 246 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to dividends received in taxable years ending after Dec. 31, 1963, see section 214(c) of Pub. L. 88–272, set out as a note under section 243 of this title.

§ 245. Dividends received from certain foreign corporations

(a) Dividends from 10-percent owned foreign corporations

(1) In general

In the case of dividends received by a corporation from a qualified 10-percent owned foreign corporation, there shall be allowed as a deduction an amount equal to the percent (specified in section 243 for the taxable year) of the U.S.-source portion of such dividends.

(2) Qualified 10-percent owned foreign corporation

For purposes of this subsection, the term ''qualified 10-percent owned foreign corporation'' means any foreign corporation (other than a passive foreign investment company) if at least 10 percent of the stock of such corporation (by vote and value) is owned by the taxpayer.

(3) U.S.-source portion

For purposes of this subsection, the U.S.-source portion of any dividend is an amount which bears the same ratio to such dividend as—

(A) the post-1986 undistributed U.S. earnings, bears to

(B) the total post-1986 undistributed earnings.

(4) Post-1986 undistributed earnings

For purposes of this subsection, the term ''post-1986 undistributed earnings'' has the meaning given to such term by section 902(c)(1).

(5) Post-1986 undistributed U.S. earnings

For purposes of this subsection, the term ''post-1986 undistributed U.S. earnings'' means

the portion of the post-1986 undistributed earnings which is attributable to—

(A) income of the qualified 10-percent owned foreign corporation which is effectively connected with the conduct of a trade or business within the United States and subject to tax under this chapter, or

(B) any dividend received (directly or through a wholly owned foreign corporation) from a domestic corporation at least 80 percent of the stock of which (by vote and value) is owned (directly or through such wholly owned foreign corporation) by the qualified 10-percent owned foreign corporation.

(6) Special rule

If the 1st day on which the requirements of paragraph (2) are met with respect to any foreign corporation is in a taxable year of such corporation beginning after December 31, 1986, the post-1986 undistributed earnings and the post-1986 undistributed U.S. earnings of such corporation shall be determined by only taking into account periods beginning on and after the 1st day of the 1st taxable year in which such requirements are met.

(7) Coordination with subsection (b)

Earnings and profits of any qualified 10-percent owned foreign corporation for any taxable year shall not be taken into account under this subsection if the deduction provided by subsection (b) would be allowable with respect to dividends paid out of such earnings and profits.

(8) Disallowance of foreign tax credit

No credit shall be allowed under section 901 for any taxes paid or accrued (or treated as paid or accrued) with respect to the United States-source portion of any dividend received by a corporation from a qualified 10-percent-owned foreign corporation.

(9) Coordination with section 904

For purposes of section 904, the U.S.-source portion of any dividend received by a corporation from a qualified 10-percent owned foreign corporation shall be treated as from sources in the United States.

(10) Coordination with treaties

If—

(A) any portion of a dividend received by a corporation from a qualified 10-percent-owned foreign corporation would be treated as from sources in the United States under paragraph (9),

(B) under a treaty obligation of the United States (applied without regard to this subsection), such portion would be treated as arising from sources outside the United States, and

(C) the taxpayer chooses the benefits of this paragraph,

this subsection shall not apply to such dividend (but subsections (a), (b), and (c) of section 904 and sections 902, 907, and 960 shall be applied separately with respect to such portion of such dividend).

(11) Coordination with section 1248

For purposes of this subsection, the term ''dividend'' does not include any amount treated as a dividend under section 1248.

(b) Certain dividends received from wholly owned foreign subsidiaries

(1) In general

In the case of dividends described in paragraph (2) received from a foreign corporation by a domestic corporation which, for its taxable year in which such dividends are received, owns (directly or indirectly) all of the outstanding stock of such foreign corporation, there shall be allowed as a deduction (in lieu of the deduction provided by subsection (a)) an amount equal to 100 percent of such dividends.

(2) Eligible dividends

Paragraph (1) shall apply only to dividends which are paid out of the earnings and profits of a foreign corporation for a taxable year during which—

(A) all of its outstanding stock is owned (directly or indirectly) by the domestic corporation to which such dividends are paid; and

(B) all of its gross income from all sources is effectively connected with the conduct of a trade or business within the United States.

(3) Exception

Paragraph (1) shall not apply to any dividends if an election under section 1562 is effective for either—

(A) the taxable year of the domestic corporation in which such dividends are received, or

(B) the taxable year of the foreign corporation out of the earnings and profits of which such dividends are paid.

(c) Certain dividends received from FSC

(1) In general

In the case of a domestic corporation, there shall be allowed as a deduction an amount equal to—

(A) 100 percent of any dividend received from another corporation which is distributed out of earnings and profits attributable to foreign trade income for a period during which such other corporation was a FSC, and

(B) 70 percent (80 percent in the case of dividends from a 20-percent owned corporation as defined in section 243(c)(2)) of any dividend received from another corporation which is distributed out of earnings and profits attributable to effectively connected income received or accrued by such other corporation while such other corporation was a FSC.

(2) Exception for certain dividends

Paragraph (1) shall not apply to any dividend which is distributed out of earnings and profits attributable to foreign trade income which—

(A) is section 923(a)(2) nonexempt income (within the meaning of section 927(d)(6)), or

(B) would not, but for section 923(a)(4), be treated as exempt foreign trade income.

(3) No deduction under subsection (a) or (b)

No deduction shall be allowable under subsection (a) or (b) with respect to any dividend which is distributed out of earnings and profits of a corporation accumulated while such corporation was a FSC.

(4) Definitions

For purposes of this subsection—

(A) Foreign trade income; exempt foreign trade income

The terms ''foreign trade income'' and ''exempt foreign trade income'' have the respective meanings given such terms by section 923.

(B) Effectively connected income

The term ''effectively connected income'' means any income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States and is subject to tax under this chapter. Such term shall not include any foreign trade income.

(C) FSC

The term ''FSC'' has the meaning given such term by section 922.

(5) References to prior law

Any reference in this subsection to section 922, 923, or 927 shall be treated as a reference to such section as in effect before its repeal by the FSC Repeal and Extraterritorial Income Exclusion Act of 2000.

(Aug. 16, 1954, ch. 736, 68A Stat. 73; Pub. L. 87–834, §5(c), Oct. 16, 1962, 76 Stat. 977; Pub. L. 89–809, title I, §104(d), (e), Nov. 13, 1966, 80 Stat. 1558; Pub. L. 98–369, div. A, title VIII, §801(b)(1), (2)(B), July 18, 1984, 98 Stat. 994, 995; Pub. L. 99–514, title XII, §1226(a), title XVIII, §1876(d)(1), (j), Oct. 22, 1986, 100 Stat. 2559, 2898, 2900; Pub. L. 100–203, title X, §10221(d)(1), Dec. 22, 1987, 101 Stat. 1330–409; Pub. L. 100–647, title I, §§1006(e)(16), 1012(*l*)(2), (3), (bb)(9)(A), Nov. 10, 1988, 102 Stat. 3403, 3513, 3537; Pub. L. 101–239, title VII, §7811(i)(14), Dec. 19, 1989, 103 Stat. 2411; Pub. L. 108–357, title IV, §413(c)(3), Oct. 22, 2004, 118 Stat. 1507; Pub. L. 110–172, §11(g)(3), (4), Dec. 29, 2007, 121 Stat. 2490.)

REFERENCES IN TEXT

Section 1562, referred to in subsec. (b)(3), was repealed by Pub. L. 91–172, title IV, §401(a)(2), Dec. 30, 1969, 83 Stat. 600.

The FSC Repeal and Extraterritorial Income Exclusion Act of 2000, referred to in subsec. (c)(5), is Pub. L. 106–519, Nov. 15, 2000, 114 Stat. 2423. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under section 1 of this title and Tables.

AMENDMENTS

2007—Subsec. (c)(4)(C). Pub. L. 110–172, §11(g)(3), added subpar. (C).

Subsec. (c)(5). Pub. L. 110–172, §11(g)(4), added par. (5).

2004—Subsec. (a)(2). Pub. L. 108–357 struck out ''foreign personal holding company or'' after ''(other than a''.

1989—Subsec. (a)(8). Pub. L. 101–239 made clarifying amendment to directory language of Pub. L. 100–647, §1012(*l*)(2)(A), see 1988 Amendment note below.

1988—Subsec. (a)(8). Pub. L. 100–647, §1012(*l*)(2)(A), as amended by Pub. L. 101–239, substituted ''Disallowance of foreign tax credit'' for ''Coordination with section 902'' in heading and amended text generally. Prior to amendment, text read as follows: ''In the case of a dividend received by a corporation from a qualified 10-percent owned foreign corporation, no credit shall be allowed under section 901 for any taxes treated as paid under section 902 with respect to the U.S.-source portion of such dividend.''

Subsec. (a)(10), (11). Pub. L. 100–647, §1012(*l*)(2)(B), (3), added pars. (10) and (11).

Subsec. (c). Pub. L. 100–647, §1012(bb)(9)(A), amended subsec. (c) generally, revising and restating provisions of pars. (1) to (4).

Subsec. (d). Pub. L. 100–647, §1006(e)(16), struck out subsec. (d) which read as follows: ''PROPERTY DISTRIBUTIONS.—For purposes of this section, the amount of any distribution of property other than money shall be the amount determined by applying section 301(b)(1)(B).''

1987—Subsec. (c)(1)(B). Pub. L. 100–203 substituted ''70 percent (80 percent in the case of dividends from a 20-percent owned corporation as defined in section 243(c)(2))'' for ''85 percent''.

1986—Subsec. (a). Pub. L. 99–514, §1226(a), in amending subsec. (a) generally, substituted ''Dividends from 10-percent owned foreign corporations'' for ''General rule'' as heading, and in text substituted provisions set out in nine numbered paragraphs allowing for deduction for dividends received from certain foreign corporations qualifying as ''10-percent owned foreign corporations'' for former provisions which directed that, in the case of dividends received from a foreign corporation (other than a foreign personal holding company) which was subject to taxation under this chapter, if, for an uninterrupted period of not less than 36 months ending with the close of such foreign corporation's taxable year in which such dividends were paid (or, if the corporation had not been in existence for 36 months at the close of such taxable year, for the period the foreign corporation had been in existence as of the close of such taxable year) such foreign corporation had been engaged in trade or business within the United States and if 50 percent or more of the gross income of such corporation from all sources for such period was effectively connected with the conduct of a trade or business within the United States, there was allowed as a deduction in the case of a corporation a percentage of dividends received.

Subsec. (c)(1). Pub. L. 99–514, §1876(d)(1)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''In the case of a domestic corporation, there shall be allowed as a deduction an amount equal to 100 percent of any dividend received by such corporation from another corporation which is distributed out of earnings and profits attributable to foreign trade income for a period during which such other corporation was a FSC. The deduction allowable under the preceding sentence with respect to any dividend shall be in lieu of any deduction allowable under subsection (a) or (b) with respect to such dividend.''

Subsec. (c)(3). Pub. L. 99–514, §1876(j), added par. (3). Former par. (3) redesignated (4).

Pub. L. 99–514, §1876(d)(1)(B), inserted ''For purposes of this subsection, the term 'qualified interest and carrying charges' means any interest or carrying charges (as defined in section 927(d)(1)) derived from a transaction which results in foreign trade income.''

Subsec. (c)(4). Pub. L. 99–514, §1876(j), redesignated former par. (3) as (4).

1984—Subsec. (c). Pub. L. 98–369 added subsec. (c), redesignated former subsec. (c) as (d), and substituted therein ''this section'' for ''subsections (a) and (b)''.

1966—Subsec. (a). Pub. L. 89–809, §104(d), (e)(2), substituted ''and if 50 percent or more of the gross income of such corporation from all sources for such period is effectively connected with the conduct of a trade or business within the United States'' for ''and has derived 50 percent or more of its gross income from sources within the United States'' in provisions preceding par. (1), ''which is effectively connected with the conduct of a trade or business within the United

States'' for ''from sources within the United States'' in par. (1), '', which is effectively connected with the conduct of a trade or business within the United States,'' for ''from sources within the United States'' in par. (2), and inserted provisions following par. (2).

Subsecs. (b), (c). Pub. L. 89–809, § 104(e)(1), (3), added subsec. (b), redesignated former subsec. (b) as (c), and substituted therein ''subsections (a) and (b)'' for ''subsection (a)''.

1962—Subsec. (b). Pub. L. 87–834 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1012(bb)(9)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply as if included in the provision of the Tax Reform Act of 1984 [Pub. L. 98–369, div. A] to which it relates.''

Amendment by sections 1006(e)(16) and 1012(*l*)(2), (3) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to dividends received or accrued after Dec. 31, 1987, in taxable years ending after such date, see section 10221(e)(1) of Pub. L. 100–203, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1226(c)(1) of Pub. L. 99–514 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to distributions out of earnings and profits for taxable years beginning after December 31, 1986.''

Amendment by section 1876(d)(1), (j) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 805(a) of title VIII of div. A of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, title XVIII, § 1876(i), (*o*), (p)(4), Oct. 22, 1986, 100 Stat. 2095, 2900–2902, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this title [enacting sections 921 to 927 of this title, amending this section and sections 246, 274, 275, 441, 901, 904, 906, 934, 936, 951, 956, 992, 993, 995, 996, 999, 1248, 6011, 6072, 6501, 6686, and 7651 of this title, and enacting provisions set out as notes under sections 921 and 991 of this title] shall apply to transactions after December 31, 1984, in taxable years ending after such date.

''(2) SPECIAL RULE FOR CERTAIN CONTRACTS.—To the extent provided in regulations prescribed by the Secretary of the Treasury or his delegate, any event or activity required to occur or required to be performed, before January 1, 1985, by section 924(c) or (d) or 925(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be treated as meeting the requirements of such section if such event or activity is with respect to—

''(A) any lease of more than 3 years duration which was entered into before January 1, 1985,

''(B) any contract with respect to which the taxpayer uses the completed contract method of accounting which was entered into before January 1, 1985, or

''(C) in the case of any contract other than a lease or contract described in subparagraph (A) or (B), any contract which was entered into before January 1, 1985; except that this subparagraph shall only apply to the first 3 taxable years of the FSC ending after January 1, 1985, or such later taxable years as the Secretary of the Treasury or his delegate may prescribe.

''(3) SECTION 801(d)(10).—The amendment made by section 801(d)(10) [amending section 996 of this title] shall apply to distributions on or after June 22, 1984.

''(4) SECTION 803.—The amendments made by section 803 [amending section 441 of this title] shall apply to taxable years beginning after December 31, 1984.''

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable to distributions made after Dec. 31, 1962, see section 5(d) of Pub. L. 87–834, set out as a note under section 301 of this title.

DIVIDENDS RECEIVED OR ACCRUED DURING 1987

Section 1006(b)(1) of Pub. L. 100–647 provided that: ''In the case of dividends received or accrued during 1987—

''(A) subparagraph (B) of section 245(c)(1) of the 1986 Code shall be applied by substituting '80 percent' for the percentage specified therein, and

''(B) subparagraph (B) of section 861(a)(2) of the 1986 Code shall be applied by substituting '100‰ths' for the fraction specified therein.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 246. Rules applying to deductions for dividends received

(a) Deduction not allowed for dividends from certain corporations

(1) In general

The deductions allowed by sections 243, 244, and 245 shall not apply to any dividend from a corporation which, for the taxable year of the corporation in which the distribution is made, or for the next preceding taxable year of the corporation, is a corporation exempt from tax under section 501 (relating to certain charitable, etc., organizations) or section 521 (relating to farmers' cooperative associations).

(2) Subsection not to apply to certain dividends of Federal Home Loan Banks

(A) Dividends out of current earnings and profits

In the case of any dividend paid by any FHLB out of earnings and profits of the FHLB for the taxable year in which such dividend was paid, paragraph (1) shall not apply to that portion of such dividend which bears the same ratio to the total dividend as—

(i) the dividends received by the FHLB from the FHLMC during such taxable year, bears to

(ii) the total earnings and profits of the FHLB for such taxable year.

(B) Dividends out of accumulated earnings and profits

In the case of any dividend which is paid out of any accumulated earnings and profits of any FHLB, paragraph (1) shall not apply to that portion of the dividend which bears the same ratio to the total dividend as—

(i) the amount of dividends received by such FHLB from the FHLMC which are out of earnings and profits of the FHLMC—

(I) for taxable years ending after December 31, 1984, and

(II) which were not previously treated as distributed under subparagraph (A) or this subparagraph, bears to

(ii) the total accumulated earnings and profits of the FHLB as of the time such dividend is paid.

For purposes of clause (ii), the accumulated earnings and profits of the FHLB as of January 1, 1985, shall be treated as equal to its retained earnings as of such date.

(C) Coordination with section 243

To the extent that paragraph (1) does not apply to any dividend by reason of subparagraph (A) or (B) of this paragraph, the requirement contained in section 243(a) that the corporation paying the dividend be subject to taxation under this chapter shall not apply.

(D) Definitions

For purposes of this paragraph—

(i) FHLB

The term ''FHLB'' means any Federal Home Loan Bank.

(ii) FHLMC

The term ''FHLMC'' means the Federal Home Loan Mortgage Corporation.

(iii) Taxable year of FHLB

The taxable year of an FHLB shall, except as provided in regulations prescribed by the Secretary, be treated as the calendar year.

(iv) Earnings and profits

The earnings and profits of any FHLB for any taxable year shall be treated as equal to the sum of—

(I) any dividends received by the FHLB from the FHLMC during such taxable year, and

(II) the total earnings and profits (determined without regard to dividends described in subclause (I)) of the FHLB as reported in its annual financial statement prepared in accordance with section 20 of the Federal Home Loan Bank Act (12 U.S.C. 1440).

(b) Limitation on aggregate amount of deductions

(1) General rule

Except as provided in paragraph (2), the aggregate amount of the deductions allowed by sections 243(a)(1), 244(a), and subsection (a) or (b) of section 245 shall not exceed the percentage determined under paragraph (3) of the taxable income computed without regard to the deductions allowed by sections 172, 199, 243(a)(1), 244(a), subsection (a) or (b) of section 245, and 247, without regard to any adjustment under section 1059, and without regard to any capital loss carryback to the taxable year under section 1212(a)(1).

(2) Effect of net operating loss

Paragraph (1) shall not apply for any taxable year for which there is a net operating loss (as determined under section 172).

(3) Special rules

The provisions of paragraph (1) shall be applied—

(A) first separately with respect to dividends from 20-percent owned corporations (as defined in section 243(c)(2)) and the percentage determined under this paragraph shall be 80 percent, and

(B) then separately with respect to dividends not from 20-percent owned corporations and the percentage determined under this paragraph shall be 70 percent and the taxable income shall be reduced by the aggregate amount of dividends from 20-percent owned corporations (as so defined).

(c) Exclusion of certain dividends

(1) In general

No deduction shall be allowed under section 243, 244, or 245, in respect of any dividend on any share of stock—

(A) which is held by the taxpayer for 45 days or less during the 91-day period beginning on the date which is 45 days before the date on which such share becomes ex-dividend with respect to such dividend, or

(B) to the extent that the taxpayer is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property.

(2) 90-day rule in the case of certain preference dividends

In the case of stock having preference in dividends, if the taxpayer receives dividends with respect to such stock which are attributable to a period or periods aggregating in excess of 366 days, paragraph (1)(A) shall be applied—

(A) by substituting ''90 days'' for ''45 days'' each place it appears, and

(B) by substituting ''181-day period'' for ''91-day period''.

(3) Determination of holding periods

For purposes of this subsection, in determining the period for which the taxpayer has held any share of stock—

(A) the day of disposition, but not the day of acquisition, shall be taken into account, and

(B) paragraph (3) of section 1223 shall not apply.

(4) Holding period reduced for periods where risk of loss diminished

The holding periods determined for purposes of this subsection shall be appropriately reduced (in the manner provided in regulations prescribed by the Secretary) for any period (during such periods) in which—

(A) the taxpayer has an option to sell, is under a contractual obligation to sell, or has made (and not closed) a short sale of, substantially identical stock or securities,

(B) the taxpayer is the grantor of an option to buy substantially identical stock or securities, or

(C) under regulations prescribed by the Secretary, a taxpayer has diminished his risk of loss by holding 1 or more other positions with respect to substantially similar or related property.

The preceding sentence shall not apply in the case of any qualified covered call (as defined in section 1092(c)(4) but without regard to the requirement that gain or loss with respect to the option not be ordinary income or loss), other than a qualified covered call option to which section 1092(f) applies.

(d) Dividends from a DISC or former DISC

No deduction shall be allowed under section 243 in respect of a dividend from a corporation which is a DISC or former DISC (as defined in section 992(a)) to the extent such dividend is paid out of the corporation's accumulated DISC income or previously taxed income, or is a deemed distribution pursuant to section 995(b)(1).

(e) Certain distributions to satisfy requirements

No deduction shall be allowed under section 243(a) with respect to a dividend received pursuant to a distribution described in section 936(h)(4).

(Aug. 16, 1954, ch. 736, 68A Stat. 74; Pub. L. 85–866, title I, §§18(a), 57(c)(2), Sept. 2, 1958, 72 Stat. 1614, 1646; Pub. L. 88–272, title II, §214(b)(2), Feb. 26, 1964, 78 Stat. 55; Pub. L. 91–172, title IV, §434(b)(1), title V, §512(f)(3), Dec. 30, 1969, 83 Stat. 625, 641; Pub. L. 92–178, title V, §502(a), Dec. 10, 1971, 85 Stat. 549; Pub. L. 94–455, title X, §1051(f)(3), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1646, 1834; Pub. L. 97–248, title II, §213(c), Sept. 3, 1982, 96 Stat. 465; Pub. L. 98–369, div. A, title I, §§53(b), (d)(2), 177(b), title VIII, §801(b)(2)(A), July 18, 1984, 98 Stat. 567, 568, 709, 995; Pub. L. 99–514, title VI, §611(a)(3), title XII, §1275(a)(2)(B), title XVIII, §§1804(b)(1)(A), (B), 1812(d)(1), Oct. 22, 1986, 100 Stat. 2249, 2598, 2798, 2835; Pub. L. 100–203, title X, §10221(c)(1), Dec. 22, 1987, 101 Stat. 1330–409; Pub. L. 100–647, title I, §1018(u)(10), Nov. 10, 1988, 102 Stat. 3590; Pub. L. 104–188, title I, §1616(b)(4), Aug. 20, 1996, 110 Stat. 1856; Pub. L. 105–34, title X, §1015(a), (b), Aug. 5, 1997, 111 Stat. 921, 922; Pub. L. 108–311, title IV, §406(f), Oct. 4, 2004, 118 Stat. 1190; Pub. L. 108–357, title I, §102(d)(4), title VIII, §888(d), Oct. 22, 2004, 118 Stat. 1429, 1643; Pub. L. 109–135, title IV, §402(a)(4), Dec. 21, 2005, 119 Stat. 2610.)

AMENDMENTS

2005—Subsec. (c)(3)(B). Pub. L. 109–135 substituted ''paragraph (3) of section 1223'' for ''paragraph (4) of section 1223''.

2004—Subsec. (b)(1). Pub. L. 108–357, §102(d)(4), inserted ''199,'' after ''172,''.

Subsec. (c)(1)(A). Pub. L. 108–311, §406(f)(1), substituted ''91-day period'' for ''90-day period''.

Subsec. (c)(2)(B). Pub. L. 108–311, §406(f)(2), substituted ''181-day period'' for ''180-day period'' and ''91-day period'' for ''90-day period''.

Subsec. (c)(4). Pub. L. 108–357, §888(d), inserted '', other than a qualified covered call option to which section 1092(f) applies'' before period at end of concluding provisions.

1997—Subsec. (c)(1)(A). Pub. L. 105–34, §1015(a), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''which is held by the taxpayer for 45 days or less, or''.

Subsec. (c)(2). Pub. L. 105–34, §1015(b)(1), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''In the case of any stock having preference in dividends, the holding period specified in paragraph (1)(A) shall be 90 days in lieu of 45 days if the taxpayer receives dividends with respect to such stock which are attributable to a period or periods aggregating in excess of 366 days.''

Subsec. (c)(3). Pub. L. 105–34, §1015(b)(2), inserted ''and'' at end of subpar. (A), redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: ''there shall not be taken into account any day which is more than 45 days (or 90 days in the case of stock to which paragraph (2) applies) after the date on which such share becomes ex-dividend, and''.

1996—Subsec. (f). Pub. L. 104–188 struck out subsec. (f) which provided a cross reference to section 596 of this title for special rule relating to mutual savings banks, etc., to which section 593 applies.

1988—Subsec. (c)(1)(A). Pub. L. 100–647 substituted ''which'' for ''Which''.

1987—Subsec. (b)(1). Pub. L. 100–203, §10221(c)(1)(A), substituted ''the percentage determined under paragraph (3)'' for ''80 percent''.

Subsec. (b)(3). Pub. L. 100–203, §10221(c)(1)(B), added par. (3).

1986—Subsec. (a)(2)(B). Pub. L. 99–514, §1812(d)(1)(A), substituted ''In'' for ''For purposes of subparagraph (A), in'' in introductory provisions and substituted cl. (i)(II) for former cl. (i)(II) which read as follows: ''which were not taken into account under subparagraph (A), bears to''.

Subsec. (a)(2)(C), (D). Pub. L. 99–514, §1812(d)(1)(B), (C), added subpar. (C), redesignated former subpar. (C) as (D), and added cl. (iv) to subpar. (D).

Subsec. (b)(1). Pub. L. 99–514, §611(a)(3), substituted ''80 percent'' for ''85 percent''.

Subsec. (c)(1)(A). Pub. L. 99–514, §1804(b)(1)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''which is sold or otherwise disposed of in any case in which the taxpayer has held such share for 45 days or less, or''.

Subsec. (c)(4). Pub. L. 99–514, §1804(b)(1)(B), substituted ''determined for purposes of this subsection'' for ''determined under paragraph (3)''.

Subsec. (e). Pub. L. 99–514, §1275(a)(2)(B), struck out ''or 934(e)(3)'' after ''936(h)(4)''.

1984—Subsec. (a). Pub. L. 98–369, §177(b), amended subsec. (a) generally, designating existing provisions as par. (1) and adding par. (2).

Subsec. (b)(1). Pub. L. 98–369, §801(b)(2)(A), substituted ''subsection (a) or (b) of section 245'' for ''245'' in two places.

Pub. L. 98–369, § 53(d)(2), substituted ''without regard to any adjustment under section 1059, and without regard'' for ''and without regard''.

Subsec. (c)(1)(A). Pub. L. 98–369, § 53(b)(1), substituted ''45'' for ''15''.

Subsec. (c)(1)(B). Pub. L. 98–369, § 53(b)(3), substituted ''to make related payments with respect to positions in substantially similar or related property'' for ''to make corresponding payments with respect to substantially identical stock or securities''.

Subsec. (c)(2). Pub. L. 98–369, § 53(b)(1), substituted ''45'' for ''15''.

Subsec. (c)(3). Pub. L. 98–369, § 53(b)(4), struck out last sentence which directed that the holding periods determined under the preceding provisions of this paragraph be appropriately reduced (in the manner provided in regulations prescribed by the Secretary) for any period (during such holding periods) in which the taxpayer had an option to sell, was under a contractual obligation to sell, or had made (and not closed) a short sale of, substantially identical stock or securities.

Subsec. (c)(3)(B). Pub. L. 98–369, § 53(b)(1), substituted ''45'' for ''15''.

Subsec. (c)(4). Pub. L. 98–369, § 53(b)(2), added par. (4).

1982—Subsecs. (e), (f). Pub. L. 97–248 added subsec. (e) and redesignated former subsec. (e) as (f).

1976—Subsec. (a). Pub. L. 94–455, § 1051(f)(3), struck out references to dividends from corporations organized under the China Trade Act, 1922, and corporations to which section 931 (relating to income from sources within possessions of the United States) applies.

Subsec. (c)(3). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

1971—Subsecs. (d), (e). Pub. L. 92–178 added subsec. (d) and redesignated former subsec. (d) as (e).

1969—Subsec. (b)(1). Pub. L. 91–172, § 512(f)(3), substituted ''and 247, and without regard to any capital loss carryback to the taxable year under section 1212(a)(1)'' for ''and 247''.

Subsec. (d). Pub. L. 91–172, § 434(b)(1), added subsec. (d).

1964—Subsec. (b). Pub. L. 88–272 substituted ''243(a)(1), 244(a)'' for ''243(a), 244'' wherever appearing.

1958—Subsec. (b)(1). Pub. L. 85–866, § 57(c)(2), substituted ''243(a)'' for ''243'' wherever appearing.

Subsec. (c). Pub. L. 85–866, § 18(a), added subsec. (c).

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which it relates, but not applicable with respect to any transaction ordered in compliance with the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) before its repeal, see section 402(m) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 36C of this title.

EFFECTIVE DATE OF 2004 AMENDMENTS

Amendment by section 102(d)(4) of Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2004, see section 102(e) of Pub. L. 108–357, set out as a note under section 56 of this title.

Pub. L. 108–357, title VIII, § 888(e), Oct. 22, 2004, 118 Stat. 1643, provided that: ''The amendments made by this section [amending this section and sections 1092 and 1258 of this title] shall apply to positions established on or after the date of the enactment of this Act [Oct. 22, 2004].''

Amendment by Pub. L. 108–311 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 406(h) of Pub. L. 108–311, set out as a note under section 55 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1015(c) of Pub. L. 105–34 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to dividends received or accrued after the 30th day after the date of the enactment of this Act [Aug. 5, 1997].

''(2) TRANSITIONAL RULE.—The amendments made by this section shall not apply to dividends received or accrued during the 2-year period beginning on the date of the enactment of this Act if—

''(A) the dividend is paid with respect to stock held by the taxpayer on June 8, 1997, and all times thereafter until the dividend is received,

''(B) such stock is continuously subject to a position described in section 246(c)(4) of the Internal Revenue Code of 1986 on June 8, 1997, and all times thereafter until the dividend is received, and

''(C) such stock and position are clearly identified in the taxpayer's records within 30 days after the date of the enactment of this Act.

Stock shall not be treated as meeting the requirement of subparagraph (B) if the position is sold, closed, or otherwise terminated and reestablished.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, see section 1616(c) of Pub. L. 104–188, set out as a note under section 593 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to taxable years beginning after Dec. 31, 1987, see section 10221(e)(2) of Pub. L. 100–203, as amended, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 611(b) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—The amendments made by subsection (a) [amending this section and sections 243, 244, 246A, and 805 of this title] shall apply to dividends received or accrued after December 31, 1986, in taxable years ending after such date.

''(2) AMENDMENT RELATING TO LIMITATION ON DEDUCTIONS.—The amendment made by subsection (a) to section 246(b) of the Internal Revenue Code of 1986 shall apply to taxable years beginning after December 31, 1986.''

Amendment by section 1275(a)(2)(B) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

Section 1804(b)(1)(C) of Pub. L. 99–514 provided that: ''The amendments made by this paragraph [amending this section] shall apply to stock acquired after March 1, 1986.''

Amendment by section 1812(d)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 53(d)(2) of Pub. L. 98–369 applicable to distributions after Mar. 1, 1984, in taxable years ending after such date, and amendment of subsec. (c) of this section by section 53(b) of Pub. L. 98–369, applicable to stock acquired after July 18, 1984, in taxable years ending after such date, see section 53(e)(1), (2) of Pub. L. 98–369, set out as an Effective Date note under section 1059 of this title.

Amendment by section 177(b) of Pub. L. 98–369, effective Jan. 1, 1985, see section 177(d) of Pub. L. 98–369, set out as a note under section 172 of this title.

Amendment by section 801(b)(2)(A) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, see section 213(e)(1) of Pub. L. 97–248, set out as a note under section 936 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1051(f)(3) of Pub. L. 94–455, see section 1051(i) of Pub. L. 94–455, set out as a note under section 27 of this title.

Amendment by section 1906(b)(13)(A) of Pub. L. 94–455 effective Feb. 1, 1977, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable with respect to taxable years ending after Dec. 31, 1971, except that a corporation may not be a DISC for any taxable year beginning before Jan. 1, 1972, see section 507 of Pub. L. 92–178, set out as an Effective Date note under section 991 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 512(f)(3) of Pub. L. 91–172 applicable with respect to net capital losses sustained in taxable years beginning after Dec. 31, 1969, see section 512(g) of Pub. L. 91–172, set out as a note under section 1212 of this title.

Section 434(c) of Pub. L. 91–172 provided that: ''The amendments made by this section [enacting section 596 of this title and amending this section] shall apply to taxable years beginning after July 11, 1969.''

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to dividends received in taxable years ending after Dec. 31, 1963, see section 214(c) of Pub. L. 88–272, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 18(b) of Pub. L. 85–866 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years ending after December 31, 1957, but only with respect to shares of stock acquired or short sales made after December 31, 1957.''

Amendment by section 57(c)(2) of Pub. L. 85–866 applicable with respect to taxable years beginning after Sept. 2, 1958, see section 57(d) of Pub. L. 85–866, set out as a note under section 243 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 246A. Dividends received deduction reduced where portfolio stock is debt financed

(a) General rule

In the case of any dividend on debt-financed portfolio stock, there shall be substituted for the percentage which (but for this subsection) would be used in determining the amount of the deduction allowable under section 243, 244, or 245(a) a percentage equal to the product of—

(1) 70 percent (80 percent in the case of any dividend from a 20-percent owned corporation as defined in section 243(c)(2)), and

(2) 100 percent minus the average indebtedness percentage.

(b) Section not to apply to dividends for which 100 percent dividends received deduction allowable

Subsection (a) shall not apply to—

(1) qualifying dividends (as defined in section 243(b) without regard to section 243(d)(4)), and

(2) dividends received by a small business investment company operating under the Small Business Investment Act of 1958.

(c) Debt financed portfolio stock

For purposes of this section—

(1) In general

The term ''debt financed portfolio stock'' means any portfolio stock if at some time during the base period there is portfolio indebtedness with respect to such stock.

(2) Portfolio stock

The term ''portfolio stock'' means any stock of a corporation unless—

(A) as of the beginning of the ex-dividend date, the taxpayer owns stock of such corporation—

(i) possessing at least 50 percent of the total voting power of the stock of such corporation, and

(ii) having a value equal to at least 50 percent of the total value of the stock of such corporation, or

(B) as of the beginning of the ex-dividend date—

(i) the taxpayer owns stock of such corporation which would meet the requirements of subparagraph (A) if ''20 percent'' were substituted for ''50 percent'' each place it appears in such subparagraph, and

(ii) stock meeting the requirements of subparagraph (A) is owned by 5 or fewer corporate shareholders.

(3) Special rule for stock in a bank or bank holding company

(A) In general

If, as of the beginning of the ex-dividend date, the taxpayer owns stock of any bank or bank holding company having a value equal to at least 80 percent of the total value of the stock of such bank or bank holding company, for purposes of paragraph (2)(A)(i), the taxpayer shall be treated as owning any stock of such bank or bank holding company which the taxpayer has an option to acquire.

(B) Definitions

For purposes of subparagraph (A)—

(i) Bank

The term ''bank'' has the meaning given such term by section 581.

(ii) Bank holding company

The term ''bank holding company'' means a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956).

(4) Treatment of certain preferred stock

For purposes of determining whether the requirements of subparagraph (A) or (B) of paragraph (2) or of subparagraph (A) of paragraph (3) are met, stock described in section 1504(a)(4) shall not be taken into account.

(d) Average indebtedness percentage

For purposes of this section—

(1) In general

Except as provided in paragraph (2), the term ''average indebtedness percentage'' means the percentage obtained by dividing—

(A) the average amount (determined under regulations prescribed by the Secretary) of the portfolio indebtedness with respect to the stock during the base period, by

(B) the average amount (determined under regulations prescribed by the Secretary) of the adjusted basis of the stock during the base period.

(2) Special rule where stock not held throughout base period

In the case of any stock which was not held by the taxpayer throughout the base period, paragraph (1) shall be applied as if the base period consisted only of that portion of the base period during which the stock was held by the taxpayer.

(3) Portfolio indebtedness

(A) In general

The term ''portfolio indebtedness'' means any indebtedness directly attributable to investment in the portfolio stock.

(B) Certain amounts received from short sale treated as indebtedness

For purposes of subparagraph (A), any amount received from a short sale shall be treated as indebtedness for the period beginning on the day on which such amount is received and ending on the day the short sale is closed.

(4) Base period

The term ''base period'' means, with respect to any dividend, the shorter of—

(A) the period beginning on the ex-dividend date for the most recent previous dividend on the stock and ending on the day before the ex-dividend date for the dividend involved, or

(B) the 1-year period ending on the day before the ex-dividend date for the dividend involved.

(e) Reduction in dividends received deduction not to exceed allocable interest

Under regulations prescribed by the Secretary, any reduction under this section in the amount allowable as a deduction under section 243, 244, or 245 with respect to any dividend shall not exceed the amount of any interest deduction (including any deductible short sale expense) allocable to such dividend.

(f) Regulations

The regulations prescribed for purposes of this section under section 7701(f) shall include regulations providing for the disallowance of interest deductions or other appropriate treatment (in lieu of reducing the dividend received deduction) where the obligor of the indebtedness is a person other than the person receiving the dividend.

(Added Pub. L. 98–369, div. A, title I, § 51(a), July 18, 1984, 98 Stat. 562; amended Pub. L. 99–514, title VI, § 611(a)(4), title XVIII, § 1804(a), Oct. 22, 1986, 100 Stat. 2249, 2798; Pub. L. 100–203, title X, § 10221(d)(2), Dec. 22, 1987, 101 Stat. 1330–409; Pub. L. 100–647, title I, § 1012(*l*)(1), Nov. 10, 1988, 102 Stat. 3513; Pub. L. 108–311, title IV, § 408(a)(9), Oct. 4, 2004, 118 Stat. 1191.)

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in subsec. (b)(2), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§ 661 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 661 of Title 15 and Tables.

Section 2(a) of the Bank Holding Company Act of 1956, referred to in subsec. (c)(3)(B)(ii), is classified to section 1841(a) of Title 12, Banks and Banking.

AMENDMENTS

2004—Subsec. (b)(1). Pub. L. 108–311 substituted ''section 243(d)(4)'' for ''section 243(c)(4)''.

1988—Subsec. (a). Pub. L. 100–647 struck out at end ''The preceding sentence shall be applied before any determination of a ratio under paragraph (1) or (2) of section 245(a).''

1987—Subsec. (a)(1). Pub. L. 100–203 substituted ''70 percent (80 percent in the case of any dividend from a 20-percent owned corporation as defined in section 243(c)(2))'' for ''80 percent''.

1986—Subsec. (a). Pub. L. 99–514, § 1804(a), substituted ''or 245(a)'' for ''or 245'' and inserted ''The preceding sentence shall be applied before any determination of a ratio under paragraph (1) or (2) of section 245(a).''

Subsec. (a)(1). Pub. L. 99–514, § 611(a)(4), substituted ''80 percent'' for ''85 percent''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to dividends received or accrued after Dec. 31, 1987, in taxable years ending after such date, see section 10221(e)(1) of Pub. L. 100–203, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 611(a)(4) of Pub. L. 99–514 applicable to dividends received or accrued after Dec. 31, 1986, in taxable years ending after such date, see section 611(b) of Pub. L. 99–514, set out as a note under section 246 of this title.

Amendment by section 1804(a) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section 51(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [enacting this section] shall apply with respect to stock the holding period for which begins after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 247. Dividends paid on certain preferred stock of public utilities

(a) Amount of deduction

In the case of a public utility, there shall be allowed as a deduction an amount computed as follows:

(1) First determine the amount which is the lesser of—

(A) the amount of dividends paid during the taxable year on its preferred stock, or

(B) the taxable income for the taxable year (computed without the deduction allowed by this section).

(2) Then multiply the amount determined under paragraph (1) by the fraction—

(A) the numerator of which is 14 percent, and

(B) the denominator of which is that percentage which equals the highest rate of tax specified in section 11(b).

For purposes of the deduction provided in this section, the amount of dividends paid shall not include any amount distributed in the current taxable year with respect to dividends unpaid and accumulated in any taxable year ending before October 1, 1942. Amounts distributed in the current taxable year with respect to dividends unpaid and accumulated for a prior taxable year shall for purposes of this subsection be deemed to be distributed with respect to the earliest year or years for which there are dividends unpaid and accumulated.

(b) Definitions

For purposes of this section and section 244—

(1) Public utility

The term ''public utility'' means a corporation engaged in the furnishing of telephone service or in the sale of electrical energy, gas, or water, if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof or by an agency or instrumentality of the United States or by a public utility or public service commission or other similar body of the District of Columbia or of any State or political subdivision thereof.

(2) Preferred stock

(A) In general

The term ''preferred stock'' means stock issued before October 1, 1942, which during the whole of the taxable year (or the part of the taxable year after its issue) was stock the dividends in respect of which were cumulative, limited to the same amount, and payable in preference to the payment of dividends on other stock.

(B) Certain stock issued on or after October 1, 1942

Stock issued on or after October 1, 1942, shall be deemed for purposes of this paragraph to have been issued before October 1, 1942, if it was issued to refund or replace bonds or debentures issued before October 1, 1942, or to refund or replace other preferred stock (including stock which is preferred stock by reason of this subparagraph or subparagraph (D)), but only to the extent that the par or stated value of the new stock does not exceed the par, stated, or face value of the bonds or debentures issued before October 1, 1942, or the other preferred stock, which such new stock is issued to refund or replace.

(C) Determination under regulations

The determination of whether stock was issued to refund or replace bonds or debentures issued before October 1, 1942, or to refund or replace other preferred stock, shall be made under regulations prescribed by the Secretary.

(D) Issuance of stock

For purposes of subparagraph (B), issuance of stock includes issuance either by the same or another corporation in a transaction which is a reorganization (as defined in section 368(a)) or a transaction subject to part VI of subchapter O as in effect before its repeal (relating to exchanges in SEC obedience orders), or the respectively corresponding provisions of the Internal Revenue Code of 1939.

(Aug. 16, 1954, ch. 736, 68A Stat. 75; Pub. L. 94–455, title XIX, § 1901(a)(35), Oct. 4, 1976, 90 Stat. 1770; Pub. L. 95–600, title III, § 301(b)(4), Nov. 6, 1978, 92 Stat. 2820; Pub. L. 101–508, title XI, § 11801(c)(8)(C), Nov. 5, 1990, 104 Stat. 1388–524; Pub. L. 104–188, title I, § 1704(t)(49), Aug. 20, 1996, 110 Stat. 1890; Pub. L. 109–135, title IV, § 402(a)(5), Dec. 21, 2005, 119 Stat. 2610.)

REFERENCES IN TEXT

The Internal Revenue Code of 1939, referred to in subsec. (b)(2)(D), is act Feb. 10, 1939, ch. 2, 53 Stat. 1, as amended. Prior to the enactment of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the 1939 Code was classified to former Title 26, Internal Revenue Code. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title.

AMENDMENTS

2005—Subsec. (b)(2)(D). Pub. L. 109–135 inserted ''as in effect before its repeal'' after ''part VI of subchapter O''.

1996—Subsec. (b)(2)(D). Pub. L. 104–188 provided that section 11801(c)(8)(C) of Pub. L. 101–508 shall be applied as if ''reorganizations'' appeared instead of ''reorganization'' in the material proposed to be stricken. See 1990 Amendment note below.

1990—Subsec. (b)(2)(D). Pub. L. 101–508 which directed that '', a transaction to which section 371 (relating to insolvency reorganization) applies,'' be struck out was executed by striking out '', a transaction to which section 371 (relating to insolvency reorganizations) applies,'' after ''(as defined in section 368(a))''. See 1996 Amendment note above.

1978—Subsec. (a)(2)(B). Pub. L. 95–600 substituted ''the highest rate of tax specified in section 11(b)'' for ''the sum of the normal tax rate and the surtax rate for the taxable year specified in section 11''.

1976—Subsec. (b)(2). Pub. L. 94–455 divided existing provisions into subpars. (A), (B), (C), and (D), added headings for subpars. (A), (B), (C), and (D), and, in subpar. (C) as so redesignated, substituted ''prescribed by the Secretary'' for ''prescribed by the Secretary or his delegate''.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which it relates, but not applicable with respect to any transaction ordered in compliance with the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) before its repeal, see section 402(m) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 36C of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§ 248. Organizational expenditures

(a) Election to deduct

If a corporation elects the application of this subsection (in accordance with regulations prescribed by the Secretary) with respect to any organizational expenditures—

(1) the corporation shall be allowed a deduction for the taxable year in which the corporation begins business in an amount equal to the lesser of—

(A) the amount of organizational expenditures with respect to the taxpayer, or

(B) $5,000, reduced (but not below zero) by the amount by which such organizational expenditures exceed $50,000, and

(2) the remainder of such organizational expenditures shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the corporation begins business.

(b) Organizational expenditures defined

The term ''organizational expenditures'' means any expenditure which—

(1) is incident to the creation of the corporation;

(2) is chargeable to capital account; and

(3) is of a character which, if expended incident to the creation of a corporation having a limited life, would be amortizable over such life.

(c) Time for and scope of election

The election provided by subsection (a) may be made for any taxable year beginning after December 31, 1953, but only if made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof). The period so elected shall be adhered to in computing the taxable income of the corporation for the taxable year for which the election is made and all subsequent taxable years. The election shall apply only with respect to expenditures paid or incurred on or after August 16, 1954.

(Aug. 16, 1954, ch. 736, 68A Stat. 76; Pub. L. 94–455, title XIX, §§1901(a)(36), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1770, 1834; Pub. L. 108–357, title VIII, §902(b), Oct. 22, 2004, 118 Stat. 1651.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–357 amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''The organizational expenditures of a corporation may, at the election of the corporation (made in accordance with regulations prescribed by the Secretary, be treated as deferred expenses. In computing taxable income, such deferred expenses shall be allowed as a deduction ratably over such period of not less than 60 months as may be selected by the corporation (beginning with the month in which the corporation begins business).''

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c). Pub. L. 94–455, §1901(a)(36), substituted ''August 16, 1954'' for ''the date of enactment of this title''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to amounts paid or incurred after Oct. 22, 2004, see section 902(d) of Pub. L. 108–357, set out as a note under section 195 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(36) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 1906(b)(13)(A) of Pub. L. 94–455 effective Feb. 1, 1977, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

§ 249. Limitation on deduction of bond premium on repurchase

(a) General rule

No deduction shall be allowed to the issuing corporation for any premium paid or incurred upon the repurchase of a bond, debenture, note, or certificate or other evidence of indebtedness which is convertible into the stock of the issuing corporation, or a corporation in control of, or controlled by, the issuing corporation, to the extent the repurchase price exceeds an amount equal to the adjusted issue price plus a normal call premium on bonds or other evidences of indebtedness which are not convertible. The preceding sentence shall not apply to the extent that the corporation can demonstrate to the satisfaction of the Secretary that such excess is attributable to the cost of borrowing and is not attributable to the conversion feature.

(b) Special rules

For purposes of subsection (a)—

(1) Adjusted issue price

The adjusted issue price is the issue price (as defined in sections 1273(b) and 1274) increased

by any amount of discount deducted before repurchase, or, in the case of bonds or other evidences of indebtedness issued after February 28, 1913, decreased by any amount of premium included in gross income before repurchase by the issuing corporation.

(2) Control

The term ''control'' has the meaning assigned to such term by section 368(c).

(Added Pub. L. 91–172, title IV, § 414(a), Dec. 30, 1969, 83 Stat. 612; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title I, § 42(a)(5), July 18, 1984, 98 Stat. 557.)

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98–369 substituted ''sections 1273(b) and 1274'' for ''section 1232(b)''.

1976—Subsec. (a). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective Feb. 1, 1977, see section 1906(d)(1) of Pub. L. 94–455, set out as a note under section 6013 of this title.

EFFECTIVE DATE

Section 414(c) of Pub. L. 91–172, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [enacting this section] shall apply to a convertible bond or other convertible evidence of indebtedness repurchased after April 22, 1969, other than such a bond or other evidence of indebtedness repurchased pursuant to a binding obligation incurred on or before April 22, 1969, to repurchase such bond or other evidence of indebtedness at a specified call premium, but no inference shall be drawn from the fact that section 249 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a) of this section) does not apply to the repurchase of such convertible bond or other convertible evidence of indebtedness.''

[§ 250. Repealed. Pub. L. 101–508, title XI, § 11801(a)(15), Nov. 5, 1990, 104 Stat. 1388–520]

Section, added Pub. L. 91–518, title IX, § 901(a), Oct. 30, 1970, 84 Stat. 1341; amended Pub. L. 93–496, § 12, Oct. 28, 1974, 88 Stat. 1531; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–473, § 2(a)(2)(C), Oct. 17, 1978, 92 Stat. 1464; Pub. L. 96–454, § 3(b)(1), Oct. 15, 1980, 94 Stat. 2012; Pub. L. 97–261, § 6(d)(3), Sept. 20, 1982, 96 Stat. 1107; Pub. L. 99–521, § 4(3), Oct. 22, 1986, 100 Stat. 2993, related to certain payments to National Railroad Passenger Corporation.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PART IX—ITEMS NOT DEDUCTIBLE

Sec.
261. General rule for disallowance of deductions.
262. Personal, living, and family expenses.
263. Capital expenditures.
263A. Capitalization and inclusion in inventory costs of certain expenses.
264. Certain amounts paid in connection with insurance contracts.
265. Expenses and interest relating to tax-exempt income.
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274. Disallowance of certain entertainment, etc., expenses.
275. Certain taxes.
276. Certain indirect contributions to political parties.
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[278. Repealed.]
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[280. Repealed.]
280A. Disallowance of certain expenses in connection with business use of home, rental of vacation homes, etc.
280B. Demolition of structures.
280C. Certain expenses for which credits are allowable.
[280D. Repealed.]
280E. Expenditures in connection with the illegal sale of drugs.
280F. Limitation on depreciation for luxury automobiles; limitation where certain property used for personal purposes.
280G. Golden parachute payments.
280H. Limitation on certain amounts paid to owner-employees by personal service corporations electing alternative taxable years.[1]

AMENDMENTS

1996—Pub. L. 104–188, title I, § 1704(t)(55), Aug. 20, 1996, 110 Stat. 1890, provided that section 11813(b)(13)(F) of Pub. L. 101–508 shall be applied as if ''tax'' appeared after ''investment'' in the material proposed to be stricken. See 1990 Amendment note below.

1990—Pub. L. 101–508, title XI, § 11813(b)(13)(F), Nov. 5, 1990, 104 Stat. 1388–555, which directed the striking out of ''investment credit and'' in item 280F, was executed by striking out ''investment tax credit and'' after ''Limitation on''. See 1996 Amendment note above.

1988—Pub. L. 100–418, title I, § 1941(b)(4)(B), Aug. 23, 1988, 102 Stat. 1324, struck out item 280D ''Portion of chapter 45 taxes for which credit or refund is allowable under section 6429''.

1987—Pub. L. 100–203, title X, § 10206(c)(2), Dec. 22, 1987, 101 Stat. 1330–402, added item 280H.

1986—Pub. L. 99–514, title VIII, § 803(c)(1), (3), Oct. 22, 1986, 100 Stat. 2356, added item 263A and struck out items 278 ''Capital expenditures incurred in planting and developing citrus and almond groves'' and 280 ''Certain expenditures incurred in production of films, books, records, or similar property''.

1984—Pub. L. 98–369, div. A, title I, §§ 67(d)(1), 136(b), 179(c), title X, § 1063(b)(2), July 18, 1984, 98 Stat. 587, 670,

[1] So in original. Does not conform to section catchline.

718, 1047, added items 269B, 280F, and 280G, and struck out ''certain historic'' before ''structures'' in item 280B.

1983—Pub. L. 97–414, § 4(b)(2)(B), Jan. 4, 1983, 96 Stat. 2056, substituted ''Certain expenses for which credits are allowable'' for ''Portion of wages for which credit is claimed under section 44B'' in item 280C.

1982—Pub. L. 97–248, title II, § 250(b), title III, § 351(b), Sept. 3, 1982, 96 Stat. 528, 640, added items 269A and 280E.

1980—Pub. L. 96–499, title XI, § 1131(d)(2), Dec. 5, 1980, 94 Stat. 2693, added item 280D.

1977—Pub. L. 95–30, title II, § 202(c)(2), May 23, 1977, 91 Stat. 147, added item 280C.

1976—Pub. L. 94–455, title II, § 210(b), title VI, § 601(b), title XXI, § 2124(b)(2), Oct. 4, 1976, 90 Stat. 1544, 1572, 1918, added items 280, 280A, and 280B.

1971—Pub. L. 91–680, § 1(c), Jan. 12, 1971, 84 Stat. 2064, inserted ''and almond'' after ''citrus'' in item 278.

1969—Pub. L. 91–172, title I, § 121(b)(3)(B), title II, §§ 213(c)(2), 216(b), title IV, § 411(b), Dec. 30, 1969, 83 Stat. 541, 572, 574, 608, struck out item 270 ''Limitation on deductions allowable to individuals in certain cases'', and added items 277 to 279.

1966—Pub. L. 89–368, title III, § 301(b), Mar. 15, 1966, 80 Stat. 67, added item 276.

1964—Pub. L. 88–272, title II, §§ 207(b)(3)(B), 227(b)(4), Feb. 26, 1964, 78 Stat. 42, 98, inserted ''or domestic iron ore'' in item 272, and added item 275.

1962—Pub. L. 87–834, § 4(a)(2), Oct. 16, 1962, 76 Stat. 976, added item 274.

§ 261. General rule for disallowance of deductions

In computing taxable income no deduction shall in any case be allowed in respect of the items specified in this part.

(Aug. 16, 1954, ch. 736, 68A Stat. 76.)

§ 262. Personal, living, and family expenses

(a) General rule

Except as otherwise expressly provided in this chapter, no deduction shall be allowed for personal, living, or family expenses.

(b) Treatment of certain phone expenses

For purposes of subsection (a), in the case of an individual, any charge (including taxes thereon) for basic local telephone service with respect to the 1st telephone line provided to any residence of the taxpayer shall be treated as a personal expense.

(Aug. 16, 1954, ch. 736, 68A Stat. 76; Pub. L. 100–647, title V, § 5073(a), Nov. 10, 1988, 102 Stat. 3682.)

AMENDMENTS

1988—Pub. L. 100–647 amended section generally. Prior to amendment, section read as follows: ''Except as otherwise expressly provided in this chapter, no deduction shall be allowed for personal, living, or family expenses.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 5073(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1988.''

§ 263. Capital expenditures

(a) General rule

No deduction shall be allowed for—

(1) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate. This paragraph shall not apply to—

(A) expenditures for the development of mines or deposits deductible under section 616,

(B) research and experimental expenditures deductible under section 174,

(C) soil and water conservation expenditures deductible under section 175,

(D) expenditures by farmers for fertilizer, etc., deductible under section 180,

(E) expenditures for removal of architectural and transportation barriers to the handicapped and elderly which the taxpayer elects to deduct under section 190,

(F) expenditures for tertiary injectants with respect to which a deduction is allowed under section 193; [1]

(G) expenditures for which a deduction is allowed under section 179; [1]

(H) expenditures for which a deduction is allowed under section 179A,

(I) expenditures for which a deduction is allowed under section 179B,

(J) expenditures for which a deduction is allowed under section 179C,

(K) expenditures for which a deduction is allowed under section 179D, or

(L) expenditures for which a deduction is allowed under section 179E.

(2) Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made.

[(b) Repealed. Pub. L. 101–508, title XI, § 11801(a)(16), Nov. 5, 1990, 104 Stat. 1388–520]

(c) Intangible drilling and development costs in the case of oil and gas wells and geothermal wells

Notwithstanding subsection (a), and except as provided in subsection (i), regulations shall be prescribed by the Secretary under this subtitle corresponding to the regulations which granted the option to deduct as expenses intangible drilling and development costs in the case of oil and gas wells and which were recognized and approved by the Congress in House Concurrent Resolution 50, Seventy-ninth Congress. Such regulations shall also grant the option to deduct as expenses intangible drilling and development costs in the case of wells drilled for any geothermal deposit (as defined in section 613(e)(2)) to the same extent and in the same manner as such expenses are deductible in the case of oil and gas wells. This subsection shall not apply with respect to any costs to which any deduction is allowed under section 59(e) or 291.

(d) Expenditures in connection with certain railroad rolling stock

In the case of expenditures in connection with the rehabilitation of a unit of railroad rolling stock (except a locomotive) used by a domestic common carrier by railroad which would, but for this subsection, be properly chargeable to capital account, such expenditures, if during any 12-month period they do not exceed an amount

[1] So in original. The semicolon probably should be a comma.

equal to 20 percent of the basis of such unit in the hands of the taxpayer, shall, at the election of the taxpayer, be treated (notwithstanding subsection (a)) as deductible repairs under section 162 or 212. An election under this subsection shall be made for any taxable year at such time and in such manner as the Secretary prescribes by regulations. An election may not be made under this subsection for any taxable year to which an election under subsection (e) applies to railroad rolling stock (other than locomotives).

[(e) Repealed. Pub. L. 97–34, title II, § 201(c), Aug. 13, 1981, 95 Stat. 219]

(f) Railroad ties

In the case of a domestic common carrier by rail (including a railroad switching or terminal company) which uses the retirement-replacement method of accounting for depreciation of its railroad track, expenditures for acquiring and installing replacement ties of any material (and fastenings related to such ties) shall be accorded the same tax accounting treatment as expenditures for replacement ties of wood (and fastenings related to such ties).

(g) Certain interest and carrying costs in the case of straddles

(1) General rule

No deduction shall be allowed for interest and carrying charges properly allocable to personal property which is part of a straddle (as defined in section 1092(c)). Any amount not allowed as a deduction by reason of the preceding sentence shall be chargeable to the capital account with respect to the personal property to which such amount relates.

(2) Interest and carrying charges defined

For purposes of paragraph (1), the term ''interest and carrying charges'' means the excess of—

(A) the sum of—

(i) interest on indebtedness incurred or continued to purchase or carry the personal property, and

(ii) all other amounts (including charges to insure, store, or transport the personal property) paid or incurred to carry the personal property, over

(B) the sum of—

(i) the amount of interest (including original issue discount) includible in gross income for the taxable year with respect to the property described in subparagraph (A),

(ii) any amount treated as ordinary income under section 1271(a)(3)(A), 1276, or 1281(a) with respect to such property for the taxable year,

(iii) the excess of any dividends includible in gross income with respect to such property for the taxable year over the amount of any deduction allowable with respect to such dividends under section 243, 244, or 245, and

(iv) any amount which is a payment with respect to a security loan (within the meaning of section 512(a)(5)) includible in gross income with respect to such property for the taxable year.

For purposes of subparagraph (A), the term ''interest'' includes any amount paid or incurred in connection with personal property used in a short sale.

(3) Exception for hedging transactions

This subsection shall not apply in the case of any hedging transaction (as defined in section 1256(e)).

(4) Application with other provisions

(A) Subsection (c)

In the case of any short sale, this subsection shall be applied after subsection (h).

(B) Section 1277 or 1282

In the case of any obligation to which section 1277 or 1282 applies, this subsection shall be applied after section 1277 or 1282.

(h) Payments in lieu of dividends in connection with short sales

(1) In general

If—

(A) a taxpayer makes any payment with respect to any stock used by such taxpayer in a short sale and such payment is in lieu of a dividend payment on such stock, and

(B) the closing of such short sale occurs on or before the 45th day after the date of such short sale,

then no deduction shall be allowed for such payment. The basis of the stock used to close the short sale shall be increased by the amount not allowed as a deduction by reason of the preceding sentence.

(2) Longer period in case of extraordinary dividends

If the payment described in paragraph (1)(A) is in respect of an extraordinary dividend, paragraph (1)(B) shall be applied by substituting ''the day 1 year after the date of such short sale'' for ''the 45th day after the date of such short sale''.

(3) Extraordinary dividend

For purposes of this subsection, the term ''extraordinary dividend'' has the meaning given to such term by section 1059(c); except that such section shall be applied by treating the amount realized by the taxpayer in the short sale as his adjusted basis in the stock.

(4) Special rule where risk of loss diminished

The running of any period of time applicable under paragraph (1)(B) (as modified by paragraph (2)) shall be suspended during any period in which—

(A) the taxpayer holds, has an option to buy, or is under a contractual obligation to buy, substantially identical stock or securities, or

(B) under regulations prescribed by the Secretary, a taxpayer has diminished his risk of loss by holding 1 or more other positions with respect to substantially similar or related property.

(5) Deduction allowable to extent of ordinary income from amounts paid by lending broker for use of collateral

(A) In general

Paragraph (1) shall apply only to the extent that the payments or distributions with

respect to any short sale exceed the amount which—

(i) is treated as ordinary income by the taxpayer, and

(ii) is received by the taxpayer as compensation for the use of any collateral with respect to any stock used in such short sale.

(B) Exception not to apply to extraordinary dividends

Subparagraph (A) shall not apply if one or more payments or distributions is in respect of an extraordinary dividend.

(6) Application of this subsection with subsection (g)

In the case of any short sale, this subsection shall be applied before subsection (g).

(i) Special rules for intangible drilling and development costs incurred outside the United States

In the case of intangible drilling and development costs paid or incurred with respect to an oil, gas, or geothermal well located outside the United States—

(1) subsection (c) shall not apply, and

(2) such costs shall—

(A) at the election of the taxpayer, be included in adjusted basis for purposes of computing the amount of any deduction allowable under section 611 (determined without regard to section 613), or

(B) if subparagraph (A) does not apply, be allowed as a deduction ratably over the 10-taxable year period beginning with the taxable year in which such costs were paid or incurred.

This subsection shall not apply to costs paid or incurred with respect to a nonproductive well.

(Aug. 16, 1954, ch. 736, 68A Stat. 77; Pub. L. 86–779, §6(c), Sept. 14, 1960, 74 Stat. 1001; Pub. L. 87–834, §21(b), Oct. 16, 1962, 76 Stat. 1064; Pub. L. 88–563, §4, Sept. 2, 1964, 78 Stat. 845; Pub. L. 89–243, §4(p)(1), (2), Oct. 9, 1965, 79 Stat. 964; Pub. L. 91–172, title VII, §706(a), Dec. 30, 1969, 83 Stat. 674; Pub. L. 92–178, title I, §109(b), (c), Dec. 10, 1971, 85 Stat. 509; Pub. L. 94–455, title XVII, §1701(a), title XIX, §§1904(b)(10)(A)(i), 1906(b)(13)(A), title XXI, §2122(b)(2), Oct. 4, 1976, 90 Stat. 1759, 1817, 1834, 1915; Pub. L. 95–618, title IV, §402(a), Nov. 9, 1978, 92 Stat. 3201; Pub. L. 96–223, title II, §251(a)(2)(B), Apr. 2, 1980, 94 Stat. 287; Pub. L. 97–34, title II, §§201(c), 202(d)(1), title V, §502, Aug. 13, 1981, 95 Stat. 219, 221, 327; Pub. L. 97–248, title II, §204(c)(1), Sept. 3, 1982, 96 Stat. 426; Pub. L. 97–448, title I, §105(b)(1), title III, §306(a)(9)(A), Jan. 12, 1983, 96 Stat. 2385, 2403; Pub. L. 98–369, div. A, title I, §§56(a), 102(e)(7), (8), July 18, 1984, 98 Stat. 573, 624, 625; Pub. L. 99–514, title IV, §§402(b)(1), 411(b)(1), title VII, §701(e)(4)(D), title XVIII, §1808(b), Oct. 22, 1986, 100 Stat. 2221, 2225, 2343, 2817; Pub. L. 100–647, title I, §1007(g)(5), Nov. 10, 1988, 102 Stat. 3435; Pub. L. 101–508, title XI, §§11801(a)(16), 11815(b)(3), Nov. 5, 1990, 104 Stat. 1388–520, 1388–558; Pub. L. 105–34, title XVI, §1604(a)(1), Aug. 5, 1997, 111 Stat. 1097; Pub. L. 108–311, title IV, §408(a)(10), Oct. 4, 2004, 118 Stat. 1191; Pub. L. 108–357, title III, §338(b)(1), Oct. 22, 2004, 118 Stat. 1481; Pub. L. 109–58, title XIII, §§1323(b)(2), 1331(b)(4), Aug. 8, 2005, 119 Stat. 1015, 1024; Pub. L. 109–432, div. A, title IV, §404(b)(1), Dec. 20, 2006, 120 Stat. 2956.)

AMENDMENTS

2006—Subsec. (a)(1)(L). Pub. L. 109–432 added subpar. (L).

2005—Subsec. (a)(1)(J). Pub. L. 109–58, §1323(b)(2), added subpar. (J).

Subsec. (a)(1)(K). Pub. L. 109–58, §1331(b)(4), added subpar. (K).

2004—Subsec. (a)(1)(I). Pub. L. 108–357 added subpar. (I).

Subsec. (g)(2)(B)(ii). Pub. L. 108–311 substituted ''1276'' for ''1278''.

1997—Subsec. (a)(1)(H). Pub. L. 105–34 added subpar. (H).

1990—Subsec. (b). Pub. L. 101–508, §11801(a)(16), struck out subsec. (b) ''Expenditures for advertising and good will'' which read as follows: ''If a corporation has, for the purpose of computing its excess profits tax credit under chapter 2E or subchapter D of chapter 1 of the Internal Revenue Code of 1939 claimed the benefits of the election provided in section 733 or section 451 of such code, as the case may be, no deduction shall be allowable under section 162 to such corporation for expenditures for advertising or the promotion of good will which, under the rules and regulations prescribed under section 733 or section 451 of such code, as the case may be, may be regarded as capital investments.''

Subsec. (c). Pub. L. 101–508, §11815(b)(3), substituted ''section 613(e)(2)'' for ''section 613(e)(3)''.

1988—Subsec. (c). Pub. L. 100–647 substituted ''section 59(e)'' for ''section 59(d)''.

1986—Subsec. (a)(1)(E) to (H). Pub. L. 99–514, §402(b)(1), struck out subpar. (E) relating to nonapplication of par. (1) to expenditures by farmers for clearing land deductible under section 182, and redesignated subpars. (F) to (H) as (E) to (G), respectively.

Subsec. (c). Pub. L. 99–514, §701(e)(4)(D), substituted ''59(d)'' for ''58(i)''.

Pub. L. 99–514, §411(b)(1)(B), inserted ''and except as provided in subsection (i),''.

Subsec. (g)(2)(B)(iv). Pub. L. 99–541, §1808(b), added cl. (iv).

Subsec. (i). Pub. L. 99–514, §411(b)(1)(A), added subsec. (i).

1984—Subsec. (g)(2). Pub. L. 98–369, §102(e)(7), amended par. (2) generally, striking out ''charges for temporary use of the personal property in a short sale, or'' after ''(including'' in subpar. (A)(ii), substituting ''any amount treated as ordinary income under section 1271(a)(3)(A), 1278, or 1281(a) with respect to such property for the taxable year, and'' for ''any amount treated as ordinary income under section 1232(a)(3)(A) with respect to such property for the taxable year'' in subpar. (B)(ii), and adding subpar. (B)(iii).

Subsec. (g)(4). Pub. L. 98–369, §102(e)(8), added par. (4).

Subsec. (h). Pub. L. 98–369, §56(a), added subsec. (h).

1983—Subsec. (g)(2)(A)(ii). Pub. L. 97–448, §105(b)(1), substituted ''all other amounts (including charges for temporary use of the personal property in a short sale, or to insure, store, or transport the personal property) paid or incurred to carry the personal property, over'' for ''amounts paid or incurred to insure, store, or transport the personal property, over''.

Subsec. (g)(2)(B)(ii). Pub. L. 97–448, §306(a)(9)(A), substituted ''section 1232(a)(3)(A)'' for ''section 1232(a)(4)(A)''.

1982—Subsec. (c). Pub. L. 97–248, §204(c)(1), inserted provision that this subsection not apply with respect to any costs to which any deduction is allowed under section 58(i) or 291.

1981—Subsec. (a)(1)(H). Pub. L. 97–34, §202(d)(1), added subpar. (H).

Subsec. (e). Pub. L. 97–34, §201(c), struck out subsec. (e) which related to the allowance of repair expenses or specified repair, rehabilitation, or improvement expenditures.

Subsec. (g). Pub. L. 97–34, § 502, added subsec. (g).

1980—Subsec. (a)(1)(G). Pub. L. 96–223 added subpar. (G).

1978—Subsec. (c). Pub. L. 95–618 inserted ''and geothermal wells'' after ''gas wells'' in heading and in text inserted provision that such regulations also grant the option to deduct as expenses intangible drilling and development costs in the case of wells drilled for any geothermal deposit (as defined in section 613(e)(3)) to the same extent and in the same manner as such expenses are deductible in the case of oil and gas wells.

1976—Subsec. (a)(1)(F). Pub. L. 94–455, § 2122(b)(2), added subpar. (F).

Subsec. (a)(3). Pub. L. 94–455, § 1904(b)(10)(A)(i)(I), struck out par. (3) which provided that no deduction be allowed for amounts paid as tax under section 4911 (relating to imposition of interest equalization tax) except as provided in subsec. (d).

Subsec. (d). Pub. L. 94–455, §§ 1904(b)(10)(A)(i)(I), (II), 1906(b)(13)(A), redesignated subsec. (e) as (d) and struck out ''or his delegate'' after ''Secretary'' and substituted ''subsection (e)'' for ''subsection (f)''. Former subsec. (d) was struck out.

Subsec. (e). Pub. L. 94–455, §§ 1904(b)(10)(A)(i)(I), 1906(b)(13)(A), redesignated subsec. (f) as (e) and struck out ''or his delegate'' after ''Secretary''. Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 94–455, §§ 1701(a), 1904(b)(10)(A)(i)(I), added subsec. (f). Former subsec. (f) redesignated (e).

1971—Subsec. (e). Pub. L. 92–178, § 109(c), substituted ''shall, at the election of the taxpayer, be treated'' for ''shall be treated'' and inserted provisions respecting making of election under this subsection for any taxable year at such time and in such manner as Secretary or his delegate prescribed by regulation and prohibiting making of election for any taxable year to which an election under subsec. (f) applies to railroad rolling stock (other than locomotives).

Subsec. (f). Pub. L. 92–178, § 109(b), added subsec. (f).

1969—Subsec. (e). Pub. L. 91–172 added subsec. (e).

1965—Subsec. (a)(3). Pub. L. 89–243, § 4(p)(1), inserted ''Except as provided in subsection (d)'', and struck out ''except to the extent that any amount attributable to the amount paid as tax is included in gross income for the taxable year'' after parenthetical provision.

Subsec. (d). Pub. L. 89–243, § 4(p)(2), added subsec. (d).

1964—Subsec. (a)(3). Pub. L. 88–563 added par. (3).

1962—Subsec. (a)(1)(E). Pub. L. 87–834 added subpar. (E).

1960—Subsec. (a)(1)(D). Pub. L. 86–779 added subpar. (D).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–432 applicable to costs paid or incurred after Dec. 20, 2006, see section 404(c) of Pub. L. 109–432, set out as an Effective Date note under section 179E of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 1323(b)(2) of Pub. L. 109–58 applicable to properties placed in service after Aug. 8, 2005, see section 1323(c) of Pub. L. 109–58, set out as an Effective Date note under section 179C of this title.

Amendment by section 1331(b)(4) of Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, see section 1331(d) of Pub. L. 109–58, set out as an Effective Date note under section 179D of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to expenses paid or incurred after Dec. 31, 2002, in taxable years ending after such date, see section 338(c) of Pub. L. 108–357, set out as an Effective Date note under section 179B of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1604(a)(4) of Pub. L. 105–34 provided that: ''The amendments made by this subsection [amending this section and sections 312 and 1245 of this title] shall take effect as if included in the amendments made by section 1913 of the Energy Policy Act of 1992 [Pub. L. 102–486].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 402(b)(1) of Pub. L. 99–514 applicable to amounts paid or incurred after Dec. 31, 1985, in taxable years ending after such date, see section 402(c) of Pub. L. 99–514 set out as an Effective Date of Repeal note under former section 182 of this title.

Section 411(c) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 243, 291, 381, 616, and 617 of this title] shall apply to costs paid or incurred after December 31, 1986, in taxable years ending after such date.

''(2) TRANSITION RULE.—The amendments made by this section shall not apply with respect to intangible drilling and development costs incurred by United States companies pursuant to a minority interest in a license for Netherlands or United Kingdom North Sea development if such interest was acquired on or before December 31, 1985.''

Amendment by section 701(e)(4)(D) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

Amendment by section 1808(b) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 56(a) of Pub. L. 98–369 applicable to short sales after July 18, 1984, in taxable years ending after that date, see section 56(d) of Pub. L. 98–369, set out as a note under section 163 of this title.

Amendment by section 102(e)(7), (8) of Pub. L. 98–369 applicable to positions established after July 18, 1984, in taxable years ending after that date, except as otherwise provided, see section 102(f), (g) of Pub. L. 98–369, set out as a note under section 1256 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 105(b)(2) of Pub. L. 97–448 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to property acquired, and positions established, by the taxpayer after September 22, 1982, in taxable years ending after such date.''

Amendment by section 306 of Pub. L. 97–448 effective as if included in the provisions of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 311(d) of Pub. L. 97–448, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to taxable years beginning after December 31, 1982, see section 204(d)(1) of Pub. L. 97–248, set out as an Effective Date note under section 291 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by sections 201(c) and 202(d)(1) of Pub. L. 97–34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, see section 209(a) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

Amendment by section 502 of Pub. L. 97–34 applicable to property acquired and positions established by the taxpayer after June 23, 1981, in taxable years ending after such date, and applicable when so elected with respect to property held on June 23, 1981, see section 508 of Pub. L. 97–34, set out as an Effective Date note under section 1092 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 applicable to taxable years beginning after Dec. 31, 1979, see section 251(b) of Pub. L. 96–223, set out as an Effective Date note under section 193 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 402(e) of Pub. L. 95–618, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 57, 465, 751, and 1254 of this title] shall apply with respect to wells commenced on or after October 1, 1978, in taxable years ending on or after such date.

''(2) ELECTION.—The taxpayer may elect to capitalize or deduct any costs to which section 263(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applies by reason of the amendments made by this section [amending this section and sections 57, 465, 751, and 1254 of this title]. Any such election shall be made before the expiration of the time for filing claim for credit or refund of any overpayment of tax imposed by chapter 1 of such Code [section 1 et seq. of this title] with respect to the taxpayer's first taxable year to which the amendments made by this section apply and for which he pays or incurs costs to which such section 263(c) applies by reason of the amendments made by this section. Any election under this paragraph may be changed or revoked at any time before the expiration of the time referred to in the preceding sentence, but after the expiration of such time such election may not be changed or revoked.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1904(b)(10)(A)(vii) of Pub. L. 94–455 provided that: ''The amendments made by this subparagraph [amending this section and sections 6011, 6611, and 6651 of this title and repealing sections 6076 and 6680 of this title] shall apply with respect to acquisitions of stock or debt obligations made after June 30, 1974, except that the repeal of paragraph (2) of section 6011(d) under clause (ii) shall apply with respect to loans and commitments made after such date.''

Amendment by section 2122(b)(2) of Pub. L. 94–455, as amended by Pub. L. 96–167, § 9(c), Dec. 29, 1979, 93 Stat. 1278, applicable to taxable years beginning after Dec. 31, 1976, see section 2122(c) of Pub. L. 94–455, as amended, set out as an Effective Date note under section 190 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 109(d)(2), (3) of Pub. L. 92–178 provided that:

''(2) The amendment made by subsection (b) [amending this section] shall apply to taxable years ending after December 31, 1970.

''(3) The amendments made by subsection (c) [amending this section] shall apply to taxable years beginning after December 31, 1969.''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 706(b) of Pub. L. 91–172 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1969.''

EFFECTIVE DATE OF 1965 AMENDMENT

Section 4(p)(3) of Pub. L. 89–243 provided that: ''The amendments made by this subsection [amending this section] shall apply to taxable years ending after September 2, 1964.''

Section 4(q) of Pub. L. 89–243 provided in part that: ''Except as otherwise specifically provided in this section and in the amendments made by this section [amending this section and sections 4912, 4914, 4916, 4917, 4919, 4920, and 4931 of this title], such amendments shall apply with respect to acquisitions of stock and debt obligations made after February 10, 1965.''

EFFECTIVE DATE OF 1962 AMENDMENT

Section 21(d) of Pub. L. 87–834 provided that: ''The amendments made by this section [enacting section 182 of this title and amending this section] shall apply with respect to taxable years beginning after December 31, 1962.''

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–779 applicable to taxable years beginning after Dec. 31, 1959, see section 6(d) of Pub. L. 86–779, set out as an Effective Date note under section 180 of this title.

SHORT TITLE OF 1965 AMENDMENT

Section 1(a) of Pub. L. 89–243 provided that: ''This Act [amending this section and sections 4912, 4914, 4916, 4917, 4919, 4920, and 4931 of this title, and enacting provisions set out as notes under sections 6011 and 6076 of this title] may be cited as the 'Interest Equalization Tax Extension Act of 1965'.''

SHORT TITLE OF 1964 AMENDMENT

Section 1(a) of Pub. L. 88–563 provided that: ''This Act [enacting sections 4911 to 4920, 4931, 6076, 6680, 6681, and 7241 of this title, amending this section and sections 1232, 6011, and 6103 of this title, and enacting provisions set out as notes under section 6011 of this title] may be cited as the 'Interest Equalization Tax Act'.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(4)(D) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 263A. Capitalization and inclusion in inventory costs of certain expenses

(a) Nondeductibility of certain direct and indirect costs

(1) In general

In the case of any property to which this section applies, any costs described in paragraph (2)—

(A) in the case of property which is inventory in the hands of the taxpayer, shall be included in inventory costs, and

(B) in the case of any other property, shall be capitalized.

(2) Allocable costs

The costs described in this paragraph with respect to any property are—

(A) the direct costs of such property, and

(B) such property's proper share of those indirect costs (including taxes) part or all of which are allocable to such property.

Any cost which (but for this subsection) could not be taken into account in computing taxable income for any taxable year shall not be treated as a cost described in this paragraph.

(b) Property to which section applies

Except as otherwise provided in this section, this section shall apply to—

(1) Property produced by taxpayer

Real or tangible personal property produced by the taxpayer.

(2) Property acquired for resale

(A) In general

Real or personal property described in section 1221(a)(1) which is acquired by the taxpayer for resale.

(B) Exception for taxpayer with gross receipts of $10,000,000 or less

Subparagraph (A) shall not apply to any personal property acquired during any taxable year by the taxpayer for resale if the average annual gross receipts of the taxpayer (or any predecessor) for the 3-taxable year period ending with the taxable year preceding such taxable year do not exceed $10,000,000.

(C) Aggregation rules, etc.

For purposes of subparagraph (B), rules similar to the rules of paragraphs (2) and (3) of section 448(c) shall apply.

For purposes of paragraph (1), the term ''tangible personal property'' shall include a film, sound recording, video tape, book, or similar property.

(c) General exceptions

(1) Personal use property

This section shall not apply to any property produced by the taxpayer for use by the taxpayer other than in a trade or business or an activity conducted for profit.

(2) Research and experimental expenditures

This section shall not apply to any amount allowable as a deduction under section 174.

(3) Certain development and other costs of oil and gas wells or other mineral property

This section shall not apply to any cost allowable as a deduction under section 167(h), 179B, 263(c), 263(i), 291(b)(2), 616, or 617.

(4) Coordination with long-term contract rules

This section shall not apply to any property produced by the taxpayer pursuant to a long-term contract.

(5) Timber and certain ornamental trees

This section shall not apply to—

(A) trees raised, harvested, or grown by the taxpayer other than trees described in clause (ii) of subsection (e)(4)(B) (after application of the last sentence thereof), and

(B) any real property underlying such trees.

(6) Coordination with section 59(e)

Paragraphs (2) and (3) shall apply to any amount allowable as a deduction under section 59(e) for qualified expenditures described in subparagraphs (B), (C), (D), and (E) of paragraph (2) thereof.

(d) Exception for farming businesses

(1) Section not to apply to certain property

(A) In general

This section shall not apply to any of the following which is produced by the taxpayer in a farming business:

(i) Any animal.

(ii) Any plant which has a preproductive period of 2 years or less.

(B) Exception for taxpayers required to use accrual method

Subparagraph (A) shall not apply to any corporation, partnership, or tax shelter required to use an accrual method of accounting under section 447 or 448(a)(3).

(2) Treatment of certain plants lost by reason of casualty

(A) In general

If plants bearing an edible crop for human consumption were lost or damaged (while in the hands of the taxpayer) by reason of freezing temperatures, disease, drought, pests, or casualty, this section shall not apply to any costs of the taxpayer of replanting plants bearing the same type of crop (whether on the same parcel of land on which such lost or damaged plants were located or any other parcel of land of the same acreage in the United States).

(B) Special rule for person with minority interest who materially participates

Subparagraph (A) shall apply to amounts paid or incurred by a person (other than the taxpayer described in subparagraph (A)) if—

(i) the taxpayer described in subparagraph (A) has an equity interest of more than 50 percent in the plants described in subparagraph (A) at all times during the taxable year in which such amounts were paid or incurred, and

(ii) such other person holds any part of the remaining equity interest and materially participates in the planting, maintenance, cultivation, or development of such the plants described in subparagraph (A) during the taxable year in which such amounts were paid or incurred.

The determination of whether an individual materially participates in any activity shall be made in a manner similar to the manner in which such determination is made under section 2032A(e)(6).

(3) Election to have this section not apply

(A) In general

If a taxpayer makes an election under this paragraph, this section shall not apply to any plant produced in any farming business carried on by such taxpayer.

(B) Certain persons not eligible

No election may be made under this paragraph by a corporation, partnership, or tax shelter, if such corporation, partnership, or tax shelter is required to use an accrual method of accounting under section 447 or 448(a)(3).

(C) Special rule for citrus and almond growers

An election under this paragraph shall not apply with respect to any item which is attributable to the planting, cultivation, maintenance, or development of any citrus or almond grove (or part thereof) and which is incurred before the close of the 4th taxable year beginning with the taxable year in which the trees were planted. For purposes of the preceding sentence, the portion of a citrus or almond grove planted in 1 taxable year shall be treated separately from the portion of such grove planted in another taxable year.

(D) Election

Unless the Secretary otherwise consents, an election under this paragraph may be made only for the taxpayer's 1st taxable year which begins after December 31, 1986, and during which the taxpayer engages in a farming business. Any such election, once made, may be revoked only with the consent of the Secretary.

(e) Definitions and special rules for purposes of subsection (d)

(1) Recapture of expensed amounts on disposition

(A) In general

In the case of any plant with respect to which amounts would have been capitalized under subsection (a) but for an election under subsection (d)(3)—

(i) such plant (if not otherwise section 1245 property) shall be treated as section 1245 property, and

(ii) for purposes of section 1245, the recapture amount shall be treated as a deduction allowed for depreciation with respect to such property.

(B) Recapture amount

For purposes of subparagraph (A), the term ''recapture amount'' means any amount allowable as a deduction to the taxpayer which, but for an election under subsection (d)(3), would have been capitalized with respect to the plant.

(2) Effects of election on depreciation

(A) In general

If the taxpayer (or any related person) makes an election under subsection (d)(3), the provisions of section 168(g)(2) (relating to alternative depreciation) shall apply to all property of the taxpayer used predominantly in the farming business and placed in service in any taxable year during which any such election is in effect.

(B) Related person

For purposes of subparagraph (A), the term ''related person'' means—

(i) the taxpayer and members of the taxpayer's family,

(ii) any corporation (including an S corporation) if 50 percent or more (in value) of the stock of such corporation is owned (directly or through the application of section 318) by the taxpayer or members of the taxpayer's family,

(iii) a corporation and any other corporation which is a member of the same controlled group described in section 1563(a)(1), and

(iv) any partnership if 50 percent or more (in value) of the interests in such partnership is owned directly or indirectly by the taxpayer or members of the taxpayer's family.

(C) Members of family

For purposes of this paragraph, the term ''family'' means the taxpayer, the spouse of the taxpayer, and any of their children who have not attained age 18 before the close of the taxable year.

(3) Preproductive period

(A) In general

For purposes of this section, the term ''preproductive period'' means—

(i) in the case of a plant which will have more than 1 crop or yield, the period before the 1st marketable crop or yield from such plant, or

(ii) in the case of any other plant, the period before such plant is reasonably expected to be disposed of.

For purposes of this subparagraph, use by the taxpayer in a farming business of any supply produced in such business shall be treated as a disposition.

(B) Rule for determining period

In the case of a plant grown in commercial quantities in the United States, the preproductive period for such plant if grown in the United States shall be based on the nationwide weighted average preproductive period for such plant.

(4) Farming business

For purposes of this section—

(A) In general

The term ''farming business'' means the trade or business of farming.

(B) Certain trades and businesses included

The term ''farming business'' shall include the trade or business of—

(i) operating a nursery or sod farm, or

(ii) the raising or harvesting of trees bearing fruit, nuts, or other crops, or ornamental trees.

For purposes of clause (ii), an evergreen tree which is more than 6 years old at the time

severed from the roots shall not be treated as an ornamental tree.

(5) Certain inventory valuation methods permitted

The Secretary shall by regulations permit the taxpayer to use reasonable inventory valuation methods to compute the amount required to be capitalized under subsection (a) in the case of any plant.

(f) Special rules for allocation of interest to property produced by the taxpayer

(1) Interest capitalized only in certain cases

Subsection (a) shall only apply to interest costs which are—

(A) paid or incurred during the production period, and

(B) allocable to property which is described in subsection (b)(1) and which has—

(i) a long useful life,

(ii) an estimated production period exceeding 2 years, or

(iii) an estimated production period exceeding 1 year and a cost exceeding $1,000,000.

(2) Allocation rules

(A) In general

In determining the amount of interest required to be capitalized under subsection (a) with respect to any property—

(i) interest on any indebtedness directly attributable to production expenditures with respect to such property shall be assigned to such property, and

(ii) interest on any other indebtedness shall be assigned to such property to the extent that the taxpayer's interest costs could have been reduced if production expenditures (not attributable to indebtedness described in clause (i)) had not been incurred.

(B) Exception for qualified residence interest

Subparagraph (A) shall not apply to any qualified residence interest (within the meaning of section 163(h)).

(C) Special rule for flow-through entities

Except as provided in regulations, in the case of any flow-through entity, this paragraph shall be applied first at the entity level and then at the beneficiary level.

(3) Interest relating to property used to produce property

This subsection shall apply to any interest on indebtedness allocable (as determined under paragraph (2)) to property used to produce property to which this subsection applies to the extent such interest is allocable (as so determined) to the produced property.

(4) Definitions

For purposes of this subsection—

(A) Long useful life

Property has a long useful life if such property is—

(i) real property, or

(ii) property with a class life of 20 years or more (as determined under section 168).

(B) Production period

The term ''production period'' means, when used with respect to any property, the period—

(i) beginning on the date on which production of the property begins, and

(ii) ending on the date on which the property is ready to be placed in service or is ready to be held for sale.

(C) Production expenditures

The term ''production expenditures'' means the costs (whether or not incurred during the production period) required to be capitalized under subsection (a) with respect to the property.

(g) Production

For purposes of this section—

(1) In general

The term ''produce'' includes construct, build, install, manufacture, develop, or improve.

(2) Treatment of property produced under contract for the taxpayer

The taxpayer shall be treated as producing any property produced for the taxpayer under a contract with the taxpayer; except that only costs paid or incurred by the taxpayer (whether under such contract or otherwise) shall be taken into account in applying subsection (a) to the taxpayer.

(h) Exemption for free lance authors, photographers, and artists

(1) In general

Nothing in this section shall require the capitalization of any qualified creative expense.

(2) Qualified creative expense

For purposes of this subsection, the term ''qualified creative expense'' means any expense—

(A) which is paid or incurred by an individual in the trade or business of such individual (other than as an employee) of being a writer, photographer, or artist, and

(B) which, without regard to this section, would be allowable as a deduction for the taxable year.

Such term does not include any expense related to printing, photographic plates, motion picture films, video tapes, or similar items.

(3) Definitions

For purposes of this subsection—

(A) Writer

The term ''writer'' means any individual if the personal efforts of such individual create (or may reasonably be expected to create) a literary manuscript, musical composition (including any accompanying words), or dance score.

(B) Photographer

The term ''photographer'' means any individual if the personal efforts of such individual create (or may reasonably be expected to create) a photograph or photographic negative or transparency.

(C) Artist

(i) In general

The term ''artist'' means any individual if the personal efforts of such individual create (or may reasonably be expected to create) a picture, painting, sculpture, statue, etching, drawing, cartoon, graphic design, or original print edition.

(ii) Criteria

In determining whether any expense is paid or incurred in the trade or business of being an artist, the following criteria shall be taken into account:

(I) The originality and uniqueness of the item created (or to be created).

(II) The predominance of aesthetic value over utilitarian value of the item created (or to be created).

(D) Treatment of certain corporations

(i) In general

If—

(I) substantially all of the stock of a corporation is owned by a qualified employee-owner and members of his family (as defined in section 267(c)(4)), and

(II) the principal activity of such corporation is performance of personal services directly related to the activities of the qualified employee-owner and such services are substantially performed by the qualified employee-owner,

this subsection shall apply to any expense of such corporation which directly relates to the activities of such employee-owner in the same manner as if such expense were incurred by such employee-owner.

(ii) Qualified employee-owner

For purposes of this subparagraph, the term ''qualified employee-owner'' means any individual who is an employee-owner of the corporation (as defined in section 269A(b)(2)) and who is a writer, photographer, or artist.

(i) Regulations

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

(1) regulations to prevent the use of related parties, pass-thru entities, or intermediaries to avoid the application of this section, and

(2) regulations providing for simplified procedures for the application of this section in the case of property described in subsection (b)(2).

(Added Pub. L. 99–514, title VIII, §803(a), Oct. 22, 1986, 100 Stat. 2350; amended Pub. L. 100–647, title I, §1008(b)(1)–(4), title VI, §6026(a)–(c), Nov. 10, 1988, 102 Stat. 3437, 3438, 3691–3693; Pub. L. 101–239, title VII, §7816(d)(1), Dec. 19, 1989, 103 Stat. 2420; Pub. L. 106–170, title V, §532(c)(2)(B), Dec. 17, 1999, 113 Stat. 1930; Pub. L. 108–357, title III, §338(b)(2), Oct. 22, 2004, 118 Stat. 1481; Pub. L. 109–58, title XIII, §1329(b), Aug. 8, 2005, 119 Stat. 1020).

AMENDMENTS

2005—Subsec. (c)(3). Pub. L. 109–58 inserted ''167(h),'' after ''under section''.

2004—Subsec. (c)(3). Pub. L. 108–357, which directed amendment of par. (3) by inserting ''179B,'' after ''section'', was executed by making the insertion after ''section'' the second place it appeared to reflect the probable intent of Congress.

1999—Subsec. (b)(2)(A). Pub. L. 106–170 substituted ''1221(a)(1)'' for ''1221(1)''.

1989—Subsec. (h)(3)(D). Pub. L. 101–239 substituted ''corporations'' for ''personal service corporations'' in heading and amended text generally. Prior to amendment, text read as follows:

''(i) IN GENERAL.—In the case of a personal service corporation, this subsection shall apply to any expense of such corporation which directly relates to the activities of the qualified employee-owner in the same manner as if such expense were incurred by such employee-owner.

''(ii) QUALIFIED EMPLOYEE-OWNER.—The term 'qualified employee-owner' means any individual who is an employee-owner of the personal service corporation and who is a writer, photographer, or artist, but only if substantially all of the stock of such corporation is owned by such individual and members of his family (as defined in section 267(c)(4)).

''(iii) PERSONAL SERVICE CORPORATION.—For purposes of this subparagraph, the term 'personal service corporation' means any personal service corporation (as defined in section 269A(b)).''

1988—Subsec. (a)(2). Pub. L. 100–647, §1008(b)(1), inserted at end ''Any cost which (but for this subsection) could not be taken into account in computing taxable income for any taxable year shall not be treated as a cost described in this paragraph.''

Subsec. (c)(3). Pub. L. 100–647, §1008(b)(2)(A), substituted ''section 263(c), 263(i), 291(b)(2), 616, or 617'' for ''section 263(c), 616(a), or 617(a)''.

Subsec. (c)(6). Pub. L. 100–647, §1008(b)(2)(B), added par. (6).

Subsec. (d)(1). Pub. L. 100–647, §6026(b)(2)(A), substituted ''Section not to apply to certain property'' for ''Section to apply only if preproductive period is more than 2 years'' in heading.

Subsec. (d)(1)(A). Pub. L. 100–647, §6026(b)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''This section shall not apply to any plant or animal which is produced by the taxpayer in a farming business and which has a preproductive period of 2 years or less.''

Subsec. (d)(2)(B)(i). Pub. L. 100–647, §1008(b)(3)(A), substituted ''the plants described in subparagraph (A) at all times during the taxable year in which such amounts were paid or incurred'' for ''such grove, orchard, or vineyard''.

Subsec. (d)(2)(B)(ii). Pub. L. 100–647, §1008(b)(3)(B), substituted ''the plants described in subparagraph (A) during the taxable year in which such amounts were paid or incurred'' for ''such grove, orchard, or vineyard during the 4-taxable year period beginning with the taxable year in which the grove, orchard, or vineyard was lost or damaged''.

Subsec. (d)(3)(A). Pub. L. 100–647, §6026(b)(2)(B), struck out ''or animal'' after ''plant''.

Subsec. (d)(3)(B). Pub. L. 100–647, §6026(c), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''No election may be made under this paragraph—

''(i) by a corporation, partnership, or tax shelter, if such corporation, partnership, or tax shelter is required to use an accrual method of accounting under section 447 or 448(a)(3), or

''(ii) with respect to the planting, cultivation, maintenance, or development of pistachio trees.''

Subsec. (e). Pub. L. 100–647, §6026(b)(2)(B), struck out ''or animal'' after ''plant'' wherever appearing in pars. (1), (3), and (5).

Subsec. (f)(3). Pub. L. 100–647, §1008(b)(4), substituted ''allocable (as determined under paragraph (2)) to'' for ''incurred or continued in connection with'' and inserted ''(as so determined)'' after ''allocable''.

Subsecs. (h), (i). Pub. L. 100–647, §6026(a), added subsec. (h) and redesignated former subsec. (h) as (i).

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–58 applicable to amounts paid or incurred in taxable years beginning after Aug. 8, 2005, see section 1329(c) of Pub. L. 109–58, set out as a note under section 167 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to expenses paid or incurred after Dec. 31, 2002, in taxable years ending after such date, see section 338(c) of Pub. L. 108–357, set out as an Effective Date note under section 179B of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1008(b)(1)–(4) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6026(d) of Pub. L. 100–647, as amended by Pub. L. 101–239, title VII, § 7816(d)(2), Dec. 19, 1989, 103 Stat. 2421, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by this section [amending this section] shall take effect as if included in the amendments made by section 803 of the Tax Reform Act of 1986 [section 803 of Pub. L. 99–514].

''(2) SUBSECTION (b).—

''(A) IN GENERAL.—The amendments made by subsection (b) [amending this section] shall apply to costs incurred after December 31, 1988, in taxable years ending after such date.

''(B) REVOCATION OF ELECTION.—If a taxpayer engaged in a farming business involving the production of animals having a preproductive period of more than 2 years made an election under section 263A(d)(3) of the 1986 Code for a taxable year beginning before January 1, 1989, such taxpayer may, without the consent of the Secretary of the Treasury or his delegate, revoke such election effective for the taxpayer's 1st taxable year beginning after December 31, 1988.''

EFFECTIVE DATE

Section 7831(d)(2) of Pub. L. 101–239 provided that: ''If any interest costs incurred after December 31, 1986, are attributable to costs incurred before January 1, 1987, the amendments made by section 803 of the Tax Reform Act of 1986 [section 803 of Pub. L. 99–514, enacting this section, amending sections 48, 267, 312, 447, 464, and 471 of this title, and repealing sections 189, 278, and 280 of this title] shall apply to such interest costs only to the extent such interest costs are attributable to costs which were required to be capitalized under section 263 of the Internal Revenue Code of 1954 and which would have been taken into account in applying section 189 of the Internal Revenue Code of 1954 (as in effect before its repeal by section 803 of the Tax Reform Act of 1986) or, if applicable, section 266 of such Code.''

Section 803(d) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1008(b)(7), Nov. 10, 1988, 102 Stat. 3438; Pub. L. 101–239, title VII, § 7831(d)(1), Dec. 19, 1989, 103 Stat. 2426, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [enacting this section, amending sections 48, 267, 312, 447, 464, and 471 of this title, and repealing sections 189, 278, and 280 of this title] shall apply to costs incurred after December 31, 1986, in taxable years ending after such date.

''(2) SPECIAL RULE FOR INVENTORY PROPERTY.—In the case of any property which is inventory in the hands of the taxpayer—

''(A) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

''(B) CHANGE IN METHOD OF ACCOUNTING.—If the taxpayer is required by the amendments made by this section to change its method of accounting with respect to such property for any taxable year—

''(i) such change shall be treated as initiated by the taxpayer,

''(ii) such change shall be treated as made with the consent of the Secretary, and

''(iii) the period for taking into account the adjustments under section 481 by reason of such change shall not exceed 4 years.

''(3) SPECIAL RULE FOR SELF-CONSTRUCTED PROPERTY.—The amendments made by this section shall not apply to any property which is produced by the taxpayer for use by the taxpayer if substantial construction had occurred before March 1, 1986.

''(4) TRANSITIONAL RULE FOR CAPITALIZATION OF INTEREST AND TAXES.—

''(A) TRANSITION PROPERTY EXEMPTED FROM INTEREST CAPITALIZATION.—Section 263A of the Internal Revenue Code of 1986 (as added by this section) and the amendment made by subsection (b)(1) [repealing section 189 of this title] shall not apply to interest costs which are allocable to any property—

''(i) to which the amendments made by section 201 [amending sections 46, 167, 168, 178, 179, 280F, 291, 312, 465, 467, 514, 751, 1245, 4162, 6111, and 7701 of this title] do not apply by reason of sections 204(a)(1)(D) and (E) and 204(a)(5)(A) [set out as a note under section 168 of this title], and

''(ii) to which the amendments made by section 251 [amending sections 46 and 48 of this title and enacting provisions set out as a note under section 46 of this title] do not apply by reason of section 251(d)(3)(M) [set out as a note under section 46 of this title].

''(B) INTEREST AND TAXES.—Section 263A of such Code shall not apply to property described in the matter following subparagraph (B) of section 207(e)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 207(e)(2)(B) of Pub. L. 97–248, formerly set out as a note under section 189 of this title] to the extent it would require the capitalization of interest and taxes paid or incurred in connection with such property which are not required to be capitalized under section 189 of such Code (as in effect before the amendment made by subsection (b)(1)) [repealing section 189 of this title].

''(5) TRANSITION RULE CONCERNING CAPITALIZATION OF INVENTORY RULES.—In the case of a corporation which on the date of the enactment of this Act [Oct. 22, 1986] was a member of an affiliated group of corporations (within the meaning of section 1504(a) of the Internal Revenue Code of 1986), the parent of which—

''(A) was incorporated in California on April 15, 1925,

''(B) adopted LIFO accounting as of the close of the taxable year ended December 31, 1950, and

''(C) was, on May 22, 1986, merged into a Delaware corporation incorporated on March 12, 1986,

the amendments made by this section shall apply under a cut-off method whereby the uniform capitalization rules are applied only in costing layers of inventory acquired during taxable years beginning on or after January 1, 1987.

''(6) TREATMENT OF CERTAIN REHABILITATION PROJECT.—The amendments made by this section shall not apply to interest and taxes paid or incurred with

respect to the rehabilitation and conversion of a certified historic building which was formerly a factory into an apartment project with 155 units, 39 units of which are for low-income families, if the project was approved for annual interest assistance on June 10, 1986, by the housing authority of the State in which the project is located.

''(7) SPECIAL RULE FOR CASUALTY LOSSES.—Section 263A(d)(2) of the Internal Revenue Code of 1986 (as added by this section) shall apply to expenses incurred on or after the date of the enactment of this Act [Oct. 22, 1986].''

ALLOCATION RATIO FOR APPORTIONING STORAGE COSTS AND RELATED HANDLING COSTS

Section 1008(b)(8) of Pub. L. 100–647 provided that: ''The allocation used in the regulations prescribed under section 263A(h)(2) of the Internal Revenue Code of 1986 for apportioning storage costs and related handling costs shall be determined by dividing the amount of such costs by the beginning inventory balances and the purchases during the year and by multiplying the resulting allocation ratio by inventory amounts determined in accordance with the provisions of the joint explanatory statement of the committee of conference of the conference report accompanying H.R. 3838 (H.R. Rept. No. 99–841, Vol. II., 99th Cong., 2d Sess. II–306–307 (1986)).''

AMORTIZATION OF PAST SERVICE PENSION COSTS

Pub. L. 100–203, title X, § 10204, Dec. 22, 1987, 101 Stat. 1330–394, provided that:

''(a) IN GENERAL.—For purposes of sections 263A and 460 of the Internal Revenue Code of 1986, the allocable costs (within the meaning of section 263A(a)(2) or section 460(c) of such Code, whichever is applicable) with respect to any property shall include contributions paid to or under a pension or annuity plan whether or not such contributions represent past service costs.

''(b) EFFECTIVE DATE.—

''(1) IN GENERAL.—Except as provided in paragraph (2), subsection (a) shall apply to costs incurred after December 31, 1987, in taxable years ending after such date.

''(2) SPECIAL RULE FOR INVENTORY PROPERTY.—In the case of any property which is inventory in the hands of the taxpayer—

''(A) IN GENERAL.—Subsection (a) shall apply to taxable years beginning after December 31, 1987.

''(B) CHANGE IN METHOD OF ACCOUNTING.—If the taxpayer is required by this section to change its method of accounting for any taxable year—

''(i) such change shall be treated as initiated by the taxpayer,

''(ii) such change shall be treated as made with the consent of the Secretary of the Treasury or his delegate, and

''(iii) the net amount of adjustments required by section 481 of the Internal Revenue Code of 1986 shall be taken into account over a period not longer than 4 taxable years.''

§ 264. Certain amounts paid in connection with insurance contracts

(a) General rule

No deduction shall be allowed for—

(1) Premiums on any life insurance policy, or endowment or annuity contract, if the taxpayer is directly or indirectly a beneficiary under the policy or contract.

(2) Any amount paid or accrued on indebtedness incurred or continued to purchase or carry a single premium life insurance, endowment, or annuity contract.

(3) Except as provided in subsection (d), any amount paid or accrued on indebtedness incurred or continued to purchase or carry a life insurance, endowment, or annuity contract (other than a single premium contract or a contract treated as a single premium contract) pursuant to a plan of purchase which contemplates the systematic direct or indirect borrowing of part or all of the increases in the cash value of such contract (either from the insurer or otherwise).

(4) Except as provided in subsection (e), any interest paid or accrued on any indebtedness with respect to 1 or more life insurance policies owned by the taxpayer covering the life of any individual, or any endowment or annuity contracts owned by the taxpayer covering any individual.

Paragraph (2) shall apply in respect of annuity contracts only as to contracts purchased after March 1, 1954. Paragraph (3) shall apply only in respect of contracts purchased after August 6, 1963. Paragraph (4) shall apply with respect to contracts purchased after June 20, 1986.

(b) Exceptions to subsection (a)(1)

Subsection (a)(1) shall not apply to—

(1) any annuity contract described in section 72(s)(5), and

(2) any annuity contract to which section 72(u) applies.

(c) Contracts treated as single premium contracts

For purposes of subsection (a)(2), a contract shall be treated as a single premium contract—

(1) if substantially all the premiums on the contract are paid within a period of 4 years from the date on which the contract is purchased, or

(2) if an amount is deposited after March 1, 1954, with the insurer for payment of a substantial number of future premiums on the contract.

(d) Exceptions

Subsection (a)(3) shall not apply to any amount paid or accrued by a person during a taxable year on indebtedness incurred or continued as part of a plan referred to in subsection (a)(3)—

(1) if no part of 4 of the annual premiums due during the 7-year period (beginning with the date the first premium on the contract to which such plan relates was paid) is paid under such plan by means of indebtedness,

(2) if the total of the amounts paid or accrued by such person during such taxable year for which (without regard to this paragraph) no deduction would be allowable by reason of subsection (a)(3) does not exceed $100.

(3) if such amount was paid or accrued on indebtedness incurred because of an unforeseen substantial loss of income or unforeseen substantial increase in his financial obligations, or

(4) if such indebtedness was incurred in connection with his trade or business.

For purposes of applying paragraph (1), if there is a substantial increase in the premiums on a contract, a new 7-year period described in such paragraph with respect to such contract shall commence on the date of first such increased premium is paid.

(e) Special rules for application of subsection (a)(4)

(1) Exception for key persons

Subsection (a)(4) shall not apply to any interest paid or accrued on any indebtedness with respect to policies or contracts covering an individual who is a key person to the extent that the aggregate amount of such indebtedness with respect to policies and contracts covering such individual does not exceed $50,000.

(2) Interest rate cap on key persons and pre-1986 contracts

(A) In general

No deduction shall be allowed by reason of paragraph (1) or the last sentence of subsection (a) with respect to interest paid or accrued for any month beginning after December 31, 1995, to the extent the amount of such interest exceeds the amount which would have been determined if the applicable rate of interest were used for such month.

(B) Applicable rate of interest

For purposes of subparagraph (A)—

(i) In general

The applicable rate of interest for any month is the rate of interest described as Moody's Corporate Bond Yield Average-Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto, for such month.

(ii) Pre-1986 contracts

In the case of indebtedness on a contract purchased on or before June 20, 1986—

(I) which is a contract providing a fixed rate of interest, the applicable rate of interest for any month shall be the Moody's rate described in clause (i) for the month in which the contract was purchased, or

(II) which is a contract providing a variable rate of interest, the applicable rate of interest for any month in an applicable period shall be such Moody's rate for the third month preceding the first month in such period.

For purposes of subclause (II), the term ''applicable period'' means the 12-month period beginning on the date the policy is issued (and each successive 12-month period thereafter) unless the taxpayer elects a number of months (not greater than 12) other than such 12-month period to be its applicable period. Such an election shall be made not later than the 90th day after the date of the enactment of this sentence and, if made, shall apply to the taxpayer's first taxable year ending on or after October 13, 1995, and all subsequent taxable years unless revoked with the consent of the Secretary.

(3) Key person

For purposes of paragraph (1), the term ''key person'' means an officer or 20-percent owner, except that the number of individuals who may be treated as key persons with respect to any taxpayer shall not exceed the greater of—

(A) 5 individuals, or

(B) the lesser of 5 percent of the total officers and employees of the taxpayer or 20 individuals.

(4) 20-percent owner

For purposes of this subsection, the term ''20-percent owner'' means—

(A) if the taxpayer is a corporation, any person who owns directly 20 percent or more of the outstanding stock of the corporation or stock possessing 20 percent or more of the total combined voting power of all stock of the corporation, or

(B) if the taxpayer is not a corporation, any person who owns 20 percent or more of the capital or profits interest in the taxpayer.

(5) Aggregation rules

(A) In general

For purposes of paragraph (4)(A) and applying the $50,000 limitation in paragraph (1)—

(i) all members of a controlled group shall be treated as one taxpayer, and

(ii) such limitation shall be allocated among the members of such group in such manner as the Secretary may prescribe.

(B) Controlled group

For purposes of this paragraph, all persons treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (*o*) of section 414 shall be treated as members of a controlled group.

(f) Pro rata allocation of interest expense to policy cash values

(1) In general

No deduction shall be allowed for that portion of the taxpayer's interest expense which is allocable to unborrowed policy cash values.

(2) Allocation

For purposes of paragraph (1), the portion of the taxpayer's interest expense which is allocable to unborrowed policy cash values is an amount which bears the same ratio to such interest expense as—

(A) the taxpayer's average unborrowed policy cash values of life insurance policies, and annuity and endowment contracts, issued after June 8, 1997, bears to

(B) the sum of—

(i) in the case of assets of the taxpayer which are life insurance policies or annuity or endowment contracts, the average unborrowed policy cash values of such policies and contracts, and

(ii) in the case of assets of the taxpayer not described in clause (i), the average adjusted bases (within the meaning of section 1016) of such assets.

(3) Unborrowed policy cash value

For purposes of this subsection, the term ''unborrowed policy cash value'' means, with respect to any life insurance policy or annuity or endowment contract, the excess of—

(A) the cash surrender value of such policy or contract determined without regard to any surrender charge, over

(B) the amount of any loan with respect to such policy or contract.

If the amount described in subparagraph (A) with respect to any policy or contract does not reasonably approximate its actual value, the amount taken into account under subparagraph (A) shall be the greater of the amount of the insurance company liability or the insurance company reserve with respect to such policy or contract (as determined for purposes of the annual statement approved by the National Association of Insurance Commissioners) or shall be such other amount as is determined by the Secretary.

(4) Exception for certain policies and contracts

(A) Policies and contracts covering 20-percent owners, officers, directors, and employees

Paragraph (1) shall not apply to any policy or contract owned by an entity engaged in a trade or business if such policy or contract covers only 1 individual and if such individual is (at the time first covered by the policy or contract)—

(i) a 20-percent owner of such entity, or

(ii) an individual (not described in clause (i)) who is an officer, director, or employee of such trade or business.

A policy or contract covering a 20-percent owner of such entity shall not be treated as failing to meet the requirements of the preceding sentence by reason of covering the joint lives of such owner and such owner's spouse.

(B) Contracts subject to current income inclusion

Paragraph (1) shall not apply to any annuity contract to which section 72(u) applies.

(C) Coordination with paragraph (2)

Any policy or contract to which paragraph (1) does not apply by reason of this paragraph shall not be taken into account under paragraph (2).

(D) 20-percent owner

For purposes of subparagraph (A), the term ''20-percent owner'' has the meaning given such term by subsection (e)(4).

(E) Master contracts

If coverage for each insured under a master contract is treated as a separate contract for purposes of sections 817(h), 7702, and 7702A, coverage for each such insured shall be treated as a separate contract for purposes of subparagraph (A). For purposes of the preceding sentence, the term ''master contract'' shall not include any group life insurance contract (as defined in section 848(e)(2)).

(5) Exception for policies and contracts held by natural persons; treatment of partnerships and S corporations

(A) Policies and contracts held by natural persons

(i) In general

This subsection shall not apply to any policy or contract held by a natural person.

(ii) Exception where business is beneficiary

If a trade or business is directly or indirectly the beneficiary under any policy or contract, such policy or contract shall be treated as held by such trade or business and not by a natural person.

(iii) Special rules

(I) Certain trades or businesses not taken into account

Clause (ii) shall not apply to any trade or business carried on as a sole proprietorship and to any trade or business performing services as an employee.

(II) Limitation on unborrowed cash value

The amount of the unborrowed cash value of any policy or contract which is taken into account by reason of clause (ii) shall not exceed the benefit to which the trade or business is directly or indirectly entitled under the policy or contract.

(iv) Reporting

The Secretary shall require such reporting from policyholders and issuers as is necessary to carry out clause (ii).

(B) Treatment of partnerships and S corporations

In the case of a partnership or S corporation, this subsection shall be applied at the partnership and corporate levels.

(6) Special rules

(A) Coordination with subsection (a) and section 265

If interest on any indebtedness is disallowed under subsection (a) or section 265—

(i) such disallowed interest shall not be taken into account for purposes of applying this subsection, and

(ii) the amount otherwise taken into account under paragraph (2)(B) shall be reduced (but not below zero) by the amount of such indebtedness.

(B) Coordination with section 263A

This subsection shall be applied before the application of section 263A (relating to capitalization of certain expenses where taxpayer produces property).

(7) Interest expense

The term ''interest expense'' means the aggregate amount allowable to the taxpayer as a deduction for interest (within the meaning of section 265(b)(4)) for the taxable year (determined without regard to this subsection, section 265(b), and section 291).

(8) Aggregation rules

(A) In general

All members of a controlled group (within the meaning of subsection (e)(5)(B)) shall be treated as 1 taxpayer for purposes of this subsection.

(B) Treatment of insurance companies

This subsection shall not apply to an insurance company subject to tax under sub-

chapter L, and subparagraph (A) shall be applied without regard to any member of an affiliated group which is an insurance company.

(Aug. 16, 1954, ch. 736, 68A Stat. 77; Pub. L. 88–272, title II, § 215(a), (b), Feb. 26, 1964, 78 Stat. 55; Pub. L. 99–514, title X, § 1003(a), (b), Oct. 22, 1986, 100 Stat. 2388; Pub. L. 104–191, title V, § 501(a), (b), Aug. 21, 1996, 110 Stat. 2090; Pub. L. 105–34, title X, § 1084(a), (b)(1), (c), title XVI, § 1602(f)(1)–(3), Aug. 5, 1997, 111 Stat. 951, 952, 1094, 1095; Pub. L. 105–206, title VI, § 6010(*o*)(1)–(3)(A), (4)(A), (5), July 22, 1998, 112 Stat. 816; Pub. L. 105–277, div. J, title IV, § 4003(i), Oct. 21, 1998, 112 Stat. 2681–910.)

REFERENCES IN TEXT

The date of the enactment of this sentence, referred to in subsec. (e)(2)(B)(ii), probably means the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

CODIFICATION

Another section 1084(b) of Pub. L. 105–34 amended sections 805, 807, 812, and 832 of this title. Another section 1084(c) of Pub. L. 105–34 amended section 265 of this title.

AMENDMENTS

1998—Subsec. (a)(3). Pub. L. 105–206, § 6010(*o*)(1), substituted ''subsection (d)'' for ''subsection (c)''.

Subsec. (a)(4). Pub. L. 105–206, § 6010(*o*)(2), substituted ''subsection (e)'' for ''subsection (d)''.

Subsec. (f)(3). Pub. L. 105–277 inserted concluding provisions.

Subsec. (f)(4)(E). Pub. L. 105–206, § 6010(*o*)(3)(A), added subpar. (E).

Subsec. (f)(5)(A)(iv). Pub. L. 105–206, § 6010(*o*)(4)(A), struck out at end ''Any report required under the preceding sentence shall be treated as a statement referred to in section 6724(d)(1).''

Subsec. (f)(8)(A). Pub. L. 105–206, § 6010(*o*)(5), substituted ''subsection (e)(5)(B)'' for ''subsection (d)(5)(B)''.

1997—Subsec. (a)(1). Pub. L. 105–34, § 1084(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Premiums paid on any life insurance policy covering the life of any officer or employee, or of any person financially interested in any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary under such policy.''

Subsec. (a)(4). Pub. L. 105–34, § 1602(f)(1), added subpars. (A) and (B) and concluding provisions and struck out former subpars. (A) and (B) and concluding provisions which read as follows:

''(A) is an officer or employee of, or

''(B) is financially interested in,

any trade or business carried on by the taxpayer.''

Pub. L. 105–34, § 1084(b)(1), substituted ''individual.'' for ''individual, who—

''(A) is or was an officer or employee, or

''(B) is or was financially interested in,

any trade or business carried on (currently or formerly) by the taxpayer.''

Subsecs. (b), (c). Pub. L. 105–34, § 1084(a)(2), added subsec. (b) and redesignated former subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 105–34, § 1084(a)(2), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (d)(2)(B)(ii). Pub. L. 105–34, § 1602(f)(2), amended concluding provisions generally. Prior to amendment, concluding provisions read as follows: ''For purposes of subclause (II), the taxpayer shall elect an applicable period for such contract on its return of tax imposed by this chapter for its first taxable year ending on or after October 13, 1995. Such applicable period shall be for any number of months (not greater than 12) specified in the election and may not be changed by the taxpayer without the consent of the Secretary.''

Subsec. (d)(4)(B). Pub. L. 105–34, § 1602(f)(3), substituted ''interest in the taxpayer'' for ''interest in the employer''.

Subsec. (e). Pub. L. 105–34, § 1084(a)(2), redesignated subsec. (d) as (e).

Subsec. (f). Pub. L. 105–34, § 1084(c), added subsec. (f).

1996—Subsec. (a)(4). Pub. L. 104–191, § 501(a)(1), (b)(1), in introductory provisions, substituted ''Except as provided in subsection (d), any'' for ''Any'' and inserted '', or any endowment or annuity contracts owned by the taxpayer covering any individual,'' after ''the life of any individual''.

Pub. L. 104–191, § 501(a)(2), struck out ''to the extent that the aggregate amount of such indebtedness with respect to policies covering such individual exceeds $50,000'' after ''carried on by the taxpayer'' in concluding provisions.

Subsec. (d). Pub. L. 104–191, § 501(b)(2), added subsec. (d).

1986—Subsec. (a). Pub. L. 99–514 added par. (4) and last sentence providing that par. (4) shall apply with respect to contracts purchased after June 20, 1986.

1964—Subsec. (a). Pub. L. 88–272 added par. (3) and sentence providing that par. (3) shall apply only to contracts purchased after August 6, 1963.

Subsec. (c). Pub. L. 88–272 added subsec. (c).

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105–277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 4003(*l*) of Pub. L. 105–277, set out as a note under section 86 of this title.

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1084(a), (b)(1), (c) of Pub. L. 105–34 applicable to contracts issued after June 8, 1997, in taxable years ending after such date, with special provisions relating to changes in contracts to be treated as new contracts, see section 1084(d) of Pub. L. 105–34, set out as a note under section 101 of this title.

Amendment by section 1602(f)(1)–(3) of Pub. L. 105–34 effective as if included in the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104–191, to which such amendment relates, see section 1602(i) of Pub. L. 105–34, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 501(c) of Pub. L. 104–191, as amended by Pub. L. 105–34, title XVI, § 1602(f)(4), Aug. 5, 1997, 111 Stat. 1095, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to interest paid or accrued after October 13, 1995.

''(2) TRANSITION RULE FOR EXISTING INDEBTEDNESS.—

''(A) IN GENERAL.—In the case of—

''(i) indebtedness incurred before January 1, 1996, or

''(ii) indebtedness incurred before January 1, 1997 with respect to any contract or policy entered into in 1994 or 1995,

the amendments made by this section shall not apply to qualified interest paid or accrued on such indebtedness after October 13, 1995, and before January 1, 1999.

''(B) QUALIFIED INTEREST.—For purposes of subparagraph (A), the qualified interest with respect to any indebtedness for any month is the amount of interest (otherwise deductible) which would be paid or accrued for such month on such indebtedness if—

''(i) in the case of any interest paid or accrued after December 31, 1995, indebtedness with respect to no more than 20,000 insured individuals were taken into account, and

''(ii) the lesser of the following rates of interest were used for such month:

''(I) The rate of interest specified under the terms of the indebtedness as in effect on October 13, 1995 (and without regard to modification of such terms after such date).

''(II) The applicable percentage of the rate of interest described as Moody's Corporate Bond Yield Average-Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto, for such month.

For purposes of clause (i), all persons treated as a single employer under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 or subsection (m) or (*o*) of section 414 of such Code shall be treated as 1 person. Subclause (II) of clause (ii) shall not apply to any month before January 1, 1996.

''(C) APPLICABLE PERCENTAGE.—For purposes of subparagraph (B), the applicable percentage is as follows:

For calendar year:	The percentage is:
1996	100 percent
1997	90 percent
1998	80 percent.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1003(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section] shall apply to contracts purchased after June 20, 1986, in taxable years ending after such date.''

EFFECTIVE DATE OF 1964 AMENDMENT

Section 215(c) of Pub. L. 88–272 provided that: ''The amendments made by this section [amending this section] shall apply with respect to amounts paid or accrued in taxable years beginning after December 31, 1963.''

SPREAD OF INCOME INCLUSION ON SURRENDER, ETC. OF CONTRACTS

Section 501(d) of Pub. L. 104–191, as amended by Pub. L. 105–34, title XVI, §1602(f)(5), Aug. 5, 1997, 111 Stat. 1095, provided that:

''(1) IN GENERAL.—If any amount is received under any life insurance policy or endowment or annuity contract described in paragraph (4) of section 264(a) of the Internal Revenue Code of 1986—

''(A) on the complete surrender, redemption, or maturity of such policy or contract during calendar year 1996, 1997, or 1998, or

''(B) in full discharge during any such calendar year of the obligation under the policy or contract which is in the nature of a refund of the consideration paid for the policy or contract,

then (in lieu of any other inclusion in gross income) such amount shall be includible in gross income ratably over the 4-taxable year period beginning with the taxable year such amount would (but for this paragraph) be includible. The preceding sentence shall only apply to the extent the amount is includible in gross income for the taxable year in which the event described in subparagraph (A) or (B) occurs.

''(2) SPECIAL RULES FOR APPLYING SECTION 264.—A contract shall not be treated as—

''(A) failing to meet the requirement of section 264(c)(1) of the Internal Revenue Code of 1986, or

''(B) a single premium contract under section 264(b)(1) of such Code,

solely by reason of an occurrence described in subparagraph (A) or (B) of paragraph (1) of this subsection or solely by reason of a lapse occurring after October 13, 1995, by reason of no additional premiums being received under the contract.

''(3) SPECIAL RULE FOR DEFERRED ACQUISITION COSTS.—In the case of the occurrence of any event described in subparagraph (A) or (B) of paragraph (1) of this subsection with respect to any policy or contract—

''(A) section 848 of the Internal Revenue Code of 1986 shall not apply to the unamortized balance (if any) of the specified policy acquisition expenses attributable to such policy or contract immediately before the insurance company's taxable year in which such event occurs, and

''(B) there shall be allowed as a deduction to such company for such taxable year under chapter 1 of such Code an amount equal to such unamortized balance.''

§ 265. Expenses and interest relating to tax-exempt income

(a) General rule

No deduction shall be allowed for—

(1) Expenses

Any amount otherwise allowable as a deduction which is allocable to one or more classes of income other than interest (whether or not any amount of income of that class or classes is received or accrued) wholly exempt from the taxes imposed by this subtitle, or any amount otherwise allowable under section 212 (relating to expenses for production of income) which is allocable to interest (whether or not any amount of such interest is received or accrued) wholly exempt from the taxes imposed by this subtitle.

(2) Interest

Interest on indebtedness incurred or continued to purchase or carry obligations the interest on which is wholly exempt from the taxes imposed by this subtitle.

(3) Certain regulated investment companies

In the case of a regulated investment company which distributes during the taxable year an exempt-interest dividend (including exempt-interest dividends paid after the close of the taxable year as described in section 855), that portion of any amount otherwise allowable as a deduction which the amount of the income of such company wholly exempt from taxes under this subtitle bears to the total of such exempt income and its gross income (excluding from gross income, for this purpose, capital gain net income, as defined in section 1222(9)).

(4) Interest related to exempt-interest dividends

Interest on indebtedness incurred or continued to purchase or carry shares of stock of a regulated investment company which during the taxable year of the holder thereof distributes exempt-interest dividends.

(5) Special rules for application of paragraph (2) in the case of short sales

For purposes of paragraph (2)—

(A) In general

The term ''interest'' includes any amount paid or incurred—

(i) by any person making a short sale in connection with personal property used in such short sale, or

(ii) by any other person for the use of any collateral with respect to such short sale.

(B) Exception where no return on cash collateral

If—

(i) the taxpayer provides cash as collateral for any short sale, and

(ii) the taxpayer receives no material earnings on such cash during the period of the sale,

subparagraph (A)(i) shall not apply to such short sale.

(6) Section not to apply with respect to parsonage and military housing allowances

No deduction shall be denied under this section for interest on a mortgage on, or real property taxes on, the home of the taxpayer by reason of the receipt of an amount as—

(A) a military housing allowance, or

(B) a parsonage allowance excludable from gross income under section 107.

(b) Pro rata allocation of interest expense of financial institutions to tax-exempt interest

(1) In general

In the case of a financial institution, no deduction shall be allowed for that portion of the taxpayer's interest expense which is allocable to tax-exempt interest.

(2) Allocation

For purposes of paragraph (1), the portion of the taxpayer's interest expense which is allocable to tax-exempt interest is an amount which bears the same ratio to such interest expense as—

(A) the taxpayer's average adjusted bases (within the meaning of section 1016) of tax-exempt obligations acquired after August 7, 1986, bears to

(B) such average adjusted bases for all assets of the taxpayer.

(3) Exception for certain tax-exempt obligations

(A) In general

Any qualified tax-exempt obligation acquired after August 7, 1986, shall be treated for purposes of paragraph (2) and section 291(e)(1)(B) as if it were acquired on August 7, 1986.

(B) Qualified tax-exempt obligation

(i) In general

For purposes of subparagraph (A), the term ''qualified tax-exempt obligation'' means a tax-exempt obligation—

(I) which is issued after August 7, 1986, by a qualified small issuer,

(II) which is not a private activity bond (as defined in section 141), and

(III) which is designated by the issuer for purposes of this paragraph.

(ii) Certain bonds not treated as private activity bonds

For purposes of clause (i)(II), there shall not be treated as a private activity bond—

(I) any qualified 501(c)(3) bond (as defined in section 145), or

(II) any obligation issued to refund (or which is part of a series of obligations issued to refund) an obligation issued before August 8, 1986, which was not an industrial development bond (as defined in section 103(b)(2) as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) or a private loan bond (as defined in section 103(*o*)(2)(A), as so in effect, but without regard to any exemption from such definition other than section 103(*o*)(2)(A)).

(C) Qualified small issuer

(i) In general

For purposes of subparagraph (B), the term ''qualified small issuer'' means, with respect to obligations issued during any calendar year, any issuer if the reasonably anticipated amount of tax-exempt obligations (other than obligations described in clause (ii)) which will be issued by such issuer during such calendar year does not exceed $10,000,000.

(ii) Obligations not taken into account in determining status as qualified small issuer

For purposes of clause (i), an obligation is described in this clause if such obligation is—

(I) a private activity bond (other than a qualified 501(c)(3) bond, as defined in section 145),

(II) an obligation to which section 141(a) does not apply by reason of section 1312, 1313, 1316(g), or 1317 of the Tax Reform Act of 1986 and which would (if issued on August 15, 1986) have been an industrial development bond (as defined in section 103(b)(2) as in effect on the day before the date of the enactment of such Act) or a private loan bond (as defined in section 103(*o*)(2)(A), as so in effect, but without regard to any exception from such definition other than section 103(*o*)(2)(A)), or

(III) an obligation issued to refund (other than to advance refund within the meaning of section 149(d)(5)) any obligation to the extent the amount of the refunding obligation does not exceed the outstanding amount of the refunded obligation.

(iii) Allocation of amount of issue in certain cases

In the case of an issue under which more than 1 governmental entity receives benefits, if—

(I) all governmental entities receiving benefits from such issue irrevocably agree (before the date of issuance of the issue) on an allocation of the amount of such issue for purposes of this subparagraph, and

(II) such allocation bears a reasonable relationship to the respective benefits received by such entities,

then the amount of such issue so allocated to an entity (and only such amount with respect to such issue) shall be taken into account under clause (i) with respect to such entity.

(D) Limitation on amount of obligations which may be designated

(i) In general

Not more than $10,000,000 of obligations issued by an issuer during any calendar year may be designated by such issuer for purposes of this paragraph.

(ii) Certain refundings of designated obligations deemed designated

Except as provided in clause (iii), in the case of a refunding (or series of refundings) of a qualified tax-exempt obligation, the refunding obligation shall be treated as a qualified tax-exempt obligation (and shall not be taken into account under clause (i)) if—

(I) the refunding obligation was not taken into account under subparagraph (C) by reason of clause (ii)(III) thereof,

(II) the average maturity date of the refunding obligations issued as part of the issue of which such refunding obligation is a part is not later than the average maturity date of the obligations to be refunded by such issue, and

(III) the refunding obligation has a maturity date which is not later than the date which is 30 years after the date the original qualified tax-exempt obligation was issued.

Subclause (II) shall not apply if the average maturity of the issue of which the original qualified tax-exempt obligation was a part (and of the issue of which the obligations to be refunded are a part) is 3 years or less. For purposes of this clause, average maturity shall be determined in accordance with section 147(b)(2)(A).

(iii) Certain obligations may not be designated or deemed designated

No obligation issued as part of an issue may be designated under this paragraph (or may be treated as designated under clause (ii)) if—

(I) any obligation issued as part of such issue is issued to refund another obligation, and

(II) the aggregate face amount of such issue exceeds $10,000,000.

(E) Aggregation of issuers

For purposes of subparagraphs (C) and (D)—

(i) an issuer and all entities which issue obligations on behalf of such issuer shall be treated as 1 issuer,

(ii) all obligations issued by a subordinate entity shall, for purposes of applying subparagraphs (C) and (D) to each other entity to which such entity is subordinate, be treated as issued by such other entity, and

(iii) an entity formed (or, to the extent provided by the Secretary, availed of) to avoid the purposes of subparagraph (C) or (D) and all entities benefiting thereby shall be treated as 1 issuer.

(F) Treatment of composite issues

In the case of an obligation which is issued as part of a direct or indirect composite issue, such obligation shall not be treated as a qualified tax-exempt obligation unless—

(i) the requirements of this paragraph are met with respect to such composite issue (determined by treating such composite issue as a single issue), and

(ii) the requirements of this paragraph are met with respect to each separate lot of obligations which are part of the issue (determined by treating each such separate lot as a separate issue).

(G) Special rules for obligations issued during 2009 and 2010

(i) Increase in limitation

In the case of obligations issued during 2009 or 2010, subparagraphs (C)(i), (D)(i), and (D)(iii)(II) shall each be applied by substituting ''$30,000,000'' for ''$10,000,000''.

(ii) Qualified 501(c)(3) bonds treated as issued by exempt organization

In the case of a qualified 501(c)(3) bond (as defined in section 145) issued during 2009 or 2010, this paragraph shall be applied by treating the 501(c)(3) organization for whose benefit such bond was issued as the issuer.

(iii) Special rule for qualified financings

In the case of a qualified financing issue issued during 2009 or 2010—

(I) subparagraph (F) shall not apply, and

(II) any obligation issued as a part of such issue shall be treated as a qualified tax-exempt obligation if the requirements of this paragraph are met with respect to each qualified portion of the issue (determined by treating each qualified portion as a separate issue which is issued by the qualified borrower with respect to which such portion relates).

(iv) Qualified financing issue

For purposes of this subparagraph, the term ''qualified financing issue'' means any composite, pooled, or other conduit financing issue the proceeds of which are used directly or indirectly to make or finance loans to 1 or more ultimate borrowers each of whom is a qualified borrower.

(v) Qualified portion

For purposes of this subparagraph, the term ''qualified portion'' means that portion of the proceeds which are used with respect to each qualified borrower under the issue.

(vi) Qualified borrower

For purposes of this subparagraph, the term ''qualified borrower'' means a borrower which is a State or political subdivision thereof or an organization described in section 501(c)(3) and exempt from taxation under section 501(a).

(4) Definitions

For purposes of this subsection—

(A) Interest expense

The term ''interest expense'' means the aggregate amount allowable to the taxpayer

as a deduction for interest for the taxable year (determined without regard to this subsection, section 264, and section 291). For purposes of the preceding sentence, the term ''interest'' includes amounts (whether or not designated as interest) paid in respect of deposits, investment certificates, or withdrawable or repurchasable shares.

(B) Tax-exempt obligation

The term ''tax-exempt obligation'' means any obligation the interest on which is wholly exempt from taxes imposed by this subtitle. Such term includes shares of stock of a regulated investment company which during the taxable year of the holder thereof distributes exempt-interest dividends.

(5) Financial institution

For purposes of this subsection, the term ''financial institution'' means any person who—

(A) accepts deposits from the public in the ordinary course of such person's trade or business, and is subject to Federal or State supervision as a financial institution, or

(B) is a corporation described in section 585(a)(2).

(6) Special rules

(A) Coordination with subsection (a)

If interest on any indebtedness is disallowed under subsection (a) with respect to any tax-exempt obligation—

(i) such disallowed interest shall not be taken into account for purposes of applying this subsection, and

(ii) for purposes of applying paragraph (2), the adjusted basis of such tax-exempt obligation shall be reduced (but not below zero) by the amount of such indebtedness.

(B) Coordination with section 263A

This section shall be applied before the application of section 263A (relating to capitalization of certain expenses where taxpayer produces property).

(7) De minimis exception for bonds issued during 2009 or 2010

(A) In general

In applying paragraph (2)(A), there shall not be taken into account tax-exempt obligations issued during 2009 or 2010.

(B) Limitation

The amount of tax-exempt obligations not taken into account by reason of subparagraph (A) shall not exceed 2 percent of the amount determined under paragraph (2)(B).

(C) Refundings

For purposes of this paragraph, a refunding bond (whether a current or advance refunding) shall be treated as issued on the date of the issuance of the refunded bond (or in the case of a series of refundings, the original bond).

(Aug. 16, 1954, ch. 736, 68A Stat. 78; Pub. L. 88–272, title II, § 216(a), Feb. 26, 1964, 78 Stat. 56; Pub. L. 94–455, title XIX, §§ 1901(a)(37), 1906(b)(13)(A), title XXI, § 2137(e), Oct. 4, 1976, 90 Stat. 1770, 1834, 1931; Pub. L. 96–223, title IV, § 404(b)(2), Apr. 2, 1980, 94 Stat. 306; Pub. L. 97–34, title III, §§ 301(b)(2), 302(c)(2), (d)(1), Aug. 13, 1981, 95 Stat. 270, 272, 274; Pub. L. 98–369, div. A, title I, §§ 16(a), 56(c), July 18, 1984, 98 Stat. 505, 574; Pub. L. 99–514, title I, § 144, title IX, § 902(a), (b), (d), Oct. 22, 1986, 100 Stat. 2121, 2380–2382; Pub. L. 100–647, title I, § 1009(b)(3)(A), Nov. 10, 1988, 102 Stat. 3446; Pub. L. 101–508, title XI, § 11801(c)(4), Nov. 5, 1990, 104 Stat. 1388–523; Pub. L. 105–34, title X, § 1084(c), Aug. 5, 1997, 111 Stat. 955; Pub. L. 111–5, div. B, title I, §§ 1501(a), 1502(a), Feb. 17, 2009, 123 Stat. 353.)

REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (b)(3)(B)(ii)(II), (C)(ii)(II), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

Sections 1312, 1313, 1316(g), and 1317 of the Tax Reform Act of 1986, referred to in subsec. (b)(3)(C)(ii)(II), are sections 1312, 1313, 1316(g), and 1317 of Pub. L. 99–514, which are set out as a note under section 141 of this title.

CODIFICATION

Another section 1084(c) of Pub. L. 105–34 amended section 264 of this title.

AMENDMENTS

2009—Subsec. (b)(3)(G). Pub. L. 111–5, § 1502(a), added subpar. (G).

Subsec. (b)(7). Pub. L. 111–5, § 1501(a), added par. (7).

1997—Subsec. (b)(4)(A). Pub. L. 105–34 inserted '', section 264,'' before ''and section 291''.

1990—Subsec. (a)(2). Pub. L. 101–508, § 11801(c)(4), struck out before period at end '', or to purchase or carry any certificate to the extent the interest on such certificate is excludable under section 128''.

1988—Subsec. (b)(3). Pub. L. 100–647 amended par. (3) generally, reenacting subpar. (A) without change, revising and restating provisions of subpars. (B) to (E), and adding subpar. (F).

1986—Pub. L. 99–514, § 902(a), (d), designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

Par. (2). Pub. L. 99–514, § 902(b), struck out last sentence which read as follows: ''In applying the preceding sentence to a financial institution (other than a bank) which is a face-amount certificate company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 and following) and which is subject to the banking laws of the State in which such institution is incorporated, interest on face-amount certificates (as defined in section 2(a)(15) of such Act) issued by such institution, and interest on amounts received for the purchase of such certificates to be issued by such institution, shall not be considered as interest on indebtedness incurred or continued to purchase or carry obligations the interest on which is wholly exempt from the taxes imposed by this subtitle, to the extent that the average amount of such obligations held by such institution during the taxable year (as determined under regulations prescribed by the Secretary) does not exceed 15 percent of the average of the total assets held by such institution during the taxable year (as so determined).''

Par. (6). Pub. L. 99–514, § 144, added par. (6).

1984—Par. (2). Pub. L. 98–369, § 16(a), repealed amendments made by Pub. L. 97–34, § 302(c). See 1981 Amendment note below.

Par. (5). Pub. L. 98–369, § 56(c), added par. (5).

1981—Par. (2). Pub. L. 97–34, § 302(c)(2), (d)(1), provided that, applicable to taxable years beginning after Dec. 31, 1984, par. (2) is amended by striking out ''or to purchase or carry any certificate to the extent the interest on such certificate is excludable under section 128'' and

inserting in lieu thereof ''or to purchase or carry obligations or shares, or to make other deposits or investments, the interest on which is described in section 128(c)(1) to the extent such interest is excludable from gross income under section 128''. Section 16(a) of Pub. L. 98–369, repealed section 302(c) of Pub. L. 97–34, and provided that this title shall be applied and administered as if section 302(c), and the amendments made by such section 302(c), had not been enacted.

Pub. L. 97–34, §301(b)(2), inserted '', or to purchase or carry any certificate to the extent the interest on such certificate is excludable under section 128'' after ''116''.

1980—Par. (2). Pub. L. 96–223 inserted '', or to purchase or carry obligations or shares, or to make deposits or other investments, the interest on which is described in section 116(c) to the extent such interest is excludable from gross income under section 116'' after ''subtitle''.

1976—Par. (2). Pub. L. 94–455, §§1901(a)(37), 1906(b)(13)(A), struck out ''(other than obligations of the United States issued after September 24, 1917, and originally subscribed for by the taxpayer)'' after ''to purchase or carry obligations'' and ''or his delegate'' after ''Secretary''.

Pars. (3), (4). Pub. L. 94–455, §2137(e), added pars. (3) and (4).

1964—Par. (2). Pub. L. 88–272 provided that interest on face-amount certificates issued by a face-amount certificate company, and interest on amounts received for the purchase of such certificates to be issued by such institution, shall not be considered interest on indebtedness to purchase or carry obligations the interest on which is wholly exempt from the taxes under this subtitle, to the extent the average amount of such obligations held by such institution during the taxable year doesn't exceed 15 percent of the average total assets held by such institution during the taxable year.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1501(c), Feb. 17, 2009, 123 Stat. 353, provided that: ''The amendments made by this section [amending this section and section 291 of this title] shall apply to obligations issued after December 31, 2008.''

Pub. L. 111–5, div. B, title I, §1502(b), Feb. 17, 2009, 123 Stat. 354, provided that: ''The amendment made by this section [amending this section] shall apply to obligations issued after December 31, 2008.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to contracts issued after June 8, 1997, in taxable years ending after such date, with special provisions relating to changes in contracts to be treated as new contracts, see section 1084(d) of Pub. L. 105–34, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1009(b)(3)(B)–(D) of Pub. L. 100–647, as amended by Pub. L. 101–239, title VII, §7811(f)(2), Dec. 19, 1989, 103 Stat. 2409, provided that:

''(B) In the case of any obligation issued after August 7, 1986, and before January 1, 1987, the time for making a designation with respect to such obligation under section 265(b)(3)(B)(i)(III) of the 1986 Code shall not expire before January 1, 1989.

''(C) If—

''(i) an obligation is issued on or after January 1, 1986, and on or before August 7, 1986,

''(ii) when such obligation was issued, the issuer made a designation that it intended to qualify under section 802(e)(3) of H.R. 3838 of the 99th Congress as passed by the House of Representatives [H.R. 3838 was enacted as Pub. L. 99–514], and

''(iii) the issuer makes an election under this subparagraph with respect to such obligation,

for purposes of section 265(b)(3) of the 1986 Code, such obligation shall be treated as issued on August 8, 1986.

''(D)(i) Except as provided in clause (ii), the following provisions of section 265(b)(3) of the 1986 Code (as amended by this subparagraph (A)) shall apply to obligations issued after June 30, 1987:

''(I) subparagraph (C)(ii)(III),

''(II) clauses (ii) and (iii) of subparagraph (D), and

''(III) subparagraphs (E) and (F).

''(ii) At the election of an issuer (made at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe), the provisions referred to in clause (i) shall apply to such issuer as if included in the amendments made by section 902(a) of the Tax Reform Act of 1986 [section 902(a) of Pub. L. 99–514, amending this section].''

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 144 of Pub. L. 99–514 applicable to taxable years beginning before, on, or after Dec. 31, 1986, see section 151(e) of Pub. L. 99–514, set out as a note under section 1 of this title.

Section 902(f) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1009(b)(1), (2), (7), Nov. 10, 1988, 102 Stat. 3445, 3446, 3449, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 163, 291, and 1277 of this title] shall apply to taxable years ending after December 31, 1986.

''(2) OBLIGATIONS ACQUIRED PURSUANT TO CERTAIN COMMITMENTS.—For purposes of sections 265(b) and 291(e)(1)(B) of the Internal Revenue Code of 1986, any tax-exempt obligation which is acquired after August 7, 1986, pursuant to a direct or indirect written commitment—

''(A) to purchase or repurchase such obligation, and

''(B) entered into on or before September 25, 1985,

shall be treated as an obligation acquired before August 8, 1986.

''(3) TRANSITIONAL RULES.—For purposes of sections 265(b) and 291(e)(1)(B) of the Internal Revenue Code of 1986, obligations with respect to any of the following projects shall be treated as obligations acquired before August 8, 1986, in the hands of the first and any subsequent financial institution acquiring such obligations:

''(A) Park Forest, Illinois, redevelopment project.

''(B) Clinton, Tennessee, Carriage Trace project.

''(C) Savannah, Georgia, Mall Terrace Warehouse project.

''(D) Chattanooga, Tennessee, Warehouse Row project.

''(E) Dalton, Georgia, Towne Square project.

''(F) Milwaukee, Wisconsin, Standard Electric Supply Company—distribution facility.

''(G) Wausau, Wisconsin, urban renewal project.

''(H) Cassville, Missouri, UDAG project.

''(I) Outlook Envelope Company—plant expansion.

''(J) Woodstock, Connecticut, Crabtree Warehouse partnership.

''(K) Louisville, Kentucky, Speed Mansion renovation project.

''(L) Charleston, South Carolina, 2 Festival Market Place projects at Union Pier Terminal and 1 project at the Remount Road Container Yard, State Pier No. 15 at North Charleston Terminal.

''(M) New Orleans, Louisiana, Upper Pontalba Building renovation.

''(N) Woodward Wight Building.

''(O) Minneapolis, Minnesota, Miller Milling Company—flour mill project.

''(P) Homewood, Alabama, the Club Apartments.

''(Q) Charlotte, North Carolina—qualified mortgage bonds acquired by NCNB bank ($5,250,000).

''(R) Grand Rapids, Michigan, Central Bank project.

''(S) Ruppman Marketing Services, Inc.—building project.

''(T) Bellows Falls, Vermont—building project.

''(U) East Broadway Project, Louisville, Kentucky.

''(V) O.K. Industries, Oklahoma.

''(4) ADDITIONAL TRANSITIONAL RULE.—Obligations issued pursuant to an allocation of a State's volume limitation for private activity bonds, which allocation was made by Executive Order 25 signed by the Governor of the State on May 22, 1986 (as such order may be amended before January 1, 1987), and qualified 501(c)(3) bonds designated by such Governor for purposes of this paragraph, shall be treated as acquired on or before August 7, 1986, in the hands of the first and any subsequent financial institution acquiring such obligation. The aggregate face amount of obligations to which this paragraph applies shall not exceed $200,000,000.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 16(a) of Pub. L. 98–369 applicable to taxable years ending after Dec. 31, 1983, see section 18(a) of Pub. L. 98–369, set out as a note under section 48 of this title.

Amendment by section 56(c) of Pub. L. 98–369 applicable to short sales after July 18, 1984, in taxable years ending after that date, see section 56(d) of Pub. L. 98–369, set out as a note under section 163 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 301(d) of Pub. L. 97–34 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 128 of this title and amending this section and sections 584, 643, and 702 of this title] shall apply to taxable years ending after September 30, 1981.

''(2) CONFORMING AMENDMENTS.—The amendments made by subsection (b)(6) [amending sections 584, 643, and 702 of this title] shall apply to taxable years beginning after December 31, 1981.''

EFFECTIVE AND TERMINATION DATES OF 1980 AMENDMENT

Section 404(c) of Pub. L. 96–223, as amended by Pub. L. 97–34, title III, § 302(b)(1), Aug. 13, 1981, 95 Stat. 272, provided that: ''The amendments made by this section [amending this section and sections 116, 584, 643, 702, 854, and 857 of this title] shall apply with respect to taxable years beginning after December 31, 1980, and before January 1, 1982.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(37) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 2137(e) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1975, see section 2137(e) of Pub. L. 94–455, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 216(b) of Pub. L. 88–272 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years ending after the date of the enactment of this Act [Feb. 21, 1964].''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

CLARIFICATION OF TREATMENT OF AMOUNTS EXCLUDED UNDER SECTION 597

Section 904(c)(2)(B) of Pub. L. 99–514 provided that this section shall not deny any deduction by reason of such deduction being allocable to amounts excluded from gross income under section 597 of this title as in effect on Oct. 21, 1986, prior to repeal by Pub. L. 101–73, title XIV, § 1401(a)(3)(B), Aug. 9, 1989, 103 Stat. 549.

§ 266. Carrying charges

No deduction shall be allowed for amounts paid or accrued for such taxes and carrying charges as, under regulations prescribed by the Secretary, are chargeable to capital account with respect to property, if the taxpayer elects, in accordance with such regulations, to treat such taxes or charges as so chargeable.

(Aug. 16, 1954, ch. 736, 68A Stat. 78; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

§ 267. Losses, expenses, and interest with respect to transactions between related taxpayers

(a) In general

(1) Deduction for losses disallowed

No deduction shall be allowed in respect of any loss from the sale or exchange of property, directly or indirectly, between persons specified in any of the paragraphs of subsection (b). The preceding sentence shall not apply to any loss of the distributing corporation (or the distributee) in the case of a distribution in complete liquidation.

(2) Matching of deduction and payee income item in the case of expenses and interest

If—

(A) by reason of the method of accounting of the person to whom the payment is to be made, the amount thereof is not (unless paid) includible in the gross income of such person, and

(B) at the close of the taxable year of the taxpayer for which (but for this paragraph) the amount would be deductible under this chapter, both the taxpayer and the person to whom the payment is to be made are persons specified in any of the paragraphs of subsection (b),

then any deduction allowable under this chapter in respect of such amount shall be allowable as of the day as of which such amount is includible in the gross income of the person to whom the payment is made (or, if later, as of the day on which it would be so allowable but for this paragraph). For purposes of this paragraph, in the case of a personal service corporation (within the meaning of section 441(i)(2)), such corporation and any employee-owner (within the meaning of section 269A(b)(2), as modified by section 441(i)(2)) shall be treated as persons specified in subsection (b).

(3) Payments to foreign persons

(A) In general

The Secretary shall by regulations apply the matching principle of paragraph (2) in cases in which the person to whom the payment is to be made is not a United States person.

(B) Special rule for certain foreign entities

(i) In general

Notwithstanding subparagraph (A), in the case of any item payable to a controlled foreign corporation (as defined in section 957) or a passive foreign investment company (as defined in section 1297), a deduction shall be allowable to the payor with respect to such amount for any taxable year before the taxable year in which paid only to the extent that an amount attributable to such item is includible (determined without regard to properly allocable deductions and qualified deficits under section 952(c)(1)(B)) during such prior taxable year in the gross income of a United States person who owns (within the meaning of section 958(a)) stock in such corporation.

(ii) Secretarial authority

The Secretary may by regulation exempt transactions from the application of clause (i), including any transaction which is entered into by a payor in the ordinary course of a trade or business in which the payor is predominantly engaged and in which the payment of the accrued amounts occurs within 8½ months after accrual or within such other period as the Secretary may prescribe.

(b) Relationships

The persons referred to in subsection (a) are:

(1) Members of a family, as defined in subsection (c)(4);

(2) An individual and a corporation more than 50 percent in value of the outstanding stock of which is owned, directly or indirectly, by or for such individual;

(3) Two corporations which are members of the same controlled group (as defined in subsection (f));

(4) A grantor and a fiduciary of any trust;

(5) A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;

(6) A fiduciary of a trust and a beneficiary of such trust;

(7) A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;

(8) A fiduciary of a trust and a corporation more than 50 percent in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;

(9) A person and an organization to which section 501 (relating to certain educational and charitable organizations which are exempt from tax) applies and which is controlled directly or indirectly by such person or (if such person is an individual) by members of the family of such individual;

(10) A corporation and a partnership if the same persons own—

(A) more than 50 percent in value of the outstanding stock of the corporation, and

(B) more than 50 percent of the capital interest, or the profits interest, in the partnership;

(11) An S corporation and another S corporation if the same persons own more than 50 percent in value of the outstanding stock of each corporation;

(12) An S corporation and a C corporation, if the same persons own more than 50 percent in value of the outstanding stock of each corporation; or

(13) Except in the case of a sale or exchange in satisfaction of a pecuniary bequest, an executor of an estate and a beneficiary of such estate.

(c) Constructive ownership of stock

For purposes of determining, in applying subsection (b), the ownership of stock—

(1) Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries;

(2) An individual shall be considered as owning the stock owned, directly or indirectly, by or for his family;

(3) An individual owning (otherwise than by the application of paragraph (2)) any stock in a corporation shall be considered as owning the stock owned, directly or indirectly, by or for his partner;

(4) The family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants; and

(5) Stock constructively owned by a person by reason of the application of paragraph (1) shall, for the purpose of applying paragraph (1), (2), or (3), be treated as actually owned by such person, but stock constructively owned by an individual by reason of the application of paragraph (2) or (3) shall not be treated as owned by him for the purpose of again applying either of such paragraphs in order to make another the constructive owner of such stock.

(d) Amount of gain where loss previously disallowed

If—

(1) in the case of a sale or exchange of property to the taxpayer a loss sustained by the transferor is not allowable to the transferor as a deduction by reason of subsection (a)(1) (or by reason of section 24(b) of the Internal Revenue Code of 1939); and

(2) after December 31, 1953, the taxpayer sells or otherwise disposes of such property (or of other property the basis of which in his hands is determined directly or indirectly by reference to such property) at a gain,

then such gain shall be recognized only to the extent that it exceeds so much of such loss as is properly allocable to the property sold or otherwise disposed of by the taxpayer. This subsection applies with respect to taxable years ending after December 31, 1953. This subsection shall not apply if the loss sustained by the transferor is not allowable to the transferor as a deduction by reason of section 1091 (relating to wash sales) or by reason of section 118 of the Internal Revenue Code of 1939.

(e) Special rules for pass-thru entities

(1) In general

In the case of any amount paid or incurred by, to, or on behalf of, a pass-thru entity, for purposes of applying subsection (a)(2)—

(A) such entity,

(B) in the case of—

(i) a partnership, any person who owns (directly or indirectly) any capital interest or profits interest of such partnership, or

(ii) an S corporation, any person who owns (directly or indirectly) any of the stock of such corporation,

(C) any person who owns (directly or indirectly) any capital interest or profits interest of a partnership in which such entity owns (directly or indirectly) any capital interest or profits interest, and

(D) any person related (within the meaning of subsection (b) of this section or section 707(b)(1)) to a person described in subparagraph (B) or (C),

shall be treated as persons specified in a paragraph of subsection (b). Subparagraph (C) shall apply to a transaction only if such transaction is related either to the operations of the partnership described in such subparagraph or to an interest in such partnership.

(2) Pass-thru entity

For purposes of this section, the term ''pass-thru entity'' means—

(A) a partnership, and

(B) an S corporation.

(3) Constructive ownership in the case of partnerships

For purposes of determining ownership of a capital interest or profits interest of a partnership, the principles of subsection (c) shall apply, except that—

(A) paragraph (3) of subsection (c) shall not apply, and

(B) interests owned (directly or indirectly) by or for a C corporation shall be considered as owned by or for any shareholder only if such shareholder owns (directly or indirectly) 5 percent or more in value of the stock of such corporation.

(4) Subsection (a)(2) not to apply to certain guaranteed payments of partnerships

In the case of any amount paid or incurred by a partnership, subsection (a)(2) shall not apply to the extent that section 707(c) applies to such amount.

(5) Exception for certain expenses and interest of partnerships owning low-income housing

(A) In general

This subsection shall not apply with respect to qualified expenses and interest paid or incurred by a partnership owning low-income housing to—

(i) any qualified 5-percent or less partner of such partnership, or

(ii) any person related (within the meaning of subsection (b) of this section or section 707(b)(1)) to any qualified 5-percent or less partner of such partnership.

(B) Qualified 5-percent or less partner

For purposes of this paragraph, the term ''qualified 5-percent or less partner'' means any partner who has (directly or indirectly) an interest of 5 percent or less in the aggregate capital and profits interests of the partnership but only if—

(i) such partner owned the low-income housing at all times during the 2-year period ending on the date such housing was transferred to the partnership, or

(ii) such partnership acquired the low-income housing pursuant to a purchase, assignment, or other transfer from the Department of Housing and Urban Development or any State or local housing authority.

For purposes of the preceding sentence, a partner shall be treated as holding any interest in the partnership which is held (directly or indirectly) by any person related (within the meaning of subsection (b) of this section or section 707(b)(1)) to such partner.

(C) Qualified expenses and interest

For purpose of this paragraph, the term ''qualified expenses and interest'' means any expense or interest incurred by the partnership with respect to low-income housing held by the partnership but—

(i) only if the amount of such expense or interest (as the case may be) is unconditionally required to be paid by the partnership not later than 10 years after the date such amount was incurred, and

(ii) in the case of such interest, only if such interest is incurred at an annual rate not in excess of 12 percent.

(D) Low-income housing

For purposes of this paragraph, the term ''low-income housing'' means—

(i) any interest in property described in clause (i), (ii), (iii), or (iv) of section 1250(a)(1)(B), and

(ii) any interest in a partnership owning such property.

(6) Cross reference

For additional rules relating to partnerships, see section 707(b).

(f) Controlled group defined; special rules applicable to controlled groups

(1) Controlled group defined

For purposes of this section, the term ''controlled group'' has the meaning given to such term by section 1563(a), except that—

(A) ''more than 50 percent'' shall be substituted for ''at least 80 percent'' each place it appears in section 1563(a), and

(B) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

(2) Deferral (rather than denial) of loss from sale or exchange between members

In the case of any loss from the sale or exchange of property which is between members of the same controlled group and to which subsection (a)(1) applies (determined without regard to this paragraph but with regard to paragraph (3))—

(A) subsections (a)(1) and (d) shall not apply to such loss, but

(B) such loss shall be deferred until the property is transferred outside such controlled group and there would be recognition of loss under consolidated return principles or until such other time as may be prescribed in regulations.

(3) Loss deferral rules not to apply in certain cases

(A) Transfer to DISC

For purposes of applying subsection (a)(1), the term ''controlled group'' shall not include a DISC.

(B) Certain sales of inventory

Except to the extent provided in regulations prescribed by the Secretary, subsection (a)(1) shall not apply to the sale or exchange of property between members of the same controlled group (or persons described in subsection (b)(10)) if—

(i) such property in the hands of the transferor is property described in section 1221(a)(1),

(ii) such sale or exchange is in the ordinary course of the transferor's trade or business,

(iii) such property in the hands of the transferee is property described in section 1221(a)(1), and

(iv) the transferee or the transferor is a foreign corporation.

(C) Certain foreign currency losses

To the extent provided in regulations, subsection (a)(1) shall not apply to any loss sustained by a member of a controlled group on the repayment of a loan made to another member of such group if such loan is payable in a foreign currency or is denominated in such a currency and such loss is attributable to a reduction in value of such foreign currency.

(D) Redemptions by fund-of-funds regulated investment companies

Except to the extent provided in regulations prescribed by the Secretary, subsection (a)(1) shall not apply to any distribution in redemption of stock of a regulated investment company if—

(i) such company issues only stock which is redeemable upon the demand of the stockholder, and

(ii) such redemption is upon the demand of another regulated investment company.

(4) Determination of relationship resulting in disallowance of loss, for purposes of other provisions

For purposes of any other section of this title which refers to a relationship which would result in a disallowance of losses under this section, deferral under paragraph (2) shall be treated as disallowance.

(g) Coordination with section 1041

Subsection (a)(1) shall not apply to any transfer described in section 1041(a) (relating to transfers of property between spouses or incident to divorce).

(Aug. 16, 1954, ch. 736, 68A Stat. 78; Pub. L. 95–628, §2(a), Nov. 10, 1978, 92 Stat. 3627; Pub. L. 97–354, §3(h), Oct. 19, 1982, 96 Stat. 1689; Pub. L. 98–369, div. A, title I, §174(a)–(b)(4), title VII, §721(s), July 18, 1984, 98 Stat. 704–707, 970; Pub. L. 99–514, title VIII, §§803(b)(5), 806(c)(2), title XVIII, §§1812(c)(1), (2), (3)(C), (4)(A), 1842(a), Oct. 22, 1986, 100 Stat. 2356, 2364, 2834, 2835, 2852; Pub. L. 100–647, title I, §§1006(e)(9), 1008(e)(6), Nov. 10, 1988, 102 Stat. 3401, 3441; Pub. L. 105–34, title XIII, §1308(a), title XVI, §1604(e)(1), Aug. 5, 1997, 111 Stat. 1041, 1098; Pub. L. 106–170, title V, §532(c)(2)(C), Dec. 17, 1999, 113 Stat. 1930; Pub. L. 108–357, title VIII, §841(b), Oct. 22, 2004, 118 Stat. 1598; Pub. L. 111–325, title III, §306(b), Dec. 22, 2010, 124 Stat. 3549.)

REFERENCES IN TEXT

Sections 24(b) and 118 of the Internal Revenue Code of 1939, referred to in subsec. (d), were classified to sections 24(b) and 118 of former Title 26, Internal Revenue Code. Sections 24(b) and 118 were repealed by section 7851(a)(1) of this title. For table of comparisons of the 1939 Code to the 1986 Code [formerly I.R.C. 1954], see Table I preceding section 1 of this title. See, also, section 7851(e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

AMENDMENTS

2010—Subsec. (f)(3)(D). Pub. L. 111–325 added subpar. (D).

2004—Subsec. (a)(3). Pub. L. 108–357 designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

1999—Subsec. (f)(3)(B)(i), (iii). Pub. L. 106–170 substituted ''1221(a)(1)'' for ''1221(1)''.

1997—Subsec. (b)(13). Pub. L. 105–34, §1308(a), added par. (13).

Subsec. (f)(4). Pub. L. 105–34, §1604(e)(1), added par. (4).

1988—Subsec. (a)(1). Pub. L. 100–647, §1006(e)(9), struck out ''(other than a loss in case of a distribution in corporate liquidation)'' after ''exchange of property'' and inserted at end ''The preceding sentence shall not apply to any loss of the distributing corporation (or the distributee) in the case of a distribution in complete liquidation.''

Subsec. (a)(2). Pub. L. 100–647, §1008(e)(6), made technical correction to directory language of Pub. L. 99–514, §806(c)(2), see 1986 Amendment note below.

1986—Subsec. (a)(2). Pub. L. 99–514, §806(c)(2), as amended by Pub. L. 100–647, §1008(e)(6), inserted at end ''For purposes of this paragraph, in the case of a personal service corporation (within the meaning of section 441(i)(2)), such corporation and any employee-owner (within the meaning of section 269A(b)(2), as modified by section 441(i)(2)) shall be treated as persons specified in subsection (b).''

Subsec. (a)(3). Pub. L. 99–514, §1812(c)(1), added par. (3).

Subsec. (b)(12). Pub. L. 99–514, §1812(c)(4)(A), substituted ''same persons own'' for ''same persons owns''.

Subsec. (e)(5)(D). Pub. L. 99–514, §803(b)(5), substituted in cl. (i) ''interest in property described in clause (i), (ii), (iii), or (iv) of section 1250(a)(1)(B)'' for ''interest in low-income housing (as defined in paragraph (5) of section 189(e))'' and in cl. (ii) ''such property'' for ''low-income housing (as so defined)''.

Subsec. (e)(6). Pub. L. 99–514, §1812(c)(3)(C), added par. (6).

Subsec. (f)(3)(B). Pub. L. 99–514, §1812(c)(2), inserted ''(or persons described in subsection (b)(10))''.

Subsec. (g). Pub. L. 99–514, §1842(a), added subsec. (g).

1984—Subsec. (a). Pub. L. 98–369, §174(a), amended subsec. (a) generally, substituting ''In general'' for ''De-

duction disallowed'' in heading, ''Deduction for losses disallowed'' for ''Losses'' in par. (1) heading, and provisions dealing with matching of deduction and payee income item in the case of expenses and interest for provisions dealing with unpaid expenses and interest in par. (2).

Subsec. (b)(3). Pub. L. 98–369, §174(b)(2)(A), substituted ''Two corporations which are members of the same controlled group (as defined in subsection (f))'' for ''Two corporations more than 50 percent in value of the outstanding stock of each of which is owned, directly or indirectly, by or for the same individual, if either one of such corporations, with respect to the taxable year of the corporation preceding the date of the sale or exchange was, under the law applicable to such taxable year, a personal holding company or a foreign personal holding company''.

Subsec. (b)(10). Pub. L. 98–369, §174(b)(3), substituted ''A corporation'' for ''An S corporation'' in introductory provisions and ''the corporation'' for ''the S corporation'' in subpar. (A).

Subsec. (b)(12). Pub. L. 98–369, §174(b)(4), substituted ''the same persons'' for ''the same individual''.

Subsec. (e). Pub. L. 98–369, §174(b)(1), added subsec. (e).

Pub. L. 98–369, §174(a)(2), struck out subsec. (e) which provided that for purposes of subsection (a)(2) where the last day of the 2½ month period falls on Saturday, Sunday, or a legal holiday, such last day be treated as falling on the next succeeding day which is not a Saturday, Sunday, or a legal holiday, and the determination of what constitutes a legal holiday be made under section 7503 with respect to the payor's return of tax under this chapter for the preceding taxable year.

Subsec. (f). Pub. L. 98–369, §174(b)(2)(B), added subsec. (f).

Pub. L. 98–369, §174(b)(1), struck out subsec. (f) which related to special rules for unpaid expenses and interest of S corporations and treatment under such provisions of certain shareholders, etc., as related persons.

Pub. L. 98–369, §721(s), in closing provision of par. (1) substituted ''then any deduction allowable under such sections in respect of such amount shall be allowable as of the day as of which such payment is includible in the gross income of the person to whom the payment is made (or, if later, as of the day on which it would be so allowable but for this paragraph)'' for ''then no deduction shall be allowed in respect of expenses otherwise deductible under section 162 or 212, or of interest otherwise deductible under section 163, before the day as of which the amount thereof is includible in the gross income of the person to whom the payment is made''.

1982—Subsec. (b)(10) to (12). Pub. L. 97–354, §3(h)(1), (3), added pars. (10) to (12).

Subsec. (f). Pub. L. 97–354, §3(h)(2), added subsec. (f).

1978—Subsec. (e). Pub. L. 95–628 added subsec. (e).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–325, title III, §306(c), Dec. 22, 2010, 124 Stat. 3550, provided that: ''The amendments made by this section [amending this section and section 302 of this title] shall apply to distributions after the date of the enactment of this Act [Dec. 22, 2010].''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to payments accrued on or after Oct. 22, 2004, see section 841(c) of Pub. L. 108–357, set out as a note under section 163 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1308(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section and section 1239 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997].''

Section 1604(e)(2) of Pub. L. 105–34 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in section 174(b) of the Tax Reform Act of 1984 [Pub. L. 98–369].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

If any interest costs incurred after Dec. 31, 1986, are attributable to costs incurred before Jan. 1, 1987, the amendment by section 803(b)(5) of Pub. L. 99–514 is applicable to such interest costs only to the extent such interest costs are attributable to costs which were required to be capitalized under section 263 of the Internal Revenue Code of 1954 and which would have been taken into account in applying section 189 of the Internal Revenue Code of 1954 (as in effect before its repeal by section 803 of Pub. L. 99–514) or, if applicable, section 266 of such Code, see section 7831(d)(2) of Pub. L. 101–239, set out as an Effective Date note under section 263A of this title.

Amendment by section 803(b)(5) of Pub. L. 99–514 applicable, except as otherwise provided, to costs incurred after Dec. 31, 1986, in taxable years ending after that date, see section 803(d) of Pub. L. 99–514, set out as a note under section 263A of this title.

Amendment by section 806(c)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with special provisions applicable to taxpayers who are required to change their accounting periods, see section 806(e) of Pub. L. 99–514, set out as a note under section 1378 of this title.

Amendment by sections 1812(c)(1), (2), (3)(C), (4)(A) and 1842(a) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 174(c) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) SUBSECTIONS (a) AND (b)(1).—The amendments made by subsections (a) and (b)(1) [amending this section] shall apply to amounts allowable as deductions under chapter 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for taxable years beginning after December 31, 1983. For purposes of the preceding sentence, the allowability of a deduction shall be determined without regard to any disallowance or postponement of deductions under section 267 of such Code.

''(2) SUBSECTION (b) (OTHER THAN PARAGRAPH (1)).—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by subsection (b) (other than paragraph (1) thereof) [amending this section and sections 170, 368, 514, and 1235 of this title] shall apply to transactions after December 31, 1983, in taxable years ending after such date.

''(B) EXCEPTION FOR TRANSFERS TO FOREIGN CORPORATIONS ON OR BEFORE MARCH 1, 1984.—The amendments made by subsection (b)(2) [amending this section] shall not apply to property transferred to a foreign corporation on or before March 1, 1984.

''(3) EXCEPTION FOR EXISTING INDEBTEDNESS, ETC.—

''(A) IN GENERAL.—The amendments made by this section [amending this section and sections 170, 368, 514, and 1235 of this title] shall not apply to any amount paid or incurred—

''(i) on indebtedness incurred on or before September 29, 1983, or

''(ii) pursuant to a contract which was binding on September 29, 1983, and at all times thereafter before the amount is paid or incurred.

''(B) TREATMENT OF RENEGOTIATIONS, EXTENSIONS, ETC.—If any indebtedness (or contract described in subparagraph (A)) is renegotiated, extended, renewed, or revised after September 29, 1983, subparagraph (A) shall not apply to any amount paid or incurred on such indebtedness (or pursuant to such contract) after the date of such renegotiation, extension, renewal, or revision.''

Amendment by section 721(s) of Pub. L. 98–369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97–354, see section 721(y)(1) of Pub. L. 98–369, set out as a note under section 1361 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 2(b) of Pub. L. 95–628 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to payments made after the date of the enactment of this Act [Nov. 10, 1978].''

CONSTRUCTION OF SECTION 806 OF PUB. L. 99–514

Nothing in section 806 of Pub. L. 99–514 [amending this section] or in any legislative history relating thereto to be construed as requiring the Secretary of the Treasury or his delegate to permit an automatic change of a taxable year, see section 1008(e)(9) of Pub. L. 100–647, set out as a note under section 1378 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

EXCEPTION FOR CERTAIN INDEBTEDNESS

Section 1812(c)(5) of Pub. L. 99–514 provided that: ''Clause (i) of section 174(c)(3)(A) of the Tax Reform Act of 1984 [section 174(c)(3)(A)(i) of Pub. L. 98–369, set out as a note above] shall be applied by substituting 'December 31, 1983' for 'September 29, 1983' in the case of indebtedness which matures on January 1, 1999, the payments on which from January 1989 through November 1993 equal U/L plus $77,600, the payments on which from December 1993 to maturity equal U/L plus $50,100, and which accrued interest at 13.75 percent through December 31, 1989.''

§ 268. Sale of land with unharvested crop

Where an unharvested crop sold by the taxpayer is considered under the provisions of section 1231 as ''property used in the trade or business'', in computing taxable income no deduction (whether or not for the taxable year of the sale and whether for expenses, depreciation, or otherwise) attributable to the production of such crop shall be allowed.

(Aug. 16, 1954, ch. 736, 68A Stat. 80.)

§ 269. Acquisitions made to evade or avoid income tax

(a) In general

If—

(1) any person or persons acquire, or acquired on or after October 8, 1940, directly or indirectly, control of a corporation, or

(2) any corporation acquires, or acquired on or after October 8, 1940, directly or indirectly, property of another corporation, not controlled, directly or indirectly, immediately before such acquisition, by such acquiring corporation or its stockholders, the basis of which property, in the hands of the acquiring corporation, is determined by reference to the basis in the hands of the transferor corporation,

and the principal purpose for which such acquisition was made is evasion or avoidance of Federal income tax by securing the benefit of a deduction, credit, or other allowance which such person or corporation would not otherwise enjoy, then the Secretary may disallow such deduction, credit, or other allowance. For purposes of paragraphs (1) and (2), control means the ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock of the corporation.

(b) Certain liquidations after qualified stock purchases

(1) In general

If—

(A) there is a qualified stock purchase by a corporation of another corporation,

(B) an election is not made under section 338 with respect to such purchase,

(C) the acquired corporation is liquidated pursuant to a plan of liquidation adopted not more than 2 years after the acquisition date, and

(D) the principal purpose for such liquidation is the evasion or avoidance of Federal income tax by securing the benefit of a deduction, credit, or other allowance which the acquiring corporation would not otherwise enjoy,

then the Secretary may disallow such deduction, credit, or other allowance.

(2) Meaning of terms

For purposes of paragraph (1), the terms ''qualified stock purchase'' and ''acquisition date'' have the same respective meanings as when used in section 338.

(c) Power of Secretary to allow deduction, etc., in part

In any case to which subsection (a) or (b) applies the Secretary is authorized—

(1) to allow as a deduction, credit, or allowance any part of any amount disallowed by such subsection, if he determines that such allowance will not result in the evasion or avoidance of Federal income tax for which the acquisition was made; or

(2) to distribute, apportion, or allocate gross income, and distribute, apportion, or allocate the deductions, credits, or allowances the benefit of which was sought to be secured, between or among the corporations, or properties, or parts thereof, involved, and to allow such deductions, credits, or allowances so distributed, apportioned, or allocated, but to give effect to such allowance only to such extent as he determines will not result in the evasion or

avoidance of Federal income tax for which the acquisition was made; or

(3) to exercise his powers in part under paragraph (1) and in part under paragraph (2).

(Aug. 16, 1954, ch. 736, 68A Stat. 80; Pub. L. 88–272, title II, § 235(c)(2), Feb. 26, 1964, 78 Stat. 126; Pub. L. 94–455, title XIX, §§ 1901(a)(38), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1771, 1834; Pub. L. 98–369, div. A, title VII, § 712(k)(8)(A), (B), July 18, 1984, 98 Stat. 952.)

AMENDMENTS

1984—Subsecs. (b), (c). Pub. L. 98–369 added subsec. (b), redesignated former subsec. (b) as (c) and inserted reference to subsec. (b).

1976—Subsecs. (a), (b). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' wherever appearing.

Subsec. (c). Pub. L. 94–455, § 1901(a)(38), struck out subsec. (c) relating to presumptions in the case of disproportionate purchase price.

1964—Subsec. (a). Pub. L. 88–272 substituted ''the Secretary or his delegate may disallow such deduction, credit, or other allowance'' for ''such deduction, credit or other allowance shall not be allowed''.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 712(k)(8)(C) of Pub. L. 98–369 provided that: ''The amendments made by this paragraph [amending this section] shall apply to liquidations after October 20, 1983, in taxable years ending after such date.''

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years ending after Dec. 31, 1963, see section 235(d) of Pub. L. 88–272, set out as a note under section 1551 of this title.

§ 269A. Personal service corporations formed or availed of to avoid or evade income tax

(a) General rule

If—

(1) substantially all of the services of a personal service corporation are performed for (or on behalf of) 1 other corporation, partnership, or other entity, and

(2) the principal purpose for forming, or availing of, such personal service corporation is the avoidance or evasion of Federal income tax by reducing the income of, or securing the benefit of any expense, deduction, credit, exclusion, or other allowance for, any employee-owner which would not otherwise be available,

then the Secretary may allocate all income, deductions, credits, exclusions, and other allowances between such personal service corporation and its employee-owners, if such allocation is necessary to prevent avoidance or evasion of Federal income tax or clearly to reflect the income of the personal service corporation or any of its employee-owners.

(b) Definitions

For purposes of this section—

(1) Personal service corporation

The term ''personal service corporation'' means a corporation the principal activity of which is the performance of personal services and such services are substantially performed by employee-owners.

(2) Employee-owner

The term ''employee-owner'' means any employee who owns, on any day during the taxable year, more than 10 percent of the outstanding stock of the personal service corporation. For purposes of the preceding sentence, section 318 shall apply, except that ''5 percent'' shall be substituted for ''50 percent'' in section 318(a)(2)(C).

(3) Related persons

All related persons (within the meaning of section 144(a)(3)) shall be treated as 1 entity.

(Added Pub. L. 97–248, title II, § 250(a), Sept. 3, 1982, 96 Stat. 528; amended Pub. L. 99–514, title XIII, § 1301(j)(4), Oct. 22, 1986, 100 Stat. 2657.)

AMENDMENTS

1986—Subsec. (b)(3). Pub. L. 99–514 substituted ''section 144(a)(3)'' for ''section 103(b)(6)(C)''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE

Section 250(c) of Pub. L. 97–248 provided that: ''The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1982.''

§ 269B. Stapled entities

(a) General rule

Except as otherwise provided by regulations, for purposes of this title—

(1) if a domestic corporation and a foreign corporation are stapled entities, the foreign corporation shall be treated as a domestic corporation.

(2) in applying section 1563, stock in a second corporation which constitutes a stapled interest with respect to stock of a first corporation shall be treated as owned by such first corporation, and

(3) in applying subchapter M for purposes of determining whether any stapled entity is a regulated investment company or a real estate investment trust, all entities which are stapled entities with respect to each other shall be treated as 1 entity.

(b) Secretary to prescribe regulations

The Secretary shall prescribe such regulations as may be necessary to prevent avoidance or evasion of Federal income tax through the use of stapled entities. Such regulations may include (but shall not be limited to) regulations providing the extent to which 1 of such entities shall be treated as owning the other entity (to the extent of the stapled interest) and regulations providing that any tax imposed on the foreign corporation referred to in subsection (a)(1) may, if not paid by such corporation, be collected from the domestic corporation referred to in such subsection or the shareholders of such foreign corporation.

(c) Definitions

For purposes of this section—

(1) Entity

The term ''entity'' means any corporation, partnership, trust, association, estate, or

other form of carrying on a business or activity.

(2) Stapled entities

The term ''stapled entities'' means any group of 2 or more entities if more than 50 percent in value of the beneficial ownership in each of such entities consists of stapled interests.

(3) Stapled interests

Two or more interests are stapled interests if, by reason of form of ownership, restrictions on transfer, or other terms or conditions, in connection with the transfer of 1 of such interests the other such interests are also transferred or required to be transferred.

(d) Special rule for treaties

Nothing in section 894 or 7852(d) or in any other provision of law shall be construed as permitting an exemption, by reason of any treaty obligation of the United States heretofore or hereafter entered into, from the provisions of this section.

(e) Subsection (a)(1) not to apply in certain cases

(1) In general

Subsection (a)(1) shall not apply if it is established to the satisfaction of the Secretary that the domestic corporation and the foreign corporation referred to in such subsection are foreign owned.

(2) Foreign owned

For purposes of paragraph (1), a corporation is foreign owned if less than 50 percent of—

(A) the total combined voting power of all classes of stock of such corporation entitled to vote, and

(B) the total value of the stock of the corporation,

is held directly (or indirectly through applying paragraphs (2) and (3) of section 958(a) and paragraph (4) of section 318(a)) by United States persons (as defined in section 7701(a)(30)).

(Added Pub. L. 98–369, div. A, title I, §136(a), July 18, 1984, 98 Stat. 669; amended Pub. L. 99–514, title XVIII, §1810(j), Oct. 22, 1986, 100 Stat. 2829.)

AMENDMENTS

1986—Subsec. (b). Pub. L. 99–514, §1810(j)(1), inserted ''and regulations providing that any tax imposed on the foreign corporation referred to in subsection (a)(1) may, if not paid by such corporation, be collected from the domestic corporation referred to in such subsection or the shareholders of such foreign corporation''.

Subsec. (e). Pub. L. 99–514, §1810(j)(2), added subsec. (e).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section 136(c) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section] shall take effect on the date of the enactment of this Act [July 18, 1984].

''(2) INTERESTS STAPLED AS OF JUNE 30, 1983.—Except as otherwise provided in this subsection, in the case of any interests which on June 30, 1983, were stapled interests (as defined in section 269B(c)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this section)), the amendments made by this section shall take effect on January 1, 1985 (January 1, 1987, in the case of stapled interests in a foreign corporation).

''(3) CERTAIN STAPLED ENTITIES WHICH INCLUDE REAL ESTATE INVESTMENT TRUST.—Paragraph (3) of section 269B(a) of such Code shall not apply in determining the application of the provisions of part II of subchapter M of chapter 1 of such Code to any real estate investment trust which is part of a group of stapled entities if—

''(A) all members of such group were stapled entities as of June 30, 1983, and

''(B) as of June 30, 1983, such group included one or more real estate investment trusts.

''(4) CERTAIN STAPLED ENTITIES WHICH INCLUDE PUERTO RICAN CORPORATIONS.—

''(A) Paragraph (1) of section 269B(a) of such Code shall not apply to a domestic corporation and a qualified Puerto Rican corporation which, on June 30, 1983, were stapled entities.

''(B) For purposes of subparagraph (A), the term 'qualified Puerto Rican corporation' means any corporation organized in Puerto Rico—

''(i) which is described in section 957(c) of such Code or would be so described if any dividends it received from any other corporation described in such section 957(c) were treated as gross income of the type described in such section 957(c), and

''(ii) does not, at any time during the taxable year, own (within the meaning of section 958 of such Code but before applying paragraph (2) of section 269B(a) of such Code) any stock of any corporation which is not described in such section 957(c).

''(5) TREATY RULE NOT TO APPLY TO STAPLED ENTITIES ENTITLED TO TREATY BENEFITS AS OF JUNE 30, 1983.—In the case of any entity which was a stapled entity as of June 30, 1983, subsection (d) of section 269B of such Code shall not apply to any treaty benefit to which such entity was entitled as of June 30, 1983.

''(6) ELECTIONS TO TREAT STAPLED FOREIGN ENTITIES AS SUBSIDIARIES.—

''(A) IN GENERAL.—In the case of any foreign corporation and domestic corporation which as of June 30, 1983, were stapled entities, such domestic corporation may elect (in lieu of applying paragraph (1) of section 269B(a) of such Code) to be treated as owning all interests in the foreign corporation which constitute stapled interests with respect to stock of the domestic corporation.

''(B) ELECTION.—Any election under subparagraph (A) shall be made not later than 180 days after the date of the enactment of this Act and shall be made in such manner as the Secretary of the Treasury or his delegate shall prescribe.

''(C) ELECTION IRREVOCABLE.—Any election under subparagraph (A), once made, may be revoked only with the consent of the Secretary of the Treasury or his delegate.

''(7) OTHER STAPLED ENTITIES WHICH INCLUDE REAL ESTATE INVESTMENT TRUST.—

''(A) IN GENERAL.—Paragraph (3) of section 269B(a) of such Code shall not apply in determining the application of the provisions of part II of subchapter M of chapter 1 of such Code to any qualified real estate investment trust which is a part of a group of stapled entities—

''(i) which was created pursuant to a written board of directors resolution adopted on April 5, 1984, and

''(ii) all members of such group were stapled entities as of June 16, 1985.

''(B) QUALIFIED REAL ESTATE INVESTMENT TRUST.—The term 'qualified real estate investment trust' means any real estate trust—

''(i) at least 75 percent of the gross income of which is derived from interest on obligations secured by mortgages on real property (as defined in section 856 of such Code),

''(ii) with respect to which the interest on the obligations described in clause (i) made or acquired by such trust (other than to persons who are independent contractors, as defined in section 856(d)(3) of such Code) is at an arm's length rate or a rate not more than 1 percentage point greater than the associated borrowing cost of the trust, and

''(iii) with respect to which any real property held by the trust is not used in the trade or business of any other member of the group of stapled entities.''

TERMINATION OF EXCEPTION FOR CERTAIN REAL ESTATE INVESTMENT TRUSTS FROM THE TREATMENT OF STAPLED ENTITIES

Pub. L. 105–206, title VII, § 7002, July 22, 1998, 112 Stat. 827, provided that:

''(a) IN GENERAL.—Notwithstanding paragraph (3) of section 136(c) of the Tax Reform Act of 1984 [Pub. L. 98–369, set out above] (relating to stapled stock; stapled entities), the REIT gross income provisions shall be applied by treating the activities and gross income of members of the stapled REIT group properly allocable to any nonqualified real property interest held by the exempt REIT or any stapled entity which is a member of such group (or treated under subsection (c) as held by such REIT or stapled entity) as the activities and gross income of the exempt REIT in the same manner as if the exempt REIT and such group were one entity.

''(b) NONQUALIFIED REAL PROPERTY INTEREST.—For purposes of this section—

''(1) IN GENERAL.—The term 'nonqualified real property interest' means, with respect to any exempt REIT, any interest in real property acquired after March 26, 1998, by the exempt REIT or any stapled entity.

''(2) EXCEPTION FOR BINDING CONTRACTS, ETC.—Such term shall not include any interest in real property acquired after March 26, 1998, by the exempt REIT or any stapled entity if—

''(A) the acquisition is pursuant to a written agreement (including a put option, buy-sell agreement, and an agreement relating to a third party default) which was binding on such date and at all times thereafter on such REIT or stapled entity; or

''(B) the acquisition is described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission.

''(3) IMPROVEMENTS AND LEASES.—

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term 'nonqualified real property interest' shall not include—

''(i) any improvement to land owned or leased by the exempt REIT or any member of the stapled REIT group; and

''(ii) any repair to, or improvement of, any improvement owned or leased by the exempt REIT or any member of the stapled REIT group,

if such ownership or leasehold interest is a qualified real property interest.

''(B) LEASES.—The term 'nonqualified real property interest' shall not include—

''(i) any lease of a qualified real property interest if such lease is not otherwise such an interest; or

''(ii) any renewal of a lease which is a qualified real property interest,

but only if the rent on any lease referred to in clause (i) or any renewal referred to in clause (ii) does not exceed an arm's length rate.

''(C) TERMINATION WHERE CHANGE IN USE.—

''(i) IN GENERAL.—Subparagraph (A) shall not apply to any improvement placed in service after December 31, 1999, which is part of a change in the use of the property to which such improvement relates unless the cost of such improvement does not exceed 200 percent of—

''(I) the cost of such property; or

''(II) if such property is substituted basis property (as defined in section 7701(a)(42) of the Internal Revenue Code of 1986), the fair market value of the property at the time of acquisition.

''(ii) BINDING CONTRACTS.—For purposes of clause (i), an improvement shall be treated as placed in service before January 1, 2000, if such improvement is placed in service before January 1, 2004, pursuant to a binding contract in effect on December 31, 1999, and at all times thereafter.

''(4) EXCEPTION FOR PERMITTED TRANSFERS, ETC.—The term 'nonqualified real property interest' shall not include any interest in real property acquired solely as a result of a direct or indirect contribution, distribution, or other transfer of such interest from the exempt REIT or any member of the stapled REIT group to such REIT or any such member, but only to the extent the aggregate of the interests of the exempt REIT and all stapled entities in such interest in real property (determined in accordance with subsection (c)(1)) is not increased by reason of the transfer.

''(5) TREATMENT OF ENTITIES WHICH ARE NOT STAPLED, ETC. ON MARCH 26, 1998.—Notwithstanding any other provision of this section, all interests in real property held by an exempt REIT or any stapled entity with respect to such REIT (or treated under subsection (c) as held by such REIT or stapled entity) shall be treated as nonqualified real property interests unless—

''(A) such stapled entity was a stapled entity with respect to such REIT as of March 26, 1998, and at all times thereafter; and

''(B) as of March 26, 1998, and at all times thereafter, such REIT was a real estate investment trust.

''(6) QUALIFIED REAL PROPERTY INTEREST.—The term 'qualified real property interest' means any interest in real property other than a nonqualified real property interest.

''(c) TREATMENT OF PROPERTY HELD BY 10-PERCENT SUBSIDIARIES.—For purposes of this section—

''(1) IN GENERAL.—Any exempt REIT and any stapled entity shall be treated as holding their proportionate shares of each interest in real property held by any 10-percent subsidiary entity of the exempt REIT or stapled entity, as the case may be.

''(2) PROPERTY HELD BY 10-PERCENT SUBSIDIARIES TREATED AS NONQUALIFIED.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), any interest in real property held by a 10-percent subsidiary entity of an exempt REIT or stapled entity shall be treated as a nonqualified real property interest.

''(B) EXCEPTION FOR INTERESTS IN REAL PROPERTY HELD ON MARCH 26, 1998, ETC.—In the case of an entity which was a 10-percent subsidiary entity of an exempt REIT or stapled entity on March 26, 1998, and at all times thereafter, an interest in real property held by such subsidiary entity shall be treated as a qualified real property interest if such interest would be so treated if held or acquired directly by the exempt REIT or the stapled entity.

''(3) REDUCTION IN QUALIFIED REAL PROPERTY INTERESTS IF INCREASE IN OWNERSHIP OF SUBSIDIARY.—If, after March 26, 1998, an exempt REIT or stapled entity increases its ownership interest in a subsidiary entity to which paragraph (2)(B) applies above its ownership interest in such subsidiary entity as of such date, the additional portion of each interest in real property which is treated as held by the exempt REIT or stapled entity by reason of such increased ownership shall be treated as a nonqualified real property interest.

''(4) SPECIAL RULES FOR DETERMINING OWNERSHIP.—For purposes of this subsection—

''(A) percentage ownership of an entity shall be determined in accordance with subsection (e)(4);

''(B) interests in the entity which are acquired by an exempt REIT or a member of the stapled REIT

group in any acquisition described in an agreement, announcement, or filing described in subsection (b)(2) shall be treated as acquired on March 26, 1998; and

''(C) except as provided in guidance prescribed by the Secretary, any change in proportionate ownership which is attributable solely to fluctuations in the relative fair market values of different classes of stock shall not be taken into account.

''(5) TREATMENT OF 60-PERCENT PARTNERSHIPS.—

''(A) IN GENERAL.—If, as of March 26, 1998—

''(i) an exempt REIT or stapled entity held directly or indirectly at least 60 percent of the capital or profits interest in a partnership; and

''(ii) 90 percent or more of the capital interests and 90 percent or more of the profits interests in such partnership (other than interests held directly or indirectly by the exempt REIT or stapled entity) are, or will be, redeemable or exchangeable for consideration the amount of which is determined by reference to the value of shares of stock in the exempt REIT or stapled entity (or both),

paragraph (3) shall not apply to such partnership, and such REIT or entity shall be treated for all purposes of this section as holding all of the capital and profits interests in such partnership.

''(B) LIMITATION TO ONE PARTNERSHIP.—If, as of January 1, 1999, more than one partnership owned by any exempt REIT or stapled entity meets the requirements of subparagraph (A), only the largest such partnership on such date (determined by aggregate asset bases) shall be treated as meeting such requirements.

''(C) MIRROR ENTITY.—For purposes of subparagraph (A), an interest in a partnership formed after March 26, 1998, shall be treated as held by an exempt REIT or stapled entity on March 26, 1998, if such partnership is formed to mirror the stapling of an exempt REIT and a stapled entity in connection with an acquisition agreed to or announced on or before March 26, 1998.

''(d) TREATMENT OF PROPERTY SECURED BY MORTGAGE HELD BY EXEMPT REIT OR MEMBER OF STAPLED REIT GROUP.—

''(1) IN GENERAL.—In the case of any nonqualified obligation held by an exempt REIT or any member of the stapled REIT group, the REIT gross income provisions shall be applied by treating the exempt REIT as having impermissible tenant service income equal to—

''(A) the interest income from such obligation which is properly allocable to the property described in paragraph (2); and

''(B) the income of any member of the stapled REIT group from services described in paragraph (2) with respect to such property.

If the income referred to in subparagraph (A) or (B) is of a 10-percent subsidiary entity, only the portion of such income which is properly allocable to the exempt REIT's or the stapled entity's interest in the subsidiary entity shall be taken into account.

''(2) NONQUALIFIED OBLIGATION.—Except as otherwise provided in this subsection, the term 'nonqualified obligation' means any obligation secured by a mortgage on an interest in real property if the income of any member of the stapled REIT group for services furnished with respect to such property would be impermissible tenant service income were such property held by the exempt REIT and such services furnished by the exempt REIT.

''(3) EXCEPTION FOR CERTAIN MARKET RATE OBLIGATIONS.—Such term shall not include any obligation—

''(A) payments under which would be treated as interest if received by a REIT; and

''(B) the rate of interest on which does not exceed an arm's length rate.

''(4) EXCEPTION FOR EXISTING OBLIGATIONS.—Such term shall not include any obligation—

''(A) which is secured on March 26, 1998, by an interest in real property; and

''(B) which is held on such date by the exempt REIT or any entity which is a member of the stapled REIT group on such date and at all times thereafter,

but only so long as such obligation is secured by such interest, and the interest payable on such obligation is not changed to a rate which exceeds an arm's length rate unless such change is pursuant to the terms of the obligation in effect on March 26, 1998. The preceding sentence shall not cease to apply by reason of the refinancing of the obligation if (immediately after the refinancing) the principal amount of the obligation resulting from the refinancing does not exceed the principal amount of the refinanced obligation (immediately before the refinancing) and the interest payable on such refinanced obligation does not exceed an arm's length rate.

''(5) TREATMENT OF ENTITIES WHICH ARE NOT STAPLED, ETC. ON MARCH 26, 1998.—A rule similar to the rule of subsection (b)(5) shall apply for purposes of this subsection.

''(6) INCREASE IN AMOUNT OF NONQUALIFIED OBLIGATIONS IF INCREASE IN OWNERSHIP OF SUBSIDIARY.—A rule similar to the rule of subsection (c)(3) shall apply for purposes of this subsection.

''(7) COORDINATION WITH SUBSECTION (a).—This subsection shall not apply to the portion of any interest in real property that the exempt REIT or stapled entity holds or is treated as holding under this section without regard to this subsection.

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

''(1) REIT GROSS INCOME PROVISIONS.—The term 'REIT gross income provisions' means—

''(A) paragraphs (2), (3), and (6) of section 856(c) of the Internal Revenue Code of 1986; and

''(B) section 857(b)(5) of such Code.

''(2) EXEMPT REIT.—The term 'exempt REIT' means a real estate investment trust to which section 269B of the Internal Revenue Code of 1986 does not apply by reason of paragraph (3) of section 136(c) of the Tax Reform Act of 1984.

''(3) STAPLED REIT GROUP.—The term 'stapled REIT group' means, with respect to an exempt REIT, the group consisting of—

''(A) all entities which are stapled entities with respect to the exempt REIT; and

''(B) all entities which are 10-percent subsidiary entities of the exempt REIT or any such stapled entity.

''(4) 10-PERCENT SUBSIDIARY ENTITY.—

''(A) IN GENERAL.—The term '10-percent subsidiary entity' means, with respect to any exempt REIT or stapled entity, any entity in which the exempt REIT or stapled entity (as the case may be) directly or indirectly holds at least a 10-percent interest.

''(B) EXCEPTION FOR CERTAIN C CORPORATION SUBSIDIARIES OF REITS.—A corporation which would, but for this subparagraph, be treated as a 10-percent subsidiary of an exempt REIT shall not be so treated if such corporation is taxable under section 11 of the Internal Revenue Code of 1986.

''(C) 10-PERCENT INTEREST.—The term '10-percent interest' means—

''(i) in the case of an interest in a corporation, ownership of 10 percent (by vote or value) of the stock in such corporation;

''(ii) in the case of an interest in a partnership, ownership of 10 percent of the capital or profits interest in the partnership; and

''(iii) in any other case, ownership of 10 percent of the beneficial interests in the entity.

''(5) OTHER DEFINITIONS.—Terms used in this section which are used in section 269B or section 856 of such Code shall have the respective meanings given such terms by such section.

''(f) GUIDANCE.—The Secretary may prescribe such guidance as may be necessary or appropriate to carry out the purposes of this section, including guidance to prevent the avoidance of such purposes and to prevent the double counting of income.

''(g) EFFECTIVE DATE.—This section shall apply to taxable years ending after March 26, 1998.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[§ 270. Repealed. Pub. L. 91–172, title II, § 213(b), Dec. 30, 1969, 83 Stat. 572]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 81, related to the limitation on deductions allowable to certain individuals. See section 183 of this title.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1969, see section 213(d) of Pub. L. 91–172, set out as an Effective Date note under section 183 of this title.

§ 271. Debts owed by political parties, etc.

(a) General rule

In the case of a taxpayer (other than a bank as defined in section 581) no deduction shall be allowed under section 166 (relating to bad debts) or under section 165(g) (relating to worthlessness of securities) by reason of the worthlessness of any debt owed by a political party.

(b) Definitions

(1) Political party

For purposes of subsection (a), the term ''political party'' means—

(A) a political party;

(B) a national, State, or local committee of a political party; or

(C) a committee, association, or organization which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the election of presidential or vice-presidential electors or of any individual whose name is presented for election to any Federal, State, or local elective public office, whether or not such individual is elected.

(2) Contributions

For purposes of paragraph (1)(C), the term ''contributions'' includes a gift, subscription, loan, advance, or deposit, of money, or anything of value, and includes a contract, promise, or agreement to make a contribution, whether or not legally enforceable.

(3) Expenditures

For purposes of paragraph (1)(C), the term ''expenditures'' includes a payment, distribution, loan, advance, deposit, or gift, of money, or anything of value, and includes a contract, promise, or agreement to make an expenditure, whether or not legally enforceable.

(c) Exception

In the case of a taxpayer who uses an accrual method of accounting, subsection (a) shall not apply to a debt which accrued as a receivable on a bona fide sale of goods or services in the ordinary course of the taxpayer's trade or business if—

(1) for the taxable year in which such receivable accrued, more than 30 percent of all receivables which accrued in the ordinary course of the trades and businesses of the taxpayer were due from political parties, and

(2) the taxpayer made substantial continuing efforts to collect on the debt.

(Aug. 16, 1954, ch. 736, 68A Stat. 82; Pub. L. 94–455, title XXI, § 2104(a), Oct. 4, 1976, 90 Stat. 1901.)

AMENDMENTS

1976—Subsec. (c). Pub. L. 94–455 added subsec. (c).

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2104(b) of Pub. L. 94–455 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1975.''

§ 272. Disposal of coal or domestic iron ore

Where the disposal of coal or iron ore is covered by section 631, no deduction shall be allowed for expenditures attributable to the making and administering of the contract under which such disposition occurs and to the preservation of the economic interest retained under such contract, except that if in any taxable year such expenditures plus the adjusted depletion basis of the coal or iron ore disposed of in such taxable year exceed the amount realized under such contract, such excess, to the extent not availed of as a reduction of gain under section 1231, shall be a loss deductible under section 165(a). This section shall not apply to any taxable year during which there is no income under the contract.

(Aug. 16, 1954, ch. 736, 68A Stat. 82; Pub. L. 88–272, title II, § 227(a)(3), (b)(3), Feb. 26, 1964, 78 Stat. 98.)

AMENDMENTS

1964—Pub. L. 88–272 inserted ''or domestic iron ore'' in section catchline, and ''or iron ore'' wherever appearing in text.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 227(c) of Pub. L. 88–272 provided that: ''The amendments made by this section [amending this section and sections 631, 1016, 1231, and 1402 and section 411 of Title 42, The Public Health and Welfare] shall apply with respect to amounts received or accrued in taxable years beginning after December 31, 1963, attributable to iron ore mined in such taxable years.''

§ 273. Holders of life or terminable interest

Amounts paid under the laws of a State, the District of Columbia, a possession of the United States, or a foreign country as income to the holder of a life or terminable interest acquired by gift, bequest, or inheritance shall not be reduced or diminished by any deduction for shrinkage (by whatever name called) in the value of such interest due to the lapse of time.

(Aug. 16, 1954, ch. 736, 68A Stat. 83; Pub. L. 94–455, title XIX, § 1901(c)(2), Oct. 4, 1976, 90 Stat. 1803.)

AMENDMENTS

1976—Pub. L. 94–455 struck out reference to amounts paid under laws of a Territory.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of

Pub. L. 94–455, set out as a note under section 2 of this title.

§ 274. Disallowance of certain entertainment, etc., expenses

(a) Entertainment, amusement, or recreation

(1) In general

No deduction otherwise allowable under this chapter shall be allowed for any item—

(A) Activity

With respect to an activity which is of a type generally considered to constitute entertainment, amusement, or recreation, unless the taxpayer establishes that the item was directly related to, or, in the case of an item directly preceding or following a substantial and bona fide business discussion (including business meetings at a convention or otherwise), that such item was associated with, the active conduct of the taxpayer's trade or business, or

(B) Facility

With respect to a facility used in connection with an activity referred to in subparagraph (A).

In the case of an item described in subparagraph (A), the deduction shall in no event exceed the portion of such item which meets the requirements of subparagraph (A).

(2) Special rules

For purposes of applying paragraph (1)—

(A) Dues or fees to any social, athletic, or sporting club or organization shall be treated as items with respect to facilities.

(B) An activity described in section 212 shall be treated as a trade or business.

(C) In the case of a club, paragraph (1)(B) shall apply unless the taxpayer establishes that the facility was used primarily for the furtherance of the taxpayer's trade or business and that the item was directly related to the active conduct of such trade or business.

(3) Denial of deduction for club dues

Notwithstanding the preceding provisions of this subsection, no deduction shall be allowed under this chapter for amounts paid or incurred for membership in any club organized for business, pleasure, recreation, or other social purpose.

(b) Gifts

(1) Limitation

No deduction shall be allowed under section 162 or section 212 for any expense for gifts made directly or indirectly to any individual to the extent that such expense, when added to prior expenses of the taxpayer for gifts made to such individual during the same taxable year, exceeds $25. For purposes of this section, the term ''gift'' means any item excludable from gross income of the recipient under section 102 which is not excludable from his gross income under any other provision of this chapter, but such term does not include—

(A) an item having a cost to the taxpayer not in excess of $4.00 on which the name of the taxpayer is clearly and permanently imprinted and which is one of a number of identical items distributed generally by the taxpayer, or

(B) a sign, display rack, or other promotional material to be used on the business premises of the recipient.

(2) Special rules

(A) In the case of a gift by a partnership, the limitation contained in paragraph (1) shall apply to the partnership as well as to each member thereof.

(B) For purposes of paragraph (1), a husband and wife shall be treated as one taxpayer.

(c) Certain foreign travel

(1) In general

In the case of any individual who travels outside the United States away from home in pursuit of a trade or business or in pursuit of an activity described in section 212, no deduction shall be allowed under section 162, or section 212 for that portion of the expenses of such travel otherwise allowable under such section which, under regulations prescribed by the Secretary, is not allocable to such trade or business or to such activity.

(2) Exception

Paragraph (1) shall not apply to the expenses of any travel outside the United States away from home if—

(A) such travel does not exceed one week, or

(B) the portion of the time of travel outside the United States away from home which is not attributable to the pursuit of the taxpayer's trade or business or an activity described in section 212 is less than 25 percent of the total time on such travel.

(3) Domestic travel excluded

For purposes of this subsection, travel outside the United States does not include any travel from one point in the United States to another point in the United States.

(d) Substantiation required

No deduction or credit shall be allowed—

(1) under section 162 or 212 for any traveling expense (including meals and lodging while away from home),

(2) for any item with respect to an activity which is of a type generally considered to constitute entertainment, amusement, or recreation, or with respect to a facility used in connection with such an activity,

(3) for any expense for gifts, or

(4) with respect to any listed property (as defined in section 280F(d)(4)),

unless the taxpayer substantiates by adequate records or by sufficient evidence corroborating the taxpayer's own statement (A) the amount of such expense or other item, (B) the time and place of the travel, entertainment, amusement, recreation, or use of the facility or property, or the date and description of the gift, (C) the business purpose of the expense or other item, and (D) the business relationship to the taxpayer of persons entertained, using the facility or prop-

erty, or receiving the gift. The Secretary may by regulations provide that some or all of the requirements of the preceding sentence shall not apply in the case of an expense which does not exceed an amount prescribed pursuant to such regulations. This subsection shall not apply to any qualified nonpersonal use vehicle (as defined in subsection (i)).

(e) Specific exceptions to application of subsection (a)

Subsection (a) shall not apply to—

(1) Food and beverages for employees

Expenses for food and beverages (and facilities used in connection therewith) furnished on the business premises of the taxpayer primarily for his employees.

(2) Expenses treated as compensation

(A) In general

Except as provided in subparagraph (B), expenses for goods, services, and facilities, to the extent that the expenses are treated by the taxpayer, with respect to the recipient of the entertainment, amusement, or recreation, as compensation to an employee on the taxpayer's return of tax under this chapter and as wages to such employee for purposes of chapter 24 (relating to withholding of income tax at source on wages).

(B) Specified individuals

(i) In general

In the case of a recipient who is a specified individual, subparagraph (A) and paragraph (9) shall each be applied by substituting ''to the extent that the expenses do not exceed the amount of the expenses which'' for ''to the extent that the expenses''.

(ii) Specified individual

For purposes of clause (i), the term ''specified individual'' means any individual who—

(I) is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934 with respect to the taxpayer or a related party to the taxpayer, or

(II) would be subject to such requirements if the taxpayer (or such related party) were an issuer of equity securities referred to in such section.

For purposes of this clause, a person is a related party with respect to another person if such person bears a relationship to such other person described in section 267(b) or 707(b).

(3) Reimbursed expenses

Expenses paid or incurred by the taxpayer, in connection with the performance by him of services for another person (whether or not such other person is his employer), under a reimbursement or other expense allowance arrangement with such other person, but this paragraph shall apply—

(A) where the services are performed for an employer, only if the employer has not treated such expenses in the manner provided in paragraph (2), or

(B) where the services are performed for a person other than an employer, only if the taxpayer accounts (to the extent provided by subsection (d)) to such person.

(4) Recreational, etc., expenses for employees

Expenses for recreational, social, or similar activities (including facilities therefor) primarily for the benefit of employees (other than employees who are highly compensated employees (within the meaning of section 414(q))). For purposes of this paragraph, an individual owning less than a 10-percent interest in the taxpayer's trade or business shall not be considered a shareholder or other owner, and for such purposes an individual shall be treated as owning any interest owned by a member of his family (within the meaning of section 267(c)(4)). This paragraph shall not apply for purposes of subsection (a)(3).

(5) Employees, stockholder, etc., business meetings

Expenses incurred by a taxpayer which are directly related to business meetings of his employees, stockholders, agents, or directors.

(6) Meetings of business leagues, etc.

Expenses directly related and necessary to attendance at a business meeting or convention of any organization described in section 501(c)(6) (relating to business leagues, chambers of commerce, real estate boards, and boards of trade) and exempt from taxation under section 501(a).

(7) Items available to public

Expenses for goods, services, and facilities made available by the taxpayer to the general public.

(8) Entertainment sold to customers

Expenses for goods or services (including the use of facilities) which are sold by the taxpayer in a bona fide transaction for an adequate and full consideration in money or money's worth.

(9) Expenses includible in income of persons who are not employees

Expenses paid or incurred by the taxpayer for goods, services, and facilities to the extent that the expenses are includible in the gross income of a recipient of the entertainment, amusement, or recreation who is not an employee of the taxpayer as compensation for services rendered or as a prize or award under section 74. The preceding sentence shall not apply to any amount paid or incurred by the taxpayer if such amount is required to be included (or would be so required except that the amount is less than $600) in any information return filed by such taxpayer under part III of subchapter A of chapter 61 and is not so included.

For purposes of this subsection, any item referred to in subsection (a) shall be treated as an expense.

(f) Interest, taxes, casualty losses, etc.

This section shall not apply to any deduction allowable to the taxpayer without regard to its connection with his trade or business (or with

his income-producing activity). In the case of a taxpayer which is not an individual, the preceding sentence shall be applied as if it were an individual.

(g) Treatment of entertainment, etc., type facility

For purposes of this chapter, if deductions are disallowed under subsection (a) with respect to any portion of a facility, such portion shall be treated as an asset which is used for personal, living, and family purposes (and not as an asset used in the trade or business).

(h) Attendance at conventions, etc.

(1) In general

In the case of any individual who attends a convention, seminar, or similar meeting which is held outside the North American area, no deduction shall be allowed under section 162 for expenses allocable to such meeting unless the taxpayer establishes that the meeting is directly related to the active conduct of his trade or business and that, after taking into account in the manner provided by regulations prescribed by the Secretary—

(A) the purpose of such meeting and the activities taking place at such meeting,

(B) the purposes and activities of the sponsoring organizations or groups,

(C) the residences of the active members of the sponsoring organization and the places at which other meetings of the sponsoring organization or groups have been held or will be held, and

(D) such other relevant factors as the taxpayer may present,

it is as reasonable for the meeting to be held outside the North American area as within the North American area.

(2) Conventions on cruise ships

In the case of any individual who attends a convention, seminar, or other meeting which is held on any cruise ship, no deduction shall be allowed under section 162 for expenses allocable to such meeting, unless the taxpayer meets the requirements of paragraph (5) and establishes that the meeting is directly related to the active conduct of his trade or business and that—

(A) the cruise ship is a vessel registered in the United States; and

(B) all ports of call of such cruise ship are located in the United States or in possessions of the United States.

With respect to cruises beginning in any calendar year, not more than $2,000 of the expenses attributable to an individual attending one or more meetings may be taken into account under section 162 by reason of the preceding sentence.

(3) Definitions

For purposes of this subsection—

(A) North American area

The term ''North American area'' means the United States, its possessions, and the Trust Territory of the Pacific Islands, and Canada and Mexico.

(B) Cruise ship

The term ''cruise ship'' means any vessel sailing within or without the territorial waters of the United States.

(4) Subsection to apply to employer as well as to traveler

(A) Except as provided in subparagraph (B), this subsection shall apply to deductions otherwise allowable under section 162 to any person, whether or not such person is the individual attending the convention, seminar, or similar meeting.

(B) This subsection shall not deny a deduction to any person other than the individual attending the convention, seminar, or similar meeting with respect to any amount paid by such person to or on behalf of such individual if includible in the gross income of such individual. The preceding sentence shall not apply if the amount is required to be included in any information return filed by such person under part III of subchapter A of chapter 61 and is not so included.

(5) Reporting requirements

No deduction shall be allowed under section 162 for expenses allocable to attendance at a convention, seminar, or similar meeting on any cruise ship unless the taxpayer claiming the deduction attaches to the return of tax on which the deduction is claimed—

(A) a written statement signed by the individual attending the meeting which includes—

(i) information with respect to the total days of the trip, excluding the days of transportation to and from the cruise ship port, and the number of hours of each day of the trip which such individual devoted to scheduled business activities,

(ii) a program of the scheduled business activities of the meeting, and

(iii) such other information as may be required in regulations prescribed by the Secretary; and

(B) a written statement signed by an officer of the organization or group sponsoring the meeting which includes—

(i) a schedule of the business activities of each day of the meeting,

(ii) the number of hours which the individual attending the meeting attended such scheduled business activities, and

(iii) such other information as may be required in regulations prescribed by the Secretary.

(6) Treatment of conventions in certain Caribbean countries

(A) In general

For purposes of this subsection, the term ''North American area'' includes, with respect to any convention, seminar, or similar meeting, any beneficiary country if (as of the time such meeting begins)—

(i) there is in effect a bilateral or multilateral agreement described in subparagraph (C) between such country and the United States providing for the exchange of information between the United States and such country, and

(ii) there is not in effect a finding by the Secretary that the tax laws of such country discriminate against conventions held in the United States.

(B) Beneficiary country

For purposes of this paragraph, the term ''beneficiary country'' has the meaning given to such term by section 212(a)(1)(A) of the Caribbean Basin Economic Recovery Act; except that such term shall include Bermuda.

(C) Authority to conclude exchange of information agreements

(i) In general

The Secretary is authorized to negotiate and conclude an agreement for the exchange of information with any beneficiary country. Except as provided in clause (ii), an exchange of information agreement shall provide for the exchange of such information (not limited to information concerning nationals or residents of the United States or the beneficiary country) as may be necessary or appropriate to carry out and enforce the tax laws of the United States and the beneficiary country (whether criminal or civil proceedings), including information which may otherwise be subject to nondisclosure provisions of the local law of the beneficiary country such as provisions respecting bank secrecy and bearer shares. The exchange of information agreement shall be terminable by either country on reasonable notice and shall provide that information received by either country will be disclosed only to persons or authorities (including courts and administrative bodies) involved in the administration or oversight of, or in the determination of appeals in respect of, taxes of the United States or the beneficiary country and will be used by such persons or authorities only for such purposes.

(ii) Nondisclosure of qualified confidential information sought for civil tax purposes

An exchange of information agreement need not provide for the exchange of qualified confidential information which is sought only for civil tax purposes if—

(I) the Secretary of the Treasury, after making all reasonable efforts to negotiate an agreement which includes the exchange of such information, determines that such an agreement cannot be negotiated but that the agreement which was negotiated will significantly assist in the administration and enforcement of the tax laws of the United States, and

(II) the President determines that the agreement as negotiated is in the national security interest of the United States.

(iii) Qualified confidential information defined

For purposes of this subparagraph, the term ''qualified confidential information'' means information which is subject to the nondisclosure provisions of any local law of the beneficiary country regarding bank secrecy or ownership of bearer shares.

(iv) Civil tax purposes

For purposes of this subparagraph, the determination of whether information is sought only for civil tax purposes shall be made by the requesting party.

(D) Coordination with other provisions

Any exchange of information agreement negotiated under subparagraph (C) shall be treated as an income tax convention for purposes of section 6103(k)(4). The Secretary may exercise his authority under subchapter A of chapter 78 to carry out any obligation of the United States under an agreement referred to in subparagraph (C).

(E) Determinations published in the Federal Register

The following shall be published in the Federal Register—

(i) any determination by the President under subparagraph (C)(ii) (including the reasons for such determination),

(ii) any determination by the Secretary under subparagraph (C)(ii) (including the reasons for such determination), and

(iii) any finding by the Secretary under subparagraph (A)(ii) (and any termination thereof).

(7) Seminars, etc. for section 212 purposes

No deduction shall be allowed under section 212 for expenses allocable to a convention, seminar, or similar meeting.

(i) Qualified nonpersonal use vehicle

For purposes of subsection (d), the term ''qualified nonpersonal use vehicle'' means any vehicle which, by reason of its nature, is not likely to be used more than a de minimis amount for personal purposes.

(j) Employee achievement awards

(1) General rule

No deduction shall be allowed under section 162 or section 212 for the cost of an employee achievement award except to the extent that such cost does not exceed the deduction limitations of paragraph (2).

(2) Deduction limitations

The deduction for the cost of an employee achievement award made by an employer to an employee—

(A) which is not a qualified plan award, when added to the cost to the employer for all other employee achievement awards made to such employee during the taxable year which are not qualified plan awards, shall not exceed $400, and

(B) which is a qualified plan award, when added to the cost to the employer for all other employee achievement awards made to such employee during the taxable year (including employee achievement awards which are not qualified plan awards), shall not exceed $1,600.

(3) Definitions

For purposes of this subsection—

(A) Employee achievement award

The term ''employee achievement award'' means an item of tangible personal property which is—

(i) transferred by an employer to an employee for length of service achievement or safety achievement,

(ii) awarded as part of a meaningful presentation, and

(iii) awarded under conditions and circumstances that do not create a significant likelihood of the payment of disguised compensation.

(B) Qualified plan award

(i) In general

The term ''qualified plan award'' means an employee achievement award awarded as part of an established written plan or program of the taxpayer which does not discriminate in favor of highly compensated employees (within the meaning of section 414(q)) as to eligibility or benefits.

(ii) Limitation

An employee achievement award shall not be treated as a qualified plan award for any taxable year if the average cost of all employee achievement awards which are provided by the employer during the year, and which would be qualified plan awards but for this subparagraph, exceeds $400. For purposes of the preceding sentence, average cost shall be determined by including the entire cost of qualified plan awards, without taking into account employee achievement awards of nominal value.

(4) Special rules

For purposes of this subsection—

(A) Partnerships

In the case of an employee achievement award made by a partnership, the deduction limitations contained in paragraph (2) shall apply to the partnership as well as to each member thereof.

(B) Length of service awards

An item shall not be treated as having been provided for length of service achievement if the item is received during the recipient's 1st 5 years of employment or if the recipient received a length of service achievement award (other than an award excludable under section 132(e)(1)) during that year or any of the prior 4 years.

(C) Safety achievement awards

An item provided by an employer to an employee shall not be treated as having been provided for safety achievement if—

(i) during the taxable year, employee achievement awards (other than awards excludable under section 132(e)(1)) for safety achievement have previously been awarded by the employer to more than 10 percent of the employees of the employer (excluding employees described in clause (ii)), or

(ii) such item is awarded to a manager, administrator, clerical employee, or other professional employee.

(k) Business meals

(1) In general

No deduction shall be allowed under this chapter for the expense of any food or beverages unless—

(A) such expense is not lavish or extravagant under the circumstances, and

(B) the taxpayer (or an employee of the taxpayer) is present at the furnishing of such food or beverages.

(2) Exceptions

Paragraph (1) shall not apply to—

(A) any expense described in paragraph (2), (3), (4), (7), (8), or (9) of subsection (e), and

(B) any other expense to the extent provided in regulations.

(*l*) Additional limitations on entertainment tickets

(1) Entertainment tickets

(A) In general

In determining the amount allowable as a deduction under this chapter for any ticket for any activity or facility described in subsection (d)(2), the amount taken into account shall not exceed the face value of such ticket.

(B) Exception for certain charitable sports events

Subparagraph (A) shall not apply to any ticket for any sports event—

(i) which is organized for the primary purpose of benefiting an organization which is described in section 501(c)(3) and exempt from tax under section 501(a),

(ii) all of the net proceeds of which are contributed to such organization, and

(iii) which utilizes volunteers for substantially all of the work performed in carrying out such event.

(2) Skyboxes, etc.

In the case of a skybox or other private luxury box leased for more than 1 event, the amount allowable as a deduction under this chapter with respect to such events shall not exceed the sum of the face value of non-luxury box seat tickets for the seats in such box covered by the lease. For purposes of the preceding sentence, 2 or more related leases shall be treated as 1 lease.

(m) Additional limitations on travel expenses

(1) Luxury water transportation

(A) In general

No deduction shall be allowed under this chapter for expenses incurred for transportation by water to the extent such expenses exceed twice the aggregate per diem amounts for days of such transportation. For purposes of the preceding sentence, the term ''per diem amounts'' means the highest amount generally allowable with respect to a day to employees of the executive branch of the Federal Government for per diem

while away from home but serving in the United States.

(B) Exceptions

Subparagraph (A) shall not apply to—

(i) any expense allocable to a convention, seminar, or other meeting which is held on any cruise ship, and

(ii) any expense described in paragraph (2), (3), (4), (7), (8), or (9) of subsection (e).

(2) Travel as form of education

No deduction shall be allowed under this chapter for expenses for travel as a form of education.

(3) Travel expenses of spouse, dependent, or others

No deduction shall be allowed under this chapter (other than section 217) for travel expenses paid or incurred with respect to a spouse, dependent, or other individual accompanying the taxpayer (or an officer or employee of the taxpayer) on business travel, unless—

(A) the spouse, dependent, or other individual is an employee of the taxpayer,

(B) the travel of the spouse, dependent, or other individual is for a bona fide business purpose, and

(C) such expenses would otherwise be deductible by the spouse, dependent, or other individual.

(n) Only 50 percent of meal and entertainment expenses allowed as deduction

(1) In general

The amount allowable as a deduction under this chapter for—

(A) any expense for food or beverages, and

(B) any item with respect to an activity which is of a type generally considered to constitute entertainment, amusement, or recreation, or with respect to a facility used in connection with such activity,

shall not exceed 50 percent of the amount of such expense or item which would (but for this paragraph) be allowable as a deduction under this chapter.

(2) Exceptions

Paragraph (1) shall not apply to any expense if—

(A) such expense is described in paragraph (2), (3), (4), (7), (8), or (9) of subsection (e),

(B) in the case of an expense for food or beverages, such expense is excludable from the gross income of the recipient under section 132 by reason of subsection (e) thereof (relating to de minimis fringes),

(C) such expense is covered by a package involving a ticket described in subsection (*l*)(1)(B),

(D) in the case of an employer who pays or reimburses moving expenses of an employee, such expenses are includible in the income of the employee under section 82, or

(E) such expense is for food or beverages—

(i) required by any Federal law to be provided to crew members of a commercial vessel,

(ii) provided to crew members of a commercial vessel—

(I) which is operating on the Great Lakes, the Saint Lawrence Seaway, or any inland waterway of the United States, and

(II) which is of a kind which would be required by Federal law to provide food and beverages to crew members if it were operated at sea,

(iii) provided on an oil or gas platform or drilling rig if the platform or rig is located offshore, or

(iv) provided on an oil or gas platform or drilling rig, or at a support camp which is in proximity and integral to such platform or rig, if the platform or rig is located in the United States north of 54 degrees north latitude.

Clauses (i) and (ii) of subparagraph (E) shall not apply to vessels primarily engaged in providing luxury water transportation (determined under the principles of subsection (m)). In the case of the employee, the exception of subparagraph (A) shall not apply to expenses described in subparagraph (D).

(3) Special rule for individuals subject to Federal hours of service

(A) In general

In the case of any expenses for food or beverages consumed while away from home (within the meaning of section 162(a)(2)) by an individual during, or incident to, the period of duty subject to the hours of service limitations of the Department of Transportation, paragraph (1) shall be applied by substituting ''the applicable percentage'' for ''50 percent''.

(B) Applicable percentage

For purposes of this paragraph, the term ''applicable percentage'' means the percentage determined under the following table:

For taxable years beginning in calendar year—	The applicable percentage is—
1998 or 1999	55
2000 or 2001	60
2002 or 2003	65
2004 or 2005	70
2006 or 2007	75
2008 or thereafter	80.

(*o*) Regulatory authority

The Secretary shall prescribe such regulations as he may deem necessary to carry out the purposes of this section, including regulations prescribing whether subsection (a) or subsection (b) applies in cases where both such subsections would otherwise apply.

(Added Pub. L. 87–834, § 4(a)(1), Oct. 16, 1962, 76 Stat. 974; amended Pub. L. 88–272, title II, § 217(a), Feb. 26, 1964, 78 Stat. 56; Pub. L. 94–455, title VI, § 602(a), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1572, 1834; Pub. L. 95–600, title III, § 361(a), (b), title VII, § 701(g)(1)–(3), Nov. 6, 1978, 92 Stat. 2847, 2903, 2904; Pub. L. 96–222, title I, § 103(a)(10)(A), (B) Apr. 1, 1980, 94 Stat. 212; Pub. L. 96–598, § 5(a), Dec. 24, 1980, 94 Stat. 3488; Pub. L. 96–605, title I, § 108(a), Dec. 28, 1980, 94 Stat. 3524; Pub. L. 96–608, § 4(a), Dec. 28, 1980, 94 Stat. 3552; Pub. L. 97–34, title II, § 265(a), (b), Aug. 13,

1981, 95 Stat. 265; Pub. L. 97–248, title III, §§307(a)(1), 308(a), Sept. 3, 1982, 96 Stat. 589, 591; Pub. L. 97–424, title V, §543(a), Jan. 6, 1983, 96 Stat. 2195; Pub. L. 98–67, title I, §102(a), title II, §222(a), Aug. 5, 1983, 97 Stat. 369, 395; Pub. L. 98–369, div. A, title I, §179(b)(1), title VIII, §801(c), July 18, 1984, 98 Stat. 718, 995; Pub. L. 99–44, §§1(a), 2, 6(b), May 24, 1985, 99 Stat. 77, 79; Pub. L. 99–514, title I, §§122(c), (d), 142(a)–(c), title XI, §1114(b)(6), Oct. 22, 1986, 100 Stat. 2110, 2117–2120, 2451; Pub. L. 100–647, title I, §§1001(g)(1)–(4)(A), (5), 1018(u)(2), title VI, §6003(a), Nov. 10, 1988, 102 Stat. 3351, 3352, 3590, 3684; Pub. L. 101–239, title VII, §§7816(a), 7841(d)(18), Dec. 19, 1989, 103 Stat. 2420, 2429; Pub. L. 101–508, title XI, §11802(b), Nov. 5, 1990, 104 Stat. 1388–529; Pub. L. 103–66, title XIII, §§13209(a), (b), 13210(a), (b), 13272(a), Aug. 10, 1993, 107 Stat. 469, 542; Pub. L. 105–34, title IX, §969(a), Aug. 5, 1997, 111 Stat. 896; Pub. L. 108–357, title VIII, §907(a), Oct. 22, 2004, 118 Stat. 1654; Pub. L. 109–135, title IV, §403(mm), Dec. 21, 2005, 119 Stat. 2632.)

REFERENCES IN TEXT

Section 16 of the Securities Exchange Act of 1934, referred to in subsec. (e)(2)(B)(ii), is classified to section 78p of Title 15, Commerce and Trade.

Section 212(a)(1)(A) of the Caribbean Basin Economic Recovery Act, referred to in subsec. (h)(6)(B), is classified to section 2702(a)(1)(A) of Title 19, Customs Duties.

AMENDMENTS

2005—Subsec. (e)(2)(B)(ii). Pub. L. 109–135, §403(mm)(1), (2), inserted ''or a related party to the taxpayer'' after ''with respect to the taxpayer'' in subcl. (I), ''(or such related party)'' after ''the taxpayer'' in subcl. (II), and ''For purposes of this clause, a person is a related party with respect to another person if such person bears a relationship to such other person described in section 267(b) or 707(b).'' at end.

2004—Subsec. (e)(2). Pub. L. 108–357 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Expenses for goods, services, and facilities, to the extent that the expenses are treated by the taxpayer, with respect to the recipient of the entertainment, amusement, or recreation, as compensation to an employee on the taxpayer's return of tax under this chapter and as wages to such employee for purposes of chapter 24 (relating to withholding of income tax at source on wages).''

1997—Subsec. (n)(3). Pub. L. 105–34 added par. (3).

1993—Subsec. (a)(3). Pub. L. 103–66, §13210(a), added par. (3).

Subsec. (e)(4). Pub. L. 103–66, §13210(b), inserted at end ''This paragraph shall not apply for purposes of subsection (a)(3).''

Subsec. (m)(3). Pub. L. 103–66, §13272(a), added par. (3).

Subsec. (n). Pub. L. 103–66, §13209(a), (b), substituted ''50'' for ''80'' in heading and in concluding provisions of par. (1).

1990—Subsec. (*l*)(2). Pub. L. 101–508, §11802(b)(1), in amending par. (2) generally, struck out ''(A) In general'' and subpar. (B) which provided for phasein deductions of skybox tickets in the 1987 and 1988 taxable years.

Subsec. (n)(2). Pub. L. 101–508, §11802(b)(2)(A)(ii), (iii), substituted ''described in subparagraph (D)'' for ''described in subparagraph (E)'' and ''of subparagraph (E)'' for ''of subparagraph (F)'' in concluding provisions.

Subsec. (n)(2)(D) to (F). Pub. L. 101–508, §11802(b)(2)(A)(i), redesignated subpars. (E) and (F) as (D) and (E), respectively, and struck out former subpar. (D) which read as follows: ''in the case of an expense for food or beverages before January 1, 1989, such expense is an integral part of a qualified meeting,''.

Subsec. (n)(3). Pub. L. 101–508, §11802(b)(2)(B), struck out par. (3) ''Qualified meeting'' which read as follows: ''For purposes of paragraph (2)(D), the term 'qualified meeting' means any convention, seminar, annual meeting, or similar business program with respect to which—

''(A) an expense for food or beverages is not separately stated,

''(B) more than 50 percent of the participants are away from home,

''(C) at least 40 individuals attend, and

''(D) such food and beverages are part of a program which includes a speaker.''

1989—Subsec. (n)(2). Pub. L. 101–239, §7816(a), added a new subpar. (E), substantially identical to former subpar. (E), and moved sentence formerly appearing between subpars. (E) and (F) to end of concluding provisions after subpar. (F).

Subsec. (n)(2)(F)(i). Pub. L. 101–239, §7841(d)(18), inserted ''any'' before ''Federal law''.

1988—Subsec. (b)(1). Pub. L. 100–647, §1018(u)(2), related to execution of amendment by Pub. L. 99–514, §122(c)(2), see 1986 Amendment note below.

Subsec. (h)(1), (2). Pub. L. 100–647, §1001(g)(5), substituted ''trade or business and that'' for ''trade or business that''.

Subsec. (k)(2). Pub. L. 100–647, §1001(g)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Paragraph (1) shall not apply to any expense if subsection (a) does not apply to such expense by reason of paragraph (2), (3), (4), (7), (8), or (9) of subsection (e).''

Subsec. (m)(1)(B)(ii). Pub. L. 100–647, §1001(g)(3), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''any expense to which subsection (a) does not apply by reason of paragraph (2), (3), (4), (7), (8), or (9) of subsection (e).''

Subsec. (n)(2). Pub. L. 100–647, §6003(a), struck out ''or'' at end of subpar. (D), substituted '', or'' for the period at end of subpar. (E), and added subpar. (F) and flush sentence at end.

Pub. L. 100–647, §1001(g)(4)(A), struck out ''or'' at end of subpar. (C), substituted '', or'' for the period at end of subpar. (D), and added subpar. (E) and flush sentence at end.

Pub. L. 100–647, §1001(g)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''subsection (a) does not apply to such expense by reason of paragraph (2), (3), (4), (7), (8), or (9) of subsection (e),''.

1986—Subsec. (b)(1). Pub. L. 99–514, §122(c)(1)–(3), and Pub. L. 100–647, §1018(u)(2), made conforming amendments to subpars. (A) and (B) and struck out subpar. (C) which read as follows: ''an item of tangible personal property which is awarded to an employee by reason of length of service, productivity, or safety achievement, but only to the extent that—

''(i) the cost of such item to the taxpayer does not exceed $400, or

''(ii) such item is a qualified plan award.''

Subsec. (b)(3). Pub. L. 99–514, §122(c)(4), struck out par. (3) relating to qualified plan award, defining such term in subpar. (A), and providing for average amount of awards in subpar. (B) and maximum amount per item in subpar. (C).

Subsec. (e)(1). Pub. L. 99–514, §142(a)(2)(A), redesignated par. (2) as (1) and struck out former par. (1), business meals, which read as follows: ''Expenses for food and beverages furnished to any individual under circumstances which (taking into account the surroundings in which furnished, the taxpayer's trade, business, or income-producing activity and the relationship to such trade, business, or activity of the persons to whom the food and beverages are furnished) are of a type generally considered to be conducive to a business discussion.''

Subsec. (e)(2). Pub. L. 99–514, §142(a)(2)(A), redesignated par. (3) as (2). Former par. (2) redesignated (1).

Subsec. (e)(3). Pub. L. 99–514, §142(a)(2), redesignated par. (4) as (3) and substituted ''paragraph (2)'' for ''para-

graph (3)'' in subpar. (A). Former par. (3) redesignated (2).

Subsec. (e)(4). Pub. L. 99–514, §1114(b)(6), which directed the substitution of ''highly compensated employees (within the meaning of section 414(q))'' for ''officers, shareholders or other owners, or highly compensated employees'' in par. (5) was executed to par. (4) to reflect the probable intent of Congress, in view of the redesignation of par. (5) as (4) by section 142(a)(2)(A) of Pub. L. 99–514.

Pub. L. 99–514, §142(a)(2)(A), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (e)(5) to (10). Pub. L. 99–514, §142(a)(2)(A), redesignated pars. (5) to (10) as pars. (4) to (9), respectively.

Subsec. (h). Pub. L. 99–514, §142(c), struck out ''or 212'' after ''section 162'' in introductory provisions of pars. (1), (2), and (5), in closing provisions of par. (2), and in par. (4)(A), struck out ''or to an activity described in section 212 and'' after ''active conduct of his trade or business'' in introductory provisions of pars. (1) and (2), and added par. (7).

Subsec. (j). Pub. L. 99–514, §122(d), added subsec. (j). Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 99–514, §142(a)(1), added subsec. (k). Former subsec. (k) redesignated (*o*).

Subsecs. (*l*) to (n). Pub. L. 99–514, §142(b), added subsecs. (*l*) to (n).

Subsec. (*o*). Pub. L. 99–514, §142(a)(1), redesignated former subsec. (k) as (*o*).

1985—Subsec. (d). Pub. L. 99–44, §2(a), inserted at end ''This subsection shall not apply to any qualified nonpersonal use vehicle (as defined in subsection (i)).''

Pub. L. 99–44, §1(a), substituted ''adequate records or by sufficient evidence corroborating the taxpayer's own statement'' for ''adequate contemporaneous records'', and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied as if ''contemporaneous'' had not been added to subsec. (d). See Effective Date of 1985 Amendment note below.

Subsecs. (i), (j). Pub. L. 99–44, §2(b), added subsec. (i) and redesignated former subsec. (i) as (j).

1984—Subsec. (d). Pub. L. 98–369, §179(b), substituted, in introductory provisions, ''No deduction or credit'' for ''No deduction'' and, in provisions following par. (4), ''adequate contemporaneous records'' for ''adequate records or by sufficient evidence corroborating his own statement'' and ''the facility or property'' for ''the facility'' in two places, and added par. (4).

Subsec. (h)(6)(D). Pub. L. 98–369, §801(c), substituted in heading ''with other provisions'' for ''with section 6103'' and in text inserted provision that the Secretary may exercise his authority under subchapter A of chapter 78 to carry out any obligations of the United States under an agreement referred to in subpar. (C).

1983—Subsec. (e)(3). Pub. L. 98–67, §102(a), repealed amendments made by Pub. L. 97–248. See 1982 Amendment note below.

Subsec. (h)(2). Pub. L. 97–424, §543(a)(1), inserted provisions relating to requirements of par. (5) and the description in section 212, and inserted the $2,000 limit relating to section 162 or 212.

Subsec. (h)(5). Pub. L. 97–424, §543(a)(2), added par. (5).

Subsec. (h)(6). Pub. L. 98–67, §227(a), added par. (6).

1982—Subsec. (e)(3). Pub. L. 97–248 provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, par. (3) is amended by inserting ''subchapter A of'' before ''chapter 24''. Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

1981—Subsec. (b)(1)(C). Pub. L. 97–34, §265(a), excluded from term ''gift'' an award for productivity, designated existing provisions as cl. (i), and as so designated, increased the limitation to $400 from $100, and added cl. (ii).

Subsec. (b)(3). Pub. L. 97–34, §265(b), added par. (3).

1980—Subsec. (a)(2)(C). Pub. L. 96–222, §103(a)(10)(A), struck out ''country'' after ''the case of a''.

Subsec. (e)(10). Pub. L. 96–605 and Pub. L. 96–598 made identical amendments by adding par. (10).

Subsec. (h) Pub. L. 96–608 substituted provision disallowing any deductions for expenses allocable to a convention, seminar, or other similar meeting outside the North American area unless, taking certain factors into account, it is as reasonable for the meeting to be held outside the North American area as within it, disallowing any deductions for a convention, seminar, or similar meeting held on any cruise ship, and defining North American area and cruise ship, for provision allowing deductions with respect to not more than 2 foreign conventions per year, limiting deductible transportation cost to not to exceed the cost of coach or economy air fare, permitting transportation costs to be fully deductible only if at least one-half of the days are devoted to business related activities, disallowing deductions for subsistence expenses unless the individual attends two-thirds of the business activities, limiting deductible subsistence costs to not to exceed the per diem rate for United States civil servants, defining foreign convention and subsistence expenses, providing that if transportation expenses or subsistence expenses are not separately stated or do not reflect the proper allocation all amounts paid be treated as subsistence expenses, and prescribing special reporting and substantiation requirements.

1978—Subsec. (a)(1). Pub. L. 95–600, §361(a), substituted provisions allowing no deduction for expenses paid or incurred with respect to a facility which is used in conjunction with an activity which is of a type generally considered to constitute entertainment, amusement, or recreation for provisions allowing a deduction for expenses paid or incurred with respect to a facility if the facility used is primarily for the furtherance of the taxpayer's business, and the expense is ''directly related'' to the active conduct of taxpayer's business.

Subsec. (a)(2)(C). Pub. L. 95–600, §361(b), as amended by Pub. L. 96–222, §103(a)(10)(B), added subpar. (C).

Subsec. (h)(3). Pub. L. 95–600, §701(g)(3), substituted ''at least one-half'' for ''more than one-half'' in first sentence.

Subsec. (h)(6)(D). Pub. L. 95–600, §701(g)(1), designated existing provisions as cl. (i), inserted introductory phrase ''Except as provided in clause (ii)'' and substituted ''For the purposes'' for ''For purpose'', and added cl. (ii).

Subsec. (h)(6)(E). Pub. L. 95–600, §701(g)(2), added subpar. (E).

1976—Subsecs. (c)(1), (d). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (h). Pub. L. 94–455, §602(a), added subsec. (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 94–455, §§602(a), 1906(b)(13)(A), redesignated former subsec. (h) as (i) and struck out ''or his delegate'' after ''Secretary''.

1964—Subsec. (c). Pub. L. 88–272 limited subsec. (c) to individuals traveling outside the United States.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendments by Pub. L. 109–135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which they relate, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §907(b), Oct. 22, 2004, 118 Stat. 1655, provided that: ''The amendment made by this section [amending this section] shall apply to expenses incurred after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 969(b) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this sec-

tion] shall apply to taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13209(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1993.''

Section 13210(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section] shall apply to amounts paid or incurred after December 31, 1993.''

Section 13272(b) of Pub. L. 103–66 provided that: ''The amendment made by this section [amending this section] shall apply to amounts paid or incurred after December 31, 1993.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7816(a) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1001(g)(1)–(4)(A), (5) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6003(b) of Pub. L. 100–647 provided that:

''(1) Clauses (i) and (ii) of section 274(n)(2)(F) of the 1986 Code, as added by subsection (a), shall apply to taxable years beginning after December 31, 1988.

''(2) Clauses (iii) and (iv) of section 274(n)(2)(F) of the 1986 Code, as added by subsection (a), shall apply to taxable years beginning after December 31, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 122(c), (d) of Pub. L. 99–514 applicable to prizes and awards granted after Dec. 31, 1986, see section 151(c) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 142(a)–(c) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1114(b)(6) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1114(c)(1) of Pub. L. 99–514, set out as a note under section 414 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 6(a)–(c) of Pub. L. 99–44, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) REPEALS.—The amendment and repeals made by subsections (a) and (b) of section 1 [amending this section and repealing section 179(b)(2), (3) of Pub. L. 98–369 which had amended sections 6653 and 6695 of this title] shall take effect as if included in the amendments made by section 179(b) of the Tax Reform Act of 1984 [Pub. L. 98–369].

''(b) RESTORATION OF PRIOR LAW FOR 1985.—For taxable years beginning in 1985, section 274(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall apply as it read before the amendments made by section 179(b)(1) of the Tax Reform Act of 1984 [Pub. L. 98–369, see 1984 Amendments note above].

''(c) EXCEPTION FROM SUBSTANTIATION REQUIREMENTS FOR QUALIFIED NONPERSONAL USE VEHICLES.—The amendments made by section 2 [amending this section] shall apply to taxable years beginning after December 31, 1985.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 179(b)(1) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1984, see section 179(d)(2) of Pub. L. 98–369, set out as an Effective Date note under section 280F of this title.

Amendment by section 801(c) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Section 222(b) of Pub. L. 98–67 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to conventions, seminars, or other meetings which begin after June 30, 1983.''

Section 543(b) of Pub. L. 97–424 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1982.''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 265(c) of Pub. L. 97–34 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years ending on or after the date of the enactment of this Act [Aug. 13, 1981].''

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 4(b) of Pub. L. 96–608, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by subsection (a) of this section [amending this section] shall apply to conventions, seminars, and meetings beginning after December 31, 1980, except that in the case of any convention, seminar, or meeting beginning after such date which was scheduled on or before such date, a person, in such manner as the Secretary of the Treasury or his delegate may prescribe, may elect to have the provisions of section 274(h) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] be applied to such convention seminar or meeting without regard to such amendment.''

Section 5(b) of Pub. L. 96–598 and section 108(b) of Pub. L. 96–605 provided that: ''The amendment made by this section [amending this section] shall apply to any expenses paid or incurred after December 31, 1980, in taxable years ending after such date.''

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 361(c) of Pub. L. 95–600 provided that: ''The amendments made by this section [amending this section] shall apply to items paid or incurred after December 31, 1978, in taxable years ending after such date.''

Section 701(g)(4) of Pub. L. 95–600 provided that: ''The amendments made by this subsection [amending this section] shall apply to conventions beginning after December 31, 1976.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 602(b) of Pub. L. 94–455 provided that: ''The amendments made by this section [amending this section] shall apply to conventions beginning after December 31, 1976.''

EFFECTIVE DATE OF 1964 AMENDMENT

Section 217(b) of Pub. L. 88–272 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years ending after December 31, 1962, but only in respect of periods after such date.''

EFFECTIVE DATE

Section applicable with respect to taxable years ending after Dec. 31, 1962, but only in respect of periods after such date, see section 4(c) of Pub. L. 87–834, set out as an Effective Date of 1962 Amendment note under section 162 of this title.

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

Section 5 of Pub. L. 99–44 provided that: ''Not later than October 1, 1985, the Secretary of the Treasury or his delegate shall prescribe regulations to carry out the provisions of this Act [amending sections 274, 280F, 3402, 6653, and 6695 of this title, and enacting provisions set out as notes under sections 274, 280F, 3402, and 6653 of this title] which shall fully reflect such provisions.''

Section 1(c) of Pub. L. 99–44 provided that: ''Regulations issued before the date of the enactment of this Act [May 24, 1985] to carry out the amendments made by paragraphs (1)(C), (2), and (3) of section 179(b) of the Tax Reform Act of 1984 [Pub. L. 98–369, amending sections 274, 6653, and 6695 of this title] shall have no force and effect.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

CERTAIN RECORDKEEPING REQUIREMENTS

For treatment of use of automobile by I.R.S. special agent for purposes of this section and section 132 of this title, see section 1567 of Pub. L. 99–514, set out as a note under section 132 of this title.

SUBSTANTIATION BY ADEQUATE CONTEMPORANEOUS RECORDS

Section 1(a) of Pub. L. 99–44, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided in part that: ''the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be applied and administered as if the word 'contemporaneous' had not been added [by Pub. L. 98–369] to such subsection (d) [subsec. (d) of this section].''

USE OF FACILITIES IN CASE OF INDEPENDENT CONTRACTORS, ETC.

Section 103(a)(10)(C) of Pub. L. 96–222, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(i) IN GENERAL.—Subsection (a) of section 274 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to disallowance of certain entertainment, etc., expenses) shall not apply to expenses paid or incurred by the taxpayer for goods, services, and facilities to the extent that the expenses are includible in the gross income of a recipient of the entertainment, amusement, or recreation who is not an employee of the taxpayer as compensation for services rendered or as a prize or award under section 74 of such Code.

''(ii) INFORMATION RETURN REQUIREMENT.—Clause (i) shall not apply to any amount paid or incurred by the taxpayer if such amount is required to be included in any information return filed by such taxpayer under part III of subchapter A of chapter 61 of such Code [section 6031 et seq. of this title] and is not so included.

''(iii) APPLICATION OF SUBPARAGRAPH.—This subparagraph shall only apply with respect to expenses paid or incurred during 1979 or 1980.''

§ 275. Certain taxes

(a) General rule

No deduction shall be allowed for the following taxes:

(1) Federal income taxes, including—

(A) the tax imposed by section 3101 (relating to the tax on employees under the Federal Insurance Contributions Act);

(B) the taxes imposed by sections 3201 and 3211 (relating to the taxes on railroad employees and railroad employee representatives); and

(C) the tax withheld at source on wages under section 3402.

(2) Federal war profits and excess profits taxes.

(3) Estate, inheritance, legacy, succession, and gift taxes.

(4) Income, war profits, and excess profits taxes imposed by the authority of any foreign country or possession of the United States if the taxpayer chooses to take to any extent the benefits of section 901.

(5) Taxes on real property, to the extent that section 164(d) requires such taxes to be treated as imposed on another taxpayer.

(6) Taxes imposed by chapters 41, 42, 43, 44, 45, 46, and 54.

Paragraph (1) shall not apply to the tax imposed by section 59A. Paragraph (1) shall not apply to any taxes to the extent such taxes are allowable as a deduction under section 164(f).

(b) Cross reference

For disallowance of certain other taxes, see section 164(c).

(Added Pub. L. 88–272, title II, § 207(b)(3)(A), Feb. 26, 1964, 78 Stat. 42; amended Pub. L. 93–406, title II, § 1016(a)(1), Sept. 2, 1974, 88 Stat. 929; Pub. L. 94–455, title XIII, § 1307(d)(2)(A), title XVI, § 1605(b)(1), title XIX, § 1901(a)(39), Oct. 4, 1976, 90 Stat. 1727, 1754, 1771; Pub. L. 95–600, title VII, § 701(t)(3)(B), Nov. 6, 1978, 92 Stat. 2912; Pub. L. 97–248, title III, §§ 305(a), 308(a), Sept. 3, 1982, 96 Stat. 588, 591; Pub. L. 98–21, title I, § 124(c)(5), Apr. 20, 1983, 97 Stat. 91; Pub. L. 98–67, title I, § 102(a) Aug. 5, 1983, 97 Stat. 369; Pub. L. 98–369, div. A, title I, § 67(b)(2), title VIII, § 801(d)(5), July 18, 1984, 98 Stat. 587, 996; Pub. L. 99–499, title V, § 516(b)(2)(B), Oct. 17, 1986, 100 Stat. 1771; Pub. L. 100–203, title X, § 10228(b), Dec. 22, 1987, 101 Stat. 1330–418; Pub. L. 106–519, § 4(2), Nov. 15, 2000, 114 Stat. 2432; Pub. L. 108–357, title I, § 101(b)(5), title VIII, § 802(b)(1), Oct. 22, 2004, 118 Stat. 1423, 1568; Pub. L. 110–172, § 11(g)(5), Dec. 29, 2007, 121 Stat. 2490.)

REFERENCES IN TEXT

The Federal Insurance Contributions Act, referred to in subsec. (a)(1)(A), is act Aug. 16, 1954, ch. 736, §§ 3101, 3102, 3111, 3112, 3121 to 3128, 68A Stat. 415, as amended,

which is classified generally to chapter 21 (§ 3101 et seq.) of this title. For complete classification of this Act to the Code, see section 3128 of this title and Tables.

CODIFICATION

Pub. L. 95–600, § 701(t)(3)(B) (effective Oct. 4, 1976, see Pub. L. 95–600, § 701(t)(5), set out as an Effective Date of 1978 Amendment note under section 859 of this title) repealed § 1605(b)(1) of Pub. L. 94–455, cited as a credit to this section, which had duplicated the amendment to subsec. (a)(6) made by § 1307(d)(2)(A) of Pub. L. 94–455.

AMENDMENTS

2007—Subsec. (a)(4). Pub. L. 110–172 substituted ''if the taxpayer chooses to take to any extent the benefits of section 901.'' for ''if—

''(A) the taxpayer chooses to take to any extent the benefits of section 901, or

''(B) such taxes are paid or accrued with respect to foreign trade income (within the meaning of section 923(b)) of a FSC,.''

2004—Subsec. (a). Pub. L. 108–357, § 101(b)(5)(B), struck out at end of concluding provisions ''A rule similar to the rule of section 943(d) shall apply for purposes of paragraph (4)(C).''

Subsec. (a)(4). Pub. L. 108–357, § 101(b)(5)(A), inserted ''or'' at end of subpar. (A), substituted period for ''or'' at end of subpar. (B), and struck out subpar. (C) which read as follows: ''such taxes are paid or accrued with respect to qualifying foreign trade income (as defined in section 941).''

Subsec. (a)(6). Pub. L. 108–357, § 802(b)(1), inserted ''45,'' before ''46,''.

2000—Subsec. (a). Pub. L. 106–519, § 4(2)(B), inserted at end ''A rule similar to the rule of section 943(d) shall apply for purposes of paragraph (4)(C).''

Subsec. (a)(4)(C). Pub. L. 106–519, § 4(2)(A), added subpar. (C).

1987—Subsec. (a)(6). Pub. L. 100–203 substituted ''46, and 54'' for ''and 46''.

1986—Subsec. (a). Pub. L. 99–499 inserted at end ''Paragraph (1) shall not apply to the tax imposed by section 59A.''

1984—Subsec. (a)(4). Pub. L. 98–369, § 801(d)(5), inserted provision disallowing a deduction for income, war profits, and excess profits taxes if such taxes are paid or accrued with respect to foreign trade income, within the meaning of section 923(b), of a FSC.

Subsec. (a)(6). Pub. L. 98–369, § 67(b)(2), inserted reference to chapter 46.

1983—Subsec. (a). Pub. L. 98–21 inserted at end ''Paragraph (1) shall not apply to any taxes to the extent such taxes are allowable as a deduction under section 164(f).''

Subsec. (a)(1). Pub. L. 98–67 repealed amendments made by Pub. L. 97–248. See 1982 Amendment note below.

1982—Subsec. (a)(1). Pub. L. 97–248 provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, par. (1) is amended by striking out ''and'' at end of subpar. (B), by substituting ''; and'' for the period at end of subpar. (C), and by inserting subpar. (D) relating to the tax withheld at source on interest, dividends, and patronage dividends under section 3451. Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§ 301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

1976—Subsec. (a)(1)(C). Pub. L. 94–455, § 1901(a)(39), struck out '', and corresponding provisions of prior revenue laws'' after ''under section 3402''.

Subsec. (a)(6). Pub. L. 94–455, §§ 1307(d)(2)(A), 1605(b)(1), inserted reference to chapters 41 and 44.

1974—Subsec. (a)(6). Pub. L. 93–406 added par. (6).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 101(b)(5) of Pub. L. 108–357 applicable to transactions after Dec. 31, 2004, see section 101(c) of Pub. L. 108–357, set out as a note under section 56 of this title.

Amendment by section 802(b)(1) of Pub. L. 108–357 effective Mar. 4, 2003, see section 802(d) of Pub. L. 108–357, set out as an Effective Date note under section 4985 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–519 applicable to transactions after Sept. 30, 2000, with special rules relating to existing foreign sales corporations, see section 5 of Pub. L. 106–519, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to consideration received after Dec. 22, 1987, in taxable years ending after such date, except not applicable in the case of any acquisition pursuant to a written binding contract in effect on Dec. 15, 1987, and at all times thereafter before the acquisition, see section 10228(d) of Pub. L. 100–203, set out as an Effective Date note under section 5881 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–499 applicable to taxable years beginning after Dec. 31, 1986, see section 516(c) of Pub. L. 99–499, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 67(b)(2) of Pub. L. 98–369 applicable to payments under agreements entered into or renewed after June 14, 1984, in taxable years ending after such date, with contracts entered into before June 15, 1984, which are amended after June 14, 1984, in any significant relevant aspect to be treated as a contract entered into after June 14, 1984, see section 67(e) of Pub. L. 98–369, set out as an Effective Date note under section 280G of this title.

Amendment by section 801(d)(5) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1989, see section 124(d)(2) of Pub. L. 98–21, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1307(d)(2)(A) of Pub. L. 94–455, see section 1307(e) of Pub. L. 94–455, set out as a note under section 501 of this title.

For effective date of amendment by section 1605(b)(1) of Pub. L. 94–455, see section 1608(d) of Pub. L. 94–455, set out as a note under section 856 of this title.

Amendment by section 1901(a)(39) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93–406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as a note under section 410 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1963, see section 207(c) of Pub. L. 88–272, set out as an Effective Date of 1964 Amendment note under section 164 of this title.

§ 276. Certain indirect contributions to political parties

(a) Disallowance of deduction

No deduction otherwise allowable under this chapter shall be allowed for any amount paid or incurred for—

(1) advertising in a convention program of a political party, or in any other publication if any part of the proceeds of such publication directly or indirectly inures (or is intended to inure) to or for the use of a political party or a political candidate,

(2) admission to any dinner or program, if any part of the proceeds of such dinner or program directly or indirectly inures (or is intended to inure) to or for the use of a political party or a political candidate, or

(3) admission to an inaugural ball, inaugural gala, inaugural parade, or inaugural concert, or to any similar event which is identified with a political party or a political candidate.

(b) Definitions

For purposes of this section—

(1) Political party

The term ''political party'' means—

(A) a political party;

(B) a National, State, or local committee of a political party; or

(C) a committee, association, or organization, whether incorporated or not, which directly or indirectly accepts contributions (as defined in section 271(b)(2)) or make expenditures (as defined in section 271(b)(3)) for the purpose of influencing or attempting to influence the selection, nomination, or election of any individual to any Federal, State, or local elective public office, or the election of presidential and vice-presidential electors, whether or not such individual or electors are selected, nominated, or elected.

(2) Proceeds inuring to or for the use of political candidates

Proceeds shall be treated as inuring to or for the use of a political candidate only if—

(A) such proceeds may be used directly or indirectly for the purpose of furthering his candidacy for selection, nomination, or election to any elective public office, and

(B) such proceeds are not received by such candidate in the ordinary course of a trade or business (other than the trade or business of holding elective public office).

(c) Cross reference

For disallowance of certain entertainment, etc., expenses, see section 274.

(Added Pub. L. 89–368, title III, § 301(a), Mar. 15, 1966, 80 Stat. 66; amended Pub. L. 90–364, title I, § 108(a), June 28, 1968, 82 Stat. 268; Pub. L. 93–443, title IV, § 406(d), Oct. 15, 1974, 88 Stat. 1296.)

AMENDMENTS

1974—Subsecs. (c), (d). Pub. L. 93–443 struck out subsec. (c) relating to advertising in a convention program of a national political convention, and redesignated subsec. (d) as (c).

1968—Subsecs. (c), (d). Pub. L. 90–364 added subsec. (c) and redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–443 applicable with respect to taxable years beginning after Dec. 31, 1974, see section 410(c)(1) of Pub. L. 93–443, set out as a note under section 431 of Title 2, The Congress.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 108(b) of Pub. L. 90–364 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to amounts paid or incurred on or after January 1, 1968.''

EFFECTIVE DATE

Section 301(c) of Pub. L. 89–368 provided that: ''The amendments made by subsections (a) and (b) [enacting this section] shall apply to taxable years beginning after December 31, 1965, but only with respect to amounts paid or incurred after the date of the enactment of this Act [Mar. 15, 1966].''

PROGRAM ADVERTISING FOR PRESIDENTIAL AND VICE-PRESIDENTIAL NOMINATING CONVENTIONS

Pub. L. 90–346, June 18, 1968, 82 Stat. 183, provided for advertising in a convention program of a national political convention, applicable with respect to amounts paid or incurred on or after Jan. 1, 1968, prior to repeal by Pub. L. 93–625, § 10(g), Jan. 3, 1975, 88 Stat. 2119.

§ 277. Deductions incurred by certain membership organizations in transactions with members

(a) General rule

In the case of a social club or other membership organization which is operated primarily to furnish services or goods to members and which is not exempt from taxation, deductions for the taxable year attributable to furnishing services, insurance, goods, or other items of value to members shall be allowed only to the extent of income derived during such year from members or transactions with members (including income derived during such year from institutes and trade shows which are primarily for the education of members). If for any taxable year such deductions exceed such income, the excess shall be treated as a deduction attributable to furnishing services, insurance, goods, or other items of value to members paid or incurred in the succeeding taxable year. The deductions provided by sections 243, 244, and 245 (relating to dividends received by corporations) shall not be allowed to any organization to which this section applies for the taxable year.

(b) Exceptions

Subsection (a) shall not apply to any organization—

(1) which for the taxable year is subject to taxation under subchapter H or L,

(2) which has made an election before October 9, 1969, under section 456(c) or which is affiliated with such an organization,

(3) which for each day of any taxable year is a national securities exchange subject to regulation under the Securities Exchange Act of 1934 or a contract market subject to regulation under the Commodity Exchange Act, or

(4) which is engaged primarily in the gathering and distribution of news to its members for publication.

(Added Pub. L. 91–172, title I, § 121(b)(3)(A), Dec. 30, 1969, 83 Stat. 540; amended Pub. L. 94–568, § 1(c), Oct. 20, 1976, 90 Stat. 2697; Pub. L. 99–514, title XVI, § 1604(a), Oct. 22, 1986, 100 Stat. 2769.)

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsec. (b)(3), is act June 6, 1934, ch. 404, 48 Stat. 881, as

amended, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Commodity Exchange Act, referred to in subsec. (b)(3), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to chapter 1 (§ 1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

AMENDMENTS

1986—Subsec. (b)(4). Pub. L. 99–514 added par. (4).

1976—Subsec. (a). Pub. L. 94–568 provided that the deductions provided by sections 243, 244, and 245 (relating to dividends received by corporations) shall not be allowed to any organization to which this section applies for the taxable year.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1604(b) of Pub. L. 99–514 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 1986].''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–568 applicable to taxable years beginning after Oct. 20, 1976, see section 1(d) of Pub. L. 94–568, set out as a note under section 501 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1970, see section 121(g) of Pub. L. 91–172, set out as an Effective Date of 1969 Amendment note under section 511 of this title.

[§ 278. Repealed. Pub. L. 99–514, title VIII, § 803(b)(6), Oct. 22, 1986, 100 Stat. 2356]

Section, added Pub. L. 91–172, title II, § 216(a), Dec. 30, 1969, 83 Stat. 573; amended Pub. L. 91–680, § 1(a), (b), (d), Jan. 12, 1971, 84 Stat. 2064; Pub. L. 94–455, title II, § 207(b)(1), (2), Oct. 4, 1976, 90 Stat. 1538, related to capital expenditures incurred in planting and developing citrus and almond groves, and certain capital expenditures of farming syndicates.

EFFECTIVE DATE OF REPEAL

If any interest costs incurred after Dec. 31, 1986, are attributable to costs incurred before Jan. 1, 1987, the repeal of this section is applicable to such interest costs only to the extent such interest costs are attributable to costs which were required to be capitalized under section 263 of the Internal Revenue Code of 1954 and which would have been taken into account in applying section 189 of the Internal Revenue Code of 1954 (as in effect before its repeal by section 803 of Pub. L. 99–514) or, if applicable, section 266 of such Code, see section 7831(d)(2) of Pub. L. 101–239, set out as an Effective Date note under section 263A of this title.

Repeal applicable to costs incurred after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 803(d) of Pub. L. 99–514, set out as an Effective Date note under section 263A of this title.

§ 279. Interest on indebtedness incurred by corporation to acquire stock or assets of another corporation

(a) General rule

No deduction shall be allowed for any interest paid or incurred by a corporation during the taxable year with respect to its corporate acquisition indebtedness to the extent that such interest exceeds—

(1) $5,000,000, reduced by

(2) the amount of interest paid or incurred by such corporation during such year on obligations (A) issued after December 31, 1967, to provide consideration for an acquisition described in paragraph (1) of subsection (b), but (B) which are not corporate acquisition indebtedness.

(b) Corporate acquisition indebtedness

For purposes of this section, the term ''corporate acquisition indebtedness'' means any obligation evidenced by a bond, debenture, note, or certificate or other evidence of indebtedness issued after October 9, 1969, by a corporation (hereinafter in this section referred to as ''issuing corporation'') if—

(1) such obligation is issued to provide consideration for the acquisition of—

(A) stock in another corporation (hereinafter in this section referred to as ''acquired corporation''), or

(B) assets of another corporation (hereinafter in this section referred to as ''acquired corporation'') pursuant to a plan under which at least two-thirds (in value) of all the assets (excluding money) used in trades and businesses carried on by such corporation are acquired,

(2) such obligation is either—

(A) subordinated to the claims of trade creditors of the issuing corporation generally, or

(B) expressly subordinated in right of payment to the payment of any substantial amount of unsecured indebtedness, whether outstanding or subsequently issued, of the issuing corporation,

(3) the bond or other evidence of indebtedness is either—

(A) convertible directly or indirectly into stock of the issuing corporation, or

(B) part of an investment unit or other arrangement which includes, in addition to such bond or other evidence of indebtedness, an option to acquire, directly or indirectly, stock in the issuing corporation, and

(4) as of a day determined under subsection (c)(1), either—

(A) the ratio of debt to equity (as defined in subsection (c)(2)) of the issuing corporation exceeds 2 to 1, or

(B) the projected earnings (as defined in subsection (c)(3)) do not exceed 3 times the annual interest to be paid or incurred (determined under subsection (c)(4)).

(c) Rules for application of subsection (b)(4)

For purposes of subsection (b)(4)—

(1) Time of determination

Determinations are to be made as of the last day of any taxable year of the issuing corporation in which it issues any obligation to provide consideration for an acquisition described in subsection (b)(1) of stock in, or assets of, the acquired corporation.

(2) Ratio of debt to equity

The term ''ratio of debt to equity'' means the ratio which the total indebtedness of the issuing corporation bears to the sum of its

money and all its other assets (in an amount equal to their adjusted basis for determining gain) less such total indebtedness.

(3) Projected earnings

(A) The term ''projected earnings'' means the ''average annual earnings'' (as defined in subparagraph (B)) of—

(i) the issuing corporation only, if clause (ii) does not apply, or

(ii) both the issuing corporation and the acquired corporation, in any case where the issuing corporation has acquired control (as defined in section 368(c)), or has acquired substantially all of the properties, of the acquired corporation.

(B) The average annual earnings referred to in subparagraph (A) is, for any corporation, the amount of its earnings and profits for any 3-year period ending with the last day of a taxable year of the issuing corporation described in paragraph (1), computed without reduction for—

(i) interest paid or incurred,

(ii) depreciation or amortization allowed under this chapter,

(iii) liability for tax under this chapter, and

(iv) distributions to which section 301(c)(1) applies (other than such distributions from the acquired to the issuing corporation),

and reduced to an annual average for such 3-year period pursuant to regulations prescribed by the Secretary. Such regulations shall include rules for cases where any corporation was not in existence for all of such 3-year period or such period includes only a portion of a taxable year of any corporation.

(4) Annual interest to be paid or incurred

The term ''annual interest to be paid or incurred'' means—

(A) if subparagraph (B) does not apply, the annual interest to be paid or incurred by the issuing corporation only, determined by reference to its total indebtedness outstanding, or

(B) if projected earnings are determined under clause (ii) of paragraph (3)(A), the annual interest to be paid or incurred by both the issuing corporation and the acquired corporation, determined by reference to their combined total indebtedness outstanding.

(5) Special rules for banks and lending or finance companies

With respect to any corporation which is a bank (as defined in section 581) or is primarily engaged in a lending or finance business—

(A) in determining under paragraph (2) the ratio of debt to equity of such corporation (or of the affiliated group of which such corporation is a member), the total indebtedness of such corporation (and the assets of such corporation) shall be reduced by an amount equal to the total indebtedness owed to such corporation which arises out of the banking business of such corporation, or out of the lending or finance business of such corporation, as the case may be;

(B) in determining under paragraph (4) the annual interest to be paid or incurred by such corporation (or by the issuing and acquired corporations referred to in paragraph (4)(B) or by the affiliated group of which such corporation is a member) the amount of such interest (determined without regard to this paragraph) shall be reduced by an amount which bears the same ratio to the amount of such interest as the amount of the reduction for the taxable year under subparagraph (A) bears to the total indebtedness of such corporation; and

(C) in determining under paragraph (3)(B) the average annual earnings, the amount of the earnings and profits for the 3-year period shall be reduced by the sum of the reductions under subparagraph (B) for such period.

For purposes of this paragraph, the term ''lending or finance business'' means a business of making loans or purchasing or discounting accounts receivable, notes, or installment obligations.

(d) Taxable years to which applicable

In applying this section—

(1) First year of disallowance

The deduction of interest on any obligation shall not be disallowed under subsection (a) before the first taxable year of the issuing corporation as of the last day of which the application of either subparagraph (A) or subparagraph (B) of subsection (b)(4) results in such obligation being corporate acquisition indebtedness.

(2) General rule for succeeding years

Except as provided in paragraphs (3), (4), and (5), if an obligation is determined to be corporate acquisition indebtedness as of the last day of any taxable year of the issuing corporation, it shall be corporate acquisition indebtedness for such taxable year and all subsequent taxable years.

(3) Redetermination where control, etc., is acquired

If an obligation is determined to be corporate acquisition indebtedness as of the close of a taxable year of the issuing corporation in which clause (i) of subsection (c)(3)(A) applied, but would not be corporate acquisition indebtedness if the determination were made as of the close of the first taxable year of such corporation thereafter in which clause (ii) of subsection (c)(3)(A) could apply, such obligation shall be considered not to be corporate acquisition indebtedness for such later taxable year and all taxable years thereafter.

(4) Special 3-year rule

If an obligation which has been determined to be corporate acquisition indebtedness for any taxable year would not be such indebtedness for each of any 3 consecutive taxable years thereafter if subsection (b)(4) were applied as of the close of each of such 3 years, then such obligation shall not be corporate acquisition indebtedness for all taxable years after such 3 consecutive taxable years.

(5) 5 percent stock rule

In the case of obligations issued to provide consideration for the acquisition of stock in another corporation, such obligations shall be corporate acquisition indebtedness for a taxable year only if at some time after October 9, 1969, and before the close of such year the issuing corporation owns 5 percent or more of the total combined voting power of all classes of stock entitled to vote of such other corporation.

(e) Certain nontaxable transactions

An acquisition of stock of a corporation of which the issuing corporation is in control (as defined in section 368(c)) in a transaction in which gain or loss is not recognized shall be deemed an acquisition described in paragraph (1) of subsection (b) only if immediately before such transaction (1) the acquired corporation was in existence, and (2) the issuing corporation was not in control (as defined in section 368(c)) of such corporation.

(f) Exemption for certain acquisitions of foreign corporations

For purposes of this section, the term ''corporate acquisition indebtedness'' does not include any indebtedness issued to any person to provide consideration for the acquisition of stock in, or assets of, any foreign corporation substantially all of the income of which, for the 3-year period ending with the date of such acquisition or for such part of such period as the foreign corporation was in existence, is from sources without the United States.

(g) Affiliated groups

In any case in which the issuing corporation is a member of an affiliated group, the application of this section shall be determined, pursuant to regulations prescribed by the Secretary, by treating all of the members of the affiliated group in the aggregate as the issuing corporation, except that the ratio of debt to equity of, projected earnings of, and annual interest to be paid or incurred by any corporation (other than the issuing corporation determined without regard to this subsection) shall be included in the determinations required under subparagraphs (A) and (B) of subsection (b)(4) as of any day only if such corporation is a member of the affiliated group on such day, and, in determining projected earnings of such corporation under subsection (c)(3), there shall be taken into account only the earnings and profits of such corporation for the period during which it was a member of the affiliated group. For purposes of the preceding sentence, the term ''affiliated group'' has the meaning assigned to such term by section 1504(a), except that all corporations other than the acquired corporation shall be treated as includible corporations (without any exclusion under section 1504(b)) and the acquired corporation shall not be treated as an includible corporation.

(h) Changes in obligation

For purposes of this section—

(1) Any extension, renewal, or refinancing of an obligation evidencing a preexisting indebtedness shall not be deemed to be the issuance of a new obligation.

(2) Any obligation which is corporate acquisition indebtedness of the issuing corporation is also corporate acquisition indebtedness of any corporation which becomes liable for such obligation as guarantor, endorser, or indemnitor or which assumes liability for such obligation in any transaction.

(i) Certain obligations issued after October 9, 1969

For purposes of this section, an obligation shall not be corporate acquisition indebtedness if issued after October 9, 1969, to provide consideration for the acquisition of—

(1) stock or assets pursuant to a binding written contract which was in effect on October 9, 1969, and at all times thereafter before such acquisition, or

(2) stock in any corporation where the issuing corporation, on October 9, 1969, and at all times thereafter before such acquisition, owned at least 50 percent of the total combined voting power of all classes of stock entitled to vote of the acquired corporation.

(j) Effect on other provisions

No inference shall be drawn from any provision in this section that any instrument designated as a bond, debenture, note, or certificate or other evidence of indebtedness by its issuer represents an obligation or indebtedness of such issuer in applying any other provision of this title.

(Added Pub. L. 91–172, title IV, §411(a), Dec. 30, 1969, 83 Stat. 604; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 94–514, §1(a), Oct. 15, 1976, 90 Stat. 2443.)

AMENDMENTS

1976—Subsecs. (c)(3)(B), (g). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

Subsec. (i). Pub. L. 94–514 struck out provisions that par. (2) would cease to apply when (at any time on or after October 9, 1969) the issuing corporation has acquired control (as defined in section 368(c)) of the acquired corporation.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1(b) of Pub. L. 94–514 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after October 9, 1969. If refund or credit of any overpayment of income tax resulting from the amendment made by subsection (a) [amending this section] is prevented on the date of the enactment of this Act [Oct. 15, 1976], or at any time within one year after such date, by the operation of any law or rule of law, refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed within one year from such date.''

EFFECTIVE DATE

Section 411(c) of Pub. L. 91–172 provided that: ''The amendments made by this section [enacting this section] shall apply to the determination of the allowability of the deduction of interest paid or incurred with respect to indebtedness incurred after October 9, 1969.''

[§ 280. Repealed. Pub. L. 99–514, title VIII, § 803(b)(2)(A), Oct. 22, 1986, 100 Stat. 2355]

Section, added Pub. L. 94–455, title II, §210(a), Oct. 4, 1976, 90 Stat. 1544; amended Pub. L. 95–600, title VII, §701(m)(2), Nov. 6, 1978, 92 Stat. 2907; Pub. L. 97–354, §5(a)(25), Oct. 19, 1982, 96 Stat. 1694, related to certain

expenditures incurred in the production of films, books, records, or similar property.

EFFECTIVE DATE OF REPEAL

If any interest costs incurred after Dec. 31, 1986, are attributable to costs incurred before Jan. 1, 1987, the repeal of this section is applicable to such interest costs only to the extent such interest costs are attributable to costs which were required to be capitalized under section 263 of the Internal Revenue Code of 1954 and which would have been taken into account in applying section 189 of the Internal Revenue Code of 1954 (as in effect before its repeal by section 803 of Pub. L. 99–514) or, if applicable, section 266 of such Code, see section 7831(d)(2) of Pub. L. 101–239, set out as an Effective Date note under section 263A of this title.

Repeal applicable to costs incurred after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 803(d) of Pub. L. 99–514, set out as an Effective Date note under section 263A of this title.

§ 280A. Disallowance of certain expenses in connection with business use of home, rental of vacation homes, etc.

(a) General rule

Except as otherwise provided in this section, in the case of a taxpayer who is an individual or an S corporation, no deduction otherwise allowable under this chapter shall be allowed with respect to the use of a dwelling unit which is used by the taxpayer during the taxable year as a residence.

(b) Exception for interest, taxes, casualty losses, etc.

Subsection (a) shall not apply to any deduction allowable to the taxpayer without regard to its connection with his trade or business (or with his income-producing activity).

(c) Exceptions for certain business or rental use; limitation on deductions for such use

(1) Certain business use

Subsection (a) shall not apply to any item to the extent such item is allocable to a portion of the dwelling unit which is exclusively used on a regular basis—

(A) as the principal place of business for any trade or business of the taxpayer,

(B) as a place of business which is used by patients, clients, or customers in meeting or dealing with the taxpayer in the normal course of his trade or business, or

(C) in the case of a separate structure which is not attached to the dwelling unit, in connection with the taxpayer's trade or business.

In the case of an employee, the preceding sentence shall apply only if the exclusive use referred to in the preceding sentence is for the convenience of his employer. For purposes of subparagraph (A), the term ''principal place of business'' includes a place of business which is used by the taxpayer for the administrative or management activities of any trade or business of the taxpayer if there is no other fixed location of such trade or business where the taxpayer conducts substantial administrative or management activities of such trade or business.

(2) Certain storage use

Subsection (a) shall not apply to any item to the extent such item is allocable to space within the dwelling unit which is used on a regular basis as a storage unit for the inventory or product samples of the taxpayer held for use in the taxpayer's trade or business of selling products at retail or wholesale, but only if the dwelling unit is the sole fixed location of such trade or business.

(3) Rental use

Subsection (a) shall not apply to any item which is attributable to the rental of the dwelling unit or portion thereof (determined after the application of subsection (e)).

(4) Use in providing day care services

(A) In general

Subsection (a) shall not apply to any item to the extent that such item is allocable to the use of any portion of the dwelling unit on a regular basis in the taxpayer's trade or business of providing day care for children, for individuals who have attained age 65, or for individuals who are physically or mentally incapable of caring for themselves.

(B) Licensing, etc., requirement

Subparagraph (A) shall apply to items accruing for a period only if the owner or operator of the trade or business referred to in subparagraph (A)—

(i) has applied for (and such application has not been rejected),

(ii) has been granted (and such granting has not been revoked), or

(iii) is exempt from having,

a license, certification, registration, or approval as a day care center or as a family or group day care home under the provisions of any applicable State law. This subparagraph shall apply only to items accruing in periods beginning on or after the first day of the first month which begins more than 90 days after the date of the enactment of the Tax Reduction and Simplification Act of 1977.

(C) Allocation formula

If a portion of the taxpayer's dwelling unit used for the purposes described in subparagraph (A) is not used exclusively for those purposes, the amount of the expenses attributable to that portion shall not exceed an amount which bears the same ratio to the total amount of the items allocable to such portion as the number of hours the portion is used for such purposes bears to the number of hours the portion is available for use.

(5) Limitation on deductions

In the case of a use described in paragraph (1), (2), or (4), and in the case of a use described in paragraph (3) where the dwelling unit is used by the taxpayer during the taxable year as a residence, the deductions allowed under this chapter for the taxable year by reason of being attributed to such use shall not exceed the excess of—

(A) the gross income derived from such use for the taxable year, over

(B) the sum of—

(i) the deductions allocable to such use which are allowable under this chapter for the taxable year whether or not such unit (or portion thereof) was so used, and

(ii) the deductions allocable to the trade or business (or rental activity) in which such use occurs (but which are not allocable to such use) for such taxable year.

Any amount not allowable as a deduction under this chapter by reason of the preceding sentence shall be taken into account as a deduction (allocable to such use) under this chapter for the succeeding taxable year. Any amount taken into account for any taxable year under the preceding sentence shall be subject to the limitation of the 1st sentence of this paragraph whether or not the dwelling unit is used as a residence during such taxable year.

(6) Treatment of rental to employer

Paragraphs (1) and (3) shall not apply to any item which is attributable to the rental of the dwelling unit (or any portion thereof) by the taxpayer to his employer during any period in which the taxpayer uses the dwelling unit (or portion) in performing services as an employee of the employer.

(d) Use as residence

(1) In general

For purposes of this section, a taxpayer uses a dwelling unit during the taxable year as a residence if he uses such unit (or portion thereof) for personal purposes for a number of days which exceeds the greater of—

(A) 14 days, or

(B) 10 percent of the number of days during such year for which such unit is rented at a fair rental.

For purposes of subparagraph (B), a unit shall not be treated as rented at a fair rental for any day for which it is used for personal purposes.

(2) Personal use of unit

For purposes of this section, the taxpayer shall be deemed to have used a dwelling unit for personal purposes for a day if, for any part of such day, the unit is used—

(A) for personal purposes by the taxpayer or any other person who has an interest in such unit, or by any member of the family (as defined in section 267(c)(4)) of the taxpayer or such other person;

(B) by any individual who uses the unit under an arrangement which enables the taxpayer to use some other dwelling unit (whether or not a rental is charged for the use of such other unit); or

(C) by any individual (other than an employee with respect to whose use section 119 applies), unless for such day the dwelling unit is rented for a rental which, under the facts and circumstances, is fair rental.

The Secretary shall prescribe regulations with respect to the circumstances under which use of the unit for repairs and annual maintenance will not constitute personal use under this paragraph, except that if the taxpayer is engaged in repair and maintenance on a substantially full time basis for any day, such authority shall not allow the Secretary to treat a dwelling unit as being used for personal use by the taxpayer on such day merely because other individuals who are on the premises on such day are not so engaged.

(3) Rental to family member, etc., for use as principal residence

(A) In general

A taxpayer shall not be treated as using a dwelling unit for personal purposes by reason of a rental arrangement for any period if for such period such dwelling unit is rented, at a fair rental, to any person for use as such person's principal residence.

(B) Special rules for rental to person having interest in unit

(i) Rental must be pursuant to shared equity financing agreement

Subparagraph (A) shall apply to a rental to a person who has an interest in the dwelling unit only if such rental is pursuant to a shared equity financing agreement.

(ii) Determination of fair rental

In the case of a rental pursuant to a shared equity financing agreement, fair rental shall be determined as of the time the agreement is entered into and by taking into account the occupant's qualified ownership interest.

(C) Shared equity financing agreement

For purposes of this paragraph, the term ''shared equity financing agreement'' means an agreement under which—

(i) 2 or more persons acquire qualified ownership interests in a dwelling unit, and

(ii) the person (or persons) holding 1 or more of such interests—

(I) is entitled to occupy the dwelling unit for use as a principal residence, and

(II) is required to pay rent to 1 or more other persons holding qualified ownership interests in the dwelling unit.

(D) Qualified ownership interest

For purposes of this paragraph, the term ''qualified ownership interest'' means an undivided interest for more than 50 years in the entire dwelling unit and appurtenant land being acquired in the transaction to which the shared equity financing agreement relates.

(4) Rental of principal residence

(A) In general

For purposes of applying subsection (c)(5) to deductions allocable to a qualified rental period, a taxpayer shall not be considered to have used a dwelling unit for personal purposes for any day during the taxable year which occurs before or after a qualified rental period described in subparagraph (B)(i), or before a qualified rental period described in subparagraph (B)(ii), if with respect to such day such unit constitutes the principal residence (within the meaning of section 121) of the taxpayer.

(B) Qualified rental period

For purposes of subparagraph (A), the term ''qualified rental period'' means a consecutive period of—

(i) 12 or more months which begins or ends in such taxable year, or

(ii) less than 12 months which begins in such taxable year and at the end of which such dwelling unit is sold or exchanged, and

for which such unit is rented, or is held for rental, at a fair rental.

(e) Expenses attributable to rental

(1) In general

In any case where a taxpayer who is an individual or an S corporation uses a dwelling unit for personal purposes on any day during the taxable year (whether or not he is treated under this section as using such unit as a residence), the amount deductible under this chapter with respect to expenses attributable to the rental of the unit (or portion thereof) for the taxable year shall not exceed an amount which bears the same relationship to such expenses as the number of days during each year that the unit (or portion thereof) is rented at a fair rental bears to the total number of days during such year that the unit (or portion thereof) is used.

(2) Exception for deductions otherwise allowable

This subsection shall not apply with respect to deductions which would be allowable under this chapter for the taxable year whether or not such unit (or portion thereof) was rented.

(f) Definitions and special rules

(1) Dwelling unit defined

For purposes of this section—

(A) In general

The term ''dwelling unit'' includes a house, apartment, condominium, mobile home, boat, or similar property, and all structures or other property appurtenant to such dwelling unit.

(B) Exception

The term ''dwelling unit'' does not include that portion of a unit which is used exclusively as a hotel, motel, inn, or similar establishment.

(2) Personal use by shareholders of S corporation

In the case of an S corporation, subparagraphs (A) and (B) of subsection (d)(2) shall be applied by substituting ''any shareholder of the S corporation'' for ''the taxpayer'' each place it appears.

(3) Coordination with section 183

If subsection (a) applies with respect to any dwelling unit (or portion thereof) for the taxable year—

(A) section 183 (relating to activities not engaged in for profit) shall not apply to such unit (or portion thereof) for such year, but

(B) such year shall be taken into account as a taxable year for purposes of applying subsection (d) of section 183 (relating to 5-year presumption).

(4) Coordination with section 162(a)(2)

Nothing in this section shall be construed to disallow any deduction allowable under section 162(a)(2) (or any deduction which meets the tests of section 162(a)(2) but is allowable under another provision of this title) by reason of the taxpayer's being away from home in the pursuit of a trade or business (other than the trade or business of renting dwelling units).

(g) Special rule for certain rental use

Notwithstanding any other provision of this section or section 183, if a dwelling unit is used during the taxable year by the taxpayer as a residence and such dwelling unit is actually rented for less than 15 days during the taxable year, then—

(1) no deduction otherwise allowable under this chapter because of the rental use of such dwelling unit shall be allowed, and

(2) the income derived from such use for the taxable year shall not be included in the gross income of such taxpayer under section 61.

(Added Pub. L. 94–455, title VI, § 601(a), Oct. 4, 1976, 90 Stat. 1569; amended Pub. L. 95–30, title III, § 306(a), (b), May 23, 1977, 91 Stat. 152, 153; Pub. L. 95–600, title VII, § 701(h)(1), Nov. 6, 1978, 92 Stat. 2904; Pub. L. 97–119, title I, § 113(a)–(d), Dec. 29, 1981, 95 Stat. 1641, 1642; Pub. L. 97–216, title II, § 215(b), July 18, 1982, 96 Stat. 194; Pub. L. 97–354, § 5(a)(26), Oct. 19, 1982, 96 Stat. 1694; Pub. L. 99–514, title I, § 143(b), (c), Oct. 22, 1986, 100 Stat. 2120; Pub. L. 100–647, title I, § 1001(h)(1), (2), Nov. 10, 1988, 102 Stat. 3352; Pub. L. 104–188, title I, §§ 1113(a), 1704(t)(39), Aug. 20, 1996, 110 Stat. 1759, 1889; Pub. L. 105–34, title III, § 312(d)(1), title IX, § 932(a), Aug. 5, 1997, 111 Stat. 839, 881.)

REFERENCES IN TEXT

The date of enactment of the Tax Reduction and Simplification Act of 1977, referred to in subsec. (c)(4)(B), is the date of enactment of Pub. L. 95–30, 91 Stat. 126, which was May 23, 1977.

AMENDMENTS

1997—Subsec. (c)(1). Pub. L. 105–34, § 932(a), inserted at end ''For purposes of subparagraph (A), the term 'principal place of business' includes a place of business which is used by the taxpayer for the administrative or management activities of any trade or business of the taxpayer if there is no other fixed location of such trade or business where the taxpayer conducts substantial administrative or management activities of such trade or business.''

Subsec. (d)(4)(A). Pub. L. 105–34, § 312(d)(1), substituted ''section 121'' for ''section 1034''.

1996—Subsec. (c)(1)(A). Pub. L. 104–188, § 1704(t)(39), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''the principal place of business for any trade or business of the taxpayer.''

Subsec. (c)(2). Pub. L. 104–188, § 1113(a), substituted ''inventory or product samples'' for ''inventory''.

1988—Subsec. (c)(5). Pub. L. 100–647 inserted ''(or rental activity)'' after ''trade or business'' in subpar. (B)(ii) and inserted at end ''Any amount taken into account for any taxable year under the preceding sentence shall be subject to the limitation of the 1st sentence of this paragraph whether or not the dwelling unit is used as a residence during such taxable year.''

1986—Subsec. (c)(5)(B). Pub. L. 99–514, § 143(c), added subpar. (B) and struck out former subpar. (B) which read as follows: ''the deductions allocable to such use which are allowable under this chapter for the taxable year whether or not such unit (or portion thereof) was so used.''

Subsec. (c)(6). Pub. L. 99–514, § 143(b), added par. (6).

1982—Subsecs. (a), (e)(1). Pub. L. 97–354, § 5(a)(26)(A), (B), substituted ''an S corporation'' for ''an electing small business corporation''.

Subsec. (f)(2). Pub. L. 97–354, §5(a)(26)(C), substituted ''shareholders of S corporation'' for ''electing small business corporation'' in subsec. heading, substituted ''an S corporation'' for ''an electing small business corporation'' and ''any shareholder of the S corporation'' for ''any shareholder of the electing small business corporation''.

Subsec. (f)(4). Pub. L. 97–216 struck out '', etc.'' after ''section 162(a)(2)'' in heading, struck out ''(A) In general.—'' before ''Nothing in this section'', and struck out subpar. (B) which directed the Secretary to prescribe amounts deductible (without substantiation) pursuant to last sentence of section 162(a) and that no other provisions of this title could permit such a deduction for any taxable year of amounts in excess of the amounts determined to be appropriate under the circumstances.

1981—Subsec. (c)(1)(A). Pub. L. 97–119, §113(c), substituted ''the principal place of business for any trade or business of the taxpayer'' for ''as the taxpayer's principal place of business''.

Subsec. (d)(2). Pub. L. 97–119, §113(d), inserted in provision following subpar. (C) '', except that if the taxpayer is engaged in repair and maintenance on a substantially full time basis for any day, such authority shall not allow the Secretary to treat a dwelling unit as being used for personal use by the taxpayer on such day merely because other individuals who are on the premises on such day are not so engaged''.

Subsec. (d)(3), (4). Pub. L. 97–119, §113(a), added par. (3), redesignated former par. (3) as (4) and struck out ''to a person other than a member of the family (as defined in section 267(c)(4)) of the taxpayer'' after ''such unit is rented'' in subpar. (B).

Subsec. (f)(4). Pub. L. 97–119, §113(b)(1), added par. (4).

1978—Subsec. (d)(3). Pub. L. 95–600 added par. (3).

1977—Subsec. (c)(4), (5). Pub. L. 95–30 added par. (4), redesignated former par. (4) as (5) and substituted ''paragraph (1), (2), or (4)'' for ''paragraph (1) or (2)'' in introductory provisions.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 312(d)(1) of Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 of this title.

Section 932(b) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1998.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1113(b) of Pub. L. 104–188 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1995.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

EFFECTIVE DATES OF 1982 AMENDMENTS

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

Amendment by Pub. L. 97–216 applicable to taxable years beginning after Dec. 31, 1981, see section 215(d) of Pub. L. 97–216, set out as a note under section 162 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 113(e) of Pub. L. 97–119 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1975, except that in the case of taxable years beginning after December 31, 1975, and before January 1, 1980, the amendment made by this section shall apply only to taxable years for which, on the date of the enactment of this Act [Dec. 29, 1981], the making of a refund, or the assessment of a deficiency, was not barred by law or any rule of law.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(h)(2) of Pub. L. 95–600, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in section 280A of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as such provision was added to such Code by section 601(a) of the Tax Reform Act of 1976 [Pub. L. 94–455, title VI, §601(a), Oct. 4, 1976, 90 Stat. 1569].''

EFFECTIVE DATE OF 1977 AMENDMENT

Section 306(c) of Pub. L. 95–30 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1975.''

EFFECTIVE DATE

Section 601(c) of Pub. L. 94–455 provided that: ''The amendments made by this section [enacting this section and amending the analysis of sections preceding section 261 of this title] shall apply to taxable years beginning after December 31, 1975.''

§280B. Demolition of structures

In the case of the demolition of any structure—

(1) no deduction otherwise allowable under this chapter shall be allowed to the owner or lessee of such structure for—

(A) any amount expended for such demolition, or

(B) any loss sustained on account of such demolition; and

(2) amounts described in paragraph (1) shall be treated as properly chargeable to capital account with respect to the land on which the demolished structure was located.

(Added Pub. L. 94–455, title XXI, §2124(b)(1), Oct. 4, 1976, 90 Stat. 1918; amended Pub. L. 95–600, title VII, §701(f)(5), Nov. 6, 1978, 92 Stat. 2902; Pub. L. 96–541, §2(b), Dec. 17, 1980, 94 Stat. 3204; Pub. L. 97–34, title II, §212(d)(2)(C), Aug. 13, 1981, 95 Stat. 239; Pub. L. 98–369, div. A, title X, §1063(a), (b)(1), July 18, 1984, 98 Stat. 1047.)

AMENDMENTS

1984—Pub. L. 98–369 struck out ''certain historic'' before ''structures'' in section catchline, struck out heading ''(a) General rule'', substituted ''In the case of the demolition of any structure'' for ''In the case of the demolition of a certified historic structure (as defined in 48(g)(3)(A))'' in text, and struck out subsecs. (b) and (c) which contained provisions relating to a special rule for registered historic districts and to the application of this section, respectively.

1981—Subsec. (a). Pub. L. 97–34, §212(d)(2)(C)(i), substituted ''48(g)(3)(A)'' for ''section 191(d)(1)'' in provisions preceding par. (1).

Subsec. (b). Pub. L. 97–34, §212(d)(2)(C)(ii), substituted ''section 48(g)(3)(B)'' for ''section 191(d)(2)''.

1980—Subsec. (c). Pub. L. 96–541 added subsec. (c).

1978—Subsec. (b). Pub. L. 95–600 substituted ''registered historic district (as defined in section 191(d)(2))''

for ''Registered Historic District'' and ''Secretary of the Interior has certified that such structure is not a certified historic structure, and that such structure is not of historic significance to the district, and if such certification occurs after the beginning of the demolition of such structure, the taxpayer has certified to the Secretary that, at the time of such demolition, he in good faith was not aware of the certification requirement by the Secretary of the Interior'' for ''Secretary of the Interior has certified, prior to the demolition of such structure, that such structure is not of historic significance to the district''.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1063(c) of Pub. L. 98–369, as amended by Pub. L. 99–514, title XVIII, § 1878(h), Oct. 22, 1986, 100 Stat. 2904, provided that:

''(1) The amendments made by this section [amending this section] shall apply to taxable years ending after December 31, 1983, but shall not apply to any demolition (other than of a certified historic structure) commencing before July 19, 1984.

''(2) For purposes of paragraph (1), if a demolition is delayed until the completion of the replacement structure on the same site, the demolition shall be treated as commencing when construction of the replacement structure commences.

''(3) The amendments made by this section [amending this section] shall not apply to any demolition commencing before September 1, 1984, pursuant to a bank headquarters building project if—

''(A) on April 1, 1984, a corporation was retained to advise the bank on the final completion of the project, and

''(B) on June 12, 1984, the Comptroller of the Currency approved the project.

''(4) The amendments made by this section shall not apply to the remaining adjusted basis at the time of demolition of any structure if—

''(A) such structure was used in the manufacture, storage, or distribution of lead alkyl antiknock products and intermediate and related products at facilities located in or near Baton Rouge, Louisiana, and Houston, Texas, owned by the same corporation, and

''(B) demolition of at least one such structure at the Baton Rouge facility commenced before January 1, 1984.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to expenditures incurred after Dec. 31, 1981, in taxable years ending after such date, see section 212(e) of Pub. L. 97–34, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective as if included within the enactment of this section by section 2124 of Pub. L. 94–455, see section 701(f)(8) of Pub. L. 95–600, set out as an Effective and Termination Dates of 1978 Amendments note under section 167 of this title.

EFFECTIVE DATE

Section 2124(b)(3) of Pub. L. 94–455, which had provided that enactment of this section by subsec. (b) shall apply with respect to demolitions commencing after June 30, 1976, and before Jan. 1, 1981, was repealed by Pub. L. 96–541, § 2(e)(2), Dec. 17, 1980, 94 Stat. 3205. See subsec. (c) of this section.

§ 280C. Certain expenses for which credits are allowable

(a) Rule for employment credits

No deduction shall be allowed for that portion of the wages or salaries paid or incurred for the taxable year which is equal to the sum of the credits determined for the taxable year under sections 45A(a), 45P(a), 51(a), and[1] 1396(a), 1400P(b), and 1400R. In the case of a corporation which is a member of a controlled group of corporations (within the meaning of section 52(a)) or a trade or business which is treated as being under common control with other trades or businesses (within the meaning of section 52(b)), this subsection shall be applied under rules prescribed by the Secretary similar to the rules applicable under subsections (a) and (b) of section 52.

(b) Credit for qualified clinical testing expenses for certain drugs

(1) In general

No deduction shall be allowed for that portion of the qualified clinical testing expenses (as defined in section 45C(b)) otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit allowable for the taxable year under section 45C (determined without regard to section 38(c)).

(2) Similar rule where taxpayer capitalizes rather than deducts expenses

If—

(A) the amount of the credit allowable for the taxable year under section 45C (determined without regard to section 38(c)), exceeds

(B) the amount allowable as a deduction for the taxable year for qualified clinical testing expenses (determined without regard to paragraph (1)),

the amount chargeable to capital account for the taxable year for such expenses shall be reduced by the amount of such excess.

(3) Controlled groups

In the case of a corporation which is a member of a controlled group of corporations (within the meaning of section 41(f)(5)) or a trade or business which is treated as being under common control with other trades or business (within the meaning of section 41(f)(1)(B)), this subsection shall be applied under rules prescribed by the Secretary similar to the rules applicable under subparagraphs (A) and (B) of section 41(f)(1).

(c) Credit for increasing research activities

(1) In general

No deduction shall be allowed for that portion of the qualified research expenses (as defined in section 41(b)) or basic research expenses (as defined in section 41(e)(2)) otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for such taxable year under section 41(a).

(2) Similar rule where taxpayer capitalizes rather than deducts expenses

If—

(A) the amount of the credit determined for the taxable year under section 41(a)(1), exceeds

(B) the amount allowable as a deduction for such taxable year for qualified research expenses or basic research expenses (determined without regard to paragraph (1)),

the amount chargeable to capital account for the taxable year for such expenses shall be reduced by the amount of such excess.

[1] So in original. The word ''and'' probably should not appear.

(3) Election of reduced credit

(A) In general

In the case of any taxable year for which an election is made under this paragraph—

(i) paragraphs (1) and (2) shall not apply, and

(ii) the amount of the credit under section 41(a) shall be the amount determined under subparagraph (B).

(B) Amount of reduced credit

The amount of credit determined under this subparagraph for any taxable year shall be the amount equal to the excess of—

(i) the amount of credit determined under section 41(a) without regard to this paragraph, over

(ii) the product of—

(I) the amount described in clause (i), and

(II) the maximum rate of tax under section 11(b)(1).

(C) Election

An election under this paragraph for any taxable year shall be made not later than the time for filing the return of tax for such year (including extensions), shall be made on such return, and shall be made in such manner as the Secretary may prescribe. Such an election, once made, shall be irrevocable.

(4) Controlled groups

Paragraph (3) of subsection (b) shall apply for purposes of this subsection.

(d) Credit for low sulfur diesel fuel production

The deductions otherwise allowed under this chapter for the taxable year shall be reduced by the amount of the credit determined for the taxable year under section 45H(a).

(e) Mine rescue team training credit

No deduction shall be allowed for that portion of the expenses otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for the taxable year under section 45N(a).

(f) Credit for security of agricultural chemicals

No deduction shall be allowed for that portion of the expenses otherwise allowable as a deduction taken into account in determining the credit under section 45O for the taxable year which is equal to the amount of the credit determined for such taxable year under section 45O(a).

(g)[2] Credit for health insurance premiums

No deduction shall be allowed for the portion of the premiums paid by the taxpayer for coverage of 1 or more individuals under a qualified health plan which is equal to the amount of the credit determined for the taxable year under section 36B(a) with respect to such premiums.

(h) Credit for employee health insurance expenses of small employers

No deduction shall be allowed for that portion of the premiums for qualified health plans (as defined in section 1301(a) of the Patient Protection and Affordable Care Act), or for health insurance coverage in the case of taxable years beginning in 2010, 2011, 2012, or 2013, paid by an employer which is equal to the amount of the credit determined under section 45R(a) with respect to the premiums.

(g)[3] Qualifying therapeutic discovery project credit

(1) In general

No deduction shall be allowed for that portion of the qualified investment (as defined in section 48D(b)) otherwise allowable as a deduction for the taxable year which—

(A) would be qualified research expenses (as defined in section 41(b)), basic research expenses (as defined in section 41(e)(2)), or qualified clinical testing expenses (as defined in section 45C(b)) if the credit under section 41 or section 45C were allowed with respect to such expenses for such taxable year, and

(B) is equal to the amount of the credit determined for such taxable year under section 48D(a), reduced by—

(i) the amount disallowed as a deduction by reason of section 48D(e)(2)(B), and

(ii) the amount of any basis reduction under section 48D(e)(1).

(2) Similar rule where taxpayer capitalizes rather than deducts expenses

In the case of expenses described in paragraph (1)(A) taken into account in determining the credit under section 48D for the taxable year, if—

(A) the amount of the portion of the credit determined under such section with respect to such expenses, exceeds

(B) the amount allowable as a deduction for such taxable year for such expenses (determined without regard to paragraph (1)),

the amount chargeable to capital account for the taxable year for such expenses shall be reduced by the amount of such excess.

(3) Controlled groups

Paragraph (3) of subsection (b) shall apply for purposes of this subsection.

(Added Pub. L. 95–30, title II, §202(c)(1), May 23, 1977, 91 Stat. 147; amended Pub. L. 95–600, title III, §322(d)(1), Nov. 6, 1978, 92 Stat. 2838; Pub. L. 96–178, §6(c)(4), Jan. 2, 1980, 93 Stat. 1298; Pub. L. 96–222, title I, §103(a)(7)(D)(iv), Apr. 1, 1980, 94 Stat. 212; Pub. L. 97–414, §4(b)(1), (2)(A), Jan. 4, 1983, 96 Stat. 2055; Pub. L. 98–369, div. A, title IV, §474(r)(10), July 18, 1984, 98 Stat. 841; Pub. L. 99–514, title II, §231(d)(3)(E), title XVIII, §1847(b)(8), Oct. 22, 1986, 100 Stat. 2179, 2856; Pub. L. 100–647, title IV, §4008(a), Nov. 10, 1988, 102 Stat. 3652; Pub. L. 101–239, title VII, §§7110(c)(1), 7814(e)(2)(A), Dec. 19, 1989, 103 Stat. 2325, 2413; Pub. L. 103–66, title XIII, §§13302(b)(1), 13322(c)(1), Aug. 10, 1993, 107 Stat. 555, 563; Pub. L. 104–188, title I, §1205(d)(7), Aug. 20, 1996, 110 Stat. 1776; Pub. L. 106–170, title V, §502(c)(2), Dec. 17, 1999, 113 Stat. 1919; Pub. L. 106–554, §1(a)(7) [title III, §311(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–639; Pub. L. 108–357, title III, §339(c), Oct. 22, 2004, 118 Stat. 1484; Pub. L. 109–135, title I, §103(b)(2), title

[2] Another subsec. (g) is set out after subsec. (h).

[3] Another subsec. (g) is set out before subsec. (h).

II, § 201(b)(2), Dec. 21, 2005, 119 Stat. 2595, 2607; Pub. L. 109–432, div. A, title IV, § 405(c), Dec. 20, 2006, 120 Stat. 2957; Pub. L. 110–172, § 7(a)(1)(B), Dec. 29, 2007, 121 Stat. 2481; Pub. L. 110–234, title XV, § 15343(c), May 22, 2008, 122 Stat. 1519; Pub. L. 110–245, title I, § 111(c), June 17, 2008, 122 Stat. 1635; Pub. L. 110–246, § 4(a), title XV, § 15343(c), June 18, 2008, 122 Stat. 1664, 2281; Pub. L. 111–148, title I, §§ 1401(b), 1421(d)(1), title IX, § 9023(c)(2), title X, § 10105(e)(3), Mar. 23, 2010, 124 Stat. 219, 242, 880, 906.)

REFERENCES IN TEXT

Section 1301(a) of the Patient Protection and Affordable Care Act, referred to in subsec. (h), is classified to section 18021(a) of Title 42, The Public Health and Welfare.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2010—Subsec. (g). Pub. L. 111–148, § 9023(c)(2), added subsec. (g) relating to qualifying therapeutic discovery project credit.

Pub. L. 111–148, § 1401(b), added subsec. (g) relating to credit for health insurance premiums.

Subsec. (h). Pub. L. 111–148, § 10105(e)(3), substituted ''2010, 2011'' for ''2011''.

Pub. L. 111–148, § 1421(d)(1), added subsec. (h).

2008—Subsec. (a). Pub. L. 110–245 inserted ''45P(a),'' after ''45A(a),''.

Subsec. (f). Pub. L. 110–246, § 15343(c), added subsec. (f).

2007—Subsec. (d). Pub. L. 110–172 amended heading and text generally. Prior to amendment, text read as follows: ''No deduction shall be allowed for that portion of the expenses otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for the taxable year under section 45H(a).''

2006—Subsec. (e). Pub. L. 109–432 added subsec. (e).

2005—Subsec. (a). Pub. L. 109–135, § 201(b)(2), substituted ''1400P(b), and 1400R'' for ''and 1400P(b)''.

Pub. L. 109–135, § 103(b)(2), substituted ''1396(a), and 1400P(b)'' for ''and 1396(a)''.

2004—Subsec. (d). Pub. L. 108–357 added subsec. (d).

2000—Subsec. (c)(1). Pub. L. 106–554 struck out ''or credit'' after ''deduction'' in two places.

1999—Subsec. (c)(1). Pub. L. 106–170 inserted ''or credit'' after ''deduction'' in two places.

1996—Subsec. (b)(1). Pub. L. 104–188, § 1205(d)(7), substituted ''section 45C(b)'' for ''section 28(b)'', ''section 45C'' for ''section 28'', and ''section 38(c)'' for ''subsection (d)(2) thereof''.

Subsec. (b)(2)(A). Pub. L. 104–188, § 1205(d)(7)(B), (C), substituted ''section 45C'' for ''section 28'' and ''section 38(c)'' for ''subsection (d)(2) thereof''.

1993—Subsec. (a). Pub. L. 103–66, § 13322(c)(1), substituted ''45A(a), 51(a), and'' for ''51(a)''.

Pub. L. 103–66, § 13302(b)(1), substituted ''Rule for employment credits'' for ''Rule for targeted jobs credit'' in heading and ''the sum of the credits determined for the taxable year under sections 51(a) and 1396(a)'' for ''the amount of the credit determined for the taxable year under section 51(a)'' in text.

1989—Subsec. (c)(1), (2)(A). Pub. L. 101–239, § 7110(c)(1), struck out ''50 percent of'' before ''the amount of the credit''.

Subsec. (c)(3). Pub. L. 101–239, § 7814(e)(2)(A), added par. (3). Former par. (3) redesignated (4).

Subsec. (c)(3)(B)(ii)(I). Pub. L. 101–239, § 7110(c)(1), struck out ''50 percent of'' before ''the amount described''.

Subsec. (c)(4). Pub. L. 101–239, § 7814(e)(2)(A), redesignated par. (3) as (4).

1988—Subsec. (c). Pub. L. 100–647 added subsec. (c).

1986—Subsec. (b)(1), (2)(A). Pub. L. 99–514, § 1847(b)(8), substituted ''section 28(b)'' for ''section 29(b)'' in par. (1) and ''section 28'' for ''section 29'' in pars. (1) and (2)(A).

Subsec. (b)(3). Pub. L. 99–514, § 231(d)(3)(E), substituted ''section 41(f)(5)'', ''section 41(f)(1)(B)'', and ''section 41(f)(1)'' for ''section 30(f)(5)'', ''section 30(f)(1)(B)'', and ''section 30(f)(1)'', respectively.

1984—Subsec. (a). Pub. L. 98–369, § 474(r)(10)(A), (B), redesignated subsec. (b) as (a), in heading substituted ''targeted jobs credit'' for ''section 44B credit'', and in text substituted ''No deduction shall be allowed for that portion of the wages or salaries paid or incurred for the taxable year which is equal to the amount of the credit determined for the taxable year under section 51(a)'' for ''No deduction shall be allowed for that portion of the wage or salaries paid or incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under section 44B (relating to credit for employment of certain new employees) determined without regard to the provisions of section 53 (relating to limitation based on amount of tax)''. Former subsec. (a), which had provided that no deduction would be allowed for that portion of the work incentive program expenses paid or incurred for the taxable year which was equal to the amount of the credit allowable for the taxable year under section 40 (relating to credit for expenses of work incentive programs) determined without regard to the provisions of section 50A(a)(2) (relating to limitation based on amount of tax), and that in the case of a corporation which was a member of a controlled group of corporations (within the meaning of section 50B(g)(1) or a trade or business which was treated as being under common control with other trades or businesses within the meaning of section 50B(g)(2), this subsection would be applied under rules prescribed by the Secretary similar to the rules applicable under paragraphs (1) and (2) of section 50B(g), was struck out.

Subsec. (b). Pub. L. 98–369, § 474(r)(10)(A), redesignated subsec. (c) as (b). Former subsec. (b) redesignated (a).

Subsec. (b)(1), (2)(A). Pub. L. 98–369, § 474(r)(10)(C), substituted ''29'' for ''44H''.

Subsec. (b)(3). Pub. L. 98–369, § 474(r)(10)(D), substituted ''section 30(f)(5)'' for ''section 44F(f)(5)'', ''section 30(f)(1)(B)'' for ''section 44F(f)(1)(B)'', and ''section 30(f)(1)'' for ''section 44F(f)(1)''.

Subsec. (c). Pub. L. 98–369, § 474(r)(10)(A), redesignated subsec. (c) as (b).

1983—Pub. L. 97–414, § 4(b)(2)(A), substituted ''Certain expenses for which credits are allowable'' for ''Portion of wages for which credit is claimed under section 40 or 44B'' in section catchline.

Subsec. (c). Pub. L. 97–414, § 4(b)(1), added subsec. (c).

1978—Pub. L. 95–600, as amended by Pub. L. 96–178 and Pub. L. 96–222, substituted ''section 40 or 44B'' for ''section 44B'' in section catchline, and in text designated existing provisions as subsec. (b) and added subsec. (a).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 1401(b) of Pub. L. 111–148 applicable to taxable years ending after Dec. 31, 2013, see section 1401(e) of Pub. L. 111–148, set out as a note under section 36B of this title.

Amendment by section 1421(d)(1) of Pub. L. 111–148 applicable to amounts paid or incurred in taxable years beginning after Dec. 31, 2009, see section 1421(f)(1) of Pub. L. 111–148, set out as a note under section 38 of this title.

Amendment by section 9023(c)(2) of Pub. L. 111–148 applicable to amounts paid or incurred after Dec. 31, 2008, in taxable years beginning after such date, see section 9023(f) of Pub. L. 111–148, set out as a note under section 46 of this title.

Amendment by section 10105(e)(3) of Pub. L. 111–148 effective as if included in the enactment of section 1421 of Pub. L. 111–148, see section 10105(e)(5) of Pub. L. 111–148, set out as a note under section 45R of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 15343(c) of Pub. L. 110–246 applicable to amounts paid or incurred after June 18, 2008, see section 15343(e) of Pub. L. 110–246, set out as a note under section 38 of this title.

Amendment by Pub. L. 110–245 applicable to amounts paid after June 17, 2008, see section 111(e) of Pub. L. 110–245, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 7(e) of Pub. L. 110–172, set out as a note under section 1092 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–432 applicable to taxable years beginning after Dec. 31, 2005, see section 405(e) of Pub. L. 109–432, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to expenses paid or incurred after Dec. 31, 2002, in taxable years ending after such date, see section 339(f) of Pub. L. 108–357, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the provisions of the Ticket to Work and Work Incentives Improvement Act of 1999, Pub. L. 106–170, to which such amendment relates, see section 1(a)(7) [title III, §311(d)] of Pub. L. 106–554, set out as a note under section 30A of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to amounts paid or incurred after June 30, 1999, see section 502(c)(3) of Pub. L. 106–170, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to amounts paid or incurred in taxable years ending after June 30, 1996, see section 1205(e) of Pub. L. 104–188, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13322(c)(1) of Pub. L. 103–66 applicable to wages paid or incurred after Dec. 31, 1993, see section 13322(f) of Pub. L. 103–66, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7110(c)(1) of Pub. L. 101–239 applicable to taxable years beginning after Dec. 31, 1989, see section 7110(e) of Pub. L. 101–239, set out as a note under section 41 of this title.

Amendment by section 7814(e)(2)(A) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1988, see section 4008(d) of Pub. L. 100–647, set out as a note under section 41 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 231(d)(3)(E) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1985, see section 231(g) of Pub. L. 99–514, set out as a note under section 41 of this title.

Amendment by section 1847(b)(8) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–414 applicable to amounts paid or incurred after December 31, 1982, in taxable years ending after such date, see section 4(d) of Pub. L. 97–414, set out as an Effective Date note under section 28 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 322(e) of Pub. L. 95–600, as amended by Pub. L. 96–178, §6(a), (b), Jan. 2, 1980, 93 Stat. 1297; Pub. L. 96–222, title I, §103(a)(7)(A), (B), Apr. 1, 1980, 94 Stat. 211; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 50A and 50B of this title] shall apply to work incentive program expenses paid or incurred after December 31, 1978, in taxable years ending after such date; except that so much of the amendment made by subsection (a) as affects section 50A(a)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall apply to taxable years beginning after December 31, 1978. For purposes of applying section 50A(a)(2) of the Internal Revenue Code of 1986 with respect to a taxable year beginning before January 1, 1979, the rules of sections 50A(a)(4), 50A(a)(5), and 50B(e)(3) of such Code (as in effect on the day before the date of the enactment of this Act [Nov. 6, 1978] shall apply.

''(2) SPECIAL RULES FOR CERTAIN ELIGIBLE EMPLOYEES.—

''(A) ELIGIBLE EMPLOYEES HIRED BEFORE SEPTEMBER 27, 1978.—In the case of any eligible employee (as defined in section 50B(h)) hired before September 27, 1978, no credit shall be allowed under section 40 with respect to second-year work incentive program expenses (as defined in section 50B(a)) attributable to service performed by such employee.

''(B) ELIGIBLE EMPLOYEES HIRED AFTER SEPTEMBER 26, 1978.—In the case of any eligible employee (as defined in section 50B(h)) hired after September 26, 1978, for purposes of applying the amendments made by this section, such individual shall be treated for purposes of the credit allowed by section 40 as having first begun work for the taxpayer not earlier than January 1, 1979, and any wages paid or incurred after December 31, 1978, with respect to such individual shall be considered to be attributable to services rendered after that date.''

[Section 6(d) of Pub. L. 96–178 provided that: ''Any amendment made by this section to the Revenue Act of 1978 [amending section 322(e)(1) and (2) of Pub. L. 95–600, set out above] shall take effect as if it had been included in the provision of the Revenue Act of 1978 [Pub. L. 95–600] to which such amendment relates.'']

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1976, and to credit carrybacks from such years, see section 202(e) of Pub. L. 95–30, set out as a note under section 51 of this title.

TIME AND FORM OF CERTAIN ELECTIONS UNDER SUBSECTION (c)(3)

Section 7814(e)(2)(B) of Pub. L. 101–239 provided that: ''In the case of a taxable year for which the last date for making the election under section 280C(c)(3) of the Internal Revenue Code of 1986 (as added by subparagraph (A)) is on or before the date which is 75 days after the date of the enactment of this Act [Dec. 19, 1989], such an election for such year may be made—

''(i) at any time before the date which is 75 days after such date of enactment, and

''(ii) in such form and manner as the Secretary of the Treasury or his delegate may prescribe.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[§ 280D. Repealed. Pub. L. 100–418, title I, § 1941(b)(4)(A), Aug. 23, 1988, 102 Stat. 1324]

Section, added Pub. L. 96–499, title XI, § 1131(d)(1), Dec. 5, 1980, 94 Stat. 2693, related to portion of chapter 45 windfall profit tax on domestic crude oil for which credit or refund was allowable under section 6429.

EFFECTIVE DATE OF REPEAL

Repeal applicable to crude oil removed from the premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100–418, set out as an Effective Date of 1988 Amendment note under section 164 of this title.

§ 280E. Expenditures in connection with the illegal sale of drugs

No deduction or credit shall be allowed for any amount paid or incurred during the taxable year in carrying on any trade or business if such trade or business (or the activities which comprise such trade or business) consists of trafficking in controlled substances (within the meaning of schedule I and II of the Controlled Substances Act) which is prohibited by Federal law or the law of any State in which such trade or business is conducted.

(Added Pub. L. 97–248, title III, § 351(a), Sept. 3, 1982, 96 Stat. 640.)

REFERENCES IN TEXT

The Controlled Substances Act, referred to in text, is title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§ 801 et seq.) of chapter 13 of Title 21, Food and Drugs. Schedules I and II are set out in section 812 of Title 21. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

EFFECTIVE DATE

Section 351(c) of Pub. L. 97–248 provided that: ''The amendments made by this section [enacting this section] shall apply to amounts paid or incurred after the date of the enactment of this Act [Sept. 3, 1982] in taxable years ending after such date.''

§ 280F. Limitation on depreciation for luxury automobiles; limitation where certain property used for personal purposes

(a) Limitation on amount of depreciation for luxury automobiles

(1) Depreciation

(A) Limitation

The amount of the depreciation deduction for any taxable year for any passenger automobile shall not exceed—

(i) $2,560 for the 1st taxable year in the recovery period,

(ii) $4,100 for the 2nd taxable year in the recovery period,

(iii) $2,450 for the 3rd taxable year in the recovery period, and

(iv) $1,475 for each succeeding taxable year in the recovery period.

(B) Disallowed deductions allowed for years after recovery period

(i) In general

Except as provided in clause (ii), the unrecovered basis of any passenger automobile shall be treated as an expense for the 1st taxable year after the recovery period. Any excess of the unrecovered basis over the limitation of clause (ii) shall be treated as an expense in the succeeding taxable year.

(ii) $1,475 limitation

The amount treated as an expense under clause (i) for any taxable year shall not exceed $1,475.

(iii) Property must be depreciable

No amount shall be allowable as a deduction by reason of this subparagraph with respect to any property for any taxable year unless a depreciation deduction would be allowable with respect to such property for such taxable year.

(iv) Amount treated as depreciation deduction

For purposes of this subtitle, any amount allowable as a deduction by reason of this subparagraph shall be treated as a depreciation deduction allowable under section 168.

(C) Special rule for certain clean-fuel passenger automobiles

(i) Modified automobiles

In the case of a passenger automobile which is propelled by a fuel which is not a clean-burning fuel and to which is installed qualified clean-fuel vehicle property (as defined in section 179A(c)(1)(A)) for purposes of permitting such vehicle to be propelled by a clean burning fuel (as defined in section 179A(e)(1)), subparagraph (A) shall not apply to the cost of the installed qualified clean burning vehicle property.

(ii) Purpose built passenger vehicles

In the case of a purpose built passenger vehicle (as defined in section 4001(a)(2)(C)(ii)), each of the annual limita-

tions specified in subparagraphs (A) and (B) shall be tripled.

(iii) Application of subparagraph

This subparagraph shall apply to property placed in service after August 5, 1997, and before January 1, 2007.

(2) Coordination with reductions in amount allowable by reason of personal use, etc.

This subsection shall be applied before—

(A) the application of subsection (b), and

(B) the application of any other reduction

in the amount of any depreciation deduction allowable under section 168 by reason of any use not qualifying the property for such credit or depreciation deduction.

(b) Limitation where business use of listed property not greater than 50 percent

(1) Depreciation

If any listed property is not predominantly used in a qualified business use for any taxable year, the deduction allowed under section 168 with respect to such property for such taxable year and any subsequent taxable year shall be determined under section 168(g) (relating to alternative depreciation system).

(2) Recapture

(A) Where business use percentage does not exceed 50 percent

If—

(i) property is predominantly used in a qualified business use in a taxable year in which it is placed in service, and

(ii) such property is not predominantly used in a qualified business use for any subsequent taxable year,

then any excess depreciation shall be included in gross income for the taxable year referred to in clause (ii), and the depreciation deduction for the taxable year referred to in clause (ii) and any subsequent taxable years shall be determined under section 168(g) (relating to alternative depreciation system).

(B) Excess depreciation

For purposes of subparagraph (A), the term ''excess depreciation'' means the excess (if any) of—

(i) the amount of the depreciation deductions allowable with respect to the property for taxable years before the 1st taxable year in which the property was not predominantly used in a qualified business use, over

(ii) the amount which would have been so allowable if the property had not been predominantly used in a qualified business use for the taxable year in which it was placed in service.

(3) Property predominantly used in qualified business use

For purposes of this subsection, property shall be treated as predominantly used in a qualified business use for any taxable year if the business use percentage for such taxable year exceeds 50 percent.

(c) Treatment of leases

(1) Lessor's deductions not affected

This section shall not apply to any listed property leased or held for leasing by any person regularly engaged in the business of leasing such property.

(2) Lessee's deductions reduced

For purposes of determining the amount allowable as a deduction under this chapter for rentals or other payments under a lease for a period of 30 days or more of listed property, only the allowable percentage of such payments shall be taken into account.

(3) Allowable percentage

For purposes of paragraph (2), the allowable percentage shall be determined under tables prescribed by the Secretary. Such tables shall be prescribed so that the reduction in the deduction under paragraph (2) is substantially equivalent to the applicable restrictions contained in subsections (a) and (b).

(4) Lease term

In determining the term of any lease for purposes of paragraph (2), the rules of section 168(i)(3)(A) shall apply.

(5) Lessee recapture

Under regulations prescribed by the Secretary, rules similar to the rules of subsection (b)(3) shall apply to any lessee to which paragraph (2) applies.

(d) Definitions and special rules

For purposes of this section—

(1) Coordination with section 179

Any deduction allowable under section 179 with respect to any listed property shall be subject to the limitations of subsections (a) and (b), and the limitation of paragraph (3) of this subsection, in the same manner as if it were a depreciation deduction allowable under section 168.

(2) Subsequent depreciation deductions reduced for deductions allocable to personal use

Solely for purposes of determining the amount of the depreciation deduction for subsequent taxable years, if less than 100 percent of the use of any listed property during any taxable year is use in a trade or business (including the holding for the production of income), all of the use of such property during such taxable year shall be treated as use so described.

(3) Deductions of employee

(A) In general

Any employee use of listed property shall not be treated as use in a trade or business for purposes of determining the amount of any depreciation deduction allowable to the employee (or the amount of any deduction allowable to the employee for rentals or other payments under a lease of listed property) unless such use is for the convenience of the employer and required as a condition of employment.

(B) Employee use

For purposes of subparagraph (A), the term ''employee use'' means any use in connec-

tion with the performance of services as an employee.

(4) Listed property

(A) In general

Except as provided in subparagraph (B), the term ''listed property'' means—

(i) any passenger automobile,

(ii) any other property used as a means of transportation,

(iii) any property of a type generally used for purposes of entertainment, recreation, or amusement,

(iv) any computer or peripheral equipment (as defined in section 168(i)(2)(B)), ''and''[1]

(v) any other property of a type specified by the Secretary by regulations.

(B) Exception for certain computers

The term ''listed property'' shall not include any computer or peripheral equipment (as so defined) used exclusively at a regular business establishment and owned or leased by the person operating such establishment. For purposes of the preceding sentence, any portion of a dwelling unit shall be treated as a regular business establishment if (and only if) the requirements of section 280A(c)(1) are met with respect to such portion.

(C) Exception for property used in business of transporting persons or property

Except to the extent provided in regulations, clause (ii) of subparagraph (A) shall not apply to any property substantially all of the use of which is in a trade or business of providing to unrelated persons services consisting of the transportation of persons or property for compensation or hire.

(5) Passenger automobile

(A) In general

Except as provided in subparagraph (B), the term ''passenger automobile'' means any 4-wheeled vehicle—

(i) which is manufactured primarily for use on public streets, roads, and highways, and

(ii) which is rated at 6,000 pounds unloaded gross vehicle weight or less.

In the case of a truck or van, clause (ii) shall be applied by substituting ''gross vehicle weight'' for ''unloaded gross vehicle weight''.

(B) Exception for certain vehicles

The term ''passenger automobile'' shall not include—

(i) any ambulance, hearse, or combination ambulance-hearse used by the taxpayer directly in a trade or business,

(ii) any vehicle used by the taxpayer directly in the trade or business of transporting persons or property for compensation or hire, and

(iii) under regulations, any truck or van.

(6) Business use percentage

(A) In general

The term ''business use percentage'' means the percentage of the use of any listed property during any taxable year which is a qualified business use.

(B) Qualified business use

Except as provided in subparagraph (C), the term ''qualified business use'' means any use in a trade or business of the taxpayer.

(C) Exception for certain use by 5-percent owners and related persons

(i) In general

The term ''qualified business use'' shall not include—

(I) leasing property to any 5-percent owner or related person,

(II) use of property provided as compensation for the performance of services by a 5-percent owner or related person, or

(III) use of property provided as compensation for the performance of services by any person not described in subclause (II) unless an amount is included in the gross income of such person with respect to such use, and, where required, there was withholding under chapter 24.

(ii) Special rule for aircraft

Clause (i) shall not apply with respect to any aircraft if at least 25 percent of the total use of the aircraft during the taxable year consists of qualified business use not described in clause (i).

(D) Definitions

For purposes of this paragraph—

(i) 5-percent owner

The term ''5-percent owner'' means any person who is a 5-percent owner with respect to the taxpayer (as defined in section 416(i)(1)(B)(i)).

(ii) Related person

The term ''related person'' means any person related to the taxpayer (within the meaning of section 267(b)).

(7) Automobile price inflation adjustment

(A) In general

In the case of any passenger automobile placed in service after 1988, subsection (a) shall be applied by increasing each dollar amount contained in such subsection by the automobile price inflation adjustment for the calendar year in which such automobile is placed in service. Any increase under the preceding sentence shall be rounded to the nearest multiple of $100 (or if the increase is a multiple of $50, such increase shall be increased to the next higher multiple of $100).

(B) Automobile price inflation adjustment

For purposes of this paragraph—

(i) In general

The automobile price inflation adjustment for any calendar year is the percentage (if any) by which—

(I) the CPI automobile component for October of the preceding calendar year, exceeds

(II) the CPI automobile component for October of 1987.

[1] So in original. The quotation marks probably should not appear.

(ii) CPI automobile component

The term ''CPI automobile component'' means the automobile component of the Consumer Price Index for All Urban Consumers published by the Department of Labor.

(8) Unrecovered basis

For purposes of subsection (a)(2), the term ''unrecovered basis'' means the adjusted basis of the passenger automobile determined after the application of subsection (a) and as if all use during the recovery period were use in a trade or business (including the holding of property for the production of income).

(9) All taxpayers holding interests in passenger automobile treated as 1 taxpayer

All taxpayers holding interests in any passenger automobile shall be treated as 1 taxpayer for purposes of applying subsection (a) to such automobile, and the limitations of subsection (a) shall be allocated among such taxpayers in proportion to their interests in such automobile.

(10) Special rule for property acquired in nonrecognition transactions

For purposes of subsection (a)(2) any property acquired in a nonrecognition transaction shall be treated as a single property originally placed in service in the taxable year in which it was placed in service after being so acquired.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations with respect to items properly included in, or excluded from, the adjusted basis of any listed property.

(Added Pub. L. 98–369, div. A, title I, §179(a), July 18, 1984, 98 Stat. 713; amended Pub. L. 99–44, §4, May 24, 1985, 99 Stat. 78; Pub. L. 99–514, title II, §201(d)(4), title XVIII, §1812(e)(1)(A), (C), (2)–(5), Oct. 22, 1986, 100 Stat. 2139, 2836, 2837; Pub. L. 100–647, title I, §§1002(a)(10), (b)(2), 1018(u)(3), Nov. 10, 1988, 102 Stat. 3354, 3357, 3590; Pub. L. 101–239, title VII, §7643(a), Dec. 19, 1989, 103 Stat. 2381; Pub. L. 101–508, title XI, §11813(b)(13)(A)–(E), Nov. 5, 1990, 104 Stat. 1388–554, 1388–555; Pub. L. 104–188, title I, §1702(h)(5), Aug. 20, 1996, 110 Stat. 1874; Pub. L. 105–34, title IX, §971(a), Aug. 5, 1997, 111 Stat. 897; Pub. L. 105–206, title VI, §6009(c), July 22, 1998, 112 Stat. 812; Pub. L. 107–147, title VI, §602(b)(1), Mar. 9, 2002, 116 Stat. 59; Pub. L. 111–240, title II, §2043(a), Sept. 27, 2010, 124 Stat. 2560.)

INFLATION ADJUSTED ITEMS FOR CERTAIN CALENDAR YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table below.

AMENDMENTS

2010—Subsec. (d)(4)(A). Pub. L. 111–240 inserted '' 'and' '' at end of clause (iv), redesignated clause (vi) as (v), and struck out former cl. (v) which read as follows: ''any cellular telephone (or other similar telecommunications equipment), and''.

2002—Subsec. (a)(1)(C)(iii). Pub. L. 107–147 added cl. (iii).

1998—Subsec. (a)(1)(C)(ii). Pub. L. 105–206 substituted ''subparagraphs (A) and (B)'' for ''subparagraph (A)''.

1997—Subsec. (a)(1)(C). Pub. L. 105–34 added subpar. (C).

1996—Subsec. (a). Pub. L. 104–188 struck out ''investment tax credit and'' after ''amount of'' in heading.

1990—Pub. L. 101–508, §11813(b)(13)(E), struck out ''investment tax credit and'' after ''Limitation on'' in section catchline.

Subsec. (a)(1). Pub. L. 101–508, §11813(b)(13)(A)(i), redesignated par. (2) as (1) and struck out former par. (1) ''Investment tax credit'' which read as follows: ''The amount of the credit determined under section 46(a) for any passenger automobile shall not exceed $675.''

Subsec. (a)(2). Pub. L. 101–508, §11813(b)(13)(A)(i), redesignated par. (3) as (2). Former par. (2) redesignated (1).

Subsec. (a)(2)(B). Pub. L. 101–508, §11813(b)(13)(A)(ii), struck out ''the credit determined under section 46(a) or'' after ''the amount of''.

Subsec. (a)(3). Pub. L. 101–508, §11813(b)(13)(A)(i), redesignated par. (3) as (2).

Subsec. (a)(4). Pub. L. 101–508, §11813(b)(13)(A)(i), struck out par. (4) ''Special rule where election of reduced credit in lieu of the basis adjustment'' which read as follows: ''In the case of any election under section 48(q)(4) with respect to any passenger automobile, the limitation of paragraph (1) applicable to such passenger automobile shall be ⅔ of the amount which would be so applicable but for this paragraph.''

Subsec. (b). Pub. L. 101–508, §11813(b)(13)(B), redesignated pars. (2) to (4) as (1) to (3), respectively, and struck out former par. (1) ''Investment tax credit'' which read as follows: ''For purposes of this subtitle, any listed property shall not be treated as section 38 property for any taxable year unless such property is predominantly used in a qualified business use for such taxable year.''

Subsec. (c)(1). Pub. L. 101–508, §11813(b)(13)(C), struck out ''credits and'' after ''Lessor's'' in heading.

Subsec. (d)(3)(A). Pub. L. 101–508, §11813(b)(13)(D), struck out ''the amount of any credit allowable under section 38 to the employee or'' after ''of determining''.

1989—Subsec. (d)(4)(A)(v), (vi). Pub. L. 101–239 added cl. (v) and redesignated former cl. (v) as (vi).

1988—Subsec. (b)(3)(B)(i). Pub. L. 100–647, §1018(u)(3), substituted ''depreciation deductions'' for ''recovery deductions''.

Subsec. (d)(1). Pub. L. 100–647, §1002(b)(2), substituted ''subsections (a) and (b), and the limitation of paragraph (3) of this subsection,'' for ''subsections (a) and (b)''.

Subsec. (d)(3)(A). Pub. L. 100–647, §1002(a)(10), substituted ''depreciation deduction'' for ''recovery deduction''.

1986—Subsec. (a)(2)(A). Pub. L. 99–514, §201(d)(4)(A)(i), (K), substituted ''depreciation deduction'' for ''recovery deduction'' in introductory provisions and substituted cls. (i) to (iv) for former cls. (i) and (ii) which read as follows:

''(i) $3,200 for the first taxable year in the recovery period, and

''(ii) $4,800 for each succeeding taxable year in the recovery period.''

Subsec. (a)(2)(B). Pub. L. 99–514, §201(d)(4)(A)(ii), (K), substituted ''$1,475'' for ''$4,800'' in heading and text of cl. (ii), and ''depreciation deduction'' for ''recovery deduction'' in heading and text of cl. (iv).

Subsec. (a)(3)(B). Pub. L. 99–514, §201(d)(4)(K), substituted ''depreciation deduction'' for ''recovery deduction'' in two places.

Subsec. (b)(2). Pub. L. 99–514, §201(d)(4)(J), substituted ''section 168(g) (relating to alternative depreciation system)'' for ''the straight line method over the earnings and profits life for such property''.

Subsec. (b)(3)(A). Pub. L. 99–514, §201(d)(4)(B), (K), substituted ''depreciation deduction'' for ''recovery deduction'' and ''section 168(g) (relating to alternative de-

preciation system)'' for ''the straight line method over the earnings and profits life'' in closing provisions.

Subsec. (b)(4). Pub. L. 99–514, § 201(d)(4)(C), in amending par. (4) generally, struck out heading ''Definitions'', redesignated as par. (4) former subpar. (A) heading and text, substituted ''For purposes of this section, property'' for ''Property'', and struck out former subpar. (B) definition of straight line method over earnings and profits life.

Subsec. (c)(4). Pub. L. 99–514, § 201(d)(4)(D), substituted ''section 168(i)(3)(A)'' for ''section 168(j)(6)(B)''.

Subsec. (d)(1). Pub. L. 99–514, § 201(d)(4)(E), substituted ''depreciation deduction'' for ''recovery deduction''.

Subsec. (d)(2). Pub. L. 99–514, § 1812(e)(5), substituted ''is use described in'' for ''is not use described in''.

Pub. L. 99–514, § 201(d)(4)(F), substituted ''depreciation deduction'' for ''recovery deduction'' and ''use in a trade or business (including the holding for the production of income)'' for ''use described in section 168(c)(1) (defining recovery property)''.

Subsec. (d)(3)(A). Pub. L. 99–514, § 1812(e)(2), inserted ''(or the amount of any deduction allowable to the employee for rentals or other payments under a lease of listed property)''.

Subsec. (d)(4)(A)(iv). Pub. L. 99–514, § 201(d)(4)(G), substituted ''section 168(i)(2)(B)'' for ''section 168(j)(5)(D)''.

Subsec. (d)(4)(B). Pub. L. 99–514, § 1812(e)(3), inserted ''and owned or leased by the person operating such establishment''.

Subsec. (d)(4)(C). Pub. L. 99–514, § 1812(e)(4), added subpar. (C).

Subsec. (d)(5)(A). Pub. L. 99–514, § 1812(e)(1)(A), (C), substituted ''unloaded gross vehicle weight'' for ''gross vehicle weight'' in cl. (ii) and inserted at end ''In the case of a truck or van, clause (ii) shall be applied by substituting 'gross vehicle weight' for 'unloaded gross vehicle weight'.''

Subsec. (d)(8). Pub. L. 99–514, § 201(d)(4)(H), amended par. (8) generally. Prior to amendment, par. (8) read as follows: ''For purposes of subsection (a)(2), the term ''unrecovered basis'' means the excess (if any) of—

''(A) the unadjusted basis (as defined in section 168(d)(1)(A)) of the passenger automobile, over

''(B) the amount of the recovery deductions which would have been allowable for taxable years in the recovery period determined after the application of subsection (a) and as if all use during the recovery period were use described in section 168(c)(1).''

Subsec. (d)(10). Pub. L. 99–514, § 201(d)(4)(I), struck out '', notwithstanding any regulations prescribed under section 168(f)(7),'' after ''For purposes of subsection (a)(2)''.

1985—Subsec. (a)(1). Pub. L. 99–44, § 4(a)(1), substituted ''$675'' for ''$1,000''.

Subsec. (a)(2)(A)(i). Pub. L. 99–44, § 4(a)(2)(A), substituted ''$3,200'' for ''$4,000''.

Subsec. (a)(2)(A)(ii), (B)(ii). Pub. L. 99–44, § 4(a)(2)(B), substituted ''$4,800'' for ''$6,000'' wherever appearing in text and heading.

Subsec. (d)(7)(A). Pub. L. 99–44, § 4(b)(1), inserted ''placed in service after 1988'' after ''passenger automobile''.

Subsec. (d)(7)(B)(i). Pub. L. 99–44, § 4(b)(3), struck out last sentence which directed that in the case of calendar year 1984, the automobile price inflation adjustment would be zero.

Subsec. (d)(7)(B)(i)(II). Pub. L. 99–44, § 4(b)(2), substituted ''1987'' for ''1983''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title II, § 2043(b), Sept. 27, 2010, 124 Stat. 2560, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 applicable to property placed in service after Dec. 31, 2001, see section 602(c) of Pub. L. 107–147, set out as a note under section 30 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title IX, § 971(b), Aug. 5, 1997, 111 Stat. 897, as amended by Pub. L. 107–147, title VI, § 602(b)(2), Mar. 9, 2002, 116 Stat. 59, provided that: ''The amendments made by this section [amending this section] shall apply to property placed in service after the date of enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7643(b) of Pub. L. 101–239 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to property placed in service or leased in taxable years beginning after December 31, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 201(d)(4) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

Amendment by section 201(d)(4) of Pub. L. 99–514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99–514, set out as a note under section 46 of this title.

Amendment by section 1812(e)(1)(A), (C), (2)–(5) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 6(e) of Pub. L. 99–44 provided that:

''(1) Except as provided in paragraph (2), the amendments made by section 4 [amending this section] shall apply to—

''(A) property placed in service after April 2, 1985, in taxable years ending after such date, and

''(B) property leased after April 2, 1985, in taxable years ending after such date.

''(2) The amendments made by section 4 [amending this section] shall not apply to any property—

''(A) acquired by the taxpayer pursuant to a binding contract in effect on April 1, 1985, and at all times thereafter, but only if the property is placed in service before August 1, 1985, or

''(B) of which the taxpayer is the lessee, but only if the lease is pursuant to a binding contract in effect on April 1, 1985, and at all times thereafter, and only if the taxpayer first uses such property under the lease before August 1, 1985.''

EFFECTIVE DATE

Section 179(d) of Pub. L. 98–369 provided that:

''(1) IN GENERAL.—

''(A) Except as provided in subparagraph (B), the amendments made by subsections (a) and (c) [enacting this section] shall apply to—

''(i) property placed in service after June 18, 1984, in taxable years ending after such date, and

''(ii) property leased after June 18, 1984, in taxable years ending after such date.

''(B) The amendments made by subsections (a) and (c) shall not apply to any property—

''(i) acquired by the taxpayer pursuant to a binding contract in effect on June 18, 1984, and at all times thereafter (or under construction on such date) but only if the property is placed in service before January 1, 1985 (January 1, 1987, in the case of 15-year real property), or

''(ii) of which the taxpayer is the lessee but only if the lease is pursuant to a binding contract in effect on June 18, 1984, and at all times thereafter and only if the taxpayer first uses such property under the lease before January 1, 1985 (January 1, 1987, in the case of 15-year real property).

For purposes of the preceding sentence, the term '15-year real property' includes 18-year real property.

''(2) COMPLIANCE PROVISIONS.—The amendments made by subsection (b) [amending sections 274, 6653, and 6695 of this title] shall apply to taxable years beginning after December 31, 1984.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

INFLATION ADJUSTED ITEMS FOR CERTAIN CALENDAR YEARS

Provisions relating to inflation adjustment of items in this section for certain calendar years were contained in the following:

2010—Revenue Procedure 2010–18.
2009—Revenue Procedure 2009–24.
2008—Revenue Procedure 2008–22.
2007—Revenue Procedure 2007–30.
2006—Revenue Procedure 2006–18.
2005—Revenue Procedure 2005–13.
2004—Revenue Procedure 2004–20.
2003—Revenue Procedure 2003–75.
2002—Revenue Procedure 2002–14.
2001—Revenue Procedure 2001–19.
2000—Revenue Procedure 2000–18.
1999—Revenue Procedure 99–14.
1998—Revenue Procedures 98–24 and 98–30.
1997—Revenue Procedure 97–20.
1996—Revenue Procedure 96–25.

§ 280G. Golden parachute payments

(a) General rule

No deduction shall be allowed under this chapter for any excess parachute payment.

(b) Excess parachute payment

For purposes of this section—

(1) In general

The term ''excess parachute payment'' means an amount equal to the excess of any parachute payment over the portion of the base amount allocated to such payment.

(2) Parachute payment defined

(A) In general

The term ''parachute payment'' means any payment in the nature of compensation to (or for the benefit of) a disqualified individual if—

(i) such payment is contingent on a change—

(I) in the ownership or effective control of the corporation, or

(II) in the ownership of a substantial portion of the assets of the corporation, and

(ii) the aggregate present value of the payments in the nature of compensation to (or for the benefit of) such individual which are contingent on such change equals or exceeds an amount equal to 3 times the base amount.

For purposes of clause (ii), payments not treated as parachute payments under paragraph (4)(A), (5), or (6) shall not be taken into account.

(B) Agreements

The term ''parachute payment'' shall also include any payment in the nature of compensation to (or for the benefit of) a disqualified individual if such payment is made pursuant to an agreement which violates any generally enforced securities laws or regulations. In any proceeding involving the issue of whether any payment made to a disqualified individual is a parachute payment on account of a violation of any generally enforced securities laws or regulations, the burden of proof with respect to establishing the occurrence of a violation of such a law or regulation shall be upon the Secretary.

(C) Treatment of certain agreements entered into within 1 year before change of ownership

For purposes of subparagraph (A)(i), any payment pursuant to—

(i) an agreement entered into within 1 year before the change described in subparagraph (A)(i), or

(ii) an amendment made within such 1-year period of a previous agreement,

shall be presumed to be contingent on such change unless the contrary is established by clear and convincing evidence.

(3) Base amount

(A) In general

The term ''base amount'' means the individual's annualized includible compensation for the base period.

(B) Allocation

The portion of the base amount allocated to any parachute payment shall be an amount which bears the same ratio to the base amount as—

(i) the present value of such payment, bears to

(ii) the aggregate present value of all such payments.

(4) Treatment of amounts which taxpayer establishes as reasonable compensation

In the case of any payment described in paragraph (2)(A)—

(A) the amount treated as a parachute payment shall not include the portion of such payment which the taxpayer establishes by clear and convincing evidence is reasonable compensation for personal services to be rendered on or after the date of the change described in paragraph (2)(A)(i), and

(B) the amount treated as an excess parachute payment shall be reduced by the portion of such payment which the taxpayer establishes by clear and convincing evidence is reasonable compensation for personal services actually rendered before the date of the change described in paragraph (2)(A)(i).

For purposes of subparagraph (B), reasonable compensation for services actually rendered before the date of the change described in paragraph (2)(A)(i) shall be first offset against the base amount.

(5) Exemption for small business corporations, etc.

(A) In general

Notwithstanding paragraph (2), the term ''parachute payment'' does not include—

(i) any payment to a disqualified individual with respect to a corporation which (immediately before the change described in paragraph (2)(A)(i)) was a small business corporation (as defined in section 1361(b) but without regard to paragraph (1)(C) thereof), and

(ii) any payment to a disqualified individual with respect to a corporation (other than a corporation described in clause (i)) if—

(I) immediately before the change described in paragraph (2)(A)(i), no stock in such corporation was readily tradeable on an established securities market or otherwise, and

(II) the shareholder approval requirements of subparagraph (B) are met with respect to such payment.

The Secretary may, by regulations, prescribe that the requirements of subclause (I) of clause (ii) are not met where a substantial portion of the assets of any entity consists (directly or indirectly) of stock in such corporation and interests in such other entity are readily tradeable on an established securities market, or otherwise. Stock described in section 1504(a)(4) shall not be taken into account under clause (ii)(I) if the payment does not adversely affect the shareholder's redemption and liquidation rights.

(B) Shareholder approval requirements

The shareholder approval requirements of this subparagraph are met with respect to any payment if—

(i) such payment was approved by a vote of the persons who owned, immediately before the change described in paragraph (2)(A)(i), more than 75 percent of the voting power of all outstanding stock of the corporation, and

(ii) there was adequate disclosure to shareholders of all material facts concerning all payments which (but for this paragraph) would be parachute payments with respect to a disqualified individual.

The regulations prescribed under subsection (e) shall include regulations providing for the application of this subparagraph in the case of shareholders which are not individuals (including the treatment of nonvoting interests in an entity which is a shareholder) and where an entity holds a de minimis amount of stock in the corporation.

(6) Exemption for payments under qualified plans

Notwithstanding paragraph (2), the term ''parachute payment'' shall not include any payment to or from—

(A) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

(B) an annuity plan described in section 403(a),

(C) a simplified employee pension (as defined in section 408(k)), or

(D) a simple retirement account described in section 408(p).

(c) Disqualified individuals

For purposes of this section, the term ''disqualified individual'' means any individual who is—

(1) an employee, independent contractor, or other person specified in regulations by the Secretary who performs personal services for any corporation, and

(2) is an officer, shareholder, or highly-compensated individual.

For purposes of this section, a personal service corporation (or similar entity) shall be treated as an individual. For purposes of paragraph (2), the term ''highly-compensated individual'' only includes an individual who is (or would be if the individual were an employee) a member of the group consisting of the highest paid 1 percent of the employees of the corporation or, if less, the highest paid 250 employees of the corporation.

(d) Other definitions and special rules

For purposes of this section—

(1) Annualized includible compensation for base period

The term ''annualized includible compensation for the base period'' means the average annual compensation which—

(A) was payable by the corporation with respect to which the change in ownership or control described in paragraph (2)(A) of subsection (b) occurs, and

(B) was includible in the gross income of the disqualified individual for taxable years in the base period.

(2) Base period

The term ''base period'' means the period consisting of the most recent 5 taxable years ending before the date on which the change in ownership or control described in paragraph (2)(A) of subsection (b) occurs (or such portion of such period during which the disqualified individual performed personal services for the corporation).

(3) Property transfers

Any transfer of property—

(A) shall be treated as a payment, and

(B) shall be taken into account as its fair market value.

(4) Present value

Present value shall be determined by using a discount rate equal to 120 percent of the applicable Federal rate (determined under section 1274(d)), compounded semiannually.

(5) Treatment of affiliated groups

Except as otherwise provided in regulations, all members of the same affiliated group (as defined in section 1504, determined without regard to section 1504(b)) shall be treated as 1 corporation for purposes of this section. Any person who is an officer of any member of such group shall be treated as an officer of such 1 corporation.

(e) Special rule for application to employers participating in the Troubled Assets Relief Program

(1) In general

In the case of the severance from employment of a covered executive of an applicable employer during the period during which the authorities under section 101(a) of the Emergency Economic Stabilization Act of 2008 are in effect (determined under section 120 of such Act), this section shall be applied to payments to such executive with the following modifications:

(A) Any reference to a disqualified individual (other than in subsection (c)) shall be treated as a reference to a covered executive.

(B) Any reference to a change described in subsection (b)(2)(A)(i) shall be treated as a reference to an applicable severance from employment of a covered executive, and any reference to a payment contingent on such a change shall be treated as a reference to any payment made during an applicable taxable year of the employer on account of such applicable severance from employment.

(C) Any reference to a corporation shall be treated as a reference to an applicable employer.

(D) The provisions of subsections (b)(2)(C), (b)(4), (b)(5), and (d)(5) shall not apply.

(2) Definitions and special rules

For purposes of this subsection:

(A) Definitions

Any term used in this subsection which is also used in section 162(m)(5) shall have the meaning given such term by such section.

(B) Applicable severance from employment

The term ''applicable severance from employment'' means any severance from employment of a covered executive—

(i) by reason of an involuntary termination of the executive by the employer, or

(ii) in connection with any bankruptcy, liquidation, or receivership of the employer.

(C) Coordination and other rules

(i) In general

If a payment which is treated as a parachute payment by reason of this subsection is also a parachute payment determined without regard to this subsection, this subsection shall not apply to such payment.

(ii) Regulatory authority

The Secretary may prescribe such guidance, rules, or regulations as are necessary—

(I) to carry out the purposes of this subsection and the Emergency Economic Stabilization Act of 2008, including the extent to which this subsection applies in the case of any acquisition, merger, or reorganization of an applicable employer,

(II) to apply this section and section 4999 in cases where one or more payments with respect to any individual are treated as parachute payments by reason of this subsection, and other payments with respect to such individual are treated as parachute payments under this section without regard to this subsection, and

(III) to prevent the avoidance of the application of this section through the mischaracterization of a severance from employment as other than an applicable severance from employment.

(f) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section (including regulations for the application of this section in the case of related corporations and in the case of personal service corporations).

(Added Pub. L. 98–369, div. A, title I, §67(a), July 18, 1984, 98 Stat. 585; amended Pub. L. 99–121, title I, §102(c)(4), Oct. 11, 1985, 99 Stat. 508; Pub. L. 99–514, title XVIII, §1804(j), Oct. 22, 1986, 100 Stat. 2807; Pub. L. 100–647, title I, §1018(d)(6)–(8), Nov. 10, 1988, 102 Stat. 3581; Pub. L. 104–188, title I, §1421(b)(9)(A), Aug. 20, 1996, 110 Stat. 1798; Pub. L. 110–343, div. A, title III, §302(b), Oct. 3, 2008, 122 Stat. 3805.)

REFERENCES IN TEXT

The Emergency Economic Stabilization Act of 2008, referred to in subsec. (e)(1), (2)(C)(ii)(I), is Pub. L. 110–343, div. A, Oct. 3, 2008, 122 Stat. 3765. Section 101(a) of the Act enacted section 5211(a) of Title 12, Banks and Banking, and amended section 5315 of Title 5, Government Organization and Employees, and section 301 of Title 31, Money and Finance. Section 120 of the Act is classified to section 5230 of Title 12. For complete classification of this Act to the Code, see Short Title note set out under section 5201 of Title 12 and Tables.

AMENDMENTS

2008—Subsecs. (e), (f). Pub. L. 110–343 added subsec. (e) and redesignated former subsec. (e) as (f).

1996—Subsec. (b)(6)(D). Pub. L. 104–188 added subpar. (D).

1988—Subsec. (b)(5)(A). Pub. L. 100–647, §1018(d)(6), substituted ''section 1361(b) but without regard to paragraph (1)(C) thereof)'' for ''section 1361(b))'' in cl. (i) and inserted at end ''Stock described in section 1504(a)(4) shall not be taken into account under clause (ii)(I) if the payment does not adversely affect the shareholder's redemption and liquidation rights.''

Subsec. (b)(5)(B). Pub. L. 100–647, §1018(d)(7), inserted at end ''The regulations prescribed under subsection (e) shall include regulations providing for the application of this subparagraph in the case of shareholders which are not individuals (including the treatment of nonvoting interests in an entity which is a shareholder) and where an entity holds a de minimis amount of stock in the corporation.''

Subsec. (d)(5). Pub. L. 100–647, §1018(d)(8), substituted ''officer of any member'' for ''officer or any member''.

1986—Subsec. (b)(2)(A). Pub. L. 99–514, §1804(j)(6), inserted ''For purposes of clause (ii), payments not treated as parachute payments under paragraph (4)(A), (5), or (6) shall not be taken into account.''

Subsec. (b)(2)(B). Pub. L. 99–514, §1804(j)(7), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The term 'parachute payment' shall also include any payment in the nature of compensation to (or for the benefit of) a disqualified individual if such payment is pursuant to an agreement which violates any securities laws or regulations.''

Subsec. (b)(4). Pub. L. 99–514, §1804(j)(2), substituted ''Treatment of amounts which taxpayer establishes as reasonable compensation'' for ''Excess parachute payments reduced to extent taxpayer establishes reasonable compensation'' in heading and amended text generally. Prior to amendment, text read as follows: ''In the case of any parachute payment described in paragraph (2)(A), the amount of any excess parachute payment shall be reduced by the portion of such payment which the taxpayer establishes by clear and convincing evidence is reasonable compensation for personal services actually rendered. For purposes of the preceding sentence, reasonable compensation shall be first offset against the base amount.''

Subsec. (b)(5). Pub. L. 99–514, §1804(j)(1), added par. (5).

Subsec. (b)(6). Pub. L. 99–514, §1804(j)(3), added par. (6).

Subsec. (c). Pub. L. 99–514, §1804(j)(5), inserted provision defining ''highly-compensated individual''.

Subsec. (d)(2). Pub. L. 99–514, §1804(j)(8), substituted ''performed personal services for the corporation'' for ''was an employee of the corporation''.

Subsec. (d)(5). Pub. L. 99–514, §1804(j)(4), added par. (5).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. A, title III, §302(c)(2), Oct. 3, 2008, 122 Stat. 3806, provided that: ''The amendments made by subsection (b) [amending this section] shall apply to payments with respect to severances occurring during the period during which the authorities under section 101(a) of this Act [enacting section 5211(a) of Title 12, Banks and Banking, and amending section 5315 of Title 5, Government Organization and Employees, and section 301 of Title 31, Money and Finance] are in effect (determined under section 120 of this Act [12 U.S.C. 5230]).''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104–188, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–121 applicable to sales and exchanges after June 30, 1985, in taxable years ending after such date, see section 105(a)(1) of Pub. L. 99–121, set out as a note under section 1274 of this title.

EFFECTIVE DATE

Section 67(e) of Pub. L. 98–369 provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section and section 4999 of this title and amending sections 275 and 3121 of this title] shall apply to payments under agreements entered into or renewed after June 14, 1984, in taxable years ending after such date.

''(2) SPECIAL RULE FOR CONTRACT AMENDMENTS.—Any contract entered into before June 15, 1984, which is amended after June 14, 1984, in any significant relevant aspect shall be treated as a contract entered into after June 14, 1984.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 280H. Limitation on certain amounts paid to employee-owners by personal service corporations electing alternative taxable years

(a) General rule

If—

(1) an election by a personal service corporation under section 444 is in effect for a taxable year, and

(2) such corporation does not meet the minimum distribution requirements of subsection (c) for such taxable year,

then the deduction otherwise allowed under this chapter for applicable amounts paid or incurred by such corporation to employee-owners shall not exceed the maximum deductible amount. The preceding sentence shall not apply for purposes of subchapter G (relating to personal holding companies).

(b) Carryover of nondeductible amounts

If any amount is not allowed as a deduction for a taxable year under subsection (a), such amount shall be treated as paid or incurred in the succeeding taxable year.

(c) Minimum distribution requirement

For purposes of this section—

(1) In general

A personal service corporation meets the minimum distribution requirements of this subsection if the applicable amounts paid or incurred during the deferral period of the taxable year (determined without regard to subsection (b)) equal or exceed the lesser of—

(A) the product of—

(i) the applicable amounts paid during the preceding taxable year, divided by the number of months in such taxable year, multiplied by

(ii) the number of months in the deferral period of the preceding taxable year, or

(B) the applicable percentage of the adjusted taxable income for the deferral period of the taxable year.

(2) Applicable percentage

The term ''applicable percentage'' means the percentage (not in excess of 95 percent) determined by dividing—

(A) the applicable amounts paid or incurred during the 3 taxable years immediately preceding the taxable year, by

(B) the adjusted taxable income of such corporation for such 3 taxable years.

(d) Maximum deductible amount

For purposes of this section, the term ''maximum deductible amount'' means the sum of—

(1) the applicable amounts paid during the deferral period, plus

(2) an amount equal to the product of—

(A) the amount determined under paragraph (1), divided by the number of months in the deferral period, multiplied by

(B) the number of months in the nondeferral period.

(e) Disallowance of net operating loss carrybacks

No net operating loss carryback shall be allowed to (or from) any taxable year of a personal service corporation to which an election under section 444 applies.

(f) Other definitions and special rules

For purposes of this section—

(1) Applicable amount

The term ''applicable amount'' means any amount paid to an employee-owner which is includible in the gross income of such employee, other than—

(A) any gain from the sale or exchange of property between the owner-employee and the corporation, or

(B) any dividend paid by the corporation.

(2) Employee-owner

The term ''employee-owner'' has the meaning given such term by section 269A(b)(2) (as modified by section 441(i)(2)).

(3) Nondeferral and deferral periods

(A) Deferral period

The term ''deferral period'' has the meaning given to such term by section 444(b)(4).

(B) Nondeferral period

The term ''nondeferral period'' means the portion of the taxable year of the personal service corporation which occurs after the portion of such year constituting the deferral period.

(4) Adjusted taxable income

The term ''adjusted taxable income'' means taxable income determined without regard to—

(A) any amount paid to an employee-owner which is includible in the gross income of such employee-owner, and

(B) any net operating loss carryover to the extent such carryover is attributable to amounts described in subparagraph (A).

(5) Personal service corporation

The term ''personal service corporation'' has the meaning given to such term by section 441(i)(2).

(Added Pub. L. 100–203, title X, §10206(c)(1), Dec. 22, 1987, 101 Stat. 1330–401; amended Pub. L. 100–647, title II, §2004(e)(2)(B), (3), (14)(A), (C), Nov. 10, 1988, 102 Stat. 3600, 3602.)

AMENDMENTS

1988—Subsecs. (c)(1)(A)(i), (d)(1). Pub. L. 100–647, §2004(e)(14)(C), substituted ''amounts paid'' for ''amounts paid or incurred''.

Subsec. (f)(2). Pub. L. 100–647, §2004(e)(3), substituted ''section 269A(b)(2) (as modified by section 441(i)(2))'' for ''section 296A(b)(2)''.

Subsec. (f)(4). Pub. L. 100–647, §2004(e)(14)(A), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''The term 'adjusted taxable income' means taxable income increased by any amount paid or incurred to an employee-owner which was includible in the gross income of such employee-owner.''

Subsec. (f)(5). Pub. L. 100–647, §2004(e)(2)(B), added par. (5).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, see section 10206(d)(1) of Pub. L. 100–203, set out as a note under section 444 of this title.

PART X—TERMINAL RAILROAD CORPORATIONS AND THEIR SHAREHOLDERS

Sec.
281. Terminal railroad corporations and their shareholders.

AMENDMENTS

1962—Pub. L. 87–870, §1(a), Oct. 23, 1962, 76 Stat. 1158, added part X and item 281.

§ 281. Terminal railroad corporations and their shareholders

(a) Computation of taxable income of terminal railroad corporations

(1) In general

In computing the taxable income of a terminal railroad corporation—

(A) such corporation shall not be considered to have received or accrued—

(i) the portion of any liability of any railroad corporation, with respect to related terminal services provided by such corporation, which is discharged by crediting such liability with an amount of related terminal income, or

(ii) the portion of any charge which would be made by such corporation for related terminal services provided by it, but which is not made as a result of taking related terminal income into account in computing such charge; and

(B) no deduction otherwise allowable under this chapter shall be disallowed as a result of any discharge of liability described in subparagraph (A)(i) or as a result of any computation of charges in the manner described in subparagraph (A)(ii).

(2) Limitation

In the case of any taxable year ending after the date of the enactment of this section, paragraph (1) shall not apply to the extent that it would (but for this paragraph) operate to create (or increase) a net operating loss for the terminal railroad corporation for the taxable year.

(b) Computation of taxable income of shareholders

Subject to the limitation in subsection (a)(2), in computing the taxable income of any shareholder of a terminal railroad corporation, no amount shall be considered to have been received or accrued or paid or incurred by such shareholder as a result of any discharge of liability described in subsection (a)(1)(A)(i) or as a result of any computation of charges in the manner described in subsection (a)(1)(A)(ii).

(c) Agreement required

In the case of any taxable year, subsections (a) and (b) shall apply with respect to any discharge of liability described in subsection (a)(1)(A)(i), and to any computation of charges in the manner described in subsection (a)(1)(A)(ii), only if such discharge or computation (as in the case may be) was provided for in a written agreement, to which all of the shareholders of the terminal railroad corporation were parties, entered into before the beginning of such taxable year.

(d) Definitions

For purposes of this section—

(1) Terminal railroad corporation

The term ''terminal railroad corporation'' means a domestic railroad corporation which is not a member, other than as a common parent corporation, of an affiliated group (as defined in section 1504) and—

(A) all of the shareholders of which are rail carriers subject to part A of subtitle IV of title 49;

(B) the primary business of which is the providing of railroad terminal and switching facilities and services to rail carriers subject to part A of subtitle IV of title 49 and to the shippers and passengers of such railroad corporations;

(C) a substantial part of the services of which for the taxable year is rendered to one or more of its shareholders; and

(D) each shareholder of which computes its taxable income on the basis of a taxable year beginning or ending on the same day that the taxable year of the terminal railroad corporation begins or ends.

(2) Related terminal income

The term ''related terminal income'' means the income (determined in accordance with regulations prescribed by the Secretary) of a terminal railroad corporation derived—

(A) from services or facilities of a character ordinarily and regularly provided by terminal railroad corporations for railroad corporations or for the employees, passengers, or shippers of railroad corporations;

(B) from the use by persons other than railroad corporations of portions of a facility, or a service which is used primarily for railroad purposes;

(C) from any railroad corporation for services or facilities provided by such terminal railroad corporation in connection with railroad operations; and

(D) from the United States in payment for facilities or services in connection with mail handling.

For purposes of subparagraph (B), a substantial addition, constructed after the date of the enactment of this section, to a facility shall be treated as a separate facility.

(3) Related terminal services

The term ''related terminal services'' includes only services, and the use of facilities, taken into account in computing related terminal income.

(e) Regulations

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

(Added Pub. L. 87–870, § 1(a), Oct. 23, 1962, 76 Stat. 1158; amended Pub. L. 94–455, title XIX, §§ 1901(a)(40), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1771, 1834; Pub. L. 95–473, § 2(a)(2)(D), (E), Oct. 17, 1978, 92 Stat. 1464; Pub. L. 104–88, title III, § 304(b), Dec. 29, 1995, 109 Stat. 943.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsecs. (a)(2), (d)(2), refers to the date of enactment of Pub. L. 87–870, which was approved Oct. 23, 1962.

AMENDMENTS

1995—Subsec. (d)(1)(A), (B). Pub. L. 104–88 substituted ''rail carriers subject to part A of subtitle IV'' for ''domestic railroad corporations providing transportation subject to subchapter I of chapter 105''.

1978—Subsec. (d)(1)(A). Pub. L. 95–473, § 2(a)(2)(D), substituted ''providing transportation subject to subchapter I of chapter 105 of title 49'' for ''subject to part I of the Interstate Commerce Act (49 U.S.C. 1 and following)''.

Subsec. (d)(1)(B). Pub. L. 95–473, §2(a)(2)(E), substituted ''providing transportation subject to subchapter I of chapter 105 of title 49'' for ''subject to part I of the Interstate Commerce Act''.

1976—Subsec. (d)(1)(A). Pub. L. 94–455, §1901(a)(40)(A), inserted ''(49 U.S.C. 1 and following)'' after ''Interstate Commerce Act''.

Subsecs. (e), (f). Pub. L. 94–455, §§1901(a)(40)(B), 1906(b)(13)(A), redesignated subsec. (f) as (e) and struck out ''or his delegate'' after ''Secretary''. Former subsec. (e), which made special provision for the application of this section to taxable years ending before Oct. 23, 1962, was struck out.

EFFECTIVE DATE OF 1995 AMENDMENT

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

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(40) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section 2(a) of Pub. L. 87–870 provided that: ''The amendments made by the first section of this Act [enacting this section] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954.''

INTERNAL REVENUE CODE OF 1939; INCLUSION OF TERMINAL RAILROAD CORPORATIONS AND THEIR SHAREHOLDERS PROVISION

Section 2(b) of Pub. L. 87–870, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Provisions having the same effect as section 281 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by the first section of this Act) shall be deemed to be included in the Internal Revenue Code of 1939, effective with respect to all taxable years to which such Code applies.''

PART XI—SPECIAL RULES RELATING TO CORPORATE PREFERENCE ITEMS

Sec.
291. Special rules relating to corporate preference items.

AMENDMENTS

1982—Pub. L. 97–248, title II, §204(a), Sept. 3, 1982, 96 Stat. 423, added part XI heading and analysis of sections consisting of item 291.

§ 291. Special rules relating to corporate preference items

(a) Reduction in certain preference items, etc.

For purposes of this subtitle, in the case of a corporation—

(1) Section 1250 capital gain treatment

In the case of section 1250 property which is disposed of during the taxable year, 20 percent of the excess (if any) of—

(A) the amount which would be treated as ordinary income if such property was section 1245 property, over

(B) the amount treated as ordinary income under section 1250 (determined without regard to this paragraph),

shall be treated as gain which is ordinary income under section 1250 and shall be recognized notwithstanding any other provision of this title. Under regulations prescribed by the Secretary, the provisions of this paragraph shall not apply to the disposition of any property to the extent section 1250(a) does not apply to such disposition by reason of section 1250(d).

(2) Reduction in percentage depletion

In the case of iron ore and coal (including lignite), the amount allowable as a deduction under section 613 with respect to any property (as defined in section 614) shall be reduced by 20 percent of the amount of the excess (if any) of—

(A) the amount of the deduction allowable under section 613 for the taxable year (determined without regard to this paragraph), over

(B) the adjusted basis of the property at the close of the taxable year (determined without regard to the depletion deduction for the taxable year).

(3) Certain financial institution preference items

The amount allowable as a deduction under this chapter (determined without regard to this section) with respect to any financial institution preference item shall be reduced by 20 percent.

(4) Amortization of pollution control facilities

If an election is made under section 169 with respect to any certified pollution control facility, the amortizable basis of such facility for purposes of such section shall be reduced by 20 percent.

(b) Special rules for treatment of intangible drilling costs and mineral exploration and development costs

For purposes of this subtitle, in the case of a corporation—

(1) In general

The amount allowable as a deduction for any taxable year (determined without regard to this section)—

(A) under section 263(c) in the case of an integrated oil company, or

(B) under section 616(a) or 617(a),

shall be reduced by 30 percent.

(2) Amortization of amounts not allowable as deductions under paragraph (1)

The amount not allowable as a deduction under section 263(c), 616(a), or 617(a) (as the case may be) for any taxable year by reason of paragraph (1) shall be allowable as a deduction ratably over the 60-month period beginning with the month in which the costs are paid or incurred.

(3) Dispositions

For purposes of section 1254, any deduction under paragraph (2) shall be treated as a deduction allowable under section 263(c), 616(a), or 617(a) (whichever is appropriate).

(4) Integrated oil company defined

For purposes of this subsection, the term ''integrated oil company'' means, with respect to any taxable year, any producer of crude oil

to whom subsection (c) of section 613A does not apply by reason of paragraph (2) or (4) of section 613A(d).

(5) Coordination with cost depletion

The portion of the adjusted basis of any property which is attributable to amounts to which paragraph (1) applied shall not be taken into account for purposes of determining depletion under section 611.

(c) Special rules relating to pollution control facilities

For purposes of this subtitle—

(1) Accelerated cost recovery deduction

Section 168 shall apply with respect to that portion of the basis of any property not taken into account under section 169 by reason of subsection (a)(4).

(2) 1250 Recapture

Subsection (a)(1) shall not apply to any section 1250 property which is part of a certified pollution control facility (within the meaning of section 169(d)(1)) with respect to which an election under section 169 was made.

(d) Special rule for real estate investment trusts

In the case of a real estate investment trust (as defined in section 856), the difference between the amounts described in subparagraphs (A) and (B) of subsection (a)(1) shall be reduced to the extent that a capital gain dividend (as defined in section 857(b)(3)(C), applied without regard to this section) is treated as paid out of such difference. Any capital gain dividend treated as having been paid out of such difference to a shareholder which is an applicable corporation retains its character in the hands of the shareholder as gain from the disposition of section 1250 property for purposes of applying subsection (a)(1) to such shareholder.

(e) Definitions

For purposes of this section—

(1) Financial institution preference item

The term ''financial institution preference item'' includes the following:

[(A) Repealed. Pub. L. 101–508, title XI, § 11801(c)(12)(B), Nov. 5, 1990, 104 Stat. 1388–527]

(B) Interest on debt to carry tax-exempt obligations acquired after December 31, 1982, and before August 8, 1986

(i) In general

In the case of a financial institution which is a bank (as defined in section 585(a)(2)), the amount of interest on indebtedness incurred or continued to purchase or carry obligations acquired after December 31, 1982, and before August 8, 1986, the interest on which is exempt from taxes for the taxable year, to the extent that a deduction would (but for this paragraph or section 265(b)) be allowable with respect to such interest for such taxable year.

(ii) Determination of interest allocable to indebtedness on tax-exempt obligations

Unless the taxpayer (under regulations prescribed by the Secretary) establishes otherwise, the amount determined under clause (i) shall be an amount which bears the same ratio to the aggregate amount allowable (determined without regard to this section and section 265(b)) to the taxpayer as a deduction for interest for the taxable year as—

(I) the taxpayer's average adjusted basis (within the meaning of section 1016) of obligations described in clause (i), bears to

(II) such average adjusted basis for all assets of the taxpayer.

(iii) Interest

For purposes of this subparagraph, the term ''interest'' includes amounts (whether or not designated as interest) paid in respect of deposits, investment certificates, or withdrawable or repurchasable shares.

(iv) Application of subparagraph to certain obligations issued after August 7, 1986

For application of this subparagraph to certain obligations issued after August 7, 1986, see section 265(b)(3). That portion of any obligation not taken into account under paragraph (2)(A) of section 265(b) by reason of paragraph (7) of such section shall be treated for purposes of this section as having been acquired on August 7, 1986.

(2) Section 1245 and 1250 property

The terms ''section 1245 property'' and ''section 1250 property'' have the meanings given such terms by sections 1245(a)(3) and 1250(c), respectively.

(Added Pub. L. 97–248, title II, § 204(a), Sept. 3, 1982, 96 Stat. 423; amended Pub. L. 97–354, § 5(a)(27), Oct. 19, 1982, 96 Stat. 1694; Pub. L. 97–448, title III, § 306(a)(2), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 98–369, div. A, title I, § 68(a), (b), title VII, § 712(a)(1)(A), (2)–(4), July 18, 1984, 98 Stat. 588, 946; Pub. L. 99–514, title II, § 201(d)(5), title IV, §§ 411(a), (b)(2)(C)(ii), 412(b)(1), title IX, §§ 901(b)(4), (d)(4)(C), 902(c), title XVIII, §§ 1804(k)(1), (3)(A), 1854(c)(1), 1876(b)(1), Oct. 22, 1986, 100 Stat. 2140, 2225, 2227, 2378, 2380, 2382, 2809, 2878, 2898; Pub. L. 100–418, title I, § 1941(b)(5), Aug. 23, 1988, 102 Stat. 1324; Pub. L. 100–647, title I, § 1009(b)(4), (5), Nov. 10, 1988, 102 Stat. 3449; Pub. L. 101–508, title XI, § 11801(c)(12)(B), Nov. 5, 1990, 104 Stat. 1388–527; Pub. L. 104–188, title I, §§ 1602(b)(1), 1616(b)(5), Aug. 20, 1996, 110 Stat. 1833, 1856; Pub. L. 110–172, § 11(g)(6), Dec. 29, 2007, 121 Stat. 2490; Pub. L. 111–5, div. B, title I, § 1501(b), Feb. 17, 2009, 123 Stat. 353.)

AMENDMENTS

2009—Subsec. (e)(1)(B)(iv). Pub. L. 111–5 inserted at end ''That portion of any obligation not taken into account under paragraph (2)(A) of section 265(b) by reason of paragraph (7) of such section shall be treated for purposes of this section as having been acquired on August 7, 1986.''

2007—Subsec. (a)(4), (5). Pub. L. 110–172, § 11(g)(6)(A), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: ''In the case of taxable years beginning after December 31, 1984, section 923(a) shall be applied with respect to any FSC by substituting—

''(A) '30 percent' for '32 percent' in paragraph (2), and

''(B) '$15\frac{23}{23}$' for '$16\frac{23}{23}$' in paragraph (3).

If all of the stock in the FSC is not held by 1 or more C corporations throughout the taxable year, under reg-

ulations, proper adjustments shall be made in the application of the preceding sentence to take into account stock held by persons other than C corporations.''

Subsec. (c)(1). Pub. L. 110–172, §11(g)(6)(B), substituted ''subsection (a)(4)'' for ''subsection (a)(5)''.

1996—Subsec. (e)(1)(B)(i). Pub. L. 104–188, §1616(b)(5), struck out ''or to which section 593 applies'' after ''585(a)(2))''.

Subsec. (e)(1)(B)(iv), (v). Pub. L. 104–188, §1602(b)(1), redesignated cl. (v) as (iv) and struck out former cl. (iv) which read as follows: ''SPECIAL RULES FOR OBLIGATIONS TO WHICH SECTION 133 APPLIES.—In the case of an obligation to which section 133 applies, interest on such obligation shall not be treated as exempt from taxes for purposes of this subparagraph.''

1990—Subsec. (e)(1)(A). Pub. L. 101–508 struck out subpar. (A) ''Excess reserves for losses on bad debts of financial institutions'' which read as follows: ''In the case of a financial institution to which section 585 applies, the excess of—

''(i) the amount which would, but for this section, be allowable as a deduction for the taxable year for a reasonable addition to a reserve for bad debts, over

''(ii) the amount which would have been allowable had such institution maintained its bad debt reserve for all taxable years on the basis of actual experience.''

1988—Subsec. (b)(4). Pub. L. 100–418 amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''For purposes of this subsection, the term 'integrated oil company' means, with respect to any taxable year, any producer (within the meaning of section 4996(a)(1)) of crude oil other than an independent producer (within the meaning of section 4992(b)).''

Subsec. (e)(1)(B)(i). Pub. L. 100–647, §1009(b)(5), substituted ''section 585(a)(2)'' for ''section 582(a)(2)''.

Subsec. (e)(1)(B)(iv), (v). Pub. L. 100–647, §1009(b)(4), redesignated cl. (iv), relating to application of subparagraph to certain obligations issued after Aug. 7, 1986, as (v).

1986—Subsec. (a). Pub. L. 99–514, §1804(k)(3)(A), substituted ''Reduction'' for ''20-percent reduction'' in heading.

Subsec. (a)(1)(A). Pub. L. 99–514, §201(d)(5)(A), struck out ''or section 1245 recovery property'' after ''section 1245 property''.

Subsec. (a)(2). Pub. L. 99–514, §412(b)(1), substituted ''20 percent'' for ''15 percent''.

Subsec. (a)(4). Pub. L. 99–514, §1876(b)(1), substituted ''Certain FSC income'' for ''Certain deferred FSC income'' in heading and amended text generally. Prior to amendment, text read as follows: ''If a C corporation is a shareholder of the FSC, in the case of taxable years beginning after December 31, 1984, section 923(a) shall be applied with respect to such corporation by substituting—

''(A) '30 percent' for '32 percent' in paragraph (2), and

''(B) '15/23' for '16/23' in paragraph (3).''

Pub. L. 99–514, §1804(k)(1), substituted ''If a C corporation'' for ''If a corporation''.

Subsec. (b)(1). Pub. L. 99–514, §411(a)(1), (b)(2)(C)(ii), substituted ''30 percent'' for ''20 percent'' in closing provisions and ''617(a)'' for ''617'' in subpar. (B).

Subsec. (b)(2) to (6). Pub. L. 99–514, §411(a)(2), added pars. (2) to (5) and struck out former pars. (2) to (6) as follows: former par. (2), special rule for amounts not allowable as deductions under paragraph (1), related in subpar. (A) to intangible drilling costs and in subpar. (B) to mineral exploration and development costs; former par. (3) defined applicable percentage in accordance with table for taxable years 1 to 5; former par. (4) dispositions, related in subpar. (A) to oil, gas, and geothermal property, in subpar. (B) to application of section 617(d) of this title, and in subpar. (C) to recapture of investment credit; former par. (5) defined integrated oil company; and former par. (6) related to coordination with cost depletion.

Subsec. (c)(1). Pub. L. 99–514, §201(d)(5)(B), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''For purposes of subclause (1) of section 168(d)(1)(A)(ii), a taxpayer shall not be treated as electing the amortization deduction under section 169 with respect to that portion of the basis not taken into account under section 169 by reason of subsection (a)(5).''

Subsec. (e)(1)(A). Pub. L. 99–514, §901(b)(4), struck out ''or 593'' after ''section 585''.

Subsec. (e)(1)(B). Pub. L. 99–514, §902(c)(2)(C), substituted ''1982, and before August 8, 1986'' for ''1982'' in heading.

Subsec. (e)(1)(B)(i). Pub. L. 99–514, §902(c)(1), (2)(A), substituted ''1982, and before August 8, 1986'' for ''1982'' and ''(but for this paragraph or section 265(b))'' for ''(but for this paragraph)''.

Pub. L. 99–514, §901(d)(4)(C), substituted ''which is a bank (as defined in section 582(a)(2)) or to which section 593 applies'' for ''to which section 585 or 593 applies''.

Subsec. (e)(1)(B)(ii). Pub. L. 99–514, §902(c)(2)(B), inserted ''and section 265(b)''.

Subsec. (e)(1)(B)(iv). Pub. L. 99–514, §1854(c)(1), added cl. (iv) relating to special rules for obligations to which section 133 applies.

Pub. L. 99–514, §902(c)(2)(D), added cl. (iv) relating to application of subparagraph to certain obligations issued after August 7, 1986.

Subsec. (e)(2). Pub. L. 99–514, §201(d)(5)(C), struck out '', 'section 1245 recovery property','' after '' 'section 1245 property' '' and directed that par. (2) be amended by striking out '', section 1245(a)(5),'' which was executed by striking out '', 1245(a)(5),'' after ''sections 1245(a)(3)'' to reflect the probable intent of Congress.

1984—Subsec. (a). Pub. L. 98–369, §68(a), which directed that each subsection be amended by substituting ''20 percent'' for ''15 percent'' wherever appearing, was executed in heading by substituting ''20-percent'' for ''15-percent'' to reflect the probable intent of Congress.

Subsec. (a)(1). Pub. L. 98–369, §68(a), substituted ''20 percent'' for ''15 percent'' in provisions preceding subpar. (A).

Pub. L. 98–369, §712(a)(1)(A)(ii), inserted ''under section 1250'' in provisions following subpar. (B).

Subsec. (a)(1)(B). Pub. L. 98–369, §712(a)(1)(A)(i), inserted ''(determined without regard to this paragraph)''.

Subsec. (a)(3). Pub. L. 98–369, §68(a), substituted ''20 percent'' for ''15 percent''.

Subsec. (a)(4). Pub. L. 98–369, §68(b), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''(4) CERTAIN DEFERRED DISC INCOME.—If a corporation is a shareholder of a DISC, in the case of taxable years beginning after December 31, 1982, section 995(b)(1)(F)(i) shall be applied with respect to such corporation by substituting '57.5 percent' for 'one-half'.''

Subsec. (a)(5). Pub. L. 98–369, §68(a), substituted ''20 percent'' for ''15 percent''.

Subsec. (b)(1). Pub. L. 98–369, §68(a), substituted ''20 percent'' for ''15 percent'' in provisions following subpar. (B).

Subsec. (b)(2)(B)(ii). Pub. L. 98–369, §712(a)(2), inserted ''in the case of a deposit located in the United States,''.

Subsec. (b)(6). Pub. L. 98–369, §712(a)(3), substituted ''attributable to amounts to which paragraph (1) applied'' for ''attributable to intangible drilling and development costs or mining exploration and development costs''.

Subsec. (e)(1)(B)(iii). Pub. L. 98–369, §712(a)(4), added cl. (iii).

1983—Subsec. (a)(1). Pub. L. 97–448 inserted provision that, under regulations prescribed by the Secretary, the provisions of this paragraph shall not apply to the disposition of any property to the extent section 1250(a) does not apply to such disposition by reason of section 1250(d).

1982—Subsec. (a). Pub. L. 97–354, §5(a)(27)(A), substituted ''a corporation'' for ''an applicable corporation'' wherever appearing.

Subsec. (b). Pub. L. 97–354, §5(a)(27)(A), substituted ''a corporation'' for ''an applicable corporation''.

Subsec. (e)(2), (3). Pub. L. 97–354, §5(a)(27)(B), redesignated par. (3) as (2). Former par. (2), defining ''applicable corporation'', was struck out.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–5 applicable to obligations issued after Dec. 31, 2008, see section 1501(c) of Pub. L. 111–5, set out as a note under section 265 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1602(b)(1) of Pub. L. 104–188 applicable to loans made after Aug. 20, 1996, with exception and provisions relating to certain refinancings, see section 1602(c) of Pub. L. 104–188, set out as an Effective Date of Repeal note under former section 133 of this title.

Amendment by section 1616(b)(5) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, see section 1616(c) of Pub. L. 104–188, set out as a note under section 593 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by Pub. L. 100–418 applicable to crude oil removed from the premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100–418, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 201(d)(5) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

Amendment by section 201(d)(5) of Pub. L. 99–514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99–514, set out as a note under section 46 of this title.

Amendment by section 411(a), (b)(2)(C)(ii) of Pub. L. 99–514 applicable, except as otherwise provided, to costs paid or incurred after Dec. 31, 1986, in taxable years ending after such date, see section 411(c) of Pub. L. 99–514 set out as a note under section 263 of this title.

Section 412(b)(2) of Pub. L. 99–514 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1986.''

Amendment by section 901(b)(4), (d)(4)(C) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 901(e) of Pub. L. 99–514, set out as a note under section 166 of this title.

Amendment by section 902(c) of Pub. L. 99–514 applicable to taxable years ending after Dec. 31, 1986, with certain exceptions and qualifications, see section 902(f) of Pub. L. 99–514, set out as a note under section 265 of this title.

Section 1804(k)(1) of Pub. L. 99–514 provided that amendment made by section 1804(k)(1) of Pub. L. 99–514 is effective with respect to taxable years beginning after Dec. 31, 1982.

Amendment by sections 1804(k)(3)(A), 1854(c)(1), and 1876(b)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title I, § 68(e), July 18, 1984, 98 Stat. 588, as amended by Pub. L. 99–514, § 2, title XVIII, § 1804(k)(2), Oct. 22, 1986, 100 Stat. 2095, 2809, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 57 and 995 of this title] shall apply to taxable years beginning after December 31, 1984.

''(2) 1250 GAIN.—The amendments made by this section to section 291(a)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], and the amendment made by subsection (c)(2) of this section [amending section 57 of this title], shall apply to sales or other dispositions after December 31, 1984, in taxable years ending after such date.

''(3) POLLUTION CONTROL FACILITIES.—The amendments made by this section to section 291(a)(5) [now 291(a)(4)] of such Code, and so much of the amendment made by subsection (c)(1) of this section [amending section 57 of this title] as relates to pollution control facilities, shall apply to property placed in service after December 31, 1984, in taxable years ending after such date.

''(4) DRILLING AND MINING COSTS.—The amendments made by this section to section 291(b) of such Code shall apply to expenditures after December 31, 1984, in taxable years ending after such date.''

Amendment by section 712 of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

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

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE

Pub. L. 97–248, title II, § 204(d), Sept. 3, 1982, 96 Stat. 427, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [enacting this section and amending sections 57 and 263 of this title] shall apply to taxable years beginning after December 31, 1982.

''(2) 1250 GAIN.—Section 291(a)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall apply to sales or other disposition after December 31, 1982, in taxable years ending after such date.

''(3) POLLUTION CONTROL FACILITIES.—Section 291(a)(5) [now 291(a)(4)] of such Code shall apply to property placed in service after December 31, 1982, in taxable years ending after such date.

''(4) DRILLING AND MINING COSTS.—Section 291(b) of such Code shall apply to expenditures after December 31, 1982, in taxable years ending after such date.

''(5) REDUCTION IN PERCENTAGE DEPLETION FOR COAL AND IRON ORE.—Section 291(a)(2) of such Code shall apply to taxable years beginning after December 31, 1983.

''(6) MINIMUM TAX.—The amendment made by subsection (b) [amending section 57 of this title] shall apply to taxable years ending after December 31, 1982, with respect to items of tax preference described in section 57(b) of such Code to which section 291 of such Code applies; except that in the case of an item described in section 291(a)(2) of such Code, such amendment shall apply to taxable years beginning after December 31, 1983.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see sec-

tion 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

Subchapter C—Corporate Distributions and Adjustments

Part
I. Distributions by corporations.
II. Corporate liquidations.
III. Corporate organizations and reorganizations.
[IV. Repealed.]
V. Carryovers.
VI. Treatment of certain corporate interests as stock or indebtedness.
[VII. Repealed.]

AMENDMENTS

1990—Pub. L. 101–508, title XI, § 11801(b)(5), Nov. 5, 1990, 104 Stat. 1388–522, struck out item for part IV ''Insolvency reorganizations''.

1988—Pub. L. 100–647, title I, § 1006(e)(8)(C), Nov. 10, 1988, 102 Stat. 3401, struck out item for part VII ''Miscellaneous corporate provisions''.

1984—Pub. L. 98–369, div. A, title I, § 75(d), July 18, 1984, 98 Stat. 595, added item for part VII.

1976—Pub. L. 94–455, title XIX, § 1901(b)(15), Oct. 4, 1976, 90 Stat. 1796, struck out item for part VII ''Effective date of subchapter C.''

1969—Pub. L. 91–172, title IV, § 415(b), Dec. 30, 1969, 83 Stat. 614, redesignated item for part VI as VII and added part VI.

PART I—DISTRIBUTIONS BY CORPORATIONS

Subpart
A. Effects on recipients.
B. Effects on corporation.
C. Definitions; constructive ownership of stock.

SUBPART A—EFFECTS ON RECIPIENTS

Sec.
301. Distributions of property.
302. Distributions in redemption of stock.
303. Distributions in redemption of stock to pay death taxes.
304. Redemption through use of related corporations.
305. Distributions of stock and stock rights.
306. Dispositions of certain stock.
307. Basis of stock and stock rights acquired in distributions.

§ 301. Distributions of property

(a) In general

Except as otherwise provided in this chapter, a distribution of property (as defined in section 317(a)) made by a corporation to a shareholder with respect to its stock shall be treated in the manner provided in subsection (c).

(b) Amount distributed

(1) General rule

For purposes of this section, the amount of any distribution shall be the amount of money received, plus the fair market value of the other property received.

(2) Reduction for liabilities

The amount of any distribution determined under paragraph (1) shall be reduced (but not below zero) by—

(A) the amount of any liability of the corporation assumed by the shareholder in connection with the distribution, and

(B) the amount of any liability to which the property received by the shareholder is subject immediately before, and immediately after, the distribution.

(3) Determination of fair market value

For purposes of this section, fair market value shall be determined as of the date of the distribution.

(c) Amount taxable

In the case of a distribution to which subsection (a) applies—

(1) Amount constituting dividend

That portion of the distribution which is a dividend (as defined in section 316) shall be included in gross income.

(2) Amount applied against basis

That portion of the distribution which is not a dividend shall be applied against and reduce the adjusted basis of the stock.

(3) Amount in excess of basis

(A) In general

Except as provided in subparagraph (B), that portion of the distribution which is not a dividend, to the extent that it exceeds the adjusted basis of the stock, shall be treated as gain from the sale or exchange of property.

(B) Distributions out of increase in value accrued before March 1, 1913

That portion of the distribution which is not a dividend, to the extent that it exceeds the adjusted basis of the stock and to the extent that it is out of increase in value accrued before March 1, 1913, shall be exempt from tax.

(d) Basis

The basis of property received in a distribution to which subsection (a) applies shall be the fair market value of such property.

(e) Special rule for certain distributions received by 20 percent corporate shareholder

(1) In general

Except to the extent otherwise provided in regulations, solely for purposes of determining the taxable income of any 20 percent corporate shareholder (and its adjusted basis in the stock of the distributing corporation), section 312 shall be applied with respect to the distributing corporation as if it did not contain subsections (k) and (n) thereof.

(2) 20 percent corporate shareholder

For purposes of this subsection, the term ''20 percent corporate shareholder'' means, with respect to any distribution, any corporation which owns (directly or through the application of section 318)—

(A) stock in the corporation making the distribution possessing at least 20 percent of the total combined voting power of all classes of stock entitled to vote, or

(B) at least 20 percent of the total value of all stock of the distributing corporation (except nonvoting stock which is limited and preferred as to dividends),

but only if, but for this subsection, the distributee corporation would be entitled to a deduction under section 243, 244, or 245 with respect to such distribution.

(3) Application of section 312(n)(7) not affected

The reference in paragraph (1) to subsection (n) of section 312 shall be treated as not including a reference to paragraph (7) of such subsection.

(4) Regulations

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

(f) Special rules

(1) For distributions in redemption of stock, see section 302.

(2) For distributions in complete liquidation, see part II (sec. 331 and following).

(3) For distributions in corporate organizations and reorganizations, see part III (sec. 351 and following).

(4) For taxation of dividends received by individuals at capital gain rates, see section 1(h)(11).

(Aug. 16, 1954, ch. 736, 68A Stat. 84; Pub. L. 87–403, § 2(a), Feb. 2, 1962, 76 Stat. 5; Pub. L. 87–834, §§ 5(a), (b), 13(f)(2), Oct. 16, 1962, 76 Stat. 977, 1035; Pub. L. 88–272, title II, § 231(b)(2), Feb. 26, 1964, 78 Stat. 105; Pub. L. 88–484, § 1(b)(1), Aug. 22, 1964, 78 Stat. 597; Pub. L. 89–570, § 1(b)(2), Sept. 12, 1966, 80 Stat. 762; Pub. L. 89–809, title I, § 104(f), Nov. 13, 1966, 80 Stat. 1559; Pub. L. 91–172, title II, § 211(b)(1), (2), title IX, § 905(b)(2), Dec. 30, 1969, 83 Stat. 570, 714; Pub. L. 92–178, title III, § 312(a), Dec. 10, 1971, 85 Stat. 526; Pub. L. 94–455, title II, § 205(c)(1)(B), (C), title XIX, §§ 1901(a)(41), (b)(32)(A), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1535, 1771, 1800, 1834; Pub. L. 95–628, § 3(a), (b), Nov. 10, 1978, 92 Stat. 3627; Pub. L. 98–369, div. A, title I, §§ 54(b), 61(d), title VII, § 712(i)(1), July 18, 1984, 98 Stat. 569, 582, 948; Pub. L. 99–514, title VI, § 612(b)(1), title XVIII, § 1804(f)(2)(B), Oct. 22, 1986, 100 Stat. 2250, 2805; Pub. L. 100–203, title X, § 10222(b)(1), Dec. 22, 1987, 101 Stat. 1330–411; Pub. L. 100–647, title I, § 1006(e)(10)–(12), title II, § 2004(j)(3)(B), Nov. 10, 1988, 102 Stat. 3401, 3402, 3605; Pub. L. 108–27, title III, § 302(e)(2), May 28, 2003, 117 Stat. 763.)

AMENDMENT OF SECTION

For termination of amendment by section 303 of Pub. L. 108–27, see Effective and Termination Dates of 2003 Amendment note below.

AMENDMENTS

2003—Subsec. (f)(4). Pub. L. 108–27, §§ 302(e)(2), 303, temporarily added par. (4). See Effective and Termination Dates of 2003 Amendment note below.

1988—Subsec. (b)(1). Pub. L. 100–647, § 1006(e)(10), amended par. (1) generally. Prior to amendment, par. (1) contained subpars. (A) to (D) which provided what the amount of any distribution would be for noncorporate distributees, corporate distributees, certain corporate distributees of foreign corporations, and foreign corporate distributees.

Subsec. (d). Pub. L. 100–647, § 1006(e)(11), amended subsec. (d) generally. Prior to amendment, subsec. (d) contained pars. (1) to (4) which provided what the basis of property received would be for noncorporate distributees, corporate distributees, foreign corporate distributees, and certain corporate distributees of foreign corporations.

Subsec. (e). Pub. L. 100–647, § 2004(j)(3)(B), added par. (3) and redesignated former par. (3) as (4).

Pub. L. 100–647, § 1006(e)(12), redesignated subsec. (f) as (e) and struck out former subsec. (e) which related to special rule for holding period of appreciated property distributed to corporation.

Subsecs. (f), (g). Pub. L. 100–647, § 1006(e)(12), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

1987—Subsec. (f)(1). Pub. L. 100–203 substituted ''subsections (k) and (n)'' for ''subsection (n)''.

1986—Subsec. (f)(3). Pub. L. 99–514, § 1804(f)(2)(B), substituted ''this subsection'' for ''this section''.

Subsec. (g)(4). Pub. L. 99–514, § 612(b)(1), struck out par. (4) which provided: ''For partial exclusion from gross income of dividends received by individuals, see section 116.''

1984—Subsec. (e). Pub. L. 98–369, § 54(b), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (e)(2). Pub. L. 98–369, § 712(i)(1), substituted ''complete liquidation'' for ''partial or complete liquidation'' in subsec. (e)(2), which became subsec. (g)(2).

Subsec. (f). Pub. L. 98–369, § 61(d), added subsec. (f). Former subsec. (f) redesignated (g).

Pub. L. 98–369, § 54(b), redesignated former subsec. (e) as (f).

Subsec. (g). Pub. L. 98–369, §§ 54(b), 61(d), redesignated former subsec. (e) successively as subsec. (f) and as subsec. (g).

Subsec. (g)(2). Pub. L. 98–369, § 712(i)(1), substituted ''complete liquidation'' for ''partial or complete liquidation'' in subsec. (e)(2), which became subsec. (g)(2).

1978—Subsec. (b)(1)(B)(ii). Pub. L. 95–628, § 3(a), substituted ''amount of gain recognized to the distributing corporation on the distribution'' for ''amount of gain to the distributing corporation which is recognized under subsection (b), (c), or (d) of section 311, under section 341(f), or under section 617(d)(1), 1245(a), 1250(a), 1251(c), 1252(a), or 1254(a)''.

Subsec. (d)(2)(B). Pub. L. 95–628, § 3(b), substituted ''amount of gain recognized to the distributing corporation on the distribution'' for ''amount of gain to the distributing corporation which is recognized under subsection (b), (c), or (d) of section 311, under section 341(f), or under section 617(d)(1), 1245(a), 1250(a), 1251(c), 1252(a), or 1254(a)''.

1976—Subsec. (b)(1)(B)(ii). Pub. L. 94–455, § 205(c)(1)(B), substituted ''1252(a), or 1254(a)'' for ''or 1252(a)''.

Subsec. (b)(1)(C). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d)(2)(B). Pub. L. 94–455, § 205(c)(1)(C), substituted ''1252(a), or 1254(a)'' for ''or 1252(a)''.

Subsec. (e). Pub. L. 94–455, § 1901(a)(41), (b)(32)(A), redesignated subsec. (g) as (e). Former subsec. (e), which related to exceptions for certain distributions by personal service corporations, was struck out.

Subsec. (f). Pub. L. 94–455, § 1901(b)(32)(A), struck out subsec. (f) which related to special rules for distribution of antitrust stock to corporations.

Subsec. (g). Pub. L. 94–455, § 1901(b)(32)(A), redesignated subsec. (g) as (e).

1971—Subsec. (b)(1)(B). Pub. L. 92–178, § 312(a)(1), substituted ''corporation, unless subparagraph (D) applies'' for ''corporation'' where first appearing.

Subsec. (b)(1)(D). Pub. L. 92–178, § 312(a)(2), added subpar. (D).

Subsec. (d)(2). Pub. L. 92–178, § 312(a)(3), substituted ''corporation, unless paragraph (3) applies'' for ''corporation'' where first appearing.

Subsec. (d)(3), (4). Pub. L. 92–178, § 312(a)(4), added par. (3) and redesignated former par. (3) as (4).

1969—Subsec. (b)(1)(B)(ii). Pub. L. 91–172, §§211(b)(1), 905(b)(2), substituted ''1250(a), 1251(c), or 1252(a)'' for ''or 1250(a)'' and inserted reference to section 311(a).

Subsec. (d)(2)(B). Pub. L. 91–172, §§211(b)(2), 905(b)(2), substituted ''1250(a), 1251(c), or 1252(a)'', for ''or 1250(a)'' and inserted reference to section 311(a).

1966—Subsec. (b)(1)(B)(ii). Pub. L. 89–570 included reference to section 617(d)(1).

Subsec. (b)(1)(C). Pub. L. 89–809 substituted ''gross income which is effectively connected with the conduct of a trade or business within the United States'' for ''gross income from sources within the United States'' in cl. (i), ''gross income which is not effectively connected with the conduct of a trade or business within the United States'' for ''gross income from sources without the United States'' in cl. (ii), and inserted text following cl. (ii) setting out the treatment to be accorded gross income for any period before the first taxable year beginning after December 31, 1966.

Subsec. (d)(2)(B). Pub. L. 89–570 included reference to section 617(d)(1).

1964—Subsec. (b). Pub. L. 88–484 included amount of gain recognized under section 341(f).

Pub. L. 88–272 inserted reference to section 1250(a).

Subsec. (d). Pub. L. 88–484 included amount of gain recognized under section 341(f).

Pub. L. 88–272 inserted reference to section 1250(a).

1962—Subsec. (b)(1)(B). Pub. L. 87–834, §13(f)(2), substituted ''subsection (b) or (c) of section 311 or under section 1245(a)'' for ''subsection (b) or (c) of section 311''.

Subsec. (b)(1)(C). Pub. L. 87–834, §5(a), added subpar. (C).

Subsec. (d)(2). Pub. L. 87–834, §13(f)(2), substituted ''subsection (b) or (c) of section 311 or under section 1245(a)'' for ''subsection (b) or (c) of section 311''.

Subsec. (d)(3). Pub. L. 87–834, §5(b), added par. (3).

Subsecs. (f), (g). Pub. L. 87–403 added subsec. (f) and redesignated former subsec. (f) as (g).

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as a note under section 1 of this title.

Amendment by Pub. L. 108–27 inapplicable to taxable years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 303 of Pub. L. 108–27, as amended, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1006(e)(10)–(12) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 2004(j)(3)(B) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10222(b)(2) of Pub. L. 100–203, as amended by Pub. L. 100–647, title II, §2004(j)(4), Nov. 10, 1988, 102 Stat. 3605, provided that:

''(A) IN GENERAL.—The amendment made by paragraph (1) [amending this section] shall apply to distributions after December 15, 1987. For purposes of applying such amendment to any such distribution—

''(i) for purposes of determining earnings and profits, such amendment shall be deemed to be in effect for all periods whether before, on, or after December 15, 1987, but

''(ii) such amendment shall not affect the determination of whether any distribution on or before December 15, 1987, is a dividend and the amount of any reduction in accumulated earnings and profits on account of any such distribution.

''(B) EXCEPTION.—The amendment made by paragraph (1) shall not apply for purposes of determining gain or loss on any disposition of stock after December 15, 1987, and before January 1, 1989, if such disposition is pursuant to a written binding contract, governmental order, letter of intent or preliminary agreement, or stock acquisition agreement, in effect on or before December 15, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 612(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section and sections 584, 642, 643, 702, 854, and 857 of this title, repealing section 116 of this title, and enacting provisions set out as a note under section 584 of this title] shall apply to taxable years beginning after December 31, 1986.''

Amendment by section 1804(f)(2)(B) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 54(b) of Pub. L. 98–369 applicable to distributions after July 18, 1984, in taxable years ending after July 18, 1984, see section 54(d)(2) of Pub. L. 98–369, set out as a note under section 311 of this title.

Section 61(e)(4) of Pub. L. 98–369 provided that: ''The amendment made by subsection (d) [amending this section] shall apply to distributions after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.''

Amendment by section 712(i)(1) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 3(d) of Pub. L. 95–628 provided that: ''The amendments made by this section [amending this section and section 312 of this title] shall apply to distributions made after the date of the enactment of this Act [Nov. 10, 1978].''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 205(c)(1)(B), (C) of Pub. L. 94–455 effective for taxable years ending after Dec. 31, 1975, see section 205(e) of Pub. L. 94–455, set out as an Effective Date note under section 1254 of this title.

Amendment by section 1901(a)(41), (b)(32)(A) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 312(b) of Pub. L. 92–178 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to distributions made after November 8, 1971.''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 211(c) of Pub. L. 91–172 provided that: ''The amendments made by this section [enacting section 1251 of this title and amending this section and sections 312, 341, 453, and 751 of this title] shall apply to taxable years beginning after December 31, 1969.''

Amendment by section 905(b)(2) of Pub. L. 91–172 effective with respect to distributions made after Nov. 30, 1969, see section 905(c) of Pub. L. 91–172, set out as a note under section 311 of this title.

EFFECTIVE DATE OF 1966 AMENDMENTS

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

Amendment by Pub. L. 89–570 applicable to taxable years ending after Sept. 12, 1966, but only in respect of expenditures paid or incurred after such date, see section 3 of Pub. L. 89–570, set out as an Effective Date note under section 617 of this title.

EFFECTIVE DATE OF 1964 AMENDMENTS

Pub. L. 88–484, § 2, Aug. 22, 1964, 78 Stat. 597, provided that: ''The amendments made by the first section of this Act [amending this section and sections 312, 341, and 453 of this title] shall apply with respect to transactions after the date of the enactment of this Act [Aug. 22, 1964] in taxable years ending after such date.''

Amendment by Pub. L. 88–272 applicable to dispositions after Dec. 31, 1963, in taxable years ending after such date, see section 231(c) of Pub. L. 88–272, set out as an Effective Date note under section 1250 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Section 5(d) of Pub. L. 87–834 provided that: ''The amendments made by this section [amending this section and section 245 of this title] shall apply to distributions made after December 31, 1962.''

Amendment by section 13(f)(2) of Pub. L. 87–834 applicable to taxable years beginning after Dec. 31, 1962, see section 13(g) of Pub. L. 87–834, set out as an Effective Date note under section 1245 of this title.

Section 2(b) of Pub. L. 87–403 provided that: ''The amendments made by this section [amending this section] shall apply only with respect to distributions made after the date of the enactment of this Act [Feb. 2, 1962].''

STUDY OF CORPORATE PROVISIONS

Section 634 of Pub. L. 99–514 directed Secretary of the Treasury or his delegate to conduct a study of proposals to reform the provisions of subchapter C of chapter 1 of the Internal Revenue Code of 1986, and not later than Jan. 1, 1988 (due date extended to Jan. 1, 1992, by Pub. L. 101–508, title XI, § 11831(b), Nov. 5, 1990, 104 Stat. 1388–559), to submit to Committee on Ways and Means of House of Representatives and Committee on Finance of Senate a report on the study conducted (together with such recommendations he deemed advisable).

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 302. Distributions in redemption of stock

(a) General rule

If a corporation redeems its stock (within the meaning of section 317(b)), and if paragraph (1), (2), (3), (4), or (5) of subsection (b) applies, such redemption shall be treated as a distribution in part or full payment in exchange for the stock.

(b) Redemptions treated as exchanges

(1) Redemptions not equivalent to dividends

Subsection (a) shall apply if the redemption is not essentially equivalent to a dividend.

(2) Substantially disproportionate redemption of stock

(A) In general

Subsection (a) shall apply if the distribution is substantially disproportionate with respect to the shareholder.

(B) Limitation

This paragraph shall not apply unless immediately after the redemption the shareholder owns less than 50 percent of the total combined voting power of all classes of stock entitled to vote.

(C) Definitions

For purposes of this paragraph, the distribution is substantially disproportionate if—

(i) the ratio which the voting stock of the corporation owned by the shareholder immediately after the redemption bears to all of the voting stock of the corporation at such time,

is less than 80 percent of—

(ii) the ratio which the voting stock of the corporation owned by the shareholder immediately before the redemption bears to all of the voting stock of the corporation at such time.

For purposes of this paragraph, no distribution shall be treated as substantially disproportionate unless the shareholder's ownership of the common stock of the corporation (whether voting or nonvoting) after and before redemption also meets the 80 percent requirement of the preceding sentence. For purposes of the preceding sentence, if there is more than one class of common stock, the determinations shall be made by reference to fair market value.

(D) Series of redemptions

This paragraph shall not apply to any redemption made pursuant to a plan the purpose or effect of which is a series of redemptions resulting in a distribution which (in the aggregate) is not substantially disproportionate with respect to the shareholder.

(3) Termination of shareholder's interest

Subsection (a) shall apply if the redemption is in complete redemption of all of the stock of the corporation owned by the shareholder.

(4) Redemption from noncorporate shareholder in partial liquidation

Subsection (a) shall apply to a distribution if such distribution is—

(A) in redemption of stock held by a shareholder who is not a corporation, and

(B) in partial liquidation of the distributing corporation.

(5) Redemptions by certain regulated investment companies

Except to the extent provided in regulations prescribed by the Secretary, subsection (a) shall apply to any distribution in redemption of stock of a publicly offered regulated investment company (within the meaning of section 67(c)(2)(B)) if—

(A) such redemption is upon the demand of the stockholder, and

(B) such company issues only stock which is redeemable upon the demand of the stockholder.

(6) Application of paragraphs

In determining whether a redemption meets the requirements of paragraph (1), the fact that such redemption fails to meet the requirements of paragraph (2), (3), or (4) shall not be taken into account. If a redemption meets the requirements of paragraph (3) and also the requirements of paragraph (1), (2), or (4), then so much of subsection (c)(2) as would (but for this sentence) apply in respect of the acquisition of an interest in the corporation within the 10-year period beginning on the date of the distribution shall not apply.

(c) Constructive ownership of stock

(1) In general

Except as provided in paragraph (2) of this subsection, section 318(a) shall apply in determining the ownership of stock for purposes of this section.

(2) For determining termination of interest

(A) In the case of a distribution described in subsection (b)(3), section 318(a)(1) shall not apply if—

(i) immediately after the distribution the distributee has no interest in the corporation (including an interest as officer, director, or employee), other than an interest as a creditor,

(ii) the distributee does not acquire any such interest (other than stock acquired by bequest or inheritance) within 10 years from the date of such distribution, and

(iii) the distributee, at such time and in such manner as the Secretary by regulations prescribes, files an agreement to notify the Secretary of any acquisition described in clause (ii) and to retain such records as may be necessary for the application of this paragraph.

If the distributee acquires such an interest in the corporation (other than by bequest or inheritance) within 10 years from the date of the distribution, then the periods of limitation provided in sections 6501 and 6502 on the making of an assessment and the collection by levy or a proceeding in court shall, with respect to any deficiency (including interest and additions to the tax) resulting from such acquisition, include one year immediately following the date on which the distributee (in accordance with regulations prescribed by the Secretary) notifies the Secretary of such acquisition; and such assessment and collection may be made notwithstanding any provision of law or rule of law which otherwise would prevent such assessment and collection.

(B) Subparagraph (A) of this paragraph shall not apply if—

(i) any portion of the stock redeemed was acquired, directly or indirectly, within the 10-year period ending on the date of the distribution by the distributee from a person the ownership of whose stock would (at the time of distribution) be attributable to the distributee under section 318(a), or

(ii) any person owns (at the time of the distribution) stock the ownership of which is attributable to the distributee under section 318(a) and such person acquired any stock in the corporation, directly or indirectly, from the distributee within the 10-year period ending on the date of the distribution, unless such stock so acquired from the distributee is redeemed in the same transaction.

The preceding sentence shall not apply if the acquisition (or, in the case of clause (ii), the disposition) by the distributee did not have as one of its principal purposes the avoidance of Federal income tax.

(C) Special rule for waivers by entities

(i) In general

Subparagraph (A) shall not apply to a distribution to any entity unless—

(I) such entity and each related person meet the requirements of clauses (i), (ii), and (iii) of subparagraph (A), and

(II) each related person agrees to be jointly and severally liable for any deficiency (including interest and additions to tax) resulting from an acquisition described in clause (ii) of subparagraph (A).

In any case to which the preceding sentence applies, the second sentence of subparagraph (A) and subparagraph (B)(ii) shall be applied by substituting ''distributee or any related person'' for ''distributee'' each place it appears.

(ii) Definitions

For purposes of this subparagraph—

(I) the term ''entity'' means a partnership, estate, trust, or corporation; and

(II) the term ''related person'' means any person to whom ownership of stock in the corporation is (at the time of the distribution) attributable under section 318(a)(1) if such stock is further attributable to the entity under section 318(a)(3).

(d) Redemptions treated as distributions of property

Except as otherwise provided in this subchapter, if a corporation redeems its stock (within the meaning of section 317(b)), and if subsection (a) of this section does not apply, such redemption shall be treated as a distribution of property to which section 301 applies.

(e) Partial liquidation defined

(1) In general

For purposes of subsection (b)(4), a distribution shall be treated as in partial liquidation of a corporation if—

(A) the distribution is not essentially equivalent to a dividend (determined at the corporate level rather than at the shareholder level), and

(B) the distribution is pursuant to a plan and occurs within the taxable year in which

the plan is adopted or within the succeeding taxable year.

(2) Termination of business

The distributions which meet the requirements of paragraph (1)(A) shall include (but shall not be limited to) a distribution which meets the requirements of subparagraphs (A) and (B) of this paragraph:

(A) The distribution is attributable to the distributing corporation's ceasing to conduct, or consists of the assets of, a qualified trade or business.

(B) Immediately after the distribution, the distributing corporation is actively engaged in the conduct of a qualified trade or business.

(3) Qualified trade or business

For purposes of paragraph (2), the term ''qualified trade or business'' means any trade or business which—

(A) was actively conducted throughout the 5-year period ending on the date of the redemption, and

(B) was not acquired by the corporation within such period in a transaction in which gain or loss was recognized in whole or in part.

(4) Redemption may be pro rata

Whether or not a redemption meets the requirements of subparagraphs (A) and (B) of paragraph (2) shall be determined without regard to whether or not the redemption is pro rata with respect to all of the shareholders of the corporation.

(5) Treatment of certain pass-thru entities

For purposes of determining under subsection (b)(4) whether any stock is held by a shareholder who is not a corporation, any stock held by a partnership, estate, or trust shall be treated as if it were actually held proportionately by its partners or beneficiaries.

(f) Cross references

For special rules relating to redemption—

(1) Death Taxes.—Of stock to pay death taxes, see section 303.

(2) Section 306 Stock.—Of section 306 stock, see section 306.

(3) Liquidations.—Of stock in complete liquidation, see section 331.

(Aug. 16, 1954, ch. 736, 68A Stat. 85; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–589, § 5(b), Dec. 24, 1980, 94 Stat. 3405; Pub. L. 97–248, title II, §§ 222(c), 228(a), Sept. 3, 1982, 96 Stat. 478, 493; Pub. L. 98–369, div. A, title VII, § 712(i)(1), July 18, 1984, 98 Stat. 948; Pub. L. 111–325, title III, § 306(a), Dec. 22, 2010, 124 Stat. 3549.)

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–325, § 306(a)(2), substituted ''(4), or (5)'' for ''or (4)''.

Subsec. (b)(5), (6). Pub. L. 111–325, § 306(a)(1), added par. (5) and redesignated former par. (5) as (6).

1984—Subsec. (f)(3). Pub. L. 98–369 substituted ''complete liquidation'' for ''partial or complete liquidation''.

1982—Subsec. (a). Pub. L. 97–248, § 222(c)(3), substituted ''paragraph (1), (2), (3), or (4)'' for ''paragraph (1), (2), or (3)''.

Subsec. (b)(4), (5). Pub. L. 97–248, § 222(c)(1), (4), added par. (4), redesignated former par. (4) as (5) and substituted ''paragraph (2), (3), or (4)'' for ''paragraph (2) or (3)'' after ''to meet the requirements of'', and ''paragraph (1), (2), or (4)'' for ''paragraph (1) or (2)'' after ''and also the requirements of''.

Subsec. (c)(2)(C). Pub. L. 97–248, § 228(a), added subpar. (C).

Subsecs. (e), (f). Pub. L. 97–248, § 222(c)(2), added subsec. (e) and redesignated former subsec. (e) as (f).

1980—Subsec. (a). Pub. L. 96–589, § 5(b)(2)(A), struck out reference to par. (4) of subsec. (b).

Subsec. (b)(4), (5). Pub. L. 96–589, § 5(b)(1), (2)(B), redesignated par. (5) as (4) and struck out reference to par. (4) in two places. Former par. (4) was struck out.

1976—Subsec. (c)(2). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary'' wherever appearing.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–325 applicable to distributions after Dec. 22, 2010, see section 306(c) of Pub. L. 111–325, set out as a note under section 267 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT; PARTIAL LIQUIDATIONS

Section 228(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section]'' shall apply with respect to distributions after August 31, 1982, in taxable years ending after such date.''

Section 222(f) of Pub. L. 97–248, as amended by Pub. L. 97–448, title III, § 306(a)(6)(A), Jan. 12, 1983, 96 Stat. 2402; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 306, 312, 331, 334, 336, 341, 346, 543, and 562 of this title and repealing section 338 of this title] shall apply to distributions after August 31, 1982.

''(2) EXCEPTIONS.—

''(A) RULING REQUESTS.—The amendments made by this section shall not apply to distributions made by any corporation if—

''(i)(I) on July 22, 1982, there was a ruling request by such corporation pending with the Internal Revenue Service as to whether such distributions would qualify as a partial liquidation, or

''(II) within the period beginning on July 12, 1981, and ending on July 22, 1982, the Internal Revenue Service granted a ruling to such corporation that the distributions would qualify as a partial liquidation, and

''(ii) such distributions are pursuant to a plan of partial liquidation adopted before October 1, 1982 (or, if later, 90 days after the date on which the Internal Revenue Service granted a ruling pursuant to the request described in clause (i)(I)).

''(B) PLANS ADOPTED BEFORE JULY 23, 1982.—The amendments made by this section shall not apply to distributions made pursuant to a plan of partial liquidation adopted before July 23, 1982.

''(C) CONTROL ACQUIRED AFTER 1981 AND BEFORE JULY 23, 1982.—The amendments made by this section shall not apply to distributions made pursuant to a plan of partial liquidation adopted before October 1, 1982, where control of the corporation making the distributions was acquired after December 31, 1981, and before July 23, 1982.

''(D) TENDER OFFER OR BINDING CONTRACT OUTSTANDING ON JULY 22, 1982.—

''(i) IN GENERAL.—The amendments made by this section shall not apply to distributions made by a corporation if—

''(I) such distributions are pursuant to a plan of liquidation adopted before October 1, 1982, and

''(II) control of such corporation was acquired after July 22, 1982, pursuant to a tender offer or binding contract outstanding on such date.

''(ii) EXTENSION OF TIME FOR ADOPTING PLAN WHERE ACQUISITION SUBJECT TO FEDERAL REGULATORY APPROVAL.—If the acquisition described in clause (i)(II) is subject to approval by a Federal regulatory agency, clause (i) shall be applied by substituting for 'October 1, 1982' the date which is 90 days after the date on which approval by the Federal regulatory agency of such acquisition becomes final.

''(iii) SPECIAL RULE WHERE OFFER SUBJECT TO APPROVAL BY FOREIGN REGULATORY BODY.—In any case where an offer to acquire stock in a corporation was subject to intervention by a foreign regulatory body and a public announcement of such an offer resulted in the intervention by such foreign regulatory body before July 23, 1982—

''(I) such public announcement shall be treated as a tender offer, and

''(II) clause (i) shall be applied by substituting for 'October 1, 1982' the date which is 90 days after the date on which such regulatory body approves a public offer to acquire stock in such corporation.

''(iv) SPECIAL RULE WHERE ONE-THIRD OF SHARES ACQUIRED DURING MARCH AND APRIL 1982.—If—

''(I) one-third or more of the shares of a corporation were acquired by another corporation during March and April 1982, and

''(II) during March or April 1982, the acquiring corporation filed with the Federal Trade Commission notification of its intent to acquire control of the acquired corporation,

subclause (II) of clause (i) shall not apply with respect to distributions made by the acquired corporation.

''(E) INSURANCE COMPANIES.—The amendments made by this section shall not apply to distributions made by an insurance company pursuant to a plan of partial liquidation adopted before October 1, 1982, where control was acquired by the distributee or its parent after December 31, 1980, and before July 23, 1982, and the conduct of the insurance business by the distributee is conditioned on approval by a State regulatory authority.

For purposes of this paragraph, the term 'control' has the meaning given to such term by section 368(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], except that in applying such section both direct and indirect ownership of stock shall be taken into account.

''(3) APPROVAL OF PLAN BY BOARD OF DIRECTORS.—For purposes of—

''(A) paragraph (2), and

''(B) applying section 346(a)(2) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act) [Sept. 3, 1982] to distributions to which (but for paragraph (2)) the amendments made by this section would apply,

a plan of liquidation shall be treated as adopted when approved by the corporation's board of directors.

''(4) COORDINATION WITH AMENDMENTS MADE BY SECTION 224.—For purposes of section 338(e)(2)(C) of the Internal Revenue Code of 1986 (as added by section 224), any property acquired in a distribution to which the amendments made by this section do not apply by reason of paragraph (2) shall be treated as acquired before September 1, 1982.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 applicable to stock which is issued after Dec. 31, 1980, except as otherwise provided, see section 7(d)(2), (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

SAVINGS PROVISIONS

Applicability of subsec. (b)(1) to the determination of gross investment income under sections 4940 and 4948(a) of this title, see section 101(*l*)(8) of Pub. L. 91–172, set out as a note under section 4940 of this title.

§ 303. Distributions in redemption of stock to pay death taxes

(a) In general

A distribution of property to a shareholder by a corporation in redemption of part or all of the stock of such corporation which (for Federal estate tax purposes) is included in determining the gross estate of a decedent, to the extent that the amount of such distribution does not exceed the sum of—

(1) the estate, inheritance, legacy, and succession taxes (including any interest collected as a part of such taxes) imposed because of such decedent's death, and

(2) the amount of funeral and administration expenses allowable as deductions to the estate under section 2053 (or under section 2106 in the case of the estate of a decedent nonresident, not a citizen of the United States),

shall be treated as a distribution in full payment in exchange for the stock so redeemed.

(b) Limitations on application of subsection (a)

(1) Period for distribution

Subsection (a) shall apply only to amounts distributed after the death of the decedent and—

(A) within the period of limitations provided in section 6501(a) for the assessment of the Federal estate tax (determined without the application of any provision other than section 6501(a)), or within 90 days after the expiration of such period,

(B) if a petition for redetermination of a deficiency in such estate tax has been filed with the Tax Court within the time prescribed in section 6213, at any time before the expiration of 60 days after the decision of the Tax Court becomes final, or

(C) if an election has been made under section 6166 and if the time prescribed by this subparagraph expires at a later date than the time prescribed by subparagraph (B) of this paragraph, within the time determined under section 6166 for the payment of the installments.

(2) Relationship of stock to decedent's estate

(A) In general

Subsection (a) shall apply to a distribution by a corporation only if the value (for Federal estate tax purposes) of all of the stock of such corporation which is included in determining the value of the decedent's gross estate exceeds 35 percent of the excess of—

(i) the value of the gross estate of such decedent, over

(ii) the sum of the amounts allowable as a deduction under section 2053 or 2054.

(B) Special rule for stock of two or more corporations

For purposes of subparagraph (A), stock of 2 or more corporations, with respect to each of which there is included in determining the value of the decedent's gross estate 20 percent or more in value of the outstanding

stock, shall be treated as the stock of a single corporation. For purposes of the 20-percent requirement of the preceding sentence, stock which, at the decedent's death, represents the surviving spouse's interest in property held by the decedent and the surviving spouse as community property or as joint tenants, tenants by the entirety, or tenants in common shall be treated as having been included in determining the value of the decedent's gross estate.

(3) Relationship of shareholder to estate tax

Subsection (a) shall apply to a distribution by a corporation only to the extent that the interest of the shareholder is reduced directly (or through a binding obligation to contribute) by any payment of an amount described in paragraph (1) or (2) of subsection (a).

(4) Additional requirements for distributions made more than 4 years after decedent's death

In the case of amounts distributed more than 4 years after the date of the decedent's death, subsection (a) shall apply to a distribution by a corporation only to the extent of the lesser of—

(A) the aggregate of the amounts referred to in paragraph (1) or (2) of subsection (a) which remained unpaid immediately before the distribution, or

(B) the aggregate of the amounts referred to in paragraph (1) or (2) of subsection (a) which are paid during the 1-year period beginning on the date of such distribution.

(c) Stock with substituted basis

If—

(1) a shareholder owns stock of a corporation (referred to in this subsection as ''new stock'') the basis of which is determined by reference to the basis of stock of a corporation (referred to in this subsection as ''old stock''),

(2) the old stock was included (for Federal estate tax purposes) in determining the gross estate of a decedent, and

(3) subsection (a) would apply to a distribution of property to such shareholder in redemption of the old stock,

then, subject to the limitation specified in subsection (b), subsection (a) shall apply in respect of a distribution in redemption of the new stock.

(d) Special rules for generation-skipping transfers

Where stock in a corporation is the subject of a generation-skipping transfer (within the meaning of section 2611(a)) occurring at the same time as and as a result of the death of an individual—

(1) the stock shall be deemed to be included in the gross estate of such individual;

(2) taxes of the kind referred to in subsection (a)(1) which are imposed because of the generation-skipping transfer shall be treated as imposed because of such individual's death (and for this purpose the tax imposed by section 2601 shall be treated as an estate tax);

(3) the period of distribution shall be measured from the date of the generation-skipping transfer; and

(4) the relationship of stock to the decedent's estate shall be measured with reference solely to the amount of the generation-skipping transfer.

(Aug. 16, 1954, ch. 736, 68A Stat. 88; Pub. L. 94–455, title XX, §§ 2004(e), 2006(b)(4), Oct. 4, 1976, 90 Stat. 1871, 1889; Pub. L. 97–34, title IV, § 422(b), (e)(1), Aug. 13, 1981, 95 Stat. 314, 316; Pub. L. 99–514, title XIV, § 1432(b), Oct. 22, 1986, 100 Stat. 2730.)

AMENDMENTS

1986—Subsec. (d). Pub. L. 99–514 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''Under regulations prescribed by the Secretary, where stock in a corporation is subject to tax under section 2601 as a result of a generation-skipping transfer (within the meaning of section 2611(a)), which occurs at or after the death of the deemed transferor (within the meaning of section 2612)—

''(1) the stock shall be deemed to be included in the gross estate of the deemed transferor;

''(2) taxes of the kind referred to in subsection (a)(1) which are imposed because of the generation-skipping transfer shall be treated as imposed because of the deemed transferor's death (and for this purpose the tax imposed by section 2601 shall be treated as an estate tax);

''(3) the period of distribution shall be measured from the date of the generation-skipping transfer; and

''(4) the relationship of stock to the decedent's estate shall be measured with reference solely to the amount of the generation-skipping transfer.''

1981—Subsec. (b)(1)(C). Pub. L. 97–34, § 422(e)(1), struck out ''or 6166A'' after ''section 6166'' in two places.

Subsec. (b)(2)(A). Pub. L. 97–34, § 422(b)(1), substituted ''35'' for ''50'' before percent.

Subsec. (b)(2)(B). Pub. L. 97–34, § 422(b)(2), in heading, substituted ''stock in 2'' for ''stock of two'', in first sentence, struck out ''the 50 percent requirement'' before ''of subparagraph (A)'' and substituted ''2'' for ''two'' and ''20 percent or more in value'' for ''more than 75 percent in value'', and, in last sentence, substituted ''For purposes of the 20-percent requirement'' for ''For the purpose of the 75 percent requirement'' and, in determining value of decedent's gross estate, treated the estate as including stock which at decedent's death represented surviving spouse's interest in property held by the decedent and surviving spouse either as joint tenants, tenants by the entirety, or tenants in common.

1976—Subsec. (b)(1)(C). Pub. L. 94–455, § 2004(e)(1), added subpar. (C).

Subsec. (b)(2)(A). Pub. L. 94–455, § 2004(e)(2)(A), substituted provisions limiting the applicability of subsec. (a) to corporate distributions in which the value of the corporate stock included in decedent's gross estate exceeds 50 percent of the gross estate over deductions allowed under sections 2053 and 2054 for provisions limiting the applicability of subsec. (a) to corporate distributions in which the value of the corporate stock included in decedent's gross estate is either more than 35 percent of the gross estate or 50 percent of the taxable estate.

Subsec. (b)(2)(B). Pub. L. 94–455, § 2004(e)(2)(B), substituted ''the 50 percent requirement'' for ''the 35 percent and 50 percent requirements''.

Subsec. (b)(3), (4). Pub. L. 94–455, § 2004(e)(3), added pars. (3) and (4).

Subsec. (c). Pub. L. 94–455, § 2004(e)(4), substituted ''limitation specified in subsection (b)'' for ''limitation specified in subsection (b)(1)''.

Subsec. (d). Pub. L. 94–455, § 2006(b)(4), added subsec. (d).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to generation-skipping transfers (within the meaning of section

2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99–514, set out as an Effective Date note under section 2601 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to estates of decedents dying after Dec. 31, 1981, see section 422(f) of Pub. L. 97–34, set out as a note under section 6166 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 2004(e)(1)–(4) of Pub. L. 94–455 applicable to estates of decedents dying after Dec. 31, 1976, see section 2004(g) of Pub. L. 94–455, set out as an Effective Date note under section 6166 of this title.

For effective date of amendment by section 2006(b)(4) of Pub. L. 94–455, see section 2006(c) of Pub. L. 94–455, set out as an Effective Date note under section 2601 of this title.

§ 304. Redemption through use of related corporations

(a) Treatment of certain stock purchases

(1) Acquisition by related corporation (other than subsidiary)

For purposes of sections 302 and 303, if—

(A) one or more persons are in control of each of two corporations, and

(B) in return for property, one of the corporations acquires stock in the other corporation from the person (or persons) so in control,

then (unless paragraph (2) applies) such property shall be treated as a distribution in redemption of the stock of the corporation acquiring such stock. To the extent that such distribution is treated as a distribution to which section 301 applies, the transferor and the acquiring corporation shall be treated in the same manner as if the transferor had transferred the stock so acquired to the acquiring corporation in exchange for stock of the acquiring corporation in a transaction to which section 351(a) applies, and then the acquiring corporation had redeemed the stock it was treated as issuing in such transaction.

(2) Acquisition by subsidiary

For purposes of sections 302 and 303, if—

(A) in return for property, one corporation acquires from a shareholder of another corporation stock in such other corporation, and

(B) the issuing corporation controls the acquiring corporation,

then such property shall be treated as a distribution in redemption of the stock of the issuing corporation.

(b) Special rules for application of subsection (a)

(1) Rules for determinations under section 302(b)

In the case of any acquisition of stock to which subsection (a) of this section applies, determinations as to whether the acquisition is, by reason of section 302(b), to be treated as a distribution in part or full payment in exchange for the stock shall be made by reference to the stock of the issuing corporation. In applying section 318(a) (relating to constructive ownership of stock) with respect to section 302(b) for purposes of this paragraph, sections 318(a)(2)(C) and 318(a)(3)(C) shall be applied without regard to the 50 percent limitation contained therein.

(2) Amount constituting dividend

In the case of any acquisition of stock to which subsection (a) applies, the determination of the amount which is a dividend (and the source thereof) shall be made as if the property were distributed—

(A) by the acquiring corporation to the extent of its earnings and profits, and

(B) then by the issuing corporation to the extent of its earnings and profits.

(3) Coordination with section 351

(A) Property treated as received in redemption

Except as otherwise provided in this paragraph, subsection (a) (and not section 351 and not so much of sections 357 and 358 as relates to section 351) shall apply to any property received in a distribution described in subsection (a).

(B) Certain assumptions of liability, etc.

(i) In general

In the case of an acquisition described in section 351, subsection (a) shall not apply to any liability—

(I) assumed by the acquiring corporation, or

(II) to which the stock is subject,

if such liability was incurred by the transferor to acquire the stock. For purposes of the preceding sentence, the term ''stock'' means stock referred to in paragraph (1)(B) or (2)(A) of subsection (a).

(ii) Extension of obligations, etc.

For purposes of clause (i), an extension, renewal, or refinancing of a liability which meets the requirements of clause (i) shall be treated as meeting such requirements.

(iii) Clause (i) does not apply to stock acquired from related person except where complete termination

Clause (i) shall apply only to stock acquired by the transferor from a person—

(I) none of whose stock is attributable to the transferor under section 318(a) (other than paragraph (4) thereof), or

(II) who satisfies rules similar to the rules of section 302(c)(2) with respect to both the acquiring and the issuing corporations (determined as if such person were a distributee of each such corporation).

(C) Distributions incident to formation of bank holding companies

If—

(i) pursuant to a plan, control of a bank is acquired and within 2 years after the date on which such control is acquired, stock constituting control of such bank is transferred to a BHC in connection with its formation,

(ii) incident to the formation of the BHC there is a distribution of property described in subsection (a), and

(iii) the shareholders of the BHC who receive distributions of such property do not have control of such BHC,

then, subsection (a) shall not apply to any securities received by a qualified minority shareholder incident to the formation of such BHC. For purposes of this subparagraph, any assumption of (or acquisition of stock subject to) a liability under subparagraph (B) shall not be treated as a distribution of property.

(D) Definitions and special rule

For purposes of subparagraph (C) and this subparagraph—

(i) Qualified minority shareholder

The term ''qualified minority shareholder'' means any shareholder who owns less than 10 percent (in value) of the stock of the BHC. For purposes of the preceding sentence, the rules of paragraph (3) of subsection (c) shall apply.

(ii) BHC

The term ''BHC'' means a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956).

(iii) Special rule in case of BHC's formed before 1985

In the case of a BHC which is formed before 1985, clause (i) of subparagraph (C) shall not apply.

(4) Treatment of certain intragroup transactions

(A) In general

In the case of any transfer described in subsection (a) of stock from 1 member of an affiliated group to another member of such group, proper adjustments shall be made to—

(i) the adjusted basis of any intragroup stock, and

(ii) the earnings and profits of any member of such group,

to the extent necessary to carry out the purposes of this section.

(B) Definitions

For purposes of this paragraph—

(i) Affiliated group

The term ''affiliated group'' has the meaning given such term by section 1504(a).

(ii) Intragroup stock

The term ''intragroup stock'' means any stock which—

(I) is in a corporation which is a member of an affiliated group, and

(II) is held by another member of such group.

(5) Acquisitions by foreign corporations

(A) In general

In the case of any acquisition to which subsection (a) applies in which the acquiring corporation is a foreign corporation, the only earnings and profits taken into account under paragraph (2)(A) shall be those earnings and profits—

(i) which are attributable (under regulations prescribed by the Secretary) to stock of the acquiring corporation owned (within the meaning of section 958(a)) by a corporation or individual which is—

(I) a United States shareholder (within the meaning of section 951(b)) of the acquiring corporation, and

(II) the transferor or a person who bears a relationship to the transferor described in section 267(b) or 707(b), and

(ii) which were accumulated during the period or periods such stock was owned by such person while the acquiring corporation was a controlled foreign corporation.

(B) Special rule in case of foreign acquiring corporation

In the case of any acquisition to which subsection (a) applies in which the acquiring corporation is a foreign corporation, no earnings and profits shall be taken into account under paragraph (2)(A) (and subparagraph (A) shall not apply) if more than 50 percent of the dividends arising from such acquisition (determined without regard to this subparagraph) would neither—

(i) be subject to tax under this chapter for the taxable year in which the dividends arise, nor

(ii) be includible in the earnings and profits of a controlled foreign corporation (as defined in section 957 and without regard to section 953(c)).

(C) Regulations

The Secretary shall prescribe such regulations as are appropriate to carry out the purposes of this paragraph.

(6) Avoidance of multiple inclusions, etc.

In the case of any acquisition to which subsection (a) applies in which the acquiring corporation or the issuing corporation is a foreign corporation, the Secretary shall prescribe such regulations as are appropriate in order to eliminate a multiple inclusion of any item in income by reason of this subpart and to provide appropriate basis adjustments (including modifications to the application of sections 959 and 961).

(c) Control

(1) In general

For purposes of this section, control means the ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote, or at least 50 percent of the total value of shares of all classes of stock. If a person (or persons) is in control (within the meaning of the preceding sentence) of a corporation which in turn owns at least 50 percent of the total combined voting power of all stock entitled to vote of another corporation, or owns at least 50 percent of the total value of the shares of all classes of stock of another corporation, then such person (or persons) shall be treated as in control of such other corporation.

(2) Stock acquired in the transaction

For purposes of subsection (a)(1)—

(A) General rule

Where 1 or more persons in control of the issuing corporation transfer stock of such corporation in exchange for stock of the acquiring corporation, the stock of the acquiring corporation received shall be taken into account in determining whether such person or persons are in control of the acquiring corporation.

(B) Definition of control group

Where 2 or more persons in control of the issuing corporation transfer stock of such corporation to the acquiring corporation and, after the transfer, the transferors are in control of the acquiring corporation, the person or persons in control of each corporation shall include each of the persons who so transfer stock.

(3) Constructive ownership

(A) In general

Section 318(a) (relating to constructive ownership of stock) shall apply for purposes of determining control under this section.

(B) Modification of 50-percent limitations in section 318

For purposes of subparagraph (A)—

(i) paragraph (2)(C) of section 318(a) shall be applied by substituting ''5 percent'' for ''50 percent'', and

(ii) paragraph (3)(C) of section 318(a) shall be applied—

(I) by substituting ''5 percent'' for ''50 percent'', and

(II) in any case where such paragraph would not apply but for subclause (I), by considering a corporation as owning the stock (other than stock in such corporation) owned by or for any shareholder of such corporation in that proportion which the value of the stock which such shareholder owned in such corporation bears to the value of all stock in such corporation.

(Aug. 16, 1954, ch. 736, 68A Stat. 89; Pub. L. 88–554, §4(b)(1), Aug. 31, 1964, 78 Stat. 763; Pub. L. 97–248, title II, §226(a)(1)(A), (2), (3), Sept. 3, 1982, 96 Stat. 490, 491; Pub. L. 98–369, div. A, title VII, §712(*l*)(1)–(5)(A), July 18, 1984, 98 Stat. 953, 954; Pub. L. 99–514, title XVIII, §1875(b), Oct. 22, 1986, 100 Stat. 2894; Pub. L. 100–203, title X, §10223(c), Dec. 22, 1987, 101 Stat. 1330–411; Pub. L. 100–647, title II, §2004(k)(2), Nov. 10, 1988, 102 Stat. 3605; Pub. L. 105–34, title X, §1013(a), (c), Aug. 5, 1997, 111 Stat. 918; Pub. L. 105–206, title VI, §6010(d), July 22, 1998, 112 Stat. 814; Pub. L. 111–226, title II, §215(a), Aug. 10, 2010, 124 Stat. 2399.)

REFERENCES IN TEXT

Section 2(a) of the Bank Holding Company Act of 1956, referred to in subsec. (b)(3)(D)(ii), is classified to section 1841(a) of Title 12, Banks and Banking.

AMENDMENTS

2010—Subsec. (b)(5)(B), (C). Pub. L. 111–226 added subpar. (B) and redesignated former subpar. (B) as (C).

1998—Subsec. (b)(5)(B), (C). Pub. L. 105–206, §6010(d)(1), redesignated subpar. (C) as (B) and struck out heading and text of former subpar. (B). Text read as follows: ''For purposes of subparagraph (A), the rules of section 1248(d) shall apply except to the extent otherwise provided by the Secretary.''

Subsec. (b)(6). Pub. L. 105–206, §6010(d)(2), added par. (6).

1997—Subsec. (a)(1). Pub. L. 105–34, §1013(a), amended last sentence generally. Prior to amendment, last sentence read as follows: ''To the extent that such distribution is treated as a distribution to which section 301 applies, the stock so acquired shall be treated as having been transferred by the person from whom acquired, and as having been received by the corporation acquiring it, as a contribution to the capital of such corporation.''

Subsec. (b)(5). Pub. L. 105–34, §1013(c), added par. (5).

1988—Subsec. (b)(4)(A). Pub. L. 100–647 substituted ''stock from 1 member'' for ''stock of 1 member''.

1987—Subsec. (b)(4). Pub. L. 100–203 added par. (4).

1986—Subsec. (a)(1). Pub. L. 99–514 substituted ''To the extent that such distribution is treated as a distribution to which section 301 applies'' for ''In any such case'' in last sentence.

1984—Subsec. (b)(2). Pub. L. 98–369, §712(*l*)(1), consolidated former subpars. ''(A) Where subsection (a)(1) applies'' and ''(B) Where subsection (a)(2) applies'' in one paragraph, inserted provision respecting source of dividend, and incorporated in cls. (A) and (B) former subpar. (A) and (B) provisions which had required determination of amount which is a dividend to be made by reference to earnings and profits of the acquiring corporation and as if the property were distributed by the acquiring corporation to the issuing corporation and immediately thereafter distributed by the issuing corporation.

Subsec. (b)(3)(A). Pub. L. 98–369, §712(*l*)(2), substituted ''section 351 and not so much of sections 357 and 358 as relates to section 351'' for ''part III''.

Subsec. (b)(3)(B)(i). Pub. L. 98–369, §712(*l*)(3)(A)(i), substituted ''In the case of an acquisition described in section 351, subsection (a)'' for ''Subsection (a)''.

Subsec. (b)(3)(B)(iii). Pub. L. 98–369, §712(*l*)(3)(B), added cl. (iii).

Subsec. (b)(3)(C). Pub. L. 98–369, §712(*l*)(4), inserted following cl. (iii) ''For purposes of this subparagraph, any assumption of (or acquisition of stock subject to) a liability under subparagraph (B) shall not be treated as a distribution of property.''

Subsec. (c)(3). Pub. L. 98–369, §712(*l*)(5)(A), designated existing first sentence as subpar. ''(A) In general'' and substituted subpar. (B) for former second sentence which read ''For purposes of the preceding sentence, sections 318(a)(2)(C) and 318(a)(3)(C) shall be applied without regard to the 50 percent limitation contained therein.''

1982—Subsec. (b)(2)(A). Pub. L. 97–248, §226(a)(3), substituted ''as if the property were distributed by the issuing corporation to the acquiring corporation and immediately thereafter distributed by the acquiring corporation'' for ''soley by reference to the earnings and profits of the acquiring corporation'' after ''dividend shall be made''.

Subsec. (b)(3). Pub. L. 97–248, §226(a)(1)(A), added par. (3).

Subsec. (c)(2), (3). Pub. L. 97–248, §226(a)(2), added par. (2), redesignated former par. (2) as (3) and substituted ''this section'' for ''paragraph (1)'' after ''determining control under''.

1964—Subsecs. (b)(1), (c)(2). Pub. L. 88–554 inserted reference to section 318(a)(3)(C) of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–226, title II, §215(b), Aug. 10, 2010, 124 Stat. 2400, provided that: ''The amendments made by this section [amending this section] shall apply to acquisitions after the date of the enactment of this Act [Aug. 10, 2010].''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of

the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1013(d) of Pub. L. 105–34 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 1059 of this title] shall apply to distributions and acquisitions after June 8, 1997.

''(2) TRANSITION RULE.—The amendments made by this section shall not apply to any distribution or acquisition after June 8, 1997, if such distribution or acquisition is—

''(A) made pursuant to a written agreement which was binding on such date and at all times thereafter,

''(B) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

''(C) described in a public announcement or filing with the Securities and Exchange Commission on or before such date.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10223(d) of Pub. L. 100–203, as amended by Pub. L. 100–647, title II, § 2004(k)(3), (4), Nov. 10, 1988, 102 Stat. 3605, 3606, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 337 and 355 of this title] shall apply to distributions or transfers after December 15, 1987.

''(2) EXCEPTIONS.—

''(A) DISTRIBUTIONS.—The amendments made by this section shall not apply to any distribution after December 15, 1987, and before January 1, 1993, if—

''(i) 80 percent or more of the stock of the distributing corporation was acquired by the distributee before December 15, 1987, or

''(ii) 80 percent or more of the stock of the distributing corporation was acquired by the distributee before January 1, 1989, pursuant to a binding written contract or tender offer in effect on December 15, 1987.

For purposes of the preceding sentence, stock described in section 1504(a)(4) of the Internal Revenue Code of 1986 shall not be taken into account.

''(B) SECTION 304 TRANSFERS.—The amendment made by subsection (c) [amending this section] shall not apply to any transfer after December 15, 1987, and on or before March 31, 1988, if such transfer is—

''(i) between corporations which are members of the same affiliated group on December 15, 1987, or

''(ii) between corporations which become members of the same affiliated group pursuant to a binding written contract or tender offer in effect on December 15, 1987.

''(C) DISTRIBUTIONS COVERED BY PRIOR TRANSITION RULE.—The amendments made by this section shall not apply to any distribution to which the amendments made by subtitle D of title VI of the Tax Reform Act of 1986 [sections 631 to 634 of Pub. L. 99–514, see Tables for classification] do not apply.

''(D) TREATMENT OF CERTAIN MEMBERS OF AFFILIATED GROUP.—

''(i) IN GENERAL.—For purposes of subparagraph (A), all corporations which were in existence on the designated date and were members of the same affiliated group which included the distributees on such date shall be treated as 1 distributee.

''(ii) LIMITATION TO STOCK HELD ON DESIGNATED DATE.—Clause (i) shall not exempt any distribution from the amendments made by this section if such distribution is with respect to stock not held by the distributee (determined without regard to clause (i)) on the designated date directly or indirectly through a corporation which goes out of existence in the transaction.

''(iii) DESIGNATED DATE.—For purposes of this subparagraph, the term 'designated date' means the later of—

''(I) December 15, 1987, or

''(II) the date on which the acquisition meeting the requirements of subparagraph (A) occurred.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 712(*l*)(7) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by paragraphs (1) and (3) [amending this section] shall apply to stock acquired after June 18, 1984, in taxable years ending after such date.

''(B) ELECTION BY TAXPAYER TO HAVE AMENDMENTS APPLY EARLIER.—Any taxpayer may elect, at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe, to have the amendments made by paragraphs (1) and (3) apply as if included in section 226 of the Tax Equity and Fiscal Responsibility Act of 1982 [section 226 of Pub. L. 97–248, which amended this section and section 306 of this title and enacted Effective Date of 1982 Amendment note set out below].

''(C) SPECIAL RULE FOR CERTAIN TRANSFERS TO FORM BANK HOLDING COMPANY.—Except as provided in subparagraph (D), the amendments made by paragraphs (1) and (3) shall not apply to transfers pursuant to an application to form a BHC (as defined in section 304(b)(3)(D)(ii) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) filed with the Federal Reserve Board before June 18, 1984, if—

''(i) such BHC was formed not later than the 90th day after the date of the last required approval of any regulatory authority to form such BHC, and

''(ii) such BHC did not elect (at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe) not to have the provisions of this subparagraph apply.

''(D) AMENDMENTS TO APPLY TO CERTAIN LIABILITIES INCURRED BEFORE OCTOBER 20, 1983.—The amendment made by paragraph (3)(A) shall apply to the acquisition of any stock to the extent the liability assumed, or to which such stock is subject, was incurred by the transferor after October 20, 1983.''

Amendment by section 712(*l*)(2), (4), (5)(A) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 226(c) of Pub. L. 97–248 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 306 and 351 of this title] shall apply to transfers occurring after August 31, 1982, in taxable years ending after such date.

''(2) APPROVAL BY FEDERAL RESERVE BOARD.—The amendments made by this section shall not apply to transfers pursuant to an application to form a BHC filed with the Federal Reserve Board before August 16, 1982, if the BHC was formed not later than the later of—

''(A) the 90th day after the date of the last required approval of any regulatory authority to form such BHC, or

''(B) January 1, 1983.

For purposes of this paragraph, the term 'BHC' means a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956 [section 1841(a) of Title 12, Banks and Banking]).''

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–554 effective Aug. 31, 1964, except that for purposes of this section and section 302 of this title, such amendments shall not apply to distributions in payment for stock acquisitions or redemptions, if such acquisition or redemption occurred before Aug. 31, 1964, see section 4(c) of Pub. L. 88–554, set out as a note under section 318 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 305. Distributions of stock and stock rights

(a) General rule

Except as otherwise provided in this section, gross income does not include the amount of any distribution of the stock of a corporation made by such corporation to its shareholders with respect to its stock.

(b) Exceptions

Subsection (a) shall not apply to a distribution by a corporation of its stock, and the distribution shall be treated as a distribution of property to which section 301 applies—

(1) Distributions in lieu of money

If the distribution is, at the election of any of the shareholders (whether exercised before or after the declaration thereof), payable either—

(A) in its stock, or

(B) in property.

(2) Disproportionate distributions

If the distribution (or a series of distributions of which such distribution is one) has the result of—

(A) the receipt of property by some shareholders, and

(B) an increase in the proportionate interests of other shareholders in the assets or earnings and profits of the corporation.

(3) Distributions of common and preferred stock

If the distribution (or a series of distributions of which such distribution is one) has the result of—

(A) the receipt of preferred stock by some common shareholders, and

(B) the receipt of common stock by other common shareholders.

(4) Distributions on preferred stock

If the distribution is with respect to preferred stock, other than an increase in the conversion ratio of convertible preferred stock made solely to take account of a stock dividend or stock split with respect to the stock into which such convertible stock is convertible.

(5) Distributions of convertible preferred stock

If the distribution is of convertible preferred stock, unless it is established to the satisfaction of the Secretary that such distribution will not have the result described in paragraph (2).

(c) Certain transactions treated as distributions

For purposes of this section and section 301, the Secretary shall prescribe regulations under which a change in conversion ratio, a change in redemption price, a difference between redemption price and issue price, a redemption which is treated as a distribution to which section 301 applies, or any transaction (including a recapitalization) having a similar effect on the interest of any shareholder shall be treated as a distribution with respect to any shareholder whose proportionate interest in the earnings and profits or assets of the corporation is increased by such change, difference, redemption, or similar transaction. Regulations prescribed under the preceding sentence shall provide that—

(1) where the issuer of stock is required to redeem the stock at a specified time or the holder of stock has the option to require the issuer to redeem the stock, a redemption premium resulting from such requirement or option shall be treated as reasonable only if the amount of such premium does not exceed the amount determined under the principles of section 1273(a)(3),

(2) a redemption premium shall not fail to be treated as a distribution (or series of distributions) merely because the stock is callable, and

(3) in any case in which a redemption premium is treated as a distribution (or series of distributions), such premium shall be taken into account under principles similar to the principles of section 1272(a).

(d) Definitions

(1) Rights to acquire stock

For purposes of this section, the term ''stock'' includes rights to acquire such stock.

(2) Shareholders

For purposes of subsections (b) and (c), the term ''shareholder'' includes a holder of rights or of convertible securities.

(e) Treatment of purchaser of stripped preferred stock

(1) In general

If any person purchases after April 30, 1993, any stripped preferred stock, then such person, while holding such stock, shall include in gross income amounts equal to the amounts which would have been so includible if such stripped preferred stock were a bond issued on the purchase date and having original issue discount equal to the excess, if any, of—

(A) the redemption price for such stock, over

(B) the price at which such person purchased such stock.

The preceding sentence shall also apply in the case of any person whose basis in such stock is

determined by reference to the basis in the hands of such purchaser.

(2) Basis adjustments

Appropriate adjustments to basis shall be made for amounts includible in gross income under paragraph (1).

(3) Tax treatment of person stripping stock

If any person strips the rights to 1 or more dividends from any stock described in paragraph (5)(B) and after April 30, 1993, disposes of such dividend rights, for purposes of paragraph (1), such person shall be treated as having purchased the stripped preferred stock on the date of such disposition for a purchase price equal to such person's adjusted basis in such stripped preferred stock.

(4) Amounts treated as ordinary income

Any amount included in gross income under paragraph (1) shall be treated as ordinary income.

(5) Stripped preferred stock

For purposes of this subsection—

(A) In general

The term ''stripped preferred stock'' means any stock described in subparagraph (B) if there has been a separation in ownership between such stock and any dividend on such stock which has not become payable.

(B) Description of stock

Stock is described in this subsection if such stock—

(i) is limited and preferred as to dividends and does not participate in corporate growth to any significant extent, and

(ii) has a fixed redemption price.

(6) Purchase

For purposes of this subsection, the term ''purchase'' means—

(A) any acquisition of stock, where

(B) the basis of such stock is not determined in whole or in part by the reference to the adjusted basis of such stock in the hands of the person from whom acquired.

(7) Cross reference

For treatment of stripped interests in certain accounts or entities holding preferred stock, see section 1286(f).

(f) Cross references

For special rules—

(1) Relating to the receipt of stock and stock rights in corporate organizations and reorganizations, see part III (sec. 351 and following).

(2) In the case of a distribution which results in a gift, see section 2501 and following.

(3) In the case of a distribution which has the effect of the payment of compensation, see section 61(a)(1).

(Aug. 16, 1954, ch. 736, 68A Stat. 90; Pub. L. 91–172, title IV, § 421(a), Dec. 30, 1969, 83 Stat. 614; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–34, title III, § 321(a), (b), Aug. 13, 1981, 95 Stat. 287, 289; Pub. L. 97–448, title I, § 103(f), Jan. 12, 1983, 96 Stat. 2378; Pub. L. 101–508, title XI, §§ 11322(a), 11801(a)(17), (c)(7), Nov. 5, 1990, 104 Stat. 1388–463, 1388–521, 1388–524; Pub. L. 103–66, title XIII, § 13206(c)(1), Aug. 10, 1993, 107 Stat. 465; Pub. L. 108–357, title VIII, § 831(b), Oct. 22, 2004, 118 Stat. 1587.)

AMENDMENTS

2004—Subsec. (e)(7). Pub. L. 108–357 added par. (7).

1993—Subsecs. (e), (f). Pub. L. 103–66 added subsec. (e) and redesignated former subsec. (e) as (f).

1990—Subsec. (c). Pub. L. 101–508, § 11322(a), inserted sentence at end specifying the contents of regulations.

Subsec. (d)(1). Pub. L. 101–508, § 11801(c)(7)(A), struck out ''(other than subsection (e))'' after ''this section''.

Subsecs. (e), (f). Pub. L. 101–508, § 11801(a)(17), (c)(7)(B), redesignated subsec. (f) as (e) and struck out former subsec. (e) relating to dividend reinvestment in stock of public utilities.

1983—Subsec. (e)(3)(A). Pub. L. 97–448, § 103(f)(1), substituted ''placed in service qualified long-life public utility property having a cost equal to at least 60 percent of the aggregate cost of all tangible property described in subparagraph (A) or (B) of section 1245(a)(3) placed in service by the corporation during such period'' for ''acquired public utility recovery property having a cost equal to at least 60 percent of the aggregate cost of all tangible property described in section 1245(a)(3) (other than subparagraphs (C) and (D) thereof) acquired by the corporation during such period''.

Subsec. (e)(3)(C)(ii). Pub. L. 97–448, § 103(f)(2), substituted definition of ''qualified long-life public utility property'' for definition of ''public utility recovery property'' which had been defined as public utility property (within the meaning of section 167(*l*)(3)(A)) which was recovery property which was 10-year property or 15-year public utility property (within the meaning of section 168), except that any requirement that the property be placed in service after December 31, 1980, did not apply.

1981—Subsec. (d)(1). Pub. L. 97–34, § 321(b), inserted ''(other than subsection (e))'' after ''this section''.

Subsecs. (e), (f). Pub. L. 97–34, § 321(a), added subsec. (e) and redesignated former subsec. (e) as (f).

1976—Subsecs. (b)(5), (c). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1969—Subsec. (a). Pub. L. 91–172 substituted reference to this section for reference to subsec. (b), and omitted reference to rights to acquire its stock.

Subsec. (b). Pub. L. 91–172 omitted reference to rights to acquire its stock, in text preceding par. (1), redesignated former par. (2) as par. (1) and added pars. (2) to (5). Former par. (1), providing for the extent to which distribution of preference dividends were to be treated as distribution of property to which section 301 applied, was struck out.

Subsecs. (c) to (e). Pub. L. 91–172 added subsecs. (c) and (d) and redesignated former subsec. (c) as (e).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, § 831(c), Oct. 22, 2004, 118 Stat. 1587, provided that: ''The amendments made by this section [amending this section and section 1286 of this title] shall apply to purchases and dispositions after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective Apr. 30, 1993, see section 13206(c)(3) of Pub. L. 103–66 set out as a note under section 167 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11322(b) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to stock issued after October 9, 1990.

''(2) EXCEPTION.—The amendment made by subsection (a) shall not apply to any stock issued after October 9, 1990, if—

''(A) such stock is issued pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such issuance,

''(B) such stock is issued pursuant to a registration or offering statement filed on or before October 9, 1990, with a Federal or State agency regulating the offering or sale of securities and such stock is issued before the date 90 days after the date of such filing, or

''(C) such stock is issued pursuant to a plan filed on or before October 9, 1990, in a title 11 or similar case (as defined in section 368(a)(3)(A) of the Internal Revenue Code of 1986).''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 321(c) of Pub. L. 97–34 provided that: ''The amendments made by this section [amending this section] shall apply to distributions after December 31, 1981, in taxable years ending after such date.''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 421(b) of Pub. L. 91–172, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) Except as otherwise provided in this subsection, the amendment made by subsection (a) [amending this section] shall apply with respect to distributions (or deemed distributions) made after January 10, 1969, in taxable years ending after such date.

''(2)(A) Section 305(b)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) shall not apply to a distribution (or deemed distribution) of stock made before January 1, 1991, with respect to stock (i) outstanding on January 10, 1969, (ii) issued pursuant to a contract binding on January 10, 1969, on the distributing corporation, (iii) which is additional stock of that class of stock which (as of January 10, 1969) had the largest fair market value of all classes of stock of the corporation (taking into account only stock outstanding on January 10, 1969, or issued pursuant to a contract binding on January 10, 1969), (iv) described in subparagraph (C)(iii), or (v) issued in a prior distribution described in clause (i), (ii), (iii), or (iv).

''(B) Subparagraph (A) shall apply only if—

''(i) the stock as to which there is a receipt of property was outstanding on January 10, 1969 (or was issued pursuant to a contract binding on January 10, 1969, on the distributing corporation), and

''(ii) if such stock and any stock described in subparagraph (A)(i) were also outstanding on January 10, 1968, a distribution of property was made on or before January 10, 1969, with respect to such stock, and a distribution of stock was made on or before January 10, 1969, with respect to such stock described in subparagraph (A)(i).

''(C) Subparagraph (A) shall cease to apply when at any time after October 9, 1969, the distributing corporation issues any of its stock (other than in a distribution of stock with respect to stock of the same class) which is not—

''(i) nonconvertible preferred stock.

''(ii) additional stock of that class of stock which meets the requirements of subparagraph (A)(iii), or

''(iii) preferred stock which is convertible into stock which meets the requirements of subparagraph (A)(iii) at a fixed conversion ratio which takes account of all stock dividends and stock splits with respect to the stock into which such convertible stock is convertible.

''(D) For purposes of this paragraph, the term 'stock' includes rights to acquire such stock.

''(3) In cases to which Treasury Decision 6990 (promulgated January 10, 1969) would not have applied, in applying paragraphs (1) and (2) April 22, 1969, shall be substituted for January 10, 1969.

''(4) Section 305(b)(4) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall not apply to any distribution (or deemed distribution) with respect to preferred stock (including any increase in the conversion ratio of convertible stock) made before January 1, 1991, pursuant to the terms relating to the issuance of such stock which were in effect on January 10, 1969.

''(5) With respect to distributions made or considered as made after January 10, 1969, in taxable years ending after such date, to the extent that the amendment made by subsection (a) [amending this section] does not apply by reason of paragraph (2), (3), or (4) of this subsection, section 305 of the Internal Revenue Code of 1986 (as in effect before the amendment made by subsection (a)) shall continue to apply.''

SAVINGS PROVISION

For provisions that nothing in amendment by section 11801(a)(17), (c)(7) of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§ 306. Dispositions of certain stock

(a) General rule

If a shareholder sells or otherwise disposes of section 306 stock (as defined in subsection (c))—

(1) Dispositions other than redemptions

If such disposition is not a redemption (within the meaning of section 317(b))—

(A) The amount realized shall be treated as ordinary income. This subparagraph shall not apply to the extent that—

(i) the amount realized, exceeds

(ii) such stock's ratable share of the amount which would have been a dividend at the time of distribution if (in lieu of section 306 stock) the corporation had distributed money in an amount equal to the fair market value of the stock at the time of distribution.

(B) Any excess of the amount realized over the sum of—

(i) the amount treated under subparagraph (A) as ordinary income, plus

(ii) the adjusted basis of the stock,

shall be treated as gain from the sale of such stock.

(C) No loss shall be recognized.

(D) TREATMENT AS DIVIDEND.—For purposes of section 1(h)(11) and such other provisions as the Secretary may specify, any amount treated as ordinary income under this paragraph shall be treated as a dividend received from the corporation.

(2) Redemption

If the disposition is a redemption, the amount realized shall be treated as a distribution of property to which section 301 applies.

(b) Exceptions

Subsection (a) shall not apply—

(1) Termination of shareholder's interest, etc.

(A) Not in redemption

If the disposition—

(i) is not a redemption;

(ii) is not, directly or indirectly, to a person the ownership of whose stock would (under section 318(a)) be attributable to the shareholder; and

(iii) terminates the entire stock interest of the shareholder in the corporation (and for purposes of this clause, section 318(a) shall apply).

(B) In redemption

If the disposition is a redemption and paragraph (3) or (4) of section 302(b) applies.

(2) Liquidations

If the section 306 stock is redeemed in a distribution in complete liquidation to which part II (sec. 331 and following) applies.

(3) Where gain or loss is not recognized

To the extent that, under any provision of this subtitle, gain or loss to the shareholder is not recognized with respect to the disposition of the section 306 stock.

(4) Transactions not in avoidance

If it is established to the satisfaction of the Secretary—

(A) that the distribution, and the disposition or redemption, or

(B) in the case of a prior or simultaneous disposition (or redemption) of the stock with respect to which the section 306 stock disposed of (or redeemed) was issued, that the disposition (or redemption) of the section 306 stock,

was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax.

(c) Section 306 stock defined

(1) In general

For purposes of this subchapter, the term ''section 306 stock'' means stock which meets the requirements of subparagraph (A), (B), or (C) of this paragraph.

(A) Distributed to seller

Stock (other than common stock issued with respect to common stock) which was distributed to the shareholder selling or otherwise disposing of such stock if, by reason of section 305(a), any part of such distribution was not includible in the gross income of the shareholder.

(B) Received in a corporate reorganization or separation

Stock which is not common stock and—

(i) which was received, by the shareholder selling or otherwise disposing of such stock, in pursuance of a plan of reorganization (within the meaning of section 368(a)), or in a distribution or exchange to which section 355 (or so much of section 356 as relates to section 355) applied, and

(ii) with respect to the receipt of which gain or loss to the shareholder was to any extent not recognized by reason of part III, but only to the extent that either the effect of the transaction was substantially the same as the receipt of a stock dividend, or the stock was received in exchange for section 306 stock.

For purposes of this section, a receipt of stock to which the foregoing provisions of this subparagraph apply shall be treated as a distribution of stock.

(C) Stock having transferred or substituted basis

Except as otherwise provided in subparagraph (B), stock the basis of which (in the hands of the shareholder selling or otherwise disposing of such stock) is determined by reference to the basis (in the hands of such shareholder or any other person) of section 306 stock.

(2) Exception where no earnings and profits

For purposes of this section, the term ''section 306 stock'' does not include any stock no part of the distribution of which would have been a dividend at the time of the distribution if money had been distributed in lieu of the stock.

(3) Certain stock acquired in section 351 exchange

The term ''section 306 stock'' also includes any stock which is not common stock acquired in an exchange to which section 351 applied if receipt of money (in lieu of the stock) would have been treated as a dividend to any extent. Rules similar to the rules of section 304(b)(2) shall apply—

(A) for purposes of the preceding sentence, and

(B) for purposes of determining the application of this section to any subsequent disposition of stock which is section 306 stock by reason of an exchange described in the preceding sentence.

(4) Application of attribution rules for certain purposes

For purposes of paragraphs (1)(B)(ii) and (3), section 318(a) shall apply. For purposes of applying the preceding sentence to paragraph (3), the rules of section 304(c)(3)(B) shall apply.

(d) Stock rights

For purposes of this section—

(1) stock rights shall be treated as stock, and

(2) stock acquired through the exercise of stock rights shall be treated as stock distributed at the time of the distribution of the stock rights, to the extent of the fair market value of such rights at the time of the distribution.

(e) Convertible stock

For purposes of subsection (c)—

(1) if section 306 stock was issued with respect to common stock and later such section 306 stock is exchanged for common stock in the same corporation (whether or not such exchange is pursuant to a conversion privilege contained in the section 306 stock), then (except as provided in paragraph (2)) the common stock so received shall not be treated as section 306 stock; and

(2) common stock with respect to which there is a privilege of converting into stock other than common stock (or into property), whether or not the conversion privilege is contained in such stock, shall not be treated as common stock.

(f) Source of gain

The amount treated under subsection (a)(1)(A) as ordinary income shall, for purposes of part I of subchapter N (sec. 861 and following, relating to determination of sources of income), be treated as derived from the same source as would have been the source if money had been received from the corporation as a dividend at the time of the distribution of such stock. If under the preceding sentence such amount is determined to be derived from sources within the United States, such amount shall be considered to be fixed or determinable annual or periodical gains, profits, and income within the meaning of section 871(a) or section 881(a), as the case may be.

(g) Change in terms and conditions of stock

If a substantial change is made in the terms and conditions of any stock, then, for purposes of this section—

(1) the fair market value of such stock shall be the fair market value at the time of the distribution or at the time of such change, whichever such value is higher;

(2) such stock's ratable share of the amount which would have been a dividend if money had been distributed in lieu of stock shall be determined as of the time of distribution or as of the time of such change, whichever such ratable share is higher; and

(3) subsection (c)(2) shall not apply unless the stock meets the requirements of such subsection both at the time of such distribution and at the time of such change.

(Aug. 16, 1954, ch. 736, 68A Stat. 90; Pub. L. 94–455, title XIX, §§1901(b)(3)(J), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1793, 1834; Pub. L. 95–600, title VII, §702(a)(1), (2), Nov. 6, 1978, 92 Stat. 2925; Pub. L. 96–223, title IV, §401(a), Apr. 2, 1980, 94 Stat. 299; Pub. L. 97–248, title II, §§222(e)(1)(A), (2), 226(b), 227(a), Sept. 3, 1982, 96 Stat. 480, 492; Pub. L. 98–369, div. A, title VII, §712(i)(2), (*l*)(5)(B), (6), July 18, 1984, 98 Stat. 948, 954; Pub. L. 101–508, title XI, §11801(a)(18), Nov. 5, 1990, 104 Stat. 1388–521; Pub. L. 108–27, title III, §302(e)(3), May 28, 2003, 117 Stat. 763.)

AMENDMENT OF SECTION

For termination of amendment by section 303 of Pub. L. 108–27, see Effective and Termination Dates of 2003 Amendment note below.

AMENDMENTS

2003—Subsec. (a)(1)(D). Pub. L. 108–27, §§302(e)(3), 303, temporarily added subpar. (D). See Effective and Termination Dates of 2003 Amendment note below.

1990—Subsec. (h). Pub. L. 101–508 struck out subsec. (h) which related to stock received in distributions and reorganizations to which 1939 Code applied.

1984—Subsec. (b)(1). Pub. L. 98–369, §712(i)(2), substituted ''interest, etc.'' for ''interest'' in heading.

Subsec. (c)(3). Pub. L. 98–369, §712(*l*)(6), incorporated existing second sentence in provision designated subpar. (A) and added subpar. (B).

Subsec. (c)(4). Pub. L. 98–369, §712(*l*)(5)(B), substituted ''the rules of section 304(c)(3)(B) shall apply'' for ''sections 318(a)(2)(C) and 318(a)(3)(C) shall be applied without regard to the 50 percent limitation contained therein''.

1982—Subsec. (b)(1)(B). Pub. L. 97–248, §222(e)(2), substituted ''paragraph (3) or (4) of section 302(b)'' for ''section 302(b)(3)''.

Subsec. (b)(2). Pub. L. 97–248, §222(e)(1)(A), struck out ''partial or'' before ''complete liquidation''.

Subsec. (c)(3). Pub. L. 97–248, §226(b), added par. (3).

Subsec. (c)(4). Pub. L. 97–248, §227(a), added par. (4).

1980—Subsecs. (a)(3), (b)(5). Pub. L. 96–223 repealed the amendments made by Pub. L. 95–600, §702(a)(1), (2). See 1978 Amendment notes below.

1978—Subsec. (a)(3). Pub. L. 95–600, §702(a)(1), added par. (3) which related to ordinary income from the sale or redemption of section 306 stock which was carryover basis property adjusted for 1976 value. See Repeals note below.

Subsec. (b)(5). Pub. L. 95–600, §702(a)(2), added par. (5) which provided that subsec. (a) of this section shall not apply to the extent that section 303 applies to a distribution in redemption of section 306 stock. See Repeals note below.

1976—Subsec. (a)(1)(A), (B)(i). Pub. L. 94–455, §1901(b)(3)(J), substituted ''ordinary income'' for ''gain from the sale of property which is not a capital asset''.

Subsec. (b)(4). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (f). Pub. L. 94–455, §1901(b)(3)(J), substituted ''ordinary income'' for ''gain from the sale of property which is not a capital asset''.

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as a note under section 1 of this title.

Amendment by Pub. L. 108–27 inapplicable to taxable years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 303 of Pub. L. 108–27, as amended, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 222(e)(1)(A), (2) of Pub. L. 97–248 applicable to distributions after Aug. 31, 1982, with exceptions for certain partial liquidations, see section 222(f) of Pub. L. 97–248, set out as a note under section 302 of this title.

Amendment by section 226(b) of Pub. L. 97–248 applicable to transfers occurring after Aug. 31, 1982, except for certain transfers pursuant to an application to form a BHC filed with the Federal Reserve Board before Aug. 16, 1982, see section 226(c) of Pub. L. 97–248, set out as a note under section 304 of this title.

Section 227(c)(1) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to stock received after August 31, 1982, in taxable years ending after such date.''

EFFECTIVE DATE OF 1980 AMENDMENT AND REVIVAL OF PRIOR LAW

Amendment by Pub. L. 96–223 (repealing section 702(a)(1), (2) of Pub. L. 95–600 and the amendments made thereby, which had amended this section) applicable in respect of decedents dying after Dec. 31, 1976, and, except for certain elections, this title to be applied and administered as if those repealed provisions had not been enacted, see section 401(b), (e) of Pub. L. 96–223, set out as a note under section 1023 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 702(a)(3) of Pub. L. 95–600 provided that the amendments made by section 702(a) of Pub. L. 95–600 would apply to the estates of decedents dying after Dec. 31, 1979, prior to repeal by Pub. L. 96–223, title IV, §401(a), Apr. 2, 1980, 94 Stat. 299.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(3)(J) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

REPEALS

Pub. L. 95–600, § 702(a)(1), (2), cited as a credit to this section, and the amendments made thereby, were repealed by Pub. L. 96–223, title IV, § 401(a), Apr. 2, 1980, 94 Stat. 299, resulting in the text of this section reading as it read prior to enactment of section 702(a)(1), (2). See Effective Date of 1980 Amendment and Revival of Prior Law note above.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§ 307. Basis of stock and stock rights acquired in distributions

(a) General rule

If a shareholder in a corporation receives its stock or rights to acquire its stock (referred to in this subsection as ''new stock'') in a distribution to which section 305(a) applies, then the basis of such new stock and of the stock with respect to which it is distributed (referred to in this section as ''old stock''), respectively, shall, in the shareholder's hands, be determined by allocating between the old stock and the new stock the adjusted basis of the old stock. Such allocation shall be made under regulations prescribed by the Secretary.

(b) Exception for certain stock rights

(1) In general

If—

(A) a corporation distributes rights to acquire its stock to a shareholder in a distribution to which section 305(a) applies, and

(B) the fair market value of such rights at the time of the distribution is less than 15 percent of the fair market value of the old stock at such time,

then subsection (a) shall not apply and the basis of such rights shall be zero, unless the taxpayer elects under paragraph (2) of this subsection to determine the basis of the old stock and of the stock rights under the method of allocation provided in subsection (a).

(2) Election

The election referred to in paragraph (1) shall be made in the return filed within the time prescribed by law (including extensions thereof) for the taxable year in which such rights were received. Such election shall be made in such manner as the Secretary may by regulations prescribe, and shall be irrevocable when made.

(c) Cross reference

For basis of stock and stock rights distributed before June 22, 1954, see section 1052.

(Aug. 16, 1954, ch. 736, 68A Stat. 93; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsecs. (a), (b)(2). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

SUBPART B—EFFECTS ON CORPORATION

Sec.
311. Taxability of corporation on distribution.
312. Effect on earnings and profits.

§ 311. Taxability of corporation on distribution

(a) General rule

Except as provided in subsection (b), no gain or loss shall be recognized to a corporation on the distribution (not in complete liquidation) with respect to its stock of—

(1) its stock (or rights to acquire its stock), or

(2) property.

(b) Distributions of appreciated property

(1) In general

If—

(A) a corporation distributes property (other than an obligation of such corporation) to a shareholder in a distribution to which subpart A applies, and

(B) the fair market value of such property exceeds its adjusted basis (in the hands of the distributing corporation),

then gain shall be recognized to the distributing corporation as if such property were sold to the distributee at its fair market value.

(2) Treatment of liabilities

Rules similar to the rules of section 336(b) shall apply for purposes of this subsection.

(3) Special rule for certain distributions of partnership or trust interests

If the property distributed consists of an interest in a partnership or trust, the Secretary may by regulations provide that the amount of the gain recognized under paragraph (1) shall be computed without regard to any loss attributable to property contributed to the partnership or trust for the principal purpose of recognizing such loss on the distribution.

(Aug. 16, 1954, ch. 736, 68A Stat. 94; Pub. L. 91–172, title IX, § 905(a), (b)(1), Dec. 30, 1969, 83 Stat. 713, 714; Pub. L. 94–452, § 2(b), Oct. 2, 1976, 90 Stat. 1511; Pub. L. 94–455, title XIX, § 1901(a)(42)(A), (B)(i), (C), Oct. 4, 1976, 90 Stat. 1771; Pub. L. 95–600, title VII, § 703(j)(2)(A), (B), Nov. 6, 1978, 92 Stat. 2941; Pub. L. 96–471, § 2(b)(1), Oct. 19, 1980, 94 Stat. 2253; Pub. L. 97–248, title II, § 223(a), Sept. 3, 1982, 96 Stat. 483; Pub. L. 98–369, div. A, title I, § 54(a), title VII, § 712(j), July 18, 1984, 98 Stat. 568, 948; Pub. L. 99–514, title VI, § 631(c), Oct. 22, 1986, 100 Stat. 2272; Pub. L. 100–647, title I, §§ 1006(e)(8)(B), (21)(B), 1018(d)(5)(E), Nov. 10, 1988, 102 Stat. 3401, 3403, 3580.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–647, § 1018(d)(5)(E), substituted ''distribution (not in complete liquidation) with respect to its stock'' for ''distribution, with respect to its stock,''.

Subsec. (b)(2). Pub. L. 100–647, § 1006(e)(21)(B), substituted ''liabilities'' for ''liabilities in excess of basis'' in heading.

Subsec. (b)(3). Pub. L. 100–647, § 1006(e)(8)(B), added par. (3).

1986—Pub. L. 99–514 amended section generally, substituting provisions relating to distributions of appreciated property for provisions relating to LIFO inventory, liability in excess of basis, and appreciated property used to redeem stock.

1984—Subsec. (d). Pub. L. 98–369, § 54(a)(3), substituted ''Distributions of appreciated property'' for ''Appreciated property used to redeem stock'' in heading.

Subsec. (d)(1). Pub. L. 98–369, § 54(a)(1), substituted ''This subsection shall be applied after the applications of subsections (b) and (c)'' for ''Subsections (b) and (c) shall not apply to any distribution to which this subsection applies'' in provisions following subpar. (B).

Subsec. (d)(1)(A). Pub. L. 98–369, § 54(a)(1), struck out ''of part or all of his stock in such corporation'' before ''and''.

Subsec. (d)(2)(A). Pub. L. 98–369, § 54(a)(2)(A), substituted provisions relating to a distribution which is made with respect to qualified stock if section 302(b)(4) applies to such distribution or such distribution is a qualified distribution for provisions which had related to a distribution to a corporate shareholder if the basis of the property distributed was determined under section 301(d)(2).

Subsec. (d)(2)(B) to (F). Pub. L. 98–369, § 54(a)(2)(A), (B), redesignated subpars. (C) to (F) as (B) to (E), respectively, and struck out former subpar. (B) which related to distributions to which section 302(b)(4) applied and which were made with respect to qualified stock.

Subsec. (e)(1)(C). Pub. L. 98–369, § 712(j), added subpar. (C).

Subsec. (e)(3). Pub. L. 98–369, § 54(a)(2)(C), added par. (3).

1982—Subsec. (d)(2)(A). Pub. L. 97–248, § 223(a)(1), substituted reference to a distribution to a corporate shareholder if the basis of the property distributed is determined under section 301(d)(2) for reference to a distribution in complete redemption of all of the stock of a shareholder who, at all times within the 12-month period ending on the date of such distribution owned at least 10 percent in value of the outstanding stock of the distributing corporation, but only if the redemption qualified under section 302(b)(3) (determined without the application of section 302(c)(2)(A)(ii)).

Subsec. (d)(2)(B). Pub. L. 97–248, § 223(a)(1), substituted reference to a distribution to which section 302(b)(4) applies and which is made with respect to qualified stock for reference to a distribution of stock or an obligation of a corporation, which was engaged in at least one trade or business, which had not received property constituting a substantial part of its assets from the distributing corporation, in a transaction to which section 351 applied or as a contribution to capital, within the 5-year period ending on the date of the distribution, and at least 50 percent in value of the outstanding stock of which was owned by the distributing corporation at any time within the 9-year period ending one year before the date of the distribution.

Subsec. (d)(2)(C). Pub. L. 97–248, § 223(a)(1), substituted reference to a distribution of stock or an obligation of a corporation if the requirements of subsec. (e)(2) of this section are met with respect to the distribution for reference to a distribution of stock or securities pursuant to the terms of a final judgment rendered by a court with respect to the distributing corporation in a court proceeding under the Sherman Act (15 U.S.C. 1–7) or the Clayton Act (15 U.S.C. 12–27), or both, to which the United States was a party, but only if the distribution of such stock or securities in redemption of the distributing corporation's stock was in furtherance of the purposes of the judgment.

Subsec. (d)(2)(G). Pub. L. 97–248, § 223(a)(3), struck out subpar. (G) which provided that a distribution of stock to a distributee which is not an organization exempt from tax under section 501(a) of this title, if with respect to such distributee, subsec. (a)(1) or (b)(1) of section 1101 of this title applied to such distribution.

Subsec. (e). Pub. L. 97–248, § 223(a)(2), added subsec. (e).

1980—Subsec. (a). Pub. L. 96–471 substituted ''section 453B'' for ''Section 453(d)''.

1978—Subsec. (d)(2)(G), (H). Pub. L. 95–600 redesignated subpar. (H) as (G).

1976—Subsec. (d)(1)(B). Pub. L. 94–455, § 1901(a) (42)(A), substituted ''then a gain shall be recognized'' for ''then again shall be recognized''.

Subsec. (d)(2). Pub. L. 94–452 and Pub. L. 94–455 § 1901(a)(42)(B)(i), (C), struck out subpar. (C) relating to certain distributions before Dec. 1, 1974, struck out ''26 Stat. 209;'' before ''15 U.S.C. 1–7)'' and ''38 Stat. 730;'' before ''15 U.S.C. 12–27)'' in subpar. (D), added subpar. (H), and redesignated subpars. (D) to (G), as so amended, as subpars. (C) to (F), respectively.

1969—Subsec. (a). Pub. L. 91–172, § 905(b)(1), inserted reference to subsec. (d).

Subsec. (d). Pub. L. 91–172, § 905(a), added subsec. (d).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 54(d) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, title XVIII, § 1804(b)(3), Oct. 22, 1986, 100 Stat. 2095, 2799; Pub. L. 100–647, title I, § 1018(d)(1)–(3), Nov. 10, 1988, 102 Stat. 3578, provided that:

''(1) SUBSECTION (a).—Except as otherwise provided in this subsection, the amendments made by subsection (a) [amending this section] shall apply to distributions declared on or after June 14, 1984, in taxable years ending after such date.

''(2) SUBSECTION (b).—The amendment made by subsection (b) [amending section 301 of this title] shall apply to distributions after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

''(3) EXCEPTION FOR DISTRIBUTIONS BEFORE JANUARY 1, 1985, TO 80-PERCENT CORPORATE SHAREHOLDERS.—

''(A) IN GENERAL.—The amendments made by subsection (a) shall not apply to any distribution before January 1, 1985, to an 80-percent corporate shareholder if the basis of the property distributed is determined under section 301(d)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

''(B) 80-PERCENT CORPORATE SHAREHOLDER.—The term '80-percent corporate shareholder' means, with respect to any distribution, any corporation which owns—

''(i) stock in the corporation making the distribution possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote, and

''(ii) at least 80 percent of the total number of shares of all other classes of stock of the distributing corporation (except nonvoting stock which is limited and preferred as to dividends).

''(C) SPECIAL RULE FOR AFFILIATED GROUP FILING CONSOLIDATED RETURN.—For purposes of this paragraph and paragraph (4), all members of the same affiliated group (as defined in section 1504 of the Internal Revenue Code of 1986) which file a consolidated return for the taxable year which includes the date of the distribution shall be treated as 1 corporation.

''(D) SPECIAL RULE FOR CERTAIN DISTRIBUTIONS BEFORE JANUARY 1, 1988.—

''(i) IN GENERAL.—In the case of a transaction to which this subparagraph applies, subparagraph (A) shall be applied by substituting '1988' for '1985' and the amendments made by subtitle D of title VI of the Tax Reform Act of 1986 [sections 631 to 634 of Pub. L. 99–514, enacting sections 336 and 337 of this title, amending this section and sections 26, 312, 332, 334, 338, 341, 346, 367, 453, 453B, 467, 852, 897, 1056, 1248, 1255, 1276, 1363, 1366, 1374, and 1375 of this title, repealing sections 333, 336, and 337 of this title, and enacting provisions set out as a note under section 301 of this title] shall not apply.

''(ii) TRANSACTION TO WHICH SUBPARAGAPH [sic] APPLIES.—This subparagraph appies [applies] to a transaction in which a Delaware corporation which was incorporated on May 31, 1927, and which was acquired by the transferee on December 10, 1968, transfers to the transferee stock in a corporation—

''(I) with respect to which such Delaware corporation is a 100-percent corporate shareholder, and

''(II) which is a Tennessee corporation which was incorporated on March 2, 1978,, [sic] and which is a successor to an Indiana corporation which was incorporated on June 28, 1946, and acquired by the transferee on December 9 [10], 1968.

''(4) EXCEPTION FOR CERTAIN DISTRIBUTIONS WHERE TENDER OFFER COMMENCED ON MAY 23, 1984.—

''(A) IN GENERAL.—The amendments made by subsection (a) shall not apply to any distribution made before September 1, 1986, if—

''(i) such distribution consists of qualified stock held (directly or indirectly) on June 15, 1984, by the distributing corporation,

''(ii) control of the distributing corporation (as defined in section 368(c) of the Internal Revenue Code of 1986) is acquired other than in a tax-free transaction after January 1, 1984, but before January 1, 1985,

''(iii) a tender offer for the shares of the distributing corporation was commenced on May 23, 1984, and was amended on May 24, 1984, and

''(iv) the distributing corporation and the distributee corporation are members of the same affiliated group (as defined in section 1504 of such Code) which filed a consolidated return for the taxable year which includes the date of the distribution.

If the common parent of any affiliated group filing a consolidated return meets the requirements of clauses (ii) and (iii), each other member of such group shall be treated as meeting such requirements.

''(B) QUALIFIED STOCK.—For purposes of subparagraph (A), the term 'qualified stock' means any stock in a corporation which on June 15, 1984, was a member of the same affiliated group as the distributing corporation and which filed a consolidated return with the distributing corporation for the taxable year which included June 15, 1984.

''(5) EXCEPTION FOR CERTAIN DISTRIBUTIONS.—

''(A) IN GENERAL.—The amendments made by this section [amending this section and sections 301 and 1223 of this title] shall not apply to distributions before February 1, 1986, if—

''(i) the distribution consists of property held on March 7, 1984 (or property acquired thereafter in the ordinary course of a trade or business) by—

''(I) the controlled corporation, or

''(II) any subsidiary controlled corporation,

''(ii) a group of 1 or more shareholders (acting in concert)—

''(I) acquired, during the 1-year period ending on February 1, 1984, at least 10 percent of the outstanding stock of the controlled corporation,

''(II) held at least 10 percent of the outstanding stock of the common parent on February 1, 1984, and

''(III) submitted a proposal for distributions of interests in a royalty trust from the common parent or the controlled corporation, and

''(iii) the common parent acquired control of the controlled corporation during the 1-year period ending on February 1, 1984.

''(B) DEFINITIONS.—For purposes of this paragraph—

''(i) The term 'common parent' has the meaning given such term by section 1504(a) of the Internal Revenue Code of 1986.

''(ii) The term 'controlled corporation' means a corporation with respect to which 50 percent or more of the outstanding stock of its common parent is tendered for pursuant to a tender offer outstanding on March 7, 1984.

''(iii) The term 'subsidiary controlled corporation' means any corporation with respect to which the controlled corporation has control (within the meaning of section 368(c) of such Code) on March 7, 1984.

''(6) EXCEPTION FOR CERTAIN DISTRIBUTION OF PARTNERSHIP INTERESTS.—The amendments made by this section shall not apply to any distribution before February 1, 1986, of an interest in a partnership the interests of which were being traded on a national securities exchange on March 7, 1984, if—

''(A) such interest was owned by the distributing corporation (or any member of an affiliated group within the meaning of section 1504(a) of such Code of which the distributing corporation was a member) on March 7, 1984,

''(B) the distributing corporation (or any such affiliated member) owned more than 80 percent of the interests in such partnership on March 7, 1984, and

''(C) more than 10 percent of the interests in such partnership was offered for sale to the public during the 1-year period ending on March 7, 1984.''

Amendment by section 712(j) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENTS; EXCEPTIONS

Section 223(b) of Pub. L. 97–248, as amended by Pub. L. 97–448, title III, § 306(a)(7), Jan. 12, 1983, 96 Stat. 2402; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section] shall apply to distributions after August 31, 1982.

''(2) DISTRIBUTIONS PURSUANT TO RULING REQUESTS BEFORE JULY 23, 1982.—In the case of a ruling request under section 311(d)(2)(A) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect before the amendments made by this section) made before July 23, 1982, the amendments made by this section [amending this section] shall not apply to distributions made—

''(A) pursuant to a ruling granted pursuant to such request, and

''(B) either before October 21, 1982, or within 90 days after the date of such ruling.

''(3) DISTRIBUTIONS PURSUANT TO FINAL JUDGMENTS OF COURT.—In the case of a final judgment described in section 311(d)(2)(C) of such Code (as in effect before the amendments made by this section) rendered before July 23, 1982, the amendments made by this section [amending this section] shall not apply to distributions made before January 1, 1986, pursuant to such judgment.

''(4) CERTAIN DISTRIBUTIONS WITH RESPECT TO STOCK ACQUIRED BEFORE MAY 1982.—The amendments made by this section [amending this section] shall not apply to distributions—

''(A) which meet the requirements of section 311(d)(2)(A) of such Code (as in effect on the day before the date of the enactment of this Act [Sept. 3, 1982]),

''(B) which are made on or before August 31, 1983, and

''(C) which are made with respect to stock acquired after 1980 and before May 1982.

''(5) DISTRIBUTIONS OF TIMBERLAND WITH RESPECT TO STOCK OF FOREST PRODUCTS COMPANY.—If—

''(A) a forest products company distributes timberland to a shareholder in redemption of the common and preferred stock in such corporation held by such shareholder,

''(B) section 311(d)(2)(A) of the Internal Revenue Code of 1986 (as in effect before the amendments made by this section) would have applied to such distributions, and

''(C) such distributions are made pursuant to 1 of 2 options contained in a contract between such company and such shareholder which is binding on August 31, 1982, and at all times thereafter,

then such distributions of timberland having an aggregate fair market value on August 31, 1982, not in excess of $10,000,000 shall be treated as distributions to which section 311(d)(2)(A) of such Code (as in effect before the date of the enactment of this Act [Sept. 3, 1982] applies.''

EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96–471, see section 6(a)(1) of Pub. L. 96–471, set out as an Effective Date note under section 453 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 703(j)(2)(C) of Pub. L. 95–600 provided that: ''The amendments made by this paragraph [amending this section] shall take effect as if included in section 2(b) of the Bank Holding Company Tax Act of 1976 [amending this section].''

EFFECTIVE DATE OF 1976 AMENDMENTS

Amendment by section 1901(a)(42)(A), (C) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Section 1901(a)(42)(B)(ii) of Pub. L. 94–455 provided that: ''The amendments made by clause (i) [amending this section] shall apply only with respect to distributions after November 30, 1974.''

Section 2(d)(4) of Pub. L. 94–452 provided that: ''The amendment made by subsection (b) [amending this section] shall take effect on October 1, 1977, with respect to distributions after December 31, 1975, in taxable years ending after December 31, 1975.''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 905(c) of Pub. L. 91–172, as amended by Pub. L. 91–675, Jan. 12, 1971, 84 Stat. 2059, provided that:

''(1) Except as provided in paragraphs (2), (3), (4), and (5), the amendments made by subsections (a) and (b) [amending this section and sections 301 and 312 of this title] shall apply with respect to distributions after November 30, 1969.

''(2) The amendments made by subsections (a) and (b) shall not apply to a distribution before April 1, 1970, pursuant to the terms of—

''(A) a written contract which was binding on the distributing corporation on November 30, 1969, and at all times thereafter before the distribution,

''(B) an offer made by the distributing corporation before December 1, 1969,

''(C) an offer made in accordance with a request for a ruling filed by the distributing corporation with the Internal Revenue Service before December 1, 1969, or

''(D) an offer made in accordance with a registration statement filed with the Securities and Exchange Commission before December 1, 1969.

For purposes of subparagraphs (B), (C), and (D), an offer shall be treated as an offer only if it was in writing and not revocable by its express terms.

''(3) The amendments made by subsections (a) and (b) shall not apply to a distribution by a corporation of specific property in redemption of stock outstanding on November 30, 1969, if—

''(A) every holder of such stock on such date had the right to demand redemption of his stock in such specific property, and

''(B) the corporation had such specific property on hand on such date in a quantity sufficient to redeem all of such stock.

For purposes of the preceding sentence, stock shall be considered to have been outstanding on November 30, 1969, if it could have been acquired on such date through the exercise of an existing right of conversion contained in other stock held on such date.

''(4) The amendments made by subsections (a) and (b) shall not apply to a distribution by a corporation of property (held on December 1, 1969, by the distributing corporation or a corporation which was a wholly owned subsidiary of the distributing corporation on such date) in redemption of stock outstanding on November 30, 1969, which is redeemed and canceled before July 31, 1971, if—

''(A) such redemption is pursuant to a resolution adopted before November 1, 1969, by the Board of Directors authorizing the redemption of a specific amount of stock constituting more than 10 percent of the outstanding stock of the corporation at the time of the adoption of such resolution; and

''(B) more than 40 percent of the stock authorized to be redeemed pursuant to such resolution was redeemed before December 30, 1969, and more than one-half of the stock so redeemed was redeemed with property other than money.

''(5) The amendments made by subsections (a) and (b) shall not apply to a distribution of stock, by a corporation organized prior to December 1, 1969, for the principal purpose of providing an equity participation plan for employees of the corporation whose stock is being distributed (hereinafter referred to as the 'employer corporation') if—

''(A) the stock being distributed was owned by the distributing corporation on November 30, 1969,

''(B) the stock being redeemed was acquired before January 1, 1973, pursuant to such equity participation plan by the shareholder presenting such stock for redemption (or by a predecessor of such shareholder),

''(C) the employment of the shareholder presenting the stock for redemption (or the predecessor of such shareholder) by the employer corporation commenced before January 1, 1971,

''(D) at least 90 percent in value of the assets of the distributing corporation on November 30, 1969, consisted of common stock of the employer corporation, and

''(E) at least 50 percent of the outstanding voting stock of the employer corporation is owned by the distributing corporation at any time within the nine-year period ending one year before the date of such distribution.''

§ 312. Effect on earnings and profits

(a) General rule

Except as otherwise provided in this section, on the distribution of property by a corporation with respect to its stock, the earnings and profits of the corporation (to the extent thereof) shall be decreased by the sum of—

(1) the amount of money,

(2) the principal amount of the obligations of such corporation (or, in the case of obligations having original issue discount, the aggregate issue price of such obligations), and

(3) the adjusted basis of the other property, so distributed.

(b) Distributions of appreciated property

On the distribution by a corporation, with respect to its stock, of any property (other than an obligation of such corporation) the fair market value of which exceeds the adjusted basis thereof—

(1) the earnings and profits of the corporation shall be increased by the amount of such excess, and

(2) subsection (a)(3) shall be applied by substituting ''fair market value'' for ''adjusted basis''.

For purposes of this subsection and subsection (a), the adjusted basis of any property is its adjusted basis as determined for purposes of computing earnings and profits.

(c) Adjustments for liabilities

In making the adjustments to the earnings and profits of a corporation under subsection (a) or (b), proper adjustment shall be made for—

(1) the amount of any liability to which the property distributed is subject, and

(2) the amount of any liability of the corporation assumed by a shareholder in connection with the distribution.

(d) Certain distributions of stock and securities

(1) In general

The distribution to a distributee by or on behalf of a corporation of its stock or securities, of stock or securities in another corporation, or of property, in a distribution to which this title applies, shall not be considered a distribution of the earnings and profits of any corporation—

(A) if no gain to such distributee from the receipt of such stock or securities, or property, was recognized under this title, or

(B) if the distribution was not subject to tax in the hands of such distributee by reason of section 305(a).

(2) Prior distributions

In the case of a distribution of stock or securities, or property, to which section 115(h) of the Internal Revenue Code of 1939 (or the corresponding provision of prior law) applied, the effect on earnings and profits of such distribution shall be determined under such section 115(h), or the corresponding provision of prior law, as the case may be.

(3) Stock or securities

For purposes of this subsection, the term ''stock or securities'' includes rights to acquire stock or securities.

[(e) Repealed. Pub. L. 98–369, div. A, title I, § 61(a)(2)(B), July 18, 1984, 98 Stat. 581]

(f) Effect on earnings and profits of gain or loss and of receipt of tax-free distributions

(1) Effect on earnings and profits of gain or loss

The gain or loss realized from the sale or other disposition (after February 28, 1913) of property by a corporation—

(A) for the purpose of the computation of the earnings and profits of the corporation, shall (except as provided in subparagraph (B)) be determined by using as the adjusted basis the adjusted basis (under the law applicable to the year in which the sale or other disposition was made) for determining gain, except that no regard shall be had to the value of the property as of March 1, 1913; but

(B) for purposes of the computation of the earnings and profits of the corporation for any period beginning after February 28, 1913, shall be determined by using as the adjusted basis the adjusted basis (under the law applicable to the year in which the sale or other disposition was made) for determining gain.

Gain or loss so realized shall increase or decrease the earnings and profits to, but not beyond, the extent to which such a realized gain or loss was recognized in computing taxable income under the law applicable to the year in which such sale or disposition was made. Where, in determining the adjusted basis used in computing such realized gain or loss, the adjustment to the basis differs from the adjustment proper for the purpose of determining earnings and profits, then the latter adjustment shall be used in determining the increase or decrease above provided. For purposes of this subsection, a loss with respect to which a deduction is disallowed under section 1091 (relating to wash sales of stock or securities), or the corresponding provision of prior law, shall not be deemed to be recognized.

(2) Effect on earnings and profits of receipt of tax-free distributions

Where a corporation receives (after February 28, 1913) a distribution from a second corporation which (under the law applicable to the year in which the distribution was made) was not a taxable dividend to the shareholders of the second corporation, the amount of such distribution shall not increase the earnings and profits of the first corporation in the following cases:

(A) no such increase shall be made in respect of the part of such distribution which (under such law) is directly applied in reduction of the basis of the stock in respect of which the distribution was made; and

(B) no such increase shall be made if (under such law) the distribution causes the basis of the stock in respect of which the distribution was made to be allocated between such stock and the property received (or such basis would, but for section 307(b), be so allocated).

(g) Earnings and profits—increase in value accrued before March 1, 1913

(1) If any increase or decrease in the earnings and profits for any period beginning after February 28, 1913, with respect to any matter would be different had the adjusted basis of the property involved been determined without regard to its March 1, 1913, value, then, except as provided in paragraph (2), an increase (properly reflecting such difference) shall be made in that part of the earnings and profits consisting of increase in value of property accrued before March 1, 1913.

(2) If the application of subsection (f) to a sale or other disposition after February 28, 1913, results in a loss which is to be applied in decrease of earnings and profits for any period beginning after February 28, 1913, then, notwithstanding subsection (f) and in lieu of the rule provided in paragraph (1) of this subsection, the amount of such loss so to be applied shall be reduced by the amount, if any, by which the adjusted basis of the property used in determining the loss exceeds the adjusted basis computed without regard to the

value of the property on March 1, 1913, and if such amount so applied in reduction of the decrease exceeds such loss, the excess over such loss shall increase that part of the earnings and profits consisting of increase in value of property accrued before March 1, 1913.

(h) Allocation in certain corporate separations and reorganizations

(1) Section 355

In the case of a distribution or exchange to which section 355 (or so much of section 356 as relates to section 355) applies, proper allocation with respect to the earnings and profits of the distributing corporation and the controlled corporation (or corporations) shall be made under regulations prescribed by the Secretary.

(2) Section 368(a)(1)(C) or (D)

In the case of a reorganization described in subparagraph (C) or (D) of section 368(a)(1), proper allocation with respect to the earnings and profits of the acquired corporation shall, under regulations prescribed by the Secretary, be made between the acquiring corporation and the acquired corporation (or any corporation which had control of the acquired corporation before the reorganization).

(i) Distribution of proceeds of loan insured by the United States

If a corporation distributes property with respect to its stock and if, at the time of distribution—

(1) there is outstanding a loan to such corporation which was made, guaranteed, or insured by the United States (or by any agency or instrumentality thereof), and

(2) the amount of such loan so outstanding exceeds the adjusted basis of the property constituting security for such loan,

then the earnings and profits of the corporation shall be increased by the amount of such excess, and (immediately after the distribution) shall be decreased by the amount of such excess. For purposes of paragraph (2), the adjusted basis of the property at the time of distribution shall be determined without regard to any adjustment under section 1016(a)(2) (relating to adjustment for depreciation, etc.). For purposes of this subsection, a commitment to make, guarantee, or insure a loan shall be treated as the making, guaranteeing, or insuring of a loan.

[(j) Repealed. Pub. L. 108–357, title IV, § 413(c)(4), Oct. 22, 2004, 118 Stat. 1507]

(k) Effect of depreciation on earnings and profits

(1) General rule

For purposes of computing the earnings and profits of a corporation for any taxable year beginning after June 30, 1972, the allowance for depreciation (and amortization, if any) shall be deemed to be the amount which would be allowable for such year if the straight line method of depreciation had been used for each taxable year beginning after June 30, 1972.

(2) Exception

If for any taxable year a method of depreciation was used by the taxpayer which the Secretary has determined results in a reasonable allowance under section 167(a) and which is the unit-of-production method or other method not expressed in a term of years, then the adjustment to earnings and profits for depreciation for such year shall be determined under the method so used (in lieu of the straight line method).

(3) Exception for tangible property

(A) In general

Except as provided in subparagraph (B), in the case of tangible property to which section 168 applies, the adjustment to earnings and profits for depreciation for any taxable year shall be determined under the alternative depreciation system (within the meaning of section 168(g)(2)).

(B) Treatment of amounts deductible under section 179, 179A, 179B, 179C, 179D, or 179E

For purposes of computing the earnings and profits of a corporation, any amount deductible under section 179, 179A, 179B, 179C, 179D, or 179E shall be allowed as a deduction ratably over the period of 5 taxable years (beginning with the taxable year for which such amount is deductible under section 179, 179A, 179B, 179C, 179D, or 179E, as the case may be).

(4) Certain foreign corporations

The provisions of paragraph (1) shall not apply in computing the earnings and profits of a foreign corporation for any taxable year for which less than 20 percent of the gross income from all sources of such corporation is derived from sources within the United States.

(5) Basis adjustment not taken into account

In computing the earnings and profits of a corporation for any taxable year, the allowance for depreciation (and amortization, if any) shall be computed without regard to any basis adjustment under section 50(c).

***(l)* Discharge of indebtedness income**

(1) Does not increase earnings and profits if applied to reduce basis

The earnings and profits of a corporation shall not include income from the discharge of indebtedness to the extent of the amount applied to reduce basis under section 1017.

(2) Reduction of deficit in earnings and profits in certain cases

If—

(A) the interest of any shareholder of a corporation is terminated or extinguished in a title 11 or similar case (within the meaning of section 368(a)(3)(A)), and

(B) there is a deficit in the earnings and profits of the corporation,

then such deficit shall be reduced by an amount equal to the paid-in capital which is allocable to the interest of the shareholder which is so terminated or extinguished.

(m) No adjustment for interest paid on certain registration-required obligations not in registered form

The earnings and profits of any corporation shall not be decreased by any interest with re-

spect to which a deduction is not or would not be allowable by reason of section 163(f), unless at the time of issuance the issuer is a foreign corporation that is not a controlled foreign corporation (within the meaning of section 957) and the issuance did not have as a purpose the avoidance of section 163(f) of this subsection[1]

(n) Adjustments to earnings and profits to more accurately reflect economic gain and loss

For purposes of computing the earnings and profits of a corporation, the following adjustments shall be made:

(1) Construction period carrying charges

(A) In general

In the case of any amount paid or incurred for construction period carrying charges—

(i) no deduction shall be allowed with respect to such amount, and

(ii) the basis of the property with respect to which such charges are allocable shall be increased by such amount.

(B) Construction period carrying charges defined

For purposes of this paragraph, the term ''construction period carrying charges'' means all—

(i) interest paid or accrued on indebtedness incurred or continued to acquire, construct, or carry property,

(ii) property taxes, and

(iii) similar carrying charges,

to the extent such interest, taxes, or charges are attributable to the construction period for such property and would be allowable as a deduction in determining taxable income under this chapter for the taxable year in which paid or incurred.

(C) Construction period

The term ''construction period'' has the meaning given the term production period under section 263A(f)(4)(B).

(2) Intangible drilling costs and mineral exploration and development costs

(A) Intangible drilling costs

Any amount allowable as a deduction under section 263(c) in determining taxable income (other than costs incurred in connection with a nonproductive well)—

(i) shall be capitalized, and

(ii) shall be allowed as a deduction ratably over the 60-month period beginning with the month in which such amount was paid or incurred.

(B) Mineral exploration and development costs

Any amount allowable as a deduction under section 616(a) or 617 in determining taxable income—

(i) shall be capitalized, and

(ii) shall be allowed as a deduction ratably over the 120-month period beginning with the later of—

(I) the month in which production from the deposit begins, or

(II) the month in which such amount was paid or incurred.

(3) Certain amortization provisions not to apply

Sections 173 and 248 shall not apply.

(4) LIFO inventory adjustments

(A) In general

Earnings and profits shall be increased or decreased by the amount of any increase or decrease in the LIFO recapture amount as of the close of each taxable year; except that any decrease below the LIFO recapture amount as of the close of the taxable year preceding the 1st taxable year to which this paragraph applies to the taxpayer shall be taken into account only to the extent provided in regulations prescribed by the Secretary.

(B) LIFO recapture amount

For purposes of this paragraph, the term ''LIFO recapture amount'' means the amount (if any) by which—

(i) the inventory amount of the inventory assets under the first-in, first-out method authorized by section 471, exceeds

(ii) the inventory amount of such assets under the LIFO method.

(C) Definitions

For purposes of this paragraph—

(i) LIFO method

The term ''LIFO method'' means the method authorized by section 472 (relating to last-in, first-out inventories).

(ii) Inventory assets

The term ''inventory assets'' means stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year.

(iii) Inventory amount

The inventory amount of assets under the first-in, first-out method authorized by section 471 shall be determined—

(I) if the corporation uses the retail method of valuing inventories under section 472, by using such method, or

(II) if subclause (I) does not apply, by using cost or market, whichever is lower.

(5) Installment sales

In the case of any installment sale, earnings and profits shall be computed as if the corporation did not use the installment method.

(6) Completed contract method of accounting

In the case of a taxpayer who uses the completed contract method of accounting, earnings and profits shall be computed as if such taxpayer used the percentage of completion method of accounting.

(7) Redemptions

If a corporation distributes amounts in a redemption to which section 302(a) or 303 applies, the part of such distribution which is properly chargeable to earnings and profits

[1] Subsec. (m) was enacted without a period at the end.

shall be an amount which is not in excess of the ratable share of the earnings and profits of such corporation accumulated after February 28, 1913, attributable to the stock so redeemed.

(8) Special rule for certain foreign corporations

In the case of a foreign corporation described in subsection (k)(4)—

(A) paragraphs (4) and (6) shall apply only in the case of taxable years beginning after December 31, 1985, and

(B) paragraph (5) shall apply only in the case of taxable years beginning after December 31, 1987.

(*o*) Definition of original issue discount and issue price for purposes of subsection (a)(2)

For purposes of subsection (a)(2), the terms ''original issue discount'' and ''issue price'' have the same respective meanings as when used in subpart A of part V of subchapter P of this chapter.

(Aug. 16, 1954, ch. 736, 68A Stat. 95; Pub. L. 87–403, §3(a), Feb. 2, 1962, 76 Stat. 6; Pub. L. 87–834, §§13(f)(3), 14(b)(1), Oct. 16, 1962, 76 Stat. 1035, 1040; Pub. L. 88–272, title II, §231(b)(3), Feb. 26, 1964, 78 Stat. 105; Pub. L. 88–484, §1(b)(1), Aug. 22, 1964, 78 Stat. 597; Pub. L. 89–570, §1(b)(3), Sept. 12, 1966, 80 Stat. 762; Pub. L. 91–172, title II, §211(b)(3), title IV, §442(a), title IX, §905(b)(2), Dec. 30, 1969, 83 Stat. 570, 628, 714; Pub. L. 94–455, title II, §205(c)(1)(D), title XIX, §§1901(a)(43), (b)(32)(B)(i), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1535, 1771, 1800, 1834; Pub. L. 95–628, §3(c), Nov. 10, 1978, 92 Stat. 3627; Pub. L. 96–589, §5(f), Dec. 24, 1980, 94 Stat. 3406; Pub. L. 97–34, title II, §206(a), (b), Aug. 13, 1981, 95 Stat. 224; Pub. L. 97–248, title II, §§205(a)(3), 222(e)(3), title III, §310(b)(3), Sept. 3, 1982, 96 Stat. 429, 480, 597; Pub. L. 97–448, title III, §306(a)(6)(B), Jan. 12, 1983, 96 Stat. 2402; Pub. L. 98–369, div. A, title I, §§61(a)–(c)(1), 63(b), 111(e)(5), July 18, 1984, 98 Stat. 579–581, 583, 633; Pub. L. 99–121, title I, §103(b)(1)(C), Oct. 11, 1985, 99 Stat. 509; Pub. L. 99–514, title II, §§201(b), (d)(6), 241(b)(1), title VI, §631(e)(1), title VIII, §803(b)(3), title XVIII, §§1804(f)(1)(A)–(E), 1809(a)(2)(C)(ii), Oct. 22, 1986, 100 Stat. 2137, 2141, 2181, 2273, 2355, 2804, 2805, 2819; Pub. L. 100–647, title I, §§1002(a)(3), 1018(d)(4), (u)(4), Nov. 10, 1988, 102 Stat. 3353, 3578, 3590; Pub. L. 101–239, title VII, §§7611(f)(5)(A), 7811(m)(2), Dec. 19, 1989, 103 Stat. 2373, 2412; Pub. L. 101–508, title XI, §§11812(b)(5), 11813(b)(14), Nov. 5, 1990, 104 Stat. 1388–535, 1388–555; Pub. L. 105–34, title XVI, §1604(a)(2), Aug. 5, 1997, 111 Stat. 1097; Pub. L. 108–357, title III, §338(b)(3), title IV, §413(c)(4), (5), Oct. 22, 2004, 118 Stat. 1481, 1507; Pub. L. 109–58, title XIII, §§1323(b)(3), 1331(b)(5), Aug. 8, 2005, 119 Stat. 1015, 1024; Pub. L. 109–432, div. A, title IV, §404(b)(2), Dec. 20, 2006, 120 Stat. 2956.)

REFERENCES IN TEXT

Section 115(h) of the Internal Revenue Code of 1939, referred to in subsec. (d)(2), was classified to section 115(h) of former Title 26, Internal Revenue Code. Section 115(h) was repealed by section 7851(a)(1) of this title. For table of comparisons of the 1939 Code to the 1986 Code [formerly I.R.C. 1954], see Table I preceding section 1 of this title. See, also, section 7851(e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, then applicable.

AMENDMENTS

2006—Subsec. (k)(3)(B). Pub. L. 109–432 substituted ''179D, or 179E'' for ''or 179D'' in heading and two places in text.

2005—Subsec. (k)(3)(B). Pub. L. 109–58, §1331(b)(5), substituted ''179, 179A, 179B, 179C, or 179D'' for ''179, 179A, 179B, or 179C'' in heading and two places in text.

Pub. L. 109–58, §1323(b)(3), substituted ''179, 179A, 179B, or 179C'' for ''179 179A, or 179B'' in heading and two places in text.

2004—Subsec. (j). Pub. L. 108–357, §413(c)(4), struck out subsec. (j) which related to earnings and profits of foreign investment companies.

Subsec. (k)(3)(B). Pub. L. 108–357, §338(b)(3), substituted ''179A, or 179B'' for ''or 179A'' in heading and two places in text.

Subsec. (m). Pub. L. 108–357, §413(c)(5), struck out '', a foreign investment company (within the meaning of section 1246(b)), or a foreign personal holding company (within the meaning of section 552)'' before ''and the issuance''.

1997—Subsec. (k)(3)(B). Pub. L. 105–34, in heading substituted ''179 or 179A'' for ''179'' and in text substituted ''section 179 or 179A shall'' for ''section 179 shall'' and ''section 179 or 179A, as the case may be)'' for ''section 179)''.

1990—Subsec. (k)(2). Pub. L. 101–508, §11812(b)(5), substituted heading for one which read: ''Exceptions'' and amended text generally. Prior to amendment, text read as follows: ''If for any taxable year beginning after June 30, 1972, a method of depreciation was used by the taxpayer which the Secretary has determined results in a reasonable allowance under section 167(a), and which is not—

''(A) a declining balance method,

''(B) the sum of the years-digit method, or

''(C) any other method allowable solely by reason of the application of subsection (b)(4) or (j)(1)(C) of section 167,

then the adjustment to earnings and profits for depreciation for such year shall be determined under the method so used (in lieu of under the straight line method).''

Subsec. (k)(5). Pub. L. 101–508, §11813(b)(14), substituted ''section 50(c)'' for ''section 48(q)''.

1989—Subsec. (b). Pub. L. 101–239, §7811(m)(2), made clarifying amendment to directory language of Pub. L. 100–647, §1018(d)(4), see 1988 Amendment note below.

Subsec. (n)(2)(A)(ii). Pub. L. 101–239, §7611(f)(5)(A), substituted ''in which such amount was paid or incurred'' for ''in which the production from the well begins''.

1988—Subsec. (b). Pub. L. 100–647, §1018(d)(4), as amended by Pub. L. 101–239, §7811(m)(2), substituted ''of any property (other than an obligation of such corporation)'' for ''of any property'' in introductory provisions.

Subsec. (k)(4). Pub. L. 100–647, §1002(a)(3), substituted ''paragraph (1)'' for ''paragraphs (1) and (3)''.

Subsec. (n)(1)(B). Pub. L. 100–647, §1018(u)(4), made technical amendment to directory language of Pub. L. 99–514, §803(b)(3)(A). See 1986 Amendment note below.

1986—Subsec. (b). Pub. L. 99–514, §1804(f)(1)(A), amended subsec. (b) generally, substituting provisions relating to distributions of appreciated property for provisions relating to distribution of certain inventory assets.

Subsec. (c). Pub. L. 99–514, §1804(f)(1)(B), (C), struck out '', etc.'' after ''liabilities'' in heading and struck out par. (3) which read as follows: ''any gain recognized to the corporation on the distribution.''

Subsec. (k)(3). Pub. L. 99–514, §201(b), amended par. (3) generally, substituting provisions relating to tangible property to which section 168 applies and amounts deductible under section 179 for provisions relating to recovery property within the meaning of section 168, amounts deductible under section 179, and flexibility if a different recovery percentage is elected under section 168 based on a longer recovery period.

Subsec. (k)(3)(A). Pub. L. 99–514, §1809(a)(2)(C)(ii), in subpar. (A), struck out ''and rules similar to the rules under the next to the last sentence of section 168(b)(2)(A) and section 168(b)(2)(B) shall apply'' after ''low-income housing)''.

Subsec. (k)(4). Pub. L. 99–514, §201(d)(6), struck out last sentence ''In determining the earnings and profits of such corporation in the case of recovery property (within the meaning of section 168), the rules of section 168(f)(2) shall apply.''

Subsec. (n)(1)(B). Pub. L. 99–514, §803(b)(3)(A), as amended by Pub. L. 100–647, §1018(u)(4), struck out ''(determined without regard to section 189)'' after ''incurred''.

Subsec. (n)(1)(C). Pub. L. 99–514, §803(b)(3)(B), added subpar. (C) and struck out former subpar. (C) which read as follows: ''The term 'construction period' has the meaning given such term by section 189(e)(2) (determined without regard to any real property limitation).''

Subsec. (n)(3). Pub. L. 99–514, §241(b)(1), struck out '', 177,'' after ''sections 173''.

Subsec. (n)(4). Pub. L. 99–514, §631(e)(1), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''Earnings and profits shall be increased or decreased by the amount of any increase or decrease in the LIFO recapture amount (determined under section 336(b)(3)) as of the close of each taxable year; except that any decrease below the LIFO recapture amount as of the close of the taxable year preceding the first taxable year to which this paragraph applies to the taxpayer shall be taken into account only to the extent provided in regulations prescribed by the Secretary.''

Pub. L. 99–514, §1804(f)(1)(D), redesignated par. (5) as (4). Former par. (4), relating to certain untaxed appreciation of distributed property, was struck out.

Subsec. (n)(5) to (7). Pub. L. 99–514, §1804(f)(1)(D), redesignated pars. (6) to (8) as (5) to (7), respectively. Former par. (5) redesignated (4).

Subsec. (n)(8), (9). Pub. L. 99–514, §1804(f)(1)(D), (E), redesignated par. (9) as (8) and substituted provisions of subpars. (A) and (B) for ''paragraphs (5), (6), and (7) shall apply only in the case of taxable years beginning after December 31, 1985.'' Former par. (8) redesignated (7).

1985—Subsec. (k)(3)(A). Pub. L. 99–121 substituted ''19-year real property'' for ''18-year real property'' wherever appearing.

1984—Subsec. (a)(2). Pub. L. 98–369, §61(c)(1)(A), inserted ''(or, in the case of obligations having original issue discount, the aggregate issue price of such obligations)''.

Subsec. (e). Pub. L. 98–369, §61(a)(2)(B), struck out subsec. (e) which provided: ''In the case of amounts distributed in a redemption to which section 302(a) or 303 applies, the part of such distribution which is properly chargeable to capital account shall not be treated as a distribution of earnings and profits.''

Subsec. (h). Pub. L. 98–369, §63(b), amended subsec. (h) generally, designating existing provisions as par. (1) and adding par. (2).

Subsec. (j)(3). Pub. L. 98–369, §61(a)(2)(A), struck out par. (3) which provided: ''If a foreign investment company (as defined in section 1246) distributes amounts in a redemption to which section 302(a) or 303 applies, the part of such distribution which is properly chargeable to earnings and profits shall be an amount which is not in excess of the ratable share of the earnings and profits of the company accumulated after February 28, 1913, attributable to the stock so redeemed.''

Subsec. (k)(3)(A). Pub. L. 98–369, §111(e)(5), substituted ''18-year real property and low-income housing'' for ''15-year real property'' in three places.

Pub. L. 98–369, §61(b), substituted ''40 years'' for ''35 years'' in table item relating to 15-year real property. Directory language that table be amended by substituting ''40 years'' for ''35 years'' in item relating to 15-year real property and 20-year real property, was executed by making the substitution in item relating to 15-year real property. The table contained no item relating to 20-year real property.

Subsec. (n). Pub. L. 98–369, §61(a)(1), added subsec. (n).

Subsec. (*o*). Pub. L. 98–369, §61(c)(1)(B), added subsec. (*o*).

1983—Subsec. (j)(3). Pub. L. 97–448 substituted ''Redemptions'' for ''Partial liquidations and redemptions'' in heading, and in text struck out ''in partial liquidation or'' after ''distributes amounts''.

1982—Subsec. (e). Pub. L. 97–248, §222(e)(3), struck out ''partial liquidations and'' in heading, and in text struck out ''in partial liquidation (whether before, on, or after June 22, 1954) or'' after ''amounts distributed''.

Subsec. (k)(5). Pub. L. 97–248, §205(a)(3), added par. (5).

Subsec. (m). Pub. L. 97–248, §310(b)(3), added subsec. (m).

1981—Subsec. (k)(3), (4). Pub. L. 97–34 added par. (3), redesignated former par. (3) as (4) substituted ''The provisions of paragraphs (1) and (3)'' for ''The provisions of paragraph (1)'', and inserted provision that the rules of section 168(f)(2) shall apply in determining the earnings and profits of the corporation in the case of recovery property (within the meaning of section 168).

1980—Subsec. (*l*). Pub. L. 96–589 added subsec. (*l*).

1978—Subsec. (c)(3). Pub. L. 95–628 substituted ''gain recognized to the corporation on the distribution'' for ''gain to the corporation recognized under subsection (b), (c), or (d) of section 311, under section 341(f), or under section 617(d)(1), 1245(a), 1250(a), 1251(c), 1252(a), or 1254(a)''.

1976—Subsec. (c)(3). Pub. L. 94–455, §205(c)(1)(D), substituted ''1252(a), or 1254(a)'' for ''or 1252(a)''.

Subsec. (d)(1). Pub. L. 94–455, §1901(a)(43)(A), substituted ''this title'' for ''this Code'' wherever appearing.

Subsec. (h). Pub. L. 94–455, §§1901(a)(43)(B), 1906(b)(13)(A), redesignated subsec. (i) as (h) and struck out ''or his delegate'' after ''Secretary''. Former subsec. (h), which related to earnings and profits of personal service corporations, was struck out.

Subsec. (i). Pub. L. 94–455, §1901(a)(43)(B), (C), redesignated subsec. (j) as (i), and, among other changes, substituted ''paragraph (2)'' for ''subparagraph (B) of the preceding sentence'' and ''of this subsection'' for ''of this paragraph'', and struck out provisions relating to the effective date of this subsec. Former subsec. (i) redesignated (h).

Subsec. (j). Pub. L. 94–455, §§1901(a)(43)(D), (b)(32)(B)(i), 1906(b)(13)(A), redesignated subsec. (*l*) as (j), struck out ''or his delegate'' after ''Secretary'' in par. (1) and in par. (3) provision relating to the effective date of such paragraph. Former subsec. (j) redesignated (i).

Subsec. (k). Pub. L. 94–455, §§1901(b)(32)(B)(i), 1906(b)(13)(A), redesignated subsec. (m) as (k) and struck out ''or his delegate'' after ''Secretary'' in par. (2). Former subsec. (k), relating to special adjustment on disposition of antitrust stock received as a dividend, was struck out.

Subsec. (*l*). Pub. L. 94–455, §1901(b)(32)(B)(i), redesignated subsec. (*l*) as (j).

Subsec. (m). Pub. L. 94–455, §1901(b)(32)(B)(i), redesignated subsec. (m) as (k).

1969—Subsec. (c)(3). Pub. L. 91–172, §§211(b)(3), 905(b)(2), substituted ''1250(a), 1251(c), or 1252(a)'', for ''or 1250(a)'' and inserted reference to section 311(d).

Subsec. (m). Pub. L. 91–172, §442(a), added subsec. (m).

1966—Subsec. (c)(3). Pub. L. 89–570 inserted reference to section 617(d)(1).

1964—Subsec. (c)(3). Pub. L. 88–484 authorized adjustment for amount of gain recognized under section 341(f).

Pub. L. 88–272 inserted reference to section 1250(a).

1962—Subsec. (c)(3). Pub. L. 87–834, §13(f)(3), included any gain recognized under section 1245(a).

Subsec. (k). Pub. L. 87–403 added subsec. (k).

Subsec. (*l*). Pub. L. 87–834, §14(b)(1), added subsec. (*l*).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–432 applicable to costs paid or incurred after Dec. 20, 2006, see section 404(c) of Pub. L. 109–432, set out as an Effective Date note under section 179E of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 1323(b)(3) of Pub. L. 109–58 applicable to properties placed in service after Aug. 8, 2005, see section 1323(c) of Pub. L. 109–58, set out as an Effective Date note under section 179C of this title.

Amendment by section 1331(b)(5) of Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, see section 1331(d) of Pub. L. 109–58, set out as an Effective Date note under section 179D of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 338(b)(3) of Pub. L. 108–357 applicable to expenses paid or incurred after Dec. 31, 2002, in taxable years ending after such date, see section 338(c) of Pub. L. 108–357, set out as an Effective Date note under section 179B of this title.

Amendment by section 413(c)(4), (5) of Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective as if included in the amendments made by section 1913 of the Energy Policy Act of 1992, Pub. L. 102–486, see section 1604(a)(4) of Pub. L. 105–34, set out as a note under section 263 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

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

Amendment by section 11813(b)(14) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7611(f)(5)(A) of Pub. L. 101–239 applicable to costs paid or incurred in taxable years beginning after Dec. 31, 1989, see section 7611(g)(2) of Pub. L. 101–239, set out as a note under section 56 of this title.

Amendment by section 7811(m)(2) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

If any interest costs incurred after Dec. 31, 1986, are attributable to costs incurred before Jan. 1, 1987, the amendment by section 803(b)(3) of Pub. L. 99–514 is applicable to such interest costs only to the extent such interest costs are attributable to costs which were required to be capitalized under section 263 of the Internal Revenue Code of 1954 and which would have been taken into account in applying section 189 of the Internal Revenue Code of 1954 (as in effect before its repeal by section 803 of Pub. L. 99–514) or, if applicable, section 266 of such Code, see section 7831(d)(2) of Pub. L. 101–239, set out as an Effective Date note under section 263A of this title.

Amendment by section 201(b), (d)(6) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

Amendment by section 201(b), (d)(6) of Pub. L. 99–514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99–514, set out as a note under section 46 of this title.

Amendment by section 241(b)(1) of Pub. L. 99–514 applicable to expenditures paid or incurred after Dec. 31, 1986, except as otherwise provided, see section 241(c) of Pub. L. 99–514, set out as an Effective Date of Repeal note under former section 177 of this title.

Amendment by section 631(e)(1) of Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

Amendment by section 803(b)(3) of Pub. L. 99–514 applicable to costs incurred after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 803(d) of Pub. L. 99–514, set out as an Effective Date note under section 263A of this title.

Amendment by sections 1804(f)(1)(A)–(E) and 1809(a)(2)(C)(ii) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Section 1804(f)(3) of Pub. L. 99–514 provided that: ''Paragraph (7) of section 312(n) of the Internal Revenue Code of 1954 [now 1986] (as redesignated by paragraph (1)(D) of this subsection), and the amendments made by section 61(a)(2) of the Tax Reform Act of 1984 [amending this section], shall apply to distributions in taxable years beginning after September 30, 1984.''

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–121 applicable with respect to property placed in service by the taxpayer after May 8, 1985, with specified exceptions, see section 105(b) of Pub. L. 99–121, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 61(e)(1)–(3) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) ADJUSTMENTS TO EARNINGS AND PROFITS.—

''(A) PARAGRAPHS (1), (2), AND (3) OF SECTION 312(n).—The provisions of paragraphs (1), (2), and (3) of section 312(n) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) shall apply to amounts paid or incurred in taxable years beginning after September 30, 1984.

''(B) PARAGRAPH (4) OF SECTION 312(n).—The provisions of paragraph (4) of section 312(n) of such Code (as so added) shall apply to distributions after September 30, 1984; except that such provisions shall not apply to any distribution to which the amendments made by section 54(a) of this Act [amending section 311 of this title] do not apply.

''(C) LIFO INVENTORY.—The provisions of paragraph (5) of section 312(n) of such Code (as so added) shall apply to taxable years beginning after September 30, 1984.

''(D) INSTALLMENT SALES.—The provisions of paragraph (6) of section 312(n) of such Code (as so added) shall apply to sales after September 30, 1984, in taxable years ending after such date.

''(E) COMPLETED CONTRACT METHOD.—The provisions of paragraph (7) of section 312(n) of such Code (as so added) shall apply to contracts entered into after September 30, 1984, in taxable years ending after such date.

''(2) SUBSECTION (b).—The amendments made by subsection (b) [amending this section] shall apply to property placed in service in taxable years beginning after September 30, 1984.

''(3) SUBSECTION (c).—The amendments made by subsection (c) [amending this section and section 1275 of this title] shall apply with respect to distributions declared after March 15, 1984, in taxable years ending after such date.''

Amendment by section 61(a)(2) of Pub. L. 98–369 applicable to distributions in taxable years beginning after Sept. 30, 1984, see section 1804(f)(3) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note above.

Section 1804(f)(1)(F) of Pub. L. 99–514 provided that: ''Any reference in subsection (e) of section 61 of the Tax Reform Act of 1984 [set out above] to a paragraph of section 312(n) of the Internal Revenue Code of 1954 [now 1986] shall be treated as a reference to such paragraph as in effect before its redesignation by subparagraph (D) [see 1986 Amendment note above].''

Section 63(c) of Pub. L. 98–369 provided that: ''The amendment made by this section [amending this section and section 368 of this title] shall apply to transactions pursuant to plans adopted after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 111(e)(5) of Pub. L. 98–369 applicable with respect to property placed in service by the taxpayer after Mar. 15, 1984, subject to certain exceptions, see section 111(g) of Pub. L. 98–369, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

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

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 205(a)(3) of Pub. L. 97–248 applicable to periods after Dec. 31, 1982, under rules similar to the rules of section 48(m) of this title, with certain qualifications, see section 205(c)(1) of Pub. L. 97–248, set out as an Effective Date note under section 196 of this title.

Amendment by section 222(e)(3) of Pub. L. 97–248 applicable to distributions after Aug. 31, 1982, with exceptions for certain partial liquidations, see section 222(f) of Pub. L. 97–248, set out as a note under section 302 of this title.

Amendment by section 310(b)(3) of Pub. L. 97–248 applicable to obligations issued after Dec. 31, 1982, with exceptions for certain warrants, see section 310(d) of Pub. L. 97–248, set out as a note under section 103 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, see section 209(a) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 applicable to transactions which occur after Dec. 31, 1980, other than transactions which occur in proceedings in bankruptcy cases or similar judicial proceedings or in proceedings under Title 11, Bankruptcy, commencing on or before Dec. 31, 1980, except as otherwise provided, see section 7 of Pub. L. 96–589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–628 applicable to distributions made after Nov. 10, 1978, see section 3(d) of Pub. L. 95–628, set out as a note under section 301 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 205(c)(1)(D) of Pub. L. 94–455 effective for taxable years ending after Dec. 31, 1975, see section 205(e) of Pub. L. 94–455, set out as a note under section 1254 of this title.

Amendment by section 1901(a)(43) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 1901(b)(32) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 211(b)(3) of Pub. L. 91–172 applicable to taxable years beginning after December 31, 1969, see section 211(c) of Pub. L. 91–172, set out as a note under section 301 of this title.

Amendment by section 905(b)(2) Pub. L. 91–172 effective with respect to distributions made after Nov. 30, 1969, see section 905(c) of Pub. L. 91–172, set out as a note under section 311 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–570 applicable to taxable years ending after Sept. 12, 1966, but only in respect of expenditures paid or incurred after such date, see section 3 of Pub. L. 89–570, set out as an Effective Date note under section 617 of this title.

EFFECTIVE DATE OF 1964 AMENDMENTS

Amendment by Pub. L. 88–484 applicable with respect to transactions after Aug. 22, 1964 in taxable years ending after such date, see section 2 of Pub. L. 88–484, set out as a note under section 301 of this title.

Amendment by Pub. L. 88–272 applicable to dispositions after Dec. 31, 1963, in taxable years ending after such date, see section 231(c) of Pub. L. 88–272, set out as an Effective Date note under section 1250 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Amendment by section 13(f)(3) of Pub. L. 87–834 applicable to taxable years beginning after Dec. 31, 1962, see section 13(g) of Pub. L. 87–834, set out as an Effective Date note under section 1245 of this title.

Pub. L. 87–834, § 14(c), Oct. 16, 1962, 76 Stat. 1041, provided that: ''The amendments made by this section [enacting sections 1246 and 1247 of this title and amending this section and sections 751 and 1223 of this title] shall apply with respect to taxable years beginning after December 31, 1962.''

Section 3(g) of Pub. L. 87–403 provided that: ''The amendments made by this section [amending this section and sections 535, 543, 545, 556 and 561 of this title] shall apply only with respect to distributions made after the date of the enactment of this Act [Feb. 2, 1962].''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liabil-

ity for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

SUBPART C—DEFINITIONS; CONSTRUCTIVE OWNERSHIP OF STOCK

Sec.
316. Dividend defined.
317. Other definitions.
318. Constructive ownership of stock.

§ 316. Dividend defined

(a) General rule

For purposes of this subtitle, the term ''dividend'' means any distribution of property made by a corporation to its shareholders—

(1) out of its earnings and profits accumulated after February 28, 1913, or

(2) out of its earnings and profits of the taxable year (computed as of the close of the taxable year without diminution by reason of any distributions made during the taxable year), without regard to the amount of the earnings and profits at the time the distribution was made.

Except as otherwise provided in this subtitle, every distribution is made out of earnings and profits to the extent thereof, and from the most recently accumulated earnings and profits. To the extent that any distribution is, under any provision of this subchapter, treated as a distribution of property to which section 301 applies, such distribution shall be treated as a distribution of property for purposes of this subsection.

(b) Special rules

(1) Certain insurance company dividends

The definition in subsection (a) shall not apply to the term ''dividend'' as used in subchapter L in any case where the reference is to dividends of insurance companies paid to policyholders as such.

(2) Distributions by personal holding companies

(A) In the case of a corporation which—

(i) under the law applicable to the taxable year in which the distribution is made, is a personal holding company (as defined in section 542), or

(ii) for the taxable year in respect of which the distribution is made under section 563(b) (relating to dividends paid after the close of the taxable year), or section 547 (relating to deficiency dividends), or the corresponding provisions of prior law, is a personal holding company under the law applicable to such taxable year,

the term ''dividend'' also means any distribution of property (whether or not a dividend as defined in subsection (a)) made by the corporation to its shareholders, to the extent of its undistributed personal holding company income (determined under section 545 without regard to distributions under this paragraph) for such year.

(B) For purposes of subparagraph (A), the term ''distribution of property'' includes a distribution in complete liquidation occurring within 24 months after the adoption of a plan of liquidation, but—

(i) only to the extent of the amounts distributed to distributees other than corporate shareholders, and

(ii) only to the extent that the corporation designates such amounts as a dividend distribution and duly notifies such distributees of such designation, under regulations prescribed by the Secretary, but

(iii) not in excess of the sum of such distributees' allocable share of the undistributed personal holding company income for such year, computed without regard to this subparagraph or section 562(b).

(3) Deficiency dividend distributions by a regulated investment company or real estate investment trust

The term ''dividend'' also means any distribution of property (whether or not a dividend as defined in subsection (a)) which constitutes a ''deficiency dividend'' as defined in section 860(f).

(4) Certain distributions by regulated investment companies in excess of earnings and profits

In the case of a regulated investment company that has a taxable year other than a calendar year, if the distributions by the company with respect to any class of stock of such company for the taxable year exceed the company's current and accumulated earnings and profits which may be used for the payment of dividends on such class of stock, the company's current earnings and profits shall, for purposes of subsection (a), be allocated first to distributions with respect to such class of stock made during the portion of the taxable year which precedes January 1.

(Aug. 16, 1954, ch. 736, 68A Stat. 98; Mar. 13, 1956, ch. 83, § 5(1), 70 Stat. 49; Pub. L. 88–272, title II, § 225(f)(1), Feb. 26, 1964, 78 Stat. 87; Pub. L. 94–455, title XVI, § 1601(d), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1746, 1834; Pub. L. 95–600, title III, § 362(d)(1), Nov. 6, 1978, 92 Stat. 2851; Pub. L. 111–325, title III, § 305(a), Dec. 22, 2010, 124 Stat. 3549.)

AMENDMENTS

2010—Subsec. (b)(4). Pub. L. 111–325 added par. (4).

1978—Subsec. (b)(3). Pub. L. 95–600 inserted ''regulated investment company or'' after ''distributions by a'' in heading and substituted in text ''section 860(f)'' for ''section 859(d)''.

1976—Subsec. (b)(2)(B)(ii). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (b)(3). Pub. L. 94–455, § 1601(d), added par. (3).

1964—Subsec. (b)(2). Pub. L. 88–272 inserted definition of ''distribution of property''.

1956—Subsec. (b)(1). Act Mar. 13, 1956, substituted ''subchapter L'' for ''sections 803(e), 821(a)(2), and 832(c)(11)''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–325, title III, § 305(b), Dec. 22, 2010, 124 Stat. 3549, provided that: ''The amendment made by this section [amending this section] shall apply to distributions made in taxable years beginning after the date of the enactment of this Act [Dec. 22, 2010].''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable with respect to determinations (as defined in section 860(e) of this title) after Nov. 6, 1978, see section 362(e) of Pub. L. 95–600, set out as an Effective Date note under section 860 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1601(d) of Pub. L. 94–455, see section 1608(a) of Pub. L. 94–455, set out as a note under section 857 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 225(*l*) of Pub. L. 88–272 provided that:

''(1) The amendments made by this section [enacting section 1022, redesignating former section 1022 as 1023, amending this section and sections 331, 333, 381, 541, 542, 543, 544, 545, 551, 553, 554, 562, 856, 1016, 1361, 6501, and the analysis preceding section 1011, and enacting provisions set out as a note under section 333 of this title] (other than by subsections (c)(1), (f), (g), and (j) [enacting section 1022, redesignating former section 1022 as 1023, amending this section and sections 331, 333, 542, 551, 562, 1016, and the analysis preceding section 1011 of this title]) shall apply to taxable years beginning after December 31, 1963.

''(2) The amendment made by subsection (c)(1) [amending section 542 of this title] shall apply to taxable years beginning after October 16, 1962.

''(3) The amendments made by subsections (f) and (g) [amending this section and sections 331, 333, 551, and 562 of this title] shall apply to distributions made in any taxable year of the distributing corporation beginning after December 31, 1963.

''(4) The amendments made by subsection (j) [enacting section 1022, redesignating former section 1022 as 1023, and amending section 1016 and the analysis preceding section 1011 of this title] shall apply in respect of decedents dying after December 31, 1963.

''(5) Subsection (h) [set out as a note under section 333 of this title] shall apply to taxable years beginning after December 31, 1963.''

EFFECTIVE DATE OF 1956 AMENDMENT

Section 6 of act Mar. 13, 1956, provided that: ''The amendments made by this Act [amending this section and sections 501, 594, 801 to 805, 811 to 813, 816 to 818, 821, 822, 832, 841, 842, 843, 891, 1201, 1504, and 4371 of this title] shall apply only to taxable years beginning after December 31, 1954.''

§ 317. Other definitions

(a) Property

For purposes of this part, the term ''property'' means money, securities, and any other property; except that such term does not include stock in the corporation making the distribution (or rights to acquire such stock).

(b) Redemption of stock

For purposes of this part, stock shall be treated as redeemed by a corporation if the corporation acquires its stock from a shareholder in exchange for property, whether or not the stock so acquired is cancelled, retired, or held as treasury stock.

(Aug. 16, 1954, ch. 736, 68A Stat. 99.)

§ 318. Constructive ownership of stock

(a) General rule

For purposes of those provisions of this subchapter to which the rules contained in this section are expressly made applicable—

(1) Members of family

(A) In general

An individual shall be considered as owning the stock owned, directly or indirectly, by or for—

(i) his spouse (other than a spouse who is legally separated from the individual under a decree of divorce or separate maintenance), and

(ii) his children, grandchildren, and parents.

(B) Effect of adoption

For purposes of subparagraph (A)(ii), a legally adopted child of an individual shall be treated as a child of such individual by blood.

(2) Attribution from partnerships, estates, trusts, and corporations

(A) From partnerships and estates

Stock owned, directly or indirectly, by or for a partnership or estate shall be considered as owned proportionately by its partners or beneficiaries.

(B) From trusts

(i) Stock owned, directly or indirectly, by or for a trust (other than an employees' trust described in section 401(a) which is exempt from tax under section 501(a)) shall be considered as owned by its beneficiaries in proportion to the actuarial interest of such beneficiaries in such trust.

(ii) Stock owned, directly or indirectly, by or for any portion of a trust of which a person is considered the owner under subpart E of part I of subchapter J (relating to grantors and others treated as substantial owners) shall be considered as owned by such person.

(C) From corporations

If 50 percent or more in value of the stock in a corporation is owned, directly or indirectly, by or for any person, such person shall be considered as owning the stock owned, directly or indirectly, by or for such corporation, in that proportion which the value of the stock which such person so owns bears to the value of all the stock in such corporation.

(3) Attribution to partnerships, estates, trusts, and corporations

(A) To partnerships and estates

Stock owned, directly or indirectly, by or for a partner or a beneficiary of an estate shall be considered as owned by the partnership or estate.

(B) To trusts

(i) Stock owned, directly or indirectly, by or for a beneficiary of a trust (other than an employees' trust described in sec-

tion 401(a) which is exempt from tax under section 501(a)) shall be considered as owned by the trust, unless such beneficiary's interest in the trust is a remote contingent interest. For purposes of this clause, a contingent interest of a beneficiary in a trust shall be considered remote if, under the maximum exercise of discretion by the trustee in favor of such beneficiary, the value of such interest, computed actuarially, is 5 percent or less of the value of the trust property.

(ii) Stock owned, directly or indirectly, by or for a person who is considered the owner of any portion of a trust under subpart E of part I of subchapter J (relating to grantors and others treated as substantial owners), shall be considered as owned by the trust.

(C) To corporations

If 50 percent or more in value of the stock in a corporation is owned, directly or indirectly, by or for any person, such corporation shall be considered as owning the stock owned, directly or indirectly, by or for such person.

(4) Options

If any person has an option to acquire stock, such stock shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

(5) Operating rules

(A) In general

Except as provided in subparagraphs (B) and (C), stock constructively owned by a person by reason of the application of paragraph (1), (2), (3), or (4), shall, for purposes of applying paragraphs (1), (2), (3), and (4), be considered as actually owned by such person.

(B) Members of family

Stock constructively owned by an individual by reason of the application of paragraph (1) shall not be considered as owned by him for purposes of again applying paragraph (1) in order to make another the constructive owner of such stock.

(C) Partnerships, estates, trusts, and corporations

Stock constructively owned by a partnership, estate, trust, or corporation by reason of the application of paragraph (3) shall not be considered as owned by it for purposes of applying paragraph (2) in order to make another the constructive owner of such stock.

(D) Option rule in lieu of family rule

For purposes of this paragraph, if stock may be considered as owned by an individual under paragraph (1) or (4), it shall be considered as owned by him under paragraph (4).

(E) S corporation treated as partnership

For purposes of this subsection—

(i) an S corporation shall be treated as a partnership, and

(ii) any shareholder of the S corporation shall be treated as a partner of such partnership.

The preceding sentence shall not apply for purposes of determining whether stock in the S corporation is constructively owned by any person.

(b) Cross references

For provisions to which the rules contained in subsection (a) apply, see—

(1) section 302 (relating to redemption of stock);

(2) section 304 (relating to redemption by related corporations);

(3) section 306(b)(1)(A) (relating to disposition of section 306 stock);

(4) section 338(h)(3) (defining purchase);

(5) section 382(*l*)(3) (relating to special limitations on net operating loss carryovers);

(6) section 856(d) (relating to definition of rents from real property in the case of real estate investment trusts);

(7) section 958(b) (relating to constructive ownership rules with respect to controlled foreign corporations); and

(8) section 6038(e)(2) (relating to information with respect to certain foreign corporations).

(Aug. 16, 1954, ch. 736, 68A Stat. 99; Pub. L. 86–779, §10(h), Sept. 14, 1960, 74 Stat. 1009; Pub. L. 87–834, §20(d)(1), Oct. 16, 1962, 76 Stat. 1063; Pub. L. 88–554, §4(a), (b)(2), Aug. 31, 1964, 78 Stat. 762, 763; Pub. L. 97–248, title II, §224(c)(3), Sept. 3, 1982, 96 Stat. 489; Pub. L. 98–369, div. A, title VII, §§712(k)(5)(E), 721(j), July 18, 1984, 98 Stat. 950, 969; Pub. L. 99–514, title VI, §621(c)(1), Oct. 22, 1986, 100 Stat. 2266; Pub. L. 105–34, title XI, §1142(e)(3), Aug. 5, 1997, 111 Stat. 983; Pub. L. 109–135, title IV, §412(u), Dec. 21, 2005, 119 Stat. 2638.)

AMENDMENTS

2005—Subsec. (b)(8). Pub. L. 109–135 substituted ''section 6038(e)(2)'' for ''section 6038(d)(2)''.

1997—Subsec. (b)(8). Pub. L. 105–34 substituted ''6038(d)(2)'' for ''6038(d)(1)''.

1986—Subsec. (b)(5). Pub. L. 99–514 substituted ''382(*l*)(3)'' for ''382(a)(3)''.

1984—Subsec. (a)(5)(E). Pub. L. 98–369, §721(j), added subpar. (E).

Subsec. (b)(4). Pub. L. 98–369, §712(k)(5)(E), substituted ''section 338(h)(3) (defining purchase)'' for ''section 338(h)(3)(B) (relating to purchase of stock from subsidiaries, etc.)''.

1982—Subsec. (b)(4). Pub. L. 97–248 substituted ''section 338(h)(3)(B) (relating to purchase of stock from subsidiaries, etc.)'' for ''section 334(b)(3)(C) (relating to basis of property received in certain liquidations of subsidiaries)''.

1964—Subsec. (a). Pub. L. 88–554, §4(a), struck out sidewise attribution by providing that when stock is attributed to a partnership, estate, trust, or corporation from a partner, shareholder, or beneficiary, this stock is not to be attributed again to another partner, beneficiary, or shareholder.

Subsec. (b)(7), (8). Pub. L. 88–554, §4(b)(2), added par. (7) and redesignated former par. (7) as (8).

1962—Subsec. (b)(7). Pub. L. 87–834 added par. (7).

1960—Subsec. (b)(6). Pub. L. 86–779 added par. (6).

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1142(f) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section and sections 901 and 6038 of this title] shall apply to annual accounting periods beginning after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to any ownership change after Dec. 31, 1986, except as otherwise provided, see section 621(f) of Pub. L. 99–514, as amended, set out as a note under section 382 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 712(k)(5)(E) of Pub. L. 98–369 not applicable to any qualified stock purchase where the acquisition date is before Sept. 1, 1982, see section 712(k)(9)(A) of Pub. L. 98–369, set out as a note under section 338 of this title.

Amendment by section 712(k)(5)(E) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

Amendment by section 721(j) of Pub. L. 98–369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97–354, see section 721(y)(1) of Pub. L. 98–369, set out as a note under section 1361 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to any target corporation with respect to which the acquisition date occurs after Aug. 31, 1982, with special rules for certain acquisitions before Sept. 1, 1982, and certain acquisitions of financial institutions in which there was a binding contract on July 22, 1982, to acquire control, see section 224(d) of Pub. L. 97–248, set out as an Effective Date note under section 338 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 4(c) of Pub. L. 88–554, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [amending this section and sections 304, 382, 856, 958, and 6038 of this title] shall take effect on the date of the enactment of this Act, [Aug. 31, 1964], except that, for purposes of sections 302 and 304 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], such amendments shall not apply with respect to distributions in payment for stock acquisitions or redemptions, if such acquisitions or redemptions occurred before the date of the enactment of this Act.''

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–779 applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86–779, set out as an Effective Date note under section 856 of this title.

PART II—CORPORATE LIQUIDATIONS

Subpart
A. Effects on recipients.
B. Effects on corporation.
[C. Repealed.]
D. Definition and special rule.

AMENDMENT OF ANALYSIS

For termination of amendment by Pub. L. 108–27, see section 303 of Pub. L. 108–27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

AMENDMENTS

2003—Pub. L. 108–27, title III, §§ 302(e)(4)(B)(iii), 303, May 28, 2003, 117 Stat. 764, temporarily struck out item for subpart C ''Collapsible corporations''.

1982—Pub. L. 97–248, title II, § 222(e)(8)(B), Sept. 3, 1982, 96 Stat. 481, inserted ''and special rule'' in item for subpart D.

1976—Pub. L. 94–455, title XIX, § 1901(b)(12)(B), Oct. 4, 1976, 90 Stat. 1795, struck out in table of subparts for part II of subchapter C of chapter 1 in subpart (C) ''; foreign personal holding companies'' after ''corporations''.

SUBPART A—EFFECTS ON RECIPIENTS

Sec.
331. Gain or loss to shareholder in corporate liquidations.[1]
332. Complete liquidations of subsidiaries.
[333. Repealed.]
334. Basis of property received in liquidations.

AMENDMENTS

1986—Pub. L. 99–514, title VI, § 631(e)(16), Oct. 22, 1986, 100 Stat. 2275, struck out item 333 ''Election as to recognition of gain in certain liquidations''.

§ 331. Gain or loss to shareholders in corporate liquidations

(a) Distributions in complete liquidation treated as exchanges

Amounts received by a shareholder in a distribution in complete liquidation of a corporation shall be treated as in full payment in exchange for the stock.

(b) Nonapplication of section 301

Section 301 (relating to effects on shareholder of distributions of property) shall not apply to any distribution of property (other than a distribution referred to in paragraph (2)(B) of section 316(b)) in complete liquidation.

(c) Cross reference

For general rule for determination of the amount of gain or loss recognized, see section 1001.

(Aug. 16, 1954, ch. 736, 68A Stat. 101; Pub. L. 88–272, title II, § 225(f)(2), Feb. 26, 1964, 78 Stat. 88; Pub. L. 94–455, title XIX, § 1901(b)(28)(A), Oct. 4, 1976, 90 Stat. 1799; Pub. L. 97–248, title II, § 222(a), (e)(1)(B), Sept. 3, 1982, 96 Stat. 478, 480.)

AMENDMENTS

1982—Subsec. (a). Pub. L. 97–248, § 222(a), substituted provisions that amounts received by a shareholder in a distribution in complete liquidation of a corporation shall be treated as in full payment in exchange for the stock for provisions that, in complete liquidations, amounts distributed shall be treated as in full payment in exchange for the stock, while amounts distributed in partial liquidation shall be treated as in part or full payment in exchange for the stock.

Subsec. (b). Pub. L. 97–248, § 222(e)(1)(B), struck out ''partial or'' before ''complete liquidation''.

1976—Subsec. (c). Pub. L. 94–455 substituted ''reference'' for ''references'' in heading and struck out cross reference relating to general rule for determination of the amount of gain or loss to the distributee and substituted ''section 1001'' for ''section 1002''.

1964—Subsec. (b). Pub. L. 88–272 inserted ''(other than a distribution referred to in paragraph (2)(B) of section 316(b))''.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to distributions after Aug. 31, 1982, with exceptions for certain partial liquidations, see section 222(f) of Pub. L. 97–248, set out as a note under section 302 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to distribution made in any taxable year of the distributing cor-

[1] So in original. Does not conform to section catchline.

poration beginning after Dec. 31, 1963, see section 225(*l*) of Pub. L. 88–272, set out as a note under section 316 of this title.

LIQUIDATIONS BEFORE JANUARY 1, 1966

Section 225(h) of Pub. L. 88–272 provided that in the case of corporations referred to in former subsec. (g)(3) of this section the amendments made by section 225 of Pub. L. 88–272 do not apply if there is a complete liquidation of such corporation and if the distribution of all the property under such liquidation occurs before Jan. 1, 1966, except for certain liquidations to which section 332 of this title applies.

§ 332. Complete liquidations of subsidiaries

(a) General rule

No gain or loss shall be recognized on the receipt by a corporation of property distributed in complete liquidation of another corporation.

(b) Liquidations to which section applies

For purposes of this section, a distribution shall be considered to be in complete liquidation only if—

(1) the corporation receiving such property was, on the date of the adoption of the plan of liquidation, and has continued to be at all times until the receipt of the property, the owner of stock (in such other corporation) meeting the requirements of section 1504(a)(2); and either

(2) the distribution is by such other corporation in complete cancellation or redemption of all its stock, and the transfer of all the property occurs within the taxable year; in such case the adoption by the shareholders of the resolution under which is authorized the distribution of all the assets of such corporation in complete cancellation or redemption of all its stock shall be considered an adoption of a plan of liquidation, even though no time for the completion of the transfer of the property is specified in such resolution; or

(3) such distribution is one of a series of distributions by such other corporation in complete cancellation or redemption of all its stock in accordance with a plan of liquidation under which the transfer of all the property under the liquidation is to be completed within 3 years from the close of the taxable year during which is made the first of the series of distributions under the plan, except that if such transfer is not completed within such period, or if the taxpayer does not continue qualified under paragraph (1) until the completion of such transfer, no distribution under the plan shall be considered a distribution in complete liquidation.

If such transfer of all the property does not occur within the taxable year, the Secretary may require of the taxpayer such bond, or waiver of the statute of limitations on assessment and collection, or both, as he may deem necessary to insure, if the transfer of the property is not completed within such 3-year period, or if the taxpayer does not continue qualified under paragraph (1) until the completion of such transfer, the assessment and collection of all income taxes then imposed by law for such taxable year or subsequent taxable years, to the extent attributable to property so received. A distribution otherwise constituting a distribution in complete liquidation within the meaning of this subsection shall not be considered as not constituting such a distribution merely because it does not constitute a distribution or liquidation within the meaning of the corporate law under which the distribution is made; and for purposes of this subsection a transfer of property of such other corporation to the taxpayer shall not be considered as not constituting a distribution (or one of a series of distributions) in complete cancellation or redemption of all the stock of such other corporation, merely because the carrying out of the plan involves (A) the transfer under the plan to the taxpayer by such other corporation of property, not attributable to shares owned by the taxpayer, on an exchange described in section 361, and (B) the complete cancellation or redemption under the plan, as a result of exchanges described in section 354, of the shares not owned by the taxpayer.

(c) Deductible liquidating distributions of regulated investment companies and real estate investment trusts

If a corporation receives a distribution from a regulated investment company or a real estate investment trust which is considered under subsection (b) as being in complete liquidation of such company or trust, then, notwithstanding any other provision of this chapter, such corporation shall recognize and treat as a dividend from such company or trust an amount equal to the deduction for dividends paid allowable to such company or trust by reason of such distribution.

(d) Recognition of gain on liquidation of certain holding companies

(1) In general

In the case of any distribution to a foreign corporation in complete liquidation of an applicable holding company—

(A) subsection (a) and section 331 shall not apply to such distribution, and

(B) such distribution shall be treated as a distribution of property to which section 301 applies.

(2) Applicable holding company

For purposes of this subsection:

(A) In general

The term ''applicable holding company'' means any domestic corporation—

(i) which is a common parent of an affiliated group,

(ii) stock of which is directly owned by the distributee foreign corporation,

(iii) substantially all of the assets of which consist of stock in other members of such affiliated group, and

(iv) which has not been in existence at all times during the 5 years immediately preceding the date of the liquidation.

(B) Affiliated group

For purposes of this subsection, the term ''affiliated group'' has the meaning given such term by section 1504(a) (without regard to paragraphs (2) and (4) of section 1504(b)).

(3) Coordination with subpart F

If the distributee of a distribution described in paragraph (1) is a controlled foreign cor-

poration (as defined in section 957), then notwithstanding paragraph (1) or subsection (a), such distribution shall be treated as a distribution to which section 331 applies.

(4) Regulations

The Secretary shall provide such regulations as appropriate to prevent the abuse of this subsection, including regulations which provide, for the purposes of clause (iv) of paragraph (2)(A), that a corporation is not in existence for any period unless it is engaged in the active conduct of a trade or business or owns a significant ownership interest in another corporation so engaged.

(Aug. 16, 1954, ch. 736, 68A Stat. 102; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99–514, title VI, § 631(e)(2), title XVIII, § 1804(e)(6)(A), Oct. 22, 1986, 100 Stat. 2273, 2803; Pub. L. 105–277, div. J, title III, § 3001(a), (b)(1), Oct. 21, 1998, 112 Stat. 2681–904; Pub. L. 108–357, title VIII, § 893(a), Oct. 22, 2004, 118 Stat. 1646; Pub. L. 109–135, title IV, § 412(v), Dec. 21, 2005, 119 Stat. 2638.)

AMENDMENTS

2005—Subsec. (d)(1)(B). Pub. L. 109–135 substituted ''distribution of property to which section 301 applies'' for ''distribution to which section 301 applies''.

2004—Subsec. (d). Pub. L. 108–357 added subsec. (d).

1998—Subsec. (b). Pub. L. 105–277, § 3001(b)(1), substituted ''this section'' for ''subsection (a)'' in introductory provisions.

Subsec. (c). Pub. L. 105–277, § 3001(a), added subsec. (c).

1986—Subsec. (b)(1). Pub. L. 99–514, § 1804(e)(6)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''the corporation receiving such property was, on the date of the adoption of the plan of liquidation, and has continued to be at all times until the receipt of the property, the owner of stock (in such other corporation) possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and the owner of at least 80 percent of the total number of shares of all other classes of stock (except nonvoting stock which is limited and preferred as to dividends); and either''.

Subsec. (c). Pub. L. 99–514, § 631(e)(2), struck out subsec. (c) containing special rule for indebtedness of subsidiary to parent in relation to complete liquidations of subsidiaries.

1976—Subsec. (b). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, § 893(b), Oct. 22, 2004, 118 Stat. 1647, provided that: ''The amendment made by this section [amending this section] shall apply to distributions in complete liquidation occurring on or after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. J, title III, § 3001(c), Oct. 21, 1998, 112 Stat. 2681–904, provided that: ''The amendments made by this section [amending this section and section 334 of this title] shall apply to distributions after May 21, 1998.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 631(e)(2) of Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

Section 1804(e)(6)(B) of Pub. L. 99–514 provided that:

''(i) IN GENERAL.—Except as provided in clause (iii), the amendment made by subparagraph (A) [amending this section] shall apply with respect to plans of complete liquidation adopted after March 28, 1985.

''(ii) CERTAIN DISTRIBUTIONS MADE AFTER DECEMBER 31, 1984.—Except as provided in clause (iii), the amendment made by subparagraph (A) shall also apply with respect to plans of complete liquidations adopted on or before March 28, 1985, pursuant to which any distribution is made in a taxable year beginning after December 31, 1984 (December 31, 1983, in the case of an affiliated group to which an election under section 60(b)(7) of the Tax Reform Act of 1984 [Pub. L. 98–369, set out as a note under section 1504 of this title] applies), but only if the liquidating corporation and any corporation which receives a distribution in complete liquidation of such corporation are members of an affiliated group of corporations filing a consolidated return for the taxable year which includes the date of the distribution.

''(iii) TRANSITIONAL RULE FOR AFFILIATED GROUPS.—The amendment made by subparagraph (A) shall not apply with respect to plans of complete liquidation if the liquidating corporation is a member of an affiliated group of corporations under section 60(b) (2), (5), (6), or (8) of the Tax Reform Act of 1984 [Pub. L. 98–369, set out as a note under section 1504 of this title], for all taxable years which include the date of any distribution pursuant to such plan.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[§ 333. Repealed. Pub. L. 99–514, title VI, § 631(e)(3), Oct. 22, 1986, 100 Stat. 2273]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 103; Feb. 26, 1964, Pub. L. 88–272, title II, § 225(g), 78 Stat. 89; Oct. 4, 1976, Pub. L. 94–455, title XIX, §§ 1901(a)(44), 1906(b)(13)(A), 1951(b)(6)(A), 90 Stat. 1772, 1834, 1838, related to election as to recognition of gain in certain liquidations.

EFFECTIVE DATE OF REPEAL

Repeal applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

§ 334. Basis of property received in liquidations

(a) General rule

If property is received in a distribution in complete liquidation, and if gain or loss is recognized on receipt of such property, then the basis of the property in the hands of the distributee shall be the fair market value of such property at the time of the distribution.

(b) Liquidation of subsidiary

(1) In general

If property is received by a corporate distributee in a distribution in a complete liq-

uidation to which section 332 applies (or in a transfer described in section 337(b)(1)), the basis of such property in the hands of such distributee shall be the same as it would be in the hands of the transferor; except that, in the hands of such distributee—

(A) the basis of such property shall be the fair market value of the property at the time of the distribution in any case in which gain or loss is recognized by the liquidating corporation with respect to such property, and

(B) the basis of any property described in section 362(e)(1)(B) shall be the fair market value of the property at the time of the distribution in any case in which such distributee's aggregate adjusted basis of such property would (but for this subparagraph) exceed the fair market value of such property immediately after such liquidation.

(2) Corporate distributee

For purposes of this subsection, the term ''corporate distributee'' means only the corporation which meets the stock ownership requirements specified in section 332(b).

(Aug. 16, 1954, ch. 736, 68A Stat. 104; Pub. L. 89–809, title II, §202(a), (b), Nov. 13, 1966, 80 Stat. 1576; Pub. L. 94–455, title XIX, §§1901(a)(45), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1772, 1834; Pub. L. 97–248, title II, §§222(e)(1)(C), 224(b), Sept. 3, 1982, 96 Stat. 480, 488; Pub. L. 99–514, title VI, §631(e)(4), Oct. 22, 1986, 100 Stat. 2273; Pub. L. 100–647, title I, §1006(e)(6), Nov. 10, 1988, 102 Stat. 3401; Pub. L. 105–277, div. J, title III, §3001(b)(2), Oct. 21, 1998, 112 Stat. 2681–904; Pub. L. 108–357, title VIII, §836(b), Oct. 22, 2004, 118 Stat. 1595; Pub. L. 109–135, title IV, §403(dd)(1), Dec. 21, 2005, 119 Stat. 2630.)

AMENDMENTS

2005—Subsec. (b)(1). Pub. L. 109–135 substituted ''except that, in the hands of such distributee—'' for ''except that the basis of such property in the hands of such distributee shall be the fair market value of the property at the time of the distribution—'' in introductory provisions, added subpars. (A) and (B), and struck out former subpars. (A) and (B) which read as follows:

''(A) in any case in which gain or loss is recognized by the liquidating corporation with respect to such property, or

''(B) in any case in which the liquidating corporation is a foreign corporation, the corporate distributee is a domestic corporation, and the corporate distributee's aggregate adjusted bases of property described in section 362(e)(1)(B) which is distributed in such liquidation would (but for this subparagraph) exceed the fair market value of such property immediately after such liquidation.''

2004—Subsec. (b)(1). Pub. L. 108–357 reenacted heading without change and amended text of par. (1) generally. Prior to amendment, text read as follows: ''If property is received by a corporate distributee in a distribution in a complete liquidation to which section 332 applies (or in a transfer described in section 337(b)(1)), the basis of such property in the hands of such distributee shall be the same as it would be in the hands of the transferor; except that, in any case in which gain or loss is recognized by the liquidating corporation with respect to such property, the basis of such property in the hands of such distributee shall be the fair market value of the property at the time of the distribution.''

1998—Subsec. (b)(1). Pub. L. 105–277 substituted ''section 332'' for ''section 332(a)''.

1988—Subsec. (b). Pub. L. 100–647 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

''(1) DISTRIBUTION IN COMPLETE LIQUIDATION.—If property is received by a corporation in a distribution in a complete liquidation to which section 332(a) applies, the basis of the property in the hands of the distributee shall be the same as it would be in the hands of the transferor.

''(2) TRANSFERS TO WHICH SECTION 332(c) APPLIES.—If property is received by a corporation in a transfer to which section 332(c) applies, the basis of the property in the hands of the transferee shall be the same as it would be in the hands of the transferor.

''(3) DISTRIBUTEE DEFINED.—For purposes of this subsection, the term 'distributee' means only the corporation which meets the 80-percent stock ownership requirements specified in section 332(b).''

1986—Subsec. (a). Pub. L. 99–514, §631(e)(4)(A), struck out ''(other than a distribution to which section 333 applies)'' after ''liquidation''.

Subsec. (c). Pub. L. 99–514, §631(e)(4)(B), struck out subsec. (c) relating to property received in liquidation under section 333.

1982—Subsec. (a). Pub. L. 97–248, §222(e)(1)(C), struck out ''partial or'' before ''complete liquidation''.

Subsec. (b). Pub. L. 97–248, §224(b), struck out heading to par. (1) ''In general'', redesignated first sentence as par. (1) with heading ''Distribution in complete liquidation'', in par. (1) as so redesignated substituted reference to section 332(a) for reference to section 332(b) relating to a distribution in complete liquidation, struck out reference to par. (2) as an exception to the determination of basis, redesignated second sentence as par. (2) with heading ''Transfers to which section 332(c) applies'', in par. (2) as so redesignated struck out reference to par. (2) as an exception to the determination of basis, struck out par. (2) which had provided that if property was received by a corporation in a distribution in complete liquidation of another corporation and if the distribution was pursuant to a plan of liquidation adopted not more than 2 years after the date of the transaction described below, or in the case of a series of transactions, the date of the last such transaction, and stock of the distributing corporation possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote, and at least 80 percent of the total number of shares of all other classes of stock (except nonvoting stock which was limited and preferred as to dividends), was acquired by the distributee by purchase (as defined in par. (3)) during a 12-month period beginning with the earlier of the date of the first acquisition by purchase of such stock, or if any of such stock was acquired in an acquisition which is a purchase within the meaning of second sentence of par. (3), the date on which the distributee was first considered under section 318(a) as owning stock owned by the corporation from which such acquisition was made, then the basis of the property in the hands of the distributee would be the adjusted basis of the stock with respect to which the distribution was made, and under regulations prescribed by the Secretary, proper adjustment in the adjusted basis of any stock would be made for any distribution made to the distributee with respect to such stock before the adoption of the plan of liquidation, for any money received, for any liabilities assumed or subject to which the property was received, and for other items, and struck out par. (3) which provided that ''purchase'' meant any acquisition of stock, but only if the basis of the stock in the hands of the distributee was not determined in whole or in part by reference to the adjusted basis of such stock in the hands of the person from whom acquired, or under section 1014(a) of this title the stock was not acquired in an exchange to which section 351 of this title applies, and the stock was not acquired from a person the ownership of whose stock would, under section 318(a) of this title, be attributed to the person acquiring such stock, but that ''purchase'' also meant an acquisition of stock from a corporation when ownership of such stock would be attributed under section 318(a) to the person acquiring such stock, if the stock of such corporation by reason of which such ownership would be attributed was acquired by purchase, and redesignated par. (4) as (3).

1976—Subsec. (b)(2). Pub. L. 94–455, §§1901(a)(45), 1906(b)(13)(A), struck out in subpar. (A) provision relating to distributions made pursuant to a plan of liquidation adopted on or before June 22, 1954, and in provisions following subpar. (B)(ii) ''or his delegate'' after ''Secretary''.

1966—Subsec. (b)(2)(B). Pub. L. 89–809, §202(b), inserted provisions for the determination of the date on which to commence the running of the 12-month period during which the distributee must have acquired the stock by purchase by adding clauses (i) and (ii).

Subsec. (b)(3). Pub. L. 89–809, §202(a), inserted provision that, for purposes of par. (2)(B), ''purchase'' also means an acquisition of stock from a corporation when ownership of such stock would be attributed under section 318(a) to the person acquiring such stock, if the stock of such corporation by reason of which such ownership would be attributed was acquired by purchase.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §836(c)(2), Oct. 22, 2004, 118 Stat. 1596, provided that: ''The amendment made by subsection (b) [amending this section] shall apply to liquidations after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 applicable to distributions after May 21, 1998, see section 3001(c) of Pub. L. 105–277, set out as a note under section 332 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 222(e)(1)(C) of Pub. L. 97–248 applicable to distributions after Aug. 31, 1982, with exceptions for certain partial liquidations, see section 222(f) of Pub. L. 97–248, set out as a note under section 302 of this title.

Amendment by section 224(b) of Pub. L. 97–248 applicable to any target corporation with respect to which the acquisition date occurs after Aug. 31, 1982, with special rules for certain acquisitions before Sept. 1, 1982, and certain acquisitions of financial institutions in which there was a binding contract on July 22, 1982, to acquire control, see section 224(d) of Pub. L. 97–248, set out as an Effective Date note under section 338 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(45) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 202(d) of Pub. L. 89–809 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to acquisitions of stock after December 31, 1965. The amendment made by subsections (b) and (c) [amending this section and section 453 of this title] shall apply only with respect to distributions made after the date of the enactment of this Act [Nov. 13, 1966].''

ADJUSTMENT FOR LIABILITY TO BASIS OF PROPERTY DISTRIBUTED IN COMPLETE LIQUIDATION OF CORPORATION PRIOR TO JULY 1, 1957; DEDUCTION FOR UNCOMPENSATED LIABILITY

Pub. L. 93–497, §3, Oct. 29, 1974, 88 Stat. 1534, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) Notwithstanding the provisions of section 334 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to basis of property received in liquidations), no adjustment to the basis of any property distributed in complete liquidation of a corporation prior to July 1, 1957, shall be made for any liability if—

''(1) the distributor and distributee did not consider the liability relevant to the value of the stock with respect to which the distribution was made,

''(2) the distributor and distributee reasonably relied upon a decision of a United States district court specifically adjudicating the amount of the liability and its affirmance by the appropriate United States court of appeals, and

''(3) the amount of liability so adjudicated was not greater than would be compensated for by insurance.

The provisions of this section apply without regard to whether such decision was subsequently reversed or modified by that United States court of appeals following distribution of such property in complete liquidation.

''(b) To the extent that the liability described in subsection (a) is not compensated for by insurance or otherwise, the amount thereof shall be allowed as a deduction under the appropriate provision of the Internal Revenue Code of 1986 for the taxable year in which payment thereof was made and shall be effective in determining income tax liabilities of all taxable years prior thereto.''

SUBPART B—EFFECTS ON CORPORATION

Sec.
336. Gain or loss recognized on property distributed in complete liquidation.
337. Nonrecognition for property distributed to parent in complete liquidation of subsidiary.
338. Certain stock purchases treated as asset acquisitions.

AMENDMENTS

1986—Pub. L. 99–514, title VI, §631(e)(17), Oct. 22, 1986, 100 Stat. 2275, substituted ''Gain or loss recognized on property distributed in complete liquidation'' for ''General rule'' in item 336 and ''Nonrecognition for property distributed to parent in complete liquidation of subsidiary'' for ''Gain or loss on sales or exchanges in connection with certain liquidations'' in item 337.

1982—Pub. L. 97–248, title II, §224(c)(9), Sept. 3, 1982, 96 Stat. 489, substituted ''Certain stock purchases treated as asset acquisitions'' for ''Effect on earnings and profits'' in item 338.

§ 336. Gain or loss recognized on property distributed in complete liquidation

(a) General rule

Except as otherwise provided in this section or section 337, gain or loss shall be recognized to a liquidating corporation on the distribution of

property in complete liquidation as if such property were sold to the distributee at its fair market value.

(b) Treatment of liabilities

If any property distributed in the liquidation is subject to a liability or the shareholder assumes a liability of the liquidating corporation in connection with the distribution, for purposes of subsection (a) and section 337, the fair market value of such property shall be treated as not less than the amount of such liability.

(c) Exception for liquidations which are part of a reorganization

For provision providing that this subpart does not apply to distributions in pursuance of a plan of reorganization, see section 361(c)(4).

(d) Limitations on recognition of loss

(1) No loss recognized in certain distributions to related persons

(A) In general

No loss shall be recognized to a liquidating corporation on the distribution of any property to a related person (within the meaning of section 267) if—

(i) such distribution is not pro rata, or

(ii) such property is disqualified property.

(B) Disqualified property

For purposes of subparagraph (A), the term ''disqualified property'' means any property which is acquired by the liquidating corporation in a transaction to which section 351 applied, or as a contribution to capital, during the 5-year period ending on the date of the distribution. Such term includes any property if the adjusted basis of such property is determined (in whole or in part) by reference to the adjusted basis of property described in the preceding sentence.

(2) Special rule for certain property acquired in certain carryover basis transactions

(A) In general

For purposes of determining the amount of loss recognized by any liquidating corporation on any sale, exchange, or distribution of property described in subparagraph (B), the adjusted basis of such property shall be reduced (but not below zero) by the excess (if any) of—

(i) the adjusted basis of such property immediately after its acquisition by such corporation, over

(ii) the fair market value of such property as of such time.

(B) Description of property

(i) In general

For purposes of subparagraph (A), property is described in this subparagraph if—

(I) such property is acquired by the liquidating corporation in a transaction to which section 351 applied or as a contribution to capital, and

(II) the acquisition of such property by the liquidating corporation was part of a plan a principal purpose of which was to recognize loss by the liquidating corporation with respect to such property in connection with the liquidation.

Other property shall be treated as so described if the adjusted basis of such other property is determined (in whole or in part) by reference to the adjusted basis of property described in the preceding sentence.

(ii) Certain acquisitions treated as part of plan

For purposes of clause (i), any property described in clause (i)(I) acquired by the liquidated corporation after the date 2 years before the date of the adoption of the plan of complete liquidation shall, except as provided in regulations, be treated as acquired as part of a plan described in clause (i)(II).

(C) Recapture in lieu of disallowance

The Secretary may prescribe regulations under which, in lieu of disallowing a loss under subparagraph (A) for a prior taxable year, the gross income of the liquidating corporation for the taxable year in which the plan of complete liquidation is adopted shall be increased by the amount of the disallowed loss.

(3) Special rule in case of liquidation to which section 332 applies

In the case of any liquidation to which section 332 applies, no loss shall be recognized to the liquidating corporation on any distribution in such liquidation. The preceding sentence shall apply to any distribution to the 80-percent distributee only if subsection (a) or (b)(1) of section 337 applies to such distribution.

(e) Certain stock sales and distributions may be treated as asset transfers

Under regulations prescribed by the Secretary, if—

(1) a corporation owns stock in another corporation meeting the requirements of section 1504(a)(2), and

(2) such corporation sells, exchanges, or distributes all of such stock,

an election may be made to treat such sale, exchange, or distribution as a disposition of all of the assets of such other corporation, and no gain or loss shall be recognized on the sale, exchange, or distribution of such stock.

(Added Pub. L. 99–514, title VI, §631(a), Oct. 22, 1986, 100 Stat. 2269; amended Pub. L. 100–647, title I, §§1006(e)(1)–(3), (21)(A), 1018(d)(5)(D), Nov. 10, 1988, 102 Stat. 3400, 3403, 3580.)

PRIOR PROVISIONS

A prior section 336, acts Aug. 16, 1954, ch. 736, 68A Stat. 106; Apr. 2, 1980, Pub. L. 96–223, title IV, §403(b)(1), 94 Stat. 304; Oct. 19, 1980, Pub. L. 96–471, §2(b)(1), (c)(1), 94 Stat. 2253, 2254; Sept. 3, 1982, Pub. L. 97–248, title II, §222(b), (e)(1)(D), 224(c)(4), 96 Stat. 478, 480, 489, related to distributions of property in liquidation, prior to repeal by Pub. L. 99–514, §631(a).

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–647, §1006(e)(21)(A), substituted ''liabilities'' for ''liabilities in excess of basis'' in heading.

Subsec. (c). Pub. L. 100–647, § 1018(d)(5)(D), substituted ''liquidations which are part of a reorganization'' for ''certain liquidations to which part III applies'' in heading and amended text generally. Prior to amendment, text read as follows: ''This section shall not apply with respect to any distribution of property to the extent there is nonrecognition of gain or loss with respect to such property to the recipient under part III.''

Subsec. (d)(2)(B)(ii). Pub. L. 100–647, § 1006(e)(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''For purposes of clause (i), any property described in clause (i)(I) acquired by the liquidating corporation during the 2-year period ending on the date of the adoption of the plan of complete liquidation shall, except as provided in regulations, be treated as part of a plan described in clause (i)(II).''

Subsec. (d)(3). Pub. L. 100–647, § 1006(e)(2), inserted at end ''The preceding sentence shall apply to any distribution to the 80-percent distributee only if subsection (a) or (b)(1) of section 337 applies to such distribution.''

Subsec. (e). Pub. L. 100–647, § 1006(e)(3), substituted ''an election may be made'' for ''such corporation may elect'' in concluding provisions.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section 633 of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1006(g), Nov. 10, 1988, 102 Stat. 3407, provided that:

''(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this subtitle [subtitle D (§§ 631–634) of title VI of Pub. L. 99–514, enacting this section and section 337 of this title, amending sections 26, 311, 312, 332, 334, 338, 341, 346, 367, 453, 453B, 467, 852, 897, 1056, 1248, 1255, 1276, 1363, 1366, 1374, and 1375 of this title, and repealing former sections 333, 336, and 337 of this title] shall apply to—

''(1) any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before January 1, 1987,

''(2) any transaction described in section 338 of the Internal Revenue Code of 1986 for which the acquisition date occurs after December 31, 1986, and

''(3) any distribution (not in complete liquidation) made after December 31, 1986.

''(b) BUILT-IN GAINS OF S CORPORATIONS.—

''(1) IN GENERAL.—The amendments made by section 632 (other than subsection (b) thereof) [amending sections 26, 1366, 1374, and 1375 of this title] shall apply to taxable years beginning after December 31, 1986, but only in cases where the return for the taxable year is filed pursuant to an S election made after December 31, 1986.

''(2) APPLICATION OF PRIOR LAW.—In the case of any taxable year of an S corporation which begins after December 31, 1986, and to which the amendments made by section 632 (other than subsection (b) thereof) do not apply, paragraph (1) of section 1374(b) of the Internal Revenue Code of 1954 (as in effect on the date before the date of the enactment of this Act [Oct. 22, 1986]) shall be applied as if it read as follows:

'' '(1) an amount equal to 34 percent of the amount by which the net capital gain of the corporation for the taxable year exceeds $25,000, or'[.]

''(c) EXCEPTION FOR CERTAIN PLANS OF LIQUIDATION AND BINDING CONTRACTS.—

''(1) IN GENERAL.—The amendments made by this subtitle shall not apply to—

''(A) any distribution or sale or exchange made pursuant to a plan of liquidation adopted before August 1, 1986, if the liquidating corporation is completely liquidated before January 1, 1988,

''(B) any distribution or sale or exchange made by any corporation if more than 50 percent of the voting stock (by value) of such corporation is acquired on or after August 1, 1986, pursuant to a written binding contract in effect before such date and if such corporation is completely liquidated before January 1, 1988,

''(C) any distribution or sale or exchange made by any corporation if substantially all of the assets of such corporation are sold on or after August 1, 1986, pursuant to 1 or more written binding contracts in effect before such date and if such corporation is completely liquidated before January 1, 1988, or

''(D) any transaction described in section 338 of the Internal Revenue Code of 1986 with respect to any target corporation if a qualified stock purchase of such target corporation is made on or after August 1, 1986, pursuant to a written binding contract in effect before such date and the acquisition date (within the meaning of such section 338) is before January 1, 1988.

''(2) SPECIAL RULE FOR CERTAIN ACTIONS TAKEN BEFORE NOVEMBER 20, 1985.—For purposes of paragraph (1), transactions shall be treated as pursuant to a plan of liquidation adopted before August 1, 1986, if—

''(A) before November 20, 1985—

''(i) the board of directors of the liquidating corporation adopted a resolution to solicit shareholder approval for a transaction of a kind described in section 336 or 337, or

''(ii) the shareholders or board of directors have approved such a transaction,

''(B) before November 20, 1985—

''(i) there has been an offer to purchase a majority of the voting stock of the liquidating corporation, or

''(ii) the board of directors of the liquidating corporation has adopted a resolution approving an acquisition or recommending the approval of an acquisition to the shareholders, or

''(C) before November 20, 1985, a ruling request was submitted to the Secretary of the Treasury or his delegate with respect to a transaction of a kind described in section 336 or 337 of the Internal Revenue Code of 1954 (as in effect before the amendments made by this subtitle).

For purposes of the preceding sentence, any action taken by the board of directors or shareholders of a corporation with respect to any subsidiary of such corporation shall be treated as taken by the board of directors or shareholders of such subsidiary.

''(d) TRANSITIONAL RULE FOR CERTAIN SMALL CORPORATIONS.—

''(1) IN GENERAL.—In the case of the complete liquidation before January 1, 1989, of a qualified corporation, the amendments made by this subtitle shall not apply to the applicable percentage of each gain or loss which (but for this paragraph) would be recognized by the liquidating corporation by reason of the amendments made by this subtitle. Section 333 of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]) shall continue to apply to any complete liquidation described in the preceding sentence.

''(2) PARAGRAPH (1) NOT TO APPLY TO CERTAIN ITEMS.—Paragraph (1) shall not apply to—

''(A) any gain or loss which is an ordinary gain or loss (determined without regard to section 1239 of the Internal Revenue Code of 1986),

''(B) any gain or loss on a capital asset held for not more than 6 months, and

''(C) any gain on an asset acquired by the qualified corporation if—

''(i) the basis of such asset in the hands of the qualified corporation is determined (in whole or in part) by reference to the basis of such asset in the hands of the person from whom acquired, and

''(ii) a principal purpose for the transfer of such asset to the qualified corporation was to secure the benefits of this subsection.

''(3) APPLICABLE PERCENTAGE.—For purposes of this subsection, the term 'applicable percentage' means—

''(A) 100 percent if the applicable value of the qualified corporation is less than $5,000,000, or

''(B) 100 percent reduced by an amount which bears the same ratio to 100 percent as—

''(i) the excess of the applicable value of the corporation over $5,000,000, bears to

''(ii) $5,000,000.

''(4) APPLICABLE VALUE.—For purposes of this subsection, the applicable value is the fair market value of all of the stock of the corporation on the date of the adoption of the plan of complete liquidation (or if greater, on August 1, 1986).

''(5) QUALIFIED CORPORATION.—For purposes of this subsection, the term 'qualified corporation' means any corporation if—

''(A) on August 1, 1986, and at all times thereafter before the corporation is completely liquidated, more than 50 percent (by value) of the stock in such corporation is held by a qualified group, and

''(B) the applicable value of such corporation does not exceed $10,000,000.

''(6) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

''(A) QUALIFIED GROUP.—

''(i) IN GENERAL.—Except as provided in clause (ii), the term 'qualified group' means any group of 10 or fewer qualified persons who at all times during the 5-year period ending on the date of the adoption of the plan of complete liquidation (or, if shorter, the period during which the corporation or any predecessor was in existence) owned (or was treated as owning under the rules of subparagraph (C)) more than 50 percent (by value) of the stock in such corporation.

''(ii) 5-YEAR OWNERSHIP REQUIREMENT NOT TO APPLY IN CERTAIN CASES.—In the case of—

''(I) any complete liquidation pursuant to a plan of liquidation adopted before March 31, 1988,

''(II) any distribution not in liquidation made before March 31, 1988,

''(III) an election to be an S corporation filed before March 31, 1988, or

''(IV) a transaction described in section 338 of the Internal Revenue Code of 1986 where the acquisition date (within the meaning of such section 338) is before March 31, 1988,

the term 'qualified group' means any group of 10 or fewer qualified persons.

''(B) QUALIFIED PERSON.—The term 'qualified person' means—

''(i) an individual,

''(ii) an estate, or

''(iii) any trust described in clause (ii) or clause (iii) of section 1361(c)(2)(A) of the Internal Revenue Code of 1986.

''(C) ATTRIBUTION RULES.—

''(i) IN GENERAL.—Any stock owned by a corporation, trust (other than a trust referred to in subparagraph (B)(iii)[)], or partnership shall be treated as owned proportionately by its shareholders, beneficiaries, or partners, and shall not be treated as owned by such corporation, trust, or partnership. Stock considered to be owned by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person.

''(ii) FAMILY MEMBERS.—Stock owned (or treated as owned) by members of the same family (within the meaning of section 318(a)(1) of the Internal Revenue Code of 1986) shall be treated as owned by 1 person, and shall be treated as owned by such 1 person for any period during which it was owned (or treated as owned) by any such member.

''(iii) TREATMENT OF CERTAIN TRUSTS.—Stock owned (or treated as owned) by the estate of any decedent or by any trust referred to in subparagraph (B)(iii) with respect to such decedent shall be treated as owned by 1 person and shall be treated as owned by such 1 person for the period during which it was owned (or treated as owned) by such estate or any such trust or by the decedent.

''(D) SPECIAL HOLDING PERIOD RULES.—Any property acquired by reason of the death of an individual shall be treated as owned at all times during which such property was owned (or treated as owned) by the decedent.

''(E) CONTROLLED GROUP OF CORPORATIONS.—All members of the same controlled group (as defined in section 267(f)(1) of such Code) shall be treated as 1 corporation for purposes of determining whether any of such corporations met the requirement of paragraph (5)(B) and for purposes of determining the applicable percentage with respect to any of such corporations. For purposes of the preceding sentence, an S corporation shall not be treated as a member of a controlled group unless such corporation was a C corporation for its taxable year which includes August 1, 1986, or it was not described for such taxable year in paragraph (1) or (2) of section 1374(c) of such Code (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]).

''(7) SECTION 338 TRANSACTIONS.—The provisions of this subsection shall also apply in the case of a transaction described in section 338 of the Internal Revenue Code of 1986 where the acquisition date (within the meaning of such section 338) is before January 1, 1989.

''(8) APPLICATION OF SECTION 1374.—Rules similar to the rules of this subsection shall apply for purposes of applying section 1374 of the Internal Revenue Code of 1986 (as amended by section 632) in the case of a qualified corporation which makes an election to be an S corporation under section 1362 of such Code before January 1, 1989, without regard to whether such corporation is completely liquidated.

''(9) APPLICATION TO NONLIQUIDATING DISTRIBUTIONS.—The provisions of this subsection shall also apply in the case of any distribution (not in complete liquidation) made by a qualified corporation before January 1, 1989, without regard to whether such corporation is completely liquidated.

''(e) COMPLETE LIQUIDATION DEFINED.—For purposes of this section, a corporation shall be treated as completely liquidated if all of the assets of such corporation are distributed in complete liquidation, less assets retained to meet claims.

''(f) OTHER TRANSITIONAL RULES.—

''(1) The amendments made by this subtitle shall not apply to any liquidation of a corporation incorporated under the laws of Pennsylvania on August 3, 1970, if—

''(A) the board of directors of such corporation approved a plan of liquidation before January 1, 1986,

''(B) an agreement for the sale of a material portion of the assets of such corporation was signed on May 9, 1986 (whether or not the assets are sold in accordance with such agreement), and

''(C) the corporation is completely liquidated on or before December 31, 1988.

''(2) The amendments made by this subtitle shall not apply to any liquidation (or deemed liquidation under section 338 of the Internal Revenue Code of 1986) of a diversified financial services corporation incorporated under the laws of Delaware on May 9, 1929 (or any direct or indirect subsidiary of such corporation), pursuant to a binding written contract entered into on or before December 31, 1986; but only if the liquidation is completed (or in the case of a section 338 election, the acquisition date occurs) before January 1, 1988.

''(3) The amendments made by this subtitle shall not apply to any distribution, or sale, or exchange—

''(A) of the assets owned (directly or indirectly) by a testamentary trust established under the will of a decedent dying on June 15, 1956, or its beneficiaries,

''(B) made pursuant to a court order in an action filed on January 18, 1984, if such order—

''(i) is issued after July 31, 1986, and

''(ii) directs the disposition of the assets of such trust and the division of the trust corpus into 3 separate sub-trusts.

For purposes of the preceding sentence, an election under section 338(g) of the Internal Revenue Code of 1986 (or an election under section 338(h)(10) of such Code qualifying as a section 337 liquidation pursuant to regulations prescribed by the Secretary under section 1.338(h)(10)–1T(j)) made in connection with a sale or exchange pursuant to a court order described in subparagraph (B) shall be treated as a sale of [or] exchange.

''(4)(A) The amendments made by this subtitle shall not apply to any distribution, or sale, or exchange—

''(i) if—

''(I) an option agreement to sell substantially all of the assets of a selling corporation organized under the laws of Massachusetts on October 20, 1976, is executed before August 1, 1986, the corporation adopts (by approval of its shareholders) a conditional plan of liquidation before August 1, 1986 to become effective upon the exercise of such option agreement (or modification thereto), and the assets are sold pursuant to the exercise of the option (as originally executed or subsequently modified provided that the purchase price is not thereby increased), or

''(II) in the event that the optionee does not acquire substantially all the assets of the corporation, the optionor corporation sells substantially all its assets to another purchaser at a purchase price not greater than that contemplated by such option agreement pursuant to an effective plan of liquidation, and

''(ii) the complete liquidation of the corporation occurs within 12 months of the time the plan of liquidation becomes effective, but in no event later than December 31, 1989.

''(B) For purposes of subparagraph (A), a distribution, or sale, or exchange, of a distributee corporation (within the meaning of section 337(c)(3) of the Internal Revenue Code of 1986) shall be treated as satisfying the requirements of subparagraph (A) if its subsidiary satisfies the requirements of subparagraph (A).

''(C) For purposes of section 56 of the Internal Revenue Code of 1986 (as amended by this Act), any gain or loss not recognized by reason of this paragraph shall not be taken into account in determining the adjusted net book income of the corporation.

''(5) In the case of a corporation incorporated under the laws of Wisconsin on April 3, 1948—

''(A) a voting trust established not later than December 31, 1987, shall qualify as a trust permitted as a shareholder of an S corporation and shall be treated as only 1 shareholder if the holders of beneficial interests in such voting trust are—

''(i) employees or retirees of such corporation, or

''(ii) in the case of stock or voting trust certificates acquired from an employee or retiree of such corporation, the spouse, child, or estate of such employee or retiree or a trust created by such employee or retiree which is described in section 1361(c)(2) of the Internal Revenue Code of 1986 (or treated as described in such section by reason of section 1361(d) of such Code), and

''(B) the amendment made by section 632 (other than subsection (b) thereof) shall not apply to such corporation if it elects to be an S corporation before January 1, 1989.

''(6) The amendments made by this subtitle shall not apply to the liquidation of a corporation incorporated on January 26, 1982, under the laws of the State of Alabama with a principal place of business in Colbert County, Alabama, but only if such corporation is completely liquidated on or before December 31, 1987.

''(7) The amendments made by this subtitle shall not apply to the acquisition by a Delaware bank holding company of all of the assets of an Iowa bank holding company pursuant to a written contract dated December 9, 1981.

''(8) The amendments made by this subtitle shall not apply to the liquidation of a corporation incorporated under the laws of Delaware on January 20, 1984, if more than 40 percent of the stock of such corporation was acquired by purchase on June 11, 1986, and there was a tender offer with respect to all additional outstanding shares of such corporation on July 29, 1986, but only if the corporation is completely liquidated on or before December 31, 1987.

''(g) TREATMENT OF CERTAIN DISTRIBUTIONS IN RESPONSE TO HOSTILE TENDER OFFER.—

''(1) IN GENERAL.—No gain or loss shall be recognized under the Internal Revenue Code of 1986 to a corporation (hereinafter in this subsection referred to as 'parent') on a qualified distribution.

''(2) QUALIFIED DISTRIBUTION DEFINED.—For purposes of paragraph (1)—

''(A) IN GENERAL.—The term 'qualified distribution' means a distribution—

''(i) by parent of all of the stock of a qualified subsidiary in exchange for stock of parent which was acquired for purposes of such exchange pursuant to a tender offer dated February 16, 1982, and

''(ii) pursuant to a contract dated February 13, 1982, and

''(iii) which was made not more than 60 days after the board of directors of parent recommended rejection of an unsolicited tender offer to obtain control of parent.

''(B) QUALIFIED SUBSIDIARY.—The term 'qualified subsidiary' means a corporation created or organized under the laws of Delaware on September 7, 1976, all of the stock of which was owned by parent immediately before the qualified distribution.''

§ 337. Nonrecognition for property distributed to parent in complete liquidation of subsidiary

(a) In general

No gain or loss shall be recognized to the liquidating corporation on the distribution to the 80-percent distributee of any property in a complete liquidation to which section 332 applies.

(b) Treatment of indebtedness of subsidiary, etc.

(1) Indebtedness of subsidiary to parent

If—

(A) a corporation is liquidated in a liquidation to which section 332 applies, and

(B) on the date of the adoption of the plan of liquidation, such corporation was indebted to the 80-percent distributee,

for purposes of this section and section 336, any transfer of property to the 80-percent distributee in satisfaction of such indebtedness shall be treated as a distribution to such distributee in such liquidation.

(2) Treatment of tax-exempt distributee

(A) In general

Except as provided in subparagraph (B), paragraph (1) and subsection (a) shall not apply where the 80-percent distributee is an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by this chapter.

(B) Exception where property will be used in unrelated business

(i) In general

Subparagraph (A) shall not apply to any distribution of property to an organization described in section 511(a)(2) if, immediately after such distribution, such organization uses such property in an activity the income from which is subject to tax under section 511(a).

(ii) Later disposition or change in use

If any property to which clause (i) applied is disposed of by the organization acquiring such property, notwithstanding any other provision of law, any gain (not in excess of the amount not recognized by reason of clause (i)) shall be included in such organization's unrelated business taxable income. For purposes of the preceding sentence, if such property ceases to be used in an activity referred to in clause (i), such organization shall be treated as having disposed of such property on the date of such cessation.

(c) 80-percent distributee

For purposes of this section, the term ''80-percent distributee'' means only the corporation which meets the 80-percent stock ownership requirements specified in section 332(b). For purposes of this section, the determination of whether any corporation is an 80-percent distributee shall be made without regard to any consolidated return regulation.

(d) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of the amendments made by subtitle D of title VI of the Tax Reform Act of 1986, including—

(1) regulations to ensure that such purposes may not be circumvented through the use of any provision of law or regulations (including the consolidated return regulations and part III of this subchapter) or through the use of a regulated investment company, real estate investment trust, or tax-exempt entity, and

(2) regulations providing for appropriate coordination of the provisions of this section with the provisions of this title relating to taxation of foreign corporations and their shareholders.

(Added Pub. L. 99–514, title VI, §631(a), Oct. 22, 1986, 100 Stat. 2271; amended Pub. L. 100–203, title X, §10223(a), Dec. 22, 1987, 101 Stat. 1330–411; Pub. L. 100–647, title I, §1006(e)(4), (5)(A), Nov. 10, 1988, 102 Stat. 3400.)

REFERENCES IN TEXT

The Tax Reform Act of 1986, referred to in subsec. (d), is Pub. L. 99–514, Oct. 22, 1986, 100 Stat. 2085, as amended. Subtitle D (§§631–634) of title VI of the Tax Reform Act of 1986 enacted sections 336 and 337 of this title, amended sections 26, 311, 312, 332, 334, 338, 341, 346, 367, 453, 453B, 467, 852, 897, 1056, 1248, 1255, 1276, 1363, 1366, 1374, and 1375 of this title, and repealed former sections 333, 336, and 337 of this title. For complete classification of this Act to the Code, see Tables.

PRIOR PROVISIONS

A prior section 337, acts Aug. 16, 1954, ch. 736, 68A Stat. 106; Sept. 2, 1958, Pub. L. 85–866, title I, §19, 72 Stat. 1615; Oct. 4, 1976, Pub. L. 94–455, title XIX, §§1901(a)(46), 1906(b)(13)(A), title XXI, §2118(a), 90 Stat. 1772, 1834, 1912; Nov. 6, 1978, Pub. L. 95–600, title VII, §701(i)(1), 92 Stat. 2904; Nov. 10, 1978, Pub. L. 95–628, §4(a), 92 Stat. 3628; Apr. 2, 1980, Pub. L. 96–223, title IV, §403(b)(2)(A), 94 Stat. 304; Oct. 19, 1980, Pub. L. 96–471, §2(c)(2), 94 Stat. 2254; Dec. 24, 1980, Pub. L. 96–589, §5(c), 94 Stat. 3405; Sept. 3, 1982, Pub. L. 97–248, title II, §224(c)(5), (6), 96 Stat. 489; Oct. 22, 1986, Pub. L. 99–514, title XVIII, §1804(e)(7)(A), 100 Stat. 2803, related to gain or loss on sales or exchanges in connection with certain liquidations, prior to repeal by Pub. L. 99–514, §631(a).

AMENDMENTS

1988—Subsec. (b)(2)(B)(i). Pub. L. 100–647, §1006(e)(4)(A), (B), substituted ''described in section 511(a)(2)'' for ''described in section 511(a)(2) or 511(b)(2)'' and ''in an activity the income from which is subject to tax under section 511(a)'' for ''in an unrelated trade or business (as defined in section 513)''.

Subsec. (b)(2)(B)(ii). Pub. L. 100–647, §1006(e)(4)(C), substituted ''an activity referred to in clause (i)'' for ''an unrelated trade or business of such organization''.

Subsec. (d). Pub. L. 100–647, §1006(e)(5)(A), in introductory provisions, substituted ''amendments made by subtitle D of title VI of the Tax Reform Act of 1986'' for ''amendments made to this subpart by the Tax Reform Act of 1986'', and in par. (1), substituted ''this subchapter) or through the use of a regulated investment company, real estate investment trust, or tax-exempt entity'' for ''this subchapter)''.

1987—Subsec. (c). Pub. L. 100–203 inserted at end ''For purposes of this section, the determination of whether any corporation is an 80-percent distributee shall be made without regard to any consolidated return regulation.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1006(e)(5)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A)(ii) [amending this section] shall not apply to any reorganization if before June 10, 1987—

''(i) the board of directors of a party to the reorganization adopted a resolution to solicit shareholder approval for the transaction, or

''(ii) the shareholders or the board of directors of a party to the reorganization approved the transaction.''

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to distributions or transfers after Dec. 15, 1987, with exceptions for certain distributee corporations and distributions covered by prior transition rule, see section 10223(d) of Pub. L. 100–203, set out as a note under section 304 of this title.

EFFECTIVE DATE

Section applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as a note under section 336 of this title.

§338. Certain stock purchases treated as asset acquisitions

(a) General rule

For purposes of this subtitle, if a purchasing corporation makes an election under this sec-

tion (or is treated under subsection (e) as having made such an election), then, in the case of any qualified stock purchase, the target corporation—

(1) shall be treated as having sold all of its assets at the close of the acquisition date at fair market value in a single transaction, and

(2) shall be treated as a new corporation which purchased all of the assets referred to in paragraph (1) as of the beginning of the day after the acquisition date.

(b) Basis of assets after deemed purchase

(1) In general

For purposes of subsection (a), the assets of the target corporation shall be treated as purchased for an amount equal to the sum of—

(A) the grossed-up basis of the purchasing corporation's recently purchased stock, and

(B) the basis of the purchasing corporation's nonrecently purchased stock.

(2) Adjustment for liabilities and other relevant items

The amount described in paragraph (1) shall be adjusted under regulations prescribed by the Secretary for liabilities of the target corporation and other relevant items.

(3) Election to step-up the basis of certain target stock

(A) In general

Under regulations prescribed by the Secretary, the basis of the purchasing corporation's nonrecently purchased stock shall be the basis amount determined under subparagraph (B) of this paragraph if the purchasing corporation makes an election to recognize gain as if such stock were sold on the acquisition date for an amount equal to the basis amount determined under subparagraph (B).

(B) Determination of basis amount

For purposes of subparagraph (A), the basis amount determined under this subparagraph shall be an amount equal to the grossed-up basis determined under subparagraph (A) of paragraph (1) multiplied by a fraction—

(i) the numerator of which is the percentage of stock (by value) in the target corporation attributable to the purchasing corporation's nonrecently purchased stock, and

(ii) the denominator of which is 100 percent minus the percentage referred to in clause (i).

(4) Grossed-up basis

For purposes of paragraph (1), the grossed-up basis shall be an amount equal to the basis of the corporation's recently purchased stock, multiplied by a fraction—

(A) the numerator of which is 100 percent, minus the percentage of stock (by value) in the target corporation attributable to the purchasing corporation's nonrecently purchased stock, and

(B) the denominator of which is the percentage of stock (by value) in the target corporation attributable to the purchasing corporation's recently purchased stock.

(5) Allocation among assets

The amount determined under paragraphs (1) and (2) shall be allocated among the assets of the target corporation under regulations prescribed by the Secretary.

(6) Definitions of recently purchased stock and nonrecently purchased stock

For purposes of this subsection—

(A) Recently purchased stock

The term ''recently purchased stock'' means any stock in the target corporation which is held by the purchasing corporation on the acquisition date and which was purchased by such corporation during the 12-month acquisition period.

(B) Nonrecently purchased stock

The term ''nonrecently purchased stock'' means any stock in the target corporation which is held by the purchasing corporation on the acquisition date and which is not recently purchased stock.

[(c) Repealed. Pub. L. 99–514, title VI, § 631(b)(2), Oct. 22, 1986, 100 Stat. 2272]

(d) Purchasing corporation; target corporation; qualified stock purchase

For purposes of this section—

(1) Purchasing corporation

The term ''purchasing corporation'' means any corporation which makes a qualified stock purchase of stock of another corporation.

(2) Target corporation

The term ''target corporation'' means any corporation the stock of which is acquired by another corporation in a qualified stock purchase.

(3) Qualified stock purchase

The term ''qualified stock purchase'' means any transaction or series of transactions in which stock (meeting the requirements of section 1504(a)(2)) of 1 corporation is acquired by another corporation by purchase during the 12-month acquisition period.

(e) Deemed election where purchasing corporation acquires asset of target corporation

(1) In general

A purchasing corporation shall be treated as having made an election under this section with respect to any target corporation if, at any time during the consistency period, it acquires any asset of the target corporation (or a target affiliate).

(2) Exceptions

Paragraph (1) shall not apply with respect to any acquisition by the purchasing corporation if—

(A) such acquisition is pursuant to a sale by the target corporation (or the target affiliate) in the ordinary course of its trade or business,

(B) the basis of the property acquired is determined wholly by reference to the adjusted basis of such property in the hands of the person from whom acquired,

(C) such acquisition was before September 1, 1982, or

(D) such acquisition is described in regulations prescribed by the Secretary and meets such conditions as such regulations may provide.

(3) Anti-avoidance rule

Whenever necessary to carry out the purpose of this subsection and subsection (f), the Secretary may treat stock acquisitions which are pursuant to a plan and which meet the requirements of section 1504(a)(2) as qualified stock purchases.

(f) Consistency required for all stock acquisitions from same affiliated group

If a purchasing corporation makes qualified stock purchases with respect to the target corporation and 1 or more target affiliates during any consistency period, then (except as otherwise provided in subsection (e))—

(1) any election under this section with respect to the first such purchase shall apply to each other such purchase, and

(2) no election may be made under this section with respect to the second or subsequent such purchase if such an election was not made with respect to the first such purchase.

(g) Election

(1) When made

Except as otherwise provided in regulations, an election under this section shall be made not later than the 15th day of the 9th month beginning after the month in which the acquisition date occurs.

(2) Manner

An election by the purchasing corporation under this section shall be made in such manner as the Secretary shall by regulations prescribe.

(3) Election irrevocable

An election by a purchasing corporation under this section, once made, shall be irrevocable.

(h) Definitions and special rules

For purposes of this section—

(1) 12-month acquisition period

The term ''12-month acquisition period'' means the 12-month period beginning with the date of the first acquisition by purchase of stock included in a qualified stock purchase (or, if any of such stock was acquired in an acquisition which is a purchase by reason of subparagraph (C) of paragraph (3), the date on which the acquiring corporation is first considered under section 318(a) (other than paragraph (4) thereof) as owning stock owned by the corporation from which such acquisition was made).

(2) Acquisition date

The term ''acquisition date'' means, with respect to any corporation, the first day on which there is a qualified stock purchase with respect to the stock of such corporation.

(3) Purchase

(A) In general

The term ''purchase'' means any acquisition of stock, but only if—

(i) the basis of the stock in the hands of the purchasing corporation is not determined (I) in whole or in part by reference to the adjusted basis of such stock in the hands of the person from whom acquired, or (II) under section 1014(a) (relating to property acquired from a decedent),

(ii) the stock is not acquired in an exchange to which section 351, 354, 355, or 356 applies and is not acquired in any other transaction described in regulations in which the transferor does not recognize the entire amount of the gain or loss realized on the transaction, and

(iii) the stock is not acquired from a person the ownership of whose stock would, under section 318(a) (other than paragaraph[1] (4) thereof), be attributed to the person acquiring such stock.

(B) Deemed purchase under subsection (a)

The term ''purchase'' includes any deemed purchase under subsection (a)(2). The acquisition date for a corporation which is deemed purchased under subsection (a)(2) shall be determined under regulations prescribed by the Secretary.

(C) Certain stock acquisitions from related corporations

(i) In general

Clause (iii) of subparagraph (A) shall not apply to an acquisition of stock from a related corporation if at least 50 percent in value of the stock of such related corporation was acquired by purchase (within the meaning of subparagraphs (A) and (B)).

(ii) Certain distributions

Clause (i) of subparagraph (A) shall not apply to an acquisition of stock described in clause (i) of this subparagraph if the corporation acquiring such stock—

(I) made a qualified stock purchase of stock of the related corporation, and

(II) made an election under this section (or is treated under subsection (e) as having made such an election) with respect to such qualified stock purchase.

(iii) Related corporation defined

For purposes of this subparagraph, a corporation is a related corporation if stock owned by such corporation is treated (under section 318(a) other than paragraph (4) thereof) as owned by the corporation acquiring the stock.

(4) Consistency period

(A) In general

Except as provided in subparagraph (B), the term ''consistency period'' means the period consisting of—

(i) the 1-year period before the beginning of the 12-month acquisition period for the target corporation,

(ii) such acquisition period (up to and including the acquisition date), and

(iii) the 1-year period beginning on the day after the acquisition date.

[1] So in original.

(B) Extension where there is plan

The period referred to in subparagraph (A) shall also include any period during which the Secretary determines that there was in effect a plan to make a qualified stock purchase plus 1 or more other qualified stock purchases (or asset acquisitions described in subsection (e)) with respect to the target corporation or any target affiliate.

(5) Affiliated group

The term ''affiliated group'' has the meaning given to such term by section 1504(a) (determined without regard to the exceptions contained in section 1504(b)).

(6) Target affiliate

(A) In general

A corporation shall be treated as a target affiliate of the target corporation if each of such corporations was, at any time during so much of the consistency period as ends on the acquisition date of the target corporation, a member of an affiliated group which had the same common parent.

(B) Certain foreign corporations, etc.

Except as otherwise provided in regulations (and subject to such conditions as may be provided in regulations)—

(i) the term ''target affiliate'' does not include a foreign corporation, a DISC, or a corporation to which an election under section 936 applies, and

(ii) stock held by a target affiliate in a foreign corporation or a domestic corporation which is a DISC or described in section 1248(e) shall be excluded from the operation of this section.

[(7) Repealed. Pub. L. 100–647, title I, § 1006(e)(20), Nov. 10, 1988, 102 Stat. 3403]

(8) Acquisitions by affiliated group treated as made by 1 corporation

Except as provided in regulations prescribed by the Secretary, stock and asset acquisitions made by members of the same affiliated group shall be treated as made by 1 corporation.

(9) Target not treated as member of affiliated group

Except as otherwise provided in paragraph (10) or in regulations prescribed under this paragraph, the target corporation shall not be treated as a member of an affiliated group with respect to the sale described in subsection (a)(1).

(10) Elective recognition of gain or loss by target corporation, together with nonrecognition of gain or loss on stock sold by selling consolidated group

(A) In general

Under regulations prescribed by the Secretary, an election may be made under which if—

(i) the target corporation was, before the transaction, a member of the selling consolidated group, and

(ii) the target corporation recognizes gain or loss with respect to the transaction as if it sold all of its assets in a single transaction,

then the target corporation shall be treated as a member of the selling consolidated group with respect to such sale, and (to the extent provided in regulations) no gain or loss will be recognized on stock sold or exchanged in the transaction by members of the selling consolidated group.

(B) Selling consolidated group

For purposes of subparagraph (A), the term ''selling consolidated group'' means any group of corporations which (for the taxable period which includes the transaction)—

(i) includes the target corporation, and

(ii) files a consolidated return.

To the extent provided in regulations, such term also includes any affiliated group of corporations which includes the target corporation (whether or not such group files a consolidated return).

(C) Information required to be furnished to the Secretary

Under regulations, where an election is made under subparagraph (A), the purchasing corporation and the common parent of the selling consolidated group shall, at such times and in such manner as may be provided in regulations, furnish to the Secretary the following information:

(i) The amount allocated under subsection (b)(5) to goodwill or going concern value.

(ii) Any modification of the amount described in clause (i).

(iii) Any other information as the Secretary deems necessary to carry out the provisions of this paragraph.

(11) Elective formula for determining fair market value

For purposes of subsection (a)(1), fair market value may be determined on the basis of a formula provided in regulations prescribed by the Secretary which takes into account liabilities and other relevant items.

[(12) Repealed. Pub. L. 99–514, title VI, § 631(e)(5), Oct. 22, 1986, 100 Stat. 2273]

(13) Tax on deemed sale not taken into account for estimated tax purposes

For purposes of section 6655, tax attributable to the sale described in subsection (a)(1) shall not be taken into account. The preceding sentence shall not apply with respect to a qualified stock purchase for which an election is made under paragraph (10).

[(14) Repealed. Pub. L. 108–27, title III, § 302(e)(4)(B)(i), May 28, 2003, 117 Stat. 763]

(15) Combined deemed sale return

Under regulations prescribed by the Secretary, a combined deemed sale return may be filed by all target corporations acquired by a purchasing corporation on the same acquisition date if such target corporations were members of the same selling consolidated group (as defined in subparagraph (B) of paragraph (10)).

(16) Coordination with foreign tax credit provisions

Except as provided in regulations, this section shall not apply for purposes of determining the source or character of any item for purposes of subpart A of part III of subchapter N of this chapter (relating to foreign tax credit). The preceding sentence shall not apply to any gain to the extent such gain is includible in gross income as a dividend under section 1248 (determined without regard to any deemed sale under this section by a foreign corporation).

(i) Regulations

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

(1) regulations to ensure that the purpose of this section to require consistency of treatment of stock and asset sales and purchases may not be circumvented through the use of any provision of law or regulations (including the consolidated return regulations) and

(2) regulations providing for the coordination of the provisions of this section with the provision of this title relating to foreign corporations and their shareholders.

(Added Pub. L. 97–248, title II, §224(a), Sept. 3, 1982, 96 Stat. 485; amended Pub. L. 97–448, title III, §306(a)(8)(A)(i), Jan. 12, 1983, 96 Stat. 2402; Pub. L. 98–369, div. A, title VII, §712(k)(1)–(5)(D), (6), (7), July 18, 1984, 98 Stat. 948–952; Pub. L. 99–514, title VI, §631(b), (e)(5), title XII, §1275(c)(6), title XVIII, §§1804(e)(8)(A), 1899A(7), Oct. 22, 1986, 100 Stat. 2272, 2273, 2599, 2804, 2958; Pub. L. 100–647, title I, §§1006(e)(20), 1012(bb)(5)(A), 1018(d)(9), Nov. 10, 1988, 102 Stat. 3403, 3535, 3581; Pub. L. 101–508, title XI, §11323(c)(1), Nov. 5, 1990, 104 Stat. 1388–465; Pub. L. 108–27, title III, §302(e)(4)(B)(i), May 28, 2003, 117 Stat. 763; Pub. L. 108–357, title VIII, §839(a), Oct. 22, 2004, 118 Stat. 1597.)

AMENDMENT OF SECTION

For termination of amendment by section 303 of Pub. L. 108–27, see Effective and Termination Dates of 2003 Amendment note below.

PRIOR PROVISIONS

A prior section 338, act Aug. 16, 1954, ch. 736, 68A Stat. 107, made reference to a special rule relating to the effect on earnings and profits of certain distributions in partial liquidation in section 312(e), prior to repeal by Pub. L. 97–248, §222(e)(4).

AMENDMENTS

2004—Subsec. (h)(13). Pub. L. 108–357 inserted at end ''The preceding sentence shall not apply with respect to a qualified stock purchase for which an election is made under paragraph (10).''

2003—Subsec. (h)(14). Pub. L. 108–27, §§302(e)(4)(B)(i), 303, temporarily struck out heading and text of par. (14). Text read as follows: ''For purposes of determining whether section 341 applies to a disposition within 1 year after the acquisition date of stock by a shareholder (other than the acquiring corporation) who held stock in the target corporation on the acquisition date, section 341 shall be applied without regard to this section.'' See Effective and Termination Dates of 2003 Amendment note below.

1990—Subsec. (h)(10)(C). Pub. L. 101–508 added subpar. (C).

1988—Subsec. (e)(3). Pub. L. 100–647, §1018(d)(9), substituted ''which meet the requirements of section 1504(a)(2)'' for ''which meet the 80 percent requirements of subparagraphs (A) and (B) of subsection (d)(3)''.

Subsec. (h)(7). Pub. L. 100–647, §1006(e)(20), struck out par. (7) which read as follows: ''ADDITIONAL PERCENTAGE MUST BE ATTRIBUTABLE TO PURCHASE, ETC.—For purposes of subsection (c)(1), any increase in the maximum percentage of stock taken into account over the percentage of stock (by value) of the target corporation held by the purchasing corporation on the acquisition date shall be taken into account only to the extent such increase is attributable to—

''(A) purchase, or

''(B) a redemption of stock of the target corporation—

''(i) to which section 302(a) applies, or

''(ii) in the case of a shareholder who is not a corporation, to which section 301 applies.''

Subsec. (h)(16). Pub. L. 100–647, §1012(bb)(5)(A), added par. (16).

1986—Subsec. (a)(1). Pub. L. 99–514, §631(b)(1), struck out ''to which section 337 applies'' after ''in a single transaction''.

Subsec. (c). Pub. L. 99–514, §631(b)(2), struck out subsec. (c) relating to special rules for coordination with section 337 where purchasing corporation holds less than 100 percent of stock, and in case of certain redemptions where an election is made under this section.

Subsec. (d)(3). Pub. L. 99–514, §1804(e)(8)(A), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The term 'qualified stock purchase' means any transaction or series of transactions in which stock of 1 corporation possessing—

''(A) at least 80 percent of total combined voting power of all classes of stock entitled to vote, and

''(B) at least 80 percent of the total number of shares of all other classes of stock (except nonvoting stock which is limited and preferred as to dividends),

is acquired by another corporation by purchase during the 12-month acquisition period.''

Subsec. (h)(3)(C)(i). Pub. L. 99–514, §1899A(7), substituted ''subparagraphs'' for ''subparagraph''.

Subsec. (h)(6)(B)(i). Pub. L. 99–514, §1275(c)(6), struck out ''a corporation described in section 934(b),'' after ''DISC,''.

Subsec. (h)(10)(B). Pub. L. 99–514, §631(b)(3), inserted provision that to the extent provided in regulations, term ''selling consolidated group'' also includes any affiliated group of corporations which includes the target corporation (whether or not such group files a consolidated return).

Subsec. (h)(12). Pub. L. 99–514, §631(e)(5), struck out par. (12) relating to applicability of section 337 where target had adopted plan for complete liquidation.

1984—Subsec. (a)(1). Pub. L. 98–369, §712(k)(1)(A), inserted ''at fair market value'' after ''acquisition date''.

Subsec. (b). Pub. L. 98–369, §712(k)(1)(B), substituted ''Basis of assets after deemed purchase'' for ''Price at which deemed sale made'' in heading.

Subsec. (b)(1). Pub. L. 98–369, §712(k)(1)(B), amended par. (1) generally, substituting ''as purchased for an amount equal to the sum of'' for ''as sold (and purchased) at an amount equal to'' in introductory text, ''purchasing corporation's recently purchased stock, and'' for ''purchasing corporation's stock in the target corporation on the acquisition date'' in subpar. (A), and ''the basis of the purchasing corporation's nonrecently purchased stock'' in subpar. (B) in lieu of provision relating to adjustment for liabilities and other relevant items, now covered in par. (2).

Subsec. (b)(2). Pub. L. 98–369, §712(k)(1)(B), amended par. (2) generally, incorporating former par. (1)(B) provision, inserting heading ''Adjustment for liabilities and other relevant items'' and substituting ''adjusted under regulations'' for ''properly adjusted under regulations''. Former par. (2) redesignated (4).

Subsec. (b)(3). Pub. L. 98–369, §712(k)(1)(B), added par. (3). Former par. (3) redesignated (5).

Subsec. (b)(4). Pub. L. 98–369, §712(k)(1)(B), redesignated former par. (2) as (4), substituted in introductory text ''corporation's recently purchased stock,'' for ''purchasing corporation's stock in the target corporation on the acquisition date'', inserted in subpar. (A) ''minus the percentage of stock (by value) in the target corporation attributable to the purchasing corporation's nonrecently purchased stock'', and substituted in subpar. (B) ''in the target corporation attributable to the purchasing corporation's recently purchased stock'' for ''of the target corporation held by the purchasing corporation on the acquisition date''.

Subsec. (b)(5). Pub. L. 98–369, §712(k)(1)(B), redesignated former par. (3) as (5) and inserted reference to par. (2).

Subsec. (b)(6). Pub. L. 98–369, §712(k)(1)(B), added par. (6).

Subsec. (c)(1). Pub. L. 98–369, §712(k)(2), inserted in last sentence ''and section 333 does not apply to such liquidation''.

Subsec. (e)(2). Pub. L. 98–369, §712(k)(3), substituted ''wholly'' for ''(in whole or in part)'' in subpar. (B), struck out subpar. (D) providing for nonapplication of par. (1) to any acquisition by the purchasing corporation if, to the extent provided in regulations, the property acquired is located outside the United States, redesignated subpar. (E) as (D), and, in subpar. (D) as redesignated, inserted ''and meets such conditions as such regulations may provide''.

Subsec. (g)(1). Pub. L. 98–369, §712(k)(4), substituted ''the 15th day of the 9th month beginning after the month in which the acquisition date occurs'' for ''75 days after the acquisition date''.

Subsec. (h)(1). Pub. L. 98–369, §712(k)(5)(C), included within 12-month acquisition period the period beginning with the date on which the acquiring corporation is first considered as owning stock owned by corporation from which acquisition was made.

Subsec. (h)(3)(A)(ii). Pub. L. 98–369, §712(k)(5)(D), included references to sections 354, 355, and 356 and in defining ''purchase'' provided that the stock not be acquired in any other transaction described in regulations in which the transferor does not recognize the entire amount of the gain or loss realized on the transaction.

Subsec. (h)(3)(B). Pub. L. 98–369, §712(k)(5)(A), substituted in heading ''under subsection (a)'' for ''of stock of subsidiaries'' and in text ''The term 'purchase' includes any deemed purchase under subsection (a)(2). The acquisition date for a corporation which is deemed purchased under subsection (a)(2) shall be determined under regulations prescribed by the Secretary'' for ''If stock in a corporation is acquired by purchase (within the meaning of subparagraph (A)) and, as a result of such acquisition, the corporation making such purchase is treated (by reason of section 318(a)) as owning stock in a 3rd corporation, the corporation making such purchase shall be treated as having purchased such stock in such 3rd corporation. The corporation making such purchase shall be treated as purchasing stock in the 3rd corporation by reason of the preceding sentence on the first day on which the purchasing corporation is considered under section 318(a) as owning such stock''.

Subsec. (h)(3)(C). Pub. L. 98–369, §712(k)(5)(B), added subpar. (C).

Subsec. (h)(7). Pub. L. 98–369, §712(k)(6)(A), added par. (7) and struck out former par. (7) which had provided that acquisitions by purchasing corporation include acquisitions by corporations affiliated with purchasing corporation. See subsec. (h)(8).

Subsec. (h)(8). Pub. L. 98–369, §712(k)(6)(A), added par. (8) incorporating former par. (7) provision stating that ''Except as otherwise provided in regulations, an acquisition of stock or assets by any member of an affiliated group which includes a purchasing corporation shall be treated as made by the purchasing corporation.'' Former par. (8) redesignated (9).

Subsec. (h)(9). Pub. L. 98–369, §712(k)(6)(A), (B), redesignated former par. (8) as (9) and substituted therein ''paragraph (10)'' for ''paragraph (9)''. Former par. (9) redesignated (10).

Subsec. (h)(10). Pub. L. 98–369, §712(k)(6)(A), redesignated former par. (9) as (10).

Subsec. (h)(11) to (15). Pub. L. 98–369, §712(k)(6)(C), added pars. (11) to (15).

Subsec. (i). Pub. L. 98–369, §712(k)(7), provided in introductory text that the regulations be appropriate to carry out the purposes of this section; designated existing provisions as par. (1) and substituted therein ''treatment of stock and asset sales and purchases'' for ''treatment of stock and asset purchases with respect to a target corporation and its target affiliates (whether by treating all of them as stock purchases or as asset purchases)'' before ''may not be circumvented'', and added par. (2).

1983—Subsec. (h)(8), (9). Pub. L. 97–448 added pars. (8) and (9).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §839(b), Oct. 22, 2004, 118 Stat. 1597, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to transactions occurring after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as a note under section 1 of this title.

Amendment by Pub. L. 108–27 inapplicable to taxable years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 303 of Pub. L. 108–27, as amended, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11323(d) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 1060 and 6724 of this title] shall apply to acquisitions after October 9, 1990.

''(2) BINDING CONTRACT EXCEPTION.—The amendments made by this section shall not apply to any acquisition pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such acquisition.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1012(bb)(5)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to qualified stock purchases (as defined in section 338(d)(3) of the 1986 Code) after March 31, 1988, except that, in the case of an election under section 338(h)(10) of the 1986 Code, such amendment shall apply to qualified stock purchases (as so defined) after June 10, 1987.''

Amendment by sections 1006(e)(20) and 1018(d)(9) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 631(b), (e)(5) of Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

Amendment by section 1275(c)(6) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

Section 1804(e)(8)(B) of Pub. L. 99–514 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply in cases where the 12-month acquisition period (as defined in section 338(h)(1) of the Internal Revenue Code of 1954 [now 1986] begins after December 31, 1985.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 712(k)(9) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(A) IN GENERAL.—The amendments made by this subsection [amending this section and sections 269 and 318 of this title] shall not apply to any qualified stock purchase (as defined in section 338(d)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) where the acquisition date (as defined in section 338(h)(2) of such Code) is before September 1, 1982.

''(B) EXTENSION OF TIME FOR MAKING ELECTION.—In the case of any qualified stock purchase described in subparagraph (A), the time for making an election under section 338 of such Code shall not expire before the close of the 60th day after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 712(k) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

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

EFFECTIVE DATE

Section 224(d) of Pub. L. 97–248, as amended by Pub. L. 97–448, title III, §306(a)(8)(B), Jan. 12, 1983, 96 Stat. 2403; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section and amending sections 168, 318, 334, 336, 337, 381, and 617 of this title] shall apply to any target corporation (within the meaning of section 338 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as added by this section) with respect to which the acquisition date (within the meaning of such section) occurs after August 31, 1982.

''(2) CERTAIN ACQUISITIONS BEFORE SEPTEMBER 1, 1982.—If—

''(A) an acquisition date (within the meaning of section 338 of such Code without regard to paragraph (5) of this subsection) occurred after August 31, 1980, and before September 1, 1982,

''(B) the target corporation (within the meaning of section 338 of such Code) is not liquidated before September 1, 1982, and

''(C) the purchasing corporation (within the meaning of section 338 of such Code makes, not later than November 15, 1982, an election under section 338 of such Code,

then the amendments made by this section shall apply to the acquisition of such target corporation.

''(3) CERTAIN ACQUISITIONS OF FINANCIAL INSTITUTIONS.—In any case in which—

''(A) there is, on July 22, 1982, a binding contract to acquire control (within the meaning of section 368(c) of such Code of any financial institution,

''(B) the approval of one or more regulatory authorities is required in order to complete such acquisition, and

''(C) within 90 days after the date of the final approval of the last such regulatory authority granting final approval, a plan of complete liquidation of such financial institution is adopted,

then the purchasing corporation may elect not to have the amendments made by this section apply to the acquisition pursuant to such contract.

''(4) EXTENSION OF TIME FOR MAKING ELECTIONS; REVOCATION OF ELECTIONS.—

''(A) EXTENSION.—The time for making an election under section 338 of such Code shall not expire before the close of February 28, 1983.

''(B) REVOCATION.—Any election made under section 338 of such Code may be revoked by the purchasing corporation if revoked before March 1, 1983.

''(5) RULES FOR ACQUISITIONS DESCRIBED IN PARAGRAPH (2).—

''(A) IN GENERAL.—For purposes of applying section 338 of such Code with respect to any acquisition described in paragraph (2)—

''(i) the date selected under subparagraph (B) of this paragraph shall be treated as the acquisition date,

''(ii) a rule similar to the last sentence of section 334(b)(2) of such Code (as in effect on August 31, 1982) shall apply, and

''(iii) subsections (e), (f), and (i) of such section 338, and paragraphs (4), (6), (8), and (9) of subsection (h) of such section 338, shall not apply.

''(B) SELECTION OF ACQUISITION DATE BY PURCHASING CORPORATION.—The purchasing corporation may select any date for purposes of subparagraph (A)(i) if such date—

''(i) is after the later of June 30, 1982, or the acquisition date (within the meaning of section 338 of such Code without regard to this paragraph), and

''(ii) is on or before the date on which the election described in paragraph (2)(C) is made.''

TREATMENT OF CERTAIN CORPORATION ORGANIZED ON FEBRUARY 22, 1983

Section 1804(e)(9) of Pub. L. 99–514 provided that: ''In the case of a Rhode Island corporation which was organized on February 22, 1983, and which on February 25, 1983—

''(A) purchased the stock of another corporation,

''(B) filed an election under section 338(g) of the Internal Revenue Code of 1986 with respect to such purchase, and

''(C) merged into the acquired corporation,

such purchase of stock shall be considered as made by the acquiring corporation, such election shall be valid, and the acquiring corporation shall be considered a purchasing corporation for purposes of section 338 of such Code without regard to the duration of the existence of the acquiring corporation.''

SPECIAL RULES FOR DEEMED PURCHASES UNDER PRIOR LAW

Section 712(k)(10) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''If, before October 20, 1983, a corporation was treated as making a qualified stock purchase (as defined in section 338(d)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]), but would not be so treated under the amendments made by paragraphs (5) and (6) [amending subsec. (h) and section 318(b)(4) of this title] of this subsection, the amendments made by such paragraphs shall not apply to such purchase unless such corporation elects (at such time and in such manner as the Secretary of the Treasury or his delegate may by regulations prescribe) to have the amendments made by such paragraphs apply.''

EXCEPTION FOR STOCK PURCHASES IN CONTEMPLATION OF TARGET CORPORATION AS MEMBER OF AFFILIATED GROUP

Section 306(a)(8)(A)(ii) of Pub. L. 97–448, as amended by Pub. L. 98–369, div. A, title VII, §722(a)(3), July 18, 1984, 98 Stat. 973; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''If—

''(I) any portion of a qualified stock purchase is pursuant to a binding contract entered into on or after September 1, 1982, and on or before the date of the enactment of this Act [Jan. 12, 1983], and

''(II) the purchasing corporation establishes by clear and convincing evidence that such contract was negotiated on the contemplation that, with respect to the deemed sale under section 338 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the target corporation would be treated as a member of the affiliated group which includes the selling corporation,

then the amendment made by clause (i) [amending subsec. (h)] shall not apply to such qualified stock purchase.''

[SUBPART C—REPEALED]

[§ 341. Repealed. Pub. L. 108–27, title III, § 302(e)(4)(A), May 28, 2003, 117 Stat. 763]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 107; Pub. L. 85–866, title I, § 20(a), Sept. 2, 1958, 72 Stat. 1615; Pub. L. 87–834, § 13(f)(4), Oct. 16, 1962, 76 Stat. 1035; Pub. L. 88–272, title II, § 231(b)(4), Feb. 26, 1964, 78 Stat. 105; Pub. L. 88–484, § 1(a), Aug. 22, 1964, 78 Stat. 596; Pub. L. 89–570, § 1(b)(4), Sept. 12, 1966, 80 Stat. 762; Pub. L. 91–172, title II, § 211(b)(4), title V, § 514(b)(1), Dec. 30, 1969, 83 Stat. 570, 643; Pub. L. 94–455, title II, § 205(c)(2), title XIV, § 1402(b)(1)(B), (2), title XIX, §§ 1901(b)(3)(A), (I), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1535, 1731, 1732, 1792, 1793, 1834; Pub. L. 97–34, title V, § 505(c)(2), Aug. 13, 1981, 95 Stat. 332; Pub. L. 97–248, title II, § 222(e)(5), Sept. 3, 1982, 96 Stat. 480; Pub. L. 98–369, div. A, title I, §§ 43(c)(1), 65(a)–(c), 135(a), title IV, § 492(b)(2), title X, § 1001(b)(2), (e), July 18, 1984, 98 Stat. 558, 584, 669, 854, 1011, 1012; Pub. L. 99–514, title VI, § 631(e)(6), title XVIII, §§ 1804(i)(1), 1899A(8), Oct. 22, 1986, 100 Stat. 2273, 2807, 2958; Pub. L. 100–647, title I, § 1006(e)(18), Nov. 10, 1988, 102 Stat. 3403; Pub. L. 104–188, title I, § 1702(h)(7), Aug. 20, 1996, 110 Stat. 1874; Pub. L. 106–170, title V, § 532(c)(2)(D), Dec. 17, 1999, 113 Stat. 1930; Pub. L. 107–147, title IV, § 417(24)(B)(i), Mar. 9, 2002, 116 Stat. 57, related to collapsible corporations.

TERMINATION OF REPEAL

For termination of repeal by section 303 of Pub. L. 108–27, see Effective and Termination Dates of Repeal note below.

EFFECTIVE AND TERMINATION DATES OF REPEAL

Repeal applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

Repeal terminated for taxable years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if section had never been repealed, see section 303 of Pub. L. 108–27, as amended, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

[§ 342. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(47), Oct. 4, 1976, 90 Stat. 1772]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 110, related to liquidation of certain foreign personal holding companies.

EFFECTIVE DATE OF REPEAL

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

SUBPART D—DEFINITION AND SPECIAL RULE

Sec.
346. Definition and special rule.

AMENDMENTS

1982—Pub. L. 97–248, title II, § 222(e)(8)(A), Sept. 3, 1982, 96 Stat. 481, inserted ''and Special Rule'' in subpart heading, and substituted ''Definition and special rule'' for ''Partial liquidation defined'' in item 346.

§ 346. Definition and special rule

(a) Complete liquidation

For purposes of this subchapter, a distribution shall be treated as in complete liquidation of a corporation if the distribution is one of a series of distributions in redemption of all of the stock of the corporation pursuant to a plan.

(b) Transactions which might reach same result as partial liquidations

The Secretary shall prescribe such regulations as may be necessary to ensure that the purposes of subsections (a) and (b) of section 222 of the Tax Equity and Fiscal Responsibility Act of 1982 (which repeal the special tax treatment for partial liquidations) may not be circumvented through the use of section 355, 351, or any other provision of law or regulations (including the consolidated return regulations).

(Aug. 16, 1954, ch. 736, 68A Stat. 110; Pub. L. 97–248, title II, § 222(d), Sept. 3, 1982, 96 Stat. 479; Pub. L. 99–514, title VI, § 631(e)(7), Oct. 22, 1986, 100 Stat. 2273.)

REFERENCES IN TEXT

Subsections (a) and (b) of section 222 of the Tax Equity and Fiscal Responsibility Act of 1982, referred to in subsec. (b), are subsecs. (a) and (b) of Pub. L. 97–248, title II, § 222, Sept. 3, 1982, 96 Stat. 478, which amended sections 331(a) and 336(a) of this title.

AMENDMENTS

1986—Subsec. (b). Pub. L. 99–514 struck out ''337,'' after ''351,''.

1982—Subsec. (a). Pub. L. 97–248 substituted provision that a distribution shall be treated as in complete liquidation if the distribution is one of a series in redemption of all the stock pursuant to a plan for provision that a distribution was to be treated as in partial liquidation if the distribution was one of a series in redemption of all the stock pursuant to a plan, or the distribution was not essentially equivalent to a dividend, was in redemption of part of the stock pursuant to a plan, and occurred within the taxable year or the next taxable year of the plan being adopted, including but not limited to a distribution which met the requirements of former subsec. (b) of this section, and that for the purposes of sections 562(b) and 6043 of this title, a partial liquidation included a redemption of stock to which section 302 of this title applied.

Subsec. (b). Pub. L. 97–248 added subsec. (b) and struck out former subsec. (b) which provided that a distribution was to be treated as in partial liquidation of a corporation if the distribution was attributable to the cessation of a business which had been carried on for the previous 5-year period and had not been acquired by the corporation in a transaction involving recognition of gain or loss during that time, and if the distributing corporation was actively involved in a trade or business immediately after the distribution under the terms described above for the business being liquidated, and that compliance with the above requirements would be determined without regard to whether or not the distribution was pro rata with respect to all the shareholders of the corporation.

Subsec. (c). Pub. L. 97–248 struck out subsec. (c) which provided that the fact that, with respect to a shareholder, a distribution qualified under section

302(a) by reason of section 302(b) would not be taken into account in determining whether the distribution, with respect to such shareholder, was also a distribution in partial liquidation of the corporation.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to distributions after Aug. 31, 1982, with exceptions for certain partial liquidations, see section 222(f) of Pub. L. 97–248, set out as a note under section 302 of this title.

PART III—CORPORATE ORGANIZATIONS AND REORGANIZATIONS

Subpart
A. Corporate organizations.
B. Effects on shareholders and security holders.
C. Effects on corporations.[1]
D. Special rule; definitions.

SUBPART A—CORPORATE ORGANIZATIONS

Sec.
351. Transfer to corporation controlled by transferor.

§ 351. Transfer to corporation controlled by transferor

(a) General rule

No gain or loss shall be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock in such corporation and immediately after the exchange such person or persons are in control (as defined in section 368(c)) of the corporation.

(b) Receipt of property

If subsection (a) would apply to an exchange but for the fact that there is received, in addition to the stock permitted to be received under subsection (a), other property or money, then—

(1) gain (if any) to such recipient shall be recognized, but not in excess of—

(A) the amount of money received, plus

(B) the fair market value of such other property received; and

(2) no loss to such recipient shall be recognized.

(c) Special rules where distribution to shareholders

(1) In general

In determining control for purposes of this section, the fact that any corporate transferor distributes part or all of the stock in the corporation which it receives in the exchange to its shareholders shall not be taken into account.

(2) Special rule for section 355

If the requirements of section 355 (or so much of section 356 as relates to section 355) are met with respect to a distribution described in paragraph (1), then, solely for purposes of determining the tax treatment of the transfers of property to the controlled corporation by the distributing corporation, the fact that the shareholders of the distributing corporation dispose of part or all of the distributed stock, or the fact that the corporation whose stock was distributed issues additional stock, shall not be taken into account in determining control for purposes of this section.

(d) Services, certain indebtedness, and accrued interest not treated as property

For purposes of this section, stock issued for—

(1) services,

(2) indebtedness of the transferee corporation which is not evidenced by a security, or

(3) interest on indebtedness of the transferee corporation which accrued on or after the beginning of the transferor's holding period for the debt,

shall not be considered as issued in return for property.

(e) Exceptions

This section shall not apply to—

(1) Transfer of property to an investment company

A transfer of property to an investment company. For purposes of the preceding sentence, the determination of whether a company is an investment company shall be made—

(A) by taking into account all stock and securities held by the company, and

(B) by treating as stock and securities—

(i) money,

(ii) stocks and other equity interests in a corporation, evidences of indebtedness, options, forward or futures contracts, notional principal contracts and derivatives,

(iii) any foreign currency,

(iv) any interest in a real estate investment trust, a common trust fund, a regulated investment company, a publicly-traded partnership (as defined in section 7704(b)) or any other equity interest (other than in a corporation) which pursuant to its terms or any other arrangement is readily convertible into, or exchangeable for, any asset described in any preceding clause, this clause or clause (v) or (viii),

(v) except to the extent provided in regulations prescribed by the Secretary, any interest in a precious metal, unless such metal is used or held in the active conduct of a trade or business after the contribution,

(vi) except as otherwise provided in regulations prescribed by the Secretary, interests in any entity if substantially all of the assets of such entity consist (directly or indirectly) of any assets described in any preceding clause or clause (viii),

(vii) to the extent provided in regulations prescribed by the Secretary, any interest in any entity not described in clause (vi), but only to the extent of the value of such interest that is attributable to assets

[1] So in original. Does not conform to subpart heading.

listed in clauses (i) through (v) or clause (viii), or

(viii) any other asset specified in regulations prescribed by the Secretary.

The Secretary may prescribe regulations that, under appropriate circumstances, treat any asset described in clauses (i) through (v) as not so listed.

(2) Title 11 or similar case

A transfer of property of a debtor pursuant to a plan while the debtor is under the jurisdiction of a court in a title 11 or similar case (within the meaning of section 368(a)(3)(A)), to the extent that the stock received in the exchange is used to satisfy the indebtedness of such debtor.

(f) Treatment of controlled corporation

If—

(1) property is transferred to a corporation (hereinafter in this subsection referred to as the ''controlled corporation'') in an exchange with respect to which gain or loss is not recognized (in whole or in part) to the transferor under this section, and

(2) such exchange is not in pursuance of a plan of reorganization,

section 311 shall apply to any transfer in such exchange by the controlled corporation in the same manner as if such transfer were a distribution to which subpart A of part I applies.

(g) Nonqualified preferred stock not treated as stock

(1) In general

In the case of a person who transfers property to a corporation and receives nonqualified preferred stock—

(A) subsection (a) shall not apply to such transferor, and

(B) if (and only if) the transferor receives stock other than nonqualified preferred stock—

(i) subsection (b) shall apply to such transferor; and

(ii) such nonqualified preferred stock shall be treated as other property for purposes of applying subsection (b).

(2) Nonqualified preferred stock

For purposes of paragraph (1)—

(A) In general

The term ''nonqualified preferred stock'' means preferred stock if—

(i) the holder of such stock has the right to require the issuer or a related person to redeem or purchase the stock,

(ii) the issuer or a related person is required to redeem or purchase such stock,

(iii) the issuer or a related person has the right to redeem or purchase the stock and, as of the issue date, it is more likely than not that such right will be exercised, or

(iv) the dividend rate on such stock varies in whole or in part (directly or indirectly) with reference to interest rates, commodity prices, or other similar indices.

(B) Limitations

Clauses (i), (ii), and (iii) of subparagraph (A) shall apply only if the right or obligation referred to therein may be exercised within the 20-year period beginning on the issue date of such stock and such right or obligation is not subject to a contingency which, as of the issue date, makes remote the likelihood of the redemption or purchase.

(C) Exceptions for certain rights or obligations

(i) In general

A right or obligation shall not be treated as described in clause (i), (ii), or (iii) of subparagraph (A) if—

(I) it may be exercised only upon the death, disability, or mental incompetency of the holder, or

(II) in the case of a right or obligation to redeem or purchase stock transferred in connection with the performance of services for the issuer or a related person (and which represents reasonable compensation), it may be exercised only upon the holder's separation from service from the issuer or a related person.

(ii) Exception

Clause (i)(I) shall not apply if the stock relinquished in the exchange, or the stock acquired in the exchange is in—

(I) a corporation if any class of stock in such corporation or a related party is readily tradable on an established securities market or otherwise, or

(II) any other corporation if such exchange is part of a transaction or series of transactions in which such corporation is to become a corporation described in subclause (I).

(3) Definitions

For purposes of this subsection—

(A) Preferred stock

The term ''preferred stock'' means stock which is limited and preferred as to dividends and does not participate in corporate growth to any significant extent. Stock shall not be treated as participating in corporate growth to any significant extent unless there is a real and meaningful likelihood of the shareholder actually participating in the earnings and growth of the corporation. If there is not a real and meaningful likelihood that dividends beyond any limitation or preference will actually be paid, the possibility of such payments will be disregarded in determining whether stock is limited and preferred as to dividends.

(B) Related person

A person shall be treated as related to another person if they bear a relationship to such other person described in section 267(b) or 707(b).

(4) Regulations

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

sections 354(a)(2)(C), 355(a)(3)(D), and 356(e). The Secretary may also prescribe regulations, consistent with the treatment under this subsection and such sections, for the treatment of nonqualified preferred stock under other provisions of this title.

(h) Cross references

(1) For special rule where another party to the exchange assumes a liability, see section 357.

(2) For the basis of stock or property received in an exchange to which this section applies, see sections 358 and 362.

(3) For special rule in the case of an exchange described in this section but which results in a gift, see section 2501 and following.

(4) For special rule in the case of an exchange described in this section but which has the effect of the payment of compensation by the corporation or by a transferor, see section 61(a)(1).

(5) For coordination of this section with section 304, see section 304(b)(3).

(Aug. 16, 1954, ch. 736, 68A Stat. 111; Pub. L. 89–809, title II, §203(a), (b), Nov. 13, 1966, 80 Stat. 1577; Pub. L. 94–455, title XIX, §1901(a)(48)(A), (B), Oct. 4, 1976, 90 Stat. 1772; Pub. L. 96–589, §5(e), Dec. 24, 1980, 94 Stat. 3406; Pub. L. 97–248, title II, §226(a)(1)(B), Sept. 3, 1982, 96 Stat. 491; Pub. L. 100–647, title I, §1018(d)(5)(G), Nov. 10, 1988, 102 Stat. 3580; Pub. L. 101–239, title VII, §7203(a), (b), Dec. 19, 1989, 103 Stat. 2333; Pub. L. 101–508, title XI, §11704(a)(3), Nov. 5, 1990, 104 Stat. 1388–518; Pub. L. 105–34, title X, §§1002(a), 1012(c)(1), 1014(a), Aug. 5, 1997, 111 Stat. 909, 916, 919; Pub. L. 105–206, title VI, §6010(c)(3)(A), (e)(1), July 22, 1998, 112 Stat. 813, 814; Pub. L. 105–277, div. J, title IV, §4003(f)(1), Oct. 21, 1998, 112 Stat. 2681–910; Pub. L. 106–36, title III, §3001(d)(1), June 25, 1999, 113 Stat. 183; Pub. L. 107–147, title IV, §417(9), Mar. 9, 2002, 116 Stat. 56; Pub. L. 108–357, title VIII, §899(a), Oct. 22, 2004, 118 Stat. 1649; Pub. L. 109–135, title IV, §403(kk), Dec. 21, 2005, 119 Stat. 2632.)

AMENDMENTS

2005—Subsec. (g)(3)(A). Pub. L. 109–135 inserted at end ''If there is not a real and meaningful likelihood that dividends beyond any limitation or preference will actually be paid, the possibility of such payments will be disregarded in determining whether stock is limited and preferred as to dividends.''

2004—Subsec. (g)(3)(A). Pub. L. 108–357 inserted at end ''Stock shall not be treated as participating in corporate growth to any significant extent unless there is a real and meaningful likelihood of the shareholder actually participating in the earnings and growth of the corporation.''

2002—Subsec. (h)(1). Pub. L. 107–147 inserted comma after ''liability''.

1999—Subsec. (h)(1). Pub. L. 106–36 struck out '', or acquires property subject to a liability,'' after ''liability''.

1998—Subsec. (c). Pub. L. 105–206, §6010(c)(3)(A), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''In determining control for purposes of this section—

''(1) the fact that any corporate transferor distributes part or all of the stock in the corporation which it receives in the exchange to its shareholders shall not be taken into account, and

''(2) if the requirements of section 355 are met with respect to such distribution, the shareholders shall be treated as in control of such corporation immediately after the exchange if the shareholders own (immediately after the distribution) stock possessing—

''(A) more than 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, and

''(B) more than 50 percent of the total value of shares of all classes of stock of such corporation.''

Subsec. (c)(2). Pub. L. 105–277 inserted '', or the fact that the corporation whose stock was distributed issues additional stock,'' after ''dispose of part or all of the distributed stock''.

Subsec. (g)(1)(A) to (C). Pub. L. 105–206, §6010(e)(1), inserted ''and'' at end of subpar. (A), added subpar. (B), and struck out former subpars. (B) and (C) which read as follows:

''(B) subsection (b) shall apply to such transferor, and

''(C) such nonqualified preferred stock shall be treated as other property for purposes of applying subsection (b).''

1997—Subsec. (c). Pub. L. 105–34, §1012(c)(1), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: ''In determining control, for purposes of this section, the fact that any corporate transferor distributes part or all of the stock which it receives in the exchange to its shareholders shall not be taken into account.''

Subsec. (e)(1). Pub. L. 105–34, §1002(a), inserted last two sentences.

Subsecs. (g), (h). Pub. L. 105–34, §1014(a), added subsec. (g) and redesignated former subsec. (g) as (h).

1990—Subsec. (e)(2). Pub. L. 101–508 substituted ''is used'' for ''are used''.

1989—Subsec. (a). Pub. L. 101–239, §7203(a), struck out ''or securities'' after ''stock''.

Subsecs. (b), (d), (e)(2). Pub. L. 101–239, §7203(b)(1), struck out ''or securities'' after ''stock''.

Subsec. (g)(2). Pub. L. 101–239, §7203(b)(2), substituted ''stock or property'' for ''stock, securities, or property''.

1988—Subsecs. (f), (g). Pub. L. 100–647 added subsec. (f) and redesignated former subsec. (f) as (g).

1982—Subsec. (f)(5). Pub. L. 97–248 added par. (5).

1980—Subsec. (a). Pub. L. 96–589, §5(e)(2), struck out provision that stock or securities issued for services shall not be considered as issued in return for property for purposes of this section.

Subsec. (d). Pub. L. 96–589, §5(e)(1), added subsec. (d). Former subsec. (d) redesignated (e)(1).

Subsec. (e). Pub. L. 96–589, §5(e)(2), redesignated former subsec. (d) as par. (1) and added par. (2). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 96–589, §5(e)(1), redesignated former subsec. (e) as (f).

1976—Subsec. (a). Pub. L. 94–455, §1901(a)(48)(A), struck out ''(including, in the case of transfers made on or before June 30, 1967, an investment company)'' after ''property is transferred to a corporation''.

Subsec. (d). Pub. L. 94–455, §1901(a)(48)(B), among other changes, substituted ''Exception'' for ''Application of June 30, 1967, date'' in heading and in text provision that this section does not apply to a transfer of property to an investment company for provisions relating to treatment of a transfer of property to an investment company as made on or before June 30, 1967.

1966—Subsec. (a). Pub. L. 89–809, §203(a), inserted ''(including, in the case of transfers made on or before June 30, 1967, an investment company)'' after ''if property is transferred to a corporation''.

Subsecs. (d), (e). Pub. L. 89–809, §203(b), added subsec. (d) and redesignated former subsec. (d) as (e).

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §899(b), Oct. 22, 2004, 118 Stat. 1649, provided that: ''The amendment made by this section [amending this section] shall apply to transactions after May 14, 2003.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–36, title III, §3001(e), June 25, 1999, 113 Stat. 184, provided that: ''The amendments made by

this section [amending this section and sections 357, 358, 362, 368, 584, and 1031 of this title] shall apply to transfers after October 18, 1998.''

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105–277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 4003(*l*) of Pub. L. 105–277, set out as a note under section 86 of this title.

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1002(b) of Pub. L. 105–34 provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to transfers after June 8, 1997, in taxable years ending after such date.

''(2) BINDING CONTRACTS.—The amendment made by subsection (a) shall not apply to any transfer pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such transfer if such contract provides for the transfer of a fixed amount of property.''

Section 1012(d) of Pub. L. 105–34, as amended by Pub. L. 105–206, title VI, § 6010(c)(1), July 22, 1998, 112 Stat. 813, provided that:

''(1) SECTION 355 RULES.—The amendments made by subsections (a) and (b) [amending sections 355 and 358 of this title] shall apply to distributions after April 16, 1997; except that the amendment made by subsection (a) [amending section 355 of this title] shall apply to such distributions only if pursuant to a plan (or series of related transactions) which involves an acquisition described in section 355(e)(2)(A)(ii) of the Internal Revenue Code of 1986 occurring after such date.

''(2) DIVISIVE TRANSACTIONS.—The amendments made by subsection (c) [amending this section and section 368 of this title] shall apply to transfers after the date of the enactment of this Act [Aug. 5, 1997].

''(3) TRANSITION RULE.—The amendments made by this section [amending this section and sections 355, 358, and 368 of this title] shall not apply to any distribution pursuant to a plan (or series of related transactions) which involves an acquisition described in section 355(e)(2)(A)(ii) of the Internal Revenue Code of 1986 (or, in the case of the amendments made by subsection (c), any transfer) occurring after April 16, 1997, if such acquisition or transfer is—

''(A) made pursuant to an agreement which was binding on such date and at all times thereafter,

''(B) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

''(C) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission required solely by reason of the acquisition or transfer.

This paragraph shall not apply to any agreement, ruling request, or public announcement or filing unless it identifies the acquirer of the distributing corporation or any controlled corporation, or the transferee, whichever is applicable.''

Section 1014(f) of Pub. L. 105–34 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 354 to 356 and 1036 of this title] shall apply to transactions after June 8, 1997.

''(2) TRANSITION RULE.—The amendments made by this section shall not apply to any transaction after June 8, 1997, if such transaction is—

''(A) made pursuant to a written agreement which was binding on such date and at all times thereafter,

''(B) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

''(C) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission required solely by reason of the transaction.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7203(c) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section] shall apply to transfers after October 2, 1989, in taxable years ending after such date.

''(2) BINDING CONTRACT.—The amendments made by this section shall not apply to any transfer pursuant to a written binding contract in effect on October 2, 1989, and at all times thereafter before such transfer.

''(3) CORPORATE TRANSFERS.—In the case of property transferred (directly or indirectly through a partnership or otherwise) by a C corporation, paragraphs (1) and (2) shall be applied by substituting 'July 11, 1989' for 'October 2, 1989'. The preceding sentence shall not apply where the corporation meets the requirements of section 1504(a)(2) of the Internal Revenue Code of 1986 with respect to the transferee corporation (and where the transfer is not part of a plan pursuant to which the transferor subsequently fails to meet such requirements).''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1018(d)(5)(G) of Pub. L. 100–647 provided that the amendment made by that section is effective with respect to transfers on or after June 21, 1988.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to transfers occurring after Aug. 31, 1982, except for certain transfers pursuant to an application to form a BHC filed with the Federal Reserve Board before Aug. 16, 1982, see section 226(c) of Pub. L. 97–248, set out as a note under section 304 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 applicable to transactions which occur after Dec. 31, 1980, other than transactions which occur in proceedings in bankruptcy cases or similar judicial proceedings or in proceedings under Title 11, Bankruptcy, commencing on or before Dec. 31, 1980, except as otherwise provided, see section 7 of Pub. L. 96–589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1901(a)(48)(C) of Pub. L. 94–455 provided that: ''The amendments made by this paragraph [amending this section] shall take effect with respect to transfers of property occurring after the date of the enactment of this Act [Oct. 4, 1976].''

EFFECTIVE DATE OF 1966 AMENDMENT

Section 203(c) of Pub. L. 89–809 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply with respect to transfers of property to investment companies whether made before, on, or after the date of the enactment of this Act [Nov. 13, 1966].''

SUBPART B—EFFECTS ON SHAREHOLDERS AND SECURITY HOLDERS

Sec.
354. Exchanges of stock and securities in certain reorganizations.
355. Distribution of stock and securities of a controlled corporation.
356. Receipt of additional consideration.
357. Assumption of liability.
358. Basis to distributees.

§ 354. Exchanges of stock and securities in certain reorganizations

(a) General rule

(1) In general

No gain or loss shall be recognized if stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization.

(2) Limitation

(A) Excess principal amount

Paragraph (1) shall not apply if—

(i) the principal amount of any such securities received exceeds the principal amount of any such securities surrendered, or

(ii) any such securities are received and no such securities are surrendered.

(B) Property attributable to accrued interest

Neither paragraph (1) nor so much of section 356 as relates to paragraph (1) shall apply to the extent that any stock (including nonqualified preferred stock, as defined in section 351(g)(2)), securities, or other property received is attributable to interest which has accrued on securities on or after the beginning of the holder's holding period.

(C) Nonqualified preferred stock

(i) In general

Nonqualified preferred stock (as defined in section 351(g)(2)) received in exchange for stock other than nonqualified preferred stock (as so defined) shall not be treated as stock or securities.

(ii) Recapitalizations of family-owned corporations

(I) In general

Clause (i) shall not apply in the case of a recapitalization under section 368(a)(1)(E) of a family-owned corporation.

(II) Family-owned corporation

For purposes of this clause, except as provided in regulations, the term ''family-owned corporation'' means any corporation which is described in clause (i) of section 447(d)(2)(C) throughout the 8-year period beginning on the date which is 5 years before the date of the recapitalization. For purposes of the preceding sentence, stock shall not be treated as owned by a family member during any period described in section 355(d)(6)(B).

(III) Extension of statute of limitations

The statutory period for the assessment of any deficiency attributable to a corporation failing to be a family-owned corporation shall not expire before the expiration of 3 years after the date the Secretary is notified by the corporation (in such manner as the Secretary may prescribe) of such failure, and such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(3) Cross references

(A) For treatment of the exchange if any property is received which is not permitted to be received under this subsection (including nonqualified preferred stock and an excess principal amount of securities received over securities surrendered, but not including property to which paragraph (2)(B) applies), see section 356.

(B) For treatment of accrued interest in the case of an exchange described in paragraph (2)(B), see section 61.

(b) Exception

(1) In general

Subsection (a) shall not apply to an exchange in pursuance of a plan of reorganization within the meaning of subparagraph (D) or (G) of section 368(a)(1), unless—

(A) the corporation to which the assets are transferred acquires substantially all of the assets of the transferor of such assets; and

(B) the stock, securities, and other properties received by such transferor, as well as the other properties of such transferor, are distributed in pursuance of the plan of reorganization.

(2) Cross reference

For special rules for certain exchanges in pursuance of plans of reorganization within the meaning of subparagraph (D) or (G) of section 368(a)(1), see section 355.

(c) Certain railroad reorganizations

Notwithstanding any other provision of this subchapter, subsection (a)(1) (and so much of section 356 as relates to this section) shall apply with respect to a plan of reorganization (whether or not a reorganization within the meaning of section 368(a)) for a railroad confirmed under section 1173 of title 11 of the United States Code, as being in the public interest.

(Aug. 16, 1954, ch. 736, 68A Stat. 112; Pub. L. 94–253, § 1(c), Mar. 31, 1976, 90 Stat. 296; Pub. L. 95–473, § 2(a)(2)(F), Oct. 17, 1978, 92 Stat. 1465; Pub. L. 96–589, §§ 4(e)(1), (h)(1), 6(i)(2), Dec. 24, 1980, 94 Stat. 3403, 3404, 3410; Pub. L. 101–508, title XI, § 11801(c)(8)(D), Nov. 5, 1990, 104 Stat. 1388–524; Pub. L. 104–88, title III, § 304(c), Dec. 29, 1995, 109 Stat. 944; Pub. L. 105–34, title X, § 1014(b), (e)(1), (2), Aug. 5, 1997, 111 Stat. 920, 921; Pub. L. 105–206, title VI, § 6010(e)(2), July 22, 1998, 112 Stat. 814.)

AMENDMENTS

1998—Subsec. (a)(2)(C)(ii)(III). Pub. L. 105–206 added subcl. (III).

1997—Subsec. (a)(2)(B). Pub. L. 105–34, § 1014(e)(1), inserted ''(including nonqualified preferred stock, as defined in section 351(g)(2))'' after ''stock''.

Subsec. (a)(2)(C). Pub. L. 105–34, § 1014(b), added subpar. (C).

Subsec. (a)(3)(A). Pub. L. 105–34, § 1014(e)(2), inserted ''nonqualified preferred stock and'' after ''subsection (including''.

1995—Subsec. (c). Pub. L. 104–88 struck out ''or approved by the Interstate Commerce Commission under subchapter IV of chapter 113 of title 49,'' after ''Code,''.

1990—Subsec. (d). Pub. L. 101–508 struck out subsec. (d) ''Exchanges under the final system plan for ConRail'' which read as follows: ''No gain or loss shall be recognized if stock or securities in a corporation are,

in pursuance of an exchange to which paragraph (1) or (2) of section 374(c) applies, exchanged solely for stock of the Consolidated Rail Corporation, securities of such Corporation, certificates of value of the United States Railway Association, or any combination thereof.''

1980—Subsec. (a)(2). Pub. L. 96–589, §4(e)(1), redesignated existing pars. (A) and (B) as par. (A)(i), (ii), and added par. (B).

Subsec. (a)(3). Pub. L. 96–589, §4(e)(1), designated existing provisions as subpar. (A), inserted provisions excluding property to which paragraph (2)(B) applies, and added subpar. (B).

Subsec. (b). Pub. L. 96–589, §4(h)(1), substituted ''subparagraph (D) or (G) of section 368(a)(1)'' for ''section 368(a)(1)(D)'', wherever appearing.

Subsec. (c). Pub. L. 96–589, §6(i)(2), substituted ''confirmed under section 1173 of title 11 of the United States Code, or approved by the Interstate Commerce Commission'' for ''approved by the Interstate Commerce Commission under section 77 of the Bankruptcy Act, or''.

1978—Subsec. (c). Pub. L. 95–473 substituted ''subchapter IV of chapter 113 of title 49'' for ''section 20b of the Interstate Commerce Act''.

1976—Subsec. (d). Pub. L. 94–253 added subsec. (d).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable, with certain exceptions, to transactions after June 8, 1997, see section 1014(f) of Pub. L. 105–34, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1995 AMENDMENT

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

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 4(e)(1) of Pub. L. 96–589 applicable to bankruptcy cases or similar judicial proceedings commencing after Dec. 31, 1980, and to exchanges which occur after Dec. 31, 1980, and which do not occur in a bankruptcy case or similar judicial proceeding or in a proceeding under Title 11, Bankruptcy, commenced on or before Dec. 31, 1980, with an exception permitting the debtor to make the amendment applicable to such cases, proceedings or exchanges commencing after Sept. 30, 1979, see section 7(c), (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

Amendment by section 4(h)(1) of Pub. L. 96–589 applicable to bankruptcy cases or similar judicial proceedings commencing after Dec. 31, 1980, with an exception permitting the debtor to make the amendment applicable to such cases or proceedings commencing after Sept. 30, 1979, see section 7(c)(1), (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

Amendment by section 6(i)(2) of Pub. L. 96–589 effective Oct. 1, 1979, but not applicable to any proceeding under Title 11 commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96–589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2 of Pub. L. 94–253 provided that: ''The amendments made by section 1 [amending this section and sections 356, 358, and 374 of this title] shall apply to taxable years ending after March 31, 1976.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS

United States Railway Association abolished effective Apr. 1, 1987, all powers, duties, rights, and obligations of Association relating to Consolidated Rail Corporation under Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) transferred to Secretary of Transportation on Jan. 1, 1987, and any securities of Corporation held by Association transferred to Secretary of Transportation on Oct. 21, 1986, see section 1341 of Title 45, Railroads.

§ 355. Distribution of stock and securities of a controlled corporation

(a) Effect on distributees

(1) General rule

If—

(A) a corporation (referred to in this section as the ''distributing corporation'')—

(i) distributes to a shareholder, with respect to its stock, or

(ii) distributes to a security holder, in exchange for its securities,

solely stock or securities of a corporation (referred to in this section as ''controlled corporation'') which it controls immediately before the distribution,

(B) the transaction was not used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (but the mere fact that subsequent to the distribution stock or securities in one or more of such corporations are sold or exchanged by all or some of the distributees (other than pursuant to an arrangement negotiated or agreed upon prior to such distribution) shall not be construed to mean that the transaction was used principally as such a device),

(C) the requirements of subsection (b) (relating to active businesses) are satisfied, and

(D) as part of the distribution, the distributing corporation distributes—

(i) all of the stock and securities in the controlled corporation held by it immediately before the distribution, or

(ii) an amount of stock in the controlled corporation constituting control within the meaning of section 368(c), and it is established to the satisfaction of the Secretary that the retention by the distributing corporation of stock (or stock and securities) in the controlled corporation was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax,

then no gain or loss shall be recognized to (and no amount shall be includible in the income of) such shareholder or security holder on the receipt of such stock or securities.

(2) Non pro rata distributions, etc.

Paragraph (1) shall be applied without regard to the following:

(A) whether or not the distribution is pro rata with respect to all of the shareholders of the distributing corporation,

(B) whether or not the shareholder surrenders stock in the distributing corporation, and

(C) whether or not the distribution is in pursuance of a plan of reorganization (within the meaning of section 368(a)(1)(D)).

(3) Limitations

(A) Excess principal amount

Paragraph (1) shall not apply if—

(i) the principal amount of the securities in the controlled corporation which are received exceeds the principal amount of the securities which are surrendered in connection with such distribution, or

(ii) securities in the controlled corporation are received and no securities are surrendered in connection with such distribution.

(B) Stock acquired in taxable transactions within 5 years treated as boot

For purposes of this section (other than paragraph (1)(D) of this subsection) and so much of section 356 as relates to this section, stock of a controlled corporation acquired by the distributing corporation by reason of any transaction—

(i) which occurs within 5 years of the distribution of such stock, and

(ii) in which gain or loss was recognized in whole or in part,

shall not be treated as stock of such controlled corporation, but as other property.

(C) Property attributable to accrued interest

Neither paragraph (1) nor so much of section 356 as relates to paragraph (1) shall apply to the extent that any stock (including nonqualified preferred stock, as defined in section 351(g)(2)), securities, or other property received is attributable to interest which has accrued on securities on or after the beginning of the holder's holding period.

(D) Nonqualified preferred stock

Nonqualified preferred stock (as defined in section 351(g)(2)) received in a distribution with respect to stock other than nonqualified preferred stock (as so defined) shall not be treated as stock or securities.

(4) Cross references

(A) For treatment of the exchange if any property is received which is not permitted to be received under this subsection (including nonqualified preferred stock and an excess principal amount of securities received over securities surrendered, but not including property to which paragraph (3)(C) applies), see section 356.

(B) For treatment of accrued interest in the case of an exchange described in paragraph (3)(C), see section 61.

(b) Requirements as to active business

(1) In general

Subsection (a) shall apply only if either—

(A) the distributing corporation, and the controlled corporation (or, if stock of more than one controlled corporation is distributed, each of such corporations), is engaged immediately after the distribution in the active conduct of a trade or business, or

(B) immediately before the distribution, the distributing corporation had no assets other than stock or securities in the controlled corporations and each of the controlled corporations is engaged immediately after the distribution in the active conduct of a trade or business.

(2) Definition

For purposes of paragraph (1), a corporation shall be treated as engaged in the active conduct of a trade or business if and only if—

(A) it is engaged in the active conduct of a trade or business,

(B) such trade or business has been actively conducted throughout the 5-year period ending on the date of the distribution,

(C) such trade or business was not acquired within the period described in subparagraph (B) in a transaction in which gain or loss was recognized in whole or in part, and

(D) control of a corporation which (at the time of acquisition of control) was conducting such trade or business—

(i) was not acquired by any distributee corporation directly (or through 1 or more corporations, whether through the distributing corporation or otherwise) within the period described in subparagraph (B) and was not acquired by the distributing corporation directly (or through 1 or more corporations) within such period, or

(ii) was so acquired by any such corporation within such period, but, in each case in which such control was so acquired, it was so acquired, only by reason of transactions in which gain or loss was not recognized in whole or in part, or only by reason of such transactions combined with acquisitions before the beginning of such period.

For purposes of subparagraph (D), all distributee corporations which are members of the same affiliated group (as defined in section 1504(a) without regard to section 1504(b)) shall be treated as 1 distributee corporation.

(3) Special rules for determining active conduct in the case of affiliated groups

(A) In general

For purposes of determining whether a corporation meets the requirements of paragraph (2)(A), all members of such corporation's separate affiliated group shall be treated as one corporation.

(B) Separate affiliated group

For purposes of this paragraph, the term ''separate affiliated group'' means, with respect to any corporation, the affiliated group which would be determined under section 1504(a) if such corporation were the common parent and section 1504(b) did not apply.

(C) Treatment of trade or business conducted by acquired member

If a corporation became a member of a separate affiliated group as a result of one or

more transactions in which gain or loss was recognized in whole or in part, any trade or business conducted by such corporation (at the time that such corporation became such a member) shall be treated for purposes of paragraph (2) as acquired in a transaction in which gain or loss was recognized in whole or in part.

(D) Regulations

The Secretary shall prescribe such regulations as are necessary or appropriate to carry out the purposes of this paragraph, including regulations which provide for the proper application of subparagraphs (B), (C), and (D) of paragraph (2), and modify the application of subsection (a)(3)(B), in connection with the application of this paragraph.

(c) Taxability of corporation on distribution

(1) In general

Except as provided in paragraph (2), no gain or loss shall be recognized to a corporation on any distribution to which this section (or so much of section 356 as relates to this section) applies and which is not in pursuance of a plan of reorganization.

(2) Distribution of appreciated property

(A) In general

If—

(i) in a distribution referred to in paragraph (1), the corporation distributes property other than qualified property, and

(ii) the fair market value of such property exceeds its adjusted basis (in the hands of the distributing corporation),

then gain shall be recognized to the distributing corporation as if such property were sold to the distributee at its fair market value.

(B) Qualified property

For purposes of subparagraph (A), the term ''qualified property'' means any stock or securities in the controlled corporation.

(C) Treatment of liabilities

If any property distributed in the distribution referred to in paragraph (1) is subject to a liability or the shareholder assumes a liability of the distributing corporation in connection with the distribution, then, for purposes of subparagraph (A), the fair market value of such property shall be treated as not less than the amount of such liability.

(3) Coordination with sections 311 and 336(a)

Sections 311 and 336(a) shall not apply to any distribution referred to in paragraph (1).

(d) Recognition of gain on certain distributions of stock or securities in controlled corporation

(1) In general

In the case of a disqualified distribution, any stock or securities in the controlled corporation shall not be treated as qualified property for purposes of subsection (c)(2) of this section or section 361(c)(2).

(2) Disqualified distribution

For purposes of this subsection, the term ''disqualified distribution'' means any distribution to which this section (or so much of section 356 as relates to this section) applies if, immediately after the distribution—

(A) any person holds disqualified stock in the distributing corporation which constitutes a 50-percent or greater interest in such corporation, or

(B) any person holds disqualified stock in the controlled corporation (or, if stock of more than 1 controlled corporation is distributed, in any controlled corporation) which constitutes a 50-percent or greater interest in such corporation.

(3) Disqualified stock

For purposes of this subsection, the term ''disqualified stock'' means—

(A) any stock in the distributing corporation acquired by purchase after October 9, 1990, and during the 5-year period ending on the date of the distribution, and

(B) any stock in any controlled corporation—

(i) acquired by purchase after October 9, 1990, and during the 5-year period ending on the date of the distribution, or

(ii) received in the distribution to the extent attributable to distributions on—

(I) stock described in subparagraph (A), or

(II) any securities in the distributing corporation acquired by purchase after October 9, 1990, and during the 5-year period ending on the date of the distribution.

(4) 50-percent or greater interest

For purposes of this subsection, the term ''50-percent or greater interest'' means stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock.

(5) Purchase

For purposes of this subsection—

(A) In general

Except as otherwise provided in this paragraph, the term ''purchase'' means any acquisition but only if—

(i) the basis of the property acquired in the hands of the acquirer is not determined (I) in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or (II) under section 1014(a), and

(ii) the property is not acquired in an exchange to which section 351, 354, 355, or 356 applies.

(B) Certain section 351 exchanges treated as purchases

The term ''purchase'' includes any acquisition of property in an exchange to which section 351 applies to the extent such property is acquired in exchange for—

(i) any cash or cash item,

(ii) any marketable stock or security, or

(iii) any debt of the transferor.

(C) Carryover basis transactions

If—

(i) any person acquires property from another person who acquired such property by purchase (as determined under this paragraph with regard to this subparagraph), and

(ii) the adjusted basis of such property in the hands of such acquirer is determined in whole or in part by reference to the adjusted basis of such property in the hands of such other person,

such acquirer shall be treated as having acquired such property by purchase on the date it was so acquired by such other person.

(6) Special rule where substantial diminution of risk

(A) In general

If this paragraph applies to any stock or securities for any period, the running of any 5-year period set forth in subparagraph (A) or (B) of paragraph (3) (whichever applies) shall be suspended during such period.

(B) Property to which suspension applies

This paragraph applies to any stock or securities for any period during which the holder's risk of loss with respect to such stock or securities, or with respect to any portion of the activities of the corporation, is (directly or indirectly) substantially diminished by—

(i) an option,

(ii) a short sale,

(iii) any special class of stock, or

(iv) any other device or transaction.

(7) Aggregation rules

(A) In general

For purposes of this subsection, a person and all persons related to such person (within the meaning of section 267(b) or 707(b)(1)) shall be treated as one person.

(B) Persons acting pursuant to plans or arrangements

If two or more persons act pursuant to a plan or arrangement with respect to acquisitions of stock or securities in the distributing corporation or controlled corporation, such persons shall be treated as one person for purposes of this subsection.

(8) Attribution from entities

(A) In general

Paragraph (2) of section 318(a) shall apply in determining whether a person holds stock or securities in any corporation (determined by substituting ''10 percent'' for ''50 percent'' in subparagraph (C) of such paragraph (2) and by treating any reference to stock as including a reference to securities).

(B) Deemed purchase rule

If—

(i) any person acquires by purchase an interest in any entity, and

(ii) such person is treated under subparagraph (A) as holding any stock or securities by reason of holding such interest,

such stock or securities shall be treated as acquired by purchase by such person on the later of the date of the purchase of the interest in such entity or the date such stock or securities are acquired by purchase by such entity.

(9) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including—

(A) regulations to prevent the avoidance of the purposes of this subsection through the use of related persons, intermediaries, pass-thru entities, options, or other arrangements, and

(B) regulations modifying the definition of the term ''purchase''.

(e) Recognition of gain on certain distributions of stock or securities in connection with acquisitions

(1) General rule

If there is a distribution to which this subsection applies, any stock or securities in the controlled corporation shall not be treated as qualified property for purposes of subsection (c)(2) of this section or section 361(c)(2).

(2) Distributions to which subsection applies

(A) In general

This subsection shall apply to any distribution—

(i) to which this section (or so much of section 356 as relates to this section) applies, and

(ii) which is part of a plan (or series of related transactions) pursuant to which 1 or more persons acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or any controlled corporation.

(B) Plan presumed to exist in certain cases

If 1 or more persons acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or any controlled corporation during the 4-year period beginning on the date which is 2 years before the date of the distribution, such acquisition shall be treated as pursuant to a plan described in subparagraph (A)(ii) unless it is established that the distribution and the acquisition are not pursuant to a plan or series of related transactions.

(C) Certain plans disregarded

A plan (or series of related transactions) shall not be treated as described in subparagraph (A)(ii) if, immediately after the completion of such plan or transactions, the distributing corporation and all controlled corporations are members of a single affiliated group (as defined in section 1504 without regard to subsection (b) thereof).

(D) Coordination with subsection (d)

This subsection shall not apply to any distribution to which subsection (d) applies.

(3) Special rules relating to acquisitions

(A) Certain acquisitions not taken into account

Except as provided in regulations, the following acquisitions shall not be taken into account in applying paragraph (2)(A)(ii):

(i) The acquisition of stock in any controlled corporation by the distributing corporation.

(ii) The acquisition by a person of stock in any controlled corporation by reason of holding stock or securities in the distributing corporation.

(iii) The acquisition by a person of stock in any successor corporation of the distributing corporation or any controlled corporation by reason of holding stock or securities in such distributing or controlled corporation.

(iv) The acquisition of stock in the distributing corporation or any controlled corporation to the extent that the percentage of stock owned directly or indirectly in such corporation by each person owning stock in such corporation immediately before the acquisition does not decrease.

This subparagraph shall not apply to any acquisition if the stock held before the acquisition was acquired pursuant to a plan (or series of related transactions) described in paragraph (2)(A)(ii).

(B) Asset acquisitions

Except as provided in regulations, for purposes of this subsection, if the assets of the distributing corporation or any controlled corporation are acquired by a successor corporation in a transaction described in subparagraph (A), (C), or (D) of section 368(a)(1) or any other transaction specified in regulations by the Secretary, the shareholders (immediately before the acquisition) of the corporation acquiring such assets shall be treated as acquiring stock in the corporation from which the assets were acquired.

(4) Definition and special rules

For purposes of this subsection—

(A) 50-percent or greater interest

The term ''50-percent or greater interest'' has the meaning given such term by subsection (d)(4).

(B) Distributions in title 11 or similar case

Paragraph (1) shall not apply to any distribution made in a title 11 or similar case (as defined in section 368(a)(3)).

(C) Aggregation and attribution rules

(i) Aggregation

The rules of paragraph (7)(A) of subsection (d) shall apply.

(ii) Attribution

Section 318(a)(2) shall apply in determining whether a person holds stock or securities in any corporation. Except as provided in regulations, section 318(a)(2)(C) shall be applied without regard to the phrase ''50 percent or more in value'' for purposes of the preceding sentence.

(D) Successors and predecessors

For purposes of this subsection, any reference to a controlled corporation or a distributing corporation shall include a reference to any predecessor or successor of such corporation.

(E) Statute of limitations

If there is a distribution to which paragraph (1) applies—

(i) the statutory period for the assessment of any deficiency attributable to any part of the gain recognized under this subsection by reason of such distribution shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) that such distribution occurred, and

(ii) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(5) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations—

(A) providing for the application of this subsection where there is more than 1 controlled corporation,

(B) treating 2 or more distributions as 1 distribution where necessary to prevent the avoidance of such purposes, and

(C) providing for the application of rules similar to the rules of subsection (d)(6) where appropriate for purposes of paragraph (2)(B).

(f) Section not to apply to certain intragroup distributions

Except as provided in regulations, this section (or so much of section 356 as relates to this section) shall not apply to the distribution of stock from 1 member of an affiliated group (as defined in section 1504(a)) to another member of such group if such distribution is part of a plan (or series of related transactions) described in subsection (e)(2)(A)(ii) (determined after the application of subsection (e)).

(g) Section not to apply to distributions involving disqualified investment corporations

(1) In general

This section (and so much of section 356 as relates to this section) shall not apply to any distribution which is part of a transaction if—

(A) either the distributing corporation or controlled corporation is, immediately after the transaction, a disqualified investment corporation, and

(B) any person holds, immediately after the transaction, a 50-percent or greater interest in any disqualified investment corporation, but only if such person did not hold such an interest in such corporation immediately before the transaction.

(2) Disqualified investment corporation

For purposes of this subsection—

(A) In general

The term ''disqualified investment corporation'' means any distributing or controlled corporation if the fair market value of the investment assets of the corporation is—

(i) in the case of distributions after the end of the 1-year period beginning on the date of the enactment of this subsection, ⅔ or more of the fair market value of all assets of the corporation, and

(ii) in the case of distributions during such 1-year period, ¾ or more of the fair market value of all assets of the corporation.

(B) Investment assets

(i) In general

Except as otherwise provided in this subparagraph, the term ''investment assets'' means—

(I) cash,

(II) any stock or securities in a corporation,

(III) any interest in a partnership,

(IV) any debt instrument or other evidence of indebtedness,

(V) any option, forward or futures contract, notional principal contract, or derivative,

(VI) foreign currency, or

(VII) any similar asset.

(ii) Exception for assets used in active conduct of certain financial trades or businesses

Such term shall not include any asset which is held for use in the active and regular conduct of—

(I) a lending or finance business (within the meaning of section 954(h)(4)),

(II) a banking business through a bank (as defined in section 581), a domestic building and loan association (within the meaning of section 7701(a)(19)), or any similar institution specified by the Secretary, or

(III) an insurance business if the conduct of the business is licensed, authorized, or regulated by an applicable insurance regulatory body.

This clause shall only apply with respect to any business if substantially all of the income of the business is derived from persons who are not related (within the meaning of section 267(b) or 707(b)(1)) to the person conducting the business.

(iii) Exception for securities marked to market

Such term shall not include any security (as defined in section 475(c)(2)) which is held by a dealer in securities and to which section 475(a) applies.

(iv) Stock or securities in a 20-percent controlled entity

(I) In general

Such term shall not include any stock and securities in, or any asset described in subclause (IV) or (V) of clause (i) issued by, a corporation which is a 20-percent controlled entity with respect to the distributing or controlled corporation.

(II) Look-thru rule

The distributing or controlled corporation shall, for purposes of applying this subsection, be treated as owning its ratable share of the assets of any 20-percent controlled entity.

(III) 20-percent controlled entity

For purposes of this clause, the term ''20-percent controlled entity'' means, with respect to any distributing or controlled corporation, any corporation with respect to which the distributing or controlled corporation owns directly or indirectly stock meeting the requirements of section 1504(a)(2), except that such section shall be applied by substituting ''20 percent'' for ''80 percent'' and without regard to stock described in section 1504(a)(4).

(v) Interests in certain partnerships

(I) In general

Such term shall not include any interest in a partnership, or any debt instrument or other evidence of indebtedness, issued by the partnership, if 1 or more of the trades or businesses of the partnership are (or, without regard to the 5-year requirement under subsection (b)(2)(B), would be) taken into account by the distributing or controlled corporation, as the case may be, in determining whether the requirements of subsection (b) are met with respect to the distribution.

(II) Look-thru rule

The distributing or controlled corporation shall, for purposes of applying this subsection, be treated as owning its ratable share of the assets of any partnership described in subclause (I).

(3) 50-percent or greater interest

For purposes of this subsection—

(A) In general

The term ''50-percent or greater interest'' has the meaning given such term by subsection (d)(4).

(B) Attribution rules

The rules of section 318 shall apply for purposes of determining ownership of stock for purposes of this paragraph.

(4) Transaction

For purposes of this subsection, the term ''transaction'' includes a series of transactions.

(5) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out, or prevent the avoidance of, the purposes of this subsection, including regulations—

(A) to carry out, or prevent the avoidance of, the purposes of this subsection in cases involving—

(i) the use of related persons, intermediaries, pass-thru entities, options, or other arrangements, and

(ii) the treatment of assets unrelated to the trade or business of a corporation as investment assets if, prior to the distribution, investment assets were used to acquire such unrelated assets,

(B) which in appropriate cases exclude from the application of this subsection a distribution which does not have the character of a redemption which would be treated as a sale or exchange under section 302, and

(C) which modify the application of the attribution rules applied for purposes of this subsection.

(Aug. 16, 1954, ch. 736, 68A Stat. 113; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–589, § 4(e)(2), Dec. 24, 1980, 94 Stat. 3403; Pub. L. 100–203, title X, § 10223(b), Dec. 22, 1987, 101 Stat. 1330–411; Pub. L. 100–647, title I, § 1018(d)(5)(C), title II, § 2004(k)(1), Nov. 10, 1988, 102 Stat. 3580, 3605; Pub. L. 101–508, title XI, §§ 11321(a), 11702(e)(2), Nov. 5, 1990, 104 Stat. 1388–460, 1388–515; Pub. L. 104–188, title I, § 1704(t)(31), Aug. 20, 1996, 110 Stat. 1889; Pub. L. 105–34, title X, §§ 1012(a), (b)(1), 1014(c), (e)(1), (2), Aug. 5, 1997, 111 Stat. 914, 916, 921; Pub. L. 105–206, title VI, § 6010(c)(2), July 22, 1998, 112 Stat. 813; Pub. L. 109–222, title II, § 202, title V, § 507(a), May 17, 2006, 120 Stat. 348, 358; Pub. L. 109–432, div. A, title IV, § 410(a), Dec. 20, 2006, 120 Stat. 2963; Pub. L. 110–172, § 4(b)(1), (2), Dec. 29, 2007, 121 Stat. 2476.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (g)(2)(A)(i), is the date of enactment of Pub. L. 109–222, which was approved May 17, 2006.

AMENDMENTS

2007—Subsec. (b)(2)(A). Pub. L. 110–172, § 4(b)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''it is engaged in the active conduct of a trade or business, or substantially all of its assets consist of stock and securities of a corporation controlled by it (immediately after the distribution) which is so engaged,''.

Subsec. (b)(3). Pub. L. 110–172, § 4(b)(2), amended par. (3) generally. Prior to amendment, par. (3) provided for special rule relating to active business requirement applicable in the case of any distribution made after May 17, 2006.

2006—Subsec. (b)(3). Pub. L. 109–222, § 202, added par. (3).

Subsec. (b)(3)(A), (D). Pub. L. 109–432 struck out ''and on or before December 31, 2010'' after ''this paragraph'' in subpar. (A) and after ''such date'' in subpar. (D).

Subsec. (g). Pub. L. 109–222, § 507(a), added subsec. (g).

1998—Subsec. (e)(3)(A). Pub. L. 105–206, § 6010(c)(2)(A), substituted ''shall not be taken into account in applying'' for ''shall not be treated as described in'' in introductory provisions.

Subsec. (e)(3)(A)(iv). Pub. L. 105–206, § 6010(c)(2)(B), added cl. (iv) and struck out former cl. (iv) which read as follows: ''The acquisition of stock in a corporation if shareholders owning directly or indirectly stock possessing—

''(I) more than 50 percent of the total combined voting power of all classes of stock entitled to vote, and

''(II) more than 50 percent of the total value of shares of all classes of stock,

in the distributing corporation or any controlled corporation before such acquisition own directly or indirectly stock possessing such vote and value in such distributing or controlled corporation after such acquisition.''

1997—Subsec. (a)(3)(C). Pub. L. 105–34, § 1014(e)(1), inserted ''(including nonqualified preferred stock, as defined in section 351(g)(2))'' after ''stock''.

Subsec. (a)(3)(D). Pub. L. 105–34, § 1014(c), added subpar. (D).

Subsec. (a)(4)(A). Pub. L. 105–34, § 1014(e)(2), inserted ''nonqualified preferred stock and'' after ''subsection (including''.

Subsec. (e). Pub. L. 105–34, § 1012(a), added subsec. (e).

Subsec. (f). Pub. L. 105–34, § 1012(b)(1), added subsec. (f).

1996—Subsec. (d)(7)(A). Pub. L. 104–188 inserted ''section'' before ''267(b)''.

1990—Subsec. (c). Pub. L. 101–508, § 11321(a), added subsec. (c) and struck out former subsec. (c) which read as follows:

''(1) IN GENERAL.—Except as provided in paragraph (2), no gain or loss shall be recognized to a corporation on any distribution to which this section (or so much of section 356 as relates to this section) applies and which is not in pursuance of a plan of reorganization.

''(2) DISTRIBUTION OF APPRECIATED PROPERTY.—

''(A) IN GENERAL.—If—

''(i) in a distribution referred to in paragraph (1), the corporation distributes property other than stock or securities in the controlled corporation, and

''(ii) the fair market value of such property exceeds its adjusted basis (in the hands of the distributing corporation),

then gain shall be recognized to the distributing corporation as if such property were sold to the distributee at its fair market value.

''(B) TREATMENT OF LIABILITIES.—If any property distributed in the distribution referred to in paragraph (1) is subject to a liability or the shareholder assumes a liability of the distributing corporation in connection with the distribution, then, for purposes of subparagraph (A), the fair market value of such property shall be treated as not less than the amount of such liability.

''(3) COORDINATION WITH SECTIONS 311 AND 336(a).—Sections 311 and 336(a) shall not apply to any distribution referred to in paragraph (1).''

Pub. L. 101–508, § 11702(e)(2), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Section 311 shall apply to any distribution—

''(1) to which this section (or so much of section 356 as relates to this section) applies, and

''(2) which is not in pursuance of a plan of reorganization,

in the same manner as if such distribution were a distribution to which subpart A of part I applies; except that subsection (b) of section 311 shall not apply to any distribution of stock or securities in the controlled corporation.''

Subsec. (d). Pub. L. 101–508, § 11321(a), added subsec. (d).

1988—Subsec. (b)(2)(D)(i), (ii). Pub. L. 100–647, § 2004(k)(1), added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows:

''(i) was not acquired by any distributee corporation directly (or through 1 or more corporations, whether through the distributing corporation or otherwise) within the period described in subparagraph (B), or

''(ii) was so acquired such distributee corporation within such period, but such control was so acquired only by reason of transactions in which gain or loss was not recognized in whole or in part, or only by reason of such transactions combined with acquisitions before the beginning of such period.''

Subsec. (c). Pub. L. 100–647, § 1018(d)(5)(C), added subsec. (c).

1987—Subsec. (b)(2)(D). Pub. L. 100–203, § 10223(b)(3), inserted at end ''For purposes of subparagraph (D), all distributee corporations which are members of the same affiliated group (as defined in section 1504(a) without regard to section 1504(b)) shall be treated as 1 distributee corporation.''

Subsec. (b)(2)(D)(i). Pub. L. 100–203, § 10223(b)(1), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''was not acquired directly (or through one or more corporations) by another corporation within the period described in subparagraph (B), or''.

Subsec. (b)(2)(D)(ii). Pub. L. 100–203, § 10223(b)(2), substituted ''such distributee corporation'' for ''by another corporation''.

1980—Subsec. (a)(3). Pub. L. 96–589 designated existing provisions as subpars. (A) and (B) and added subpar. (C).

Subsec. (a)(4). Pub. L. 96–589, § 4(e)(2), designated existing provisions as subpar. (A), substituted ''exchange if any property'' for ''distribution if any property'', inserted provisions excluding property to which paragraph (3)(C) applies, and added subpar. (B).

1976—Subsec. (a)(1)(D)(ii). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–172, § 4(d), Dec. 29, 2007, 121 Stat. 2478, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 911 and 954 of this title] shall take effect as if included in the provisions of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109–222] to which they relate.

''(2) MODIFICATION OF ACTIVE BUSINESS DEFINITION UNDER SECTION 355.—

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by subsection (b) [amending this section] shall apply to distributions made after May 17, 2006.

''(B) TRANSITION RULE.—The amendments made by subsection (b) shall not apply to any distribution pursuant to a transaction which is—

''(i) made pursuant to an agreement which was binding on May 17, 2006, and at all times thereafter,

''(ii) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

''(iii) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission.

''(C) ELECTION OUT OF TRANSITION RULE.—Subparagraph (B) shall not apply if the distributing corporation elects not to have such subparagraph apply to distributions of such corporation. Any such election, once made, shall be irrevocable.

''(D) SPECIAL RULE FOR CERTAIN PRE-ENACTMENT DISTRIBUTIONS.—For purposes of determining the continued qualification under section 355(b)(2)(A) of the Internal Revenue Code of 1986 of distributions made on or before May 17, 2006, as a result of an acquisition, disposition, or other restructuring after such date, such distribution shall be treated as made on the date of such acquisition, disposition, or restructuring for purposes of applying subparagraphs (A) through (C) of this paragraph. The preceding sentence shall only apply with respect to the corporation that undertakes such acquisition, disposition, or other restructuring, and only if such application results in continued qualification under section 355(b)(2)(A) of such Code.

''(3) AMENDMENT RELATED TO SECTION 515 OF THE ACT.—The amendment made by subsection (c) [amending section 911 of this title] shall apply to taxable years beginning after December 31, 2006.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, § 410(b), Dec. 20, 2006, 120 Stat. 2963, provided that: ''The amendments made by this section [amending this section] shall take effect as if included in section 202 of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109–222].''

Pub. L. 109–222, title V, § 507(b), May 17, 2006, 120 Stat. 361, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to distributions after the date of the enactment of this Act [May 17, 2006].

''(2) TRANSITION RULE.—The amendments made by this section shall not apply to any distribution pursuant to a transaction which is—

''(A) made pursuant to an agreement which was binding on such date of enactment and at all times thereafter,

''(B) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

''(C) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1012(a), (b)(1) of Pub. L. 105–34 applicable, with transition rule, to distributions after Apr. 16, 1997, except that amendment by section 1012(a) applicable to such distributions only if pursuant to a plan (or series of related transactions) which involves an acquisition described in subsec. (e)(2)(A)(ii) of this section occurring after such date, see section 1012(d) of Pub. L. 105–34, as amended, set out as a note under section 351 of this title.

Amendment by section 1014(c), (e)(1), (2) of Pub. L. 105–34 applicable, with certain exceptions, to transactions after June 8, 1997, see section 1014(f) of Pub. L. 105–34, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11321(c) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 361 of this title] shall apply to distributions after October 9, 1990.

''(2) BINDING CONTRACT EXCEPTION.—The amendments made by this section shall not apply to any distribution pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such distribution.

''(3) TRANSITIONAL RULES.—For purposes of subparagraphs (A) and (B) of section 355(d)(3) of the Internal Revenue Code of 1986 (as amended by subsection (a)), an acquisition shall be treated as occurring on or before October 9, 1990, if—

''(A) such acquisition is pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such acquisition,

''(B) such acquisition is pursuant to a transaction which was described in documents filed with the Securities and Exchange Commission on or before October 9, 1990, or

''(C) such acquisition is pursuant to a transaction—

''(i) the material terms of which were described in a written public announcement on or before October 9, 1990,

''(ii) which was the subject of a prior filing with the Securities and Exchange Commission, and

''(iii) which is the subject of a subsequent filing with the Securities and Exchange Commission before January 1, 1991.''

Amendment by section 11702(e)(2) of Pub. L. 101–508 effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 11702(j) of Pub. L. 101–508, set out as a note under section 59 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1018(d)(5)(C) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 2004(k)(1) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to distributions or transfers after Dec. 15, 1987, with exceptions for

certain distributee corporations and distributions covered by prior transition rule, see section 10223(d) of Pub. L. 100–203, set out as a note under section 304 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 applicable to bankruptcy cases or similar judicial proceedings commencing after Dec. 31, 1980, and to exchanges which occur after Dec. 31, 1980, and which do not occur in a bankruptcy case or similar judicial proceeding or in a proceeding under Title 11, Bankruptcy, commenced on or before Dec. 31, 1980, with an exception permitting the debtor to make the amendment applicable to such cases, proceedings or exchanges commencing after Sept. 30, 1979, see section 7(c), (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

TERMINATION OF TAX INCREASE PREVENTION AND RECONCILIATION ACT OF 2005 AND TAX RELIEF AND HEALTH CARE ACT OF 2006 AMENDMENTS

Pub. L. 110–172, § 4(b)(3), Dec. 29, 2007, 121 Stat. 2476, provided that: ''The Internal Revenue Code of 1986 shall be applied and administered as if the amendments made by section 202 of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109–222, amending this section] and by section 410 of division A of the Tax Relief and Health Care Act of 2006 [Pub. L. 109–432, amending this section] had never been enacted.''

§ 356. Receipt of additional consideration

(a) Gain on exchanges

(1) Recognition of gain

If—

(A) section 354 or 355 would apply to an exchange but for the fact that

(B) the property received in the exchange consists not only of property permitted by section 354 or 355 to be received without the recognition of gain but also of other property or money,

then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

(2) Treatment as dividend

If an exchange is described in paragraph (1) but has the effect of the distribution of a dividend (determined with the application of section 318(a)), then there shall be treated as a dividend to each distributee such an amount of the gain recognized under paragraph (1) as is not in excess of his ratable share of the undistributed earnings and profits of the corporation accumulated after February 28, 1913. The remainder, if any, of the gain recognized under paragraph (1) shall be treated as gain from the exchange of property.

(b) Additional consideration received in certain distributions

If—

(1) section 355 would apply to a distribution but for the fact that

(2) the property received in the distribution consists not only of property permitted by section 355 to be received without the recognition of gain, but also of other property or money,

then an amount equal to the sum of such money and the fair market value of such other property shall be treated as a distribution of property to which section 301 applies.

(c) Loss

If—

(1) section 354 would apply to an exchange or section 355 would apply to an exchange or distribution, but for the fact that

(2) the property received in the exchange or distribution consists not only of property permitted by section 354 or 355 to be received without the recognition of gain or loss, but also of other property or money,

then no loss from the exchange or distribution shall be recognized.

(d) Securities as other property

For purposes of this section—

(1) In general

Except as provided in paragraph (2), the term ''other property'' includes securities.

(2) Exceptions

(A) Securities with respect to which nonrecognition of gain would be permitted

The term ''other property'' does not include securities to the extent that, under section 354 or 355, such securities would be permitted to be received without the recognition of gain.

(B) Greater principal amount in section 354 exchange

If—

(i) in an exchange described in section 354 (other than subsection (c) thereof), securities of a corporation a party to the reorganization are surrendered and securities of any corporation a party to the reorganization are received, and

(ii) the principal amount of such securities received exceeds the principal amount of such securities surrendered,

then, with respect to such securities received, the term ''other property'' means only the fair market value of such excess. For purposes of this subparagraph and subparagraph (C) if no securities are surrendered, the excess shall be the entire principal amount of the securities received.

(C) Greater principal amount in section 355 transaction

If, in an exchange or distribution described in section 355, the principal amount of the securities in the controlled corporation which are received exceeds the principal amount of the securities in the distributing corporation which are surrendered, then, with respect to such securities received, the term ''other property'' means only the fair market value of such excess.

(e) Nonqualified preferred stock treated as other property

For purposes of this section—

(1) In general

Except as provided in paragraph (2), the term ''other property'' includes nonqualified preferred stock (as defined in section 351(g)(2)).

(2) Exception

The term ''other property'' does not include nonqualified preferred stock (as so defined) to

the extent that, under section 354 or 355, such preferred stock would be permitted to be received without the recognition of gain.

(f) Exchanges for section 306 stock

Notwithstanding any other provision of this section, to the extent that any of the other property (or money) is received in exchange for section 306 stock, an amount equal to the fair market value of such other property (or the amount of such money) shall be treated as a distribution of property to which section 301 applies.

(g) Transactions involving gift or compensation

For special rules for a transaction described in section 354, 355, or this section, but which—

(1) results in a gift, see section 2501 and following, or

(2) has the effect of the payment of compensation, see section 61(a)(1).

(Aug. 16, 1954, ch. 736, 68A Stat. 115; Pub. L. 94–253, §1(c), Mar. 31, 1976, 90 Stat. 296; Pub. L. 97–248, title II, §227(b), Sept. 3, 1982, 96 Stat. 492; Pub. L. 101–508, title XI, §11801(c)(8)(E), Nov. 5, 1990, 104 Stat. 1388–524; Pub. L. 105–34, title X, §1014(d), Aug. 5, 1997, 111 Stat. 921.)

AMENDMENTS

1997—Subsecs. (e) to (g). Pub. L. 105–34 added subsec. (e) and redesignated former subsecs. (e) and (f) as (f) and (g), respectively.

1990—Subsec. (d)(2)(B)(i). Pub. L. 101–508 struck out ''or (d)'' after ''subsection (c)''.

1982—Subsec. (a)(2). Pub. L. 97–248 inserted ''(determined with the application of section 318(a))'' after ''distribution of a dividend''.

1976—Subsec. (d)(2)(B)(i). Pub. L. 94–253 substituted ''subsection (c) or (d) thereof'' for ''subsection (c) thereof''.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable, with certain exceptions, to transactions after June 8, 1997, see section 1014(f) of Pub. L. 105–34, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 227(c)(2) of Pub. L. 97–248 provided that: ''The amendment made by subsection (b) [amending this section] shall apply to distributions after August 31, 1982, in taxable years ending after such date.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–253 applicable to taxable years ending after Mar. 31, 1976, see section 2 of Pub. L. 94–253, set out as a note under section 354 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§ 357. Assumption of liability

(a) General rule

Except as provided in subsections (b) and (c), if—

(1) the taxpayer receives property which would be permitted to be received under section 351 or 361 without the recognition of gain if it were the sole consideration, and

(2) as part of the consideration, another party to the exchange assumes a liability of the taxpayer,

then such assumption shall not be treated as money or other property, and shall not prevent the exchange from being within the provisions of section 351 or 361, as the case may be.

(b) Tax avoidance purpose

(1) In general

If, taking into consideration the nature of the liability and the circumstances in the light of which the arrangement for the assumption was made, it appears that the principal purpose of the taxpayer with respect to the assumption described in subsection (a)—

(A) was a purpose to avoid Federal income tax on the exchange, or

(B) if not such purpose, was not a bona fide business purpose,

then such assumption (in the total amount of the liability assumed pursuant to such exchange) shall, for purposes of section 351 or 361 (as the case may be), be considered as money received by the taxpayer on the exchange.

(2) Burden of proof

In any suit or proceeding where the burden is on the taxpayer to prove such assumption is not to be treated as money received by the taxpayer, such burden shall not be considered as sustained unless the taxpayer sustains such burden by the clear preponderance of the evidence.

(c) Liabilities in excess of basis

(1) In general

In the case of an exchange—

(A) to which section 351 applies, or

(B) to which section 361 applies by reason of a plan of reorganization within the meaning of section 368(a)(1)(D) with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355,

if the sum of the amount of the liabilities assumed exceeds the total of the adjusted basis of the property transferred pursuant to such exchange, then such excess shall be considered as a gain from the sale or exchange of a capital asset or of property which is not a capital asset, as the case may be.

(2) Exceptions

Paragraph (1) shall not apply to any exchange—

(A) to which subsection (b)(1) of this section applies, or

(B) which is pursuant to a plan of reorganization within the meaning of section 368(a)(1)(G) where no former shareholder of the transferor corporation receives any consideration for his stock.

(3) Certain liabilities excluded

(A) In general

If a taxpayer transfers, in an exchange to which section 351 applies, a liability the payment of which either—

(i) would give rise to a deduction, or
(ii) would be described in section 736(a),

then, for purposes of paragraph (1), the amount of such liability shall be excluded in determining the amount of liabilities assumed.

(B) Exception

Subparagraph (A) shall not apply to any liability to the extent that the incurrence of the liability resulted in the creation of, or an increase in, the basis of any property.

(d) Determination of amount of liability assumed

(1) In general

For purposes of this section, section 358(d), section 358(h), section 361(b)(3), section 362(d), section 368(a)(1)(C), and section 368(a)(2)(B), except as provided in regulations—

(A) a recourse liability (or portion thereof) shall be treated as having been assumed if, as determined on the basis of all facts and circumstances, the transferee has agreed to, and is expected to, satisfy such liability (or portion), whether or not the transferor has been relieved of such liability; and

(B) except to the extent provided in paragraph (2), a nonrecourse liability shall be treated as having been assumed by the transferee of any asset subject to such liability.

(2) Exception for nonrecourse liability

The amount of the nonrecourse liability treated as described in paragraph (1)(B) shall be reduced by the lesser of—

(A) the amount of such liability which an owner of other assets not transferred to the transferee and also subject to such liability has agreed with the transferee to, and is expected to, satisfy; or

(B) the fair market value of such other assets (determined without regard to section 7701(g)).

(3) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection and section 362(d). The Secretary may also prescribe regulations which provide that the manner in which a liability is treated as assumed under this subsection is applied, where appropriate, elsewhere in this title.

(Aug. 16, 1954, ch. 736, 68A Stat. 116; June 29, 1956, ch. 463, § 2, 70 Stat. 403; Pub. L. 95–600, title III, § 365(a), Nov. 6, 1978, 92 Stat. 2854; Pub. L. 96–222, title I, § 103(a)(12), Apr. 1, 1980, 94 Stat. 213; Pub. L. 96–589, § 4(h)(2), Dec. 24, 1980, 94 Stat. 3405; Pub. L. 101–508, title XI, § 11801(c)(8)(F), Nov. 5, 1990, 104 Stat. 1388–524; Pub. L. 106–36, title III, § 3001(a)(1), (b)(1), (d)(2)–(5), June 25, 1999, 113 Stat. 181–184; Pub. L. 106–554, § 1(a)(7) [title III, § 309(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–638; Pub. L. 108–357, title VIII, § 898(b), Oct. 22, 2004, 118 Stat. 1649; Pub. L. 109–135, title IV, § 403(jj)(2), Dec. 21, 2005, 119 Stat. 2632.)

AMENDMENTS

2005—Subsec. (d)(1). Pub. L. 109–135 inserted ''section 361(b)(3),'' after ''section 358(h),''.

2004—Subsec. (c)(1)(B). Pub. L. 108–357 inserted ''with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355'' after ''section 368(a)(1)(D)''.

2000—Subsec. (d)(1). Pub. L. 106–554 inserted ''section 358(h),'' after ''section 358(d),'' in introductory provisions.

1999—Subsec. (a). Pub. L. 106–36, § 3001(d)(2), struck out ''or acquisition'' after ''assumption'' in concluding provisions.

Subsec. (a)(2). Pub. L. 106–36, § 3001(a)(1), struck out '', or acquires from the taxpayer property subject to a liability'' before comma at end.

Subsec. (b). Pub. L. 106–36, § 3001(d)(2), (3), struck out ''or acquisition'' after ''assumption'' wherever appearing and struck out ''or acquired'' after ''liability assumed'' in concluding provisions of par. (1).

Subsec. (c)(1). Pub. L. 106–36, § 3001(d)(4), struck out '', plus the amount of the liabilities to which the property is subject,'' after ''liabilities assumed'' in concluding provisions.

Subsec. (c)(3)(A). Pub. L. 106–36, § 3001(d)(5), struck out ''or to which the property transferred is subject'' after ''liabilities assumed'' in concluding provisions.

Subsec. (d). Pub. L. 106–36, § 3001(b)(1), added subsec. (d).

1990—Subsecs. (a), (b)(1). Pub. L. 101–508, § 11801(c)(8)(F)(i), substituted ''351 or 361'' for ''351, 361, 371, or 374'' wherever appearing.

Subsec. (c)(2). Pub. L. 101–508, § 11801(c)(8)(F)(ii), inserted ''or'' at end of subpar. (A), redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: ''to which section 371 or 374 applies, or''.

1980—Subsec. (c)(2)(C). Pub. L. 96–589 added subpar. (C).

Subsec. (c)(3)(A). Pub. L. 96–222 struck out requirement that only taxpayers who compute taxable income under the cash receipts and disbursements method of accounting are eligible to exclude certain liabilities in determining the amount of gain realized on a transfer to a controlled corporation and the requirement that the excluded liability must be an account payable.

1978—Subsec. (c)(3). Pub. L. 95–600 added par. (3).

1956—Subsec. (a). Act June 29, 1956, § 2(1), substituted ''371, or 374'' for ''or 371'' in two places.

Subsec. (b). Act June 29, 1956, § 2(1), substituted ''371, or 374'' for ''or 371''.

Subsec. (c)(2)(B). Act June 29, 1956, § 2(2), substituted ''371 or 374'' for ''371''.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, § 898(c), Oct. 22, 2004, 118 Stat. 1649, provided that: ''The amendments made by this section [amending this section and section 361 of this title] shall apply to transfers of money or other property, or liabilities assumed, in connection with a reorganization occurring on or after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 applicable to assumptions of liability after Oct. 18, 1999, see section 1(a)(7) [title III, § 309(d)] of Pub. L. 106–554, set out as a note under section 358 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–36 applicable to transfers after Oct. 18, 1998, see section 3001(e) of Pub. L. 106–36, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–589 applicable to bankruptcy cases or similar judicial proceedings commenc-

ing after Dec. 31, 1980, with exception permitting the debtor to make the amendment applicable to such cases or proceedings commencing after Sept. 30, 1979, see section 7(c)(1), (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 365(c) of Pub. L. 95–600 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 358 of this title] shall apply to transfers occurring on or after the date of the enactment of this Act [Nov. 6, 1978].''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§ 358. Basis to distributees

(a) General rule

In the case of an exchange to which section 351, 354, 355, 356, or 361 applies—

(1) Nonrecognition property

The basis of the property permitted to be received under such section without the recognition of gain or loss shall be the same as that of the property exchanged—

(A) decreased by—

(i) the fair market value of any other property (except money) received by the taxpayer,

(ii) the amount of any money received by the taxpayer, and

(iii) the amount of loss to the taxpayer which was recognized on such exchange, and

(B) increased by—

(i) the amount which was treated as a dividend, and

(ii) the amount of gain to the taxpayer which was recognized on such exchange (not including any portion of such gain which was treated as a dividend).

(2) Other property

The basis of any other property (except money) received by the taxpayer shall be its fair market value.

(b) Allocation of basis

(1) In general

Under regulations prescribed by the Secretary, the basis determined under subsection (a)(1) shall be allocated among the properties permitted to be received without the recognition of gain or loss.

(2) Special rule for section 355

In the case of an exchange to which section 355 (or so much of section 356 as relates to section 355) applies, then in making the allocation under paragraph (1) of this subsection, there shall be taken into account not only the property so permitted to be received without the recognition of gain or loss, but also the stock or securities (if any) of the distributing corporation which are retained, and the allocation of basis shall be made among all such properties.

(c) Section 355 transactions which are not exchanges

For purposes of this section, a distribution to which section 355 (or so much of section 356 as relates to section 355) applies shall be treated as an exchange, and for such purposes the stock and securities of the distributing corporation which are retained shall be treated as surrendered, and received back, in the exchange.

(d) Assumption of liability

(1) In general

Where, as part of the consideration to the taxpayer, another party to the exchange assumed a liability of the taxpayer, such assumption shall, for purposes of this section, be treated as money received by the taxpayer on the exchange.

(2) Exception

Paragraph (1) shall not apply to the amount of any liability excluded under section 357(c)(3).

(e) Exception

This section shall not apply to property acquired by a corporation by the exchange of its stock or securities (or the stock or securities of a corporation which is in control of the acquiring corporation) as consideration in whole or in part for the transfer of the property to it.

(f) Definition of nonrecognition property in case of section 361 exchange

For purposes of this section, the property permitted to be received under section 361 without the recognition of gain or loss shall be treated as consisting only of stock or securities in another corporation a party to the reorganization.

(g) Adjustments in intragroup transactions involving section 355

In the case of a distribution to which section 355 (or so much of section 356 as relates to section 355) applies and which involves the distribution of stock from 1 member of an affiliated group (as defined in section 1504(a) without regard to subsection (b) thereof) to another member of such group, the Secretary may, notwithstanding any other provision of this section, provide adjustments to the adjusted basis of any stock which—

(1) is in a corporation which is a member of such group, and

(2) is held by another member of such group,

to appropriately reflect the proper treatment of such distribution.

(h) Special rules for assumption of liabilities to which subsection (d) does not apply

(1) In general

If, after application of the other provisions of this section to an exchange or series of exchanges, the basis of property to which sub-

section (a)(1) applies exceeds the fair market value of such property, then such basis shall be reduced (but not below such fair market value) by the amount (determined as of the date of the exchange) of any liability—

(A) which is assumed by another person as part of the exchange, and

(B) with respect to which subsection (d)(1) does not apply to the assumption.

(2) Exceptions

Except as provided by the Secretary, paragraph (1) shall not apply to any liability if—

(A) the trade or business with which the liability is associated is transferred to the person assuming the liability as part of the exchange, or

(B) substantially all of the assets with which the liability is associated are transferred to the person assuming the liability as part of the exchange.

(3) Liability

For purposes of this subsection, the term ''liability'' shall include any fixed or contingent obligation to make payment, without regard to whether the obligation is otherwise taken into account for purposes of this title.

(Aug. 16, 1954, ch. 736, 68A Stat. 117; Pub. L. 85–866, title I, § 21(a), Sept. 2, 1958, 72 Stat. 1620; Pub. L. 90–621, § 2(a), Oct. 22, 1968, 82 Stat. 1311; Pub. L. 94–253, § 1(b), Mar. 31, 1976, 90 Stat. 296; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–600, title III, § 365(b), Nov. 6, 1978, 92 Stat. 2855; Pub. L. 100–647, title I, § 1018(d)(5)(B), Nov. 10, 1988, 102 Stat. 3580; Pub. L. 101–508, title XI, § 11801(c)(8)(G), Nov. 5, 1990, 104 Stat. 1388–524; Pub. L. 105–34, title X, § 1012(b)(2), Aug. 5, 1997, 111 Stat. 916; Pub. L. 106–36, title III, § 3001(a)(2), (d)(6), June 25, 1999, 113 Stat. 182, 184; Pub. L. 106–554, § 1(a)(7) [title III, § 309(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–638; Pub. L. 107–147, title IV, § 412(c), Mar. 9, 2002, 116 Stat. 53.)

AMENDMENTS

2002—Subsec. (h)(1)(A). Pub. L. 107–147 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''which is assumed in exchange for such property, and''.

2000—Subsec. (h). Pub. L. 106–554 added subsec. (h).

1999—Subsec. (d)(1). Pub. L. 106–36 struck out ''or acquired from the taxpayer property subject to a liability'' after ''liability of the taxpayer'' and ''or acquisition (in the amount of the liability)'' after ''such assumption''.

1997—Subsec. (g). Pub. L. 105–34 added subsec. (g).

1990—Subsec. (a). Pub. L. 101–508, § 11801(c)(8)(G)(i), substituted ''or 361'' for ''361, 371(b), or 374''.

Subsec. (b)(3). Pub. L. 101–508, § 11801(c)(8)(G)(ii), struck out par. (3) ''Certain exchanges involving Con-Rail'' which read as follows: ''To the extent provided in regulations prescribed by the Secretary in the case of an exchange to which section 354(d) (or so much of section 356 as relates to section 354(d)) or section 374(c) applies, for purposes of allocating basis under paragraph (1), stock of the Consolidated Rail Corporation and the certificate of value of the United States Railway Association which relates to such stock shall, so long as they are held by the same person, be treated as one property.''

1988—Subsec. (f). Pub. L. 100–647 added subsec. (f).

1978—Subsec. (d). Pub. L. 95–600 designated existing provisions as par. (1) and added par. (2).

1976—Subsec. (a). Pub. L. 94–253, § 1(b)(1), substituted ''371(b), or 374'' for ''or 371(b)''.

Subsec. (b)(1), (3). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

Pub. L. 94–253, § 1(b)(2), added par. (3).

1968—Subsec. (e). Pub. L. 90–621 substituted exchange of stock and securities for issuance of stock or securities as the transaction involved and inserted parenthetical provisions making reference to stock or securities of a corporation which is in control of the acquiring corporation.

1958—Subsec. (a)(1)(A)(iii). Pub. L. 85–866 added cl. (iii).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Community Renewal Tax Relief Act of 2000 [H.R. 5662, as enacted by Pub. L. 106–554], to which such amendment relates, see section 412(e) of Pub. L. 107–147, set out as a note under section 151 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(7) [title III, § 309(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–638, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 357 of this title] shall apply to assumptions of liability after October 18, 1999.

''(2) RULES.—The rules prescribed under subsection (c) [see Application of Comparable Rules to Partnerships and S Corporations note below] shall apply to assumptions of liability after October 18, 1999, or such later date as may be prescribed in such rules.''

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–36 applicable to transfers after Oct. 18, 1998, see section 3001(e) of Pub. L. 106–36, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable, with certain exceptions, to distributions after Apr. 16, 1997, pursuant to a plan (or series of related transactions) which involves an acquisition described in section 355(e)(2)(A)(ii) of this title occurring after such date, see section 1012(d) of Pub. L. 105–34, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to transfers occurring on or after Nov. 6, 1978, see section 365(c) of Pub. L. 95–600, set out as a note under section 357 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–253 applicable to taxable years ending after Mar. 31, 1976, see section 2 of Pub. L. 94–253, set out as a note under section 354 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 2(c) of Pub. L. 90–621 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 362 of this title] shall apply only in respect of plans of reorganization adopted after the date of the enactment of this Act [Oct. 22, 1968].''

EFFECTIVE DATE OF 1958 AMENDMENT

Section 21(b) of Pub. L. 85–866, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by subsection (a) [amending

this section] shall apply as provided in section 393 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as if the clause (iii) added by such amendment had been included in such Code at the time of its enactment [Aug. 16, 1954].''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS

United States Railway Association abolished effective Apr. 1, 1987, all powers, duties, rights, and obligations of Association relating to Consolidated Rail Corporation under Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) transferred to Secretary of Transportation on Jan. 1, 1987, and any securities of Corporation held by Association transferred to Secretary of Transportation on Oct. 21, 1986, see section 1341 of Title 45, Railroads.

APPLICATION OF COMPARABLE RULES TO PARTNERSHIPS AND S CORPORATIONS

Pub. L. 106–554, §1(a)(7) [title III, §309(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–638, provided that: ''The Secretary of the Treasury or his delegate—

''(1) shall prescribe rules which provide appropriate adjustments under subchapter K of chapter 1 of the Internal Revenue Code of 1986 to prevent the acceleration or duplication of losses through the assumption of (or transfer of assets subject to) liabilities described in section 358(h)(3) of such Code (as added by subsection (a)) in transactions involving partnerships, and

''(2) may prescribe rules which provide appropriate adjustments under subchapter S of chapter 1 of such Code in transactions described in paragraph (1) involving S corporations rather than partnerships.''

SUBPART C—EFFECTS ON CORPORATION

Sec.
361. Nonrecognition of gain or loss to corporations; treatment of distributions.
362. Basis to corporations.
[363. Repealed.]

AMENDMENTS

1988—Pub. L. 100–647, title I, §1018(d)(5)(F), Nov. 10, 1988, 102 Stat. 3580, substituted ''corporations; treatment of distributions.'' for ''transferor corporation; other treatment of transferor corporation; etc.'' in item 361.

1986—Pub. L. 99–514, title XVIII, §1804(g)(3), Oct. 22, 1986, 100 Stat. 2806, substituted ''to transferor corporation; other treatment of transferor corporation; etc.'' for ''corporations'' in item 361.

1976—Pub. L. 94–455, title XIX, §1901(b)(13), Oct. 4, 1976, 90 Stat. 1795, struck out item 363 ''Effect on earnings and profits''.

§ 361. Nonrecognition of gain or loss to corporations; treatment of distributions

(a) General rule

No gain or loss shall be recognized to a corporation if such corporation is a party to a reorganization and exchanges property, in pursuance of the plan of reorganization, solely for stock or securities in another corporation a party to the reorganization.

(b) Exchanges not solely in kind

(1) Gain

If subsection (a) would apply to an exchange but for the fact that the property received in exchange consists not only of stock or securities permitted by subsection (a) to be received without the recognition of gain, but also of other property or money, then—

(A) Property distributed

If the corporation receiving such other property or money distributes it in pursuance of the plan of reorganization, no gain to the corporation shall be recognized from the exchange, but

(B) Property not distributed

If the corporation receiving such other property or money does not distribute it in pursuance of the plan of reorganization, the gain, if any, to the corporation shall be recognized.

The amount of gain recognized under subparagraph (B) shall not exceed the sum of the money and the fair market value of the other property so received which is not so distributed.

(2) Loss

If subsection (a) would apply to an exchange but for the fact that the property received in exchange consists not only of property permitted by subsection (a) to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

(3) Treatment of transfers to creditors

For purposes of paragraph (1), any transfer of the other property or money received in the exchange by the corporation to its creditors in connection with the reorganization shall be treated as a distribution in pursuance of the plan of reorganization. The Secretary may prescribe such regulations as may be necessary to prevent avoidance of tax through abuse of the preceding sentence or subsection (c)(3). In the case of a reorganization described in section 368(a)(1)(D) with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355, this paragraph shall apply only to the extent that the sum of the money and the fair market value of other property transferred to such creditors does not exceed the adjusted bases of such assets transferred (reduced by the amount of the liabilities assumed (within the meaning of section 357(c))).

(c) Treatment of distributions

(1) In general

Except as provided in paragraph (2), no gain or loss shall be recognized to a corporation a party to a reorganization on the distribution to its shareholders of property in pursuance of the plan of reorganization.

(2) Distributions of appreciated property

(A) In general

If—

(i) in a distribution referred to in paragraph (1), the corporation distributes property other than qualified property, and

(ii) the fair market value of such property exceeds its adjusted basis (in the hands of the distributing corporation),

then gain shall be recognized to the distributing corporation as if such property were sold to the distributee at its fair market value.

(B) Qualified property

For purposes of this subsection, the term ''qualified property'' means—

(i) any stock in (or right to acquire stock in) the distributing corporation or obligation of the distributing corporation, or

(ii) any stock in (or right to acquire stock in) another corporation which is a party to the reorganization or obligation of another corporation which is such a party if such stock (or right) or obligation is received by the distributing corporation in the exchange.

(C) Treatment of liabilities

If any property distributed in the distribution referred to in paragraph (1) is subject to a liability or the shareholder assumes a liability of the distributing corporation in connection with the distribution, then, for purposes of subparagraph (A), the fair market value of such property shall be treated as not less than the amount of such liability.

(3) Treatment of certain transfers to creditors

For purposes of this subsection, any transfer of qualified property by the corporation to its creditors in connection with the reorganization shall be treated as a distribution to its shareholders pursuant to the plan of reorganization.

(4) Coordination with other provisions

Section 311 and subpart B of part II of this subchapter shall not apply to any distribution referred to in paragraph (1).

(5) Cross reference

For provision providing for recognition of gain in certain distributions, see section 355(d).

(Aug. 16, 1954, ch. 736, 68A Stat. 118; Pub. L. 99–514, title XVIII, § 1804(g)(1), Oct. 22, 1986, 100 Stat. 2805; Pub. L. 100–647, title I, § 1018(d)(5)(A), Nov. 10, 1988, 102 Stat. 3578; Pub. L. 101–508, title XI, § 11321(b), Nov. 5, 1990, 104 Stat. 1388–463; Pub. L. 108–357, title VIII, § 898(a), Oct. 22, 2004, 118 Stat. 1649; Pub. L. 109–135, title IV, § 403(jj)(1), Dec. 21, 2005, 119 Stat. 2632.)

AMENDMENTS

2005—Subsec. (b)(3). Pub. L. 109–135 inserted before period at end ''(reduced by the amount of the liabilities assumed (within the meaning of section 357(c)))''.

2004—Subsec. (b)(3). Pub. L. 108–357 inserted at end ''In the case of a reorganization described in section 368(a)(1)(D) with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355, this paragraph shall apply only to the extent that the sum of the money and the fair market value of other property transferred to such creditors does not exceed the adjusted bases of such assets transferred.''

1990—Subsec. (c)(5). Pub. L. 101–508 added par. (5).

1988—Pub. L. 100–647 substituted ''corporations; treatment of distributions'' for ''transferor corporations; other treatment of transferor corporation; etc.'' in section catchline and amended text generally, revising content and structure of section.

1986—Pub. L. 99–514 amended section generally. Prior to amendment, section related to whether gain or loss was recognized if corporation which was party to reorganization exchanged property, pursuant to plan of reorganization, for stock or securities in another corporation which was party to the reorganization or for other property or money.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to transfers of money or other property, or liabilities assumed, in connection with a reorganization occurring on or after Oct. 22, 2004, see section 898(c) of Pub. L. 108–357, set out as a note under section 357 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to distributions after Oct. 9, 1990, but not applicable to any distribution pursuant to a written binding contract in effect on Oct. 9, 1990, and at all times thereafter before such distribution, see section 11321(c) of Pub. L. 101–508, set out as a note under section 355 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1804(g)(4) of Pub. L. 99–514 provided that: ''The amendments made by this subsection [amending this section and section 368 of this title] shall apply to plans of reorganizations adopted after the date of the enactment of this Act [Oct. 22, 1986].''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 362. Basis to corporations

(a) Property acquired by issuance of stock or as paid-in surplus

If property was acquired on or after June 22, 1954, by a corporation—

(1) in connection with a transaction to which section 351 (relating to transfer of property to corporation controlled by transferor) applies, or

(2) as paid-in surplus or as a contribution to capital,

then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain recognized to the transferor on such transfer.

(b) Transfers to corporations

If property was acquired by a corporation in connection with a reorganization to which this part applies, then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain recognized to the transferor on such transfer. This subsection shall not apply if the property acquired consists of stock or securities in a corporation a party to the reorganization, unless acquired by the exchange of stock or securities of the transferee (or of a corporation which is in control of the transferee) as the consideration in whole or in part for the transfer.

(c) Special rule for certain contributions to capital

(1) Property other than money

Notwithstanding subsection (a)(2), if property other than money—

(A) is acquired by a corporation, on or after June 22, 1954, as a contribution to capital, and

(B) is not contributed by a shareholder as such,

then the basis of such property shall be zero.

(2) Money

Notwithstanding subsection (a)(2), if money—

(A) is received by a corporation, on or after June 22, 1954, as a contribution to capital, and

(B) is not contributed by a shareholder as such,

then the basis of any property acquired with such money during the 12-month period beginning on the day the contribution is received shall be reduced by the amount of such contribution. The excess (if any) of the amount of such contribution over the amount of the reduction under the preceding sentence shall be applied to the reduction (as of the last day of the period specified in the preceding sentence) of the basis of any other property held by the taxpayer. The particular properties to which the reductions required by this paragraph shall be allocated shall be determined under regulations prescribed by the Secretary.

(d) Limitation on basis increase attributable to assumption of liability

(1) In general

In no event shall the basis of any property be increased under subsection (a) or (b) above the fair market value of such property (determined without regard to section 7701(g)) by reason of any gain recognized to the transferor as a result of the assumption of a liability.

(2) Treatment of gain not subject to tax

Except as provided in regulations, if—

(A) gain is recognized to the transferor as a result of an assumption of a nonrecourse liability by a transferee which is also secured by assets not transferred to such transferee; and

(B) no person is subject to tax under this title on such gain,

then, for purposes of determining basis under subsections (a) and (b), the amount of gain recognized by the transferor as a result of the assumption of the liability shall be determined as if the liability assumed by the transferee equaled such transferee's ratable portion of such liability determined on the basis of the relative fair market values (determined without regard to section 7701(g)) of all of the assets subject to such liability.

(e) Limitations on built-in losses

(1) Limitation on importation of built-in losses

(A) In general

If in any transaction described in subsection (a) or (b) there would (but for this subsection) be an importation of a net built-in loss, the basis of each property described in subparagraph (B) which is acquired in such transaction shall (notwithstanding subsections (a) and (b)) be its fair market value immediately after such transaction.

(B) Property described

For purposes of subparagraph (A), property is described in this subparagraph if—

(i) gain or loss with respect to such property is not subject to tax under this subtitle in the hands of the transferor immediately before the transfer, and

(ii) gain or loss with respect to such property is subject to such tax in the hands of the transferee immediately after such transfer.

In any case in which the transferor is a partnership, the preceding sentence shall be applied by treating each partner in such partnership as holding such partner's proportionate share of the property of such partnership.

(C) Importation of net built-in loss

For purposes of subparagraph (A), there is an importation of a net built-in loss in a transaction if the transferee's aggregate adjusted bases of property described in subparagraph (B) which is transferred in such transaction would (but for this paragraph) exceed the fair market value of such property immediately after such transaction.

(2) Limitation on transfer of built-in losses in section 351 transactions

(A) In general

If—

(i) property is transferred by a transferor in any transaction which is described in subsection (a) and which is not described in paragraph (1) of this subsection, and

(ii) the transferee's aggregate adjusted bases of such property so transferred would (but for this paragraph) exceed the fair market value of such property immediately after such transaction,

then, notwithstanding subsection (a), the transferee's aggregate adjusted bases of the property so transferred shall not exceed the fair market value of such property immediately after such transaction.

(B) Allocation of basis reduction

The aggregate reduction in basis by reason of subparagraph (A) shall be allocated

among the property so transferred in proportion to their respective built-in losses immediately before the transaction.

(C) Election to apply limitation to transferor's stock basis

(i) In general

If the transferor and transferee of a transaction described in subparagraph (A) both elect the application of this subparagraph—

(I) subparagraph (A) shall not apply, and

(II) the transferor's basis in the stock received for property to which subparagraph (A) does not apply by reason of the election shall not exceed its fair market value immediately after the transfer.

(ii) Election

Any election under clause (i) shall be made at such time and in such form and manner as the Secretary may prescribe, and, once made, shall be irrevocable.

(Aug. 16, 1954, ch. 736, 68A Stat. 118; Pub. L. 90–621, § 2(b), Oct. 22, 1968, 82 Stat. 1311; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), title XXI, § 2120(b), Oct. 4, 1976, 90 Stat. 1834, 1913; Pub. L. 99–514, title VIII, § 824(b), Oct. 22, 1986, 100 Stat. 2374; Pub. L. 106–36, title III, § 3001(b)(2), June 25, 1999, 113 Stat. 182; Pub. L. 108–357, title VIII, § 836(a), Oct. 22, 2004, 118 Stat. 1594; Pub. L. 109–135, title IV, § 403(dd)(2), Dec. 21, 2005, 119 Stat. 2631.)

AMENDMENTS

2005—Subsec. (e)(2)(C)(ii). Pub. L. 109–135 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''An election under clause (i) shall be included with the return of tax for the taxable year in which the transaction occurred, shall be in such form and manner as the Secretary may prescribe, and, once made, shall be irrevocable.''

2004—Subsec. (e). Pub. L. 108–357 added subsec. (e).

1999—Subsec. (d). Pub. L. 106–36 added subsec. (d).

1986—Subsec. (c)(3). Pub. L. 99–514 struck out par. (3) relating to exceptions for contributions in aid of construction.

1976—Subsec. (c)(2)(B). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(3). Pub. L. 94–455, § 2120(b), added par. (3).

1968—Subsec. (b). Pub. L. 90–621 substituted the exchange of stock or securities of the transferee (or of a corporation which is in control of the transferee) for the issuance of stock or securities of the transferee as the transaction rendering the subsection applicable.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, § 836(c)(1), Oct. 22, 2004, 118 Stat. 1596, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to transactions after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–36 applicable to transfers after Oct. 18, 1998, see section 3001(e) of Pub. L. 106–36, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to amounts received after Dec. 31, 1986, in taxable years ending after such date, with certain exceptions and qualifications, see section 824(c) of Pub. L. 99–514, set out as a note under section 118 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 2120(b) of Pub. L. 94–455 applicable to contributions made after Jan. 31, 1976, see section 2120(c) of Pub. L. 94–455, set out as a note under section 118 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–621 applicable only in respect of plans of reorganization adopted after Oct. 22, 1968, see section 2(c) of Pub. L. 90–621, set out as a note under section 358 of this title.

[§ 363. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(49), Oct. 4, 1976, 90 Stat. 1773]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 119, related to cross reference for rules relating to effect on earnings and profits of transactions to which this part applies.

EFFECTIVE DATE OF REPEAL

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

SUBPART D—SPECIAL RULE; DEFINITIONS

Sec.
367. Foreign corporations.
368. Definitions relating to corporate reorganizations.

§ 367. Foreign corporations

(a) Transfers of property from the United States

(1) General rule

If, in connection with any exchange described in section 332, 351, 354, 356, or 361, a United States person transfers property to a foreign corporation, such foreign corporation shall not, for purposes of determining the extent to which gain shall be recognized on such transfer, be considered to be a corporation.

(2) Exception for certain stock or securities

Except to the extent provided in regulations, paragraph (1) shall not apply to the transfer of stock or securities of a foreign corporation which is a party to the exchange or a party to the reorganization.

(3) Exception for transfers of certain property used in the active conduct of a trade or business

(A) In general

Except as provided in regulations prescribed by the Secretary, paragraph (1) shall not apply to any property transferred to a foreign corporation for use by such foreign corporation in the active conduct of a trade or business outside of the United States.

(B) Paragraph not to apply to certain property

Except as provided in regulations prescribed by the Secretary, subparagraph (A) shall not apply to any—

(i) property described in paragraph (1) or (3) of section 1221(a) (relating to inventory and copyrights, etc.),

(ii) installment obligations, accounts receivable, or similar property,

(iii) foreign currency or other property denominated in foreign currency,

(iv) intangible property (within the meaning of section 936(h)(3)(B)), or

(v) property with respect to which the transferor is a lessor at the time of the transfer, except that this clause shall not apply if the transferee was the lessee.

(C) Transfer of foreign branch with previously deducted losses

Except as provided in regulations prescribed by the Secretary, subparagraph (A) shall not apply to gain realized on the transfer of the assets of a foreign branch of a United States person to a foreign corporation in an exchange described in paragraph (1) to the extent that—

(i) the sum of losses—

(I) which were incurred by the foreign branch before the transfer, and

(II) with respect to which a deduction was allowed to the taxpayer, exceeds

(ii) the sum of—

(I) any taxable income of such branch for a taxable year after the taxable year in which the loss was incurred and through the close of the taxable year of the transfer, and

(II) the amount which is recognized under section 904(f)(3) on account of the transfer.

Any gain recognized by reason of the preceding sentence shall be treated for purposes of this chapter as income from sources outside the United States having the same character as such losses had.

(4) Special rule for transfer of partnership interests

Except as provided in regulations prescribed by the Secretary, a transfer by a United States person of an interest in a partnership to a foreign corporation in an exchange described in paragraph (1) shall, for purposes of this subsection, be treated as a transfer to such corporation of such person's pro rata share of the assets of the partnership.

(5) Paragraphs (2) and (3) not to apply to certain section 361 transactions

Paragraphs (2) and (3) shall not apply in the case of an exchange described in subsection (a) or (b) of section 361. Subject to such basis adjustments and such other conditions as shall be provided in regulations, the preceding sentence shall not apply if the transferor corporation is controlled (within the meaning of section 368(c)) by 5 or fewer domestic corporations. For purposes of the preceding sentence, all members of the same affiliated group (within the meaning of section 1504) shall be treated as 1 corporation.

(6) Secretary may exempt certain transactions from application of this subsection

Paragraph (1) shall not apply to the transfer of any property which the Secretary, in order to carry out the purposes of this subsection, designates by regulation.

(b) Other transfers

(1) Effect of section to be determined under regulations

In the case of any exchange described in section 332, 351, 354, 355, 356, or 361 in connection with which there is no transfer of property described in subsection (a)(1), a foreign corporation shall be considered to be a corporation except to the extent provided in regulations prescribed by the Secretary which are necessary or appropriate to prevent the avoidance of Federal income taxes.

(2) Regulations relating to sale or exchange of stock in foreign corporations

The regulations prescribed pursuant to paragraph (1) shall include (but shall not be limited to) regulations dealing with the sale or exchange of stock or securities in a foreign corporation by a United States person, including regulations providing—

(A) the circumstances under which—

(i) gain shall be recognized currently, or amounts included in gross income currently as a dividend, or both, or

(ii) gain or other amounts may be deferred for inclusion in the gross income of a shareholder (or his successor in interest) at a later date, and

(B) the extent to which adjustments shall be made to earnings and profits, basis of stock or securities, and basis of assets.

(c) Transactions to be treated as exchanges

(1) Section 355 distribution

For purposes of this section, any distribution described in section 355 (or so much of section 356 as relates to section 355) shall be treated as an exchange whether or not it is an exchange.

(2) Contribution of capital to controlled corporations

For purposes of this chapter, any transfer of property to a foreign corporation as a contribution to the capital of such corporation by one or more persons who, immediately after the transfer, own (within the meaning of section 318) stock possessing at least 80 percent of the total combined voting power of all classes of stock of such corporation entitled to vote shall be treated as an exchange of such property for stock of the foreign corporation equal in value to the fair market value of the property transferred.

(d) Special rules relating to transfers of intangibles

(1) In general

Except as provided in regulations prescribed by the Secretary, if a United States person transfers any intangible property (within the meaning of section 936(h)(3)(B)) to a foreign corporation in an exchange described in section 351 or 361—

(A) subsection (a) shall not apply to the transfer of such property, and

(B) the provisions of this subsection shall apply to such transfer.

(2) Transfer of intangibles treated as transfer pursuant to sale of contingent payments

(A) In general

If paragraph (1) applies to any transfer, the United States person transferring such property shall be treated as—

(i) having sold such property in exchange for payments which are contingent upon the productivity, use, or disposition of such property, and

(ii) receiving amounts which reasonably reflect the amounts which would have been received—

(I) annually in the form of such payments over the useful life of such property, or

(II) in the case of a disposition following such transfer (whether direct or indirect), at the time of the disposition.

The amounts taken into account under clause (ii) shall be commensurate with the income attributable to the intangible.

(B) Effect on earnings and profits

For purposes of this chapter, the earnings and profits of a foreign corporation to which the intangible property was transferred shall be reduced by the amount required to be included in the income of the transferor of the intangible property under subparagraph (A)(ii).

(C) Amounts received treated as ordinary income

For purposes of this chapter, any amount included in gross income by reason of this subsection shall be treated as ordinary income. For purposes of applying section 904(d), any such amount shall be treated in the same manner as if such amount were a royalty.

(3) Regulations relating to transfers of intangibles to partnerships

The Secretary may provide by regulations that the rules of paragraph (2) also apply to the transfer of intangible property by a United States person to a partnership in circumstances consistent with the purposes of this subsection.

(e) Treatment of distributions described in section 355 or liquidations under section 332

(1) Distributions described in section 355

In the case of any distribution described in section 355 (or so much of section 356 as relates to section 355) by a domestic corporation to a person who is not a United States person, to the extent provided in regulations, gain shall be recognized under principles similar to the principles of this section.

(2) Liquidations under section 332

In the case of any liquidation to which section 332 applies, except as provided in regulations, subsections (a) and (b)(1) of section 337 shall not apply where the 80-percent distributee (as defined in section 337(c)) is a foreign corporation.

(f) Other transfers

To the extent provided in regulations, if a United States person transfers property to a foreign corporation as paid-in surplus or as a contribution to capital (in a transaction not otherwise described in this section), such transfer shall be treated as a sale or exchange for an amount equal to the fair market value of the property transferred, and the transferor shall recognize as gain the excess of—

(1) the fair market value of the property so transferred, over

(2) the adjusted basis (for purposes of determining gain) of such property in the hands of the transferor.

(Aug. 16, 1954, ch. 736, 68A Stat. 119; Pub. L. 91–681, § 1(a), Jan. 12, 1971, 84 Stat. 2065; Pub. L. 94–455, title X, § 1042(a), Oct. 4, 1976, 90 Stat. 1634; Pub. L. 97–248, title II, § 213(d), Sept. 3, 1982, 96 Stat. 465; Pub. L. 98–369, div. A, title I, § 131(a)–(c), July 18, 1984, 98 Stat. 662–664; Pub. L. 99–514, title VI, § 631(d)(1), title XII, § 1231(e)(2), title XVIII, § 1810(g)(1), (4), Oct. 22, 1986, 100 Stat. 2272, 2563, 2828, 2829; Pub. L. 100–647, title I, § 1006(e)(13)(A), Nov. 10, 1988, 102 Stat. 3402; Pub. L. 101–508, title XI, § 11702(a)(1), Nov. 5, 1990, 104 Stat. 1388–514; Pub. L. 105–34, title XI, § 1131(b)(2), (4), (5)(A), Aug. 5, 1997, 111 Stat. 979, 980; Pub. L. 106–170, title V, § 532(c)(1)(C), Dec. 17, 1999, 113 Stat. 1930; Pub. L. 108–357, title IV, § 406(a), Oct. 22, 2004, 118 Stat. 1498.)

CODIFICATION

Another section 1131(b) of Pub. L. 105–34 enacted section 684 of this title.

AMENDMENTS

2004—Subsec. (d)(2)(C). Pub. L. 108–357 inserted at end ''For purposes of applying section 904(d), any such amount shall be treated in the same manner as if such amount were a royalty.''

1999—Subsec. (a)(3)(B)(i). Pub. L. 106–170 substituted ''section 1221(a)'' for ''section 1221''.

1997—Subsec. (d)(2)(C). Pub. L. 105–34, § 1131(b)(4), amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: ''For purposes of this chapter, any amount included in gross income by reason of this subsection shall be treated as ordinary income from sources within the United States.''

Subsec. (d)(3). Pub. L. 105–34, § 1131(b)(5)(A), added par. (3).

Subsec. (f). Pub. L. 105–34, § 1131(b)(2), added subsec. (f).

1990—Subsec. (a)(5). Pub. L. 101–508 substituted ''subsection (a) or (b) of section 361'' for ''section 361''.

1988—Subsec. (a)(5), (6). Pub. L. 100–647 added par. (5) and redesignated former par. (5) as (6).

1986—Subsec. (a)(1). Pub. L. 99–514, § 1810(g)(4)(A), struck out ''355,'' after ''354,''.

Subsec. (d)(2)(A). Pub. L. 99–514, § 1231(e)(2), inserted at end ''The amounts taken into account under clause (ii) shall be commensurate with the income attributable to the intangible.''

Subsec. (e). Pub. L. 99–514, § 631(d)(1), amended subsec. (e) generally. Prior to amendment, subsec. (e), treatment of distributions described in section 336 or 355, read as follows: ''In the case of any distribution described in section 336 or 355 (or so much of section 356 as relates to section 355) by a domestic corporation which is made to a person who is not a United States person, to the extent provided in regulations, gain shall be recognized under principles similar to the principles of this section.''

Subsec. (f). Pub. L. 99–514, § 1810(g)(1), struck out subsec. (f) which related to transitional rules in the case of any exchanges beginning before Jan. 1, 1978.

Pub. L. 99–514, § 1810(g)(4)(B), in heading substituted ''distributions described in section 336 or 355'' for ''liq-

uidations under section 336'', and in text inserted ''or 355 (or so much of section 356 as relates to section 355)''.

1984—Subsec. (a). Pub. L. 98–369, §131(a), amended subsec. (a) generally, revising provisions of pars. (1) and (2), and adding pars. (3) to (5).

Subsec. (d). Pub. L. 98–369, §131(b), amended subsec. (d) generally, substituting provision providing special rules relating to transfers of intangibles for provision providing special rules relating to transfers of intangibles by possession corporation.

Subsecs. (e), (f). Pub. L. 98–369, §131(c), added subsec. (e) and redesignated former subsec. (e) as (f).

1982—Subsecs. (d), (e). Pub. L. 97–248 added subsec. (d) and redesignated former subsec. (d) as (e).

1976—Pub. L. 94–455, among other changes, inserted provisions permitting nonrecognition of gain if a request for a ruling that tax avoidance is not present is filed within 183 days after beginning of an exchange, relating to an organization, reorganization, and liquidation of a foreign corporation, in the case of outbound transfers, however, for all other transfers, regulations are to provide the extent that earnings are to be taken into account as dividends and provisions relating to Tax Court review of the tax avoidance rulings.

1971—Subsec. (a). Pub. L. 91–681 designated existing provisions as subsec. (a), and, as so designated, inserted provisions relating to instances of an exchange, described in subsec. (b). Provisions relating to distributions described in section 355 (or so much of section 356 as relates to section 355) were stricken and were transferred to subsec. (c).

Subsec. (b). Pub. L. 91–681 added subsec. (b).

Subsec. (c). Pub. L. 91–681 designated as subsec. (c) provisions relating to distribution described in section 355 (or so much of section 356 as relates to section 355).

Subsec. (d). Pub. L. 91–681 added subsec. (d).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title IV, §406(b), Oct. 22, 2004, 118 Stat. 1498, provided that: ''The amendment made by this section [amending this section] shall apply to amounts treated as received pursuant to section 367(d)(2) of the Internal Revenue Code of 1986 on or after August 5, 1997.''

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1131(d) of Pub. L. 105–34 provided that: ''The amendments made by this section [enacting section 684 of this title, amending this section and sections 721, 814, 1035, and 6422 of this title, and repealing sections 1057, 1491, 1492, and 1494 of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 11702(j) of Pub. L. 101–508, set out as a note under section 59 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1006(e)(13)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to exchanges on or after June 21, 1988, except that such amendment shall not apply to any exchange pursuant to any reorganization for which a plan of reorganization was adopted before June 21, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 631(d)(1) of Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

Amendment by section 1231(e)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, but only with respect to transfers after Nov. 16, 1985, or licenses granted after such date, or before such date with respect to property not in existence or owned by taxpayer on such date, except that for purposes of section 936(h)(5)(C) of this title, such amendment applicable to taxable years beginning after Dec. 31, 1986, without regard to when the transfer or license was made, see section 1231(g)(2) of Pub. L. 99–514, set out as a note under section 936 of this title.

Amendment by section 1810(g)(1), (4) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 131(g) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting section 6038B of this title, amending this section and sections 1492, 1494, 6501, and 7482 of this title, and repealing section 7477 of this title] shall apply to transfers or exchanges after December 31, 1984, in taxable years ending after such date.

''(2) SPECIAL RULE FOR CERTAIN TRANSFERS OF INTANGIBLES.—

''(A) IN GENERAL.—If, after June 6, 1984, and before January 1, 1985, a United States person transfers any intangible property (within the meaning of section 936(h)(3)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) to a foreign corporation or in a transfer described in section 1491, such transfer shall be treated for purposes of sections 367(a), 1492(2), and 1494(b) of such Code as pursuant to a plan having as 1 of its principal purposes the avoidance of Federal income tax.

''(B) WAIVER.—Subject to such terms and conditions as the Secretary of the Treasury or his delegate may prescribe, the Secretary may waive the application of subparagraph (A) with respect to any transfer.

''(3) RULING REQUEST BEFORE MARCH 1, 1984.—The amendments made by this section (and the provisions of paragraph (2) of this subsection) shall not apply to any transfer or exchange of property described in a request filed before March 1, 1984, under section 367(a), 1492(2), or 1494(b) of the Internal Revenue Code of 1986 (as in effect before such amendments).''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to taxable years ending after Aug. 14, 1982, see section 213(e)(3) of Pub. L. 97–248, set out as a note under section 936 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1042(e) of Pub. L. 94–455, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) The amendments made by this section (other than by subsection (d)) [amending this section and sections 751 and 1248 of this title] shall apply to transfers beginning after October 9, 1975, and to sales, exchanges, and distributions taking place after such date. The amendments made by subsection (d) [enacting section 7477 of this title and amending sections 7476 and 7482 of this title] shall apply with respect to pleadings filed with the Tax Court after the date of the enactment of this Act [Oct. 4, 1976] but only with respect to transfers beginning after October 9, 1975.

''(2) In the case of any exchange described in section 367 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect on December 31, 1974) in any taxable year beginning after December 31, 1962, and before the date of the enactment of this Act [Oct. 4, 1976], which does not involve the transfer of property to or from a United States person, a taxpayer shall have for purposes of such section until 183 days after the date of the enactment of this Act [Oct. 4, 1976] to file a request with the Secretary of the Treasury or his delegate seeking to establish to the satisfaction of the Secretary of the Treasury or his delegate that such exchange was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes and that for purposes of such section a foreign corporation is to be treated as a foreign corporation.''

EFFECTIVE DATE OF 1971 AMENDMENT

Section 1(c) of Pub. L. 91–681, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [amending this section and section 1492 of this title] shall apply to transfers made after December 31, 1967; except that sections 367(d) and 1492 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this section) shall apply only with respect to transfers made after December 31, 1970.''

APPLICABILITY OF SUBSECTION (e)(2)

Section 1006(e)(13)(C) of Pub. L. 100–647 provided that: ''Section 367(e)(2) of the 1986 Code (as amended by the Reform Act [Pub. L. 99–514]) shall not apply in the case of any corporation completely liquidated before June 10, 1987, into a corporation organized in a country which has an income tax treaty with the United States.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 368. Definitions relating to corporate reorganizations

(a) Reorganization

(1) In general

For purposes of parts I and II and this part, the term ''reorganization'' means—

(A) a statutory merger or consolidation;

(B) the acquisition by one corporation, in exchange solely for all or a part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of stock of another corporation if, immediately after the acquisition, the acquiring corporation has control of such other corporation (whether or not such acquiring corporation had control immediately before the acquisition);

(C) the acquisition by one corporation, in exchange solely for all or a part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of substantially all of the properties of another corporation, but in determining whether the exchange is solely for stock the assumption by the acquiring corporation of a liability of the other shall be disregarded;

(D) a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor, or one or more of its shareholders (including persons who were shareholders immediately before the transfer), or any combination thereof, is in control of the corporation to which the assets are transferred; but only if, in pursuance of the plan, stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 354, 355, or 356;

(E) a recapitalization;

(F) a mere change in identity, form, or place of organization of one corporation, however effected; or

(G) a transfer by a corporation of all or part of its assets to another corporation in a title 11 or similar case; but only if, in pursuance of the plan, stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 354, 355, or 356.

(2) Special rules relating to paragraph (1)

(A) Reorganizations described in both paragraph (1)(C) and paragraph (1)(D)

If a transaction is described in both paragraph (1)(C) and paragraph (1)(D), then, for purposes of this subchapter (other than for purposes of subparagraph (C)), such transaction shall be treated as described only in paragraph (1)(D).

(B) Additional consideration in certain paragraph (1)(C) cases

If—

(i) one corporation acquires substantially all of the properties of another corporation,

(ii) the acquisition would qualify under paragraph (1)(C) but for the fact that the acquiring corporation exchanges money or other property in addition to voting stock, and

(iii) the acquiring corporation acquires, solely for voting stock described in paragraph (1)(C), property of the other corporation having a fair market value which is at least 80 percent of the fair market value of all of the property of the other corporation,

then such acquisition shall (subject to subparagraph (A) of this paragraph) be treated as qualifying under paragraph (1)(C). Solely for the purpose of determining whether clause (iii) of the preceding sentence applies, the amount of any liability assumed by the acquiring corporation shall be treated as money paid for the property.

(C) Transfers of assets or stock to subsidiaries in certain paragraph (1)(A), (1)(B), (1)(C), and (1)(G) cases

A transaction otherwise qualifying under paragraph (1)(A), (1)(B), or (1)(C) shall not be disqualified by reason of the fact that part or all of the assets or stock which were acquired in the transaction are transferred to a corporation controlled by the corporation

acquiring such assets or stock. A similar rule shall apply to a transaction otherwise qualifying under paragraph (1)(G) where the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met with respect to the acquisition of the assets.

(D) Use of stock of controlling corporation in paragraph (1)(A) and (1)(G) cases

The acquisition by one corporation, in exchange for stock of a corporation (referred to in this subparagraph as ''controlling corporation'') which is in control of the acquiring corporation, of substantially all of the properties of another corporation shall not disqualify a transaction under paragraph (1)(A) or (1)(G) if—

(i) no stock of the acquiring corporation is used in the transaction, and

(ii) in the case of a transaction under paragraph (1)(A), such transaction would have qualified under paragraph (1)(A) had the merger been into the controlling corporation.

(E) Statutory merger using voting stock of corporation controlling merged corporation

A transaction otherwise qualifying under paragraph (1)(A) shall not be disqualified by reason of the fact that stock of a corporation (referred to in this subparagraph as the ''controlling corporation'') which before the merger was in control of the merged corporation is used in the transaction, if—

(i) after the transaction, the corporation surviving the merger holds substantially all of its properties and of the properties of the merged corporation (other than stock of the controlling corporation distributed in the transaction); and

(ii) in the transaction, former shareholders of the surviving corporation exchanged, for an amount of voting stock of the controlling corporation, an amount of stock in the surviving corporation which constitutes control of such corporation.

(F) Certain transactions involving 2 or more investment companies

(i) If immediately before a transaction described in paragraph (1) (other than subparagraph (E) thereof), 2 or more parties to the transaction were investment companies, then the transaction shall not be considered to be a reorganization with respect to any such investment company (and its shareholders and security holders) unless it was a regulated investment company, a real estate investment trust, or a corporation which meets the requirements of clause (ii).

(ii) A corporation meets the requirements of this clause if not more than 25 percent of the value of its total assets is invested in the stock and securities of any one issuer, and not more than 50 percent of the value of its total assets is invested in the stock and securities of 5 or fewer issuers. For purposes of this clause, all members of a controlled group of corporations (within the meaning of section 1563(a)) shall be treated as one issuer. For purposes of this clause, a person holding stock in a regulated investment company, a real estate investment trust, or an investment company which meets the requirements of this clause shall, except as provided in regulations, be treated as holding its proportionate share of the assets held by such company or trust.

(iii) For purposes of this subparagraph the term ''investment company'' means a regulated investment company, a real estate investment trust, or a corporation 50 percent or more of the value of whose total assets are stock and securities and 80 percent or more of the value of whose total assets are assets held for investment. In making the 50-percent and 80-percent determinations under the preceding sentence, stock and securities in any subsidiary corporation shall be disregarded and the parent corporation shall be deemed to own its ratable share of the subsidiary's assets, and a corporation shall be considered a subsidiary if the parent owns 50 percent or more of the combined voting power of all classes of stock entitled to vote, or 50 percent or more of the total value of shares of all classes of stock outstanding.

(iv) For purposes of this subparagraph, in determining total assets there shall be excluded cash and cash items (including receivables). Government securities, and, under regulations prescribed by the Secretary, assets acquired (through incurring indebtedness or otherwise) for purposes of meeting the requirements of clause (ii) or ceasing to be an investment company.

(v) This subparagraph shall not apply if the stock of each investment company is owned substantially by the same persons in the same proportions.

(vi) If an investment company which does not meet the requirements of clause (ii) acquires assets of another corporation, clause (i) shall be applied to such investment company and its shareholders and security holders as though its assets had been acquired by such other corporation. If such investment company acquires stock of another corporation in a reorganization described in section 368(a)(1)(B), clause (i) shall be applied to the shareholders of such investment company as though they had exchanged with such other corporation all of their stock in such company for stock having a fair market value equal to the fair market value of their stock of such investment company immediately after the exchange. For purposes of section 1001, the deemed acquisition or exchange referred to in the two preceding sentences shall be treated as a sale or exchange of property by the corporation and by the shareholders and security holders to which clause (i) is applied.

(vii) For purposes of clauses (ii) and (iii), the term ''securities'' includes obligations of State and local governments, commodity futures contracts, shares of regulated investment companies and real estate in-

vestment trusts, and other investments constituting a security within the meaning of the Investment Company Act of 1940 (15 U.S.C. 80a–2(36)).[1]

[(viii) Repealed. Pub. L. 98–369, div. A, title I, §174(b)(5)(D), July 18, 1984, 98 Stat. 707]

(G) Distribution requirement for paragraph (1)(C)

(i) In general

A transaction shall fail to meet the requirements of paragraph (1)(C) unless the acquired corporation distributes the stock, securities, and other properties it receives, as well as its other properties, in pursuance of the plan of reorganization. For purposes of the preceding sentence, if the acquired corporation is liquidated pursuant to the plan of reorganization, any distribution to its creditors in connection with such liquidation shall be treated as pursuant to the plan of reorganization.

(ii) Exception

The Secretary may waive the application of clause (i) to any transaction subject to any conditions the Secretary may prescribe.

(H) Special rules for determining whether certain transactions are qualified under paragraph (1)(D)

For purposes of determining whether a transaction qualifies under paragraph (1)(D)—

(i) in the case of a transaction with respect to which the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met, the term ''control'' has the meaning given such term by section 304(c), and

(ii) in the case of a transaction with respect to which the requirements of section 355 (or so much of section 356 as relates to section 355) are met, the fact that the shareholders of the distributing corporation dispose of part or all of the distributed stock, or the fact that the corporation whose stock was distributed issues additional stock, shall not be taken into account.

(3) Additional rules relating to title 11 and similar cases

(A) Title 11 or similar case defined

For purposes of this part, the term ''title 11 or similar case'' means—

(i) a case under title 11 of the United States Code, or

(ii) a receivership, foreclosure, or similar proceeding in a Federal or State court.

(B) Transfer of assets in a title 11 or similar case

In applying paragraph (1)(G), a transfer of the assets of a corporation shall be treated as made in a title 11 or similar case if and only if—

(i) any party to the reorganization is under the jurisdiction of the court in such case, and

(ii) the transfer is pursuant to a plan of reorganization approved by the court.

(C) Reorganizations qualifying under paragraph (1)(G) and another provision

If a transaction would (but for this subparagraph) qualify both—

(i) under subparagraph (G) of paragraph (1), and

(ii) under any other subparagraph of paragraph (1) or under section 332 or 351,

then, for purposes of this subchapter (other than section 357(c)(1)), such transaction shall be treated as qualifying only under subparagraph (G) of paragraph (1).

(D) Agency receivership proceedings which involve financial institutions

For purposes of subparagraphs (A) and (B), in the case of a receivership, foreclosure, or similar proceeding before a Federal or State agency involving a financial institution referred to in section 581 or 591, the agency shall be treated as a court.

(E) Application of paragraph (2)(E)(ii)

In the case of a title 11 or similar case, the requirement of clause (ii) of paragraph (2)(E) shall be treated as met if—

(i) no former shareholder of the surviving corporation received any consideration for his stock, and

(ii) the former creditors of the surviving corporation exchanged, for an amount of voting stock of the controlling corporation, debt of the surviving corporation which had a fair market value equal to 80 percent or more of the total fair market value of the debt of the surviving corporation.

(b) Party to a reorganization

For purposes of this part, the term ''a party to a reorganization'' includes—

(1) a corporation resulting from a reorganization, and

(2) both corporations, in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another.

In the case of a reorganization qualifying under paragraph (1)(B) or (1)(C) of subsection (a), if the stock exchanged for the stock or properties is stock of a corporation which is in control of the acquiring corporation, the term ''a party to a reorganization'' includes the corporation so controlling the acquiring corporation. In the case of a reorganization qualifying under paragraph (1)(A), (1)(B), or (1)(C), or (1)(G) of subsection (a) by reason of paragraph (2)(C) of subsection (a), the term ''a party to a reorganization'' includes the corporation controlling the corporation to which the acquired assets or stock are transferred. In the case of a reorganization qualifying under paragraph (1)(A) or (1)(G) of subsection (a) by reason of paragraph (2)(D) of that subsection, the term ''a party to a reorganization'' includes the controlling corporation referred to in such paragraph (2)(D). In the case of a reorganization qualifying under subsection (a)(1)(A) by reason of subsection (a)(2)(E), the term ''party to a reorganization'' includes the controlling corporation referred to in subsection (a)(2)(E).

[1] So in original. A reference to 15 U.S.C. 80a–2(a)(36) was probably intended.

(c) Control defined

For purposes of part I (other than section 304), part II, this part, and part V, the term ''control'' means the ownership of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

(Aug. 16, 1954, ch. 736, 68A Stat. 120; Pub. L. 88–272, title II, §218(a), (b), Feb. 26, 1964, 78 Stat. 57; Pub. L. 90–621, §1(a), (b), Oct. 22, 1968, 82 Stat. 1310, 1311; Pub. L. 91–693, §1(a), (b), Jan. 12, 1971, 84 Stat. 2077; Pub. L. 94–455, title VIII, §806(f)(1), title XXI, §2131(a), Oct. 4, 1976, 90 Stat. 1605, 1922; Pub. L. 95–600, title VII, §701(j)(1), Nov. 6, 1978, 92 Stat. 2905; Pub. L. 96–589, §4(a)–(d), (h)(3), (4), Dec. 24, 1980, 94 Stat. 3401–3403, 3405; Pub. L. 97–34, title II, §241, Aug. 13, 1981, 95 Stat. 254; Pub. L. 97–248, title II, §225(a), Sept. 3, 1982, 96 Stat. 490; Pub. L. 97–448, title III, §304(b), (c), Jan. 12, 1983, 96 Stat. 2398; Pub. L. 98–369, div. A, title I, §§63(a), 64(a), 174(b)(5)(D), July 18, 1984, 98 Stat. 583, 584, 707; Pub. L. 99–514, title VI, §621(e)(1), title IX, §904(a), title XVIII, §§1804(g)(2), (h), 1879(*l*)(1), Oct. 22, 1986, 100 Stat. 2266, 2385, 2806, 2909; Pub. L. 100–647, title I, §1018(q)(5), title IV, §4012(b)(1)(A), Nov. 10, 1988, 102 Stat. 3586, 3656; Pub. L. 101–73, title XIV, §1401(a)(1), (b)(1), Aug. 9, 1989, 103 Stat. 548, 549; Pub. L. 105–34, title X, §1012(c)(2), Aug. 5, 1997, 111 Stat. 917; Pub. L. 105–206, title VI, §6010(c)(3)(B), July 22, 1998, 112 Stat. 813; Pub. L. 105–277, div. J, title IV, §4003(f)(2), Oct. 21, 1998, 112 Stat. 2681–910; Pub. L. 106–36, title III, §3001(a)(3), June 25, 1999, 113 Stat. 182.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (a)(2)(F)(vii), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

AMENDMENTS

1999—Subsec. (a)(1)(C). Pub. L. 106–36, §3001(a)(3)(A), struck out '', or the fact that property acquired is subject to a liability,'' before ''shall be disregarded''.

Subsec. (a)(2)(B). Pub. L. 106–36, §3001(a)(3)(B), which directed amendment of concluding provisions by striking out '', and the amount of any liability to which any property acquired from the acquiring corporation is subject,'', was executed by striking out '', and the amount of any liability to which any property acquired by the acquiring corporation is subject,'' after ''acquiring corporation'', to reflect the probable intent of Congress.

1998—Subsec. (a)(2)(H)(ii). Pub. L. 105–277 inserted '', or the fact that the corporation whose stock was distributed issues additional stock,'' after ''dispose of part or all of the distributed stock''.

Pub. L. 105–206 amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''in the case of a transaction with respect to which the requirements of section 355 are met, the shareholders described in paragraph (1)(D) shall be treated as having control of the corporation to which the assets are transferred if such shareholders own (immediately after the distribution) stock possessing—

''(I) more than 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, and

''(II) more than 50 percent of the total value of shares of all classes of stock of such corporation.''

1997—Subsec. (a)(2)(H). Pub. L. 105–34 amended heading and text of subpar. (H) generally. Prior to amendment, text read as follows: ''In the case of any transaction with respect to which the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met, for purposes of determining whether such transaction qualifies under subparagraph (D) of paragraph (1), the term 'control' has the meaning given to such term by section 304(c).''

1989—Subsec. (a)(3)(D). Pub. L. 101–73, §1401(b)(1), repealed amendment made by Pub. L. 99–514, §904(a), see 1986 Amendment note below.

Pub. L. 101–73, §1401(a)(1), inserted ''receivership'' in heading and amended text generally, changing the structure of the subparagraph from one consisting of five clauses designated (i) to (v) to one consisting of a single undesignated subparagraph.

1988—Subsec. (a)(2)(F)(ii). Pub. L. 100–647, §1018(q)(5), struck out ''(other than stock in a regulated investment company, a real estate investment trust, or an investment company which meets the requirements of this clause (ii))'' after ''any one issuer'' and after ''or fewer issuers'' and inserted at end ''For purposes of this clause, a person holding stock in a regulated investment company, a real estate investment trust, or an investment company which meets the requirements of this clause shall, except as provided in regulations, be treated as holding its proportionate share of the assets held by such company or trust.''

Subsec. (a)(3)(D)(iv), (v). Pub. L. 100–647, §4012(b)(1)(A), amended subpar. (D), as in effect before the amendment made by section 904(a) of Pub. L. 99–514, by adding cls. (iv) and (v).

1986—Subsec. (a)(2)(A). Pub. L. 99–514, §1804(h)(3), inserted ''(other than for purposes of subparagraph (C))'' after ''subchapter''.

Subsec. (a)(2)(F)(ii). Pub. L. 99–514, §1879(*l*)(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''A corporation meets the requirements of this clause if not more than 25 percent of the value of its total assets is invested in the stock and securities of any one issuer, and not more than 50 percent of the value of its total assets is invested in the stock and securities of 5 or fewer issuers. For purposes of this clause, all members of a controlled group of corporations (within the meaning of section 1563(a)) shall be treated as one issuer.''

Subsec. (a)(2)(G)(i). Pub. L. 99–514, §1804(g)(2), inserted ''For purposes of the preceding sentence, if the acquired corporation is liquidated pursuant to the plan of reorganization, any distribution to its creditors in connection with such liquidation shall be treated as pursuant to the plan of reorganization.''

Subsec. (a)(2)(H). Pub. L. 99–514, §1804(h)(2), added subpar. (H).

Subsec. (a)(3)(D). Pub. L. 99–514, §904(a), (c)(1), as amended by Pub. L. 100–647, §4012(a)(1), which (applicable to acquisitions after Dec. 31, 1989, in taxable years ending after such date) directed amendment of subpar. (D) to read ''(D) AGENCY RECEIVERSHIP PROCEEDINGS WHICH INVOLVE FINANCIAL INSTITUTIONS.—For purposes of subparagraphs (A) and (B), in the case of a receivership, foreclosure, or similar proceeding before a Federal or State agency involving a financial institution referred to in section 581 or 591, the agency shall be treated as a court.'', was repealed by Pub. L. 101–73, §1401(b)(1), (c)(4), eff. Oct. 22, 1986, and I.R.C. of 1986 applicable as if the amendments made by such section had not been enacted.

Subsec. (c). Pub. L. 99–514, §1804(h)(1), in amending subsec. (c) generally, struck out par. (1) designation and struck out par. (2) defining term ''control'' as having meaning given to such term by section 304(c) in case of any transaction with respect to which requirements of subpars. (A) and (B) of section 354(b)(1) are met, for purposes of determining whether such transaction is described in subpar. (D) of subsec. (a)(1).

Pub. L. 99–514, §621(e)(1), repealed amendment by Pub. L. 94–455, §806(f)(1). See 1976 Amendment note below.

1984—Subsec. (a)(2)(F)(viii). Pub. L. 98–369, §174(b)(5)(D), struck out cl. (viii) which provided that in

applying paragraph (3) of section 267(b) in respect of any transaction to which this subparagraph applies, the reference to a personal holding company in such paragraph (3) be treated as including a reference to an investment company and the determination of whether a corporation is an investment company be made as of the time immediately before the transaction instead of with respect to the taxable year referred to in such paragraph (3).

Subsec. (a)(2)(G). Pub. L. 98–369, § 63(a), added subpar. (G).

Subsec. (c). Pub. L. 98–369, § 64(a), designated existing provisions as par. (1) and added par. (2).

1983—Subsec. (a)(2)(C). Pub. L. 97–448, § 304(b), struck out ''or stock'' after ''acquisition of the assets''.

Subsec. (a)(3)(B)(i). Pub. L. 97–448, § 304(c), substituted ''any party to the reorganization'' for ''such corporation''.

1982—Subsec. (a)(1)(F). Pub. L. 97–248 inserted ''of one corporation'' after ''place of organization''.

1981—Subsec. (a)(3)(D). Pub. L. 97–34 substituted ''Agency proceedings'' for ''Agency receivership proceedings'' in heading, incorporated existing provisions in text designated cl. (i), inserted in cl. (i)(II) definition for term ''title 11 or similar case'', and added cls. (ii) and (iii).

1980—Subsec. (a)(1)(G). Pub. L. 96–589, § 4(a), (h)(3), added subpar. (G).

Subsec. (a)(2)(C). Pub. L. 96–589, § 4(c), inserted provision that a similar rule would apply to a transaction otherwise qualifying under par. (1)(G), where the requirements of subpars. (A) and (B) of section 354(b)(1) are met with respect to the acquisition of the assets or stock.

Subsec. (a)(2)(D). Pub. L. 96–589, § 4(d), among other changes, inserted reference to par. (1)(G).

Subsec. (a)(3). Pub. L. 96–589, § 4(b), added par. (3).

Subsec. (b). Pub. L. 96–589, § 4(h)(4), substituted ''paragraph (1)(A), (1)(B), (1)(C), or (1)(G) of subsection (a) by reason of paragraph (2)(C)'' and ''paragraph (1)(A) or (1)(G) of subsection (a) by reason of paragraph (2)(D)'' for ''paragraph (1)(A), (1)(B), or (1)(C) of subsection (a) by reason of paragraph (2)(C)'' and ''paragraph (1)(A) of subsection (a) by reason of paragraph (2)(D)'', respectively.

1978—Subsec. (a)(2)(F). Pub. L. 95–600 substituted in cl. (iii), first sentence, ''50 percent or more'' and ''80 percent or more'' for ''more than 50 percent'' and ''more than 80 percent''; substituted in cl. (vi), first sentence, ''does not meet the requirements'' for ''is not diversified within the meaning''; struck from cl. (vi), second sentence, ''(hereafter referred to as the ('actual acquisition')'' after ''section 368(a)(1)(B)'' and ''and security holders'' after ''the shareholders'' and substituted ''stock in such company for stock having a fair market value equal to the fair market value of their stock of such investment company immediately after the exchange'' for ''stock in such investment company for a percentage of the value of the total outstanding stock of the other corporation equal to the percentage of the value of the total outstanding stock of such investment company which such shareholders own immediately after the actual acquisition''; and added cls. (vii) and (viii).

1976—Subsec. (a)(2)(F). Pub. L. 94–455, § 2131(a), added subpar. (F).

Subsec. (c). Pub. L. 94–455, § 806(f)(1), which substituted ''this part, and Part V,'' for ''and this part,'' was repealed by Pub. L. 99–514, § 621(e)(1). See Effective Date of 1986 and 1976 Amendment notes below.

1971—Subsec. (a)(2)(E). Pub. L. 91–693, § 1(a), added subpar. (E).

Subsec. (b). Pub. L. 91–693, § 1(b), defined ''party to a reorganization'' in the case of a reorganization qualifying under subsection (a)(1)(A) by reason of subsection (a)(2)(E).

1968—Subsec. (a)(2)(D). Pub. L. 90–621, § 1(a), added subpar. (D).

Subsec. (b). Pub. L. 90–621, § 1(b), inserted reference to the inclusion of the controlling corporation in term ''a party to a reorganization'' in reorganizations qualifying under paragraph (1)(A) of subsection (a) by reason of paragraph (2)(D) of subsection (a).

1964—Subsec. (a). Pub. L. 88–272, § 218(a), (b)(1), inserted ''(or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation)'' in par. (1)(B), and in par. (2)(C), inserted references to par. (1)(B), and substituted ''assets or stock'' for ''assets'' wherever appearing.

Subsec. (b). Pub. L. 88–272, § 218(b)(2), inserted references to par. (1)(B) wherever appearing.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–36 applicable to transfers after Oct. 18, 1998, see section 3001(e) of Pub. L. 106–36, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105–277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 4003(*l*) of Pub. L. 105–277, set out as a note under section 86 of this title.

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable, with certain exceptions, to transfers after Aug. 5, 1997, see section 1012(d) of Pub. L. 105–34, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

Repeal of amendment by section 904(a) of Pub. L. 99–514 effective Oct. 22, 1986, and I.R.C. of 1986 applicable as if the amendment had not been enacted, see section 1401(b)(1) of Pub. L. 101–73, set out as a Repeal of Provisions Relating to Repeal of Special Reorganization Rules for Financial Institutions note set out under section 597 of this title, and section 1401(c)(4) of Pub. L. 101–73, set out as Effective Date of 1989 Amendment note under section 597 of this title.

Section 1401(c)(1) of Pub. L. 101–73 provided that: ''The amendment made by subsection (a)(1) [amending this section] shall apply to acquisitions on or after May 10, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1018(q)(5) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 4012(b)(1)(C)(i) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to acquisitions after the date of the enactment of this Act [Nov. 10, 1988] and before January 1, 1990.''

EFFECTIVE DATE OF 1986 AMENDMENT

Repeal of amendment by section 806(f)(1) of Pub. L. 94–455 effective Jan. 1, 1986, with certain exceptions, see section 621(f)(2) of Pub. L. 99–514, set out as a note under section 382 of this title.

Section 904(c)(1) of Pub. L. 99–514, as amended by Pub. L. 100–647, title IV, § 4012(a)(1), Nov. 10, 1988, 102 Stat. 3656, which provided that the amendments made by subsection (a), amending this section, were to apply to acquisitions after Dec. 31, 1989, in taxable years ending after such date, was repealed by Pub. L. 101–73, title XIV, § 1401(b)(1), Aug. 9, 1989, 103 Stat. 549.

Amendment by section 1804(g)(2) of Pub. L. 99–514 applicable to plans of reorganizations adopted after Oct. 22, 1986, see section 1804(g)(4) of Pub. L. 99–514, set out as a note under section 361 of this title.

Amendment by section 1804(h) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Section 1879(*l*)(2) of Pub. L. 99–514 provided that: ''The amendment made by this subsection [amending this section] shall apply as if included in section 2131 of the Tax Reform Act of 1976 [Pub. L. 94–455].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 63(a) of Pub. L. 98–369 applicable to transactions pursuant to plans adopted after July 18, 1984, see section 63(c) of Pub. L. 98–369, set out as a note under section 312 of this title.

Section 64(b) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall apply to transactions pursuant to plans adopted after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 174(b)(5)(D) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1983, in taxable years ending after that date, see section 174(c)(2)(A) of Pub. L. 98–369, set out as a note under section 267 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 311(b)(2) of Pub. L. 97–448 provided that: ''The amendment made by subsection (b) of section 304 [amending this section] shall take effect as if included in the amendments made by section 4 of such Act [Pub. L. 96–589, the Bankruptcy Tax Act of 1980, see 1980 Amendment notes above].''

EFFECTIVE DATE OF 1982 AMENDMENT

Section 225(b) of Pub. L. 97–248 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply with respect to transactions occurring after August 31, 1982.

''(2) PLANS ADOPTED ON OR BEFORE AUGUST 31, 1982.—The amendment made by subsection (a) shall not apply with respect to plans of reorganization adopted on or before August 31, 1982, but only if the transaction occurs before January 1, 1983.''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 246(a) of Pub. L. 97–34 provided that: ''The amendment made by sections 241 and 242 [amending this section and section 382 of this title] shall apply to any transfer made on or after January 1, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 applicable to bankruptcy cases or similar judicial proceedings commencing after Dec. 31, 1980, with exception permitting the debtor to make the amendment applicable to such cases or proceedings commencing after Sept. 30, 1979, see section 7(c)(1), (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(j)(2) of Pub. L. 95–600, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(A) Except as provided in subparagraphs (B) and (C), the amendments made by paragraph (1) [amending this section] shall apply as if included in section 368(a)(2)(F) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as added by section 2131(a) of the Tax Reform Act of 1976 [Pub. L. 94–455, title XX, §2131(a), Oct. 4, 1976, 90 Stat. 1922].

''(B) Clause (viii) of section 368(a)(2)(F) of the Internal Revenue Code of 1986 (as added by paragraph (1)) shall apply only with respect to losses sustained after September 26, 1977.

''(C) Clause (vii) of section 368(a)(2)(F) of the Internal Revenue Code of 1986 (as added by paragraph (1)) shall apply only with respect to transfers made after September 26, 1977.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2131(f)(1), (2) of Pub. L. 94–455, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to transfers made after February 17, 1976, in taxable years ending after such date.

''(2) The amendment made by subsection (a) shall not apply to transfers made in accordance with a ruling issued by the Internal Revenue Service before February 18, 1976, holding that a proposed transaction would be a reorganization described in paragraph (1) of section 368(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].''

For effective date of amendment by section 806(f)(1) of Pub. L. 94–455, see section 806(g)(2), (3) of Pub. L. 94–455, formerly set out as a note under section 382 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 1(c) of Pub. L. 91–693 provided that: ''The amendments made by this section [amending this section] shall apply to statutory mergers occurring after December 31, 1970.''

EFFECTIVE DATE OF 1968 AMENDMENT

Section 1(c) of Pub. L. 90–621 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to statutory mergers occurring after the date of the enactment of this Act [Oct. 22, 1968].''

EFFECTIVE DATE OF 1964 AMENDMENT

Section 218(c) of Pub. L. 88–272 provided that: ''The amendments made by this section [amending this section] shall apply with respect to transactions after December 31, 1963, in taxable years ending after such date.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[PART IV—REPEALED]

[§§ 370 to 372. Repealed. Pub. L. 101–508, title XI, §11801(a)(19), Nov. 5, 1990, 104 Stat. 1388–521]

Section 370, added Pub. L. 96–589, §4(f), Dec. 24, 1980, 94 Stat. 3404, related to termination of part.

Section 371, acts Aug. 16, 1954, ch. 736, 68A Stat. 121; Oct. 4, 1976, Pub. L. 94–455, title XIX, §1901(a)(50), 90 Stat. 1773, related to reorganization in certain receivership and bankruptcy proceedings.

Section 372, acts Aug. 16, 1954, ch. 736, 68A Stat. 122; Sept. 2, 1958, Pub. L. 85–866, title I, §95(a), 72 Stat. 1671; Oct. 4, 1976, Pub. L. 94–455, title XIX, §§1901(a)(51), (b)(14)(A), 1906(b)(13)(A), 90 Stat. 1773, 1795, 1834, related to basis in connection with certain receivership and bankruptcy proceedings.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account

prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[§ 373. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(52), Oct. 4, 1976, 90 Stat. 1773]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 123; June 29, 1956, ch. 463, § 3, 70 Stat. 403, related to loss not recognized in certain railroad reorganizations.

EFFECTIVE DATE OF REPEAL

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

[§ 374. Repealed. Pub. L. 101–508, title XI, § 11801(a)(19), Nov. 5, 1990, 104 Stat. 1388–521]

Section, added June 29, 1956, ch. 463, § 1, 70 Stat. 402; amended Mar. 31, 1976, Pub. L. 94–253, § 1(a), (d), 90 Stat. 295, 296; Oct. 4, 1976, Pub. L. 94–455, title XIX, § 1901(a)(53), (b)(10)(A), (14)(B), (C), 90 Stat. 1773, 1795, 1796; Nov. 6, 1978, Pub. L. 95–600, title III, § 369(a), 92 Stat. 2857; Apr. 1, 1980, Pub. L. 96–222, title I, § 103(a)(14), 94 Stat. 214; Oct. 22, 1986, Pub. L. 99–514, title XVIII, § 1899A(9), 100 Stat. 2958, related to nonrecognition of gain or loss in certain railroad reorganizations.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PART V—CARRYOVERS

Sec.

381. Carryovers in certain corporate acquisitions.
382. Limitation on net operating loss carryforwards and certain built-in losses following ownership change.
383. Special limitations on certain excess credits, etc.
384. Limitation on use of preacquisition losses to offset built-in gains.

AMENDMENTS

1987—Pub. L. 100–203, title X, § 10226(b), Dec. 22, 1987, 101 Stat. 1330–415, added item 384.

1986—Pub. L. 99–514, title VI, § 621(c)(2), Oct. 22, 1986, 100 Stat. 2266, substituted ''Limitation on net operating loss carryforwards and certain built-in losses following ownership change'' for ''Special limitations on net operating loss carryovers'' in item 382 and ''Special limitations on certain excess credits, etc.'' for ''Special limitations on unused business credits, research credits, foreign taxes, and capital losses'' in item 383.

1984—Pub. L. 98–369, div. A, title IV, § 474(r)(12)(C), July 18, 1984, 98 Stat. 842, substituted ''unused business credits, research credits, foreign taxes, and capital losses'' for ''carryovers of unused investment credits, work incentive program credits, new employee credits, alcohol fuel credits, research credits, employee stock ownership credits, foreign taxes, and capital losses'' in item 383.

1981—Pub. L. 97–34, title II, § 221(b)(1)(E), title III, § 331(d)(1)(E), Aug. 13, 1981, 95 Stat. 246, 295, inserted references to alcohol fuel credits, research credits, and employee stock ownership credits in item 383. For applicability of amendment by section 221(b)(1)(E) to amounts paid or incurred after June 30, 1981, and before Jan. 1, 1986, see section 221(d) of Pub. L. 97–34, set out as an Effective Date note under section 30 of this title.

1977—Pub. L. 95–30, title II, § 202(d)(3)(D), May 23, 1977, 91 Stat. 148, inserted ''new employee credits,'' after ''work incentive program credits,'' in item 383.

1971—Pub. L. 92–178, title III, § 302(b), Dec. 10, 1971, 85 Stat. 521, added item 383.

§ 381. Carryovers in certain corporate acquisitions

(a) General rule

In the case of the acquisition of assets of a corporation by another corporation—

(1) in a distribution to such other corporation to which section 332 (relating to liquidations of subsidiaries) applies; or

(2) in a transfer to which section 361 (relating to nonrecognition of gain or loss to corporations) applies, but only if the transfer is in connection with a reorganization described in subparagraph (A), (C), (D), (F), or (G) of section 368(a)(1),

the acquiring corporation shall succeed to and take into account, as of the close of the day of distribution or transfer, the items described in subsection (c) of the distributor or transferor corporation, subject to the conditions and limitations specified in subsections (b) and (c). For purposes of the preceding sentence, a reorganization shall be treated as meeting the requirements of subparagraph (D) or (G) of section 368(a)(1) only if the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met.

(b) Operating rules

Except in the case of an acquisition in connection with a reorganization described in subparagraph (F) of section 368(a)(1)—

(1) The taxable year of the distributor or transferor corporation shall end on the date of distribution or transfer.

(2) For purposes of this section, the date of distribution or transfer shall be the day on which the distribution or transfer is completed; except that, under regulations prescribed by the Secretary, the date when substantially all of the property has been distributed or transferred may be used if the distributor or transferor corporation ceases all operations, other than liquidating activities, after such date.

(3) The corporation acquiring property in a distribution or transfer described in subsection (a) shall not be entitled to carry back a net operating loss or a net capital loss for a taxable year ending after the date of distribution or transfer to a taxable year of the distributor or transferor corporation.

(c) Items of the distributor or transferor corporation

The items referred to in subsection (a) are:

(1) Net operating loss carryovers

The net operating loss carryovers determined under section 172, subject to the following conditions and limitations:

(A) the taxable year of the acquiring corporation to which the net operating loss carryovers of the distributor or transferor corporation are first carried shall be the first taxable year ending after the date of distribution or transfer.

(B) In determining the net operating loss deduction, the portion of such deduction attributable to the net operating loss carryovers of the distributor or transferor corporation to the first taxable year of the acquiring corporation ending after the date of distribution or transfer shall be limited to an amount which bears the same ratio to the taxable income (determined without regard to a net operating loss deduction) of the acquiring corporation in such taxable year as the number of days in the taxable year after the date of distribution or transfer bears to the total number of days in the taxable year.

(C) For the purpose of determining the amount of the net operating loss carryovers under section 172(b)(2), a net operating loss for a taxable year (hereinafter in this subparagraph referred to as the ''loss year'') of a distributor or transferor corporation which ends on or before the end of a loss year of the acquiring corporation shall be considered to be a net operating loss for a year prior to such loss year of the acquiring corporation. For the same purpose, the taxable income for a ''prior taxable year'' (as the term is used in section 172(b)(2)) shall be computed as provided in such section; except that, if the date of distribution or transfer is on a day other than the last day of a taxable year of the acquiring corporation—

(i) such taxable year shall (for the purpose of this subparagraph only) be considered to be 2 taxable years (hereinafter in this subparagraph referred to as the ''pre-acquisition part year'' and the ''post-acquisition part year'');

(ii) the pre-acquisition part year shall begin on the same day as such taxable year begins and shall end on the date of distribution or transfer;

(iii) the post-acquisition part year shall begin on the day following the date of distribution or transfer and shall end on the same day as the end of such taxable year;

(iv) the taxable income for such taxable year (computed with the modifications specified in section 172(b)(2)(A) but without a net operating loss deduction) shall be divided between the pre-acquisition part year and the post-acquisition part year in proportion to the number of days in each;

(v) the net operating loss deduction for the pre-acquisition part year shall be determined as provided in section 172(b)(2)(B), but without regard to a net operating loss year of the distributor or transferor corporation; and

(vi) the net operating loss deduction for the post-acquisition part year shall be determined as provided in section 172(b)(2)(B).

(2) Earnings and profits

In the case of a distribution or transfer described in subsection (a)—

(A) the earnings and profits or deficit in earnings and profits, as the case may be, of the distributor or transferor corporation shall, subject to subparagraph (B), be deemed to have been received or incurred by the acquiring corporation as of the close of the date of the distribution or transfer; and

(B) a deficit in earnings and profits of the distributor, transferor, or acquiring corporation shall be used only to offset earnings and profits accumulated after the date of transfer. For this purpose, the earnings and profits for the taxable year of the acquiring corporation in which the distribution or transfer occurs shall be deemed to have been accumulated after such distribution or transfer in an amount which bears the same ratio to the undistributed earnings and profits of the acquiring corporation for such taxable year (computed without regard to any earnings and profits received from the distributor or transferor corporation, as described in subparagraph (A) of this paragraph) as the number of days in the taxable year after the date of distribution or transfer bears to the total number of days in the taxable year.

(3) Capital loss carryover

The capital loss carryover determined under section 1212, subject to the following conditions and limitations:

(A) The taxable year of the acquiring corporation to which the capital loss carryover of the distributor or transferor corporation is first carried shall be the first taxable year ending after the date of distribution or transfer.

(B) The capital loss carryover shall be a short-term capital loss in the taxable year determined under subparagraph (A) but shall be limited to an amount which bears the same ratio to the capital gain net income (determined without regard to a short-term capital loss attributable to capital loss carryover), if any, of the acquiring corporation in such taxable year as the number of days in the taxable year after the date of distribution or transfer bears to the total number of days in the taxable year.

(C) For purposes of determining the amount of such capital loss carryover to taxable years following the taxable year determined under subparagraph (A), the capital gain net income in the taxable year determined under subparagraph (A) shall be considered to be an amount equal to the amount determined under subparagraph (B).

(4) Method of accounting

The acquiring corporation shall use the method of accounting used by the distributor or transferor corporation on the date of distribution or transfer unless different methods were used by several distributor or transferor corporations or by a distributor or transferor corporation and the acquiring corporation. If different methods were used, the acquiring corporation shall use the method or combination of methods of computing taxable income adopted pursuant to regulations prescribed by the Secretary.

(5) Inventories

In any case in which inventories are received by the acquiring corporation, such inventories shall be taken by such corporation (in determining its income) on the same basis on which

such inventories were taken by the distributor or transferor corporation, unless different methods were used by several distributor or transferor corporations or by a distributor or transferor corporation and the acquiring corporation. If different methods were used, the acquiring corporation shall use the method or combination of methods of taking inventory adopted pursuant to regulations prescribed by the Secretary.

(6) Method of computing depreciation allowance

The acquiring corporation shall be treated as the distributor or transferor corporation for purposes of computing the depreciation allowance under sections 167 and 168 on property acquired in a distribution or transfer with respect to so much of the basis in the hands of the acquiring corporation as does not exceed the adjusted basis in the hands of the distributor or transferor corporation.

[(7) Repealed. June 15, 1955, ch. 143, § 2(1), 69 Stat. 134]

(8) Installment method

If the acquiring corporation acquires installment obligations (the income from which the distributor or transferor corporation reports on the installment basis under section 453) the acquiring corporation shall, for purposes of section 453, be treated as if it were the distributor or transferor corporation.

(9) Amortization of bond discount or premium

If the acquiring corporation assumes liability for bonds of the distributor or transferor corporation issued at a discount or premium, the acquiring corporation shall be treated as the distributor or transferor corporation after the date of distribution or transfer for purposes of determining the amount of amortization allowable or includible with respect to such discount or premium.

(10) Treatment of certain mining development and exploration expenses of distributor of transferor corporation

The acquiring corporation shall be entitled to deduct, if it were the distributor or transferor corporation, expenses deferred under section 616 (relating to certain development expenditures) if the distributor or transferor corporation has so elected.

(11) Contributions to pension plans, employees' annuity plans, and stock bonus and profit-sharing plans

The acquiring corporation shall be considered to be the distributor or transferor corporation after the date of distribution or transfer for the purpose of determining the amounts deductible under section 404 with respect to pension plans, employees' annuity plans, and stock bonus and profit-sharing plans.

(12) Recovery of tax benefit items

If the acquiring corporation is entitled to the recovery of any amounts previously deducted by (or allowable as credits to) the distributor or transferor corporation, the acquiring corporation shall succeed to the treatment under section 111 which would apply to such amounts in the hands of the distributor or transferor corporation.

(13) Involuntary conversions under section 1033

The acquiring corporation shall be treated as the distributor or transferor corporation after the date of distribution or transfer for purposes of applying section 1033.

(14) Dividend carryover to personal holding company

The dividend carryover (described in section 564) to taxable years ending after the date of distribution or transfer.

[(15) Repealed. Pub. L. 101–508, title XI, § 11801(c)(10)(A), Nov. 5, 1990, 104 Stat. 1388–526]

(16) Certain obligations of distributor or transferor corporation

If the acquiring corporation—

(A) assumes an obligation of the distributor or transferor corporation which, after the date of the distribution or transfer, gives rise to a liability, and

(B) such liability, if paid or accrued by the distributor or transferor corporation, would have been deductible in computing its taxable income,

the acquiring corporation shall be entitled to deduct such items when paid or accrued, as the case may be, as if such corporation were the distributor or transferor corporation. A corporation which would have been an acquiring corporation under this section if the date of distribution or transfer had occurred on or after the effective date of the provisions of this subchapter applicable to a liquidation or reorganization, as the case may be, shall be entitled, even though the date of distribution or transfer occurred before such effective date, to apply this paragraph with respect to amounts paid or accrued in taxable years beginning after December 31, 1953, on account of such obligations of the distributor or transferor corporation. This paragraph shall not apply if such obligations are reflected in the amount of stock, securities, or property transferred by the acquiring corporation to the transferor corporation for the property of the transferor corporation.

(17) Deficiency dividend of personal holding company

If the acquiring corporation pays a deficiency dividend (as defined in section 547(d)) with respect to the distributor or transferor corporation, such distributor or transferor corporation shall, with respect to such payments, be entitled to the deficiency dividend deduction provided in section 547.

(18) Percentage depletion on extraction of ores or minerals from the waste or residue of prior mining

The acquiring corporation shall be considered to be the distributor or transferor corporation for the purpose of determining the

applicability of section 613(c)(3) (relating to extraction of ores or minerals from the ground).

(19) Charitable contributions in excess of prior years' limitation

Contributions made in the taxable year ending on the date of distribution or transfer and the 4 prior taxable years by the distributor or transferor corporation in excess of the amount deductible under section 170(b)(2) for such taxable years shall be deductible by the acquiring corporation for its taxable years which begin after the date of distribution or transfer, subject to the limitations imposed in section 170(b)(2). In applying the preceding sentence, each taxable year of the distributor or transferor corporation beginning on or before the date of distribution or transfer shall be treated as a prior taxable year with reference to the acquiring corporation's taxable years beginning after such date.

[(20), (21) Repealed. Pub. L. 94–455, title XIX, § 1901(a)(54), (b)(16), Oct. 4, 1976, 90 Stat. 1773, 1796]

(22) Successor insurance company

If the acquiring corporation is an insurance company taxable under subchapter L, there shall be taken into account (to the extent proper to carry out the purposes of this section and of subchapter L, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of subchapter L in respect of the distributor or transferor corporation.

(23) Deficiency dividend of regulated investment company or real estate investment trust

If the acquiring corporation pays a deficiency dividend (as defined in section 860(f)) with respect to the distributor or transferor corporation, such distributor or transferor corporation shall, with respect to such payments, be entitled to the deficiency dividend deduction provided in section 860.

(24) Credit under section 38

The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and section 38, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of section 38 in respect of the distributor or transferor corporation.

(25) Credit under section 53

The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and section 53, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of section 53 in respect of the distributor or transferor corporation.

(26) Enterprise zone provisions

The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and subchapter U, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of subchapter U in respect of the distributor or transferor corporation.

(d) Operations loss carrybacks and carryovers of life insurance companies

For application of this part to operations loss carrybacks and carryovers of life insurance companies, see section 810.

(Aug. 16, 1954, ch. 736, 68A Stat. 124; June 15, 1955, ch. 143, § 2(1), 69 Stat. 134; Jan. 28, 1956, ch. 15, § 1, 70 Stat. 7; Pub. L. 85–866, title I, § 29(c), Sept. 2, 1958, 72 Stat. 1628; Pub. L. 86–69, § 3(c), June 25, 1959, 73 Stat. 139; Pub. L. 87–834, § 2(d), Oct. 16, 1962, 76 Stat. 971; Pub. L. 88–272, title II, §§ 209(d)(2), 225(i)(3), Feb. 26, 1964, 78 Stat. 46, 92; Pub. L. 90–240, § 5(d), Jan. 2, 1968, 81 Stat. 778; Pub. L. 91–172, title V, §§ 504(c)(2), 512(c), 521(f), Dec. 30, 1969, 83 Stat. 633, 639, 654; Pub. L. 92–178, title VI, § 601(c)(3), Dec. 10, 1971, 85 Stat. 557; Pub. L. 94–455, title XVI, § 1601(e), title XIX, §§ 1901(a)(54), (b)(16), (17), (21)(B), (33)(N), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1746, 1773, 1796, 1797, 1802, 1834; Pub. L. 95–30, title II, § 202(d)(3)(A), May 23, 1977, 91 Stat. 148; Pub. L. 95–600, title III, § 362(d)(2), Nov. 6, 1978, 92 Stat. 2851; Pub. L. 96–223, title II, § 232(b)(2)(B), Apr. 2, 1980, 94 Stat. 276; Pub. L. 96–471, § 2(b)(2), Oct. 19, 1980, 94 Stat. 2253; Pub. L. 96–589, § 4(g), Dec. 24, 1980, 94 Stat. 3404; Pub. L. 97–34, title II, §§ 208, 221(b)(1)(B), title III, § 331(d)(1)(B), Aug. 13, 1981, 95 Stat. 226, 246, 294; Pub. L. 97–248, title II, § 224(c)(7), Sept. 3, 1982, 96 Stat. 489; Pub. L. 97–448, title I, §§ 102(h)(3), 103(g)(2)(F), Jan. 12, 1983, 96 Stat. 2372, 2379; Pub. L. 98–369, div. A, title II, § 211(b)(4), title IV, § 474(r)(11), July 18, 1984, 98 Stat. 754, 841; Pub. L. 99–514, title II, § 231(d)(3)(F), title IV, § 411(b)(2)(C)(iii), title VII, § 701(e)(1), title XVIII, § 1812(a)(3), Oct. 22, 1986, 100 Stat. 2179, 2227, 2342, 2833; Pub. L. 100–203, title X, § 10202(c)(3), Dec. 22, 1987, 101 Stat. 1330–392; Pub. L. 100–647, title I, § 1002(a)(13), Nov. 10, 1988, 102 Stat. 3355; Pub. L. 101–239, title VII, § 7841(d)(10), Dec. 19, 1989, 103 Stat. 2428; Pub. L. 101–508, title XI, §§ 11801(c)(10)(A), 11812(b)(6), Nov. 5, 1990, 104 Stat. 1388–526, 1388–535; Pub. L. 103–66, title XIII, § 13302(e), Aug. 10, 1993, 107 Stat. 556; Pub. L. 104–188, title I, § 1704(t)(26), Aug. 20, 1996, 110 Stat. 1888.)

AMENDMENTS

1996—Subsec. (c)(26), (27). Pub. L. 104–188 amended directory language of Pub. L. 101–239. See 1989 Amendment note below.

1993—Subsec. (c)(26). Pub. L. 103–66 added par. (26).

1990—Subsec. (c)(6). Pub. L. 101–508, § 11812(b)(6)(A), substituted ''sections 167 and 168'' for ''subsections (b), (j), and (k) of section 167''.

Subsec. (c)(15). Pub. L. 101–508, § 11801(c)(10)(A), struck out par. (15) ''Indebtedness of certain personal holding companies'' which read as follows: ''The acquiring corporation shall be considered to be the distributor or transferor corporation for the purpose of determining the applicability of subsection (c) of section 545, relating to deduction with respect to payment of certain indebtedness.''

Subsec. (c)(24) to (26). Pub. L. 101–508, § 11812(b)(6)(B), redesignated pars. (25) and (26) as (24) and (25), respectively, and struck out former par. (24) ''Method of computing depreciation deduction'' which read as follows: ''The acquiring corporation shall be treated as the dis-

tributor or transferor corporation for purposes of computing the deduction allowable under section 168(a) on property acquired in a distribution or transfer with respect to so much of the basis in the hands of the acquiring corporation as does not exceed the adjusted basis in the hands of the distributor or transferor corporation.''

1989—Subsec. (c)(26), (27). Pub. L. 101–239, as amended by Pub. L. 104–188, redesignated par. (27) as (26).

1988—Subsec. (c)(24). Pub. L. 100–647 substituted ''depreciation deduction'' for ''recovery allowance for recovery property'' in heading.

1987—Subsec. (c)(8). Pub. L. 100–203 struck out ''or 453A'' after ''section 453'' in two places.

1986—Subsec. (c)(10). Pub. L. 99–514, § 411(b)(2)(C)(iii), struck out last sentence which read: ''For the purpose of applying the limitation provided in section 617(h), if, for any taxable year, the distributor or transferor corporation was allowed a deduction under section 617(a), the acquiring corporation shall be deemed to have been allowed such deduction.''

Subsec. (c)(12). Pub. L. 99–514, § 1812(a)(3), amended par. (12) generally. Prior to amendment, par. (12), recovery of bad debts, prior taxes, or delinquency amounts, read as follows: ''If the acquiring corporation is entitled to the recovery of bad debts, prior taxes, or delinquency amounts previously deducted or credited by the distributor or transferor corporation, the acquiring corporation shall include in its income such amounts as would have been includible by the distributor or transferor corporation in accordance with section 111 (relating to the recovery of bad debts, prior taxes, and delinquency amounts).''

Subsec. (c)(25), (26). Pub. L. 99–514, § 231(d)(3)(F), redesignated par. (26) as (25). Former par. (25), relating to credit under section 30, was struck out.

Subsec. (c)(27). Pub. L. 99–514, § 701(e)(1), added par. (27).

1984—Subsec. (c)(23). Pub. L. 98–369, § 474(r)(11)(B), redesignated par. (25) as (23). Former par. (23), relating to credit under section 38 for investment in certain depreciable property, was struck out.

Subsec. (c)(24). Pub. L. 98–369, § 474(r)(11)(B), redesignated par. (28) as (24). Former par. (24), relating to credit under section 40 for work incentive program expenses, was struck out.

Subsec. (c)(25). Pub. L. 98–369, § 474(r)(11)(B), (C), redesignated par. (29) as (25), and substituted ''30'' for ''44F'' wherever appearing in heading and text. Former par. (25) redesignated (23).

Subsec. (c)(26). Pub. L. 98–369, § 474(r)(11)(D), added par. (26). Former par. (26), relating to credit under section 44B for employment of certain new employees, was struck out.

Subsec. (c)(27). Pub. L. 98–369, § 474(r)(11)(A), struck out par. (27) relating to credit under section 44E for alcohol used as fuel.

Subsec. (c)(28), (29). Pub. L. 98–369, § 474(r)(11)(B), redesignated pars. (28) and (29) as (24) and (25), respectively.

Subsec. (c)(30). Pub. L. 98–369, § 474(r)(11)(A), struck out par. (30) relating to credit under section 44G.

Subsec. (d). Pub. L. 98–369, § 211(b)(4), substituted ''section 810'' for ''section 812(f)''.

1983—Subsec. (c)(28), (29). Pub. L. 97–448, § 102(h)(3), redesignated par. (28), relating to credit under section 44F, as (29). Former par. (29) redesignated (30).

Subsec. (c)(30). Pub. L. 97–448, § 103(g)(2)(F), redesignated former par. (29), relating to credit under section 44G, as (30).

1982—Subsec. (a)(1). Pub. L. 97–248 struck out '', except in a case in which the basis of the assets distributed is determined under section 334(b)(2)'' after ''applies''.

1981—Subsec. (c)(28). Pub. L. 97–34, § 208, added par. (28) relating to recovery allowance for recovery property.

Pub. L. 97–34, § 221(b)(1)(B), added par. (28) relating to credit under section 44F.

Subsec. (c)(29). Pub. L. 97–34, § 331(d)(1)(B), added par. (29).

1980—Subsec. (a). Pub. L. 96–589, § 4(g)(2), inserted provisions that a reorganization shall be treated as meeting the requirements of subparagraph (D) or (G) of section 368(a)(1) only if the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met.

Subsec. (a)(2). Pub. L. 96–589, § 4(g)(1), substituted ''subparagraph (A), (C), (D), (F), or (G) of section 368(a)(1)'' for ''subparagraph (A), (C), (D) (but only if the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met), or (F) of section 368(a)(1)''.

Subsec. (c)(8). Pub. L. 96–471 substituted ''reports on the installment basis under section 453 or 453A'' for ''has elected, under section 453, to report on the installment basis'' and ''for purposes of section 453 or 453A'' for ''for purposes of section 453.''

Subsec. (c)(27). Pub. L. 96–223 added par. (27).

1978—Subsec. (c)(25). Pub. L. 95–600 substituted ''regulated investment company or real estate investment trust'' for ''real estate investment trust'' in heading, and in text ''section 860(f)'' for ''section 859(d)'' and ''section 860'' for ''section 859''.

1977—Subsec. (c)(26). Pub. L. 95–30 added par. (26).

1976—Subsec. (b)(2). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(3). Pub. L. 94–455, § 1901(b)(33)(N), substituted in subpars. (B) and (C) ''capital gain net income'' for ''net capital gain''.

Subsec. (c)(4), (5). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(10). Pub. L. 94–455, § 1901(b)(21(B), among other changes, substituted reference to section 616 (relating to certain development expenditures) if the distributor or transferor corporation has so elected for reference to sections 615 and 616 (relating to pre-1970 exploration expenditures and development expenditures, respectively) if the distributor or transferor corporation has so elected and struck out provisions that if, for any taxable year, the distributor of transferor corporation was allowed or made the election of the deduction under section 615 of this title, the acquiring corporation shall be deemed to have been allowed or to have made such election of the deduction under section 615 of this title.

Subsec. (c)(15). Pub. L. 94–455, § 1901(b)(17), substituted ''subsection (c)'' for ''subsections (b)(7) and (c)''.

Subsec. (c)(20). Pub. L. 94–455, § 1901(a)(54), struck out par. (20) which related to carry-over of unused pension trust deductions in certain cases.

Subsec. (c)(21). Pub. L. 94–455, § 1901(b)(16), struck out par. (21) which related to pre-1954 adjustments resulting from change in method of accounting.

Subsec. (c)(22) to (24). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(25). Pub. L. 94–455, § 1601(e), added par. (25).

1971—Subsec. (c)(24). Pub. L. 92–178 added par. (24).

1969—Subsec. (b)(3). Pub. L. 91–172, § 512(c), substituted ''a net operating loss or a net capital loss'' for ''a net operating loss''.

Subsec. (c)(6). Pub. L. 91–172, § 521(f), substituted ''subsections (b), (j) and (k) of section 167'' for ''paragraphs (2), (3) and (4) of section 167(b)'' and inserted reference to adjusted basis in the hand of the distributor or transferor corporation.

Subsec. (c)(10). Pub. L. 91–172, § 504(c)(2), substituted ''Treatment of certain mining exploration and development expenses of distributor or transferor corporation'' for ''Treatment of certain expenses deferred by the election of distributor or transferor corporation'' in heading, limited deduction of expenses deferred under sections 615 and 616 of this title by the acquiring corporation as if it were the distributor or transferor corporation to pre-1970 exploration and development expenditures, and inserted provision that if distributor or transferor corporation, for any taxable year, was allowed the deduction in sections 615(a) or 617(a) of this title or made the election provided in section 615(b) of this title, acquiring corporation shall be deemed to have been allowed such deduction or deductions or to have made such election, as the case may be, for the purpose of applying the limitation provided in section 617 of this title.

1968—Subsec. (c)(22). Pub. L. 90–240 substituted successor insurance companies for successor life insurance companies as the business enterprise covered, substituted reference to insurance companies taxable under subchapter L for reference to life insurance companies as defined in section 801(a), and substituted reference to the purposes of this section and of subchapter L for reference to the purposes of this section and part I of subchapter L.

1964—Subsec. (c)(15). Pub. L. 88–272, §225(i)(3), substituted ''subsections (b)(7) and (c) of section 545, relating to deductions with respect to payment of certain indebtedness'' for ''section 545(b)(7), relating to a deduction for payment of certain indebtedness incurred before Jan. 1, 1934''.

Subsec. (c)(19). Pub. L. 88–272, §209(d)(2), permitted deductions for contributions made in the taxable year and in 4 prior taxable years, instead of one prior taxable year, and provided that each taxable year beginning on or before the distribution or transfer date shall be treated as a prior taxable year with reference to the acquiring corporation's taxable years beginning after such date.

1962—Subsec. (c)(23). Pub. L. 87–834 added par. (23).

1959—Subsec. (c)(22). Pub. L. 86–69, §3(c)(1), added par. (22).

Subsec. (d). Pub. L. 86–69, §3(c)(2), added subsec. (d).

1958—Subsec. (c)(21). Pub. L. 85–866 added par. (21).

1956—Subsec. (c)(20). Act Jan. 28, 1956 added par. (20).

1955—Subsec. (c)(7). Act June 15, 1955, repealed par. (7) which related to carryover of prepaid income.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11812(b)(6) of Pub. L. 101–508 applicable to property placed in service after Nov. 5, 1990, but not applicable to any property to which section 168 of this title does not apply by reason of subsec. (f)(5) of section 168, and not applicable to rehabilitation expenditures described in section 252(f)(5) of Pub. L. 99–514, see section 11812(c) of Pub. L. 101–508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to dispositions in taxable years beginning after Dec. 31, 1987, with special rules for nondealers and coordination with Tax Reform Act of 1986, see section 10202(e)(1), (3), (5) of Pub. L. 100–203, set out as a note under section 453 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 231(d)(3)(F) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1985, see section 231(g) of Pub. L. 99–514, set out as a note under section 41 of this title.

Amendment by section 411(b)(2)(C)(iii) of Pub. L. 99–514 applicable, except as otherwise provided, to costs paid or incurred after Dec. 31, 1986, in taxable years ending after such date, see section 411(c) of Pub. L. 99–514, set out as a note under section 263 of this title.

Amendment by section 701(e)(1) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

Amendment by section 1812(a)(3) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 211(b)(4) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

Amendment by section 474(r)(11) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to any target corporation with respect to which the acquisition date occurs after Aug. 31, 1982, with special rules for certain acquisitions before Sept. 1, 1982, and certain acquisitions of financial institutions in which there was a binding contract on July 22, 1982, to acquire control, see section 224(d) of Pub. L. 97–248, set out as an Effective Date note under section 338 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 208 of Pub. L. 97–34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, see section 209(a) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

Amendment by section 221(b)(1)(B) of Pub. L. 97–34 applicable to amounts paid or incurred after June 30, 1981, see section 221(d) of Pub. L. 97–34, as amended, set out as an Effective Date note under section 41 of this title.

Amendment by section 331(d)(1)(B) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 339 of Pub. L. 97–34, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–589 applicable to bankruptcy cases or similar judicial proceeding commencing after Dec. 31, 1980, with exception permitting the debtor to make the amendment applicable to such cases or proceeding commencing after Sept. 30, 1979, see section 7(c)(1), (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

For effective date of amendment by Pub. L. 96–471, see section 6(a)(1) of Pub. L. 96–471, set out as an Effective Date note under section 453 of this title.

Amendment by Pub. L. 96–223 applicable to sales or uses after Sept. 30, 1980, in taxable years ending after such date, see section 232(h)(1) of Pub. L. 96–223, set out as an Effective Date note under section 40 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable with respect to determinations (as defined in section 860(e) of this title) after Nov. 6, 1978, see section 362(e) of Pub. L. 95–600, set out as an Effective Date note under section 860 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, and to credit carrybacks from such years, see section 202(e) of Pub. L. 95–30, set out as an Effective Date note under section 51 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1601(e) of Pub. L. 94–455, see section 1608(a) of Pub. L. 94–455, set out as a note under section 857 of this title.

Amendment by section 1901(a)(54), (b)(16), (17), (21)(B), (33)(N) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 601(f) of Pub. L. 92–178 provided that: ''The amendments made by this section [enacting sections 40, 50A, and 50B of this title and amending this section and sections 56, 6411, 6501, 6511, 6601, and 6611 of this title] shall apply to taxable years beginning after December 31, 1971.''

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 504(c)(2) of Pub. L. 91–172 applicable with respect to exploration expenditures paid or incurred after Dec. 31, 1969, see section 504(d)(1) of Pub. L. 91–172, set out as a note under section 243 of this title.

Amendment by section 512(c) of Pub. L. 91–172 applicable with respect to net capital losses sustained in taxable years beginning after Dec. 31, 1969, see section 512(g) of Pub. L. 91–172, set out as a note under section 1212 of this title.

Amendment by section 521(f) of Pub. L. 91–172 applicable with respect to taxable years ending after July 24, 1969, see section 521(g) of Pub. L. 91–172, set out as a note under section 167 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–240 applicable to taxable years beginning after Dec. 31, 1966, see section 5(e) of Pub. L. 90–240, set out as a note under section 832 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 225(i)(3) of Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(*l*) of Pub. L. 88–272 set out as a note under section 316 of this title.

Amendment by section 209(d)(2) of Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, with respect to contributions paid or treated as paid under section 170(a)(2) of this title, in taxable years beginning after Dec. 31, 1961, see section 209(f)(2) of Pub. L. 88–272, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable with respect to taxable years ending after Dec. 31, 1961, see section 2(h) of Pub. L. 87–834, set out as an Effective Date note under section 46 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Section 4 of Pub. L. 86–69 provided that: ''Except as otherwise provided in this Act, the amendments made by this Act [amending this section, part I (§ 801 et seq.) of subchapter L, and sections 841, 842, 891, 1016, 1201, 1232, 1504, 4371, and 6501 of this title] shall apply only with respect to taxable years beginning after December 31, 1957.''

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendment by Pub. L. 85–866, see section 29(d) of Pub. L. 85–866, set out as a note under section 481 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Section 2 of act Jan. 28, 1956, provided that: ''The amendments made by the first section of this Act [amending this section] shall reply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954.''

EFFECTIVE DATE OF 1955 AMENDMENT

Section 3 of act June 15, 1955, provided that: ''The amendments made by this Act [amending this section and repealing sections 452 and 462 of this title] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

Section 4 of act June 15, 1955, as amended by act Oct. 22, 1986, Pub. L. 99–514, § 2, 100 Stat. 2095, provided:

''(a) FILING OF STATEMENT.—If—

''(1) the amount of any tax required to be paid for any taxable year ending on or before the date of the enactment of this Act [June 15, 1955] is increased by reason of the enactment of this Act [amending this section and repealing sections 452 and 462], and

''(2) the last date prescribed for payment of such tax (or any installment thereof) is before December 15, 1955, then the taxpayer shall, on or before December 15, 1955, file a statement which shows the increase in the amount of such tax required to be paid by reason of the enactment of this Act.

''(b) FORM AND EFFECT OF STATEMENT.—

''(1) FORM OF STATEMENT, ETC.—The statement required by subsection (a) shall be filed at the place fixed for filing the return. Such statement shall be in such form, and shall include such information necessary or appropriate to show the increase in the amount of the tax required to be paid for the taxable year by reason of the enactment of this Act, as the Secretary of the Treasury or his delegate shall by regulations prescribe.

''(2) TREATMENT AS AMOUNT SHOWN ON RETURN.—The amount shown on a statement filed under subsection (a) as the increase in the amount of the tax required to be paid for the taxable year by reason of the enactment of this Act shall, for all purposes of the internal revenue laws, be treated as tax shown on the return. Notwithstanding the preceding sentence, that portion of the amount of increase in tax for any taxable year which is attributable to a decrease (by reason of the enactment of this Act) in the net operating loss for a succeeding taxable year shall not be treated as tax shown on the return.

''(3) WAIVER OF INTEREST IN CASE OF PAYMENT ON OR BEFORE DECEMBER 15, 1955.—If the taxpayer, on or before December 15, 1955, files the statement referred to in subsection (a) and pays in full that portion of the amount shown thereon for which the last date prescribed for payment is before December 15, 1955, then for purposes of computing interest (other than interest on overpayments) such portion shall be treated as having been paid on the last date prescribed for payment. This paragraph shall not apply if the amount shown on the statement as the increase in the amount of the tax required to be paid for the taxable year by reason of the enactment of this Act is greater than the actual increase unless the taxpayer establishes, to the satisfaction of the Secretary of the Treasury or his delegate, that his computation of the greater amount was based upon a reasonable interpretation and application of sections 452 and 462 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [sections 452 and 462 of this title], as those sections existed before the enactment of this Act.

''(c) SPECIAL RULES.—

''(1) INTEREST FOR PERIOD BEFORE ENACTMENT.—Interest shall not be imposed on the amount of any increase in tax resulting from the enactment of this Act for any period before the day after the date of the enactment of this Act [June 15, 1955].

''(2) ESTIMATED TAX.—Any addition to the tax under section 294(d) of the Internal Revenue Code of 1939 [section 294(d) of former Title 26, Internal Revenue Code], shall be computed as if this Act had not been enacted. In the case of any installment for which the last date prescribed for payment is before December 15, 1955, any addition to the tax under section 6654 of the Internal Revenue Code of 1986 [section 6654 of this title], shall be computed as if this Act had not been enacted.

''(3) TREATMENT OF CERTAIN PAYMENTS WHICH TAXPAYER IS REQUIRED TO MAKE.—If—

''(A) the taxpayer is required to make a payment (or an additional payment) to another person by reason of the enactment of this Act, and

''(B) the Internal Revenue Code of 1986 [this title] prescribes a period, which expires after the close of the taxable year, within which the taxpayer must make such payment (or additional payment) if the amount thereof is to be taken into account (as a deduction or otherwise) in computing taxable income for such taxable year,

then, subject to such regulations as the Secretary of the Treasury or his delegate may prescribe, if such payment (or additional payment) is made on or before December 15, 1955, it shall be treated as having been made within the period prescribed by such Code.

''(4) TREATMENT OF CERTAIN DIVIDENDS.—Subject to such regulations as the Secretary of the Treasury or his delegate may prescribe, for purposes of section 561(a)(1) of the Internal Revenue Code of 1986 [section 561(a)(1) of this title], dividends paid after the 15th day of the third month following the close of the taxable year and on or before December 15, 1955, may be treated as having been paid on the last day of the taxable year, but only to the extent (A) that such dividends are attributable to an increase in taxable income for the taxable year resulting from the enactment of this Act, and (B) elected by the taxpayer.

''(5) DETERMINATION OF DATE PRESCRIBED.—For purposes of this section, the determination of the last date prescribed for payment or for filing a return shall be made without regard to any extension of time therefor and without regard to any provision of this section.

''(6) REGULATIONS.—For requirement that the Secretary of the Treasury or his delegate shall prescribe all rules and regulations as may be necessary by reason of the enactment of this Act, see section 7805(a) of the Internal Revenue Code of 1986 [section 7805(a) of this title].''

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(1) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 382. Limitation on net operating loss carryforwards and certain built-in losses following ownership change

(a) General rule

The amount of the taxable income of any new loss corporation for any post-change year which may be offset by pre-change losses shall not exceed the section 382 limitation for such year.

(b) Section 382 limitation

For purposes of this section—

(1) In general

Except as otherwise provided in this section, the section 382 limitation for any post-change year is an amount equal to—

(A) the value of the old loss corporation, multiplied by

(B) the long-term tax-exempt rate.

(2) Carryforward of unused limitation

If the section 382 limitation for any post-change year exceeds the taxable income of the new loss corporation for such year which was offset by pre-change losses, the section 382 limitation for the next post-change year shall be increased by the amount of such excess.

(3) Special rule for post-change year which includes change date

In the case of any post-change year which includes the change date—

(A) Limitation does not apply to taxable income before change

Subsection (a) shall not apply to the portion of the taxable income for such year which is allocable to the period in such year on or before the change date. Except as provided in subsection (h)(5) and in regulations, taxable income shall be allocated ratably to each day in the year.

(B) Limitation for period after change

For purposes of applying the limitation of subsection (a) to the remainder of the taxable income for such year, the section 382 limitation shall be an amount which bears the same ratio to such limitation (determined without regard to this paragraph) as—

(i) the number of days in such year after the change date, bears to

(ii) the total number of days in such year.

(c) Carryforwards disallowed if continuity of business requirements not met

(1) In general

Except as provided in paragraph (2), if the new loss corporation does not continue the business enterprise of the old loss corporation at all times during the 2-year period beginning on the change date, the section 382 limitation for any post-change year shall be zero.

(2) Exception for certain gains

The section 382 limitation for any post-change year shall not be less than the sum of—

(A) any increase in such limitation under—

(i) subsection (h)(1)(A) for recognized built-in gains for such year, and

(ii) subsection (h)(1)(C) for gain recognized by reason of an election under section 338, plus

(B) any increase in such limitation under subsection (b)(2) for amounts described in subparagraph (A) which are carried forward to such year.

(d) Pre-change loss and post-change year

For purposes of this section—

(1) Pre-change loss

The term ''pre-change loss'' means—

(A) any net operating loss carryforward of the old loss corporation to the taxable year ending with the ownership change or in which the change date occurs, and

(B) the net operating loss of the old loss corporation for the taxable year in which

the ownership change occurs to the extent such loss is allocable to the period in such year on or before the change date.

Except as provided in subsection (h)(5) and in regulations, the net operating loss shall, for purposes of subparagraph (B), be allocated ratably to each day in the year.

(2) Post-change year

The term ''post-change year'' means any taxable year ending after the change date.

(e) Value of old loss corporation

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the value of the old loss corporation is the value of the stock of such corporation (including any stock described in section 1504(a)(4)) immediately before the ownership change.

(2) Special rule in the case of redemption or other corporate contraction

If a redemption or other corporate contraction occurs in connection with an ownership change, the value under paragraph (1) shall be determined after taking such redemption or other corporate contraction into account.

(3) Treatment of foreign corporations

Except as otherwise provided in regulations, in determining the value of any old loss corporation which is a foreign corporation, there shall be taken into account only items treated as connected with the conduct of a trade or business in the United States.

(f) Long-term tax-exempt rate

For purposes of this section—

(1) In general

The long-term tax-exempt rate shall be the highest of the adjusted Federal long-term rates in effect for any month in the 3-calendar-month period ending with the calendar month in which the change date occurs.

(2) Adjusted Federal long-term rate

For purposes of paragraph (1), the term ''adjusted Federal long-term rate'' means the Federal long-term rate determined under section 1274(d), except that—

(A) paragraphs (2) and (3) thereof shall not apply, and

(B) such rate shall be properly adjusted for differences between rates on long-term taxable and tax-exempt obligations.

(g) Ownership change

For purposes of this section—

(1) In general

There is an ownership change if, immediately after any owner shift involving a 5-percent shareholder or any equity structure shift—

(A) the percentage of the stock of the loss corporation owned by 1 or more 5-percent shareholders has increased by more than 50 percentage points, over

(B) the lowest percentage of stock of the loss corporation (or any predecessor corporation) owned by such shareholders at any time during the testing period.

(2) Owner shift involving 5-percent shareholder

There is an owner shift involving a 5-percent shareholder if—

(A) there is any change in the respective ownership of stock of a corporation, and

(B) such change affects the percentage of stock of such corporation owned by any person who is a 5-percent shareholder before or after such change.

(3) Equity structure shift defined

(A) In general

The term ''equity structure shift'' means any reorganization (within the meaning of section 368). Such term shall not include—

(i) any reorganization described in subparagraph (D) or (G) of section 368(a)(1) unless the requirements of section 354(b)(1) are met, and

(ii) any reorganization described in subparagraph (F) of section 368(a)(1).

(B) Taxable reorganization-type transactions, etc.

To the extent provided in regulations, the term ''equity structure shift'' includes taxable reorganization-type transactions, public offerings, and similar transactions.

(4) Special rules for application of subsection

(A) Treatment of less than 5-percent shareholders

Except as provided in subparagraphs (B)(i) and (C), in determining whether an ownership change has occurred, all stock owned by shareholders of a corporation who are not 5-percent shareholders of such corporation shall be treated as stock owned by 1 5-percent shareholder of such corporation.

(B) Coordination with equity structure shifts

For purposes of determining whether an equity structure shift (or subsequent transaction) is an ownership change—

(i) Less than 5-percent shareholders

Subparagraph (A) shall be applied separately with respect to each group of shareholders (immediately before such equity structure shift) of each corporation which was a party to the reorganization involved in such equity structure shift.

(ii) Acquisitions of stock

Unless a different proportion is established, acquisitions of stock after such equity structure shift shall be treated as being made proportionately from all shareholders immediately before such acquisition.

(C) Coordination with other owner shifts

Except as provided in regulations, rules similar to the rules of subparagraph (B) shall apply in determining whether there has been an owner shift involving a 5-percent shareholder and whether such shift (or subsequent transaction) results in an ownership change.

(D) Treatment of worthless stock

If any stock held by a 50-percent shareholder is treated by such shareholder as becoming worthless during any taxable year of such shareholder and such stock is held by such shareholder as of the close of such taxable year, for purposes of determining whether an ownership change occurs after the close of such taxable year, such shareholder—

(i) shall be treated as having acquired such stock on the 1st day of his 1st succeeding taxable year, and

(ii) shall not be treated as having owned such stock during any prior period.

For purposes of the preceding sentence, the term ''50-percent shareholder'' means any person owning 50 percent or more of the stock of the corporation at any time during the 3-year period ending on the last day of the taxable year with respect to which the stock was so treated.

(h) Special rules for built-in gains and losses and section 338 gains

For purposes of this section—

(1) In general

(A) Net unrealized built-in gain

(i) In general

If the old loss corporation has a net unrealized built-in gain, the section 382 limitation for any recognition period taxable year shall be increased by the recognized built-in gains for such taxable year.

(ii) Limitation

The increase under clause (i) for any recognition period taxable year shall not exceed—

(I) the net unrealized built-in gain, reduced by

(II) recognized built-in gains for prior years ending in the recognition period.

(B) Net unrealized built-in loss

(i) In general

If the old loss corporation has a net unrealized built-in loss, the recognized built-in loss for any recognition period taxable year shall be subject to limitation under this section in the same manner as if such loss were a pre-change loss.

(ii) Limitation

Clause (i) shall apply to recognized built-in losses for any recognition period taxable year only to the extent such losses do not exceed—

(I) the net unrealized built-in loss, reduced by

(II) recognized built-in losses for prior taxable years ending in the recognition period.

(C) Special rules for certain section 338 gains

If an election under section 338 is made in connection with an ownership change and the net unrealized built-in gain is zero by reason of paragraph (3)(B), then, with respect to such change, the section 382 limitation for the post-change year in which gain is recognized by reason of such election shall be increased by the lesser of—

(i) the recognized built-in gains by reason of such election, or

(ii) the net unrealized built-in gain (determined without regard to paragraph (3)(B)).

(2) Recognized built-in gain and loss

(A) Recognized built-in gain

The term ''recognized built-in gain'' means any gain recognized during the recognition period on the disposition of any asset to the extent the new loss corporation establishes that—

(i) such asset was held by the old loss corporation immediately before the change date, and

(ii) such gain does not exceed the excess of—

(I) the fair market value of such asset on the change date, over

(II) the adjusted basis of such asset on such date.

(B) Recognized built-in loss

The term ''recognized built-in loss'' means any loss recognized during the recognition period on the disposition of any asset except to the extent the new loss corporation establishes that—

(i) such asset was not held by the old loss corporation immediately before the change date, or

(ii) such loss exceeds the excess of—

(I) the adjusted basis of such asset on the change date, over

(II) the fair market value of such asset on such date.

Such term includes any amount allowable as depreciation, amortization, or depletion for any period within the recognition period except to the extent the new loss corporation establishes that the amount so allowable is not attributable to the excess described in clause (ii).

(3) Net unrealized built-in gain and loss defined

(A) Net unrealized built-in gain and loss

(i) In general

The terms ''net unrealized built-in gain'' and ''net unrealized built-in loss'' mean, with respect to any old loss corporation, the amount by which—

(I) the fair market value of the assets of such corporation immediately before an ownership change is more or less, respectively, than

(II) the aggregate adjusted basis of such assets at such time.

(ii) Special rule for redemptions or other corporate contractions

If a redemption or other corporate contraction occurs in connection with an ownership change, to the extent provided in regulations, determinations under clause (i) shall be made after taking such redemption or other corporate contraction into account.

(B) Threshold requirement

(i) In general

If the amount of the net unrealized built-in gain or net unrealized built-in loss (determined without regard to this subparagraph) of any old loss corporation is not greater than the lesser of—

(I) 15 percent of the amount determined for purposes of subparagraph (A)(i)(I), or

(II) $10,000,000,

the net unrealized built-in gain or net unrealized built-in loss shall be zero.

(ii) Cash and cash items not taken into account

In computing any net unrealized built-in gain or net unrealized built-in loss under clause (i), except as provided in regulations, there shall not be taken into account—

(I) any cash or cash item, or

(II) any marketable security which has a value which does not substantially differ from adjusted basis.

(4) Disallowed loss allowed as a carryforward

If a deduction for any portion of a recognized built-in loss is disallowed for any post-change year, such portion—

(A) shall be carried forward to subsequent taxable years under rules similar to the rules for the carrying forward of net operating losses (or to the extent the amount so disallowed is attributable to capital losses, under rules similar to the rules for the carrying forward of net capital losses), but

(B) shall be subject to limitation under this section in the same manner as a pre-change loss.

(5) Special rules for post-change year which includes change date

For purposes of subsection (b)(3)—

(A) in applying subparagraph (A) thereof, taxable income shall be computed without regard to recognized built-in gains to the extent such gains increased the section 382 limitation for the year (or recognized built-in losses to the extent such losses are treated as pre-change losses), and gain described in paragraph (1)(C), for the year, and

(B) in applying subparagraph (B) thereof, the section 382 limitation shall be computed without regard to recognized built-in gains, and gain described in paragraph (1)(C), for the year.

(6) Treatment of certain built-in items

(A) Income items

Any item of income which is properly taken into account during the recognition period but which is attributable to periods before the change date shall be treated as a recognized built-in gain for the taxable year in which it is properly taken into account.

(B) Deduction items

Any amount which is allowable as a deduction during the recognition period (determined without regard to any carryover) but which is attributable to periods before the change date shall be treated as a recognized built-in loss for the taxable year for which it is allowable as a deduction.

(C) Adjustments

The amount of the net unrealized built-in gain or loss shall be properly adjusted for amounts which would be treated as recognized built-in gains or losses under this paragraph if such amounts were properly taken into account (or allowable as a deduction) during the recognition period.

(7) Recognition period, etc.

(A) Recognition period

The term ''recognition period'' means, with respect to any ownership change, the 5-year period beginning on the change date.

(B) Recognition period taxable year

The term ''recognition period taxable year'' means any taxable year any portion of which is in the recognition period.

(8) Determination of fair market value in certain cases

If 80 percent or more in value of the stock of a corporation is acquired in 1 transaction (or in a series of related transactions during any 12-month period), for purposes of determining the net unrealized built-in loss, the fair market value of the assets of such corporation shall not exceed the grossed up amount paid for such stock properly adjusted for indebtedness of the corporation and other relevant items.

(9) Tax-free exchanges or transfers

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection where property held on the change date was acquired (or is subsequently transferred) in a transaction where gain or loss is not recognized (in whole or in part).

(i) Testing period

For purposes of this section—

(1) 3-year period

Except as otherwise provided in this section, the testing period is the 3-year period ending on the day of any owner shift involving a 5-percent shareholder or equity structure shift.

(2) Shorter period where there has been recent ownership change

If there has been an ownership change under this section, the testing period for determining whether a 2nd ownership change has occurred shall not begin before the 1st day following the change date for such earlier ownership change.

(3) Shorter period where all losses arise after 3-year period begins

The testing period shall not begin before the earlier of the 1st day of the 1st taxable year from which there is a carryforward of a loss or of an excess credit to the 1st post-change year or the taxable year in which the transaction being tested occurs. Except as provided in regulations, this paragraph shall not apply to any

loss corporation which has a net unrealized built-in loss (determined after application of subsection (h)(3)(B)).

(j) Change date

For purposes of this section, the change date is—

(1) in the case where the last component of an ownership change is an owner shift involving a 5-percent shareholder, the date on which such shift occurs, and

(2) in the case where the last component of an ownership change is an equity structure shift, the date of the reorganization.

(k) Definitions and special rules

For purposes of this section—

(1) Loss corporation

The term ''loss corporation'' means a corporation entitled to use a net operating loss carryover or having a net operating loss for the taxable year in which the ownership change occurs. Except to the extent provided in regulations, such term includes any corporation with a net unrealized built-in loss.

(2) Old loss corporation

The term ''old loss corporation'' means any corporation—

(A) with respect to which there is an ownership change, and

(B) which (before the ownership change) was a loss corporation.

(3) New loss corporation

The term ''new loss corporation'' means a corporation which (after an ownership change) is a loss corporation. Nothing in this section shall be treated as implying that the same corporation may not be both the old loss corporation and the new loss corporation.

(4) Taxable income

Taxable income shall be computed with the modifications set forth in section 172(d).

(5) Value

The term ''value'' means fair market value.

(6) Rules relating to stock

(A) Preferred stock

Except as provided in regulations and subsection (e), the term ''stock'' means stock other than stock described in section 1504(a)(4).

(B) Treatment of certain rights, etc.

The Secretary shall prescribe such regulations as may be necessary—

(i) to treat warrants, options, contracts to acquire stock, convertible debt interests, and other similar interests as stock, and

(ii) to treat stock as not stock.

(C) Determinations on basis of value

Determinations of the percentage of stock of any corporation held by any person shall be made on the basis of value.

(7) 5-percent shareholder

The term ''5-percent shareholder'' means any person holding 5 percent or more of the stock of the corporation at any time during the testing period.

***(l)* Certain additional operating rules**

For purposes of this section—

(1) Certain capital contributions not taken into account

(A) In general

Any capital contribution received by an old loss corporation as part of a plan a principal purpose of which is to avoid or increase any limitation under this section shall not be taken into account for purposes of this section.

(B) Certain contributions treated as part of plan

For purposes of subparagraph (A), any capital contribution made during the 2-year period ending on the change date shall, except as provided in regulations, be treated as part of a plan described in subparagraph (A).

(2) Ordering rules for application of section

(A) Coordination with section 172(b) carryover rules

In the case of any pre-change loss for any taxable year (hereinafter in this subparagraph referred to as the ''loss year'') subject to limitation under this section, for purposes of determining under the 2nd sentence of section 172(b)(2) the amount of such loss which may be carried to any taxable year, taxable income for any taxable year shall be treated as not greater than—

(i) the section 382 limitation for such taxable year, reduced by

(ii) the unused pre-change losses for taxable years preceding the loss year.

Similar rules shall apply in the case of any credit or loss subject to limitation under section 383.

(B) Ordering rule for losses carried from same taxable year

In any case in which—

(i) a pre-change loss of a loss corporation for any taxable year is subject to a section 382 limitation, and

(ii) a net operating loss of such corporation from such taxable year is not subject to such limitation,

taxable income shall be treated as having been offset first by the loss subject to such limitation.

(3) Operating rules relating to ownership of stock

(A) Constructive ownership

Section 318 (relating to constructive ownership of stock) shall apply in determining ownership of stock, except that—

(i) paragraphs (1) and (5)(B) of section 318(a) shall not apply and an individual and all members of his family described in paragraph (1) of section 318(a) shall be treated as 1 individual for purposes of applying this section,

(ii) paragraph (2) of section 318(a) shall be applied—

(I) without regard to the 50-percent limitation contained in subparagraph (C) thereof, and

(II) except as provided in regulations, by treating stock attributed thereunder as no longer being held by the entity from which attributed,

(iii) paragraph (3) of section 318(a) shall be applied only to the extent provided in regulations,

(iv) except to the extent provided in regulations, an option to acquire stock shall be treated as exercised if such exercise results in an ownership change, and

(v) in attributing stock from an entity under paragraph (2) of section 318(a), there shall not be taken into account—

(I) in the case of attribution from a corporation, stock which is not treated as stock for purposes of this section, or

(II) in the case of attribution from another entity, an interest in such entity similar to stock described in subclause (I).

A rule similar to the rule of clause (iv) shall apply in the case of any contingent purchase, warrant, convertible debt, put, stock subject to a risk of forfeiture, contract to acquire stock, or similar interests.

(B) Stock acquired by reason of death, gift, divorce, separation, etc.

If—

(i) the basis of any stock in the hands of any person is determined—

(I) under section 1014 (relating to property acquired from a decedent),

(II) section 1015 (relating to property acquired by a gift or transfer in trust), or

(III) section 1041(b)(2) (relating to transfers of property between spouses or incident to divorce),

(ii) stock is received by any person in satisfaction of a right to receive a pecuniary bequest, or

(iii) stock is acquired by a person pursuant to any divorce or separation instrument (within the meaning of section 71(b)(2)),

such person shall be treated as owning such stock during the period such stock was owned by the person from whom it was acquired.

(C) Certain changes in percentage ownership which are attributable to fluctuations in value not taken into account

Except as provided in regulations, any change in proportionate ownership which is attributable solely to fluctuations in the relative fair market values of different classes of stock shall not be taken into account.

(4) Reduction in value where substantial nonbusiness assets

(A) In general

If, immediately after an ownership change, the new loss corporation has substantial nonbusiness assets, the value of the old loss corporation shall be reduced by the excess (if any) of—

(i) the fair market value of the nonbusiness assets of the old loss corporation, over

(ii) the nonbusiness asset share of indebtedness for which such corporation is liable.

(B) Corporation having substantial nonbusiness assets

For purposes of subparagraph (A)—

(i) In general

The old loss corporation shall be treated as having substantial nonbusiness assets if at least ⅓ of the value of the total assets of such corporation consists of nonbusiness assets.

(ii) Exception for certain investment entities

A regulated investment company to which part I of subchapter M applies, a real estate investment trust to which part II of subchapter M applies, or a REMIC to which part IV of subchapter M applies, shall not be treated as a new loss corporation having substantial nonbusiness assets.

(C) Nonbusiness assets

For purposes of this paragraph, the term ''nonbusiness assets'' means assets held for investment.

(D) Nonbusiness asset share

For purposes of this paragraph, the nonbusiness asset share of the indebtedness of the corporation is an amount which bears the same ratio to such indebtedness as—

(i) the fair market value of the nonbusiness assets of the corporation, bears to

(ii) the fair market value of all assets of such corporation.

(E) Treatment of subsidiaries

For purposes of this paragraph, stock and securities in any subsidiary corporation shall be disregarded and the parent corporation shall be deemed to own its ratable share of the subsidiary's assets. For purposes of the preceding sentence, a corporation shall be treated as a subsidiary if the parent owns 50 percent or more of the combined voting power of all classes of stock entitled to vote, and 50 percent or more of the total value of shares of all classes of stock.

(5) Title 11 or similar case

(A) In general

Subsection (a) shall not apply to any ownership change if—

(i) the old loss corporation is (immediately before such ownership change) under the jurisdiction of the court in a title 11 or similar case, and

(ii) the shareholders and creditors of the old loss corporation (determined immediately before such ownership change) own (after such ownership change and as a result of being shareholders or creditors immediately before such change) stock of the

new loss corporation (or stock of a controlling corporation if also in bankruptcy) which meets the requirements of section 1504(a)(2) (determined by substituting ''50 percent'' for ''80 percent'' each place it appears).

(B) Reduction for interest payments to creditors becoming shareholders

In any case to which subparagraph (A) applies, the pre-change losses and excess credits (within the meaning of section 383(a)(2)) which may be carried to a post-change year shall be computed as if no deduction was allowable under this chapter for the interest paid or accrued by the old loss corporation on indebtedness which was converted into stock pursuant to title 11 or similar case during—

(i) any taxable year ending during the 3-year period preceding the taxable year in which the ownership change occurs, and

(ii) the period of the taxable year in which the ownership change occurs on or before the change date.

(C) Coordination with section 108

In applying section 108(e)(8) to any case to which subparagraph (A) applies, there shall not be taken into account any indebtedness for interest described in subparagraph (B).

(D) Section 382 limitation zero if another change within 2 years

If, during the 2-year period immediately following an ownership change to which this paragraph applies, an ownership change of the new loss corporation occurs, this paragraph shall not apply and the section 382 limitation with respect to the 2nd ownership change for any post-change year ending after the change date of the 2nd ownership change shall be zero.

(E) Only certain stock taken into account

For purposes of subparagraph (A)(ii), stock transferred to a creditor shall be taken into account only to the extent such stock is transferred in satisfaction of indebtedness and only if such indebtedness—

(i) was held by the creditor at least 18 months before the date of the filing of the title 11 or similar case, or

(ii) arose in the ordinary course of the trade or business of the old loss corporation and is held by the person who at all times held the beneficial interest in such indebtedness.

(F) Special rule for certain financial institutions

(i) In general

In the case of any ownership change to which this subparagraph applies, this paragraph shall be applied—

(I) by substituting ''1504(a)(2)(B)'' for ''1504(a)(2)'' and ''20 percent'' for ''50 percent'' in subparagraph (A)(ii), and

(II) without regard to subparagraphs (B) and (C).

(ii) Special rule for depositors

For purposes of applying this paragraph to an ownership change to which this subparagraph applies—

(I) a depositor in the old loss corporation shall be treated as a stockholder in such loss corporation immediately before the change,

(II) deposits which, after the change, become deposits of the new loss corporation shall be treated as stock of the new loss corporation, and

(III) the fair market value of the outstanding stock of the new loss corporation shall include the amount of deposits in the new loss corporation immediately after the change.

(iii) Changes to which subparagraph applies

This subparagraph shall apply to—

(I) an equity structure shift which is a reorganization described in section 368(a)(3)(D)(ii)[1] (as modified by section 368(a)(3)(D)(iv)),[1] or

(II) any other equity structure shift (or transaction to which section 351 applies) which occurs as an integral part of a transaction involving a change to which subclause (I) applies.

This subparagraph shall not apply to any equity structure shift or transaction occurring on or after May 10, 1989.

(G) Title 11 or similar case

For purposes of this paragraph, the term ''title 11 or similar case'' has the meaning given such term by section 368(a)(3)(A).

(H) Election not to have paragraph apply

A new loss corporation may elect, subject to such terms and conditions as the Secretary may prescribe, not to have the provisions of this paragraph apply.

(6) Special rule for insolvency transactions

If paragraph (5) does not apply to any reorganization described in subparagraph (G) of section 368(a)(1) or any exchange of debt for stock in a title 11 or similar case (as defined in section 368(a)(3)(A)), the value under subsection (e) shall reflect the increase (if any) in value of the old loss corporation resulting from any surrender or cancellation of creditors' claims in the transaction.

(7) Coordination with alternative minimum tax

The Secretary shall by regulation provide for the application of this section to the alternative tax net operating loss deduction under section 56(d).

(8) Predecessor and successor entities

Except as provided in regulations, any entity and any predecessor or successor entities of such entity shall be treated as 1 entity.

(m) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section and section 383, including (but not limited to) regulations—

(1) providing for the application of this section and section 383 where an ownership change with respect to the old loss corpora-

[1] See References in Text note below.

tion is followed by an ownership change with respect to the new loss corporation, and

(2) providing for the application of this section and section 383 in the case of a short taxable year,

(3) providing for such adjustments to the application of this section and section 383 as is necessary to prevent the avoidance of the purposes of this section and section 383, including the avoidance of such purposes through the use of related persons, pass-thru entities, or other intermediaries,

(4) providing for the application of subsection (g)(4) where there is only 1 corporation involved, and

(5) providing, in the case of any group of corporations described in section 1563(a) (determined by substituting ''50 percent'' for ''80 percent'' each place it appears and determined without regard to paragraph (4) thereof), appropriate adjustments to value, built-in gain or loss, and other items so that items are not omitted or taken into account more than once.

(n) Special rule for certain ownership changes

(1) In general

The limitation contained in subsection (a) shall not apply in the case of an ownership change which is pursuant to a restructuring plan of a taxpayer which—

(A) is required under a loan agreement or a commitment for a line of credit entered into with the Department of the Treasury under the Emergency Economic Stabilization Act of 2008, and

(B) is intended to result in a rationalization of the costs, capitalization, and capacity with respect to the manufacturing workforce of, and suppliers to, the taxpayer and its subsidiaries.

(2) Subsequent acquisitions

Paragraph (1) shall not apply in the case of any subsequent ownership change unless such ownership change is described in such paragraph.

(3) Limitation based on control in corporation

(A) In general

Paragraph (1) shall not apply in the case of any ownership change if, immediately after such ownership change, any person (other than a voluntary employees' beneficiary association under section 501(c)(9)) owns stock of the new loss corporation possessing 50 percent or more of the total combined voting power of all classes of stock entitled to vote, or of the total value of the stock of such corporation.

(B) Treatment of related persons

(i) In general

Related persons shall be treated as a single person for purposes of this paragraph.

(ii) Related persons

For purposes of clause (i), a person shall be treated as related to another person if—

(I) such person bears a relationship to such other person described in section 267(b) or 707(b), or

(II) such persons are members of a group of persons acting in concert.

(Aug. 16, 1954, ch. 736, 68A Stat. 129; Pub. L. 88–554, § 4(b)(3), Aug. 31, 1964, 78 Stat. 763; Pub. L. 94–455, title VIII, § 806(e), Oct. 4, 1976, 90 Stat. 1599; Pub. L. 96–589, § 2(d), Dec. 24, 1980, 94 Stat. 3396; Pub. L. 97–34, title II, § 242, Aug. 13, 1981, 95 Stat. 255; Pub. L. 98–369, div. A, title I, § 62(b)(1), July 18, 1984, 98 Stat. 583; Pub. L. 99–514, title VI, § 621(a), (e)(1), Oct. 22, 1986, 100 Stat. 2254, 2266; Pub. L. 100–203, title X, § 10225(a), (b), Dec. 22, 1987, 101 Stat. 1330–413; Pub. L. 100–647, title I, § 1006(d)(1)(A)–(C), (2)–(10), (17)(A), (18)–(28)(A), (29), (t)(22)(A), title IV, § 4012(a)(3), (b)(1)(B), title V, § 5077(a), Nov. 10, 1988, 102 Stat. 3395–3400, 3426, 3656, 3657, 3683; Pub. L. 101–73, title XIV, § 1401(a)(2), Aug. 9, 1989, 103 Stat. 548; Pub. L. 101–239, title VII, §§ 7205(a), 7304(d)(1), 7811(c)(5)(A), 7815(h), 7841(d)(11), Dec. 19, 1989, 103 Stat. 2335, 2354, 2407, 2420, 2428; Pub. L. 103–66, title XIII, § 13226(a)(2)(A), Aug. 10, 1993, 107 Stat. 487; Pub. L. 104–188, title I, § 1621(b)(3), Aug. 20, 1996, 110 Stat. 1867; Pub. L. 108–357, title VIII, § 835(b)(2), Oct. 22, 2004, 118 Stat. 1593; Pub. L. 111–5, div. B, title I, § 1262(a), Feb. 17, 2009, 123 Stat. 343.)

REFERENCES IN TEXT

Section 368(a)(3)(D), referred to in subsec. (*l*)(5)(F)(iii)(I), was amended generally by Pub. L. 99–514, title IX, § 904(a), Oct. 22, 1986, 100 Stat. 2385, and, as so amended, does not contain a cl. (ii) or (iv).

The Emergency Economic Stabilization Act of 2008, referred to in subsec. (n)(1)(A), is div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, which is classified principally to chapter 52 (§ 5201 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 5201 of Title 12 and Tables.

AMENDMENTS

2009—Subsec. (n). Pub. L. 111–5 added subsec. (n).

2004—Subsec. (*l*)(4)(B)(ii). Pub. L. 108–357 substituted ''or a REMIC to which part IV of subchapter M applies,'' for ''a REMIC to which part IV of subchapter M applies, or a FASIT to which part V of subchapter M applies,''.

1996—Subsec. (*l*)(4)(B)(ii). Pub. L. 104–188 substituted ''a REMIC to which part IV of subchapter M applies, or a FASIT to which part V of subchapter M applies'' for ''or a REMIC to which part IV of subchapter M applies''.

1993—Subsec. (*l*)(5)(C). Pub. L. 103–66 amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows:

''(i) IN GENERAL.—In any case to which subparagraph (A) applies, 50 percent of the amount which, but for the application of section 108(e)(10)(B), would have been applied to reduce tax attributes under section 108(b) shall be so applied.

''(ii) CLARIFICATION WITH SUBPARAGRAPH (B).—In applying clause (i), there shall not be taken into account any indebtedness for interest described in subparagraph (B).''

1989—Subsec. (h)(3)(B)(i). Pub. L. 101–239, § 7205(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''If the amount of the net unrealized built-in gain or net unrealized built-in loss (determined without regard to this subparagraph) of any old loss corporation is not greater than 25 percent of the amount determined for purposes of subparagraph (A)(i)(I), the net unrealized built-in gain or net unrealized built-in loss shall be zero.''

Subsec. (h)(6)(B). Pub. L. 101–239, § 7811(c)(5)(A)(i), inserted ''(determined without regard to any carryover)'' after ''during the recognition period''.

Subsec. (h)(6)(C). Pub. L. 101–239, §7811(c)(5)(A)(ii), substituted ''which would be treated as recognized built-in gains or losses under this paragraph if such amounts were properly taken into account (or allowable as a deduction) during the recognition period'' for ''treated as recognized built-in gains or losses under this paragraph''.

Subsec. (*l*)(3)(B)(i)(III). Pub. L. 101–239, §7841(d)(11), substituted ''incident to divorce),'' for ''incident to divorce,''.

Subsec. (*l*)(3)(C). Pub. L. 101–239, §7304(d)(1), redesignated subpar. (D) as (C) and struck out former subpar. (C) which related to special rule for employee stock ownership plans.

Subsec. (*l*)(3)(C)(ii). Pub. L. 101–239, §7815(h), substituted ''For purposes of subclause (III),'' for ''for purposes of subclause (III),'' in concluding provisions.

Subsec. (*l*)(3)(D). Pub. L. 101–239, §7304(d)(1), redesignated subpar. (D) as (C).

Subsec. (*l*)(5)(F). Pub. L. 101–73 substituted ''on or after May 10, 1989'' for ''after December 31, 1989'' in last sentence.

1988—Subsec. (e)(2). Pub. L. 100–647, §1006(d)(1)(A), inserted ''or other corporate contraction'' after ''redemption'' in heading and in two places in text.

Subsec. (e)(3). Pub. L. 100–647, §1006(d)(17)(A), added par. (3).

Subsec. (g)(1)(A). Pub. L. 100–647, §1006(d)(21)(A), struck out ''new'' after ''stock of the''.

Subsec. (g)(1)(B). Pub. L. 100–647, §1006(d)(21)(B), struck out ''old'' after ''stock of the''.

Subsec. (g)(4)(C). Pub. L. 100–647, §1006(d)(2), inserted ''rules similar to'' after ''provided in regulations,''.

Subsec. (h)(1)(C). Pub. L. 100–647, §1006(d)(3)(A), substituted ''Special rules for certain section 338 gains'' for ''Section 338 gain'' in heading and amended text generally. Prior to amendment, text read as follows: ''The section 382 limitation for any taxable year in which gain is recognized by reason of an election under section 338 shall be increased by the excess of—

''(i) the amount of such gain, over

''(ii) the portion of such gain taken into account in computing recognized built-in gains for such taxable year.''

Subsec. (h)(3)(A)(ii). Pub. L. 100–647, §1006(d)(28)(A), inserted ''to the extent provided in regulations,'' after ''an ownership change,''.

Pub. L. 100–647, §1006(d)(1)(B), inserted ''or other corporate contractions'' after ''redemptions'' in heading and ''or other corporate contraction'' after ''redemption'' in two places in text.

Subsec. (h)(3)(B)(ii). Pub. L. 100–647, §1006(d)(26), inserted ''except as provided in regulations,'' after ''under clause (i),''.

Subsec. (h)(4). Pub. L. 100–647, §1006(d)(20), substituted ''allowed as a carryforward'' for ''treated as a net operating loss'' in heading and inserted ''(or to the extent the amount so disallowed is attributable to capital losses, under rules similar to the rules for the carrying forward of net capital losses)'' after ''net operating losses'' in subpar. (A).

Subsec. (h)(5)(A). Pub. L. 100–647, §1006(d)(3)(B), substituted ''recognized built-in gains to the extent such gains increased the section 382 limitation for the year (or recognized built-in losses to the extent such losses are treated as pre-change losses)'' for ''recognized built-in gains and losses''.

Subsec. (h)(6). Pub. L. 100–647, §1006(d)(22), substituted ''Treatment of certain built-in items'' for ''Secretary may treat certain deductions as built-in losses'' in heading and amended text generally. Prior to amendment, text read as follows: ''The Secretary may by regulation treat amounts which accrue on or before the change date but which are allowable as a deduction after such date as recognized built-in losses.''

Subsec. (h)(9). Pub. L. 100–647, §1006(d)(23), substituted ''was acquired (or is subsequently transferred)'' for ''is transferred''.

Subsec. (i)(3). Pub. L. 100–647, §1006(d)(4), inserted ''the earlier of'' after ''not begin before'' and ''or the taxable year in which the transaction being tested occurs'' after ''1st post-change year''.

Subsec. (k)(1). Pub. L. 100–647, §1006(d)(5)(A), inserted ''or having a net operating loss for the taxable year in which the ownership change occurs'' after ''operating loss carryover''.

Subsec. (k)(2). Pub. L. 100–647, §1006(d)(5)(B), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The term 'old loss corporation' means any corporation with respect to which there is an ownership change—

''(A) which (before the ownership change) was a loss corporation, or

''(B) with respect to which there is a pre-change loss described in subsection (d)(1)(B).''

Subsec. (*l*)(3)(A)(iv), (v). Pub. L. 100–647, §1006(d)(6), added cls. (iv) and (v) and struck out former cl. (iv) which read as follows: ''except to the extent provided in regulations, paragraph (4) of section 318(a) shall apply to an option if such application results in an ownership change.''

Subsec. (*l*)(3)(C)(ii). Pub. L. 100–647, §5077(a), added subcl. (III) and concluding provisions.

Subsec. (*l*)(4)(B)(ii). Pub. L. 100–647, §1006(t)(22)(A), substituted ''REMIC'' for ''real estate mortgage pool''.

Subsec. (*l*)(5)(A)(ii). Pub. L. 100–647, §1006(d)(25), substituted ''stock of a controlling corporation'' for ''stock of controlling corporation''.

Pub. L. 100–647, §1006(d)(7), substituted ''after such ownership change and as a result of being shareholders or creditors immediately before such change'' for ''immediately after such ownership change''.

Subsec. (*l*)(5)(B). Pub. L. 100–647, §1006(d)(27), substituted ''the pre-change losses and excess credits (within the meaning of section 383(a)(2)) which may be carried to a post-change year shall be computed'' for ''the net operating loss deduction under section 172(a) for any post-change year shall be determined''.

Subsec. (*l*)(5)(C). Pub. L. 100–647, §1006(d)(18), substituted ''tax attributes'' for ''carryforwards'' in heading and amended text generally. Prior to amendment, text read as follows: ''In any case to which subparagraph (A) applies, the pre-change losses and excess credits (within the meaning of section 383(a)(2)) which may be carried to a post-change year shall be computed as if 50 percent of the amount which, but for the application of section 108(e)(10)(B), would have been includible in gross income for any taxable year had been so included.''

Subsec. (*l*)(5)(E). Pub. L. 100–647, §1006(d)(19), substituted ''taken into account'' for ''of creditors taken into account'' in heading and amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: ''For purposes of subparagraph (A)(ii), stock transferred to a creditor in satisfaction of indebtedness shall be taken into account only if such indebtedness—''.

Subsec. (*l*)(5)(F). Pub. L. 100–647, §4012(a)(3), substituted ''1989'' for ''1988'' in last sentence.

Subsec. (*l*)(5)(F)(i)(I). Pub. L. 100–647, §1006(d)(8)(A), inserted '' '1504(a)(2)(B)' for '1504(a)(2)' and'' after ''by substituting''.

Subsec. (*l*)(5)(F)(ii)(III). Pub. L. 100–647, §1006(d)(8)(B), substituted ''the amount of deposits in the new loss corporation immediately after the change'' for ''deposits described in subclause (II)''.

Subsec. (*l*)(5)(F)(iii)(I). Pub. L. 100–647, §4012(b)(1)(B), inserted ''(as modified by section 368(a)(3)(D)(iv))'' after ''section 368(a)(3)(D)(ii)''.

Pub. L. 100–647, §1006(d)(29), which directed amendment of subcl. (I) by substituting ''section 368(a)(3)(D)(ii)'' for ''section 368(a)(D)(ii)'', could not be executed because ''section 368(a)(3)(D)(ii)'' appeared and ''section 368(a)(D)(ii)'' did not appear.

Subsec. (*l*)(6). Pub. L. 100–647, §1006(d)(9), substituted ''shall reflect the increase (if any) in value of the old loss corporation resulting from any surrender or cancellation of creditors' claims in the transaction'' for ''shall be the value of the new loss corporation immediately after the ownership change''.

Subsec. (*l*)(8). Pub. L. 100–647, §1006(d)(10), added par. (8).

Subsec. (m)(4). Pub. L. 100–647, §1006(d)(1)(C), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: ''providing for the treatment of corporate contractions as redemptions for purposes of subsections (e)(2) and (h)(3)(A), and''.

Subsec. (m)(5). Pub. L. 100–647, §1006(d)(24), added par. (5).

Pub. L. 100–647, §1006(d)(1)(C), redesignated former par. (5) as (4).

1987—Subsec. (g)(4)(D). Pub. L. 100–203, §10225(a), added subpar. (D).

Subsec. (h)(2)(B). Pub. L. 100–203, §10225(b), inserted at end ''Such term includes any amount allowable as depreciation, amortization, or depletion for any period within the recognition period except to the extent the new loss corporation establishes that the amount so allowable is not attributable to the excess described in clause (ii).''

1986—Pub. L. 99–514, §621(a), in amending section generally, in subsec. (a), substituted provisions setting forth general rule that amount of taxable income of any new loss corporation for any post-change year which may be offset by pre-change losses shall not exceed section 382 limitation for such year for provisions relating to change in ownership of corporation and change in its business, description of persons owning corporation, attribution of ownership, and definition of ''purchase'', in subsec. (b), substituted provisions relating to section 382 limitation for provisions relating to change in ownership as result of reorganization, in subsec. (c), substituted provisions relating to disallowance of carryforwards if continuity of business requirements are not met for provisions defining stock as all shares except nonvoting stock which is limited and preferred as to dividends, and added subsecs. (d) to (m).

Pub. L. 99–514, §621(e)(1), repealed amendment by Pub. L. 94–455, §806(e). See 1976 Amendment note below.

1984—Subsec. (b)(1). Pub. L. 98–369, in section as amended by Pub. L. 94–455, substituted ''subparagraph (A), (B), (C), or (F) of section 368(a)(1) or subparagraph (D) or (G) of section 368(a)(1) (but only if the requirements of section 354(b)(1) are met)'' for ''section 368(a)(1)(A), (B), (C), (D) (but only if the requirements of section 354(b)(1) are met, or (F)''.

1981—Subsec. (b)(7). Pub. L. 97–34 designated existing provisions as subpar. (A) and added subpar. (B).

1980—Subsec. (b)(7). Pub. L. 96–589 added par. (7).

1976—Pub. L. 94–455, §806(e), which amended section generally, substituting provisions relating to special limitations on net operating loss carryovers based on continuity of trade or business conducted, for provisions relating to special limitations on net operating loss carryovers based on continuity of ownership, was repealed by Pub. L. 99–514, §621(e)(1). See Effective Date of 1986 and 1976 Amendment notes below.

1964—Subsec. (a)(3). Pub. L. 88–554 inserted reference to section 318(a)(3)(C) of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1262(b), Feb. 17, 2009, 123 Stat. 344, provided that: ''The amendment made by this section [amending this section] shall apply to ownership changes after the date of the enactment of this Act [Feb. 17, 2009].''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 effective Jan. 1, 2005, with exception for any FASIT in existence on Oct. 22, 2004, to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance, see section 835(c) of Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

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

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to stock transferred after Dec. 31, 1994, in satisfaction of any indebtedness, except that such amendment inapplicable to stock transferred in satisfaction of any indebtedness if such transfer is in a title 11 or similar case filed on or before Dec. 31, 1993, see section 13226(a)(3) of Pub. L. 103–66, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by section 7205(a) of Pub. L. 101–239 applicable, except as otherwise provided, to ownership changes and acquisitions after Oct. 2, 1989, in taxable years ending after such date, see section 7205(c) of Pub. L. 101–239, set out as a note under section 56 of this title.

Section 7304(d)(2) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section] shall apply to acquisitions of employer securities after July 12, 1989, except that such amendments shall not apply to acquisitions after July 12, 1989, pursuant to a written binding contract in effect on July 12, 1989, and at all times thereafter before such acquisition.''

Amendment by sections 7811(c)(5)(A) and 7815(h) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Section 1401(c)(2) of Pub. L. 101–73 provided that: ''The amendment made by subsection (a)(2) [amending this section] shall apply to transactions on or after May 10, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1006(d)(1)(D) of Pub. L. 100–647 provided that: ''The amendments made by this paragraph [amending this section] shall apply with respect to ownership changes after June 10, 1987.''

Section 1006(d)(17)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to any ownership change after June 10, 1987. For purposes of the preceding sentence, any equity structure shift pursuant to a plan of reorganization adopted on or before June 10, 1987, shall be treated as occurring when such plan was adopted.''

Section 1006(d)(28)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply in the case of ownership changes on or after June 21, 1988.''

Amendment by section 1006(d)(2)–(10), (18)–(27), (29), (t)(22)(A) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 4012(b)(1)(C)(ii) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (B) [amending this section] shall apply to any ownership change occurring after the date of the enactment of this Act [Nov. 10, 1988] and before January 1, 1990.''

Section 5077(b) of Pub. L. 100–647 provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to acquisition after December 31, 1988.

''(2) EXCEPTION.—The amendment made by subsection (a) shall not apply to acquisitions after December 31, 1988, pursuant to a binding written contract entered into on or before October 21, 1988.''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10225(c) of Pub. L. 100–203 provided that:

''(1) SUBSECTION (a).—The amendment made by subsection (a) [amending this section] shall apply in the case of stock treated as becoming worthless in taxable years beginning after December 31, 1987.

''(2) SUBSECTION (b).—The amendment made by subsection (b) [amending this section] shall apply in the

case of ownership changes (as defined in section 382 of the Internal Revenue Code of 1986 as amended by subsection (a)) after December 15, 1987; except that such amendment shall not apply in the case of any ownership change pursuant to a binding written contract which was in effect on December 15, 1987, and at all times thereafter before such ownership change.''

EFFECTIVE DATE OF 1986 AMENDMENT; SAVINGS PROVISIONS

Section 621(f) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1006(d)(11)–(16), title VI, §6277(a), (b), Nov. 10, 1988, 102 Stat. 3397, 3398, 3753, 3754, provided that:

''(1) AMENDMENTS MADE BY SUBSECTIONS (a), (b), AND (c).—

''(A) IN GENERAL.—

''(i) CHANGES AFTER 1986.—The amendments made by subsections (a), (b), and (c) [amending this section and sections 318 and 383 of this title] shall apply to any ownership change after December 31, 1986.

''(ii) PLANS OF REORGANIZATION ADOPTED BEFORE 1987.—For purposes of clause (i), any equity structure shift pursuant to a plan of reorganization adopted before January 1, 1987, shall be treated as occurring when such plan was adopted.

''(B) TERMINATION OF OLD SECTION 382.—Except in a case described in any of the following paragraphs—

''(i) section 382(a) of the Internal Revenue Code of 1954 (as in effect before the amendment made by subsection (a) and the amendments made by section 806 of the Tax Reform Act of 1976 [section 806 of Pub. L. 94–455]) shall not apply to any increase in percentage points occurring after December 31, 1988, and

''(ii) section 382(b) of such Code (as so in effect) shall not apply to any reorganization occurring pursuant to a plan of reorganization adopted after December 31, 1986.

In no event shall sections 382(a) and (b) of such Code (as so in effect) apply to any ownership change described in subparagraph (A).

''(C) COORDINATION WITH SECTION 382(i).—For purposes of section 382(i) of the Internal Revenue Code of 1986 (as added by this section), any equity structure shift pursuant to a plan of reorganization adopted before January 1, 1987, shall be treated as occurring when such plan was adopted.

''(2) FOR AMENDMENTS TO TAX REFORM ACT OF 1976.—

''(A) IN GENERAL.—The repeals made by subsection (e)(1) [repealing amendments by Pub. L. 94–455, §806(e), (f), amending this section and sections 108, 368, and 383 of this title] and the amendment made by subsection (e)(2) [repealing section 806(g)(2), (3) of Pub. L. 94–455, formerly set out as an Effective Date of 1976 Amendment note below] shall take effect on January 1, 1986.

''(B) ELECTION TO HAVE AMENDMENTS APPLY.—

''(i) If a taxpayer described in clause (ii) elects to have the provisions of this subparagraph apply, the amendments made by subsections (e) and (f) of section 806 of the Tax Reform Act of 1976 [amending this section and sections 108, 368, and 383 of this title] shall apply to the reorganization described in clause (ii).

''(ii) A taxpayer is described in this clause if the taxpayer filed a title 11 or similar case on December 8, 1981, filed a plan of reorganization on February 5, 1986, filed an amended plan on March 14, 1986, and received court approval for the amended plan and disclosure statement on April 16, 1986.

''(C) APPLICATION OF OLD RULES TO CERTAIN DEBT.—In the case of debt of a corporation incorporated in Colorado on November 8, 1924, and reincorporated in Delaware in 1987, with headquarters in Denver, Colorado—

''(i) the amendments made by subsections (a), (b), and (c) shall not apply to any debt restructuring of such debt which was approved by the debtor's Board of Directors and the lenders in 1986, and

''(ii) the amendments made by subsections (e) and (f) of section 806 of the Tax Reform Act of 1976 shall not apply to such debt restructuring, except that the amendment treated as part of such subsections under section 59(b) of the Tax Reform Act of 1984 (relating to qualified workouts) shall apply to such debt restructuring.

''(D) SPECIAL RULE FOR OIL AND GAS WELL DRILLING BUSINESS.—In the case of a Texas corporation incorporated on July 23, 1935, in applying section 382 of the Internal Revenue Code of 1986 (as in effect before and after the amendments made by subsections (a), (b), and (c)) to a loan restructuring agreement during 1985, section 382(a)(5)(C) of the Internal Revenue Code of 1954 (as added by the amendments made by subsections (e) and (f) of section 806 of the Tax Reform Act of 1976) shall be applied as if it were in effect with respect to such restructuring. For purposes of the preceding sentence, in applying section 382 (as so in effect), if a person has a warrant to acquire stock, such stock shall be considered as owned by such person.

''(3) TESTING PERIOD.—For purposes of determining whether there is an ownership change, the testing period shall not begin before the later of—

''(A) May 6, 1986, or

''(B) in the case of an ownership change which occurs after May 5, 1986, and to which the amendments made by subsections (a), (b), and (c) do not apply, the first day following the date on which such ownership change occurs.

''(4) SPECIAL TRANSITION RULES.—The amendments made by subsections (a), (b), and (c) shall not apply to any—

''(A) stock-for-debt exchanges and stock sales made pursuant to a plan of reorganization with respect to a petition for reorganization filed by a corporation under chapter 11 of title 11, United States Code, on August 26, 1982, and which filed with a United States district court a first amended and related plan of reorganization before March 1, 1986, or

''(B) ownership change of a Delaware corporation incorporated in August 1983, which may result from the exercise of put or call option under an agreement entered into on September 14, 1983, but only with respect to taxable years beginning after 1991 regardless of when such ownership change takes place.

Any regulations prescribed under section 382 of the Internal Revenue Code of 1986 (as added by subsection (a)) which have the effect of treating a group of shareholders as a separate 5-percent shareholder by reason of a public offering shall not apply to any public offering before January 1, 1989, for the benefit of institutions described in section 591 of such Code. Unless the corporation otherwise elects, an underwriter of any offering of stock in a corporation before September 19, 1986 (January 1, 1989, in the case of an offering for the benefit of an institution described in the preceding sentence), shall not be treated as acquiring any stock of such corporation by reason of a firm commitment underwriting to the extent the stock is disposed of pursuant to the offering (but in no event later than 60 days after the initial offering).

''(5) BANKRUPTCY PROCEEDINGS.—Unless the taxpayer elects not to have the provisions of this paragraph apply, in the case of a reorganization described in subparagraph (G) of section 368(a)(1) of the Internal Revenue Code of 1986 or an exchange of debt for stock in a title 11 or similar case, as defined in section 368(a)(3) of such Code, the amendments made by subsections (a), (b), and (c) shall not apply to any ownership change resulting from such a reorganization or proceeding if a petition in such case was filed with the court before August 14, 1986. The determination as to whether an ownership change has occurred during the period beginning January 1, 1987, and ending on the final settlement of any reorganization or proceeding described in the preceding sentence shall be redetermined as of the time of such final settlement.

''(6) CERTAIN PLANS.—The amendments made by subsections (a), (b), and (c) shall not apply to any ownership change with respect to—

''(A) the acquisition of a corporation the stock of which is acquired pursuant to a plan of divestiture which identified such corporation and its assets, and was agreed to by the board of directors of such corporation's parent corporation on May 17, 1985,

''(B) a merger which occurs pursuant to a merger agreement (entered into before September 24, 1985) and an application for approval by the Federal Home Loan Bank Board was filed on October 4, 1985,

''(C) a reorganization involving a party to a reorganization of a group of corporations engaged in enhanced oil recovery operations in California, merged in furtherance of a plan of reorganization adopted by a board of directors vote on September 24, 1985, and a Delaware corporation whose principal oil and gas producing fields are located in California, or

''(D) the conversion of a mutual savings and loan association holding a Federal charter dated March 22, 1985, to a stock savings and loan association pursuant to the rules and regulations of the Federal Home Loan Bank Board.

''(7) OWNERSHIP CHANGE OF REGULATED AIR CARRIER.—The amendments made by subsections (a), (b), and (c) shall not apply to an ownership change of a regulated air carrier if—

''(A) on July 16, 1986, at least 40 percent of the outstanding common stock (excluding all preferred stock, whether or not convertible) of such carrier had been acquired by a parent corporation incorporated in March 1980 under the laws of Delaware, and

''(B) the acquisition (by or for such parent corporation) or retirement of the remaining common stock of such carrier is completed before the later of March 31, 1987, or 90 days after the requisite governmental approvals are finally granted,

but only if the ownership change occurs on or before the later of March 31, 1987, or such 90th day. The aggregate reduction in tax for any taxable year by reason of this paragraph shall not exceed $10,000,000. The testing period for determining whether a subsequent ownership change has occurred shall not begin before the 1st day following an ownership change to which this paragraph applies.

''(8) The amendments made by subsections (a), (b), and (c) shall not apply to any ownership change resulting from the conversion of a Minnesota mutual savings bank holding a Federal charter dated December 31, 1985, to a stock savings bank pursuant to the rules and regulations of the Federal Home Loan Bank Board, and from the issuance of stock pursuant to that conversion to a holding company incorporated in Delaware on February 21, 1984. For purposes of determining whether any ownership change occurs with respect to the holding company or any subsidiary thereof (whether resulting from the transaction described in the preceding sentence or otherwise), any issuance of stock made by such holding company in connection with the transaction described in the preceding sentence shall not be taken into account.

''(9) DEFINITIONS.—Except as otherwise provided, terms used in this subsection shall have the same meaning as when used in section 382 of the Internal Revenue Code of 1986 (as amended by this section).''

[Section 6277(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending section 621(f) of Pub. L. 99–514, set out above] shall take effect as if included in section 621(f)(5) of the Tax Reform Act of 1986 [Pub. L. 99–514].'']

EFFECTIVE DATE OF 1984 AMENDMENT

Section 62(b)(2) of Pub. L. 98–369 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 4 of the Bankruptcy Tax Act of 1980 [Pub. L. 96–589].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to any transfer made on or after Jan. 1, 1981, see section 246(a) of Pub. L. 97–34, set out as a note under section 368 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 2(d) of Pub. L. 96–589 provided that the amendment made by section 2(b) of Pub. L. 96–589 is to subsec. (b) as in effect before its amendment by section 806 of the Tax Reform Act of 1976, Pub. L. 94–455.

Amendment by Pub. L. 96–589 applicable to transactions which occur after Dec. 31, 1980, other than transactions which occur in a proceeding in a bankruptcy case or similar judicial proceeding or in a proceeding under Title 11 commencing on or before Dec. 31, 1980, with an exception permitting the debtor to make the amendment applicable to transactions occurring after Sept. 30, 1979, in a specified manner, see section 7(a)(1), (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 806(g)(2), (3) of Pub. L. 94–455, as amended by Pub. L. 95–600, title III, § 368(a), Nov. 6, 1978, 92 Stat. 2857; Pub. L. 95–615, § 8, Nov. 8, 1978, 92 Stat. 3098; Pub. L. 96–167, § 9(e), Dec. 29, 1979, 93 Stat. 1279; Pub. L. 97–119, title I, § 111, Dec. 29, 1981, 95 Stat. 1640; Pub. L. 98–369, div. A, title I, § 62(a), July 18, 1984, 98 Stat. 583, which provided an effective date for the amendments made by section 806(e), (f) of Pub. L. 94–455 for purposes of applying sections 382(a) and 383 (as it relates to section 382(a)) of this title, was repealed by Pub. L. 99–514, title VI, § 621(e)(2), (f)(2), Oct. 22, 1986, 100 Stat. 2266, eff. Jan. 1, 1986.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–554 effective Aug. 31, 1964, except that for purposes of sections 302 and 304 of this title, such amendment shall not apply to distributions in payment for stock acquisitions or redemptions, if such acquisitions or redemptions occurred before Aug. 31, 1964, see section 4(c) of Pub. L. 88–554, set out as a note under section 318 of this title.

DELAY IN EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 95–600, title III, § 368, Nov. 6, 1978, 92 Stat. 2857, provided for delaying the effective date established by section 806(g)(2), (3) of Pub. L. 94–455, formerly set out above, by substituting ''1980'' for ''1978'', with certain elections.

CLARIFICATION OF REGULATIONS RELATED TO LIMITATIONS ON CERTAIN BUILT-IN LOSSES FOLLOWING AN OWNERSHIP CHANGE

Pub. L. 111–5, div. B, title I, § 1261, Feb. 17, 2009, 123 Stat. 342, provided that:

''(a) FINDINGS.—Congress finds as follows:

''(1) The delegation of authority to the Secretary of the Treasury under section 382(m) of the Internal Revenue Code of 1986 does not authorize the Secretary to provide exemptions or special rules that are restricted to particular industries or classes of taxpayers.

''(2) Internal Revenue Service Notice 2008–83 is inconsistent with the congressional intent in enacting such section 382(m).

''(3) The legal authority to prescribe Internal Revenue Service Notice 2008–83 is doubtful.

''(4) However, as taxpayers should generally be able to rely on guidance issued by the Secretary of the Treasury legislation is necessary to clarify the force and effect of Internal Revenue Service Notice 2008–83 and restore the proper application under the Internal Revenue Code of 1986 of the limitation on built-in losses following an ownership change of a bank.

''(b) DETERMINATION OF FORCE AND EFFECT OF INTERNAL REVENUE SERVICE NOTICE 2008–83 EXEMPTING BANKS FROM LIMITATION ON CERTAIN BUILT–IN LOSSES FOLLOWING OWNERSHIP CHANGE.—

''(1) IN GENERAL.—Internal Revenue Service Notice 2008–83—

''(A) shall be deemed to have the force and effect of law with respect to any ownership change (as defined in section 382(g) of the Internal Revenue Code of 1986) occurring on or before January 16, 2009, and

''(B) shall have no force or effect with respect to any ownership change after such date.

''(2) BINDING CONTRACTS.—Notwithstanding paragraph (1), Internal Revenue Service Notice 2008–83 shall have the force and effect of law with respect to any ownership change (as so defined) which occurs after January 16, 2009, if such change—

''(A) is pursuant to a written binding contract entered into on or before such date, or

''(B) is pursuant to a written agreement entered into on or before such date and such agreement was described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission required by reason of such ownership change.''

REPORT ON DEPRECIATION AND BUILT-IN DEDUCTIONS; REPORT ON BANKRUPTCY WORKOUTS

Section 621(d) of Pub. L. 99–514 directed Secretary of the Treasury or his delegate to, not later than Jan. 1, 1989, conduct a study and report to Committee on Ways and Means of House of Representatives and Committee on Finance of Senate with respect to treatment of depreciation, amortization, depletion, and other built-in deductions for purposes of sections 382 and 383 of this title, and, not later than Jan. 1, 1988, conduct a study and report to committees referred to above with respect to treatment of informal bankruptcy workouts for purposes of sections 108 and 382 of this title, prior to repeal by Pub. L. 101–508, title XI, §11832(3), Nov. 5, 1990, 104 Stat. 1388–559.

§ 383. Special limitations on certain excess credits, etc.

(a) Excess credits

(1) In general

Under regulations, if an ownership change occurs with respect to a corporation, the amount of any excess credit for any taxable year which may be used in any post-change year shall be limited to an amount determined on the basis of the tax liability which is attributable to so much of the taxable income as does not exceed the section 382 limitation for such post-change year to the extent available after the application of section 382 and subsections (b) and (c) of this section.

(2) Excess credit

For purposes of paragraph (1), the term ''excess credit'' means—

(A) any unused general business credit of the corporation under section 39, and

(B) any unused minimum tax credit of the corporation under section 53.

(b) Limitation on net capital loss

If an ownership change occurs with respect to a corporation, the amount of any net capital loss under section 1212 for any taxable year before the 1st post-change year which may be used in any post-change year shall be limited under regulations which shall be based on the principles applicable under section 382. Such regulations shall provide that any such net capital loss used in a post-change year shall reduce the section 382 limitation which is applied to prechange losses under section 382 for such year.

(c) Foreign tax credits

If an ownership change occurs with respect to a corporation, the amount of any excess foreign taxes under section 904(c) for any taxable year before the 1st post-change taxable year shall be limited under regulations which shall be consistent with purposes of this section and section 382.

(d) Pro ration rules for year which includes change

For purposes of this section, rules similar to the rules of subsections (b)(3) and (d)(1)(B) of section 382 shall apply.

(e) Definitions

Terms used in this section shall have the same respective meanings as when used in section 382, except that appropriate adjustments shall be made to take into account that the limitations of this section apply to credits and net capital losses.

(Added Pub. L. 92–178, title III, §302(a), Dec. 10, 1971, 85 Stat. 521; amended Pub. L. 94–455, title VIII, §806(f)(2), title X, §1031(b)(5), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1605, 1623, 1834; Pub. L. 95–30, title II, §202(d)(3)(B), (C), May 23, 1977, 91 Stat. 148; Pub. L. 96–222, title I, §103(a)(6)(G)(xiii), Apr. 1, 1980, 94 Stat. 211; Pub. L. 96–223, title II, §232(b)(2)(C), (D), Apr. 2, 1980, 94 Stat. 276; Pub. L. 97–34, title II, §221(b)(1)(C), (D), title III, §331(d)(1)(C), (D), Aug. 13, 1981, 95 Stat. 246, 294; Pub. L. 98–369, div. A, title IV, §474(r)(12)(A), (B), July 18, 1984, 98 Stat. 841; Pub. L. 99–514, title VI, §621(b), (e)(1), Oct. 22, 1986, 100 Stat. 2265, 2266.)

AMENDMENTS

1986—Pub. L. 99–514, §621(b), amended section generally. Prior to amendment, section read as follows: ''If—

''(1) the ownership and business of a corporation are changed in the manner described in section 382(a)(1), or

''(2) in the case of a reorganization specified in paragraph (2) of section 381(a), there is a change in ownership described in section 382(b)(1)(B),

then the limitations provided in section 382 in such cases with respect to the carryover of net operating losses shall apply in the same manner, as provided under regulations prescribed by the Secretary, with respect to any unused business credit of the corporation which can otherwise be carried forward under section 39, to any unused credit of the corporation which could otherwise be carried forward under section 30(g)(2), to any excess foreign taxes of the corporation which could otherwise be carried forward under section 904(c), and to any net capital loss of the corporation which can otherwise be carried forward under section 1212.''

Pub. L. 99–514, §621(e)(1), repealed amendment by Pub. L. 94–455, §806(f)(2). See 1976 Amendment note below.

1984—Pub. L. 98–369, §474(r)(12)(A)(ii), in catchline of section 383, as in effect prior to amendment by Pub. L. 94–455, §806(f)(2), as related to section 382(a) of this title, substituted ''Special limitations on unused business credits, research credits, foreign taxes, and capital losses'' for ''Special limitations on carryovers of unused investment credits, work incentive program credits, new employee credits, alcohol fuel credits, research credits, employee stock ownership credits, foreign taxes, and capital losses''.

Pub. L. 98–369, §474(r)(12)(B)(ii), in catchline of section 383, as amended by Pub. L. 94–455, §806(f)(2), as related to section 382(b) of this title, substituted ''business credits, research credits'' for ''investment credits, work incentive program credits''.

Pub. L. 98–369, §474(r)(12)(B)(ii), in catchline of section 383, as amended by Pub. L. 94–455, §806(f)(2), as related to section 382(a) of this title, substituted ''business credits'' for ''investment credits'' and struck out

references to work incentive program credits, new employee credits, alcohol fuel credits, and employee stock ownership credits.

Pub. L. 98–369, § 474(r)(12)(A)(i), in section 383, as in effect prior to amendment by Pub. L. 94–455, § 806(f)(2), as related to section 382(a) of this title, substituted ''with respect to any unused business credit of the corporation which can otherwise be carried forward under section 39, to any unused credit of the corporation which could otherwise be carried forward under section 30(g)(2), to any excess foreign taxes of the corporation which could otherwise be carried forward under section 904(c), and to any net capital loss of the corporation which can otherwise be carried forward under section 1212'' for ''with respect to any unused investment credit of the corporation which can otherwise be carried forward under section 46(b), to any unused work incentive program credit of the corporation which can otherwise be carried forward under section 50A(b), to any unused new employee credit of the corporation which could otherwise be carried forward under section 53(b), to any unused credit of the corporation which could otherwise be carried forward under section 44E(e)(2), to any unused credit of the corporation which could otherwise be carried forward under section 44F(g)(2), to any unused credit of the corporation which could otherwise be carried forward under section 44G(b)(2), to any excess foreign taxes of the corporation which can otherwise be carried forward under section 904(c), and to any net capital loss of the corporation which can otherwise be carried forward under section 1212''.

Pub. L. 98–369, § 474(r)(12)(B)(i), in section 383, as amended by Pub. L. 94–455, § 806(f)(2), as related to section 382(b) of this title, substituted ''with respect to any unused business credit of the corporation under section 39, to any unused credit of the corporation under section 30(g)(2), to any excess foreign taxes of the corporation under section 904(c), and to any net capital loss of the corporation under section 1212'' for ''with respect to any unused investment credit of the corporation under section 46(b), to any unused work incentive program credit of the corporation under section 50A(b), to any excess foreign taxes of the corporation under section 904(c), and to any net capital loss of the corporation under section 1212''.

Pub. L. 98–369, § 474(r)(12)(B)(i), in section 383, as amended by Pub. L. 94–455, § 806(f)(2), as related to section 382(a) of this title, substituted ''with respect to any unused business credit of the corporation under section 39, to any unused credit of the corporation under section 30(g)(2), to any excess foreign taxes of the corporation under section 904(c), and to any net capital loss of the corporation under section 1212'' for ''with respect to any unused investment credit of the corporation under section 46(b), to any unused work incentive program credit of the corporation under section 50A(b), to any unused new employee credit of the corporation under section 53(b), to any unused credit of the corporation under section 44E(e)(2), to any unused credit of the corporation under section 44F(g)(2), to any unused credit of the corporation under section 44G(b)(2), to any excess foreign taxes of the corporation under section 904(c), and to any net capital loss of the corporation under section 1212''.

1981—Pub. L. 97–34, § 331(d)(1)(C)(ii), (D)(ii), in catchlines of sections 383, as related to section 382(a) of this title, before and after amendment by Pub. L. 94–455, § 806(f)(2), inserted reference to employee stock ownership credits.

Pub. L. 97–34, § 331(d)(1)(D)(i), in section 383, as in effect prior to amendment by Pub. L. 94–455, § 806(f)(2), as related to section 382(a) of this title, inserted ''to any unused credit of the corporation which could otherwise be carried forward under section 44G(b)(2),''.

Pub. L. 97–34, § 331(d)(1)(C)(i), in section 383, as amended by Pub. L. 94–455, § 806(f)(2), as related to section 382(a) of this title, inserted ''to any unused credit of the corporation under section 44G(b)(2),''.

Pub. L. 97–34, § 221(b)(1)(C)(ii), (D)(ii), in catchlines of sections 383, as related to section 382(a) of this title, before and after amendment by Pub. L. 94–455, § 806(f)(2), inserted reference to research credits.

Pub. L. 97–34, § 221(b)(1)(D)(i), in section 383, as in effect prior to amendment by Pub. L. 94–455, § 806(f)(2), as related to section 382(a) of this title, inserted ''to any unused credit of the corporation which could otherwise be carried forward under section 44F(g)(2),'' after ''section 44E(e)(2),''.

Pub. L. 97–34, § 221(b)(1)(C)(i), in section 383, as amended by Pub. L. 94–455, § 806(f)(2), as related to section 382(a) of this title, inserted ''to any unused credit of the corporation under section 44F(g)(2),'' after ''section 44E(e)(2),''.

1980—Pub. L. 96–223, § 232(b)(2)(D), in section 383, as in effect prior to amendment by Pub. L. 94–455, § 806(f)(2), as related to section 382(a) of this title, inserted reference to unused alcohol fuel credits in section catchline and reference to any unused credit of the corporation which could otherwise be carried forward under section 44E(e)(2) in text.

Pub. L. 96–223, § 232(b)(2)(C), in section 383, as amended by Pub. L. 94–455, § 806(f)(2), as related to section 382(a) of this title, inserted reference to unused alcohol fuel credits in section catchline and reference to any unused credit of the corporation under section 44E(e)(2) in text.

Pub. L. 96–222, in sections 383, as related to section 382(a) of this title, before and after amendment by Pub. L. 94–455, § 806(f)(2), substituted ''section 53(b)'' for ''section 53(c)''.

1977—Pub. L. 95–30, § 202(d)(3)(C), in section 383, as in effect prior to amendment by Pub. L. 94–455, § 806(f)(2), as related to section 382(a) of this title, inserted ''to any unused new employee credit of the corporation which could otherwise be carried forward under section 53(c)'' in text and ''new employee credits,'' in catchline.

Pub. L. 95–30, § 202(d)(3)(B), in section 383, as amended by Pub. L. 94–455, § 806(f)(2), as related to section 382(a) of this title, inserted ''to any unused new employee credit of the corporation under section 53(c)'' in text and ''new employee credits,'' in section catchline.

1976—Pub. L. 94–455, §§ 1031(b)(5), 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'', and substituted ''section 904(c)'' for ''section 904(d)'', respectively, in section 383 set out first.

Pub. L. 94–455, § 806(f)(2), which substituted, in sections 383 as related to section 382(a) and (b) of this title, provisions that the net operating loss limitations in section 382 shall apply to unused investment credits under section 46(b), to unused work incentive program credits under section 50A(b), to excess foreign taxes under section 904(d) and to net capital losses under section 1212 for provisions that the net operating loss carryover limitations in section 382 shall apply, in the case of ownership changes described in section 382(a)(1) or reorganizations specified in section 381(a)(2) resulting in ownership changes described in section 382(b)(1)(B), to unused investment credits under section 46(b), to unused work incentive program credits under section 50A(B), to excess foreign taxes under section 904(c), and to net capital losses under section 1212, was repealed by Pub. L. 99–514, § 621(e)(1). See Effective Date of 1986 and 1976 Amendment notes below.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 621(b) of Pub. L. 99–514 applicable to any ownership change after Dec. 31, 1986, except as otherwise provided, see section 621(f) of Pub. L. 99–514, as amended, set out as a note under section 382 of this title.

Repeal of amendment by section 806(f)(1) of Pub. L. 94–455 effective Jan. 1, 1986, with certain exceptions, see section 621(f)(2) of Pub. L. 99–514, set out as a note under section 382 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 221(b)(1)(C), (D) of Pub. L. 97–34 applicable to amounts paid or incurred after June 30, 1981, see section 221(d) of Pub. L. 97–34, as amended, set out as an Effective Date note under section 41 of this title.

Amendment by section 331(d)(1)(C), (D) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 339 of Pub. L. 97–34, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–223 applicable to sales or uses after Sept. 30, 1980, in taxable years ending after such date, see section 232(h)(1) of Pub. L. 96–223, set out as an Effective Date note under section 40 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, Nov. 6, 1978, 92 Stat. 2763, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1031(b)(5) of Pub. L. 94–455, see section 1031(c) of Pub. L. 94–455, set out as a note under section 904 of this title.

For purposes of applying this section (as it relates to section 382(a) of this title) as amended by section 806(e), (f) of Pub. L. 94–455, the amendments made by section 806(e), (f) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1985, with specified provisions for determining the beginning of the taxable years specified in section 382(a)(1)(B)(ii) of this title, and this section (as it relates to section 382(b) of this title) as amended by section 806(e), (f) of Pub. L. 94–455 to apply (and such sections as in effect prior to such amendment not to apply) to reorganizations pursuant to a plan of reorganization adopted by one or more of the parties thereto on or after Jan. 1, 1986, see section 806(g)(2), (3) of Pub. L. 94–455, as amended, formerly set out as a note under section 382 of this title.

EFFECTIVE DATE

Section 302(c) of Pub. L. 92–178 provided that: ''The amendments made by this section [enacting this section] shall be applicable only with respect to reorganizations and other changes in ownership occurring after the date of enactment of this Act [Dec. 10, 1971] pursuant to a plan of reorganization or contract entered into on or after September 29, 1971.''

DELAY IN EFFECTIVE DATE OF 1976 AMENDMENT

For election by taxpayer for application of prior law with respect to any acquisition or reorganization occurring before the end of the taxpayer's first taxable year beginning after June 30, 1978, see section 368 of Pub. L. 95–600, set out as a Delay in Effective Date of 1976 Amendment note under section 382 of this title.

§ 384. Limitation on use of preacquisition losses to offset built-in gains

(a) General rule

If—

(1)(A) a corporation acquires directly (or through 1 or more other corporations) control of another corporation, or

(B) the assets of a corporation are acquired by another corporation in a reorganization described in subparagraph (A), (C), or (D) of section 368(a)(1), and

(2) either of such corporations is a gain corporation,

income for any recognition period taxable year (to the extent attributable to recognized built-in gains) shall not be offset by any preacquisition loss (other than a preacquisition loss of the gain corporation).

(b) Exception where corporations under common control

(1) In general

Subsection (a) shall not apply to the preacquisition loss of any corporation if such corporation and the gain corporation were members of the same controlled group at all times during the 5-year period ending on the acquisition date.

(2) Controlled group

For purposes of this subsection, the term ''controlled group'' means a controlled group of corporations (as defined in section 1563(a)); except that—

(A) ''more than 50 percent'' shall be substituted for ''at least 80 percent'' each place it appears,

(B) the ownership requirements of section 1563(a) must be met both with respect to voting power and value, and

(C) the determination shall be made without regard to subsection (a)(4) of section 1563.

(3) Shorter period where corporations not in existence for 5 years

If either of the corporations referred to in paragraph (1) was not in existence throughout the 5-year period referred to in paragraph (1), the period during which such corporation was in existence (or if both, the shorter of such periods) shall be substituted for such 5-year period.

(c) Definitions

For purposes of this section—

(1) Recognized built-in gain

(A) In general

The term ''recognized built-in gain'' means any gain recognized during the recognition period on the disposition of any asset except to the extent the gain corporation (or, in any case described in subsection (a)(1)(B), the acquiring corporation) establishes that—

(i) such asset was not held by the gain corporation on the acquisition date, or

(ii) such gain exceeds the excess (if any) of—

(I) the fair market value of such asset on the acquisition date, over

(II) the adjusted basis of such asset on such date.

(B) Treatment of certain income items

Any item of income which is properly taken into account for any recognition period taxable year but which is attributable to periods before the acquisition date shall be treated as a recognized built-in gain for the taxable year in which it is properly taken into account and shall be taken into account in determining the amount of the net unrealized built-in gain.

(C) Limitation

The amount of the recognized built-in gains for any recognition period taxable year shall not exceed—

(i) the net unrealized built-in gain, reduced by

(ii) the recognized built-in gains for prior years ending in the recognition period which (but for this section) would have been offset by preacquisition losses.

(2) Acquisition date

The term ''acquisition date'' means—

(A) in any case described in subsection (a)(1)(A), the date on which the acquisition of control occurs, or

(B) in any case described in subsection (a)(1)(B), the date of the transfer in the reorganization.

(3) Preacquisition loss

(A) In general

The term ''preacquisition loss'' means—

(i) any net operating loss carryforward to the taxable year in which the acquisition date occurs, and

(ii) any net operating loss for the taxable year in which the acquisition date occurs to the extent such loss is allocable to the period in such year on or before the acquisition date.

Except as provided in regulations, the net operating loss shall, for purposes of clause (ii), be allocated ratably to each day in the year.

(B) Treatment of recognized built-in loss

In the case of a corporation with a net unrealized built-in loss, the term ''preacquisition loss'' includes any recognized built-in loss.

(4) Gain corporation

The term ''gain corporation'' means any corporation with a net unrealized built-in gain.

(5) Control

The term ''control'' means ownership of stock in a corporation which meets the requirements of section 1504(a)(2).

(6) Treatment of members of same group

Except as provided in regulations and except for purposes of subsection (b), all corporations which are members of the same affiliated group immediately before the acquisition date shall be treated as 1 corporation. To the extent provided in regulations, section 1504 shall be applied without regard to subsection (b) thereof for purposes of the preceding sentence.

(7) Treatment of predecessors and successors

Any reference in this section to a corporation shall include a reference to any predecessor or successor thereof.

(8) Other definitions

Except as provided in regulations, the terms ''net unrealized built-in gain'', ''net unrealized built-in loss'', ''recognized built-in loss'', ''recognition period'', and ''recognition period taxable year'', have the same respective meanings as when used in section 382(h), except that the acquisition date shall be taken into account in lieu of the change date.

(d) Limitation also to apply to excess credits or net capital losses

Rules similar to the rules of subsection (a) shall also apply in the case of any excess credit (as defined in section 383(a)(2)) or net capital loss.

(e) Ordering rules for net operating losses, etc.

(1) Carryover rules

If any preacquisition loss may not offset a recognized built-in gain by reason of this section, such gain shall not be taken into account in determining under section 172(b)(2) the amount of such loss which may be carried to other taxable years. A similar rule shall apply in the case of any excess credit or net capital loss limited by reason of subsection (d).

(2) Ordering rule for losses carried from same taxable year

In any case in which—

(A) a preacquisition loss for any taxable year is subject to limitation under subsection (a), and

(B) a net operating loss from such taxable year is not subject to such limitation,

taxable income shall be treated as having been offset 1st by the loss subject to such limitation.

(f) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations to ensure that the purposes of this section may not be circumvented through—

(1) the use of any provision of law or regulations (including subchapter K of this chapter), or

(2) contributions of property to a corporation.

(Added Pub. L. 100–203, title X, § 10226(a), Dec. 22, 1987, 101 Stat. 1330–414; amended Pub. L. 100–647, title II, § 2004(m)(1)–(4), Nov. 10, 1988, 102 Stat. 3606, 3607; Pub. L. 101–239, title VII, § 7812(c)(1), Dec. 19, 1989, 103 Stat. 2412.)

AMENDMENTS

1989—Subsec. (e)(1). Pub. L. 101–239 substituted ''built-in gain'' for ''build-in gain''.

1988—Subsec. (a). Pub. L. 100–647, § 2004(m)(1)(A), amended subsec. (a) generally, making changes in substance and structure.

Subsec. (b). Pub. L. 100–647, § 2004(m)(3), substituted ''corporations under common control'' for ''50 percent of gain corporation held'' in heading and amended text generally. Prior to amendment, text read as follows: ''Subsection (a) shall not apply if more than 50 percent of the stock (by vote and value) of the gain corporation was held throughout the 5-year period ending on the acquisition date—

''(1) in any case described in subsection (a)(1), by members of the affiliated group referred to in subsection (a)(1), or

''(2) in any case described in subsection (a)(2), by the acquiring corporation or members of such acquiring corporation's affiliated group.

For purposes of the preceding sentence, stock described in section 1504(a)(4) shall not be taken into account.''

Subsec. (c)(1)(A). Pub. L. 100–647, § 2004(m)(1)(D), substituted ''subsection (a)(1)(B)'' for ''subsection (a)(2)''.

Subsec. (c)(2). Pub. L. 100–647, § 2004(m)(1)(C), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The term 'acquisition date' means the date on which the gain corporation becomes a member of the affiliated group or, in any case described in subsection (a)(2), the date of the distribution or transfer in the liquidation or reorganization.''

Subsec. (c)(4) to (8). Pub. L. 100–647, § 2004(m)(1)(B), redesignated par. (4) as (8) and added pars. (4) to (7).

Subsecs. (e), (f). Pub. L. 100–647, § 2004(m)(2), (4), substituted ''a corporation'' for ''the gain corporation'' in subsec. (e)(2), redesignated subsec. (e) as (f), and added subsec. (e).

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE

Section 10226(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [enacting this section] shall apply in cases where the acquisition date (as defined in section 384(c)(2) of the Internal Revenue Code of 1986 as added by this section) is after December 15, 1987; except that such amendments shall not apply in the case of any transaction pursuant to—

''(1) a binding written contract in effect on or before December 15, 1987, or

''(2) a letter of intent or agreement of merger signed on or before December 15, 1987.''

ELECTION TO HAVE AMENDMENTS BY PUB. L. 100–647 NOT APPLY

Section 2004(m)(5) of Pub. L. 100–647 provided that: ''In any case where the acquisition date (as defined in section 384(c)(2) of the 1986 Code as amended by this subsection) is before March 31, 1988, the acquiring corporation may elect to have the amendments made by this subsection not apply. Such an election shall be made in such manner as the Secretary of the Treasury or his delegate shall prescribe and shall be made not later than the later of the due date (including extensions) for filing the return for the taxable year of the acquiring corporation in which the acquisition date occurs or the date 120 days after the date of the enactment of this Act [Nov. 10, 1989]. Such an election, once made, shall be irrevocable.''

PART VI—TREATMENT OF CERTAIN CORPORATE INTERESTS AS STOCK OR INDEBTEDNESS

Sec.
385. Treatment of certain interests in corporations as stock or indebtedness.

AMENDMENTS

1969—Pub. L. 91–172, title IV, § 415(a), Dec. 30, 1969, 83 Stat. 613, added part heading and analysis of sections.

§ 385. Treatment of certain interests in corporations as stock or indebtedness

(a) Authority to prescribe regulations

The Secretary is authorized to prescribe such regulations as may be necessary or appropriate to determine whether an interest in a corporation is to be treated for purposes of this title as stock or indebtedness (or as in part stock and in part indebtedness).

(b) Factors

The regulations prescribed under this section shall set forth factors which are to be taken into account in determining with respect to a particular factual situation whether a debtor-creditor relationship exists or a corporation-shareholder relationship exists. The factors so set forth in the regulations may include among other factors:

(1) whether there is a written unconditional promise to pay on demand or on a specified date a sum certain in money in return for an adequate consideration in money or money's worth, and to pay a fixed rate of interest,

(2) whether there is subordination to or preference over any indebtedness of the corporation,

(3) the ratio of debt to equity of the corporation,

(4) whether there is convertibility into the stock of the corporation, and

(5) the relationship between holdings of stock in the corporation and holdings of the interest in question.

(c) Effect of classification by issuer

(1) In general

The characterization (as of the time of issuance) by the issuer as to whether an interest in a corporation is stock or indebtedness shall be binding on such issuer and on all holders of such interest (but shall not be binding on the Secretary).

(2) Notification of inconsistent treatment

Except as provided in regulations, paragraph (1) shall not apply to any holder of an interest if such holder on his return discloses that he is treating such interest in a manner inconsistent with the characterization referred to in paragraph (1).

(3) Regulations

The Secretary is authorized to require such information as the Secretary determines to be necessary to carry out the provisions of this subsection.

(Added Pub. L. 91–172, title IV, § 415(a), Dec. 30, 1969, 83 Stat. 613; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 101–239, title VII, § 7208(a)(1), Dec. 19, 1989, 103 Stat. 2337; Pub. L. 102–486, title XIX, § 1936(a), Oct. 24, 1992, 106 Stat. 3032.)

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–486 added subsec. (c).

1989—Subsec. (a). Pub. L. 101–239 inserted ''(or as in part stock and in part indebtedness)'' before period at end.

1976—Subsec. (a). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1936(b) of Pub. L. 102–486 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to instruments issued after the date of the enactment of this Act [Oct. 24, 1992].''

REGULATIONS NOT TO BE APPLIED RETROACTIVELY

Section 7208(a)(2) of Pub. L. 101–239 provided that: ''Any regulations issued pursuant to the authority granted by the amendment made by paragraph (1) [amending this section] shall only apply with respect to instruments issued after the date on which the Secretary of the Treasury or his delegate provides public guidance as to the characterization of such instruments whether by regulation, ruling, or otherwise.''

[PART VII—REPEALED]

[§ 386. Repealed. Pub. L. 100–647, title I, § 1006(e)(8)(A), Nov. 10, 1988, 102 Stat. 3401]

Section, added Pub. L. 98–369, div. A, title I, § 75(a), July 18, 1984, 98 Stat. 594; amended Pub. L. 99–514, title XVIII, § 1805(c)(1), Oct. 22, 1986, 100 Stat. 2810, related to transfers of partnership and trust interests by corporations.

EFFECTIVE DATE OF REPEAL

Repeal effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as an Effective Date of 1988 Amendment note under section 1 of this title.

[§§ 391 to 395. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(55), Oct. 4, 1976, 90 Stat. 1773]

Section 391, acts Aug. 16, 1954, ch. 736, 68A Stat. 131; Sept. 2, 1958, Pub. L. 85–866, title I, § 22(a), 72 Stat. 1620, related to effective date of section 301 et seq. of this title.

Section 392, act Aug. 16, 1954, ch. 736, 68A Stat. 131, related to effective date of section 331 et seq. of this title.

Section 393, act Aug. 16, 1954, ch. 736, 68A Stat. 132, related to effective date of section 351 et seq. of this title.

Section 394, act Aug. 16, 1954, ch. 736, 68A Stat. 133, related to effective date of section 381 et seq. of this title.

Section 395, act Aug. 16, 1954, ch. 736, 68A Stat. 133, related to special rules for application of this subchapter.

EFFECTIVE DATE OF REPEAL

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

Subchapter D—Deferred Compensation, Etc.

Part
I. Pension, profit-sharing, stock bonus plans, etc.
II. Certain stock options.
III Rules relating to minimum funding standards and benefit limitations.[1]

AMENDMENTS

2006—Pub. L. 109–280, title I, § 113(a)(2), Aug. 17, 2006, 120 Stat. 852, added item for part III.

1964—Pub. L. 88–272, title II, § 221(d)(1), Feb. 26, 1964, 78 Stat. 75, substituted ''Certain stock options'' for ''Miscellaneous provisions'' in heading to part II.

PART I—PENSION, PROFIT-SHARING, STOCK BONUS PLANS, ETC.

Subpart
A. General rule.
B. Special rules.
C. Special rules for multiemployer plans.
D. Treatment of welfare benefit funds.
E. Treatment of transfers to retiree health accounts.[1]

AMENDMENTS

1984—Pub. L. 98–369, div. A, title V, § 511(d), July 18, 1984, 98 Stat. 862, added heading for subpart D.

1980—Pub. L. 96–364, title II, § 202(b), Sept. 26, 1980, 94 Stat. 1285, added heading for subpart C.

SUBPART A—GENERAL RULE

Sec.
401. Qualified pension, profit-sharing, and stock bonus plans.
402. Taxability of beneficiary of employees' trust.
402A. Optional treatment of elective deferrals as Roth contributions.
403. Taxation of employee annuities.
404. Deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan.
404A. Deduction for certain foreign deferred compensation plans.
[405. Repealed.]
406. Employees of foreign affiliates covered by section 3121(*l*) agreements.
407. Certain employees of domestic subsidiaries engaged in business outside the United States.
408. Individual retirement accounts.
408A. Roth IRAs.
409. Qualifications for tax credit employee stock ownership plans.
409A. Inclusion in gross income of deferred compensation under nonqualified deferred compensation plans.

AMENDMENTS

2004—Pub. L. 108–357, title VIII, § 885(c), Oct. 22, 2004, 118 Stat. 1640, added item 409A.

2001—Pub. L. 107–16, title VI, § 617(e)(2), June 7, 2001, 115 Stat. 106, added item 402A.

1997—Pub. L. 105–34, title III, § 302(e), Aug. 5, 1997, 111 Stat. 829, added item 408A.

1986—Pub. L. 99–514, title XVIII, § 1899A(70), Oct. 22, 1986, 100 Stat. 2963, substituted ''Qualifications'' for ''Qualification'' in item 409.

1984—Pub. L. 98–369, div. A, title IV, § 491(d)(54), (e)(10), July 18, 1984, 98 Stat. 852, 853, struck out items 405 and 409, which read ''Qualified bond purchase plans'' and ''Retirement bonds'', respectively, and redesignated item 409A as 409.

1983—Pub. L. 98–21, title III, § 321(e)(2)(D)(ii), Apr. 20, 1983, 97 Stat. 120, substituted ''Employees of foreign affiliates covered by section 3121(*l*) agreements'' for ''Certain employees of foreign subsidiaries'' in item 406.

1980—Pub. L. 96–603, § 2(d)(1), Dec. 28, 1980, 94 Stat. 3510, added item 404A.

Pub. L. 96–222, title I, § 101(a)(7)(L)(v)(VIII), Apr. 1, 1980, 94 Stat. 200, substituted ''tax credit employee stock ownership plans'' for ''ESOPS'' in item 409A.

1978—Pub. L. 95–600, title I, § 141(f)(8), Nov. 6, 1978, 92 Stat. 2795, added item 409A.

1974—Pub. L. 93–406, title II, § 1016(b)(1), Sept. 2, 1974, 88 Stat. 932, inserted heading ''Subpart A—General Rule'' and added analysis of subparts.

Pub. L. 93–406, title II, § 2002(h)(2), Sept. 2, 1974, 88 Stat. 970, added items 408 and 409.

1964—Pub. L. 88–272, title II, § 220(c)(1), Feb. 26, 1964, 78 Stat. 62, added items 406 and 407.

1962—Pub. L. 87–792, § 5(b), Oct. 10, 1962, 76 Stat. 827, added item 405.

§ 401. Qualified pension, profit-sharing, and stock bonus plans

(a) Requirements for qualification

A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section—

(1) if contributions are made to the trust by such employer, or employees, or both, or by another employer who is entitled to deduct his contributions under section 404(a)(3)(B) (relating to deduction for contributions to profit-sharing and stock bonus plans), or by a charitable remainder trust pursuant to a qualified

[1] Period editorially supplied.

[1] Editorially supplied. Subpart E of part I added by Pub. L. 101–508 without corresponding amendment of part analysis.

gratuitous transfer (as defined in section 664(g)(1)), for the purpose of distributing to such employees or their beneficiaries the corpus and income of the fund accumulated by the trust in accordance with such plan;

(2) if under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees or their beneficiaries (but this paragraph shall not be construed, in the case of a multiemployer plan, to prohibit the return of a contribution within 6 months after the plan administrator determines that the contribution was made by a mistake of fact or law (other than a mistake relating to whether the plan is described in section 401(a) or the trust which is part of such plan is exempt from taxation under section 501(a), or the return of any withdrawal liability payment determined to be an overpayment within 6 months of such determination).;[1]

(3) if the plan of which such trust is a part satisfies the requirements of section 410 (relating to minimum participation standards); and

(4) if the contributions or benefits provided under the plan do not discriminate in favor of highly compensated employees (within the meaning of section 414(q)). For purposes of this paragraph, there shall be excluded from consideration employees described in section 410(b)(3)(A) and (C).

(5) SPECIAL RULES RELATING TO NONDISCRIMINATION REQUIREMENTS.—

(A) SALARIED OR CLERICAL EMPLOYEES.—A classification shall not be considered discriminatory within the meaning of paragraph (4) or section 410(b)(2)(A)(i) merely because it is limited to salaried or clerical employees.

(B) CONTRIBUTIONS AND BENEFITS MAY BEAR UNIFORM RELATIONSHIP TO COMPENSATION.—A plan shall not be considered discriminatory within the meaning of paragraph (4) merely because the contributions or benefits of, or on behalf of, the employees under the plan bear a uniform relationship to the compensation (within the meaning of section 414(s)) of such employees.

(C) CERTAIN DISPARITY PERMITTED.—A plan shall not be considered discriminatory within the meaning of paragraph (4) merely because the contributions or benefits of, or on behalf of, the employees under the plan favor highly compensated employees (as defined in section 414(q)) in the manner permitted under subsection (l).

(D) INTEGRATED DEFINED BENEFIT PLAN.—

(i) IN GENERAL.—A defined benefit plan shall not be considered discriminatory within the meaning of paragraph (4) merely because the plan provides that the employer-derived accrued retirement benefit for any participant under the plan may not exceed the excess (if any) of—

(I) the participant's final pay with the employer, over

(II) the employer-derived retirement benefit created under Federal law attributable to service by the participant with the employer.

For purposes of this clause, the employer-derived retirement benefit created under Federal law shall be treated as accruing ratably over 35 years.

(ii) FINAL PAY.—For purposes of this subparagraph, the participant's final pay is the compensation (as defined in section 414(q)(4)) paid to the participant by the employer for any year—

(I) which ends during the 5-year period ending with the year in which the participant separated from service for the employer, and

(II) for which the participant's total compensation from the employer was highest.

(E) 2 OR MORE PLANS TREATED AS SINGLE PLAN.—For purposes of determining whether 2 or more plans of an employer satisfy the requirements of paragraph (4) when considered as a single plan—

(i) CONTRIBUTIONS.—If the amount of contributions on behalf of the employees allowed as a deduction under section 404 for the taxable year with respect to such plans, taken together, bears a uniform relationship to the compensation (within the meaning of section 414(s)) of such employees, the plans shall not be considered discriminatory merely because the rights of employees to, or derived from, the employer contributions under the separate plans do not become nonforfeitable at the same rate.

(ii) BENEFITS.—If the employees' rights to benefits under the separate plans do not become nonforfeitable at the same rate, but the levels of benefits provided by the separate plans satisfy the requirements of regulations prescribed by the Secretary to take account of the differences in such rates, the plans shall not be considered discriminatory merely because of the difference in such rates.

(F) SOCIAL SECURITY RETIREMENT AGE.—For purposes of testing for discrimination under paragraph (4)—

(i) the social security retirement age (as defined in section 415(b)(8)) shall be treated as a uniform retirement age, and

(ii) subsidized early retirement benefits and joint and survivor annuities shall not be treated as being unavailable to employees on the same terms merely because such benefits or annuities are based in whole or in part on an employee's social security retirement age (as so defined).

(G) GOVERNMENTAL PLANS.—Paragraphs (3) and (4) shall not apply to a governmental plan (within the meaning of section 414(d)).

(6) A plan shall be considered as meeting the requirements of paragraph (3) during the whole of any taxable year of the plan if on one

[1] So in original. Period before semicolon probably should be a closing parenthesis.

day in each quarter it satisfied such requirements.

(7) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part satisfies the requirements of section 411 (relating to minimum vesting standards).

(8) A trust forming part of a defined benefit plan shall not constitute a qualified trust under this section unless the plan provides that forfeitures must not be applied to increase the benefits any employee would otherwise receive under the plan.

(9) REQUIRED DISTRIBUTIONS.—

(A) IN GENERAL.—A trust shall not constitute a qualified trust under this subsection unless the plan provides that the entire interest of each employee—

(i) will be distributed to such employee not later than the required beginning date, or

(ii) will be distributed, beginning not later than the required beginning date, in accordance with regulations, over the life of such employee or over the lives of such employee and a designated beneficiary (or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary).

(B) REQUIRED DISTRIBUTION WHERE EMPLOYEE DIES BEFORE ENTIRE INTEREST IS DISTRIBUTED.—

(i) WHERE DISTRIBUTIONS HAVE BEGUN UNDER SUBPARAGRAPH (A)(ii).—A trust shall not constitute a qualified trust under this section unless the plan provides that if—

(I) the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii), and

(II) the employee dies before his entire interest has been distributed to him,

the remaining portion of such interest will be distributed at least as rapidly as under the method of distributions being used under subparagraph (A)(ii) as of the date of his death.

(ii) 5-YEAR RULE FOR OTHER CASES.—A trust shall not constitute a qualified trust under this section unless the plan provides that, if an employee dies before the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii), the entire interest of the employee will be distributed within 5 years after the death of such employee.

(iii) EXCEPTION TO 5-YEAR RULE FOR CERTAIN AMOUNTS PAYABLE OVER LIFE OF BENEFICIARY.—If—

(I) any portion of the employee's interest is payable to (or for the benefit of) a designated beneficiary,

(II) such portion will be distributed (in accordance with regulations) over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary), and

(III) such distributions begin not later than 1 year after the date of the employee's death or such later date as the Secretary may by regulations prescribe,

for purposes of clause (ii), the portion referred to in subclause (I) shall be treated as distributed on the date on which such distributions begin.

(iv) SPECIAL RULE FOR SURVIVING SPOUSE OF EMPLOYEE.—If the designated beneficiary referred to in clause (iii)(I) is the surviving spouse of the employee—

(I) the date on which the distributions are required to begin under clause (iii)(III) shall not be earlier than the date on which the employee would have attained age 70½, and

(II) if the surviving spouse dies before the distributions to such spouse begin, this subparagraph shall be applied as if the surviving spouse were the employee.

(C) REQUIRED BEGINNING DATE.—For purposes of this paragraph—

(i) IN GENERAL.—The term ''required beginning date'' means April 1 of the calendar year following the later of—

(I) the calendar year in which the employee attains age 70½, or

(II) the calendar year in which the employee retires.

(ii) EXCEPTION.—Subclause (II) of clause (i) shall not apply—

(I) except as provided in section 409(d), in the case of an employee who is a 5-percent owner (as defined in section 416) with respect to the plan year ending in the calendar year in which the employee attains age 70½, or

(II) for purposes of section 408(a)(6) or (b)(3).

(iii) ACTUARIAL ADJUSTMENT.—In the case of an employee to whom clause (i)(II) applies who retires in a calendar year after the calendar year in which the employee attains age 70½, the employee's accrued benefit shall be actuarially increased to take into account the period after age 70½ in which the employee was not receiving any benefits under the plan.

(iv) EXCEPTION FOR GOVERNMENTAL AND CHURCH PLANS.—Clauses (ii) and (iii) shall not apply in the case of a governmental plan or church plan. For purposes of this clause, the term ''church plan'' means a plan maintained by a church for church employees, and the term ''church'' means any church (as defined in section 3121(w)(3)(A)) or qualified church-controlled organization (as defined in section 3121(w)(3)(B)).

(D) LIFE EXPECTANCY.—For purposes of this paragraph, the life expectancy of an employee and the employee's spouse (other than in the case of a life annuity) may be redetermined but not more frequently than annually.

(E) DESIGNATED BENEFICIARY.—For purposes of this paragraph, the term ''designated beneficiary'' means any individual designated as a beneficiary by the employee.

(F) TREATMENT OF PAYMENTS TO CHILDREN.—Under regulations prescribed by the

Secretary, for purposes of this paragraph, any amount paid to a child shall be treated as if it had been paid to the surviving spouse if such amount will become payable to the surviving spouse upon such child reaching majority (or other designated event permitted under regulations).

(G) TREATMENT OF INCIDENTAL DEATH BENEFIT DISTRIBUTIONS.—For purposes of this title, any distribution required under the incidental death benefit requirements of this subsection shall be treated as a distribution required under this paragraph.

(H) TEMPORARY WAIVER OF MINIMUM REQUIRED DISTRIBUTION.—

(i) IN GENERAL.—The requirements of this paragraph shall not apply for calendar year 2009 to—

(I) a defined contribution plan which is described in this subsection or in section 403(a) or 403(b),

(II) a defined contribution plan which is an eligible deferred compensation plan described in section 457(b) but only if such plan is maintained by an employer described in section 457(e)(1)(A), or

(III) an individual retirement plan.

(ii) SPECIAL RULES REGARDING WAIVER PERIOD.—For purposes of this paragraph—

(I) the required beginning date with respect to any individual shall be determined without regard to this subparagraph for purposes of applying this paragraph for calendar years after 2009, and

(II) if clause (ii) of subparagraph (B) applies, the 5-year period described in such clause shall be determined without regard to calendar year 2009.

(10) OTHER REQUIREMENTS.—

(A) PLANS BENEFITING OWNER-EMPLOYEES.—In the case of any plan which provides contributions or benefits for employees some or all of whom are owner-employees (as defined in subsection (c)(3)), a trust forming part of such plan shall constitute a qualified trust under this section only if the requirements of subsection (d) are also met.

(B) TOP-HEAVY PLANS.—

(i) IN GENERAL.—In the case of any top-heavy plan, a trust forming part of such plan shall constitute a qualified trust under this section only if the requirements of section 416 are met.

(ii) PLANS WHICH MAY BECOME TOP-HEAVY.—Except to the extent provided in regulations, a trust forming part of a plan (whether or not a top-heavy plan) shall constitute a qualified trust under this section only if such plan contains provisions—

(I) which will take effect if such plan becomes a top-heavy plan, and

(II) which meet the requirements of section 416.

(iii) EXEMPTION FOR GOVERNMENTAL PLANS.—This subparagraph shall not apply to any governmental plan.

(11) REQUIREMENT OF JOINT AND SURVIVOR ANNUITY AND PRERETIREMENT SURVIVOR ANNUITY.—

(A) IN GENERAL.—In the case of any plan to which this paragraph applies, except as provided in section 417, a trust forming part of such plan shall not constitute a qualified trust under this section unless—

(i) in the case of a vested participant who does not die before the annuity starting date, the accrued benefit payable to such participant is provided in the form of a qualified joint and survivor annuity, and

(ii) in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a qualified preretirement survivor annuity is provided to the surviving spouse of such participant.

(B) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to—

(i) any defined benefit plan,

(ii) any defined contribution plan which is subject to the funding standards of section 412, and

(iii) any participant under any other defined contribution plan unless—

(I) such plan provides that the participant's nonforfeitable accrued benefit (reduced by any security interest held by the plan by reason of a loan outstanding to such participant) is payable in full, on the death of the participant, to the participant's surviving spouse (or, if there is no surviving spouse or the surviving spouse consents in the manner required under section 417(a)(2), to a designated beneficiary),

(II) such participant does not elect a payment of benefits in the form of a life annuity, and

(III) with respect to such participant, such plan is not a direct or indirect transferee (in a transfer after December 31, 1984) of a plan which is described in clause (i) or (ii) or to which this clause applied with respect to the participant.

Clause (iii)(III) shall apply only with respect to the transferred assets (and income therefrom) if the plan separately accounts for such assets and any income therefrom.

(C) EXCEPTION FOR CERTAIN ESOP BENEFITS.—

(i) IN GENERAL.—In the case of—

(I) a tax credit employee stock ownership plan (as defined in section 409(a)), or

(II) an employee stock ownership plan (as defined in section 4975(e)(7)),

subparagraph (A) shall not apply to that portion of the employee's accrued benefit to which the requirements of section 409(h) apply.

(ii) NONFORFEITABLE BENEFIT MUST BE PAID IN FULL, ETC.—In the case of any participant, clause (i) shall apply only if the requirements of subclauses (I), (II), and (III) of subparagraph (B)(iii) are met with respect to such participant.

(D) SPECIAL RULE WHERE PARTICIPANT AND SPOUSE MARRIED LESS THAN 1 YEAR.—A plan shall not be treated as failing to meet the requirements of subparagraphs (B)(iii) or (C)

merely because the plan provides that benefits will not be payable to the surviving spouse of the participant unless the participant and such spouse had been married throughout the 1-year period ending on the earlier of the participant's annuity starting date or the date of the participant's death.

(E) EXCEPTION FOR PLANS DESCRIBED IN SECTION 404(c).—This paragraph shall not apply to a plan which the Secretary has determined is a plan described in section 404(c) (or a continuation thereof) in which participation is substantially limited to individuals who, before January 1, 1976, ceased employment covered by the plan.

(F) CROSS REFERENCE.—For—

(i) provisions under which participants may elect to waive the requirements of this paragraph, and

(ii) other definitions and special rules for purposes of this paragraph,

see section 417.

(12) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that in the case of any merger or consolidation with, or transfer of assets or liabilities to, any other plan after September 2, 1974, each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated). The preceding sentence does not apply to any multiemployer plan with respect to any transaction to the extent that participants either before or after the transaction are covered under a multiemployer plan to which title IV of the Employee Retirement Income Security Act of 1974 applies.

(13) ASSIGNMENT AND ALIENATION.—

(A) IN GENERAL.—A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that benefits provided under the plan may not be assigned or alienated. For purposes of the preceding sentence, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment made by any participant who is receiving benefits under the plan unless the assignment or alienation is made for purposes of defraying plan administration costs. For purposes of this paragraph a loan made to a participant or beneficiary shall not be treated as an assignment or alienation if such loan is secured by the participant's accrued nonforfeitable benefit and is exempt from the tax imposed by section 4975 (relating to tax on prohibited transactions) by reason of section 4975(d)(1). This paragraph shall take effect on January 1, 1976 and shall not apply to assignments which were irrevocable on September 2, 1974.

(B) SPECIAL RULES FOR DOMESTIC RELATIONS ORDERS.—Subparagraph (A) shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that subparagraph (A) shall not apply if the order is determined to be a qualified domestic relations order.

(C) SPECIAL RULE FOR CERTAIN JUDGMENTS AND SETTLEMENTS.—Subparagraph (A) shall not apply to any offset of a participant's benefits provided under a plan against an amount that the participant is ordered or required to pay to the plan if—

(i) the order or requirement to pay arises—

(I) under a judgment of conviction for a crime involving such plan,

(II) under a civil judgment (including a consent order or decree) entered by a court in an action brought in connection with a violation (or alleged violation) of part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, or

(III) pursuant to a settlement agreement between the Secretary of Labor and the participant, or a settlement agreement between the Pension Benefit Guaranty Corporation and the participant, in connection with a violation (or alleged violation) of part 4 of such subtitle by a fiduciary or any other person,

(ii) the judgment, order, decree, or settlement agreement expressly provides for the offset of all or part of the amount ordered or required to be paid to the plan against the participant's benefits provided under the plan, and

(iii) in a case in which the survivor annuity requirements of section 401(a)(11) apply with respect to distributions from the plan to the participant, if the participant has a spouse at the time at which the offset is to be made—

(I) either such spouse has consented in writing to such offset and such consent is witnessed by a notary public or representative of the plan (or it is established to the satisfaction of a plan representative that such consent may not be obtained by reason of circumstances described in section 417(a)(2)(B)), or an election to waive the right of the spouse to either a qualified joint and survivor annuity or a qualified preretirement survivor annuity is in effect in accordance with the requirements of section 417(a),

(II) such spouse is ordered or required in such judgment, order, decree, or settlement to pay an amount to the plan in connection with a violation of part 4 of such subtitle, or

(III) in such judgment, order, decree, or settlement, such spouse retains the right to receive the survivor annuity under a qualified joint and survivor annuity provided pursuant to section 401(a)(11)(A)(i) and under a qualified preretirement survivor annuity provided pursuant to section 401(a)(11)(A)(ii), determined in accordance with subparagraph (D).

A plan shall not be treated as failing to meet the requirements of this subsection, subsection (k), section 403(b), or section 409(d) solely by reason of an offset described in this subparagraph.

(D) SURVIVOR ANNUITY.—

(i) IN GENERAL.—The survivor annuity described in subparagraph (C)(iii)(III) shall be determined as if—

(I) the participant terminated employment on the date of the offset,

(II) there was no offset,

(III) the plan permitted commencement of benefits only on or after normal retirement age,

(IV) the plan provided only the minimum-required qualified joint and survivor annuity, and

(V) the amount of the qualified preretirement survivor annuity under the plan is equal to the amount of the survivor annuity payable under the minimum-required qualified joint and survivor annuity.

(ii) DEFINITION.—For purposes of this subparagraph, the term ''minimum-required qualified joint and survivor annuity'' means the qualified joint and survivor annuity which is the actuarial equivalent of the participant's accrued benefit (within the meaning of section 411(a)(7)) and under which the survivor annuity is 50 percent of the amount of the annuity which is payable during the joint lives of the participant and the spouse.

(14) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that, unless the participant otherwise elects, the payment of benefits under the plan to the participant will begin not later than the 60th day after the latest of the close of the plan year in which—

(A) the date on which the participant attains the earlier of age 65 or the normal retirement age specified under the plan,

(B) occurs the 10th anniversary of the year in which the participant commenced participation in the plan, or

(C) the participant terminates his service with the employer.

In the case of a plan which provides for the payment of an early retirement benefit, a trust forming a part of such plan shall not constitute a qualified trust under this section unless a participant who satisfied the service requirements for such early retirement benefit, but separated from the service (with any nonforfeitable right to an accrued benefit) before satisfying the age requirement for such early retirement benefit, is entitled upon satisfaction of such age requirement to receive a benefit not less than the benefit to which he would be entitled at the normal retirement age, actuarially, reduced under regulations prescribed by the Secretary.

(15) a[2] trust shall not constitute a qualified trust under this section unless under the plan of which such trust is a part—

(A) in the case of a participant or beneficiary who is receiving benefits under such plan, or

(B) in the case of a participant who is separated from the service and who has nonforfeitable rights to benefits,

such benefits are not decreased by reason of any increase in the benefit levels payable under title II of the Social Security Act or any increase in the wage base under such title II, if such increase takes place after September 2, 1974, or (if later) the earlier of the date of first receipt of such benefits or the date of such separation, as the case may be.

(16) A trust shall not constitute a qualified trust under this section if the plan of which such trust is a part provides for benefits or contributions which exceed the limitations of section 415.

(17) COMPENSATION LIMIT.—

(A) IN GENERAL.—A trust shall not constitute a qualified trust under this section unless, under the plan of which such trust is a part, the annual compensation of each employee taken into account under the plan for any year does not exceed $200,000.

(B) COST-OF-LIVING ADJUSTMENT.—The Secretary shall adjust annually the $200,000 amount in subparagraph (A) for increases in the cost-of-living at the same time and in the same manner as adjustments under section 415(d); except that the base period shall be the calendar quarter beginning July 1, 2001, and any increase which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000.

[(18) Repealed. Pub. L. 97–248, title II, § 237(b), Sept. 3, 1982, 96 Stat. 511.]

(19) A trust shall not constitute a qualified trust under this section if under the plan of which such trust is a part any part of a participant's accrued benefit derived from employer contributions (whether or not otherwise nonforfeitable), is forfeitable solely because of withdrawal by such participant of any amount attributable to the benefit derived from contributions made by such participant. The preceding sentence shall not apply to the accrued benefit of any participant unless, at the time of such withdrawal, such participant has a nonforfeitable right to at least 50 percent of such accrued benefit (as determined under section 411). The first sentence of this paragraph shall not apply to the extent that an accrued benefit is permitted to be forfeited in accordance with section 411(a)(3)(D)(iii) (relating to proportional forfeitures of benefits accrued before September 2, 1974, in the event of withdrawal of certain mandatory contributions).

(20) A trust forming part of a pension plan shall not be treated as failing to constitute a qualified trust under this section merely because the pension plan of which such trust is a part makes 1 or more distributions within 1 taxable year to a distributee on account of a termination of the plan of which the trust is a part, or in the case of a profit-sharing or stock bonus plan, a complete discontinuance of contributions under such plan. This paragraph

[2] So in original. Probably should be capitalized.

shall not apply to a defined benefit plan unless the employer maintaining such plan files a notice with the Pension Benefit Guaranty Corporation (at the time and in the manner prescribed by the Pension Benefit Guaranty Corporation) notifying the Corporation of such payment or distribution and the Corporation has approved such payment or distribution or, within 90 days after the date on which such notice was filed, has failed to disapprove such payment or distribution. For purposes of this paragraph, rules similar to the rules of section 402(a)(6)(B) (as in effect before its repeal by section 521 of the Unemployment Compensation Amendments of 1992) shall apply.

[(21) Repealed. Pub. L. 99–514, title XI, § 1171(b)(5), Oct. 22, 1986, 100 Stat. 2513.]

(22) If a defined contribution plan (other than a profit-sharing plan)—

(A) is established by an employer whose stock is not readily tradable on an established market, and

(B) after acquiring securities of the employer, more than 10 percent of the total assets of the plan are securities of the employer,

any trust forming part of such plan shall not constitute a qualified trust under this section unless the plan meets the requirements of subsection (e) of section 409. The requirements of subsection (e) of section 409 shall not apply to any employees of an employer who are participants in any defined contribution plan established and maintained by such employer if the stock of such employer is not readily tradable on an established market and the trade or business of such employer consists of publishing on a regular basis a newspaper for general circulation. For purposes of the preceding sentence, subsections (b), (c), (m), and (*o*) of section 414 shall not apply except for determining whether stock of the employer is not readily tradable on an established market.

(23) A stock bonus plan shall not be treated as meeting the requirements of this section unless such plan meets the requirements of subsections (h) and (*o*) of section 409, except that in applying section 409(h) for purposes of this paragraph, the term ''employer securities'' shall include any securities of the employer held by the plan.

(24) Any group trust which otherwise meets the requirements of this section shall not be treated as not meeting such requirements on account of the participation or inclusion in such trust of the moneys of any plan or governmental unit described in section 818(a)(6).

(25) REQUIREMENT THAT ACTUARIAL ASSUMPTIONS BE SPECIFIED.—A defined benefit plan shall not be treated as providing definitely determinable benefits unless, whenever the amount of any benefit is to be determined on the basis of actuarial assumptions, such assumptions are specified in the plan in a way which precludes employer discretion.

(26) ADDITIONAL PARTICIPATION REQUIREMENTS.—

(A) IN GENERAL.—In the case of a trust which is a part of a defined benefit plan, such trust shall not constitute a qualified trust under this subsection unless on each day of the plan year such trust benefits at least the lesser of—

(i) 50 employees of the employer, or

(ii) the greater of—

(I) 40 percent of all employees of the employer, or

(II) 2 employees (or if there is only 1 employee, such employee).

(B) TREATMENT OF EXCLUDABLE EMPLOYEES.—

(i) IN GENERAL.—A plan may exclude from consideration under this paragraph employees described in paragraphs (3) and (4)(A) of section 410(b).

(ii) SEPARATE APPLICATION FOR CERTAIN EXCLUDABLE EMPLOYEES.—If employees described in section 410(b)(4)(B) are covered under a plan which meets the requirements of subparagraph (A) separately with respect to such employees, such employees may be excluded from consideration in determining whether any plan of the employer meets such requirements if—

(I) the benefits for such employees are provided under the same plan as benefits for other employees,

(II) the benefits provided to such employees are not greater than comparable benefits provided to other employees under the plan, and

(III) no highly compensated employee (within the meaning of section 414(q)) is included in the group of such employees for more than 1 year.

(C) SPECIAL RULE FOR COLLECTIVE BARGAINING UNITS.—Except to the extent provided in regulations, a plan covering only employees described in section 410(b)(3)(A) may exclude from consideration any employees who are not included in the unit or units in which the covered employees are included.

(D) PARAGRAPH NOT TO APPLY TO MULTIEMPLOYER PLANS.—Except to the extent provided in regulations, this paragraph shall not apply to employees in a multiemployer plan (within the meaning of section 414(f)) who are covered by collective bargaining agreements.

(E) SPECIAL RULE FOR CERTAIN DISPOSITIONS OR ACQUISITIONS.—Rules similar to the rules of section 410(b)(6)(C) shall apply for purposes of this paragraph.

(F) SEPARATE LINES OF BUSINESS.—At the election of the employer and with the consent of the Secretary, this paragraph may be applied separately with respect to each separate line of business of the employer. For purposes of this paragraph, the term ''separate line of business'' has the meaning given such term by section 414(r) (without regard to paragraph (2)(A) or (7) thereof).

(G) EXCEPTION FOR GOVERNMENTAL PLANS.—This paragraph shall not apply to a governmental plan (within the meaning of section 414(d)).

(H) REGULATIONS.—The Secretary may by regulation provide that any separate benefit structure, any separate trust, or any other separate arrangement is to be treated as a separate plan for purposes of applying this paragraph.

(27) DETERMINATIONS AS TO PROFIT-SHARING PLANS.—

(A) CONTRIBUTIONS NEED NOT BE BASED ON PROFITS.—The determination of whether the plan under which any contributions are made is a profit-sharing plan shall be made without regard to current or accumulated profits of the employer and without regard to whether the employer is a tax-exempt organization.

(B) PLAN MUST DESIGNATE TYPE.—In the case of a plan which is intended to be a money purchase pension plan or a profit-sharing plan, a trust forming part of such plan shall not constitute a qualified trust under this subsection unless the plan designates such intent at such time and in such manner as the Secretary may prescribe.

(28) ADDITIONAL REQUIREMENTS RELATING TO EMPLOYEE STOCK OWNERSHIP PLANS.—

(A) IN GENERAL.—In the case of a trust which is part of an employee stock ownership plan (within the meaning of section 4975(e)(7)) or a plan which meets the requirements of section 409(a), such trust shall not constitute a qualified trust under this section unless such plan meets the requirements of subparagraphs (B) and (C).

(B) DIVERSIFICATION OF INVESTMENTS.—

(i) IN GENERAL.—A plan meets the requirements of this subparagraph if each qualified participant in the plan may elect within 90 days after the close of each plan year in the qualified election period to direct the plan as to the investment of at least 25 percent of the participant's account in the plan (to the extent such portion exceeds the amount to which a prior election under this subparagraph applies). In the case of the election year in which the participant can make his last election, the preceding sentence shall be applied by substituting ''50 percent'' for ''25 percent''.

(ii) METHOD OF MEETING REQUIREMENTS.—A plan shall be treated as meeting the requirements of clause (i) if—

(I) the portion of the participant's account covered by the election under clause (i) is distributed within 90 days after the period during which the election may be made, or

(II) the plan offers at least 3 investment options (not inconsistent with regulations prescribed by the Secretary) to each participant making an election under clause (i) and within 90 days after the period during which the election may be made, the plan invests the portion of the participant's account covered by the election in accordance with such election.

(iii) QUALIFIED PARTICIPANT.—For purposes of this subparagraph, the term ''qualified participant'' means any employee who has completed at least 10 years of participation under the plan and has attained age 55.

(iv) QUALIFIED ELECTION PERIOD.—For purposes of this subparagraph, the term ''qualified election period'' means the 6-plan-year period beginning with the later of—

(I) the 1st plan year in which the individual first became a qualified participant, or

(II) the 1st plan year beginning after December 31, 1986.

For purposes of the preceding sentence, an employer may elect to treat an individual first becoming a qualified participant in the 1st plan year beginning in 1987 as having become a participant in the 1st plan year beginning in 1988.

(v) EXCEPTION.—This subparagraph shall not apply to an applicable defined contribution plan (as defined in paragraph (35)(E)).

(C) USE OF INDEPENDENT APPRAISER.—A plan meets the requirements of this subparagraph if all valuations of employer securities which are not readily tradable on an established securities market with respect to activities carried on by the plan are by an independent appraiser. For purposes of the preceding sentence, the term ''independent appraiser'' means any appraiser meeting requirements similar to the requirements of the regulations prescribed under section 170(a)(1).

(29) BENEFIT LIMITATIONS.—In the case of a defined benefit plan (other than a multiemployer plan) to which the requirements of section 412 apply, the trust of which the plan is a part shall not constitute a qualified trust under this subsection unless the plan meets the requirements of section 436.

(30) LIMITATIONS ON ELECTIVE DEFERRALS.—In the case of a trust which is part of a plan under which elective deferrals (within the meaning of section 402(g)(3)) may be made with respect to any individual during a calendar year, such trust shall not constitute a qualified trust under this subsection unless the plan provides that the amount of such deferrals under such plan and all other plans, contracts, or arrangements of an employer maintaining such plan may not exceed the amount of the limitation in effect under section 402(g)(1)(A) for taxable years beginning in such calendar year.

(31) DIRECT TRANSFER OF ELIGIBLE ROLLOVER DISTRIBUTIONS.—

(A) IN GENERAL.—A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that if the distributee of any eligible rollover distribution—

(i) elects to have such distribution paid directly to an eligible retirement plan, and

(ii) specifies the eligible retirement plan to which such distribution is to be paid (in such form and at such time as the plan administrator may prescribe),

such distribution shall be made in the form of a direct trustee-to-trustee transfer to the eligible retirement plan so specified.

(B) CERTAIN MANDATORY DISTRIBUTIONS.—

(i) IN GENERAL.—In case of a trust which is part of an eligible plan, such trust shall

not constitute a qualified trust under this section unless the plan of which such trust is a part provides that if—

(I) a distribution described in clause (ii) in excess of $1,000 is made, and

(II) the distributee does not make an election under subparagraph (A) and does not elect to receive the distribution directly,

the plan administrator shall make such transfer to an individual retirement plan of a designated trustee or issuer and shall notify the distributee in writing (either separately or as part of the notice under section 402(f)) that the distribution may be transferred to another individual retirement plan.

(ii) ELIGIBLE PLAN.—For purposes of clause (i), the term ''eligible plan'' means a plan which provides that any nonforfeitable accrued benefit for which the present value (as determined under section 411(a)(11)) does not exceed $5,000 shall be immediately distributed to the participant.

(C) LIMITATION.—Subparagraphs (A) and (B) shall apply only to the extent that the eligible rollover distribution would be includible in gross income if not transferred as provided in subparagraph (A) (determined without regard to sections 402(c), 403(a)(4), 403(b)(8), and 457(e)(16)). The preceding sentence shall not apply to such distribution if the plan to which such distribution is transferred—

(i) is a qualified trust which is part of a plan which is a defined contribution plan and agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible, or

(ii) is an eligible retirement plan described in clause (i) or (ii) of section 402(c)(8)(B).

(D) ELIGIBLE ROLLOVER DISTRIBUTION.—For purposes of this paragraph, the term ''eligible rollover distribution'' has the meaning given such term by section 402(f)(2)(A).

(E) ELIGIBLE RETIREMENT PLAN.—For purposes of this paragraph, the term ''eligible retirement plan'' has the meaning given such term by section 402(c)(8)(B), except that a qualified trust shall be considered an eligible retirement plan only if it is a defined contribution plan, the terms of which permit the acceptance of rollover distributions.

(32) TREATMENT OF FAILURE TO MAKE CERTAIN PAYMENTS IF PLAN HAS LIQUIDITY SHORTFALL.—

(A) IN GENERAL.—A trust forming part of a pension plan to which section section[3] 430(j)(4) applies shall not be treated as failing to constitute a qualified trust under this section merely because such plan ceases to make any payment described in subparagraph (B) during any period that such plan has a liquidity shortfall (as defined in section section[3] 430(j)(4)).

(B) PAYMENTS DESCRIBED.—A payment is described in this subparagraph if such payment is—

(i) any payment, in excess of the monthly amount paid under a single life annuity (plus any social security supplements described in the last sentence of section 411(a)(9)), to a participant or beneficiary whose annuity starting date (as defined in section 417(f)(2)) occurs during the period referred to in subparagraph (A),

(ii) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits, and

(iii) any other payment specified by the Secretary by regulations.

(C) PERIOD OF SHORTFALL.—For purposes of this paragraph, a plan has a liquidity shortfall during the period that there is an underpayment of an installment under section 430(j)(3) by reason of section 430(j)(4)(A) thereof.[4]

(33) PROHIBITION ON BENEFIT INCREASES WHILE SPONSOR IS IN BANKRUPTCY.—

(A) IN GENERAL.—A trust which is part of a plan to which this paragraph applies shall not constitute a qualified trust under this section if an amendment to such plan is adopted while the employer is a debtor in a case under title 11, United States Code, or similar Federal or State law, if such amendment increases liabilities of the plan by reason of—

(i) any increase in benefits,

(ii) any change in the accrual of benefits, or

(iii) any change in the rate at which benefits become nonforfeitable under the plan,

with respect to employees of the debtor, and such amendment is effective prior to the effective date of such employer's plan of reorganization.

(B) EXCEPTIONS.—This paragraph shall not apply to any plan amendment if—

(i) the plan, were such amendment to take effect, would have a funding target attainment percentage (as defined in section 430(d)(2)) of 100 percent or more,

(ii) the Secretary determines that such amendment is reasonable and provides for only de minimis increases in the liabilities of the plan with respect to employees of the debtor,

(iii) such amendment only repeals an amendment described in section 412(d)(2), or

(iv) such amendment is required as a condition of qualification under this part.

(C) PLANS TO WHICH THIS PARAGRAPH APPLIES.—This paragraph shall apply only to plans (other than multiemployer plans) covered under section 4021 of the Employee Retirement Income Security Act of 1974.

(D) EMPLOYER.—For purposes of this paragraph, the term ''employer'' means the em-

[3] So in original.

[4] So in original. The ''thereof'' probably should not appear.

ployer referred to in section 412(b)(1), without regard to section 412(b)(2).

(34) BENEFITS OF MISSING PARTICIPANTS ON PLAN TERMINATION.—In the case of a plan covered by title IV of the Employee Retirement Income Security Act of 1974, a trust forming part of such plan shall not be treated as failing to constitute a qualified trust under this section merely because the pension plan of which such trust is a part, upon its termination, transfers benefits of missing participants to the Pension Benefit Guaranty Corporation in accordance with section 4050 of such Act.

(35) DIVERSIFICATION REQUIREMENTS FOR CERTAIN DEFINED CONTRIBUTION PLANS.—

(A) IN GENERAL.—A trust which is part of an applicable defined contribution plan shall not be treated as a qualified trust unless the plan meets the diversification requirements of subparagraphs (B), (C), and (D).

(B) EMPLOYEE CONTRIBUTIONS AND ELECTIVE DEFERRALS INVESTED IN EMPLOYER SECURITIES.—In the case of the portion of an applicable individual's account attributable to employee contributions and elective deferrals which is invested in employer securities, a plan meets the requirements of this subparagraph if the applicable individual may elect to direct the plan to divest any such securities and to reinvest an equivalent amount in other investment options meeting the requirements of subparagraph (D).

(C) EMPLOYER CONTRIBUTIONS INVESTED IN EMPLOYER SECURITIES.—In the case of the portion of the account attributable to employer contributions other than elective deferrals which is invested in employer securities, a plan meets the requirements of this subparagraph if each applicable individual who—

(i) is a participant who has completed at least 3 years of service, or

(ii) is a beneficiary of a participant described in clause (i) or of a deceased participant,

may elect to direct the plan to divest any such securities and to reinvest an equivalent amount in other investment options meeting the requirements of subparagraph (D).

(D) INVESTMENT OPTIONS.—

(i) IN GENERAL.—The requirements of this subparagraph are met if the plan offers not less than 3 investment options, other than employer securities, to which an applicable individual may direct the proceeds from the divestment of employer securities pursuant to this paragraph, each of which is diversified and has materially different risk and return characteristics.

(ii) TREATMENT OF CERTAIN RESTRICTIONS AND CONDITIONS.—

(I) TIME FOR MAKING INVESTMENT CHOICES.—A plan shall not be treated as failing to meet the requirements of this subparagraph merely because the plan limits the time for divestment and reinvestment to periodic, reasonable opportunities occurring no less frequently than quarterly.

(II) CERTAIN RESTRICTIONS AND CONDITIONS NOT ALLOWED.—Except as provided in regulations, a plan shall not meet the requirements of this subparagraph if the plan imposes restrictions or conditions with respect to the investment of employer securities which are not imposed on the investment of other assets of the plan. This subclause shall not apply to any restrictions or conditions imposed by reason of the application of securities laws.

(E) APPLICABLE DEFINED CONTRIBUTION PLAN.—For purposes of this paragraph—

(i) IN GENERAL.—The term ''applicable defined contribution plan'' means any defined contribution plan which holds any publicly traded employer securities.

(ii) EXCEPTION FOR CERTAIN ESOPS.—Such term does not include an employee stock ownership plan if—

(I) there are no contributions to such plan (or earnings thereunder) which are held within such plan and are subject to subsection (k) or (m), and

(II) such plan is a separate plan for purposes of section 414(*l*) with respect to any other defined benefit plan or defined contribution plan maintained by the same employer or employers.

(iii) EXCEPTION FOR ONE PARTICIPANT PLANS.—Such term does not include a one-participant retirement plan.

(iv) ONE-PARTICIPANT RETIREMENT PLAN.—For purposes of clause (iii), the term ''one-participant retirement plan'' means a retirement plan that on the first day of the plan year—

(I) covered only one individual (or the individual and the individual's spouse) and the individual (or the individual and the individual's spouse) owned 100 percent of the plan sponsor (whether or not incorporated), or

(II) covered only one or more partners (or partners and their spouses) in the plan sponsor.

(F) CERTAIN PLANS TREATED AS HOLDING PUBLICLY TRADED EMPLOYER SECURITIES.—

(i) IN GENERAL.—Except as provided in regulations or in clause (ii), a plan holding employer securities which are not publicly traded employer securities shall be treated as holding publicly traded employer securities if any employer corporation, or any member of a controlled group of corporations which includes such employer corporation, has issued a class of stock which is a publicly traded employer security.

(ii) EXCEPTION FOR CERTAIN CONTROLLED GROUPS WITH PUBLICLY TRADED SECURITIES.—Clause (i) shall not apply to a plan if—

(I) no employer corporation, or parent corporation of an employer corporation, has issued any publicly traded employer security, and

(II) no employer corporation, or parent corporation of an employer corporation, has issued any special class of stock

which grants particular rights to, or bears particular risks for, the holder or issuer with respect to any corporation described in clause (i) which has issued any publicly traded employer security.

(iii) DEFINITIONS.—For purposes of this subparagraph, the term—

(I) ''controlled group of corporations'' has the meaning given such term by section 1563(a), except that ''50 percent'' shall be substituted for ''80 percent'' each place it appears,

(II) ''employer corporation'' means a corporation which is an employer maintaining the plan, and

(III) ''parent corporation'' has the meaning given such term by section 424(e).

(G) OTHER DEFINITIONS.—For purposes of this paragraph—

(i) APPLICABLE INDIVIDUAL.—The term ''applicable individual'' means—

(I) any participant in the plan, and

(II) any beneficiary who has an account under the plan with respect to which the beneficiary is entitled to exercise the rights of a participant.

(ii) ELECTIVE DEFERRAL.—The term ''elective deferral'' means an employer contribution described in section 402(g)(3)(A).

(iii) EMPLOYER SECURITY.—The term ''employer security'' has the meaning given such term by section 407(d)(1) of the Employee Retirement Income Security Act of 1974.

(iv) EMPLOYEE STOCK OWNERSHIP PLAN.—The term ''employee stock ownership plan'' has the meaning given such term by section 4975(e)(7).

(v) PUBLICLY TRADED EMPLOYER SECURITIES.—The term ''publicly traded employer securities'' means employer securities which are readily tradable on an established securities market.

(vi) YEAR OF SERVICE.—The term ''year of service'' has the meaning given such term by section 411(a)(5).

(H) TRANSITION RULE FOR SECURITIES ATTRIBUTABLE TO EMPLOYER CONTRIBUTIONS.—

(i) RULES PHASED IN OVER 3 YEARS.—

(I) IN GENERAL.—In the case of the portion of an account to which subparagraph (C) applies and which consists of employer securities acquired in a plan year beginning before January 1, 2007, subparagraph (C) shall only apply to the applicable percentage of such securities. This subparagraph shall be applied separately with respect to each class of securities.

(II) EXCEPTION FOR CERTAIN PARTICIPANTS AGED 55 OR OVER.—Subclause (I) shall not apply to an applicable individual who is a participant who has attained age 55 and completed at least 3 years of service before the first plan year beginning after December 31, 2005.

(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage shall be determined as follows:

Plan year to which subparagraph (C) applies:	The applicable percentage is:
1st	33
2d	66
3d and following	100.

(36) DISTRIBUTIONS DURING WORKING RETIREMENT.—A trust forming part of a pension plan shall not be treated as failing to constitute a qualified trust under this section solely because the plan provides that a distribution may be made from such trust to an employee who has attained age 62 and who is not separated from employment at the time of such distribution.

(37) DEATH BENEFITS UNDER USERRA-QUALIFIED ACTIVE MILITARY SERVICE.—A trust shall not constitute a qualified trust unless the plan provides that, in the case of a participant who dies while performing qualified military service (as defined in section 414(u)), the survivors of the participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the plan had the participant resumed and then terminated employment on account of death.

Paragraphs (11), (12), (13), (14), (15), (19), and (20) shall apply only in the case of a plan to which section 411 (relating to minimum vesting standards) applies without regard to subsection (e)(2) of such section.

(b) Certain retroactive changes in plan

A stock bonus, pension, profit-sharing, or annuity plan shall be considered as satisfying the requirements of subsection (a) for the period beginning with the date on which it was put into effect, or for the period beginning with the earlier of the date on which there was adopted or put into effect any amendment which caused the plan to fail to satisfy such requirements, and ending with the time prescribed by law for filing the return of the employer for his taxable year in which such plan or amendment was adopted (including extensions thereof) or such later time as the Secretary may designate, if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes for the whole of such period.

(c) Definitions and rules relating to self-employed individuals and owner-employees

For purposes of this section—

(1) Self-employed individual treated as employee

(A) In general

The term ''employee'' includes, for any taxable year, an individual who is a self-employed individual for such taxable year.

(B) Self-employed individual

The term ''self-employed individual'' means, with respect to any taxable year, an individual who has earned income (as defined in paragraph (2)) for such taxable year. To the extent provided in regulations prescribed by the Secretary, such term also includes, for any taxable year—

(i) an individual who would be a self-employed individual within the meaning of

the preceding sentence but for the fact that the trade or business carried on by such individual did not have net profits for the taxable year, and

(ii) an individual who has been a self-employed individual within the meaning of the preceding sentence for any prior taxable year.

(2) Earned income

(A) In general

The term ''earned income'' means the net earnings from self-employment (as defined in section 1402(a)), but such net earnings shall be determined—

(i) only with respect to a trade or business in which personal services of the taxpayer are a material income-producing factor,

(ii) without regard to paragraphs (4) and (5) of section 1402(c),

(iii) in the case of any individual who is treated as an employee under sections[5] 3121(d)(3)(A), (C), or (D), without regard to paragraph (2) of section 1402(c),

(iv) without regard to items which are not included in gross income for purposes of this chapter, and the deductions properly allocable to or chargeable against such items,

(v) with regard to the deductions allowed by section 404 to the taxpayer, and

(vi) with regard to the deduction allowed to the taxpayer by section 164(f).

For purposes of this subparagraph, section 1402, as in effect for a taxable year ending on December 31, 1962, shall be treated as having been in effect for all taxable years ending before such date. For purposes of this part only (other than sections 419 and 419A), this subparagraph shall be applied as if the term ''trade or business'' for purposes of section 1402 included service described in section 1402(c)(6).

[(B) Repealed]

(C) Income from disposition of certain property

For purposes of this section, the term ''earned income'' includes gains (other than any gain which is treated under any provision of this chapter as gain from the sale or exchange of a capital asset) and net earnings derived from the sale or other disposition of, the transfer of any interest in, or the licensing of the use of property (other than good will) by an individual whose personal efforts created such property.

(3) Owner-employee

The term ''owner-employee'' means an employee who—

(A) owns the entire interest in an unincorporated trade or business, or

(B) in the case of a partnership, is a partner who owns more than 10 percent of either the capital interest or the profits interest in such partnership.

To the extent provided in regulations prescribed by the Secretary, such term also means an individual who has been an owner-employee within the meaning of the preceding sentence.

(4) Employer

An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (1).

(5) Contributions on behalf of owner-employees

The term ''contribution on behalf of an owner-employee'' includes, except as the context otherwise requires, a contribution under a plan—

(A) by the employer for an owner-employee, and

(B) by an owner-employee as an employee.

(6) Special rule for certain fishermen

For purposes of this subsection, the term ''self-employed individual'' includes an individual described in section 3121(b)(20) (relating to certain fishermen).

(d) Contribution limit on owner-employees

A trust forming part of a pension or profit-sharing plan which provides contributions or benefits for employees some or all of whom are owner-employees shall constitute a qualified trust under this section only if, in addition to meeting the requirements of subsection (a), the plan provides that contributions on behalf of any owner-employee may be made only with respect to the earned income of such owner-employee which is derived from the trade or business with respect to which such plan is established.

[(e) Repealed. Pub. L. 98–369, div. A, title VII, § 713(d)(3), July 18, 1984, 98 Stat. 958]

(f) Certain custodial accounts and contracts

For purposes of this title, a custodial account, an annuity contract, or a contract (other than a life, health or accident, property, casualty, or liability insurance contract) issued by an insurance company qualified to do business in a State shall be treated as a qualified trust under this section if—

(1) the custodial account or contract would, except for the fact that it is not a trust, constitute a qualified trust under this section, and

(2) in the case of a custodial account the assets thereof are held by a bank (as defined in section 408(n)) or another person who demonstrates, to the satisfaction of the Secretary, that the manner in which he will hold the assets will be consistent with the requirements of this section.

For purposes of this title, in the case of a custodial account or contract treated as a qualified trust under this section by reason of this subsection, the person holding the assets of such account or holding such contract shall be treated as the trustee thereof.

[5] So in original. Probably should be ''section''.

(g) Annuity defined

For purposes of this section and sections 402, 403, and 404, the term ''annuity'' includes a face-amount certificate, as defined in section 2(a)(15) of the Investment Company Act of 1940 (15 U.S.C., sec. 80a–2); but does not include any contract or certificate issued after December 31, 1962, which is transferable, if any person other than the trustee of a trust described in section 401(a) which is exempt from tax under section 501(a) is the owner of such contract or certificate.

(h) Medical, etc., benefits for retired employees and their spouses and dependents

Under regulations prescribed by the Secretary, and subject to the provisions of section 420, a pension or annuity plan may provide for the payment of benefits for sickness, accident, hospitalization, and medical expenses of retired employees, their spouses and their dependents, but only if—

(1) such benefits are subordinate to the retirement benefits provided by the plan,

(2) a separate account is established and maintained for such benefits,

(3) the employer's contributions to such separate account are reasonable and ascertainable,

(4) it is impossible, at any time prior to the satisfaction of all liabilities under the plan to provide such benefits, for any part of the corpus or income of such separate account to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of such benefits,

(5) notwithstanding the provisions of subsection (a)(2), upon the satisfaction of all liabilities under the plan to provide such benefits, any amount remaining in such separate account must, under the terms of the plan, be returned to the employer, and

(6) in the case of an employee who is a key employee, a separate account is established and maintained for such benefits payable to such employee (and his spouse and dependents) and such benefits (to the extent attributable to plan years beginning after March 31, 1984, for which the employee is a key employee) are only payable to such employee (and his spouse and dependents) from such separate account.

For purposes of paragraph (6), the term ''key employee'' means any employee, who at any time during the plan year or any preceding plan year during which contributions were made on behalf of such employee, is or was a key employee as defined in section 416(i). In no event shall the requirements of paragraph (1) be treated as met if the aggregate actual contributions for medical benefits, when added to actual contributions for life insurance protection under the plan, exceed 25 percent of the total actual contributions to the plan (other than contributions to fund past service credits) after the date on which the account is established. For purposes of this subsection, the term ''dependent'' shall include any individual who is a child (as defined in section 152(f)(1)) of a retired employee who as of the end of the calendar year has not attained age 27.

(i) Certain union-negotiated pension plans

In the case of a trust forming part of a pension plan which has been determined by the Secretary to constitute a qualified trust under subsection (a) and to be exempt from taxation under section 501(a) for a period beginning after contributions were first made to or for such trust, if it is shown to the satisfaction of the Secretary that—

(1) such trust was created pursuant to a collective bargaining agreement between employee representatives and one or more employers,

(2) any disbursements of contributions, made to or for such trust before the time as of which the Secretary or his delegate determined that the trust constituted a qualified trust, substantially complied with the terms of the trust, and the plan of which the trust is a part, as subsequently qualified, and

(3) before the time as of which the Secretary determined that the trust constitutes a qualified trust, the contributions to or for such trust were not used in a manner which would jeopardize the interests of its beneficiaries,

then such trust shall be considered as having constituted a qualified trust under subsection (a) and as having been exempt from taxation under section 501(a) for the period beginning on the date on which contributions were first made to or for such trust and ending on the date such trust first constituted (without regard to this subsection) a qualified trust under subsection (a).

[(j) Repealed. Pub. L. 97–248, title II, § 238(b), Sept. 3, 1982, 96 Stat. 512]

(k) Cash or deferred arrangements

(1) General rule

A profit-sharing or stock bonus plan, a pre-ERISA money purchase plan, or a rural cooperative plan shall not be considered as not satisfying the requirements of subsection (a) merely because the plan includes a qualified cash or deferred arrangement.

(2) Qualified cash or deferred arrangement

A qualified cash or deferred arrangement is any arrangement which is part of a profit-sharing or stock bonus plan, a pre-ERISA money purchase plan, or a rural cooperative plan which meets the requirements of subsection (a)—

(A) under which a covered employee may elect to have the employer make payments as contributions to a trust under the plan on behalf of the employee, or to the employee directly in cash;

(B) under which amounts held by the trust which are attributable to employer contributions made pursuant to the employee's election—

(i) may not be distributable to participants or other beneficiaries earlier than—

(I) severance from employment, death, or disability,

(II) an event described in paragraph (10),

(III) in the case of a profit-sharing or stock bonus plan, the attainment of age 59½,

(IV) in the case of contributions to a profit-sharing or stock bonus plan to which section 402(e)(3) applies, upon hardship of the employee, or

(V) in the case of a qualified reservist distribution (as defined in section 72(t)(2)(G)(iii)), the date on which a period referred to in subclause (III) of such section begins, and

(ii) will not be distributable merely by reason of the completion of a stated period of participation or the lapse of a fixed number of years;

(C) which provides that an employee's right to his accrued benefit derived from employer contributions made to the trust pursuant to his election is nonforfeitable, and

(D) which does not require, as a condition of participation in the arrangement, that an employee complete a period of service with the employer (or employers) maintaining the plan extending beyond the period permitted under section 410(a)(1) (determined without regard to subparagraph (B)(i) thereof).

(3) Application of participation and discrimination standards

(A) A cash or deferred arrangement shall not be treated as a qualified cash or deferred arrangement unless—

(i) those employees eligible to benefit under the arrangement satisfy the provisions of section 410(b)(1), and

(ii) the actual deferral percentage for eligible highly compensated employees (as defined in paragraph (5)) for the plan year bears a relationship to the actual deferral percentage for all other eligible employees for the preceding plan year which meets either of the following tests:

(I) The actual deferral percentage for the group of eligible highly compensated employees is not more than the actual deferral percentage of all other eligible employees multiplied by 1.25.

(II) The excess of the actual deferral percentage for the group of eligible highly compensated employees over that of all other eligible employees is not more than 2 percentage points, and the actual deferral percentage for the group of eligible highly compensated employees is not more than the actual deferral percentage of all other eligible employees multiplied by 2.

If 2 or more plans which include cash or deferred arrangements are considered as 1 plan for purposes of section 401(a)(4) or 410(b), the cash or deferred arrangements included in such plans shall be treated as 1 arrangement for purposes of this subparagraph.

If any highly compensated employee is a participant under 2 or more cash or deferred arrangements of the employer, for purposes of determining the deferral percentage with respect to such employee, all such cash or deferred arrangements shall be treated as 1 cash or deferred arrangement. An arrangement may apply clause (ii) by using the plan year rather than the preceding plan year if the employer so elects, except that if such an election is made, it may not be changed except as provided by the Secretary.

(B) For purposes of subparagraph (A), the actual deferral percentage for a specified group of employees for a plan year shall be the average of the ratios (calculated separately for each employee in such group) of—

(i) the amount of employer contributions actually paid over to the trust on behalf of each such employee for such plan year, to

(ii) the employee's compensation for such plan year.

(C) A cash or deferred arrangement shall be treated as meeting the requirements of subsection (a)(4) with respect to contributions if the requirements of subparagraph (A)(ii) are met.

(D) For purposes of subparagraph (B), the employer contributions on behalf of any employee—

(i) shall include any employer contributions made pursuant to the employee's election under paragraph (2), and

(ii) under such rules as the Secretary may prescribe, may, at the election of the employer, include—

(I) matching contributions (as defined in 401(m)(4)(A)) which meet the requirements of paragraph (2)(B) and (C), and

(II) qualified nonelective contributions (within the meaning of section 401(m)(4)(C)).

(E) For purposes of this paragraph, in the case of the first plan year of any plan (other than a successor plan), the amount taken into account as the actual deferral percentage of nonhighly compensated employees for the preceding plan year shall be—

(i) 3 percent, or

(ii) if the employer makes an election under this subclause, the actual deferral percentage of nonhighly compensated employees determined for such first plan year.

(F) SPECIAL RULE FOR EARLY PARTICIPATION.—If an employer elects to apply section 410(b)(4)(B) in determining whether a cash or deferred arrangement meets the requirements of subparagraph (A)(i), the employer may, in determining whether the arrangement meets the requirements of subparagraph (A)(ii), exclude from consideration all eligible employees (other than highly compensated employees) who have not met the minimum age and service requirements of section 410(a)(1)(A).

(G) GOVERNMENTAL PLAN.—A governmental plan (within the meaning of section 414(d)) shall be treated as meeting the requirements of this paragraph.

(4) Other requirements

(A) Benefits (other than matching contributions) must not be contingent on election to defer

A cash or deferred arrangement of any employer shall not be treated as a qualified

cash or deferred arrangement if any other benefit is conditioned (directly or indirectly) on the employee electing to have the employer make or not make contributions under the arrangement in lieu of receiving cash. The preceding sentence shall not apply to any matching contribution (as defined in section 401(m)) made by reason of such an election.

(B) Eligibility of State and local governments and tax-exempt organizations

(i) Tax-exempts eligible

Except as provided in clause (ii), any organization exempt from tax under this subtitle may include a qualified cash or deferred arrangement as part of a plan maintained by it.

(ii) Governments ineligible

A cash or deferred arrangement shall not be treated as a qualified cash or deferred arrangement if it is part of a plan maintained by a State or local government or political subdivision thereof, or any agency or instrumentality thereof. This clause shall not apply to a rural cooperative plan or to a plan of an employer described in clause (iii).

(iii) Treatment of Indian tribal governments

An employer which is an Indian tribal government (as defined in section 7701(a)(40)), a subdivision of an Indian tribal government (determined in accordance with section 7871(d)), an agency or instrumentality of an Indian tribal government or subdivision thereof, or a corporation chartered under Federal, State, or tribal law which is owned in whole or in part by any of the foregoing may include a qualified cash or deferred arrangement as part of a plan maintained by the employer.

(C) Coordination with other plans

Except as provided in section 401(m), any employer contribution made pursuant to an employee's election under a qualified cash or deferred arrangement shall not be taken into account for purposes of determining whether any other plan meets the requirements of section 401(a) or 410(b). This subparagraph shall not apply for purposes of determining whether a plan meets the average benefit requirement of section 410(b)(2)(A)(ii).

(5) Highly compensated employee

For purposes of this subsection, the term ''highly compensated employee'' has the meaning given such term by section 414(q).

(6) Pre-ERISA money purchase plan

For purposes of this subsection, the term ''pre-ERISA money purchase plan'' means a pension plan—

(A) which is a defined contribution plan (as defined in section 414(i)),

(B) which was in existence on June 27, 1974, and which, on such date, included a salary reduction arrangement, and

(C) under which neither the employee contributions nor the employer contributions may exceed the levels provided for by the contribution formula in effect under the plan on such date.

(7) Rural cooperative plan

For purposes of this subsection—

(A) In general

The term ''rural cooperative plan'' means any pension plan—

(i) which is a defined contribution plan (as defined in section 414(i)), and

(ii) which is established and maintained by a rural cooperative.

(B) Rural cooperative defined

For purposes of subparagraph (A), the term ''rural cooperative'' means—

(i) any organization which—

(I) is engaged primarily in providing electric service on a mutual or cooperative basis, or

(II) is engaged primarily in providing electric service to the public in its area of service and which is exempt from tax under this subtitle or which is a State or local government (or an agency or instrumentality thereof), other than a municipality (or an agency or instrumentality thereof),

(ii) any organization described in paragraph (4) or (6) of section 501(c) and at least 80 percent of the members of which are organizations described in clause (i),

(iii) a cooperative telephone company described in section 501(c)(12),

(iv) any organization which—

(I) is a mutual irrigation or ditch company described in section 501(c)(12) (without regard to the 85 percent requirement thereof), or

(II) is a district organized under the laws of a State as a municipal corporation for the purpose of irrigation, water conservation, or drainage, and

(v) an organization which is a national association of organizations described in clause (i), (ii),,[6] (iii), or (iv).

(C) Special rule for certain distributions

A rural cooperative plan which includes a qualified cash or deferred arrangement shall not be treated as violating the requirements of section 401(a) or of paragraph (2) merely by reason of a hardship distribution or a distribution to a participant after attainment of age 59½. For purposes of this section, the term ''hardship distribution'' means a distribution described in paragraph (2)(B)(i)(IV) (without regard to the limitation of its application to profit-sharing or stock bonus plans).

(8) Arrangement not disqualified if excess contributions distributed

(A) In general

A cash or deferred arrangement shall not be treated as failing to meet the requirements of clause (ii) of paragraph (3)(A) for

[6] So in original.

any plan year if, before the close of the following plan year—

(i) the amount of the excess contributions for such plan year (and any income allocable to such contributions through the end of such year) is distributed, or

(ii) to the extent provided in regulations, the employee elects to treat the amount of the excess contributions as an amount distributed to the employee and then contributed by the employee to the plan.

Any distribution of excess contributions (and income) may be made without regard to any other provision of law.

(B) Excess contributions

For purposes of subparagraph (A), the term ''excess contributions'' means, with respect to any plan year, the excess of—

(i) the aggregate amount of employer contributions actually paid over to the trust on behalf of highly compensated employees for such plan year, over

(ii) the maximum amount of such contributions permitted under the limitations of clause (ii) of paragraph (3)(A) (determined by reducing contributions made on behalf of highly compensated employees in order of the actual deferral percentages beginning with the highest of such percentages).

(C) Method of distributing excess contributions

Any distribution of the excess contributions for any plan year shall be made to highly compensated employees on the basis of the amount of contributions by, or on behalf of, each of such employees.

(D) Additional tax under section 72(t) not to apply

No tax shall be imposed under section 72(t) on any amount required to be distributed under this paragraph.

(E) Treatment of matching contributions forfeited by reason of excess deferral or contribution or permissible withdrawal

For purposes of paragraph (2)(C), a matching contribution (within the meaning of subsection (m)) shall not be treated as forfeitable merely because such contribution is forfeitable if the contribution to which the matching contribution relates is treated as an excess contribution under subparagraph (B), an excess deferral under section 402(g)(2)(A), a permissible withdrawal under section 414(w), or an excess aggregate contribution under section 401(m)(6)(B).

(F) Cross reference

For excise tax on certain excess contributions, see section 4979.

(9) Compensation

For purposes of this subsection, the term ''compensation'' has the meaning given such term by section 414(s).

(10) Distributions upon termination of plan

(A) In general

An event described in this subparagraph is the termination of the plan without establishment or maintenance of another defined contribution plan (other than an employee stock ownership plan as defined in section 4975(e)(7)).

(B) Distributions must be lump sum distributions

(i) In general

A termination shall not be treated as described in subparagraph (A) with respect to any employee unless the employee receives a lump sum distribution by reason of the termination.

(ii) Lump-sum distribution

For purposes of this subparagraph, the term ''lump-sum distribution'' has the meaning given such term by section 402(e)(4)(D) (without regard to subclauses (I), (II), (III), and (IV) of clause (i) thereof). Such term includes a distribution of an annuity contract from—

(I) a trust which forms a part of a plan described in section 401(a) and which is exempt from tax under section 501(a), or

(II) an annuity plan described in section 403(a).

(11) Adoption of simple plan to meet nondiscrimination tests

(A) In general

A cash or deferred arrangement maintained by an eligible employer shall be treated as meeting the requirements of paragraph (3)(A)(ii) if such arrangement meets—

(i) the contribution requirements of subparagraph (B),

(ii) the exclusive plan requirements of subparagraph (C), and

(iii) the vesting requirements of section 408(p)(3).

(B) Contribution requirements

(i) In general

The requirements of this subparagraph are met if, under the arrangement—

(I) an employee may elect to have the employer make elective contributions for the year on behalf of the employee to a trust under the plan in an amount which is expressed as a percentage of compensation of the employee but which in no event exceeds the amount in effect under section 408(p)(2)(A)(ii),

(II) the employer is required to make a matching contribution to the trust for the year in an amount equal to so much of the amount the employee elects under subclause (I) as does not exceed 3 percent of compensation for the year, and

(III) no other contributions may be made other than contributions described in subclause (I) or (II).

(ii) Employer may elect 2-percent nonelective contribution

An employer shall be treated as meeting the requirements of clause (i)(II) for any year if, in lieu of the contributions described in such clause, the employer elects (pursuant to the terms of the arrangement) to make nonelective contributions

of 2 percent of compensation for each employee who is eligible to participate in the arrangement and who has at least $5,000 of compensation from the employer for the year. If an employer makes an election under this subparagraph for any year, the employer shall notify employees of such election within a reasonable period of time before the 60th day before the beginning of such year.

(iii) Administrative requirements

(I) In general

Rules similar to the rules of subparagraphs (B) and (C) of section 408(p)(5) shall apply for purposes of this subparagraph.

(II) Notice of election period

The requirements of this subparagraph shall not be treated as met with respect to any year unless the employer notifies each employee eligible to participate, within a reasonable period of time before the 60th day before the beginning of such year (and, for the first year the employee is so eligible, the 60th day before the first day such employee is so eligible), of the rules similar to the rules of section 408(p)(5)(C) which apply by reason of subclause (I).

(C) Exclusive plan requirement

The requirements of this subparagraph are met for any year to which this paragraph applies if no contributions were made, or benefits were accrued, for services during such year under any qualified plan of the employer on behalf of any employee eligible to participate in the cash or deferred arrangement, other than contributions described in subparagraph (B).

(D) Definitions and special rule

(i) Definitions

For purposes of this paragraph, any term used in this paragraph which is also used in section 408(p) shall have the meaning given such term by such section.

(ii) Coordination with top-heavy rules

A plan meeting the requirements of this paragraph for any year shall not be treated as a top-heavy plan under section 416 for such year if such plan allows only contributions required under this paragraph.

(12) Alternative methods of meeting nondiscrimination requirements

(A) In general

A cash or deferred arrangement shall be treated as meeting the requirements of paragraph (3)(A)(ii) if such arrangement—

(i) meets the contribution requirements of subparagraph (B) or (C), and

(ii) meets the notice requirements of subparagraph (D).

(B) Matching contributions

(i) In general

The requirements of this subparagraph are met if, under the arrangement, the employer makes matching contributions on behalf of each employee who is not a highly compensated employee in an amount equal to—

(I) 100 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 3 percent of the employee's compensation, and

(II) 50 percent of the elective contributions of the employee to the extent that such elective contributions exceed 3 percent but do not exceed 5 percent of the employee's compensation.

(ii) Rate for highly compensated employees

The requirements of this subparagraph are not met if, under the arrangement, the rate of matching contribution with respect to any elective contribution of a highly compensated employee at any rate of elective contribution is greater than that with respect to an employee who is not a highly compensated employee.

(iii) Alternative plan designs

If the rate of any matching contribution with respect to any rate of elective contribution is not equal to the percentage required under clause (i), an arrangement shall not be treated as failing to meet the requirements of clause (i) if—

(I) the rate of an employer's matching contribution does not increase as an employee's rate of elective contributions increase, and

(II) the aggregate amount of matching contributions at such rate of elective contribution is at least equal to the aggregate amount of matching contributions which would be made if matching contributions were made on the basis of the percentages described in clause (i).

(C) Nonelective contributions

The requirements of this subparagraph are met if, under the arrangement, the employer is required, without regard to whether the employee makes an elective contribution or employee contribution, to make a contribution to a defined contribution plan on behalf of each employee who is not a highly compensated employee and who is eligible to participate in the arrangement in an amount equal to at least 3 percent of the employee's compensation.

(D) Notice requirement

An arrangement meets the requirements of this paragraph if, under the arrangement, each employee eligible to participate is, within a reasonable period before any year, given written notice of the employee's rights and obligations under the arrangement which—

(i) is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations, and

(ii) is written in a manner calculated to be understood by the average employee eligible to participate.

(E) Other requirements

(i) Withdrawal and vesting restrictions

An arrangement shall not be treated as meeting the requirements of subparagraph (B) or (C) of this paragraph unless the requirements of subparagraphs (B) and (C) of paragraph (2) are met with respect to all employer contributions (including matching contributions) taken into account in determining whether the requirements of subparagraphs (B) and (C) of this paragraph are met.

(ii) Social security and similar contributions not taken into account

An arrangement shall not be treated as meeting the requirements of subparagraph (B) or (C) unless such requirements are met without regard to subsection (*l*), and, for purposes of subsection (*l*), employer contributions under subparagraph (B) or (C) shall not be taken into account.

(F) Other plans

An arrangement shall be treated as meeting the requirements under subparagraph (A)(i) if any other plan maintained by the employer meets such requirements with respect to employees eligible under the arrangement.

(13) Alternative method for automatic contribution arrangements to meet nondiscrimination requirements

(A) In general

A qualified automatic contribution arrangement shall be treated as meeting the requirements of paragraph (3)(A)(ii).

(B) Qualified automatic contribution arrangement

For purposes of this paragraph, the term ''qualified automatic contribution arrangement'' means any cash or deferred arrangement which meets the requirements of subparagraphs (C) through (E).

(C) Automatic deferral

(i) In general

The requirements of this subparagraph are met if, under the arrangement, each employee eligible to participate in the arrangement is treated as having elected to have the employer make elective contributions in an amount equal to a qualified percentage of compensation.

(ii) Election out

The election treated as having been made under clause (i) shall cease to apply with respect to any employee if such employee makes an affirmative election—

(I) to not have such contributions made, or

(II) to make elective contributions at a level specified in such affirmative election.

(iii) Qualified percentage

For purposes of this subparagraph, the term ''qualified percentage'' means, with respect to any employee, any percentage determined under the arrangement if such percentage is applied uniformly, does not exceed 10 percent, and is at least—

(I) 3 percent during the period ending on the last day of the first plan year which begins after the date on which the first elective contribution described in clause (i) is made with respect to such employee,

(II) 4 percent during the first plan year following the plan year described in subclause (I),

(III) 5 percent during the second plan year following the plan year described in subclause (I), and

(IV) 6 percent during any subsequent plan year.

(iv) Automatic deferral for current employees not required

Clause (i) may be applied without taking into account any employee who—

(I) was eligible to participate in the arrangement (or a predecessor arrangement) immediately before the date on which such arrangement becomes a qualified automatic contribution arrangement (determined after application of this clause), and

(II) had an election in effect on such date either to participate in the arrangement or to not participate in the arrangement.

(D) Matching or nonelective contributions

(i) In general

The requirements of this subparagraph are met if, under the arrangement, the employer—

(I) makes matching contributions on behalf of each employee who is not a highly compensated employee in an amount equal to the sum of 100 percent of the elective contributions of the employee to the extent that such contributions do not exceed 1 percent of compensation plus 50 percent of so much of such contributions as exceed 1 percent but do not exceed 6 percent of compensation, or

(II) is required, without regard to whether the employee makes an elective contribution or employee contribution, to make a contribution to a defined contribution plan on behalf of each employee who is not a highly compensated employee and who is eligible to participate in the arrangement in an amount equal to at least 3 percent of the employee's compensation.

(ii) Application of rules for matching contributions

The rules of clauses (ii) and (iii) of paragraph (12)(B) shall apply for purposes of clause (i)(I).

(iii) Withdrawal and vesting restrictions

An arrangement shall not be treated as meeting the requirements of clause (i) unless, with respect to employer contributions (including matching contributions)

taken into account in determining whether the requirements of clause (i) are met—

(I) any employee who has completed at least 2 years of service (within the meaning of section 411(a)) has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from such employer contributions, and

(II) the requirements of subparagraph (B) of paragraph (2) are met with respect to all such employer contributions.

(iv) Application of certain other rules

The rules of subparagraphs (E)(ii) and (F) of paragraph (12) shall apply for purposes of subclauses (I) and (II) of clause (i).

(E) Notice requirements

(i) In general

The requirements of this subparagraph are met if, within a reasonable period before each plan year, each employee eligible to participate in the arrangement for such year receives written notice of the employee's rights and obligations under the arrangement which—

(I) is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations, and

(II) is written in a manner calculated to be understood by the average employee to whom the arrangement applies.

(ii) Timing and content requirements

A notice shall not be treated as meeting the requirements of clause (i) with respect to an employee unless—

(I) the notice explains the employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf (or to elect to have such contributions made at a different percentage),

(II) in the case of an arrangement under which the employee may elect among 2 or more investment options, the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the employee, and

(III) the employee has a reasonable period of time after receipt of the notice described in subclauses (I) and (II) and before the first elective contribution is made to make either such election.

(*l*) Permitted disparity in plan contributions or benefits

(1) In general

The requirements of this subsection are met with respect to a plan if—

(A) in the case of a defined contribution plan, the requirements of paragraph (2) are met, and

(B) in the case of a defined benefit plan, the requirements of paragraph (3) are met.

(2) Defined contribution plan

(A) In general

A defined contribution plan meets the requirements of this paragraph if the excess contribution percentage does not exceed the base contribution percentage by more than the lesser of—

(i) the base contribution percentage, or

(ii) the greater of—

(I) 5.7 percentage points, or

(II) the percentage equal to the portion of the rate of tax under section 3111(a) (in effect as of the beginning of the year) which is attributable to old-age insurance.

(B) Contribution percentages

For purposes of this paragraph—

(i) Excess contribution percentage

The term ''excess contribution percentage'' means the percentage of compensation which is contributed by the employer under the plan with respect to that portion of each participant's compensation in excess of the integration level.

(ii) Base contribution percentage

The term ''base contribution percentage'' means the percentage of compensation contributed by the employer under the plan with respect to that portion of each participant's compensation not in excess of the integration level.

(3) Defined benefit plan

A defined benefit plan meets the requirements of this paragraph if—

(A) Excess plans

(i) In general

In the case of a plan other than an offset plan—

(I) the excess benefit percentage does not exceed the base benefit percentage by more than the maximum excess allowance,

(II) any optional form of benefit, preretirement benefit, actuarial factor, or other benefit or feature provided with respect to compensation in excess of the integration level is provided with respect to compensation not in excess of such level, and

(III) benefits are based on average annual compensation.

(ii) Benefit percentages

For purposes of this subparagraph, the excess and base benefit percentages shall be computed in the same manner as the excess and base contribution percentages under paragraph (2)(B), except that such determination shall be made on the basis of benefits attributable to employer contributions rather than contributions.

(B) Offset plans

In the case of an offset plan, the plan provides that—

(i) a participant's accrued benefit attributable to employer contributions (within the meaning of section 411(c)(1)) may not be reduced (by reason of the offset) by more than the maximum offset allowance, and

(ii) benefits are based on average annual compensation.

(4) Definitions relating to paragraph (3)

For purposes of paragraph (3)—

(A) Maximum excess allowance

The maximum excess allowance is equal to—

(i) in the case of benefits attributable to any year of service with the employer taken into account under the plan, ¾ of a percentage point, and

(ii) in the case of total benefits, ¾ of a percentage point, multiplied by the participant's years of service (not in excess of 35) with the employer taken into account under the plan.

In no event shall the maximum excess allowance exceed the base benefit percentage.

(B) Maximum offset allowance

The maximum offset allowance is equal to—

(i) in the case of benefits attributable to any year of service with the employer taken into account under the plan, ¾ percent of the participant's final average compensation, and

(ii) in the case of total benefits, ¾ percent of the participant's final average compensation, multiplied by the participant's years of service (not in excess of 35) with the employer taken into account under the plan.

In no event shall the maximum offset allowance exceed 50 percent of the benefit which would have accrued without regard to the offset reduction.

(C) Reductions

(i) In general

The Secretary shall prescribe regulations requiring the reduction of the ¾ percentage factor under subparagraph (A) or (B)—

(I) in the case of a plan other than an offset plan which has an integration level in excess of covered compensation, or

(II) with respect to any participant in an offset plan who has final average compensation in excess of covered compensation.

(ii) Basis of reductions

Any reductions under clause (i) shall be based on the percentages of compensation replaced by the employer-derived portions of primary insurance amounts under the Social Security Act for participants with compensation in excess of covered compensation.

(D) Offset plan

The term ''offset plan'' means any plan with respect to which the benefit attributable to employer contributions for each participant is reduced by an amount specified in the plan.

(5) Other definitions and special rules

For purposes of this subsection—

(A) Integration level

(i) In general

The term ''integration level'' means the amount of compensation specified under the plan (by dollar amount or formula) at or below which the rate at which contributions or benefits are provided (expressed as a percentage) is less than such rate above such amount.

(ii) Limitation

The integration level for any year may not exceed the contribution and benefit base in effect under section 230 of the Social Security Act for such year.

(iii) Level to apply to all participants

A plan's integration level shall apply with respect to all participants in the plan.

(iv) Multiple integration levels

Under rules prescribed by the Secretary, a defined benefit plan may specify multiple integration levels.

(B) Compensation

The term ''compensation'' has the meaning given such term by section 414(s).

(C) Average annual compensation

The term ''average annual compensation'' means the participant's highest average annual compensation for—

(i) any period of at least 3 consecutive years, or

(ii) if shorter, the participant's full period of service.

(D) Final average compensation

(i) In general

The term ''final average compensation'' means the participant's average annual compensation for—

(I) the 3-consecutive year period ending with the current year, or

(II) if shorter, the participant's full period of service.

(ii) Limitation

A participant's final average compensation shall be determined by not taking into account in any year compensation in excess of the contribution and benefit base in effect under section 230 of the Social Security Act for such year.

(E) Covered compensation

(i) In general

The term ''covered compensation'' means, with respect to an employee, the average of the contribution and benefit bases in effect under section 230 of the Social Security Act for each year in the 35-year period ending with the year in which the employee attains the social security retirement age.

(ii) Computation for any year

For purposes of clause (i), the determination for any year preceding the year in which the employee attains the social security retirement age shall be made by as-

suming that there is no increase in the bases described in clause (i) after the determination year and before the employee attains the social security retirement age.

(iii) Social security retirement age

For purposes of this subparagraph, the term ''social security retirement age'' has the meaning given such term by section 415(b)(8).

(F) Regulations

The Secretary shall prescribe such regulations as are necessary or appropriate to carry out the purposes of this subsection, including—

(i) in the case of a defined benefit plan which provides for unreduced benefits commencing before the social security retirement age (as defined in section 415(b)(8)), rules providing for the reduction of the maximum excess allowance and the maximum offset allowance, and

(ii) in the case of an employee covered by 2 or more plans of the employer which fail to meet the requirements of subsection (a)(4) (without regard to this subsection), rules preventing the multiple use of the disparity permitted under this subsection with respect to any employee.

For purposes of clause (i), unreduced benefits shall not include benefits for disability (within the meaning of section 223(d) of the Social Security Act).

(6) Special rule for plan maintained by railroads

In determining whether a plan which includes employees of a railroad employer who are entitled to benefits under the Railroad Retirement Act of 1974 meets the requirements of this subsection, rules similar to the rules set forth in this subsection shall apply. Such rules shall take into account the employer-derived portion of the employees' tier 2 railroad retirement benefits and any supplemental annuity under the Railroad Retirement Act of 1974.

(m) Nondiscrimination test for matching contributions and employee contributions

(1) In general

A defined contribution plan shall be treated as meeting the requirements of subsection (a)(4) with respect to the amount of any matching contribution or employee contribution for any plan year only if the contribution percentage requirement of paragraph (2) of this subsection is met for such plan year.

(2) Requirements

(A) Contribution percentage requirement

A plan meets the contribution percentage requirement of this paragraph for any plan year only if the contribution percentage for eligible highly compensated employees for such plan year does not exceed the greater of—

(i) 125 percent of such percentage for all other eligible employees for the preceding plan year, or

(ii) the lesser of 200 percent of such percentage for all other eligible employees for the preceding plan year, or such percentage for all other eligible employees for the preceding plan year plus 2 percentage points.

This subparagraph may be applied by using the plan year rather than the preceding plan year if the employer so elects, except that if such an election is made, it may not be changed except as provided by the Secretary.

(B) Multiple plans treated as a single plan

If two or more plans of an employer to which matching contributions, employee contributions, or elective deferrals are made are treated as one plan for purposes of section 410(b), such plans shall be treated as one plan for purposes of this subsection. If a highly compensated employee participates in two or more plans of an employer to which contributions to which this subsection applies are made, all such contributions shall be aggregated for purposes of this subsection.

(3) Contribution percentage

For purposes of paragraph (2), the contribution percentage for a specified group of employees for a plan year shall be the average of the ratios (calculated separately for each employee in such group) of—

(A) the sum of the matching contributions and employee contributions paid under the plan on behalf of each such employee for such plan year, to

(B) the employee's compensation (within the meaning of section 414(s)) for such plan year.

Under regulations, an employer may elect to take into account (in computing the contribution percentage) elective deferrals and qualified nonelective contributions under the plan or any other plan of the employer. If matching contributions are taken into account for purposes of subsection (k)(3)(A)(ii) for any plan year, such contributions shall not be taken into account under subparagraph (A) for such year. Rules similar to the rules of subsection (k)(3)(E) shall apply for purposes of this subsection.

(4) Definitions

For purposes of this subsection—

(A) Matching contribution

The term ''matching contribution'' means—

(i) any employer contribution made to a defined contribution plan on behalf of an employee on account of an employee contribution made by such employee, and

(ii) any employer contribution made to a defined contribution plan on behalf of an employee on account of an employee's elective deferral.

(B) Elective deferral

The term ''elective deferral'' means any employer contribution described in section 402(g)(3).

(C) Qualified nonelective contributions

The term ''qualified nonelective contribution'' means any employer contribution

(other than a matching contribution) with respect to which—

(i) the employee may not elect to have the contribution paid to the employee in cash instead of being contributed to the plan, and

(ii) the requirements of subparagraphs (B) and (C) of subsection (k)(2) are met.

(5) Employees taken into consideration

(A) In general

Any employee who is eligible to make an employee contribution (or, if the employer takes elective contributions into account, elective contributions) or to receive a matching contribution under the plan being tested under paragraph (1) shall be considered an eligible employee for purposes of this subsection.

(B) Certain nonparticipants

If an employee contribution is required as a condition of participation in the plan, any employee who would be a participant in the plan if such employee made such a contribution shall be treated as an eligible employee on behalf of whom no employer contributions are made.

(C) Special rule for early participation

If an employer elects to apply section 410(b)(4)(B) in determining whether a plan meets the requirements of section 410(b), the employer may, in determining whether the plan meets the requirements of paragraph (2), exclude from consideration all eligible employees (other than highly compensated employees) who have not met the minimum age and service requirements of section 410(a)(1)(A).

(6) Plan not disqualified if excess aggregate contributions distributed before end of following plan year

(A) In general

A plan shall not be treated as failing to meet the requirements of paragraph (1) for any plan year if, before the close of the following plan year, the amount of the excess aggregate contributions for such plan year (and any income allocable to such contributions through the end of such year) is distributed (or, if forfeitable, is forfeited). Such contributions (and such income) may be distributed without regard to any other provision of law.

(B) Excess aggregate contributions

For purposes of subparagraph (A), the term ''excess aggregate contributions'' means, with respect to any plan year, the excess of—

(i) the aggregate amount of the matching contributions and employee contributions (and any qualified nonelective contribution or elective contribution taken into account in computing the contribution percentage) actually made on behalf of highly compensated employees for such plan year, over

(ii) the maximum amount of such contributions permitted under the limitations of paragraph (2)(A) (determined by reducing contributions made on behalf of highly compensated employees in order of their contribution percentages beginning with the highest of such percentages).

(C) Method of distributing excess aggregate contributions

Any distribution of the excess aggregate contributions for any plan year shall be made to highly compensated employees on the basis of the amount of contributions on behalf of, or by, each such employee. Forfeitures of excess aggregate contributions may not be allocated to participants whose contributions are reduced under this paragraph.

(D) Coordination with subsection (k) and 402(g)

The determination of the amount of excess aggregate contributions with respect to a plan shall be made after—

(i) first determining the excess deferrals (within the meaning of section 402(g)), and

(ii) then determining the excess contributions under subsection (k).

(7) Treatment of distributions

(A) Additional tax of section 72(t) not applicable

No tax shall be imposed under section 72(t) on any amount required to be distributed under paragraph (6).

(B) Exclusion of employee contributions

Any distribution attributable to employee contributions shall not be included in gross income except to the extent attributable to income on such contributions.

(8) Highly compensated employee

For purposes of this subsection, the term ''highly compensated employee'' has the meaning given to such term by section 414(q).

(9) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection and subsection (k), including regulations permitting appropriate aggregation of plans and contributions.

(10) Alternative method of satisfying tests

A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan—

(A) meets the contribution requirements of subparagraph (B) of subsection (k)(11),

(B) meets the exclusive plan requirements of subsection (k)(11)(C), and

(C) meets the vesting requirements of section 408(p)(3).

(11) Additional alternative method of satisfying tests

(A) In general

A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan—

(i) meets the contribution requirements of subparagraph (B) or (C) of subsection (k)(12),

(ii) meets the notice requirements of subsection (k)(12)(D), and

(iii) meets the requirements of subparagraph (B).

(B) Limitation on matching contributions

The requirements of this subparagraph are met if—

(i) matching contributions on behalf of any employee may not be made with respect to an employee's contributions or elective deferrals in excess of 6 percent of the employee's compensation,

(ii) the rate of an employer's matching contribution does not increase as the rate of an employee's contributions or elective deferrals increase, and

(iii) the matching contribution with respect to any highly compensated employee at any rate of an employee contribution or rate of elective deferral is not greater than that with respect to an employee who is not a highly compensated employee.

(12) Alternative method for automatic contribution arrangements

A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan—

(A) is a qualified automatic contribution arrangement (as defined in subsection (k)(13)), and

(B) meets the requirements of paragraph (11)(B).

(13) Cross reference

For excise tax on certain excess contributions, see section 4979.

(n) Coordination with qualified domestic relations orders

The Secretary shall prescribe such rules or regulations as may be necessary to coordinate the requirements of subsection (a)(13)(B) and section 414(p) (and the regulations issued by the Secretary of Labor thereunder) with the other provisions of this chapter.

(*o*) Cross reference

For exemption from tax of a trust qualified under this section, see section 501(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 134; Pub. L. 87–792, § 2, Oct. 10, 1962, 76 Stat. 809; Pub. L. 87–863, § 2(a), Oct. 23, 1962, 76 Stat. 1141; Pub. L. 88–272, title II, § 219(a), Feb. 26, 1964, 78 Stat. 57; Pub. L. 89–97, title I, § 106(d)(4), July 30, 1965, 79 Stat. 337; Pub. L. 89–809, title II, §§ 204(b)(1), (c), 205(a), Nov. 13, 1966, 80 Stat. 1577, 1578; Pub. L. 91–691, § 1(a), Jan. 12, 1971, 84 Stat. 2074; Pub. L. 93–406, title II, §§ 1012(b), 1016(a)(2), 1021, 1022(a)–(d), (f), 1023, 2001(c)–(e)(4), (h)(1), 2004(a)(1), Sept. 2, 1974, 88 Stat. 913, 929, 935, 938–940, 943, 952–955, 957, 979; Pub. L. 94–267, § 1(c)(1), (2), Apr. 15, 1976, 90 Stat. 367; Pub. L. 94–455, title VIII, § 803(b)(2), title XV, § 1505(b), title XIX, §§ 1901(a)(56), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1584, 1738, 1773, 1834; Pub. L. 95–600, title I, §§ 135(a), 141(f)(3), 143(a), 152(e), Nov. 6, 1978, 92 Stat. 2785, 2795, 2796, 2799; Pub. L. 96–222, title I, § 101(a)(7)(L)(i)(V), (9), (14)(E)(iii), Apr. 1, 1980, 94 Stat. 199, 201, 205; Pub. L. 96–364, title II, § 208(a), (e), title IV, § 410(b), Sept. 26, 1980, 94 Stat. 1289, 1290, 1308; Pub. L. 96–605, title II, §§ 221(a), 225(b)(1), (2), Dec. 28, 1980, 94 Stat. 3528, 3529; Pub. L. 97–34, title III, §§ 312(b)(1), (c)(2)–(4), (e)(2), 314(a)(1), 335, 338(a), Aug. 13, 1981, 95 Stat. 283–286, 297, 298; Pub. L. 97–248, title II, §§ 237(a), (b), (e)(1), 238(b), (d)(1), (2), 240(b), 242(a), 249(a), 254(a), Sept. 3, 1982, 96 Stat. 511–513, 520, 521, 527, 533; Pub. L. 97–448, title I, § 103(c)(10)(A), (d)(2), (g)(2)(A), title III, § 306(a)(12), Jan. 12, 1983, 96 Stat. 2377–2379, 2405; Pub. L. 98–21, title I, § 124(c)(4)(A), Apr. 20, 1983, 97 Stat. 91; Pub. L. 98–369, div. A, title II, § 211(b)(5), title IV, §§ 474(r)(13), 491(e)(4), (5), title V, §§ 521(a), 524(d)(1), 527(a), (b), 528(b), title VII, § 713(c)(2)(A), (d)(3), July 18, 1984, 98 Stat. 754, 842, 853, 865, 872, 875–877, 957, 958; Pub. L. 98–397, title II, §§ 203(a), 204(a), title III, § 301(b), Aug. 23, 1984, 98 Stat. 1440, 1445, 1451; Pub. L. 99–514, title XI, §§ 1106(d)(1), 1111(a), (b), 1112(b), (d)(1), 1114(b)(7), 1116(a)–(e), 1117(a), 1119(a), 1121(b), 1136(a), 1143(a), 1145(a), 1171(b)(5), 1174(c)(2)(A), 1175(a)(1), 1176(a), title XVIII, §§ 1848(b), 1852(a)(4)(A), (6), (b)(8), (g), (h)(1), 1879(g)(1), (2), 1898(b)(2)(A), (3)(A), (7)(A), (13)(A), (14)(A), (c)(3), 1899A(10), Oct. 22, 1986, 100 Stat. 2435, 2439, 2444, 2445, 2451, 2454–2456, 2459, 2463, 2465, 2485, 2490, 2513, 2518, 2519, 2857, 2865–2869, 2906, 2907, 2945, 2948, 2950, 2953, 2958; Pub. L. 100–203, title IX, § 9341(a), Dec. 22, 1987, 101 Stat. 1330–369; Pub. L. 100–647, title I, §§ 1011(c)(7)(A), (d)(4), (e)(3), (g)(1)–(3), (h)(3), (k)(1)(A), (B), s2)–(7), (9), (*l*)(1)–(5)(A), (6), (7), 1011A(j), (*l*), 1011B(j)(1), (2), (6), (k)(1), (2), title VI, §§ 6053(a), 6055(a), 6071(a), (b), Nov. 10, 1988, 102 Stat. 3458–3460, 3463, 3464, 3468–3470, 3483, 3492, 3493, 3696, 3697, 3705; Pub. L. 101–140, title II, § 203(a)(5), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101–239, title VII, §§ 7311(a), 7811(g)(1), (h)(3), 7816(*l*), 7881(i)(1)(A), (4)(A), Dec. 19, 1989, 103 Stat. 2354, 2409, 2421, 2442; Pub. L. 101–508, title XII, § 12011(b), Nov. 5, 1990, 104 Stat. 1388–571; Pub. L. 102–318, title V, §§ 521(b)(5)–(8), 522(a)(1), July 3, 1992, 106 Stat. 310, 313; Pub. L. 103–66, title XIII, § 13212(a), Aug. 10, 1993, 107 Stat. 471; Pub. L. 103–465, title VII, §§ 732(a), 751(a)(9)(C), 766(b), 776(d), Dec. 8, 1994, 108 Stat. 5004, 5021, 5037, 5048; Pub. L. 104–188, title I, §§ 1401(b)(5), (6), 1404(a), 1422(a), (b), 1426(a), 1431(b)(2), (c)(1)(B), 1432(a), (b), 1433(a)–(e), 1441(a), 1443(a), (b), 1445(a), 1459(a), (b), 1704(a), (t)(67), Aug. 20, 1996, 110 Stat. 1789, 1791, 1800, 1801, 1803–1809, 1811, 1820, 1878, 1890; Pub. L. 105–34, title XV, §§ 1502(b), 1505(a)(1), (2), (b), 1525(a), 1530(c)(1), title XVI, § 1601(d)(2)(A), (B), (D), (3), Aug. 5, 1997, 111 Stat. 1059, 1063, 1072, 1078, 1088, 1089; Pub. L. 106–554, § 1(a)(7) [title III, § 316(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–644; Pub. L. 107–16, title VI, §§ 611(c), (f)(3), (g)(1), 641(e)(3), 643(b), 646(a)(1), 657(a), 666(a), June 7, 2001, 115 Stat. 97, 99, 120, 122, 126, 135, 143; Pub. L. 107–147, title IV, § 411(*o*)(2), (q)(1), Mar. 9, 2002, 116 Stat. 48, 51; Pub. L. 108–311, title IV, § 407(b), Oct. 4, 2004, 118 Stat. 1190; Pub. L. 109–280, title I, § 114(a), title VIII, §§ 827(b)(1), 861(a), (b), title IX, §§ 901(a)(1), (2)(A), 902(a), (b), (d)(2)(C), (D), (e)(3)(B), 905(b), Aug. 17, 2006, 120 Stat. 853, 1000, 1020, 1021, 1026, 1029, 1033, 1035, 1038, 1050; Pub. L. 110–245, title I, § 104(a), June 17, 2008, 122 Stat. 1626; Pub. L. 110–458, title I, §§ 101(d)(2)(A)–(C), 109(a)–(b)(2), title II, § 201(a), Dec. 23, 2008, 122 Stat. 5099, 5111, 5116; Pub. L. 111–152, title I, § 1004(d)(5), Mar. 30, 2010, 124 Stat. 1036.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table below.

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(12), (13)(C)(i)(II), (III), (iii)(II), (29)(B)(i), (33)(C), (34), (35)(G)(iii), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended. Part 4 of subtitle B of title I of the Act is classified generally to part 4 (§1101 et seq.) of subtitle B of subchapter I of chapter 18 of Title 29, Labor. Title IV of the Act is classified generally to subchapter III (§1301 et seq.) of chapter 18 of Title 29. Sections 407, 412, 4021, and 4050 of the Act are classified to sections 1107, 1112, 1321, and 1350, respectively, of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The Social Security Act, referred to in subsecs. (a)(15), (*l*)(4)(C)(ii), (5)(A)(ii), (D)(ii), (E)(i), (F), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of Title 42. Sections 223(d) and 230 of the Social Security Act are classified to sections 423(d) and 430, respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 521 of the Unemployment Compensation Amendments of 1992, referred to in subsec. (a)(20), is section 521 of Pub. L. 102–318, which amended section 402(a) to (f) of this title generally, and, as so amended, subsec. (a) of section 402 does not contain a par. (6)(B).

The Railroad Retirement Act of 1974, referred to in subsec. (*l*)(6), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

AMENDMENTS

2010—Subsec. (h). Pub. L. 111–152 inserted at end ''For purposes of this subsection, the term 'dependent' shall include any individual who is a child (as defined in section 152(f)(1)) of a retired employee who as of the end of the calendar year has not attained age 27.''

2008—Subsec. (a)(9)(H). Pub. L. 110–458, §201(a), added subpar. (H).

Subsec. (a)(29). Pub. L. 110–458, §101(d)(2)(A), struck out ''on plans in at-risk status'' after ''limitations'' in heading.

Subsec. (a)(32)(C). Pub. L. 110–458, §101(d)(2)(B), substituted ''section 430(j)(3)'' for ''section 430(j)'' and ''section 430(j)(4)(A)'' for ''paragraph (5)(A)''.

Subsec. (a)(33)(B)(iii). Pub. L. 110–458, §101(d)(2)(C)(i), substituted ''section 412(d)(2)'' for ''section 412(c)(2)''.

Subsec. (a)(33)(D). Pub. L. 110–458, §101(d)(2)(C)(ii), substituted ''section 412(b)(1), without regard to section 412(b)(2)'' for ''section 412(b)(2) (without regard to subparagraph (B) thereof)''.

Subsec. (a)(35)(E)(iv). Pub. L. 110–458, §109(a), amended cl. (iv) generally. Prior to amendment, text read as follows: ''For purposes of clause (iii), the term 'one-participant retirement plan' means a retirement plan that—

''(I) on the first day of the plan year covered only one individual (or the individual and the individual's spouse) and the individual owned 100 percent of the plan sponsor (whether or not incorporated), or covered only one or more partners (or partners and their spouses) in the plan sponsor,

''(II) meets the minimum coverage requirements of section 410(b) without being combined with any other plan of the business that covers the employees of the business,

''(III) does not provide benefits to anyone except the individual (and the individual's spouse) or the partners (and their spouses),

''(IV) does not cover a business that is a member of an affiliated service group, a controlled group of corporations, or a group of businesses under common control, and

''(V) does not cover a business that uses the services of leased employees (within the meaning of section 414(n)).

For purposes of this clause, the term ''partner'' includes a 2-percent shareholder (as defined in section 1372(b)) of an S corporation.''

Subsec. (a)(37). Pub. L. 110–245 added par. (37).

Subsec. (k)(8)(E). Pub. L. 110–458, §109(b)(2), substituted ''permissible withdrawal'' for ''erroneous automatic contribution'' in heading and ''a permissible withdrawal'' for ''an erroneous automatic contribution'' in text.

Subsec. (k)(13)(D)(i)(I). Pub. L. 110–458, §109(b)(1), substituted ''such contributions as exceed 1 percent but do not'' for ''such compensation as exceeds 1 percent but does not''.

2006—Subsec. (a)(5)(G). Pub. L. 109–280, §861(a)(1), (b)(1), substituted ''Governmental'' for ''State and local governmental'' in heading and ''section 414(d))'' for ''section 414(d)) maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof)'' in text.

Subsec. (a)(26)(G). Pub. L. 109–280, §861(a)(1), (b)(2), substituted ''Exception for'' for ''Exception for state and local'' in heading and ''section 414(d))'' for ''section 414(d)) maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof)'' in text.

Subsec. (a)(28)(B)(v). Pub. L. 109–280, §901(a)(2)(A), added cl. (v).

Subsec. (a)(29). Pub. L. 109–280, §114(a)(1), amended heading and text of par. (29) generally, substituting provisions relating to benefit limitations on plans in at-risk status for provisions relating to security required upon adoption of plan amendment resulting in significant underfunding.

Subsec. (a)(32)(A). Pub. L. 109–280, §114(a)(2)(A), substituted ''section 430(j)(4)'' for ''412(m)(5)'' in two places.

Subsec. (a)(32)(C). Pub. L. 109–280, §114(a)(2)(B), substituted ''section 430(j)'' for ''section 412(m)''.

Subsec. (a)(33)(B)(i). Pub. L. 109–280, §114(a)(3)(A), which directed amendment of cl. (i) by substituting ''funding target attainment percentage (as defined in section 430(d)(2))'' for ''funded current liability percentage (within the meaning of section 412(*l*)(8))'', was executed by making the substitution for ''funded current liability percentage (as defined in section 412(*l*)(8))'', to reflect the probable intent of Congress.

Subsec. (a)(33)(B)(iii). Pub. L. 109–280, §114(a)(3)(B), substituted ''section 412(c)(2)'' for ''subsection 412(c)(8)''.

Subsec. (a)(33)(D). Pub. L. 109–280, §114(a)(3)(C), substituted ''section 412(b)(2) (without regard to subparagraph (B) thereof)'' for ''section 412(c)(11) (without regard to subparagraph (B) thereof)''.

Subsec. (a)(35). Pub. L. 109–280, §901(a)(1), added par. (35).

Subsec. (a)(36). Pub. L. 109–280, §905(b), added par. (36).

Subsec. (k)(2)(B)(i)(V). Pub. L. 109–280, §827(b)(1), added subcl. (V).

Subsec. (k)(3)(G). Pub. L. 109–280, §861(a)(2), (b)(3), inserted heading and struck out ''maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof)'' after ''414(d))'' in text.

Subsec. (k)(8)(A)(i). Pub. L. 109–280, §902(e)(3)(B)(i), inserted ''through the end of such year'' after ''such contributions''.

Subsec. (k)(8)(E). Pub. L. 109–280, §902(d)(2)(C), (D), inserted ''or erroneous automatic contribution'' after ''or

contribution'' in heading and inserted ''an erroneous automatic contribution under section 414(w),'' after ''402(g)(2)(A),'' in text.

Subsec. (k)(13). Pub. L. 109–280, § 902(a), added par. (13).

Subsec. (m)(6)(A). Pub. L. 109–280, § 902(e)(3)(B)(ii), inserted ''through the end of such year'' after ''to such contributions''.

Subsec. (m)(12), (13). Pub. L. 109–280, § 902(b), added par. (12) and redesignated former par. (12) as (13).

2004—Subsec. (a)(26)(C) to (I). Pub. L. 108–311 redesignated subpars. (D) to (I) as (C) to (H), respectively, and struck out heading and text of former subpar. (C). Text read as follows: ''In the case of contributions under section 401(k) or 401(m), employees who are eligible to contribute (or may elect to have contributions made on their behalf) shall be treated as benefiting under the plan.''

2002—Subsec. (a)(30). Pub. L. 107–147, § 411(*o*)(2), substituted ''402(g)(1)(A)'' for ''402(g)(1)''.

Subsec. (a)(31)(C)(i). Pub. L. 107–147, § 411(q)(1), inserted ''is a qualified trust which is part of a plan which is a defined contribution plan and'' before ''agrees''.

2001—Subsec. (a)(17). Pub. L. 107–16, § 611(c)(1), substituted ''$200,000'' for ''$150,000'' in two places.

Subsec. (a)(17)(B). Pub. L. 107–16, § 611(c)(2), substituted ''July 1, 2001'' for ''October 1, 1993'' and substituted ''$5,000'' for ''$10,000'' in two places.

Subsec. (a)(31). Pub. L. 107–16, § 657(a)(2)(A), substituted ''Direct'' for ''Optional direct'' in heading.

Subsec. (a)(31)(B). Pub. L. 107–16, § 657(a)(1), added subpar. (B). Former subpar. (B) redesignated (C).

Pub. L. 107–16, § 643(b), inserted at end ''The preceding sentence shall not apply to such distribution if the plan to which such distribution is transferred—

''(i) agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible, or

''(ii) is an eligible retirement plan described in clause (i) or (ii) of section 402(c)(8)(B).''

Pub. L. 107–16, § 641(e)(3), substituted '', 403(a)(4), 403(b)(8), and 457(e)(16)'' for ''and 403(a)(4)''.

Subsec. (a)(31)(C). Pub. L. 107–16, § 657(a)(2)(B), substituted ''Subparagraphs (A) and (B)'' for ''Subparagraph (A)''.

Pub. L. 107–16, § 657(a)(1), redesignated subpar. (B) as (C). Former subpar. (C) redesignated (D).

Subsec. (a)(31)(D), (E). Pub. L. 107–16, § 657(a)(1), redesignated subpars. (C) and (D) as (D) and (E), respectively.

Subsec. (c)(2)(A). Pub. L. 107–16, § 611(g)(1), inserted at end ''For purposes of this part only (other than sections 419 and 419A), this subparagraph shall be applied as if the term 'trade or business' for purposes of section 1402 included service described in section 1402(c)(6).''

Subsec. (k)(2)(B)(i)(I). Pub. L. 107–16, § 646(a)(1)(A), substituted ''severance from employment'' for ''separation from service''.

Subsec. (k)(10). Pub. L. 107–16, § 646(a)(1)(C)(iii), struck out ''or disposition of assets or subsidiary'' after ''plan'' in heading.

Subsec. (k)(10)(A). Pub. L. 107–16, § 646(a)(1)(B), reenacted heading without change and amended text generally, substituting present provisions for provisions including termination of plan, disposition of assets, and disposition of subsidiary as events described in this paragraph.

Subsec. (k)(10)(B)(i). Pub. L. 107–16, § 646(a)(1)(C)(i), substituted ''A termination'' for ''An event'' and ''the termination'' for ''the event''.

Subsec. (k)(10)(C). Pub. L. 107–16, § 646(a)(1)(C)(ii), struck out heading and text of subpar. (C). Text read as follows: ''An event shall not be treated as described in clause (ii) or (iii) of subparagraph (A) unless the transferor corporation continues to maintain the plan after the disposition.''

Subsec. (k)(11)(B)(i)(I). Pub. L. 107–16, § 611(f)(3)(A), substituted ''the amount in effect under section 408(p)(2)(A)(ii)'' for ''$6,000''.

Subsec. (k)(11)(E). Pub. L. 107–16, § 611(f)(3)(B), struck out heading and text of subpar. (E). Text read as follows: ''The Secretary shall adjust the $6,000 amount under subparagraph (B)(i)(I) at the same time and in the same manner as under section 408(p)(2)(E).''

Subsec. (m)(9). Pub. L. 107–16, § 666(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection and subsection (k) including—

''(A) such regulations as may be necessary to prevent the multiple use of the alternative limitation with respect to any highly compensated employee, and

''(B) regulations permitting appropriate aggregation of plans and contributions.

For purposes of the preceding sentence, the term 'alternative limitation' means the limitation of section 401(k)(3)(A)(ii)(II) and the limitation of paragraph (2)(A)(ii) of this subsection.''

2000—Subsec. (k)(10)(B)(ii). Pub. L. 106–554 inserted at end ''Such term includes a distribution of an annuity contract from—

''(I) a trust which forms a part of a plan described in section 401(a) and which is exempt from tax under section 501(a), or

''(II) an annuity plan described in section 403(a).''

1997—Subsec. (a)(1). Pub. L. 105–34, § 1530(c)(1), inserted ''or by a charitable remainder trust pursuant to a qualified gratuitous transfer (as defined in section 664(g)(1)),'' after ''stock bonus plans),''.

Subsec. (a)(5)(G). Pub. L. 105–34, § 1505(a)(1), added subpar. (G).

Subsec. (a)(13)(C), (D). Pub. L. 105–34, § 1502(b), added subpars. (C) and (D).

Subsec. (a)(26)(H). Pub. L. 105–34, § 1505(a)(2), amended heading and text of subpar. (H) generally. Prior to amendment, text read as follows:

''(i) IN GENERAL.—An employer may elect to have this paragraph applied separately with respect to any classification of qualified public safety employees for whom a separate plan is maintained.

''(ii) QUALIFIED PUBLIC SAFETY EMPLOYEE.—For purposes of this subparagraph, the term 'qualified public safety employee' means any employee of any police department or fire department organized and operated by a State or political subdivision if the employee provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State or political subdivision.''

Subsec. (k)(3)(G). Pub. L. 105–34, § 1505(b), added subpar. (G).

Subsec. (k)(7)(B)(iii) to (v). Pub. L. 105–34, § 1525(a), struck out ''and'' at end of cl. (iii), added cl. (iv), redesignated former cl. (iv) as (v), and in cl. (v), substituted '', (iii), or (iv)'' for ''or (iii)''.

Subsec. (k)(11)(B)(iii). Pub. L. 105–34, § 1601(d)(2)(D), added cl. (iii).

Subsec. (k)(11)(D)(ii). Pub. L. 105–34, § 1601(d)(2)(A), inserted ''if such plan allows only contributions required under this paragraph'' before period at end.

Subsec. (k)(11)(E). Pub. L. 105–34, § 1601(d)(2)(B), added subpar. (E).

Subsec. (m)(11). Pub. L. 105–34, § 1601(d)(3), substituted ''Additional alternative'' for ''Alternative'' in heading.

1996—Subsec. (a)(5)(D)(ii). Pub. L. 104–188, § 1431(c)(1)(B), substituted ''section 414(q)(4)'' for ''section 414(q)(7)'' in introductory provisions.

Subsec. (a)(5)(F). Pub. L. 104–188, § 1445(a), added subpar. (F).

Subsec. (a)(9)(C). Pub. L. 104–188, § 1404(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of this paragraph, the term 'required beginning date' means April 1 of the calendar year following the calendar year in which the employee attains age 70½. In the case of a governmental plan or church plan, the required beginning date shall be the later of the date determined under the preceding sentence or April 1 of

the calendar year following the calendar year in which the employee retires. For purposes of this subparagraph, the term 'church plan' means a plan maintained by a church for church employees, and the term 'church' means any church (as defined in section 3121(w)(3)(A)) or qualified church-controlled organization (as defined in section 3121(w)(3)(B)).''

Subsec. (a)(17)(A). Pub. L. 104–188, §1431(b)(2), struck out at end ''In determining the compensation of an employee, the rules of section 414(q)(6) shall apply, except that in applying such rules, the term 'family' shall include only the spouse of the employee and any lineal descendants of the employee who have not attained age 19 before the close of the year.''

Subsec. (a)(20). Pub. L. 104–188, §1704(t)(67), substituted ''section 521'' for ''section 211'' in last sentence.

Subsec. (a)(26)(A). Pub. L. 104–188, §1432(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''A trust shall not constitute a qualified trust under this subsection unless such trust is part of a plan which on each day of the plan year benefits the lesser of—

''(i) 50 employees of the employer, or

''(ii) 40 percent or more of all employees of the employer.''

Subsec. (a)(26)(G). Pub. L. 104–188, §1432(b), substituted ''paragraph (2)(A) or (7)'' for ''paragraph (7)''.

Subsec. (a)(28)(B)(v). Pub. L. 104–188, §1401(b)(5), struck out cl. (v) which read as follows:

''(v) COORDINATION WITH DISTRIBUTION RULES.—Any distribution required by this subparagraph shall not be taken into account in determining whether a subsequent distribution is a lump sum distribution under section 402(d)(4)(A) or in determining whether section 402(c)(10) applies.''

Subsec. (d). Pub. L. 104–188, §1441(a), amended subsec. (d) generally, substituting provisions relating to contribution limit on owner-employees for former provisions relating to additional requirements for qualification of trusts and plans benefiting owner-employees.

Subsec. (h). Pub. L. 104–188, §1704(a), provided that, except as otherwise expressly provided, whenever in title XII of Pub. L. 101–508 an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986. Section 12011(b) of title XII of Pub. L. 101–508 directed the amendment of this section without specifying that the amendment was to the Internal Revenue Code of 1986. See 1990 Amendment note below.

Subsec. (k)(3)(A). Pub. L. 104–188, §1433(c)(1), in introductory provisions of cl. (ii) substituted ''the plan year'' for ''such year'' and ''for the preceding plan year'' for ''for such plan year'' and inserted at end of closing provisions of subpar. (A) ''An arrangement may apply clause (ii) by using the plan year rather than the preceding plan year if the employer so elects, except that if such an election is made, it may not be changed except as provided by the Secretary.''

Subsec. (k)(3)(E). Pub. L. 104–188, §1433(d)(1), added subpar. (E).

Subsec. (k)(3)(F). Pub. L. 104–188, §1459(a), added subpar. (F).

Subsec. (k)(4)(B). Pub. L. 104–188, §1426(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows:

''(B) STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS NOT ELIGIBLE.—A cash or deferred arrangement shall not be treated as a qualified cash or deferred arrangement if it is part of a plan maintained by—

''(i) a State or local government or political subdivision thereof, or any agency or instrumentality thereof, or

''(ii) any organization exempt from tax under this subtitle.

This subparagraph shall not apply to a rural cooperative plan.''

Subsec. (k)(7)(B)(i). Pub. L. 104–188, §1443(b), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''any organization which—

''(I) is exempt from tax under this subtitle or which is a State or local government or political subdivision thereof (or agency or instrumentality thereof), and

''(II) is engaged primarily in providing electric service on a mutual or cooperative basis,''.

Subsec. (k)(7)(C). Pub. L. 104–188, §1443(a), added subpar. (C).

Subsec. (k)(8)(C). Pub. L. 104–188, §1433(e)(1), substituted ''on the basis of the amount of contributions by, or on behalf of, each of such employees'' for ''on the basis of the respective portions of the excess contributions attributable to each of such employees''.

Subsec. (k)(10)(B)(ii). Pub. L. 104–188, §1401(b)(6), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows:

''(ii) LUMP SUM DISTRIBUTION.—For purposes of this subparagraph, the term 'lump sum distribution' has the meaning given such term by section 402(d)(4), without regard to clauses (i), (ii), (iii), and (iv) of subparagraph (A), subparagraph (B), or subparagraph (F) thereof.''

Subsec. (k)(11). Pub. L. 104–188, §1422(a), added par. (11).

Subsec. (k)(12). Pub. L. 104–188, §1433(a), added par. (12).

Subsec. (m)(2)(A). Pub. L. 104–188, §1433(c)(2), inserted ''for such plan year'' after ''highly compensated employees'' in introductory provisions, inserted ''for the preceding plan year'' after ''eligible employees'' wherever appearing in cls. (i) and (ii), and inserted at end ''This subparagraph may be applied by using the plan year rather than the preceding plan year if the employer so elects, except that if such an election is made, it may not be changed except as provided by the Secretary.''

Subsec. (m)(3). Pub. L. 104–188, §1433(d)(2), inserted at end of closing provisions ''Rules similar to the rules of subsection (k)(3)(E) shall apply for purposes of this subsection.''

Subsec. (m)(5)(C). Pub. L. 104–188, §1459(b), added subpar. (C).

Subsec. (m)(6)(C). Pub. L. 104–188, §1433(e)(2), substituted ''on the basis of the amount of contributions on behalf of, or by, each such employee'' for ''on the basis of the respective portions of such amounts attributable to each of such employees''.

Subsec. (m)(10). Pub. L. 104–188, §1422(b), added par. (10). Former par. (10) redesignated (11).

Subsec. (m)(11). Pub. L. 104–188, §1433(b), added par. (11). Former par. (11) redesignated (12).

Pub. L. 104–188, §1422(b), redesignated par. (10) as (11).

Subsec. (m)(12). Pub. L. 104–188, §1433(b), redesignated par. (11) as (12).

1994—Subsec. (a)(17)(B). Pub. L. 103–465, §732(a), reenacted subpar. (B) heading without change and amended text generally. Prior to amendment, text read as follows:

''(i) IN GENERAL.—If, for any calendar year after 1994, the excess (if any) of—

''(I) $150,000, increased by the cost-of-living adjustment for the calendar year, over

''(II) the dollar amount in effect under subparagraph (A) for taxable years beginning in the calendar year,

is equal to or greater than $10,000, then the $150,000 amount under subparagraph (A) (as previously adjusted under this subparagraph) for any taxable year beginning in any subsequent calendar year shall be increased by the amount of such excess, rounded to the next lowest multiple of $10,000.

''(ii) COST-OF-LIVING ADJUSTMENT.—The cost-of-living adjustment for any calendar year shall be the adjustment made under section 415(d) for such calendar year, except that the base period for purposes of section 415(d)(1)(A) shall be the calendar quarter beginning October 1, 1993.''

Subsec. (a)(32). Pub. L. 103–465, §751(a)(9)(C), which directed amendment of subsec. (a) by adding par. (32) at

end, was executed by adding par. (32) after par. (31) to reflect the probable intent of Congress.

Subsec. (a)(33). Pub. L. 103–465, § 766(b), which directed amendment of subsec. (a) by adding par. (33) at end, was executed by adding par. (33) after par. (32) to reflect the probable intent of Congress.

Subsec. (a)(34). Pub. L. 103–465, § 776(d), added par. (34).

1993—Subsec. (a)(17). Pub. L. 103–66 inserted par. heading, designated existing provisions as subpar. (A), inserted subpar. heading, substituted ''$150,000'' for ''$200,000'' in first sentence, struck out after first sentence ''The Secretary shall adjust the $200,000 amount at the same time and in the same manner as under section 415(d).'', and added subpar. (B).

1992—Subsec. (a)(20). Pub. L. 102–318, § 521(b)(5), substituted ''1 or more distributions within 1 taxable year to a distributee on account of a termination of the plan of which the trust is a part, or in the case of a profit-sharing or stock bonus plan, a complete discontinuance of contributions under such plan'' for ''a qualified total distribution described in section 402(a)(5)(E)(i)(I)'' and inserted at end ''For purposes of this paragraph, rules similar to the rules of section 402(a)(6)(B) (as in effect before its repeal by section 211 of the Unemployment Compensation Amendments of 1992) shall apply.''

Subsec. (a)(28)(B)(v). Pub. L. 102–318, § 521(b)(6), amended cl. (v) generally. Prior to amendment, cl. (v) read as follows: ''Any distribution required by this subparagraph shall not be taken into account in determining whether—

''(I) a subsequent distribution is a lump-sum distribution under section 402(e)(4)(A), or

''(II) section 402(a)(5)(D)(iii) applies to a subsequent distribution.''

Subsec. (a)(31). Pub. L. 102–318, § 522(a)(1), added par. (31).

Subsec. (k)(2)(B)(i)(IV). Pub. L. 102–318, § 521(b)(7), substituted ''402(e)(3)'' for ''402(a)(8)''.

Subsec. (k)(10)(B)(ii). Pub. L. 102–318, § 521(b)(8), substituted ''402(d)(4)'' for ''402(e)(4)'' and ''subparagraph (F)'' for ''subparagraph (H)''.

1990—Subsec. (h). Pub. L. 101–508, which directed that ''section 401(h) is amended by inserting ', and subject to the provisions of section 420'' without specifying that amendment was to the Internal Revenue Code of 1986, was executed by making the insertion in subsec. (h) of this section. See 1996 Amendment note above.

1989—Subsec. (a)(9)(C). Pub. L. 101–140 struck out ''(as defined in section 89(i)(4))'' after ''governmental or church plan'' and inserted at end ''For purposes of this subparagraph, the term 'church plan' means a plan maintained by a church for church employees, and the term 'church' means any church (as defined in section 3121(w)(3)(A)) or qualified church-controlled organization (as defined in section 3121(w)(3)(B)).''

Subsec. (a)(28)(B)(ii)(II). Pub. L. 101–239, § 7811(h)(3), made technical correction to directory language of Pub. L. 100–647, § 1011B(j)(1), see 1988 Amendment note below.

Subsec. (a)(29)(A)(i). Pub. L. 101–239, § 7881(i)(4)(A), substituted ''multiemployer plan) to which the requirements of section 412 apply'' for ''multiemployer plan)''.

Subsec. (a)(29)(C)(i)(II). Pub. L. 101–239, § 7881(i)(1)(A), substituted ''plan amendment and any other plan amendments adopted after December 22, 1987, and before such plan amendment'' for ''plan amendment''.

Subsec. (a)(30). Pub. L. 101–239, § 7811(g)(1), moved par. (30) from a position after the undesignated closing par. to a position immediately after par. (29).

Subsec. (h). Pub. L. 101–239, § 7311(a), inserted at end ''In no event shall the requirements of paragraph (1) be treated as met if the aggregate actual contributions for medical benefits, when added to actual contributions for life insurance protection under the plan, exceed 25 percent of the total actual contributions to the plan (other than contributions to fund past service credits) after the date on which the account is established.''

Subsec. (k)(4)(B). Pub. L. 101–239, § 7816(*l*), amended Pub. L. 100–647, § 6071(b)(2), see 1988 Amendment note below.

1988—Subsec. (a)(9)(C). Pub. L. 100–647, § 6053(a), inserted at end ''In the case of a governmental plan or church plan (as defined in section 89(i)(4)), the required beginning date shall be the later of the date determined under the preceding sentence or April 1 of the calendar year following the calendar year in which the employee retires.''

Subsec. (a)(11)(E), (F). Pub. L. 100–647, § 1011A(*l*), redesignated subpar. (E), relating to cross reference, as (F).

Subsec. (a)(17). Pub. L. 100–647, § 1011(d)(4), inserted at end ''In determining the compensation of an employee, the rules of section 414(q)(6) shall apply, except that in applying such rules, the term 'family' shall include only the spouse of the employee and any lineal descendants of the employee who have not attained age 19 before the close of the year.''

Subsec. (a)(22). Pub. L. 100–647, § 1011B(k)(1), (2), substituted ''is not readily tradable on an established market'' for ''is not publicly traded'' in subpar. (A) and in last sentence, and inserted at end ''For purposes of the preceding sentence, subsections (b), (c), (m), and (*o*) of section 414 shall not apply except for determining whether stock of the employer is not readily tradable on an established market.''

Subsec. (a)(26)(F), (G). Pub. L. 100–647, § 1011(h)(3), added subpars. (F) and (G). Former subpar. (F) redesignated (H).

Subsec. (a)(26)(H). Pub. L. 100–647, § 6055(a), added subpar. (H). Former subpar. (H) redesignated (I).

Pub. L. 100–647, § 1011(h)(3), redesignated former subpar. (F) as (H).

Subsec. (a)(26)(I). Pub. L. 100–647, § 6055(a), redesignated former subpar. (H) as (I).

Subsec. (a)(27). Pub. L. 100–647, § 1011A(j), inserted par. heading, designated existing provisions as subpar. (A), inserted subpar. (A) heading, and added subpar. (B).

Subsec. (a)(28)(B)(ii)(II). Pub. L. 100–647, § 1011B(j)(1), as amended by Pub. L. 101–239, § 7811(h)(3), inserted ''and within 90 days after the period during which the election may be made, the plan invests the portion of the participant's account covered by the election in accordance with such election'' after ''clause (i)''.

Subsec. (a)(28)(B)(iv). Pub. L. 100–647, § 1011B(d)(2), amended cl. (iv) generally. Prior to amendment, cl. (iv) read as follows: ''For purposes of this subparagraph, the term 'qualified election period' means the 5-plan-year period beginning with the plan year after the plan year in which the participant attains age 55 (or, if later, beginning with the plan year after the 1st plan year in which the individual 1st became a qualified participant).''

Subsec. (a)(28)(B)(v). Pub. L. 100–647, § 1011B(j)(6), added cl. (v).

Subsec. (a)(30). Pub. L. 100–647, § 1011(c)(7)(A), added par. (30) at end.

Subsec. (k)(1), (2). Pub. L. 100–647, § 6071(a), struck out ''electric'' after ''or a rural''.

Subsec. (k)(2)(B). Pub. L. 100–647, § 1011(k)(2)(A), inserted ''amounts held by the trust which are attributable to employer contributions made pursuant to the employee's election'' after ''under which''.

Subsec. (k)(2)(B)(i). Pub. L. 100–647, § 1011(k)(2)(B), struck out ''amounts held by the trust which are attributable to employer contributions made pursuant to the employee's election'' before ''may not be''.

Pub. L. 100–647, § 1011(k)(1)(A), added subcl. (II), redesignated former subcls. (V) and (VI) as (III) and (IV), respectively, and struck out former subcls. (II) to (IV) which read as follows:

''(II) termination of the plan without establishment of a successor plan,

''(III) the date of the sale by a corporation of substantially all of the assets (within the meaning of section 409(d)(2)) used by such corporation in a trade or business of such corporation with respect to an employee who continues employment with the corporation acquiring such assets,

''(IV) the date of the sale by a corporation of such corporation's interest in a subsidiary (within the mean-

ing of section 409(d)(3)) with respect to an employee who continues employment with such subsidiary,''.

Subsec. (k)(2)(B)(ii). Pub. L. 100–647, §1011(k)(2)(C), struck out ''amounts'' before ''will not be''.

Subsec. (k)(3)(A). Pub. L. 100–647, §1011(k)(3)(B), made technical correction to Pub. L. 99–514, §1116(b)(4). See 1986 Amendment note below.

Subsec. (k)(3)(A)(ii). Pub. L. 100–647, §1011(k)(3)(A), inserted ''eligible'' before ''highly compensated employees'' in introductory text, in subcl. (I), and in two places in subcl. (II).

Subsec. (k)(3)(C), (D). Pub. L. 100–647, §1011(k)(4), (5), redesignated subpar. (C), relating to employer contributions, as (D), and substituted ''meet'' for ''meets'' in cl. (ii)(I).

Subsec. (k)(4)(A). Pub. L. 100–647, §1011(k)(6), struck out ''provided by such employer'' after ''any other benefit''.

Subsec. (k)(4)(B). Pub. L. 100–647, §6071(b)(2), as amended by Pub. L. 101–239, §7816(*l*), substituted ''rural cooperative plan'' for ''rural electric cooperative plan'' in last sentence.

Pub. L. 100–647, §1011(k)(9), inserted at end ''This subparagraph shall not apply to a rural electric cooperative plan.''

Subsec. (k)(7). Pub. L. 100–647, §6071(b)(1), substituted ''Rural cooperative plan'' for ''Rural electric cooperative plan'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of this subsection—

''(A) IN GENERAL.—The term 'rural cooperative plan' means any pension plan—

''(i) which is a defined contribution plan (as defined in section 414(i)), and

''(ii) which is established and maintained by a rural cooperative.

''(B) RURAL COOPERATIVE DEFINED.—For purposes of subparagraph (A), the term 'rural cooperative' means—

''(i) any organization which—

''(I) is exempt from tax under this subtitle or which is a State or local government or political subdivision thereof (or agency or instrumentality thereof), and

''(II) is engaged primarily in providing electric service on a mutual or cooperative basis,

''(ii) any organization described in paragraph (4) or (6) of section 501(c) and at least 80 percent of the members of which are organizations described in clause (i), and

''(iii) an organization which is a national association of organizations described in clause (i) or (ii).''

Pub. L. 100–647, §1011(e)(3), amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''For purposes of this subsection, the term 'rural electric cooperative plan' means any pension plan—

''(A) which is a defined contribution plan (as defined in section 414(i)), and

''(B) which is established and maintained by a rural electric cooperative (as defined in section 457(d)(9)(B)) or a national association of such rural electric cooperatives.''

Subsec. (k)(8)(E), (F). Pub. L. 100–647, §1011(k)(7), added subpar. (E) and redesignated former subpar. (E) as (F).

Subsec. (k)(10). Pub. L. 100–647, §1011(k)(1)(B), added par. (10).

Subsec. (*l*)(2)(B)(i), (ii). Pub. L. 100–647, §1011(g)(1)(A), substituted ''contributed by the employer under'' for ''contributed under''.

Subsec. (*l*)(3)(A)(ii). Pub. L. 100–647, §1011(g)(1)(B), inserted ''attributable to employer contributions'' after ''basis of benefits''.

Subsec. (*l*)(5)(C). Pub. L. 100–647, §1011(g)(2), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''The term 'average annual compensation' means the greater of—

''(i) the participant's final average compensation (determined without regard to subparagraph (D)(ii)), or

''(ii) the participant's highest average annual compensation for any other period of at least 3 consecutive years.''

Subsec. (*l*)(5)(E). Pub. L. 100–647, §1011(g)(3), substituted ''the social security retirement age'' for ''age 65'' in cl. (i) and in two places in cl. (ii), and added cl. (iii).

Subsec. (m)(1). Pub. L. 100–647, §1011(*l*)(1), substituted ''A defined contribution plan'' for ''A plan''.

Subsec. (m)(2)(B). Pub. L. 100–647, §1011(*l*)(3), substituted ''contributions to which this subsection applies are made'' for ''such contributions are made''.

Subsec. (m)(3). Pub. L. 100–647, §1011(*l*)(2), inserted at end ''If matching contributions are taken into account for purposes of subsection (k)(3)(A)(ii) for any plan year, such contributions shall not be taken into account under subparagraph (A) for such year.''

Subsec. (m)(4)(A)(i), (ii). Pub. L. 100–647, §1011(*l*)(4), substituted ''a defined contribution plan'' for ''the plan''.

Subsec. (m)(4)(B). Pub. L. 100–647, §1011(*l*)(5)(A), substituted ''section 402(g)(3)'' for ''section 402(g)(3)(A)''.

Subsec. (m)(6)(C). Pub. L. 100–647, §1011(*l*)(6), substituted ''excess aggregate contributions'' for ''excess contributions'' in heading.

Subsec. (m)(7)(A). Pub. L. 100–647, §1011(*l*)(7), substituted ''paragraph (6)'' for ''paragraph (8)''.

1987—Subsec. (a)(29). Pub. L. 100–203 added par. (29).

1986—Subsec. (a)(4). Pub. L. 99–514, §1114(b)(7), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''if the contributions or the benefits provided under the plan do not discriminate in favor of employees who are—

''(A) officers,

''(B) shareholders, or

''(C) highly compensated.

For purposes of this paragraph, there shall be excluded from consideration employees described in section 410(b)(3)(A) and (C).''

Subsec. (a)(5). Pub. L. 99–514, §1111(b), amended par. (5) generally. Prior to amendment, par. (5) related to conditions which taken alone would not require a classification to be considered discriminatory and means of determining the basic or regular rate of compensation of an employee and whether two or more plans of an employer satisfy requirements of par. (4) when considered as a single plan.

Subsec. (a)(8). Pub. L. 99–514, §1119(a), substituted ''defined benefit plan'' for ''pension plan''.

Subsec. (a)(9)(C). Pub. L. 99–514, §1121(b), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''For purposes of this paragraph, the term 'required beginning date' means April 1 of the calendar year following the later of—

''(i) the calendar year in which the employee attains age 70½, or

''(ii) the calendar year in which the employee retires.

Clause (ii) shall not apply in the case of an employee who is a 5-percent owner (as defined in section 416(i)(1)(B)) at any time during the 5-plan-year period ending in the calendar year in which the employee attains age 70½. If the employee becomes a 5-percent owner during any subsequent plan year, the required beginning date shall be April 1 of the calendar year following the calendar year in which such subsequent plan year ends.''

Pub. L. 99–514, §1852(a)(4)(A), substituted last 2 sentences for ''Except as provided in section 409(d), clause (ii) shall not apply in the case of an employee who is a 5-percent owner (as defined in section 416) with respect to the plan year ending in the calendar year in which the employee attains 70½.''

Subsec. (a)(9)(G). Pub. L. 99–514, §1852(a)(6), added subpar. (G).

Subsec. (a)(11)(A)(i). Pub. L. 99–514, §1898(b)(3)(A), substituted ''who does not die before the annuity starting date'' for ''who retires under the plan''.

Subsec. (a)(11)(B). Pub. L. 99–514, §1898(b)(2)(A)(ii), inserted at end ''Clause (iii)(III) shall apply only with re-

spect to the transferred assets (and income therefrom) if the plan separately accounts for such assets and any income therefrom.''

Subsec. (a)(11)(B)(iii)(I). Pub. L. 99–514, § 1898(b)(7)(A), inserted ''(reduced by any security interest held by the plan by reason of a loan outstanding to such participant)''.

Pub. L. 99–514, § 1898(b)(13)(A), substituted ''section 417(a)(2)'' for ''section 417(a)(2)(A)''.

Subsec. (a)(11)(B)(iii)(III). Pub. L. 99–514, § 1898(b)(2)(A)(i), inserted ''(in a transfer after December 31, 1984)''.

Subsec. (a)(11)(D), (E). Pub. L. 99–514, § 1145(a), added subpar. (E) relating to exception for plans described in section 404(c) and redesignated former subpar. (D), relating to cross references, as (E).

Pub. L. 99–514, § 1898(b)(14)(A), added subpar. (D) and redesignated former subpar. (D), relating to cross references, as (E).

Subsec. (a)(17). Pub. L. 99–514, § 1106(d)(1), added par. (17).

Subsec. (a)(20). Pub. L. 99–514, § 1852(b)(8), substituted ''qualified total distribution described in section 402(a)(5)(E)(i)(I)'' for ''qualifying rollover distribution (determined as if section 402(a)(5)(D)(i) did not contain subclause (II) thereof) described in section 402(a)(5)(A)(i) or 403(a)(4)(A)(i)''.

Subsec. (a)(21). Pub. L. 99–514, § 1171(b)(5), struck out par. (21) which read as follows: ''A trust forming part of a tax credit employee stock ownership plan shall not fail to be considered a permanent program merely because employer contributions under the plan are determined solely by reference to the amount of credit which would be allowable under section 41 if the employer made the transfer described in section 41(c)(1)(B)''.

Subsec. (a)(22). Pub. L. 99–514, § 1899A(10), substituted ''If'' for ''if''.

Pub. L. 99–514, § 1176(a), inserted at end ''The requirements of subsection (e) of section 409 shall not apply to any employees of an employer who are participants in any defined contribution plan established and maintained by such employer if the stock of such employer is not publicly traded and the trade or business of such employer consists of publishing on a regular basis a newspaper for general circulation.''

Subsec. (a)(23). Pub. L. 99–514, § 1174(c)(2)(A), amended par. (23) generally. Prior to amendment, par. (23) read as follows: ''A stock bonus plan which otherwise meets the requirements of this section shall not be considered to fail to meet the requirements of this section because it provides a cash distribution option to participants if that option meets the requirements of section 409(h), except that in applying section 409(h) for purposes of this paragraph, the term 'employer securities' shall include any securities of the employer held by the plan.''

Subsec. (a)(26). Pub. L. 99–514, § 1112(b), added par. (26).

Subsec. (a)(27). Pub. L. 99–514, § 1136(a), added par. (27).

Subsec. (a)(28). Pub. L. 99–514, § 1175(a)(1), added par. (28).

Subsec. (c)(2)(A)(v). Pub. L. 99–514, § 1848(b), substituted ''section 404'' for ''sections 404 and 405(c)''.

Subsec. (c)(6). Pub. L. 99–514, § 1143(a), added par. (6).

Subsec. (h). Pub. L. 99–514, § 1852(h)(1), substituted ''key employee'' for ''5-percent owner'' in two places in par. (6) and amended last sentence generally, substituting '' 'key employee' means any employee, who'' for '' '5-percent owner' means any employee who,'' and ''key employee as defined in section 416(i)'' for ''5-percent owner (as defined in section 416(i)(1)(B))''.

Subsec. (k)(1), (2). Pub. L. 99–514, § 1879(g)(1), substituted '', a pre-ERISA money purchase plan, or a rural electric cooperative plan'' for ''(or a pre-ERISA money purchase plan)''.

Subsec. (k)(2)(B). Pub. L. 99–514, § 1116(b)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''under which amounts held by the trust which are attributable to employer contributions made pursuant to the employee's election may not be distributable to participants or other beneficiaries earlier than upon retirement, death, disability, or separation from service (or in the case of a profit sharing or stock bonus plan, hardship or the attainment of age 59½) and will not be distributable merely by reason of the completion of a stated period of participation or the lapse of a fixed number of years; and''.

Subsec. (k)(2)(C). Pub. L. 99–514, § 1852(g)(3), substituted ''is nonforfeitable'' for ''are nonforfeitable''.

Subsec. (k)(2)(D). Pub. L. 99–514, § 1116(b)(2), added subpar. (D).

Subsec. (k)(3). Pub. L. 99–514, § 1116(d)(3), which directed that the last sentence of subpar. (B) be struck out was executed by striking out the last sentence of par. (3) as the probable intent of Congress because subpar. (B) is composed of only one sentence. Prior to being stricken, such last sentence read as follows: ''For purposes of the preceding sentence, the compensation of any employee for a plan year shall be the amount of his compensation which is taken into account under the plan in calculating the contribution which may be made on his behalf for such plan year.''

Subsec. (k)(3)(A). Pub. L. 99–514, § 1116(b)(4), as amended by Pub. L. 100–647, § 1011(k)(3)(B), substituted ''any highly compensated employee'' for ''an employee'' in concluding provisions.

Pub. L. 99–514, § 1852(g)(2), substituted ''If an employee is a participant under 2 or more cash or deferred arrangements of the employer, for purposes of determining the deferral percentage with respect to such employee, all such cash or deferred arrangements shall be treated as 1 cash or deferred arrangement'' for ''The deferral percentage taken into account under this subparagraph for any employee who is a participant under 2 or more cash or deferred arrangements of the employer shall be the sum of the deferral percentages for such employee under each of such arrangements''.

Subsec. (k)(3)(A)(i). Pub. L. 99–514, § 1112(d)(1), struck out ''subparagraph (A) or (B) of'' before ''section 410(b)(1)''.

Subsec. (k)(3)(A)(ii). Pub. L. 99–514, § 1116(c)(2), substituted ''paragraph (5)'' for ''paragraph (4)''.

Pub. L. 99–514, § 1116(a), substituted ''1.25'' for ''1.5'' in subcl. (I), and ''2 percentage points'' for ''3 percentage points'' and ''2'' for ''2.5'' in subcl. (II).

Subsec. (k)(3)(C). Pub. L. 99–514, § 1852(g)(1), added subpar. (C) relating to treatment of cash or deferred arrangements.

Pub. L. 99–514, § 1116(e), added subpar. (C) relating to employer contributions.

Subsec. (k)(4). Pub. L. 99–514, § 1116(b)(3), added par. (4). Former par. (4) redesignated (5).

Subsec. (k)(5). Pub. L. 99–514, § 1116(b)(3), (d)(1), redesignated former par. (4) as (5) and substituted ''the term 'highly compensated employee' has the meaning given such term by section 414(q)'' for ''the term 'highly compensated employee' means any employee who is more highly compensated than two-thirds of all eligible employees, taking into account only compensation which is considered in applying paragraph (3)''. Former par. (5) redesignated (6).

Subsec. (k)(6). Pub. L. 99–514, § 1116(b)(3), redesignated former par. (5) as (6). Former par. (6) redesignated (7).

Pub. L. 99–514, § 1879(g)(2), added par. (6).

Subsec. (k)(7). Pub. L. 99–514, § 1116(b)(3), redesignated former par. (6) as (7).

Subsec. (k)(8). Pub. L. 99–514, § 1116(c)(1), added par. (8).

Subsec. (k)(9). Pub. L. 99–514, § 1116(d)(2), added par. (9).

Subsec. (*l*). Pub. L. 99–514, § 1111(a), amended subsec. (*l*) generally, substituting provisions relating to permitted disparity in plan contributions or benefits for provisions relating to nondiscriminatory coordination of defined contribution plans with OASDI.

Subsec. (m). Pub. L. 99–514, § 1117(a), added subsec. (m) and redesignated former subsec. (m) as (n).

Pub. L. 99–514, § 1898(c)(3), added subsec. (m).

Subsec. (n). Pub. L. 99–514, § 1117(a), redesignated former subsec. (m) as (n). Former subsec. (n) redesignated (*o*).

Pub. L. 99–514, §1898(c)(3), redesignated subsec. (*o*) as (n).

Subsec. (*o*). Pub. L. 99–514, §1117(a), redesignated former subsec. (n) as (*o*).

Pub. L. 99–514, §1898(c)(3), redesignated subsec. (*o*) as (n).

1984—Subsec. (a)(9). Pub. L. 98–369, §521(a)(1), amended par. (9) generally, redesignating existing provisions as subpar. (A) and in subpar. (A) as so redesignated struck out ''In the case of a plan which provides contributions or benefits for employees some or all of whom are employees within the meaning of subsection (c)(1)'' before ''a trust forming part of such plan'', substituted ''the plan provides that the entire interest of each employee—'' for '', under the plan, the entire interest of each employee—'', redesignated subpars. (A) and (B) as cls. (i) and (ii) respectively, in cl. (i) as so redesignated substituted provisions stating that a qualified plan provides that the entire interest will be distributed to the employee not later than the beginning date for former provisions which provided alternative dates for providing interest, in cl. (ii) as so redesignated substituted alternate distribution dates to be set in accordance with regulations for former provisions stating that a qualified plan shall be distributed not later than the taxable year in which the taxpayer attains age 70½, and struck out the par. following cl. (ii) which provided ''A trust shall not be disqualified under this paragraph by reason of distributions under a designation, prior to the date of the enactment of this paragraph, by any employee under the plan of which such trust is a part, of a method of distribution which does not meet the terms of the preceding sentence.'', and added subpars. (B) to (F).

Pub. L. 98–369, §521(a)(2), repealed amendment made by Pub. L. 97–248, §242(a). See 1982 Amendment note below.

Subsec. (a)(10)(B)(iii). Pub. L. 98–369, §524(d)(1), added cl. (iii).

Subsec. (a)(11). Pub. L. 98–397, §203(a), amended par. (11) generally, inserting provisions relating to preretirement survivor annuities, and substituting present four subpars. for former eight subpars.

Subsec. (a)(13). Pub. L. 98–397, §204(a), designated existing provisions as subpar. (A), corrected the margin of subpar. (A), and added subpar. (B).

Subsec. (a)(21). Pub. L. 98–369, §474(r)(13), substituted provisions relating to the amount of the credit which would be allowable under section 41 if the employer made the transfer described in section 41(c)(1)(B) for former provisions which had related to the amount of credit which would be allowable under section 46(a) if the employer made the transfer described in section 48(n)(1) or under section 44G if the employer made the transfer described in section 44G(c)(1)(B).

Subsec. (a)(22). Pub. L. 98–369, §491(e)(4), substituted ''section 409'' for ''section 409A''.

Subsec. (a)(23). Pub. L. 98–369, §491(e)(5), substituted ''section 409(h)'' for ''section 409A(h)'' in two places.

Subsec. (a)(24). Pub. L. 98–369, §211(b)(5), substituted ''section 818(a)(6)'' for ''section 805(d)(6)''.

Subsec. (a)(25). Pub. L. 98–397, §301(b), added par. (25).

Subsec. (e). Pub. L. 98–369, §713(d)(3), repealed subsec. (e) which related to contributions for premiums on annuity, etc., contracts.

Subsec. (f)(2). Pub. L. 98–369, §713(c)(2)(A), substituted ''(as defined in section 408(n))'' for ''(as defined in subsection (d)(1))''.

Subsec. (h)(6). Pub. L. 98–369, §528(b), added par. (6).

Subsec. (k)(1), (2). Pub. L. 98–369, §527(b)(1), inserted ''(or a pre-ERISA money purchase plan)''.

Subsec. (k)(2)(B). Pub. L. 98–369, §527(b)(3), substituted ''(or in the case of a profit sharing or stock bonus plan, hardship or the attainment of age 59½)'' for '', hardship or the attainment of age 59½,''.

Subsec. (k)(3)(A). Pub. L. 98–369, §527(a), struck out ''qualified'' before ''cash or deferred arrangement'', substituted ''shall not be treated as a qualified cash or deferred arrangement unless'' for ''shall be considered to satisfy the requirements of subsection (a)(4), with respect to the amount of contributions, and of subparagraph (B) of section 410(b)(1) for a plan year if'', designated provisions beginning ''those employees'' and ending ''section 401(b)(1)'' as cl. (i) and text following as cl. (ii), redesignated former cls. (i) and (ii) as subcls. (I) and (II) and inserted text following subcl. (II).

Subsec. (k)(5). Pub. L. 98–369, §527(b)(2), added par. (5).

1983—Subsec. (a)(21). Pub. L. 97–448, §103(g)(2)(A), designated part of existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c)(2)(A)(vi). Pub. L. 98–21 added cl. (vi).

Subsec. (d)(2). Pub. L. 97–448, §306(a)(12), substituted ''paragraph (1)(B)'' for ''paragraph (9)(B)''.

Subsec. (d)(5). Pub. L. 97–448, §103(c)(10)(A), substituted ''Subparagraphs (A) and (B) shall not apply to contributions described in subsection (e), and shall not apply to any deductible employee contribution (as defined in section 72(*o*)(5))'' for ''Subparagraphs (A) and (B) do not apply to contributions described in subsection (e)'' in second sentence.

Subsec. (j)(3). Pub. L. 97–448, §103(d)(2), substituted ''under subparagraph (A) of paragraph (2) shall be treated as beginning a new period of plan participation with respect only to such change'' for ''under subparagraph (A) of subsection (j)(2) shall be treated as beginning a new period of plan participation'' in last sentence.

1982—Subsec. (a)(9). Pub. L. 97–248, §242(a), which was repealed by Pub. L. 98–369, §521(a)(2), had amended par. (9) generally, redesignating existing provisions as subpar. (A), in subpar. (A), as so redesignated, struck out preliminary provision which limited the application of this paragraph to plans providing contributions or benefits for employees some or all of whom were employees within the meaning of subsec. (c)(1), redesignated former subpars. (A) and (B) as cls. (i) and (ii) of subpar. (A), in cl. (i), as so redesignated, substituted reference to a key employee who is a participant in a top-heavy plan for former reference to owner-employees (within the meaning of subsec. (c)(3)), redesignated former cls. (i) and (ii) of subpar. (B) as subcls. (I) and (II) of cl. (ii), struck out former provision that a trust would not be disqualified under this paragraph by reason of distributions under a designation, prior to the date of the enactment of this paragraph, by any employee under the plan of which such trust was a part, of a method of distribution which did not meet the terms of this paragraph, and adding subpar. (B).

Subsec. (a)(10). Pub. L. 97–248, §237(e)(1), amended par. (10) generally, redesignating subpar. (B) as (A) and striking out former subpar. (A) relating to qualified trust as a trust forming part of such plan, for provisions relating to discriminatory plans with respect to nonapplicability of paragraph (3), the first and second sentences of paragraph (5) and section 410 of this title.

Subsec. (a)(10)(B). Pub. L. 97–248, §240(b), added subpar. (B).

Subsec. (a)(17), (18). Pub. L. 97–248, §237(b), struck out pars. (17) and (18) which related, respectively, to a plan which provides contributions or benefits for employees some or all of whom are employees within the meaning of subsection (c)(1), or are shareholder-employees within the meaning of section 1379(d), and a trust which is part of a plan providing a defined benefit for employees some or all of whom are employees within the meaning of subsection (c)(1), or are shareholder-employees within the meaning of section 1379(d).

Subsec. (a)(24). Pub. L. 97–248 added par. (24).

Subsec. (c)(1). Pub. L. 97–248, §238(d)(1), amended par. (1) generally, substituting in heading ''Self-employed individual treated as employee'' for ''Employee'', adding subparagraph headings, and substituting provisions defining ''employee'' and ''self-employed individual'', for provisions defining ''employee''.

Subsec. (c)(2)(A). Pub. L. 97–248, §238(d)(2), added cl. (v).

Subsec. (d). Pub. L. 97–248, §237(a), redesignated pars. (9) to (11) as (1) to (3), respectively. Former pars. (1) to (7), which related to trusts created or organized before or after October 10, 1962, contributions under the plan, benefits under the plan for employees, contributions or

benefits under the plan, limitations pursuant to the plan, applicability of requirements of subsec. (a)(4) of this section, and distributions under the plan, respectively, were struck out.

Subsec. (j). Pub. L. 97–248, § 238(b), struck out subsec. (j) which related to general requirements, regulation guidelines, applicable percentage, certain contributions and benefits not taken into account, definitions, and special rules with respect to defined benefit plans providing benefits for self-employed individuals and shareholder-employees.

Subsecs. (*l*), (*o*). Pub. L. 97–248, § 249(a), added subsec. (*l*) and redesignated former subsec. (*l*) as (*o*).

1981—Subsec. (a)(17). Pub. L. 97–34, § 312(b)(1), designated provision relating to the annual compensation of each employee as subpar. (A), and in subpar. (A) as so designated, substituted ''$200,000'' for ''$100,000'', and added subpar. (B).

Subsec. (a)(22). Pub. L. 97–34, § 338(a), inserted ''(other than a profit-sharing plan)'' and substituted ''if'' for ''If'' and ''such plan'' for ''said plan''.

Subsec. (a)(23). Pub. L. 97–34, § 335, substituted ''409A(h), except that in applying section 409A(h) for purposes of this paragraph, the term 'employer securities' shall include any securities of the employer held by the plan'' for ''409A(h)(2)''.

Subsec. (d)(4). Pub. L. 97–34, § 312(e)(2), inserted provision making subpar. (B) inapplicable to any distribution to which section 72(m)(9) applies.

Subsec. (d)(5). Pub. L. 97–34, § 314(a)(1), inserted provision making subpar. (C) inapplicable to a distribution on account of the termination of the plan.

Subsec. (e). Pub. L. 97–34, § 312(c)(2), substituted ''for such taxable year exceeds $15,000'' for ''for all such years exceeds $7,500''.

Subsec. (j). Pub. L. 97–34, § 312(c)(3), (4), substituted in par. (2)(A) ''$100,000'' for ''$50,000'' and in par. (3) inserted provision that for purposes of this paragraph, a change in the annual compensation taken into account under subpar. (A) of subsec. (j)(2) be treated as beginning a new period of plan participation.

1980—Subsec. (a)(2). Pub. L. 96–364, §§ 208(e), 410(b), inserted provisions relating to applicability to multiemployer plans and return of contributions made by a mistake of law or fact, or return of withdrawal liability payment.

Subsec. (a)(4). Pub. L. 96–605, § 225(b)(1), substituted ''section 410(b)(3)(A)'' for ''section 410(b)(2)(A)''.

Subsec. (a)(12). Pub. L. 96–364, § 208(a), substituted provisions relating to applicability to multiemployer plans subject to title IV of the Employee Retirement Income Security Act of 1974 of provisions of preceding sentence, for provisions relating to applicability of paragraph to multiemployer plans to extent determined by Corporation.

Subsec. (a)(20). Pub. L. 96–222, § 101(a)(14)(E)(iii), substituted ''makes a qualifying rollover distribution (determined as if section 402(a)(5)(D)(i) did not contain subclause (II) thereof) described in section 402(a)(5)(A)(i) or 403(a)(4)(A)(i)'' for ''makes a payment or distribution described in section 402(a)(5)(i) or 403(a)(4)(i)''.

Subsec. (a)(21). Pub. L. 96–222, § 101(a)(7)(L)(i)(V), substituted ''a tax credit employee stock ownership plan'' for ''an ESOP''.

Subsec. (a)(22)(B). Pub. L. 96–222, § 101(a)(9), substituted ''are securities'' for ''as securities''.

Subsec. (a)(23). Pub. L. 96–605, § 221(a), added par. (23).

Subsec. (d)(3)(B). Pub. L. 96–605, § 225(b)(2), substituted in cl. (i) ''section 410(b)(3)(A)'' for ''section 410(b)(2)(A)'' and in cl. (ii) ''section 410(b)(3)(C)'' for ''section 410(b)(2)(C)''.

1978—Subsec. (a)(5). Pub. L. 95–600, § 152(e), inserted provision that for purposes of determining whether one or more plans of the employer satisfy the requirements of section 410(b)(4), an employer may take into account all simplified employee pensions to which only the employer contributes.

Subsec. (a)(21). Pub. L. 95–600, § 141(f)(3), substituted ''ESOP'' for ''employee stock option plan which satisfies the requirements of section 301(d) of the Tax Reduction Act of 1975'' and ''section 48(n)(1)'' for ''subsection (d)(6) or (e)(3) of section 301 of the Tax Reduction Act of 1975''.

Subsec. (a)(22). Pub. L. 95–600, § 143(a), added par. (22).

Subsecs. (k), (*l*). Pub. L. 95–600, § 135(a), added subsec. (k) and redesignated former subsec. (k) as (*l*).

1976—Subsec. (a). Pub. L. 94–455, §§ 803(b)(2), 1901(a)(56), 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' in pars. (5), (11), and (14), substituted references to Sept. 2, 1974, for references to the enactment of the Employee Retirement Income Security Act of 1974 in pars. (12), (13), (15), and (19), added par. (21), and inserted reference to par. (20) in provisions following par. (21), such addition of reference to par. (20) duplicating amendment by Pub. L. 94–267, § 1(c)(2).

Pub. L. 94–267, § 1(c)(2), substituted ''(19), and (20)'' for ''and (19)''.

Subsec. (a)(20). Pub. L. 94–267, § 1(c)(1), added par. (20).

Subsecs. (b), (c), (d). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (f). Pub. L. 94–455, § 1505(b), inserted reference to contracts (other than life, health, or accident, property, casualty, or liability insurance contracts) issued by an insurance company qualified to do a business in a State and struck out ''or his delegate'' after ''Secretary''.

Subsecs. (h), (i), (j). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

1974—Subsec. (a). Pub. L. 93–406, § 1021(a)(2), inserted provision that paragraphs (11), (12), (13), (14), (15), and (19) shall apply only in the case of a plan to which section 411 (relating to minimum vesting standards) applies without regard to subsection (e)(2) of this section.

Subsec. (a)(3). Pub. L. 93–406, § 1016(a)(2)(A), substituted provisions referring simply to a plan of which the trust is a part and the satisfaction by that plan of the requirements of section 410 (relating to minimum participation standards) for provisions referring to a trust, trusts, or trust or trusts and annuity plan or plans designated by the employer as constituting parts of a plan intended to qualify under subsec. (a) and spelling out the requisite coverage of the plan.

Subsec. (a)(4). Pub. L. 93–406, § 1022(a), struck out provisions referring to persons whose principal duties consist in supervising the work of other employees and inserted provisions directing the exclusion from consideration of employees described in section 410(b)(2) (A) and (C).

Subsec. (a)(5). Pub. L. 93–406, §§ 1012(b), 1016(a)(2)(B), inserted provisions covering the determination of whether two or more plans of an employer satisfy the requirements of par. (4) when considered as a single plan and substituted ''shall not be considered discriminatory within the meaning of paragraph (4) of section 410(b) (without regard to paragraph (1)(A) thereof)'' for ''shall not be considered discriminatory within the meaning of paragraph (3)(B) or (4)''.

Subsec. (a)(7). Pub. L. 93–406, § 1016(a)(2)(C), substituted provisions referring simply to the satisfaction by the plan of which a trust is a part of the requirements of section 411 (relating to minimum vesting standards) for provisions spelling out in detail the conditions which the plan had to satisfy in order that the trust forming part of that plan constitute a qualified trust under this section.

Subsec. (a)(10)(A). Pub. L. 93–406, §§ 1022(b)(1), 2001(e)(4), inserted reference to section 410 in provisions preceding cl. (i) and substituted ''subsection (e)'' for ''subsection (e)(3)(A)'' in cl. (ii).

Subsec. (a)(11). Pub. L. 93–406, § 1021(a)(1), added par. (11).

Subsec. (a)(12). Pub. L. 93–406, § 1021(b), added par. (12).

Subsec. (a)(13). Pub. L. 93–406, § 1021(c), added par. (13).

Subsec. (a)(14). Pub. L. 93–406, § 1021(d), added par. (14).

Subsec. (a)(15). Pub. L. 93–406, § 1021(e), added par. (15).

Subsec. (a)(16). Pub. L. 93–406, § 2004(a)(1), added par. (16).

Subsec. (a)(17). Pub. L. 93–406, § 2001(c), added par. (17).

Subsec. (a)(18). Pub. L. 93–406, § 2001(d)(1), added par. (18).

Subsec. (a)(19). Pub. L. 93–406, §1021(f), added par. (19).

Subsec. (b). Pub. L. 93–406, §1023, substituted reference to the requirements of subsection (a) for the period beginning with the date on which a stock bonus, pension, profit-sharing, or annuity plan was put into effect, or for the period beginning with the earlier of the date on which there was adopted or put into effect any amendment which caused the plan to fail to satisfy such requirements, and ending with the time prescribed by law for filing the return of the employer for his taxable year in which such plan or amendment was adopted (including extensions thereof) or such later time as the Secretary or his delegate may designate for reference to the requirements of paragraphs (3), (4), (5), and (6) of subsection (a) for the period beginning with the date on which a stock bonus, pension, profit-sharing, or annuity plan was put into effect and ending with the 15th day of the third month following the close of the taxable year of the employer in which the plan was put in effect.

Subsec. (d)(1). Pub. L. 93–406, §1022(c), (f), substituted ''October 10, 1962'' for ''the date of the enactment of this subsection'' and ''assets thereof are held by a bank or other person who demonstrates to the satisfaction of the Secretary or his delegate that the manner in which he will administer the trust will be consistent with the requirements of this section. A trust shall not be disqualified under this paragraph merely because a person (including the employer) other than the trustee or custodian so administering the trust'' for ''trustee is a bank, but a person (including the employer) other than a bank'' and inserted reference to an insured credit union (within the meaning of section 101(6) of the Federal Credit Union Act) in definition of ''bank''.

Subsec. (d)(3). Pub. L. 93–406, §1022(b)(2), inserted reference to the section 410(a)(3) definition of ''years of service'' and substituted reference to employees included in a unit of employees covered by a collective-bargaining agreement described in section 410(b)(2)(A) and employees who are nonresident aliens described in section 410(b)(2)(C) for reference to employees whose customary employment was for not more than 20 hours in any one week or was for not more than 5 months in any calendar year.

Subsec. (d)(4)(B). Pub. L. 93–406, §2001(h)(1), inserted ''in excess of contributions made by an owner-employee as an employee'' after ''benefits''.

Subsec. (d)(5). Pub. L. 93–406, §2001(e)(1), substituted ''Subparagraphs (A) and (B) do not apply to contributions described in subsection (e)'' for ''Subparagraphs (A) and (B) shall not apply to any contribution which is not considered to be an excess contribution (as defined in subsection (e)(1)) by reason of the application of subsection (e)(3)''.

Subsec. (d)(8). Pub. L. 93–406, §2001(e)(2), struck out par. (8) covering excess contributions.

Subsec. (e). Pub. L. 93–406, §2001(e)(3), struck out pars. (1) and (2) which defined and described the effect of excess contributions, redesignated par. (3) as the entire subsec. (e) and in provisions as thus carried forward as the entire subsec. (e) substituted ''$7,500'' for ''$2,500'' and inserted references to section 4972(b).

Subsec. (f). Pub. L. 93–406, §1022(d), expanded provisions to cover annuity contracts.

Subsecs. (j), (k). Pub. L. 93–406, §2001(d)(2), added subsec. (j) and redesignated former subsec. (j) as (k).

1971—Subsec. (i). Pub. L. 91–691 struck out ''multi-employer'' before ''pension plans'' in heading, and substituted ''one or more employers'' for ''two or more employers who are not related (determined under regulations prescribed by the Secretary or his delegate)'' in par. (1).

1966—Subsec. (a)(10)(A)(ii). Pub. L. 89–809, §204(b)(1)(A), struck out ''(determined without regard to section 404(a)(10))'' after ''deducted under section 404''.

Subsec. (c)(2)(A). Pub. L. 89–809, §204(c), struck out ''to the extent that such net earnings constitute earned income (as defined in section 911(b) but determined with the application of subparagraph (B))'' after ''The term 'earned income' means the net earnings from self-employment (as defined in section 1402(a))'', added cl. (i) and redesignated former cls. (i) to (ii) as (ii) to (iv) respectively, and struck out references to section 911(b) and subparagraph (B), as in effect for a taxable year beginning on January 1, 1963, in text following cl. (iv).

Subsec. (c)(2)(B). Pub. L. 89–809, §204(c), struck out subpar. (B) relating to earned income when both personal services and capital are material income-producing factors. See subsec. (c)(2)(A)(i).

Subsec. (c)(2)(C). Pub. L. 89–809, §205(a), added subpar. (C).

Subsecs. (d)(5)(A), (B), (d)(6)(A), (e)(1)(A), (B)(i), (3). Pub. L. 89–809, §204(b)(1)(B) to (E), struck out ''(determined without regard to section 404(a)(10))'' wherever appearing.

1965—Subsec. (d)(4)(B). Pub. L. 89–97 substituted ''section 72(m)(7)'' for ''section 213(g)(3)''.

1964—Subsecs. (i), (j). Pub. L. 88–272 added subsec. (i) and redesignated former subsec. (i) as (j).

1962—Subsec. (a)(5). Pub. L. 87–792, §2(1), inserted provisions defining total compensation for purposes of par. (5) and par. (10) of this subsection.

Subsec. (a)(7) to (10). Pub. L. 87–792, §2(2), added pars. (7) to (10).

Subsecs. (c) to (g). Pub. L. 87–792, §2(3), added subsecs. (c) to (g). Former subsec. (c) redesignated (h).

Subsec. (h). Pub. L. 87–863 added subsec. (h). Former subsec. (h) redesignated (i).

Pub. L. 87–792, §2(3), redesignated former subsec. (c) as (h).

Subsec. (i). Pub. L. 87–863 redesignated former subsec. (h) as (i).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–192, title II, §202(c)(1), June 25, 2010, 124 Stat. 1299, provided that: ''The amendment made by subsection (a) [amending sections 1021, 1023, 1053, 1054, 1056, 1057, 1103, 1108, 1301, 1303, 1310, 1362, 1371, and 1423 of Title 29, Labor, and section 106 of 1978 Reorg. Plan No. 4, set out in the Appendix to Title 5, Government Organization and Employees, and as a note under section 1001 of Title 29, enacting provisions set out as a note under this section, and amending provisions set out as a note under section 1021 of Title 29] shall take effect as if included in the Pension Protection Act of 2006 [Pub. L. 109–280].''

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by sections 101(d)(2)(A)–(C) and 109(a)–(b)(2) of Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

Pub. L. 110–458, title II, §201(c), Dec. 23, 2008, 122 Stat. 5117, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 402 of this title] shall apply for calendar years beginning after December 31, 2008.

''(2) PROVISIONS RELATING TO PLAN OR CONTRACT AMENDMENTS.—

''(A) IN GENERAL.—If this paragraph applies to any pension plan or contract amendment, such pension plan or contract shall not fail to be treated as being operated in accordance with the terms of the plan during the period described in subparagraph (B)(ii) solely because the plan operates in accordance with this section.

''(B) AMENDMENTS TO WHICH PARAGRAPH APPLIES.—

''(i) IN GENERAL.—This paragraph shall apply to any amendment to any pension plan or annuity contract which—

''(I) is made pursuant to the amendments made by this section, and

''(II) is made on or before the last day of the first plan year beginning on or after January 1, 2011.

In the case of a governmental plan, subclause (II) shall be applied by substituting '2012' for '2011'.

''(ii) CONDITIONS.—This paragraph shall not apply to any amendment unless during the period beginning on the effective date of the amendment and ending on December 31, 2009, the plan or contract is operated as if such plan or contract amendment were in effect.''

Pub. L. 110–245, title I, §104(d), June 17, 2008, 122 Stat. 1627, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 403, 404, 414, and 457 of this title] shall apply with respect to deaths and disabilities occurring on or after January 1, 2007.

''(2) PROVISIONS RELATING TO PLAN AMENDMENTS.—

''(A) IN GENERAL.—If this subparagraph applies to any plan or contract amendment, such plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in subparagraph (B)(iii).

''(B) AMENDMENTS TO WHICH SUBPARAGRAPH (A) APPLIES.—

''(i) IN GENERAL.—Subparagraph (A) shall apply to any amendment to any plan or annuity contract which is made—

''(I) pursuant to the amendments made by subsection (a) [amending this section] or pursuant to any regulation issued by the Secretary of the Treasury under subsection (a), and

''(II) on or before the last day of the first plan year beginning on or after January 1, 2010.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this clause shall be applied by substituting '2012' for '2010' in subclause (II).

''(ii) CONDITIONS.—This paragraph shall not apply to any amendment unless—

''(I) the plan or contract is operated as if such plan or contract amendment were in effect for the period described in clause (iii), and

''(II) such plan or contract amendment applies retroactively for such period.

''(iii) PERIOD DESCRIBED.—The period described in this clause is the period—

''(I) beginning on the effective date specified by the plan, and

''(II) ending on the date described in clause (i)(II) (or, if earlier, the date the plan or contract amendment is adopted).''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title I, §114(g), as added by Pub. L. 110–458, title I, §101(d)(3), Dec. 23, 2008, 122 Stat. 5099, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 411, 414, 420, 4971, 4972, and 6059 of this title] shall apply to plan years beginning after 2007.

''(2) EXCISE TAX.—The amendments made by subsection (e) [amending sections 4971 and 4972 of this title] shall apply to taxable years beginning after 2007, but only with respect to plan years described in paragraph (1) which end with or within any such taxable year.''

Amendment by section 827(b)(1) of Pub. L. 109–280 applicable to distributions after Sept. 11, 2001, with waiver of limitations if refund or credit of overpayment of tax resulting from such amendment is prevented before the close of the 1-year period beginning on Aug. 17, 2006, see section 827(c) of Pub. L. 109–280, set out as a note under section 72 of this title.

Pub. L. 109–280, title VIII, §861(c), Aug. 17, 2006, 120 Stat. 1021, provided that: ''The amendments made by this section [amending this section and provisions set out as a note under this section] shall apply to any year beginning after the date of the enactment of this Act [Aug. 17, 2006].''

Pub. L. 109–280, title IX, §901(c), Aug. 17, 2006, 120 Stat. 1032, provided that:

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section, sections 409 and 4980 of this title, and sections 1054 and 1107 of Title 29, Labor] shall apply to plan years beginning after December 31, 2006.

''(2) SPECIAL RULE FOR COLLECTIVELY BARGAINED AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act [Aug. 17, 2006], paragraph (1) shall be applied to benefits pursuant to, and individuals covered by, any such agreement by substituting for 'December 31, 2006' the earlier of—

''(A) the later of—

''(i) December 31, 2007, or

''(ii) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after such date of enactment), or

''(B) December 31, 2008.

''(3) SPECIAL RULE FOR CERTAIN EMPLOYER SECURITIES HELD IN AN ESOP.—

''(A) IN GENERAL.—In the case of employer securities to which this paragraph applies, the amendments made by this section [amending this section, sections 409 and 4980 of this title, and sections 1054 and 1107 of Title 29, Labor] shall apply to plan years beginning after the earlier of—

''(i) December 31, 2007, or

''(ii) the first date on which the fair market value of such securities exceeds the guaranteed minimum value described in subparagraph (B)(ii).

''(B) APPLICABLE SECURITIES.—This paragraph shall apply to employer securities which are attributable to employer contributions other than elective deferrals, and which, on September 17, 2003—

''(i) consist of preferred stock, and

''(ii) are within an employee stock ownership plan (as defined in section 4975(e)(7) of the Internal Revenue Code of 1986), the terms of which provide that the value of the securities cannot be less than the guaranteed minimum value specified by the plan on such date.

''(C) COORDINATION WITH TRANSITION RULE.—In applying section 401(a)(35)(H) of the Internal Revenue Code of 1986 and section 204(j)(7) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(j)(7)] (as added by this section) to employer securities to which this paragraph applies, the applicable percentage shall be determined without regard to this paragraph.''

Pub. L. 109–280, title IX, §902(g), Aug. 17, 2006, 120 Stat. 1039, provided that: ''The amendments made by this section [amending this section, sections 411, 414, 416, and 4979 of this title, and sections 1053, 1132, and 1144 of Title 29, Labor] shall apply to plan years beginning after December 31, 2007, except that the amendments made by subsection (f) [amending sections 1132 and 1144 of Title 29] shall take effect on the date of the enactment of this Act [Aug. 17, 2006].''

Pub. L. 109–280, title IX, §905(c), Aug. 17, 2006, 120 Stat. 1051, provided that: ''The amendments made by this section [amending this section and section 1002 of Title 29, Labor] shall apply to distributions in plan years beginning after December 31, 2006.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title IV, §407(c), Oct. 4, 2004, 118 Stat. 1190, provided that: ''The amendments made by this section [amending this section and section 1377 of this title] shall take effect as if included in the provisions of the Small Business Job Protection Act of 1996 [Pub. L. 104–188] to which they relate.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 611(c), (f)(3), (g)(1) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 611(i)(1) of Pub. L. 107–16, set out as a note under section 415 of this title.

Amendment by section 641(e)(3) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107–16, set out as a note under section 402 of this title.

Pub. L. 107–16, title VI, § 643(d), June 7, 2001, 115 Stat. 123, provided that: ''The amendments made by this section [amending this section and sections 402 and 408 of this title] shall apply to distributions made after December 31, 2001.''

Pub. L. 107–16, title VI, § 646(b), June 7, 2001, 115 Stat. 126, provided that: ''The amendments made by this section [amending this section and sections 403 and 457 of this title] shall apply to distributions after December 31, 2001.''

Pub. L. 107–16, title VI, § 657(d), June 7, 2001, 115 Stat. 137, provided that: ''The amendments made by this section [amending this section, section 402 of this title, and section 1104 of Title 29, Labor] shall apply to distributions made after final regulations implementing subsection (c)(2)(A) [set out as a note below] are prescribed [Final regulations implementing subsec. (c)(2)(A) became effective Mar. 28, 2005. See 69 F.R. 58017.].''

Pub. L. 107–16, title VI, § 666(b), June 7, 2001, 115 Stat. 144, provided that: ''The amendment made by this section [amending this section] shall apply to years beginning after December 31, 2001.''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which such amendment relates, see section 1(a)(7) [title III, § 316(e)] of Pub. L. 106–554, set out as a note under section 51 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1502(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section and section 1056 of Title 29, Labor] shall apply to judgments, orders, and decrees issued, and settlement agreements entered into, on or after the date of the enactment of this Act [Aug. 5, 1997].''

Pub. L. 105–34, title XV, § 1505(d), Aug. 5, 1997, 111 Stat. 1064, as amended by Pub. L. 105–206, title VI, § 6015(b), July 22, 1998, 112 Stat. 820; Pub. L. 109–280, title VIII, § 861(a)(2), Aug. 17, 2006, 120 Stat. 1021, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 403 and 410 of this title] apply to taxable years beginning on or after the date of enactment of this Act [Aug. 5, 1997].

''(2) TREATMENT FOR YEARS BEGINNING BEFORE DATE OF ENACTMENT.—A governmental plan (within the meaning of section 414(d) of the Internal Revenue Code of 1986) shall be treated as satisfying the requirements of sections 401(a)(3), 401(a)(4), 401(a)(26), 401(k), 401(m), 403(b)(1)(D) and (b)(12)(A)(i), and 410 of such Code for all taxable years beginning before the date of enactment of this Act.''

Section 1525(b) of Pub. L. 105–34 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to years beginning after December 31, 1997.''

Section 1530(d) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section and sections 404, 415, 664, 674, 2055, 2056, 4947, 4975, 4978, and 4979A of this title] shall apply to transfers made by trusts to, or for the use of, an employee stock ownership plan after the date of the enactment of this Act [Aug. 5, 1997].''

Amendment by section 1601(d)(2)(A), (B), (3) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, and amendment by section 1601(d)(2)(D) of Pub. L. 105–34 applicable to calendar years beginning after Aug. 5, 1997, see section 1601(j) of Pub. L. 105–34, set out as a note under section 36C of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1401(b)(5), (6) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1999, with retention of certain transition rules, see section 1401(c) of Pub. L. 104–188, set out as a note under section 402 of this title.

Section 1404(b) of Pub. L. 104–188 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to years beginning after December 31, 1996.''

Section 1422(c) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section] shall apply to plan years beginning after December 31, 1996.''

Section 1426(b) of Pub. L. 104–188 provided that: ''The amendment made by this section [amending this section] shall apply to plan years beginning after December 31, 1996, but shall not apply to any cash or deferred arrangement to which clause (i) of section 1116(f)(2)(B) of the Tax Reform Act of 1986 applies [Pub. L. 99–514, set out below].''

Amendment by section 1431(b)(2) of Pub. L. 104–188 applicable to years beginning after Dec. 31, 1996, and amendment by section 1431(c)(1)(B) of Pub. L. 104–188 applicable to years beginning after Dec. 31, 1996, except that in determining whether an employee is a highly compensated employee for years beginning in 1997, amendment by section 1431(c)(1)(B) to be treated as having been in effect for years beginning in 1996, see section 1431(d) of Pub. L. 104–188, set out as a note under section 414 of this title.

Section 1432(c) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section] shall apply to years beginning after December 31, 1996.''

Section 1433(f) of Pub. L. 104–188 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to years beginning after December 31, 1998.

''(2) EXCEPTIONS.—The amendments made by subsections (c), (d), and (e) [amending this section] shall apply to years beginning after December 31, 1996.''

Section 1441(b) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section] shall apply to years beginning after December 31, 1996.''

Section 1443(c) of Pub. L. 104–188 provided that:

''(1) DISTRIBUTIONS.—The amendments made by subsection (a) [amending this section] shall apply to distributions after the date of the enactment of this Act [Aug. 20, 1996].

''(2) PUBLIC UTILITY DISTRICTS.—The amendments made by subsection (b) [amending this section] shall apply to plan years beginning after December 31, 1996.''

Section 1445(b) of Pub. L. 104–188 provided that: ''The amendment made by this section [amending this section] shall apply to years beginning after December 31, 1996.''

Section 1459(c) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section] shall apply to plan years beginning after December 31, 1998.''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 732(e) of Pub. L. 103–465 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 402, 408, and 415 of this title] shall apply to years beginning after December 31, 1994.

''(2) ROUNDING NOT TO RESULT IN DECREASES.—The amendments made by this section providing for the rounding of indexed amounts shall not apply to any year to the extent the rounding would require the indexed amount to be reduced below the amount in effect for years beginning in 1994.''

Section 751(b) of Pub. L. 103–465 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 404, 412, and 4971 of this title] shall apply to plan years beginning after December 31, 1994.

''(2) REFERENCE.—The amendment made by subsection (a)(11) [amending section 404 of this title] shall take effect on the date of the enactment of this Act [Dec. 8, 1994].''

Section 766(d) of Pub. L. 103–465 provided that: ''The amendments made by this section [amending this section and sections 1054 and 1322 of Title 29, Labor] shall apply to plan amendments adopted on or after the date of enactment of this Act [Dec. 8, 1994].''

Amendment by section 776(d) of Pub. L. 103–465 effective with respect to distributions that occur in plan years commencing on or after Jan. 1, 1996, see section 776(e) of Pub. L. 103–465, set out as a note under section 1056 of Title 29, Labor.

Section 781 of title VII of Pub. L. 103–465 provided that: ''Except as otherwise provided in this subtitle [subtitle F (§§ 750–781) of title VII of Pub. L. 103–465, enacting sections 1310, 1311, and 1350 of Title 29, Labor, amending this section, sections 404, 411, 412, 415, 417, 4971, and 4972 of this title, and sections 1053 to 1056, 1082, 1132, 1301, 1303, 1305, 1306, 1322, 1341, 1342, and 1343 of Title 29, and enacting provisions set out as notes under this section, sections 1, 411, 412, and 4972 of this title, and sections 1056, 1082, 1303, 1306, 1310, 1311, 1322, 1341, and 1342 of Title 29], the amendments made by this subtitle shall be effective on the date of enactment of this Act [Dec. 8, 1994].''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13212(d) of Pub. L. 103–66, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 404, 408, and 505 of this title] shall apply to benefits accruing in plan years beginning after December 31, 1993.

''(2) COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of the enactment of this Act [Aug. 10, 1993], the amendments made by this section shall not apply to contributions or benefits pursuant to such agreements for plan years beginning before the earlier of—

''(A) the latest of—

''(i) January 1, 1994,

''(ii) the date on which the last of such collective bargaining agreements terminates (without regard to any extension, amendment, or modification of such agreements on or after such date of enactment), or

''(iii) in the case of a plan maintained pursuant to collective bargaining under the Railway Labor Act [45 U.S.C. 151 et seq.], the date of execution of an extension or replacement of the last of such collective bargaining agreements in effect on such date of enactment, or

''(B) January 1, 1997.

''(3) TRANSITION RULE FOR STATE AND LOCAL PLANS.—

''(A) IN GENERAL.—In the case of an eligible participant in a governmental plan (within the meaning of section 414(d) of the Internal Revenue Code of 1986), the dollar limitation under section 401(a)(17) of such Code shall not apply to the extent the amount of compensation which is allowed to be taken into account under the plan would be reduced below the amount which was allowed to be taken into account under the plan as in effect on July 1, 1993.

''(B) ELIGIBLE PARTICIPANT.—For purposes of subparagraph (A), an eligible participant is an individual who first became a participant in the plan during a plan year beginning before the 1st plan year beginning after the earlier of—

''(i) the plan year in which the plan is amended to reflect the amendments made by this section, or

''(ii) December 31, 1995.

''(C) PLAN MUST BE AMENDED TO INCORPORATE LIMITS.—This paragraph shall not apply to any eligible participant of a plan unless the plan is amended so that the plan incorporates by reference the dollar limitation under section 401(a)(17) of the Internal Revenue Code of 1986, effective with respect to noneligible participants for plan years beginning after December 31, 1995 (or earlier if the plan amendment so provides).''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 521(b)(5)–(8) of Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

Section 522(d) of Pub. L. 102–318 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 402 to 404, 3402, 3405, 6047, and 6652 of this title] shall apply to distributions after December 31, 1992.

''(2) TRANSITION RULE FOR CERTAIN ANNUITY CONTRACTS.—If, as of July 1, 1992, a State law prohibits a direct trustee-to-trustee transfer from an annuity contract described in section 403(b) of the Internal Revenue Code of 1986 which was purchased for an employee by an employer which is a State or a political subdivision thereof (or an agency or instrumentality of any 1 or more of either), the amendments made by this section shall not apply to distributions before the earlier of—

''(A) 90 days after the first day after July 1, 1992, on which such transfer is allowed under State law, or

''(B) January 1, 1994.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to transfers in taxable years beginning after Dec. 31, 1990, see section 12011(c)(1) of Pub. L. 101–508, set out as an Effective Date note under section 420 of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 7311(b) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to contributions after October 3, 1989.

''(2) TRANSITION.—The amendment made by this section shall not apply to contributions made before January 1, 1990, if—

''(A) the employer requested before October 3, 1989, a private letter ruling or determination letter with respect to the qualification of the plan maintaining the account under section 401(h) of the Internal Revenue Code of 1986,

''(B) the request sets forth a method under which the amount of contributions to the account are to be determined on the basis of cost,

''(C) such method is permissible under section 401(h) of such Code under the provisions of General Counsel Memorandum 39785, and

''(D) the Internal Revenue Service issued before October 4, 1989, a private letter ruling, determination letter, or other letter providing that the specific plan involved qualifies under section 401(a) of such Code when such method is used, that contributions to the account are deductible, or acknowledging that the account would not adversely affect the qualified status of the plan (contingent on all phases of the particular plan being approved).''

Amendment by sections 7811(g)(1), (h)(3) and 7816(*l*) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Section 7882 of Pub. L. 101–239 provided that: ''Except as otherwise provided in this subpart [subpart C (§§ 7881, 7882) of part V of title VII of Pub. L. 101–239, amending this section and sections 411 and 412 of this title, and sections 1002, 1021, 1023, 1054, 1082, 1083, 1085b, 1103, 1107,

1108, 1113, 1132, 1306, 1322, 1341, 1342, 1344, 1362, 1364, 1368, 1370, and 1371 of Title 29, Labor, enacting provisions set out as a note under section 1054 of Title 29, and amending provisions set out as notes under sections 404 and 412 of this title and sections 1021, 1301, 1322, and 1344 of Title 29], any amendment made by this subpart shall take effect as if included in the provision of the Pension Protection Act [Pub. L. 100–203, title IX, subtitle D, part II, §§9302–9346] to which such amendment relates.''

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1011(c)(7)(E) of Pub. L. 100–647 provided that: ''(i) Except as provided in clause (ii), the amendments made by this paragraph [amending this section and sections 403, 408, and 501 of this title] shall apply to plan years beginning after December 31, 1987.

''(ii) In the case of a plan described in section 1105(c)(2) of the Reform Act [section 1105(c)(2) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 402 of this title], the amendments made by this paragraph shall not apply to contributions made pursuant to an agreement described in such section for plan years beginning before the earlier of—

''(I) the later of January 1, 1988, or the date on which the last of such agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

''(II) January 1, 1989.''

Section 1011(k)(1)(C) of Pub. L. 100–647 provided that: ''(i) Subparagraph (A)(i) of section 401(k)(10) of the 1986 Code (as added by subparagraph (B)) shall apply to distributions after October 16, 1987.

''(ii) Subparagraph (B) of section 401(k)(10) of the 1986 Code (as added by subparagraph (B)) shall apply to distributions after March 31, 1988.''

Section 1011(*l*)(5)(B) of Pub. L. 100–647 provided that: ''The amendment made by this paragraph [amending this section] shall take effect as if included in the amendments made by section 1120 of the Reform Act [Pub. L. 99–514].''

Amendment by sections 1011(d)(4), (e)(3), (g)(1)–(3), (h)(3), (k)(1)(A), (B), (2)–(7), (9), (*l*)(1)–(4), (6), (7), 1011A(j), (*l*), and 1011B(j)(1), (2), (6), (k)(1), (2) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6053(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as if included in the amendments made by section 1121 of the Reform Act [Pub. L. 99–514].''

Section 6055(b) of Pub. L. 100–647 provided that: ''The amendment made by this section [amending this section] shall take effect as if included in the amendments made by section 1112(b) of the Reform Act [Pub. L. 99–514].''

Section 6071(d) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section and section 457 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9341(c) of Pub. L. 100–203, as amended by Pub. L. 101–239, title VII, §7881(i)(5), Dec. 19, 1989, 103 Stat. 2442, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [enacting section 1085b of Title 29, Labor, and amending this section] shall apply to plan amendments adopted after the date of the enactment of this Act [Dec. 22, 1987].

''(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of the enactment of this Act, the amendments made by this section shall not apply to plan amendments adopted pursuant to collective bargaining agreements ratified before the date of enactment (without regard to any extension, amendment, or modification of such agreements on or after such date of enactment).''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1106(d)(1) of Pub. L. 99–514 applicable to benefits accruing in years beginning after Dec. 31, 1988, except as otherwise provided, see section 1106(i)(5) of Pub. L. 99–514, set out as a note under section 415 of this title.

Section 1111(c) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1011(g)(4), Nov. 10, 1988, 102 Stat. 3464, provided that:

''(1) SUBSECTION (a).—The amendments made by subsection (a) [amending this section] shall apply to benefits attributable to plan years beginning after December 31, 1988.

''(2) SUBSECTION (b).—The amendments made by subsection (b) [amending this section] shall apply to years beginning after December 31, 1988.

''(3) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to plan years beginning before the earlier of—

''(A) the later of—

''(i) January 1, 1989, or

''(ii) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

''(B) January 1, 1991.''

Section 1112(e) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1011(h)(6)–(9), Nov. 10, 1988, 102 Stat. 3465, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 402, 404, 406, 407, 410, and 818 of this title] shall apply to plan years beginning after December 31, 1988.

''(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to plan years beginning before the earlier of—

''(A) the later of—

''(i) January 1, 1989, or

''(ii) the date on which the last of such collective bargaining agreement terminates (determined without regard to any extension thereof after February 28, 1986), or

''(B) January 1, 1991.

''(3) WAIVER OF EXCISE TAX ON REVERSIONS.—

''(A) IN GENERAL.—If—

''(i) a plan is in existence on August 16, 1986,

''(ii) such plan would fail to meet the requirements of section 401(a)(26) of the Internal Revenue Code of 1986 (as added by subsection (b)) if such section were in effect for the plan year including August 16, 1986, and

''(iii) there is no transfer of assets to or liabilities from the plan or spinoff or merger involving such plan after August 16, 1986,

then no tax shall be imposed under section 4980 of such Code on any employer reversion by reason of the termination or merger of such plan before the 1st year to which the amendment made by subsection (b) applies.

''(B) INTEREST RATE FOR DETERMINING ACCRUED BENEFIT OF HIGHLY COMPENSATED EMPLOYEES FOR CERTAIN PURPOSES.—In the case of a termination, transfer, or

distribution of assets of a plan described in subparagraph (A)(ii) before the 1st year to which the amendment made by subsection (b) applies—

''(i) AMOUNT ELIGIBLE FOR ROLLOVER, INCOME AVERAGING, OR TAX-FREE TRANSFER.—For purposes of determining any eligible amount, the present value of the accrued benefit of any highly compensated employee shall be determined by using an interest rate not less than the highest of—

''(I) the applicable rate under the plan's method in effect under the plan on August 16, 1986,

''(II) the highest rate (as of the date of the termination, transfer, or distribution) determined under any of the methods applicable under the plan at any time after August 15, 1986, and before the termination, transfer, or distribution in calculating the present value of the accrued benefit of an employee who is not a highly compensated employee under the plan (or any other plan used in determining whether the plan meets the requirements of section 401 of the Internal Revenue Code of 1986), or

''(III) 5 percent.

''(ii) ELIGIBLE AMOUNT.—For purposes of clause (i), the term 'eligible amount' means any amount with respect to a highly compensated employee which—

''(I) may be rolled over under section 402(a)(5) of such Code,

''(II) is eligible for income averaging under section 402(e)(1) of such Code, or capital gains treatment under section 402(a)(2) or 403(a)(2) of such Code (as in effect before this Act), or

''(III) may be transferred to another plan without inclusion in gross income.

''(iii) AMOUNTS SUBJECT TO EARLY WITHDRAWAL OR EXCESS DISTRIBUTION TAX.—For purposes of sections 72(t) and 4980A of such Code, there shall not be taken into account the excess (if any) of—

''(I) the amount distributed to a highly compensated employee by reason of such termination or distribution, over

''(II) the amount determined by using the interest rate applicable under clause (i).

''(iv) DISTRIBUTIONS OF ANNUITY CONTRACTS.—If an annuity contract purchased after August 16, 1986, is distributed to a highly compensated employee in connection with such termination or distribution, there shall be included in gross income for the taxable year of such distribution an amount equal to the excess of—

''(I) the purchase price of such contract, over

''(II) the present value of the benefits payable under such contract determined by using the interest rate applicable under clause (i).

Such excess shall not be taken into account for purposes of sections 72(t) and 4980A of such Code.

''(v) HIGHLY COMPENSATED EMPLOYEE.—For purposes of this subparagraph, the term 'highly compensated employee' has the meaning given such term by section 414(q) of such Code.

''(4) SPECIAL RULE FOR PLANS WHICH MAY NOT TERMINATE.—To the extent provided in regulations prescribed by the Secretary of the Treasury or his delegate, if a plan is prohibited from terminating under title IV of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1301 et seq.] before the 1st year to which the amendment made by subsection (b) would apply, the amendment made by subsection (b) shall only apply to years after the 1st year in which the plan is able to terminate.''

Amendment by section 1114(b)(7) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1988, see section 1114(c)(3) of Pub. L. 99–514, set out as a note under section 414 of this title.

Section 1116(f) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1011(k)(8), (10), Nov. 10, 1988, 102 Stat. 3470, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section] shall apply to years beginning after December 31, 1988.

''(2) NONDISCRIMINATION RULES.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by subsections (a), (b)(4), and (d) [amending this section], and the provisions of section 401(k)(4)(B) of the Internal Revenue Code of 1986 (as added by this section), shall apply to years beginning after December 31, 1986.

''(B) TRANSITION RULES FOR CERTAIN GOVERNMENTAL AND TAX-EXEMPT PLANS.—Subparagraph (B) of section 401(k)(4) of the Internal Revenue Code of 1986 (relating to governments and tax-exempt organizations not eligible for cash or deferred arrangements), as added by this section, shall not apply to any cash or deferred arrangement adopted by—

''(i) a State or local government or political subdivision thereof, or any agency or instrumentality thereof, before May 6, 1986, or

''(ii) a tax-exempt organization before July 2, 1986.

In the case of an arrangement described in clause (i), the amendments made by subsections (a), (b)(4), and (d) shall apply to years beginning after December 31, 1988. If clause (i) or (ii) applies to any arrangement adopted by a governmental unit, then any cash or deferred arrangement adopted by such unit on or after the date referred to in the applicable clause shall be treated as adopted before such date.

''(3) AGGREGATION AND EXCESS CONTRIBUTIONS.—The amendments made by subsections (c) and (e) [amending this section] shall apply to years beginning after December 31, 1986.

''(4) COLLECTIVE BARGAINING AGREEMENTS.—

''(A) IN GENERAL.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to years beginning before the earlier of—

''(i) the later of—

''(I) January 1, 1989, or

''(II) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

''(ii) January 1, 1991.

''(B) SPECIAL RULE FOR NONDISCRIMINATION RULES.—In the case of a plan described in subparagraph (A), the amendments and provisions described in paragraph (2) shall not apply to years beginning before the earlier of—

''(i) the date determined under subparagraph (A)(i)(II), or

''(ii) January 1, 1989.

''(5) SPECIAL RULE FOR QUALIFIED OFFSET ARRANGEMENTS.—

''(A) IN GENERAL.—A cash or deferred arrangement shall not be treated as failing to meet the requirements of section 401(k)(4) of the Internal Revenue Code of 1986 (as added by this section) to the extent such arrangement is part of a qualified offset arrangement consisting of such cash or deferred arrangement and a defined benefit plan.

''(B) QUALIFIED OFFSET ARRANGEMENT.—For purposes of subparagraph (A), a cash or deferred arrangement is part of a qualified offset arrangement with a defined benefit plan to the extent such offset arrangement satisfies each of the following conditions with respect to the employer maintaining the arrangement on April 16, 1986, and at all times thereafter:

''(i) The benefit under the defined benefit plan is directly and uniformly conditioned on the initial elective deferrals (up to 4 percent of compensation).

''(ii) The benefit provided under the defined benefit plan (before the offset) is at least 60 percent of an employee's cumulative elective deferrals (up to 4 percent of compensation).

''(iii) The benefit under the defined benefit plan is reduced by the benefit attributable to the employee's elective deferrals under the plan (up to 4 percent of compensation) and the income allocable

thereto. The interest rate used to calculate the reduction shall not exceed the greater of the rate under section 411(a)(11)(B)(ii) of such Code or the interest rate applicable under section 411(c)(2)(C)(iii) of such Code, taking into account section 411(c)(2)(D) of such Code.

For purposes of applying section 401(k)(3) of such Code to the cash or deferred arrangement, the benefits under the defined benefit plan conditioned on initial elective deferrals may be treated as matching contributions under such rules as the Secretary of the Treasury or his delegate may prescribe. The Secretary shall provide rules for the application of this paragraph in the case of successor plans.

''(C) DEFINITION OF EMPLOYER.—For purposes of this paragraph, the term 'employer' includes any research and development center which is federally funded and engaged in cancer research, but only with respect to employees of contractor-operators whose salaries are reimbursed as direct costs against the operator's contract to perform work at such center.

''(6) WITHDRAWALS ON SALE OF ASSETS.—Subclauses (II), (III), and (IV) of section 401(k)(2)(B)(i) of the Internal Revenue Code of 1986 (as added by subsection (b)(1)) shall apply to distributions after December 31, 1984.

''(7) DISTRIBUTIONS BEFORE PLAN AMENDMENT.—

''(A) IN GENERAL.—If a plan amendment is required to allow a plan to make any distribution described in section 401(k)(8) of the Internal Revenue Code of 1986, any such distribution which is made before the close of the 1st plan year for which such amendment is required to be in effect under section 1140 [set out as a note below], shall be treated as made in accordance with the provisions of such plan.

''(B) DISTRIBUTIONS PURSUANT TO MODEL AMENDMENT.—

''(i) SECRETARY TO PRESCRIBE AMENDMENT.—The Secretary of the Treasury or his delegate shall prescribe an amendment which allows a plan to make any distribution described in section 401(k)(8) of such Code.

''(ii) ADOPTION BY PLAN.—If a plan adopts the amendment prescribed under clause (i) and makes a distribution in accordance with such amendment, such distribution shall be treated as made in accordance with the provisions of the plan.''

Section 1117(d) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1011(*l*)(12), Nov. 10, 1988, 102 Stat. 3471, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting section 4979 of this title and amending this section and section 414 of this title] shall apply to plan years beginning after December 31, 1986.

''(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to plan years beginning before the earlier of—

''(A) January 1, 1989, or

''(B) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986).

''(3) ANNUITY CONTRACTS.—In the case of an annuity contract under section 403(b) of the Internal Revenue Code of 1986—

''(A) the amendments made by this section shall apply to plan years beginning after December 31, 1988, and

''(B) in the case of a collective bargaining agreement described in paragraph (2), the amendments made by this section shall not apply to years beginning before the earlier of—

''(i) the later of—

''(I) January 1, 1989, or

''(II) the date determined under paragraph (2)(B), or

''(ii) January 1, 1991.

''(4) DISTRIBUTIONS BEFORE PLAN AMENDMENT.—

''(A) IN GENERAL.—If a plan amendment is required to allow a plan to make any distribution described in section 401(m)(6) of the Internal Revenue Code of 1986, any such distribution which is made before the close of the 1st plan year for which such amendment is required to be in effect under section 1140 [set out as a note below] shall be treated as made in accordance with the provisions of the plan.

''(B) DISTRIBUTIONS PURSUANT TO MODEL AMENDMENT.—

''(i) SECRETARY TO PRESCRIBE AMENDMENT.—The Secretary of the Treasury or his delegate shall prescribe an amendment which allows a plan to make any distribution described in section 401(m)(6) of the Internal Revenue Code of 1986.

''(ii) ADOPTION BY PLAN.—If a plan adopts the amendment prescribed under clause (i) and makes a distribution in accordance with such amendment, such distribution shall be treated as made in accordance with the provisions of the plan.''

Section 1119(b) of Pub. L. 99–514 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to plan years beginning after December 31, 1985.''

Section 1121(d) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1011A(a)(3), (4), Nov. 10, 1988, 102 Stat. 3472, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 402, 408, and 4974 of this title] shall apply to years beginning after December 31, 1988.

''(2) SUBSECTION (c).—The amendments made by subsection (c) [amending sections 402 and 408 of this title] shall apply to years beginning after December 31, 1986.

''(3) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to distributions to individuals covered by such agreements in years beginning before the earlier of—

''(A) the later of—

''(i) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

''(ii) January 1, 1989, or

''(B) January 1, 1991.

''(4) TRANSITION RULES.—

''(A) The amendments made by subsections (a) and (b) [amending this section and section 4974 of this title] shall not apply with respect to any benefits with respect to which a designation is in effect under section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 242(b)(2) of Pub. L. 97–248, formerly set out as a note below].

''(B)(i) Except as provided in clause (ii), the amendment made by subsection (b) [amending this section] shall not apply in the case of any individual who has attained age 70½ before January 1, 1988.

''(ii) Clause (i) shall not apply to any individual who is a 5-percent owner (as defined in section 416(i) of the Internal Revenue Code of 1986), at any time during—

''(I) the plan year ending with or within the calendar year in which such owner attains age 66½, and

''(II) any subsequent plan year.

''(5) PLANS MAY INCORPORATE SECTION 401(a)(9) REQUIREMENTS BY REFERENCE.—Notwithstanding any other provision of law, except as provided in regulations prescribed by the Secretary of the Treasury or his delegate, a plan may incorporate by reference the requirements of section 401(a)(9) of the Internal Revenue Code of 1986.''

Section 1136(c) of Pub. L. 99–514 provided that: ''The amendment made by subsection (a) [amending this sec-

tion] shall apply to years beginning after December 31, 1985.''

Section 1143(b) of Pub. L. 99–514 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1986.''

Section 1145(d) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section, section 1055 of Title 29, Labor, and provisions set out as a note under section 1001 of Title 29] shall apply as if included in the amendments made by the Retirement Equity Act of 1984 [Pub. L. 98–397].''

Amendment by section 1171(b)(5) of Pub. L. 99–514 applicable to compensation paid or accrued after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 1171(c) of Pub. L. 99–514, set out as a note under section 38 of this title.

Section 1174(c)(2)(B) of Pub. L. 99–514 provided that: ''The amendment made by this paragraph [amending this section] shall apply to distributions attributable to stock acquired after December 31, 1986.''

Section 1175(a)(2) of Pub. L. 99–514 provided that: ''The amendment made by this subsection [amending this section] shall apply to stock acquired after December 31, 1986.''

Section 1176(c) of Pub. L. 99–514 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective December 31, 1986. The amendment made by subsection (b) [amending section 409 of this title] shall apply to acquisitions of securities after December 31, 1986.''

Section 1852(h)(1) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1018(t)(3)(C), Nov. 10, 1988, 102 Stat. 3588, provided that the amendment made by that section is effective for years beginning after Dec. 31, 1985.

Section 1879(g)(3) of Pub. L. 99–514 provided that: ''The amendments made by this subsection [amending this section] shall apply to plan years beginning after December 31, 1984.''

Amendment by sections 1848(b) and 1852(a)(4)(A), (6), (b)(8), (g), (h)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Section 1898(j) of Pub. L. 99–514 provided that: ''Except as otherwise provided in this section, any amendment made by this section [amending this section, sections 402, 411, 414, 415, 417, and 2503 of this title, and sections 1053 to 1056 of Title 29, Labor, and provisions set out as notes under section 1001 of Title 29] shall take effect as if included in the provision of the Retirement Equity Act of 1984 [Pub. L. 98–397] to which such amendment relates.''

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by section 203(a) of Pub. L. 98–397 applicable to plan years beginning after Dec. 31, 1984, amendment by section 204(a) of Pub. L. 98–397 effective Jan. 1, 1985, and amendment by section 301(b) of Pub. L. 98–397 applicable to plan amendments made after July 30, 1984, but not applicable to the termination of a certain defined benefit plan, except as otherwise provided, see sections 302 and 303 of Pub. L. 98–397, set out as a note under section 1001 of Title 29, Labor.

Nothing in amendment by section 203(a) of Pub. L. 98–397 to prevent any distribution required by reason of a failure to comply with the terms of a loan made on or before Aug. 18, 1985, and secured by a portion of the participant's accrued benefit, see section 1898(b)(4)(C)(ii) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 417 of this title.

Amendment by section 211(b)(5) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

Amendment by section 474(r)(13) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Section 491(f)(3) of Pub. L. 98–369 provided that: ''The amendments made by subsection (e) [redesignating section 409A as section 409 of this title and amending this section and sections 41, 415, 4975, and 6699 of this title] shall take effect on January 1, 1984.''

Section 521(e) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 72, 403, and 408 of this title and repealing provisions set out as a note under this section] shall apply to years beginning after December 31, 1984.

''(2) REPEAL OF SECTION 242 OF TEFRA.—The amendment made by subsection (a)(2) [repealing section 242 of Pub. L. 97–248, which amended this section and enacted provisions formerly set out below] shall take effect as if included in the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248].

''(3) TRANSITION RULE.—A trust forming part of a plan shall not be disqualified under paragraph (9) of section 401(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended by subsection (a)(1), by reason of distributions under a designation (before January 1, 1984) by any employee in accordance with a designation described in section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 (as in efffect [sic] before the amendments made by this Act) [formerly set out as an Effective Date of 1982 Amendment note below].

''(4) SPECIAL RULE FOR GOVERNMENTAL PLANS.—In the case of a governmental plan (within the meaning of section 414(d) of the Internal Revenue Code of 1986), paragraph (1) shall be applied by substituting '1986' for '1984'.

''(5) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to one or more collective bargaining agreements ratified on or before the date of the enactment of this Act [July 18, 1984] between employee representatives and one or more employers, the amendments made by this section shall not apply to years beginning before the earlier of—

''(A) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

''(B) January 1, 1988.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.''

Section 524(d)(2) of Pub. L. 98–369 provided that: ''The amendment made by this subsection [amending this section] shall apply to plan years beginning after December 31, 1983.''

Section 527(c) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) SUBSECTION (a).—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by subsection (a) [amending this section] shall apply to plan years beginning after December 31, 1984.

''(B) EXCEPTION FOR CERTAIN EXISTING PLANS.—The amendment made by subsection (a) shall not apply to any plan—

''(i) which was maintained by a State on June 8, 1984, and

''(ii) with respect to which a determination letter had been issued by the Secretary on December 6, 1982.

''(2) SUBSECTION (b).—

''(A) IN GENERAL.—The amendments made by this section [amending this section] shall apply with respect to plan years beginning after the date of the enactment of this Act [July 18, 1984].

''(B) TRANSITIONAL RULE.—Rules similar to the rules under section 135(c)(2) of the Revenue Act of 1978 [section 135(c)(2) of Pub. L. 95–600, set out below] shall apply with respect to any pre-ERISA money purchase plan (as defined in section 401(k)(5) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) for plan years beginning after December 31, 1979, and on or before the date of the enactment of this Act.''

Section 528(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and section 415 of this title] shall apply to years beginning after March 31, 1984.''

Amendment by section 713 of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1989, see section 124(d)(2) of Pub. L. 98–21, set out as a note under section 1401 of this title.

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 242(b) of Pub. L. 97–248, which prescribed the effective date for amendment by section 242(a) of Pub. L. 97–248, was repealed by Pub. L. 98–369, div. A, title V, § 521(a)(2), July 18, 1984, 98 Stat. 867.

Section 249(b) of Pub. L. 97–248 provided that: ''The amendments made by this section [amending this section] shall apply to plan years beginning after December 31, 1983.''

Section 254(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1981.''

Amendment by sections 237, 238, and 240 of Pub. L. 97–248 applicable to years beginning after Dec. 31, 1983, see section 241 of Pub. L. 97–248, set out as an Effective Date note under section 416 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 312(b)(1), (c)(2)–(4), (e)(2) of Pub. L. 97–34 applicable to plans which include employees within the meaning of subsec. (c)(1) of this section with respect to taxable years beginning after Dec. 31, 1981, see section 312(f)(1) of Pub. L. 97–34, set out as a note under section 72 of this title.

Section 314(a)(2) of Pub. L. 97–34 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to distributions after December 31, 1980, in taxable years beginning after such date.''

Section 338(b) of Pub. L. 97–34 provided that: ''The amendment made by this section [amending this section] shall apply to acquisitions of securities after December 31, 1979.''

Section 339 of Pub. L. 97–34 provided that: ''Except as otherwise provided, the amendments made by this subtitle [subtitle D (§§ 331–339) of title III of Pub. L. 97–34, enacting section 44G of this title and amending this section and sections 46, 48, 55, 56, 381, 383, 404, 409A, 415, 6096, 6411, 6511, and 6699 of this title] shall apply to taxable years beginning after December 31, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 221(b) of Pub. L. 96–605 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to plan years beginning after December 31, 1980.''

Section 225(c) of Pub. L. 96–605 provided that: ''The amendments made by this section [amending this section and sections 408 and 410 of this title] shall apply with respect to plan years beginning after December 31, 1980.''

Section 410(c) of Pub. L. 96–364 provided that: ''The amendment made by this section [amending this section and section 1103 of Title 29, Labor] shall take effect on January 1, 1975, except that in the case of contributions received by a collectively bargained plan maintained by more than one employer before the date of enactment of this Act, [Sept. 26, 1980], any determination by the plan administrator that any such contribution was made by mistake of fact or law before such date shall be deemed to have been made on such date of enactment.''

Amendment by section 208(a), (e) of Pub. L. 96–364 effective Sept. 26, 1980, see section 210(a) of Pub. L. 96–364, set out as an Effective Date note under section 418 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 135(c)(1) of Pub. L. 95–600 provided that: ''The amendments made by this section [amending this section and section 402 of this title] shall apply to plan years beginning after December 31, 1979.''

Amendment by section 141(f)(3) of Pub. L. 95–600 effective with respect to qualified investment for taxable years beginning after Dec. 31, 1978, see section 141(g)(1) of Pub. L. 95–600, set out as an Effective Date note under section 409 of this title.

Section 143(b) of Pub. L. 95–600 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to acquisitions of securities after December 31, 1979.''

Amendment by section 152(e) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 152(h) of Pub. L. 95–600, set out as a note under section 408 of this title.

EFFECTIVE DATE OF 1976 AMENDMENTS

Amendment by section 803(b)(2) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1974, see section 803(j) of Pub. L. 94–455, set out as a note under section 46 of this title.

Section 1505(c) of Pub. L. 94–455 provided that: ''The amendments made by this section [amending this section and section 801 of this title] apply for taxable years beginning after December 31, 1975.''

Amendment by section 1901(a)(56) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Section 1(e) of Pub. L. 94–267 provided that: ''The amendments made by this Act [amending this section and sections 402 to 404 and 805 of this title, and enacting provisions set out as a note under section 402 of this title] shall apply with respect to payments made to an employee on or after July 4, 1974.''

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by sections 1012(b) and 1016(a)(2) of Pub. L. 93–406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by sections 1012(b) and 196(a)(2) of Pub. L. 93–406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

Section 1021(a)(1), (b) of Pub. L. 93–406 provided that the amendment made by that section is effective with respect to plan years beginning after Dec. 31, 1975.

Section 1022(d) of Pub. L. 93–406 provided that the amendment made by that section is effective as of Jan. 1, 1974.

Section 1022(f) of Pub. L. 93–406 provided that the amendment made by that section is effective as of Jan. 1, 1974.

Section 1024 of Pub. L. 93–406 provided that: ''Except as otherwise provided in section 1021, the amendments made by section 1021 [amending this section] shall apply to plan years to which part I applies. [For description of plan years to which part I applies, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.] Except as otherwise provided in section 1022, the amendments made by section 1022 [amending this section and section 6051 of this title] shall apply to plan years to which part I applies. Section 1023 [amending this section] shall take effect on the date of the enactment of this Act [Sept. 2, 1974].''

Section 2001(i)(2)–(4) of Pub. L. 93–406 provided that:

''(2) The amendments made by subsection (c) [amending this section] apply to

''(A) taxable years beginning after December 31, 1975, and

''(B) any other taxable years beginning after December 31, 1973, for which contributions were made under the plan in excess of the amounts permitted to be made under sections 404(e) and 1379(b) [of this title] as in effect on the day before the date of the enactment of this Act [Sept. 2, 1974].

''(3) The amendments made by subsection (d) [amending this section] apply to taxable years beginning after December 31, 1975.

''(4) The amendments made by subsections (e) and (f) [enacting section 4972 of this title and amending this section and section 72 of this title] apply to contributions made in taxable years beginning after December 31, 1975.''

Amendment by section 2001(h)(1) of Pub. L. 93–406 applicable to taxable years ending after Sept. 2, 1974, see section 2001(i)(6) of Pub. L. 93–406, set out as a note under section 72 of this title.

Amendment by section 2004(a)(1) of Pub. L. 93–406 applicable to years beginning after Dec. 31, 1975, see section 2004(d) of Pub. L. 93–406, set out as an Effective Date; Transitional Provisions note under section 415 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 1(b) of Pub. L. 91–691 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1953, and ending after August 16, 1954, but only with respect to contributions made after December 31, 1954.''

EFFECTIVE DATE OF 1966 AMENDMENT

Section 204(d) of Pub. L. 89–809, as amended by Pub. L. 90–607, Oct. 21, 1968, 82 Stat. 1189; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 404 of this title] shall apply with respect to taxable years beginning after December 31, 1967. The amendment made by subsection (c) [amending this section] shall apply with respect to taxable years beginning after December 31, 1967, and in the case of a taxpayer who applies the averaging provisions of section 401(e)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for a taxable year beginning after December 31, 1967, the computation of the amount deductible under section 404 of such Code for any prior taxable year which began before January 1, 1968, shall be made, for purposes of such averaging provisions, as if the amendment made by subsection (c) were applicable to such prior taxable year.''

Section 205(b) of Pub. L. 89–809 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Nov. 13, 1966].''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–97 applicable to taxable years beginning after Dec. 31, 1966, see section 106(e) of Pub. L. 89–97, set out as a note under section 213 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 219(b) of Pub. L. 88–272 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954, but only with respect to contributions made after December 31, 1954.''

EFFECTIVE DATE OF 1962 AMENDMENTS

Section 2(c) of Pub. L. 87–863 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 404 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 23, 1962].''

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

SHORT TITLE OF 1962 AMENDMENT

Section 1 of Pub. L. 87–792 provided: ''That this Act [enacting sections 405 and 6047 of this title and amending this section and sections 37, 62, 72, 101, 104, 105, 172, 402 to 404, 503, 805, 1361, 2039, 2517, 3306, 3401, and 7207 of this title] may be cited as the 'Self-Employed Individuals Tax Retirement Act of 1962'.''

REGULATIONS

Pub. L. 109–280, title VIII, § 823, Aug. 17, 2006, 120 Stat. 998, provided that: ''The Secretary of the Treasury shall issue regulations under which a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986) shall, for all years to which section 401(a)(9) of such Code applies to such plan, be treated as having complied with such section 401(a)(9) if such plan complies with a reasonable good faith interpretation of such section 401(a)(9).''

Pub. L. 109–280, title VIII, § 826, Aug. 17, 2006, 120 Stat. 999, provided that: ''Within 180 days after the date of the enactment of this Act [Aug. 17, 2006], the Secretary of the Treasury shall modify the rules for determining whether a participant has had a hardship for purposes of section 401(k)(2)(B)(i)(IV) of the Internal Revenue Code of 1986 to provide that if an event (including the occurrence of a medical expense) would constitute a hardship under the plan if it occurred with respect to the participant's spouse or dependent (as defined in section 152 of such Code), such event shall, to the extent permitted under a plan, constitute a hardship if it occurs with respect to a person who is a beneficiary under the plan with respect to the participant. The Secretary of the Treasury shall issue similar rules for purposes of determining whether a participant has had—

''(1) a hardship for purposes of section 403(b)(11)(B) of such Code; or

''(2) an unforeseen financial emergency for purposes of sections 409A(a)(2)(A)(vi), 409A(a)(2)(B)(ii), and 457(d)(1)(A)(iii) of such Code.''

Pub. L. 107–16, title VI, § 657(c)(2), June 7, 2001, 115 Stat. 136, provided that:

''(A) AUTOMATIC ROLLOVER SAFE HARBOR.—Not later than 3 years after the date of enactment of this Act [June 7, 2001], the Secretary of Labor shall prescribe regulations providing for safe harbors under which the designation of an institution and investment of funds in accordance with section 401(a)(31)(B) of the Internal Revenue Code of 1986 is deemed to satisfy the fiduciary requirements of section 404(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(a)).

''(B) USE OF LOW-COST INDIVIDUAL RETIREMENT PLANS.—The Secretary of the Treasury and the Secretary of Labor may provide, and shall give consideration to providing, special relief with respect to the use of low-cost individual retirement plans for purposes of transfers under section 401(a)(31)(B) of the Internal Revenue Code of 1986 and for other uses that promote the preservation of assets for retirement income purposes.''

Section 1141 of Pub. L. 99–514 provided that: ''The Secretary of the Treasury or his delegate shall issue be-

fore February 1, 1988, such final regulations as may be necessary to carry out the amendments made by—

''(1) section 1111 [amending this section], relating to application of nondiscrimination rules to integrated plans,

''(2) section 1112 [amending this section and sections 402, 404, 406, 407, 410, and 818 of this title], relating to coverage requirements for qualified plans,

''(3) section 1113 [amending sections 410 and 411 of this title and sections 1052 to 1054 of Title 29, Labor], relating to minimum vesting standards,

''(4) section 1114 [amending this section, sections 106, 117, 120, 127, 129, 132, 274, 404A, 406, 407, 411, 414, 415, 423, 501, 505, and 4975 of this title, and section 1108 of Title 29], relating to the definition of highly compensated employee,

''(5) section 1115 [amending section 414 of this title], relating to separate lines of business and the definition of compensation,

''(6) section 1116 [amending this section], relating to rules for section 401(k) plans,

''(7) section 1117 [enacting section 4979 of this title and amending this section and section 414 of this title], relating to nondiscrimination requirements for employer matching and employer contribution,

''(8) section 1120 [amending section 403 of this title], relating to nondiscrimination requirements for tax sheltered annuities, and

''(9) section 1133 [enacting section 4981A [now 4980A] of this title], relating to tax on excess distributions.''

SPECIAL RULES FOR MULTIPLE EMPLOYER PLANS OF CERTAIN COOPERATIVES

Pub. L. 109–280, title I, §104, Aug. 17, 2006, 120 Stat. 816, as amended by Pub. L. 111–192, title II, §202(b), June 25, 2010, 124 Stat. 1298, provided that:

''(a) GENERAL RULE.—Except as provided in this section, if a plan in existence on July 26, 2005, was an eligible cooperative plan or an eligible charity plan for its plan year which includes such date, the amendments made by this subtitle [subtitle A (§§101 to 108) of title I of Pub. L. 109–280, enacting sections 1082 and 1083 of Title 29, Labor, amending sections 1021, 1023, 1053, 1054, 1056, 1103, 1108, 1132, 1301, 1303, 1310, 1362, 1371, and 1423 of Title 29 and section 106 of 1978 Reorg. Plan No. 4, set out in the Appendix to Title 5, Government Organization and Employees, and as a note under section 1001 of Title 29, and repealing sections 1057, 1082 to 1086 of Title 29] and subtitle B [subtitle B (§§111 to 116) of title I of Pub. L. 109–280, enacting sections 430 and 436 of this title, amending this section and sections 409A, 411, 412, 414, 420, 4971, 4972, and 6059 of this title, and amending provisions set out as a note under section 412 of this title] shall not apply to plan years beginning before the earlier of—

''(1) the first plan year for which the plan ceases to be an eligible cooperative plan or an eligible charity plan, or

''(2) January 1, 2017.

''(b) INTEREST RATE.—In applying section 302(b)(5)(B) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082(b)(5)(B)] and section 412(b)(5)(B) of the Internal Revenue Code of 1986 (as in effect before the amendments made by this subtitle and subtitle B) to an eligible cooperative plan or an eligible charity plan for plan years beginning after December 31, 2007, and before the first plan year to which such amendments apply, the third segment rate determined under section 303(h)(2)(C)(iii) of such Act [29 U.S.C. 1083(h)(2)(C)(iii)] and section 430(h)(2)(C)(iii) of such Code (as added by such amendments) shall be used in lieu of the interest rate otherwise used.

''(c) ELIGIBLE COOPERATIVE PLAN DEFINED.—For purposes of this section, a plan shall be treated as an eligible cooperative plan for a plan year if the plan is maintained by more than 1 employer and at least 85 percent of the employers are—

''(1) rural cooperatives (as defined in section 401(k)(7)(B) of such Code without regard to clause (iv) thereof), or

''(2) organizations which are—

''(A) cooperative organizations described in section 1381(a) of such Code which are more than 50-percent owned by agricultural producers or by cooperatives owned by agricultural producers, or

''(B) more than 50-percent owned, or controlled by, one or more cooperative organizations described in subparagraph (A).

A plan shall also be treated as an eligible cooperative plan for any plan year for which it is described in section 210(a) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1060(a)] and is maintained by a rural telephone cooperative association described in section 3(40)(B)(v) of such Act [29 U.S.C. 1002(40)(B)(v)].

''(d) ELIGIBLE CHARITY PLAN DEFINED.—For purposes of this section, a plan shall be treated as an eligible charity plan for a plan year if the plan is maintained by more than one employer (determined without regard to section 414(c) of the Internal Revenue Code) and 100 percent of the employers are described in section 501(c)(3) of such Code.''

[Pub. L. 111–192, title II, §202(c)(2), June 25, 2010, 124 Stat. 1299, provided that: ''The amendments made by subsection (b) [amending section 104 of Pub. L. 109–280, set out above] shall apply to plan years beginning after December 31, 2007, except that a plan sponsor may elect to apply such amendments to plan years beginning after December 31, 2008. Any such election shall be made at such time, and in such form and manner, as shall be prescribed by the Secretary of the Treasury, and may be revoked only with the consent of the Secretary of the Treasury.'']

TEMPORARY RELIEF FOR CERTAIN PBGC SETTLEMENT PLANS

Pub. L. 109–280, title I, §105, Aug. 17, 2006, 120 Stat. 817, provided that:

''(a) GENERAL RULE.—Except as provided in this section, if a plan in existence on July 26, 2005, was a PBGC settlement plan as of such date, the amendments made by this subtitle [subtitle A (§§101 to 108) of title I of Pub. L. 109–280, enacting sections 1082 and 1083 of Title 29, Labor, amending sections 1021, 1023, 1053, 1054, 1056, 1103, 1108, 1132, 1301, 1303, 1310, 1362, 1371, and 1423 of Title 29 and section 106 of 1978 Reorg. Plan No. 4, set out in the Appendix to Title 5, Government Organization and Employees, and as a note under section 1001 of Title 29, and repealing sections 1057, 1082 to 1086 of Title 29] and subtitle B [subtitle B (§§111 to 116) of title I of Pub. L. 109–280, enacting sections 430 and 436 of this title, amending this section and sections 409A, 411, 412, 414, 420, 4971, 4972, and 6059 of this title, and amending provisions set out as a note under section 412 of this title] shall not apply to plan years beginning before January 1, 2014.

''(b) INTEREST RATE.—In applying section 302(b)(5)(B) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082(b)(5)(B)] and section 412(b)(5)(B) of the Internal Revenue Code of 1986 (as in effect before the amendments made by this subtitle and subtitle B), to a PBGC settlement plan for plan years beginning after December 31, 2007, and before January 1, 2014, the third segment rate determined under section 303(h)(2)(C)(iii) of such Act [29 U.S.C. 1083(h)(2)(C)(iii)] and section 430(h)(2)(C)(iii) of such Code (as added by such amendments) shall be used in lieu of the interest rate otherwise used.

''(c) PBGC SETTLEMENT PLAN.—For purposes of this section, the term 'PBGC settlement plan' means a defined benefit plan (other than a multiemployer plan) to which section 302 of such Act [29 U.S.C. 1082] and section 412 of such Code apply and—

''(1) which was sponsored by an employer which was in bankruptcy, giving rise to a claim by the Pension Benefit Guaranty Corporation of not greater than $150,000,000, and the sponsorship of which was assumed by another employer that was not a member of the same controlled group as the bankrupt sponsor and the claim of the Pension Benefit Guaranty Corporation was settled or withdrawn in connection with the assumption of the sponsorship, or

''(2) which, by agreement with the Pension Benefit Guaranty Corporation, was spun off from a plan subsequently terminated by such Corporation under section 4042 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1342].''

SPECIAL RULES FOR PLANS OF CERTAIN GOVERNMENT CONTRACTORS

Pub. L. 109–280, title I, §106, Aug. 17, 2006, 120 Stat. 817, provided that:

''(a) GENERAL RULE.—Except as provided in this section, if a plan is an eligible government contractor plan, this subtitle [subtitle A (§§101 to 108) of title I of Pub. L. 109–280, enacting sections 1082 and 1083 of Title 29, Labor, amending sections 1021, 1023, 1053, 1054, 1056, 1103, 1108, 1132, 1301, 1303, 1310, 1362, 1371, and 1423 of Title 29 and section 106 of 1978 Reorg. Plan No. 4, set out in the Appendix to Title 5, Government Organization and Employees, and as a note under section 1001 of Title 29, repealing sections 1057, 1082 to 1086 of Title 29, and enacting provisions set out as notes under this section and sections 1021, 1082, and 1083 of Title 29] and subtitle B [subtitle B (§§111 to 116) of title I of Pub. L. 109–280, enacting sections 430 and 436 of this title, amending this section and sections 409A, 411, 412, 414, 420, 4971, 4972, and 6059 of this title, enacting provisions set out as notes under sections 409A, 412, 430, and 436 of this title, and amending provisions set out as a note under section 412 of this title] shall not apply to plan years beginning before the earliest of—

''(1) the first plan year for which the plan ceases to be an eligible government contractor plan,

''(2) the effective date of the Cost Accounting Standards Pension Harmonization Rule, or

''(3) January 1, 2011.

''(b) INTEREST RATE.—In applying section 302(b)(5)(B) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082(b)(5)(B)] and section 412(b)(5)(B) of the Internal Revenue Code of 1986 (as in effect before the amendments made by this subtitle and subtitle B) to an eligible government contractor plan for plan years beginning after December 31, 2007, and before the first plan year to which such amendments apply, the third segment rate determined under section 303(h)(2)(C)(iii) of such Act [29 U.S.C. 1083(h)(2)(C)(iii)] and section 430(h)(2)(C)(iii) of such Code (as added by such amendments) shall be used in lieu of the interest rate otherwise used.

''(c) ELIGIBLE GOVERNMENT CONTRACTOR PLAN DEFINED.—For purposes of this section, a plan shall be treated as an eligible government contractor plan if it is maintained by a corporation or a member of the same affiliated group (as defined by section 1504(a) of the Internal Revenue Code of 1986), whose primary source of revenue is derived from business performed under contracts with the United States that are subject to the Federal Acquisition Regulations (chapter 1 of title 48, CFR) and that are also subject to the Defense Federal Acquisition Regulation Supplement (chapter 2 of title 48, CFR), and whose revenue derived from such business in the previous fiscal year exceeded $5,000,000,000, and whose pension plan costs that are assignable under those contracts are subject to sections 412 and 413 of the Cost Accounting Standards (48 CFR 9904.412 and 9904.413).

''(d) COST ACCOUNTING STANDARDS PENSION HARMONIZATION RULE.—The Cost Accounting Standards Board shall review and revise sections 412 and 413 of the Cost Accounting Standards (48 CFR 9904.412 and 9904.413) to harmonize the minimum required contribution under the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.] of eligible government contractor plans and government reimbursable pension plan costs not later than January 1, 2010. Any final rule adopted by the Cost Accounting Standards Board shall be deemed the Cost Accounting Standards Pension Harmonization Rule.''

APPLICATION OF EXTENDED AMORTIZATION PERIODS TO PLANS WITH DELAYED EFFECTIVE DATE

Pub. L. 109–280, title I, §107, as added by Pub. L. 111–192, title II, §202(a), June 25, 2010, 124 Stat. 1297, provided that:

''(a) IN GENERAL.—If the plan sponsor of a plan to which section 104, 105, or 106 of this Act [see notes above] applies elects to have this section apply for any eligible plan year (in this section referred to as an 'election year'), section 302 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082] and section 412 of the Internal Revenue Code of 1986 (as in effect before the amendments made by this subtitle [subtitle A (§§101 to 108) of title I of Pub. L. 109–280, enacting sections 1082 and 1083 of Title 29, Labor, amending sections 1021, 1023, 1053, 1054, 1056, 1103, 1108, 1132, 1301, 1303, 1310, 1362, 1371, and 1423 of Title 29 and section 106 of 1978 Reorg. Plan No. 4, set out in the Appendix to Title 5, Government Organization and Employees, and as a note under section 1001 of Title 29, and repealing sections 1057, 1082 to 1086 of Title 29] and subtitle B [subtitle B (§§111 to 116) of title I of Pub. L. 109–280, enacting sections 430 and 436 of this title, amending this section and sections 409A, 411, 412, 414, 420, 4971, 4972, and 6059 of this title, and amending provisions set out as a note under section 412 of this title]) shall apply to such year in the manner described in subsection (b) or (c), whichever is specified in the election. All references in this section to 'such Act' or 'such Code' shall be to such Act or such Code as in effect before the amendments made by this subtitle and subtitle B.

''(b) APPLICATION OF 2 AND 7 RULE.—In the case of an election year to which this subsection applies—

''(1) 2-YEAR LOOKBACK FOR DETERMINING DEFICIT REDUCTION CONTRIBUTIONS FOR CERTAIN PLANS.—For purposes of applying section 302(d)(9) of such Act [29 U.S.C. 1082(d)(9)] and section 412(*l*)(9) of such Code, the funded current liability percentage (as defined in subparagraph (C) thereof) for such plan for such plan year shall be such funded current liability percentage of such plan for the second plan year preceding the first election year of such plan.

''(2) CALCULATION OF DEFICIT REDUCTION CONTRIBUTION.—For purposes of applying section 302(d) of such Act [29 U.S.C. 1082(d)] and section 412(*l*) of such Code to a plan to which such sections apply (after taking into account paragraph (1))—

''(A) in the case of the increased unfunded new liability of the plan, the applicable percentage described in section 302(d)(4)(C) of such Act [29 U.S.C. 1082(d)(4)(C)] and section 412(*l*)(4)(C) of such Code shall be the third segment rate described in sections 104(b), 105(b), and 106(b) of this Act [see notes above], and

''(B) in the case of the excess of the unfunded new liability over the increased unfunded new liability, such applicable percentage shall be determined without regard to this section.

''(c) APPLICATION OF 15-YEAR AMORTIZATION.—In the case of an election year to which this subsection applies, for purposes of applying section 302(d) of such Act [29 U.S.C. 1082(d)] and section 412(*l*) of such Code—

''(1) in the case of the increased unfunded new liability of the plan, the applicable percentage described in section 302(d)(4)(C) of such Act [29 U.S.C. 1082(d)(4)(C)] and section 412(*l*)(4)(C) of such Code for any pre-effective date plan year beginning with or after the first election year shall be the ratio of—

''(A) the annual installments payable in each year if the increased unfunded new liability for such plan year were amortized over 15 years, using an interest rate equal to the third segment rate described in sections 104(b), 105(b), and 106(b) of this Act, to

''(B) the increased unfunded new liability for such plan year, and

''(2) in the case of the excess of the unfunded new liability over the increased unfunded new liability, such applicable percentage shall be determined without regard to this section.

''(d) ELECTION.—

''(1) IN GENERAL.—The plan sponsor of a plan may elect to have this section apply to not more than 2 eligible plan years with respect to the plan, except that in the case of a plan to which section 106 of this Act applies, the plan sponsor may only elect to have this section apply to 1 eligible plan year.

''(2) AMORTIZATION SCHEDULE.—Such election shall specify whether the rules under subsection (b) or (c) shall apply to an election year, except that if a plan sponsor elects to have this section apply to 2 eligible plan years, the plan sponsor must elect the same rule for both years.

''(3) OTHER RULES.—Such election shall be made at such time, and in such form and manner, as shall be prescribed by the Secretary of the Treasury, and may be revoked only with the consent of the Secretary of the Treasury.

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

''(1) ELIGIBLE PLAN YEAR.—For purposes of this subparagraph, the term 'eligible plan year' means any plan year beginning in 2008, 2009, 2010, or 2011, except that a plan year beginning in 2008 shall only be treated as an eligible plan year if the due date for the payment of the minimum required contribution for such plan year occurs on or after the date of the enactment of this clause [June 25, 2010].

''(2) PRE-EFFECTIVE DATE PLAN YEAR.—The term 'pre-effective date plan year' means, with respect to a plan, any plan year prior to the first year in which the amendments made by this subtitle and subtitle B apply to the plan.

''(3) INCREASED UNFUNDED NEW LIABILITY.—The term 'increased unfunded new liability' means, with respect to a year, the excess (if any) of the unfunded new liability over the amount of unfunded new liability determined as if the value of the plan's assets determined under subsection 302(c)(2) of such Act [29 U.S.C. 1082(c)(2)] and section 412(c)(2) of such Code equaled the product of the current liability of the plan for the year multiplied by the funded current liability percentage (as defined in section 302(d)(8)(B) of such Act [29 U.S.C. 1082(d)(8)(B)] and 412(*l*)(8)(B) of such Code) of the plan for the second plan year preceding the first election year of such plan.

''(4) OTHER DEFINITIONS.—The terms 'unfunded new liability' and 'current liability' shall have the meanings set forth in section 302(d) of such Act [29 U.S.C. 1082(d)] and section 412(*l*) of such Code.''

GRANDFATHER RULE FOR CHURCH PLANS WHICH SELF-ANNUITIZE

Pub. L. 109–280, title VIII, §865, Aug. 17, 2006, 120 Stat. 1025, provided that:

''(a) IN GENERAL.—In the case of any plan year ending after the date of the enactment of this Act [Aug. 17, 2006], annuity payments provided with respect to any account maintained for a participant or beneficiary under a qualified church plan shall not fail to satisfy the requirements of section 401(a)(9) of the Internal Revenue Code of 1986 merely because the payments are not made under an annuity contract purchased from an insurance company if such payments would not fail such requirements if provided with respect to a retirement income account described in section 403(b)(9) of such Code.

''(b) QUALIFIED CHURCH PLAN.—For purposes of this section, the term 'qualified church plan' means any money purchase pension plan described in section 401(a) of such Code which—

''(1) is a church plan (as defined in section 414(e) of such Code) with respect to which the election provided by section 410(d) of such Code has not been made, and

''(2) was in existence on April 17, 2002.''

NEW TECHNOLOGIES IN RETIREMENT PLANS

Section 1510 of Pub. L. 105–34 provided that:

''(a) IN GENERAL.—Not later than December 31, 1998, the Secretary of the Treasury and the Secretary of Labor shall each issue guidance which is designed to—

''(1) interpret the notice, election, consent, disclosure, and time requirements (and related recordkeeping requirements) under the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.] relating to retirement plans as applied to the use of new technologies by plan sponsors and administrators while maintaining the protection of the rights of participants and beneficiaries, and

''(2) clarify the extent to which writing requirements under the Internal Revenue Code of 1986 relating to retirement plans shall be interpreted to permit paperless transactions.

''(b) APPLICABILITY OF FINAL REGULATIONS.—Final regulations applicable to the guidance regarding new technologies described in subsection (a) shall not be effective until the first plan year beginning at least 6 months after the issuance of such final regulations.''

TREATMENT OF QUALIFIED FOOTBALL COACHES PLAN

Section 1704(k) of Pub. L. 104–188 provided that:

''(1) IN GENERAL.—For purposes of the Internal Revenue Code of 1986, a qualified football coaches plan—

''(A) shall be treated as a multiemployer collectively bargained plan, and

''(B) notwithstanding section 401(k)(4)(B) of such Code, may include a qualified cash and deferred arrangement under section 401(k) of such Code.

''(2) QUALIFIED FOOTBALL COACHES PLAN.—For purposes of this subsection, the term 'qualified football coaches plan' means any defined contribution plan which is established and maintained by an organization—

''(A) which is described in section 501(c) of such Code,

''(B) the membership of which consists entirely of individuals who primarily coach football as full-time employees of 4-year colleges or universities described in section 170(b)(1)(A)(ii) of such Code, and

''(C) which was in existence on September 18, 1986.

''(3) EFFECTIVE DATE.—This subsection shall apply to years beginning after December 22, 1987.''

APPLICABILITY OF SUBSECTION (a)(26)

Section 6065 of Pub. L. 100–647 provided that: ''In the case of plan years beginning before January 1, 1993, section 401(a)(26) of the 1986 Code shall not apply to any governmental plan (within the meaning of section 414(d) of such Code) with respect to employees who were participants in such plan on July 14, 1988.''

COORDINATION OF INTERNAL REVENUE CODE OF 1986 WITH EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Section 9343(a) of Pub. L. 100–203 provided that: ''Except to the extent specifically provided in the Internal Revenue Code of 1986 or as determined by the Secretary of the Treasury, titles I and IV of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq., 1301 et seq.] are not applicable in interpreting such Code.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

Section 1465 of title I of Pub. L. 104–188 provided that: ''If any amendment made by this subtitle [subtitle D (§§1401–1465) of title I of Pub. L. 104–188, see Tables for classification] requires an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after January 1, 1998, if—

''(1) during the period after such amendment takes effect and before such first plan year, the plan or contract is operated in accordance with the requirements of such amendment, and

''(2) such amendment applies retroactively to such period.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this

section shall be applied by substituting '2000' for '1998'.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

Section 523 of title V of Pub. L. 102–318 provided that: ''If any amendment made by this subtitle [subtitle B (§§ 521–523) of title V of Pub. L. 102–318, amending this section and sections 55, 62, 72, 219, 402 to 404, 406 to 408, 411, 414, 415, 457, 691, 871, 877, 1441, 3121, 3306, 3402, 3405, 4973, 4980A, 6047, 6652, and 7701 of this title] requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after January 1, 1994, if—

''(1) during the period after such amendment takes effect and before such first plan year, the plan is operated in accordance with the requirements of such amendment, and

''(2) such plan amendment applies retroactively to such period.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

Section 1140 of title XI of Pub. L. 99–514, as amended by Pub. L. 101–239, title VII, § 7861(c), Dec. 19, 1989, 103 Stat. 2431; Pub. L. 104–188, title I, § 1704(t)(27), Aug. 20, 1996, 110 Stat. 1888, provided that:

''(a) IN GENERAL.—If any amendment made by this subtitle, subtitle C [subtitles A (§§ 1101–1147) and C (§§ 1171–1177) of title XI of Pub. L. 99–514, enacting sections 2057, 4972, 4979, 4980, 4981A, and 6659A of this title, amending this section, sections 38, 56, 72, 106, 108, 117, 120, 127, 129, 132, 133, 219, 274, 402 to 404A, 406 to 411, 414 to 417, 423, 457, 501, 505, 818, 852, 3121, 3306, 3405, 4973 to 4975, 4979A, 6051, 6693, and 7701 of this title, and sections 1052 to 1055 and 1108 of Title 29, Labor, repealing sections 41 and 6699 of this title, and amending provisions set out as a note under section 1001 of Title 29], or title XVIII of this Act [see Tables for classification] requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after January 1, 1989, if—

''(1) during the period after such amendment takes effect and before such first plan year, the plan is operated in accordance with the requirements of such amendment or in accordance with an amendment prescribed by the Secretary and adopted by the plan, and

''(2) such plan amendment applies retroactively to the period after such amendment takes effect and such first plan year.

A pension plan shall not be treated as failing to provide definitely determinable benefits or contributions, or to be operated in accordance with the provisions of the plan, merely because it operates in accordance with this provision.

''(b) MODEL AMENDMENT.—

''(1) SECRETARY TO PRESCRIBE AMENDMENT.—The Secretary of the Treasury or his delegate shall prescribe an amendment or amendments which allow a plan to meet the requirements of any amendment made by this subtitle or subtitle C—

''(A) which requires an amendment to such plan, and

''(B) is effective before the first plan year beginning after December 31, 1988.

''(2) ADOPTION BY PLAN.—If a plan adopts the amendment or amendments prescribed under paragraph (1) and operates in accordance with such amendment or amendments, such plan shall not be treated as failing to provide definitely determinable benefits or contributions or to be operated in accordance with the provisions of the plan.

''(c) SPECIAL RULE FOR COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, subsection (a) shall be applied by substituting for the first plan year beginning on or after January 1, 1989, the first plan year beginning after the later of—

''(1) December 31, 1988, or

''(2) the earlier of—

''(A) December 31, 1990, or

''(B) the date on which the last of such collective bargaining agreements terminate (without regard to any extension after February 28, 1986).

For purposes of paragraph (1)(B) [(2)(B)] and any other provision of this title [see Tables for classification], an agreement shall not be treated as terminated merely because the plan is amended pursuant to such agreement to meet the requirements of any amendment made by this title or title XVIII of this Act.''

SECRETARY TO ACCEPT APPLICATIONS WITH RESPECT TO SECTION 401(k) PLANS

Section 1142 of Pub. L. 99–514 provided that: ''The Secretary of the Treasury or his delegate shall, not later than May 1, 1987, begin accepting applications for opinion letters with respect to master and prototype plans for qualified cash or deferred arrangements under section 401(k) of the Internal Revenue Code of 1986.''

TREATMENT OF INDIVIDUALS HAVING BEGINNING DATE AFFECTED BY PUB. L. 99–514

Section 1852(a)(4)(C) of Pub. L. 99–514, as added by Pub. L. 100–647, title I, § 1018(t)(3)(A), Nov. 10, 1988, 102 Stat. 3588, provided that: ''An individual whose required beginning date would, but for the amendment made by subparagraph (A) [amending this section], occur after December 31, 1986, but whose required beginning date after such amendment occurs before January 1, 1987, shall be treated as if such individual had become a 5-percent owner during the plan year ending in 1986.''

DISTRIBUTION REQUIREMENTS FOR ACCOUNTS AND ANNUITIES OF AN INSURER IN A REHABILITATION PROCEEDING

Section 553 of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) IN GENERAL.—For purposes of sections 401(a)(9), 408(a)(6) and (7), and 408(b)(3) and (4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]—

''(1) a trust, custodial account, or annuity or other contract forming part of a pension or profit-sharing plan, or a retirement annuity, or

''(2) a grantor of an individual retirement account or an individual retirement annuity,

shall not be treated as failing to meet the requirements of such sections if such account, annuity, or contract was issued by an insurance company which, on March 15, 1984, was a party to a rehabilitation proceeding under the applicable State insurance law.

''(b) LIMITATION.—Subsection (a) shall apply only during the period during which—

''(1) the insurance company continues to be a party to the proceeding described in subsection (a), and

''(2) distributions under the trust, custodial account, or annuity or other contract may not be made by reason of such proceeding.''

QUALIFICATION REQUIREMENTS MODIFIED IF REGULATIONS NOT ISSUED

Section 524(e) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—If the Secretary of the Treasury or his delegate does not publish final regulations under section 416 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect on the day before the date of the enactment of this Act [July 18, 1984]) before January 1, 1985, the Secretary shall publish before such date plan amendment provisions which may be incorporated in a plan to meet the requirements of section 401(a)(10)(B)(ii) of such Code.

''(2) EFFECT OF INCORPORATION.—If a plan is amended to incorporate the plan amendment provisions described in paragraph (1), such plan shall be treated as meeting the requirements of section 401(a)(10)(B)(ii) of the Internal Revenue Code of 1986 during the period

such amendment is in effect but not later than 6 months after the final regulations described in paragraph (1) are published.

''(3) FAILURE BY SECRETARY TO PUBLISH.—If the Secretary of the Treasury or his delegate does not publish plan amendment provisions described in paragraph (1), the plan shall be treated as meeting the requirements of section 401(a)(10)(B) of the Internal Revenue Code of 1986 if—

''(A) such plan is amended to incorporate such requirements by reference, except that

''(B) in the case of any optional requirement under section 416 of such Code, if such amendment does not specify the manner in which such requirement will be met, the employer shall be treated as having elected the requirement with respect to each employee which provides the maximum vested accrued benefit for such employee.''

TRANSITIONAL RULE

Section 135(c)(2) of Pub. L. 95–600, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of cash or deferred arrangements in existence on June 27, 1974—

''(A) the qualification of the plan and the trust under section 401 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954];

''(B) the exemption of the trust under section 501(a) of such Code;

''(C) the taxable year of inclusion in gross income of the employee of any amount so contributed by the employer to the trust; and

''(D) the excludability of the interest of the employee in the trust under sections 2039 and 2517 of such Code,

shall be determined for plan years beginning before January 1, 1980 in a manner consistent with Revenue Ruling 56–497 (1956–2 C.B. 284), Revenue Ruling 63–180 (1963–2 C.B. 189), and Revenue Ruling 68–89 (1968–1 C.B. 402).''

SALARY REDUCTION REGULATIONS

Section 2006 of Pub. L. 93–406, as amended by Pub. L. 94–455, title XV, §1506, Oct. 4, 1976, 90 Stat. 1739; Pub. L. 95–615, §5, Nov. 8, 1978, 92 Stat. 3097; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) INCLUSION OF CERTAIN CONTRIBUTIONS IN INCOME.—Except in the case of plans or arrangements in existence on June 27, 1974, a contribution made before January 1, 1980, to an employees' trust described in section 401(a), 403(a) or 405(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] which is exempt from tax under section 501(a) of such Code, or under an arrangement which, but for the fact that it was not in existence on June 27, 1974, would be an arrangement described in subsection (b)(2) of this section, shall be treated as a contribution made by an employee if the contribution is made under an arrangement under which the contribution will be made only if the employee elects to receive a reduction in his compensation or to forego an increase in his compensation.

''(b) ADMINISTRATION IN THE CASE OF CERTAIN QUALIFIED PENSION OR PROFIT-SHARING PLANS, ETC., IN EXISTENCE ON JUNE 27, 1974.—No salary reduction regulations may be issued by the Secretary of the Treasury in final form before January 1, 1980, with respect to an arrangement which was in existence on June 27, 1974, and which, on that date—

''(1) provided for contributions to an employee's trust described in section 401(a), 403(a), or 405(a) of the Internal Revenue Code of 1986 [subsec. (a) of this section, section 403(a) of this title, or section 405(a) of this title] which is exempt from tax under section 501(a) of such Code [section 501(a) of this title], or

''(2) was maintained as part of an arrangement under which an employee was permitted to elect to receive part of his compensation in one or more alternative forms if one of such forms results in the inclusion of amounts in income under the Internal Revenue Code of 1986 [this title].

''(c) ADMINISTRATION OF LAW WITH RESPECT TO CERTAIN PLANS.—

''(1) ADMINISTRATION IN THE CASE OF PLANS DESCRIBED IN SUBSECTION (b).—Until salary reduction regulations have been issued in final form, the law with respect to plans or arrangements described in subsection (b) shall be administered—

''(A) without regard to the proposed salary reduction regulations (37 FR 25938) and without regard to any other proposed salary reduction regulations, and

''(B) in the manner in which such law was administered before January 1, 1972.

''(2) ADMINISTRATION IN THE CASE OF QUALIFIED PROFIT-SHARING PLANS.—In the case of plans or arrangements described in subsection (b), in applying this section to the tax treatment of contributions to qualified profit-sharing plans where the contributed amounts are distributable only after a period of deferral, the law shall be administered in a manner consistent with—

''(A) Revenue Ruling 56–497 (1956—2 C.B. 284),

''(B) Revenue Ruling 63–180 (1963—2 C.B. 189), and

''(C) Revenue Ruling 68–89 (1968—1 C.B. 402).

''(d) LIMITATION ON RETROACTIVITY OF FINAL REGULATIONS.—In the case of any salary reduction regulations which become final after December 31, 1979—

''(1) for purposes of chapter 1 of the Internal Revenue Code of 1986 (relating to normal taxes and surtaxes), such regulations shall not apply before January 1, 1980; and

''(2) for purposes of chapter 21 of such Code (relating to Federal Insurance Contributions Act) and for purposes of chapter 24 of such Code (relating to collection of income tax at source on wages), such regulations shall not apply before the day on which such regulations are issued in final form.

''(e) SALARY REDUCTION REGULATIONS DEFINED.—For purpose of this section, the term 'salary reduction regulations' means regulations dealing with the includibility in gross income (at the time of contribution) of amounts contributed to a plan which includes a trust that qualifies under section 401(a) [subsec. (a) of this section], or a plan described in section 403(a) or 405(a), including plans or arrangements described in subsection (b)(2), if the contribution is made under an arrangement under which the contribution will be made only if the employee elects to receive a reduction in his compensation or to forego an increase in his compensation, or under an arrangement under which the employee is permitted to elect to receive part of his compensation in one or more alternative forms (if one of such forms results in the inclusion of amounts in income under the Internal Revenue Code of 1986).''

Pub. L. 95–615, §210(b), Nov. 8, 1978, 92 Stat. 3109, provided that: ''Section 5 of this Act [amending this note] shall not apply with respect to any type of plan for any period for which rules for that type of plan are provided by the Revenue Act of 1978 [see Short Title note set out under section 1 of this title].''

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

Provisions relating to inflation adjustment of items in sections 25B, 45A, 219, 401, 402, 404, 408, 408A, 409, 414 to 416, 430, 457 of this title for certain years were contained in the following:

2011—Internal Revenue Notice 2010–78.
2010—Internal Revenue Notice 2009–94.
2009—Internal Revenue Notice 2008–102.
2008—Internal Revenue Notice 2007–87.
2007—Internal Revenue Notice 2006–98.
2006—Internal Revenue Notice 2005–75.
2005—Internal Revenue Notice 2004–72.
2004—Internal Revenue Notice 2003–73.
2003—Internal Revenue Notice 2002–71.
2002—Internal Revenue Notice 2001–84.
2001—Internal Revenue Notice 2000–66.
2000—Internal Revenue Notice 99–55.
1999—Internal Revenue Notice 98–53.
1998—Internal Revenue Notice 97–58.

1997—Internal Revenue Notice 96–55.

§ 402. Taxability of beneficiary of employees' trust

(a) Taxability of beneficiary of exempt trust

Except as otherwise provided in this section, any amount actually distributed to any distributee by any employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under section 72 (relating to annuities).

(b) Taxability of beneficiary of nonexempt trust

(1) Contributions

Contributions to an employees' trust made by an employer during a taxable year of the employer which ends with or within a taxable year of the trust for which the trust is not exempt from tax under section 501(a) shall be included in the gross income of the employee in accordance with section 83 (relating to property transferred in connection with performance of services), except that the value of the employee's interest in the trust shall be substituted for the fair market value of the property for purposes of applying such section.

(2) Distributions

The amount actually distributed or made available to any distributee by any trust described in paragraph (1) shall be taxable to the distributee, in the taxable year in which so distributed or made available, under section 72 (relating to annuities), except that distributions of income of such trust before the annuity starting date (as defined in section 72(c)(4)) shall be included in the gross income of the employee without regard to section 72(e)(5) (relating to amounts not received as annuities).

(3) Grantor trusts

A beneficiary of any trust described in paragraph (1) shall not be considered the owner of any portion of such trust under subpart E of part I of subchapter J (relating to grantors and others treated as substantial owners).

(4) Failure to meet requirements of section 410(b)

(A) Highly compensated employees

If 1 of the reasons a trust is not exempt from tax under section 501(a) is the failure of the plan of which it is a part to meet the requirements of section 401(a)(26) or 410(b), then a highly compensated employee shall, in lieu of the amount determined under paragraph (1) or (2) include in gross income for the taxable year with or within which the taxable year of the trust ends an amount equal to the vested accrued benefit of such employee (other than the employee's investment in the contract) as of the close of such taxable year of the trust.

(B) Failure to meet coverage tests

If a trust is not exempt from tax under section 501(a) for any taxable year solely because such trust is part of a plan which fails to meet the requirements of section 401(a)(26) or 410(b), paragraphs (1) and (2) shall not apply by reason of such failure to any employee who was not a highly compensated employee during—

(i) such taxable year, or

(ii) any preceding period for which service was creditable to such employee under the plan.

(C) Highly compensated employee

For purposes of this paragraph, the term ''highly compensated employee'' has the meaning given such term by section 414(q).

(c) Rules applicable to rollovers from exempt trusts

(1) Exclusion from income

If—

(A) any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution,

(B) the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and

(C) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(2) Maximum amount which may be rolled over

In the case of any eligible rollover distribution, the maximum amount transferred to which paragraph (1) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to paragraph (1)). The preceding sentence shall not apply to such distribution to the extent—

(A) such portion is transferred in a direct trustee-to-trustee transfer to a qualified trust or to an annuity contract described in section 403(b) and such trust or contract provides for separate accounting for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible, or

(B) such portion is transferred to an eligible retirement plan described in clause (i) or (ii) of paragraph (8)(B).

In the case of a transfer described in subparagraph (A) or (B), the amount transferred shall be treated as consisting first of the portion of such distribution that is includible in gross income (determined without regard to paragraph (1)).

(3) Transfer must be made within 60 days of receipt

(A) In general

Except as provided in subparagraph (B), paragraph (1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.

(B) Hardship exception

The Secretary may waive the 60-day requirement under subparagraph (A) where the

failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.

(4) Eligible rollover distribution

For purposes of this subsection, the term ''eligible rollover distribution'' means any distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified trust; except that such term shall not include—

(A) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made—

(i) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary, or

(ii) for a specified period of 10 years or more,

(B) any distribution to the extent such distribution is required under section 401(a)(9), and

(C) any distribution which is made upon hardship of the employee.

If all or any portion of a distribution during 2009 is treated as an eligible rollover distribution but would not be so treated if the minimum distribution requirements under section 401(a)(9) had applied during 2009, such distribution shall not be treated as an eligible rollover distribution for purposes of section 401(a)(31) or 3405(c) or subsection (f) of this section.

(5) Transfer treated as rollover contribution under section 408

For purposes of this title, a transfer to an eligible retirement plan described in clause (i) or (ii) of paragraph (8)(B) resulting in any portion of a distribution being excluded from gross income under paragraph (1) shall be treated as a rollover contribution described in section 408(d)(3).

(6) Sales of distributed property

For purposes of this subsection—

(A) Transfer of proceeds from sale of distributed property treated as transfer of distributed property

The transfer of an amount equal to any portion of the proceeds from the sale of property received in the distribution shall be treated as the transfer of property received in the distribution.

(B) Proceeds attributable to increase in value

The excess of fair market value of property on sale over its fair market value on distribution shall be treated as property received in the distribution.

(C) Designation where amount of distribution exceeds rollover contribution

In any case where part or all of the distribution consists of property other than money—

(i) the portion of the money or other property which is to be treated as attributable to amounts not included in gross income, and

(ii) the portion of the money or other property which is to be treated as included in the rollover contribution,

shall be determined on a ratable basis unless the taxpayer designates otherwise. Any designation under this subparagraph for a taxable year shall be made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof). Any such designation, once made, shall be irrevocable.

(D) Nonrecognition of gain or loss

No gain or loss shall be recognized on any sale described in subparagraph (A) to the extent that an amount equal to the proceeds is transferred pursuant to paragraph (1).

(7) Special rule for frozen deposits

(A) In general

The 60-day period described in paragraph (3) shall not—

(i) include any period during which the amount transferred to the employee is a frozen deposit, or

(ii) end earlier than 10 days after such amount ceases to be a frozen deposit.

(B) Frozen deposits

For purposes of this subparagraph, the term ''frozen deposit'' means any deposit which may not be withdrawn because of—

(i) the bankruptcy or insolvency of any financial institution, or

(ii) any requirement imposed by the State in which such institution is located by reason of the bankruptcy or insolvency (or threat thereof) of 1 or more financial institutions in such State.

A deposit shall not be treated as a frozen deposit unless on at least 1 day during the 60-day period described in paragraph (3) (without regard to this paragraph) such deposit is described in the preceding sentence.

(8) Definitions

For purposes of this subsection—

(A) Qualified trust

The term ''qualified trust'' means an employees' trust described in section 401(a) which is exempt from tax under section 501(a).

(B) Eligible retirement plan

The term ''eligible retirement plan'' means—

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

(ii) an individual retirement annuity described in section 408(b) (other than an endowment contract),

(iii) a qualified trust,

(iv) an annuity plan described in section 403(a),

(v) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A), and

(vi) an annuity contract described in section 403(b).

If any portion of an eligible rollover distribution is attributable to payments or distributions from a designated Roth account (as defined in section 402A), an eligible retirement plan with respect to such portion shall include only another designated Roth account and a Roth IRA.

(9) Rollover where spouse receives distribution after death of employee

If any distribution attributable to an employee is paid to the spouse of the employee after the employee's death, the preceding provisions of this subsection shall apply to such distribution in the same manner as if the spouse were the employee.

(10) Separate accounting

Unless a plan described in clause (v) of paragraph (8)(B) agrees to separately account for amounts rolled into such plan from eligible retirement plans not described in such clause, the plan described in such clause may not accept transfers or rollovers from such retirement plans.

(11) Distributions to inherited individual retirement plan of nonspouse beneficiary

(A) In general

If, with respect to any portion of a distribution from an eligible retirement plan described in paragraph (8)(B)(iii) of a deceased employee, a direct trustee-to-trustee transfer is made to an individual retirement plan described in clause (i) or (ii) of paragraph (8)(B) established for the purposes of receiving the distribution on behalf of an individual who is a designated beneficiary (as defined by section 401(a)(9)(E)) of the employee and who is not the surviving spouse of the employee—

(i) the transfer shall be treated as an eligible rollover distribution,

(ii) the individual retirement plan shall be treated as an inherited individual retirement account or individual retirement annuity (within the meaning of section 408(d)(3)(C)) for purposes of this title, and

(iii) section 401(a)(9)(B) (other than clause (iv) thereof) shall apply to such plan.

(B) Certain trusts treated as beneficiaries

For purposes of this paragraph, to the extent provided in rules prescribed by the Secretary, a trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a designated beneficiary.

(d) Taxability of beneficiary of certain foreign situs trusts

For purposes of subsections (a), (b), and (c), a stock bonus, pension, or profit-sharing trust which would qualify for exemption from tax under section 501(a) except for the fact that it is a trust created or organized outside the United States shall be treated as if it were a trust exempt from tax under section 501(a).

(e) Other rules applicable to exempt trusts

(1) Alternate payees

(A) Alternate payee treated as distributee

For purposes of subsection (a) and section 72, an alternate payee who is the spouse or former spouse of the participant shall be treated as the distributee of any distribution or payment made to the alternate payee under a qualified domestic relations order (as defined in section 414(p)).

(B) Rollovers

If any amount is paid or distributed to an alternate payee who is the spouse or former spouse of the participant by reason of any qualified domestic relations order (within the meaning of section 414(p)), subsection (c) shall apply to such distribution in the same manner as if such alternate payee were the employee.

(2) Distributions by United States to nonresident aliens

The amount includible under subsection (a) in the gross income of a nonresident alien with respect to a distribution made by the United States in respect of services performed by an employee of the United States shall not exceed an amount which bears the same ratio to the amount includible in gross income without regard to this paragraph as—

(A) the aggregate basic pay paid by the United States to such employee for such services, reduced by the amount of such basic pay which was not includible in gross income by reason of being from sources without the United States, bears to

(B) the aggregate basic pay paid by the United States to such employee for such services.

In the case of distributions under the civil service retirement laws, the term ''basic pay'' shall have the meaning provided in section 8331(3) of title 5, United States Code.

(3) Cash or deferred arrangements

For purposes of this title, contributions made by an employer on behalf of an employee to a trust which is a part of a qualified cash or deferred arrangement (as defined in section 401(k)(2)) or which is part of a salary reduction agreement under section 403(b) shall not be treated as distributed or made available to the employee nor as contributions made to the trust by the employee merely because the arrangement includes provisions under which the employee has an election whether the contribution will be made to the trust or received by the employee in cash.

(4) Net unrealized appreciation

(A) Amounts attributable to employee contributions

For purposes of subsection (a) and section 72, in the case of a distribution other than a lump sum distribution, the amount actually distributed to any distributee from a trust described in subsection (a) shall not include any net unrealized appreciation in securities of the employer corporation attributable to amounts contributed by the employee (other than deductible employee contributions within the meaning of section 72(*o*)(5)). This subparagraph shall not apply to a distribution to which subsection (c) applies.

(B) Amounts attributable to employer contributions

For purposes of subsection (a) and section 72, in the case of any lump sum distribution which includes securities of the employer corporation, there shall be excluded from gross income the net unrealized appreciation attributable to that part of the distribution which consists of securities of the employer corporation. In accordance with rules prescribed by the Secretary, a taxpayer may elect, on the return of tax on which a lump sum distribution is required to be included, not to have this subparagraph apply to such distribution.

(C) Determination of amounts and adjustments

For purposes of subparagraphs (A) and (B), net unrealized appreciation and the resulting adjustments to basis shall be determined in accordance with regulations prescribed by the Secretary.

(D) Lump-sum distribution

For purposes of this paragraph—

(i) In general

The term ''lump-sum distribution'' means the distribution or payment within one taxable year of the recipient of the balance to the credit of an employee which becomes payable to the recipient—

(I) on account of the employee's death,

(II) after the employee attains age 59½,

(III) on account of the employee's separation from service, or

(IV) after the employee has become disabled (within the meaning of section 72(m)(7)),

from a trust which forms a part of a plan described in section 401(a) and which is exempt from tax under section 501 or from a plan described in section 403(a). Subclause (III) of this clause shall be applied only with respect to an individual who is an employee without regard to section 401(c)(1), and subclause (IV) shall be applied only with respect to an employee within the meaning of section 401(c)(1). For purposes of this clause, a distribution to two or more trusts shall be treated as a distribution to one recipient. For purposes of this paragraph, the balance to the credit of the employee does not include the accumulated deductible employee contributions under the plan (within the meaning of section 72(*o*)(5)).

(ii) Aggregation of certain trusts and plans

For purposes of determining the balance to the credit of an employee under clause (i)—

(I) all trusts which are part of a plan shall be treated as a single trust, all pension plans maintained by the employer shall be treated as a single plan, all profit-sharing plans maintained by the employer shall be treated as a single plan, and all stock bonus plans maintained by the employer shall be treated as a single plan, and

(II) trusts which are not qualified trusts under section 401(a) and annuity contracts which do not satisfy the requirements of section 404(a)(2) shall not be taken into account.

(iii) Community property laws

The provisions of this paragraph shall be applied without regard to community property laws.

(iv) Amounts subject to penalty

This paragraph shall not apply to amounts described in subparagraph (A) of section 72(m)(5) to the extent that section 72(m)(5) applies to such amounts.

(v) Balance to credit of employee not to include amounts payable under qualified domestic relations order

For purposes of this paragraph, the balance to the credit of an employee shall not include any amount payable to an alternate payee under a qualified domestic relations order (within the meaning of section 414(p)).

(vi) Transfers to cost-of-living arrangement not treated as distribution

For purposes of this paragraph, the balance to the credit of an employee under a defined contribution plan shall not include any amount transferred from such defined contribution plan to a qualified cost-of-living arrangement (within the meaning of section 415(k)(2)) under a defined benefit plan.

(vii) Lump-sum distributions of alternate payees

If any distribution or payment of the balance to the credit of an employee would be treated as a lump-sum distribution, then, for purposes of this paragraph, the payment under a qualified domestic relations order (within the meaning of section 414(p)) of the balance to the credit of an alternate payee who is the spouse or former spouse of the employee shall be treated as a lump-sum distribution. For purposes of this clause, the balance to the credit of the alternate payee shall not include any amount payable to the employee.

(E) Definitions relating to securities

For purposes of this paragraph—

(i) Securities

The term ''securities'' means only shares of stock and bonds or debentures issued by a corporation with interest coupons or in registered form.

(ii) Securities of the employer

The term ''securities of the employer corporation'' includes securities of a parent or subsidiary corporation (as defined in subsections (e) and (f) of section 424) of the employer corporation.

[(5) Repealed. Pub. L. 104–188, title I, § 1401(b)(13), Aug. 20, 1996, 110 Stat. 1789]

(6) Direct trustee-to-trustee transfers

Any amount transferred in a direct trustee-to-trustee transfer in accordance with section

401(a)(31) shall not be includible in gross income for the taxable year of such transfer.

(f) Written explanation to recipients of distributions eligible for rollover treatment

(1) In general

The plan administrator of any plan shall, within a reasonable period of time before making an eligible rollover distribution, provide a written explanation to the recipient—

(A) of the provisions under which the recipient may have the distribution directly transferred to an eligible retirement plan and that the automatic distribution by direct transfer applies to certain distributions in accordance with section 401(a)(31)(B),

(B) of the provision which requires the withholding of tax on the distribution if it is not directly transferred to an eligible retirement plan,

(C) of the provisions under which the distribution will not be subject to tax if transferred to an eligible retirement plan within 60 days after the date on which the recipient received the distribution,

(D) if applicable, of the provisions of subsections (d) and (e) of this section, and

(E) of the provisions under which distributions from the eligible retirement plan receiving the distribution may be subject to restrictions and tax consequences which are different from those applicable to distributions from the plan making such distribution.

(2) Definitions

For purposes of this subsection—

(A) Eligible rollover distribution

The term ''eligible rollover distribution'' has the same meaning as when used in subsection (c) of this section, paragraph (4) of section 403(a), subparagraph (A) of section 403(b)(8), or subparagraph (A) of section 457(e)(16). Such term shall include any distribution to a designated beneficiary which would be treated as an eligible rollover distribution by reason of subsection (c)(11), or section 403(a)(4)(B), 403(b)(8)(B), or 457(e)(16)(B), if the requirements of subsection (c)(11) were satisfied.

(B) Eligible retirement plan

The term ''eligible retirement plan'' has the meaning given such term by subsection (c)(8)(B).

(g) Limitation on exclusion for elective deferrals

(1) In general

(A) Limitation

Notwithstanding subsections (e)(3) and (h)(1)(B), the elective deferrals of any individual for any taxable year shall be included in such individual's gross income to the extent the amount of such deferrals for the taxable year exceeds the applicable dollar amount. The preceding sentence shall not apply to the portion of such excess as does not exceed the designated Roth contributions of the individual for the taxable year.

(B) Applicable dollar amount

For purposes of subparagraph (A), the applicable dollar amount shall be the amount determined in accordance with the following table:

For taxable years beginning in calendar year:	The applicable dollar amount:
2002	$11,000
2003	$12,000
2004	$13,000
2005	$14,000
2006 or thereafter	$15,000.

(C) Catch-up contributions

In addition to subparagraph (A), in the case of an eligible participant (as defined in section 414(v)), gross income shall not include elective deferrals in excess of the applicable dollar amount under subparagraph (B) to the extent that the amount of such elective deferrals does not exceed the applicable dollar amount under section 414(v)(2)(B)(i) for the taxable year (without regard to the treatment of the elective deferrals by an applicable employer plan under section 414(v)).

(2) Distribution of excess deferrals

(A) In general

If any amount (hereinafter in this paragraph referred to as ''excess deferrals'') is included in the gross income of an individual under paragraph (1) (or would be included but for the last sentence thereof) for any taxable year—

(i) not later than the 1st March 1 following the close of the taxable year, the individual may allocate the amount of such excess deferrals among the plans under which the deferrals were made and may notify each such plan of the portion allocated to it, and

(ii) not later than the 1st April 15 following the close of the taxable year, each such plan may distribute to the individual the amount allocated to it under clause (i) (and any income allocable to such amount through the end of such taxable year).

The distribution described in clause (ii) may be made notwithstanding any other provision of law.

(B) Treatment of distribution under section 401(k)

Except to the extent provided under rules prescribed by the Secretary, notwithstanding the distribution of any portion of an excess deferral from a plan under subparagraph (A)(ii), such portion shall, for purposes of applying section 401(k)(3)(A)(ii), be treated as an employer contribution.

(C) Taxation of distribution

In the case of a distribution to which subparagraph (A) applies—

(i) except as provided in clause (ii), such distribution shall not be included in gross income, and

(ii) any income on the excess deferral shall, for purposes of this chapter, be treated as earned and received in the taxable year in which such income is distributed.

No tax shall be imposed under section 72(t) on any distribution described in the preceding sentence.

(D) Partial distributions

If a plan distributes only a portion of any excess deferral and income allocable thereto, such portion shall be treated as having been distributed ratably from the excess deferral and the income.

(3) Elective deferrals

For purposes of this subsection, the term ''elective deferrals'' means, with respect to any taxable year, the sum of—

(A) any employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k)) to the extent not includible in gross income for the taxable year under subsection (e)(3) (determined without regard to this subsection),

(B) any employer contribution to the extent not includible in gross income for the taxable year under subsection (h)(1)(B) (determined without regard to this subsection),

(C) any employer contribution to purchase an annuity contract under section 403(b) under a salary reduction agreement (within the meaning of section 3121(a)(5)(D)), and

(D) any elective employer contribution under section 408(p)(2)(A)(i).

An employer contribution shall not be treated as an elective deferral described in subparagraph (C) if under the salary reduction agreement such contribution is made pursuant to a one-time irrevocable election made by the employee at the time of initial eligibility to participate in the agreement or is made pursuant to a similar arrangement involving a one-time irrevocable election specified in regulations.

(4) Cost-of-living adjustment

In the case of taxable years beginning after December 31, 2006, the Secretary shall adjust the $15,000 amount under paragraph (1)(B) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2005, and any increase under this paragraph which is not a multiple of $500 shall be rounded to the next lowest multiple of $500.

(5) Disregard of community property laws

This subsection shall be applied without regard to community property laws.

(6) Coordination with section 72

For purposes of applying section 72, any amount includible in gross income for any taxable year under this subsection but which is not distributed from the plan during such taxable year shall not be treated as investment in the contract.

(7) Special rule for certain organizations

(A) In general

In the case of a qualified employee of a qualified organization, with respect to employer contributions described in paragraph (3)(C) made by such organization, the limitation of paragraph (1) for any taxable year shall be increased by whichever of the following is the least:

(i) $3,000,

(ii) $15,000 reduced by the sum of—

(I) the amounts not included in gross income for prior taxable years by reason of this paragraph, plus

(II) the aggregate amount of designated Roth contributions (as defined in section 402A(c)) permitted for prior taxable years by reason of this paragraph, or

(iii) the excess of $5,000 multiplied by the number of years of service of the employee with the qualified organization over the employer contributions described in paragraph (3) made by the organization on behalf of such employee for prior taxable years (determined in the manner prescribed by the Secretary).

(B) Qualified organization

For purposes of this paragraph, the term ''qualified organization'' means any educational organization, hospital, home health service agency, health and welfare service agency, church, or convention or association of churches. Such term includes any organization described in section 414(e)(3)(B)(ii). Terms used in this subparagraph shall have the same meaning as when used in section 415(c)(4) (as in effect before the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001).

(C) Qualified employee

For purposes of this paragraph, the term ''qualified employee'' means any employee who has completed 15 years of service with the qualified organization.

(D) Years of service

For purposes of this paragraph, the term ''years of service'' has the meaning given such term by section 403(b).

(8) Matching contributions on behalf of self-employed individuals not treated as elective employer contributions

Except as provided in section 401(k)(3)(D)(ii), any matching contribution described in section 401(m)(4)(A) which is made on behalf of a self-employed individual (as defined in section 401(c)) shall not be treated as an elective employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k)) for purposes of this title.

(h) Special rules for simplified employee pensions

For purposes of this chapter—

(1) In general

Except as provided in paragraph (2), contributions made by an employer on behalf of an employee to an individual retirement plan pursuant to a simplified employee pension (as defined in section 408(k))—

(A) shall not be treated as distributed or made available to the employee or as contributions made by the employee, and

(B) if such contributions are made pursuant to an arrangement under section 408(k)(6) under which an employee may elect to have the employer make contributions to

the simplified employee pension on behalf of the employee, shall not be treated as distributed or made available or as contributions made by the employee merely because the simplified employee pension includes provisions for such election.

(2) Limitations on employer contributions

Contributions made by an employer to a simplified employee pension with respect to an employee for any year shall be treated as distributed or made available to such employee and as contributions made by the employee to the extent such contributions exceed the lesser of—

(A) 25 percent of the compensation (within the meaning of section 414(s)) from such employer includible in the employee's gross income for the year (determined without regard to the employer contributions to the simplified employee pension), or

(B) the limitation in effect under section 415(c)(1)(A), reduced in the case of any highly compensated employee (within the meaning of section 414(q)) by the amount taken into account with respect to such employee under section 408(k)(3)(D).

(3) Distributions

Any amount paid or distributed out of an individual retirement plan pursuant to a simplified employee pension shall be included in gross income by the payee or distributee, as the case may be, in accordance with the provisions of section 408(d).

(i) Treatment of self-employed individuals

For purposes of this section, except as otherwise provided in subparagraph (A) of subsection (d)(4),[1] the term ''employee'' includes a self-employed individual (as defined in section 401(c)(1)(B)) and the employer of such individual shall be the person treated as his employer under section 401(c)(4).

(j) Effect of disposition of stock by plan on net unrealized appreciation

(1) In general

For purposes of subsection (e)(4), in the case of any transaction to which this subsection applies, the determination of net unrealized appreciation shall be made without regard to such transaction.

(2) Transaction to which subsection applies

This subsection shall apply to any transaction in which—

(A) the plan trustee exchanges the plan's securities of the employer corporation for other such securities, or

(B) the plan trustee disposes of securities of the employer corporation and uses the proceeds of such disposition to acquire securities of the employer corporation within 90 days (or such longer period as the Secretary may prescribe), except that this subparagraph shall not apply to any employee with respect to whom a distribution of money was made during the period after such disposition and before such acquisition.

[1] See References in Text note below.

(k) Treatment of simple retirement accounts

Rules similar to the rules of paragraphs (1) and (3) of subsection (h) shall apply to contributions and distributions with respect to a simple retirement account under section 408(p).

***(l)* Distributions from governmental plans for health and long-term care insurance**

(1) In general

In the case of an employee who is an eligible retired public safety officer who makes the election described in paragraph (6) with respect to any taxable year of such employee, gross income of such employee for such taxable year does not include any distribution from an eligible retirement plan maintained by the employer described in paragraph (4)(B) to the extent that the aggregate amount of such distributions does not exceed the amount paid by such employee for qualified health insurance premiums for such taxable year.

(2) Limitation

The amount which may be excluded from gross income for the taxable year by reason of paragraph (1) shall not exceed $3,000.

(3) Distributions must otherwise be includible

(A) In general

An amount shall be treated as a distribution for purposes of paragraph (1) only to the extent that such amount would be includible in gross income without regard to paragraph (1).

(B) Application of section 72

Notwithstanding section 72, in determining the extent to which an amount is treated as a distribution for purposes of subparagraph (A), the aggregate amounts distributed from an eligible retirement plan in a taxable year (up to the amount excluded under paragraph (1)) shall be treated as includible in gross income (without regard to subparagraph (A)) to the extent that such amount does not exceed the aggregate amount which would have been so includible if all amounts to the credit of the eligible public safety officer in all eligible retirement plans maintained by the employer described in paragraph (4)(B) were distributed during such taxable year and all such plans were treated as 1 contract for purposes of determining under section 72 the aggregate amount which would have been so includible. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

(4) Definitions

For purposes of this subsection—

(A) Eligible retirement plan

For purposes of paragraph (1), the term ''eligible retirement plan'' means a governmental plan (within the meaning of section 414(d)) which is described in clause (iii), (iv), (v), or (vi) of subsection (c)(8)(B).

(B) Eligible retired public safety officer

The term ''eligible retired public safety officer'' means an individual who, by reason of

disability or attainment of normal retirement age, is separated from service as a public safety officer with the employer who maintains the eligible retirement plan from which distributions subject to paragraph (1) are made.

(C) Public safety officer

The term ''public safety officer'' shall have the same meaning given such term by section 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b(9)(A)).

(D) Qualified health insurance premiums

The term ''qualified health insurance premiums'' means premiums for coverage for the eligible retired public safety officer, his spouse, and dependents (as defined in section 152), by an accident or health plan or qualified long-term care insurance contract (as defined in section 7702B(b)).

(5) Special rules

For purposes of this subsection—

(A) Direct payment to insurer required

Paragraph (1) shall only apply to a distribution if payment of the premiums is made directly to the provider of the accident or health plan or qualified long-term care insurance contract by deduction from a distribution from the eligible retirement plan.

(B) Related plans treated as 1

All eligible retirement plans of an employer shall be treated as a single plan.

(6) Election described

(A) In general

For purposes of paragraph (1), an election is described in this paragraph if the election is made by an employee after separation from service with respect to amounts not distributed from an eligible retirement plan to have amounts from such plan distributed in order to pay for qualified health insurance premiums.

(B) Special rule

A plan shall not be treated as violating the requirements of section 401, or as engaging in a prohibited transaction for purposes of section 503(b), merely because it provides for an election with respect to amounts that are otherwise distributable under the plan or merely because of a distribution made pursuant to an election described in subparagraph (A).

(7) Coordination with medical expense deduction

The amounts excluded from gross income under paragraph (1) shall not be taken into account under section 213.

(8) Coordination with deduction for health insurance costs of self-employed individuals

The amounts excluded from gross income under paragraph (1) shall not be taken into account under section 162(*l*).

(Aug. 16, 1954, ch. 736, 68A Stat. 135; Pub. L. 86–437, §§1, 2(a), Apr. 22, 1960, 74 Stat. 79; Pub. L. 87–792, §4(c), Oct. 10, 1962, 76 Stat. 825; Pub. L. 88–272, title II, §§221(c)(1), 232(e)(1)–(3), Feb. 26, 1964, 78 Stat. 75, 111; Pub. L. 91–172, title III, §321(b)(1), title V, §515(a)(1), Dec. 30, 1969, 83 Stat. 590, 643; Pub. L. 93–406, title II, §§2002(g)(5), 2005(a), (b)(1), (c)(1), (2), Sept. 2, 1974, 88 Stat. 968, 987, 990, 991: Pub. L. 94–267, §1(a), Apr. 15, 1976, 90 Stat. 365; Pub. L. 94–455, title XIV, §1402(b)(1)(C), (2), title XV, §1512(a), title XIX, §§1901(a)(57)(A)–(C)(i), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1731, 1732, 1742, 1773, 1774, 1834; Pub. L. 95–30, title I, §102(b)(4), May 23, 1977, 91 Stat. 137; Pub. L. 95–458, §4(a), (c), Oct. 14, 1978, 92 Stat. 1257, 1259; Pub. L. 95–600, title I, §§101(d)(1), 135(b), 157(f)(1), (g)(1), (h)(1), Nov. 6, 1978, 92 Stat. 2770, 2787, 2806–2808; Pub. L. 96–222, title I, §101(a)(14)(C), (E)(i), Apr. 1, 1980, 94 Stat. 204, 205; Pub. L. 96–608, §2(a), Dec. 28, 1980, 94 Stat. 3551; Pub. L. 97–34, title III, §§311(b)(2), (3)(A), (c), 314(c)(1), Aug. 13, 1981, 95 Stat. 280, 286; Pub. L. 97–448, title I, §§101(b), 103(c)(7), (8)(A), (12)(D), Jan. 12, 1983, 96 Stat. 2366, 2376, 2377; Pub. L. 98–369, div. A, title IV, §491(c)(2), (d)(9)–(11), title V, §522(a)(1), (b)–(d)(8), title VII, §713(c)(3), title X, §1001(b)(3), (e), July 18, 1984, 98 Stat. 848, 849, 868–870, 957, 1011, 1012; Pub. L. 98–397, title II, §§204(c)(1), (3), (4), 207(a), Aug. 23, 1984, 98 Stat. 1448, 1449; Pub. L. 99–272, title XI, §11012(c), Apr. 7, 1986, 100 Stat. 260; Pub. L. 99–514, title I, §104(b)(5), title XI, §§1105(a), 1106(c)(2), 1108(b), 1112(c), 1121(c)(1), 1122(a), (b)(1)(A), (2), (e)(1), (2)(A), (g), title XVIII, §§1852(a)(5)(A), (b)(1)–(7), (c)(5), 1854(f)(2), 1875(c)(1)(A), 1898(a)(2), (3), (c)(1)(A), (7)(A)(i), (e), Oct. 22, 1986, 100 Stat. 2105, 2417, 2423, 2432, 2444, 2465, 2466, 2469, 2470, 2865–2867, 2881, 2894, 2942, 2943, 2951, 2954, 2955; Pub. L. 100–647, title I, §§1011(c)(1)–(6)(B), (11), (h)(4), 1011A(a)(1), (b)(4)(A)–(D), (5)–(8), (10), (c)(9), 1018(t)(8)(A), (C), (u)(1), (6), (7), title VI, §6068(a), Nov. 10, 1988, 102 Stat. 3457–3459, 3464, 3472–3474, 3476, 3589, 3590, 3703; Pub. L. 101–239, title VII, §7811(g)(2), (i)(13), Dec. 19, 1989, 103 Stat. 2409, 2411; Pub. L. 101–508, title XI, §11801(c)(9)(I), Nov. 5, 1990, 104 Stat. 1388–526; Pub. L. 102–318, title V, §§521(a), (b)(9)–(11), 522(c)(1), July 3, 1992, 106 Stat. 300, 310, 311, 315; Pub. L. 103–465, title VII, §732(c), Dec. 8, 1994, 108 Stat. 5005; Pub. L. 104–188, title I, §§1401(a)–(b)(2), (13), 1421(b)(3)(A), (9)(B), 1450(a)(2), 1704(t)(68), Aug. 20, 1996, 110 Stat. 1787–1789, 1796, 1798, 1814, 1891; Pub. L. 105–34, title XV, §1501(a), Aug. 5, 1997, 111 Stat. 1058; Pub. L. 105–206, title VI, §6005(c)(2)(A), July 22, 1998, 112 Stat. 800; Pub. L. 107–16, title VI, §§611(d)(1)–(3)(A), 617(b), (c), 632(a)(3)(G), 636(b)(1), 641(a)(2)(A), (B), (b)(2)–(d), (e)(4)–(6), 643(a), 644(a), 657(b), June 7, 2001, 115 Stat. 97, 98, 105, 114, 117, 119–123, 136; Pub. L. 107–147, title IV, §411(*l*)(3), (*o*)(1), (p)(6), (q)(2), Mar. 9, 2002, 116 Stat. 47, 48, 51; Pub. L. 109–135, title IV, §407(a), Dec. 21, 2005, 119 Stat. 2635; Pub. L. 109–280, title VIII, §§822(a), 829(a)(1), 845(a), Aug. 17, 2006, 120 Stat. 998, 1001, 1013; Pub. L. 110–172, §8(a)(1), Dec. 29, 2007, 121 Stat. 2483; Pub. L. 110–458, title I, §§108(f)(1)–(2)(B), (j), 109(b)(3), title II, §201(b), Dec. 23, 2008, 122 Stat. 5109–5111, 5117.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

REFERENCES IN TEXT

Section 415(c)(4) (as in effect before the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001), referred to in subsec. (g)(7)(B), means section 415(c)(4) of this title prior to its repeal by Pub. L. 107–16, title VI, § 632(a)(3)(E), June 7, 2001, 115 Stat. 114.

Subsection (d), referred to in subsec. (i), was amended generally by Pub. L. 104–188, title I, § 1401(a), Aug. 20, 1996, 110 Stat. 1787, and as so amended, no longer contains a par. (4).

AMENDMENTS

2008—Subsec. (c)(4). Pub. L. 110–458, § 201(b), inserted concluding provisions.

Subsec. (c)(11)(A). Pub. L. 110–458, § 108(f)(1)(A), inserted ''described in paragraph (8)(B)(iii)'' after ''eligible retirement plan'' in introductory provisions.

Subsec. (c)(11)(A)(i). Pub. L. 110–458, § 108(f)(2)(B), struck out ''for purposes of this subsection'' after ''eligible rollover distribution''.

Subsec. (c)(11)(B). Pub. L. 110–458, § 108(f)(1)(B), struck out ''trust'' before ''designated beneficiary''.

Subsec. (f)(2)(A). Pub. L. 110–458, § 108(f)(2)(A), inserted at end ''Such term shall include any distribution to a designated beneficiary which would be treated as an eligible rollover distribution by reason of subsection (c)(11), or section 403(a)(4)(B), 403(b)(8)(B), or 457(e)(16)(B), if the requirements of subsection (c)(11) were satisfied.''

Subsec. (g)(2)(A)(ii). Pub. L. 110–458, § 109(b)(3), inserted ''through the end of such taxable year'' after ''such amount''.

Subsec. (*l*)(1). Pub. L. 110–458, § 108(j)(1)(A), inserted ''maintained by the employer described in paragraph (4)(B)'' after ''an eligible retirement plan'' and struck out ''of the employee, his spouse, or dependents (as defined in section 152)'' after ''qualified health insurance premiums''.

Subsec. (*l*)(3)(B). Pub. L. 110–458, § 108(j)(2), substituted ''all amounts to the credit of the eligible public safety officer in all eligible retirement plans maintained by the employer described in paragraph (4)(B) were distributed during such taxable year and all such plans were treated as 1 contract for purposes of determining under section 72 the aggregate amount which would have been so includible'' for ''all amounts distributed from all eligible retirement plans were treated as 1 contract for purposes of determining the inclusion of such distribution under section 72''.

Subsec. (*l*)(4)(D). Pub. L. 110–458, § 108(j)(1)(B), inserted ''(as defined in section 152)'' after ''dependents'' and substituted ''health plan'' for ''health insurance plan''.

Subsec. (*l*)(5)(A). Pub. L. 110–458, § 108(j)(1)(C), substituted ''health plan'' for ''health insurance plan''.

2007—Subsec. (g)(7)(A)(ii)(II). Pub. L. 110–172 substituted ''permitted for prior taxable years by reason of this paragraph'' for ''for prior taxable years''. Amendment was executed to subsec. (g)(7)(A)(ii) as amended by Pub. L. 109–135, § 407(a)(1), as the probable intent of Congress, notwithstanding Pub. L. 110–172, § 8(b), which provided that the amendment take effect as if included in the provisions of Pub. L. 107–16 to which it relates. See 2006 Amendment note and Effective Date of 2007 Amendment note below.

2006—Subsec. (c)(2)(A). Pub. L. 109–280, § 822(a), which directed the amendment of section 402(c)(2)(A) by substituting ''or to an annuity contract described in section 403(b) and such trust or contract provides for separate accounting'' for ''which is part of a plan which is a defined contribution plan and which agrees to separately account'' and inserting ''(and earnings thereon)'' after ''so transferred'', without specifying the act to be amended, was executed to this section, which is section 402(c)(2)(A) of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

Subsec. (c)(11). Pub. L. 109–280, § 829(a)(1), added par. (11).

Subsec. (*l*). Pub. L. 109–280, § 845(a), added subsec. (*l*).

2005—Subsec. (g)(1)(A). Pub. L. 109–135, § 407(a)(2), inserted ''to'' after ''shall not apply''.

Subsec. (g)(7)(A)(ii). Pub. L. 109–135, § 407(a)(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''$15,000 reduced by amounts not included in gross income for prior taxable years by reason of this paragraph, or''.

2002—Subsec. (c)(2). Pub. L. 107–147, § 411(q)(2), inserted at end: ''In the case of a transfer described in subparagraph (A) or (B), the amount transferred shall be treated as consisting first of the portion of such distribution that is includible in gross income (determined without regard to paragraph (1)).''

Subsec. (g)(1)(C). Pub. L. 107–147, § 411(*o*)(1), added subpar. (C).

Subsec. (g)(7)(B). Pub. L. 107–147, § 411(p)(6), substituted ''2001).'' for ''2001.''

Subsec. (h)(2)(A). Pub. L. 107–147, § 411(*l*)(3), substituted ''25 percent'' for ''15 percent''.

2001—Subsec. (c)(2). Pub. L. 107–16, § 643(a), inserted at end ''The preceding sentence shall not apply to such distribution to the extent—

''(A) such portion is transferred in a direct trustee-to-trustee transfer to a qualified trust which is part of a plan which is a defined contribution plan and which agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible, or

''(B) such portion is transferred to an eligible retirement plan described in clause (i) or (ii) of paragraph (8)(B).''

Subsec. (c)(3). Pub. L. 107–16, § 644(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Paragraph (1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.''

Subsec. (c)(4)(C). Pub. L. 107–16, § 636(b)(1), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''any hardship distribution described in section 401(k)(2)(B)(i)(IV).''

Subsec. (c)(8)(B). Pub. L. 107–16, § 617(c), inserted concluding provisions.

Subsec. (c)(8)(B)(v). Pub. L. 107–16, § 641(a)(2)(A), added cl. (v).

Subsec. (c)(8)(B)(vi). Pub. L. 107–16, § 641(b)(2), added cl. (vi).

Subsec. (c)(9). Pub. L. 107–16, § 641(d), struck out before period at end ''; except that a trust or plan described in clause (iii) or (iv) of paragraph (8)(B) shall not be treated as an eligible retirement plan with respect to such distribution''.

Subsec. (c)(10). Pub. L. 107–16, § 641(a)(2)(B), added par. (10).

Subsec. (f)(1). Pub. L. 107–16, § 641(e)(5), struck out ''from an eligible retirement plan'' after ''rollover distribution'' in introductory provisions.

Subsec. (f)(1)(A). Pub. L. 107–16, § 657(b), inserted before comma at end ''and that the automatic distribution by direct transfer applies to certain distributions in accordance with section 401(a)(31)(B)''.

Pub. L. 107–16, § 641(e)(6), substituted ''an eligible retirement plan'' for ''another eligible retirement plan''.

Subsec. (f)(1)(B). Pub. L. 107–16, § 641(e)(6), substituted ''an eligible retirement plan'' for ''another eligible retirement plan''.

Subsec. (f)(1)(E). Pub. L. 107–16, § 641(c), added subpar. (E).

Subsec. (f)(2)(A). Pub. L. 107–16, § 641(e)(4), substituted '', paragraph (4) of section 403(a), subparagraph (A) of section 403(b)(8), or subparagraph (A) of section 457(e)(16)'' for ''or paragraph (4) of section 403(a)''.

Subsec. (g)(1). Pub. L. 107–16, § 611(d)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Notwithstanding subsections (e)(3) and (h)(1)(B), the elective deferrals of any individual for any taxable year shall be included in such individual's gross income to the extent the amount of such deferrals for the taxable year exceeds $7,000.''

Subsec. (g)(1)(A). Pub. L. 107–16, title VI, §617(b)(1), inserted at end ''The preceding sentence shall not apply the portion of such excess as does not exceed the designated Roth contributions of the individual for the taxable year.''

Subsec. (g)(2)(A). Pub. L. 107–16, title VI, §617(b)(2), inserted ''(or would be included but for the last sentence thereof)'' after ''paragraph (1)''.

Subsec. (g)(4). Pub. L. 107–16, §611(d)(3)(A), redesignated par. (5) as (4) and struck out heading and text of former par. (4). Text read as follows: ''The limitation under paragraph (1) shall be increased (but not to an amount in excess of $9,500) by the amount of any employer contributions for the taxable year described in paragraph (3)(C).''

Subsec. (g)(5). Pub. L. 107–16, §611(d)(3)(A), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Pub. L. 107–16, §611(d)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The Secretary shall adjust the $7,000 amount under paragraph (1) at the same time and in the same manner as under section 415(d); except that any increase under this paragraph which is not a multiple of $500 shall be rounded to the next lowest multiple of $500.''

Subsec. (g)(6). Pub. L. 107–16, §611(d)(3)(A), redesignated par. (7) as (6). Former par. (6) redesignated (5).

Subsec. (g)(7). Pub. L. 107–16, §611(d)(3)(A), redesignated par. (8) as (7).

Subsec. (g)(7)(B). Pub. L. 107–16, §632(a)(3)(G), inserted ''(as in effect before the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001'' before period at end.

Subsec. (g)(8), (9). Pub. L. 107–16, §611(d)(3)(A), redesignated par. (9) as (8). Former par. (8) redesignated (7).

1998—Subsec. (c)(4)(C). Pub. L. 105–206 added subpar. (C).

1997—Subsec. (g)(9). Pub. L. 105–34 added par. (9).

1996—Subsec. (c)(10). Pub. L. 104–188, §1401(b)(2), struck out par. (10) which read as follows:

''(10) DENIAL OF AVERAGING FOR SUBSEQUENT DISTRIBUTIONS.—If paragraph (1) applies to any distribution paid to any employee, paragraphs (1) and (3) of subsection (d) shall not apply to any distribution (paid after such distribution) of the balance to the credit of the employee under the plan under which the preceding distribution was made (or under any other plan which, under subsection (d)(4)(C), would be aggregated with such plan).''

Subsec. (d). Pub. L. 104–188, §1401(a), amended subsec. (d) generally, substituting provisions relating to taxability of beneficiary of certain foreign situs trusts for former provisions relating to tax on lump sum distributions.

Subsec. (e)(3). Pub. L. 104–188, §1450(a)(2), inserted ''or which is part of a salary reduction agreement under section 403(b)'' after ''section 401(k)(2))''.

Subsec. (e)(4)(D). Pub. L. 104–188, §1401(b)(1), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows:

''(D) LUMP SUM DISTRIBUTION.—For purposes of this paragraph, the term 'lump sum distribution' has the meaning given such term by subsection (d)(4)(A) (without regard to subsection (d)(4)(F)).''

Subsec. (e)(5). Pub. L. 104–188, §1401(b)(13), struck out par. (5) which read as follows:

''(5) TAXABILITY OF BENEFICIARY OF CERTAIN FOREIGN SITUS TRUSTS.—For purposes of subsections (a), (b), and (c), a stock bonus, pension, or profit-sharing trust which would qualify for exemption from tax under section 501(a) except for the fact that it is a trust created or organized outside the United States shall be treated as if it were a trust exempt from tax under section 501(a).''

Subsec. (g)(3)(A). Pub. L. 104–188, §1704(t)(68), substituted ''subsection (e)(3)'' for ''subsection (a)(8)''.

Subsec. (g)(3)(D). Pub. L. 104–188, §1421(b)(9)(B), added subpar. (D).

Subsec. (k). Pub. L. 104–188, §1421(b)(3)(A), added subsec. (k).

1994—Subsec. (g)(5). Pub. L. 103–465 inserted before period at end ''; except that any increase under this paragraph which is not a multiple of $500 shall be rounded to the next lowest multiple of $500''.

1992—Subsecs. (a) to (d). Pub. L. 102–318, §521(a), amended subsecs. (a) to (d) generally, substituting present provisions for former provisions which in subsec. (a) related to taxability of beneficiaries of exempt trusts, in subsec. (b) related to taxability of beneficiaries of nonexempt trusts, in subsec. (c) related to taxability of beneficiaries of certain foreign situs trusts, and subsec. (d) which had been previously repealed.

Subsec. (e). Pub. L. 102–318, §521, amended subsec. (e) generally, substituting provisions relating to other rules applicable to exempt trusts for provisions relating to tax on lump sum distributions.

Subsec. (e)(6). Pub. L. 102–318, §522(c)(1), added par. (6).

Subsec. (f). Pub. L. 102–318, §521(a), amended subsec. (f) generally, substituting present provisions for provisions requiring a different time when explanation was to be provided and a different content of explanation to be given and using different definitions for ''eligible rollover distribution'' and ''eligible retirement plan''.

Subsec. (g)(1). Pub. L. 102–318, §521(b)(9), substituted ''subsections (e)(3)'' for ''subsections (a)(8)''.

Subsec. (i). Pub. L. 102–318, §521(b)(10), substituted ''subsection (d)(4)'' for ''subsection (e)(4)''.

Subsec. (j)(1). Pub. L. 102–318, §521(b)(11), substituted ''(e)(4)'' for ''(a)(1) or (e)(4)(J)''.

1990—Subsec. (a)(3)(B). Pub. L. 101–508, §11801(c)(9)(I)(i), substituted ''section 424'' for ''section 425''.

Subsec. (a)(6)(B)(i). Pub. L. 101–508, §11801(c)(9)(I)(ii), substituted ''section 424(f)'' for ''section 425(f)''.

1989—Subsec. (e)(7). Pub. L. 101–239, §7811(i)(13), added par. (7).

Subsec. (g)(3). Pub. L. 101–239, §7811(g)(2), inserted ''involving a one-time irrevocable election'' after ''similar arrangement'' in last sentence.

1988—Subsec. (a)(1). Pub. L. 100–647, §1011A(b)(8)(A), substituted ''paragraph (4)'' for ''paragraphs (2) and (4)''.

Subsec. (a)(4). Pub. L. 100–647, §1011A(b)(8)(B), struck out ''or (2)'' after ''under paragraph (1)''.

Subsec. (a)(5)(D)(i). Pub. L. 100–647, §1011A(b)(4)(C), inserted at end ''Any distribution described in section 401(a)(28)(B)(ii) shall be treated as meeting the requirements of subclauses (I) and (II).''

Pub. L. 100–647, §1011A(b)(4)(A), repealed amendment by Pub. L. 99–514, §1122(e)(1), which had amended cl. (i) generally, and provided that the Internal Revenue Code of 1986 shall be applied and administered as if such amendment had not been enacted. See 1986 Amendment note and Effective Date of 1988 Amendment note below.

Subsec. (a)(5)(D)(i)(I). Pub. L. 100–647, §1011A(b)(4)(B), inserted ''is payable as provided in clause (i), (iii), or (iv) of subsection (e)(4)(A) (without regard to the second sentence thereof) and'' after ''(I) such distribution''.

Subsec. (a)(5)(D)(iii). Pub. L. 100–647, §1011A(b)(4)(D), struck out ''10-year'' after ''Denial of'' in heading.

Subsec. (a)(5)(F). Pub. L. 100–647, §1011A(a)(1), substituted ''resulting in any portion of a distribution being excluded from gross income under subparagraph (A)'' for ''described in subparagraph (A)''.

Subsec. (a)(6)(C). Pub. L. 100–647, §1011A(b)(8)(C), struck out ''paragraph (2) of subsection (a), and'' after ''paragraph (5)(A) applies,''.

Subsec. (a)(6)(E)(ii). Pub. L. 100–647, §1011A(b)(8)(D), substituted ''then paragraphs (1) and (3) of subsection (e) shall'' for ''then paragraph (2) of subsection (a), and paragraphs (1) and (3) of subsection (e), shall''.

Subsec. (a)(6)(G). Pub. L. 100–647, §1018(t)(8)(A), redesignated subpar. (G), relating to treatment of potential future vesting, as (I).

Subsec. (a)(6)(H)(ii). Pub. L. 100–647, §1011A(b)(5), inserted at end ''A deposit shall not be treated as a frozen deposit unless on at least 1 day during the 60-day period

described in paragraph (5)(C) (without regard to this subparagraph) such deposit is described in the preceding sentence.''

Subsec. (a)(6)(I). Pub. L. 100–647, §1018(t)(8)(A), redesignated subpar. (G), relating to treatment of potential future vesting, as (I).

Subsec. (b)(2)(A). Pub. L. 100–647, §1011(h)(4), added subpar. (A) and struck out former subpar. (A) which related to trust which is not exempt from tax under section 501(a) because plan fails to meet requirements of section 410(b).

Subsec. (b)(2)(B). Pub. L. 100–647, §1011(h)(4), added subpar. (B) and struck out former subpar. (B) which related to failure of plan to meet requirements of section 410(b) for more than 1 taxable year.

Subsec. (e)(1)(A). Pub. L. 100–647, §1011A(b)(8)(E), struck out ''ordinary income portion of a'' after ''subparagraph (B)) on the''.

Subsec. (e)(1)(B). Pub. L. 100–647, §1011A(b)(10), inserted at end ''For purposes of the preceding sentence, in determining the amount of tax under section 1(c), section 1(g) shall be applied without regard to paragraph (2)(B) thereof.''

Pub. L. 100–647, §1018(u)(1), made technical correction to directory language of Pub. L. 99–514, §104(b)(5). See 1986 Amendment note below.

Pub. L. 100–647, §1018(u)(6), related to execution of amendment by Pub. L. 99–514, §1122(b)(2)(B), see 1986 Amendment note below.

Subsec. (e)(3). Pub. L. 100–647, §1018(u)(7), related to execution of amendment by Pub. L. 99–514, §1122(b)(2)(C), see 1986 Amendment note below.

Subsec. (e)(4)(A). Pub. L. 100–647, §1011A(b)(8)(F), in concluding provisions, substituted ''A'' for ''Except for purposes of subsection (a)(2) and section 403(a)(2), a'', and struck out ''subsection (a)(2) of this section, and subsection (a)(2) of section 403,'' before ''the balance to''.

Subsec. (e)(4)(B)(i). Pub. L. 100–647, §1011A(b)(6), substituted ''employee'' for ''taxpayer''.

Subsec. (e)(4)(I). Pub. L. 100–647, §1011A(c)(9), struck out ''clause (ii) of'' after ''amounts described in''.

Subsec. (e)(4)(J). Pub. L. 100–647, §1011A(b)(7), amended last sentence generally. Prior to amendment, last sentence read as follows: ''To the extent provided by the Secretary, a taxpayer may elect before any distribution not to have this paragraph apply with respect to such distribution.''

Subsec. (e)(4)(L). Pub. L. 100–647, §1011A(b)(8)(G), struck out subpar. (L) which related to election to treat pre-1974 participation as post-1973 participation.

Subsec. (e)(4)(M). Pub. L. 100–647, §1011A(b)(8)(H), struck out '', subsection (a)(2) of this section, and section 403(a)(2)'' after ''of this subsection''.

Subsec. (e)(4)(O). Pub. L. 100–647, §6068(a), added subpar. (O).

Subsec. (e)(5). Pub. L. 100–647, §1011A(b)(8)(I), struck out ''and paragraph (2) of subsection (a)'' after ''of this subsection''.

Subsec. (e)(6)(C). Pub. L. 100–647, §1011A(b)(8)(J), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''For purposes of this paragraph, special lump sum treatment applies to any distribution if any portion of such distribution—

''(i) is taxed under this subsection by reason of an election under paragraph (4)(B), or

''(ii) is treated as long-term capital gain under subsection (a)(2) of this section or section 403(a)(2).''

Subsec. (f)(1). Pub. L. 100–647, §1018(t)(8)(C), substituted ''an eligible'' for ''a eligible''.

Subsec. (g). Pub. L. 100–647, §1011(c)(6)(B), redesignated subsec. (g), relating to effect of disposition of stock by plan on net unrealized appreciation, as (j).

Pub. L. 100–647, §1011(c)(6)(A), redesignated subsec. (g), relating to treatment of self-employed individuals, as (i).

Subsec. (g)(2). Pub. L. 100–647, §1011(c)(2), substituted ''Distribution'' for ''Required distribution'' in heading.

Subsec. (g)(2)(C). Pub. L. 100–647, §1011(c)(1), struck out ''(and no tax shall be imposed under section 72(t))'' after ''in gross income'', in cl. (i), substituted ''such income is distributed'' for ''such excess deferral is made'' in cl. (ii), and inserted at end ''No tax shall be imposed under section 72(t) on any distribution described in the preceding sentence.''

Subsec. (g)(2)(D). Pub. L. 100–647, §1011(c)(3), added subpar. (D).

Subsec. (g)(3). Pub. L. 100–647, §1011(c)(4), substituted ''this subsection'' for ''this paragraph''.

Pub. L. 100–647, §1011(c)(11), inserted at end ''An employer contribution shall not be treated as an elective deferral described in subparagraph (C) if under the salary reduction agreement such contribution is made pursuant to a one-time irrevocable election made by the employee at the time of initial eligibility to participate in the agreement or is made pursuant to a similar arrangement specified in regulations.''

Subsec. (g)(8)(A)(iii). Pub. L. 100–647, §1011(c)(5)(A), inserted ''(determined in the manner prescribed by the Secretary)'' after ''prior taxable years''.

Subsec. (g)(8)(D). Pub. L. 100–647, §1011(c)(5)(B), added subpar. (D).

Subsec. (i). Pub. L. 100–647, §1011(c)(6)(A), redesignated subsec. (g), relating to treatment of self-employed individuals, as (i).

Subsec. (j). Pub. L. 100–647, §1011(c)(6)(B), redesignated subsec. (g), relating to effect of disposition of stock by plan on net unrealized appreciation, as (j).

1986—Subsec. (a)(2). Pub. L. 99–514, §1122(b)(1)(A), struck out par. (2) relating to capital gains treatment for portion of lump sum distribution.

Subsec. (a)(5)(D)(i). Pub. L. 99–514, §1122(e)(1), amended cl. (i) generally, to read as follows: ''Subparagraph (A) shall apply to a partial distribution only if the employee elects to have subparagraph (A) apply to such distribution and such distribution would be a lump sum distribution if subsection (e)(4)(A) were applied—

''(I) by substituting '50 percent of the balance to the credit of an employee' for 'the balance to the credit of an employee',

''(II) without regard to clause (ii) thereof, the second sentence thereof, and subparagraph (B) of subsection (e)(4).

Any distribution described in section 401(a)(28)(B)(ii) shall be treated as meeting the requirements of this clause.'' This amendment was repealed by Pub. L. 100–647, §1011A(b)(4)(A). See 1988 Amendment note above.

Pub. L. 99–514, §1852(b)(2), inserted at end ''For purposes of subclause (I), the balance to the credit of the employee shall not include any accumulated deductible employee contributions (within the meaning of section 72(*o*)(5)).''

Subsec. (a)(5)(D)(ii). Pub. L. 99–514, §1852(b)(5), substituted ''a trust or plan described in subclause (III) or (IV)'' for ''a plan described in subclause (IV) or (V)''.

Subsec. (a)(5)(D)(iii). Pub. L. 99–514, §1122(b)(2)(A), struck out ''and capital gains treatment'' in heading and amended text generally. Prior to amendment, cl. (iii) read as follows: ''If an election under clause (i) is made with respect to any partial distribution paid to any employee—

''(I) paragraph (2) of this subsection,

''(II) paragraphs (1) and (3) of subsection (e), and

''(III) paragraph (2) of section 403(a),

shall not apply to any distribution (paid after such partial distribution) of the balance to the credit of such employee under the plan under which such partial distribution was made (or under any other plan which, under subsection (e)(4)(C), would be aggregated with such plan).''

Subsec. (a)(5)(E)(v). Pub. L. 99–514, §1852(b)(1), substituted ''of all or any portion of'' for ''of any portion of''.

Subsec. (a)(5)(F). Pub. L. 99–514, §1121(c)(1), amended subpar. (F) generally. Prior to amendment, subpar. (F) heading read ''Special rules'' and text read as follows: ''(i) Transfer treated as rollover contribution under section 408

''For purposes of this title, a transfer resulting in any portion of a distribution being excluded from gross in-

come under subparagraph (A) to an eligible retirement plan described in subclause (I) or (II) of subparagraph (E)(iv) shall be treated as a rollover contribution described in section 408(d)(3).

''(ii) 5-percent owners

''An eligible retirement plan described in subclause (III) or (IV) of subparagraph (E)(iv) shall not be treated as an eligible retirement plan for the transfer of a distribution if the employee is a 5-percent owner at the time such distribution is made. For purposes of the preceding sentence, the term '5-percent owner' means any individual who is a 5-percent owner (as defined in section 416(i)(1)(B)) at any time during the 5 plan years preceding the plan year in which the distribution is made.''

Pub. L. 99–514, §1852(b)(6), in cl. (i) substituted ''a transfer resulting in any portion of a distribution being excluded from gross income under subparagraph (A)'' for ''a transfer described in subparagraph (A)''.

Pub. L. 99–514, §1875(c)(1)(A), amended cl. (ii) generally. Prior to amendment, cl. (ii), key employees, read as follows: ''An eligible retirement plan described in subclause (III) or (IV) of subparagraph (E)(iv) shall not be treated as an eligible retirement plan for the transfer of a distribution if any part of the distribution is attributable to contributions made on behalf of the employee while he was a key employee in a top-heavy plan. For purposes of the preceding sentence, the terms 'key employee' and 'top-heavy plan' have the same respective meanings as when used in section 416.''

Subsec. (a)(5)(G). Pub. L. 99–514, §1852(a)(5)(A), added subpar. (G).

Subsec. (a)(6)(D)(v). Pub. L. 99–514, §1852(b)(7), substituted ''(7)'' for ''(7)(B)''.

Subsec. (a)(6)(F). Pub. L. 99–514, §1898(c)(7)(A)(i), substituted ''paragraph (5)'' for ''paragraph (5)(A)''.

Subsec. (a)(6)(G). Pub. L. 99–514, §1898(a)(3), added subpar. (G) relating to treatment of potential future vesting.

Pub. L. 99–272 added subpar. (G) relating to payments from certain pension plan termination trusts.

Subsec. (a)(6)(H). Pub. L. 99–514, §1122(e)(2)(A), added subpar. (H).

Subsec. (a)(7). Pub. L. 99–514, §1852(b)(4), inserted ''; except that a trust or plan described in subclause (III) or (IV) of paragraph (5)(E)(iv) shall not be treated as an eligible retirement plan with respect to such distribution'' after ''the spouse were the employee''.

Subsec. (a)(9). Pub. L. 99–514, §1898(c)(1)(A), substituted ''any alternate payee who is the spouse or former spouse of the participant shall be treated'' for ''the alternate payee shall be treated''.

Subsec. (b). Pub. L. 99–514, §1112(c), designated existing provisions as par. (1), inserted par. (1) heading, and added par. (2).

Pub. L. 99–514, §1852(c)(5), substituted ''section 72(e)(5)'' for ''section 72(e)(1)''.

Subsec. (e)(1)(B). Pub. L. 99–514, §1122(b)(2)(B), and Pub. L. 100–647, §1018(u)(6), redesignated subpar. (C) as (B), substituted ''Amount of tax'' for ''Initial separate tax'' in heading and ''The amount of tax imposed by subparagraph (A)'' for ''The initial separate tax'', and struck out former subpar. (B) which related to computation of tax on lump sum distributions.

Pub. L. 99–514, §104(b)(5), as amended by Pub. L. 100–647, §1018(u)(1), struck out ''the zero bracket amount applicable to such individual for the taxable year plus'' after ''amount equal to''.

Pub. L. 99–514, §1122(a)(2)(A), (B), substituted ''5'' for ''10'' and ''⅕'' for ''one-tenth''.

Subsec. (e)(1)(C) to (E). Pub. L. 99–514, §1122(b)(2)(B)(i), redesignated subpars. (C) to (E) as (B) to (D), respectively.

Subsec. (e)(3). Pub. L. 99–514, §1122(b)(2)(C), and Pub. L. 100-647, §1018(u)(7), substituted ''total taxable amount'' for ''ordinary income portion''.

Subsec. (e)(4)(B). Pub. L. 99–514, §1122(a)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''For purposes of this section and section 403, no amount which is not an annuity contract may be treated as a lump sum distribution under subparagraph (A) unless the taxpayer elects for the taxable year to have all such amounts received during such year so treated at the time and in the manner provided under regulations prescribed by the Secretary. Not more than one election may be made under this subparagraph with respect to any individual after such individual has attained age 59½. No election may be made under this subparagraph by any taxpayer other than an individual, an estate, or a trust. In the case of a lump sum distribution made with respect to an employee to two or more trusts, the election under this subparagraph shall be made by the personal representative of the employee.''

Subsec. (e)(4)(E). Pub. L. 99–514, §1122(b)(2)(D), struck out subpar. (E) defining ''ordinary income portion'' with respect to a lump sum distribution.

Subsec. (e)(4)(F). Pub. L. 99–514, §1852(b)(3)(B), struck out subpar. (F) defining ''employee''. See subsec. (g) of this section relating to treatment of self-employed individuals.

Subsec. (e)(4)(H). Pub. L. 99–514, §1122(b)(2)(E), struck out ''(but not for purposes of subsection (a)(2) or section 403(a)(2)(A))'' after ''For purposes of this subsection''.

Subsec. (e)(4)(J). Pub. L. 99–514, §1122(g), inserted at end ''To the extent provided by the Secretary, a taxpayer may elect before any distribution not to have this paragraph apply with respect to such distribution.''

Subsec. (e)(4)(N). Pub. L. 99–514, §1106(c)(2), added subpar. (N).

Subsec. (e)(6). Pub. L. 99–514, §1898(a)(2), added par. (6).

Subsec. (f)(1). Pub. L. 99–514, §1898(e)(1), substituted ''eligible rollover distribution'' for ''qualifying rollover distribution''.

Subsec. (f)(2). Pub. L. 99–514, §1898(e)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''For purposes of this subsection, the terms 'qualifying rollover distribution' and 'eligible retirement plan' have the respective meanings given such terms by subsection (a)(5)(E).''

Subsec. (g). Pub. L. 99–514, §1854(f)(2), added subsec. (g) relating to effect of disposition of stock by plan on net unrealized appreciation.

Pub. L. 99–514, §1852(b)(3)(A), added subsec. (g) relating to treatment of self-employed individuals.

Pub. L. 99–514, §1105(a), added subsec. (g) relating to limitation on exclusion for elective deferrals.

Subsec. (h). Pub. L. 99–514, §1108(b), added subsec. (h).

1984—Subsec. (a)(2). Pub. L. 98–369, §1001(b)(3), substituted ''6 months'' for ''1 year''.

Subsec. (a)(5)(A)(i). Pub. L. 98–369, §522(a)(1), substituted ''any portion of the balance to the credit of an employee in a qualified trust is paid to him'' for ''the balance to the credit of an employee in a qualified trust is paid to him in a qualifying rollover distribution''.

Subsec. (a)(5)(B). Pub. L. 98–369, §522(d)(1)(A), (2), substituted ''qualified total distribution'' for ''qualifying rollover distribution'', and inserted ''In the case of any partial distribution, the maximum amount transferred to which subparagraph (A) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to subparagraph (A)).''

Subsec. (a)(5)(D). Pub. L. 98–369, §522(b), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (a)(5)(D)(iv)(III)–(V). Pub. L. 98–369, §491(d)(9), struck out subcl. (III), which included a retirement bond described in section 409 within term ''eligible retirement plan'' and redesignated former subcls. (IV) and (V) and (III) and (IV), respectively.

Subsec. (a)(5)(E). Pub. L. 98–369, §522(b), redesignated subpar. (D) as (E). Former subpar. (E) redesignated (F).

Subsec. (a)(5)(E)(i). Pub. L. 98–369, §522(d)(1)(B), substituted ''qualified total distribution'' for ''qualifying rollover distribution'' in heading and text.

Subsec. (a)(5)(E)(ii)(II). Pub. L. 98–369, §522(d)(3), substituted ''gross income (determined without regard to this paragraph)'' for ''gross income''.

Subsec. (a)(5)(E)(v). Pub. L. 98–369, § 522(d)(4), substituted provision dealing with partial distribution for provision dealing with rollover of partial distributions of deductible employee contributions permitted.

Subsec. (a)(5)(F). Pub. L. 98–369, § 522(b), redesignated subpar. (E) as (F).

Subsec. (a)(5)(F)(i). Pub. L. 98–369, § 522(d)(5), substituted ''subparagraph (E)(iv)'' for ''subparagraph (D)(iv)''.

Pub. L. 98–369, § 491(d)(10), substituted ''or (II)'' for '', (II), or (III)''.

Subsec. (a)(5)(F)(ii). Pub. L. 98–369, § 522(d)(5), substituted ''subparagraph (E)(iv)'' for ''subparagraph (D)(iv)''.

Pub. L. 98–369, § 491(d)(11), substituted ''(III) or (IV)'' for ''(IV) and (V)''.

Pub. L. 98–369, § 713(c)(3), substituted ''Key employees'' for ''Self-employed individuals and owner-employees'' in heading and ''attributable to contributions made on behalf of the employee while he was a key employee in a top-heavy plan'' for ''attributable to a trust forming part of a plan under which the employee was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan'' in text, and inserted sentence adopting the meaning of ''key employee'' and ''top-heavy plan'' used in section 416.

Subsec. (a)(6)(A), (B). Pub. L. 98–369, § 522(d)(6), substituted ''paragraph (5)(E)(i)'' for ''paragraph (5)(D)(i)''.

Subsec. (a)(6)(D)(iii), (iv). Pub. L. 98–369, § 522(d)(7), substituted ''employee contributions (or, in the case of a partial distribution, the amount not includible in gross income)'' for ''employee contributions''.

Subsec. (a)(6)(E)(i). Pub. L. 98–369, § 522(d)(1)(C), (8), substituted ''qualified total distribution'' for ''qualifying rollover distribution'', and ''paragraph (5)(D) or (5)(E)(i)(II)'' for ''paragraph (5)(D)(i)(II)''.

Subsec. (a)(6)(F). Pub. L. 98–397, § 204(c)(3), added subpar. (F).

Subsec. (a)(7). Pub. L. 98–369, § 522(c), substituted provisions relating to rollover where spouse receives distributions after death of employee for provisions dealing with rollover where spouse receives lump-sum distribution at death of employee.

Subsec. (a)(9). Pub. L. 98–397, § 204(c)(1), added par. (9).

Subsec. (e)(4)(L). Pub. L. 98–369, § 1001(b)(3), substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsec. (e)(4)(M). Pub. L. 98–397, § 204(c)(4), added subpar. (M).

Subsec. (e)(5). Pub. L. 98–369, § 491(c)(2), added par. (5).

Subsec. (f). Pub. L. 98–397, § 207(a), added subsec. (f).

1983—Subsec. (a)(5)(D)(v). Pub. L. 97–448, § 103(c)(8)(A), added cl. (v).

Subsec. (e)(1)(C). Pub. L. 97–448, § 101(b), substituted ''the zero bracket amount applicable to such an individual for the taxable year'' for ''$2,300''.

Subsec. (e)(4)(A). Pub. L. 97–448, § 103(c)(7), substituted ''this subsection, subsection (a)(2) of this section, and subsection (a)(2) of section 403'' for ''this section and section 403'' in last sentence.

Subsec. (e)(4)(J). Pub. L. 97–448, § 103(c)(12)(D), amended Pub. L. 97–34, § 311(c)(2) [see 1981 Amendment note below], by substituting ''section 72(*o*)(5)'' for ''section 77(*o*)(5)'' in last sentence of subpar. (j).

1981—Subsec. (a)(1). Pub. L. 97–34, § 311(c)(1), inserted ''(other than deductible employee contributions within the meaning of section 72(*o*)(5))''.

Pub. L. 97–34, § 314(c)(1), struck out ''or made available'' after ''distributed'' in three places.

Subsec. (a)(5). Pub. L. 97–34, § 311(b)(3)(A), inserted ''(other than accumulated deductible employee contributions within the meaning of section 72(*o*)(5))'' after ''contributions'' in subpar. (B) and added subcl. (III) in subpar. (D).

Subsec. (e)(4). Pub. L. 97–34, § 311(b)(2), (c)(2), added to subpar. (A) provision that for purposes of sections 402 and 403, the balance to the credit of the employee does not include the accumulated deductible employee contributions under the plan (within the meaning of section 72(*o*)(5)), and added subpar. (J) provision making subpar. (J) inapplicable to distributions of accumulated deductible employee contributions (within the meaning of section 77(*o*)(5)). See 1983 Amendment note above.

1980—Subsec. (a)(6)(D)(iii). Pub. L. 96–222, § 101(a)(14)(E)(i), substituted ''may designate'' for ''many designate''.

Subsec. (a)(6)(E). Pub. L. 96–608 added subpar. (E).

Subsec. (a)(7)(A)(i). Pub. L. 96–222, § 101(a)(14)(C), substituted ''qualifying rollover distribution attributable to an employee is paid to the spouse of the employee after'' for ''lump-sum distribution from a qualified trust is paid to the spouse of the employee on account of''.

1978—Subsec. (a)(5). Pub. L. 95–458, § 4(a), among other changes, substituted provision permitting tax-free treatment for any portion of a lump sum distribution from a qualified retirement plan which is deposited in an individual retirement account or another qualifying plan for provision which required transfer of all such property received.

Subsec. (a)(5)(D)(i)(II). Pub. L. 95–600, § 157(h)(1), substituted ''subparagraphs (B) and (H) of subsection (e)(4)'' for ''subsection (e)(4)(B)''.

Subsec. (a)(6). Pub. L. 95–458, § 4(c), in provision preceding subpar. (A) struck out ''For purposes of paragraph (5)(A)(i)'', in subpar. (A) substituted ''For purposes of paragraph (5)(D)(i), a complete'' for ''A complete'', in subpar. (B) inserted ''For purposes of paragraph (5)(D)(i)—'' after ''assets.—'' in provision preceding cl. (i), and added subpar. (C).

Subsec. (a)(6)(D). Pub. L. 95–600, § 157(f)(1), added subpar. (D).

Subsec. (a)(7). Pub. L. 95–600, § 157(g)(1), added par. (7).

Subsec. (a)(8). Pub. L. 95–600, § 135(b), added par. (8).

Subsec. (e)(1)(C). Pub. L. 95–600, § 101(d)(1), substituted ''$2,300'' for ''$2,200''.

1977—Subsec. (e)(1)(C). Pub. L. 95–30 substituted ''amount equal to $2,200 plus one-tenth of the excess of'' for ''amount equal to one-tenth of the excess of'' in provisions preceding cl. (i).

1976—Subsec. (a)(1). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (a)(2). Pub. L. 94–455, § 1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, §§ 1402(b)(1)(C), 1906(b)(13)(A), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977 and struck out ''or his delegate'' after ''Secretary''.

Subsec. (a)(4). Pub. L. 94–455, § 1901(a)(57)(A), substituted ''basic pay'' for ''basic salary'', ''civil service retirement laws'' for ''Civil Service Retirement Act (5 U.S.C. 2251)'', and ''section 8331(3) of title 5, United States Code'' for ''section 1(d) of such Act''.

Subsec. (a)(5). Pub. L. 94–267, § 1(a)(2), substituted ''a payment'' for ''the lump-sum distribution''.

Subsec. (a)(5)(A). Pub. L. 94–267, § 1(a)(1), restructured provision by adding cl. (i) and designating existing provision as cl. (ii).

Subsec. (a)(6). Pub. L. 94–267, § 1(a)(3), added par. (6).

Subsec. (a)(6)(A). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d). Pub. L. 94–455, § 1901(a)(57)(B), struck out subsec. (d) which related to certain trust agreements made before Oct. 21, 1942.

Subsec. (e)(2). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (e)(4)(A). Pub. L. 94–455, § 1901(a)(57)(C)(i), substituted ''Except for purposes of subsection (a)(2) and section 403(a)(2)'' for ''For purposes of this subparagraph''.

Subsec. (e)(4)(B), (J). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (e)(4)(L). Pub. L. 94–455, § 1402(b)(2), substituted ''1 year'' for ''9 months''.

Pub. L. 94–455, §§ 1402(b)(1)(C), 1512(a), added subsec. (e)(4)(L) to be applicable to distributions and payments after Dec. 31, 1975, in taxable years beginning after Dec. 31, 1975, and provided that ''6 months'' would be

changed to ''9 months'' for taxable years beginning in 1977.

1974—Subsec. (a)(2). Pub. L. 93–406, §2005(b)(1), substituted provisions covering capital gains treatment of portions of lump sum distributions determined through the application of a fraction formula susceptible of producing a phaseout of capital gains treatment for provisions covering capital gains treatment of portions of lump sum distributions determined on a fixed formula.

Subsec. (a)(3)(C). Pub. L. 93–406, §2005(c)(1), struck out subsec. (a)(3)(C) which defined ''total distribution payable''.

Subsec. (a)(5). Pub. L. 93–406, §§2002(g)(5), 2005(c)(2), substituted provisions covering rollover amounts for provisions covering limitation on capital gains treatment.

Subsec. (e). Pub. L. 93–406, §2005(a), substituted provisions covering tax on lump sum distributions for provisions covering plan termination distributions made after Dec. 31, 1953, and before Jan. 1, 1955.

1969—Subsec. (a)(5). Pub. L. 91–172, §515(a)(1), added par. (5).

Subsec. (b). Pub. L. 91–172, §321(b)(1), substituted provision for inclusion of contributions made by an employer to a nonexempt trust in the ''gross income of the employee in accordance with section 83 (relating to property transferred in connection with performance of services), except that the value of the employee's interest in the trust shall be substituted for the fair market value of the property for purposes of applying such section'' for prior provision for inclusion in the ''gross income of an employee for the taxable year in which the contribution is made to the trust in the case of an employee whose beneficial interest in such contribution is nonforfeitable at the time the contribution is made'', and provided that distributions of income of such trust before the annuity starting date (as defined in section 72(c)(4)) shall be included in the gross income of the employee without regard to section 72(e)(1) (relating to amount not received as annuities) and that a beneficiary of any such trust shall not be considered the owner of any portion of such trust under subpart E of part I of subch. J (relating to grantors and others treated as substantial owners).

1964—Subsec. (a)(1). Pub. L. 88–272, §232(e)(1), struck out ''except that section 72(e)(3) shall not apply'' after ''(relating to annuities)''.

Subsec. (a)(3)(B). Pub. L. 88–272, §221(c)(1), substituted ''subsections (e) and (f) of section 425'' for ''section 421(d)(2) and (3)''.

Subsecs. (b), (d). Pub. L. 88–272, §232(e)(2), (3), struck out ''except that section 72(e)(3) shall not apply'' after ''(relating to annuities)''.

1962—Subsec. (a)(2). Pub. L. 87–792 inserted sentence providing that this paragraph shall not apply to distributions paid to any distributee to the extent such distributions are attributable to contributions made on behalf of the employee while he was an employee within the meaning of section 401(c)(1).

1960—Subsec. (a)(1). Pub. L. 86–437, §2(a), substituted ''paragraphs (2) and (4)'' for ''paragraph (2)''.

Subsec. (a)(4). Pub. L. 86–437, §1, added par. (4).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–458, title I, §108(f)(2)(C), Dec. 23, 2008, 122 Stat. 5109, provided that: ''The amendments made by this paragraph [amending this section] shall apply with respect to plan years beginning after December 31, 2009.''

Amendment by sections 108(f)(1)–(2)(B), (j) and 109(b)(3) of Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

Amendment by section 201(b) of Pub. L. 110–458 applicable to calendar years beginning after December 31, 2008, with provisions relating to pension plan or contract amendments, see section 201(c) of Pub. L. 110–458, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–172, §8(b), Dec. 29, 2007, 121 Stat. 2484, provided that: ''The amendments made by this section [amending this section and section 3121 of this title] shall take effect as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16] to which they relate.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, §822(b), Aug. 17, 2006, 120 Stat. 998, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2006.''

Pub. L. 109–280, title VIII, §829(b), Aug. 17, 2006, 120 Stat. 1002, provided that: ''The amendments made by this section [amending this section and sections 403 and 457 of this title] shall apply to distributions after December 31, 2006.''

Pub. L. 109–280, title VIII, §845(c), Aug. 17, 2006, 120 Stat. 1015, provided that: ''The amendments made by this section [amending this section and sections 403 and 457 of this title] shall apply to distributions in taxable years beginning after December 31, 2006.''

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–135, title IV, §407(c), Dec. 21, 2005, 119 Stat. 2635, provided that: ''The amendments made by this section [amending this section and section 415 of this title] shall take effect as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16] to which they relate.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 611(d)(1)–(3)(A) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 611(i)(1) of Pub. L. 107–16, set out as a note under section 415 of this title.

Pub. L. 107–16, title VI, §617(f), June 7, 2001, 115 Stat. 106, provided that: ''The amendments made by this section [enacting section 402A of this title and amending this section and sections 408A, 6047, and 6051 of this title] shall apply to taxable years beginning after December 31, 2005.''

Amendment by section 632(a)(3)(G) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 632(a)(4) of Pub. L. 107–16, set out as a note under section 72 of this title.

Pub. L. 107–16, title VI, §636(b)(2), June 7, 2001, 115 Stat. 117, provided that: ''The amendment made by this subsection [amending this section] shall apply to distributions made after December 31, 2001.''

Pub. L. 107–16, title VI, §641(f), June 7, 2001, 115 Stat. 121, provided that:

''(1) EFFECTIVE DATE.—The amendments made by this section [amending this section and sections 72, 219, 401, 403, 408, 415, 457, 3401, 3405, and 4973 of this title] shall apply to distributions after December 31, 2001.

''(2) REASONABLE NOTICE.—No penalty shall be imposed on a plan for the failure to provide the information required by the amendment made by subsection (c) [amending this section] with respect to any distribution made before the date that is 90 days after the date on which the Secretary of the Treasury issues a safe harbor rollover notice after the date of the enactment of this Act [June 7, 2001], if the administrator of such plan makes a reasonable attempt to comply with such requirement.

''(3) SPECIAL RULE.—Notwithstanding any other provision of law, subsections (h)(3) and (h)(5) of section 1122 of the Tax Reform Act of 1986 [Pub. L. 99–514, set out as a note below] shall not apply to any distribution

from an eligible retirement plan (as defined in clause (iii) or (iv) of section 402(c)(8)(B) of the Internal Revenue Code of 1986) on behalf of an individual if there was a rollover to such plan on behalf of such individual which is permitted solely by reason of any amendment made by this section.''

Amendment by section 643(a) of Pub. L. 107–16 applicable to distributions made after Dec. 31, 2001, see section 643(d) of Pub. L. 107–16, set out as a note under section 401 of this title.

Pub. L. 107–16, title VI, § 644(c), June 7, 2001, 115 Stat. 123, provided that: ''The amendments made by this section [amending this section and section 408 of this title] shall apply to distributions after December 31, 2001.''

Amendment by section 657(b) of Pub. L. 107–16 applicable to distributions made after Mar. 28, 2005, see section 657(d) of Pub. L. 107–16, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title VI, § 6005(c)(2)(C), July 22, 1998, 112 Stat. 800, provided that: ''The amendments made by this paragraph [amending this section and section 403 of this title] shall apply to distributions after December 31, 1998.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1501(c)(1) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1401(c) of Pub. L. 104–188 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 55, 62, 401, 406, 407, 691, 871, 877, and 4980A of this title] shall apply to taxable years beginning after December 31, 1999.

''(2) RETENTION OF CERTAIN TRANSITION RULES.—The amendments made by this section shall not apply to any distribution for which the taxpayer is eligible to elect the benefits of section 1122(h)(3) or (5) of the Tax Reform Act of 1986 [Pub. L. 99–514, set out below]. Notwithstanding the preceding sentence, individuals who elect such benefits after December 31, 1999, shall not be eligible for 5-year averaging under section 402(d) of the Internal Revenue Code of 1986 (as in effect immediately before such amendments).''

Amendment by section 1421(b)(3)(A), (9)(B) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104–188, set out as a note under section 72 of this title.

Amendment by section 1450(a)(2) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, see section 1450(a)(3) of Pub. L. 104–188, set out in a Modifications of Subsection (b) of This Section note under section 403 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 applicable to years beginning after Dec. 31, 1994, and, to the extent of providing for the rounding of indexed amounts, not applicable to any year to the extent the rounding would require the indexed amount to be reduced below the amount in effect for years beginning in 1994, see section 732(e) of Pub. L. 103–465, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 521(e) of Pub. L. 102–318 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 55, 62, 72, 219, 401, 403, 406 to 408, 411, 414, 415, 457, 691, 871, 877, 1441, 3121, 3306, 3405, 4973, 4980A, and 7701 of this title] shall apply to distributions after December 31, 1992.

''(2) SPECIAL RULE FOR PARTIAL DISTRIBUTIONS.—For purposes of section 402(a)(5)(D)(i)(II) of the Internal Revenue Code of 1986 (as in effect before the amendments made by this section), a distribution before January 1, 1993, which is made before or at the same time as a series of periodic payments shall not be treated as one of such series if it is not substantially equal in amount to other payments in such series.''

Amendment by section 522(c)(1) of Pub. L. 102–318 applicable, except as otherwise provided, to distributions after Dec. 31, 1992, see section 522(d) of Pub. L. 102–318, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7811(i)(13) of Pub. L. 101–239 provided that the amendment made by that section is effective with respect to taxable years ending after Dec. 19, 1989 (or, at the election of the taxpayer, beginning after Dec. 31, 1986).

Amendment by section 7811(g)(2) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1011(c)(1)–(6)(B), (11), (h)(4), 1011A(a)(1), (b)(4)(A)–(D), (5)–(8), (10), (c)(9), and 1018(t)(8)(A), (C), (u)(1), (6), (7) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6068(b) of Pub. L. 100–647 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years ending after December 31, 1984.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 104(b)(5) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Section 1105(c) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1011(c)(8), (9), Nov. 10, 1988, 102 Stat. 3458, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1986.

''(2) DEFERRALS UNDER COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendment made by subsection (a) shall not apply to contributions made pursuant to such an agreement for taxable years beginning before the earlier of—

''(A) the date on which such agreement terminates (determined without regard to any extension thereof after February 28, 1986), or

''(B) January 1, 1989.

Such contributions shall be taken into account for purposes of applying the amendment made by this section to other plans.

''(3) DISTRIBUTIONS MADE BEFORE PLAN AMENDMENT.—

''(A) IN GENERAL.—If a plan amendment is required to allow the plan to make any distribution described in section 402(g)(2)(A)(ii) of the Internal Revenue Code of 1986, any such distribution which is made before the close of the 1st plan year for which such amendment is required to be in effect under section 1140 [set out as a note under section 401 of this title] shall be treated as made in accordance with the provisions of such plan.

''(B) DISTRIBUTIONS PURSUANT TO MODEL AMENDMENT.—

''(i) SECRETARY TO PRESCRIBE AMENDMENT.—The Secretary of the Treasury or his delegate shall prescribe an amendment which allows a plan to make any distribution described in section 402(g)(2)(A)(ii) of such Code.

''(ii) ADOPTION BY PLAN.—If a plan adopts the amendment prescribed under clause (i) and makes a distribution in accordance with such amendment, such distribution shall be treated as made in accordance with the provisions of the plan.

''(4) SPECIAL RULE FOR TAXABLE YEARS OF PARTNERSHIPS WHICH INCLUDE JANUARY 1, 1987.—In the case of the taxable year of any partnership which begins before January 1, 1987, and ends after January 1, 1987, elective deferrals (within the meaning of section 402(g)(3) of the Internal Revenue Code of 1986) made on behalf of a partner for such taxable year shall, for purposes of section 402(g)(3) of such Code, be treated as having been made ratably during such taxable year.

''(5) CASH OR DEFERRED ARRANGEMENTS.—The amendments made by this section [amending this section and section 6051 of this title] shall not apply to employer contributions made during 1987 and attributable to services performed during 1986 under a qualified cash or deferred arrangement (as defined in section 401(k) of the Internal Revenue Code of 1986) if, under the terms of such arrangement as in effect on August 16, 1986—

''(A) the employee makes an election with respect to such contribution before January 1, 1987, and

''(B) the employer identifies the amount of such contribution before January 1, 1987.

''(6) REPORTING REQUIREMENTS.—The amendments made by subsection (b) [amending section 6051 of this title] shall apply to calendar years beginning after December 31, 1986.''

Amendment by section 1106(c)(2) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1106(i) of Pub. L. 99–514, set out as a note under section 415 of this title.

Amendment by section 1108(b) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1108(h) of Pub. L. 99–514, set out as a note under section 219 of this title.

Amendment by section 1112(c) of Pub. L. 99–514 applicable to plan years beginning after Dec. 31, 1988, with special rule regarding collective bargaining agreements ratified before Mar. 1, 1986, and with provision for waiver of excise tax on reversions, see section 1112(e) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 1121(c)(1) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, with special provisions for plans maintained pursuant to collective bargaining agreements ratified before Mar. 1, 1986, and transition rules, see section 1121(d) of Pub. L. 99–514, set out as a note under section 401 of this title.

Section 1122(h) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1011A(b)(11)–(15), Nov. 10, 1988, 102 Stat. 3474, 3475, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 72, 403, and 408 of this title] shall apply to amounts distributed after December 31, 1986, in taxable years ending after such date.

''(2) SUBSECTION (c).—

''(A) SUBSECTION (c)(1).—The amendment made by subsection (c)(1) [amending section 72 of this title] shall apply to individuals whose annuity starting date is after July 1, 1986.

''(B) SUBSECTION (c)(2).—The amendment made by subsection (c)(2) [amending section 72 of this title] shall apply to individuals whose annuity starting date is after December 31, 1986, except that section 72(b)(3) of the Internal Revenue Code of 1986 (as added by such subsection) shall apply to individuals whose annuity starting date is after July 1, 1986.

''(C) SPECIAL RULE FOR AMOUNTS NOT RECEIVED AS ANNUITIES.—In the case of any plan not described in section 72(e)(8)(D) of the Internal Revenue Code of 1986 (as added by subsection (c)(3)), the amendments made by subsection (c)(3) [amending section 72 of this title] shall apply to amounts received after July 1, 1986.

''(3) SPECIAL RULE FOR INDIVIDUALS WHO ATTAINED AGE 50 BEFORE JANUARY 1, 1986.—

''(A) IN GENERAL.—In the case of a lump sum distribution to which this paragraph applies—

''(i) the existing capital gains provisions shall continue to apply, and

''(ii) the requirement of subparagraph (B) of section 402(e)(4) of the Internal Revenue Code of 1986 (as amended by subsection (a)) that the distribution be received after attaining age 59½ shall not apply.

''(B) COMPUTATION OF TAX.—If subparagraph (A) applies to any lump sum distribution of any taxpayer for any taxable year, the tax imposed by section 1 of the Internal Revenue Code of 1986 on such taxpayer for such taxable year shall be equal to the sum of—

''(i) the tax imposed by such section 1 on the taxable income of the taxpayer (reduced by the portion of such lump sum distribution to which clause (ii) applies), plus

''(ii) 20 percent of the portion of such lump sum distribution to which the existing capital gains provisions continue to apply by reason of this paragraph.

''(C) LUMP SUM DISTRIBUTIONS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to any lump sum distribution if—

''(i) such lump sum distribution is received by an employee who has attained age 50 before January 1, 1986 or by an individual, estate, or trust with respect to such an employee, and

''(ii) the taxpayer makes an election under this paragraph.

Not more than 1 election may be made under this paragraph with respect to an employee. An election under this subparagraph shall be treated as an election under section 402(e)(4)(B) of such Code for purposes of such Code.

''(4) 5-YEAR PHASE-OUT OF CAPITAL GAINS TREATMENT.—

''(A) Notwithstanding the amendment made by subsection (b) [amending this section and section 403 of this title], if the taxpayer elects the application of this paragraph with respect to any distribution after December 31, 1986, and before January 1, 1992, the phase-out percentage of the amount which would have been treated, without regard to this subparagraph, as long-term capital gain under the existing capital gains provisions shall be treated as long-term capital gain.

''(B) For purposes of this paragraph—

"In the case of distributions during calendar year:	The phase-out percentage is:
1987	100
1988	95
1989	75
1990	50
1991	25.

''(C) No more than 1 election may be made under this paragraph with respect to an employee. An election under this paragraph shall be treated as an election under section 402(e)(4)(B) of the Internal Revenue Code of 1986 for purposes of such Code.

''(5) ELECTION OF 10-YEAR AVERAGING.—An employee who has attained age 50 before January 1, 1986, and elects the application of paragraph (3) or section 402(e)(1) of the Internal Revenue Code of 1986 (as amended by this Act) may elect to have such section applied by substituting '10 times' for '5 times' and '1/10' for '1/5' in subparagraph (B) thereof. For purposes of the preceding sentence, section 402(e)(1) of such Code shall be applied by using the rate of tax in effect under section 1 of the Internal Revenue Code of 1954 for taxable years beginning during 1986 and by including in gross income the zero bracket amount in effect under section 63(d) of such Code for such years. This paragraph shall also apply to an individual, estate, or trust which receives a distribution with respect to an employee described in this paragraph.

''(6) EXISTING CAPITAL GAIN PROVISIONS.—For purposes of paragraphs (3) and (4), the term 'existing capital gains provisions' means the provisions of paragraph (2)

of section 402(a) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]) and paragraph (2) of section 403(a) of such Code (as so in effect).

''(7) SUBSECTION (d).—The amendments made by subsection (d) [amending section 403 of this title] shall apply to taxable years beginning after December 31, 1985.

''(8) FROZEN DEPOSITS.—The amendments made by subsection (e)(2) [amending this section and section 408 of this title] shall apply to amounts transferred to an employee before, on, or after the date of the enactment of this Act [Oct. 22, 1986], except that in the case of an amount transferred on or before such date, the 60-day period referred to in section 402(a)(5)(C) of the Internal Revenue Code of 1986 shall not expire before the 60th day after the date of the enactment of this Act.

''(9) SPECIAL RULE FOR STATE PLANS.—In the case of a plan maintained by a State which on May 5, 1986, permitted withdrawal by the employee of employee contributions (other than as an annuity), section 72(e) of the Internal Revenue Code of 1986 shall be applied—

''(A) without regard to the phrase 'before separation from service' in paragraph (8)(D), and

''(B) by treating any amount received (other than as an annuity) before or with the 1st annuity payment as having been received before the annuity starting date.''

Amendment by section 1852(a)(5)(A), (b)(1)–(7), (c)(5) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Section 1854(f)(4)(C) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1011(c)(6)(C), Nov. 10, 1988, 102 Stat. 3458, provided that: ''The amendments made by paragraph (2) [amending this section] shall apply to any transaction occurring after December 31, 1984, except that in the case of any transaction occurring before the date of the enactment of this Act [Oct. 22, 1986], the period under which proceeds are required to be invested under section 402(j) of the Internal Revenue Code of 1954 [now 1986] (as added by paragraph (2)) shall not end before the earlier of 1 year after the date of such transaction or 180 days after the date of the enactment of this Act.''

Section 1875(c)(1)(B) of Pub. L. 99–514 provided that: ''The amendments made by subparagraph (A) [amending this section] shall apply to distributions after the date of the enactment of this Act [Oct. 22, 1986]. Such amendments shall apply also to distributions after 1983 and on or before the date of the enactment of this Act to individuals who are not 5-percent owners (as defined in section 402(a)(5)(F)(ii) of the Internal Revenue Code of 1954 [now 1986] (as amended by this paragraph)).''

Amendment by section 1898(a)(2), (3), (c)(7)(A)(i), (e) of Pub. L. 99–514 effective as if included in the provision of the Retirement Equity Act of 1984, Pub. L. 98–397, to which such amendment relates, except as otherwise provided, see section 1898(j) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 1898(c)(1)(A) of Pub. L. 99–514 applicable to payments made after Oct. 22, 1986, see section 1898(c)(1)(C) of Pub. L. 99–514, set out as a note under section 72 of this title.

Amendment by Pub. L. 99–272 effective Jan. 1, 1986, with certain exceptions, see section 11019 of Pub. L. 99–272, set out as a note under section 1341 of Title 29, Labor.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by section 204 of Pub. L. 98–397 effective Jan. 1, 1985, and amendment by section 207 of Pub. L. 98–397 applicable to plan years beginning after Dec. 31, 1984, except as otherwise provided, see sections 302 and 303 of Pub. L. 98–397, set out as a note under section 1001 of Title 29, Labor.

Amendment by section 491(d)(9)–(11) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Section 491(f)(2) of Pub. L. 98–369 provided that: ''The amendment made by subsection (c) [amending this section and section 405 of this title] shall apply to redemptions after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.''

Section 522(e) of Pub. L. 98–369, as amended by Pub. L. 99–514, title XVIII, §1852(b)(9), Oct. 22, 1986, 100 Stat. 2867, provided that: ''The amendments made by this section [amending this section and sections 403, 408, and 409 of this title] shall apply to distributions made after the date of the enactment of this Act [July 18, 1984], in taxable years ending after such date.

Section 713(c)(4) of Pub. L. 98–369, as added by Pub. L. 99–514, title XVIII, §1875(c)(2), Oct. 22, 1986, 100 Stat. 2894, provided that: ''The amendment made by paragraph (3) [amending this section] shall apply to distributions after July 18, 1984.''

Amendment by section 1001(b)(3) of Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 311(b)(2), (3)(A), (c) of Pub. L. 97–34, applicable to taxable years beginning after Dec. 31, 1981, see section 311(i)(1) of Pub. L. 97–34, set out as a note under section 219 of this title.

Section 314(c)(2) of Pub. L. 97–34 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 2(b) of Pub. L. 96–608, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to payments made in taxable years beginning after December 31, 1978.

''(2) TRANSITIONAL RULE.—In the case of any payment made before January 1, 1982, in a taxable year beginning after December 31, 1978, which is treated as a qualifying rollover distribution (as defined in section 402(a)(5)(D)(i) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) by reason of the amendment made by subsection (a), the applicable period specified in section 402(a)(5)(C) of such Code shall not expire before the close of December 31, 1981.''

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 101(d) of Pub. L. 95–600 effective with respect to taxable years beginning after Dec. 31, 1978, see section 101(f)(1) of Pub. L. 95–600, set out as a note under section 1 of this title.

Amendment by section 135(b) of Pub. L. 95–600 applicable to plan years beginning after December 31, 1979, see section 135(c)(1) of Pub. L. 95–600, set out as a note under section 401 of this title.

Section 157(h)(3)(A) of Pub. L. 95–600, as amended by Pub. L. 96–222, title I, §101(a)(14)(A), Apr. 1, 1980, 94 Stat. 204, provided that: ''The amendments made by this subsection [amending this section and section 408 of this title] shall apply to payments made in taxable years beginning after December 31, 1977.''

Section 157(f)(2) of Pub. L. 95–600, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to qualifying rollover distributions (as defined in section 402(a)(5)(D)(i) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) completed after December 31, 1978, in taxable years ending after such date.''

Section 157(g)(4) of Pub. L. 95–600 provided that: ''The amendments made by this subsection [amending this section and sections 403 and 408 of this title] shall apply to lump-sum distributions completed after December 31, 1978, in taxable years ending after such date.''

EFFECTIVE DATE OF 1978 AMENDMENT; CERTAIN ROLLOVERS VALIDATED

Section 4(d) of Pub. L. 95–458, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendments made by subsections (a), (b), and (c) [amending this section and section 403 of this title] shall apply with respect to taxable years beginning after December 31, 1974.

''(2) VALIDATION OF CERTAIN ATTEMPTED ROLLOVERS.—If the taxpayer—

''(A) attempted to comply with the requirements of section 402(a)(5) or 403(a)(4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for a taxable year beginning before the date of the enactment of this Act, [Oct. 14, 1978], and

''(B) failed to meet the requirements of such section that all property received in the distribution be transferred,

such section (as amended by this section) shall be applied by treating any transfer of property made on or before December 31, 1978, as if it were made on or before the 60th day after the day on which the taxpayer received such property. For purposes of the preceding sentence, a transfer of money shall be treated as a transfer of property received in a distribution to the extent that the amount of the money transferred does not exceed the highest fair market value of the property distributed during the 60-day period beginning on the date on which the taxpayer received such property.''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENTS

Section 1402(b)(1) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Section 1402(b)(2) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Section 1512(b) of Pub. L. 94–455 provided that: ''The amendment made by this section [amending this section] shall apply to distributions and payments made after December 31, 1975, in taxable years beginning after such date.''

Section 1901(a)(57)(C)(ii) of Pub. L. 94–455 provided that: ''The amendment made by clause (i) [amending this section] shall apply with respect to distributions or payments made after December 31, 1973, in taxable years beginning after such date.''

Amendment by Pub. L. 94–267 applicable with respect to payments made to an employee on or after July 4, 1974, see section 1(e) of Pub. L. 94–267, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 2002(i)(3) of Pub. L. 93–406, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by subsection (g)(5) and (6) [amending this section and section 403 of this title] shall apply on and after the date of enactment of this Act [Sept. 2, 1974] with respect to contributions to an employees' trust described in section 401(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] which is exempt from tax under section 501(a) of such Code or an annuity plan described in section 403(a) of such Code.''

Section 2005(d) of Pub. L. 93–406 provided that: ''The amendments made by this section [amending this section and sections 46, 50A, 56, 62, 72, 101, 122, 403, 405, 406, 407, 871, 877, 901, 1304, and 1348 of this title] shall apply only with respect to distributions or payments made after December 31, 1973, in taxable years beginning after such date.''

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 321(b)(1) of Pub. L. 91–172 applicable with respect to contributions made and premiums paid after Aug. 1, 1969, see section 321(d) of Pub. L. 91–172, set out as an Effective Date note under section 83 of this title.

Section 515(d) of Pub. L. 91–172 provided that: ''The amendments made by this section [amending this section and sections 72, 403, 405, 406, 407 and 1304 of this title] shall apply to taxable years ending after December 31, 1969.''

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 221(c)(1) of Pub. L. 88–272 applicable to taxable years ending after Dec. 31, 1963, see section 221(e) of Pub. L. 88–272, set out as a note under section 421 of this title.

Amendment by section 232(e)(1)–(3) of Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 232(g) of Pub. L. 88–272, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 3 of Pub. L. 86–437 provided that: ''The amendments made by this Act [amending this section and section 871 of this title] shall apply only with respect to taxable years beginning after December 31, 1959.''

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1112 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

CLARIFICATION OF DISQUALIFICATION RULES RELATING TO ACCEPTANCE OF ROLLOVER CONTRIBUTIONS

Section 1509 of Pub. L. 105–34 provided that: ''The Secretary of the Treasury or his delegate shall clarify that, under the Internal Revenue Service regulations protecting pension plans from disqualification by reason of the receipt of invalid rollover contributions under section 402(c) of the Internal Revenue Code of 1986, in order for the administrator of the plan receiving any such contribution to reasonably conclude that the contribution is a valid rollover contribution it is not necessary for the distributing plan to have a determination letter with respect to its status as a qualified plan under section 401 of such Code.''

MODEL EXPLANATION

Section 521(d) of Pub. L. 102–318 provided that: ''The Secretary of the Treasury or his delegate shall develop a model explanation which a plan administrator may provide to a recipient in order to meet the requirements of section 402(f) of the Internal Revenue Code of 1986.''

INCORPORATION BY REFERENCE OF SUBSECTION (g) LIMITATIONS

Section 1011(c)(10) of Pub. L. 100–647 provided that: ''Notwithstanding any other provision of law, a plan may incorporate by reference the dollar limitations under section 402(g) of the Internal Revenue Code of 1986.''

APPLICABILITY OF SUBSECTION (a)(5)(F)(ii)

Section 1011A(a)(5) of Pub. L. 100–647 provided that: ''Section 402(a)(5)(F)(ii) of the Internal Revenue Code of 1954 shall not apply to distributions after October 22, 1986, and before the 1st taxable year beginning after 1986 which are attributable to benefits which accrued before January 1, 1985.''

APPLICABILITY OF SUBSECTION (a)(5)(D)(i)(II)

Section 1011A(b)(4)(E) of Pub. L. 100–647 provided that: ''Section 402(a)(5)(D)(i)(II) of the 1986 Code (as in effect after the amendment made by subparagraph (A)) shall not apply to distributions after December 31, 1986, and before March 31, 1988.''

ELECTION TO TREAT CERTAIN LUMP SUM DISTRIBUTIONS RECEIVED DURING 1987 AS RECEIVED DURING 1986

Section 1124 of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1011A(d), Nov. 10, 1988, 102 Stat. 3476, provided that:

''(a) IN GENERAL.—If an employee dies, separates from service, or becomes disabled before 1987 and an individual, trust, or estate receives a lump-sum distribution with respect to such employee after December 31, 1986, and before March 16, 1987, on account of such death, separation from service, or disability, then, for purposes of the Internal Revenue Code of 1986, such individual, estate, or trust may treat such distribution as if it were received in 1986.

''(b) SPECIAL RULE FOR TERMINATED PLAN.—In the case of an individual, estate, or trust who receives with respect to an employee a distribution from a terminated plan which was maintained by a corporation organized under the laws of the State of Nevada, the principal place of business of which is Denver, Colorado, and which filed for relief from creditors under the United States Bankruptcy Code on August 28, 1986, the individual, estate, or trust may treat a lump sum distribution received from such plan before June 30, 1987, as if it were received in 1986.

''(c) LUMP SUM DISTRIBUTION.—For purposes of this section, the term 'lump sum distribution' has the meaning given such term by section 402(e)(4)(A) of the Internal Revenue Code of 1986, without regard to subparagraph (B) or (H) of section 402(e)(4) of such Code.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TREATMENT OF CERTAIN DISTRIBUTIONS FROM QUALIFIED TERMINATED PLAN

Section 551 of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) IN GENERAL.—For purposes of the Internal Revenue Code [of] 1986 [formerly I.R.C. 1954], if—

''(1) a distribution was made from a qualified terminated plan to an employee on December 16, 1976, and on January 6, 1977, such employee transferred all of the property received in such distribution to an individual retirement account (within the meaning of section 408(a) of such Code) established for the benefit of such employee, and

''(2) the remaining balance to the credit of such employee in such qualified terminated plan was distributed to such employee on January 21, 1977, and all the property received by such employee in such distribution was transferred by such employee to such individual retirement account on January 21, 1977,

then such distributions shall be treated as qualifying rollover distributions (within the meaning of section 402(a)(5) of such Code) and shall not be includible in the gross income of such employee for the taxable year in which paid.

''(b) QUALIFIED TERMINATED PLAN.—For purposes of this section, the term 'qualified terminated plan' means a pension plan—

''(1) with respect to which a notice of sufficiency was issued by the Pension Benefit Guaranty Corporation on December 2, 1976, and

''(2) which was terminated by corporate action on February 20, 1976.

''(c) REFUND OR CREDIT OF OVERPAYMENT BARRED BY STATUTE OF LIMITATIONS.—Notwithstanding section 6511(a) of the Internal Revenue Code of 1986 or any other period of limitation or lapse of time, a claim for credit or refund of overpayment of the tax imposed by such Code which arises by reason of this section may be filed by any person at any time within the 1-year period beginning on the date of enactment of this Act [July 18, 1984]. Sections 6511(b) and 6514 of such Code shall not apply to any claim for credit or refund filed under this subsection within such 1-year period.''

TRANSITIONAL RULE IN CASE OF ROLLOVER CONTRIBUTIONS TO EMPLOYEE TRUSTS OR ANNUITIES

Section 157(h)(3)(B) of Pub. L. 95–600, as amended by Pub. L. 96–222, title I, § 101(a)(14)(A), (D), Apr. 1, 1980, 94 Stat. 204, 205; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of any payment made during 1978 which is described in section 402(a)(5)(A) or 403(a)(4)(A) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] by reason of the amendments made by this subsection [amending sections 402 and 408 of this title], the applicable period specified in section 402(a)(5)(C) of such Code (or in the case of an individual retirement annuity, such section as made applicable by section 403(a)(4)(B) of such code) shall not expire before the close of December 31, 1980.''

TRANSITIONAL RULES RELATING TO PERIOD FOR ROLLOVER CONTRIBUTION

Section 1(d) of Pub. L. 94–267, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—

''(A) PERIOD FOR ROLLOVER CONTRIBUTION.—In the case of a payment described in section 402(a)(5)(A) (other than a payment described in section 402(a)(5)(A) as in effect on the day before the date of the enactment of this Act) [Apr. 15, 1976] or section 403(a)(4)(A) (other than a payment described in section 403(a)(4)(A) as in effect on the day before the date of the enactment of this Act [Apr. 15, 1976] of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to distributions of the balance to the credit of the employee) which is contributed by an employee after the date of the enactment of this Act [Apr. 15, 1976] to a trust, plan, account, annuity, or bond described in section 402(a)(5)(B) or 403(a)(4)(B) of such Code, the applicable period specified in section 402(a)(5)(B) or 403(a)(4)(B) of such Code (relating to rollover distributions to another plan or retirement account) shall not expire before December 31, 1976.

''(B) TIME OF CONTRIBUTION.—

(i) GENERAL RULE.—If the initial portion of a payment the applicable period for which is determined under subparagraph (A) is contributed before December 31, 1976, by an individual to a trust, plan, account, annuity, or bond described in subparagraph (A) and the remaining portion of such payment is contributed by such individual to such a trust, plan, account, annuity, or bond not later than 30 days after the date a credit or refund is allowed by the Secretary of the Treasury or his delegate under section 6402 of the Internal Revenue Code of 1986 with respect to the contribution, then, for purposes of subparagraph (A) and sections 402(a)(5) and 403(a)(4) of such Code, at the election of the individual (made in accordance with regulations prescribed by the Secretary or his delegate), such remaining portion shall be considered to have been contributed on the date the initial portion of the payment was contributed. For purposes of this subparagraph, the initial portion of a payment is the amount by which such payment exceeds the amount of the tax imposed on such payment by chapter 1 of such Code (determined without regard to this subparagraph). [chapter 1 of this title]

''(ii) REGULATIONS.—For purposes of this subparagraph, the tax imposed on a payment by chapter 1 of the Internal Revenue Code of 1986, and the date a credit or refund is allowed by the Secretary of the Treasury or his delegate under section 6402 with respect to a contribution, shall be determined under regulations prescribed by the Secretary of the Treasury or his delegate.

''(C) PERIOD OF LIMITATIONS.—If an individual has made the election provided by subparagraph (B), then—

''(i) the period provided by the Internal Revenue Code of 1986 for the assessment of any deficiency for the taxable year in which the payment described in subparagraph (A) was made and each subsequent taxable year for which tax is determined by reference to the treatment of such payment under such Code or the status under such Code of any trust, plan, account, annuity, or bond described in subparagraph (A) shall, to the extent attributable to such treatment, not expire before the expiration of 3 years from the date the Secretary of the Treasury or his delegate is notified by the individual (in such manner as the Secretary of the Treasury or his delegate may prescribe) that such individual has made (or failed to make) the contribution of the remaining portion of the payment within the period specified in subparagraph (B)(i), and

''(ii) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of section 6212(c) of such Code or the provisions of any other law or rule of law which would otherwise prevent such assessment.

''(2) ROLLOVER CONTRIBUTION FOR CERTAIN PROPERTY SOLD.—Sections 402(a)(5)(C) and 403(a)(4)(C) of the Internal Revenue Code of 1986 (relating to the requirement that rollover amount must consist of property received in a distribution) shall not apply with respect to that portion of the property received in a payment described in section 402(a)(5)(A) (other than a payment described in section 402(a)(5)(A) as in effect on the day before the date of the enactment of this Act [Apr. 15, 1976] or 403(a)(4)(A) (other than a payment described in section 403(a)(4)(A) as in effect on the day before the date of the enactment of this Act) [Apr. 15, 1976] of such Code which is sold or exchanged by the employee on or before the date of the enactment of this Act, [Apr. 15, 1976], if the employee transfers an amount of cash equal to the proceeds received from the sale or exchange of such property in excess of the amount considered contributed by the employee (within the meaning of section 402(a)(4)(D)(i) of such Code).

''(3) NONRECOGNITION OF GAIN OR LOSS.—For purposes of the Internal Revenue Code of 1986 [this title] no gain or loss shall be recognized with respect to the sale or exchange of property described in paragraph (2) if the proceeds of such sale or exchange are transferred by an employee in accordance with this subsection and the applicable provisions of section 402(a)(5) or 403(a)(4) of such Code.''

§ 402A. Optional treatment of elective deferrals as Roth contributions

(a) General rule

If an applicable retirement plan includes a qualified Roth contribution program—

(1) any designated Roth contribution made by an employee pursuant to the program shall be treated as an elective deferral for purposes of this chapter, except that such contribution shall not be excludable from gross income, and

(2) such plan (and any arrangement which is part of such plan) shall not be treated as failing to meet any requirement of this chapter solely by reason of including such program.

(b) Qualified Roth contribution program

For purposes of this section—

(1) In general

The term ''qualified Roth contribution program'' means a program under which an employee may elect to make designated Roth contributions in lieu of all or a portion of elective deferrals the employee is otherwise eligible to make under the applicable retirement plan.

(2) Separate accounting required

A program shall not be treated as a qualified Roth contribution program unless the applicable retirement plan—

(A) establishes separate accounts (''designated Roth accounts'') for the designated Roth contributions of each employee and any earnings properly allocable to the contributions, and

(B) maintains separate recordkeeping with respect to each account.

(c) Definitions and rules relating to designated Roth contributions

For purposes of this section—

(1) Designated Roth contribution

The term ''designated Roth contribution'' means any elective deferral which—

(A) is excludable from gross income of an employee without regard to this section, and

(B) the employee designates (at such time and in such manner as the Secretary may prescribe) as not being so excludable.

(2) Designation limits

The amount of elective deferrals which an employee may designate under paragraph (1) shall not exceed the excess (if any) of—

(A) the maximum amount of elective deferrals excludable from gross income of the employee for the taxable year (without regard to this section), over

(B) the aggregate amount of elective deferrals of the employee for the taxable year which the employee does not designate under paragraph (1).

(3) Rollover contributions

(A) In general

A rollover contribution of any payment or distribution from a designated Roth account which is otherwise allowable under this chapter may be made only if the contribution is to—

(i) another designated Roth account of the individual from whose account the payment or distribution was made, or

(ii) a Roth IRA of such individual.

(B) Coordination with limit

Any rollover contribution to a designated Roth account under subparagraph (A) shall not be taken into account for purposes of paragraph (1).

(4) Taxable rollovers to designated Roth accounts

(A) In general

Notwithstanding sections 402(c), 403(b)(8), and 457(e)(16), in the case of any distribution to which this paragraph applies—

(i) there shall be included in gross income any amount which would be includible were it not part of a qualified rollover contribution,

(ii) section 72(t) shall not apply, and

(iii) unless the taxpayer elects not to have this clause apply, any amount required to be included in gross income for any taxable year beginning in 2010 by reason of this paragraph shall be so included ratably over the 2-taxable-year period beginning with the first taxable year beginning in 2011.

Any election under clause (iii) for any distributions during a taxable year may not be changed after the due date for such taxable year.

(B) Distributions to which paragraph applies

In the case of an applicable retirement plan which includes a qualified Roth contribution program, this paragraph shall apply to a distribution from such plan other than from a designated Roth account which is contributed in a qualified rollover contribution (within the meaning of section 408A(e)) to the designated Roth account maintained under such plan for the benefit of the individual to whom the distribution is made.

(C) Coordination with limit

Any distribution to which this paragraph applies shall not be taken into account for purposes of paragraph (1).

(D) Other rules

The rules of subparagraphs (D), (E), and (F) of section 408A(d)(3) (as in effect for taxable years beginning after 2009) shall apply for purposes of this paragraph.

(d) Distribution rules

For purposes of this title—

(1) Exclusion

Any qualified distribution from a designated Roth account shall not be includible in gross income.

(2) Qualified distribution

For purposes of this subsection—

(A) In general

The term ''qualified distribution'' has the meaning given such term by section 408A(d)(2)(A) (without regard to clause (iv) thereof).

(B) Distributions within nonexclusion period

A payment or distribution from a designated Roth account shall not be treated as a qualified distribution if such payment or distribution is made within the 5-taxable-year period beginning with the earlier of—

(i) the first taxable year for which the individual made a designated Roth contribution to any designated Roth account established for such individual under the same applicable retirement plan, or

(ii) if a rollover contribution was made to such designated Roth account from a designated Roth account previously established for such individual under another applicable retirement plan, the first taxable year for which the individual made a designated Roth contribution to such previously established account.

(C) Distributions of excess deferrals and contributions and earnings thereon

The term ''qualified distribution'' shall not include any distribution of any excess deferral under section 402(g)(2) or any excess contribution under section 401(k)(8), and any income on the excess deferral or contribution.

(3) Treatment of distributions of certain excess deferrals

Notwithstanding section 72, if any excess deferral under section 402(g)(2) attributable to a designated Roth contribution is not distributed on or before the 1st April 15 following the close of the taxable year in which such excess deferral is made, the amount of such excess deferral shall—

(A) not be treated as investment in the contract, and

(B) be included in gross income for the taxable year in which such excess is distributed.

(4) Aggregation rules

Section 72 shall be applied separately with respect to distributions and payments from a

designated Roth account and other distributions and payments from the plan.

(e) Other definitions

For purposes of this section—

(1) Applicable retirement plan

The term ''applicable retirement plan'' means—

(A) an employees' trust described in section 401(a) which is exempt from tax under section 501(a),

(B) a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b), and

(C) an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A).

(2) Elective deferral

The term ''elective deferral'' means—

(A) any elective deferral described in subparagraph (A) or (C) of section 402(g)(3), and

(B) any elective deferral of compensation by an individual under an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A).

(Added Pub. L. 107–16, title VI, §617(a), June 7, 2001, 115 Stat. 103; amended Pub. L. 111–240, title II, §§2111(a), (b), 2112(a), Sept. 27, 2010, 124 Stat. 2565, 2566.)

AMENDMENTS

2010—Subsec. (c)(4). Pub. L. 111–240, §2112(a), added par. (4).

Subsec. (e)(1)(C). Pub. L. 111–240, §2111(a), added subpar. (C).

Subsec. (e)(2). Pub. L. 111–240, §2111(b), amended par. (2) generally. Prior to amendment, text read as follows: ''The term 'elective deferral' means any elective deferral described in subparagraph (A) or (C) of section 402(g)(3).''

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title II, §2111(c), Sept. 27, 2010, 124 Stat. 2566, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2010.''

Pub. L. 111–240, title II, §2112(b), Sept. 27, 2010, 124 Stat. 2566, provided that: ''The amendments made by this section [amending this section] shall apply to distributions after the date of the enactment of this Act [Sept. 27, 2010].''

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 2005, see section 617(f) of Pub. L. 107–16, set out as an Effective Date of 2001 Amendment note under section 402 of this title.

§ 403. Taxation of employee annuities

(a) Taxability of beneficiary under a qualified annuity plan

(1) Distributee taxable under section 72

If an annuity contract is purchased by an employer for an employee under a plan which meets the requirements of section 404(a)(2) (whether or not the employer deducts the amounts paid for the contract under such section), the amount actually distributed to any distributee under the contract shall be taxable to the distributee (in the year in which so distributed) under section 72 (relating to annuities).

(2) Special rule for health and long-term care insurance

To the extent provided in section 402(*l*), paragraph (1) shall not apply to the amount distributed under the contract which is otherwise includible in gross income under this subsection.

(3) Self-employed individuals

For purposes of this subsection, the term ''employee'' includes an individual who is an employee within the meaning of section 401(c)(1), and the employer of such individual is the person treated as his employer under section 401(c)(4).

(4) Rollover amounts

(A) General rule

If—

(i) any portion of the balance to the credit of an employee in an employee annuity described in paragraph (1) is paid to him in an eligible rollover distribution (within the meaning of section 402(c)(4)),

(ii) the employee transfers any portion of the property he receives in such distribution to an eligible retirement plan, and

(iii) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(B) Certain rules made applicable

The rules of paragraphs (2) through (7) and (11) and (9) of section 402(c) and section 402(f) shall apply for purposes of subparagraph (A).

(5) Direct trustee-to-trustee transfer

Any amount transferred in a direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of such transfer.

(b) Taxability of beneficiary under annuity purchased by section 501(c)(3) organization or public school

(1) General rule

If—

(A) an annuity contract is purchased—

(i) for an employee by an employer described in section 501(c)(3) which is exempt from tax under section 501(a),

(ii) for an employee (other than an employee described in clause (i)), who performs services for an educational organization described in section 170(b)(1)(A)(ii), by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of any one or more of the foregoing, or

(iii) for the minister described in section 414(e)(5)(A) by the minister or by an employer,

(B) such annuity contract is not subject to subsection (a),

(C) the employee's rights under the contract are nonforfeitable, except for failure to pay future premiums,

(D) except in the case of a contract purchased by a church, such contract is purchased under a plan which meets the nondiscrimination requirements of paragraph (12), and

(E) in the case of a contract purchased under a salary reduction agreement, the contract meets the requirements of section 401(a)(30),

then contributions and other additions by such employer for such annuity contract shall be excluded from the gross income of the employee for the taxable year to the extent that the aggregate of such contributions and additions (when expressed as an annual addition (within the meaning of section 415(c)(2))) does not exceed the applicable limit under section 415. The amount actually distributed to any distributee under such contract shall be taxable to the distributee (in the year in which so distributed) under section 72 (relating to annuities). For purposes of applying the rules of this subsection to contributions and other additions by an employer for a taxable year, amounts transferred to a contract described in this paragraph by reason of a rollover contribution described in paragraph (8) of this subsection or section 408(d)(3)(A)(ii) shall not be considered contributed by such employer.

(2) Special rule for health and long-term care insurance

To the extent provided in section 402(*l*), paragraph (1) shall not apply to the amount distributed under the contract which is otherwise includible in gross income under this subsection.

(3) Includible compensation

For purposes of this subsection, the term ''includible compensation'' means, in the case of any employee, the amount of compensation which is received from the employer described in paragraph (1)(A), and which is includible in gross income (computed without regard to section 911) for the most recent period (ending not later than the close of the taxable year) which under paragraph (4) may be counted as one year of service, and which precedes the taxable year by no more than five years. Such term does not include any amount contributed by the employer for any annuity contract to which this subsection applies. Such term includes—

(A) any elective deferral (as defined in section 402(g)(3)), and

(B) any amount which is contributed or deferred by the employer at the election of the employee and which is not includible in the gross income of the employee by reason of section 125, 132(f)(4), or 457.

(4) Years of service

In determining the number of years of service for purposes of this subsection, there shall be included—

(A) one year for each full year during which the individual was a full-time employee of the organization purchasing the annuity for him, and

(B) a fraction of a year (determined in accordance with regulations prescribed by the Secretary) for each full year during which such individual was a part-time employee of such organization and for each part of a year during which such individual was a full-time or part-time employee of such organization.

In no case shall the number of years of service be less than one.

(5) Application to more than one annuity contract

If for any taxable year of the employee this subsection applies to 2 or more annuity contracts purchased by the employer, such contracts shall be treated as one contract.

[(6) Repealed. Pub. L. 107–147, title IV, § 411(p)(2), Mar. 9, 2002, 116 Stat. 50]

(7) Custodial accounts for regulated investment company stock

(A) Amounts paid treated as contributions

For purposes of this title, amounts paid by an employer described in paragraph (1)(A) to a custodial account which satisfies the requirements of section 401(f)(2) shall be treated as amounts contributed by him for an annuity contract for his employee if—

(i) the amounts are to be invested in regulated investment company stock to be held in that custodial account, and

(ii) under the custodial account no such amounts may be paid or made available to any distributee (unless such amount is a distribution to which section 72(t)(2)(G) applies) before the employee dies, attains age 59½, has a severance from employment, becomes disabled (within the meaning of section 72(m)(7)), or in the case of contributions made pursuant to a salary reduction agreement (within the meaning of section 3121(a)(5)(D)), encounters financial hardship.

(B) Account treated as plan

For purposes of this title, a custodial account which satisfies the requirements of section 401(f)(2) shall be treated as an organization described in section 401(a) solely for purposes of subchapter F and subtitle F with respect to amounts received by it (and income from investment thereof).

(C) Regulated investment company

For purposes of this paragraph, the term ''regulated investment company'' means a domestic corporation which is a regulated investment company within the meaning of section 851(a).

(8) Rollover amounts

(A) General rule

If—

(i) any portion of the balance to the credit of an employee in an annuity contract described in paragraph (1) is paid to him in an eligible rollover distribution (within the meaning of section 402(c)(4)),

(ii) the employee transfers any portion of the property he receives in such distribution to an eligible retirement plan described in section 402(c)(8)(B), and

(iii) in the case of a distribution of property other than money, the property so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(B) Certain rules made applicable

The rules of paragraphs (2) through (7), (9), and (11) of section 402(c) and section 402(f) shall apply for purposes of subparagraph (A), except that section 402(f) shall be applied to the payor in lieu of the plan administrator.

(9) Retirement income accounts provided by churches, etc.

(A) Amounts paid treated as contributions

For purposes of this title—

(i) a retirement income account shall be treated as an annuity contract described in this subsection, and

(ii) amounts paid by an employer described in paragraph (1)(A) to a retirement income account shall be treated as amounts contributed by the employer for an annuity contract for the employee on whose behalf such account is maintained.

(B) Retirement income account

For purposes of this paragraph, the term ''retirement income account'' means a defined contribution program established or maintained by a church, or a convention or association of churches, including an organization described in section 414(e)(3)(A), to provide benefits under section 403(b) for an employee described in paragraph (1) or his beneficiaries.

(10) Distribution requirements

Under regulations prescribed by the Secretary, this subsection shall not apply to any annuity contract (or to any custodial account described in paragraph (7) or retirement income account described in paragraph (9)) unless requirements similar to the requirements of sections 401(a)(9) and 401(a)(31) are met (and requirements similar to the incidental death benefit requirements of section 401(a) are met) with respect to such annuity contract (or custodial account or retirement income account). Any amount transferred in a direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of the transfer.

(11) Requirement that distributions not begin before age 59½, severance from employment, death, or disability

This subsection shall not apply to any annuity contract unless under such contract distributions attributable to contributions made pursuant to a salary reduction agreement (within the meaning of section 402(g)(3)(C)) may be paid only—

(A) when the employee attains age 59½, has a severance from employment, dies, or becomes disabled (within the meaning of section 72(m)(7)),

(B) in the case of hardship, or

(C) for distributions to which section 72(t)(2)(G) applies.

Such contract may not provide for the distribution of any income attributable to such contributions in the case of hardship.

(12) Nondiscrimination requirements

(A) In general

For purposes of paragraph (1)(D), a plan meets the nondiscrimination requirements of this paragraph if—

(i) with respect to contributions not made pursuant to a salary reduction agreement, such plan meets the requirements of paragraphs (4), (5), (17), and (26) of section 401(a), section 401(m), and section 410(b) in the same manner as if such plan were described in section 401(a), and

(ii) all employees of the organization may elect to have the employer make contributions of more than $200 pursuant to a salary reduction agreement if any employee of the organization may elect to have the organization make contributions for such contracts pursuant to such agreement.

For purposes of clause (i), a contribution shall be treated as not made pursuant to a salary reduction agreement if under the agreement it is made pursuant to a 1-time irrevocable election made by the employee at the time of initial eligibility to participate in the agreement or is made pursuant to a similar arrangement involving a one-time irrevocable election specified in regulations. For purposes of clause (ii), there may be excluded any employee who is a participant in an eligible deferred compensation plan (within the meaning of section 457) or a qualified cash or deferred arrangement of the organization or another annuity contract described in this subsection. Any nonresident alien described in section 410(b)(3)(C) may also be excluded. Subject to the conditions applicable under section 410(b)(4), there may be excluded for purposes of this subparagraph employees who are students performing services described in section 3121(b)(10) and employees who normally work less than 20 hours per week.

(B) Church

For purposes of paragraph (1)(D), the term ''church'' has the meaning given to such term by section 3121(w)(3)(A). Such term shall include any qualified church-controlled organization (as defined in section 3121(w)(3)(B)).

(C) State and local governmental plans

For purposes of paragraph (1)(D), the requirements of subparagraph (A)(i) (other than those relating to section 401(a)(17)) shall not apply to a governmental plan (within the meaning of section 414(d)) maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof).

(13) Trustee-to-trustee transfers to purchase permissive service credit

No amount shall be includible in gross income by reason of a direct trustee-to-trustee transfer to a defined benefit governmental

plan (as defined in section 414(d)) if such transfer is—

(A) for the purchase of permissive service credit (as defined in section 415(n)(3)(A)) under such plan, or

(B) a repayment to which section 415 does not apply by reason of subsection (k)(3) thereof.

(14) Death benefits under USERRA-qualified active military service

This subsection shall not apply to an annuity contract unless such contract meets the requirements of section 401(a)(37).

(c) Taxability of beneficiary under nonqualified annuities or under annuities purchased by exempt organizations

Premiums paid by an employer for an annuity contract which is not subject to subsection (a) shall be included in the gross income of the employee in accordance with section 83 (relating to property transferred in connection with performance of services), except that the value of such contract shall be substituted for the fair market value of the property for purposes of applying such section. The preceding sentence shall not apply to that portion of the premiums paid which is excluded from gross income under subsection (b). In the case of any portion of any contract which is attributable to premiums to which this subsection applies, the amount actually paid or made available under such contract to any beneficiary which is attributable to such premiums shall be taxable to the beneficiary (in the year in which so paid or made available) under section 72 (relating to annuities).

(Aug. 16, 1954, ch. 736, 68A Stat. 137; Pub. L. 85–866, title I, § 23(a)–(c), Sept. 2, 1958, 72 Stat. 1620–1622; Pub. L. 87–370, § 3(a), Oct. 4, 1961, 75 Stat. 801; Pub. L. 87–792, § 4(d), Oct. 10, 1962, 76 Stat. 825; Pub. L. 88–272, title II, § 232(e)(4)–(6), Feb. 26, 1964, 78 Stat. 111; Pub. L. 91–172, title III, § 321(b)(2), title V, § 515(a)(2), Dec. 30, 1969, 83 Stat. 591, 644; Pub. L. 93–406, title II, §§ 1022(e), 2002(g)(6), 2004(c)(4), 2005(b)(2), Sept. 2, 1974, 88 Stat. 940, 969, 986, 991; Pub. L. 94–267, § 1(b), Apr. 15, 1976, 90 Stat. 366; Pub. L. 94–455, title XIV, § 1402(b)(1)(D), (2), title XV, § 1504(a), title XIX, §§ 1901(a)(58), (b)(8)(A), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1731, 1732, 1738, 1774, 1794, 1834; Pub. L. 95–458, § 4(b), Oct. 14, 1978, 92 Stat. 1259; Pub. L. 95–600, title I, §§ 154(a), 156(a), (b), 157(g)(2), Nov. 6, 1978, 92 Stat. 2801, 2802, 2808; Pub. L. 96–222, title I, § 101(a)(12), (13)(C), Apr. 1, 1980, 94 Stat. 204; Pub. L. 97–34, title III, § 311(b)(3)(B), Aug. 13, 1981, 95 Stat. 280; Pub. L. 97–248, title II, § 251(a), (b), (c)(3), Sept. 3, 1982, 96 Stat. 529–531; Pub. L. 97–448, title I, § 103(c)(8)(B), Jan. 12, 1983, 96 Stat. 2377; Pub. L. 98–21, title I, § 122(c)(4), Apr. 20, 1983, 97 Stat. 87; Pub. L. 98–369, div. A, title IV, § 491(d)(12), title V, §§ 521(c), 522(a)(2), (3), (d)(9)–(11), title X, § 1001(b)(4), (e), July 18, 1984, 98 Stat. 849, 867, 869–871, 1011, 1012; Pub. L. 99–514, title XI, §§ 1120(a), (b), 1122(b)(1)(B), (d), 1123(c), title XVIII, § 1852(a)(3)(A), (B), (5)(B), (b)(10), Oct. 22, 1986, 100 Stat. 2463, 2466, 2469, 2474, 2865, 2867; Pub. L. 100–647, title I, § 1011(c)(7)(B), (12), (m)(1), (2), title VI, § 6052(a)(1), Nov. 10, 1988, 102 Stat. 3458, 3459, 3471, 3696; Pub. L. 101–508, title XI, § 11701(k), Nov. 5, 1990, 104 Stat. 1388–513; Pub. L. 102–318, title V, §§ 521(b)(12), (13), 522(a)(3), (c)(2), (3), July 3, 1992, 106 Stat. 311, 314, 315; Pub. L. 104–188, title I, §§ 1450(c)(1), 1704(t)(69), Aug. 20, 1996, 110 Stat. 1815, 1891; Pub. L. 105–34, title XV, §§ 1504(a)(1), 1505(c), title XVI, § 1601(d)(6)(B), Aug. 5, 1997, 111 Stat. 1063, 1064, 1090; Pub. L. 105–206, title VI, § 6005(c)(2)(B), July 22, 1998, 112 Stat. 800; Pub. L. 106–554, § 1(a)(7) [title III, § 314(e)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–643; Pub. L. 107–16, title VI, §§ 632(a)(2), 641(b)(1), (e)(7), 642(b)(1), 646(a)(2), 647(a), June 7, 2001, 115 Stat. 113, 120, 121, 126, 127; Pub. L. 107–147, title IV, § 411(p)(1)–(3), Mar. 9, 2002, 116 Stat. 49, 50; Pub. L. 108–311, title IV, §§ 404(e), 408(a)(11), Oct. 4, 2004, 118 Stat. 1188, 1191; Pub. L. 109–135, title IV, § 412(w), Dec. 21, 2005, 119 Stat. 2638; Pub. L. 109–280, title VIII, §§ 827(b)(2), (3), 829(a)(2), (3), 845(b)(1), (2), Aug. 17, 2006, 120 Stat. 1000, 1002, 1015; Pub. L. 110–245, title I, § 104(c)(2), June 17, 2008, 122 Stat. 1627.)

AMENDMENTS

2008—Subsec. (b)(14). Pub. L. 110–245 added par. (14).

2006—Subsec. (a)(2). Pub. L. 109–280, § 845(b)(1), added par. (2).

Subsec. (a)(4)(B). Pub. L. 109–280, § 829(a)(2), inserted ''and (11)'' after ''(7)''.

Subsec. (b)(2). Pub. L. 109–280, § 845(b)(2), added par. (2).

Subsec. (b)(7)(A)(ii). Pub. L. 109–280, § 827(b)(2), inserted ''(unless such amount is a distribution to which section 72(t)(2)(G) applies)'' after ''distributee''.

Subsec. (b)(8)(B). Pub. L. 109–280, § 829(a)(3), substituted '', (9), and (11)'' for ''and (9)''.

Subsec. (b)(11)(C). Pub. L. 109–280, § 827(b)(3), added subpar. (C).

2005—Subsec. (b)(9)(B). Pub. L. 109–135 inserted ''or'' before ''a convention''.

2004—Subsec. (a)(4)(B). Pub. L. 108–311, § 404(e), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Rules similar to the rules of paragraphs (2) through (7) of section 402(c) shall apply for purposes of subparagraph (A).''

Subsec. (b)(7)(A)(ii). Pub. L. 108–311, § 408(a)(11), substituted ''3121(a)(5)(D)'' for ''3121(a)(1)(D)''.

2002—Subsec. (b)(1). Pub. L. 107–147, § 411(p)(1), inserted concluding provisions and struck out former concluding provisions which read as follows: ''then amounts contributed by such employer for such annuity contract on or after such rights become nonforfeitable shall be excluded from the gross income of the employee for the taxable year to the extent that the aggregate of such amounts does not exceed the applicable limit under section 415. The amount actually distributed to any distributee under such contract shall be taxable to the distributee (in the year in which so distributed) under section 72 (relating to annuities). For purposes of applying the rules of this subsection to amounts contributed by an employer for a taxable year, amounts transferred to a contract described in this paragraph by reason of a rollover contribution described in paragraph (8) of this subsection or section 408(d)(3)(A)(ii) shall not be considered contributed by such employer.''

Subsec. (b)(3). Pub. L. 107–147, § 411(p)(3), in first sentence, inserted '', and which precedes the taxable year by no more than five years'' before period at end and, in second sentence, struck out ''or any amount received by a former employee after the fifth taxable year following the taxable year in which such employee was terminated'' after ''this subsection applies''.

Subsec. (b)(6). Pub. L. 107–147, § 411(p)(2), struck out heading and text of par. (6). Text read as follows: ''For purposes of this subsection and section 72(f) (relating to special rules for computing employees' contributions to annuity contracts), if rights of the employee under an

annuity contract described in subparagraphs (A) and (B) of paragraph (1) change from forfeitable to nonforfeitable rights, then the amount (determined without regard to this subsection) includible in gross income by reason of such change shall be treated as an amount contributed by the employer for such annuity contract as of the time such rights become nonforfeitable.''

2001—Subsec. (b)(1). Pub. L. 107–16, §642(b)(1), substituted ''section 408(d)(3)(A)(ii)'' for ''section 408(d)(3)(A)(iii)'' in concluding provisions.

Pub. L. 107–16, §632(a)(2)(A), substituted ''the applicable limit under section 415'' for ''the exclusion allowance for such taxable year'' in concluding provisions.

Subsec. (b)(2). Pub. L. 107–16, §632(a)(2)(B), struck out par. (2), which described exclusion allowance for purposes of subsec. (b) providing general criteria, determination under section 415 rules, number of years of service for duly ordained, commissioned, or licensed ministers or lay employees, and alternative exclusion allowance for such ministers or lay employees.

Subsec. (b)(3). Pub. L. 107–16, §632(a)(2)(C), inserted ''or any amount received by a former employee after the fifth taxable year following the taxable year in which such employee was terminated'' before period at end of second sentence.

Subsec. (b)(7)(A)(ii). Pub. L. 107–16, §646(a)(2)(A), substituted ''has a severance from employment'' for ''separates from service''.

Subsec. (b)(8)(A)(ii). Pub. L. 107–16, §641(b)(1), substituted ''such distribution to an eligible retirement plan described in section 402(c)(8)(B), and'' for ''such distribution to an individual retirement plan or to an annuity contract described in paragraph (1), and''.

Subsec. (b)(8)(B). Pub. L. 107–16, §641(e)(7), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Rules similar to the rules of paragraphs (2) through (7) of section 402(c) (including paragraph (4)(C) thereof) shall apply for purposes of subparagraph (A).''

Subsec. (b)(11). Pub. L. 107–16, §646(a)(2)(B), substituted ''severance from employment'' for ''separation from service'' in heading.

Subsec. (b)(11)(A). Pub. L. 107–16, §646(a)(2)(A), substituted ''has a severance from employment'' for ''separates from service''.

Subsec. (b)(13). Pub. L. 107–16, §647(a), added par. (13).

2000—Subsec. (b)(3)(B). Pub. L. 106–554 substituted ''section 125, 132(f)(4), or'' for ''section 125 or''.

1998—Subsec. (b)(8)(B). Pub. L. 105–206 inserted ''(including paragraph (4)(C) thereof)'' after ''section 402(c)''.

1997—Subsec. (b)(1)(A)(iii). Pub. L. 105–34, §1601(d)(6)(B), added cl. (iii).

Subsec. (b)(3). Pub. L. 105–34, §1504(a)(1), inserted at end ''Such term includes—'' and subpars. (A) and (B).

Subsec. (b)(12)(C). Pub. L. 105–34, §1505(c), added subpar. (C).

1996—Subsec. (b)(1)(E). Pub. L. 104–188, §1450(c)(1), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: ''in the case of a contract purchased under a plan which provides a salary reduction agreement, the plan meets the requirements of section 401(a)(30),''.

Subsec. (b)(10). Pub. L. 104–188, §1704(t)(69), substituted ''a direct'' for ''an direct'' in last sentence.

1992—Subsec. (a)(4)(A)(i). Pub. L. 102–318, §521(b)(12)(A), inserted before comma at end ''in an eligible rollover distribution (within the meaning of section 402(c)(4))''.

Subsec. (a)(4)(B). Pub. L. 102–318, §521(b)(12)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Rules similar to the rules of subparagraphs (B) through (G) of section 402(a)(5) and of paragraphs (6) and (7) of section 402(a) shall apply for purposes of subparagraph (A).''

Subsec. (a)(5). Pub. L. 102–318, §522(c)(2), added par. (5).

Subsec. (b)(8)(A)(i). Pub. L. 102–318, §521(b)(13)(A), inserted before comma at end ''in an eligible rollover distribution (within the meaning of section 402(c)(4))''.

Subsec. (b)(8)(B) to (D). Pub. L. 102–318, §521(b)(13)(B), added subpar. (B) and struck out former subpars. (B) to (D), which related to special rules for partial distributions, applicability of certain similar rules, and eligibility for rollover treatment of required distributions.

Subsec. (b)(10). Pub. L. 102–318, §522(a)(3), (c)(3), substituted ''sections 401(a)(9) and 401(a)(31)'' for ''section 401(a)(9)'' and inserted at end ''Any amount transferred in an direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of the transfer.''

1990—Subsec. (b)(12)(A). Pub. L. 101–508 inserted ''involving a one-time irrevocable election'' after ''similar arrangement'' in second sentence.

1988—Subsec. (b)(1)(D). Pub. L. 100–647, §1011(m)(1)(B), substituted ''paragraph (12)'' for ''paragraph (10)''.

Subsec. (b)(1)(E). Pub. L. 100–647, §1011(c)(7)(B), added subpar. (E).

Subsec. (b)(10). Pub. L. 100–647, §1011(m)(1)(A), redesignated par. (10), relating to nondiscrimination requirements, as (12).

Subsec. (b)(12). Pub. L. 100–647, §1011(m)(1)(A), redesignated par. (10), relating to nondiscrimination requirements, as (12).

Subsec. (b)(12)(A). Pub. L. 100–647, §1011(m)(2), inserted ''(17),'' after ''paragraphs (4), (5),'' and '', section 401(m),'' after ''of section 401(a)'' in cl. (i).

Pub. L. 100–647, §1011(c)(12), inserted after cl. (ii) ''For purposes of clause (i), a contribution shall be treated as not made pursuant to a salary reduction agreement if under the agreement it is made pursuant to a 1-time irrevocable election made by the employee at the time of initial eligibility to participate in the agreement or is made pursuant to a similar arrangement specified in regulations.''

Pub. L. 100–647, §6052(a)(1), amended last sentence generally. Prior to amendment, last sentence read as follows: ''For purposes of this subparagraph, students who normally work less than 20 hours per week may (subject to the conditions applicable under section 410(b)(4)) be excluded.''

1986—Subsec. (a)(1). Pub. L. 99–514, §1122(d)(1), substituted ''Distributee taxable under section 72'' for ''General rule'' in heading and amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Except as provided in paragraph (2), if an annuity contract is purchased by an employer for an employee under a plan which meets the requirements of section 404(a)(2) (whether or not the employer deducts the amounts paid for the contract under such section), the employee shall include in his gross income the amounts received under such contract for the year received as provided in section 72 (relating to annuities).''

Subsec. (a)(2). Pub. L. 99–514, §1122(b)(1)(B), struck out par. (2) which read as follows:

''(A) General rule

''If—

''(i) an annuity contract is purchased by an employer for an employee under a plan described in paragraph (1);

''(ii) such plan requires that refunds of contributions with respect to annuity contracts purchased under such plan be used to reduce subsequent premiums on the contracts under the plan; and

''(iii) a lump sum distribution (as defined in section 402(e)(4)(A)) is paid to the recipient,

so much of the total taxable amount (as defined in section 402(e)(4)(D)) of such distribution as is equal to the product of such total taxable amount multiplied by the fraction described in section 402(a)(2) shall be treated as a gain from the sale or exchange of a capital asset held for more than 6 months. For purposes of this paragraph, in the case of an individual who is an employee without regard to section 401(c)(1), determination of whether or not any distribution is a lump sum distribution shall be made without regard to the requirement that an election be made under subsection (e)(4)(B) of section 402, but no distribution to any taxpayer other than an individual, estate, or trust may be treated as a lump sum distribution under this paragraph.

''(B) Cross reference

''For imposition of separate tax on ordinary income portion of lump sum distribution, see section 402(e).''

Subsec. (a)(4)(B). Pub. L. 99–514, § 1852(a)(5)(B)(i), substituted ''through (G)'' for ''through (F)''.

Subsec. (b)(1). Pub. L. 99–514, § 1122(d)(2), amended second sentence generally. Prior to amendment, second sentence read as follows: ''The employee shall include in his gross income the amounts received under such contract for the year received as provided in section 72 (relating to annuities)''.

Subsec. (b)(1)(D). Pub. L. 99–514, § 1120(a), added subpar. (D).

Subsec. (b)(7)(A)(ii). Pub. L. 99–514, § 1123(c)(2), inserted ''in the case of contributions made pursuant to a salary reduction agreement (within the meaning of section 3121(a)(1)(D)),'' after ''section 72(m)(7)), or''.

Subsec. (b)(7)(D). Pub. L. 99–514, § 1852(a)(3)(B), struck out subpar. (D) ''Distribution requirements'' which read as follows: ''For purposes of determining when the interest of an employee in a custodial account must be distributed, such account shall be treated in the same manner as an annuity contract.''

Subsec. (b)(8)(C). Pub. L. 99–514, § 1852(b)(10), inserted ''and'' before ''(F)(i)''.

Subsec. (b)(8)(D). Pub. L. 99–514, § 1852(a)(5)(B)(ii), added subpar. (D).

Subsec. (b)(10). Pub. L. 99–514, § 1120(b), added par. (10) relating to nondiscrimination requirements.

Pub. L. 99–514, § 1852(a)(3)(A), added par. (10) relating to distribution requirements.

Subsec. (b)(11). Pub. L. 99–514, § 1123(c)(1), added par. (11).

Subsec. (c). Pub. L. 99–514, § 1122(d)(3), amended last sentence generally. Prior to amendment, last sentence read as follows: ''The amount actually paid or made available to any beneficiary under such contract shall be taxable to him in the year in which so paid or made available under section 72 (relating to annuities).''

1984—Subsec. (a)(2)(A). Pub. L. 98–369, § 1001(b)(4), substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsec. (a)(4)(A)(i). Pub. L. 98–369, § 522(a)(2), substituted ''any portion of the balance to the credit of an employee in an employee annuity described in paragraph (1) is paid to him,'' for ''the balance to the credit of an employee in an employee annuity described in paragraph (1) is paid to him in a qualifying rollover distribution.''

Subsec. (a)(4)(B). Pub. L. 98–369, § 522(d)(9), substituted ''(B) through (F)'' for ''(B) through (E)''.

Subsec. (b)(1). Pub. L. 98–369, § 491(d)(12), struck out ''or 409(b)(3)(C)'' after ''408(d)(3)(A)(iii)''.

Subsec. (b)(7)(D). Pub. L. 98–369, § 521(c), added subpar. (D).

Subsec. (b)(8)(A)(i). Pub. L. 98–369, § 522(a)(3), substituted ''any portion of the balance to the credit of an employee in an annuity contract described in paragraph (1) is paid to him'' for ''the balance to the credit of an employee is paid to him in a qualifying distribution''.

Subsec. (b)(8)(B). Pub. L. 98–369, § 522(d)(10), substituted provisions relating to special rules for partial distributions for provisions relating to definition of qualifying distributions.

Subsec. (b)(8)(C). Pub. L. 98–369, § 522(d)(11), substituted ''(F)(i)'' for ''(D)(v), and (E)(i)''.

1983—Subsec. (b)(3). Pub. L. 98–21 substituted ''section 911'' for ''sections 105(d) and 911''.

Subsec. (b)(8)(C). Pub. L. 97–448 substituted ''subparagraphs (B), (C), (D)(v), and (E)(i) of section 402(a)(5)'' for ''subparagraphs (B), (C), and (E)(i) of section 402(a)(5)''.

1982—Subsec. (b)(2)(B). Pub. L. 97–248, § 251(a)(1), (c)(3), substituted ''home health service agencies, and certain churches, etc.'' for ''and home health service agencies'', and ''(under section 415 without regard to section 415(c)(8))'' for ''(under section 415)''.

Subsec. (b)(2)(C), (D). Pub. L. 97–248, § 251(a)(2), added subpars. (C) and (D).

Subsec. (b)(9). Pub. L. 97–248, § 251(b), added par. (9).

1981—Subsec. (b)(8)(B)(i). Pub. L. 97–34 inserted '', or 1 or more distributions of accumulated deductible employee contributions (within the meaning of section 72(*o*)(5))'' after ''subsection (a)''.

1980—Subsec. (b). Pub. L. 96–222 substituted in par. (1) ''409(b)(3)(C)'' for ''409(d)(3)(C)'', and in par. (7)(A) ''which satisfies'' for ''which satisfied''.

1978—Subsec. (a)(4). Pub. L. 95–600, § 157(g)(2), in subpar. (B) substituted ''paragraphs (6) and (7)'' for ''paragraph (6)''.

Pub. L. 95–458, among other changes, substituted provision permitting tax free treatment for any portion of a lump sum distribution from a qualified retirement plan which is deposited in an individual retirement account or another qualifying plan for provision which required transfer of all such property received.

Subsec. (a)(5). Pub. L. 95–458 struck out par. (5) which related to special rules concerning time of termination of a profit-sharing plan and the treatment of the sale of a corporate subsidiary or assets as payment or distribution on account of termination of a plan of which an annuity trust was a part.

Subsec. (b)(1). Pub. L. 95–600, § 156(b), inserted provision relating to application of rules of this subsection to amounts contributed by an employer for a taxable year.

Subsec. (b)(7)(A). Pub. L. 95–600, § 154(a), struck out ''the amounts are paid to provide a retirement benefit for that employee and are to be invested in regulated investment company stock to be held in that custodial account'' after ''contract for his employee if'', and added cls. (i) and (ii).

Subsec. (b)(8). Pub. L. 95–600, § 156(a), added par. (8).

1976—Subsec. (a)(2)(A). Pub. L. 94–455, § 1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, § 1402(b) (1)(D), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

Subsec. (a)(4). Pub. L. 94–455, § 1901(a)(58), reenacted provisions following subpar. (C) without substantive change.

Pub. L. 94–267, § 1(b)(2), substituted ''a payment'' for ''the lump-sum distribution''.

Subsec. (a)(4)(A). Pub. L. 94–267, § 1(b)(1), restructured provisions by adding cl. (i) and designating existing provision as cl. (ii).

Subsec. (a)(5). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' wherever appearing.

Pub. L. 94–267, § 1(b)(3), added par. (5).

Subsec. (b)(1)(A)(ii). Pub. L. 94–455, § 1901(b)(8)(A), substituted ''educational organization described in section 170(b)(1)(A)(ii)'' for ''educational institution (as defined in section 151(e)(4))''.

Subsec. (b)(4)(B). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (b)(7)(C). Pub. L. 94–455, § 1504(a), struck out '', and which issues only redeemable stock'' after ''regulated investment company within the meaning of section 851(a)''.

1974—Subsec. (a)(2). Pub. L. 93–406, § 2005(b)(2), substituted ''a lump sum distribution (as defined in section 4002(e)(4)(A)) is paid to the recipient'' for ''the total amounts payable by reason of an employee's death or other separation from the service, or by reason of the death of an employee after the employee's separation from the service, are paid to the payee within one taxable year of the payee'' as cl. (iii) of subpar. (A), substituted ''so much of the total taxable amount (as defined in section 402(e)(4)(D)) of such distribution as is equal to the product of such total taxable amount multiplied by the fraction described in section 402(a)(2) shall be treated as a gain from the sale or exchange of a capital asset held for more than 6 months. For purposes of this paragraph, in the case of an individual who is an employee without regard to section 401(c)(1), determination of whether or not any distribution is a lump sum distribution shall be made without regard to the requirement that an election be made under sub-

section (e)(4)(B) of section 402, but no distribution to any taxpayer other than an individual, estate, or trust may be treated as a lump sum distribution under this paragraph'' for ''then the amount of such payments, to the extent exceeding the amount contributed by the employee (determined by applying section 72(f)), which employee contributions shall be reduced by any amounts theretofore paid to him which were not includible in gross income, shall be considered a gain from the sale or exchange of a capital asset held for more than 6 months. This subparagraph shall not apply to amounts paid to any payee to the extent such amounts are attributable to contributions made on behalf of the employee while he was an employee within the meaning of section 401(c)(1)'' following cl. (iii) of subpar. (A), substituted provisions setting out a cross reference to section 402(e) for provisions defining ''total amounts'' as subpar. (B), and struck out subpar. (C) setting out limitations on capital gains treatment.

Subsec. (a)(4). Pub. L. 93–406, §2002(g)(6), added par. (4).

Subsec. (b)(2). Pub. L. 93–406, §2004(c)(4), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (b)(7). Pub. L. 93–406, §1022(e), added par. (7).

1969—Subsec. (a)(2)(C). Pub. L. 91–172, §515(a)(2), added subpar. (C).

Subsec. (c). Pub. L. 91–172, §321(b)(2), consolidated provisions of subsec. (c) providing for taxability of beneficiary under a nonqualified annuity, the employees gross income to include amount contributed by employer for annuity contract in the year in which amount is contributed, the amount to be included as provided in section 72 of this title and of subsec. (d) providing for taxability of beneficiary under certain forfeitable contracts purchased by exempt organizations, including farmers' cooperatives, the gross income to include amount contributed by employer after Dec. 31, 1957, in the year of change from forfeitable to nonforfeitable rights, the new provisions including premiums paid by an employer in accordance with section 83, except that value of the contract shall be substituted for fair market value of the property for purposes of applying such section 83, such provision not to be applicable to that portion of premiums paid which is excluded from gross income under subsec. (b) of this section.

Subsec. (d). Pub. L. 91–172, §321(b)(2), struck out subsec. (d) providing for taxability of beneficiary under certain forfeitable contracts purchased by exempt organizations, including farmers' cooperatives, gross income of the employee to include (amount contributed by employer after Dec. 31, 1957), in year of change from forfeitable to nonforfeitable rights. See subsec. (c) of this section.

1964—Subsecs. (a)(1), (b)(1), (c). Pub. L. 88–272, §232(e)(4)–(6), struck out ''except that section 72(e)(3) shall not apply'' after ''(relating to annuities)''.

1962—Subsec. (a)(2)(A). Pub. L. 87–792, §4(d)(1), (2), substituted ''described in paragraph (1)'' for ''which meets the requirements of section 401(a)(3), (4), (5), and (6)'' in cl. (i), and inserted sentence at end thereof providing that this subparagraph shall not apply to amounts paid to any payee to the extent such amounts are attributable to contributions made on behalf of the employee while he was an employee within the meaning of section 401(c)(1).

Subsec. (a)(3). Pub. L. 87–792, §4(d)(3), added par. (3).

1961—Subsec. (b). Pub. L. 87–370, §3(a)(3), inserted ''or public school'' in heading.

Subsec. (b)(1)(A). Pub. L. 87–370, §3(a)(1), included annuity contracts purchased for an employee, other than one described in clause (i) of this subpar., who performs services for an educational institution, as defined in section 151(e)(4) of this title, by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of either.

Subsec. (b)(3). Pub. L. 87–370, §(3)(a)(2), substituted ''the employer described in paragraph (1)(A)'' for ''the employer described in section 501(c)(3) and exempt from tax under section 501(a)''.

1958—Subsec. (a)(1). Pub. L. 85–866, §23(b), substituted ''which meets the requirements of section 404(a)(2) (whether or not the employer deducts the amounts paid for the contract under such section),'' for ''with respect to which the employer's contribution is deductible under section 404(a)(2), or if an annuity contract is purchased for an employee by an employer described in section 501(c)(3) which is exempt from tax under section 501(a),''.

Subsecs. (b) to (d). Pub. L. 85–866, §23(a), added subsec. (b), redesignated former subsec. (b) as (c), and added subsec. (d).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–245 applicable with respect to deaths and disabilities occurring on or after Jan. 1, 2007, see section 104(d)(1) of Pub. L. 110–245, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 827(b)(2), (3) of Pub. L. 109–280 applicable to distributions after Sept. 11, 2001, with waiver of limitations if refund or credit of overpayment of tax resulting from such amendment is prevented before the close of the 1-year period beginning on Aug. 17, 2006, see section 827(c) of Pub. L. 109–280, set out as a note under section 72 of this title.

Amendment by section 829(a)(2), (3) of Pub. L. 109–280 applicable to distributions after Dec. 31, 2006, see section 829(b) of Pub. L. 109–280, set out as a note under section 402 of this title.

Amendment by section 845(b)(1), (2) of Pub. L. 109–280 applicable to distributions in taxable years beginning after Dec. 31, 2006, see section 845(c) of Pub. L. 109–280, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 404(e) of Pub. L. 108–311 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 404(f) of Pub. L. 108–311, set out as a note under section 45A of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 632(a)(2) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 632(a)(4) of Pub. L. 107–16, set out as a note under section 72 of this title.

Amendment by section 641(b)(1), (e)(7) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107–16, set out as a note under section 402 of this title.

Amendment by section 642(b)(1) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 642(c) of Pub. L. 107–16, set out as a note under section 408 of this title.

Amendment by section 646(a)(2) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 646(b) of Pub. L. 107–16, set out as a note under section 401 of this title.

Pub. L. 107–16, title VI, §647(c), June 7, 2001, 115 Stat. 127, provided that: ''The amendments made by this section [amending this section and section 457 of this title] shall apply to trustee-to-trustee transfers after December 31, 2001.''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see

section 1(a)(7) [title III, §314(g)] of Pub. L. 106–554, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6005 of Pub. L. 105–206 applicable to distributions after Dec. 31, 1998, see section 6005(c)(2)(C) of Pub. L. 105–206, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1504(a)(2) of Pub. L. 105–34 provided that: ''The amendment made by this subsection [amending this section] shall apply to years beginning after December 31, 1997.''

Amendment by section 1505(c) of Pub. L. 105–34 applicable to taxable years beginning on or after Aug. 5, 1997, with certain governmental plans treated as satisfying requirements for all taxable years beginning before Aug. 5, 1997, see section 1505(d) of Pub. L. 105–34, set out as a note under section 401 of this title.

Amendment by section 1601(d)(6)(B) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 36C of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1450(c)(2) of Pub. L. 104–188 provided that: ''The amendment made by this subsection [amending this section] shall apply to years beginning after December 31, 1995, except a contract shall not be required to meet any change in any requirement by reason of such amendment before the 90th day after the date of the enactment of this Act [Aug. 20, 1996].''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 521(b)(12), (13) of Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

Amendment by section 522(a)(3), (c)(2), (3) of Pub. L. 102–318 applicable, except as otherwise provided, to distributions after Dec. 31, 1992, see section 522(d) of Pub. L. 102–318, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective, except as otherwise provided, as if included in the provision of the Revenue Reconciliation Act of 1989, Pub. L. 101–239, title VII, to which such amendment relates, see section 11701(n) of Pub. L. 101–508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011(c)(7)(B) of Pub. L. 100–647 applicable to plan years beginning after Dec. 31, 1987, with exception in case of a plan described in section 1105(c)(2) of Pub. L. 99–514, see section 1011(c)(7)(E) of Pub. L. 100–647, set out as a note under section 401 of this title.

Amendment by section 1011(c)(12), (m)(1), (2) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6052(a)(2) of Pub. L. 100–647 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendment made by section 1120(b) of the Reform Act [Pub. L. 99–514].''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1120(c) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1011(m)(3), Nov. 10, 1988, 102 Stat. 3471, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to years beginning after December 31, 1988.

''(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to plan years beginning before the earlier of—

''(A) January 1, 1991, or

''(B) the later of—

''(i) January 1, 1989, or

''(ii) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986).''

Amendment by section 1122(b)(1)(B), (d) of Pub. L. 99–514 applicable, except as otherwise provided, to amounts distributed after Dec. 31, 1986, in taxable years ending after such date, see section 1122(h) of Pub. L. 99–514, set out as a note under section 402 of this title.

Amendment by section 1123(c) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1988, but only with respect to distributions from contracts described in subsec. (b) of this section which are attributable to assets other than assets held as of the close of the last year beginning before Jan. 1, 1989, with certain exceptions and transition rule, see section 1123(e) of Pub. L. 99–514, as amended, set out as a note under section 72 of this title.

Section 1852(a)(3)(C) of Pub. L. 99–514 provided that: ''The amendments made by this paragraph [amending this section] shall apply to benefits accruing after December 31, 1986, in taxable years ending after such date.''

Amendment by section 1852(a)(5)(B), (b)(10) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 491(d)(12) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Amendment by section 521(c) of Pub. L. 98–369 applicable to years beginning after Dec. 31, 1984, see section 521(e) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 522 of Pub. L. 98–369 applicable to distributions made after July 18, 1984, in taxable years ending after that date, see section 522(e) of Pub. L. 98–369, set out as a note under section 402 of this title.

Amendment by section 1001(b)(4) of Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual's annuity starting date was deferred under section 105(d)(6) of this title as in effect on the day before Apr. 20, 1983, such deferral shall end on the first day of such individual's first taxable year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98–21, set out as a note under section 22 of this title.

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 251(e) of Pub. L. 97–248, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and section 415 of this title, and enacting a provision set out as a note below] shall apply to taxable years beginning after December 31, 1981.

''(2) RETIREMENT INCOME ACCOUNTS.—The amendments made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1974.

''(3) SECTION 415 AMENDMENTS.—The amendments made by subsection (c) [amending section 415 of this title] shall apply to years beginning after December 31, 1981.

''(4) CORRECTION PERIOD.—The amendment made by subsection (d) [enacting provisions set out below] shall take effect on July 1, 1982.

''(5) SPECIAL RULE FOR EXISTING DEFINED BENEFIT ARRANGEMENTS.—Any defined benefit arrangement which is established by a church or a convention or association of churches (including an organization described in section 414(e)(3)(B)(ii) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) and which is in effect on the date of the enactment of this Act [Sept. 3, 1982] shall not be treated as failing to meet the requirements of section 403(b)(2) of such Code merely because it is a defined benefit arrangement.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 311(i)(1) of Pub. L. 97–34, set out as a note under section 219 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENTS

Section 154(b) of Pub. L. 95–600 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1978.''

Section 156(d) of Pub. L. 95–600, as amended by Pub. L. 96–222, title I, §101(a)(13)(A), Apr. 1, 1980, 94 Stat. 204, provided that: ''The amendments made by this section [amending this section and sections 219, 220, 408, 409, 2039, and 4973] shall apply to distributions or transfers made after December 31, 1977, in taxable years beginning after such date.''

Amendment by section 157(g)(2) of Pub. L. 95–600 applicable to lump-sum distributions completed after Dec. 31, 1978, in taxable years ending after such date, see section 157(g)(4) of Pub. L. 95–600, set out as a note under section 402 of this title.

Amendment by Pub. L. 95–458 applicable with respect to taxable years beginning after Dec. 31, 1974, see section 4(d) of Pub. L. 95–458, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1976 AMENDMENTS

Section 1402(b)(1) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Section 1402(b)(2) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Section 1504(b) of Pub. L. 94–455 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1975.''

Amendment by section 1901(a)(58), (b)(8)(A) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by Pub. L. 94–267 applicable with respect to payments made to an employee on or after July 4, 1974, see section 1(e) of Pub. L. 94–267, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 1022(e) of Pub. L. 93–406 provided that the amendment made by that section is effective Jan. 1, 1974.

Amendment by section 2002(g)(6) of Pub. L. 93–406 applicable on and after Sept. 2, 1974, with respect to contributions to an employees' trust described in section 401(a) which is exempt from tax under section 501(a) or an annuity plan described in section 403(a), see section 2002(i)(3) of Pub. L. 93–406, set out as a note under section 402 of this title.

Amendment by section 2004(c)(4) of Pub. L. 93–406 applicable to years beginning after Dec. 31, 1975, see section 2004(d) of Pub. L. 93–406, set out as an Effective Date; Transition Provisions note under section 415 of this title.

Amendment by section 2005(b)(2) of Pub. L. 93–406 applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 321(b)(2) of Pub. L. 91–172 applicable with respect to contributions made and premiums paid after Aug. 1, 1969, see section 321(d) of Pub. L. 91–172, set out as an Effective Date note under section 83 of this title.

Amendment by section 515(a)(2) of Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 515(d) of Pub. L. 91–172, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 232(g) of Pub. L. 88–272, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Section 3(b) of Pub. L. 87–370 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1957.''

EFFECTIVE DATES OF 1958 AMENDMENT

Section 23(g) of Pub. L. 85–866 provided that: ''The amendments made by subsections (a), (b), (c), and (d) [amending this section and section 101 of this title] shall apply with respect to taxable years beginning after December 31, 1957. The amendments made by subsection (e) [amending section 2039 of this title] shall apply with respect to estates of decedents dying after December 31, 1957. The amendments made by subsection (f) [amending section 2517 of this title] shall apply with respect to calendar years after 1957.''

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1120 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

ELECTION TO MODIFY SECTION 403(b) EXCLUSION ALLOWANCE TO CONFORM TO SECTION 415 MODIFICATION

Pub. L. 107–16, title VI, §632(b)(3), June 7, 2001, 115 Stat. 115, provided that: ''In the case of taxable years beginning after December 31, 1999, and before January 1, 2002, a plan may disregard the requirement in the

regulations regarding the exclusion allowance under section 403(b)(2) of the Internal Revenue Code of 1986 that contributions to a defined benefit pension plan be treated as previously excluded amounts for purposes of the exclusion allowance.''

MODIFICATIONS OF SUBSECTION (b) OF THIS SECTION

Section 1601(d)(4) of Pub. L. 105–34, as amended by Pub. L. 105–206, title VI, § 6016(a)(2), July 22, 1998, 112 Stat. 822, provided that:

''(A) Paragraphs (7)(A)(ii) and (11) of section 403(b) of the Internal Revenue Code of 1986 shall not apply with respect to a distribution from a contract described in section 1450(b)(1) of such Act [Pub. L. 104–188, set out below] to the extent that such distribution is not includible in income by reason of—

''(i) in the case of distributions before January 1, 1998, section 403(b)(8) or (b)(10) of such Code (determined after the application of section 1450(b)(2) of such Act [Pub. L. 104–188, set out below]), and

''(ii) in the case of distributions on and after such date, such section 403(b)(10).

''(B) This paragraph shall apply as if included in section 1450 of the Small Business Job Protection Act of 1996 [Pub. L. 104–188, set out below].''

Section 1450(a), (b) of Pub. L. 104–188 provided that:

''(a) MULTIPLE SALARY REDUCTION AGREEMENTS PERMITTED.—

''(1) GENERAL RULE.—For purposes of section 403(b) of the Internal Revenue Code of 1986, the frequency that an employee is permitted to enter into a salary reduction agreement, the salary to which such an agreement may apply, and the ability to revoke such an agreement shall be determined under the rules applicable to cash or deferred elections under section 401(k) of such Code.

''(2) CONSTRUCTIVE RECEIPT.—[Amended section 402 of this title.]

''(3) EFFECTIVE DATE.—This subsection shall apply to taxable years beginning after December 31, 1995.

''(b) TREATMENT OF INDIAN TRIBAL GOVERNMENTS.—

''(1) IN GENERAL.—In the case of any contract purchased in a plan year beginning before January 1, 1995, section 403(b) of the Internal Revenue Code of 1986 shall be applied as if any reference to an employer described in section 501(c)(3) of the Internal Revenue Code of 1986 which is exempt from tax under section 501 of such Code included a reference to an employer which is an Indian tribal government (as defined by section 7701(a)(40) of such Code), a subdivision of an Indian tribal government (determined in accordance with section 7871(d) of such Code), an agency or instrumentality of an Indian tribal government or subdivision thereof, or a corporation chartered under Federal, State, or tribal law which is owned in whole or in part by any of the foregoing.

''(2) ROLLOVERS.—Solely for purposes of applying section 403(b)(8) of such Code to a contract to which paragraph (1) applies, a qualified cash or deferred arrangement under section 401(k) of such Code shall be treated as if it were a plan or contract described in clause (ii) of section 403(b)(8)(A) of such Code.''

SAMPLING TO DETERMINE WHETHER PLAN MEETS SUBSECTION (b)(12) REQUIREMENTS

Section 6052(b) of Pub. L. 100–647 provided that: ''In the case of plan years beginning in 1989, 1990, or 1991, determinations as to whether a plan meets the requirements of section 403(b)(12) of the 1986 Code may be made on the basis of a statistically valid random sample. The preceding sentence shall apply only if—

''(1) the sampling is conducted by an independent person in a manner not inconsistent with regulations prescribed by the Secretary, and

''(2) the statistical method and sample size result in a 95 percent probability that the results will have a margin of error not greater than 3 percent.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

CORRECTION PERIOD FOR CHURCH PLANS

Section 251(d) of Pub. L. 97–248, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''A church plan (within the meaning of section 414(e) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) shall not be treated as not meeting the requirements of section 401 or 403 of such Code if—

''(1) by reason of any change in any law, regulation, ruling, or otherwise such plan is required to be amended to meet such requirements, and

''(2) such plan is so amended at the next earliest church convention or such other time as the Secretary of the Treasury or his delegate may prescribe.''

TRANSITIONAL RULE FOR MAKING SECTION 403(b)(8) ROLLOVER IN THE CASE OF PAYMENTS DURING 1978

Section 101(a)(13)(B) of Pub. L. 96–222, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of any payment made during 1978 in a qualifying distribution described in section 403(b)(8) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the applicable period specified in section 402(a)(5)(C) of such Code shall not expire before the close of December 31, 1980.''

TRANSITIONAL RULE IN CASE OF ROLLOVER CONTRIBUTIONS TO EMPLOYEE TRUSTS OR ANNUITIES

Applicable period specified in section 402(a)(5)(C) of this title shall not expire before close of Dec. 31, 1980 in case of any payment described in subsec. (a)(4)(A) of this section or section 402(a)(5)(A) of this title, see section 157(h)(3)(B) of Pub. L. 95–600, set out as a note under section 402 of this title.

§ 404. Deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan

(a) General rule

If contributions are paid by an employer to or under a stock bonus, pension, profit-sharing, or annuity plan, or if compensation is paid or accrued on account of any employee under a plan deferring the receipt of such compensation, such contributions or compensation shall not be deductible under this chapter; but, if they would otherwise be deductible, they shall be deductible under this section, subject, however, to the fol-

lowing limitations as to the amounts deductible in any year:

(1) Pension trusts

(A) In general

In the taxable year when paid, if the contributions are paid into a pension trust (other than a trust to which paragraph (3) applies), and if such taxable year ends within or with a taxable year of the trust for which the trust is exempt under section 501(a), in the case of a defined benefit plan other than a multiemployer plan, in an amount determined under subsection (*o*), and in the case of any other plan in an amount determined as follows:

(i) the amount necessary to satisfy the minimum funding standard provided by section 412(a) for plan years ending within or with such taxable year (or for any prior plan year), if such amount is greater than the amount determined under clause (ii) or (iii) (whichever is applicable with respect to the plan),

(ii) the amount necessary to provide with respect to all of the employees under the trust the remaining unfunded cost of their past and current service credits distributed as a level amount, or a level percentage of compensation, over the remaining future service of each such employee, as determined under regulations prescribed by the Secretary, but if such remaining unfunded cost with respect to any 3 individuals is more than 50 percent of such remaining unfunded cost, the amount of such unfunded cost attributable to such individuals shall be distributed over a period of at least 5 taxable years,

(iii) an amount equal to the normal cost of the plan, as determined under regulations prescribed by the Secretary, plus, if past service or other supplementary pension or annuity credits are provided by the plan, an amount necessary to amortize the unfunded costs attributable to such credits in equal annual payments (until fully amortized) over 10 years, as determined under regulations prescribed by the Secretary.

In determining the amount deductible in such year under the foregoing limitations the funding method and the actuarial assumptions used shall be those used for such year under section 431, and the maximum amount deductible for such year shall be an amount equal to the full funding limitation for such year determined under section 431.

(B) Special rule in case of certain amendments

In the case of a multiemployer plan which the Secretary of Labor finds to be collectively bargained which makes an election under this subparagraph (in such manner and at such time as may be provided under regulations prescribed by the Secretary), if the full funding limitation determined under section 431(c)(6) for such year is zero, if as a result of any plan amendment applying to such plan year, the amount determined under section 431(c)(6)(A)(ii) exceeds the amount determined under section 431(c)(6)(A)(i), and if the funding method and the actuarial assumptions used are those used for such year under section 431, the maximum amount deductible in such year under the limitations of this paragraph shall be an amount equal to the lesser of—

(i) the full funding limitation for such year determined by applying section 431(c)(6) but increasing the amount referred to in subparagraph (A) thereof by the decrease in the present value of all unamortized liabilities resulting from such amendment, or

(ii) the normal cost under the plan reduced by the amount necessary to amortize in equal annual installments over 10 years (until fully amortized) the decrease described in clause (i).

In the case of any election under this subparagraph, the amount deductible under the limitations of this paragraph with respect to any of the plan years following the plan year for which such election was made shall be determined as provided under such regulations as may be prescribed by the Secretary to carry out the purposes of this subparagraph.

(C) Certain collectively-bargained plans

In the case of a plan which the Secretary of Labor finds to be collectively bargained, established or maintained by an employer doing business in not less than 40 States and engaged in the trade or business of furnishing or selling services described in section 168(i)(10)(C), with respect to which the rates have been established or approved by a State or political subdivision thereof, by any agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof, and in the case of any employer which is a member of a controlled group with such employer, subparagraph (B) shall be applied by substituting for the words ''plan amendment'' the words ''plan amendment or increase in benefits payable under title II of the Social Security Act''. For the purposes of this subparagraph, the term ''controlled group'' has the meaning provided by section 1563(a), determined without regard to section 1563(a)(4) and (e)(3)(C).

(D) Amount determined on basis of unfunded current liability

In the case of a defined benefit plan which is a multiemployer plan, except as provided in regulations, the maximum amount deductible under the limitations of this paragraph shall not be less than the excess (if any) of—

(i) 140 percent of the current liability of the plan determined under section 431(c)(6)(D), over

(ii) the value of the plan's assets determined under section 431(c)(2).

(E) Carryover

Any amount paid in a taxable year in excess of the amount deductible in such year

under the foregoing limitations shall be deductible in the succeeding taxable years in order of time to the extent of the difference between the amount paid and deductible in each such succeeding year and the maximum amount deductible for such year under the foregoing limitations.

(2) Employees' annuities

In the taxable year when paid, in an amount determined in accordance with paragraph (1), if the contributions are paid toward the purchase of retirement annuities, or retirement annuities and medical benefits as described in section 401(h), and such purchase is part of a plan which meets the requirements of section 401(a)(3), (4), (5), (6), (7), (8), (9), (11), (12), (13), (14), (15), (16), (17),[1] (19), (20), (22), (26), (27), (31), and (37) and, if applicable, the requirements of section 401(a)(10) and of section 401(d), and if refunds of premiums, if any, are applied within the current taxable year or next succeeding taxable year toward the purchase of such retirement annuities, or such retirement annuities and medical benefits.

(3) Stock bonus and profit-sharing trusts

(A) Limits on deductible contributions

(i) In general

In the taxable year when paid, if the contributions are paid into a stock bonus or profit-sharing trust, and if such taxable year ends within or with a taxable year of the trust with respect to which the trust is exempt under section 501(a), in an amount not in excess of the greater of—

(I) 25 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under the stock bonus or profit-sharing plan, or

(II) the amount such employer is required to contribute to such trust under section 401(k)(11) for such year.

(ii) Carryover of excess contributions

Any amount paid into the trust in any taxable year in excess of the limitation of clause (i) (or the corresponding provision of prior law) shall be deductible in the succeeding taxable years in order of time, but the amount so deductible under this clause in any 1 such succeeding taxable year together with the amount allowable under clause (i) shall not exceed the amount described in subclause (I) or (II) of clause (i), whichever is greater, with respect to such taxable year.

(iii) Certain retirement plans excluded

For purposes of this subparagraph, the term ''stock bonus or profit-sharing trust'' shall not include any trust designed to provide benefits upon retirement and covering a period of years, if under the plan the amounts to be contributed by the employer can be determined actuarially as provided in paragraph (1).

(iv) 2 or more trusts treated as 1 trust

If the contributions are made to 2 or more stock bonus or profit-sharing trusts, such trusts shall be considered a single trust for purposes of applying the limitations in this subparagraph.

(v) Defined contribution plans subject to the funding standards

Except as provided by the Secretary, a defined contribution plan which is subject to the funding standards of section 412 shall be treated in the same manner as a stock bonus or profit-sharing plan for purposes of this subparagraph.

(B) Profit-sharing plan of affiliated group

In the case of a profit-sharing plan, or a stock bonus plan in which contributions are determined with reference to profits, of a group of corporations which is an affiliated group within the meaning of section 1504, if any member of such affiliated group is prevented from making a contribution which it would otherwise have made under the plan, by reason of having no current or accumulated earnings or profits or because such earnings or profits are less than the contributions which it would otherwise have made, then so much of the contribution which such member was so prevented from making may be made, for the benefit of the employees of such member, by the other members of the group, to the extent of current or accumulated earnings or profits, except that such contribution by each such other member shall be limited, where the group does not file a consolidated return, to that proportion of its total current and accumulated earnings or profits remaining after adjustment for its contribution deductible without regard to this subparagraph which the total prevented contribution bears to the total current and accumulated earnings or profits of all the members of the group remaining after adjustment for all contributions deductible without regard to this subparagraph. Contributions made under the preceding sentence shall be deductible under subparagraph (A) of this paragraph by the employer making such contribution, and, for the purpose of determining amounts which may be carried forward and deducted under the second sentence of subparagraph (A) of this paragraph in succeeding taxable years, shall be deemed to have been made by the employer on behalf of whose employees such contributions were made.

(4) Trusts created or organized outside the United States

If a stock bonus, pension, or profit-sharing trust would qualify for exemption under section 501(a) except for the fact that it is a trust created or organized outside the United States, contributions to such a trust by an employer which is a resident, or corporation, or other entity of the United States, shall be deductible under the preceding paragraphs.

(5) Other plans

If the plan is not one included in paragraph (1), (2), or (3), in the taxable year in which an amount attributable to the contribution is in-

[1] See References in Text note below.

cludible in the gross income of employees participating in the plan, but, in the case of a plan in which more than one employee participates only if separate accounts are maintained for each employee. For purposes of this section, any vacation pay which is treated as deferred compensation shall be deductible for the taxable year of the employer in which paid to the employee.

(6) Time when contributions deemed made

For purposes of paragraphs (1), (2), and (3), a taxpayer shall be deemed to have made a payment on the last day of the preceding taxable year if the payment is on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof).

(7) Limitation on deductions where combination of defined contribution plan and defined benefit plan

(A) In general

If amounts are deductible under the foregoing paragraphs of this subsection (other than paragraph (5)) in connection with 1 or more defined contribution plans and 1 or more defined benefit plans or in connection with trusts or plans described in 2 or more of such paragraphs, the total amount deductible in a taxable year under such plans shall not exceed the greater of—

(i) 25 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under such plans, or

(ii) the amount of contributions made to or under the defined benefit plans to the extent such contributions do not exceed the amount of employer contributions necessary to satisfy the minimum funding standard provided by section 412 with respect to any such defined benefit plans for the plan year which ends with or within such taxable year (or for any prior plan year).

A defined contribution plan which is a pension plan shall not be treated as failing to provide definitely determinable benefits merely by limiting employer contributions to amounts deductible under this section. In the case of a defined benefit plan which is a single employer plan, the amount necessary to satisfy the minimum funding standard provided by section 412 shall not be less than the excess (if any) of the plan's funding target (as defined in section 430(d)(1)) over the value of the plan's assets (as determined under section 430(g)(3)).

(B) Carryover of contributions in excess of the deductible limit

Any amount paid under the plans in any taxable year in excess of the limitation of subparagraph (A) shall be deductible in the succeeding taxable years in order of time, but the amount so deductible under this subparagraph in any 1 such succeeding taxable year together with the amount allowable under subparagraph (A) shall not exceed 25 percent of the compensation otherwise paid or accrued during such taxable year to the beneficiaries under the plans.

(C) Paragraph not to apply in certain cases

(i) Beneficiary test

This paragraph shall not have the effect of reducing the amount otherwise deductible under paragraphs (1), (2), and (3), if no employee is a beneficiary under more than 1 trust or under a trust and an annuity plan.

(ii) Elective deferrals

If, in connection with 1 or more defined contribution plans and 1 or more defined benefit plans, no amounts (other than elective deferrals (as defined in section 402(g)(3))) are contributed to any of the defined contribution plans for the taxable year, then subparagraph (A) shall not apply with respect to any of such defined contribution plans and defined benefit plans.

(iii) Limitation

In the case of employer contributions to 1 or more defined contribution plans—

(I) if such contributions do not exceed 6 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under such plans, this paragraph shall not apply to such contributions or to employer contributions to the defined benefit plans to which this paragraph would otherwise apply by reason of contributions to the defined contribution plans, and

(II) if such contributions exceed 6 percent of such compensation, this paragraph shall be applied by only taking into account such contributions to the extent of such excess.

For purposes of this clause, amounts carried over from preceding taxable years under subparagraph (B) shall be treated as employer contributions to 1 or more defined contributions plans to the extent attributable to employer contributions to such plans in such preceding taxable years.

(iv) Guaranteed plans

In applying this paragraph, any single-employer plan covered under section 4021 of the Employee Retirement Income Security Act of 1974 shall not be taken into account.

(v) Multiemployer plans

In applying this paragraph, any multiemployer plan shall not be taken into account.

(D) Insurance contract plans

For purposes of this paragraph, a plan described in section 412(e)(3) shall be treated as a defined benefit plan.

(8) Self-employed individuals

In the case of a plan included in paragraph (1), (2), or (3) which provides contributions or benefits for employees some or all of whom are employees within the meaning of section 401(c)(1), for purposes of this section—

(A) the term ''employee'' includes an individual who is an employee within the meaning of section 401(c)(1), and the employer of such individual is the person treated as his employer under section 401(c)(4);

(B) the term ''earned income'' has the meaning assigned to it by section 401(c)(2);

(C) the contributions to such plan on behalf of an individual who is an employee within the meaning of section 401(c)(1) shall be considered to satisfy the conditions of section 162 or 212 to the extent that such contributions do not exceed the earned income of such individual (determined without regard to the deductions allowed by this section) derived from the trade or business with respect to which such plan is established, and to the extent that such contributions are not allocable (determined in accordance with regulations prescribed by the Secretary) to the purchase of life, accident, health, or other insurance; and

(D) any reference to compensation shall, in the case of an individual who is an employee within the meaning of section 401(c)(1), be considered to be a reference to the earned income of such individual derived from the trade or business with respect to which the plan is established.

(9) Certain contributions to employee stock ownership plans

(A) Principal payments

Notwithstanding the provisions of paragraphs (3) and (7), if contributions are paid into a trust which forms a part of an employee stock ownership plan (as described in section 4975(e)(7)), and such contributions are, on or before the time prescribed in paragraph (6), applied by the plan to the repayment of the principal of a loan incurred for the purpose of acquiring qualifying employer securities (as described in section 4975(e)(8)), such contributions shall be deductible under this paragraph for the taxable year determined under paragraph (6). The amount deductible under this paragraph shall not, however, exceed 25 percent of the compensation otherwise paid or accrued during the taxable year to the employees under such employee stock ownership plan. Any amount paid into such trust in any taxable year in excess of the amount deductible under this paragraph shall be deductible in the succeeding taxable years in order of time to the extent of the difference between the amount paid and deductible in each such succeeding year and the maximum amount deductible for such year under the preceding sentence.

(B) Interest payment

Notwithstanding the provisions of paragraphs (3) and (7), if contributions are made to an employee stock ownership plan (described in subparagraph (A)) and such contributions are applied by the plan to the repayment of interest on a loan incurred for the purpose of acquiring qualifying employer securities (as described in subparagraph (A)), such contributions shall be deductible for the taxable year with respect to which such contributions are made as determined under paragraph (6).

(C) S corporations

This paragraph shall not apply to an S corporation.

(D) Qualified gratuitous transfers

A qualified gratuitous transfer (as defined in section 664(g)(1)) shall have no effect on the amount or amounts otherwise deductible under paragraph (3) or (7) or under this paragraph.

(10) Contributions by certain ministers to retirement income accounts

In the case of contributions made by a minister described in section 414(e)(5) to a retirement income account described in section 403(b)(9) and not by a person other than such minister, such contributions—

(A) shall be treated as made to a trust which is exempt from tax under section 501(a) and which is part of a plan which is described in section 401(a), and

(B) shall be deductible under this subsection to the extent such contributions do not exceed the limit on elective deferrals under section 402(g) or the limit on annual additions under section 415.

For purposes of this paragraph, all plans in which the minister is a participant shall be treated as one plan.

(11) Determinations relating to deferred compensation

For purposes of determining under this section—

(A) whether compensation of an employee is deferred compensation; and

(B) when deferred compensation is paid,

no amount shall be treated as received by the employee, or paid, until it is actually received by the employee.

(12) Definition of compensation

For purposes of paragraphs (3), (7), (8), and (9) and subsection (h)(1)(C), the term ''compensation'' shall include amounts treated as ''participant's compensation'' under subparagraph (C) or (D) of section 415(c)(3).

(b) Method of contributions, etc., having the effect of a plan; certain deferred benefits

(1) Method of contributions, etc., having the effect of a plan

If—

(A) there is no plan, but

(B) there is a method or arrangement of employer contributions or compensation which has the effect of a stock bonus, pension, profit-sharing, or annuity plan, or other plan deferring the receipt of compensation (including a plan described in paragraph (2)),

subsection (a) shall apply as if there were such a plan.

(2) Plans providing certain deferred benefits

(A) In general

For purposes of this section, any plan providing for deferred benefits (other than com-

pensation) for employees, their spouses, or their dependents shall be treated as a plan deferring the receipt of compensation. In the case of such a plan, for purposes of this section, the determination of when an amount is includible in gross income shall be made without regard to any provisions of this chapter excluding such benefits from gross income.

(B) Exception

Subparagraph (A) shall not apply to any benefit provided through a welfare benefit fund (as defined in section 419(e)).

(c) Certain negotiated plans

If contributions are paid by an employer—

(1) under a plan under which such contributions are held in trust for the purpose of paying (either from principal or income or both) for the benefit of employees and their families and dependents at least medical or hospital care, or pensions on retirement or death of employees; and

(2) such plan was established prior to January 1, 1954, as a result of an agreement between employee representatives and the Government of the United States during a period of Government operation, under seizure powers, of a major part of the productive facilities of the industry in which such employer is engaged,

such contributions shall not be deductible under this section nor be made nondeductible by this section, but the deductibility thereof shall be governed solely by section 162 (relating to trade or business expenses). For purposes of this chapter and subtitle B, in the case of any individual who before July 1, 1974, was a participant in a plan described in the preceding sentence—

(A) such individual, if he is or was an employee within the meaning of section 401(c)(1), shall be treated (with respect to service covered by the plan) as being an employee other than an employee within the meaning of section 401(c)(1) and as being an employee of a participating employer under the plan,

(B) earnings derived from service covered by the plan shall be treated as not being earned income within the meaning of section 401(c)(2), and

(C) such individual shall be treated as an employee of a participating employer under the plan with respect to service before July 1, 1975, covered by the plan.

Section 277 (relating to deductions incurred by certain membership organizations in transactions with members) does not apply to any trust described in this subsection. The first and third sentences of this subsection shall have no application with respect to amounts contributed to a trust on or after any date on which such trust is qualified for exemption from tax under section 501(a).

(d) Deductibility of payments of deferred compensation, etc., to independent contractors

If a plan would be described in so much of subsection (a) as precedes paragraph (1) thereof (as modified by subsection (b)) but for the fact that there is no employer-employee relationship, the contributions or compensation—

(1) shall not be deductible by the payor thereof under this chapter, but

(2) shall (if they would be deductible under this chapter but for paragraph (1)) be deductible under this subsection for the taxable year in which an amount attributable to the contribution or compensation is includible in the gross income of the persons participating in the plan.

(e) Contributions allocable to life insurance protection for self-employed individuals

In the case of a self-employed individual described in section 401(c)(1), contributions which are allocable (determined under regulations prescribed by the Secretary) to the purchase of life, accident, health, or other insurance shall not be taken into account under paragraph (1), (2), or (3) of subsection (a).

[(f) Repealed. Pub. L. 98–369, div. A, title VII, § 713(b)(3), July 18, 1984, 98 Stat. 957]

(g) Certain employer liability payments considered as contributions

(1) In general

For purposes of this section, any amount paid by an employer under section 4041(b), 4062, 4063, or 4064, or part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 shall be treated as a contribution to which this section applies by such employer to or under a stock bonus, pension, profit-sharing, or annuity plan.

(2) Controlled group deductions

In the case of a payment described in paragraph (1) made by an entity which is liable because it is a member of a commonly controlled group of corporations, trades, or businesses, within the meaning of subsection (b) or (c) of section 414, the fact that the entity did not directly employ participants of the plan with respect to which the liability payment was made shall not affect the deductibility of a payment which otherwise satisfies the conditions of section 162 (relating to trade or business expenses) or section 212 (relating to expenses for the production of income).

(3) Timing of deduction of contributions

(A) In general

Except as otherwise provided in this paragraph, any payment described in paragraph (1) shall (subject to the last sentence of subsection (a)(1)(A)) be deductible under this section when paid.

(B) Contributions under standard terminations

Subparagraph (A) shall not apply (and subsection (a)(1)(A) shall apply) to any payments described in paragraph (1) which are paid to terminate a plan under section 4041(b) of the Employee Retirement Income Security Act of 1974 to the extent such payments result in the assets of the plan being in excess of the total amount of benefits under such plan which are guaranteed by the Pension Benefit Guaranty Corporation under section 4022 of such Act.

(C) Contributions to certain trusts

Subparagraph (A) shall not apply to any payment described in paragraph (1) which is

made under section 4062(c) of such Act and such payment shall be deductible at such time as may be prescribed in regulations which are based on principles similar to the principles of subsection (a)(1)(A).

(4) References to Employee Retirement Income Security Act of 1974

For purposes of this subsection, any reference to a section of the Employee Retirement Income Security Act of 1974 shall be treated as a reference to such section as in effect on the date of the enactment of the Retirement Protection Act of 1994.

(h) Special rules for simplified employee pensions

(1) In general

Employer contributions to a simplified employee pension shall be treated as if they are made to a plan subject to the requirements of this section. Employer contributions to a simplified employee pension are subject to the following limitations:

(A) Contributions made for a year are deductible—

(i) in the case of a simplified employee pension maintained on a calendar year basis, for the taxable year with or within which the calendar year ends, or

(ii) in the case of a simplified employee pension which is maintained on the basis of the taxable year of the employer, for such taxable year.

(B) Contributions shall be treated for purposes of this subsection as if they were made for a taxable year if such contributions are made on account of such taxable year and are made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof).

(C) The amount deductible in a taxable year for a simplified employee pension shall not exceed 25 percent of the compensation paid to the employees during the calendar year ending with or within the taxable year (or during the taxable year in the case of a taxable year described in subparagraph (A)(ii)). The excess of the amount contributed over the amount deductible for a taxable year shall be deductible in the succeeding taxable years in order of time, subject to the 25 percent limit of the preceding sentence.

(2) Effect on certain trusts

For any taxable year for which the employer has a deduction under paragraph (1), the otherwise applicable limitations in subsection (a)(3)(A) shall be reduced by the amount of the allowable deductions under paragraph (1) with respect to participants in the trust subject to subsection (a)(3)(A).

(3) Coordination with subsection (a)(7)

For purposes of subsection (a)(7), a simplified employee pension shall be treated as if it were a separate stock bonus or profit-sharing trust.

[(i) Repealed. Pub. L. 99–514, title XI, § 1171(b)(6), Oct. 22, 1986, 100 Stat. 2513]

(j) Special rules relating to application with section 415

(1) No deduction in excess of section 415 limitation

In computing the amount of any deduction allowable under paragraph (1), (2), (3), (4), (7), or (9) of subsection (a) for any year—

(A) in the case of a defined benefit plan, there shall not be taken into account any benefits for any year in excess of any limitation on such benefits under section 415 for such year, or

(B) in the case of a defined contribution plan, the amount of any contributions otherwise taken into account shall be reduced by any annual additions in excess of the limitation under section 415 for such year.

(2) No advance funding of cost-of-living adjustments

For purposes of clause (i), (ii) or (iii) of subsection (a)(1)(A), and in computing the full funding limitation, there shall not be taken into account any adjustments under section 415(d)(1) for any year before the year for which such adjustment first takes effect.

(k) Deduction for dividends paid on certain employer securities

(1) General rule

In the case of a C corporation, there shall be allowed as a deduction for a taxable year the amount of any applicable dividend paid in cash by such corporation with respect to applicable employer securities. Such deduction shall be in addition to the deductions allowed under subsection (a).

(2) Applicable dividend

For purposes of this subsection—

(A) In general

The term ''applicable dividend'' means any dividend which, in accordance with the plan provisions—

(i) is paid in cash to the participants in the plan or their beneficiaries,

(ii) is paid to the plan and is distributed in cash to participants in the plan or their beneficiaries not later than 90 days after the close of the plan year in which paid,

(iii) is, at the election of such participants or their beneficiaries—

(I) payable as provided in clause (i) or (ii), or

(II) paid to the plan and reinvested in qualifying employer securities, or

(iv) is used to make payments on a loan described in subsection (a)(9) the proceeds of which were used to acquire the employer securities (whether or not allocated to participants) with respect to which the dividend is paid.

(B) Limitation on certain dividends

A dividend described in subparagraph (A)(iv) which is paid with respect to any employer security which is allocated to a par-

ticipant shall not be treated as an applicable dividend unless the plan provides that employer securities with a fair market value of not less than the amount of such dividend are allocated to such participant for the year which (but for subparagraph (A)) such dividend would have been allocated to such participant.

(3) Applicable employer securities

For purposes of this subsection, the term ''applicable employer securities'' means, with respect to any dividend, employer securities which are held on the record date for such dividend by an employee stock ownership plan which is maintained by—

(A) the corporation paying such dividend, or

(B) any other corporation which is a member of a controlled group of corporations (within the meaning of section 409(*l*)(4)) which includes such corporation.

(4) Time for deduction

(A) In general

The deduction under paragraph (1) shall be allowable in the taxable year of the corporation in which the dividend is paid or distributed to a participant or his beneficiary.

(B) Reinvestment dividends

For purposes of subparagraph (A), an applicable dividend reinvested pursuant to clause (iii)(II) of paragraph (2)(A) shall be treated as paid in the taxable year of the corporation in which such dividend is reinvested in qualifying employer securities or in which the election under clause (iii) of paragraph (2)(A) is made, whichever is later.

(C) Repayment of loans

In the case of an applicable dividend described in clause (iv) of paragraph (2)(A), the deduction under paragraph (1) shall be allowable in the taxable year of the corporation in which such dividend is used to repay the loan described in such clause.

(5) Other rules

For purposes of this subsection—

(A) Disallowance of deduction

The Secretary may disallow the deduction under paragraph (1) for any dividend if the Secretary determines that such dividend constitutes, in substance, an avoidance or evasion of taxation.

(B) Plan qualification

A plan shall not be treated as violating the requirements of section 401, 409, or 4975(e)(7), or as engaging in a prohibited transaction for purposes of section 4975(d)(3), merely by reason of any payment or distribution described in paragraph (2)(A).

(6) Definitions

For purposes of this subsection—

(A) Employer securities

The term ''employer securities'' has the meaning given such term by section 409(*l*).

(B) Employee stock ownership plan

The term ''employee stock ownership plan'' has the meaning given such term by section 4975(e)(7). Such term includes a tax credit employee stock ownership plan (as defined in section 409).

(7) Full vesting

In accordance with section 411, an applicable dividend described in clause (iii)(II) of paragraph (2)(A) shall be subject to the requirements of section 411(a)(1).

(*l*) Limitation on amount of annual compensation taken into account

For purposes of applying the limitations of this section, the amount of annual compensation of each employee taken into account under the plan for any year shall not exceed $200,000. The Secretary shall adjust the $200,000 amount at the same time, and by the same amount, as any adjustment under section 401(a)(17)(B). For purposes of clause (i), (ii), or (iii) of subsection (a)(1)(A), and in computing the full funding limitation, any adjustment under the preceding sentence shall not be taken into account for any year before the year for which such adjustment first takes effect.

(m) Special rules for simple retirement accounts

(1) In general

Employer contributions to a simple retirement account shall be treated as if they are made to a plan subject to the requirements of this section.

(2) Timing

(A) Deduction

Contributions described in paragraph (1) shall be deductible in the taxable year of the employer with or within which the calendar year for which the contributions were made ends.

(B) Contributions after end of year

For purposes of this subsection, contributions shall be treated as made for a taxable year if they are made on account of the taxable year and are made not later than the time prescribed by law for filing the return for the taxable year (including extensions thereof).

(n) Elective deferrals not taken into account for purposes of deduction limits

Elective deferrals (as defined in section 402(g)(3)) shall not be subject to any limitation contained in paragraph (3), (7), or (9) of subsection (a) or paragraph (1)(C) of subsection (h) and such elective deferrals shall not be taken into account in applying any such limitation to any other contributions.

(*o*) Deduction limit for single-employer plans

For purposes of subsection (a)(1)(A)—

(1) In general

In the case of a defined benefit plan to which subsection (a)(1)(A) applies (other than a multiemployer plan), the amount determined under this subsection for any taxable year shall be equal to the greater of—

(A) the sum of the amounts determined under paragraph (2) with respect to each plan year ending with or within the taxable year, or

(B) the sum of the minimum required contributions under section 430 for such plan years.

(2) Determination of amount

(A) In general

The amount determined under this paragraph for any plan year shall be equal to the excess (if any) of—

(i) the sum of—

(I) the funding target for the plan year,

(II) the target normal cost for the plan year, and

(III) the cushion amount for the plan year, over

(ii) the value (determined under section 430(g)(3)) of the assets of the plan which are held by the plan as of the valuation date for the plan year.

(B) Special rule for certain employers

If section 430(i) does not apply to a plan for a plan year, the amount determined under subparagraph (A)(i) for the plan year shall in no event be less than the sum of—

(i) the funding target for the plan year (determined as if section 430(i) applied to the plan), plus

(ii) the target normal cost for the plan year (as so determined).

(3) Cushion amount

For purposes of paragraph (2)(A)(i)(III)—

(A) In general

The cushion amount for any plan year is the sum of—

(i) 50 percent of the funding target for the plan year, and

(ii) the amount by which the funding target for the plan year would increase if the plan were to take into account—

(I) increases in compensation which are expected to occur in succeeding plan years, or

(II) if the plan does not base benefits for service to date on compensation, increases in benefits which are expected to occur in succeeding plan years (determined on the basis of the average annual increase in benefits over the 6 immediately preceding plan years).

(B) Limitations

(i) In general

In making the computation under subparagraph (A)(ii), the plan's actuary shall assume that the limitations under subsection (*l*) and section 415(b) shall apply.

(ii) Expected increases

In the case of a plan year during which a plan is covered under section 4021 of the Employee Retirement Income Security Act of 1974, the plan's actuary may, notwithstanding subsection (*l*), take into account increases in the limitations which are expected to occur in succeeding plan years.

(4) Special rules for plans with 100 or fewer participants

(A) In general

For purposes of determining the amount under paragraph (3) for any plan year, in the case of a plan which has 100 or fewer participants for the plan year, the liability of the plan attributable to benefit increases for highly compensated employees (as defined in section 414(q)) resulting from a plan amendment which is made or becomes effective, whichever is later, within the last 2 years shall not be taken into account in determining the target liability.

(B) Rule for determining number of participants

For purposes of determining the number of plan participants, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group (within the meaning of section 412(d)(3)) shall be treated as one plan, but only participants of such member or employer shall be taken into account.

(5) Special rule for terminating plans

In the case of a plan which, subject to section 4041 of the Employee Retirement Income Security Act of 1974, terminates during the plan year, the amount determined under paragraph (2) shall in no event be less than the amount required to make the plan sufficient for benefit liabilities (within the meaning of section 4041(d) of such Act).

(6) Actuarial assumptions

Any computation under this subsection for any plan year shall use the same actuarial assumptions which are used for the plan year under section 430.

(7) Definitions

Any term used in this subsection which is also used in section 430 shall have the same meaning given such term by section 430.

(Aug. 16, 1954, ch. 736, 68A Stat. 138; Pub. L. 85–866, title I, § 24, Sept. 2, 1958, 72 Stat. 1623; Pub. L. 87–792, § 3, Oct. 10, 1962, 76 Stat. 819; Pub. L. 87–863, § 2(b), Oct. 23, 1962, 76 Stat. 1141; Pub. L. 89–809, title II, § 204(a), (b)(2), (3), Nov. 13, 1966, 80 Stat. 1577; Pub. L. 91–172, title III, § 321(b)(3), Dec. 30, 1969, 83 Stat. 591; Pub. L. 93–406, title II, §§ 1013(c), 1016(a)(3), 2001(a), (g)(2)(E), (F), 2004(b), (c)(1), 2007(a), (b), title IV, § 4401(a), formerly § 4081(a), Sept. 2, 1974, 88 Stat. 921, 929, 952, 957, 986, 993, 994, 1033, renumbered § 4401(a), Pub. L. 96–364, title I, § 108(a), Sept. 26, 1980, 94 Stat. 1267; Pub. L. 94–267, § 1(c)(3), Apr. 15, 1976, 90 Stat. 367; Pub. L. 94–455, title XV, § 1502(a)(2), title XIX, §§ 1901(a)(59), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1737, 1774, 1834; Pub. L. 95–600, title I, §§ 133(a), (b), 141(f)(9), 152(f), Nov. 6, 1978, 92 Stat. 2783, 2795, 2799; Pub. L. 96–222, title I, § 101(a)(10)(E), (J)(ii), Apr. 1, 1980, 94 Stat. 202, 204; Pub. L. 96–364, title II, § 205, Sept. 26, 1980, 94 Stat. 1287; Pub. L. 97–34, title III, §§ 312(a), 331(b), 333(a), Aug. 13, 1981, 95 Stat. 283, 293, 296; Pub. L. 97–248, title II, §§ 235(f), 237(e)(2), 238(a), 253(b), Sept. 3, 1982, 96 Stat. 507, 512, 533; Pub. L. 98–369, div. A, title IV, § 474(r)(14), title V, §§ 512(a), 542(a), title VII, § 713(b)(3), (d)(4)(A), (5), (6), (9), July 18, 1984, 98 Stat. 842, 862, 890, 957, 958; Pub. L. 99–272, title XI, § 11011(c)(1), (2), Apr. 7, 1986, 100 Stat. 257, 258; Pub. L. 99–514, title XI, §§ 1106(d)(2), 1108(c), 1112(d)(2), 1131(a), (b), 1136(b), 1171(b)(6), 1173(a), title XVIII, §§ 1848(c), 1851(b)(2)(A)–(C)(ii),

1854(b)(2)–(5), 1875(c)(7), Oct. 22, 1986, 100 Stat. 2424, 2433, 2445, 2476, 2477, 2486, 2513, 2515, 2857, 2863, 2878, 2895; Pub. L. 100–203, title IX, §9307(c), (d), title X, §10201(b)(2), (3), Dec. 22, 1987, 101 Stat. 1330–357, 1330–387; Pub. L. 100–647, title I, §§1011(d)(1), (4), (f)(6), 1011A(e)(4), 1011B(h)(3), (6), 1018(t)(4)(A), (5), title II, §2005(b), Nov. 10, 1988, 102 Stat. 3459, 3463, 3478, 3491, 3492, 3588, 3589, 3610; Pub. L. 101–239, title VII, §§7302(a), 7841(b)(1), Dec. 19, 1989, 103 Stat. 2351, 2428; Pub. L. 101–508, title XI, §11812(b)(7), Nov. 5, 1990, 104 Stat. 1388–535; Pub. L. 102–318, title V, §522(a)(2), July 3, 1992, 106 Stat. 314; Pub. L. 103–66, title XIII, §13212(c)(1), Aug. 10, 1993, 107 Stat. 472; Pub. L. 103–465, title VII, §751(a)(11), Dec. 8, 1994, 108 Stat. 5022; Pub. L. 104–188, title I, §§1316(d)(1), (2), 1421(b)(2), 1431(b)(3), 1461(b), 1704(q)(1), (t)(76), Aug. 20, 1996, 110 Stat. 1786, 1795, 1803, 1823, 1887, 1891; Pub. L. 105–34, title XV, §1530(c)(2), title XVI, §1601(d)(2)(C), Aug. 5, 1997, 111 Stat. 1078, 1088; Pub. L. 105–206, title VI, §6015(d), title VII, §7001(a), July 22, 1998, 112 Stat. 821, 827; Pub. L. 107–16, title VI, §§611(c)(1), 614(a), 616(a)–(b)(2)(A), 632(a)(3)(B), 652(a), 662(a), (b), June 7, 2001, 115 Stat. 97, 102, 103, 114, 129, 142; Pub. L. 107–147, title IV, §411(*l*)(1), (2), (4), (s), (w), Mar. 9, 2002, 116 Stat. 47, 51, 52; Pub. L. 108–218, title I, §101(b)(5), Apr. 10, 2004, 118 Stat. 598; Pub. L. 109–280, title VIII, §§801(a)–(c)(3), (d), 802(a), 803(a), (b), Aug. 17, 2006, 120 Stat. 992–996; Pub. L. 110–245, title I, §104(c)(1), June 17, 2008, 122 Stat. 1627; Pub. L. 110–458, title I, §108(a)–(c), Dec. 23, 2008, 122 Stat. 5108.)

Inflation Adjusted Items for Certain Years

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

References in Text

The Social Security Act, referred to in subsec. (a)(1)(C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 401(a)(17), referred to in subsec. (a)(2), was repealed by Pub. L. 97–248, title II, §237(b), Sept. 3, 1982, 96 Stat. 511. A new section 401(a)(17) was added by Pub. L. 99–514, title XI, §1106(d)(1), Oct. 22, 1986, 100 Stat. 2423.

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (a)(3)(A)(v)(II), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

The Employee Retirement Income Security Act of 1974, referred to in subsecs. (a)(1)(D)(iv), (7)(C)(iv), (g)(1), (3)(B), (C), (4), and (*o*)(3)(B)(ii), (5), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended, which is classified principally to chapter 18 (§1001 et seq.) of Title 29, Labor. Part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 is classified generally to part 1 (§1381 et seq.) of subtitle E of subchapter III of chapter 18 of Title 29. Sections 4021, 4022, 4041, 4062, 4063, and 4064 of the Employee Retirement Income Security Act of 1974 are classified to sections 1321, 1322, 1341, 1362, 1363, and 1364, respectively, of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The date of the enactment of the Retirement Protection Act of 1994, referred to in subsec. (g)(4), is the date of enactment of subtitle F (§§750–781) of title VII of Pub. L. 103–465, which was approved Dec. 8, 1994.

Amendments

2008—Subsec. (a)(1)(D)(i). Pub. L. 110–458, §108(b), substituted ''431(c)(6)(D)'' for ''431(c)(6)(C)''.

Subsec. (a)(2). Pub. L. 110–245 substituted ''(31), and (37)'' for ''and (31)''.

Subsec. (a)(7)(A). Pub. L. 110–458, §108(a)(2), in concluding provisions, substituted ''the excess (if any) of the plan's funding target (as defined in section 430(d)(1)) over the value of the plan's assets (as determined under section 430(g)(3))'' for ''the plan's funding shortfall determined under section 430'' in last sentence and struck out second sentence which read as follows: ''For purposes of clause (ii), if paragraph (1)(D) applies to a defined benefit plan for any plan year, the amount necessary to satisfy the minimum funding standard provided by section 412 with respect to such plan for such plan year shall not be less than the unfunded current liability of such plan under section 412(*l*).''

Subsec. (a)(7)(C)(iii). Pub. L. 110–458, §108(c), amended cl. (iii) generally. Prior to amendment, text read as follows: ''In the case of employer contributions to 1 or more defined contribution plans, this paragraph shall only apply to the extent that such contributions exceed 6 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under such plans. For purposes of this clause, amounts carried over from preceding taxable years under subparagraph (B) shall be treated as employer contributions to 1 or more defined contributions to the extent attributable to employer contributions to such plans in such preceding taxable years.''

Subsec. (*o*)(2)(A)(ii). Pub. L. 110–458, §108(a)(1)(A), substituted ''430(g)(3)'' for ''430(g)(2)''.

Subsec. (*o*)(4)(B). Pub. L. 110–458, §108(a)(1)(B), substituted ''412(d)(3)'' for ''412(f)(4)''.

2006—Subsec. (a)(1)(A). Pub. L. 109–280, §801(a)(1), (c)(1), inserted ''in the case of a defined benefit plan other than a multiemployer plan, in an amount determined under subsection (*o*), and in the case of any other plan'' after ''section 501(a),'' in introductory provisions and substituted ''431'' for ''412'' in two places in concluding provisions.

Subsec. (a)(1)(B). Pub. L. 109–280, §801(c)(2), in introductory provisions, substituted ''In the case of a multiemployer plan'' for ''In the case of a plan'', ''431(c)(6)'' for ''412(c)(7)'', ''431(c)(6)(A)(ii)'' for ''412(c)(7)(B)'', ''431(c)(6)(A)(i)'' for ''412(c)(7)(A)'', and ''431'' for ''412'', and, in cl. (i), substituted ''431(c)(6)'' for ''412(c)(7)''.

Subsec. (a)(1)(D). Pub. L. 109–280, §802(a), amended heading and text of subpar. (D) generally, substituting provisions relating to maximum amount deductible in the case of a defined benefit plan which is a multiemployer plan for provisions relating to maximum amount deductible in the case of any defined benefit plan and stating rule for plans with 100 or less participants, rule for determining number of participants, and rule for terminating plans.

Subsec. (a)(1)(D)(i). Pub. L. 109–280, §801(d)(1), substituted ''section 412(*l*)(8)(A), except that section 412(*l*)(8)(A) shall be applied for purposes of this clause by substituting '150 percent (140 percent in the case of a multiemployer plan) of current liability' for 'the current liability' in clause (i).'' for ''section 412(*l*)''.

Subsec. (a)(1)(F). Pub. L. 109–280, §801(d)(2), struck out heading and text of subpar. (F). Text read as follows: ''An employer may elect to disregard subsections (b)(5)(B)(ii)(II) and (*l*)(7)(C)(i)(IV) of section 412 solely for purposes of determining the interest rate used in calculating the maximum amount of the deduction allowable under this paragraph.''

Subsec. (a)(7)(A). Pub. L. 109–280, §801(c)(3)(A), inserted at end ''In the case of a defined benefit plan which is a single employer plan, the amount necessary to satisfy the minimum funding standard provided by section 412 shall not be less than the plan's funding shortfall determined under section 430.''

Subsec. (a)(7)(C)(iii). Pub. L. 109–280, §803(a), added cl. (iii).

Subsec. (a)(7)(C)(iv). Pub. L. 109–280, §801(b), added cl. (iv).

Subsec. (a)(7)(C)(v). Pub. L. 109–280, §803(b), added cl. (v).

Subsec. (a)(7)(D). Pub. L. 109–280, §801(c)(3)(B), added subpar. (D) and struck out heading and text of former subpar. (D). Former text read as follows: ''For purposes of this paragraph, any plan described in section 412(i) shall be treated as a defined benefit plan.''

Subsec. (*o*). Pub. L. 109–280, §801(a)(2), added subsec. (*o*).

2004—Subsec. (a)(1)(F). Pub. L. 108–218 added subpar. (F).

2002—Subsec. (a)(1)(D)(iv). Pub. L. 107–147, §411(s), substituted ''Special rule for terminating plans'' for ''Plans maintained by professional service employers'' in heading.

Subsec. (a)(7)(C). Pub. L. 107–147, §411(*l*)(4), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''This paragraph shall not have the effect of reducing the amount otherwise deductible under paragraphs (1), (2), and (3), if no employee is a beneficiary under more than 1 trust or under a trust and an annuity plan.''

Subsec. (a)(12). Pub. L. 107–147, §411(*l*)(1), substituted ''(9) and subsection (h)(1)(C),'' for ''(9),''.

Subsec. (k)(1). Pub. L. 107–147, §411(w)(1)(A), struck out ''during the taxable year'' after ''such corporation''.

Subsec. (k)(2)(B). Pub. L. 107–147, §411(w)(1)(B), substituted ''(A)(iv)'' for ''(A)(iii)''.

Subsec. (k)(4)(B), (C). Pub. L. 107–147, §411(w)(1)(C), (D), substituted ''clause (iv)'' for ''clause (iii)'' in subpar. (B), added a new subpar. (B), and redesignated former subpar. (B) as (C).

Subsec. (k)(7). Pub. L. 107–147, §411(w)(2), added par. (7).

Subsec. (n). Pub. L. 107–147, §411(*l*)(2), substituted ''subsection (a) or paragraph (1)(C) of subsection (h)'' for ''subsection (a),''.

2001—Subsec. (a)(1)(A). Pub. L. 107–16, §616(a)(2)(B)(i), inserted ''(other than a trust to which paragraph (3) applies)'' after ''pension trust'' in introductory provisions.

Subsec. (a)(1)(D). Pub. L. 107–16, §652(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''In the case of any defined benefit plan (other than a multiemployer plan) which has more than 100 participants for the plan year, except as provided in regulations, the maximum amount deductible under the limitations of this paragraph shall not be less than the unfunded current liability determined under section 412(*l*). For purposes of determining whether a plan has more than 100 participants, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group (within the meaning of section 412(*l*)(8)(C))) shall be treated as 1 plan, but only employees of such member or employer shall be taken into account.''

Subsec. (a)(3)(A)(i)(I). Pub. L. 107–16, §616(a)(1)(A), substituted ''25 percent'' for ''15 percent''.

Subsec. (a)(3)(A)(v). Pub. L. 107–16, §616(a)(2)(A), amended cl. (v) generally, substituting present provisions for provisions which directed that the limitation of cl. (i) for any taxable year would be increased by the unused pre-87 limitation carryforwards and defined ''unused pre-87 limitation carryforwards''.

Subsec. (a)(3)(B). Pub. L. 107–16, §616(b)(2)(A), struck out at end ''The term 'compensation otherwise paid or accrued during the taxable year to all employees' shall include any amount with respect to which an election under section 415(c)(3)(C) is in effect, but only to the extent that any contribution with respect to such amount is nonforfeitable.''

Subsec. (a)(10)(B). Pub. L. 107–16, §632(a)(3)(B), struck out '', the exclusion allowance under section 403(b)(2),'' after ''deferrals under section 402(g)''.

Subsec. (a)(12). Pub. L. 107–16, §616(b)(1), added par. (12).

Subsec. (h)(1)(C). Pub. L. 107–16, §616(a)(1)(B), substituted ''25 percent'' for ''15 percent'' in two places.

Subsec. (h)(2). Pub. L. 107–16, §616(a)(2)(B)(ii), (iii), substituted ''certain trusts'' for ''stock bonus and profit-sharing trust'' in heading and ''trust subject to subsection (a)(3)(A)'' for ''stock bonus or profit-sharing trust'' in text.

Subsec. (k)(2)(A)(iii), (iv). Pub. L. 107–16, §662(a), added cl. (iii) and redesignated former cl. (iii) as (iv).

Subsec. (k)(5)(A). Pub. L. 107–16, §662(b), inserted ''avoidance or'' before ''evasion''.

Subsec. (*l*). Pub. L. 107–16, §611(c)(1), substituted ''$200,000'' for ''$150,000'' in two places.

Subsec. (n). Pub. L. 107–16, §614(a), added subsec. (n).

1998—Subsec. (a)(9)(C), (D). Pub. L. 105–206, §6015(d), redesignated subpar. (C), relating to qualified gratuitous transfers, as (D) and inserted heading.

Subsec. (a)(11). Pub. L. 105–206, §7001(a), added par. (11).

1997—Subsec. (a)(3)(A)(i). Pub. L. 105–34, §1601(d)(2)(C)(i), substituted ''not in excess of the greater of—'' and subcls. (I) and (II) for ''not in excess of 15 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under the stock bonus or profit-sharing plan.''

Subsec. (a)(3)(A)(ii). Pub. L. 105–34, §1601(d)(2)(C)(ii), substituted ''the amount described in subclause (I) or (II) of clause (i), whichever is greater, with respect to such taxable year.'' for ''15 percent of the compensation otherwise paid or accrued during such taxable year to the beneficiaries under the plan.''

Subsec. (a)(9)(C). Pub. L. 105–34, §1530(c)(2), added subpar. (C) relating to qualified gratuitous transfers.

1996—Subsec. (a)(2). Pub. L. 104–188, §1704(t)(76), struck out ''(18),'' after ''(17),''.

Subsec. (a)(9)(C). Pub. L. 104–188, §1316(d)(1), added subpar. (C) relating to S corporations.

Subsec. (a)(10). Pub. L. 104–188, §1461(b), added par. (10).

Subsec. (j)(1). Pub. L. 104–188, §1704(q)(1), substituted ''(9)'' for ''(10)'' in introductory provisions.

Subsec. (k)(1). Pub. L. 104–188, §1316(d)(2), substituted ''a C corporation'' for ''a corporation''.

Subsec. (*l*). Pub. L. 104–188, §1431(b)(3), struck out at end ''In determining the compensation of an employee, the rules of section 414(q)(6) shall apply, except that in applying such rules, the term 'family' shall include only the spouse of the employee and any lineal descendants of the employee who have not attained age 19 before the close of the year.''

Subsec. (m). Pub. L. 104–188, §1421(b)(2), added subsec. (m).

1994—Subsec. (g)(4). Pub. L. 103–465 substituted ''the Retirement Protection Act of 1994'' for ''the Single-Employer Pension Plan Amendments Act of 1986''.

1993—Subsec. (*l*). Pub. L. 103–66 substituted ''$150,000'' for ''$200,000'' in first sentence and ''The Secretary shall adjust the $150,000 amount at the same time, and by the same amount, as any adjustment under section 401(a)(17)(B).'' for ''The Secretary shall adjust the $200,000 amount at the same time and in the same manner as under section 415(d).''

1992—Subsec. (a)(2). Pub. L. 102–318 substituted ''(27), and (31)'' for ''and (27)''.

1990—Subsec. (a)(1)(C). Pub. L. 101–508 substituted ''section 168(i)(10)(C)'' for ''section 167(*l*)(3)(A)(iii)''.

1989—Subsec. (g)(1). Pub. L. 101–239, §7841(b)(1), inserted ''4041(b),'' after ''under section''.

Subsec. (k). Pub. L. 101–239, §7302(a), amended subsec. (k) generally, substituting ''Deduction for dividends paid on certain employer securities'' for ''Dividends paid deductions'' in heading and pars. (1) to (6) for former pars. (1) and (2) and concluding provisions.

1988—Subsec. (a)(1)(D). Pub. L. 100–647, §2005(b)(3), struck out ''(without regard to any reduction by the credit balance in the funding standard account)'' after ''under section 412(*l*)''.

Pub. L. 100–647, §2005(b)(1), substituted ''For purposes of determining whether a plan has more than 100 participants'' for ''For purposes of this subparagraph''.

Subsec. (a)(7)(A). Pub. L. 100–647, §2005(b)(2), inserted at end ''For purposes of clause (ii), if paragraph (1)(D)

applies to a defined benefit plan for any plan year, the amount necessary to satisfy the minimum funding standard provided by section 412 with respect to such plan for such plan year shall not be less than the unfunded current liability of such plan under section 412(*l*).''

Pub. L. 100–647, §1011A(e)(4)(A), in introductory provisions, substituted ''foregoing paragraphs'' for ''foregoing provisions'' and inserted ''or in connection with trusts or plans described in 2 or more of such paragraphs'' after ''defined benefit plans''.

Subsec. (a)(8)(D). Pub. L. 100–647, §1018(t)(5), made technical correction to Pub. L. 99–514, §1875(c)(7)(B), see 1986 Amendment note below.

Subsec. (h)(1)(C). Pub. L. 100–647, §1011(f)(6), inserted ''(or during the taxable year in the case of a taxable year described in subparagraph (A)(ii))'' after ''within the taxable year''.

Subsec. (h)(3). Pub. L. 100–647, §1011A(e)(4)(B), substituted ''Coordination with subsection (a)(7)'' for ''Effect on limit on deductions'' in heading and amended text generally. Prior to amendment, text read as follows: ''For any taxable year for which the employer has a deduction under paragraph (1), the otherwise applicable 25 percent limitations in subsection (a)(7) shall be reduced by the amount of the allowable deductions under paragraph (1) with respect to participants in the stock bonus or profit-sharing trust.''

Subsec. (k). Pub. L. 100–647, §1011B(h)(3)(A), inserted ''(whether or not allocated to participants)'' after ''to employer securities'' in par. (2)(C).

Pub. L. 100–647, §1011B(h)(6), substituted ''or as engaging in a prohibited transaction for purposes of section 4975(d)(3) merely by reason of any distribution or payment'' for ''merely by reason of any distribution'' in third sentence.

Pub. L. 100–647, §1018(t)(4)(A), substituted ''evasion of taxation'' for ''avoidance of taxation'' in fourth sentence.

Pub. L. 100–647, §1011B(h)(3)(B), inserted at end ''Paragraph (2)(C) shall not apply to dividends from employer securities which are allocated to any participant unless the plan provides that employer securities with a fair market value not less than the amount of such dividends are allocated to such participant for the year which (but for paragraph (2)(C)) such dividends would have been allocated to such participant.''

Subsec. (*l*). Pub. L. 100–647, §1011(d)(4), inserted at end ''In determining the compensation of an employee, the rules of section 414(q)(6) shall apply, except that in applying such rules, the term 'family' shall include only the spouse of the employee and any lineal descendants of the employee who have not attained age 19 before the close of the year.''

Pub. L. 100–647, §1011(d)(1), inserted at end ''For purposes of clause (i), (ii), or (iii) of subsection (a)(1)(A), and in computing the full funding limitation, any adjustment under the preceding sentence shall not be taken into account for any year before the year for which such adjustment first takes effect.''

1987—Subsec. (a)(1)(A)(iii). Pub. L. 100–203, §9307(d), inserted ''the unfunded costs attributable to'' after ''to amortize''.

Subsec. (a)(1)(D), (E). Pub. L. 100–203, §9307(c), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (a)(5). Pub. L. 100–203, §10201(b)(3), inserted at end ''For purposes of this section, any vacation pay which is treated as deferred compensation shall be deductible for the taxable year of the employer in which paid to the employee.''

Subsec. (b)(2)(B). Pub. L. 100–203, §10201(b)(2), substituted ''Exception'' for ''Exception for certain benefits'' in heading and amended text generally. Prior to amendment, text read as follows: ''Subparagraph (A) shall not apply to—

''(i) any benefit provided through a welfare benefit fund (as defined in section 419(e)), or

''(ii) any benefit with respect to which an election under section 463 applies.''

1986—Subsec. (a). Pub. L. 99–514, §1851(b)(2)(C)(i), substituted ''this chapter; but, if they would otherwise be deductible'' for ''section 162 (relating to trade or business expenses) or section 212 (relating to expenses for the production of income); but, if they satisfy the conditions of either of such sections''.

Subsec. (a)(2). Pub. L. 99–514, §1136(b), substituted ''(26), and (27)'' for ''and (26)''.

Pub. L. 99–514, §1112(d)(2), substituted ''(22), and (26)'' for ''and (22)''.

Subsec. (a)(3)(A). Pub. L. 99–514, §1131(a), amended subpar. (A) generally, revising and restating as cls. (i) to (v) provisions formerly contained in single paragraph.

Subsec. (a)(7). Pub. L. 99–514, §1131(b), amended par. (7) generally, revising and restating as subpars. (A) to (C) provisions formerly contained in single paragraph, and adding subpar. (D).

Subsec. (a)(8)(C). Pub. L. 99–514, §1875(c)(7)(A), inserted ''(determined without regard to the deductions allowed by this section)''.

Subsec. (a)(8)(D). Pub. L. 99–514, §1875(c)(7)(B), as amended by Pub. L. 100–647, §1018(t)(5), struck out ''(determined without regard to the deductions allowed by this section)'' after ''earned income of such individual''.

Pub. L. 99–514, §1848(c), substituted ''the deduction allowed by this section'' for ''the deductions allowed by this section and section 405(c)''.

Subsec. (b). Pub. L. 99–514, §1851(b)(2)(B)(i), substituted ''certain'' for ''unfunded'' in heading.

Subsec. (b)(2). Pub. L. 99–514, §1851(b)(2)(A), (B)(ii), substituted ''certain'' for ''unfunded'' in heading, and in subpar. (B)(ii), substituted ''any benefit'' for ''to any benefit''.

Subsec. (d). Pub. L. 99–514, §1851(b)(2)(C)(ii), substituted ''under this chapter'' for ''under section 162 or 212'' in pars. (1) and (2).

Subsec. (g)(3). Pub. L. 99–272, §11011(c)(1), amended par. (3) generally. Prior to the amendment, par. (3), coordination with subsection (a), read as follows: ''Any payment described in paragraph (1) shall (subject to the last sentence of subsection (a)(1)(A)) be deductible under this section when paid.''

Subsec. (g)(4). Pub. L. 99–272, §11011(c)(2), added par. (4).

Subsec. (h)(1)(A), (B). Pub. L. 99–514, §1108(c), amended subpars. (A) and (B) generally. Prior to amendment, subpars. (A) and (B) read as follows:

''(A) Contributions made for a calendar year are deductible for the taxable year with which or within which the calendar year ends.

''(B) Contributions made within 3½ months after the close of a calendar year are treated as if they were made on the last day of such calendar year if they are made on account of such calendar year.''

Subsec. (i). Pub. L. 99–514, §1171(b)(6), struck out subsec. (i) relating to the deductibility of unused portions of employee stock ownership credit.

Subsec. (k). Pub. L. 99–514, §1854(b)(2)(B), struck out ''during the taxable year'' after ''cash by such corporation'' in introductory provisions.

Pub. L. 99–514, §1854(b)(4), inserted ''The Secretary may disallow the deduction under this subsection for any dividend if the Secretary determines that such dividend constitutes, in substance, an avoidance of taxation.''

Pub. L. 99–514, §1854(b)(3), inserted ''A plan to which this subsection applies shall not be treated as violating the requirements of section 401, 409, or 4975(e)(7) merely by reason of any distribution described in paragraph (2).''

Pub. L. 99–514, §1854(b)(2)(A), inserted ''Any deduction under subparagraph (A) or (B) of paragraph (2) shall be allowed in the taxable year of the corporation in which the dividend is paid or distributed to the participant under paragraph (2).''

Pub. L. 99–514, §1173(a)(2), inserted ''Any deduction under paragraph (2)(C) shall be allowable in the taxable year of the corporation in which the dividend is used to repay the loan described in such paragraph.''

Subsec. (k)(2)(A), (B). Pub. L. 99–514, §1854(b)(5), inserted ''or their beneficiaries''.

Subsec. (k)(2)(C). Pub. L. 99–514, § 1173(a)(1), added subpar. (C).

Subsec. (*l*). Pub. L. 99–514, § 1106(d)(2), added subsec. (*l*).

1984—Subsec. (a)(8)(D). Pub. L. 98–369, § 713(d)(6), inserted ''(determined without regard to the deductions allowed by this section and section 405(c))''.

Subsec. (a)(9), (10). Pub. L. 98–369, § 713(d)(4)(A), struck out par. (9) relating to plans benefiting self-employed individuals and redesignated par. (10) as (9).

Subsec. (b). Pub. L. 98–369, § 512(a), amended subsec. (b) generally, inserting heading, redesignating former heading as par. (1) heading, designating existing provisions as par. (1), and in par. (1) as so designated, inserted ''(including a plan described in paragraph (2))'' after ''compensation'' and adding par. (2).

Subsec. (e). Pub. L. 98–369, § 713(d)(9), substituted ''under paragraph (1), (2), or (3) of subsection (a)'' for ''under this section''.

Subsec. (f). Pub. L. 98–369, § 713(b)(3), repealed subsec. (f) which related to certain loan repayments considered as contributions.

Subsec. (h)(4). Pub. L. 98–369, § 713(d)(5), repealed par. (4) which related to effect on self-employed individuals or shareholder-employees.

Subsec. (i). Pub. L. 98–369, § 474(r)(14), in par. (1), substituted ''If any portion of the employee stock ownership credit determined under section 41 for any taxable year has not, after the application of section 38(c), been allowed under section 38 for any taxable year, such portion shall be allowed as a deduction (without regard to any limitations provided under this section) for the last taxable year to which such portion could have been allowed as a credit under section 39'' for ''There shall be allowed as a deduction (without regard to any limitations provided under this section) for the last taxable year to which an unused employee stock ownership credit carryover (within the meaning of section 44G(b)(2)(A)) may be carried, an amount equal to the portion of such unused credit carryover which expires at the close of such taxable year'', and in par. (2), substituted references to section 41 and 41(c)(3) for references to section 44G and 44G(c)(3), respectively.

Subsec. (k). Pub. L. 98–369, § 542(a), added subsec. (k).

1982—Subsec. (a)(2). Pub. L. 97–248, § 237(e)(2), substituted ''(8), (9)'' for ''(8)'', and ''401(a)(10) and of section 401(d)'' for ''401(a)(9), (10), (17), and (18) and of section 401(d) (other than paragraph (1))''.

Subsec. (a)(3)(B). Pub. L. 97–248, § 253(b), inserted provision that ''compensation otherwise paid or accrued during the taxable year to all employees'' shall include any amount with respect to which an election under section 415(c)(3)(C) is in effect, but only to the extent that any contribution with respect to such amount is nonforfeitable.

Subsec. (e). Pub. L. 97–248, § 238(a), amended subsec. (e) generally, substituting provisions relating to contributions allocable to life insurance protection for self-employed individuals, for provisions relating to general requirements, contributions made under more than one plan, contributions allocable to insurance protection, and limitations of not lower than $750 or 100 percent of earned income with respect to special limitations for self-employed individuals.

Subsec. (j). Pub. L. 97–248, § 235(f), added subsec. (j).

1981—Subsec. (a)(10). Pub. L. 97–34, § 333(a), added par. (10).

Subsec. (e). Pub. L. 97–34, § 312(a), substituted in pars. (1) and (2)(A) ''$15,000'' for ''$7,500''.

Subsec. (i). Pub. L. 97–34, § 331(b), added subsec. (i).

1980—Subsec. (g). Pub. L. 96–364 redesignated existing provisions as par. (1), inserted applicability to part 1 of subtitle E of title IV of Employee Retirement Income Security Act of 1974, and added pars. (2) and (3).

Subsec. (h). Pub. L. 96–222 inserted ''or shareholder employees'' after ''individuals'' in heading, and in par. (4) ''or described in section 1379(b)(1)'' after ''of subsection (e)'' and ''or a shareholder-employee (as defined in section 1379(d))'' after ''section 401(c)(1)'' and substituted in pars. (2) to (4) ''paragraph (1)'' for ''subparagraph (1)''.

1978—Subsec. (a)(2). Pub. L. 95–600, § 141(f)(9), substituted ''(20), and (22)'' for ''and (20)''.

Subsec. (b). Pub. L. 95–600, § 133(b), substituted ''other plan'' for ''similar plan''.

Subsec. (d). Pub. L. 95–600, § 133(a), added subsec. (d).

Subsec. (h). Pub. L. 95–600, § 152(f), added subsec. (h).

1976—Subsecs. (a)(1)(B), (8)(C). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (a)(2). Pub. L. 94–267 substituted ''(19), and (20)'' for ''and (19)''.

Subsec. (d). Pub. L. 94–455, § 1901(a)(59), struck out subsec. (d) which related to the taxability of the beneficiary under certain forfeitable contracts purchased by exempt organizations.

Subsecs. (e)(2)(B), (3). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (e)(4). Pub. L. 94–455, § 1502(a)(2), inserted provisions following subpar. (B).

1974—Subsec. (a)(1). Pub. L. 93–406, § 1013(c)(1), expanded subpars. (A), (B), and (C) to accommodate the increased minimum funding standards required by section 412.

Subsec. (a)(2). Pub. L. 93–406, §§ 1016(a)(3), 2001(g)(2)(E), 2004(c)(1), inserted references to the requirements of section 401(a)(11), (12), (13), (14), (15), (16), (17), (18), and (19), and, if applicable, the requirements of section 401(a)(17) and (18).

Subsec. (a)(3)(A). Pub. L. 93–406, § 2004(b), inserted '', but the amount so deductible under this sentence in any one succeeding taxable year together with the amount so deductible under the first sentence of this subparagraph shall not exceed 25 percent of the compensation otherwise paid or accrued during such taxable year to the beneficiaries under the plan'' after ''If in any taxable year there is paid into the trust, or a similar trust then in effect, amounts less than the amounts deductible under the preceding sentence, the excess, or if no amount is paid, the amounts deductible, shall be carried forward and be deductible when paid in the succeeding taxable years in order of time, but the amount so deductible under this sentence in any such succeeding taxable year shall not exceed 15 percent of the compensation otherwise paid or accrued during such succeeding taxable year to the beneficiaries under the plan''.

Subsec. (a)(6). Pub. L. 93–406, § 1013(c)(2), substituted provisions covering only taxpayers operating on the accrual basis for provisions covering the time when contributions shall be deemed made.

Subsec. (a)(7). Pub. L. 93–406, § 1013(c)(3), inserted reference to the amount of contributions made to or under the trusts or plans to the extent such contributions do not exceed the amount of employer contributions necessary to satisfy the minimum funding standards provided by section 412 for the plan year which ends with or within such taxable year (or for any prior plan year) and substituted ''25 percent'' for ''30 percent'' in provision covering amounts paid into trusts or under an annuity plan in any taxable year in excess of the amount allowable with respect to such year.

Subsec. (a)(9)(B)(ii). Pub. L. 93–406, § 2001(g)(2)(F), substituted ''the second sentence of paragraph (3)'' for ''paragraph (1)(D), the second and third sentences of paragraph (3), and the second sentence of paragraph (7)''.

Subsec. (c). Pub. L. 93–406, § 2008(a), (b), substituted ''or pensions'' for ''and pensions'' in par. (1), substituted ''The first and third sentences of this subsection'' for ''This subsection'' in provisions covering amounts contributed to a trust on or after any date on which such trust is qualified for exemption from tax under section 501(a), inserted provisions setting out specified treatment to be accorded individuals who before July 1, 1974, were participants in plans described in the subsections, and inserted provision that section 277 (relating to deductions incurred by certain membership organizations in transactions with members) does not apply to any trust described in the subsection.

Subsec. (e)(1). Pub. L. 93–406, § 2001(a)(1), substituted ''subject to paragraphs (2) and (4), not exceed $7,500, or

15 percent'' for ''subject to the provisions of paragraph (2), not exceed $2,500, or 10 percent''.

Subsec. (e)(2)(A). Pub. L. 93–406, §2001(a)(2), substituted ''shall (subject to paragraph (4)) not exceed $7,500, or 15 percent'' for ''shall not exceed $2,500 or 10 percent''.

Subsec. (e)(4). Pub. L. 93–406, §2001(a)(3), added par. (4).

Subsec. (g). Pub. L. 93–406, §4081(a), added subsec. (g).

1969—Subsec. (a)(5). Pub. L. 91–172 substituted ''If the plan is not one included in paragraph (1), (2), or (3), in the taxable year in which an amount attributable to the contribution is includible in the gross income of employees participating in the plan, but, in the case of a plan in which more than one employee participates only if separate accounts are maintained for each employee'' for ''In the taxable year when paid, if the plan is not one included in paragraph (1), (2), or (3), if the employees' rights to or derived from such employer's contribution or such compensation are nonforfeitable at the time the contribution or compensation is paid''.

1966—Subsec. (a). Pub. L. 89–809, §204(a), repealed par. (10) which provided for a special limitation on the amount allowed as a deduction for self-employed individuals.

Subsec. (e). Pub. L. 89–809, §204(b)(2), (3), struck out references to par. (10) of subsec. (a) wherever appearing.

1962—Subsec. (a)(2). Pub. L. 87–863 inserted '', or retirement annuities and medical benefits as described in section 401(h),'' after ''purchase of retirement annuities'', and '', or such retirement annuities and medical benefits'' after ''such retirement annuities.''

Pub. L. 87–792, §3(a)(1), substituted ''(5), (6), (7), and (8), and, if applicable, the requirements of section 401(a)(9) and (10) and of section 401(d) (other than paragraph (1)),'' for ''(5), and (6),''.

Subsecs. (a)(8) to (10). Pub. L. 87–792, §3(a)(2), added pars. (8) to (10).

Subsecs. (e), (f). Pub. L. 87–792, §3(b), added subsecs. (e) and (f).

1958—Subsec. (a). Pub. L. 85–866 substituted ''income); but, if'' for ''income) but if'' preceding par. (1).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

Amendment by Pub. L. 110–245 applicable with respect to deaths and disabilities occurring on or after Jan. 1, 2007, see section 104(d)(1) of Pub. L. 110–245, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, §801(e), Aug. 17, 2006, 120 Stat. 995, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 404A of this title] shall apply to years beginning after December 31, 2007.

''(2) SPECIAL RULES.—The amendments made by subsection (d) [amending this section] shall apply to years beginning after December 31, 2005.''

Pub. L. 109–280, title VIII, §802(b), Aug. 17, 2006, 120 Stat. 996, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to years beginning after December 31, 2007.''

Pub. L. 109–280, title VIII, §803(d), Aug. 17, 2006, 120 Stat. 996, provided that: ''The amendments made by this section [amending this section and section 4972 of this title] shall apply to contributions for taxable years beginning after December 31, 2005.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–218, title I, §101(d), Apr. 10, 2004, 118 Stat. 599, provided that:

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section, sections 412 and 415 of this title, and sections 1082 and 1306 of Title 29, Labor] shall apply to plan years beginning after December 31, 2003.

''(2) LOOKBACK RULES.—For purposes of applying subsections (d)(9)(B)(ii) and (e)(1) of section 302 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082(d)(9)(B)(ii), (e)(1)] and subsections (*l*)(9)(B)(ii) and (m)(1) of [former] section 412 of the Internal Revenue Code of 1986 to plan years beginning after December 31, 2003, the amendments made by this section may be applied as if such amendments had been in effect for all prior plan years. The Secretary of the Treasury may prescribe simplified assumptions which may be used in applying the amendments made by this section to such prior plan years.

''(3) TRANSITION RULE FOR SECTION 415 LIMITATION.—In the case of any participant or beneficiary receiving a distribution after December 31, 2003[,] and before January 1, 2005, the amount payable under any form of benefit subject to section 417(e)(3) of the Internal Revenue Code of 1986 and subject to adjustment under section 415(b)(2)(B) of such Code shall not, solely by reason of the amendment made by subsection (b)(4) [amending section 415 of this title], be less than the amount that would have been so payable had the amount payable been determined using the applicable interest rate in effect as of the last day of the last plan year beginning before January 1, 2004.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 611(c)(1) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 611(i)(1) of Pub. L. 107–16, set out as a note under section 415 of this title.

Pub. L. 107–16, title VI, §614(b), June 7, 2001, 115 Stat. 102, provided that: ''The amendment made by this section [amending this section] shall apply to years beginning after December 31, 2001.''

Pub. L. 107–16, title VI, §616(c), June 7, 2001, 115 Stat. 103, provided that: ''The amendments made by this section [amending this section and section 4972 of this title] shall apply to years beginning after December 31, 2001.''

Amendment by section 632(a)(3)(B) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 632(a)(4) of Pub. L. 107–16, set out as a note under section 72 of this title.

Pub. L. 107–16, title VI, §652(c), June 7, 2001, 115 Stat. 130, provided that: ''The amendments made by this section [amending this section and section 4972 of this title] shall apply to plan years beginning after December 31, 2001.''

Pub. L. 107–16, title VI, §662(c), June 7, 2001, 115 Stat. 142, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2001.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6015(d) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

Pub. L. 105–206, title VII, §7001(b), July 22, 1998, 112 Stat. 827, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [July 22, 1998].

''(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer required by the amendment made by sub-

section (a) [amending this section] to change its method of accounting for its first taxable year ending after the date of the enactment of this Act [July 22, 1998]—

''(A) such change shall be treated as initiated by the taxpayer,

''(B) such change shall be treated as made with the consent of the Secretary of the Treasury; and

''(C) the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 shall be taken into account ratably over the 3-taxable year period beginning with such first taxable year.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1530(c)(2) of Pub. L. 105–34 applicable to transfers made by trusts to, or for the use of, an employee stock ownership plan after Aug. 5, 1997, see section 1530(d) of Pub. L. 105–34, set out as a note under section 401 of this title.

Amendment by section 1601(d)(2)(C) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 36C of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1316(d)(1), (2) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1997, see section 1316(f) of Pub. L. 104–188, set out as a note under section 170 of this title.

Amendment by section 1421(b)(2) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104–188, set out as a note under section 72 of this title.

Amendment by section 1431(b)(3) of Pub. L. 104–188 applicable to years beginning after Dec. 31, 1996, see section 1431(d)(2) of Pub. L. 104–188, set out as a note under section 414 of this title.

Section 1461(c) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section and section 1414 of this title] shall apply to years beginning after December 31, 1996.''

Section 1704(q)(2) of Pub. L. 104–188 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 713(d)(4)(A) of the Deficit Reduction Act of 1984 [Pub. L. 98–369].''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable, except as otherwise provided, to benefits accruing in plan years beginning after Dec. 31, 1993, see section 13212(d) of Pub. L. 103–66, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable, except as otherwise provided, to distributions after Dec. 31, 1992, see section 522(d) of Pub. L. 102–318, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

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

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7302(b) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to employer securities acquired after August 4, 1989.

''(2) SECURITIES ACQUIRED WITH CERTAIN LOANS.—The amendment made by this section shall not apply to employer securities acquired after August 4, 1989, which are acquired—

''(A) with the proceeds of any loan which was made pursuant to a binding written commitment in effect on August 4, 1989, and at all times thereafter before such loan is made, and

''(B) pursuant to a written binding contract (or tender offer registered with the Securities and Exchange Commission) in effect on August 4, 1989, and at all times thereafter before such securities are acquired.''

Section 7841(b)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to payments made after January 1, 1986, in taxable years ending after such date.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1011(d)(1), (4), (f)(6), 1011A(e)(4), 1011B(h)(3), (6), and 1018(t)(4)(A), (5) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 2005(e) of Pub. L. 100–647, as amended by Pub. L. 101–239, title VII, § 7812(d), Dec. 19, 1989, 103 Stat. 2412, provided that: ''The amendments made by this section [amending this section and sections 412, 414, and 4972 of this title and section 1082 of Title 29, Labor] shall take effect as if included in the amendments made by the provisions of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203] to which it relates, except that the amendment made by subsection (a)(1) [amending section 4972 of this title] shall take effect as if included in the amendment made by section 1131(c) of the Tax Reform Act of 1986 [Pub. L. 99–514].''

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title IX, § 9307(f), Dec. 22, 1987, 101 Stat. 1330–359, as amended by Pub. L. 101–239, title VII, § 7881(d)(3), Dec. 19, 1989, 103 Stat. 2439, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 412 of this title and section 1082 of Title 29, Labor] shall apply to years beginning after December 31, 1987.

''(2) AMORTIZATION OF GAINS AND LOSSES.—Sections 412(b)(2)(B)(iv) and 412(b)(3)(B)(ii) of the Internal Revenue Code of 1986 and sections 302(b)(2)(B)(iv) and 302(b)(3)(B)(ii) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082(b)(2)(B)(iv), (3)(B)(ii)] (as amended by paragraphs (1)(A) and (2)(A) of subsection (a)) shall apply to gains and losses established in years beginning after December 31, 1987. For purposes of the preceding sentence, any gain or loss determined by a valuation occurring as of January 1, 1988, shall be treated as established in years beginning before 1988, or at the election of the employer, shall be amortized in accordance with Internal Revenue Service Notice 89–52.''

Section 10201(c)(1) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and sections 419 and 461 of this title, and repealing sections 81 and 463 of this title] shall apply to taxable years beginning after December 31, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1106(d)(2) of Pub. L. 99–514 applicable to benefits accruing in years beginning after Dec. 31, 1988, except as otherwise provided, see section 1106(i)(5) of Pub. L. 99–514, set out as a note under section 415 of this title.

Amendment by section 1108(c) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1108(h) of Pub. L. 99–514, set out as a note under section 219 of this title.

Amendment by section 1112(d)(2) of Pub. L. 99–514 applicable to plan years beginning after Dec. 31, 1988, with special rule regarding collective bargaining agreements ratified before Mar. 1, 1986, and with provision for waiv-

er of excise tax on reversions, see section 1112(e) of Pub. L. 99–514, set out as a note under section 401 of this title.

Section 1131(d) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1011A(e)(3), Nov. 10, 1988, 102 Stat. 3478, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 4972 of this title and amending this section] shall apply to taxable years beginning after December 31, 1986.

''(2) SPECIAL RULES FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to contributions pursuant to any such agreement for taxable years beginning before the earlier of—

''(A) January 1, 1989, or

''(B) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986).''

Amendment by section 1171(b)(6) of Pub. L. 99–514 applicable to compensation paid or accrued after Dec. 31, 1986, in taxable years ending after such date, but this section 404(i) of this title to continue to apply with respect to credits under section 41 of this title attributable to compensation paid or accrued before Jan. 1, 1987 (or under section 38 of this title with respect to qualified investment before Jan. 1, 1983), see section 1171(c) of Pub. L. 99–514, set out as a note under section 38 of this title.

Section 1173(c)(1) of Pub. L. 99–514 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to dividends paid in taxable years beginning after the date of the enactment of this Act [Oct. 22, 1986].''

Amendment by sections 1848(c), 1851(b)(2)(A)–(C)(ii), and 1854(b)(3)–(5) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Amendment by section 1854(b)(2) of Pub. L. 99–514 not applicable to dividends paid before Jan. 1, 1986, if the taxpayer treated such dividends in a manner inconsistent with such amendment on a return filed with the Secretary before Oct. 22, 1986, see section 1854(b)(6) of Pub. L. 99–514, set out as a note under section 72 of this title.

Section 1875(c)(7)(B) of Pub. L. 99–514 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1984.

Section 11011(c)(3) of Pub. L. 99–272 provided that: ''The amendments made by this subsection [amending this section] shall apply to payments made after January 1, 1986, in taxable years ending after such date.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(14) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Section 512(c) of Pub. L. 98–369 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 162 of this title] shall apply to amounts paid or incurred after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

''(2) EXCEPTION FOR CERTAIN EXTENDED VACATION PAY PLANS.—In the case of any extended vacation pay plan maintained pursuant to a collective bargaining agreement—

''(A) between employee representatives and 1 or more employers, and

''(B) in effect on June 22, 1984,

the amendments made by this section shall not apply before the date on which such collective bargaining agreement terminates (determined without regard to any extension thereof agreed to after June 22, 1984). For purposes of the preceding sentence, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.''

Section 542(d) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and sections 116 and 3405 of this title] shall apply to taxable years beginning after the date of enactment of this Act [July 18, 1984].''

Amendment by section 713 of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 253(c) of Pub. L. 97–248 provided that: ''The amendments made by this section [amending this section and section 415 of this title] shall apply to taxable years beginning after December 31, 1981.''

Amendment by section 235(f) of Pub. L. 97–248, in the case of any plan which is not in existence on July 1, 1982, applicable to years ending after July 1, 1982, and in the case of any plan which is in existence on July 1, 1982, applicable to years beginning after Dec. 31, 1982, see section 235(g)(1) of Pub. L. 97–248, set out as a note under section 415 of this title.

Amendment by sections 237 and 238 of Pub. L. 97–248 applicable to years beginning after Dec. 31, 1983, see section 241 of Pub. L. 97–248, set out as an Effective Date note under section 416 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 312(a) of Pub. L. 97–34 applicable to plans which include employees within the meaning of section 401(c)(1) of this title with respect to taxable years beginning after Dec. 31, 1981, see section 312(f)(1) of Pub. L. 97–34, set out as a note under section 72 of this title.

Section 331(f)(2) of Pub. L. 97–34 provided that: ''The amendments made by subsections (b) and (c) [amending this section and sections 56, 409A, and 6699 of this title] shall apply to taxable years ending after December 31, 1982.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–364 effective Sept. 26, 1980, see section 210(a) of Pub. L. 96–364, set out as an Effective Date note under section 418 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 133(c) of Pub. L. 95–600, as amended by Pub. L. 96–222, title I, §101(a)(5), Apr. 1, 1980, 94 Stat. 196; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to deductions for taxable years beginning after December 31, 1978.

''(2) SPECIAL RULE FOR CERTAIN TITLE INSURANCE COMPANIES.—

''(A) IN GENERAL.—In the case of a qualified title insurance company plan, the amendment made by subsection (a) [amending this section] shall apply to deductions for taxable years beginning after December 31, 1979.

''(B) QUALIFIED TITLE INSURANCE COMPANY PLAN.—For purposes of subparagraph (A), the term 'qualified title insurance company plan' means a plan of a qualified title insurance company—

''(i) which defers the payment of amounts credited by such company to separate accounts for members of such company in consideration of their issuance of policies of title insurance, and

''(ii) under which no part of such amounts is payable to or withdrawable by the members until after the period for the adverse possession of real property under applicable State law.

''(C) QUALIFIED TITLE INSURANCE COMPANY.—For purposes of subparagraph (B), the term 'qualified title insurance company' means an unincorporated title insurance company organized as a business trust—

''(i) which is engaged in the business of providing title insurance coverage on interests in and liens upon real property obtained by clients of the members of such company, and

''(ii) which is subject to tax under section 831 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].''

Amendment by section 141(f)(9) of Pub. L. 95–600 effective with respect to qualified investment for taxable years beginning after Dec. 31, 1978, see section 141(g)(1) of Pub. L. 95–600, set out as an Effective Date note under section 409 of this title.

Amendment by section 152(f) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 152(h) of Pub. L. 95–600, set out as a note under section 408 of this title.

EFFECTIVE DATE OF 1976 AMENDMENTS

Amendment by section 1502(a)(2) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1975, see section 1502(b) of Pub. L. 94–455, set out as a note under section 415 of this title.

Amendment by section 1901(a)(59) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by Pub. L. 94–267 applicable with respect to payments made to an employee on or after July 4, 1974, see section 1(e) of Pub. L. 94–267, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by sections 1013(c) and 1016(a)(3) of Pub. L. 93–406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by sections 1013(c) and 1016(a)(3) of Pub. L. 93–406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

Section 2001(i)(1) of Pub. L. 93–406 provided that: ''The amendments made by subsections (a) [amending this section] and (b) [amending section 1379 of this title] apply to taxable years beginning after December 31, 1973.''

Amendment by section 2001(g)(2)(E), (F) of Pub. L. 93–406 applicable to distributions made in taxable years beginning after Dec. 31, 1975, see section 2001(i)(5) of Pub. L. 93–406, set out as a note under section 72 of this title.

Section 2008(c) of Pub. L. 93–406 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years ending on or after June 30, 1972.''

Amendment by section 2004(b), (c)(1) of Pub. L. 93–406 applicable to years beginning after Dec. 31, 1975, see section 2004(d) of Pub. L. 93–406, set out as an Effective Date; Transition Provisions note under section 415 of this title.

Amendment by section 4081(a) of Pub. L. 93–406 effective on Sept. 2, 1974, with exceptions specified in section 1461(b), (c) of Title 29, Labor, see section 1461(a) of Title 29.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to contributions made and premiums paid after Aug. 1, 1969, see section 321(d) of Pub. L. 91–172, set out as an Effective Date note under section 83 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1967, see section 204(d) of Pub. L. 89–809, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Amendment by Pub. L. 87–863 applicable to taxable years beginning after Oct. 23, 1962, see section 2(c) of Pub. L. 87–863, set out as a note under section 401 of this title.

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1112 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

CLARIFICATION OF TREATMENT OF CONTRIBUTIONS TO MULTIEMPLOYER PLAN

Pub. L. 107–16, title VI, § 658, June 7, 2001, 115 Stat. 137, provided that:

''(a) NOT CONSIDERED METHOD OF ACCOUNTING.—For purposes of section 446 of the Internal Revenue Code of 1986, a determination under section 404(a)(6) of such Code regarding the taxable year with respect to which a contribution to a multiemployer pension plan is deemed made shall not be treated as a method of accounting of the taxpayer. No deduction shall be allowed for any taxable year for any contribution to a multiemployer pension plan with respect to which a deduction was previously allowed.

''(b) REGULATIONS.—The Secretary of the Treasury shall promulgate such regulations as necessary to clarify that a taxpayer shall not be allowed an aggregate amount of deductions for contributions to a multiemployer pension plan which exceeds the amount of such contributions made or deemed made under section 404(a)(6) of the Internal Revenue Code of 1986 to such plan.

''(c) EFFECTIVE DATE.—Subsection (a), and any regulations promulgated under subsection (b), shall be effective for years ending after the date of the enactment of this Act [June 7, 2001].''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

COORDINATION OF REPEALS OF CERTAIN SECTIONS

Section 713(d)(8) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Sections 404(e) and 1379(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect on the day before the date of the enactment of the Tax Equity and Fiscal Responsibility Act of 1982 [Sept. 3, 1982]) shall not apply to any plan to which section 401(j) of such Code applies (or would apply but for its repeal).''

DEDUCTIBILITY OF PAYMENTS TO PLAN BY CORPORATION OPERATING PUBLIC TRANSPORTATION SYSTEM ACQUIRED BY STATE

Section 408 of Pub. L. 96–364, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) For purposes of subsection (g) of section 404 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to certain employer liability payments considered as contributions), as amended by section 205 of this Act, any payment made to a plan covering employees of a corporation operating a public transportation system shall be treated as a payment described in paragraph (1) of such subsection if—

''(1) such payment is made to fund accrued benefits under the plan in conjunction with an acquisition by a State (or agency or instrumentality thereof) of the stock or assets of such corporation, and

''(2) such acquisition is pursuant to a State public transportation law enacted after June 30, 1979, and before January 1, 1980.

''(b) The provisions of this section shall apply to payments made after June 29, 1980.''

YEAR OF DEDUCTION FOR CERTAIN EMPLOYER CONTRIBUTIONS FOR SEVERANCE PAYMENTS REQUIRED BY FOREIGN LAW

Section 1022(j) of Pub. L. 93–406, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Effective for taxable years beginning after December 31, 1973, if—

''(1) an employer is engaged in a trade or business in a foreign country,

''(2) such employer is required by the laws of that country to make payments, based on periods of service, to its employees or their beneficiaries after the employees' retirement, death, or other separation from the service, and

''(3) such employer establishes a trust (whether organized within or outside the United States) for the purpose of funding the payments required by such law,

then, in determining for purposes of paragraph (5) of section 404(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] the taxable year in which any contribution to or under the plan is includible in the gross income of the nonresident alien employees of such employer, such paragraph (5) shall be treated as not requiring that separate accounts be maintained for such nonresident alien employees.''

§ 404A. Deduction for certain foreign deferred compensation plans

(a) General rule

Amounts paid or accrued by an employer under a qualified foreign plan—

(1) shall not be allowable as a deduction under this chapter, but

(2) if they would otherwise be deductible, shall be allowed as a deduction under this section for the taxable year for which such amounts are properly taken into account under this section.

(b) Rules for qualified funded plans

For purposes of this section—

(1) In general

Except as otherwise provided in this section, in the case of a qualified funded plan contributions are properly taken into account for the taxable year in which paid.

(2) Payment after close of taxable year

For purposes of paragraph (1), a payment made after the close of a taxable year shall be treated as made on the last day of such year if the payment is made—

(A) on account of such year, and

(B) not later than the time prescribed by law for filing the return for such year (including extensions thereof).

(3) Limitations

In the case of a qualified funded plan, the amount allowable as a deduction for the taxable year shall be subject to—

(A) in the case of—

(i) a plan under which the benefits are fixed or determinable, limitations similar to those contained in clauses (ii) and (iii) of subparagraph (A) of section 404(a)(1) (determined without regard to the last sentence of such subparagraph (A)), or

(ii) any other plan, limitations similar to the limitations contained in paragraph (3) of section 404(a), and

(B) limitations similar to those contained in paragraph (7) of section 404(a).

(4) Carryover

If—

(A) the aggregate of the contributions paid during the taxable year reduced by any contributions not allowable as a deduction under paragraphs (1) and (2) of subsection (g), exceeds

(B) the amount allowable as a deduction under subsection (a) (determined without regard to subsection (d)),

such excess shall be treated as an amount paid in the succeeding taxable year.

(5) Amounts must be paid to qualified trust, etc.

In the case of a qualified funded plan, a contribution shall be taken into account only if it is paid—

(A) to a trust (or the equivalent of a trust) which meets the requirements of section 401(a)(2),

(B) for a retirement annuity, or
(C) to a participant or beneficiary.

(c) Rules relating to qualified reserve plans

For purposes of this section—

(1) In general

In the case of a qualified reserve plan, the amount properly taken into account for the taxable year is the reasonable addition for such year to a reserve for the taxpayer's liability under the plan. Unless otherwise required or permitted in regulations prescribed by the Secretary, the reserve for the taxpayer's liability shall be determined under the unit credit method modified to reflect the requirements of paragraphs (3) and (4). All benefits paid under the plan shall be charged to the reserve.

(2) Income item

In the case of a plan which is or has been a qualified reserve plan, an amount equal to that portion of any decrease for the taxable year in the reserve which is not attributable to the payment of benefits shall be included in gross income.

(3) Rights must be nonforfeitable, etc.

In the case of a qualified reserve plan, an item shall be taken into account for a taxable year only if—

(A) there is no substantial risk that the rights of the employee will be forfeited, and

(B) such item meets such additional requirements as the Secretary may by regulations prescribe as necessary or appropriate to ensure that the liability will be satisfied.

(4) Spreading of certain increases and decreases in reserves

There shall be amortized over a 10-year period any increase or decrease to the reserve on account of—

(A) the adoption of the plan or a plan amendment,

(B) experience gains and losses, and [1]

(C) any change in actuarial assumptions,

(D) changes in the interest rate under subsection (g)(3)(B), and

(E) such other factors as may be prescribed by regulations.

(d) Amounts taken into account must be consistent with amounts allowed under foreign law

(1) General rule

In the case of any plan, the amount allowed as a deduction under subsection (a) for any taxable year shall equal—

(A) the lesser of—

(i) the cumulative United States amount, or

(ii) the cumulative foreign amount, reduced by

(B) the aggregate amount determined under this section for all prior taxable years.

(2) Cumulative amounts defined

For purposes of paragraph (1)—

(A) Cumulative United States amount

The term ''cumulative United States amount'' means the aggregate amount determined with respect to the plan under this section for the taxable year and for all prior taxable years to which this section applies. Such determination shall be made for each taxable year without regard to the application of paragraph (1).

(B) Cumulative foreign amount

The term ''cumulative foreign amount'' means the aggregate amount allowed as a deduction under the appropriate foreign tax laws for the taxable year and all prior taxable years to which this section applies.

(3) Effect on earnings and profits, etc.

In determining the earnings and profits and accumulated profits of any foreign corporation with respect to a qualified foreign plan, except as provided in regulations, the amount determined under paragraph (1) with respect to any plan for any taxable year shall in no event exceed the amount allowed as a deduction under the appropriate foreign tax laws for such taxable year.

(e) Qualified foreign plan

For purposes of this section, the term ''qualified foreign plan'' means any written plan of an employer for deferring the receipt of compensation but only if—

(1) such plan is for the exclusive benefit of the employer's employees or their beneficiaries,

(2) 90 percent or more of the amounts taken into account for the taxable year under the plan are attributable to services—

(A) performed by nonresident aliens, and

(B) the compensation for which is not subject to tax under this chapter, and

(3) the employer elects (at such time and in such manner as the Secretary shall by regulations prescribe) to have this section apply to such plan.

(f) Funded and reserve plans

For purposes of this section—

(1) Qualified funded plan

The term ''qualified funded plan'' means a qualified foreign plan which is not a qualified reserve plan.

(2) Qualified reserve plan

The term ''qualified reserve plan'' means a qualified foreign plan with respect to which an election made by the taxpayer is in effect for the taxable year. An election under the preceding sentence shall be made in such manner and form as the Secretary may by regulations prescribe and, once made, may be revoked only with the consent of the Secretary.

(g) Other special rules

(1) No deduction for certain amounts

Except as provided in section 404(a)(5), no deduction shall be allowed under this section for any item to the extent such item is attributable to services—

(A) performed by a citizen or resident of the United States who is a highly compensated employee (within the meaning of section 414(q)), or

(B) performed in the United States the compensation for which is subject to tax under this chapter.

[1] So in original. The word ''and'' probably should not appear.

(2) Taxpayer must furnish information

(A) In general

No deduction shall be allowed under this section with respect to any plan for any taxable year unless the taxpayer furnishes to the Secretary with respect to such plan (at such time as the Secretary may by regulations prescribe)—

(i) a statement from the foreign tax authorities specifying the amount of the deduction allowed in computing taxable income under foreign law for such year with respect to such plan,

(ii) if the return under foreign tax law shows the deduction for plan contributions or reserves as a separate, identifiable item, a copy of the foreign tax return for the taxable year, or

(iii) such other statement, return, or other evidence as the Secretary prescribes by regulation as being sufficient to establish the amount of the deduction under foreign law.

(B) Redetermination where foreign tax deduction is adjusted

If the deduction under foreign tax law is adjusted, the taxpayer shall notify the Secretary of such adjustment on or before the date prescribed by regulations, and the Secretary shall redetermine the amount of the tax for the year or years affected. In any case described in the preceding sentence, rules similar to the rules of subsection (c) of section 905 shall apply.

(3) Actuarial assumptions must be reasonable; full funding

(A) In general

Except as provided in subparagraph (B), principles similar to those set forth in paragraphs (3) and (6) of section 431(c) shall apply for purposes of this section.

(B) Interest rate for reserve plan

(i) In general

In the case of a qualified reserve plan, in lieu of taking rates of interest into account under subparagraph (A), the rate of interest for the plan shall be the rate selected by the taxpayer which is within the permissible range.

(ii) Rate remains in effect so long as it falls within permissible range

Any rate selected by the taxpayer for the plan under this subparagraph shall remain in effect for such plan until the first taxable year for which such rate is no longer within the permissible range. At such time, the taxpayer shall select a new rate of interest which is within the permissible range applicable at such time.

(iii) Permissible range

For purposes of this subparagraph, the term ''permissible range'' means a rate of interest which is not more than 20 percent above, and not more than 20 percent below, the average rate of interest for long-term corporate bonds in the appropriate country for the 15-year period ending on the last day before the beginning of the taxable year.

(4) Accounting method

Any change in the method (but not the actuarial assumptions) used to determine the amount allowed as a deduction under subsection (a) shall be treated as a change in accounting method under section 446(e).

(5) Section 481 applies to election

For purposes of section 481, any election under this section shall be treated as a change in the taxpayer's method of accounting. In applying section 481 with respect to any such election, the period for taking into account any increase or decrease in accumulated profits, earnings and profits or taxable income resulting from the application of section 481(a)(2) shall be the year for which the election is made and the fourteen succeeding years.

(h) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section (including regulations providing for the coordination of the provisions of this section with section 404 in the case of a plan which has been subject to both of such sections).

(Added Pub. L. 96–603, §2(a), Dec. 28, 1980, 94 Stat. 3505; amended Pub. L. 99–514, title XI, §1114(b)(8), title XVIII, §1851(b)(2)(C)(iii), Oct. 22, 1986, 100 Stat. 2451, 2863; Pub. L. 100–647, title I, §1012(b)(4), Nov. 10, 1988, 102 Stat. 3496; Pub. L. 109–280, title VIII, §801(c)(4), Aug. 17, 2006, 120 Stat. 995.)

AMENDMENTS

2006—Subsec. (g)(3)(A). Pub. L. 109–280 substituted ''paragraphs (3) and (6) of section 431(c)'' for ''paragraphs (3) and (7) of section 412(c)''.

1988—Subsec. (d)(3). Pub. L. 100–647 inserted ''except as provided in regulations,'' after ''qualified foreign plan,''.

1986—Subsec. (a). Pub. L. 99–514, §1851(b)(2)(C)(iii), substituted ''under this chapter'' for ''under section 162, 212, or 404'' in par. (1) and ''they would otherwise be deductible'' for ''they satisfy the conditions of section 162'' in par. (2).

Subsec. (g)(1)(A). Pub. L. 99–514, §1114(b)(8), substituted ''a highly compensated employee (within the meaning of section 414(q))'' for ''an officer, shareholder, or highly compensated''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to years beginning after Dec. 31, 2007, see section 801(e)(1) of Pub. L. 109–280, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1114(b)(8) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1988, see section 1114(c)(3) of Pub. L. 99–514, set out as a note under section 414 of this title.

Amendment by section 1851(b)(2)(C)(iii) of Pub. L. 99–514 effective, except as otherwise provided, as if in-

cluded in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section 2(e) of Pub. L. 96–603, as amended by Pub. L. 97–448, title III, § 305(a), Jan. 12, 1983, 96 Stat. 2399; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section and section 6689 of this title and amending sections 679 and 905 of this title] shall apply with respect to employer contributions or accruals for taxable years beginning after December 31, 1979.

''(2) ELECTION TO APPLY AMENDMENTS RETROACTIVELY WITH RESPECT TO FOREIGN SUBSIDIARIES.—

''(A) IN GENERAL.—The taxpayer may elect to have the amendments made by this section [enacting this section and section 6689 of this title and amending sections 679 and 905 of this title] apply retroactively with respect to its foreign subsidiaries.

''(B) SCOPE OF RETROACTIVE APPLICATION.—Any election made under this paragraph shall apply with respect to all foreign subsidiaries of the taxpayer for the taxpayer's open period.

''(C) DISTRIBUTIONS BY FOREIGN SUBSIDIARY MUST BE OUT OF POST-1971 EARNINGS AND PROFITS.—The election under this paragraph shall apply to distributions made by a foreign subsidiary only if made out of accumulated profits (or earnings and profits) earned after December 31, 1970.

''(D) REVOCATION ONLY WITH CONSENT.—An election under this paragraph may be revoked only with the consent of the Secretary of the Treasury or his delegate.

''(E) OPEN PERIOD.—For purposes of this subsection, the term 'open period' means, with respect to any taxpayer, all taxable years which begin before January 1, 1980, and which begin after December 31, 1971, and for which, on December 31, 1980, the making of a refund, or the assessment of a deficiency, was not barred by any law or rule of law.

''(3) ALLOWANCE OF PRIOR DEDUCTIONS IN CASE OF CERTAIN FUNDED BRANCH PLANS.—

''(A) IN GENERAL.—If—

''(i) the taxpayer elects to have this paragraph apply, and

''(ii) the taxpayer agrees to the assessment of all deficiencies (including interest thereon) arising from all erroneous deductions,

then an amount equal to 1/15th of the aggregate of the prior deductions which would have been allowable if the amendments made by this section [enacting this section and section 6689 of this title and amending sections 679 and 905 of this title] applied to taxable years beginning before January 1, 1980, shall be allowed as a deduction for the taxpayer's first taxable year beginning in 1980, and an equal amount shall be allowed for each of the succeeding 14 taxable years.

''(B) PRIOR DEDUCTION.—For purposes of subparagraph (A), the term 'prior deduction' means a deduction with respect to a qualified funded plan (within the meaning of section 404A(f)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) of the taxpayer—

''(i) which the taxpayer claimed for a taxable year (or could have claimed if the amendments made by this section [enacting this section and section 6689 of this title and amending sections 679 and 905 of this title] applied to taxable years beginning before January 1, 1980) beginning before January 1, 1980,

''(ii) which was not allowable, and

''(iii) with respect to which, on December 1, 1980, the assessment of a deficiency was not barred by any law or rule of law.

''(4) TIME AND MANNER FOR MAKING ELECTIONS.—

''(A) TIME.—An election under paragraph (2) or (3) may be made only on or before the due date (including extensions) for filing the taxpayer's return of tax under chapter 1 of the Internal Revenue Code of 1986 [section 1 et seq. of this title] for its first taxable year ending on or after December 31, 1980.

''(B) MANNER.—An election under paragraph (2) may be made only by a statement attached to the taxpayer's return for its first taxable year ending on or after December 31, 1980. An election under paragraph (3) may be made only if the taxpayer, on or before the last day for making the election, files with the Secretary of the Treasury or his delegate such amended return and such other information as the Secretary of the Treasury or his delegate may require, and agrees to the assessment of a deficiency for any closed year falling within the open period, to the extent such deficiency is attributable to the operation of such election.''

[Pub. L. 97–448, title III, § 311(c)(1), Jan. 12, 1983, 96 Stat. 2411, provided that: ''The amendment made by subsection (a) of section 305 [amending par. (2)(E) of this note] shall take effect on December 28, 1980.'']

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[§ 405. Repealed. Pub. L. 98–369, div. A, title IV, § 491(a), July 18, 1984, 98 Stat. 848]

Section, added Pub. L. 87–792, § 5(a), Oct. 10, 1962, 76 Stat. 826; amended Pub. L. 89–97, title I, § 106(d)(5), July 30, 1965, 79 Stat. 337; Pub. L. 91–172, title V, § 515(c)(1), Dec. 30, 1969, 83 Stat. 645; Pub. L. 93–406, title II, §§ 2004(c)(2), 2005(c)(11), Sept. 2, 1974, 88 Stat. 986, 992; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–34, title III, § 313(a), (b)(1), Aug. 13, 1981, 95 Stat. 285, 286; Pub. L. 97–452, § 2(c)(1), Jan. 12, 1983, 96 Stat. 2478; Pub. L. 98–369, div. A, title I, § 42(a)(6), July 18, 1984, 98 Stat. 557, related to qualified bond purchase plans.

EFFECTIVE DATE OF REPEAL

Repeal applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 62 of this title.

ROLLOVER OF EXISTING BONDS INTO QUALIFIED EMPLOYER PLANS

Pub. L. 98–369, div. A, title IV, § 491(c)(1), (f)(2), July 18, 1984, 98 Stat. 848, 853, provided that, applicable to redemptions after July 18, 1984, in taxable years ending after such date, subsec. (d)(3)(A) of this section, as in effect before its repeal, is amended to read as follows:

''(A) IN GENERAL.—If—

''(i) any qualified bond is redeemed,

''(ii) any portion of the excess of the proceeds from such redemption over the basis of such bond is transferred to an individual retirement plan which is maintained for the benefit of the individual redeeming such bond, or to a qualified trust (as defined in section 402(a)(5)(D)(iii)) for the benefit of such individual, and

''(iii) such transfer is made on or before the 60th day after the individual received the proceeds of such redemption,

then gross income shall not include the proceeds to the extent so transferred and the transfer shall be treated

as a rollover contribution described in section 408(d)(3).''

BONDS UNDER QUALIFIED BOND PURCHASE PLANS REDEEMABLE AT ANY TIME AFTER JULY 18, 1984

Section 491(f)(4) of Pub. L. 98–369 provided that: ''Notwithstanding—

''(A) subparagraph (D) of section 405(b)(1) of the Internal Revenue Code of 1954 (as in effect before its repeal by this section) [see above], and

''(B) the terms of any bond described in subsection (b) of such section 405,

such a bond may be redeemed at any time after the date of the enactment of this Act [July 18, 1984] in the same manner as if the individual redeeming the bond had attained age 59½.''

§ 406. Employees of foreign affiliates covered by section 3121(*l*) agreements

(a) Treatment as employees of American employer

For purposes of applying this part with respect to a pension, profit-sharing, or stock bonus plan described in section 401(a) or an annuity plan described in section 403(a), of an American employer (as defined in section 3121(h)), an individual who is a citizen or resident of the United States and who is an employee of a foreign affiliate (as defined in section 3121(*l*)(6)) of such American employer shall be treated as an employee of such American employer, if—

(1) such American employer has entered into an agreement under section 3121(*l*) which applies to the foreign affiliate of which such individual is an employee;

(2) the plan of such American employer expressly provides for contributions or benefits for individuals who are citizens or residents of the United States and who are employees of its foreign affiliates to which an agreement entered into by such American employer under section 3121(*l*) applies; and

(3) contributions under a funded plan of deferred compensation (whether or not a plan described in section 401(a) or 403(a)) are not provided by any other person with respect to the remuneration paid to such individual by the foreign affiliate.

(b) Special rules for application of section 401(a)

(1) Nondiscrimination requirements

For purposes of applying section 401(a)(4) and section 410(b) with respect to an individual who is treated as an employee of an American employer under subsection (a)—

(A) if such individual is a highly compensated employee (within the meaning of section 414(q)), he shall be treated as having such capacity with respect to such American employer; and

(B) the determination of whether such individual is a highly compensated employee (as so defined) shall be made by treating such individual's total compensation (determined with the application of paragraph (2) of this subsection) as compensation paid by such American employer and by determining such individual's status with regard to such American employer.

(2) Determination of compensation

For purposes of applying paragraph (5) of section 401(a) with respect to an individual who is treated as an employee of an American employer under subsection (a)—

(A) the total compensation of such individual shall be the remuneration paid to such individual by the foreign affiliate which would constitute his total compensation if his services had been performed for such American employer, and the basic or regular rate of compensation of such individual shall be determined under regulations prescribed by the Secretary; and

(B) such individual shall be treated as having paid the amount paid by such American employer which is equivalent to the tax imposed by section 3101.

[(c) Repealed. Pub. L. 104–188, title I, § 1401(b)(7), Aug. 20, 1996, 110 Stat. 1789]

(d) Deductibility of contributions

For purposes of applying section 404 with respect to contributions made to or under a pension, profit-sharing, stock bonus, or annuity plan by an American employer, or by another taxpayer which is entitled to deduct its contributions under section 404(a)(3)(B), on behalf of an individual who is treated as an employee of such American employer under subsection (a)—

(1) except as provided in paragraph (2), no deduction shall be allowed to such American employer or to any other taxpayer which is entitled to deduct its contributions under such sections,

(2) there shall be allowed as a deduction to the foreign affiliate of which such individual is an employee an amount equal to the amount which (but for paragraph (1)) would be deductible under section 404 by the American employer if he were an employee of the American employer, and

(3) any reference to compensation shall be considered to be a reference to the total compensation of such individual (determined with the application of subsection (b)(2)).

Any amount deductible by a foreign affiliate under this subsection shall be deductible for its taxable year with or within which the taxable year of such American employer ends.

(e) Treatment as employee under related provisions

An individual who is treated as an employee of an American employer under subsection (a) shall also be treated as an employee of such American employer, with respect to the plan described in subsection (a)(2), for purposes of applying the following provisions of this title:

(1) Section 72(f) (relating to special rules for computing employees' contributions).

(2) Section 2039 (relating to annuities).

(Added Pub. L. 88–272, title II, § 220(a), Feb. 26, 1964, 78 Stat. 58; amended Pub. L. 91–172, title V, § 515(c)(2), Dec. 30, 1969, 83 Stat. 645; Pub. L. 93–406, title II, §§ 1016(a)(4), 2005(c)(12), Sept. 2, 1974, 88 Stat. 929, 992; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–21, title III, § 321(c), (e)(2)(A)–(D)(i), Apr. 20, 1983, 97 Stat. 119, 120; Pub. L. 98–369, div. A, title IV, § 491(d)(13)–(15), July 18, 1984, 98 Stat. 849; Pub. L. 99–514, title XI, §§ 1112(d)(3), 1114(b)(9)(A), (C), title XVIII, § 1852(e)(2)(C), Oct. 22, 1986, 100

Stat. 2445, 2451, 2868; Pub. L. 100–647, title I, § 1011A(b)(1)(C), (16), Nov. 10, 1988, 102 Stat. 3472, 3475; Pub. L. 101–239, title VII, §§ 7811(g)(3), 7831(f), title X, § 10201(b)(1), (2), Dec. 19, 1989, 103 Stat. 2409, 2427, 2472; Pub. L. 102–318, title V, § 521(b)(14), July 3, 1992, 106 Stat. 311; Pub. L. 104–188, title I, §§ 1401(b)(7), 1402(b)(2), Aug. 20, 1996, 110 Stat. 1789, 1790.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–188, § 1401(b)(7), struck out subsec. (c) which related to treatment of termination of status as deemed employee.

Subsec. (e)(2), (3). Pub. L. 104–188, § 1402(b)(2), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''Section 101(b) (relating to employees' death benefits).''

1992—Subsec. (c). Pub. L. 102–318 substituted ''402(d)'' for ''402(e)''.

1989—Subsec. (a). Pub. L. 101–239, § 10201(b)(1), substituted ''3121(*l*)(6)'' for ''3121(*l*)(8)''.

Subsec. (b)(1)(A). Pub. L. 101–239, § 7831(f), made technical correction to Pub. L. 99–514, § 1114(b)(9)(A), see 1986 Amendment note below.

Subsec. (c). Pub. L. 101–239, § 7811(g)(3), substituted ''purposes of limitation'' for ''purposes limitation'' in heading.

Subsec. (c)(3). Pub. L. 101–239, § 10201(b)(2), substituted ''3121(*l*)(6)(B)'' for ''3121(*l*)(8)(B)''.

1988—Subsec. (c). Pub. L. 100–647, § 1011A(b)(16), struck out ''of capital gain provisions and'' after ''service for purposes'' in heading and substituted ''applying section 402(e)'' for ''applying subsections (a)(2) and (e) of section 402, and section 403(a)(2)'' in text.

Subsec. (e). Pub. L. 100–647, § 1011A(b)(1)(C), redesignated pars. (2) to (4) as (1) to (3), respectively, and struck out former par. (1) which read as follows: ''Section 72(d) (relating to employees' annuities).''

1986—Subsec. (b)(1). Pub. L. 99–514, § 1112(d)(3), struck out ''(without regard to paragraph (1)(A) thereof)'' after ''section 410(b)'' in introductory text.

Subsec. (b)(1)(A). Pub. L. 99–514, § 1114(b)(9)(A), as amended by Pub. L. 101–239, § 7831(f), substituted ''a highly compensated employee (within the meaning of section 414(q))'' for ''an officer, shareholder, or person whose principal duties consist in supervising the work of other employees of a foreign affiliate of such American employer''.

Subsec. (b)(1)(B). Pub. L. 99–514, § 1114(b)(9)(C), inserted ''(as so defined)'' after ''employee''.

Subsec. (e)(5). Pub. L. 99–514, § 1852(e)(2)(C), struck out par. (5) which read as follows: ''Section 2517 (relating to certain annuities under qualified plans).''

1984—Subsec. (a). Pub. L. 98–369, § 491(d)(13), substituted in introductory provision ''or an annuity plan described in section 403(a)'' for '', an annuity plan described in section 403(a), or a bond purchase plan described in section 405(a)''.

Subsec. (a)(3). Pub. L. 98–369, § 491(d)(14), substituted ''or 403(a)'' for '', 403(a), or 405(a)''.

Subsec. (d). Pub. L. 98–369, § 491(d)(15)(A), (B), substituted in introductory provision ''section 404'' for ''sections 404 and 405(c)'', and ''or annuity'' for ''annuity, or bond purchase''.

Subsec. (d)(2). Pub. L. 98–369, § 491(d)(15)(C), struck out ''(or section 405(c))'' after ''section 404''.

1983—Pub. L. 98–21, § 321(e)(2)(D)(i), substituted ''Employees of foreign affiliates covered by section 3121(*l*) agreements'' for ''Certain employees of foreign subsidiaries'' in section catchline.

Subsec. (a). Pub. L. 98–21, § 321(c), amended subsec. (a) generally, substituting ''American employer'' for ''domestic corporation'' in heading and in text wherever appearing, inserting reference to section 3121(h) of this title, inserting ''or resident'' after ''citizen'' wherever appearing, substituting ''foreign affiliate'' for ''foreign subsidiary'' wherever appearing, and ''foreign affiliates'' for ''foreign subsidiaries''.

Subsec. (b). Pub. L. 98–21, § 321(e)(2)(A), substituted reference to an American employer for reference to a domestic corporation, and reference to an affiliate for reference to a subsidiary, wherever appearing.

Subsec. (c). Pub. L. 98–21, § 321(e)(2)(A), substituted reference to an American employer for reference to a domestic corporation, and reference to an affiliate for reference to a subsidiary, wherever appearing in provisions preceding par. (1) and in pars. (1) and (2).

Subsec. (c)(3). Pub. L. 98–21, § 321(e)(2)(A), (B), substituted ''foreign affiliate by reason of which he is treated as an employee of such American employer, if he becomes an employee of another entity in which such American employer has not less than a 10-percent interest (within the meaning of section 3121(*l*)(8)(B)'' for ''foreign subsidiary by reason of which he is treated as an employee of such domestic corporation, if he becomes an employee of another corporation controlled by such domestic corporation''.

Subsec. (d). Pub. L. 98–21, § 321(e)(2)(A), (C), substituted references to an American employer for references to a domestic corporation and reference to an affiliate for a reference to a subsidiary wherever appearing, substituted ''another taxpayer'' for ''another corporation'' in provisions preceding par. (1), and substituted ''any other taxpayer'' for ''any other corporation'' in par. (1).

Subsec. (e). Pub. L. 98–21, § 321(e)(2)(A), substituted reference to an American employer for reference to a domestic corporation wherever appearing in provisions preceding par. (1).

1976—Subsec. (b)(2)(A). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1974—Subsec. (b)(1). Pub. L. 93–406, § 1016(a)(4), substituted ''section 401(a)(4) and section 410(b) (without regard to paragraph (1)(A) thereof)'' for ''paragraphs (3)(B) and (4) of section 401(a)''.

Subsec. (c). Pub. L. 93–406, § 2005(c)(12), substituted ''subsections (a)(2) and (e) of section 402'' for ''section 72(n), section 402(a)(2)''.

1969—Subsec. (c). Pub. L. 91–172 substituted ''provisions and limitation of tax'' for ''provisions'' in heading, and substituted ''section 72(n), section 402(a)(2),'' for ''section 402(a)(2)'' in text.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1401(b)(7) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1999, with retention of certain transition rules, see section 1401(c) of Pub. L. 104–188, set out as a note under section 402 of this title.

Amendment by section 1402(b)(2) of Pub. L. 104–188 applicable with respect to decedents dying after Aug. 20, 1996, see section 1402(c) of Pub. L. 104–188, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

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

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7811(g)(3) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Amendment by section 7831(f) of Pub. L. 101–239 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7831(g) of Pub. L. 101–239, set out as a note under section 1 of this title.

Section 10201(c) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section, section 3121 of this title, and section 410 of Title 42, The Public Health and Welfare] shall apply with respect to any agreement in effect under section 3121(*l*) of the Internal Revenue Code of 1986 on or after June 15, 1989, with respect to which no notice of termination is in effect on such date.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1112(d)(3) of Pub. L. 99–514 applicable to plan years beginning after Dec. 31, 1988, with special rule regarding collective bargaining agreements ratified before Mar. 1, 1986, and with provision for waiver of excise tax on reversions, see section 1112(e) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 1114(b)(9)(A), (C) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1988, see section 1114(c)(3) of Pub. L. 99–514, set out as a note under section 414 of this title.

Section 1852(e)(2)(E) of Pub. L. 99–514 provided that: ''The amendments made by this paragraph [amending this section and section 407 of this title and repealing section 2517 of this title] shall apply to transfers after the date of the enactment of this Act [Oct. 22, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

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

EFFECTIVE DATE OF 1983 AMENDMENT

Section 321(f) of Pub. L. 98–21 provided that:

''(1)(A) The amendments made by this section [amending this section and sections 407, 1402, 3121, and 6413 of this title and section 410 of Title 42, The Public Health and Welfare] (other than subsection (d) [amending section 407 of this title]) shall apply to agreements entered into after the date of the enactment of this Act [Apr. 20, 1983].

''(B) At the election of any American employer, the amendments made by this section (other than subsection (d)) shall also apply to any agreement entered into on or before the date of the enactment of this Act. Any such election shall be made at such time and in such manner as the Secretary may by regulations prescribe.

''(2)(A) The amendments made by subsection (d) [amending section 407 of this title] shall apply to plans established after the date of the enactment of this Act [Apr. 20, 1983].

''(B) At the election of any domestic parent corporation the amendments made by subsection (d) shall also apply to any plan established on or before the date of the enactment of this Act. Any such election shall be made at such time and in such manner as the Secretary may by regulations prescribe.''

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 1016(a)(4) of Pub. L. 93–406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93–406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transition of Rules note under section 410 of this title.

Amendment by section 2005(c)(12) of Pub. L. 93–406 applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 515(d) of Pub. L. 91–172, set out as a note under section 402 of this title.

EFFECTIVE DATE

Section 220(d) of Pub. L. 88–272 provided that: ''The amendments made by subsections (a) [enacting this section], (b) [enacting section 407 of this title], and (c)(1) [amending the analysis preceding section 401 of this title] shall apply to taxable years ending after December 31, 1963. The amendments made by subsections (c)(2) [amending section 3121 of this title] and (3) [amending section 409 of Title 42, The Public Health and Welfare] shall apply to remuneration paid after December 31, 1962.''

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by sections 1112 and 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 407. Certain employees of domestic subsidiaries engaged in business outside the United States

(a) Treatment as employees of domestic parent corporation

(1) In general

For purposes of applying this part with respect to a pension, profit-sharing, or stock bonus plan described in section 401(a) or an annuity plan described in section 403(a), of a domestic parent corporation, an individual who is a citizen or resident of the United States and who is an employee of a domestic subsidiary (within the meaning of paragraph (2)) of such domestic parent corporation shall be treated as an employee of such domestic parent corporation, if—

(A) the plan of such domestic parent corporation expressly provides for contributions or benefits for individuals who are citizens or residents of the United States and who are employees of its domestic subsidiaries; and

(B) contributions under a funded plan of deferred compensation (whether or not a

plan described in section 401(a) or 403(a)) are not provided by any other person with respect to the remuneration paid to such individual by the domestic subsidiary.

(2) Definitions

For purposes of this section—

(A) Domestic subsidiary

A corporation shall be treated as a domestic subsidiary for any taxable year only if—

(i) such corporation is a domestic corporation 80 percent or more of the outstanding voting stock of which is owned by another domestic corporation;

(ii) 95 percent or more of its gross income for the three-year period immediately preceding the close of its taxable year which ends on or before the close of the taxable year of such other domestic corporation (or for such part of such period during which the corporation was in existence), was derived from sources without the United States; and

(iii) 90 percent or more of its gross income for such period (or such part) was derived from the active conduct of a trade or business.

If for the period (or part thereof) referred to in clauses (ii) and (iii) such corporation has no gross income, the provisions of clauses (ii) and (iii) shall be treated as satisfied if it is reasonable to anticipate that, with respect to the first taxable year thereafter for which such corporation has gross income, the provisions of such clauses will be satisfied.

(B) Domestic parent corporation

The domestic parent corporation of any domestic subsidiary is the domestic corporation which owns 80 percent or more of the outstanding voting stock of such domestic subsidiary.

(b) Special rules for application of section 401(a)

(1) Nondiscrimination requirements

For purposes of applying section 401(a)(4) and section 410(b) with respect to an individual who is treated as an employee of a domestic parent corporation under subsection (a)—

(A) if such individual is a highly compensated employee (within the meaning of section 414(q)), he shall be treated as having such capacity with respect to such domestic parent corporation; and

(B) the determination of whether such individual is a highly compensated employee (as so defined) shall be made by treating such individual's total compensation (determined with the application of paragraph (2) of this subsection) as compensation paid by such domestic parent corporation and by determining such individual's status with regard to such domestic parent corporation.

(2) Determination of compensation

For purposes of applying paragraph (5) of section 401(a) with respect to an individual who is treated as an employee of a domestic parent corporation under subsection (a), the total compensation of such individual shall be the remuneration paid to such individual by the domestic subsidiary which would constitute his total compensation if his services had been performed for such domestic parent corporation, and the basic or regular rate of compensation of such individual shall be determined under regulations prescribed by the Secretary.

[(c) Repealed. Pub. L. 104–188, title I, § 1401(b)(8), Aug. 20, 1996, 110 Stat. 1789]

(d) Deductibility of contributions

For purposes of applying section 404 with respect to contributions made to or under a pension, profit-sharing, stock bonus, or annuity plan by a domestic parent corporation, or by another corporation which is entitled to deduct its contributions under section 404(a)(3)(B), on behalf of an individual who is treated as an employee of such domestic corporation under subsection (a)—

(1) except as provided in paragraph (2), no deduction shall be allowed to such domestic parent corporation or to any other corporation which is entitled to deduct its contributions under such sections,

(2) there shall be allowed as a deduction to the domestic subsidiary of which such individual is an employee an amount equal to the amount which (but for paragraph (1)) would be deductible under section 404 by the domestic parent corporation if he were an employee of the domestic parent corporation, and

(3) any reference to compensation shall be considered to be a reference to the total compensation of such individual (determined with the application of subsection (b)(2)).

Any amount deductible by a domestic subsidiary under this subsection shall be deductible for its taxable year with or within which the taxable year of such domestic parent corporation ends.

(e) Treatment as employee under related provisions

An individual who is treated as an employee of a domestic parent corporation under subsection (a) shall also be treated as an employee of such domestic parent corporation, with respect to the plan described in subsection (a)(1)(A), for purposes of applying the following provisions of this title:

(1) Section 72(f) (relating to special rules for computing employees' contributions).

(2) Section 2039 (relating to annuities).

(Added Pub. L. 88–272, title II, § 220(b), Feb. 26, 1964, 78 Stat. 60; amended Pub. L. 91–172, title V, § 515(c)(3), Dec. 30, 1969, 83 Stat. 646; Pub. L. 93–406, title II, §§ 1016(a)(5), 2005(c)(13), Sept. 2, 1974, 88 Stat. 929, 992; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–21, title III, § 321(d), Apr. 20, 1983, 97 Stat. 119; Pub. L. 98–369, div. A, title IV, § 491(d)(16)–(18), July 18, 1984, 98 Stat. 850; Pub. L. 99–514, title XI, §§ 1112(d)(3), 1114(b)(9)(B), (C), title XVIII, § 1852(e)(2)(D), Oct. 22, 1986, 100 Stat. 2445, 2451, 2868; Pub. L. 100–647, title I, § 1011A(b)(1)(C), (16), Nov. 10, 1988, 102 Stat. 3472, 3475; Pub. L. 101–239, title VII, §§ 7811(g)(3), 7831(f), Dec. 19, 1989, 103 Stat. 2409, 2427; Pub. L. 102–318, title V, § 521(b)(15), July 3, 1992, 106 Stat. 311; Pub. L.

104–188, title I, §§1401(b)(8), 1402(b)(2), Aug. 20, 1996, 110 Stat. 1789, 1790.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–188, §1401(b)(8), struck out subsec. (c) which related to treatment of termination of status as deemed employee.

Subsec. (e)(2), (3). Pub. L. 104–188, §1402(b)(2), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''Section 101(b) (relating to employees' death benefits).''

1992—Subsec. (c). Pub. L. 102–318 substituted ''402(d)'' for ''402(e)''.

1989—Subsec. (b)(1)(A). Pub. L. 101–239, §7831(f), made technical correction to Pub. L. 99–514, §1114(b)(9)(B), see 1986 Amendment note below.

Subsec. (c). Pub. L. 101–239, §7811(g)(3), substituted ''purposes of limitation'' for ''purposes limitation'' in heading.

1988—Subsec. (c). Pub. L. 100–647, §1011A(b)(16), struck out ''of capital gain provisions and'' after ''service for purposes'' in heading and substituted ''applying section 402(e)'' for ''applying subsections (a)(2) and (e) of section 402, and section 403(a)(2)'' in text.

Subsec. (e). Pub. L. 100–647, §1011A(b)(1)(C), redesignated pars. (2) to (4) as (1) to (3), respectively, and struck out former par. (1) which read as follows: ''Section 72(d) (relating to employees' annuities).''

1986—Subsec. (b)(1). Pub. L. 99–514, §1112(d)(3), struck out ''(without regard to paragraph (1)(A) thereof)'' after ''section 410(b)'' in introductory text.

Subsec. (b)(1)(A). Pub. L. 99–514, §1114(b)(9)(B), as amended by Pub. L. 101–239, §7831(f), substituted ''a highly compensated employee (within the meaning of section 414(q))'' for ''an officer, shareholder, or person whose principal duties consist in supervising the work of other employees of a domestic subsidiary''.

Subsec. (b)(1)(B). Pub. L. 99–514, §1114(b)(9)(C), inserted ''(as so defined)'' after ''employee''.

Subsec. (e)(5). Pub. L. 99–514, §1852(e)(2)(D), struck out par. (5) which read as follows: ''Section 2517 (relating to certain annuities under qualified plans).''

1984—Subsec. (a)(1). Pub. L. 98–369, §491(d)(16), substituted ''or an annuity plan described in section 403(a)'' for '', an annuity plan described in section 403(a), or a bond purchase plan described in section 405(a)''.

Subsec. (a)(1)(B). Pub. L. 98–369, §491(d)(17), substituted ''or 403(a)'' for '', 403(a), or 405(a)''.

Subsec. (d). Pub. L. 98–369, §491(d)(18)(A), (B), substituted in introductory provision ''section 404'' for ''sections 404 and 405(a)'', and ''or annuity'' for ''annuity, or bond purchase''.

Subsec. (d)(2). Pub. L. 98–369, §491(d)(18)(C), struck out ''(or section 405(c))'' after ''section 404''.

1983—Subsec. (a)(1). Pub. L. 98–21 inserted ''or resident'' after ''citizen'', and inserted ''or residents'' after ''citizens'' in subpar. (A).

1976—Subsec. (b)(2). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1974—Subsec. (b)(1). Pub. L. 93–406, §1016(a)(5), substituted ''section 401(a)(4) and section 410(b) (without regard to paragraph (1)(A) thereof)'' for ''paragraphs (3)(B) and (4) of section 401(a)''.

Subsec. (c). Pub. L. 93–406, §2005(c)(13), substituted ''subsections (a)(2) and (e) of section 402'' for ''section 72(n), section 402(a)(2)''.

1969—Subsec. (c). Pub. L. 91–172 substituted ''provisions and limitation of tax'' for ''provisions'' in heading, and substituted ''section 72(n), section 402(a)(2),'' for ''section 402(a)(2)'' in text.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1401(b)(8) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1999, with retention of certain transition rules, see section 1401(c) of Pub. L. 104–188, set out as a note under section 402 of this title.

Amendment by section 1402(b)(2) of Pub. L. 104–188 applicable with respect to decedents dying after Aug. 20, 1996, see section 1402(c) of Pub. L. 104–188, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

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

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7811(g)(3) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Amendment by section 7831(f) of Pub. L. 101–239 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7831(g) of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1112(d)(3) of Pub. L. 99–514 applicable to plan years beginning after Dec. 31, 1988, with special rule regarding collective bargaining agreements ratified before Mar. 1, 1986, and with provision for waiver of excise tax on reversions, see section 1112(e) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 1114(b)(9)(B), (C) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1988, see section 1114(c)(3) of Pub. L. 99–514, set out as a note under section 414 of this title.

Amendment by section 1852(e)(2)(D) of Pub. L. 99–514 applicable to transfers after Oct. 22, 1986, see section 1852(e)(2)(E) of Pub. L. 99–514, set out as a note under section 406 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

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

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to plans established after Apr. 20, 1983, except that at the election of any domestic parent corporation such amendment shall also apply to any plan established on or before Apr. 20, 1983, see section 321(f) of Pub. L. 98–21 set out as a note under section 406 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 1016(a)(5) of Pub. L. 93–406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93–406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

Amendment by section 2005(c)(13) of Pub. L. 93–406 applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 515(d) of Pub. L. 91–172, set out as a note under section 402 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after Dec. 31, 1963, see section 220(d) of Pub. L. 88–272, set out as a note under section 406 of this title.

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by sections 1112 and 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 408. Individual retirement accounts

(a) Individual retirement account

For purposes of this section, the term ''individual retirement account'' means a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries, but only if the written governing instrument creating the trust meets the following requirements:

(1) Except in the case of a rollover contribution described in subsection (d)(3) in[1] section 402(c), 403(a)(4), 403(b)(8), or 457(e)(16), no contribution will be accepted unless it is in cash, and contributions will not be accepted for the taxable year on behalf of any individual in excess of the amount in effect for such taxable year under section 219(b)(1)(A).

(2) The trustee is a bank (as defined in subsection (n)) or such other person who demonstrates to the satisfaction of the Secretary that the manner in which such other person will administer the trust will be consistent with the requirements of this section.

(3) No part of the trust funds will be invested in life insurance contracts.

(4) The interest of an individual in the balance in his account is nonforfeitable.

(5) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

(6) Under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained.

(b) Individual retirement annuity

For purposes of this section, the term ''individual retirement annuity'' means an annuity contract, or an endowment contract (as determined under regulations prescribed by the Secretary), issued by an insurance company which meets the following requirements:

(1) The contract is not transferable by the owner.

(2) Under the contract—

(A) the premiums are not fixed,

(B) the annual premium on behalf of any individual will not exceed the dollar amount in effect under section 219(b)(1)(A), and

(C) any refund of premiums will be applied before the close of the calendar year following the year of the refund toward the payment of future premiums or the purchase of additional benefits.

(3) Under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of the owner.

(4) The entire interest of the owner is nonforfeitable.

Such term does not include such an annuity contract for any taxable year of the owner in which it is disqualified on the application of subsection (e) or for any subsequent taxable year. For purposes of this subsection, no contract shall be treated as an endowment contract if it matures later than the taxable year in which the individual in whose name such contract is purchased attains age 70½; if it is not for the exclusive benefit of the individual in whose name it is purchased or his beneficiaries; or if the aggregate annual premiums under all such contracts purchased in the name of such individual for any taxable year exceed the dollar amount in effect under section 219(b)(1)(A).

(c) Accounts established by employers and certain associations of employees

A trust created or organized in the United States by an employer for the exclusive benefit of his employees or their beneficiaries, or by an association of employees (which may include employees within the meaning of section 401(c)(1)) for the exclusive benefit of its members or their beneficiaries, shall be treated as an individual retirement account (described in subsection (a)), but only if the written governing instrument creating the trust meets the following requirements:

(1) The trust satisfies the requirements of paragraphs (1) through (6) of subsection (a).

(2) There is a separate accounting for the interest of each employee or member (or spouse of an employee or member).

The assets of the trust may be held in a common fund for the account of all individuals who have an interest in the trust.

[1] So in original.

(d) Tax treatment of distributions

(1) In general

Except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement plan shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72.

(2) Special rules for applying section 72

For purposes of applying section 72 to any amount described in paragraph (1)—

(A) all individual retirement plans shall be treated as 1 contract,

(B) all distributions during any taxable year shall be treated as 1 distribution, and

(C) the value of the contract, income on the contract, and investment in the contract shall be computed as of the close of the calendar year in which the taxable year begins.

For purposes of subparagraph (C), the value of the contract shall be increased by the amount of any distributions during the calendar year.

(3) Rollover contribution

An amount is described in this paragraph as a rollover contribution if it meets the requirements of subparagraphs (A) and (B).

(A) In general

Paragraph (1) does not apply to any amount paid or distributed out of an individual retirement account or individual retirement annuity to the individual for whose benefit the account or annuity is maintained if—

(i) the entire amount received (including money and any other property) is paid into an individual retirement account or individual retirement annuity (other than an endowment contract) for the benefit of such individual not later than the 60th day after the day on which he receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to this paragraph).

For purposes of clause (ii), the term ''eligible retirement plan'' means an eligible retirement plan described in clause (iii), (iv), (v), or (vi) of section 402(c)(8)(B).

(B) Limitation

This paragraph does not apply to any amount described in subparagraph (A)(i) received by an individual from an individual retirement account or individual retirement annuity if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in that subparagraph from an individual retirement account or an individual retirement annuity which was not includible in his gross income because of the application of this paragraph.

(C) Denial of rollover treatment for inherited accounts, etc.

(i) In general

In the case of an inherited individual retirement account or individual retirement annuity—

(I) this paragraph shall not apply to any amount received by an individual from such an account or annuity (and no amount transferred from such account or annuity to another individual retirement account or annuity shall be excluded from gross income by reason of such transfer), and

(II) such inherited account or annuity shall not be treated as an individual retirement account or annuity for purposes of determining whether any other amount is a rollover contribution.

(ii) Inherited individual retirement account or annuity

An individual retirement account or individual retirement annuity shall be treated as inherited if—

(I) the individual for whose benefit the account or annuity is maintained acquired such account by reason of the death of another individual, and

(II) such individual was not the surviving spouse of such other individual.

(D) Partial rollovers permitted

(i) In general

If any amount paid or distributed out of an individual retirement account or individual retirement annuity would meet the requirements of subparagraph (A) but for the fact that the entire amount was not paid into an eligible plan as required by clause (i) or (ii) of subparagraph (A), such amount shall be treated as meeting the requirements of subparagraph (A) to the extent it is paid into an eligible plan referred to in such clause not later than the 60th day referred to in such clause.

(ii) Eligible plan

For purposes of clause (i), the term ''eligible plan'' means any account, annuity, contract, or plan referred to in subparagraph (A).

(E) Denial of rollover treatment for required distributions

This paragraph shall not apply to any amount to the extent such amount is required to be distributed under subsection (a)(6) or (b)(3).

(F) Frozen deposits

For purposes of this paragraph, rules similar to the rules of section 402(c)(7) (relating to frozen deposits) shall apply.

(G) Simple retirement accounts

In the case of any payment or distribution out of a simple retirement account (as defined in subsection (p)) to which section 72(t)(6) applies, this paragraph shall not

apply unless such payment or distribution is paid into another simple retirement account.

(H) Application of section 72

(i) In general

If—

(I) a distribution is made from an individual retirement plan, and

(II) a rollover contribution is made to an eligible retirement plan described in section 402(c)(8)(B)(iii), (iv), (v), or (vi) with respect to all or part of such distribution,

then, notwithstanding paragraph (2), the rules of clause (ii) shall apply for purposes of applying section 72.

(ii) Applicable rules

In the case of a distribution described in clause (i)—

(I) section 72 shall be applied separately to such distribution,

(II) notwithstanding the pro rata allocation of income on, and investment in, the contract to distributions under section 72, the portion of such distribution rolled over to an eligible retirement plan described in clause (i) shall be treated as from income on the contract (to the extent of the aggregate income on the contract from all individual retirement plans of the distributee), and

(III) appropriate adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

(I) Waiver of 60-day requirement

The Secretary may waive the 60-day requirement under subparagraphs (A) and (D) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.

(4) Contributions returned before due date of return

Paragraph (1) does not apply to the distribution of any contribution paid during a taxable year to an individual retirement account or for an individual retirement annuity if—

(A) such distribution is received on or before the day prescribed by law (including extensions of time) for filing such individual's return for such taxable year,

(B) no deduction is allowed under section 219 with respect to such contribution, and

(C) such distribution is accompanied by the amount of net income attributable to such contribution.

In the case of such a distribution, for purposes of section 61, any net income described in subparagraph (C) shall be deemed to have been earned and receivable in the taxable year in which such contribution is made.

(5) Distributions of excess contributions after due date for taxable year and certain excess rollover contributions

(A) In general

In the case of any individual, if the aggregate contributions (other than rollover contributions) paid for any taxable year to an individual retirement account or for an individual retirement annuity do not exceed the dollar amount in effect under section 219(b)(1)(A), paragraph (1) shall not apply to the distribution of any such contribution to the extent that such contribution exceeds the amount allowable as a deduction under section 219 for the taxable year for which the contribution was paid—

(i) if such distribution is received after the date described in paragraph (4),

(ii) but only to the extent that no deduction has been allowed under section 219 with respect to such excess contribution.

If employer contributions on behalf of the individual are paid for the taxable year to a simplified employee pension, the dollar limitation of the preceding sentence shall be increased by the lesser of the amount of such contributions or the dollar limitation in effect under section 415(c)(1)(A) for such taxable year.

(B) Excess rollover contributions attributable to erroneous information

If—

(i) the taxpayer reasonably relies on information supplied pursuant to subtitle F for determining the amount of a rollover contribution, but

(ii) the information was erroneous,

subparagraph (A) shall be applied by increasing the dollar limit set forth therein by that portion of the excess contribution which was attributable to such information.

For purposes of this paragraph, the amount allowable as a deduction under section 219 shall be computed without regard to section 219(g).

(6) Transfer of account incident to divorce

The transfer of an individual's interest in an individual retirement account or an individual retirement annuity to his spouse or former spouse under a divorce or separation instrument described in subparagraph (A) of section 71(b)(2) is not to be considered a taxable transfer made by such individual notwithstanding any other provision of this subtitle, and such interest at the time of the transfer is to be treated as an individual retirement account of such spouse, and not of such individual. Thereafter such account or annuity for purposes of this subtitle is to be treated as maintained for the benefit of such spouse.

(7) Special rules for simplified employee pensions or simple retirement accounts

(A) Transfer or rollover of contributions prohibited until deferral test met

Notwithstanding any other provision of this subsection or section 72(t), paragraph (1) and section 72(t)(1) shall apply to the transfer or distribution from a simplified employee pension of any contribution under a salary reduction arrangement described in subsection (k)(6) (or any income allocable thereto) before a determination as to whether the requirements of subsection (k)(6)(A)(iii) are met with respect to such contribution.

(B) Certain exclusions treated as deductions

For purposes of paragraphs (4) and (5) and section 4973, any amount excludable or excluded from gross income under section 402(h) or 402(k) shall be treated as an amount allowable or allowed as a deduction under section 219.

(8) Distributions for charitable purposes

(A) In general

So much of the aggregate amount of qualified charitable distributions with respect to a taxpayer made during any taxable year which does not exceed $100,000 shall not be includible in gross income of such taxpayer for such taxable year.

(B) Qualified charitable distribution

For purposes of this paragraph, the term ''qualified charitable distribution'' means any distribution from an individual retirement plan (other than a plan described in subsection (k) or (p))—

(i) which is made directly by the trustee to an organization described in section 170(b)(1)(A) (other than any organization described in section 509(a)(3) or any fund or account described in section 4966(d)(2)), and

(ii) which is made on or after the date that the individual for whose benefit the plan is maintained has attained age 70½.

A distribution shall be treated as a qualified charitable distribution only to the extent that the distribution would be includible in gross income without regard to subparagraph (A).

(C) Contributions must be otherwise deductible

For purposes of this paragraph, a distribution to an organization described in subparagraph (B)(i) shall be treated as a qualified charitable distribution only if a deduction for the entire distribution would be allowable under section 170 (determined without regard to subsection (b) thereof and this paragraph).

(D) Application of section 72

Notwithstanding section 72, in determining the extent to which a distribution is a qualified charitable distribution, the entire amount of the distribution shall be treated as includible in gross income without regard to subparagraph (A) to the extent that such amount does not exceed the aggregate amount which would have been so includible if all amounts in all individual retirement plans of the individual were distributed during such taxable year and all such plans were treated as 1 contract for purposes of determining under section 72 the aggregate amount which would have been so includible. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

(E) Denial of deduction

Qualified charitable distributions which are not includible in gross income pursuant to subparagraph (A) shall not be taken into account in determining the deduction under section 170.

(F) Termination

This paragraph shall not apply to distributions made in taxable years beginning after December 31, 2011.

(9) Distribution for health savings account funding

(A) In general

In the case of an individual who is an eligible individual (as defined in section 223(c)) and who elects the application of this paragraph for a taxable year, gross income of the individual for the taxable year does not include a qualified HSA funding distribution to the extent such distribution is otherwise includible in gross income.

(B) Qualified HSA funding distribution

For purposes of this paragraph, the term ''qualified HSA funding distribution'' means a distribution from an individual retirement plan (other than a plan described in subsection (k) or (p)) of the employee to the extent that such distribution is contributed to the health savings account of the individual in a direct trustee-to-trustee transfer.

(C) Limitations

(i) Maximum dollar limitation

The amount excluded from gross income by subparagraph (A) shall not exceed the excess of—

(I) the annual limitation under section 223(b) computed on the basis of the type of coverage under the high deductible health plan covering the individual at the time of the qualified HSA funding distribution, over

(II) in the case of a distribution described in clause (ii)(II), the amount of the earlier qualified HSA funding distribution.

(ii) One-time transfer

(I) In general

Except as provided in subclause (II), an individual may make an election under subparagraph (A) only for one qualified HSA funding distribution during the lifetime of the individual. Such an election, once made, shall be irrevocable.

(II) Conversion from self-only to family coverage

If a qualified HSA funding distribution is made during a month in a taxable year during which an individual has self-only coverage under a high deductible health plan as of the first day of the month, the individual may elect to make an additional qualified HSA funding distribution during a subsequent month in such taxable year during which the individual has family coverage under a high deductible health plan as of the first day of the subsequent month.

(D) Failure to maintain high deductible health plan coverage

(i) In general

If, at any time during the testing period, the individual is not an eligible individual, then the aggregate amount of all contributions to the health savings account of the individual made under subparagraph (A)—

(I) shall be includible in the gross income of the individual for the taxable year in which occurs the first month in the testing period for which such individual is not an eligible individual, and

(II) the tax imposed by this chapter for any taxable year on the individual shall be increased by 10 percent of the amount which is so includible.

(ii) Exception for disability or death

Subclauses (I) and (II) of clause (i) shall not apply if the individual ceased to be an eligible individual by reason of the death of the individual or the individual becoming disabled (within the meaning of section 72(m)(7)).

(iii) Testing period

The term ''testing period'' means the period beginning with the month in which the qualified HSA funding distribution is contributed to a health savings account and ending on the last day of the 12th month following such month.

(E) Application of section 72

Notwithstanding section 72, in determining the extent to which an amount is treated as otherwise includible in gross income for purposes of subparagraph (A), the aggregate amount distributed from an individual retirement plan shall be treated as includible in gross income to the extent that such amount does not exceed the aggregate amount which would have been so includible if all amounts from all individual retirement plans were distributed. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

(e) Tax treatment of accounts and annuities

(1) Exemption from tax

Any individual retirement account is exempt from taxation under this subtitle unless such account has ceased to be an individual retirement account by reason of paragraph (2) or (3). Notwithstanding the preceding sentence, any such account is subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc. organizations).

(2) Loss of exemption of account where employee engages in prohibited transaction

(A) In general

If, during any taxable year of the individual for whose benefit any individual retirement account is established, that individual or his beneficiary engages in any transaction prohibited by section 4975 with respect to such account, such account ceases to be an individual retirement account as of the first day of such taxable year. For purposes of this paragraph—

(i) the individual for whose benefit any account was established is treated as the creator of such account, and

(ii) the separate account for any individual within an individual retirement account maintained by an employer or association of employees is treated as a separate individual retirement account.

(B) Account treated as distributing all its assets

In any case in which any account ceases to be an individual retirement account by reason of subparagraph (A) as of the first day of any taxable year, paragraph (1) of subsection (d) applies as if there were a distribution on such first day in an amount equal to the fair market value (on such first day) of all assets in the account (on such first day).

(3) Effect of borrowing on annuity contract

If during any taxable year the owner of an individual retirement annuity borrows any money under or by use of such contract, the contract ceases to be an individual retirement annuity as of the first day of such taxable year. Such owner shall include in gross income for such year an amount equal to the fair market value of such contract as of such first day.

(4) Effect of pledging account as security

If, during any taxable year of the individual for whose benefit an individual retirement account is established, that individual uses the account or any portion thereof as security for a loan, the portion so used is treated as distributed to that individual.

(5) Purchase of endowment contract by individual retirement account

If the assets of an individual retirement account or any part of such assets are used to purchase an endowment contract for the benefit of the individual for whose benefit the account is established—

(A) to the extent that the amount of the assets involved in the purchase are not attributable to the purchase of life insurance, the purchase is treated as a rollover contribution described in subsection (d)(3), and

(B) to the extent that the amount of the assets involved in the purchase are attributable to the purchase of life, health, accident, or other insurance, such amounts are treated as distributed to that individual (but the provisions of subsection (f) do not apply).

(6) Commingling individual retirement account amounts in certain common trust funds and common investment funds

Any common trust fund or common investment fund of individual retirement account assets which is exempt from taxation under this subtitle does not cease to be exempt on account of the participation or inclusion of assets of a trust exempt from taxation under section 501(a) which is described in section 401(a).

[(f) Repealed. Pub. L. 99–514, title XI, § 1123(d)(2), Oct. 22, 1986, 100 Stat. 2475]

(g) Community property laws

This section shall be applied without regard to any community property laws.

(h) Custodial accounts

For purposes of this section, a custodial account shall be treated as a trust if the assets of such account are held by a bank (as defined in subsection (n)) or another person who demonstrates, to the satisfaction of the Secretary, that the manner in which he will administer the account will be consistent with the requirements of this section, and if the custodial account would, except for the fact that it is not a trust, constitute an individual retirement account described in subsection (a). For purposes of this title, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of such account shall be treated as the trustee thereof.

(i) Reports

The trustee of an individual retirement account and the issuer of an endowment contract described in subsection (b) or an individual retirement annuity shall make such reports regarding such account, contract, or annuity to the Secretary and to the individuals for whom the account, contract, or annuity is, or is to be, maintained with respect to contributions (and the years to which they relate), distributions aggregating $10 or more in any calendar year, and such other matters as the Secretary may require. The reports required by this subsection—

(1) shall be filed at such time and in such manner as the Secretary prescribes, and

(2) shall be furnished to individuals—

(A) not later than January 31 of the calendar year following the calendar year to which such reports relate, and

(B) in such manner as the Secretary prescribes.

In the case of a simple retirement account under subsection (p), only one report under this subsection shall be required to be submitted each calendar year to the Secretary (at the time provided under paragraph (2)) but, in addition to the report under this subsection, there shall be furnished, within 31 days after each calendar year, to the individual on whose behalf the account is maintained a statement with respect to the account balance as of the close of, and the account activity during, such calendar year.

(j) Increase in maximum limitations for simplified employee pensions

In the case of any simplified employee pension, subsections (a)(1) and (b)(2) of this section shall be applied by increasing the amounts contained therein by the amount of the limitation in effect under section 415(c)(1)(A).

(k) Simplified employee pension defined

(1) In general

For purposes of this title, the term ''simplified employee pension'' means an individual retirement account or individual retirement annuity—

(A) with respect to which the requirements of paragraphs (2), (3), (4), and (5) of this subsection are met, and

(B) if such account or annuity is part of a top-heavy plan (as defined in section 416), with respect to which the requirements of section 416(c)(2) are met.

(2) Participation requirements

This paragraph is satisfied with respect to a simplified employee pension for a year only if for such year the employer contributes to the simplified employee pension of each employee who—

(A) has attained age 21,

(B) has performed service for the employer during at least 3 of the immediately preceding 5 years, and

(C) received at least $450 in compensation (within the meaning of section 414(q)(4)) from the employer for the year.

For purposes of this paragraph, there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(3). For purposes of any arrangement described in subsection (k)(6), any employee who is eligible to have employer contributions made on the employee's behalf under such arrangement shall be treated as if such a contribution was made.

(3) Contributions may not discriminate in favor of the highly compensated, etc.

(A) In general

The requirements of this paragraph are met with respect to a simplified employee pension for a year if for such year the contributions made by the employer to simplified employee pensions for his employees do not discriminate in favor of any highly compensated employee (within the meaning of section 414(q)).

(B) Special rules

For purposes of subparagraph (A), there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(3).

(C) Contributions must bear uniform relationship to total compensation

For purposes of subparagraph (A), and except as provided in subparagraph (D), employer contributions to simplified employee pensions (other than contributions under an arrangement described in paragraph (6)) shall be considered discriminatory unless contributions thereto bear a uniform relationship to the compensation (not in excess of the first $200,000) of each employee maintaining a simplified employee pension.

(D) Permitted disparity

For purposes of subparagraph (C), the rules of section 401(*l*)(2) shall apply to contributions to simplified employee pensions (other than contributions under an arrangement described in paragraph (6)).

(4) Withdrawals must be permitted

A simplified employee pension meets the requirements of this paragraph only if—

(A) employer contributions thereto are not conditioned on the retention in such pension of any portion of the amount contributed, and

(B) there is no prohibition imposed by the employer on withdrawals from the simplified employee pension.

(5) Contributions must be made under written allocation formula

The requirements of this paragraph are met with respect to a simplified employee pension only if employer contributions to such pension are determined under a definite written allocation formula which specifies—

(A) the requirements which an employee must satisfy to share in an allocation, and

(B) the manner in which the amount allocated is computed.

(6) Employee may elect salary reduction arrangement

(A) Arrangements which qualify

(i) In general

A simplified employee pension shall not fail to meet the requirements of this subsection for a year merely because, under the terms of the pension, an employee may elect to have the employer make payments—

(I) as elective employer contributions to the simplified employee pension on behalf of the employee, or

(II) to the employee directly in cash.

(ii) 50 percent of eligible employees must elect

Clause (i) shall not apply to a simplified employee pension unless an election described in clause (i)(I) is made or is in effect with respect to not less than 50 percent of the employees of the employer eligible to participate.

(iii) Requirements relating to deferral percentage

Clause (i) shall not apply to a simplified employee pension for any year unless the deferral percentage for such year of each highly compensated employee eligible to participate is not more than the product of—

(I) the average of the deferral percentages for such year of all employees (other than highly compensated employees) eligible to participate, multiplied by

(II) 1.25.

(iv) Limitations on elective deferrals

Clause (i) shall not apply to a simplified employee pension unless the requirements of section 401(a)(30) are met.

(B) Exception where more than 25 employees

This paragraph shall not apply with respect to any year in the case of a simplified employee pension maintained by an employer with more than 25 employees who were eligible to participate (or would have been required to be eligible to participate if a pension was maintained) at any time during the preceding year.

(C) Distributions of excess contributions

(i) In general

Rules similar to the rules of section 401(k)(8) shall apply to any excess contribution under this paragraph. Any excess contribution under a simplified employee pension shall be treated as an excess contribution for purposes of section 4979.

(ii) Excess contribution

For purposes of clause (i), the term ''excess contribution'' means, with respect to a highly compensated employee, the excess of elective employer contributions under this paragraph over the maximum amount of such contributions allowable under subparagraph (A)(iii).

(D) Deferral percentage

For purposes of this paragraph, the deferral percentage for an employee for a year shall be the ratio of—

(i) the amount of elective employer contributions actually paid over to the simplified employee pension on behalf of the employee for the year, to

(ii) the employee's compensation (not in excess of the first $200,000) for the year.

(E) Exception for State and local and tax-exempt pensions

This paragraph shall not apply to a simplified employee pension maintained by—

(i) a State or local government or political subdivision thereof, or any agency or instrumentality thereof, or

(ii) an organization exempt from tax under this title.

(F) Exception where pension does not meet requirements necessary to insure distribution of excess contributions

This paragraph shall not apply with respect to any year for which the simplified employee pension does not meet such requirements as the Secretary may prescribe as are necessary to insure that excess contributions are distributed in accordance with subparagraph (C), including—

(i) reporting requirements, and

(ii) requirements which, notwithstanding paragraph (4), provide that contributions (and any income allocable thereto) may not be withdrawn from a simplified employee pension until a determination has been made that the requirements of subparagraph (A)(iii) have been met with respect to such contributions.

(G) Highly compensated employee

For purposes of this paragraph, the term ''highly compensated employee'' has the meaning given such term by section 414(q).

(H) Termination

This paragraph shall not apply to years beginning after December 31, 1996. The preceding sentence shall not apply to a simplified employee pension of an employer if the terms of simplified employee pensions of such employer, as in effect on December 31, 1996, provide that an employee may make the election described in subparagraph (A).

(7) Definitions

For purposes of this subsection and subsection (*l*)—

(A) Employee, employer, or owner-employee

The terms ''employee'', ''employer'', and ''owner-employee'' shall have the respective meanings given such terms by section 401(c).

(B) Compensation

Except as provided in paragraph (2)(C), the term ''compensation'' has the meaning given such term by section 414(s).

(C) Year

The term ''year'' means—

(i) the calendar year, or

(ii) if the employer elects, subject to such terms and conditions as the Secretary may prescribe, to maintain the simplified employee pension on the basis of the employer's taxable year.

(8) Cost-of-living adjustment

The Secretary shall adjust the $450 amount in paragraph (2)(C) at the same time and in the same manner as under section 415(d) and shall adjust the $200,000 amount in paragraphs (3)(C) and (6)(D)(ii) at the same time, and by the same amount, as any adjustment under section 401(a)(17)(B); except that any increase in the $450 amount which is not a multiple of $50 shall be rounded to the next lowest multiple of $50.

(9) Cross reference

For excise tax on certain excess contributions, see section 4979.

(*l*) Simplified employer reports

(1) In general

An employer who makes a contribution on behalf of an employee to a simplified employee pension shall provide such simplified reports with respect to such contributions as the Secretary may require by regulations. The reports required by this subsection shall be filed at such time and in such manner, and information with respect to such contributions shall be furnished to the employee at such time and in such manner, as may be required by regulations.

(2) Simple retirement accounts

(A) No employer reports

Except as provided in this paragraph, no report shall be required under this section by an employer maintaining a qualified salary reduction arrangement under subsection (p).

(B) Summary description

The trustee of any simple retirement account established pursuant to a qualified salary reduction arrangement under subsection (p) and the issuer of an annuity established under such an arrangement shall provide to the employer maintaining the arrangement, each year a description containing the following information:

(i) The name and address of the employer and the trustee or issuer.

(ii) The requirements for eligibility for participation.

(iii) The benefits provided with respect to the arrangement.

(iv) The time and method of making elections with respect to the arrangement.

(v) The procedures for, and effects of, withdrawals (including rollovers) from the arrangement.

(C) Employee notification

The employer shall notify each employee immediately before the period for which an election described in subsection (p)(5)(C) may be made of the employee's opportunity to make such election. Such notice shall include a copy of the description described in subparagraph (B).

(m) Investment in collectibles treated as distributions

(1) In general

The acquisition by an individual retirement account or by an individually-directed account under a plan described in section 401(a) of any collectible shall be treated (for purposes of this section and section 402) as a distribution from such account in an amount equal to the cost to such account of such collectible.

(2) Collectible defined

For purposes of this subsection, the term ''collectible'' means—

(A) any work of art,

(B) any rug or antique,

(C) any metal or gem,

(D) any stamp or coin,

(E) any alcoholic beverage, or

(F) any other tangible personal property specified by the Secretary for purposes of this subsection.

(3) Exception for certain coins and bullion

For purposes of this subsection, the term ''collectible'' shall not include—

(A) any coin which is—

(i) a gold coin described in paragraph (7), (8), (9), or (10) of section 5112(a) of title 31, United States Code,

(ii) a silver coin described in section 5112(e) of title 31, United States Code,

(iii) a platinum coin described in section 5112(k) of title 31, United States Code, or

(iv) a coin issued under the laws of any State, or

(B) any gold, silver, platinum, or palladium bullion of a fineness equal to or exceeding the minimum fineness that a contract market (as described in section 7 of the Commodity Exchange Act, 7 U.S.C. 7)[2] requires for metals which may be delivered in satisfaction of a regulated futures contract,

if such bullion is in the physical possession of a trustee described under subsection (a) of this section.

(n) Bank

For purposes of subsection (a)(2), the term ''bank'' means—

(1) any bank (as defined in section 581),

(2) an insured credit union (within the meaning of paragraph (6) or (7) of section 101 of the Federal Credit Union Act), and

[2] See References in Text note below.

(3) a corporation which, under the laws of the State of its incorporation, is subject to supervision and examination by the Commissioner of Banking or other officer of such State in charge of the administration of the banking laws of such State.

(*o*) Definitions and rules relating to nondeductible contributions to individual retirement plans

(1) In general

Subject to the provisions of this subsection, designated nondeductible contributions may be made on behalf of an individual to an individual retirement plan.

(2) Limits on amounts which may be contributed

(A) In general

The amount of the designated nondeductible contributions made on behalf of any individual for any taxable year shall not exceed the nondeductible limit for such taxable year.

(B) Nondeductible limit

For purposes of this paragraph—

(i) In general

The term ''nondeductible limit'' means the excess of—

(I) the amount allowable as a deduction under section 219 (determined without regard to section 219(g)), over

(II) the amount allowable as a deduction under section 219 (determined with regard to section 219(g)).

(ii) Taxpayer may elect to treat deductible contributions as nondeductible

If a taxpayer elects not to deduct an amount which (without regard to this clause) is allowable as a deduction under section 219 for any taxable year, the nondeductible limit for such taxable year shall be increased by such amount.

(C) Designated nondeductible contributions

(i) In general

For purposes of this paragraph, the term ''designated nondeductible contribution'' means any contribution to an individual retirement plan for the taxable year which is designated (in such manner as the Secretary may prescribe) as a contribution for which a deduction is not allowable under section 219.

(ii) Designation

Any designation under clause (i) shall be made on the return of tax imposed by chapter 1 for the taxable year.

(3) Time when contributions made

In determining for which taxable year a designated nondeductible contribution is made, the rule of section 219(f)(3) shall apply.

(4) Individual required to report amount of designated nondeductible contributions

(A) In general

Any individual who—

(i) makes a designated nondeductible contribution to any individual retirement plan for any taxable year, or

(ii) receives any amount from any individual retirement plan for any taxable year,

shall include on his return of the tax imposed by chapter 1 for such taxable year and any succeeding taxable year (or on such other form as the Secretary may prescribe for any such taxable year) information described in subparagraph (B).

(B) Information required to be supplied

The following information is described in this subparagraph:

(i) The amount of designated nondeductible contributions for the taxable year.

(ii) The amount of distributions from individual retirement plans for the taxable year.

(iii) The excess (if any) of—

(I) the aggregate amount of designated nondeductible contributions for all preceding taxable years, over

(II) the aggregate amount of distributions from individual retirement plans which was excludable from gross income for such taxable years.

(iv) The aggregate balance of all individual retirement plans of the individual as of the close of the calendar year in which the taxable year begins.

(v) Such other information as the Secretary may prescribe.

(C) Penalty for reporting contributions not made

For penalty where individual reports designated nondeductible contributions not made, see section 6693(b).

(p) Simple retirement accounts

(1) In general

For purposes of this title, the term ''simple retirement account'' means an individual retirement plan (as defined in section 7701(a)(37))—

(A) with respect to which the requirements of paragraphs (3), (4), and (5) are met; and

(B) with respect to which the only contributions allowed are contributions under a qualified salary reduction arrangement.

(2) Qualified salary reduction arrangement

(A) In general

For purposes of this subsection, the term ''qualified salary reduction arrangement'' means a written arrangement of an eligible employer under which—

(i) an employee eligible to participate in the arrangement may elect to have the employer make payments—

(I) as elective employer contributions to a simple retirement account on behalf of the employee, or

(II) to the employee directly in cash,

(ii) the amount which an employee may elect under clause (i) for any year is required to be expressed as a percentage of compensation and may not exceed a total of the applicable dollar amount for any year,

(iii) the employer is required to make a matching contribution to the simple re-

tirement account for any year in an amount equal to so much of the amount the employee elects under clause (i)(I) as does not exceed the applicable percentage of compensation for the year, and

(iv) no contributions may be made other than contributions described in clause (i) or (iii).

(B) Employer may elect 2-percent nonelective contribution

(i) In general

An employer shall be treated as meeting the requirements of subparagraph (A)(iii) for any year if, in lieu of the contributions described in such clause, the employer elects to make nonelective contributions of 2 percent of compensation for each employee who is eligible to participate in the arrangement and who has at least $5,000 of compensation from the employer for the year. If an employer makes an election under this subparagraph for any year, the employer shall notify employees of such election within a reasonable period of time before the 60-day period for such year under paragraph (5)(C).

(ii) Compensation limitation

The compensation taken into account under clause (i) for any year shall not exceed the limitation in effect for such year under section 401(a)(17).

(C) Definitions

For purposes of this subsection—

(i) Eligible employer

(I) In general

The term ''eligible employer'' means, with respect to any year, an employer which had no more than 100 employees who received at least $5,000 of compensation from the employer for the preceding year.

(II) 2-year grace period

An eligible employer who establishes and maintains a plan under this subsection for 1 or more years and who fails to be an eligible employer for any subsequent year shall be treated as an eligible employer for the 2 years following the last year the employer was an eligible employer. If such failure is due to any acquisition, disposition, or similar transaction involving an eligible employer, the preceding sentence shall not apply.

(ii) Applicable percentage

(I) In general

The term ''applicable percentage'' means 3 percent.

(II) Election of lower percentage

An employer may elect to apply a lower percentage (not less than 1 percent) for any year for all employees eligible to participate in the plan for such year if the employer notifies the employees of such lower percentage within a reasonable period of time before the 60-day election period for such year under paragraph (5)(C). An employer may not elect a lower percentage under this subclause for any year if that election would result in the applicable percentage being lower than 3 percent in more than 2 of the years in the 5-year period ending with such year.

(III) Special rule for years arrangement not in effect

If any year in the 5-year period described in subclause (II) is a year prior to the first year for which any qualified salary reduction arrangement is in effect with respect to the employer (or any predecessor), the employer shall be treated as if the level of the employer matching contribution was at 3 percent of compensation for such prior year.

(D) Arrangement may be only plan of employer

(i) In general

An arrangement shall not be treated as a qualified salary reduction arrangement for any year if the employer (or any predecessor employer) maintained a qualified plan with respect to which contributions were made, or benefits were accrued, for service in any year in the period beginning with the year such arrangement became effective and ending with the year for which the determination is being made. If only individuals other than employees described in subparagraph (A) of section 410(b)(3) are eligible to participate in such arrangement, then the preceding sentence shall be applied without regard to any qualified plan in which only employees so described are eligible to participate.

(ii) Qualified plan

For purposes of this subparagraph, the term ''qualified plan'' means a plan, contract, pension, or trust described in subparagraph (A) or (B) of section 219(g)(5).

(E) Applicable dollar amount; cost-of-living adjustment

(i) In general

For purposes of subparagraph (A)(ii), the applicable dollar amount shall be the amount determined in accordance with the following table:

For years beginning in calendar year:	The applicable dollar amount:
2002	$7,000
2003	$8,000
2004	$9,000
2005 or thereafter	$10,000.

(ii) Cost-of-living adjustment

In the case of a year beginning after December 31, 2005, the Secretary shall adjust the $10,000 amount under clause (i) at the same time and in the same manner as under section 415(d), except that the base period taken into account shall be the calendar quarter beginning July 1, 2004, and any increase under this subparagraph

which is not a multiple of $500 shall be rounded to the next lower multiple of $500.

(3) Vesting requirements

The requirements of this paragraph are met with respect to a simple retirement account if the employee's rights to any contribution to the simple retirement account are nonforfeitable. For purposes of this paragraph, rules similar to the rules of subsection (k)(4) shall apply.

(4) Participation requirements

(A) In general

The requirements of this paragraph are met with respect to any simple retirement account for a year only if, under the qualified salary reduction arrangement, all employees of the employer who—

(i) received at least $5,000 in compensation from the employer during any 2 preceding years, and

(ii) are reasonably expected to receive at least $5,000 in compensation during the year,

are eligible to make the election under paragraph (2)(A)(i) or receive the nonelective contribution described in paragraph (2)(B).

(B) Excludable employees

An employer may elect to exclude from the requirement under subparagraph (A) employees described in section 410(b)(3).

(5) Administrative requirements

The requirements of this paragraph are met with respect to any simple retirement account if, under the qualified salary reduction arrangement—

(A) an employer must—

(i) make the elective employer contributions under paragraph (2)(A)(i) not later than the close of the 30-day period following the last day of the month with respect to which the contributions are to be made, and

(ii) make the matching contributions under paragraph (2)(A)(iii) or the nonelective contributions under paragraph (2)(B) not later than the date described in section 404(m)(2)(B),

(B) an employee may elect to terminate participation in such arrangement at any time during the year, except that if an employee so terminates, the arrangement may provide that the employee may not elect to resume participation until the beginning of the next year, and

(C) each employee eligible to participate may elect, during the 60-day period before the beginning of any year (and the 60-day period before the first day such employee is eligible to participate), to participate in the arrangement, or to modify the amounts subject to such arrangement, for such year.

(6) Definitions

For purposes of this subsection—

(A) Compensation

(i) In general

The term ''compensation'' means amounts described in paragraphs (3) and (8) of section 6051(a). For purposes of the preceding sentence, amounts described in section 6051(a)(3) shall be determined without regard to section 3401(a)(3).

(ii) Self-employed

In the case of an employee described in subparagraph (B), the term ''compensation'' means net earnings from self-employment determined under section 1402(a) without regard to any contribution under this subsection. The preceding sentence shall be applied as if the term ''trade or business'' for purposes of section 1402 included service described in section 1402(c)(6).

(B) Employee

The term ''employee'' includes an employee as defined in section 401(c)(1).

(C) Year

The term ''year'' means the calendar year.

(7) Use of designated financial institution

A plan shall not be treated as failing to satisfy the requirements of this subsection or any other provision of this title merely because the employer makes all contributions to the individual retirement accounts or annuities of a designated trustee or issuer. The preceding sentence shall not apply unless each plan participant is notified in writing (either separately or as part of the notice under subsection (*l*)(2)(C)) that the participant's balance may be transferred without cost or penalty to another individual account or annuity in accordance with subsection (d)(3)(G).

(8) Coordination with maximum limitation under subsection (a)

In the case of any simple retirement account, subsections (a)(1) and (b)(2) shall be applied by substituting ''the sum of the dollar amount in effect under paragraph (2)(A)(ii) of this subsection and the employer contribution required under subparagraph (A)(iii) or (B)(i) of paragraph (2) of this subsection, whichever is applicable'' for ''the dollar amount in effect under section 219(b)(1)(A)''.

(9) Matching contributions on behalf of self-employed individuals not treated as elective employer contributions

Any matching contribution described in paragraph (2)(A)(iii) which is made on behalf of a self-employed individual (as defined in section 401(c)) shall not be treated as an elective employer contribution to a simple retirement account for purposes of this title.

(10) Special rules for acquisitions, dispositions, and similar transactions

(A) In general

An employer which fails to meet any applicable requirement by reason of an acquisition, disposition, or similar transaction shall not be treated as failing to meet such requirement during the transition period if—

(i) the employer satisfies requirements similar to the requirements of section 410(b)(6)(C)(i)(II); and

(ii) the qualified salary reduction arrangement maintained by the employer

would satisfy the requirements of this subsection after the transaction if the employer which maintained the arrangement before the transaction had remained a separate employer.

(B) Applicable requirement

For purposes of this paragraph, the term ''applicable requirement'' means—

(i) the requirement under paragraph (2)(A)(i) that an employer be an eligible employer;

(ii) the requirement under paragraph (2)(D) that an arrangement be the only plan of an employer; and

(iii) the participation requirements under paragraph (4).

(C) Transition period

For purposes of this paragraph, the term ''transition period'' means the period beginning on the date of any transaction described in subparagraph (A) and ending on the last day of the second calendar year following the calendar year in which such transaction occurs.

(q) Deemed IRAs under qualified employer plans

(1) General rule

If—

(A) a qualified employer plan elects to allow employees to make voluntary employee contributions to a separate account or annuity established under the plan, and

(B) under the terms of the qualified employer plan, such account or annuity meets the applicable requirements of this section or section 408A for an individual retirement account or annuity,

then such account or annuity shall be treated for purposes of this title in the same manner as an individual retirement plan and not as a qualified employer plan (and contributions to such account or annuity as contributions to an individual retirement plan and not to the qualified employer plan). For purposes of subparagraph (B), the requirements of subsection (a)(5) shall not apply.

(2) Special rules for qualified employer plans

For purposes of this title, a qualified employer plan shall not fail to meet any requirement of this title solely by reason of establishing and maintaining a program described in paragraph (1).

(3) Definitions

For purposes of this subsection—

(A) Qualified employer plan

The term ''qualified employer plan'' has the meaning given such term by section 72(p)(4)(A)(i); except that such term shall also include an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A).

(B) Voluntary employee contribution

The term ''voluntary employee contribution'' means any contribution (other than a mandatory contribution within the meaning of section 411(c)(2)(C))—

(i) which is made by an individual as an employee under a qualified employer plan which allows employees to elect to make contributions described in paragraph (1), and

(ii) with respect to which the individual has designated the contribution as a contribution to which this subsection applies.

(r) Cross references

(1) For tax on excess contributions in individual retirement accounts or annuities, see section 4963.

(2) For tax on certain accumulations in individual retirement accounts or annuities, see section 4974.

(Added Pub. L. 93–406, title II, §2002(b), Sept. 2, 1974, 88 Stat. 959; amended Pub. L. 94–455, title XV, §1501(b)(2), (5), (10), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1735–1737, 1834; Pub. L. 95–600, title I, §§152(a), (b), 156(c)(1), (3), 157(c)(1), (d)(1), (e)(1)(A), (g)(3), (h)(2), title VII, §703(c)(4), Nov. 6, 1978, 92 Stat. 2797, 2802, 2803, 2805, 2806, 2808, 2939; Pub. L. 96–222, title I, §101(a)(10)(A), (C), (F), (G), (J)(i), (14)(B), (E)(ii), Apr. 1, 1980, 94 Stat. 201–205; Pub. L. 96–605, title II, §225(b)(3), (4), Dec. 28, 1980, 94 Stat. 3529; Pub. L. 97–34, title III, §§311(g)(1)(A)–(C), (2), (h)(2), 312(b)(2), (c)(5), 313(b)(2), 314(b)(1), Aug. 13, 1981, 95 Stat. 281–284, 286; Pub. L. 97–248, title II, §§237(e)(3), 238(d)(3), (4), 243(a), (b)(1)(A), title III, §335(a)(1), Sept. 3, 1982, 96 Stat. 512, 513, 521, 522, 628; Pub. L. 97–448, title I, §103(d)(1), (e), Jan. 12, 1983, 96 Stat. 2378; Pub. L. 98–369, div. A, title I, §147(a), title IV, §491(d)(19)–(24), title V, §§521(b), 522(d)(12), title VII, §713(c)(2)(B), (f)(2), (5)(B), (g)(2), (j), July 18, 1984, 98 Stat. 687, 850, 867, 871, 957, 959, 960; Pub. L. 99–514, title XI, §§1102(a), (b)(2), (c), (e)(2), 1108(a), (d)–(g)(1), (4), (6), 1121(c)(2), 1122(e)(2)(B), 1123(d)(2), 1144(a), title XVIII, §§1852(a)(1), (5)(C), (7)(A), 1875(c)(6)(A), (8), 1898(a)(5), Oct. 22, 1986, 100 Stat. 2414–2416, 2431, 2433, 2434, 2465, 2470, 2475, 2490, 2864–2866, 2895, 2944; Pub. L. 100–647, title I, §§1011(b)(1)–(3), (c)(7)(C), (f)(1)–(5), (10), (i)(5), 1011A(a)(2)(A), 1018(t)(3)(D), title VI, §6057(a), Nov. 10, 1988, 102 Stat. 3456, 3458, 3461–3463, 3468, 3472, 3588, 3698; Pub. L. 101–239, title VII, §§7811(m)(7), 7841(a)(1), Dec. 19, 1989, 103 Stat. 2412, 2427; Pub. L. 102–318, title V, §521(b)(16)–(19), July 3, 1992, 106 Stat. 311; Pub. L. 103–66, title XIII, §13212(b), Aug. 10, 1993, 107 Stat. 472; Pub. L. 103–465, title VII, §732(d), Dec. 8, 1994, 108 Stat. 5005; Pub. L. 104–188, title I, §§1421(a), (b)(3)(B), (5), (6), (c), 1427(b)(3), 1431(c)(1)(B), 1455(b)(1), Aug. 20, 1996, 110 Stat. 1792, 1796–1798, 1802, 1803, 1817; Pub. L. 105–34, title III, §§302(d), 304(a), title XV, §1501(b), title XVI, §1601(d)(1)(A)–(C)(i), (D)–(G), Aug. 5, 1997, 111 Stat. 829, 831, 1058, 1087, 1088; Pub. L. 105–206, title VI, §§6015(a), 6016(a)(1), 6018(b), July 22, 1998, 112 Stat. 820–822; Pub. L. 106–554, §1(a)(7) [title III, §319(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–646; Pub. L. 107–16, title VI, §§601(b), 602(a), 611(c)(1), (f)(1), (2), (g)(2), 641(e)(8), 642(a), (b)(2), (3), 643(c), 644(b), June 7, 2001, 115 Stat. 95, 97, 99, 121–123; Pub. L. 107–147, title IV, §411(i)(1), (j)(1), Mar. 9, 2002, 116 Stat. 46, 47; Pub. L. 108–311, title IV, §§404(d), 408(a)(12), (13), Oct. 4, 2004, 118 Stat. 1188, 1191; Pub. L. 109–280, title XII, §1201(a), Aug. 17, 2006, 120 Stat. 1063; Pub. L. 109–432, div. A, title III, §307(a), Dec. 20, 2006, 120 Stat. 2951; Pub. L. 110–172, §3(a), Dec. 29, 2007, 121 Stat. 2474; Pub. L. 110–343, div. C, title II, §205(a), Oct. 3, 2008, 122

Stat. 3865; Pub. L. 111–312, title VII, § 725(a), Dec. 17, 2010, 124 Stat. 3316.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

REFERENCES IN TEXT

Section 7 of the Commodity Exchange Act, referred to in subsec. (m)(3)(B), is classified to section 11 of Title 7, Agriculture, and relates to vacation on request of designation as ''contract market''. Section 5 of the Commodity Exchange Act, which is classified to section 7 of Title 7, relates to designation of boards of trade as ''contract markets''.

Paragraph (6) or (7) of section 101 of the Federal Credit Union Act, referred to in subsec. (n)(2), is classified to section 1752(6), (7) of Title 12, Banks and Banking.

AMENDMENTS

2010—Subsec. (d)(8)(F). Pub. L. 111–312 substituted ''December 31, 2011'' for ''December 31, 2009''.

2008—Subsec. (d)(8)(F). Pub. L. 110–343 substituted ''December 31, 2009'' for ''December 31, 2007''.

2007—Subsec. (d)(8)(D). Pub. L. 110–172 substituted ''all amounts in all individual retirement plans of the individual were distributed during such taxable year and all such plans were treated as 1 contract for purposes of determining under section 72 the aggregate amount which would have been so includible'' for ''all amounts distributed from all individual retirement plans were treated as 1 contract under paragraph (2)(A) for purposes of determining the inclusion of such distribution under section 72''.

2006—Subsec. (d)(8). Pub. L. 109–280, which directed the amendment of section 408(d) by adding par. (8), without specifying the act to be amended, was executed by making the addition to this section, which is section 408 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

Subsec. (d)(9). Pub. L. 109–432 added par. (9).

2004—Subsec. (a)(1). Pub. L. 108–311, § 408(a)(12), substituted ''457(e)(16),'' for ''457(e)(16)''.

Subsec. (n)(2). Pub. L. 108–311, § 408(a)(13), substituted ''paragraph (6) or (7) of section 101'' for ''section 101(6)''.

Subsec. (p)(6)(A)(i). Pub. L. 108–311, § 404(d), inserted at end ''For purposes of the preceding sentence, amounts described in section 6051(a)(3) shall be determined without regard to section 3401(a)(3).''

2002—Subsec. (k)(2)(C). Pub. L. 107–147, § 411(j)(1)(A), substituted ''$450'' for ''$300''.

Subsec. (k)(8). Pub. L. 107–147, § 411(j)(1)(B), substituted ''$450'' for ''$300'' in two places.

Subsec. (q)(3)(A). Pub. L. 107–147, § 411(i)(1), reenacted heading without change and amended text of subpar. (A) generally. Prior to amendment, text read as follows: ''The term 'qualified employer plan' has the meaning given such term by section 72(p)(4); except such term shall not include a government plan which is not a qualified plan unless the plan is an eligible deferred compensation plan (as defined in section 457(b)).''

2001—Subsec. (a)(1). Pub. L. 107–16, § 641(e)(8), substituted ''403(b)(8), or 457(e)(16)'' for ''or 403(b)(8),''.

Pub. L. 107–16, § 601(b)(1), substituted ''on behalf of any individual in excess of the amount in effect for such taxable year under section 219(b)(1)(A)'' for ''in excess of $2,000 on behalf of any individual''.

Subsec. (b). Pub. L. 107–16, § 601(b)(3), substituted ''the dollar amount in effect under section 219(b)(1)(A)'' for ''$2,000'' in concluding provisions.

Subsec. (b)(2)(B). Pub. L. 107–16, § 601(b)(2), substituted ''the dollar amount in effect under section 219(b)(1)(A)'' for ''$2,000''.

Subsec. (d)(3)(A). Pub. L. 107–16, § 642(a), inserted ''or'' at end of cl. (i), added cl. (ii) and concluding provisions, and struck out former cls. (ii) and (iii) which read as follows:

''(ii) no amount in the account and no part of the value of the annuity is attributable to any source other than a rollover contribution (as defined in section 402) from an employee's trust described in section 401(a) which is exempt from tax under section 501(a) or from an annuity plan described in section 403(a) (and any earnings on such contribution), and the entire amount received (including property and other money) is paid (for the benefit of such individual) into another such trust or annuity plan not later than the 60th day on which the individual receives the payment or the distribution; or

''(iii)(I) the entire amount received (including money and other property) represents the entire interest in the account or the entire value of the annuity,

''(II) no amount in the account and no part of the value of the annuity is attributable to any source other than a rollover contribution from an annuity contract described in section 403(b) and any earnings on such rollover, and

''(III) the entire amount thereof is paid into another annuity contract described in section 403(b) (for the benefit of such individual) not later than the 60th day after he receives the payment or distribution.''

Subsec. (d)(3)(D)(i). Pub. L. 107–16, § 642(b)(2), substituted ''(i) or (ii)'' for ''(i), (ii), or (iii)''.

Subsec. (d)(3)(G). Pub. L. 107–16, § 642(b)(3), reenacted heading without change and amended text of subpar. (G) generally. Prior to amendment, text read as follows: ''This paragraph shall not apply to any amount paid or distributed out of a simple retirement account (as defined in subsection (p)) unless—

''(i) it is paid into another simple retirement account, or

''(ii) in the case of any payment or distribution to which section 72(t)(6) does not apply, it is paid into an individual retirement plan.''

Subsec. (d)(3)(H). Pub. L. 107–16, § 643(c), added subpar. (H).

Subsec. (d)(3)(I). Pub. L. 107–16, § 644(b), added subpar. (I).

Subsec. (j). Pub. L. 107–16, § 601(b)(4), struck out ''$2,000'' before ''amounts''.

Subsec. (k)(3)(C), (6)(D)(ii), (8). Pub. L. 107–16, § 611(c)(1), substituted ''$200,000'' for ''$150,000''.

Subsec. (p)(2)(A)(ii). Pub. L. 107–16, § 611(f)(1), substituted ''the applicable dollar amount'' for ''$6,000''.

Subsec. (p)(2)(E). Pub. L. 107–16, § 611(f)(2), amended heading and text of subpar. (E) generally. Prior to amendment, text read as follows: ''The Secretary shall adjust the $6,000 amount under subparagraph (A)(ii) at the same time and in the same manner as under section 415(d), except that the base period taken into account shall be the calendar quarter ending September 30, 1996, and any increase under this subparagraph which is not a multiple of $500 shall be rounded to the next lower multiple of $500.''

Subsec. (p)(6)(A)(ii). Pub. L. 107–16, § 611(g)(2), inserted at end ''The preceding sentence shall be applied as if the term 'trade or business' for purposes of section 1402 included service described in section 1402(c)(6).''

Subsec. (p)(8). Pub. L. 107–16, § 601(b)(5), substituted ''the dollar amount in effect under section 219(b)(1)(A)'' for ''$2,000''.

Subsecs. (q), (r). Pub. L. 107–16, § 602(a), added subsec. (q) and redesignated former subsec. (q) as (r).

2000—Subsec. (d)(5). Pub. L. 106–554 amended heading generally. Prior to amendment, heading read as follows: ''Certain distributions of excess contributions after due date for taxable year''.

1998—Subsec. (d)(7). Pub. L. 105–206, § 6018(b)(2), inserted ''or simple retirement accounts'' after ''pensions'' in heading.

Subsec. (d)(7)(B). Pub. L. 105–206, § 6018(b)(1), inserted ''or 402(k)'' after ''section 402(h)''.

Subsec. (p)(2)(C)(i)(II). Pub. L. 105–206, § 6016(a)(1)(C)(i), substituted ''the preceding sentence shall not apply'' for ''the preceding sentence shall apply only in accordance with rules similar to the rules of section 410(b)(6)(C)(i)'' in last sentence.

Subsec. (p)(2)(D)(i). Pub. L. 105–206, § 6016(a)(1)(A), struck out ''or (B)'' after ''(A)'' in last sentence.

Subsec. (p)(2)(D)(iii). Pub. L. 105–206, §6016(a)(1)(C)(ii), struck out heading and text of cl. (iii). Text read as follows: ''In the case of an employer who establishes and maintains a plan under this subsection for 1 or more years and who fails to meet any requirement of this subsection for any subsequent year due to any acquisition, disposition, or similar transaction involving another such employer, rules similar to the rules of section 410(b)(6)(C) shall apply for purposes of this subsection.''

Subsec. (p)(8), (9). Pub. L. 105–206, §6015(a), redesignated par. (8), relating to matching contributions on behalf of self-employed individuals not treated as elective employer contributions, as (9).

Subsec. (p)(10). Pub. L. 105–206, §6016(a)(1)(B), added par. (10).

1997—Subsec. (i). Pub. L. 105–34, §1601(d)(1)(A), substituted ''31 days'' for ''30 days'' in concluding provisions.

Pub. L. 105–34, §302(d), struck out ''under regulations'' after ''may require'' in introductory provisions and struck out ''in such regulations'' after ''prescribes'' in pars. (1) and (2)(B).

Subsec. (k)(6)(H). Pub. L. 105–34, §1601(d)(1)(B), substituted ''of an employer if the terms of simplified employee pensions of such employer'' for ''if the terms of such pension''.

Subsec. (*l*)(2)(B). Pub. L. 105–34, §1601(d)(1)(C)(i), inserted ''and the issuer of an annuity established under such an arrangement'' after ''under subsection (p)'' in introductory provisions and ''or issuer'' after ''trustee'' in cl. (i).

Subsec. (m)(3). Pub. L. 105–34, §304(a), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''In the case of an individual retirement account, paragraph (2) shall not apply to—

''(A) any gold coin described in paragraph (7), (8), (9), or (10) of section 5112(a) of title 31,

''(B) any silver coin described in section 5112(e) of title 31, or

''(C) any coin issued under the laws of any State.''

Subsec. (p)(2)(D)(i). Pub. L. 105–34, §1601(d)(1)(E), inserted at end ''If only individuals other than employees described in subparagraph (A) or (B) of section 410(b)(3) are eligible to participate in such arrangement, then the preceding sentence shall be applied without regard to any qualified plan in which only employees so described are eligible to participate.''

Subsec. (p)(2)(D)(iii). Pub. L. 105–34, §1601(d)(1)(F), added cl. (iii).

Subsec. (p)(5). Pub. L. 105–34, §1601(d)(1)(G), substituted ''simple'' for ''simplified'' in introductory provisions.

Subsec. (p)(8). Pub. L. 105–34, §1601(d)(1)(D), added par. (8) relating to coordination with maximum limitation under subsection (a).

Pub. L. 105–34, §1501(b), added par. (8) relating to matching contributions on behalf of self-employed individuals not treated as elective employer contributions.

1996—Subsec. (d)(3)(G). Pub. L. 104–188, §1421(b)(3)(B), added subpar. (G).

Subsec. (d)(5)(A). Pub. L. 104–188, §1427(b)(3), substituted ''the dollar amount in effect under section 219(b)(1)(A)'' for ''$2,250'' in introductory provisions.

Subsec. (i). Pub. L. 104–188, §1455(b)(1), inserted ''aggregating $10 or more in any calendar year'' after ''distributions'' in introductory provisions.

Pub. L. 104–188, §1421(b)(6), inserted at end ''In the case of a simple retirement account under subsection (p), only one report under this subsection shall be required to be submitted each calendar year to the Secretary (at the time provided under paragraph (2)) but, in addition to the report under this subsection, there shall be furnished, within 30 days after each calendar year, to the individual on whose behalf the account is maintained a statement with respect to the account balance as of the close of, and the account activity during, such calendar year.''

Subsec. (k)(2)(C). Pub. L. 104–188, §1431(c)(1)(B), substituted ''section 414(q)(4)'' for ''section 414(q)(7)''.

Subsec. (k)(6)(H). Pub. L. 104–188, §1421(c), added subpar. (H).

Subsec. (*l*). Pub. L. 104–188, §1421(b)(5), designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsecs. (p), (q). Pub. L. 104–188, §1421(a), added subsec. (p) and redesignated former subsec. (p) as (q).

1994—Subsec. (k)(8). Pub. L. 103–465 inserted before period at end ''; except that any increase in the $300 amount which is not a multiple of $50 shall be rounded to the next lowest multiple of $50''.

1993—Subsec. (k)(3)(C), (6)(D)(ii). Pub. L. 103–66, §13212(b)(1), substituted ''$150,000'' for ''$200,000''.

Subsec. (k)(8). Pub. L. 103–66, §13212(b)(2), amended heading and text of par. (8) generally. Prior to amendment, text read as follows: ''The Secretary shall adjust the $300 amount in paragraph (2)(C) and the $200,000 amount in paragraphs (3)(C) and (6)(D)(ii) at the same time and in the same manner as under section 415(d), except that in the case of years beginning after 1988, the $200,000 amount (as so adjusted) shall not exceed the amount in effect under section 401(a)(17).''

1992—Subsec. (a)(1). Pub. L. 102–318, §521(b)(16), substituted ''402(c)'' for ''402(a)(5), 402(a)(7)''.

Subsec. (d)(3)(A)(ii). Pub. L. 102–318, §521(b)(17), amended clause (ii) generally. Prior to amendment, clause (ii) read as follows: ''the entire amount received (including money and any other property) represents the entire amount in the account or the entire value of the annuity and no amount in the account and no part of the value of the annuity is attributable to any source other than a rollover contribution of a qualified total distribution (as defined in section 402(a)(5)(E)(i)) from an employee's trust described in section 401(a) which is exempt from tax under section 501(a), or an annuity plan described in section 403(a) and any earnings on such sums and the entire amount thereof is paid into another such trust (for the benefit of such individual) or annuity plan not later than the 60th day on which he receives the payment or distribution; or''.

Subsec. (d)(3)(B). Pub. L. 102–318, §521(b)(18), struck out at end ''Clause (ii) of subparagraph (A) shall not apply to any amount paid or distributed out of an individual retirement account or an individual retirement annuity to which an amount was contributed which was treated as a rollover contribution by section 402(a)(7) (or in the case of an individual retirement annuity, such section as made applicable by section 403(a)(4)(B)).''

Subsec. (d)(3)(F). Pub. L. 102–318, §521(b)(19), substituted ''402(c)(7)'' for ''402(a)(6)(H)''.

1989—Subsecs. (a)(6), (b)(3). Pub. L. 101–239, §7811(m)(7), struck out ''(without regard to subparagraph (C)(ii) thereof)'' after ''section 401(a)(9)''.

Subsec. (d)(6). Pub. L. 101–239, §7841(a)(1), substituted ''his spouse or former spouse under a divorce or separation instrument described in subparagraph (A) of section 71(b)(2)'' for ''his former spouse under a divorce decree or under a written instrument incident to such divorce''.

1988—Subsec. (d)(2)(C). Pub. L. 100–647, §1011(b)(1), substituted ''in which the taxable year begins'' for ''with or within which the taxable year ends''.

Subsec. (d)(3)(A). Pub. L. 100–647, §1011A(a)(2)(A), struck out at end ''Clause (ii) shall not apply during the 5-year period beginning on the date of the qualified total distribution referred to in such clause if the individual was treated as a 5-percent owner with respect to such distribution under section 402(a)(5)(F)(ii).''

Subsec. (d)(3)(E). Pub. L. 100–647, §1018(t)(3)(D), substituted ''paragraph'' for ''subparagraph''.

Subsec. (d)(4). Pub. L. 100–647, §1011(b)(2), substituted ''Contributions'' for ''Excess contributions'' in heading, struck out ''to the extent that such contribution exceeds the amount allowable as a deduction under section 219'' after ''individual retirement annuity'' in introductory provisions, and substituted ''such contribution'' for ''such excess contribution'' in subpars. (B) and (C) and in last sentence.

Subsec. (d)(5). Pub. L. 100–647, §1011(b)(3), substituted ''shall be computed without regard to section 219(g)''

for ''(after application of section 408(*o*)(2)(B)(ii)) shall be increased by the nondeductible limit under section 408(*o*)(2)(B)'' in last sentence.

Subsec. (d)(7). Pub. L. 100–647, §1011(f)(5), added par. (7).

Subsec. (k)(3)(B). Pub. L. 100–647, §1011(i)(5), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''For purposes of subparagraph (A)—

''(i) there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(3), and

''(ii) an individual shall be considered a shareholder if he owns (with the application of section 318) more than 10 percent of the value of the stock of the employer.''

Subsec. (k)(3)(C). Pub. L. 100–647, §1011(f)(3)(C), struck out ''total'' before ''compensation''.

Subsec. (k)(6)(A). Pub. L. 100–647, §1011(f)(1), substituted ''Arrangements which qualify'' for ''In general'' in heading and amended text generally. Prior to amendment, text read as follows: ''A simplified employee pension shall not fail to meet the requirements of this subsection for a year merely because, under the terms of the pension—

''(i) an employee may elect to have the employer make payments—

''(I) as elective employer contributions to the simplified employee pension on behalf of the employee, or

''(II) to the employee directly in cash,

''(ii) an election described in clause (i)(I) is made or is in effect with respect to not less than 50 percent of the employees of the employer, and

''(iii) the deferral percentage for such year of each highly compensated employee eligible to participate is not more than the product derived by multiplying the average of the deferral percentages for such year of all employees (other than highly compensated employees) eligible to participate by 1.25.''

Subsec. (k)(6)(A)(iv). Pub. L. 100–647, §1011(c)(7)(C), added cl. (iv).

Subsec. (k)(6)(B). Pub. L. 100–647, §1011(f)(2), inserted ''who were eligible to participate (or would have been required to be eligible to participate if a pension was maintained)'' after ''than 25 employees''.

Subsec. (k)(6)(D)(ii). Pub. L. 100–647, §1011(f)(3)(A), substituted ''(not in excess of the first $200,000)'' for ''(within the meaning of section 414(s))''.

Subsec. (k)(6)(F), (G). Pub. L. 100–647, §1011(f)(4), added subpar. (f) and redesignated former subpar. (F) as (G).

Subsec. (k)(7)(B). Pub. L. 100–647, §1011(f)(3)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The term 'compensation' means, in the case of an employee within the meaning of section 401(c)(1), earned income within the meaning of section 401(c)(2).''

Subsec. (k)(8). Pub. L. 100–647, §1011(f)(3)(D), (10), substituted ''paragraphs (3)(C) and (6)(D)(ii)'' for ''paragraph (3)(C)'' and inserted '', except that in the case of years beginning after 1988, the $200,000 amount (as so adjusted) shall not exceed the amount in effect under section 401(a)(17)'' after ''under section 415(d)''.

Subsec. (m)(3). Pub. L. 100–647, §6057(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''In the case of an individual retirement account, paragraph (2) shall not apply to any gold coin described in paragraph (7), (8), (9), or (10) of section 5112(a) of title 31 or any silver coin described in section 5112(e) of title 31.''

Subsec. (*o*)(4)(B)(iv). Pub. L. 100–647, §1011(b)(1), substituted ''in which the taxable year begins'' for ''with or within which the taxable year ends''.

1986—Subsecs. (a)(6), (b)(3). Pub. L. 99–514, §1852(a)(1), substituted ''(without regard to subparagraph (C)(ii) thereof) and the incidental death benefit requirements of section 401(a)'' for ''(relating to required distributions)''.

Subsec. (c)(1). Pub. L. 99–514, §1852(a)(7)(A), substituted ''paragraphs (1) through (6)'' for ''paragraphs (1) through (7)''.

Subsec. (d)(1). Pub. L. 99–514, §1102(c), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement account or under an individual retirement annuity shall be included in gross income by the payee or distributee, as the case may be, for the taxable year in which the payment or distribution is received. Notwithstanding any other provision of this title (including chapters 11 and 12), the basis any person in such an account or annuity is zero.''

Subsec. (d)(2). Pub. L. 99–514, §1102(c), substituted ''Special rules for applying section 72'' for ''Distributions of annuity contracts'' in heading and amended par. generally. Prior to amendment, par. (2) read as follows: ''Paragraph (1) does not apply to any annuity contract which meets the requirements of paragraphs (1), (3), (4), and (5) of subsection (b) and which is distributed from an individual retirement account. Section 72 applies to any such annuity contract, and for purposes of section 72 the investment in such contract is zero.''

Subsec. (d)(3)(A). Pub. L. 99–514, §1875(c)(8)(C), inserted at end ''Clause (ii) shall not apply during the 5-year period beginning on the date of the qualified total distribution referred to in such clause if the individual was treated as a 5-percent owner with respect to such distribution under section 402(a)(5)(F)(ii).''

Subsec. (d)(3)(A)(ii). Pub. L. 99–514, §1875(c)(8)(A), (B), struck out ''(other than a trust forming part of a plan under which the individual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan)'' after ''section 501(a)'' and struck out ''(other than a plan under which the individual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan)'' after ''section 403(a)''.

Pub. L. 99–514, §1121(c)(2), made amendment identical to Pub. L. 99–514, §1875(c)(8)(A), (B), see above.

Subsec. (d)(3)(E). Pub. L. 99–514, §1852(a)(5)(C), added subpar. (E).

Subsec. (d)(3)(F). Pub. L. 99–514, §1122(e)(2)(B), added subpar. (F).

Subsec. (d)(5). Pub. L. 99–514, §1102(b)(2), inserted at end ''For purposes of this paragraph, the amount allowable as a deduction under section 219 (after application of section 408(*o*)(2)(B)(ii)) shall be increased by the nondeductible limit under section 408(*o*)(2)(B).''

Subsec. (d)(5)(A). Pub. L. 99–514, §1875(c)(6)(A), substituted ''the dollar limitation in effect under section 415(c)(1)(A) for such taxable year'' for ''$15,000''.

Subsec. (f). Pub. L. 99–514, §1123(d)(2), struck out subsec. (f) which related to additional tax on certain amounts included in gross income before age 59½.

Subsec. (i). Pub. L. 99–514, §1102(e)(2), amended last sentence generally. Prior to amendment, last sentence read as follows: ''The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by those regulations.''

Subsec. (k)(2). Pub. L. 99–514, §1108(d), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''This paragraph is satisfied with respect to a simplified employee pension for a calendar year only if for such year the employer contributes to the simplified employee pension of each employee who—

''(A) has attained age 21, and

''(B) has performed service for the employer during at least 3 of the immediately preceding 5 calendar years.

For purposes of this paragraph, there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(3).''

Subsec. (k)(2)(A). Pub. L. 99–514, §1898(a)(5), substituted ''age 21'' for ''age 25''.

Subsec. (k)(3)(A). Pub. L. 99–514, §1108(g)(4), substituted ''year'' for ''calendar year''.

Pub. L. 99–514, §1108(g)(1)(A), substituted ''any highly compensated employee (within the meaning of section 414(q))'' for ''any employee who is—

''(i) an officer,

''(ii) a shareholder,

''(iii) a self-employed individual, or

''(iv) highly compensated''.

Subsec. (k)(3)(C). Pub. L. 99–514, §1108(g)(1)(B), inserted ''and except as provided in subparagraph (D),'' and ''(other than contributions under an arrangement described in paragraph (6))'', and struck out end sentence which read as follows: ''The Secretary shall annually adjust the $200,000 amount contained in the preceding sentence at the same time and in the same manner as he adjusts the dollar amount contained in section 415(c)(1)(A).''

Subsec. (k)(3)(D), (E). Pub. L. 99–514, §1108(g)(1)(C), added subpar. (D) and struck out former subpar. (D), treatment of certain contributions and taxes, which read ''Except as provided in this subparagraph, employer contributions do not meet the requirements of this paragraph unless such contributions meet the requirements of this paragraph without taking into account contributions or benefits under chapter 2 (relating to tax on self-employment income), chapter 21 (relating to Federal Insurance Contribution Act), title II of the Social Security Act, or any other Federal or State law. If the employer does not maintain an integrated plan at any time during the taxable year, OASDI contributions (as defined in section 401(*l*)(2)) may, for purposes of this paragraph, be taken into account as contributions by the employer to the employee's simplified employee pension, but only if such contributions are so taken into account with respect to each employee maintaining a simplified employee pension.'', and former subpar. (E), integrated plan defined, which read ''For purposes of subparagraph (D), the term 'integrated plan' means a plan which meets the requirements of section 401(a) or 403(a) but would not meet such requirements if contributions or benefits under chapter 2 (relating to tax on self-employment income), chapter 21 (relating to Federal Insurance Contributions Act), title II of the Social Security Act, or any other Federal or State law were not taken into account.''

Subsec. (k)(6). Pub. L. 99–514, §1108(a), added par. (6).

Subsec. (k)(7)(C). Pub. L. 99–514, §1108(f), added subpar. (C).

Subsec. (k)(8). Pub. L. 99–514, §1108(e), added par. (8).

Subsec. (k)(9). Pub. L. 99–514, §1108(g)(6), added par. (9).

Subsec. (m)(3). Pub. L. 99–514, §1144(a), added par. (3).

Subsecs. (*o*), (p). Pub. L. 99–514, §1102(a), added subsec. (*o*) and redesignated former subsec. (*o*) as (p).

1984—Subsec. (a)(1). Pub. L. 98–369, §491(d)(19), substituted ''or 403(b)(8)'' for ''403(b)(8), 405(d)(3), or 409(b)(3)(C)''.

Subsec. (a)(6). Pub. L. 98–369, §521(b)(1), added par. (6) and struck out former par. (6) which provided that the entire interest of an individual for whose benefit the trust is maintained will be distributed to him not later than the close of his taxable year in which he attains age 70½, or will be distributed, commencing before the close of such taxable year, in accordance with regulations prescribed by the Secretary, over (A) the life of such individual or the lives of such individual and his spouse, or (B) a period not extending beyond the life expectancy of such individual or the life expectancy of such individual and his spouse.

Subsec. (a)(7). Pub. L. 98–369, §521(b)(1), struck out par. (7) which provided that if (A) an individual for whose benefit the trust is maintained dies before his entire interest has been distributed to him, or (B) distribution has been commenced as provided in paragraph (6) to his surviving spouse and such surviving spouse dies before the entire interest has been distributed to such spouse, the entire interest (or the remaining part of such interest if distribution thereof has commenced) will be distributed within 5 years after his death (or the death of the surviving spouse). The preceding sentence shall not apply if distributions over a term certain commenced before the death of the individual for whose benefit the trust was maintained and the term certain is for a period permitted under paragraph (6).

Subsec. (b)(3). Pub. L. 98–369, §521(b)(2), added par. (3) and struck out former par. (3) which provided that the entire interest of the owner will be distributed to him not later than the close of his taxable year in which he attains age 70½, or will be distributed, in accordance with regulations prescribed by the Secretary, over (A) the life of such owner or the lives of such owner and his spouse, or (B) a period not extending beyond the life expectancy of such owner or the life expectancy of such owner and his spouse.

Subsec. (b)(4), (5). Pub. L. 98–369, §521(b)(2), redesignated par. (5) as (4) and struck out former par. (4) which provided that if (A) the owner dies before his entire interest has been distributed to him, or (B) distribution has been commenced as provided in paragraph (3) to his surviving spouse and such surviving spouse dies before the entire interest has been distributed to such spouse, the entire interest (or the remaining part of such interest if distribution thereof has commenced) will be distributed within 5 years after his death (or the death of the surviving spouse). The preceding sentence shall not apply if distributions over a term certain commenced before the death of the owner and the term certain is for a period permitted under paragraph (3).

Subsec. (d)(3)(A)(i). Pub. L. 98–369, §491(d)(20), struck out ''or retirement bond'' before ''for the benefit''.

Subsec. (d)(3)(A)(ii). Pub. L. 98–369, §522(d)(12), substituted ''rollover contribution of a qualified total distribution (as defined in section 402(a)(5)(E)(i)) from an employee's trust'' for ''rollover contribution from an employee's trust''.

Subsec. (d)(3)(B). Pub. L. 98–369, §491(d)(21), substituted ''or an individual retirement annuity'' for '', individual retirement annuity, or a retirement bond''.

Subsec. (d)(3)(C), (D). Pub. L. 98–369, §713(g)(2), designated the subpar. (C), as added by section 335(a)(1) of Pub. L. 97–248, relating to permitting partial rollovers, as subpar. (D).

Subsec. (d)(3)(D)(ii). Pub. L. 98–369, §491(d)(22), struck out ''bond,'' after ''annuity,''.

Subsec. (d)(6). Pub. L. 98–369, §491(d)(23), substituted ''or an individual retirement annuity'' for '', individual retirement annuity, or retirement bond'', and ''or annuity'' for '', annuity, or bond''.

Subsec. (h). Pub. L. 98–369, §713(c)(2)(B), substituted ''(as defined in subsection (n))'' for ''(as defined in section 401(d)(1))''.

Subsec. (i). Pub. L. 98–369, §147(a), inserted ''(and the years to which they relate)''.

Subsec. (k)(1). Pub. L. 98–369, §713(f)(2), amended par. (1) generally, designating existing provisions as subpar. (A) and adding subpar. (B).

Subsec. (k)(3)(C). Pub. L. 98–369, §713(f)(5)(B), inserted provision which required annual adjustment of the $200,000 amount concurrently with the dollar amount adjustment in section 415(c)(1)(A).

Subsec. (k)(3)(D). Pub. L. 98–369, §713(j), substituted in penultimate sentence ''OASDI contributions (as defined in section 401(*l*)(2)'' for ''taxes paid under section 3111 (relating to tax on employers) with respect to an employee'' and ''as contributions by the employer to the employee's simplified employee pension, but only if such contributions are so taken into account with respect to each employee maintaining a simplified employee pension'' for ''as a contribution by the employer to an employee's simplified pension'' and struck out third sentence which provided ''If contributions are made to the simplified employee pension of an owner-employee, the preceding sentence shall not apply unless taxes paid by all such owner-employees under chapter 2, and the taxes which would be payable under chapter 2 by such owner-employees but for paragraphs (4) and (5) of section 1402(c), are taken into account as contributions by the employer on behalf of such owner-employees.''

Subsec. (k)(3)(E). Pub. L. 98–369, §491(d)(24), substituted ''or 403(a)'' for '', 403(a), or 405(a)''.

1983—Subsec. (j). Pub. L. 97–448, §103(d)(1)(B), substituted ''$17,000'' for ''$15,000'' in provisions preceding par. (1).

Subsec. (k)(3)(C)(ii). Pub. L. 97–448, §103(d)(1)(A), inserted ''(other than an employee within the meaning of section 401(c)(1))'' after ''a simplified employee pension on behalf of each employee''.

Subsecs. (m), (n). Pub. L. 97–448, §103(e)(1), amended directory language of Pub. L. 97–34, §314(b)(1), thereby correcting subsec. designations. See 1981 Amendment note below for subsecs. (m) and (n).

1982—Subsec. (a)(2). Pub. L. 97–248, §237(e)(3)(A), substituted reference to subsection (n) of this section, for reference to section 401(d)(1).

Subsec. (a)(7). Pub. L. 97–248, §243(a)(1), amended par. (7) generally, designating existing provisions as subpars. (A) and (B), in subpar. (B), as so designated, striking out ''if'' before ''distribution'', in provisions following subpar. (B) substituting ''will be distributed within 5 years after his death (or the death of the surviving spouse)'' for ''will, within 5 years after his death (or the death of the surviving spouse), be distributed, or applied to the purchase of an immediate annuity for his beneficiary or beneficiaries (or the beneficiary or beneficiaries of his surviving spouse) which will be payable for the life of such beneficiary or beneficiaries (or for a term certain not extending beyond the life expectancy of such beneficiary or beneficiaries) and which annuity will be immediately distributed to such beneficiary or beneficiaries'', and substituting ''shall not apply'' for ''does not apply''.

Subsec. (b)(4). Pub. L. 97–248, §243(a)(2), amended par. (4) generally, designating existing provisions, as subpars. (A) and (B), in subpar. (B), as so redesignated, striking out ''if'' before ''distribution'', in provisions following subpar. (B) substituting ''will be distributed within 5 years after his death (or the death of the surviving spouse)'' for ''will, within 5 years after his death (or the death of the surviving spouse), be distributed, or applied to the purchase of an immediate annuity for his beneficiary or beneficiaries (or the beneficiary or beneficiaries of his surviving spouse) which will be payable for the life of such beneficiary or beneficiaries (or for a term certain not extending beyond the life expectancy of such beneficiary or beneficiaries) and which annuity will be immediately distributed to such beneficiary or beneficiaries'', and substituting ''shall not apply'' for ''shall have no application''.

Subsec. (d)(3)(C). Pub. L. 97–248, §243(b)(1)(A), added subpar. (C) relating to denial of rollover treatment for inherited accounts.

Pub. L. 97–248, §335(a)(1), added subpar. (C) relating to permitting partial rollovers.

Subsec. (j). Pub. L. 97–248, §238(d)(3), amended subsec. (j) generally, substituting provisions increasing amount by the amount of the limitation in effect under section 415(c)(1)(A), for provisions increasing amount by substituting ''$15,000'' for ''$2,000''.

Subsec. (k)(1). Pub. L. 97–248, §238(d)(4)(B), struck out reference to par. (6) of this subsection.

Subsec. (k)(3)(C). Pub. L. 97–248, §238(d)(4)(C), amended subpar. (C) generally, striking out cl. ''(i)'' designation and cl. (ii) which related to taking into account compensation in excess of $100,000 with respect to a simplified employee pension.

Subsec. (k)(6). Pub. L. 97–248, §238(d)(4)(A), struck out par. (6) which related to prohibition on employer maintaining plan to which section 401(j) applies.

Subsecs. (n), (*o*). Pub. L. 97–248, §237(e)(3)(B), added subsec. (n) and redesignated former subsec. (n) as (*o*).

1981—Subsec. (a)(1). Pub. L. 97–34, §313(b)(2), inserted reference to section 405(d)(3).

Pub. L. 97–34, §311(g)(1)(A), substituted ''$2,000'' for ''$1,500''.

Subsec. (b). Pub. L. 97–34, §311(g)(1)(B), substituted in par. (2)(B) and provision following par. (5) ''$2,000'' for ''$1,500''.

Subsec. (d)(4). Pub. L. 97–34, §311(h)(2), substituted section ''219'' for ''219 or 220'' in provision preceding subpar. (A) and in subpar. (B).

Subsec. (d)(5)(A). Pub. L. 97–34, §312(c)(5), substituted ''$15,000'' for ''$7,500''.

Pub. L. 97–34, §311(g)(2), (h)(2), substituted ''$2,250'' for ''$1,750'' and ''219'' for ''219 or 220'' in two places.

Subsec. (j). Pub. L. 97–34, §312(c)(5), substituted ''$15,000'' for ''$7,500''.

Pub. L. 97–34, §311(g)(1)(C), substituted ''$2,000'' for ''$1,500''.

Subsec. (k)(3)(C). Pub. L. 97–34, §312(b)(2), designated provision relating to compensation bearing a uniform relationship to total compensation as cl. (i), and in cl. (i) as so designated, substituted ''$200,000'' for ''$100,000'', and added cl. (ii).

Subsecs. (m), (n). Pub. L. 97–34, §314(b)(1), as amended by Pub. L. 97–448, §103(e)(1), added subsec. (m) and redesignated former subsec. (m) as (n).

1980—Subsec. (a)(1). Pub. L. 96–222, §101(a)(14)(B), inserted reference to section 402(a)(7).

Subsec. (d)(5). Pub. L. 96–222, §101(a)(10)(C), (14)(E)(ii), in subpar. (A) inserted provisions requiring that if employer contributions on behalf of the individual are paid for the taxable year to a simplified employee pension, the dollar amount of the preceding sentence be increased by the lessor of the amount of such contributions or $7,500 and restructured subpar. (B).

Subsec. (j)(3). Pub. L. 96–222, §101(a)(10)(J)(i), struck out par. (3) which made reference to paragraph (5) of subsection (b).

Subsec. (k). Pub. L. 96–222, §101(a)(10)(A), (F), (G), substituted in par. (1) ''(5), and (6)'' for ''and (5)'' and in par. (3)(D) ''If the employer does not maintain an integrated plan at any time during the taxable year, taxes paid'' for ''Taxes paid'', inserted in par. (2) provisions requiring that for purposes of this paragraph there be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(2) and pars. (3)(E) and (6), and redesignated former par. (6) as (7).

Subsec. (k)(2), (3)(B)(i). Pub. L. 96–605, §225(b)(3), (4), substituted ''section 410(b)(3)'' for ''section 410(b)(2)''.

1978—Subsec. (a)(1). Pub. L. 95–600, §156(c)(3), inserted reference to section 403(b)(8).

Subsec. (b)(2). Pub. L. 95–600, §157(d)(1), (e)(1)(A), designated existing provisions as subpars. (B) and (C) and added subpar. (A), and in subpar. (B) as so designated, inserted ''on behalf of any individual'' after ''annual premium'', respectively.

Subsec. (d)(3)(A)(iii). Pub. L. 95–600, §156(c)(1), added cl. (iii).

Subsec. (d)(3)(B). Pub. L. 95–600, §157(g)(3), (h)(2), inserted provision relating to the applicability of clause (ii) of subparagraph (A) to any amount paid or distributed out of an individual retirement account or annuity to which an amount was contributed which was treated as a rollover contribution by section 402(a)(7) and substituted ''1-year period'' for ''3-year period''.

Subsec. (d)(4). Pub. L. 95–600, §703(c)(4), amended Pub. L. 94–455, §1501(b)(5). See 1976 Amendment note below.

Subsec. (d)(5), (6). Pub. L. 95–600, §157(c)(1), added par. (5) and redesignated former par. (5) as (6).

Subsecs. (j) to (m). Pub. L. 95–600, §152(a), added subsecs. (j) to (*l*) and redesignated former subsec. (j) as (m).

1976—Subsecs. (a)(2), (6), (b). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(2). Pub. L. 94–455, §1501(b)(2), substituted ''member (or spouse of an employee or member)'' for ''member''.

Subsec. (d)(1). Pub. L. 94–455, §1501(b)(10), substituted ''Notwithstanding any other provision of this title (including chapters 11 and 12), the basis'' for ''The basis''.

Subsec. (d)(4). Pub. L. 94–455, §1501(b)(5), as amended by Pub. L. 95–600, §703(c)(4), inserted reference to section 220 and substituted ''In the case of such a distribution, for purposes of section 61, any net income described in subparagraph (C) shall be deemed to have been earned and receivable in the taxable year in which such excess contribution is made'' for ''Any net income described in subparagraph (C) shall be included in the gross income of the individual for the taxable year in which received''.

Subsecs. (h), (i). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §725(b), Dec. 17, 2010, 124 Stat. 3316, provided that:

''(1) EFFECTIVE DATE.—The amendment made by this section [amending this section] shall apply to distributions made in taxable years beginning after December 31, 2009.

''(2) SPECIAL RULE.—For purposes of subsections (a)(6), (b)(3), and (d)(8) of section 408 of the Internal Revenue Code of 1986, at the election of the taxpayer (at such time and in such manner as prescribed by the Secretary of the Treasury) any qualified charitable distribution made after December 31, 2010, and before February 1, 2011, shall be deemed to have been made on December 31, 2010.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title II, §205(b), Oct. 3, 2008, 122 Stat. 3865, provided that: ''The amendment made by this section [amending this section] shall apply to distributions made in taxable years beginning after December 31, 2007.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provisions of the Pension Protection Act of 2006, Pub. L. 109–280, to which such amendment relates, see section 3(j) of Pub. L. 110–172, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–432 applicable to taxable years beginning after Dec. 31, 2006, see section 307(c) of Pub. L. 109–432, set out as a note under section 223 of this title.

Pub. L. 109–280, title XII, §1201(c)(1), Aug. 17, 2006, 120 Stat. 1066, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to distributions made in taxable years beginning after December 31, 2005.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 404(d) of Pub. L. 108–311 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 404(f) of Pub. L. 108–311, set out as a note under section 45A of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 601(b) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 601(c) of Pub. L. 107–16, set out as an Effective and Termination Dates of 2001 Amendment note under section 219 of this title.

Pub. L. 107–16, title VI, §602(c), June 7, 2001, 115 Stat. 96, provided that: ''The amendments made by this section [amending this section and section 1003 of Title 29, Labor] shall apply to plan years beginning after December 31, 2002.''

Amendment by section 611(c)(1), (f)(1), (2), (g)(2) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 611(i)(1) of Pub. L. 107–16, set out as a note under section 415 of this title.

Amendment by section 641(e)(8) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107–16, set out as a note under section 402 of this title.

Pub. L. 107–16, title VI, §642(c), June 7, 2001, 115 Stat. 122, provided that:

''(1) EFFECTIVE DATE.—The amendments made by this section [amending this section and section 403 of this title] shall apply to distributions after December 31, 2001.

''(2) SPECIAL RULE.—Notwithstanding any other provision of law, subsections (h)(3) and (h)(5) of section 1122 of the Tax Reform Act of 1986 [Pub. L. 99–514, set out as a note under section 402 of this title] shall not apply to any distribution from an eligible retirement plan (as defined in clause (iii) or (iv) of section 402(c)(8)(B) of the Internal Revenue Code of 1986) on behalf of an individual if there was a rollover to such plan on behalf of such individual which is permitted solely by reason of the amendments made by this section.''

Amendment by section 643(c) of Pub. L. 107–16 applicable to distributions made after Dec. 31, 2001, see section 643(d) of Pub. L. 107–16, set out as a note under section 401 of this title.

Amendment by section 644(b) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 644(c) of Pub. L. 107–16, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6018(b) of Pub. L. 105–206 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which such amendment relates, see section 6018(h) of Pub. L. 105–206, set out as a note under section 36C of this title.

Amendment by sections 6015(a) and 6016(a)(1) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 302(d) of Pub. L. 105–34 applicable to taxable years beginning after Dec. 31, 1997, see section 302(f) of Pub. L. 105–34, set out as a note under section 219 of this title.

Section 304(b) of Pub. L. 105–34 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997.''

Section 1501(c)(2) of Pub. L. 105–34 provided that: ''The amendment made by subsection (b) [amending this section] shall apply to years beginning after December 31, 1996.''

Amendment by section 1601(d)(1)(A)–(C)(i), (D)–(G) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 36C of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1421(a), (b)(3)(B), (5), (6), (c) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104–188, set out as a note under section 72 of this title.

Amendment by section 1427(b)(3) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1427(c) of Pub. L. 104–188, set out as a note under section 219 of this title.

Amendment by section 1431(c)(1)(B) of Pub. L. 104–188 applicable to years beginning after Dec. 31, 1996, except that in determining whether an employee is a highly compensated employee for years beginning in 1997, such amendment to be treated as having been in effect for years beginning in 1996, see section 1431(d)(1) of Pub. L. 104–188, set out as a note under section 414 of this title.

Section 1455(e) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section and sections 6047, 6652, 6693, and 6724 of this title] shall apply to returns, reports, and other statements the due date for which (determined without regard to extensions) is after December 31, 1996.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 applicable to years beginning after Dec. 31, 1994, and, to the extent of provid-

ing for the rounding of indexed amounts, not applicable to any year to the extent the rounding would require the indexed amount to be reduced below the amount in effect for years beginning in 1994, see section 732(e) of Pub. L. 103–465, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable, except as otherwise provided, to benefits accruing in plan years beginning after Dec. 31, 1993, see section 13212(d) of Pub. L. 103–66, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

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

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7811(m)(7) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Section 7841(a)(3) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section and section 414 of this title] shall apply to transfers after the date of the enactment of this Act [Dec. 19, 1989] in taxable years ending after such date.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011(c)(7)(C) of Pub. L. 100–647 applicable to plan years beginning after Dec. 31, 1987, with exception in case of a plan described in section 1105(c)(2) of Pub. L. 99–514, see section 1011(c)(7)(E) of Pub. L. 100–647, set out as a note under section 401 of this title.

Section 1011A(a)(2)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to rollover contributions made in taxable years beginning after December 31, 1986.''

Amendment by sections 1011(b)(1)–(3), (f)(1)–(5), (10), (i)(5) and 1018(t)(3)(D) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6057(b) of Pub. L. 100–647 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to acquisitions after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1102(a), (b)(2), (c), (e)(2) of Pub. L. 99–514 applicable to contributions and distributions for taxable years beginning after Dec. 31, 1986, see section 1102(g) of Pub. L. 99–514, set out as a note under section 219 of this title.

Amendment by section 1108(a), (d)–(g)(1), (4), (6) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, except that section 408(k)(3)(D) and (E) of the Internal Revenue Code of 1954 (as in effect before the amendments made by section 1108 of Pub. L. 99–514) shall continue to apply for years beginning after Dec. 31, 1986, and before Jan. 1, 1989, except that employer contributions under an arrangement under section 408(k)(6) of the Internal Revenue Code of 1986 (as added by section 1108 of Pub. L. 99–514) may not be integrated under section 408(k)(3)(D) and (E) of the Internal Revenue Code of 1954, see section 1108(h) of Pub. L. 99–514, as amended, set out as a note under section 219 of this title.

Amendment by section 1121(c)(2) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, with special provisions for plans maintained pursuant to collective bargaining agreements ratified before Mar. 1, 1986, and transition rules, see section 1121(d) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 1122(e)(2)(B) of Pub. L. 99–514 applicable, except as otherwise provided, to amounts distributed after Dec. 31, 1986, in taxable years ending after such date, see section 1122(h) of Pub. L. 99–514, set out as a note under section 402 of this title.

Amendment by section 1123(d)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1123(e) of Pub. L. 99–514, set out as a note under section 72 of this title.

Section 1144(b) of Pub. L. 99–514 provided that: ''The amendment made by this section [amending this section] shall apply to acquisitions after December 31, 1986.''

Amendment by sections 1852(a)(1), (5)(C), (7)(A) and 1875(c)(8) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Amendment by section 1875(c)(6)(A) of Pub. L. 99–514 effective as if included in the amendments made by section 238 of Pub. L. 97–248, see section 1875(c)(12) of Pub. L. 99–514, set out as a note under section 62 of this title.

Section 1898(a)(5) of Pub. L. 99–514 provided that the amendment made by that section is effective with respect to plan years beginning after Oct. 22, 1986.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 147(a) of Pub. L. 98–369 applicable to contributions made after Dec. 31, 1984, see section 147(d)(1) of Pub. L. 98–369, set out as a note under section 219 of this title.

Amendment by section 491(d)(19)–(24) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Amendment by section 521(b) of Pub. L. 98–369 applicable to years beginning after Dec. 31, 1984, see section 521(e) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 522(d)(12) of Pub. L. 98–369 applicable to distributions made after July 18, 1984, in taxable years ending after that date, see section 522(e) of Pub. L. 98–369, set out as a note under section 402 of this title.

Amendment by section 713 of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by sections 237 and 238 of Pub. L. 97–248 applicable to years beginning after Dec. 31, 1983, see section 241 of Pub. L. 97–248, set out as an Effective Date note under section 416 of this title.

Section 243(c) of Pub. L. 97–248, as amended by Pub. L. 98–369, div. A, title VII, § 713(g)(1), July 18, 1984, 98 Stat. 960, provided that: ''The amendments made by this section [amending this section and sections 219 and 409 of this title] shall apply with respect to individuals dying after December 31, 1983.''

Section 335(b) of Pub. L. 97–248 provided that: ''The amendments made by subsection (a) [amending this section and section 409 of this title] shall apply to distributions made after December 31, 1982, in taxable years ending after such date.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 311(g)(1)(A)–(C), (2), (h)(2) of Pub. L. 97–34 applicable to taxable years beginning

after Dec. 31, 1981, see section 311(i) of Pub. L. 97–34, set out as a note under section 219 of this title.

Amendment by section 312(b)(2), (c)(5) of Pub. L. 97–34 applicable to plans which include employees within the meaning of section 401(c)(1) with respect to taxable years beginning after Dec. 31, 1981, see section 312(f) of Pub. L. 97–34, set out as a note under section 72 of this title.

Amendment by section 313(b)(2) of Pub. L. 97–34 applicable to redemptions after Aug. 13, 1981, in taxable years ending after such date, see section 313(c) of Pub. L. 97–34, set out as a note under section 219 of this title.

Section 314(b)(2) of Pub. L. 97–34 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to property acquired after December 31, 1981, in taxable years ending after such date.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–605 applicable with respect to plan years beginning after Dec. 31, 1980, see section 225(c) of Pub. L. 96–605, set out as a note under section 401 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 152(h) of Pub. L. 95–600 provided that: ''The amendments made by this section [amending this section and sections 219, 401, 404, 414, and 415 of this title] shall apply to taxable years beginning after December 31, 1978.''

Amendment by section 156(c)(1), (3) of Pub. L. 95–600 applicable to distributions or transfers made after Dec. 31, 1977, in taxable years beginning after such date, see section 156(d) of Pub. L. 95–600, set out as a note under section 403 of this title.

Section 157(c)(2)(A) of Pub. L. 95–600 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to distributions in taxable years beginning after December 31, 1975.''

Section 157(d)(2) of Pub. L. 95–600 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to contracts issued after the date of the enactment of this Act [Nov. 6, 1978].''

Amendment by section 157(h)(2) of Pub. L. 95–600 applicable to payments made in taxable years beginning after Dec. 31, 1977, see section 157(h)(3)(A) of Pub. L. 95–600, set out as a note under section 402 of this title.

Section 157(e)(2) of Pub. L. 95–600 provided that: ''The amendments made by paragraph (1) [amending this section and section 409 of this title] shall apply to taxable years beginning after December 31, 1976.''

Amendment by section 157(g)(3) of Pub. L. 95–600 applicable to lump-sum distributions completed after Dec. 31, 1978, in taxable years ending after such date, see section 157(g)(4) of Pub. L. 95–600, set out as a note under section 402 of this title.

Amendment by section 703(c)(4) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1976, see section 703(c)(5) of Pub. L. 95–600, set out as a note under section 219 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1501(b)(2), (5), (10) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1501(d) of Pub. L. 94–455, set out as a note under section 62 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1974, see section 2002(i)(1) of Pub. L. 93–406, set out as a note under section 219 of this title.

DIRECT PAYMENT OF TAX REFUNDS TO INDIVIDUAL RETIREMENT PLANS

Pub. L. 109–280, title VIII, §830, Aug. 17, 2006, 120 Stat. 1002, provided that:

''(a) IN GENERAL.—The Secretary of the Treasury (or the Secretary's delegate) shall make available a form (or modify existing forms) for use by individuals to direct that a portion of any refund of overpayment of tax imposed by chapter 1 of the Internal Revenue Code of 1986 be paid directly to an individual retirement plan (as defined in section 7701(a)(37) of such Code) of such individual.

''(b) EFFECTIVE DATE.—The form required by subsection (a) shall be made available for taxable years beginning after December 31, 2006.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TRANSITIONAL RULE FOR CONTRIBUTIONS FOR TAXABLE YEARS BEGINNING BEFORE JANUARY 1, 1978

Section 157(c)(2)(B) of Pub. L. 95–600, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of contributions for taxable years beginning before January 1, 1978, paragraph (5) of section 408(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be applied as if such paragraph did not contain any dollar limitation.''

EXCHANGE OF FIXED PREMIUM ANNUITY OR ENDOWMENT CONTRACT ISSUED ON OR BEFORE NOV. 6, 1978, FOR INDIVIDUAL RETIREMENT ANNUITY

Section 157(d)(3) of Pub. L. 95–600, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of any annuity or endowment contract issued on or before the date of the enactment of this Act [Nov. 6, 1978] which would be an individual retirement annuity within the meaning of section 408(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by paragraph (1) [amending subsec. (b)(2) of this section]) but for the fact that the premiums under the contract are fixed, at the election of the taxpayer an exchange before January 1, 1981, of that contract for an individual retirement annuity within the meaning of such section 408(b) (as amended by paragraph (1)) shall be treated as a nontaxable exchange which does not constitute a distribution.''

§ 408A. Roth IRAs

(a) General rule

Except as provided in this section, a Roth IRA shall be treated for purposes of this title in the same manner as an individual retirement plan.

(b) Roth IRA

For purposes of this title, the term ''Roth IRA'' means an individual retirement plan (as defined in section 7701(a)(37)) which is designated (in such manner as the Secretary may prescribe) at the time of establishment of the plan as a Roth IRA. Such designation shall be made in such manner as the Secretary may prescribe.

(c) Treatment of contributions

(1) No deduction allowed

No deduction shall be allowed under section 219 for a contribution to a Roth IRA.

(2) Contribution limit

The aggregate amount of contributions for any taxable year to all Roth IRAs maintained for the benefit of an individual shall not exceed the excess (if any) of—

(A) the maximum amount allowable as a deduction under section 219 with respect to such individual for such taxable year (computed without regard to subsection (d)(1) or (g) of such section), over

(B) the aggregate amount of contributions for such taxable year to all other individual retirement plans (other than Roth IRAs) maintained for the benefit of the individual.

(3) Limits based on modified adjusted gross income

(A) Dollar limit

The amount determined under paragraph (2) for any taxable year shall not exceed an amount equal to the amount determined under paragraph (2)(A) for such taxable year, reduced (but not below zero) by the amount which bears the same ratio to such amount as—

(i) the excess of—

(I) the taxpayer's adjusted gross income for such taxable year, over

(II) the applicable dollar amount, bears to

(ii) $15,000 ($10,000 in the case of a joint return or a married individual filing a separate return).

The rules of subparagraphs (B) and (C) of section 219(g)(2) shall apply to any reduction under this subparagraph.

(B) Definitions

For purposes of this paragraph—

(i) adjusted gross income shall be determined in the same manner as under section 219(g)(3), except that any amount included in gross income under subsection (d)(3) shall not be taken into account, and

(ii) the applicable dollar amount is—

(I) in the case of a taxpayer filing a joint return, $150,000,

(II) in the case of any other taxpayer (other than a married individual filing a separate return), $95,000, and

(III) in the case of a married individual filing a separate return, zero.

(C) Marital status

Section 219(g)(4) shall apply for purposes of this paragraph.

(D) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 2006, the dollar amounts in subclauses (I) and (II) of subparagraph (B)(ii) shall each be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ''calendar year 2005'' for ''calendar year 1992'' in subparagraph (B) thereof.

Any increase determined under the preceding sentence shall be rounded to the nearest multiple of $1,000.

(4) Contributions permitted after age 70½

Contributions to a Roth IRA may be made even after the individual for whom the account is maintained has attained age 70½.

(5) Mandatory distribution rules not to apply before death

Notwithstanding subsections (a)(6) and (b)(3) of section 408 (relating to required distributions), the following provisions shall not apply to any Roth IRA:

(A) Section 401(a)(9)(A).

(B) The incidental death benefit requirements of section 401(a).

(6) Rollover contributions

(A) In general

No rollover contribution may be made to a Roth IRA unless it is a qualified rollover contribution.

(B) Coordination with limit

A qualified rollover contribution shall not be taken into account for purposes of paragraph (2).

(7) Time when contributions made

For purposes of this section, the rule of section 219(f)(3) shall apply.

(d) Distribution rules

For purposes of this title—

(1) Exclusion

Any qualified distribution from a Roth IRA shall not be includible in gross income.

(2) Qualified distribution

For purposes of this subsection—

(A) In general

The term ''qualified distribution'' means any payment or distribution—

(i) made on or after the date on which the individual attains age 59½,

(ii) made to a beneficiary (or to the estate of the individual) on or after the death of the individual,

(iii) attributable to the individual's being disabled (within the meaning of section 72(m)(7)), or

(iv) which is a qualified special purpose distribution.

(B) Distributions within nonexclusion period

A payment or distribution from a Roth IRA shall not be treated as a qualified dis-

tribution under subparagraph (A) if such payment or distribution is made within the 5-taxable year period beginning with the first taxable year for which the individual made a contribution to a Roth IRA (or such individual's spouse made a contribution to a Roth IRA) established for such individual.

(C) Distributions of excess contributions and earnings

The term ''qualified distribution'' shall not include any distribution of any contribution described in section 408(d)(4) and any net income allocable to the contribution.

(3) Rollovers from an eligible retirement plan other than a Roth IRA

(A) In general

Notwithstanding sections 402(c), 403(b)(8), 408(d)(3), and 457(e)(16), in the case of any distribution to which this paragraph applies—

(i) there shall be included in gross income any amount which would be includible were it not part of a qualified rollover contribution,

(ii) section 72(t) shall not apply, and

(iii) unless the taxpayer elects not to have this clause apply, any amount required to be included in gross income for any taxable year beginning in 2010 by reason of this paragraph shall be so included ratably over the 2-taxable-year period beginning with the first taxable year beginning in 2011.

Any election under clause (iii) for any distributions during a taxable year may not be changed after the due date for such taxable year.

(B) Distributions to which paragraph applies

This paragraph shall apply to a distribution from an eligible retirement plan (as defined by section 402(c)(8)(B)) maintained for the benefit of an individual which is contributed to a Roth IRA maintained for the benefit of such individual in a qualified rollover contribution. This paragraph shall not apply to a distribution which is a qualified rollover contribution from a Roth IRA or a qualified rollover contribution from a designated Roth account which is a rollover contribution described in section 402A(c)(3)(A)[1]

(C) Conversions

The conversion of an individual retirement plan (other than a Roth IRA) to a Roth IRA shall be treated for purposes of this paragraph as a distribution to which this paragraph applies.

(D) Additional reporting requirements

Trustees of Roth IRAs, trustees of individual retirement plans, persons subject to section 6047(d)(1), or all of the foregoing persons, whichever is appropriate, shall include such additional information in reports required under section 408(i) or 6047 as the Secretary may require to ensure that amounts required to be included in gross income under subparagraph (A) are so included.

(E) Special rules for contributions to which 2-year averaging applies

In the case of a qualified rollover contribution to a Roth IRA of a distribution to which subparagraph (A)(iii) applied, the following rules shall apply:

(i) Acceleration of inclusion

(I) In general

The amount otherwise required to be included in gross income for any taxable year beginning in 2010 or the first taxable year in the 2-year period under subparagraph (A)(iii) shall be increased by the aggregate distributions from Roth IRAs for such taxable year which are allocable under paragraph (4) to the portion of such qualified rollover contribution required to be included in gross income under subparagraph (A)(i).

(II) Limitation on aggregate amount included

The amount required to be included in gross income for any taxable year under subparagraph (A)(iii) shall not exceed the aggregate amount required to be included in gross income under subparagraph (A)(iii) for all taxable years in the 2-year period (without regard to subclause (I)) reduced by amounts included for all preceding taxable years.

(ii) Death of distributee

(I) In general

If the individual required to include amounts in gross income under such subparagraph dies before all of such amounts are included, all remaining amounts shall be included in gross income for the taxable year which includes the date of death.

(II) Special rule for surviving spouse

If the spouse of the individual described in subclause (I) acquires the individual's entire interest in any Roth IRA to which such qualified rollover contribution is properly allocable, the spouse may elect to treat the remaining amounts described in subclause (I) as includible in the spouse's gross income in the taxable years of the spouse ending with or within the taxable years of such individual in which such amounts would otherwise have been includible. Any such election may not be made or changed after the due date for the spouse's taxable year which includes the date of death.

(F) Special rule for applying section 72

(i) In general

If—

(I) any portion of a distribution from a Roth IRA is properly allocable to a qualified rollover contribution described in this paragraph; and

(II) such distribution is made within the 5-taxable year period beginning with

[1] So in original. Probably should be followed by a period.

the taxable year in which such contribution was made,

then section 72(t) shall be applied as if such portion were includible in gross income.

(ii) Limitation

Clause (i) shall apply only to the extent of the amount of the qualified rollover contribution includible in gross income under subparagraph (A)(i).

(4) Aggregation and ordering rules

(A) Aggregation rules

Section 408(d)(2) shall be applied separately with respect to Roth IRAs and other individual retirement plans.

(B) Ordering rules

For purposes of applying this section and section 72 to any distribution from a Roth IRA, such distribution shall be treated as made—

(i) from contributions to the extent that the amount of such distribution, when added to all previous distributions from the Roth IRA, does not exceed the aggregate contributions to the Roth IRA; and

(ii) from such contributions in the following order:

(I) Contributions other than qualified rollover contributions to which paragraph (3) applies.

(II) Qualified rollover contributions to which paragraph (3) applies on a first-in, first-out basis.

Any distribution allocated to a qualified rollover contribution under clause (ii)(II) shall be allocated first to the portion of such contribution required to be included in gross income.

(5) Qualified special purpose distribution

For purposes of this section, the term ''qualified special purpose distribution'' means any distribution to which subparagraph (F) of section 72(t)(2) applies.

(6) Taxpayer may make adjustments before due date

(A) In general

Except as provided by the Secretary, if, on or before the due date for any taxable year, a taxpayer transfers in a trustee-to-trustee transfer any contribution to an individual retirement plan made during such taxable year from such plan to any other individual retirement plan, then, for purposes of this chapter, such contribution shall be treated as having been made to the transferee plan (and not the transferor plan).

(B) Special rules

(i) Transfer of earnings

Subparagraph (A) shall not apply to the transfer of any contribution unless such transfer is accompanied by any net income allocable to such contribution.

(ii) No deduction

Subparagraph (A) shall apply to the transfer of any contribution only to the extent no deduction was allowed with respect to the contribution to the transferor plan.

(7) Due date

For purposes of this subsection, the due date for any taxable year is the date prescribed by law (including extensions of time) for filing the taxpayer's return for such taxable year.

(e) Qualified rollover contribution

For purposes of this section—

(1) In general

The term ''qualified rollover contribution'' means a rollover contribution—

(A) to a Roth IRA from another such account,

(B) from an eligible retirement plan, but only if—

(i) in the case of an individual retirement plan, such rollover contribution meets the requirements of section 408(d)(3), and

(ii) in the case of any eligible retirement plan (as defined in section 402(c)(8)(B) other than clauses (i) and (ii) thereof), such rollover contribution meets the requirements of section 402(c), 403(b)(8), or 457(e)(16), as applicable.

For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan (other than a Roth IRA) to a Roth IRA.

(2) Military death gratuity

(A) In general

The term ''qualified rollover contribution'' includes a contribution to a Roth IRA maintained for the benefit of an individual made before the end of the 1-year period beginning on the date on which such individual receives an amount under section 1477 of title 10, United States Code, or section 1967 of title 38 of such Code, with respect to a person, to the extent that such contribution does not exceed—

(i) the sum of the amounts received during such period by such individual under such sections with respect to such person, reduced by

(ii) the amounts so received which were contributed to a Coverdell education savings account under section 530(d)(9).

(B) Annual limit on number of rollovers not to apply

Section 408(d)(3)(B) shall not apply with respect to amounts treated as a rollover by the[2] subparagraph (A).

(C) Application of section 72

For purposes of applying section 72 in the case of a distribution which is not a qualified distribution, the amount treated as a rollover by reason of subparagraph (A) shall be treated as investment in the contract.

(f) Individual retirement plan

For purposes of this section—

[2] So in original. The word ''the'' probably should not appear.

(1) a simplified employee pension or a simple retirement account may not be designated as a Roth IRA; and

(2) contributions to any such pension or account shall not be taken into account for purposes of subsection (c)(2)(B).

(Added Pub. L. 105–34, title III, §302(a), Aug. 5, 1997, 111 Stat. 825; amended Pub. L. 105–206, title VI, §6005(b)(1)–(7), (9), title VII, §7004(a), July 22, 1998, 112 Stat. 796–800, 833; Pub. L. 105–277, div. J, title IV, §4002(j), Oct. 21, 1998, 112 Stat. 2681–908; Pub. L. 107–16, title VI, §617(e)(1), June 7, 2001, 115 Stat. 106; Pub. L. 109–222, title V, §512(a), (b), May 17, 2006, 120 Stat. 365; Pub. L. 109–280, title VIII, §§824(a), (b), 833(c), Aug. 17, 2006, 120 Stat. 998, 1004; Pub. L. 110–245, title I, §109(a), (b), June 17, 2008, 122 Stat. 1631, 1632; Pub. L. 110–458, title I, §108(d), (h), Dec. 23, 2008, 122 Stat. 5109.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title and Internal Revenue Notices listed in a table under section 401 of this title.

AMENDMENTS

2008—Subsec. (c)(3)(B). Pub. L. 110–458, §108(d)(1), in introductory provisions, struck out second ''an'' before ''eligible'' and ''other than a Roth IRA'' before ''during any taxable year'', and inserted as concluding provisions ''This subparagraph shall not apply to a qualified rollover contribution from a Roth IRA or to a qualified rollover contribution from a designated Roth account which is a rollover contribution described in section 402A(c)(3)(A).''

Subsec. (c)(3)(C), (E). Pub. L. 110–458, §108(h)(1), redesignated subpar. (C) relating to inflation adjustment as subpar. (E).

Subsec. (d)(3)(B). Pub. L. 110–458, §108(d)(2), struck out ''(other than a Roth IRA)'' after ''section 402(c)(8)(B))'' and inserted at end ''This paragraph shall not apply to a distribution which is a qualified rollover contribution from a Roth IRA or a qualified rollover contribution from a designated Roth account which is a rollover contribution described in section 402A(c)(3)(A)''.

Subsec. (e). Pub. L. 110–245, §109(b), amended subsec. (e), as in effect after amendment by section 824(a) of Pub. L. 109–280, by amending text generally. Prior to amendment, text read as follows: ''For purposes of this section, the term 'qualified rollover contribution' means a rollover contribution—

''(1) to a Roth IRA from another such account,

''(2) from an eligible retirement plan, but only if—

''(A) in the case of an individual retirement plan, such rollover contribution meets the requirements of section 408(d)(3), and

''(B) in the case of any eligible retirement plan (as defined in section 402(c)(8)(B) other than clauses (i) and (ii) thereof), such rollover contribution meets the requirements of section 402(c), 403(b)(8), or 457(e)(16), as applicable.

For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan (other than a Roth IRA) to a Roth IRA.''

Pub. L. 110–245, §109(a), amended subsec. (e), as in effect before amendment by section 824(a) of Pub. L. 109–280, by reenacting heading without change and amending text to read as follows: ''For purposes of this section—

''(1) IN GENERAL.—The term 'qualified rollover contribution' means a rollover contribution to a Roth IRA from another such account, or from an individual retirement plan, but only if such rollover contribution meets the requirements of section 408(d)(3). Such term includes a rollover contribution described in section 402A(c)(3)(A). For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan (other than a Roth IRA) to a Roth IRA.

''(2) MILITARY DEATH GRATUITY.—

''(A) IN GENERAL.—The term 'qualified rollover contribution' includes a contribution to a Roth IRA maintained for the benefit of an individual made before the end of the 1-year period beginning on the date on which such individual receives an amount under section 1477 of title 10, United States Code, or section 1967 of title 38 of such Code, with respect to a person, to the extent that such contribution does not exceed—

''(i) the sum of the amounts received during such period by such individual under such sections with respect to such person, reduced by

''(ii) the amounts so received which were contributed to a Coverdell education savings account under section 530(d)(9).

''(B) ANNUAL LIMIT ON NUMBER OF ROLLOVERS NOT TO APPLY.—Section 408(d)(3)(B) shall not apply with respect to amounts treated as a rollover by subparagraph (A).

''(C) APPLICATION OF SECTION 72.—For purposes of applying section 72 in the case of a distribution which is not a qualified distribution, the amount treated as a rollover by reason of subparagraph (A) shall be treated as investment in the contract.'' See 2006 Amendment note below.

2006—Subsec. (c)(3)(B). Pub. L. 109–222, §512(a)(1), redesignated subpar. (C) as (B) and struck out former subpar. (B). Prior to amendment, text read as follows: ''A taxpayer shall not be allowed to make a qualified rollover contribution to a Roth IRA from an individual retirement plan other than a Roth IRA during any taxable year if, for the taxable year of the distribution to which such contribution relates—

''(i) the taxpayer's adjusted gross income exceeds $100,000, or

''(ii) the taxpayer is a married individual filing a separate return.

This subparagraph shall not apply to a qualified rollover contribution from a Roth IRA or to a qualified rollover contribution from a designated Roth account which is a rollover contribution described in section 402A(c)(3)(A).'' See Effective Date of 2006 Amendment note below.

Pub. L. 109–280, §824(b)(1), substituted ''eligible retirement plan'' for ''IRA'' in heading and ''an eligible retirement plan (as defined by section 402(c)(8)(B))'' for ''individual retirement plan'' in introductory provisions. See Effective Date of 2006 Amendment note below.

Subsec. (c)(3)(B)(i). Pub. L. 109–222, §512(a)(2), substituted ''except that any amount included in gross income under subsection (d)(3) shall not be taken into account, and'' for ''except that—

''(I) any amount included in gross income under subsection (d)(3) shall not be taken into account; and

''(II) any amount included in gross income by reason of a required distribution under a provision described in paragraph (5) shall not be taken into account for purposes of subparagraph (B)(i), and''.

Subsec. (c)(3)(C). Pub. L. 109–222, §512(a)(1), redesignated subpar. (D), relating to marital status, as (C). Former subpar. (C) redesignated (B). See Effective Date of 2006 Amendment note below.

Pub. L. 109–280, §833(c), added subpar. (C) relating to inflation adjustment.

Subsec. (c)(3)(D), (E). Pub. L. 110–458, §108(h)(2), redesignated subpar. (E) as (D) and substituted ''subparagraph (B)(ii)'' for ''subparagraph (C)(ii)''.

Subsec. (d)(3). Pub. L. 109–280, §824(b)(2)(E), substituted ''an eligible retirement plan'' for ''an IRA'' in heading.

Subsec. (d)(3)(A). Pub. L. 109–280, §824(b)(2)(A), substituted ''sections 402(c), 403(b)(8), 408(d)(3), and

457(e)(16)'' for ''section 408(d)(3)'' in introductory provisions.

Subsec. (d)(3)(A)(iii). Pub. L. 109–222, § 512(b)(1), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''unless the taxpayer elects not to have this clause apply for any taxable year, any amount required to be included in gross income for such taxable year by reason of this paragraph for any distribution before January 1, 1999, shall be so included ratably over the 4-taxable year period beginning with such taxable year.''

Subsec. (d)(3)(B). Pub. L. 109–280, § 824(b)(2)(B), substituted ''eligible retirement plan (as defined by section 402(c)(8)(B))'' for ''individual retirement plan''.

Subsec. (d)(3)(D). Pub. L. 109–280, § 824(b)(2)(C), (D), substituted ''persons subject to section 6047(d)(1), or all of the foregoing persons'' for ''or both'' and inserted ''or 6047'' after ''408(i)''.

Subsec. (d)(3)(E). Pub. L. 109–222, § 512(b)(2)(B), substituted ''2-year'' for ''4-year'' in heading.

Subsec. (d)(3)(E)(i). Pub. L. 109–222, § 512(b)(2)(A), amended cl. (i) generally. Prior to amendment, text read as follows:

''(I) IN GENERAL.—The amount required to be included in gross income for each of the first 3 taxable years in the 4-year period under subparagraph (A)(iii) shall be increased by the aggregate distributions from Roth IRAs for such taxable year which are allocable under paragraph (4) to the portion of such qualified rollover contribution required to be included in gross income under subparagraph (A)(i).

''(II) LIMITATION ON AGGREGATE AMOUNT INCLUDED.—The amount required to be included in gross income for any taxable year under subparagraph (A)(iii) shall not exceed the aggregate amount required to be included in gross income under subparagraph (A)(iii) for all taxable years in the 4-year period (without regard to subclause (I)) reduced by amounts included for all preceding taxable years.''

Subsec. (e). Pub. L. 109–280, § 824(a), reenacted heading without change and amended text of subsec. (e) generally. Prior to amendments by Pub. L. 109–280, § 824(a), and Pub. L. 110–245, § 109(a), text read as follows: ''For purposes of this section, the term 'qualified rollover contribution' means a rollover contribution to a Roth IRA from another such account, or from an individual retirement plan, but only if such rollover contribution meets the requirements of section 408(d)(3). For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan (other than a Roth IRA) to a Roth IRA.'' See 2008 Amendment note above.

2001—Subsec. (e). Pub. L. 107–16 inserted ''Such term includes a rollover contribution described in section 402A(c)(3)(A).'' after first sentence.

1998—Subsec. (c)(3)(A). Pub. L. 105–206, § 6005(b)(1), substituted ''shall not exceed an amount equal to the amount determined under paragraph (2)(A) for such taxable year, reduced'' for ''shall be reduced'' in introductory provisions.

Subsec. (c)(3)(A)(ii). Pub. L. 105–206, § 6005(b)(2)(A), inserted ''or a married individual filing a separate return'' after ''joint return''.

Subsec. (c)(3)(B). Pub. L. 105–206, § 6005(b)(2)(B)(i), inserted '', for the taxable year of the distribution to which such contribution relates'' after ''if'' in introductory provisions.

Subsec. (c)(3)(B)(i). Pub. L. 105–206, § 6005(b)(2)(B)(ii), struck out ''for such taxable year'' after ''gross income''.

Subsec. (c)(3)(C)(i). Pub. L. 105–206, § 7004(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''adjusted gross income shall be determined in the same manner as under section 219(g)(3), except that any amount included in gross income under subsection (d)(3) shall not be taken into account, and''.

Pub. L. 105–206, § 6005(b)(2)(C), struck out ''and the deduction under section 219 shall be taken into account'' after ''taken into account''.

Subsec. (c)(3)(C)(i)(II). Pub. L. 105–277 substituted '', and'' for period at end.

Subsec. (d)(1). Pub. L. 105–206, § 6005(b)(5)(B), substituted ''Exclusion'' for ''General rules'' in heading and amended text generally. Prior to amendment, text read as follows:

''(A) EXCLUSIONS FROM GROSS INCOME.—Any qualified distribution from a Roth IRA shall not be includible in gross income.

''(B) NONQUALIFIED DISTRIBUTIONS.—In applying section 72 to any distribution from a Roth IRA which is not a qualified distribution, such distribution shall be treated as made from contributions to the Roth IRA to the extent that such distribution, when added to all previous distributions from the Roth IRA, does not exceed the aggregate amount of contributions to the Roth IRA.''

Subsec. (d)(2)(B). Pub. L. 105–206, § 6005(b)(3)(A), added subpar. (B) and struck out heading and text of former subpar. (B). Text read as follows: ''A payment or distribution shall not be treated as a qualified distribution under subparagraph (A) if—

''(i) it is made within the 5-taxable year period beginning with the 1st taxable year for which the individual made a contribution to a Roth IRA (or such individual's spouse made a contribution to a Roth IRA) established for such individual, or

''(ii) in the case of a payment or distribution properly allocable (as determined in the manner prescribed by the Secretary) to a qualified rollover contribution from an individual retirement plan other than a Roth IRA (or income allocable thereto), it is made within the 5-taxable year period beginning with the taxable year in which the rollover contribution was made.''

Subsec. (d)(2)(C). Pub. L. 105–206, § 6005(b)(3)(B), added subpar. (C).

Subsec. (d)(3)(A). Pub. L. 105–206, § 6005(b)(4)(A), added cl. (iii) and concluding provisions and struck out former cl. (iii) which read as follows: ''in the case of a distribution before January 1, 1999, any amount required to be included in gross income by reason of this paragraph shall be so included ratably over the 4-taxable year period beginning with the taxable year in which the payment or distribution is made.''

Subsec. (d)(3)(D). Pub. L. 105–206, § 6005(b)(6)(B), redesignated subpar. (E) as (D) and struck out heading and text of former subpar. (D). Text read as follows: ''If, no later than the due date for filing the return of tax for any taxable year (without regard to extensions), an individual transfers, from an individual retirement plan (other than a Roth IRA), contributions for such taxable year (and any earnings allocable thereto) to a Roth IRA, no such amount shall be includible in gross income to the extent no deduction was allowed with respect to such amount.''

Subsec. (d)(3)(E). Pub. L. 105–206, § 6005(b)(6)(B), redesignated subpar. (F) as (E). Former subpar. (E) redesignated (D).

Subsec. (d)(3)(F). Pub. L. 105–206, § 6005(b)(6)(B), redesignated subpar. (G) as (F). Former subpar. (F) redesignated (E).

Pub. L. 105–206, § 6005(b)(4)(B), added subpar. (F).

Subsec. (d)(3)(G). Pub. L. 105–206, § 6005(b)(6)(B), redesignated subpar. (G) as (F).

Pub. L. 105–206, § 6005(b)(4)(B), added subpar. (G).

Subsec. (d)(4). Pub. L. 105–206, § 6005(b)(5)(A), substituted ''Aggregation and ordering rules'' for ''Coordination with individual retirement accounts'' in heading and amended text generally. Prior to amendment, text read as follows: ''Section 408(d)(2) shall be applied separately with respect to Roth IRAs and other individual retirement plans.''

Subsec. (d)(6). Pub. L. 105–206, § 6005(b)(6)(A), added par. (6).

Subsec. (d)(7). Pub. L. 105–206, § 6005(b)(7), added par. (7).

Subsec. (f). Pub. L. 105–206, § 6005(b)(9), added subsec. (f).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–458, title I, § 108(h)(2), Dec. 23, 2008, 122 Stat. 5109, amended this section ''[i]n the case of taxable years beginning after December 31, 2009''.

Amendment by Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

Pub. L. 110–245, title I, §109(d), June 17, 2008, 122 Stat. 1633, provided that:

''(1) IN GENERAL.—Except as provided by paragraphs (2) and (3), the amendments made by this section [amending this section and section 530 of this title] shall apply with respect to deaths from injuries occurring on or after the date of the enactment of this Act [June 17, 2008].

''(2) APPLICATION OF AMENDMENTS TO DEATHS FROM INJURIES OCCURRING ON OR AFTER OCTOBER 7, 2001, AND BEFORE ENACTMENT.—The amendments made by this section shall apply to any contribution made pursuant to section 408A(e)(2) or 530(d)(5) of the Internal Revenue Code of 1986, as amended by this Act, with respect to amounts received under section 1477 of title 10, United States Code, or under section 1967 of title 38 of such Code, for deaths from injuries occurring on or after October 7, 2001, and before the date of the enactment of this Act if such contribution is made not later than 1 year after the date of the enactment of this Act.

''(3) PENSION PROTECTION ACT CHANGES.—Section 408A(e)(1) of the Internal Revenue Code of 1986 (as in effect after the amendments made by subsection (b)) shall apply to taxable years beginning after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, §824(b)(1), Aug. 17, 2006, 120 Stat. 998, provided that the amendment made by section 824(b)(1) amends this section as in effect before the Tax Increase Prevention and Reconciliation Act of 2005, Pub. L. 109–222. See below.

Pub. L. 109–280, title VIII, §824(c), Aug. 17, 2006, 120 Stat. 999, provided that: ''The amendments made by this section [amending this section] shall apply to distributions after December 31, 2007.''

Amendment by section 833(c) of Pub. L. 109–280 applicable to taxable years beginning after 2006, see section 833(d) of Pub. L. 109–280, set out as a note under section 25B of this title.

Pub. L. 109–222, title V, §512(c), May 17, 2006, 120 Stat. 366, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009.''

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2005, see section 617(f) of Pub. L. 107–16, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105–277 effective as if included in the provision of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, to which such amendment relates, see section 4002(k) of Pub. L. 105–277, set out as a note under section 1 of this title.

Amendment by section 6005(b)(1)–(7), (9) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

Pub. L. 105–206, title VII, §7004(b), July 22, 1998, 112 Stat. 833, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2004.''

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1997, see section 302(f) of Pub. L. 105–34, set out as an Effective Date of 1997 Amendment note under section 219 of this title.

ROLLOVER OF AMOUNTS RECEIVED IN AIRLINE CARRIER BANKRUPTCY TO ROTH IRAS

Pub. L. 110–458, title I, §125, Dec. 23, 2008, 122 Stat. 5115, provided that:

''(a) GENERAL RULE.—If a qualified airline employee receives any airline payment amount and transfers any portion of such amount to a Roth IRA within 180 days of receipt of such amount (or, if later, within 180 days of the date of the enactment of this Act [Dec. 23, 2008]), then such amount (to the extent so transferred) shall be treated as a qualified rollover contribution described in section 408A(e) of the Internal Revenue Code of 1986, and the limitations described in section 408A(c)(3) of such Code shall not apply to any such transfer.

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

''(1) AIRLINE PAYMENT AMOUNT.—

''(A) IN GENERAL.—The term 'airline payment amount' means any payment of any money or other property which is payable by a commercial passenger airline carrier to a qualified airline employee—

''(i) under the approval of an order of a Federal bankruptcy court in a case filed after September 11, 2001, and before January 1, 2007, and

''(ii) in respect of the qualified airline employee's interest in a bankruptcy claim against the carrier, any note of the carrier (or amount paid in lieu of a note being issued), or any other fixed obligation of the carrier to pay a lump sum amount.

The amount of such payment shall be determined without regard to any requirement to deduct and withhold tax from such payment under sections 3102(a) and 3402(a).

''(B) EXCEPTION.—An airline payment amount shall not include any amount payable on the basis of the carrier's future earnings or profits.

''(2) QUALIFIED AIRLINE EMPLOYEE.—The term 'qualified airline employee' means an employee or former employee of a commercial passenger airline carrier who was a participant in a defined benefit plan maintained by the carrier which—

''(A) is a plan described in section 401(a) of the Internal Revenue Code of 1986 which includes a trust exempt from tax under section 501(a) of such Code, and

''(B) was terminated or became subject to the restrictions contained in paragraphs (2) and (3) of section 402(b) of the Pension Protection Act of 2006 [Pub. L. 109–280, 26 U.S.C. 430 note].

''(3) REPORTING REQUIREMENTS.—If a commercial passenger airline carrier pays 1 or more airline payment amounts, the carrier shall, within 90 days of such payment (or, if later, within 90 days of the date of the enactment of this Act [Dec. 23, 2008]), report—

''(A) to the Secretary of the Treasury, the names of the qualified airline employees to whom such amounts were paid, and

''(B) to the Secretary and to such employees, the years and the amounts of the payments.

Such reports shall be in such form, and contain such additional information, as the Secretary may prescribe.

''(c) EFFECTIVE DATE.—This section shall apply to transfers made after the date of the enactment of this Act [Dec. 23, 2008] with respect to airline payment amounts paid before, on, or after such date.''

§ 409. Qualifications for tax credit employee stock ownership plans

(a) Tax credit employee stock ownership plan defined

Except as otherwise provided in this title, for purposes of this title, the term ''tax credit employee stock ownership plan'' means a defined contribution plan which—

(1) meets the requirements of section 401(a),

(2) is designed to invest primarily in employer securities, and

(3) meets the requirements of subsections (b), (c), (d), (e), (f), (g), (h), and (*o*) of this section.

(b) Required allocation of employer securities

(1) In general

A plan meets the requirements of this subsection if—

(A) the plan provides for the allocation for the plan year of all employer securities transferred to it or purchased by it (because of the requirements of section 41(c)(1)(B))[1] to the accounts of all participants who are entitled to share in such allocation, and

(B) for the plan year the allocation to each participant so entitled is an amount which bears substantially the same proportion to the amount of all such securities allocated to all such participants in the plan for that year as the amount of compensation paid to such participant during that year bears to the compensation paid to all such participants during that year.

(2) Compensation in excess of $100,000 disregarded

For purposes of paragraph (1), compensation of any participant in excess of the first $100,000 per year shall be disregarded.

(3) Determination of compensation

For purposes of this subsection, the amount of compensation paid to a participant for any period is the amount of such participant's compensation (within the meaning of section 415(c)(3)) for such period.

(4) Suspension of allocation in certain cases

Notwithstanding paragraph (1), the allocation to the account of any participant which is attributable to the basic employee plan credit or the credit allowed under section 41[1] (relating to the employee stock ownership credit) may be extended over whatever period may be necessary to comply with the requirements of section 415.

(c) Participants must have nonforfeitable rights

A plan meets the requirements of this subsection only if it provides that each participant has a nonforfeitable right to any employer security allocated to his account.

(d) Employer securities must stay in the plan

A plan meets the requirements of this subsection only if it provides that no employer security allocated to a participant's account under subsection (b) (or allocated to a participant's account in connection with matched employer and employee contributions) may be distributed from that account before the end of the 84th month beginning after the month in which the security is allocated to the account. To the extent provided in the plan, the preceding sentence shall not apply in the case of—

(1) death, disability, separation from service, or termination of the plan;

(2) a transfer of a participant to the employment of an acquiring employer from the employment of the selling corporation in the case of a sale to the acquiring corporation of substantially all of the assets used by the selling corporation in a trade or business conducted by the selling corporation, or

(3) with respect to the stock of a selling corporation, a disposition of such selling corporation's interest in a subsidiary when the participant continues employment with such subsidiary.

This subsection shall not apply to any distribution required under section 401(a)(9) or to any distribution or reinvestment required under section 401(a)(28).

(e) Voting rights

(1) In general

A plan meets the requirements of this subsection if it meets the requirements of paragraph (2) or (3), whichever is applicable.

(2) Requirements where employer has a registration-type class of securities

If the employer has a registration-type class of securities, the plan meets the requirements of this paragraph only if each participant or beneficiary in the plan is entitled to direct the plan as to the manner in which securities of the employer which are entitled to vote and are allocated to the account of such participant or beneficiary are to be voted.

(3) Requirement for other employers

If the employer does not have a registration-type class of securities, the plan meets the requirements of this paragraph only if each participant or beneficiary in the plan is entitled to direct the plan as to the manner in which voting rights under securities of the employer which are allocated to the account of such participant or beneficiary are to be exercised with respect to any corporate matter which involves the voting of such shares with respect to the approval or disapproval of any corporate merger or consolidation, recapitalization, reclassification, liquidation, dissolution, sale of substantially all assets of a trade or business, or such similar transaction as the Secretary may prescribe in regulations.

(4) Registration-type class of securities defined

For purposes of this subsection, the term, ''registration-type class of securities'' means—

(A) a class of securities required to be registered under section 12 of the Securities Exchange Act of 1934, and

(B) a class of securities which would be required to be so registered except for the exemption from registration provided in subsection (g)(2)(H) of such section 12.

(5) 1 vote per participant

A plan meets the requirements of paragraph (3) with respect to an issue if—

(A) the plan permits each participant 1 vote with respect to such issue, and

(B) the trustee votes the shares held by the plan in the proportion determined after application of subparagraph (A).

(f) Plan must be established before employer's due date

(1) In general

A plan meets the requirements of this subsection only if it is established on or before

[1] See References in Text note below.

the due date (including any extension of such date) for the filing of the employer's tax return for the first taxable year of the employer for which an employee plan credit is claimed by the employer with respect to the plan.

(2) Special rule for first year

A plan which otherwise meets the requirements of this section shall not be considered to have failed to meet the requirements of section 401(a) merely because it was not established by the close of the first taxable year of the employer for which an employee plan credit is claimed by the employer with respect to the plan.

(g) Transferred amounts must stay in plan even though investment credit is redetermined or recaptured

A plan meets the requirement of this subsection only if it provides that amounts which are transferred to the plan (because of the requirements of section 48(n)(1) or 41(c)(1)(B))[2] shall remain in the plan (and, if allocated under the plan, shall remain so allocated) even though part or all of the employee plan credit or the credit allowed under section 41[2] (relating to employee stock ownership credit) is recaptured or redetermined. For purposes of the preceding sentence, the references to section 48(n)(1)[2] and the employee plan credit shall refer to such section and credit as in effect before the enactment of the Tax Reform Act of 1984.

(h) Right to demand employer securities; put option

(1) In general

A plan meets the requirements of this subsection if a participant who is entitled to a distribution from the plan—

(A) has a right to demand that his benefits be distributed in the form of employer securities, and

(B) if the employer securities are not readily tradable on an established market, has a right to require that the employer repurchase employer securities under a fair valuation formula.

(2) Plan may distribute cash in certain cases

(A) In general

A plan which otherwise meets the requirements of this subsection or of section 4975(e)(7) shall not be considered to have failed to meet the requirements of section 401(a) merely because under the plan the benefits may be distributed in cash or in the form of employer securities.

(B) Exception for certain plans restricted from distributing securities

(i) In general

A plan to which this subparagraph applies shall not be treated as failing to meet the requirements of this subsection or section 401(a) merely because it does not permit a participant to exercise the right described in paragraph (1)(A) if such plan provides that the participant entitled to a distribution has a right to receive the distribution in cash, except that such plan may distribute employer securities subject to a requirement that such securities may be resold to the employer under terms which meet the requirements of paragraph (1)(B).

(ii) Applicable plans

This subparagraph shall apply to a plan which otherwise meets the requirements of this subsection or section 4975(e)(7) and which is established and maintained by—

(I) an employer whose charter or bylaws restrict the ownership of substantially all outstanding employer securities to employees or to a trust described in section 401(a), or

(II) an S corporation.

(3) Special rule for banks

In the case of a plan established and maintained by a bank (as defined in section 581) which is prohibited by law from redeeming or purchasing its own securities, the requirements of paragraph (1)(B) shall not apply if the plan provides that participants entitled to a distribution from the plan shall have a right to receive a distribution in cash.

(4) Put option period

An employer shall be deemed to satisfy the requirements of paragraph (1)(B) if it provides a put option for a period of at least 60 days following the date of distribution of stock of the employer and, if the put option is not exercised within such 60-day period, for an additional period of at least 60 days in the following plan year (as provided in regulations promulgated by the Secretary).

(5) Payment requirement for total distribution

If an employer is required to repurchase employer securities which are distributed to the employee as part of a total distribution, the requirements of paragraph (1)(B) shall be treated as met if—

(A) the amount to be paid for the employer securities is paid in substantially equal periodic payments (not less frequently than annually) over a period beginning not later than 30 days after the exercise of the put option described in paragraph (4) and not exceeding 5 years, and

(B) there is adequate security provided and reasonable interest paid on the unpaid amounts referred to in subparagraph (A).

For purposes of this paragraph, the term ''total distribution'' means the distribution within 1 taxable year to the recipient of the balance to the credit of the recipient's account.

(6) Payment requirement for installment distributions

If an employer is required to repurchase employer securities as part of an installment distribution, the requirements of paragraph (1)(B) shall be treated as met if the amount to be paid for the employer securities is paid not later than 30 days after the exercise of the put option described in paragraph (4).

[2] See References in Text note below.

(7) Exception where employee elected diversification

Paragraph (1)(A) shall not apply with respect to the portion of the participant's account which the employee elected to have reinvested under section 401(a)(28)(B) or subparagraph (B) or (C) of section 401(a)(35).

(i) Reimbursement for expenses of establishing and administering plan

A plan which otherwise meets the requirements of this section shall not be treated as failing to meet such requirements merely because it provides that—

(1) Expenses of establishing plan

As reimbursement for the expenses of establishing the plan, the employer may withhold from amounts due the plan for the taxable year for which the plan is established (or the plan may pay) so much of the amounts paid or incurred in connection with the establishment of the plan as does not exceed the sum of—

(A) 10 percent of the first $100,000 which the employer is required to transfer to the plan for that taxable year under section 41(c)(1)(B),[3] and

(B) 5 percent of any amount so required to be transferred in excess of the first $100,000; and

(2) Administrative expenses

As reimbursement for the expenses of administering the plan, the employer may withhold from amounts due the plan (or the plan may pay) so much of the amounts paid or incurred during the taxable year as expenses of administering the plan as does not exceed the lesser of—

(A) the sum of—

(i) 10 percent of the first $100,000 of the dividends paid to the plan with respect to stock of the employer during the plan year ending with or within the employer's taxable year, and

(ii) 5 percent of the amount of such dividends in excess of $100,000 or

(B) $100,000.

(j) Conditional contributions to the plan

A plan which otherwise meets the requirements of this section shall not be treated as failing to satisfy such requirements (or as failing to satisfy the requirements of section 401(a) of this title or of section 403(c)(1) of the Employee Retirement Income Security Act of 1974) merely because of the return of a contribution (or a provision permitting such a return) if—

(1) the contribution to the plan is conditioned on a determination by the Secretary that such plan meets the requirements of this section,

(2) the application for a determination described in paragraph (1) is filed with the Secretary not later than 90 days after the date on which an employee plan credit is claimed, and

(3) the contribution is returned within 1 year after the date on which the Secretary issues notice to the employer that such plan does not satisfy the requirements of this section.

[3] See References in Text note below.

(k) Requirements relating to certain withdrawals

Notwithstanding any other law or rule of law—

(1) the withdrawal from a plan which otherwise meets the requirements of this section by the employer of an amount contributed for purposes of the matching employee plan credit shall not be considered to make the benefits forfeitable, and

(2) the plan shall not, by reason of such withdrawal, fail to be for the exclusive benefit of participants or their beneficiaries,

if the withdrawn amounts were not matched by employee contributions or were in excess of the limitations of section 415. Any withdrawal described in the preceding sentence shall not be considered to violate the provisions of section 403(c)(1) of the Employee Retirement Income Security Act of 1974. For purposes of this subsection, the reference to the matching employee plan credit shall refer to such credit as in effect before the enactment of the Tax Reform Act of 1984.

***(l)* Employer securities defined**

For purposes of this section—

(1) In general

The term ''employer securities'' means common stock issued by the employer (or by a corporation which is a member of the same controlled group) which is readily tradable on an established securities market.

(2) Special rule where there is no readily tradable common stock

If there is no common stock which meets the requirements of paragraph (1), the term ''employer securities'' means common stock issued by the employer (or by a corporation which is a member of the same controlled group) having a combination of voting power and dividend rights equal to or in excess of—

(A) that class of common stock of the employer (or of any other such corporation) having the greatest voting power, and

(B) that class of common stock of the employer (or of any other such corporation) having the greatest dividend rights.

(3) Preferred stock may be issued in certain cases

Noncallable preferred stock shall be treated as employer securities if such stock is convertible at any time into stock which meets the requirements of paragraph (1) or (2) (whichever is applicable) and if such conversion is at a conversion price which (as of the date of the acquisition by the tax credit employee stock ownership plan) is reasonable. For purposes of the preceding sentence, under regulations prescribed by the Secretary, preferred stock shall be treated as noncallable if after the call there will be a reasonable opportunity for a conversion which meets the requirements of the preceding sentence.

(4) Application to controlled group of corporations

(A) In general

For purposes of this subsection, the term ''controlled group of corporations'' has the

meaning given to such term by section 1563(a) (determined without regard to subsections (a)(4) and (e)(3)(C) of section 1563).

(B) Where common parent owns at least 50 percent of first tier subsidiary

For purposes of subparagraph (A), if the common parent owns directly stock possessing at least 50 percent of the voting power of all classes of stock and at least 50 percent of each class of nonvoting stock in a first tier subsidiary, such subsidiary (and all other corporations below it in the chain which would meet the 80 percent test of section 1563(a) if the first tier subsidiary were the common parent) shall be treated as includible corporations.

(C) Where common parent owns 100 percent of first tier subsidiary

For purposes of subparagraph (A), if the common parent owns directly stock possessing all of the voting power of all classes of stock and all of the nonvoting stock, in a first tier subsidiary, and if the first tier subsidiary owns directly stock possessing at least 50 percent of the voting power of all classes of stock, and at least 50 percent of each class of nonvoting stock, in a second tier subsidiary of the common parent, such second tier subsidiary (and all other corporations below it in the chain which would meet the 80 percent test of section 1563(a) if the second tier subsidiary were the common parent) shall be treated as includible corporations.

(5) Nonvoting common stock may be acquired in certain cases

Nonvoting common stock of an employer described in the second sentence of section 401(a)(22) shall be treated as employer securities if an employer has a class of nonvoting common stock outstanding and the specific shares that the plan acquires have been issued and outstanding for at least 24 months.

(m) Nonrecognition of gain or loss on contribution of employer securities to tax credit employee stock ownership plan

No gain or loss shall be recognized to the taxpayer with respect to the transfer of employer securities to a tax credit employee stock ownership plan maintained by the taxpayer to the extent that such transfer is required under section 41(c)(1)(B),[4] or subparagraph (A) or (B) of section 48(n)(1).[4]

(n) Securities received in certain transactions

(1) In general

A plan to which section 1042 applies and an eligible worker-owned cooperative (within the meaning of section 1042(c)) shall provide that no portion of the assets of the plan or cooperative attributable to (or allocable in lieu of) employer securities acquired by the plan or cooperative in a sale to which section 1042 applies may accrue (or be allocated directly or indirectly under any plan of the employer meeting the requirements of section 401(a))—

(A) during the nonallocation period, for the benefit of—

(i) any taxpayer who makes an election under section 1042(a) with respect to employer securities,,,[5]

(ii) any individual who is related to the taxpayer (within the meaning of section 267(b)), or

(B) for the benefit of any other person who owns (after application of section 318(a)) more than 25 percent of—

(i) any class of outstanding stock of the corporation which issued such employer securities or of any corporation which is a member of the same controlled group of corporations (within the meaning of subsection (*l*)(4)) as such corporation, or

(ii) the total value of any class of outstanding stock of any such corporation.

For purposes of subparagraph (B), section 318(a) shall be applied without regard to the employee trust exception in paragraph (2)(B)(i).

(2) Failure to meet requirements

If a plan fails to meet the requirements of paragraph (1)—

(A) the plan shall be treated as having distributed to the person described in paragraph (1) the amount allocated to the account of such person in violation of paragraph (1) at the time of such allocation,

(B) the provisions of section 4979A shall apply, and

(C) the statutory period for the assessment of any tax imposed by section 4979A shall not expire before the date which is 3 years from the later of—

(i) the 1st allocation of employer securities in connection with a sale to the plan to which section 1042 applies, or

(ii) the date on which the Secretary is notified of such failure.

(3) Definitions and special rules

For purposes of this subsection—

(A) Lineal descendants

Paragraph (1)(A)(ii) shall not apply to any individual if—

(i) such individual is a lineal descendant of the taxpayer, and

(ii) the aggregate amount allocated to the benefit of all such lineal descendants during the nonallocation period does not exceed more than 5 percent of the employer securities (or amounts allocated in lieu thereof) held by the plan which are attributable to a sale to the plan by any person related to such descendants (within the meaning of section 267(c)(4)) in a transaction to which section 1042 applied.

(B) 25-percent shareholders

A person shall be treated as failing to meet the stock ownership limitation under paragraph (1)(B) if such person fails such limitation—

(i) at any time during the 1-year period ending on the date of sale of qualified securities to the plan or cooperative, or

[4] See References in Text note below.

[5] So in original.

(ii) on the date as of which qualified securities are allocated to participants in the plan or cooperative.

(C) Nonallocation period

The term ''nonallocation period'' means the period beginning on the date of the sale of the qualified securities and ending on the later of—

(i) the date which is 10 years after the date of sale, or

(ii) the date of the plan allocation attributable to the final payment of acquisition indebtedness incurred in connection with such sale.

(*o*) Distribution and payment requirements

A plan meets the requirements of this subsection if—

(1) Distribution requirement

(A) In general

The plan provides that, if the participant and, if applicable pursuant to sections 401(a)(11) and 417, with the consent of the participant's spouse elects, the distribution of the participant's account balance in the plan will commence not later than 1 year after the close of the plan year—

(i) in which the participant separates from service by reason of the attainment of normal retirement age under the plan, disability, or death, or

(ii) which is the 5th plan year following the plan year in which the participant otherwise separates from service, except that this clause shall not apply if the participant is reemployed by the employer before distribution is required to begin under this clause.

(B) Exception for certain financed securities

For purposes of this subsection, the account balance of a participant shall not include any employer securities acquired with the proceeds of the loan described in section 404(a)(9) until the close of the plan year in which such loan is repaid in full.

(C) Limited distribution period

The plan provides that, unless the participant elects otherwise, the distribution of the participant's account balance will be in substantially equal periodic payments (not less frequently than annually) over a period not longer than the greater of—

(i) 5 years, or

(ii) in the case of a participant with an account balance in excess of $800,000, 5 years plus 1 additional year (but not more than 5 additional years) for each $160,000 or fraction thereof by which such balance exceeds $800,000.

(2) Cost-of-living adjustment

The Secretary shall adjust the dollar amounts under paragraph (1)(C) at the same time and in the same manner as under section 415(d).

(p) Prohibited allocations of securities in an S corporation

(1) In general

An employee stock ownership plan holding employer securities consisting of stock in an S corporation shall provide that no portion of the assets of the plan attributable to (or allocable in lieu of) such employer securities may, during a nonallocation year, accrue (or be allocated directly or indirectly under any plan of the employer meeting the requirements of section 401(a)) for the benefit of any disqualified person.

(2) Failure to meet requirements

(A) In general

If a plan fails to meet the requirements of paragraph (1), the plan shall be treated as having distributed to any disqualified person the amount allocated to the account of such person in violation of paragraph (1) at the time of such allocation.

(B) Cross reference

For excise tax relating to violations of paragraph (1) and ownership of synthetic equity, see section 4979A.

(3) Nonallocation year

For purposes of this subsection—

(A) In general

The term ''nonallocation year'' means any plan year of an employee stock ownership plan if, at any time during such plan year—

(i) such plan holds employer securities consisting of stock in an S corporation, and

(ii) disqualified persons own at least 50 percent of the number of shares of stock in the S corporation.

(B) Attribution rules

For purposes of subparagraph (A)—

(i) In general

The rules of section 318(a) shall apply for purposes of determining ownership, except that—

(I) in applying paragraph (1) thereof, the members of an individual's family shall include members of the family described in paragraph (4)(D), and

(II) paragraph (4) thereof shall not apply.

(ii) Deemed-owned shares

Notwithstanding the employee trust exception in section 318(a)(2)(B)(i), an individual shall be treated as owning deemed-owned shares of the individual.

Solely for purposes of applying paragraph (5), this subparagraph shall be applied after the attribution rules of paragraph (5) have been applied.

(4) Disqualified person

For purposes of this subsection—

(A) In general

The term ''disqualified person'' means any person if—

(i) the aggregate number of deemed-owned shares of such person and the members of such person's family is at least 20 percent of the number of deemed-owned shares of stock in the S corporation, or

(ii) in the case of a person not described in clause (i), the number of deemed-owned

shares of such person is at least 10 percent of the number of deemed-owned shares of stock in such corporation.

(B) Treatment of family members

In the case of a disqualified person described in subparagraph (A)(i), any member of such person's family with deemed-owned shares shall be treated as a disqualified person if not otherwise treated as a disqualified person under subparagraph (A).

(C) Deemed-owned shares

(i) In general

The term ''deemed-owned shares'' means, with respect to any person—

(I) the stock in the S corporation constituting employer securities of an employee stock ownership plan which is allocated to such person under the plan, and

(II) such person's share of the stock in such corporation which is held by such plan but which is not allocated under the plan to participants.

(ii) Person's share of unallocated stock

For purposes of clause (i)(II), a person's share of unallocated S corporation stock held by such plan is the amount of the unallocated stock which would be allocated to such person if the unallocated stock were allocated to all participants in the same proportions as the most recent stock allocation under the plan.

(D) Member of family

For purposes of this paragraph, the term ''member of the family'' means, with respect to any individual—

(i) the spouse of the individual,

(ii) an ancestor or lineal descendant of the individual or the individual's spouse,

(iii) a brother or sister of the individual or the individual's spouse and any lineal descendant of the brother or sister, and

(iv) the spouse of any individual described in clause (ii) or (iii).

A spouse of an individual who is legally separated from such individual under a decree of divorce or separate maintenance shall not be treated as such individual's spouse for purposes of this subparagraph.

(5) Treatment of synthetic equity

For purposes of paragraphs (3) and (4), in the case of a person who owns synthetic equity in the S corporation, except to the extent provided in regulations, the shares of stock in such corporation on which such synthetic equity is based shall be treated as outstanding stock in such corporation and deemed-owned shares of such person if such treatment of synthetic equity of 1 or more such persons results in—

(A) the treatment of any person as a disqualified person, or

(B) the treatment of any year as a nonallocation year.

For purposes of this paragraph, synthetic equity shall be treated as owned by a person in the same manner as stock is treated as owned by a person under the rules of paragraphs (2) and (3) of section 318(a). If, without regard to this paragraph, a person is treated as a disqualified person or a year is treated as a nonallocation year, this paragraph shall not be construed to result in the person or year not being so treated.

(6) Definitions

For purposes of this subsection—

(A) Employee stock ownership plan

The term ''employee stock ownership plan'' has the meaning given such term by section 4975(e)(7).

(B) Employer securities

The term ''employer security'' has the meaning given such term by section 409(*l*).

(C) Synthetic equity

The term ''synthetic equity'' means any stock option, warrant, restricted stock, deferred issuance stock right, or similar interest or right that gives the holder the right to acquire or receive stock of the S corporation in the future. Except to the extent provided in regulations, synthetic equity also includes a stock appreciation right, phantom stock unit, or similar right to a future cash payment based on the value of such stock or appreciation in such value.

(7) Regulations and guidance

(A) In general

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

(B) Avoidance or evasion

The Secretary may, by regulation or other guidance of general applicability, provide that a nonallocation year occurs in any case in which the principal purpose of the ownership structure of an S corporation constitutes an avoidance or evasion of this subsection.

(q) Cross references

(1) For requirements for allowance of employee plan credit, see section 48(n).[6]

(2) For assessable penalties for failure to meet requirements of this section, or for failure to make contributions required with respect to the allowance of an employee plan credit or employee stock ownership credit, see section 6699.[6]

(3) For requirements for allowance of an employee stock ownership credit, see section 41.[6]

(Added Pub. L. 95–600, title I, §141(a), Nov. 6, 1978, 92 Stat. 2787, §409A; amended Pub. L. 96–222, title I, §101(a)(7)(D)–(F), (I), (J), (L)(i)(VI), (ii)(I), (II), (iii)(V), (v)(VI), (VII), Apr. 1, 1980, 94 Stat. 198–200; Pub. L. 96–605, title II, §224(a), Dec. 28, 1980, 94 Stat. 3528; Pub. L. 97–34, title III, §§331(c)(1), 334, 336, 337(a), Aug. 13, 1981, 95 Stat. 293, 297, 298; Pub. L. 97–448, title I, §103(h), (i), Jan. 12, 1983, 96 Stat. 2379; renumbered §409 and amended Pub. L. 98–369, div. A, title IV, §§474(r)(15), 491(e)(1), July 18, 1984, 98 Stat. 843, 852; Pub. L. 99–514, title XI, §§1172(b)(1),

[6] See References in Text note below.

1174(a)(1), (b)(1), (2), (c)(1)(A), 1176(b), title XVIII, §§1852(a)(4)(B), 1854(a)(3)(A), (f)(1), (3)(C), 1899A(11), Oct. 22, 1986, 100 Stat. 2514, 2516, 2517, 2520, 2865, 2873, 2881, 2882, 2958; Pub. L. 100–647, title I, §§1011B(g)(1), (2), (i)(1), (3), (j)(3), (5), (k)(3), 1018(t)(4)(B), (C), (H), Nov. 10, 1988, 102 Stat. 3490, 3492, 3493, 3588, 3589; Pub. L. 101–239, title VII, §§7304(a)(2)(A), (B), 7811(h)(1), Dec. 19, 1989, 103 Stat. 2352, 2353, 2409; Pub. L. 105–34, title XV, §1506(a), Aug. 5, 1997, 111 Stat. 1064; Pub. L. 107–16, title VI, §656(a), June 7, 2001, 115 Stat. 131; Pub. L. 107–147, title IV, §411(j)(2), Mar. 9, 2002, 116 Stat. 47; Pub. L. 109–280, title IX, §901(a)(2)(B), Aug. 17, 2006, 120 Stat. 1029.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

REFERENCES IN TEXT

Section 41, referred to in subsecs. (b)(1)(A), (4), (g), (i)(1)(A), (m), and (p), which related to employee stock ownership credit, was repealed by Pub. L. 99–514, title XI, §1171(a), Oct. 22, 1986, 100 Stat. 2513. Section 30 of this title, relating to credit for increasing research activities, was renumbered section 41.

Section 12 of the Securities Exchange Act of 1934, referred to in subsec. (e)(4), is classified to section 78*l* of Title 15, Commerce and Trade.

Section 403(c)(1) of the Employee Retirement Income Security Act of 1974, referred to in subsecs. (j) and (k), is classified to section 1103(c)(1) of Title 29, Labor.

The enactment of the Tax Reform Act of 1984, referred to in subsecs. (g) and (k), means the enactment of div. A of Pub. L. 98–369, which was approved July 18, 1984.

Subsec. (n) of section 48, referred to in subsecs. (g), (m), and (p)(1), was repealed by section 474(*o*)(15) of Pub. L. 98–369.

Section 6699, referred to in subsec. (p)(2), was repealed by Pub. L. 99–514, title XI, §1171(b)(7)(A), Oct. 22, 1986, 100 Stat. 2513.

PRIOR PROVISIONS

A prior section 409, added Pub. L. 93–406, title II, §2002(c), Sept. 2, 1974, 88 Stat. 964; amended Pub. L. 94–455, title XV, §1501(b)(6), title XIX, §§1901(a)(60), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1736, 1774, 1834; Pub. L. 95–600, title I, §§156(c)(2), (3), 157(e)(1)(B), Nov. 6, 1978, 92 Stat. 2803, 2806; Pub. L. 96–222, title I, §101(a)(14)(B), Apr. 1, 1980, 94 Stat. 204; Pub. L. 97–34, title III, §311(g)(1)(D), (3), Aug. 13, 1981, 95 Stat. 281; Pub. L. 97–248, title II, §243(b)(1)(B), title III, §335(a)(2), Sept. 3, 1982, 96 Stat. 523, 628; Pub. L. 97–452, §2(c)(1), Jan. 12, 1983, 96 Stat. 2478; Pub. L. 98–369, div. A, title I, §42(a)(7), title V, §522(d)(13), July 18, 1984, 98 Stat. 557, 871, related to retirement bonds, prior to repeal by Pub. L. 98–369, div. A, title IV, §491(b), (f)(1), July 18, 1984, 98 Stat. 848, 853, applicable to obligations issued after Dec. 31, 1983.

AMENDMENTS

2006—Subsec. (h)(7). Pub. L. 109–280 inserted ''or subparagraph (B) or (C) of section 401(a)(35)'' before period at end.

2002—Subsec. (*o*)(1)(C)(ii). Pub. L. 107–147 substituted ''$800,000'' for ''$500,000'' in two places and ''$160,000'' for ''$100,000''.

2001—Subsecs. (p), (q). Pub. L. 107–16 added subsec. (p) and redesignated former subsec. (p) as (q).

1997—Subsec. (h)(2). Pub. L. 105–34 designated existing provisions as subpar. (A), inserted subpar. heading, struck out ''In the case of an employer whose charter or bylaws restrict the ownership of substantially all outstanding employer securities to employees or to a trust described in section 401(a), a plan which otherwise meets the requirements of this subsection or section 4975(e)(7) shall not be considered to have failed to meet the requirements of this subsection or of section 401(a) merely because it does not permit a participant to exercise the right described in paragraph (1)(A) if such plan provides that participants entitled to a distribution from the plan shall have a right to receive such distribution in cash, except that such plan may distribute employer securities subject to a requirement that such securities may be resold to the employer under terms which meet the requirements of paragraph (1)(B).'' after ''employer securities.'', and added subpar. (B).

1989—Subsec. (*l*)(5). Pub. L. 101–239, §7811(h)(1), substituted ''the second sentence'' for ''the last sentence''.

Subsec. (n)(1). Pub. L. 101–239, §7304(a)(2)(A)(i), struck out ''or section 2057'' after ''section 1042'' in two places in introductory provisions.

Subsec. (n)(1)(A)(i). Pub. L. 101–239, §7304(a)(2)(A)(ii), struck out ''or any decedent if the executor of the estate of such decedent makes a qualified sale to which section 2057 applies'' after ''employer securities,''.

Subsec. (n)(1)(A)(ii). Pub. L. 101–239, §7304(a)(2)(A)(iii), struck out ''or the decedent'' after ''the taxpayer''.

Subsec. (n)(2)(C)(i), (3)(A)(ii). Pub. L. 101–239, §7304(a)(2)(B), struck out ''or section 2057'' after ''section 1042''.

1988—Subsec. (d). Pub. L. 100–647, §1011B(j)(3), inserted ''or to any distribution or reinvestment required under section 401(a)(28)'' after ''under section 401(a)(9)''.

Subsec. (e)(5). Pub. L. 100–647, §1018(t)(4)(H), substituted ''paragraph (3)'' for ''paragraph (2) or (3)''.

Subsec. (h)(2). Pub. L. 100–647, §1018(t)(4)(B), substituted ''paragraph (1)(B)'' for ''section 409(*o*)''.

Subsec. (h)(7). Pub. L. 100–647, §1011B(j)(5), added par. (7).

Subsec. (*l*)(4), (5). Pub. L. 100–647, §1011B(k)(3), redesignated par. (4), relating to nonvoting common stock may be acquired in certain cases, as (5).

Subsec. (n)(1). Pub. L. 100–647, §1011B(g)(1), made technical amendment to directory language of Pub. L. 99–514, §1172(b)(1). See 1986 Amendment note below.

Subsec. (n)(2)(C)(i), (3)(A)(ii). Pub. L. 100–647, §1011B(g)(2), inserted ''or section 2057'' after ''which section 1042''.

Subsec. (n)(3)(C). Pub. L. 100–647, §1018(t)(4)(C), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''The term 'nonallocation period' means the 10-year period beginning on the later of—

''(i) the date of the sale of the qualified securities, or

''(ii) the date of the plan allocation attributable to the final payment of acquisition indebtedness incurred in connection with such sale.''

Subsec. (*o*)(1)(A). Pub. L. 100–647, §1011B(i)(3), substituted ''if the participant and, if applicable pursuant to sections 401(a)(11) and 417, with the consent of the participant's spouse elects'' for ''unless the participant otherwise elects''.

Subsec. (*o*)(1)(A)(ii). Pub. L. 100–647, §1011B(i)(1), substituted ''distribution is required to begin under this clause'' for ''such year''.

1986—Subsec. (a)(3). Pub. L. 99–514, §1174(b)(2), inserted reference to subsec. (*o*).

Subsec. (d). Pub. L. 99–514, §1899A(11), substituted ''participant's'' for ''participants's''.

Pub. L. 99–514, §1852(a)(4)(B), inserted at end ''This subsection shall not apply to any distribution required under section 401(a)(9).''

Subsec. (d)(1). Pub. L. 99–514, §1174(a)(1), substituted ''separation from service, or termination of the plan'' for ''or separation from service''.

Subsec. (e)(2). Pub. L. 99–514, §1854(f)(1)(C), (D), inserted ''or beneficiary'' after ''participant'' in two places and substituted ''securities of the employer'' for ''employer securities''.

Subsec. (e)(3). Pub. L. 99–514, §1854(f)(1)(B)–(D), inserted ''or beneficiary'' after ''participant'' in two places and substituted ''securities of the employer'' for

''employer securities'' and ''any corporate matter which involves the voting of such shares with respect to the approval or disapproval of any corporate merger or consolidation, recapitalization, reclassification, liquidation, dissolution, sale of substantially all assets of a trade or business, or such similar transaction as the Secretary may prescribe in regulations'' for ''a corporate matter which (by law or charter) must be decided by more than a majority vote of outstanding common shares voted''.

Subsec. (e)(5). Pub. L. 99–514, §1854(f)(1)(A), added par. (5).

Subsec. (h)(2). Pub. L. 99–514, §1854(f)(3)(C), inserted '', except that such plan may distribute employer securities subject to a requirement that such securities may be resold to the employer under terms which meet the requirements of section 409(*o*)''.

Subsec. (h)(5), (6). Pub. L. 99–514, §1174(c)(1)(A), added pars. (5) and (6).

Subsec. (*l*)(4). Pub. L. 99–514, §1176(b), added par. (4) relating to acquisition of nonvoting common stock.

Subsec. (n). Pub. L. 99–514, §1854(a)(3)(A), added subsec. (n). Former subsec. (n) redesignated (*o*).

Subsec. (n)(1). Pub. L. 99–514, §1172(b)(1), as amended by Pub. L. 100–647, §1011B(g)(1), inserted ''or section 2057'' in two places in introductory provisions, ''or any decedent if the executor of the estate of such decedent makes a qualified sale to which section 2057 applies,'' in subpar. (A)(i), and ''or the decedent'' in subpar. (A)(ii).

Subsec. (*o*). Pub. L. 99–514, §1174(b)(1), added subsec. (*o*). Former subsec. (*o*) redesignated (p).

Pub. L. 99–514, §1854(a)(3)(A), redesignated former subsec. (n) as (*o*).

Subsec. (p). Pub. L. 99–514, §1174(b)(1), redesignated former subsec. (*o*) as (p).

1984—Subsec. (b)(1)(A). Pub. L. 98–369, §474(r)(15)(A), (B), substituted ''41'' for ''44G'' and struck out ''48(n)(1)(A) or'' after ''requirements of section''.

Subsec. (b)(4). Pub. L. 98–369, §474(r)(15)(A), substituted ''41'' for ''44G''.

Subsec. (g). Pub. L. 98–369, §474(r)(15)(A), (C), substituted ''41'' for ''44G'' in two places, and inserted provision directing that, for purposes of the preceding sentence, the references to section 48(n)(1) and the employee plan credit shall refer to such section and credit as in effect before the enactment of the Tax Reform Act of 1984.

Subsec. (i)(1)(A). Pub. L. 98–369, §474(r)(15)(A), (D), substituted ''41'' for ''44G'', and struck out ''48(n)(1) or'' after ''taxable year under section''.

Subsec. (k). Pub. L. 98–369, §474(r)(15)(E), inserted provision requiring that, for purposes of this subsection, the reference to the matching employee plan credit refer to such credit as in effect before the enactment of the Tax Reform Act of 1984.

Subsec. (m). Pub. L. 98–369, §474(r)(15)(A), substituted ''41'' for ''44G''.

Subsec. (n)(3). Pub. L. 98–369, §474(r)(15)(A), substituted ''41'' for ''44G''.

1983—Subsec. (d)(2). Pub. L. 97–448, §103(i), struck out provisions covering the sale of substantially all of the stock of a subsidiary of the employer.

Subsec. (h)(2). Pub. L. 97–448, §103(h), substituted ''the requirements of this subsection or of section 401(a)'' for ''the requirements of section 401(a)''.

1981—Subsec. (b). Pub. L. 97–34, §331(c)(1)(A), (B), inserted in par. (1)(A) reference to section 44G(c)(1)(B), and inserted in par. (4) ''or the credit allowed under section 44G (relating to the employee stock ownership credit)'' after ''basic employee plan credit''.

Subsec. (d). Pub. L. 97–34, §337, designated provision relating to death, disability, or separation from service as par. (1) and added pars. (2) and (3).

Subsec. (g). Pub. L. 97–34, §331(c)(1)(C), (D), inserted reference to section 44G(c)(1)(B) and inserted ''or the credit allowed under section 44G (relating to employee stock ownership credit)'' after ''employee plan credit''.

Subsec. (h)(2). Pub. L. 97–34, §334, substituted ''this subsection'' for ''this section'' and inserted provision respecting receipt of distributions in cash where employer's charter or bylaws restrict ownership of substantially all outstanding employer securities to employees or to a section 401(a) trust where a participant is not permitted to exercise the right described in par. (1)(A).

Subsec. (h)(3), (4). Pub. L. 97–34, §336, added pars. (3) and (4).

Subsec. (i)(1)(A). Pub. L. 97–34, §331(c)(1)(E), inserted reference to section 44G(c)(1)(B).

Subsec. (m). Pub. L. 97–34, §331(c)(1)(F), inserted reference to section 44G(c)(1)(B).

Subsec. (n)(2), (3). Pub. L. 97–34, §331(c)(1)(G), (H), inserted ''or employee stock ownership credit'' after ''employee plan credit'' in par. (2) and added par. (3).

1980—Pub. L. 96–222, §101(a)(7)(L)(v)(VII), substituted ''tax credit employee stock ownership plans'' for ''ESOPS'' in section catchline.

Subsec. (a). Pub. L. 96–222, §101(a)(7)(L)(ii)(I), (v)(VI), substituted in heading and in text ''tax credit employee stock ownership plan'' for ''ESOP''.

Subsec. (b)(4). Pub. L. 96–222, §101(a)(7)(L)(iii)(V), substituted ''employee plan credit'' for ''ESOP credit''.

Subsec. (d). Pub. L. 96–222, §101(a)(7)(F), inserted ''(or allocated to a participant's account in connection with matched employer and employee contributions)'' after ''under subsection (b)''.

Subsec. (f)(1). Pub. L. 96–222, §101(a)(7)(I)(i), substituted ''only if it is established on or before the due date (including any extension of such date) for the filing of the employer's tax return for the first taxable year of the employer for which an employee plan credit is claimed by the employer with respect to the plan'' for ''for a plan year only if it is established on or before the due date for the filing of the employer's tax return for the taxable year (including any extension of such date) in which or with which the plan year ends''.

Subsec. (f)(2). Pub. L. 96–222, §101(a)(7)(I)(ii), (L)(v)(VII), substituted ''employee plan'' for ''ESOP'' and inserted ''with respect to the plan'' after ''by the employer''.

Subsec. (g). Pub. L. 96–222, §101(a)(7)(L)(iii)(V), substituted ''employee plan credit'' for ''ESOP credit''.

Subsec. (h)(2). Pub. L. 96–222, §101(a)(7)(E), inserted ''or of section 4975(e)(7)'' after ''the requirements of this section''.

Subsecs. (j)(2), (k)(1). Pub. L. 96–222, §101(a)(7)(L)(iii)(V), substituted ''employee plan credit'' for ''ESOP credit''.

Subsec. (*l*)(2)(B). Pub. L. 96–222, §101(a)(7)(J)(i), substituted ''class of common stock'' for ''class of stock''.

Subsec. (*l*)(3). Pub. L. 96–222, §101(a)(7)(J)(ii), (L)(ii)(II), substituted ''as employer securities'' for ''as meeting the requirements of paragraph (1)'', ''paragraph (1) or (2)'' for ''paragraph (2)'', and ''tax credit employee stock ownership plan'' for ''ESOP'' and inserted provisions requiring preferred stock to be treated as noncallable if after the call there will be a reasonable opportunity for a conversion which meets the requirements of the preceding sentence.

Subsec. (*l*)(4). Pub. L. 96–605 substituted in heading ''Application to controlled group of corporations'' for ''Controlled group of corporations defined'' and in subpar. (B) heading ''Where common parent owns at least'' for ''Common parent may own only'' and added subpar. (C).

Subsec. (m). Pub. L. 96–222, §101(a)(7)(D), (L)(i), substituted provisions relating to nonrecognition of gain or loss on contribution of employer securities to a tax credit employee stock ownership plan for provisions relating to contributions of stock of a controlling corporation.

Subsec. (n). Pub. L. 96–222, §101(a)(7)(L)(iii)(V), substituted ''employee plan credit'' for ''ESOP credit'' in pars. (1) and (2).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to plan years beginning after Dec. 31, 2006, with special rules for collectively bargained agreements and certain employer securities held in an ESOP, see section 901(c) of

Pub. L. 109–280, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title VI, § 656(d), June 7, 2001, 115 Stat. 135, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 4975 and 4979A of this title] shall apply to plan years beginning after December 31, 2004.

''(2) EXCEPTION FOR CERTAIN PLANS.—In the case of any—

''(A) employee stock ownership plan established after March 14, 2001, or

''(B) employee stock ownership plan established on or before such date if employer securities held by the plan consist of stock in a corporation with respect to which an election under section 1362(a) of the Internal Revenue Code of 1986 is not in effect on such date,

the amendments made by this section shall apply to plan years ending after March 14, 2001.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1506(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section, section 4975 of this title, and section 1108 of Title 29, Labor] shall apply to taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7304(a)(3) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section and sections 4978 and 4979A of this title and repealing sections 2057 and 4978A of this title] shall apply to the estates of decedents dying after the date of the enactment of this Act [Dec. 19, 1989].''

Amendment by section 7811(h)(1) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1172(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [enacting section 2057 of this title and amending this section and section 4979A of this title] shall apply to sales after the date of the enactment of this Act [Oct. 22, 1986] with respect to which an election is made by the executor of an estate who is required to file the return of the tax imposed by the Internal Revenue Code of 1986 on a date (including extensions) after the date of the enactment of this Act.''

Section 1174(a)(2) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1011B(i)(2), Nov. 10, 1988, 102 Stat. 3492, provided that: ''The amendment made by this subsection [amending this section] shall apply to distributions after December 31, 1984.''

Section 1174(b)(3) of Pub. L. 99–514 provided that: ''The amendments made by this subsection [amending this section] shall apply to distributions attributable to stock acquired after December 31, 1986.''

Section 1174(c)(1)(B) of Pub. L. 99–514 provided that: ''The amendment made by this paragraph [amending this section] shall apply to distributions attributable to stock acquired after December 31, 1986, except that a plan may elect to have such amendment apply to all distributions after the date of the enactment of this Act [Oct. 22, 1986].''

Amendment by section 1176(b) of Pub. L. 99–514 applicable to acquisitions of securities after Dec. 31, 1986, see section 1176(c) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 1852(a)(4)(B) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Section 1854(a)(3)(C) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1018(t)(4)(G), Nov. 10, 1988, 102 Stat. 3588, provided that:

''(i) Except as provided in clause (ii), the amendments made by this paragraph [amending this section and section 1042 of this title] shall apply to sales of securities after the date of the enactment of this Act [Oct. 22, 1986].

''(ii) A taxpayer or executor may elect to have section 1042(b)(3) of the Internal Revenue Code of 1954 (as in effect before the amendment made by subparagraph (B)) apply to sales before the date of the enactment of this Act as if such section included the last sentence of section 409(n)(1) of the Internal Revenue Code of 1986 (as added by subparagraph (A)).''

Section 1854(f)(4)(A), (B) of Pub. L. 99–514 provided that:

''(A) The amendments made by paragraph (1)(A) and (3) [amending this section and sections 1042 and 4975 of this title] shall take effect on the date of the enactment of this Act [Oct. 22, 1986].''

''(B) The amendments made by subparagraphs (B), (C), and (D) of paragraph (1) [amending this section] shall apply after December 31, 1986, to stock acquired after December 31, 1979.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(15) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Redesignation of section 409A as 409 by section 491(e)(1) of Pub. L. 98–369 effective Jan. 1, 1984, see section 491(f)(3) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 331(c)(1) of Pub. L. 97–34 applicable to taxable years ending after Dec. 31, 1982, see section 331(f)(2) of Pub. L. 97–34, set out as a note under section 404 of this title.

Section 337(b) of Pub. L. 97–34, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [amending this section] shall apply to distributions described in section 409A(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (or any corresponding provision of prior law) made after March 29, 1975.''

Amendment by sections 334 and 336 of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 339 of Pub. L. 97–34, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 224(b) of Pub. L. 96–605 provided that: ''The amendment made by subsection (a) [amending this sec-

tion] shall apply with respect to qualified investment for taxable years beginning after December 31, 1978.''

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE

Section 141(g) of Pub. L. 95–600, as added by Pub. L. 96–222, title I, §101(a)(7)(B), Apr. 1, 1980, 94 Stat. 197; amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection and subsection (h) [set out as an Effective Date of 1978 Amendment note under section 4975 of this title], the amendments made by this section [enacting sections 409A [now 409] and 6699 of this title and amending sections 46, 48, 56, 401, 404, 415, 805, 1504, and 4975 of this title] shall apply with respect to qualified investment for taxable years beginning after December 31, 1978.

''(2) ELECTION TO HAVE AMENDMENTS APPLY DURING 1978.—At the election of the taxpayer, paragraph (1) shall be applied by substituting 'December 31, 1977' for 'December 31, 1978'; except that in the case of a plan in existence before December 31, 1978, any such election shall not affect the required allocation of employer securities attributable to qualified investment for taxable years beginning before January 1, 1979. An election under the preceding sentence shall be made at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe. Such an election, once made, shall be irrevocable.

''(3) VOTING RIGHT PROVISIONS.—Section 409A(e) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) [now section 409] shall apply to plans to which section 409A of such Code applies, beginning with the first day of such application.

''(4) RIGHT TO DEMAND EMPLOYER SECURITIES, ETC.—Paragraphs (1)(A) and (2) of section 409A(h) of the Internal Revenue Code of 1986 (as added by subsection (a)) [now section 409] shall apply to distributions after December 31, 1978, made by a plan to which section 409A of such Code applies.

''(5) SUBSECTION (f)(7).—The amendment made by subsection (f)(7) [amending section 415 of this title] shall apply to years beginning after December 31, 1978.

''(6) RETROACTIVE APPLICATION OF AMENDMENT MADE BY SUBSECTION (d).—In determining the regular tax deduction under section 56(c) of the Internal Revenue Code of 1986 for any taxable year beginning before January 1, 1979, the amount of the credit allowable under section 38 of such Code shall be determined without regard to section 46(a)(2)(B) of such Code (as in effect before the enactment of the Energy Tax Act of 1978 [Nov. 9, 1978]).''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 409A. Inclusion in gross income of deferred compensation under nonqualified deferred compensation plans

(a) Rules relating to constructive receipt

(1) Plan failures

(A) Gross income inclusion

(i) In general

If at any time during a taxable year a nonqualified deferred compensation plan—

(I) fails to meet the requirements of paragraphs (2), (3), and (4), or

(II) is not operated in accordance with such requirements,

all compensation deferred under the plan for the taxable year and all preceding taxable years shall be includible in gross income for the taxable year to the extent not subject to a substantial risk of forfeiture and not previously included in gross income.

(ii) Application only to affected participants

Clause (i) shall only apply with respect to all compensation deferred under the plan for participants with respect to whom the failure relates.

(B) Interest and additional tax payable with respect to previously deferred compensation

(i) In general

If compensation is required to be included in gross income under subparagraph (A) for a taxable year, the tax imposed by this chapter for the taxable year shall be increased by the sum of—

(I) the amount of interest determined under clause (ii), and

(II) an amount equal to 20 percent of the compensation which is required to be included in gross income.

(ii) Interest

For purposes of clause (i), the interest determined under this clause for any taxable year is the amount of interest at the underpayment rate plus 1 percentage point on the underpayments that would have occurred had the deferred compensation been includible in gross income for the taxable year in which first deferred or, if later, the first taxable year in which such deferred compensation is not subject to a substantial risk of forfeiture.

(2) Distributions

(A) In general

The requirements of this paragraph are met if the plan provides that compensation deferred under the plan may not be distributed earlier than—

(i) separation from service as determined by the Secretary (except as provided in subparagraph (B)(i)),

(ii) the date the participant becomes disabled (within the meaning of subparagraph (C)),

(iii) death,

(iv) a specified time (or pursuant to a fixed schedule) specified under the plan at the date of the deferral of such compensation,

(v) to the extent provided by the Secretary, a change in the ownership or effective control of the corporation, or in the ownership of a substantial portion of the assets of the corporation, or

(vi) the occurrence of an unforeseeable emergency.

(B) Special rules

(i) Specified employees

In the case of any specified employee, the requirement of subparagraph (A)(i) is met only if distributions may not be made before the date which is 6 months after the date of separation from service (or, if earlier, the date of death of the employee). For purposes of the preceding sentence, a specified employee is a key employee (as defined in section 416(i) without regard to paragraph (5) thereof) of a corporation any stock in which is publicly traded on an established securities market or otherwise.

(ii) Unforeseeable emergency

For purposes of subparagraph (A)(vi)—

(I) In general

The term ''unforeseeable emergency'' means a severe financial hardship to the participant resulting from an illness or accident of the participant, the participant's spouse, or a dependent (as defined in section 152(a)) of the participant, loss of the participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant.

(II) Limitation on distributions

The requirement of subparagraph (A)(vi) is met only if, as determined under regulations of the Secretary, the amounts distributed with respect to an emergency do not exceed the amounts necessary to satisfy such emergency plus amounts necessary to pay taxes reasonably anticipated as a result of the distribution, after taking into account the extent to which such hardship is or may be relieved through reimbursement or compensation by insurance or otherwise or by liquidation of the participant's assets (to the extent the liquidation of such assets would not itself cause severe financial hardship).

(C) Disabled

For purposes of subparagraph (A)(ii), a participant shall be considered disabled if the participant—

(i) is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, or

(ii) is, by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than 3 months under an accident and health plan covering employees of the participant's employer.

(3) Acceleration of benefits

The requirements of this paragraph are met if the plan does not permit the acceleration of the time or schedule of any payment under the plan, except as provided in regulations by the Secretary.

(4) Elections

(A) In general

The requirements of this paragraph are met if the requirements of subparagraphs (B) and (C) are met.

(B) Initial deferral decision

(i) In general

The requirements of this subparagraph are met if the plan provides that compensation for services performed during a taxable year may be deferred at the participant's election only if the election to defer such compensation is made not later than the close of the preceding taxable year or at such other time as provided in regulations.

(ii) First year of eligibility

In the case of the first year in which a participant becomes eligible to participate in the plan, such election may be made with respect to services to be performed subsequent to the election within 30 days after the date the participant becomes eligible to participate in such plan.

(iii) Performance-based compensation

In the case of any performance-based compensation based on services performed over a period of at least 12 months, such election may be made no later than 6 months before the end of the period.

(C) Changes in time and form of distribution

The requirements of this subparagraph are met if, in the case of a plan which permits under a subsequent election a delay in a payment or a change in the form of payment—

(i) the plan requires that such election may not take effect until at least 12 months after the date on which the election is made,

(ii) in the case of an election related to a payment not described in clause (ii), (iii), or (vi) of paragraph (2)(A), the plan requires that the payment with respect to which such election is made be deferred for a period of not less than 5 years from the date such payment would otherwise have been made, and

(iii) the plan requires that any election related to a payment described in paragraph (2)(A)(iv) may not be made less than 12 months prior to the date of the first scheduled payment under such paragraph.

(b) Rules relating to funding

(1) Offshore property in a trust

In the case of assets set aside (directly or indirectly) in a trust (or other arrangement determined by the Secretary) for purposes of paying deferred compensation under a nonqualified deferred compensation plan, for purposes of section 83 such assets shall be treated as property transferred in connection with the performance of services whether or not such assets are available to satisfy claims of general creditors—

(A) at the time set aside if such assets (or such trust or other arrangement) are located outside of the United States, or

(B) at the time transferred if such assets (or such trust or other arrangement) are subsequently transferred outside of the United States.

This paragraph shall not apply to assets located in a foreign jurisdiction if substantially all of the services to which the nonqualified deferred compensation relates are performed in such jurisdiction.

(2) Employer's financial health

In the case of compensation deferred under a nonqualified deferred compensation plan, there is a transfer of property within the meaning of section 83 with respect to such compensation as of the earlier of—

(A) the date on which the plan first provides that assets will become restricted to the provision of benefits under the plan in connection with a change in the employer's financial health, or

(B) the date on which assets are so restricted,

whether or not such assets are available to satisfy claims of general creditors.

(3) Treatment of employer's defined benefit plan during restricted period

(A) In general

If—

(i) during any restricted period with respect to a single-employer defined benefit plan, assets are set aside or reserved (directly or indirectly) in a trust (or other arrangement as determined by the Secretary) or transferred to such a trust or other arrangement for purposes of paying deferred compensation of an applicable covered employee under a nonqualified deferred compensation plan of the plan sponsor or member of a controlled group which includes the plan sponsor, or

(ii) a nonqualified deferred compensation plan of the plan sponsor or member of a controlled group which includes the plan sponsor provides that assets will become restricted to the provision of benefits under the plan to an applicable covered employee in connection with such restricted period (or other similar financial measure determined by the Secretary) with respect to the defined benefit plan, or assets are so restricted,

such assets shall, for purposes of section 83, be treated as property transferred in connection with the performance of services whether or not such assets are available to satisfy claims of general creditors. Clause (i) shall not apply with respect to any assets which are so set aside before the restricted period with respect to the defined benefit plan.

(B) Restricted period

For purposes of this section, the term ''restricted period'' means, with respect to any plan described in subparagraph (A)—

(i) any period during which the plan is in at-risk status (as defined in section 430(i));[1]

(ii) any period the plan sponsor is a debtor in a case under title 11, United States Code, or similar Federal or State law, and

(iii) the 12-month period beginning on the date which is 6 months before the termination date of the plan if, as of the termination date, the plan is not sufficient for benefit liabilities (within the meaning of section 4041 of the Employee Retirement Income Security Act of 1974).

(C) Special rule for payment of taxes on deferred compensation included in income

If an employer provides directly or indirectly for the payment of any Federal, State, or local income taxes with respect to any compensation required to be included in gross income by reason of this paragraph—

(i) interest shall be imposed under subsection (a)(1)(B)(i)(I) on the amount of such payment in the same manner as if such payment was part of the deferred compensation to which it relates,

(ii) such payment shall be taken into account in determining the amount of the additional tax under subsection (a)(1)(B)(i)(II) in the same manner as if such payment was part of the deferred compensation to which it relates, and

(iii) no deduction shall be allowed under this title with respect to such payment.

(D) Other definitions

For purposes of this section—

(i) Applicable covered employee

The term ''applicable covered employee'' means any—

(I) covered employee of a plan sponsor,

(II) covered employee of a member of a controlled group which includes the plan sponsor, and

(III) former employee who was a covered employee at the time of termination of employment with the plan sponsor or a member of a controlled group which includes the plan sponsor.

(ii) Covered employee

The term ''covered employee'' means an individual described in section 162(m)(3) or an individual subject to the requirements of section 16(a) of the Securities Exchange Act of 1934.

(4) Income inclusion for offshore trusts and employer's financial health

For each taxable year that assets treated as transferred under this subsection remain set aside in a trust or other arrangement subject to paragraph (1), (2), or (3), any increase in value in, or earnings with respect to, such assets shall be treated as an additional transfer of property under this subsection (to the extent not previously included in income).

[1] So in original. The semicolon probably should be a comma.

(5) Interest on tax liability payable with respect to transferred property

(A) In general

If amounts are required to be included in gross income by reason of paragraph (1), (2), or (3) for a taxable year, the tax imposed by this chapter for such taxable year shall be increased by the sum of—

(i) the amount of interest determined under subparagraph (B), and

(ii) an amount equal to 20 percent of the amounts required to be included in gross income.

(B) Interest

For purposes of subparagraph (A), the interest determined under this subparagraph for any taxable year is the amount of interest at the underpayment rate plus 1 percentage point on the underpayments that would have occurred had the amounts so required to be included in gross income by paragraph (1), (2), or (3) been includible in gross income for the taxable year in which first deferred or, if later, the first taxable year in which such amounts are not subject to a substantial risk of forfeiture.

(c) No inference on earlier income inclusion or requirement of later inclusion

Nothing in this section shall be construed to prevent the inclusion of amounts in gross income under any other provision of this chapter or any other rule of law earlier than the time provided in this section. Any amount included in gross income under this section shall not be required to be included in gross income under any other provision of this chapter or any other rule of law later than the time provided in this section.

(d) Other definitions and special rules

For purposes of this section:

(1) Nonqualified deferred compensation plan

The term ''nonqualified deferred compensation plan'' means any plan that provides for the deferral of compensation, other than—

(A) a qualified employer plan, and

(B) any bona fide vacation leave, sick leave, compensatory time, disability pay, or death benefit plan.

(2) Qualified employer plan

The term ''qualified employer plan'' means—

(A) any plan, contract, pension, account, or trust described in subparagraph (A) or (B) of section 219(g)(5) (without regard to subparagraph (A)(iii)),

(B) any eligible deferred compensation plan (within the meaning of section 457(b)), and

(C) any plan described in section 415(m).

(3) Plan includes arrangements, etc.

The term ''plan'' includes any agreement or arrangement, including an agreement or arrangement that includes one person.

(4) Substantial risk of forfeiture

The rights of a person to compensation are subject to a substantial risk of forfeiture if such person's rights to such compensation are conditioned upon the future performance of substantial services by any individual.

(5) Treatment of earnings

References to deferred compensation shall be treated as including references to income (whether actual or notional) attributable to such compensation or such income.

(6) Aggregation rules

Except as provided by the Secretary, rules similar to the rules of subsections (b) and (c) of section 414 shall apply.

(e) Regulations

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

(1) providing for the determination of amounts of deferral in the case of a nonqualified deferred compensation plan which is a defined benefit plan,

(2) relating to changes in the ownership and control of a corporation or assets of a corporation for purposes of subsection (a)(2)(A)(v),

(3) exempting arrangements from the application of subsection (b) if such arrangements will not result in an improper deferral of United States tax and will not result in assets being effectively beyond the reach of creditors,

(4) defining financial health for purposes of subsection (b)(2), and

(5) disregarding a substantial risk of forfeiture in cases where necessary to carry out the purposes of this section.

(Added Pub. L. 108–357, title VIII, § 885(a), Oct. 22, 2004, 118 Stat. 1634; amended Pub. L. 109–135, title IV, § 403(hh)(2), Dec. 21, 2005, 119 Stat. 2631; Pub. L. 109–280, title I, § 116(a), (b), Aug. 17, 2006, 120 Stat. 856, 858; Pub. L. 110–458, title I, § 101(e), Dec. 23, 2008, 122 Stat. 5100.)

REFERENCES IN TEXT

Section 4041 of the Employee Retirement Income Security Act of 1974, referred to in subsec. (b)(3)(B)(iii), is classified to section 1341 of Title 29, Labor.

Section 16(a) of the Securities Exchange Act of 1934, referred to in subsec. (b)(3)(D)(ii), is classified to section 78p(a) of Title 15, Commerce and Trade.

PRIOR PROVISIONS

A prior section 409A was renumbered section 409 of this title.

AMENDMENTS

2008—Subsec. (b)(3)(A)(ii). Pub. L. 110–458 inserted ''to an applicable covered employee'' after ''under the plan''.

2006—Subsec. (b)(3). Pub. L. 109–280, § 116(a), added par. (3). Former par. (3) redesignated (4).

Subsec. (b)(4), (5). Pub. L. 109–280 redesignated pars. (3) and (4) as (4) and (5), respectively, and substituted ''paragraph (1), (2), or (3)'' for ''paragraph (1) or (2)'' wherever appearing.

2005—Subsec. (a)(4)(C)(ii). Pub. L. 109–135 struck out ''first'' after ''requires that the''.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title I, §116(c), Aug. 17, 2006, 120 Stat. 858, provided that: ''The amendments made by this section [amending this section] shall apply to transfers or other reservation of assets after the date of the enactment of this Act [Aug. 17, 2006].''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE

Pub. L. 109–135, title IV, §403(hh)(3)(A), Dec. 21, 2005, 119 Stat. 2631, provided that: ''Notwithstanding section 885(d)(1) of the American Jobs Creation Act of 2004 [Pub. L. 108–357, set out below], subsection (b) of section 409A of the Internal Revenue Code of 1986 shall take effect on January 1, 2005.''

Pub. L. 108–357, title VIII, §885(d), Oct. 22, 2004, 118 Stat. 1640, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section and amending sections 3401, 6041, and 6051 of this title] shall apply to amounts deferred after December 31, 2004.

''(2) SPECIAL RULES.—

''(A) EARNINGS.—The amendments made by this section shall apply to earnings on deferred compensation only to the extent that such amendments apply to such compensation.

''(B) MATERIAL MODIFICATIONS.—For purposes of this subsection, amounts deferred in taxable years beginning before January 1, 2005, shall be treated as amounts deferred in a taxable year beginning on or after such date if the plan under which the deferral is made is materially modified after October 3, 2004, unless such modification is pursuant to the guidance issued under subsection (f) [set out as a note below].

''(3) EXCEPTION FOR NONELECTIVE DEFERRED COMPENSATION.—The amendments made by this section shall not apply to any nonelective deferred compensation to which section 457 of the Internal Revenue Code of 1986 does not apply by reason of section 457(e)(12) of such Code, but only if such compensation is provided under a nonqualified deferred compensation plan—

''(A) which was in existence on May 1, 2004,

''(B) which was providing nonelective deferred compensation described in such section 457(e)(12) on such date, and

''(C) which is established or maintained by an organization incorporated on July 2, 1974.

If, after May 1, 2004, a plan described in the preceding sentence adopts a plan amendment which provides a material change in the classes of individuals eligible to participate in the plan, this paragraph shall not apply to any nonelective deferred compensation provided under the plan on or after the date of the adoption of the amendment.''

APPLICABILITY OF AMENDMENTS BY SUBTITLES A AND B OF TITLE I OF PUB. L. 109–280

For special rules on applicability of amendments by subtitles A (§§101–108) and B (§§111–116) of title I of Pub. L. 109–280 to certain eligible cooperative plans, PBGC settlement plans, and eligible government contractor plans, see sections 104, 105, and 106 of Pub. L. 109–280, set out as notes under section 401 of this title.

GUIDANCE RELATING TO CONFORMANCE WITH FUNDING RULES

Pub. L. 109–135, title IV, §403(hh)(3)(B), Dec. 21, 2005, 119 Stat. 2631, provided that: ''Not later than 90 days after the date of the enactment of this Act [Dec. 21, 2005], the Secretary of the Treasury shall issue guidance under which a nonqualified deferred compensation plan which is in violation of the requirements of section 409A(b) of such Code shall be treated as not having violated such requirements if such plan comes into conformance with such requirements during such limited period as the Secretary may specify in such guidance.''

GUIDANCE RELATING TO CHANGE OF OWNERSHIP OR CONTROL

Pub. L. 108–357, title VIII, §885(e), Oct. 22, 2004, 118 Stat. 1640, provided that: ''Not later than 90 days after the date of the enactment of this Act [Oct. 22, 2004], the Secretary of the Treasury shall issue guidance on what constitutes a change in ownership or effective control for purposes of section 409A of the Internal Revenue Code of 1986, as added by this section.''

GUIDANCE RELATING TO TERMINATION OF CERTAIN EXISTING ARRANGEMENTS

Pub. L. 108–357, title VIII, §885(f), Oct. 22, 2004, 118 Stat. 1641, as amended by Pub. L. 109–135, title IV, §403(hh)(4), Dec. 21, 2005, 119 Stat. 2632, provided that: ''Not later than 60 days after the date of the enactment of this Act [Oct. 22, 2004], the Secretary of the Treasury shall issue guidance providing a limited period during which a nonqualified deferred compensation plan adopted before January 1, 2005, may, without violating the requirements of paragraphs (2), (3), and (4) of section 409A(a) of the Internal Revenue Code of 1986 (as added by this section), be amended—

''(1) to provide that a participant may terminate participation in the plan, or cancel an outstanding deferral election with regard to amounts deferred after December 31, 2004, but only if amounts subject to the termination or cancellation are includible in income of the participant as earned (or, if later, when no longer subject to substantial risk of forfeiture), and

''(2) to conform to the requirements of such section 409A with regard to amounts deferred after December 31, 2004.''

SUBPART B—SPECIAL RULES

Sec.
410. Minimum participation standards.
411. Minimum vesting standards.
412. Minimum funding standards.
413. Collectively bargained plans.[1]
414. Definitions and special rules.
415. Limitations on benefits and contribution under qualified plans.
416. Special rules for top-heavy plans.
417. Definitions and special rules for purposes of minimum survivor annuity requirements.

AMENDMENTS

1984—Pub. L. 98–397, title II, §203(c), Aug. 23, 1984, 98 Stat. 1445, added item 417.

1982—Pub. L. 97–248, title II, §240(d), Sept. 3, 1982, 96 Stat. 520, added item 416.

1974—Pub. L. 93–406, title II, §1011, Sept. 2, 1974, 88 Stat. 898, added subpart heading and analysis of sections.

§ 410. Minimum participation standards

(a) Participation

(1) Minimum age and service conditions

(A) General rule

A trust shall not constitute a qualified trust under section 401(a) if the plan of which it is a part requires, as a condition of participation in the plan, that an employee complete a period of service with the employer or employers maintaining the plan extending beyond the later of the following dates—

[1] So in original. Does not conform to section catchline.

(i) the date on which the employee attains the age of 21; or

(ii) the date on which he completes 1 year of service.

(B) Special rules for certain plans

(i) In the case of any plan which provides that after not more than 2 years of service each participant has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable (within the meaning of section 411) at the time such benefit accrues, clause (ii) of subparagraph (A) shall be applied by substituting ''2 years of service'' for ''1 year of service''.

(ii) In the case of any plan maintained exclusively for employees of an educational institution (as defined in section 170(b)(1)(A)(ii) by an employer which is exempt from tax under section 501(a) which provides that each participant having at least 1 year of service has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable (within the meaning of section 411) at the time such benefit accrues, clause (i) of subparagraph (A) shall be applied by substituting ''26'' for ''21''. This clause shall not apply to any plan to which clause (i) applies.

(2) Maximum age conditions

A trust shall not constitute a qualified trust under section 401(a) if the plan of which it is a part excludes from participation (on the basis of age) employees who have attained a specified age.

(3) Definition of year of service

(A) General rule

For purposes of this subsection, the term ''year of service'' means a 12-month period during which the employee has not less than 1,000 hours of service. For purposes of this paragraph, computation of any 12-month period shall be made with reference to the date on which the employee's employment commenced, except that, under regulations prescribed by the Secretary of Labor, such computation may be made by reference to the first day of a plan year in the case of an employee who does not complete 1,000 hours of service during the 12-month period beginning on the date his employment commenced.

(B) Seasonal industries

In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term ''year of service'' shall be such period as may be determined under regulations prescribed by the Secretary of Labor.

(C) Hours of service

For purposes of this subsection, the term ''hour of service'' means a time of service determined under regulations prescribed by the Secretary of Labor.

(D) Maritime industries

For purposes of this subsection, in the case of any maritime industry, 125 days of service shall be treated as 1,000 hours of service. The Secretary of Labor may prescribe regulations to carry out this subparagraph.

(4) Time of participation

A plan shall be treated as not meeting the requirements of paragraph (1) unless it provides that any employee who has satisfied the minimum age and service requirements specified in such paragraph, and who is otherwise entitled to participate in the plan, commences participation in the plan no later than the earlier of—

(A) the first day of the first plan year beginning after the date on which such employee satisfied such requirements, or

(B) the date 6 months after the date on which he satisfied such requirements,

unless such employee was separated from the service before the date referred to in subparagraph (A) or (B), whichever is applicable.

(5) Breaks in service

(A) General rule

Except as otherwise provided in subparagraphs (B), (C), and (D), all years of service with the employer or employers maintaining the plan shall be taken into account in computing the period of service for purposes of paragraph (1).

(B) Employees under 2-year 100 percent vesting

In the case of any employee who has any 1-year break in service (as defined in section 411(a)(6)(A)) under a plan to which the service requirements of clause (i) of paragraph (1)(B) apply, if such employee has not satisfied such requirements, service before such break shall not be required to be taken into account.

(C) 1-year break in service

In computing an employee's period of service for purposes of paragraph (1) in the case of any participant who has any 1-year break in service (as defined in section 411(a)(6)(A)), service before such break shall not be required to be taken into account under the plan until he has completed a year of service (as defined in paragraph (3)) after his return.

(D) Nonvested participants

(i) In general

For purposes of paragraph (1), in the case of a nonvested participant, years of service with the employer or employers maintaining the plan before any period of consecutive 1-year breaks in service shall not be required to be taken into account in computing the period of service if the number of consecutive 1-year breaks in service within such period equals or exceeds the greater of—

(I) 5, or

(II) the aggregate number of years of service before such period.

(ii) Years of service not taken into account

If any years of service are not required to be taken into account by reason of a period of breaks in service to which clause (i) applies, such years of service shall not be

taken into account in applying clause (i) to a subsequent period of breaks in service.

(iii) Nonvested participant defined

For purposes of clause (i), the term ''nonvested participant'' means a participant who does not have any nonforfeitable right under the plan to an accrued benefit derived from employer contributions.

(E) Special rule for maternity or paternity absences

(i) General rule

In the case of each individual who is absent from work for any period—

(I) by reason of the pregnancy of the individual,

(II) by reason of the birth of a child of the individual,

(III) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or

(IV) for purposes of caring for such child for a period beginning immediately following such birth or placement,

the plan shall treat as hours of service, solely for purposes of determining under this paragraph whether a 1-year break in service (as defined in section 411(a)(6)(A)) has occurred, the hours described in clause (ii).

(ii) Hours treated as hours of service

The hours described in this clause are—

(I) the hours of service which otherwise would normally have been credited to such individual but for such absence, or

(II) in any case in which the plan is unable to determine the hours described in subclause (I), 8 hours of service per day of such absence,

except that the total number of hours treated as hours of service under this clause by reason of any such pregnancy or placement shall not exceed 501 hours.

(iii) Year to which hours are credited

The hours described in clause (ii) shall be treated as hours of service as provided in this subparagraph—

(I) only in the year in which the absence from work begins, if a participant would be prevented from incurring a 1-year break in service in such year solely because the period of absence is treated as hours of service as provided in clause (i); or

(II) in any other case, in the immediately following year.

(iv) Year defined

For purposes of this subparagraph, the term ''year'' means the period used in computations pursuant to paragraph (3).

(v) Information required to be filed

A plan shall not fail to satisfy the requirements of this subparagraph solely because it provides that no credit will be given pursuant to this subparagraph unless the individual furnishes to the plan administrator such timely information as the plan may reasonably require to establish—

(I) that the absence from work is for reasons referred to in clause (i), and

(II) the number of days for which there was such an absence.

(b) Minimum coverage requirements

(1) In general

A trust shall not constitute a qualified trust under section 401(a) unless such trust is designated by the employer as part of a plan which meets 1 of the following requirements:

(A) The plan benefits at least 70 percent of employees who are not highly compensated employees.

(B) The plan benefits—

(i) a percentage of employees who are not highly compensated employees which is at least 70 percent of

(ii) the percentage of highly compensated employees benefiting under the plan.

(C) The plan meets the requirements of paragraph (2).

(2) Average benefit percentage test

(A) In general

A plan shall be treated as meeting the requirements of this paragraph if—

(i) the plan benefits such employees as qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of highly compensated employees, and

(ii) the average benefit percentage for employees who are not highly compensated employees is at least 70 percent of the average benefit percentage for highly compensated employees.

(B) Average benefit percentage

For purposes of this paragraph, the term ''average benefit percentage'' means, with respect to any group, the average of the benefit percentages calculated separately with respect to each employee in such group (whether or not a participant in any plan).

(C) Benefit percentage

For purposes of this paragraph—

(i) In general

The term ''benefit percentage'' means the employer-provided contribution or benefit of an employee under all qualified plans maintained by the employer, expressed as a percentage of such employee's compensation (within the meaning of section 414(s)).

(ii) Period for computing percentage

At the election of an employer, the benefit percentage for any plan year shall be computed on the basis of contributions or benefits for—

(I) such plan year, or

(II) any consecutive plan year period (not greater than 3 years) which ends with such plan year and which is specified in such election.

An election under this clause, once made, may be revoked or modified only with the consent of the Secretary.

(D) Employees taken into account

For purposes of determining who is an employee for purposes of determining the average benefit percentage under subparagraph (B)—

(i) except as provided in clause (ii), paragraph (4)(A) shall not apply, or

(ii) if the employer elects, paragraph (4)(A) shall be applied by using the lowest age and service requirements of all qualified plans maintained by the employer.

(E) Qualified plan

For purposes of this paragraph, the term ''qualified plan'' means any plan which (without regard to this subsection) meets the requirements of section 401(a).

(3) Exclusion of certain employees

For purposes of this subsection, there shall be excluded from consideration—

(A) employees who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that retirement benefits were the subject of good faith bargaining between such employee representatives and such employer or employers,

(B) in the case of a trust established or maintained pursuant to an agreement which the Secretary of Labor finds to be a collective bargaining agreement between air pilots represented in accordance with title II of the Railway Labor Act and one or more employers, all employees not covered by such agreement, and

(C) employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)).

Subparagraph (A) shall not apply with respect to coverage of employees under a plan pursuant to an agreement under such subparagraph. For purposes of subparagraph (B), management pilots who are not represented in accordance with title II of the Railway Labor Act shall be treated as covered by a collective bargaining agreement described in such subparagraph if the management pilots manage the flight operations of air pilots who are so represented and the management pilots are, pursuant to the terms of the agreement, included in the group of employees benefitting under the trust described in such subparagraph. Subparagraph (B) shall not apply in the case of a plan which provides contributions or benefits for employees whose principal duties are not customarily performed aboard an aircraft in flight (other than management pilots described in the preceding sentence).

(4) Exclusion of employees not meeting age and service requirements

(A) In general

If a plan—

(i) prescribes minimum age and service requirements as a condition of participation, and

(ii) excludes all employees not meeting such requirements from participation,

then such employees shall be excluded from consideration for purposes of this subsection.

(B) Requirements may be met separately with respect to excluded group

If employees not meeting the minimum age or service requirements of subsection (a)(1) (without regard to subparagraph (B) thereof) are covered under a plan of the employer which meets the requirements of paragraph (1) separately with respect to such employees, such employees may be excluded from consideration in determining whether any plan of the employer meets the requirements of paragraph (1).

(C) Requirements not treated as being met before entry date

An employee shall not be treated as meeting the age and service requirements described in this paragraph until the first date on which, under the plan, any employee with the same age and service would be eligible to commence participation in the plan.

(5) Line of business exception

(A) In general

If, under section 414(r), an employer is treated as operating separate lines of business for a year, the employer may apply the requirements of this subsection for such year separately with respect to employees in each separate line of business.

(B) Plan must be nondiscriminatory

Subparagraph (A) shall not apply with respect to any plan maintained by an employer unless such plan benefits such employees as qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of highly compensated employees.

(6) Definitions and special rules

For purposes of this subsection—

(A) Highly compensated employee

The term ''highly compensated employee'' has the meaning given such term by section 414(q).

(B) Aggregation rules

An employer may elect to designate—

(i) 2 or more trusts,

(ii) 1 or more trusts and 1 or more annuity plans, or

(iii) 2 or more annuity plans,

as part of 1 plan intended to qualify under section 401(a) to determine whether the requirements of this subsection are met with respect to such trusts or annuity plans. If an employer elects to treat any trusts or annuity plans as 1 plan under this subparagraph, such trusts or annuity plans shall be treated as 1 plan for purposes of section 401(a)(4).

(C) Special rules for certain dispositions or acquisitions

(i) In general

If a person becomes, or ceases to be, a member of a group described in subsection

(b), (c), (m), or (o) of section 414, then the requirements of this subsection shall be treated as having been met during the transition period with respect to any plan covering employees of such person or any other member of such group if—

(I) such requirements were met immediately before each such change, and

(II) the coverage under such plan is not significantly changed during the transition period (other than by reason of the change in members of a group) or such plan meets such other requirements as the Secretary may prescribe by regulation.

(ii) Transition period

For purposes of clause (i), the term ''transition period'' means the period—

(I) beginning on the date of the change in members of a group, and

(II) ending on the last day of the 1st plan year beginning after the date of such change.

(D) Special rule for certain employee stock ownership plans

A trust which is part of a tax credit employee stock ownership plan which is the only plan of an employer intended to qualify under section 401(a) shall not be treated as not a qualified trust under section 401(a) solely because it fails to meet the requirements of this subsection if—

(i) such plan benefits 50 percent or more of all the employees who are eligible under a nondiscriminatory classification under the plan, and

(ii) the sum of the amounts allocated to each participant's account for the year does not exceed 2 percent of the compensation of that participant for the year.

(E) Eligibility to contribute

In the case of contributions which are subject to section 401(k) or 401(m), employees who are eligible to contribute (or elect to have contributions made on their behalf) shall be treated as benefiting under the plan (other than for purposes of paragraph (2)(A)(ii)).

(F) Employers with only highly compensated employees

A plan maintained by an employer which has no employees other than highly compensated employees for any year shall be treated as meeting the requirements of this subsection for such year.

(G) Regulations

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

(c) Application of participation standards to certain plans

(1) The provisions of this section (other than paragraph (2) of this subsection) shall not apply to—

(A) a governmental plan (within the meaning of section 414(d)),

(B) a church plan (within the meaning of section 414(e)) with respect to which the election provided by subsection (d) of this section has not been made,

(C) a plan which has not at any time after September 2, 1974, provided for employer contributions, and

(D) a plan established and maintained by a society, order, or association described in section 501(c)(8) or (9) if no part of the contributions to or under such plan are made by employers of participants in such plan.

(2) A plan described in paragraph (1) shall be treated as meeting the requirements of this section for purposes of section 401(a), except that in the case of a plan described in subparagraph (B), (C), or (D) of paragraph (1), this paragraph shall apply only if such plan meets the requirements of section 401(a)(3) (as in effect on September 1, 1974).

(d) Election by church to have participation, vesting, funding, etc., provisions apply

(1) In general

If the church or convention or association of churches which maintains any church plan makes an election under this subsection (in such form and manner as the Secretary may by regulations prescribe), then the provisions of this title relating to participation, vesting, funding, etc. (as in effect from time to time) shall apply to such church plan as if such provisions did not contain an exclusion for church plans.

(2) Election irrevocable

An election under this subsection with respect to any church plan shall be binding with respect to such plan, and, once made, shall be irrevocable.

(Added Pub. L. 93–406, title II, §1011, Sept. 2, 1974, 88 Stat. 898; amended Pub. L. 94–455, title XIX, §§1901(a)(61), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1774, 1834; Pub. L. 96–605, title II, §225(a), Dec. 28, 1980, 94 Stat. 3529; Pub. L. 97–34, title I, §111(b)(4), Aug. 13, 1981, 95 Stat. 194; Pub. L. 98–397, title II, §202(a), (d)(1), (e)(1), Aug. 23, 1984, 98 Stat. 1436–1438; Pub. L. 99–509, title IX, §9203(a)(2), Oct. 21, 1986, 100 Stat. 1979; Pub. L. 99–514, title XI, §§1112(a), 1113(c), (d)(A), Oct. 22, 1986, 100 Stat. 2440, 2447; Pub. L. 100–647, title I, §1011(h)(1), (2), (11), title III, §3021(a)(13)(B), Nov. 10, 1988, 102 Stat. 3464, 3467, 3631; Pub. L. 101–239, title VII, §7841(d)(6), Dec. 19, 1989, 103 Stat. 2428; Pub. L. 105–34, title XV, §1505(a)(3), Aug. 5, 1997, 111 Stat. 1063; Pub. L. 109–280, title IV, §402(h)(1), Aug. 17, 2006, 120 Stat. 927.)

REFERENCES IN TEXT

The Railway Labor Act, referred to in subsec. (b)(3), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended. Title II of the Railway Labor Act was added by act Apr. 10, 1936, ch. 166, 49 Stat. 1189, and is classified generally to subchapter II (§181 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

AMENDMENTS

2006—Subsec. (b)(3). Pub. L. 109–280, in concluding provisions, substituted ''For purposes of subparagraph (B), management pilots who are not represented in accordance with title II of the Railway Labor Act shall be treated as covered by a collective bargaining agreement described in such subparagraph if the manage-

ment pilots manage the flight operations of air pilots who are so represented and the management pilots are, pursuant to the terms of the agreement, included in the group of employees benefitting under the trust described in such subparagraph. Subparagraph (B) shall not apply in the case of a plan which provides contributions or benefits for employees whose principal duties are not customarily performed aboard an aircraft in flight (other than management pilots described in the preceding sentence).'' for ''Subparagraph (B) shall not apply in the case of a plan which provides contributions or benefits for employees whose principal duties are not customarily performed aboard aircraft in flight.''

1997—Subsec. (c)(2). Pub. L. 105–34 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''A plan described in paragraph (1) shall be treated as meeting the requirements of this section, for purposes of section 401(a), if such plan meets the requirements of section 401(a)(3) as in effect on September 1, 1974.''

1989—Subsec. (a)(2). Pub. L. 101–239 struck out comma before period at end.

1988—Subsec. (b)(4)(B). Pub. L. 100–647, §1011(h)(1), substituted ''not meeting'' for ''do not meet'' and struck out ''and'' before ''are covered''.

Subsec. (b)(4)(C). Pub. L. 100–647, §1011(h)(11), added subpar. (C).

Subsec. (b)(6)(C)(i)(II). Pub. L. 100–647, §3021(a)(13)(B), inserted ''or such plan meets such other requirements as the Secretary may prescribe by regulation'' after ''of a group)''.

Subsec. (b)(6)(F), (G). Pub. L. 100–647, §1011(h)(2), added subpar. (F) and redesignated former subpar. (F) as (G).

1986—Subsec. (a)(1)(B)(i). Pub. L. 99–514, §1113(c), substituted ''2 years of service'' for ''3 years of service'' in two places.

Subsec. (a)(2). Pub. L. 99–509 substituted a period for ''unless—

''(A) the plan is a—

''(i) defined benefit plan, or

''(ii) target benefit plan (as defined under regulations prescribed by the Secretary), and

''(B) such employees begin employment with the employer after they have attained a specified age which is not more than 5 years before the normal retirement age under the plan.''

Subsec. (a)(5)(B). Pub. L. 99–514, §1113(d)(A), substituted ''2-year'' for ''3-year'' in heading.

Subsec. (b). Pub. L. 99–514, §1112(a), substituted ''Minimum coverage requirements'' for ''Eligibility'' as subsec. (b) heading and amended subsec. generally, revising and restating as pars. (1) to (6) provisions formerly contained in pars. (1) to (3).

1984—Subsec. (a)(1)(A)(i). Pub. L. 98–397, §202(a)(1), substituted ''21'' for ''25''.

Subsec. (a)(1)(B)(ii). Pub. L. 98–397, §202(a)(2), substituted '' '26' for '21' '' for '' '30' for '25' ''.

Subsec. (a)(5)(D). Pub. L. 98–397, §202(d)(1), amended subpar. (D) generally.

Subsec. (a)(5)(E). Pub. L. 98–397, §202(e)(1), added subpar. (E).

1981—Subsec. (b)(3)(C). Pub. L. 97–34 substituted ''section 911(d)(2)'' for ''section 911(b)''.

1980—Subsec. (b)(2), (3). Pub. L. 96–605 added par. (2), redesignated former par. (2) as (3) and substituted ''paragraphs (1) and (2)'' for ''paragraph (1)''.

1976—Subsec. (a)(2)(A)(ii). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (a)(5)(C), (D). Pub. L. 94–455, §1901(a)(61)(A), substituted ''purposes of paragraph (1)'' for ''purposes of subsection (a)(1)''.

Subsec. (b)(1)(B). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(1)(C). Pub. L. 94–455, §1901(a)(61)(B), substituted ''September 2, 1974,'' for ''the date of the enactment of the Employee Retirement Income Security Act of 1974''.

Subsec. (c)(2). Pub. L. 94–455, §1901(a)(61)(C), substituted ''September 1, 1974'' for ''the day before the date of the enactment of this section''.

Subsec. (d)(1). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to years beginning before, on, or after Aug. 17, 2006, see section 402(h)(2) of Pub. L. 109–280, set out as a Special Funding Rules for Certain Plans Maintained by Commercial Airlines note under section 430 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to taxable years beginning on or after Aug. 5, 1997, with certain governmental plans treated as satisfying requirements for all taxable years beginning before Aug. 5, 1997, see section 1505(d) of Pub. L. 105–34, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011(h)(1), (2), (11) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 3021(a)(13)(B) of Pub. L. 100–647 effective as if included in the amendments by section 1151 of Pub. L. 99–514, see section 3021(d)(1) of Pub. L. 100–647, set out as a note under section 129 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1112(a) of Pub. L. 99–514 applicable to plan years beginning after Dec. 31, 1988, with special rule regarding collective bargaining agreements ratified before Mar. 1, 1986, and with provision for waiver of excise tax on reversions, see section 1112(e) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 1113(c), (d)(A) of Pub. L. 99–514 applicable to plan years beginning after Dec. 31, 1988, with special rule for plans maintained pursuant to collective bargaining agreements ratified before Mar. 1, 1986, and not applicable to employees who do not have 1 hour of service in any plan year to which the amendment applies, see section 1113(f) of Pub. L. 99–514, as amended, set out as a note under section 411 of this title.

Amendment by Pub. L. 99–509 applicable only with respect to plan years beginning on or after January 1, 1988, and only with respect to service performed on or after such date, see section 9204(b) of Pub. L. 99–509, set out as an Effective and Termination Dates of 1986 Amendments note under section 623 of Title 29, Labor.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–397 applicable to plan years beginning after Dec. 31, 1984, except as otherwise provided, see sections 302 and 303 of Pub. L. 98–397, set out as a note under section 1001 of Title 29, Labor.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to taxable years beginning after Dec. 31, 1981, see section 115 of Pub. L. 97–34, set out as a note under section 911 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–605 applicable with respect to plan years beginning after December 31, 1980, see section 225(c) of Pub. L. 96–605, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(61) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE; TRANSITIONAL RULES

Section 1017 of Pub. L. 93–406, as amended by Pub. L. 94–12, title IV, § 402, Mar. 29, 1975, 89 Stat. 47; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this part [part 1 (§§ 1011–1017) of subtitle A of title II of Pub. L. 93–406, enacting this section and sections 411, 412, 413, 414, and 4971 of this title, amending sections 275, 401, 404, 406, 407, 805, 6161, 6201, 6204, 6211, 6212, 6213, 6214, 6344, 6501, 6503, 6512, 6601, 6653, 6659 [now 6662], 6676, 6677, 6679, 6682, 6688, 6861, 6862, and 7422 of this title and enacting provisions set out as notes under this section and sections 411 and 412 of this title] shall apply for plan years beginning after the date of the enactment of this Act [Sept. 2, 1974].

''(b) EXISTING PLANS.—Except as otherwise provided in subsections (c) through (i), in the case of a plan in existence on January 1, 1974, the amendments made by this part shall apply for plan years beginning after December 31, 1975.

''(c) EXISTING PLANS UNDER COLLECTIVE BARGAINING AGREEMENTS.—

''(1) APPLICATION OF VESTING RULES TO CERTAIN PLAN PROVISIONS.—

''(A) WAIVER OF APPLICATION.—In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary of Labor finds to be collective bargaining agreements between employee representatives and one or more employers, during the special temporary waiver period the plan shall not be treated as not meeting the requirements of section 411(b)(1) or (2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] solely by reason of a supplementary or special plan provision (within the meaning of subparagraph (D)).

''(B) SPECIAL TEMPORARY WAIVER PERIOD.—For purposes of this paragraph, the term 'special temporary waiver period' means plan years beginning after December 31, 1975, and before the earlier of—

''(i) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act [Sept. 2, 1974]), or

''(ii) January 1, 1981.

For purposes of clause (i), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement contained in this Act [see Short Title note set out under section 1001 of Title 29, Labor] shall not be treated as a termination of such collective bargaining agreement.

''(C) DETERMINATION BY SECRETARY OF LABOR REQUIRED.—Subparagraph (A) shall not apply unless the Secretary of Labor determines that the participation and vesting rules in effect on the date of the enactment of this Act [Sept. 2, 1974] are not less favorable to the employees, in the aggregate than the rules provided under sections 410 and 411 of the Internal Revenue Code of 1986.

''(D) SUPPLEMENTARY OR SPECIAL PLAN PROVISIONS.—For purposes of this paragraph, the term 'supplementary or special plan provision' means any plan provision which—

''(i) provides supplementary benefits, not in excess of one-third of the basic benefit, in the form of an annuity for the life of the participant, or

''(ii) provides that, under a contractual agreement based on medical evidence as to the effects of working in an adverse environment for an extended period of time, a participant having 25 years of service is to be treated as having 30 years of service.

''(2) APPLICATION OF FUNDING RULES.—

''(A) IN GENERAL.—In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary of Labor finds to be collective bargaining agreements between employee representatives and one or more employers, section 412 of the Internal Revenue Code of 1986, and other amendments made by this part to the extent such amendments relate to such section 412, shall not apply during the special temporary waiver period (as defined in paragraph (1)(B)).

''(B) WAIVER OF UNDERFUNDING.—In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary of Labor finds to be collective bargaining agreements between employee representatives and one or more employers, if by reason of subparagraph (A) the requirements of section 401(a)(7) of the Internal Revenue Code of 1986 apply without regard to the amendment of such section 401(a)(7) by section 1016(a)(2)(C) of this Act [Pub. L. 93–406], the plan shall not be treated as not meeting such requirements solely by reason of the application of the amendments made by sections 1011 and 1012 of this Act [enacting this section and section 411 of this title] or related amendments made by this part.

''(C) LABOR ORGANIZATION CONVENTIONS.—In the case of a plan maintained by a labor organization, which is exempt from tax under section 501(c)(5) of the Internal Revenue Code of 1986 exclusively for the benefit of its employees and their beneficiaries, section 412 of such Code and other amendments made by this part to the extent such amendments relate to such section 412, shall be applied by substituting for the term 'December 31, 1975' in subsection (b), the earlier of—

''(i) the date on which the second convention of such labor organization held after the date of the enactment of this Act [Sept. 2, 1974] ends, or

''(ii) December 31, 1980,

but in no event shall a date earlier than the later of December 31, 1975, or the date determined under subparagraph (A) or (B) be substituted.

''(d) EXISTING PLANS MAY ELECT NEW PROVISIONS.—In the case of a plan in existence on January 1, 1974, the provisions of the Internal Revenue Code of 1986 relating to participation, vesting, funding, and form of benefit (as in effect from time to time) shall apply in the case of the plan year (which begins after the date of the enactment of this Act [Sept. 2, 1974] but before the applicable effective date determined under subsection (b) or (c)) selected by the plan administrator and to all subsequent plan years, if the plan administrator elects (in such manner and at such time as the Secretary of the Treasury or his delegate shall by regulations prescribe) to have such provisions so apply. Any election made under this subsection, once made, shall be irrevocable.

''(e) CERTAIN DEFINITIONS AND SPECIAL RULES.—Section 414 of the Internal Revenue Code of 1986 (other than subsections (b) and (c) of such section 414), as added by section 1015(a) of this Act [Pub. L. 93–406], shall take effect on the date of the enactment of this Act [Sept. 2, 1974].

''(f) TRANSITIONAL RULES WITH RESPECT TO BREAKS IN SERVICE.—

''(1) PARTICIPATION.—In the case of a plan to which section 410 of the Internal Revenue Code of 1986 [this section] applies, if any plan amendment with respect to breaks in service (which amendment is made or becomes effective after January 1, 1974, and before the date on which such section 410 first becomes effective with respect to such plan) provides that any employee's participation in the plan would commence at any date later than the later of—

''(A) the date on which his participation would commence under the break in service rules of section 410(a)(5) of such Code, or

''(B) the date on which his participation would commence under the plan as in effect on January 1, 1974,

such plan shall not constitute a plan described in section 403(a) or 405(a) of such Code and a trust forming a part of such plan shall not constitute a qualified trust under section 401(a) of such Code.

''(2) VESTING.—In the case of a plan to which section 411 of the Internal Revenue Code of 1986 applies,

if any plan amendment with respect to breaks in service (which amendment is made or becomes effective after January 1, 1974, and before the date on which such section 411 first becomes effective with respect to such plan) provides that the nonforfeitable benefit derived from employer contributions to which any employee would be entitled is less than the lesser of the nonforfeitable benefit derived from employer contributions to which he would be entitled under—

''(A) the break in service rules of section 411(a)(6) of such Code, or

''(B) the plan as in effect on January 1, 1974,

such plan shall not constitute a plan described in section 403(a) or 405(a) of such Code and a trust forming a part of such plan shall not constitute a qualified trust under section 401(a) of such Code. Subparagraph (B) shall not apply if the break in service rules under the plan would have been in violation of any law or rule of law in effect on January 1, 1974.

''(g) 3-YEAR DELAY FOR CERTAIN PROVISIONS.—Subparagraphs (B) and (C) of section 404(a)(1) shall apply only in the case of plan years beginning on or after 3 years after the date of the enactment of this Act [Sept. 2, 1974].

''(h)(1) Except as provided in paragraph (2), section 413 of the Internal Revenue Code of 1986 shall apply to plan years beginning after December 31, 1953.

''(2)(A) For plan years beginning before the applicable effective date of section 410 of such Code, the provisions of paragraphs (1) and (8) of subsection (b) of such section 413 shall be applied by substituting '401(a)(3)' for '410'.

''(B) For plan years beginning before the applicable effective date of section 411 of such Code, the provisions of subsection (b)(2) of such section 413 shall be applied by substituting '401(a)(7)' for '411(d)(3)'.

''(C)(i) The provisions of subsection (b)(4) of such section 413 shall not apply to plan years beginning before the applicable effective date of section 411 of such Code.

''(ii) The provisions of subsection (b)(5) (other than the second sentence thereof) of such section 413 shall not apply to plan years beginning before the applicable effective date of section 412 of such Code.

''(i) CONTRIBUTIONS TO H.R. 10 PLANS.—Notwithstanding subsections (b) and (c)(2), in the case of a plan in existence on January 1, 1974, the amendment made by section 1013(c)(2) of this Act [amending section 404(a)(6) of this title] shall apply, with respect to a plan which provides contributions or benefits for employees some or all of whom are employees within the meaning of section 401(c)(1) of the Internal Revenue Code of 1986, for plan years beginning after December 31, 1974, but only if the employer (within the meaning of section 401(c)(4) of such Code) elects in such manner and at such time as the Secretary of the Treasury or his delegate shall by regulations prescribe, to have such amendment so apply. Any election made under this subsection, once made, shall be irrevocable.''

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by sections 1112 and 1113 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

Secretary of Labor, Secretary of the Treasury, and Equal Employment Opportunity Commission shall each issue before Feb. 1, 1988, final regulations to carry out amendments made by section 9203 of Pub. L. 99–509, see section 9204 of Pub. L. 99–509, set out as a note under section 623 of Title 29, Labor.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

For provisions directing that if any amendments made by section 9203(a)(2) of Pub. L. 99–509 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 9204 of Pub. L. 99–509, set out as a note under section 623 of Title 29, Labor.

§ 411. Minimum vesting standards

(a) General rule

A trust shall not constitute a qualified trust under section 401(a) unless the plan of which such trust is a part provides that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age (as defined in paragraph (8)) and in addition satisfies the requirements of paragraphs (1), (2), and (11) of this subsection and the requirements of subsection (b)(3), and also satisfies, in the case of a defined benefit plan, the requirements of subsection (b)(1) and, in the case of a defined contribution plan, the requirements of subsection (b)(2).

(1) Employee contributions

A plan satisfies the requirements of this paragraph if an employee's rights in his accrued benefit derived from his own contributions are nonforfeitable.

(2) Employer contributions

(A) Defined benefit plans

(i) In general

In the case of a defined benefit plan, a plan satisfies the requirements of this paragraph if it satisfies the requirements of clause (ii) or (iii).

(ii) 5-year vesting

A plan satisfies the requirements of this clause if an employee who has completed at least 5 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

(iii) 3 to 7 year vesting

A plan satisfies the requirements of this clause if an employee has a nonforfeitable right to a percentage of the employee's accrued benefit derived from employer contributions determined under the following table:

Years of service:	The nonforfeitable percentage is:
3	20
4	40
5	60
6	80
7 or more	100.

(B) Defined contribution plans

(i) In general

In the case of a defined contribution plan, a plan satisfies the requirements of this paragraph if it satisfies the requirements of clause (ii) or (iii).

(ii) 3-year vesting

A plan satisfies the requirements of this clause if an employee who has completed

at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

(iii) 2 to 6 year vesting

A plan satisfies the requirements of this clause if an employee has a nonforfeitable right to a percentage of the employee's accrued benefit derived from employer contributions determined under the following table:

Years of service:	The nonforfeitable percentage is:
2	20
3	40
4	60
5	80
6 or more	100.

(3) Certain permitted forfeitures, suspensions, etc.

For purposes of this subsection—

(A) Forfeiture on account of death

A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that it is not payable if the participant dies (except in the case of a survivor annuity which is payable as provided in section 401(a)(11)).

(B) Suspension of benefits upon reemployment of retiree

A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that the payment of benefits is suspended for such period as the employee is employed, subsequent to the commencement of payment of such benefits—

(i) in the case of a plan other than a multi-employer plan, by the employer who maintains the plan under which such benefits were being paid; and

(ii) in the case of a multiemployer plan, in the same industry, the same trade or craft, and the same geographic area covered by the plan as when such benefits commenced.

The Secretary of Labor shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph, including regulations with respect to the meaning of the term ''employed''.

(C) Effect of retroactive plan amendments

A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because plan amendments may be given retroactive application as provided in section 412(d)(2).

(D) Withdrawal of mandatory contribution

(i) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that, in the case of a participant who does not have a nonforfeitable right to at least 50 percent of his accrued benefit derived from employer contributions, such accrued benefit may be forfeited on account of the withdrawal by the participant of any amount attributable to the benefit derived from mandatory contributions (as defined in subsection (c)(2)(C)) made by such participant.

(ii) Clause (i) shall not apply to a plan unless the plan provides that any accrued benefit forfeited under a plan provision described in such clause shall be restored upon repayment by the participant of the full amount of the withdrawal described in such clause plus, in the case of a defined benefit plan, interest. Such interest shall be computed on such amount at the rate determined for purposes of subsection (c)(2)(C) on the date of such repayment (computed annually from the date of such withdrawal). The plan provision required under this clause may provide that such repayment must be made (I) in the case of a withdrawal on account of separation from service, before the earlier of 5 years after the first date on which the participant is subsequently re-employed by the employer, or the close of the first period of 5 consecutive 1-year breaks in service commencing after the withdrawal; or (II) in the case of any other withdrawal, 5 years after the date of the withdrawal.

(iii) In the case of accrued benefits derived from employer contributions which accrued before September 2, 1974, a right to such accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that an amount of such accrued benefit may be forfeited on account of the withdrawal by the participant of an amount attributable to the benefit derived from mandatory contributions (as defined in subsection (c)(2)(C)) made by such participant before September 2, 1974 if such amount forfeited is proportional to such amount withdrawn. This clause shall not apply to any plan to which any mandatory contribution is made after September 2, 1974. The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this clause.

(iv) For purposes of this subparagraph, in the case of any class-year plan, a withdrawal of employee contributions shall be treated as a withdrawal of such contributions on a plan year by plan year basis in succeeding order of time.

(v) For nonforfeitability where the employee has a nonforfeitable right to at least 50 percent of his accrued benefit, see section 401(a)(19).

(E) Cessation of contributions under a multiemployer plan

A right to an accrued benefit derived from employer contributions under a multiemployer plan shall not be treated as forfeitable solely because the plan provides that benefits accrued as a result of service with the participant's employer before the employer had an obligation to contribute under the plan may not be payable if the employer

ceases contributions to the multiemployer plan.

(F) Reduction and suspension of benefits by a multiemployer plan

A participant's right to an accrued benefit derived from employer contributions under a multiemployer plan shall not be treated as forfeitable solely because—

(i) the plan is amended to reduce benefits under section 418D or under section 4281 of the Employee Retirement Income Security Act of 1974, or

(ii) benefit payments under the plan may be suspended under section 418E or under section 4281 of the Employee Retirement Income Security Act of 1974.

(G) Treatment of matching contributions forfeited by reason of excess deferral or contribution or permissible withdrawal

A matching contribution (within the meaning of section 401(m)) shall not be treated as forfeitable merely because such contribution is forfeitable if the contribution to which the matching contribution relates is treated as an excess contribution under section 401(k)(8)(B), an excess deferral under section 402(g)(2)(A), a permissible withdrawal under section 414(w), or an excess aggregate contribution under section 401(m)(6)(B).

(4) Service included in determination of nonforfeitable percentage

In computing the period of service under the plan for purposes of determining the nonforfeitable percentage under paragraph (2), all of an employee's years of service with the employer or employers maintaining the plan shall be taken into account, except that the following may be disregarded:

(A) years of service before age 18,[1]

(B) years of service during a period for which the employee declined to contribute to a plan requiring employee contributions;

(C) years of service with an employer during any period for which the employer did not maintain the plan or a predecessor plan (as defined under regulations prescribed by the Secretary;

(D) service not required to be taken into account under paragraph (6);

(E) years of service before January 1, 1971, unless the employee has had at least 3 years of service after December 31, 1970;

(F) years of service before the first plan year to which this section applies, if such service would have been disregarded under the rules of the plan with regard to breaks in service as in effect on the applicable date; and

(G) in the case of a multiemployer plan, years of service—

(i) with an employer after—

(I) a complete withdrawal of that employer from the plan (within the meaning of section 4203 of the Employee Retirement Income Security Act of 1974), or

(II) to the extent permitted in regulations prescribed by the Secretary, a partial withdrawal described in section 4205(b)(2)(A)(i) of such Act in conjunction with the decertification of the collective bargaining representative, and

(ii) with any employer under the plan after the termination date of the plan under section 4048 of such Act.

(5) Year of service

(A) General rule

For purposes of this subsection, except as provided in subparagraph (C), the term ''year of service'' means a calendar year, plan year, or other 12-consecutive month period designated by the plan (and not prohibited under regulations prescribed by the Secretary of Labor) during which the participant has completed 1,000 hours of service.

(B) Hours of service

For purposes of this subsection, the term ''hours of service'' has the meaning provided by section 410(a)(3)(C).

(C) Seasonal industries

In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term ''year of service'' shall be such period as may be determined under regulations prescribed by the Secretary of Labor.

(D) Maritime industries

For purposes of this subsection, in the case of any maritime industry, 125 days of service shall be treated as 1,000 hours of service. The Secretary of Labor may prescribe regulations to carry out the purposes of this subparagraph.

(6) Breaks in service

(A) Definition of 1-year break in service

For purposes of this paragraph, the term ''1-year break in service'' means a calendar year, plan year, or other 12-consecutive-month period designated by the plan (and not prohibited under regulations prescribed by the Secretary of Labor) during which the participant has not completed more than 500 hours of service.

(B) 1 year of service after 1-year break in service

For purposes of paragraph (4), in the case of any employee who has any 1-year break in service, years of service before such break shall not be required to be taken into account until he has completed a year of service after his return.

(C) 5 consecutive 1-year breaks in service under defined contribution plan

For purposes of paragraph (4), in the case of any participant in a defined contribution plan, or an insured defined benefit plan which satisfies the requirements of subsection (b)(1)(F), who has 5 consecutive 1-year breaks in service, years of service after such 5-year period shall not be required to be taken into account for purposes of determining the nonforfeitable percentage of his accrued benefit derived from employer con-

[1] So in original. The comma probably should be a semicolon.

tributions which accrued before such 5-year period.

(D) Nonvested participants

(i) In general

For purposes of paragraph (4), in the case of a nonvested participant, years of service with the employer or employers maintaining the plan before any period of consecutive 1-year breaks in service shall not be required to be taken into account if the number of consecutive 1-year breaks in service within such period equals or exceeds the greater of—

(I) 5, or

(II) the aggregate number of years of service before such period.

(ii) Years of service not taken into account

If any years of service are not required to be taken into account by reason of a period of breaks in service to which clause (i) applies, such years of service shall not be taken into account in applying clause (i) to a subsequent period of breaks in service.

(iii) Nonvested participant defined

For purposes of clause (i), the term ''nonvested participant'' means a participant who does not have any nonforfeitable right under the plan to an accrued benefit derived from employer contributions.

(E) Special rule for maternity or paternity absences

(i) General rule

In the case of each individual who is absent from work for any period—

(I) by reason of the pregnancy of the individual,

(II) by reason of the birth of a child of the individual,

(III) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or

(IV) for purposes of caring for such child for a period beginning immediately following such birth or placement,

the plan shall treat as hours of service, solely for purposes of determining under this paragraph whether a 1-year break in service has occurred, the hours described in clause (ii).

(ii) Hours treated as hours of service

The hours described in this clause are—

(I) the hours of service which otherwise would normally have been credited to such individual but for such absence, or

(II) in any case in which the plan is unable to determine the hours described in subclause (I), 8 hours of service per day of absence,

except that the total number of hours treated as hours of service under this clause by reason of any such pregnancy or placement shall not exceed 501 hours.

(iii) Year to which hours are credited

The hours described in clause (ii) shall be treated as hours of service as provided in this subparagraph—

(I) only in the year in which the absence from work begins, if a participant would be prevented from incurring a 1-year break in service in such year solely because the period of absence is treated as hours of service as provided in clause (i); or

(II) in any other case, in the immediately following year.

(iv) Year defined

For purposes of this subparagraph, the term ''year'' means the period used in computations pursuant to paragraph (5).

(v) Information required to be filed

A plan shall not fail to satisfy the requirements of this subparagraph solely because it provides that no credit will be given pursuant to this subparagraph unless the individual furnishes to the plan administrator such timely information as the plan may reasonably require to establish—

(I) that the absence from work is for reasons referred to in clause (i), and

(II) the number of days for which there was such an absence.

(7) Accrued benefit

(A) In general

For purposes of this section, the term ''accrued benefit'' means—

(i) in the case of a defined benefit plan, the employee's accrued benefit determined under the plan and, except as provided in subsection (c)(3), expressed in the form of an annual benefit commencing at normal retirement age, or

(ii) in the case of a plan which is not a defined benefit plan, the balance of the employee's account.

(B) Effect of certain distributions

Notwithstanding paragraph (4), for purposes of determining the employee's accrued benefit under the plan, the plan may disregard service performed by the employee with respect to which he has received—

(i) a distribution of the present value of his entire nonforfeitable benefit if such distribution was in an amount (not more than the dollar limit under section 411(a)(11)(A)) permitted under regulations prescribed by the Secretary, or

(ii) a distribution of the present value of his nonforfeitable benefit attributable to such service which he elected to receive.

Clause (i) of this subparagraph shall apply only if such distribution was made on termination of the employee's participation in the plan. Clause (ii) of this subparagraph shall apply only if such distribution was made on termination of the employee's participation in the plan or under such other circumstances as may be provided under regulations prescribed by the Secretary.

(C) Repayment of subparagraph (B) distributions

For purposes of determining the employee's accrued benefit under a plan, the plan may not disregard service as provided in

subparagraph (B) unless the plan provides an opportunity for the participant to repay the full amount of the distribution described in such subparagraph (B) with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C) and provides that upon such repayment the employee's accrued benefit shall be recomputed by taking into account service so disregarded. This subparagraph shall apply only in the case of a participant who—

(i) received such a distribution in any plan year to which this section applies, which distribution was less than the present value of his accrued benefit,

(ii) resumes employment covered under the plan, and

(iii) repays the full amount of such distribution with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C).

The plan provision required under this subparagraph may provide that such repayment must be made (I) in the case of a withdrawal on account of separation from service, before the earlier of 5 years after the first date on which the participant is subsequently re-employed by the employer, or the close of the first period of 5 consecutive 1-year breaks in service commencing after the withdrawal; or (II) in the case of any other withdrawal, 5 years after the date of the withdrawal.

(D) Accrued benefit attributable to employee contributions

The accrued benefit of an employee shall not be less than the amount determined under subsection (c)(2)(B) with respect to the employee's accumulated contributions.

(8) Normal retirement age

For purposes of this section, the term ''normal retirement age'' means the earlier of—

(A) the time a plan participant attains normal retirement age under the plan, or

(B) the later of—

(i) the time a plan participant attains age 65, or

(ii) the 5th anniversary of the time a plan participant commenced participation in the plan.

(9) Normal retirement benefit

For purposes of this section, the term ''normal retirement benefit'' means the greater of the early retirement benefit under the plan, or the benefit under the plan commencing at normal retirement age. The normal retirement benefit shall be determined without regard to—

(A) medical benefits, and

(B) disability benefits not in excess of the qualified disability benefit.

For purposes of this paragraph, a qualified disability benefit is a disability benefit provided by a plan which does not exceed the benefit which would be provided for the participant if he separated from the service at normal retirement age. For purposes of this paragraph, the early retirement benefit under a plan shall be determined without regard to any benefits commencing before benefits payable under title II of the Social Security Act become payable which—

(i) do not exceed such social security benefits, and

(ii) terminate when such social security benefits commence.

(10) Changes in vesting schedule

(A) General rule

A plan amendment changing any vesting schedule under the plan shall be treated as not satisfying the requirements of paragraph (2) if the nonforfeitable percentage of the accrued benefit derived from employer contributions (determined as of the later of the date such amendment is adopted, or the date such amendment becomes effective) of any employee who is a participant in the plan is less than such nonforfeitable percentage computed under the plan without regard to such amendment.

(B) Election of former schedule

A plan amendment changing any vesting schedule under the plan shall be treated as not satisfying the requirements of paragraph (2) unless each participant having not less than 3 years of service is permitted to elect, within a reasonable period after the adoption of such amendment, to have his nonforfeitable percentage computed under the plan without regard to such amendment.

(11) Restrictions on certain mandatory distributions

(A) In general

If the present value of any nonforfeitable accrued benefit exceeds $5,000, a plan meets the requirements of this paragraph only if such plan provides that such benefit may not be immediately distributed without the consent of the participant.

(B) Determination of present value

For purposes of subparagraph (A), the present value shall be calculated in accordance with section 417(e)(3).

(C) Dividend distributions of ESOPS arrangement

This paragraph shall not apply to any distribution of dividends to which section 404(k) applies.

(D) Special rule for rollover contributions

A plan shall not fail to meet the requirements of this paragraph if, under the terms of the plan, the present value of the nonforfeitable accrued benefit is determined without regard to that portion of such benefit which is attributable to rollover contributions (and earnings allocable thereto). For purposes of this subparagraph, the term ''rollover contributions'' means any rollover contribution under sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16).

[(12) Repealed. Pub. L. 109–280, title IX, § 904(a)(2), Aug. 17, 2006, 120 Stat. 1049]

(13) Special rules for plans computing accrued benefits by reference to hypothetical account balance or equivalent amounts

(A) In general

An applicable defined benefit plan shall not be treated as failing to meet—

(i) subject to subparagraph (B), the requirements of subsection (a)(2), or

(ii) the requirements of subsection (a)(11) or (c), or the requirements of section 417(e), with respect to accrued benefits derived from employer contributions,

solely because the present value of the accrued benefit (or any portion thereof) of any participant is, under the terms of the plan, equal to the amount expressed as the balance in the hypothetical account described in subparagraph (C) or as an accumulated percentage of the participant's final average compensation.

(B) 3-year vesting

In the case of an applicable defined benefit plan, such plan shall be treated as meeting the requirements of subsection (a)(2) only if an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

(C) Applicable defined benefit plan and related rules

For purposes of this subsection—

(i) In general

The term ''applicable defined benefit plan'' means a defined benefit plan under which the accrued benefit (or any portion thereof) is calculated as the balance of a hypothetical account maintained for the participant or as an accumulated percentage of the participant's final average compensation.

(ii) Regulations to include similar plans

The Secretary shall issue regulations which include in the definition of an applicable defined benefit plan any defined benefit plan (or any portion of such a plan) which has an effect similar to an applicable defined benefit plan.

(b) Accrued benefit requirements

(1) Defined benefit plans

(A) 3-percent method

A defined benefit plan satisfies the requirements of this paragraph if the accrued benefit to which each participant is entitled upon his separation from the service is not less than—

(i) 3 percent of the normal retirement benefit to which he would be entitled if he commenced participation at the earliest possible entry age under the plan and served continuously until the earlier of age 65 or the normal retirement age specified under the plan, multiplied by

(ii) the number of years (not in excess of 33⅓) of his participation in the plan.

In the case of a plan providing retirement benefits based on compensation during any period, the normal retirement benefit to which a participant would be entitled shall be determined as if he continued to earn annually the average rate of compensation which he earned during consecutive years of service, not in excess of 10, for which his compensation was the highest. For purposes of this subparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.

(B) 133⅓ percent rule

A defined benefit plan satisfies the requirements of this paragraph for a particular plan year if under the plan the accrued benefit payable at the normal retirement age is equal to the normal retirement benefit and the annual rate at which any individual who is or could be a participant can accrue the retirement benefits payable at normal retirement age under the plan for any later plan year is not more than 133⅓ percent of the annual rate at which he can accrue benefits for any plan year beginning on or after such particular plan year and before such later plan year. For purposes of this subparagraph—

(i) any amendment to the plan which is in effect for the current year shall be treated as in effect for all other plan years;

(ii) any change in an accrual rate which does not apply to any individual who is or could be a participant in the current year shall be disregarded;

(iii) the fact that benefits under the plan may be payable to certain employees before normal retirement age shall be disregarded; and

(iv) social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after the current year.

(C) Fractional rule

A defined benefits plan satisfies the requirements of this paragraph if the accrued benefit to which any participant is entitled upon his separation from the service is not less than a fraction of the annual benefit commencing at normal retirement age to which he would be entitled under the plan as in effect on the date of his separation if he continued to earn annually until normal retirement age the same rate of compensation upon which his normal retirement benefit would be computed under the plan, determined as if he had attained normal retirement age on the date on which any such determination is made (but taking into account no more than the 10 years of service immediately preceding his separation from service). Such fraction shall be a fraction, not exceeding 1, the numerator of which is the total number of his years of participation in the plan (as of the date of his separation from the service) and the denominator

of which is the total number of years he would have participated in the plan if he separated from the service at the normal retirement age. For purposes of this subparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.

(D) Accrual for service before effective date

Subparagraphs (A), (B), and (C) shall not apply with respect to years of participation before the first plan year to which this section applies, but a defined benefit plan satisfies the requirements of this subparagraph with respect to such years of participation only if the accrued benefit of any participant with respect to such years of participation is not less than the greater of—

(i) his accrued benefit determined under the plan, as in effect from time to time prior to September 2, 1974, or

(ii) an accrued benefit which is not less than one-half of the accrued benefit to which such participant would have been entitled if subparagraph (A), (B), or (C) applied with respect to such years of participation.

(E) First two years of service

Notwithstanding subparagraphs (A), (B), and (C) of this paragraph, a plan shall not be treated as not satisfying the requirements of this paragraph solely because the accrual of benefits under the plan does not become effective until the employee has two continuous years of service. For purposes of this subparagraph, the term ''years of service'' has the meaning provided by section 410(a)(3)(A).

(F) Certain insured defined benefit plans

Notwithstanding subparagraphs (A), (B), and (C), a defined benefit plan satisfies the requirements of this paragraph if such plan—

(i) is funded exclusively by the purchase of insurance contracts, and

(ii) satisfies the requirements of subparagraphs (B) and (C) of section 412(e)(3) (relating to certain insurance contract plans),

but only if an employee's accrued benefit as of any applicable date is not less than the cash surrender value his insurance contracts would have on such applicable date if the requirements of subparagraphs (D), (E), and (F) of section 412(e)(3) were satisfied.

(G) Accrued benefit may not decrease on account of increasing age or service

Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if the participant's accrued benefit is reduced on account of any increase in his age or service. The preceding sentence shall not apply to benefits under the plan commencing before entitlement to benefits payable under title II of the Social Security Act which benefits under the plan—

(i) do not exceed such social security benefits, and

(ii) terminate when such social security benefits commence.

(H) Continued accrual beyond normal retirement age

(i) In general

Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if, under the plan, an employee's benefit accrual is ceased, or the rate of an employee's benefit accrual is reduced, because of the attainment of any age.

(ii) Certain limitations permitted

A plan shall not be treated as failing to meet the requirements of this subparagraph solely because the plan imposes (without regard to age) a limitation on the amount of benefits that the plan provides or a limitation on the number of years of service or years of participation which are taken into account for purposes of determining benefit accrual under the plan.

(iii) Adjustments under plan for delayed retirement taken into account

In the case of any employee who, as of the end of any plan year under a defined benefit plan, has attained normal retirement age under such plan—

(I) if distribution of benefits under such plan with respect to such employee has commenced as of the end of such plan year, then any requirement of this subparagraph for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of the actuarial equivalent of inservice distribution of benefits, and

(II) if distribution of benefits under such plan with respect to such employee has not commenced as of the end of such year in accordance with section 401(a)(14)(C), and the payment of benefits under such plan with respect to such employee is not suspended during such plan year pursuant to subsection (a)(3)(B), then any requirement of this subparagraph for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of any adjustment in the benefit payable under the plan during such plan year attributable to the delay in the distribution of benefits after the attainment of normal retirement age.

The preceding provisions of this clause shall apply in accordance with regulations of the Secretary. Such regulations may provide for the application of the preceding provisions of this clause, in the case of any such employee, with respect to any period of time within a plan year.

(iv) Disregard of subsidized portion of early retirement benefit

A plan shall not be treated as failing to meet the requirements of clause (i) solely because the subsidized portion of any early retirement benefit is disregarded in determining benefit accruals.

(v) Coordination with other requirements

The Secretary shall provide by regulation for the coordination of the requirements of this subparagraph with the requirements of subsection (a), sections 404, 410, and 415, and the provisions of this subchapter precluding discrimination in favor of highly compensated employees.

(2) Defined contribution plans

(A) In general

A defined contribution plan satisfies the requirements of this paragraph if, under the plan, allocations to the employee's account are not ceased, and the rate at which amounts are allocated to the employee's account is not reduced, because of the attainment of any age.

(B) Application to target benefit plans

The Secretary shall provide by regulation for the application of the requirements of this paragraph to target benefit plans.

(C) Coordination with other requirements

The Secretary may provide by regulation for the coordination of the requirements of this paragraph with the requirements of subsection (a), sections 404, 410, and 415, and the provisions of this subchapter precluding discrimination in favor of highly compensated employees.

(3) Separate accounting required in certain cases

A plan satisfies the requirements of this paragraph if—

(A) in the case of the defined benefit plan, the plan requires separate accounting for the portion of each employee's accrued benefit derived from any voluntary employee contributions permitted under the plan; and

(B) in the case of any plan which is not a defined benefit plan, the plan requires separate accounting for each employee's accrued benefit.

(4) Year of participation

(A) Definition

For purposes of determining an employee's accrued benefit, the term ''year of participation'' means a period of service (beginning at the earliest date on which the employee is a participant in the plan and which is included in a period of service required to be taken into account under section 410(a)(5), determined without regard to section 410(a)(5)(E)) as determined under regulations prescribed by the Secretary of Labor which provide for the calculation of such period on any reasonable and consistent basis.

(B) Less than full time service

For purposes of this paragraph, except as provided in subparagraph (C), in the case of any employee whose customary employment is less than full time, the calculation of such employee's service on any basis which provides less than a ratable portion of the accrued benefit to which he would be entitled under the plan if his customary employment were full time shall not be treated as made on a reasonable and consistent basis.

(C) Less than 1,000 hours of service during year

For purposes of this paragraph, in the case of any employee whose service is less than 1,000 hours during any calendar year, plan year or other 12-consecutive month period designated by the plan (and not prohibited under regulations prescribed by the Secretary of Labor) the calculation of his period of service shall not be treated as not made on a reasonable and consistent basis solely because such service is not taken into account.

(D) Seasonal industries

In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term ''year of participation'' shall be such period as determined under regulations prescribed by the Secretary of Labor.

(E) Maritime industries

For purposes of this subsection, in the case of any maritime industry, 125 days of service shall be treated as a year of participation. The Secretary of Labor may prescribe regulations to carry out the purposes of this subparagraph.

(5) Special rules relating to age

(A) Comparison to similarly situated younger individual

(i) In general

A plan shall not be treated as failing to meet the requirements of paragraph (1)(H)(i) if a participant's accrued benefit, as determined as of any date under the terms of the plan, would be equal to or greater than that of any similarly situated, younger individual who is or could be a participant.

(ii) Similarly situated

For purposes of this subparagraph, a participant is similarly situated to any other individual if such participant is identical to such other individual in every respect (including period of service, compensation, position, date of hire, work history, and any other respect) except for age.

(iii) Disregard of subsidized early retirement benefits

In determining the accrued benefit as of any date for purposes of this subparagraph, the subsidized portion of any early retirement benefit or retirement-type subsidy shall be disregarded.

(iv) Accrued benefit

For purposes of this subparagraph, the accrued benefit may, under the terms of the plan, be expressed as an annuity pay-

able at normal retirement age, the balance of a hypothetical account, or the current value of the accumulated percentage of the employee's final average compensation.

(B) Applicable defined benefit plans

(i) Interest credits

(I) In general

An applicable defined benefit plan shall be treated as failing to meet the requirements of paragraph (1)(H) unless the terms of the plan provide that any interest credit (or an equivalent amount) for any plan year shall be at a rate which is not greater than a market rate of return. A plan shall not be treated as failing to meet the requirements of this subclause merely because the plan provides for a reasonable minimum guaranteed rate of return or for a rate of return that is equal to the greater of a fixed or variable rate of return.

(II) Preservation of capital

An applicable defined benefit plan shall be treated as failing to meet the requirements of paragraph (1)(H) unless the plan provides that an interest credit (or equivalent amount) of less than zero shall in no event result in the account balance or similar amount being less than the aggregate amount of contributions credited to the account.

(III) Market rate of return

The Secretary may provide by regulation for rules governing the calculation of a market rate of return for purposes of subclause (I) and for permissible methods of crediting interest to the account (including fixed or variable interest rates) resulting in effective rates of return meeting the requirements of subclause (I).

(ii) Special rule for plan conversions

If, after June 29, 2005, an applicable plan amendment is adopted, the plan shall be treated as failing to meet the requirements of paragraph (1)(H) unless the requirements of clause (iii) are met with respect to each individual who was a participant in the plan immediately before the adoption of the amendment.

(iii) Rate of benefit accrual

Subject to clause (iv), the requirements of this clause are met with respect to any participant if the accrued benefit of the participant under the terms of the plan as in effect after the amendment is not less than the sum of—

(I) the participant's accrued benefit for years of service before the effective date of the amendment, determined under the terms of the plan as in effect before the amendment, plus

(II) the participant's accrued benefit for years of service after the effective date of the amendment, determined under the terms of the plan as in effect after the amendment.

(iv) Special rules for early retirement subsidies

For purposes of clause (iii)(I), the plan shall credit the accumulation account or similar amount[2] with the amount of any early retirement benefit or retirement-type subsidy for the plan year in which the participant retires if, as of such time, the participant has met the age, years of service, and other requirements under the plan for entitlement to such benefit or subsidy.

(v) Applicable plan amendment

For purposes of this subparagraph—

(I) In general

The term ''applicable plan amendment'' means an amendment to a defined benefit plan which has the effect of converting the plan to an applicable defined benefit plan.

(II) Special rule for coordinated benefits

If the benefits of 2 or more defined benefit plans established or maintained by an employer are coordinated in such a manner as to have the effect of the adoption of an amendment described in subclause (I), the sponsor of the defined benefit plan or plans providing for such coordination shall be treated as having adopted such a plan amendment as of the date such coordination begins.

(III) Multiple amendments

The Secretary shall issue regulations to prevent the avoidance of the purposes of this subparagraph through the use of 2 or more plan amendments rather than a single amendment.

(IV) Applicable defined benefit plan

For purposes of this subparagraph, the term ''applicable defined benefit plan'' has the meaning given such term by section 411(a)(13).

(vi) Termination requirements

An applicable defined benefit plan shall not be treated as meeting the requirements of clause (i) unless the plan provides that, upon the termination of the plan—

(I) if the interest credit rate (or an equivalent amount) under the plan is a variable rate, the rate of interest used to determine accrued benefits under the plan shall be equal to the average of the rates of interest used under the plan during the 5-year period ending on the termination date, and

(II) the interest rate and mortality table used to determine the amount of any benefit under the plan payable in the form of an annuity payable at normal retirement age shall be the rate and table specified under the plan for such purpose as of the termination date, except that if such interest rate is a variable rate, the interest rate shall be determined under the rules of subclause (I).

[2] So in original. Probably should be ''similar account''.

(C) Certain offsets permitted

A plan shall not be treated as failing to meet the requirements of paragraph (1)(H)(i) solely because the plan provides offsets against benefits under the plan to the extent such offsets are otherwise allowable in applying the requirements of section 401(a).

(D) Permitted disparities in plan contributions or benefits

A plan shall not be treated as failing to meet the requirements of paragraph (1)(H) solely because the plan provides a disparity in contributions or benefits with respect to which the requirements of section 401(*l*) are met.

(E) Indexing permitted

(i) In general

A plan shall not be treated as failing to meet the requirements of paragraph (1)(H) solely because the plan provides for indexing of accrued benefits under the plan.

(ii) Protection against loss

Except in the case of any benefit provided in the form of a variable annuity, clause (i) shall not apply with respect to any indexing which results in an accrued benefit less than the accrued benefit determined without regard to such indexing.

(iii) Indexing

For purposes of this subparagraph, the term ''indexing'' means, in connection with an accrued benefit, the periodic adjustment of the accrued benefit by means of the application of a recognized investment index or methodology.

(F) Early retirement benefit or retirement-type subsidy

For purposes of this paragraph, the terms ''early retirement benefit'' and ''retirement-type subsidy'' have the meaning given such terms in subsection (d)(6)(B)(i).

(G) Benefit accrued to date

For purposes of this paragraph, any reference to the accrued benefit shall be a reference to such benefit accrued to date.

(c) Allocation of accrued benefits between employer and employee contributions

(1) Accrued benefit derived from employer contributions

For purposes of this section, an employee's accrued benefit derived from employer contributions as of any applicable date is the excess, if any, of the accrued benefit for such employee as of such applicable date over the accrued benefit derived from contributions made by such employee as of such date.

(2) Accrued benefit derived from employee contributions

(A) Plans other than defined benefit plans

In the case of a plan other than a defined benefit plan, the accrued benefit derived from contributions made by an employee as of any applicable date is—

(i) except as provided in clause (ii), the balance of the employee's separate account consisting only of his contributions and the income, expenses, gains, and losses attributable thereto, or

(ii) if a separate account is not maintained with respect to an employee's contributions under such a plan, the amount which bears the same ratio to his total accrued benefit as the total amount of the employee's contributions (less withdrawals) bears to the sum of such contributions and the contributions made on his behalf by the employer (less withdrawals).

(B) Defined benefit plans

In the case of a defined benefit plan, the accrued benefit derived from contributions made by an employee as of any applicable date is the amount equal to the employee's accumulated contributions expressed as an annual benefit commencing at normal retirement age, using an interest rate which would be used under the plan under section 417(e)(3) (as of the determination date).

(C) Definition of accumulated contributions

For purposes of this subsection, the term ''accumulated contribution'' means the total of—

(i) all mandatory contributions made by the employee,

(ii) interest (if any) under the plan to the end of the last plan year to which subsection (a)(2) does not apply (by reason of the applicable effective date), and

(iii) interest on the sum of the amounts determined under clauses (i) and (ii) compounded annually—

(I) at the rate of 120 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of a plan year) for the period beginning with the 1st plan year to which subsection (a)(2) applies (by reason of the applicable effective date) and ending with the date on which the determination is being made, and

(II) at the interest rate which would be used under the plan under section 417(e)(3) (as of the determination date) for the period beginning with the determination date and ending on the date on which the employee attains normal retirement age.

For purposes of this subparagraph, the term ''mandatory contributions'' means amounts contributed to the plan by the employee which are required as a condition of employment, as a condition of participation in such plan, or as a condition of obtaining benefits under the plan attributable to employer contributions.

(D) Adjustments

The Secretary is authorized to adjust by regulation the conversion factor described in subparagraph (B) from time to time as he may deem necessary. No such adjustment shall be effective for a plan year beginning before the expiration of 1 year after such adjustment is determined and published.

(3) Actuarial adjustment

For purposes of this section, in the case of any defined benefit plan, if an employee's ac-

crued benefit is to be determined as an amount other than an annual benefit commencing at normal retirement age, or if the accrued benefit derived from contributions made by an employee is to be determined with respect to a benefit other than an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the employee's accrued benefit, or the accrued benefits derived from contributions made by an employee, as the case may be, shall be the actuarial equivalent of such benefit or amount determined under paragraph (1) or (2).

(d) Special rules

(1) Coordination with section 401(a)(4)

A plan which satisfies the requirements of this section shall be treated as satisfying any vesting requirements resulting from the application of section 401(a)(4) unless—

(A) there has been a pattern of abuse under the plan (such as a dismissal of employees before their accrued benefits become nonforfeitable) tending to discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)), or

(B) there have been, or there is reason to believe there will be, an accrual of benefits or forfeitures tending to discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)).

(2) Prohibited discrimination

Subsection (a) shall not apply to benefits which may not be provided for designated employees in the event of early termination of the plan under provisions of the plan adopted pursuant to regulations prescribed by the Secretary to preclude the discrimination prohibited by section 401(a)(4).

(3) Termination or partial termination; discontinuance of contributions

Notwithstanding the provisions of subsection (a), a trust shall not constitute a qualified trust under section 401(a) unless the plan of which such trust is a part provides that—

(A) upon its termination or partial termination, or

(B) in the case of a plan to which section 412 does not apply, upon complete discontinuance of contributions under the plan,

the rights of all affected employees to benefits accrued to the date of such termination, partial termination, or discontinuance, to the extent funded as of such date, or the amounts credited to the employees' accounts, are nonforfeitable. This paragraph shall not apply to benefits or contributions which, under provisions of the plan adopted pursuant to regulations prescribed by the Secretary to preclude the discrimination prohibited by section 401(a)(4), may not be used for designated employees in the event of early termination of the plan. For purposes of this paragraph, in the case of the complete discontinuance of contributions under a profit-sharing or stock bonus plan, such plan shall be treated as having terminated on the day on which the plan administrator notifies the Secretary (in accordance with regulations) of the discontinuance.

[(4) Repealed. Pub. L. 99–514, title XI, § 1113(b), Oct. 22, 1986, 100 Stat. 2447]

(5) Treatment of voluntary employee contributions

In the case of a defined benefit plan which permits voluntary employee contributions, the portion of an employee's accrued benefit derived from such contributions shall be treated as an accrued benefit derived from employee contributions under a plan other than a defined benefit plan.

(6) Accrued benefit not to be decreased by amendment

(A) In general

A plan shall be treated as not satisfying the requirements of this section if the accrued benefit of a participant is decreased by an amendment of the plan, other than an amendment described in section 412(d)(2), or section 4281 of the Employee Retirement Income Security Act of 1974.

(B) Treatment of certain plan amendments

For purposes of subparagraph (A), a plan amendment which has the effect of—

(i) eliminating or reducing an early retirement benefit or a retirement-type subsidy (as defined in regulations), or

(ii) eliminating an optional form of benefit,

with respect to benefits attributable to service before the amendment shall be treated as reducing accrued benefits. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a participant who satisfies (either before or after the amendment) the preamendment conditions for the subsidy. The Secretary shall by regulations provide that this subparagraph shall not apply to any plan amendment which reduces or eliminates benefits or subsidies which create significant burdens or complexities for the plan and plan participants, unless such amendment adversely affects the rights of any participant in a more than de minimis manner. The Secretary may by regulations provide that this subparagraph shall not apply to a plan amendment described in clause (ii) (other than a plan amendment having an effect described in clause (i)).

(C) Special rule for ESOPS

For purposes of this paragraph, any—

(i) tax credit employee stock ownership plan (as defined in section 409(a)), or

(ii) employee stock ownership plan (as defined in section 4975(e)(7)),

shall not be treated as failing to meet the requirements of this paragraph merely because it modifies distribution options in a nondiscriminatory manner.

(D) Plan transfers

(i) In general

A defined contribution plan (in this subparagraph referred to as the ''transferee plan'') shall not be treated as failing to meet the requirements of this subsection merely because the transferee plan does not provide some or all of the forms of distribution previously available under another defined contribution plan (in this subparagraph referred to as the ''transferor plan'') to the extent that—

(I) the forms of distribution previously available under the transferor plan applied to the account of a participant or beneficiary under the transferor plan that was transferred from the transferor plan to the transferee plan pursuant to a direct transfer rather than pursuant to a distribution from the transferor plan,

(II) the terms of both the transferor plan and the transferee plan authorize the transfer described in subclause (I),

(III) the transfer described in subclause (I) was made pursuant to a voluntary election by the participant or beneficiary whose account was transferred to the transferee plan,

(IV) the election described in subclause (III) was made after the participant or beneficiary received a notice describing the consequences of making the election, and

(V) the transferee plan allows the participant or beneficiary described in subclause (III) to receive any distribution to which the participant or beneficiary is entitled under the transferee plan in the form of a single sum distribution.

(ii) Special rule for mergers, etc.

Clause (i) shall apply to plan mergers and other transactions having the effect of a direct transfer, including consolidations of benefits attributable to different employers within a multiple employer plan.

(E) Elimination of form of distribution

Except to the extent provided in regulations, a defined contribution plan shall not be treated as failing to meet the requirements of this section merely because of the elimination of a form of distribution previously available thereunder. This subparagraph shall not apply to the elimination of a form of distribution with respect to any participant unless—

(i) a single sum payment is available to such participant at the same time or times as the form of distribution being eliminated, and

(ii) such single sum payment is based on the same or greater portion of the participant's account as the form of distribution being eliminated.

(e) Application of vesting standards to certain plans

(1) The provisions of this section (other than paragraph (2)) shall not apply to—

(A) a governmental plan (within the meaning of section 414(d)),

(B) a church plan (within the meaning of section 414(e)) with respect to which the election provided by section 410(d) has not been made,

(C) a plan which has not, at any time after September 2, 1974, provided for employer contributions, and

(D) a plan established and maintained by a society, order, or association described in section 501(c)(8) or (9), if no part of the contributions to or under such plan are made by employers of participants in such plan.

(2) A plan described in paragraph (1) shall be treated as meeting the requirements of this section, for purposes of section 401(a), if such plan meets the vesting requirements resulting from the application of sections 401(a)(4) and 401(a)(7) as in effect on September 1, 1974.

(Added Pub. L. 93–406, title II, §1012(a), Sept. 2, 1974, 88 Stat. 901; amended Pub. L. 94–455, title XIX, §§1901(a)(62), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1774, 1834; Pub. L. 96–364, title II, §206, Sept. 26, 1980, 94 Stat. 1287; Pub. L. 98–397, title II, §202(b), (c), (d)(2), (e)(2), (3), (f), 205, title III, §301(a)(1), Aug. 23, 1984, 98 Stat. 1437, 1439, 1440, 1449, 1450; Pub. L. 99–509, title IX, §§9202(b), 9203(b)(2), Oct. 21, 1986, 100 Stat. 1977, 1979; Pub. L. 99–514, title XI, §§1113(a), (b), (d)(B), 1114(b)(10), 1139(a), title XVIII, §1898(a)(1)(A), (4)(A), (d)(1)(A), (2)(A), (f)(1)(A), Oct. 22, 1986, 100 Stat. 2446, 2447, 2451, 2487, 2941, 2943, 2955, 2956; Pub. L. 100–203, title IX, §9346(b), Dec. 22, 1987, 101 Stat. 1330–374; Pub. L. 100–647, title I, §1018(t)(8)(B), Nov. 10, 1988, 102 Stat. 3589; Pub. L. 101–239, title VII, §§7861(a)(5)(A), (6)(A), 7871(a)(1), (2), (b)(1), 7881(m)(1), Dec. 19, 1989, 103 Stat. 2430, 2435, 2443; Pub. L. 102–318, title V, §521(b)(44), July 3, 1992, 106 Stat. 313; Pub. L. 103–465, title VII, §767(a)(1), Dec. 8, 1994, 108 Stat. 5037; Pub. L. 104–188, title I, §1442(a), Aug. 20, 1996, 110 Stat. 1808; Pub. L. 105–34, title X, §1071(a)(1), (2)(A), Aug. 5, 1997, 111 Stat. 948; Pub. L. 107–16, title VI, §§633(a), 645(a)(1), (b)(1), 648(a)(1), June 7, 2001, 115 Stat. 115, 123, 125, 127; Pub. L. 108–311, title IV, §408(a)(14), Oct. 4, 2004, 118 Stat. 1192; Pub. L. 109–280, title I, §114(b), title VII, 701(b), title IX, §§902(d)(2)(A), (B), 904(a), Aug. 17, 2006, 120 Stat. 853, 984, 1038, 1048; Pub. L. 110–458, title I, §§101(d)(2)(D), 107(b), 109(b)(2), Dec. 23, 2008, 122 Stat. 5099, 5107, 5111.)

REFERENCES IN TEXT

Section 4281 of the Employee Retirement Income Security Act of 1974, referred to in subsecs. (a)(3)(F)(i), (ii) and (d)(6)(A), is classified to section 1441 of Title 29, Labor.

Section 4203 of the Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(4)(G)(i)(I), is classified to section 1383 of Title 29.

Section 4205(b)(2)(A)(i) of such Act, referred to in subsec. (a)(4)(G)(i)(II), is classified to section 1385(b)(2)(A)(i) of Title 29.

Section 4048 of such Act, referred to in subsec. (a)(4)(G)(ii), is classified to section 1348 of Title 29.

The Social Security Act, referred to in subsecs. (a)(9) and (b)(1)(G), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2008—Subsec. (a)(3)(C). Pub. L. 110–458, §101(d)(2)(D)(i), substituted ''section 412(d)(2)'' for ''section 412(c)(2)''.

Subsec. (a)(3)(G). Pub. L. 110–458, §109(b)(2), substituted ''permissible withdrawal'' for ''erroneous automatic contribution'' in heading and ''a permissible withdrawal'' for ''an erroneous automatic contribution'' in text.

Subsec. (a)(13)(A). Pub. L. 110–458, §107(b)(2), substituted ''subparagraph (B)'' for ''paragraph (2)'' in cl. (i) and ''subparagraph (C)'' for paragraph (3) in concluding provisions, added cl. (ii), and struck out former cl. (ii) which read as follows: ''the requirements of subsection (c) or section 417(e) with respect to contributions other than employee contributions,''.

Subsec. (b)(5)(A)(iii). Pub. L. 110–458, §107(b)(1)(A), substituted ''subparagraph'' for ''clause''.

Subsec. (b)(5)(B)(i)(II). Pub. L. 110–458, §107(b)(3), amended subcl. (II) generally. Prior to amendment, text read as follows: ''An interest credit (or an equivalent amount) of less than zero shall in no event result in the account balance or similar amount being less than the aggregate amount of contributions credited to the account.''

Subsec. (b)(5)(C). Pub. L. 110–458, §107(b)(1)(B), inserted ''otherwise'' before ''allowable''.

Subsec. (d)(6)(A). Pub. L. 110–458, §101(d)(2)(D)(ii), substituted ''section 412(d)(2)'' for ''section 412(e)(2)''.

2006—Subsec. (a)(2). Pub. L. 109–280, §904(a)(1), reenacted heading without change and amended text of par. (2) generally, substituting provisions relating to vesting requirements under defined benefit plans and defined contribution plans for provisions relating to 5-year vesting and 3 to 7 year vesting under all plans.

Subsec. (a)(3)(C). Pub. L. 109–280, §114(b)(1), substituted ''412(c)(2)'' for ''412(c)(8)''.

Subsec. (a)(3)(G). Pub. L. 109–280, §902(d)(2)(A), (B), inserted ''or erroneous automatic contribution'' after ''or contribution'' in heading and ''an erroneous automatic contribution under section 414(w),'' after ''402(g)(2)(A),'' in text.

Subsec. (a)(12). Pub. L. 109–280, §904(a)(2), struck out par. (12), which related to faster vesting for matching contributions by employers.

Subsec. (a)(13). Pub. L. 109–280, §701(b)(2), added par. (13).

Subsec. (b)(1)(F). Pub. L. 109–280, §114(b)(2), substituted ''subparagraphs (B) and (C) of section 412(e)(3)'' for ''paragraphs (2) and (3) of section 412(i)'' in cl. (ii) and ''subparagraphs (D), (E), and (F) of section 412(e)(3)'' for ''paragraphs (4), (5), and (6) of section 412(i)'' in concluding provisions.

Subsec. (b)(5). Pub. L. 109–280, §701(b)(1), added par. (5).

Subsec. (d)(6)(A). Pub. L. 109–280, §114(b)(3), substituted ''412(e)(2)'' for ''412(c)(8)''.

2004—Subsec. (a)(12)(B). Pub. L. 108–311 substituted ''6 or more'' for ''6'' in table.

2001—Subsec. (a)(2). Pub. L. 107–16, §633(a)(1), substituted ''Except as provided in paragraph (12), a plan'' for ''A plan'' in introductory provisions.

Subsec. (a)(11)(D). Pub. L. 107–16, §648(a)(1), added subpar. (D).

Subsec. (a)(12). Pub. L. 107–16, §633(a)(2), added par. (12).

Subsec. (d)(6)(B). Pub. L. 107–16, §645(b)(1), inserted after second sentence ''The Secretary shall by regulations provide that this subparagraph shall not apply to any plan amendment which reduces or eliminates benefits or subsidies which create significant burdens or complexities for the plan and plan participants, unless such amendment adversely affects the rights of any participant in a more than de minimis manner.''

Subsec. (d)(6)(D), (E). Pub. L. 107–16, §645(a)(1), added subpars. (D) and (E).

1997—Subsec. (a)(7)(B)(i). Pub. L. 105–34, §1071(a)(2)(A), substituted ''the dollar limit under section 411(a)(11)(A)'' for ''$3,500''.

Subsec. (a)(11)(A). Pub. L. 105–34, §1071(a)(1), substituted ''$5,000'' for ''$3,500''.

1996—Subsec. (a)(2). Pub. L. 104–188 substituted ''subparagraph (A) or (B)'' for ''subparagraph (A), (B), or (C)'' in introductory provisions and struck out subpar. (C) which read as follows: ''MULTIEMPLOYER PLANS.—A plan satisfies the requirements of this subparagraph if—

''(i) the plan is a multiemployer plan (within the meaning of section 414(f)), and

''(ii) under the plan—

''(I) an employee who is covered pursuant to a collective bargaining agreement described in section 414(f)(1)(B) and who has completed at least 10 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions, and

''(II) the requirements of subparagraph (A) or (B) are met with respect to employees not described in subclause (I).''

1994—Subsec. (a)(11)(B). Pub. L. 103–465 reenacted subpar. (B) heading without change and amended text generally. Prior to amendment, text read as follows:

''(i) IN GENERAL.—For purposes of subparagraph (A), the present value shall be calculated—

''(I) by using an interest rate no greater than the applicable interest rate if the vested accrued benefit (using such rate) is not in excess of $25,000, and

''(II) by using an interest rate no greater than 120 percent of the applicable interest rate if the vested accrued benefit exceeds $25,000 (as determined under subclause (I)).

In no event shall the present value determined under subclause (II) be less than $25,000.

''(ii) APPLICABLE INTEREST RATE.—For purposes of clause (i), the term 'applicable interest rate' means the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.''

1992—Subsec. (d)(3). Pub. L. 102–318 inserted at end ''For purposes of this paragraph, in the case of the complete discontinuance of contributions under a profit-sharing or stock bonus plan, such plan shall be treated as having terminated on the day on which the plan administrator notifies the Secretary (in accordance with regulations) of the discontinuance.''

1989—Subsec. (a)(3)(G). Pub. L. 101–239, §7861(a)(5)(A), added subpar. (G).

Subsec. (a)(4)(A). Pub. L. 101–239, §7861(a)(6)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''years of service before age 18, except that in the case of a plan which does not satisfy subparagraph (A) or (B) of paragraph (2), the plan may not disregard any such year of service during which the employee was a participant;''.

Subsec. (a)(7)(D). Pub. L. 101–239, §7881(m)(1)(D), added subpar. (D).

Subsec. (a)(8)(B). Pub. L. 101–239, §7871(b)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the latest of—

''(i) the time a plan participant attains age 65,

''(ii) in the case of a plan participant who commences participation in the plan within 5 years before attaining normal retirement age under the plan, the 5th anniversary of the time the plan participant commences participation in the plan, or

''(iii) in the case of a plan participant not described in clause (ii), the 10th anniversary of the time the plan participant commences participation in the plan.''

Subsec. (b)(2)(B). Pub. L. 101–239, §7871(a)(1), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: ''DISREGARD OF SUBSIDIZED PORTION OF EARLY RETIREMENT BENEFIT.—A plan shall not be treated as failing to meet the requirements of subparagraph (A) solely because the subsidized portion of any early retirement benefit is disregarded in determining benefit accruals.''

Subsec. (b)(2)(C), (D). Pub. L. 101–239, §7871(a)(1), (2), redesignated subpar. (D) as (C) and substituted ''this paragraph'' for ''this subparagraph''. Former subpar. (C) redesignated (B).

Subsec. (c)(2)(B). Pub. L. 101–239, §7881(m)(1)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows:

''(i) IN GENERAL.—In the case of a defined benefit plan providing an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the accrued benefit derived from contributions made by an employee as of any applicable date is the annual benefit equal to the employee's accumulated contributions multiplied by the appropriate conversion factor.

''(ii) APPROPRIATE CONVERSION FACTOR.—For purposes of clause (i), the term 'appropriate conversion factor' means the factor necessary to convert an amount equal to the accumulated contributions to a single life annuity (without ancillary benefits) commencing at normal retirement age and shall be 10 percent for a normal retirement age of 65 years. For other normal retirement ages the conversion factor shall be determined in accordance with regulations prescribed by the Secretary.''

Subsec. (c)(2)(C)(iii). Pub. L. 101–239, §7881(m)(1)(A), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''interest on the sum of the amounts determined under clauses (i) and (ii) compounded annually at the rate of 120 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of a plan year) from the beginning of the first plan year to which subsection (a)(2) applies (by reason of the applicable effective date) to the date upon which the employee would attain normal retirement age.''

Subsec. (c)(2)(E). Pub. L. 101–239, §7881(m)(1)(C), struck out subpar. (E) which read as follows: ''LIMITATION.—The accrued benefit derived from employee contributions shall not exceed the greater of—

''(i) the employee's accrued benefit under the plan, or

''(ii) the accrued benefit derived from employee contributions determined as though the amounts calculated under clauses (ii) and (iii) of subparagraph (C) were zero.''

1988—Subsec. (a)(11)(A). Pub. L. 100–647 substituted ''nonforfeitable'' for ''vested''.

1987—Subsec. (c)(2)(C)(iii). Pub. L. 100–203, §9346(b)(1), substituted ''120 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of a plan year)'' for ''5 percent per annum''.

Subsec. (c)(2)(D). Pub. L. 100–203, §9346(b)(2), struck out '', the rate of interest described in clause (iii) of subparagraph (C), or both'' before ''from time to time'' in first sentence and struck out second sentence which read as follows: ''The rate of interest described in clause (iii) of subparagraph (C), or both, from time to time as he may deem necessary. The rate of interest shall bear the relationship to 5 percent which the Secretary determines to be comparable to the relationship which the long-term money rates and investment yields for the last period of 10 calendar years ending at least 12 months before the beginning of the plan year bear to the long-term money rates and investment yields for the 10-calendar year period 1964 through 1973.''

1986—Subsec. (a). Pub. L. 99–514, §1898(d)(1)(A)(ii), inserted reference to par. (11) in introductory text.

Pub. L. 99–509, §9202(b)(3), substituted ''subsection (b)(3), and also satisfies, in the case of a defined benefit plan, the requirements of subsection (b)(1) and, in the case of a defined contribution plan, the requirements of subsection (b)(2)'' for ''paragraph (2) of subsection (b), and in the case of a defined benefit plan, also satisfies the requirements of paragraph (1) of subsection (b)'' in first sentence.

Subsec. (a)(2). Pub. L. 99–514, §1113(a), amended par. (2) generally, substituting provisions covering 5-year vesting, 3 to 7 year vesting, and multiemployer plans, for former provisions which had covered 10-year vesting, 5- to 15-year vesting, and the ''rule of 45''.

Subsec. (a)(3)(D)(ii). Pub. L. 99–514, §1898(a)(4)(A)(i), substituted last sentence for former last sentence which read as follows: ''In the case of a defined contribution plan, the plan provision required under this clause may provide that such repayment must be made before the participant has any one-year break in service commencing after the withdrawal.''

Subsec. (a)(7)(C). Pub. L. 99–514, §1898(a)(4)(A)(ii), substituted last sentence for former last sentence which read as follows: ''In the case of a defined contribution plan, the plan provision required under this subparagraph may provide that such repayment must be made before the participant has 5 consecutive 1-year breaks in service commencing after such withdrawal.''

Subsec. (a)(8)(B). Pub. L. 99–509, §9203(b)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the latter of—

''(i) the time a plan participant attains age 65, or

''(ii) the 10th anniversary of the time a plan participant commenced participation in the plan.''

Subsec. (a)(10)(B). Pub. L. 99–514, §1113(d)(B), substituted ''3 years'' for ''5 years''.

Subsec. (a)(11)(A). Pub. L. 99–514, §1898(d)(1)(A)(i), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''If the present value of any accrued benefit exceeds $3,500, such benefit shall not be treated as nonforfeitable if the plan provides that the present value of such benefit could be immediately distributed without the consent of the participant.''

Subsec. (a)(11)(B). Pub. L. 99–514, §1139(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''For purposes of subparagraph (A), the present value shall be calculated by using an interest rate not greater than the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.''

Subsec. (a)(11)(C). Pub. L. 99–514, §1898(d)(2)(A), added subpar. (C).

Subsec. (b)(1). Pub. L. 99–509, §9202(b)(1), substituted ''Defined benefit plans'' for ''General rules'' in heading and added subpar. (H).

Subsec. (b)(2) to (4). Pub. L. 99–509, §9202(b)(2), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (d)(1)(A), (B). Pub. L. 99–514, §1114(b)(10), substituted ''highly compensated employees (within the meaning of section 414(q))'' for ''officers, shareholders, or highly compensated''.

Subsec. (d)(4). Pub. L. 99–514, §1113(b), repealed par. (4) which provided that a class year plan satisfied the requirements of subsec. (a)(2) if it provided that 100 percent of each employee's right to or derived from the contributions of the employer on his behalf with respect to any plan year were nonforfeitable not later than the end of the 5th plan year following the plan year for which such contributions were made.

Pub. L. 99–514, §1898(a)(1)(A), substituted ''Class-year'' for ''Class year'' in heading and amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''The requirements of subsection (a)(2) shall be deemed to be satisfied in the case of a class year plan if such plan provides that 100 percent of each employee's right to or derived from the contributions of the employer on his behalf with respect to any plan year are nonforfeitable not later than the end of the 5th plan year following the plan year for which such contributions were made. For purposes of this section, the term 'class year plan' means a profit-sharing, stock bonus, or money purchase plan which provides for the separate nonforfeitability of employees' rights to or derived from the contributions for each plan year.''

Subsec. (d)(6)(C). Pub. L. 99–514, §1898(f)(1)(A), added subpar. (C).

1984—Subsec. (a)(4)(A). Pub. L. 98–397, §202(b), substituted ''18'' for ''22''.

Subsec. (a)(6)(C). Pub. L. 98–397, §202(c), substituted ''5 consecutive 1-year breaks'' for ''1-year break'', in heading, and in text substituted ''5 consecutive 1-year breaks in service'' for ''any 1-year break in service'' and ''such 5-year period'' for ''such break'' in two places.

Subsec. (a)(6)(D). Pub. L. 98–397, § 202(d)(2), amended subpar. (D) generally.

Subsec. (a)(6)(E). Pub. L. 98–397, § 202(e)(2), added subpar. (E).

Subsec. (a)(7)(B)(i). Pub. L. 98–397, § 205(b), substituted ''$3,500'' for ''$1,750''.

Subsec. (a)(7)(C). Pub. L. 98–397, § 202(f), substituted ''5 consecutive 1-year breaks in service'' for ''any one-year break in service''.

Subsec. (a)(11). Pub. L. 98–397, § 205(a), added par. (11).

Subsec. (b)(3)(A). Pub. L. 98–397, § 202(e)(3), inserted '', determined without regard to section 410(a)(5)(E)''.

Subsec. (d)(6). Pub. L. 98–397, § 301(a)(1), designated existing provisions as subpar. (A) and added subpar. (B).

1980—Subsec. (a). Pub. L. 96–364, § 206(1)–(4), in par. (3) added subpars. (E) and (F), and in par. (4) added subpar. (G).

Subsec. (d)(6). Pub. L. 96–364, § 206(5), inserted reference to section 4281 of the Employee Retirement Income Security Act of 1974.

1976—Subsec. (a). Pub. L. 94–455, §§ 1901(a)(62)(A)–(C), 1906(b)(13)(A), substituted ''paragraph (8)'' for ''subsection (a)(8)'' in provisions preceding par. (1), substituted references to Sept. 2, 1974, for references to the date of enactment of the Employee Retirement Income Security Act of 1974 in par. (3)(D)(iii), struck out ''or his delegate'' after ''Secretary'' in pars. (4)(C) and (7)(B), and substituted ''(B)'' for ''(b)'' in heading of par. (7)(C).

Subsec. (b)(1)(D)(i). Pub. L. 94–455, § 1901(a)(62)(D), substituted reference to Sept. 2, 1974, for reference to the date of enactment of the Employee Retirement Income Security Act of 1974.

Subsecs. (c)(2)(B)(ii), (D), (d)(2), (3). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (e)(1)(C). Pub. L. 94–455, § 1901(a)(62)(D), substituted reference to Sept. 2, 1974, for reference to the date of enactment of the Employee Retirement Income Security Act of 1974.

Subsec. (e)(2). Pub. L. 94–455, § 1901(a)(62)(E), substituted reference to Sept. 1, 1974, for reference to the date before the date of enactment of the Employee Retirement Income Security Act of 1974.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 114(b) of Pub. L. 109–280 applicable to plan years beginning after 2007, see section 114(g)(1) of Pub. L. 109–280, as added by Pub. L. 110–458, set out as a note under section 401 of this title.

Pub. L. 109–280, title VII, § 701(e), Aug. 17, 2006, 120 Stat. 991, as amended by Pub. L. 110–458, title I, § 107(c)(2), Dec. 23, 2008, 122 Stat. 5107, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 623, 1053, and 1054 of Title 29, Labor] shall apply to periods beginning on or after June 29, 2005.

''(2) PRESENT VALUE OF ACCRUED BENEFIT.—The amendments made by subsections (a)(2) and (b)(2) [amending this section and section 1053 of Title 29] shall apply to distributions made after the date of the enactment of this Act [Aug. 17, 2006].

''(3) VESTING AND INTEREST CREDIT REQUIREMENTS.—In the case of a plan in existence on June 29, 2005, the requirements of clause (i) of section 411(b)(5)(B) of the Internal Revenue Code of 1986, clause (i) of section 204(b)(5)(B) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(b)(5)(B)], and clause (i) of section 4(i)(10)(B) of the Age Discrimination in Employment Act of 1967 [29 U.S.C. 623(i)(10)(B)] (as added by this Act) and the requirements of 203(f)(2) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1053(f)(2)] and section 411(a)(13)(B) of the Internal Revenue Code of 1986 (as so added) shall, for purposes of applying the amendments made by subsections (a) and (b) [amending this section and sections 1053 and 1054 of Title 29], apply to years beginning after December 31, 2007, unless the plan sponsor elects the application of such requirements for any period on or after June 29, 2005, and before the first year beginning after December 31, 2007.

''(4) SPECIAL RULE FOR COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act [Aug. 17, 2006], the requirements described in paragraph (3) shall, for purposes of applying the amendments made by subsections (a) and (b) [amending this section and sections 1053 and 1054 of Title 29], not apply to plan years beginning before the earlier of—

''(A) the later of—

''(i) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof on or after such date of enactment), or

''(ii) January 1, 2008, or

''(B) January 1, 2010.

''(5) CONVERSIONS.—The requirements of clause (ii) of section 411(b)(5)(B) of the Internal Revenue Code of 1986, clause (ii) of section 204(b)(5)(B) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(b)(5)(B)], and clause (ii) of section 4(i)(10)(B) of the Age Discrimination in Employment Act of 1967 [29 U.S.C. 623(i)(10)(B)] (as added by this Act), shall apply to plan amendments adopted on or after, and taking effect on or after, June 29, 2005, except that the plan sponsor may elect to have such amendments apply to plan amendments adopted before, and taking effect on or after, such date.

''(6) SPECIAL RULE FOR VESTING REQUIREMENTS.—The requirements of section 203(f)(2) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1053(f)(2)] and section 411(a)(13)(B) of the Internal Revenue Code of 1986 (as added by this Act)—

''(A) shall not apply to a participant who does not have an hour of service after the effective date of such requirements (as otherwise determined under this subsection); and

''(B) in the case of a plan other than a plan described in paragraph (3) or (4), shall apply to plan years ending on or after June 29, 2005.''

[Pub. L. 110–458, § 107(c)(2)(B)(i), which directed insertion of ''the earlier of'' after ''before'' in introductory provisions of section 701(e)(4) of Pub. L. 109–280, set out above, was executed by making the insertion after the second instance of ''before'' to reflect the probable intent of Congress.]

Amendment by section 902(d)(2)(A), (B) of Pub. L. 109–280 applicable to plan years beginning after Dec. 31, 2007, see section 902(g) of Pub. L. 109–280, set out as a note under section 401 of this title.

Pub. L. 109–280, title IX, § 904(c), Aug. 17, 2006, 120 Stat. 1050, provided that:

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (4), the amendments made by this section [amending this section and section 1053 of Title 29, Labor] shall apply to contributions for plan years beginning after December 31, 2006.

''(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of the enactment of this Act [Aug. 17, 2006], the amendments made by this section shall not apply to contributions on behalf of employees covered by any such agreement for plan years beginning before the earlier of—

''(A) the later of—

''(i) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof on or after such date of the enactment); or

''(ii) January 1, 2007; or

''(B) January 1, 2009.

''(3) SERVICE REQUIRED.—With respect to any plan, the amendments made by this section shall not apply to any employee before the date that such employee has 1 hour of service under such plan in any plan year to which the amendments made by this section apply.

''(4) SPECIAL RULE FOR STOCK OWNERSHIP PLANS.—Notwithstanding paragraph (1) or (2), in the case of an employee stock ownership plan (as defined in section 4975(e)(7) of the Internal Revenue Code of 1986) which had outstanding on September 26, 2005, a loan incurred for the purpose of acquiring qualifying employer securities (as defined in section 4975(e)(8) of such Code), the amendments made by this section shall not apply to any plan year beginning before the earlier of—

''(A) the date on which the loan is fully repaid, or

''(B) the date on which the loan was, as of September 26, 2005, scheduled to be fully repaid.''

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title VI, §633(c), June 7, 2001, 115 Stat. 116, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1053 of Title 29, Labor] shall apply to contributions for plan years beginning after December 31, 2001.

''(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified by the date of the enactment of this Act [June 7, 2001], the amendments made by this section shall not apply to contributions on behalf of employees covered by any such agreement for plan years beginning before the earlier of—

''(A) the later of—

''(i) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof on or after such date of the enactment); or

''(ii) January 1, 2002; or

''(B) January 1, 2006.

''(3) SERVICE REQUIRED.—With respect to any plan, the amendments made by this section shall not apply to any employee before the date that such employee has 1 hour of service under such plan in any plan year to which the amendments made by this section apply.''

Pub. L. 107–16, title VI, §645(a)(3), June 7, 2001, 115 Stat. 125, provided that: ''The amendments made by this subsection [amending this section and section 1054 of Title 29, Labor] shall apply to years beginning after December 31, 2001.''

Pub. L. 107–16, title VI, §648(c), June 7, 2001, 115 Stat. 128, provided that: ''The amendments made by this section [amending this section, section 457 of this title, and section 1053 of Title 29, Labor] shall apply to distributions after December 31, 2001.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1071(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section, sections 417 and 457 of this title, and sections 1053 to 1055 of Title 29, Labor] shall apply to plan years beginning after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1442(c) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section and section 1053 of Title 29, Labor] shall apply to plan years beginning on or after the earlier of—

''(1) the later of—

''(A) January 1, 1997, or

''(B) the date on which the last of the collective bargaining agreements pursuant to which the plan is maintained terminates (determined without regard to any extension thereof after the date of the enactment of this Act [Aug. 20, 1996]), or

''(2) January 1, 1999.

Such amendments shall not apply to any individual who does not have more than 1 hour of service under the plan on or after the 1st day of the 1st plan year to which such amendments apply.''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 767(d) of Pub. L. 103–465, as amended by Pub. L. 104–188, title I, §1449(a), Aug. 20, 1996, 110 Stat. 1813; Pub. L. 105–34, title XVI, §1604(b)(3), Aug. 5, 1997, 111 Stat. 1097, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section, sections 415 and 417 of this title, and sections 1053 and 1055 of Title 29, Labor] shall apply to plan years and limitation years beginning after December 31, 1994; except that an employer may elect to treat the amendments made by this section as being effective on or after the date of the enactment of this Act [Dec. 8, 1994].

''(2) NO REDUCTION IN ACCRUED BENEFITS.—A participant's accrued benefit shall not be considered to be reduced in violation of section 411(d)(6) of the Internal Revenue Code of 1986 or section 204(g) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(g)] merely because (A) the benefit is determined in accordance with section 417(e)(3)(A) of such Code, as amended by this Act, or section 205(g)(3) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1055(g)(3)], as amended by this Act, or (B) the plan applies section 415(b)(2)(E) of such Code, as amended by this Act.

''(3) SECTION 415.—

''(A) EXCEPTION.—A plan that was adopted and in effect before December 8, 1994, shall not be required to apply the amendments made by subsection (b) [amending section 415 of this title] with respect to benefits accrued before the earlier of—

''(i) the later of the date a plan amendment applying the amendments made by subsection (b) is adopted or made effective, or

''(ii) the first day of the first limitation year beginning after December 31, 1999.

Determinations under section 415(b)(2)(E) of the Internal Revenue Code of 1986 before such earlier date shall be made with respect to such benefits on the basis of such section as in effect on December 7, 1994, and the provisions of the plan as in effect on December 7, 1994, but only if such provisions of the plan meet the requirements of such section (as so in effect).

''(B) TIMING OF PLAN AMENDMENT.—A plan that operates in accordance with the amendments made by subsection (b) shall not be treated as failing to satisfy section 401(a) of the Internal Revenue Code of 1986 or as not being operated in accordance with the provisions of the plan until such date as the Secretary of the Treasury provides merely because the plan has not been amended to include the amendments made by subsection (b).''

EFFECTIVE DATE OF 1992 AMENDMENT

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

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7861(a)(5)(A), (6)(A) of Pub. L. 101–239 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7863 of Pub. L. 101–239, set out as a note under section 106 of this title.

Section 7871(a)(4) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section and section 1054 of Title 29, Labor] shall take effect as if included in the amendments made by section 9202 of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509].''

Section 7871(b)(3) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending

this section and section 1002 of Title 29, Labor] shall take effect as if included in the amendments made by section 9203 of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509].''

Amendment by section 7881(m)(1) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100–203, §§9302–9346, to which such amendment relates, see section 7882 of Pub. L. 101–239, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to plan years beginning after Dec. 31, 1987, with plan amendments not required to be made before first plan year beginning on or after Jan. 1, 1989, if certain conditions are met, see section 9346(c) of Pub. L. 100–203, set out as a note under section 1054 of Title 29, Labor.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 1113(f), formerly §1113(e), of Pub. L. 99–514, as redesignated and amended by Pub. L. 101–239, title VII, §7861(a)(3), (4), Dec. 19, 1989, 103 Stat. 2430, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 410 of this title and sections 1052 to 1054 of Title 29, Labor] shall apply to plan years beginning after December 31, 1988.

''(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to employees covered by any such agreement in plan years beginning before the earlier of—

''(A) the later of—

''(i) January 1, 1989, or

''(ii) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

''(B) January 1, 1991.

''(3) PARTICIPATION REQUIRED.—The amendments made by this section shall not apply to any employee who does not have 1 hour of service in any plan year to which the amendments made by this section apply.

''(4) REPEAL OF CLASS YEAR VESTING.—If a plan amendment repealing class year vesting is adopted after October 22, 1986, such amendment shall not apply to any employee for the 1st plan year to which the amendments made by subsections (b) and (e)(2) [amending this section and section 1053 of Title 29] apply (and any subsequent plan year) if—

''(A) such plan amendment would reduce the nonforfeitable right of such employee for such year, and

''(B) such employee has at least 1 hour of service before the adoption of such plan amendment and after the beginning of such 1st plan year.

This paragraph shall not apply to an employee who has 5 consecutive 1-year breaks in service (as defined in section 411(a)(6)(A) of the Internal Revenue Code of 1986) which include the 1st day of the 1st plan year to which the amendments made by subsection (b) and (e)(2) apply. A plan shall not be treated as failing to meet the requirements of section 401(a)(26) of such Code by reason of complying with the provisions of this paragraph.''

Amendment by section 1114(b)(10) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1988, see section 1114(c)(3) of Pub. L. 99–514, set out as a note under section 414 of this title.

Section 1139(d) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1011A(k), Nov. 10, 1988, 102 Stat. 3483, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 417 of this title and sections 1053 and 1055 of Title 29, Labor] shall apply to distributions in plan years beginning after December 31, 1984, except that such amendments shall not apply to any distributions in plan years beginning after December 31, 1984, and before January 1, 1987, if such distributions were made in accordance with the requirements of the regulations issued under the Retirement Equity Act of 1984 [Pub. L. 98–397, see Short Title of 1984 Amendment note set out under section 1001 of Title 29].

''(2) REDUCTION IN ACCRUED BENEFITS.—

''(A) IN GENERAL.—If a plan—

''(i) adopts a plan amendment before the close of the first plan year beginning on or after January 1, 1989, which provides for the calculation of the present value of the accrued benefits in the manner provided by the amendments made by this section, and

''(ii) the plan reduces the accrued benefits for any plan year to which such plan amendment applies in accordance with such plan amendment,

such reduction shall not be treated as a violation of section 411(d)(6) of the Internal Revenue Code of 1986 or section 204(g) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(g)).

''(B) SPECIAL RULE.—In the case of a plan maintained by a corporation incorporated on April 11, 1934, which is headquartered in Tarrant County, Texas—

''(i) such plan may be amended to remove the option of an employee to receive a lump sum distribution (within the meaning of section 402(e)(5) of such Code) if such amendment—

''(I) is adopted within 1 year of the date of the enactment of this Act [Oct. 22, 1986], and

''(II) is not effective until 2 years after the employees are notified of such amendment, and

''(ii) the present value of any vested accrued benefit of such plan determined during the 3-year period beginning on the date of the enactment of this Act shall be determined under the applicable interest rate (within the meaning of section 411(a)(11)(B)(ii) of such Code), except that if such value (as so determined) exceeds $50,000, then the value of any excess over $50,000 shall be determined by using the interest rate specified in the plan as of August 16, 1986.''

Section 1898(a)(1)(C) of Pub. L. 99–514 provided that: ''The amendments made by this paragraph [amending this section and section 1053 of Title 29, Labor] shall apply to contributions made for plan years beginning after the date of the enactment of this Act [Oct. 22, 1986]; except that, in the case of a plan described in section 302(b) of the Retirement Equity Act of 1984 [section 302(b) of Pub. L. 98–397, set out as a note under section 1001 of Title 29], such amendments shall not apply to any plan year to which the amendments made by such Act [see Short Title of 1984 Amendment note set out under section 1001 of Title 29] do not apply by reason of such section 302(b).''

Amendment by section 1898(a)(4)(A), (d)(1)(A), (2)(A), (f)(1)(A) of Pub. L. 99–514 effective as if included in the provision of the Retirement Equity Act of 1984, Pub. L. 98–397, to which such amendment relates, except as otherwise provided, see section 1898(j) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 9202(b) of Pub. L. 99–509 applicable only with respect to plan years beginning on or after Jan. 1, 1988, and only to employees who have 1 hour of service in any plan year to which amendment applies, with special rule for collectively bargained plans, and amendment by section 9203(b)(2) of Pub. L. 99–509 applicable only with respect to plan years beginning on or after Jan. 1, 1988, and only with respect to service performed on or after such date, see section 9204(a), (b) of Pub. L. 99–509, set out as an Effective and Termination Dates of 1986 Amendments note under section 623 of Title 29, Labor.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–397 applicable to plan years beginning after Dec. 31, 1984, except as otherwise provided, see sections 302 and 303 of Pub. L. 98–397, set out as a note under section 1001 of Title 29, Labor.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–364 effective Sept. 26, 1980, see section 210(a) of Pub. L. 96–364, set out as an Effective Date note under section 418 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(62) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, and, in the case of plans in existence on Jan. 1, 1974, for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

REGULATIONS

Pub. L. 109–280, title VII, §702, Aug. 17, 2006, 120 Stat. 992, provided that: ''The Secretary of the Treasury or his delegate shall, not later than 12 months after the date of the enactment of this Act [Aug. 17, 2006], prescribe regulations for the application of the amendments made by, and the provisions of, this title [amending this section and sections 623, 1053, and 1054 of Title 29, Labor, and enacting provisions set out as notes under this section] in cases where the conversion of a plan to an applicable defined benefit plan is made with respect to a group of employees who become employees by reason of a merger, acquisition, or similar transaction.''

Pub. L. 109–280, title XI, §1102(b), Aug. 17, 2006, 120 Stat. 1056, provided that:

''(1) IN GENERAL.—The Secretary of the Treasury shall modify the regulations under section 411(a)(11) of the Internal Revenue Code of 1986 and under section 205 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1055] to provide that the description of a participant's right, if any, to defer receipt of a distribution shall also describe the consequences of failing to defer such receipt.

''(2) EFFECTIVE DATE.—

''(A) IN GENERAL.—The modifications required by paragraph (1) shall apply to years beginning after December 31, 2006.

''(B) REASONABLE NOTICE.—A plan shall not be treated as failing to meet the requirements of section 411(a)(11) of such Code or section 205 of such Act with respect to any description of consequences described in paragraph (1) made within 90 days after the Secretary of the Treasury issues the modifications required by paragraph (1) if the plan administrator makes a reasonable attempt to comply with such requirements.''

Pub. L. 107–16, title VI, §645(b)(3), June 7, 2001, 115 Stat. 126, provided that: ''Not later than December 31, 2003, the Secretary of the Treasury is directed to issue regulations under section 411(d)(6) of the Internal Revenue Code of 1986 and section 204(g) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(g)], including the regulations required by the amendment made by this subsection [amending this section and section 1054 of Title 29, Labor]. Such regulations shall apply to plan years beginning after December 31, 2003, or such earlier date as is specified by the Secretary of the Treasury.''

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by sections 1113 and 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

Secretary of Labor, Secretary of the Treasury, and Equal Employment Opportunity Commission shall each issue before Feb. 1, 1988, final regulations to carry out amendments made by sections 9202 and 9203 of Pub. L. 99–509, see section 9204 of Pub. L. 99–509, set out as a note under section 623 of Title 29, Labor.

CONSTRUCTION OF 2006 AMENDMENT

Pub. L. 109–280, title VII, §701(d), Aug. 17, 2006, 120 Stat. 991, as amended by Pub. L. 110–458, title I, §107(c)(1), Dec. 23, 2008, 122 Stat. 5107, provided that: ''Nothing in the amendments made by this section [amending this section and sections 623, 1053, and 1054 of Title 29, Labor] shall be construed to create an inference with respect to—

''(1) the treatment of applicable defined benefit plans or conversions to applicable defined benefit plans under sections 204(b)(1)(H) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(b)(1)(H)], 4(i)(1) of the Age Discrimination in Employment Act of 1967 [29 U.S.C. 623(i)(1)], and 411(b)(1)(H) of the Internal Revenue Code of 1986, as in effect before such amendments, or

''(2) the determination of whether an applicable defined benefit plan fails to meet the requirements of sections 203(a)(2), 204(c), or 205(g) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1053(a)(2), 1054(c), 1055(g)] or sections 411(a)(2), 411(c), or 417(e) of such Code, as in effect before such amendments, solely because the present value of the accrued benefit (or any portion thereof) of any participant is, under the terms of the plan, equal to the amount expressed as the balance in a hypothetical account or as an accumulated percentage of the participant's final average compensation.

For purposes of this subsection, the term 'applicable defined benefit plan' has the meaning given such term by section 203(f)(3) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1053(f)(3)] and section 411(a)(13)(C) of such Code, as in effect after such amendments.''

APPLICABILITY OF AMENDMENTS BY SUBTITLES A AND B OF TITLE I OF PUB. L. 109–280

For special rules on applicability of amendments by subtitles A (§§101–108) and B (§§111–116) of title I of Pub. L. 109–280 to certain eligible cooperative plans, PBGC settlement plans, and eligible government contractor plans, see sections 104, 105, and 106 of Pub. L. 109–280, set out as notes under section 401 of this title.

PROVISIONS RELATING TO PLAN AMENDMENTS

Pub. L. 109–280, title XI, §1107, Aug. 17, 2006, 120 Stat. 1063, provided that:

''(a) IN GENERAL.—If this section applies to any pension plan or contract amendment—

''(1) such pension plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in subsection (b)(2)(A), and

''(2) except as provided by the Secretary of the Treasury, such pension plan shall not fail to meet the requirements of section 411(d)(6) of the Internal Revenue Code of 1986 and section 204(g) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(g)] by reason of such amendment.

''(b) AMENDMENTS TO WHICH SECTION APPLIES.—

''(1) IN GENERAL.—This section shall apply to any amendment to any pension plan or annuity contract which is made—

''(A) pursuant to any amendment made by this Act [see Tables for classification] or pursuant to any regulation issued by the Secretary of the Treasury or the Secretary of Labor under this Act, and

''(B) on or before the last day of the first plan year beginning on or after January 1, 2009.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this paragraph shall be applied by substituting '2011' for '2009'.

''(2) CONDITIONS.—This section shall not apply to any amendment unless—

''(A) during the period—

''(i) beginning on the date the legislative or regulatory amendment described in paragraph (1)(A) takes effect (or in the case of a plan or contract amendment not required by such legislative or regulatory amendment, the effective date specified by the plan), and

''(ii) ending on the date described in paragraph (1)(B) (or, if earlier, the date the plan or contract amendment is adopted), the plan or contract is operated as if such plan or contract amendment were in effect; and

''(B) such plan or contract amendment applies retroactively for such period.''

Pub. L. 108–218, title I, § 101(c), Apr. 10, 2004, 118 Stat. 598, as amended by Pub. L. 109–280, title III, § 301(c), Aug. 17, 2006, 120 Stat. 920; Pub. L. 110–458, title I, § 103(a), Dec. 23, 2008, 122 Stat. 5103, provided that:

''(1) IN GENERAL.—If this subsection applies to any plan or annuity contract amendment—

''(A) such plan or contract shall be treated as being operated in accordance with the terms of the plan or contract during the period described in paragraph (2)(B)(i), and

''(B) except as provided by the Secretary of the Treasury, such plan shall not fail to meet the requirements of section 411(d)(6) of the Internal Revenue Code of 1986 and section 204(g) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(g)] by reason of such amendment.

''(2) AMENDMENTS TO WHICH SECTION APPLIES.—

''(A) IN GENERAL.—This subsection shall apply to any amendment to any plan or annuity contract which is made—

''(i) pursuant to any amendment made by this section [amending sections 404, 412, and 415 of this title and sections 1082 and 1306 of Title 29, Labor], and

''(ii) on or before the last day of the first plan year beginning on or after January 1, 2009.

''(B) CONDITIONS.—This subsection shall not apply to any plan or annuity contract amendment unless—

''(i) during the period beginning on the date the amendment described in subparagraph (A)(i) takes effect and ending on the date described in subparagraph (A)(ii) (or, if earlier, the date the plan or contract amendment is adopted), the plan or contract is operated as if such plan or contract amendment were in effect; and

''(ii) such plan or contract amendment applies retroactively for such period.''

Section 1541 of title XV of Pub. L. 105–34 provided that:

''(a) IN GENERAL.—If this section applies to any plan or contract amendment—

''(1) such plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in subsection (b)(2)(A), and

''(2) such plan shall not fail to meet the requirements of section 411(d)(6) of the Internal Revenue Code of 1986 or section 204(g) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(g)] by reason of such amendment.

''(b) AMENDMENTS TO WHICH SECTION APPLIES.—

''(1) IN GENERAL.—This section shall apply to any amendment to any plan or annuity contract which is made—

''(A) pursuant to any amendment made by this title [enacting sections 9811 and 9812 of this title, amending sections 101, 401 to 404, 408, 409, 410, 412, 414, 415, 512, 664, 674, 2055, 2056, 4947, 4972, 4975, 4978, 4979A, 4980D, 9801, 9802, and 9831 of this title, sections 1021, 1022, 1024, 1026 to 1028, 1056, 1082, 1107, 1108, and 1132 of Title 29, Labor, and section 1320b–14 of Title 42, The Public Health and Welfare, renumbering sections 9804 to 9806 of this title as sections 9831 to 9833, respectively, of this title, and amending provisions set out as a note under section 412 of this title] or subtitle H of title X [§§ 1071–1075, amending this section, sections 72, 132, 417, 457, 691, 2013, 2053, 4975, and 6018 of this title, and sections 1053 to 1055 of Title 29 and repealing section 4980A of this title], and

''(B) before the first day of the first plan year beginning on or after January 1, 1999.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this paragraph shall be applied by substituting '2001' for '1999'.

''(2) CONDITIONS.—This section shall not apply to any amendment unless—

''(A) during the period—

''(i) beginning on the date the legislative amendment described in paragraph (1)(A) takes effect (or in the case of a plan or contract amendment not required by such legislative amendment, the effective date specified by the plan), and

''(ii) ending on the date described in paragraph (1)(B) (or, if earlier, the date the plan or contract amendment is adopted),

the plan or contract is operated as if such plan or contract amendment were in effect, and

''(B) such plan or contract amendment applies retroactively for such period.''

TRANSITIONAL RULE: CERTAIN PLAN AMENDMENTS ADOPTED OR EFFECTIVE ON OR BEFORE AUGUST 20, 1996

Section 1449(d) of Pub. L. 104–188 provided that: ''In the case of a plan that was adopted and in effect before December 8, 1994, if—

''(1) a plan amendment was adopted or made effective on or before the date of the enactment of this Act [Aug. 20, 1996] applying the amendments made by section 767 of the Uruguay Round Agreements Act [Pub. L. 103–465, see Effective Date of 1994 Amendment note set out above], and

''(2) within 1 year after the date of the enactment of this Act [Aug. 20, 1996], a plan amendment is adopted which repeals the amendment referred to in paragraph (1),

the amendment referred to in paragraph (1) shall not be taken into account in applying section 767(d)(3)(A) of the Uruguay Round Agreements Act, as amended by subsection (a).''

PLAN AMENDMENTS REFLECTING AMENDMENTS BY SECTION 7881(m) OF PUB. L. 101–239 NOT TREATED AS REDUCING ACCRUED BENEFITS

For provisions directing that if during the period beginning Dec. 22, 1987, and ending June 21, 1988, a plan was amended to reflect the amendments by section 9346 of Pub. L. 100–203 and such plan is amended to reflect the amendments by section 7881(m) of Pub. L. 101–239, any plan amendments made to reflect the amendments by section 7881(m) of Pub. L. 101–239 shall not be treated as reducing accrued benefits for purposes of subsection (d)(6) of this section or section 1054(g) of Title 29, Labor, see section 7881(m)(3) of Pub. L. 101–239, set out as a note under section 1054 of Title 29.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521–523] of title V of Pub. L.

102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

For provisions directing that if any amendments made by sections 9202(b) and 9203(b)(2) of Pub. L. 99–509 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 9204 of Pub. L. 99–509, set out as a note under section 623 of Title 29, Labor.

ALTERNATE METHODS OF SATISFYING REQUIREMENTS FOR VESTING AND ACCRUED BENEFITS

Pub. L. 93–406, title II, § 1012(c), Sept. 2, 1974, 88 Stat. 913, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of any plan maintained on January 1, 1974, if, not later than 2 years after the date of the enactment of this Act [Sept. 2, 1974], the plan administrator petitions the Secretary of Labor, the Secretary of Labor may prescribe an alternate method which shall be treated as satisfying the requirements of subsection (a)(2) of section 411 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], or of subsection (b)(1) (other than subparagraph (D) thereof) of such section 411, or of both such provisions for a period of not more than 4 years. The Secretary may prescribe such alternate method only when he finds that—

''(1) the application of such requirements would increase the costs of the plan to such an extent that there would result a substantial risk to the voluntary continuation of the plan or a substantial curtailment of benefit levels or the levels of employees' compensation,

''(2) the application of such requirements or discontinuance of the plan would be adverse to the interests of plan participants in the aggregate, and

''(3) a waiver or extension of time granted under [former] section 412(d) or (e) would be inadequate.

In the case of any plan with respect to which an alternate method has been prescribed under the preceding provisions of this subsection for a period of not more than 4 years, if, not later than 1 year before the expiration of such period, the plan administrator petitions the Secretary of Labor for an extension of such alternate method, and the Secretary makes the findings required by the preceding sentence, such alternate method may be extended for not more than 3 years.''

§ 412. Minimum funding standards

(a) Requirement to meet minimum funding standard

(1) In general

A plan to which this section applies shall satisfy the minimum funding standard applicable to the plan for any plan year.

(2) Minimum funding standard

For purposes of paragraph (1), a plan shall be treated as satisfying the minimum funding standard for a plan year if—

(A) in the case of a defined benefit plan which is not a multiemployer plan, the employer makes contributions to or under the plan for the plan year which, in the aggregate, are not less than the minimum required contribution determined under section 430 for the plan for the plan year,

(B) in the case of a money purchase plan which is not a multiemployer plan, the employer makes contributions to or under the plan for the plan year which are required under the terms of the plan, and

(C) in the case of a multiemployer plan, the employers make contributions to or under the plan for any plan year which, in the aggregate, are sufficient to ensure that the plan does not have an accumulated funding deficiency under section 431 as of the end of the plan year.

(b) Liability for contributions

(1) In general

Except as provided in paragraph (2), the amount of any contribution required by this section (including any required installments under paragraphs (3) and (4) of section 430(j)) shall be paid by the employer responsible for making contributions to or under the plan.

(2) Joint and several liability where employer member of controlled group

If the employer referred to in paragraph (1) is a member of a controlled group, each member of such group shall be jointly and severally liable for payment of such contributions.

(3) Multiemployer plans in critical status

Paragraph (1) shall not apply in the case of a multiemployer plan for any plan year in which the plan is in critical status pursuant to section 432. This paragraph shall only apply if the plan sponsor adopts a rehabilitation plan in accordance with section 432(e) and complies with such rehabilitation plan (and any modifications of the plan).

(c) Variance from minimum funding standards

(1) Waiver in case of business hardship

(A) In general

If—

(i) an employer is (or in the case of a multiemployer plan, 10 percent or more of the number of employers contributing to or under the plan are) unable to satisfy the minimum funding standard for a plan year without temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan), and

(ii) application of the standard would be adverse to the interests of plan participants in the aggregate,

the Secretary may, subject to subparagraph (C), waive the requirements of subsection (a) for such year with respect to all or any portion of the minimum funding standard. The Secretary shall not waive the minimum funding standard with respect to a plan for more than 3 of any 15 (5 of any 15 in the case of a multiemployer plan) consecutive plan years[1]

(B) Effects of waiver

If a waiver is granted under subparagraph (A) for any plan year—

[1] So in original. Probably should be followed by a period.

(i) in the case of a defined benefit plan which is not a multiemployer plan, the minimum required contribution under section 430 for the plan year shall be reduced by the amount of the waived funding deficiency and such amount shall be amortized as required under section 430(e), and

(ii) in the case of a multiemployer plan, the funding standard account shall be credited under section 431(b)(3)(C) with the amount of the waived funding deficiency and such amount shall be amortized as required under section 431(b)(2)(C).

(C) Waiver of amortized portion not allowed

The Secretary may not waive under subparagraph (A) any portion of the minimum funding standard under subsection (a) for a plan year which is attributable to any waived funding deficiency for any preceding plan year.

(2) Determination of business hardship

For purposes of this subsection, the factors taken into account in determining temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan) shall include (but shall not be limited to) whether or not—

(A) the employer is operating at an economic loss,

(B) there is substantial unemployment or underemployment in the trade or business and in the industry concerned,

(C) the sales and profits of the industry concerned are depressed or declining, and

(D) it is reasonable to expect that the plan will be continued only if the waiver is granted.

(3) Waived funding deficiency

For purposes of this section and part III of this subchapter, the term ''waived funding deficiency'' means the portion of the minimum funding standard under subsection (a) (determined without regard to the waiver) for a plan year waived by the Secretary and not satisfied by employer contributions.

(4) Security for waivers for single-employer plans, consultations

(A) Security may be required

(i) In general

Except as provided in subparagraph (C), the Secretary may require an employer maintaining a defined benefit plan which is a single-employer plan (within the meaning of section 4001(a)(15) of the Employee Retirement Income Security Act of 1974) to provide security to such plan as a condition for granting or modifying a waiver under paragraph (1).

(ii) Special rules

Any security provided under clause (i) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Corporation, by a contributing sponsor (within the meaning of section 4001(a)(13) of the Employee Retirement Income Security Act of 1974), or a member of such sponsor's controlled group (within the meaning of section 4001(a)(14) of such Act).

(B) Consultation with the Pension Benefit Guaranty Corporation

Except as provided in subparagraph (C), the Secretary shall, before granting or modifying a waiver under this subsection with respect to a plan described in subparagraph (A)(i)—

(i) provide the Pension Benefit Guaranty Corporation with—

(I) notice of the completed application for any waiver or modification, and

(II) an opportunity to comment on such application within 30 days after receipt of such notice, and

(ii) consider—

(I) any comments of the Corporation under clause (i)(II), and

(II) any views of any employee organization (within the meaning of section 3(4) of the Employee Retirement Income Security Act of 1974) representing participants in the plan which are submitted in writing to the Secretary in connection with such application.

Information provided to the Corporation under this subparagraph shall be considered tax return information and subject to the safeguarding and reporting requirements of section 6103(p).

(C) Exception for certain waivers

(i) In general

The preceding provisions of this paragraph shall not apply to any plan with respect to which the sum of—

(I) the aggregate unpaid minimum required contributions (within the meaning of section 4971(c)(4)) for the plan year and all preceding plan years, and

(II) the present value of all waiver amortization installments determined for the plan year and succeeding plan years under section 430(e)(2),

is less than $1,000,000.

(ii) Treatment of waivers for which applications are pending

The amount described in clause (i)(I) shall include any increase in such amount which would result if all applications for waivers of the minimum funding standard under this subsection which are pending with respect to such plan were denied.

(5) Special rules for single-employer plans

(A) Application must be submitted before date 2½ months after close of year

In the case of a defined benefit plan which is not a multiemployer plan, no waiver may be granted under this subsection with respect to any plan for any plan year unless an application therefor is submitted to the Secretary not later than the 15th day of the 3rd month beginning after the close of such plan year.

(B) Special rule if employer is member of controlled group

In the case of a defined benefit plan which is not a multiemployer plan, if an employer

is a member of a controlled group, the temporary substantial business hardship requirements of paragraph (1) shall be treated as met only if such requirements are met—

(i) with respect to such employer, and

(ii) with respect to the controlled group of which such employer is a member (determined by treating all members of such group as a single employer).

The Secretary may provide that an analysis of a trade or business or industry of a member need not be conducted if the Secretary determines such analysis is not necessary because the taking into account of such member would not significantly affect the determination under this paragraph.

(6) Advance notice

(A) In general

The Secretary shall, before granting a waiver under this subsection, require each applicant to provide evidence satisfactory to the Secretary that the applicant has provided notice of the filing of the application for such waiver to each affected party (as defined in section 4001(a)(21) of the Employee Retirement Income Security Act of 1974). Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV of the Employee Retirement Income Security Act of 1974 and for benefit liabilities.

(B) Consideration of relevant information

The Secretary shall consider any relevant information provided by a person to whom notice was given under subparagraph (A).

(7) Restriction on plan amendments

(A) In general

No amendment of a plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted if a waiver under this subsection or an extension of time under section 431(d) is in effect with respect to the plan, or if a plan amendment described in subsection (d)(2) which reduces the accrued benefit of any participant has been made at any time in the preceding 12 months (24 months in the case of a multiemployer plan). If a plan is amended in violation of the preceding sentence, any such waiver, or extension of time, shall not apply to any plan year ending on or after the date on which such amendment is adopted.

(B) Exception

Subparagraph (A) shall not apply to any plan amendment which—

(i) the Secretary determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan,

(ii) only repeals an amendment described in subsection (d)(2), or

(iii) is required as a condition of qualification under part I of subchapter D,[2] of chapter 1.

[2] So in original. The comma probably should not appear.

(d) Miscellaneous rules

(1) Change in method or year

If the funding method or a plan year for a plan is changed, the change shall take effect only if approved by the Secretary.

(2) Certain retroactive plan amendments

For purposes of this section, any amendment applying to a plan year which—

(A) is adopted after the close of such plan year but no later than 2½ months after the close of the plan year (or, in the case of a multiemployer plan, no later than 2 years after the close of such plan year),

(B) does not reduce the accrued benefit of any participant determined as of the beginning of the first plan year to which the amendment applies, and

(C) does not reduce the accrued benefit of any participant determined as of the time of adoption except to the extent required by the circumstances,

shall, at the election of the plan administrator, be deemed to have been made on the first day of such plan year. No amendment described in this paragraph which reduces the accrued benefits of any participant shall take effect unless the plan administrator files a notice with the Secretary notifying him of such amendment and the Secretary has approved such amendment, or within 90 days after the date on which such notice was filed, failed to disapprove such amendment. No amendment described in this subsection shall be approved by the Secretary unless the Secretary determines that such amendment is necessary because of a temporary substantial business hardship (as determined under subsection (c)(2)) or a substantial business hardship (as so determined) in the case of a multiemployer plan and that a waiver under subsection (c) (or, in the case of a multiemployer plan, any extension of the amortization period under section 431(d)) is unavailable or inadequate.

(3) Controlled group

For purposes of this section, the term ''controlled group'' means any group treated as a single employer under subsection (b), (c), (m), or (*o*) of section 414.

(e) Plans to which section applies

(1) In general

Except as provided in paragraphs (2) and (4), this section applies to a plan if, for any plan year beginning on or after the effective date of this section for such plan under the Employee Retirement Income Security Act of 1974—

(A) such plan included a trust which qualified (or was determined by the Secretary to have qualified) under section 401(a), or

(B) such plan satisfied (or was determined by the Secretary to have satisfied) the requirements of section 403(a).

(2) Exceptions

This section shall not apply to—

(A) any profit-sharing or stock bonus plan,

(B) any insurance contract plan described in paragraph (3),

(C) any governmental plan (within the meaning of section 414(d)),

(D) any church plan (within the meaning of section 414(e)) with respect to which the election provided by section 410(d) has not been made,

(E) any plan which has not, at any time after September 2, 1974, provided for employer contributions, or

(F) any plan established and maintained by a society, order, or association described in section 501(c)(8) or (9), if no part of the contributions to or under such plan are made by employers of participants in such plan.

No plan described in subparagraph (C), (D), or (F) shall be treated as a qualified plan for purposes of section 401(a) unless such plan meets the requirements of section 401(a)(7) as in effect on September 1, 1974.

(3) Certain insurance contract plans

A plan is described in this paragraph if—

(A) the plan is funded exclusively by the purchase of individual insurance contracts,

(B) such contracts provide for level annual premium payments to be paid extending not later than the retirement age for each individual participating in the plan, and commencing with the date the individual became a participant in the plan (or, in the case of an increase in benefits, commencing at the time such increase becomes effective),

(C) benefits provided by the plan are equal to the benefits provided under each contract at normal retirement age under the plan and are guaranteed by an insurance carrier (licensed under the laws of a State to do business with the plan) to the extent premiums have been paid,

(D) premiums payable for the plan year, and all prior plan years, under such contracts have been paid before lapse or there is reinstatement of the policy,

(E) no rights under such contracts have been subject to a security interest at any time during the plan year, and

(F) no policy loans are outstanding at any time during the plan year.

A plan funded exclusively by the purchase of group insurance contracts which is determined under regulations prescribed by the Secretary to have the same characteristics as contracts described in the preceding sentence shall be treated as a plan described in this paragraph.

(4) Certain terminated multiemployer plans

This section applies with respect to a terminated multiemployer plan to which section 4021 of the Employee Retirement Income Security Act of 1974 applies until the last day of the plan year in which the plan terminates (within the meaning of section 4041A(a)(2) of such Act).

(Added Pub. L. 93–406, title II, § 1013(a), Sept. 2, 1974, 88 Stat. 914; amended Pub. L. 94–455, title XIX, §§ 1901(a)(63), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1775, 1834; Pub. L. 96–364, title II, §§ 203, 208(c), Sept. 26, 1980, 94 Stat. 1285, 1289; Pub. L. 98–369, div. A, title IV, § 491(d)(25), July 18, 1984, 98 Stat. 850; Pub. L. 99–272, title XI, §§ 11015(a)(2), (b)(2), 11016(c)(4), Apr. 7, 1986, 100 Stat. 265, 267, 273; Pub. L. 100–203, title IX, §§ 9301(a), 9303(a), (d)(1), 9304(a)(1), (b)(1), (e)(1), 9305(b)(1), 9306(a)(1), (b)(1), (c)(1), (d)(1), (e)(1), 9307(a)(1), (b)(1), (e)(1), Dec. 22, 1987, 101 Stat. 1330–331, 1330–333, 1330–342 to 1330–344, 1330–348, 1330–351, 1330–352, 1330–354 to 1330–357; Pub. L. 100–647, title II, § 2005(a)(2)(A), (d)(1), Nov. 10, 1988, 102 Stat. 3610, 3612; Pub. L. 101–239, title VII, § 7881(a)(1)(A), (2)(A), (3)(A), (4)(A), (5)(A), (6)(A), (b)(1)(A), (2)(A), (3)(A), (4)(A), (6)(A), (c)(1), (d)(1)(A), Dec. 19, 1989, 103 Stat. 2435–2439; Pub. L. 103–465, title VII, §§ 751(a)(1)–(9)(A), (10), 752(a), 753(a), 754(a), 768(a), Dec. 8, 1994, 108 Stat. 5012–5019, 5021–5023, 5040; Pub. L. 105–34, title XV, § 1521(a), (c)(1), (3)(A), title XVI, § 1604(b)(2)(A), Aug. 5, 1997, 111 Stat. 1069, 1070, 1097; Pub. L. 107–16, title VI, §§ 651(a), 661(a), June 7, 2001, 115 Stat. 129, 141; Pub. L. 107–147, title IV, §§ 405(a), 411(v)(1), Mar. 9, 2002, 116 Stat. 42, 52; Pub. L. 108–218, title I, §§ 101(b)(1)–(3), 102(b), 104(b), Apr. 10, 2004, 118 Stat. 597, 598, 601, 606; Pub. L. 109–135, title IV, § 412(x)(1), Dec. 21, 2005, 119 Stat. 2638; Pub. L. 109–280, title I, § 111(a), title II, § 212(c), title III, § 301(b), Aug. 17, 2006, 120 Stat. 820, 917, 919; Pub. L. 110–458, title I, §§ 101(a)(2), 102(b)(2)(H), Dec. 23, 2008, 122 Stat. 5093, 5103.)

AMENDMENT OF SECTION

For termination of subsection (b)(3) of this section by section 221(c) of Pub. L. 109–280, see Effective and Termination Dates of 2006 Amendment note below.

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in subsecs. (c)(4)(A), (B)(ii)(II), (6)(A), and (e)(1), (4), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, which is classified principally to chapter 18 (§ 1001 et seq.) of Title 29, Labor. Title IV of the Act is classified generally to subchapter III (§ 1301 et seq.) of chapter 18 of Title 29. Sections 3, 4001, 4021, and 4041A of the Act are classified to sections 1002, 1301, 1321, and 1341a of Title 29, respectively. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The effective date of this section, referred to in subsec. (e)(1), probably means the effective date of Pub. L. 109–280, § 111(a), which amended this section. See Effective and Termination Dates of 2006 Amendment note below.

AMENDMENTS

2008—Subsec. (b)(3). Pub. L. 110–458, § 102(b)(2)(H), substituted ''the plan sponsor adopts'' for ''the plan adopts''.

Subsec. (c)(1)(A)(i). Pub. L. 110–458, § 101(a)(2)(A), substituted ''the plan are'' for ''the plan is''.

Subsec. (c)(7)(A). Pub. L. 110–458, § 101(a)(2)(B), inserted ''which reduces the accrued benefit of any participant'' after ''subsection (d)(2)''.

Subsec. (d)(1). Pub. L. 110–458, § 101(a)(2)(C), struck out '', the valuation date,'' after ''If the funding method''.

2006—Pub. L. 109–280, § 111(a), reenacted heading without change and amended text generally, substituting provisions relating to minimum funding standard requirement, liability for contributions, variance from minimum funding standards, miscellaneous rules, and plans to which section applies, consisting of subsecs. (a) to (e), for provisions relating to general rule for satisfaction of minimum funding standard, funding standard account, special rules, variance from minimum funding standard, extension of amortization periods, requirements relating to waivers and extensions, alternative minimum funding standard, exceptions, certain insurance contract plans, certain terminated multiemployer

plans, financial assistance, additional funding requirements for plans which are not multiemployer plans, quarterly contributions requirement, and imposition of lien where failure to make required contributions, consisting of subsecs. (a) to (n).

Subsec. (b)(3). Pub. L. 109–280, §§212(c), 221(c), temporarily added par. (3). See Effective and Termination Dates of 2006 Amendment note below.

Subsec. (b)(5)(B)(ii)(II). Pub. L. 109–280, §301(b)(1), substituted '', 2005, 2006, and 2007'' for ''and 2005'' in heading and ''2008'' for ''2006'' in text.

Subsec. (*l*)(7)(C)(i)(IV). Pub. L. 109–280, §301(b)(2), substituted '', 2005, 2006, and 2007'' for ''and 2005'' in heading and '', 2005, 2006, or 2007'' for ''or 2005'' in text.

2005—Subsec. (m)(4)(B)(i). Pub. L. 109–135 substituted ''subsection (d)'' for ''subsection (c)''.

2004—Subsec. (b)(5)(B)(ii)(I). Pub. L. 108–218, §101(b)(1)(C), inserted ''or (III)'' after ''subclause (II)''.

Subsec. (b)(5)(B)(ii)(II), (III). Pub. L. 108–218, §101(b)(1)(A), (B), added subcl. (II), redesignated former subcl. (II) as (III), and, in subcl. (III), inserted ''or (II)'' after ''permissible under subclause (I)'' and substituted ''such subclause'' for ''subclause (I)'' before period at end.

Subsec. (b)(7)(F). Pub. L. 108–218, §104(b), added subpar. (F).

Subsec. (*l*)(7)(C)(i)(IV). Pub. L. 108–218, §101(b)(2), added subcl. (IV).

Subsec. (*l*)(12). Pub. L. 108–218, §102(b), added par. (12).

Subsec. (m)(7). Pub. L. 108–218, §101(b)(3), amended heading and text of par. (7) generally, substituting provisions relating to special rule for 2002 for provisions relating to special rules for 2002 and 2004.

2002—Subsec. (c)(9)(B)(ii). Pub. L. 107–147, §411(v)(1)(A), substituted ''100 percent'' for ''125 percent''.

Subsec. (c)(9)(B)(iv). Pub. L. 107–147, §411(v)(1)(B), added cl. (iv).

Subsec. (*l*)(7)(C)(i)(III). Pub. L. 107–147, §405(a)(1), added subcl. (III).

Subsec. (m)(7). Pub. L. 107–147, §405(a)(2), added par. (7).

2001—Subsec. (c)(7)(A)(i)(I). Pub. L. 107–16, §651(a)(1), substituted ''in the case of plan years beginning before January 1, 2004, the applicable percentage'' for ''the applicable percentage''.

Subsec. (c)(7)(F). Pub. L. 107–16, §651(a)(2), reenacted heading and introductory provisions without change and amended table generally, substituting present provisions for provisions which had set out applicable percentage of 155 in the case of any plan year beginning in 1999 or 2000, 160 in the case of any plan year beginning in 2001 or 2002, 165 in the case of any plan year beginning in 2003 or 2004, and 170 in the case of any plan year beginning in 2005 and succeeding years.

Subsec. (c)(9). Pub. L. 107–16, §661(a), reenacted heading without change and amended text of par. (9) generally. Prior to amendment, text read as follows: ''For purposes of this section, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every year, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary.''

1997—Subsec. (b)(2)(E). Pub. L. 105–34, §1521(c)(1), added subpar. (E).

Subsec. (c)(7)(A)(i)(I). Pub. L. 105–34, §1521(a)(A), substituted ''the applicable percentage'' for ''150 percent''.

Subsec. (c)(7)(D). Pub. L. 105–34, §1521(c)(3)(A), inserted ''and'' at end of cl. (i), substituted a period for '', and'' at end of cl. (ii), and struck out cl. (iii) which read as follows: ''for the treatment under this section of contributions which would be required to be made under the plan but for the provisions of subparagraph (A)(i)(I).''

Subsec. (c)(7)(F). Pub. L. 105–34, §1521(a)(B), added subpar. (F).

Subsec. (m)(5)(E)(ii)(II). Pub. L. 105–34, §1604(b)(2)(A), substituted ''subclause (I)'' for ''clause (i)''.

1994—Subsec. (c)(5). Pub. L. 103–465, §752(a), designated existing provisions as subpar. (A), inserted subpar. heading, and added subpar. (B).

Subsec. (c)(7)(A)(i)(I). Pub. L. 103–465, §751(a)(10)(A), inserted ''(including the expected increase in current liability due to benefits accruing during the plan year)'' after ''current liability''.

Subsec. (c)(7)(B). Pub. L. 103–465, §751(a)(10)(C), reenacted subpar. (B) heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of subparagraphs (A) and (D), the term 'current liability' has the meaning given such term by subsection (*l*)(7) (without regard to subparagraph (D) thereof).''

Subsec. (c)(7)(E). Pub. L. 103–465, §751(a)(10)(B), added subpar. (E).

Subsec. (c)(12). Pub. L. 103–465, §753(a), added par. (12).

Subsec. (*l*)(1). Pub. L. 103–465, §751(a)(1)(A), (2)(B), in introductory provisions, substituted ''to which this subsection applies under paragraph (9)'' for ''which has an unfunded current liability'', and amended concluding provisions generally. Prior to amendment, concluding provisions read as follows: ''Such increase shall not exceed the amount necessary to increase the funded current liability percentage to 100 percent.''

Subsec. (*l*)(1)(A)(ii). Pub. L. 103–465, §751(a)(2)(A), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''the sum of the charges for such plan year under subparagraphs (B) (other than clauses (iv) and (v) thereof), (C), and (D) of subsection (b)(2), reduced by the sum of the credits for such plan year under subparagraph (B)(i) of subsection (b)(3), plus''.

Subsec. (*l*)(2)(C). Pub. L. 103–465, §751(a)(3), added subpar. (C).

Subsec. (*l*)(2)(D). Pub. L. 103–465, §751(a)(7)(B)(i), added subpar. (D).

Subsec. (*l*)(3)(D), (E). Pub. L. 103–465, §751(a)(4)(A), added subpars. (D) and (E).

Subsec. (*l*)(4)(B)(i). Pub. L. 103–465, §751(a)(4)(B), (7)(B)(iii), inserted '', the unamortized portion of the additional unfunded old liability, the unamortized portion of each unfunded mortality increase,'' after ''old liability''.

Subsec. (*l*)(4)(C). Pub. L. 103–465, §751(a)(5), substituted ''.40'' for ''.25'' in cl. (i) and ''60'' for ''35'' in cl. (ii).

Subsec. (*l*)(5)(A). Pub. L. 103–465, §751(a)(6)(A)(i), substituted ''greatest of'' for ''greater of'' in introductory provisions.

Subsec. (*l*)(5)(A)(iii). Pub. L. 103–465, §751(a)(6)(A)(ii)–(iv), added cl. (iii).

Subsec. (*l*)(5)(E). Pub. L. 103–465, §751(a)(6)(B), added subpar. (E).

Subsec. (*l*)(7)(C). Pub. L. 103–465, §751(a)(7)(A), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''(C) INTEREST RATES USED.—The rate of interest used to determine current liability shall be the rate of interest used under subsection (b)(5).''

Subsec. (*l*)(9). Pub. L. 103–465, §751(a)(1)(B), added par. (9).

Subsec. (*l*)(10). Pub. L. 103–465, §751(a)(7)(B)(ii), added par. (10).

Subsec. (*l*)(11). Pub. L. 103–465, §751(a)(8), added par. (11).

Subsec. (m)(1). Pub. L. 103–465, §754(a), in introductory provisions, inserted ''which has a funded current liability percentage (as defined in subsection (*l*)(8)) for the preceding plan year of less than 100 percent'' before ''fails'' and substituted ''the plan year'' for ''any plan year''.

Subsec. (m)(4)(D)(ii). Pub. L. 103–465, §751(a)(6)(C)(i), substituted ''greatest of'' for ''greater of'' in introductory provisions.

Subsec. (m)(4)(D)(ii)(III). Pub. L. 103–465, §751(a)(6)(C)(ii)–(iv), added subcl. (III).

Subsec. (m)(5), (6). Pub. L. 103–465, §751(a)(9)(A), added par. (5) and redesignated former par. (5) as (6).

Subsec. (n)(2). Pub. L. 103–465, §768(a)(1), inserted at end ''This subsection shall not apply to any plan to which section 4021 of the Employee Retirement Income Security Act of 1974 does not apply (as such section is in effect on the date of the enactment of the Retirement Protection Act of 1994).''

Subsec. (n)(3). Pub. L. 103–465, § 768(a)(2), reenacted par. (3) heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of paragraph (1), the amount of the lien shall be equal to the lesser of—

''(A) the amount by which the unpaid balances described in paragraph (1)(B) (including interest) exceed $1,000,000, or

''(B) the aggregate unpaid balance of required installments and other payments required under this section (including interest)—

''(i) for plan years beginning after 1987, and

''(ii) for which payment has not been made before the due date.''

Subsec. (n)(4)(B). Pub. L. 103–465, § 768(a)(3), struck out ''60th day following the'' before ''due date''.

1989—Subsec. (b)(5)(B)(iii). Pub. L. 101–239, § 7881(d)(1)(A), struck out ''for purposes of this section and for purposes of determining current liability,'' before ''the interest rate'' in introductory provisions.

Subsec. (c)(9). Pub. L. 101–239, § 7881(a)(6)(A), substituted ''Annual'' for ''3-year'' in heading and ''every year'' for ''every 3 years'' in text.

Subsec. (c)(10)(A). Pub. L. 101–239, § 7881(b)(1)(A), substituted ''Defined benefit plans'' for ''Plans'' in heading and ''defined benefit plan other'' for ''plan other'' in introductory provisions.

Subsec. (c)(10)(B). Pub. L. 101–239, § 7881(b)(2)(A), substituted ''Other'' for ''Multiemployer'' in heading and ''plan not described in subparagraph (A)'' for ''multiemployer plan'' in text.

Subsec. (d)(1)(A)(ii). Pub. L. 101–239, § 7881(b)(6)(A)(ii), substituted ''costs (including adjustments under subsection (b)(5)(B))'' for ''costs''.

Subsec. (f)(4)(A). Pub. L. 101–239, § 7881(c)(1), substituted ''for benefit liabilities'' for ''the benefit liabilities''.

Subsec. (*l*)(3)(C)(ii)(II). Pub. L. 101–239, § 7881(a)(1)(A), substituted ''reducing (but not below zero)'' for ''reducing''.

Subsec. (*l*)(4)(B)(i). Pub. L. 101–239, § 7881(a)(2)(A), substituted ''liability and the unamortized portion of the unfunded existing benefit increase liability'' for ''liability''.

Subsec. (*l*)(5)(C). Pub. L. 101–239, § 7881(a)(3)(A), substituted ''the first plan year beginning after December 31, 1988'' for ''October 17, 1987''.

Subsec. (*l*)(7)(D)(iii)(III). Pub. L. 101–239, § 7881(a)(4)(A)(i), added subcl. (III).

Subsec. (*l*)(7)(D)(iv). Pub. L. 101–239, § 7881(a)(4)(A)(ii), added cl. (iv).

Subsec. (*l*)(8)(A)(ii). Pub. L. 101–239, § 7881(a)(5)(A)(i), struck out ''reduced by any credit balance in the funding standard account'' after ''under subsection (c)(2)''.

Subsec. (*l*)(8)(E). Pub. L. 101–239, § 7881(a)(5)(A)(ii), added subpar. (E).

Subsec. (m)(1). Pub. L. 101–239, § 7881(b)(3)(A), substituted ''defined benefit plan (other than'' for ''plan (other than'' in introductory provisions.

Subsec. (m)(1)(B). Pub. L. 101–239, § 7881(b)(6)(A)(i), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the rate under subsection (b)(5).''

Subsec. (m)(4)(D). Pub. L. 101–239, § 7881(b)(4)(A), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''In the case of a plan with any unpredictable contingent event benefit liabilities—

''(i) such liabilities shall not be taken into account in computing the required annual payment under subparagraph (B), and

''(ii) each required installment shall be increased by the greater of—

''(I) the amount of benefits described in subsection (*l*)(5)(A)(i) paid during the 3-month period preceding the month in which the due date for such installment occurs, or

''(II) 25 percent of the amount determined under subsection (*l*)(5)(A)(ii) for the plan year.''

1988—Subsec. (*l*)(3)(C)(i), (iii). Pub. L. 100–647, § 2005(a)(2)(A), (d)(1), amended cl. (i) identically, substituting ''October 29'' for ''October 17'' and amended cl. (iii) identically, substituting ''October 28'' for ''October 16''.

1987—Subsec. (b)(2). Pub. L. 100–203, § 9303(a)(2), inserted at end ''For additional requirements in the case of plans other than multiemployer plans, see subsection (*l*).''

Subsec. (b)(2)(B)(iv). Pub. L. 100–203, § 9307(a)(1)(A), substituted ''5 plan years (15 plan years in the case of a multiemployer plan)'' for ''15 plan years''.

Subsec. (b)(2)(B)(v). Pub. L. 100–203, § 9307(a)(1)(B), substituted ''10 plan years (30 plan years in the case of a multiemployer plan)'' for ''30 plan years''.

Subsec. (b)(2)(C), (3)(B)(ii). Pub. L. 100–203, § 9307(a)(1)(A), substituted ''5 plan years (15 plan years in the case of a multiemployer plan)'' for ''15 plan years''.

Subsec. (b)(3)(B)(iii). Pub. L. 100–203, § 9307(a)(1)(B), substituted ''10 plan years (30 plan years in the case of a multiemployer plan)'' for ''30 plan years''.

Subsec. (b)(5). Pub. L. 100–203, § 9307(e)(1), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.''

Subsec. (c)(2)(B). Pub. L. 100–203, § 9303(d)(1), inserted at end ''In the case of a plan other than a multiemployer plan, this subparagraph shall not apply, but the Secretary may by regulations provide that the value of any dedicated bond portfolio of such plan shall be determined by using the interest rate under subsection (b)(5).''

Subsec. (c)(3). Pub. L. 100–203, § 9307(b)(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods which, in the aggregate, are reasonable (taking into account the experience of the plan and reasonable expectations) and which, in combination, offer the actuary's best estimate of anticipated experience under the plan.''

Subsec. (c)(7). Pub. L. 100–203, § 9301(a), substituted ''Full-funding'' for ''Full funding'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of paragraph (6), the term full funding limitation means the excess (if any) of—

''(A) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

''(B) the lesser of the fair market value of the plan's assets or the value of such assets determined under paragraph (2).''

Subsec. (c)(10). Pub. L. 100–203, § 9304(a)(1), amended par. (10) generally. Prior to amendment, par. (10) read as follows: ''For purposes of this section, any contributions for a plan year made by an employer after the last day of such plan year, but not later than two and one-half months after such day, shall be deemed to have been made on such last day. For purposes of this paragraph, such two and one-half month period may be extended for not more than six months under regulations prescribed by the Secretary.''

Subsec. (c)(11). Pub. L. 100–203, § 9305(b)(1), added par. (11).

Subsec. (d)(1). Pub. L. 100–203, § 9306(a)(1)(B), struck out ''substantial'' after ''in case of'' in heading, and substituted ''temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan)'' for ''substantial business hardship'' in text.

Pub. L. 100–203, § 9306(b)(1), substituted ''more than 3 of any 15 (5 of any 15 in the case of a multiemployer plan)'' for ''more than 5 of any 15''.

Pub. L. 100–203, § 9306(c)(1)(A), substituted ''The interest rate used for purposes of computing the amortiza-

tion charge described in subsection (b)(2)(C) for any plan year shall be—'' and subpars. (A) and (B) for ''The interest rate used for purposes of computing the amortization charge described in section 412(b)(2)(C) for a variance granted under this subsection shall be the rate determined under section 6621(b).''

Subsec. (d)(2). Pub. L. 100–203, §9306(a)(1)(B), struck out ''substantial'' after ''Determination of'' in heading, and substituted ''temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan)'' for ''substantial business hardship'' in introductory provisions.

Subsec. (d)(4). Pub. L. 100–203, §9306(a)(1)(A), added par. (4).

Subsec. (d)(5). Pub. L. 100–203, §9306(a)(1)(C), added par. (5).

Subsec. (e). Pub. L. 100–203, §9306(c)(1)(B), substituted last two sentences for ''The interest rate applicable under any arrangement entered into by the Secretary in connection with an extension granted under this subsection shall be the rate determined under section 6621(b).''

Subsec. (f)(3)(C)(i). Pub. L. 100–203, §9306(e)(1), substituted ''$1,000,000'' for ''$2,000,000'' at end.

Subsec. (f)(4)(A). Pub. L. 100–203, §9306(d)(1), substituted ''plan, and each participant, beneficiary, and alternate payee (within the meaning of section 414(p)(8)). Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV of such Act and the benefit liabilities.'' for ''plan.''

Subsec. (*l*). Pub. L. 100–203, §9303(a)(1), added subsec. (*l*).

Subsec. (m). Pub. L. 100–203, §9304(b)(1), added subsec. (m).

Subsec. (n). Pub. L. 100–203, §9304(e)(1), added subsec. (n).

1986—Subsec. (d)(1). Pub. L. 99–272, §11015(b)(2)(A), inserted provision that the interest rate used for purposes of computing the amortization charge described in section 412(b)(2)(C) for a variance granted under this subsection be the rate determined under section 6621(b).

Subsec. (e). Pub. L. 99–272, §11015(b)(2)(B), inserted provision that the interest rate applicable under any arrangement entered into by the Secretary in connection with an extension granted under this subsection be the rate determined under section 6621(b).

Subsec. (f). Pub. L. 99–272, §11015(a)(2), substituted in heading ''Requirements relating to waivers and extensions'' for ''Benefits may not be increased during waiver or extension period'' and in par. (1) heading ''Benefits may not be increased during waiver or extension period'' for ''In general'', and added par. (3).

Pub. L. 99–272, §11016(c)(4), added par. (4).

1984—Subsec. (a)(2). Pub. L. 98–369 struck out ''or 405(a)'' after ''section 403(a)''.

1980—Subsec. (a). Pub. L. 96–364, §208(c), inserted provisions relating to plan years where multiemployer plan is in reorganization.

Subsec. (b). Pub. L. 96–364, §203(1), (2), struck out in pars. (2)(B)(ii), (iii), and (3)(B)(i) provisions respecting applicability of multiemployer plans with 40 plan years and in pars. (2)(B)(iv) and (3)(B)(ii) provisions respecting applicability of multiemployer plans with 20 year plans and added pars. (6) and (7).

Subsecs. (j), (k). Pub. L. 96–364, §203(3), added subsecs. (j) and (k).

1976—Subsecs. (a) to (d). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (h). Pub. L. 94–455, §1901(a)(63), substituted reference to Sept. 2, 1974, for reference to the date of enactment of the Employee Retirement Income Security Act of 1974 in par. (5) and substituted reference to Sept. 1, 1974, for reference to the day before the date of enactment of the Employee Retirement Income Security Act of 1974 in the provisions following par. (6).

Subsec. (i). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

EFFECTIVE AND TERMINATION DATES OF 2006 AMENDMENT

Pub. L. 109–280, title I, §111(b), Aug. 17, 2006, 120 Stat. 826, provided that: ''The amendments made by this section [amending this section] shall apply to plan years beginning after December 31, 2007.''

Pub. L. 109–280, title II, §212(e), Aug. 17, 2006, 120 Stat. 917, as amended by Pub. L. 110–458, title I, §102(b)(3)(B), (C), Dec. 23, 2008, 122 Stat. 5103, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting section 432 of this title and amending this section and section 4971 of this title] shall apply with respect to plan years beginning after 2007, except that the amendments made by subsection (b) [amending section 4971 of this title] shall apply to taxable years beginning after 2007, but only with respect to plan years beginning after 2007 which end with or within any such taxable year.

''(2) SPECIAL RULE FOR CERTAIN NOTICES.—In any case in which a plan's actuary certifies that it is reasonably expected that a multiemployer plan will be in critical status under section 432(b)(3) of the Internal Revenue Code of 1986, as added by this section, with respect to the first plan year beginning after 2007, the notice required under subparagraph (D) of such section may be provided at any time after the date of enactment [Aug. 17, 2006], so long as it is provided on or before the last date for providing the notice under such subparagraph.

''(3) SPECIAL RULE FOR CERTAIN RESTORED BENEFITS.—In the case of a multiemployer plan—

''(A) with respect to which benefits were reduced pursuant to a plan amendment adopted on or after January 1, 2002, and before June 30, 2005, and

''(B) which, pursuant to the plan document, the trust agreement, or a formal written communication from the plan sponsor to participants provided before June 30, 2005, provided for the restoration of such benefits,

the amendments made by this section shall not apply to such benefit restorations to the extent that any restriction on the providing or accrual of such benefits would otherwise apply by reason of such amendments.''

Pub. L. 109–280, title II, §221(c), Aug. 17, 2006, 120 Stat. 919, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, notwithstanding any other provision of this Act [see Tables for classification], the provisions of, and the amendments made by, sections 201(b), 202, and 212 [enacting section 432 of this title and section 1085 of Title 29, Labor, amending this section, section 4971 of this title, and sections 1082 and 1132 of Title 29, and enacting provisions set out as notes under this section and sections 1082 and 1084 of Title 29] shall not apply to plan years beginning after December 31, 2014.

''(2) FUNDING IMPROVEMENT AND REHABILITATION PLANS.—If a plan is operating under a funding improvement or rehabilitation plan under section 305 of such Act [probably means section 305 of the Employee Retirement Income Security Act of 1974, Pub. L. 93–406, 29 U.S.C. 1085] or 432 of such Code [probably means section 432 of the Internal Revenue Code of 1986] for its last year beginning before January 1, 2015, such plan shall continue to operate under such funding improvement or rehabilitation plan during any period after December 31, 2014, such funding improvement or rehabilitation plan is in effect and all provisions of such Act or Code relating to the operation of such funding improvement or rehabilitation plan shall continue in effect during such period.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 101(b)(1)–(3) of Pub. L. 108–218 applicable, except as otherwise provided, to plan years

beginning after Dec. 31, 2003, see section 101(d) of Pub. L. 108–218, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by section 411(v)(1) of Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title VI, § 651(c), June 7, 2001, 115 Stat. 129, provided that: ''The amendments made by this section [amending this section and section 1082 of Title 29, Labor] shall apply to plan years beginning after December 31, 2001.''

Pub. L. 107–16, title VI, § 661(c), June 7, 2001, 115 Stat. 142, provided that: ''The amendments made by this section [amending this section and section 1082 of Title 29, Labor] shall apply to plan years beginning after December 31, 2001.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1521(d)(1) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section and section 1082 of Title 29, Labor] shall apply to plan years beginning after December 31, 1998.''

Section 1604(b)(4) of Pub. L. 105–34 provided that: ''The amendments made by this subsection [amending this section, section 6621 of this title, section 1082 of Title 29, Labor, and provisions set out as a note under section 411 of this title] shall take effect as if included in the sections of the Uruguay Round Agreements Act [Pub. L. 103–465] to which they relate.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 751(a)(1)–(9)(A), (10) of Pub. L. 103–465 applicable to plan years beginning after Dec. 31, 1994, see section 751(b)(1) of Pub. L. 103–465, set out as a note under section 401 of this title.

Section 752(b) of Pub. L. 103–465 provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to changes in assumptions for plan years beginning after October 28, 1993.

''(2) CERTAIN CHANGES CEASE TO BE EFFECTIVE.—In the case of changes in assumptions for plan years beginning after December 31, 1992, and on or before October 28, 1993, such changes shall cease to be effective for plan years beginning after December 31, 1994, if—

''(A) such change would have required the approval of the Secretary of the Treasury had such amendment applied to such change, and

''(B) such change is not so approved.''

Section 753(b) of Pub. L. 103–465 provided that: ''The amendment made by this section [amending this section] shall apply to plan years beginning after December 31, 1994, with respect to collective bargaining agreements in effect on or after January 1, 1995.''

Section 754(b) of Pub. L. 103–465 provided that: ''The amendment made by this section [amending this section] shall apply to plan years beginning after the date of enactment of this Act [Dec. 8, 1994].''

Section 768(c) of Pub. L. 103–465 provided that: ''The amendments made by this section [amending this section and section 1082 of Title 29, Labor] shall be effective for installments and other payments required under section 412 of the Internal Revenue Code of 1986 or under part 3 of subtitle B [of title I] of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1081 et seq.] that become due on or after the date of enactment [Dec. 8, 1994].''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100–203, §§ 9302–9346, to which such amendment relates, see section 7882 of Pub. L. 101–239, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective as if included in the amendments made by the provisions of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, to which it relates, see section 2005(e) of Pub. L. 100–647, as amended, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9301(c)(1), (2) of Pub. L. 100–203 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 1082 of Title 29, Labor] shall apply to years beginning after December 31, 1987.

''(2) REGULATIONS.—The Secretary of the Treasury or his delegate shall prescribe such regulations as are necessary to carry out the amendments made by this section no later than August 15, 1988.''

Pub. L. 100–203, title IX, § 9303(e), Dec. 22, 1987, 101 Stat. 1330–342, as amended by Pub. L. 101–239, title VII, § 7881(a)(7), Dec. 19, 1989, 103 Stat. 2436, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and section 1082 of Title 29, Labor] shall apply with respect to plan years beginning after December 31, 1988.

''(2) SUBSECTIONS (c) AND (d).—The amendments made by subsections (c) [set out below] and (d) [amending this section and section 1082 of Title 29] shall apply with respect to years beginning after December 31, 1987.

''(3) SPECIAL RULE FOR STEEL COMPANIES.—

''(A) IN GENERAL.—For any plan year beginning before January 1, 1994, any increase in the funding standard account under [former] section 412(*l*) of the 1986 Code or section 302(d) of ERISA (as added by this section) [29 U.S.C. 1082(d)] with respect to any steel employee plan shall not exceed the sum of—

''(i) the required percentage of the current liability under such plan, plus

''(ii) the amount determined under subparagraph (C)(i) for such plan year.

''(B) REQUIRED PERCENTAGE.—For purposes of subparagraph (A), the term 'required percentage' means, with respect to any plan year, the excess (if any) of—

''(i) the sum of—

''(I) the funded current liability percentage as of the beginning of the 1st plan year beginning after December 31, 1988 (determined without regard to any plan amendment adopted after June 30, 1987), plus

''(II) 1 percentage point for the plan year for which the determination under this paragraph is being made and for each prior plan year beginning after December 31, 1988, over

''(ii) the funded current liability percentage as of the beginning of the plan year for which such determination is being made.

''(C) SPECIAL RULES FOR CONTINGENT EVENTS.—In the case of any unpredictable contingent event benefit with respect to which the event on which such benefits are contingent occurs after December 17, 1987—

''(i) AMORTIZATION AMOUNT.—For purposes of subparagraph (A)(ii), the amount determined under this clause for any plan year is the amount which would be determined if the unpredictable contingent event benefit liability were amortized in equal annual installments over 10 plan years (beginning with the plan year in which such event occurs).

''(ii) BENEFIT AND CONTRIBUTIONS NOT TAKEN INTO ACCOUNT.—For purposes of subparagraph (B), in determining the funded current liability percentage for any plan year, there shall not be taken into account—

''(I) the unpredictable contingent event benefit liability, or

''(II) any amount contributed to the plan which is attributable to clause (i) (and any income allocable to such amount).

''(D) STEEL EMPLOYEE PLAN.—For purposes of this paragraph, the term 'steel employee plan' means any plan if—

''(i) such plan is maintained by a steel company, and

''(ii) substantially all of the employees covered by such plan are employees of such company.

''(E) OTHER DEFINITIONS.—For purposes of this paragraph—

''(i) STEEL COMPANY.—The term 'steel company' means any corporation described in section 806(b) of the Steel Import Stabilization Act [section 806(b) of Pub. L. 98–573, 19 U.S.C. 2253 note].

''(ii) OTHER DEFINITIONS.—The terms 'current liability', 'funded current liability percentage', and 'unpredictable contingent event benefit' have the meanings given such terms by [former] section 412(*l*) of the 1986 Code (as added by this section).

''(F) SPECIAL RULE.—The provisions of this paragraph shall apply in the case of a company which was originally incorporated on April 25, 1927, in Michigan and reincorporated on June 3, 1968, in Delaware in the same manner as if such company were a steel company.''

Section 9304(a)(3) of Pub. L. 100–203 provided that: ''The amendments made by this subsection [amending this section and section 1082 of Title 29, Labor] shall apply to plan years beginning after December 31, 1987.''

Section 9304(b)(3) of Pub. L. 100–203 provided that: ''The amendments made by this subsection [amending this section and section 1082 of Title 29] shall apply with respect to plan years beginning after 1988.''

Section 9304(e)(3) of Pub. L. 100–203 provided that: ''The amendments made by this subsection [amending this section and section 1082 of Title 29] shall apply to plan years beginning after December 31, 1987.''

Section 9305(d) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and sections 414 and 4971 of this title and section 1082 of Title 29] shall apply with respect to plan years beginning after December 31, 1987.''

Pub. L. 100–203, title IX, §9306(f), Dec. 22, 1987, 101 Stat. 1330–355, as amended by Pub. L. 101–239, title VII, §7881(c)(3), Dec. 19, 1989, 103 Stat. 2439, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 1083, 1084, and 1085a of Title 29, Labor] shall apply in the case of—

''(A) any application submitted after December 17, 1987, and

''(B) any waiver granted pursuant to such an application.

''(2) SPECIAL RULE FOR APPLICATION REQUIREMENT.—

''(A) IN GENERAL.—The amendments made by subsections (a)(1)(A) and (a)(2)(A) [amending this section and section 1083 of Title 29] shall apply to plan years beginning after December 31, 1987.

''(B) TRANSITIONAL RULE FOR YEARS BEGINNING IN 1988.—In the case of any plan year beginning during calendar 1988, [former] section 412(d)(4) of the 1986 Code and section 303(d)(1) of ERISA [29 U.S.C. 1083(d)(1)] (as added by subsection (a)(1) [and (2)]) shall be applied by substituting '6th month' for '3rd month'.

''(3) SUBSECTION (b).—The amendments made by subsection (b) [amending this section and section 1083 of Title 29] shall apply to waivers for plan years beginning after December 31, 1987. For purposes of applying such amendments, the number of waivers which may be granted for plan years after December 31, 1987, shall be determined without regard to any waivers granted for plan years beginning before January 1, 1988.

''(4) SUBSECTION (d).—The amendments made by subsection (d) [amending this section and section 1083 of Title 29] shall apply to applications submitted more than 90 days after the date of the enactment of this Act [Dec. 22, 1987].''

Amendment by section 9307(a)(1), (b)(1), (e)(1) of Pub. L. 100–203 applicable to years beginning after Dec. 31, 1987, except that subsec. (b)(2)(B)(iv) and (3)(B)(ii) of this section (as amended by section 9307(a)(1)(A) of Pub. L. 100–203) is applicable to gains and losses established in years beginning after Dec. 31, 1987, see section 9307(f) of Pub. L. 100–203, as amended, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–272, title XI, §11015(a)(3), Apr. 7, 1986, 100 Stat. 267, provided that: ''The amendments made by this subsection [enacting former section 1085a of Title 29, Labor, and amending this section and section 1061 of Title 29] shall apply with respect to applications for waivers, extensions, and modifications filed on or after the date of the enactment of this Act [Apr. 7, 1986].''

Amendment by sections 11015(b)(2) and 11016(c)(4) of Pub. L. 99–272 effective Jan. 1, 1986, with certain exceptions, see section 11019 of Pub. L. 99–272, set out as a note under section 1341 of Title 29.

EFFECTIVE DATE OF 1984 AMENDMENT

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

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–364 effective Sept. 26, 1980, see section 210(a) of Pub. L. 96–364, set out as an Effective Date note under section 418 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(63) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, and, in the case of plans in existence on Jan. 1, 1974, for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

REGULATIONS

Pub. L. 103–465, title VII, §769, Dec. 8, 1994, 108 Stat. 5041, as amended by Pub. L. 105–34, title XV, §1508(a), Aug. 5, 1997, 111 Stat. 1067; Pub. L. 108–218, title II, §201(a), Apr. 10, 2004, 118 Stat. 608; Pub. L. 109–280, title I, §115(d)(1), (e)(1), Aug. 17, 2006, 120 Stat. 856, provided that:

''(a) FUNDING RULES NOT TO APPLY TO CERTAIN PLANS.—Any changes made by this Act [Pub. L. 103–465] to section 412 of the Internal Revenue Code of 1986 or to part 3 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1081 et seq.] shall not apply to—

''(1) a plan which is, on the date of enactment of this Act [Dec. 8, 1994], subject to a restoration payment schedule order issued by the Pension Benefit Guaranty Corporation that meets the requirements of section 1.412(c)(1)–3 of the Treasury Regulations, or

''(2) a plan established by an affected air carrier (as defined under section 4001(a)(14)(C)(ii)(I) of such Act [29 U.S.C. 1301(a)(14)(C)(ii)(I)]) and assumed by a new plan sponsor pursuant to the terms of a written agreement with the Pension Benefit Guaranty Corporation dated January 5, 1993, and approved by the United States Bankruptcy Court for the District of Delaware on December 30, 1992.

''(b) CHANGE IN ACTUARIAL METHOD.—Any amortization installments for bases established under [former] section 412(b) of the Internal Revenue Code of 1986 and section 302(b) of the Employee Retirement Income Se-

curity Act of 1974 [29 U.S.C. 1082(b)] for plan years beginning after December 31, 1987, and before January 1, 1993, by reason of nonelective changes under the frozen entry age actuarial cost method shall not be included in the calculation of offsets under [former] section 412(*l*)(1)(A)(ii) of such Code and section 302(d)(1)(A)(ii) of such Act for the 1st 5 plan years beginning after December 31, 1994.''

[Pub. L. 109–280, title I, §115(d)(2), Aug. 17, 2006, 120 Stat. 856, provided that: ''The amendment made by paragraph (1) [amending section 769 of Pub. L. 103–465, set out above] shall apply to plan years beginning after December 31, 2005.'']

[Pub. L. 109–280, title I, §115(e)(2), Aug. 17, 2006, 120 Stat. 856, provided that: ''The amendment made by paragraph (1) [amending section 769 of Pub. L. 103–465, set out above] shall take effect on December 31, 2007, and shall apply to plan years beginning after such date.'']

[Pub. L. 108–218, title II, §201(b), Apr. 10, 2004, 118 Stat. 608, provided that: ''The amendments made by this section [amending section 769 of Pub. L. 103–465, set out above] shall apply to plan years beginning after December 31, 2003.'']

[Section 1508(b) of Pub. L. 105–34 provided that: ''The amendment made by this section [amending section 769 of Pub. L. 103–465, set out above] shall apply to plan years beginning after December 31, 1996.'']

Pub. L. 100–203, title IX, §9303(c), Dec. 22, 1987, 101 Stat. 1330–342, provided that: ''Effective with respect to plan years beginning after December 31, 1987, the provisions of the regulations prescribed under section 412(c)(2) of the 1986 Code which permit asset valuations to be based on a range between 85 percent and 115 percent of average value shall have no force and effect with respect to plans other than multiemployer plans (as defined in section 414(f) of the 1986 Code). The Secretary of the Treasury or his delegate shall amend such regulations to carry out the purposes of the preceding sentence.''

APPLICABILITY OF AMENDMENTS BY SUBTITLES A AND B OF TITLE I OF PUB. L. 109–280

For special rules on applicability of amendments by subtitles A (§§101–108) and B (§§111–116) of title I of Pub. L. 109–280 to certain eligible cooperative plans, PBGC settlement plans, and eligible government contractor plans, see sections 104, 105, and 106 of Pub. L. 109–280, set out as notes under section 401 of this title.

SPECIAL RULE FOR CERTAIN BENEFITS FUNDED UNDER AN AGREEMENT APPROVED BY THE PENSION BENEFIT GUARANTY CORPORATION

Pub. L. 109–280, title II, §206, Aug. 17, 2006, 120 Stat. 889, provided that: ''In the case of a multiemployer plan that is a party to an agreement that was approved by the Pension Benefit Guaranty Corporation prior to June 30, 2005, and that—

''(1) increases benefits, and

''(2) provides for special withdrawal liability rules under section 4203(f) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1383[(f)]),

the amendments made by sections 201, 202, 211, and 212 of this Act [enacting sections 431 and 432 of this title and sections 1084 and 1085 of Title 29, Labor, and amending this section, section 4971 of this title, and sections 1081, 1082, and 1132 of Title 29] shall not apply to the benefit increases under any plan amendment adopted prior to June 30, 2005, that are funded pursuant to such agreement if the plan is funded in compliance with such agreement (and any amendments thereto).''

APPLICABILITY OF SECTION TO CERTAIN PLANS MAINTAINED BY COMMERCIAL AIRLINES

For special rules on applicability of this section to certain plans maintained by commercial airlines, see section 402 of Pub. L. 109–280, set out as a note under section 430 of this title.

EFFECT OF ELECTION

Pub. L. 108–218, title I, §102(c), Apr. 10, 2004, 118 Stat. 602, provided that: ''An election under section 302(d)(12) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082(d)(12)] or [former] section 412(*l*)(12) of the Internal Revenue Code of 1986 (as added by this section) with respect to a plan shall not invalidate any obligation (pursuant to a collective bargaining agreement in effect on the date of the election) to provide benefits, to change the accrual of benefits, or to change the rate at which benefits become nonforfeitable under the plan.''

SPECIAL RULE FOR UNAMORTIZED BALANCES UNDER EXISTING LAW

Pub. L. 105–34, title XV, §1521(d)(2), Aug. 5, 1997, 111 Stat. 1070, provided that: ''The unamortized balance (as of the close of the plan year preceding the plan's first year beginning in 1999) of any amortization base established under [former] section 412(c)(7)(D)(iii) of such Code [26 U.S.C. 412(c)(7)(D)(iii)] and section 302(c)(7)(D)(iii) of such Act [29 U.S.C. 1082(c)(7)(D)(iii)] (as repealed by subsection (c)(3)) for any plan year beginning before 1999 shall be amortized in equal annual installments (until fully amortized) over a period of years equal to the excess of—

''(A) 20 years, over

''(B) the number of years since the amortization base was established.''

ALTERNATIVE AMORTIZATION METHOD FOR CERTAIN MULTIEMPLOYER PLANS

Pub. L. 93–406, title II, §1013(d), Sept. 2, 1974, 88 Stat. 923, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) GENERAL RULE.—In the case of any multiemployer plan (as defined in section 414(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) to which section 412 of such Code applies, if—

''(A) on January 1, 1974, the contributions under the plan were based on a percentage of pay,

''(B) the actuarial assumptions with respect to pay are reasonably related to past and projected experience, and

''(C) the rates of interest under the plan are determined on the basis of reasonable actuarial assumptions,

the plan may elect (in such manner and at such time as may be provided under regulations prescribed by the Secretary of the Treasury or his delegate) to fund the unfunded past service liability under the plan existing as of the date 12 months following the first date on which such section 412 first applies to the plan by charging the funding standard account with an equal annual percentage of the aggregate pay of all participants in the plan in lieu of the level dollar charges to such account required under clauses (i), (ii), and (iii) of [former] section 412(b)(2)(B) of such Code and section 302(b)(2)(B)(i), (ii), and (iii) of this Act [section 1082(b)(2)(B)(i), (ii), and (iii) of Title 29, Labor].

''(2) LIMITATION.—In the case of a plan which makes an election under paragraph (1), the aggregate of the charges required under such paragraph for a plan year shall not be less than the interest on the unfunded past service liabilities described in clauses (i), (ii), and (iii) of [former] section 412(b)(2)(B) of the Internal Revenue Code of 1986.''

§ 413. Collectively bargained plans, etc.

(a) Application of subsection (b)

Subsection (b) applies to—

(1) a plan maintained pursuant to an agreement which the Secretary of Labor finds to be a collective-bargaining agreement between employee representatives and one or more employers, and

(2) each trust which is a part of such plan.

(b) General rule

If this subsection applies to a plan, notwithstanding any other provision of this title—

(1) Participation

Section 410 shall be applied as if all employees of each of the employers who are parties to the collective-bargaining agreement and who are subject to the same benefit computation formula under the plan were employed by a single employer.

(2) Discrimination, etc.

Sections 401(a)(4) and 411(d)(3) shall be applied as if all participants who are subject to the same benefit computation formula and who are employed by employers who are parties to the collective bargaining agreement were employed by a single employer.

(3) Exclusive benefit

For purposes of section 401(a), in determining whether the plan of an employer is for the exclusive benefit of his employees and their beneficiaries, all plan participants shall be considered to be his employees.

(4) Vesting

Section 411 (other than subsection (d)(3)) shall be applied as if all employers who have been parties to the collective-bargaining agreement constituted a single employer, except that the application of any rules with respect to breaks in service shall be made under regulations prescribed by the Secretary of Labor.

(5) Funding

The minimum funding standard provided by section 412 shall be determined as if all participants in the plan were employed by a single employer.

(6) Liability for funding tax

For a plan year the liability under section 4971 of each employer who is a party to the collective bargaining agreement shall be determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary—

(A) first on the basis of their respective delinquencies in meeting required employer contributions under the plan, and

(B) then on the basis of their respective liabilities for contributions under the plan.

For purposes of this subsection and the last sentence of section 4971(a),[1] an employer's withdrawal liability under part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 shall not be treated as a liability for contributions under the plan.

(7) Deduction limitations

Each applicable limitation provided by section 404(a) shall be determined as if all participants in the plan were employed by a single employer. The amounts contributed to or under the plan by each employer who is a party to the agreement, for the portion of his taxable year which is included within such a plan year, shall be considered not to exceed such a limitation if the anticipated employer contributions for such plan year (determined in a manner consistent with the manner in which actual employer contributions for such plan year are determined) do not exceed such limitation. If such anticipated contributions exceed such a limitation, the portion of each such employer's contributions which is not deductible under section 404 shall be determined in accordance with regulations prescribed by the Secretary.

(8) Employees of labor unions

For purposes of this subsection, employees or employee representatives shall be treated as employees of an employer described in subsection (a)(1) if such representatives meet the requirements of sections 401(a)(4) and 410 with respect to such employees.

(9) Plans covering a professional employee

Notwithstanding subsection (a), in the case of a plan (and trust forming part thereof) which covers any professional employee, paragraph (1) shall be applied by substituting ''section 410(a)'' for ''section 410'', and paragraph (2) shall not apply.

(c) Plans maintained by more than one employer

In the case of a plan maintained by more than one employer—

(1) Participation

Section 410(a) shall be applied as if all employees of each of the employers who maintain the plan were employed by a single employer.

(2) Exclusive benefit

For purposes of section 401(a), in determining whether the plan of an employer is for the exclusive benefit of his employees and their beneficiaries all plan participants shall be considered to be his employees.

(3) Vesting

Section 411 shall be applied as if all employers who maintain the plan constituted a single employer, except that the application of any rules with respect to breaks in service shall be made under regulations prescribed by the Secretary of Labor.

(4) Funding

(A) In general

In the case of a plan established after December 31, 1988, each employer shall be treated as maintaining a separate plan for purposes of section 412 unless such plan uses a method for determining required contributions which provides that any employer contributes not less than the amount which would be required if such employer maintained a separate plan.

(B) Other plans

In the case of a plan not described in subparagraph (A), the requirements of section 412 shall be determined as if all participants in the plan were employed by a single employer unless the plan administrator elects not later than the close of the first plan year

[1] See References in Text note below.

of the plan beginning after the date of enactment of the Technical and Miscellaneous Revenue Act of 1988 to have the provisions of subparagraph (A) apply. An election under the preceding sentence shall take effect for the plan year in which made and, once made, may be revoked only with the consent of the Secretary.

(5) Liability for funding tax

For a plan year the liability under section 4971 of each employer who maintains the plan shall be determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary—

(A) first on the basis of their respective delinquencies in meeting required employer contributions under the plan, and

(B) then on the basis of their respective liabilities for contributions under the plan.

(6) Deduction limitations

(A) In general

In the case of a plan established after December 31, 1988, each applicable limitation provided by section 404(a) shall be determined as if each employer were maintaining a separate plan.

(B) Other plans

(i) In general

In the case of a plan not described in subparagraph (A), each applicable limitation provided by section 404(a) shall be determined as if all participants in the plan were employed by a single employer, except that if an election is made under paragraph (4)(B), subparagraph (A) shall apply to such plan.

(ii) Special rule

If this subparagraph applies, the amounts contributed to or under the plan by each employer who maintains the plan (for the portion of the taxable year included within a plan year) shall be considered not to exceed any such limitation if the anticipated employer contributions for such plan year (determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary) do not exceed such limitation. If such anticipated contributions exceed such a limitation, the portion of each such employer's contributions which is not deductible under section 404 shall be determined in accordance with regulations prescribed by the Secretary.

(7) Allocations

(A) In general

Except as provided in subparagraph (B), allocations of amounts under paragraphs (4), (5), and (6) among the employers maintaining the plan shall not be inconsistent with regulations prescribed for this purpose by the Secretary.

(B) Assets and liabilities of plan

For purposes of applying paragraphs (4)(A) and (6)(A), the assets and liabilities of each plan shall be treated as the assets and liabilities which would be allocated to a plan maintained by the employer if the employer withdrew from the multiple employer plan.

(Added Pub. L. 93–406, title II, § 1014, Sept. 2, 1974, 88 Stat. 924; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–364, title II, § 208(d), Sept. 26, 1980, 94 Stat. 1290; Pub. L. 100–647, title I, § 1011(h)(10), title VI, § 6058(a)–(c), Nov. 10, 1988, 102 Stat. 3466, 3698, 3699; Pub. L. 101–508, title XI, § 11704(a)(4), Nov. 5, 1990, 104 Stat. 1388–518.)

REFERENCES IN TEXT

The last sentence of section 4971(a), referred to in subsec. (b)(6), was struck out by Pub. L. 100–203, title IX, § 9305(a)(2)(A), Dec. 22, 1987, 101 Stat. 1330–351.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (b)(6), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended. Part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 is classified generally to part 1 (§ 1381 et seq.) of subtitle E of subchapter III of chapter 18 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The date of enactment of the Technical and Miscellaneous Revenue Act of 1988, referred to in subsec. (c)(4)(B), is the date of enactment of Pub. L. 100–647, which was approved Nov. 10, 1988.

AMENDMENTS

1990—Subsec. (c)(7)(B). Pub. L. 101–508 substituted ''Assets'' for ''Asset'' in heading.

1988—Subsec. (b)(9). Pub. L. 100–647, § 1011(h)(10), added par. (9).

Subsec. (c). Pub. L. 100–647, § 6058(c), struck out at end ''Allocations of amounts under paragraphs (4), (5), and (6), among the employers maintaining the plan, shall not be inconsistent with regulations prescribed for this purpose by the Secretary.''

Subsec. (c)(4). Pub. L. 100–647, § 6058(a), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''The minimum funding standard provided by section 412 shall be determined as if all participants in the plan were employed by a single employer.''

Subsec. (c)(6). Pub. L. 100–647, § 6058(b), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''Each applicable limitation provided by section 404(a) shall be determined as if all participants in the plan were employed by a single employer. The amounts contributed to or under the plan by each employer who maintains the plan, for the portion of this taxable year which is included within such a plan year, shall be considered not to exceed such a limitation if the anticipated employer contributions for such plan year (determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary) do not exceed such limitation. If such anticipated contributions exceed such a limitation, the portion of each such employer's contributions which is not deductible under section 404 shall be determined in accordance with regulations prescribed by the Secretary.''

Subsec. (c)(7). Pub. L. 100–647, § 6058(c), added par. (7).

1980—Subsec. (b)(6). Pub. L. 96–364 inserted provisions relating to withdrawal liability of employer.

1976—Subsecs. (b), (c). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011(h)(10) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6058(d) of Pub. L. 100–647 provided that: ''Except as provided in paragraph (2), the amendments made by this section [amending this section] shall

apply to plan years beginning after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–364 effective Sept. 26, 1980, see section 210(a) of Pub. L. 96–364, set out as an Effective Date note under section 418 of this title.

EFFECTIVE DATE

Section applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, and, in the case of plans in existence on Jan. 1, 1974, for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

§ 414. Definitions and special rules

(a) Service for predecessor employer

For purposes of this part—

(1) in any case in which the employer maintains a plan of a predecessor employer, service for such predecessor shall be treated as service for the employer, and

(2) in any case in which the employer maintains a plan which is not the plan maintained by a predecessor employer, service for such predecessor shall, to the extent provided in regulations prescribed by the Secretary, be treated as service for the employer.

(b) Employees of controlled group of corporations

For purposes of sections 401, 408(k), 408(p), 410, 411, 415, and 416, all employees of all corporations which are members of a controlled group of corporations (within the meaning of section 1563(a), determined without regard to section 1563(a)(4) and (e)(3)(C)) shall be treated as employed by a single employer. With respect to a plan adopted by more than one such corporation, the applicable limitations provided by section 404(a) shall be determined as if all such employers were a single employer, and allocated to each employer in accordance with regulations prescribed by the Secretary.

(c) Employees of partnerships, proprietorships, etc., which are under common control

For purposes of sections 401, 408(k), 408(p), 410, 411, 415, and 416, under regulations prescribed by the Secretary, all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer. The regulations prescribed under this subsection shall be based on principles similar to the principles which apply in the case of subsection (b).

(d) Governmental plan

For purposes of this part, the term ''governmental plan'' means a plan established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing. The term ''governmental plan'' also includes any plan to which the Railroad Retirement Act of 1935 or 1937 applies and which is financed by contributions required under that Act and any plan of an international organization which is exempt from taxation by reason of the International Organizations Immunities Act (59 Stat. 669). The term ''governmental plan'' includes a plan which is established and maintained by an Indian tribal government (as defined in section 7701(a)(40)), a subdivision of an Indian tribal government (determined in accordance with section 7871(d)), or an agency or instrumentality of either, and all of the participants of which are employees of such entity substantially all of whose services as such an employee are in the performance of essential governmental functions but not in the performance of commercial activities (whether or not an essential government function).

(e) Church plan

(1) In general

For purposes of this part, the term ''church plan'' means a plan established and maintained (to the extent required in paragraph (2)(B)) for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under section 501.

(2) Certain plans excluded

The term ''church plan'' does not include a plan—

(A) which is established and maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of churches who are employed in connection with one or more unrelated trades or businesses (within the meaning of section 513); or

(B) if less than substantially all of the individuals included in the plan are individuals described in paragraph (1) or (3)(B) (or their beneficiaries).

(3) Definitions and other provisions

For purposes of this subsection—

(A) Treatment as church plan

A plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches includes a plan maintained by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches.

(B) Employee defined

The term employee of a church or a convention or association of churches shall include—

(i) a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry, regardless of the source of his compensation;

(ii) an employee of an organization, whether a civil law corporation or otherwise, which is exempt from tax under section 501 and which is controlled by or associated with a church or a convention or association of churches; and

(iii) an individual described in subparagraph (E).

(C) Church treated as employer

A church or a convention or association of churches which is exempt from tax under section 501 shall be deemed the employer of any individual included as an employee under subparagraph (B).

(D) Association with church

An organization, whether a civil law corporation or otherwise, is associated with a church or a convention or association of churches if it shares common religious bonds and convictions with that church or convention or association of churches.

(E) Special rule in case of separation from plan

If an employee who is included in a church plan separates from the service of a church or a convention or association of churches or an organization described in clause (ii) of paragraph (3)(B), the church plan shall not fail to meet the requirements of this subsection merely because the plan—

(i) retains the employee's accrued benefit or account for the payment of benefits to the employee or his beneficiaries pursuant to the terms of the plan; or

(ii) receives contributions on the employee's behalf after the employee's separation from such service, but only for a period of 5 years after such separation, unless the employee is disabled (within the meaning of the disability provisions of the church plan or, if there are no such provisions in the church plan, within the meaning of section 72(m)(7)) at the time of such separation from service.

(4) Correction of failure to meet church plan requirements

(A) In general

If a plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under section 501 fails to meet one or more of the requirements of this subsection and corrects its failure to meet such requirements within the correction period, the plan shall be deemed to meet the requirements of this subsection for the year in which the correction was made and for all prior years.

(B) Failure to correct

If a correction is not made within the correction period, the plan shall be deemed not to meet the requirements of this subsection beginning with the date on which the earliest failure to meet one or more of such requirements occurred.

(C) Correction period defined

The term ''correction period'' means—

(i) the period, ending 270 days after the date of mailing by the Secretary of a notice of default with respect to the plan's failure to meet one or more of the requirements of this subsection;

(ii) any period set by a court of competent jurisdiction after a final determination that the plan fails to meet such requirements, or, if the court does not specify such period, any reasonable period determined by the Secretary on the basis of all the facts and circumstances, but in any event not less than 270 days after the determination has become final; or

(iii) any additional period which the Secretary determines is reasonable or necessary for the correction of the default,

whichever has the latest ending date.

(5) Special rules for chaplains and self-employed ministers

(A) Certain ministers may participate

For purposes of this part—

(i) In general

A duly ordained, commissioned, or licensed minister of a church is described in paragraph (3)(B) if, in connection with the exercise of their ministry, the minister—

(I) is a self-employed individual (within the meaning of section 401(c)(1)(B), or

(II) is employed by an organization other than an organization which is described in section 501(c)(3) and with respect to which the minister shares common religious bonds.

(ii) Treatment as employer and employee

For purposes of sections 403(b)(1)(A) and 404(a)(10), a minister described in clause (i)(I) shall be treated as employed by the minister's own employer which is an organization described in section 501(c)(3) and exempt from tax under section 501(a).

(B) Special rules for applying section 403(b) to self-employed ministers

In the case of a minister described in subparagraph (A)(i)(I)—

(i) the minister's includible compensation under section 403(b)(3) shall be determined by reference to the minister's earned income (within the meaning of section 401(c)(2)) from such ministry rather than the amount of compensation which is received from an employer, and

(ii) the years (and portions of years) in which such minister was a self-employed individual (within the meaning of section 401(c)(1)(B)) with respect to such ministry shall be included for purposes of section 403(b)(4).

(C) Effect on non-denominational plans

If a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry participates in a church plan (within the meaning of this section) and in the exercise of such ministry is employed by an employer not otherwise participating in such church plan, then such employer may exclude such minister from being treated as an employee of such employer for purposes of applying sections 401(a)(3), 401(a)(4), and 401(a)(5), as in effect on September 1, 1974, and sections 401(a)(4), 401(a)(5), 401(a)(26), 401(k)(3), 401(m), 403(b)(1)(D) (including section 403(b)(12)), and 410 to any stock bonus, pension, profit-shar-

ing, or annuity plan (including an annuity described in section 403(b) or a retirement income account described in section 403(b)(9)). The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purpose of, and prevent the abuse of, this subparagraph.

(D) Compensation taken into account only once

If any compensation is taken into account in determining the amount of any contributions made to, or benefits to be provided under, any church plan, such compensation shall not also be taken into account in determining the amount of any contributions made to, or benefits to be provided under, any other stock bonus, pension, profit-sharing, or annuity plan which is not a church plan.

(E) Exclusion

In the case of a contribution to a church plan made on behalf of a minister described in subparagraph (A)(i)(II), such contribution shall not be included in the gross income of the minister to the extent that such contribution would not be so included if the minister was an employee of a church.

(f) Multiemployer plan

(1) Definition

For purposes of this part, the term ''multiemployer plan'' means a plan—

(A) to which more than one employer is required to contribute,

(B) which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer, and

(C) which satisfies such other requirements as the Secretary of Labor may prescribe by regulation.

(2) Cases of common control

For purposes of this subsection, all trades or businesses (whether or not incorporated) which are under common control within the meaning of subsection (c) are considered a single employer.

(3) Continuation of status after termination

Notwithstanding paragraph (1), a plan is a multiemployer plan on and after its termination date under title IV of the Employee Retirement Income Security Act of 1974 if the plan was a multiemployer plan under this subsection for the plan year preceding its termination date.

(4) Transitional rule

For any plan year which began before the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980, the term ''multiemployer plan'' means a plan described in this subsection as in effect immediately before that date.

(5) Special election

Within one year after the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980, a multiemployer plan may irrevocably elect, pursuant to procedures established by the Pension Benefit Guaranty Corporation and subject to the provisions of section 4403(b) and (c) of the Employee Retirement Income Security Act of 1974, that the plan shall not be treated as a multiemployer plan for any purpose under such Act or this title, if for each of the last 3 plan years ending prior to the effective date of the Multiemployer Pension Plan Amendments Act of 1980—

(A) the plan was not a multiemployer plan because the plan was not a plan described in section 3(37)(A)(iii) of the Employee Retirement Income Security Act of 1974 and section 414(f)(1)(C) (as such provisions were in effect on the day before the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980); and

(B) the plan had been identified as a plan that was not a multiemployer plan in substantially all its filings with the Pension Benefit Guaranty Corporation, the Secretary of Labor and the Secretary.

(6) Election with regard to multiemployer status

(A) Within 1 year after the enactment of the Pension Protection Act of 2006—

(i) An election under paragraph (5) may be revoked, pursuant to procedures prescribed by the Pension Benefit Guaranty Corporation, if, for each of the 3 plan years prior to the date of the enactment of that Act, the plan would have been a multiemployer plan but for the election under paragraph (5), and

(ii) a plan that meets the criteria in subparagraph (A) and (B) of paragraph (1) of this subsection or that is described in subparagraph (E) may, pursuant to procedures prescribed by the Pension Benefit Guaranty Corporation, elect to be a multiemployer plan, if—

(I) for each of the 3 plan years immediately preceding the first plan year for which the election under this paragraph is effective with respect to the plan, the plan has met those criteria or is so described,

(II) substantially all of the plan's employer contributions for each of those plan years were made or required to be made by organizations that were exempt from tax under section 501, and

(III) the plan was established prior to September 2, 1974.

(B) An election under this paragraph shall be effective for all purposes under this Act[1] and under the Employee Retirement Income Security Act of 1974, starting with any plan year beginning on or after January 1, 1999, and ending before January 1, 2008, as designated by the plan in the election made under subparagraph (A)(ii).

(C) Once made, an election under this paragraph shall be irrevocable, except that a plan described in subparagraph (A)(ii) shall cease to be a multiemployer plan as of the plan year beginning immediately after the first plan year for which the majority of its employer contributions were made or required to be made by organizations that were not exempt from tax under section 501.

[1] So in original. Probably should be ''title''.

(D) The fact that a plan makes an election under subparagraph (A)(ii) does not imply that the plan was not a multiemployer plan prior to the date of the election or would not be a multiemployer plan without regard to the election.

(E) A plan is described in this subparagraph if it is a plan sponsored by an organization which is described in section 501(c)(5) and exempt from tax under section 501(a) and which was established in Chicago, Illinois, on August 12, 1881.

(F) MAINTENANCE UNDER COLLECTIVE BARGAINING AGREEMENT.—For purposes of this title and the Employee Retirement Income Security Act of 1974, a plan making an election under this paragraph shall be treated as maintained pursuant to a collective bargaining agreement if a collective bargaining agreement, expressly or otherwise, provides for or permits employer contributions to the plan by one or more employers that are signatory to such agreement, or participation in the plan by one or more employees of an employer that is signatory to such agreement, regardless of whether the plan was created, established, or maintained for such employees by virtue of another document that is not a collective bargaining agreement.

(g) Plan administrator

For purposes of this part, the term ''plan administrator'' means—

(1) the person specifically so designated by the terms of the instrument under which the plan is operated;

(2) in the absence of a designation referred to in paragraph (1)—

(A) in the case of a plan maintained by a single employer, such employer,

(B) in the case of a plan maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who maintained the plan, or

(C) in any case to which subparagraph (A) or (B) does not apply, such other person as the Secretary may by regulation, prescribe.

(h) Tax treatment of certain contributions

(1) In general

Effective with respect to taxable years beginning after December 31, 1973, for purposes of this title, any amount contributed—

(A) to an employees' trust described in section 401(a), or

(B) under a plan described in section 403(a), shall not be treated as having been made by the employer if it is designated as an employee contribution.

(2) Designation by units of government

For purposes of paragraph (1), in the case of any plan established by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing, or a governmental plan described in the last sentence of section 414(d) (relating to plans of Indian tribal governments), where the contributions of employing units are designated as employee contributions but where any employing unit picks up the contributions, the contributions so picked up shall be treated as employer contributions.

(i) Defined contribution plan

For purposes of this part, the term ''defined contribution plan'' means a plan which provides for an individual account for each participant and for benefits based solely on the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account.

(j) Defined benefit plan

For purposes of this part, the term ''defined benefit plan'' means any plan which is not a defined contribution plan.

(k) Certain plans

A defined benefit plan which provides a benefit derived from employer contributions which is based partly on the balance of the separate account of a participant shall—

(1) for purposes of section 410 (relating to minimum participation standards), be treated as a defined contribution plan.

(2) for purposes of sections 72(d) (relating to treatment of employee contributions as separate contract), 411(a)(7)(A) (relating to minimum vesting standards), 415 (relating to limitations on benefits and contributions under qualified plans), and 401(m) (relating to nondiscrimination tests for matching requirements and employee contributions), be treated as consisting of a defined contribution plan to the extent benefits are based on the separate account of a participant and as a defined benefit plan with respect to the remaining portion of benefits under the plan, and

(3) for purposes of section 4975 (relating to tax on prohibited transactions), be treated as a defined benefit plan.

***(l)* Merger and consolidations of plans or transfers of plan assets**

(1) In general

A trust which forms a part of a plan shall not constitute a qualified trust under section 401 and a plan shall be treated as not described in section 403(a) unless in the case of any merger or consolidation of the plan with, or in the case of any transfer of assets or liabilities of such plan to, any other trust plan after September 2, 1974, each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated). The preceding sentence does not apply to any multiemployer plan with respect to any transaction to the extent that participants either before or after the transaction are covered under a multiemployer plan to which Title IV of the Employee Retirement Income Security Act of 1974 applies.

(2) Allocation of assets in plan spin-offs, etc.

(A) In general

In the case of a plan spin-off of a defined benefit plan, a trust which forms part of—

(i) the original plan, or
(ii) any plan spun off from such plan,

shall not constitute a qualified trust under this section unless the applicable percentage of excess assets are allocated to each of such plans.

(B) Applicable percentage

For purposes of subparagraph (A), the term ''applicable percentage'' means, with respect to each of the plans described in clauses (i) and (ii) of subparagraph (A), the percentage determined by dividing—

(i) the excess (if any) of—

(I) the sum of the funding target and target normal cost determined under section 430, over

(II) the amount of the assets required to be allocated to the plan after the spin-off (without regard to this paragraph), by

(ii) the sum of the excess amounts determined separately under clause (i) for all such plans.

(C) Excess assets

For purposes of subparagraph (A), the term ''excess assets'' means an amount equal to the excess (if any) of—

(i) the fair market value of the assets of the original plan immediately before the spin-off, over

(ii) the amount of assets required to be allocated after the spin-off to all plans (determined without regard to this paragraph).

(D) Certain spun-off plans not taken into account

(i) In general

A plan involved in a spin-off which is described in clause (ii), (iii), or (iv) shall not be taken into account for purposes of this paragraph, except that the amount determined under subparagraph (C)(ii) shall be increased by the amount of assets allocated to such plan.

(ii) Plans transferred out of controlled groups

A plan is described in this clause if, after such spin-off, such plan is maintained by an employer who is not a member of the same controlled group as the employer maintaining the original plan.

(iii) Plans transferred out of multiple employer plans

A plan as described in this clause if, after the spin-off, any employer maintaining such plan (and any member of the same controlled group as such employer) does not maintain any other plan remaining after the spin-off which is also maintained by another employer (or member of the same controlled group as such other employer) which maintained the plan in existence before the spin-off.

(iv) Terminated plans

A plan is described in this clause if, pursuant to the transaction involving the spin-off, the plan is terminated.

(v) Controlled group

For purposes of this subparagraph, the term ''controlled group'' means any group treated as a single employer under subsection (b), (c), (m), or (*o*).

(E) Paragraph not to apply to multiemployer plans

This paragraph does not apply to any multiemployer plan with respect to any spin-off to the extent that participants either before or after the spin-off are covered under a multiemployer plan to which title IV of the Employee Retirement Income Security Act of 1974 applies.

(F) Application to similar transaction

Except as provided by the Secretary, rules similar to the rules of this paragraph shall apply to transactions similar to spin-offs.

(G) Special rules for bridge banks [2]

For purposes of this paragraph, in the case of a bridge depository institution established under section 11(i) of the Federal Deposit Insurance Act (12 U.S.C. 1821(i))—

(i) such bank shall be treated as a member of any controlled group which includes any insured bank (as defined in section 3(h) of such Act (12 U.S.C. 1813(h)))—

(I) which maintains a defined benefit plan,

(II) which is closed by the appropriate bank regulatory authorities, and

(III) any asset and liabilities of which are received by the bridge depository institution, and

(ii) the requirements of this paragraph shall not be treated as met with respect to such plan unless during the 180-day period beginning on the date such insured bank is closed—

(I) the bridge depository institution has the right to require the plan to transfer (subject to the provisions of this paragraph) not more than 50 percent of the excess assets (as defined in subparagraph (C)) to a defined benefit plan maintained by the bridge depository institution with respect to participants or former participants (including retirees and beneficiaries) in the original plan employed by the bridge depository institution or formerly employed by the closed bank, and

(II) no other merger, spin-off, termination, or similar transaction involving the portion of the excess assets described in subclause (I) may occur without the prior written consent of the bridge depository institution.

(m) Employees of an affiliated service group

(1) In general

For purposes of the employee benefit requirements listed in paragraph (4), except to the extent otherwise provided in regulations, all employees of the members of an affiliated

[2] So in original. Probably should be ''bridge depository institutions''

service group shall be treated as employed by a single employer.

(2) Affiliated service group

For purposes of this subsection, the term ''affiliated service group'' means a group consisting of a service organization (hereinafter in this paragraph referred to as the ''first organization'') and one or more of the following:

(A) any service organization which—

(i) is a shareholder or partner in the first organization, and

(ii) regularly performs services for the first organization or is regularly associated with the first organization in performing services for third persons, and

(B) any other organization if—

(i) a significant portion of the business of such organization is the performance of services (for the first organization, for organizations described in subparagraph (A), or for both) of a type historically performed in such service field by employees, and

(ii) 10 percent or more of the interests in such organization is held by persons who are highly compensated employees (within the meaning of section 414(q)) of the first organization or an organization described in subparagraph (A).

(3) Service organizations

For purposes of this subsection, the term ''service organization'' means an organization the principal business of which is the performance of services.

(4) Employee benefit requirements

For purposes of this subsection, the employee benefit requirements listed in this paragraph are—

(A) paragraphs (3), (4), (7), (16), (17), and (26) of section 401(a), and

(B) sections 408(k), 408(p), 410, 411, 415, and 416.

(5) Certain organizations performing management functions

For purposes of this subsection, the term ''affiliated service group'' also includes a group consisting of—

(A) an organization the principal business of which is performing, on a regular and continuing basis, management functions for 1 organization (or for 1 organization and other organizations related to such 1 organization), and

(B) the organization (and related organizations) for which such functions are so performed by the organization described in subparagraph (A).

For purposes of this paragraph, the term ''related organizations'' has the same meaning as the term ''related persons'' when used in section 144(a)(3).

(6) Other definitions

For purposes of this subsection—

(A) Organization defined

The term ''organization'' means a corporation, partnership, or other organization.

(B) Ownership

In determining ownership, the principles of section 318(a) shall apply.

(n) Employee leasing

(1) In general

For purposes of the requirements listed in paragraph (3), with respect to any person (hereinafter in this subsection referred to as the ''recipient'') for whom a leased employee performs services—

(A) the leased employee shall be treated as an employee of the recipient, but

(B) contributions or benefits provided by the leasing organization which are attributable to services performed for the recipient shall be treated as provided by the recipient.

(2) Leased employee

For purposes of paragraph (1), the term ''leased employee'' means any person who is not an employee of the recipient and who provides services to the recipient if—

(A) such services are provided pursuant to an agreement between the recipient and any other person (in this subsection referred to as the ''leasing organization''),

(B) such person has performed such services for the recipient (or for the recipient and related persons) on a substantially full-time basis for a period of at least 1 year, and

(C) such services are performed under primary direction or control by the recipient.

(3) Requirements

For purposes of this subsection, the requirements listed in this paragraph are—

(A) paragraphs (3), (4), (7), (16), (17), and (26) of section 401(a),

(B) sections 408(k), 408(p), 410, 411, 415, and 416, and

(C) sections 79, 106, 117(d), 120, 125, 127, 129, 132, 137, 274(j), 505, and 4980B.

(4) Time when first considered as employee

(A) In general

In the case of any leased employee, paragraph (1) shall apply only for purposes of determining whether the requirements listed in paragraph (3) are met for periods after the close of the period referred to in paragraph (2)(B).

(B) Years of service

In the case of a person who is an employee of the recipient (whether by reason of this subsection or otherwise), for purposes of the requirements listed in paragraph (3), years of service for the recipient shall be determined by taking into account any period for which such employee would have been a leased employee but for the requirements of paragraph (2)(B).

(5) Safe harbor

(A) In general

In the case of requirements described in subparagraphs (A) and (B) of paragraph (3), this subsection shall not apply to any leased employee with respect to services performed for a recipient if—

(i) such employee is covered by a plan which is maintained by the leasing organization and meets the requirements of subparagraph (B), and

(ii) leased employees (determined without regard to this paragraph) do not constitute more than 20 percent of the recipient's nonhighly compensated work force.

(B) Plan requirements

A plan meets the requirements of this subparagraph if—

(i) such plan is a money purchase pension plan with a nonintegrated employer contribution rate for each participant of at least 10 percent of compensation,

(ii) such plan provides for full and immediate vesting, and

(iii) each employee of the leasing organization (other than employees who perform substantially all of their services for the leasing organization) immediately participates in such plan.

Clause (iii) shall not apply to any individual whose compensation from the leasing organization in each plan year during the 4-year period ending with the plan year is less than $1,000.

(C) Definitions

For purposes of this paragraph—

(i) Highly compensated employee

The term ''highly compensated employee'' has the meaning given such term by section 414(q).

(ii) Nonhighly compensated work force

The term ''nonhighly compensated work force'' means the aggregate number of individuals (other than highly compensated employees)—

(I) who are employees of the recipient (without regard to this subsection) and have performed services for the recipient (or for the recipient and related persons) on a substantially full-time basis for a period of at least 1 year, or

(II) who are leased employees with respect to the recipient (determined without regard to this paragraph).

(iii) Compensation

The term ''compensation'' has the same meaning as when used in section 415; except that such term shall include—

(I) any employer contribution under a qualified cash or deferred arrangement to the extent not included in gross income under section 402(e)(3) or 402(h)(1)(B),

(II) any amount which the employee would have received in cash but for an election under a cafeteria plan (within the meaning of section 125), and

(III) any amount contributed to an annuity contract described in section 403(b) pursuant to a salary reduction agreement (within the meaning of section 3121(a)(5)(D)).

(6) Other rules

For purposes of this subsection—

(A) Related persons

The term ''related persons'' has the same meaning as when used in section 144(a)(3).

(B) Employees of entities under common control

The rules of subsections (b), (c), (m), and (*o*) shall apply.

(*o*) Regulations

The Secretary shall prescribe such regulations (which may provide rules in addition to the rules contained in subsections (m) and (n)) as may be necessary to prevent the avoidance of any employee benefit requirement listed in subsection (m)(4) or (n)(3) or any requirement under section 457 through the use of—

(1) separate organizations,

(2) employee leasing, or

(3) other arrangements.

The regulations prescribed under subsection (n) shall include provisions to minimize the recordkeeping requirements of subsection (n) in the case of an employer which has no top-heavy plans (within the meaning of section 416(g)) and which uses the services of persons (other than employees) for an insignificant percentage of the employer's total workload.

(p) Qualified domestic relations order defined

For purposes of this subsection and section 401(a)(13)—

(1) In general

(A) Qualified domestic relations order

The term ''qualified domestic relations order'' means a domestic relations order—

(i) which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan, and

(ii) with respect to which the requirements of paragraphs (2) and (3) are met.

(B) Domestic relations order

The term ''domestic relations order'' means any judgment, decree, or order (including approval of a property settlement agreement) which—

(i) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant, and

(ii) is made pursuant to a State domestic relations law (including a community property law).

(2) Order must clearly specify certain facts

A domestic relations order meets the requirements of this paragraph only if such order clearly specifies—

(A) the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order,

(B) the amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined,

(C) the number of payments or period to which such order applies, and

(D) each plan to which such order applies.

(3) Order may not alter amount, form, etc., of benefits

A domestic relations order meets the requirements of this paragraph only if such order—

(A) does not require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan,

(B) does not require the plan to provide increased benefits (determined on the basis of actuarial value), and

(C) does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.

(4) Exception for certain payments made after earliest retirement age

(A) In general

A domestic relations order shall not be treated as failing to meet the requirements of subparagraph (A) of paragraph (3) solely because such order requires that payment of benefits be made to an alternate payee—

(i) in the case of any payment before a participant has separated from service, on or after the date on which the participant attains (or would have attained) the earliest retirement age,

(ii) as if the participant had retired on the date on which such payment is to begin under such order (but taking into account only the present value of the benefits actually accrued and not taking into account the present value of any employer subsidy for early retirement), and

(iii) in any form in which such benefits may be paid under the plan to the participant (other than in the form of a joint and survivor annuity with respect to the alternate payee and his or her subsequent spouse).

For purposes of clause (ii), the interest rate assumption used in determining the present value shall be the interest rate specified in the plan or, if no rate is specified, 5 percent.

(B) Earliest retirement age

For purposes of this paragraph, the term ''earliest retirement age'' means the earlier of—

(i) the date on which the participant is entitled to a distribution under the plan, or

(ii) the later of—

(I) the date the participant attains age 50, or

(II) the earliest date on which the participant could begin receiving benefits under the plan if the participant separated from service.

(5) Treatment of former spouse as surviving spouse for purposes of determining survivor benefits

To the extent provided in any qualified domestic relations order—

(A) the former spouse of a participant shall be treated as a surviving spouse of such participant for purposes of sections 401(a)(11) and 417 (and any spouse of the participant shall not be treated as a spouse of the participant for such purposes), and

(B) if married for at least 1 year, the surviving former spouse shall be treated as meeting the requirements of section 417(d).

(6) Plan procedures with respect to orders

(A) Notice and determination by administrator

In the case of any domestic relations order received by a plan—

(i) the plan administrator shall promptly notify the participant and each alternate payee of the receipt of such order and the plan's procedures for determining the qualified status of domestic relations orders, and

(ii) within a reasonable period after receipt of such order, the plan administrator shall determine whether such order is a qualified domestic relations order and notify the participant and each alternate payee of such determination.

(B) Plan to establish reasonable procedures

Each plan shall establish reasonable procedures to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders.

(7) Procedures for period during which determination is being made

(A) In general

During any period in which the issue of whether a domestic relations order is a qualified domestic relations order is being determined (by the plan administrator, by a court of competent jurisdiction, or otherwise), the plan administrator shall separately account for the amounts (hereinafter in this paragraph referred to as the ''segregated amounts'') which would have been payable to the alternate payee during such period if the order had been determined to be a qualified domestic relations order.

(B) Payment to alternate payee if order determined to be qualified domestic relations order

If within the 18-month period described in subparagraph (E) the order (or modification thereof) is determined to be a qualified domestic relations order, the plan administrator shall pay the segregated amounts (including any interest thereon) to the person or persons entitled thereto.

(C) Payment to plan participant in certain cases

If within the 18-month period described in subparagraph (E)—

(i) it is determined that the order is not a qualified domestic relations order, or

(ii) the issue as to whether such order is a qualified domestic relations order is not resolved,

then the plan administrator shall pay the segregated amounts (including any interest

thereon) to the person or persons who would have been entitled to such amounts if there had been no order.

(D) Subsequent determination or order to be applied prospectively only

Any determination that an order is a qualified domestic relations order which is made after the close of the 18-month period described in subparagraph (E) shall be applied prospectively only.

(E) Determination of 18-month period

For purposes of this paragraph, the 18-month period described in this subparagraph is the 18-month period beginning with the date on which the first payment would be required to be made under the domestic relations order.

(8) Alternate payee defined

The term ''alternate payee'' means any spouse, former spouse, child or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such participant.

(9) Subsection not to apply to plans to which section 401(a)(13) does not apply

This subsection shall not apply to any plan to which section 401(a)(13) does not apply. For purposes of this title, except as provided in regulations, any distribution from an annuity contract under section 403(b) pursuant to a qualified domestic relations order shall be treated in the same manner as a distribution from a plan to which section 401(a)(13) applies.

(10) Waiver of certain distribution requirements

With respect to the requirements of subsections (a) and (k) of section 401, section 403(b), section 409(d), and section 457(d), a plan shall not be treated as failing to meet such requirements solely by reason of payments to an alternative payee pursuant to a qualified domestic relations order.

(11) Application of rules to certain other plans

For purposes of this title, a distribution or payment from a governmental plan (as defined in subsection (d)) or a church plan (as described in subsection (e)) or an eligible deferred compensation plan (within the meaning of section 457(b)) shall be treated as made pursuant to a qualified domestic relations order if it is made pursuant to a domestic relations order which meets the requirement of clause (i) of paragraph (1)(A).

(12) Tax treatment of payments from a section 457 plan

If a distribution or payment from an eligible deferred compensation plan described in section 457(b) is made pursuant to a qualified domestic relations order, rules similar to the rules of section 402(e)(1)(A) shall apply to such distribution or payment.

(13) Consultation with the Secretary

In prescribing regulations under this subsection and section 401(a)(13), the Secretary of Labor shall consult with the Secretary.

(q) Highly compensated employee

(1) In general

The term ''highly compensated employee'' means any employee who—

(A) was a 5-percent owner at any time during the year or the preceding year, or

(B) for the preceding year—

(i) had compensation from the employer in excess of $80,000, and

(ii) if the employer elects the application of this clause for such preceding year, was in the top-paid group of employees for such preceding year.

The Secretary shall adjust the $80,000 amount under subparagraph (B) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter ending September 30, 1996.

(2) 5-percent owner

An employee shall be treated as a 5-percent owner for any year if at any time during such year such employee was a 5-percent owner (as defined in section 416(i)(1)) of the employer.

(3) Top-paid group

An employee is in the top-paid group of employees for any year if such employee is in the group consisting of the top 20 percent of the employees when ranked on the basis of compensation paid during such year.

(4) Compensation

For purposes of this subsection, the term ''compensation'' has the meaning given such term by section 415(c)(3).

(5) Excluded employees

For purposes of subsection (r) and for purposes of determining the number of employees in the top-paid group, the following employees shall be excluded—

(A) employees who have not completed 6 months of service,

(B) employees who normally work less than 17½ hours per week,

(C) employees who normally work during not more than 6 months during any year,

(D) employees who have not attained age 21, and

(E) except to the extent provided in regulations, employees who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and the employer.

Except as provided by the Secretary, the employer may elect to apply subparagraph (A), (B), (C), or (D) by substituting a shorter period of service, smaller number of hours or months, or lower age for the period of service, number of hours or months, or age (as the case may be) than that specified in such subparagraph.

(6) Former employees

A former employee shall be treated as a highly compensated employee if—

(A) such employee was a highly compensated employee when such employee separated from service, or

(B) such employee was a highly compensated employee at any time after attaining age 55.

(7) Coordination with other provisions

Subsections (b), (c), (m), (n), and (*o*) shall be applied before the application of this subsection.

(8) Special rule for nonresident aliens

For purposes of this subsection and subsection (r), employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)) shall not be treated as employees.

(9) Certain employees not considered highly compensated and excluded employees under pre-ERISA rules for church plans

In the case of a church plan (as defined in subsection (e)), no employee shall be considered an officer, a person whose principal duties consist of supervising the work of other employees, or a highly compensated employee for any year unless such employee is a highly compensated employee under paragraph (1) for such year.

(r) Special rules for separate line of business

(1) In general

For purposes of sections 129(d)(8) and 410(b), an employer shall be treated as operating separate lines of business during any year if the employer for bona fide business reasons operates separate lines of business.

(2) Line of business must have 50 employees, etc.

A line of business shall not be treated as separate under paragraph (1) unless—

(A) such line of business has at least 50 employees who are not excluded under subsection (q)(5),

(B) the employer notifies the Secretary that such line of business is being treated as separate for purposes of paragraph (1), and

(C) such line of business meets guidelines prescribed by the Secretary or the employer receives a determination from the Secretary that such line of business may be treated as separate for purposes of paragraph (1).

(3) Safe harbor rule

(A) In general

The requirements of subparagraph (C) of paragraph (2) shall not apply to any line of business if the highly compensated employee percentage with respect to such line of business is—

(i) not less than one-half, and

(ii) not more than twice,

the percentage which highly compensated employees are of all employees of the employer. An employer shall be treated as meeting the requirements of clause (i) if at least 10 percent of all highly compensated employees of the employer perform services solely for such line of business.

(B) Determination may be based on preceding year

The requirements of subparagraph (A) shall be treated as met with respect to any line of business if such requirements were met with respect to such line of business for the preceding year and if—

(i) no more than a de minimis number of employees were shifted to or from the line of business after the close of the preceding year, or

(ii) the employees shifted to or from the line of business after the close of the preceding year contained a substantially proportional number of highly compensated employees.

(4) Highly compensated employee percentage defined

For purposes of this subsection, the term ''highly compensated employee percentage'' means the percentage which highly compensated employees performing services for the line of business are of all employees performing services for the line of business.

(5) Allocation of benefits to line of business

For purposes of this subsection, benefits which are attributable to services provided to a line of business shall be treated as provided by such line of business.

(6) Headquarters personnel, etc.

The Secretary shall prescribe rules providing for—

(A) the allocation of headquarters personnel among the lines of business of the employer, and

(B) the treatment of other employees providing services for more than 1 line of business of the employer or not in lines of business meeting the requirements of paragraph (2).

(7) Separate operating units

For purposes of this subsection, the term ''separate line of business'' includes an operating unit in a separate geographic area separately operated for a bona fide business reason.

(8) Affiliated service groups

This subsection shall not apply in the case of any affiliated service group (within the meaning of section 414(m)).

(s) Compensation

For purposes of any applicable provision—

(1) In general

Except as provided in this subsection, the term ''compensation'' has the meaning given such term by section 415(c)(3).

(2) Employer may elect not to treat certain deferrals as compensation

An employer may elect not to include as compensation any amount which is contributed by the employer pursuant to a salary reduction agreement and which is not includible in the gross income of an employee under section 125, 132(f)(4), 402(e)(3), 402(h), or 403(b).

(3) Alternative determination of compensation

The Secretary shall by regulation provide for alternative methods of determining compensation which may be used by an employer, except that such regulations shall provide that

an employer may not use an alternative method if the use of such method discriminates in favor of highly compensated employees (within the meaning of subsection (q)).

(4) Applicable provision

For purposes of this subsection, the term ''applicable provision'' means any provision which specifically refers to this subsection.

(t) Application of controlled group rules to certain employee benefits

(1) In general

All employees who are treated as employed by a single employer under subsection (b), (c), or (m) shall be treated as employed by a single employer for purposes of an applicable section. The provisions of subsection (*o*) shall apply with respect to the requirements of an applicable section.

(2) Applicable section

For purposes of this subsection, the term ''applicable section'' means section 79, 106, 117(d), 120, 125, 127, 129, 132, 137, 274(j), 505, or 4980B.

(u) Special rules relating to veterans' reemployment rights under USERRA and to differential wage payments to members on active duty

(1) Treatment of certain contributions made pursuant to veterans' reemployment rights

If any contribution is made by an employer or an employee under an individual account plan with respect to an employee, or by an employee to a defined benefit plan that provides for employee contributions, and such contribution is required by reason of such employee's rights under chapter 43 of title 38, United States Code, resulting from qualified military service, then—

(A) such contribution shall not be subject to any otherwise applicable limitation contained in section 402(g), 402(h), 403(b), 404(a), 404(h), 408, 415, or 457, and shall not be taken into account in applying such limitations to other contributions or benefits under such plan or any other plan, with respect to the year in which the contribution is made,

(B) such contribution shall be subject to the limitations referred to in subparagraph (A) with respect to the year to which the contribution relates (in accordance with rules prescribed by the Secretary), and

(C) such plan shall not be treated as failing to meet the requirements of section 401(a)(4), 401(a)(26), 401(k)(3), 401(k)(11), 401(k)(12), 401(m), 403(b)(12), 408(k)(3), 408(k)(6), 408(p), 410(b), or 416 by reason of the making of (or the right to make) such contribution.

For purposes of the preceding sentence, any elective deferral or employee contribution made under paragraph (2) shall be treated as required by reason of the employee's rights under such chapter 43.

(2) Reemployment rights under USERRA with respect to elective deferrals

(A) In general

For purposes of this subchapter and section 457, if an employee is entitled to the benefits of chapter 43 of title 38, United States Code, with respect to any plan which provides for elective deferrals, the employer sponsoring the plan shall be treated as meeting the requirements of such chapter 43 with respect to such elective deferrals only if such employer—

(i) permits such employee to make additional elective deferrals under such plan (in the amount determined under subparagraph (B) or such lesser amount as is elected by the employee) during the period which begins on the date of the reemployment of such employee with such employer and has the same length as the lesser of—

(I) the product of 3 and the period of qualified military service which resulted in such rights, and

(II) 5 years, and

(ii) makes a matching contribution with respect to any additional elective deferral made pursuant to clause (i) which would have been required had such deferral actually been made during the period of such qualified military service.

(B) Amount of makeup required

The amount determined under this subparagraph with respect to any plan is the maximum amount of the elective deferrals that the individual would have been permitted to make under the plan in accordance with the limitations referred to in paragraph (1)(A) during the period of qualified military service if the individual had continued to be employed by the employer during such period and received compensation as determined under paragraph (7). Proper adjustment shall be made to the amount determined under the preceding sentence for any elective deferrals actually made during the period of such qualified military service.

(C) Elective deferral

For purposes of this paragraph, the term ''elective deferral'' has the meaning given such term by section 402(g)(3); except that such term shall include any deferral of compensation under an eligible deferred compensation plan (as defined in section 457(b)).

(D) After-tax employee contributions

References in subparagraphs (A) and (B) to elective deferrals shall be treated as including references to employee contributions.

(3) Certain retroactive adjustments not required

For purposes of this subchapter and subchapter E, no provision of chapter 43 of title 38, United States Code, shall be construed as requiring—

(A) any crediting of earnings to an employee with respect to any contribution before such contribution is actually made, or

(B) any allocation of any forfeiture with respect to the period of qualified military service.

(4) Loan repayment suspensions permitted

If any plan suspends the obligation to repay any loan made to an employee from such plan

for any part of any period during which such employee is performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code), whether or not qualified military service, such suspension shall not be taken into account for purposes of section 72(p), 401(a), or 4975(d)(1).

(5) Qualified military service

For purposes of this subsection, the term ''qualified military service'' means any service in the uniformed services (as defined in chapter 43 of title 38, United States Code) by any individual if such individual is entitled to reemployment rights under such chapter with respect to such service.

(6) Individual account plan

For purposes of this subsection, the term ''individual account plan'' means any defined contribution plan [3](including any tax-sheltered annuity plan under section 403(b), any simplified employee pension under section 408(k), any qualified salary reduction arrangement under section 408(p), and any eligible deferred compensation plan (as defined in section 457(b)).

(7) Compensation

For purposes of sections 403(b)(3), 415(c)(3), and 457(e)(5), an employee who is in qualified military service shall be treated as receiving compensation from the employer during such period of qualified military service equal to—

(A) the compensation the employee would have received during such period if the employee were not in qualified military service, determined based on the rate of pay the employee would have received from the employer but for absence during the period of qualified military service, or

(B) if the compensation the employee would have received during such period was not reasonably certain, the employee's average compensation from the employer during the 12-month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

(8) USERRA requirements for qualified retirement plans

For purposes of this subchapter and section 457, an employer sponsoring a retirement plan shall be treated as meeting the requirements of chapter 43 of title 38, United States Code, only if each of the following requirements is met:

(A) An individual reemployed under such chapter is treated with respect to such plan as not having incurred a break in service with the employer maintaining the plan by reason of such individual's period of qualified military service.

(B) Each period of qualified military service served by an individual is, upon reemployment under such chapter, deemed with respect to such plan to constitute service with the employer maintaining the plan for the purpose of determining the nonforfeitability of the individual's accrued benefits under such plan and for the purpose of determining the accrual of benefits under such plan.

(C) An individual reemployed under such chapter is entitled to accrued benefits that are contingent on the making of, or derived from, employee contributions or elective deferrals only to the extent the individual makes payment to the plan with respect to such contributions or deferrals. No such payment may exceed the amount the individual would have been permitted or required to contribute had the individual remained continuously employed by the employer throughout the period of qualified military service. Any payment to such plan shall be made during the period beginning with the date of reemployment and whose duration is 3 times the period of the qualified military service (but not greater than 5 years).

(9) Treatment in the case of death or disability resulting from active military service

(A) In general

For benefit accrual purposes, an employer sponsoring a retirement plan may treat an individual who dies or becomes disabled (as defined under the terms of the plan) while performing qualified military service with respect to the employer maintaining the plan as if the individual has resumed employment in accordance with the individual's reemployment rights under chapter 43 of title 38, United States Code, on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability. In the case of any such treatment, and subject to subparagraphs (B) and (C), any full or partial compliance by such plan with respect to the benefit accrual requirements of paragraph (8) with respect to such individual shall be treated for purposes of paragraph (1) as if such compliance were required under such chapter 43.

(B) Nondiscrimination requirement

Subparagraph (A) shall apply only if all individuals performing qualified military service with respect to the employer maintaining the plan (as determined under subsections (b), (c), (m), and (*o*)) who die or became disabled as a result of performing qualified military service prior to reemployment by the employer are credited with service and benefits on reasonably equivalent terms.

(C) Determination of benefits

The amount of employee contributions and the amount of elective deferrals of an individual treated as reemployed under subparagraph (A) for purposes of applying paragraph (8)(C) shall be determined on the basis of the individual's average actual employee contributions or elective deferrals for the lesser of—

(i) the 12-month period of service with the employer immediately prior to qualified military service, or

(ii) if service with the employer is less than such 12-month period, the actual

[3] So in original. There is no closing parenthesis.

length of continuous service with the employer.

(10) Plans not subject to title 38

This subsection shall not apply to any retirement plan to which chapter 43 of title 38, United States Code, does not apply.

(11) References

For purposes of this section, any reference to chapter 43 of title 38, United States Code, shall be treated as a reference to such chapter as in effect on December 12, 1994 (without regard to any subsequent amendment).

(12) Treatment of differential wage payments

(A) In general

Except as provided in this paragraph, for purposes of applying this title to a retirement plan to which this subsection applies—

(i) an individual receiving a differential wage payment shall be treated as an employee of the employer making the payment,

(ii) the differential wage payment shall be treated as compensation, and

(iii) the plan shall not be treated as failing to meet the requirements of any provision described in paragraph (1)(C) by reason of any contribution or benefit which is based on the differential wage payment.

(B) Special rule for distributions

(i) In general

Notwithstanding subparagraph (A)(i), for purposes of section 401(k)(2)(B)(i)(I), 403(b)(7)(A)(ii), 403(b)(11)(A), or 457(d)(1)(A)(ii), an individual shall be treated as having been severed from employment during any period the individual is performing service in the uniformed services described in section 3401(h)(2)(A).

(ii) Limitation

If an individual elects to receive a distribution by reason of clause (i), the plan shall provide that the individual may not make an elective deferral or employee contribution during the 6-month period beginning on the date of the distribution.

(C) Nondiscrimination requirement

Subparagraph (A)(iii) shall apply only if all employees of an employer (as determined under subsections (b), (c), (m), and (*o*)) performing service in the uniformed services described in section 3401(h)(2)(A) are entitled to receive differential wage payments on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the employer, to make contributions based on the payments on reasonably equivalent terms. For purposes of applying this subparagraph, the provisions of paragraphs (3), (4), and (5) of section 410(b) shall apply.

(D) Differential wage payment

For purposes of this paragraph, the term ''differential wage payment'' has the meaning given such term by section 3401(h)(2).

(v) Catch-up contributions for individuals age 50 or over

(1) In general

An applicable employer plan shall not be treated as failing to meet any requirement of this title solely because the plan permits an eligible participant to make additional elective deferrals in any plan year.

(2) Limitation on amount of additional deferrals

(A) In general

A plan shall not permit additional elective deferrals under paragraph (1) for any year in an amount greater than the lesser of—

(i) the applicable dollar amount, or

(ii) the excess (if any) of—

(I) the participant's compensation (as defined in section 415(c)(3)) for the year, over

(II) any other elective deferrals of the participant for such year which are made without regard to this subsection.

(B) Applicable dollar amount

For purposes of this paragraph—

(i) In the case of an applicable employer plan other than a plan described in section 401(k)(11) or 408(p), the applicable dollar amount shall be determined in accordance with the following table:

For taxable years beginning in:	The applicable dollar amount is:
2002	$1,000
2003	$2,000
2004	$3,000
2005	$4,000
2006 and thereafter	$5,000.

(ii) In the case of an applicable employer plan described in section 401(k)(11) or 408(p), the applicable dollar amount shall be determined in accordance with the following table:

For taxable years beginning in:	The applicable dollar amount is:
2002	$500
2003	$1,000
2004	$1,500
2005	$2,000
2006 and thereafter	$2,500.

(C) Cost-of-living adjustment

In the case of a year beginning after December 31, 2006, the Secretary shall adjust annually the $5,000 amount in subparagraph (B)(i) and the $2,500 amount in subparagraph (B)(ii) for increases in the cost-of-living at the same time and in the same manner as adjustments under section 415(d); except that the base period taken into account shall be the calendar quarter beginning July 1, 2005, and any increase under this subparagraph which is not a multiple of $500 shall be rounded to the next lower multiple of $500.

(D) Aggregation of plans

For purposes of this paragraph, plans described in clauses (i), (ii), and (iv) of para-

graph (6)(A) that are maintained by the same employer (as determined under subsection (b), (c), (m) or (*o*)) shall be treated as a single plan, and plans described in clause (iii) of paragraph (6)(A) that are maintained by the same employer shall be treated as a single plan.

(3) Treatment of contributions

In the case of any contribution to a plan under paragraph (1)—

(A) such contribution shall not, with respect to the year in which the contribution is made—

(i) be subject to any otherwise applicable limitation contained in sections 401(a)(30), 402(h), 403(b), 408, 415(c), and 457(b)(2) (determined without regard to section 457(b)(3)), or

(ii) be taken into account in applying such limitations to other contributions or benefits under such plan or any other such plan, and

(B) except as provided in paragraph (4), such plan shall not be treated as failing to meet the requirements of section 401(a)(4), 401(k)(3), 401(k)(11), 403(b)(12), 408(k), 410(b), or 416 by reason of the making of (or the right to make) such contribution.

(4) Application of nondiscrimination rules

(A) In general

An applicable employer plan shall be treated as failing to meet the nondiscrimination requirements under section 401(a)(4) with respect to benefits, rights, and features unless the plan allows all eligible participants to make the same election with respect to the additional elective deferrals under this subsection.

(B) Aggregation

For purposes of subparagraph (A), all plans maintained by employers who are treated as a single employer under subsection (b), (c), (m), or (*o*) of section 414 shall be treated as 1 plan, except that a plan described in clause (i) of section 410(b)(6)(C) shall not be treated as a plan of the employer until the expiration of the transition period with respect to such plan (as determined under clause (ii) of such section).

(5) Eligible participant

For purposes of this subsection, the term ''eligible participant'' means a participant in a plan—

(A) who would attain age 50 by the end of the taxable year,

(B) with respect to whom no other elective deferrals may (without regard to this subsection) be made to the plan for the plan (or other applicable) year by reason of the application of any limitation or other restriction described in paragraph (3) or comparable limitation or restriction contained in the terms of the plan.

(6) Other definitions and rules

For purposes of this subsection—

(A) Applicable employer plan

The term ''applicable employer plan'' means—

(i) an employees' trust described in section 401(a) which is exempt from tax under section 501(a),

(ii) a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b),

(iii) an eligible deferred compensation plan under section 457 of an eligible employer described in section 457(e)(1)(A), and

(iv) an arrangement meeting the requirements of section 408(k) or (p).

(B) Elective deferral

The term ''elective deferral'' has the meaning given such term by subsection (u)(2)(C).

(C) Exception for section 457 plans

This subsection shall not apply to a participant for any year for which a higher limitation applies to the participant under section 457(b)(3).

(w) Special rules for certain withdrawals from eligible automatic contribution arrangements

(1) In general

If an eligible automatic contribution arrangement allows an employee to elect to make permissible withdrawals—

(A) the amount of any such withdrawal shall be includible in the gross income of the employee for the taxable year of the employee in which the distribution is made,

(B) no tax shall be imposed under section 72(t) with respect to the distribution, and

(C) the arrangement shall not be treated as violating any restriction on distributions under this title solely by reason of allowing the withdrawal.

In the case of any distribution to an employee by reason of an election under this paragraph, employer matching contributions shall be forfeited or subject to such other treatment as the Secretary may prescribe.

(2) Permissible withdrawal

For purposes of this subsection—

(A) In general

The term ''permissible withdrawal'' means any withdrawal from an eligible automatic contribution arrangement meeting the requirements of this paragraph which—

(i) is made pursuant to an election by an employee, and

(ii) consists of elective contributions described in paragraph (3)(B) (and earnings attributable thereto).

(B) Time for making election

Subparagraph (A) shall not apply to an election by an employee unless the election is made no later than the date which is 90 days after the date of the first elective contribution with respect to the employee under the arrangement.

(C) Amount of distribution

Subparagraph (A) shall not apply to any election by an employee unless the amount of any distribution by reason of the election

is equal to the amount of elective contributions made with respect to the first payroll period to which the eligible automatic contribution arrangement applies to the employee and any succeeding payroll period beginning before the effective date of the election (and earnings attributable thereto).

(3) Eligible automatic contribution arrangement

For purposes of this subsection, the term ''eligible automatic contribution arrangement'' means an arrangement under an applicable employer plan—

(A) under which a participant may elect to have the employer make payments as contributions under the plan on behalf of the participant, or to the participant directly in cash,

(B) under which the participant is treated as having elected to have the employer make such contributions in an amount equal to a uniform percentage of compensation provided under the plan until the participant specifically elects not to have such contributions made (or specifically elects to have such contributions made at a different percentage), and

(C) which meets the requirements of paragraph (4).

(4) Notice requirements

(A) In general

The administrator of a plan containing an arrangement described in paragraph (3) shall, within a reasonable period before each plan year, give to each employee to whom an arrangement described in paragraph (3) applies for such plan year notice of the employee's rights and obligations under the arrangement which—

(i) is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations, and

(ii) is written in a manner calculated to be understood by the average employee to whom the arrangement applies.

(B) Time and form of notice

A notice shall not be treated as meeting the requirements of subparagraph (A) with respect to an employee unless—

(i) the notice includes an explanation of the employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf (or to elect to have such contributions made at a different percentage),

(ii) the employee has a reasonable period of time after receipt of the notice described in clause (i) and before the first elective contribution is made to make such election, and

(iii) the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the employee.

(5) Applicable employer plan

For purposes of this subsection, the term ''applicable employer plan'' means—

(A) an employees' trust described in section 401(a) which is exempt from tax under section 501(a),

(B) a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b),

(C) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A),

(D) a simplified employee pension the terms of which provide for a salary reduction arrangement described in section 408(k)(6), and

(E) a simple retirement account (as defined in section 408(p)).

(6) Special rule

A withdrawal described in paragraph (1) (subject to the limitation of paragraph (2)(C)) shall not be taken into account for purposes of section 401(k)(3) or for purposes of applying the limitation under section 402(g)(1).

(x) Special rules for eligible combined defined benefit plans and qualified cash or deferred arrangements

(1) General rule

Except as provided in this subsection, the requirements of this title shall be applied to any defined benefit plan or applicable defined contribution plan which are[4] part of an eligible combined plan in the same manner as if each such plan were not a part of the eligible combined plan. In the case of a termination of the defined benefit plan and the applicable defined contribution plan forming part of an eligible combined plan, the plan administrator shall terminate each such plan separately.

(2) Eligible combined plan

For purposes of this subsection—

(A) In general

The term ''eligible combined plan'' means a plan—

(i) which is maintained by an employer which, at the time the plan is established, is a small employer,

(ii) which consists of a defined benefit plan and an applicable defined contribution plan,

(iii) the assets of which are held in a single trust forming part of the plan and are clearly identified and allocated to the defined benefit plan and the applicable defined contribution plan to the extent necessary for the separate application of this title under paragraph (1), and

(iv) with respect to which the benefit, contribution, vesting, and nondiscrimination requirements of subparagraphs (B), (C), (D), (E), and (F) are met.

For purposes of this subparagraph, the term ''small employer'' has the meaning given such term by section 4980D(d)(2), except that such section shall be applied by substituting ''500'' for ''50'' each place it appears.

(B) Benefit requirements

(i) In general

The benefit requirements of this subparagraph are met with respect to the de-

[4] So in original. Probably should be ''is''.

fined benefit plan forming part of the eligible combined plan if the accrued benefit of each participant derived from employer contributions, when expressed as an annual retirement benefit, is not less than the applicable percentage of the participant's final average pay. For purposes of this clause, final average pay shall be determined using the period of consecutive years (not exceeding 5) during which the participant had the greatest aggregate compensation from the employer.

(ii) Applicable percentage

For purposes of clause (i), the applicable percentage is the lesser of—

(I) 1 percent multiplied by the number of years of service with the employer, or

(II) 20 percent.

(iii) Special rule for applicable defined benefit plans

If the defined benefit plan under clause (i) is an applicable defined benefit plan as defined in section 411(a)(13)(B) which meets the interest credit requirements of section 411(b)(5)(B)(i), the plan shall be treated as meeting the requirements of clause (i) with respect to any plan year if each participant receives a pay credit for the year which is not less than the percentage of compensation determined in accordance with the following table:

If the participant's age as of the beginning of the year is—	The percentage is—
30 or less	2
Over 30 but less than 40	4
40 or over but less than 50	6
50 or over	8.

(iv) Years of service

For purposes of this subparagraph, years of service shall be determined under the rules of paragraphs (4), (5), and (6) of section 411(a), except that the plan may not disregard any year of service because of a participant making, or failing to make, any elective deferral with respect to the qualified cash or deferred arrangement to which subparagraph (C) applies.

(C) Contribution requirements

(i) In general

The contribution requirements of this subparagraph with respect to any applicable defined contribution plan forming part of an eligible combined plan are met if—

(I) the qualified cash or deferred arrangement included in such plan constitutes an automatic contribution arrangement, and

(II) the employer is required to make matching contributions on behalf of each employee eligible to participate in the arrangement in an amount equal to 50 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 4 percent of compensation.

Rules similar to the rules of clauses (ii) and (iii) of section 401(k)(12)(B) shall apply for purposes of this clause.

(ii) Nonelective contributions

An applicable defined contribution plan shall not be treated as failing to meet the requirements of clause (i) because the employer makes nonelective contributions under the plan but such contributions shall not be taken into account in determining whether the requirements of clause (i)(II) are met.

(D) Vesting requirements

The vesting requirements of this subparagraph are met if—

(i) in the case of a defined benefit plan forming part of an eligible combined plan an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit under the plan derived from employer contributions, and

(ii) in the case of an applicable defined contribution plan forming part of eligible combined plan—

(I) an employee has a nonforfeitable right to any matching contribution made under the qualified cash or deferred arrangement included in such plan by an employer with respect to any elective contribution, including matching contributions in excess of the contributions required under subparagraph (C)(i)(II), and

(II) an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived under the arrangement from nonelective contributions of the employer.

For purposes of this subparagraph, the rules of section 411 shall apply to the extent not inconsistent with this subparagraph.

(E) Uniform provision of contributions and benefits

In the case of a defined benefit plan or applicable defined contribution plan forming part of an eligible combined plan, the requirements of this subparagraph are met if all contributions and benefits under each such plan, and all rights and features under each such plan, must be provided uniformly to all participants.

(F) Requirements must be met without taking into account social security and similar contributions and benefits or other plans

(i) In general

The requirements of this subparagraph are met if the requirements of clauses (ii) and (iii) are met.

(ii) Social security and similar contributions

The requirements of this clause are met if—

(I) the requirements of subparagraphs (B) and (C) are met without regard to section 401(*l*), and

(II) the requirements of sections 401(a)(4) and 410(b) are met with respect

to both the applicable defined contribution plan and defined benefit plan forming part of an eligible combined plan without regard to section 401(*l*).

(iii) Other plans and arrangements

The requirements of this clause are met if the applicable defined contribution plan and defined benefit plan forming part of an eligible combined plan meet the requirements of sections 401(a)(4) and 410(b) without being combined with any other plan.

(3) Nondiscrimination requirements for qualified cash or deferred arrangement

(A) In general

A qualified cash or deferred arrangement which is included in an applicable defined contribution plan forming part of an eligible combined plan shall be treated as meeting the requirements of section 401(k)(3)(A)(ii) if the requirements of paragraph (2)(C) are met with respect to such arrangement.

(B) Matching contributions

In applying section 401(m)(11) to any matching contribution with respect to a contribution to which paragraph (2)(C) applies, the contribution requirement of paragraph (2)(C) and the notice requirements of paragraph (5)(B) shall be substituted for the requirements otherwise applicable under clauses (i) and (ii) of section 401(m)(11)(A).

(4) Satisfaction of top-heavy rules

A defined benefit plan and applicable defined contribution plan forming part of an eligible combined plan for any plan year shall be treated as meeting the requirements of section 416 for the plan year.

(5) Automatic contribution arrangement

For purposes of this subsection—

(A) In general

A qualified cash or deferred arrangement shall be treated as an automatic contribution arrangement if the arrangement—

(i) provides that each employee eligible to participate in the arrangement is treated as having elected to have the employer make elective contributions in an amount equal to 4 percent of the employee's compensation unless the employee specifically elects not to have such contributions made or to have such contributions made at a different rate, and

(ii) meets the notice requirements under subparagraph (B).

(B) Notice requirements

(i) In general

The requirements of this subparagraph are met if the requirements of clauses (ii) and (iii) are met.

(ii) Reasonable period to make election

The requirements of this clause are met if each employee to whom subparagraph (A)(i) applies—

(I) receives a notice explaining the employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf or to have the contributions made at a different rate, and

(II) has a reasonable period of time after receipt of such notice and before the first elective contribution is made to make such election.

(iii) Annual notice of rights and obligations

The requirements of this clause are met if each employee eligible to participate in the arrangement is, within a reasonable period before any year, given notice of the employee's rights and obligations under the arrangement.

The requirements of clauses (i) and (ii) of section 401(k)(12)(D) shall be met with respect to the notices described in clauses (ii) and (iii) of this subparagraph.

(6) Coordination with other requirements

(A) Treatment of separate plans

Section 414(k) shall not apply to an eligible combined plan.

(B) Reporting

An eligible combined plan shall be treated as a single plan for purposes of sections 6058 and 6059.

(7) Applicable defined contribution plan

For purposes of this subsection—

(A) In general

The term ''applicable defined contribution plan'' means a defined contribution plan which includes a qualified cash or deferred arrangement.

(B) Qualified cash or deferred arrangement

The term ''qualified cash or deferred arrangement'' has the meaning given such term by section 401(k)(2).

(Added Pub. L. 93–406, title II, §1015, Sept. 2, 1974, 88 Stat. 925; amended Pub. L. 94–455, title XIX, §§1901(a)(64), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1775, 1834; Pub. L. 95–600, title I, §152(d), Nov. 6, 1978, 92 Stat. 2799; Pub. L. 96–364, title II, §§207, 208(a), title IV, §407(b), Sept. 26, 1980, 94 Stat. 1288, 1289, 1305; Pub. L. 96–605, title II, §201(a), Dec. 28, 1980, 94 Stat. 3526; Pub. L. 96–613, §5(a), Dec. 28, 1980, 94 Stat. 3580; Pub. L. 97–248, title II, §§240(c), 246(a), 248(a), Sept. 3, 1982, 96 Stat. 520, 525, 526; Pub. L. 98–369, div. A, title IV, §491(d)(26), (27), title V, §526(a)(1), (b)(1), (d)(1), (2), title VII, §713(i), July 18, 1984, 98 Stat. 850, 874, 875, 960; Pub. L. 98–397, title II, §204(b), Aug. 23, 1984, 98 Stat. 1445; Pub. L. 99–514, title XI, §§1114(a), (b)(11), 1115(a), 1117(c), 1146(a), (b), 1151(e)(1), (i), title XIII, §1301(j)(4), title XVIII, §§1852(f), 1898(c)(2)(A), (4)(A), (6)(A), (7)(A)(ii)–(vii), 1899A(12), Oct. 22, 1986, 100 Stat. 2448, 2451, 2452, 2462, 2491, 2506, 2507, 2657, 2868, 2951, 2953, 2954, 2958; Pub. L. 100–203, title IX, §9305(c), Dec. 22, 1987, 101 Stat. 1330–352; Pub. L. 100–647, title I, §§1011(d)(8), (e)(4), (h)(5), (i)(1)–(4)(A), (j)(1), (2), 1011A(b)(3), 1011B(a)(16), (17), (19), (20), 1018(t)(8)(E)–(G), title II, §2005(c)(1), (2), title III, §§3011(b)(4), (5), 3021(b)(1), (2)(A), title VI, §6067(a), Nov. 10, 1988, 102 Stat. 3460, 3461, 3465, 3467, 3468, 3473, 3485, 3589, 3611, 3612, 3625, 3631, 3632, 3703; Pub. L. 101–140,

title II, §§203(a)(6), 204(b)(2), Nov. 8, 1989, 103 Stat. 831, 833; Pub. L. 101–239, title VII, §§7811(m)(5), 7813(b), 7841(a)(2), Dec. 19, 1989, 103 Stat. 2412, 2413, 2427; Pub. L. 101–508, title XI, §11703(b)(1), Nov. 5, 1990, 104 Stat. 1388–517; Pub. L. 102–318, title V, §521(b)(20)–(22), July 3, 1992, 106 Stat. 311; Pub. L. 104–188, title I, §§1421(b)(9)(C), 1431(a), (b)(1), (c)(1)(A), (D), (E), 1434(b), 1454(a), 1461(a), 1462(a), 1704(n)(1), Aug. 20, 1996, 110 Stat. 1798, 1802, 1803, 1807, 1817, 1822, 1824, 1883; Pub. L. 105–34, title XV, §1522(a), title XVI, §1601(d)(6)(A), (7), (h)(2)(D)(i), (ii), Aug. 5, 1997, 111 Stat. 1070, 1089, 1090, 1092; Pub. L. 105–206, title VI, §6018(c), July 22, 1998, 112 Stat. 822; Pub. L. 106–554, §1(a)(7) [title III, §314(e)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–643; Pub. L. 107–16, title VI, §§631(a), 635(a)–(c), June 7, 2001, 115 Stat. 111, 117; Pub. L. 107–147, title IV, §411(*o*)(3)–(8), Mar. 9, 2002, 116 Stat. 48, 49; Pub. L. 108–311, title IV, §408(a)(15), Oct. 4, 2004, 118 Stat. 1192; Pub. L. 109–280, title I, §114(c), title IX, §§902(d)(1), 903(a), 906(a)(1), (b)(1)(C), title XI, §1106(b), Aug. 17, 2006, 120 Stat. 853, 1036, 1040, 1051, 1052, 1062; Pub. L. 110–28, title VI, §6611(a)(2), (b)(2), May 25, 2007, 121 Stat. 180, 181; Pub. L. 110–245, title I, §§104(b), 105(b)(1), June 17, 2008, 122 Stat. 1626, 1628; Pub. L. 110–289, div. A, title VI, §1604(b)(4), July 30, 2008, 122 Stat. 2829; Pub. L. 110–458, title I, §§101(d)(2)(E), 109(b)(4)–(c)(1), Dec. 23, 2008, 122 Stat. 5099, 5111.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

REFERENCES IN TEXT

The Railroad Retirement Act of 1935 or 1937, referred to in subsec. (d), means act Aug. 29, 1935, ch. 812, 49 Stat. 867, known as the Railroad Retirement Act of 1935. The Railroad Retirement Act of 1935 was amended generally by act June 24, 1937, ch. 382, part I, 50 Stat. 307, and was known as the Railroad Retirement Act of 1937. The Railroad Retirement Act of 1937 was amended generally and redesignated the Railroad Retirement Act of 1974 by Pub. L. 93–444, title I, Oct. 16, 1974, 88 Stat. 1305 and is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45, Railroads. For complete classification of this Act to the Code, see Tables.

The International Organizations Immunities Act (59 Stat. 669), referred to in subsec. (d), is act Dec. 29, 1945, ch. 652, title I, 59 Stat. 669, as amended, which is classified principally to subchapter XVIII (§288 et seq.) of chapter 7 of Title 22, Foreign Relations and Intercourse. The Act also amended several other laws including the Internal Revenue Code of 1939. For exemption from taxation of income of international organizations and of the compensation of employees thereof, see sections 892 and 893 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 288 of Title 22 and Tables.

The Employee Retirement Income Security Act of 1974, referred to in subsecs. (f)(3), (5), (6)(B), (F) and (*l*)(1), (2)(E), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, which is classified principally to chapter 18 (§1001 et seq.) of Title 29, Labor. Title IV of the Act is classified principally to subchapter III (§1301 et seq.) of chapter 18 of Title 29. Section 3(37)(A)(iii) of the Act is classified to section 1002(37)(A)(iii) of Title 29. Section 4403(b) and (c) of the Employee Retirement Income Security Act of 1974 probably means section 4303(b) and (c) of such Act which is classified to section 1453(b) and (c) of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980, referred to in subsec. (f)(4), (5), means the date of the enactment of Pub. L. 96–364, which was approved Sept. 26, 1980.

Effective date of the Multiemployer Pension Plan Amendments Act of 1980, referred to in subsec. (f)(5), probably means the date of enactment of the Multiemployer Pension Plan Amendments Act of 1980, which was approved Sept. 26, 1980.

AMENDMENTS

2008—Subsec. (*l*)(2)(B)(i)(I). Pub. L. 110–458, §101(d)(2)(E), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ''the amount determined under section 431(c)(6)(A)(i) in the case of a multiemployer plan (and the sum of the funding shortfall and target normal cost determined under section 430 in the case of any other plan), over''.

Subsec. (*l*)(2)(G). Pub. L. 110–289, §1604(b)(4), which directed substitution of ''bridge depository institution'' for ''bridge bank'', was executed by making the substitution wherever appearing in text, to reflect the probable intent of Congress.

Subsec. (u). Pub. L. 110–245, §105(b)(1)(B), inserted ''and to differential wage payments to members on active duty'' after ''USERRA'' in heading.

Subsec. (u)(9) to (11). Pub. L. 110–245, §104(b), added par. (9) and redesignated former pars. (9) and (10) as (10) and (11), respectively.

Subsec. (u)(12). Pub. L. 110–245, §105(b)(1)(A), added par. (12).

Subsec. (w)(3)(B) to (D). Pub. L. 110–458, §109(b)(4), inserted ''and'' after comma at end of subpar. (B), redesignated subpar. (D) as (C), and struck out former subpar. (C) which read as follows: ''under which, in the absence of an investment election by the participant, contributions described in subparagraph (B) are invested in accordance with regulations prescribed by the Secretary of Labor under section 404(c)(5) of the Employee Retirement Income Security Act of 1974, and''.

Subsec. (w)(5)(D), (E). Pub. L. 110–458, §109(b)(5), added subpars. (D) and (E).

Subsec. (w)(6). Pub. L. 110–458, §109(b)(6), inserted ''or for purposes of applying the limitation under section 402(g)(1)'' before period at end.

Subsec. (x)(1). Pub. L. 110–458, §109(c)(1), inserted at end ''In the case of a termination of the defined benefit plan and the applicable defined contribution plan forming part of an eligible combined plan, the plan administrator shall terminate each such plan separately.''

2007—Subsec. (f)(6)(A)(ii)(I). Pub. L. 110–28, §6611(a)(2)(A), substituted ''for each of the 3 plan years immediately preceding the first plan year for which the election under this paragraph is effective with respect to the plan,'' for ''for each of the 3 plan years immediately before the date of enactment of the Pension Protection Act of 2006,''.

Subsec. (f)(6)(B). Pub. L. 110–28, §6611(a)(2)(B), substituted ''starting with any plan year beginning on or after January 1, 1999, and ending before January 1, 2008, as designated by the plan in the election made under subparagraph (A)(ii)'' for ''starting with the first plan year ending after the date of the enactment of the Pension Protection Act of 2006''.

Subsec. (f)(6)(E). Pub. L. 110–28, §6611(b)(2), substituted ''if it is a plan sponsored by an organization which is described in section 501(c)(5) and exempt from tax under section 501(a) and which was established in Chicago, Illinois, on August 12, 1881.'' for ''if it is a plan—

''(i) that was established in Chicago, Illinois, on August 12, 1881; and

''(ii) sponsored by an organization described in section 501(c)(5) and exempt from tax under section 501(a).''

Subsec. (f)(6)(F). Pub. L. 110–28, §6611(a)(2)(C), added subpar. (F).

2006—Subsec. (d). Pub. L. 109–280, §906(a)(1), inserted at end ''The term 'governmental plan' includes a plan which is established and maintained by an Indian tribal

government (as defined in section 7701(a)(40)), a subdivision of an Indian tribal government (determined in accordance with section 7871(d)), or an agency or instrumentality of either, and all of the participants of which are employees of such entity substantially all of whose services as such an employee are in the performance of essential governmental functions but not in the performance of commercial activities (whether or not an essential government function).''

Subsec. (f)(6). Pub. L. 109–280, §1106(b), added par. (6).

Subsec. (h)(2). Pub. L. 109–280, §906(b)(1)(C), inserted ''or a governmental plan described in the last sentence of section 414(d) (relating to plans of Indian tribal governments),'' after ''foregoing,''.

Subsec. (*l*)(2)(B)(i)(I). Pub. L. 109–280, §114(c), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ''the amount determined under section 412(c)(7)(A)(i) with respect to the plan, over''.

Subsec. (w). Pub. L. 109–280, §902(d)(1), added subsec. (w).

Subsec. (x). Pub. L. 109–280, §903(a), added subsec. (x).

2004—Subsec. (q)(7). Pub. L. 108–311 substituted ''subsection'' for ''section''.

2002—Subsec. (v)(2)(D). Pub. L. 107–147, §411(*o*)(3), added subpar. (D).

Subsec. (v)(3)(A)(i). Pub. L. 107–147, §411(*o*)(4), substituted ''sections 401(a)(30), 402(h), 403(b), 408, 415(c), and 457(b)(2) (determined without regard to section 457(b)(3))'' for ''section 402(g), 402(h), 403(b), 404(a), 404(h), 408(k), 408(p), 415, or 457''.

Subsec. (v)(3)(B). Pub. L. 107–147, §411(*o*)(5), substituted ''section 401(a)(4), 401(k)(3), 401(k)(11), 403(b)(12), 408(k), 410(b), or 416'' for ''section 401(a)(4), 401(a)(26), 401(k)(3), 401(k)(11), 401(k)(12), 403(b)(12), 408(k), 408(p), 408B, 410(b), or 416''.

Subsec. (v)(4)(B). Pub. L. 107–147, §411(*o*)(6), inserted before period at end '', except that a plan described in clause (i) of section 410(b)(6)(C) shall not be treated as a plan of the employer until the expiration of the transition period with respect to such plan (as determined under clause (ii) of such section)''.

Subsec. (v)(5). Pub. L. 107–147, §411(*o*)(7)(A), struck out '', with respect to any plan year,'' before ''a participant'' in introductory provisions.

Subsec. (v)(5)(A). Pub. L. 107–147, §411(*o*)(7)(B), amended subpar. (A) generally. Prior to amendment, subpar (A) read as follows: ''who has attained the age of 50 before the close of the plan year, and''.

Subsec. (v)(5)(B). Pub. L. 107–147, §411(*o*)(7)(C), substituted ''plan (or other applicable) year'' for ''plan year''.

Subsec. (v)(6)(C). Pub. L. 107–147, §411(*o*)(8), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''This subsection shall not apply to an applicable employer plan described in subparagraph (A)(iii) for any year to which section 457(b)(3) applies.''

2001—Subsec. (p)(10). Pub. L. 107–16, §635(b), substituted ''section 409(d), and section 457(d)'' for ''and section 409(d)''.

Subsec. (p)(11). Pub. L. 107–16, §635(a), in heading substituted ''certain other plans'' for ''governmental and church plans'' and in text inserted ''or an eligible deferred compensation plan (within the meaning of section 457(b))'' after ''subsection (e))''.

Subsec. (p)(12), (13). Pub. L. 107–16, §635(c), added par. (12) and redesignated former par. (12) as (13).

Subsec. (v). Pub. L. 107–16, §631(a), added subsec. (v).

2000—Subsec. (s)(2). Pub. L. 106–554 substituted ''section 125, 132(f)(4), 402(e)(3)'' for ''section 125, 402(e)(3)''.

1998—Subsec. (q)(5). Pub. L. 105–206 made technical amendment to Pub. L. 104–188, §1434(c)(1)(E). See 1996 Amendment note below.

1997—Subsec. (e)(5)(A). Pub. L. 105–34, §1601(d)(6)(A), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows: ''For purposes of this part—

''(i) IN GENERAL.—An employee of a church or a convention or association of churches shall include a duly ordained, commissioned, or licensed minister of a church who, in connection with the exercise of his or her ministry—

''(I) is a self-employed individual (within the meaning of section 401(c)(1)(B)), or

''(II) is employed by an organization other than an organization described in section 501(c)(3).

''(ii) TREATMENT AS EMPLOYER AND EMPLOYEE.—

''(I) SELF-EMPLOYED.—A minister described in clause (i)(I) shall be treated as his or her own employer which is an organization described in section 501(c)(3) and which is exempt from tax under section 501(a).

''(II) OTHERS.—A minister described in clause (i)(II) shall be treated as employed by an organization described in section 501(c)(3) and exempt from tax under section 501(a).''

Subsec. (e)(5)(C). Pub. L. 105–34, §1522(a)(1), substituted ''not otherwise participating'' for ''not eligible to participate''.

Subsec. (e)(5)(E). Pub. L. 105–34, §1522(a)(2), added subpar. (E).

Subsec. (n)(3)(C). Pub. L. 105–34, §1601(h)(2)(D)(i), inserted ''137,'' after ''132,''.

Subsec. (q)(7), (9). Pub. L. 105–34, §1601(d)(7), redesignated par. (7), relating to certain employees not considered highly compensated and excluded employees under pre-ERISA rules for church plans, as (9).

Subsec. (t)(2). Pub. L. 105–34, §1601(h)(2)(D)(ii), inserted ''137,'' after ''132,''.

1996—Subsecs. (b), (c). Pub. L. 104–188, §1421(b)(9)(C), inserted ''408(p),'' after ''408(k),''.

Subsec. (e)(5). Pub. L. 104–188, §1461(a), added par. (5).

Subsec. (m)(4)(B). Pub. L. 104–188, §1421(b)(9)(C), inserted ''408(p),'' after ''408(k),''.

Subsec. (n)(2)(C). Pub. L. 104–188, §1454(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''such services are of a type historically performed, in the business field of the recipient, by employees.''

Subsec. (n)(3)(B). Pub. L. 104–188, §1421(b)(9)(C), inserted ''408(p),'' after ''408(k),''.

Subsec. (q)(1). Pub. L. 104–188, §1431(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''IN GENERAL.—The term 'highly compensated employee' means any employee who, during the year or the preceding year—

''(A) was at any time a 5-percent owner,

''(B) received compensation from the employer in excess of $75,000,

''(C) received compensation from the employer in excess of $50,000 and was in the top-paid group of employees for such year, or

''(D) was at any time an officer and received compensation greater than 50 percent of the amount in effect under section 415(b)(1)(A) for such year.

The Secretary shall adjust the $75,000 and $50,000 amounts under this paragraph at the same time and in the same manner as under section 415(d).''

Subsec. (q)(2), (3). Pub. L. 104–188, §1431(c)(1)(A), redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which read as follows: ''SPECIAL RULE FOR CURRENT YEAR.—In the case of the year for which the relevant determination is being made, an employee not described in subparagraph (B), (C), or (D) of paragraph (1) for the preceding year (without regard to this paragraph) shall not be treated as described in subparagraph (B), (C), or (D) of paragraph (1) unless such employee is a member of the group consisting of the 100 employees paid the greatest compensation during the year for which such determination is being made.''

Subsec. (q)(4). Pub. L. 104–188, §1434(b)(1), amended heading and text of par. (4) generally. Prior to amendment, text read as follows: ''For purposes of this subsection—

''(A) IN GENERAL.—The term 'compensation' means compensation within the meaning of section 415(c)(3).

''(B) CERTAIN PROVISIONS NOT TAKEN INTO ACCOUNT.—The determination under subparagraph (A) shall be made—

''(i) without regard to sections 125, 402(e)(3), and 402(h)(1)(B), and

''(ii) in the case of employer contributions made pursuant to a salary reduction agreement, without regard to section 403(b).''

Pub. L. 104–188, §1431(c)(1)(A), redesignated par. (7) as (4).

Subsec. (q)(5). Pub. L. 104–188, §1434(c)(1)(E), as amended by Pub. L. 105–206, §6018(c), struck out ''under paragraph (4) or the number of officers taken into account under paragraph (5)'' after ''top-paid group'' in introductory provisions.

Pub. L. 104–188, §1431(c)(1)(A), redesignated par. (8) as (5) and struck out former par. (5) which read as follows: ''SPECIAL RULES FOR TREATMENT OF OFFICERS.—

''(A) NOT MORE THAN 50 OFFICERS TAKEN INTO ACCOUNT.—For purposes of paragraph (1)(D), no more than 50 employees (or, if lesser, the greater of 3 employees or 10 percent of the employees) shall be treated as officers.

''(B) AT LEAST 1 OFFICER TAKEN INTO ACCOUNT.—If for any year no officer of the employer is described in paragraph (1)(D), the highest paid officer of the employer for such year shall be treated as described in such paragraph.''

Subsec. (q)(6). Pub. L. 104–188, §1431(b)(1), (c)(1)(A), redesignated par. (9) as (6) and struck out former par. (6) which related to treatment of families of 5-percent owners or of highly compensated employees.

Subsec. (q)(7). Pub. L. 104–188, §1462(a), added par. (7) relating to certain employees not considered highly compensated and excluded employees under pre-ERISA rules for church plans.

Pub. L. 104–188, §1431(c)(1)(A), redesignated par. (10), relating to coordination with other provisions, as (7). Former par. (7) redesignated (4).

Subsec. (q)(8) to (12). Pub. L. 104–188, §1431(c)(1)(A), redesignated pars. (8) to (11) as (5) to (8), respectively, and struck out par. (12) which related to simplified method for determining highly compensated employees.

Subsec. (r)(2)(A). Pub. L. 104–188, §1431(c)(1)(D), substituted ''subsection (q)(5)'' for ''subsection (q)(8)''.

Subsec. (s)(2). Pub. L. 104–188, §1434(b)(2), inserted ''not'' after ''elect'' in heading and in text.

Subsec. (u). Pub. L. 104–188, §1704(n)(1), added subsec. (u).

1992—Subsec. (n)(5)(C)(iii)(I). Pub. L. 102–318, §521(b)(20), substituted ''402(e)(3)'' for ''402(a)(8)''.

Subsec. (q)(7)(B)(i). Pub. L. 102–318, §521(b)(21), substituted ''402(e)(3)'' for ''402(a)(8)''.

Subsec. (s)(2). Pub. L. 102–318, §521(b)(22), substituted ''402(e)(3)'' for ''402(a)(8)''.

1990—Subsec. (n)(2)(B). Pub. L. 101–508 struck out ''(6 months in the case of core health benefits)'' after ''1 year''.

1989—Subsec. (n)(3)(C). Pub. L. 101–239, §7813(b), amended directory language of Pub. L. 100–647, §3011(b)(4), see 1988 Amendment note below.

Pub. L. 101–140, §203(a)(6)(A), struck out ''89,'' after ''79,''.

Subsec. (p)(10). Pub. L. 101–239, §7811(m)(5), inserted ''section'' before ''403(b)''.

Subsec. (p)(11). Pub. L. 101–239, §7841(a)(2), added par. (11) and redesignated former par. (11) as (12).

Subsec. (r)(1). Pub. L. 101–140, §204(b)(2), substituted ''sections 129(d)(8) and 410(b)'' for ''section 410(b)''.

Pub. L. 101–140, §203(a)(6)(B), substituted ''section 410(b)'' for ''sections 89 and 410(b)''.

Subsec. (t)(2). Pub. L. 101–239, §7813(b), amended directory language of Pub. L. 100–647, §3011(b)(5), see 1988 Amendment note below.

Pub. L. 101–140, §203(a)(6)(C), struck out ''89,'' after ''79,''.

1988—Subsec. (k)(2). Pub. L. 100–647, §1011A(b)(3), inserted ''72(d) (relating to treatment of employee contributions as separate contract),'' after ''purposes of sections''.

Subsec. (*l*). Pub. L. 100–647, §2005(c)(1), (2), substituted ''Merger'' for ''Mergers'' in heading, designated existing provision as par. (1), inserted par. (1) heading, and added par. (2).

Subsec. (*l*)(2)(G). Pub. L. 100–647, §6067(a), added subpar. (G).

Subsec. (m)(4)(A). Pub. L. 100–647, §1011(h)(5), substituted ''(16), (17), and (26)'' for ''and (16)''.

Subsec. (m)(4)(C), (D). Pub. L. 100–647, §1011B(a)(16), struck out subpars. (C) and (D) which read as follows: ''(C) section 105(h), and

''(D) section 125.''

Subsec. (n)(3)(A). Pub. L. 100–647, §1011(h)(5), substituted ''(16), (17), and (26)'' for ''and (16)''.

Subsec. (n)(3)(C). Pub. L. 100–647, §3011(b)(4), as amended by Pub. L. 101–239, §7813(b), struck out ''162(i)(2), 162(k),'' after ''132,'' and substituted ''505, and 4980B'' for ''and 505''.

Pub. L. 100–647, §1011B(a)(19), inserted ''162(i)(2), 162(k),'' after ''132,''.

Subsec. (*o*). Pub. L. 100–647, §1011(e)(4), inserted ''or any requirement under section 457'' after ''or (n)(3)''.

Subsec. (p)(4)(B). Pub. L. 100–647, §1018(t)(8)(E), substituted ''means the earlier of'' for ''means earlier of'' and struck out ''in'' at beginning of cls. (i) and (ii).

Subsec. (p)(9). Pub. L. 100–647, §1018(t)(8)(G), inserted at end ''For purposes of this title, except as provided in regulations, any distribution from an annuity contract under section 403(b) pursuant to a qualified domestic relations order shall be treated in the same manner as a distribution from a plan to which section 401(a)(13) applies.''

Subsec. (p)(10). Pub. L. 100–647, §1018(t)(8)(F), inserted '', 403(b),'' after ''section 401''.

Subsec. (q)(1). Pub. L. 100–647, §1011(i)(1), inserted at end ''The Secretary shall adjust the $75,000 and $50,000 amounts under this paragraph at the same time and in the same manner as under section 415(d).''

Subsec. (q)(1)(D). Pub. L. 100–647, §1011(d)(8), substituted ''50'' for ''150'' and ''415(b)(1)(A)'' for ''415(c)(1)(A)''.

Subsec. (q)(6)(C). Pub. L. 100–647, §1011(i)(2), added subpar. (C).

Subsec. (q)(8). Pub. L. 100–647, §1011(i)(4)(A), inserted ''or the number of officers taken into account under paragraph (5)'' after ''under paragraph (4)''.

Pub. L. 100–647, §1011(i)(3)(A)(ii), substituted ''Except as provided by the Secretary, the employer'' for ''The employer'' in last sentence.

Subsec. (q)(8)(F). Pub. L. 100–647, §1011(i)(3)(A)(i), struck out subpar. (F) which read as follows: ''employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)).''

Subsec. (q)(11). Pub. L. 100–647, §1011(i)(3)(B), added par. (11).

Subsec. (q)(12). Pub. L. 100–647, §3021(b)(1), added par. (12).

Subsec. (r)(3). Pub. L. 100–647, §3021(b)(2)(A), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The requirements of subparagraph (C) of paragraph (2) shall not apply to any line of business if the highly compensated employee percentage with respect to such line of business is—

''(A) not less than one-half, and

''(B) not more than twice,

the percentage which highly compensated employees are of all employees of the employer. An employer shall be treated as meeting the requirements of subparagraph (A) if at least 10 percent of all highly compensated employees of the employer perform services solely for such line of business.''

Subsec. (s). Pub. L. 100–647, §1011(j)(1), substituted ''any applicable provision'' for ''this part'' in introductory provisions.

Subsec. (s)(1). Pub. L. 100–647, §1011(j)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The term 'compensation' means compensation for service performed for an employer which (taking into account the provisions of this chapter) is currently includible in gross income.''

Subsec. (s)(2) to (4). Pub. L. 100–647, §1011(j)(2), added par. (4), redesignated former pars. (3) and (4) as (2) and

(3), respectively, and struck out former par. (2) which read as follows: ''The Secretary shall prescribe regulations for the determination of the compensation of an employee who is a self-employed individual (within the meaning of section 401(c)(1)) which are based on the principles of paragraph (1).''

Subsec. (t)(1). Pub. L. 100–647, §1011B(a)(20), struck out ''of section 414'' before ''shall be treated'' and ''shall apply with''.

Subsec. (t)(2). Pub. L. 100–647, §3011(b)(5), as amended by Pub. L. 101–239, §7813(b), struck out ''162(i)(2), 162(k),'' after ''132,'' and substituted ''505, or 4980B'' for ''or 505''.

Pub. L. 100–647, §1011B(a)(17), inserted ''162(i)(2), 162(k),'' after ''132,''.

1987—Subsec. (b). Pub. L. 100–203 struck out ''the minimum funding standard of section 412, the tax imposed by section 4971, and'' after ''one such corporation,''.

1986—Subsec. (k)(2). Pub. L. 99–514, §1117(c), inserted reference to section 401(m) (relating to nondiscrimination tests for matching requirements and employee contributions).

Subsec. (m)(2)(B)(ii). Pub. L. 99–514, §1114(b)(11), substituted ''highly compensated employees (within the meaning of section 414(q))'' for ''officers, highly compensated employees, or owners''.

Subsec. (m)(5). Pub. L. 99–514, §1301(j)(4), substituted ''section 144(a)(3)'' for ''section 103(b)(6)(C)''.

Subsec. (m)(7). Pub. L. 99–514, §1852(f), amended directory language of Pub. L. 98–369, §526(d)(2), to correct an error, and did not involve any change in text. See 1984 Amendment note below.

Subsec. (n)(1). Pub. L. 99–514, §1151(i)(1), substituted ''requirements'' for ''pension requirements''.

Pub. L. 99–514, §1146(b)(2), struck out ''except to the extent otherwise provided in regulations,'' after ''listed in paragraph (3),''.

Subsec. (n)(2)(B). Pub. L. 99–514, §1151(i)(2), inserted ''(6 months in the case of core health benefits)'' after ''1 year''.

Subsec. (n)(3). Pub. L. 99–514, §1151(i)(3), substituted ''Requirements'' for ''Pension requirements'' in heading, substituted ''requirements'' for ''pension requirements'' in text, and added subpar. (C).

Subsec. (n)(4). Pub. L. 99–514, §1146(a)(2), substituted ''Time when first considered as employee'' for ''Time when leased employee is first considered as employee'' in heading and amended text generally. Prior to amendment, text read as follows: ''In the case of any leased employee, paragraph (1) shall apply only for purposes of determining whether the pension requirements listed in paragraph (3) are met for periods after the close of the 1-year period referred to in paragraph (2); except that years of service for the recipient shall be determined by taking into account the entire period for which the leased employee performed services for the recipient (or related persons).''

Subsec. (n)(5). Pub. L. 99–514, §1146(a)(1), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''This subsection shall not apply to any leased employee if such employee is covered by a plan which is maintained by the leasing organization if, with respect to such employee, such plan—

''(A) is a money purchase pension plan with a nonintegrated employer contribution rate of at least 7½ percent, and

''(B) provides for immediate participation and for full and immediate vesting.''

Subsec. (n)(6). Pub. L. 99–514, §1301(j)(4), substituted ''section 144(a)(3)'' for ''section 103(b)(6)(C)'' in subpar. (A).

Pub. L. 99–514, §1146(a)(3), substituted ''Other rules'' for ''Related persons'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of this subsection, the term 'related persons' has the same meaning as when used in section 103(b)(6)(C).''

Subsec. (*o*). Pub. L. 99–514, §1146(b)(1), inserted provision relating to regulations to minimize recordkeeping requirements in case of employer which has no top-heavy plans and uses the services of persons other than employees for an insignificant percentage of the employer's total workload.

Subsec. (p)(1)(B)(i). Pub. L. 99–514, §1898(c)(7)(A)(ii), inserted ''former spouse,''.

Subsec. (p)(3)(B). Pub. L. 99–514, §1899A(12), struck out the comma after ''benefits''.

Subsec. (p)(4)(A). Pub. L. 99–514, §1898(c)(7)(A)(vi), substituted ''A'' for ''In the case of any payment before a participant has separated from service, a'' in introductory provisions and inserted ''in the case of any payment before a participant has separated from service,'' in cl. (i).

Subsec. (p)(4)(B). Pub. L. 99–514, §1898(c)(7)(A)(vii), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''For purposes of this paragraph, the term 'earliest retirement age' has the meaning given such term by section 417(f)(3), except that in the case of any defined contribution plan, the earliest retirement age shall be the date which is 10 years before the normal retirement age (within the meaning of section 411(a)(8)).''

Subsec. (p)(5). Pub. L. 99–514, §1898(c)(7)(A)(v), struck out last sentence which read as follows: ''A plan shall not be treated as failing to meet the requirements of subsection (a) or (k) of section 401 which prohibit payment of benefits before termination of employment solely by reason of payments to an alternate payee pursuant to a qualified domestic relations order.''

Subsec. (p)(5)(A). Pub. L. 99–514, §1898(c)(6)(A), inserted ''(and any spouse of the participant shall not be treated as a spouse of the participant for such purposes)''.

Subsec. (p)(5)(B). Pub. L. 99–514, §1898(c)(7)(A)(iv), substituted ''the surviving former spouse'' for ''the surviving spouse''.

Subsec. (p)(6)(A)(i). Pub. L. 99–514, §1898(c)(7)(A)(iii), substituted ''each alternate payee'' for ''any other alternate payee''.

Subsec. (p)(7)(A). Pub. L. 99–514, §1898(c)(2)(A)(i), substituted ''shall separately account for the amounts (hereinafter in this paragraph referred to as the 'segregated amounts')'' for ''shall segregate in a separate account in the plan or in an escrow account the amounts''.

Subsec. (p)(7)(B). Pub. L. 99–514, §1898(c)(2)(A)(ii), substituted ''the 18-month period described in subparagraph (E)'' for ''18 months'' and ''including any interest'' for ''plus any interest''.

Subsec. (p)(7)(C). Pub. L. 99–514, §1898(c)(2)(A)(iii), substituted ''the 18-month period described in subparagraph (E)'' for ''18 months'' and ''including any interest'' for ''plus any interest''.

Subsec. (p)(7)(D). Pub. L. 99–514, §1898(c)(2)(A)(iv), inserted ''described in subparagraph (E)''.

Subsec. (p)(7)(E). Pub. L. 99–514, §1898(c)(2)(A)(v), added subpar. (E).

Subsec. (p)(9). Pub. L. 99–514, §1898(c)(4)(A), added par. (9). Former par. (9) redesignated (11).

Subsec. (p)(10). Pub. L. 99–514, §1898(c)(7)(A)(v), added par. (10).

Subsec. (p)(11). Pub. L. 99–514, §1898(c)(4)(A), redesignated former par. (9) as (11).

Subsec. (q). Pub. L. 99–514, §1114(a), added subsec. (q).

Subsecs. (r), (s). Pub. L. 99–514, §1115(a), added subsecs. (r) and (s).

Subsec. (t). Pub. L. 99–514, §1151(e)(1), added subsec. (t).

1984—Subsec. (h)(1)(B). Pub. L. 98–369, §491(d)(26), struck out ''or 405(a)'' after ''section 403(a)''.

Subsec. (*l*). Pub. L. 98–369, §491(d)(27), struck out ''or 405'' after ''section 403(a)''.

Subsec. (m)(6)(B). Pub. L. 98–369, §526(a)(1), substituted ''section 318(a)'' for ''section 267(c)''.

Subsec. (m)(7). Pub. L. 98–369, §526(d)(2), as amended by Pub. L. 99–514, §1852(f), struck out par. (7) relating to regulations. See subsec. (*o*) of this section.

Subsec. (n)(2). Pub. L. 98–369, §§526(b)(1), 713(i), made identical amendments, substituting ''any person who is not an employee of the recipient and'' for ''any person'' in text preceding subpar. (A).

Subsec. (*o*). Pub. L. 98–369, §526(d)(1), added subsec. (*o*).

Subsec. (p). Pub. L. 98–397 added subsec. (p).

1982—Subsecs. (b), (c). Pub. L. 97–248, §240(c)(1), inserted reference to section 416.

Subsec. (m)(4)(B). Pub. L. 97–248, §240(c)(2), inserted reference to section 416.

Subsec. (m)(5) to (7). Pub. L. 97–248, §246(a), added par. (5) and redesignated former pars. (5) and (6) as (6) and (7), respectively.

Subsec. (n). Pub. L. 97–248, §248(a), added subsec. (n).

1980—Subsec. (e). Pub. L. 96–364, §407(b), substituted provisions defining ''church plan'' with respect to general requirements, exclusion of certain plans, definitions and other provisions, and correction of failures to meet church plan requirements, for provisions defining ''church plan'' with respect to general requirements, certain unrelated business or multiemployer plans, and special temporary rules for certain church agencies under church plan.

Subsec. (f). Pub. L. 96–364, §207, substituted provisions setting forth definition, cases of common control, continuation of status after termination, transitional rule, and special election with respect to a multiemployer plan, for provisions setting forth definition and special rules with respect to a multiemployer plan.

Subsec. (*l*). Pub. L. 96–364, §208(a), substituted provisions relating to applicability to multiemployer plans subject to title IV of the Employee Retirement Income Security Act of 1974 of provisions of preceding sentence, for provisions relating to applicability of paragraph to multiemployer plans to extent determined by Corporation.

Subsec. (m). Pub. L. 96–605 and Pub. L. 96–613 added an identical subsec. (m).

1978—Subsecs. (b), (c). Pub. L. 95–600 inserted ''408(k),'' after ''sections 401,'' wherever appearing.

1976—Subsecs. (a) to (c). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (f). Pub. L. 94–455, §1901(a)(64)(A), substituted ''Plan'' for ''plan'' in heading.

Subsec. (g)(2)(C). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (*l*). Pub. L. 94–455, §1901(a)(64)(B), substituted reference to Sept. 2, 1974, for reference to the date of enactment of the Employee Retirement Income Security Act of 1974.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

Amendment by section 104(b) of Pub. L. 110–245 applicable with respect to deaths and disabilities occurring on or after Jan. 1, 2007, see section 104(d)(1) of Pub. L. 110–245, set out as a note under section 401 of this title.

Amendment by section 105(b)(1) of Pub. L. 110–245 applicable to years beginning after December 31, 2008, see section 105(b)(3) of Pub. L. 110–245, set out as a note under section 219 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–28, title VI, §6611(c), May 25, 2007, 121 Stat. 181, provided that: ''The amendments made by this section [amending this section and section 1002 of Title 29, Labor] shall take effect as if included in section 1106 of the Pension Protection Act of 2006 [Pub. L. 109–280].''

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 114(c) of Pub. L. 109–280 applicable to plan years beginning after 2007, see section 114(g)(1) of Pub. L. 109–280, as added by Pub. L. 110–458, set out as a note under section 401 of this title.

Amendment by section 902(d)(1) of Pub. L. 109–280 applicable to plan years beginning after Dec. 31, 2007, see section 902(g) of Pub. L. 109–280, set out as a note under section 401 of this title.

Pub. L. 109–280, title IX, §903(c), Aug. 17, 2006, 120 Stat. 1048, provided that: ''The amendments made by this section [amending this section and section 1060 of Title 29, Labor] shall apply to plan years beginning after December 31, 2009.''

Pub. L. 109–280, title IX, §906(c), Aug. 17, 2006, 120 Stat. 1052, provided that: ''The amendments made by this section [amending this section, section 415 of this title, and sections 1002 and 1321 of Title 29, Labor] shall apply to any year beginning on or after the date of the enactment of this Act [Aug. 17, 2006].''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title VI, §631(b), June 7, 2001, 115 Stat. 113, provided that: ''The amendment made by this section [amending this section] shall apply to contributions in taxable years beginning after December 31, 2001.''

Pub. L. 107–16, title VI, §635(d), June 7, 2001, 115 Stat. 117, provided that: ''The amendment made by this section [amending this section] shall apply to transfers, distributions, and payments made after December 31, 2001.''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 1(a)(7) [title III, §314(g)] of Pub. L. 106–554, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6018 of Pub. L. 105–206 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which such amendment relates, see section 6018(h) of Pub. L. 105–206, set out as a note under section 36C of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1522(b) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply to years beginning after December 31, 1997.''

Amendment by section 1601(d)(6)(A), (7), (h)(2)(D)(i), (ii) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 36C of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1421(b)(9)(C) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104–188, set out as a note under section 72 of this title.

Section 1431(d) of Pub. L. 104–188 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section, sections 129, 401, 404, 408, and 416 of this title, and provisions set out as a note below] shall apply to years beginning after December 31, 1996, except that in determining whether an employee is a highly compensated employee for years beginning in 1997, such amendments shall be treated as having been in effect for years beginning in 1996.

''(2) FAMILY AGGREGATION.—The amendments made by subsection (b) [amending this section and sections 401 and 404 of this title] shall apply to years beginning after December 31, 1996.''

Section 1434(c) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this sec-

tion and section 415 of this title] shall apply to years beginning after December 31, 1997.''

Section 1454(b) of Pub. L. 104–188 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to years beginning after December 31, 1996, but shall not apply to any relationship determined under an Internal Revenue Service ruling issued before the date of the enactment of this Act [Aug. 20, 1996] pursuant to section 414(n)(2)(C) of the Internal Revenue Code of 1986 (as in effect on the day before such date) not to involve a leased employee.''

Amendment by section 1461(a) of Pub. L. 104–188 applicable to years beginning after Dec. 31, 1996, see section 1461(c) of Pub. L. 104–188, set out as a note under section 404 of this title.

Section 1462(c) of Pub. L. 104–188 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to years beginning after December 31, 1996.''

Section 1704(n)(3) of Pub. L. 104–188 provided that: ''The amendments made by this subsection [amending this section and section 1108 of Title 29, Labor] shall be effective as of December 12, 1994.''

EFFECTIVE DATE OF 1992 AMENDMENT

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

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11703(b)(2) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [probably means par. (1), which amended this section] shall take effect as if included in the amendments made by section 1151 of the Tax Reform Act of 1986 [Pub. L. 99–514].''

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by sections 7811(m)(5) and 7813(b) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Amendment by section 7841(a)(2) of Pub. L. 101–239 applicable to transfers after Dec. 19, 1989, in taxable years ending after such date, see section 7841(a)(3) of Pub. L. 101–239, set out as a note under section 408 of this title.

Amendment by section 203(a)(6) of Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

Amendment by section 204(b)(2) of Pub. L. 101–140 applicable to years beginning after Dec. 31, 1988, see section 204(d)(1) of Pub. L. 101–140, set out as a note under section 129 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1011(d)(8), (e)(4), (h)(5), (i)(1)–(4)(A), (j)(1), (2), 1011A(b)(3), 1011B(a)(16), (17), (19), (20), and 1018(t)(8)(E)–(G) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 2005(c)(3) of Pub. L. 100–647 provided that:

''(A) Except as provided in subparagraph (B), the amendments made by this subsection [amending this section] shall apply with respect to transactions occurring after July 26, 1988.

''(B) The amendments made by this subsection shall not apply to any transaction occurring after July 26, 1988, if on or before such date the board of directors of the employer, approves such transaction or the employer took similar binding action.''

Amendment by section 3011(b)(4), (5) of Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1988, but not applicable to any plan for any plan year to which section 162(k) of this title (as in effect on the day before Nov. 10, 1988) did not apply by reason of section 10001(e)(2) of Pub. L. 99–272, see section 3011(d) of Pub. L. 100–647, set out as a note under section 162 of this title.

Amendment by section 3021(b)(1), (2)(A) of Pub. L. 100–647 applicable to years beginning after Dec. 31, 1986, see section 3021(d)(2) of Pub. L. 100–647, set out as a note under section 129 of this title.

Section 6067(c) of Pub. L. 100–647, as amended by Pub. L. 101–239, title VII, §7816(k), Dec. 19, 1989, 103 Stat. 2421, provided that: ''The amendment made by this section [amending this section] shall take effect as if included in the amendments made by section 2005(c) of this Act [amending this section].''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable with respect to plan years beginning after Dec. 31, 1987, see section 9305(d) of Pub. L. 100–203, set out as a note under section 412 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1114(c) of Pub. L. 99–514, as amended by Pub. L. 104–188, title I, §1431(c)(2), Aug. 20, 1996, 110 Stat. 1803; Pub. L. 107–16, title VI, §663(a), June 7, 2001, 115 Stat. 142, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendment made by this section [amending this section and sections 106, 274, 423, and 501 of this title] shall apply to years beginning after December 31, 1986.

''(2) CONFORMING AMENDMENTS TO EMPLOYEE BENEFIT PROVISIONS.—The amendments made by paragraphs (2), (3), (4), (5), and (16) of subsection (b) [amending sections 117, 120, 127, 129, 132, and 505 of this title] shall apply to years beginning after December 31, 1987.

''(3) CONFORMING AMENDMENTS TO PENSION PROVISIONS.—The amendments made by paragraphs (7), (8), (9), (10), (11), (12), and (15) of subsection (b) [amending this section and sections 401, 404A, 406, 407, 411, 415, and 4975 of this title and section 1108 of Title 29, Labor] shall apply to years beginning after December 31, 1988.''

[Pub. L. 107–16, title VI, §663(b), June 7, 2001, 115 Stat. 143, provided that: ''The repeal made by subsection (a) [repealing par. (4) of section 1114(c) of Pub. L. 99–514, set out above] shall apply to plan years beginning after December 31, 2001.'']

Section 1115(b) of Pub. L. 99–514 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to years beginning after December 31, 1986.''

Amendment by section 1117(c) of Pub. L. 99–514 applicable to plan years beginning after Dec. 31, 1986, with special provisions for plans maintained pursuant to collective bargaining agreements ratified before Mar. 1, 1986, and for annuity contracts under section 403(b) of this title, see section 1117(d) of Pub. L. 99–514, set out as a note under section 401 of this title.

Section 1146(c) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1983.

''(2) SUBSECTION (a)(1).—The amendment made by subsection (a)(1) shall apply to services performed after December 31, 1986.

''(3) RECORDKEEPING REQUIREMENTS.—In the case of years beginning before the date of the enactment of this Act [Oct. 22, 1986], the last sentence of section 414(*o*) shall be applied without regard to the requirement that an insignificant percentage of the workload be performed by persons other than employees.''

Amendment by section 1151(e)(1), (i) of Pub. L. 99–514 applicable, with certain qualifications and exceptions, to years beginning after Dec. 31, 1988, see section 1151(k) of Pub. L. 99–514, as amended, set out as a note under section 79 of this title.

Amendment by section 1301(j)(4) of Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as

otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

Amendment by section 1852(f) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Amendment by section 1898(c)(2)(A), (4)(A), (6)(A), (7)(A)(ii)–(vii) of Pub. L. 99–514 effective as if included in the provision of the Retirement Equity Act of 1984, Pub. L. 98–397, to which such amendment relates, except as otherwise provided, see section 1898(j) of Pub. L. 99–514, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–397 effective Jan. 1, 1985, except as otherwise provided, see section 303(d) of Pub. L. 98–397, set out as a note under section 1001 of Title 29, Labor.

Amendment by section 491(d)(26), (27) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Section 526(a)(2) of Pub. L. 98–369 provided that: ''The amendment made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 1984.''

Section 526(b)(2) of Pub. L. 98–369 provided that: ''The amendment made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 1983.''

Section 526(d)(3) of Pub. L. 98–369 provided that: ''The amendments made by this subsection [amending this section] shall take effect on the date of the enactment of this Act [July 18, 1984].''

Amendment by section 713(i) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 240(c) of Pub. L. 97–248, applicable to years beginning after Dec. 31, 1983, see section 241(a) of Pub. L. 97–248, set out as a note under section 416 of this title.

Section 246(b) of Pub. L. 97–248 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1983.''

Section 248(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1983.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 201(c) of Pub. L. 96–605 and section 5(c) of Pub. L. 96–613, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 105 and 125 of this title] shall apply to plan years ending after November 30, 1980.

''(2) PLANS IN EXISTENCE ON NOVEMBER 30, 1980.—In the case of a plan in existence on November 30, 1980, the amendments made by this section [amending this section and sections 105 and 125 of this title] shall apply to plan years beginning after November 30, 1980.''

Section 407(c) of Pub. L. 96–364 provided that: ''The amendments made by this section [amending this section and section 1002 of Title 29, Labor] shall be effective as of January 1, 1974.''

Amendment by sections 207 and 208(a) of Pub. L. 96–364 effective Sept. 26, 1980, see section 210(a) of Pub. L. 96–364, set out as an Effective Date note under section 418 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 152(h) of Pub. L. 95–600, set out as a note under section 408 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(64) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, and, in the case of plans in existence on Jan. 1, 1974, for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

REGULATIONS

Pub. L. 109–280, title X, §1001, Aug. 17, 2006, 120 Stat. 1052, provided that: ''Not later than 1 year after the date of the enactment of this Act [Aug. 17, 2006], the Secretary of Labor shall issue regulations under section 206(d)(3) of the Employee Retirement Security Act of 1974 [29 U.S.C. 1056(d)(3)] and section 414(p) of the Internal Revenue Code of 1986 which clarify that—

''(1) a domestic relations order otherwise meeting the requirements to be a qualified domestic relations order, including the requirements of section 206(d)(3)(D) of such Act and section 414(p)(3) of such Code, shall not fail to be treated as a qualified domestic relations order solely because—

''(A) the order is issued after, or revises, another domestic relations order or qualified domestic relations order; or

''(B) of the time at which it is issued; and

''(2) any order described in paragraph (1) shall be subject to the same requirements and protections which apply to qualified domestic relations orders, including the provisions of section 206(d)(3)(H) of such Act and section 414(p)(7) of such Code.''

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by sections 1114, 1115, and 1117 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

PROVISIONS RELATING TO PLAN AMENDMENTS PURSUANT TO PUB. L. 110–245

Pub. L. 110–245, title I, §105(c), June 17, 2008, 122 Stat. 1629, provided that:

''(1) IN GENERAL.—If this subsection applies to any plan or annuity contract amendment, such plan or contract shall be treated as being operated in accordance with the terms of the plan or contract during the period described in paragraph (2)(B)(i).

''(2) AMENDMENTS TO WHICH SECTION APPLIES.—

''(A) IN GENERAL.—This subsection shall apply to any amendment to any plan or annuity contract which is made—

''(i) pursuant to any amendment made by subsection (b)(1) [amending this section], and

''(ii) on or before the last day of the first plan year beginning on or after January 1, 2010.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this subparagraph shall be applied by substituting '2012' for '2010' in clause (ii).

''(B) CONDITIONS.—This subsection shall not apply to any plan or annuity contract amendment unless—

''(i) during the period beginning on the date the amendment described in subparagraph (A)(i) takes effect and ending on the date described in subparagraph (A)(ii) (or, if earlier, the date the plan or contract amendment is adopted), the plan or contract is operated as if such plan or contract amendment were in effect, and

''(ii) such plan or contract amendment applies retroactively for such period.''

APPLICABILITY OF AMENDMENTS BY SUBTITLES A AND B OF TITLE I OF PUB. L. 109–280

For special rules on applicability of amendments by subtitles A (§§ 101–108) and B (§§ 111–116) of title I of Pub. L. 109–280 to certain eligible cooperative plans, PBGC settlement plans, and eligible government contractor plans, see sections 104, 105, and 106 of Pub. L. 109–280, set out as notes under section 401 of this title.

SAMPLE LANGUAGE FOR SPOUSAL CONSENT AND QUALIFIED DOMESTIC RELATIONS FORMS

Section 1457 of Pub. L. 104–188 provided that:

''(a) DEVELOPMENT OF SAMPLE LANGUAGE.—Not later than January 1, 1997, the Secretary of the Treasury shall develop—

''(1) sample language for inclusion in a form for the spousal consent required under section 417(a)(2) of the Internal Revenue Code of 1986 and section 205(c)(2) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1055(c)(2)] which—

''(A) is written in a manner calculated to be understood by the average person, and

''(B) discloses in plain form—

''(i) whether the waiver to which the spouse consents is irrevocable, and

''(ii) whether such waiver may be revoked by a qualified domestic relations order, and

''(2) sample language for inclusion in a form for a qualified domestic relations order described in section 414(p)(1)(A) of such Code and section 206(d)(3)(B)(i) of such Act [29 U.S.C. 1056(d)(3)(B)(i)] which—

''(A) meets the requirements contained in such sections, and

''(B) the provisions of which focus attention on the need to consider the treatment of any lump sum payment, qualified joint and survivor annuity, or qualified preretirement survivor annuity.

''(b) PUBLICITY.—The Secretary of the Treasury shall include publicity for the sample language developed under subsection (a) in the pension outreach efforts undertaken by the Secretary.''

SAFEHARBOR AUTHORITY

Section 1462(b) of Pub. L. 104–188 provided that: ''The Secretary of the Treasury may design nondiscrimination and coverage safe harbors for church plans.''

APPLICATION OF LINE OF BUSINESS TEST FOR PERIOD BEFORE GUIDELINES ISSUED

Section 204(b)(1) of Pub. L. 101–140 provided that: ''In the case of any plan year beginning on or before the date the Secretary of the Treasury or his delegate issues guidelines and begins issuing determinations under section 414(r)(2)(C) of the Internal Revenue Code of 1986, an employer shall be treated as operating separate lines of business if the employer reasonably determines that it meets the requirements of section 414(r) (other than paragraph (2)(C) thereof) of such Code.''

[Section 204(d)(3) of Pub. L. 101–140 provided that: ''The provisions of subsection (b)(1) [set out above] shall apply to years beginning after December 31, 1986.'']

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

STUDY REFLECTING ALLOCATION OF ASSETS

Section 6067(b) of Pub. L. 100–647 directed Secretary of the Treasury or his delegate, in consultation with Federal Deposit Insurance Corporation, to conduct a study with respect to proper method of allocating assets in case of a transaction to which the amendment made by such section and, not later than Jan. 1, 1990 (due date extended to Jan. 1, 1992, by Pub. L. 101–508, title XI, § 11831(b), Nov. 5, 1990, 104 Stat. 1388–559) to report results of such study to Committee on Ways and Means of House of Representatives and to Committee on Finance of Senate.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 415. Limitations on benefits and contribution under qualified plans

(a) General rule

(1) Trusts

A trust which is a part of a pension, profit-sharing, or stock bonus plan shall not constitute a qualified trust under section 401(a) if—

(A) in the case of a defined benefit plan, the plan provides for the payment of benefits with respect to a participant which exceed the limitation of subsection (b), or

(B) in the case of a defined contribution plan, contributions and other additions under the plan with respect to any participant for any taxable year exceed the limitation of subsection (c).

(2) Section applies to certain annuities and accounts

In the case of—

(A) an employee annuity plan described in section 403(a),

(B) an annuity contract described in section 403(b), or

(C) a simplified employee pension described in section 408(k),

such a contract, plan, or pension shall not be considered to be described in section 403(a), 403(b), or 408(k), as the case may be, unless it satisfies the requirements of subparagraph (A) or subparagraph (B) of paragraph (1), whichever is appropriate, and has not been disqualified under subsection (g). In the case of an annuity contract described in section 403(b), the

preceding sentence shall apply only to the portion of the annuity contract which exceeds the limitation of subsection (b) or the limitation of subsection (c), whichever is appropriate.

(b) Limitation for defined benefit plans

(1) In general

Benefits with respect to a participant exceed the limitation of this subsection if, when expressed as an annual benefit (within the meaning of paragraph (2)), such annual benefit is greater than the lesser of—

(A) $160,000, or

(B) 100 percent of the participant's average compensation for his high 3 years.

(2) Annual benefit

(A) In general

For purposes of paragraph (1), the term ''annual benefit'' means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) under a plan to which employees do not contribute and under which no rollover contributions (as defined in sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)) are made.

(B) Adjustment for certain other forms of benefit

If the benefit under the plan is payable in any form other than the form described in subparagraph (A), or if the employees contribute to the plan or make rollover contributions (as defined in sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)), the determinations as to whether the limitation described in paragraph (1) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary by adjusting such benefit so that it is equivalent to the benefit described in subparagraph (A). For purposes of this subparagraph, any ancillary benefit which is not directly related to retirement income benefits shall not be taken into account; and that portion of any joint and survivor annuity which constitutes a qualified joint and survivor annuity (as defined in section 417) shall not be taken into account.

(C) Adjustment to $160,000 limit where benefit begins before age 62

If the retirement income benefit under the plan begins before age 62, the determination as to whether the $160,000 limitation set forth in paragraph (1)(A) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary, by reducing the limitation of paragraph (1)(A) so that such limitation (as so reduced) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a $160,000 annual benefit beginning at age 62.

(D) Adjustment to $160,000 limit where benefit begins after age 65

If the retirement income benefit under the plan begins after age 65, the determination as to whether the $160,000 limitation set forth in paragraph (1)(A) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary, by increasing the limitation of paragraph (1)(A) so that such limitation (as so increased) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a $160,000 annual benefit beginning at age 65.

(E) Limitation on certain assumptions

(i) For purposes of adjusting any limitation under subparagraph (C) and, except as provided in clause (ii), for purposes of adjusting any benefit under subparagraph (B), the interest rate assumption shall not be less than the greater of 5 percent or the rate specified in the plan.

(ii) For purposes of adjusting any benefit under subparagraph (B) for any form of benefit subject to section 417(e)(3), the interest rate assumption shall not be less than the greatest of—

(I) 5.5 percent,

(II) the rate that provides a benefit of not more than 105 percent of the benefit that would be provided if the applicable interest rate (as defined in section 417(e)(3)) were the interest rate assumption, or

(III) the rate specified under the plan.

(iii) For purposes of adjusting any limitation under subparagraph (D), the interest rate assumption shall not be greater than the lesser of 5 percent or the rate specified in the plan.

(iv) For purposes of this subsection, no adjustments under subsection (d)(1) shall be taken into account before the year for which such adjustment first takes effect.

(v) For purposes of adjusting any benefit or limitation under subparagraph (B), (C), or (D), the mortality table used shall be the applicable mortality table (within the meaning of section 417(e)(3)(B)).

(vi) In the case of a plan maintained by an eligible employer (as defined in section 408(p)(2)(C)(i)), clause (ii) shall be applied without regard to subclause (II) thereof.

[(F) Repealed. Pub. L. 107–16, title VI, § 611(a)(5)(A), June 7, 2001, 115 Stat. 97]

(G) Special limitation for qualified police or firefighters

In the case of a qualified participant, subparagraph (C) of this paragraph shall not apply.

(H) Qualified participant defined

For purposes of subparagraph (G), the term ''qualified participant'' means a participant—

(i) in a defined benefit plan which is maintained by a State, Indian tribal government (as defined in section 7701(a)(40)), or any political subdivision thereof,

(ii) with respect to whom the period of service taken into account in determining the amount of the benefit under such defined benefit plan includes at least 15 years of service of the participant—

(I) as a full-time employee of any police department or fire department which is organized and operated by the

State, Indian tribal government (as so defined), or any political subdivision maintaining such defined benefit plan to provide police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State, Indian tribal government (as so defined), or any political subdivision, or

(II) as a member of the Armed Forces of the United States.

(I) Exemption for survivor and disability benefits provided under governmental plans

Subparagraph (C) of this paragraph and paragraph (5) shall not apply to—

(i) income received from a governmental plan (as defined in section 414(d)) as a pension, annuity, or similar allowance as the result of the recipient becoming disabled by reason of personal injuries or sickness, or

(ii) amounts received from a governmental plan by the beneficiaries, survivors, or the estate of an employee as the result of the death of the employee.

(3) Average compensation for high 3 years

For purposes of paragraph (1), a participant's high 3 years shall be the period of consecutive calendar years (not more than 3) during which the participant had the greatest aggregate compensation from the employer. In the case of an employee within the meaning of section 401(c)(1), the preceding sentence shall be applied by substituting for ''compensation from the employer'' the following: ''the participant's earned income (within the meaning of section 401(c)(2) but determined without regard to any exclusion under section 911)''.

(4) Total annual benefits not in excess of $10,000

Notwithstanding the preceding provisions of this subsection, the benefits payable with respect to a participant under any defined benefit plan shall be deemed not to exceed the limitation of this subsection if—

(A) the retirement benefits payable with respect to such participant under such plan and under all other defined benefit plans of the employer do not exceed $10,000 for the plan year, or for any prior plan year, and

(B) the employer has not at any time maintained a defined contribution plan in which the participant participated.

(5) Reduction for participation or service of less than 10 years

(A) Dollar limitation

In the case of an employee who has less than 10 years of participation in a defined benefit plan, the limitation referred to in paragraph (1)(A) shall be the limitation determined under such paragraph (without regard to this paragraph) multiplied by a fraction—

(i) the numerator of which is the number of years (or part thereof) of participation in the defined benefit plan of the employer, and

(ii) the denominator of which is 10.

(B) Compensation and benefits limitations

The provisions of subparagraph (A) shall apply to the limitations under paragraphs (1)(B) and (4), except that such subparagraph shall be applied with respect to years of service with an employer rather than years of participation in a plan.

(C) Limitation on reduction

In no event shall subparagraph (A) or (B) reduce the limitations referred to in paragraphs (1) and (4) to an amount less than $\frac{1}{10}$ of such limitation (determined without regard to this paragraph).

(D) Application to changes in benefit structure

To the extent provided in regulations, subparagraph (A) shall be applied separately with respect to each change in the benefit structure of a plan.

(6) Computation of benefits and contributions

The computation of—

(A) benefits under a defined contribution plan, for purposes of section 401(a)(4),

(B) contributions made on behalf of a participant in a defined benefit plan, for purposes of section 401(a)(4), and

(C) contributions and benefits provided for a participant in a plan described in section 414(k), for purposes of this section

shall not be made on a basis inconsistent with regulations prescribed by the Secretary.

(7) Benefits under certain collectively bargained plans

For a year, the limitation referred to in paragraph (1)(B) shall not apply to benefits with respect to a participant under a defined benefit plan (other than a multiemployer plan)—

(A) which is maintained for such year pursuant to a collective bargaining agreement between employee representatives and one or more employers,

(B) which, at all times during such year, has at least 100 participants,

(C) under which benefits are determined solely by reference to length of service, the particular years during which service was rendered, age at retirement, and date of retirement,

(D) which provides that an employee who has at least 4 years of service has a nonforfeitable right to 100 percent of his accrued benefit derived from employer contributions, and

(E) which requires, as a condition of participation in the plan, that an employee complete a period of not more than 60 consecutive days of service with the employer or employers maintaining the plan.

This paragraph shall not apply to a participant whose compensation for any 3 years during the 10-year period immediately preceding the year in which he separates from service exceeded the average compensation for such 3 years of all participants in such plan. This paragraph shall not apply to a participant for

any period for which he is a participant under another plan to which this section applies which is maintained by an employer maintaining this plan. For any year for which the paragraph applies to benefits with respect to a participant, paragraph (1)(A) and subsection (d)(1)(A) shall be applied with respect to such participant by substituting one-half the amount otherwise applicable for such year under paragraph (1)(A) for ''$160,000''.

(8) Social security retirement age defined

For purposes of this subsection, the term ''social security retirement age'' means the age used as the retirement age under section 216(*l*) of the Social Security Act, except that such section shall be applied—

(A) without regard to the age increase factor, and

(B) as if the early retirement age under section 216(*l*)(2) of such Act were 62.

(9) Special rule for commercial airline pilots

(A) In general

Except as provided in subparagraph (B), in the case of any participant who is a commercial airline pilot, if, as of the time of the participant's retirement, regulations prescribed by the Federal Aviation Administration require an individual to separate from service as a commercial airline pilot after attaining any age occurring on or after age 60 and before age 62, paragraph (2)(C) shall be applied by substituting such age for age 62.

(B) Individuals who separate from service before age 60

If a participant described in subparagraph (A) separates from service before age 60, the rules of paragraph (2)(C) shall apply.

(10) Special rule for State, Indian tribal, and local government plans

(A) Limitation to equal accrued benefit

In the case of a plan maintained for its employees by any State or political subdivision thereof, or by any agency or instrumentality of the foregoing, or a governmental plan described in the last sentence of section 414(d) (relating to plans of Indian tribal governments), the limitation with respect to a qualified participant under this subsection shall not be less than the accrued benefit of the participant under the plan (determined without regard to any amendment of the plan made after October 14, 1987).

(B) Qualified participant

For purposes of this paragraph, the term ''qualified participant'' means a participant who first became a participant in the plan maintained by the employer before January 1, 1990.

(C) Election

(i) In general

This paragraph shall not apply to any plan unless each employer maintaining the plan elects before the close of the 1st plan year beginning after December 31, 1989, to have this subsection (other than paragraph (2)(G)).

(ii) Revocation of election

An election under clause (i) may be revoked not later than the last day of the third plan year beginning after the date of the enactment of this clause. The revocation shall apply to all plan years to which the election applied and to all subsequent plan years. Any amount paid by a plan in a taxable year ending after the revocation shall be includible in income in such taxable year under the rules of this chapter in effect for such taxable year, except that, for purposes of applying the limitations imposed by this section, any portion of such amount which is attributable to any taxable year during which the election was in effect shall be treated as received in such taxable year.

(11) Special limitation rule for governmental and multiemployer plans

In the case of a governmental plan (as defined in section 414(d)) or a multiemployer plan (as defined in section 414(f)), subparagraph (B) of paragraph (1) shall not apply. Subparagraph (B) of paragraph (1) shall not apply to a plan maintained by an organization described in section 3121(w)(3)(A) except with respect to highly compensated benefits. For purposes of this paragraph, the term ''highly compensated benefits'' means any benefits accrued for an employee in any year on or after the first year in which such employee is a highly compensated employee (as defined in section 414(q)) of the organization described in section 3121(w)(3)(A). For purposes of applying paragraph (1)(B) to highly compensated benefits, all benefits of the employee otherwise taken into account (without regard to this paragraph) shall be taken into account.

(c) Limitation for defined contribution plans

(1) In general

Contributions and other additions with respect to a participant exceed the limitation of this subsection if, when expressed as an annual addition (within the meaning of paragraph (2)) to the participant's account, such annual addition is greater than the lesser of—

(A) $40,000, or

(B) 100 percent of the participant's compensation.

(2) Annual addition

For purposes of paragraph (1), the term ''annual addition'' means the sum of any year of—

(A) employer contributions,

(B) the employee contributions, and

(C) forfeitures.

For the purposes of this paragraph, employee contributions under subparagraph (B) are determined without regard to any rollover contributions (as defined in sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)) without regard to employee contributions to a simplified employee pension which are excludable from gross income under section 408(k)(6). Subparagraph (B) of paragraph (1) shall not apply to any contribution for medical benefits (within the meaning of section 419A(f)(2)) after separation from service which is treated as an annual addition.

(3) Participant's compensation

For purposes of paragraph (1)—

(A) In general

The term ''participant's compensation'' means the compensation of the participant from the employer for the year.

(B) Special rule for self-employed individuals

In the case of an employee within the meaning of section 401(c)(1), subparagraph (A) shall be applied by substituting ''the participant's earned income (within the meaning of section 401(c)(2) but determined without regard to any exclusion under section 911)'' for ''compensation of the participant from the employer''.

(C) Special rules for permanent and total disability

In the case of a participant in any defined contribution plan—

(i) who is permanently and totally disabled (as defined in section 22(e)(3)),

(ii) who is not a highly compensated employee (within the meaning of section 414(q)), and

(iii) with respect to whom the employer elects, at such time and in such manner as the Secretary may prescribe, to have this subparagraph apply,

the term ''participant's compensation'' means the compensation the participant would have received for the year if the participant was paid at the rate of compensation paid immediately before becoming permanently and totally disabled. This subparagraph shall apply only if contributions made with respect to amounts treated as compensation under this subparagraph are nonforfeitable when made. If a defined contribution plan provides for the continuation of contributions on behalf of all participants described in clause (i) for a fixed or determinable period, this subparagraph shall be applied without regard to clauses (ii) and (iii).

(D) Certain deferrals included

The term ''participant's compensation'' shall include—

(i) any elective deferral (as defined in section 402(g)(3)), and

(ii) any amount which is contributed or deferred by the employer at the election of the employee and which is not includible in the gross income of the employee by reason of section 125, 132(f)(4), or 457.

(E) Annuity contracts

In the case of an annuity contract described in section 403(b), the term ''participant's compensation'' means the participant's includible compensation determined under section 403(b)(3).

[(4) Repealed. Pub. L. 107–16, title VI, § 632(a)(3)(E), June 7, 2001, 115 Stat. 114]

[(5) Repealed. Pub. L. 97–248, title II, § 238(d)(5), Sept. 3, 1982, 96 Stat. 513]

(6) Special rule for employee stock ownership plans

If no more than one-third of the employer contributions to an employee stock ownership plan (as described in section 4975(e)(7)) for a year which are deductible under paragraph (9) of section 404(a) are allocated to highly compensated employees (within the meaning of section 414(q)), the limitations imposed by this section shall not apply to—

(A) forfeitures of employer securities (within the meaning of section 409) under such an employee stock ownership plan if such securities were acquired with the proceeds of a loan (as described in section 404(a)(9)(A)), or

(B) employer contributions to such an employee stock ownership plan which are deductible under section 404(a)(9)(B) and charged against the participant's account.

The amount of any qualified gratuitous transfer (as defined in section 664(g)(1)) allocated to a participant for any limitation year shall not exceed the limitations imposed by this section, but such amount shall not be taken into account in determining whether any other amount exceeds the limitations imposed by this section.

(7) Special rules relating to church plans

(A) Alternative contribution limitation

(i) In general

Notwithstanding any other provision of this subsection, at the election of a participant who is an employee of a church or a convention or association of churches, including an organization described in section 414(e)(3)(B)(ii), contributions and other additions for an annuity contract or retirement income account described in section 403(b) with respect to such participant, when expressed as an annual addition to such participant's account, shall be treated as not exceeding the limitation of paragraph (1) if such annual addition is not in excess of $10,000.

(ii) $40,000 aggregate limitation

The total amount of additions with respect to any participant which may be taken into account for purposes of this subparagraph for all years may not exceed $40,000.

(B) Number of years of service for duly ordained, commissioned, or licensed ministers or lay employees

For purposes of this paragraph—

(i) all years of service by—

(I) a duly ordained, commissioned, or licensed minister of a church, or

(II) a lay person,

as an employee of a church, a convention or association of churches, including an organization described in section

414(e)(3)(B)(ii), shall be considered as years of service for 1 employer, and

(ii) all amounts contributed for annuity contracts by each such church (or convention or association of churches) or such organization during such years for such minister or lay person shall be considered to have been contributed by 1 employer.

(C) Foreign missionaries

In the case of any individual described in subparagraph (B) performing services outside the United States, contributions and other additions for an annuity contract or retirement income account described in section 403(b) with respect to such employee, when expressed as an annual addition to such employee's account, shall not be treated as exceeding the limitation of paragraph (1) if such annual addition is not in excess of $3,000. This subparagraph shall not apply with respect to any taxable year to any individual whose adjusted gross income for such taxable year (determined separately and without regard to community property laws) exceeds $17,000.

(D) Annual addition

For purposes of this paragraph, the term ''annual addition'' has the meaning given such term by paragraph (2).

(E) Church, convention or association of churches

For purposes of this paragraph, the terms ''church'' and ''convention or association of churches'' have the same meaning as when used in section 414(e).

(d) Cost-of-living adjustments

(1) In general

The Secretary shall adjust annually—

(A) the $160,000 amount in subsection (b)(1)(A),

(B) in the case of a participant who is separated from service, the amount taken into account under subsection (b)(1)(B), and

(C) the $40,000 amount in subsection (c)(1)(A),

for increases in the cost-of-living in accordance with regulations prescribed by the Secretary.

(2) Method

The regulations prescribed under paragraph (1) shall provide for—

(A) an adjustment with respect to any calendar year based on the increase in the applicable index for the calendar quarter ending September 30 of the preceding calendar year over such index for the base period, and

(B) adjustment procedures which are similar to the procedures used to adjust benefit amounts under section 215(i)(2)(A) of the Social Security Act.

(3) Base period

For purposes of paragraph (2)—

(A) $160,000 amount

The base period taken into account for purposes of paragraph (1)(A) is the calendar quarter beginning July 1, 2001.

(B) Separations after December 31, 1994

The base period taken into account for purposes of paragraph (1)(B) with respect to individuals separating from service with the employer after December 31, 1994, is the calendar quarter beginning July 1 of the calendar year preceding the calendar year in which such separation occurs.

(C) Separations before January 1, 1995

The base period taken into account for purposes of paragraph (1)(B) with respect to individuals separating from service with the employer before January 1, 1995, is the calendar quarter beginning October 1 of the calendar year preceding the calendar year in which such separation occurs.

(D) $40,000 amount

The base period taken into account for purposes of paragraph (1)(C) is the calendar quarter beginning July 1, 2001.

(4) Rounding

(A) $160,000 amount

Any increase under subparagraph (A) of paragraph (1) which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000. This subparagraph shall also apply for purposes of any provision of this title that provides for adjustments in accordance with the method contained in this subsection, except to the extent provided in such provision.

(B) $40,000 amount

Any increase under subparagraph (C) of paragraph (1) which is not a multiple of $1,000 shall be rounded to the next lowest multiple of $1,000.

[(e) Repealed. Pub. L. 104–188, title I, § 1452(a), Aug. 20, 1996, 110 Stat. 1816]

(f) Combining of plans

(1) In general

For purposes of applying the limitations of subsections (b) and (c)—

(A) all defined benefit plans (whether or not terminated) of an employer are to be treated as one defined benefit plan, and

(B) all defined contribution plans (whether or not terminated) of an employer are to be treated as one defined contribution plan.

(2) Exception for multiemployer plans

Notwithstanding paragraph (1) and subsection (g), a multiemployer plan (as defined in section 414(f)) shall not be combined or aggregated—

(A) with any other plan which is not a multiemployer plan for purposes of applying subsection (b)(1)(B) to such other plan, or

(B) with any other multiemployer plan for purposes of applying the limitations established in this section.

(g) Aggregation of plans

Except as provided in subsection (f)(3),[1] the Secretary, in applying the provisions of this section to benefits or contributions under more

[1] See References in Text note below.

than one plan maintained by the same employer, and to any trusts, contracts, accounts, or bonds referred to in subsection (a)(2), with respect to which the participant has the control required under section 414(b) or (c), as modified by subsection (h), shall, under regulations prescribed by the Secretary, disqualify one or more trusts, plans, contracts, accounts, or bonds, or any combination thereof until such benefits or contributions do not exceed the limitations contained in this section. In addition to taking into account such other factors as may be necessary to carry out the purposes of subsection (f), the regulations prescribed under this paragraph shall provide that no plan which has been terminated shall be disqualified until all other trusts, plans, contracts, accounts, or bonds have been disqualified.

(h) 50 percent control

For purposes of applying subsections (b) and (c) of section 414 to this section, the phrase ''more than 50 percent'' shall be substituted for the phrase ''at least 80 percent'' each place it appears in section 1563(a)(1).

(i) Records not available for past periods

Where for the period before January 1, 1976, or (if later) the first day of the first plan year of the plan, the records necessary for the application of this section are not available, the Secretary may by regulations prescribe alternate methods for determining the amounts to be taken into account for such period.

(j) Regulations; definition of year

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including, but not limited to, regulations defining the term ''year'' for purposes of any provision of this section.

(k) Special rules

(1) Defined benefit plan and defined contribution plan

For purposes of this title, the term ''defined contribution plan'' or ''defined benefit plan'' means a defined contribution plan (within the meaning of section 414(i)) or a defined benefit plan (within the meaning of section 414(j)), whichever applies, which is—

(A) a plan described in section 401(a) which includes a trust which is exempt from tax under section 501(a),

(B) an annuity plan described in section 403(a),

(C) an annuity contract described in section 403(b), or

(D) a simplified employee pension.

(2) Contributions to provide cost-of-living protection under defined benefit plans

(A) In general

In the case of a defined benefit plan which maintains a qualified cost-of-living arrangement—

(i) any contribution made directly by an employee under such an arrangement shall not be treated as an annual addition for purposes of subsection (c), and

(ii) any benefit under such arrangement which is allocable to an employer contribution which was transferred from a defined contribution plan and to which the requirements of subsection (c) were applied shall, for purposes of subsection (b), be treated as a benefit derived from an employee contribution (and subsection (c) shall not again apply to such contribution by reason of such transfer).

(B) Qualified cost-of-living arrangement defined

For purposes of this paragraph, the term ''qualified cost-of-living arrangement'' means an arrangement under a defined benefit plan which—

(i) provides a cost-of-living adjustment to a benefit provided under such plan or a separate plan subject to the requirements of section 412, and

(ii) meets the requirements of subparagraphs (C), (D), (E), and (F) and such other requirements as the Secretary may prescribe.

(C) Determination of amount of benefit

An arrangement meets the requirement of this subparagraph only if the cost-of-living adjustment of participants is based—

(i) on increases in the cost-of-living after the annuity starting date, and

(ii) on average cost-of-living increases determined by reference to 1 or more indexes prescribed by the Secretary, except that the arrangement may provide that the increase for any year will not be less than 3 percent of the retirement benefit (determined without regard to such increase).

(D) Arrangement elective; time for election

An arrangement meets the requirements of this subparagraph only if it is elective, it is available under the same terms to all participants, and it provides that such election may at least be made in the year in which the participant—

(i) attains the earliest retirement age under the defined benefit plan (determined without regard to any requirement of separation from service), or

(ii) separates from service.

(E) Nondiscrimination requirements

An arrangement shall not meet the requirements of this subparagraph if the Secretary finds that a pattern of discrimination exists with respect to participation.

(F) Special rules for key employees

(i) In general

An arrangement shall not meet the requirements of this paragraph if any key employee is eligible to participate.

(ii) Key employee

For purposes of this subparagraph, the term ''key employee'' has the meaning given such term by section 416(i)(1), except that in the case of a plan other than a top-heavy plan (within the meaning of section 416(g)), such term shall not include an individual who is a key employee solely by reason of section 416(i)(1)(A)(i).

(3) Repayments of cashouts under governmental plans

In the case of any repayment of contributions (including interest thereon) to the governmental plan with respect to an amount previously refunded upon a forfeiture of service credit under the plan or under another governmental plan maintained by a State or local government employer within the same State, any such repayment shall not be taken into account for purposes of this section.

(4) Special rules for sections 403(b) and 408

For purposes of this section, any annuity contract described in section 403(b) for the benefit of a participant shall be treated as a defined contribution plan maintained by each employer with respect to which the participant has the control required under subsection (b) or (c) of section 414 (as modified by subsection (h)). For purposes of this section, any contribution by an employer to a simplified employee pension plan for an individual for a taxable year shall be treated as an employer contribution to a defined contribution plan for such individual for such year.

(*l*) Treatment of certain medical benefits

(1) In general

For purposes of this section, contributions allocated to any individual medical benefit account which is part of a pension or annuity plan shall be treated as an annual addition to a defined contribution plan for purposes of subsection (c). Subparagraph (B) of subsection (c)(1) shall not apply to any amount treated as an annual addition under the preceding sentence.

(2) Individual medical benefit account

For purposes of paragraph (1), the term ''individual medical benefit account'' means any separate account—

(A) which is established for a participant under a pension or annuity plan, and

(B) from which benefits described in section 401(h) are payable solely to such participant, his spouse, or his dependents.

(m) Treatment of qualified governmental excess benefit arrangements

(1) Governmental plan not affected

In determining whether a governmental plan (as defined in section 414(d)) meets the requirements of this section, benefits provided under a qualified governmental excess benefit arrangement shall not be taken into account. Income accruing to a governmental plan (or to a trust that is maintained solely for the purpose of providing benefits under a qualified governmental excess benefit arrangement) in respect of a qualified governmental excess benefit arrangement shall constitute income derived from the exercise of an essential governmental function upon which such governmental plan (or trust) shall be exempt from tax under section 115.

(2) Taxation of participant

For purposes of this chapter—

(A) the taxable year or years for which amounts in respect of a qualified governmental excess benefit arrangement are includible in gross income by a participant, and

(B) the treatment of such amounts when so includible by the participant,

shall be determined as if such qualified governmental excess benefit arrangement were treated as a plan for the deferral of compensation which is maintained by a corporation not exempt from tax under this chapter and which does not meet the requirements for qualification under section 401.

(3) Qualified governmental excess benefit arrangement

For purposes of this subsection, the term ''qualified governmental excess benefit arrangement'' means a portion of a governmental plan if—

(A) such portion is maintained solely for the purpose of providing to participants in the plan that part of the participant's annual benefit otherwise payable under the terms of the plan that exceeds the limitations on benefits imposed by this section,

(B) under such portion no election is provided at any time to the participant (directly or indirectly) to defer compensation, and

(C) benefits described in subparagraph (A) are not paid from a trust forming a part of such governmental plan unless such trust is maintained solely for the purpose of providing such benefits.

(n) Special rules relating to purchase of permissive service credit

(1) In general

If a participant makes 1 or more contributions to a defined benefit governmental plan (within the meaning of section 414(d)) to purchase permissive service credit under such plan, then the requirements of this section shall be treated as met only if—

(A) the requirements of subsection (b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of subsection (b), or

(B) the requirements of subsection (c) are met, determined by treating all such contributions as annual additions for purposes of subsection (c).

(2) Application of limit

For purposes of—

(A) applying paragraph (1)(A), the plan shall not fail to meet the reduced limit under subsection (b)(2)(C) solely by reason of this subsection, and

(B) applying paragraph (1)(B), the plan shall not fail to meet the percentage limitation under subsection (c)(1)(B) solely by reason of this subsection.

(3) Permissive service credit

For purposes of this subsection—

(A) In general

The term ''permissive service credit'' means service credit—

(i) recognized by the governmental plan for purposes of calculating a participant's benefit under the plan,

(ii) which such participant has not received under such governmental plan, and

(iii) which such participant may receive only by making a voluntary additional contribution, in an amount determined under such governmental plan, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Such term may include service credit for periods for which there is no performance of service, and, notwithstanding clause (ii), may include service credited in order to provide an increased benefit for service credit which a participant is receiving under the plan.

(B) Limitation on nonqualified service credit

A plan shall fail to meet the requirements of this section if—

(i) more than 5 years of nonqualified service credit are taken into account for purposes of this subsection, or

(ii) any nonqualified service credit is taken into account under this subsection before the employee has at least 5 years of participation under the plan.

(C) Nonqualified service credit

For purposes of subparagraph (B), the term ''nonqualified service credit'' means permissive service credit other than that allowed with respect to—

(i) service (including parental, medical, sabbatical, and similar leave) as an employee of the Government of the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in subsection (k)(3)),

(ii) service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in clause (i)) of an educational organization described in section 170(b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed,

(iii) service as an employee of an association of employees who are described in clause (i), or

(iv) military service (other than qualified military service under section 414(u)) recognized by such governmental plan.

In the case of service described in clause (i), (ii), or (iii), such service will be nonqualified service if recognition of such service would cause a participant to receive a retirement benefit for the same service under more than one plan.

(D) Special rules for trustee-to-trustee transfers

In the case of a trustee-to-trustee transfer to which section 403(b)(13)(A) or 457(e)(17)(A) applies (without regard to whether the transfer is made between plans maintained by the same employer)—

(i) the limitations of subparagraph (B) shall not apply in determining whether the transfer is for the purchase of permissive service credit, and

(ii) the distribution rules applicable under this title to the defined benefit governmental plan to which any amounts are so transferred shall apply to such amounts and any benefits attributable to such amounts.

(Added Pub. L. 93–406, title II, §2004(a)(2), Sept. 2, 1974, 88 Stat. 979; amended Pub. L. 94–455, title VIII, §803(b)(4), (f), title XV, §§1501(b)(3), 1502(a)(1), 1511(a), title XIX, §§1901(a)(65), (b)(8)(D), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1584, 1589, 1735–1737, 1741, 1775, 1794, 1834; Pub. L. 95–600, title I, §§141(f)(7), 152(g), 153(a), Nov. 6, 1978, 92 Stat. 2795, 2800; Pub. L. 96–222, title I, §101(a)(7)(L)(i)(VII), (iv)(I), (10)(I), (J)(iii), (11), Apr. 1, 1980, 94 Stat. 199, 200, 203, 204; Pub. L. 96–605, title II, §222(a), Dec. 28, 1980, 94 Stat. 3528; Pub. L. 97–34, title III, §§311(g)(4), (h)(3), 333(b)(1), Aug. 13, 1981, 95 Stat. 281, 282, 297; Pub. L. 97–248, title II, §§235(a)–(e), 238(d)(5), 251(c)(1), (2), 253(a), Sept. 3, 1982, 96 Stat. 505–507, 513, 530, 532; Pub. L. 98–21, title I, §122(c)(5), Apr. 20, 1983, 97 Stat. 87; Pub. L. 98–369, div. A, title I, §15, title IV, §491(d)(28)–(32), (e)(6), title (V), §528(a), title VII, §713(a)(1), (3), (d)(4)(B), (7), (k), July 18, 1984, 98 Stat. 505, 850, 853, 876, 955, 956, 958, 960; Pub. L. 99–514, title XI, §§1106(a)–(c)(1), (e)–(g), 1108(g)(5), 1114(b)(12), 1174(d)(1), (2), title XVIII, §§1847(b)(4), 1852(h)(2), (3), 1875(c)(9), (11), 1898(b)(15)(C), 1899A(13), Oct. 22, 1986, 100 Stat. 2420, 2422, 2424, 2425, 2434, 2451, 2518, 2856, 2869, 2895, 2951, 2958; Pub. L. 100–647, title I, §§1011(d)(2), (3), (6), (7), 1018(t)(3)(B), (8)(D), title VI, §§6054(a), 6059(a), Nov. 10, 1988, 102 Stat. 3459, 3460, 3588, 3589, 3696, 3699; Pub. L. 101–239, title VII, §7304(c)(1), Dec. 19, 1989, 103 Stat. 2353; Pub. L. 102–318, title V, §521(b)(23)–(25), July 3, 1992, 106 Stat. 311, 312; Pub. L. 103–465, title VII, §§732(b), 767(b), Dec. 8, 1994, 108 Stat. 5004, 5038; Pub. L. 104–188, title I, §§1434(a), 1444(a), (b)(1), (c), (d), 1446(a), 1449(b), 1452(a), (c)(1)–(6), 1704(t)(75), Aug. 20, 1996, 110 Stat. 1807, 1809–1811, 1814, 1816, 1891; Pub. L. 105–34, title XV, §§1526(a), (b), 1527(a), 1530(c)(3), (4), Aug. 5, 1997, 111 Stat. 1072–1074, 1078; Pub. L. 106–554, §1(a)(7) [title III, §314(e)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–643; Pub. L. 107–16, title VI, §§611(a), (b), (h), 632(a)(1), (3)(C)–(F), (b)(1), 641(e)(9), (10), 654(a), (b), June 7, 2001, 115 Stat. 96, 97, 100, 113–115, 121, 130, 131; Pub. L. 107–147, title IV, §411(p)(4), Mar. 9, 2002, 116 Stat. 50; Pub. L. 108–218, title I, §101(b)(4), Apr. 10, 2004, 118 Stat. 598; Pub. L. 108–311, title IV, §§404(b)(2), 408(a)(17), Oct. 4, 2004, 118 Stat. 1188, 1192; Pub. L. 109–135, title IV, §§407(b), 412(y), (z), Dec. 21, 2005, 119 Stat. 2635, 2638; Pub. L. 109–280, title III, §303(a), title VIII, §§821(a)–(c), 832(a), 867(a), title IX, §906(b)(1)(A), (B), Aug. 17, 2006, 120 Stat. 921, 997, 1003, 1025, 1051, 1052; Pub. L. 110–458, title I, §§103(b)(2)(B)(i), 108(g), 109(d)(1), 122(a), Dec. 23, 2008, 122 Stat. 5103, 5109, 5112, 5114.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (b)(8) and (d)(2)(B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. Sections 215(i)(2)(A) and 216(*l*) of the Act enacted sections 415(i)(2)(A) and 416(*l*) of Title 42, respectively. For complete classification of this Act to the Code, see Tables.

The date of the enactment of this clause, referred to in subsec. (b)(10)(C)(ii), is the date of enactment of Pub. L. 104–188, which was approved Aug. 20, 1996.

Subsection (f)(3), referred to in subsec. (g), was redesignated subsection (f)(2) by Pub. L. 100–458, title I, § 108(g), Dec. 23, 2008, 122 Stat. 5109.

AMENDMENTS

2008—Subsec. (b)(2)(E)(v). Pub. L. 110–458, § 103(b)(2)(B)(i), amended cl. (v) generally. Prior to amendment, cl. (v) read as follows: ''For purposes of adjusting any benefit or limitation under subparagraph (B), (C), or (D), the mortality table used shall be the table prescribed by the Secretary. Such table shall be based on the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on the date the adjustment is being made (without regard to any other subparagraph of section 807(d)(5)).''

Subsec. (b)(2)(E)(vi). Pub. L. 110–458, § 122(a), added cl. (vi).

Subsec. (b)(10). Pub. L. 110–458, § 109(d)(1), made technical correction to directory language of Pub. L. 109–280, § 906(b)(1)(B)(ii). See 2006 Amendment note below.

Subsec. (f)(2), (3). Pub. L. 110–458, § 108(g), redesignated par. (3) as par. (2) and struck out former par. (2) which related to annual compensation taken into account for defined benefit plans.

2006—Subsec. (b)(2)(E)(ii). Pub. L. 109–280, § 303(a), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''For purposes of adjusting any benefit under subparagraph (B) for any form of benefit subject to section 417(e)(3), the applicable interest rate (as defined in section 417(e)(3)) shall be substituted for '5 percent' in clause (i), except that in the case of plan years beginning in 2004 or 2005, '5.5 percent' shall be substituted for '5 percent' in clause (i).''

Subsec. (b)(2)(H)(i). Pub. L. 109–280, § 906(b)(1)(A)(i), substituted ''State, Indian tribal government (as defined in section 7701(a)(40)), or any political subdivision'' for ''State or political subdivision''.

Subsec. (b)(2)(H)(ii)(I). Pub. L. 109–280, § 906(b)(1)(A)(ii), substituted ''State, Indian tribal government (as so defined), or any political subdivision'' for ''State or political subdivision'' in two places.

Subsec. (b)(3). Pub. L. 109–280, § 832(a), struck out ''both was an active participant in the plan and'' before ''had the greatest''.

Subsec. (b)(10). Pub. L. 109–280, § 906(b)(1)(B)(ii), as amended by Pub. L. 110–458, § 109(d)(1), substituted ''State, Indian tribal, and'' for ''State and'' in heading.

Subsec. (b)(10)(A). Pub. L. 109–280, § 906(b)(1)(B)(i), inserted ''or a governmental plan described in the last sentence of section 414(d) (relating to plans of Indian tribal governments),'' after ''foregoing,''.

Subsec. (b)(11). Pub. L. 109–280, § 867(a), inserted at end ''Subparagraph (B) of paragraph (1) shall not apply to a plan maintained by an organization described in section 3121(w)(3)(A) except with respect to highly compensated benefits. For purposes of this paragraph, the term 'highly compensated benefits' means any benefits accrued for an employee in any year on or after the first year in which such employee is a highly compensated employee (as defined in section 414(q)) of the organization described in section 3121(w)(3)(A). For purposes of applying paragraph (1)(B) to highly compensated benefits, all benefits of the employee otherwise taken into account (without regard to this paragraph) shall be taken into account.''

Subsec. (n)(1). Pub. L. 109–280, § 821(a)(1), substituted ''a participant'' for ''an employee'' in introductory provisions.

Subsec. (n)(3)(A). Pub. L. 109–280, § 821(a)(2), inserted concluding provisions.

Subsec. (n)(3)(B)(i), (ii). Pub. L. 109–280, § 821(c)(1), substituted ''nonqualified service credit'' for ''permissive service credit attributable to nonqualified service''.

Subsec. (n)(3)(C). Pub. L. 109–280, § 821(c)(2), substituted ''service credit'' for ''service'' in heading and ''the term 'nonqualified service credit' means permissive service credit other than that allowed with respect to'' for ''the term 'nonqualified service' means service for which permissive service credit is allowed other than'' in introductory provisions.

Subsec. (n)(3)(C)(ii). Pub. L. 109–280, § 821(c)(3), substituted ''or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed'' for ''as determined under State law''.

Subsec. (n)(3)(D). Pub. L. 109–280, § 821(b), added subpar. (D).

2005—Subsec. (c)(7)(C). Pub. L. 109–135, § 407(b), substituted ''$3,000. This subparagraph shall not apply with respect to any taxable year to any individual whose adjusted gross income for such taxable year (determined separately and without regard to community property laws) exceeds $17,000'' for ''the greater of $3,000 or the employee's includible compensation determined under section 403(b)(3)''.

Subsec. (*l*)(1). Pub. L. 109–135, § 412(y), substituted ''individual medical benefit account'' for ''individual medical account''.

Subsec. (n)(3)(C). Pub. L. 109–135, § 412(z), substituted ''clause'' for ''clauses'' in concluding provisions.

2004—Subsec. (b)(2)(E)(ii). Pub. L. 108–218 inserted before period at end '', except that in the case of plan years beginning in 2004 or 2005, '5.5 percent' shall be substituted for '5 percent' in clause (i)''.

Subsec. (c)(7)(C). Pub. L. 108–311, § 408(a)(17), substituted ''subparagraph (B)'' for ''subparagraph (D)''.

Subsec. (d)(4)(A). Pub. L. 108–311, § 404(b)(2), inserted at end ''This subparagraph shall also apply for purposes of any provision of this title that provides for adjustments in accordance with the method contained in this subsection, except to the extent provided in such provision.''

2002—Subsec. (c)(7). Pub. L. 107–147 amended heading and text of par. (7) generally, substituting provisions relating to special rules relating to church plans for provisions relating to certain contributions by church plans not treated as exceeding limit and adding provisions relating to foreign missionaries and definitions of ''church'' and ''convention or association of churches''.

2001—Subsec. (a)(2). Pub. L. 107–16, § 632(a)(3)(C), struck out '', and the amount of the contribution for such portion shall reduce the exclusion allowance as provided in section 403(b)(2)'' before period at end.

Subsec. (b)(1)(A). Pub. L. 107–16, § 611(a)(1)(A), substituted ''$160,000'' for ''$90,000''.

Subsec. (b)(2)(A), (B). Pub. L. 107–16, § 641(e)(9), substituted ''403(b)(8), 408(d)(3), and 457(e)(16)'' for ''and 408(d)(3)''.

Subsec. (b)(2)(C). Pub. L. 107–16, § 611(a)(1)(B), (2), in heading substituted ''$160,000'' for ''$90,000'' and ''age 62'' for ''the social security retirement age'' and in text substituted ''age 62'' for ''the social security retirement age'' in two places, ''$160,000'' for ''$90,000'' in two places, and struck out at end ''The reduction under this subparagraph shall be made in such manner as the Secretary may prescribe which is consistent with the reduction for old-age insurance benefits commencing before the social security retirement age under the Social Security Act.''

Subsec. (b)(2)(D). Pub. L. 107–16, §611(a)(1)(B), (3), in heading substituted ''$160,000'' for ''$90,000'' and ''age 65'' for ''the social security retirement age'' and in text substituted ''age 65'' for ''the social security retirement age'' in two places and ''$160,000'' for ''$90,000'' in two places.

Subsec. (b)(2)(F). Pub. L. 107–16, §611(a)(5)(A), struck out subpar. (F), which related to the application of subpars. (C) and (D) in the case of a governmental plan, a plan maintained by a tax-exempt organization, or a qualified merchant marine plan and defined ''qualified merchant marine plan''.

Subsec. (b)(7). Pub. L. 107–16, §654(a)(2), inserted ''(other than a multiemployer plan)'' after ''defined benefit plan'' in introductory provisions.

Pub. L. 107–16, §611(a)(1)(C), substituted ''one-half the amount otherwise applicable for such year under paragraph (1)(A) for '$160,000' '' for ''the greater of $68,212 or one-half the amount otherwise applicable for such year under paragraph (1)(A) for '$90,000' '' in concluding provisions.

Subsec. (b)(9). Pub. L. 107–16, §611(a)(5)(B), amended par. (9) generally, substituting present provisions for provisions which provided that, in the case of any participant who was a commercial airline pilot, the rule of par. (2)(F)(i)(II) would apply, and if, as of the time of the participant's retirement, regulations prescribed by the Federal Aviation Administration required an individual to separate from service as a commercial airline pilot after attaining any age occurring on or after age 60 and before the social security retirement age, par. (2)(C) would be applied by substituting such age for the social security retirement age, and provisions which provided that if a participant separated from service before age 60, the rules of par. (2)(F) would apply.

Subsec. (b)(10)(C)(i). Pub. L. 107–16, §611(a)(5)(C), struck out ''applied without regard to paragraph (2)(F)'' before period at end.

Subsec. (b)(11). Pub. L. 107–16, §654(a)(1), amended heading and text of par. (11) generally. Prior to amendment, text read as follows: ''In the case of a governmental plan (as defined in section 414(d)), subparagraph (B) of paragraph (1) shall not apply.''

Subsec. (c)(1)(A). Pub. L. 107–16, §611(b)(1), substituted ''$40,000'' for ''$30,000''.

Subsec. (c)(1)(B). Pub. L. 107–16, §632(a)(1), substituted ''100 percent'' for ''25 percent''.

Subsec. (c)(2). Pub. L. 107–16, §641(e)(10), substituted ''408(d)(3), and 457(e)(16)'' for ''and 408(d)(3)'' in concluding provisions.

Subsec. (c)(3)(E). Pub. L. 107–16, §632(a)(3)(D), added subpar. (E).

Subsec. (c)(4). Pub. L. 107–16, §632(a)(3)(E), struck out par. (4), which related to special election for section 403(b) contracts purchased by educational organizations, hospitals, home health service agencies, certain churches, and other organizations.

Subsec. (c)(7). Pub. L. 107–16, §632(a)(3)(F), amended par. (7) generally, redesignating cls. (i) and (ii) of subpar. (B) as subpars. (A) and (B), respectively, reenacting subpar. (C) without change, striking out former subpar. (A), which directed that any contribution or addition with respect to any participant, when expressed as an annual addition, which was allocable to the application of section 403(b)(2)(D) to such participant for such year, would be treated as not exceeding the limitations of par. (1), and striking out former subpar. (B), cl. (iii), which prohibited making of election under this subpar. for any year if an election had been made under former par. (4)(A) for such year.

Subsec. (d)(1)(A). Pub. L. 107–16, §611(a)(4)(A), substituted ''$160,000'' for ''$90,000''.

Subsec. (d)(1)(C). Pub. L. 107–16, §611(b)(2)(A), substituted ''$40,000'' for ''$30,000''.

Subsec. (d)(3)(A). Pub. L. 107–16, §611(a)(4)(B), in heading substituted ''$160,000'' for ''$90,000'' and in text substituted ''July 1, 2001'' for ''October 1, 1986''.

Subsec. (d)(3)(D). Pub. L. 107–16, §611(b)(2)(B), in heading substituted ''$40,000'' for ''$30,000'' and in text substituted ''July 1, 2001'' for ''October 1, 1993''.

Subsec. (d)(4). Pub. L. 107–16, §611(h), reenacted heading without change and amended text of par. (4) generally. Prior to amendment, text read as follows: ''Any increase under subparagraph (A) or (C) of paragraph (1) which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000.''

Subsec. (f)(3). Pub. L. 107–16, §654(b)(1), added par. (3).

Subsec. (g). Pub. L. 107–16, §654(b)(2), substituted ''Except as provided in subsection (f)(3), the Secretary'' for ''The Secretary''.

Subsec. (k)(4). Pub. L. 107–16, §632(b)(1), added par. (4).

2000—Subsec. (c)(3)(D)(ii). Pub. L. 106–554 substituted ''section 125, 132(f)(4), or'' for ''section 125 or''.

1997—Subsec. (b)(2)(G). Pub. L. 105–34, §1527(a), substituted ''participant, subparagraph (C) of this paragraph shall not apply.'' for ''participant—

''(i) subparagraph (C) shall not reduce the limitation of paragraph (1)(A) to an amount less than $50,000, and

''(ii) the rules of subparagraph (F) shall apply.

The Secretary shall adjust the $50,000 amount in clause (i) at the same time and in the same manner as under section 415(d).''

Subsec. (c)(6). Pub. L. 105–34, §1530(c)(3), inserted concluding provisions ''The amount of any qualified gratuitous transfer (as defined in section 664(g)(1)) allocated to a participant for any limitation year shall not exceed the limitations imposed by this section, but such amount shall not be taken into account in determining whether any other amount exceeds the limitations imposed by this section.''

Subsec. (e)(6), (7). Pub. L. 105–34, §1530(c)(4), added par. (6) and redesignated former par. (6) as (7).

Subsec. (k)(3). Pub. L. 105–34, §1526(b), added par. (3).

Subsec. (n). Pub. L. 105–34, §1526(a), added subsec. (n).

1996—Subsec. (a)(1). Pub. L. 104–188, §1452(c)(1), inserted ''or'' at end of subpar. (A), struck out '', or'' at end of subpar. (B), and struck out subpar. (C) which read as follows: ''in any case in which an individual is a participant in both a defined benefit plan and a defined contribution plan maintained by the employer, the trust has been disqualified under subsection (g).''

Subsec. (b)(2)(E)(i). Pub. L. 104–188, §1449(b)(1), substituted ''For purposes of adjusting any limitation under subparagraph (C) and, except as provided in clause (ii), for purposes of adjusting any benefit under subparagraph (B),'' for ''Except as provided in clause (ii), for purposes of adjusting any benefit or limitation under subparagraph (B) or (C),''.

Subsec. (b)(2)(E)(ii). Pub. L. 104–188, §1449(b)(2), substituted ''For purposes of adjusting any benefit under subparagraph (B) for any form of benefit subject to section 417(e)(3),'' for ''For purposes of adjusting the benefit or limitation of any form of benefit subject to section 417(e)(3),''.

Subsec. (b)(2)(I). Pub. L. 104–188, §1444(c), added subpar. (I).

Subsec. (b)(5)(B). Pub. L. 104–188, §1452(c)(2), struck out ''and subsection (e)'' after ''and (4)''.

Subsec. (b)(10)(C). Pub. L. 104–188, §1444(d), designated existing provisions as cl. (i), inserted heading, and added cl. (ii).

Subsec. (b)(11). Pub. L. 104–188, §1444(a), added par. (11).

Subsec. (c)(3)(C). Pub. L. 104–188, §1446(a), inserted at end ''If a defined contribution plan provides for the continuation of contributions on behalf of all participants described in clause (i) for a fixed or determinable period, this subparagraph shall be applied without regard to clauses (ii) and (iii).''

Subsec. (c)(3)(D). Pub. L. 104–188, §1434(a), added subpar. (D).

Subsec. (e). Pub. L. 104–188, §1452(a), struck out subsec. (e) which related to limitation in case of a defined benefit plan and a defined contribution plan for same employee.

Subsec. (f)(1). Pub. L. 104–188, §1452(c)(3), in introductory provisions, substituted ''subsections (b) and (c)'' for ''subsections (b), (c), and (e)''.

Subsec. (g). Pub. L. 104–188, §1452(c)(4), in last sentence, substituted ''subsection (f)'' for ''subsections (e) and (f)''.

Subsec. (k)(1)(C) to (F). Pub. L. 104–188, §1704(t)(75), inserted ''or'' at end of subpar. (C), redesignated subpar. (F) as (D), and struck out former subpars. (D) and (E) which read as follows:

''(D) an individual retirement account described in section 408(a),

''(E) an individual retirement annuity described in section 408(b), or''.

Subsec. (k)(2)(A)(i). Pub. L. 104–188, §1452(c)(5), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''any contribution made directly by an employee under such arrangement—

''(I) shall not be treated as an annual addition for purposes of subsection (c), but

''(II) shall be so treated for purposes of subsection (e), and''.

Subsec. (k)(2)(A)(ii). Pub. L. 104–188, §1452(c)(6), substituted ''subsection (c)'' for ''subsections (c) and (e)'' before ''shall not again''.

Subsec. (m). Pub. L. 104–188, §1444(b)(1), added subsec. (m).

1994—Subsec. (b)(2)(E). Pub. L. 103–465, §767(b), added cls. (i), (ii), and (v), redesignated former cls. (ii) and (iii) as (iii) and (iv), respectively, and struck out former cl. (i) which read as follows: ''For purposes of adjusting any benefit or limitation under subparagraph (B) or (C), the interest rate assumption shall not be less than the greater of 5 percent or the rate specified in the plan.''

Subsec. (c)(1)(A). Pub. L. 103–465, §732(b)(2), struck out ''(or, if greater, ¼ of the dollar limitation in effect under subsection (b)(1)(A))'' after ''$30,000''.

Subsec. (d). Pub. L. 103–465, §732(b)(1), amended subsec. (d) generally, substituting present provisions for provisions authorizing annual cost-of-living adjustments, outlining base periods, and providing for a freeze on adjustment to defined contribution and benefit limits.

1992—Subsecs. (b)(2)(A), (B), (c)(2). Pub. L. 102–318 substituted ''402(c)'' for ''402(a)(5)''.

1989—Subsec. (c)(6). Pub. L. 101–239 substituted ''Special rule for employee stock ownership plans'' for ''Special limitation for employee stock ownership plan'' in heading and amended text generally, substituting introductory provisions and subpars. (A) and (B) for former subpars. (A) to (C).

1988—Subsec. (b)(2)(H)(ii). Pub. L. 100–647, §6059(a), substituted ''15'' for ''20''.

Subsec. (b)(5)(B). Pub. L. 100–647, §1011(d)(6), inserted ''and subsection (e)'' after ''paragraphs (1)(B) and (4)''.

Subsec. (b)(5)(D). Pub. L. 100–647, §1011(d)(2), substituted ''subparagraph (A)'' for ''this paragraph''.

Subsec. (b)(10). Pub. L. 100–647, §6054(a), added par. (10).

Subsec. (c)(6)(A). Pub. L. 100–647, §1011(d)(7), substituted ''paragraph (1)(A)'' for ''paragraph (c)(1)(A) (as adjusted for such year pursuant to subsection (d)(1))'' and for ''paragraph (c)(1)(A) (as so adjusted)''.

Subsec. (k). Pub. L. 100–647, §1018(t)(8)(D), repealed Pub. L. 99–514, §1899A(13), see 1986 Amendment note below.

Subsec. (k)(2)(C)(ii). Pub. L. 100–647, §1011(d)(3)(A), substituted ''to such increase'' for ''to the arrangement''.

Subsec. (k)(2)(D). Pub. L. 100–647, §1011(d)(3)(B), added subpar. (D) and struck out former subpar. (D) which read as follows: ''An arrangement meets the requirements of this subparagraph only if it is elective, it is available under the same terms to all participants, and it provides that such election may be made in—

''(i) the year in which the participant—

''(I) attains the earliest retirement age under the defined benefit plan (determined without regard to any requirement of separation from service), or

''(II) separates from service, or

''(ii) both such years.''

Subsec. (*l*)(1). Pub. L. 100–647, §1018(t)(3)(B), made technical correction to directory language of Pub. L. 99–514, §1852(h)(2). See 1986 Amendment note below.

1986—Subsec. (b)(2)(B). Pub. L. 99–514, §1898(b)(15)(C), substituted reference to section 417 for reference to section 401(a)(11)(G)(iii).

Subsec. (b)(2)(C). Pub. L. 99–514, §1106(b)(1)(A), substituted in heading and in two places in text ''the social security retirement age'' for ''age 62'' and substituted new last sentence for ''The reduction under this subparagraph shall not reduce the limitation of paragraph (1)(A) below—

''(i) if the benefit begins at or after age 55, $75,000, or

''(ii) if the benefit begins before age 55, the amount which is the equivalent of the $75,000 limitation for age 55.''

Subsec. (b)(2)(D). Pub. L. 99–514, §1106(b)(1)(A)(i), substituted in heading and in two places in text ''the social security retirement age'' for ''age 65''.

Subsec. (b)(2)(E)(iii). Pub. L. 99–514, §1875(c)(9), substituted ''this subsection'' for ''adjusting any benefit or limitation under subparagraph (B), (C), or (D)''.

Subsec. (b)(2)(F) to (H). Pub. L. 99–514, §1106(b)(2), added subpars. (F) to (H).

Subsec. (b)(5). Pub. L. 99–514, §1106(f), substituted ''Reduction for participation or service of less than 10 years'' for ''Reduction for service less than 10 years'' in heading and amended text generally. Prior to amendment, text read as follows: ''In the case of an employee who has less than 10 years of service with the employer, the limitation referred to in paragraph (1), and the limitation referred to in paragraph (4), shall be the limitation determined under such paragraph (without regard to this paragraph), multiplied by a fraction, the numerator of which is the number of years (or part thereof) of service with the employer and the denominator of which is 10.''

Subsec. (b)(8). Pub. L. 99–514, §1106(b)(1)(B), added par. (8).

Subsec. (b)(9). Pub. L. 99–514, §1106(b)(3), added par. (9).

Subsec. (c)(1)(A). Pub. L. 99–514, §1106(a), amended subpar. (A) generally, inserting ''(or, if greater, ¼ of the dollar limitation in effect under subsection (b)(1)(A))''.

Subsec. (c)(2). Pub. L. 99–514, §1108(g)(5), substituted ''which are excludable from gross income under section 408(k)(6)'' for ''allowable as a deduction under section 219(a), and without regard to deductible employee contributions within the meaning of section 72(*o*)(5)'' in last sentence.

Pub. L. 99–514, §1106(e)(2), inserted at end ''Subparagraph (B) of paragraph (1) shall not apply to any contribution for medical benefits (within the meaning of section 419A(f)(2)) after separation from service which is treated as an annual addition.''

Subsec. (c)(2)(B). Pub. L. 99–514, §1106(e)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the lesser of—

''(i) the amount of the employee contributions in excess of 6 percent of his compensation, or

''(ii) one-half of the employee contributions, and''.

Subsec. (c)(3)(C). Pub. L. 99–514, §1875(c)(11), substituted ''any defined contribution plan'' for ''a profit-sharing or stock bonus plan''.

Subsec. (c)(3)(C)(i). Pub. L. 99–514, §1847(b)(4), substituted ''section 22(e)(3)'' for ''section 37(e)(3)''.

Subsec. (c)(3)(C)(ii). Pub. L. 99–514, §1114(b)(12), substituted ''a highly compensated employee (within the meaning of section 414(q))'' for ''an officer, owner, or highly compensated''.

Subsec. (c)(4)(A) to (C). Pub. L. 99–514, §1106(b)(4), inserted ''a health and welfare service agency,'' after ''a home health service agency,''.

Subsec. (c)(6)(A). Pub. L. 99–514, §1174(d)(1), substituted ''highly compensated employees (within the meaning of section 414(q))'' for ''the group of employees consisting of officers, shareholders owning more than 10 percent of the employer's stock (determined under subparagraph (B)(iv)), or employees described in subparagraph (B)(iii)''.

Subsec. (c)(6)(B)(iii), (iv). Pub. L. 99–514, §1174(d)(2)(A), struck out cls. (iii) and (iv) which read as follows:

''(iii) an employee described in this clause is any participant whose compensation for a year exceeds an

amount equal to twice the amount described in paragraph (1)(A) for such year (as adjusted for such year pursuant to subsection (d)(1)), determined without regard to subparagraph (A) of this paragraph, and

''(iv) an individual shall be considered to own more than 10 percent of the employer's stock if, without regard to stock held under the employee stock ownership plan, he owns (after application of section 1563(e)) more than 10 percent of the total combined voting power of all classes of stock entitled to vote or more than 10 percent of the total value of shares of all classes of stock.''

Subsec. (c)(6)(C). Pub. L. 99–514, §1174(d)(2)(B), substituted ''highly compensated employees (within the meaning of section 414(q))'' for ''the group of employees consisting of officers, shareholders owning more than 10 percent of the employer's stock (determined under subparagraph (B)(iv)), or employees described in subparagraph (B)(iii)''.

Subsec. (d)(1)(B), (C). Pub. L. 99–514, §1106(g)(1), redesignated subpar. (C) as (B) and struck out former subpar. (B), which related to the $30,000 amount in subsection (c)(1)(A).

Subsec. (d)(2)(A). Pub. L. 99–514, §1106(g)(2)(A), substituted ''subparagraph (A)'' for ''subparagraphs (A) and (B)''.

Subsec. (d)(2)(B). Pub. L. 99–514, §1106(g)(2)(B), substituted ''subparagraph (B)'' for ''subparagraph (C)''.

Subsec. (d)(3). Pub. L. 99–514, §1106(g)(3), substituted ''subparagraph (A)'' for ''subparagraph (A) or (B)''.

Subsec. (k). Pub. L. 99–514, §1899A(13), which directed the general amendment of subsec. (k) by striking out par. (1) designation and redesignating subpars. (A) to (F) as pars. (1) to (6), respectively, was repealed by Pub. L. 100–647, §1018(t)(8)(D).

Subsec. (k)(2). Pub. L. 99–514, §1106(c)(1), added par. (2) relating to contributions to provide cost-of-living protection under defined benefit plans.

Subsec. (*l*). Pub. L. 99–514, §1852(h)(3), substituted ''a pension or annuity plan'' for ''a defined benefit plan'' in pars. (1) and (2)(A).

Pub. L. 99–514, §1852(h)(2), as amended by Pub. L. 100–647, §1018(t)(3)(B), inserted at end of par. (1) ''Subparagraph (B) of subsection (c)(1) shall not apply to any amount treated as an annual addition under the preceding sentence.''

1984—Subsec. (a)(2). Pub. L. 98–369, §491(d)(28), struck out subpar. (D) which related to application of this section to a plan described in section 405(a), and in provision following subpar. (C) struck out ''405(a),'' after ''403(b),''.

Subsec. (b)(2)(A), (B). Pub. L. 98–369, §491(d)(29), (30), substituted ''and 408(d)(3)'' for ''408(d)(3) and 409(b)(3)(C)''.

Subsec. (b)(2)(C). Pub. L. 98–369, §713(a)(1)(A), substituted provision respecting determination as to whether $90,000 limitation has been satisfied by reducing the limitation of par. (1)(A) so that such limitation (as so reduced) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a $90,000 annual benefit beginning at age 62 for provision for such determination by adjusting the benefit so that it is equivalent to such a benefit beginning at age 62.

Subsec. (b)(2)(D). Pub. L. 98–369, §713(a)(1)(B), substituted ''limit'' for ''limitation'' in heading, and in text substituted provision respecting determination as to whether $90,000 limitation has been satisfied by increasing the limitation of par. (1)(A) so that such limitation (as so increased) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a $90,000 annual benefit beginning at age 65 for provision for such determination by adjusting the benefit so that it is equivalent to such a benefit beginning at age 65.

Subsec. (b)(2)(E). Pub. L. 98–369, §713(a)(1)(C), provided in cls. (i) and (iii) for adjustment of any limitation and substituted in cl. (ii) ''any limitation'' for ''any benefit''.

Subsec. (c)(2). Pub. L. 98–369, §491(d)(31), substituted ''and 408(d)(3)'' for ''405(d)(3), 408(d)(3), and 409(b)(3)(C)''.

Subsec. (c)(3)(C). Pub. L. 98–369, §713(k), inserted in introductory text ''in a profit-sharing or stock bonus plan'', and substituted in last sentence ''if contributions made with respect to amounts treated as compensation under this subparagraph'' for ''if contributions made with respect to such participant''.

Subsec. (c)(6)(B)(ii). Pub. L. 98–369, §491(e)(6), substituted ''section 409'' for ''section 409A''.

Subsec. (c)(6)(C). Pub. L. 98–369, §713(d)(4)(B)(i)–(iii), substituted ''paragraph (9)'' for ''paragraph (10)'' of section 404(a), section ''404(a)(9)(A)'' for ''404(a)(10)(A)'', and section ''404(a)(9)(B)'' for ''404(a)(10)(B)''.

Subsec. (c)(7), (8). Pub. L. 98–369, §713(d)(7)(A), redesignated par. (8) as (7), and struck out former par. (7) relating to certain level premium annuity contracts under plans benefiting owner-employees.

Subsec. (d)(2)(A). Pub. L. 98–369, §15(b), substituted ''1986'' for ''1984''.

Subsec. (d)(3). Pub. L. 98–369, §15(a), substituted ''January 1, 1988'' for ''January 1, 1986''.

Subsec. (e)(3)(B)(ii)(II). Pub. L. 98–369, §713(d)(7)(B), struck out reference to subsec. (c)(8).

Subsec. (e)(6)(C). Pub. L. 98–369, §713(a)(3), added subpar. (C).

Subsec. (k)(1). Pub. L. 98–369, §491(d)(32), struck out subpars. (C) and (H), which included a qualified bond purchase plan described in section 405(a) and an individual retirement bond described in section 409 within the term ''defined contribution plan'' or ''defined benefit plan'', respectively, and redesignated subpars. (D) to (G) as (C) to (F), respectively.

Subsec. (*l*). Pub. L. 98–369, §528(a), added subsec. (*l*).

1983—Subsec. (c)(3)(C)(i). Pub. L. 98–21 substituted ''section 37(e)(3)'' for ''section 105(d)(4)''.

1982—Subsec. (b)(1)(A). Pub. L. 97–248, §235(a)(1), substituted ''$90,000'' for ''$75,000''.

Subsec. (b)(2)(C). Pub. L. 97–248, §235(a)(3)(A), (e)(1), (2), inserted provisions relating to reduction under this subparagraph, and substituted ''$90,000'' for ''$75,000'' and ''62'' for ''55'', wherever appearing.

Subsec. (b)(2)(D), (E). Pub. L. 97–248, §235(e)(3), (4), added subpars. (D) and (E).

Subsec. (b)(7). Pub. L. 97–248, §235(a)(3)(B), substituted ''the greater of $68,212 or one-half the amount otherwise applicable for such year under paragraph (1)(A) for '$90,000' '' for '' '37,500' for '75,000' ''.

Subsec. (c)(1)(A). Pub. L. 97–248, §235(a)(2), substituted ''$30,000'' for ''$25,000''.

Subsec. (c)(3). Pub. L. 97–248, §253(a), designated existing provisions as subpars. (A) and (B) and added subpar. (C).

Subsec. (c)(4). Pub. L. 97–248, §251(c)(1), substituted '', home health service agencies, and certain churches, etc.'' for ''and home health service agencies'' in heading, in subpar. (A) inserted ''(as determined for purposes of section 403(b)(2))'' after ''by taking into account his service for the employer'', substituted ''a home health service agency, or a church, convention or association of churches, or an organization described in section 414(e)(3)(B)(ii)'' for ''or a home health service agency'' in subpars. (A), (B) and (C), respectively, and, in subpar. (D), added cl. (iv).

Subsec. (c)(5). Pub. L. 97–248, §238(d)(5), struck out par. (5) relating to application with section 404(e)(4).

Subsec. (c)(8). Pub. L. 97–248, §251(c)(2), added par. (8).

Subsec. (d)(1). Pub. L. 97–248, §235(b)(1), substituted ''benefit amounts'' for ''primary insurance amounts'' in provision following subpar. (C).

Pub. L. 97–248, §235(b)(3), substituted ''$90,000'' for ''$75,000'' in subpar. (A), and in subpar. (B) substituted ''$30,000'' for ''$25,000''.

Subsec. (d)(2)(A). Pub. L. 97–248, §235(b)(2)(B), substituted ''1984'' for ''1974''.

Subsec. (d)(3). Pub. L. 97–248, §235(b)(2)(A), added par. (3).

Subsec. (e)(1). Pub. L. 97–248, §235(c)(1), substituted ''1.0'' for ''1.4''.

Subsec. (e)(2)(B). Pub. L. 97–248, §235(c)(2)(A), substituted provisions that for purposes of this subsection, the defined benefit plan fraction for any year has a de-

nominator which is the lesser of the product of 1.25 multiplied by the dollar limitation in effect under subsec. (b)(1)(A) for such year, or the product of 1.4 multiplied by the amount which may be taken into account under subsec. (b)(1)(B) with respect to such individual under the plan for such year, for provisions that such benefit plan fraction had a denominator which was the projected annual benefit of the participant under the plan (determined as of the close of the year) if the plan provided the maximum benefit allowable under subsec. (b).

Subsec. (e)(3)(B). Pub. L. 97–248, §235(c)(2)(B), substituted provision that the defined contribution plan fraction for any year has a denominator which, determined for such year and for each prior year of service with the employer, is the lesser of either the product of 1.25 multiplied by the dollar limitation in effect under subsec. (c)(1)(A) for such year (determined without regard to subsec. (c)(6)), or the product of 1.4 multiplied by the amount which may be taken into account under subsec. (c)(1)(B) (or subsec. (c)(7) or (8), if applicable) with respect to such individual under such plan for such year, for provision that the denominator of such fraction was the sum of the maximum amount of annual additions to the participant's account which could have been made under subsec. (c) for such year and for each prior year of service with the employer (determined without regard to subsec. (c)(6)).

Subsec. (e)(6). Pub. L. 97–248, §235(d), added par. (6).

1981—Subsec. (a)(2). Pub. L. 97–34, §311(g)(4)(A), struck out in provision preceding subpar. (A) ''Except as provided in paragraph (3)'', redesignated former subpar. (E) as (C), and in subpar. (C) as so designated, inserted ''described in section 408(k), or'', redesignated former subpar. (F) as (D), struck out former subpars. (C), relating to an individual retirement account described under section 408(a), (D), relating to an individual retirement annuity described in section 408(b), and (G), relating to a retirement bond described in section 409, and in provision following subpar. (D), substituted ''such a contract, plan, or pension,'' for ''such contract, annuity plan, account, annuity, plan, or bond'' and ''408(k)'' for ''408(a), 408(b), or 409''.

Subsec. (a)(3). Pub. L. 97–34, §311(h)(3), struck out par. (3) which provided that par. (2) not apply to an account, annuity, or bond described in section 408(a), 408(b), or 409, established for the benefit of the spouse of the individual contributing to such account, or for such annuity or bond, if a deduction is allowed under section 220 to such individual with respect to such contribution for such year.

Subsec. (c)(2). Pub. L. 97–34, §311(g)(4)(B), included in provision following subpar. (C) references to sections 403(b)(8) and 405(d)(3) and inserted ''without regard to employee contributions to a simplified employee pension allowable as a deduction under section 219(a), and without regard to deductible employee contributions within the meaning of section 72(*o*)(5)''.

Subsec. (c)(6)(C). Pub. L. 97–34, §333(b)(1), added subpar. (C).

Subsec. (e)(5). Pub. L. 97–34, §311(g)(4)(C), struck out '', any individual retirement account described in section 408(a), any individual retirement annuity described in section 408(b), and any retirement bond described in section 409,'' before ''for the benefit''.

1980—Subsec. (b)(7). Pub. L. 96–222, §101(a)(11), substituted in subpar. (C) ''under which benefits are determined solely by reference to length of service, the particular years during which service was rendered, age at retirement, and date of retirement'' for ''benefits under which are determined by multiplying a specified amount (which is the same amount for each participant) by the number of the participant's years of service'' and inserted in text following subpar. (E) provisions requiring that this paragraph not apply to a participant for any period for which he is a participant under another plan to which this section applies which is maintained by an employer maintaining this plan.

Subsec. (c)(6)(A). Pub. L. 96–605 inserted '', or purchased with cash contributed,'' after ''securities contributed''.

Subsec. (c)(6)(B)(i). Pub. L. 96–222, §101(a)(7)(L)(i)(VII), (iv)(I), substituted ''a tax credit employee stock ownership plan'' for ''an ESOP'' and struck out ''leveraged'' before ''employee''.

Subsec. (e)(5). Pub. L. 96–222, §101(a)(10)(I), inserted provisions requiring that for purposes of this section, any contribution by an employer to a simplified employee pension for an individual for a taxable year be treated as an employer contribution to a defined contribution plan for such individual for such year.

1978—Subsec. (a)(2). Pub. L. 95–600, §152(g)(1), (2), as amended by Pub. L. 96–222, §101(a)(10)(J)(iii), added subpar. (E), redesignated former subpars. (E) and (F) as (F) and (G), respectively, and in provision following subpar. (G) as so redesignated, inserted ''408(k),'' after ''408(b),''.

Subsec. (b)(7). Pub. L. 95–600, §153(a), added par. (7).

Subsec. (c)(6)(B)(i). Pub. L. 95–600, §141(f)(7), substituted ''leveraged employee stock ownership plan (within the meaning of section 4975(e)(7)) or an ESOP'' for ''a plan which meets the requirements of section 4975(e)(7) or section 301(d) of the Tax Reduction Act of 1975''.

Subsec. (c)(6)(B)(ii). Pub. L. 95–600, §141(f)(7), substituted ''has the meaning given to such term by section 409A'' for ''means, in the case of an employee stock ownership plan within the meaning of section 4975(e)(7), qualifying employer securities within the meaning of section 4975(e)(8), but only if they are described in section 301(d)(9)(A) of the Tax Reduction Act of 1975, or, in the case of an employee stock ownership plan described in section 301(d)(2) of the Tax Reduction Act of 1975, employer securities within the meaning of section 301(d)(9)(A) of such Act''.

Subsec. (e)(5). Pub. L. 95–600, §152(g)(3), inserted ''any simplified employee pension,'' after ''section 408(b),''.

Subsec. (k)(1)(G), (H). Pub. L. 95–600, §152(g)(4), added subpar. (G) and redesignated former subpar. (G) as (H).

1976—Subsec. (a)(2). Pub. L. 94–455, §1501(b)(3)(A), substituted ''Except as provided in paragraph (3), in the case'' for ''In the case''.

Subsec. (a)(3). Pub. L. 94–455, §1501(b)(3)(B), added par. (3).

Subsec. (b)(2)(A). Pub. L. 94–455, §1901(a)(65)(A), inserted closing parenthesis after ''409(b)(3)(C)''.

Subsec. (b)(2)(B). Pub. L. 94–455, §§1901(a)(65)(B), 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' and substituted ''section 401(a)(11)(G)(iii)'' for ''section 401(a)(11)(H)(iii)''.

Subsec. (b)(2)(C), (6). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(4). Pub. L. 94–455, §§1901(b)(8)(D), 1906(b)(13)(A), substituted ''educational organizations'' for ''educational institutions'' in the heading and ''educational organization'' for ''educational institution'' in subpars. (A), (B), and (C), struck out ''or his delegate'' after ''Secretary'' in subpar. (D)(i), and substituted ''For purposes of this paragraph the term 'educational organization' means an educational organization described in section 170(b)(1)(A)(ii)'' for ''For purposes of this paragraph the term 'educational institution' means an educational institution as defined in section 151(e)(4)'' in subpar. (D)(ii).

Subsec. (c)(5). Pub. L. 94–455, §1502(a)(1), added par. (5).

Subsec. (c)(6). Pub. L. 94–455, §803(f)(1), added par. (6).

Subsec. (c)(7). Pub. L. 94–455, §1511(a), added par. (7).

Subsec. (d)(1). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (e)(3)(B). Pub. L. 94–455, §803(f)(2), substituted ''with the employer determined without regard to paragraph (6) of such subsection)'' for ''with the employer''.

Subsec. (e)(5). Pub. L. 94–455, §803(b)(4), substituted ''For purposes of this section'' for ''For purposes of this subsection''.

Subsecs. (g), (i), (j). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–458, title I, §103(b)(2)(B)(ii), Dec. 23, 2008, 122 Stat. 5103, provided that:

''(I) Except as provided in subclause (II), the amendment made by clause (i) [amending this section] shall apply to years beginning after December 31, 2008.

''(II) A plan sponsor may elect to have the amendment made by clause (i) apply to any year beginning after December 31, 2007, and before January 1, 2009, or to any portion of any such year.''

Amendment by sections 108(g) and 109(d)(1) of Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

Pub. L. 110–458, title I, §122(b), Dec. 23, 2008, 122 Stat. 5114, provided that: ''The amendment made by this section [amending this section] shall apply to years beginning after December 31, 2008.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title III, §303(b), Aug. 17, 2006, 120 Stat. 921, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to distributions made in years beginning after December 31, 2005.''

Pub. L. 109–280, title VIII, §821(d), Aug. 17, 2006, 120 Stat. 998, provided that:

''(1) IN GENERAL.—The amendments made by subsections (a) and (c) [amending this section] shall take effect as if included in the amendments made by section 1526 of the Taxpayer Relief Act of 1997 [Pub. L. 105–34].

''(2) SUBSECTION (b).—The amendments made by subsection (b) [amending this section] shall take effect as if included in the amendments made by section 647 of the Economic Growth and Tax Relief Reconciliation Act of 2001 [see section 647(c) of Pub. L. 107–16, set out as an Effective Date of 2001 Amendment note under section 403 of this title].''

Pub. L. 109–280, title VIII, §832(b), Aug. 17, 2006, 120 Stat. 1003, provided that: ''The amendment made by this section [amending this section] shall apply to years beginning after December 31, 2005.''

Pub. L. 109–280, title VIII, §867(b), Aug. 17, 2006, 120 Stat. 1025, provided that: ''The amendment made by this section [amending this section] shall apply to years beginning after December 31, 2006.''

Amendment by section 906(b)(1)(A), (B) of Pub. L. 109–280 applicable to any year beginning on or after Aug. 17, 2006, see section 906(c) of Pub. L. 109–280, set out as a note under section 414 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 407(b) of Pub. L. 109–135 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 407(c) of Pub. L. 109–135, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 2004 AMENDMENTS

Amendment by section 404(b)(2) of Pub. L. 108–311 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 404(f) of Pub. L. 108–311, set out as a note under section 45A of this title.

Amendment by Pub. L. 108–218 applicable, except as otherwise provided, to plan years beginning after Dec. 31, 2003, see section 101(d) of Pub. L. 108–218, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title VI, §611(i), June 7, 2001, 115 Stat. 100, as amended by Pub. L. 107–147, title IV, §411(j)(3), Mar. 9, 2002, 116 Stat. 47, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 401, 402, 404, 408, 457, 501, and 505 of this title] shall apply to years beginning after December 31, 2001.

''(2) DEFINED BENEFIT PLANS.—The amendments made by subsection (a) [amending this section] shall apply to years ending after December 31, 2001.''

''(3) SPECIAL RULE.—In the case of plan that, on June 7, 2001, incorporated by reference the limitation of section 415(b)(1)(A) of the Internal Revenue Code of 1986, section 411(d)(6) of such Code and section 204(g)(1) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(g)(1)] do not apply to a plan amendment that—

''(A) is adopted on or before June 30, 2002,

''(B) reduces benefits to the level that would have applied without regard to the amendments made by subsection (a) of this section, and

''(C) is effective no earlier than the years described in paragraph (2).''

Amendment by section 632(a)(1), (3)(C)–(F) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 632(a)(4) of Pub. L. 107–16, set out as a note under section 72 of this title.

Pub. L. 107–16, title VI, §632(b)(2), June 7, 2001, 115 Stat. 115, provided that:

''(A) IN GENERAL.—The amendment made by paragraph (1) [amending this section] shall apply to limitation years beginning after December 31, 1999.

''(B) EXCLUSION ALLOWANCE.—Effective for limitation years beginning in 2000, in the case of any annuity contract described in section 403(b) of the Internal Revenue Code of 1986, the amount of the contribution disqualified by reason of section 415(g) of such Code shall reduce the exclusion allowance as provided in section 403(b)(2) of such Code.''

Amendment by section 641(e)(9), (10) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107–16, set out as a note under section 402 of this title.

Pub. L. 107–16, title VI, §654(c), June 7, 2001, 115 Stat. 131, provided that: ''The amendments made by this section [amending this section] shall apply to years beginning after December 31, 2001.''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 1(a)(7) [title III, §314(g)] of Pub. L. 106–554, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1526(c) of Pub. L. 105–34 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to permissive service credit contributions made in years beginning after December 31, 1997.

''(2) TRANSITION RULE.—

''(A) IN GENERAL.—In the case of an eligible participant in a governmental plan (within the meaning of section 414(d) of the Internal Revenue Code of 1986), the limitations of section 415(c)(1) of such Code shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of the plan as in effect on the date of the enactment of this Act [Aug. 5, 1997].

''(B) ELIGIBLE PARTICIPANT.—For purposes of subparagraph (A), an eligible participant is an individual who first became a participant in the plan before the first plan year beginning after the last day of the calendar year in which the next regular session (following the date of the enactment of this Act) of the governing body with authority to amend the plan ends.''

Section 1527(b) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to years beginning after December 31, 1996.''

Amendment by section 1530(c)(3), (4) of Pub. L. 105–34 applicable to transfers made by trusts to, or for the use of, an employee stock ownership plan after Aug. 5, 1997, see section 1530(d) of Pub. L. 105–34, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1434(a) of Pub. L. 104–188 applicable to years beginning after Dec. 31, 1997, see section 1434(c) of Pub. L. 104–188, set out as a note under section 414 of this title.

Section 1444(e) of Pub. L. 104–188 provided that:

''(1) IN GENERAL.—The amendments made by subsections (a), (b), and (c) [amending this section and section 457 of this title] shall apply to years beginning after December 31, 1994. The amendments made by subsection (d) [amending this section] shall apply with respect to revocations adopted after the date of the enactment of this Act [Aug. 20, 1997].

''(2) TREATMENT FOR YEARS BEGINNING BEFORE JANUARY 1, 1995.—Nothing in the amendments made by this section shall be construed to imply that a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986) fails to satisfy the requirements of section 415 of such Code for any taxable year beginning before January 1, 1995.''

Section 1446(b) of Pub. L. 104–188 provided that: ''The amendment made by this section [amending this section] shall apply to years beginning after December 31, 1996.''

Section 1449(c) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section and provisions set out as a note under section 411 of this title] shall take effect as if included in the provisions of section 767 of the Uruguay Round Agreements Act [Pub. L. 103–465].''

Section 1452(d) of Pub. L. 104–188 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 416 and 4980A of this title] shall apply to limitation years beginning after December 31, 1999.

''(2) EXCESS DISTRIBUTIONS.—The amendment made by subsection (b) [amending section 4980A of this title] shall apply to years beginning after December 31, 1996.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 732(b) of Pub. L. 103–465 applicable to years beginning after Dec. 31, 1994, and, to the extent of providing for the rounding of indexed amounts, not applicable to any year to the extent the rounding would require the indexed amount to be reduced below the amount in effect for years beginning in 1994, see section 732(e) of Pub. L. 103–465, set out as a note under section 401 of this title.

Amendment by section 767(b) of Pub. L. 103–465 applicable to plan years and limitation years beginning after Dec. 31, 1994, except that employer may elect to treat such amendment as effective on or after Dec. 8, 1994, with provisions relating to reduction of accrued benefits, exception, and timing of plan amendment, see section 767(d) of Pub. L. 103–465, as amended, set out as a note under section 411 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

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

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7304(c)(2) of Pub. L. 101–239 provided that: ''The amendment made by this subsection [amending this section] shall apply to years beginning after July 12, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1011(d)(2), (3), (6), (7) and 1018(t)(3)(B), (8)(D) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6054(b) of Pub. L. 100–647, as amended by Pub. L. 101–239, title VII, § 7816(h), Dec. 19, 1989, 103 Stat. 2421, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendment made by this section [amending this section] shall apply to years beginning after December 31, 1982.

''(2) ELECTION.—Section 415(b)(10)(C) of the 1986 Code (as added by subsection (a)) shall not apply to any year beginning before January 1, 1990.''

Section 6059(b) of Pub. L. 100–647 provided that: ''The amendment made by this section [amending this section] shall apply as if included in the amendments made by section 1106(b)(2) of the Reform Act [Pub. L. 99–514].''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1106(i) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1011(d)(5), title VI, § 6062(a), Nov. 10, 1988, 102 Stat. 3460, 3700, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 401, 402, 404, 416, and 818 of this title] shall apply to years beginning after December 31, 1986.

''(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan in effect before March 1, 1986, pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers, the amendments made by this section (other than subsection (d)) shall not apply to contributions or benefits pursuant to such agreement in years beginning before October 1, 1991.

''(3) RIGHT TO HIGHER ACCRUED DEFINED BENEFIT PRESERVED.—

''(A) IN GENERAL.—In the case of an individual who is a participant (as of the 1st day of the 1st year to which the amendments made by this section apply) in a defined benefit plan which is in existence on May 6, 1986, and with respect to which the requirements of section 415 of the Internal Revenue Code of 1986 have been met for all plan years, if such individual's current accrued benefit under the plan exceeds the limitation of subsection (b) of section 415 of such Code (as amended by this section), then (in the case of such plan), for purposes of subsections (b) and (e) of such section, the limitation of such subsection (b)(1)(A) with respect to such individual shall be equal to such current accrued benefit.

''(B) CURRENT ACCRUED BENEFIT DEFINED.—

''(i) IN GENERAL.—For purposes of this paragraph, the term 'current accrued benefit' means the individual's accrued benefit (at the close of the last year to which the amendments made by this section do not apply) when expressed as an annual benefit (within the meaning of section 415(b)(2) of such Code).

''(ii) SPECIAL RULE.—For purposes of determining the amount of any individual's current accrued benefit—

''(I) no change in the terms and conditions of the plan after May 5, 1986, and

''(II) no cost-of-living adjustment occurring after May 5, 1986,

shall be taken into account. For purposes of subclause (I), any change in the terms and conditions of the plan pursuant to a collective bargaining agreement ratified before May 6, 1986, shall be treated as a change made before May 6, 1986.

''(4) TRANSITION RULE WHERE THE SUM OF DEFINED CONTRIBUTION AND DEFINED BENEFIT PLAN FRACTIONS EXCEEDS 1.0.—In the case of a plan which satisfied the requirements of section 415 of the Internal Revenue Code of 1986 for its last year beginning before January 1, 1987, the Secretary of the Treasury or his delegate shall prescribe regulations under which an amount is subtracted from the numerator of the defined contribution plan

fraction (not exceeding such numerator) so that the sum of the defined benefit plan fraction and the defined contribution plan fraction computed under section 415(e)(1) of such Code does not exceed 1.0 for such year (determined as if the amendments made by this section were in effect for such year).

''(5) EFFECTIVE DATE FOR SUBSECTION (d).—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by subsection (d) [amending sections 401, 404, 416, and 818 of this title] shall apply to benefits accruing in years beginning after December 31, 1988.

''(B) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan described in paragraph (2), the amendments made by subsection (d) shall apply to benefits accruing in years beginning on or after the earlier of—

''(i) the later of—

''(I) the date determined under paragraph (2)(A), or

''(II) January 1, 1989, or

''(ii) January 1, 1991.

''(6) SPECIAL RULE FOR AMENDMENT MADE BY SUBSECTION (e).—The amendment made by subsection (e) [amending this section] shall not require the recomputation, for purposes of section 415(e) of the Internal Revenue Code of 1986, of the annual addition for any year beginning before 1987.''

[Section 6062(b) of Pub. L. 100–647 provided that: ''The amendment made by this section [amending section 1106(i) of Pub. L. 99–514, set out above] shall take effect as if included in the provisions of section 1106 of the Reform Act [Pub. L. 99–514].'']

Amendment by section 1108(g)(5) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1108(h) of Pub. L. 99–514, set out as a note under section 219 of this title.

Amendment by section 1114(b)(12) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1988, see section 1114(c)(3) of Pub. L. 99–514, set out as a note under section 414 of this title.

Section 1174(d)(3) of Pub. L. 99–514 provided that: ''The amendments made by this subsection [amending this section] shall apply to years beginning after December 31, 1986.''

Amendment by sections 1847(b)(4), 1852(h)(2), (3), and 1875(c)(9), (11) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Amendment by section 1898(b)(15)(C) of Pub. L. 99–514 effective as if included in the provision of the Retirement Equity Act of 1984, Pub. L. 98–397, to which such amendment relates, except as otherwise provided, see section 1898(j) of Pub. L. 99–514, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 15 of Pub. L. 98–369 applicable to taxable years ending after Dec. 31, 1983, see section 18(a) of Pub. L. 98–369, set out as a note under section 48 of this title.

Amendment by section 491(d)(28)–(32) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Amendment by section 491(e)(6) of Pub. L. 98–369 effective Jan. 1, 1984, see section 491(f)(3) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 528(a) of Pub. L. 98–369 applicable to years beginning after Mar. 31, 1984, see section 528(c) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 713 of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual's annuity starting date was deferred under section 105(d)(6) of this title as in effect on the day before Apr. 20, 1983, such deferral shall end on the first day of such individual's first taxable year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98–21, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 235(g) of Pub. L. 97–248, as amended by Pub. L. 97–448, title III, §306(a)(10), Jan. 12, 1983, 96 Stat. 2404; Pub. L. 98–369, div. A, title VII, §713(a)(2), (4), (f)(3), July 18, 1984, 98 Stat. 956, 959; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—

''(A) NEW PLANS.—In the case of any plan which is not in existence on July 1, 1982, the amendments made by this section [amending this section and section 404 of this title] shall apply to years ending after July 1, 1982.

''(B) EXISTING PLANS.—

''(i) In the case of any plan which is in existence on July 1, 1982, the amendments made by this section [amending this section and section 404 of this title] shall apply to years beginning after December 31, 1982.

''(ii) PLAN REQUIREMENTS.—A plan shall not be treated as failing to meet the requirements of section 401(a)(16) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for any year beginning before January 1, 1984, merely because such plan provides for benefit or contribution limits which are in excess of the limitations under section 415 of such Code, as amended by this section. The preceding sentence shall not apply to any plan which provides such limits in excess of the limitation under section 415 of such Code before such amendments.

''(2) AMENDMENTS RELATED TO COST-OF-LIVING ADJUSTMENTS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by subsection (b) [amending this section] shall apply to adjustments for years beginning after December 31, 1982.

''(B) ADJUSTMENT PROCEDURES.—The amendments made by subsections (b)(1) and (b)(2)(B) [amending this section] shall apply to adjustments for years beginning after December 31, 1985.

''(3) TRANSITION RULE WHERE THE SUM OF DEFINED CONTRIBUTION AND DEFINED BENEFIT PLAN FRACTIONS EXCEEDS 1.0.—In the case of a plan which satisfied the requirements of section 415 of the Internal Revenue Code of 1986 for the last year beginning before January 1, 1983, the Secretary of the Treasury or his delegate shall prescribe regulations under which an amount is subtracted from the numerator of the defined contribution plan fraction (not exceeding such numerator) so that the sum of the defined benefit plan fraction and the defined contribution plan fraction computed under section 415(e)(1) of the Internal Revenue Code of 1986 (as amended by the Tax Equity and Fiscal Responsibility Act of 1982) does not exceed 1.0 for such year. A similar rule shall apply with respect to the last plan year beginning before January 1, 1984, for purposes of applying section 416(h) of the Internal Revenue Code of 1986.

''(4) RIGHT TO HIGHER ACCRUED DEFINED BENEFIT PRESERVED.—

''(A) IN GENERAL.—In the case of an individual who is a participant before January 1, 1983, in a defined benefit plan which is in existence on July 1, 1982, and with respect to which the requirements of section 415 of such Code have been met for all years, if such individual's current accrued benefit under such plan exceeds the limitation of subsection (b) of section 415 of the Internal Revenue Code of 1986 (as amended by this section), then (in the case of such plan) for purposes of subsections (b) and (e) of such section, the limitation of such subsection (b) with respect to such individual shall be equal to such current accrued benefit.

''(B) CURRENT ACCRUED BENEFIT DEFINED.—

''(i) IN GENERAL.—For purposes of this paragraph, the term 'current accrued benefit' means the individual's accrued benefit (at the close of the last year beginning before January 1, 1983) when expressed as an annual benefit (within the meaning of section 415(b)(2) of such Code as in effect before the amendments made by this Act). In the case of any plan described in the first sentence of paragraph (5), the preceding sentence shall be applied by substituting for 'January 1, 1983' the applicable date determined under paragraph (5).

''(ii) SPECIAL RULE.—For purposes of determining the amount of any individual's current accrued benefit—

''(I) no change in the terms and conditions of the plan after July 1, 1982, and

''(II) no cost-of-living adjustment occurring after July 1, 1982,

shall be taken into account. For purposes of subclause (I), any change in the terms and conditions of the plan pursuant to a collective bargaining agreement entered into before July 1, 1982, and ratified before September 3, 1982, shall be treated as a change made before July 1, 1982.

''(5) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained on the date of the enactment of this Act [Sept. 3, 1982] pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers, the amendments made by this section [amending this section and section 404 of this title] and section 242 [amending section 401 of this title and enacting a provision set out as a note under section 401 of this title] (relating to age 70½) shall not apply to years beginning before the earlier of—

''(A) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act [Sept. 3, 1982]), or

''(B) January 1, 1986.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section and section 242 shall not be treated as a termination of such collective bargaining agreement.''

Amendment by section 238(d)(5) of Pub. L. 97–248 applicable to years beginning after Dec. 31, 1983, see section 241 of Pub. L. 97–248, set out as an Effective Date note under section 416 of this title.

Amendment by section 251(c)(1), (2) of Pub. L. 97–248 applicable to years beginning after Dec. 31, 1981, see section 251(e)(3) of Pub. L. 97–248, set out as a note under section 403 of this title.

Amendment by section 253(a) of Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1981, see section 253(c) of Pub. L. 97–248, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 311(g)(4), (h)(3) of Pub. L. 97–34 applicable to years beginning after Dec. 31, 1981, see section 311(i)(4) of Pub. L. 97–34, set out as a note under section 219 of this title.

Section 333(b)(2) of Pub. L. 97–34 provided that: ''The amendment made by this subsection [amending this section] shall apply to years beginning after December 31, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 222(b) of Pub. L. 96–605 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to years beginning after December 31, 1980.''

Section 101(b)(1)(G) of Pub. L. 96–222 provided that: ''The amendment made by subparagraph (I) of subsection (a)(10) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Apr. 1, 1980].''

Amendment by section 101(a)(7)(L)(i)(VII), (iv)(i), (10)(J)(iii), (11) of Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 141(f)(7) of Pub. L. 95–600 effective for years beginning after Dec. 31, 1978, and with respect to qualified investment for taxable years beginning after Dec. 31, 1978, see section 141(g)(1) of Pub. L. 95–600, set out as an Effective Date note under section 409 of this title.

Section 141(g)(5) of Pub. L. 95–600, as added by Pub. L. 96–222, title I, § 101(a)(7)(B), Apr. 1, 1980, 94 Stat. 197, provided that: ''The amendment made by subsection (f)(7) [amending this section] shall apply to years beginning after December 31, 1978.''

Amendment by section 152(g) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 152(h) of Pub. L. 95–600, set out as a note under section 408 of this title.

Section 153(b) of Pub. L. 95–600 provided that: ''The amendment made by this section [amending this section] shall apply to years beginning after December 31, 1978.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 803(b)(4), (f) of Pub. L. 94–455 effective for years beginning after Dec. 31, 1975, see section 803(j) of Pub. L. 94–455, set out as a note under section 46 of this title.

Amendment by section 1501(b)(3) of Pub. L. 94–455 effective for years beginning after Dec. 31, 1976, see section 1501(d) of Pub. L. 94–455, set out as a note under section 62 of this title.

Section 1502(b) of Pub. L. 94–455 provided that: ''The amendment made by subsection (a)(1) [amending this section] shall apply to years beginning after December 31, 1975. The amendment made by subsection (a)(2) [amending section 404 of this title] shall apply to taxable years beginning after December 31, 1975.''

Section 1511(b) of Pub. L. 94–455 provided that: ''The amendment made by this section [amending this section] shall apply for years beginning after December 31, 1975.''

Amendment by section 1901(a)(65), (b)(8)(D) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE; TRANSITION PROVISIONS

Section 2004(d) of Pub. L. 93–406, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) GENERAL RULE.—The amendments made by this section [enacting this section, amending sections 401, 403, 404, 405, and 805 of this title, and enacting provisions set out as notes under this section] shall apply to years beginning after December 31, 1975. The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out the provisions of this paragraph.

''(2) TRANSITION RULE FOR DEFINED BENEFIT PLANS.—In the case of an individual who was an active participant in a defined benefit plan before October 3, 1973, if—

''(A) the annual benefit (within the meaning of section 415(b)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) payable to such participant on retirement does not exceed 100 percent of his annual rate of compensation on the earlier of (i) October 2, 1973, or (ii) the date on which he separated from the service of the employer,

''(B) such annual benefit is no greater than the annual benefit which would have been payable to such participant on retirement if (i) all the terms

and conditions of such plan in existence on such date had remained in existence until such retirement, and (ii) his compensation taken into account for any period after October 2, 1973, had not exceeded his annual rate of compensation on such date, and

''(C) in the case of a participant who separated from the service of the employer prior to October 2, 1973, such annual benefit is no greater than his vested accrued benefit as of the date he separated from the service,

then such annual benefit shall be treated as not exceeding the limitation of subsection (b) of section 415 of the Internal Revenue Code of 1986.''

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

PLANS MAY INCORPORATE SECTION 415 LIMITATIONS BY REFERENCE

Section 1106(h) of Pub. L. 99–514 provided that: ''Notwithstanding any other provision of law, except as provided in regulations prescribed by the Secretary of the Treasury or his delegate, a plan may incorporate by reference the limitations under section 415 of the Internal Revenue Code of 1986.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

SPECIAL RULE FOR CERTAIN PLANS IN EFFECT ON SEPTEMBER 2, 1974

Section 2004(a)(3) of Pub. L. 93–406, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In any case in which, on the date of enactment of this Act [Sept. 2, 1974], an individual is a participant in both a defined benefit plan and a defined contribution plan maintained by the same employer, and the sum of the defined benefit plan fraction and the defined contribution plan fraction for the year during which such date occurs exceeds 1.4, the sum of such fractions may continue to exceed 1.4 if—

''(A) the defined benefit plan fraction is not increased, by amendment of the plan or otherwise, after

''(B) no contributions are made under the defined contribution plan after such date.

A trust which is part of a pension, profit-sharing, or stock bonus plan described in the preceding sentence shall not be treated as not constituting a qualified trust under section 401(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] on account of the provisions of section 415(e) of such Code, as long as it is described in the preceding sentence of this subsection.''

§ 416. Special rules for top-heavy plans

(a) General rule

A trust shall not constitute a qualified trust under section 401(a) for any plan year if the plan of which it is a part is a top-heavy plan for such plan year unless such plan meets—

(1) the vesting requirements of subsection (b), and

(2) the minimum benefit requirements of subsection (c).

(b) Vesting requirements

(1) In general

A plan satisfies the requirements of this subsection if it satisfies the requirements of either of the following subparagraphs:

(A) 3-year vesting

A plan satisfies the requirements of this subparagraph if an employee who has completed at least 3 years of service with the employer or employers maintaining the plan has a nonforfeitable right to 100 percent of his accrued benefit derived from employer contributions.

(B) 6-year graded vesting

A plan satisfies the requirements of this subparagraph if an employee has a nonforfeitable right to a percentage of his accrued benefit derived from employer contributions determined under the following table:

Years of service	The nonforfeitable percentage is:
2	20
3	40
4	60
5	80
6 or more	100

(2) Certain rules made applicable

Except to the extent inconsistent with the provisions of this subsection, the rules of section 411 shall apply for purposes of this subsection.

(c) Plan must provide minimum benefits

(1) Defined benefit plans

(A) In general

A defined benefit plan meets the requirements of this subsection if the accrued benefit derived from employer contributions of each participant who is a non-key employee, when expressed as an annual retirement benefit, is not less than the applicable percentage of the participant's average compensation for years in the testing period.

(B) Applicable percentage

For purposes of subparagraph (A), the term ''applicable percentage'' means the lesser of—

(i) 2 percent multiplied by the number of years of service with the employer, or

(ii) 20 percent.

(C) Years of service

For purposes of this paragraph—

(i) In general

Except as provided in clause (ii) or (iii), years of service shall be determined under the rules of paragraphs (4), (5), and (6) of section 411(a).

(ii) Exception for years during which plan was not top-heavy

A year of service with the employer shall not be taken into account under this paragraph if—

(I) the plan was not a top-heavy plan for any plan year ending during such year of service, or

(II) such year of service was completed in a plan year beginning before January 1, 1984.

(iii) Exception for plan under which no key employee (or former key employee) benefits for plan year

For purposes of determining an employee's years of service with the employer, any service with the employer shall be disregarded to the extent that such service occurs during a plan year when the plan benefits (within the meaning of section 410(b)) no key employee or former key employee.

(D) Average compensation for high 5 years

For purposes of this paragraph—

(i) In general

A participant's testing period shall be the period of consecutive years (not exceeding 5) during which the participant had the greatest aggregate compensation from the employer.

(ii) Year must be included in year of service

The years taken into account under clause (i) shall be properly adjusted for years not included in a year of service.

(iii) Certain years not taken into account

Except to the extent provided in the plan, a year shall not be taken into account under clause (i) if—

(I) such year ends in a plan year beginning before January 1, 1984, or

(II) such year begins after the close of the last year in which the plan was a top-heavy plan.

(E) Annual retirement benefit

For purposes of this paragraph, the term ''annual retirement benefit'' means a benefit payable annually in the form of a single life annuity (with no ancillary benefits) beginning at the normal retirement age under the plan.

(2) Defined contribution plans

(A) In general

A defined contribution plan meets the requirements of the subsection if the employer contribution for the year for each participant who is a non-key employee is not less than 3 percent of such participant's compensation (within the meaning of section 415). Employer matching contributions (as defined in section 401(m)(4)(A)) shall be taken into account for purposes of this subparagraph (and any reduction under this sentence shall not be taken into account in determining whether section 401(k)(4)(A) applies).

(B) Special rule where maximum contribution less than 3 percent

(i) In general

The percentage referred to in subparagraph (A) for any year shall not exceed the percentage at which contributions are made (or required to be made) under the plan for the year for the key employee for whom such percentage is the highest for the year.

(ii) Treatment of aggregation groups

(I) For purposes of this subparagraph, all defined contribution plans required to be included in an aggregation group under subsection (g)(2)(A)(i) shall be treated as one plan.

(II) This subparagraph shall not apply to any plan required to be included in an aggregation group if such plan enables a defined benefit plan required to be included in such group to meet the requirements of section 401(a)(4) or 410.

[(d) Repealed. Pub. L. 99–514, title XI, § 1106(d)(3)(B)(i), Oct. 22, 1986, 100 Stat. 2424]

(e) Plan must meet requirements without taking into account social security and similar contributions and benefits

A top-heavy plan shall not be treated as meeting the requirement of subsection (b) or (c) unless such plan meets such requirement without taking into account contributions or benefits under chapter 2 (relating to tax on self-employment income), chapter 21 (relating to Federal Insurance Contributions Act), title II of the Social Security Act, or any other Federal or State law.

(f) Coordination where employer has 2 or more plans

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section where the employer has 2 or more plans including (but not limited to) regulations to prevent inappropriate omissions or required duplication of minimum benefits or contributions.

(g) Top-heavy plan defined

For purposes of this section—

(1) In general

(A) Plans not required to be aggregated

Except as provided in subparagraph (B), the term ''top-heavy plan'' means, with respect to any plan year—

(i) any defined benefit plan if, as of the determination date, the present value of the cumulative accrued benefits under the plan for key employees exceeds 60 percent

of the present value of the cumulative accrued benefits under the plan for all employees, and

(ii) any defined contribution plan if, as of the determination date, the aggregate of the accounts of key employees under the plan exceeds 60 percent of the aggregate of the accounts of all employees under such plan.

(B) Aggregated plans

Each plan of an employer required to be included in an aggregation group shall be treated as a top-heavy plan if such group is a top-heavy group.

(2) Aggregation

For purposes of this subsection—

(A) Aggregation group

(i) Required aggregation

The term ''aggregation group'' means—

(I) each plan of the employer in which a key employee is a participant, and

(II) each other plan of the employer which enables any plan described in subclause (I) to meet the requirements of section 401(a)(4) or 410.

(ii) Permissive aggregation

The employer may treat any plan not required to be included in an aggregation group under clause (i) as being part of such group if such group would continue to meet the requirements of sections 401(a)(4) and 410 with such plan being taken into account.

(B) Top-heavy group

The term ''top-heavy group'' means any aggregation group if—

(i) the sum (as of the determination date) of—

(I) the present value of the cumulative accrued benefits for key employees under all defined benefit plans included in such group, and

(II) the aggregate of the accounts of key employees under all defined contribution plans included in such group,

(ii) exceeds 60 percent of a similar sum determined for all employees.

(3) Distributions during last year before determination date taken into account

(A) In general

For purposes of determining—

(i) the present value of the cumulative accrued benefit for any employee, or

(ii) the amount of the account of any employee,

such present value or amount shall be increased by the aggregate distributions made with respect to such employee under the plan during the 1-year period ending on the determination date. The preceding sentence shall also apply to distributions under a terminated plan which if it had not been terminated would have been required to be included in an aggregation group.

(B) 5-year period in case of in-service distribution

In the case of any distribution made for a reason other than severance from employment, death, or disability, subparagraph (A) shall be applied by substituting ''5-year period'' for ''1-year period''.

(4) Other special rules

For purposes of this subsection—

(A) Rollover contributions to plan not taken into account

Except to the extent provided in regulations, any rollover contribution (or similar transfer) initiated by the employee and made after December 31, 1983, to a plan shall not be taken into account with respect to the transferee plan for purposes of determining whether such plan is a top-heavy plan (or whether any aggregation group which includes such plan is a top-heavy group).

(B) Benefits not taken into account if employee ceases to be key employee

If any individual is a non-key employee with respect to any plan for any plan year, but such individual was a key employee with respect to such plan for any prior plan year, any accrued benefit for such employee (and the account of such employee) shall not be taken into account.

(C) Determination date

The term ''determination date'' means, with respect to any plan year—

(i) the last day of the preceding plan year, or

(ii) in the case of the first plan year of any plan, the last day of such plan year.

(D) Years

To the extent provided in regulations, this section shall be applied on the basis of any year specified in such regulations in lieu of plan years.

(E) Benefits not taken into account if employee not employed for last year before determination date

If any individual has not performed services for the employer maintaining the plan at any time during the 1-year period ending on the determination date, any accrued benefit for such individual (and the account of such individual) shall not be taken into account.

(F) Accrued benefits treated as accruing ratably

The accrued benefit of any employee (other than a key employee) shall be determined—

(i) under the method which is used for accrual purposes for all plans of the employer, or

(ii) if there is no method described in clause (i), as if such benefit accrued not more rapidly than the slowest accrual rate permitted under section 411(b)(1)(C).

(G) Simple retirement accounts

The term ''top-heavy plan'' shall not include a simple retirement account under section 408(p).

(H) Cash or deferred arrangements using alternative methods of meeting nondiscrimination requirements

The term ''top-heavy plan'' shall not include a plan which consists solely of—

(i) a cash or deferred arrangement which meets the requirements of section 401(k)(12) or 401(k)(13), and

(ii) matching contributions with respect to which the requirements of section 401(m)(11) or 401(m)(12) are met.

If, but for this subparagraph, a plan would be treated as a top-heavy plan because it is a member of an aggregation group which is a top-heavy group, contributions under the plan may be taken into account in determining whether any other plan in the group meets the requirements of subsection (c)(2).

[(h) Repealed. Pub. L. 104–188, title I, § 1452(c)(7), Aug. 20, 1996, 110 Stat. 1816]

(i) Definitions

For purposes of this section—

(1) Key employee

(A) In general

The term ''key employee'' means an employee who, at any time during the plan year, is—

(i) an officer of the employer having an annual compensation greater than $130,000,

(ii) a 5-percent owner of the employer, or

(iii) a 1-percent owner of the employer having an annual compensation from the employer of more than $150,000.

For purposes of clause (i), no more than 50 employees (or, if lesser, the greater of 3 or 10 percent of the employees) shall be treated as officers. In the case of plan years beginning after December 31, 2002, the $130,000 amount in clause (i) shall be adjusted at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2001, and any increase under this sentence which is not a multiple of $5,000 shall be rounded to the next lower multiple of $5,000. Such term shall not include any officer or employee of an entity referred to in section 414(d) (relating to governmental plans). For purposes of determining the number of officers taken into account under clause (i), employees described in section 414(q)(5) shall be excluded.

(B) Percentage owners

(i) 5-percent owner

For purposes of this paragraph, the term ''5-percent owner'' means—

(I) if the employer is a corporation, any person who owns (or is considered as owning within the meaning of section 318) more than 5 percent of the outstanding stock of the corporation or stock possessing more than 5 percent of the total combined voting power of all stock of the corporation, or

(II) if the employer is not a corporation, any person who owns more than 5 percent of the capital or profits interest in the employer.

(ii) 1-percent owner

For purposes of this paragraph, the term ''1-percent owner'' means any person who would be described in clause (i) if ''1 percent'' were substituted for ''5 percent'' each place it appears in clause (i).

(iii) Constructive ownership rules

For purposes of this subparagraph—

(I) subparagraph (C) of section 318(a)(2) shall be applied by substituting ''5 percent'' for ''50 percent'', and

(II) in the case of any employer which is not a corporation, ownership in such employer shall be determined in accordance with regulations prescribed by the Secretary which shall be based on principles similar to the principles of section 318 (as modified by subclause (I)).

(C) Aggregation rules do not apply for purposes of determining ownership in the employer

The rules of subsections (b), (c), and (m) of section 414 shall not apply for purposes of determining ownership in the employer.

(D) Compensation

For purposes of this paragraph, the term ''compensation'' has the meaning given such term by section 414(q)(4).

(2) Non-key employee

The term ''non-key employee'' means any employee who is not a key employee.

(3) Self-employed individuals

In the case of a self-employed individual described in section 401(c)(1)—

(A) such individual shall be treated as an employee, and

(B) such individual's earned income (within the meaning of section 401(c)(2)) shall be treated as compensation.

(4) Treatment of employees covered by collective bargaining agreements

The requirements of subsections (b), (c), and (d) shall not apply with respect to any employee included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and 1 or more employers if there is evidence that retirement benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.

(5) Treatment of beneficiaries

The terms ''employee'' and ''key employee'' include their beneficiaries.

(6) Treatment of simplified employee pensions

(A) Treatment as defined contribution plans

A simplified employee pension shall be treated as a defined contribution plan.

(B) Election to have determinations based on employer contributions

In the case of a simplified employee pension, at the election of the employer, paragraphs (1)(A)(ii) and (2)(B) of subsection (g) shall be applied by taking into account aggregate employer contributions in lieu of the aggregate of the accounts of employees.

(Added Pub. L. 97–248, title II, § 240(a), Sept. 3, 1982, 96 Stat. 514; amended Pub. L. 98–369, div. A,

title V, §524(a)(1), (b)(1), (c)(1), title VII, §713(f)(1), (4), (5)(A), (6), July 18, 1984, 98 Stat. 872, 958–960; Pub. L. 99–514, title XI, §§1106(d)(3)(A), (B), 1118(a), title XVIII, §1852(d), Oct. 22, 1986, 100 Stat. 2424, 2463, 2867; Pub. L. 100–647, title I, §1011(d)(8), (i)(4)(B), (j)(3)(A), Nov. 10, 1988, 102 Stat. 3460, 3467, 3468; Pub. L. 104–188, title I, §§1421(b)(7), 1431(c)(1)(B), (C), 1452(c)(7), Aug. 20, 1996, 110 Stat. 1797, 1803, 1816; Pub. L. 107–16, title VI, §613(a)–(e), June 7, 2001, 115 Stat. 100–102; Pub. L. 107–147, title IV, §411(k), Mar. 9, 2002, 116 Stat. 47; Pub. L. 108–311, title IV, §408(a)(16), Oct. 4, 2004, 118 Stat. 1192; Pub. L. 109–280, title IX, §902(c), Aug. 17, 2006, 120 Stat. 1036.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

REFERENCES IN TEXT

The Federal Insurance Contributions Act, referred to in subsec. (e), is act Aug. 16, 1954, ch. 736, §§3101, 3102, 3111, 3112, 3121 to 3128, 68A Stat. 415, as amended, which is classified generally to chapter 21 (§3101 et seq.) of this title. For complete classification of this Act to the Code, see section 3128 of this title and Tables.

The Social Security Act, referred to in subsec. (e), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2006—Subsec. (g)(4)(H)(i). Pub. L. 109–280, §902(c)(1), inserted ''or 401(k)(13)'' after ''401(k)(12)''.

Subsec. (g)(4)(H)(ii). Pub. L. 109–280, §902(c)(2), inserted ''or 401(m)(12)'' after ''401(m)(11)''.

2004—Subsec. (i)(1)(A). Pub. L. 108–311 substituted ''In the case of plan years'' for ''in the case of plan years'' in concluding provisions.

2002—Subsec. (c)(1)(C)(iii). Pub. L. 107–147, §411(k)(1), substituted ''Exception for plan under which no key employee (or former key employee) benefits for plan year'' for ''Exception for frozen plan'' in heading.

Subsec. (g)(3)(B). Pub. L. 107–147, §411(k)(2), substituted ''severance from employment'' for ''separation from service''.

2001—Subsec. (c)(1)(C)(i). Pub. L. 107–16, §613(e)(A), substituted ''clause (ii) or (iii)'' for ''clause (ii)''.

Subsec. (c)(1)(C)(iii). Pub. L. 107–16, §613(e)(B), added cl. (iii).

Subsec. (c)(2)(A). Pub. L. 107–16, §613(b), inserted at end ''Employer matching contributions (as defined in section 401(m)(4)(A)) shall be taken into account for purposes of this subparagraph (and any reduction under this sentence shall not be taken into account in determining whether section 401(k)(4)(A) applies).''

Subsec. (g)(3). Pub. L. 107–16, §613(c)(1), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''For purposes of determining—

''(A) the present value of the cumulative accrued benefit for any employee, or

''(B) the amount of the account of any employee,

such present value or amount shall be increased by the aggregate distributions made with respect to such employee under the plan during the 5-year period ending on the determination date. The preceding sentence shall also apply to distributions under a terminated plan which if it had not been terminated would have been required to be included in an aggregation group.''

Subsec. (g)(4)(E). Pub. L. 107–16, §613(c)(2), in heading substituted ''last year before determination date'' for ''last 5 years'' and in text substituted ''1-year period'' for ''5-year period''.

Subsec. (g)(4)(H). Pub. L. 107–16, §613(d), added subpar. (H).

Subsec. (i)(1)(A). Pub. L. 107–16, §613(a)(1)(D), in concluding provisions, substituted ''in the case of plan years beginning after December 31, 2002, the $130,000 amount in clause (i) shall be adjusted at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2001, and any increase under this sentence which is not a multiple of $5,000 shall be rounded to the next lower multiple of $5,000.'' for ''For purposes of clause (ii), if 2 employees have the same interest in the employer, the employee having greater annual compensation from the employer shall be treated as having a larger interest.''

Pub. L. 107–16, §613(a)(1)(A), struck out ''or any of the 4 preceding plan years'' after ''plan year'' in introductory provisions.

Subsec. (i)(1)(A)(i). Pub. L. 107–16, §613(a)(1)(B), added cl. (i) and struck out former cl. (i) which read as follows: ''an officer of the employer having an annual compensation greater than 50 percent of the amount in effect under section 415(b)(1)(A) for any such plan year,''.

Subsec. (i)(1)(A)(ii)–(iv). Pub. L. 107–16, §613(a)(1)(C), redesignated cls. (iii) and (iv) as (ii) and (iii), respectively, and struck out former cl. (ii) which read as follows: ''1 of the 10 employees having annual compensation from the employer of more than the limitation in effect under section 415(c)(1)(A) and owning (or considered as owning within the meaning of section 318) the largest interests in the employer,''.

Subsec. (i)(1)(B)(iii). Pub. L. 107–16, §613(a)(2), struck out ''and subparagraph (A)(ii)'' after ''this subparagraph'' in introductory provisions.

1996—Subsec. (g)(4)(G). Pub. L. 104–188, §1421(b)(7), added subpar. (G).

Subsec. (h). Pub. L. 104–188, §1452(c)(7), struck out subsec. (h) which related to adjustments in section 415 limits for top-heavy plans.

Subsec. (i)(1)(A). Pub. L. 104–188, §1431(c)(1)(C), substituted ''section 414(q)(5)'' for ''section 414(q)(8)'' in closing provisions.

Subsec. (i)(1)(D). Pub. L. 104–188, §1431(c)(1)(B), substituted ''section 414(q)(4)'' for ''section 414(q)(7)''.

1988—Subsec. (i)(1)(A). Pub. L. 100–647, §1011(i)(4)(B), inserted at end ''For purposes of determining the number of officers taken into account under clause (i), employees described in section 414(q)(8) shall be excluded.''

Subsec. (i)(1)(A)(i). Pub. L. 100–647, §1011(d)(8), substituted ''50'' for ''150'' and ''415(b)(1)(A)'' for ''415(c)(1)(A)''.

Subsec. (i)(1)(D). Pub. L. 100–647, §1011(j)(3)(A), added subpar. (D).

1986—Subsec. (a)(3). Pub. L. 99–514, §1106(d)(3)(A), struck out par. (3) which read as follows: ''the limitation on compensation requirement of subsection (d).''

Subsec. (c)(2)(B)(ii), (iii). Pub. L. 99–514, §1106(d)(3)(B)(ii), redesignated cl. (iii) as (ii) and struck out former cl. (ii) which read as follows: ''DETERMINATION OF PERCENTAGE.—The determination referred to in clause (i) shall be determined for each key employee by dividing the contributions for such employee by so much of his total compensation for the year as does not exceed $200,000.''

Subsec. (d). Pub. L. 99–514, §1106(d)(3)(B)(i), repealed subsec. (d) which provided for a $200,000 limitation on the amount of annual compensation of each employee taken into account.

Subsec. (g)(4)(E). Pub. L. 99–514, §1852(d)(2), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: ''If any individual has not received any compensation from any employer maintaining the plan (other than benefits under the plan) at any time during the 5-year period ending on the determination date, any accrued benefit for such individual (and the account of such individual) shall not be taken into account.''

Subsec. (g)(4)(F). Pub. L. 99–514, §1118(a), added subpar. (F).

Subsec. (i)(1)(A). Pub. L. 99–514, §1852(d)(1), inserted at end ''Such term shall not include any officer or employee of an entity referred to in section 414(d) (relating to governmental plans).''

1984—Subsec. (c)(2)(C). Pub. L. 98–369, §524(c)(1), struck out subpar. (C) which provided that for purposes of this paragraph, any employer contribution attributable to a salary reduction or similar arrangement shall not be taken into account.

Subsec. (d)(2). Pub. L. 98–369, §713(f)(5)(A), inserted ''at the same time and''.

Subsec. (f). Pub. L. 98–369, §713(f)(6)(A), substituted ''required'' for ''require''.

Subsec. (g)(3). Pub. L. 98–369, §713(f)(4), inserted at end ''The preceding sentence shall also apply to distributions under a terminated plan which if it had not been terminated would have been required to be included in an aggregation group.''

Subsec. (g)(4)(E). Pub. L. 98–369, §524(b)(1), added subpar. (E).

Subsec. (i)(1)(A). Pub. L. 98–369, §713(f)(1)(A), (C), substituted in provisions preceding cl. (i) ''an employee'' for ''any participant in an employer plan'' and inserted at end thereof provision for treatment of an employee with the greater annual compensation as having a larger interest in the employer where, for purposes of cl. (ii), 2 employees have the same interest in the employer.

Subsec. (i)(1)(A)(i). Pub. L. 98–369, §524(a)(1), inserted ''having an annual compensation greater than 150 percent of the amount in effect under section 415(c)(1)(A) for any plan year''.

Subsec. (i)(1)(A)(ii). Pub. L. 98–369, §713(f)(1)(B), required a key employee to have annual compensation from the employer of more than the limitation in effect under section 415(c)(1)(A).

Subsec. (i)(1)(B)(iii). Pub. L. 98–369, §713(f)(6)(B), substituted subparagraph ''(A)(ii)'' for ''(A)(ii)(II)''.

Subsec. (i)(1)(C). Pub. L. 98–369, §713(f)(1)(A), substituted in heading ''ownership in the employer'' for ''5-percent or 1-percent owners''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to plan years beginning after Dec. 31, 2007, see section 902(g) of Pub. L. 109–280, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title VI, §613(f), June 7, 2001, 115 Stat. 102, provided that: ''The amendments made by this section [amending this section] shall apply to years beginning after December 31, 2001.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1421(b)(7) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104–188, set out as a note under section 72 of this title.

Amendment by section 1431(c)(1)(B), (C) of Pub. L. 104–188 applicable to years beginning after Dec. 31, 1996, except that in determining whether an employee is a highly compensated employee for years beginning in 1997, such amendment to be treated as having been in effect for years beginning in 1996, see section 1431(d)(1) of Pub. L. 104–188, set out as a note under section 414 of this title.

Amendment by section 1452(c)(7) of Pub. L. 104–188 applicable to limitation years beginning after Dec. 31, 1999, see section 1452(d) of Pub. L. 104–188, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1011(j)(3)(B) of Pub. L. 100–647 provided that: ''The amendment made by this paragraph [amending this section] shall apply to years beginning after December 31, 1988.''

Amendment by section 1011(d)(8), (i)(4)(B) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1106(d)(3)(A), (B) of Pub. L. 99–514 applicable to benefits accruing in years beginning after Dec. 31, 1988, except as otherwise provided, see section 1106(i)(5) of Pub. L. 99–514, set out as a note under section 415 of this title.

Section 1118(b) of Pub. L. 99–514 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to plan years beginning after December 31, 1986.''

Amendment by section 1852(d) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 524(a)(2) of Pub. L. 98–369 provided that: ''The amendment made by this subsection [amending this section] shall apply to plan years beginning after December 31, 1983.''

Section 524(b)(2) of Pub. L. 98–369 provided that: ''The amendment made by this subsection [amending this section] shall apply to plan years beginning after December 31, 1984.''

Section 524(c)(2) of Pub. L. 98–369 provided that: ''The amendment made by this subsection [amending this section] shall apply to plan years beginning after December 31, 1984.''

Amendment by section 713 of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE

Section 241 of Pub. L. 97–248 provided that:

''(a) GENERAL RULE.—Except as provided in subsection (b), the amendments made by this part [part II (§§237–241) of subtitle C of title II of Pub. L. 97–248, enacting this section, amending sections 72, 401, 404, 408, 414, 415, and 1379 of this title, and repealing section 4972 of this title] shall apply to years beginning after December 31, 1983.

''(b) ALLOWANCE OF EXCLUSION OF DEATH BENEFIT FOR SELF-EMPLOYED INDIVIDUALS.—The amendment made by section 239 [amending section 101 of this title] shall apply with respect to decedents dying after December 31, 1983.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L.

99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 417. Definitions and special rules for purposes of minimum survivor annuity requirements

(a) Election to waive qualified joint and survivor annuity or qualified preretirement survivor annuity

(1) In general

A plan meets the requirements of section 401(a)(11) only if—

(A) under the plan, each participant—

(i) may elect at any time during the applicable election period to waive the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit (or both),

(ii) if the participant elects a waiver under clause (i), may elect the qualified optional survivor annuity at any time during the applicable election period, and

(iii) may revoke any such election at any time during the applicable election period, and

(B) the plan meets the requirements of paragraphs (2), (3), and (4) of this subsection.

(2) Spouse must consent to election

Each plan shall provide that an election under paragraph (1)(A)(i) shall not take effect unless—

(A)(i) the spouse of the participant consents in writing to such election, (ii) such election designates a beneficiary (or a form of benefits) which may not be changed without spousal consent (or the consent of the spouse expressly permits designations by the participant without any requirement of further consent by the spouse), and (iii) the spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or a notary public, or

(B) it is established to the satisfaction of a plan representative that the consent required under subparagraph (A) may not be obtained because there is no spouse, because the spouse cannot be located, or because of such other circumstances as the Secretary may by regulations prescribe.

Any consent by a spouse (or establishment that the consent of a spouse may not be obtained) under the preceding sentence shall be effective only with respect to such spouse.

(3) Plan to provide written explanations

(A) Explanation of joint and survivor annuity

Each plan shall provide to each participant, within a reasonable period of time before the annuity starting date (and consistent with such regulations as the Secretary may prescribe), a written explanation of—

(i) the terms and conditions of the qualified joint and survivor annuity and of the qualified optional survivor annuity,

(ii) the participant's right to make, and the effect of, an election under paragraph (1) to waive the joint and survivor annuity form of benefit,

(iii) the rights of the participant's spouse under paragraph (2), and

(iv) the right to make, and the effect of, a revocation of an election under paragraph (1).

(B) Explanation of qualified preretirement survivor annuity

(i) In general

Each plan shall provide to each participant, within the applicable period with respect to such participant (and consistent with such regulations as the Secretary may prescribe), a written explanation with respect to the qualified preretirement survivor annuity comparable to that required under subparagraph (A).

(ii) Applicable period

For purposes of clause (i), the term ''applicable period'' means, with respect to a participant, whichever of the following periods ends last:

(I) The period beginning with the first day of the plan year in which the participant attains age 32 and ending with the close of the plan year preceding the plan year in which the participant attains age 35.

(II) A reasonable period after the individual becomes a participant.

(III) A reasonable period ending after paragraph (5) ceases to apply to the participant.

(IV) A reasonable period ending after section 401(a)(11) applies to the participant.

In the case of a participant who separates from service before attaining age 35, the applicable period shall be a reasonable period after separation.

(4) Requirement of spousal consent for using plan assets as security for loans

Each plan shall provide that, if section 401(a)(11) applies to a participant when part or all of the participant's accrued benefit is to be used as security for a loan, no portion of the participant's accrued benefit may be used as security for such loan unless—

(A) the spouse of the participant (if any) consents in writing to such use during the 90-day period ending on the date on which the loan is to be so secured, and

(B) requirements comparable to the requirements of paragraph (2) are met with respect to such consent.

(5) Special rules where plan fully subsidizes costs

(A) In general

The requirements of this subsection shall not apply with respect to the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit, as the case may be, if such benefit may not be waived (or another beneficiary selected) and if the plan fully subsidizes the costs of such benefit.

(B) Definition

For purposes of subparagraph (A), a plan fully subsidizes the costs of a benefit if

under the plan the failure to waive such benefit by a participant would not result in a decrease in any plan benefits with respect to such participant and would not result in increased contributions from such participant.

(6) Applicable election period defined

For purposes of this subsection, the term ''applicable election period'' means—

(A) in the case of an election to waive the qualified joint and survivor annuity form of benefit, the 180-day period ending on the annuity starting date, or

(B) in the case of an election to waive the qualified preretirement survivor annuity, the period which begins on the first day of the plan year in which the participant attains age 35 and ends on the date of the participant's death.

In the case of a participant who is separated from service, the applicable election period under subparagraph (B) with respect to benefits accrued before the date of such separation from service shall not begin later than such date.

(7) Special rules relating to time for written explanation

Notwithstanding any other provision of this subsection—

(A) Explanation may be provided after annuity starting date

(i) In general

A plan may provide the written explanation described in paragraph (3)(A) after the annuity starting date. In any case to which this subparagraph applies, the applicable election period under paragraph (6) shall not end before the 30th day after the date on which such explanation is provided.

(ii) Regulatory authority

The Secretary may by regulations limit the application of clause (i), except that such regulations may not limit the period of time by which the annuity starting date precedes the provision of the written explanation other than by providing that the annuity starting date may not be earlier than termination of employment.

(B) Waiver of 30-day period

A plan may permit a participant to elect (with any applicable spousal consent) to waive any requirement that the written explanation be provided at least 30 days before the annuity starting date (or to waive the 30-day requirement under subparagraph (A)) if the distribution commences more than 7 days after such explanation is provided.

(b) Definition of qualified joint and survivor annuity

For purposes of this section and section 401(a)(11), the term ''qualified joint and survivor annuity'' means an annuity—

(1) for the life of the participant with a survivor annuity for the life of the spouse which is not less than 50 percent of (and is not greater than 100 percent of) the amount of the annuity which is payable during the joint lives of the participant and the spouse, and

(2) which is the actuarial equivalent of a single annuity for the life of the participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(c) Definition of qualified preretirement survivor annuity

For purposes of this section and section 401(a)(11)—

(1) In general

Except as provided in paragraph (2), the term ''qualified preretirement survivor annuity'' means a survivor annuity for the life of the surviving spouse of the participant if—

(A) the payments to the surviving spouse under such annuity are not less than the amounts which would be payable as a survivor annuity under the qualified joint and survivor annuity under the plan (or the actuarial equivalent thereof) if—

(i) in the case of a participant who dies after the date on which the participant attained the earliest retirement age, such participant had retired with an immediate qualified joint and survivor annuity on the day before the participant's date of death, or

(ii) in the case of a participant who dies on or before the date on which the participant would have attained the earliest retirement age, such participant had—

(I) separated from service on the date of death,

(II) survived to the earliest retirement age,

(III) retired with an immediate qualified joint and survivor annuity at the earliest retirement age, and

(IV) died on the day after the day on which such participant would have attained the earliest retirement age, and

(B) under the plan, the earliest period for which the surviving spouse may receive a payment under such annuity is not later than the month in which the participant would have attained the earliest retirement age under the plan.

In the case of an individual who separated from service before the date of such individual's death, subparagraph (A)(ii)(I) shall not apply.

(2) Special rule for defined contribution plans

In the case of any defined contribution plan or participant described in clause (ii) or (iii) of section 401(a)(11)(B), the term ''qualified preretirement survivor annuity'' means an annuity for the life of the surviving spouse the actuarial equivalent of which is not less than 50 percent of the portion of the account balance of the participant (as of the date of death) to which the participant had a nonforfeitable right (within the meaning of section 411(a)).

(3) Security interests taken into account

For purposes of paragraphs (1) and (2), any security interest held by the plan by reason of

a loan outstanding to the participant shall be taken into account in determining the amount of the qualified preretirement survivor annuity.

(d) Survivor annuities need not be provided if participant and spouse married less than 1 year

(1) In general

Except as provided in paragraph (2), a plan shall not be treated as failing to meet the requirements of section 401(a)(11) merely because the plan provides that a qualified joint and survivor annuity (or a qualified preretirement survivor annuity) will not be provided unless the participant and spouse had been married throughout the 1-year period ending on the earlier of—

(A) the participant's annuity starting date, or

(B) the date of the participant's death.

(2) Treatment of certain marriages within 1 year of annuity starting date for purposes of qualified joint and survivor annuities

For purposes of paragraph (1), if—

(A) a participant marries within 1 year before the annuity starting date, and

(B) the participant and the participant's spouse in such marriage have been married for at least a 1-year period ending on or before the date of the participant's death,

such participant and such spouse shall be treated as having been married throughout the 1-year period ending on the participant's annuity starting date.

(e) Restrictions on cash-outs

(1) Plan may require distribution if present value not in excess of dollar limit

A plan may provide that the present value of a qualified joint and survivor annuity or a qualified preretirement survivor annuity will be immediately distributed if such value does not exceed the amount that can be distributed without the participant's consent under section 411(a)(11). No distribution may be made under the preceding sentence after the annuity starting date unless the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consents in writing to such distribution.

(2) Plan may distribute benefit in excess of dollar limit only with consent

If—

(A) the present value of the qualified joint and survivor annuity or the qualified preretirement survivor annuity exceeds the amount that can be distributed without the participant's consent under section 411(a)(11), and

(B) the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consent in writing to the distribution,

the plan may immediately distribute the present value of such annuity.

(3) Determination of present value

(A) In general

For purposes of paragraphs (1) and (2), the present value shall not be less than the present value calculated by using the applicable mortality table and the applicable interest rate.

(B) Applicable mortality table

For purposes of subparagraph (A), the term ''applicable mortality table'' means a mortality table, modified as appropriate by the Secretary, based on the mortality table specified for the plan year under subparagraph (A) of section 430(h)(3) (without regard to subparagraph (C) or (D) of such section).

(C) Applicable interest rate

For purposes of subparagraph (A), the term ''applicable interest rate'' means the adjusted first, second, and third segment rates applied under rules similar to the rules of section 430(h)(2)(C) for the month before the date of the distribution or such other time as the Secretary may by regulations prescribe.

(D) Applicable segment rates

For purposes of subparagraph (C), the adjusted first, second, and third segment rates are the first, second, and third segment rates which would be determined under section 430(h)(2)(C) if—

(i) section 430(h)(2)(D) were applied by substituting the average yields for the month described in subparagraph (C) for the average yields for the 24-month period described in such section,

(ii) section 430(h)(2)(G)(i)(II) were applied by substituting ''section 417(e)(3)(A)(ii)(II)'' for ''section 412(b)(5)(B)(ii)(II)'', and

(iii) the applicable percentage under section 430(h)(2)(G) were determined in accordance with the following table:

In the case of plan years beginning in:	The applicable percentage is:
2008	20 percent
2009	40 percent
2010	60 percent
2011	80 percent.

(f) Other definitions and special rules

For purposes of this section and section 401(a)(11)—

(1) Vested participant

The term ''vested participant'' means any participant who has a nonforfeitable right (within the meaning of section 411(a)) to any portion of such participant's accrued benefit.

(2) Annuity starting date

(A) In general

The term ''annuity starting date'' means—

(i) the first day of the first period for which an amount is payable as an annuity, or

(ii) in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitle the participant to such benefit.

(B) Special rule for disability benefits

For purposes of subparagraph (A), the first day of the first period for which a benefit is

to be received by reason of disability shall be treated as the annuity starting date only if such benefit is not an auxiliary benefit.

(3) Earliest retirement age

The term ''earliest retirement age'' means the earliest date on which, under the plan, the participant could elect to receive retirement benefits.

(4) Plan may take into account increased costs

A plan may take into account in any equitable manner (as determined by the Secretary) any increased costs resulting from providing a qualified joint or survivor annuity or a qualified preretirement survivor annuity.

(5) Distributions by reason of security interests

If the use of any participant's accrued benefit (or any portion thereof) as security for a loan meets the requirements of subsection (a)(4), nothing in this section or section 411(a)(11) shall prevent any distribution required by reason of a failure to comply with the terms of such loan.

(6) Requirements for certain spousal consents

No consent of a spouse shall be effective for purposes of subsection (e)(1) or (e)(2) (as the case may be) unless requirements comparable to the requirements for spousal consent to an election under subsection (a)(1)(A) are met.

(7) Consultation with the Secretary of Labor

In prescribing regulations under this section and section 401(a)(11), the Secretary shall consult with the Secretary of Labor.

(g) Definition of qualified optional survivor annuity

(1) In general

For purposes of this section, the term ''qualified optional survivor annuity'' means an annuity—

(A) for the life of the participant with a survivor annuity for the life of the spouse which is equal to the applicable percentage of the amount of the annuity which is payable during the joint lives of the participant and the spouse, and

(B) which is the actuarial equivalent of a single annuity for the life of the participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(2) Applicable percentage

(A) In general

For purposes of paragraph (1), if the survivor annuity percentage—

(i) is less than 75 percent, the applicable percentage is 75 percent, and

(ii) is greater than or equal to 75 percent, the applicable percentage is 50 percent.

(B) Survivor annuity percentage

For purposes of subparagraph (A), the term ''survivor annuity percentage'' means the percentage which the survivor annuity under the plan's qualified joint and survivor annuity bears to the annuity payable during the joint lives of the participant and the spouse.

(Added Pub. L. 98–397, title II, §203(b), Aug. 23, 1984, 98 Stat. 1441; amended Pub. L. 99–514, title XI, §1139(b), title XVIII, §1898(b)(1)(A), (4)(A), (5)(A), (6)(A), (8)(A), (9)(A), (10)(A), (11)(A), (12)(A), (15)(A), (B), Oct. 22, 1986, 100 Stat. 2487, 2944, 2945, 2947–2951; Pub. L. 100–647, title I, §1018(u)(9), Nov. 10, 1988, 102 Stat. 3590; Pub. L. 101–239, title VII, §7862(d)(1)(A), Dec. 19, 1989, 103 Stat. 2433; Pub. L. 103–465, title VII, §767(a)(2), Dec. 8, 1994, 108 Stat. 5038; Pub. L. 104–188, title I, §1451(a), Aug. 20, 1996, 110 Stat. 1815; Pub. L. 105–34, title X, §1071(a)(2), Aug. 5, 1997, 111 Stat. 948; Pub. L. 107–147, title IV, §411(r)(1), Mar. 9, 2002, 116 Stat. 51; Pub. L. 109–280, title III, §302(b), title X, §1004(a), title XI, §1102(a)(1)(A), Aug. 17, 2006, 120 Stat. 920, 1053, 1056; Pub. L. 110–458, title I, §103(b)(2)(A), Dec. 23, 2008, 122 Stat. 5103.)

AMENDMENTS

2008—Subsec. (e)(3)(D)(i). Pub. L. 110–458 substituted ''subparagraph (C)'' for ''clause (ii)''.

2006—Subsec. (a)(1)(A)(ii), (iii). Pub. L. 109–280, §1004(a)(1), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (a)(3)(A)(i). Pub. L. 109–280, §1004(a)(3), inserted ''and of the qualified optional survivor annuity'' before comma at end.

Subsec. (a)(6)(A). Pub. L. 109–280, §1102(a)(1)(A), substituted ''180-day'' for ''90-day''.

Subsec. (e)(3). Pub. L. 109–280, §302(b), reenacted heading without change and amended text of par. (3) generally, substituting provisions relating to determination of present value by using the applicable mortality table and the applicable interest rate, provisions defining ''applicable mortality table'' and ''applicable interest rate'', and provisions relating to determination of the adjusted first, second, and third segment rates, for provisions relating to determination of present value, provisions defining ''applicable mortality table'' and ''applicable interest rate'', and provisions stating exception for a distribution from a plan that was adopted and in effect before the date of the enactment of the Retirement Protection Act of 1994.

Subsec. (g). Pub. L. 109–280, §1004(a)(2), added subsec. (g).

2002—Subsec. (e)(1). Pub. L. 107–147, §411(r)(1)(A), substituted ''exceed the amount that can be distributed without the participant's consent under section 411(a)(11)'' for ''exceed the dollar limit under section 411(a)(11)(A)''.

Subsec. (e)(2)(A). Pub. L. 107–147, §411(r)(1)(B), substituted ''exceeds the amount that can be distributed without the participant's consent under section 411(a)(11)'' for ''exceeds the dollar limit under section 411(a)(11)(A)''.

1997—Subsec. (e)(1), (2). Pub. L. 105–34 substituted ''dollar limit'' for ''$3,500'' in headings of pars. (1) and (2) and ''the dollar limit under section 411(a)(11)(A)'' for ''$3,500'' in text of pars. (1) and (2)(A).

1996—Subsec. (a)(7). Pub. L. 104–188 added par. (7).

1994—Subsec. (e)(3). Pub. L. 103–465 amended par. (3) generally, substituting present provisions for provisions directing that present value be calculated by using a rate no greater than the applicable interest rate or 120 percent of such rate, depending upon amount of vested accrued benefit, and defining ''applicable interest rate''.

1989—Subsec. (a)(3)(B)(ii). Pub. L. 101–239 added sentence at end and struck out former subcl. (V) which read as follows: ''A reasonable period after separation from service in case of a participant who separates before attaining age 35.''

1988—Subsec. (e)(3)(A). Pub. L. 100–647 substituted ''clause (ii)'' for ''subclause (II)'' in last sentence.

1986—Subsec. (a)(1). Pub. L. 99–514, §1898(b)(15)(A), substituted ''section 401(a)(11)'' for ''section 401(a)(ii)''.

Subsec. (a)(1)(B). Pub. L. 99–514, §1898(b)(4)(A)(i), substituted ''paragraphs (2), (3), and (4)'' for ''paragraphs (2) and (3)''.

Subsec. (a)(2)(A). Pub. L. 99–514, §1898(b)(6)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''the spouse of the participant consents in writing to such election, and the spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or a notary public, or''.

Subsec. (a)(3)(B). Pub. L. 99–514, §1898(b)(5)(A), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Each plan shall provide to each participant, within the period beginning with the first day of the plan year in which the participant attains age 32 and ending with the close of the plan year preceding the plan year in which the participant attains age 35 (and consistent with such regulations as the Secretary may prescribe), a written explanation with respect to the qualified preretirement survivor annuity comparable to that required under subparagraph (A).''

Subsec. (a)(4). Pub. L. 99–514, §1898(b)(4)(A)(ii), added par. (4). Former par. (4) redesignated (5).

Subsec. (a)(5), (6). Pub. L. 99–514, §1898(b)(4)(A)(ii), (11)(A), redesignated former par. (4) as (5) and inserted in subpar. (A) ''if such benefit may not be waived (or another beneficiary selected) and'' before ''if the plan''. Former par. (5) redesignated (6).

Subsec. (c)(1). Pub. L. 99–514, §1898(b)(15)(B), substituted ''survivor annuity for the life of'' for ''survivor annuity or the life of''.

Pub. L. 99–514, §1898(b)(1)(A), inserted ''In the case of an individual who separated from service before the date of such individual's death, subparagraph (A)(ii)(I) shall not apply.''

Subsec. (c)(2). Pub. L. 99–514, §1898(b)(9)(A)(i), substituted ''the portion of the account balance of the participant (as of the date of death) to which the participant had a nonforfeitable right (within the meaning of section 411(a))'' for ''the account balance of the participant as of the date of death''.

Subsec. (c)(3). Pub. L. 99–514, §1898(b)(9)(A)(ii), added par. (3).

Subsec. (e)(3). Pub. L. 99–514, §1139(b), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''For purposes of paragraphs (1) and (2), the present value of a qualified joint and survivor annuity or a qualified preretirement survivor annuity shall be determined as of the date of the distribution and by using an interest rate not greater than the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.''

Subsec. (f)(1). Pub. L. 99–514, §1898(b)(8)(A), substituted ''such participant's accrued benefit'' for ''the accrued benefit derived from employer contributions''.

Subsec. (f)(2). Pub. L. 99–514, §1898(b)(12)(A), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The term 'annuity starting date' means the first day of the first period for which an amount is received as an annuity (whether by reason of retirement or disability).''

Subsec. (f)(5). Pub. L. 99–514, §1898(b)(4)(A)(iii), added par. (5) and redesignated former par. (5) as (6).

Subsec. (f)(6), (7). Pub. L. 99–514, §1898(b)(10)(A), added par. (6) and redesignated former par. (6) as (7).

Pub. L. 99–514, §1898(b)(4)(A)(iii), redesignated former par. (5) as (6).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title III, §302(c), Aug. 17, 2006, 120 Stat. 921, provided that: ''The amendments made by this section [amending this section and section 1055 of Title 29, Labor] shall apply with respect to plan years beginning after December 31, 2007.''

Pub. L. 109–280, title X, §1004(c), Aug. 17, 2006, 120 Stat. 1055, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 1055 of Title 29, Labor] shall apply to plan years beginning after December 31, 2007.

''(2) SPECIAL RULE FOR COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act [Aug. 17, 2006], the amendments made by this section shall not apply to plan years beginning before the earlier of—

''(A) the later of—

''(i) January 1, 2008, or

''(ii) the date on which the last collective bargaining agreement related to the plan terminates (determined without regard to any extension thereof after the date of enactment of this Act), or

''(B) January 1, 2009.''

Pub. L. 109–280, title XI, §1102(a)(3), Aug. 17, 2006, 120 Stat. 1056, provided that: ''The amendments and modifications made or required by this subsection [amending this section and section 1055 of Title 29, Labor] shall apply to years beginning after December 31, 2006.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to plan years beginning after Aug. 5, 1997, see section 1071(c) of Pub. L. 105–34, set out as a note under section 411 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1451(c) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section and section 1055 of Title 29, Labor] shall apply to plan years beginning after December 31, 1996.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 applicable to plan years and limitation years beginning after Dec. 31, 1994, except that employer may elect to treat such amendment as effective on or after Dec. 8, 1994, with provisions relating to reduction of accrued benefits, exception, and timing of plan amendment, see section 767(d) of Pub. L. 103–465, as amended, set out as a note under section 411 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7863 of Pub. L. 101–239, set out as a note under section 106 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1139(b) of Pub. L. 99–514 applicable to distributions in plan years beginning after Dec. 31, 1984, except that such amendments shall not apply to any distributions in plan years beginning after Dec. 31, 1984, and before Jan. 1, 1987, if such distributions were made in accordance with the requirements of the regulations issued under the Retirement Equity

Act of 1984, Pub. L. 98–397, with additional provisions relating to reductions in accrued benefits, see section 1139(d) of Pub. L. 99–514, set out as a note under section 411 of this title.

Section 1898(b)(4)(C) of Pub. L. 99–514 provided that:

''(i) The amendments made by this paragraph [amending this section and section 1055 of Title 29, Labor] shall apply with respect to loans made after August 18, 1985.

''(ii) In the case of any loan which was made on or before August 18, 1985, and which is secured by a portion of the participant's accrued benefit, nothing in the amendments made by sections 103 and 203 of the Retirement Equity Act of 1984 [sections 103 and 203 of Pub. L. 98–397, enacting this section and amending section 401 of this title and section 1055 of Title 29] shall prevent any distribution required by reason of a failure to comply with the terms of such loan.

''(iii) For purposes of this subparagraph, any loan which is revised, extended, renewed, or renegotiated after August 18, 1985, shall be treated as made after August 18, 1985.

Section 1898(b)(6)(C) of Pub. L. 99–514 provided that: ''The amendments made by this paragraph [amending this section and section 1055 of Title 29, Labor] shall apply to plan years beginning after the date of the enactment of this Act [Oct. 22, 1986].''

Section 1898(b)(8)(C) of Pub. L. 99–514, as added by Pub. L. 101–239, title VII, § 7862(d)(2), Dec. 19, 1989, 103 Stat. 2434, provided that: ''The amendments made by this paragraph [amending this section and section 1055 of Title 29, Labor] shall apply to distributions after the date of the enactment of this Act [Oct. 22, 1986].''

Amendment by section 1898(b)(1)(A), (5)(A), (9)(A), (10)(A), (11)(A), (12)(A), (15)(A), (B) of Pub. L. 99–514 effective as if included in the provision of the Retirement Equity Act of 1984, Pub. L. 98–397, to which such amendment relates, except as otherwise provided, see section 1898(j) of Pub. L. 99–514, set out as a note under section 401 of this title.

EFFECTIVE DATE

Section applicable to plan years beginning after Dec. 31, 1984, except as otherwise provided, see sections 302 and 303 of Pub. L. 98–397, set out as an Effective Date of 1984 Amendment note under section 1001 of Title 29, Labor.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

SUBPART C—SPECIAL RULES FOR MULTIEMPLOYER PLANS

Sec.

418. Reorganization status.
418A. Notice of reorganization and funding requirements.
418B. Minimum contribution requirement.
418C. Overburden credit against minimum contribution requirement.
418D. Adjustments in accrued benefits.
418E. Insolvent plans.

AMENDMENTS

1980—Pub. L. 96–364, title II, § 202(a), Sept. 26, 1980, 94 Stat. 1271, added subpart C heading ''Special Rules for Multiemployer Plans'' and items 418 to 418E.

§ 418. Reorganization status

(a) General rule

A multiemployer plan is in reorganization for a plan year if the plan's reorganization index for that year is greater than zero.

(b) Reorganization index

For purposes of this subpart—

(1) In general

A plan's reorganization index for any plan year is the excess of—

(A) the vested benefits charge for such year, over

(B) the net charge to the funding standard account for such year.

(2) Net charge to funding standard account

The net charge to the funding standard account for any plan year is the excess (if any) of—

(A) the charges to the funding standard account for such year under section 412(b)(2),[1] over

(B) the credits to the funding standard account under section 412(b)(3)(B).[1]

(3) Vested benefits charge

The vested benefits charge for any plan year is the amount which would be necessary to amortize the plan's unfunded vested benefits as of the end of the base plan year in equal annual installments—

(A) over 10 years, to the extent such benefits are attributable to persons in pay status, and

(B) over 25 years, to the extent such benefits are attributable to other participants.

(4) Determination of vested benefits charge

(A) In general

The vested benefits charge for a plan year shall be based on an actuarial valuation of the plan as of the end of the base plan year, adjusted to reflect—

(i) any—

(I) decrease of 5 percent or more in the value of plan assets, or increase of 5 percent or more in the number of persons in pay status, during the period beginning on the first day of the plan year following the base plan year and ending on the adjustment date, or

(II) at the election of the plan sponsor, actuarial valuation of the plan as of the adjustment date or any later date not later than the last day of the plan year for which the determination is being made,

(ii) any change in benefits under the plan which is not otherwise taken into account

[1] See References in Text note below.

under this subparagraph and which is pursuant to any amendment—

(I) adopted before the end of the plan year for which the determination is being made, and

(II) effective after the end of the base plan year and on or before the end of the plan year referred to in subclause (I), and

(iii) any other event (including an event described in subparagraph (B)(i)(I)) which, as determined in accordance with regulations prescribed by the Secretary, would substantially increase the plan's vested benefit charge.

(B) Certain changes in benefit levels

(i) In general

In determining the vested benefits charge for a plan year following a plan year in which the plan was not in reorganization, any change in benefits which—

(I) results from the changing of a group of participants from one benefit level to another benefit level under a schedule of plan benefits as a result of changes in a collective bargaining agreement, or

(II) results from any other change in a collective bargaining agreement,

shall not be taken into account except to the extent provided in regulations prescribed by the Secretary.

(ii) Plan in reorganization

Except as otherwise determined by the Secretary, in determining the vested benefits charge for any plan year following any plan year in which the plan was in reorganization, any change in benefits—

(I) described in clause (i)(I), or

(II) described in clause (i)(II) as determined under regulations prescribed by the Secretary,

shall, for purposes of subparagraph (A)(ii), be treated as a change in benefits pursuant to an amendment to a plan.

(5) Base plan year

(A) In general

The base plan year for any plan year is—

(i) if there is a relevant collective bargaining agreement, the last plan year ending at least 6 months before the relevant effective date, or

(ii) if there is no relevant collective bargaining agreement, the last plan year ending at least 12 months before the beginning of the plan year.

(B) Relevant collective bargaining agreement

A relevant collective bargaining agreement is a collective bargaining agreement—

(i) which is in effect for at least 6 months during the plan year, and

(ii) which has not been in effect for more than 36 months as of the end of the plan year.

(C) Relevant effective date

The relevant effective date is the earliest of the effective dates for the relevant collective bargaining agreements.

(D) Adjustment date

The adjustment date is the date which is—

(i) 90 days before the relevant effective date, or

(ii) if there is no relevant effective date, 90 days before the beginning of the plan year.

(6) Person in pay status

The term ''person in pay status'' means—

(A) a participant or beneficiary on the last day of the base plan year who, at any time during such year, was paid an early, late, normal, or disability retirement benefit (or a death benefit related to a retirement benefit), and

(B) to the extent provided in regulations prescribed by the Secretary, any other person who is entitled to such a benefit under the plan.

(7) Other definitions and special rules

(A) Unfunded vested benefits

The term ''unfunded vested benefits'' means, in connection with a plan, an amount (determined in accordance with regulations prescribed by the Secretary) equal to—

(i) the value of vested benefits under the plan, less

(ii) the value of the assets of the plan.

(B) Vested benefits

The term ''vested benefits'' means any nonforfeitable benefit (within the meaning of section 4001(a)(8) of the Employee Retirement Income Security Act of 1974).

(C) Allocation of assets

In determining the plan's unfunded vested benefits, plan assets shall first be allocated to the vested benefits attributable to persons in pay status.

(D) Treatment of certain benefit reductions

The vested benefits charge shall be determined without regard to reductions in accrued benefits under section 418D which are first effective in the plan year.

(E) Withdrawal liability

For purposes of this part, any outstanding claim for withdrawal liability shall not be considered a plan asset, except as otherwise provided in regulations prescribed by the Secretary.

(c) Prohibition of nonannuity payments

Except as provided in regulations prescribed by the Pension Benefit Guaranty Corporation, while a plan is in reorganization a benefit with respect to a participant (other than a death benefit) which is attributable to employer contributions and which has a value of more than $1,750 may not be paid in a form other than an annuity which (by itself or in combination with social security, railroad retirement, or workers' compensation benefits) provides substantially level payments over the life of the participant.

(d) Terminated plans

Any multiemployer plan which terminates under section 4041A(a)(2) of the Employee Retirement Income Security Act of 1974 shall not

be considered in reorganization after the last day of the plan year in which the plan is treated as having terminated.

(Added Pub. L. 96–364, title II, § 202(a), Sept. 26, 1980, 94 Stat. 1271.)

REFERENCES IN TEXT

Section 412, referred to in subsec. (b)(2), was amended generally by Pub. L. 109–280, title I, § 111(a), Aug. 17, 2006, 120 Stat. 820, and as so amended, section 412(b)(3) no longer contains a subpar. (B) and section 412(b)(2) no longer relates to charges to the funding standard account.

Section 4001(a)(8) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (b)(7)(B), is classified to section 1301(a)(8) of Title 29, Labor.

Section 4041A(a)(2) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (d), is classified to section 1341a(a)(2) of Title 29.

EFFECTIVE DATE

Section 210 of title II of Pub. L. 96–364 provided that: ''(a) Except as otherwise provided in this section, the amendments made by this title [amending sections 401, 404, 411 to 414, 4971, and 4975 of this title] shall take effect on the date of the enactment of this Act [Sept. 26, 1980].

''(b) Subpart C of part I of subchapter D of chapter 1 of such Code (as added by this Act) [sections 418 to 418E of this title] shall take effect, with respect to each plan, on the first day of the first plan year beginning on or after the earlier of—

''(1) the date on which the last collective-bargaining agreement providing for employer contributions under the plan, which was in effect on the date of the enactment of this Act [Sept. 26, 1980], expires, without regard to extensions agreed to after such date of enactment, or

''(2) 3 years after the date of the enactment of this Act [Sept. 26, 1980].

''(c) The amendments made by section 209 [enacting section 194 of this title, and amending sections 501 and 4975 of this title] shall apply to taxable years ending after the date of the enactment of this Act [Sept. 26, 1980].''

§ 418A. Notice of reorganization and funding requirements

(a) Notice requirement

(1) In general

If—

(A) a multiemployer plan is in reorganization for a plan year, and

(B) section 418B would require an increase in contributions for such plan year,

the plan sponsor shall notify the persons described in paragraph (2) that the plan is in reorganization and that, if contributions to the plan are not increased, accrued benefits under the plan may be reduced or an excise tax may be imposed (or both such reduction and imposition may occur).

(2) Persons to whom notice is to be given

The persons described in this paragraph are—

(A) each employer who has an obligation to contribute under the plan (within the meaning of section 4212(a) of the Employee Retirement Income Security Act of 1974), and

(B) each employee organization which, for purposes of collective bargaining, represents plan participants employed by such an employer.

(3) Overburden credit not taken into account

The determination under paragraph (1)(B) shall be made without regard to the overburden credit provided by section 418C.

(b) Additional requirements

The Pension Benefit Guaranty Corporation may prescribe additional or alternative requirements for assuring, in the case of a plan with respect to which notice is required by subsection (a)(1), that the persons described in subsection (a)(2)—

(1) receive appropriate notice that the plan is in reorganization,

(2) are adequately informed of the implications of reorganization status, and

(3) have reasonable access to information relevant to the plan's reorganization status.

(Added Pub. L. 96–364, title II, § 202(a), Sept. 26, 1980, 94 Stat. 1274.)

REFERENCES IN TEXT

Section 4212(a) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(2)(A), is classified to section 1392(a) of Title 29, Labor.

§ 418B. Minimum contribution requirement

(a) Accumulated funding deficiency in reorganization

(1) In general

For any plan year in which a multiemployer plan is in reorganization—

(A) the plan shall continue to maintain its funding standard account, and

(B) the plan's accumulated funding deficiency under section 412(a)[1] for such plan year shall be equal to the excess (if any) of—

(i) the sum of the minimum contribution requirement for such plan year (taking into account any overburden credit under section 418C(a)) plus the plan's accumulated funding deficiency for the preceding plan year (determined under this section if the plan was in reorganization during such plan year or under section 412(a)[1] if the plan was not in reorganization), over

(ii) amounts considered contributed by employers to or under the plan for the plan year (increased by any amount waived under subsection (f) for the plan year).

(2) Treatment of withdrawal liability payments

For purposes of paragraph (1), withdrawal liability payments (whether or not received) which are due with respect to withdrawals before the end of the base plan year shall be considered amounts contributed by the employer to or under the plan if, as of the adjustment date, it was reasonable for the plan sponsor to anticipate that such payments would be made during the plan year.

(b) Minimum contribution requirement

(1) In general

Except as otherwise provided in this section for purposes of this subpart the minimum con-

[1] See References in Text note below.

tribution requirement for a plan year in which a plan is in reorganization is an amount equal to the excess of—

(A) the sum of—

(i) the plan's vested benefits charge for the plan year; and

(ii) the increase in normal cost for the plan year determined under the entry age normal funding method which is attributable to plan amendments adopted while the plan was in reorganization, over

(B) the amount of the overburden credit (if any) determined under section 418C for the plan year.

(2) Adjustment for reductions in contribution base units

If the plan's current contribution base for the plan year is less than the plan's valuation contribution base for the plan year, the minimum contribution requirement for such plan year shall be equal to the product of the amount determined under paragraph (1) (after any adjustment required by this subpart other than this paragraph) multiplied by a fraction—

(A) the numerator of which is the plan's current contribution base for the plan year, and

(B) the denominator of which is the plan's valuation contribution base for the plan year.

(3) Special rule where cash-flow amount exceeds vested benefits charge

(A) In general

If the vested benefits charge for a plan year of a plan in reorganization is less than the plan's cash-flow amount for the plan year, the plan's minimum contribution requirement for the plan year is the amount determined under paragraph (1) (determined before the application of paragraph (2)) after substituting the term ''cash-flow amount'' for the term ''vested benefits charge'' in paragraph (1)(A).

(B) Cash-flow amount

For purposes of subparagraph (A), a plan's cash-flow amount for a plan year is an amount equal to—

(i) the amount of the benefits payable under the plan for the base plan year, plus the amount of the plan's administrative expenses for the base plan year, reduced by

(ii) the value of the available plan assets for the base plan year determined under regulations prescribed by the Secretary,

adjusted in a manner consistent with section 418(b)(4).

(c) Current contribution base; valuation contribution base

(1) Current contribution base

For purposes of this subpart, a plan's current contribution base for a plan year is the number of contribution base units with respect to which contributions are required to be made under the plan for that plan year, determined in accordance with regulations prescribed by the Secretary.

(2) Valuation contribution base

(A) In general

Except as provided in subparagraph (B), for purposes of this subpart a plan's valuation contribution base is the number of contribution base units for which contributions were received for the base plan year—

(i) adjusted to reflect declines in the contribution base which have occurred (or could reasonably be anticipated) as of the adjustment date for the plan year referred to in paragraph (1),

(ii) adjusted upward (in accordance with regulations prescribed by the Secretary) for any contribution base reduction in the base plan year caused by a strike or lockout or by unusual events, such as fire, earthquake, or severe weather conditions, and

(iii) adjusted (in accordance with regulations prescribed by the Secretary) for reductions in the contribution base resulting from transfers of liabilities.

(B) Insolvent plans

For any plan year—

(i) in which the plan is insolvent (within the meaning of section 418E(b)(1)), and

(ii) beginning with the first plan year beginning after the expiration of all relevant collective bargaining agreements which were in effect in the plan year in which the plan became insolvent,

the plan's valuation contribution base is the greater of the number of contribution base units for which contributions were received for the first or second plan year preceding the first plan year in which the plan is insolvent, adjusted as provided in clause (ii) or (iii) of subparagraph (A).

(3) Contribution base unit

For purposes of this subpart, the term ''contribution base unit'' means a unit with respect to which an employer has an obligation to contribute under a multiemployer plan (as defined in regulations prescribed by the Secretary).

(d) Limitation on required increases in rate of employer contributions

(1) In general

Under regulations prescribed by the Secretary, the minimum contribution requirement applicable to any plan for any plan year which is determined under subsection (b) (without regard to subsection (b)(2)) shall not exceed an amount which is equal to the sum of—

(A) the greater of—

(i) the funding standard requirement for such plan year, or

(ii) 107 percent of—

(I) if the plan was not in reorganization in the preceding plan year, the funding standard requirement for such preceding plan year, or

(II) if the plan was in reorganization in the preceding plan year, the sum of the amount determined under this subparagraph for the preceding plan year and

the amount (if any) determined under subparagraph (B) for the preceding plan year, plus

(B) if for the plan year a change in benefits is first required to be considered in computing the charges under section 412(b)(2)(A) or (B),[1] the sum of—

(i) the increase in normal cost for a plan year determined under the entry age normal funding method due to increases in benefits described in section 418(b)(4)(A)(ii) (determined without regard to section 418(b)(4)(B)(ii)), and

(ii) the amount necessary to amortize in equal annual installments the increase in the value of vested benefits under the plan due to increases in benefits described in clause (i) over—

(I) 10 years, to the extent such increase in value is attributable to persons in pay status, or

(II) 25 years, to the extent such increase in value is attributable to other participants.

(2) Funding standard requirement

For purposes of paragraph (1), the funding standard requirement for any plan year is an amount equal to the net charge to the funding standard account for such plan year (as defined in section 418(b)(2)).

(3) Special rule for certain plans

(A) In general

In the case of a plan described in section 4216(b) of the Employee Retirement Income Security Act of 1974, if a plan amendment which increases benefits is adopted after January 1, 1980—

(i) paragraph (1) shall apply only if the plan is a plan described in subparagraph (B), and

(ii) the amount under paragraph (1) shall be determined without regard to subparagraph (1)(B).

(B) Eligible plans

A plan is described in this subparagraph if—

(i) the rate of employer contributions under the plan for the first plan year beginning on or after the date on which an amendment increasing benefits is adopted, multiplied by the valuation contribution base for that plan year, equals or exceeds the sum of—

(I) the amount that would be necessary to amortize fully, in equal annual installments, by July 1, 1986, the unfunded vested benefits attributable to plan provisions in effect on July 1, 1977 (determined as of the last day of the base plan year); and

(II) the amount that would be necessary to amortize fully, in equal annual installments, over the period described in subparagraph (C), beginning with the first day of the first plan year beginning on or after the date on which the amendment is adopted, the unfunded vested benefits (determined as of the last day of the base plan year) attributable to each plan amendment after July 1, 1977; and

(ii) the rate of employer contributions for each subsequent plan year is not less than the lesser of—

(I) the rate which when multiplied by the valuation contribution base for that subsequent plan year produces the annual amount that would be necessary to complete the amortization schedule described in clause (i), or

(II) the rate for the plan year immediately preceding such subsequent plan year, plus 5 percent of such rate.

(C) Period

The period determined under this subparagraph is the lesser of—

(i) 12 years, or

(ii) a period equal in length to the average of the remaining expected lives of all persons receiving benefits under the plan.

(4) Exception in case of certain benefit increases

Paragraph (1) shall not apply with respect to a plan, other than a plan described in paragraph (3), for the period of consecutive plan years in each of which the plan is in reorganization, beginning with a plan year in which occurs the earlier of the date of the adoption or the effective date of any amendment of the plan which increases benefits with respect to service performed before the plan year in which the adoption of the amendment occurred.

(e) Certain retroactive plan amendments

In determining the minimum contribution requirement with respect to a plan for a plan year under subsection (b), the vested benefits charge may be adjusted to reflect a plan amendment reducing benefits under section 412(c)(8).[1]

(f) Waiver of accumulated funding deficiency

(1) In general

The Secretary may waive any accumulated funding deficiency under this section in accordance with the provisions of section 412(d)(1).[1]

(2) Treatment of waiver

Any waiver under paragraph (1) shall not be treated as a waived funding deficiency (within the meaning of section 412(d)(3)).[1]

(g) Actuarial assumptions must be reasonable

For purposes of making any determination under this subpart, the requirements of section 412(c)(3)[1] shall apply.

(Added Pub. L. 96–364, title II, § 202(a), Sept. 26, 1980, 94 Stat. 1274.)

REFERENCES IN TEXT

Section 412, referred to in subsecs. (a)(1)(B), (d)(1)(B), and (e) to (g), was amended generally by Pub. L. 109–280, title I, § 111(a), Aug. 17, 2006, 120 Stat. 820, and as so amended, provisions formerly contained in section 412(a), (b)(2)(A), (B), (c)(3), (8), (d)(1), and (3), have been revised and restated elsewhere in, or omitted from, the section.

Section 4216(b) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (d)(3)(A), is classified to section 1396(b) of Title 29, Labor.

§ 418C. Overburden credit against minimum contribution requirement

(a) General rule

For purposes of determining the contribution under section 418B (before the application of section 418B(b)(2) or (d)), the plan sponsor of a plan which is overburdened for the plan year shall apply an overburden credit against the plan's minimum contribution requirement for the plan year (determined without regard to section 418B(b)(2) or (d) and without regard to this section).

(b) Definition of overburdened plan

A plan is overburdened for a plan year if—

(1) the average number of pay status participants under the plan in the base plan year exceeds the average of the number of active participants in the base plan year and the 2 plan years preceding the base plan year, and

(2) the rate of employer contributions under the plan equals or exceeds the greater of—

(A) such rate for the preceding plan year, or

(B) such rate for the plan year preceding the first year in which the plan is in reorganization.

(c) Amount of overburden credit

The amount of the overburden credit for a plan year is the product of—

(1) one-half of the average guaranteed benefit paid for the base plan year, and

(2) the overburden factor for the plan year.

The amount of the overburden credit for a plan year shall not exceed the amount of the minimum contribution requirement for such year (determined without regard to this section).

(d) Overburden factor

For purposes of this section, the overburden factor of a plan for the plan year is an amount equal to—

(1) the average number of pay status participants for the base plan year, reduced by

(2) the average of the number of active participants for the base plan year and for each of the 2 plan years preceding the base plan year.

(e) Definitions

For purposes of this section—

(1) Pay status participant

The term ''pay status participant'' means, with respect to a plan, a participant receiving retirement benefits under the plan.

(2) Number of active participants

The number of active participants for a plan year shall be the sum of—

(A) the number of active employees who are participants in the plan and on whose behalf contributions are required to be made during the plan year;

(B) the number of active employees who are not participants in the plan but who are in an employment unit covered by a collective bargaining agreement which requires the employees' employer to contribute to the plan unless service in such employment unit was never covered under the plan or a predecessor thereof, and

(C) the total number of active employees attributed to employers who made payments to the plan for the plan year of withdrawal liability pursuant to part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974, determined by dividing—

(i) the total amount of such payments, by

(ii) the amount equal to the total contributions received by the plan during the plan year divided by the average number of active employees who were participants in the plan during the plan year.

The Secretary shall by regulations provide alternative methods of determining active participants where (by reason of irregular employment, contributions on a unit basis, or otherwise) this paragraph does not yield a representative basis for determining the credit.

(3) Average number

The term ''average number'' means, with respect to pay status participants for a plan year, a number equal to one-half the sum of—

(A) the number with respect to the plan as of the beginning of the plan year, and

(B) the number with respect to the plan as of the end of the plan year.

(4) Average guaranteed benefit

The average guaranteed benefit paid is 12 times the average monthly pension payment guaranteed under section 4022A(c)(1) of the Employee Retirement Income Security Act of 1974 determined under the provisions of the plan in effect at the beginning of the first plan year in which the plan is in reorganization and without regard to section 4022A(c)(2).

(5) First year in reorganization

The first year in which the plan is in reorganization is the first of a period of 1 or more consecutive plan years in which the plan has been in reorganization not taking into account any plan years the plan was in reorganization prior to any period of 3 or more consecutive plan years in which the plan was not in reorganization.

(f) No overburden credit in case of certain reductions in contributions

(1) In general

Notwithstanding any other provision of this section, a plan is not eligible for an overburden credit for a plan year if the Secretary finds that the plan's current contribution base for any plan year was reduced, without a corresponding reduction in the plan's unfunded vested benefits attributable to pay status participants, as a result of a change in an agreement providing for employer contributions under the plan.

(2) Treatment of certain withdrawals

For purposes of paragraph (1), a complete or partial withdrawal of an employer (within the meaning of part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974) does not impair a plan's eligibility for an overburden credit, unless the Secretary finds that a contribution base reduction de-

scribed in paragraph (1) resulted from a transfer of liabilities to another plan in connection with the withdrawal.

(g) Mergers

Notwithstanding any other provision of this section, if 2 or more multiemployer plans merge, the amount of the overburden credit which may be applied under this section with respect to the plan resulting from the merger for any of the 3 plan years ending after the effective date of the merger shall not exceed the sum of the used overburden credit for each of the merging plans for its last plan year ending before the effective date of the merger. For purposes of the preceding sentence, the used overburden credit is that portion of the credit which does not exceed the excess of the minimum contribution requirement determined without regard to any overburden credit under this section over the employer contributions required under the plan.

(Added Pub. L. 96–364, title II, § 202(a), Sept. 26, 1980, 94 Stat. 1278.)

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in subsecs. (e)(2)(C), (4), and (f)(2), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended. Part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 is classified generally to part 1 (§ 1381 et seq.) of subtitle E of subchapter III of chapter 18 of Title 29, Labor. Section 4022A of the Employee Retirement Income Security Act of 1974 is classified to section 1322a of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

§ 418D. Adjustments in accrued benefits

(a) Adjustments in accrued benefits

(1) In general

Notwithstanding section 411, a multiemployer plan in reorganization may be amended, in accordance with this section, to reduce or eliminate accrued benefits attributable to employer contributions which, under section 4022A(b) of the Employee Retirement Income Security Act of 1974, are not eligible for the Pension Benefit Guaranty Corporation's guarantee. The preceding sentence shall only apply to accrued benefits under plan amendments (or plans) adopted after March 26, 1980, or under collective bargaining agreement entered into after March 26, 1980.

(2) Adjustment of vested benefits charge

In determining the minimum contribution requirement with respect to a plan for a plan year under section 418B(b), the vested benefits charge may be adjusted to reflect a plan amendment reducing benefits under this section or section 412(c)(8),[1] but only if the amendment is adopted and effective no later than 2½ months after the end of the plan year, or within such extended period as the Secretary may prescribe by regulations under section 412(c)(10).[1]

(b) Limitation on reduction

(1) In general

Accrued benefits may not be reduced under this section unless—

(A) notice has been given, at least 6 months before the first day of the plan year in which the amendment reducing benefits is adopted, to—

(i) plan participants and beneficiaries,

(ii) each employer who has an obligation to contribute (within the meaning of section 4212(a) of the Employee Retirement Income Security Act of 1974) under the plan, and

(iii) each employee organization which, for purposes of collective bargaining, represents plan participants employed by such an employer,

that the plan is in reorganization and that, if contributions under the plan are not increased, accrued benefits under the plan will be reduced or an excise tax will be imposed on employers;

(B) in accordance with regulations prescribed by the Secretary—

(i) any category of accrued benefits is not reduced with respect to inactive participants to a greater extent proportionally that such category of accrued benefits is reduced with respect to active participants,

(ii) benefits attributable to employer contributions other than accrued benefits and the rate of future benefit accruals are reduced at least to an extent equal to the reduction in accrued benefits of inactive participants, and

(iii) in any case in which the accrued benefit of a participant or beneficiary is reduced by changing the benefit form or the requirements which the participant or beneficiary must satisfy to be entitled to the benefit, such reduction is not applicable to—

(I) any participant or beneficiary in pay status on the effective date of the amendment, or the beneficiary of such a participant, or

(II) any participant who has attained normal retirement age, or who is within 5 years of attaining normal retirement age, on the effective date of the amendment, or the beneficiary of any such participant; and

(C) the rate of employer contributions for the plan year in which the amendment becomes effective and for all succeeding plan years in which the plan is in reorganization equals or exceeds the greater of—

(i) the rate of employer contributions, calculated without regard to the amendment, for the plan year in which the amendment becomes effective, or

(ii) the rate of employer contributions for the plan year preceding the plan year in which the amendment becomes effective.

(2) Information required to be included in notice

The plan sponsors shall include in any notice required to be sent to plan participants and beneficiaries under paragraph (1) information as to the rights and remedies of plan partici-

[1] See References in Text note below.

pants and beneficiaries as well as how to contact the Department of Labor for further information and assistance where appropriate.

(c) No recoupment

A plan may not recoup a benefit payment which is in excess of the amount payable under the plan because of an amendment retroactively reducing accrued benefits under this section.

(d) Benefit increases under multiemployer plan in reorganization

(1) Restoration of previously reduced benefits

(A) In general

A plan which has been amended to reduce accrued benefits under this section may be amended to increase or restore accrued benefits, or the rate of future benefit accruals, only if the plan is amended to restore levels of previously reduced accrued benefits of inactive participants and of participants who are within 5 years of attaining normal retirement age to at least the same extent as any such increase in accrued benefits or in the rate of future benefit accruals.

(B) Benefit increases and benefit restorations

For purposes of this subsection, in the case of a plan which has been amended under this section to reduce accrued benefits—

(i) an increase in a benefit, or in the rate of future benefit accruals, shall be considered a benefit increase to the extent that the benefit, or the accrual rate, is thereby increased above the highest benefit level, or accrual rate, which was in effect under the terms of the plan before the effective date of the amendment reducing accrued benefits, and

(ii) an increase in a benefit, or in the rate of future benefit accruals, shall be considered a benefit restoration to the extent that the benefit, or the accrual rate, is not thereby increased above the highest benefit level, or accrual rate, which was in effect under the terms of the plan immediately before the effective date of the amendment reducing accrued benefits.

(2) Uniformity in benefit restoration

If a plan is amended to partially restore previously reduced accrued benefit levels, or the rate of future benefit accruals, the benefits of inactive participants shall be restored in at least the same proportions as other accrued benefits which are restored.

(3) No benefit increases in year of benefit reduction

No benefit increase under a plan may take effect in a plan year in which an amendment reducing accrued benefits under the plan, in accordance with this section, is adopted or first becomes effective.

(4) Retroactive payments

A plan is not required to make retroactive benefit payments with respect to that portion of an accrued benefit which was reduced and subsequently restored under this section.

(e) Inactive participant

For purposes of this section, the term ''inactive participant'' means a person not in covered service under the plan who is in pay status under the plan or who has a nonforfeitable benefit under the plan.

(f) Regulations

The Secretary may prescribe rules under which, notwithstanding any other provision of this section, accrued benefit reductions or benefit increases for different participant groups may be varied equitably to reflect variations in contribution rates and other relevant factors reflecting differences in negotiated levels of financial support for plan benefit obligations.

(Added Pub. L. 96–364, title II, §202(a), Sept. 26, 1980, 94 Stat. 1280.)

REFERENCES IN TEXT

Section 4022A(b) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(1), is classified to section 1322a(b) of Title 29, Labor.

Section 412, referred to in subsec. (a)(2), was amended generally by Pub. L. 109–280, title I, §111(a), Aug. 17, 2006, 120 Stat. 820, and as so amended, no longer contains a subsec. (c)(8) or (10).

Section 4212(a) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (b)(1)(A)(ii), is classified to section 1392(a) of Title 29.

§ 418E. Insolvent plans

(a) Suspension of certain benefit payments

Notwithstanding section 411, in any case in which benefit payments under an insolvent multiemployer plan exceed the resource benefit level, any such payments of benefits which are not basic benefits shall be suspended, in accordance with this section, to the extent necessary to reduce the sum of such payments and the payments of such basic benefits to the greater of the resource benefit level or the level of basic benefits, unless an alternative procedure is prescribed by the Pension Benefit Guaranty Corporation under section 4022A(g)(5) of the Employee Retirement Income Security Act of 1974.

(b) Definitions

For purposes of this section, for a plan year—

(1) Insolvency

A multiemployer plan is insolvent if the plan's available resources are not sufficient to pay benefits under the plan when due for the plan year, or if the plan is determined to be insolvent under subsection (d).

(2) Resource benefit level

The term ''resource benefit level'' means the level of monthly benefits determined under subsections (c)(1) and (3) and (d)(3) to be the highest level which can be paid out of the plan's available resources.

(3) Available resources

The term ''available resources'' means the plan's cash, marketable assets, contributions, withdrawal liability payments, and earnings, less reasonable administrative expenses and amounts owed for such plan year to the Pension Benefit Guaranty Corporation under section 4261(b)(2) of the Employee Retirement Income Security Act of 1974.

(4) Insolvency year

The term ''insolvency year'' means a plan year in which a plan is insolvent.

(c) Benefit payments under insolvent plans

(1) Determination of resource benefit level

The plan sponsor of a plan in reorganization shall determine in writing the plan's resource benefit level for each insolvency year, based on the plan sponsor's reasonable projection of the plan's available resources and the benefits payable under the plan.

(2) Uniformity of the benefit suspension

The suspension of benefit payments under this section shall, in accordance with regulations prescribed by the Secretary, apply in substantially uniform proportions to the benefits of all persons in pay status (within the meaning of section 418(b)(6)) under the plan, except that the Secretary may prescribe rules under which benefit suspensions for different participant groups may be varied equitably to reflect variations in contribution rates and other relevant factors including differences in negotiated levels of financial support for plan benefit obligations.

(3) Resource benefit level below level of basic benefits

Notwithstanding paragraph (2), if a plan sponsor determines in writing a resource benefit level for a plan year which is below the level of basic benefits, the payment of all benefits other than basic benefits shall be suspended for that plan year.

(4) Excess resources

(A) In general

If, by the end of an insolvency year, the plan sponsor determines in writing that the plan's available resources in that insolvency year could have supported benefit payments above the resource benefit level for that insolvency year, the plan sponsor shall distribute the excess resources to the participants and beneficiaries who received benefit payments from the plan in that insolvency year, in accordance with regulations prescribed by the Secretary.

(B) Excess resources

For purposes of this paragraph, the term ''excess resources'' means available resources above the amount necessary to support the resource benefit level, but no greater than the amount necessary to pay benefits for the plan year at the benefit levels under the plan.

(5) Unpaid benefits

If, by the end of an insolvency year, any benefit has not been paid at the resource benefit level, amounts up to the resource benefit level which were unpaid shall be distributed to the participants and beneficiaries, in accordance with regulations prescribed by the Secretary, to the extent possible taking into account the plan's total available resources in that insolvency year.

(6) Retroactive payments

Except as provided in paragraph (4) or (5), a plan is not required to make retroactive benefit payments with respect to that portion of a benefit which was suspended under this section.

(d) Plan sponsor determination

(1) Triennial test

As of the end of the first plan year in which a plan is in reorganization, and at least every 3 plan years thereafter (unless the plan is no longer in reorganization), the plan sponsor shall compare the value of plan assets (determined in accordance with section 418B(b)(3)(B)(ii)) for that plan year with the total amount of benefit payments made under the plan for that plan year. Unless the plan sponsor determines that the value of plan assets exceeds 3 times the total amount of benefit payments, the plan sponsor shall determine whether the plan will be insolvent in any of the next 5 plan years. If the plan sponsor makes such a determination that the plan will be insolvent in any of the next 5 plan years, the plan sponsor shall make the comparison under this paragraph at least annually until the plan sponsor makes a determination that the plan will not be insolvent in any of the next 5 plan years.

(2) Determination of insolvency

If, at any time, the plan sponsor of a plan in reorganization reasonably determines, taking into account the plan's recent and anticipated financial experience, that the plan's available resources are not sufficient to pay benefits under the plan when due for the next plan year, the plan sponsor shall make such determination available to interested parties.

(3) Determination of resource benefit level

The plan sponsor of a plan in reorganization shall determine in writing for each insolvency year the resource benefit level and the level of basic benefits no later than 3 months before the insolvency year.

(e) Notice requirements

(1) Impending insolvency

If the plan sponsor of a plan in reorganization determines under subsection (d)(1) or (2) that the plan may become insolvent (within the meaning of subsection (b)(1)), the plan sponsor shall—

(A) notify the Secretary, the Pension Benefit Guaranty Corporation, the parties described in section 418A(a)(2), and the plan participants and beneficiaries of that determination, and

(B) inform the parties described in section 418A(a)(2) and the plan participants and beneficiaries that if insolvency occurs certain benefit payments will be suspended, but that basic benefits will continue to be paid.

(2) Resource benefit level

No later than 2 months before the first day of each insolvency year, the plan sponsor of a plan in reorganization shall notify the Secretary, the Pension Benefit Guaranty Corporation, the parties described in section 418A(a)(2), and the plan participants and beneficiaries of the resource benefit level determined in writing for that insolvency year.

(3) Potential need for financial assistance

In any case in which the plan sponsor anticipates that the resource benefit level for an in-

solvency year may not exceed the level of basic benefits, the plan sponsor shall notify the Pension Benefit Guaranty Corporation.

(4) Regulations

Notice required by this subsection shall be given in accordance with regulations prescribed by the Pension Benefit Guaranty Corporation, except that notice to the Secretary shall be given in accordance with regulations prescribed by the Secretary.

(5) Corporation may prescribe time

The Pension Benefit Guaranty Corporation may prescribe a time other than the time prescribed by this section for the making of a determination or the filing of a notice under this section.

(f) Financial assistance

(1) Permissive application

If the plan sponsor of an insolvent plan for which the resource benefit level is above the level of basic benefits anticipates that, for any month in an insolvency year, the plan will not have funds sufficient to pay basic benefits, the plan sponsor may apply for financial assistance from the Pension Benefit Guaranty Corporation under section 4261 of the Employee Retirement Income Security Act of 1974.

(2) Mandatory application

A plan sponsor who has determined a resource benefit level for an insolvency year which is below the level of basic benefits shall apply for financial assistance from the Pension Benefit Guaranty Corporation under section 4261 of the Employee Retirement Income Security Act of 1974.

(g) Financial assistance

Any amount of any financial assistance from the Pension Benefit Guaranty Corporation to any plan, and any repayment of such amount, shall be taken into account under this subpart in such manner as determined by the Secretary.

(Added Pub. L. 96–364, title II, §202(a), Sept. 26, 1980, 94 Stat. 1282; amended Pub. L. 109–280, title II, §213(a), Aug. 17, 2006, 120 Stat. 917.)

REFERENCES IN TEXT

Section 4022A(g)(5) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (a), is classified to section 1322a(g)(5) of Title 29, Labor.

Section 4261 of the Employee Retirement Income Security Act of 1974, referred to in subsecs. (b)(3) and (f), is classified to section 1431 of Title 29.

AMENDMENTS

2006—Subsec. (d)(1). Pub. L. 109–280 substituted ''5 plan years'' for ''3 plan years'' the second place it appeared and inserted at end ''If the plan sponsor makes such a determination that the plan will be insolvent in any of the next 5 plan years, the plan sponsor shall make the comparison under this paragraph at least annually until the plan sponsor makes a determination that the plan will not be insolvent in any of the next 5 plan years.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title II, §213(b), Aug. 17, 2006, 120 Stat. 918, provided that: ''The amendments made by this section [amending this section] shall apply with respect to the determinations made in plan years beginning after 2007.''

SUBPART D—TREATMENT OF WELFARE BENEFIT FUNDS

Sec.
419. Treatment of funded welfare benefit plans.
419A. Qualified asset account; limitation on additions to account.

§ 419. Treatment of funded welfare benefit plans

(a) General rule

Contributions paid or accrued by an employer to a welfare benefit fund—

(1) shall not be deductible under this chapter, but

(2) if they would otherwise be deductible, shall (subject to the limitation of subsection (b)) be deductible under this section for the taxable year in which paid.

(b) Limitation

The amount of the deduction allowable under subsection (a)(2) for any taxable year shall not exceed the welfare benefit fund's qualified cost for the taxable year.

(c) Qualified cost

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the term ''qualified cost'' means, with respect to any taxable year, the sum of—

(A) the qualified direct cost for such taxable year, and

(B) subject to the limitation of section 419A(b), any addition to a qualified asset account for the taxable year.

(2) Reduction for funds after-tax income

In the case of any welfare benefit fund, the qualified cost for any taxable year shall be reduced by such fund's after-tax income for such taxable year.

(3) Qualified direct cost

(A) In general

The term ''qualified direct cost'' means, with respect to any taxable year, the aggregate amount (including administrative expenses) which would have been allowable as a deduction to the employer with respect to the benefits provided during the taxable year, if—

(i) such benefits were provided directly by the employer, and

(ii) the employer used the cash receipts and disbursements method of accounting.

(B) Time when benefits provided

For purposes of subparagraph (A), a benefit shall be treated as provided when such benefit would be includible in the gross income of the employee if provided directly by the employer (or would be so includible but for any provision of this chapter excluding such benefit from gross income).

(C) 60-month amortization of child care facilities

(i) In general

In determining qualified direct costs with respect to any child care facility for purposes of subparagraph (A), in lieu of de-

preciation the adjusted basis of such facility shall be allowable as a deduction ratably over a period of 60 months beginning with the month in which the facility is placed in service.

(ii) Child care facility

The term ''child care facility'' means any tangible property which qualifies under regulations prescribed by the Secretary as a child care center primarily for children of employees of the employer; except that such term shall not include any property—

(I) not of a character subject to depreciation; or

(II) located outside the United States.

(4) After-tax income

(A) In general

The term ''after-tax income'' means, with respect to any taxable year, the gross income of the welfare benefit fund reduced by the sum of—

(i) the deductions allowed by this chapter which are directly connected with the production of such gross income, and

(ii) the tax imposed by this chapter on the fund for the taxable year.

(B) Treatment of certain amounts

In determining the gross income of any welfare benefit fund—

(i) contributions and other amounts received from employees shall be taken into account, but

(ii) contributions from the employer shall not be taken into account.

(5) Item only taken into account once

No item may be taken into account more than once in determining the qualified cost of any welfare benefit fund.

(d) Carryover of excess contributions

If—

(1) the amount of the contributions paid (or deemed paid under this subsection) by the employer during any taxable year to a welfare benefit fund, exceeds

(2) the limitation of subsection (b),

such excess shall be treated as an amount paid by the employer to such fund during the succeeding taxable year.

(e) Welfare benefit fund

For purposes of this section—

(1) In general

The term ''welfare benefit fund'' means any fund—

(A) which is part of a plan of an employer, and

(B) through which the employer provides welfare benefits to employees or their beneficiaries.

(2) Welfare benefit

The term ''welfare benefit'' means any benefit other than a benefit with respect to which—

(A) section 83(h) applies,

(B) section 404 applies (determined without regard to section 404(b)(2)), or

(C) section 404A applies.

(3) Fund

The term ''fund'' means—

(A) any organization described in paragraph (7), (9), (17), or (20) of section 501(c),

(B) any trust, corporation, or other organization not exempt from the tax imposed by this chapter, and

(C) to the extent provided in regulations, any account held for an employer by any person.

(4) Treatment of amounts held pursuant to certain insurance contracts

(A) In general

Notwithstanding paragraph (3)(C), the term ''fund'' shall not include amounts held by an insurance company pursuant to an insurance contract if—

(i) such contract is a life insurance contract described in section 264(a)(1), or

(ii) such contract is a qualified nonguaranteed contract.

(B) Qualified nonguaranteed contract

(i) In general

For purposes of this paragraph, the term ''qualified nonguaranteed contract'' means any insurance contract (including a reasonable premium stabilization reserve held thereunder) if—

(I) there is no guarantee of a renewal of such contract, and

(II) other than insurance protection, the only payments to which the employer or employees are entitled are experience rated refunds or policy dividends which are not guaranteed and which are determined by factors other than the amount of welfare benefits paid to (or on behalf of) the employees of the employer or their beneficiaries.

(ii) Limitation

In the case of any qualified nonguaranteed contract, subparagraph (A) shall not apply unless the amount of any experience rated refund or policy dividend payable to an employer with respect to a policy year is treated by the employer as received or accrued in the taxable year in which the policy year ends.

(f) Method of contributions, etc., having the effect of a plan

If—

(1) there is no plan, but

(2) there is a method or arrangement of employer contributions or benefits which has the effect of a plan,

this section shall apply as if there were a plan.

(g) Extension to plans for independent contractors

If any fund would be a welfare benefit fund (as modified by subsection (f)) but for the fact that there is no employee-employer relationship—

(1) this section shall apply as if there were such a relationship, and

(2) any reference in this section to the employer shall be treated as a reference to the

person for whom services are provided, and any reference in this section to an employee shall be treated as a reference to the person providing the services.

(Added Pub. L. 98–369, div. A, title V, §511(a), July 18, 1984, 98 Stat. 854; amended Pub. L. 99–514, title XVIII, §1851(a)(1), (8)(A), (b)(2)(C)(iv), Oct. 22, 1986, 100 Stat. 2858, 2860, 2863; Pub. L. 100–203, title IX, §10201(b)(4), Dec. 22, 1987, 101 Stat. 1330–387; Pub. L. 100–647, title I, §1018(t)(2)(C), Nov. 10, 1988, 102 Stat. 3587.)

AMENDMENTS

1988—Subsec. (a)(1). Pub. L. 100–647 substituted ''chapter'' for ''subchapter''.

1987—Subsec. (e)(2)(D). Pub. L. 100–203 struck out subpar. (D) which related to a benefit with respect to which an election under section 463 applies.

1986—Subsec. (a)(1). Pub. L. 99–514, §1851(b)(2)(C)(iv)(I), substituted ''under this subchapter'' for ''under section 162 or 212''.

Subsec. (a)(2). Pub. L. 99–514, §1851(b)(2)(C)(iv)(II), substituted ''they would otherwise be deductible'' for ''they satisfy the requirements of either of such sections''.

Subsec. (e)(4). Pub. L. 99–514, §1851(a)(8)(A), added par. (4).

Subsec. (g)(1). Pub. L. 99–514, §1851(a)(1), substituted ''such a relationship'' for ''such a plan''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to taxable years beginning after Dec. 31, 1987, see section 10201(c)(1) of Pub. L. 100–203, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section 511(e) of Pub. L. 98–369, as amended by Pub. L. 99–514, title XVIII, §1851(a)(12), (14), Oct. 22, 1986, 100 Stat. 2862, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this subpart] shall apply to contributions paid or accrued after December 31, 1985, in taxable years ending after such date.

''(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of plan maintained pursuant to 1 or more collective bargaining agreements—

''(A) between employee representatives and 1 or more employers, and

''(B) in effect on July 1, 1985 (or ratified on or before such date),

the amendments made by this section shall not apply to years beginning before the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after July 1, 1985).

''(3) SPECIAL RULE FOR PARAGRAPH (2).—For purposes of paragraph (2), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.

''(4) SPECIAL EFFECTIVE DATE FOR CONTRIBUTIONS OF FACILITIES.—Notwithstanding paragraphs (1) and (2), the amendments made by this section shall apply in the case of—

''(A) any contribution after June 22, 1984, of a facility to a welfare benefit fund, and

''(B) any other contribution after June 22, 1984, to a welfare benefit fund to be used to acquire or improve a facility.

''(5) BINDING CONTRACT EXCEPTIONS TO PARAGRAPH (4).—Paragraph (4) shall not apply to any facility placed in service before January 1, 1987—

''(A) which is acquired or improved by the fund (or contributed to the fund) pursuant to a binding contract in effect on June 22, 1984, and at all times thereafter, or

''(B) the construction of which by or for the fund began before June 22, 1984.

''(6) AMENDMENTS RELATED TO TAX ON UNRELATED BUSINESS INCOME.—The amendments made by subsection (b) [amending section 512 of this title] shall apply with respect to taxable years ending after December 31, 1985. For purposes of section 15 of the Internal Revenue Code of 1954 [now 1986], such amendments shall be treated as a change in the rate of a tax imposed by chapter 1 of such Code.

''(7) AMENDMENTS RELATED TO EXCISE TAXES ON CERTAIN WELFARE BENEFIT PLANS.—The amendments made by subsection (c) [enacting section 4976 of this title] shall apply to benefits provided after December 31, 1985.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

EFFECTIVE DATE OF REGULATIONS

Section 1851(a)(8)(B) of Pub. L. 99–514 provided that: ''Except in the case of a reserve for post-retirement medical or life insurance benefits and any other arrangement between an insurance company and an employer under which the employer has a contractual right to a refund or dividend based solely on the experience of such employer, any account held for an employer by any person and defined as a fund in regulations issued pursuant to section 419(e)(3)(C) of the Internal Revenue Code of 1954 [now 1986] shall be considered a 'fund' no earlier than 6 months following the date such regulations are published in final form.''

§ 419A. Qualified asset account; limitation on additions to account

(a) General rule

For purposes of this subpart and section 512, the term ''qualified asset account'' means any account consisting of assets set aside to provide for the payment of—

(1) disability benefits,

(2) medical benefits,

(3) SUB or severance pay benefits, or

(4) life insurance benefits.

(b) Limitation on additions to account

No addition to any qualified asset account may be taken into account under section 419(c)(1)(B) to the extent such addition results in the amount in such account exceeding the account limit.

(c) Account limit

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the account limit for any qualified asset account for any taxable year is the amount reasonably and actuarially necessary to fund—

(A) claims incurred but unpaid (as of the close of such taxable year) for benefits referred to in subsection (a), and

(B) administrative costs with respect to such claims.

(2) Additional reserve for post-retirement medical and life insurance benefits

The account limit for any taxable year may include a reserve funded over the working lives of the covered employees and actuarially determined on a level basis (using assumptions that are reasonable in the aggregate) as necessary for—

(A) post-retirement medical benefits to be provided to covered employees (determined on the basis of current medical costs), or

(B) post-retirement life insurance benefits to be provided to covered employees.

(3) Amount taken into account for SUB or severance pay benefits

(A) In general

The account limit for any taxable year with respect to SUB or severance pay benefits is 75 percent of the average annual qualified direct costs for SUB or severance pay benefits for any 2 of the immediately preceding 7 taxable years (as selected by the fund).

(B) Special rule for certain new plans

In the case of any new plan for which SUB or severance pay benefits are not available to any key employee, the Secretary shall, by regulations, provide for an interim amount to be taken into account under paragraph (1).

(4) Limitation on amounts to be taken into account

(A) Disability benefits

For purposes of paragraph (1), disability benefits payable to any individual shall not be taken into account to the extent such benefits are payable at an annual rate in excess of the lower of—

(i) 75 percent of such individual's average compensation for his high 3 years (within the meaning of section 415(b)(3)), or

(ii) the limitation in effect under section 415(b)(1)(A).

(B) Limitation on SUB or severance pay benefits

For purposes of paragraph (3), any SUB or severance pay benefit payable to any individual shall not be taken into account to the extent such benefit is payable at an annual rate in excess of 150 percent of the limitation in effect under section 415(c)(1)(A).

(5) Special limitation where no actuarial certification

(A) In general

Unless there is an actuarial certification of the account limit determined under this subsection for any taxable year, the account limit for such taxable year shall not exceed the sum of the safe harbor limits for such taxable year.

(B) Safe harbor limits

(i) Short-term disability benefits

In the case of short-term disability benefits, the safe harbor limit for any taxable year is 17.5 percent of the qualified direct costs (other than insurance premiums) for the immediately preceding taxable year with respect to such benefits.

(ii) Medical benefits

In the case of medical benefits, the safe harbor limit for any taxable year is 35 percent of the qualified direct costs (other than insurance premiums) for the immediately preceding taxable year with respect to medical benefits.

(iii) SUB or severance pay benefits

In the case of SUB or severance pay benefits, the safe harbor limit for any taxable year is the amount determined under paragraph (3).

(iv) Long-term disability or life insurance benefits

In the case of any long-term disability benefit or life insurance benefit, the safe harbor limit for any taxable year shall be the amount prescribed by regulations.

(6) Additional reserve for medical benefits of bona fide association plans

(A) In general

An applicable account limit for any taxable year may include a reserve in an amount not to exceed 35 percent of the sum of—

(i) the qualified direct costs, and

(ii) the change in claims incurred but unpaid,

for such taxable year with respect to medical benefits (other than post-retirement medical benefits).

(B) Applicable account limit

For purposes of this subsection, the term ''applicable account limit'' means an account limit for a qualified asset account with respect to medical benefits provided through a plan maintained by a bona fide association (as defined in section 2791(d)(3) of the Public Health Service Act (42 U.S.C. 300gg–91(d)(3)).[1]

(d) Requirement of separate accounts for post-retirement medical or life insurance benefits provided to key employees

(1) In general

In the case of any employee who is a key employee—

(A) a separate account shall be established for any medical benefits or life insurance benefits provided with respect to such employee after retirement, and

[1] So in original. The period probably should be preceded by an additional closing parenthesis.

(B) medical benefits and life insurance benefits provided with respect to such employee after retirement may only be paid from such separate account.

The requirements of this paragraph shall apply to the first taxable year for which a reserve is taken into account under subsection (c)(2) and to all subsequent taxable years.

(2) Coordination with section 415

For purposes of section 415, any amount attributable to medical benefits allocated to an account established under paragraph (1) shall be treated as an annual addition to a defined contribution plan for purposes of section 415(c). Subparagraph (B) of section 415(c)(1) shall not apply to any amount treated as an annual addition under the preceding sentence.

(3) Key employee

For purposes of this section, the term ''key employee'' means any employee who, at any time during the plan year or any preceding plan year, is or was a key employee as defined in section 416(i).

(e) Special limitations on reserves for medical benefits or life insurance benefits provided to retired employees

(1) Reserve must be nondiscriminatory

No reserve may be taken into account under subsection (c)(2) for post-retirement medical benefits or life insurance benefits to be provided to covered employees unless the plan meets the requirements of section 505(b) with respect to such benefits (whether or not such requirements apply to such plan). The preceding sentence shall not apply to any plan maintained pursuant to an agreement between employee representatives and 1 or more employers if the Secretary finds that such agreement is a collective bargaining agreement and that post-retirement medical benefits or life insurance benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.

(2) Limitation on amount of life insurance benefits

Life insurance benefits shall not be taken into account under subsection (c)(2) to the extent the aggregate amount of such benefits to be provided with respect to the employee exceeds $50,000.

(f) Definitions and other special rules

For purposes of this section—

(1) SUB or severance pay benefit

The term ''SUB or severance pay benefit'' means—

(A) any supplemental unemployment compensation benefit (as defined in section 501(c)(17)(D)), and

(B) any severance pay benefit.

(2) Medical benefit

The term ''medical benefit'' means a benefit which consists of the providing (directly or through insurance) of medical care (as defined in section 213(d)).

(3) Life insurance benefit

The term ''life insurance benefit'' includes any other death benefit.

(4) Valuation

For purposes of this section, the amount of the qualified asset account shall be the value of the assets in such account (as determined under regulations).

(5) Special rule for collective bargained and employee pay-all plans

No account limits shall apply in the case of any qualified asset account under a separate welfare benefit fund—

(A) under a collective bargaining agreement, or

(B) an employee pay-all plan under section 501(c)(9) if—

(i) such plan has at least 50 employees (determined without regard to subsection (h)(1)), and

(ii) no employee is entitled to a refund with respect to amounts in the fund, other than a refund based on the experience of the entire fund.

(6) Exception for 10-or-more employer plans

(A) In general

This subpart shall not apply in the case of any welfare benefit fund which is part of a 10 or more employer plan. The preceding sentence shall not apply to any plan which maintains experience-rating arrangements with respect to individual employers.

(B) 10 or more employer plan

For purposes of subparagraph (A), the term ''10 or more employer plan'' means a plan—

(i) to which more than 1 employer contributes, and

(ii) to which no employer normally contributes more than 10 percent of the total contributions contributed under the plan by all employers.

(7) Adjustments for existing excess reserves

(A) Increase in account limit

The account limit for any of the first 4 taxable years to which this section applies shall be increased by the applicable percentage of any existing excess reserves.

(B) Applicable percentage

For purposes of subparagraph (A)—

In the case of:	The applicable percentage is:
The first taxable year to which this section applies	80
The second taxable year to which this section applies	60
The third taxable year to which this section applies	40
The fourth taxable year to which this section applies	20.

(C) Existing excess reserve

For purposes of computing the increase under subparagraph (A) for any taxable year, the term ''existing excess reserve'' means the excess (if any) of—

(i) the amount of assets set aside at the close of the first taxable year ending after July 18, 1984, for purposes described in subsection (a), over

(ii) the account limit determined under this section (without regard to this para-

graph) for the taxable year for which such increase is being computed.

(D) Funds to which paragraph applies

This paragraph shall apply only to a welfare benefit fund which, as of July 18, 1984, had assets set aside for purposes described in subsection (a).

(g) Employer taxed on income of welfare benefit fund in certain cases

(1) In general

In the case of any welfare benefit fund which is not an organization described in paragraph (7), (9), (17), or (20) of section 501(c), the employer shall include in gross income for any taxable year an amount equal to such fund's deemed unrelated income for the fund's taxable year ending within the employer's taxable year.

(2) Deemed unrelated income

For purposes of paragraph (1), the deemed unrelated income of any welfare benefit fund shall be the amount which would have been its unrelated business taxable income under section 512(a)(3) if such fund were an organization described in paragraph (7), (9), (17), or (20) of section 501(c).

(3) Coordination with section 419

If any amount is included in the gross income of an employer for any taxable year under paragraph (1) with respect to any welfare benefit fund—

(A) the amount of the tax imposed by this chapter which is attributable to the amount so included shall be treated as a contribution paid to such welfare benefit fund on the last day of such taxable year, and

(B) the tax so attributable shall be treated as imposed on the fund for purposes of section 419(c)(4)(A).

(h) Aggregation rules

For purposes of this subpart—

(1) Aggregation of funds

(A) Mandatory aggregation

For purposes of subsections (c)(4), (d)(2), and (e)(2), all welfare benefit funds of an employer shall be treated as 1 fund.

(B) Permissive aggregation for purposes not specified in subparagraph (A)

For purposes of this section (other than the provisions specified in subparagraph (A)), at the election of the employer, 2 or more welfare benefit funds of such employer may (to the extent not inconsistent with the purposes of this subpart and section 512) be treated as 1 fund.

(2) Treatment of related employers

Rules similar to the rules of subsections (b), (c), (m), and (n) of section 414 shall apply.

(i) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this subpart. Such regulations may provide that the plan administrator of any welfare benefit fund which is part of a plan to which more than 1 employer contributes shall submit such information to the employers contributing to the fund as may be necessary to enable the employers to comply with the provisions of this section.

(Added Pub. L. 98–369, div. A, title V, § 511(a), July 18, 1984, 98 Stat. 856; amended Pub. L. 99–514, title XVIII, § 1851(a)(2), (3)(A), (4)–(7), (9), (13), Oct. 22, 1986, 100 Stat. 2858–2860, 2862; Pub. L. 100–647, title I, § 1018(t)(1)(C), (2)(A), (u)(12), Nov. 10, 1988, 102 Stat. 3587, 3590; Pub. L. 104–188, title I, § 1704(t)(60), Aug. 20, 1996, 110 Stat. 1890; Pub. L. 109–280, title VIII, § 843(a), Aug. 17, 2006, 120 Stat. 1010.)

AMENDMENTS

2006—Subsec. (c)(6). Pub. L. 109–280 added par. (6).

1996—Subsec. (c)(3). Pub. L. 104–188 substituted ''severance'' for ''severence'' in heading.

1988—Subsec. (a). Pub. L. 100–647, § 1018(u)(12), made technical amendment to directory language of Pub. L. 99–514, § 1851(a)(6)(B). See 1986 Amendment note below.

Subsec. (f)(5). Pub. L. 100–647, § 1018(t)(2)(A), repealed Pub. L. 99–514, § 1851(a)(4). See 1986 Amendment note below.

Pub. L. 100–647, § 1018(t)(1)(C), substituted ''account'' for ''accounts''.

1986—Subsec. (a). Pub. L. 99–514, § 1851(a)(6)(B), as amended by Pub. L. 100–647, § 1018(u)(12), inserted ''and section 512'' after ''this subpart''.

Subsec. (c)(5)(A). Pub. L. 99–514, § 1851(a)(5), substituted ''under this subsection'' for ''under paragraph (1)''.

Subsec. (d)(1). Pub. L. 99–514, § 1851(a)(2)(B), inserted ''The requirements of this paragraph shall apply to the first taxable year for which a reserve is taken into account under subsection (c)(2) and to all subsequent taxable years.''

Subsec. (d)(2). Pub. L. 99–514, § 1851(a)(2)(A), inserted ''Subparagraph (B) of section 415(c)(1) shall not apply to any amount treated as an annual addition under the preceding sentence.''

Subsec. (e). Pub. L. 99–514, § 1851(a)(3)(A), amended subsec. (e) generally. Prior to amendment, par. (1), benefits must be nondiscriminatory, read as follows: ''No reserve may be taken into account under subsection (c)(2) for post-retirement medical benefits or life insurance benefits to be provided to covered employees unless the plan meets the requirements of section 505(b)(1) with respect to such benefits.'', and par. (2), taxable life insurance benefits not taken into account, read as follows: ''No life insurance benefit may be taken into account under subsection (c)(2) to the extent—

''(A) such benefit is includible in gross income under section 79, or

''(B) such benefit would be includible in gross income under section 101(b) (determined by substituting '$50,000' for '$5,000').''

Subsec. (f)(5). Pub. L. 99–514, § 1851(a)(13), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''HIGHER LIMIT IN CASE OF COLLECTIVELY BARGAINED PLANS.—Not later than July 1, 1985, the Secretary shall by regulations provide for special account limits in the case of any qualified asset account under a welfare benefit fund established under a collective bargaining agreement.''

Pub. L. 99–514, § 1851(a)(4), which directed amendment of par. (5) by substituting ''welfare benefit fund maintained pursuant to'' for ''welfare benefit fund established under'', was repealed by Pub. L. 100–647, § 1018(t)(2)(A).

Subsec. (f)(7)(C), (D). Pub. L. 99–514, § 1851(a)(7), added subpars. (C) and (D) and struck out former subpar. (C) which read as follows: ''For purposes of this paragraph, the term 'existing excess reserve' means the excess (if any) of—

''(i) the amount of assets set aside for purposes described in subsection (a) as of the close of the first

taxable year ending after the date of the enactment of the Tax Reform Act of 1984, over

''(ii) the account limit which would have applied under this section to such taxable year if this section had applied to such taxable year.''

Subsec. (g)(3). Pub. L. 99–514, §1851(a)(9), added par. (3).

Subsec. (h)(1). Pub. L. 99–514, §1851(a)(6)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''At the election of the employer, 2 or more welfare benefit funds of such employer may be treated as 1 fund.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, §843(b), Aug. 17, 2006, 120 Stat. 1010, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

APPLICATION OF SECTION 419A(e) TO GROUP-TERM LIFE INSURANCE

Section 1851(a)(3)(B) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1018(t)(2)(D), Nov. 10, 1988, 102 Stat. 3587, provided that: ''Subsection (e) of section 419A, section 505, and section 4976(b)(1)(B) of the Internal Revenue Code of 1954 [now 1986] (as amended by subparagraph (A)) shall not apply to any group-term life insurance to the extent that the amendments made by section 223(a) of the Tax Reform Act of 1984 [section 223(a) of Pub. L. 98–369, amending section 79 of this title] do not apply to such insurance by reason of paragraph (2) of section 223(d) of such Act [set out as a note under section 79 of this title].''

SUBPART E—TREATMENT OF TRANSFERS TO RETIREE HEALTH ACCOUNTS

Sec.
420. Transfers of excess pension assets to retiree health accounts.

§ 420. Transfers of excess pension assets to retiree health accounts

(a) General rule

If there is a qualified transfer of any excess pension assets of a defined benefit plan to a health benefits account which is part of such plan—

(1) a trust which is part of such plan shall not be treated as failing to meet the requirements of subsection (a) or (h) of section 401 solely by reason of such transfer (or any other action authorized under this section),

(2) no amount shall be includible in the gross income of the employer maintaining the plan solely by reason of such transfer,

(3) such transfer shall not be treated—

(A) as an employer reversion for purposes of section 4980, or

(B) as a prohibited transaction for purposes of section 4975, and

(4) the limitations of subsection (d) shall apply to such employer.

(b) Qualified transfer

For purposes of this section—

(1) In general

The term ''qualified transfer'' means a transfer—

(A) of excess pension assets of a defined benefit plan to a health benefits account which is part of such plan in a taxable year beginning after December 31, 1990,

(B) which does not contravene any other provision of law, and

(C) with respect to which the following requirements are met in connection with the plan—

(i) the use requirements of subsection (c)(1),

(ii) the vesting requirements of subsection (c)(2), and

(iii) the minimum cost requirements of subsection (c)(3).

(2) Only 1 transfer per year

(A) In general

No more than 1 transfer with respect to any plan during a taxable year may be treated as a qualified transfer for purposes of this section.

(B) Exception

A transfer described in paragraph (4) shall not be taken into account for purposes of subparagraph (A).

(3) Limitation on amount transferred

The amount of excess pension assets which may be transferred in a qualified transfer shall not exceed the amount which is reasonably estimated to be the amount the employer maintaining the plan will pay (whether directly or through reimbursement) out of such account during the taxable year of the transfer for qualified current retiree health liabilities.

(4) Special rule for 1990

(A) In general

Subject to the provisions of subsection (c), a transfer shall be treated as a qualified transfer if such transfer—

(i) is made after the close of the taxable year preceding the employer's first taxable year beginning after December 31, 1990, and before the earlier of—

(I) the due date (including extensions) for the filing of the return of tax for such preceding taxable year, or

(II) the date such return is filed, and

(ii) does not exceed the expenditures of the employer for qualified current retiree health liabilities for such preceding taxable year.

(B) Deduction reduced

The amount of the deductions otherwise allowable under this chapter to an employer for the taxable year preceding the employer's first taxable year beginning after December 31, 1990, shall be reduced by the amount of any qualified transfer to which this paragraph applies.

(C) Coordination with reduction rule

Subsection (e)(1)(B) shall not apply to a transfer described in subparagraph (A).

(5) Expiration

No transfer made after December 31, 2013, shall be treated as a qualified transfer.

(c) Requirements of plans transferring assets

(1) Use of transferred assets

(A) In general

Any assets transferred to a health benefits account in a qualified transfer (and any income allocable thereto) shall be used only to pay qualified current retiree health liabilities (other than liabilities of key employees not taken into account under subsection (e)(1)(D)) for the taxable year of the transfer (whether directly or through reimbursement). In the case of a qualified future transfer or collectively bargained transfer to which subsection (f) applies, any assets so transferred may also be used to pay liabilities described in subsection (f)(2)(C).

(B) Amounts not used to pay for health benefits

(i) In general

Any assets transferred to a health benefits account in a qualified transfer (and any income allocable thereto) which are not used as provided in subparagraph (A) shall be transferred out of the account to the transferor plan.

(ii) Tax treatment of amounts

Any amount transferred out of an account under clause (i)—

(I) shall not be includible in the gross income of the employer for such taxable year, but

(II) shall be treated as an employer reversion for purposes of section 4980 (without regard to subsection (d) thereof).

(C) Ordering rule

For purposes of this section, any amount paid out of a health benefits account shall be treated as paid first out of the assets and income described in subparagraph (A).

(2) Requirements relating to pension benefits accruing before transfer

(A) In general

The requirements of this paragraph are met if the plan provides that the accrued pension benefits of any participant or beneficiary under the plan become nonforfeitable in the same manner which would be required if the plan had terminated immediately before the qualified transfer (or in the case of a participant who separated during the 1-year period ending on the date of the transfer, immediately before such separation).

(B) Special rule for 1990

In the case of a qualified transfer described in subsection (b)(4), the requirements of this paragraph are met with respect to any participant who separated from service during the taxable year to which such transfer relates by recomputing such participant's benefits as if subparagraph (A) had applied immediately before such separation.

(3) Minimum cost requirements

(A) In general

The requirements of this paragraph are met if each group health plan or arrangement under which applicable health benefits are provided provides that the applicable employer cost for each taxable year during the cost maintenance period shall not be less than the higher of the applicable employer costs for each of the 2 taxable years immediately preceding the taxable year of the qualified transfer or, in the case of a transfer which involves a plan maintained by an employer described in subsection (f)(2)(E)(i)(III), if the plan meets the requirements of subsection (f)(2)(D)(i)(II).

(B) Applicable employer cost

For purposes of this paragraph, the term ''applicable employer cost'' means, with respect to any taxable year, the amount determined by dividing—

(i) the qualified current retiree health liabilities of the employer for such taxable year determined—

(I) without regard to any reduction under subsection (e)(1)(B), and

(II) in the case of a taxable year in which there was no qualified transfer, in the same manner as if there had been such a transfer at the end of the taxable year, by

(ii) the number of individuals to whom coverage for applicable health benefits was provided during such taxable year.

(C) Election to compute cost separately

An employer may elect to have this paragraph applied separately with respect to individuals eligible for benefits under title XVIII of the Social Security Act at any time during the taxable year and with respect to individuals not so eligible.

(D) Cost maintenance period

For purposes of this paragraph, the term ''cost maintenance period'' means the period of 5 taxable years beginning with the taxable year in which the qualified transfer occurs. If a taxable year is in two or more overlapping cost maintenance periods, this paragraph shall be applied by taking into account the highest applicable employer cost required to be provided under subparagraph (A) for such taxable year.

(E) Regulations

(i) In general

The Secretary shall prescribe such regulations as may be necessary to prevent an

employer who significantly reduces retiree health coverage during the cost maintenance period from being treated as satisfying the minimum cost requirement of this subsection.

(ii) Insignificant cost reductions permitted

(I) In general

An eligible employer shall not be treated as failing to meet the requirements of this paragraph for any taxable year if, in lieu of any reduction of retiree health coverage permitted under the regulations prescribed under clause (i), the employer reduces applicable employer cost by an amount not in excess of the reduction in costs which would have occurred if the employer had made the maximum permissible reduction in retiree health coverage under such regulations. In applying such regulations to any subsequent taxable year, any reduction in applicable employer cost under this clause shall be treated as if it were an equivalent reduction in retiree health coverage.

(II) Eligible employer

For purposes of subclause (I), an employer shall be treated as an eligible employer for any taxable year if, for the preceding taxable year, the qualified current retiree health liabilities of the employer were at least 5 percent of the gross receipts of the employer. For purposes of this subclause, the rules of paragraphs (2), (3)(B), and (3)(C) of section 448(c) shall apply in determining the amount of an employer's gross receipts.

(d) Limitations on employer

For purposes of this title—

(1) Deduction limitations

No deduction shall be allowed—

(A) for the transfer of any amount to a health benefits account in a qualified transfer (or any retransfer to the plan under subsection (c)(1)(B)),

(B) for qualified current retiree health liabilities paid out of the assets (and income) described in subsection (c)(1), or

(C) for any amounts to which subparagraph (B) does not apply and which are paid for qualified current retiree health liabilities for the taxable year to the extent such amounts are not greater than the excess (if any) of—

(i) the amount determined under subparagraph (A) (and income allocable thereto), over

(ii) the amount determined under subparagraph (B).

(2) No contributions allowed

An employer may not contribute after December 31, 1990, any amount to a health benefits account or welfare benefit fund (as defined in section 419(e)(1)) with respect to qualified current retiree health liabilities for which transferred assets are required to be used under subsection (c)(1).

(e) Definition and special rules

For purposes of this section—

(1) Qualified current retiree health liabilities

For purposes of this section—

(A) In general

The term ''qualified current retiree health liabilities'' means, with respect to any taxable year, the aggregate amounts (including administrative expenses) which would have been allowable as a deduction to the employer for such taxable year with respect to applicable health benefits provided during such taxable year if—

(i) such benefits were provided directly by the employer, and

(ii) the employer used the cash receipts and disbursements method of accounting.

For purposes of the preceding sentence, the rule of section 419(c)(3)(B) shall apply.

(B) Reductions for amounts previously set aside

The amount determined under subparagraph (A) shall be reduced by the amount which bears the same ratio to such amount as—

(i) the value (as of the close of the plan year preceding the year of the qualified transfer) of the assets in all health benefits accounts or welfare benefit funds (as defined in section 419(e)(1)) set aside to pay for the qualified current retiree health liability, bears to

(ii) the present value of the qualified current retiree health liabilities for all plan years (determined without regard to this subparagraph).

(C) Applicable health benefits

The term ''applicable health benefits'' means health benefits or coverage which are provided to—

(i) retired employees who, immediately before the qualified transfer, are entitled to receive such benefits upon retirement and who are entitled to pension benefits under the plan, and

(ii) their spouses and dependents.

(D) Key employees excluded

If an employee is a key employee (within the meaning of section 416(i)(1)) with respect to any plan year ending in a taxable year, such employee shall not be taken into account in computing qualified current retiree health liabilities for such taxable year or in calculating applicable employer cost under subsection (c)(3)(B).

(2) Excess pension assets

The term ''excess pension assets'' means the excess (if any) of—

(A) the lesser of—

(i) the fair market value of the plan's assets (reduced by the prefunding balance and funding standard carryover balance determined under section 430(f)), or

(ii) the value of plan assets as determined under section 430(g)(3) after reduction under section 430(f), over

(B) 125 percent of the sum of the funding target and the target normal cost determined under section 430 for such plan year.

(3) Health benefits account

The term ''health benefits account'' means an account established and maintained under section 401(h).

(4) Coordination with section 430

In the case of a qualified transfer, any assets so transferred shall not, for purposes of this section and section 430, be treated as assets in the plan.

(5) Application to multiemployer plans

In the case of a multiemployer plan, this section shall be applied to any such plan—

(A) by treating any reference in this section to an employer as a reference to all employers maintaining the plan (or, if appropriate, the plan sponsor), and

(B) in accordance with such modifications of this section (and the provisions of this title relating to this section) as the Secretary determines appropriate to reflect the fact the plan is not maintained by a single employer.

(f) Qualified transfers to cover future retiree health costs and collectively bargained retiree health benefits

(1) In general

An employer maintaining a defined benefit plan (other than a multiemployer plan) may, in lieu of a qualified transfer, elect for any taxable year to have the plan make—

(A) a qualified future transfer, or

(B) a collectively bargained transfer.

Except as provided in this subsection, a qualified future transfer and a collectively bargained transfer shall be treated for purposes of this title and the Employee Retirement Income Security Act of 1974 as if it were a qualified transfer.

(2) Qualified future and collectively bargained transfers

For purposes of this subsection—

(A) In general

The terms ''qualified future transfer'' and ''collectively bargained transfer'' mean a transfer which meets all of the requirements for a qualified transfer, except that—

(i) the determination of excess pension assets shall be made under subparagraph (B),

(ii) the limitation on the amount transferred shall be determined under subparagraph (C),

(iii) the minimum cost requirements of subsection (c)(3) shall be modified as provided under subparagraph (D), and

(iv) in the case of a collectively bargained transfer, the requirements of subparagraph (E) shall be met with respect to the transfer.

(B) Excess pension assets

(i) In general

In determining excess pension assets for purposes of this subsection, subsection (e)(2) shall be applied by substituting ''120 percent'' for ''125 percent''.

(ii) Requirement to maintain funded status

If, as of any valuation date of any plan year in the transfer period, the amount determined under subsection (e)(2)(B) (after application of clause (i)) exceeds the amount determined under subsection (e)(2)(A), either—

(I) the employer maintaining the plan shall make contributions to the plan in an amount not less than the amount required to reduce such excess to zero as of such date, or

(II) there is transferred from the health benefits account to the plan an amount not less than the amount required to reduce such excess to zero as of such date.

(C) Limitation on amount transferred

Notwithstanding subsection (b)(3), the amount of the excess pension assets which may be transferred—

(i) in the case of a qualified future transfer shall be equal to the sum of—

(I) if the transfer period includes the taxable year of the transfer, the amount determined under subsection (b)(3) for such taxable year, plus

(II) in the case of all other taxable years in the transfer period, the sum of the qualified current retiree health liabilities which the plan reasonably estimates, in accordance with guidance issued by the Secretary, will be incurred for each of such years, and

(ii) in the case of a collectively bargained transfer, shall not exceed the amount which is reasonably estimated, in accordance with the provisions of the collective bargaining agreement and generally accepted accounting principles, to be the amount the employer maintaining the plan will pay (whether directly or through reimbursement) out of such account during the collectively bargained cost maintenance period for collectively bargained retiree health liabilities.

(D) Minimum cost requirements

(i) In general

The requirements of subsection (c)(3) shall be treated as met if—

(I) in the case of a qualified future transfer, each group health plan or arrangement under which applicable health benefits are provided provides applicable health benefits during the period beginning with the first year of the transfer period and ending with the last day of the 4th year following the transfer period such that the annual average amount of the applicable employer cost during such period is not less than the applicable employer cost determined under subsection (c)(3)(A) with respect to the transfer, and

(II) in the case of a collectively bargained transfer, each collectively bar-

gained group health plan under which collectively bargained health benefits are provided provides that the collectively bargained employer cost for each taxable year during the collectively bargained cost maintenance period shall not be less than the amount specified by the collective bargaining agreement.

(ii) Election to maintain benefits for future transfers

An employer may elect, in lieu of the requirements of clause (i)(I), to meet the requirements of subsection (c)(3) by meeting the requirements of such subsection (as in effect before the amendments made by section 535 of the Tax Relief Extension Act of 1999) for each of the years described in the period under clause (i)(I).

(iii) Collectively bargained employer cost

For purposes of this subparagraph, the term ''collectively bargained employer cost'' means the average cost per covered individual of providing collectively bargained retiree health benefits as determined in accordance with the applicable collective bargaining agreement. Such agreement may provide for an appropriate reduction in the collectively bargained employer cost to take into account any portion of the collectively bargained retiree health benefits that is provided or financed by a government program or other source.

(E) Special rules for collectively bargained transfers

(i) In general

A collectively bargained transfer shall only include a transfer which—

(I) is made in accordance with a collective bargaining agreement,

(II) before the transfer, the employer designates, in a written notice delivered to each employee organization that is a party to the collective bargaining agreement, as a collectively bargained transfer in accordance with this section, and

(III) involves a plan maintained by an employer which, in its taxable year ending in 2005, provided health benefits or coverage to retirees and their spouses and dependents under all of the benefit plans maintained by the employer, but only if the aggregate cost (including administrative expenses) of such benefits or coverage which would have been allowable as a deduction to the employer (if such benefits or coverage had been provided directly by the employer and the employer used the cash receipts and disbursements method of accounting) is at least 5 percent of the gross receipts of the employer (determined in accordance with the last sentence of subsection (c)(3)(E)(ii)(II)) for such taxable year, or a plan maintained by a successor to such employer.

(ii) Use of assets

Any assets transferred to a health benefits account in a collectively bargained transfer (and any income allocable thereto) shall be used only to pay collectively bargained retiree health liabilities (other than liabilities of key employees not taken into account under paragraph (6)(B)(iii)) for the taxable year of the transfer or for any subsequent taxable year during the collectively bargained cost maintenance period (whether directly or through reimbursement).

(3) Coordination with other transfers

In applying subsection (b)(3) to any subsequent transfer during a taxable year in a transfer period or collectively bargained cost maintenance period, qualified current retiree health liabilities shall be reduced by any such liabilities taken into account with respect to the qualified future transfer or collectively bargained transfer to which such period relates.

(4) Special deduction rules for collectively bargained transfers

In the case of a collectively bargained transfer—

(A) the limitation under subsection (d)(1)(C) shall not apply, and

(B) notwithstanding subsection (d)(2), an employer may contribute an amount to a health benefits account or welfare benefit fund (as defined in section 419(e)(1)) with respect to collectively bargained retiree health liabilities for which transferred assets are required to be used under subsection (c)(1)(B), and the deductibility of any such contribution shall be governed by the limits applicable to the deductibility of contributions to a welfare benefit fund under a collective bargaining agreement (as determined under section 419A(f)(5)(A)) without regard to whether such contributions are made to a health benefits account or welfare benefit fund and without regard to the provisions of section 404 or the other provisions of this section.

The Secretary shall provide rules to ensure that the application of this paragraph does not result in a deduction being allowed more than once for the same contribution or for 2 or more contributions or expenditures relating to the same collectively bargained retiree health liabilities.

(5) Transfer period

For purposes of this subsection, the term ''transfer period'' means, with respect to any transfer, a period of consecutive taxable years (not less than 2) specified in the election under paragraph (1) which begins and ends during the 10-taxable-year period beginning with the taxable year of the transfer.

(6) Terms relating to collectively bargained transfers

For purposes of this subsection—

(A) Collectively bargained cost maintenance period

The term ''collectively bargained cost maintenance period'' means, with respect to each covered retiree and his covered spouse and dependents, the shorter of—

(i) the remaining lifetime of such covered retiree and his covered spouse and dependents, or

(ii) the period of coverage provided by the collectively bargained health plan (determined as of the date of the collectively bargained transfer) with respect to such covered retiree and his covered spouse and dependents.

(B) Collectively bargained retiree health liabilities

(i) In general

The term ''collectively bargained retiree health liabilities'' means the present value, as of the beginning of a taxable year and determined in accordance with the applicable collective bargaining agreement, of all collectively bargained health benefits (including administrative expenses) for such taxable year and all subsequent taxable years during the collectively bargained cost maintenance period.

(ii) Reduction for amounts previously set aside

The amount determined under clause (i) shall be reduced by the value (as of the close of the plan year preceding the year of the collectively bargained transfer) of the assets in all health benefits accounts or welfare benefit funds (as defined in section 419(e)(1)) set aside to pay for the collectively bargained retiree health liabilities.

(iii) Key employees excluded

If an employee is a key employee (within the meaning of section 416(I)(1))[1] with respect to any plan year ending in a taxable year, such employee shall not be taken into account in computing collectively bargained retiree health liabilities for such taxable year or in calculating collectively bargained employer cost under subsection (c)(3)(C).

(C) Collectively bargained health benefits

The term ''collectively bargained health benefits'' means health benefits or coverage which are provided to—

(i) retired employees who, immediately before the collectively bargained transfer, are entitled to receive such benefits upon retirement and who are entitled to pension benefits under the plan, and their spouses and dependents, and

(ii) if specified by the provisions of the collective bargaining agreement governing the collectively bargained transfer, active employees who, following their retirement, are entitled to receive such benefits and who are entitled to pension benefits under the plan, and their spouses and dependents.

(D) Collectively bargained health plan

The term ''collectively bargained health plan'' means a group health plan or arrangement for retired employees and their spouses and dependents that is maintained pursuant to 1 or more collective bargaining agreements.

(Added Pub. L. 101–508, title XII, § 12011(a), Nov. 5, 1990, 104 Stat. 1388–567; amended Pub. L. 103–465, title VII, § 731(a)–(c)(3), Dec. 8, 1994, 108 Stat. 5003, 5004; Pub. L. 104–188, title I, § 1704(a), (t)(32), Aug. 20, 1996, 110 Stat. 1878, 1889; Pub. L. 106–170, title V, § 535(a)(1), (b), Dec. 17, 1999, 113 Stat. 1934; Pub. L. 108–218, title II, § 204(a), Apr. 10, 2004, 118 Stat. 609; Pub. L. 108–357, title VII, § 709(b)(1), (2), Oct. 22, 2004, 118 Stat. 1551, 1552; Pub. L. 109–280, title I, § 114(d), title VIII, §§ 841(a), 842(a), Aug. 17, 2006, 120 Stat. 854, 1005, 1009; Pub. L. 110–28, title VI, §§ 6612(a), (b), 6613(a), May 25, 2007, 121 Stat. 181; Pub. L. 110–458, title I, § 108(i)(1), (2), Dec. 23, 2008, 122 Stat. 5110.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(3)(C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (f)(1), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended, which is classified principally to chapter 18 (§ 1001 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

Subsection (c)(3) as in effect before the amendments made by section 535 of the Tax Relief Extension Act of 1999, referred to in subsec. (f)(2)(D)(ii), is subsec. (c)(3) of this section prior to its general amendment by section 535(b)(1) of Pub. L. 106–170.

AMENDMENTS

2008—Subsec. (c)(1)(A). Pub. L. 110–458, § 108(i)(1), inserted last sentence ''In the case of a qualified future transfer or collectively bargained transfer to which subsection (f) applies, any assets so transferred may also be used to pay liabilities described in subsection (f)(2)(C).''

Subsec. (f)(2)(D)(i)(I). Pub. L. 110–458, § 108(i)(2), struck out ''such'' after ''average amount of''.

2007—Subsec. (c)(3)(A). Pub. L. 110–28, § 6613(a), substituted ''transfer or, in the case of a transfer which involves a plan maintained by an employer described in subsection (f)(2)(E)(i)(III), if the plan meets the requirements of subsection (f)(2)(D)(i)(II).'' for ''transfer.''

Subsec. (e)(2)(B). Pub. L. 110–28, § 6612(b), substituted ''funding target'' for ''funding shortfall''.

Subsec. (f)(2)(E)(i)(III). Pub. L. 110–28, § 6612(a), substituted ''subsection (c)(3)(E)(ii)(II)'' for ''subsection (c)(2)(E)(ii)(II)''.

2006—Subsec. (a). Pub. L. 109–280, § 842(a)(1), struck out ''(other than a multiemployer plan)'' after ''defined benefit plan'' in introductory provisions.

Subsec. (e)(2). Pub. L. 109–280, § 114(d)(1), reenacted heading without change and amended text of par. (2) generally. Prior to amendment, text read as follows: ''The term 'excess pension assets' means the excess (if any) of—

''(A) the amount determined under section 412(c)(7)(A)(ii), over

''(B) the greater of—

''(i) the amount determined under section 412(c)(7)(A)(i), or

''(ii) 125 percent of current liability (as defined in section 412(c)(7)(B)).

The determination under this paragraph shall be made as of the most recent valuation date of the plan preceding the qualified transfer.''

Subsec. (e)(4). Pub. L. 109–280, § 114(d)(2), amended heading and text of par. (4) generally. Prior to amend-

[1] So in original. Probably should be ''416(i)(1))''.

ment, text read as follows: ''In the case of a qualified transfer to a health benefits account—

''(A) any assets transferred in a plan year on or before the valuation date for such year (and any income allocable thereto) shall, for purposes of section 412, be treated as assets in the plan as of the valuation date for such year, and

''(B) the plan shall be treated as having a net experience loss under section 412(b)(2)(B)(iv) in an amount equal to the amount of such transfer (reduced by any amounts transferred back to the pension plan under subsection (c)(1)(B)) and for which amortization charges begin for the first plan year after the plan year in which such transfer occurs, except that such section shall be applied to such amount by substituting '10 plan years' for '5 plan years'.''

Subsec. (e)(5). Pub. L. 109–280, §842(a)(2), added par. (5).

Subsec. (f). Pub. L. 109–280, §841(a), added subsec. (f).

2004—Subsec. (b)(5). Pub. L. 108–218 substituted ''2013'' for ''2005''.

Subsec. (c)(3)(E). Pub. L. 108–357 designated existing provisions as cl. (i), inserted heading, and added cl. (ii).

1999—Subsec. (b)(1)(C)(iii). Pub. L. 106–170, §535(b)(2)(A), substituted ''cost'' for ''benefits''.

Subsec. (b)(5). Pub. L. 106–170, §535(a)(1), substituted ''made after December 31, 2005'' for ''in any taxable year beginning after December 31, 2000''.

Subsec. (c)(3). Pub. L. 106–170, §535(b)(1), amended heading and text of par. (3) generally, substituting present provisions for provisions relating to maintenance of benefit requirements.

Subsec. (e)(1)(D). Pub. L. 106–170, §535(b)(2)(B), substituted ''or in calculating applicable employer cost under subsection (c)(3)(B)'' for ''and shall not be subject to the minimum benefit requirements of subsection (c)(3)''.

1996—Pub. L. 104–188, §1704(a), provided that, except as otherwise expressly provided, whenever in title XII of Pub. L. 101–508 an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986. Section 12011(a) of title XII of Pub. L. 101–508 directed the amendment of part I of subchapter D of chapter 1 by adding this subpart, including this section, without specifying that amendment was to the Internal Revenue Code of 1986.

Subsec. (e)(1)(C). Pub. L. 104–188, §1704(t)(32), substituted ''means'' for ''mean''.

1994—Subsec. (b)(1)(C)(iii). Pub. L. 103–465, §731(c)(1), substituted ''benefits'' for ''cost''.

Subsec. (b)(5). Pub. L. 103–465, §731(a), substituted ''2000'' for ''1995''.

Subsec. (c)(3). Pub. L. 103–465, §731(b), amended par. (3) generally, substituting present provisions for provisions outlining minimum cost requirements for plans, providing for elections to compute costs separately, and defining ''applicable employer cost'' and ''cost maintenance period''.

Subsec. (e)(1)(B). Pub. L. 103–465, §731(c)(2), reenacted subpar. (B) heading without change and amended text generally. Prior to amendment, text read as follows: ''The amount determined under subparagraph (A) shall be reduced by any amount previously contributed to a health benefits account or welfare benefit fund (as defined in section 419(e)(1)) to pay for the qualified current retiree health liabilities. The portion of any reserves remaining as of the close of December 31, 1990, shall be allocated on a pro rata basis to qualified current retiree health liabilities.''

Subsec. (e)(1)(D). Pub. L. 103–465, §731(c)(3), substituted ''and shall not be subject to the minimum benefit requirements of subsection (c)(3)'' for ''or in calculating applicable employer cost under subsection (c)(3)(B)''.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–28, title VI, §6612(c), May 25, 2007, 121 Stat. 181, provided that: ''The amendments made by this section [amending this section] shall take effect as if included in the provisions of the Pension Protection Act of 2006 [Pub. L. 109–280] to which they relate.''

Pub. L. 110–28, title VI, §6613(b), May 25, 2007, 121 Stat. 181, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to transfers after the date of the enactment of this Act [May 25, 2007].''

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 114(d) of Pub. L. 109–280 applicable to plan years beginning after 2007, see section 114(g)(1) of Pub. L. 109–280, as added by Pub. L. 110–458, set out as a note under section 401 of this title.

Pub. L. 109–280, title VIII, §841(b), Aug. 17, 2006, 120 Stat. 1009, provided that: ''The amendments made by this section [amending this section] shall apply to transfers after the date of the enactment of this Act [Aug. 17, 2006].''

Pub. L. 109–280, title VIII, §842(b), Aug. 17, 2006, 120 Stat. 1009, provided that: ''The amendment made by this section [amending this section] shall apply to transfers made in taxable years beginning after December 31, 2006.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VII, §709(b)(3), Oct. 22, 2004, 118 Stat. 1552, provided that: ''The amendments made by this subsection [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, §535(c), Dec. 17, 1999, 113 Stat. 1935, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 1021, 1103, and 1108 of Title 29, Labor] shall apply to qualified transfers occurring after the date of the enactment of this Act [Dec. 17, 1999].

''(2) TRANSITION RULE.—If the cost maintenance period for any qualified transfer after the date of the enactment of this Act [Dec. 17, 1999] includes any portion of a benefit maintenance period for any qualified transfer on or before such date, the amendments made by subsection (b) [amending this section] shall not apply to such portion of the cost maintenance period (and such portion shall be treated as a benefit maintenance period).''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 731(d) of Pub. L. 103–465 provided that:

''(1) EXTENSION.—The amendments made by subsections (a) and (c)(3) [amending this section] shall apply to taxable years beginning after December 31, 1995.

''(2) BENEFITS.—The amendments made by subsections (b) and (c)(1) and (2) [amending this section] shall apply to qualified transfers occurring after the date of the enactment of this Act [Dec. 8, 1994].''

EFFECTIVE DATE

Section 12011(c) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section and amending section 401 of this title] shall apply to transfers in taxable years beginning after December 31, 1990.

''(2) WAIVER OF ESTIMATED TAX PENALTIES.—No addition to tax shall be made under section 6654 or section 6655 of the Internal Revenue Code of 1986 for the taxable year preceding the taxpayer's 1st taxable year begin-

ning after December 31, 1990, with respect to any underpayment to the extent such underpayment was created or increased by reason of section 420(b)(4)(B) of such Code (as added by subsection (a)).''

APPLICABILITY OF AMENDMENTS BY SUBTITLES A AND B OF TITLE I OF PUB. L. 109–280

For special rules on applicability of amendments by subtitles A (§§ 101–108) and B (§§ 111–116) of title I of Pub. L. 109–280 to certain eligible cooperative plans, PBGC settlement plans, and eligible government contractor plans, see sections 104, 105, and 106 of Pub. L. 109–280, set out as notes under section 401 of this title.

PART II—CERTAIN STOCK OPTIONS

Sec.
421. General rules.
422. Incentive stock options.
[422A. Renumbered.]
423. Employee stock purchase plans.
424. Definitions and special rules.
[425. Renumbered.]

AMENDMENTS

1990—Pub. L. 101–508, title XI, § 11801(b)(6), (c)(9)(A)(ii), Nov. 5, 1990, 104 Stat. 1388–522, 1388–524, struck out items 422 ''Qualified stock options'' and 424 ''Restricted stock options'' and redesignated items 422A and 425 as 422 and 424, respectively.

1981—Pub. L. 97–34, title II, § 251(b)(6), Aug. 13, 1981, 95 Stat. 259, added item 422A.

1964—Pub. L. 88–272, title II, § 221(a), Feb. 26, 1964, 78 Stat. 63, substituted ''CERTAIN STOCK OPTIONS'' for ''MISCELLANEOUS PROVISIONS'' in part II heading, and ''General rules'' for ''Employee stock options'' in item 421, and added items 422–425.

§ 421. General rules

(a) Effect of qualifying transfer

If a share of stock is transferred to an individual in a transfer in respect of which the requirements of section 422(a) or 423(a) are met—

(1) no income shall result at the time of the transfer of such share to the individual upon his exercise of the option with respect to such share;

(2) no deduction under section 162 (relating to trade or business expenses) shall be allowable at any time to the employer corporation, a parent or subsidiary corporation of such corporation, or a corporation issuing or assuming a stock option in a transaction to which section 424(a) applies, with respect to the share so transferred; and

(3) no amount other than the price paid under the option shall be considered as received by any of such corporations for the share so transferred.

(b) Effect of disqualifying disposition

If the transfer of a share of stock to an individual pursuant to his exercise of an option would otherwise meet the requirements of section 422(a) or 423(a) except that there is a failure to meet any of the holding period requirements of section 422(a)(1) or 423(a)(1), then any increase in the income of such individual or deduction from the income of his employer corporation for the taxable year in which such exercise occurred attributable to such disposition, shall be treated as an increase in income or a deduction from income in the taxable year of such individual or of such employer corporation in which such disposition occurred. No amount shall be required to be deducted and withheld under chapter 24 with respect to any increase in income attributable to a disposition described in the preceding sentence.

(c) Exercise by estate

(1) In general

If an option to which this part applies is exercised after the death of the employee by the estate of the decedent, or by a person who acquired the right to exercise such option by bequest or inheritance or by reason of the death of the decedent, the provisions of subsection (a) shall apply to the same extent as if the option had been exercised by the decedent, except that—

(A) the holding period and employment requirements of sections 422(a) and 423(a) shall not apply, and

(B) any transfer by the estate of stock acquired shall be considered a disposition of such stock for purposes of section 423(c).

(2) Deduction for estate tax

If an amount is required to be included under section 423(c) in gross income of the estate of the deceased employee or of a person described in paragraph (1), there shall be allowed to the estate or such person a deduction with respect to the estate tax attributable to the inclusion in the taxable estate of the deceased employee of the net value for estate tax purposes of the option. For this purpose, the deduction shall be determined under section 691(c) as if the option acquired from the deceased employee were an item of gross income in respect of the decedent under section 691 and as if the amount includible in gross income under section 423(c) were an amount included in gross income under section 691 in respect of such item of gross income.

(3) Basis of shares acquired

In the case of a share of stock acquired by the exercise of an option to which paragraph (1) applies—

(A) the basis of such share shall include so much of the basis of the option as is attributable to such share; except that the basis of such share shall be reduced by the excess (if any) of (i) the amount which would have been includible in gross income under section 423(c) if the employee had exercised the option on the date of his death and had held the share acquired pursuant to such exercise at the time of his death, over (ii) the amount which is includible in gross income under such section; and

(B) the last sentence of section 423(c) shall apply only to the extent that the amount includible in gross income under such section exceeds so much of the basis of the option as is attributable to such share.

(d) Certain sales to comply with conflict-of-interest requirements

If—

(1) a share of stock is transferred to an eligible person (as defined in section 1043(b)(1)) pursuant to such person's exercise of an option to which this part applies, and

(2) such share is disposed of by such person pursuant to a certificate of divestiture (as defined in section 1043(b)(2)),

such disposition shall be treated as meeting the requirements of section 422(a)(1) or 423(a)(1), whichever is applicable.

(Aug. 16, 1954, ch. 736, 68A Stat. 142; Pub. L. 85–320, §1, Feb. 11, 1958, 72 Stat. 4; Pub. L. 85–866, title I, §§25, 26(a), Sept. 2, 1958, 72 Stat. 1623, 1624; Pub. L. 88–272, title II, §221(a), Feb. 26, 1964, 78 Stat. 63; Pub. L. 97–34, title II, §251(b)(1), Aug. 13, 1981, 95 Stat. 259; Pub. L. 101–508, title XI, §11801(c)(9)(B), Nov. 5, 1990, 104 Stat. 1388–524; Pub. L. 108–357, title II, §251(b), title VIII, §905(a), Oct. 22, 2004, 118 Stat. 1458, 1653.)

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–357, §251(b), inserted at end ''No amount shall be required to be deducted and withheld under chapter 24 with respect to any increase in income attributable to a disposition described in the preceding sentence.''

Subsec. (d). Pub. L. 108–357, §905(a), added subsec. (d).

1990—Subsec. (a). Pub. L. 101–508, §11801(c)(9)(B)(i)(I), substituted ''422(a) or 423(a)'' for ''422(a), 422A(a), 423(a), or 424(a)'' in introductory provisions.

Subsec. (a)(1). Pub. L. 101–508, §11801(c)(9)(B)(i)(II), struck out ''except as provided in section 422(c)(1),'' before ''no income''.

Subsec. (a)(2). Pub. L. 101–508, §11801(c)(9)(B)(i)(III), substituted ''424(a)'' for ''425(a)''.

Subsec. (b). Pub. L. 101–508, §11801(c)(9)(B)(ii), substituted ''422(a) or 423(a)'' for ''422(a), 422A(a), 423(a), or 424(a)'' and ''422(a)(1) or 423(a)(1),'' for ''422(a)(1), 422A(a)(1), 423(a)(1), or 424(a)(1),''.

Subsec. (c)(1)(A). Pub. L. 101–508, §11801(c)(9)(B)(iii)(I), substituted ''422(a) and 423(a)'' for ''422(a), 422A(a), 423(a), and 424(a)''.

Subsec. (c)(1)(B). Pub. L. 101–508, §11801(c)(9)(B)(iii)(II), substituted ''section 423(c)'' for ''sections 423(c) and 424(c)(1)''.

Subsec. (c)(2), (3)(A). Pub. L. 101–508, §11801(c)(9)(B)(iii)(III), substituted ''423(c)'' for ''422(c)(1), 423(c), or 424(c)(1)'' wherever appearing.

Subsec. (c)(3)(B). Pub. L. 101–508, §11801(c)(9)(B)(iii)(IV), (V), substituted ''section 423(c)'' for ''sections 422(c)(1), 423(c), and 424(c)(1)'' and ''such section'' for ''such sections''.

1981—Subsecs. (a), (b), (c)(1)(A). Pub. L. 97–34 inserted references to section 422A(a) in subsecs. (a), (b), and (c)(1)(A) and to section 422A(a)(1) in subsec. (b).

1964—Pub. L. 88–272 amended section generally, and among other changes, inserted provisions relating to the effect of a qualifying transfer, and to the basis of shares acquired when an option is exercised by an estate, and omitted provisions relating to treatment of restricted stock options, a special rule where option price was between 85 percent and 95 percent of value of stock, acquisition of new stock, definitions, modification, extension, or renewal of option, and corporate reorganizations, liquidations, etc. See sections 421 to 425 of this title.

1958—Subsec. (a). Pub. L. 85–866, §25, inserted sentence authorizing substitution of ''grantor corporation'' or ''corporation issuing or assuming a stock option in a transaction to which subsection (g) is applicable'' for ''employer corporation''.

Subsec. (d)(6)(C). Pub. L. 85–320 added subpar. (C).

Subsec. (d)(1)(A)(ii). Pub. L. 85–866, §26(a)(1), substituted ''in the case of a variable price option'' for ''in case the purchase price of the stock under the option is fixed or determinable under a formula in which the only variable is the value of the stock at any time during a period of 6 months which includes the time the option is exercised'' and inserted ''fair'' before ''market value''.

Subsec. (d)(7). Pub. L. 85–866, §26(a)(2), added par. (7).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, §251(d), Oct. 22, 2004, 118 Stat. 1459, provided that: ''The amendments made by this section [amending this section, sections 423, 3121, 3231, and 3306 of this title, and section 409 of Title 42, The Public Health and Welfare] shall apply to stock acquired pursuant to options exercised after the date of the enactment of this Act [Oct. 22, 2004].''

Pub. L. 108–357, title VIII, §905(b), Oct. 22, 2004, 118 Stat. 1653, provided that: ''The amendment made by this section [amending this section] shall apply to sales after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to options granted on or after Jan. 1, 1976, and exercised on or after Jan. 1, 1981, or outstanding on Jan. 1, 1981, or granted on or after Jan. 1, 1976, and outstanding Aug. 13, 1981, see section 251(c) of Pub. L. 97–34, set out as an Effective Date note under section 422 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 221(e) of Pub. L. 88–272, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) Except as provided in paragraphs (2) and (3), the amendments made by this section [enacting sections 422 to 425 and 6039, amending this section, sections 402, 691, 6652, 6678, and the analysis preceding sections 401 and 6031, and renumbering section 3039 as 3040 of this title] shall apply to taxable years ending after December 31, 1963.

''(2) The amendments made by paragraphs (1) and (3) of subsection (b) [enacting section 3039, renumbering former section 3039 as 3040, and amending section 6678 of this title] and paragraph (2) of section 6652(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by paragraph (2) of subsection (b)), shall apply to stock transferred pursuant to options exercised on or after January 1, 1964.

''(3) In the case of an option granted after December 31, 1963, and before January 1, 1965—

''(A) paragraphs (1) and (2) of section 422(b) of the Internal Revenue Code of 1986 (as added by subsection (a)), shall not apply, and

''(B) paragraph (1) of section 425(h) of such Code (as added by subsection (a)), shall not apply to any change in the terms of such option made before January 1, 1965, to permit such option to qualify under paragraphs (3), (4), and (5) of such section 422(b).''

EFFECTIVE DATE OF 1958 AMENDMENTS

Amendment by section 25 of Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

Section 26(b) of Pub. L. 85–866 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years ending after September 30, 1958.''

Section 3 of Pub. L. 85–320 provided that: ''The amendments made by this Act [amending this section and section 1014 of this title] shall apply with respect to taxable years ending after December 31, 1956, but only in the case of employees dying after such date.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§422. Incentive stock options

(a) In general

Section 421(a) shall apply with respect to the transfer of a share of stock to an individual pur-

suant to his exercise of an incentive stock option if—

(1) no disposition of such share is made by him within 2 years from the date of the granting of the option nor within 1 year after the transfer of such share to him, and

(2) at all times during the period beginning on the date of the granting of the option and ending on the day 3 months before the date of such exercise, such individual was an employee of either the corporation granting such option, a parent or subsidiary corporation of such corporation, or a corporation or a parent or subsidiary corporation of such corporation issuing or assuming a stock option in a transaction to which section 424(a) applies.

(b) Incentive stock option

For purposes of this part, the term ''incentive stock option'' means an option granted to an individual for any reason connected with his employment by a corporation, if granted by the employer corporation or its parent or subsidiary corporation, to purchase stock of any of such corporations, but only if—

(1) the option is granted pursuant to a plan which includes the aggregate number of shares which may be issued under options and the employees (or class of employees) eligible to receive options, and which is approved by the stockholders of the granting corporation within 12 months before or after the date such plan is adopted;

(2) such option is granted within 10 years from the date such plan is adopted, or the date such plan is approved by the stockholders, whichever is earlier;

(3) such option by its terms is not exercisable after the expiration of 10 years from the date such option is granted;

(4) the option price is not less than the fair market value of the stock at the time such option is granted;

(5) such option by its terms is not transferable by such individual otherwise than by will or the laws of descent and distribution, and is exercisable, during his lifetime, only by him; and

(6) such individual, at the time the option is granted, does not own stock possessing more than 10 percent of the total combined voting power of all classes of stock of the employer corporation or of its parent or subsidiary corporation.

Such term shall not include any option if (as of the time the option is granted) the terms of such option provide that it will not be treated as an incentive stock option.

(c) Special rules

(1) Good faith efforts to value of stock

If a share of stock is transferred pursuant to the exercise by an individual of an option which would fail to qualify as an incentive stock option under subsection (b) because there was a failure in an attempt, made in good faith, to meet the requirement of subsection (b)(4), the requirement of subsection (b)(4) shall be considered to have been met. To the extent provided in regulations by the Secretary, a similar rule shall apply for purposes of subsection (d).

(2) Certain disqualifying dispositions where amount realized is less than value at exercise

If—

(A) an individual who has acquired a share of stock by the exercise of an incentive stock option makes a disposition of such share within either of the periods described in subsection (a)(1), and

(B) such disposition is a sale or exchange with respect to which a loss (if sustained) would be recognized to such individual,

then the amount which is includible in the gross income of such individual, and the amount which is deductible from the income of his employer corporation, as compensation attributable to the exercise of such option shall not exceed the excess (if any) of the amount realized on such sale or exchange over the adjusted basis of such share.

(3) Certain transfers by insolvent individuals

If an insolvent individual holds a share of stock acquired pursuant to his exercise of an incentive stock option, and if such share is transferred to a trustee, receiver, or other similar fiduciary in any proceeding under title 11 or any other similar insolvency proceeding, neither such transfer, nor any other transfer of such share for the benefit of his creditors in such proceeding, shall constitute a disposition of such share for purposes of subsection (a)(1).

(4) Permissible provisions

An option which meets the requirements of subsection (b) shall be treated as an incentive stock option even if—

(A) the employee may pay for the stock with stock of the corporation granting the option,

(B) the employee has a right to receive property at the time of exercise of the option, or

(C) the option is subject to any condition not inconsistent with the provisions of subsection (b).

Subparagraph (B) shall apply to a transfer of property (other than cash) only if section 83 applies to the property so transferred.

(5) 10-percent shareholder rule

Subsection (b)(6) shall not apply if at the time such option is granted the option price is at least 110 percent of the fair market value of the stock subject to the option and such option by its terms is not exercisable after the expiration of 5 years from the date such option is granted.

(6) Special rule when disabled

For purposes of subsection (a)(2), in the case of an employee who is disabled (within the meaning of section 22(e)(3)), the 3-month period of subsection (a)(2) shall be 1 year.

(7) Fair market value

For purposes of this section, the fair market value of stock shall be determined without regard to any restriction other than a restriction which, by its terms, will never lapse.

(d) $100,000 per year limitation

(1) In general

To the extent that the aggregate fair market value of stock with respect to which incentive stock options (determined without regard to this subsection) are exercisable for the 1st time by any individual during any calendar year (under all plans of the individual's employer corporation and its parent and subsidiary corporations) exceeds $100,000, such options shall be treated as options which are not incentive stock options.

(2) Ordering rule

Paragraph (1) shall be applied by taking options into account in the order in which they were granted.

(3) Determination of fair market value

For purposes of paragraph (1), the fair market value of any stock shall be determined as of the time the option with respect to such stock is granted.

(Added Pub. L. 97–34, title II, §251(a), Aug. 13, 1981, 95 Stat. 256, §422A; amended Pub. L. 97–448, title I, §102(j)(1)–(4), Jan. 12, 1983, 96 Stat. 2373; Pub. L. 98–369, div. A, title V, §555(a)(1), div. B, title VI, §2662(f)(1), July 18, 1984, 98 Stat. 897, 1159; Pub. L. 99–514, title III, §321(a), (b), title XVIII, §1847(b)(5), Oct. 22, 1986, 100 Stat. 2220, 2856; Pub. L. 100–647, title I, §1003(d)(1)(A), (2), Nov. 10, 1988, 102 Stat. 3384; renumbered §422 and amended Pub. L. 101–508, title XI, §11801(c)(9)(A)(i), (C), Nov. 5, 1990, 104 Stat. 1388–524, 1388–525.)

PRIOR PROVISIONS

A prior section 422, added Pub. L. 88–272, title II, §221(a), Feb. 26, 1964, 78 Stat. 64; amended Pub. L. 94–455, title VI, §603(a), (b), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1574, 1834; Pub. L. 96–589, §6(i)(3), Dec. 24, 1980, 94 Stat. 3410, related to qualified stock options, prior to repeal by Pub. L. 101–508, title XI, §11801(a)(20), Nov. 5, 1990, 104 Stat. 1388–521. For savings provision, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

AMENDMENTS

1990—Pub. L. 101–508, §11801(c)(9)(A)(i), renumbered section 422A of this title as this section.

Subsec. (a)(2). Pub. L. 101–508, §11801(c)(9)(C)(i), substituted ''424(a)'' for ''425(a)''.

Subsec. (c)(5) to (8). Pub. L. 101–508, §11801(c)(9)(C)(ii), redesignated pars. (6) to (8) as (5) to (7), respectively, and struck out former par. (5) ''Coordination with sections 422 and 424'' which read as follows: ''Sections 422 and 424 shall not apply to an incentive stock option.''

1988—Subsec. (b). Pub. L. 100–647, §1003(d)(1)(A), inserted at end ''Such term shall not include any option if (as of the time the option is granted) the terms of such option provide that it will not be treated as an incentive stock option.''

Subsec. (b)(7). Pub. L. 100–647, §1003(d)(2)(B), struck out par. (7) which read as follows: ''under the terms of the plan, the aggregate fair market value (determined at the time the option is granted) of the stock with respect to which incentive stock options are exercisable for the 1st time by such individual during any calendar year (under all such plans of the individual's employer corporation and its parent and subsidiary corporations) shall not exceed $100,000.''

Subsec. (c)(1). Pub. L. 100–647, §1003(d)(2)(C), substituted ''subsection (d)'' for ''paragraph (7) of subsection (b)''.

Subsec. (d). Pub. L. 100–647, §1003(d)(2)(A), added subsec. (d).

1986—Subsec. (b)(7). Pub. L. 99–514, §321(a), added par. (7) and struck out former par. (7) which read as follows: ''such option by its terms is not exercisable while there is outstanding (within the meaning of subsection (c)(7)) any incentive stock option which was granted, before the granting of such option, to such individual to purchase stock in his employer corporation or in a corporation which (at the time of the granting of such option) is a parent or subsidiary corporation of the employer corporation, or in a predecessor corporation of any of such corporations; and''.

Subsec. (b)(8). Pub. L. 99–514, §321(a), struck out par. (8) which read as follows: ''in the case of an option granted after December 31, 1980, under the terms of the plan the aggregate fair market value (determined as of the time the option is granted) of the stock for which any employee may be granted incentive stock options in any calendar year (under all such plans of his employer corporation and its parent and subsidiary corporation) shall not exceed $100,000 plus any unused limit carryover to such year.''

Subsec. (c)(1). Pub. L. 99–514, §321(b)(2), substituted ''paragraph (7) of subsection (b)'' for ''paragraph (8) of subsection (b) and paragraph (4) of this subsection''.

Subsec. (c)(4). Pub. L. 99–514, §321(b)(1), redesignated par. (5) as (4) and struck out former par. (4) relating to carryover of unused limit.

Subsec. (c)(5), (6). Pub. L. 99–514, §321(b)(1)(B), redesignated pars. (6) and (8) as (5) and (6), respectively. Former par. (5) redesignated (4).

Subsec. (c)(7). Pub. L. 99–514, §321(b)(1), redesignated par. (9) as (7) and struck out former par. (7) which provided that for purposes of subsec. (b)(7) any incentive stock option be treated as outstanding until such option was exercised in full or expired by reason of lapse of time.

Subsec. (c)(8). Pub. L. 99–514, §321(b)(1)(B), redesignated par. (10) as (8). Former par. (8) redesignated (6).

Subsec. (c)(9). Pub. L. 99–514, §321(b)(1)(B), redesignated par. (9) as (7).

Pub. L. 99–514, §1847(b)(5), substituted ''section 22(e)(3)'' for ''section 37(e)(3)''.

Subsec. (c)(10). Pub. L. 99–514, §321(b)(1)(B), redesignated par. (10) as (8).

1984—Subsec. (c)(9). Pub. L. 98–369, §2662(f)(1), substituted ''section 37(e)(3)'' for ''section 105(d)(4)''.

Subsec. (c)(10). Pub. L. 98–369, §555(a)(1), added par. (10).

1983—Subsec. (b)(8). Pub. L. 97–448, §102(j)(1), substituted ''granted incentive stock options'' for ''granted options''.

Subsec. (c)(1). Pub. L. 97–448, §102(j)(2), substituted ''Good faith efforts to value stock'' for ''Exercise of option when price is less than value of stock'' as par. (1) heading and inserted sentence providing that, to the extent provided in regulations by the Secretary, a rule similar to that already enunciated in the paragraph applies for purposes of par. (8) of subsec. (b) and par. (4) of subsec. (c).

Subsec. (c)(2)(A). Pub. L. 97–448, §102(j)(3), substituted ''either of the periods'' for ''the 2-year period''.

Subsec. (c)(4)(A)(ii). Pub. L. 97–448, §102(j)(4), substituted ''granted incentive stock options'' for ''granted options''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 321(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section] shall apply to options granted after December 31, 1986.''

Amendment by section 1847(b)(5) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 555(c)(1) of Pub. L. 98–369, as amended by Pub. L. 99–514, title XVIII, § 1855(a)(1), Oct. 22, 1986, 100 Stat. 2882, provided that: ''The amendment made by subsection (a)(1) [amending this section] shall apply to options granted after March 20, 1984, except that such subsection shall not apply to any incentive stock option granted before September 20, 1984, pursuant to a plan adopted or corporate action taken by the board of directors of the grantor corporation before May 15, 1984.''

Amendment by section 2662 of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section 251(c) of Pub. L. 97–34, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) OPTIONS TO WHICH SECTION APPLIES.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this section [enacting this section and amending sections 421, 425 [now 424], and 6039 of this title] shall apply with respect to options granted on or after January 1, 1976, and exercised on or after January 1, 1981, or outstanding on such date.

''(B) ELECTION AND DESIGNATION OF OPTIONS.—In the case of an option granted before January 1, 1981, the amendments made by this section shall apply only if the corporation granting such option elects (in the manner and at the time prescribed by the Secretary of the Treasury or his delegate) to have the amendments made by this section apply to such option. The aggregate fair market value (determined at the time the option is granted) of the stock for which any employee was granted options (under all plans of his employer corporation and its parent and subsidiary corporations) to which the amendments made by this section apply by reason of this subparagraph shall not exceed $50,000 per calendar year ans shall not exceed $200,000 in the aggregate.

''(2) CHANGES IN TERMS OF OPTIONS.—In the case of an option granted on or after January 1, 1976, and outstanding on the date of the enactment of this Act [Aug. 13, 1981], paragraph (1) of section 425(h) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall not apply to any change in the terms of such option (or the terms of the plan under which granted, including shareholder approval) made within 1 year after such date of enactment to permit such option to qualify as a incentive stock option.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

TREATMENT OF OPTIONS AS INCENTIVE STOCK OPTIONS

Section 1003(d)(1)(B) of Pub. L. 100–647 provided that: ''In the case of an option granted after December 31, 1986, and on or before the date of the enactment of this Act [Nov. 10, 1988], such option shall not be treated as an incentive stock option if the terms of such option are amended before the date 90 days after such date of enactment to provide that such option will not be treated as an incentive stock option.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[§ 422A. Renumbered § 422]

§ 423. Employee stock purchase plans

(a) General rule

Section 421(a) shall apply with respect to the transfer of a share of stock to an individual pursuant to his exercise of an option granted after December 31, 1963, under an employee stock purchase plan (as defined in subsection (b)) if—

(1) no disposition of such share is made by him within 2 years after the date of the granting of the option nor within 1 year after the transfer of such share to him; and

(2) at all times during the period beginning with the date of the granting of the option and ending on the day 3 months before the date of such exercise, he is an employee of the corporation granting such option, a parent or subsidiary corporation of such corporation, or a corporation or a parent or subsidiary corporation of such corporation issuing or assuming a stock option in a transaction to which section 424(a) applies.

(b) Employee stock purchase plan

For purposes of this part, the term ''employee stock purchase plan'' means a plan which meets the following requirements:

(1) the plan provides that options are to be granted only to employees of the employer corporation or of its parent or subsidiary corporation to purchase stock in any such corporation;

(2) such plan is approved by the stockholders of the granting corporation within 12 months before or after the date such plan is adopted;

(3) under the terms of the plan, no employee can be granted an option if such employee, immediately after the option is granted, owns stock possessing 5 percent or more of the total combined voting power or value of all classes of stock of the employer corporation or of its parent or subsidiary corporation. For purposes of this paragraph, the rules of section 424(d) shall apply in determining the stock ownership of an individual, and stock which the employee may purchase under outstanding options shall be treated as stock owned by the employee;

(4) under the terms of the plan, options are to be granted to all employees of any corporation whose employees are granted any of such options by reason of their employment by such corporation, except that there may be excluded—

(A) employees who have been employed less than 2 years,

(B) employees whose customary employment is 20 hours or less per week,

(C) employees whose customary employment is for not more than 5 months in any calendar year, and

(D) highly compensated employees (within the meaning of section 414(q));

(5) under the terms of the plan, all employees granted such options shall have the same rights and privileges, except that the amount of stock which may be purchased by any employee under such option may bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of employees, and the plan may provide that no employee may purchase more than a maximum amount of stock fixed under the plan;

(6) under the terms of the plan, the option price is not less than the lesser of—

(A) an amount equal to 85 percent of the fair market value of the stock at the time such option is granted, or

(B) an amount which under the terms of the option may not be less than 85 percent of the fair market value of the stock at the time such option is exercised;

(7) under the terms of the plan, such option cannot be exercised after the expiration of—

(A) 5 years from the date such option is granted if, under the terms of such plan, the option price is to be not less than 85 percent of the fair market value of such stock at the time of the exercise of the option, or

(B) 27 months from the date such option is granted, if the option price is not determinable in the manner described in subparagraph (A)

(8) under the terms of the plan, no employee may be granted an option which permits his rights to purchase stock under all such plans of his employer corporation and its parent and subsidiary corporations to accrue at a rate which exceeds $25,000 of fair market value of such stock (determined at the time such option is granted) for each calendar year in which such option is outstanding at any time. For purposes of this paragraph—

(A) the right to purchase stock under an option accrues when the option (or any portion thereof) first becomes exercisable during the calendar year;

(B) the right to purchase stock under an option accrues at the rate provided in the option, but in no case may such rate exceed $25,000 of fair market value of such stock (determined at the time such option is granted) for any one calendar year; and

(C) a right to purchase stock which has accrued under one option granted pursuant to the plan may not be carried over to any other option; and

(9) under the terms of the plan, such option is not transferable by such individual otherwise than by will or the laws of descent and distribution, and is exercisable, during his lifetime, only by him.

For purposes of paragraphs (3) to (9), inclusive, where additional terms are contained in an offering made under a plan, such additional terms shall, with respect to options exercised under such offering, be treated as a part of the terms of such plan.

(c) Special rule where option price is between 85 percent and 100 percent of value of stock

If the option price of a share of stock acquired by an individual pursuant to a transfer to which subsection (a) applies was less than 100 percent of the fair market value of such share at the time such option was granted, then, in the event of any disposition of such share by him which meets the holding period requirements of subsection (a), or in the event of his death (whenever occurring) while owning such share, there shall be included as compensation (and not as gain upon the sale or exchange of a capital asset) in his gross income, for the taxable year in which falls the date of such disposition or for the taxable year closing with his death, whichever applies, an amount equal to the lesser of—

(1) the excess of the fair market value of the share at the time of such disposition or death over the amount paid for the share under the option, or

(2) the excess of the fair market value of the share at the time the option was granted over the option price.

If the option price is not fixed or determinable at the time the option is granted, then for purposes of this subsection, the option price shall be determined as if the option were exercised at such time. In the case of the disposition of such share by the individual, the basis of the share in his hands at the time of such disposition shall be increased by an amount equal to the amount so includible in his gross income. No amount shall be required to be deducted and withheld under chapter 24 with respect to any amount treated as compensation under this subsection.

(Added Pub. L. 88–272, title II, §221(a), Feb. 26, 1964, 78 Stat. 67; amended Pub. L. 94–455, title XIV, §1402(b)(1)(E), (2), Oct. 4, 1976, 90 Stat. 1732; Pub. L. 98–369, div. A, title X, §1001(b)(5), (e), July 18, 1984, 98 Stat. 1011, 1012; Pub. L. 99–514, title XI, §1114(b)(13), Oct. 22, 1986, 100 Stat. 2451; Pub. L. 101–508, title XI, §11801(c)(9)(D), (E), Nov. 5, 1990, 104 Stat. 1388–525; Pub. L. 108–357, title II, §251(c), Oct. 22, 2004, 118 Stat. 1459.)

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–357 inserted at end of concluding provisions ''No amount shall be required to be deducted and withheld under chapter 24 with respect to any amount treated as compensation under this subsection.''

1990—Subsec. (a). Pub. L. 101–508, §11801(c)(9)(D)(i), struck out ''(other than a restricted stock option granted pursuant to a plan described in section 424(c)(3)(B))'' after ''December 31, 1963''.

Subsec. (a)(2). Pub. L. 101–508, §11801(c)(9)(D)(ii), substituted ''424(a)'' for ''425(a)''.

Subsec. (b)(3). Pub. L. 101–508, §11801(c)(9)(E), substituted ''424(d)'' for ''425(d)''.

1986—Subsec. (b)(4)(D). Pub. L. 99–514 substituted ''highly compensated employees (within the meaning of section 414(q))'' for ''officers, persons whose principal duties consist of supervising the work of other employees, or highly compensated employees''.

1984—Subsec. (a)(1). Pub. L. 98–369 substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

1976—Subsec. (a)(1). Pub. L. 94–455, § 1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, § 1402(b)(1)(E), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to stock acquired pursuant to options exercised after Oct. 22, 2004, see section 251(d) of Pub. L. 108–357, set out as a note under section 421 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1114(c)(1) of Pub. L. 99–514, set out as a note under section 414 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(b)(1) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Section 1402(b)(2) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

EFFECTIVE DATE

Section applicable to taxable years ending after Dec. 31, 1963, see section 221(e) of Pub. L. 88–272, set out as an Effective Date of 1964 Amendment note under section 421 of this title.

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 424. Definitions and special rules

(a) Corporate reorganizations, liquidations, etc.

For purposes of this part, the term ''issuing or assuming a stock option in a transaction to which section 424(a) applies'' means a substitution of a new option for the old option, or an assumption of the old option, by an employer corporation, or a parent or subsidiary of such corporation, by reason of a corporate merger, consolidation, acquisition of property or stock, separation, reorganization, or liquidation, if—

(1) the excess of the aggregate fair market value of the shares subject to the option immediately after the substitution or assumption over the aggregate option price of such shares is not more than the excess of the aggregate fair market value of all shares subject to the option immediately before such substitution or assumption over the aggregate option price of such shares, and

(2) the new option or the assumption of the old option does not give the employee additional benefits which he did not have under the old option.

For purposes of this subsection, the parent-subsidiary relationship shall be determined at the time of any such transaction under this subsection.

(b) Acquisition of new stock

For purposes of this part, if stock is received by an individual in a distribution to which section 305, 354, 355, 356, or 1036 (or so much of section 1031 as relates to section 1036) applies, and such distribution was made with respect to stock transferred to him upon his exercise of the option, such stock shall be considered as having been transferred to him on his exercise of such option. A similar rule shall be applied in the case of a series of such distributions.

(c) Disposition

(1) In general

Except as provided in paragraphs (2), (3), and (4), for purposes of this part, the term ''disposition'' includes a sale, exchange, gift, or a transfer of legal title, but does not include—

(A) a transfer from a decedent to an estate or a transfer by request or inheritance;

(B) an exchange to which section 354, 355, 356, or 1036 (or so much of section 1031 as relates to section 1036) applies; or

(C) a mere pledge or hypothecation.

(2) Joint tenancy

The acquisition of a share of stock in the name of the employee and another jointly with the right of survivorship or a subsequent transfer of a share of stock into such joint ownership shall not be deemed a disposition, but a termination of such joint tenancy (except to the extent such employee acquires ownership of such stock) shall be treated as a disposition by him occurring at the time such joint tenancy is terminated.

(3) Special rule where incentive stock is acquired through use of other statutory option stock

(A) Nonrecognition sections not to apply

If—

(i) there is a transfer of statutory option stock in connection with the exercise of any incentive stock option, and

(ii) the applicable holding period requirements (under section 422(a)(1) or 423(a)(1)) are not met before such transfer,

then no section referred to in subparagraph (B) of paragraph (1) shall apply to such transfer.

(B) Statutory option stock

For purpose of subparagraph (A), the term ''statutory option stock'' means any stock

acquired through the exercise of an incentive stock option or an option granted under an employee stock purchase plan.

(4) Transfers between spouses or incident to divorce

In the case of any transfer described in subsection (a) of section 1041—

(A) such transfer shall not be treated as a disposition for purposes of this part, and

(B) the same tax treatment under this part with respect to the transferred property shall apply to the transferee as would have applied to the transferor.

(d) Attribution of stock ownership

For purposes of this part, in applying the percentage limitations of sections 422(b)(6) and 423(b)(3)—

(1) the individual with respect to whom such limitation is being determined shall be considered as owning the stock owned, directly or indirectly, by or for his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants; and

(2) stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust, shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries.

(e) Parent corporation

For purposes of this part, the term ''parent corporation'' means any corporation (other than the employer corporation) in an unbroken chain of corporations ending with the employer corporation if, at the time of the granting of the option, each of the corporations other than the employer corporation owns stock possessing 50 percent or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

(f) Subsidiary corporation

For purposes of this part, the term ''subsidiary corporation'' means any corporation (other than the employer corporation) in an unbroken chain of corporations beginning with the employer corporation if, at the time of the granting of the option, each of the corporations other than the last corporation in the unbroken chain owns stock possessing 50 percent or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

(g) Special rule for applying subsections (e) and (f)

In applying subsections (e) and (f) for purposes of section[1] 422(a)(2) and 423(a)(2), there shall be substituted for the term ''employer corporation'' wherever it appears in subsection (e) and (f) the term ''grantor corporation'' or the term ''corporation issuing or assuming a stock option in a transaction to which section 424(a) applies'' as the case may be.

(h) Modification, extension, or renewal of option

(1) In general

For purposes of this part, if the terms of any option to purchase stock are modified, extended, or renewed, such modification, extension, or renewal shall be considered as the granting of a new option.

(2) Special rule for section 423 options

In the case of the transfer of stock pursuant to the exercise of an option to which section 423 applies and which has been so modified, extended, or renewed, the fair market value of such stock at the time of the granting of the option shall be considered as whichever of the following is the highest—

(A) the fair market value of such stock on the date of the original granting of the option,

(B) the fair market value of such stock on the date of the making of such modification, extension, or renewal, or

(C) the fair market value of such stock at the time of the making of any intervening modification, extension, or renewal.

(3) Definition of modification

The term ''modification'' means any change in the terms of the option which gives the employee additional benefits under the option, but such term shall not include a change in the terms of the option—

(A) attributable to the issuance or assumption of an option under subsection (a);

(B) to permit the option to qualify under section 423(b)(9); or

(C) in the case of an option not immediately exercisable in full, to accelerate the time at which the option may be exercised.

(i) Stockholder approval

For purposes of this part, if the grant of an option is subject to approval by stockholders, the date of grant of the option shall be determined as if the option had not been subject to such approval.

(j) Cross references

For provisions requiring the reporting of certain acts with respect to a qualified stock option, an incentive stock option, options granted under employer stock purchase plans, or a restricted stock option, see section 6039.

(Added Pub. L. 88–272, title II, §221(a), Feb. 26, 1964, 78 Stat. 71, §425; amended Pub. L. 97–34, title II, §251(b)(2)–(4), Aug. 13, 1981, 95 Stat. 259; Pub. L. 97–448, title I, §102(j)(5), (6), Jan. 12, 1983, 96 Stat. 2373; Pub. L. 98–369, div. A, title V, §555(b), July 18, 1984, 98 Stat. 898; Pub. L. 100–647, title I, §1018(*l*)(1), (2), Nov. 10, 1988, 102 Stat. 3584; Pub. L. 101–239, title VII, §7811(m)(6), Dec. 19, 1989, 103 Stat. 2412; renumbered §424 and amended Pub. L. 101–508, title XI, §11801(c)(9)(A)(i), (F), Nov. 5, 1990, 104 Stat. 1388–524, 1388–525; Pub. L. 104–188, title I, §1702(h)(13), Aug. 20, 1996, 110 Stat. 1874.)

PRIOR PROVISIONS

A prior section 424, added Pub. L. 88–272, title II, §221(a), Feb. 26, 1964, 78 Stat. 69; amended Pub. L. 94–455, title VI, §603(c), title XIV, §1402(b)(1)(F), (2), Oct. 4, 1976, 90 Stat. 1574, 1732, related to restricted stock options, prior to repeal by Pub. L. 101–508, title XI, §11801(a)(21), Nov. 5, 1990, 104 Stat. 1388–521. For savings provisions, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

AMENDMENTS

1996—Subsec. (c)(3)(B). Pub. L. 104–188 substituted ''an incentive stock option or an option granted under an

[1] So in original. Probably should be ''sections''.

employee stock purchase plan'' for ''a qualified stock option, an incentive stock option, an option granted under an employee stock purchase plan, or a restricted stock option''.

1990—Pub. L. 101–508, §11801(c)(9)(A)(i), renumbered section 425 of this title as this section.

Subsec. (a). Pub. L. 101–508, §11801(c)(9)(F)(i), substituted ''424(a)'' for ''425(a)''.

Subsec. (c)(3)(A)(ii). Pub. L. 101–508, §11801(c)(9)(F)(ii), substituted ''422(a)(1) or 423(a)(1)'' for ''422(a)(1), 422A(a)(1), 423(a)(1), or 424(a)(1)''.

Subsec. (d). Pub. L. 101–508, §11801(c)(9)(F)(iii), substituted ''422(b)(6) and 423(b)(3)'' for ''422(b)(7), 422A(b)(6), 423(b)(3), and 424(b)(3)''.

Subsec. (g). Pub. L. 101–508, §11801(c)(9)(F)(iv), substituted ''422(a)(2) and 423(a)(2)'' for ''422(a)(2), 422A(a)(2), 423(a)(2), and 424(a)(2)'' and ''424(a)'' for ''425(a)''.

Subsec. (h)(2). Pub. L. 101–508, §11801(c)(9)(F)(v)(I), added par. (2) and struck out former par. (2) which related to special rules for sections 423 and 424 options and to an exception that such rules would not apply with respect to a modification, extension or renewal of a restricted stock option before Jan. 1, 1964, if the aggregate of the monthly fair market value for 12 consecutive months before date of modification, etc., divided by 12 is an amount less than 80% of the fair market value of such stock on the date of original granting or the date of modification, etc., whichever is higher.

Subsec. (h)(3). Pub. L. 101–508, §11801(c)(9)(F)(v)(III), struck out at end ''If a restricted stock option is exercisable after the expiration of 10 years from the date such option is granted, subparagraph (B) shall not apply unless the terms of the option are also changed to make it not exercisable after the expiration of such period.''

Subsec. (h)(3)(B). Pub. L. 101–508, §11801(c)(9)(F)(v)(II), substituted ''section 423(b)(9)'' for ''sections 422(b)(6), 423(b)(9), and 424(b)(2)''.

1989—Subsec. (c)(1). Pub. L. 101–239 made technical correction to Pub. L. 100–647, §1018(*l*)(2), see 1988 Amendment note below.

1988—Subsec. (c)(1). Pub. L. 100–647, §1018(*l*)(2), as amended by Pub. L. 101–239, substituted ''paragraphs (2), (3), and (4)'' for ''paragraphs (2) and (3)''.

Subsec. (c)(4). Pub. L. 100–647, §1018(*l*)(1), added par. (4).

1984—Subsec. (h)(3)(B). Pub. L. 98–369 struck out reference to section 422A(b)(5).

1983—Subsec. (c)(1). Pub. L. 97–448, §102(j)(6)(B), substituted ''paragraphs (2) and (3)'' for ''paragraph (2)''.

Subsec. (c)(3). Pub. L. 97–448, §102(j)(6)(A), added par. (3).

Subsec. (j). Pub. L. 97–448, §102(j)(5), inserted reference to an incentive stock option.

1981—Subsec. (d). Pub. L. 97–34, §251(b)(2), inserted reference to section 422A(b)(6).

Subsec. (g). Pub. L. 97–34, §251(b)(3), inserted reference to section 422A(a)(2).

Subsec. (h)(3)(B). Pub. L. 97–34, §251(b)(4), inserted reference to section 422A(b)(5).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 555(c)(3) of Pub. L. 98–369, as amended by Pub. L. 99–514, title XVIII, §1855(a)(4), Oct. 22, 1986, 100 Stat. 2882, provided that: ''The amendment made by subsection (b) [amending this section] shall apply with respect to modifications of options after March 20, 1984.''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 102(j)(6) of Pub. L. 97–448 provided that the amendment made by that section is effective only with respect to transfers after March 15, 1982.

Amendment by section 102(j)(5) of title I of Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to options granted on or after Jan. 1, 1976, and exercised on or after Jan. 1, 1981, or outstanding on Jan. 1, 1981, or granted on or after Jan. 1, 1976, and outstanding Aug. 13, 1981, see section 251(c) of Pub. L. 97–34, set out as an Effective Date note under section 422 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after Dec. 31, 1963, except in cases of options granted after Dec. 31, 1963, and before Jan. 1, 1965, in which case par. (1) of subsec. (h) shall not apply to any change in the terms of such option made before Jan. 1, 1965, to permit such option to qualify under pars. (3), (4), and (5) of section 422(b), see section 221(e) of Pub. L. 88–272, set out as an Effective Date of 1964 Amendment note under section 421 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[§ 425. Renumbered § 424]

PART III—RULES RELATING TO MINIMUM FUNDING STANDARDS AND BENEFIT LIMITATIONS

Subpart

A. Minimum funding standards for pension plans.

B. Benefit limitations under single-employer plans.

AMENDMENTS

2006—Pub. L. 109–280, title I, §113(a)(1)(A), Aug. 17, 2006, 120 Stat. 846, substituted ''RULES RELATING TO MINIMUM FUNDING STANDARDS AND BENEFIT LIMITATIONS'' for ''MINIMUM FUNDING STANDARDS FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS'' in part heading and added subpart analysis.

SUBPART A—MINIMUM FUNDING STANDARDS FOR PENSION PLANS

Sec.

430. Minimum funding standards for single-employer defined benefit pension plans.

Sec.
431. Minimum funding standards for multiemployer plans.[1]
432. Additional funding rules for multiemployer plans in endangered status or critical status.

AMENDMENT OF ANALYSIS

For termination of amendment by section 221(c) of Pub. L. 109–280, see Effective and Termination Dates of 2006 Amendment note set out under section 412 of this title.

AMENDMENTS

2006—Pub. L. 109–280, title II, §§212(d), 221(c), Aug. 17, 2006, 120 Stat. 917, 919, temporarily added item 432. See Effective and Termination Dates of 2006 Amendment note set out under section 412 of this title.

§ 430. Minimum funding standards for single-employer defined benefit pension plans

(a) Minimum required contribution

For purposes of this section and section 412(a)(2)(A), except as provided in subsection (f), the term ''minimum required contribution'' means, with respect to any plan year of a defined benefit plan which is not a multiemployer plan—

(1) in any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)(B)) is less than the funding target of the plan for the plan year, the sum of—

(A) the target normal cost of the plan for the plan year,

(B) the shortfall amortization charge (if any) for the plan for the plan year determined under subsection (c), and

(C) the waiver amortization charge (if any) for the plan for the plan year as determined under subsection (e);

(2) in any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)(B)) equals or exceeds the funding target of the plan for the plan year, the target normal cost of the plan for the plan year reduced (but not below zero) by such excess.

(b) Target normal cost

For purposes of this section:

(1) In general

Except as provided in subsection (i)(2) with respect to plans in at-risk status, the term ''target normal cost'' means, for any plan year, the excess of—

(A) the sum of—

(i) the present value of all benefits which are expected to accrue or to be earned under the plan during the plan year, plus

(ii) the amount of plan-related expenses expected to be paid from plan assets during the plan year, over

(B) the amount of mandatory employee contributions expected to be made during the plan year.

(2) Special rule for increase in compensation

For purposes of this subsection, if any benefit attributable to services performed in a preceding plan year is increased by reason of any increase in compensation during the current plan year, the increase in such benefit shall be treated as having accrued during the current plan year.

(c) Shortfall amortization charge

(1) In general

For purposes of this section, the shortfall amortization charge for a plan for any plan year is the aggregate total (not less than zero) of the shortfall amortization installments for such plan year with respect to any shortfall amortization base which has not been fully amortized under this subsection.

(2) Shortfall amortization installment

For purposes of paragraph (1)—

(A) Determination

The shortfall amortization installments are the amounts necessary to amortize the shortfall amortization base of the plan for any plan year in level annual installments over the 7-plan-year period beginning with such plan year.

(B) Shortfall installment

The shortfall amortization installment for any plan year in the 7-plan-year period under subparagraph (A) with respect to any shortfall amortization base is the annual installment determined under subparagraph (A) for that year for that base.

(C) Segment rates

In determining any shortfall amortization installment under this paragraph, the plan sponsor shall use the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2).

(D) Special election for eligible plan years

(i) In general

If a plan sponsor elects to apply this subparagraph with respect to the shortfall amortization base of a plan for any eligible plan year (in this subparagraph and paragraph (7) referred to as an ''election year''), then, notwithstanding subparagraphs (A) and (B)—

(I) the shortfall amortization installments with respect to such base shall be determined under clause (ii) or (iii), whichever is specified in the election, and

(II) the shortfall amortization installment for any plan year in the 9-plan-year period described in clause (ii) or the 15-plan-year period described in clause (iii), respectively, with respect to such shortfall amortization base is the annual installment determined under the applicable clause for that year for that base.

(ii) 2 plus 7 amortization schedule

The shortfall amortization installments determined under this clause are—

(I) in the case of the first 2 plan years in the 9-plan-year period beginning with the election year, interest on the short-

[1] Editorially supplied. Section 431 added by Pub. L. 109–280 without corresponding amendment of subpart analysis.

fall amortization base of the plan for the election year (determined using the effective interest rate for the plan for the election year), and

(II) in the case of the last 7 plan years in such 9-plan-year period, the amounts necessary to amortize the remaining balance of the shortfall amortization base of the plan for the election year in level annual installments over such last 7 plan years (using the segment rates under subparagraph (C) for the election year).

(iii) 15-year amortization

The shortfall amortization installments determined under this subparagraph are the amounts necessary to amortize the shortfall amortization base of the plan for the election year in level annual installments over the 15-plan-year period beginning with the election year (using the segment rates under subparagraph (C) for the election year).

(iv) Election

(I) In general

The plan sponsor of a plan may elect to have this subparagraph apply to not more than 2 eligible plan years with respect to the plan, except that in the case of a plan described in section 106 of the Pension Protection Act of 2006, the plan sponsor may only elect to have this subparagraph apply to a plan year beginning in 2011.

(II) Amortization schedule

Such election shall specify whether the amortization schedule under clause (ii) or (iii) shall apply to an election year, except that if a plan sponsor elects to have this subparagraph apply to 2 eligible plan years, the plan sponsor must elect the same schedule for both years.

(III) Other rules

Such election shall be made at such time, and in such form and manner, as shall be prescribed by the Secretary, and may be revoked only with the consent of the Secretary. The Secretary shall, before granting a revocation request, provide the Pension Benefit Guaranty Corporation an opportunity to comment on the conditions applicable to the treatment of any portion of the election year shortfall amortization base that remains unamortized as of the revocation date.

(v) Eligible plan year

For purposes of this subparagraph, the term ''eligible plan year'' means any plan year beginning in 2008, 2009, 2010, or 2011, except that a plan year shall only be treated as an eligible plan year if the due date under subsection (j)(1) for the payment of the minimum required contribution for such plan year occurs on or after the date of the enactment of this subparagraph.

(vi) Reporting

A plan sponsor of a plan who makes an election under clause (i) shall—

(I) give notice of the election to participants and beneficiaries of the plan, and

(II) inform the Pension Benefit Guaranty Corporation of such election in such form and manner as the Director of the Pension Benefit Guaranty Corporation may prescribe.

(vii) Increases in required installments in certain cases

For increases in required contributions in cases of excess compensation or extraordinary dividends or stock redemptions, see paragraph (7).

(3) Shortfall amortization base

For purposes of this section, the shortfall amortization base of a plan for a plan year is—

(A) the funding shortfall of such plan for such plan year, minus

(B) the present value (determined using the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2)) of the aggregate total of the shortfall amortization installments and waiver amortization installments which have been determined for such plan year and any succeeding plan year with respect to the shortfall amortization bases and waiver amortization bases of the plan for any plan year preceding such plan year.

(4) Funding shortfall

For purposes of this section, the funding shortfall of a plan for any plan year is the excess (if any) of—

(A) the funding target of the plan for the plan year, over

(B) the value of plan assets of the plan (as reduced under subsection (f)(4)(B)) for the plan year which are held by the plan on the valuation date.

(5) Exemption from new shortfall amortization base

(A) In general

In any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)(A)) is equal to or greater than the funding target of the plan for the plan year, the shortfall amortization base of the plan for such plan year shall be zero.

(B) Transition rule

(i) In general

Except as provided in clause (iii), in the case of plan years beginning after 2007 and before 2011, only the applicable percentage of the funding target shall be taken into account under paragraph (3)(A) in determining the funding shortfall for purposes of paragraph (3)(A) and subparagraph (A).

(ii) Applicable percentage

For purposes of subparagraph (A), the applicable percentage shall be determined in accordance with the following table:

In the case of a plan year beginning in calendar year:	The applicable percentage is
2008	92

2009	94
2010	96.

(iii) Transition relief not available for new or deficit reduction plans

Clause (i) shall not apply to a plan—

(I) which was not in effect for a plan year beginning in 2007, or

(II) which was in effect for a plan year beginning in 2007 and which was subject to section 412(*l*) (as in effect for plan years beginning in 2007) for such year, determined after the application of paragraphs (6) and (9) thereof.

(6) Early deemed amortization upon attainment of funding target

In any case in which the funding shortfall of a plan for a plan year is zero, for purposes of determining the shortfall amortization charge for such plan year and succeeding plan years, the shortfall amortization bases for all preceding plan years (and all shortfall amortization installments determined with respect to such bases) shall be reduced to zero.

(7) Increases in alternate required installments in cases of excess compensation or extraordinary dividends or stock redemptions

(A) In general

If there is an installment acceleration amount with respect to a plan for any plan year in the restriction period with respect to an election year under paragraph (2)(D), then the shortfall amortization installment otherwise determined and payable under such paragraph for such plan year shall, subject to the limitation under subparagraph (B), be increased by such amount.

(B) Total installments limited to shortfall base

Subject to rules prescribed by the Secretary, if a shortfall amortization installment with respect to any shortfall amortization base for an election year is required to be increased for any plan year under subparagraph (A)—

(i) such increase shall not result in the amount of such installment exceeding the present value of such installment and all succeeding installments with respect to such base (determined without regard to such increase but after application of clause (ii)), and

(ii) subsequent shortfall amortization installments with respect to such base shall, in reverse order of the otherwise required installments, be reduced to the extent necessary to limit the present value of such subsequent shortfall amortization installments (after application of this paragraph) to the present value of the remaining unamortized shortfall amortization base.

(C) Installment acceleration amount

For purposes of this paragraph—

(i) In general

The term ''installment acceleration amount'' means, with respect to any plan year in a restriction period with respect to an election year, the sum of—

(I) the aggregate amount of excess employee compensation determined under subparagraph (D) with respect to all employees for the plan year, plus

(II) the aggregate amount of extraordinary dividends and redemptions determined under subparagraph (E) for the plan year.

(ii) Annual limitation

The installment acceleration amount for any plan year shall not exceed the excess (if any) of—

(I) the sum of the shortfall amortization installments for the plan year and all preceding plan years in the amortization period elected under paragraph (2)(D) with respect to the shortfall amortization base with respect to an election year, determined without regard to paragraph (2)(D) and this paragraph, over

(II) the sum of the shortfall amortization installments for such plan year and all such preceding plan years, determined after application of paragraph (2)(D) (and in the case of any preceding plan year, after application of this paragraph).

(iii) Carryover of excess installment acceleration amounts

(I) In general

If the installment acceleration amount for any plan year (determined without regard to clause (ii)) exceeds the limitation under clause (ii), then, subject to subclause (II), such excess shall be treated as an installment acceleration amount with respect to the succeeding plan year.

(II) Cap to apply

If any amount treated as an installment acceleration amount under subclause (I) or this subclause with respect any succeeding plan year, when added to other installment acceleration amounts (determined without regard to clause (ii)) with respect to the plan year, exceeds the limitation under clause (ii), the portion of such amount representing such excess shall be treated as an installment acceleration amount with respect to the next succeeding plan year.

(III) Limitation on years to which amounts carried for

No amount shall be carried under subclause (I) or (II) to a plan year which begins after the first plan year following the last plan year in the restriction period (or after the second plan year following such last plan year in the case of an election year with respect to which 15-year amortization was elected under paragraph (2)(D)).

(IV) Ordering rules

For purposes of applying subclause (II), installment acceleration amounts for the plan year (determined without regard to any carryover under this clause)

shall be applied first against the limitation under clause (ii) and then carryovers to such plan year shall be applied against such limitation on a first-in, first-out basis.

(D) Excess employee compensation

For purposes of this paragraph—

(i) In general

The term ''excess employee compensation'' means, with respect to any employee for any plan year, the excess (if any) of—

(I) the aggregate amount includible in income under this chapter for remuneration during the calendar year in which such plan year begins for services performed by the employee for the plan sponsor (whether or not performed during such calendar year), over

(II) $1,000,000.

(ii) Amounts set aside for nonqualified deferred compensation

If during any calendar year assets are set aside or reserved (directly or indirectly) in a trust (or other arrangement as determined by the Secretary), or transferred to such a trust or other arrangement, by a plan sponsor for purposes of paying deferred compensation of an employee under a nonqualified deferred compensation plan (as defined in section 409A) of the plan sponsor, then, for purposes of clause (i), the amount of such assets shall be treated as remuneration of the employee includible in income for the calendar year unless such amount is otherwise includible in income for such year. An amount to which the preceding sentence applies shall not be taken into account under this paragraph for any subsequent calendar year.

(iii) Only remuneration for certain post-2009 services counted

Remuneration shall be taken into account under clause (i) only to the extent attributable to services performed by the employee for the plan sponsor after February 28, 2010.

(iv) Exception for certain equity payments

(I) In general

There shall not be taken into account under clause (i)(I) any amount includible in income with respect to the granting after February 28, 2010, of service recipient stock (within the meaning of section 409A) that, upon such grant, is subject to a substantial risk of forfeiture (as defined under section 83(c)(1)) for at least 5 years from the date of such grant.

(II) Secretarial authority

The Secretary may by regulation provide for the application of this clause in the case of a person other than a corporation.

(v) Other exceptions

The following amounts includible in income shall not be taken into account under clause (i)(I):

(I) Commissions

Any remuneration payable on a commission basis solely on account of income directly generated by the individual performance of the individual to whom such remuneration is payable.

(II) Certain payments under existing contracts

Any remuneration consisting of nonqualified deferred compensation, restricted stock, stock options, or stock appreciation rights payable or granted under a written binding contract that was in effect on March 1, 2010, and which was not modified in any material respect before such remuneration is paid.

(vi) Self-employed individual treated as employee

The term ''employee'' includes, with respect to a calendar year, a self-employed individual who is treated as an employee under section 401(c) for the taxable year ending during such calendar year, and the term ''compensation'' shall include earned income of such individual with respect to such self-employment.

(vii) Indexing of amount

In the case of any calendar year beginning after 2010, the dollar amount under clause (i)(II) shall be increased by an amount equal to—

(I) such dollar amount, multiplied by

(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year, determined by substituting ''calendar year 2009'' for ''calendar year 1992'' in subparagraph (B) thereof.

If the amount of any increase under clause (i) is not a multiple of $1,000, such increase shall be rounded to the next lowest multiple of $1,000.

(E) Extraordinary dividends and redemptions

(i) In general

The amount determined under this subparagraph for any plan year is the excess (if any) of the sum of the dividends declared during the plan year by the plan sponsor plus the aggregate amount paid for the redemption of stock of the plan sponsor redeemed during the plan year over the greater of—

(I) the adjusted net income (within the meaning of section 4043 of the Employee Retirement Income Security Act of 1974) of the plan sponsor for the preceding plan year, determined without regard to any reduction by reason of interest, taxes, depreciation, or amortization, or

(II) in the case of a plan sponsor that determined and declared dividends in the same manner for at least 5 consecutive years immediately preceding such plan year, the aggregate amount of dividends determined and declared for such plan year using such manner.

(ii) Only certain post-2009 dividends and redemptions counted

For purposes of clause (i), there shall only be taken into account dividends declared, and redemptions occurring, after February 28, 2010.

(iii) Exception for intra-group dividends

Dividends paid by one member of a controlled group (as defined in section 412(d)(3)) to another member of such group shall not be taken into account under clause (i).

(iv) Exception for certain redemptions

Redemptions that are made pursuant to a plan maintained with respect to employees, or that are made on account of the death, disability, or termination of employment of an employee or shareholder, shall not be taken into account under clause (i).

(v) Exception for certain preferred stock

(I) In general

Dividends and redemptions with respect to applicable preferred stock shall not be taken into account under clause (i) to the extent that dividends accrue with respect to such stock at a specified rate in all events and without regard to the plan sponsor's income, and interest accrues on any unpaid dividends with respect to such stock.

(II) Applicable preferred stock

For purposes of subclause (I), the term ''applicable preferred stock'' means preferred stock which was issued before March 1, 2010 (or which was issued after such date and is held by an employee benefit plan subject to the provisions of title I of[1] Employee Retirement Income Security Act of 1974).

(F) Other definitions and rules

For purposes of this paragraph—

(i) Plan sponsor

The term ''plan sponsor'' includes any member of the plan sponsor's controlled group (as defined in section 412(d)(3)).

(ii) Restriction period

The term ''restriction period'' means, with respect to any election year—

(I) except as provided in subclause (II), the 3-year period beginning with the election year (or, if later, the first plan year beginning after December 31, 2009), and

(II) if the plan sponsor elects 15-year amortization for the shortfall amortization base for the election year, the 5-year period beginning with the election year (or, if later, the first plan year beginning after December 31, 2009).

(iii) Elections for multiple plans

If a plan sponsor makes elections under paragraph (2)(D) with respect to 2 or more plans, the Secretary shall provide rules for the application of this paragraph to such plans, including rules for the ratable allocation of any installment acceleration amount among such plans on the basis of each plan's relative reduction in the plan's shortfall amortization installment for the first plan year in the amortization period described in subparagraph (A) (determined without regard to this paragraph).

(iv) Mergers and acquisitions

The Secretary shall prescribe rules for the application of paragraph (2)(D) and this paragraph in any case where there is a merger or acquisition involving a plan sponsor making the election under paragraph (2)(D).

(d) Rules relating to funding target

For purposes of this section—

(1) Funding target

Except as provided in subsection (i)(1) with respect to plans in at-risk status, the funding target of a plan for a plan year is the present value of all benefits accrued or earned under the plan as of the beginning of the plan year.

(2) Funding target attainment percentage

The ''funding target attainment percentage'' of a plan for a plan year is the ratio (expressed as a percentage) which—

(A) the value of plan assets for the plan year (as reduced under subsection (f)(4)(B)), bears to

(B) the funding target of the plan for the plan year (determined without regard to subsection (i)(1)).

(e) Waiver amortization charge

(1) Determination of waiver amortization charge

The waiver amortization charge (if any) for a plan for any plan year is the aggregate total of the waiver amortization installments for such plan year with respect to the waiver amortization bases for each of the 5 preceding plan years.

(2) Waiver amortization installment

For purposes of paragraph (1)—

(A) Determination

The waiver amortization installments are the amounts necessary to amortize the waiver amortization base of the plan for any plan year in level annual installments over a period of 5 plan years beginning with the succeeding plan year.

(B) Waiver installment

The waiver amortization installment for any plan year in the 5-year period under subparagraph (A) with respect to any waiver amortization base is the annual installment determined under subparagraph (A) for that year for that base.

(3) Interest rate

In determining any waiver amortization installment under this subsection, the plan sponsor shall use the segment rates determined under subparagraph (C) of subsection

[1] So in original. Probably should be followed by ''the''.

(h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2).

(4) Waiver amortization base

The waiver amortization base of a plan for a plan year is the amount of the waived funding deficiency (if any) for such plan year under section 412(c).

(5) Early deemed amortization upon attainment of funding target

In any case in which the funding shortfall of a plan for a plan year is zero, for purposes of determining the waiver amortization charge for such plan year and succeeding plan years, the waiver amortization bases for all preceding plan years (and all waiver amortization installments determined with respect to such bases) shall be reduced to zero.

(f) Reduction of minimum required contribution by prefunding balance and funding standard carryover balance

(1) Election to maintain balances

(A) Prefunding balance

The plan sponsor of a defined benefit plan which is not a multiemployer plan may elect to maintain a prefunding balance.

(B) Funding standard carryover balance

(i) In general

In the case of a defined benefit plan (other than a multiemployer plan) described in clause (ii), the plan sponsor may elect to maintain a funding standard carryover balance, until such balance is reduced to zero.

(ii) Plans maintaining funding standard account in 2007

A plan is described in this clause if the plan—

(I) was in effect for a plan year beginning in 2007, and

(II) had a positive balance in the funding standard account under section 412(b) as in effect for such plan year and determined as of the end of such plan year.

(2) Application of balances

A prefunding balance and a funding standard carryover balance maintained pursuant to this paragraph—

(A) shall be available for crediting against the minimum required contribution, pursuant to an election under paragraph (3),

(B) shall be applied as a reduction in the amount treated as the value of plan assets for purposes of this section, to the extent provided in paragraph (4), and

(C) may be reduced at any time, pursuant to an election under paragraph (5).

(3) Election to apply balances against minimum required contribution

(A) In general

Except as provided in subparagraphs (B) and (C), in the case of any plan year in which the plan sponsor elects to credit against the minimum required contribution for the current plan year all or a portion of the prefunding balance or the funding standard carryover balance for the current plan year (not in excess of such minimum required contribution), the minimum required contribution for the plan year shall be reduced as of the first day of the plan year by the amount so credited by the plan sponsor. For purposes of the preceding sentence, the minimum required contribution shall be determined after taking into account any waiver under section 412(c).

(B) Coordination with funding standard carryover balance

To the extent that any plan has a funding standard carryover balance greater than zero, no amount of the prefunding balance of such plan may be credited under this paragraph in reducing the minimum required contribution.

(C) Limitation for underfunded plans

The preceding provisions of this paragraph shall not apply for any plan year if the ratio (expressed as a percentage) which—

(i) the value of plan assets for the preceding plan year (as reduced under paragraph (4)(C)), bears to

(ii) the funding target of the plan for the preceding plan year (determined without regard to subsection (i)(1)),

is less than 80 percent. In the case of plan years beginning in 2008, the ratio under this subparagraph may be determined using such methods of estimation as the Secretary may prescribe.

(D) Special rule for certain years of plans maintained by charities

(i) In general

For purposes of applying subparagraph (C) for plan years beginning after August 31, 2009, and before September 1, 2011, the ratio determined under such subparagraph for the preceding plan year of a plan shall be the greater of—

(I) such ratio, as determined without regard to this subsection, or

(II) the ratio for such plan for the plan year beginning after August 31, 2007 and before September 1, 2008, as determined under rules prescribed by the Secretary.

(ii) Special rule

In the case of a plan for which the valuation date is not the first day of the plan year—

(I) clause (i) shall apply to plan years beginning after December 31, 2007, and before January 1, 2010, and

(II) clause (i)(II) shall apply based on the last plan year beginning before September 1, 2007, as determined under rules prescribed by the Secretary.

(iii) Limitation to charities

This subparagraph shall not apply to any plan unless such plan is maintained exclusively by one or more organizations described in section 501(c)(3).

(4) Effect of balances on amounts treated as value of plan assets

In the case of any plan maintaining a prefunding balance or a funding standard

carryover balance pursuant to this subsection, the amount treated as the value of plan assets shall be deemed to be such amount, reduced as provided in the following subparagraphs:

(A) Applicability of shortfall amortization base

For purposes of subsection (c)(5), the value of plan assets is deemed to be such amount, reduced by the amount of the prefunding balance, but only if an election under paragraph (3) applying any portion of the prefunding balance in reducing the minimum required contribution is in effect for the plan year.

(B) Determination of excess assets, funding shortfall, and funding target attainment percentage

(i) In general

For purposes of subsections (a), (c)(4)(B), and (d)(2)(A), the value of plan assets is deemed to be such amount, reduced by the amount of the prefunding balance and the funding standard carryover balance.

(ii) Special rule for certain binding agreements with PBGC

For purposes of subsection (c)(4)(B), the value of plan assets shall not be deemed to be reduced for a plan year by the amount of the specified balance if, with respect to such balance, there is in effect for a plan year a binding written agreement with the Pension Benefit Guaranty Corporation which provides that such balance is not available to reduce the minimum required contribution for the plan year. For purposes of the preceding sentence, the term ''specified balance'' means the prefunding balance or the funding standard carryover balance, as the case may be.

(C) Availability of balances in plan year for crediting against minimum required contribution

For purposes of paragraph (3)(C)(i) of this subsection, the value of plan assets is deemed to be such amount, reduced by the amount of the prefunding balance.

(5) Election to reduce balance prior to determinations of value of plan assets and crediting against minimum required contribution

(A) In general

The plan sponsor may elect to reduce by any amount the balance of the prefunding balance and the funding standard carryover balance for any plan year (but not below zero). Such reduction shall be effective prior to any determination of the value of plan assets for such plan year under this section and application of the balance in reducing the minimum required contribution for such plan for such plan year pursuant to an election under paragraph (2).

(B) Coordination between prefunding balance and funding standard carryover balance

To the extent that any plan has a funding standard carryover balance greater than zero, no election may be made under subparagraph (A) with respect to the prefunding balance.

(6) Prefunding balance

(A) In general

A prefunding balance maintained by a plan shall consist of a beginning balance of zero, increased and decreased to the extent provided in subparagraphs (B) and (C), and adjusted further as provided in paragraph (8).

(B) Increases

(i) In general

As of the first day of each plan year beginning after 2008, the prefunding balance of a plan shall be increased by the amount elected by the plan sponsor for the plan year. Such amount shall not exceed the excess (if any) of—

(I) the aggregate total of employer contributions to the plan for the preceding plan year, over—

(II) the minimum required contribution for such preceding plan year.

(ii) Adjustments for interest

Any excess contributions under clause (i) shall be properly adjusted for interest accruing for the periods between the first day of the current plan year and the dates on which the excess contributions were made, determined by using the effective interest rate for the preceding plan year and by treating contributions as being first used to satisfy the minimum required contribution.

(iii) Certain contributions necessary to avoid benefit limitations disregarded

The excess described in clause (i) with respect to any preceding plan year shall be reduced (but not below zero) by the amount of contributions an employer would be required to make under subsection (b), (c), or (e) of section 436 to avoid a benefit limitation which would otherwise be imposed under such paragraph for the preceding plan year. Any contribution which may be taken into account in satisfying the requirements of more than 1 of such paragraphs shall be taken into account only once for purposes of this clause.

(C) Decreases

The prefunding balance of a plan shall be decreased (but not below zero) by—

(i) as of the first day of each plan year after 2008, the amount of such balance credited under paragraph (2) (if any) in reducing the minimum required contribution of the plan for the preceding plan year, and

(ii) as of the time specified in paragraph (5)(A), any reduction in such balance elected under paragraph (5).

(7) Funding standard carryover balance

(A) In general

A funding standard carryover balance maintained by a plan shall consist of a beginning balance determined under subpara-

graph (B), decreased to the extent provided in subparagraph (C), and adjusted further as provided in paragraph (8).

(B) Beginning balance

The beginning balance of the funding standard carryover balance shall be the positive balance described in paragraph (1)(B)(ii)(II).

(C) Decreases

The funding standard carryover balance of a plan shall be decreased (but not below zero) by—

(i) as of the first day of each plan year after 2008, the amount of such balance credited under paragraph (2) (if any) in reducing the minimum required contribution of the plan for the preceding plan year, and

(ii) as of the time specified in paragraph (5)(A), any reduction in such balance elected under paragraph (5).

(8) Adjustments for investment experience

In determining the prefunding balance or the funding standard carryover balance of a plan as of the first day of the plan year, the plan sponsor shall, in accordance with regulations prescribed by the Secretary, adjust such balance to reflect the rate of return on plan assets for the preceding plan year. Notwithstanding subsection (g)(3), such rate of return shall be determined on the basis of fair market value and shall properly take into account, in accordance with such regulations, all contributions, distributions, and other plan payments made during such period.

(9) Elections

Elections under this subsection shall be made at such times, and in such form and manner, as shall be prescribed in regulations of the Secretary.

(g) Valuation of plan assets and liabilities

(1) Timing of determinations

Except as otherwise provided under this subsection, all determinations under this section for a plan year shall be made as of the valuation date of the plan for such plan year.

(2) Valuation date

For purposes of this section—

(A) In general

Except as provided in subparagraph (B), the valuation date of a plan for any plan year shall be the first day of the plan year.

(B) Exception for small plans

If, on each day during the preceding plan year, a plan had 100 or fewer participants, the plan may designate any day during the plan year as its valuation date for such plan year and succeeding plan years. For purposes of this subparagraph, all defined benefit plans (other than multiemployer plans) maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only participants with respect to such employer or member shall be taken into account.

(C) Application of certain rules in determination of plan size

For purposes of this paragraph—

(i) Plans not in existence in preceding year

In the case of the first plan year of any plan, subparagraph (B) shall apply to such plan by taking into account the number of participants that the plan is reasonably expected to have on days during such first plan year.

(ii) Predecessors

Any reference in subparagraph (B) to an employer shall include a reference to any predecessor of such employer.

(3) Determination of value of plan assets

For purposes of this section—

(A) In general

Except as provided in subparagraph (B), the value of plan assets shall be the fair market value of the assets.

(B) Averaging allowed

A plan may determine the value of plan assets on the basis of the averaging of fair market values, but only if such method—

(i) is permitted under regulations prescribed by the Secretary,

(ii) does not provide for averaging of such values over more than the period beginning on the last day of the 25th month preceding the month in which the valuation date occurs and ending on the valuation date (or a similar period in the case of a valuation date which is not the 1st day of a month), and

(iii) does not result in a determination of the value of plan assets which, at any time, is lower than 90 percent or greater than 110 percent of the fair market value of such assets at such time.

Any such averaging shall be adjusted for contributions, distributions, and expected earnings (as determined by the plan's actuary on the basis of an assumed earnings rate specified by the actuary but not in excess of the third segment rate applicable under subsection (h)(2)(C)(iii)), as specified by the Secretary.

(4) Accounting for contribution receipts

For purposes of determining the value of assets under paragraph (3)—

(A) Prior year contributions

If—

(i) an employer makes any contribution to the plan after the valuation date for the plan year in which the contribution is made, and

(ii) the contribution is for a preceding plan year,

the contribution shall be taken into account as an asset of the plan as of the valuation date, except that in the case of any plan year beginning after 2008, only the present value (determined as of the valuation date) of such contribution may be taken into account. For purposes of the preceding sentence, present value shall be determined using the effective interest rate for the preceding plan year to which the contribution is properly allocable.

(B) Special rule for current year contributions made before valuation date

If any contributions for any plan year are made to or under the plan during the plan year but before the valuation date for the plan year, the assets of the plan as of the valuation date shall not include—

(i) such contributions, and

(ii) interest on such contributions for the period between the date of the contributions and the valuation date, determined by using the effective interest rate for the plan year.

(h) Actuarial assumptions and methods

(1) In general

Subject to this subsection, the determination of any present value or other computation under this section shall be made on the basis of actuarial assumptions and methods—

(A) each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and

(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

(2) Interest rates

(A) Effective interest rate

For purposes of this section, the term ''effective interest rate'' means, with respect to any plan for any plan year, the single rate of interest which, if used to determine the present value of the plan's accrued or earned benefits referred to in subsection (d)(1), would result in an amount equal to the funding target of the plan for such plan year.

(B) Interest rates for determining funding target

For purposes of determining the funding target and target normal cost of a plan for any plan year, the interest rate used in determining the present value of the benefits of the plan shall be—

(i) in the case of benefits reasonably determined to be payable during the 5-year period beginning on the first day of the plan year, the first segment rate with respect to the applicable month,

(ii) in the case of benefits reasonably determined to be payable during the 15-year period beginning at the end of the period described in clause (i), the second segment rate with respect to the applicable month, and

(iii) in the case of benefits reasonably determined to be payable after the period described in clause (ii), the third segment rate with respect to the applicable month.

(C) Segment rates

For purposes of this paragraph—

(i) First segment rate

The term ''first segment rate'' means, with respect to any month, the single rate of interest which shall be determined by the Secretary for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during the 5-year period commencing with such month.

(ii) Second segment rate

The term ''second segment rate'' means, with respect to any month, the single rate of interest which shall be determined by the Secretary for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during the 15-year period beginning at the end of the period described in clause (i).

(iii) Third segment rate

The term ''third segment rate'' means, with respect to any month, the single rate of interest which shall be determined by the Secretary for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during periods beginning after the period described in clause (ii).

(D) Corporate bond yield curve

For purposes of this paragraph—

(i) In general

The term ''corporate bond yield curve'' means, with respect to any month, a yield curve which is prescribed by the Secretary for such month and which reflects the average, for the 24-month period ending with the month preceding such month, of monthly yields on investment grade corporate bonds with varying maturities and that are in the top 3 quality levels available.

(ii) Election to use yield curve

Solely for purposes of determining the minimum required contribution under this section, the plan sponsor may, in lieu of the segment rates determined under subparagraph (C), elect to use interest rates under the corporate bond yield curve. For purposes of the preceding sentence such curve shall be determined without regard to the 24-month averaging described in clause (i). Such election, once made, may be revoked only with the consent of the Secretary.

(E) Applicable month

For purposes of this paragraph, the term ''applicable month'' means, with respect to any plan for any plan year, the month which includes the valuation date of such plan for such plan year or, at the election of the plan sponsor, any of the 4 months which precede such month. Any election made under this subparagraph shall apply to the plan year for which the election is made and all succeeding plan years, unless the election is revoked with the consent of the Secretary.

(F) Publication requirements

The Secretary shall publish for each month the corporate bond yield curve (and the corporate bond yield curve reflecting the modification described in section

417(e)(3)(D)(i) for such month) and each of the rates determined under subparagraph (C) for such month. The Secretary shall also publish a description of the methodology used to determine such yield curve and such rates which is sufficiently detailed to enable plans to make reasonable projections regarding the yield curve and such rates for future months based on the plan's projection of future interest rates.

(G) Transition rule

(i) In general

Notwithstanding the preceding provisions of this paragraph, for plan years beginning in 2008 or 2009, the first, second, or third segment rate for a plan with respect to any month shall be equal to the sum of—

(I) the product of such rate for such month determined without regard to this subparagraph, multiplied by the applicable percentage, and

(II) the product of the rate determined under the rules of section 412(b)(5)(B)(ii)(II) (as in effect for plan years beginning in 2007), multiplied by a percentage equal to 100 percent minus the applicable percentage.

(ii) Applicable percentage

For purposes of clause (i), the applicable percentage is 33⅓ percent for plan years beginning in 2008 and 66⅔ percent for plan years beginning in 2009.

(iii) New plans ineligible

Clause (i) shall not apply to any plan if the first plan year of the plan begins after December 31, 2007.

(iv) Election

The plan sponsor may elect not to have this subparagraph apply. Such election, once made, may be revoked only with the consent of the Secretary.

(3) Mortality tables

(A) In general

Except as provided in subparagraph (C) or (D), the Secretary shall by regulation prescribe mortality tables to be used in determining any present value or making any computation under this section. Such tables shall be based on the actual experience of pension plans and projected trends in such experience. In prescribing such tables, the Secretary shall take into account results of available independent studies of mortality of individuals covered by pension plans.

(B) Periodic revision

The Secretary shall (at least every 10 years) make revisions in any table in effect under subparagraph (A) to reflect the actual experience of pension plans and projected trends in such experience.

(C) Substitute mortality table

(i) In general

Upon request by the plan sponsor and approval by the Secretary, a mortality table which meets the requirements of clause (iii) shall be used in determining any present value or making any computation under this section during the period of consecutive plan years (not to exceed 10) specified in the request.

(ii) Early termination of period

Notwithstanding clause (i), a mortality table described in clause (i) shall cease to be in effect as of the earliest of—

(I) the date on which there is a significant change in the participants in the plan by reason of a plan spinoff or merger or otherwise, or

(II) the date on which the plan actuary determines that such table does not meet the requirements of clause (iii).

(iii) Requirements

A mortality table meets the requirements of this clause if—

(I) there is a sufficient number of plan participants, and the pension plans have been maintained for a sufficient period of time, to have credible information necessary for purposes of subclause (II), and

(II) such table reflects the actual experience of the pension plans maintained by the sponsor and projected trends in general mortality experience.

(iv) All plans in controlled group must use separate table

Except as provided by the Secretary, a plan sponsor may not use a mortality table under this subparagraph for any plan maintained by the plan sponsor unless—

(I) a separate mortality table is established and used under this subparagraph for each other plan maintained by the plan sponsor and if the plan sponsor is a member of a controlled group, each member of the controlled group, and

(II) the requirements of clause (iii) are met separately with respect to the table so established for each such plan, determined by only taking into account the participants of such plan, the time such plan has been in existence, and the actual experience of such plan.

(v) Deadline for submission and disposition of application

(I) Submission

The plan sponsor shall submit a mortality table to the Secretary for approval under this subparagraph at least 7 months before the 1st day of the period described in clause (i).

(II) Disposition

Any mortality table submitted to the Secretary for approval under this subparagraph shall be treated as in effect as of the 1st day of the period described in clause (i) unless the Secretary, during the 180-day period beginning on the date of such submission, disapproves of such table and provides the reasons that such table fails to meet the requirements of

clause (iii). The 180-day period shall be extended upon mutual agreement of the Secretary and the plan sponsor.

(D) Separate mortality tables for the disabled

Notwithstanding subparagraph (A)—

(i) In general

The Secretary shall establish mortality tables which may be used (in lieu of the tables under subparagraph (A)) under this subsection for individuals who are entitled to benefits under the plan on account of disability. The Secretary shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning on or after such date.

(ii) Special rule for disabilities occurring after 1994

In the case of disabilities occurring in plan years beginning after December 31, 1994, the tables under clause (i) shall apply only with respect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

(iii) Periodic revision

The Secretary shall (at least every 10 years) make revisions in any table in effect under clause (i) to reflect the actual experience of pension plans and projected trends in such experience.

(4) Probability of benefit payments in the form of lump sums or other optional forms

For purposes of determining any present value or making any computation under this section, there shall be taken into account—

(A) the probability that future benefit payments under the plan will be made in the form of optional forms of benefits provided under the plan (including lump sum distributions, determined on the basis of the plan's experience and other related assumptions), and

(B) any difference in the present value of such future benefit payments resulting from the use of actuarial assumptions, in determining benefit payments in any such optional form of benefits, which are different from those specified in this subsection.

(5) Approval of large changes in actuarial assumptions

(A) In general

No actuarial assumption used to determine the funding target for a plan to which this paragraph applies may be changed without the approval of the Secretary.

(B) Plans to which paragraph applies

This paragraph shall apply to a plan only if—

(i) the plan is a defined benefit plan (other than a multiemployer plan) to which title IV of the Employee Retirement Income Security Act of 1974 applies,

(ii) the aggregate unfunded vested benefits as of the close of the preceding plan year (as determined under section 4006(a)(3)(E)(iii) of the Employee Retirement Income Security Act of 1974) of such plan and all other plans maintained by the contributing sponsors (as defined in section 4001(a)(13) of such Act) and members of such sponsors' controlled groups (as defined in section 4001(a)(14) of such Act) which are covered by title IV (disregarding plans with no unfunded vested benefits) exceed $50,000,000, and

(iii) the change in assumptions (determined after taking into account any changes in interest rate and mortality table) results in a decrease in the funding shortfall of the plan for the current plan year that exceeds $50,000,000, or that exceeds $5,000,000 and that is 5 percent or more of the funding target of the plan before such change.

(i) Special rules for at-risk plans

(1) Funding target for plans in at-risk status

(A) In general

In the case of a plan which is in at-risk status for a plan year, the funding target of the plan for the plan year shall be equal to the sum of—

(i) the present value of all benefits accrued or earned under the plan as of the beginning of the plan year, as determined by using the additional actuarial assumptions described in subparagraph (B), and

(ii) in the case of a plan which also has been in at-risk status for at least 2 of the 4 preceding plan years, a loading factor determined under subparagraph (C).

(B) Additional actuarial assumptions

The actuarial assumptions described in this subparagraph are as follows:

(i) All employees who are not otherwise assumed to retire as of the valuation date but who will be eligible to elect benefits during the plan year and the 10 succeeding plan years shall be assumed to retire at the earliest retirement date under the plan but not before the end of the plan year for which the at-risk funding target and at-risk target normal cost are being determined.

(ii) All employees shall be assumed to elect the retirement benefit available under the plan at the assumed retirement age (determined after application of clause (i)) which would result in the highest present value of benefits.

(C) Loading factor

The loading factor applied with respect to a plan under this paragraph for any plan year is the sum of—

(i) $700, times the number of participants in the plan, plus

(ii) 4 percent of the funding target (determined without regard to this paragraph) of the plan for the plan year.

(2) Target normal cost of at-risk plans

In the case of a plan which is in at-risk status for a plan year, the target normal cost of the plan for such plan year shall be equal to the sum of—

(A) the excess of—

(i) the sum of—

(I) the present value of all benefits which are expected to accrue or to be earned under the plan during the plan year, determined using the additional actuarial assumptions described in paragraph (1)(B), plus

(II) the amount of plan-related expenses expected to be paid from plan assets during the plan year, over

(ii) the amount of mandatory employee contributions expected to be made during the plan year, plus

(B) in the case of a plan which also has been in at-risk status for at least 2 of the 4 preceding plan years, a loading factor equal to 4 percent of the amount determined under subsection (b)(1)(A)(i) with respect to the plan for the plan year.

(3) Minimum amount

In no event shall—

(A) the at-risk funding target be less than the funding target, as determined without regard to this subsection, or

(B) the at-risk target normal cost be less than the target normal cost, as determined without regard to this subsection.

(4) Determination of at-risk status

For purposes of this subsection—

(A) In general

A plan is in at-risk status for a plan year if—

(i) the funding target attainment percentage for the preceding plan year (determined under this section without regard to this subsection) is less than 80 percent, and

(ii) the funding target attainment percentage for the preceding plan year (determined under this section by using the additional actuarial assumptions described in paragraph (1)(B) in computing the funding target) is less than 70 percent.

(B) Transition rule

In the case of plan years beginning in 2008, 2009, and 2010, subparagraph (A)(i) shall be applied by substituting the following percentages for ''80 percent'':

(i) 65 percent in the case of 2008.

(ii) 70 percent in the case of 2009.

(iii) 75 percent in the case of 2010.

In the case of plan years beginning in 2008, the funding target attainment percentage for the preceding plan year under subparagraph (A) may be determined using such methods of estimation as the Secretary may provide.

(C) Special rule for employees offered early retirement in 2006

(i) In general

For purposes of subparagraph (A)(ii), the additional actuarial assumptions described in paragraph (1)(B) shall not be taken into account with respect to any employee if—

(I) such employee is employed by a specified automobile manufacturer,

(II) such employee is offered a substantial amount of additional cash compensation, substantially enhanced retirement benefits under the plan, or materially reduced employment duties on the condition that by a specified date (not later than December 31, 2010) the employee retires (as defined under the terms of the plan),

(III) such offer is made during 2006 and pursuant to a bona fide retirement incentive program and requires, by the terms of the offer, that such offer can be accepted not later than a specified date (not later than December 31, 2006), and

(IV) such employee does not elect to accept such offer before the specified date on which the offer expires.

(ii) Specified automobile manufacturer

For purposes of clause (i), the term ''specified automobile manufacturer'' means—

(I) any manufacturer of automobiles, and

(II) any manufacturer of automobile parts which supplies such parts directly to a manufacturer of automobiles and which, after a transaction or series of transactions ending in 1999, ceased to be a member of a controlled group which included such manufacturer of automobiles.

(5) Transition between applicable funding targets and between applicable target normal costs

(A) In general

In any case in which a plan which is in at-risk status for a plan year has been in such status for a consecutive period of fewer than 5 plan years, the applicable amount of the funding target and of the target normal cost shall be, in lieu of the amount determined without regard to this paragraph, the sum of—

(i) the amount determined under this section without regard to this subsection, plus

(ii) the transition percentage for such plan year of the excess of the amount determined under this subsection (without regard to this paragraph) over the amount determined under this section without regard to this subsection.

(B) Transition percentage

For purposes of subparagraph (A), the transition percentage shall be determined in accordance with the following table:

If the consecutive number of years (including the plan year) the plan is in at-risk status is—	The transition percentage is—
1	20
2	40
3	60
4	80.

(C) Years before effective date

For purposes of this paragraph, plan years beginning before 2008 shall not be taken into account.

(6) Small plan exception

If, on each day during the preceding plan year, a plan had 500 or fewer participants, the plan shall not be treated as in at-risk status for the plan year. For purposes of this paragraph, all defined benefit plans (other than multiemployer plans) maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only participants with respect to such employer or member shall be taken into account and the rules of subsection (g)(2)(C) shall apply.

(j) Payment of minimum required contributions

(1) In general

For purposes of this section, the due date for any payment of any minimum required contribution for any plan year shall be 8½ months after the close of the plan year.

(2) Interest

Any payment required under paragraph (1) for a plan year that is made on a date other than the valuation date for such plan year shall be adjusted for interest accruing for the period between the valuation date and the payment date, at the effective rate of interest for the plan for such plan year.

(3) Accelerated quarterly contribution schedule for underfunded plans

(A) Failure to timely make required installment

In any case in which the plan has a funding shortfall for the preceding plan year, the employer maintaining the plan shall make the required installments under this paragraph and if the employer fails to pay the full amount of a required installment for the plan year, then the amount of interest charged under paragraph (2) on the underpayment for the period of underpayment shall be determined by using a rate of interest equal to the rate otherwise used under paragraph (2) plus 5 percentage points. In the case of plan years beginning in 2008, the funding shortfall for the preceding plan year may be determined using such methods of estimation as the Secretary may provide.

(B) Amount of underpayment, period of underpayment

For purposes of subparagraph (A)—

(i) Amount

The amount of the underpayment shall be the excess of—

(I) the required installment, over

(II) the amount (if any) of the installment contributed to or under the plan on or before the due date for the installment.

(ii) Period of underpayment

The period for which any interest is charged under this paragraph with respect to any portion of the underpayment shall run from the due date for the installment to the date on which such portion is contributed to or under the plan.

(iii) Order of crediting contributions

For purposes of clause (i)(II), contributions shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(C) Number of required installments; due dates

For purposes of this paragraph—

(i) Payable in 4 installments

There shall be 4 required installments for each plan year.

(ii) Time for payment of installments

The due dates for required installments are set forth in the following table:

In the case of the following required installment:	The due date is:
1st	April 15
2nd	July 15
3rd	October 15
4th	January 15 of the following year.

(D) Amount of required installment

For purposes of this paragraph—

(i) In general

The amount of any required installment shall be 25 percent of the required annual payment.

(ii) Required annual payment

For purposes of clause (i), the term ''required annual payment'' means the lesser of—

(I) 90 percent of the minimum required contribution (determined without regard to this subsection) to the plan for the plan year under this section, or

(II) 100 percent of the minimum required contribution (determined without regard to this subsection or to any waiver under section 412(c)) to the plan for the preceding plan year.

Subclause (II) shall not apply if the preceding plan year referred to in such clause was not a year of 12 months.

(E) Fiscal years, short years, and years with alternate valuation date

(i) Fiscal years

In applying this paragraph to a plan year beginning on any date other than January 1, there shall be substituted for the months specified in this paragraph, the months which correspond thereto.

(ii) Short plan year

This subparagraph shall be applied to plan years of less than 12 months in accordance with regulations prescribed by the Secretary.

(iii) Plan with alternate valuation date

The Secretary shall prescribe regulations for the application of this paragraph in the case of a plan which has a valuation date other than the first day of the plan year.

(F) Quarterly contributions not to include certain increased contributions

Subparagraph (D) shall be applied without regard to any increase under subsection (c)(7).

(4) Liquidity requirement in connection with quarterly contributions

(A) In general

A plan to which this paragraph applies shall be treated as failing to pay the full amount of any required installment under paragraph (3) to the extent that the value of the liquid assets paid in such installment is less than the liquidity shortfall (whether or not such liquidity shortfall exceeds the amount of such installment required to be paid but for this paragraph).

(B) Plans to which paragraph applies

This paragraph shall apply to a plan (other than a plan described in subsection (g)(2)(B)) which—

(i) is required to pay installments under paragraph (3) for a plan year, and

(ii) has a liquidity shortfall for any quarter during such plan year.

(C) Period of underpayment

For purposes of paragraph (3)(A), any portion of an installment that is treated as not paid under subparagraph (A) shall continue to be treated as unpaid until the close of the quarter in which the due date for such installment occurs.

(D) Limitation on increase

If the amount of any required installment is increased by reason of subparagraph (A), in no event shall such increase exceed the amount which, when added to prior installments for the plan year, is necessary to increase the funding target attainment percentage of the plan for the plan year (taking into account the expected increase in funding target due to benefits accruing or earned during the plan year) to 100 percent.

(E) Definitions

For purposes of this paragraph—

(i) Liquidity shortfall

The term ''liquidity shortfall'' means, with respect to any required installment, an amount equal to the excess (as of the last day of the quarter for which such installment is made) of—

(I) the base amount with respect to such quarter, over

(II) the value (as of such last day) of the plan's liquid assets.

(ii) Base amount

(I) In general

The term ''base amount'' means, with respect to any quarter, an amount equal to 3 times the sum of the adjusted disbursements from the plan for the 12 months ending on the last day of such quarter.

(II) Special rule

If the amount determined under subclause (I) exceeds an amount equal to 2 times the sum of the adjusted disbursements from the plan for the 36 months ending on the last day of the quarter and an enrolled actuary certifies to the satisfaction of the Secretary that such excess is the result of nonrecurring circumstances, the base amount with respect to such quarter shall be determined without regard to amounts related to those nonrecurring circumstances.

(iii) Disbursements from the plan

The term ''disbursements from the plan'' means all disbursements from the trust, including purchases of annuities, payments of single sums and other benefits, and administrative expenses.

(iv) Adjusted disbursements

The term ''adjusted disbursements'' means disbursements from the plan reduced by the product of—

(I) the plan's funding target attainment percentage for the plan year, and

(II) the sum of the purchases of annuities, payments of single sums, and such other disbursements as the Secretary shall provide in regulations.

(v) Liquid assets

The term ''liquid assets'' means cash, marketable securities, and such other assets as specified by the Secretary in regulations.

(vi) Quarter

The term ''quarter'' means, with respect to any required installment, the 3-month period preceding the month in which the due date for such installment occurs.

(F) Regulations

The Secretary may prescribe such regulations as are necessary to carry out this paragraph.

(k) Imposition of lien where failure to make required contributions

(1) In general

In the case of a plan to which this subsection applies (as provided under paragraph (2)), if—

(A) any person fails to make a contribution payment required by section 412 and this section before the due date for such payment, and

(B) the unpaid balance of such payment (including interest), when added to the aggregate unpaid balance of all preceding such payments for which payment was not made before the due date (including interest), exceeds $1,000,000,

then there shall be a lien in favor of the plan in the amount determined under paragraph (3) upon all property and rights to property, whether real or personal, belonging to such person and any other person who is a member of the same controlled group of which such person is a member.

(2) Plans to which subsection applies

This subsection shall apply to a defined benefit plan (other than a multiemployer plan) covered under section 4021 of the Employee Retirement Income Security Act of 1974 for any plan year for which the funding target attainment percentage (as defined in subsection (d)(2)) of such plan is less than 100 percent.

(3) Amount of lien

For purposes of paragraph (1), the amount of the lien shall be equal to the aggregate unpaid balance of contribution payments required under this section and section 412 for which payment has not been made before the due date.

(4) Notice of failure; lien

(A) Notice of failure

A person committing a failure described in paragraph (1) shall notify the Pension Benefit Guaranty Corporation of such failure within 10 days of the due date for the required contribution payment.

(B) Period of lien

The lien imposed by paragraph (1) shall arise on the due date for the required contribution payment and shall continue until the last day of the first plan year in which the plan ceases to be described in paragraph (1)(B). Such lien shall continue to run without regard to whether such plan continues to be described in paragraph (2) during the period referred to in the preceding sentence.

(C) Certain rules to apply

Any amount with respect to which a lien is imposed under paragraph (1) shall be treated as taxes due and owing the United States and rules similar to the rules of subsections (c), (d), and (e) of section 4068 of the Employee Retirement Income Security Act of 1974 shall apply with respect to a lien imposed by subsection (a) and the amount with respect to such lien.

(5) Enforcement

Any lien created under paragraph (1) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Pension Benefit Guaranty Corporation, by the contributing sponsor (or any member of the controlled group of the contributing sponsor).

(6) Definitions

For purposes of this subsection—

(A) Contribution payment

The term ''contribution payment'' means, in connection with a plan, a contribution payment required to be made to the plan, including any required installment under paragraphs (3) and (4) of subsection (j).

(B) Due date; required installment

The terms ''due date'' and ''required installment'' have the meanings given such terms by subsection (j).

(C) Controlled group

The term ''controlled group'' means any group treated as a single employer under subsections (b), (c), (m), and (*o*) of section 414.

(*l*) Qualified transfers to health benefit accounts

In the case of a qualified transfer (as defined in section 420), any assets so transferred shall not, for purposes of this section, be treated as assets in the plan.

(Added Pub. L. 109–280, title I, §112(a), Aug. 17, 2006, 120 Stat. 826; amended Pub. L. 110–458, title I, §§101(b)(2), 121(b), title II, §202(b), Dec. 23, 2008, 122 Stat. 5095, 5113, 5118; Pub. L. 111–192, title II, §§201(b), 204(b), June 25, 2010, 124 Stat. 1290, 1301.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

REFERENCES IN TEXT

Section 106 of the Pension Protection Act of 2006, referred to in subsec. (c)(2)(D)(iv)(I), is section 106 of Pub. L. 109–280, which is set out as a note under section 401 of this title.

The date of the enactment of this subparagraph, referred to in subsec. (c)(2)(D)(v), is the date of enactment of Pub. L. 111–192, which was approved June 25, 2010.

The Employee Retirement Income Security Act of 1974, referred to in subsecs. (c)(7)(E)(i)(I), (v)(II), (h)(5)(B)(i), (ii), and (k)(2), (4)(C), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829. Title I of the Act is classified generally to subchapter I (§1001 et seq.) of chapter 18 of Title 29, Labor. Title IV of the Act is classified principally to subchapter III (§1301 et seq.) of chapter 18 of Title 29. Sections 4001, 4006, 4021, 4043, and 4068 of the Act are classified to sections 1301, 1306, 1321, 1343, and 1368, respectively, of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The Social Security Act, referred to in subsec. (h)(3)(D)(ii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2010—Subsec. (c)(1). Pub. L. 111–192, §201(b)(3)(A), substituted ''any shortfall amortization base which has not been fully amortized under this subsection'' for ''the shortfall amortization bases for such plan year and each of the 6 preceding plan years''.

Subsec. (c)(2)(D). Pub. L. 111–192, §201(b)(1), added subpar. (D).

Subsec. (c)(7). Pub. L. 111–192, §201(b)(2), added par. (7).

Subsec. (f)(3)(D). Pub. L. 111–192, §204(b), added subpar. (D).

Subsec. (j)(3)(F). Pub. L. 111–192, §201(b)(3)(B), added subpar. (F).

2008—Subsec. (b). Pub. L. 110–458, §101(b)(2)(A), amended subsec. (b) generally. Prior to amendment, text read as follows: ''For purposes of this section, except as provided in subsection (i)(2) with respect to plans in at-risk status, the term ''target normal cost'' means, for any plan year, the present value of all benefits which are expected to accrue or to be earned under the plan during the plan year. For purposes of this subsection, if any benefit attributable to services performed in a preceding plan year is increased by reason of any increase in compensation during the current plan year, the increase in such benefit shall be treated as having accrued during the current plan year.''

Subsec. (c)(5)(B)(i). Pub. L. 110–458, §202(b)(2), added cl. (i) and struck out former cl. (i). Prior to amendment, text read as follows: ''Except as provided in clauses (iii) and (iv), in the case of plan years beginning after 2007 and before 2011, only the applicable percentage of the funding target shall be taken into account under paragraph (3)(A) in determining the funding shortfall for the plan year for purposes of subparagraph (A).''

Subsec. (c)(5)(B)(iii). Pub. L. 110–458, §202(b)(1), redesignated cl. (iv) as (iii) and struck out former cl. (iii).

Prior to amendment, text read as follows: ''Clause (i) shall not apply with respect to any plan year beginning after 2008 unless the shortfall amortization base for each of the preceding years beginning after 2007 was zero (determined after application of this subparagraph).''

Pub. L. 110–458, § 101(b)(2)(B), inserted ''beginning'' before ''after 2008''.

Subsec. (c)(5)(B)(iv). Pub. L. 110–458, § 202(b)(1), redesignated cl. (iv) as (iii).

Subsec. (c)(5)(B)(iv)(II). Pub. L. 110–458, § 101(b)(2)(C), inserted ''for such year'' after ''beginning in 2007)''.

Subsec. (f)(3)(A). Pub. L. 110–458, § 101(b)(2)(D)(i), struck out ''as of the first day of the plan year'' after ''credited by the plan sponsor''.

Subsec. (f)(4)(A). Pub. L. 110–458, § 101(b)(2)(D)(ii), substituted ''paragraph (3)'' for ''paragraph (2)''.

Subsec. (f)(6)(B)(iii). Pub. L. 110–458, § 101(b)(2)(D)(iii), substituted ''subsection (b), (c), or (e) of section 436'' for ''paragraph (1), (2), or (4) of section 206(g)''.

Subsec. (f)(6)(C). Pub. L. 110–458, § 101(b)(2)(D)(iv), struck out ''the sum of'' after ''by'' in introductory provisions.

Subsec. (f)(8). Pub. L. 110–458, § 101(b)(2)(D)(v), struck out ''of the Treasury'' after ''by the Secretary''.

Subsec. (g)(3)(B). Pub. L. 110–458, § 121(b), amended concluding provisions generally. Prior to amendment, concluding provisions read as follows: ''Any such averaging shall be adjusted for contributions and distributions (as provided by the Secretary).''

Subsec. (h)(2)(B). Pub. L. 110–458, § 101(b)(2)(E)(i), (ii), in introductory provisions, inserted ''and target normal cost'' after ''funding target'' and substituted ''benefits'' for ''liabilities''.

Subsec. (h)(2)(F). Pub. L. 110–458, § 101(b)(2)(E)(iii), (iv), substituted ''section 417(e)(3)(D)(i) for such month)'' for ''section 417(e)(3)(D)(i)) for such month'' and ''subparagraph (C)'' for ''subparagraph (B)''.

Subsec. (i)(2)(A). Pub. L. 110–458, § 101(b)(2)(F)(i)(I), added subpar. (A) and struck out former subpar. (A) which read as follows: ''the present value of all benefits which are expected to accrue or be earned under the plan during the plan year, determined using the additional actuarial assumptions described in paragraph (1)(B), plus''.

Subsec. (i)(2)(B). Pub. L. 110–458, § 101(b)(2)(F)(i)(II), substituted ''the amount determined under subsection (b)(1)(A)(i) with respect to the plan for the plan year'' for ''the target normal cost (determined without regard to this paragraph) of the plan for the plan year''.

Subsec. (i)(4)(B). Pub. L. 110–458, § 101(b)(2)(F)(ii), substituted ''subparagraph (A)'' for ''subparagraph (A)(ii)'' in concluding provisions.

Subsec. (j)(3)(A). Pub. L. 110–458, § 101(b)(2)(G)(i), inserted at end ''In the case of plan years beginning in 2008, the funding shortfall for the preceding plan year may be determined using such methods of estimation as the Secretary may provide.''

Subsec. (j)(3)(D)(ii)(II). Pub. L. 110–458, § 101(b)(2)(G)(ii), substituted ''section 412(c)'' for ''section 302(c)''.

Subsec. (j)(3)(E). Pub. L. 110–458, § 101(b)(2)(G)(iii), (iv), substituted '', short years, and years with alternate valuation date'' for ''and short years'' in heading and added cl. (iii).

Subsec. (k)(1). Pub. L. 110–458, § 101(b)(2)(H)(i), inserted ''(as provided under paragraph (2))'' after ''applies'' in introductory provisions.

Subsec. (k)(6)(B). Pub. L. 110–458, § 101(b)(2)(H)(ii), struck out '', except that in the case of a payment other than a required installment, the due date shall be the date such payment is required to be made under section 430'' before period at end.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–192, title II, § 201(c), June 25, 2010, 124 Stat. 1296, provided that: ''The amendments made by this section [amending this section and section 1083 of Title 29, Labor] shall apply to plan years beginning after December 31, 2007.''

Pub. L. 111–192, title II, § 204(c), June 25, 2010, 124 Stat. 1302, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1083 of Title 29, Labor] shall apply to plan years beginning after August 31, 2009.

''(2) SPECIAL RULE.—In the case of a plan for which the valuation date is not the first day of the plan year, the amendments made by this section shall apply to plan years beginning after December 31, 2008.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–458, title I, § 101(b)(3), Dec. 23, 2008, 122 Stat. 5096, provided that:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by paragraphs (1)(A) [amending section 1083 of Title 29, Labor], (1)(F)(i) [amending section 1083 of Title 29], (2)(A) [amending this section], and (2)(F)(i) [amending this section] shall apply to plan years beginning after December 31, 2008.''

''(B) ELECTION FOR EARLIER APPLICATION.—The amendments made by such paragraphs shall apply to a plan for the first plan year beginning after December 31, 2007, if the plan sponsor makes the election under this subparagraph. An election under this subparagraph shall be made at such time and in such manner as the Secretary of the Treasury or the Secretary's delegate may prescribe, and, once made, may be revoked only with the consent of the Secretary.''

Amendment by section 101(b)(2)(B)–(E), (F)(ii)–(H) of Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

Pub. L. 110–458, title I, § 121(c), Dec. 23, 2008, 122 Stat. 5114, provided that: ''The amendments made by this section [amending this section and section 1083 of Title 29, Labor] shall take effect as if included in the provisions of the 2006 Act [Pub. L. 109–280] to which the amendments relate.''

Pub. L. 110–458, title II, § 202(c), Dec. 23, 2008, 122 Stat. 5118, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1083 of Title 29, Labor] shall apply as if included in the enactment of sections 102 and 112, respectively, of the Pension Protection Act of 2006 [Pub. L. 109–280].''

EFFECTIVE DATE

Pub. L. 109–280, title I, § 112(b), Aug. 17, 2006, 120 Stat. 846, provided that: ''The amendments made by this section [enacting this section] shall apply with respect to plan years beginning after December 31, 2007.''

APPLICABILITY OF SUBTITLES A AND B OF TITLE I OF PUB. L. 109–280

For special rules on applicability of subtitles A (§§ 101–108) and B (§§ 111–116) of title I of Pub. L. 109–280 to certain eligible cooperative plans, PBGC settlement plans, and eligible government contractor plans, see sections 104, 105, and 106 of Pub. L. 109–280, set out as notes under section 401 of this title.

MODIFICATION OF TRANSITION RULE TO PENSION FUNDING REQUIREMENTS

Pub. L. 109–280, title I, § 115(a)–(c), Aug. 17, 2006, 120 Stat. 855, 856, provided that:

''(a) IN GENERAL.—In the case of a plan that—

''(1) was not required to pay a variable rate premium for the plan year beginning in 1996,

''(2) has not, in any plan year beginning after 1995, merged with another plan (other than a plan sponsored by an employer that was in 1996 within the controlled group of the plan sponsor), and

''(3) is sponsored by a company that is engaged primarily in the interurban or interstate passenger bus service,

the rules described in subsection (b) shall apply for any plan year beginning after December 31, 2007.

''(b) MODIFIED RULES.—The rules described in this subsection are as follows:

''(1) For purposes of section 430(j)(3) of the Internal Revenue Code of 1986 and section 303(j)(3) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1083(j)(3)], the plan shall be treated as not having a funding shortfall for any plan year.

''(2) For purposes of—

''(A) determining unfunded vested benefits under section 4006(a)(3)(E)(iii) of such Act [29 U.S.C. 1306(a)(3)(E)(iii)], and

''(B) determining any present value or making any computation under section 412 of such Code or section 302 of such Act [29 U.S.C. 1082],

the mortality table shall be the mortality table used by the plan.

''(3) Section 430(c)(5)(B) of such Code and section 303(c)(5)(B) of such Act [29 U.S.C. 1083(c)(5)(B)] (relating to phase-in of funding target for exemption from new shortfall amortization base) shall each be applied by substituting '2012' for '2011' therein and by substituting for the table therein the following:

"In the case of a plan year beginning in calendar year:	The applicable percentage is:
2008	90 percent
2009	92 percent
2010	94 percent
2011	96 percent.

''(c) DEFINITIONS.—Any term used in this section which is also used in section 430 of such Code or section 303 of such Act [29 U.S.C. 1083] shall have the meaning provided such term in such section. If the same term has a different meaning in such Code and such Act [29 U.S.C. 1001 et seq.], such term shall, for purposes of this section, have the meaning provided by such Code when applied with respect to such Code and the meaning provided by such Act when applied with respect to such Act.''

SPECIAL FUNDING RULES FOR CERTAIN PLANS MAINTAINED BY COMMERCIAL AIRLINES

Pub. L. 109–280, title IV, §402, Aug. 17, 2006, 120 Stat. 922, as amended by Pub. L. 110–28, title VI, §§6614(a), 6615(a), May 25, 2007, 121 Stat. 181; Pub. L. 110–458, title I, §§104(b), 126(a), Dec. 23, 2008, 122 Stat. 5104, 5116, provided that:

''(a) IN GENERAL.—The plan sponsor of an eligible plan may elect to either—

''(1) have the rules of subsection (b) apply, or

''(2) have section 303 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1083] and section 430 of the Internal Revenue Code of 1986 applied to its first taxable year beginning in 2008 by amortizing the shortfall amortization base for such taxable year over a period of 10 plan years (rather than 7 plan years) beginning with such plan year and by using, in determining the funding target for each of the 10 plan years during such period, an interest rate of 8.25 percent (rather than the segment rates calculated on the basis of the corporate bond yield curve).

''(b) ALTERNATIVE FUNDING SCHEDULE.—

''(1) IN GENERAL.—If an election is made under subsection (a)(1) to have this subsection apply to an eligible plan and the requirements of paragraphs (2) and (3) are met with respect to the plan—

''(A) in the case of any applicable plan year beginning before January 1, 2008, the plan shall not have an accumulated funding deficiency for purposes of section 302 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082] and sections 412 and 4971 of the Internal Revenue Code of 1986 if contributions to the plan for the plan year are not less than the minimum required contribution determined under subsection (e) for the plan for the plan year, and

''(B) in the case of any applicable plan year beginning on or after January 1, 2008, the minimum required contribution determined under sections 303 of such Act [29 U.S.C. 1083] and 430 of such Code shall, for purposes of sections 302 and 303 of such Act and sections 412, 430, and 4971 of such Code, be equal to the minimum required contribution determined under subsection (e) for the plan for the plan year.

''(2) ACCRUAL RESTRICTIONS.—

''(A) IN GENERAL.—The requirements of this paragraph are met if, effective as of the first day of the first applicable plan year and at all times thereafter while an election under this section is in effect, the plan provides that—

''(i) the accrued benefit, any death or disability benefit, and any social security supplement described in the last sentence of section 411(a)(9) of such Code and section 204(b)(1)(G) of such Act [29 U.S.C. 1054(b)(1)(G)], of each participant are frozen at the amount of such benefit or supplement immediately before such first day, and

''(ii) all other benefits under the plan are eliminated,

but only to the extent the freezing or elimination of such benefits would have been permitted under section 411(d)(6) of such Code and section 204(g) of such Act if they had been implemented by a plan amendment adopted immediately before such first day.

''(B) INCREASES IN SECTION 415 LIMITS.—If a plan provides that an accrued benefit of a participant which has been subject to any limitation under section 415 of such Code will be increased if such limitation is increased, the plan shall not be treated as meeting the requirements of this section unless, effective as of the first day of the first applicable plan year (or, if later, the date of the enactment of this Act [Aug. 17, 2006]) and at all times thereafter while an election under this section is in effect, the plan provides that any such increase shall not take effect. A plan shall not fail to meet the requirements of section 411(d)(6) of such Code and section 204(g) of such Act solely because the plan is amended to meet the requirements of this subparagraph.

''(3) RESTRICTION ON APPLICABLE BENEFIT INCREASES.—

''(A) IN GENERAL.—The requirements of this paragraph are met if no applicable benefit increase takes effect at any time during the period beginning on July 26, 2005, and ending on the day before the first day of the first applicable plan year.

''(B) APPLICABLE BENEFIT INCREASE.—For purposes of this paragraph, the term 'applicable benefit increase' means, with respect to any plan year, any increase in liabilities of the plan by plan amendment (or otherwise provided in regulations provided by the Secretary) which, but for this paragraph, would occur during the plan year by reason of—

''(i) any increase in benefits,

''(ii) any change in the accrual of benefits, or

''(iii) any change in the rate at which benefits become nonforfeitable under the plan.

''(4) EXCEPTION FOR IMPUTED DISABILITY SERVICE.—Paragraphs (2) and (3) shall not apply to any accrual or increase with respect to imputed service provided to a participant during any period of the participant's disability occurring on or after the effective date of the plan amendment providing the restrictions under paragraph (2) (or on or after July 26, 2005, in the case of the restrictions under paragraph (3)) if the participant—

''(A) was receiving disability benefits as of such date, or

''(B) was receiving sick pay and subsequently determined to be eligible for disability benefits as of such date.

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

''(1) ELIGIBLE PLAN.—The term 'eligible plan' means a defined benefit plan (other than a multiemployer plan) to which sections 302 of such Act [29 U.S.C. 1082] and 412 of such Code applies which is sponsored by an employer—

''(A) which is a commercial passenger airline, or

''(B) the principal business of which is providing catering services to a commercial passenger airline.

''(2) APPLICABLE PLAN YEAR.—The term 'applicable plan year' means each plan year to which the election under subsection (a)(1) applies under subsection (d)(1)(A).

''(d) ELECTIONS AND RELATED TERMS.—

''(1) YEARS FOR WHICH ELECTION MADE.—

''(A) ALTERNATIVE FUNDING SCHEDULE.—If an election under subsection (a)(1) was made with respect to an eligible plan, the plan sponsor may select either a plan year beginning in 2006 or a plan year beginning in 2007 as the first plan year to which such election applies. The election shall apply to such plan year and all subsequent years. The election shall be made—

''(i) not later than December 31, 2006, in the case of an election for a plan year beginning in 2006, or

''(ii) not later than December 31, 2007, in the case of an election for a plan year beginning in 2007.

''(B) 10 YEAR AMORTIZATION.—An election under subsection (a)(2) shall be made not later than December 31, 2007.

''(C) ELECTION OF NEW PLAN YEAR FOR ALTERNATIVE FUNDING SCHEDULE.—In the case of an election under subsection (a)(1), the plan sponsor may specify a new plan year in such election and the plan year of the plan may be changed to such new plan year without the approval of the Secretary of the Treasury.

''(2) MANNER OF ELECTION.—A plan sponsor shall make any election under subsection (a) in such manner as the Secretary of the Treasury may prescribe. Such election, once made, may be revoked only with the consent of such Secretary.

''(e) MINIMUM REQUIRED CONTRIBUTION.—In the case of an eligible plan with respect to which an election is made under subsection (a)(1)—

''(1) IN GENERAL.—In the case of any applicable plan year during the amortization period, the minimum required contribution shall be the amount necessary to amortize the unfunded liability of the plan, determined as of the first day of the plan year, in equal annual installments (until fully amortized) over the remainder of the amortization period. Such amount shall be separately determined for each applicable plan year.

''(2) YEARS AFTER AMORTIZATION PERIOD.—In the case of any plan year beginning after the end of the amortization period, section 302(a)(2)(A) of such Act [29 U.S.C. 1082(a)(2)(A)] and section 412(a)(2)(A) of such Code shall apply to such plan, but the prefunding balance and funding standard carryover balance as of the first day of the first of such years under section 303(f) of such Act [29 U.S.C. 1083(f)] and section 430(f) of such Code shall be zero.

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

''(A) UNFUNDED LIABILITY.—The term 'unfunded liability' means the unfunded accrued liability under the plan, determined under the unit credit funding method.

''(B) AMORTIZATION PERIOD.—The term 'amortization period' means the 17-plan year period beginning with the first applicable plan year.

''(4) OTHER RULES.—In determining the minimum required contribution and amortization amount under this subsection—

''(A) the provisions of section 302(c)(3) of such Act and section 412(c)(3) of such Code, as in effect before the date of enactment of this section [Aug. 17, 2006], shall apply,

''(B) a rate of interest of 8.85 percent shall be used for all calculations requiring an interest rate, and

''(C) the value of plan assets shall be determined under sections 303(g)(3) of such Act [29 U.S.C. 1083(g)(3)] and 430(g)(3) of such Code.

''(5) SPECIAL RULE FOR CERTAIN PLAN SPINOFFS.—For purposes of subsection (b), if, with respect to any eligible plan to which this subsection applies—

''(A) any applicable plan year includes the date of the enactment of this Act,

''(B) a plan was spun off from the eligible plan during the plan year but before such date of enactment,

the minimum required contribution under paragraph (1) for the eligible plan for such applicable plan year shall be an aggregate amount determined as if the plans were a single plan for that plan year (based on the full 12-month plan year in effect prior to the spinoff). The employer shall designate the allocation of such aggregate amount between such plans for the applicable plan year.

''(f) SPECIAL RULES FOR CERTAIN BALANCES AND WAIVERS.—In the case of an eligible plan with respect to which an election is made under subsection (a)(1)—

''(1) FUNDING STANDARD ACCOUNT AND CREDIT BALANCES.—Any charge or credit in the funding standard account under section 302 of such Act [29 U.S.C. 1082] or section 412 of such Code, and any prefunding balance or funding standard carryover balance under section 303 of such Act [29 U.S.C. 1083] or section 430 of such Code, as of the day before the first day of the first applicable plan year, shall be reduced to zero.

''(2) WAIVED FUNDING DEFICIENCIES.—Any waived funding deficiency under sections 302 and 303 of such Act or section 412 of such Code, as in effect before the date of enactment of this section [Aug. 17, 2006], shall be deemed satisfied as of the first day of the first applicable plan year and the amount of such waived funding deficiency shall be taken into account in determining the plan's unfunded liability under subsection (e)(3)(A). In the case of a plan amendment adopted to satisfy the requirements of subsection (b)(2), the plan shall not be deemed to violate section 304(b) of such Act [29 U.S.C. 1084(b)] or section 412(f) of such Code, as so in effect, by reason of such amendment or any increase in benefits provided to such plan's participants under a separate plan that is a defined contribution plan or a multiemployer plan.

''(g) OTHER RULES FOR PLANS MAKING ELECTION UNDER THIS SECTION.—

''(1) SUCCESSOR PLANS TO CERTAIN PLANS.—If—

''(A) an election under paragraph (1) or (2) of subsection (a) is in effect with respect to any eligible plan, and

''(B) the eligible plan is maintained by an employer that establishes or maintains 1 or more other defined benefit plans (other than any multiemployer plan), and such other plans in combination provide benefit accruals to any substantial number of successor employees,

the Secretary of the Treasury may, in the Secretary's discretion, determine that any trust of which any other such plan is a part does not constitute a qualified trust under section 401(a) of the Internal Revenue Code of 1986 unless all benefit obligations of the eligible plan have been satisfied. For purposes of this paragraph, the term 'successor employee' means any employee who is or was covered by the eligible plan and any employees who perform substantially the same type of work with respect to the same business operations as an employee covered by such eligible plan.

''(2) SPECIAL RULES FOR TERMINATIONS.—

''(A) PBGC LIABILITY LIMITED.—[Amended section 1322 of Title 29, Labor.]

''(B) TERMINATION PREMIUM.—In applying section 4006(a)(7)(A) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1306(a)(7)(A)] to an eligible plan during any period in which an election under subsection (a)(1) is in effect—

''(i) '$2,500' shall be substituted for '$1,250' in such section if such plan terminates during the 5-year period beginning on the first day of the first applicable plan year with respect to such plan, and

''(ii) such section shall be applied without regard to subparagraph (B) of section 8101(d)(2) of the Deficit Reduction Act of 2005 [Pub. L. 109–171,

29 U.S.C. 1306 note] (relating to special rule for plans terminated in bankruptcy).

The substitution described in clause (i) shall not apply with respect to any plan if the Secretary of Labor determines that such plan terminated as a result of extraordinary circumstances such as a terrorist attack or other similar event.

''(3) LIMITATION ON DEDUCTIONS UNDER CERTAIN PLANS.—Section 404(a)(7)(C)(iv) of the Internal Revenue Code of 1986, as added by this Act, shall not apply with respect to any taxable year of a plan sponsor of an eligible plan if any applicable plan year with respect to such plan ends with or within such taxable year.

''(4) NOTICE.—In the case of a plan amendment adopted in order to comply with this section, any notice required under section 204(h) of such Act [29 U.S.C. 1054(h)] or section 4980F(e) of such Code shall be provided within 15 days of the effective date of such plan amendment. This subsection shall not apply to any plan unless such plan is maintained pursuant to one or more collective bargaining agreements between employee representatives and 1 or more employers.

''(h) EXCLUSION OF CERTAIN EMPLOYEES FROM MINIMUM COVERAGE REQUIREMENTS.—

''(1) IN GENERAL.—[Amended section 410 of this title.]

''(2) EFFECTIVE DATE.—The amendment made by this subsection [amending section 410 of this title] shall apply to years beginning before, on, or after the date of the enactment of this Act [Aug. 17, 2006].

''(i) EXTENSION OF SPECIAL RULE FOR ADDITIONAL FUNDING REQUIREMENTS.—In the case of an employer which is a commercial passenger airline, section 302(d)(12) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082(d)(12)] and section 412(*l*)(12) of the Internal Revenue Code of 1986, as in effect before the date of the enactment of this Act [Aug. 17, 2006], shall each be applied—

''(1) by substituting 'January 1, 2008' for 'December 28, 2005' in subparagraph (D)(i) thereof, and

''(2) without regard to subparagraph (D)(ii).

''(j) EFFECTIVE DATE.—Except as otherwise provided in this section, the provisions of and amendments made by this section [amending section 410 of this title and section 1322 of Title 29, Labor] shall apply to plan years ending after the date of the enactment of this Act [Aug. 17, 2006].''

[Pub. L. 110–458, title I, §126(b), Dec. 23, 2008, 122 Stat. 5116, provided that: ''The amendment made by this section [amending section 402(e)(4)(C) of Pub. L. 109–280, set out above] shall apply to plan years beginning after December 31, 2007.'']

[Pub. L. 110–28, title VI, §6614(b), May 25, 2007, 121 Stat. 181, provided that: ''The amendment made by subsection (a) [amending section 402(i)(1) of Pub. L. 109–280, set out above] shall take effect as if included in section 402 of the Pension Protection Act of 2006 [Pub. L. 109–280].'']

[Pub. L. 110–28, title VI, §6615(b), May 25, 2007, 121 Stat. 181, provided that: ''The amendment made by this section [amending section 402(a)(2) of Pub. L. 109–280, set out above] shall take effect as if included in the provisions of the Pension Protection Act of 2006 [Pub. L. 109–280] to which such amendment relates.'']

§ 431. Minimum funding standards for multiemployer plans

(a) In general

For purposes of section 412, the accumulated funding deficiency of a multiemployer plan for any plan year is—

(1) except as provided in paragraph (2), the amount, determined as of the end of the plan year, equal to the excess (if any) of the total charges to the funding standard account of the plan for all plan years (beginning with the first plan year for which this part applies to the plan) over the total credits to such account for such years, and

(2) if the multiemployer plan is in reorganization for any plan year, the accumulated funding deficiency of the plan determined under section 4243 of the Employee Retirement Income Security Act of 1974.

(b) Funding standard account

(1) Account required

Each multiemployer plan to which this part applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

(2) Charges to account

For a plan year, the funding standard account shall be charged with the sum of—

(A) the normal cost of the plan for the plan year,

(B) the amounts necessary to amortize in equal annual installments (until fully amortized)—

(i) in the case of a plan which comes into existence on or after January 1, 2008, the unfunded past service liability under the plan on the first day of the first plan year to which this section applies, over a period of 15 plan years,

(ii) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

(iii) separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of 15 plan years, and

(iv) separately, with respect to each plan year, the net loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years,

(C) the amount necessary to amortize each waived funding deficiency (within the meaning of section 412(c)(3)) for each prior plan year in equal annual installments (until fully amortized) over a period of 15 plan years,

(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years any amount credited to the funding standard account under section 412(b)(3)(D) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2006), and

(E) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 20 years the contributions which would be required to be made under the plan but for the provisions of section 412(c)(7)(A)(i)(I) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2006).

(3) Credits to account

For a plan year, the funding standard account shall be credited with the sum of—

(A) the amount considered contributed by the employer to or under the plan for the plan year,

(B) the amount necessary to amortize in equal annual installments (until fully amortized)—

(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

(ii) separately, with respect to each plan year, the net experience gain (if any) under the plan, over a period of 15 plan years, and

(iii) separately, with respect to each plan year, the net gain (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years,

(C) the amount of the waived funding deficiency (within the meaning of section 412(c)(3)) for the plan year, and

(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard under section 412(g) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2006), the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

(4) Special rule for amounts first amortized in plan years before 2008

In the case of any amount amortized under section 412(b) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2006) over any period beginning with a plan year beginning before 2008 in lieu of the amortization described in paragraphs (2)(B) and (3)(B), such amount shall continue to be amortized under such section as so in effect.

(5) Combining and offsetting amounts to be amortized

Under regulations prescribed by the Secretary, amounts required to be amortized under paragraph (2) or paragraph (3), as the case may be—

(A) may be combined into one amount under such paragraph to be amortized over a period determined on the basis of the remaining amortization period for all items entering into such combined amount, and

(B) may be offset against amounts required to be amortized under the other such paragraph, with the resulting amount to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into whichever of the two amounts being offset is the greater.

(6) Interest

The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary of the Treasury) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

(7) Special rules relating to charges and credits to funding standard account

For purposes of this part—

(A) Withdrawal liability

Any amount received by a multiemployer plan in payment of all or part of an employer's withdrawal liability under part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 shall be considered an amount contributed by the employer to or under the plan. The Secretary may prescribe by regulation additional charges and credits to a multiemployer plan's funding standard account to the extent necessary to prevent withdrawal liability payments from being unduly reflected as advance funding for plan liabilities.

(B) Adjustments when a multiemployer plan leaves reorganization

If a multiemployer plan is not in reorganization in the plan year but was in reorganization in the immediately preceding plan year, any balance in the funding standard account at the close of such immediately preceding plan year—

(i) shall be eliminated by an offsetting credit or charge (as the case may be), but

(ii) shall be taken into account in subsequent plan years by being amortized in equal annual installments (until fully amortized) over 30 plan years.

The preceding sentence shall not apply to the extent of any accumulated funding deficiency under section 4243(a) of such Act as of the end of the last plan year that the plan was in reorganization.

(C) Plan payments to supplemental program or withdrawal liability payment fund

Any amount paid by a plan during a plan year to the Pension Benefit Guaranty Corporation pursuant to section 4222 of such Act or to a fund exempt under section 501(c)(22) pursuant to section 4223 of such Act shall reduce the amount of contributions considered received by the plan for the plan year.

(D) Interim withdrawal liability payments

Any amount paid by an employer pending a final determination of the employer's withdrawal liability under part 1 of subtitle E of title IV of such Act and subsequently refunded to the employer by the plan shall be charged to the funding standard account in accordance with regulations prescribed by the Secretary.

(E) Election for deferral of charge for portion of net experience loss

If an election is in effect under section 412(b)(7)(F) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2006) for any plan year, the funding standard account shall be charged in the plan year to which the portion of the net experience loss deferred by such election was deferred with the amount so deferred (and

paragraph (2)(B)(iii) shall not apply to the amount so charged).

(F) Financial assistance

Any amount of any financial assistance from the Pension Benefit Guaranty Corporation to any plan, and any repayment of such amount, shall be taken into account under this section and section 412 in such manner as is determined by the Secretary.

(G) Short-term benefits

To the extent that any plan amendment increases the unfunded past service liability under the plan by reason of an increase in benefits which are not payable as a life annuity but are payable under the terms of the plan for a period that does not exceed 14 years from the effective date of the amendment, paragraph (2)(B)(ii) shall be applied separately with respect to such increase in unfunded past service liability by substituting the number of years of the period during which such benefits are payable for ''15''.

(8) Special relief rules

Notwithstanding any other provision of this subsection—

(A) Amortization of net investment losses

(i) In general

A multiemployer plan with respect to which the solvency test under subparagraph (C) is met may treat the portion of any experience loss or gain attributable to net investment losses incurred in either or both of the first two plan years ending after August 31, 2008, as an item separate from other experience losses, to be amortized in equal annual installments (until fully amortized) over the period—

(I) beginning with the plan year in which such portion is first recognized in the actuarial value of assets, and

(II) ending with the last plan year in the 30-plan year period beginning with the plan year in which such net investment loss was incurred.

(ii) Coordination with extensions

If this subparagraph applies for any plan year—

(I) no extension of the amortization period under clause (i) shall be allowed under subsection (d), and

(II) if an extension was granted under subsection (d) for any plan year before the election to have this subparagraph apply to the plan year, such extension shall not result in such amortization period exceeding 30 years.

(iii) Net investment losses

For purposes of this subparagraph—

(I) In general

Net investment losses shall be determined in the manner prescribed by the Secretary on the basis of the difference between actual and expected returns (including any difference attributable to any criminally fraudulent investment arrangement).

(II) Criminally fraudulent investment arrangements

The determination as to whether an arrangement is a criminally fraudulent investment arrangement shall be made under rules substantially similar to the rules prescribed by the Secretary for purposes of section 165.

(B) Expanded smoothing period

(i) In general

A multiemployer plan with respect to which the solvency test under subparagraph (C) is met may change its asset valuation method in a manner which—

(I) spreads the difference between expected and actual returns for either or both of the first 2 plan years ending after August 31, 2008, over a period of not more than 10 years,

(II) provides that for either or both of the first 2 plan years beginning after August 31, 2008, the value of plan assets at any time shall not be less than 80 percent or greater than 130 percent of the fair market value of such assets at such time, or

(III) makes both changes described in subclauses (I) and (II) to such method.

(ii) Asset valuation methods

If this subparagraph applies for any plan year—

(I) the Secretary shall not treat the asset valuation method of the plan as unreasonable solely because of the changes in such method described in clause (i), and

(II) such changes shall be deemed approved by the Secretary under section 302(d)(1) of the Employee Retirement Income Security Act of 1974 and section 412(d)(1).

(iii) Amortization of reduction in unfunded accrued liability

If this subparagraph and subparagraph (A) both apply for any plan year, the plan shall treat any reduction in unfunded accrued liability resulting from the application of this subparagraph as a separate experience amortization base, to be amortized in equal annual installments (until fully amortized) over a period of 30 plan years rather than the period such liability would otherwise be amortized over.

(C) Solvency test

The solvency test under this paragraph is met only if the plan actuary certifies that the plan is projected to have sufficient assets to timely pay expected benefits and anticipated expenditures over the amortization period, taking into account the changes in the funding standard account under this paragraph.

(D) Restriction on benefit increases

If subparagraph (A) or (B) apply to a multiemployer plan for any plan year, then, in addition to any other applicable restrictions on benefit increases, a plan amend-

ment increasing benefits may not go into effect during either of the 2 plan years immediately following such plan year unless—

(i) the plan actuary certifies that—

(I) any such increase is paid for out of additional contributions not allocated to the plan immediately before the application of this paragraph to the plan, and

(II) the plan's funded percentage and projected credit balances for such 2 plan years are reasonably expected to be at least as high as such percentage and balances would have been if the benefit increase had not been adopted, or

(ii) the amendment is required as a condition of qualification under part I of subchapter D or to comply with other applicable law.

(E) Reporting

A plan sponsor of a plan to which this paragraph applies shall—

(i) give notice of such application to participants and beneficiaries of the plan, and

(ii) inform the Pension Benefit Guaranty Corporation of such application in such form and manner as the Director of the Pension Benefit Guaranty Corporation may prescribe.

(c) Additional rules

(1) Determinations to be made under funding method

For purposes of this part, normal costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

(2) Valuation of assets

(A) In general

For purposes of this part, the value of the plan's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary.

(B) Election with respect to bonds

The value of a bond or other evidence of indebtedness which is not in default as to principal or interest may, at the election of the plan administrator, be determined on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date. Any election under this subparagraph shall be made at such time and in such manner as the Secretary shall by regulations provide, shall apply to all such evidences of indebtedness, and may be revoked only with the consent of the Secretary.

(3) Actuarial assumptions must be reasonable

For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods—

(A) each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and

(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

(4) Treatment of certain changes as experience gain or loss

For purposes of this section, if—

(A) a change in benefits under the Social Security Act or in other retirement benefits created under Federal or State law, or

(B) a change in the definition of the term ''wages'' under section 3121, or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401(a)(5),

results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain.

(5) Full funding

If, as of the close of a plan year, a plan would (without regard to this paragraph) have an accumulated funding deficiency in excess of the full funding limitation—

(A) the funding standard account shall be credited with the amount of such excess, and

(B) all amounts described in subparagraphs (B), (C), and (D) of subsection (b)(2) and subparagraph (B) of subsection (b)(3) which are required to be amortized shall be considered fully amortized for purposes of such subparagraphs.

(6) Full-funding limitation

(A) In general

For purposes of paragraph (5), the term ''full-funding limitation'' means the excess (if any) of—

(i) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

(ii) the lesser of—

(I) the fair market value of the plan's assets, or

(II) the value of such assets determined under paragraph (2).

(B) Minimum amount

(i) In general

In no event shall the full-funding limitation determined under subparagraph (A) be less than the excess (if any) of—

(I) 90 percent of the current liability of the plan (including the expected increase in current liability due to benefits accruing during the plan year), over

(II) the value of the plan's assets determined under paragraph (2).

(ii) Assets

For purposes of clause (i), assets shall not be reduced by any credit balance in the funding standard account.

(C) Full funding limitation

For purposes of this paragraph, unless otherwise provided by the plan, the accrued liability under a multiemployer plan shall not include benefits which are not nonforfeitable under the plan after the termination of the plan (taking into consideration section 411(d)(3)).

(D) Current liability

For purposes of this paragraph—

(i) In general

The term ''current liability'' means all liabilities to employees and their beneficiaries under the plan.

(ii) Treatment of unpredictable contingent event benefits

For purposes of clause (i), any benefit contingent on an event other than—

(I) age, service, compensation, death, or disability, or

(II) an event which is reasonably and reliably predictable (as determined by the Secretary),

shall not be taken into account until the event on which the benefit is contingent occurs.

(iii) Interest rate used

The rate of interest used to determine current liability under this paragraph shall be the rate of interest determined under subparagraph (E).

(iv) Mortality tables

(I) Commissioners' standard table

In the case of plan years beginning before the first plan year to which the first tables prescribed under subclause (II) apply, the mortality table used in determining current liability under this paragraph shall be the table prescribed by the Secretary which is based on the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on January 1, 1993.

(II) Secretarial authority

The Secretary may by regulation prescribe for plan years beginning after December 31, 1999, mortality tables to be used in determining current liability under this subsection. Such tables shall be based upon the actual experience of pension plans and projected trends in such experience. In prescribing such tables, the Secretary shall take into account results of available independent studies of mortality of individuals covered by pension plans.

(v) Separate mortality tables for the disabled

Notwithstanding clause (iv)—

(I) In general

The Secretary shall establish mortality tables which may be used (in lieu of the tables under clause (iv)) to determine current liability under this subsection for individuals who are entitled to benefits under the plan on account of disability. The Secretary shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning on or after such date.

(II) Special rule for disabilities occurring after 1994

In the case of disabilities occurring in plan years beginning after December 31, 1994, the tables under subclause (I) shall apply only with respect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

(vi) Periodic review

The Secretary shall periodically (at least every 5 years) review any tables in effect under this subparagraph and shall, to the extent such Secretary determines necessary, by regulation update the tables to reflect the actual experience of pension plans and projected trends in such experience.

(E) Required change of interest rate

For purposes of determining a plan's current liability for purposes of this paragraph—

(i) In general

If any rate of interest used under the plan under subsection (b)(6) to determine cost is not within the permissible range, the plan shall establish a new rate of interest within the permissible range.

(ii) Permissible range

For purposes of this subparagraph—

(I) In general

Except as provided in subclause (II), the term ''permissible range'' means a rate of interest which is not more than 5 percent above, and not more than 10 percent below, the weighted average of the rates of interest on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the plan year.

(II) Secretarial authority

If the Secretary finds that the lowest rate of interest permissible under subclause (I) is unreasonably high, the Secretary may prescribe a lower rate of interest, except that such rate may not be less than 80 percent of the average rate determined under such subclause.

(iii) Assumptions

Notwithstanding paragraph (3)(A), the interest rate used under the plan shall be—

(I) determined without taking into account the experience of the plan and reasonable expectations, but

(II) consistent with the assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan.

(7) Annual valuation

(A) In general

For purposes of this section, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every

year, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary.

(B) Valuation date

(i) Current year

Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

(ii) Use of prior year valuation

The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if, as of such date, the value of the assets of the plan are not less than 100 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

(iii) Adjustments

Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

(iv) Limitation

A change in funding method to use a prior year valuation, as provided in clause (ii), may not be made unless as of the valuation date within the prior plan year, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

(8) Time when certain contributions deemed made

For purposes of this section, any contributions for a plan year made by an employer after the last day of such plan year, but not later than two and one-half months after such day, shall be deemed to have been made on such last day. For purposes of this subparagraph, such two and one-half month period may be extended for not more than six months under regulations prescribed by the Secretary.

(d) Extension of amortization periods for multiemployer plans

(1) Automatic extension upon application by certain plans

(A) In general

If the plan sponsor of a multiemployer plan—

(i) submits to the Secretary an application for an extension of the period of years required to amortize any unfunded liability described in any clause of subsection (b)(2)(B) or described in subsection (b)(4), and

(ii) includes with the application a certification by the plan's actuary described in subparagraph (B),

the Secretary shall extend the amortization period for the period of time (not in excess of 5 years) specified in the application. Such extension shall be in addition to any extension under paragraph (2).

(B) Criteria

A certification with respect to a multiemployer plan is described in this subparagraph if the plan's actuary certifies that, based on reasonable assumptions—

(i) absent the extension under subparagraph (A), the plan would have an accumulated funding deficiency in the current plan year or any of the 9 succeeding plan years,

(ii) the plan sponsor has adopted a plan to improve the plan's funding status,

(iii) the plan is projected to have sufficient assets to timely pay expected benefits and anticipated expenditures over the amortization period as extended, and

(iv) the notice required under paragraph (3)(A) has been provided.

(C) Termination

The preceding provisions of this paragraph shall not apply with respect to any application submitted after December 31, 2014.

(2) Alternative extension

(A) In general

If the plan sponsor of a multiemployer plan submits to the Secretary an application for an extension of the period of years required to amortize any unfunded liability described in any clause of subsection (b)(2)(B) or described in subsection (b)(4), the Secretary may extend the amortization period for a period of time (not in excess of 10 years reduced by the number of years of any extension under paragraph (1) with respect to such unfunded liability) if the Secretary makes the determination described in subparagraph (B). Such extension shall be in addition to any extension under paragraph (1).

(B) Determination

The Secretary may grant an extension under subparagraph (A) if the Secretary determines that—

(i) such extension would carry out the purposes of this Act[1] and would provide adequate protection for participants under the plan and their beneficiaries, and

(ii) the failure to permit such extension would—

(I) result in a substantial risk to the voluntary continuation of the plan, or a substantial curtailment of pension benefit levels or employee compensation, and

(II) be adverse to the interests of plan participants in the aggregate.

(C) Action by Secretary

The Secretary shall act upon any application for an extension under this paragraph within 180 days of the submission of such application. If the Secretary rejects the application for an extension under this paragraph, the Secretary shall provide notice to the plan detailing the specific reasons for the rejection, including references to the criteria set forth above.

[1] So in original. Probably should be ''title''.

(3) Advance notice

(A) In general

The Secretary shall, before granting an extension under this subsection, require each applicant to provide evidence satisfactory to such Secretary that the applicant has provided notice of the filing of the application for such extension to each affected party (as defined in section 4001(a)(21) of the Employee Retirement Income Security Act of 1974) with respect to the affected plan. Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV of such Act and for benefit liabilities.

(B) Consideration of relevant information

The Secretary shall consider any relevant information provided by a person to whom notice was given under paragraph (1).

(Added Pub. L. 109–280, title II, §211(a), Aug. 17, 2006, 120 Stat. 890; amended Pub. L. 111–192, title II, §211(a)(2), June 25, 2010, 124 Stat. 1304.)

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in subsecs. (a)(2), (b)(7)(A) to (D), (8)(B)(ii)(II), and (d)(3)(A), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829. Title IV of the Act is classified principally to subchapter III (§1301 et seq.) of chapter 18 of Title 29, Labor. Part 1 of subtitle E of title IV of the Act is classified generally to part 1 (§1381 et seq.) of subtitle E of subchapter III of chapter 18 of Title 29. Sections 302, 4001, 4222, 4223, and 4243 of the Act are classified to sections 1082, 1301, 1402, 1403, and 1423, respectively, of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The date of the enactment of the Pension Protection Act of 2006, referred to in subsec. (b)(2)(D), (E), (3)(D), (4), (7)(E), is the date of enactment of Pub. L. 109–280, which was approved Aug. 17, 2006.

The Social Security Act, referred to in subsec. (c)(4)(A), (6)(D)(v)(II), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. Title II of the Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2010—Subsec. (b)(8). Pub. L. 111–192 added par. (8).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–192, title II, §211(b), June 25, 2010, 124 Stat. 1306, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 1084 of Title 29, Labor] shall take effect as of the first day of the first plan year ending after August 31, 2008, except that any election a plan makes pursuant to this section that affects the plan's funding standard account for the first plan year beginning after August 31, 2008, shall be disregarded for purposes of applying the provisions of section 305 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1085] and section 432 of the Internal Revenue Code of 1986 to such plan year.

''(2) RESTRICTIONS ON BENEFIT INCREASES.—Notwithstanding paragraph (1), the restrictions on plan amendments increasing benefits in sections 304(b)(8)(D) of such Act [29 U.S.C. 1084(b)(8)(D)] and 431(b)(8)(D) of such Code, as added by this section, shall take effect on the date of enactment of this Act [June 25, 2010].''

EFFECTIVE DATE

Pub. L. 109–280, title II, §211(b), Aug. 17, 2006, 120 Stat. 898, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section] shall apply to plan years beginning after 2007.

''(2) SPECIAL RULE FOR CERTAIN AMORTIZATION EXTENSIONS.—If the Secretary of the Treasury grants an extension under section 304 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1084] and section 412(e) of the Internal Revenue Code of 1986 with respect to any application filed with the Secretary of the Treasury on or before June 30, 2005, the extension (and any modification thereof) shall be applied and administered under the rules of such sections as in effect before the enactment of this Act [Aug. 17, 2006], including the use of the rate of interest determined under section 6621(b) of such Code.''

SPECIAL RULE FOR CERTAIN BENEFITS FUNDED UNDER AN AGREEMENT APPROVED BY THE PENSION BENEFIT GUARANTY CORPORATION

For applicability of this section to a multiemployer plan that is a party to an agreement that was approved by the Pension Benefit Guaranty Corporation prior to June 30, 2005, and that increases benefits and provides for certain withdrawal liability rules, see section 206 of Pub. L. 109–280, set out as a note under section 412 of this title.

§ 432. Additional funding rules for multiemployer plans in endangered status or critical status

(a) General rule

For purposes of this part, in the case of a multiemployer plan in effect on July 16, 2006—

(1) if the plan is in endangered status—

(A) the plan sponsor shall adopt and implement a funding improvement plan in accordance with the requirements of subsection (c), and

(B) the requirements of subsection (d) shall apply during the funding plan adoption period and the funding improvement period, and

(2) if the plan is in critical status—

(A) the plan sponsor shall adopt and implement a rehabilitation plan in accordance with the requirements of subsection (e), and

(B) the requirements of subsection (f) shall apply during the rehabilitation plan adoption period and the rehabilitation period.

(b) Determination of endangered and critical status

For purposes of this section—

(1) Endangered status

A multiemployer plan is in endangered status for a plan year if, as determined by the plan actuary under paragraph (3), the plan is not in critical status for the plan year and, as of the beginning of the plan year, either—

(A) the plan's funded percentage for such plan year is less than 80 percent, or

(B) the plan has an accumulated funding deficiency for such plan year, or is projected to have such an accumulated funding deficiency for any of the 6 succeeding plan years, taking into account any extension of amortization periods under section 431(d).

For purposes of this section, a plan shall be treated as in seriously endangered status for a plan year if the plan is described in both subparagraphs (A) and (B).

(2) Critical status

A multiemployer plan is in critical status for a plan year if, as determined by the plan

actuary under paragraph (3), the plan is described in 1 or more of the following subparagraphs as of the beginning of the plan year:

(A) A plan is described in this subparagraph if—

(i) the funded percentage of the plan is less than 65 percent, and

(ii) the sum of—

(I) the fair market value of plan assets, plus

(II) the present value of the reasonably anticipated employer contributions for the current plan year and each of the 6 succeeding plan years, assuming that the terms of all collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years,

is less than the present value of all nonforfeitable benefits projected to be payable under the plan during the current plan year and each of the 6 succeeding plan years (plus administrative expenses for such plan years).

(B) A plan is described in this subparagraph if—

(i) the plan has an accumulated funding deficiency for the current plan year, not taking into account any extension of amortization periods under section 431(d), or

(ii) the plan is projected to have an accumulated funding deficiency for any of the 3 succeeding plan years (4 succeeding plan years if the funded percentage of the plan is 65 percent or less), not taking into account any extension of amortization periods under section 431(d).

(C) A plan is described in this subparagraph if—

(i)(I) the plan's normal cost for the current plan year, plus interest (determined at the rate used for determining costs under the plan) for the current plan year on the amount of unfunded benefit liabilities under the plan as of the last date of the preceding plan year, exceeds

(II) the present value of the reasonably anticipated employer and employee contributions for the current plan year,

(ii) the present value, as of the beginning of the current plan year, of nonforfeitable benefits of inactive participants is greater than the present value of nonforfeitable benefits of active participants, and

(iii) the plan has an accumulated funding deficiency for the current plan year, or is projected to have such a deficiency for any of the 4 succeeding plan years, not taking into account any extension of amortization periods under section 431(d).

(D) A plan is described in this subparagraph if the sum of—

(i) the fair market value of plan assets, plus

(ii) the present value of the reasonably anticipated employer contributions for the current plan year and each of the 4 succeeding plan years, assuming that the terms of all collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years,

is less than the present value of all benefits projected to be payable under the plan during the current plan year and each of the 4 succeeding plan years (plus administrative expenses for such plan years).

(3) Annual certification by plan actuary

(A) In general

Not later than the 90th day of each plan year of a multiemployer plan, the plan actuary shall certify to the Secretary and to the plan sponsor—

(i) whether or not the plan is in endangered status for such plan year and whether or not the plan is or will be in critical status for such plan year, and

(ii) in the case of a plan which is in a funding improvement or rehabilitation period, whether or not the plan is making the scheduled progress in meeting the requirements of its funding improvement or rehabilitation plan.

(B) Actuarial projections of assets and liabilities

(i) In general

In making the determinations and projections under this subsection, the plan actuary shall make projections required for the current and succeeding plan years of the current value of the assets of the plan and the present value of all liabilities to participants and beneficiaries under the plan for the current plan year as of the beginning of such year. The actuary's projections shall be based on reasonable actuarial estimates, assumptions, and methods that, except as provided in clause (iii), offer the actuary's best estimate of anticipated experience under the plan. The projected present value of liabilities as of the beginning of such year shall be determined based on the most recent of either—

(I) the actuarial statement required under section 103(d) of the Employee Retirement Income Security Act of 1974 with respect to the most recently filed annual report, or

(II) the actuarial valuation for the preceding plan year.

(ii) Determinations of future contributions

Any actuarial projection of plan assets shall assume—

(I) reasonably anticipated employer contributions for the current and succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years, or

(II) that employer contributions for the most recent plan year will continue indefinitely, but only if the plan actuary determines there have been no significant demographic changes that would make such assumption unreasonable.

(iii) Projected industry activity

Any projection of activity in the industry or industries covered by the plan, including future covered employment and contribution levels, shall be based on information provided by the plan sponsor, which shall act reasonably and in good faith.

(C) Penalty for failure to secure timely actuarial certification

Any failure of the plan's actuary to certify the plan's status under this subsection by the date specified in subparagraph (A) shall be treated for purposes of section 502(c)(2) of the Employee Retirement Income Security Act of 1974 as a failure or refusal by the plan administrator to file the annual report required to be filed with the Secretary under section 101(b)(1) of such Act.

(D) Notice

(i) In general

In any case in which it is certified under subparagraph (A) that a multiemployer plan is or will be in endangered or critical status for a plan year, the plan sponsor shall, not later than 30 days after the date of the certification, provide notification of the endangered or critical status to the participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, and the Secretary of Labor.

(ii) Plans in critical status

If it is certified under subparagraph (A) that a multiemployer plan is or will be in critical status, the plan sponsor shall include in the notice under clause (i) an explanation of the possibility that—

(I) adjustable benefits (as defined in subsection (e)(8)) may be reduced, and

(II) such reductions may apply to participants and beneficiaries whose benefit commencement date is on or after the date such notice is provided for the first plan year in which the plan is in critical status.

(iii) Model notice

The Secretary, in consultation with the Secretary of Labor[1] shall prescribe a model notice that a multiemployer plan may use to satisfy the requirements under clause (ii).

(c) Funding improvement plan must be adopted for multiemployer plans in endangered status

(1) In general

In any case in which a multiemployer plan is in endangered status for a plan year, the plan sponsor, in accordance with this subsection—

(A) shall adopt a funding improvement plan not later than 240 days following the required date for the actuarial certification of endangered status under subsection (b)(3)(A), and

(B) within 30 days after the adoption of the funding improvement plan—

(i) shall provide to the bargaining parties 1 or more schedules showing revised benefit structures, revised contribution structures, or both, which, if adopted, may reasonably be expected to enable the multiemployer plan to meet the applicable benchmarks in accordance with the funding improvement plan, including—

(I) one proposal for reductions in the amount of future benefit accruals necessary to achieve the applicable benchmarks, assuming no amendments increasing contributions under the plan (other than amendments increasing contributions necessary to achieve the applicable benchmarks after amendments have reduced future benefit accruals to the maximum extent permitted by law), and

(II) one proposal for increases in contributions under the plan necessary to achieve the applicable benchmarks, assuming no amendments reducing future benefit accruals under the plan, and

(ii) may, if the plan sponsor deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution rates or benefit reductions, alternative schedules, or other information relevant to achieving the applicable benchmarks in accordance with the funding improvement plan.

For purposes of this section, the term ''applicable benchmarks'' means the requirements applicable to the multiemployer plan under paragraph (3) (as modified by paragraph (5)).

(2) Exception for years after process begins

Paragraph (1) shall not apply to a plan year if such year is in a funding plan adoption period or funding improvement period by reason of the plan being in endangered status for a preceding plan year. For purposes of this section, such preceding plan year shall be the initial determination year with respect to the funding improvement plan to which it relates.

(3) Funding improvement plan

For purposes of this section—

(A) In general

A funding improvement plan is a plan which consists of the actions, including options or a range of options to be proposed to the bargaining parties, formulated to provide, based on reasonably anticipated experience and reasonable actuarial assumptions, for the attainment by the plan during the funding improvement period of the following requirements:

(i) Increase in plan's funding percentage

The plan's funded percentage as of the close of the funding improvement period equals or exceeds a percentage equal to the sum of—

(I) such percentage as of the beginning of such period, plus

(II) 33 percent of the difference between 100 percent and the percentage under subclause (I).

[1] So in original. Probably should be followed by a comma.

(ii) Avoidance of accumulated funding deficiencies

No accumulated funding deficiency for any plan year during the funding improvement period (taking into account any extension of amortization periods under section 431(d)).

(B) Seriously endangered plans

In the case of a plan in seriously endangered status, except as provided in paragraph (5), subparagraph (A)(i)(II) shall be applied by substituting ''20 percent'' for ''33 percent''.

(4) Funding improvement period

For purposes of this section—

(A) In general

The funding improvement period for any funding improvement plan adopted pursuant to this subsection is the 10-year period beginning on the first day of the first plan year of the multiemployer plan beginning after the earlier of—

(i) the second anniversary of the date of the adoption of the funding improvement plan, or

(ii) the expiration of the collective bargaining agreements in effect on the due date for the actuarial certification of endangered status for the initial determination year under subsection (b)(3)(A) and covering, as of such due date, at least 75 percent of the active participants in such multiemployer plan.

(B) Seriously endangered plans

In the case of a plan in seriously endangered status, except as provided in paragraph (5), subparagraph (A) shall be applied by substituting ''15-year period'' for ''10-year period''.

(C) Coordination with changes in status

(i) Plans no longer in endangered status

If the plan's actuary certifies under subsection (b)(3)(A) for a plan year in any funding plan adoption period or funding improvement period that the plan is no longer in endangered status and is not in critical status, the funding plan adoption period or funding improvement period, whichever is applicable, shall end as of the close of the preceding plan year.

(ii) Plans in critical status

If the plan's actuary certifies under subsection (b)(3)(A) for a plan year in any funding plan adoption period or funding improvement period that the plan is in critical status, the funding plan adoption period or funding improvement period, whichever is applicable, shall end as of the close of the plan year preceding the first plan year in the rehabilitation period with respect to such status.

(D) Plans in endangered status at end of period

If the plan's actuary certifies under subsection (b)(3)(A) for the first plan year following the close of the period described in subparagraph (A) that the plan is in endangered status, the provisions of this subsection and subsection (d) shall be applied as if such first plan year were an initial determination year, except that the plan may not be amended in a manner inconsistent with the funding improvement plan in effect for the preceding plan year until a new funding improvement plan is adopted.

(5) Special rules for seriously endangered plans more than 70 percent funded

(A) In general

If the funded percentage of a plan in seriously endangered status was more than 70 percent as of the beginning of the initial determination year—

(i) paragraphs (3)(B) and (4)(B) shall apply only if the plan's actuary certifies, within 30 days after the certification under subsection (b)(3)(A) for the initial determination year, that, based on the terms of the plan and the collective bargaining agreements in effect at the time of such certification, the plan is not projected to meet the requirements of paragraph (3)(A) (without regard to paragraphs (3)(B) and (4)(B)), and

(ii) if there is a certification under clause (i), the plan may, in formulating its funding improvement plan, only take into account the rules of paragraph (3)(B) and (4)(B) for plan years in the funding improvement period beginning on or before the date on which the last of the collective bargaining agreements described in paragraph (4)(A)(ii) expires.

(B) Special rule after expiration of agreements

Notwithstanding subparagraph (A)(ii), if, for any plan year ending after the date described in subparagraph (A)(ii), the plan actuary certifies (at the time of the annual certification under subsection (b)(3)(A) for such plan year) that, based on the terms of the plan and collective bargaining agreements in effect at the time of that annual certification, the plan is not projected to be able to meet the requirements of paragraph (3)(A) (without regard to paragraphs (3)(B) and (4)(B)), paragraphs (3)(B) and (4)(B) shall continue to apply for such year.

(6) Updates to funding improvement plans and schedules

(A) Funding improvement plan

The plan sponsor shall annually update the funding improvement plan and shall file the update with the plan's annual report under section 104 of the Employee Retirement Income Security Act of 1974.

(B) Schedules

The plan sponsor shall annually update any schedule of contribution rates provided under this subsection to reflect the experience of the plan.

(C) Duration of schedule

A schedule of contribution rates provided by the plan sponsor and relied upon by bar-

gaining parties in negotiating a collective bargaining agreement shall remain in effect for the duration of that collective bargaining agreement.

(7) Imposition of default schedule where failure to adopt funding improvement plan

(A) In general

If—

(i) a collective bargaining agreement providing for contributions under a multiemployer plan that was in effect at the time the plan entered endangered status expires, and

(ii) after receiving one or more schedules from the plan sponsor under paragraph (1)(B), the bargaining parties with respect to such agreement fail to adopt a contribution schedule with terms consistent with the funding improvement plan and a schedule from the plan sponsor,

the plan sponsor shall implement the schedule described in paragraph (1)(B)(i)(I) beginning on the date specified in subparagraph (B).

(B) Date of implementation

The date specified in this subparagraph is the date which is 180 days after the date on which the collective bargaining agreement described in subparagraph (A) expires.

(8) Funding plan adoption period

For purposes of this section, the term ''funding plan adoption period'' means the period beginning on the date of the certification under subsection (b)(3)(A) for the initial determination year and ending on the day before the first day of the funding improvement period.

(d) Rules for operation of plan during adoption and improvement periods

(1) Special rules for plan adoption period

During the funding plan adoption period—

(A) the plan sponsor may not accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for—

(i) a reduction in the level of contributions for any participants,

(ii) a suspension of contributions with respect to any period of service, or

(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation,

(B) no amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted unless the amendment is required as a condition of qualification under part I of subchapter D of chapter 1 or to comply with other applicable law, and

(C) in the case of a plan in seriously endangered status, the plan sponsor shall take all reasonable actions which are consistent with the terms of the plan and applicable law and which are expected, based on reasonable assumptions, to achieve—

(i) an increase in the plan's funded percentage, and

(ii) postponement of an accumulated funding deficiency for at least 1 additional plan year.

Actions under subparagraph (C) include applications for extensions of amortization periods under section 431(d), use of the shortfall funding method in making funding standard account computations, amendments to the plan's benefit structure, reductions in future benefit accruals, and other reasonable actions consistent with the terms of the plan and applicable law.

(2) Compliance with funding improvement plan

(A) In general

A plan may not be amended after the date of the adoption of a funding improvement plan so as to be inconsistent with the funding improvement plan.

(B) No reduction in contributions

A plan sponsor may not during any funding improvement period accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for—

(i) a reduction in the level of contributions for any participants,

(ii) a suspension of contributions with respect to any period of service, or

(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation.

(C) Special rules for benefit increases

A plan may not be amended after the date of the adoption of a funding improvement plan so as to increase benefits, including future benefit accruals, unless the plan actuary certifies that the benefit increase is consistent with the funding improvement plan and is paid for out of contributions not required by the funding improvement plan to meet the applicable benchmark in accordance with the schedule contemplated in the funding improvement plan.

(e) Rehabilitation plan must be adopted for multiemployer plans in critical status

(1) In general

In any case in which a multiemployer plan is in critical status for a plan year, the plan sponsor, in accordance with this subsection—

(A) shall adopt a rehabilitation plan not later than 240 days following the required date for the actuarial certification of critical status under subsection (b)(3)(A), and

(B) within 30 days after the adoption of the rehabilitation plan—

(i) shall provide to the bargaining parties 1 or more schedules showing revised benefit structures, revised contribution structures, or both, which, if adopted, may reasonably be expected to enable the multiemployer plan to emerge from critical status in accordance with the rehabilitation plan, and

(ii) may, if the plan sponsor deems appropriate, prepare and provide the bargain-

ing parties with additional information relating to contribution rates or benefit reductions, alternative schedules, or other information relevant to emerging from critical status in accordance with the rehabilitation plan.

The schedule or schedules described in subparagraph (B)(i) shall reflect reductions in future benefit accruals and adjustable benefits, and increases in contributions, that the plan sponsor determines are reasonably necessary to emerge from critical status. One schedule shall be designated as the default schedule and such schedule shall assume that there are no increases in contributions under the plan other than the increases necessary to emerge from critical status after future benefit accruals and other benefits (other than benefits the reduction or elimination of which are not permitted under section 411(d)(6)) have been reduced to the maximum extent permitted by law.

(2) Exception for years after process begins

Paragraph (1) shall not apply to a plan year if such year is in a rehabilitation plan adoption period or rehabilitation period by reason of the plan being in critical status for a preceding plan year. For purposes of this section, such preceding plan year shall be the initial critical year with respect to the rehabilitation plan to which it relates.

(3) Rehabilitation plan

For purposes of this section—

(A) In general

A rehabilitation plan is a plan which consists of—

(i) actions, including options or a range of options to be proposed to the bargaining parties, formulated, based on reasonably anticipated experience and reasonable actuarial assumptions, to enable the plan to cease to be in critical status by the end of the rehabilitation period and may include reductions in plan expenditures (including plan mergers and consolidations), reductions in future benefit accruals or increases in contributions, if agreed to by the bargaining parties, or any combination of such actions, or

(ii) if the plan sponsor determines that, based on reasonable actuarial assumptions and upon exhaustion of all reasonable measures, the plan can not reasonably be expected to emerge from critical status by the end of the rehabilitation period, reasonable measures to emerge from critical status at a later time or to forestall possible insolvency (within the meaning of section 4245 of the Employee Retirement Income Security Act of 1974).

A rehabilitation plan must provide annual standards for meeting the requirements of such rehabilitation plan. Such plan shall also include the schedules required to be provided under paragraph (1)(B)(i) and if clause (ii) applies, shall set forth the alternatives considered, explain why the plan is not reasonably expected to emerge from critical status by the end of the rehabilitation period, and specify when, if ever, the plan is expected to emerge from critical status in accordance with the rehabilitation plan.

(B) Updates to rehabilitation plan and schedules

(i) Rehabilitation plan

The plan sponsor shall annually update the rehabilitation plan and shall file the update with the plan's annual report under section 104 of the Employee Retirement Income Security Act of 1974.

(ii) Schedules

The plan sponsor shall annually update any schedule of contribution rates provided under this subsection to reflect the experience of the plan.

(iii) Duration of schedule

A schedule of contribution rates provided by the plan sponsor and relied upon by bargaining parties in negotiating a collective bargaining agreement shall remain in effect for the duration of that collective bargaining agreement.

(C) Imposition of default schedule where failure to adopt rehabilitation plan

(i) In general

If—

(I) a collective bargaining agreement providing for contributions under a multiemployer plan that was in effect at the time the plan entered critical status expires, and

(II) after receiving one or more schedules from the plan sponsor under paragraph (1)(B), the bargaining parties with respect to such agreement fail to adopt a to adopt a[2] contribution schedule with terms consistent with the rehabilitation plan and a schedule from the plan sponsor under paragraph (1)(B)(i),

the plan sponsor shall implement the default schedule described in the last sentence of paragraph (1) beginning on the date specified in clause (ii).

(ii) Date of implementation

The date specified in this clause is the date which is 180 days after the date on which the collective bargaining agreement described in clause (i) expires.

(4) Rehabilitation period

For purposes of this section—

(A) In general

The rehabilitation period for a plan in critical status is the 10-year period beginning on the first day of the first plan year of the multiemployer plan following the earlier of—

(i) the second anniversary of the date of the adoption of the rehabilitation plan, or

(ii) the expiration of the collective bargaining agreements in effect on the due

[2] So in original.

date for the actuarial certification of critical status for the initial critical year under subsection (a)(1) and covering, as of such date at least 75 percent of the active participants in such multiemployer plan.

If a plan emerges from critical status as provided under subparagraph (B) before the end of such 10-year period, the rehabilitation period shall end with the plan year preceding the plan year for which the determination under subparagraph (B) is made.

(B) Emergence

A plan in critical status shall remain in such status until a plan year for which the plan actuary certifies, in accordance with subsection (b)(3)(A), that the plan is not projected to have an accumulated funding deficiency for the plan year or any of the 9 succeeding plan years, without regard to the use of the shortfall method but taking into account any extension of amortization periods under section 431(d).

(5) Rehabilitation plan adoption period

For purposes of this section, the term ''rehabilitation plan adoption period'' means the period beginning on the date of the certification under subsection (b)(3)(A) for the initial critical year and ending on the day before the first day of the rehabilitation period.

(6) Limitation on reduction in rates of future accruals

Any reduction in the rate of future accruals under the default schedule described in the last sentence of paragraph (1) shall not reduce the rate of future accruals below—

(A) a monthly benefit (payable as a single life annuity commencing at the participant's normal retirement age) equal to 1 percent of the contributions required to be made with respect to a participant, or the equivalent standard accrual rate for a participant or group of participants under the collective bargaining agreements in effect as of the first day of the initial critical year, or

(B) if lower, the accrual rate under the plan on such first day.

The equivalent standard accrual rate shall be determined by the plan sponsor based on the standard or average contribution base units which the plan sponsor determines to be representative for active participants and such other factors as the plan sponsor determines to be relevant. Nothing in this paragraph shall be construed as limiting the ability of the plan sponsor to prepare and provide the bargaining parties with alternative schedules to the default schedule that establish lower or higher accrual and contribution rates than the rates otherwise described in this paragraph.

(7) Automatic employer surcharge

(A) Imposition of surcharge

Each employer otherwise obligated to make a contribution for the initial critical year shall be obligated to pay to the plan for such year a surcharge equal to 5 percent of the contribution otherwise required under the applicable collective bargaining agreement (or other agreement pursuant to which the employer contributes). For each succeeding plan year in which the plan is in critical status for a consecutive period of years beginning with the initial critical year, the surcharge shall be 10 percent of the contribution otherwise so required.

(B) Enforcement of surcharge

The surcharges under subparagraph (A) shall be due and payable on the same schedule as the contributions on which the surcharges are based. Any failure to make a surcharge payment shall be treated as a delinquent contribution under section 515 of the Employee Retirement Income Security Act of 1974 and shall be enforceable as such.

(C) Surcharge to terminate upon collective bargaining agreement renegotiation

The surcharge under this paragraph shall cease to be effective with respect to employees covered by a collective bargaining agreement (or other agreement pursuant to which the employer contributes), beginning on the effective date of a collective bargaining agreement (or other such agreement) that includes terms consistent with a schedule presented by the plan sponsor under paragraph (1)(B)(i), as modified under subparagraph (B) of paragraph (3).

(D) Surcharge not to apply until employer receives notice

The surcharge under this paragraph shall not apply to an employer until 30 days after the employer has been notified by the plan sponsor that the plan is in critical status and that the surcharge is in effect.

(E) Surcharge not to generate increased benefit accruals

Notwithstanding any provision of a plan to the contrary, the amount of any surcharge under this paragraph shall not be the basis for any benefit accrual under the plan.

(8) Benefit adjustments

(A) Adjustable benefits

(i) In general

Notwithstanding section 411(d)(6), the plan sponsor shall, subject to the notice requirement under subparagraph (C), make any reductions to adjustable benefits which the plan sponsor deems appropriate, based upon the outcome of collective bargaining over the schedule or schedules provided under paragraph (1)(B)(i).

(ii) Exception for retirees

Except in the case of adjustable benefits described in clause (iv)(III), the plan sponsor of a plan in critical status shall not reduce adjustable benefits of any participant or beneficiary whose benefit commencement date is before the date on which the plan provides notice to the participant or beneficiary under subsection (b)(3)(D) for the initial critical year.

(iii) Plan sponsor flexibility

The plan sponsor shall include in the schedules provided to the bargaining par-

ties an allowance for funding the benefits of participants with respect to whom contributions are not currently required to be made, and shall reduce their benefits to the extent permitted under this title and considered appropriate by the plan sponsor based on the plan's then current overall funding status.

(iv) Adjustable benefit defined

For purposes of this paragraph, the term ''adjustable benefit'' means—

(I) benefits, rights, and features under the plan, including post-retirement death benefits, 60-month guarantees, disability benefits not yet in pay status, and similar benefits,

(II) any early retirement benefit or retirement-type subsidy (within the meaning of section 411(d)(6)(B)(i)) and any benefit payment option (other than the qualified joint and survivor annuity), and

(III) benefit increases that would not be eligible for a guarantee under section 4022A of the Employee Retirement Income Security Act of 1974 on the first day of initial critical year because the increases were adopted (or, if later, took effect) less than 60 months before such first day.

(B) Normal retirement benefits protected

Except as provided in subparagraph (A)(iv)(III), nothing in this paragraph shall be construed to permit a plan to reduce the level of a participant's accrued benefit payable at normal retirement age.

(C) Notice requirements

(i) In general

No reduction may be made to adjustable benefits under subparagraph (A) unless notice of such reduction has been given at least 30 days before the general effective date of such reduction for all participants and beneficiaries to—

(I) plan participants and beneficiaries,

(II) each employer who has an obligation to contribute (within the meaning of section 4212(a) of the Employee Retirement Income Security Act of 1974) under the plan, and

(III) each employee organization which, for purposes of collective bargaining, represents plan participants employed by such an employer.

(ii) Content of notice

The notice under clause (i) shall contain—

(I) sufficient information to enable participants and beneficiaries to understand the effect of any reduction on their benefits, including an estimate (on an annual or monthly basis) of any affected adjustable benefit that a participant or beneficiary would otherwise have been eligible for as of the general effective date described in clause (i), and

(II) information as to the rights and remedies of plan participants and beneficiaries as well as how to contact the Department of Labor for further information and assistance where appropriate.

(iii) Form and manner

Any notice under clause (i)—

(I) shall be provided in a form and manner prescribed in regulations of the Secretary, in consultation with the Secretary of Labor,

(II) shall be written in a manner so as to be understood by the average plan participant, and

(III) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to persons to whom the notice is required to be provided.

the[3] Secretary shall in the regulations prescribed under subclause (I) establish a model notice that a plan sponsor may use to meet the requirements of this subparagraph.

(9) Adjustments disregarded in withdrawal liability determination

(A) Benefit reductions

Any benefit reductions under this subsection shall be disregarded in determining a plan's unfunded vested benefits for purposes of determining an employer's withdrawal liability under section 4201 of the Employee Retirement Income Security Act of 1974.

(B) Surcharges

Any surcharges under paragraph (7) shall be disregarded in determining the allocation of unfunded vested benefits to an employer under section 4211 of such Act, except for purposes of determining the unfunded vested benefits attributable to an employer under section 4211(c)(4) of such Act or a comparable method approved under section 4211(c)(5) of such Act.

(C) Simplified calculations

The Pension Benefit Guaranty Corporation shall prescribe simplified methods for the application of this paragraph in determining withdrawal liability.

(f) Rules for operation of plan during adoption and rehabilitation period

(1) Compliance with rehabilitation plan

(A) In general

A plan may not be amended after the date of the adoption of a rehabilitation plan under subsection (e) so as to be inconsistent with the rehabilitation plan.

(B) Special rules for benefit increases

A plan may not be amended after the date of the adoption of a rehabilitation plan under subsection (e) so as to increase benefits, including future benefit accruals, unless the plan actuary certifies that such increase is paid for out of additional contributions not contemplated by the rehabilitation plan,

[3] So in original. Probably should be capitalized.

and, after taking into account the benefit increase, the multiemployer plan still is reasonably expected to emerge from critical status by the end of the rehabilitation period on the schedule contemplated in the rehabilitation plan.

(2) Restriction on lump sums and similar benefits

(A) In general

Effective on the date the notice of certification of the plan's critical status for the initial critical year under subsection (b)(3)(D) is sent, and notwithstanding section 411(d)(6), the plan shall not pay—

(i) any payment, in excess of the monthly amount paid under a single life annuity (plus any social security supplements described in the last sentence of section 411(a)(9)), to a participant or beneficiary whose annuity starting date (as defined in section 417(f)(2)) occurs after the date such notice is sent,

(ii) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits, and

(iii) any other payment specified by the Secretary by regulations.

(B) Exception

Subparagraph (A) shall not apply to a benefit which under section 411(a)(11) may be immediately distributed without the consent of the participant or to any makeup payment in the case of a retroactive annuity starting date or any similar payment of benefits owed with respect to a prior period.

(3) Adjustments disregarded in withdrawal liability determination

Any benefit reductions under this subsection shall be disregarded in determining a plan's unfunded vested benefits for purposes of determining an employer's withdrawal liability under section 4201 of the Employee Retirement Income Security Act of 1974.

(4) Special rules for plan adoption period

During the rehabilitation plan adoption period—

(A) the plan sponsor may not accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for—

(i) a reduction in the level of contributions for any participants,

(ii) a suspension of contributions with respect to any period of service, or

(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation, and

(B) no amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted unless the amendment is required as a condition of qualification under part I of subchapter D of chapter 1 or to comply with other applicable law.

(g) Expedited resolution of plan sponsor decisions

If, within 60 days of the due date for adoption of a funding improvement plan under subsection (c) or a rehabilitation plan under subsection (e), the plan sponsor of a plan in endangered status or a plan in critical status has not agreed on a funding improvement plan or rehabilitation plan, then any member of the board or group that constitutes the plan sponsor may require that the plan sponsor enter into an expedited dispute resolution procedure for the development and adoption of a funding improvement plan or rehabilitation plan.

(h) Nonbargained participation

(1) Both bargained and nonbargained employee-participants

In the case of an employer that contributes to a multiemployer plan with respect to both employees who are covered by one or more collective bargaining agreements and employees who are not so covered, if the plan is in endangered status or in critical status, benefits of and contributions for the nonbargained employees, including surcharges on those contributions, shall be determined as if those nonbargained employees were covered under the first to expire of the employer's collective bargaining agreements in effect when the plan entered endangered or critical status.

(2) Nonbargained employees only

In the case of an employer that contributes to a multiemployer plan only with respect to employees who are not covered by a collective bargaining agreement, this section shall be applied as if the employer were the bargaining party, and its participation agreement with the plan were a collective bargaining agreement with a term ending on the first day of the plan year beginning after the employer is provided the schedule or schedules described in subsections (c) and (e).

(i) Definitions; actuarial method

For purposes of this section—

(1) Bargaining party

The term ''bargaining party'' means—

(A)(i) except as provided in clause (ii), an employer who has an obligation to contribute under the plan; or

(ii) in the case of a plan described under section 404(c), or a continuation of such a plan, the association of employers that is the employer settlor of the plan; and

(B) an employee organization which, for purposes of collective bargaining, represents plan participants employed by an employer who has an obligation to contribute under the plan.

(2) Funded percentage

The term ''funded percentage'' means the percentage equal to a fraction—

(A) the numerator of which is the value of the plan's assets, as determined under section 431(c)(2), and

(B) the denominator of which is the accrued liability of the plan, determined using actuarial assumptions described in section 431(c)(3).

(3) Accumulated funding deficiency

The term ''accumulated funding deficiency'' has the meaning given such term in section 431(a).

(4) Active participant

The term ''active participant'' means, in connection with a multiemployer plan, a participant who is in covered service under the plan.

(5) Inactive participant

The term ''inactive participant'' means, in connection with a multiemployer plan, a participant, or the beneficiary or alternate payee of a participant, who—

(A) is not in covered service under the plan, and

(B) is in pay status under the plan or has a nonforfeitable right to benefits under the plan.

(6) Pay status

A person is in pay status under a multiemployer plan if—

(A) at any time during the current plan year, such person is a participant or beneficiary under the plan and is paid an early, late, normal, or disability retirement benefit under the plan (or a death benefit under the plan related to a retirement benefit), or

(B) to the extent provided in regulations of the Secretary, such person is entitled to such a benefit under the plan.

(7) Obligation to contribute

The term ''obligation to contribute'' has the meaning given such term under section 4212(a) of the Employee Retirement Income Security Act of 1974.

(8) Actuarial method

Notwithstanding any other provision of this section, the actuary's determinations with respect to a plan's normal cost, actuarial accrued liability, and improvements in a plan's funded percentage under this section shall be based upon the unit credit funding method (whether or not that method is used for the plan's actuarial valuation).

(9) Plan sponsor

For purposes of this section, section 431, and section 4971(g):

(A) In general

The term ''plan sponsor'' means, with respect to any multiemployer plan, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.

(B) Special rule for section 404(c) plans

In the case of a plan described in section 404(c) (or a continuation of such plan), such term means the bargaining parties described in paragraph (1).

(10) Benefit commencement date

The term ''benefit commencement date'' means the annuity starting date (or in the case of a retroactive annuity starting date, the date on which benefit payments begin).

(Added Pub. L. 109–280, title II, § 212(a), Aug. 17, 2006, 120 Stat. 899; amended Pub. L. 110–458, title I, § 102(b)(2)(A)–(G), Dec. 23, 2008, 122 Stat. 5101, 5102.)

TERMINATION OF SECTION

For termination of section by section 221(c) of Pub. L. 109–280, see Effective and Termination Dates note below.

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in text, is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended. Sections 101, 103, 104, 502, 515, 4022A, 4201, 4211, 4212, and 4245 of the Act are classified to sections 1021, 1023, 1024, 1132, 1145, 1322a, 1381, 1391, 1392, and 1426, respectively, of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

AMENDMENTS

2008—Subsec. (b)(3)(C). Pub. L. 110–458, § 102(b)(2)(A), substituted ''section 101(b)(1)'' for ''section 101(b)(4)''.

Subsec. (b)(3)(D)(iii). Pub. L. 110–458, § 102(b)(2)(B), substituted ''The Secretary, in consultation with the Secretary of Labor'' for ''The Secretary of Labor''.

Subsec. (c)(3)(A)(ii). Pub. L. 110–458, § 102(b)(2)(C)(i), substituted ''section 431(d)'' for ''section 304(d)''.

Subsec. (c)(7)(A)(ii). Pub. L. 110–458, § 102(b)(2)(C)(ii)(I), substituted ''to adopt a contribution schedule with terms consistent with the funding improvement plan and a schedule from the plan sponsor,'' for ''to agree on changes to contribution or benefit schedules necessary to meet the applicable benchmarks in accordance with the funding improvement plan,''.

Subsec. (c)(7)(B). Pub. L. 110–458, § 102(b)(2)(C)(ii)(II), added subpar. (B), and struck out former subpar. (B). Prior to amendment, text read as follows: ''The date specified in this subparagraph is the earlier of the date—

''(i) on which the Secretary of Labor certifies that the parties are at an impasse, or

''(ii) which is 180 days after the date on which the collective bargaining agreement described in subparagraph (A) expires.''

Subsec. (e)(3)(C)(i)(II). Pub. L. 110–458, § 102(b)(2)(D)(i)(I), substituted ''to adopt a contribution schedule with terms consistent with the rehabilitation plan and a schedule from the plan sponsor under paragraph (1)(B)(i),'' for ''contribution or benefit schedules with terms consistent with the rehabilitation plan and the schedule from the plan sponsor under paragraph (1)(B)(i),''.

Subsec. (e)(3)(C)(ii). Pub. L. 110–458, § 102(b)(2)(D)(i)(II), added cl. (ii) and struck out former cl. (ii). Prior to amendment, text read as follows: ''The date specified in this clause is the earlier of the date—

''(I) on which the Secretary of Labor certifies that the parties are at an impasse, or

''(II) which is 180 days after the date on which the collective bargaining agreement described in clause (i) expires.''

Subsec. (e)(4)(A)(ii). Pub. L. 110–458, § 102(b)(2)(D)(ii)(I), struck out ''the date of'' after ''in effect on''.

Subsec. (e)(4)(B). Pub. L. 110–458, § 102(b)(2)(D)(ii)(II), substituted ''but taking'' for ''and taking''.

Subsec. (e)(6). Pub. L. 110–458, § 102(b)(2)(D)(iii), substituted ''the last sentence of paragraph (1)'' for ''paragraph (1)(B)(i)'' in introductory provisions and ''establish'' for ''established'' in concluding provisions.

Subsec. (e)(8)(A)(i). Pub. L. 110–458, § 102(b)(2)(D)(iv)(I), substituted ''section 411(d)(6)'' for ''section 204(g)''.

Subsec. (e)(8)(C)(i)(II). Pub. L. 110–458, § 102(b)(2)(D)(iv)(II), inserted ''of the Employee Retirement Income Security Act of 1974'' after ''section 4212(a)''.

Subsec. (e)(8)(C)(iii). Pub. L. 110–458, §102(b)(2)(D)(iv)(IV), which directed substitution of ''the Secretary'' for ''the Secretary of Labor'' in last sentence, was executed by making the substitution for ''The Secretary of Labor'', to reflect the probable intent of Congress.

Subsec. (e)(8)(C)(iii)(I). Pub. L. 110–458, §102(b)(2)(D)(iv)(III), substituted ''the Secretary, in consultation with the Secretary of Labor'' for ''the Secretary of Labor''.

Subsec. (e)(9)(B). Pub. L. 110–458, §102(b)(2)(D)(v), substituted ''the allocation of unfunded vested benefits to an employer'' for ''an employer's withdrawal liability''.

Subsec. (f)(2)(A)(i). Pub. L. 110–458, §102(b)(2)(E), substituted ''section 411(a)(9)'' for ''411(b)(1)(A)'' and inserted at end ''to a participant or beneficiary whose annuity starting date (as defined in section 417(f)(2)) occurs after the date such notice is sent,''.

Subsec. (g). Pub. L. 110–458, §102(b)(2)(F), inserted ''under subsection (c)'' after ''for adoption of a funding improvement plan''.

Subsec. (i)(3). Pub. L. 110–458, §102(b)(2)(G)(i), substituted ''section 431(a)'' for ''section 412(a)''.

Subsec. (i)(9). Pub. L. 110–458, §102(b)(2)(G)(ii), added par. (9) and struck out former par. (9). Prior to amendment, text read as follows: ''In the case of a plan described under section 404(c), or a continuation of such a plan, the term 'plan sponsor' means the bargaining parties described under paragraph (1).''

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

EFFECTIVE AND TERMINATION DATES

Section applicable with respect to plan years beginning after 2007, with special rules for certain notices and certain restored benefits, see section 212(e) of Pub. L. 109–280, set out as an Effective and Termination Dates of 2006 Amendment note under section 412 of this title.

Section inapplicable to plan years beginning after Dec. 31, 2014, with exception for certain funding improvement and rehabilitation plans, see section 221(c) of Pub. L. 109–280, set out as an Effective and Termination Dates of 2006 Amendment note under section 412 of this title.

TEMPORARY DELAY OF DESIGNATION OF MULTIEMPLOYER PLANS AS IN ENDANGERED OR CRITICAL STATUS

Pub. L. 110–458, title II, §204, Dec. 23, 2008, 122 Stat. 5118, provided that:

''(a) IN GENERAL.—Notwithstanding the actuarial certification under section 305(b)(3) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1085(b)(3)] and section 432(b)(3) of the Internal Revenue Code of 1986, if a plan sponsor of a multiemployer plan elects the application of this section, then, for purposes of section 305 of such Act and section 432 of such Code—

''(1) the status of the plan for its first plan year beginning during the period beginning on October 1, 2008, and ending on September 30, 2009, shall be the same as the status of such plan under such sections for the plan year preceding such plan year, and

''(2) in the case of a plan which was in endangered or critical status for the preceding plan year described in paragraph (1), the plan shall not be required to update its plan or schedules under section 305(c)(6) of such Act and section 432(c)(6) of such Code, or section 305(e)(3)(B) of such Act and section 432(e)(3)(B) of such Code, whichever is applicable, until the plan year following the first plan year described in paragraph (1).

If section 305 of the Employee Retirement Income Security Act of 1974 and section 432 of the Internal Revenue Code of 1986 did not apply to the preceding plan year described in paragraph (1), the plan actuary shall make a certification of the status of the plan under section 305(b)(3) of such Act and section 432(b)(3) of such Code for the preceding plan year in the same manner as if such sections had applied to such preceding plan year.

''(b) EXCEPTION FOR PLANS BECOMING CRITICAL DURING ELECTION.—If—

''(1) an election was made under subsection (a) with respect to a multiemployer plan, and

''(2) such plan has, without regard to such election, been certified by the plan actuary under section 305(b)(3) of such Act [29 U.S.C. 1085(b)(3)] and section 432(b)(3) of such Code to be in critical status for the first plan year described in subsection (a)(1),

then such plan shall be treated as a plan in critical status for such plan year for purposes of applying section 4971(g)(1)(A) of such Code, section 302(b)(3) of such Act [29 U.S.C. 1082(b)(3)] (without regard to the second sentence thereof), and section 412(b)(3) of such Code (without regard to the second sentence thereof).

''(c) ELECTION AND NOTICE.—

''(1) ELECTION.—An election under subsection (a) shall—

''(A) be made at such time and in such manner as the Secretary of the Treasury or the Secretary's delegate may prescribe and, once made, may be revoked only with the consent of the Secretary, and

''(B) if the election is made—

''(i) before the date the annual certification is submitted to the Secretary or the Secretary's delegate under section 305(b)(3) of such Act [29 U.S.C. 1085(b)(3)] and section 432(b)(3) of such Code, be included with such annual certification, and

''(ii) after such date, be submitted to the Secretary or the Secretary's delegate not later than 30 days after the date of the election.

''(2) NOTICE TO PARTICIPANTS.—

''(A) IN GENERAL.—Notwithstanding section 305(b)(3)(D) of such Act and section 431(b)(3)(D) of such Code, if the plan is neither in endangered nor critical status by reason of an election made under subsection (a)—

''(i) the plan sponsor of a multiemployer plan shall not be required to provide notice under such sections, and

''(ii) the plan sponsor shall provide to the participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, and the Secretary of Labor a notice of the election and such other information as the Secretary of the Treasury (in consultation with the Secretary of Labor) may require—

''(I) if the election is made before the date the annual certification is submitted to the Secretary or the Secretary's delegate under section 305(b)(3) of such Act and section 432(b)(3) of such Code, not later than 30 days after the date of the certification, and

''(II) if the election is made after such date, not later than 30 days after the date of the election.

''(B) NOTICE OF ENDANGERED STATUS.—Notwithstanding section 305(b)(3)(D) of such Act and section 431(b)(3)(D) of such Code, if the plan is certified to be in critical status for any plan year but is in endangered status by reason of an election made under subsection (a), the notice provided under such sections shall be the notice which would have been provided if the plan had been certified to be in endangered status.''

TEMPORARY EXTENSION OF THE FUNDING IMPROVEMENT AND REHABILITATION PERIODS FOR MULTIEMPLOYER PENSION PLANS IN CRITICAL AND ENDANGERED STATUS FOR 2008 OR 2009

Pub. L. 110–458, title II, §205, Dec. 23, 2008, 122 Stat. 5120, provided that:

''(a) IN GENERAL.—If the plan sponsor of a multiemployer plan which is in endangered or critical status for a plan year beginning in 2008 or 2009 (determined after application of section 204 [of Pub. L. 110–458, set out above]) elects the application of this section, then, for purposes of section 305 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1085] and section 432 of the Internal Revenue Code of 1986—

''(1) except as provided in paragraph (2), the plan's funding improvement period or rehabilitation period, whichever is applicable, shall be 13 years rather than 10 years, and

''(2) in the case of a plan in seriously endangered status, the plan's funding improvement period shall be 18 years rather than 15 years.

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

''(1) ELECTION.—An election under this section shall be made at such time, and in such manner and form, as (in consultation with the Secretary of Labor) the Secretary of the Treasury or the Secretary's delegate may prescribe.

''(2) DEFINITIONS.—Any term which is used in this section which is also used in section 305 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1085] and section 432 of the Internal Revenue Code of 1986 shall have the same meaning as when used in such sections.

''(c) EFFECTIVE DATE.—This section shall apply to plan years beginning after December 31, 2007.''

SPECIAL RULE FOR CERTAIN BENEFITS FUNDED UNDER AN AGREEMENT APPROVED BY THE PENSION BENEFIT GUARANTY CORPORATION

For applicability of this section to a multiemployer plan that is a party to an agreement that was approved by the Pension Benefit Guaranty Corporation prior to June 30, 2005, and that increases benefits and provides for certain withdrawal liability rules, see section 206 of Pub. L. 109–280, set out as a note under section 412 of this title.

SUBPART B—BENEFIT LIMITATIONS UNDER SINGLE-EMPLOYER PLANS

Sec.
436. Funding-based limitation on shutdown benefits and other unpredictable contingent event benefits under single-employer plans.[1]

§ 436. Funding-based limits on benefits and benefit accruals under single-employer plans

(a) General rule

For purposes of section 401(a)(29), a defined benefit plan which is a single-employer plan shall be treated as meeting the requirements of this section if the plan meets the requirements of subsections (b), (c), (d), and (e).

(b) Funding-based limitation on shutdown benefits and other unpredictable contingent event benefits under single-employer plans

(1) In general

If a participant of a defined benefit plan which is a single-employer plan is entitled to an unpredictable contingent event benefit payable with respect to any event occurring during any plan year, the plan shall provide that such benefit may not be provided if the adjusted funding target attainment percentage for such plan year—

(A) is less than 60 percent, or

(B) would be less than 60 percent taking into account such occurrence.

[1] So in original. Does not conform to section catchline.

(2) Exemption

Paragraph (1) shall cease to apply with respect to any plan year, effective as of the first day of the plan year, upon payment by the plan sponsor of a contribution (in addition to any minimum required contribution under section 430) equal to—

(A) in the case of paragraph (1)(A), the amount of the increase in the funding target of the plan (under section 430) for the plan year attributable to the occurrence referred to in paragraph (1), and

(B) in the case of paragraph (1)(B), the amount sufficient to result in an adjusted funding target attainment percentage of 60 percent.

(3) Unpredictable contingent event benefit

For purposes of this subsection, the term ''unpredictable contingent event benefit'' means any benefit payable solely by reason of—

(A) a plant shutdown (or similar event, as determined by the Secretary), or

(B) an event other than the attainment of any age, performance of any service, receipt or derivation of any compensation, or occurrence of death or disability.

(c) Limitations on plan amendments increasing liability for benefits

(1) In general

No amendment to a defined benefit plan which is a single-employer plan which has the effect of increasing liabilities of the plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits become nonforfeitable may take effect during any plan year if the adjusted funding target attainment percentage for such plan year is—

(A) less than 80 percent, or

(B) would be less than 80 percent taking into account such amendment.

(2) Exemption

Paragraph (1) shall cease to apply with respect to any plan year, effective as of the first day of the plan year (or if later, the effective date of the amendment), upon payment by the plan sponsor of a contribution (in addition to any minimum required contribution under section 430) equal to—

(A) in the case of paragraph (1)(A), the amount of the increase in the funding target of the plan (under section 430) for the plan year attributable to the amendment, and

(B) in the case of paragraph (1)(B), the amount sufficient to result in an adjusted funding target attainment percentage of 80 percent.

(3) Exception for certain benefit increases

Paragraph (1) shall not apply to any amendment which provides for an increase in benefits under a formula which is not based on a participant's compensation, but only if the rate of such increase is not in excess of the contemporaneous rate of increase in average wages of participants covered by the amendment.

(d) Limitations on accelerated benefit distributions

(1) Funding percentage less than 60 percent

A defined benefit plan which is a single-employer plan shall provide that, in any case in which the plan's adjusted funding target attainment percentage for a plan year is less than 60 percent, the plan may not pay any prohibited payment after the valuation date for the plan year.

(2) Bankruptcy

A defined benefit plan which is a single-employer plan shall provide that, during any period in which the plan sponsor is a debtor in a case under title 11, United States Code, or similar Federal or State law, the plan may not pay any prohibited payment. The preceding sentence shall not apply on or after the date on which the enrolled actuary of the plan certifies that the adjusted funding target attainment percentage of such plan is not less than 100 percent.

(3) Limited payment if percentage at least 60 percent but less than 80 percent

(A) In general

A defined benefit plan which is a single-employer plan shall provide that, in any case in which the plan's adjusted funding target attainment percentage for a plan year is 60 percent or greater but less than 80 percent, the plan may not pay any prohibited payment after the valuation date for the plan year to the extent the amount of the payment exceeds the lesser of—

(i) 50 percent of the amount of the payment which could be made without regard to this section, or

(ii) the present value (determined under guidance prescribed by the Pension Benefit Guaranty Corporation, using the interest and mortality assumptions under section 417(e)) of the maximum guarantee with respect to the participant under section 4022 of the Employee Retirement Income Security Act of 1974.

(B) One-time application

(i) In general

The plan shall also provide that only 1 prohibited payment meeting the requirements of subparagraph (A) may be made with respect to any participant during any period of consecutive plan years to which the limitations under either paragraph (1) or (2) or this paragraph applies.

(ii) Treatment of beneficiaries

For purposes of this subparagraph, a participant and any beneficiary on his behalf (including an alternate payee, as defined in section 414(p)(8)) shall be treated as 1 participant. If the accrued benefit of a participant is allocated to such an alternate payee and 1 or more other persons, the amount under subparagraph (A) shall be allocated among such persons in the same manner as the accrued benefit is allocated unless the qualified domestic relations order (as defined in section 414(p)(1)(A)) provides otherwise.

(4) Exception

This subsection shall not apply to any plan for any plan year if the terms of such plan (as in effect for the period beginning on September 1, 2005, and ending with such plan year) provide for no benefit accruals with respect to any participant during such period.

(5) Prohibited payment

For purpose of this subsection, the term ''prohibited payment'' means—

(A) any payment, in excess of the monthly amount paid under a single life annuity (plus any social security supplements described in the last sentence of section 411(a)(9)), to a participant or beneficiary whose annuity starting date (as defined in section 417(f)(2)) occurs during any period a limitation under paragraph (1) or (2) is in effect,

(B) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits, and

(C) any other payment specified by the Secretary by regulations.

Such term shall not include the payment of a benefit which under section 411(a)(11) may be immediately distributed without the consent of the participant.

(e) Limitation on benefit accruals for plans with severe funding shortfalls

(1) In general

A defined benefit plan which is a single-employer plan shall provide that, in any case in which the plan's adjusted funding target attainment percentage for a plan year is less than 60 percent, benefit accruals under the plan shall cease as of the valuation date for the plan year.

(2) Exemption

Paragraph (1) shall cease to apply with respect to any plan year, effective as of the first day of the plan year, upon payment by the plan sponsor of a contribution (in addition to any minimum required contribution under section 430) equal to the amount sufficient to result in an adjusted funding target attainment percentage of 60 percent.

(f) Rules relating to contributions required to avoid benefit limitations

(1) Security may be provided

(A) In general

For purposes of this section, the adjusted funding target attainment percentage shall be determined by treating as an asset of the plan any security provided by a plan sponsor in a form meeting the requirements of subparagraph (B).

(B) Form of security

The security required under subparagraph (A) shall consist of—

(i) a bond issued by a corporate surety company that is an acceptable surety for purposes of section 412 of the Employee Retirement Income Security Act of 1974,

(ii) cash, or United States obligations which mature in 3 years or less, held in es-

crow by a bank or similar financial institution, or

(iii) such other form of security as is satisfactory to the Secretary and the parties involved.

(C) Enforcement

Any security provided under subparagraph (A) may be perfected and enforced at any time after the earlier of—

(i) the date on which the plan terminates,

(ii) if there is a failure to make a payment of the minimum required contribution for any plan year beginning after the security is provided, the due date for the payment under section 430(j), or

(iii) if the adjusted funding target attainment percentage is less than 60 percent for a consecutive period of 7 years, the valuation date for the last year in the period.

(D) Release of security

The security shall be released (and any amounts thereunder shall be refunded together with any interest accrued thereon) at such time as the Secretary may prescribe in regulations, including regulations for partial releases of the security by reason of increases in the adjusted funding target attainment percentage.

(2) Prefunding balance or funding standard carryover balance may not be used

No prefunding balance or funding standard carryover balance under section 430(f) may be used under subsection (b), (c), or (e) to satisfy any payment an employer may make under any such subsection to avoid or terminate the application of any limitation under such subsection.

(3) Deemed reduction of funding balances

(A) In general

Subject to subparagraph (C), in any case in which a benefit limitation under subsection (b), (c), (d), or (e) would (but for this subparagraph and determined without regard to subsection (b)(2), (c)(2), or (e)(2)) apply to such plan for the plan year, the plan sponsor of such plan shall be treated for purposes of this title as having made an election under section 430(f) to reduce the prefunding balance or funding standard carryover balance by such amount as is necessary for such benefit limitation to not apply to the plan for such plan year.

(B) Exception for insufficient funding balances

Subparagraph (A) shall not apply with respect to a benefit limitation for any plan year if the application of subparagraph (A) would not result in the benefit limitation not applying for such plan year.

(C) Restrictions of certain rules to collectively bargained plans

With respect to any benefit limitation under subsection (b), (c), or (e), subparagraph (A) shall only apply in the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers.

(g) New plans

Subsections (b), (c), and (e) shall not apply to a plan for the first 5 plan years of the plan. For purposes of this subsection, the reference in this subsection to a plan shall include a reference to any predecessor plan.

(h) Presumed underfunding for purposes of benefit limitations

(1) Presumption of continued underfunding

In any case in which a benefit limitation under subsection (b), (c), (d), or (e) has been applied to a plan with respect to the plan year preceding the current plan year, the adjusted funding target attainment percentage of the plan for the current plan year shall be presumed to be equal to the adjusted funding target attainment percentage of the plan for the preceding plan year until the enrolled actuary of the plan certifies the actual adjusted funding target attainment percentage of the plan for the current plan year.

(2) Presumption of underfunding after 10th month

In any case in which no certification of the adjusted funding target attainment percentage for the current plan year is made with respect to the plan before the first day of the 10th month of such year, for purposes of subsections (b), (c), (d), and (e), such first day shall be deemed, for purposes of such subsection, to be the valuation date of the plan for the current plan year and the plan's adjusted funding target attainment percentage shall be conclusively presumed to be less than 60 percent as of such first day.

(3) Presumption of underfunding after 4th month for nearly underfunded plans

In any case in which—

(A) a benefit limitation under subsection (b), (c), (d), or (e) did not apply to a plan with respect to the plan year preceding the current plan year, but the adjusted funding target attainment percentage of the plan for such preceding plan year was not more than 10 percentage points greater than the percentage which would have caused such subsection to apply to the plan with respect to such preceding plan year, and

(B) as of the first day of the 4th month of the current plan year, the enrolled actuary of the plan has not certified the actual adjusted funding target attainment percentage of the plan for the current plan year,

until the enrolled actuary so certifies, such first day shall be deemed, for purposes of such subsection, to be the valuation date of the plan for the current plan year and the adjusted funding target attainment percentage of the plan as of such first day shall, for purposes of such subsection, be presumed to be equal to 10 percentage points less than the adjusted funding target attainment percentage of the plan for such preceding plan year.

(i) Treatment of plan as of close of prohibited or cessation period

For purposes of applying this title—

(1) Operation of plan after period

Unless the plan provides otherwise, payments and accruals will resume effective as of the day following the close of the period for which any limitation of payment or accrual of benefits under subsection (d) or (e) applies.

(2) Treatment of affected benefits

Nothing in this subsection shall be construed as affecting the plan's treatment of benefits which would have been paid or accrued but for this section.

(j) Terms relating to funding target attainment percentage

For purposes of this section—

(1) In general

The term ''funding target attainment percentage'' has the same meaning given such term by section 430(d)(2).

(2) Adjusted funding target attainment percentage

The term ''adjusted funding target attainment percentage'' means the funding target attainment percentage which is determined under paragraph (1) by increasing each of the amounts under subparagraphs (A) and (B) of section 430(d)(2) by the aggregate amount of purchases of annuities for employees other than highly compensated employees (as defined in section 414(q)) which were made by the plan during the preceding 2 plan years.

(3)[1] Application to plans which are fully funded without regard to reductions for funding balances

(A) In general

In the case of a plan for any plan year, if the funding target attainment percentage is 100 percent or more (determined without regard to the reduction in the value of assets under section 430(f)(4)), the funding target attainment percentage for purposes of paragraphs (1) and (2) shall be determined without regard to such reduction.

(B) Transition rule

Subparagraph (A) shall be applied to plan years beginning after 2007 and before 2011 by substituting for ''100 percent'' the applicable percentage determined in accordance with the following table:

In the case of a plan year beginning in calendar year:	The applicable percentage is
2008	92
2009	94
2010	96.

(C) Limitation

Subparagraph (B) shall not apply with respect to any plan year beginning after 2008 unless the funding target attainment percentage (determined without regard to the reduction in the value of assets under section 430(f)(4)) of the plan for each preceding plan year beginning after 2007 was not less than the applicable percentage with respect to such preceding plan year determined under subparagraph (B).

[1] So in original. Two pars. (3) have been enacted.

(3)[1] Special rule for certain years

Solely for purposes of any applicable provision—

(A) In general

For plan years beginning on or after October 1, 2008, and before October 1, 2010, the adjusted funding target attainment percentage of a plan shall be the greater of—

(i) such percentage, as determined without regard to this paragraph, or

(ii) the adjusted funding target attainment percentage for such plan for the plan year beginning after October 1, 2007, and before October 1, 2008, as determined under rules prescribed by the Secretary.

(B) Special rule

In the case of a plan for which the valuation date is not the first day of the plan year—

(i) subparagraph (A) shall apply to plan years beginning after December 31, 2007, and before January 1, 2010, and

(ii) subparagraph (A)(ii) shall apply based on the last plan year beginning before November 1, 2007, as determined under rules prescribed by the Secretary.

(C) Applicable provision

For purposes of this paragraph, the term ''applicable provision'' means—

(i) subsection (d), but only for purposes of applying such paragraph to a payment which, as determined under rules prescribed by the Secretary, is a payment under a social security leveling option which accelerates payments under the plan before, and reduces payments after, a participant starts receiving social security benefits in order to provide substantially similar aggregate payments both before and after such benefits are received, and

(ii) subsection (e).

(k) Secretarial authority for plans with alternate valuation date

In the case of a plan which has designated a valuation date other than the first day of the plan year, the Secretary may prescribe rules for the application of this section which are necessary to reflect the alternate valuation date.

***(l)* Single-employer plan**

For purposes of this section, the term ''single-employer plan'' means a plan which is not a multiemployer plan.

(m) Special rule for 2008

For purposes of this section, in the case of plan years beginning in 2008, the funding target attainment percentage for the preceding plan year may be determined using such methods of estimation as the Secretary may provide.

(Added Pub. L. 109–280, title I, §113(a)(1)(B), Aug. 17, 2006, 120 Stat. 847; amended Pub. L. 110–458, title I, §101(c)(2), Dec. 23, 2008, 122 Stat. 5097; Pub. L. 111–192, title II, §203(a)(2), June 25, 2010, 124 Stat. 1300.)

REFERENCES IN TEXT

Section 4022 of the Employee Retirement Income Security Act of 1974, referred to in subsec. (d)(3)(A)(ii), is classified to section 1322 of Title 29, Labor.

Section 412 of the Employee Retirement Income Security Act of 1974, referred to in subsec (f)(1)(B)(i), is classified to section 1112 of Title 29, Labor.

AMENDMENTS

2010—Subsec. (j)(3). Pub. L. 111–192 added par. (3) relating to special rule for certain years.

2008—Subsec. (b)(2). Pub. L. 110–458, § 101(c)(2)(A), substituted ''section 430'' for ''section 303'' in introductory provisions and ''an adjusted funding'' for ''a funding'' in subpar. (B).

Subsec. (b)(3). Pub. L. 110–458, § 101(c)(2)(B), inserted ''benefit'' after ''event'' in heading and substituted ''an event'' for ''any event'' in subpar. (B).

Subsec. (d)(5). Pub. L. 110–458, § 101(c)(2)(C), inserted concluding provisions.

Subsec. (f)(1)(D). Pub. L. 110–458, § 101(c)(2)(D)(i), inserted ''adjusted'' before ''funding''.

Subsec. (f)(2). Pub. L. 110–458, § 101(c)(2)(D)(ii), substituted ''prefunding balance or funding standard carryover balance under section 430(f)'' for ''prefunding balance under section 430(f) or funding standard carryover balance''.

Subsec. (j)(3)(A). Pub. L. 110–458, § 101(c)(2)(E)(i), struck out ''without regard to this paragraph and'' before ''without regard to the reduction'' and substituted ''section 430(f)(4)'' for ''section 430(f)(4)(A)'' and ''paragraphs (1) and (2)'' for ''paragraph (1)''.

Subsec. (j)(3)(C). Pub. L. 110–458, § 101(c)(2)(E)(ii), substituted ''without regard to the reduction in the value of assets under section 430(f)(4)'' for ''without regard to this paragraph'' and inserted ''beginning'' before ''after'' in two places.

Subsecs. (k) to (m). Pub. L. 110–458, § 101(c)(2)(F), added subsecs. (k) and (*l*) and redesignated former subsec. (k) as (m).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–192, title II, § 203(c), June 25, 2010, 124 Stat. 1300, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1056 of Title 29, Labor] shall apply to plan years beginning on or after October 1, 2008.

''(2) SPECIAL RULE.—In the case of a plan for which the valuation date is not the first day of the plan year, the amendments made by this section shall apply to plan years beginning after December 31, 2007.''

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

EFFECTIVE DATE

Pub. L. 109–280, title I, § 113(b), Aug. 17, 2006, 120 Stat. 852, as amended by Pub. L. 110–458, title I, § 101(c)(3), Dec. 23, 2008, 122 Stat. 5098, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this subpart] shall apply to plan years beginning after December 31, 2007.

''(2) COLLECTIVE BARGAINING EXCEPTION.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before January 1, 2008, the amendments made by this section shall not apply to plan years beginning before the earlier of—

''(A) the later of—

''(i) the date on which the last collective bargaining agreement relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act [Aug. 17, 2006]), or

''(ii) the first day of the first plan year to which the amendments made by this section [enacting this subpart] would (but for this paragraph) apply, or

''(B) January 1, 2010.

For purposes of subparagraph (A)(i), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.''

TEMPORARY MODIFICATION OF APPLICATION OF LIMITATION ON BENEFIT ACCRUALS

Pub. L. 111–192, title II, § 203(b), June 25, 2010, 124 Stat. 1300, provided that: ''Section 203 of the Worker, Retiree, and Employer Recovery Act of 2008 [Pub. L. 110–458, set out below] shall apply to a plan for any plan year in lieu of the amendments made by this section applying to sections 206(g)(4) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1056(g)(4)] and 436(e) of the Internal Revenue Code of 1986 only to the extent that such section produces a higher adjusted funding target attainment percentage for such plan for such year.''

Pub. L. 110–458, title II, § 203, Dec. 23, 2008, 122 Stat. 5118, provided that: ''In the case of the first plan year beginning during the period beginning on October 1, 2008, and ending on September 30, 2009, sections 206(g)(4)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1056(g)(4)(A)) and 436(e)(1) of the Internal Revenue Code of 1986 shall be applied by substituting the plan's adjusted funding target attainment percentage for the preceding plan year for such percentage for such plan year but only if the adjusted funding target attainment percentage for the preceding plan year is greater.''

APPLICABILITY OF AMENDMENTS BY SUBTITLES A AND B OF TITLE I OF PUB. L. 109–280

For special rules on applicability of amendments by subtitles A (§§ 101–108) and B (§§ 111–116) of title I of Pub. L. 109–280 to certain eligible cooperative plans, PBGC settlement plans, and eligible government contractor plans, see sections 104, 105, and 106 of Pub. L. 109–280, set out as notes under section 401 of this title.

Subchapter E—Accounting Periods and Methods of Accounting

Part
I. Accounting periods.
II. Methods of accounting.
III. Adjustments.

PART I—ACCOUNTING PERIODS

Sec.
441. Period for computation of taxable income.
442. Change of annual accounting period.
443. Returns for a period of less than 12 months.
444. Election of taxable year other than required taxable year.

AMENDMENTS

1987—Pub. L. 100–203, title X, § 10206(a)(2), Dec. 22, 1987, 101 Stat. 1330–398, added item 444.

§ 441. Period for computation of taxable income

(a) Computation of taxable income

Taxable income shall be computed on the basis of the taxpayer's taxable year.

(b) Taxable year

For purposes of this subtitle, the term ''taxable year'' means—

(1) the taxpayer's annual accounting period, if it is a calendar year or a fiscal year;

(2) the calendar year, if subsection (g) applies;

(3) the period for which the return is made, if a return is made for a period of less than 12 months; or

(4) in the case of a DISC filing a return for a period of at least 12 months, the period determined under subsection (h).

(c) Annual accounting period

For purposes of this subtitle, the term ''annual accounting period'' means the annual period on the basis of which the taxpayer regularly computes his income in keeping his books.

(d) Calendar year

For purposes of this subtitle, the term ''calendar year'' means a period of 12 months ending on December 31.

(e) Fiscal year

For purposes of this subtitle, the term ''fiscal year'' means a period of 12 months ending on the last day of any month other than December. In the case of any taxpayer who has made the election provided by subsection (f) the term means the annual period (varying from 52 to 53 weeks) so elected.

(f) Election of year consisting of 52–53 weeks

(1) General rule

A taxpayer who, in keeping his books, regularly computes his income on the basis of an annual period which varies from 52 to 53 weeks and ends always on the same day of the week and ends always—

(A) on whatever date such same day of the week last occurs in a calendar month, or

(B) on whatever date such same day of the week falls which is nearest to the last day of a calendar month,

may (in accordance with the regulations prescribed under paragraph (3)) elect to compute his taxable income for purposes of this subtitle on the basis of such annual period. This paragraph shall apply to taxable years ending after the date of the enactment of this title.

(2) Special rules for 52–53-week year

(A) Effective dates

In any case in which the effective date or the applicability of any provision of this title is expressed in terms of taxable years beginning, including, or ending with reference to a specified date which is the first or last day of a month, a taxable year described in paragraph (1) shall (except for purposes of the computation under section 15) be treated—

(i) as beginning with the first day of the calendar month beginning nearest to the first day of such taxable year, or

(ii) as ending with the last day of the calendar month ending nearest to the last day of such taxable year,

as the case may be.

(B) Change in accounting period

In the case of a change from or to a taxable year described in paragraph (1)—

(i) if such change results in a short period (within the meaning of section 443) of 359 days or more, or of less than 7 days, section 443(b) (relating to alternative tax computation) shall not apply;

(ii) if such change results in a short period of less than 7 days, such short period shall, for purposes of this subtitle, be added to and deemed a part of the following taxable year; and

(iii) if such change results in a short period to which subsection (b) of section 443 applies, the taxable income for such short period shall be placed on an annual basis for purposes of such subsection by multiplying the gross income for such short period (minus the deductions allowed by this chapter for the short period, but only the adjusted amount of the deductions for personal exemptions as described in section 443(c)) by 365, by dividing the result by the number of days in the short period, and the tax shall be the same part of the tax computed on the annual basis as the number of days in the short period is of 365 days.

(3) Special rule for partnerships, S corporations, and personal service corporations

The Secretary may by regulation provide terms and conditions for the application of this subsection to a partnership, S corporation, or personal service corporation (within the meaning of section 441(i)(2)).

(4) Regulations

The Secretary shall prescribe such regulations as he deems necessary for the application of this subsection.

(g) No books kept; no accounting period

Except as provided in section 443 (relating to returns for periods of less than 12 months), the taxpayer's taxable year shall be the calendar year if—

(1) the taxpayer keeps no books;

(2) the taxpayer does not have an annual accounting period; or

(3) the taxpayer has an annual accounting period, but such period does not qualify as a fiscal year.

(h) Taxable year of DISC's

(1) In general

For purposes of this subtitle, the taxable year of any DISC shall be the taxable year of that shareholder (or group of shareholders with the same 12-month taxable year) who has the highest percentage of voting power.

(2) Special rule where more than one shareholder (or group) has highest percentage

If 2 or more shareholders (or groups) have the highest percentage of voting power under paragraph (1), the taxable year of the DISC shall be the same 12-month period as that of any such shareholder (or group).

(3) Subsequent changes of ownership

The Secretary shall prescribe regulations under which paragraphs (1) and (2) shall apply to a change of ownership of a corporation after the taxable year of the corporation has been determined under paragraph (1) or (2) only if such change is a substantial change of ownership.

(4) Voting power determined

For purposes of this subsection, voting power shall be determined on the basis of total

combined voting power of all classes of stock of the corporation entitled to vote.

(i) Taxable year of personal service corporations

(1) In general

For purposes of this subtitle, the taxable year of any personal service corporation shall be the calendar year unless the corporation establishes, to the satisfaction of the Secretary, a business purpose for having a different period for its taxable year. For purposes of this paragraph, any deferral of income to shareholders shall not be treated as a business purpose.

(2) Personal service corporation

For purposes of this subsection, the term ''personal service corporation'' has the meaning given such term by section 269A(b)(1), except that section 269A(b)(2) shall be applied—

(A) by substituting ''any'' for ''more than 10 percent'', and

(B) by substituting ''any'' for ''50 percent or more in value'' in section 318(a)(2)(C).

A corporation shall not be treated as a personal service corporation unless more than 10 percent of the stock (by value) in such corporation is held by employee-owners (within the meaning of section 269A(b)(2), as modified by the preceding sentence). If a corporation is a member of an affiliated group filing a consolidated return, all members of such group shall be taken into account in determining whether such corporation is a personal service corporation.

(Aug. 16, 1954, ch. 736, 68A Stat. 148; Pub. L. 88–272, title II, § 235(c)(3), Feb. 26, 1964, 78 Stat. 127; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–30, title I, § 102(b)(5), May 23, 1977, 91 Stat. 137; Pub. L. 98–369, div. A, title IV, § 474(b)(2), title VIII, § 803, July 18, 1984, 98 Stat. 830, 1000; Pub. L. 99–514, title I, § 104(b)(6), title VIII, § 806(c)(1), (d), Oct. 22, 1986, 100 Stat. 2105, 2364; Pub. L. 100–647, title I, § 1008(e)(4), Nov. 10, 1988, 102 Stat. 3440; Pub. L. 110–172, § 11(g)(7), Dec. 29, 2007, 121 Stat. 2490.)

AMENDMENTS

2007—Subsec. (b)(4). Pub. L. 110–172, § 11(g)(7)(A), struck out ''FSC or'' before ''DISC filing''.

Subsec. (h). Pub. L. 110–172, § 11(g)(7)(B), struck out ''FSC's and'' before ''DISC's'' in heading and ''FSC or'' before ''DISC'' in pars. (1) and (2).

1988—Subsec. (i)(2). Pub. L. 100–647 inserted at end ''A corporation shall not be treated as a personal service corporation unless more than 10 percent of the stock (by value) in such corporation is held by employee-owners (within the meaning of section 269A(b)(2), as modified by the preceding sentence). If a corporation is a member of an affiliated group filing a consolidated return, all members of such group shall be taken into account in determining whether such corporation is a personal service corporation.''

1986—Subsec. (f)(2)(B)(iii). Pub. L. 99–514, § 104(b)(6), struck out ''and by adding the zero bracket amount,'' after ''in the short period,''.

Subsec. (f)(3), (4). Pub. L. 99–514, § 806(d), added par. (3) and redesignated former par. (3) as (4).

Subsec. (i). Pub. L. 99–514, § 806(c)(1), added subsec. (i).

1984—Subsec. (b)(4). Pub. L. 98–369, § 803(a), added par. (4).

Subsec. (f)(2)(A). Pub. L. 98–369, § 474(b)(2), substituted ''section 15'' for ''section 21'' in provisions preceding cl. (i).

Subsec. (h). Pub. L. 98–369, § 803(b), added subsec. (h).

1977—Subsec. (f)(2)(B)(iii). Pub. L. 95–30 substituted ''multiplying the gross income for such short period (minus the deductions allowed by this chapter for the short period, but only the adjusted amount of the deductions for personal exemptions as described in section 443(c)) by 365, by dividing the result by the number of days in the short period, and by adding the zero bracket amount'' for ''multiplying such income by 365 and dividing the result by the number of days in the short period''.

1976—Subsec. (f)(3). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1964—Subsec. (f)(2)(A). Pub. L. 88–272 inserted '', including,'' before ''or ending with reference to''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(6) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 806(c)(1), (d) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with special provisions applicable to taxpayers who are required to change their accounting periods, see section 806(e) of Pub. L. 99–514, set out as a note under section 1378 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(b)(2) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 803 of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1984, see section 805(a)(4) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years ending after Dec. 31, 1963, see section 235(d) of Pub. L. 88–272, set out as a note under section 1551 of this title.

CONSTRUCTION OF SECTION 806 OF PUB. L. 99–514

Nothing in section 806 of Pub. L. 99–514 or in any legislative history relating thereto to be construed as requiring the Secretary of the Treasury or his delegate to permit an automatic change of a taxable year, see section 1008(e)(9) of Pub. L. 100–647, set out as a note under section 1378 of this title.

§ 442. Change of annual accounting period

If a taxpayer changes his annual accounting period, the new accounting period shall become the taxpayer's taxable year only if the change is approved by the Secretary. For purposes of this subtitle, if a taxpayer to whom section 441(g) applies adopts an annual accounting period (as defined in section 441(c)) other than a calendar year, the taxpayer shall be treated as having changed his annual accounting period.

(Aug. 16, 1954, ch. 736, 68A Stat. 149; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

§ 443. Returns for a period of less than 12 months

(a) Returns for short period

A return for a period of less than 12 months (referred to in this section as ''short period'') shall be made under any of the following circumstances:

(1) Change of annual accounting period

When the taxpayer, with the approval of the Secretary, changes his annual accounting period. In such a case, the return shall be made for the short period beginning on the day after the close of the former taxable year and ending at the close of the day before the day designated as the first day of the new taxable year.

(2) Taxpayer not in existence for entire taxable year

When the taxpayer is in existence during only part of what would otherwise be his taxable year.

(b) Computation of tax on change of annual accounting period

(1) General rule

If a return is made under paragraph (1) of subsection (a), the taxable income for the short period shall be placed on an annual basis by multiplying the modified taxable income for such short period by 12, dividing the result by the number of months in the short period. The tax shall be the same part of the tax computed on the annual basis as the number of months in the short period is of 12 months.

(2) Exception

(A) Computation based on 12-month period

If the taxpayer applies for the benefits of this paragraph and establishes the amount of this taxable income for the 12-month period described in subparagraph (B), computed as if that period were a taxable year and under the law applicable to that year, then the tax for the short period, computed under paragraph (1), shall be reduced to the greater of the following:

(i) an amount which bears the same ratio to the tax computed on the taxable income for the 12-month period as the modified taxable income computed on the basis of the short period bears to the modified taxable income for the 12-month period; or

(ii) the tax computed on the modified taxable income for the short period.

The taxpayer (other than a taxpayer to whom subparagraph (B)(ii) applies) shall compute the tax and file his return without the application of this paragraph.

(B) 12-month period

The 12-month period referred to in subparagraph (A) shall be—

(i) the period of 12 months beginning on the first day of the short period, or

(ii) the period of 12 months ending at the close of the last day of the short period, if at the end of the 12 months referred to in clause (i) the taxpayer is not in existence or (if a corporation) has theretofore disposed of substantially all of its assets.

(C) Application for benefits

Application for the benefits of this paragraph shall be made in such manner and at such time as the regulations prescribed under subparagraph (D) may require; except that the time so prescribed shall not be later than the time (including extensions) for filing the return for the first taxable year which ends on or after the day which is 12 months after the first day of the short period. Such application, in case the return was filed without regard to this paragraph, shall be considered a claim for credit or refund with respect to the amount by which the tax is reduced under this paragraph.

(D) Regulations

The Secretary shall prescribe such regulations as he deems necessary for the application of this paragraph.

(3) Modified taxable income defined

For purposes of this subsection the term ''modified taxable income'' means, with respect to any period, the gross income for such period minus the deductions allowed by this chapter for such period (but, in the case of a short period, only the adjusted amount of the deductions for personal exemptions).

(c) Adjustment in deduction for personal exemption

In the case of a taxpayer other than a corporation, if a return is made for a short period by reason of subsection (a)(1) and if the tax is not computed under subsection (b)(2), then the exemptions allowed as a deduction under section 151 (and any deduction in lieu thereof) shall be reduced to amounts which bear the same ratio to the full exemptions as the number of months in the short period bears to 12.

(d) Adjustment in computing minimum tax and tax preferences

If a return is made for a short period by reason of subsection (a)—

(1) the alternative minimum taxable income for the short period shall be placed on an annual basis by multiplying such amount by 12 and dividing the result by the number of months in the short period, and

(2) the amount computed under paragraph (1) of section 55(a) shall bear the same relation to the tax computed on the annual basis as the number of months in the short period bears to 12.

(e) Cross references

For inapplicability of subsection (b) in computing—

(1) Accumulated earnings tax, see section 536.

(2) Personal holding company tax, see section 546.

(3) The taxable income of a regulated investment company, see section 852(b)(2)(E).

(4) The taxable income of a real estate investment trust, see section 857(b)(2)(C).

For returns for a period of less than 12 months in the case of a debtor's election to terminate a taxable year, see section 1398(d)(2)(E).

(Aug. 16, 1954, ch. 736, 68A Stat. 149; Pub. L. 86–779, §10(i), Sept. 14, 1960, 74 Stat. 1009; Pub. L.

91–172, title III, § 301(b)(6), Dec. 30, 1969, 83 Stat. 585; Pub. L. 94–455, title III, § 301(e), title XII, § 1204(c)(2), title XVI, § 1607(b)(1)(C), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1553, 1697, 1757, 1834; Pub. L. 95–30, title I, § 102(b)(6), May 23, 1977, 91 Stat. 137; Pub. L. 95–600, title IV, § 421(e)(2), title VII, § 703(*o*)(1)–(3), Nov. 6, 1978, 92 Stat. 2876, 2943; Pub. L. 96–222, title I, § 104(a)(4)(H)(iii), Apr. 1, 1980, 94 Stat. 217; Pub. L. 96–589, § 3(d), Dec. 24, 1980, 94 Stat. 3401; Pub. L. 97–448, title III, § 304(a), Jan. 12, 1983, 96 Stat. 2398; Pub. L. 99–514, title I, § 104(b)(7), title VII, § 701(e)(3), Oct. 22, 1986, 100 Stat. 2105, 2342; Pub. L. 108–357, title IV, § 413(c)(6), Oct. 22, 2004, 118 Stat. 1507.)

AMENDMENTS

2004—Subsec. (e)(3) to (5). Pub. L. 108–357 redesignated pars. (4) and (5) as (3) and (4), respectively, and struck out former par. (3) which read as follows: ''Undistributed foreign personal holding company income, see section 557.''

1986—Subsec. (b)(1). Pub. L. 99–514, § 104(b)(7)(A), struck out '', and adding the zero bracket amount'' after ''by the number of months in the short period''.

Subsec. (b)(2)(A)(ii). Pub. L. 99–514, § 104(b)(7)(B), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''the tax computed on the sum of the modified taxable income for the short period plus the zero bracket amount.''

Subsec. (d). Pub. L. 99–514, § 701(e)(3), substituted ''and tax preferences'' for ''for tax preferences'' in heading and amended text generally. Prior to amendment, subsec. (d) read as follows: ''If a return is made for a short period by reason of subsection (a), then—

''(1) in the case of a taxpayer other than a corporation, the alternative minimum taxable income for the short period shall be placed on an annual basis by multiplying that amount by 12 and dividing the result by the number of months in the short period, and the amount computed under paragraph (1) of section 55(a) shall be the same part of the tax computed on the annual basis as the number of months in the short period is of 12 months; and

''(2) the $10,000 amount specified in section 56 (relating to minimum tax for tax preferences), modified as provided by section 58, shall be reduced to the amount which bears the same ratio to such specified amount as the number of days in the short period bears to 365.''

1983—Subsec. (e). Pub. L. 97–448 substituted ''section 1398(d)(2)(E)'' for ''section 1398(d)(3)(E)''.

1980—Subsec. (d)(2). Pub. L. 96–222 struck out ''in the case of a corporation,'' before ''the $10,000 amount''.

Subsec. (e). Pub. L. 96–589 inserted cross reference to section 1398(d)(3)(E) for returns for a period of less than 12 months in the case of a debtor's election to terminate a taxable year.

1978—Subsec. (b)(1). Pub. L. 95–600, § 703(*o*)(2), substituted ''modified taxable income for such short period'' for ''gross income for such short period (minus the deductions allowed by this chapter for the short period, but only the adjusted amount of the deductions for personal exemptions)''.

Subsec. (b)(2). Pub. L. 95–600, § 703(*o*)(1), substituted in cl. (i) ''modified taxable income'' for ''taxable income'' in two places and in cl. (ii) ''the sum of the modified taxable income'' for ''the taxable income'' and ''plus the zero bracket amount'' for ''without placing the taxable income on an annual basis''.

Subsec. (b)(3). Pub. L. 95–600, § 703(*o*)(3), added par. (3).

Subsec. (d). Pub. L. 95–600, § 421(e)(2), substituted ''Adjustment in computing minimum tax for tax preferences'' for ''Adjustment in exclusion for computing minimum tax for tax preferences'' in heading, redesignated existing provisions as par. (2) and as so redesignated applied par. (2) to corporations, and added par. (1).

1977—Subsec. (b)(1). Pub. L. 95–30 substituted ''multiplying the gross income for such short period (minus the deductions allowed by this chapter for the short period, but only the adjusted amount of the deductions for personal exemptions) by 12, dividing the result by the number of months in the short period, and adding the zero bracket amount'' for ''multiplying such income by 12, and dividing the result by the number of months in the short period''.

1976—Subsec. (a)(1). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (a)(3). Pub. L. 94–455, § 1204(c)(2), struck out par. (3) which made termination of taxpayer's taxable year under section 6851 as one of the circumstances under which a tax return for a period of less than 12 months shall be made.

Subsec. (b)(2)(D). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d). Pub. L. 94–455, § 301(e), substituted ''$10,000'' for ''$30,000''.

Subsec. (e)(5). Pub. L. 94–455, § 1607(b)(1)(C), substituted ''section 857(b)(2)(C)'' for ''section 857(b)(2)(D)''.

1969—Subsecs. (d), (e). Pub. L. 91–172 added subsec. (d) and redesignated former subsec. (d) as (e).

1960—Subsec. (d)(5). Pub. L. 86–779 added par. (5).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(7) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 701(e)(3) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 311(b)(1) of Pub. L. 97–448 provided that: ''The amendment made by subsection (a) of section 304 [amending this section] shall take effect as if included in the amendments made by section 3 of the Bankruptcy Tax Act of 1980 [section 3 of Pub. L. 96–589, which amended this section and sections 6012 and 6103 of this title].''

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–589 applicable to bankruptcy cases commencing more than 90 days after Dec. 24, 1980, see section 7(b) of Pub. L. 96–589, set out as a note under section 108 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 703(*o*)(4) of Pub. L. 95–600 provided that: ''The amendments made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 1976.''

Amendment by section 421(e)(2) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 421(g) of Pub. L. 95–600, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of

Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 301(g)(1) of Pub. L. 94–455 provided that the amendment made by section 301(e) of Pub. L. 94–455 is effective for items of tax preferences for taxable years beginning after Dec. 31, 1975, with certain exceptions.

Amendment by section 1204(c)(2) of Pub. L. 94–455 effective with respect to action taken under section 6851, 6861, or 6862 of this title where the notice and demand takes place after Feb. 28, 1977, see section 1204(d) of Pub. L. 94–455, as amended, set out as a note under section 6851 of this title.

For effective date of amendment by section 1607(b)(1)(C) of Pub. L. 94–455, see section 1608(c) of Pub. L. 94–455, set out as a note under section 857 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 301(c) of Pub. L. 91–172, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–779 applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86–779, set out as an Effective Date note under section 856 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(3) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, see section 1012(aa)(2) of Pub. L. 100–647, set out as a note under section 861 of this title.

§ 444. Election of taxable year other than required taxable year

(a) General rule

Except as otherwise provided in this section, a partnership, S corporation, or personal service corporation may elect to have a taxable year other than the required taxable year.

(b) Limitations on taxable years which may be elected

(1) In general

Except as provided in paragraphs (2) and (3), an election may be made under subsection (a) only if the deferral period of the taxable year elected is not longer than 3 months.

(2) Changes in taxable year

Except as provided in paragraph (3), in the case of an entity changing a taxable year, an election may be made under subsection (a) only if the deferral period of the taxable year elected is not longer than the shorter of—

(A) 3 months, or

(B) the deferral period of the taxable year which is being changed.

(3) Special rule for entities retaining 1986 taxable years

In the case of an entity's 1st taxable year beginning after December 31, 1986, an entity may elect a taxable year under subsection (a) which is the same as the entity's last taxable year beginning in 1986.

(4) Deferral period

For purposes of this subsection, except as provided in regulations, the term ''deferral period'' means, with respect to any taxable year of the entity, the months between—

(A) the beginning of such year, and

(B) the close of the 1st required taxable year ending within such year.

(c) Effect of election

If an entity makes an election under subsection (a), then—

(1) in the case of a partnership or S corporation, such entity shall make the payments required by section 7519, and

(2) in the case of a personal service corporation, such corporation shall be subject to the deduction limitations of section 280H.

(d) Elections

(1) Person making election

An election under subsection (a) shall be made by the partnership, S corporation, or personal service corporation.

(2) Period of election

(A) In general

Any election under subsection (a) shall remain in effect until the partnership, S corporation, or personal service corporation changes its taxable year or otherwise terminates such election. Any change to a required taxable year may be made without the consent of the Secretary.

(B) No further election

If an election is terminated under subparagraph (A) or paragraph (3)(A), the partnership, S corporation, or personal service corporation may not make another election under subsection (a).

(3) Tiered structures, etc.

(A) In general

Except as otherwise provided in this paragraph—

(i) no election may be under subsection (a) with respect to any entity which is part of a tiered structure, and

(ii) an election under subsection (a) with respect to any entity shall be terminated if such entity becomes part of a tiered structure.

(B) Exceptions for structures consisting of certain entities with same taxable year

Subparagraph (A) shall not apply to any tiered structure which consists only of partnerships or S corporations (or both) all of which have the same taxable year.

(e) Required taxable year

For purposes of this section, the term ''required taxable year'' means the taxable year determined under section 706(b), 1378, or 441(i) without taking into account any taxable year which is allowable by reason of business purposes. Solely for purposes of the preceding sentence, sections 706(b), 1378, and 441(i) shall be treated as in effect for taxable years beginning before January 1, 1987.

(f) Personal service corporation

For purposes of this section, the term ''personal service corporation'' has the meaning given to such term by section 441(i)(2).

(g) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section, including regulations to prevent the avoidance of subsection (b)(2)(B) or (d)(2)(B) through the change in form of an entity.

(Added Pub. L. 100–203, title X, § 10206(a)(1), Dec. 22, 1987, 101 Stat. 1330–397; amended Pub. L. 100–647, title II, § 2004(e)(1), (2)(A), (12), (13), Nov. 10, 1988, 102 Stat. 3600, 3602.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–647, § 2004(e)(1)(A), substituted ''as otherwise provided in this section'' for ''as provided in subsections (b) and (c)''.

Subsec. (b)(4). Pub. L. 100–647, § 2004(e)(13), inserted ''except as provided in regulations,'' before ''the term''.

Subsec. (d)(2)(A). Pub. L. 100–647, § 2004(e)(12), inserted ''or otherwise terminates such election'' after ''its taxable year''.

Subsec. (d)(2)(B). Pub. L. 100–647, § 2004(e)(1)(C), inserted ''or paragraph (3)(A)'' after ''under subparagraph (A)''.

Subsec. (d)(3). Pub. L. 100–647, § 2004(e)(1)(B), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''No election may be made under subsection (a) with respect to an entity which is part of a tiered structure other than a tiered structure comprised of 1 or more partnerships or S corporations all of which have the same taxable year.''

Subsecs. (f), (g). Pub. L. 100–647, § 2004(e)(2)(A), added subsec. (f) and redesignated former subsec. (f) as (g).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE

Section 10206(d) of Pub. L. 100–203, as amended by Pub. L. 100–647, title II, § 2004(e)(11), Nov. 10, 1988, 102 Stat. 3602, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [enacting this section and sections 280H and 7519 of this title] shall apply to taxable years beginning after December 31, 1986.

''(2) REQUIRED PAYMENTS.—The amendments made by subsection (b) [enacting section 7519 of this title] shall apply to applicable election years beginning after December 31, 1986.

''(3) ELECTIONS.—Any election under section 444 of the Internal Revenue Code of 1986 (as added by subsection (a)) for an entity's 1st taxable year beginning after December 31, 1986, shall not be required to be made before the 90th day after the date of the enactment of this Act [Dec. 22, 1987].

''(4) SPECIAL RULE FOR EXISTING ENTITIES ELECTING S CORPORATION STATUS.—If a C corporation (within the meaning of section 1361(a)(2) of the Internal Revenue Code of 1986) with a taxable year other than the calendar year—

''(A) made an election after September 18, 1986, and before January 1, 1988, under section 1362 of such Code to be treated as an S corporation, and

''(B) elected to have the calendar year as the taxable year of the S corporation,

then section 444(b)(2)(B) of such Code shall be applied by taking into account the deferral period of the last taxable year of the C corporation rather than the deferral period of the taxable year being changed. The preceding sentence shall apply only in the case of an election under section 444 of such Code made for a taxable year beginning before 1989.''

PART II—METHODS OF ACCOUNTING

Subpart
A. Methods of accounting in general.
B. Taxable year for which items of gross income included.
C. Taxable year for which deductions taken.
D. Inventories.

SUBPART A—METHODS OF ACCOUNTING IN GENERAL

Sec.
446. General rule for methods of accounting.
447. Method of accounting for corporations engaged in farming.
448. Limitation on use of cash method of accounting.

AMENDMENTS

1986—Pub. L. 99–514, title VIII, § 801(c), Oct. 22, 1986, 100 Stat. 2348, added item 448.

1976—Pub. L. 94–455, title II, § 207(c)(1)(B), Oct. 4, 1976, 90 Stat. 1541, added item 447.

§ 446. General rule for methods of accounting

(a) General rule

Taxable income shall be computed under the method of accounting on the basis of which the taxpayer regularly computes his income in keeping his books.

(b) Exceptions

If no method of accounting has been regularly used by the taxpayer, or if the method used does not clearly reflect income, the computation of taxable income shall be made under such method as, in the opinion of the Secretary, does clearly reflect income.

(c) Permissible methods

Subject to the provisions of subsections (a) and (b), a taxpayer may compute taxable income under any of the following methods of accounting—

(1) the cash receipts and disbursements method;

(2) an accrual method;

(3) any other method permitted by this chapter; or

(4) any combination of the foregoing methods permitted under regulations prescribed by the Secretary.

(d) Taxpayer engaged in more than one business

A taxpayer engaged in more than one trade or business may, in computing taxable income, use a different method of accounting for each trade or business.

(e) Requirement respecting change of accounting method

Except as otherwise expressly provided in this chapter, a taxpayer who changes the method of accounting on the basis of which he regularly computes his income in keeping his books shall, before computing his taxable income under the new method, secure the consent of the Secretary.

(f) Failure to request change of method of accounting

If the taxpayer does not file with the Secretary a request to change the method of accounting, the absence of the consent of the Sec-

retary to a change in the method of accounting shall not be taken into account—

(1) to prevent the imposition of any penalty, or the addition of any amount to tax, under this title, or

(2) to diminish the amount of such penalty or addition to tax.

(Aug. 16, 1954, ch. 736, 68A Stat. 151; Pub. L. 94–455, title XIX, § 1906 (b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title I, § 161(a), July 18, 1984, 98 Stat. 696.)

AMENDMENTS

1984—Subsec. (f). Pub. L. 98–369 added subsec. (f).

1976—Subsecs. (b), (c), (e). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 161(b) of Pub. L. 98–369 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [July 18, 1984].''

§ 447. Method of accounting for corporations engaged in farming

(a) General rule

Except as otherwise provided by law, the taxable income from farming of—

(1) a corporation engaged in the trade or business of farming, or

(2) a partnership engaged in the trade or business of farming, if a corporation is a partner in such partnership,

shall be computed on an accrual method of accounting. This section shall not apply to the trade or business of operating a nursery or sod farm or to the raising or harvesting of trees (other than fruit and nut trees).

(b) Preproductive period expenses

For rules requiring capitalization of certain preproductive period expenses, see section 263A.

(c) Exception for certain corporations

For purposes of subsection (a), a corporation shall be treated as not being a corporation if it is—

(1) an S corporation, or

(2) a corporation the gross receipts of which meet the requirements of subsection (d).

(d) Gross receipts requirements

(1) In general

A corporation meets the requirements of this subsection if, for each prior taxable year beginning after December 31, 1975, such corporation (and any predecessor corporation) did not have gross receipts exceeding $1,000,000. For purposes of the preceding sentence, all corporations which are members of the same controlled group of corporations (within the meaning of section 1563(a)) shall be treated as 1 corporation.

(2) Special rules for family corporations

(A) In general

In the case of a family corporation, paragraph (1) shall be applied—

(i) by substituting ''December 31, 1985,'' for ''December 31, 1975,''; and

(ii) by substituting ''$25,000,000'' for ''$1,000,000''.

(B) Gross receipts test

(i) Controlled groups

Notwithstanding the last sentence of paragraph (1), in the case of a family corporation—

(I) except as provided by the Secretary, only the applicable percentage of gross receipts of any other member of any controlled group of corporations of which such corporation is a member shall be taken into account, and

(II) under regulations, gross receipts of such corporation or of another member of such group shall not be taken into account by such corporation more than once.

(ii) Pass-thru entities

For purposes of paragraph (1), if a family corporation holds directly or indirectly any interest in a partnership, estate, trust or other pass-thru entity, such corporation shall take into account its proportionate share of the gross receipts of such entity.

(iii) Applicable percentage

For purposes of clause (i), the term ''applicable percentage'' means the percentage equal to a fraction—

(I) the numerator of which is the fair market value of the stock of another corporation held directly or indirectly as of the close of the taxable year by the family corporation, and

(II) the denominator of which is the fair market value of all stock of such corporation as of such time.

For purposes of this clause, the term ''stock'' does not include stock described in section 1563(c)(1).

(C) Family corporation

For purposes of this section, the term ''family corporation'' means—

(i) any corporation if at least 50 percent of the total combined voting power of all classes of stock entitled to vote, and at least 50 percent of all other classes of stock of the corporation, are owned by members of the same family, and

(ii) any corporation described in subsection (h).

(e) Members of the same family

For purposes of subsection (d)—

(1) the members of the same family are an individual, such individual's brothers and sisters, the brothers and sisters of such individual's parents and grandparents, the ancestors and lineal descendants or any of the foregoing, a spouse of any of the foregoing, and the estate of any of the foregoing,

(2) stock owned, directly or indirectly, by or for a partnership or trust shall be treated as owned proportionately by its partners or beneficiaries, and

(3) if 50 percent or more in value of the stock in a corporation (hereinafter in this paragraph referred to as ''first corporation'') is owned, directly or through paragraph (2), by or for members of the same family, such members

shall be considered as owning each class of stock in a second corporation (or a wholly owned subsidiary of such second corporation) owned, directly or indirectly, by or for the first corporation, in that proportion which the value of the stock in the first corporation which such members so own bears to the value of all the stock in the first corporation.

For purposes of paragraph (1), individuals related by the half blood or by legal adoption shall be treated as if they were related by the whole blood.

(f) Coordination with section 481

In the case of any taxpayer required by this section to change its method of accounting for any taxable year—

(1) such change shall be treated as having been made with the consent of the Secretary,

(2) for purposes of section 481(a)(2), such change shall be treated as a change not initiated by the taxpayer, and

(3) under regulations prescribed by the Secretary, the net amount of adjustments required by section 481(a) to be taken into account by the taxpayer in computing taxable income shall be taken into account in each of the 10 taxable years (or the remaining taxable years where there is a stated future life of less than 10 taxable years) beginning with the year of change.

(g) Certain annual accrual accounting methods

(1) In general

Notwithstanding subsection (a) or section 263A, if—

(A) for its 10 taxable years ending with its first taxable year beginning after December 31, 1975, a corporation or qualified partnership used an annual accrual method of accounting with respect to its trade or business of farming,

(B) such corporation or qualified partnership raises crops which are harvested not less than 12 months after planting, and

(C) such corporation or qualified partnership has used such method of accounting for all taxable years intervening between its first taxable year beginning after December 31, 1975, and the taxable year,

such corporation or qualified partnership may continue to employ such method of accounting for the taxable year with respect to its qualified farming trade or business.

(2) Annual accrual method of accounting defined

For purposes of paragraph (1), the term ''annual accrual method of accounting'' means a method under which revenues, costs, and expenses are computed on an accrual method of accounting and the preproductive period expenses incurred during the taxable year are charged to harvested crops or deducted in determining the taxable income for such years.

(3) Certain nonrecognition transfers

For purposes of this subsection, if—

(A) a corporation acquired substantially all the assets of a qualified farming trade or business from another corporation in a transaction in which no gain or loss was recognized to the transferor or transferee corporation, or

(B) a qualified partnership acquired substantially all the assets of a qualified farming trade or business from one of its partners in a transaction to which section 721 applies,

the transferee corporation or qualified partnership shall be deemed to have computed its taxable income on an annual accrual method of accounting during the period for which the transferor corporation or partnership computed its taxable income from such trade or business on an annual accrual method.

(4) Qualified partnership defined

For purposes of this subsection—

(A) Qualified partnership

The term ''qualified partnership'' means a partnership which is engaged in a qualified farming trade or business and each of the partners of which is a corporation other than—

(i) an S corporation, or

(ii) a personal holding company (within the meaning of section 542(a)).

(B) Qualified farming trade or business

(i) In general

The term ''qualified farming trade or business'' means the trade or business of farming—

(I) sugar cane,

(II) any plant with a preproductive period (as defined in section 263A(e)(3)) of 2 years or less, and

(III) any other plant (other than any citrus or almond tree) if an election by the corporation under this subparagraph is in effect.

In the case of a partnership and for purposes of paragraph (3)(A), subclauses (II) and (III) shall not apply.

(ii) Effect of election

For purposes of paragraphs (1) and (2) of section 263A(e), any election under this subparagraph shall be treated as if it were an election under subsection (d)(3) of section 263A.

(iii) Election

Unless the Secretary otherwise consents, an election under this subparagraph may be made only for the corporation's 1st taxable year which begins after December 31, 1986, and during which the corporation engages in a farming business. Any such election, once made, may be revoked only with the consent of the Secretary.

(h) Exception for certain closely held corporations

(1) In general

A corporation is described in this subsection if, on October 4, 1976, and at all times thereafter—

(A) members of 2 families (within the meaning of subsection (e)(1)) have owned (directly or through the application of sub-

section (e)) at least 65 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, and at least 65 percent of the total number of shares of all other classes of stock of such corporation; or

(B)(i) members of 3 families (within the meaning of subsection (e)(1)) have owned (directly or through the application of subsection (e)) at least 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, and at least 50 percent of the total number of shares of all other classes of stock of such corporation; and

(ii) substantially all of the stock of such corporation which is not so owned (directly or through the application of subsection (e)) by members of such 3 families is owned directly—

(I) by employees of the corporation or members of their families (within the meaning of section 267(c)(4)), or

(II) by a trust for the benefit of the employees of such corporation which is described in section 401(a) and which is exempt from taxation under section 501(a).

(2) Stock held by employees, etc.

For purposes of this subsection, stock which—

(A) is owned directly by employes[1] of the corporation or members of their families (within the meaning of section 267(c)(4)) or by a trust described in paragraph (1)(B)(ii)(II), and

(B) was acquired on or after October 4, 1976, from the corporation or from a member of a family which, on October 4, 1976, was described in subparagraph (A) or (B)(i) of paragraph (1).

shall be treated as owned by a member of a family which, on October 4, 1976, was described in subparagraph (A) or (B)(i) of paragraph (1).

(3) Corporation must be engaged in farming

This subsection shall apply only in the case of a corporation which was, on October 4, 1976, and at all times thereafter, engaged in the trade or business of farming.

(i) Suspense account for family corporations

(1) In general

If any family corporation is required by this section to change its method of accounting for any taxable year (hereinafter in this subsection referred to as the ''year of the change''), notwithstanding subsection (f), such corporation shall establish a suspense account under this subsection in lieu of taking into account adjustments under section 481(a) with respect to amounts included in the suspense account.

(2) Initial opening balance

The initial opening balance of the account described in paragraph (1) shall be the lesser of—

(A) the net adjustments which would have been required to be taken into account under section 481 but for this subsection, or

(B) the amount of such net adjustments determined as of the beginning of the taxable year preceding the year of change.

If the amount referred to in subparagraph (A) exceeds the amount referred to in subparagraph (B), notwithstanding paragraph (1), such excess shall be included in gross income in the year of the change.

(3) Inclusion where corporation ceases to be a family corporation

(A) In general

If the corporation ceases to be a family corporation during any taxable year, the amount in the suspense account (after taking into account prior reductions) shall be included in gross income for such taxable year.

(B) Special rule for certain transfers

For purposes of subparagraph (A), any transfer in a corporation after December 15, 1987, shall be treated as a transfer to a person whose ownership could not qualify such corporation as a family corporation unless it is a transfer—

(i) to a member of the family of the transferor, or

(ii) in the case of a corporation described in subsection (h), to a member of a family which on December 15, 1987, held stock in such corporation which qualified the corporation under subsection (h).

(4) Subchapter C transactions

The application of this subsection with respect to a taxpayer which is a party to any transaction with respect to which there is nonrecognition of gain or loss to any party by reason of subchapter C shall be determined under regulations prescribed by the Secretary.

(5) Termination

(A) In general

No suspense account may be established under this subsection by any corporation required by this section to change its method of accounting for any taxable year ending after June 8, 1997.

(B) Phaseout of existing suspense accounts

(i) In general

Each suspense account under this subsection shall be reduced (but not below zero) for each taxable year beginning after June 8, 1997, by an amount equal to the lesser of—

(I) the applicable portion of such account, or

(II) 50 percent of the taxable income of the corporation for the taxable year, or, if the corporation has no taxable income for such year, the amount of any net operating loss (as defined in section 172(c)) for such taxable year.

For purposes of the preceding sentence, the amount of taxable income and net operating loss shall be determined without regard to this paragraph.

(ii) Coordination with other reductions

The amount of the applicable portion for any taxable year shall be reduced (but not

[1] So in original.

below zero) by the amount of any reduction required for such taxable year under any other provision of this subsection.

(iv)[2] Inclusion in income

Any reduction in a suspense account under this paragraph shall be included in gross income for the taxable year of the reduction.

(C) Applicable portion

For purposes of subparagraph (B), the term ''applicable portion'' means, for any taxable year, the amount which would ratably reduce the amount in the account (after taking into account prior reductions) to zero over the period consisting of such taxable year and the remaining taxable years in such first 20 taxable years.

(D) Amounts after 20th year

Any amount in the account as of the close of the 20th year referred to in subparagraph (C) shall be treated as the applicable portion for each succeeding year thereafter to the extent not reduced under this paragraph for any prior taxable year after such 20th year.

(Added Pub. L. 94–455, title II, § 207(c)(1)(A), Oct. 4, 1976, 90 Stat. 1538; amended Pub. L. 95–600, title III, §§ 351(a), 353(a), title VII, §§ 701(*l*)(1), 703(d), Nov. 6, 1978, 92 Stat. 2846, 2847, 2906, 2939; Pub. L. 97–248, title II, § 230(a), Sept. 3, 1982, 96 Stat. 495; Pub. L. 97–354, § 5(a)(28), (29), Oct. 19, 1982, 96 Stat. 1695; Pub. L. 99–514, title VIII, § 803(b)(7), Oct. 22, 1986, 100 Stat. 2356; Pub. L. 100–203, title X, § 10205(a)–(c), Dec. 22, 1987, 101 Stat. 1330–395 to 1330–397; Pub. L. 100–647, title I, § 1008(b)(5), (6), Nov. 10, 1988, 102 Stat. 3438; Pub. L. 101–508, title XI, § 11702(b), Nov. 5, 1990, 104 Stat. 1388–514; Pub. L. 105–34, title X, § 1081(a), Aug. 5, 1997, 111 Stat. 949.)

AMENDMENTS

1997—Subsec. (i)(3). Pub. L. 105–34 redesignated par. (5) as (3) and struck out heading and text of former par. (3). Text read as follows: ''If—

''(A) the gross receipts of the corporation from the trade or business of farming for the year of the change or any subsequent taxable year, is less than

''(B) such gross receipts for the taxpayer's last taxable year beginning before the year of the change (or for the most recent taxable year for which a reduction in the suspense account was made under this paragraph),

the amount in the suspense account (after taking into account prior reductions) shall be reduced by the percentage by which the amount described in subparagraph (A) is less than the amount described in subparagraph (B).''

Subsec. (i)(4). Pub. L. 105–34 redesignated par. (6) as (4) and struck out heading and text of former par. (4). Text read as follows: ''Any reduction in the suspense account under paragraph (3) shall be included in gross income for the taxable year of the reduction.''

Subsec. (i)(5), (6). Pub. L. 105–34 added par. (5) and redesignated former pars. (5) and (6) as (3) and (4), respectively.

1990—Subsec. (g)(1)(A). Pub. L. 101–508, § 11702(b)(2), substituted ''trade or business of farming'' for ''qualified farming trade or business''.

Subsec. (g)(4)(B). Pub. L. 101–508, § 11702(b)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The term 'qualified farming trade or business' means the trade or business of farming sugar cane.''

1988—Subsec. (b). Pub. L. 100–647, § 1008(b)(5), substituted ''period expenses'' for ''period of expenses'' in heading and in text.

Subsec. (g)(1). Pub. L. 100–647, § 1008(b)(6), substituted ''qualified farming trade or business'' for ''trade or business of farming'' in subpar. (A) and in concluding provisions.

1987—Subsec. (c). Pub. L. 100–203, § 10205(a), added subsec. (c), substituting ''certain corporations'' for ''small business and family corporations'' in heading and striking out former text which read as follows: ''For purposes of subsection (a), a corporation shall be treated as not being a corporation if it is—

''(1) an S corporation,

''(2) a corporation of which at least 50 percent of the total combined voting power of all classes of stock entitled to vote, and at least 50 percent of the total number of shares of all other classes of stock of the corporation, are owned by members of the same family, or

''(3) a corporation the gross receipts of which meet the requirements of subsection (e).''

Subsec. (d). Pub. L. 100–203, § 10205(a), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 100–203, § 10205(c)(1), substituted ''subsection (d)'' for ''subsection (c)(2)''.

Pub. L. 100–203, § 10205(a), redesignated former subsec. (d) as (e) and struck out former subsec. (e), ''Corporation having gross receipts of $1,000,000 or less'', which read as follows: ''A corporation meets the requirements of this subsection if, for each prior taxable year beginning after December 31, 1975, such corporation (and any predecessor corporation) did not have gross receipts exceeding $1,000,000. For purposes of the preceding sentence, all corporations which are members of a controlled group of corporations (within the meaning of section 1563(a)) shall be treated as one corporation.''

Subsec. (h)(1). Pub. L. 100–203, § 10205(c)(2)(A), substituted ''A corporation is described in this subsection'' for ''This section shall not apply to any corporation''.

Subsec. (h)(1)(A), (B). Pub. L. 100–203, § 10205(c)(2)(B), (C), substituted ''subsection (e)'' for ''subsection (d)'' and ''subsection (e)(1)'' for ''subsection (d)(1)'' wherever appearing.

Subsec. (i). Pub. L. 100–203, § 10205(b), added subsec. (i).

1986—Subsec. (a). Pub. L. 99–514, § 803(b)(7)(B), which directed that subsec. (a) be amended by striking out ''and with the capitalization of preproductive period of expenses described in subsection (b)'', was executed by striking out ''and with the capitalization of preproductive period expenses described in subsection (b)'' after ''accrual method of accounting'', as the probable intent of Congress.

Subsec. (b). Pub. L. 99–514, § 803(b)(7)(A), in amending subsec. (b) generally, substituted in heading ''period of expenses'' for ''period expenses'' and in text the cross reference to section 263A for former par. (1) defining ''preproductive period expenses'', par. (2) relating to exceptions, and par. (3) defining ''preproductive period''.

Subsec. (g)(1). Pub. L. 99–514, § 803(b)(7)(C), substituted ''Notwithstanding subsection (a) or section 263A, if'' for ''If''.

1982—Subsec. (c)(1). Pub. L. 97–354, § 5(a)(28), substituted ''an S corporation'' for ''an electing small business corporation (within the meaning of section 1371(b))''.

Subsec. (g)(1). Pub. L. 97–248, § 230(a)(1), inserted ''or qualified partnership'' after ''corporation'' wherever appearing.

Subsec. (g)(3). Pub. L. 97–248, § 230(a)(2), designated existing provisions from ''a corporation acquired'' through ''transferee corporation'', as subpar. (A), inserted ''qualified'' before ''farming trade'', and added subpar. (B).

Subsec. (g)(4). Pub. L. 97–354, § 5(a)(29), substituted in subpar. (A)(i) ''an S corporation'' for ''an electing small business corporation (within the meaning of section 1371(b))''.

[2] So in original. Probably should be ''(iii)''.

Pub. L. 97–248, § 230(a)(3), added par. (4).

1978—Subsec. (a). Pub. L. 95–600, §§ 353(a), 703(d), substituted in provisions following par. (2) ''preproductive period expenses'' for ''preproductive expenses'' and ''nursery or sod farm'' for ''nursery''.

Subsec. (f)(3). Pub. L. 95–600, § 701(*l*)(1), struck out ''(except as otherwise provided in such regulations)'' before ''be taken'' and inserted ''(or the remaining taxable years where there is a stated future life of less than 10 taxable years)'' after ''10 taxable years''.

Subsec. (g)(2). Pub. L. 95–600, § 703(d), substituted ''preproductive period expenses'' for ''preproductive expenses''.

Subsec. (h). Pub. L. 95–600, § 351(a), added subsec. (h).

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1081(b) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years ending after June 8, 1997.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 11702(j) of Pub. L. 101–508, set out as a note under section 59 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10205(d) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENT

If any interest costs incurred after Dec. 31, 1986, are attributable to costs incurred before Jan. 1, 1987, the amendment by Pub. L. 99–514 is applicable to such interest costs only to the extent such interest costs are attributable to costs which were required to be capitalized under section 263 of the Internal Revenue Code of 1954 and which would have been taken into account in applying section 189 of the Internal Revenue Code of 1954 (as in effect before its repeal by section 803 of Pub. L. 99–514) or, if applicable, section 266 of such Code, see section 7831(d)(2) of Pub. L. 101–239, set out as an Effective Date note under section 263A of this title.

Amendment by Pub. L. 99–514 applicable to costs incurred after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 803(d) of Pub. L. 99–514, set out as an Effective Date note under section 263A of this title.

EFFECTIVE DATE OF 1982 AMENDMENTS

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

Section 230(b) of Pub. L. 97–248 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1981.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 351(b) of Pub. L. 95–600 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1977.''

Section 353(b) of Pub. L. 95–600 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1976.''

Section 701(*l*)(4) of Pub. L. 95–600, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by paragraphs (1) [amending this section] and (3) [amending section 464 of this title] shall take effect as if included in section 447 or 464 (as the case may be) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] at the time of the enactment of such sections [Oct. 4, 1976].''

Amendment by section 703(d) of Pub. L. 95–600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of this title.

EFFECTIVE DATE

Section 207(c)(2) of Pub. L. 94–455, as amended by Pub. L. 95–30, title IV, § 404, May 23, 1977, 91 Stat. 155; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by paragraph (1) [enacting this section] shall apply to taxable years beginning after December 31, 1976.

''(B) SPECIAL RULE FOR CERTAIN CORPORATIONS.—In the case of a corporation engaged in the trade or business of farming and with respect to which—

''(i) members of two families (within the meaning of paragraph (1) of section 447(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as added by paragraph (1)) owned, on October 4, 1976 (directly or through the application of such section 447(d)), at least 65 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, and at least 65 percent of the total number of shares of all other classes of stock of such corporation; or

''(ii) members of three families (within the meaning of paragraph (1) of such section 447(d)) owned, on October 4, 1976 (directly or through the application of such section 447(d)), at least 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, and at least 50 percent of the total number of shares of all other classes of stock of such corporation; and substantially all of the stock of such corporation which was not so owned (directly or through the application of such section 447(d)), by members of such three families was owned, on October 4, 1976, directly—

''(I) by employees of the corporation or members of the families (within the meaning of section 267(c)(4) of such Code) of such employees, or

''(II) by a trust for the benefit of the employees of such corporation which is described in section 401(a) of such Code and which is exempt from taxation under section 501(a) of such Code,

the amendments made by paragraph (1) shall apply to taxable years beginning after December 31, 1977.''

ACCOUNTING FOR GROWING CROPS

Section 352 of Pub. L. 95–600 provided that:

''(a) APPLICATION OF SECTION.—This section shall apply to a taxpayer who—

''(1) is a farmer, nurseryman, or florist,

''(2) is on an accrual method of accounting, and

''(3) is not required by section 447 of the Internal Revenue Code of 1954 to capitalize preproductive period expenses.

''(b) TAXPAYER MAY NOT BE REQUIRED TO INVENTORY GROWING CROPS.—A taxpayer to whom this section applies may not be required to inventory growing crops for any taxable year beginning after December 31, 1977.

''(c) TAXPAYER MAY ELECT TO CHANGE TO CASH METHOD.—A taxpayer to whom this section applies may, for any taxable year beginning after December 31, 1977 and before January 1, 1981, change to the cash receipts and disbursements method of accounting with respect to any trade or business in which the principal activity is growing crops.

''(d) SECTION 481 OF CODE TO APPLY.—Any change in the way in which a taxpayer accounts for the costs of growing crops resulting from the application of subsection (b) or (c)—

''(1) shall not require the consent of the Secretary of the Treasury or his delegate, and

''(2) shall be treated, for purposes of section 481 of the Internal Revenue Code of 1954 as a change in the method of accounting initiated by the taxpayer.

''(e) GROWING CROPS.—For purposes of this section, the term 'Growing crops' does not include trees grown for lumber, pulp, or other nonlife purposes.''

AUTOMATIC TEN-YEAR ADJUSTMENT FOR FARMING SYNDICATES CHANGING TO ACCRUAL ACCOUNTING

Section 701(*l*)(2) of Pub. L. 95–600 provided that: ''If—

''(A) a farming syndicate (within the meaning of section 464(c) of the Internal Revenue Code of 1954) was in existence on December 31, 1975, and

''(B) such syndicate elects an accrual method of accounting (including the capitalization of preproductive period expenses described in section 447(b) of such Code) for a taxable year beginning before January 1, 1979,

then such election shall be treated as having been made with the consent of the Secretary of the Treasury or his delegate and, under regulations prescribed by the Secretary of the Treasury or his delegate, the net amount of the adjustments required by section 481(a) of such Code to be taken into account by the taxpayer in computing taxable income shall be taken into account in each of the 10 taxable years (or the remaining taxable years where there is a stated future life of less than 10 taxable years) beginning with the year of change.''

ELECTION TO CHANGE FROM STATIC VALUE METHOD TO ACCRUAL METHOD OF ACCOUNTING

Section 207(c)(3) of Pub. L. 94–455, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(A) IN GENERAL.—If—

''(i) a corporation has computed its taxable income on an annual accrual method of accounting together with a static value method of accounting for deferred costs of growing crops for the 10 taxable years ending with its first taxable year beginning after December 31, 1975,

''(ii) such corporation raises crops which are harvested not less than 12 months after planting, and

''(iii) such corporation elects, within one year after the date of the enactment of this Act [Oct. 4, 1976] and in such manner as the Secretary of the Treasury or his delegate prescribes, to change to the annual accrual method of accounting (within the meaning of section 447(g)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) for taxable years beginning after December 31, 1976,

such change shall be treated as having been made with the consent of the Secretary of the Treasury, and, under regulations prescribed by the Secretary of the Treasury or his delegate, the net amount of the adjustments required by section 481(a) of the Internal Revenue Code of 1986 to be taken into account by the taxpayer in computing taxable income shall (except as otherwise provided in such regulations) be taken into account in each of the 10 taxable years beginning with the year of change.

''(B) COORDINATION WITH SECTION 447 OF THE CODE.—A corporation which elects under subparagraph (A) to change to the annual accrual method of accounting shall, for purposes of section 447(g) of the Internal Revenue Code of 1986, be deemed to be a corporation which has computed its taxable income on an annual accrual method of accounting for its 10 taxable years ending with its first taxable year beginning after December 31, 1975.

''(C) CERTAIN CORPORATE REORGANIZATIONS.—For purposes of this paragraph, if a corporation acquired substantially all the assets of a farming trade or business from another corporation in a transaction in which no gain or loss was recognized to the transferor or transferee corporation, the transferee corporation shall be deemed to have computed its taxable income on an annual accrual method of accounting together with a static value method of accounting for deferred costs of growing crops during the period for which the transferor corporation computed its taxable income from such trade or business on such accrual and static value method.''

§ 448. Limitation on use of cash method of accounting

(a) General rule

Except as otherwise provided in this section, in the case of a—

(1) C corporation,

(2) partnership which has a C corporation as a partner, or

(3) tax shelter,

taxable income shall not be computed under the cash receipts and disbursements method of accounting.

(b) Exceptions

(1) Farming business

Paragraphs (1) and (2) of subsection (a) shall not apply to any farming business.

(2) Qualified personal service corporations

Paragraphs (1) and (2) of subsection (a) shall not apply to a qualified personal service corporation, and such a corporation shall be treated as an individual for purposes of determining whether paragraph (2) of subsection (a) applies to any partnership.

(3) Entities with gross receipts of not more than $5,000,000

Paragraphs (1) and (2) of subsection (a) shall not apply to any corporation or partnership for any taxable year if, for all prior taxable years beginning after December 31, 1985, such entity (or any predecessor) met the $5,000,000 gross receipts test of subsection (c).

(c) $5,000,000 gross receipts test

For purposes of this section—

(1) In general

A corporation or partnership meets the $5,000,000 gross receipts test of this subsection for any prior taxable year if the average annual gross receipts of such entity for the 3-taxable-year period ending with such prior taxable year does not exceed $5,000,000.

(2) Aggregation rules

All persons treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (*o*) of section 414 shall be treated as one person for purposes of paragraph (1).

(3) Special rules

For purposes of this subsection—

(A) Not in existence for entire 3-year period

If the entity was not in existence for the entire 3-year period referred to in paragraph (1), such paragraph shall be applied on the basis of the period during which such entity (or trade or business) was in existence.

(B) Short taxable years

Gross receipts for any taxable year of less than 12 months shall be annualized by multiplying the gross receipts for the short pe-

riod by 12 and dividing the result by the number of months in the short period.

(C) Gross receipts

Gross receipts for any taxable year shall be reduced by returns and allowances made during such year.

(D) Treatment of predecessors

Any reference in this subsection to an entity shall include a reference to any predecessor of such entity.

(d) Definitions and special rules

For purposes of this section—

(1) Farming business

(A) In general

The term ''farming business'' means the trade or business of farming (within the meaning of section 263A(e)(4)).

(B) Timber and ornamental trees

The term ''farming business'' includes the raising, harvesting, or growing of trees to which section 263A(c)(5) applies.

(2) Qualified personal service corporation

The term ''qualified personal service corporation'' means any corporation—

(A) substantially all of the activities of which involve the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting, and

(B) substantially all of the stock of which (by value) is held directly (or indirectly through 1 or more partnerships, S corporations, or qualified personal service corporations not described in paragraph (2) or (3) of subsection (a)) by—

(i) employees performing services for such corporation in connection with the activities involving a field referred to in subparagraph (A),

(ii) retired employees who had performed such services for such corporation,

(iii) the estate of any individual described in clause (i) or (ii), or

(iv) any other person who acquired such stock by reason of the death of an individual described in clause (i) or (ii) (but only for the 2-year period beginning on the date of the death of such individual).

To the extent provided in regulations which shall be prescribed by the Secretary, indirect holdings through a trust shall be taken into account under subparagraph (B).

(3) Tax shelter defined

The term ''tax shelter'' has the meaning given such term by section 461(i)(3) (determined after application of paragraph (4) thereof). An S corporation shall not be treated as a tax shelter for purposes of this section merely by reason of being required to file a notice of exemption from registration with a State agency described in section 461(i)(3)(A), but only if there is a requirement applicable to all corporations offering securities for sale in the State that to be exempt from such registration the corporation must file such a notice.

(4) Special rules for application of paragraph (2)

For purposes of paragraph (2)—

(A) community property laws shall be disregarded,

(B) stock held by a plan described in section 401(a) which is exempt from tax under section 501(a) shall be treated as held by an employee described in paragraph (2)(B)(i), and

(C) at the election of the common parent of an affiliated group (within the meaning of section 1504(a)), all members of such group may be treated as 1 taxpayer for purposes of paragraph (2)(B) if 90 percent or more of the activities of such group involve the performance of services in the same field described in paragraph (2)(A).

(5) Special rule for certain services

(A) In general

In the case of any person using an accrual method of accounting with respect to amounts to be received for the performance of services by such person, such person shall not be required to accrue any portion of such amounts which (on the basis of such person's experience) will not be collected if—

(i) such services are in fields referred to in paragraph (2)(A), or

(ii) such person meets the gross receipts test of subsection (c) for all prior taxable years.

(B) Exception

This paragraph shall not apply to any amount if interest is required to be paid on such amount or there is any penalty for failure to timely pay such amount.

(C) Regulations

The Secretary shall prescribe regulations to permit taxpayers to determine amounts referred to in subparagraph (A) using computations or formulas which, based on experience, accurately reflect the amount of income that will not be collected by such person. A taxpayer may adopt, or request consent of the Secretary to change to, a computation or formula that clearly reflects the taxpayer's experience. A request under the preceding sentence shall be approved if such computation or formula clearly reflects the taxpayer's experience.

(6) Treatment of certain trusts subject to tax on unrelated business income

For purposes of this section, a trust subject to tax under section 511(b) shall be treated as a C corporation with respect to its activities constituting an unrelated trade or business.

(7) Coordination with section 481

In the case of any taxpayer required by this section to change its method of accounting for any taxable year—

(A) such change shall be treated as initiated by the taxpayer,

(B) such change shall be treated as made with the consent of the Secretary, and

(C) the period for taking into account the adjustments under section 481 by reason of such change—

(i) except as provided in clause (ii), shall not exceed 4 years, and

(ii) in the case of a hospital, shall be 10 years.

(8) Use of related parties, etc.

The Secretary shall prescribe such regulations as may be necessary to prevent the use of related parties, pass-thru entities, or intermediaries to avoid the application of this section.

(Added Pub. L. 99–514, title VIII, § 801(a), Oct. 22, 1986, 100 Stat. 2345; amended Pub. L. 100–647, title I, § 1008(a)(1), (2), (7)–(9), title VI, § 6032(a), Nov. 10, 1988, 102 Stat. 3436, 3437, 3695; Pub. L. 107–147, title IV, § 403(a), Mar. 9, 2002, 116 Stat. 40.)

AMENDMENTS

2002—Subsec. (d)(5). Pub. L. 107–147 amended heading and text of par. (5) generally. Prior to amendment, text read as follows: ''In the case of any person using an accrual method of accounting with respect to amounts to be received for the performance of services by such person, such person shall not be required to accrue any portion of such amounts which (on the basis of experience) will not be collected. This paragraph shall not apply to any amount if interest is required to be paid on such amount or there is any penalty for failure to timely pay such amount.''

1988—Subsec. (c)(3)(D). Pub. L. 100–647, § 1008(a)(9), added subpar. (D).

Subsec. (d)(2). Pub. L. 100–647, § 6032(a), inserted at end ''To the extent provided in regulations which shall be prescribed by the Secretary, indirect holdings through a trust shall be taken into account under subparagraph (B).''

Subsec. (d)(2)(B). Pub. L. 100–647, § 1008(a)(1)(A), substituted ''(or indirectly through 1 or more partnerships, S corporations, or qualified personal service corporations not described in paragraph (2) or (3) of subsection (a))'' for ''or indirectly''.

Subsec. (d)(3). Pub. L. 100–647, § 1008(a)(7), inserted sentence at end relating to treatment of S corporation as tax shelter.

Subsec. (d)(4)(C). Pub. L. 100–647, § 1008(a)(8), substituted ''90 percent or more of'' for ''substantially all of''.

Pub. L. 100–647, § 1008(a)(2), substituted ''such group'' for ''all such members''.

Subsec. (d)(8). Pub. L. 100–647, § 1008(a)(1)(B), added par. (8).

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title IV, § 403(b), Mar. 9, 2002, 116 Stat. 41, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Mar. 9, 2002].

''(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer required by the amendments made by this section to change its method of accounting for its first taxable year ending after the date of the enactment of this Act—

''(A) such change shall be treated as initiated by the taxpayer,

''(B) such change shall be treated as made with the consent of the Secretary of the Treasury, and

''(C) the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 shall be taken into account over a period of 4 years (or if less, the number of taxable years that the taxpayer used the method permitted under section 448(d)(5) of such Code as in effect before the date of the enactment of this Act) beginning with such first taxable year.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1008(a)(1), (2), (7)–(9) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6032(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1986.''

EFFECTIVE DATE

Section 801(d) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1008(a)(5), (6), Nov. 10, 1988, 102 Stat. 3437, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending section 461 of this title] shall apply to taxable years beginning after December 31, 1986.

''(2) ELECTION TO RETAIN CASH METHOD FOR CERTAIN TRANSACTIONS.—A taxpayer may elect not to have the amendments made by this section apply to any loan or lease, or any transaction with a related party (within the meaning of section 267(b) of the Internal Revenue Code of 1954, as in effect before the enactment of this Act), entered into on or before September 25, 1985. Any election under the preceding sentence may be made separately with respect to each transaction.

''(3) CERTAIN CONTRACTS.—The amendments made by this section shall not apply to—

''(A) contracts for the acquisition or transfer of real property, and

''(B) contracts for services related to the acquisition or development of real property,

but only if such contracts were entered into before September 25, 1985, and the sole element of the contract which has not been performed as of September 25, 1985, is payment for such property or services.

''(4) TREATMENT OF AFFILIATED GROUP PROVIDING ENGINEERING SERVICES.—Each member of an affiliated group of corporations (within the meaning of section 1504(a) of the Internal Revenue Code of 1986) shall be allowed to use the cash receipts and disbursements method of accounting for any trade or business of providing engineering services with respect to taxable years ending after December 31, 1986, if the common parent of such group—

''(A) was incorporated in the State of Delaware in 1970,

''(B) was the successor to a corporation that was incorporated in the State of Illinois in 1949, and

''(C) used a method of accounting for long-term contracts of accounting [sic] for a substantial part of its income from the performance of engineering services.

''(5) SPECIAL RULE FOR PARAGRAPHS (2) AND (3).—If any loan, lease, contract, or evidence of any transaction to which paragraph (2) or (3) applies is transferred after June 10, 1987, to a person other than a related party (within the meaning of paragraph (2)), paragraph (2) or (3) shall cease to apply on and after the date of such transfer.''

SUBPART B—TAXABLE YEAR FOR WHICH ITEMS OF GROSS INCOME INCLUDED

Sec.
451. General rule for taxable year of inclusion.
[452. Repealed.]
453. Installment method.
453A. Special rules for nondealers.
453B. Gain or loss on disposition of installment obligations.[1]
[453C. Repealed.]
454. Obligations issued at discount.
455. Prepaid subscription income.
456. Prepaid dues income of certain membership organizations.

[1] So in original. Does not conform to section catchline.

457. Deferred compensation plans of State and local governments and tax-exempt organizations.
457A. Nonqualified deferred compensation from certain tax indifferent parties.
458. Magazines, paperbacks, and records returned after the close of the taxable year.
460. Special rules for long-term contracts.

AMENDMENTS

Pub. L. 110–343, div. C, title VIII, §801(c), Oct. 3, 2008, 122 Stat. 3931, added item 457A.

1988—Pub. L. 100–647, title V, §5076(b)(2), Nov. 10, 1988, 102 Stat. 3683, struck out ''of real property'' after ''rules for nondealers'' in item 453A.

1987—Pub. L. 100–203, title X, §10202(a)(2), (c)(2), Dec. 22, 1987, 101 Stat. 1330–388, 1330–392, substituted ''Special rules for nondealers of real property'' for ''Installment method for dealers in personal property'' in item 453A, and struck out item 453C ''Certain indebtedness treated as payments on installment obligations''.

1986—Pub. L. 99–514, title XI, §1107(b), (c), Oct. 22, 1986, 101 Stat. 2430, added item 457, applicable to taxable years beginning after Dec. 31, 1988, with certain exceptions, and struck out former item 457 ''Deferred compensation plans with respect to service for State and local governments''.

Pub. L. 99–514, title VIII, §§804(c), 811(b), Oct. 22, 1986, 100 Stat. 2361, 2368, added items 453C and 460.

1980—Pub. L. 96–471, §2(d), Oct. 19, 1980, 94 Stat. 2254, added items 453 to 453B and struck out former item 453 ''Installment method''.

1978—Pub. L. 95–600, title I, §131(b), title III, §372(b), Nov. 6, 1978, 92 Stat. 2782, 2862, added items 457 and 458.

1961—Pub. L. 87–109, §1(b), July 26, 1961, 75 Stat. 224, added item 456.

1958—Pub. L. 85–866, title I, §28(b), Sept. 2, 1958, 72 Stat. 1626, added item 455, effective with respect to taxable years beginning after Dec. 31, 1957. See section 28(c) of Pub. L. 85–866 set out as an Effective Date note under section 455 of this title.

1955—Act June 15, 1955, ch. 143, §2(2), 69 Stat. 135, struck out item 452 ''Adjustment in case of position inconsistent with prior income tax liability''.

§ 451. General rule for taxable year of inclusion

(a) General rule

The amount of any item of gross income shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under the method of accounting used in computing taxable income, such amount is to be properly accounted for as of a different period.

(b) Special rule in case of death

In the case of the death of a taxpayer whose taxable income is computed under an accrual method of accounting, any amount accrued only by reason of the death of the taxpayer shall not be included in computing taxable income for the period in which falls the date of the taxpayer's death.

(c) Special rule for employee tips

For purposes of subsection (a), tips included in a written statement furnished an employer by an employee pursuant to section 6053(a) shall be deemed to be received at the time the written statement including such tips is furnished to the employer.

(d) Special rule for crop insurance proceeds or disaster payments

In the case of insurance proceeds received as a result of destruction or damage to crops, a taxpayer reporting on the cash receipts and disbursements method of accounting may elect to include such proceeds in income for the taxable year following the taxable year of destruction or damage, if he establishes that, under his practice, income from such crops would have been reported in a following taxable year. For purposes of the preceding sentence, payments received under the Agricultural Act of 1949, as amended, or title II of the Disaster Assistance Act of 1988, as a result of (1) destruction or damage to crops caused by drought, flood, or any other natural disaster, or (2) the inability to plant crops because of such a natural disaster shall be treated as insurance proceeds received as a result of destruction or damage to crops. An election under this subsection for any taxable year shall be made at such time and in such manner as the Secretary prescribes.

(e) Special rule for proceeds from livestock sold on account of drought, flood, or other weather-related conditions

(1) In general

In the case of income derived from the sale or exchange of livestock in excess of the number the taxpayer would sell if he followed his usual business practices, a taxpayer reporting on the cash receipts and disbursements method of accounting may elect to include such income for the taxable year following the taxable year in which such sale or exchange occurs if he establishes that, under his usual business practices, the sale or exchange would not have occurred in the taxable year in which it occurred if it were not for drought, flood, or other weather-related conditions, and that such conditions had resulted in the area being designated as eligible for assistance by the Federal Government.

(2) Limitation

Paragraph (1) shall apply only to a taxpayer whose principal trade or business is farming (within the meaning of section 6420(c)(3)).

(3) Special election rules

If section 1033(e)(2) applies to a sale or exchange of livestock described in paragraph (1), the election under paragraph (1) shall be deemed valid if made during the replacement period described in such section.

(f) Special rule for utility services

(1) In general

In the case of a taxpayer the taxable income of which is computed under an accrual method of accounting, any income attributable to the sale or furnishing of utility services to customers shall be included in gross income not later than the taxable year in which such services are provided to such customers.

(2) Definition and special rule

For purposes of this subsection—

(A) Utility services

The term ''utility services'' includes—

(i) the providing of electrical energy, water, or sewage disposal,

(ii) the furnishing of gas or steam through a local distribution system,

(iii) telephone or other communication services, and

(iv) the transporting of gas or steam by pipeline.

(B) Year in which services provided

The taxable year in which services are treated as provided to customers shall not, in any manner, be determined by reference to—

(i) the period in which the customers' meters are read, or

(ii) the period in which the taxpayer bills (or may bill) the customers for such service.

(g) Treatment of interest on frozen deposits in certain financial institutions

(1) In general

In the case of interest credited during any calendar year on a frozen deposit in a qualified financial institution, the amount of such interest includible in the gross income of a qualified individual shall not exceed the sum of—

(A) the net amount withdrawn by such individual from such deposit during such calendar year, and

(B) the amount of such deposit which is withdrawable as of the close of the taxable year (determined without regard to any penalty for premature withdrawals of a time deposit).

(2) Interest tested each year

Any interest not included in gross income by reason of paragraph (1) shall be treated as credited in the next calendar year.

(3) Deferral of interest deduction

No deduction shall be allowed to any qualified financial institution for interest not includible in gross income under paragraph (1) until such interest is includible in gross income.

(4) Frozen deposit

For purposes of this subsection, the term ''frozen deposit'' means any deposit if, as of the close of the calendar year, any portion of such deposit may not be withdrawn because of—

(A) the bankruptcy or insolvency of the qualified financial institution (or threat thereof), or

(B) any requirement imposed by the State in which such institution is located by reason of the bankruptcy or insolvency (or threat thereof) of 1 or more financial institutions in the State.

(5) Other definitions

For purposes of this subsection, the terms ''qualified individual'', ''qualified financial institution'', and ''deposit'' have the same respective meanings as when used in section 165(*l*).

(h) Special rule for cash options for receipt of qualified prizes

(1) In general

For purposes of this title, in the case of an individual on the cash receipts and disbursements method of accounting, a qualified prize option shall be disregarded in determining the taxable year for which any portion of the qualified prize is properly includible in gross income of the taxpayer.

(2) Qualified prize option; qualified prize

For purposes of this subsection—

(A) In general

The term ''qualified prize option'' means an option which—

(i) entitles an individual to receive a single cash payment in lieu of receiving a qualified prize (or remaining portion thereof), and

(ii) is exercisable not later than 60 days after such individual becomes entitled to the qualified prize.

(B) Qualified prize

The term ''qualified prize'' means any prize or award which—

(i) is awarded as a part of a contest, lottery, jackpot, game, or other similar arrangement,

(ii) does not relate to any past services performed by the recipient and does not require the recipient to perform any substantial future service, and

(iii) is payable over a period of at least 10 years.

(3) Partnership, etc.

The Secretary shall provide for the application of this subsection in the case of a partnership or other pass-through entity consisting entirely of individuals described in paragraph (1).

(i) Special rule for sales or dispositions to implement Federal Energy Regulatory Commission or State electric restructuring policy

(1) In general

In the case of any qualifying electric transmission transaction for which the taxpayer elects the application of this section, qualified gain from such transaction shall be recognized—

(A) in the taxable year which includes the date of such transaction to the extent the amount realized from such transaction exceeds—

(i) the cost of exempt utility property which is purchased by the taxpayer during the 4-year period beginning on such date, reduced (but not below zero) by

(ii) any portion of such cost previously taken into account under this subsection, and

(B) ratably over the 8-taxable year period beginning with the taxable year which includes the date of such transaction, in the case of any such gain not recognized under subparagraph (A).

(2) Qualified gain

For purposes of this subsection, the term ''qualified gain'' means, with respect to any qualifying electric transmission transaction in any taxable year—

(A) any ordinary income derived from such transaction which would be required to be recognized under section 1245 or 1250 for such

taxable year (determined without regard to this subsection), and

(B) any income derived from such transaction in excess of the amount described in subparagraph (A) which is required to be included in gross income for such taxable year (determined without regard to this subsection).

(3) Qualifying electric transmission transaction

For purposes of this subsection, the term ''qualifying electric transmission transaction'' means any sale or other disposition before January 1, 2008 (before January 1, 2012, in the case of a qualified electric utility), of—

(A) property used in the trade or business of providing electric transmission services, or

(B) any stock or partnership interest in a corporation or partnership, as the case may be, whose principal trade or business consists of providing electric transmission services,

but only if such sale or disposition is to an independent transmission company.

(4) Independent transmission company

For purposes of this subsection, the term ''independent transmission company'' means—

(A) an independent transmission provider approved by the Federal Energy Regulatory Commission,

(B) a person—

(i) who the Federal Energy Regulatory Commission determines in its authorization of the transaction under section 203 of the Federal Power Act (16 U.S.C. 824b) or by declaratory order is not a market participant within the meaning of such Commission's rules applicable to independent transmission providers, and

(ii) whose transmission facilities to which the election under this subsection applies are under the operational control of a Federal Energy Regulatory Commission-approved independent transmission provider before the close of the period specified in such authorization, but not later than the date which is 4 years after the close of the taxable year in which the transaction occurs, or

(C) in the case of facilities subject to the jurisdiction of the Public Utility Commission of Texas—

(i) a person which is approved by that Commission as consistent with Texas State law regarding an independent transmission provider, or

(ii) a political subdivision or affiliate thereof whose transmission facilities are under the operational control of a person described in clause (i).

(5) Exempt utility property

For purposes of this subsection:

(A) In general

The term ''exempt utility property'' means property used in the trade or business of—

(i) generating, transmitting, distributing, or selling electricity, or

(ii) producing, transmitting, distributing, or selling natural gas.

(B) Nonrecognition of gain by reason of acquisition of stock

Acquisition of control of a corporation shall be taken into account under this subsection with respect to a qualifying electric transmission transaction only if the principal trade or business of such corporation is a trade or business referred to in subparagraph (A).

(C) Exception for property located outside the United States

The term ''exempt utility property'' shall not include any property which is located outside the United States.

(6) Qualified electric utility

For purposes of this subsection, the term ''qualified electric utility'' means a person that, as of the date of the qualifying electric transmission transaction, is vertically integrated, in that it is both—

(A) a transmitting utility (as defined in section 3(23) of the Federal Power Act (16 U.S.C. 796(23))) with respect to the transmission facilities to which the election under this subsection applies, and

(B) an electric utility (as defined in section 3(22) of the Federal Power Act (16 U.S.C. 796(22))).

(7) Special rule for consolidated groups

In the case of a corporation which is a member of an affiliated group filing a consolidated return, any exempt utility property purchased by another member of such group shall be treated as purchased by such corporation for purposes of applying paragraph (1)(A).

(8) Time for assessment of deficiencies

If the taxpayer has made the election under paragraph (1) and any gain is recognized by such taxpayer as provided in paragraph (1)(B), then—

(A) the statutory period for the assessment of any deficiency, for any taxable year in which any part of the gain on the transaction is realized, attributable to such gain shall not expire prior to the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) of the purchase of exempt utility property or of an intention not to purchase such property, and

(B) such deficiency may be assessed before the expiration of such 3-year period notwithstanding any law or rule of law which would otherwise prevent such assessment.

(9) Purchase

For purposes of this subsection, the taxpayer shall be considered to have purchased any property if the unadjusted basis of such property is its cost within the meaning of section 1012.

(10) Election

An election under paragraph (1) shall be made at such time and in such manner as the Secretary may require and, once made, shall be irrevocable.

(11) Nonapplication of installment sales treatment

Section 453 shall not apply to any qualifying electric transmission transaction with respect to which an election to apply this subsection is made.

(Aug. 16, 1954, ch. 736, 68A Stat. 152; Pub. L. 89–97, title III, § 313(b), July 30, 1965, 79 Stat. 382; Pub. L. 91–172, title II, § 215(a), Dec. 30, 1969, 83 Stat. 573; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), title XXI, §§ 2102(a), (b), 2141(a), Oct. 4, 1976, 90 Stat. 1834, 1900, 1933; Pub. L. 99–514, title VIII, § 821(a), title IX, § 905(b), Oct. 22, 1986, 100 Stat. 2372, 2386; Pub. L. 100–647, title I, § 1009(d)(3), title VI, §§ 6030(a), 6033(a), Nov. 10, 1988, 102 Stat. 3450, 3694, 3695; Pub. L. 105–34, title IX, § 913(a), Aug. 5, 1997, 111 Stat. 878; Pub. L. 105–277, div. J, title V, § 5301(a), Oct. 21, 1998, 112 Stat. 2681–918; Pub. L. 108–357, title III, § 311(c), title VIII, § 909(a), Oct. 22, 2004, 118 Stat. 1467, 1657; Pub. L. 109–58, title XIII, § 1305(a), (b), Aug. 8, 2005, 119 Stat. 997; Pub. L. 110–343, div. B, title I, § 109(a)–(c), Oct. 3, 2008, 122 Stat. 3821; Pub. L. 111–312, title VII, § 705(a), Dec. 17, 2010, 124 Stat. 3311.)

REFERENCES IN TEXT

The Agricultural Act of 1949, as amended, referred to in subsec. (d), is act Oct. 31, 1949, ch. 792, 63 Stat. 1051, as amended, which is classified principally to chapter 35A (§ 1421 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1421 of Title 7 and Tables.

The Disaster Assistance Act of 1988, referred to in subsec. (d), is Pub. L. 100–387, Aug. 11, 1988, 102 Stat. 924. Title II of the Disaster Assistance Act of 1988 is set out as a note under section 1421 of Title 7. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2010—Subsec. (i)(3). Pub. L. 111–312 substituted ''January 1, 2012'' for ''January 1, 2010'' in introductory provisions.

2008—Subsec. (i)(3). Pub. L. 110–343, § 109(a)(1), inserted ''(before January 1, 2010, in the case of a qualified electric utility)'' after ''January 1, 2008'' in introductory provisions.

Subsec. (i)(4)(B)(ii). Pub. L. 110–343, § 109(b), substituted ''the date which is 4 years after the close of the taxable year in which the transaction occurs'' for ''December 31, 2007''.

Subsec. (i)(5)(C). Pub. L. 110–343, § 109(c), added subpar. (C).

Subsec. (i)(6) to (11). Pub. L. 110–343, § 109(a)(2), added par. (6) and redesignated former pars. (6) to (10) as (7) to (11), respectively.

2005—Subsec. (i)(3). Pub. L. 109–58, § 1305(a), substituted ''2008'' for ''2007'' in introductory provisions.

Subsec. (i)(4)(B)(ii). Pub. L. 109–58, § 1305(b), substituted ''December 31, 2007'' for ''the close of the period applicable under subsection (a)(2)(B) as extended under paragraph (2)''.

2004—Subsec. (e)(3). Pub. L. 108–357, § 311(c), added par. (3).

Subsec. (i). Pub. L. 108–357, § 909(a), added subsec. (i).

1998—Subsec. (h). Pub. L. 105–277 added subsec. (h).

1997—Subsec. (e). Pub. L. 105–34 inserted '', flood, or other weather-related conditions'' after ''drought'' in heading and substituted ''drought, flood, or other weather-related conditions, and that such conditions'' for ''drought conditions, and that these drought conditions'' in par. (1).

1988—Subsec. (d). Pub. L. 100–647, § 6033(a), inserted ''or title II of the Disaster Assistance Act of 1988,'' after ''the Agricultural Act of 1949, as amended,''.

Subsec. (e)(1). Pub. L. 100–647, § 6030(a), struck out ''(other than livestock described in section 1231(b)(3))'' after ''exchange of livestock''.

Subsecs. (f), (g). Pub. L. 100–647, § 1009(d)(3), redesignated subsec. (f), relating to treatment of interest on frozen deposits in certain financial institutions, as (g).

1986—Subsec. (f). Pub. L. 99–514, § 905(b), added subsec. (f) relating to treatment of interest on frozen deposits in certain financial institutions.

Pub. L. 99–514, § 821(a), added subsec. (f) relating to special rule for utility services.

1976—Subsec. (d). Pub. L. 94–455, §§ 1906(b)(13)(A), 2102(a), (b), inserted reference to disaster payments in heading, provided that payments received under the Agricultural Act of 1949, as amended, be treated as insurance proceeds received as a result of destruction or damage to crops if the payments are received as the result of destruction or damage from drought, flood, or other natural disaster, or as the result of inability to plant crops because of drought, flood, or other natural disaster, and struck out ''or his delegate'' after ''Secretary''.

Subsec. (e). Pub. L. 94–455, § 2141(a), added subsec. (e).

1969—Subsec. (d). Pub. L. 91–172 added subsec. (d).

1965—Subsec. (c). Pub. L. 89–97 added subsec. (c).

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title XIII, § 1305(c), Aug. 8, 2005, 119 Stat. 997, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to transactions occurring after the date of the enactment of this Act [Aug. 8, 2005].

''(2) TECHNICAL AMENDMENT.—The amendment made by subsection (b) [amending this section] shall take effect as if included in the amendments made by section 909 of the American Jobs Creation Act of 2004 [Pub. L. 108–357, amending this section].''

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, § 705(b), Dec. 17, 2010, 124 Stat. 3311, provided that: ''The amendment made by this section [amending this section] shall apply to dispositions after December 31, 2009.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title I, § 109(d), Oct. 3, 2008, 122 Stat. 3822, provided that:

''(1) EXTENSION.—The amendments made by subsection (a) [amending this section] shall apply to transactions after December 31, 2007.

''(2) TRANSFERS OF OPERATIONAL CONTROL.—The amendment made by subsection (b) [amending this section] shall take effect as if included in section 909 of the American Jobs Creation Act of 2004 [Pub. L. 108–357].

''(3) EXCEPTION FOR PROPERTY LOCATED OUTSIDE THE UNITED STATES.—The amendment made by subsection (c) [amending this section] shall apply to transactions after the date of the enactment of this Act [Oct. 3, 2008].''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title III, § 311(d), Oct. 22, 2004, 118 Stat. 1467, provided that: ''The amendments made by this section [amending this section and section 1033 of this title] shall apply to any taxable year with respect to which the due date (without regard to extensions) for the return is after December 31, 2002.''

Pub. L. 108–357, title VIII, § 909(b), Oct. 22, 2004, 118 Stat. 1659, provided that: ''The amendments made by this section [amending this section] shall apply to transactions occurring after the date of the enactment of this Act [Oct. 22, 2004], in taxable years ending after such date.''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. J, title V, § 5301(b), Oct. 21, 1998, 112 Stat. 2681–918, provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to any prize to which a person first becomes entitled after the date of enactment of this Act [Oct. 21, 1998].

''(2) TRANSITION RULE.—The amendment made by this section shall apply to any prize to which a person first becomes entitled on or before the date of enactment of this Act, except that in determining whether an option is a qualified prize option as defined in section 451(h)(2)(A) of the Internal Revenue Code of 1986 (as added by such amendment)—

''(A) clause (ii) of such section 451(h)(2)(A) shall not apply, and

''(B) such option shall be treated as a qualified prize option if it is exercisable only during all or part of the 18-month period beginning on July 1, 1999.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 913(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section and section 1033 of this title] shall apply to sales and exchanges after December 31, 1996.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1009(d)(3) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6030(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to sales or exchanges occurring after December 31, 1987.''

Section 6033(b) of Pub. L. 100–647, as amended by Pub. L. 101–239, title VII, § 7816(g), Dec. 19, 1989, 103 Stat. 2421, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to payments received before, on, or after the date of enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 821(b) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1008(h), Nov. 10, 1988, 102 Stat. 3444, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.

''(2) CHANGE IN METHOD OF ACCOUNTING.—If a taxpayer is required by the amendments made by this section to change its method of accounting for any taxable year—

''(A) such change shall be treated as initiated by the taxpayer,

''(B) such change shall be treated as having been made with the consent of the Secretary, and

''(C) the adjustments under section 481 of the Internal Revenue Code of 1954 [now 1986] by reason of such change shall be taken into account ratably over a period no longer than the first 4 taxable years beginning after December 31, 1986.

''(3) SPECIAL RULE FOR CERTAIN CYCLE BILLING.—If a taxpayer for any taxable year beginning before August 16, 1986, for purposes of chapter 1 of the Internal Revenue Code of 1986 took into account income from services described in section 451(f) of such Code (as added by subsection (a)) on the basis of the period in which the customers' meters were read, then such treatment for such year shall be deemed to be proper. The preceding sentence shall also apply to any taxable year beginning after August 16, 1986, and before January 1, 1987, if the taxpayer treated such income in the same manner for the taxable year preceding such taxable year.''

Section 905(c) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1009(d)(2), Nov. 10, 1988, 102 Stat. 3450, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending section 165 of this title] shall apply to taxable years beginning after December 31, 1981, and, except as provided in paragraph (2), the amendment made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1982.

''(2) SPECIAL RULES FOR SUBSECTION (b).—

''(A) The amendment made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1982, and before January 1, 1987, only if the qualified individual elects to have such amendment apply for all such taxable years.

''(B) In the case of interest attributable to the period beginning January 1, 1983, and ending December 31, 1987, the interest deduction of financial institutions shall be determined without regard to paragraph (3) of section 451(f) of the Internal Revenue Code of 1986 (as added by subsection (b)).''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2102(c) of Pub. L. 94–455 provided that: ''The amendments made by this section [amending this section] shall apply to payments received after December 31, 1973, in taxable years ending after such date.''

Section 2141(b) of Pub. L. 94–455 provided that: ''The amendment made by this section [amending this section] applies to taxable years beginning after December 31, 1975.''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 215(b) of Pub. L. 91–172 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Dec. 30, 1969].''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–97 applicable only with respect to tips received by employees after 1965, see section 313(f) of Pub. L. 89–97, set out as an Effective Date note under section 6053 of this title.

TAX TREATMENT OF INCENTIVE PAYMENT

Voluntary separation incentives paid to members of Armed Forces under 10 U.S.C. 1175 as includable in gross income only for taxable year in which incentive is paid, see section 662(b) of Pub. L. 102–190, set out as a note under section 1175 of Title 10, Armed Forces.

OVERPAYMENTS OR UNDERPAYMENTS OF TAX ATTRIBUTABLE TO CERTAIN AMENDMENTS BY PUB. L. 99–514 OR PUB. L. 100–647

For provisions relating to credit or refund of overpayments of tax, and assessment of underpayments of tax, due to amendments by section 905 of Pub. L. 99–514 or section 1009(d) of Pub. L. 100–647, see section 1009(d)(4) of Pub. L. 100–647, set out as a note under section 165 of this title.

MODIFICATION OF REGULATIONS ON THE COMPLETED CONTRACT METHOD OF ACCOUNTING

Pub. L. 97–248, title II, § 229, Sept. 3, 1982, 96 Stat. 493, as amended by Pub. L. 98–369, div. A, title VII, § 712(m), July 18, 1984, 98 Stat. 955, provided that:

''(a) IN GENERAL.—The Secretary of the Treasury shall modify the income tax regulations relating to accounting for long-term contracts to—

''(1) clarify the time at which a contract is to be considered completed,

''(2) clarify when—

''(A) one agreement will be treated as more than one contract, and

''(B) two or more agreements will be treated as one contract, and

''(3) properly allocate all costs which directly benefit, or are incurred by reason of, the extended period long-term contract activities of the taxpayer.

''(b) EXTENDED PERIOD LONG-TERM CONTRACTS DEFINED.—For purposes of this section—

''(1) IN GENERAL.—The term 'extended period long-term contract' means any long-term contract which the taxpayer estimates (at the time such contract is entered into) will not be completed within the 2-year period beginning on the contract commencement date of such contract.

''(2) CERTAIN CONSTRUCTION CONTRACTS.—

''(A) IN GENERAL.—The term 'extended period long-term contract' does not include any construction contract entered into by a taxpayer—

''(i) who estimates (at the time such contract is entered into) that such contract will be completed within the 3-year period beginning on the contract commencement date of such contract, or

''(ii) whose average annual gross receipts over the 3 taxable years preceding the taxable year in which such contract is entered into do not exceed $25,000,000.

''(B) DETERMINATION OF TAXPAYER'S GROSS RECEIPTS.—For purposes of subparagraph (A), the gross receipts of—

''(i) all trades or businesses (whether or not incorporated) which are under common control with the taxpayer (within the meaning of section 52(b)), and

''(ii) all members of any controlled group of corporations of which the taxpayer is a member,

for the 3 taxable years of such persons preceding the taxable year in which the contract described in subparagraph (A) is entered into shall be included in the gross receipts of the taxpayer for the period described in subparagraph (A). The Secretary shall prescribe regulations which provide attribution rules that take into account, in addition to the persons and entities described in the preceding sentence, taxpayers who engage in construction contracts through partnerships, joint ventures, and corporations.

''(C) CONTROLLED GROUP OF CORPORATIONS.—The term 'controlled group of corporations' has the meaning given to such term by section 1563(a), except that—

''(i) 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears in section 1563(a)(1), and

''(ii) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

''(3) CONSTRUCTION CONTRACT.—The term 'construction contract' means any contract for the building, construction, reconstruction, or rehabilitation of, or the installation of any integral component to, improvements to real property.

''(4) CONTRACT COMMENCEMENT DATE.—The term 'contract commencement date' means, with respect to any contract, the first date on which any costs (other than costs such as bidding expenses or expenses incurred in connection with negotiating the contract) allocable to such contract are incurred.

''(c) EFFECTIVE DATES; SPECIAL RULES.—

''(1) IN GENERAL.—The modifications to regulations which are required to be made under paragraphs (1) and (2) of subsection (a) shall apply with respect to taxable years ending after December 31, 1982.

''(2) COST ALLOCATION.—

''(A) IN GENERAL.—Any modification to Income Tax Regulation 1.451–3 made under subsection (a)(3) which requires additional costs to be allocated to a contract shall apply only to the applicable percentage of such additional costs incurred in taxable years beginning after December 31, 1982, with respect to contracts entered into after such date.

''(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be determined in accordance with the following table:

"If the taxable year begins in calendar year:	The applicable percentage is:
1983	33⅓
1984	66⅔
1985 or thereafter	100.

''(3) SPECIAL RULES.—

''(A) TIME OF COMPLETION.—Any contract of a taxpayer which would (but for this paragraph) be treated as having been completed prior to the first taxable year of such taxpayer ending after December 31, 1982, solely by reason of any modification to regulations made under subsection (a)(1), shall be treated as having been completed on the first day of such taxable year.

''(B) AGGREGATION AND SEVERANCE.—Any contract of a taxpayer which would (but for this paragraph) be treated as having been completed prior to the first taxable year of such taxpayer ending after December 31, 1982—

''(i) solely by reason of any modification to regulations made under subsection (a)(2), or

''(ii) solely by reason of any modifications to regulations made under both paragraphs (1) and (2) of subsection (a),

shall be treated as having been completed on the first day after December 31, 1982, on which any contract which was severed from such contract (by reason of the modifications made by subsection (a)(2)) is completed (determined after the application of any modifications to regulations made under subsection (a)(1)).

''(4) UNDERPAYMENTS OF ESTIMATED TAX FOR 1982.—To the extent provided in regulations, no addition to tax shall be made under section 6654 or 6655 of the Internal Revenue Code of 1954 for the taxpayer's first taxable year ending after December 31, 1982, by reason of a long-term contract, but only with respect to installments required to be paid before April 13, 1983.''

PRIVATE DEFERRED COMPENSATION PLANS; TAXABLE YEARS ENDING ON OR AFTER FEBRUARY 1, 1978

Pub. L. 95–600, title I, § 132, Nov. 6, 1978, 92 Stat. 2782, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) GENERAL RULE.—The taxable year of inclusion in gross income of any amount covered by a private deferred compensation plan shall be determined in accordance with the principles set forth in regulations, rulings, and judicial decisions relating to deferred compensation which were in effect on February 1, 1978.

''(b) PRIVATE DEFERRED COMPENSATION PLAN DEFINED.—

''(1) IN GENERAL.—For purposes of this section, the term 'private deferred compensation plan' means a plan, agreement, or arrangement—

''(A) where the person for whom the service is performed is not a State (within the meaning of paragraph (1) of section 457(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) and not an organization which is exempt from tax under section 501 of such Code, and

''(B) under which the payment or otherwise making available of compensation is deferred.

''(2) CERTAIN PLANS EXCLUDED.—Paragraph (1) shall not apply to—

''(A) a plan described in section 401(a) of the Internal Revenue Code of 1986 which includes a trust, exempt from tax under section 501(a) of such Code,

''(B) an annuity plan or contract described in section 403 of such Code,

''(C) a qualified bond purchase plan described in section 405(a) of such Code,

''(D) that portion of any plan which consists of a transfer of property described in section 83 (determined without regard to subsection (e) thereof of such Code, and

''(E) that portion of any plan which consists of a trust to which section 402(b) of such Code applies.

''(c) EFFECTIVE DATE.—This section shall apply to taxable years ending on or after February 1, 1978.''

YEAR OF INCLUSION FOR DISASTER OR DEFICIENCY PAYMENTS RECEIVED IN 1978; ELECTION

Pub. L. 95–258, § 1, Apr. 7, 1978, 92 Stat. 195, provided that:

''(a) IN GENERAL.—In the case of a taxpayer reporting on the cash receipts and disbursements method of accounting, if—

''(1)(A) the taxpayer receives in his first taxable year beginning in 1978 payments under the Agricultural Act of 1949, as amended, [see Short Title note set out under section 1421 of Title 7, Agriculture], as a result of—

''(i) the destruction or damage to crops caused by drought, flood, or any other natural disaster, or

''(ii) the inability to plant crops because of such a natural disaster, and

''(B) the taxpayer establishes that, under his practice, income from such crops could have been reported for his last taxable year beginning in 1977, or

''(2)(A) the taxpayer receives in his first taxable year beginning in 1978 deficiency (or 'target price') payments under the Agricultural Act of 1949, as amended, for any 1977 crop, and

''(B) the fifth month of such crop's marketing year ends before December 1, 1977,

then the taxpayer may elect to include such proceeds in income for his last taxable year beginning in 1977.

''(b) MAKING AND EFFECT OF ELECTION—An election under this section for any taxable year shall be made at such time and in such manner as the Secretary of the Treasury may by regulations prescribe and shall apply with respect to all proceeds described in subsection (a) which were received by the taxpayer.''

[§ 452. Repealed. June 15, 1955, ch. 143, § 1(a), 69 Stat. 134]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 152, related to prepaid income.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 3 of act June 15, 1955, set out as an Effective Date of 1955 Amendment note under section 381 of this title.

SAVINGS PROVISION

For provisions concerning increase in tax in any taxable year ending on or before June 15, 1955 by reason of enactment of act June 15, 1955, see section 4 of act June 15, 1955, set out as a note under section 381 of this title.

§ 453. Installment method

(a) General rule

Except as otherwise provided in this section, income from an installment sale shall be taken into account for purposes of this title under the installment method.

(b) Installment sale defined

For purposes of this section—

(1) In general

The term ''installment sale'' means a disposition of property where at least 1 payment is to be received after the close of the taxable year in which the disposition occurs.

(2) Exceptions

The term ''installment sale'' does not include—

(A) Dealer dispositions

Any dealer disposition (as defined in subsection (*l*)).

(B) Inventories of personal property

A disposition of personal property of a kind which is required to be included in the inventory of the taxpayer if on hand at the close of the taxable year.

(c) Installment method defined

For purposes of this section, the term ''installment method'' means a method under which the income recognized for any taxable year from a disposition is that proportion of the payments received in that year which the gross profit (realized or to be realized when payment is completed) bears to the total contract price.

(d) Election out

(1) In general

Subsection (a) shall not apply to any disposition if the taxpayer elects to have subsection (a) not apply to such disposition.

(2) Time and manner for making election

Except as otherwise provided by regulations, an election under paragraph (1) with respect to a disposition may be made only on or before the due date prescribed by law (including extensions) for filing the taxpayer's return of the tax imposed by this chapter for the taxable year in which the disposition occurs. Such an election shall be made in the manner prescribed by regulations.

(3) Election revocable only with consent

An election under paragraph (1) with respect to any disposition may be revoked only with the consent of the Secretary.

(e) Second dispositions by related persons

(1) In general

If—

(A) any person disposes of property to a related person (hereinafter in this subsection referred to as the ''first disposition''), and

(B) before the person making the first disposition receives all payments with respect to such disposition, the related person disposes of the property (hereinafter in this subsection referred to as the ''second disposition''),

then, for purposes of this section, the amount realized with respect to such second disposition shall be treated as received at the time of the second disposition by the person making the first disposition.

(2) 2-Year cutoff for property other than marketable securities

(A) In general

Except in the case of marketable securities, paragraph (1) shall apply only if the date of the second disposition is not more than 2 years after the date of the first disposition.

(B) Substantial diminishing of risk of ownership

The running of the 2-year period set forth in subparagraph (A) shall be suspended with respect to any property for any period during which the related person's risk of loss with respect to the property is substantially diminished by—

(i) the holding of a put with respect to such property (or similar property),

(ii) the holding by another person of a right to acquire the property, or

(iii) a short sale or any other transaction.

(3) Limitation on amount treated as received

The amount treated for any taxable year as received by the person making the first dis-

position by reason of paragraph (1) shall not exceed the excess of—

(A) the lesser of—

(i) the total amount realized with respect to any second disposition of the property occurring before the close of the taxable year, or

(ii) the total contract price for the first disposition, over

(B) the sum of—

(i) the aggregate amount of payments received with respect to the first disposition before the close of such year, plus

(ii) the aggregate amount treated as received with respect to the first disposition for prior taxable years by reason of this subsection.

(4) Fair market value where disposition is not sale or exchange

For purposes of this subsection, if the second disposition is not a sale or exchange, an amount equal to the fair market value of the property disposed of shall be substituted for the amount realized.

(5) Later payments treated as receipt of tax paid amounts

If paragraph (1) applies for any taxable year, payments received in subsequent taxable years by the person making the first disposition shall not be treated as the receipt of payments with respect to the first disposition to the extent that the aggregate of such payments does not exceed the amount treated as received by reason of paragraph (1).

(6) Exception for certain dispositions

For purposes of this subsection—

(A) Reacquisitions of stock by issuing corporation not treated as first dispositions

Any sale or exchange of stock to the issuing corporation shall not be treated as a first disposition.

(B) Involuntary conversions not treated as second dispositions

A compulsory or involuntary conversion (within the meaning of section 1033) and any transfer thereafter shall not be treated as a second disposition if the first disposition occurred before the threat or imminence of the conversion.

(C) Dispositions after death

Any transfer after the earlier of—

(i) the death of the person making the first disposition, or

(ii) the death of the person acquiring the property in the first disposition,

and any transfer thereafter shall not be treated as a second disposition.

(7) Exception where tax avoidance not a principal purpose

This subsection shall not apply to a second disposition (and any transfer thereafter) if it is established to the satisfaction of the Secretary that neither the first disposition nor the second disposition had as one of its principal purposes the avoidance of Federal income tax.

(8) Extension of statute of limitations

The period for assessing a deficiency with respect to a first disposition (to the extent such deficiency is attributable to the application of this subsection) shall not expire before the day which is 2 years after the date on which the person making the first disposition furnishes (in such manner as the Secretary may by regulations prescribe) a notice that there was a second disposition of the property to which this subsection may have applied. Such deficiency may be assessed notwithstanding the provisions of any law or rule of law which would otherwise prevent such assessment.

(f) Definitions and special rules

For purposes of this section—

(1) Related person

Except for purposes of subsections (g) and (h), the term ''related person'' means—

(A) a person whose stock would be attributed under section 318(a) (other than paragraph (4) thereof) to the person first disposing of the property, or

(B) a person who bears a relationship described in section 267(b) to the person first disposing of the property.

(2) Marketable securities

The term ''marketable securities'' means any security for which, as of the date of the disposition, there was a market on an established securities market or otherwise.

(3) Payment

Except as provided in paragraph (4), the term ''payment'' does not include the receipt of evidences of indebtedness of the person acquiring the property (whether or not payment of such indebtedness is guaranteed by another person).

(4) Purchaser evidences of indebtedness payable on demand or readily tradable

Receipt of a bond or other evidence of indebtedness which—

(A) is payable on demand, or

(B) is readily tradable,

shall be treated as receipt of payment.

(5) Readily tradable defined

For purposes of paragraph (4), the term ''readily tradable'' means a bond or other evidence of indebtedness which is issued—

(A) with interest coupons attached or in registered form (other than one in registered form which the taxpayer establishes will not be readily tradable in an established securities market), or

(B) in any other form designed to render such bond or other evidence of indebtedness readily tradable in an established securities market.

(6) Like-kind exchanges

In the case of any exchange described in section 1031(b)—

(A) the total contract price shall be reduced to take into account the amount of any property permitted to be received in such exchange without recognition of gain,

(B) the gross profit from such exchange shall be reduced to take into account any

amount not recognized by reason of section 1031(b), and

(C) the term ''payment'', when used in any provision of this section other than subsection (b)(1), shall not include any property permitted to be received in such exchange without recognition of gain.

Similar rules shall apply in the case of an exchange which is described in section 356(a) and is not treated as a dividend.

(7) Depreciable property

The term ''depreciable property'' means property of a character which (in the hands of the transferee) is subject to the allowance for depreciation provided in section 167.

(8) Payments to be received defined

The term ''payments to be received'' includes—

(A) the aggregate amount of all payments which are not contingent as to amount, and

(B) the fair market value of any payments which are contingent as to amount.

(g) Sale of depreciable property to controlled entity

(1) In general

In the case of an installment sale of depreciable property between related persons—

(A) subsection (a) shall not apply,

(B) for purposes of this title—

(i) except as provided in clause (ii), all payments to be received shall be treated as received in the year of the disposition, and

(ii) in the case of any payments which are contingent as to the amount but with respect to which the fair market value may not be reasonably ascertained, the basis shall be recovered ratably, and

(C) the purchaser may not increase the basis of any property acquired in such sale by any amount before the time such amount is includible in the gross income of the seller.

(2) Exception where tax avoidance not a principal purpose

Paragraph (1) shall not apply if it is established to the satisfaction of the Secretary that the disposition did not have as one of its principal purposes the avoidance of Federal income tax.

(3) Related persons

For purposes of this subsection, the term ''related persons'' has the meaning given to such term by section 1239(b), except that such term shall include 2 or more partnerships having a relationship to each other described in section 707(b)(1)(B).

(h) Use of installment method by shareholders in certain liquidations

(1) Receipt of obligations not treated as receipt of payment

(A) In general

If, in a liquidation to which section 331 applies, the shareholder receives (in exchange for the shareholder's stock) an installment obligation acquired in respect of a sale or exchange by the corporation during the 12-month period beginning on the date a plan of complete liquidation is adopted and the liquidation is completed during such 12-month period, then, for purposes of this section, the receipt of payments under such obligation (but not the receipt of such obligation) by the shareholder shall be treated as the receipt of payment for the stock.

(B) Obligations attributable to sale of inventory must result from bulk sale

Subparagraph (A) shall not apply to an installment obligation acquired in respect of a sale or exchange of—

(i) stock in trade of the corporation,

(ii) other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year, and

(iii) property held by the corporation primarily for sale to customers in the ordinary course of its trade or business,

unless such sale or exchange is to 1 person in 1 transaction and involves substantially all of such property attributable to a trade or business of the corporation.

(C) Special rule where obligor and shareholder are related persons

If the obligor of any installment obligation and the shareholder are married to each other or are related persons (within the meaning of section 1239(b)), to the extent such installment obligation is attributable to the disposition by the corporation of depreciable property—

(i) subparagraph (A) shall not apply to such obligation, and

(ii) for purposes of this title, all payments to be received by the shareholder shall be deemed received in the year the shareholder receives the obligation.

(D) Coordination with subsection (e)(1)(A)

For purposes of subsection (e)(1)(A), disposition of property by the corporation shall be treated also as disposition of such property by the shareholder.

(E) Sales by liquidating subsidiaries

For purposes of subparagraph (A), in the case of a controlling corporate shareholder (within the meaning of section 368(c)) of a selling corporation, an obligation acquired in respect of a sale or exchange by the selling corporation shall be treated as so acquired by such controlling corporate shareholder. The preceding sentence shall be applied successively to each controlling corporate shareholder above such controlling corporate shareholder.

(2) Distributions received in more than 1 taxable year of shareholder

If—

(A) paragraph (1) applies with respect to any installment obligation received by a shareholder from a corporation, and

(B) by reason of the liquidation such shareholder receives property in more than 1 taxable year,

then, on completion of the liquidation, basis previously allocated to property so received shall be reallocated for all such taxable years so that the shareholder's basis in the stock of the corporation is properly allocated among all property received by such shareholder in such liquidation.

(i) Recognition of recapture income in year of disposition

(1) In general

In the case of any installment sale of property to which subsection (a) applies—

(A) notwithstanding subsection (a), any recapture income shall be recognized in the year of the disposition, and

(B) any gain in excess of the recapture income shall be taken into account under the installment method.

(2) Recapture income

For purposes of paragraph (1), the term ''recapture income'' means, with respect to any installment sale, the aggregate amount which would be treated as ordinary income under (or so much of section 751 as relates to section 1245 or 1250) for the taxable year of the disposition if all payments to be received were received in the taxable year of disposition.

(j) Regulations

(1) In general

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

(2) Selling price not readily ascertainable

The regulations prescribed under paragraph (1) shall include regulations providing for ratable basis recovery in transactions where the gross profit or the total contract price (or both) cannot be readily ascertained.

(k) Current inclusion in case of revolving credit plans, etc.

In the case of—

(1) any disposition of personal property under a revolving credit plan, or

(2) any installment obligation arising out of a sale of—

(A) stock or securities which are traded on an established securities market, or

(B) to the extent provided in regulations, property (other than stock or securities) of a kind regularly traded on an established market,

subsection (a) shall not apply, and, for purposes of this title, all payments to be received shall be treated as received in the year of disposition. The Secretary may provide for the application of this subsection in whole or in part for transactions in which the rules of this subsection otherwise would be avoided through the use of related parties, pass-thru entities, or intermediaries.

***(l)* Dealer dispositions**

For purposes of subsection (b)(2)(A)—

(1) In general

The term ''dealer disposition'' means any of the following dispositions:

(A) Personal property

Any disposition of personal property by a person who regularly sells or otherwise disposes of personal property of the same type on the installment plan.

(B) Real property

Any disposition of real property which is held by the taxpayer for sale to customers in the ordinary course of the taxpayer's trade or business.

(2) Exceptions

The term ''dealer disposition'' does not include—

(A) Farm property

The disposition on the installment plan of any property used or produced in the trade or business of farming (within the meaning of section 2032A(e)(4) or (5)).

(B) Timeshares and residential lots

(i) In general

Any dispositions described in clause (ii) on the installment plan if the taxpayer elects to have paragraph (3) apply to any installment obligations which arise from such dispositions. An election under this paragraph shall not apply with respect to an installment obligation which is guaranteed by any person other than an individual.

(ii) Dispositions to which subparagraph applies

A disposition is described in this clause if it is a disposition in the ordinary course of the taxpayer's trade or business to an individual of—

(I) a timeshare right to use or a timeshare ownership interest in residential real property for not more than 6 weeks per year, or a right to use specified campgrounds for recreational purposes, or

(II) any residential lot, but only if the taxpayer (or any related person) is not to make any improvements with respect to such lot.

For purposes of subclause (I), a timeshare right to use (or timeshare ownership interest in) property held by the spouse, children, grandchildren, or parents of an individual shall be treated as held by such individual.

(C) Carrying charges or interest

Any carrying charges or interest with respect to a disposition described in subparagraph (A) or (B) which are added on the books of account of the seller to the established cash selling price of the property shall be included in the total contract price of the property and, if such charges or interest are not so included, any payments received shall be treated as applying first against such carrying charges or interest.

(3) Payment of interest on timeshares and residential lots

(A) In general

In the case of any installment obligation to which paragraph (2)(B) applies, the tax

imposed by this chapter for any taxable year for which payment is received on such obligation shall be increased by the amount of interest determined in the manner provided under subparagraph (B).

(B) Computation of interest

(i) In general

The amount of interest referred to in subparagraph (A) for any taxable year shall be determined—

(I) on the amount of the tax for such taxable year which is attributable to the payments received during such taxable year on installment obligations to which this subsection applies,

(II) for the period beginning on the date of sale, and ending on the date such payment is received, and

(III) by using the applicable Federal rate under section 1274 (without regard to subsection (d)(2) thereof) in effect at the time of the sale compounded semiannually.

(ii) Interest not taken into account

For purposes of clause (i), the portion of any tax attributable to the receipt of any payment shall be determined without regard to any interest imposed under subparagraph (A).

(iii) Taxable year of sale

No interest shall be determined for any payment received in the taxable year of the disposition from which the installment obligation arises.

(C) Treatment as interest

Any amount payable under this paragraph shall be taken into account in computing the amount of any deduction allowable to the taxpayer for interest paid or accrued during such taxable year.

(Added Pub. L. 96–471, §2(a), Oct. 19, 1980, 94 Stat. 2247; amended Pub. L. 97–34, title II, §202(c), Aug. 13, 1981, 95 Stat. 221; Pub. L. 97–448, title III, §303, Jan. 12, 1983, 96 Stat. 2398; Pub. L. 98–369, div. A, title I, §112(a), title IV, §421(b)(6)(B), (C), July 18, 1984, 98 Stat. 635, 794; Pub. L. 99–514, title VI, §§631(e)(8), 642(a)(1)(D), (3), (b), title VIII, §812(a), title XVIII, §1809(c), Oct. 22, 1986, 100 Stat. 2274, 2284, 2371, 2821; Pub. L. 100–203, title X, §10202(b), Dec. 22, 1987, 101 Stat. 1330–388; Pub. L. 100–647, title I, §§1006(e)(7), (i)(1), (2), 1008(g)(1), 1018(u)(25), (26), title II, §2004(d)(1), (5), Nov. 10, 1988, 102 Stat. 3401, 3410, 3442, 3591, 3599; Pub. L. 106–170, title V, §536(a), Dec. 17, 1999, 113 Stat. 1936; Pub. L. 106–573, §2(a), Dec. 28, 2000, 114 Stat. 3061; Pub. L. 108–357, title VIII, §897(a), Oct. 22, 2004, 118 Stat. 1649.)

PRIOR PROVISIONS

A prior section 453, acts Aug. 16, 1954, ch. 736, 68A Stat. 154; Sept. 2, 1958, Pub. L. 85–866, title I, §27(a), 72 Stat. 1624; Oct. 16, 1962, Pub. L. 87–834, §13(f)(5), 76 Stat. 1035; Feb. 26, 1964, Pub. L. 88–272, title II, §§222(a), 231(b)(5), 78 Stat. 75, 105; Aug. 22, 1964, Pub. L. 88–484, §1(b)(2), 78 Stat. 597; Aug. 31, 1964, Pub. L. 88–539, §3(a), (b), 78 Stat. 746; Sept. 12, 1966, Pub. L. 89–570, §1(b)(5), 80 Stat. 762; Nov. 13, 1966, Pub. L. 89–809, title II, §202(c), 80 Stat. 1576; Dec. 30, 1969, Pub. L. 91–172, title II, §211(b)(5), title III, §301(b)(7), title IV, §412(a), title IX, §916(a), 83 Stat. 570, 585, 608, 723; Oct. 4, 1976, Pub. L. 94–455, title II, §205(c)(1)(E), title XIX, §§1901(a)(66), 1906(b)(13)(A), 1951(b)(7)(A), 90 Stat. 1535, 1775, 1834, 1838; Nov. 6, 1978, Pub. L. 95–600, title VII, §703(j)(3), 92 Stat. 2941; Apr. 1, 1980, Pub. L. 96–222, title I, §104(a)(4)(H)(iv), 94 Stat. 217; Apr. 2, 1980, Pub. L. 96–223, title IV, §403(b)(2)(B), 94 Stat. 305; Oct. 19, 1980, Pub. L. 96–471, §2(c)(4), 94 Stat. 2254, related to installment method in general, installment method for dealers in personal property, and gain or loss dispositions of installment obligations, prior to repeal by Pub. L. 96–471, §2(a), Oct. 19, 1980, 94 Stat. 2247. See sections 453A and 453B of this title.

AMENDMENTS

2004—Subsec. (f)(4)(B). Pub. L. 108–357 struck out ''is issued by a corporation or a government or political subdivision thereof and'' before ''is readily tradable''.

2000—Subsecs. (a), (d)(1), (i)(1), (k). Pub. L. 106–573 repealed Pub. L. 106–170, §536(a). See 1999 Amendment notes below.

1999—Subsec. (a). Pub. L. 106–170, §536(a)(1), which substituted ''Use of installment method'' for ''General rule'' in subsec. heading, designated existing provisions as par. (1) and inserted heading, and added heading and text of par. (2), text of which read as follows: ''(2) ACCRUAL METHOD TAXPAYER.—The installment method shall not apply to income from an installment sale if such income would be reported under an accrual method of accounting without regard to this section. The preceding sentence shall not apply to a disposition described in subparagraph (A) or (B) of subsection (*l*)(2).'', was repealed by Pub. L. 106–573, §2(a). See Effective Date and Construction of 2000 Amendment note below.

Subsecs. (d)(1), (i)(1), (k). Pub. L. 106–170, §536(a)(2), which substituted ''(a)(1)'' for ''(a)'' wherever appearing, was repealed by Pub. L. 106–573. See Effective Date and Construction of 2000 Amendment note below.

1988—Subsec. (f)(1). Pub. L. 100–647, §1018(u)(25), substituted ''subsections (g)'' for ''subsection (g)''.

Subsec. (f)(8). Pub. L. 100–647, §1018(u)(26), substituted ''payments to be'' for ''payment to be''.

Subsec. (g)(1). Pub. L. 100–647, §1006(i)(2)(B), struck out ''(within the meaning of section 1239(b))'' after ''between related persons''.

Pub. L. 100–647, §1006(i)(1), added subpars. (A) to (C) and struck out former subpars. (A) and (B) which read as follows:

''(A) subsection (a) shall not apply, and

''(B) for purposes of this title—

''(i) except as provided in clause (ii), all payments to be received shall be treated as received in the year of the disposition, and

''(ii) in the case of any payments which are contingent as to amount but with respect to which the fair market value may not be reasonably ascertained—

''(I) the basis shall be recovered ratably, and

''(II) the purchaser may not increase the basis of any property acquired in such sale by any amount before such time as the seller includes such amount in income.''

Subsec. (g)(3). Pub. L. 100–647, §1006(i)(2)(A), added par. (3).

Subsec. (h)(1)(B). Pub. L. 100–647, §1006(e)(7)(A), substituted ''to 1 person in 1 transaction'' for ''to one person'' in concluding provisions.

Subsec. (h)(1)(E). Pub. L. 100–647, §1006(e)(7)(B), substituted ''section 368(c)'' for ''section 368(c)(1)''.

Subsec. (j). Pub. L. 100–647, §1008(g)(1), redesignated subsec. (j), relating to current inclusion in case of revolving credit plans, etc., as (k).

Subsec. (k). Pub. L. 100–647, §2004(d)(5), struck out ''and section 453A'' after ''subsection (a)'' in second sentence.

Pub. L. 100–647, §1008(g)(1), redesignated subsec. (j), relating to current inclusion in case of revolving credit plans, etc., as (k).

Subsec. (*l*)(1)(A). Pub. L. 100–647, §2004(d)(1), inserted ''of the same type'' after ''disposes of personal property''.

1987—Subsec. (b)(2)(A). Pub. L. 100–203, § 10202(b)(1), substituted ''Dealer dispositions'' for ''Dealer disposition of personal property'' in heading and amended text generally. Prior to amendment, text read as follows: ''A disposition of personal property on the installment plan by a person who regularly sells or otherwise disposes of personal property on the installment plan.''

Subsec. (*l*). Pub. L. 100–203, § 10202(b)(2), added subsec. (*l*).

1986—Subsec. (f)(1). Pub. L. 99–514, § 642(a)(3), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Except for purposes of subsections (g) and (h), the term 'related person' means a person whose stock would be attributed under section 318(a) (other than paragraph (4) thereof) to the person first disposing of the property.''

Subsec. (f)(8). Pub. L. 99–514, § 642(b)(1), added par. (8).

Subsec. (g). Pub. L. 99–514, § 642(a)(1)(D), substituted ''controlled entity'' for ''80-percent owned entity'' in heading.

Subsec. (g)(1). Pub. L. 99–514, § 642(b)(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''In the case of an installment sale of depreciable property between related persons within the meaning of section 1239(b), subsection (a) shall not apply, and, for purposes of this title, all payments to be received shall be deemed received in the year of the disposition.''

Subsec. (h). Pub. L. 99–514, § 631(e)(8)(C), substituted ''certain liquidations'' for ''section 337 liquidations'' in heading.

Subsec. (h)(1)(A). Pub. L. 99–514, § 631(e)(8)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''If, in connection with a liquidation to which section 337 applies, in a transaction to which section 331 applies the shareholder receives (in exchange for the shareholder's stock) an installment obligation acquired in respect of a sale or exchange by the corporation during the 12-month period set forth in section 337(a), then, for purposes of this section, the receipt of payments under such obligation (but not the receipt of such obligation) by the shareholder shall be treated as the receipt of payment for the stock.''

Subsec. (h)(1)(B). Pub. L. 99–514, § 631(e)(8)(A), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Subparagraph (A) shall not apply to an installment obligation described in section 337(b)(1)(B) unless such obligation is also described in section 337(b)(2)(B).''

Subsec. (h)(1)(E). Pub. L. 99–514, § 631(e)(8)(B), substituted ''subsidiaries'' for ''subsidiary'' in heading and amended text generally. Prior to amendment, subpar. (E) read as follows: ''For purposes of subparagraph (A), in any case to which section 337(c)(3) applies, an obligation acquired in respect of a sale or exchange by the selling corporation shall be treated as so acquired by the corporation distributing the obligation to the shareholder.''

Subsec. (i)(2). Pub. L. 99–514, § 1809(c), substituted ''(or so much of section 751 as relates to section 1245 or 1250)'' for ''section 1245 or 1250''.

Subsec. (j). Pub. L. 99–514, § 812(a), added subsec. (j) relating to current inclusion in case of revolving credit plans, etc.

1984—Subsec. (g). Pub. L. 98–369, § 421(b)(6)(C), struck out ''spouse or'' after ''property to'' in heading.

Subsec. (h)(1)(C). Pub. L. 98–369, § 421(b)(6)(B), inserted ''married to each other or are''.

Subsec. (i). Pub. L. 98–369, § 112(a), amended subsec. (i) generally, substituting provisions relating to recognition of recapture income in year of disposition for provisions relating to application of subsec. (a) in the case of an installment sale of section 179 property.

1983—Subsec. (f)(6)(C). Pub. L. 97–448 inserted '', when used in any provision of this section other than subsection (b)(1),'' after ''the term 'payment' ''.

1981—Subsecs. (i), (j). Pub. L. 97–34 added subsec. (i) and redesignated former subsec. (i) as (j).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, § 897(b), Oct. 22, 2004, 118 Stat. 1649, provided that: ''The amendment made by this section [amending this section] shall apply to sales occurring on or after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE AND CONSTRUCTION OF 2000 AMENDMENT

Pub. L. 106–573, § 2, Dec. 28, 2000, 114 Stat. 3061, provided that:

''(a) IN GENERAL.—Subsection (a) of section 536 of the Ticket to Work and Work Incentives Improvement Act of 1999 (relating to modification of installment method and repeal of installment method for accrual method taxpayers) [Pub. L. 106–170, amending this section] is repealed effective with respect to sales and other dispositions occurring on or after the date of the enactment of such Act [Dec. 17, 1999].

''(b) APPLICABILITY.—The Internal Revenue Code of 1986 shall be applied and administered as if that subsection (and the amendments made by that subsection) had not been enacted.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, § 536(c), Dec. 17, 1999, 113 Stat. 1936, provided that: ''The amendments made by this section [amending this section and section 453A of this title] shall apply to sales or other dispositions occurring on or after the date of the enactment of this Act [Dec. 17, 1999].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1006(e)(7), (i)(1), (2), 1008(g)(1), and 1018(u)(25), (26) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 2004(d)(1), (5) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10202(e) of Pub. L. 100–203, as amended by Pub. L. 100–647, title II, § 2004(d)(3), (4), (6), Nov. 10, 1988, 102 Stat. 3599, 3600, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 56, 381, 453A, and 691 of this title and repealing section 453C of this title] shall apply to dispositions in taxable years beginning after December 31, 1987.

''(2) SPECIAL RULES FOR DEALERS.—

''(A) IN GENERAL.—In the case of dealer dispositions (within the meaning of section 453(*l*)(1) of the Internal Revenue Code of 1986 as added by this section), the amendments made by subsections (a) and (b) [amending this section and repealing section 453C of this title] shall apply to installment obligations arising from dispositions after December 31, 1987.

''(B) SPECIAL RULES FOR OBLIGATIONS ARISING FROM DEALER DISPOSITIONS AFTER FEBRUARY 28, 1986, AND BEFORE JANUARY 1, 1988.—

''(i) IN GENERAL.—In the case of an applicable installment obligation arising from a disposition described in subclause (I) or (II) of section 453C(e)(1)(A)(i) of the Internal Revenue Code of 1986 (as in effect before the amendments made by this section) before January 1, 1988, the amendments made by subsections (a) and (b) shall apply to taxable years beginning after December 31, 1987.

''(ii) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer who is required by clause (i) to change its method of accounting for any taxable year with respect to obligations described in clause (i)—

''(I) such change shall be treated as initiated by the taxpayer,

''(II) such change shall be treated as made with the consent of the Secretary of the Treasury or his delegate, and

''(III) the net amount of adjustments required by section 481 of the Internal Revenue Code of 1986 shall be taken into account over a period not longer than 4 taxable years.

''(C) CERTAIN RULES MADE APPLICABLE.—For purposes of this paragraph, rules similar to the rules of paragraphs (4) and (5) of section 812(c) of the Tax Reform Act of 1986 [Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note below] (as added by the Technical and Miscellaneous Revenue Act of 1988 [Pub. L. 100–647]) shall apply.

''(3) SPECIAL RULE FOR NONDEALERS.—

''(A) ELECTION.—A taxpayer may elect, at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe, to have the amendments made by subsections (a) and (c) [amending sections 381, 453A, and 691 of this title and repealing section 453C of this title] apply to taxable years ending after December 31, 1986, with respect to dispositions and pledges occurring after August 16, 1986.

''(B) PLEDGING RULES.—Except as provided in subparagraph (A)—

''(i) IN GENERAL.—Section 453A(d) of the Internal Revenue Code of 1986 shall apply to any installment obligation which is pledged to secure any secured indebtedness (within the meaning of section 453A(d)(4) of such Code) after December 17, 1987, in taxable years ending after such date.

''(ii) COORDINATION WITH SECTION 453C.—For purposes of section 453C of such Code (as in effect before its repeal), the face amount of any obligation to which section 453A(d) of such Code applies shall be reduced by the amount treated as payments on such obligation under section 453A(d) of such Code and the amount of any indebtedness secured by it shall not be taken into account.

''(C) CERTAIN DISPOSITIONS DEEMED MADE ON 1ST DAY OF TAXABLE YEAR.—If the taxpayer makes an election under subparagraph (A), in the case of the taxpayer's 1st taxable year ending after December 31, 1986—

''(i) dispositions after August 16, 1986, and before the 1st day of such taxable year shall be treated as made on such 1st day, and

''(ii) subsections (b)(2)(B) and (c)(4) of section 453A of such Code shall be applied separately with respect to such dispositions by substituting for '$5,000,000' the amount which bears the same ratio to $5,000,000 as the number of days after August 16, 1986, and before such 1st day bears to 365.

''(4) MINIMUM TAX.—The amendment made by subsection (d) [amending section 56 of this title] shall apply to dispositions in taxable years beginning after December 31, 1986.

''(5) COORDINATION WITH TAX REFORM ACT OF 1986.—The amendments made by this section shall not apply to any installment obligation or to any taxpayer during any period to the extent the amendments made by section 811 of the Tax Reform Act of 1986 [section 811 of Pub. L. 99–514, amending former section 453C of this title and enacting provisions set out as a note under former section 453C of this title] do not apply to such obligation or during such period.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 631(e)(8) of Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

Amendment by section 642(a)(1)(D), (3), (b) of Pub. L. 99–514 applicable to sales after Oct. 22, 1986, in taxable years ending after such date, but not applicable to sales made after Aug. 14, 1986, which are made pursuant to a binding contract in effect on Aug. 14, 1986, and at all times thereafter, see section 642(c) of Pub. L. 99–514, set out as a note under section 1239 of this title.

Section 812(c) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1008(g)(3)–(6), Nov. 10, 1988, 102 Stat. 3443, provided that:

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1986.

''(2) SALES OF STOCK, ETC.—Section 453(k)(2) of the Internal Revenue Code of 1986, as added by subsection (a), shall apply to sales after December 31, 1986, in taxable years ending after such date.

''(3) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer who made sales under a revolving credit plan and was on the installment method under section 453 or 453A of the Internal Revenue Code of 1986 for such taxpayer's last taxable year beginning before January 1, 1987, the amendments made by this section [amending this section and section 453A of this title] shall be treated as a change in method of accounting for its 1st taxable year beginning after December 31, 1986, and—

''(A) such change shall be treated as initiated by the taxpayer,

''(B) such change shall be treated as having been made with the consent of the Secretary,

''(C) the period for taking into account adjustments under section 481 of such Code by reason of such change shall be equal to 4 years, and

''(D) except as provided in paragraph (4), the amount taken into account in each of such 4 years shall be the applicable percentage (determined in accordance with the following table) of the net adjustment:

"In the case of the:	**The applicable percentage is:**
1st taxable year	15
2nd taxable year	25
3rd taxable year	30
4th taxable year	30.

If the taxpayer's last taxable year beginning before January 1, 1987, was the taxpayer's 1st taxable year in which sales were made under a revolving credit plan, all adjustments under section 481 of such Code shall be taken into account in the taxpayer's 1st taxable year beginning after December 31, 1986.

''(4) ACCELERATION OF ADJUSTMENTS WHERE CONTRACTION IN AMOUNT OF INSTALLMENT OBLIGATIONS.—

''(A) IN GENERAL.—If the percentage determined under subparagraph (B) for any taxable year in the adjustment period exceeds the percentage which would otherwise apply under paragraph (3)(D) for such taxable year (determined after the application of this paragraph for prior taxable years in the adjustment period)—

''(i) the percentage determined under subparagraph (B) shall be substituted for the applicable percentage which would otherwise apply under paragraph (3)(D), and

''(ii) any increase in the applicable percentage by reason of clause (i) shall be applied to reduce the applicable percentage determined under paragraph (3)(D) for subsequent taxable years in the adjustment period (beginning with the 1st of such subsequent taxable years).

''(B) DETERMINATION OF PERCENTAGE.—For purposes of subparagraph (A), the percentage determined under this subparagraph for any taxable year in the adjustment period is the excess (if any) of—

''(i) the percentage determined by dividing the aggregate contraction in revolving installment obligations by the aggregate face amount of such obligations outstanding as of the close of the taxpayer's last taxable year beginning before January 1, 1987, over

''(ii) the sum of the applicable percentages under paragraph (3)(D) (as modified by this paragraph) for prior taxable years in the adjustment period.

''(C) AGGREGATE CONTRACTION IN REVOLVING INSTALLMENT OBLIGATIONS.—For purposes of subparagraph (B), the aggregate contraction in revolving installment obligations is the amount by which—

''(i) the aggregate face amount of the revolving installment obligations outstanding as of the close of the taxpayer's last taxable year beginning before January 1, 1987, exceeds

''(ii) the aggregate face amount of the revolving installment obligations outstanding as of the close of the taxable year involved.

''(D) REVOLVING INSTALLMENT OBLIGATIONS.—For purposes of this paragraph, the term 'revolving installment obligations' means installment obligations arising under a revolving credit plan.

''(E) TREATMENT OF CERTAIN OBLIGATIONS DISPOSED OF ON OR BEFORE OCTOBER 26, 1987.—For purposes of subparagraphs (B)(i) and (C)(i), in determining the aggregate face amount of revolving installment obligations outstanding as of the close of the taxpayer's last taxable year beginning before January 1, 1987, there shall not be taken into account any obligation—

''(i) which was disposed of to an unrelated person on or before October 26, 1987, or

''(ii) was disposed of to an unrelated person on or after such date pursuant to a binding written contract in effect on October 26, 1987, and at all times thereafter before such disposition.

For purposes of the preceding sentence, the term 'unrelated person' means any person who is not a related person (as defined in section 453(g) of the Internal Revenue Code of 1986).

''(5) LIMITATION ON LOSSES FROM SALES OF OBLIGATIONS UNDER REVOLVING CREDIT PLANS.—If 1 or more obligations arising under a revolving credit plan and taken into account under paragraph (3) are disposed of during the adjustment period, then, notwithstanding any other provision of law—

''(A) no losses from such dispositions shall be recognized, and

''(B) the aggregate amount of the adjustment for taxable years in the adjustment period (in reverse order of time) shall be reduced by the amount of such losses.

''(6) ADJUSTMENT PERIOD.—For purposes of paragraphs (4) and (5), the adjustment period is the 4-year period under paragraph (3).''

Amendment by section 1809(c) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 112(b) of Pub. L. 98–369 provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section] shall apply with respect to dispositions made after June 6, 1984.

''(2) EXCEPTION.—The amendments made by this section shall not apply with respect to any disposition conducted pursuant to a contract which was binding on March 22, 1984, and at all times thereafter.

''(3) SPECIAL RULE FOR CERTAIN DISPOSITIONS BEFORE OCTOBER 1, 1984.—The amendments made by this section shall not apply to any disposition before October 1, 1984, of all or substantially all of the personal property of a cable television business pursuant to a written offer delivered by the seller on June 20, 1984, but only if the last payment under the installment contract is due no later than October 1, 1989.''

Amendment by section 421(b)(6)(B), (C) of Pub. L. 98–369 applicable to transfers after July 18, 1984, in taxable years ending after such date, subject to election to have amendment apply to transfers after 1983 or to transfers pursuant to existing decrees, see section 421(d) of Pub. L. 98–369, set out as an Effective Date note under section 1041 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 311(a) of Pub. L. 97–448 provided that: ''The amendments made by sections 301, 302, and 303 [amending this section and sections 453B and 1239 of this title] shall apply to dispositions made after October 19, 1980, in taxable years ending after such date.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, see section 209(a) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

EFFECTIVE DATE; APPLICATION OF FORMER SECTION 453(b) TO CERTAIN DISPOSITIONS

Section 6(a) of Pub. L. 96–471, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by sections 2 [enacting this section and sections 453A and 453B of this title and amending sections 311, 336, 337, 381, former section 453, and sections 453B, 481, 644, 691, and 1255 of this title] and 5 [amending section 1239 of this title] shall apply to dispositions made after the date of the enactment of this Act [Oct. 19, 1980] in taxable years ending after such date.

''(2) FOR SECTION 453(e).—Section 453(e) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by section 2) shall apply to first dispositions made after May 14, 1980.

''(3) FOR SECTION 453(h).—Paragraphs (1) and (2) of section 453(h) of such Code (as amended by section 2) shall apply in the case of distributions of installment obligations after March 31, 1980.

''(4) FOR SECTION 453a.—Section 453A of the Internal Revenue Code of 1986 (as amended by section 2) shall apply to taxable years ending after the date of enactment of this Act [Oct. 19, 1980].

''(5) FOR SECTION 453b(f).—Section 453B(f) of the Internal Revenue Code of 1986 (as amended by section 2) shall apply to installment obligations becoming unenforceable after the date of the enactment of this Act [Oct. 19, 1980].

''(6) FOR SECTION 2(c).—The amendments made by section 2(c) [amending sections 336, 337, 453B, and former section 453 of this title] shall take effect as if included in the amendments made by section 403(b) of the Crude Oil Windfall Profit Tax Act of 1980 [see section 403(b)(3) of Pub. L. 96–223, set out as an Effective Date of 1980 Amendments note under section 337 of this title].

''(7) SPECIAL RULE FOR APPLICATION OF FORMER SECTION 453 TO CERTAIN DISPOSITIONS.—In the case of any disposition made on or before the date of the enactment of this Act [Oct. 19, 1980] in any taxable year ending after such date, the provisions of section 453(b) of the Internal Revenue Code of 1986 [see subsec. (b) of former section 453 of this title, set out below] as in effect before such date, shall be applied with respect to such disposition without regard to—

''(A) paragraph (2) of such section 453(b), and

''(B) any requirement that more than 1 payment be received.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 453A. Special rules for nondealers

(a) General rule

In the case of an installment obligation to which this section applies—

(1) interest shall be paid on the deferred tax liability with respect to such obligation in the manner provided under subsection (c), and

(2) the pledging rules under subsection (d) shall apply.

(b) Installment obligations to which section applies

(1) In general

This section shall apply to any obligation which arises from the disposition of any property under the installment method, but only if the sales price of such property exceeds $150,000.

(2) Special rule for interest payments

For purposes of subsection (a)(1), this section shall apply to an obligation described in paragraph (1) arising during a taxable year only if—

(A) such obligation is outstanding as of the close of such taxable year, and

(B) the face amount of all such obligations held by the taxpayer which arose during, and are outstanding as of the close of, such taxable year exceeds $5,000,000.

Except as provided in regulations, all persons treated as a single employer under subsection (a) or (b) of section 52 shall be treated as one person for purposes of this paragraph and subsection (c)(4).

(3) Exception for personal use and farm property

An installment obligation shall not be treated as described in paragraph (1) if it arises from the disposition—

(A) by an individual of personal use property (within the meaning of section 1275(b)(3)), or

(B) of any property used or produced in the trade or business of farming (within the meaning of section 2032A(e)(4) or (5)).

(4) Special rule for timeshares and residential lots

An installment obligation shall not be treated as described in paragraph (1) if it arises from a disposition described in section 453(*l*)(2)(B), but the provisions of section 453(*l*)(3) (relating to interest payments on timeshares and residential lots) shall apply to such obligation.

(5) Sales price

For purposes of paragraph (1), all sales or exchanges which are part of the same transaction (or a series of related transactions) shall be treated as 1 sale or exchange.

(c) Interest on deferred tax liability

(1) In general

If an obligation to which this section applies is outstanding as of the close of any taxable year, the tax imposed by this chapter for such taxable year shall be increased by the amount of interest determined in the manner provided under paragraph (2).

(2) Computation of interest

For purposes of paragraph (1), the interest for any taxable year shall be an amount equal to the product of—

(A) the applicable percentage of the deferred tax liability with respect to such obligation, multiplied by

(B) the underpayment rate in effect under section 6621(a)(2) for the month with or within which the taxable year ends.

(3) Deferred tax liability

For purposes of this section, the term ''deferred tax liability'' means, with respect to any taxable year, the product of—

(A) the amount of gain with respect to an obligation which has not been recognized as of the close of such taxable year, multiplied by

(B) the maximum rate of tax in effect under section 1 or 11, whichever is appropriate, for such taxable year.

For purposes of applying the preceding sentence with respect to so much of the gain which, when recognized, will be treated as long-term capital gain, the maximum rate on net capital gain under section 1(h) or 1201 (whichever is appropriate) shall be taken into account.

(4) Applicable percentage

For purposes of this subsection, the term ''applicable percentage'' means, with respect to obligations arising in any taxable year, the percentage determined by dividing—

(A) the portion of the aggregate face amount of such obligations outstanding as of the close of such taxable year in excess of $5,000,000, by

(B) the aggregate face amount of such obligations outstanding as of the close of such taxable year.

(5) Treatment as interest

Any amount payable under this subsection shall be taken into account in computing the amount of any deduction allowable to the taxpayer for interest paid or accrued during the taxable year.

(6) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this subsection including regulations providing for the application of this subsection in the case of contingent payments, short taxable years, and pass-thru entities.

(d) Pledges, etc., of installment obligations

(1) In general

For purposes of section 453, if any indebtedness (hereinafter in this subsection referred to as ''secured indebtedness'') is secured by an installment obligation to which this section applies, the net proceeds of the secured indebtedness shall be treated as a payment received on such installment obligation as of the later of—

(A) the time the indebtedness becomes secured indebtedness, or

(B) the time the proceeds of such indebtedness are received by the taxpayer.

(2) Limitation based on total contract price

The amount treated as received under paragraph (1) by reason of any secured indebtedness shall not exceed the excess (if any) of—

(A) the total contract price, over

(B) any portion of the total contract price received under the contract before the later of the times referred to in subparagraph (A) or (B) of paragraph (1) (including amounts previously treated as received under paragraph (1) but not including amounts not taken into account by reason of paragraph (3)).

(3) Later payments treated as receipt of tax paid amounts

If any amount is treated as received under paragraph (1) with respect to any installment obligation, subsequent payments received on such obligation shall not be taken into account for purposes of section 453 to the extent that the aggregate of such subsequent payments does not exceed the aggregate amount treated as received under paragraph (1).

(4) Secured indebtedness

For purposes of this subsection indebtedness is secured by an installment obligation to the extent that payment of principal or interest on such indebtedness is directly secured (under the terms of the indebtedness or any underlying arrangements) by any interest in such installment obligation. A payment shall be treated as directly secured by an interest in an installment obligation to the extent an arrangement allows the taxpayer to satisfy all or a portion of the indebtedness with the installment obligation.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations—

(1) disallowing the use of the installment method in whole or in part for transactions in which the rules of this section otherwise would be avoided through the use of related persons, pass-thru entities, or intermediaries, and

(2) providing that the sale of an interest in a partnership or other pass-thru entity will be treated as a sale of the proportionate share of the assets of the partnership or other entity.

(Added Pub. L. 96–471, § 2(a), Oct. 19, 1980, 94 Stat. 2251; amended Pub. L. 99–514, title VIII, § 812(b), Oct. 22, 1986, 100 Stat. 2371; Pub. L. 100–203, title X, § 10202(c)[(1)], Dec. 22, 1987, 101 Stat. 1330–390; Pub. L. 100–647, title I, § 1008(g)(2), title II, § 2004(d)(2), (7), (8), title V, § 5076(a), (b)(1), Nov. 10, 1988, 102 Stat. 3442, 3599, 3600, 3682; Pub. L. 101–239, title VII, §§ 7812(c)(2), 7815(g), 7821(a)(1)–(3), (4)(B), Dec. 19, 1989, 103 Stat. 2412, 2420, 2423, 2424; Pub. L. 103–66, title XIII, § 13201(b)(4), Aug. 10, 1993, 107 Stat. 459; Pub. L. 106–170, title V, § 536(b), Dec. 17, 1999, 113 Stat. 1936.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 453 of this title.

AMENDMENTS

1999—Subsec. (d)(4). Pub. L. 106–170 inserted at end ''A payment shall be treated as directly secured by an interest in an installment obligation to the extent an arrangement allows the taxpayer to satisfy all or a portion of the indebtedness with the installment obligation.''

1993—Subsec. (c)(3). Pub. L. 103–66 inserted at end ''For purposes of applying the preceding sentence with respect to so much of the gain which, when recognized, will be treated as long-term capital gain, the maximum rate on net capital gain under section 1(h) or 1201 (whichever is appropriate) shall be taken into account.''

1989—Subsec. (b)(2)(B). Pub. L. 101–239, § 7821(a)(1), substituted ''such obligations held by the taxpayer'' for ''obligations of the taxpayer described in paragraph (1)''.

Subsec. (b)(3). Pub. L. 101–239, § 7815(g), substituted ''Exception for personal use and farm property'' for ''Exception for farm property'' in heading and amended text generally. Prior to amendment, text read as follows: ''An installment obligation shall not be treated as described in paragraph (1) if it arises from the disposition of any property used or produced in the trade or business of farming (within the meaning of section 2032A(e)(4) or (5).''

Pub. L. 101–239, § 7812(c)(2), substituted ''(5)).'' for ''(5).''

Subsec. (c)(5), (6). Pub. L. 101–239, § 7821(a)(4)(B), added par. (5) and redesignated former par. (5) as (6).

Subsec. (d)(1)(B). Pub. L. 101–239, § 7821(a)(3), substituted ''the time the proceeds'' for ''the proceeds''.

Subsec. (d)(2)(B). Pub. L. 101–239, § 7821(a)(2), substituted ''the later of the times referred to in subparagraph (A) or (B) of paragraph (1)'' for ''such secured indebtedness was incurred''.

1988—Pub. L. 100–647, § 5076(b)(1), struck out ''of real property'' after ''rules for nondealers'' in section catchline.

Subsec. (b)(1). Pub. L. 100–647, § 5076(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''This section shall apply to any obligation which arises from the disposition of real property under the installment method which is property used in the taxpayer's trade or business or property held for the production of rental income, but only if the sales price of such property exceeds $150,000.''

Subsec. (b)(2). Pub. L. 100–647, § 2004(d)(7), inserted ''and subsection (c)(4)'' after ''of this paragraph'' in last sentence.

Subsec. (b)(3). Pub. L. 100–647, § 2004(d)(8), substituted ''farm property'' for ''personal use and farm property'' in heading and amended text generally. Prior to amendment, text read as follows: ''An installment obligation shall not be treated as described in paragraph (1) if it arises from the disposition—

''(A) by an individual of personal use property (within the meaning of section 1275(b)(3)), or

''(B) of any property used or produced in the trade or business of farming (within the meaning of section 2032A(e)(4) or (5)).''

Subsec. (c). Pub. L. 100–647, § 1008(g)(2), substituted ''453(k)'' for ''453(j)'' in subsec. (c) as in effect on date before the date of enactment of Pub. L. 100–203 (Dec. 22, 1987).

Subsec. (e). Pub. L. 100–647, § 2004(d)(2), added subsec. (e).

1987—Pub. L. 100–203 substituted ''Special rules for nondealers of real property'' for ''Installment method for dealers in personal property'' in section catchline and amended text generally, revising and restating as subsecs. (a) to (d) provisions of former subsecs. (a) to (c).

1986—Subsec. (a)(2). Pub. L. 99–514, § 812(b)(1), struck out last sentence which read as follows: ''This paragraph shall not apply with respect to sales of personal property under a revolving credit type plan.''

Subsec. (c). Pub. L. 99–514, § 812(b)(2), added subsec. (c).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to sales or other dispositions occurring on or after Dec. 17, 1999, see section 536(c) of Pub. L. 106–170, set out as a note under section 453 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see section 13201(c) of Pub. L. 103–66, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by sections 7812(c)(2) and 7815(g) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Amendment by section 7821(a)(1)–(3), (4)(B) of Pub. L. 101–239 effective as if included in the provision of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 7823 of Pub. L. 101–239, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1008(g)(2) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 2004(d)(2), (7), (8) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

Section 5076(c) of Pub. L. 100–647 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to sales after December 31, 1988.

''(2) BINDING CONTRACT, ETC.—The amendments made by this section shall not apply to any sale on or before December 31, 1990, if—

''(A) such sale is pursuant to a written binding contract in effect on October 21, 1988, and at all times thereafter before such sale,

''(B) such sale is pursuant to a letter of intent in effect on October 21, 1988, or

''(C) there is a board of directors or shareholder approval for such sale on or before October 21, 1988.''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to dispositions in taxable years beginning after Dec. 31, 1987, with special rules for non-dealers and coordination with Tax Reform Act of 1986, see section 10202(e)(1), (3), (5) of Pub. L. 100–203, set out as a note under section 453 of this title.

EFFECTIVE DATE

For effective date, see section 6(a)(4) of Pub. L. 96–471, set out as a note under section 453 of this title.

CERTAIN REPLEDGES PERMITTED

Section 6031 of Pub. L. 100–647 provided that:

''(a) GENERAL RULE.—Section 453A(d) of the 1986 Code (relating to pledges, etc., of installment obligations) shall not apply to any pledge after December 17, 1987, of an installment obligation to secure any indebtedness if such indebtedness is incurred to refinance indebtedness which was outstanding on December 17, 1987, and which was secured on such date and all times thereafter before such refinancing by a pledge of such installment obligation.

''(b) LIMITATION.—Subsection (a) shall not apply to the extent that the principal amount of the indebtedness resulting from the refinancing exceeds the principal amount of the refinanced indebtedness immediately before the refinancing.

''(c) CERTAIN REFINANCINGS PERMITTED.—For purposes of subsection (a), if—

''(1) a refinancing is attributable to the calling of indebtedness by the creditor, and

''(2) such refinancing is not with the creditor under the refinanced indebtedness or a person related to such creditor,

such refinancing shall, to the extent the refinanced indebtedness qualifies under subsections (a) and (b), be treated as a continuation of such refinanced indebtedness.''

AMENDMENT BY PUB. L. 99–514 TREATED AS CHANGE IN METHOD OF ACCOUNTING

For provisions requiring change in accounting method in the case of any taxpayer who made sales under revolving credit plan and was on installment method under this section for such taxpayer's last taxable year beginning before Jan. 1, 1987, see section 812(c)(2) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 453 of this title.

§ 453B. Gain or loss disposition of installment obligations

(a) General rule

If an installment obligation is satisfied at other than its face value or distributed, transmitted, sold, or otherwise disposed of, gain or loss shall result to the extent of the difference between the basis of the obligation and—

(1) the amount realized, in the case of satisfaction at other than face value or a sale or exchange, or

(2) the fair market value of the obligation at the time of distribution, transmission, or disposition, in the case of the distribution, transmission, or disposition otherwise than by sale or exchange.

any gain or loss so resulting shall be considered as resulting from the sale or exchange of the property in respect of which the installment obligation was received.

(b) Basis of obligation

The basis of an installment obligation shall be the excess of the face value of the obligation over an amount equal to the income which would be returnable were the obligation satisfied in full.

(c) Special rule for transmission at death

Except as provided in section 691 (relating to recipients of income in respect of decedents), this section shall not apply to the transmission of installment obligations at death.

(d) Exception for distributions to which section 337(a) applies

Subsection (a) shall not apply to any distribution to which section 337(a) applies.

(e) Life insurance companies

(1) In general

In the case of a disposition of an installment obligation by any person other than a life insurance company (as defined in section 816(a)) to such an insurance company or to a partnership of which such an insurance company is a partner, no provision of this subtitle providing for the nonrecognition of gain shall apply with respect to any gain resulting under subsection (a). If a corporation which is a life insurance company for the taxable year was (for the preceding taxable year) a corporation which was not a life insurance company, such corporation shall, for purposes of this subsection and subsection (a), be treated as having trans-

ferred to a life insurance company, on the last day of the preceding taxable year, all installment obligations which it held on such last day. A partnership of which a life insurance company becomes a partner shall, for purposes of this subsection and subsection (a), be treated as having transferred to a life insurance company, on the last day of the preceding taxable year of such partnership, all installment obligations which it holds at the time such insurance company becomes a partner.

(2) Special rule where life insurance company elects to treat income as not related to insurance business

Paragraph (1) shall not apply to any transfer or deemed transfer of an installment obligation if the life insurance company elects (at such time and in such manner as the Secretary may by regulations prescribe) to determine its life insurance company taxable income—

(A) by returning the income on such installment obligation under the installment method prescribed in section 453, and

(B) as if such income were an item attributable to a noninsurance business (as defined in section 806(b)(3)).

(f) Obligation becomes unenforceable

For purposes of this section, if any installment obligation is canceled or otherwise becomes unenforceable—

(1) the obligation shall be treated as if it were disposed of in a transaction other than a sale or exchange, and

(2) if the obligor and obligee are related persons (within the meaning of section 453(f)(1)), the fair market value of the obligation shall be treated as not less than its face amount.

(g) Transfers between spouses or incident to divorce

In the case of any transfer described in subsection (a) of section 1041 (other than a transfer in trust)—

(1) subsection (a) of this section shall not apply, and

(2) the same tax treatment with respect to the transferred installment obligation shall apply to the transferee as would have applied to the transferor.

(h) Certain liquidating distributions by S corporations

If—

(1) an installment obligation is distributed by an S corporation in a complete liquidation, and

(2) receipt of the obligation is not treated as payment for the stock by reason of section 453(h)(1),

then, except for purposes of any tax imposed by subchapter S, no gain or loss with respect to the distribution of the obligation shall be recognized by the distributing corporation. Under regulations prescribed by the Secretary, the character of the gain or loss to the shareholder shall be determined in accordance with the principles of section 1366(b).

(Added Pub. L. 96–471, § 2(a), Oct. 19, 1980, 94 Stat. 2252; amended Pub. L. 96–471, § 2(c)(3), Oct. 19, 1980, 94 Stat. 2254; Pub. L. 97–448, title III, § 302, Jan. 12, 1983, 96 Stat. 2398; Pub. L. 98–369, div. A, title I, § 43(c)(2), title II, § 211(b)(6), title IV, §§ 421(b)(3), 492(b)(3), July 18, 1984, 98 Stat. 558, 754, 794, 854; Pub. L. 99–514, title VI, § 631(e)(9), title X, § 1011(b)(1), title XVIII, § 1842(c), Oct. 22, 1986, 100 Stat. 2274, 2389, 2853; Pub. L. 100–647, title I, § 1006(e)(22), Nov. 10, 1988, 102 Stat. 3403; Pub. L. 101–508, title XI, § 11702(a)(2), Nov. 5, 1990, 104 Stat. 1388–514.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 453 of this title.

AMENDMENTS

1990—Subsec. (d). Pub. L. 101–508 substituted heading for one which read: ''Effect of distribution in liquidations to which section 332 applies'' and amended text generally. Prior to amendment, text read as follows: ''If—

''(1) an installment obligation is distributed in a liquidation to which section 332 (relating to complete liquidations of subsidiaries) applies, and

''(2) the basis of such obligation in the hands of the distributee is determined under section 334(b)(1),

then no gain or loss with respect to the distribution of such obligation shall be recognized by the distributing corporation.''

1988—Subsec. (h). Pub. L. 100–647 added subsec. (h).

1986—Subsec. (d). Pub. L. 99–514, § 631(e)(9), amended subsec. (d) generally, substituting ''liquidations to which section 332 applies'' for ''certain liquidations'' in heading, striking out par. (1) designation, redesignating subpars. (A) and (B) as pars. (1) and (2), and striking out former par. (2) relating to liquidations to which section 337 applies.

Subsec. (e)(2)(B). Pub. L. 99–514, § 1011(b)(1), substituted ''section 806(b)(3)'' for ''section 806(c)(3)''.

Subsec. (g). Pub. L. 99–514, § 1842(c), inserted ''(other than a transfer in trust)''.

1984—Subsec. (d)(2). Pub. L. 98–369, § 492(b)(3), struck out ''1251(c),'' after ''1250(a),'' in provision following subpar. (B).

Pub. L. 98–369, § 43(c)(2), substituted ''1254(a), or 1276(a)'' for ''or 1254(a)''.

Subsec. (e)(1). Pub. L. 98–369, § 211(b)(6)(A), substituted ''section 816(a)'' for ''section 801(a)''.

Subsec. (e)(2). Pub. L. 98–369, § 211(b)(6)(B), substituted ''as not related to insurance business'' for ''as investment income'' in heading, and in text substituted ''as if such income were an item attributable to a noninsurance business (as defined in section 806(c)(3))'' for ''if such income would not otherwise be returnable as an item referred to in section 804(b) or as long-term capital gain, as if the income on such obligations were income specified in section 804(b)''.

Subsec. (g). Pub. L. 98–369, § 421(b)(3), added subsec. (g).

1983—Subsec. (d)(2). Pub. L. 97–448 substituted ''under subsection (a)'' for ''under paragraph (1)'' in second sentence.

1980—Subsec. (d). Pub. L. 96–471, § 2(c)(3), inserted last sentence providing that in the case of any installment obligation which would have met the requirements of subpars. (A) and (B) of par. (2) but for sections 337(f), gain shall be recognized to such corporation by reason of such distribution only to the extent gain would have been recognized under sections 337(f) if such corporation had sold or exchanged such installment obligation on the date of such distribution.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 11702(j) of Pub. L. 101–508, set out as a note under section 59 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 631(e)(9) of Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

Section 1011(c)(1) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section and sections 465, 801, 804 to 806, 813, and 815 of this title, enacting provisions set out as a note under section 801 of this title, and amending provisions set out as a note under section 806 of this title] shall apply to taxable years beginning after December 31, 1986.''

Amendment by section 1842(c) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 43(c)(2) of Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

Amendment by section 211(b)(6) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

Amendment by section 421(b)(3) of Pub. L. 98–369 applicable to transfers after July 18, 1984, in taxable years ending after such date, subject to election to have amendment apply to transfers after 1983 or to transfers pursuant to existing decrees, see section 421(d) of Pub. L. 98–369, set out as an Effective Date note under section 1041 of this title.

Amendment by section 492(b)(3) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 492(d) of Pub. L. 98–369, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 applicable to dispositions made after Oct. 19, 1980, in taxable years ending after such date, see section 311(a) of Pub. L. 97–448, set out as a note under section 453 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96–471, see section 6(a)(6) of Pub. L. 96–471, set out as an Effective Date note under section 453 of this title.

EFFECTIVE DATE

For effective date, see section 6(a)(1), (5) of Pub. L. 96–471, set out as a note under section 453 of this title.

REPEAL OF MODIFICATION OF INSTALLMENT METHOD

Pub. L. 106–573, §2, Dec. 28, 2000, 114 Stat. 3061, provided that:

''(a) IN GENERAL.—Subsection (a) of section 536 of the Ticket to Work and Work Incentives Improvement Act of 1999 (relating to modification of installment method and repeal of installment method for accrual method taxpayers) [Pub. L. 106–170, amending this section] is repealed effective with respect to sales and other dispositions occurring on or after the date of the enactment of such Act[Dec. 17, 1999].

''(b) APPLICABILITY.—The Internal Revenue Code of 1986 shall be applied and administered as if that subsection (and the amendments made by that subsection) had not been enacted.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TREATMENT OF ELECTIONS UNDER SECTION 453B(e)(2)

Section 217(b) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''If an election is made under section 453B(e)(2) before January 1, 1984, with respect to any installment obligation, any income from such obligation shall be treated as attributable to a noninsurance business (as defined in section 806(c)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]).''

[§ 453C. Repealed. Pub. L. 100–203, title X, § 10202(a)(1), Dec. 22, 1987, 101 Stat. 1330–388]

Section, added Pub. L. 99–514, title VIII, §811(a), Oct. 22, 1986, 100 Stat. 2365; amended Pub. L. 100–647, title I, §1008(f)(1)–(5), Nov. 10, 1988, 102 Stat. 3441, 3442, related to treatment of certain indebtedness as payment on installment obligations.

EFFECTIVE DATE OF REPEAL

Repeal applicable to dispositions in taxable years beginning after Dec. 31, 1987, with special rules for dealers and non-dealers, and coordination with Tax Reform Act of 1986, see section 10202(e)(1)–(3), (5) of Pub. L. 100–203, set out as a note under section 453 of this title.

APPLICABILITY OF AMENDMENTS BY PUB. L. 100–203 AND PUB. L. 100–647

Pub. L. 100–647, title I, §1008(f)(9), Nov. 10, 1988, 102 Stat. 3442, provided that: ''For purposes of applying the amendments made by this subsection [amending this section and provisions set out below] and the amendments made by section 10202 of the Revenue Act of 1987 [Pub. L. 100–203, amending sections 56, 381, 453, 453A, and 691 of this title and repealing this section], the provisions of this subsection shall be treated as having been enacted immediately before the enactment of the Revenue Act of 1987 [Dec. 22, 1987].''

EFFECTIVE DATE; ALLOCATION OF INDEBTEDNESS AS PAYMENT ON INSTALLMENT OBLIGATION

Section 811(c) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1008(f)(6)–(8), Nov. 10, 1988, 102 Stat. 3442; Pub. L. 105–34, title X, §1088(a), Aug. 5, 1997, 111 Stat. 959, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this section [enacting this section] shall apply to taxable years ending after December 31, 1986, with respect to dispositions after February 28, 1986.

''[(2) Repealed. Pub. L. 105–34, title X, §1088(a), Aug. 5, 1997, 111 Stat. 959.]

''(3) EXCEPTION FOR CERTAIN OBLIGATIONS.—In applying the amendments made by this section to any installment obligation of a corporation incorporated on January 13, 1928, the following indebtedness shall not be taken into account in determining the allocable installment indebtedness of such corporation under section 453C of the Internal Revenue Code of 1986 (as added by this section):

''(A) 12⅝ percent subordinated debentures with a total face amount of $175,000,000 issued pursuant to a trust indenture dated as of September 1, 1985.

''(B) A revolving credit term loan in the maximum amount of $130,000,000 made pursuant to a revolving credit and security agreement dated as of September 6, 1985, payable in various stages with final payment due on August 31, 1992.

This paragraph shall also apply to indebtedness which replaces indebtedness described in this paragraph if such indebtedness does not exceed the amount and maturity of the indebtedness it replaces.

''(4) SPECIAL RULE FOR RESIDENTIAL CONDOMINIUM PROJECT.—For purposes of applying the amendments made by this section, the term applicable installment obligation (within the meaning of section 453C(e)(1) of the Internal Revenue Code of 1986) shall not include any obligation arising in connection with sales from a residential condominium project—

''(A) for which a contract to purchase land for the project was entered into at least 5 years before the date of the enactment of this Act,

''(B) with respect to which land for the project was purchased before September 26, 1985,

''(C) with respect to which building permits for the project were obtained, and construction commenced, before September 26, 1985,

''(D) in conjunction with which not less than 80 units of low-income housing are deeded to a tax-exempt organization designated by a local government, and

''(E) with respect to which at least $1,000,000 of expenses were incurred before September 26, 1985.

''(5) SPECIAL RULE FOR QUALIFIED BUYOUT.—The amendments made by this section shall apply for taxable years ending after December 31, 1991, to a corporation if—

''(A) such corporation was incorporated on May 25, 1984, for the purpose of acquiring all of the stock of another corporation,

''(B) such acquisition took place on October 23, 1984,

''(C) in connection with such acquisition, the corporation incurred indebtedness of approximately $151,000,000, and

''(D) substantially all of the stock of the corporation is owned directly or indirectly by employees of the corporation the stock of which was acquired on October 23, 1984.

''(6) SPECIAL RULE FOR SALES OF REAL PROPERTY BY DEALERS.—In the case of installment obligations arising from the sale of real property in the ordinary course of the trade or business of the taxpayer, any gain attributable to allocable installment indebtedness allocated to any such installment obligations which arise (or are deemed to arise)—

''(A) in the 1st taxable year of the taxpayer ending after December 31, 1986, shall be taken into account ratably over the 3 taxable years beginning with such 1st taxable year, and

''(B) in the 2nd taxable year of the taxpayer ending after December 31, 1986, shall be taken into account ratably over the 2 taxable years beginning with such 2nd taxable year.

''(7) SPECIAL RULE FOR SALES OF PERSONAL PROPERTY BY DEALERS.—In the case of installment obligations arising from the sale of personal property in the ordinary course of the trade or business of the taxpayer, solely for purposes of determining the time for payment of tax and interest payable with respect to such tax—

''(A) any increase in tax imposed by chapter 1 of the Internal Revenue Code of 1986 for the 1st taxable year of the taxpayer ending after December 31, 1986, by reason of the amendments made by this section shall be treated as imposed ratably over the 3 taxable years beginning with such 1st taxable year, and

''(B) any increase in tax imposed by such chapter 1 for the 2nd taxable year of the taxpayer ending after December 31, 1986 (determined without regard to subparagraph (A)), by reason of the amendments made by this section shall be treated as imposed ratably over the 2 taxable years beginning with such 2nd taxable year.

''(8) TREATMENT OF CERTAIN INSTALLMENT OBLIGATIONS.—Notwithstanding the amendments made by subtitle B of title III [section 311 of Pub. L. 99–514, amending sections 593, 631, 852, 1201, and 1445 of this title and enacting provisions set out as notes under sections 631 and 1201 of this title], gain with respect to installment payments received pursuant to notes issued in accordance with a note agreement dated as of August 29, 1980, where—

''(A) such note agreement was executed pursuant to an agreement of purchase and sale dated April 25, 1980,

''(B) more than ½ of the installment payments of the aggregate principal of such notes have been received by August 29, 1986, and

''(C) the last installment payment of the principal of such notes is due August 29, 1989,

shall be taxed at a rate of 28 percent.

''(9) SPECIAL RULES.—For purposes of section 453C of the 1986 Code (as added by subsection (a))—

''(A) REVOLVING CREDIT PLANS, ETC.—The term 'applicable installment obligation' shall not include any obligation arising out of any disposition or sale described in paragraph (1) or (2) of section 453(k) of such Code (as added by section 812(a)).

''(B) CERTAIN DISPOSITIONS DEEMED MADE ON FIRST DAY OF TAXABLE YEAR.—In the case of a taxpayer's 1st taxable year ending after December 31, 1986, dispositions after February 28, 1986, and before the 1st day of such taxable year shall be treated as made on such 1st day.''

[Pub. L. 105–34, title X, § 1088(b), Aug. 5, 1997, 111 Stat. 959, as amended by Pub. L. 105–206, title VI, § 6010(q), July 22, 1998, 112 Stat. 817, provided that:

[''(1) IN GENERAL.—The amendment made by this section [amending section 811(c) of Pub. L. 99–514, set out above] shall apply to taxable years beginning more than 1 year after the date of the enactment of this Act [Aug. 5, 1997].

[''(2) COORDINATION WITH SECTION 481.—In the case of any taxpayer required by this section to change its method of accounting for any taxable year—

[''(A) such changes shall be treated as initiated by the taxpayer,

[''(B) such changes shall be treated as made with the consent of the Secretary of the Treasury, and

[''(C) the net amount of the adjustments required to be taken into account under section 481(a) of the Internal Revenue Code of 1986 shall be taken into account ratably over the 4 taxable year period beginning with the first taxable year beginning more than 1 year after the date of the enactment of this Act.'']

§ 454. Obligations issued at discount

(a) Non-interest-bearing obligations issued at a discount

If, in the case of a taxpayer owning any non-interest-bearing obligation issued at a discount and redeemable for fixed amounts increasing at stated intervals or owning an obligation described in paragraph (2) of subsection (c), the increase in the redemption price of such obligation occurring in the taxable year does not (under the method of accounting used in computing his taxable income) constitute income to him in such year, such taxpayer may, at his election made in his return for any taxable year, treat such increase as income received in such taxable year. If any such election is made with respect to any such obligation, it shall apply also to all such obligations owned by the taxpayer at the beginning of the first taxable year to which it applies and to all such obligations thereafter acquired by him and shall be binding for all subsequent taxable years, unless on application by the taxpayer the Secretary permits

him, subject to such conditions as the Secretary deems necessary, to change to a different method. In the case of any such obligations owned by the taxpayer at the beginning of the first taxable year to which his election applies, the increase in the redemption price of such obligations occurring between the date of acquisition (or, in the case of an obligation described in paragraph (2) of subsection (c), the date of acquisition of the series E bond involved) and the first day of such taxable year shall also be treated as income received in such taxable year.

(b) Short-term obligations issued on discount basis

In the case of any obligation—

(1) of the United States; or

(2) of a State or a possession of the United States, or any political subdivision of any of the foregoing, or of the District of Columbia,

which is issued on a discount basis and payable without interest at a fixed maturity date not exceeding 1 year from the date of issue, the amount of discount at which such obligation is originally sold shall not be considered to accrue until the date on which such obligation is paid at maturity, sold, or otherwise disposed of.

(c) Matured United States savings bonds

In the case of a taxpayer who—

(1) holds a series E United States savings bond at the date of maturity, and

(2) pursuant to regulations prescribed under chapter 31 of title 31 (A) retains his investment in such series E bond in an obligation of the United States, other than a current income obligation, or (B) exchanges such series E bond for another nontransferable obligation of the United States in an exchange upon which gain or loss is not recognized because of section 1037 (or so much of section 1031 as relates to section 1037),

the increase in redemption value (to the extent not previously includible in gross income) in excess of the amount paid for such series E bond shall be includible in gross income in the taxable year in which the obligation is finally redeemed or in the taxable year of final maturity, whichever is earlier. This subsection shall not apply to a corporation, and shall not apply in the case of any taxable year for which the taxpayer's taxable income is computed under an accrual method of accounting or for which an election made by the taxpayer under subsection (a) applies.

(Aug. 16, 1954, ch. 736, 68A Stat. 156; Pub. L. 86–346, title I, §102, Sept. 22, 1959, 73 Stat. 621; Pub. L. 94–455, title XIX, §§1901(c)(2), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1803, 1834; Pub. L. 97–452, §2(c)(2), Jan. 12, 1983, 96 Stat. 2478.)

AMENDMENTS

1983—Subsec. (c)(2). Pub. L. 97–452 substituted ''chapter 31 of title 31'' for ''the Second Liberty Bond Act''.

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' in two places.

Subsec. (b)(2). Pub. L. 94–455, §1901(c)(2), struck out '', a Territory,'' after ''a State''.

1959—Subsec. (c)(2). Pub. L. 86–346 designated existing provisions as cl. (A), inserted ''of the United States'' after ''an obligation'' and struck out ''the maturity value of'' before ''such series E bond'' and ''which matures not more than 10 years from the date of maturity of such series E bond'' after ''income obligation'' in such cl. (A), and added cl. (B).

§455. Prepaid subscription income

(a) Year in which included

Prepaid subscription income to which this section applies shall be included in gross income for the taxable years during which the liability described in subsection (d)(2) exists.

(b) Where taxpayer's liability ceases

In the case of any prepaid subscription income to which this section applies—

(1) If the liability described in subsection (d)(2) ends, then so much of such income as was not includible in gross income under subsection (a) for preceding taxable years shall be included in gross income for the taxable year in which the liability ends.

(2) If the taxpayer dies or ceases to exist, then so much of such income as was not includible in gross income under subsection (a) for preceding taxable years shall be included in gross income for the taxable year in which such death, or such cessation of existence, occurs.

(c) Prepaid subscription income to which this section applies

(1) Election of benefits

This section shall apply to prepaid subscription income if and only if the taxpayer makes an election under this section with respect to the trade or business in connection with which such income is received. The election shall be made in such manner as the Secretary may by regulations prescribe. No election may be made with respect to a trade or business if in computing taxable income the cash receipts and disbursements method of accounting is used with respect to such trade or business.

(2) Scope of election

An election made under this section shall apply to all prepaid subscription income received in connection with the trade or business with respect to which the taxpayer has made the election; except that the taxpayer may, to the extent permitted under regulations prescribed by the Secretary, include in gross income for the taxable year of receipt the entire amount of any prepaid subscription income if the liability from which it arose is to end within 12 months after the date of receipt. An election made under this section shall not apply to any prepaid subscription income received before the first taxable year for which the election is made.

(3) When election may be made

(A) With consent

A taxpayer may, with the consent of the Secretary, make an election under this section at any time.

(B) Without consent

A taxpayer may, without the consent of the Secretary, make an election under this section for his first taxable year in which he

receives prepaid subscription income in the trade or business. Such election shall be made not later than the time prescribed by law for filing the return for the taxable year (including extensions thereof) with respect to which such election is made.

(4) Period to which election applies

An election under this section shall be effective for the taxable year with respect to which it is first made and for all subsequent taxable years, unless the taxpayer secures the consent of the Secretary to the revocation of such election. For purposes of this title, the computation of taxable income under an election made under this section shall be treated as a method of accounting.

(d) Definitions

For purposes of this section—

(1) Prepaid subscription income

The term ''prepaid subscription income'' means any amount (includible in gross income) which is received in connection with, and is directly attributable to, a liability which extends beyond the close of the taxable year in which such amount is received, and which is income from a subscription to a newspaper, magazine, or other periodical.

(2) Liability

The term ''liability'' means a liability to furnish or deliver a newspaper, magazine, or other periodical.

(3) Receipt of prepaid subscription income

Prepaid subscription income shall be treated as received during the taxable year for which it is includible in gross income under section 451 (without regard to this section).

(e) Deferral of income under established accounting procedures

Notwithstanding the provisions of this section, any taxpayer who has, for taxable years prior to the first taxable year to which this section applies, reported his income under an established and consistent method or practice of accounting for prepaid subscription income (to which this section would apply if an election were made) may continue to report his income for taxable years to which this title applies in accordance with such method or practice.

(Added Pub. L. 85–866, title I, § 28(a), Sept. 2, 1958, 72 Stat. 1625; amended Pub. L. 94–455, title XIX, §§ 1901(a)(67), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1775, 1834.)

AMENDMENTS

1976—Subsec. (c). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' wherever appearing.

Subsec. (c)(3)(B). Pub. L. 94–455, § 1901(a)(67), substituted ''for his first taxable year in which he receives prepaid subscription income in the trade or business'' for ''for his first taxable year (i) which begins after December 31, 1957, and (ii) in which he receives prepaid subscription income in the trade or business''.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(67) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section 28(c) of Pub. L. 85–866 provided that: ''The amendments made by subsections (a) and (b) [enacting this section] shall apply with respect to taxable years beginning after December 31, 1957.''

§ 456. Prepaid dues income of certain membership organizations

(a) Year in which included

Prepaid dues income to which this section applies shall be included in gross income for the taxable years during which the liability described in subsection (e)(2) exists.

(b) Where taxpayer's liability ceases

In the case of any prepaid dues income to which this section applies—

(1) If the liability described in subsection (e)(2) ends, then so much of such income as was not includible in gross income under subsection (a) for preceding taxable years shall be included in gross income for the taxable year in which the liability ends.

(2) If the taxpayer ceases to exist, then so much of such income as was not includible in gross income under subsection (a) for preceding taxable years shall be included in gross income for the taxable year in which such cessation of existence occurs.

(c) Prepaid dues income to which this section applies

(1) Election of benefits

This section shall apply to prepaid dues income if and only if the taxpayer makes an election under this section with respect to the trade or business in connection with which such income is received. The election shall be made in such manner as the Secretary may by regulations prescribe. No election may be made with respect to a trade or business if in computing taxable income the cash receipts and disbursements method of accounting is used with respect to such trade or business.

(2) Scope of election

An election made under this section shall apply to all prepaid dues income received in connection with the trade or business with respect to which the taxpayer has made the election; except that the taxpayer may, to the extent permitted under regulations prescribed by the Secretary, include in gross income for the taxable year of receipt the entire amount of any prepaid dues income if the liability from which it arose is to end within 12 months after the date of receipt. Except as provided in subsection (d), and election made under this section shall not apply to any prepaid dues income received before the first taxable year for which the election is made.

(3) When election may be made

(A) With consent

A taxpayer may, with the consent of the Secretary, make an election under this section at any time.

(B) Without consent

A taxpayer may, without the consent of the Secretary, make an election under this

section for its first taxable year in which it receives prepaid dues income in the trade or business. Such election shall be made not later than the time prescribed by law for filing the return for the taxable year (including extensions thereof) with respect to which such election is made.

(4) Period to which election applies

An election under this section shall be effective for the taxable year with respect to which it is first made and for all subsequent taxable years, unless the taxpayer secures the consent of the Secretary to the revocation of such election. For purposes of this title, the computation of taxable income under an election made under this section shall be treated as a method of accounting.

(d) Transitional rule

(1) Amount includible in gross income for election years

If a taxpayer makes an election under this section with respect to prepaid dues income, such taxpayer shall include in gross income, for each taxable year to which such election applies, not only that portion of prepaid dues income received in such year otherwise includible in gross income for such year under this section, but shall also include in gross income for such year an additional amount equal to the amount of prepaid dues income received in the 3 taxable years preceding the first taxable year to which such election applies which would have been included in gross income in the taxable year had the election been effective 3 years earlier.

(2) Deductions of amounts included in income more than once

A taxpayer who makes an election with respect to prepaid dues income, and who includes in gross income for any taxable year to which the election applies an additional amount computed under paragraph (1), shall be permitted to deduct, for such taxable year and for each of the 4 succeeding taxable years, an amount equal to one-fifth of such additional amount, but only to the extent that such additional amount was also included in the taxpayer's gross income during any of the 3 taxable years preceding the first taxable year to which such election applies.

(e) Definitions

For purposes of this section—

(1) Prepaid dues income

The term ''prepaid dues income'' means any amount (includible in gross income) which is received by a membership organization in connection with, and is directly attributable to, a liability to render services or make available membership privileges over a period of time which extends beyond the close of the taxable year in which such amount is received.

(2) Liability

The term ''liability'' means a liability to render services or make available membership privileges over a period of time which does not exceed 36 months, which liability shall be deemed to exist ratably over the period of time that such services are required to be rendered, or that such membership privileges are required to be made available.

(3) Membership organization

The term ''membership organization'' means a corporation, association, federation, or other organization—

(A) organized without capital stock of any kind, and

(B) no part of the net earnings of which is distributable to any member.

(4) Receipt of prepaid dues income

Prepaid dues income shall be treated as received during the taxable year for which it is includible in gross income under section 451 (without regard to this section).

(Added Pub. L. 87–109, §1(a), July 26, 1961, 75 Stat. 222; amended Pub. L. 94–455, title XIX, §§1901(a)(68), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1775, 1834.)

AMENDMENTS

1976—Subsec. (c). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' wherever appearing.

Subsec. (c)(3)(B). Pub. L. 94–455, §1901(a)(68), substituted ''for its first taxable year'' for ''for its first taxable year (i) which begins after December 31, 1960, and (ii)''.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(68) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section 2 of Pub. L. 87–109 provided that: ''The amendments made by this Act [enacting this section] shall apply with respect to taxable years beginning after December 31, 1960.''

§ 457. Deferred compensation plans of State and local governments and tax-exempt organizations

(a) Year of inclusion in gross income

(1) In general

Any amount of compensation deferred under an eligible deferred compensation plan, and any income attributable to the amounts so deferred, shall be includible in gross income only for the taxable year in which such compensation or other income—

(A) is paid to the participant or other beneficiary, in the case of a plan of an eligible employer described in subsection (e)(1)(A), and

(B) is paid or otherwise made available to the participant or other beneficiary, in the case of a plan of an eligible employer described in subsection (e)(1)(B).

(2) Special rule for rollover amounts

To the extent provided in section 72(t)(9), section 72(t) shall apply to any amount includible in gross income under this subsection.

(3) Special rule for health and long-term care insurance

In the case of a plan of an eligible employer described in subsection (e)(1)(A), to the extent

provided in section 402(*l*), paragraph (1) shall not apply to amounts otherwise includible in gross income under this subsection.

(b) Eligible deferred compensation plan defined

For purposes of this section, the term ''eligible deferred compensation plan'' means a plan established and maintained by an eligible employer—

(1) in which only individuals who perform service for the employer may be participants,

(2) which provides that (except as provided in paragraph (3)) the maximum amount which may be deferred under the plan for the taxable year (other than rollover amounts) shall not exceed the lesser of—

(A) the applicable dollar amount, or

(B) 100 percent of the participant's includible compensation,

(3) which may provide that, for 1 or more of the participant's last 3 taxable years ending before he attains normal retirement age under the plan, the ceiling set forth in paragraph (2) shall be the lesser of—

(A) twice the dollar amount in effect under subsection (b)(2)(A), or

(B) the sum of—

(i) the plan ceiling established for purposes of paragraph (2) for the taxable year (determined without regard to this paragraph), plus

(ii) so much of the plan ceiling established for purposes of paragraph (2) for taxable years before the taxable year as has not previously been used under paragraph (2) or this paragraph,

(4) which provides that compensation will be deferred for any calendar month only if an agreement providing for such deferral has been entered into before the beginning of such month,

(5) which meets the distribution requirements of subsection (d), and

(6) except as provided in subsection (g), which provides that—

(A) all amounts of compensation deferred under the plan,

(B) all property and rights purchased with such amounts, and

(C) all income attributable to such amounts, property, or rights,

shall remain (until made available to the participant or other beneficiary) solely the property and rights of the employer (without being restricted to the provision of benefits under the plan), subject only to the claims of the employer's general creditors.

A plan which is established and maintained by an employer which is described in subsection (e)(1)(A) and which is administered in a manner which is inconsistent with the requirements of any of the preceding paragraphs shall be treated as not meeting the requirements of such paragraph as of the 1st plan year beginning more than 180 days after the date of notification by the Secretary of the inconsistency unless the employer corrects the inconsistency before the 1st day of such plan year.

(c) Limitation

The maximum amount of the compensation of any one individual which may be deferred under subsection (a) during any taxable year shall not exceed the amount in effect under subsection (b)(2)(A) (as modified by any adjustment provided under subsection (b)(3)).

(d) Distribution requirements

(1) In general

For purposes of subsection (b)(5), a plan meets the distribution requirements of this subsection if—

(A) under the plan amounts will not be made available to participants or beneficiaries earlier than—

(i) the calendar year in which the participant attains age 70½,

(ii) when the participant has a severance from employment with the employer, or

(iii) when the participant is faced with an unforeseeable emergency (determined in the manner prescribed by the Secretary in regulations),

(B) the plan meets the minimum distribution requirements of paragraph (2), and

(C) in the case of a plan maintained by an employer described in subsection (e)(1)(A), the plan meets requirements similar to the requirements of section 401(a)(31).

Any amount transferred in a direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of transfer.

(2) Minimum distribution requirements

A plan meets the minimum distribution requirements of this paragraph if such plan meets the requirements of section 401(a)(9).

(3) Special rule for government plan

An eligible deferred compensation plan of an employer described in subsection (e)(1)(A) shall not be treated as failing to meet the requirements of this subsection solely by reason of making a distribution described in subsection (e)(9)(A).

(e) Other definitions and special rules

For purposes of this section—

(1) Eligible employer

The term ''eligible employer'' means—

(A) a State, political subdivision of a State, and any agency or instrumentality of a State or political subdivision of a State, and

(B) any other organization (other than a governmental unit) exempt from tax under this subtitle.

(2) Performance of service

The performance of service includes performance of service as an independent contractor and the person (or governmental unit) for whom such services are performed shall be treated as the employer.

(3) Participant

The term ''participant'' means an individual who is eligible to defer compensation under the plan.

(4) Beneficiary

The term ''beneficiary'' means a beneficiary of the participant, his estate, or any other per-

son whose interest in the plan is derived from the participant.

(5) Includible compensation

The term ''includible compensation'' has the meaning given to the term ''participant's compensation'' by section 415(c)(3).

(6) Compensation taken into account at present value

Compensation shall be taken into account at its present value.

(7) Community property laws

The amount of includible compensation shall be determined without regard to any community property laws.

(8) Income attributable

Gains from the disposition of property shall be treated as income attributable to such property.

(9) Benefits of tax exempt organization plans not treated as made available by reason of certain elections, etc.

In the case of an eligible deferred compensation plan of an employer described in subsection (e)(1)(B)—

(A) Total amount payable is dollar limit or less

The total amount payable to a participant under the plan shall not be treated as made available merely because the participant may elect to receive such amount (or the plan may distribute such amount without the participant's consent) if—

(i) the portion of such amount which is not attributable to rollover contributions (as defined in section 411(a)(11)(D)) does not exceed the dollar limit under section 411(a)(11)(A), and

(ii) such amount may be distributed only if—

(I) no amount has been deferred under the plan with respect to such participant during the 2-year period ending on the date of the distribution, and

(II) there has been no prior distribution under the plan to such participant to which this subparagraph applied.

A plan shall not be treated as failing to meet the distribution requirements of subsection (d) by reason of a distribution to which this subparagraph applies.

(B) Election to defer commencement of distributions

The total amount payable to a participant under the plan shall not be treated as made available merely because the participant may elect to defer commencement of distributions under the plan if—

(i) such election is made after amounts may be available under the plan in accordance with subsection (d)(1)(A) and before commencement of such distributions, and

(ii) the participant may make only 1 such election.

(10) Transfers between plans

A participant shall not be required to include in gross income any portion of the entire amount payable to such participant solely by reason of the transfer of such portion from 1 eligible deferred compensation plan to another eligible deferred compensation plan.

(11) Certain plans excluded

(A) In general

The following plans shall be treated as not providing for the deferral of compensation:

(i) Any bona fide vacation leave, sick leave, compensatory time, severance pay, disability pay, or death benefit plan.

(ii) Any plan paying solely length of service awards to bona fide volunteers (or their beneficiaries) on account of qualified services performed by such volunteers.

(B) Special rules applicable to length of service award plans

(i) Bona fide volunteer

An individual shall be treated as a bona fide volunteer for purposes of subparagraph (A)(ii) if the only compensation received by such individual for performing qualified services is in the form of—

(I) reimbursement for (or a reasonable allowance for) reasonable expenses incurred in the performance of such services, or

(II) reasonable benefits (including length of service awards), and nominal fees for such services, customarily paid by eligible employers in connection with the performance of such services by volunteers.

(ii) Limitation on accruals

A plan shall not be treated as described in subparagraph (A)(ii) if the aggregate amount of length of service awards accruing with respect to any year of service for any bona fide volunteer exceeds $3,000.

(C) Qualified services

For purposes of this paragraph, the term ''qualified services'' means fire fighting and prevention services, emergency medical services, and ambulance services.

(D) Certain voluntary early retirement incentive plans

(i) In general

If an applicable voluntary early retirement incentive plan—

(I) makes payments or supplements as an early retirement benefit, a retirement-type subsidy, or a benefit described in the last sentence of section 411(a)(9), and

(II) such payments or supplements are made in coordination with a defined benefit plan which is described in section 401(a) and includes a trust exempt from tax under section 501(a) and which is maintained by an eligible employer described in paragraph (1)(A) or by an education association described in clause (ii)(II),

such applicable plan shall be treated for purposes of subparagraph (A)(i) as a bona fide severance pay plan with respect to

such payments or supplements to the extent such payments or supplements could otherwise have been provided under such defined benefit plan (determined as if section 411 applied to such defined benefit plan).

(ii) Applicable voluntary early retirement incentive plan

For purposes of this subparagraph, the term ''applicable voluntary early retirement incentive plan'' means a voluntary early retirement incentive plan maintained by—

(I) a local educational agency (as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)), or

(II) an education association which principally represents employees of 1 or more agencies described in subclause (I) and which is described in section 501(c)(5) or (6) and exempt from tax under section 501(a).

(12) Exception for nonelective deferred compensation of nonemployees

(A) In general

This section shall not apply to nonelective deferred compensation attributable to services not performed as an employee.

(B) Nonelective deferred compensation

For purposes of subparagraph (A), deferred compensation shall be treated as nonelective only if all individuals (other than those who have not satisfied any applicable initial service requirement) with the same relationship to the payor are covered under the same plan with no individual variations or options under the plan.

(13) Special rule for churches

The term ''eligible employer'' shall not include a church (as defined in section 3121(w)(3)(A)) or qualified church-controlled organization (as defined in section 3121(w)(3)(B)).

(14) Treatment of qualified governmental excess benefit arrangements

Subsections (b)(2) and (c)(1) shall not apply to any qualified governmental excess benefit arrangement (as defined in section 415(m)(3)), and benefits provided under such an arrangement shall not be taken into account in determining whether any other plan is an eligible deferred compensation plan.

(15) Applicable dollar amount

(A) In general

The applicable dollar amount shall be the amount determined in accordance with the following table:

For taxable years beginning in calendar year:	The applicable dollar amount:
2002	$11,000
2003	$12,000
2004	$13,000
2005	$14,000
2006 or thereafter	$15,000.

(B) Cost-of-living adjustments

In the case of taxable years beginning after December 31, 2006, the Secretary shall adjust the $15,000 amount under subparagraph (A) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2005, and any increase under this paragraph which is not a multiple of $500 shall be rounded to the next lowest multiple of $500.

(16) Rollover amounts

(A) General rule

In the case of an eligible deferred compensation plan established and maintained by an employer described in subsection (e)(1)(A), if—

(i) any portion of the balance to the credit of an employee in such plan is paid to such employee in an eligible rollover distribution (within the meaning of section 402(c)(4)),

(ii) the employee transfers any portion of the property such employee receives in such distribution to an eligible retirement plan described in section 402(c)(8)(B), and

(iii) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(B) Certain rules made applicable

The rules of paragraphs (2) through (7), (9), and (11) of section 402(c) and section 402(f) shall apply for purposes of subparagraph (A).

(C) Reporting

Rollovers under this paragraph shall be reported to the Secretary in the same manner as rollovers from qualified retirement plans (as defined in section 4974(c)).

(17) Trustee-to-trustee transfers to purchase permissive service credit

No amount shall be includible in gross income by reason of a direct trustee-to-trustee transfer to a defined benefit governmental plan (as defined in section 414(d)) if such transfer is—

(A) for the purchase of permissive service credit (as defined in section 415(n)(3)(A)) under such plan, or

(B) a repayment to which section 415 does not apply by reason of subsection (k)(3) thereof.

(18) Coordination with catch-up contributions for individuals age 50 or older

In the case of an individual who is an eligible participant (as defined by section 414(v)) and who is a participant in an eligible deferred compensation plan of an employer described in paragraph (1)(A), subsections (b)(3) and (c) shall be applied by substituting for the amount otherwise determined under the applicable subsection the greater of—

(A) the sum of—

(i) the plan ceiling established for purposes of subsection (b)(2) (without regard to subsection (b)(3)), plus

(ii) the applicable dollar amount for the taxable year determined under section 414(v)(2)(B)(i), or

(B) the amount determined under the applicable subsection (without regard to this paragraph).

(f) Tax treatment of participants where plan or arrangement of employer is not eligible

(1) In general

In the case of a plan of an eligible employer providing for a deferral of compensation, if such plan is not an eligible deferred compensation plan, then—

(A) the compensation shall be included in the gross income of the participant or beneficiary for the 1st taxable year in which there is no substantial risk of forfeiture of the rights to such compensation, and

(B) the tax treatment of any amount made available under the plan to a participant or beneficiary shall be determined under section 72 (relating to annuities, etc.).

(2) Exceptions

Paragraph (1) shall not apply to—

(A) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

(B) an annuity plan or contract described in section 403,

(C) that portion of any plan which consists of a transfer of property described in section 83,

(D) that portion of any plan which consists of a trust to which section 402(b) applies,

(E) a qualified governmental excess benefit arrangement described in section 415(m), and

(F) that portion of any applicable employment retention plan described in paragraph (4) with respect to any participant.

(3) Definitions

For purposes of this subsection—

(A) Plan includes arrangements, etc.

The term ''plan'' includes any agreement or arrangement.

(B) Substantial risk of forfeiture

The rights of a person to compensation are subject to a substantial risk of forfeiture if such person's rights to such compensation are conditioned upon the future performance of substantial services by any individual.

(4) Employment retention plans

For purposes of paragraph (2)(F)—

(A) In general

The portion of an applicable employment retention plan described in this paragraph with respect to any participant is that portion of the plan which provides benefits payable to the participant not in excess of twice the applicable dollar limit determined under subsection (e)(15).

(B) Other rules

(i) Limitation

Paragraph (2)(F) shall only apply to the portion of the plan described in subparagraph (A) for years preceding the year in which such portion is paid or otherwise made available to the participant.

(ii) Treatment

A plan shall not be treated for purposes of this title as providing for the deferral of compensation for any year with respect to the portion of the plan described in subparagraph (A).

(C) Applicable employment retention plan

The term ''applicable employment retention plan'' means an employment retention plan maintained by—

(i) a local educational agency (as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801),[1] or

(ii) an education association which principally represents employees of 1 or more agencies described in clause (i) and which is described in section 501(c)(5) or (6) and exempt from taxation under section 501(a).

(D) Employment retention plan

The term ''employment retention plan'' means a plan to pay, upon termination of employment, compensation to an employee of a local educational agency or education association described in subparagraph (C) for purposes of—

(i) retaining the services of the employee, or

(ii) rewarding such employee for the employee's service with 1 or more such agencies or associations.

(g) Governmental plans must maintain set-asides for exclusive benefit of participants

(1) In general

A plan maintained by an eligible employer described in subsection (e)(1)(A) shall not be treated as an eligible deferred compensation plan unless all assets and income of the plan described in subsection (b)(6) are held in trust for the exclusive benefit of participants and their beneficiaries.

(2) Taxability of trusts and participants

For purposes of this title—

(A) a trust described in paragraph (1) shall be treated as an organization exempt from taxation under section 501(a), and

(B) notwithstanding any other provision of this title, amounts in the trust shall be includible in the gross income of participants and beneficiaries only to the extent, and at the time, provided in this section.

(3) Custodial accounts and contracts

For purposes of this subsection, custodial accounts and contracts described in section 401(f) shall be treated as trusts under rules similar to the rules under section 401(f).

(4) Death benefits under USERRA-qualified active military service

A plan described in paragraph (1) shall not be treated as an eligible deferred compensation plan unless such plan meets the requirements of section 401(a)(37).

[1] So in original. A second closing parenthesis probably should precede the comma.

(Added Pub. L. 95–600, title I, § 131(a), Nov. 6, 1978, 92 Stat. 2779; amended Pub. L. 96–222, title I, § 101(a)(4), Apr. 1, 1980, 94 Stat. 196; Pub. L. 98–369, div. A, title IV, § 491(d)(33), July 18, 1984, 98 Stat. 851; Pub. L. 99–514, title XI, § 1107(a), Oct. 22, 1986, 100 Stat. 2426; Pub. L. 100–647, title I, § 1011(e)(1), (2), (9), (10), title VI, §§ 6064(a)–(c), 6071(c), Nov. 10, 1988, 102 Stat. 3460, 3461, 3700, 3701, 3705; Pub. L. 101–239, title VII, §§ 7811(g)(4), (5), 7816(j), Dec. 19, 1989, 103 Stat. 2409, 2421; Pub. L. 102–318, title V, § 521(b)(26), July 3, 1992, 106 Stat. 312; Pub. L. 104–188, title I, §§ 1421(b)(3)(C), 1444(b)(2), (3), 1447(a), (b), 1448(a), (b), 1458(a), Aug. 20, 1996, 110 Stat. 1796, 1810, 1812, 1813, 1819; Pub. L. 105–34, title X, § 1071(a)(2), Aug. 5, 1997, 111 Stat. 948; Pub. L. 107–16, title VI, §§ 611(d)(3)(B), (e), 615(a), 632(c)(1), 641(a)(1)(A)–(C), 646(a)(3), 647(b), 648(b), 649(a), (b), June 7, 2001, 115 Stat. 98, 102, 115, 118, 119, 126–128; Pub. L. 107–147, title IV, § 411(*o*)(9), (p)(5), Mar. 9, 2002, 116 Stat. 49, 51; Pub. L. 109–280, title VIII, §§ 829(a)(4), 845(b)(3), title XI, § 1104(a)(1), (b), Aug. 17, 2006, 120 Stat. 1002, 1015, 1058, 1059; Pub. L. 110–245, title I, § 104(c)(3), June 17, 2008, 122 Stat. 1627.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

AMENDMENTS

2008—Subsec. (g)(4). Pub. L. 110–245 added par. (4).

2006—Subsec. (a)(3). Pub. L. 109–280, § 845(b)(3), added par. (3).

Subsec. (e)(11)(D). Pub. L. 109–280, § 1104(a)(1), added subpar. (D).

Subsec. (e)(16)(B). Pub. L. 109–280, § 829(a)(4), substituted ", (9), and (11)" for "and (9)".

Subsec. (f)(2)(F). Pub. L. 109–280, § 1104(b)(1), added subpar. (F).

Subsec. (f)(4). Pub. L. 109–280, § 1104(b)(2), added par. (4).

2002—Subsec. (e)(5). Pub. L. 107–147, § 411(p)(5), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "The term 'includible compensation' means compensation for service performed for the employer which (taking into account the provisions of this section and other provisions of this chapter) is currently includible in gross income."

Subsec. (e)(18). Pub. L. 107–147, § 411(*o*)(9), added par. (18).

2001—Subsec. (a). Pub. L. 107–16, § 649(b)(1), reenacted heading without change and amended text of subsec. (a) generally. Prior to amendment, text read as follows: "In the case of a participant in an eligible deferred compensation plan, any amount of compensation deferred under the plan, and any income attributable to the amounts so deferred, shall be includible in gross income only for the taxable year in which such compensation or other income is paid or otherwise made available to the participant or other beneficiary."

Subsec. (b)(2). Pub. L. 107–16, § 641(a)(1)(B), inserted "(other than rollover amounts)" after "taxable year" in introductory provisions.

Subsec. (b)(2)(A). Pub. L. 107–16, § 611(e)(1)(A), substituted "the applicable dollar amount" for "$7,500".

Subsec. (b)(2)(B). Pub. L. 107–16, § 632(c)(1), substituted "100 percent" for "33⅓ percent".

Subsec. (b)(3)(A). Pub. L. 107–16, § 611(e)(1)(B), substituted "twice the dollar amount in effect under subsection (b)(2)(A)" for "$15,000".

Subsec. (c). Pub. L. 107–16, § 615(a), amended heading and text of subsec. (c) generally, substituting present provisions for provisions which stated that the maximum amount of compensation that an individual could defer under subsec. (a) during any taxable year could not exceed the applicable dollar amount, as modified by any adjustment provided under subsec. (b)(3), and provided for coordination with certain other deferrals.

Subsec. (c)(1). Pub. L. 107–16, § 611(e)(1)(A), substituted "the applicable dollar amount" for "$7,500".

Subsec. (c)(2). Pub. L. 107–16, § 611(d)(3)(B), substituted "402(g)(7)(A)(iii)" for "402(g)(8)(A)(iii)" in concluding provisions.

Subsec. (d)(1). Pub. L. 107–16, § 641(a)(1)(C), added subpar. (C) and concluding provisions.

Subsec. (d)(1)(A)(ii). Pub. L. 107–16, § 646(a)(3), substituted "has a severance from employment" for "is separated from service".

Subsec. (d)(2). Pub. L. 107–16, § 649(a), reenacted heading without change and amended text of par. (2) generally, substituting present provisions for provisions which stated that a plan would meet the minimum distribution requirements of this par. if plan met the requirements of section 401(a)(9), if plan met additional distribution requirements in the case of a deceased participant, and if any distribution payable over a period of more than 1 year would only be made in substantially nonincreasing amounts.

Subsec. (d)(3). Pub. L. 107–16, § 649(b)(2)(B), added par. (3).

Subsec. (e)(9). Pub. L. 107–16, § 649(b)(2)(A), in heading substituted "Benefits of tax exempt organization plans not treated as made available by reason of certain elections, etc." for "Benefits not treated as made available by reason of certain elections, etc." and temporarily inserted introductory provisions.

Subsec. (e)(9)(A)(i). Pub. L. 107–16, § 648(b), substituted "the portion of such amount which is not attributable to rollover contributions (as defined in section 411(a)(11)(D))" for "such amount".

Subsec. (e)(15). Pub. L. 107–16, § 611(e)(2), amended heading and text of par. (15) generally. Prior to amendment, text read as follows: "The Secretary shall adjust the $7,500 amount specified in subsections (b)(2) and (c)(1) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter ending September 30, 1994, and any increase under this paragraph which is not a multiple of $500 shall be rounded to the next lowest multiple of $500."

Subsec. (e)(16). Pub. L. 107–16, § 641(a)(1)(A), added par. (16).

Subsec. (e)(17). Pub. L. 107–16, § 647(b), added par. (17).

1997—Subsec. (e)(9)(A). Pub. L. 105–34 substituted "dollar limit" for "$3,500" in heading and "the dollar limit under section 411(a)(11)(A)" for "$3,500" in cl. (i).

1996—Subsec. (b)(6). Pub. L. 104–188, § 1448(b), inserted "except as provided in subsection (g)," before "which provides that" in introductory provisions.

Subsec. (c)(2)(B)(i). Pub. L. 104–188, § 1421(b)(3)(C), substituted "section 402(h)(1)(B) or (k)" for "section 402(h)(1)(B)".

Subsec. (e)(9). Pub. L. 104–188, § 1447(a), amended par. (9) generally. Prior to amendment, par. (9) read as follows: "BENEFITS NOT TREATED AS MADE AVAILABLE BY REASON OF CERTAIN ELECTIONS.—If—

"(A) the total amount payable to a participant under the plan does not exceed $3,500, and

"(B) no additional amounts may be deferred under the plan with respect to the participant,

the amount payable to the participant under the plan shall not be treated as made available merely because such participant may elect to receive a lump sum payable after separation from service and within 60 days of the election."

Subsec. (e)(11). Pub. L. 104–188, § 1458(a), amended par. (11) generally. Prior to amendment, par. (11) read as follows: "CERTAIN PLANS EXCEPTED.—Any bona fide vacation leave, sick leave, compensatory time, severance pay, disability pay, or death benefit plan shall be treated as a plan not providing for the deferral of compensation."

Subsec. (e)(14). Pub. L. 104–188, § 1444(b)(2), added par. (14).

Subsec. (e)(15). Pub. L. 104–188, §1447(b), added par. (15).

Subsec. (f)(2)(E). Pub. L. 104–188, §1444(b)(3), added subpar. (E).

Subsec. (g). Pub. L. 104–188, §1448(a), added subsec. (g).

1992—Subsec. (c)(2)(B)(i). Pub. L. 102–318 substituted ''402(e)(3)'' for ''402(a)(8)''.

1989—Subsec. (d)(1)(A)(iii). Pub. L. 101–239, §7811(g)(4), substituted '', and'' for period at end.

Subsec. (d)(2)(B)(i)(I). Pub. L. 101–239, §7811(g)(5), inserted ''and'' at end.

Subsec. (e)(13). Pub. L. 101–239, §7816(j), substituted ''Special rule for churches'' for ''Exception for church plans'' in heading and amended text generally. Prior to amendment, text read as follows: ''The term 'eligible deferred compensation plan' shall not include a plan maintained by a church for church employees. For purposes of this paragraph, the term 'church' has the meaning given such term by section 3121(w)(3)(A), including a qualified church-controlled organization (as defined in section 3121(w)(3)(B)).''

1988—Subsec. (c)(2). Pub. L. 100–647, §1011(e)(1), struck out ''and paragraphs (2) and (3) of subsection (b)'' after ''of this subsection''.

Pub. L. 100–647, §6071(c), substituted ''rural cooperative plan'' for ''rural electric cooperative plan'' in last sentence.

Subsec. (d)(1)(A). Pub. L. 100–647, §1011(e)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''the plan provides that amounts payable under the plan will be made available to participants or other beneficiaries not earlier than when the participant is separated from service with the employer or is faced with an unforeseeable emergency (determined in the manner prescribed by the Secretary by regulation), and''.

Subsec. (d)(2)(B)(i)(I). Pub. L. 100–647, §1011(e)(10), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ''at least ⅔ of the total amount payable with respect to the participant will be paid during the life expectancy of such participant (determined as of the commencement of the distribution), and''.

Subsec. (d)(10). Pub. L. 100–647, §6064(a)(2), amended subsec. (d), as in effect on the day before the date of enactment of Pub. L. 99–514 (Oct. 22, 1986), by adding par. (10) reading as follows: ''CERTAIN PLANS EXCEPTED.—Any bona fide vacation leave, sick leave, compensatory time, severance pay, disability pay, or death benefit plan shall be treated as a plan not providing for the deferral of compensation.''

Subsec. (d)(11). Pub. L. 100–647, §6064(b)(2), amended subsec. (d), as in effect on the day before the date of enactment of Pub. L. 99–514 (Oct. 22, 1986), by adding par. (11) reading as follows: ''EXCEPTION FOR NONELECTIVE DEFERRED COMPENSATION OF NONEMPLOYEES.—

''(A) IN GENERAL.—This section shall not apply to nonelective deferred compensation attributable to services not performed as an employee.

''(B) NONELECTIVE DEFERRED COMPENSATION.—For purposes of subparagraph (a), deferred compensation shall be treated as nonelective only if all individuals (other than those who have not satisfied any applicable initial service requirement) with the same relationship to the payor are covered under the same plan with no individual variations or options under the plan.''

Subsec. (e)(9). Pub. L. 100–647, §1011(e)(9), inserted ''after separation from service and'' after ''lump sum payable'' in concluding provisions.

Subsec. (e)(11). Pub. L. 100–647, §6064(a)(1), added par. (11).

Subsec. (e)(12). Pub. L. 100–647, §6064(b)(1), added par. (12).

Subsec. (e)(13). Pub. L. 100–647, §6064(c), added par. (13).

1986—Pub. L. 99–514 amended section generally, substituting ''Deferred compensation plans of State and local governments and tax-exempt organizations'' for ''Deferred compensation plans with respect to service for State and local governments'' as section catchline and revising and restating as subsecs. (a) to (c), (e), and (f) provisions formerly contained in subsecs. (a) to (e) and adding provisions comprising subsec. (d).

1984—Subsec. (e)(2). Pub. L. 98–369, §491(d)(33), struck out subpar. (C) which provided that par. (1) of this subsection not apply to a qualified bond purchase plan described in section 405(a), and redesignated subpars. (D) and (E) as (C) and (D), respectively.

1980—Subsec. (d)(9)(B). Pub. L. 96–222 in cl. (i) struck out ''described in section 501(c)(12)'' after ''any organization'' and substituted ''electric service on a mutual or cooperative basis'' for ''electric service'' and in cl. (ii) substituted ''paragraph (4) or (6) of section 501(a)'' for ''section 501(c)(6)'' and ''at least 80 percent of the members'' for ''all the members''.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–245 applicable with respect to deaths and disabilities occurring on or after Jan. 1, 2007, see section 104(d)(1) of Pub. L. 110–245, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 829(a)(4) of Pub. L. 109–280 applicable to distributions after Dec. 31, 2006, see section 829(b) of Pub. L. 109–280, set out as a note under section 402 of this title.

Amendment by section 845(b)(3) of Pub. L. 109–280 applicable to distributions in taxable years beginning after Dec. 31, 2006, see section 845(c) of Pub. L. 109–280, set out as a note under section 402 of this title.

Pub. L. 109–280, title XI, §1104(d), Aug. 17, 2006, 120 Stat. 1060, as amended by Pub. L. 110–458, title I, §111(a), Dec. 23, 2008, 122 Stat. 5113, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 623 and 1002 of Title 29, Labor] shall take effect on the date of the enactment of this Act [Aug. 17, 2006].

''(2) TAX AMENDMENTS.—The amendments made by subsections (a)(1) and (b) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Aug. 17, 2006].

''(3) ERISA AMENDMENTS.—The amendment made by subsection (c) [amending section 1002 of Title 29, Labor] shall apply to plan years ending after the date of the enactment of this Act [Aug. 17, 2006].

''(4) CONSTRUCTION.—Nothing in the amendments made by this section [amending this section and sections 623 and 1002 of Title 29, Labor] shall alter or affect the construction of the Internal Revenue Code of 1986, the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.], or the Age Discrimination in Employment Act of 1967 [29 U.S.C. 621 et seq.] as applied to any plan, arrangement, or conduct to which such amendments do not apply.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 611(d)(3)(B), (e) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 611(i)(1) of Pub. L. 107–16, set out as a note under section 415 of this title.

Pub. L. 107–16, title VI, §615(b), June 7, 2001, 115 Stat. 102, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to years beginning after December 31, 2001.''

Pub. L. 107–16, title VI, §632(c)(2), June 7, 2001, 115 Stat. 115, provided that: ''The amendment made by this subsection [amending this section] shall apply to years beginning after December 31, 2001.''

Amendment by section 641(a)(1)(A)–(C) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see

section 641(f)(1) of Pub. L. 107–16, set out as a note under section 402 of this title.

Amendment by section 646(a)(3) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 646(b) of Pub. L. 107–16, set out as a note under section 401 of this title.

Amendment by section 647(b) of Pub. L. 107–16 applicable to trustee-to-trustee transfers after Dec. 31, 2001, see section 647(c) of Pub. L. 107–16, set out as a note under section 403 of this title.

Amendment by section 648(b) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 648(c) of Pub. L. 107–16, set out as a note under section 411 of this title.

Pub. L. 107–16, title VI, § 649(c), June 7, 2001, 115 Stat. 128, provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to distributions after December 31, 2001.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to plan years beginning after Aug. 5, 1997, see section 1071(c) of Pub. L. 105–34, set out as a note under section 411 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1421(b)(3)(C) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104–188, set out as a note under section 72 of this title.

Amendment by section 1444(b)(2), (3) of Pub. L. 104–188 applicable to years beginning after Dec. 31, 1994, see section 1444(e) of Pub. L. 104–188, set out as a note under section 415 of this title.

Section 1447(c) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1996.''

Section 1448(c) of Pub. L. 104–188 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to assets and income described in section 457(b)(6) of the Internal Revenue Code of 1986 held by a plan on and after the date of the enactment of this Act [Aug. 20, 1996].

''(2) TRANSITION RULE.—In the case of a plan in existence on the date of the enactment of this Act, a trust need not be established by reason of the amendments made by this section before January 1, 1999.''

Section 1458(c)(1) of Pub. L. 104–188 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to accruals of length of service awards after December 31, 1996.''

EFFECTIVE DATE OF 1992 AMENDMENT

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

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1011(e)(9) of Pub. L. 100–647 provided that the amendment made by that section is effective for years beginning after Dec. 31, 1988.

Amendment by section 1011(e)(1), (2), (10) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6064(d) of Pub. L. 100–647 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1987.

''(2) EXCEPTION FOR CERTAIN COLLECTIVELY BARGAINED PLANS.—

''(A) IN GENERAL.—Section 457 of the 1986 Code (as in effect before and after the amendments made by section 1107 of the Reform Act [Pub. L. 99–514]) shall not apply to nonelective deferred compensation provided under a plan in existence on December 31, 1987, and maintained pursuant to a collective bargaining agreement.

''(B) NONELECTIVE PLAN.—For purposes of this paragraph, a nonelective plan is a plan which covers a broad group of employees and under which the covered employees earn nonelective deferred compensation under a definite, fixed and uniform benefit formula.

''(C) TERMINATION.—This paragraph shall cease to apply to a plan as of the effective date of the first material modification of the plan agreed to after December 31, 1987.

''(3) TREATMENT OF CERTAIN NONELECTIVE DEFERRED COMPENSATION.—Section 457 of the 1986 Code shall not apply to amounts deferred under a nonelective deferred compensation plan maintained by an eligible employer described in section 457(e)(1)(A) of the 1986 Code (as in effect after the Reform Act [Pub. L. 99–514])—

''(A) if such amounts were deferred from periods before July 14, 1988, or

''(B) if—

''(i) such amounts are deferred from periods on or after such date pursuant to an agreement which—

''(I) was in writing on such date, and

''(II) on such date provides for a deferral for each taxable year covered by the agreement of a fixed amount or of an amount determined pursuant to a fixed formula, and

''(ii) the individual with respect to whom the deferral is made was covered under such agreement on such date.

Subparagraph (B) shall not apply to any taxable year ending after the date on which any modification of the amount or formula described in subparagraph (B)(i)(II) agreed to in writing before January 1, 1989, is effective. The preceding sentence shall not apply to a modification agreed to in writing before January 1, 1989, which does not increase any benefit of a participant. Amounts described in the first sentence of this paragraph shall be taken into account for purposes of applying section 457 of the 1986 Code to other amounts deferred under any eligible deferred compensation plan.

''(4) STUDY.—The Secretary of the Treasury or his delegate shall conduct a study on the tax treatment of deferred compensation paid by State and local governments and tax-exempt organizations (including deferred compensation paid to independent contractors). Not later than January 1, 1990, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the study conducted under this paragraph together with such recommendations as he may deem advisable.''

[The due date for the report on the study referred to in section 6064(d)(4) of Pub. L. 100–647, set out above, extended to Jan. 1, 1992, by Pub. L. 101–508, title XI, § 11831(b), Nov. 5, 1990, 104 Stat. 1388–559.]

Amendment by section 6071(c) of Pub. L. 100–647 applicable to taxable years beginning after Nov. 10, 1988, see section 6071(d) of Pub. L. 100–647, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1107(c) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1011(e)(6), (7), Nov. 10, 1988, 102 Stat. 3461, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1988.

''(2) TRANSFERS AND CASH-OUTS.—Paragraphs (9) and (10) of section 457(e) of the Internal Revenue Code of 1986 (as amended by this section) shall apply to taxable years beginning after December 31, 1986.

''(3) APPLICATION TO TAX-EXEMPT ORGANIZATIONS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the application of section 457 of the Internal Revenue Code of 1986 by reason of the amendments made by this section to deferred compensation plans established and maintained by organizations exempt from tax shall apply to taxable years beginning after December 31, 1986.

''(B) EXISTING DEFERRALS AND ARRANGEMENTS.—Section 457 of such Code shall not apply to amounts deferred under a plan described in subparagraph (A) which—

''(i) were deferred from taxable years beginning before January 1, 1987, or

''(ii) are deferred from taxable years beginning after December 31, 1986, pursuant to an agreement which—

''(I) was in writing on August 16, 1986,

''(II) on such date provides for a deferral for each taxable year covered by the agreement of a fixed amount or of an amount determined pursuant to a fixed formula.

Clause (ii) shall not apply to any taxable year ending after the date on which any modification to the amount or formula described in subclause (II) is effective. Amounts described in the first sentence shall be taken into account for applying section 457 to other amounts deferred under any deferred compensation plan. This subparagraph shall only apply to individuals who were covered under the plan and agreement on August 16, 1986.

''(4) DEFERRED COMPENSATION PLANS FOR STATE JUDGES.—The amendments made by this section shall not apply to any qualified State judicial plan (as defined in section 131(c)(3)(B) of the Revenue Act of 1978 [set out as a note below] as amended by section 252 of the Tax Equity and Fiscal Responsibility Act of 1982).

''(5) SPECIAL RULE FOR CERTAIN DEFERRED COMPENSATION PLANS.—The amendments made by this section shall not apply—

''(A) to employees on August 16, 1986, of a nonprofit corporation organized under the laws of the State of Alabama maintaining a deferred compensation plan with respect to which the Internal Revenue Service issued a ruling dated March 17, 1976, that the plan would not affect the tax-exempt status of the corporation, or

''(B) to to [sic] individuals eligible to participate on August 16, 1986, in a deferred compensation plan with respect to which a letter dated November 6, 1975, submitted the original plan to the Internal Revenue Service, an amendment was submitted on November 19, 1975, and the Internal Revenue Service responded with a letter dated December 24, 1975,

but only with respect to deferrals under such plan.''

EFFECTIVE DATE OF 1984 AMENDMENT

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

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE

Section 131(c)(1) of Pub. L. 95–600 provided that: ''The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1978.''

ELIGIBILITY FOR PARTICIPATION IN RETIREMENT PLANS

Pub. L. 109–280, title VIII, §825, Aug. 17, 2006, 120 Stat. 999, provided that: ''An individual shall not be precluded from participating in an eligible deferred compensation plan by reason of having received a distribution under section 457(e)(9) of the Internal Revenue Code of 1986, as in effect prior to the enactment of the Small Business Job Protection Act of 1996 [Pub. L. 104–188, Aug. 20, 1996].''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1100–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TRANSITIONAL RULES

Section 131(c)(2) of Pub. L. 95–600, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(A) IN GENERAL.—In the case of any taxable year beginning after December 31, 1978, and before January 1, 1982—

''(i) any amount of compensation deferred under a plan of a State providing for a deferral of compensation (other than a plan described in section 457(e)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]), and any income attributable to the amounts so deferred, shall be includible in gross income only for the taxable year in which such compensation or other income is paid or otherwise made available to the participant or other beneficiary, but

''(ii) the maximum amount of the compensation of any one individual which may be excluded from gross income by reason of clause (i) and by reason of section 457(a) of such Code during any such taxable year shall not exceed the lesser of—

''(I) $7,500, or

''(II) 33⅓ percent of the participant's includible compensation.

''(B) APPLICATION OF CATCH-UP PROVISIONS IN CERTAIN CASES.—If, in the case of any participant for any taxable year, all of the plans are eligible State deferred compensation plans, then clause (ii) of subparagraph (A) of this paragraph shall be applied with the modification provided by paragraph (3) of section 457(b) of such Code.

''(C) APPLICATIONS OF CERTAIN COORDINATION PROVISIONS.—In applying clause (ii) of subparagraph (A) of this paragraph and section 403(b)(2)(A)(ii) of such Code, rules similar to the rules of section 457(c)(2) of such Code shall apply.

''(D) MEANING OF TERMS.—Except as otherwise provided in this paragraph, terms used in this paragraph shall have the same meaning as when used in section 457 of such Code.''

DEFERRED COMPENSATION PLANS FOR STATE JUDGES

Section 131(c)(3) of Pub. L. 95–600, as added by Pub. L. 97–248, title II, §252, Sept. 3, 1982, 96 Stat. 532, and

amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(A) IN GENERAL.—The amendments made by this section [enacting this section and provisions set out as notes under this section] shall not apply to any qualified State judicial plan.

''(B) QUALIFIED STATE JUDICIAL PLAN.—For purposes of subparagraph (A), the term 'qualified State judicial plan' means any retirement plan of a State for the exclusive benefit of judges or their beneficiaries if—

''(i) such plan has been continuously in existence since December 31, 1978,

''(ii) under such plan, all judges eligible to benefit under the plan—

''(I) are required to participate, and

''(II) are required to contribute the same fixed percentage of their basic or regular rate of compensation as judge,

''(iii) under such plan, no judge has an option as to contributions or benefits the exercise of which would affect the amount of includible compensation,

''(iv) the retirement payments of a judge under the plan are a percentage of the compensation of judges of that State holding similar positions, and

''(v) the plan during any year does not pay benefits with respect to any participant which exceed the limitations of section 415(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].''

§ 457A. Nonqualified deferred compensation from certain tax indifferent parties

(a) In general

Any compensation which is deferred under a nonqualified deferred compensation plan of a nonqualified entity shall be includible in gross income when there is no substantial risk of forfeiture of the rights to such compensation.

(b) Nonqualified entity

For purposes of this section, the term ''nonqualified entity'' means—

(1) any foreign corporation unless substantially all of its income is—

(A) effectively connected with the conduct of a trade or business in the United States, or

(B) subject to a comprehensive foreign income tax, and

(2) any partnership unless substantially all of its income is allocated to persons other than—

(A) foreign persons with respect to whom such income is not subject to a comprehensive foreign income tax, and

(B) organizations which are exempt from tax under this title.

(c) Determinability of amounts of compensation

(1) In general

If the amount of any compensation is not determinable at the time that such compensation is otherwise includible in gross income under subsection (a)—

(A) such amount shall be so includible in gross income when determinable, and

(B) the tax imposed under this chapter for the taxable year in which such compensation is includible in gross income shall be increased by the sum of—

(i) the amount of interest determined under paragraph (2), and

(ii) an amount equal to 20 percent of the amount of such compensation.

(2) Interest

For purposes of paragraph (1)(B)(i), the interest determined under this paragraph for any taxable year is the amount of interest at the underpayment rate under section 6621 plus 1 percentage point on the underpayments that would have occurred had the deferred compensation been includible in gross income for the taxable year in which first deferred or, if later, the first taxable year in which such deferred compensation is not subject to a substantial risk of forfeiture.

(d) Other definitions and special rules

For purposes of this section—

(1) Substantial risk of forfeiture

(A) In general

The rights of a person to compensation shall be treated as subject to a substantial risk of forfeiture only if such person's rights to such compensation are conditioned upon the future performance of substantial services by any individual.

(B) Exception for compensation based on gain recognized on an investment asset

(i) In general

To the extent provided in regulations prescribed by the Secretary, if compensation is determined solely by reference to the amount of gain recognized on the disposition of an investment asset, such compensation shall be treated as subject to a substantial risk of forfeiture until the date of such disposition.

(ii) Investment asset

For purposes of clause (i), the term ''investment asset'' means any single asset (other than an investment fund or similar entity)—

(I) acquired directly by an investment fund or similar entity,

(II) with respect to which such entity does not (nor does any person related to such entity) participate in the active management of such asset (or if such asset is an interest in an entity, in the active management of the activities of such entity), and

(III) substantially all of any gain on the disposition of which (other than such deferred compensation) is allocated to investors in such entity.

(iii) Coordination with special rule

Paragraph (3)(B) shall not apply to any compensation to which clause (i) applies.

(2) Comprehensive foreign income tax

The term ''comprehensive foreign income tax'' means, with respect to any foreign person, the income tax of a foreign country if—

(A) such person is eligible for the benefits of a comprehensive income tax treaty between such foreign country and the United States, or

(B) such person demonstrates to the satisfaction of the Secretary that such foreign country has a comprehensive income tax.

(3) Nonqualified deferred compensation plan

(A) In general

The term ''nonqualified deferred compensation plan'' has the meaning given such term under section 409A(d), except that such term shall include any plan that provides a right to compensation based on the appreciation in value of a specified number of equity units of the service recipient.

(B) Exception

Compensation shall not be treated as deferred for purposes of this section if the service provider receives payment of such compensation not later than 12 months after the end of the taxable year of the service recipient during which the right to the payment of such compensation is no longer subject to a substantial risk of forfeiture.

(4) Exception for certain compensation with respect to effectively connected income

In the case[1] a foreign corporation with income which is taxable under section 882, this section shall not apply to compensation which, had such compensation had[2] been paid in cash on the date that such compensation ceased to be subject to a substantial risk of forfeiture, would have been deductible by such foreign corporation against such income.

(5) Application of rules

Rules similar to the rules of paragraphs (5) and (6) of section 409A(d) shall apply.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations disregarding a substantial risk of forfeiture in cases where necessary to carry out the purposes of this section.

(Added Pub. L. 110–343, div. C, title VIII, § 801(a), Oct. 3, 2008, 122 Stat. 3929.)

EFFECTIVE DATE

Pub. L. 110–343, div. C, title VIII, § 801(d), Oct. 3, 2008, 122 Stat. 3931, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section and amending section 26 of this title] shall apply to amounts deferred which are attributable to services performed after December 31, 2008.

''(2) APPLICATION TO EXISTING DEFERRALS.—In the case of any amount deferred to which the amendments made by this section do not apply solely by reason of the fact that the amount is attributable to services performed before January 1, 2009, to the extent such amount is not includible in gross income in a taxable year beginning before 2018, such amounts shall be includible in gross income in the later of—

''(A) the last taxable year beginning before 2018, or

''(B) the taxable year in which there is no substantial risk of forfeiture of the rights to such compensation (determined in the same manner as determined for purposes of section 457A of the Internal Revenue Code of 1986, as added by this section).

''(3) ACCELERATED PAYMENTS.—No later than 120 days after the date of the enactment of this Act [Oct. 3, 2008], the Secretary shall issue guidance providing a limited period of time during which a nonqualified deferred compensation arrangement attributable to services performed on or before December 31, 2008, may, without violating the requirements of section 409A(a) of the Internal Revenue Code of 1986, be amended to conform the date of distribution to the date the amounts are required to be included in income.

''(4) CERTAIN BACK-TO-BACK ARRANGEMENTS.—If the taxpayer is also a service recipient and maintains one or more nonqualified deferred compensation arrangements for its service providers under which any amount is attributable to services performed on or before December 31, 2008, the guidance issued under paragraph (4) shall permit such arrangements to be amended to conform the dates of distribution under such arrangement to the date amounts are required to be included in the income of such taxpayer under this subsection.

''(5) ACCELERATED PAYMENT NOT TREATED AS MATERIAL MODIFICATION.—Any amendment to a nonqualified deferred compensation arrangement made pursuant to paragraph (4) or (5) shall not be treated as a material modification of the arrangement for purposes of section 409A of the Internal Revenue Code of 1986.''

§ 458. Magazines, paperbacks, and records returned after the close of the taxable year

(a) Exclusion from gross income

A taxpayer who is on an accrual method of accounting may elect not to include in the gross income for the taxable year the income attributable to the qualified sale of any magazine, paperback, or record which is returned to the taxpayer before the close of the merchandise return period.

(b) Definitions and special rules

For purposes of this section—

(1) Magazine

The term ''magazine'' includes any other periodical.

(2) Paperback

The term ''paperback'' means any book which has a flexible outer cover and the pages of which are affixed directly to such outer cover. Such term does not include a magazine.

(3) Record

The term ''record'' means a disc, tape, or similar object on which musical, spoken, or other sounds are recorded.

(4) Separate application with respect to magazines, paperbacks, and records

If a taxpayer makes qualified sales of more than one category of merchandise in connection with the same trade or business, this section shall be applied as if the qualified sales of each such category were made in connection with a separate trade or business. For purposes of the preceding sentence, magazines, paperbacks, and records shall each be treated as a separate category of merchandise.

(5) Qualified sale

A sale of a magazine, paperback, or record is a qualified sale if—

(A) at the time of sale, the taxpayer has a legal obligation to adjust the sales price of such magazine, paperback, or record if it is not resold, and

(B) the sales price of such magazine, paperback, or record is adjusted by the taxpayer because of a failure to resell it.

[1] So in original. Probably should be followed by ''of''.

[2] So in original. The word ''had'' probably should not appear.

(6) Amount excluded

The amount excluded under this section with respect to any qualified sale shall be the lesser of—

(A) the amount covered by the legal obligation described in paragraph (5)(A), or

(B) the amount of the adjustment agreed to by the taxpayer before the close of the merchandise return period.

(7) Merchandise return period

(A) Except as provided in subparagraph (B), the term ''merchandise return period'' means, with respect to any taxable year—

(i) in the case of magazines, the period of 2 months and 15 days first occurring after the close of taxable year, or

(ii) in the case of paperbacks and records, the period of 4 months and 15 days first occurring after the close of the taxable year.

(B) The taxpayer may select a shorter period than the applicable period set forth in subparagraph (A).

(C) Any change in the merchandise return period shall be treated as a change in the method of accounting.

(8) Certain evidence may be substituted for physical return of merchandise

Under regulations prescribed by the Secretary, the taxpayer may substitute, for the physical return of magazines, paperbacks, or records required by subsection (a), certification or other evidence that the magazine, paperback, or record has not been resold and will not be resold if such evidence—

(A) is in the possession of the taxpayer at the close of the merchandise return period, and

(B) is satisfactory to the Secretary.

(9) Repurchased[1] by the taxpayer not treated as resale

A repurchase by the taxpayer shall be treated as an adjustment of the sales price rather than as a resale.

(c) Qualified sales to which section applies

(1) Election of benefits

This section shall apply to qualified sales of magazines, paperbacks, or records, as the case may be, if and only if the taxpayer makes an election under this section with respect to the trade or business in connection with which such sales are made. An election under this section may be made without the consent of the Secretary. The election shall be made in such manner as the Secretary may by regulations prescribed[2] and shall be made for any taxable year not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof).

(2) Scope of election

An election made under this section shall apply to all qualified sales of magazines, paperbacks, or records, as the case may be, made in connection with the trade or business with respect to which the taxpayer has made the election.

(3) Period to which election applies

An election under this section shall be effective for the taxable year for which it is made and for all subsequent taxable years, unless the taxpayer secures the consent of the Secretary to the revocation of such election.

(4) Treatment as method of accounting

Except to the extent inconsistent with the provisions of this section, for purposes of this subtitle, the computation of taxable income under an election made under this section shall be treated as a method of accounting.

(d) 5-year spread of transitional adjustments for magazines

In applying section 481(c) with respect to any election under this section which applies to magazines, the period for taking into account any decrease in taxable income resulting from the application of section 481(a)(2) shall be the taxable year for which the election is made and the 4 succeeding taxable years.

(e) Suspense account for paperbacks and records

(1) In general

In the case of any election under this section which applies to paperbacks or records, in lieu of applying section 481, the taxpayer shall establish a suspense account for the trade or business for the taxable year for which the election is made.

(2) Initial opening balance

The opening balance of the account described in paragraph (1) for the first taxable year to which the election applies shall be the largest dollar amount of returned merchandise which would have been taken into account under this section for any of the 3 immediately preceding taxable years if this section had applied to such preceding 3 taxable years. This paragraph and paragraph (3) shall be applied by taking into account only amounts attributable to the trade or business for which such account is established.

(3) Adjustments in suspense account

At the close of each taxable year the suspense account shall be—

(A) reduced the excess (if any) of—

(i) the opening balance of the suspense account for the taxable year, over

(ii) the amount excluded from gross income for the taxable year under subsection (a), or

(B) increased (but not in excess of the initial opening balance) by the excess (if any) of—

(i) the amount excluded from gross income for the taxable year under subsection (a), over

(ii) the opening balance of the account for the taxable year.

(4) Gross income adjustments

(A) Reductions excluded from gross income

In the case of any reduction under paragraph (3)(A) in the account for the taxable

[1] So in original. Probably should be ''Repurchase''.

[2] So in original. Probably should be ''prescribe''.

year, an amount equal to such reduction shall be excluded from gross income for such taxable year.

(B) Increases added to gross income

In the case of any increase under paragraph (3)(B) in the account for the taxable year, an amount equal to such increase shall be included in gross income for such taxable year.

If the initial opening balance exceeds the dollar amount of returned merchandise which would have been taken into account under subsection (a) for the taxable year preceding the first taxable year for which the election is effective if this section had applied to such preceding taxable year, then an amount equal to the amount of such excess shall be included in gross income for such first taxable year.

(5) Subchapter C transactions

The application of this subsection with respect to a taxpayer which is a party to any transaction with respect to which there is nonrecognition of gain or loss to any party to the transaction by reason of subchapter C shall be determined under regulations prescribed by the Secretary.

(Added Pub. L. 95–600, title III, § 372(a), Nov. 6, 1978, 92 Stat. 2860.)

EFFECTIVE DATE

Section 372(c) of Pub. L. 95–600 provided that: ''The amendments made by this section [enacting this section] shall apply to taxable years beginning after September 30, 1979.''

§ 460. Special rules for long-term contracts

(a) Requirement that percentage of completion method be used

In the case of any long-term contract, the taxable income from such contract shall be determined under the percentage of completion method (as modified by subsection (b)).

(b) Percentage of completion method

(1) Requirements of percentage of completion method

Except as provided in paragraph (3), in the case of any long-term contract with respect to which the percentage of completion method is used—

(A) the percentage of completion shall be determined by comparing costs allocated to the contract under subsection (c) and incurred before the close of the taxable year with the estimated total contract costs, and

(B) upon completion of the contract (or, with respect to any amount properly taken into account after completion of the contract, when such amount is so properly taken into account), the taxpayer shall pay (or shall be entitled to receive) interest computed under the look-back method of paragraph (2).

In the case of any long-term contract with respect to which the percentage of completion method is used, except for purposes of applying the look-back method of paragraph (2), any income under the contract (to the extent not previously includible in gross income) shall be included in gross income for the taxable year following the taxable year in which the contract was completed. For purposes of subtitle F (other than sections 6654 and 6655), any interest required to be paid by the taxpayer under subparagraph (B) shall be treated as an increase in the tax imposed by this chapter for the taxable year in which the contract is completed (or, in the case of interest payable with respect to any amount properly taken into account after completion of the contract, for the taxable year in which the amount is so properly taken into account).

(2) Look-back method

The interest computed under the look-back method of this paragraph shall be determined by—

(A) first[1] allocating income under the contract among taxable years before the year in which the contract is completed on the basis of the actual contract price and costs instead of the estimated contract price and costs,

(B) second, determining (solely for purposes of computing such interest) the overpayment or underpayment of tax for each taxable year referred to in subparagraph (A) which would result solely from the application of subparagraph (A), and

(C) then using the adjusted overpayment rate (as defined in paragraph (7)), compounded daily, on the overpayment or underpayment determined under subparagraph (B).

For purposes of the preceding sentence, any amount properly taken into account after completion of the contract shall be taken into account by discounting (using the Federal mid-term rate determined under section 1274(d) as of the time such amount was properly taken into account) such amount to its value as of the completion of the contract. The taxpayer may elect with respect to any contract to have the preceding sentence not apply to such contract.

(3) Special rules

(A) Simplified method of cost allocation

In the case of any long-term contract, the Secretary may prescribe a simplified procedure for allocation of costs to such contract in lieu of the method of allocation under subsection (c).

(B) Look-back method not to apply to certain contracts

Paragraph (1)(B) shall not apply to any contract—

(i) the gross price of which (as of the completion of the contract) does not exceed the lesser of—

(I) $1,000,000, or

(II) 1 percent of the average annual gross receipts of the taxpayer for the 3 taxable years preceding the taxable year in which the contract was completed, and

[1] So in original. Probably should be followed by a comma.

(ii) which is completed within 2 years of the contract commencement date.

For purposes of this subparagraph, rules similar to the rules of subsections (e)(2) and (f)(3) shall apply.

(4) Simplified look-back method for pass-thru entities

(A) In general

In the case of a pass-thru entity—

(i) the look-back method of paragraph (2) shall be applied at the entity level,

(ii) in determining overpayments and underpayments for purposes of applying paragraph (2)(B)—

(I) any increase in the income under the contract for any taxable year by reason of the allocation under paragraph (2)(A) shall be treated as giving rise to an underpayment determined by applying the highest rate for such year to such increase, and

(II) any decrease in such income for any taxable year by reason of such allocation shall be treated as giving rise to an overpayment determined by applying the highest rate for such year to such decrease, and

(iii) any interest required to be paid by the taxpayer under paragraph (2) shall be paid by such entity (and any interest entitled to be received by the taxpayer under paragraph (2) shall be paid to such entity).

(B) Exceptions

(i) Closely held pass-thru entities

This paragraph shall not apply to any closely held pass-thru entity.

(ii) Foreign contracts

This paragraph shall not apply to any contract unless substantially all of the income from such contract is from sources in the United States.

(C) Other definitions

For purposes of this paragraph—

(i) Highest rate

The term ''highest rate'' means—

(I) the highest rate of tax specified in section 11, or

(II) if at all times during the year involved more than 50 percent of the interests in the entity are held by individuals directly or through 1 or more other pass-thru entities, the highest rate of tax specified in section 1.

(ii) Pass-thru entity

The term ''pass-thru entity'' means any—

(I) partnership,

(II) S corporation, or

(III) trust.

(iii) Closely held pass-thru entity

The term ''closely held pass-thru entity'' means any pass-thru entity if, at any time during any taxable year for which there is income under the contract, 50 percent or more (by value) of the beneficial interests in such entity are held (directly or indirectly) by or for 5 or fewer persons. For purposes of the preceding sentence, rules similar to the constructive ownership rules of section 1563(e) shall apply.

(5) Election to use 10-percent method

(A) General rule

In the case of any long-term contract with respect to which an election under this paragraph is in effect, the 10-percent method shall apply in determining the taxable income from such contract.

(B) 10-percent method

For purposes of this paragraph—

(i) In general

The 10-percent method is the percentage of completion method, modified so that any item which would otherwise be taken into account in computing taxable income with respect to a contract for any taxable year before the 10-percent year is taken into account in the 10-percent year.

(ii) 10-percent year

The term ''10-percent year'' means the 1st taxable year as of the close of which at least 10 percent of the estimated total contract costs have been incurred.

(C) Election

An election under this paragraph shall apply to all long-term contracts of the taxpayer which are entered into during the taxable year in which the election is made or any subsequent taxable year.

(D) Coordination with other provisions

(i) Simplified method of cost allocation

This paragraph shall not apply to any taxpayer which uses a simplified procedure for allocation of costs under paragraph (3)(A).

(ii) Look-back method

The 10-percent method shall be taken into account for purposes of applying the look-back method of paragraph (2) to any taxpayer making an election under this paragraph.

(6) Election to have look-back method not apply in de minimis cases

(A) Amounts taken into account after completion of contract

Paragraph (1)(B) shall not apply with respect to any taxable year (beginning after the taxable year in which the contract is completed) if—

(i) the cumulative taxable income (or loss) under the contract as of the close of such taxable year, is within

(ii) 10 percent of the cumulative look-back taxable income (or loss) under the contract as of the close of the most recent taxable year to which paragraph (1)(B) applied (or would have applied but for subparagraph (B)).

(B) De minimis discrepancies

Paragraph (1)(B) shall not apply in any case to which it would otherwise apply if—

(i) the cumulative taxable income (or loss) under the contract as of the close of each prior contract year, is within

(ii) 10 percent of the cumulative look-back income (or loss) under the contract as of the close of such prior contract year.

(C) Definitions

For purposes of this paragraph—

(i) Contract year

The term ''contract year'' means any taxable year for which income is taken into account under the contract.

(ii) Look-back income or loss

The look-back income (or loss) is the amount which would be the taxable income (or loss) under the contract if the allocation method set forth in paragraph (2)(A) were used in determining taxable income.

(iii) Discounting not applicable

The amounts taken into account after the completion of the contract shall be determined without regard to any discounting under the 2nd sentence of paragraph (2).

(D) Contracts to which paragraph applies

This paragraph shall only apply if the taxpayer makes an election under this subparagraph. Unless revoked with the consent of the Secretary, such an election shall apply to all long-term contracts completed during the taxable year for which election is made or during any subsequent taxable year.

(7) Adjusted overpayment rate

(A) In general

The adjusted overpayment rate for any interest accrual period is the overpayment rate in effect under section 6621 for the calendar quarter in which such interest accrual period begins.

(B) Interest accrual period

For purposes of subparagraph (A), the term ''interest accrual period'' means the period—

(i) beginning on the day after the return due date for any taxable year of the taxpayer, and

(ii) ending on the return due date for the following taxable year.

For purposes of the preceding sentence, the term ''return due date'' means the date prescribed for filing the return of the tax imposed by this chapter (determined without regard to extensions).

(c) Allocation of costs to contract

(1) Direct and certain indirect costs

In the case of a long-term contract, all costs (including research and experimental costs) which directly benefit, or are incurred by reason of, the long-term contract activities of the taxpayer shall be allocated to such contract in the same manner as costs are allocated to extended period long-term contracts under section 451 and the regulations thereunder.

(2) Costs identified under cost-plus and certain Federal contracts

In the case of a cost-plus long-term contract or a Federal long-term contract, any cost not allocated to such contract under paragraph (1) shall be allocated to such contract if such cost is identified by the taxpayer (or a related person), pursuant to the contract or Federal, State, or local law or regulation, as being attributable to such contract.

(3) Allocation of production period interest to contract

(A) In general

Except as provided in subparagraphs (B) and (C), in the case of a long-term contract, interest costs shall be allocated to the contract in the same manner as interest costs are allocated to property produced by the taxpayer under section 263A(f).

(B) Production period

In applying section 263A(f) for purposes of subparagraph (A), the production period shall be the period—

(i) beginning on the later of—

(I) the contract commencement date, or

(II) in the case of a taxpayer who uses an accrual method with respect to long-term contracts, the date by which at least 5 percent of the total estimated costs (including design and planning costs) under the contract have been incurred, and

(ii) ending on the contract completion date.

(C) Application of de minimis rule

In applying section 263A(f) for purposes of subparagraph (A), paragraph (1)(B)(iii) of such section shall be applied on a contract-by-contract basis; except that, in the case of a taxpayer described in subparagraph (B)(i)(II) of this paragraph, paragraph (1)(B)(iii) of section 263A(f) shall be applied on a property-by-property basis.

(4) Certain costs not included

This subsection shall not apply to any—

(A) independent research and development expenses,

(B) expenses for unsuccessful bids and proposals, and

(C) marketing, selling, and advertising expenses.

(5) Independent research and development expenses

For purposes of paragraph (4), the term ''independent research and development expenses'' means any expenses incurred in the performance of research or development, except that such term shall not include—

(A) any expenses which are directly attributable to a long-term contract in existence when such expenses are incurred, or

(B) any expenses under an agreement to perform research or development.

(6) Special rule for allocation of bonus depreciation with respect to certain property

(A) In general

Solely for purposes of determining the percentage of completion under subsection (b)(1)(A), the cost of qualified property shall

be taken into account as a cost allocated to the contract as if subsection (k) of section 168 had not been enacted.

(B) Qualified property

For purposes of this paragraph, the term ''qualified property'' means property described in section 168(k)(2) which—

(i) has a recovery period of 7 years or less, and

(ii) is placed in service after December 31, 2009, and before January 1, 2011 (January 1, 2012, in the case of property described in section 168(k)(2)(B)).

(d) Federal long-term contract

For purposes of this section—

(1) In general

The term ''Federal long-term contract'' means any long-term contract—

(A) to which the United States (or any agency or instrumentality thereof) is a party, or

(B) which is a subcontract under a contract described in subparagraph (A).

(2) Special rules for certain taxable entities

For purposes of paragraph (1), the rules of section 168(h)(2)(D) (relating to certain taxable entities not treated as instrumentalities) shall apply.

(e) Exception for certain construction contracts

(1) In general

Subsections (a), (b), and (c)(1) and (2) shall not apply to—

(A) any home construction contract, or

(B) any other construction contract entered into by a taxpayer—

(i) who estimates (at the time such contract is entered into) that such contract will be completed within the 2-year period beginning on the contract commencement date of such contract, and

(ii) whose average annual gross receipts for the 3 taxable years preceding the taxable year in which such contract is entered into do not exceed $10,000,000.

In the case of a home construction contract with respect to which the requirements of clauses (i) and (ii) of subparagraph (B) are not met, section 263A shall apply notwithstanding subsection (c)(4) thereof.

(2) Determination of taxpayer's gross receipts

For purposes of paragraph (1), the gross receipts of—

(A) all trades or businesses (whether or not incorporated) which are under common control with the taxpayer (within the meaning of section 52(b)),

(B) all members of any controlled group of corporations of which the taxpayer is a member, and

(C) any predecessor of the taxpayer or a person described in subparagraph (A) or (B),

for the 3 taxable years of such persons preceding the taxable year in which the contract described in paragraph (1) is entered into shall be included in the gross receipts of the taxpayer for the period described in paragraph (1)(B). The Secretary shall prescribe regulations which provide attribution rules that take into account, in addition to the persons and entities described in the preceding sentence, taxpayers who engage in construction contracts through partnerships, joint ventures, and corporations.

(3) Controlled group of corporations

For purposes of this subsection, the term ''controlled group of corporations'' has the meaning given to such term by section 1563(a), except that—

(A) ''more than 50 percent'' shall be substituted for ''at least 80 percent'' each place it appears in section 1563(a)(1), and

(B) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

(4) Construction contract

For purposes of this subsection, the term ''construction contract'' means any contract for the building, construction, reconstruction, or rehabilitation of, or the installation of any integral component to, or improvements of, real property.

(5) Special rule for residential construction contracts which are not home construction contracts

In the case of any residential construction contract which is not a home construction contract, subsection (a) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1989) shall apply except that such subsection shall be applied—

(A) by substituting ''70 percent'' for ''90 percent'' each place it appears, and

(B) by substituting ''30 percent'' for ''10 percent''.

(6) Definitions relating to residential construction contracts

For purposes of this subsection—

(A) Home construction contract

The term ''home construction contract'' means any construction contract if 80 percent or more of the estimated total contract costs (as of the close of the taxable year in which the contract was entered into) are reasonably expected to be attributable to activities referred to in paragraph (4) with respect to—

(i) dwelling units (as defined in section 168(e)(2)(A)(ii)) contained in buildings containing 4 or fewer dwelling units (as so defined), and

(ii) improvements to real property directly related to such dwelling units and located on the site of such dwelling units.

For purposes of clause (i), each townhouse or rowhouse shall be treated as a separate building.

(B) Residential construction contract

The term ''residential construction contract'' means any contract which would be described in subparagraph (A) if clause (i) of such subparagraph reads as follows:

''(i) dwelling units (as defined in section 168(e)(2)(A)(ii)), and''.

(f) Long-term contract

For purposes of this section—

(1) In general

The term ''long-term contract'' means any contract for the manufacture, building, installation, or construction of property if such contract is not completed within the taxable year in which such contract is entered into.

(2) Special rule for manufacturing contracts

A contract for the manufacture of property shall not be treated as a long-term contract unless such contract involves the manufacture of—

(A) any unique item of a type which is not normally included in the finished goods inventory of the taxpayer, or

(B) any item which normally requires more than 12 calendar months to complete (without regard to the period of the contract).

(3) Aggregation, etc.

For purposes of this subsection, under regulations prescribed by the Secretary—

(A) 2 or more contracts which are interdependent (by reason of pricing or otherwise) may be treated as 1 contract, and

(B) a contract which is properly treated as an aggregation of separate contracts may be so treated.

(g) Contract commencement date

For purposes of this section, the term ''contract commencement date'' means, with respect to any contract, the first date on which any costs (other than bidding expenses or expenses incurred in connection with negotiating the contract) allocable to such contract are incurred.

(h) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations to prevent the use of related parties, pass-thru entities, intermediaries, options, or other similar arrangements to avoid the application of this section.

(Added Pub. L. 99–514, title VIII, §804(a), Oct. 22, 1986, 100 Stat. 2358; amended Pub. L. 100–203, title X, §10203(a), Dec. 22, 1987, 101 Stat. 1330–394; Pub. L. 100–647, title I, §1008(c)(1), (2), (4), title V, §5041(a)–(b)(3), (c), (d), Nov. 10, 1988, 102 Stat. 3438, 3439, 3673, 3674; Pub. L. 101–239, title VII, §§7621(a)–(c), 7811(e), 7815(e)(1), Dec. 19, 1989, 103 Stat. 2375, 2376, 2408, 2419; Pub. L. 101–508, title XI, §11812(b)(8), Nov. 5, 1990, 104 Stat. 1388–535; Pub. L. 104–188, title I, §§1702(h)(15), 1704(t)(28), Aug. 20, 1996, 110 Stat. 1874, 1888; Pub. L. 105–34, title XII, §1211(a), (b), Aug. 5, 1997, 111 Stat. 998, 999; Pub. L. 111–240, title II, §2023(a), Sept. 27, 2010, 124 Stat. 2559.)

REFERENCES IN TEXT

The date of the enactment of the Revenue Reconciliation Act of 1989, referred to in subsec. (e)(5), is the date of enactment of title VII of Pub. L. 101–239, which was approved Dec. 19, 1989.

AMENDMENTS

2010—Subsec. (c)(6). Pub. L. 111–240 added par. (6).

1997—Subsec. (b)(2)(C). Pub. L. 105–34, §1211(b)(1), substituted ''the adjusted overpayment rate (as defined in paragraph (7))'' for ''the overpayment rate established by section 6621''.

Subsec. (b)(6). Pub. L. 105–34, §1211(a), added par. (6).

Subsec. (b)(7). Pub. L. 105–34, §1211(b)(2), added par. (7).

1996—Subsec. (b)(1). Pub. L. 104–188, §1704(t)(28), which directed that par. (1) be amended by substituting ''the look-back method of paragraph (2)'' for ''the look-back method of paragraph (3)'', could not be executed, because that phrase does not appear in text. See 1989 Amendment note below.

Subsec. (e)(6)(B). Pub. L. 104–188, §1702(h)(15), substituted ''section 168(e)(2)(A)(ii)'' for ''section 167(k)''.

1990—Subsec. (e)(6)(A)(i). Pub. L. 101–508 substituted ''section 168(e)(2)(A)(ii)'' for ''section 167(k)''.

1989—Subsec. (a). Pub. L. 101–239, §7621(a), substituted ''Requirement that percentage of completion method be used'' for ''Percentage of completion-capitalized cost method'' in heading and amended text generally. Prior to amendment, text read as follows:

''(1) IN GENERAL.—In the case of any long-term contract—

''(A) 90 percent of the items with respect to such contract shall be taken into account under the percentage of completion method (as modified by subsection (b)), and

''(B) 10 percent of the items with respect to such contract shall be taken into account under the taxpayer's normal method of accounting.

''(2) 90 PERCENT LOOK-BACK METHOD TO APPLY.—Upon completion of any long-term contract (or, with respect to any amount properly taken into account after completion of the contract, when such amount is so properly taken into account), the taxpayer shall pay (or shall be entitled to receive) interest determined by applying the look-back method of subsection (b)(3) to 90 percent of the items with respect to the contract.''

Subsec. (a)(2). Pub. L. 101–239, §7811(e)(1), inserted ''(or, with respect to any amount properly taken into account after completion of the contract, when such amount is so properly taken into account)'' after ''any long-term contract''.

Subsec. (b)(1). Pub. L. 101–239, §7621(c)(2)(A), substituted ''paragraph (3)'' for ''paragraph (4)''.

Pub. L. 101–239, §7621(c)(2)(B), which directed the amendment of par. (1) by substituting ''paragraph (2)'' for ''paragraph (3)'', was executed by making the substitution in subpar. (B) and concluding provisions to reflect the probable intent of Congress.

Pub. L. 101–239, §7621(c)(1), redesignated par. (2) as (1) and struck out former par. (1) which read as follows: ''SUBSECTION (a) NOT TO APPLY WHERE PERCENTAGE OF COMPLETION METHOD USED.—Subsection (a) shall not apply to any long-term contract with respect to which amounts includible in gross income are determined under the percentage of completion method.''

Subsec. (b)(2). Pub. L. 101–239, §7621(c)(1), redesignated par. (3) as (2). Former par. (2) redesignated (1).

Pub. L. 101–239, §7811(e)(4), (6), inserted two sentences at end.

Subsec. (b)(2)(B). Pub. L. 101–239, §7811(e)(2), substituted ''any amount properly taken into account'' for ''any amount received or accrued'' and ''is so properly taken into account'' for ''is so received or accrued''.

Subsec. (b)(3). Pub. L. 101–239, §7621(c)(1), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Pub. L. 101–239, §7811(e)(3), in concluding provisions, substituted ''any amount properly taken into account'' for ''any amount received or accrued'' and ''such amount was properly taken into account'' for ''such amount was received or accrued''.

Subsec. (b)(3)(B). Pub. L. 101–239, §7621(c)(3), substituted ''Paragraph (1)(B)'' for ''Paragraph (2)(B) and subsection (a)(2)'' in introductory provisions.

Subsec. (b)(4). Pub. L. 101–239, §7621(c)(1), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (b)(4)(A)(i). Pub. L. 101–239, §7621(c)(4)(A), substituted ''paragraph (2)'' for ''paragraph (3)''.

Subsec. (b)(4)(A)(ii). Pub. L. 101–239, § 7621(c)(4)(B), substituted ''paragraph (2)(B)'' for ''paragraph (3)(B)'' in introductory provisions.

Subsec. (b)(4)(A)(ii)(I). Pub. L. 101–239, § 7621(c)(4)(C), substituted ''paragraph (2)(A)'' for ''paragraph (3)(A)''.

Subsec. (b)(4)(A)(iii). Pub. L. 101–239, § 7621(c)(4)(A), substituted ''paragraph (2)'' for ''paragraph (3)'' in two places.

Subsec. (b)(5). Pub. L. 101–239, § 7621(b), added par. (5).

Pub. L. 101–239, § 7621(c)(1), redesignated former par. (5) as (4).

Subsec. (e)(2)(C). Pub. L. 101–239, § 7811(e)(5), added subpar. (C).

Subsec. (e)(5). Pub. L. 101–239, § 7621(c)(5), inserted introductory provisions and struck out former introductory provisions which read as follows: ''In the case of any residential construction contract which is not a home construction contract, subsection (a) shall be applied—''.

Subsec. (e)(6)(A). Pub. L. 101–239, § 7815(e)(1)(A), substituted ''activities referred to in paragraph (4) with respect to'' for ''the building, construction, reconstruction, or rehabilitation of''.

Subsec. (e)(6)(A)(i). Pub. L. 101–239, § 7815(e)(1)(B), added cl. (i) and struck out former cl. (i) which read as follows: ''dwelling units contained in buildings containing 4 or fewer dwelling units, and''.

1988—Subsec. (a)(1)(A). Pub. L. 100–647, § 5041(a)(1), substituted ''90'' for ''70''.

Subsec. (a)(1)(B). Pub. L. 100–647, § 5041(a)(2), substituted ''10'' for ''30''.

Subsec. (a)(2). Pub. L. 100–647, § 5041(a)(1), substituted ''90'' for ''70'' in heading and in text.

Subsec. (b)(2). Pub. L. 100–647, § 1008(c)(2)(B), substituted ''Except as provided in paragraph (4), in'' for ''In''.

Subsec. (b)(2)(B). Pub. L. 100–647, § 1008(c)(4)(B), inserted ''(or, with respect to any amount received or accrued after completion of the contract, when such amount is so received or accrued)'' after ''contract''.

Subsec. (b)(3). Pub. L. 100–647, § 1008(c)(4)(A), inserted at end ''For purposes of the preceding sentence, any amount received or accrued after completion of the contract shall be taken into account by discounting (using the Federal mid-term rate determined under section 1274(d) as of the time such amount was received or accrued) such amount to its value as of the completion of the contract. The taxpayer may elect with respect to any contract to have the preceding sentence not apply to such contract.''

Pub. L. 100–647, § 1008(c)(1)(A), substituted ''paragraph'' for ''subparagraph''.

Subsec. (b)(3)(B). Pub. L. 100–647, § 1008(c)(1)(B), substituted ''subparagraph (A)'' for ''paragraph (1)'' in two places.

Subsec. (b)(3)(C). Pub. L. 100–647, § 1008(c)(1)(C), substituted ''subparagraph (B)'' for ''paragraph (1)''.

Subsec. (b)(4). Pub. L. 100–647, § 1008(c)(2)(A), added par. (4).

Subsec. (b)(5). Pub. L. 100–647, § 5041(d), added par. (5).

Subsec. (e)(1). Pub. L. 100–647, § 5041(b)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Subsections (a), (b), and (c)(1) and (2) shall not apply to any construction contract entered into by a taxpayer—

''(A) who estimates (at the time such contract is entered into) that such contract will be completed within the 2-year period beginning on the contract commencement date of such contract, and

''(B) whose average annual gross receipts for the 3 taxable years preceding the taxable year in which such contract is entered into do not exceed $10,000,000.''

Subsec. (e)(5). Pub. L. 100–647, § 5041(b)(2), added par. (5).

Subsec. (e)(6). Pub. L. 100–647, § 5041(b)(3), added par. (6).

Subsec. (h). Pub. L. 100–647, § 5041(c), added subsec. (h).

1987—Subsec. (a). Pub. L. 100–203 substituted ''70 percent'' for ''40 percent'' in par. (1)(A) and in heading and text of par. (2), and ''30 percent'' for ''60 percent'' in par. (1)(B).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title II, § 2023(b), Sept. 27, 2010, 124 Stat. 2559, provided that: ''The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2009.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1211(c) of Pub. L. 105–34 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to contracts completed in taxable years ending after the date of the enactment of this Act [Aug. 5, 1997].

''(2) SUBSECTION (b).—The amendments made by subsection (b) [amending this section] shall apply for purposes of section 167(g) of the Internal Revenue Code of 1986 to property placed in service after September 13, 1995.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1702(h)(15) of Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

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

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7621(d) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to contracts entered into on or after July 11, 1989.

''(2) BINDING BIDS.—The amendments made by this section shall not apply to any contract resulting from the acceptance of a bid made before July 11, 1989. The preceding sentence shall apply only if the bid could not have been revoked or altered at any time on or after July 11, 1989.

''(3) SPECIAL RULE FOR CERTAIN SHIP CONTRACTS.—The amendments made by this section shall not apply in the case of a qualified ship contract (as defined in section 10203(b)(2)(B) of the Revenue Act of 1987 [Pub. L. 100–203, set out below]).''

Amendment by sections 7811(e) and 7815(e)(1) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1008(c)(1), (2), (4) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 5041(e) of Pub. L. 100–647, as amended by Pub. L. 101–239, title VII, § 7815(e)(3), Dec. 19, 1989, 103 Stat. 2419, provided that:

''(1) SUBSECTIONS (a), (b), AND (c).—

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by subsections (a), (b), and (c) [amending this section and section 56

of this title] shall apply to contracts entered into on or after June 21, 1988.

''(B) BINDING BIDS.—The amendments made by subsections (a), (b), and (c) shall not apply to any contract resulting from the acceptance of a bid made before June 21, 1988. The preceding sentence shall apply only if the bid could not have been revoked or altered at any time on or after June 21, 1988.

''(C) SPECIAL RULE FOR CERTAIN SHIP CONTRACTS.—The amendments made by subsections (a) and (b) [amending this section and section 56 of this title] shall not apply in the case of a qualified ship contract (as defined in section 10203(b)(2)(B) of the Revenue Act of 1987 [Pub. L. 100–203, set out below]).

''(2) SUBSECTION (d).—The amendment made by subsection (d) [amending this section] shall apply as if included in the amendments made by section 804 of the Reform Act [Pub. L. 99–514]; except that such amendment shall not apply to any contract completed in a taxable year ending before the date of the enactment of this Act [Nov. 10, 1988], if the due date (determined with regard to extensions) for the return for such year is before such date of enactment.''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10203(b) of Pub. L. 100–203 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to contracts entered into after October 13, 1987.

''(2) SPECIAL RULE FOR CERTAIN SHIP CONTRACTS.—

''(A) IN GENERAL.—The amendments made by this section shall not apply in the case of a qualified ship contract.

''(B) QUALIFIED SHIP CONTRACT.—For purposes of subparagraph (A), the term 'qualified ship contract' means any contract for the construction in the United States of not more than 5 ships if—

''(i) such ships will not be constructed (directly or indirectly) for the Federal Government, and

''(ii) the taxpayer reasonably expects to complete such contract within 5 years of the contract commencement date (as defined in section 460(g) of the Internal Revenue Code of 1986).''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 804(d) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1008(c)(3), Nov. 10, 1988, 102 Stat. 3439, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section] shall apply to any contract entered into after February 28, 1986.

''(2) CLARIFICATION OF TREATMENT OF INDEPENDENT RESEARCH AND DEVELOPMENT EXPENSES.—

''(A) IN GENERAL.—For periods before, on, or after the date of enactment of this Act [Oct. 22, 1986]—

''(i) any independent research and development expenses taken into account in determining the total contract price shall not be severable from the contract, and

''(ii) any independent research and development expenses shall not be treated as amounts chargeable to capital account.

''(B) INDEPENDENT RESEARCH AND DEVELOPMENT EXPENSES.—For purposes of subparagraph (A), the term 'independent research and development expenses' has the meaning given to such term by section 460(c)(5) of the Internal Revenue Code of 1986, as added by this section.''

REGULATIONS

Section 804(b) of Pub. L. 99–514 provided that: ''The Secretary of the Treasury or his delegate shall modify the income tax regulations relating to accounting for long-term contracts to carry out the provisions of section 460 of the Internal Revenue Code of 1986 (as added by subsection (a)).''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

METHOD OF ACCOUNTING FOR NAVAL SHIPBUILDERS

Pub. L. 108–357, title VII, §708, Oct. 22, 2004, 118 Stat. 1550, as amended by Pub. L. 109–135, title IV, §403(s), Dec. 21, 2005, 119 Stat. 2628, provided that:

''(a) IN GENERAL.—In the case of a qualified naval ship contract, the taxable income of such contract during the 5-taxable year period beginning with the taxable year in which the construction commencement date occurs shall be determined under a method identical to the method used in the case of a qualified ship contract (as defined in section 10203(b)(2)(B) of the Revenue Act of 1987 [Pub. L. 100–203, set out as an Effective Date of 1987 Amendment note above]).

''(b) RECAPTURE OF TAX BENEFIT.—In the case of a qualified naval ship contract to which subsection (a) applies, the taxpayer's tax imposed by chapter 1 of the Internal Revenue Code of 1986 for the first taxable year following the 5-taxable year period described in subsection (a) shall be increased by the excess (if any) of—

''(1) the amount of tax which would have been imposed during such period if this section had not been enacted, over

''(2) the amount of tax so imposed during such period.

''(c) QUALIFIED NAVAL SHIP CONTRACT.—For purposes of this section:

''(1) IN GENERAL.—The term 'qualified naval ship contract' means any contract or portion thereof that is for the construction in the United States of 1 ship or submarine for the Federal Government if the taxpayer reasonably expects the acceptance date will occur no later than 9 years after the construction commencement date.

''(2) ACCEPTANCE DATE.—The term 'acceptance date' means the date 1 year after the date on which the Federal Government issues a letter of acceptance or other similar document for the ship or submarine.

''(3) CONSTRUCTION COMMENCEMENT DATE.—The term 'construction commencement date' means the date on which the physical fabrication of any section or component of the ship or submarine begins in the taxpayer's shipyard.

''(d) CERTAIN ADJUSTMENTS NOT TO APPLY.—Section 481 of the Internal Revenue Code of 1986 shall not apply with respect to any change in the method of accounting which is required by this section.

''(e) EFFECTIVE DATE.—This section shall apply to contracts for ships or submarines with respect to which the construction commencement date occurs after the date of the enactment of this Act [Oct. 22, 2004].''

AMORTIZATION OF PAST SERVICE PENSION COSTS

Allocable costs (within the meaning of subsec. (c) of this section) with respect to any property to include contributions paid to or under a pension or annuity plan whether or not such contributions represent past service costs, see section 10204 of Pub. L. 100–203, set out as a note under section 263A of this title.

SUBPART C—TAXABLE YEAR FOR WHICH DEDUCTIONS TAKEN

Sec.

461. General rule for taxable year of deduction.
[462, 463. Repealed.]
464. Limitations on deductions for certain farming expenses.[1]
465. Deductions limited to amount at risk.
[466. Repealed.]
467. Certain payments for the use of property or services.

[1] So in original. Does not conform to section catchline.

468. Special rules for mining and solid waste reclamation and closing costs.
468A. Special rules for nuclear decommissioning costs.
468B. Special rules for designated settlement funds.
469. Passive activity losses and credits limited.
470. Limitation on deductions allocable to property used by governments or other tax-exempt entities.

AMENDMENTS

2004—Pub. L. 108–357, title VIII, § 848(b), Oct. 22, 2004, 118 Stat. 1606, added item 470.

1987—Pub. L. 100–203, title X, § 10201(b)(7), Dec. 22, 1987, 101 Stat. 1330–387, struck out item 463 ''Accrual of vacation pay''.

1986—Pub. L. 99–514, title IV, § 404(b)(2), title V, § 501(b), title VIII, § 823(b)(2), title XVIII, §§ 1807(a)(7)(B), 1899A(71), Oct. 22, 1986, 100 Stat. 2224, 2241, 2374, 2815, 2963, substituted ''for certain farming expenses'' for ''in case of farming syndicates'' in item 464, struck out item 466 ''Qualified discount coupons redeemed after close of taxable year'', inserted ''the'' before ''use'' in item 467, and added items 468B and 469.

1984—Pub. L. 98–369, div. A, title I, §§ 91(b)(2), (c)(2), 92(b), July 18, 1984, 98 Stat. 604, 606, 612, added items 467, 468, and 468A.

1978—Pub. L. 95–600, title II, § 201(c)(2), title III, § 373(b), Nov. 6, 1978, 92 Stat. 2816, 2865, struck out ''in case of certain activities'' after ''amount at risk'' in item 465 and added item 466.

1976—Pub. L. 94–455, title II, §§ 204(b), 207(a)(2), Oct. 4, 1976, 90 Stat. 1532, 1537, added items 464 and 465.

1975—Pub. L. 93–625, § 4(b), Jan. 3, 1975, 88 Stat. 2111, added item 463.

1955—Act June 15, 1955, ch. 143, § 2(3), 69 Stat. 135, struck out item 462 ''Reserves for estimated expenses, etc.''

§ 461. General rule for taxable year of deduction

(a) General rule

The amount of any deduction or credit allowed by this subtitle shall be taken for the taxable year which is the proper taxable year under the method of accounting used in computing taxable income.

(b) Special rule in case of death

In the case of the death of a taxpayer whose taxable income is computed under an accrual method of accounting, any amount accrued as a deduction or credit only by reason of the death of the taxpayer shall not be allowed in computing taxable income for the period in which falls the date of the taxpayer's death.

(c) Accrual of real property taxes

(1) In general

If the taxable income is computed under an accrual method of accounting, then, at the election of the taxpayer, any real property tax which is related to a definite period of time shall be accrued ratably over that period.

(2) When election may be made

(A) Without consent

A taxpayer may, without the consent of the Secretary, make an election under this subsection for his first taxable year in which he incurs real property taxes. Such an election shall be made not later than the time prescribed by law for filing the return for such year (including extensions thereof).

(B) With consent

A taxpayer may, with the consent of the Secretary, make an election under this subsection at any time.

(d) Limitation on acceleration of accrual of taxes

(1) General rule

In the case of a taxpayer whose taxable income is computed under an accrual method of accounting, to the extent that the time for accruing taxes is earlier than it would be but for any action of any taxing jurisdiction taken after December 31, 1960, then, under regulations prescribed by the Secretary, such taxes shall be treated as accruing at the time they would have accrued but for such action by such taxing jurisdiction.

(2) Limitation

Under regulations prescribed by the Secretary, paragraph (1) shall be inapplicable to any item of tax to the extent that its application would (but for this paragraph) prevent all persons (including successors in interest) from ever taking such item into account.

(e) Dividends or interest paid on certain deposits or withdrawable accounts

Except as provided in regulations prescribed by the Secretary, amounts paid to, or credited to the accounts of, depositors or holders of accounts as dividends or interest on their deposits or withdrawable accounts (if such amounts paid or credited are withdrawable on demand subject only to customary notice to withdraw) by a mutual savings bank not having capital stock represented by shares, a domestic building and loan association, or a cooperative bank shall not be allowed as a deduction for the taxable year to the extent such amounts are paid or credited for periods representing more than 12 months. Any such amount not allowed as a deduction as the result of the application of the preceding sentence shall be allowed as a deduction for such other taxable year as the Secretary determines to be consistent with the preceding sentence.

(f) Contested liabilities

If—

(1) the taxpayer contests an asserted liability,

(2) the taxpayer transfers money or other property to provide for the satisfaction of the asserted liability,

(3) the contest with respect to the asserted liability exists after the time of the transfer, and

(4) but for the fact that the asserted liability is contested, a deduction would be allowed for the taxable year of the transfer (or for an earlier taxable year) determined after application of subsection (h),

then the deduction shall be allowed for the taxable year of the transfer. This subsection shall not apply in respect of the deduction for income, war profits, and excess profits taxes imposed by the authority of any foreign country or possession of the United States.

(g) Prepaid interest

(1) In general

If the taxable income of the taxpayer is computed under the cash receipts and disbursements method of accounting, interest paid by the taxpayer which, under regulations prescribed by the Secretary, is properly allocable to any period—

(A) with respect to which the interest represents a charge for the use or forbearance of money, and

(B) which is after the close of the taxable year in which paid,

shall be charged to capital account and shall be treated as paid in the period to which so allocable.

(2) Exception

This subsection shall not apply to points paid in respect of any indebtedness incurred in connection with the purchase or improvement of, and secured by, the principal residence of the taxpayer to the extent that, under regulations prescribed by the Secretary, such payment of points is an established business practice in the area in which such indebtedness is incurred, and the amount of such payment does not exceed the amount generally charged in such area.

(h) Certain liabilities not incurred before economic performance

(1) In general

For purposes of this title, in determining whether an amount has been incurred with respect to any item during any taxable year, the all events test shall not be treated as met any earlier than when economic performance with respect to such item occurs.

(2) Time when economic performance occurs

Except as provided in regulations prescribed by the Secretary, the time when economic performance occurs shall be determined under the following principles:

(A) Services and property provided to the taxpayer

If the liability of the taxpayer arises out of—

(i) the providing of services to the taxpayer by another person, economic performance occurs as such person provides such services,

(ii) the providing of property to the taxpayer by another person, economic performance occurs as the person provides such property, or

(iii) the use of property by the taxpayer, economic performance occurs as the taxpayer uses such property.

(B) Services and property provided by the taxpayer

If the liability of the taxpayer requires the taxpayer to provide property or services, economic performance occurs as the taxpayer provides such property or services.

(C) Workers compensation and tort liabilities of the taxpayer

If the liability of the taxpayer requires a payment to another person and—

(i) arises under any workers compensation act, or

(ii) arises out of any tort,

economic performance occurs as the payments to such person are made. Subparagraphs (A) and (B) shall not apply to any liability described in the preceding sentence.

(D) Other items

In the case of any other liability of the taxpayer, economic performance occurs at the time determined under regulations prescribed by the Secretary.

(3) Exception for certain recurring items

(A) In general

Notwithstanding paragraph (1) an item shall be treated as incurred during any taxable year if—

(i) the all events test with respect to such item is met during such taxable year (determined without regard to paragraph (1)),

(ii) economic performance with respect to such item occurs within the shorter of—

(I) a reasonable period after the close of such taxable year, or

(II) 8½ months after the close of such taxable year,

(iii) such item is recurring in nature and the taxpayer consistently treats items of such kind as incurred in the taxable year in which the requirements of clause (i) are met, and

(iv) either—

(I) such item is not a material item, or

(II) the accrual of such item in the taxable year in which the requirements of clause (i) are met results in a more proper match against income than accruing such item in the taxable year in which economic performance occurs.

(B) Financial statements considered under subparagraph (A)(iv)

In making a determination under subparagraph (A)(iv), the treatment of such item on financial statements shall be taken into account.

(C) Paragraph not to apply to workers compensation and tort liabilities

This paragraph shall not apply to any item described in subparagraph (C) of paragraph (2).

(4) All events test

For purposes of this subsection, the all events test is met with respect to any item if all events have occurred which determine the fact of liability and the amount of such liability can be determined with reasonable accuracy.

(5) Subsection not to apply to certain items

This subsection shall not apply to any item for which a deduction is allowable under a provision of this title which specifically provides for a deduction for a reserve for estimated expenses.

(i) Special rules for tax shelters

(1) Recurring item exception not to apply

In the case of a tax shelter, economic performance shall be determined without regard to paragraph (3) of subsection (h).

(2) Special rule for spudding of oil or gas wells

(A) In general

In the case of a tax shelter, economic performance with respect to amounts paid dur-

ing the taxable year for drilling an oil or gas well shall be treated as having occurred within a taxable year if drilling of the well commences before the close of the 90th day after the close of the taxable year.

(B) Deduction limited to cash basis

(i) Tax shelter partnerships

In the case of a tax shelter which is a partnership, in applying section 704(d) to a deduction or loss for any taxable year attributable to an item which is deductible by reason of subparagraph (A), the term ''cash basis'' shall be substituted for the term ''adjusted basis''.

(ii) Other tax shelters

Under regulations prescribed by the Secretary, in the case of a tax shelter other than a partnership, the aggregate amount of the deductions allowable by reason of subparagraph (A) for any taxable year shall be limited in a manner similar to the limitation under clause (i).

(C) Cash basis defined

For purposes of subparagraph (B), a partner's cash basis in a partnership shall be equal to the adjusted basis of such partner's interest in the partnership, determined without regard to—

(i) any liability of the partnership, and

(ii) any amount borrowed by the partner with respect to such partnership which—

(I) was arranged by the partnership or by any person who participated in the organization, sale, or management of the partnership (or any person related to such person within the meaning of section 465(b)(3)(C)), or

(II) was secured by any asset of the partnership.

(3) Tax shelter defined

For purposes of this subsection, the term ''tax shelter'' means—

(A) any enterprise (other than a C corporation) if at any time interests in such enterprise have been offered for sale in any offering required to be registered with any Federal or State agency having the authority to regulate the offering of securities for sale,

(B) any syndicate (within the meaning of section 1256(e)(3)(B)), and

(C) any tax shelter (as defined in section 6662(d)(2)(C)(ii)).

(4) Special rules for farming

In the case of the trade or business of farming (as defined in section 464(e)), in determining whether an entity is a tax shelter, the definition of farming syndicate in section 464(c) shall be substituted for subparagraphs (A) and (B) of paragraph (3).

(5) Economic performance

For purposes of this subsection, the term ''economic performance'' has the meaning given such term by subsection (h).

(j) Limitation on excess farm losses of certain taxpayers

(1) Limitation

If a taxpayer other than a C corporation receives any applicable subsidy for any taxable year, any excess farm loss of the taxpayer for the taxable year shall not be allowed.

(2) Disallowed loss carried to next taxable year

Any loss which is disallowed under paragraph (1) shall be treated as a deduction of the taxpayer attributable to farming businesses in the next taxable year.

(3) Applicable subsidy

For purposes of this subsection, the term ''applicable subsidy'' means—

(A) any direct or counter-cyclical payment under title I of the Food, Conservation, and Energy Act of 2008, or any payment elected to be received in lieu of any such payment, or

(B) any Commodity Credit Corporation loan.

(4) Excess farm loss

For purposes of this subsection—

(A) In general

The term ''excess farm loss'' means the excess of—

(i) the aggregate deductions of the taxpayer for the taxable year which are attributable to farming businesses of such taxpayer (determined without regard to whether or not such deductions are disallowed for such taxable year under paragraph (1)), over

(ii) the sum of—

(I) the aggregate gross income or gain of such taxpayer for the taxable year which is attributable to such farming businesses, plus

(II) the threshold amount for the taxable year.

(B) Threshold amount

(i) In general

The term ''threshold amount'' means, with respect to any taxable year, the greater of—

(I) $300,000 ($150,000 in the case of married individuals filing separately), or

(II) the excess (if any) of the aggregate amounts described in subparagraph (A)(ii)(I) for the 5-consecutive taxable year period preceding the taxable year over the aggregate amounts described in subparagraph (A)(i) for such period.

(ii) Special rules for determining aggregate amounts

For purposes of clause (i)(II)—

(I) notwithstanding the disregard in subparagraph (A)(i) of any disallowance under paragraph (1), in the case of any loss which is carried forward under paragraph (2) from any taxable year, such loss (or any portion thereof) shall be taken into account for the first taxable year in which a deduction for such loss (or portion) is not disallowed by reason of this subsection, and

(II) the Secretary shall prescribe rules for the computation of the aggregate amounts described in such clause in cases where the filing status of the taxpayer is not the same for the taxable

year and each of the taxable years in the period described in such clause.

(C) Farming business

(i) In general

The term ''farming business'' has the meaning given such term in section 263A(e)(4).

(ii) Certain trades and businesses included

If, without regard to this clause, a taxpayer is engaged in a farming business with respect to any agricultural or horticultural commodity—

(I) the term ''farming business'' shall include any trade or business of the taxpayer of the processing of such commodity (without regard to whether the processing is incidental to the growing, raising, or harvesting of such commodity), and

(II) if the taxpayer is a member of a cooperative to which subchapter T applies, any trade or business of the cooperative described in subclause (I) shall be treated as the trade or business of the taxpayer.

(D) Certain losses disregarded

For purposes of subparagraph (A)(i), there shall not be taken into account any deduction for any loss arising by reason of fire, storm, or other casualty, or by reason of disease or drought, involving any farming business.

(5) Application of subsection in case of partnerships and S corporations

In the case of a partnership or S corporation—

(A) this subsection shall be applied at the partner or shareholder level, and

(B) each partner's or shareholder's proportionate share of the items of income, gain, or deduction of the partnership or S corporation for any taxable year from farming businesses attributable to the partnership or S corporation, and of any applicable subsidies received by the partnership or S corporation during the taxable year, shall be taken into account by the partner or shareholder in applying this subsection to the taxable year of such partner or shareholder with or within which the taxable year of the partnership or S corporation ends.

The Secretary may provide rules for the application of this paragraph to any other pass-thru entity to the extent necessary to carry out the provisions of this subsection.

(6) Additional reporting

The Secretary may prescribe such additional reporting requirements as the Secretary determines appropriate to carry out the purposes of this subsection.

(7) Coordination with section 469

This subsection shall be applied before the application of section 469.

(Aug. 16, 1954, ch. 736, 68A Stat. 157; Pub. L. 86–781, §6(a), Sept. 14, 1960, 74 Stat. 1020; Pub. L. 87–876, §3(a), Oct. 24, 1962, 76 Stat. 1199; Pub. L. 88–272, title II, §223(a)(1), Feb. 26, 1964, 78 Stat. 76; Pub. L. 94–455, title II, §208(a), title XIX, §§1901(a)(69), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1541, 1775, 1834; Pub. L. 98–369, div. A, title I, §91(a), (e), July 18, 1984,98 Stat. 598, 607; Pub. L. 99–514, title VIII, §§801(b), 805(c)(5), 823(b)(1), title XVIII, §1807(a)(1), (2), Oct. 22, 1986, 100 Stat. 2347, 2362, 2374, 2811; Pub. L. 100–203, title X, §10201(b)(5), Dec. 22, 1987, 101 Stat. 1330–387; Pub. L. 100–647, title I, §§1008(a)(3), 1018(u)(5), Nov. 10, 1988, 102 Stat. 3436, 3590; Pub. L. 101–239, title VII, §7721(c)(10), Dec. 19, 1989, 103 Stat. 2400; Pub. L. 101–508, title XI, §11704(a)(5), Nov. 5, 1990, 104 Stat. 1388–518; Pub. L. 104–188, title I, §1704(t)(24), (78), Aug. 20, 1996, 110 Stat. 1888, 1891; Pub. L. 109–135, title IV, §412(aa), Dec. 21, 2005, 119 Stat. 2638; Pub. L. 110–234, title XV, §15351(a), May 22, 2008, 122 Stat. 1523; Pub. L. 110–246, §4(a), title XV, §15351(a), June 18, 2008, 122 Stat. 1664, 2285.)

REFERENCES IN TEXT

The Food, Conservation, and Energy Act of 2008, referred to in subsec. (j)(3)(A), is Pub. L. 110–246, June 18, 2008, 122 Stat. 1651. Title I of the Act is classified principally to chapter 113 (§8701 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 8701 of Title 7 and Tables.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Subsec. (j). Pub. L. 110–246, §15351(a), added subsec. (j).

2005—Subsec. (i)(3)(C). Pub. L. 109–135 substituted ''section 6662(d)(2)(C)(ii)'' for ''section 6662(d)(2)(C)(iii)''.

1996—Subsec. (i)(3)(C). Pub. L. 104–188, §1704(t)(78), substituted ''section 6662(d)(2)(C)(iii)'' for ''section 6662(d)(2)(C)(ii)''.

Pub. L. 104–188, §1704(t)(24), amended directory language of Pub. L. 101–239. See 1989 Amendment note below.

1990—Subsec. (i)(3)(C). Pub. L. 101–508 amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''any tax shelter (within the meaning of section 6662(d)(2)(C)(ii)).''

1989—Subsec. (i)(3)(C). Pub. L. 101–239, as amended by Pub. L. 104–188, §1704(t)(24), substituted ''section 6662(d)(2)(C)(ii)'' for ''section 6661(b)(2)(C)(ii)''.

1988—Subsec. (h)(5)(B), (C). Pub. L. 100–647, §1018(u)(5), amended Pub. L. 99–514, §823(b)(1). See 1986 Amendment note below.

Subsec. (i)(2). Pub. L. 100–647, §1008(a)(3), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''In the case of a tax shelter, economic performance with respect to the act of drilling an oil or gas well shall be treated as having occurred within a taxable year if drilling of the well commences before the close of the 90th day after the close of the taxable year.''

1987—Subsec. (h)(5). Pub. L. 100–203 substituted ''items'' for ''cases to which other provisions of this title specifically apply'' in heading and amended text generally. Prior to amendment, text read as follows: ''This subsection shall not apply to any item to which any of the following provisions apply:

''(A) Section 463 (relating to vacation pay).

''(B) Any other provisions of this title which specifically provides for a deduction for a reserve for estimated expenses.''

1986—Subsec. (h)(5)(A). Pub. L. 99–514, §805(c)(5), redesignated subpar. (B) as (A) and struck out former subpar. (A) which referred to subsec. (c) or (f) of section 166.

Subsec. (h)(5)(B). Pub. L. 99–514, § 823(b)(1), as amended by Pub. L. 100–647, § 1018(u)(5), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: ''Section 466 (relating to discount coupons).''

Pub. L. 99–514, § 805(c)(5), redesignated subpar. (C) as (B). Former subpar. (B) redesignated (A).

Subsec. (h)(5)(C). Pub. L. 99–514, § 823(b)(1), as amended by Pub. L. 100–647, § 1018(u)(5), redesignated subpar. (C) as (B).

Pub. L. 99–514, § 805(c)(5), redesignated subpar. (D) as (C). Former subpar. (C) redesignated (B).

Subsec. (h)(5)(D). Pub. L. 99–514, § 805(c)(5), redesignated subpar. (D) as (C).

Subsec. (i). Pub. L. 99–514, § 801(b)(1), substituted ''Special rules for tax shelters'' for ''Tax shelters may not deduct items earlier than when economic performance occurs'' in heading.

Subsec. (i)(1). Pub. L. 99–514, § 801(b)(1), substituted ''Recurring item exception not to apply'' for ''In general'' in heading and amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''In the case of a tax shelter computing taxable income under the cash receipts and disbursements method of accounting, such tax shelter shall not be allowed a deduction under this chapter with respect to any item any earlier than the time when such item would be treated as incurred under subsection (h) (determined without regard to paragraph (3) thereof).''

Subsec. (i)(2). Pub. L. 99–514, § 801(b)(1), amended par. (2) generally, substituting provisions relating to special rule for spudding of oil or gas wells for former provisions consisting of subpars. (A) to (D) which related to deduction of items when economic performance occurs on or before 90th day after close of the taxable year to the extent of cash basis.

Pub. L. 99–514, § 1807(a)(1), substituted ''on or before the 90th day'' for ''within 90 days'' in heading and substituted ''before the close of the 90th day after the close of the taxable year'' for ''within 90 days after the close of the taxable year'' in subpar. (A).

Subsec. (i)(4). Pub. L. 99–514, § 801(b)(2), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''In the case of the trade or business of farming (as defined in section 464(e))—

''(A) any tax shelter described in paragraph (3)(C) shall be treated as a farming syndicate for purposes of section 464; except that this subparagraph shall not apply for purposes of determining the income of an individual meeting the requirements of section 464(c)(2),

''(B) section 464 shall be applied before this subsection, and

''(C) in determining whether an entity is a tax shelter, the definition of farming syndicate in section 464(c) shall be substituted for subparagraphs (A) and (B) of paragraph (3).''

Subsec. (i)(4)(A). Pub. L. 99–514, § 1807(a)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''section 464 shall be applied to any tax shelter described in paragraph (3)(C),''.

1984—Subsec. (f)(4). Pub. L. 98–369, § 91(e), inserted ''determined after application of subsection (h)''.

Subsecs. (h), (i). Pub. L. 98–369, § 91(a), added subsecs. (h) and (i).

1976—Subsec. (c)(2), (3). Pub. L. 94–455, §§ 1901(a)(69)(A), (B), 1906(b)(13)(A), redesignated par. (3) as (2), substituted ''in which he'' for ''which begins after December 31, 1953, and ends after the date of the enactment of this title in which the taxpayer'', and struck out ''or his delegate'' after ''Secretary'' wherever appearing. Former par. (2), which related to special limitations on the applicability of par. (1), was struck out.

Subsecs. (d), (e). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' wherever appearing.

Subsec. (g). Pub. L. 94–455, § 208(a), added subsec. (g).

1964—Subsec. (f). Pub. L. 88–272 added subsec. (f).

1962—Subsec. (e). Pub. L. 87–876 added subsec. (e).

1960—Subsec. (d). Pub. L. 86–781 added subsec. (d).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110–234, title XV, § 15351(b), May 22, 2008, 122 Stat. 1525, and Pub. L. 110–246, § 4(a), title XV, § 15351(b), June 18, 2008, 122 Stat. 1664, 2287, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009.''

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7721(d) of Pub. L. 101–239 provided that: ''The amendments made by this section [enacting sections 6662 to 6665 of this title, amending this section and sections 1274, 5684, 5761, 6013, 6222, 6601, 6621, 6653, 6672, and 7519 of this title, and repealing sections 6659, 6659A, 6660, 6661, and former section 6662 of this title] shall apply to returns the due date for which (determined without regard to extensions) is after December 31, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to taxable years beginning after Dec. 31, 1987, see section 10201(c)(1) of Pub. L. 100–203, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 801(b) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 801(d) of Pub. L. 99–514, set out as an Effective Date note under section 448 of this title.

Amendment by section 805(c)(5) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain changes required in method of accounting, see section 805(d) of Pub. L. 99–514, set out as a note under section 166 of this title.

Amendment by section 823 of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with changes required in the method of accounting, see section 823(c) of Pub. L. 99–514, set out as an Effective Date of Repeal note under section 466 of this title.

Amendment by section 1807(a)(1), (2) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 91(g)–(i) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, title XVIII, § 1807(a)(3)(B), (4)(F), (5), (6), Oct. 22, 1986, 100 Stat. 2095, 2811, 2813, 2814, provided that:

''(g) EFFECTIVE DATES.—

''(1) IN GENERAL.—Except as provided in this subsection and subsections (h) and (i), the amendments made by this section [enacting sections 88, 468, and 468A of this title and amending this section and section 172 of this title] shall apply to amounts with re-

spect to which a deduction would be allowable under chapter 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (determined without regard to such amendments) after—

''(A) in the case of amounts to which section 461(h) of such Code (as added by such amendments) applies, the date of the enactment of this Act [July 18, 1984], and

''(B) in the case of amounts to which section 461(i) of such Code (as so added) applies, after March 31, 1984.

''(2) TAXPAYER MAY ELECT EARLIER APPLICATION.—

''(A) IN GENERAL.—In the case of amounts described in paragraph (1)(A), a taxpayer may elect to have the amendments made by this section apply to amounts which—

''(i) are incurred on or before the date of the enactment of this Act [July 18, 1984] (determined without regard to such amendments), and

''(ii) are incurred after the date of the enactment of this Act (determined with regard to such amendments).

The Secretary of the Treasury or his delegate may by regulations provide that (in lieu of an election under the preceding sentence) a taxpayer may (subject to such conditions as such regulations may provide) elect to have subsection (h) of section 461 of such Code apply to the taxpayer's entire taxable year in which occurs July 19, 1984.

''(B) ELECTION TREATED AS CHANGE IN THE METHOD OF ACCOUNTING.—For purposes of section 481 of the Internal Revenue Code of 1986, if an election is made under subparagraph (A) with respect to any amount, the application of the amendments made by this section shall be treated as a change in method of accounting—

''(i) initiated by the taxpayer,

''(ii) made with the consent of the Secretary of the Treasury, and

''(iii) with respect to which section 481 of such Code shall be applied by substituting a 3-year adjustment period for a 10-year adjustment period.

''(3) SECTION 461(h) TO APPLY IN CERTAIN CASES.—Notwithstanding paragraph (1), section 461(h) of the Internal Revenue Code of 1986 (as added by this section) shall be treated as being in effect to the extent necessary to carry out any amendments made by this section which take effect before section 461(h).

''(4) EFFECTIVE DATE FOR TREATMENT OF MINING AND SOLID WASTE RECLAMATION AND CLOSING COSTS.—Except as otherwise provided in subsection (h), the amendments made by subsection (b) [enacting section 468 of this title] shall take effect on the date of the enactment of this Act [July 18, 1984] with respect to taxable years ending after such date.

''(5) RULES FOR NUCLEAR DECOMMISSIONING COSTS.—The amendments made by subsections (c) and (f) [enacting sections 88 and 468A of this title] shall take effect on the date of the enactment of this Act [July 18, 1984] with respect to taxable years ending after such date.

''(6) MODIFICATION OF NET OPERATING LOSS CARRYBACK PERIOD.—The amendments made by subsection (d) [amending section 172 of this title] shall apply to losses for taxable years beginning after December 31, 1983.

''(h) EXCEPTION FOR CERTAIN EXISTING ACTIVITIES AND CONTRACTS.—If—

''(1) EXISTING ACCOUNTING PRACTICES.—If, on March 1, 1984, any taxpayer was regularly computing his deduction for mining reclamation activities under a current cost method of accounting (as determined by the Secretary of the Treasury or his delegate), the liability for reclamation activities—

''(A) for land disturbed before the date of the enactment of this Act [July 18, 1984], or

''(B) to which paragraph (2) applies,

shall be treated as having been incurred when the land was disturbed.

''(2) FIXED PRICE SUPPLY CONTRACT.—

''(A) IN GENERAL.—In the case of any fixed price supply contract entered into before March 1, 1984, the amendments made by subsection (b) [enacting section 468 of this title] shall not apply to any minerals extracted from such property which are sold pursuant to such contract.

''(B) NO EXTENSION OR RENEGOTIATION.—Subparagraph (A) shall not apply—

''(i) to any extension of any contract beyond the period such contract was in effect on March 1, 1984, or

''(ii) to any renegotiation of, or other change in, the terms and conditions of such contract in effect on March 1, 1984.

''(i) TRANSITIONAL RULE FOR ACCRUED VACATION PAY.—

''(1) IN GENERAL.—In the case of any taxpayer—

''(A) with respect to whom a deduction was allowable (other than under section 463 of the Internal Revenue Code of 1986) for vested accrued vacation pay for the last taxable year ending before the date of the enactment of this Act [July 18, 1984], and

''(B) who elects the application of section 463 of such Code for the first taxable year ending after the date of the enactment of this Act,

then, for purposes of section 463(b) of such Code, the opening balance of the taxpayer with respect to any vested accrued vacation pay shall be determined under section 463(b)(1) of such Code.

''(2) VESTED ACCRUED VACATION PAY.—For purposes of this subsection, the term 'vested accrued vacation pay' means any amount allowable under section 162(a) of such Code with respect to vacation pay of employees of the taxpayer (determined without regard to section 463 of such Code).''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(69) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Section 208(b) of Pub. L. 94–455 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to amounts paid after December 31, 1975, in taxable years ending after such date.

''(2) CERTAIN AMOUNTS PAID BEFORE 1977.—The amendment made by subsection (a) [amending this section] shall not apply to amounts paid before January 1, 1977, pursuant to a binding contract or written loan commitment which existed on September 16, 1975 (and at all times thereafter), and which required prepayment of such amounts by the taxpayer.''

EFFECTIVE DATE OF 1964 AMENDMENT

Section 223(b) of Pub. L. 88–272 provided that: ''Except as provided in subsections (c) and (d) [set out below]—

''(1) the amendment made by subsection (a)(1) [amending this section] shall apply to taxable years beginning after December 31, 1953, and ending after August 16, 1954, and

''(2) the amendment made by subsection (a)(2) [amending section 43 of the Internal Revenue Code of 1939] shall apply to taxable years to which the Internal Revenue Code of 1939 applies.''

EFFECTIVE DATE OF 1962 AMENDMENT

Section 3(b) of Pub. L. 87–876 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to taxable years ending after December 31, 1962.''

EFFECTIVE DATE OF 1960 AMENDMENT

Section 6(b) of Pub. L. 86–781 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after December 31, 1960.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TRANSITIONAL RULE FOR CERTAIN AMOUNTS

Section 1807(a)(8) of Pub. L. 99–514 provided that: ''For purposes of section 461(h) of the Internal Revenue Code of 1954 [now 1986], economic performance shall be treated as occurring on the date of a payment to an insurance company if—

''(A) such payment was made before November 23, 1985, for indemnification against a tort liability relating to personal injury or death caused by inhalation or ingestion of dust from asbestos-containing insulation products,

''(B) such insurance company is unrelated to taxpayer,

''(C) such payment is not refundable, and

''(D) the taxpayer is not engaged in the mining of asbestos nor is any member of any affiliated group which includes the taxpayer so engaged.''

TRANSITION RULE

Section 1807(c) of Pub. L. 99–514 provided that: ''A taxpayer shall be allowed to use the cash receipts and disbursements method of accounting for taxable years ending after January 1, 1982, if such taxpayer—

''(1) is a partnership which was founded in 1936,

''(2) has over 1,000 professional employees,

''(3) used a long-term contract method of accounting for a substantial part of its income from the performance of architectural and engineering services, and

''(4) is headquartered in Chicago, Illinois.''

ELECTION AS TO TRANSFERS IN TAXABLE YEARS BEGINNING BEFORE JAN. 1, 1964

Section 223(c) of Pub. L. 88–272 provided that:

''(1) The amendments made by subsection (a) [amending this section and section 43 of the Internal Revenue Code of 1939] shall not apply to any transfer of money or other property described in subsection (a) made in a taxable year beginning before January 1, 1964, if the taxpayer elects, in the manner provided by regulations prescribed by the Secretary of the Treasury or his delegate, to have this paragraph apply. Such an election—

''(A) must be made within one year after the date of the enactment of this Act [Feb. 26, 1964],

''(B) may not be revoked after the expiration of such one-year period, and

''(C) shall apply to all transfers described in the first sentence of this paragraph (other than transfers described in paragraph (2)).

In the case of any transfer to which this paragraph applies, the deduction shall be allowed only for the taxable year in which the contest with respect to such transfer is settled.

''(2) Paragraph (1) shall not apply to any transfer if the assessment of any deficiency which would result from the application of the election in respect of such transfer is, on the date of the election under paragraph (1), prevented by the operation of any law or rule of law.

''(3) If the taxpayer makes an election under paragraph (1), and if, on the date of such election, the assessment of any deficiency which results from the application of the election in respect of any transfer is not prevented by the operation of any law or rule of law, the period within which assessment of such deficiency may be made shall not expire earlier than 2 years after the date of the enactment of this Act [Feb. 26, 1964].''

CERTAIN OTHER TRANSFERS IN TAXABLE YEARS BEGINNING BEFORE JAN. 1, 1964

Section 223(d) of Pub. L. 88–272 provided that: ''The amendments made by subsection (a) [amending this section and section 43 of the Internal Revenue Code of 1939] shall not apply to any transfer of money or other property described in subsection (a) made in a taxable year beginning before January 1, 1964, if—

''(1) no deduction has been allowed in respect of such transfer for any taxable year before the taxable year in which the contest with respect to such transfer is settled, and

''(2) refund or credit of any overpayment which would result from the application of such amendments to such transfer is prevented by the operation of any law or rule of law.

In the case of any transfer to which this subsection applies, the deduction shall be allowed for the taxable year in which the contest with respect to such transfer is settled.''

[§ 462. Repealed. June 15, 1955, ch. 143, § 1(b), 69 Stat. 134]

Section, act Aug. 16, 1954, ch. 736 68A Stat. 158, related to reserves for estimated expenses.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 3 of Act June 15, 1955, set out as an Effective Date of 1955 Amendment note under section 381 of this title.

SAVINGS PROVISION

For provisions concerning increase in tax in any taxable year ending on or before June 15, 1955 by reason of enactment of act June 15, 1955, see section 4 of act June 15, 1955, set out as a note under section 381 of this title.

[§ 463. Repealed. Pub. L. 100–203, title X, § 10201(a), Dec. 22, 1987, 101 Stat. 1330–387]

Section, added Pub. L. 93–625, § 4(a), Jan. 3, 1974, 88 Stat. 2109; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title V, § 561(a), July 18, 1984, 98 Stat. 901; Pub. L. 99–514, title XI, § 1165(a), Oct. 22, 1986, 100 Stat. 2511, related to deduction allowable for accrual basis taxpayers under section 162(a) of this title with respect to vacation pay.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1987, see section 10201(c)(1) of Pub. L. 100–203, set out as an Effective Date of 1987 Amendment note under section 404 of this title.

CHANGE IN METHOD OF ACCOUNTING REQUIRED BY PUB. L. 100–203

Pub. L. 100–203, title X, § 10201(c)(2), Dec. 22, 1987, 101 Stat. 1330–388, provided that: ''In the case of any taxpayer who elected to have section 463 of the Internal Revenue Code of 1986 apply for such taxpayer's last taxable year beginning before January 1, 1988, and who is required to change his method of accounting by reason of the amendments made by this section [amending sections 404, 419, and 461 of this title, repealing sections 81 and 463 of this title, and enacting provisions set out as a note under section 404 of this title]—

''(A) such change shall be treated as initiated by the taxpayer,

''(B) such change shall be treated as having been made with the consent of the Secretary, and

''(C) the net amount of adjustments required by section 481 of such Code to be taken into account by the taxpayer—

''(i) shall be reduced by the balance in the suspense account under section 463(c) of such Code as of the close of such last taxable year, and

''(ii) shall be taken into account over the 4-taxable year period beginning with the taxable year following such last taxable year as follows:

"In the case of the:	The percentage taken into account is:
1st year	25
2nd year	5
3rd year	35
4th year	35.

Notwithstanding subparagraph (C)(ii), if the period the adjustments are required to be taken into account under section 481 of such Code is less than 4 years, such adjustments shall be taken into account ratably over such shorter period.''

§ 464. Limitations on deductions for certain farming

(a) General rule

In the case of any farming syndicate (as defined in subsection (c)), a deduction (otherwise allowable under this chapter) for amounts paid for feed, seed, fertilizer, or other similar farm supplies shall only be allowed for the taxable year in which such feed, seed, fertilizer, or other supplies are actually used or consumed, or, if later, for the taxable year for which allowable as a deduction (determined without regard to this section).

(b) Certain poultry expenses

In the case of any farming syndicate (as defined in subsection (c))—

(1) the cost of poultry (including egg-laying hens and baby chicks) purchased for use in a trade or business (or both for use in a trade or business and for sale) shall be capitalized and deducted ratably over the lesser of 12 months or their useful life in the trade or business, and

(2) the cost of poultry purchased for sale shall be deducted for the taxable year in which the poultry is sold or otherwise disposed of.

(c) Farming syndicate defined

(1) In general

For purposes of this section, the term ''farming syndicate'' means—

(A) a partnership or any other enterprise other than a corporation which is not an S corporation engaged in the trade or business of farming, if at any time interests in such partnership or enterprise have been offered for sale in any offering required to be registered with any Federal or State agency having authority to regulate the offering of securities for sale, or

(B) a partnership or any other enterprise other than a corporation which is not an S corporation engaged in the trade or business of farming, if more than 35 percent of the losses during any period are allocable to limited partners or limited entrepreneurs.

(2) Holdings attributable to active management

For purposes of paragraph (1)(B), the following shall be treated as an interest which is not held by a limited partner or a limited entrepreneur:

(A) in the case of any individual who has actively participated (for a period of not less than 5 years) in the management of any trade or business of farming, any interest in a partnership or other enterprise which is attributable to such active participation,

(B) in the case of any individual whose principal residence is on a farm, any partnership or other enterprise engaged in the trade or business of farming such farm,

(C) in the case of any individual who is actively participating in the management of any trade or business of farming or who is an individual who is described in subparagraph (A) or (B), any participation in the further processing of livestock which was raised in such trade or business (or in the trade or business referred to in subparagraph (A) or (B)),

(D) in the case of an individual whose principal business activity involves active participation in the management of a trade or business of farming, any interest in any other trade or business of farming, and,

(E) any interest held by a member of the family (or a spouse of any such member) or a grandparent of an individual described in subparagraph (A), (B), (C), or (D) if the interest in the partnership or the enterprise is attributable to the active participation of the individual described in subparagraph (A), (B), (C), or (D).

For purposes of subparagraph (A), where one farm is substituted for or added to another farm, both farms shall be treated as one farm. For purposes of subparagraph (E), the term ''family'' has the meaning given to such term by section 267(c)(4).

(d) Exception

Subsection (a) shall not apply to any amount paid for supplies which are on hand at the close of the taxable year on account of fire, storm, or other casualty, or on account of disease or drought.

(e) Definitions

For purposes of this section—

(1) Farming

The term ''farming'' means the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity including the raising, shearing, feeding, caring for, training, and management of animals. For purposes of the preceding sentence, trees (other than trees bearing fruit or nuts) shall not be treated as an agricultural or horticultural commodity.

(2) Limited entrepreneur

The term ''limited entrepreneur'' means a person who—

(A) has an interest in an enterprise other than as a limited partner, and

(B) does not actively participate in the management of such enterprise.

(f) Subsections (a) and (b) to apply to certain persons prepaying 50 percent or more of certain farming expenses

(1) In general

In the case of a taxpayer to whom this subsection applies, subsections (a) and (b) shall apply to the excess prepaid farm supplies of

such taxpayer in the same manner as if such taxpayer were a farming syndicate.

(2) Taxpayer to whom subsection applies

This subsection applies to any taxpayer for any taxable year if such taxpayer—

(A) does not use an accrual method of accounting,

(B) has excess prepaid farm supplies for the taxable year, and

(C) is not a qualified farm-related taxpayer.

(3) Qualified farm-related taxpayer

(A) In general

For purposes of this subsection, the term ''qualified farm-related taxpayer'' means any farm-related taxpayer if—

(i)(I) the aggregate prepaid farm supplies for the 3 taxable years preceding the taxable year are less than 50 percent of,

(II) the aggregate deductible farming expenses (other than prepaid farm supplies) for such 3 taxable years, or

(ii) the taxpayer has excess prepaid farm supplies for the taxable year by reason of any change in business operation directly attributable to extraordinary circumstances.

(B) Farm-related taxpayer

For purposes of this paragraph, the term ''farm-related taxpayer'' means any taxpayer—

(i) whose principal residence (within the meaning of section 121) is on a farm,

(ii) who has a principal occupation of farming, or

(iii) who is a member of the family (within the meaning of subsection (c)(2)(E)) of a taxpayer described in clause (i) or (ii).

(4) Definitions

For purposes of this subsection—

(A) Excess prepaid farm supplies

The term ''excess prepaid farm supplies'' means the prepaid farm supplies for the taxable year to the extent the amount of such supplies exceeds 50 percent of the deductible farming expenses for the taxable year (other than prepaid farm supplies).

(B) Prepaid farm supplies

The term ''prepaid farm supplies'' means any amounts which are described in subsection (a) or (b) and would be allowable for a subsequent taxable year under the rules of subsections (a) and (b).

(C) Deductible farming expenses

The term ''deductible farming expenses'' means any amount allowable as a deduction under this chapter (including any amount allowable as a deduction for depreciation or amortization) which is properly allocable to the trade or business of farming.

(g) Termination

Except as provided in subsection (f), subsections (a) and (b) shall not apply to any taxable year beginning after December 31, 1986.

(Added Pub. L. 94–455, title II, § 207(a)(1), Oct. 4, 1976, 90 Stat. 1536; amended Pub. L. 95–600, title VII, § 701(*l*)(3), Nov. 6, 1978, 92 Stat. 2907; Pub. L. 97–354, § 5(a)(30), Oct. 19, 1982, 96 Stat. 1695; Pub. L. 99–514, title IV, § 404(a), (b)(1), title VIII, § 803(b)(8), Oct. 22, 1986, 100 Stat. 2223, 2224, 2356; Pub. L. 100–647, title I, § 1008(a)(4), Nov. 10, 1988, 102 Stat. 3437; Pub. L. 105–34, title III, § 312(d)(1), Aug. 5, 1997, 111 Stat. 839.)

AMENDMENTS

1997—Subsec. (f)(3)(B)(i). Pub. L. 105–34 substituted ''section 121'' for ''section 1034''.

1988—Subsec. (g). Pub. L. 100–647 added subsec. (g).

1986—Pub. L. 99–514, § 404(b)(1), substituted ''for certain farming'' for ''in case of farming syndicates'' in section catchline.

Subsec. (d). Pub. L. 99–514, § 803(b)(8), substituted ''Exception'' for ''Exceptions'' as heading and amended text generally. Prior to amendment, text read as follows: ''Subsection (a) shall not apply to—

''(1) any amount paid for supplies which are on hand at the close of the taxable year on account of fire, storm, flood, or other casualty or on account of disease or drought, or

''(2) any amount required to be charged to capital account under section 278.''

Subsec. (f). Pub. L. 99–514, § 404(a), added subsec. (f).

1982—Subsec. (c)(1)(A), (B). Pub. L. 97–354 substituted ''an S corporation'' for ''an electing small business corporation (as defined in section 1371(b))''.

1978—Subsec. (c)(2). Pub. L. 95–600 substituted in subpar. (E) ''(or a spouse of any such member)'' for ''(within the meaning of section 267(c)(4))'' and provided that for purposes of subpar. (E) the term ''family'' has the meaning given to such term by section 267(c)(4).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

If any interest costs incurred after Dec. 31, 1986, are attributable to costs incurred before Jan. 1, 1987, the amendment by section 803(b)(8) of Pub. L. 99–514 is applicable to such interest costs only to the extent such interest costs are attributable to costs which were required to be capitalized under section 263 of the Internal Revenue Code of 1954 and which would have been taken into account in applying section 189 of the Internal Revenue Code of 1954 (as in effect before its repeal by section 803 of Pub. L. 99–514) or, if applicable, section 266 of such Code, see section 7831(d)(2) of Pub. L. 101–239, set out as an Effective Date note under section 263A of this title.

Section 404(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section] shall apply to amounts paid or incurred after March 1, 1986, in taxable years beginning after such date.''

Amendment by section 803(b)(8) of Pub. L. 99–514 applicable to costs incurred after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 803(d) of Pub. L. 99–514, set out as an Effective Date note under section 263A of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of

Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective as if included in this section or section 447 of this title at the time of their enactment, Oct. 4, 1976, see section 701(*l*)(4) of Pub. L. 95–600, set out as a note under section 447 of this title.

EFFECTIVE DATE

Section 207(a)(3) of Pub. L. 94–455 provided that:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection [enacting this section] shall apply to taxable years beginning after December 31, 1975.

''(B) TRANSITIONAL RULE.—In the case of a farming syndicate in existence on December 31, 1975, and for which there was no change of membership throughout its taxable year beginning in 1976, the amendments made by this subsection shall apply to taxable years beginning after December 31, 1976.''

§ 465. Deductions limited to amount at risk

(a) Limitation to amount at risk

(1) In general

In the case of—

(A) an individual, and

(B) a C corporation with respect to which the stock ownership requirement of paragraph (2) of section 542(a) is met,

engaged in an activity to which this section applies, any loss from such activity for the taxable year shall be allowed only to the extent of the aggregate amount with respect to which the taxpayer is at risk (within the meaning of subsection (b)) for such activity at the close of the taxable year.

(2) Deduction in succeeding year

Any loss from an activity to which this section applies not allowed under this section for the taxable year shall be treated as a deduction allocable to such activity in the first succeeding taxable year.

(3) Special rules for applying paragraph (1)(B)

For purposes of paragraph (1)(B)—

(A) section 544(a)(2) shall be applied as if such section did not contain the phrase ''or by or for his partner''; and

(B) sections 544(a)(4)(A) and 544(b)(1) shall be applied by substituting ''the corporation meet the stock ownership requirements of section 542(a)(2)'' for ''the corporation a personal holding company''.

(b) Amounts considered at risk

(1) In general

For purposes of this section, a taxpayer shall be considered at risk for an activity with respect to amounts including—

(A) the amount of money and the adjusted basis of other property contributed by the taxpayer to the activity, and

(B) amounts borrowed with respect to such activity (as determined under paragraph (2)).

(2) Borrowed amounts

For purposes of this section, a taxpayer shall be considered at risk with respect to amounts borrowed for use in an activity to the extent that he—

(A) is personally liable for the repayment of such amounts, or

(B) has pledged property, other than property used in such activity, as security for such borrowed amount (to the extent of the net fair market value of the taxpayer's interest in such property).

No property shall be taken into account as security if such property is directly or indirectly financed by indebtedness which is secured by property described in paragraph (1).

(3) Certain borrowed amounts excluded

(A) In general

Except to the extent provided in regulations, for purposes of paragraph (1)(B), amounts borrowed shall not be considered to be at risk with respect to an activity if such amounts are borrowed from any person who has an interest in such activity or from a related person to a person (other than the taxpayer) having such an interest.

(B) Exceptions

(i) Interest as creditor

Subparagraph (A) shall not apply to an interest as a creditor in the activity.

(ii) Interest as shareholder with respect to amounts borrowed by corporation

In the case of amounts borrowed by a corporation from a shareholder, subparagraph (A) shall not apply to an interest as a shareholder.

(C) Related person

For purposes of this subsection, a person (hereinafter in this paragraph referred to as the ''related person'') is related to any person if—

(i) the related person bears a relationship to such person specified in section 267(b) or section 707(b)(1), or

(ii) the related person and such person are engaged in trades or business under common control (within the meaning of subsections (a) and (b) of section 52).

For purposes of clause (i), in applying section 267(b) or 707(b)(1), ''10 percent'' shall be substituted for ''50 percent''.

(4) Exception

Notwithstanding any other provision of this section, a taxpayer shall not be considered at risk with respect to amounts protected against loss through nonrecourse financing, guarantees, stop loss agreements, or other similar arrangements.

(5) Amounts at risk in subsequent years

If in any taxable year the taxpayer has a loss from an activity to which subsection (a) applies, the amount with respect to which a taxpayer is considered to be at risk (within the meaning of subsection (b)) in subsequent taxable years with respect to that activity shall be reduced by that portion of the loss which (after the application of subsection (a)) is allowable as a deduction.

(6) Qualified nonrecourse financing treated as amount at risk

For purposes of this section—

(A) In general

Notwithstanding any other provision of this subsection, in the case of an activity of holding real property, a taxpayer shall be considered at risk with respect to the taxpayer's share of any qualified nonrecourse financing which is secured by real property used in such activity.

(B) Qualified nonrecourse financing

For purposes of this paragraph, the term ''qualified nonrecourse financing'' means any financing—

(i) which is borrowed by the taxpayer with respect to the activity of holding real property,

(ii) which is borrowed by the taxpayer from a qualified person or represents a loan from any Federal, State, or local government or instrumentality thereof, or is guaranteed by any Federal, State, or local government,

(iii) except to the extent provided in regulations, with respect to which no person is personally liable for repayment, and

(iv) which is not convertible debt.

(C) Special rule for partnerships

In the case of a partnership, a partner's share of any qualified nonrecourse financing of such partnership shall be determined on the basis of the partner's share of liabilities of such partnership incurred in connection with such financing (within the meaning of section 752).

(D) Qualified person defined

For purposes of this paragraph—

(i) In general

The term ''qualified person'' has the meaning given such term by section 49(a)(1)(D)(iv).

(ii) Certain commercially reasonable financing from related persons

For purposes of clause (i), section 49(a)(1)(D)(iv) shall be applied without regard to subclause (I) thereof (relating to financing from related persons) if the financing from the related person is commercially reasonable and on substantially the same terms as loans involving unrelated persons.

(E) Activity of holding real property

For purposes of this paragraph—

(i) Incidental personal property and services

The activity of holding real property includes the holding of personal property and the providing of services which are incidental to making real property available as living accommodations.

(ii) Mineral property

The activity of holding real property shall not include the holding of mineral property.

(c) Activities to which section applies

(1) Types of activities

This section applies to any taxpayer engaged in the activity of—

(A) holding, producing, or distributing motion picture films or video tapes,

(B) farming (as defined in section 464(e)),

(C) leasing any section 1245 property (as defined in section 1245(a)(3)),

(D) exploring for, or exploiting, oil and gas resources as a trade or business or for the production of income, or

(E) exploring for, or exploiting, geothermal deposits (as defined in section 613(e)(2)).

(2) Separate activities

For purposes of this section—

(A) In general

Except as provided in subparagraph (B), a taxpayer's activity with respect to each—

(i) film or video tape,

(ii) section 1245 property which is leased or held for leasing,

(iii) farm,

(iv) oil and gas property (as defined under section 614), or

(v) geothermal property (as defined under section 614),

shall be treated as a separate activity.

(B) Aggregation rules

(i) Special rule for leases of section 1245 property by partnerships or S corporations

In the case of any partnership or S corporation, all activities with respect to section 1245 properties which—

(I) are leased or held for lease, and

(II) are placed in service in any taxable year of the partnership or S corporation,

shall be treated as a single activity.

(ii) Other aggregation rules

Rules similar to the rules of subparagraphs (B) and (C) of paragraph (3) shall apply for purposes of this paragraph.

(3) Extension to other activities

(A) In general

In the case of taxable years beginning after December 31, 1978, this section also applies to each activity—

(i) engaged in by the taxpayer in carrying on a trade or business or for the production of income, and

(ii) which is not described in paragraph (1).

(B) Aggregation of activities where taxpayer actively participates in management of trade or business

Except as provided in subparagraph (C), for purposes of this section, activities described in subparagraph (A) which constitute a trade or business shall be treated as one activity if—

(i) the taxpayer actively participates in the management of such trade or business, or

(ii) such trade or business is carried on by a partnership or an S corporation and 65 percent or more of the losses for the taxable year is allocable to persons who

actively participate in the management of the trade or business.

(C) Aggregation or separation of activities under regulations

The Secretary shall prescribe regulations under which activities described in subparagraph (A) shall be aggregated or treated as separate activities.

(D) Application of subsection (b)(3)

In the case of an activity described in subparagraph (A), subsection (b)(3) shall apply only to the extent provided in regulations prescribed by the Secretary.

(4) Exclusion for certain equipment leasing by closely-held corporations

(A) In general

In the case of a corporation described in subsection (a)(1)(B) actively engaged in equipment leasing—

(i) the activity of equipment leasing shall be treated as a separate activity, and

(ii) subsection (a) shall not apply to losses from such activity.

(B) 50-percent gross receipts test

For purposes of subparagraph (A), a corporation shall not be considered to be actively engaged in equipment leasing unless 50 percent or more of the gross receipts of the corporation for the taxable year is attributable, under regulations prescribed by the Secretary, to equipment leasing.

(C) Component members of controlled group treated as a single corporation

For purposes of subparagraph (A), the component members of a controlled group of corporations shall be treated as a single corporation.

(5) Waiver of controlled group rule where there is substantial leasing activity

(A) In general

In the case of the component members of a qualified leasing group, paragraph (4) shall be applied—

(i) by substituting ''80 percent'' for ''50 percent'' in subparagraph (B) thereof, and

(ii) as if paragraph (4) did not include subparagraph (C) thereof.

(B) Qualified leasing group

For purposes of this paragraph, the term ''qualified leasing group'' means a controlled group of corporations which, for the taxable year and each of the 2 immediately preceding taxable years, satisfied each of the following 3 requirements:

(i) At least 3 employees

During the entire year, the group had at least 3 full-time employees substantially all of the services of whom were services directly related to the equipment leasing activity of the qualified leasing members.

(ii) At least 5 separate leasing transactions

During the year, the qualified leasing members in the aggregate entered into at least 5 separate equipment leasing transactions.

(iii) At least $1,000,000 equipment leasing receipts

During the year, the qualified leasing members in the aggregate had at least $1,000,000 in gross receipts from equipment leasing.

The term ''qualified leasing group'' does not include any controlled group of corporations to which, without regard to this paragraph, paragraph (4) applies.

(C) Qualified leasing member

For purposes of this paragraph, a corporation shall be treated as a qualified leasing member for the taxable year only if for each of the taxable years referred to in subparagraph (B)—

(i) it is a component member of the controlled group of corporations, and

(ii) it meets the requirements of paragraph (4)(B) (as modified by subparagraph (A)(i) of this paragraph).

(6) Definitions relating to paragraphs (4) and (5)

For purposes of paragraphs (4) and (5)—

(A) Equipment leasing

The term ''equipment leasing'' means—

(i) the leasing of equipment which is section 1245 property, and

(ii) the purchasing, servicing, and selling of such equipment.

(B) Leasing of master sound recordings, etc., excluded

The term ''equipment leasing'' does not include the leasing of master sound recordings, and other similar contractual arrangements with respect to tangible or intangible assets associated with literary, artistic, or musical properties.

(C) Controlled group of corporations; component member

The terms ''controlled group of corporations'' and ''component members'' have the same meanings as when used in section 1563. The determination of the taxable years taken into account with respect to any controlled group of corporations shall be made in a manner consistent with the manner set forth in section 1563.

(7) Exclusion of active businesses of qualified C corporations

(A) In general

In the case of a taxpayer which is a qualified C corporation—

(i) each qualifying business carried on by such taxpayer shall be treated as a separate activity, and

(ii) subsection (a) shall not apply to losses from such business.

(B) Qualified C corporation

For purposes of subparagraph (A), the term ''qualified C corporation'' means any corporation described in subparagraph (B) of subsection (a)(1) which is not—

(i) a personal holding company (as defined in section 542(a)), or

(ii) a personal service corporation (as defined in section 269A(b) but determined by substituting ''5 percent'' for ''10 percent'' in section 269A(b)(2)).

(C) Qualifying business

For purposes of this paragraph, the term ''qualifying business'' means any active business if—

(i) during the entire 12-month period ending on the last day of the taxable year, such corporation had at least 1 full-time employee substantially all the services of whom were in the active management of such business,

(ii) during the entire 12-month period ending on the last day of the taxable year, such corporation had at least 3 full-time, nonowner employees substantially all of the services of whom were services directly related to such business,

(iii) the amount of the deductions attributable to such business which are allowable to the taxpayer solely by reason of sections 162 and 404 for the taxable year exceeds 15 percent of the gross income from such business for such year, and

(iv) such business is not an excluded business.

(D) Special rules for application of subparagraph (C)

(i) Partnerships in which taxpayer is a qualified corporate partner

In the case of an active business of a partnership, if—

(I) the taxpayer is a qualified corporate partner in the partnership, and

(II) during the entire 12-month period ending on the last day of the partnership's taxable year, there was at least 1 full-time employee of the partnership (or of a qualified corporate partner) substantially all the services of whom were in the active management of such business,

then the taxpayer's proportionate share (determined on the basis of its profits interest) of the activities of the partnership in such business shall be treated as activities of the taxpayer (and clause (i) of subparagraph (C) shall not apply in determining whether such business is a qualifying business of the taxpayer).

(ii) Qualified corporate partner

For purposes of clause (i), the term ''qualified corporate partner'' means any corporation if—

(I) such corporation is a general partner in the partnership,

(II) such corporation has an interest of 10 percent or more in the profits and losses of the partnership, and

(III) such corporation has contributed property to the partnership in an amount not less than the lesser of $500,000 or 10 percent of the net worth of the corporation.

For purposes of subclause (III), any contribution of property other than money shall be taken into account at its fair market value.

(iii) Deduction for owner employee compensation not taken into account

For purposes of clause (iii) of subparagraph (C), there shall not be taken into account any deduction in respect of compensation for personal services rendered by any employee (other than a non-owner employee) of the taxpayer or any member of such employee's family (within the meaning of section 318(a)(1)).

(iv) Special rule for banks

For purposes of clause (iii) of subparagraph (C), in the case of a bank (as defined in section 581) or a financial institution to which section 591 applies—

(I) gross income shall be determined without regard to the exclusion of interest from gross income under section 103, and

(II) in addition to the deductions described in such clause, there shall also be taken into account the amount of the deductions which are allowable for amounts paid or credited to the accounts of depositors or holders of accounts as dividends or interest on their deposits or withdrawable accounts under section 163 or 591.

(v) Special rule for life insurance companies

(I) In general

Clause (iii) of subparagraph (C) shall not apply to any insurance business of a qualified life insurance company.

(II) Insurance business

For purposes of subclause (I), the term ''insurance business'' means any business which is not a noninsurance business (within the meaning of section 806(b)(3)).

(III) Qualified life insurance company

For purposes of subclause (I), the term ''qualified life insurance company'' means any company which would be a life insurance company as defined in section 816 if unearned premiums were not taken into account under subsections (a)(2) and (c)(2) of section 816.

(E) Definitions

For purposes of this paragraph—

(i) Non-owner employee

The term ''non-owner employee'' means any employee who does not own, at any time during the taxable year, more than 5 percent in value of the outstanding stock of the taxpayer. For purposes of the preceding sentence, section 318 shall apply, except that ''5 percent'' shall be substituted for ''50 percent'' in section 318(a)(2)(C).

(ii) Excluded business

The term ''excluded business'' means—

(I) equipment leasing (as defined in paragraph (6)), and

(II) any business involving the use, exploitation, sale, lease, or other disposi-

tion of master sound recordings, motion picture films, video tapes, or tangible or intangible assets associated with literary, artistic, musical, or similar properties.

(iii) Special rules relating to communications industry, etc.

(I) Business not excluded where taxpayer not completely at risk

A business involving the use, exploitation, sale, lease, or other disposition of property described in subclause (II) of clause (ii) shall not constitute an excluded business by reason of such subclause if the taxpayer is at risk with respect to all amounts paid or incurred (or chargeable to capital account) in such business.

(II) Certain licensed businesses not excluded

For purposes of subclause (II) of clause (ii), the provision of radio, television, cable television, or similar services pursuant to a license or franchise granted by the Federal Communications Commission or any other Federal, State, or local authority shall not constitute an excluded business by reason of such subclause.

(F) Affiliated group treated as 1 taxpayer

For purposes of this paragraph—

(i) In general

Except as provided in subparagraph (G), the component members of an affiliated group of corporations shall be treated as a single taxpayer.

(ii) Affiliated group of corporations

The term ''affiliated group of corporations'' means an affiliated group (as defined in section 1504(a)) which files or is required to file consolidated income tax returns.

(iii) Component member

The term ''component member'' means an includible corporation (as defined in section 1504) which is a member of the affiliated group.

(G) Loss of 1 member of affiliated group may not offset income of personal holding company or personal service corporation

Nothing in this paragraph shall permit any loss of a member of an affiliated group to be used as an offset against the income of any other member of such group which is a personal holding company (as defined in section 542(a)) or a personal service corporation (as defined in section 269A(b) but determined by substituting ''5 percent'' for ''10 percent'' in section 269A(b)(2)).

(d) Definition of loss

For purposes of this section, the term ''loss'' means the excess of the deductions allowable under this chapter for the taxable year (determined without regard to the first sentence of subsection (a)) and allocable to an activity to which this section applies over the income received or accrued by the taxpayer during the taxable year from such activity (determined without regard to subsection (e)(1)(A)).

(e) Recapture of losses where amount at risk is less than zero

(1) In general

If zero exceeds the amount for which the taxpayer is at risk in any activity at the close of any taxable year—

(A) the taxpayer shall include in his gross income for such taxable year (as income from such activity) an amount equal to such excess, and

(B) an amount equal to the amount so included in gross income shall be treated as a deduction allocable to such activity for the first succeeding taxable year.

(2) Limitation

The excess referred to in paragraph (1) shall not exceed—

(A) the aggregate amount of the reductions required by subsection (b)(5) with respect to the activity by reason of losses for all prior taxable years beginning after December 31, 1978, reduced by

(B) the amounts previously included in gross income with respect to such activity under this subsection.

(Added Pub. L. 94–455, title II, §204(a), Oct. 4, 1976, 90 Stat. 1531; amended Pub. L. 95–600, title II, §§201(a), (c)(1), 202, 203, title VII, §701(k)(2), Nov. 6, 1978, 92 Stat. 2814, 2816, 2906; Pub. L. 95–618, title IV, §402(d), Nov. 9, 1978, 92 Stat. 3202; Pub. L. 96–222, title I, §102(a)(1)(A)–(D), Apr. 1, 1980, 94 Stat. 206; Pub. L. 97–354, §5(a)(31), Oct. 19, 1982, 96 Stat. 1695; Pub. L. 98–369, div. A, title IV, §432(a)–(c), title VII, §721(x)(2), July 18, 1984, 98 Stat. 811–814, 971; Pub. L. 99–514, title II, §201(d)(7)(A), title V, §503(a), (b), title X, §1011(b)(1), Oct. 22, 1986, 100 Stat. 2141, 2243, 2389; Pub. L. 101–508, title XI, §§11813(b)(15), 11815(b)(3), Nov. 5, 1990, 104 Stat. 1388–555, 1388–558; Pub. L. 108–357, title IV, §413(c)(7), Oct. 22, 2004, 118 Stat. 1507.)

AMENDMENTS

2004—Subsec. (c)(7)(B). Pub. L. 108–357 inserted ''or'' at end of cl. (i), redesignated cl. (iii) as (ii), and struck out former cl. (ii) which read as follows: ''a foreign personal holding company (as defined in section 552(a)), or''.

1990—Subsec. (b)(6)(D). Pub. L. 101–508, §11813(b)(15), substituted ''49(a)(1)(D)(iv)'' for ''46(c)(8)(D)(iv)'' wherever appearing.

Subsec. (c)(1)(E). Pub. L. 101–508, §11815(b)(3), substituted ''section 613(e)(2)'' for ''section 613(e)(3)''.

1986—Subsec. (b)(3)(C). Pub. L. 99–514, §201(d)(7)(A), struck out ''defined'' after ''person'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of subparagraph (A), the term 'related person' has the meaning given such term by section 168(e)(4).''

Subsec. (b)(6). Pub. L. 99–514, §503(b), added par. (6).

Subsec. (c)(3)(D), (E). Pub. L. 99–514, §503(a), redesignated subpar. (E) as (D) and struck out former subpar. (D) which read as follows: ''In the case of activities described in subparagraph (A), the holding of real property (other than mineral property) shall be treated as a separate activity, and subsection (a) shall not apply to losses from such activity. For purposes of the preceding sentence, personal property and services which

are incidental to making real property available as living accommodations shall be treated as part of the activity of holding such real property.''

Subsec. (c)(7)(D)(v)(II). Pub. L. 99–514, § 1011(b)(1), substituted ''section 806(b)(3)'' for ''section 806(c)(3)''.

1984—Subsec. (a)(1)(B). Pub. L. 98–369, § 721(x)(2), substituted ''a C corporation'' for ''a corporation''.

Subsec. (b)(3). Pub. L. 98–369, § 432(c), designated existing provisions as subpar. (A), in subpar. (A) as so designated struck out subpar. designations ''(A)'' and ''(B)'' and substituted provisions that, except as provided by regulation, amounts borrowed shall not be considered to be at risk if such amounts are borrowed from any person who has an interest in the activity or from a related person to a person (other than the taxpayer) having such an interest for provision that such amounts would not be considered to be at risk if borrowed from a person who had an interest (other than as a creditor) in such activity or who had a relationship to the taxpayer specified in section 267(b) of this title, and added subpars. (B) and (C).

Subsec. (c)(2). Pub. L. 98–369, § 432(b), designated existing provisions as subpar. (A), in subpar. (A) as so designated, redesignated former subpars. (A) to (E) as cls. (i) to (v), respectively, struck out provision that a partner's interest in a partnership or a shareholder's interest in an S corporation had to be treated as a single activity to the extent that the partnership or the S corporation was engaged in activities described in any subparagraph of this paragraph, and added subpar. (B).

Subsec. (c)(7). Pub. L. 98–369, § 432(a), added par. (7).

1982—Subsec. (a)(1). Pub. L. 97–354, § 5(a)(31)(A), redesignated subpar. (C) as (B). Former subpar. (B), relating to an electing small business corporation, was struck out.

Subsec. (a)(3). Pub. L. 97–354, § 5(a)(31)(B), substituted ''paragraph (1)(B)'' for ''paragraph (1)(C)'' in heading and text.

Subsec. (c)(2). Pub. L. 97–354, § 5(a)(31)(C), substituted ''an S corporation'' for ''an electing small business corporation'' the first place appearing and ''the S corporation'' for ''an electing small business corporation'' the second place appearing.

Subsec. (c)(3)(B)(ii). Pub. L. 97–354, § 5(a)(31)(D), substituted ''an S corporation'' for ''electing small business corporation (as defined in section 1371(b))''.

Subsec. (c)(4)(A). Pub. L. 97–354, § 5(a)(31)(E), substituted ''subsection (a)(1)(B)'' for ''subsection (a)(1)(C)''.

1980—Subsec. (a)(1)(C), (3). Pub. L. 96–222, § 102(a)(1)(A), struck out in par. (1)(C) ''(determined by reference to the rules contained in section 318 rather than under section 544)'' after ''of section 542(a)'' and added par. (3).

Subsec. (b)(5). Pub. L. 96–222, § 102(a)(1)(D)(iii), substituted ''to which subsection (a) applies'' for ''to which this section applies''.

Subsec. (c)(3)(D). Pub. L. 96–222, § 102(a)(1)(D)(ii), struck out provisions relating to equipment leasing by closely-held corporations.

Subsec. (c)(4) to (6). Pub. L. 96–222, § 102(a)(1)(D)(i), added pars. (4) to (6).

Subsec. (d). Pub. L. 96–222, § 102(a)(1)(B), inserted ''(determined without regard to subsection (e)(1)(A)'' after ''from such activity''.

Subsec. (e)(2)(A). Pub. L. 96–222, § 102(a)(1)(C), inserted ''by reason of losses'' after ''with respect to the activity''.

1978—Pub. L. 95–600, § 201(c)(1), substituted ''Deductions limited to amount at risk'' for ''Deductions limited to amount at risk in case of certain activities'' in section catchline.

Subsec. (a). Pub. L. 95–600, § 202, redesignated existing provisions as par. (1), substituted provisions relating to limitations with respect to an individual, an electing small business corporation defined under section 1371(b) of this title, and a corporation meeting the stock ownership requirements of section 542(a)(2) of this title and the rules of section 318 of this title, for provisions relating to limitations with respect to a taxpayer other than a corporation which is neither an electing small business corporation defined under section 1371(b) of this title, nor a personal holding company defined under section 542 of this title, and added par. (2).

Subsec. (c)(1)(E). Pub. L. 95–618, § 402(d)(1), added subpar. (E).

Subsec. (c)(2)(E). Pub. L. 95–618, § 402(d)(2), added subpar. (E).

Subsec. (c)(3). Pub. L. 95–600, § 201(a), added par. (3).

Subsec. (d). Pub. L. 95–600, § 701(k)(2), substituted ''(determined without regard to the first sentence of subsection (a))'' for ''(determined without regard to this section)''.

Subsec. (e). Pub. L. 95–600, § 203, added subsec. (e).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11813(b)(15) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 201(d)(7)(A) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

Amendment by section 201(d)(7)(A) of Pub. L. 99–514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99–514, set out as a note under section 46 of this title.

Section 503(c) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section] shall apply to losses incurred after December 31, 1986, with respect to property placed in service by the taxpayer after December 31, 1986.

''(2) SPECIAL RULE FOR LOSSES OF S CORPORATION, PARTNERSHIP, OR PASS-THRU ENTITY.—In the case of an interest in an S corporation, a partnership, or other pass-thru entity acquired after December 31, 1986, the amendments made by this section shall apply to losses after December 31, 1986, which are attributable to property placed in service by the S corporation, partnership, or pass-thru entity on, before, or after January 1, 1986.

''(3) SPECIAL RULE FOR ATHLETIC STADIUM.—The amendments made by this section shall not apply to any losses incurred by a taxpayer with respect to the holding of a multi-use athletic stadium in Pittsburgh, Pennsylvania, which the taxpayer acquired in a sale for which a letter of understanding was entered into before April 16, 1986.''

Amendment by section 1011(b)(1) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1011(c)(1) of Pub. L. 99–514, set out as a note under section 453B of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 432(d) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1983; except that any loss from an activity described in section 465(c)(7)(A) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this section) which (but for the amendments made by this section) would have been treated as a deduction for the taxpayer's first taxable year beginning after December 31, 1983, under section 465(a)(2) of such Code shall be allowed as a deduction for such first taxable year notwithstanding such amendments.''

Amendment by section 721(x)(2) of Pub. L. 98–369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97–354, see section 721(y)(1) of Pub. L. 98–369, set out as a note under section 1361 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–618 applicable with respect to wells commenced on or after Oct. 1, 1978, in taxable years ending on or after such date, see section 402(e) of Pub. L. 95–618, set out as a note under section 263 of this title.

Section 204(a) of Pub. L. 95–600 provided that: ''The amendments made by this subtitle [amending this section and section 704 of this title and enacting provisions set out as notes under this section and section 704 of this title] shall apply to taxable years beginning after December 31, 1978.''

Section 701(k)(3) of Pub. L. 95–600 provided that: ''The amendments made by this subsection [amending this section and provisions set out below] shall take effect on October 4, 1976.''

EFFECTIVE DATE AND TRANSITIONAL RULES

Section 204(c) of Pub. L. 94–455, as amended by Pub. L. 95–600, title VII, §701(k)(1), Nov. 6, 1978, 92 Stat. 2906; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [enacting this section] shall apply to losses attributable to amounts paid or incurred in taxable years beginning after December 31, 1975. For purposes of this subsection, any amount allowed or allowable for depreciation or amortization for any period shall be treated as an amount paid or incurred in such period.

''(2) SPECIAL TRANSITIONAL RULES FOR MOVIES AND VIDEO TAPES.—

''(A) IN GENERAL.—In the case of any activity described in section 465(c)(1)(A) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the amendments made by this section shall not apply to—

''(i) deductions for depreciation or amortization with respect to property the principal production of which began before September 11, 1975, and for the purchase of which there was on September 11, 1975, and at all times thereafter a binding contract, and

''(ii) deductions attributable to producing or distributing property the principal production of which began before September 11, 1975.

''(B) EXCEPTION FOR CERTAIN AGREEMENTS WHERE PRINCIPAL PHOTOGRAPHY BEGIN BEFORE 1976.—In the case of any activity described in section 465(c)(1)(A) of the Internal Revenue Code of 1986, the amendments made by this section shall not apply to deductions attributable to the producing of a film the principal photography of which began on or before December 31, 1975, if—

''(i) on September 10, 1975, there was an agreement with the director or a principal motion picture star, or on or before September 10, 1975, there had been expended (or committed to the production) an amount not less than the lower of $100,000 or 10 percent of the estimated costs of producing the film, and

''(ii) the production takes place in the United States.

Subparagraph (A) shall apply only to taxpayers who held their interests on September 10, 1975. Subparagraph (B) shall apply only to taxpayers who held their interests on December 31, 1975.

''(3) SPECIAL TRANSITIONAL RULES FOR LEASING ACTIVITIES.—

''(A) RULE FOR LEASES OTHER THAN OPERATING LEASES.—In the case of any activity described in section 465(c)(1)(C) of the Internal Revenue Code of 1986, the amendments made by this section shall not apply with respect to—

''(i) leases entered into before January 1, 1976, and

''(ii) leases where the property was ordered by the lessor or lessee before January 1, 1976.

''(B) HOLDING OF INTERESTS FOR PURPOSES OF SUBPARAGRAPH (A).—Subparagraph (A) shall apply only to taxpayers who held their interests in the property on December 31, 1975.

''(C) SPECIAL RULE FOR OPERATING LEASES.—In the case of a lease described in section 46(e)(3)(B) of the Internal Revenue Code of 1986—

''(i) subparagraph (A) shall be applied by substituting 'May 1, 1976' for 'January 1, 1976' each place it appears therein, and

''(ii) subparagraph (B) shall be applied by substituting 'April 30, 1976' for 'December 31, 1975'.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

TRANSITIONAL RULES FOR RECAPTURE PROVISIONS AND LEASING ACTIVITIES

Section 204(b) of Pub. L. 95–600, as amended by Pub. L. 96–222, title I, §102(a)(1)(E), Apr. 1, 1980, 94 Stat. 208; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) RECAPTURE PROVISIONS.—If the amount for which the taxpayer is at risk in any activity as of the close of the taxpayer's last taxable year beginning before January 1, 1979, is less than zero, section 465(e)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by section 203 of this Act) shall be applied with respect to such activity of the taxpayer by substituting such negative amount for zero.

''(2) SPECIAL TRANSITIONAL RULES FOR LEASING ACTIVITIES.—

''(A) RULE FOR LEASES.—In the case of any activity described in section 465(c)(1)(C) of such Code in which a corporation described in section 465(a)(1)(C) of such Code is engaged, the amendments made by this subtitle [amending sections 465 and 704 of this title and enacting provisions set out as notes under sections 465 and 704 of this title] shall not apply with respect to—

''(i) leases entered into before November 1, 1978, and

''(ii) leases where the property was ordered by the lessor or lessee before November 1, 1978.

''(B) HOLDING OF INTERESTS FOR PURPOSES OF SUBPARAGRAPH (A).—Subparagraph (A) shall apply only

to taxpayers who held their interests in the property on October 31, 1978.''

[§ 466. Repealed. Pub. L. 99–514, title VIII, § 823(a), Oct. 22, 1986, 100 Stat. 2373]

Section, added Pub. L. 95–600, title III, § 373(a), Nov. 6, 1978, 92 Stat. 2863; amended Pub. L. 96–222, title I, § 103(a)(16), Apr. 1, 1980, 94 Stat. 214, related to qualified discount coupons redeemed after close of taxable year.

EFFECTIVE DATE OF REPEAL

Section 823(c) of Pub. L. 99–514 provided:

''(1) IN GENERAL.—The amendments made by this section [amending section 461 of this title and repealing this section] shall apply to taxable years beginning after December 31, 1986.

''(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer who elected to have section 466 of the Internal Revenue Code of 1954 [now 1986] apply for such taxpayer's last taxable year beginning before January 1, 1987, and is required to change its method of accounting by reason of the amendments made by this section for any taxable year—

''(A) such change shall be treated as initiated by the taxpayer,

''(B) such change shall be treated as having been made with the consent of the Secretary, and

''(C) the net amount of adjustments required by section 481 of the Internal Revenue Code of 1986 to be taken into account by the taxpayer shall—

''(i) be reduced by the balance in the suspense account under section 466(e) of such Code as of the close of such last taxable year, and

''(ii) be taken into account over a period not longer than 4 years.''

§ 467. Certain payments for the use of property or services

(a) Accrual method on present value basis

In the case of the lessor or lessee under any section 467 rental agreement, there shall be taken into account for purposes of this title for any taxable year the sum of—

(1) the amount of the rent which accrues during such taxable year as determined under subsection (b), and

(2) interest for the year on the amounts which were taken into account under this subsection for prior taxable years and which are unpaid.

(b) Accrual of rental payments

(1) Allocation follows agreement

Except as provided in paragraph (2), the determination of the amount of the rent under any section 467 rental agreement which accrues during any taxable year shall be made—

(A) by allocating rents in accordance with the agreement, and

(B) by taking into account any rent to be paid after the close of the period in an amount determined under regulations which shall be based on present value concepts.

(2) Constant rental accrual in case of certain tax avoidance transactions, etc.

In the case of any section 467 rental agreement to which this paragraph applies, the portion of the rent which accrues during any taxable year shall be that portion of the constant rental amount with respect to such agreement which is allocable to such taxable year.

(3) Agreements to which paragraph (2) applies

Paragraph (2) applies to any rental payment agreement if—

(A) such agreement is a disqualified leaseback or long-term agreement, or

(B) such agreement does not provide for the allocation referred to in paragraph (1)(A).

(4) Disqualified leaseback or long-term agreement

For purposes of this subsection, the term ''disqualified leaseback or long-term agreement'' means any section 467 rental agreement if—

(A) such agreement is part of a leaseback transaction or such agreement is for a term in excess of 75 percent of the statutory recovery period for the property, and

(B) a principal purpose for providing increasing rents under the agreement is the avoidance of tax imposed by this subtitle.

(5) Exceptions to disqualification in certain cases

The Secretary shall prescribe regulations setting forth circumstances under which agreements will not be treated as disqualified leaseback or long-term agreements, including circumstances relating to—

(A) changes in amounts paid determined by reference to price indices,

(B) rents based on a fixed percentage of lessee receipts or similar amounts,

(C) reasonable rent holidays, or

(D) changes in amounts paid to unrelated 3rd parties.

(c) Recapture of prior understated inclusions under leaseback or long-term agreements

(1) In general

If—

(A) the lessor under any section 467 rental agreement disposes of any property subject to such agreement during the term of such agreement, and

(B) such agreement is a leaseback or long-term agreement to which paragraph (2) of subsection (b) did not apply,

the recapture amount shall be treated as ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(2) Recapture amount

For purposes of paragraph (1), the term ''recapture amount'' means the lesser of—

(A) the prior understated inclusions, or

(B) the excess of the amount realized (or in the case of a disposition other than a sale, exchange, or involuntary conversion, the fair market value of the property) over the adjusted basis of such property.

The amount determined under subparagraph (B) shall be reduced by the amount of any gain treated as ordinary income on the disposition under any other provision of this subtitle.

(3) Prior understated inclusions

For purposes of this subsection, the term ''prior understated inclusion'' means the excess (if any) of—

(A) the amount which would have been taken into account by the lessor under sub-

section (a) for periods before the disposition if subsection (b)(2) had applied to the agreement, over

(B) the amount taken into account under subsection (a) by the lessor for periods before the disposition.

(4) Leaseback or long-term agreement

For purposes of this subsection, the term ''leaseback or long-term agreement'' means any agreement described in subsection (b)(4)(A).

(5) Special rules

Under regulations prescribed by the Secretary—

(A) exceptions similar to the exceptions applicable under section 1245 or 1250 (whichever is appropriate) shall apply for purposes of this subsection,

(B) any transferee in a disposition excepted by reason of subparagraph (A) who has a transferred basis in the property shall be treated in the same manner as the transferor, and

(C) for purposes of sections 170(e) and 751(c), amounts treated as ordinary income under this section shall be treated in the same manner as amounts treated as ordinary income under section 1245 or 1250.

(d) Section 467 rental agreements

(1) In general

Except as otherwise provided in this subsection, the term ''section 467 rental agreements'' means any rental agreement for the use of tangible property under which—

(A) there is at least one amount allocable to the use of property during a calendar year which is to be paid after the close of the calendar year following the calendar year in which such use occurs, or

(B) there are increases in the amount to be paid as rent under the agreement.

(2) Section not to apply to agreements involving payments of $250,000 or less

This section shall not apply to any amount to be paid for the use of property if the sum of the following amounts does not exceed $250,000—

(A) the aggregate amount of payments received as consideration for such use of property, and

(B) the aggregate value of any other consideration to be received for such use of property.

For purposes of the preceding sentence, rules similar to the rules of clauses (ii) and (iii) of section 1274(c)(4)(C) shall apply.

(e) Definitions

For purposes of this section—

(1) Constant rental amount

The term ''constant rental amount'' means, with respect to any section 467 rental agreement, the amount which, if paid as of the close of each lease period under the agreement, would result in an aggregate present value equal to the present value of the aggregate payments required under the agreement.

(2) Leaseback transaction

A transaction is a leaseback transaction if it involves a leaseback to any person who had an interest in such property at any time within 2 years before such leaseback (or to a related person).

(3) Statutory recovery period

(A) In general

In the case of:	The statutory recovery period is:
3-year property	3 years
5-year property	5 years
7-year property	7 years
10-year property	10 years
15-year and 20-year property	15 years
Residential rental property and nonresidential real property	19 years
Any railroad grading or tunnel bore	50 years.

(B) Special rule for property not depreciable under section 168

In the case of property to which section 168 does not apply, subparagraph (A) shall be applied as if section 168 applies to such property.

(4) Discount and interest rate

For purposes of computing present value and interest under subsection (a)(2), the rate used shall be equal to 110 percent of the applicable Federal rate determined under section 1274(d) (compounded semiannually) which is in effect at the time the agreement is entered into with respect to debt instruments having a maturity equal to the term of the agreement.

(5) Related person

The term ''related person'' has the meaning given to such term by section 465(b)(3)(C).

(6) Certain options of lessee to renew not taken into account

Except as provided in regulations prescribed by the Secretary, there shall not be taken into account in computing the term of any agreement for purposes of this section any extension which is solely at the option of the lessee.

(f) Comparable rules where agreement for decreasing payments

Under regulations prescribed by the Secretary, rules comparable to the rules of this section shall also apply in the case of any agreement where the amount paid under the agreement for the use of property decreases during the term of the agreement.

(g) Comparable rules for services

Under regulations prescribed by the Secretary, rules comparable to the rules of subsection (a)(2) shall also apply in the case of payments for services which meet requirements comparable to the requirements of subsection (d). The preceding sentence shall not apply to any amount to which section 404 or 404A (or any other provision specified in regulations) applies.

(h) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including regulations providing for the application of this section in the case of contingent payments.

(Added Pub. L. 98–369, div. A, title I, § 92(a), July 18, 1984, 98 Stat. 609; amended Pub. L. 99–514, title II, § 201(d)(8), title V, § 511(d)(2)(A), title VI, § 631(e)(10), title XVIII, §§ 1807(b), 1879(f)(1), Oct. 22, 1986, 100 Stat. 2141, 2248, 2274, 2816, 2906; Pub. L. 100–647, title I, §§ 1002(i)(2)(H), 1005(c)(10), Nov. 10, 1988, 102 Stat. 3371, 3392; Pub. L. 108–27, title III, § 302(e)(4)(B)(ii), May 28, 2003, 117 Stat. 764.)

AMENDMENT OF SECTION

For termination of amendment by section 303 of Pub. L. 108–27, see Effective and Termination Dates of 2003 Amendment note below.

AMENDMENTS

2003—Subsec. (c)(5)(C). Pub. L. 108–27, §§ 302(e)(4)(B)(ii), 303, temporarily struck out '', 341(e)(12),'' after ''170(e)''. See Effective and Termination Dates of 2003 Amendment note below.

1988—Subsec. (c)(5)(C). Pub. L. 100–647, § 1005(c)(10), made technical correction to directory language of Pub. L. 99–514, § 511(d)(2)(A). See 1986 Amendment note below.

Subsec. (e)(3)(A). Pub. L. 100–647, § 1002(i)(2)(H), at end of table inserted item relating to any railroad grading or tunnel bore.

1986—Subsec. (b)(4)(A). Pub. L. 99–514, § 1807(b)(2)(A), substituted ''statutory recovery period'' for ''statutory recover period''.

Subsec. (c)(4). Pub. L. 99–514, § 1807(b)(2)(B), substituted ''subsection (b)(4)(A)'' for ''subsection (b)(3)(A)''.

Subsec. (c)(5)(C). Pub. L. 99–514, § 631(e)(10), struck out ''453B(d)(2),'' after ''341(e)(12),''.

Pub. L. 99–514, § 511(d)(2)(A), as amended by Pub. L. 100–647, § 1005(c)(10), struck out ''163(d),'' after ''sections''.

Subsec. (d)(2). Pub. L. 99–514, § 1807(b)(2)(C), substituted ''section 1274(c)(4)(C)'' for ''section 1274(c)(2)(C)''.

Subsec. (e)(3)(A). Pub. L. 99–514, § 201(d)(8)(A), in amending subpar. (A) generally, included in table 7-year property, 15-year and 20-year property, and residential rental property and nonresidential real property having recovery periods of 7, 15, and 19 years, respectively, and struck out from table low-income housing, 15-year public utility property, and 19-year real property having recovery periods of 15, 15, and 19 years, respectively.

Pub. L. 99–514, § 1879(f)(1), substituted ''19-year real property'' and ''19 years'' for ''18-year real property'' and ''18 years'', respectively.

Subsec. (e)(3)(B). Pub. L. 99–514, § 201(d)(8)(A), in amending subpar. (B) generally, substituted in heading ''not depreciable under section 168'' for ''which is not recovery property'' and in text ''In the case of property to which section 168 does not apply, subparagraph (A) shall be applied as if section 168 applies to such property.'' for ''In the case of any property, which is not recovery property, subparagraph (A) shall be applied as if such property were recovery property.''

Subsec. (e)(5). Pub. L. 99–514, § 201(d)(8)(B), substituted ''section 465(b)(3)(C)'' for ''section 168(e)(4)(D)''.

Pub. L. 99–514, § 1807(b)(2)(D), substituted ''section 168(e)(4)(D)'' for ''section 168(d)(4)(D)''.

Subsec. (g). Pub. L. 99–514, § 1807(b)(1), inserted at end ''The preceding sentence shall not apply to any amount to which section 404 or 404A (or any other provision specified in regulations) applies.''

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as a note under section 1 of this title.

Amendment by Pub. L. 108–27 inapplicable to taxable years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 303 of Pub. L. 108–27, as amended, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 201(d)(8) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

Amendment by section 201(d)(8) of Pub. L. 99–514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99–514, set out as a note under section 46 of this title.

Amendment by section 511(d)(2)(A) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 511(e) of Pub. L. 99–514, set out as a note under section 163 of this title.

Amendment by section 631(e)(10) of Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

Amendment by section 1807(b) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Section 1879(f)(2) of Pub. L. 99–514 provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 103 of Public Law 99–121.''

EFFECTIVE DATE

Section 92(c) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section] shall apply with respect to agreements entered into after June 8, 1984.

''(2) EXCEPTIONS.—The amendments made by this section shall not apply—

''(A) to any agreement entered into pursuant to a written agreement which was binding on June 8, 1984, and at all times thereafter,

''(B) subject to the provisions of paragraph (3), to any agreement to lease property if—

''(i) there was in effect a firm plan, evidenced by a board of directors' resolution, memorandum of agreement, or letter of intent on March 15, 1984, to enter into such an agreement, and

''(ii) construction of the property was commenced (but such property was not placed in service) on or before March 15, 1984, and

''(C) to any agreement to lease property if—

''(i) the lessee of such property adopted a firm plan to lease the property, evidenced by a resolution of the Finance Committee of the Board of Directors of such lessee, on February 10, 1984,

''(ii) the sum of the present values of the rents payable by the lessee under the lease at the incep-

tion thereof equals at least $91,223,034, assuming for purposes of this clause—

''(I) the annual discount rate is 12.6 percent,

''(II) the initial payment of rent occurs 12 months after the commencement of the lease, and

''(III) subsequent payments of rents occur on the anniversary date of the initial payment, and

''(iii) during—

''(I) the first 5 years of the lease, at least 9 percent of the rents payable by the lessee under the agreement are paid, and

''(II) the second 5 years of the lease, at least 16.25 percent of the rents payable by the lessee under the agreement are paid.

Paragraph (3)(B)(ii)(II) shall apply for purposes of clauses (ii) and (iii) of subparagraph (C), as if, as of the beginning of the last stage, the separate agreements were treated as 1 single agreement relating to all property covered by the agreements, including any property placed in service before the property to which the agreement for the last stage relates. If the lessor under the agreement described in subparagraph (C) leases the property from another person, this exception shall also apply to any agreement between the lessor and such person which is integrally related to, and entered into at the same time as, such agreement, and which calls for comparable payments of rent over the primary term of the agreement.

''(3) SCHEDULE OF DEEMED RENTAL PAYMENTS.—

''(A) IN GENERAL.—In any case to which paragraph (2)(B) applies, for purposes of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the lessor shall be treated as having received or accrued (and the lessee shall be treated as having paid or incurred) rents equal to the greater of—

''(i) the amount of rents actually paid under the agreement during the taxable year, or

''(ii) the amount of rents determined in accordance with the schedule under subparagraph (B) for such taxable year.

''(B) SCHEDULE.—

''(i) IN GENERAL.—The schedule under this subparagraph is as follows:

"Portion of lease term:	Cumulative percentage of total rent deemed paid:
1st ⅕	10
2nd ⅕	25
3rd ⅕	45
4th ⅕	70
Last ⅕	100.

''(ii) OPERATING RULES.—For purposes of this schedule—

''(I) the rent allocable to each taxable year within any portion of a lease term described in such schedule shall be a level pro rata amount properly allocable to such taxable year, and

''(II) any agreement relating to property which is to be placed in service in 2 or more stages shall be treated as 2 or more separate agreements.

''(C) PARAGRAPH NOT TO APPLY.—This paragraph shall not apply to any agreement if the sum of the present values of all payments under the agreement is greater than the sum of the present value of all the payments deemed to be paid or received under the schedule under subparagraph (B). For purposes of computing any present value under this subparagraph, the annual discount rate shall be equal to 12 percent, compounded semiannually.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 468. Special rules for mining and solid waste reclamation and closing costs

(a) Establishment of reserves for reclamation and closing costs

(1) Allowance of deduction

If a taxpayer elects the application of this section with respect to any mining or solid waste disposal property, the amount of any deduction for qualified reclamation or closing costs for any taxable year to which such election applies shall be equal to the current reclamation or closing costs allocable to—

(A) in the case of qualified reclamation costs, the portion of the reserve property which was disturbed during such taxable year, and

(B) in the case of qualified closing costs, the production from the reserve property during such taxable year.

(2) Opening balance and adjustments to reserve

(A) Opening balance

The opening balance of any reserve for its first taxable year shall be zero.

(B) Increase for interest

A reserve shall be increased each taxable year by an amount equal to the amount of interest which would have been earned during such taxable year on the opening balance of such reserve for such taxable year if such interest were computed—

(i) at the Federal short-term rate or rates (determined under section 1274) in effect, and

(ii) by compounding semiannually.

(C) Reserve to be charged for amounts paid

Any amount paid by the taxpayer during any taxable year for qualified reclamation or closing costs allocable to portions of the reserve property for which the election under paragraph (1) was in effect shall be charged to the appropriate reserve as of the close of the taxable year.

(D) Reserve increased by amount deducted

A reserve shall be increased each taxable year by the amount allowable as a deduction under paragraph (1) for such taxable year which is allocable to such reserve.

(3) Allowance of deduction for excess amounts paid

There shall be allowed as a deduction for any taxable year the excess of—

(A) the amounts described in paragraph (2)(C) paid during such taxable year, over

(B) the closing balance of the reserve for such taxable year (determined without regard to paragraph (2)(C)).

(4) Limitation on balance as of the close of any taxable year

(A) Reclamation reserves

In the case of any reserve for qualified reclamation costs, there shall be included in

gross income for any taxable year an amount equal to the excess of—

(i) the closing balance of the reserve for such taxable year, over

(ii) the current reclamation costs of the taxpayer for all portions of the reserve property disturbed during any taxable year to which the election under paragraph (1) applies.

(B) Closing costs reserves

In the case of any reserve for qualified closing costs, there shall be included in gross income for any taxable year an amount equal to the excess of—

(i) the closing balance of the reserve for such taxable year, over

(ii) the current closing cost of the taxpayer with respect to the reserve property, determined as if all production with respect to the reserve property for any taxable year to which the election under paragraph (1) applies had occurred in such taxable year.

(C) Order of application

This paragraph shall be applied after all adjustments to the reserve have been made for the taxable year.

(5) Income inclusions on completion or disposition

Proper inclusion in income shall be made upon—

(A) the revocation of an election under paragraph (1), or

(B) completion of the closing, or disposition of any portion, of a reserve property.

(b) Allocation for property where election not in effect for all taxable years

If the election under subsection (a)(1) is not in effect for 1 or more taxable years in which the reserved property is disturbed (or production occurs), items with respect to the reserve property shall be allocated to the reserve in such manner as the Secretary may prescribe by regulations.

(c) Revocation of election; separate reserves

(1) Revocation of election

(A) In general

The taxpayer may revoke an election under subsection (a)(1) with respect to any property. Such revocation, once made, shall be irrevocable.

(B) Time and manner of revocation

Any revocation under subparagraph (A) shall be made at such time and in such manner as the Secretary may prescribe.

(2) Separate reserves required

If a taxpayer makes an election under subsection (a)(1), the taxpayer shall establish with respect to the property for which the election was made—

(A) a separate reserve for qualified reclamation costs, and

(B) a separate reserve for qualified closing costs.

(d) Definitions and special rules relating to reclamation and closing costs

For purposes of this section—

(1) Current reclamation and closing costs

(A) Current reclamation costs

The term ''current reclamation costs'' means the amount which the taxpayer would be required to pay for qualified reclamation costs if the reclamation activities were performed currently.

(B) Current closing costs

(i) In general

The term ''current closing costs'' means the amount which the taxpayer would be required to pay for qualified closing costs if the closing activities were performed currently.

(ii) Costs computed on unit-of-production or capacity method

Estimated closing costs shall—

(I) in the case of the closing of any mine site, be computed on the unit-of-production method of accounting, and

(II) in the case of the closing of any solid waste disposal site, be computed on the unit-of-capacity method.

(2) Qualified reclamation or closing costs

The term ''qualified reclamation or closing costs'' means any of the following expenses:

(A) Mining reclamation and closing costs

Any expenses incurred for any land reclamation or closing activity which is conducted in accordance with a reclamation plan (including an amendment or modification thereof)—

(i) which—

(I) is submitted pursuant to the provisions of section 511 or 528 of the Surface Mining Control and Reclamation Act of 1977 (as in effect on January 1, 1984), and

(II) is part of a surface mining and reclamation permit granted under the provisions of title V of such Act (as so in effect), or

(ii) which is submitted pursuant to any other Federal or State law which imposes surface mining reclamation and permit requirements substantially similar to the requirements imposed by title V of such Act (as so in effect).

(B) Solid waste disposal and closing costs

(i) In general

Any expenses incurred for any land reclamation or closing activity in connection with any solid waste disposal site which is conducted in accordance with any permit issued pursuant to—

(I) any provision of the Solid Waste Disposal Act (as in effect on January 1, 1984) requiring such activity, or

(II) any other Federal, State, or local law which imposes requirements substantially similar to the requirements imposed by the Solid Waste Disposal Act (as so in effect).

(ii) Exception for certain hazardous waste sites

Clause (i) shall not apply to that portion of any property which is disturbed after

the property is listed in the national contingency plan established under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

(3) Property

The term ''property'' has the meaning given such term by section 614.

(4) Reserve property

The term ''reserve property'' means any property with respect to which a reserve is established under subsection (a)(1).

(Added Pub. L. 98–369, div. A, title I, §91(b)(1), July 18, 1984, 98 Stat. 601; amended Pub. L. 99–514, title XVIII, §§1807(a)(3)(A), (C), 1899A(14), Oct. 22, 1986, 100 Stat. 2811, 2959; Pub. L. 101–508, title XI, §11802(c), Nov. 5, 1990, 104 Stat. 1388–529.)

REFERENCES IN TEXT

The Surface Mining Control and Reclamation Act of 1977, referred to in subsec. (d)(2)(A), is Pub. L. 95–87, Aug. 3, 1977, 91 Stat. 445, as amended. Title V of that Act is classified generally to subchapter V (§1251 et seq.) of chapter 25 of Title 30, Mineral Lands and Mining. Sections 511 and 528 of that Act are classified to sections 1261 and 1278, respectively, of Title 30. For complete classification of this Act to the Code, see Short Title note set out under section 1201 of Title 30 and Tables.

The Solid Waste Disposal Act, referred to in subsec. (d)(2)(B)(i), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of Title 42 and Tables.

Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in subsec. (d)(2)(B)(ii), is classified to section 9605 of Title 42.

AMENDMENTS

1990—Subsec. (a)(2)(B). Pub. L. 101–508 amended subpar. (B) generally, substituting present provisions for provisions providing for increase for interest and a phase-in of interest rates for taxable years ending before 1987.

1986—Subsec. (a)(1). Pub. L. 99–514, §1807(a)(3)(C), substituted ''this section'' for ''this subsection''.

Subsec. (a)(2)(D). Pub. L. 99–514, §1807(a)(3)(A), added subpar. (D).

Subsec. (d)(2)(B)(ii). Pub. L. 99–514, §1899A(14), substituted ''Comprehensive Environmental Response, Compensation, and Liability Act of 1980'' for ''Comprehensive Environmental, Compensation, and Liability Act of 1980''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1807(a)(3)(A), (C) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section effective July 18, 1984, with respect to taxable years ending after such date, except as otherwise provided, see section 91(g)(4) of Pub. L. 98–369, as amended, set out as an Effective Date of 1984 Amendment note under section 461 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 468A. Special rules for nuclear decommissioning costs

(a) In general

If the taxpayer elects the application of this section, there shall be allowed as a deduction for any taxable year the amount of payments made by the taxpayer to a Nuclear Decommissioning Reserve Fund (hereinafter referred to as the ''Fund'') during such taxable year.

(b) Limitation on amounts paid into Fund

The amount which a taxpayer may pay into the Fund for any taxable year shall not exceed the ruling amount applicable to such taxable year.

(c) Income and deductions of the taxpayer

(1) Inclusion of amounts distributed

There shall be includible in the gross income of the taxpayer for any taxable year—

(A) any amount distributed from the Fund during such taxable year, other than any amount distributed to pay costs described in subsection (e)(4)(B), and

(B) except to the extent provided in regulations, amounts properly includible in gross income in the case of any deemed distribution under subsection (e)(6), any termination under subsection (e)(7), or the disposition of any interest in the nuclear powerplant.

(2) Deduction when economic performance occurs

In addition to any deduction under subsection (a), there shall be allowable as a deduction for any taxable year the amount of the nuclear decommissioning costs with respect to which economic performance (within the meaning of section 461(h)(2)) occurs during such taxable year.

(d) Ruling amount

For purposes of this section—

(1) Request required

No deduction shall be allowed for any payment to the Fund unless the taxpayer requests, and receives, from the Secretary a schedule of ruling amounts. For purposes of the preceding sentence, the taxpayer shall request a schedule of ruling amounts upon each renewal of the operating license of the nuclear powerplant.

(2) Ruling amount

The term ''ruling amount'' means, with respect to any taxable year, the amount which

the Secretary determines under paragraph (1) to be necessary to—

(A) fund the total nuclear decommissioning costs with respect to such power plant over the estimated useful life of such power plant, and

(B) prevent any excessive funding of such costs or the funding of such costs at a rate more rapid than level funding, taking into account such discount rates as the Secretary deems appropriate.

(3) Review of amount

The Secretary shall at least once during the useful life of the nuclear powerplant (or, more frequently, upon the request of the taxpayer) review, and revise if necessary, the schedule of ruling amounts determined under paragraph (1).

(e) Nuclear Decommissioning Reserve Fund

(1) In general

Each taxpayer who elects the application of this section shall establish a Nuclear Decommissioning Reserve Fund with respect to each nuclear powerplant to which such election applies.

(2) Taxation of Fund

(A) In general

There is hereby imposed on the gross income of the Fund for any taxable year a tax at the rate of 20 percent, except that—

(i) there shall not be included in the gross income of the Fund any payment to the Fund with respect to which a deduction is allowable under subsection (a), and

(ii) there shall be allowed as a deduction to the Fund any amount paid by the Fund which is described in paragraph (4)(B) (other than an amount paid to the taxpayer) and which would be deductible under this chapter for purposes of determining the taxable income of a corporation.

(B) Tax in lieu of other taxation

The tax imposed by subparagraph (A) shall be in lieu of any other taxation under this subtitle of the income from assets in the Fund.

(C) Fund treated as corporation

For purposes of subtitle F—

(i) the Fund shall be treated as if it were a corporation, and

(ii) any tax imposed by this paragraph shall be treated as a tax imposed by section 11.

(3) Contributions to Fund

Except as provided in subsection (f), the Fund shall not accept any payments (or other amounts) other than payments with respect to which a deduction is allowable under subsection (a).

(4) Use of Fund

The Fund shall be used exclusively for—

(A) satisfying, in whole or in part, any liability of any person contributing to the Fund for the decommissioning of a nuclear powerplant (or unit thereof),

(B) to pay administrative costs (including taxes) and other incidental expenses of the Fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the Fund, and

(C) to the extent that a portion of the Fund is not currently needed for purposes described in subparagraph (A) or (B), making investments.

(5) Prohibitions against self-dealing

Under regulations prescribed by the Secretary, for purposes of section 4951 (and so much of this title as relates to such section), the Fund shall be treated in the same manner as a trust described in section 501(c)(21).

(6) Disqualification of Fund

In any case in which the Fund violates any provision of this section or section 4951, the Secretary may disqualify such Fund from the application of this section. In any case to which this paragraph applies, the Fund shall be treated as having distributed all of its funds on the date such determination takes effect.

(7) Termination upon completion

Upon substantial completion of the nuclear decommissioning of the nuclear powerplant with respect to which a Fund relates, the taxpayer shall terminate such Fund.

(f) Transfers into qualified funds

(1) In general

Notwithstanding subsection (b), any taxpayer maintaining a Fund to which this section applies with respect to a nuclear power plant may transfer into such Fund not more than an amount equal to the present value of the portion of the total nuclear decommissioning costs with respect to such nuclear power plant previously excluded for such nuclear power plant under subsection (d)(2)(A) as in effect immediately before the date of the enactment of this subsection.

(2) Deduction for amounts transferred

(A) In general

Except as provided in subparagraph (C), the deduction allowed by subsection (a) for any transfer permitted by this subsection shall be allowed ratably over the remaining estimated useful life (within the meaning of subsection (d)(2)(A)) of the nuclear power plant beginning with the taxable year during which the transfer is made.

(B) Denial of deduction for previously deducted amounts

No deduction shall be allowed for any transfer under this subsection of an amount for which a deduction was previously allowed to the taxpayer (or a predecessor) or a corresponding amount was not included in gross income of the taxpayer (or a predecessor). For purposes of the preceding sentence, a ratable portion of each transfer shall be treated as being from previously deducted or excluded amounts to the extent thereof.

(C) Transfers of qualified funds

If—

(i) any transfer permitted by this subsection is made to any Fund to which this section applies, and

(ii) such Fund is transferred thereafter,

any deduction under this subsection for taxable years ending after the date that such Fund is transferred shall be allowed to the transferor for the taxable year which includes such date.

(D) Special rules

(i) Gain or loss not recognized on transfers to Fund

No gain or loss shall be recognized on any transfer described in paragraph (1).

(ii) Transfers of appreciated property to Fund

If appreciated property is transferred in a transfer described in paragraph (1), the amount of the deduction shall not exceed the adjusted basis of such property.

(3) New ruling amount required

Paragraph (1) shall not apply to any transfer unless the taxpayer requests from the Secretary a new schedule of ruling amounts in connection with such transfer.

(4) No basis in qualified funds

Notwithstanding any other provision of law, the taxpayer's basis in any Fund to which this section applies shall not be increased by reason of any transfer permitted by this subsection.

(g) Nuclear powerplant

For purposes of this section, the term ''nuclear powerplant'' includes any unit thereof.

(h) Time when payments deemed made

For purposes of this section, a taxpayer shall be deemed to have made a payment to the Fund on the last day of a taxable year if such payment is made on account of such taxable year and is made within 2½ months after the close of such taxable year.

(Added Pub. L. 98–369, div. A, title I, §91(c)(1), July 18, 1984, 98 Stat. 604; amended Pub. L. 99–514, title XVIII, §1807(a)(4)(A)(i), (B)–(E)(vi), Oct. 22, 1986, 100 Stat. 2812, 2813; Pub. L. 102–486, title XIX, §1917(a), (b), Oct. 24, 1992, 106 Stat. 3024, 3025; Pub. L. 104–188, title I, §1704(j)(6), Aug. 20, 1996, 110 Stat. 1882; Pub. L. 109–58, title XIII, §1310(a)–(e), Aug. 8, 2005, 119 Stat. 1007–1009.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (f)(1), is the date of enactment of Pub. L. 109–58, which was approved Aug. 8, 2005.

AMENDMENTS

2005—Subsec. (b). Pub. L. 109–58, §1310(a), reenacted heading without change and amended text of subsec. (b) generally. Prior to amendment, text read as follows: ''The amount which a taxpayer may pay into the Fund for any taxable year shall not exceed the lesser of—

''(1) the amount of nuclear decommissioning costs allocable to the Fund which is included in the taxpayer's cost of service for ratemaking purposes for such taxable year, or

''(2) the ruling amount applicable to such taxable year.''

Subsec. (d)(1). Pub. L. 109–58, §1310(c), inserted at end ''For purposes of the preceding sentence, the taxpayer shall request a schedule of ruling amounts upon each renewal of the operating license of the nuclear powerplant.''

Subsec. (d)(2)(A). Pub. L. 109–58, §1310(b)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''fund that portion of the nuclear decommissioning costs of the taxpayer with respect to the nuclear powerplant which bears the same ratio to the total nuclear decommissioning costs with respect to such nuclear powerplant as the period for which the Fund is in effect bears to the estimated useful life of such nuclear powerplant, and''.

Subsec. (e)(2)(A). Pub. L. 109–58, §1310(e)(1), substituted ''rate of 20 percent'' for ''rate set forth in subparagraph (B)'' in introductory provisions.

Subsec. (e)(2)(B) to (D). Pub. L. 109–58, §1310(e)(2), (3), redesignated subpars. (C) and (D) as (B) and (C), respectively, and struck out heading and text of former subpar. (B). Text read as follows: ''For purposes of subparagraph (A), the rate set forth in this subparagraph is—

''(i) 22 percent in the case of taxable years beginning in calendar year 1994 or 1995, and

''(ii) 20 percent in the case of taxable years beginning after December 31, 1995.''

Subsec. (e)(3). Pub. L. 109–58, §1310(d), substituted ''Except as provided in subsection (f), the Fund'' for ''The Fund''.

Subsecs. (f) to (h). Pub. L. 109–58, §1310(b)(1), added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

1996—Subsec. (e)(2)(A). Pub. L. 104–188 provided that the amendment made by section 1917(b)(1) of Pub. L. 102–486 shall be applied as if ''at a rate'' appeared instead of ''at the rate'' in the material proposed to be stricken. See 1992 Amendment note below.

1992—Subsec. (e)(2)(A). Pub. L. 102–486, §1917(b)(1), which directed that subpar. (A) be amended by striking ''at the rate equal to the highest rate of tax specified in section 11(b)'' and inserting ''at the rate set forth in subparagraph (B)'', was executed by making the substitution for ''at a rate equal to the highest rate of tax specified in section 11(b)''. See 1996 Amendment note above.

Subsec. (e)(2)(B) to (D). Pub. L. 102–486, §1917(b)(2), added subpar. (B) and redesignated former subpars. (B) and (C) as (C) and (D), respectively.

Subsec. (e)(4)(C). Pub. L. 102–486, §1917(a), struck out before period at end ''described in section 501(c)(21)(B)(ii)''.

1986—Subsec. (a). Pub. L. 99–514, §1807(a)(4)(E)(i), substituted ''this section'' for ''this subsection''.

Subsec. (c)(1)(A). Pub. L. 99–514, §1807(a)(4)(B), substituted ''subsection (e)(4)(B)'' for ''subsection (e)(2)(B)''.

Subsec. (d). Pub. L. 99–514, §1807(a)(4)(E)(ii), substituted ''this section'' for ''this subsection'' in introductory text.

Subsec. (e). Pub. L. 99–514, §1807(a)(4)(E)(iii), substituted ''Reserve Fund'' for ''Trust Fund'' in heading.

Subsec. (e)(1). Pub. L. 99–514, §1807(a)(4)(E)(iv), substituted ''this section'' for ''this subsection'' and ''Reserve Fund'' for ''Trust Fund''.

Subsec. (e)(2). Pub. L. 99–514, §1807(a)(4)(C), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''There is imposed on the gross income of the Fund for any taxable year a tax at a rate equal to the maximum rate in effect under section 11(b), except that—

''(A) there shall not be included in the gross income of the Fund any payment to the Fund with respect to which a deduction is allowable under subsection (a), and

''(B) there shall be allowed as a deduction any amount paid by the Fund described in paragraph (4)(B) (other than to the taxpayer).''

Subsec. (e)(4)(C). Pub. L. 99–514, §1807(a)(4)(D), added subpar. (C).

Subsec. (e)(6). Pub. L. 99–514, §1807(a)(4)(E)(v), substituted ''this section'' for ''this subsection'' in two places and ''this paragraph'' for ''this subparagraph''.

Subsec. (f). Pub. L. 99–514, §1807(a)(4)(E)(vi), substituted ''For purposes of this section, the'' for ''The''.

Subsec. (g). Pub. L. 99–514, §1807(a)(4)(A)(i), added subsec. (g).

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title XIII, §1310(f), Aug. 8, 2005, 119 Stat. 1009, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2005.''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1917(c) of Pub. L. 102–486 provided that:

''(1) SUBSECTION (a).—The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1992.

''(2) SUBSECTION (b).—The amendments made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1993. Section 15 of the Internal Revenue Code of 1986 shall not apply to any change in rate resulting from the amendment made by subsection (b).''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section effective July 18, 1984, with respect to taxable years ending after such date, see section 91(g)(5) of Pub. L. 98–369, as amended, set out as an Effective Date of 1984 Amendment note under section 461 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TRANSITIONAL RULE

Section 1807(a)(4)(A)(ii) of Pub. L. 99–514 provided that: ''To the extent provided in regulations prescribed by the Secretary of the Treasury or his delegate, subsection (g) of section 468A of the Internal Revenue Code of 1954 [now 1986] (as added by clause (i)) shall be applied with respect to any payment on account of a taxable year beginning before January 1, 1987, as if it did not contain the requirement that the payment be made within 2½ months after the close of the taxable year. Such regulations may provide that, to the extent such payment to the Fund is made more than 2½ months after the close of the taxable year, any adjustment to the tax attributable to such payment shall not affect the amount of interest payable with respect to periods before the payment is made. Such regulations may provide appropriate adjustments to the deduction allowed under such section 468A for any such taxable year to take into account the fact that the payment to the Fund is made more than 2½ months after the close of the taxable year.''

§ 468B. Special rules for designated settlement funds

(a) In general

For purposes of section 461(h), economic performance shall be deemed to occur as qualified payments are made by the taxpayer to a designated settlement fund.

(b) Taxation of designated settlement fund

(1) In general

There is imposed on the gross income of any designated settlement fund for any taxable year a tax at a rate equal to the maximum rate in effect for such taxable year under section 1(e).

(2) Certain expenses allowed

For purposes of paragraph (1), gross income for any taxable year shall be reduced by the amount of any administrative costs (including State and local taxes) and other incidental expenses of the designated settlement fund (including legal, accounting, and actuarial expenses)—

(A) which are incurred in connection with the operation of the fund, and

(B) which would be deductible under this chapter for purposes of determining the taxable income of a corporation.

No other deduction shall be allowed to the fund.

(3) Transfers to the fund

In the case of any qualified payment made to the fund—

(A) the amount of such payment shall not be treated as income of the designated settlement fund,

(B) the basis of the fund in any property which constitutes a qualified payment shall be equal to the fair market value of such property at the time of payment, and

(C) the fund shall be treated as the owner of the property in the fund (and any earnings thereon).

(4) Tax in lieu of other taxation

The tax imposed by paragraph (1) shall be in lieu of any other taxation under this subtitle of income from assets in the designated settlement fund.

(5) Coordination with subtitle F

For purposes of subtitle F—

(A) a designated settlement fund shall be treated as a corporation, and

(B) any tax imposed by this subsection shall be treated as a tax imposed by section 11.

(c) Deductions not allowed for transfer of insurance amounts

No deduction shall be allowable for any qualified payment by the taxpayer of any amounts received from the settlement of any insurance claim to the extent such amounts are excluded from the gross income of the taxpayer.

(d) Definitions

For purposes of this section—

(1) Qualified payment

The term ''qualified payment'' means any money or property which is transferred to any designated settlement fund pursuant to a court order, other than—

(A) any amount which may be transferred from the fund to the taxpayer (or any related person), or

(B) the transfer of any stock or indebtedness of the taxpayer (or any related person).

(2) Designated settlement fund

The term ''designated settlement fund'' means any fund—

(A) which is established pursuant to a court order and which extinguishes completely the taxpayer's tort liability with respect to claims described in subparagraph (D),

(B) with respect to which no amounts may be transferred other than in the form of qualified payments,

(C) which is administered by persons a majority of whom are independent of the taxpayer,

(D) which is established for the principal purpose of resolving and satisfying present and future claims against the taxpayer (or any related person or formerly related person) arising out of personal injury, death, or property damage,

(E) under the terms of which the taxpayer (or any related person) may not hold any beneficial interest in the income or corpus of the fund, and

(F) with respect to which an election is made under this section by the taxpayer.

An election under this section shall be made at such time and in such manner as the Secretary shall by regulation prescribe. Such an election, once made, may be revoked only with the consent of the Secretary.

(3) Related person

The term ''related person'' means a person related to the taxpayer within the meaning of section 267(b).

(e) Nonapplicability of section

This section (other than subsection (g)) shall not apply with respect to any liability of the taxpayer arising under any workers' compensation Act or any contested liability of the taxpayer within the meaning of section 461(f).

(f) Other funds

Except as provided in regulations, any payment in respect of a liability described in subsection (d)(2)(D) (and not described in subsection (e)) to a trust fund or escrow fund which is not a designated settlement fund shall not be treated as constituting economic performance.

(g) Clarification of taxation of certain funds

(1) In general

Except as provided in paragraph (2), nothing in any provision of law shall be construed as providing that an escrow account, settlement fund, or similar fund is not subject to current income tax. The Secretary shall prescribe regulations providing for the taxation of any such account or fund whether as a grantor trust or otherwise.

(2) Exemption from tax for certain settlement funds

An escrow account, settlement fund, or similar fund shall be treated as beneficially owned by the United States and shall be exempt from taxation under this subtitle if—

(A) it is established pursuant to a consent decree entered by a judge of a United States District Court,

(B) it is created for the receipt of settlement payments as directed by a government entity for the sole purpose of resolving or satisfying one or more claims asserting liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980,

(C) the authority and control over the expenditure of funds therein (including the expenditure of contributions thereto and any net earnings thereon) is with such government entity, and

(D) upon termination, any remaining funds will be disbursed to such government entity for use in accordance with applicable law.

For purposes of this paragraph, the term ''government entity'' means the United States, any State or political subdivision thereof, the District of Columbia, any possession of the United States, and any agency or instrumentality of any of the foregoing.

(Added Pub. L. 99–514, title XVIII, §1807(a)(7)(A), Oct. 22, 1986, 100 Stat. 2814; amended Pub. L. 100–647, title I, §1018(f)(1), (2), (4), (5)(A), Nov. 10, 1988, 102 Stat. 3582; Pub. L. 101–508, title XI, §11702(e)(1), Nov. 5, 1990, 104 Stat. 1388–515; Pub. L. 109–222, title II, §201(a), May 17, 2006, 120 Stat. 347; Pub. L. 109–432, div. A, title IV, §409(a), Dec. 20, 2006, 120 Stat. 2963.)

REFERENCES IN TEXT

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in subsec. (g)(2)(B), is Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, as amended, which is classified principally to chapter 103 (§9601 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of Title 42 and Tables.

AMENDMENTS

2006—Subsec. (g). Pub. L. 109–222 reenacted heading without change and amended text of subsec. (g) generally. Prior to amendment, text read as follows: ''Nothing in any provision of law shall be construed as providing that an escrow account, settlement fund, or similar fund is not subject to current income tax. The Secretary shall prescribe regulations providing for the taxation of any such account or fund whether as a grantor trust or otherwise.''

Subsec. (g)(3). Pub. L. 109–432 struck out heading and text of par. (3). Text read as follows: ''Paragraph (2) shall not apply to accounts and funds established after December 31, 2010.''

1990—Subsec. (e). Pub. L. 101–508 substituted ''This section (other than subsection (g))'' for ''This section''.

1988—Subsec. (b)(2). Pub. L. 100–647, §1018(f)(4)(B), substituted ''No other'' for ''no other'' in concluding provisions.

Subsec. (b)(2)(B). Pub. L. 100–647, §1018(f)(4)(A), substituted ''a corporation.'' for ''the corporation,''.

Subsec. (d)(1)(A). Pub. L. 100–647, §1018(f)(1), inserted ''(or any related person)'' after ''taxpayer''.

Subsec. (d)(2)(A). Pub. L. 100–647, §1018(f)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''which is established pursuant to a court order,''.

Subsec. (d)(2)(E). Pub. L. 100–647, §1018(f)(1), inserted ''(or any related person)'' after ''taxpayer''.

Subsec. (g). Pub. L. 100–647, §1018(f)(5)(A), added subsec. (g).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §409(b), Dec. 20, 2006, 120 Stat. 2963, provided that: ''The amendment made by

this section [amending this section] shall take effect as if included in section 201 of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109–222].''

Pub. L. 109–222, title II, § 201(b), May 17, 2006, 120 Stat. 348, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to accounts and funds established after the date of the enactment of this Act [May 17, 2006].''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 11702(j) of Pub. L. 101–508, set out as a note under section 59 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 48 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

SPECIAL RULE FOR TAXPAYER IN BANKRUPTCY REORGANIZATION

Section 1807(a)(7)(C) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1018(f)(3), Nov. 10, 1988, 102 Stat. 3582, provided that: ''In the case of any settlement fund which is established for claimants against a corporation which filed a petition for reorganization under chapter 11 of title 11, United States Code, on August 26, 1982, and which filed with a United States district court a first amended and restated plan of reorganization before March 1, 1986—

''(i) any portion of such fund which is established pursuant to a court order and with qualified payments, which meets the requirements of subparagraphs (C) and (D) of section 468B(d)(2) of the Internal Revenue Code of 1954 [now 1986] (as added by this paragraph), and with respect to which an election is made under subparagraph (F) thereof, shall be treated as a designated settlement fund for purposes of section 468B of such Code,

''(ii) such corporation (or any successor thereof) shall be liable for the tax imposed by section 468B of such Code on such portion of the fund (and the fund shall not be liable for such tax), such tax shall be deductible by the corporation, and the rate of tax under section 468B of such Code for any taxable year shall be equal to 15 percent, and

''(iii) any transaction by any portion of the fund not described in clause (i) shall be treated as a transaction made by the corporation.''

CLARIFICATION OF LAW WITH RESPECT TO CERTAIN FUNDS

Section 1807(a)(7)(D) of Pub. L. 99–514 provided that nothing in any provision of law be construed as providing that an escrow account, settlement fund, or similar fund established after Aug. 16, 1986, not be subject to current income tax and that if contributions to such account or fund are not deductible then the account or fund be taxed as a grantor trust, prior to repeal by Pub. L. 100–647, title I, § 1018(f)(5)(B), Nov. 10, 1988, 102 Stat. 3582.

§ 469. Passive activity losses and credits limited

(a) Disallowance

(1) In general

If for any taxable year the taxpayer is described in paragraph (2), neither—

(A) the passive activity loss, nor

(B) the passive activity credit,

for the taxable year shall be allowed.

(2) Persons described

The following are described in this paragraph:

(A) any individual, estate, or trust,

(B) any closely held C corporation, and

(C) any personal service corporation.

(b) Disallowed loss or credit carried to next year

Except as otherwise provided in this section, any loss or credit from an activity which is disallowed under subsection (a) shall be treated as a deduction or credit allocable to such activity in the next taxable year.

(c) Passive activity defined

For purposes of this section—

(1) In general

The term ''passive activity'' means any activity—

(A) which involves the conduct of any trade or business, and

(B) in which the taxpayer does not materially participate.

(2) Passive activity includes any rental activity

Except as provided in paragraph (7), the term ''passive activity'' includes any rental activity.

(3) Working interests in oil and gas property

(A) In general

The term ''passive activity'' shall not include any working interest in any oil or gas property which the taxpayer holds directly or through an entity which does not limit the liability of the taxpayer with respect to such interest.

(B) Income in subsequent years

If any taxpayer has any loss for any taxable year from a working interest in any oil or gas property which is treated as a loss which is not from a passive activity, then any net income from such property (or any property the basis of which is determined in whole or in part by reference to the basis of such property) for any succeeding taxable year shall be treated as income of the taxpayer which is not from a passive activity. If the preceding sentence applies to the net income from any property for any taxable year, any credits allowable under subpart B (other than section 27(a)) or D of part IV of subchapter A for such taxable year which are attributable to such property shall be

treated as credits not from a passive activity to the extent the amount of such credits does not exceed the regular tax liability of the taxpayer for the taxable year which is allocable to such net income.

(4) Material participation not required for paragraphs (2) and (3)

Paragraphs (2) and (3) shall be applied without regard to whether or not the taxpayer materially participates in the activity.

(5) Trade or business includes research and experimentation activity

For purposes of paragraph (1)(A), the term ''trade or business'' includes any activity involving research or experimentation (within the meaning of section 174).

(6) Activity in connection with trade or business or production of income

To the extent provided in regulations, for purposes of paragraph (1)(A), the term ''trade or business'' includes—

(A) any activity in connection with a trade or business, or

(B) any activity with respect to which expenses are allowable as a deduction under section 212.

(7) Special rules for taxpayers in real property business

(A) In general

If this paragraph applies to any taxpayer for a taxable year—

(i) paragraph (2) shall not apply to any rental real estate activity of such taxpayer for such taxable year, and

(ii) this section shall be applied as if each interest of the taxpayer in rental real estate were a separate activity.

Notwithstanding clause (ii), a taxpayer may elect to treat all interests in rental real estate as one activity. Nothing in the preceding provisions of this subparagraph shall be construed as affecting the determination of whether the taxpayer materially participates with respect to any interest in a limited partnership as a limited partner.

(B) Taxpayers to whom paragraph applies

This paragraph shall apply to a taxpayer for a taxable year if—

(i) more than one-half of the personal services performed in trades or businesses by the taxpayer during such taxable year are performed in real property trades or businesses in which the taxpayer materially participates, and

(ii) such taxpayer performs more than 750 hours of services during the taxable year in real property trades or businesses in which the taxpayer materially participates.

In the case of a joint return, the requirements of the preceding sentence are satisfied if and only if either spouse separately satisfies such requirements. For purposes of the preceding sentence, activities in which a spouse materially participates shall be determined under subsection (h).

(C) Real property trade or business

For purposes of this paragraph, the term ''real property trade or business'' means any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, or brokerage trade or business.

(D) Special rules for subparagraph (B)

(i) Closely held C corporations

In the case of a closely held C corporation, the requirements of subparagraph (B) shall be treated as met for any taxable year if more than 50 percent of the gross receipts of such corporation for such taxable year are derived from real property trades or businesses in which the corporation materially participates.

(ii) Personal services as an employee

For purposes of subparagraph (B), personal services performed as an employee shall not be treated as performed in real property trades or businesses. The preceding sentence shall not apply if such employee is a 5-percent owner (as defined in section 416(i)(1)(B)) in the employer.

(d) Passive activity loss and credit defined

For purposes of this section—

(1) Passive activity loss

The term ''passive activity loss'' means the amount (if any) by which—

(A) the aggregate losses from all passive activities for the taxable year, exceed

(B) the aggregate income from all passive activities for such year.

(2) Passive activity credit

The term ''passive activity credit'' means the amount (if any) by which—

(A) the sum of the credits from all passive activities allowable for the taxable year under—

(i) subpart D of part IV of subchapter A, or

(ii) subpart B (other than section 27(a)) of such part IV, exceeds

(B) the regular tax liability of the taxpayer for the taxable year allocable to all passive activities.

(e) Special rules for determining income or loss from a passive activity

For purposes of this section—

(1) Certain income not treated as income from passive activity

In determining the income or loss from any activity—

(A) In general

There shall not be taken into account—

(i) any—

(I) gross income from interest, dividends, annuities, or royalties not derived in the ordinary course of a trade or business,

(II) expenses (other than interest) which are clearly and directly allocable to such gross income, and

(III) interest expense properly allocable to such gross income, and

(ii) gain or loss not derived in the ordinary course of a trade or business which is attributable to the disposition of property—

(I) producing income of a type described in clause (i), or

(II) held for investment.

For purposes of clause (ii), any interest in a passive activity shall not be treated as property held for investment.

(B) Return on working capital

For purposes of subparagraph (A), any income, gain, or loss which is attributable to an investment of working capital shall be treated as not derived in the ordinary course of a trade or business.

(2) Passive losses of certain closely held corporations may offset active income

(A) In general

If a closely held C corporation (other than a personal service corporation) has net active income for any taxable year, the passive activity loss of such taxpayer for such taxable year (determined without regard to this paragraph)—

(i) shall be allowable as a deduction against net active income, and

(ii) shall not be taken into account under subsection (a) to the extent so allowable as a deduction.

A similar rule shall apply in the case of any passive activity credit of the taxpayer.

(B) Net active income

For purposes of this paragraph, the term ''net active income'' means the taxable income of the taxpayer for the taxable year determined without regard to—

(i) any income or loss from a passive activity, and

(ii) any item of gross income, expense, gain, or loss described in paragraph (1)(A).

(3) Compensation for personal services

Earned income (within the meaning of section 911(d)(2)(A)) shall not be taken into account in computing the income or loss from a passive activity for any taxable year.

(4) Dividends reduced by dividends received deduction

For purposes of paragraphs (1) and (2), income from dividends shall be reduced by the amount of any dividends received deduction under section 243, 244, or 245.

(f) Treatment of former passive activities

For purposes of this section—

(1) In general

If an activity is a former passive activity for any taxable year—

(A) any unused deduction allocable to such activity under subsection (b) shall be offset against the income from such activity for the taxable year,

(B) any unused credit allocable to such activity under subsection (b) shall be offset against the regular tax liability (computed after the application of paragraph (1)) allocable to such activity for the taxable year, and

(C) any such deduction or credit remaining after the application of subparagraphs (A) and (B) shall continue to be treated as arising from a passive activity.

(2) Change in status of closely held C corporation or personal service corporation

If a taxpayer ceases for any taxable year to be a closely held C corporation or personal service corporation, this section shall continue to apply to losses and credits to which this section applied for any preceding taxable year in the same manner as if such taxpayer continued to be a closely held C corporation or personal service corporation, whichever is applicable.

(3) Former passive activity

The term ''former passive activity'' means any activity which, with respect to the taxpayer—

(A) is not a passive activity for the taxable year, but

(B) was a passive activity for any prior taxable year.

(g) Dispositions of entire interest in passive activity

If during the taxable year a taxpayer disposes of his entire interest in any passive activity (or former passive activity), the following rules shall apply:

(1) Fully taxable transaction

(A) In general

If all gain or loss realized on such disposition is recognized, the excess of—

(i) any loss from such activity for such taxable year (determined after the application of subsection (b)), over

(ii) any net income or gain for such taxable year from all other passive activities (determined after the application of subsection (b)),

shall be treated as a loss which is not from a passive activity.

(B) Subparagraph (A) not to apply to disposition involving related party

If the taxpayer and the person acquiring the interest bear a relationship to each other described in section 267(b) or section 707(b)(1), then subparagraph (A) shall not apply to any loss of the taxpayer until the taxable year in which such interest is acquired (in a transaction described in subparagraph (A)) by another person who does not bear such a relationship to the taxpayer.

(C) Income from prior years

To the extent provided in regulations, income or gain from the activity for preceding taxable years shall be taken into account under subparagraph (A)(ii) for the taxable year to the extent necessary to prevent the avoidance of this section.

(2) Disposition by death

If an interest in the activity is transferred by reason of the death of the taxpayer—

(A) paragraph (1)(A) shall apply to losses described in paragraph (1)(A) to the extent

such losses are greater than the excess (if any) of—

(i) the basis of such property in the hands of the transferee, over

(ii) the adjusted basis of such property immediately before the death of the taxpayer, and

(B) any losses to the extent of the excess described in subparagraph (A) shall not be allowed as a deduction for any taxable year.

(3) Installment sale of entire interest

In the case of an installment sale of an entire interest in an activity to which section 453 applies, paragraph (1) shall apply to the portion of such losses for each taxable year which bears the same ratio to all such losses as the gain recognized on such sale during such taxable year bears to the gross profit from such sale (realized or to be realized when payment is completed).

(h) Material participation defined

For purposes of this section—

(1) In general

A taxpayer shall be treated as materially participating in an activity only if the taxpayer is involved in the operations of the activity on a basis which is—

(A) regular,

(B) continuous, and

(C) substantial.

(2) Interests in limited partnerships

Except as provided in regulations, no interest in a limited partnership as a limited partner shall be treated as an interest with respect to which a taxpayer materially participates.

(3) Treatment of certain retired individuals and surviving spouses

A taxpayer shall be treated as materially participating in any farming activity for a taxable year if paragraph (4) or (5) of section 2032A(b) would cause the requirements of section 2032A(b)(1)(C)(ii) to be met with respect to real property used in such activity if such taxpayer had died during the taxable year.

(4) Certain closely held C corporations and personal service corporations

A closely held C corporation or personal service corporation shall be treated as materially participating in an activity only if—

(A) 1 or more shareholders holding stock representing more than 50 percent (by value) of the outstanding stock of such corporation materially participate in such activity, or

(B) in the case of a closely held C corporation (other than a personal service corporation), the requirements of section 465(c)(7)(C) (without regard to clause (iv)) are met with respect to such activity.

(5) Participation by spouse

In determining whether a taxpayer materially participates, the participation of the spouse of the taxpayer shall be taken into account.

(i) $25,000 offset for rental real estate activities

(1) In general

In the case of any natural person, subsection (a) shall not apply to that portion of the passive activity loss or the deduction equivalent (within the meaning of subsection (j)(5)) of the passive activity credit for any taxable year which is attributable to all rental real estate activities with respect to which such individual actively participated in such taxable year (and if any portion of such loss or credit arose in another taxable year, in such other taxable year).

(2) Dollar limitation

The aggregate amount to which paragraph (1) applies for any taxable year shall not exceed $25,000.

(3) Phase-out of exemption

(A) In general

In the case of any taxpayer, the $25,000 amount under paragraph (2) shall be reduced (but not below zero) by 50 percent of the amount by which the adjusted gross income of the taxpayer for the taxable year exceeds $100,000.

(B) Special phase-out of rehabilitation credit

In the case of any portion of the passive activity credit for any taxable year which is attributable to the rehabilitation credit determined under section 47, subparagraph (A) shall be applied by substituting ''$200,000'' for ''$100,000''.

(C) Exception for commercial revitalization deduction

Subparagraph (A) shall not apply to any portion of the passive activity loss for any taxable year which is attributable to the commercial revitalization deduction under section 1400I.

(D) Exception for low-income housing credit

Subparagraph (A) shall not apply to any portion of the passive activity credit for any taxable year which is attributable to any credit determined under section 42.

(E) Ordering rules to reflect exceptions and separate phase-outs

If subparagraph (B), (C), or (D) applies for a taxable year, paragraph (1) shall be applied—

(i) first to the portion of the passive activity loss to which subparagraph (C) does not apply,

(ii) second to the portion of such loss to which subparagraph (C) applies,

(iii) third to the portion of the passive activity credit to which subparagraph (B) or (D) does not apply,

(iv) fourth to the portion of such credit to which subparagraph (B) applies, and

(v) then to the portion of such credit to which subparagraph (D) applies.

(F) Adjusted gross income

For purposes of this paragraph, adjusted gross income shall be determined without regard to—

(i) any amount includible in gross income under section 86,

(ii) the amounts excludable from gross income under sections 135 and 137,

(iii) the amounts allowable as a deduction under sections 199, 219, 221, and 222, and

(iv) any passive activity loss or any loss allowable by reason of subsection (c)(7).

(4) Special rule for estates

(A) In general

In the case of taxable years of an estate ending less than 2 years after the date of the death of the decedent, this subsection shall apply to all rental real estate activities with respect to which such decedent actively participated before his death.

(B) Reduction for surviving spouse's exemption

For purposes of subparagraph (A), the $25,000 amount under paragraph (2) shall be reduced by the amount of the exemption under paragraph (1) (without regard to paragraph (3)) allowable to the surviving spouse of the decedent for the taxable year ending with or within the taxable year of the estate.

(5) Married individuals filing separately

(A) In general

Except as provided in subparagraph (B), in the case of any married individual filing a separate return, this subsection shall be applied by substituting—

(i) ''$12,500'' for ''$25,000'' each place it appears,

(ii) ''$50,000'' for ''$100,000'' in paragraph (3)(A), and

(iii) ''$100,000'' for ''$200,000'' in paragraph (3)(B).

(B) Taxpayers not living apart

This subsection shall not apply to a taxpayer who—

(i) is a married individual filing a separate return for any taxable year, and

(ii) does not live apart from his spouse at all times during such taxable year.

(6) Active participation

(A) In general

An individual shall not be treated as actively participating with respect to any interest in any rental real estate activity for any period if, at any time during such period, such interest (including any interest of the spouse of the individual) is less than 10 percent (by value) of all interests in such activity.

(B) No participation requirement for low-income housing, rehabilitation credit, or commercial revitalization deduction

Paragraphs (1) and (4)(A) shall be applied without regard to the active participation requirement in the case of—

(i) any credit determined under section 42 for any taxable year,

(ii) any rehabilitation credit determined under section 47, or

(iii) any deduction under section 1400I (relating to commercial revitalization deduction).

(C) Interest as a limited partner

Except as provided in regulations, no interest as a limited partner in a limited partnership shall be treated as an interest with respect to which the taxpayer actively participates.

(D) Participation by spouse

In determining whether a taxpayer actively participates, the participation of the spouse of the taxpayer shall be taken into account.

(j) Other definitions and special rules

For purposes of this section—

(1) Closely held C corporation

The term ''closely held C corporation'' means any C corporation described in section 465(a)(1)(B).

(2) Personal service corporation

The term ''personal service corporation'' has the meaning given such term by section 269A(b)(1), except that section 269A(b)(2) shall be applied—

(A) by substituting ''any'' for ''more than 10 percent'', and

(B) by substituting ''any'' for ''50 percent or more in value'' in section 318(a)(2)(C).

A corporation shall not be treated as a personal service corporation unless more than 10 percent of the stock (by value) in such corporation is held by employee-owners (within the meaning of section 269A(b)(2), as modified by the preceding sentence).

(3) Regular tax liability

The term ''regular tax liability'' has the meaning given such term by section 26(b).

(4) Allocation of passive activity loss and credit

The passive activity loss and the passive activity credit (and the $25,000 amount under subsection (i)) shall be allocated to activities, and within activities, on a pro rata basis in such manner as the Secretary may prescribe.

(5) Deduction equivalent

The deduction equivalent of credits from a passive activity for any taxable year is the amount which (if allowed as a deduction) would reduce the regular tax liability for such taxable year by an amount equal to such credits.

(6) Special rule for gifts

In the case of a disposition of any interest in a passive activity by gift—

(A) the basis of such interest immediately before the transfer shall be increased by the amount of any passive activity losses allocable to such interest with respect to which a deduction has not been allowed by reason of subsection (a), and

(B) such losses shall not be allowable as a deduction for any taxable year.

(7) Qualified residence interest

The passive activity loss of a taxpayer shall be computed without regard to qualified residence interest (within the meaning of section 163(h)(3)).

(8) Rental activity

The term ''rental activity'' means any activity where payments are principally for the use of tangible property.

(9) Election to increase basis of property by amount of disallowed credit

For purposes of determining gain or loss from a disposition of any property to which subsection (g)(1) applies, the transferor may elect to increase the basis of such property immediately before the transfer by an amount equal to the portion of any unused credit allowable under this chapter which reduced the basis of such property for the taxable year in which such credit arose. If the taxpayer elects the application of this paragraph, such portion of the passive activity credit of such taxpayer shall not be allowed for any taxable year.

(10) Coordination with section 280A

If a passive activity involves the use of a dwelling unit to which section 280A(c)(5) applies for any taxable year, any income, deduction, gain, or loss allocable to such use shall not be taken into account for purposes of this section for such taxable year.

(11) Aggregation of members of affiliated groups

Except as provided in regulations, all members of an affiliated group which files a consolidated return shall be treated as 1 corporation.

(12) Special rule for distributions by estates or trusts

If any interest in a passive activity is distributed by an estate or trust—

(A) the basis of such interest immediately before such distribution shall be increased by the amount of any passive activity losses allocable to such interest, and

(B) such losses shall not be allowable as a deduction for any taxable year.

(k) Separate application of section in case of publicly traded partnerships

(1) In general

This section shall be applied separately with respect to items attributable to each publicly traded partnership (and subsection (i) shall not apply with respect to items attributable to any such partnership). The preceding sentence shall not apply to any credit determined under section 42, or any rehabilitation credit determined under section 47, attributable to a publicly traded partnership to the extent the amount of any such credits exceeds the regular tax liability attributable to income from such partnership.

(2) Publicly traded partnership

For purposes of this section, the term ''publicly traded partnership'' means any partnership if—

(A) interests in such partnership are traded on an established securities market, or

(B) interests in such partnership are readily tradable on a secondary market (or the substantial equivalent thereof).

(3) Coordination with subsection (g)

For purposes of subsection (g), a taxpayer shall not be treated as having disposed of his entire interest in an activity of a publicly traded partnership until he disposes of his entire interest in such partnership.

(4) Application to regulated investment companies

For purposes of this section, a regulated investment company (as defined in section 851) holding an interest in a qualified publicly traded partnership (as defined in section 851(h)) shall be treated as a taxpayer described in subsection (a)(2) with respect to items attributable to such interest.

***(l)* Regulations**

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out provisions of this section, including regulations—

(1) which specify what constitutes an activity, material participation, or active participation for purposes of this section,

(2) which provide that certain items of gross income will not be taken into account in determining income or loss from any activity (and the treatment of expenses allocable to such income),

(3) requiring net income or gain from a limited partnership or other passive activity to be treated as not from a passive activity,

(4) which provide for the determination of the allocation of interest expense for purposes of this section, and

(5) which deal with changes in marital status and changes between joint returns and separate returns.

(m) Phase-in of disallowance of losses and credits for interest held before date of enactment

(1) In general

In the case of any passive activity loss or passive activity credit for any taxable year beginning in calendar years 1987 through 1990, subsection (a) shall not apply to the applicable percentage of that portion of such loss (or such credit) which is attributable to pre-enactment interests.

(2) Applicable percentage

For purposes of this subsection, the applicable percentage shall be determined in accordance with the following table:

In the case of taxable years beginning in:	The applicable percentage is:
1987	65
1988	40
1989	20
1990	10.

(3) Portion of loss or credit attributable to pre-enactment interests

For purposes of this subsection—

(A) In general

The portion of the passive activity loss (or passive activity credit) for any taxable year which is attributable to pre-enactment interests is the lesser of—

(i) the amount of the passive activity loss (or passive activity credit) which is disallowed for the taxable year under subsection (a) (without regard to this subsection), or

(ii) the amount of the passive activity loss (or passive activity credit) which would be disallowed for the taxable year

(without regard to this subsection and without regard to any amount allocable to an activity for the taxable year under subsection (b)) taking into account only pre-enactment interests.

(B) Pre-enactment interest

(i) In general

The term ''pre-enactment interest'' means any interest in a passive activity held by a taxpayer on the date of the enactment of the Tax Reform Act of 1986, and at all times thereafter.

(ii) Binding contract exception

For purposes of clause (i), any interest acquired after such date of enactment pursuant to a written binding contract in effect on such date, and at all times thereafter, shall be treated as held on such date.

(iii) Interest in activities

The term ''pre-enactment interest'' shall not include an interest in a passive activity unless such activity was being conducted on such date of enactment. The preceding sentence shall not apply to an activity commencing after such date if—

(I) the property used in such activity is acquired pursuant to a written binding contract in effect on August 16, 1986, and at all times thereafter, or

(II) construction of property used in such activity began on or before August 16, 1986.

(Added Pub. L. 99–514, title V, § 501(a), Oct. 22, 1986, 100 Stat. 2233; amended Pub. L. 100–203, title X, § 10212(a), Dec. 22, 1987, 101 Stat. 1330–405; Pub. L. 100–647, title I, § 1005(a)(1)–(9), (11), (12), title II, § 2004(g), title VI, § 6009(c)(3), Nov. 10, 1988, 102 Stat. 3387–3389, 3603, 3690; Pub. L. 101–239, title VII, § 7109(a), Dec. 19, 1989, 103 Stat. 2322; Pub. L. 101–508, title XI, §§ 11704(a)(6), 11813(b)(16), Nov. 5, 1990, 104 Stat. 1388–518, 1388–555; Pub. L. 103–66, title XIII, § 13143(a), (b), Aug. 10, 1993, 107 Stat. 440, 441; Pub. L. 104–188, title I, §§ 1704(d)(1), (e)(1), 1807(c)(4), Aug. 20, 1996, 110 Stat. 1878, 1902; Pub. L. 105–277, div. J, title IV, § 4003(a)(2)(D), Oct. 21, 1998, 112 Stat. 2681–908; Pub. L. 106–554, § 1(a)(7) [title I, § 101(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–599; Pub. L. 107–16, title IV, § 431(c)(3), June 7, 2001, 115 Stat. 68; Pub. L. 107–147, title IV, § 412(a), Mar. 9, 2002, 116 Stat. 53; Pub. L. 108–357, title I, § 102(d)(5), title III, § 331(g), Oct. 22, 2004, 118 Stat. 1429, 1477.)

AMENDMENT OF SECTION

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (m)(3)(B), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

AMENDMENTS

2004—Subsec. (i)(3)(F)(iii). Pub. L. 108–357, § 102(d)(5), inserted ''199,'' before ''219,''.

Subsec. (k)(4). Pub. L. 108–357, § 331(g), added par. (4).

2002—Subsec. (i)(3)(E)(ii) to (iv). Pub. L. 107–147 added cls. (ii) to (iv) and struck out former cls. (ii) to (iv) which read as follows:

''(ii) second to the portion of the passive activity credit to which subparagraph (B) or (D) does not apply,

''(iii) third to the portion of such credit to which subparagraph (B) applies,

''(iv) fourth to the portion of such loss to which subparagraph (C) applies, and''.

2001—Subsec. (i)(3)(F)(iii). Pub. L. 107–16, §§ 431(c)(3), 901, temporarily substituted '', 221, and 222'' for ''and 221''. See Effective and Termination Dates of 2001 Amendment note below.

2000—Subsec. (i)(3)(C) to (F). Pub. L. 106–554, § 1(a)(7) [title I, § 101(b)(1), (2)], added subpar. (C), redesignated former subpars. (C) to (E) as (D) to (F), respectively, and generally amended heading and text of subpar. (E), as redesignated. Prior to amendment, text read as follows: ''If subparagraph (B) or (C) applies for any taxable year, paragraph (1) shall be applied—

''(i) first to the passive activity loss,

''(ii) second to the portion of the passive activity credit to which subparagraph (B) or (C) does not apply,

''(iii) third to the portion of such credit to which subparagraph (B) applies, and

''(iv) then to the portion of such credit to which subparagraph (C) applies.''

Subsec. (i)(6)(B). Pub. L. 106–554, § 1(a)(7) [title I, § 101(b)(3)(B)], substituted '', rehabilitation credit, or commercial revitalization deduction'' for ''or rehabilitation credit'' in heading.

Subsec. (i)(6)(B)(iii). Pub. L. 106–554, § 1(a)(7) [title I, § 101(b)(3)(A)], added cl. (iii).

1998—Subsec. (i)(3)(E)(iii). Pub. L. 105–277 amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''any amount allowable as a deduction under section 219, and''.

1996—Subsec. (c)(3)(B). Pub. L. 104–188, § 1704(d)(1), inserted at end ''If the preceding sentence applies to the net income from any property for any taxable year, any credits allowable under subpart B (other than section 27(a)) or D of part IV of subchapter A for such taxable year which are attributable to such property shall be treated as credits not from a passive activity to the extent the amount of such credits does not exceed the regular tax liability of the taxpayer for the taxable year which is allocable to such net income.''

Subsec. (g)(1)(A). Pub. L. 104–188, § 1704(e)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''If all gain or loss realized on such disposition is recognized, the excess of—

''(i) the sum of—

''(I) any loss from such activity for such taxable year (determined after application of subsection (b)), plus

''(II) any loss realized on such disposition, over

''(ii) net income or gain for such taxable year from all passive activities (determined without regard to losses described in clause (i)),

shall be treated as a loss which is not from a passive activity.''

Subsec. (i)(3)(E)(ii). Pub. L. 104–188, § 1807(c)(4), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''the amount excludable from gross income under section 135,''.

1993—Subsec. (c)(2). Pub. L. 103–66, § 13143(b)(1), substituted ''Except as provided in paragraph (7), the'' for ''The''.

Subsec. (c)(7). Pub. L. 103–66, § 13143(a), added par. (7).

Subsec. (i)(3)(E)(iv). Pub. L. 103–66, § 13143(b)(2), inserted ''or any loss allowable by reason of subsection (c)(7)'' after ''loss''.

1990—Subsec. (i)(3)(B), (6)(B)(ii). Pub. L. 101–508, § 11813(b)(16)(A), substituted ''rehabilitation credit determined under section 47'' for ''rehabilitation investment credit (within the meaning of section 48(*o*))''.

Subsec. (k)(1). Pub. L. 101–508, § 11813(b)(16)(B), substituted ''rehabilitation credit determined under section 47'' for ''rehabilitation investment credit (within the meaning of section 48(*o*))''.

Subsec. (m)(3)(A). Pub. L. 101–508, § 11704(a)(6), substituted ''pre-enactment'' for ''preenactment''.

1989—Subsec. (i)(3)(B), (C). Pub. L. 101–239 added subpars. (B) and (C) and struck out former subpars. (B) and (C) which read as follows:

''(B) SPECIAL PHASE-OUT OF LOW-INCOME HOUSING AND REHABILITATION CREDITS.—In the case of any portion of the passive activity credit for any taxable year which is attributable to any credit to which paragraph (6)(B) applies, subparagraph (A) shall be applied by substituting '$200,000' for '$100,000'.

''(C) ORDERING RULE TO REFLECT SEPARATE PHASE-OUTS.—If subparagraph (B) applies for any taxable year, paragraph (1) shall be applied—

''(i) first to the passive activity loss,

''(ii) second to the portion of the passive activity credit to which subparagraph (B) does not apply, and

''(iii) then to the portion of such credit to which subparagraph (B) applies.''

Subsec. (i)(3)(D), (E). Pub. L. 101–239 added subpar. (D) and redesignated former subpar. (D) as (E).

1988—Subsec. (e)(1)(A)(ii). Pub. L. 100–647, §1005(a)(1), inserted ''not derived in the ordinary course of a trade or business which is'' after ''gain or loss''.

Subsec. (g)(1)(A). Pub. L. 100–647, §1005(a)(2)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''If all gain or loss realized on such disposition is recognized, any loss from such activity which has not previously been allowed as a deduction (and in the case of a passive activity for the taxable year, any loss realized on such disposition) shall not be treated as a passive activity loss and shall be allowable as a deduction against income in the following order:

''(i) Income or gain from the passive activity for the taxable year (including any gain recognized on the disposition).

''(ii) Net income or gain for the taxable year from all passive activities.

''(iii) Any other income or gain.''

Subsec. (g)(1)(C). Pub. L. 100–647, §1005(a)(2)(B), substituted ''Income from prior years'' for ''Coordination with section 1211'' in heading and amended text generally. Prior to amendment, text read as follows: ''In the case of any loss realized on the disposition of an interest in a passive activity, section 1211 shall be applied before subparagraph (A) is applied.''

Subsec. (g)(2)(A). Pub. L. 100–647, §1005(a)(3), substituted ''paragraph (1)(A)'' for ''paragraph (1)'' and ''to losses described in paragraph (1)(A)'' for ''to such losses''.

Subsec. (g)(3). Pub. L. 100–647, §1005(a)(4), substituted ''(realized or to be realized'' for ''realized (or to be realized)'' and ''is completed)'' for ''is completed''.

Subsec. (h)(4). Pub. L. 100–647, §1005(a)(5), inserted ''only'' before ''if''.

Subsec. (i)(1). Pub. L. 100–647, §1005(a)(6), substituted ''in such taxable year (and if any portion of such loss or credit arose in another taxable year, in such other taxable year)'' for ''in the taxable year in which such portion of such loss or credit arose''.

Subsec. (i)(3)(D). Pub. L. 100–647, §6009(c)(3), added cl. (ii) and redesignated former cls. (ii) and (iii) as (iii) and (iv), respectively.

Subsec. (i)(6)(C). Pub. L. 100–647, §1005(a)(7), substituted ''Except as provided in regulations, no'' for ''No''.

Subsec. (j)(6)(A). Pub. L. 100–647, §1005(a)(8), inserted ''with respect to which a deduction has not been allowed by reason of subsection (a)'' after ''to such interest''.

Subsec. (j)(10), (11). Pub. L. 100–647, §1005(a)(9), added pars. (10) and (11).

Subsec. (j)(12). Pub. L. 100–647, §1005(a)(11), added par. (12).

Subsec. (k)(3). Pub. L. 100–647, §2004(g), added par. (3).

Subsec. (m). Pub. L. 100–647, §1005(a)(12), substituted ''interest'' for ''interests'' in heading.

Subsec. (m)(1). Pub. L. 100–647, §1005(a)(12), added par. (1) and struck out former par. (1) which read as follows: ''In the case of any passive activity loss or credit for any taxable year beginning in calendar years 1987 through 1990 which—

''(A) is attributable to a pre-enactment interest, but

''(B) is not attributable to a carryforward to such taxable year of any loss or credit which was disallowed under this section for a preceding taxable year,

there shall be disallowed under subsection (a) only the applicable percentage of the amount which (but for this subsection) would have been disallowed under subsection (a) for such taxable year.''

Subsec. (m)(2). Pub. L. 100–647, §1005(a)(12), added par. (2) and struck out former par. (2) which resulted in substituting ''65'', ''40'', ''20'', and ''10'' for ''35'', ''60'', ''80'', and ''90'' respectively, in second column.

Subsec. (m)(3)(A). Pub. L. 100–647, §1005(a)(12), added subpar. (A) and struck out former subpar. (A) which read as follows: ''The portion of the passive activity loss for any taxable year which is attributable to pre-enactment interests shall be equal to the lesser of—

''(i) the passive activity loss for such taxable year, or

''(ii) the passive activity loss for such taxable year determined by taking into account only pre-enactment interests.

For purposes of this subparagraph, the deduction equivalent (within the meaning of subsection (j)(5)) of a passive activity credit shall be taken into account.''

1987—Subsecs. (k) to (m). Pub. L. 100–203 added subsec. (k) and redesignated former subsecs. (k) and (*l*) as (*l*) and (m), respectively.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 102(d)(5) of Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2004, see section 102(e) of Pub. L. 108–357, set out as a note under section 56 of this title.

Pub. L. 108–357, title III, §331(h), Oct. 22, 2004, 118 Stat. 1477, provided that: ''The amendments made by this section [amending this section and sections 851 and 7704 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Community Renewal Tax Relief Act of 2000 [H.R. 5662, as enacted by Pub. L. 106–554], to which such amendment relates, see section 412(e) of Pub. L. 107–147, set out as a note under section 151 of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to payments made in taxable years beginning after Dec. 31, 2001, see section 431(d) of Pub. L. 107–16, set out as a note under section 62 of this title.

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 4003(*l*) of Pub. L. 105–277, set out as a note under section 86 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1704(d)(2) of Pub. L. 104–188 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1986.''

Section 1704(e)(2) of Pub. L. 104–188 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1986.''

Amendment by section 1807(c)(4) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1807(e) of Pub. L. 104–188, set out as an Effective Date note under section 36C of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13143(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1993.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11813(b)(16) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7109(b) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to property placed in service after December 31, 1989, in taxable years ending after such date.

''(2) SPECIAL RULE WHERE INTEREST HELD IN PASS-THRU ENTITY.—In the case of a taxpayer who holds an indirect interest in property described in paragraph (1), the amendments made by this section shall apply only if such interest is acquired after December 31, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1005(a)(1)–(9), (11), (12) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 2004(g) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

Amendment by section 6009(c)(3) of Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1989, see section 6009(d) of Pub. L. 100–647, set out as a note under section 86 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 effective as if included in the amendments made by section 501 of the Tax Reform Act of 1986, Pub. L. 99–514, see section 10212(c) of Pub. L. 100–203, set out as a note under section 58 of this title.

EFFECTIVE DATE

Section 501(c) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1005(a)(10), title IV, § 4003(b)(2), Nov. 10, 1988, 102 Stat. 3388, 3644, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1986.

''(2) SPECIAL RULE FOR CARRYOVERS.—The amendments made by this section shall not apply to any loss, deduction, or credit carried to a taxable year beginning after December 31, 1986, from a taxable year beginning before January 1, 1987.

''[(3) Repealed. Pub. L. 100–647, title IV, § 4003(b)(2), Nov. 10, 1988, 102 Stat. 3644.]

''(4) INCOME FROM SALES OF PASSIVE ACTIVITIES IN TAXABLE YEARS BEGINNING BEFORE JANUARY 1, 1987.—If—

''(A) gain is recognized in a taxable year beginning after December 31, 1986, from a sale or exchange of an interest in an activity in a taxable year beginning before January 1, 1987, and

''(B) such gain would have been treated as gain from a passive activity had section 469 of the Internal Revenue Code of 1986 (as added by this section) been in effect for the taxable year in which the sale or exchange occurred and for all succeeding taxable years,

then such gain shall be treated as gain from a passive activity for purposes of such section.''

SAVINGS PROVISION

For provisions that nothing in amendment by section 11813(b)(16) of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

AMOUNTS ATTRIBUTABLE TO ACTIVITIES SUBJECT TO LIMITATIONS UNDER SECTION 469 TREATED AS DEDUCTION ALLOCABLE TO SUCH ACTIVITY

Section 1005(c)(11) of Pub. L. 100–647 provided that: ''If—

''(A) any amount was disallowed as a deduction under section 163(d) of the Internal Revenue Code of 1954 [now 1986] (as in effect on the day before the date of the enactment of the Reform Act [Oct. 22, 1986]),

''(B) such amount would (but for this paragraph) be treated as investment interest paid or accrued by the taxpayer in the taxpayer's first taxable year beginning after December 31, 1986, and

''(C) the taxpayer makes an election under this paragraph at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe,

to the extent such amount is attributable to an activity subject to the limitations of section 469 of the 1986 Code, such amount shall not be treated as investment interest but shall be treated as a deduction allocable to such activity for such first taxable year. Subsection (m) of section 469 of the 1986 Code and section 501(c)(2) of the Reform Act [Pub. L. 99–514, set out as an Effective Date note above] shall not apply to any amount so treated.''

TRANSITIONAL RULE FOR LOW-INCOME HOUSING

Section 502 of Pub. L. 99–514, as amended by Pub. L. 99–509, title VIII, § 8073(a), Oct. 21, 1986, 100 Stat. 1965; Pub. L. 100–647, title I, § 1005(b), Nov. 10, 1988, 102 Stat. 3389, provided that:

''(a) GENERAL RULE.—Any loss sustained by a qualified investor with respect to an interest in a qualified low-income housing project for any taxable year in the relief period shall not be treated as a loss from a passive activity for purposes of section 469 of the Internal Revenue Code of 1986.

''(b) RELIEF PERIOD.—For purposes of subsection (a), the term 'relief period' means the period beginning with the taxable year in which the investor made his initial investment in the qualified low-income housing project and ending with whichever of the following is the earliest—

''(1) the 6th taxable year after the taxable year in which the investor made his initial investment,

''(2) the 1st taxable year after the taxable year in which the investor is obligated to make his last investment, or

''(3) the taxable year preceding the 1st taxable year for which such project ceased to be a qualified low-income housing project.

''(c) QUALIFIED LOW-INCOME HOUSING PROJECT.—For purposes of this section, the term 'qualified low-income housing project' means any project if—

''(1) such project meets the requirements of clause (i), (ii), (iii), or (iv) of section 1250(a)(1)(B) [of the Internal Revenue Code of 1986] as of the date placed in service and for each taxable year thereafter which be-

gins after 1986 and for which a passive loss may be allowable with respect to such project,

''(2) the operator certifies to the Secretary of the Treasury or his delegate that such project met the requirements of paragraph (1) on the date of the enactment of this Act [Oct. 22, 1986] (or, if later, when placed in service) and annually thereafter,

''(3) such project is constructed or acquired pursuant to a binding written contract entered into on or before August 16, 1986, and

''(4) such project is placed in service before January 1, 1989.

''(d) QUALIFIED INVESTOR.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified investor' means any natural person who holds (directly or through 1 or more entities) an interest in a qualified low-income housing project—

''(A) if—

''(i) in the case of a project placed in service on or before August 16, 1986, such person held an interest in such project on August 16, 1986, and such person made his initial investment after December 31, 1983, or

''(ii) in the case of a project placed in service after August 16, 1986, such person made his initial investment after December 31, 1983, and such person held an interest in such project on December 31, 1986, and

''(B) if such investor is required to make payments after December 31, 1986, of 50 percent or more of the total original obligated investment for such interest.

For purposes of subparagraph (A), a person shall be treated as holding an interest on August 16, 1986, or December 31, 1986, if on such date such person had a binding contract to acquire such interest.

''(2) TREATMENT OF ESTATES.—The estate of a decedent shall succeed to the treatment under this section of the decedent but only with respect to the 1st 2 taxable years of such estate ending after the date of the decedent's death.

''(3) SPECIAL RULE FOR CERTAIN PARTNERSHIPS.—In the case of any property which is held by a partnership—

''(A) which placed such property in service on or after December 31, 1985, and before August 17, 1986, and continuously held such property through the close of the taxable year for which the determination is being made, and

''(B) which was not treated as a new partnership or as terminated at any time on or after the date on which such property was placed in service and through the close of the taxable year for which the determination is being made,

paragraph (1)(A)(i) shall be applied by substituting 'December 31, 1988' for 'August 16, 1986' the 2nd place it appears.

''(4) SPECIAL RULE FOR CERTAIN RURAL HOUSING.—In the case of any interest in a qualified low-income housing project which—

''(A) is assisted under section 515 of the Housing Act of 1949 [42 U.S.C. 1485] (relating to the Farmers' Home Administration Program), and

''(B) is located in a town with a population of less than 10,000 and which is not part of a metropolitan statistical area,

paragraph (1)(B) shall be applied by substituting '35 percent' for '50 percent' and subsection (b)(1) shall be applied by substituting '5th taxable year' for '6th taxable year'. The preceding sentence shall not apply to any interest unless, on December 31, 1986, at least one-half of the number of payments required with respect to such interest remain to be paid.

''(e) SPECIAL RULES.—

''(1) WHERE MORE THAN 1 BUILDING IN PROJECT.—If there is more than 1 building in any project, the determination of when such project is placed in service shall be based on when the 1st building in such project is placed in service.

''(2) ONLY CASH AND OTHER PROPERTY TAKEN INTO ACCOUNT.—In determining the amount any person invests in (or is obligated to invest in) any interest, only cash and other property shall be taken into account.

''(3) COORDINATION WITH CREDIT.—No low-income housing credit shall be determined under section 42 of the Internal Revenue Code of 1986 with respect to any project with respect to which any person has been allowed any benefit under this section.''

[Section 8073(b) of Pub. L. 99–509 provided that: ''The amendment made by subsection (a) [amending section 502 of Pub. L. 99–514, set out above] shall take effect as if included in section 502 of the Tax Reform Act of 1986 on the date of its enactment [Oct. 22, 1986].'']

§ 470. Limitation on deductions allocable to property used by governments or other tax-exempt entities

(a) Limitation on losses

Except as otherwise provided in this section, a tax-exempt use loss for any taxable year shall not be allowed.

(b) Disallowed loss carried to next year

Any tax-exempt use loss with respect to any tax-exempt use property which is disallowed under subsection (a) for any taxable year shall be treated as a deduction with respect to such property in the next taxable year.

(c) Definitions

For purposes of this section—

(1) Tax-exempt use loss

The term ''tax-exempt use loss'' means, with respect to any taxable year, the amount (if any) by which—

(A) the sum of—

(i) the aggregate deductions (other than interest) directly allocable to a tax-exempt use property, plus

(ii) the aggregate deductions for interest properly allocable to such property, exceed

(B) the aggregate income from such property.

(2) Tax-exempt use property

(A) In general

The term ''tax-exempt use property'' has the meaning given to such term by section 168(h), except that such section shall be applied—

(i) without regard to paragraphs (1)(C) and (3) thereof, and

(ii) as if section 197 intangible property (as defined in section 197), and property described in paragraph (1)(B) or (2) of section 167(f), were tangible property.

(B) Exception for partnerships

Such term shall not include any property which would (but for this subparagraph) be tax-exempt use property solely by reason of section 168(h)(6).

(C) Cross reference

For treatment of partnerships as leases to which section 168(h) applies, see section 7701(e).

(d) Exception for certain leases

This section shall not apply to any lease of property which meets the requirements of all of the following paragraphs:

(1) Availability of funds

(A) In general

A lease of property meets the requirements of this paragraph if (at all times during the lease term) not more than an allowable amount of funds are—

(i) subject to any arrangement referred to in subparagraph (B), or

(ii) set aside or expected to be set aside,

to or for the benefit of the lessor or any lender, or to or for the benefit of the lessee to satisfy the lessee's obligations or options under the lease. For purposes of clause (ii), funds shall be treated as set aside or expected to be set aside only if a reasonable person would conclude, based on the facts and circumstances, that such funds are set aside or expected to be set aside.

(B) Arrangements

The arrangements referred to in this subparagraph include a defeasance arrangement, a loan by the lessee to the lessor or any lender, a deposit arrangement, a letter of credit collateralized with cash or cash equivalents, a payment undertaking agreement, prepaid rent (within the meaning of the regulations under section 467), a sinking fund arrangement, a guaranteed investment contract, financial guaranty insurance, and any similar arrangement (whether or not such arrangement provides credit support).

(C) Allowable amount

(i) In general

Except as otherwise provided in this subparagraph, the term ''allowable amount'' means an amount equal to 20 percent of the lessor's adjusted basis in the property at the time the lease is entered into.

(ii) Higher amount permitted in certain cases

To the extent provided in regulations, a higher percentage shall be permitted under clause (i) where necessary because of the credit-worthiness of the lessee. In no event may such regulations permit a percentage of more than 50 percent.

(iii) Option to purchase

If under the lease the lessee has the option to purchase the property for a fixed price or for other than the fair market value of the property (determined at the time of exercise), the allowable amount at the time such option may be exercised may not exceed 50 percent of the price at which such option may be exercised.

(iv) No allowable amount for certain arrangements

The allowable amount shall be zero with respect to any arrangement which involves—

(I) a loan from the lessee to the lessor or a lender,

(II) any deposit received, letter of credit issued, or payment undertaking agreement entered into by a lender otherwise involved in the transaction, or

(III) in the case of a transaction which involves a lender, any credit support made available to the lessor in which any such lender does not have a claim that is senior to the lessor.

For purposes of subclause (I), the term ''loan'' shall not include any amount treated as a loan under section 467 with respect to a section 467 rental agreement.

(2) Lessor must make substantial equity investment

(A) In general

A lease of property meets the requirements of this paragraph if—

(i) the lessor—

(I) has at the time the lease is entered into an unconditional at-risk equity investment (as determined by the Secretary) in the property of at least 20 percent of the lessor's adjusted basis in the property as of that time, and

(II) maintains such investment throughout the term of the lease, and

(ii) the fair market value of the property at the end of the lease term is reasonably expected to be equal to at least 20 percent of such basis.

(B) Risk of loss

For purposes of clause (ii),[1] the fair market value at the end of the lease term shall be reduced to the extent that a person other than the lessor bears a risk of loss in the value of the property.

(C) Paragraph not to apply to short-term leases

This paragraph shall not apply to any lease with a lease term of 5 years or less.

(3) Lessee may not bear more than minimal risk of loss

(A) In general

A lease of property meets the requirements of this paragraph if there is no arrangement under which the lessee bears—

(i) any portion of the loss that would occur if the fair market value of the leased property were 25 percent less than its reasonably expected fair market value at the time the lease is terminated, or

(ii) more than 50 percent of the loss that would occur if the fair market value of the leased property at the time the lease is terminated were zero.

(B) Exception

The Secretary may by regulations provide that the requirements of this paragraph are not met where the lessee bears more than a minimal risk of loss.

(C) Paragraph not to apply to short-term leases

This paragraph shall not apply to any lease with a lease term of 5 years or less.

(4) Property with more than 7-year class life

In the case of a lease—

[1] So in original. Probably should be ''subparagraph (A)(ii)''.

(A) of property with a class life (as defined in section 168(i)(1)) of more than 7 years, other than fixed-wing aircraft and vessels, and

(B) under which the lessee has the option to purchase the property,

the lease meets the requirements of this paragraph only if the purchase price under the option equals the fair market value of the property (determined at the time of exercise).

(e) Special rules

(1) Treatment of former tax-exempt use property

(A) In general

In the case of any former tax-exempt use property—

(i) any deduction allowable under subsection (b) with respect to such property for any taxable year shall be allowed only to the extent of any net income (without regard to such deduction) from such property for such taxable year, and

(ii) any portion of such unused deduction remaining after application of clause (i) shall be treated as a deduction allowable under subsection (b) with respect to such property in the next taxable year.

(B) Former tax-exempt use property

For purposes of this subsection, the term ''former tax-exempt use property'' means any property which—

(i) is not tax-exempt use property for the taxable year, but

(ii) was tax-exempt use property for any prior taxable year.

(2) Disposition of entire interest in property

If during the taxable year a taxpayer disposes of the taxpayer's entire interest in tax-exempt use property (or former tax-exempt use property), rules similar to the rules of section 469(g) shall apply for purposes of this section.

(3) Coordination with section 469

This section shall be applied before the application of section 469.

(4) Coordination with sections 1031 and 1033

(A) In general

Sections 1031(a) and 1033(a) shall not apply if—

(i) the exchanged or converted property is tax-exempt use property subject to a lease which was entered into before March 13, 2004, and which would not have met the requirements of subsection (d) had such requirements been in effect when the lease was entered into, or

(ii) the replacement property is tax-exempt use property subject to a lease which does not meet the requirements of subsection (d).

(B) Adjusted basis

In the case of property acquired by the lessor in a transaction to which section 1031 or 1033 applies, the adjusted basis of such property for purposes of this section shall be equal to the lesser of—

(i) the fair market value of the property as of the beginning of the lease term, or

(ii) the amount which would be the lessor's adjusted basis if such sections did not apply to such transaction.

(f) Other definitions

For purposes of this section—

(1) Related parties

The terms ''lessor'', ''lessee'', and ''lender'' each include any related party (within the meaning of section 197(f)(9)(C)(i)).

(2) Lease term

The term ''lease term'' has the meaning given to such term by section 168(i)(3).

(3) Lender

The term ''lender'' means, with respect to any lease, a person that makes a loan to the lessor which is secured (or economically similar to being secured) by the lease or the leased property.

(4) Loan

The term ''loan'' includes any similar arrangement.

(g) Regulations

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

(1) allow in appropriate cases the aggregation of property subject to the same lease, and

(2) provide for the determination of the allocation of interest expense for purposes of this section.

(Added Pub. L. 108–357, title VIII, §848(a), Oct. 22, 2004, 118 Stat. 1602; amended Pub. L. 110–172, §7(c), Dec. 29, 2007, 121 Stat. 2482.)

AMENDMENTS

2007—Subsec. (c)(2). Pub. L. 110–172, §7(c)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'tax-exempt use property' has the meaning given to such term by section 168(h), except that such section shall be applied—

''(A) without regard to paragraphs (1)(C) and (3) thereof, and

''(B) as if property described in—

''(i) section 167(f)(1)(B),

''(ii) section 167(f)(2), and

''(iii) section 197 intangible,

were tangible property.

Such term shall not include property which would (but for this sentence) be tax-exempt use property solely by reason of section 168(h)(6) if any credit is allowable under section 42 or 47 with respect to such property.''

Subsec. (d)(1)(A). Pub. L. 110–172, §7(c)(2), in introductory provisions, substituted ''(at all times during the lease term)'' for ''(at any time during the lease term)''.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 7(e) of Pub. L. 110–172, set out as a note under section 1092 of this title.

EFFECTIVE DATE

Pub. L. 108–357, title VIII, §849, Oct. 22, 2004, 118 Stat. 1606, as amended by Pub. L. 109–135, title IV, §403(ff), Dec. 21, 2005, 119 Stat. 2631, provided that:

''(a) IN GENERAL.—Except as provided in this section, the amendments made by this part [part III (§§ 847–849) of subtitle B of title VIII of Pub. L. 108–357, enacting this section and amending sections 167, 168, and 197 of this title] shall apply to leases entered into after March 12, 2004, and in the case of property treated as tax-exempt use property other than by reason of a lease, to property acquired after March 12, 2004.

''(b) EXCEPTION.—

''(1) IN GENERAL.—The amendments made by this part shall not apply to qualified transportation property.

''(2) QUALIFIED TRANSPORTATION PROPERTY.—For purposes of paragraph (1), the term 'qualified transportation property' means domestic property subject to a lease with respect to which a formal application—

''(A) was submitted for approval to the Federal Transit Administration (an agency of the Department of Transportation) after June 30, 2003, and before March 13, 2004,

''(B) is approved by the Federal Transit Administration before January 1, 2006, and

''(C) includes a description of such property and the value of such property.

''(3) EXCHANGES AND CONVERSION OF TAX-EXEMPT USE PROPERTY.—Section 470(e)(4) of the Internal Revenue Code of 1986, as added by section 848, shall apply to property exchanged or converted after the date of the enactment of this Act [Oct. 22, 2004].

''(4) INTANGIBLES AND INDIAN TRIBAL GOVERNMENTS.—The amendments made subsections (b)(2), (b)(3), and (e) of section 847 [amending sections 167, 168, and 197 of this title], and the treatment of property described in clauses (ii) and (iii) of section 470(c)(2)(B) of the Internal Revenue Code of 1986 (as added by section 848) as tangible property, shall apply to leases entered into after October 3, 2004.''

SUBPART D—INVENTORIES

Sec.

471. General rule for inventories.
472. Last-in, first-out inventories.
473. Qualified liquidations of LIFO inventories.
474. Simplified dollar-value LIFO method for certain small businesses.
475. Mark to market accounting method for dealers in securities.

AMENDMENTS

1993—Pub. L. 103–66, title XIII, § 13223(b)(2), Aug. 10, 1993, 107 Stat. 484, added item 475.

1986—Pub. L. 99–514, title VIII, § 802(b), Oct. 22, 1986, 100 Stat. 2350, substituted ''Simplified dollar-value LIFO method for certain small businesses'' for ''Election by certain small businesses to use one inventory pool'' in item 474.

1981—Pub. L. 97–34, title II, § 237(b), Aug. 13, 1981, 95 Stat. 253, added item 474.

1980—Pub. L. 96–223, title IV, § 403(a)(2), Apr. 2, 1980, 94 Stat. 304, added item 473.

§ 471. General rule for inventories

(a) General rule

Whenever in the opinion of the Secretary the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer on such basis as the Secretary may prescribe as conforming as nearly as may be to the best accounting practice in the trade or business and as most clearly reflecting the income.

(b) Estimates of inventory shrinkage permitted

A method of determining inventories shall not be treated as failing to clearly reflect income solely because it utilizes estimates of inventory shrinkage that are confirmed by a physical count only after the last day of the taxable year if—

(1) the taxpayer normally does a physical count of inventories at each location on a regular and consistent basis, and

(2) the taxpayer makes proper adjustments to such inventories and to its estimating methods to the extent such estimates are greater than or less than the actual shrinkage.

(c) Cross reference

For rules relating to capitalization of direct and indirect costs of property, see section 263A.

(Aug. 16, 1954, ch. 736, 68A Stat. 159; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99–514, title VIII, § 803(b)(4), Oct. 22, 1986, 100 Stat. 2356; Pub. L. 105–34, title IX, § 961(a), Aug. 5, 1997, 111 Stat. 891.)

AMENDMENTS

1997—Subsecs. (b), (c). Pub. L. 105–34 added subsec. (b) and redesignated former subsec. (b) as (c).

1986—Pub. L. 99–514 designated existing provisions as subsec. (a) and added subsec. (b).

1976—Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary'' wherever appearing.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 961(b)(1) of Pub. L. 105–34 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1986 AMENDMENT

If any interest costs incurred after Dec. 31, 1986, are attributable to costs incurred before Jan. 1, 1987, the amendment by Pub. L. 99–514 is applicable to such interest costs only to the extent such interest costs are attributable to costs which were required to be capitalized under section 263 of the Internal Revenue Code of 1954 and which would have been taken into account in applying section 189 of the Internal Revenue Code of 1954 (as in effect before its repeal by section 803 of Pub. L. 99–514) or, if applicable, section 266 of such Code, see section 7831(d)(2) of Pub. L. 101–239, set out as an Effective Date note under section 263A of this title.

Amendment by Pub. L. 99–514 applicable to costs incurred after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 803(d) of Pub. L. 99–514, set out as an Effective Date note under section 263A of this title.

COORDINATION WITH SECTION 481

Section 961(b)(2) of Pub. L. 105–34 provided that: ''In the case of any taxpayer permitted by this section [amending this section and enacting provisions set out as a note above] to change its method of accounting to a permissible method for any taxable year—

''(A) such changes shall be treated as initiated by the taxpayer,

''(B) such changes shall be treated as made with the consent of the Secretary of the Treasury, and

''(C) the period for taking into account the adjustments under section 481 [26 U.S.C. 481] by reason of such change shall be 4 years.''

STUDY OF ACCOUNTING METHODS FOR INVENTORY; REPORT NOT LATER THAN DECEMBER 31, 1982

Pub. L. 97–34, title II, § 238, Aug. 13, 1981, 95 Stat. 254, directed Secretary of the Treasury to conduct a study of methods of tax accounting for inventory with a view towards development of simplified methods and to report to Congress, not later than Dec. 31, 1982, prior to repeal by Pub. L. 100–647, title VI, § 6252(a)(2), Nov. 10, 1988, 102 Stat. 3752.

§ 472. Last-in, first-out inventories

(a) Authorization

A taxpayer may use the method provided in subsection (b) (whether or not such method has been prescribed under section 471) in inventorying goods specified in an application to use such method filed at such time and in such manner as the Secretary may prescribe. The change to, and the use of, such method shall be in accordance with such regulations as the Secretary may prescribe as necessary in order that the use of such method may clearly reflect income.

(b) Method applicable

In inventorying goods specified in the application described in subsection (a), the taxpayer shall:

(1) Treat those remaining on hand at the close of the taxable year as being: First, those included in the opening inventory of the taxable year (in the order of acquisition) to the extent thereof; and second, those acquired in the taxable year;

(2) Inventory them at cost; and

(3) Treat those included in the opening inventory of the taxable year in which such method is first used as having been acquired at the same time and determine their cost by the average cost method.

(c) Condition

Subsection (a) shall apply only if the taxpayer establishes to the satisfaction of the Secretary that the taxpayer has used no procedure other than that specified in paragraphs (1) and (3) of subsection (b) in inventorying such goods to ascertain the income, profit, or loss of the first taxable year for which the method described in subsection (b) is to be used, for the purpose of a report or statement covering such taxable year—

(1) to shareholders, partners, or other proprietors, or to beneficiaries, or

(2) for credit purposes.

(d) 3-year averaging for increases in inventory value

The beginning inventory for the first taxable year for which the method described in subsection (b) is used shall be valued at cost. Any change in the inventory amount resulting from the application of the preceding sentence shall be taken into account ratably in each of the 3 taxable years beginning with the first taxable year for which the method described in subsection (b) is first used.

(e) Subsequent inventories

If a taxpayer, having complied with subsection (a), uses the method described in subsection (b) for any taxable year, then such method shall be used in all subsequent taxable years unless—

(1) with the approval of the Secretary a change to a different method is authorized; or,

(2) the Secretary determines that the taxpayer has used for any such subsequent taxable year some procedure other than that specified in paragraph (1) of subsection (b) in inventorying the goods specified in the application to ascertain the income, profit, or loss of such subsequent taxable year for the purpose of a report or statement covering such taxable year (A) to shareholders, partners, or other proprietors, or beneficiaries, or (B) for credit purposes; and requires a change to a method different from that prescribed in subsection (b) beginning with such subsequent taxable year or any taxable year thereafter.

If paragraph (1) or (2) of this subsection applies, the change to, and the use of, the different method shall be in accordance with such regulations as the Secretary may prescribe as necessary in order that the use of such method may clearly reflect income.

(f) Use of government price indexes in pricing inventory

The Secretary shall prescribe regulations permitting the use of suitable published governmental indexes in such manner and circumstances as determined by the Secretary for purposes of the method described in subsection (b).

(g) Conformity rules applied on controlled group basis

(1) In general

Except as otherwise provided in regulations, all members of the same group of financially related corporations shall be treated as 1 taxpayer for purposes of subsections (c) and (e)(2).

(2) Group of financially related corporations

For purposes of paragraph (1), the term ''group of financially related corporations'' means—

(A) any affiliated group as defined in section 1504 determined by substituting ''50 percent'' for ''80 percent'' each place it appears in section 1504(a) and without regard to section 1504(b), and

(B) any other group of corporations which consolidate or combine for purposes of financial statements.

(Aug. 16, 1954, ch. 736, 68A Stat. 159; Pub. L. 94–455, title XIX, §§1901(b)(36)(A), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1802, 1834; Pub. L. 97–34, title II, §§235, 236(a), Aug. 13, 1981, 95 Stat. 252; Pub. L. 98–369, div. A, title I, §95(a), July 18, 1984, 98 Stat. 616.)

AMENDMENTS

1984—Subsec. (g). Pub. L. 98–369 added subsec. (g).

1981—Subsec. (d). Pub. L. 97–34, §236(a), substituted ''3-year averaging for increases in inventory value'' for ''Preceding closing inventory'' in heading, substituted first sentence reading ''The beginning inventory for the first taxable year for which the method described in subsection (b) is used shall be valued at cost.'' for ''In determining income for the taxable year preceding the taxable year for which the method described in subsection (b) is first used, the closing inventory of such preceding year of the goods specified in the application referred to in subsection (a) shall be at cost.'' and inserted ''Any change in the inventory amount resulting from the application of the preceding sentence shall be taken into account ratably in each of the 3 taxable years beginning with the first taxable year for which the method described in subsection (b) is first used.''

Subsec. (f). Pub. L. 97–34, §235, added subsec. (f).

1976—Subsecs. (a), (c), (e). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' wherever appearing.

Subsec. (f). Pub. L. 94–455, §1901(b)(36)(A), struck out subsec. (f) which provided for a cross reference relating

to involuntary liquidation and replacement of LIFO inventories.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 95(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [July 18, 1984].''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 236(b) of Pub. L. 97–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1981.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(36)(A) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

§ 473. Qualified liquidations of LIFO inventories

(a) General rule

If, for any liquidation year—

(1) there is a qualified liquidation of goods which the taxpayer inventories under the LIFO method, and

(2) the taxpayer elects to have the provisions of this section apply with respect to such liquidation,

then the gross income of the taxpayer for such taxable year shall be adjusted as provided in subsection (b).

(b) Adjustment for replacements

If the liquidated goods are replaced (in whole or in part) during any replacement year and such replacement is reflected in the closing inventory for such year, then the gross income for the liquidation year shall be—

(1) decreased by an amount equal to the excess of—

(A) the aggregate replacement cost of the liquidated goods so replaced during such year, over

(B) the aggregate cost of such goods reflected in the opening inventory of the liquidation year, or

(2) increased by an amount equal to the excess of—

(A) the aggregate cost reflected in such opening inventory of the liquidated goods so replaced during such year, over

(B) such aggregate replacement cost.

(c) Qualified liquidation defined

For purposes of this section—

(1) In general

The term ''qualified liquidation'' means—

(A) a decrease in the closing inventory of the liquidation year from the opening inventory of such year, but only if

(B) the taxpayer establishes to the satisfaction of the Secretary that such decrease is directly and primarily attributable to a qualified inventory interruption.

(2) Qualified inventory interruption defined

(A) In general

The term ''qualified inventory interruption'' means a regulation, request, or interruption described in subparagraph (B) but only to the extent provided in the notice published pursuant to subparagraph (B).

(B) Determination by Secretary

Whenever the Secretary, after consultation with the appropriate Federal officers, determines—

(i) that—

(I) any Department of Energy regulation or request with respect to energy supplies, or

(II) any embargo, international boycott, or other major foreign trade interruption,

has made difficult or impossible the replacement during the liquidation year of any class of goods for any class of taxpayers, and

(ii) that the application of this section to that class of goods and taxpayers is necessary to carry out the purposes of this section,

he shall publish a notice of such determinations in the Federal Register, together with the period to be affected by such notice.

(d) Other definitions and special rules

For purposes of this section—

(1) Liquidation year

The term ''liquidation year'' means the taxable year in which occurs the qualified liquidation to which this section applies.

(2) Replacement year

The term ''replacement year'' means any taxable year in the replacement period; except that such term shall not include any taxable year after the taxable year in which replacement of the liquidated goods is completed.

(3) Replacement period

The term ''replacement period'' means the shorter of—

(A) the period of the 3 taxable years following the liquidation year, or

(B) the period specified by the Secretary in a notice published in the Federal Register with respect to that qualified inventory interruption.

Any period specified by the Secretary under subparagraph (B) may be modified by the Secretary in a subsequent notice published in the Federal Register.

(4) LIFO method

The term ''LIFO method'' means the method of inventorying goods described in section 472.

(5) Election

(A) In general

An election under subsection (a) shall be made subject to such conditions, and in such manner and form and at such time, as the Secretary may prescribe by regulation.

(B) Irrevocable election

An election under this section shall be irrevocable and shall be binding for the liquidation year and for all determinations for prior and subsequent taxable years insofar

as such determinations are affected by the adjustments under this section.

(e) Replacement; inventory basis

For purposes of this chapter—

(1) Replacements

If the closing inventory of the taxpayer for any replacement year reflects an increase over the opening inventory of such goods for such year, the goods reflecting such increase shall be considered, in the order of their acquisition, as having been acquired in replacement of the goods most recently liquidated (whether or not in a qualified liquidation) and not previously replaced.

(2) Amount at which replacement goods taken into account

In the case of any qualified liquidation, any goods considered under paragraph (1) as having been acquired in replacement of the goods liquidated in such liquidation shall be taken into purchases and included in the closing inventory of the taxpayer for the replacement year at the inventory cost basis of the goods replaced.

(f) Special rules for application of adjustments

(1) Period of limitations

If—

(A) an adjustment is required under this section for any taxable year by reason of the replacement of liquidated goods during any replacement year, and

(B) the assessment of a deficiency, or the allowance of a credit or refund of an overpayment of tax attributable to such adjustment, for any taxable year, is otherwise prevented by the operation of any law or rule of law (other than section 7122, relating to compromises),

then such deficiency may be assessed, or credit or refund allowed, within the period prescribed for assessing a deficiency or allowing a credit or refund for the replacement year if a notice for deficiency is mailed, or claim for refund is filed, within such period.

(2) Interest

Solely for purposes of determining interest on any overpayment or underpayment attributable to an adjustment made under this section, such overpayment or underpayment shall be treated as an overpayment or underpayment (as the case may be) for the replacement year.

(g) Coordination with section 472

The Secretary shall prescribe such regulations as may be necessary to coordinate the provisions of this section with the provisions of section 472.

(Added Pub. L. 96–223, title IV, §403(a)(1), Apr. 2, 1980, 94 Stat. 302.)

EFFECTIVE DATE

Section 403(a)(3) of Pub. L. 96–223, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by paragraphs (1) and (2) [enacting this section] shall apply to qualified liquidations (within the meaning of section 473(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) in taxable years ending after October 31, 1979.''

§ 474. Simplified dollar-value LIFO method for certain small businesses

(a) General rule

An eligible small business may elect to use the simplified dollar-value method of pricing inventories for purposes of the LIFO method.

(b) Simplified dollar-value method of pricing inventories

For purposes of this section—

(1) In general

The simplified dollar-value method of pricing inventories is a dollar-value method of pricing inventories under which—

(A) the taxpayer maintains a separate inventory pool for items in each major category in the applicable Government price index, and

(B) the adjustment for each such separate pool is based on the change from the preceding taxable year in the component of such index for the major category.

(2) Applicable Government price index

The term ''applicable Government price index'' means—

(A) except as provided in subparagraph (B), the Producer Price Index published by the Bureau of Labor Statistics, or

(B) in the case of a retailer using the retail method, the Consumer Price Index published by the Bureau of Labor Statistics.

(3) Major category

The term ''major category'' means—

(A) in the case of the Producer Price Index, any of the 2-digit standard industrial classifications in the Producer Prices Data Report, or

(B) in the case of the Consumer Price Index, any of the general expenditure categories in the Consumer Price Index Detailed Report.

(c) Eligible small business

For purposes of this section, a taxpayer is an eligible small business for any taxable year if the average annual gross receipts of the taxpayer for the 3 preceding taxable years do not exceed $5,000,000. For purposes of the preceding sentence, rules similar to the rules of section 448(c)(3) shall apply.

(d) Special rules

For purposes of this section—

(1) Controlled groups

(A) In general

In the case of a taxpayer which is a member of a controlled group, all persons which are component members of such group shall be treated as 1 taxpayer for purposes of determining the gross receipts of the taxpayer.

(B) Controlled group defined

For purposes of subparagraph (A), persons shall be treated as being component members of a controlled group if such persons would be treated as a single employer under section 52.

(2) Election

(A) In general

The election under this section may be made without the consent of the Secretary.

(B) Period to which election applies

The election under this section shall apply—

(i) to the taxable year for which it is made, and

(ii) to all subsequent taxable years for which the taxpayer is an eligible small business,

unless the taxpayer secures the consent of the Secretary to the revocation of such election.

(3) LIFO method

The term ''LIFO method'' means the method provided by section 472(b).

(4) Transitional rules

(A) In general

In the case of a year of change under this section—

(i) the inventory pools shall—

(I) in the case of the 1st taxable year to which such an election applies, be established in accordance with the major categories in the applicable Government price index, or

(II) in the case of the 1st taxable year after such election ceases to apply, be established in the manner provided by regulations under section 472;

(ii) the aggregate dollar amount of the taxpayer's inventory as of the beginning of the year of change shall be the same as the aggregate dollar value as of the close of the taxable year preceding the year of change, and

(iii) the year of change shall be treated as a new base year in accordance with procedures provided by regulations under section 472.

(B) Year of change

For purposes of this paragraph, the year of change under this section is—

(i) the 1st taxable year to which an election under this section applies, or

(ii) in the case of a cessation of such an election, the 1st taxable year after such election ceases to apply.

(Added Pub. L. 97–34, title II, § 237(a), Aug. 13, 1981, 95 Stat. 252; amended Pub. L. 99–514, title VIII, § 802(a), Oct. 22, 1986, 100 Stat. 2348.)

AMENDMENTS

1986—Pub. L. 99–514 amended section generally, substituting provisions relating to election by eligible small business to use simplified dollar-value method of pricing inventories for purposes of LIFO method for provisions relating to election by eligible small business which uses dollar-value method of pricing inventories under method provided by section 472(b) of this title to use one inventory pool for any trade or business of such eligible small business.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 802(c) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.

''(2) TREATMENT OF TAXPAYERS WHO MADE ELECTIONS UNDER EXISTING SECTION 474.—The amendments made by this section shall not apply to any taxpayer who made an election under section 474 of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]) for any period during which such election is in effect. Notwithstanding any provision of such section 474 (as so in effect), an election under such section may be revoked without the consent of the Secretary.''

EFFECTIVE DATE

Section 237(c) of Pub. L. 97–34 provided that: ''The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1981.''

§ 475. Mark to market accounting method for dealers in securities

(a) General rule

Notwithstanding any other provision of this subpart, the following rules shall apply to securities held by a dealer in securities:

(1) Any security which is inventory in the hands of the dealer shall be included in inventory at its fair market value.

(2) In the case of any security which is not inventory in the hands of the dealer and which is held at the close of any taxable year—

(A) the dealer shall recognize gain or loss as if such security were sold for its fair market value on the last business day of such taxable year, and

(B) any gain or loss shall be taken into account for such taxable year.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence. The Secretary may provide by regulations for the application of this paragraph at times other than the times provided in this paragraph.

(b) Exceptions

(1) In general

Subsection (a) shall not apply to—

(A) any security held for investment,

(B)(i) any security described in subsection (c)(2)(C) which is acquired (including originated) by the taxpayer in the ordinary course of a trade or business of the taxpayer and which is not held for sale, and (ii) any obligation to acquire a security described in clause (i) if such obligation is entered into in the ordinary course of such trade or business and is not held for sale, and

(C) any security which is a hedge with respect to—

(i) a security to which subsection (a) does not apply, or

(ii) a position, right to income, or a liability which is not a security in the hands of the taxpayer.

To the extent provided in regulations, subparagraph (C) shall not apply to any security held by a person in its capacity as a dealer in securities.

(2) Identification required

A security shall not be treated as described in subparagraph (A), (B), or (C) of paragraph

(1), as the case may be, unless such security is clearly identified in the dealer's records as being described in such subparagraph before the close of the day on which it was acquired, originated, or entered into (or such other time as the Secretary may by regulations prescribe).

(3) Securities subsequently not exempt

If a security ceases to be described in paragraph (1) at any time after it was identified as such under paragraph (2), subsection (a) shall apply to any changes in value of the security occurring after the cessation.

(4) Special rule for property held for investment

To the extent provided in regulations, subparagraph (A) of paragraph (1) shall not apply to any security described in subparagraph (D) or (E) of subsection (c)(2) which is held by a dealer in such securities.

(c) Definitions

For purposes of this section—

(1) Dealer in securities defined

The term ''dealer in securities'' means a taxpayer who—

(A) regularly purchases securities from or sells securities to customers in the ordinary course of a trade or business; or

(B) regularly offers to enter into, assume, offset, assign or otherwise terminate positions in securities with customers in the ordinary course of a trade or business.

(2) Security defined

The term ''security'' means any—

(A) share of stock in a corporation;

(B) partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust;

(C) note, bond, debenture, or other evidence of indebtedness;

(D) interest rate, currency, or equity notional principal contract;

(E) evidence of an interest in, or a derivative financial instrument in, any security described in subparagraph (A), (B), (C), or (D), or any currency, including any option, forward contract, short position, and any similar financial instrument in such a security or currency; and

(F) position which—

(i) is not a security described in subparagraph (A), (B), (C), (D), or (E),

(ii) is a hedge with respect to such a security, and

(iii) is clearly identified in the dealer's records as being described in this subparagraph before the close of the day on which it was acquired or entered into (or such other time as the Secretary may by regulations prescribe).

Subparagraph (E) shall not include any contract to which section 1256(a) applies.

(3) Hedge

The term ''hedge'' means any position which manages the dealer's risk of interest rate or price changes or currency fluctuations, including any position which is reasonably expected to become a hedge within 60 days after the acquisition of the position.

(4) Special rules for certain receivables

(A) In general

Paragraph (2)(C) shall not include any nonfinancial customer paper.

(B) Nonfinancial customer paper

For purposes of subparagraph (A), the term ''nonfinancial customer paper'' means any receivable which—

(i) is a note, bond, debenture, or other evidence of indebtedness;

(ii) arises out of the sale of nonfinancial goods or services by a person the principal activity of which is the selling or providing of nonfinancial goods or services; and

(iii) is held by such person (or a person who bears a relationship to such person described in section 267(b) or 707(b)) at all times since issue.

(d) Special rules

For purposes of this section—

(1) Coordination with certain rules

The rules of sections 263(g), 263A, and 1256(a) shall not apply to securities to which subsection (a) applies, and section 1091 shall not apply (and section 1092 shall apply) to any loss recognized under subsection (a).

(2) Improper identification

If a taxpayer—

(A) identifies any security under subsection (b)(2) as being described in subsection (b)(1) and such security is not so described, or

(B) fails under subsection (c)(2)(F)(iii) to identify any position which is described in subsection (c)(2)(F) (without regard to clause (iii) thereof) at the time such identification is required,

the provisions of subsection (a) shall apply to such security or position, except that any loss under this section prior to the disposition of the security or position shall be recognized only to the extent of gain previously recognized under this section (and not previously taken into account under this paragraph) with respect to such security or position.

(3) Character of gain or loss

(A) In general

Except as provided in subparagraph (B) or section 1236(b)—

(i) In general

Any gain or loss with respect to a security under subsection (a)(2) shall be treated as ordinary income or loss.

(ii) Special rule for dispositions

If—

(I) gain or loss is recognized with respect to a security before the close of the taxable year, and

(II) subsection (a)(2) would have applied if the security were held as of the close of the taxable year,

such gain or loss shall be treated as ordinary income or loss.

(B) Exception

Subparagraph (A) shall not apply to any gain or loss which is allocable to a period during which—

(i) the security is described in subsection (b)(1)(C) (without regard to subsection (b)(2)),

(ii) the security is held by a person other than in connection with its activities as a dealer in securities, or

(iii) the security is improperly identified (within the meaning of subparagraph (A) or (B) of paragraph (2)).

(e) Election of mark to market for dealers in commodities

(1) In general

In the case of a dealer in commodities who elects the application of this subsection, this section shall apply to commodities held by such dealer in the same manner as this section applies to securities held by a dealer in securities.

(2) Commodity

For purposes of this subsection and subsection (f), the term ''commodity'' means—

(A) any commodity which is actively traded (within the meaning of section 1092(d)(1));

(B) any notional principal contract with respect to any commodity described in subparagraph (A);

(C) any evidence of an interest in, or a derivative instrument in, any commodity described in subparagraph (A) or (B), including any option, forward contract, futures contract, short position, and any similar instrument in such a commodity; and

(D) any position which—

(i) is not a commodity described in subparagraph (A), (B), or (C),

(ii) is a hedge with respect to such a commodity, and

(iii) is clearly identified in the taxpayer's records as being described in this subparagraph before the close of the day on which it was acquired or entered into (or such other time as the Secretary may by regulations prescribe).

(3) Election

An election under this subsection may be made without the consent of the Secretary. Such an election, once made, shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(f) Election of mark to market for traders in securities or commodities

(1) Traders in securities

(A) In general

In the case of a person who is engaged in a trade or business as a trader in securities and who elects to have this paragraph apply to such trade or business—

(i) such person shall recognize gain or loss on any security held in connection with such trade or business at the close of any taxable year as if such security were sold for its fair market value on the last business day of such taxable year, and

(ii) any gain or loss shall be taken into account for such taxable year.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence. The Secretary may provide by regulations for the application of this subparagraph at times other than the times provided in this subparagraph.

(B) Exception

Subparagraph (A) shall not apply to any security—

(i) which is established to the satisfaction of the Secretary as having no connection to the activities of such person as a trader, and

(ii) which is clearly identified in such person's records as being described in clause (i) before the close of the day on which it was acquired, originated, or entered into (or such other time as the Secretary may by regulations prescribe).

If a security ceases to be described in clause (i) at any time after it was identified as such under clause (ii), subparagraph (A) shall apply to any changes in value of the security occurring after the cessation.

(C) Coordination with section 1259

Any security to which subparagraph (A) applies and which was acquired in the normal course of the taxpayer's activities as a trader in securities shall not be taken into account in applying section 1259 to any position to which subparagraph (A) does not apply.

(D) Other rules to apply

Rules similar to the rules of subsections (b)(4) and (d) shall apply to securities held by a person in any trade or business with respect to which an election under this paragraph is in effect. Subsection (d)(3) shall not apply under the preceding sentence for purposes of applying sections 1402 and 7704.

(2) Traders in commodities

In the case of a person who is engaged in a trade or business as a trader in commodities and who elects to have this paragraph apply to such trade or business, paragraph (1) shall apply to commodities held by such trader in connection with such trade or business in the same manner as paragraph (1) applies to securities held by a trader in securities.

(3) Election

The elections under paragraphs (1) and (2) may be made separately for each trade or business and without the consent of the Secretary. Such an election, once made, shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(g) Regulatory authority

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

(1) to prevent the use of year-end transfers, related parties, or other arrangements to avoid the provisions of this section,

(2) to provide for the application of this section to any security which is a hedge which cannot be identified with a specific security, position, right to income, or liability, and

(3) to prevent the use by taxpayers of subsection (c)(4) to avoid the application of this section to a receivable that is inventory in the hands of the taxpayer (or a person who bears a relationship to the taxpayer described in section 267(b) or 707(b)).

(Added Pub. L. 103–66, title XIII, §13223(a), Aug. 10, 1993, 107 Stat. 481; amended Pub. L. 105–34, title X, §1001(b), Aug. 5, 1997, 111 Stat. 906; Pub. L. 105–206, title VI, §6010(a)(3), title VII, §7003(a), (b), July 22, 1998, 112 Stat. 813, 832; Pub. L. 106–170, title V, §532(b)(1), Dec. 17, 1999, 113 Stat. 1930; Pub. L. 106–554, §1(a)(7) [title III, §319(4)], Dec. 21, 2000, 114 Stat. 2763, 2763A–646; Pub. L. 107–147, title IV, §417(10), Mar. 9, 2002, 116 Stat. 56.)

AMENDMENTS

2002—Subsec. (g)(3). Pub. L. 107–147 substituted ''described in section'' for ''described in sections''.

2000—Subsec. (g)(3). Pub. L. 106–554 substituted ''267(b) or'' for ''267(b) of''.

1999—Subsec. (c)(3). Pub. L. 106–170 substituted ''manages'' for ''reduces''.

1998—Subsec. (c)(4). Pub. L. 105–206, §7003(a), added par. (4).

Subsec. (f)(1)(D). Pub. L. 105–206, §6010(a)(3), inserted at end ''Subsection (d)(3) shall not apply under the preceding sentence for purposes of applying sections 1402 and 7704.''

Subsec. (g)(3). Pub. L. 105–206, §7003(b), added par. (3).

1997—Subsecs. (e) to (g). Pub. L. 105–34 added subsecs. (e) and (f) and redesignated former subsec. (e) as (g).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6010(a)(3) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

Pub. L. 105–206, title VII, §7003(c), July 22, 1998, 112 Stat. 833, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [July 22, 1998].

''(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer required by the amendments made by this section to change its method of accounting for its first taxable year ending after the date of the enactment of this Act—

''(A) such change shall be treated as initiated by the taxpayer;

''(B) such change shall be treated as made with the consent of the Secretary of the Treasury; and

''(C) the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 shall be taken into account ratably over the 4-taxable-year period beginning with such first taxable year.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1001(d) of Pub. L. 105–34, as amended by Pub. L. 105–206, title VI, §6010(a)(4), July 22, 1998, 112 Stat. 813, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting section 1259 of this title and amending this section] shall apply to any constructive sale after June 8, 1997.

''(2) EXCEPTION FOR SALES OF POSITIONS, ETC. HELD BEFORE JUNE 9, 1997.—If—

''(A) before June 9, 1997, the taxpayer entered into any transaction which is a constructive sale of any appreciated financial position, and

''(B) before the close of the 30-day period beginning on the date of the enactment of this Act [Aug. 5, 1997] or before such later date as may be specified by the Secretary of the Treasury, such transaction and position are clearly identified in the taxpayer's records as offsetting,

such transaction and position shall not be taken into account in determining whether any other constructive sale after June 8, 1997, has occurred. The preceding sentence shall cease to apply as of the date such transaction is closed or the taxpayer ceases to hold such position.

''(3) SPECIAL RULE.—In the case of a decedent dying after June 8, 1997, if—

''(A) there was a constructive sale on or before such date of any appreciated financial position,

''(B) the transaction resulting in such constructive sale of such position remains open (with respect to the decedent or any related person)—

''(i) for not less than 2 years after the date of such transaction (whether such period is before or after June 8, 1997), and

''(ii) at any time during the 3-year period ending on the date of the decedent's death, and

''(C) such transaction is not closed before the close of the 30th day after the date of the enactment of this Act,

then, for purposes of such Code [probably means the Internal Revenue Code of 1986], such position (and the transaction resulting in such constructive sale) shall be treated as property constituting rights to receive an item of income in respect of a decedent under section 691 of such Code. Section 1014(c) of such Code shall not apply to so much of such position's or property's value (as included in the decedent's estate for purposes of chapter 11 of such Code) as exceeds its fair market value as of the date such transaction is closed.

''(4) ELECTION OF MARK TO MARKET BY SECURITIES TRADERS AND TRADERS AND DEALERS IN COMMODITIES.—

''(A) IN GENERAL.—The amendments made by subsection (b) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act.

''(B) 4-YEAR SPREAD OF ADJUSTMENTS.—In the case of a taxpayer who elects under subsection (e) or (f) of section 475 of the Internal Revenue Code of 1986 (as added by this section) to change its method of accounting for the taxable year which includes the date of the enactment of this Act—

''(i) any identification required under such subsection with respect to securities and commodities held on the date of the enactment of this Act shall be treated as timely made if made on or before the 30th day after such date of enactment, and

''(ii) the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of such Code shall be taken into account ratably over the 4-taxable year period beginning with such first taxable year.''

EFFECTIVE DATE

Section 13223(c) of Pub. L. 103–66 provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section and amending section 988 of this title] shall apply to all taxable years ending on or after December 31, 1993.

''(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer required by this section to change its method of accounting for any taxable year—

''(A) such change shall be treated as initiated by the taxpayer,

''(B) such change shall be treated as made with the consent of the Secretary, and

''(C) except as provided in paragraph (3), the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 shall be taken into account ratably over the 5-taxable year period beginning with the first taxable year ending on or after December 31, 1993.

''(3) SPECIAL RULE FOR FLOOR SPECIALISTS AND MARKET MAKERS.—

''(A) IN GENERAL.—If—

''(i) a taxpayer (or any predecessor) used the last-in first-out (LIFO) method of accounting with respect to any qualified securities for the 5-taxable year period ending with its last taxable year ending before December 31, 1993, and

''(ii) any portion of the net amount described in paragraph (2)(C) is attributable to the use of such method of accounting,

then paragraph (2)(C) shall be applied by taking such portion into account ratably over the 15-taxable year period beginning with the first taxable year ending on or after December 31, 1993.

''(B) QUALIFIED SECURITY.—For purposes of this paragraph, the term 'qualified security' means any security acquired—

''(i) by a floor specialist (as defined in section 1236(d)(2) of the Internal Revenue Code of 1986) in connection with the specialist's duties as a specialist on an exchange, but only if the security is one in which the specialist is registered with the exchange, or

''(ii) by a taxpayer who is a market maker in connection with the taxpayer's duties as a market maker, but only if—

''(I) the security is included on the National Association of Security Dealers Automated Quotation System,

''(II) the taxpayer is registered as a market maker in such security with the National Association of Security Dealers, and

''(III) as of the last day of the taxable year preceding the taxpayer's first taxable year ending on or after December 31, 1993, the taxpayer (or any predecessor) has been actively and regularly engaged as a market maker in such security for the 2-year period ending on such date (or, if shorter, the period beginning 61 days after the security was listed in such quotation system and ending on such date).''

PART III—ADJUSTMENTS

Sec.
481. Adjustments required by changes in method of accounting.
482. Allocation of income and deductions among taxpayers.
483. Interest on certain deferred payments.

AMENDMENTS

1964—Pub. L. 88–272, title II, § 224(b), Feb. 26, 1964, 78 Stat. 79, added item 483.

§ 481. Adjustments required by changes in method of accounting

(a) General rule

In computing the taxpayer's taxable income for any taxable year (referred to in this section as the ''year of the change'')—

(1) if such computation is under a method of accounting different from the method under which the taxpayer's taxable income for the preceding taxable year was computed, then

(2) there shall be taken into account those adjustments which are determined to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted, except there shall not be taken into account any adjustment in respect of any taxable year to which this section does not apply unless the adjustment is attributable to a change in the method of accounting initiated by the taxpayer.

(b) Limitation on tax where adjustments are substantial

(1) Three year allocation

If—

(A) the method of accounting from which the change is made was used by the taxpayer in computing his taxable income for the 2 taxable years preceding the year of the change, and

(B) the increase in taxable income for the year of the change which results solely by reason of the adjustments required by subsection (a)(2) exceeds $3,000,

then the tax under this chapter attributable to such increase in taxable income shall not be greater than the aggregate increase in the taxes under this chapter (or under the corresponding provisions of prior revenue laws) which would result if one-third of such increase in taxable income were included in taxable income for the year of the change and one-third of such increase were included for each of the 2 preceding taxable years.

(2) Allocation under new method of accounting

If—

(A) the increase in taxable income for the year of the change which results solely by reason of the adjustments required by subsection (a)(2) exceeds $3,000, and

(B) the taxpayer establishes his taxable income (under the new method of accounting) for one or more taxable years consecutively preceding the taxable year of the change for which the taxpayer in computing taxable income used the method of accounting from which the change is made,

then the tax under this chapter attributable to such increase in taxable income shall not be greater than the net increase in the taxes under this chapter (or under the corresponding provisions of prior revenue laws) which would result if the adjustments required by subsection (a)(2) were allocated to the taxable year or years specified in subparagraph (B) to which they are properly allocable under the new method of accounting and the balance of the adjustments required by subsection (a)(2) was allocated to the taxable year of the change.

(3) Special rules for computations under paragraphs (1) and (2)

For purposes of this subsection—

(A) There shall be taken into account the increase or decrease in tax for any taxable year preceding the year of the change to which no adjustment is allocated under paragraph (1) or (2) but which is affected by a net operating loss (as defined in section 172) or by a capital loss carryback or carryover (as defined in section 1212), determined

with reference to taxable years with respect to which adjustments under paragraph (1) or (2) are allocated.

(B) The increase or decrease in the tax for any taxable year for which an assessment of any deficiency, or a credit or refund of any overpayment, is prevented by any law or rule of law, shall be determined by reference to the tax previously determined (within the meaning of section 1314(a)) for such year.

(C) In applying section 7807(b)(1), the provisions of chapter 1 (other than subchapter E, relating to self-employment income) and chapter 2 of the Internal Revenue Code of 1939 shall be treated as the corresponding provisions of the Internal Revenue Code of 1939.

(c) Adjustments under regulations

In the case of any change described in subsection (a), the taxpayer may, in such manner and subject to such conditions as the Secretary may by regulations prescribe, take the adjustments required by subsection (a)(2) into account in computing the tax imposed by this chapter for the taxable year or years permitted under such regulations.

(Aug. 16, 1954, ch. 736, 68A Stat. 160; Pub. L. 85–866, title I, §29(a), (b), Sept. 2, 1958, 72 Stat. 1626–1628; Pub. L. 91–172, title V, §512(f)(4), Dec. 30, 1969, 83 Stat. 641; Pub. L. 94–455, title XIX, §§1901(a)(70), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1776, 1834; Pub. L. 96–471, §2(b)(3), Oct. 19, 1980, 94 Stat. 2254.)

REFERENCES IN TEXT

The Internal Revenue Code of 1939, referred to in subsec. (b)(3)(C), is act Feb. 10, 1939, ch. 2, 53 Stat. 1, as amended. Prior to the enactment of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the 1939 Code was classified to former Title 26, Internal Revenue Code. Chapters 1 and 2 of the Internal Revenue Code of 1939 were comprised of sections 1 to 482 and 500 to 784, respectively, of former Title 26. Chapters 1 (except sections 143 and 144) and 2 were repealed by section 7851(a)(1) of this title. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title. See, also, section 7851(e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

AMENDMENTS

1980—Subsec. (d). Pub. L. 96–471 struck out subsec. (d) which provided that this section was not to apply to a change to which section 453 of this title, relating to change to installment method, applied.

1976—Subsecs. (b)(1), (2). Pub. L. 94–455, §1901(a)(70)(B), struck out ‘‘, other than the amount of such adjustments to which paragraph (4) or (5) applies,’’ after ‘‘required by subsection (a)(2)’’.

Subsec. (b)(4), (5), (6). Pub. L. 94–455, §1901(a)(70)(A), struck out par. (4) which related to special rule for pre-1954 general adjustments, par. (5) which related to special rule for pre-1954 adjustments in case of certain decedents, and par. (6) which related to the application of the special rule for pre-1954 general adjustments.

Subsec. (c). Pub. L. 94–455, §1906(b)(13)(A), struck out ‘‘or his delegate’’ after ‘‘Secretary’’.

1969—Subsec. (b)(3)(A). Pub. L. 91–172 substituted ‘‘loss carryback or carryover’’ for ‘‘loss carryover’’.

1958—Subsec. (a)(2). Pub. L. 85–866, §29(a)(1), inserted ‘‘unless the adjustment is attributable to a change in the method of accounting initiated by the taxpayer’’, after ‘‘does not apply’’.

Subsec. (b)(1). Pub. L. 85–866, §29(b)(1)–(3), inserted ‘‘, other than the amount of such adjustments to which paragraph (4) or (5) applies,’’ after ‘‘subsection (a)(2)’’ and substituted ‘‘the aggregate increase in the taxes’’ for ‘‘the aggregate of the taxes’’ and ‘‘which would result if one-third of such increase in taxable income’’ for ‘‘which would result if one-third of such increase’’.

Subsec. (b)(2). Pub. L. 85–866, §29(b)(1), (4), inserted ‘‘other than the amount of such adjustments to which paragraph (4) or (5) applies,’’ after ‘‘subsection (a)(2)’’, wherever appearing and ‘‘(or under the corresponding provisions of prior revenue laws)’’ after ‘‘the net increase in the taxes under this Chapter’’.

Subsec. (b)(3)(A). Pub. L. 85–866, §29(b)(5), substituted ‘‘paragraph (1) or (2)’’ for ‘‘paragraph (2)’’, wherever appearing.

Subsec. (b)(4) to (6). Pub. L. 85–866, §29(a)(2), added pars. (4) to (6).

EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96–471, see section 6(a)(1) of Pub. L. 96–471, set out as an Effective Date note under section 453 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(70) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to net capital losses sustained in taxable years beginning after Dec. 31, 1969, see section 512(g) of Pub. L. 91–172, set out as a note under section 1212 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 29(d) of Pub. L. 85–866, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

‘‘(1) IN GENERAL.—The amendments made by this section [amending this section and section 381 of this title] shall apply with respect to any change in a method of accounting where the year of the change (within the meaning of section 481 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) is a taxable year beginning after December 31, 1953, and ending after August 16, 1954.

‘‘(2) EXCEPTION FOR CERTAIN AGREEMENTS.—The amendments made by subsections (a), (b)(I), and (c) [amending this section and section 381 of this title] shall not apply if before the date of the enactment of this Act [Sept. 2, 1958]—

‘‘(A) the taxpayer applied for a change in the method of accounting in the manner provided by regulations prescribed by the Secretary of the Treasury or his delegate, and

‘‘(B) the taxpayer and the Secretary of the Treasury or his delegate agreed to the terms and conditions for making the change.’’

CHANGES IN TREATMENT OF POLICYHOLDER DIVIDENDS BY QUALIFIED GROUP SELF-INSURERS’ FUNDS

Pub. L. 101–239, title VII, §7816(m), Dec. 19, 1989, 103 Stat. 2421, provided that: ‘‘If, for the 1st taxable year beginning on or after January 1, 1987, a qualified group self-insurers’ fund changes its treatment of policyholder dividends to take into account such dividends no earlier than the date that the State regulatory authority determines the amount of the policyholder dividend that may be paid, then such change shall be treated as a change in a method of accounting and no adjustment under section 481(a) of the Internal Revenue Code of 1986 shall be made with respect to such change in method of accounting.’’

TRANSITIONAL PROVISIONS FOR INCOME TAX TREATMENT OF DEALER RESERVE INCOME

Pub. L. 86–459, May 13, 1960, 74 Stat. 124, authorized any person who computed taxable income under the ac-

crual method of accounting for his most recent taxable year ending on or before June 22, 1959, and who treated dealer reserve income for such taxable year as accruable for a subsequent taxable year, to elect before Sept. 1, 1960, to have section 481 of this title apply to the treatment for income tax purposes of dealer reserve income.

ELECTION TO RETURN TO FORMER METHOD OF ACCOUNTING

Section 29(e) of Pub. L. 85–866 authorized an election by certain taxpayers, who, for any taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, and before Sept. 2, 1958, computed their taxable incomes using different accounting methods in succeeding taxable years, to return to their first method of accounting, where the election was made within six months after Sept. 2, 1958. Claims for refunds of overpayments of tax resulting from the election were to be filed within one year after the date of the election. Such an election was to be considered a consent to an assessment of a deficiency resulting from the election, where the assessment is made within one year after the date of the election.

§ 482. Allocation of income and deductions among taxpayers

In any case of two or more organizations, trades, or businesses (whether or not incorporated, whether or not organized in the United States, and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the Secretary may distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among such organizations, trades, or businesses, if he determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such organizations, trades, or businesses. In the case of any transfer (or license) of intangible property (within the meaning of section 936(h)(3)(B)), the income with respect to such transfer or license shall be commensurate with the income attributable to the intangible.

(Aug. 16, 1954, ch. 736, 68A Stat. 162; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99–514, title XII, § 1231(e)(1), Oct. 22, 1986, 100 Stat. 2562.)

AMENDMENTS

1986—Pub. L. 99–514 inserted at end ''In the case of any transfer (or license) of intangible property (within the meaning of section 936(h)(3)(B)), the income with respect to such transfer or license shall be commensurate with the income attributable to the intangible.''

1976—Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, but only with respect to transfers after Nov. 16, 1985, or licenses granted after such date, or before such date with respect to property not in existence or owned by the taxpayer on such date, except that for purposes of section 936(h)(5)(C) of this title, such amendment applicable to taxable years beginning after Dec. 31, 1986, without regard to when the transfer or license was made, see section 1231(g)(2) of Pub. L. 99–514, set out as a note under section 936 of this title.

REGULATIONS

For requirement that, not later than 180 days after July 18, 1984, the Secretary of the Treasury modify the safe harbor interest rates applicable under the regulations prescribed under this section so that such rates are consistent with the rates applicable under section 483 of this title by reason of the amendments made by Pub. L. 98–369, see section 44(b)(2) of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

STUDY OF APPLICATION AND ADMINISTRATION OF THIS SECTION

Pub. L. 101–508, title XI, § 11316, Nov. 5, 1990, 104 Stat. 1388–458, directed Secretary of the Treasury or his delegate to conduct a study of the application and administration of section 482 of the Internal Revenue Code of 1986 and not later than Mar. 1, 1992, submit to Committee on Ways and Means of House of Representatives and Committee on Finance of Senate a report on the study, together with such recommendations as he deemed advisable.

§ 483. Interest on certain deferred payments

(a) Amount constituting interest

For purposes of this title, in the case of any payment—

(1) under any contract for the sale or exchange of any property, and

(2) to which this section applies,

there shall be treated as interest that portion of the total unstated interest under such contract which, as determined in a manner consistent with the method of computing interest under section 1272(a), is properly allocable to such payment.

(b) Total unstated interest

For purposes of this section, the term ''total unstated interest'' means, with respect to a contract for the sale or exchange of property, an amount equal to the excess of—

(1) the sum of the payments to which this section applies which are due under the contract, over

(2) the sum of the present values of such payments and the present values of any interest payments due under the contract.

For purposes of the preceding sentence, the present value of a payment shall be determined under the rules of section 1274(b)(2) using a discount rate equal to the applicable Federal rate determined under section 1274(d).

(c) Payments to which subsection (a) applies

(1) In general

Except as provided in subsection (d), this section shall apply to any payment on account of the sale or exchange of property which constitutes part or all of the sales price and which is due more than 6 months after the date of such sale or exchange under a contract—

(A) under which some or all of the payments are due more than 1 year after the date of such sale or exchange, and

(B) under which there is total unstated interest.

(2) Treatment of other debt instruments

For purposes of this section, a debt instrument of the purchaser which is given in consideration for the sale or exchange of property shall not be treated as a payment, and any payment due under such debt instrument shall be treated as due under the contract for the sale or exchange.

(3) Debt instrument defined

For purposes of this subsection, the term ''debt instrument'' has the meaning given such term by section 1275(a)(1).

(d) Exceptions and limitations

(1) Coordination with original issue discount rules

This section shall not apply to any debt instrument for which an issue price is determined under section 1273(b) (other than paragraph (4) thereof) or section 1274.

(2) Sales prices of $3,000 or less

This section shall not apply to any payment on account of the sale or exchange of property if it can be determined at the time of such sale or exchange that the sales price cannot exceed $3,000.

(3) Carrying charges

In the case of the purchaser, the tax treatment of amounts paid on account of the sale or exchange of property shall be made without regard to this section if any such amounts are treated under section 163(b) as if they included interest.

(4) Certain sales of patents

In the case of any transfer described in section 1235(a) (relating to sale or exchange of patents), this section shall not apply to any amount contingent on the productivity, use, or disposition of the property transferred.

(e) Maximum rate of interest on certain transfers of land between related parties

(1) In general

In the case of any qualified sale, the discount rate used in determining the total unstated interest rate under subsection (b) shall not exceed 6 percent, compounded semiannually.

(2) Qualified sale

For purposes of this subsection, the term ''qualified sale'' means any sale or exchange of land by an individual to a member of such individual's family (within the meaning of section 267(c)(4)).

(3) $500,000 limitation

Paragraph (1) shall not apply to any qualified sale between individuals made during any calendar year to the extent that the sales price for such sale (when added to the aggregate sales price for prior qualified sales between such individuals during the calendar year) exceeds $500,000.

(4) Nonresident alien individuals

Paragraph (1) shall not apply to any sale or exchange if any party to such sale or exchange is a nonresident alien individual.

(f) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section including regulations providing for the application of this section in the case of—

(1) any contract for the sale or exchange of property under which the liability for, or the amount or due date of, a payment cannot be determined at the time of the sale or exchange, or

(2) any change in the liability for, or the amount or due date of, any payment (including interest) under a contract for the sale or exchange of property.

(g) Cross references

(1) For treatment of assumptions, see section 1274(c)(4).

(2) For special rules for certain transactions where stated principal amount does not exceed $2,800,000, see section 1274A.

(3) For special rules in case of the borrower under certain loans for personal use, see section 1275(b).

(Added Pub. L. 88–272, title II, §224(a), Feb. 26, 1964, 78 Stat. 77; amended Pub. L. 94–455, title XIX, §§1901(b)(3)(B), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1792, 1834; Pub. L. 97–34, title I, §126(a), Aug. 13, 1981, 95 Stat. 202; Pub. L. 97–448, title I, §101(g), Jan. 12, 1983, 96 Stat. 2367; Pub. L. 98–369, div. A, title I, §41(b), July 18, 1984, 98 Stat. 553; Pub. L. 99–121, title I, §§101(a)(2), 102(c)(1)–(3), Oct. 11, 1985, 99 Stat. 505, 508; Pub. L. 99–514, title XVIII, §1803(a)(14)(B), Oct. 22, 1986, 100 Stat. 2797.)

AMENDMENTS

1986—Subsec. (d)(3). Pub. L. 99–514 substituted ''for which an issue price is determined under section 1273(b) (other than paragraph (4) thereof) or section 1274'' for ''to which section 1272 applies''.

1985—Subsec. (b). Pub. L. 99–121, §101(a)(2)(A), struck out ''120 percent of'' after ''discount rate equal to'' in closing provisions.

Subsec. (c)(1)(B). Pub. L. 99–121, §101(a)(2)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''under which, using a discount rate equal to 110 percent of the applicable Federal rate determined under section 1274(d), there is total unstated interest.''

Subsec. (e). Pub. L. 99–121, §102(c)(1), (2), redesignated subsec. (f) as (e), and as so redesignated substituted ''6 percent'' for ''7 percent'' in par. (1). Former subsec. (e), which related to the interest rates in the case of the sales of principal residences or farm lands, was struck out.

Subsec. (f). Pub. L. 99–121, §102(c)(1), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsecs. (g), (h). Pub. L. 99–121, §102(c)(1), (3), redesignated subsec. (h) as (g) and amended it generally, designating existing undesignated cross reference as par. (3), and adding pars. (1) and (2). Former subsec. (g) redesignated (f).

1984—Subsec. (a). Pub. L. 98–369 amended subsec. (a) generally, substituting ''For purposes of this title, in the case of any payment (1) under any contract for the sale or exchange of any property, and (2) to which this section applies, there shall be treated as interest that portion of the total unstated interest under such contract which, as determined in a manner consistent with the method of computing interest under section 1272(a), is properly allocable to such payment'' for ''For purposes of this title, in the case of any contract for the sale or exchange of property there shall be treated as interest that part of a payment to which this section applies which bears the same ratio to the amount of such payment as the total unstated interest under such contract bears to the total of the payments to which this section applies which are due under such contract''.

Subsec. (b). Pub. L. 98–369 amended subsec. (b) generally, substituting provisions directing that the present value of a payment be determined under the rules of section 1274(b)(2) using a discount rate equal to 120 percent of the applicable Federal rate determined under

section 1274(d) for provisions which had directed that the present value of a payment be determined, as of the date of the sale or exchange, by discounting such payment at the rate, and in the manner, provided in regulations prescribed by the Secretary and that such regulations provide for discounting on the basis of 6-month brackets and provide that the present value of any interest payment due not more than 6 months after the date of the sale or exchange was to have been an amount equal to 100 percent of such payment.

Subsec. (c). Pub. L. 98–369 substituted ''subsection (a) applies'' for ''section applies'' in heading.

Subsec. (c)(1). Pub. L. 98–369 substituted ''under which, using a discount rate equal to 110 percent of the applicable Federal rate determined under section 1274(d), there is total unstated interest'' for ''under which, using a rate provided by regulations prescribed by the Secretary for purposes of this subparagraph, there is total unstated interest'', in subpar. (B), and struck out provision formerly set out following subpar. (B) which had directed that any rate prescribed for determining whether there was total unstated interest for purposes of subpar. (B) be at least one percentage point lower than the rate prescribed for purposes of subsec. (b)(2).

Subsec. (c)(2). Pub. L. 98–369 substituted ''Treatment of other debt instruments'' for ''Treatment of other evidence of indebtedness'' in heading and, in text, substituted ''a debt instrument of the purchaser which is given in consideration for the sale or exchange of property shall not be treated as a payment, and any payment due under such debt instrument'' for ''an evidence of indebtedness of the purchaser given in consideration for the sale or exchange of property shall not be considered a payment, and any payment due under such evidence of indebtedness''.

Subsec. (c)(3). Pub. L. 98–369 added par. (3).

Subsec. (d). Pub. L. 98–369 amended subsec. (d) generally, substituting provisions relating to exceptions and limitations for provisions which related to payments indefinite as to time, liability, or amount.

Subsec. (e). Pub. L. 98–369 amended subsec. (e) generally, substituting provisions relating to interest rates in case of sale of principal residence or farm land for provision relating to changes in terms of contract.

Subsec. (f). Pub. L. 98–369 amended subsec. (f) generally, substituting provisions relating to maximum rate of interest on certain transfers of land between related parties for provisions which related to exceptions and limitations now covered in subsec. (d) of this section.

Subsec. (g). Pub. L. 98–369 amended subsec. (g) generally, substituting provisions which related to calling for the promulgation of regulations by the Secretary for provisions which related to the maximum rate of interest on certain transfers of land between related parties now covered in subsec. (f) of this section.

Subsec. (h). Pub. L. 98–369 added subsec. (h).

1983—Subsec. (g)(4). Pub. L. 97–448 substituted ''Paragraph (1)'' for ''This section''.

1981—Subsec. (g). Pub. L. 97–34 added subsec. (g).

1976—Subsecs. (b), (c)(1)(B), (e). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (f)(3). Pub. L. 94–455, § 1901(b)(3)(B), substituted ''all of the gain, if any, on such'' for ''no part of any gain on such'' and ''ordinary income'' for gain from the sale or exchange of property other than a capital asset''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–121 applicable to sales and exchanges after June 30, 1985, in taxable years ending after such date, see section 105(a)(1) of Pub. L. 99–121, set out as a note under section 1274 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, and applicable to sales or exchanges after Dec. 31, 1984, but not applicable to any sale or exchange pursuant to a written contract which was binding on Mar. 1, 1984, and at all times thereafter before the sale or exchange, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 126(b) of Pub. L. 97–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to payments made after June 30, 1981, pursuant to sales or exchanges after such date.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(3)(B) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section applicable to payments made after Dec. 31, 1963, on account of sales or exchanges of property after June 30, 1963, other than a sale or exchange pursuant to written contract, including an irrevocable written option, entered into before July 1, 1963, see section 224(d) of Pub. L. 88–272, set out as an Effective Date of 1964 Amendment note under section 163 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TREATMENT OF TRANSFERS OF LAND BETWEEN RELATED PARTIES

Section 1803(a)(9) of Pub. L. 99–514 provided that: ''In the case of any sale or exchange before July 1, 1985, to which section 483(f) of the Internal Revenue Code of 1954 [now 1986] (as in effect on the day before the date of the enactment of Public Law 99–121 [Oct. 11, 1985]) applies, such section shall be treated as providing that the discount rate to be used for purposes of section 483(c)(1) of such Code shall be 6 percent, compounded semiannually.''

TRANSITIONAL RULE FOR PURPOSES OF IMPUTED INTEREST RULES

Provisions, respecting treatment of debt instruments received in exchange for property, relating to special rules for sales after Dec. 31, 1984, and before July 1, 1985, general rule for assumptions of loans, exception for assumptions of loans made on or before Oct. 15, 1984, and exception for assumptions of loans with respect to certain property, see section 44(b)(4)–(7) of Pub. L. 98–369, as amended, set out as an Effective Date note under section 1271 of this title.

Subchapter F—Exempt Organizations

Part
I. General rule.

Part
II. Private foundations.
III. Taxation of business income of certain exempt organizations.
IV. Farmers' cooperatives.
V. Shipowners' protection and indemnity associations.
VI. Political organizations.
VII. Certain homeowners associations.
VIII. Higher education savings entities.

AMENDMENTS

1997—Pub. L. 105–34, title II, § 211(e)(1)(B), Aug. 5, 1997, 111 Stat. 812, substituted ''Higher education savings entities'' for ''Qualified State tuition programs'' in part VIII heading.

1996—Pub. L. 104–188, title I, § 1806(b)(2), Aug. 20, 1996, 110 Stat. 1898, added part VIII heading.

1976—Pub. L. 94–455, title XXI, § 2101(d), Oct. 4, 1976, 90 Stat. 1899, added part VII heading.

1975—Pub. L. 93–625, § 10(d), Jan. 3, 1975, 88 Stat. 2119, added part VI heading.

1969—Pub. L. 91–172, title I, § 101(j)(58), Dec. 30, 1969, 83 Stat. 532, added part II heading, and redesignated former parts II, III and IV as parts III, IV and V, respectively.

PART I—GENERAL RULE

Sec.
501. Exemption from tax on corporations, certain trusts, etc.
502. Feeder organizations.
503. Requirements for exemption.
504. Status after organization ceases to qualify for exemption under section 501(c)(3) because of substantial lobbying or because of political activities.
505. Additional requirements for organizations described in paragraph (9), (17), or (20) of section 501(c).

AMENDMENTS

1987—Pub. L. 100–203, title X, § 10711(b)(2)(B), Dec. 22, 1987, 101 Stat. 1330–464, substituted ''substantial lobbying or because of political activities'' for ''substantial lobbying'' in item 504.

1984—Pub. L. 98–369, div. A, title V, § 513(b), July 18, 1984, 98 Stat. 865, added item 505.

1976—Pub. L. 94–455, title XIII, § 1307(d)(3)(B), Oct. 4, 1976, 90 Stat. 1728, added item 504.

1969—Pub. L. 91–172, title I, § 101(j)(61), Dec. 30, 1969, 83 Stat. 532, struck out item 504 ''Denial of exemption''.

§ 501. Exemption from tax on corporations, certain trusts, etc.

(a) Exemption from taxation

An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

(b) Tax on unrelated business income and certain other activities

An organization exempt from taxation under subsection (a) shall be subject to tax to the extent provided in parts II, III, and VI of this subchapter, but (notwithstanding parts II, III, and VI of this subchapter) shall be considered an organization exempt from income taxes for the purpose of any law which refers to organizations exempt from income taxes.

(c) List of exempt organizations

The following organizations are referred to in subsection (a):

(1) Any corporation organized under Act of Congress which is an instrumentality of the United States but only if such corporation—

(A) is exempt from Federal income taxes—

(i) under such Act as amended and supplemented before July 18, 1984, or

(ii) under this title without regard to any provision of law which is not contained in this title and which is not contained in a revenue Act, or

(B) is described in subsection (*l*).

(2) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt under this section. Rules similar to the rules of subparagraph (G) of paragraph (25) shall apply for purposes of this paragraph.

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

(4)(A) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

(B) Subparagraph (A) shall not apply to an entity unless no part of the net earnings of such entity inures to the benefit of any private shareholder or individual.

(5) Labor, agricultural, or horticultural organizations.

(6) Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(7) Clubs organized for pleasure, recreation, and other nonprofitable purposes, substantially all of the activities of which are for such purposes and no part of the net earnings of which inures to the benefit of any private shareholder.

(8) Fraternal beneficiary societies, orders, or associations—

(A) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and

(B) providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents.

(9) Voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or designated beneficiaries, if no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual. For purposes of providing for the payment of sick and accident benefits to members of such an association and their dependents, the term ''dependent'' shall include any individual who is a child (as defined in section 152(f)(1)) of a member who as of the end of the calendar year has not attained age 27.

(10) Domestic fraternal societies, orders, or associations, operating under the lodge system—

(A) the net earnings of which are devoted exclusively to religious, charitable, scientific, literary, educational, and fraternal purposes, and

(B) which do not provide for the payment of life, sick, accident, or other benefits.

(11) Teachers' retirement fund associations of a purely local character, if—

(A) no part of their net earnings inures (other than through payment of retirement benefits) to the benefit of any private shareholder or individual, and

(B) the income consists solely of amounts received from public taxation, amounts received from assessments on the teaching salaries of members, and income in respect of investments.

(12)(A) Benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations; but only if 85 percent or more of the income consists of amounts collected from members for the sole purpose of meeting losses and expenses.

(B) In the case of a mutual or cooperative telephone company, subparagraph (A) shall be applied without taking into account any income received or accrued—

(i) from a nonmember telephone company for the performance of communication services which involve members of the mutual or cooperative telephone company,

(ii) from qualified pole rentals,

(iii) from the sale of display listings in a directory furnished to the members of the mutual or cooperative telephone company, or

(iv) from the prepayment of a loan under section 306A, 306B, or 311[1] of the Rural Electrification Act of 1936 (as in effect on January 1, 1987).

(C) In the case of a mutual or cooperative electric company, subparagraph (A) shall be applied without taking into account any income received or accrued—

(i) from qualified pole rentals, or

(ii) from any provision or sale of electric energy transmission services or ancillary services if such services are provided on a nondiscriminatory open access basis under an open access transmission tariff approved or accepted by FERC or under an independent transmission provider agreement approved or accepted by FERC (other than income received or accrued directly or indirectly from a member),

(iii) from the provision or sale of electric energy distribution services or ancillary services if such services are provided on a nondiscriminatory open access basis to distribute electric energy not owned by the mutual or electric cooperative company—

(I) to end-users who are served by distribution facilities not owned by such company or any of its members (other than income received or accrued directly or indirectly from a member), or

(II) generated by a generation facility not owned or leased by such company or any of its members and which is directly connected to distribution facilities owned by such company or any of its members (other than income received or accrued directly or indirectly from a member),

(iv) from any nuclear decommissioning transaction, or

(v) from any asset exchange or conversion transaction.

(D) For purposes of this paragraph, the term ''qualified pole rental'' means any rental of a pole (or other structure used to support wires) if such pole (or other structure)—

(i) is used by the telephone or electric company to support one or more wires which are used by such company in providing telephone or electric services to its members, and

(ii) is used pursuant to the rental to support one or more wires (in addition to the wires described in clause (i)) for use in connection with the transmission by wire of electricity or of telephone or other communications.

For purposes of the preceding sentence, the term ''rental'' includes any sale of the right to use the pole (or other structure).

(E) For purposes of subparagraph (C)(ii), the term ''FERC'' means the Federal Energy Regulatory Commission and references to such term shall be treated as including the Public Utility Commission of Texas with respect to any ERCOT utility (as defined in section 212(k)(2)(B) of the Federal Power Act (16 U.S.C. 824k(k)(2)(B))).

(F) For purposes of subparagraph (C)(iv), the term ''nuclear decommissioning transaction'' means—

(i) any transfer into a trust, fund, or instrument established to pay any nuclear decommissioning costs if the transfer is in connection with the transfer of the mutual or cooperative electric company's interest in a nuclear power plant or nuclear power plant unit,

[1] See References in Text note below.

(ii) any distribution from any trust, fund, or instrument established to pay any nuclear decommissioning costs, or

(iii) any earnings from any trust, fund, or instrument established to pay any nuclear decommissioning costs.

(G) For purposes of subparagraph (C)(v), the term ''asset exchange or conversion transaction'' means any voluntary exchange or involuntary conversion of any property related to generating, transmitting, distributing, or selling electric energy by a mutual or cooperative electric company, the gain from which qualifies for deferred recognition under section 1031 or 1033, but only if the replacement property acquired by such company pursuant to such section constitutes property which is used, or to be used, for—

(i) generating, transmitting, distributing, or selling electric energy, or

(ii) producing, transmitting, distributing, or selling natural gas.

(H)(i) In the case of a mutual or cooperative electric company described in this paragraph or an organization described in section 1381(a)(2)(C), income received or accrued from a load loss transaction shall be treated as an amount collected from members for the sole purpose of meeting losses and expenses.

(ii) For purposes of clause (i), the term ''load loss transaction'' means any wholesale or retail sale of electric energy (other than to members) to the extent that the aggregate sales during the recovery period do not exceed the load loss mitigation sales limit for such period.

(iii) For purposes of clause (ii), the load loss mitigation sales limit for the recovery period is the sum of the annual load losses for each year of such period.

(iv) For purposes of clause (iii), a mutual or cooperative electric company's annual load loss for each year of the recovery period is the amount (if any) by which—

(I) the megawatt hours of electric energy sold during such year to members of such electric company are less than

(II) the megawatt hours of electric energy sold during the base year to such members.

(v) For purposes of clause (iv)(II), the term ''base year'' means—

(I) the calendar year preceding the start-up year, or

(II) at the election of the mutual or cooperative electric company, the second or third calendar years preceding the start-up year.

(vi) For purposes of this subparagraph, the recovery period is the 7-year period beginning with the start-up year.

(vii) For purposes of this subparagraph, the start-up year is the first year that the mutual or cooperative electric company offers nondiscriminatory open access or the calendar year which includes the date of the enactment of this subparagraph, if later, at the election of such company.

(viii) A company shall not fail to be treated as a mutual or cooperative electric company for purposes of this paragraph or as a corporation operating on a cooperative basis for purposes of section 1381(a)(2)(C) by reason of the treatment under clause (i).

(ix) For purposes of subparagraph (A), in the case of a mutual or cooperative electric company, income received, or accrued, indirectly from a member shall be treated as an amount collected from members for the sole purpose of meeting losses and expenses.

(13) Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for the purpose of the disposal of bodies by burial or cremation which is not permitted by its charter to engage in any business not necessarily incident to that purpose and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(14)(A) Credit unions without capital stock organized and operated for mutual purposes and without profit.

(B) Corporations or associations without capital stock organized before September 1, 1957, and operated for mutual purposes and without profit for the purpose of providing reserve funds for, and insurance of shares or deposits in—

(i) domestic building and loan associations,

(ii) cooperative banks without capital stock organized and operated for mutual purposes and without profit,

(iii) mutual savings banks not having capital stock represented by shares, or

(iv) mutual savings banks described in section 591(b)[2]

(C) Corporations or associations organized before September 1, 1957, and operated for mutual purposes and without profit for the purpose of providing reserve funds for associations or banks described in clause (i), (ii), or (iii) of subparagraph (B); but only if 85 percent or more of the income is attributable to providing such reserve funds and to investments. This subparagraph shall not apply to any corporation or association entitled to exemption under subparagraph (B).

(15)(A) Insurance companies (as defined in section 816(a)) other than life (including interinsurers and reciprocal underwriters) if—

(i)(I) the gross receipts for the taxable year do not exceed $600,000, and

(II) more than 50 percent of such gross receipts consist of premiums, or

(ii) in the case of a mutual insurance company—

(I) the gross receipts of which for the taxable year do not exceed $150,000, and

(II) more than 35 percent of such gross receipts consist of premiums.

Clause (ii) shall not apply to a company if any employee of the company, or a member of the employee's family (as defined in section 2032A(e)(2)), is an employee of another company exempt from taxation by reason of this paragraph (or would be so exempt but for this sentence).

[2] So in original. Probably should be followed by a period.

(B) For purposes of subparagraph (A), in determining whether any company or association is described in subparagraph (A), such company or association shall be treated as receiving during the taxable year amounts described in subparagraph (A) which are received during such year by all other companies or associations which are members of the same controlled group as the insurance company or association for which the determination is being made.

(C) For purposes of subparagraph (B), the term ''controlled group'' has the meaning given such term by section 831(b)(2)(B)(ii), except that in applying section 831(b)(2)(B)(ii) for purposes of this subparagraph, subparagraphs (B) and (C) of section 1563(b)(2) shall be disregarded.

(16) Corporations organized by an association subject to part IV of this subchapter or members thereof, for the purpose of financing the ordinary crop operations of such members or other producers, and operated in conjunction with such association. Exemption shall not be denied any such corporation because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the State of incorporation or 8 percent per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the corporation, on dissolution or otherwise, beyond the fixed dividends) is owned by such association, or members thereof; nor shall exemption be denied any such corporation because there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose.

(17)(A) A trust or trusts forming part of a plan providing for the payment of supplemental unemployment compensation benefits, if—

(i) under the plan, it is impossible, at any time prior to the satisfaction of all liabilities, with respect to employees under the plan, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of supplemental unemployment compensation benefits,

(ii) such benefits are payable to employees under a classification which is set forth in the plan and which is found by the Secretary not to be discriminatory in favor of employees who are highly compensated employees (within the meaning of section 414(q)), and

(iii) such benefits do not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)). A plan shall not be considered discriminatory within the meaning of this clause merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan.

(B) In determining whether a plan meets the requirements of subparagraph (A), any benefits provided under any other plan shall not be taken into consideration, except that a plan shall not be considered discriminatory—

(i) merely because the benefits under the plan which are first determined in a nondiscriminatory manner within the meaning of subparagraph (A) are then reduced by any sick, accident, or unemployment compensation benefits received under State or Federal law (or reduced by a portion of such benefits if determined in a nondiscriminatory manner), or

(ii) merely because the plan provides only for employees who are not eligible to receive sick, accident, or unemployment compensation benefits under State or Federal law the same benefits (or a portion of such benefits if determined in a nondiscriminatory manner) which such employees would receive under such laws if such employees were eligible for such benefits, or

(iii) merely because the plan provides only for employees who are not eligible under another plan (which meets the requirements of subparagraph (A)) of supplemental unemployment compensation benefits provided wholly by the employer the same benefits (or a portion of such benefits if determined in a nondiscriminatory manner) which such employees would receive under such other plan if such employees were eligible under such other plan, but only if the employees eligible under both plans would make a classification which would be nondiscriminatory within the meaning of subparagraph (A).

(C) A plan shall be considered to meet the requirements of subparagraph (A) during the whole of any year of the plan if on one day in each quarter it satisfies such requirements.

(D) The term ''supplemental unemployment compensation benefits'' means only—

(i) benefits which are paid to an employee because of his involuntary separation from the employment of the employer (whether or not such separation is temporary) resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions, and

(ii) sick and accident benefits subordinate to the benefits described in clause (i).

(E) Exemption shall not be denied under subsection (a) to any organization entitled to such exemption as an association described in paragraph (9) of this subsection merely because such organization provides for the payment of supplemental unemployment benefits (as defined in subparagraph (D)(i)).

(18) A trust or trusts created before June 25, 1959, forming part of a plan providing for the payment of benefits under a pension plan funded only by contributions of employees, if—

(A) under the plan, it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the plan, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of benefits under the plan,

(B) such benefits are payable to employees under a classification which is set forth in

the plan and which is found by the Secretary not to be discriminatory in favor of employees who are highly compensated employees (within the meaning of section 414(q)),

(C) such benefits do not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)). A plan shall not be considered discriminatory within the meaning of this subparagraph merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan, and

(D) in the case of a plan under which an employee may designate certain contributions as deductible—

(i) such contributions do not exceed the amount with respect to which a deduction is allowable under section 219(b)(3),

(ii) requirements similar to the requirements of section 401(k)(3)(A)(ii) are met with respect to such elective contributions,

(iii) such contributions are treated as elective deferrals for purposes of section 402(g), and

(iv) the requirements of section 401(a)(30) are met.

For purposes of subparagraph (D)(ii), rules similar to the rules of section 401(k)(8) shall apply. For purposes of section 4979, any excess contribution under clause (ii) shall be treated as an excess contribution under a cash or deferred arrangement.

(19) A post or organization of past or present members of the Armed Forces of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization—

(A) organized in the United States or any of its possessions,

(B) at least 75 percent of the members of which are past or present members of the Armed Forces of the United States and substantially all of the other members of which are individuals who are cadets or are spouses, widows,,[3] widowers, ancestors, or lineal descendants of past or present members of the Armed Forces of the United States or of cadets, and

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(20) an[4] organization or trust created or organized in the United States, the exclusive function of which is to form part of a qualified group legal services plan or plans, within the meaning of section 120. An organization or trust which receives contributions because of section 120(c)(5)(C) shall not be prevented from qualifying as an organization described in this paragraph merely because it provides legal services or indemnification against the cost of legal services unassociated with a qualified group legal services plan.

(21)(A) A trust or trusts established in writing, created or organized in the United States, and contributed to by any person (except an insurance company) if—

(i) the purpose of such trust or trusts is exclusively—

(I) to satisfy, in whole or in part, the liability of such person for, or with respect to, claims for compensation for disability or death due to pneumoconiosis under Black Lung Acts,

(II) to pay premiums for insurance exclusively covering such liability,

(III) to pay administrative and other incidental expenses of such trust in connection with the operation of the trust and the processing of claims against such person under Black Lung Acts, and

(IV) to pay accident or health benefits for retired miners and their spouses and dependents (including administrative and other incidental expenses of such trust in connection therewith) or premiums for insurance exclusively covering such benefits; and

(ii) no part of the assets of the trust may be used for, or diverted to, any purpose other than—

(I) the purposes described in clause (i),

(II) investment (but only to the extent that the trustee determines that a portion of the assets is not currently needed for the purposes described in clause (i)) in qualified investments, or

(III) payment into the Black Lung Disability Trust Fund established under section 9501, or into the general fund of the United States Treasury (other than in satisfaction of any tax or other civil or criminal liability of the person who established or contributed to the trust).

(B) No deduction shall be allowed under this chapter for any payment described in subparagraph (A)(i)(IV) from such trust.

(C) Payments described in subparagraph (A)(i)(IV) may be made from such trust during a taxable year only to the extent that the aggregate amount of such payments during such taxable year does not exceed the excess (if any), as of the close of the preceding taxable year, of—

(i) the fair market value of the assets of the trust, over

(ii) 110 percent of the present value of the liability described in subparagraph (A)(i)(I) of such person.

The determinations under the preceding sentence shall be made by an independent actuary using actuarial methods and assumptions (not inconsistent with the regulations prescribed under section 192(c)(1)(A)) each of which is reasonable and which are reasonable in the aggregate.

(D) For purposes of this paragraph:

(i) The term ''Black Lung Acts'' means part C of title IV of the Federal Mine Safety and Health Act of 1977, and any State law providing compensation for disability or death due to that pneumoconiosis.

(ii) The term ''qualified investments'' means—

(I) public debt securities of the United States,

[3] So in original.

[4] So in original. Probably should be capitalized.

(II) obligations of a State or local government which are not in default as to principal or interest, and

(III) time or demand deposits in a bank (as defined in section 581) or an insured credit union (within the meaning of section 101(7) of the Federal Credit Union Act, 12 U.S.C. 1752(7)) located in the United States.

(iii) The term ''miner'' has the same meaning as such term has when used in section 402(d) of the Black Lung Benefits Act (30 U.S.C. 902(d)).

(iv) The term ''incidental expenses'' includes legal, accounting, actuarial, and trustee expenses.

(22) A trust created or organized in the United States and established in writing by the plan sponsors of multiemployer plans if—

(A) the purpose of such trust is exclusively—

(i) to pay any amount described in section 4223(c) or (h) of the Employee Retirement Income Security Act of 1974, and

(ii) to pay reasonable and necessary administrative expenses in connection with the establishment and operation of the trust and the processing of claims against the trust,

(B) no part of the assets of the trust may be used for, or diverted to, any purpose other than—

(i) the purposes described in subparagraph (A), or

(ii) the investment in securities, obligations, or time or demand deposits described in clause (ii) of paragraph (21)(D),

(C) such trust meets the requirements of paragraphs (2), (3), and (4) of section 4223(b), 4223(h), or, if applicable, section 4223(c) of the Employee Retirement Income Security Act of 1974, and

(D) the trust instrument provides that, on dissolution of the trust, assets of the trust may not be paid other than to plans which have participated in the plan or, in the case of a trust established under section 4223(h) of such Act, to plans with respect to which employers have participated in the fund.

(23) Any association organized before 1880 more than 75 percent of the members of which are present or past members of the Armed Forces and a principal purpose of which is to provide insurance and other benefits to veterans or their dependents.

(24) A trust described in section 4049 of the Employee Retirement Income Security Act of 1974 (as in effect on the date of the enactment of the Single-Employer Pension Plan Amendments Act of 1986).

(25)(A) Any corporation or trust which—

(i) has no more than 35 shareholders or beneficiaries,

(ii) has only 1 class of stock or beneficial interest, and

(iii) is organized for the exclusive purposes of—

(I) acquiring real property and holding title to, and collecting income from, such property, and

(II) remitting the entire amount of income from such property (less expenses) to 1 or more organizations described in subparagraph (C) which are shareholders of such corporation or beneficiaries of such trust.

For purposes of clause (iii), the term ''real property'' shall not include any interest as a tenant in common (or similar interest) and shall not include any indirect interest.

(B) A corporation or trust shall be described in subparagraph (A) without regard to whether the corporation or trust is organized by 1 or more organizations described in subparagraph (C).

(C) An organization is described in this subparagraph if such organization is—

(i) a qualified pension, profit sharing, or stock bonus plan that meets the requirements of section 401(a),

(ii) a governmental plan (within the meaning of section 414(d)),

(iii) the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing, or

(iv) any organization described in paragraph (3).

(D) A corporation or trust shall in no event be treated as described in subparagraph (A) unless such corporation or trust permits its shareholders or beneficiaries—

(i) to dismiss the corporation's or trust's investment adviser, following reasonable notice, upon a vote of the shareholders or beneficiaries holding a majority of interest in the corporation or trust, and

(ii) to terminate their interest in the corporation or trust by either, or both, of the following alternatives, as determined by the corporation or trust:

(I) by selling or exchanging their stock in the corporation or interest in the trust (subject to any Federal or State securities law) to any organization described in subparagraph (C) so long as the sale or exchange does not increase the number of shareholders or beneficiaries in such corporation or trust above 35, or

(II) by having their stock or interest redeemed by the corporation or trust after the shareholder or beneficiary has provided 90 days notice to such corporation or trust.

(E)(i) For purposes of this title—

(I) a corporation which is a qualified subsidiary shall not be treated as a separate corporation, and

(II) all assets, liabilities, and items of income, deduction, and credit of a qualified subsidiary shall be treated as assets, liabilities, and such items (as the case may be) of the corporation or trust described in subparagraph (A).

(ii) For purposes of this subparagraph, the term ''qualified subsidiary'' means any corporation if, at all times during the period such corporation was in existence, 100 percent of the stock of such corporation is held by the corporation or trust described in subparagraph (A).

(iii) For purposes of this subtitle, if any corporation which was a qualified subsidiary ceases to meet the requirements of clause (ii), such corporation shall be treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) immediately before such cessation from the corporation or trust described in subparagraph (A) in exchange for its stock.

(F) For purposes of subparagraph (A), the term ''real property'' includes any personal property which is leased under, or in connection with, a lease of real property, but only if the rent attributable to such personal property (determined under the rules of section 856(d)(1)) for the taxable year does not exceed 15 percent of the total rent for the taxable year attributable to both the real and personal property leased under, or in connection with, such lease.

(G)(i) An organization shall not be treated as failing to be described in this paragraph merely by reason of the receipt of any otherwise disqualifying income which is incidentally derived from the holding of real property.

(ii) Clause (i) shall not apply if the amount of gross income described in such clause exceeds 10 percent of the organization's gross income for the taxable year unless the organization establishes to the satisfaction of the Secretary that the receipt of gross income described in clause (i) in excess of such limitation was inadvertent and reasonable steps are being taken to correct the circumstances giving rise to such income.

(26) Any membership organization if—

(A) such organization is established by a State exclusively to provide coverage for medical care (as defined in section 213(d)) on a not-for-profit basis to individuals described in subparagraph (B) through—

(i) insurance issued by the organization, or

(ii) a health maintenance organization under an arrangement with the organization,

(B) the only individuals receiving such coverage through the organization are individuals—

(i) who are residents of such State, and

(ii) who, by reason of the existence or history of a medical condition—

(I) are unable to acquire medical care coverage for such condition through insurance or from a health maintenance organization, or

(II) are able to acquire such coverage only at a rate which is substantially in excess of the rate for such coverage through the membership organization,

(C) the composition of the membership in such organization is specified by such State, and

(D) no part of the net earnings of the organization inures to the benefit of any private shareholder or individual.

A spouse and any qualifying child (as defined in section 24(c)) of an individual described in subparagraph (B) (without regard to this sentence) shall be treated as described in subparagraph (B).

(27)(A) Any membership organization if—

(i) such organization is established before June 1, 1996, by a State exclusively to reimburse its members for losses arising under workmen's compensation acts,

(ii) such State requires that the membership of such organization consist of—

(I) all persons who issue insurance covering workmen's compensation losses in such State, and

(II) all persons and governmental entities who self-insure against such losses, and

(iii) such organization operates as a nonprofit organization by—

(I) returning surplus income to its members or workmen's compensation policyholders on a periodic basis, and

(II) reducing initial premiums in anticipation of investment income.

(B) Any organization (including a mutual insurance company) if—

(i) such organization is created by State law and is organized and operated under State law exclusively to—

(I) provide workmen's compensation insurance which is required by State law or with respect to which State law provides significant disincentives if such insurance is not purchased by an employer, and

(II) provide related coverage which is incidental to workmen's compensation insurance,

(ii) such organization must provide workmen's compensation insurance to any employer in the State (for employees in the State or temporarily assigned out-of-State) which seeks such insurance and meets other reasonable requirements relating thereto,

(iii)(I) the State makes a financial commitment with respect to such organization either by extending the full faith and credit of the State to the initial debt of such organization or by providing the initial operating capital of such organization, and (II) in the case of periods after the date of enactment of this subparagraph, the assets of such organization revert to the State upon dissolution or State law does not permit the dissolution of such organization, and

(iv) the majority of the board of directors or oversight body of such organization are appointed by the chief executive officer or other executive branch official of the State, by the State legislature, or by both.

(28) The National Railroad Retirement Investment Trust established under section 15(j) of the Railroad Retirement Act of 1974.

(29) CO–OP HEALTH INSURANCE ISSUERS.—

(A) IN GENERAL.—A qualified nonprofit health insurance issuer (within the meaning of section 1322 of the Patient Protection and Affordable Care Act) which has received a loan or grant under the CO–OP program under such section, but only with respect to periods for which the issuer is in compliance with the requirements of such section and any agreement with respect to the loan or grant.

(B) CONDITIONS FOR EXEMPTION.—Subparagraph (A) shall apply to an organization only if—

(i) the organization has given notice to the Secretary, in such manner as the Secretary may by regulations prescribe, that it is applying for recognition of its status under this paragraph,

(ii) except as provided in section 1322(c)(4) of the Patient Protection and Affordable Care Act, no part of the net earnings of which inures to the benefit of any private shareholder or individual,

(iii) no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and

(iv) the organization does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

(d) Religious and apostolic organizations

The following organizations are referred to in subsection (a): Religious or apostolic associations or corporations, if such associations or corporations have a common treasury or community treasury, even if such associations or corporations engage in business for the common benefit of the members, but only if the members thereof include (at the time of filing their returns) in their gross income their entire pro rata shares, whether distributed or not, of the taxable income of the association or corporation for such year. Any amount so included in the gross income of a member shall be treated as a dividend received.

(e) Cooperative hospital service organizations

For purposes of this title, an organization shall be treated as an organization organized and operated exclusively for charitable purposes, if—

(1) such organization is organized and operated solely—

(A) to perform, on a centralized basis, one or more of the following services which, if performed on its own behalf by a hospital which is an organization described in subsection (c)(3) and exempt from taxation under subsection (a), would constitute activities in exercising or performing the purpose or function constituting the basis for its exemption: data processing, purchasing (including the purchasing of insurance on a group basis), warehousing, billing and collection (including the purchase of patron accounts receivable on a recourse basis), food, clinical, industrial engineering, laboratory, printing, communications, record center, and personnel (including selection, testing, training, and education of personnel) services; and

(B) to perform such services solely for two or more hospitals each of which is—

(i) an organization described in subsection (c)(3) which is exempt from taxation under subsection (a),

(ii) a constituent part of an organization described in subsection (c)(3) which is exempt from taxation under subsection (a) and which, if organized and operated as a separate entity, would constitute an organization described in subsection (c)(3), or

(iii) owned and operated by the United States, a State, the District of Columbia, or a possession of the United States, or a political subdivision or an agency or instrumentality of any of the foregoing;

(2) such organization is organized and operated on a cooperative basis and allocates or pays, within 8½ months after the close of its taxable year, all net earnings to patrons on the basis of services performed for them; and

(3) if such organization has capital stock, all of such stock outstanding is owned by its patrons.

For purposes of this title, any organization which, by reason of the preceding sentence, is an organization described in subsection (c)(3) and exempt from taxation under subsection (a), shall be treated as a hospital and as an organization referred to in section 170(b)(1)(A)(iii).

(f) Cooperative service organizations of operating educational organizations

For purposes of this title, if an organization is—

(1) organized and operated solely to hold, commingle, and collectively invest and reinvest (including arranging for and supervising the performance by independent contractors of investment services related thereto) in stocks and securities, the moneys contributed thereto by each of the members of such organization, and to collect income therefrom and turn over the entire amount thereof, less expenses, to such members,

(2) organized and controlled by one or more such members, and

(3) comprised solely of members that are organizations described in clause (ii) or (iv) of section 170(b)(1)(A)—

(A) which are exempt from taxation under subsection (a), or

(B) the income of which is excluded from taxation under section 115(a),

then such organization shall be treated as an organization organized and operated exclusively for charitable purposes.

(g) Definition of agricultural

For purposes of subsection (c)(5), the term ''agricultural'' includes the art or science of cultivating land, harvesting crops or aquatic resources, or raising livestock.

(h) Expenditures by public charities to influence legislation

(1) General rule

In the case of an organization to which this subsection applies, exemption from taxation under subsection (a) shall be denied because a substantial part of the activities of such organization consists of carrying on propaganda, or otherwise attempting, to influence legislation, but only if such organization normally—

(A) makes lobbying expenditures in excess of the lobbying ceiling amount for such organization for each taxable year, or

(B) makes grass roots expenditures in excess of the grass roots ceiling amount for such organization for each taxable year.

(2) Definitions

For purposes of this subsection—

(A) Lobbying expenditures

The term ''lobbying expenditures'' means expenditures for the purpose of influencing legislation (as defined in section 4911(d)).

(B) Lobbying ceiling amount

The lobbying ceiling amount for any organization for any taxable year is 150 percent of the lobbying nontaxable amount for such organization for such taxable year, determined under section 4911.

(C) Grass roots expenditures

The term ''grass roots expenditures'' means expenditures for the purpose of influencing legislation (as defined in section 4911(d) without regard to paragraph (1)(B) thereof).

(D) Grass roots ceiling amount

The grass roots ceiling amount for any organization for any taxable year is 150 percent of the grass roots nontaxable amount for such organization for such taxable year, determined under section 4911.

(3) Organizations to which this subsection applies

This subsection shall apply to any organization which has elected (in such manner and at such time as the Secretary may prescribe) to have the provisions of this subsection apply to such organization and which, for the taxable year which includes the date the election is made, is described in subsection (c)(3) and—

(A) is described in paragraph (4), and

(B) is not a disqualified organization under paragraph (5).

(4) Organizations permitted to elect to have this subsection apply

An organization is described in this paragraph if it is described in—

(A) section 170(b)(1)(A)(ii) (relating to educational institutions),

(B) section 170(b)(1)(A)(iii) (relating to hospitals and medical research organizations),

(C) section 170(b)(1)(A)(iv) (relating to organizations supporting government schools),

(D) section 170(b)(1)(A)(vi) (relating to organizations publicly supported by charitable contributions),

(E) section 509(a)(2) (relating to organizations publicly supported by admissions, sales, etc.), or

(F) section 509(a)(3) (relating to organizations supporting certain types of public charities) except that for purposes of this subparagraph, section 509(a)(3) shall be applied without regard to the last sentence of section 509(a).

(5) Disqualified organizations

For purposes of paragraph (3) an organization is a disqualified organization if it is—

(A) described in section 170(b)(1)(A)(i) (relating to churches),

(B) an integrated auxiliary of a church or of a convention or association of churches, or

(C) a member of an affiliated group of organizations (within the meaning of section 4911(f)(2)) if one or more members of such group is described in subparagraph (A) or (B).

(6) Years for which election is effective

An election by an organization under this subsection shall be effective for all taxable years of such organization which—

(A) end after the date the election is made, and

(B) begin before the date the election is revoked by such organization (under regulations prescribed by the Secretary).

(7) No effect on certain organizations

With respect to any organization for a taxable year for which—

(A) such organization is a disqualified organization (within the meaning of paragraph (5)), or

(B) an election under this subsection is not in effect for such organization,

nothing in this subsection or in section 4911 shall be construed to affect the interpretation of the phrase, ''no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation,'' under subsection (c)(3).

(8) Affiliated organizations

For rules regarding affiliated organizations, see section 4911(f).

(i) Prohibition of discrimination by certain social clubs

Notwithstanding subsection (a), an organization which is described in subsection (c)(7) shall not be exempt from taxation under subsection (a) for any taxable year if, at any time during such taxable year, the charter, bylaws, or other governing instrument, of such organization or any written policy statement of such organization contains a provision which provides for discrimination against any person on the basis of race, color, or religion. The preceding sentence to the extent it relates to discrimination on the basis of religion shall not apply to—

(1) an auxiliary of a fraternal beneficiary society if such society—

(A) is described in subsection (c)(8) and exempt from tax under subsection (a), and

(B) limits its membership to the members of a particular religion, or

(2) a club which in good faith limits its membership to the members of a particular religion in order to further the teachings or principles of that religion, and not to exclude individuals of a particular race or color.

(j) Special rules for certain amateur sports organizations

(1) In general

In the case of a qualified amateur sports organization—

(A) the requirement of subsection (c)(3) that no part of its activities involve the provision of athletic facilities or equipment shall not apply, and

(B) such organization shall not fail to meet the requirements of subsection (c)(3)

merely because its membership is local or regional in nature.

(2) Qualified amateur sports organization defined

For purposes of this subsection, the term ''qualified amateur sports organization'' means any organization organized and operated exclusively to foster national or international amateur sports competition if such organization is also organized and operated primarily to conduct national or international competition in sports or to support and develop amateur athletes for national or international competition in sports.

(k) Treatment of certain organizations providing child care

For purposes of subsection (c)(3) of this section and sections 170(c)(2), 2055(a)(2), and 2522(a)(2), the term ''educational purposes'' includes the providing of care of children away from their homes if—

(1) substantially all of the care provided by the organization is for purposes of enabling individuals to be gainfully employed, and

(2) the services provided by the organization are available to the general public.

(*l*) Government corporations exempt under subsection (c)(1)

For purposes of subsection (c)(1), the following organizations are described in this subsection:

(1) The Central Liquidity Facility established under title III of the Federal Credit Union Act (12 U.S.C. 1795 et seq.).

(2) The Resolution Trust Corporation established under section 21A of the Federal Home Loan Bank Act.

(3) The Resolution Funding Corporation established under section 21B of the Federal Home Loan Bank Act.

(4) The Patient-Centered Outcomes Research Institute established under section 1181(b) of the Social Security Act.

(m) Certain organizations providing commercial-type insurance not exempt from tax

(1) Denial of tax exemption where providing commercial-type insurance is substantial part of activities

An organization described in paragraph (3) or (4) of subsection (c) shall be exempt from tax under subsection (a) only if no substantial part of its activities consists of providing commercial-type insurance.

(2) Other organizations taxed as insurance companies on insurance business

In the case of an organization described in paragraph (3) or (4) of subsection (c) which is exempt from tax under subsection (a) after the application of paragraph (1) of this subsection—

(A) the activity of providing commercial-type insurance shall be treated as an unrelated trade or business (as defined in section 513), and

(B) in lieu of the tax imposed by section 511 with respect to such activity, such organization shall be treated as an insurance company for purposes of applying subchapter L with respect to such activity.

(3) Commercial-type insurance

For purposes of this subsection, the term ''commercial-type insurance'' shall not include—

(A) insurance provided at substantially below cost to a class of charitable recipients,

(B) incidental health insurance provided by a health maintenance organization of a kind customarily provided by such organizations,

(C) property or casualty insurance provided (directly or through an organization described in section 414(e)(3)(B)(ii)) by a church or convention or association of churches for such church or convention or association of churches,

(D) providing retirement or welfare benefits (or both) by a church or a convention or association of churches (directly or through an organization described in section 414(e)(3)(A) or 414(e)(3)(B)(ii)) for the employees (including employees described in section 414(e)(3)(B)) of such church or convention or association of churches or the beneficiaries of such employees, and

(E) charitable gift annuities.

(4) Insurance includes annuities

For purposes of this subsection, the issuance of annuity contracts shall be treated as providing insurance.

(5) Charitable gift annuity

For purposes of paragraph (3)(E), the term ''charitable gift annuity'' means an annuity if—

(A) a portion of the amount paid in connection with the issuance of the annuity is allowable as a deduction under section 170 or 2055, and

(B) the annuity is described in section 514(c)(5) (determined as if any amount paid in cash in connection with such issuance were property).

(n) Charitable risk pools

(1) In general

For purposes of this title—

(A) a qualified charitable risk pool shall be treated as an organization organized and operated exclusively for charitable purposes, and

(B) subsection (m) shall not apply to a qualified charitable risk pool.

(2) Qualified charitable risk pool

For purposes of this subsection, the term ''qualified charitable risk pool'' means any organization—

(A) which is organized and operated solely to pool insurable risks of its members (other than risks related to medical malpractice) and to provide information to its members with respect to loss control and risk management,

(B) which is comprised solely of members that are organizations described in subsection (c)(3) and exempt from tax under subsection (a), and

(C) which meets the organizational requirements of paragraph (3).

(3) Organizational requirements

An organization (hereinafter in this subsection referred to as the ''risk pool'') meets

the organizational requirements of this paragraph if—

(A) such risk pool is organized as a nonprofit organization under State law provisions authorizing risk pooling arrangements for charitable organizations,

(B) such risk pool is exempt from any income tax imposed by the State (or will be so exempt after such pool qualifies as an organization exempt from tax under this title),

(C) such risk pool has obtained at least $1,000,000 in startup capital from nonmember charitable organizations,

(D) such risk pool is controlled by a board of directors elected by its members, and

(E) the organizational documents of such risk pool require that—

(i) each member of such pool shall at all times be an organization described in subsection (c)(3) and exempt from tax under subsection (a),

(ii) any member which receives a final determination that it no longer qualifies as an organization described in subsection (c)(3) shall immediately notify the pool of such determination and the effective date of such determination, and

(iii) each policy of insurance issued by the risk pool shall provide that such policy will not cover the insured with respect to events occurring after the date such final determination was issued to the insured.

An organization shall not cease to qualify as a qualified charitable risk pool solely by reason of the failure of any of its members to continue to be an organization described in subsection (c)(3) if, within a reasonable period of time after such pool is notified as required under subparagraph (E)(ii), such pool takes such action as may be reasonably necessary to remove such member from such pool.

(4) Other definitions

For purposes of this subsection—

(A) Startup capital

The term ''startup capital'' means any capital contributed to, and any program-related investments (within the meaning of section 4944(c)) made in, the risk pool before such pool commences operations.

(B) Nonmember charitable organization

The term ''nonmember charitable organization'' means any organization which is described in subsection (c)(3) and exempt from tax under subsection (a) and which is not a member of the risk pool and does not benefit (directly or indirectly) from the insurance coverage provided by the pool to its members.

(*o*) Treatment of hospitals participating in provider-sponsored organizations

An organization shall not fail to be treated as organized and operated exclusively for a charitable purpose for purposes of subsection (c)(3) solely because a hospital which is owned and operated by such organization participates in a provider-sponsored organization (as defined in section 1855(d) of the Social Security Act), whether or not the provider-sponsored organization is exempt from tax. For purposes of subsection (c)(3), any person with a material financial interest in such a provider-sponsored organization shall be treated as a private shareholder or individual with respect to the hospital.

(p) Suspension of tax-exempt status of terrorist organizations

(1) In general

The exemption from tax under subsection (a) with respect to any organization described in paragraph (2), and the eligibility of any organization described in paragraph (2) to apply for recognition of exemption under subsection (a), shall be suspended during the period described in paragraph (3).

(2) Terrorist organizations

An organization is described in this paragraph if such organization is designated or otherwise individually identified—

(A) under section 212(a)(3)(B)(vi)(II) or 219 of the Immigration and Nationality Act as a terrorist organization or foreign terrorist organization,

(B) in or pursuant to an Executive order which is related to terrorism and issued under the authority of the International Emergency Economic Powers Act or section 5 of the United Nations Participation Act of 1945 for the purpose of imposing on such organization an economic or other sanction, or

(C) in or pursuant to an Executive order issued under the authority of any Federal law if—

(i) the organization is designated or otherwise individually identified in or pursuant to such Executive order as supporting or engaging in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act) or supporting terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989); and

(ii) such Executive order refers to this subsection.

(3) Period of suspension

With respect to any organization described in paragraph (2), the period of suspension—

(A) begins on the later of—

(i) the date of the first publication of a designation or identification described in paragraph (2) with respect to such organization, or

(ii) the date of the enactment of this subsection, and

(B) ends on the first date that all designations and identifications described in paragraph (2) with respect to such organization are rescinded pursuant to the law or Executive order under which such designation or identification was made.

(4) Denial of deduction

No deduction shall be allowed under any provision of this title, including sections 170, 545(b)(2), 556(b)(2),[5] 642(c), 2055, 2106(a)(2), and 2522, with respect to any contribution to an or-

[5] See References in Text note below.

ganization described in paragraph (2) during the period described in paragraph (3).

(5) Denial of administrative or judicial challenge of suspension or denial of deduction

Notwithstanding section 7428 or any other provision of law, no organization or other person may challenge a suspension under paragraph (1), a designation or identification described in paragraph (2), the period of suspension described in paragraph (3), or a denial of a deduction under paragraph (4) in any administrative or judicial proceeding relating to the Federal tax liability of such organization or other person.

(6) Erroneous designation

(A) In general

If—

(i) the tax exemption of any organization described in paragraph (2) is suspended under paragraph (1),

(ii) each designation and identification described in paragraph (2) which has been made with respect to such organization is determined to be erroneous pursuant to the law or Executive order under which such designation or identification was made, and

(iii) the erroneous designations and identifications result in an overpayment of income tax for any taxable year by such organization,

credit or refund (with interest) with respect to such overpayment shall be made.

(B) Waiver of limitations

If the credit or refund of any overpayment of tax described in subparagraph (A)(iii) is prevented at any time by the operation of any law or rule of law (including res judicata), such credit or refund may nevertheless be allowed or made if the claim therefor is filed before the close of the 1-year period beginning on the date of the last determination described in subparagraph (A)(ii).

(7) Notice of suspensions

If the tax exemption of any organization is suspended under this subsection, the Internal Revenue Service shall update the listings of tax-exempt organizations and shall publish appropriate notice to taxpayers of such suspension and of the fact that contributions to such organization are not deductible during the period of such suspension.

(q) Special rules for credit counseling organizations

(1) In general

An organization with respect to which the provision of credit counseling services is a substantial purpose shall not be exempt from tax under subsection (a) unless such organization is described in paragraph (3) or (4) of subsection (c) and such organization is organized and operated in accordance with the following requirements:

(A) The organization—

(i) provides credit counseling services tailored to the specific needs and circumstances of consumers,

(ii) makes no loans to debtors (other than loans with no fees or interest) and does not negotiate the making of loans on behalf of debtors,

(iii) provides services for the purpose of improving a consumer's credit record, credit history, or credit rating only to the extent that such services are incidental to providing credit counseling services, and

(iv) does not charge any separately stated fee for services for the purpose of improving any consumer's credit record, credit history, or credit rating.

(B) The organization does not refuse to provide credit counseling services to a consumer due to the inability of the consumer to pay, the ineligibility of the consumer for debt management plan enrollment, or the unwillingness of the consumer to enroll in a debt management plan.

(C) The organization establishes and implements a fee policy which—

(i) requires that any fees charged to a consumer for services are reasonable,

(ii) allows for the waiver of fees if the consumer is unable to pay, and

(iii) except to the extent allowed by State law, prohibits charging any fee based in whole or in part on a percentage of the consumer's debt, the consumer's payments to be made pursuant to a debt management plan, or the projected or actual savings to the consumer resulting from enrolling in a debt management plan.

(D) At all times the organization has a board of directors or other governing body—

(i) which is controlled by persons who represent the broad interests of the public, such as public officials acting in their capacities as such, persons having special knowledge or expertise in credit or financial education, and community leaders,

(ii) not more than 20 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees or the repayment of consumer debt to creditors other than the credit counseling organization or its affiliates), and

(iii) not more than 49 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees).

(E) The organization does not own more than 35 percent of—

(i) the total combined voting power of any corporation (other than a corporation which is an organization described in subsection (c)(3) and exempt from tax under subsection (a)) which is in the trade or business of lending money, repairing credit, or providing debt management plan services, payment processing, or similar services,

(ii) the profits interest of any partnership (other than a partnership which is an organization described in subsection (c)(3) and exempt from tax under subsection (a)) which is in the trade or business of lending money, repairing credit, or providing debt management plan services, payment processing, or similar services, and

(iii) the beneficial interest of any trust or estate (other than a trust which is an organization described in subsection (c)(3) and exempt from tax under subsection (a)) which is in the trade or business of lending money, repairing credit, or providing debt management plan services, payment processing, or similar services.

(F) The organization receives no amount for providing referrals to others for debt management plan services, and pays no amount to others for obtaining referrals of consumers.

(2) Additional requirements for organizations described in subsection (c)(3)

(A) In general

In addition to the requirements under paragraph (1), an organization with respect to which the provision of credit counseling services is a substantial purpose and which is described in paragraph (3) of subsection (c) shall not be exempt from tax under subsection (a) unless such organization is organized and operated in accordance with the following requirements:

(i) The organization does not solicit contributions from consumers during the initial counseling process or while the consumer is receiving services from the organization.

(ii) The aggregate revenues of the organization which are from payments of creditors of consumers of the organization and which are attributable to debt management plan services do not exceed the applicable percentage of the total revenues of the organization.

(B) Applicable percentage

(i) In general

For purposes of subparagraph (A)(ii), the applicable percentage is 50 percent.

(ii) Transition rule

Notwithstanding clause (i), in the case of an organization with respect to which the provision of credit counseling services is a substantial purpose and which is described in paragraph (3) of subsection (c) and exempt from tax under subsection (a) on the date of the enactment of this subsection, the applicable percentage is—

(I) 80 percent for the first taxable year of such organization beginning after the date which is 1 year after the date of the enactment of this subsection, and

(II) 70 percent for the second such taxable year beginning after such date, and

(III) 60 percent for the third such taxable year beginning after such date.

(3) Additional requirement for organizations described in subsection (c)(4)

In addition to the requirements under paragraph (1), an organization with respect to which the provision of credit counseling services is a substantial purpose and which is described in paragraph (4) of subsection (c) shall not be exempt from tax under subsection (a) unless such organization notifies the Secretary, in such manner as the Secretary may by regulations prescribe, that it is applying for recognition as a credit counseling organization.

(4) Credit counseling services; debt management plan services

For purposes of this subsection—

(A) Credit counseling services

The term ''credit counseling services'' means—

(i) the providing of educational information to the general public on budgeting, personal finance, financial literacy, saving and spending practices, and the sound use of consumer credit,

(ii) the assisting of individuals and families with financial problems by providing them with counseling, or

(iii) a combination of the activities described in clauses (i) and (ii).

(B) Debt management plan services

The term ''debt management plan services'' means services related to the repayment, consolidation, or restructuring of a consumer's debt, and includes the negotiation with creditors of lower interest rates, the waiver or reduction of fees, and the marketing and processing of debt management plans.

(r) Additional requirements for certain hospitals

(1) In general

A hospital organization to which this subsection applies shall not be treated as described in subsection (c)(3) unless the organization—

(A) meets the community health needs assessment requirements described in paragraph (3),

(B) meets the financial assistance policy requirements described in paragraph (4),

(C) meets the requirements on charges described in paragraph (5), and

(D) meets the billing and collection requirement described in paragraph (6).

(2) Hospital organizations to which subsection applies

(A) In general

This subsection shall apply to—

(i) an organization which operates a facility which is required by a State to be licensed, registered, or similarly recognized as a hospital, and

(ii) any other organization which the Secretary determines has the provision of hospital care as its principal function or purpose constituting the basis for its exemption under subsection (c)(3) (determined without regard to this subsection).

(B) Organizations with more than 1 hospital facility

If a hospital organization operates more than 1 hospital facility—

(i) the organization shall meet the requirements of this subsection separately with respect to each such facility, and

(ii) the organization shall not be treated as described in subsection (c)(3) with respect to any such facility for which such requirements are not separately met.

(3) Community health needs assessments

(A) In general

An organization meets the requirements of this paragraph with respect to any taxable year only if the organization—

(i) has conducted a community health needs assessment which meets the requirements of subparagraph (B) in such taxable year or in either of the 2 taxable years immediately preceding such taxable year, and

(ii) has adopted an implementation strategy to meet the community health needs identified through such assessment.

(B) Community health needs assessment

A community health needs assessment meets the requirements of this paragraph if such community health needs assessment—

(i) takes into account input from persons who represent the broad interests of the community served by the hospital facility, including those with special knowledge of or expertise in public health, and

(ii) is made widely available to the public.

(4) Financial assistance policy

An organization meets the requirements of this paragraph if the organization establishes the following policies:

(A) Financial assistance policy

A written financial assistance policy which includes—

(i) eligibility criteria for financial assistance, and whether such assistance includes free or discounted care,

(ii) the basis for calculating amounts charged to patients,

(iii) the method for applying for financial assistance,

(iv) in the case of an organization which does not have a separate billing and collections policy, the actions the organization may take in the event of non-payment, including collections action and reporting to credit agencies, and

(v) measures to widely publicize the policy within the community to be served by the organization.

(B) Policy relating to emergency medical care

A written policy requiring the organization to provide, without discrimination, care for emergency medical conditions (within the meaning of section 1867 of the Social Security Act (42 U.S.C. 1395dd)) to individuals regardless of their eligibility under the financial assistance policy described in subparagraph (A).

(5) Limitation on charges

An organization meets the requirements of this paragraph if the organization—

(A) limits amounts charged for emergency or other medically necessary care provided to individuals eligible for assistance under the financial assistance policy described in paragraph (4)(A) to not more than the amounts generally billed to individuals who have insurance covering such care, and

(B) prohibits the use of gross charges.

(6) Billing and collection requirements

An organization meets the requirement of this paragraph only if the organization does not engage in extraordinary collection actions before the organization has made reasonable efforts to determine whether the individual is eligible for assistance under the financial assistance policy described in paragraph (4)(A).

(7) Regulatory authority

The Secretary shall issue such regulations and guidance as may be necessary to carry out the provisions of this subsection, including guidance relating to what constitutes reasonable efforts to determine the eligibility of a patient under a financial assistance policy for purposes of paragraph (6).

(s) Cross reference

For nonexemption of Communist-controlled organizations, see section 11(b) of the Internal Security Act of 1950 (64 Stat. 997; 50 U.S.C. 790(b)).

(Aug. 16, 1954, ch. 736, 68A Stat. 163; Mar. 13, 1956, ch. 83, § 5(2), 70 Stat. 49; Pub. L. 86–428, § 1, Apr. 22, 1960, 74 Stat. 54; Pub. L. 86–667, § 1, July 14, 1960, 74 Stat. 534; Pub. L. 87–834, § 8(d), Oct. 16, 1962, 76 Stat. 997; Pub. L. 89–352, § 1, Feb. 2, 1966, 80 Stat. 4; Pub. L. 89–800, § 6(a), Nov. 8, 1966, 80 Stat. 1515; Pub. L. 90–364, title I, § 109(a), June 28, 1968, 82 Stat. 269; Pub. L. 91–172, title I, §§ 101(j)(3)–(6), 121(b)(5)(A), (6)(A), Dec. 30, 1969, 83 Stat. 526, 527, 541; Pub. L. 91–618, § 1, Dec. 31, 1970, 84 Stat. 1855; Pub. L. 92–418, § 1(a), Aug. 29, 1972, 86 Stat. 656; Pub. L. 93–310, § 3(a), June 8, 1974, 88 Stat. 235; Pub. L. 93–625, § 10(c), Jan. 3, 1975, 88 Stat. 2119; Pub. L. 94–455, title XIII, §§ 1307(a)(1), (d)(1)(A), 1312(a), 1313(a), title XIX, § 1906(b)(13)(A), title XXI, §§ 2113(a), 2134(b), Oct. 4, 1976, 90 Stat. 1720, 1727, 1730, 1834, 1907, 1927; Pub. L. 94–568, §§ 1(a), 2(a), Oct. 20, 1976, 90 Stat. 2697; Pub. L. 95–227, § 4(a), Feb. 10, 1978, 92 Stat. 15; Pub. L. 95–345, § 1(a), Aug. 15, 1978, 92 Stat. 481; Pub. L. 95–600, title VII, § 703(b)(2), (g)(2)(A), (B), Nov. 6, 1978, 92 Stat. 2939, 2940; Pub. L. 96–222, title I, § 108(b)(2)(B), Apr. 1, 1980, 94 Stat. 226; Pub. L. 96–364, title II, § 209(a), Sept. 26, 1980, 94 Stat. 1290; Pub. L. 96–601, § 3(a), Dec. 24, 1980, 94 Stat. 3496; Pub. L. 96–605, title I, § 106(a), Dec. 28, 1980, 94 Stat. 3523; Pub. L. 97–119, title I, § 103(c)(1), Dec. 29, 1981, 95 Stat. 1638; Pub. L. 97–248, title II, § 286(a), title III, § 354(a), (b), Sept. 3, 1982, 96 Stat. 569, 640, 641; Pub. L. 97–448, title III, § 306(b)(5), Jan. 12, 1983, 96 Stat. 2406; Pub. L. 98–369, div. A, title X, §§ 1032(a), 1079, div. B, title VIII, § 2813(b), July 18, 1984, 98 Stat. 1033, 1056, 1206; Pub. L. 99–272, title XI, § 11012(b), Apr. 7, 1986, 100 Stat. 260; Pub. L. 99–514, title X,

§§ 1012(a), 1024(b), title XI, §§ 1109(a), 1114(b)(14), title XVI, § 1603(a), title XVIII, §§ 1879(k)(1), 1899A(15), Oct. 22, 1986, 100 Stat. 2390, 2406, 2435, 2451, 2768, 2909, 2959; Pub. L. 100–203, title X, § 10711(a)(2), Dec. 22, 1987, 101 Stat. 1330–464; Pub. L. 100–647, title I, §§ 1010(b)(4), 1011(c)(7)(D), 1016(a)(1)(A), (2)–(4), 1018(u)(14), (15), (34), title II, § 2003(a)(1), (2), title VI, § 6202(a), Nov. 10, 1988, 102 Stat. 3451, 3458, 3573, 3574, 3590, 3592, 3597, 3598, 3730; Pub. L. 101–73, title XIV, § 1402(a), Aug. 9, 1989, 103 Stat. 550; Pub. L. 102–486, title XIX, § 1940(a), Oct. 24, 1992, 106 Stat. 3034; Pub. L. 103–66, title XIII, § 13146(a), (b), Aug. 10, 1993, 107 Stat. 443; Pub. L. 104–168, title XIII, § 1311(b)(1), July 30, 1996, 110 Stat. 1477; Pub. L. 104–188, title I, §§ 1114(a), 1704(j)(5), Aug. 20, 1996, 110 Stat. 1759, 1882; Pub. L. 104–191, title III, §§ 341(a), 342(a), Aug. 21, 1996, 110 Stat. 2070; Pub. L. 105–33, title IV, § 4041(a), Aug. 5, 1997, 111 Stat. 360; Pub. L. 105–34, title I, § 101(c), title IX, §§ 963(a), (b), 974(a), Aug. 5, 1997, 111 Stat. 799, 892, 898; Pub. L. 105–206, title VI, § 6023(6), (7), July 22, 1998, 112 Stat. 825; Pub. L. 107–16, title VI, § 611(d)(3)(C), June 7, 2001, 115 Stat. 98; Pub. L. 107–90, title II, § 202, Dec. 21, 2001, 115 Stat. 890; Pub. L. 108–121, title I, §§ 105(a), 108(a), Nov. 11, 2003, 117 Stat. 1338, 1339; Pub. L. 108–218, title II, § 206(a), (b), Apr. 10, 2004, 118 Stat. 610, 611; Pub. L. 108–357, title III, § 319(a), (b), Oct. 22, 2004, 118 Stat. 1470, 1471; Pub. L. 109–58, title XIII, § 1304(a), (b), Aug. 8, 2005, 119 Stat. 997; Pub. L. 109–135, title IV, § 412(bb), (cc), Dec. 21, 2005, 119 Stat. 2639; Pub. L. 109–280, title VIII, § 862(a), title XII, § 1220(a), Aug. 17, 2006, 120 Stat. 1021, 1086; Pub. L. 111–148, title I, § 1322(h)(1), title VI, § 6301(f), title IX, § 9007(a), title X, § 10903(a), Mar. 23, 2010, 124 Stat. 191, 747, 855, 1016; Pub. L. 111–152, title I, § 1004(d)(4), Mar. 30, 2010, 124 Stat. 1035.)

REFERENCES IN TEXT

Sections 306A and 306B of the Rural Electrification Act of 1936, referred to in subsec. (c)(12)(B)(iv), are classified to sections 936a and 936b, respectively, of Title 7, Agriculture. Section 311 of the Act was classified to section 940a of Title 7 prior to repeal by Pub. L. 104–127, title VII, § 780, Apr. 4, 1996, 110 Stat. 1151.

The date of the enactment of this subparagraph, referred to in subsec. (c)(12)(H)(vii), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

The Federal Mine Safety and Health Act of 1977, referred to in subsec. (c)(21)(D)(i), is Pub. L. 91–173, Dec. 30, 1969, 83 Stat. 742, as amended by Pub. L. 95–164, Nov. 9, 1977, 91 Stat. 1290. Part C of title IV of the Act is classified generally to part C (§ 931 et seq.) of subchapter IV of chapter 22 of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 30 and Tables.

Section 4223 of the Employee Retirement Income Security Act of 1974, referred to in subsec. (c)(22)(A)(i), (C), (D), is classified to section 1403 of Title 29, Labor.

Section 4049 of the Employee Retirement Income Security Act of 1974, referred to in subsec. (c)(24), was classified to section 1349 of Title 29, prior to its repeal by Pub. L. 100–203, title IX, § 9312(a), Dec. 22, 1987, 101 Stat. 1330–361.

The date of the enactment of the Single-Employer Pension Plan Amendments Act of 1986, referred to in subsec. (c)(24), is the date of enactment of title XI of Pub. L. 99–272, which was approved Apr. 7, 1986.

The date of enactment of this subparagraph, referred to in subsec. (c)(27)(B)(iii)(I), is the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

Section 15(j) of the Railroad Retirement Act of 1974, referred to in subsec. (c)(28), is classified to section 231n(j) of Title 45, Railroads.

Section 1322 of the Patient Protection and Affordable Care Act, referred to in subsec. (c)(29)(A), (B)(ii), is classified to section 18042 of Title 42, The Public Health and Welfare.

The provisions of subsec. (a) of section 115, referred to in subsec. (f)(3)(B), now comprise section 115 in its entirety, following the deletion therefrom of the subsec. (a) designation by section 1901(a)(19) of Pub. L. 94–455.

The Federal Credit Union Act, referred to in subsec. (*l*)(1), is act June 26, 1934, ch. 750, 48 Stat. 1216, as amended. Title III of the Federal Credit Union Act is classified generally to subchapter III (§ 1795 et seq.) of chapter 14 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1751 of Title 12 and Tables.

Sections 21A and 21B of the Federal Home Loan Bank Act, referred to in subsec. (*l*)(2), (3), are classified to sections 1441a and 1441b, respectively, of Title 12.

Sections 1181(b) and 1855(d) of the Social Security Act, referred to in subsecs. (*l*)(4) and (*o*), are classified to sections 1320e(b) and 1395w–25(d), respectively, of Title 42, The Public Health and Welfare.

Sections 212(a)(3)(B) and 219 of the Immigration and Nationality Act, referred to in subsec. (p)(2)(A), (C)(i), are classified to sections 1182(a)(3)(B) and 1189, respectively, of Title 8, Aliens and Nationality.

The International Emergency Economic Powers Act, referred to in subsec. (p)(2)(B), is title II of Pub. L. 95–223, Dec. 28, 1977, 91 Stat. 1626, as amended, which is classified generally to chapter 35 (§ 1701 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 50 and Tables.

Section 5 of the United Nations Participation Act of 1945, referred to in subsec. (p)(2)(B), is classified to section 287c of Title 22, Foreign Relations and Intercourse.

Section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, referred to in subsec. (p)(2)(C)(i), is classified to section 2656f(d)(2) of Title 22, Foreign Relations and Intercourse.

The date of the enactment of this subsection, referred to in subsec. (p)(3)(A)(ii), is the date of enactment of Pub. L. 108–121, which was approved Nov. 11, 2003.

Section 556(b)(2), referred to in subsec. (p)(4), was repealed by Pub. L. 108–357, title IV, § 413(a)(1), Oct. 22, 2004, 118 Stat. 1506.

The date of the enactment of this subsection, referred to in subsec. (q)(2)(B)(ii), is the date of enactment of Pub. L. 109–280, which was approved Aug. 17, 2006.

Section 11(b) of the Internal Security Act of 1950 (64 Stat. 997; 50 U.S.C. 790(b)), referred to in subsec. (s), was repealed by Pub. L. 103–199, title VIII, § 803(1), Dec. 17, 1993, 107 Stat. 2329.

AMENDMENTS

2010—Subsec. (c)(9). Pub. L. 111–152 inserted at end ''For purposes of providing for the payment of sick and accident benefits to members of such an association and their dependents, the term 'dependent' shall include any individual who is a child (as defined in section 152(f)(1)) of a member who as of the end of the calendar year has not attained age 27.''

Subsec. (c)(29). Pub. L. 111–148, § 1322(h)(1), added par. (29).

Subsec. (*l*)(4). Pub. L. 111–148, § 6301(f), added par. (4).

Subsec. (r). Pub. L. 111–148, § 9007(a), added subsec. (r). Former subsec. (r) redesignated (s).

Subsec. (r)(5)(A). Pub. L. 111–148, § 10903(a), substituted ''the amounts generally billed'' for ''the lowest amounts charged''.

Subsec. (s). Pub. L. 111–148, § 9007(a), redesignated subsec. (r) as (s).

2006—Subsec. (c)(21)(C). Pub. L. 109–280, § 862(a), amended introductory provisions and cls. (i) and (ii) generally. Prior to amendment, introductory provisions and cls. (i) and (ii) read as follows: ''Payments described in subparagraph (A)(i)(IV) may be made from such trust during a taxable year only to the extent that the aggregate amount of such payments during such taxable year does not exceed the lesser of—

''(i) the excess (if any) (as of the close of the preceding taxable year) of—

''(I) the fair market value of the assets of the trust, over

''(II) 110 percent of the present value of the liability described in subparagraph (A)(i)(I) of such person, or

''(ii) the excess (if any) of—

''(I) the sum of a similar excess determined as of the close of the last taxable year ending before the date of the enactment of this subparagraph plus earnings thereon as of the close of the taxable year preceding the taxable year involved, over

''(II) the aggregate payments described in subparagraph (A)(i)(IV) made from the trust during all taxable years beginning after the date of the enactment of this subparagraph.''

Subsecs. (q), (r). Pub. L. 109–280, § 1220(a), which directed the amendment of section 501 by adding subsec. (q) and redesignating former subsec. (q) as (r), without specifying the act to be amended, was executed by making the amendments to this section, which is section 501 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

2005—Subsec. (c)(12)(C). Pub. L. 109–58, § 1304(a), struck out concluding provisions which read as follows: ''Clauses (ii) through (v) shall not apply to taxable years beginning after December 31, 2006.''

Subsec. (c)(12)(F). Pub. L. 109–135, § 412(bb)(1), substituted ''subparagraph (C)(iv)'' for ''subparagraph (C)(iii)''.

Subsec. (c)(12)(G). Pub. L. 109–135, § 412(bb)(2), substituted ''subparagraph (C)(v)'' for ''subparagraph (C)(iv)''.

Subsec. (c)(12)(H)(x). Pub. L. 109–58, § 1304(b), struck out cl. (x) which read as follows: ''This subparagraph shall not apply to taxable years beginning after December 31, 2006.''

Subsec. (c)(22)(B)(ii). Pub. L. 109–135, § 412(cc), substituted ''clause (ii) of paragraph (21)(D)'' for ''clause (ii) of paragraph (21)(B)''.

2004—Subsec. (c)(12)(C). Pub. L. 108–357, § 319(a)(1), added cls. (ii) to (v) and concluding provisions and struck out former cl. (ii) which read as follows: ''from the prepayment of a loan under section 306A, 306B, or 311 of the Rural Electrification Act of 1936 (as in effect on January 1, 1987).''

Subsec. (c)(12)(E) to (G). Pub. L. 108–357, § 319(a)(2), added subpars. (E) to (G).

Subsec. (c)(12)(H). Pub. L. 108–357, § 319(b), added subpar. (H).

Subsec. (c)(15)(A). Pub. L. 108–218, § 206(a), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''Insurance companies or associations other than life (including interinsurers and reciprocal underwriters) if the net written premiums (or, if greater, direct written premiums) for the taxable year do not exceed $350,000.''

Subsec. (c)(15)(C). Pub. L. 108–218, § 206(b), inserted before period at end '', except that in applying section 831(b)(2)(B)(ii) for purposes of this subparagraph, subparagraphs (B) and (C) of section 1563(b)(2) shall be disregarded''.

2003—Subsec. (c)(19)(B). Pub. L. 108–121, § 105(a), substituted '', widowers, ancestors, or lineal descendants'' for ''or widowers''.

Subsecs. (p), (q). Pub. L. 108–121, § 108(a), added subsec. (p) and redesignated former subsec. (p) as (q).

2001—Subsec. (c)(18)(D)(iii). Pub. L. 107–16, § 611(d)(3)(C), struck out ''(other than paragraph (4) thereof)'' after ''section 402(g)''.

Subsec. (c)(28). Pub. L. 107–90 added par. (28).

1998—Subsec. (n)(3). Pub. L. 105–206, § 6023(6), substituted ''subparagraph (E)(ii)'' for ''subparagraph (C)(ii)'' in concluding provisions.

Subsec. (*o*). Pub. L. 105–206, § 6023(7), substituted ''section 1855(d)'' for ''section 1853(e)''.

1997—Subsec. (c)(26). Pub. L. 105–34, § 101(c), inserted concluding provisions ''A spouse and any qualifying child (as defined in section 24(c)) of an individual described in subparagraph (B) (without regard to this sentence) shall be treated as described in subparagraph (B).''

Subsec. (c)(27). Pub. L. 105–34, § 963(a), (b), designated existing provisions as subpar. (A), redesignated former subpar. (A) as cl. (i), redesignated subpar. (B) as cl. (ii) and former cls. (i) and (ii) of subpar. (B) as subcls. (I) and (II), respectively, of cl. (ii), redesignated subpar. (C) as cl. (iii) and former cls. (i) and (ii) of subpar. (C) as subcls. (I) and (II), respectively, of cl. (iii), and added subpar. (B).

Subsec. (e)(1)(A). Pub. L. 105–34, § 974(a), inserted ''(including the purchase of patron accounts receivable on a recourse basis)'' after ''billing and collection''.

Subsecs. (*o*), (p). Pub. L. 105–33 added subsec. (*o*) and redesignated former subsec. (*o*) as (p).

1996—Subsec. (c)(4). Pub. L. 104–168 designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c)(21)(D)(ii)(III). Pub. L. 104–188, § 1704(j)(5), substituted ''section 101(7)'' for ''section 101(6)'' and ''1752(7)'' for ''1752(6)''.

Subsec. (c)(26). Pub. L. 104–191, § 341(a), added par. (26).

Subsec. (c)(27). Pub. L. 104–191, § 342(a), added par. (27).

Subsecs. (n), (*o*). Pub. L. 104–188, § 1114(a), added subsec. (n) and redesignated former subsec. (n) as (*o*).

1993—Subsec. (c)(2). Pub. L. 103–66, § 13146(b), inserted at end ''Rules similar to the rules of subparagraph (G) of paragraph (25) shall apply for purposes of this paragraph.''

Subsec. (c)(25)(G). Pub. L. 103–66, § 13146(a), added subpar. (G).

1992—Subsec. (c)(21). Pub. L. 102–486 amended par. (21) generally, substituting present provisions consisting of subpars. (A) to (D) for former provisions consisting of subpars. (A) and (B).

1989—Subsec. (*l*). Pub. L. 101–73 amended subsec. (*l*) generally. Prior to amendment, subsec. (*l*) read as follows: ''The organization described in this subsection is the Central Liquidity Facility established under title III of the Federal Credit Union Act (12 U.S.C. 1795 et seq.).''

1988—Subsec. (c)(1). Pub. L. 100–647, § 1018(u)(15), substituted ''Any'' for ''any''.

Subsec. (c)(12)(B)(iv). Pub. L. 100–647, § 2003(a)(1), added cl. (iv).

Subsec. (c)(12)(C). Pub. L. 100–647, § 2003(a)(2), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''In the case of a mutual or cooperative electric company, subparagraph (A) shall be applied without taking into account any income received or accrued from qualified pole rentals.''

Subsec. (c)(17)(A)(ii), (iii), (18)(B), (C). Pub. L. 100–647, § 1018(u)(34), made technical amendments to Pub. L. 99–154, § 1114(b)(14). See 1986 Amendment note below.

Subsec. (c)(18)(D)(iv). Pub. L. 100–647, § 1011(c)(7)(D), added cl. (iv).

Subsec. (c)(23). Pub. L. 100–647, § 1018(u)(14), substituted ''Any'' for ''any''.

Subsec. (c)(25)(A). Pub. L. 100–647, § 1016(a)(1)(A), inserted at end ''For purposes of clause (iii), the term 'real property' shall not include any interest as a tenant in common (or similar interest) and shall not include any indirect interest.''

Subsec. (c)(25)(C)(v). Pub. L. 100–647, § 1016(a)(3)(B), struck out cl. (v) which read as follows: ''any organization described in this paragraph.''

Subsec. (c)(25)(D). Pub. L. 100–647, § 1016(a)(2), substituted ''A corporation or trust shall in no event be treated as described in subparagraph (A) unless such corporation or trust permits its shareholders or beneficiaries'' for ''A corporation or trust described in this paragraph must permit its shareholders or beneficiaries'' in introductory text.

Subsec. (c)(25)(E), (F). Pub. L. 100–647, § 1016(a)(3)(A), (4), added subpars. (E) and (F).

Subsec. (e)(1)(A). Pub. L. 100–647, § 6202(a), inserted ''(including the purchasing of insurance on a group basis)'' after ''purchasing''.

Subsec. (m)(3)(E). Pub. L. 100–647, § 1010(b)(4)(A), added subpar. (E).

Subsec. (m)(5). Pub. L. 100–647, §1010(b)(4)(B), added par. (5).

1987—Subsec. (c)(3). Pub. L. 100–203 inserted ''(or in opposition to)'' after ''in behalf of''.

1986—Subsec. (c)(1)(A)(i). Pub. L. 99–514, §1899A(15), substituted ''July 18, 1984'' for ''the date of the enactment of the Tax Reform Act of 1984''.

Subsec. (c)(14)(B)(iv). Pub. L. 99–514, §1879(k)(1), added cl. (iv).

Subsec. (c)(15). Pub. L. 99–514, §1024(b), amended par. (15) generally. Prior to amendment, par. (15) read as follows: ''Mutual insurance companies or associations other than life or marine (including inter-insurers and reciprocal underwriters) if the gross amount received during the taxable year from the items described in section 822(b) (other than paragraph (1)(D) thereof) and premiums (including deposits and assessments) does not exceed $150,000.''

Subsec. (c)(17)(A)(ii), (iii), (18)(B), (C). Pub. L. 99–514, §1114(b)(14), as amended by Pub. L. 100–647, §1018(u)(34), substituted ''highly compensated employees (within the meaning of section 414(q))'' for ''officers, shareholders, persons whose principal duties consist of supervising the work of other employees, or highly compensated employees''.

Subsec. (c)(18)(D). Pub. L. 99–514, §1109(a), added subpar. (D).

Subsec. (c)(24). Pub. L. 99–272 added par. (24).

Subsec. (c)(25). Pub. L. 99–514, §1603(a), added par. (25).

Subsecs. (m), (n). Pub. L. 99–514, §1012(a), added subsec. (m) and redesignated former subsec. (m) as (n).

1984—Subsec. (c)(1). Pub. L. 98–369, §2813(b)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c)(1)(A). Pub. L. 98–369, §1079, substituted provisions referring to corporations exempt from Federal income taxes under any Act of Congress as amended and supplemented before July 18, 1984, or under this title without regard to any provision of law not contained in this title and not contained in a revenue Act for provisions referring to corporations exempt from Federal income taxes under any Act of Congress as amended and supplemented.

Subsec. (k). Pub. L. 98–369, §1032(a), added subsec. (k). Former subsec. (k) redesignated (*l*).

Subsec. (*l*). Pub. L. 98–369, §2813(b)(1), added subsec. (*l*). Former subsec. (*l*) redesignated (m).

Pub. L. 98–369, §1032(a), redesignated former subsec. (k) as (*l*).

Subsec. (m). Pub. L. 98–369, §2813(b)(1), redesignated former subsec. (*l*) as (m).

1983—Subsec. (c)(23). Pub. L. 97–448 substituted ''75 percent'' for ''25 percent''.

1982—Subsec. (c)(19). Pub. L. 97–248, §354(a)(1), substituted ''past or present members of the Armed Forces of the United States'' for ''war veterans'' after ''A post or organization of''.

Subsec. (c)(19)(B). Pub. L. 97–248, §354(a)(2), substituted ''past or present members of the Armed Forces of the United States'' for ''war veterans'' wherever appearing, struck out ''veterans (but not war veterans), or are'' after ''individuals who are'', and substituted ''or of cadets'' for ''or such individuals'' before '', and''.

Subsec. (c)(23). Pub. L. 97–248, §354(b), added par. (23).

Subsecs. (j), (k). Pub. L. 97–248, §286(a), added subsec. (j) and redesignated former subsec. (j) as (k).

1981—Subsec. (c)(21)(B)(iii). Pub. L. 97–119 substituted ''established under section 9501'' for ''established under section 3 of the Black Lung Benefits Revenue Act of 1977''.

1980—Subsec. (c)(12). Pub. L. 96–605 designated existing provision as subpar. (A), struck out provision that, in the case of any mutual or cooperative telephone company, the 85 per cent or more income requirement be applied without taking into account any income received or accrued from a nonmember telephone company for the performance of communication services which involve members of such mutual or cooperative telephone company, and added subpars. (B) to (D).

Subsec. (c)(21). Pub. L. 96–222 substituted ''Federal Mine Safety and Health Act of 1977'' for ''Federal Coal Mine Health and Safety Act of 1969''.

Subsec. (c)(22). Pub. L. 96–364 added par. (22).

Subsec. (i). Pub. L. 96–601 inserted provision that the restriction on religious discrimination not apply to an auxiliary of a fraternal beneficiary society if the society is described in subsec. (c)(8) of this section, is exempt from income tax under subsec. (a) of this section, and limits its membership to the members of a particular religion or to a club which in good faith limits its membership to the members of a particular religion in order to further the teachings or principles of that religion, and not to exclude individuals of a particular race or color.

1978—Subsec. (c)(12). Pub. L. 95–345 inserted provision relating to applicability of statutory provisions to mutual or cooperative telephone company of income received or accrued from a nonmember telephone company.

Subsec. (c)(20). Pub. L. 95–600, §703(b)(2), substituted ''this paragraph'' for ''section 501(c)(20)''.

Subsec. (c)(21). Pub. L. 95–227 added par. (21).

Subsecs. (g), (i). Pub. L. 95–600, §703(g)(2)(B), redesignated subsec. (g), which was added by section 2(a) of Pub. L. 94–568, as subsec. (i). Former subsec. (i), relating to cross reference, redesignated (j).

Subsecs. (i), (j). Pub. L. 95–600, §703(g)(2)(A), amended Pub. L. 95–600, §2(a). See 1976 Amendment note below.

1976—Subsec. (c)(3). Pub. L. 94–455, §§1313(a), 1307(d)(1)(A), inserted ''or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment)'' after ''educational purposes'' and inserted ''(except as otherwise provided in subsection (h))'' after ''influence legislation''.

Subsec. (c)(7). Pub. L. 94–568, §1(a), struck out requirement that clubs be ''operated exclusively'' for specified purposes but required that substantially all of club activities be for specified purposes.

Subsec. (c)(17), (18). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(20). Pub. L. 94–455, §2134(b), added par. (20).

Subsec. (e)(1)(A). Pub. L. 94–455, §1312(a), inserted ''clinical'' after ''food''.

Subsec. (g). Pub. L. 94–568, §2(a), added subsec. (g) relating to prohibition of discrimination by certain social clubs.

Pub. L. 94–455, §2113(a), added subsec. (g) defining agricultural. Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 94–455, §§1307(a)(1), 2113(a), added subsec. (h). Former subsec. (g), relating to cross reference, redesignated (h) and further redesignated (i).

Subsec. (i). Pub. L. 94–568, §2(a), as amended by Pub. L. 95–600, §703(g)(2)(A), added subsec. (i). Former subsec. (i) redesignated (j).

Pub. L. 94–455, §1307(a)(1), redesignated subsec. (h), relating to cross reference, as (i).

Subsec. (j). Pub. L. 94–568, §2(a), as amended by Pub. L. 95–600, §703(g)(2)(A), redesignated subsec. (i), relating to cross reference, as (j).

1975—Subsec. (b). Pub. L. 93–625 inserted references to part VI of this subchapter.

1974—Subsecs. (f), (g). Pub. L. 93–310 added subsec. (f) and redesignated former subsec. (f) as (g).

1972—Subsec. (c)(19). Pub. L. 92–418 added par. (19).

1970—Subsec. (c)(13). Pub. L., 91–618 substituted ''corporation chartered solely for the purpose of disposal of bodies by burial or cremation which is not permitted'' for ''corporation chartered solely for burial purposes as a cemetery corporation and is not permitted''.

1969—Subsec. (a). Pub. L. 91–172, §101(j)(3), struck out reference to section 504.

Subsec. (b). Pub. L. 91–172, §101(j)(4), inserted reference to certain other activities in heading and to part III in text, and struck out reference to tax on unrelated income.

Subsec. (c). Pub. L. 91–172, §§101(j)(5), 121(b)(6)(A), substituted ''part IV'' for ''part III'' after ''Corporations organized by an association subject to'' and added par. 18.

Subsec. (c)(9). Pub. L. 91–172, §121(b)(5)(A), inserted reference to designated beneficiaries and struck out

reference to 85 percent or more income of voluntary employees' beneficiary associations.

Subsec. (c)(10). Pub. L. 91–172, § 121(b)(5)(A), substituted provisions concerning domestic fraternal societies, orders, or associations, operating under the lodge system, for provisions covering voluntary employees' beneficiary associations which would pay benefits to designated beneficiaries of members.

Subsec. (e). Pub. L. 91–172, § 101(j)(6), substituted ''section 170(b)(1)(A)(iii)'' for ''section 503(b)(5)'' in last sentence.

1968—Subsecs. (e), (f). Pub. L. 90–364 added subsec. (e) and redesignated former subsec. (e) as (f).

1966—Subsec. (c)(6). Pub. L. 89–800 inserted reference to professional football leagues (whether or not administering a pension fund for football players).

Subsec. (c)(14). Pub. L. 89–352 designated as subpar. (A) provisions covering credit unions which were formerly set out preceding subpar. (A), designated as subpar. (B) and clauses (i), (ii), and (iii) thereunder provisions covering corporation or associations without capital stock organized before Sept. 1, 1957, which formerly were set out as provisions preceding subpar. (A) and as subpars. (A), (B), and (C) respectively, and added subpar. (C).

1962—Subsec. (c)(15). Pub. L. 87–834 substituted ''$150,000'' for ''$75,000''.

1960—Subsec. (c)(14). Pub. L. 86–428 substituted ''September 1, 1957'' for ''September 1, 1951''.

Subsec. (c)(17). Pub. L. 86–667 added par. (17).

1956—Subsec. (c)(15). Act Mar. 13, 1956, substituted ''the items described in section 822(b) (other than paragraph (1)(D) thereof)'' for ''interest, dividends, rents,''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title IX, § 9007(f), Mar. 23, 2010, 124 Stat. 858, provided that:

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [enacting section 4959 of this title and amending this section and section 6033 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Mar. 23, 2010].

''(2) COMMUNITY HEALTH NEEDS ASSESSMENT.—The requirements of section 501(r)(3) of the Internal Revenue Code of 1986, as added by subsection (a), shall apply to taxable years beginning after the date which is 2 years after the date of the enactment of this Act.

''(3) EXCISE TAX.—The amendments made by subsection (b) [enacting section 4959 of this title] shall apply to failures occurring after the date of the enactment of this Act.''

Pub. L. 111–148, title X, § 10903(b), Mar. 23, 2010, 124 Stat. 1016, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Mar. 23, 2010].''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, § 862(b), Aug. 17, 2006, 120 Stat. 1021, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006.''

Pub. L. 109–280, title XII, § 1220(c), Aug. 17, 2006, 120 Stat. 1089, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 513 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 17, 2006].

''(2) TRANSITION RULE FOR EXISTING ORGANIZATIONS.—In the case of any organization described in paragraph (3) or (4) of section 501(c) of the Internal Revenue Code of 1986 and with respect to which the provision of credit counseling services is a substantial purpose on the date of the enactment of this Act, the amendments made by this section shall apply to taxable years beginning after the date which is 1 year after the date of the enactment of this Act.''

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title XIII, § 1304(c), Aug. 8, 2005, 119 Stat. 997, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 8, 2005].''

EFFECTIVE DATE OF 2004 AMENDMENTS

Pub. L. 108–357, title III, § 319(e), Oct. 22, 2004, 118 Stat. 1473, provided that: ''The amendments made by this section [amending this section and sections 512 and 1381 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004].''

Pub. L. 108–218, title II, § 206(e), Apr. 10, 2004, 118 Stat. 611, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 831 of this title] shall apply to taxable years beginning after December 31, 2003.

''(2) TRANSITION RULE FOR COMPANIES IN RECEIVERSHIP OR LIQUIDATION.—In the case of a company or association which—

''(A) for the taxable year which includes April 1, 2004, meets the requirements of section 501(c)(15)(A) of the Internal Revenue Code of 1986, as in effect for the last taxable year beginning before January 1, 2004, and

''(B) on April 1, 2004, is in a receivership, liquidation, or similar proceeding under the supervision of a State court,

the amendments made by this section shall apply to taxable years beginning after the earlier of the date such proceeding ends or December 31, 2007.''

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–121, title I, § 105(b), Nov. 11, 2003, 117 Stat. 1338, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Nov. 11, 2003].''

Pub. L. 108–121, title I, § 108(b), Nov. 11, 2003, 117 Stat. 1341, provided that: ''The amendments made by this section [amending this section] shall apply to designations made before, on, or after the date of the enactment of this Act [Nov. 11, 2003].''

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 611(i)(1) of Pub. L. 107–16, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1997 AMENDMENTS

Amendment by section 101(c) of Pub. L. 105–34 applicable to taxable years beginning after Dec. 31, 1997, see section 101(e) of Pub. L. 105–34, set out as an Effective Date note under section 24 of this title.

Section 963(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997.''

Section 974(b) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1996.''

Section 4041(b) of Pub. L. 105–33 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1996 AMENDMENTS

Section 341(b) of Pub. L. 104–191 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1996.''

Section 342(b) of Pub. L. 104–191 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Aug. 21, 1996].''

Section 1114(b) of Pub. L. 104–188 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 20, 1996].''

Section 1311(d)(3) of Pub. L. 104–168 provided that:

''(A) IN GENERAL.—The amendment made by subsection (b) [amending this section] shall apply to inurement occurring on or after September 14, 1995.

''(B) BINDING CONTRACTS.—The amendment made by subsection (b) shall not apply to any inurement occurring before January 1, 1997, pursuant to a written contract which was binding on September 13, 1995, and at all times thereafter before such inurement occurred.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13146(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning on or after January 1, 1994.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–486 applicable to taxable years beginning after Dec. 31, 1991, see section 1940(d) of Pub. L. 102–486, set out as a note under section 192 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 1402(b) of Pub. L. 101–73 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 9, 1989].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011(c)(7)(D) of Pub. L. 100–647 applicable to plan years beginning after Dec. 31, 1987, with exception in case of a plan described in section 1105(c)(2) of Pub. L. 99–514, see section 1011(c)(7)(E) of Pub. L. 100–647, set out as a note under section 401 of this title.

Section 1016(a)(1)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply with respect to property acquired by the organization after June 10, 1987, except that such amendment shall not apply to any property acquired after June 10, 1987, pursuant to a binding written contract in effect on June 10, 1987, and at all times thereafter before such acquisition.''

Amendment by sections 1010(b)(4), 1016(a)(2)–(4), and 1018(u)(14), (15), (34) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 2003(a)(3) of Pub. L. 100–647 provided that: ''The amendments made by this subsection [amending this section] shall apply to taxable years ending after the date of the enactment of the Omnibus Budget Reconciliation Act of 1986 [Oct. 21, 1986].''

Section 6202(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to purchases before, on, or after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable with respect to activities after Dec. 22, 1987, see section 10711(c) of Pub. L. 100–203, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1012(a) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1012(c) of Pub. L. 99–514, set out as an Effective Date note under section 833 of this title.

Amendment by section 1024(b) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1024(e) of Pub. L. 99–514, set out as a note under section 831 of this title.

Amendment by section 1109(a) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1109(c) of Pub. L. 99–514, set out as a note under section 219 of this title.

Amendment by section 1114(b)(14) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1114(c)(1) of Pub. L. 99–514, set out as a note under section 414 of this title.

Section 1603(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section and section 514 of this title] shall apply to taxable years beginning after December 31, 1986.''

Section 1879(k)(2) of Pub. L. 99–514 provided that: ''The amendments made by this subsection [amending this section] shall apply to taxable years ending after August 13, 1981.''

Amendment by Pub. L. 99–272 effective Jan. 1, 1986, with certain exceptions, see section 11019 of Pub. L. 99–272, set out as a note under section 1341 of Title 29, Labor.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 1032 of Pub. L. 98–369 applicable to taxable years beginning after July 18, 1984, see section 1032(c) of Pub. L. 98–369, set out as a note under section 170 of this title.

Amendment by section 2813(b) of Pub. L. 98–369 effective Oct. 1, 1979, see section 2813(c) of Pub. L. 98–369, set out as an Effective Date note under section 1795k of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1983 AMENDMENT

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

EFFECTIVE DATE OF 1982 AMENDMENT

Section 286(c) of Pub. L. 97–248 provided that: ''The amendments made by this section [amending this section and sections 170, 2055, and 2522 of this title] shall take effect on October 5, 1976.''

Section 354(c) of Pub. L. 97–248 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Sept. 3, 1982].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–119 effective Jan. 1, 1982, see section 103(d)(1) of Pub. L. 97–119, set out as an Effective Date note under section 9501 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 106(c)(1) of Pub. L. 96–605, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to all taxable years to which the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applies.''

Section 3(b) of Pub. L. 96–601 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after October 20, 1976.''

Amendment by Pub. L. 96–364 applicable to taxable years ending after Sept. 26, 1980, see section 210(c) of Pub. L. 96–364, set out as an Effective Date note under section 418 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as an Effective Date of 1980 Amendment note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by section 703(b)(2), (g)(2)(B) of Pub. L. 95–600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of this title.

Section 703(g)(2)(C) of Pub. L. 95–600 provided that: ''The amendments made by this paragraph [amending this section] shall take effect on October 20, 1976, as if included in Public Law 94–568.''

Section 1(b) of Pub. L. 95–345 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1974.''

Amendment by Pub. L. 95–227 applicable with respect to contributions, acts, and expenditures made after Dec. 31, 1977, in and for taxable years beginning after such date, see section 4(f) of Pub. L. 95–227, set out as a note under section 192 of this title.

EFFECTIVE DATE OF 1976 AMENDMENTS

Section 1(d) of Pub. L. 94–568 provided that: ''The amendments made by this section [amending this section and sections 277 and 512 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 20, 1976].''

Section 2(b) of Pub. L. 94–568 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 20, 1976].''

Section 1307(e) of Pub. L. 94–455 provided that: ''The amendments made by this section [amending this section and sections 170, 275, 2055, 2106, 2522, 6104, 6161, 6201, 6211, 6212, 6213, 6214, 6344, 6501, 6512, 6601, and 7422 of this title and enacting sections 504 and 4911 of this title] shall apply—

''(1) except as otherwise specified in paragraph (2), in the case of amendments to subtitle A, to taxable years beginning after December 31, 1976;

''(2) in the case of the amendments made by subsection (a)(2) [enacting section 504 of this title], to activities occurring after the date of the enactment of this Act [Oct. 4, 1976];

''(3) in the case of amendments to chapter 11, to the estates of decedents dying after December 31, 1976;

''(4) in the case of amendments to chapter 12, to gifts in calendar years beginning after December 31, 1976;

''(5) in the case of amendments to subtitle D, to taxable years beginning after December 31, 1976; and

''(6) in the case of amendments to subtitle F, on and after the date of the enactment of this Act [Oct. 4, 1976].''

Section 1312(b) of Pub. L. 94–455 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years ending after December 31, 1976.''

Section 1313(d) of Pub. L. 94–455 provided that: ''The amendments made by this section [amending this section and sections 170, 2055, and 2522 of this title] shall apply on the day following the date of the enactment of this Act [Oct. 4, 1976].''

Section 2113(b) of Pub. L. 94–455 provided that: ''The amendment made by this section [amending this section] applies to taxable years ending after December 31, 1975.''

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–625 applicable to taxable years beginning after Dec. 31, 1974, see section 10(e) of Pub. L. 93–625, set out as an Effective Date note under section 527 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 3(b) of Pub. L. 93–310 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years ending after December 31, 1973.''

EFFECTIVE DATE OF 1972 AMENDMENT

Section 1(c) of Pub. L. 92–418 provided that: ''The amendments made by this section [amending this section and section 512 of this title] shall apply to taxable years beginning after December 31, 1969.''

EFFECTIVE DATE OF 1970 AMENDMENT

Section 2 of Pub L. 91–618 provided that: ''The amendment made by the first section of this Act [amending this section] shall apply to taxable years ending after the date of enactment of this Act [Dec. 31, 1970].''

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 101(j)(3) of Pub. L. 91–172 effective Jan. 1, 1970, except that amendment of subsec. (a) of this section applicable to taxable years beginning after Dec. 31, 1969, see section 101(k)(1), (2)(B) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

Amendment by section 121(b)(5)(A), (6)(A) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91–172, set out as a note under section 511 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 109(b) of Pub. L. 90–364 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [June 28, 1968].''

EFFECTIVE DATE OF 1966 AMENDMENTS

Section 6(c) of Pub. L. 89–800 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Nov. 8, 1966].''

Section 3 of Pub. 89–352 provided in part that: ''The amendment made by the first section of this Act [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Feb. 2, 1966].''

EFFECTIVE DATE OF 1962 AMENDMENT

Section 8(h) of Pub. L. 87–834 provided that: ''The amendments made by this section [enacting sections 823 to 826 of this title, amending this section and sections 821, 822, 832, 841, 1016, and 1201 of this title, and redesignating former section 823 as section 822(f) of this title] (other than by subsection (f) [amending section 831 of this title]) shall apply with respect to taxable years beginning after December 31, 1962.''

EFFECTIVE DATE OF 1960 AMENDMENTS

Section 6 of Pub. L. 86–667 provided that:

''(a) Except as provided in subsection (b), the amendments made by this Act [amending this section and sections 503, 511, 513, and 514 of this title] shall apply to taxable years beginning after December 31, 1959.

''(b) In the case of loans, the amendments made by section 2 of this Act [amending section 503 of this title] shall apply only to loans made, renewed, or continued after December 31, 1959.''

Section 2 of Pub. L. 86–428 provided that: ''The amendment made by this Act [amending this section] shall apply only with respect to taxable years beginning after December 31, 1959.''

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956, applicable only to taxable years beginning after Dec. 31, 1954, see section 6 of act Mar. 13, 1956, set out as a note under section 316 of this title.

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

MANDATORY REVIEW OF TAX EXEMPTION FOR HOSPITALS

Pub. L. 111–148, title IX, §9007(c), Mar. 23, 2010, 124 Stat. 857, provided that: ''The Secretary of the Treasury or the Secretary's delegate shall review at least once every 3 years the community benefit activities of each hospital organization to which section 501(r) of the Internal Revenue Code of 1986 (as added by this section) applies.''

REPORTS

Pub. L. 111–148, title IX, §9007(e), Mar. 23, 2010, 124 Stat. 858, provided that:

''(1) REPORT ON LEVELS OF CHARITY CARE.—The Secretary of the Treasury, in consultation with the Secretary of Health and Human Services, shall submit to the Committees on Ways and Means, Education and Labor, and Energy and Commerce of the House of Representatives and to the Committees on Finance and Health, Education, Labor, and Pensions of the Senate an annual report on the following:

''(A) Information with respect to private tax-exempt, taxable, and government-owned hospitals regarding—

''(i) levels of charity care provided,

''(ii) bad debt expenses,

''(iii) unreimbursed costs for services provided with respect to means-tested government programs, and

''(iv) unreimbursed costs for services provided with respect to non-means tested government programs.

''(B) Information with respect to private tax-exempt hospitals regarding costs incurred for community benefit activities.

''(2) REPORT ON TRENDS.—

''(A) STUDY.—The Secretary of the Treasury, in consultation with the Secretary of Health and Human Services, shall conduct a study on trends in the information required to be reported under paragraph (1).

''(B) REPORT.—Not later than 5 years after the date of the enactment of this Act [Mar. 23, 2010], the Secretary of the Treasury, in consultation with the Secretary of Health and Human Services, shall submit a report on the study conducted under subparagraph (A) to the Committees on Ways and Means, Education and Labor, and Energy and Commerce of the House of Representatives and to the Committees on Finance and Health, Education, Labor, and Pensions of the Senate.''

PAYMENTS BY CHARITABLE ORGANIZATIONS TREATED AS EXEMPT PAYMENTS

Pub. L. 107–134, title I, §104, Jan. 23, 2002, 115 Stat. 2431, provided that:

''(a) IN GENERAL.—For purposes of the Internal Revenue Code of 1986—

''(1) payments made by an organization described in section 501(c)(3) of such Code by reason of the death, injury, wounding, or illness of an individual incurred as the result of the terrorist attacks against the United States on September 11, 2001, or an attack involving anthrax occurring on or after September 11, 2001, and before January 1, 2002, shall be treated as related to the purpose or function constituting the basis for such organization's exemption under section 501 of such Code if such payments are made in good faith using a reasonable and objective formula which is consistently applied; and

''(2) in the case of a private foundation (as defined in section 509 of such Code), any payment described in paragraph (1) shall not be treated as made to a disqualified person for purposes of section 4941 of such Code.

''(b) EFFECTIVE DATE.—This section shall apply to payments made on or after September 11, 2001.''

SPECIAL RULE FOR CERTAIN COOPERATIVES

Section 1311(b)(2) of Pub. L. 104–168 provided that: ''In the case of an organization operating on a cooperative basis which, before the date of the enactment of this Act [July 30, 1996], was determined by the Secretary of the Treasury or his delegate, to be described in section 501(c)(4) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code, the allocation or return of net margins or capital to the members of such organization in accordance with its incorporating statute and bylaws shall not be treated for purposes of such Code as the inurement of the net earnings of such organization to the benefit of any private shareholder or individual. The preceding sentence shall apply only if such statute and bylaws are substantially as such statute and bylaws were in existence on the date of the enactment of this Act.''

APPLICATION OF PUB. L. 100–647 TO SECTION 501(c)(3) BONDS

Section 1013(i) of Pub. L. 100–647 provided that: ''In accordance with section 1302 of the Reform Act [Pub. L. 99–514, set out as a note below], each amendment and other provision of this Act [see Tables for classification] which applies to private activity bonds shall, unless otherwise expressly provided, apply to qualified 501(c)(3) bonds.''

CANCELLATION OF CERTAIN DEBTS ORIGINATED BY OR GUARANTEED BY UNITED STATES NOT TAKEN INTO ACCOUNT IN DETERMINING TAX EXEMPT STATUS OF CERTAIN ORGANIZATIONS

Section 6203 of Pub. L. 100–647 provided that: ''Subparagraph (A) of section 501(c)(12) of the 1986 Code shall be applied without taking into account any income attributable to the cancellation of any loan originally made or guaranteed by the United States (or any agency or instrumentality thereof) if such cancellation occurs after 1986 and before 1990.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TREATMENT OF SECTION 501(c)(3) BONDS

Section 1302 of title XIII of Pub. L. 99–514 provided that: ''Nothing in the treatment of section 501(c)(3) bonds as private activity bonds under the amendments made by this title [enacting sections 141 to 150 and 7703 of this title, amending sections 2, 22, 25, 32, 86, 103, 105, 152, 153, 163, 172, 194, 269A, 414, 879, 1016, 1398, 3402, 4701, 4940, 4942, 4988, 6362, 6652, and 7871 of this title, repealing sections 103A, 1391 to 1397, and 6039B of this title, enacting provisions set out as notes under sections 141 and 148 of this title, and amending provisions set out as a note under section 103A of this title] shall be construed as indicating how section 501(c)(3) bonds will be treated in future legislation, and any change in future legislation applicable to private activity bonds shall apply to section 501(c)(3) bonds only if expressly provided in such legislation.''

TAX-EXEMPT STATUS FOR ORGANIZATION INTRODUCING INTO PUBLIC USE TECHNOLOGY DEVELOPED BY QUALIFIED ORGANIZATIONS

Section 1605 of Pub. L. 99–514 provided that:

''(a) IN GENERAL.—For purposes of the Internal Revenue Code of 1986, an organization shall be treated as an organization organized and operated exclusively for charitable purposes if such organization—

''(1) is organized and operated exclusively—

''(A) to provide for (directly or by arranging for and supervising the performance by independent contractors)—

''(i) reviewing technology disclosures from qualified organizations,

''(ii) obtaining protection for such technology through patents, copyrights, or other means, and

''(iii) licensing, sale, or other exploitation of such technology,

''(B) to distribute the income therefrom, to such qualified organizations after paying expenses and other amounts as agreed with the originating qualified organizations, and

''(C) to make research grants to such qualified organizations,

''(2) regularly provides the services and research grants described in paragraph (1) exclusively to 1 or more qualified organizations, except that research grants may be made to such qualified organizations through an organization which is controlled by 1 or more organizations each of which—

''(A) is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 or the income of which is excluded from taxation under section 115 of such Code, and

''(B) may be a recipient of the services or research grants described in paragraph (1),

''(3) derives at least 80 percent of its gross revenues from providing services to qualified organizations located in the same State as the State in which such organization has its principal office, and

''(4) was incorporated on July 20, 1981.

''(b) QUALIFIED ORGANIZATIONS.—For purposes of this section, the term 'qualified organization' has the same meaning given to such term by subparagraphs (A) and (B) of section 41(e)(6) (as redesignated by section 231(d)(2)) of the Internal Revenue Code of 1986.

''(c) TREATMENT OF INVESTMENT IN A TECHNOLOGY TRANSFER SERVICE ORGANIZATION.—

''(1) IN GENERAL.—A qualified investment made by a private foundation in an organization described in subparagraph (C) shall be treated as an investment described in section 4944(c) of the Internal Revenue Code of 1986 and shall not result in imposition of taxes under section 4941, 4943, 4944, 4945, or 507(c) of such Code.

''(2) DEFINITIONS.—For purposes of this subsection—

''(A) QUALIFIED INVESTMENT.—The term 'qualified investment' means a transfer by a private foundation of—

''(i) all of the patents, copyrights, know-how, and other technology or rights thereto of the private foundation, and

''(ii) investment assets, net receivables, and cash not exceeding $35,000,000,

to such organization in exchange for debt.

''(B) PRIVATE FOUNDATION.—The term 'private foundation' means—

''(i) a nonprofit corporation which was incorporated before 1913 which is described in sections 501(c)(3) and 509(a) of such Code, and which is exempt from taxation under section 501(a) of such Code, and

''(ii) the principal purposes of which are to support research by and to provide technology transfer services to organizations described in section 170(b)(1)(A) of such Code—

''(I) which are exempt from taxation under section 501(a) of such Code, or

''(II) the income of which is excluded from taxation under section 115 of such Code.

''(C) TECHNOLOGY TRANSFER ORGANIZATION.—The term 'technology transfer organization' means a corporation established after the date of the enactment of this Act [Oct. 22, 1986]—

''(i) which is organized and operated to advance the public welfare through the provision of technology transfer services to research organizations,

''(ii) no part of the net earnings of which inures to the benefit of, or is distributable to, any private shareholder, individual, or entity, other than a private foundation or research organization,

''(iii) which does not participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office,

''(iv) no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and

''(v) upon liquidation or dissolution of which all of its net assets can be distributed only to research organizations.

''(d) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act [Oct. 22, 1986].''

APPLICABILITY OF 1976 AMENDMENT TO CERTAIN ORGANIZATIONS

Section 1313(c) of Pub. L. 94–455, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''An organization which (without regard to the amendments made by this section [amending this section and sections 170, 2055, and 2522 of this title]) is an organization described in section 170(c)(2)(B), 501(c)(3), 2055(a)(2), or 2522(a)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall not be treated as an organization not so described as a result of the amendments made by this section.''

TAX EXEMPTION FOR CERTAIN PUERTO RICAN PENSION, ETC., PLANS

Section 1022(i) of Pub. L. 93–406, title II, Sept. 2, 1974, 88 Stat. 942, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) GENERAL RULE.—Effective for taxable years beginning after December 31, 1973, for purposes of section 501(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to exemption from tax), any trust forming part of a pension, profit-sharing, or stock bonus plan all of the participants of which are residents of the Commonwealth of Puerto Rico shall be treated as an organization described in section 401(a) of such Code if such trust—

''(A) forms part of a pension, profit-sharing, or stock bonus plan, and

''(B) is exempt from income tax under the laws of the Commonwealth of Puerto Rico.

''(2) ELECTION TO HAVE PROVISIONS OF, AND AMENDMENTS MADE BY, TITLE II OF THIS ACT APPLY.—

''(A) If the administrator of a pension, profit-sharing, or stock bonus plan which is created or organized in Puerto Rico elects, at such time and in such manner as the Secretary of the Treasury may require, to have the provisions of this paragraph apply, for plan years beginning after the date of election any trust forming a part of such plan shall be treated as a trust created or organized in the United States for purposes of section 401(a) of the Internal Revenue Code of 1986.

''(B) An election under subparagraph (A), once made, is irrevocable.

''(C) This paragraph applies to plan years beginning after the date of enactment of this Act [Sept. 2, 1974]

''(D) The source of any distributions made under a plan which makes an election under this paragraph to participants and beneficiaries residing outside of the United States shall be determined, for purposes of subchapter N of chapter 1 of the Internal Revenue Code of 1986 by the Secretary of the Treasury in accordance with regulations prescribed by him. For purposes of this subparagraph the United States means the United States as defined in section 7701(a)(9) of the Internal Revenue Code of 1986.''

EXCHANGES FOR SALE OF POULTRY

Pub. L. 89–44, title VIII, § 811, June 21, 1965, 79 Stat. 169, provided that certain corporations, associations, or organizations organized and operated exclusively for the purpose of providing an exchange for the sale of poultry growers of a particular locality shall be treated for purposes of this title as an exempt organization and that such exemption shall apply to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, which begin before Jan. 1, 1966.

§ 502. Feeder organizations

(a) General rule

An organization operated for the primary purpose of carrying on a trade or business for profit shall not be exempt from taxation under section 501 on the ground that all of its profits are pay-

able to one or more organizations exempt from taxation under section 501.

(b) Special rule

For purposes of this section, the term ''trade or business'' shall not include—

(1) the deriving of rents which would be excluded under section 512(b)(3), if section 512 applied to the organization,

(2) any trade or business in which substantially all the work in carrying on such trade or business is performed for the organization without compensation, or

(3) any trade or business which is the selling of merchandise, substantially all of which has been received by the organization as gifts or contributions.

(Aug. 16, 1954, ch. 736, 68A Stat. 166; Pub. L. 91–172, title I, § 121(b)(7), Dec. 30, 1969, 83 Stat. 542.)

AMENDMENTS

1969—Pub. L. 91–172 redesignated first sentence of existing provisions as subsec. (a), and substantial portion of second sentence as subsec. (b)(1), and, in subsec. (b)(1) as so redesignated, inserted reference to section 512 of this title, and added pars. (2) and (3).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91–172, set out as a note under section 511 of this title.

§ 503. Requirements for exemption

(a) Denial of exemption to organizations engaged in prohibited transactions

(1) General rule

(A) An organization described in section 501(c)(17) shall not be exempt from taxation under section 501(a) if it has engaged in a prohibited transaction after December 31, 1959.

(B) An organization described in section 401(a) which is referred to in section 4975(g) (2) or (3) shall not be exempt from taxation under section 501(a) if it has engaged in a prohibited transaction after March 1, 1954.

(C) An organization described in section 501(c)(18) shall not be exempt from taxation under section 501(a) if it has engaged in a prohibited transaction after December 31, 1969.

(2) Taxable years affected

An organization described in section 501(c)(17) or (18) or paragraph (1)(B) shall be denied exemption from taxation under section 501(a) by reason of paragraph (1) only for taxable years after the taxable year during which it is notified by the Secretary that it has engaged in a prohibited transaction, unless such organization entered into such prohibited transaction with the purpose of diverting corpus or income of the organization from its exempt purposes, and such transaction involved a substantial part of the corpus or income of such organization.

(b) Prohibited transactions

For purposes of this section, the term ''prohibited transaction'' means any transaction in which an organization subject to the provisions of this section—

(1) lends any part of its income or corpus, without the receipt of adequate security and a reasonable rate of interest, to;

(2) pays any compensation, in excess of a reasonable allowance for salaries or other compensation for personal services actually rendered, to;

(3) makes any part of its services available on a preferential basis to;

(4) makes any substantial purchase of securities or any other property, for more than adequate consideration in money or money's worth, from;

(5) sells any substantial part of its securities or other property, for less than an adequate consideration in money or money's worth, to; or

(6) engages in any other transaction which results in a substantial diversion of its income or corpus to;

the creator of such organization (if a trust); a person who has made a substantial contribution to such organization; a member of the family (as defined in section 267(c)(4)) of an individual who is the creator of such trust or who has made a substantial contribution to such organization; or a corporation controlled by such creator or person through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation.

(c) Future status of organizations denied exemption

Any organization described in section 501(c)(17) or (18) or subsection (a)(1)(B) which is denied exemption under section 501(a) by reason of subsection (a) of this section, with respect to any taxable year following the taxable year in which notice of denial of exemption was received, may, under regulations prescribed by the Secretary, file claim for exemption, and if the Secretary, pursuant to such regulations, is satisfied that such organization will not knowingly again engage in a prohibited transaction, such organization shall be exempt with respect to taxable years after the year in which such claim is filed.

[(d) Repealed. Pub. L. 101–508, title XI, § 11801(a)(22), Nov. 5, 1990, 104 Stat. 1388–521]

(e) Special rules

For purposes of subsection (b)(1), a bond, debenture, note, or certificate or other evidence of indebtedness (hereinafter in this subsection referred to as ''obligation'') shall not be treated as a loan made without the receipt of adequate security if—

(1) such obligation is acquired—

(A) on the market, either (i) at the price of the obligation prevailing on a national securities exchange which is registered with the Securities and Exchange Commission, or (ii) if the obligation is not traded on such a national securities exchange, at a price not less favorable to the trust than the offering price for the obligation as established by current bid and asked prices quoted by persons independent of the issuer;

(B) from an underwriter, at a price (i) not in excess of the public offering price for the obligation as set forth in a prospectus or offering circular filed with the Securities and Exchange Commission, and (ii) at which a substantial portion of the same issue is acquired by persons independent of the issuer; or

(C) directly from the issuer, at a price not less favorable to the trust than the price paid currently for a substantial portion of the same issue by persons independent of the issuer;

(2) immediately following acquisition of such obligation—

(A) not more than 25 percent of the aggregate amount of obligations issued in such issue and outstanding at the time of acquisition is held by the trust, and

(B) at least 50 percent of the aggregate amount referred to in subparagraph (A) is held by persons independent of the issuer; and

(3) immediately following acquisition of the obligation, not more than 25 percent of the assets of the trust is invested in obligations of persons described in subsection (b).

(f) Loans with respect to which employers are prohibited from pledging certain assets

Subsection (b)(1) shall not apply to a loan made by a trust described in section 401(a) to the employer (or to a renewal of such a loan or, if the loan is repayable upon demand, to a continuation of such a loan) if the loan bears a reasonable rate of interest, and if (in the case of a making or renewal)—

(1) the employer is prohibited (at the time of such making or renewal) by any law of the United States or regulation thereunder from directly or indirectly pledging, as security for such a loan, a particular class or classes of his assets the value of which (at such time) represents more than one-half of the value of all his assets;

(2) the making or renewal, as the case may be, is approved in writing as an investment which is consistent with the exempt purposes of the trust by a trustee who is independent of the employer, and no other such trustee had previously refused to give such written approval; and

(3) immediately following the making or renewal, as the case may be, the aggregate amount loaned by the trust to the employer, without the receipt of adequate security, does not exceed 25 percent of the value of all the assets of the trust.

For purposes of paragraph (2), the term ''trustee'' means, with respect to any trust for which there is more than one trustee who is independent of the employer, a majority of such independent trustees. For purposes of paragraph (3), the determination as to whether any amount loaned by the trust to the employer is loaned without the receipt of adequate security shall be made without regard to subsection (e).

(Aug. 16, 1954, ch. 736, 68A Stat. 166; Pub. L. 85–866, title I, §30(a), (b), Sept. 2, 1958, 72 Stat. 1629, 1630; Pub. L. 86–667, §2, July 14, 1960, 74 Stat. 535; Pub. L. 87–792, §6, Oct. 10, 1962, 76 Stat. 827; Pub. L. 91–172, title I, §§101(j)(7)–(14), 121(b)(6)(B), Dec. 30, 1969, 83 Stat. 527, 542; Pub. L. 93–406, title II, §2003(b), Sept. 2, 1974, 88 Stat. 978; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 101–508, title XI, §11801(a)(22), Nov. 5, 1990, 104 Stat. 1388–521.)

AMENDMENTS

1990—Subsec. (d). Pub. L. 101–508 struck out subsec. (d) ''Special rule for loans'' which read as follows: ''For purposes of the application of subsection (b)(1), in the case of a loan by a trust described in section 401(a), the following rules shall apply with respect to a loan made before March 1, 1954, which would constitute a prohibited transaction if made on or after March 1, 1954:

''(1) If any part of the loan is repayable prior to December 31, 1955, the renewal of such part of the loan for a period not extending beyond December 31, 1955, on the same terms, shall not be considered a prohibited transaction.

''(2) If the loan is repayable on demand, the continuation of the loan without the receipt of adequate security and a reasonable rate of interest beyond December 31, 1955, shall be considered a prohibited transaction.''

1976—Subsecs. (a)(2), (c). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1974—Subsec. (a)(1)(A). Pub. L. 93–406, §2003(b)(1), substituted ''section 501(c)(17)'' for ''section 501(c)(17) or (18)''.

Subsec. (a)(1)(B). Pub. L. 93–406, §2003(b)(2), inserted ''which is referred to in section 4975(g)(2) or (3)''.

Subsec. (a)(2). Pub. L. 93–406, §2003(b)(3), substituted ''or paragraph (1)(B)'' for ''or section 401''.

Subsec. (c). Pub. L. 93–406, §2003(b)(4), substituted ''or subsection (a)(1)(B)'' for ''or section 401''.

Subsec. (g). Pub. L. 93–406, §2003(b)(5), struck out subsec. (g) which covered trusts benefiting certain owner-employees.

1969—Subsec. (a)(1)(A). Pub. L. 91–172, §§101(j)(7), 121(b)(6)(B)(ii), redesignated subpar. (B) as (A) and inserted reference to section 501(c)(18). Former subpar. (A), referring to organizations described in section 501(c)(3) and to prohibited transactions engaged in after July 1, 1950, was struck out.

Subsec. (a)(1)(B). Pub. L. 91–172, §101(j)(7), redesignated subpar. (C) as (B). Former subpar. (B), referring to organizations described in section 501(c)(17) was amended by addition of a reference to section 501(c)(18), and redesignated as subpar. (A).

Subsec. (a)(1)(C). Pub. L. 91–172, §§101(j)(7), 121(b)(6)(B)(i), added subpar. (C). Former subpar. (C), dealing with organizations described in section 401(a) and with prohibited transactions engaged in after Mar. 1, 1954, was redesignated as subpar. (B).

Subsec. (a)(2). Pub. L. 91–172, §§101(j)(8), 121(b)(6)(B)(ii), struck out reference to organizations described in section 501(c)(3), and inserted references to organizations described in section 501(c)(18).

Subsec. (b). Pub. L. 91–172, §101(j)(14), redesignated subsec. (c) as (b). Former subsec. (b), setting out the organizations to which section applied, was struck out.

Subsec. (c). Pub. L. 91–172, §§101(j)(9), (14), 121(b)(6)(B)(ii), redesignated subsec. (d) as (c), struck out reference to organizations described in section 501(c)(3), and inserted reference to organizations described in section 501(c)(17). Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 91–172, §101(j)(10), (14), redesignated subsec. (g) as (d) and substituted ''subsection (b)(1)'' for ''subsection (c)(1).'' Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 91–172, §101(j)(11), (14), redesignated subsec. (h) as (e), modified heading to read: ''Special rules'', substituted ''subsection (b)(1)'' for ''subsection (c)(1)'' in text preceding par. (1) and in par. (3), and in text preceding par. (1) struck out ''acquired by a trust described in section 401(a) or section 501(c)(17)''.

Former subsec. (e), covering the disallowance of certain charitable deductions, was struck out.

Subsec. (f). Pub. L. 91–172, §101(j)(12), (14), redesignated subsec. (i) as (f) and substituted ''Subsection (b)(1)'' for ''Subsection (c)(1)'' and ''subsection (e)'' for ''subsection (h)''. Former subsec. (f), defining ''gift or bequest'', was struck out.

Subsec. (g). Pub. L. 91–172, §101(j)(13), (14), redesignated subsec. (j) as (g) and substituted ''subsection (b)'' for ''subsection (c)'' in par. (1). Former subsec. (g) redesignated (d).

Subsecs. (h) to (j). Pub. L. 91–172, §101(j)(14), redesignated subsecs. (h), (i), and (j) as (e), (f), and (g), respectively. Former subsecs. (e) and (f) were struck out and former subsec. (g) was redesignated (d).

1962—Subsec. (j). Pub. L. 87–792 added subsec. (j).

1960—Subsec. (a)(1). Pub. L. 86–667, §2(a)(1), denied exemption to an organization described in section 501(c)(17) if it has engaged in a prohibited transaction after Dec. 31, 1959.

Subsecs. (a)(2), (b), (d). Pub. L. 86–667, §2(a)(2), (b), (c), included organizations described in section 501(c)(17).

Subsec. (h). Pub. L. 86–667, §2(d), included trusts described in section 501(c)(17).

1958—Subsec. (h). Pub. L. 85–866, §30(a), added subsec. (h).

Subsec. (i). Pub. L. 85–866, §30(b), added subsec. (i).

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 effective Jan. 1, 1975, but with provision for an election to be exercised by an organization so as to constitute a savings clause with reference to the amendment, see section 2003(c) of Pub. L. 93–406, set out as an Effective Date; Savings Provisions note under section 4975 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 101(j)(7)–(14) of Pub. L. 91–172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

Amendment by section 121(b)(6)(B) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91–172, set out as a note under section 511 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–667 applicable to taxable years beginning after Dec. 31, 1959, and in the case of loans, the amendments to this section made by Pub. L. 86–667 are applicable only to loans made, renewed, or continued after Dec. 31, 1959, see section 6 of Pub. L. 86–667, set out as a note under section 501 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 30(c) of Pub. L. 85–866, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply with respect to taxable years ending after March 15, 1956. The amendment made by subsection (b) [amending this section] shall apply with respect to taxable years ending after the date of the enactment of this Act [Sept. 2, 1958], but only with respect to periods after such date.

''(2) EXCEPTIONS.—Nothing in subsection (a) [amending this section] shall be construed to make any transaction a prohibited transaction which, under announcements of the Internal Revenue Service made with respect to section 503(c)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] before the date of the enactment of this Act [Sept. 2, 1958], would not constitute a prohibited transaction. In the case of any bond, debenture, note, or certificate or other evidence of indebtedness acquired before the date of the enactment of this Act [Sept. 2, 1958], by a trust described in section 401(a) of such Code which is held on such date, paragraphs (2) and (3) of section 503(h) of such Code shall be treated as satisfied if such requirements would have been satisfied if such obligation had been acquired on such date of enactment [Sept. 2, 1958].''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§ 504. Status after organization ceases to qualify for exemption under section 501(c)(3) because of substantial lobbying or because of political activities

(a) General rule

An organization which—

(1) was exempt (or was determined by the Secretary to be exempt) from taxation under section 501(a) by reason of being an organization described in section 501(c)(3), and

(2) is not an organization described in section 501(c)(3)—

(A) by reason of carrying on propaganda, or otherwise attempting, to influence legislation, or

(B) by reason of participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for public office,

shall not at any time thereafter be treated as an organization described in section 501(c)(4).

(b) Regulations to prevent avoidance

The Secretary shall prescribe such regulations as may be necessary or appropriate to prevent the avoidance of subsection (a), including regulations relating to a direct or indirect transfer of all or part of the assets of an organization to an organization controlled (directly or indirectly) by the same person or persons who control the transferor organization.

(c) Churches, etc.

Subsection (a) shall not apply to any organization which is a disqualified organization within the meaning of section 501(h)(5) (relating to churches, etc.) for the taxable year immediately preceding the first taxable year for which such organization is described in paragraph (2) of subsection (a).

(Added Pub. L. 94–455, title XIII, §1307(a)(2), Oct. 4, 1976, 90 Stat. 1721; amended Pub. L. 100–203, title X, §10711(b)(1), (2)(A), Dec. 22, 1987, 101 Stat. 1330–464.)

PRIOR PROVISIONS

A prior section 504, acts Aug. 16, 1954, ch. 736, 68A Stat. 168; Oct. 22, 1968, Pub. L. 90–630, §6(a), 82 Stat. 1330, related to denial of exemption, prior to repeal by Pub. L. 91–172, title I, §101(j)(15), Dec. 30, 1969, 83 Stat. 527. For effective date of repeal, see section 101(k)(2)(B) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

AMENDMENTS

1987—Pub. L. 100–203, § 10711(b)(2)(A), substituted ''substantial lobbying or because of political activities'' for ''substantial lobbying'' in section catchline.

Subsec. (a)(2). Pub. L. 100–203, § 10711(b)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''is not an organization described in section 501(c)(3) by reason of carrying on propaganda, or otherwise attempting, to influence legislation,''.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable with respect to activities after Dec. 22, 1987, see section 10711(c) of Pub. L. 100–203, set out as a note under section 170 of this title.

CONSTRUCTION OF AMENDMENT

Section 1307(a)(3) of Pub. L. 94–455 provided that: ''It is the intent of Congress that enactment of this section [amending section 501 and enacting section 504 of this title] is not to be regarded in any way as an approval or disapproval of the decision of the Court of Appeals for the Tenth Circuit in Christian Echoes National Ministry, Inc. versus United States, 470 F.2d 849 (1972), or of the reasoning in any of the opinions leading to that decision.''

§ 505. Additional requirements for organizations described in paragraph (9), (17), or (20) of section 501(c)

(a) Certain requirements must be met in the case of organizations described in paragraph (9) or (20) of section 501(c)

(1) Voluntary employees' beneficiary associations, etc.

An organization described in paragraph (9) or (20) of subsection (c) of section 501 which is part of a plan shall not be exempt from tax under section 501(a) unless such plan meets the requirements of subsection (b) of this section.

(2) Exception for collective bargaining agreements

Paragraph (1) shall not apply to any organization which is part of a plan maintained pursuant to an agreement between employee representatives and 1 or more employers if the Secretary finds that such agreement is a collective bargaining agreement and that such plan was the subject of good faith bargaining between such employee representatives and such employer or employers.

(b) Nondiscrimination requirements

(1) In general

Except as otherwise provided in this subsection, a plan meets the requirements of this subsection only if—

(A) each class of benefits under the plan is provided under a classification of employees which is set forth in the plan and which is found by the Secretary not to be discriminatory in favor of employees who are highly compensated individuals, and

(B) in the case of each class of benefits, such benefits do not discriminate in favor of employees who are highly compensated individuals.

A life insurance, disability, severance pay, or supplemental unemployment compensation benefit shall not be considered to fail to meet the requirements of subparagraph (B) merely because the benefits available bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of employees covered by the plan.

(2) Exclusion of certain employees

For purposes of paragraph (1), there may be excluded from consideration—

(A) employees who have not completed 3 years of service,

(B) employees who have not attained age 21,

(C) seasonal employees or less than half-time employees,

(D) employees not included in the plan who are included in a unit of employees covered by an agreement between employee representatives and 1 or more employers which the Secretary finds to be a collective bargaining agreement if the class of benefits involved was the subject of good faith bargaining between such employee representatives and such employer or employers, and

(E) employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)).

(3) Application of subsection where other nondiscrimination rules provided

In the case of any benefit for which a provision of this chapter other than this subsection provides nondiscrimination rules, paragraph (1) shall not apply but the requirements of this subsection shall be met only if the nondiscrimination rules so provided are satisfied with respect to such benefit.

(4) Aggregation rules

At the election of the employer, 2 or more plans of such employer may be treated as 1 plan for purposes of this subsection.

(5) Highly compensated individual

For purposes of this subsection, the determination as to whether an individual is a highly compensated individual shall be made under rules similar to the rules for determining whether an individual is a highly compensated employee (within the meaning of section 414(q)).

(6) Compensation

For purposes of this subsection, the term ''compensation'' has the meaning given such term by section 414(s).

(7) Compensation limit

A plan shall not be treated as meeting the requirements of this subsection unless under the plan the annual compensation of each employee taken into account for any year does not exceed $200,000. The Secretary shall adjust the $200,000 amount at the same time, and by the same amount, as any adjustment under section 401(a)(17)(B). This paragraph shall not apply in determining whether the requirements of section 79(d) are met.

(c) Requirement that organization notify Secretary that it is applying for tax-exempt status

(1) In general

An organization shall not be treated as an organization described in paragraph (9), (17), or (20) of section 501(c)—

(A) unless it has given notice to the Secretary, in such manner as the Secretary may by regulations prescribe, that it is applying for recognition of such status, or

(B) for any period before the giving of such notice, if such notice is given after the time prescribed by the Secretary by regulations for giving notice under this subsection.

(2) Special rule for existing organizations

In the case of any organization in existence on July 18, 1984, the time for giving notice under paragraph (1) shall not expire before the date 1 year after such date of the enactment.

(Added Pub. L. 98–369, div. A, title V, § 513(a), July 18, 1984, 98 Stat. 863; amended Pub. L. 99–514, title XI, §§ 1114(b)(16), 1151(e)(2)(B), (g)(6), (j)(3), title XVIII, §§ 1851(c), 1899A(16), Oct. 22, 1986, 100 Stat. 2452, 2506–2508, 2863, 2959; Pub. L. 100–647, title I, § 1011B(a)(27)(C), (31)(B), (32), Nov. 10, 1988, 102 Stat. 3487, 3488; Pub. L. 101–140, title II, §§ 203(a)(1), (2), 204(c), Nov. 8, 1989, 103 Stat. 830, 833; Pub. L. 103–66, title XIII, § 13212(c), Aug. 10, 1993, 107 Stat. 472; Pub. L. 107–16, title VI, § 611(c)(1), June 7, 2001, 115 Stat. 97.)

AMENDMENTS

2001—Subsec. (b)(7). Pub. L. 107–16 substituted ''$200,000'' for ''$150,000'' in two places.

1993—Subsec. (b)(7). Pub. L. 103–66 substituted ''Compensation limit'' for ''$200,000 compensation limit'' in heading and ''exceed $150,000. The Secretary shall adjust the $150,000 amount at the same time, and by the same amount, as any adjustment under section 401(a)(17)(B).'' for ''exceed $200,000. The Secretary shall adjust the $200,000 amount at the same time and in the same manner as under section 415(d).'' in text.

1989—Subsec. (a)(1). Pub. L. 101–140, § 203(a)(2), amended par. (1) to read as if amendments by Pub. L. 100–647, § 1011B(a)(27)(C), had not been enacted, see 1988 Amendment note below.

Subsec. (b)(2). Pub. L. 101–140, § 203(a)(2), amended par. (2) to read as if amendments by Pub. L. 100–647, § 1011B(a)(31)(B), had not been enacted, see 1988 Amendment note below.

Pub. L. 101–140, § 203(a)(1), amended par. (2) to read as if amendments by Pub. L. 99–514, § 1151(g)(6), had not been enacted, see 1986 Amendment note below.

Subsec. (b)(7). Pub. L. 101–140, § 204(c), inserted at end ''This paragraph shall not apply in determining whether the requirements of section 79(d) are met.''

1988—Subsec. (a)(1). Pub. L. 100–647, § 1011B(a)(27)(C), inserted at end ''This paragraph shall not apply to any organization by reason of a failure to meet the requirements of subsection (b) with respect to a benefit to which section 89 applies.''

Subsec. (b)(2). Pub. L. 100–647, § 1011B(a)(31)(B), substituted ''there shall be'' for ''there may be'' and ''who are'' for ''who may be''.

Subsec. (b)(7). Pub. L. 100–647, § 1011B(a)(32), added par. (7).

1986—Subsec. (a)(1). Pub. L. 99–514, § 1851(c)(1), struck out ''of an employer'' before ''shall''.

Subsec. (a)(2). Pub. L. 99–514, § 1851(c)(4), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Paragraph (1) shall not apply to any organization which is part of a plan maintained pursuant to 1 or more collective bargaining agreements between 1 or more employee organizations and 1 or more employers.''

Subsec. (b)(1). Pub. L. 99–514, § 1851(c)(2), (3), substituted ''as otherwise provided in this subsection'' for ''as provided in paragraph (2)'' in introductory provision, and in subpar. (B) substituted ''highly compensated individuals'' for ''highly compensated employees''.

Subsec. (b)(2). Pub. L. 99–514, § 1151(g)(6), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''For purposes of paragraph (1), there may be excluded from consideration—

''(A) employees who have not completed 3 years of service,

''(B) employees who have not attained age 21,

''(C) seasonal employees or less than half-time employees,

''(D) employees not included in the plan who are included in a unit of employees covered by an agreement between employee representatives and 1 or more employers which the Secretary finds to be a collective bargaining agreement if the class of benefits involved was the subject of good faith bargaining between such employee representatives and such employer or employers, and

''(E) employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)).''

Subsec. (b)(4). Pub. L. 99–514, § 1151(e)(2)(B), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''For purposes of this subsection—

''(A) AGGREGATION OF PLANS.—At the election of the employer, 2 or more plans of such employer may be treated as 1 plan.

''(B) TREATMENT OF RELATED EMPLOYERS.—Rules similar to the rules of subsections (b), (c), (m), and (n) of section 414 shall apply. For purposes of the preceding sentence, section 414(n) shall be applied without regard to paragraph (5).''

Subsec. (b)(5). Pub. L. 99–514, § 1114(b)(16), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''For purposes of this subsection, the term 'highly compensated individual' has the meaning given such term by section 105(h)(5). For purposes of the preceding sentence, section 105(h)(5) shall be applied by substituting '10 percent' for '25 percent'.''

Subsec. (b)(6). Pub. L. 99–514, § 1151(j)(3), added par. (6).

Subsec. (c)(2). Pub. L. 99–514, § 1899A(16), substituted ''July 18, 1984'' for ''the date of the enactment of the Tax Reform Act of 1984''.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 611(i)(1) of Pub. L. 107–16, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable, except as otherwise provided, to benefits accruing in plan years beginning after Dec. 31, 1993, see section 13212(d) of Pub. L. 103–66, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 203(a)(1), (2) of Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

Section 204(d)(4) of Pub. L. 101–140 provided that: ''The amendment made by subsection (c) [amending this section] shall take effect as if included in the amendment made by section 1011B(a)(32) of the Technical and Miscellaneous Revenue Act of 1988 [Pub. L. 100–647].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of

the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1114(b)(16) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1987, see section 1114(c)(2) of Pub. L. 99–514, set out as a note under section 414 of this title.

Amendment by section 1151(e)(2)(B), (g)(6), (j)(3) of Pub. L. 99–514 applicable, with certain qualifications and exceptions, to years beginning after Dec. 31, 1988, see section 1151(k) of Pub. L. 99–514, as amended, set out as a note under section 79 of this title.

Amendment by section 1851(c) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section 513(c) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section] shall apply to years beginning after December 31, 1984.

''(2) TREATMENT OF CERTAIN BENEFITS IN PAY STATUS AS OF JANUARY 1, 1985.—For purposes of determining whether a plan meets the requirements of section 505(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)), there may (at the election of the employer) be excluded from consideration all disability or severance payments payable to individuals who are in pay status as of January 1, 1985. The preceding sentence shall not apply to any payment to the extent such payment is increased by any plan amendment adopted after June 22, 1984.''

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

PART II—PRIVATE FOUNDATIONS

Sec.
507. Termination of private foundation status.
508. Special rules with respect to section 501(c)(3) organizations.
509. Private foundation defined.

AMENDMENTS

1969—Pub. L. 91–172, title I, § 101(a), Dec. 30, 1969, 83 Stat. 492, added part heading and analysis for part II.

§ 507. Termination of private foundation status

(a) General rule

Except as provided in subsection (b), the status of any organization as a private foundation shall be terminated only if—

(1) such organization notifies the Secretary (at such time and in such manner as the Secretary may by regulations prescribe) of its intent to accomplish such termination, or

(2)(A) with respect to such organization, there have been either willful repeated acts (or failures to act), or a willful and flagrant act (or failure to act), giving rise to liability for tax under chapter 42, and

(B) the Secretary notifies such organization that, by reason of subparagraph (A), such organization is liable for the tax imposed by subsection (c),

and either such organization pays the tax imposed by subsection (c) (or any portion not abated under subsection (g)) or the entire amount of such tax is abated under subsection (g).

(b) Special rules

(1) Transfer to, or operation as, public charity

The status as a private foundation of any organization, with respect to which there have not been either willful repeated acts (or failures to act) or a willful and flagrant act (or failure to act) giving rise to liability for tax under chapter 42, shall be terminated if—

(A) such organization distributes all of its net assets to one or more organizations described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)) each of which has been in existence and so described for a continuous period of at least 60 calendar months immediately preceding such distribution, or

(B)(i) such organization meets the requirements of paragraph (1), (2), or (3) of section 509(a) by the end of the 12-month period beginning with its first taxable year which begins after December 31, 1969, or for a continuous period of 60 calendar months beginning with the first day of any taxable year which begins after December 31, 1969,

(ii) such organization notifies the Secretary (in such manner as the Secretary may by regulations prescribe) before the commencement of such 12-month or 60-month period (or before the 90th day after the day on which regulations first prescribed under this subsection become final) that it is terminating its private foundation status, and

(iii) such organization establishes to the satisfaction of the Secretary (in such manner as the Secretary may by regulations prescribe) immediately after the expiration of such 12-month or 60-month period that such organization has complied with clause (i).

If an organization gives notice under subparagraph (B)(ii) of the commencement of a 60-month period and such organization fails to meet the requirements of paragraph (1), (2), or (3) of section 509(a) for the entire 60-month period, this part and chapter 42 shall not apply to such organization for any taxable year within such 60-month period for which it does meet such requirements.

(2) Transferee foundations

For purposes of this part, in the case of a transfer of assets of any private foundation to another private foundation pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization, the transferee foundation shall not be treated as a newly created organization.

(c) Imposition of tax

There is hereby imposed on each organization which is referred to in subsection (a) a tax equal to the lower of—

(1) the amount which the private foundation substantiates by adequate records or other corroborating evidence as the aggregate tax benefit resulting from the section 501(c)(3) status of such foundation, or

(2) the value of the net assets of such foundation.

(d) Aggregate tax benefit

(1) In general

For purposes of subsection (c), the aggregate tax benefit resulting from the section 501(c)(3) status of any private foundation is the sum of—

(A) the aggregate increases in tax under chapters 1, 11, and 12 (or the corresponding provisions of prior law) which would have been imposed with respect to all substantial contributors to the foundation if deductions for all contributions made by such contributors to the foundation after February 28, 1913, had been disallowed, and

(B) the aggregate increases in tax under chapter 1 (or the corresponding provisions of prior law) which would have been imposed with respect to the income of the private foundation for taxable years beginning after December 31, 1912, if (i) it had not been exempt from tax under section 501(a) (or the corresponding provisions of prior law), and (ii) in the case of a trust, deductions under section 642(c) (or the corresponding provisions of prior law) had been limited to 20 percent of the taxable income of the trust (computed without the benefit of section 642(c) but with the benefit of section 170(b)(1)(A)), and

(C) interest on the increases in tax determined under subparagraphs (A) and (B) from the first date on which each such increase would have been due and payable to the date on which the organization ceases to be a private foundation.

(2) Substantial contributor

(A) Definition

For purposes of paragraph (1), the term ''substantial contributor'' means any person who contributed or bequeathed an aggregate amount of more than $5,000 to the private foundation, if such amount is more than 2 percent of the total contributions and bequests received by the foundation before the close of the taxable year of the foundation in which the contribution or bequest is received by the foundation from such person. In the case of a trust, the term ''substantial contributor'' also means the creator of the trust.

(B) Special rules

For purposes of subparagraph (A)—

(i) each contribution or bequest shall be valued at fair market value on the date it was received,

(ii) in the case of a foundation which is in existence on October 9, 1969, all contributions and bequests received on or before such date shall be treated (except for purposes of clause (i)) as if received on such date,

(iii) an individual shall be treated as making all contributions and bequests made by his spouse, and

(iv) any person who is a substantial contributor on any date shall remain a substantial contributor for all subsequent periods.

(C) Person ceases to be substantial contributor in certain cases

(i) In general

A person shall cease to be treated as a substantial contributor with respect to any private foundation as of the close of any taxable year of such foundation if—

(I) during the 10-year period ending at the close of such taxable year such person (and all related persons) have not made any contribution to such private foundation,

(II) at no time during such 10-year period was such person (or any related person) a foundation manager of such private foundation, and

(III) the aggregate contributions made by such person (and related persons) are determined by the Secretary to be insignificant when compared to the aggregate amount of contributions to such foundation by one other person.

For purposes of subclause (III), appreciation on contributions while held by the foundation shall be taken into account.

(ii) Related person

For purposes of clause (i), the term ''related person'' means, with respect to any person, any other person who would be a disqualified person (within the meaning of section 4946) by reason of his relationship to such person. In the case of a contributor which is a corporation, the term also includes any officer or director of such corporation.

(3) Regulations

For purposes of this section, the determination as to whether and to what extent there would have been any increase in tax shall be made in accordance with regulations prescribed by the Secretary.

(e) Value of assets

For purposes of subsection (c), the value of the net assets shall be determined at whichever time such value is higher: (1) the first day on which action is taken by the organization which culminates in its ceasing to be a private founda-

tion, or (2) the date on which it ceases to be a private foundation.

(f) Liability in case of transfers of assets from private foundation

For purposes of determining liability for the tax imposed by subsection (c) in the case of assets transferred by the private foundation, such tax shall be deemed to have been imposed on the first day on which action is taken by the organization which culminates in its ceasing to be a private foundation.

(g) Abatement of taxes

The Secretary may abate the unpaid portion of the assessment of any tax imposed by subsection (c), or any liability in respect thereof, if—

(1) the private foundation distributes all of its net assets to one or more organizations described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)) each of which has been in existence and so described for a continuous period of at least 60 calendar months, or

(2) following the notification prescribed in section 6104(c) to the appropriate State officer, such State officer within one year notifies the Secretary, in such manner as the Secretary may by regulations prescribe, that corrective action has been initiated pursuant to State law to insure that the assets of such private foundation are preserved for such charitable or other purposes specified in section 501(c)(3) as may be ordered or approved by a court of competent jurisdiction, and upon completion of the corrective action, the Secretary receives certification from the appropriate State officer that such action has resulted in such preservation of assets.

(Added Pub. L. 91–172, title I, § 101(a), Dec. 30, 1969, 83 Stat. 492; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title III, § 313(a), July 18, 1984, 98 Stat. 786.)

AMENDMENTS

1984—Subsec. (d)(2)(C). Pub. L. 98–369 added subpar. (C).

1976—Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary'' wherever appearing.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 313(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1984.''

EFFECTIVE DATE

Section effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as a note under section 4940 of this title.

APPLICABILITY TO DETERMINATION OF STATUS AS SUBSTANTIAL CONTRIBUTOR FOR PURPOSES OF TAXES ON SELF-DEALING OF CONTRIBUTIONS MADE PRIOR TO OCTOBER 9, 1969

Pub. L. 95–170, § 3, Nov. 12, 1977, 91 Stat. 1352, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In determining whether a person is a substantial contributor within the meaning of section 507(d)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for purposes of applying section 4941 of such Code (relating to taxes on self-dealing), contributions made before October 9, 1969, which—

''(1) were made on account of or in lieu of payments required under a lease in effect before such date, and

''(2) were coincident with or by reason of the reduction in the required payments under such lease,

shall not be taken into account. For purposes of applying section 507(d)(2)(B)(iv) of such Code, the preceding sentence shall be treated as having taken effect on January 1, 1970.''

§ 508. Special rules with respect to section 501(c)(3) organizations

(a) New organizations must notify Secretary that they are applying for recognition of section 501(c)(3) status

Except as provided in subsection (c), an organization organized after October 9, 1969, shall not be treated as an organization described in section 501(c)(3)—

(1) unless it has given notice to the Secretary in such manner as the Secretary may by regulations prescribe, that it is applying for recognition of such status, or

(2) for any period before the giving of such notice, if such notice is given after the time prescribed by the Secretary by regulations for giving notice under this subsection.

(b) Presumption that organizations are private foundations

Except as provided in subsection (c), any organization (including an organization in existence on October 9, 1969) which is described in section 501(c)(3) and which does not notify the Secretary, at such time and in such manner as the Secretary may by regulations prescribe, that it is not a private foundation shall be presumed to be a private foundation.

(c) Exceptions

(1) Mandatory exceptions

Subsections (a) and (b) shall not apply to—

(A) churches, their integrated auxiliaries, and conventions or associations of churches, or

(B) any organization which is not a private foundation (as defined in section 509(a)) and the gross receipts of which in each taxable year are normally not more than $5,000.

(2) Exceptions by regulations

The Secretary may by regulations exempt (to the extent and subject to such conditions as may be prescribed in such regulations) from the provisions of subsection (a) or (b) or both—

(A) educational organizations described in section 170(b)(1)(A)(ii), and

(B) any other class of organizations with respect to which the Secretary determines that full compliance with the provisions of subsections (a) and (b) is not necessary to the efficient administration of the provisions of this title relating to private foundations.

(d) Disallowance of certain charitable, etc., deductions

(1) Gift or bequest to organizations subject to section 507(c) tax

No gift or bequest made to an organization upon which the tax provided by section 507(c) has been imposed shall be allowed as a deduction under section 170, 545(b)(2), 642(c), 2055,

2106(a)(2), or 2522, if such gift or bequest is made—

(A) by any person after notification is made under section 507(a), or

(B) by a substantial contributor (as defined in section 507(d)(2)) in his taxable year which includes the first day on which action is taken by such organization which culminates in the imposition of tax under section 507(c) and any subsequent taxable year.

(2) Gift or bequest to taxable private foundation, section 4947 trust, etc.

No gift or bequest made to an organization shall be allowed as a deduction under section 170, 545(b)(2), 642(c), 2055, 2106(a)(2), or 2522, if such gift or bequest is made—

(A) to a private foundation or a trust described in section 4947 in a taxable year for which it fails to meet the requirements of subsection (e) (determined without regard to subsection (e)(2)), or

(B) to any organization in a period for which it is not treated as an organization described in section 501(c)(3) by reason of subsection (a).

(3) Exception

Paragraph (1) shall not apply if the entire amount of the unpaid portion of the tax imposed by section 507(c) is abated by the Secretary under section 507(g).

(e) Governing instruments

(1) General rule

A private foundation shall not be exempt from taxation under section 501(a) unless its governing instrument includes provisions the effects of which are—

(A) to require its income for each taxable year to be distributed at such time and in such manner as not to subject the foundation to tax under section 4942, and

(B) to prohibit the foundation from engaging in any act of self-dealing (as defined in section 4941(d)), from retaining any excess business holdings (as defined in section 4943(c)), from making any investments in such manner as to subject the foundation to tax under section 4944, and from making any taxable expenditures (as defined in section 4945(d)).

(2) Special rules for existing private foundations

In the case of any organization organized before January 1, 1970, paragraph (1) shall not apply—

(A) to any period after December 31, 1971, during the pendency of any judicial proceeding begun before January 1, 1972, by the private foundation which is necessary to reform, or to excuse such foundation from compliance with, its governing instrument or any other instrument in order to meet the requirements of paragraph (1), and

(B) to any period after the termination of any judicial proceeding described in subparagraph (A) during which its governing instrument or any other instrument does not permit it to meet the requirements of paragraph (1).

(f) Additional provisions relating to sponsoring organizations

A sponsoring organization (as defined in section 4966(d)(1)) shall give notice to the Secretary (in such manner as the Secretary may provide) whether such organization maintains or intends to maintain donor advised funds (as defined in section 4966(d)(2)) and the manner in which such organization plans to operate such funds.

(Added Pub. L. 91–172, title I, §101(a), Dec. 30, 1969, 83 Stat. 494; amended Pub. L. 94–455, title XIX, §§1901(a)(71), (b)(8)(E), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1776, 1794, 1834; Pub. L. 108–357, title IV, §413(c)(30), Oct. 22, 2004, 118 Stat. 1509; Pub. L. 109–280, title XII, §1235(b)(1), Aug. 17, 2006, 120 Stat. 1101.)

AMENDMENTS

2006—Subsec. (f). Pub. L. 109–280, which directed the addition of subsec. (f) to section 508, without specifying the act to be amended, was executed by making the addition to this section, which is section 508 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

2004—Subsec. (d)(1), (2). Pub. L. 108–357 struck out ''556(b)(2),'' after ''545(b)(2),''.

1976—Subsec. (a). Pub. L. 94–455, §1901(a)(71)(A), struck out last sentence providing that for purposes of paragraph (2), the time prescribed for giving notice under this subsection shall not expire before the 90th day after the day on which regulations first prescribed under this subsection become final.

Subsec. (a)(1), (2). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' in three places after ''Secretary''.

Subsec. (b). Pub. L. 94–455, §§1901(a)(71)(A), 1906(b)(13)(A), struck out ''or his delegate'' in two places after ''Secretary'' and ''The time prescribed for giving notice under this subsection shall not expire before the 90th day after the day on which regulations first prescribed under this subsection become final'' after ''a private foundation''.

Subsec. (c)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(2)(A). Pub. L. 94–455, §1901(b)(8)(E), substituted ''(A) educational organizations described in section 170(b)(1)(A)(ii), and'' for ''(A) educational organizations which normally maintain a regular faculty and curriculum and normally have a regularly enrolled body of pupils or students in attendance at the place where their educational activities are regularly carried on; and'' after ''(b) or both—''.

Subsec. (c)(2)(B). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d)(2)(A). Pub. L. 94–455, §1901(a)(71)(C), substituted ''(e)(2)'' for ''(e)(2)(B) and (C)'' after ''regard to subsection''.

Subsec. (d)(3). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (e)(2)(A). Pub. L. 94–455, §1901(a)(71)(B), struck out subpar. (A) relating to taxable years beginning before 1972, and redesignated subpars. (B) and (C) as (A) and (B), respectively.

Subsec. (e)(2)(B). Pub. L. 94–455, §1901(a)(71)(B), redesignated subpar. (C) as (B) and substituted ''(A)'' for ''(B)'' after ''described in subparagraph''.

Subsec. (e)(2)(C). Pub. L. 94–455, §1901(a)(71)(B), redesignated subpar. (C) as (B).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title XII, §1235(b)(2), Aug. 17, 2006, 120 Stat. 1102, provided that: ''The amendment made by this subsection [amending this section] shall apply to organizations applying for tax-exempt status after the date of the enactment of this Act [Aug. 17, 2006].''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31,

2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(71)(A)–(C), (b)(8)(E) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1970, except that subsecs. (a), (b), and (c) effective Oct. 9, 1969, see section 101(k)(1), (3) of Pub. L. 91–172, set out as a note under section 4940 of this title.

SAVINGS PROVISION

Limits on inclusion of provisions inconsistent with subsec. (e) of this section in governing instruments, see section 101(*l*)(6) of Pub. L. 91–172, set out as a note under section 4940 of this title.

§ 509. Private foundation defined

(a) General rule

For purposes of this title, the term ''private foundation'' means a domestic or foreign organization described in section 501(c)(3) other than—

(1) an organization described in section 170(b)(1)(A) (other than in clauses (vii) and (viii));

(2) an organization which—

(A) normally receives more than one-third of its support in each taxable year from any combination of—

(i) gifts, grants, contributions, or membership fees, and

(ii) gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in an activity which is not an unrelated trade or business (within the meaning of section 513), not including such receipts from any person, or from any bureau or similar agency of a governmental unit (as described in section 170(c)(1)), in any taxable year to the extent such receipts exceed the greater of $5,000 or 1 percent of the organization's support in such taxable year,

from persons other than disqualified persons (as defined in section 4946) with respect to the organization, from governmental units described in section 170(c)(1), or from organizations described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)), and

(B) normally receives not more than one-third of its support in each taxable year from the sum of—

(i) gross investment income (as defined in subsection (e)) and

(ii) the excess (if any) of the amount of the unrelated business taxable income (as defined in section 512) over the amount of the tax imposed by section 511;

(3) an organization which—

(A) is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations described in paragraph (1) or (2),

(B) is—

(i) operated, supervised, or controlled by one or more organizations described in paragraph (1) or (2),

(ii) supervised or controlled in connection with one or more such organizations, or

(iii) operated in connection with one or more such organizations, and

(C) is not controlled directly or indirectly by one or more disqualified persons (as defined in section 4946) other than foundation managers and other than one or more organizations described in paragraph (1) or (2); and

(4) an organization which is organized and operated exclusively for testing for public safety.

For purposes of paragraph (3), an organization described in paragraph (2) shall be deemed to include an organization described in section 501(c)(4), (5), or (6) which would be described in paragraph (2) if it were an organization described in section 501(c)(3).

(b) Continuation of private foundation status

For purposes of this title, if an organization is a private foundation (within the meaning of subsection (a)) on October 9, 1969, or becomes a private foundation on any subsequent date, such organization shall be treated as a private foundation for all periods after October 9, 1969, or after such subsequent date, unless its status as such is terminated under section 507.

(c) Status of organization after termination of private foundation status

For purposes of this part, an organization the status of which as a private foundation is terminated under section 507 shall (except as provided in section 507(b)(2)) be treated as an organization created on the day after the date of such termination.

(d) Definition of support

For purposes of this part and chapter 42, the term ''support'' includes (but is not limited to)—

(1) gifts, grants, contributions, or membership fees,

(2) gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities in any activity which is not an unrelated trade or business (within the meaning of section 513),

(3) net income from unrelated business activities, whether or not such activities are carried on regularly as a trade or business,

(4) gross investment income (as defined in subsection (e)),

(5) tax revenues levied for the benefit of an organization and either paid to or expended on behalf of such organization, and

(6) the value of services or facilities (exclusive of services or facilities generally furnished to the public without charge) furnished by a governmental unit referred to in section 170(c)(1) to an organization without charge.

Such term does not include any gain from the sale or other disposition of property which would be considered as gain from the sale or ex-

change of a capital asset, or the value of exemption from any Federal, State, or local tax or any similar benefit.

(e) Definition of gross investment income

For purposes of subsection (d), the term ''gross investment income'' means the gross amount of income from interest, dividends, payments with respect to securities loans (as defined in section 512(a)(5)), rents, and royalties, but not including any such income to the extent included in computing the tax imposed by section 511. Such term shall also include income from sources similar to those in the preceding sentence.

(f) Requirements for supporting organizations

(1) Type III supporting organizations

For purposes of subsection (a)(3)(B)(iii), an organization shall not be considered to be operated in connection with any organization described in paragraph (1) or (2) of subsection (a) unless such organization meets the following requirements:

(A) Responsiveness

For each taxable year beginning after the date of the enactment of this subsection, the organization provides to each supported organization such information as the Secretary may require to ensure that such organization is responsive to the needs or demands of the supported organization.

(B) Foreign supported organizations

(i) In general

The organization is not operated in connection with any supported organization that is not organized in the United States.

(ii) Transition rule for existing organizations

If the organization is operated in connection with an organization that is not organized in the United States on the date of the enactment of this subsection, clause (i) shall not apply until the first day of the third taxable year of the organization beginning after the date of the enactment of this subsection.

(2) Organizations controlled by donors

(A) In general

For purposes of subsection (a)(3)(B), an organization shall not be considered to be—

(i) operated, supervised, or controlled by any organization described in paragraph (1) or (2) of subsection (a), or

(ii) operated in connection with any organization described in paragraph (1) or (2) of subsection (a),

if such organization accepts any gift or contribution from any person described in subparagraph (B).

(B) Person described

A person is described in this subparagraph if, with respect to a supported organization of an organization described in subparagraph (A), such person is—

(i) a person (other than an organization described in paragraph (1), (2), or (4) of section 509(a)) who directly or indirectly controls, either alone or together with persons described in clauses (ii) and (iii), the governing body of such supported organization,

(ii) a member of the family (determined under section 4958(f)(4)) of an individual described in clause (i), or

(iii) a 35-percent controlled entity (as defined in section 4958(f)(3) by substituting ''persons described in clause (i) or (ii) of section 509(f)(2)(B)'' for ''persons described in subparagraph (A) or (B) of paragraph (1)'' in subparagraph (A)(i) thereof).

(3) Supported organization

For purposes of this subsection, the term ''supported organization'' means, with respect to an organization described in subsection (a)(3), an organization described in paragraph (1) or (2) of subsection (a)—

(A) for whose benefit the organization described in subsection (a)(3) is organized and operated, or

(B) with respect to which the organization performs the functions of, or carries out the purposes of.

(Added Pub. L. 91–172, title I, §101(a), Dec. 30, 1969, 83 Stat. 496; amended Pub. L. 94–81, §3(a), Aug. 9, 1975, 89 Stat. 418; Pub. L. 95–345, §2(a)(1), Aug. 15, 1978, 92 Stat. 481; Pub. L. 109–280, title XII, §§1221(a)(2), 1241(a), (b), Aug. 17, 2006, 120 Stat. 1089, 1102.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (f)(1)(A), (B)(ii), is the date of enactment of Pub. L. 109–280, which was approved Aug. 17, 2006.

CODIFICATION

Sections 1221(a)(2) and 1241(a), (b) of Pub. L. 109–280, which directed the amendment of section 509 without specifying the act to be amended, were executed to this section, which is section 509 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

AMENDMENTS

2006—Subsec. (a)(3)(B). Pub. L. 109–280, §1241(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''is operated, supervised, or controlled by or in connection with one or more organizations described in paragraph (1) or (2), and''. See Codification note above.

Subsec. (e). Pub. L. 109–280, §1221(a)(2), inserted at end ''Such term shall also include income from sources similar to those in the preceding sentence.'' See Codification note above.

Subsec. (f). Pub. L. 109–280, §1241(b), added subsec. (f). See Codification note above.

1978—Subsec. (e). Pub. L. 95–345 inserted provision relating to payments with respect to securities loans.

1975—Subsec. (a)(2)(B). Pub. L. 94–81 designated existing provisions as cl. (i) and added cl. (ii).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title XII, §1221(c), Aug. 17, 2006, 120 Stat. 1089, provided that: ''The amendments made by this section [amending this section and section 4940 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 17, 2006].''

Pub. L. 109–280, title XII, §1241(e), Aug. 17, 2006, 120 Stat. 1103, provided that:

''(1) IN GENERAL.—The amendments made by subsections (a) and (b) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 17, 2006].

''(2) CHARITABLE TRUSTS WHICH ARE TYPE III SUPPORTING ORGANIZATIONS.—Subsection (c) [enacting provisions set out as a note below] shall take effect—

''(A) in the case of trusts operated in connection with an organization described in paragraph (1) or (2) of section 509(a) of the Internal Revenue Code of 1986 on the date of the enactment of this Act, on the date that is one year after the date of the enactment of this Act, and

''(B) in the case of any other trust, on the date of the enactment of this Act.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 2(e) of Pub. L. 95–345, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [enacting section 1058 of this title and amending sections 509, 512, 514, 851, and 4940 of this title] apply with respect to—

''(1) amounts received after December 31, 1976, as payments with respect to securities loans (as defined in section 512(a)(5) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]), and

''(2) transfers of securities, under agreements described in section 1058 of such Code, occurring after such date.''

EFFECTIVE DATE OF 1975 AMENDMENT

Section 3(b) of Pub. L. 94–81 provided that: ''The amendment made by this section [amending this section] shall apply to unrelated business taxable income derived from trades and businesses which are acquired by the organization after June 30, 1975.''

EFFECTIVE DATE

Section effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as a note under section 4940 of this title.

SAVINGS PROVISION

Applicability of subsec. (a) of this section to testamentary trusts, see section 101(*l*)(7) of Pub. L. 91–172, set out as a note under section 4940 of this title.

CHARITABLE TRUSTS WHICH ARE TYPE III SUPPORTING ORGANIZATIONS

Pub. L. 109–280, title XII, § 1241(c), Aug. 17, 2006, 120 Stat. 1103, provided that: ''For purposes of section 509(a)(3)(B)(iii) of the Internal Revenue Code of 1986, an organization which is a trust shall not be considered to be operated in connection with any organization described in paragraph (1) or (2) of section 509(a) of such Code solely because—

''(1) it is a charitable trust under State law,

''(2) the supported organization (as defined in section 509(f)(3) of such Code) is a beneficiary of such trust, and

''(3) the supported organization (as so defined) has the power to enforce the trust and compel an accounting.''

PAYOUT REQUIREMENTS FOR TYPE III SUPPORTING ORGANIZATIONS

Pub. L. 109–280, title XII, § 1241(d), Aug. 17, 2006, 120 Stat. 1103, provided that:

''(1) IN GENERAL.—The Secretary of the Treasury shall promulgate new regulations under section 509 of the Internal Revenue Code of 1986 on payments required by type III supporting organizations which are not functionally integrated type III supporting organizations. Such regulations shall require such organizations to make distributions of a percentage of either income or assets to supported organizations (as defined in section 509(f)(3) of such Code) in order to ensure that a significant amount is paid to such organizations.

''(2) TYPE III SUPPORTING ORGANIZATION; FUNCTIONALLY INTEGRATED TYPE III SUPPORTING ORGANIZATION.—For purposes of paragraph (1), the terms 'type III supporting organization' and 'functionally integrated type III supporting organization' have the meanings given such terms under subparagraphs (A) and (B) section 4943(f)(5) of the Internal Revenue Code of 1986 (as added by this Act), respectively.''

PART III—TAXATION OF BUSINESS INCOME OF CERTAIN EXEMPT ORGANIZATIONS

Sec.
511. Imposition of tax on unrelated business income of charitable organizations, etc.[1]
512. Unrelated business taxable income.
513. Unrelated trade or business.
514. Unrelated debt-financed income.
515. Taxes of foreign countries and possessions of the United States.

AMENDMENTS

1969—Pub. L. 91–172, title I, §§ 101(a), 121(d)(3)(C), Dec. 30, 1969, 83 Stat. 492, 548, substituted ''PART III'' for ''PART II'' as part designation and substituted ''Unrelated debt-financed income'' for ''Business leases'' in item 514.

§ 511. Imposition of tax on unrelated business income of charitable, etc., organizations

(a) Charitable, etc., organizations taxable at corporation rates

(1) Imposition of tax

There is hereby imposed for each taxable year on the unrelated business taxable income (as defined in section 512) of every organization described in paragraph (2) a tax computed as provided in section 11. In making such computation for purposes of this section, the term ''taxable income'' as used in section 11 shall be read as ''unrelated business taxable income''.

(2) Organizations subject to tax

(A) Organizations described in sections 401(a) and 501(c)

The tax imposed by paragraph (1) shall apply in the case of any organization (other than a trust described in subsection (b) or an organization described in section 501(c)(1)) which is exempt, except as provided in this part or part II (relating to private foundations), from taxation under this subtitle by reason of section 501(a).

(B) State colleges and universities

The tax imposed by paragraph (1) shall apply in the case of any college or university which is an agency or instrumentality of any government or any political subdivision thereof, or which is owned or operated by a government or any political subdivision thereof, or by any agency or instrumentality of one or more governments or political subdivisions. Such tax shall also apply in the case of any corporation wholly owned by one or more such colleges or universities.

(b) Tax on charitable, etc., trusts

(1) Imposition of tax

There is hereby imposed for each taxable year on the unrelated business taxable income of every trust described in paragraph (2) a tax computed as provided in section 1(e). In making such computation for purposes of this section, the term ''taxable income'' as used in

[1] So in original. Does not conform to section catchline.

section 1 shall be read as ''unrelated business taxable income'' as defined in section 512.

(2) Charitable, etc., trusts subject to tax

The tax imposed by paragraph (1) shall apply in the case of any trust which is exempt, except as provided in this part or part II (relating to private foundations), from taxation under this subtitle by reason of section 501(a) and which, if it were not for such exemption, would be subject to subchapter J (sec. 641 and following, relating to estates, trusts, beneficiaries, and decedents).

(c) Special rule for section 501(c)(2) corporations

If a corporation described in section 501(c)(2)—

(1) pays any amount of its net income for a taxable year to an organization exempt from taxation under section 501(a) (or which would pay such an amount but for the fact that the expenses of collecting its income exceed its income), and

(2) such corporation and such organization file a consolidated return for the taxable year,

such corporation shall be treated, for purposes of the tax imposed by subsection (a), as being organized and operated for the same purposes as such organization, in addition to the purposes described in section 501(c)(2).

(Aug. 16, 1954, ch. 736, 68A Stat. 169; Pub. L. 86–667, §3, July 14, 1960, 74 Stat. 535; Pub. L. 89–352, §2, Feb. 2, 1966, 80 Stat. 4; Pub. L. 91–172, title I, §121(a)(1)–(3), title III, §301(b)(8), title VIII, §803(d)(2), Dec. 30, 1969, 83 Stat. 536, 585, 684; Pub. L. 95–30, title I, §101(d)(6), May 23, 1977, 91 Stat. 133; Pub. L. 95–600, title III, §301(b)(5), title IV, §421(e)(3), Nov. 6, 1978, 92 Stat. 2821, 2876; Pub. L. 97–248, title II, §201(d)(5), formerly §201(c)(5), Sept. 3, 1982, 96 Stat. 419, renumbered §201(d)(5), Pub. L. 97–448, title III, §306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 100–647, title I, §1007(g)(6), Nov. 10, 1988, 102 Stat. 3435.)

AMENDMENTS

1988—Subsec. (d). Pub. L. 100–647 struck out subsec. (d) which read as follows: ''TAX PREFERENCES.—

''(1) ORGANIZATIONS TAXABLE AT CORPORATE RATES.—If an organization is subject to tax on unrelated business taxable income pursuant to subsection (a), the tax imposed by section 56 shall apply to such organizations with respect to items of tax preference which enter into the computation of unrelated business taxable income in the same manner as section 56 applies to corporations.

''(2) ORGANIZATIONS TAXABLE AS TRUSTS.—If an organization is subject to tax on unrelated business taxable income pursuant to subsection (b), the taxes imposed by section 55 shall apply to such organization with respect to items of tax preference which enter into the computation of unrelated business taxable income.''

1982—Subsec. (d)(2). Pub. L. 97–248 substituted ''section 55'' for ''section 55 and section 56 (as the case may be)''.

1978—Subsec. (a)(1). Pub. L. 95–600, §301(b)(5)(A), substituted ''a tax'' for ''a normal tax and a surtax''.

Subsec. (a)(2). Pub. L. 95–600, §301(b)(5)(B), substituted ''tax'' for ''taxes'' wherever appearing.

Subsec. (d). Pub. L. 95–600, §421(e)(3), substituted provisions relating to organizations taxable at corporate rates and organizations taxable as trusts, for provisions relating to imposition of the tax imposed by section 56 of this title to an organization subject to tax under this section for tax preferences computed in unrelated business taxable income.

1977—Subsec. (b)(1). Pub. L. 95–30 substituted ''section 1(e)'' for ''section 1(d)''.

1969—Subsec. (a)(2)(A). Pub. L. 91–172, §121(a)(1), removed reference, in heading, to pars. (2), (3), (5), (6), (14)(B), (C), and (17) of section 501(c) of this title, and, in text, struck out exemptions to churches, conventions, or associations of churches, from the imposition of tax on their unrelated business income, made corporations organized under section 501(c)(1) of this title (i.e. organized under Acts of Congress), exempt from such tax, but made all such exemptions subservient to the exceptions in part II and section 501(a) of this title.

Subsec. (b)(1). Pub. L. 91–172, §803(d)(2), substituted section 1(d) for section 1 in reference to section under which the computation of the tax dealing with the imposition of tax on the unrelated business taxable income of trusts, is computed.

Subsec. (b)(2). Pub. L. 91–172, §121(a)(2), pluralized ''trust'' in heading and in text made the imposition of tax on the unrelated business income of exempt trusts subject to provisions of part II, and, for purposes of determining trusts exempt from taxation, substituted reference to section 501(a) for reference to ''section 501(c)(3) or (17) or section 401(a)''.

Subsec. (c). Pub. L. 91–172, §121(a)(3), added subsec. (c). Former subsec. (c), covering the effective date, was struck out.

Subsec. (d). Pub. L. 91–172, §301(b)(8), added subsec. (d).

1966—Subsec. (a)(2)(A). Pub. L. 89–352 inserted ''(14)(B) or (C),'' after ''(6),'' in heading and in text.

1960—Subsec. (a)(2). Pub. L. 86–667, §3(a), included organizations described in section 501(c)(17) within subpar. (A).

Subsec. (b). Pub. L. 86–667, §3(b), inserted a reference to section 501(c)(17).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

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

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 301(b)(5)(A), (B) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

Amendment by section 421(e)(3) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 421(g) of Pub. L. 95–600, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 121(g) of Pub. L. 91–172, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [amending this section and sections 48, 501, 502, 503, 512 to 514, 681, 801, 810, 1443, 1504, and 7605 of this title] (other than by subsections (b)(3) and (e) [enacting sections 277 and 6050 of this title]) shall apply to taxable years beginning after December 31, 1969. The amendments made by subsection (b)(3) [enacting section 277 of this title] shall apply to taxable years beginning after December 31, 1970. The

amendments made by subsection (e) [enacting section 6050 of this title] shall apply with respect to transfers of property after December 31, 1969. Where an organization makes a bargain purchase of property before October 9, 1969, which is subject to a mortgage which was placed on the property more than 5 years before the purchase, and the organization paid the seller a total amount no greater than the amount of the seller's cost (including attorneys' fees) directly related to the transfer of such property to the organization (but in any event no more than 10 percent of the value of the seller's equity in the property), the indebtedness secured by such mortgage shall not be treated, notwithstanding the amendments made by subsection (d)(1) [amending section 514 of this title], as acquisition indebtedness for purposes of section 514(c)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] during a period of 10 years following the date of the transaction.''

Amendment by section 301(b)(8) of Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 301(c) of Pub. L. 91–172, set out as a note under section 5 of this title.

Amendment by section 803(d)(2) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1970, see section 803(f) of Pub. L. 91–172, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 3 of Pub. L. 89–352 provided in part that: ''The amendment made by section 2 [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Feb. 2, 1966].''

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–667 applicable to taxable years beginning after Dec. 31, 1959, see section 6 of Pub. L. 86–667, set out as a note under section 501 of this title.

§ 512. Unrelated business taxable income

(a) Definition

For purposes of this title—

(1) General rule

Except as otherwise provided in this subsection, the term ''unrelated business taxable income'' means the gross income derived by any organization from any unrelated trade or business (as defined in section 513) regularly carried on by it, less the deductions allowed by this chapter which are directly connected with the carrying on of such trade or business, both computed with the modifications provided in subsection (b).

(2) Special rule for foreign organizations

In the case of an organization described in section 511 which is a foreign organization, the unrelated business taxable income shall be—

(A) its unrelated business taxable income which is derived from sources within the United States and which is not effectively connected with the conduct of a trade or business within the United States, plus

(B) its unrelated business taxable income which is effectively connected with the conduct of a trade or business within the United States.

(3) Special rules applicable to organizations described in paragraph (7), (9), (17), or (20) of section 501(c)

(A) General rule

In the case of an organization described in paragraph (7), (9), (17), or (20) of section 501(c), the term ''unrelated business taxable income'' means the gross income (excluding any exempt function income), less the deductions allowed by this chapter which are directly connected with the production of the gross income (excluding exempt function income), both computed with the modifications provided in paragraphs (6), (10), (11), and (12) of subsection (b). For purposes of the preceding sentence, the deductions provided by sections 243, 244, and 245 (relating to dividends received by corporations) shall be treated as not directly connected with the production of gross income.

(B) Exempt function income

For purposes of subparagraph (A), the term ''exempt function income'' means the gross income from dues, fees, charges, or similar amounts paid by members of the organization as consideration for providing such members or their dependents or guests goods, facilities, or services in furtherance of the purposes constituting the basis for the exemption of the organization to which such income is paid. Such term also means all income (other than an amount equal to the gross income derived from any unrelated trade or business regularly carried on by such organization computed as if the organization were subject to paragraph (1)), which is set aside—

(i) for a purpose specified in section 170(c)(4), or

(ii) in the case of an organization described in paragraph (9), (17), or (20) of section 501(c), to provide for the payment of life, sick, accident, or other benefits,

including reasonable costs of administration directly connected with a purpose described in clause (i) or (ii). If during the taxable year, an amount which is attributable to income so set aside is used for a purpose other than that described in clause (i) or (ii), such amount shall be included, under subparagraph (A), in unrelated business taxable income for the taxable year.

(C) Applicability to certain corporations described in section 501(c)(2)

In the case of a corporation described in section 501(c)(2), the income of which is payable to an organization described in paragraph (7), (9), (17), or (20) of section 501(c), subparagraph (A) shall apply as if such corporation were the organization to which the income is payable. For purposes of the preceding sentence, such corporation shall be treated as having exempt function income for a taxable year only if it files a consolidated return with such organization for such year.

(D) Nonrecognition of gain

If property used directly in the performance of the exempt function of an organization described in paragraph (7), (9), (17), or (20) of section 501(c) is sold by such organization, and within a period beginning 1 year before the date of such sale, and ending 3 years after such date, other property is purchased and used by such organization di-

rectly in the performance of its exempt function, gain (if any) from such sale shall be recognized only to the extent that such organization's sales price of the old property exceeds the organization's cost of purchasing the other property. For purposes of this subparagraph, the destruction in whole or in part, theft, seizure, requisition, or condemnation of property, shall be treated as the sale of such property, and rules similar to the rules provided by subsections (b), (c), (e), and (j) of section 1034 (as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997) shall apply.

(E) Limitation on amount of setaside in the case of organizations described in paragraph (9), (17), or (20) of section 501(c)

(i) In general

In the case of any organization described in paragraph (9), (17), or (20) of section 501(c), a set-aside for any purpose specified in clause (ii) of subparagraph (B) may be taken into account under subparagraph (B) only to the extent that such set-aside does not result in an amount of assets set aside for such purpose in excess of the account limit determined under section 419A (without regard to subsection (f)(6) thereof) for the taxable year (not taking into account any reserve described in section 419A(c)(2)(A) for post-retirement medical benefits).

(ii) Treatment of existing reserves for post-retirement medical or life insurance benefits

(I) Clause (i) shall not apply to any income attributable to an existing reserve for post-retirement medical or life insurance benefits.

(II) For purposes of subclause (I), the term ''reserve for post-retirement medical or life insurance benefits'' means the greater of the amount of assets set aside for purposes of post-retirement medical or life insurance benefits to be provided to covered employees as of the close of the last plan year ending before the date of the enactment of the Tax Reform Act of 1984 or on July 18, 1984.

(III) All payments during plan years ending on or after the date of the enactment of the Tax Reform Act of 1984 of post-retirement medical benefits or life insurance benefits shall be charged against the reserve referred to in subclause (II). Except to the extent provided in regulations prescribed by the Secretary, all plans of an employer shall be treated as 1 plan for purposes of the preceding sentence.

(iii) Treatment of tax exempt organizations

This subparagraph shall not apply to any organization if substantially all of the contributions to such organization are made by employers who were exempt from tax under this chapter throughout the 5-taxable year period ending with the taxable year in which the contributions are made.

(4) Special rule applicable to organizations described in section 501(c)(19)

In the case of an organization described in section 501(c)(19), the term ''unrelated business taxable income'' does not include any amount attributable to payments for life, sick, accident, or health insurance with respect to members of such organizations or their dependents which is set aside for the purpose of providing for the payment of insurance benefits or for a purpose specified in section 170(c)(4). If an amount set aside under the preceding sentence is used during the taxable year for a purpose other than a purpose described in the preceding sentence, such amount shall be included, under paragraph (1), in unrelated business taxable income for the taxable year.

(5) Definition of payments with respect to securities loans

(A) The term ''payments with respect to securities loans'' includes all amounts received in respect of a security (as defined in section 1236(c)) transferred by the owner to another person in a transaction to which section 1058 applies (whether or not title to the security remains in the name of the lender) including—

(i) amounts in respect of dividends, interest, or other distributions,

(ii) fees computed by reference to the period beginning with the transfer of securities by the owner and ending with the transfer of identical securities back to the transferor by the transferee and the fair market value of the security during such period,

(iii) income from collateral security for such loan, and

(iv) income from the investment of collateral security.

(B) Subparagraph (A) shall apply only with respect to securities transferred pursuant to an agreement between the transferor and the transferee which provides for—

(i) reasonable procedures to implement the obligation of the transferee to furnish to the transferor, for each business day during such period, collateral with a fair market value not less than the fair market value of the security at the close of business on the preceding business day,

(ii) termination of the loan by the transferor upon notice of not more than 5 business days, and

(iii) return to the transferor of securities identical to the transferred securities upon termination of the loan.

(b) Modifications

The modifications referred to in subsection (a) are the following:

(1) There shall be excluded all dividends, interest, payments with respect to securities loans (as defined in subsection (a)(5)), amounts received or accrued as consideration for entering into agreements to make loans, and annuities, and all deductions directly connected with such income.

(2) There shall be excluded all royalties (including overriding royalties) whether meas-

ured by production or by gross or taxable income from the property, and all deductions directly connected with such income.

(3) In the case of rents—

(A) Except as provided in subparagraph (B), there shall be excluded—

(i) all rents from real property (including property described in section 1245(a)(3)(C)), and

(ii) all rents from personal property (including for purposes of this paragraph as personal property any property described in section 1245(a)(3)(B)) leased with such real property, if the rents attributable to such personal property are an incidental amount of the total rents received or accrued under the lease, determined at the time the personal property is placed in service.

(B) Subparagraph (A) shall not apply—

(i) if more than 50 percent of the total rent received or accrued under the lease is attributable to personal property described in subparagraph (A)(ii), or

(ii) if the determination of the amount of such rent depends in whole or in part on the income or profits derived by any person from the property leased (other than an amount based on a fixed percentage or percentages of receipts or sales).

(C) There shall be excluded all deductions directly connected with rents excluded under subparagraph (A).

(4) Notwithstanding paragraph (1), (2), (3), or (5), in the case of debt-financed property (as defined in section 514) there shall be included, as an item of gross income derived from an unrelated trade or business, the amount ascertained under section 514(a)(1), and there shall be allowed, as a deduction, the amount ascertained under section 514(a)(2).

(5) There shall be excluded all gains or losses from the sale, exchange, or other disposition of property other than—

(A) stock in trade or other property of a kind which would properly be includible in inventory if on hand at the close of the taxable year, or

(B) property held primarily for sale to customers in the ordinary course of the trade or business.

There shall also be excluded all gains or losses recognized, in connection with the organization's investment activities, from the lapse or termination of options to buy or sell securities (as defined in section 1236(c)) or real property and all gains or losses from the forfeiture of good-faith deposits (that are consistent with established business practice) for the purchase, sale, or lease of real property in connection with the organization's investment activities. This paragraph shall not apply with respect to the cutting of timber which is considered, on the application of section 631, as a sale or exchange of such timber.

(6) The net operating loss deduction provided in section 172 shall be allowed, except that—

(A) the net operating loss for any taxable year, the amount of the net operating loss carryback or carryover to any taxable year, and the net operating loss deduction for any taxable year shall be determined under section 172 without taking into account any amount of income or deduction which is excluded under this part in computing the unrelated business taxable income; and

(B) the terms ''preceding taxable year'' and ''preceding taxable years'' as used in section 172 shall not include any taxable year for which the organization was not subject to the provisions of this part.

(7) There shall be excluded all income derived from research for (A) the United States, or any of its agencies or instrumentalities, or (B) any State or political subdivision thereof; and there shall be excluded all deductions directly connected with such income.

(8) In the case of a college, university, or hospital, there shall be excluded all income derived from research performed for any person, and all deductions directly connected with such income.

(9) In the case of an organization operated primarily for purposes of carrying on fundamental research the results of which are freely available to the general public, there shall be excluded all income derived from research performed for any person, and all deductions directly connected with such income.

(10) In the case of any organization described in section 511(a), the deduction allowed by section 170 (relating to charitable etc. contributions and gifts) shall be allowed (whether or not directly connected with the carrying on of the trade or business), but shall not exceed 10 percent of the unrelated business taxable income computed without the benefit of this paragraph.

(11) In the case of any trust described in section 511(b), the deduction allowed by section 170 (relating to charitable etc. contributions and gifts) shall be allowed (whether or not directly connected with the carrying on of the trade or business), and for such purpose a distribution made by the trust to a beneficiary described in section 170 shall be considered as a gift or contribution. The deduction allowed by this paragraph shall be allowed with the limitations prescribed in section 170(b)(1)(A) and (B) determined with reference to the unrelated business taxable income computed without the benefit of this paragraph (in lieu of with reference to adjusted gross income).

(12) Except for purposes of computing the net operating loss under section 172 and paragraph (6), there shall be allowed a specific deduction of $1,000. In the case of a diocese, province of a religious order, or a convention or association of churches, there shall also be allowed, with respect to each parish, individual church, district, or other local unit, a specific deduction equal to the lower of—

(A) $1,000, or

(B) the gross income derived from any unrelated trade or business regularly carried on by such local unit.

(13) SPECIAL RULES FOR CERTAIN AMOUNTS RECEIVED FROM CONTROLLED ENTITIES.—

(A) IN GENERAL.—If an organization (in this paragraph referred to as the ''control-

ling organization'') receives or accrues (directly or indirectly) a specified payment from another entity which it controls (in this paragraph referred to as the ''controlled entity''), notwithstanding paragraphs (1), (2), and (3), the controlling organization shall include such payment as an item of gross income derived from an unrelated trade or business to the extent such payment reduces the net unrelated income of the controlled entity (or increases any net unrelated loss of the controlled entity). There shall be allowed all deductions of the controlling organization directly connected with amounts treated as derived from an unrelated trade or business under the preceding sentence.

(B) NET UNRELATED INCOME OR LOSS.—For purposes of this paragraph—

(i) NET UNRELATED INCOME.—The term ''net unrelated income'' means—

(I) in the case of a controlled entity which is not exempt from tax under section 501(a), the portion of such entity's taxable income which would be unrelated business taxable income if such entity were exempt from tax under section 501(a) and had the same exempt purposes as the controlling organization, or

(II) in the case of a controlled entity which is exempt from tax under section 501(a), the amount of the unrelated business taxable income of the controlled entity.

(ii) NET UNRELATED LOSS.—The term ''net unrelated loss'' means the net operating loss adjusted under rules similar to the rules of clause (i).

(C) SPECIFIED PAYMENT.—For purposes of this paragraph, the term ''specified payment'' means any interest, annuity, royalty, or rent.

(D) DEFINITION OF CONTROL.—For purposes of this paragraph—

(i) CONTROL.—The term ''control'' means—

(I) in the case of a corporation, ownership (by vote or value) of more than 50 percent of the stock in such corporation,

(II) in the case of a partnership, ownership of more than 50 percent of the profits interests or capital interests in such partnership, or

(III) in any other case, ownership of more than 50 percent of the beneficial interests in the entity.

(ii) CONSTRUCTIVE OWNERSHIP.—Section 318 (relating to constructive ownership of stock) shall apply for purposes of determining ownership of stock in a corporation. Similar principles shall apply for purposes of determining ownership of interests in any other entity.

(E) PARAGRAPH TO APPLY ONLY TO CERTAIN EXCESS PAYMENTS.—

(i) IN GENERAL.—Subparagraph (A) shall apply only to the portion of a qualifying specified payment received or accrued by the controlling organization that exceeds the amount which would have been paid or accrued if such payment met the requirements prescribed under section 482.

(ii) ADDITION TO TAX FOR VALUATION MISSTATEMENTS.—The tax imposed by this chapter on the controlling organization shall be increased by an amount equal to 20 percent of the larger of—

(I) such excess determined without regard to any amendment or supplement to a return of tax, or

(II) such excess determined with regard to all such amendments and supplements.

(iii) QUALIFYING SPECIFIED PAYMENT.—The term ''qualifying specified payment'' means a specified payment which is made pursuant to—

(I) a binding written contract in effect on the date of the enactment of this subparagraph, or

(II) a contract which is a renewal, under substantially similar terms, of a contract described in subclause (I).

(iv) TERMINATION.—This subparagraph shall not apply to payments received or accrued after December 31, 2011.

(F) RELATED PERSONS.—The Secretary shall prescribe such rules as may be necessary or appropriate to prevent avoidance of the purposes of this paragraph through the use of related persons.

[(14) Repealed. Pub. L. 101–508, title XI, § 11801(a)(23), Nov. 5, 1990, 104 Stat. 1388–521.]

(15) Except as provided in paragraph (4), in the case of a trade or business—

(A) which consists of providing services under license issued by a Federal regulatory agency,

(B) which is carried on by a religious order or by an educational organization described in section 170(b)(1)(A)(ii) maintained by such religious order, and which was so carried on before May 27, 1959, and

(C) less than 10 percent of the net income of which for each taxable year is used for activities which are not related to the purpose constituting the basis for the religious order's exemption,

there shall be excluded all gross income derived from such trade or business and all deductions directly connected with the carrying on of such trade or business, so long as it is established to the satisfaction of the Secretary that the rates or other charges for such services are competitive with rates or other charges charged for similar services by persons not exempt from taxation.

(16)(A) Notwithstanding paragraph (5)(B), there shall be excluded all gains or losses from the sale, exchange, or other disposition of any real property described in subparagraph (B) if—

(i) such property was acquired by the organization from—

(I) a financial institution described in section 581 or 591(a) which is in conservatorship or receivership, or

(II) the conservator or receiver of such an institution (or any government agency

or corporation succeeding to the rights or interests of the conservator or receiver),

(ii) such property is designated by the organization within the 9-month period beginning on the date of its acquisition as property held for sale, except that not more than one-half (by value determined as of such date) of property acquired in a single transaction may be so designated,

(iii) such sale, exchange, or disposition occurs before the later of—

(I) the date which is 30 months after the date of the acquisition of such property, or

(II) the date specified by the Secretary in order to assure an orderly disposition of property held by persons described in subparagraph (A), and

(iv) while such property was held by the organization, the aggregate expenditures on improvements and development activities included in the basis of the property are (or were) not in excess of 20 percent of the net selling price of such property.

(B) Property is described in this subparagraph if it is real property which—

(i) was held by the financial institution at the time it entered into conservatorship or receivership, or

(ii) was foreclosure property (as defined in section 514(c)(9)(H)(v)) which secured indebtedness held by the financial institution at such time.

For purposes of this subparagraph, real property includes an interest in a mortgage.

(17) TREATMENT OF CERTAIN AMOUNTS DERIVED FROM FOREIGN CORPORATIONS.—

(A) IN GENERAL.—Notwithstanding paragraph (1), any amount included in gross income under section 951(a)(1)(A) shall be included as an item of gross income derived from an unrelated trade or business to the extent the amount so included is attributable to insurance income (as defined in section 953) which, if derived directly by the organization, would be treated as gross income from an unrelated trade or business. There shall be allowed all deductions directly connected with amounts included in gross income under the preceding sentence.

(B) EXCEPTION.—

(i) IN GENERAL.—Subparagraph (A) shall not apply to income attributable to a policy of insurance or reinsurance with respect to which the person (directly or indirectly) insured is—

(I) such organization,

(II) an affiliate of such organization which is exempt from tax under section 501(a), or

(III) a director or officer of, or an individual who (directly or indirectly) performs services for, such organization or affiliate but only if the insurance covers primarily risks associated with the performance of services in connection with such organization or affiliate.

(ii) AFFILIATE.—For purposes of this subparagraph—

(I) IN GENERAL.—The determination as to whether an entity is an affiliate of an organization shall be made under rules similar to the rules of section 168(h)(4)(B).

(II) SPECIAL RULE.—Two or more organizations (and any affiliates of such organizations) shall be treated as affiliates if such organizations are colleges or universities described in section 170(b)(1)(A)(ii) or organizations described in section 170(b)(1)(A)(iii) and participate in an insurance arrangement that provides for any profits from such arrangement to be returned to the policyholders in their capacity as such.

(C) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations for the application of this paragraph in the case of income paid through 1 or more entities or between 2 or more chains of entities.

(18) TREATMENT OF MUTUAL OR COOPERATIVE ELECTRIC COMPANIES.—In the case of a mutual or cooperative electric company described in section 501(c)(12), there shall be excluded income which is treated as member income under subparagraph (H) thereof.

(19) TREATMENT OF GAIN OR LOSS ON SALE OR EXCHANGE OF CERTAIN BROWNFIELD SITES.—

(A) IN GENERAL.—Notwithstanding paragraph (5)(B), there shall be excluded any gain or loss from the qualified sale, exchange, or other disposition of any qualifying brownfield property by an eligible taxpayer.

(B) ELIGIBLE TAXPAYER.—For purposes of this paragraph—

(i) IN GENERAL.—The term ''eligible taxpayer'' means, with respect to a property, any organization exempt from tax under section 501(a) which—

(I) acquires from an unrelated person a qualifying brownfield property, and

(II) pays or incurs eligible remediation expenditures with respect to such property in an amount which exceeds the greater of $550,000 or 12 percent of the fair market value of the property at the time such property was acquired by the eligible taxpayer, determined as if there was not a presence of a hazardous substance, pollutant, or contaminant on the property which is complicating the expansion, redevelopment, or reuse of the property.

(ii) EXCEPTION.—Such term shall not include any organization which is—

(I) potentially liable under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 with respect to the qualifying brownfield property,

(II) affiliated with any other person which is so potentially liable through any direct or indirect familial relationship or any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship which is created by the instru-

ments by which title to any qualifying brownfield property is conveyed or financed or by a contract of sale of goods or services), or

(III) the result of a reorganization of a business entity which was so potentially liable.

(C) QUALIFYING BROWNFIELD PROPERTY.—For purposes of this paragraph—

(i) IN GENERAL.—The term ''qualifying brownfield property'' means any real property which is certified, before the taxpayer incurs any eligible remediation expenditures (other than to obtain a Phase I environmental site assessment), by an appropriate State agency (within the meaning of section 198(c)(4)) in the State in which such property is located as a brownfield site within the meaning of section 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as in effect on the date of the enactment of this paragraph).

(ii) REQUEST FOR CERTIFICATION.—Any request by an eligible taxpayer for a certification described in clause (i) shall include a sworn statement by the eligible taxpayer and supporting documentation of the presence of a hazardous substance, pollutant, or contaminant on the property which is complicating the expansion, redevelopment, or reuse of the property given the property's reasonably anticipated future land uses or capacity for uses of the property (including a Phase I environmental site assessment and, if applicable, evidence of the property's presence on a local, State, or Federal list of brownfields or contaminated property) and other environmental assessments prepared or obtained by the taxpayer.

(D) QUALIFIED SALE, EXCHANGE, OR OTHER DISPOSITION.—For purposes of this paragraph—

(i) IN GENERAL.—A sale, exchange, or other disposition of property shall be considered as qualified if—

(I) such property is transferred by the eligible taxpayer to an unrelated person, and

(II) within 1 year of such transfer the eligible taxpayer has received a certification from the Environmental Protection Agency or an appropriate State agency (within the meaning of section 198(c)(4)) in the State in which such property is located that, as a result of the eligible taxpayer's remediation actions, such property would not be treated as a qualifying brownfield property in the hands of the transferee.

For purposes of subclause (II), before issuing such certification, the Environmental Protection Agency or appropriate State agency shall respond to comments received pursuant to clause (ii)(V) in the same form and manner as required under section 117(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as in effect on the date of the enactment of this paragraph).

(ii) REQUEST FOR CERTIFICATION.—Any request by an eligible taxpayer for a certification described in clause (i) shall be made not later than the date of the transfer and shall include a sworn statement by the eligible taxpayer certifying the following:

(I) Remedial actions which comply with all applicable or relevant and appropriate requirements (consistent with section 121(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980) have been substantially completed, such that there are no hazardous substances, pollutants, or contaminants which complicate the expansion, redevelopment, or reuse of the property given the property's reasonably anticipated future land uses or capacity for uses of the property.

(II) The reasonably anticipated future land uses or capacity for uses of the property are more economically productive or environmentally beneficial than the uses of the property in existence on the date of the certification described in subparagraph (C)(i). For purposes of the preceding sentence, use of property as a landfill or other hazardous waste facility shall not be considered more economically productive or environmentally beneficial.

(III) A remediation plan has been implemented to bring the property into compliance with all applicable local, State, and Federal environmental laws, regulations, and standards and to ensure that the remediation protects human health and the environment.

(IV) The remediation plan described in subclause (III), including any physical improvements required to remediate the property, is either complete or substantially complete, and, if substantially complete, sufficient monitoring, funding, institutional controls, and financial assurances have been put in place to ensure the complete remediation of the property in accordance with the remediation plan as soon as is reasonably practicable after the sale, exchange, or other disposition of such property.

(V) Public notice and the opportunity for comment on the request for certification was completed before the date of such request. Such notice and opportunity for comment shall be in the same form and manner as required for public participation required under section 117(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as in effect on the date of the enactment of this paragraph). For purposes of this subclause, public notice shall include, at a minimum, publication in a major local newspaper of general circulation.

(iii) ATTACHMENT TO TAX RETURNS.—A copy of each of the requests for certification described in clause (ii) of subparagraph (C) and this subparagraph shall be included in the tax return of the eligible

taxpayer (and, where applicable, of the qualifying partnership) for the taxable year during which the transfer occurs.

(iv) SUBSTANTIAL COMPLETION.—For purposes of this subparagraph, a remedial action is substantially complete when any necessary physical construction is complete, all immediate threats have been eliminated, and all long-term threats are under control.

(E) ELIGIBLE REMEDIATION EXPENDITURES.—For purposes of this paragraph—

(i) IN GENERAL.—The term ''eligible remediation expenditures'' means, with respect to any qualifying brownfield property, any amount paid or incurred by the eligible taxpayer to an unrelated third person to obtain a Phase I environmental site assessment of the property, and any amount so paid or incurred after the date of the certification described in subparagraph (C)(i) for goods and services necessary to obtain a certification described in subparagraph (D)(i) with respect to such property, including expenditures—

(I) to manage, remove, control, contain, abate, or otherwise remediate a hazardous substance, pollutant, or contaminant on the property,

(II) to obtain a Phase II environmental site assessment of the property, including any expenditure to monitor, sample, study, assess, or otherwise evaluate the release, threat of release, or presence of a hazardous substance, pollutant, or contaminant on the property,

(III) to obtain environmental regulatory certifications and approvals required to manage the remediation and monitoring of the hazardous substance, pollutant, or contaminant on the property, and

(IV) regardless of whether it is necessary to obtain a certification described in subparagraph (D)(i)(II), to obtain remediation cost-cap or stop-loss coverage, re-opener or regulatory action coverage, or similar coverage under environmental insurance policies, or financial guarantees required to manage such remediation and monitoring.

(ii) EXCEPTIONS.—Such term shall not include—

(I) any portion of the purchase price paid or incurred by the eligible taxpayer to acquire the qualifying brownfield property,

(II) environmental insurance costs paid or incurred to obtain legal defense coverage, owner/operator liability coverage, lender liability coverage, professional liability coverage, or similar types of coverage,

(III) any amount paid or incurred to the extent such amount is reimbursed, funded, or otherwise subsidized by grants provided by the United States, a State, or a political subdivision of a State for use in connection with the property, proceeds of an issue of State or local government obligations used to provide financing for the property the interest of which is exempt from tax under section 103, or subsidized financing provided (directly or indirectly) under a Federal, State, or local program provided in connection with the property, or

(IV) any expenditure paid or incurred before the date of the enactment of this paragraph.

For purposes of subclause (III), the Secretary may issue guidance regarding the treatment of government-provided funds for purposes of determining eligible remediation expenditures.

(F) DETERMINATION OF GAIN OR LOSS.—For purposes of this paragraph, the determination of gain or loss shall not include an amount treated as gain which is ordinary income with respect to section 1245 or section 1250 property, including amounts deducted as section 198 expenses which are subject to the recapture rules of section 198(e), if the taxpayer had deducted such amounts in the computation of its unrelated business taxable income.

(G) SPECIAL RULES FOR PARTNERSHIPS.—

(i) IN GENERAL.—In the case of an eligible taxpayer which is a partner of a qualifying partnership which acquires, remediates, and sells, exchanges, or otherwise disposes of a qualifying brownfield property, this paragraph shall apply to the eligible taxpayer's distributive share of the qualifying partnership's gain or loss from the sale, exchange, or other disposition of such property.

(ii) QUALIFYING PARTNERSHIP.—The term ''qualifying partnership'' means a partnership which—

(I) has a partnership agreement which satisfies the requirements of section 514(c)(9)(B)(vi) at all times beginning on the date of the first certification received by the partnership under subparagraph (C)(i),

(II) satisfies the requirements of subparagraphs (B)(i), (C), (D), and (E), if ''qualified partnership'' is substituted for ''eligible taxpayer'' each place it appears therein (except subparagraph (D)(iii)), and

(III) is not an organization which would be prevented from constituting an eligible taxpayer by reason of subparagraph (B)(ii).

(iii) REQUIREMENT THAT TAX-EXEMPT PARTNER BE A PARTNER SINCE FIRST CERTIFICATION.—This paragraph shall apply with respect to any eligible taxpayer which is a partner of a partnership which acquires, remediates, and sells, exchanges, or otherwise disposes of a qualifying brownfield property only if such eligible taxpayer was a partner of the qualifying partnership at all times beginning on the date of the first certification received by the partnership under subparagraph (C)(i) and ending on the date of the sale, exchange, or other disposition of the property by the partnership.

(iv) REGULATIONS.—The Secretary shall prescribe such regulations as are necessary to prevent abuse of the requirements of this subparagraph, including abuse through—

(I) the use of special allocations of gains or losses, or

(II) changes in ownership of partnership interests held by eligible taxpayers.

(H) SPECIAL RULES FOR MULTIPLE PROPERTIES.—

(i) IN GENERAL.—An eligible taxpayer or a qualifying partnership of which the eligible taxpayer is a partner may make a 1-time election to apply this paragraph to more than 1 qualifying brownfield property by averaging the eligible remediation expenditures for all such properties acquired during the election period. If the eligible taxpayer or qualifying partnership makes such an election, the election shall apply to all qualified sales, exchanges, or other dispositions of qualifying brownfield properties the acquisition and transfer of which occur during the period for which the election remains in effect.

(ii) ELECTION.—An election under clause (i) shall be made with the eligible taxpayer's or qualifying partnership's timely filed tax return (including extensions) for the first taxable year for which the taxpayer or qualifying partnership intends to have the election apply. An election under clause (i) is effective for the period—

(I) beginning on the date which is the first day of the taxable year of the return in which the election is included or a later day in such taxable year selected by the eligible taxpayer or qualifying partnership, and

(II) ending on the date which is the earliest of a date of revocation selected by the eligible taxpayer or qualifying partnership, the date which is 8 years after the date described in subclause (I), or, in the case of an election by a qualifying partnership of which the eligible taxpayer is a partner, the date of the termination of the qualifying partnership.

(iii) REVOCATION.—An eligible taxpayer or qualifying partnership may revoke an election under clause (i)(II)[1] by filing a statement of revocation with a timely filed tax return (including extensions). A revocation is effective as of the first day of the taxable year of the return in which the revocation is included or a later day in such taxable year selected by the eligible taxpayer or qualifying partnership. Once an eligible taxpayer or qualifying partnership revokes the election, the eligible taxpayer or qualifying partnership is ineligible to make another election under clause (i) with respect to any qualifying brownfield property subject to the revoked election.

(I) RECAPTURE.—If an eligible taxpayer excludes gain or loss from a sale, exchange, or other disposition of property to which an election under subparagraph (H) applies, and such property fails to satisfy the requirements of this paragraph, the unrelated business taxable income of the eligible taxpayer for the taxable year in which such failure occurs shall be determined by including any previously excluded gain or loss from such sale, exchange, or other disposition allocable to such taxpayer, and interest shall be determined at the overpayment rate established under section 6621 on any resulting tax for the period beginning with the due date of the return for the taxable year during which such sale, exchange, or other disposition occurred, and ending on the date of payment of the tax.

(J) RELATED PERSONS.—For purposes of this paragraph, a person shall be treated as related to another person if—

(i) such person bears a relationship to such other person described in section 267(b) (determined without regard to paragraph (9) thereof), or section 707(b)(1), determined by substituting ''25 percent'' for ''50 percent'' each place it appears therein, and

(ii) in the case such other person is a nonprofit organization, if such person controls directly or indirectly more than 25 percent of the governing body of such organization.

(K) TERMINATION.—Except for purposes of determining the average eligible remediation expenditures for properties acquired during the election period under subparagraph (H), this paragraph shall not apply to any property acquired by the eligible taxpayer or qualifying partnership after December 31, 2009.

(c) Special rules for partnerships

(1) In general

If a trade or business regularly carried on by a partnership of which an organization is a member is an unrelated trade or business with respect to such organization, such organization in computing its unrelated business taxable income shall, subject to the exceptions, additions, and limitations contained in subsection (b), include its share (whether or not distributed) of the gross income of the partnership from such unrelated trade or business and its share of the partnership deductions directly connected with such gross income.

(2) Special rule where partnership year is different from organization's year

If the taxable year of the organization is different from that of the partnership, the amounts to be included or deducted in computing the unrelated business taxable income under paragraph (1) shall be based upon the income and deductions of the partnership for any taxable year of the partnership ending within or with the taxable year of the organization.

(d) Treatment of dues of agricultural or horticultural organizations

(1) In general

If—

[1] So in original.

(A) an agricultural or horticultural organization described in section 501(c)(5) requires annual dues to be paid in order to be a member of such organization, and

(B) the amount of such required annual dues does not exceed $100,

in no event shall any portion of such dues be treated as derived by such organization from an unrelated trade or business by reason of any benefits or privileges to which members of such organization are entitled.

(2) Indexation of $100 amount

In the case of any taxable year beginning in a calendar year after 1995, the $100 amount in paragraph (1) shall be increased by an amount equal to—

(A) $100, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting ''calendar year 1994'' for ''calendar year 1992'' in subparagraph (B) thereof.

(3) Dues

For purposes of this subsection, the term ''dues'' means any payment (whether or not designated as dues) which is required to be made in order to be recognized by the organization as a member of the organization.

(e) Special rules applicable to S corporations

(1) In general

If an organization described in section 1361(c)(2)(A)(vi) or 1361(c)(6) holds stock in an S corporation—

(A) such interest shall be treated as an interest in an unrelated trade or business, and

(B) notwithstanding any other provision of this part—

(i) all items of income, loss, or deduction taken into account under section 1366(a), and

(ii) any gain or loss on the disposition of the stock in the S corporation,

shall be taken into account in computing the unrelated business taxable income of such organization.

(2) Basis reduction

Except as provided in regulations, for purposes of paragraph (1), the basis of any stock acquired by purchase (as defined in section 1361(e)(1)(C)) shall be reduced by the amount of any dividends received by the organization with respect to the stock.

(3) Exception for ESOPs

This subsection shall not apply to employer securities (within the meaning of section 409(*l*)) held by an employee stock ownership plan described in section 4975(e)(7).

(Aug. 16, 1954, ch. 736, 68A Stat. 170; Pub. L. 85–367, §1(a), Apr. 7, 1958, 72 Stat. 80; Pub. L. 88–380, §1, July 17, 1964, 78 Stat. 333; Pub. L. 89–809, title I, §104(g), Nov. 13, 1966, 80 Stat. 1559; Pub. L. 91–172, title I, §121(b)(1), (2), Dec. 30, 1969, 83 Stat. 537, 538; Pub. L. 92–418, §1(b), Aug. 29, 1972, 86 Stat. 656; Pub. L. 94–396, §1(a), Sept. 3, 1976, 90 Stat. 1201; Pub. L. 94–455, title XIX, §§1901(b)(8)(F), 1906(b)(13)(A), 1951(b)(8)(A), Oct. 4, 1976, 90 Stat. 1794, 1834, 1839; Pub. L. 94–568, §1(b), Oct. 20, 1976, 90 Stat. 2697; Pub. L. 95–345, §2(a)(2), (b), Aug. 15, 1978, 92 Stat. 481; Pub. L. 97–448, title I, §102(m)(3), Jan. 12, 1983, 96 Stat. 2374; Pub. L. 98–369, div. A, title V, §511(b), July 18, 1984, 98 Stat. 860; Pub. L. 99–514, title XVIII, §1851(a)(10), Oct. 22, 1986, 100 Stat. 2861; Pub. L. 100–203, title X, §10213(a), Dec. 22, 1987, 101 Stat. 1330–406; Pub. L. 100–647, title I, §1018(t)(2)(B), Nov. 10, 1988, 102 Stat. 3587; Pub. L. 101–508, title XI, §11801(a)(23), Nov. 5, 1990, 104 Stat. 1388–521; Pub. L. 103–66, title XIII, §§13145(a), 13147(a), 13148(a), (b), Aug. 10, 1993, 107 Stat. 443, 444; Pub. L. 104–188, title I, §§1115(a), 1316(c), 1603(a), Aug. 20, 1996, 110 Stat. 1761, 1786, 1835; Pub. L. 105–34, title III, §312(d)(5), title X, §1041(a), title XV, §1523(a), title XVI, §1601(c)(4)(A), (D), Aug. 5, 1997, 111 Stat. 840, 938, 1070, 1087; Pub. L. 105–206, title VI, §§6010(j)(1), (2), 6023(8), July 22, 1998, 112 Stat. 815, 825; Pub. L. 108–357, title II, §233(d), title III, §319(c), title VII, §702(a), Oct. 22, 2004, 118 Stat. 1434, 1472, 1540; Pub. L. 109–135, title IV, §412(dd), (ee)(1), Dec. 21, 2005, 119 Stat. 2639; Pub. L. 109–280, title XII, §1205(a), Aug. 17, 2006, 120 Stat. 1066; Pub. L. 110–343, div. C, title III, §306(a), Oct. 3, 2008, 122 Stat. 3868; Pub. L. 111–312, title VII, §747(a), Dec. 17, 2010, 124 Stat. 3320.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

REFERENCES IN TEXT

The date of the enactment of the Taxpayer Relief Act of 1997, referred to in subsec. (a)(3)(D), is the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

The date of the enactment of the Tax Reform Act of 1984, referred to in subsec. (a)(3)(E)(ii)(II), (III), is the date of enactment of division A of Pub. L. 98–369, which was approved July 18, 1984.

The date of the enactment of this subparagraph, referred to in subsec. (b)(13)(E)(iii)(I), is the date of enactment of Pub. L. 109–280, which was approved Aug. 17, 2006.

Sections 101(39), 107, 117(a), (b), and 121(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in subsec. (b)(19)(B)(ii)(I), (C)(i), (D)(i), (ii)(I), (V), are classified to sections 9601(39), 9607, 9617(a), (b), and 9621(d), respectively, of Title 42, The Public Health and Welfare.

The date of the enactment of this paragraph, referred to in subsec. (b)(19)(C)(i), (D)(i), (ii)(V), (E)(ii)(IV), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

AMENDMENTS

2010—Subsec. (b)(13)(E)(iv). Pub. L. 111–312 substituted ''December 31, 2011'' for ''December 31, 2009''.

2008—Subsec. (b)(13)(E)(iv). Pub. L. 110–343 substituted ''December 31, 2009'' for ''December 31, 2007''.

2006—Subsec. (b)(13)(E), (F). Pub. L. 109–280, which directed the amendment of section 512(b)(13) by adding subpar. (E) and redesignating former subpar. (E) as (F), without specifying the act to be amended, was executed by making the amendments to this section, which is section 512 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

2005—Subsec. (b)(1). Pub. L. 109–135, §412(dd), substituted ''subsection (a)(5)'' for ''section 512(a)(5)''.

Subsec. (b)(18), (19). Pub. L. 109–135, §412(ee)(1), redesignated par. (18), relating to treatment of gain or loss on sale or exchange of certain brownfield sites, as (19).

2004—Subsec. (b)(18). Pub. L. 108–357, §702(a), added par. (18) relating to treatment of gain or loss on sale or exchange of certain brownfield sites.

Pub. L. 108–357, §319(c), added par. (18) relating to treatment of mutual or cooperative electric companies.

Subsec. (e)(1). Pub. L. 108–357, §233(d), inserted ''1361(c)(2)(A)(vi) or'' before ''1361(c)(6)'' in introductory provisions.

1998—Subsec. (b)(13)(A). Pub. L. 105–206, §6010(j)(1), inserted ''or accrues'' after ''receives'' in first sentence.

Subsec. (b)(13)(B)(i)(I). Pub. L. 105–206, §6010(j)(2), struck out ''(as defined in section 513A(a)(5)(A))'' after ''exempt purposes''.

Subsec. (b)(17)(B)(ii)(II). Pub. L. 105–206, §6023(8), substituted ''rule'' for ''Rule'' in subcl. heading.

1997—Subsec. (a)(3)(D). Pub. L. 105–34, §312(d)(5), inserted ''(as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997)'' after ''1034''.

Subsec. (b)(13). Pub. L. 105–34, §1041(a), amended par. (13) generally. Prior to amendment, par. (13) related to inclusion in gross income of controlling organization of amounts of interest, annuities, royalties, and rents derived from a controlled organization.

Subsec. (e)(1). Pub. L. 105–34, §1601(c)(4)(D), substituted ''section 1361(c)(6)'' for ''section 1361(c)(7)''.

Subsec. (e)(2). Pub. L. 105–34, §1601(c)(4)(A), substituted ''as defined in section 1361(e)(1)(C)'' for ''within the meaning of section 1012''.

Subsec. (e)(3). Pub. L. 105–34, §1523(a), added par. (3).

1996—Subsec. (b)(17). Pub. L. 104–188, §1603(a), added par. (17).

Subsec. (d). Pub. L. 104–188, §1115(a), added subsec. (d).

Subsec. (e). Pub. L. 104–188, §1316(c), added subsec. (e).

1993—Subsec. (b)(1). Pub. L. 103–66, §13148(a), inserted ''amounts received or accrued as consideration for entering into agreements to make loans,'' before ''and annuities''.

Subsec. (b)(5). Pub. L. 103–66, §13148(b), in second sentence, substituted ''all gains or losses recognized, in connection with the organization's investment activities, from'' for ''all gains on'', struck out '', written by the organization in connection with its investment activities,'' after ''termination of options'', and inserted before period at end ''or real property and all gains or losses from the forfeiture of good-faith deposits (that are consistent with established business practice) for the purchase, sale, or lease of real property in connection with the organization's investment activities''.

Subsec. (b)(16). Pub. L. 103–66, §13147(a), added par. (16).

Subsec. (c)(2), (3). Pub. L. 103–66, §13145(a), redesignated par. (3) as (2), substituted ''paragraph (1)'' for ''paragraph (1) or (2)'', and struck out heading and text of former par. (2). Text read as follows: ''Notwithstanding any other provision of this section—

''(A) any organization's share (whether or not distributed) of the gross income of a publicly traded partnership (as defined in section 469(k)(2)) shall be treated as gross income derived from an unrelated trade or business, and

''(B) such organization's share of the partnership deductions shall be allowed in computing unrelated business taxable income.''

1990—Subsec. (b)(14). Pub. L. 101–508 struck out par. (14) which read as follows: ''Except as provided in paragraph (4), in the case of a church, or convention or association of churches, for taxable years beginning before January 1, 1976, there shall be excluded all gross income derived from a trade or business and all deductions directly connected with the carrying on of such trade or business if such trade or business was carried on by such organization or its predecessor before May 27, 1969.''

1988—Subsec. (a)(3)(E)(ii)(II). Pub. L. 100–647 substituted ''subclause (I)'' for ''subclause (II)'' and a period for comma at end.

1987—Subsec. (c). Pub. L. 100–203 substituted ''for partnerships'' for ''applicable to partnerships'' in heading and amended text generally. Prior to amendment, text read as follows: ''If a trade or business regularly carried on by a partnership of which an organization is a member is an unrelated trade or business with respect to such organization, such organization in computing its unrelated business taxable income shall, subject to the exceptions, additions, and limitations contained in subsection (b), include its share (whether or not distributed) of the gross income of the partnership from such unrelated trade or business and its share of the partnership deductions directly connected with such gross income. If the taxable year of the organization is different from that of the partnership, the amounts to be so included or deducted in computing the unrelated business taxable income shall be based upon the income and deductions of the partnership for any taxable year of the partnership ending within or with the taxable year of the organization.''

1986—Subsec. (a)(3)(E)(i). Pub. L. 99–514, §1851(a)(10)(A), substituted ''determined under section 419A (without regard to subsection (f)(6) thereof)'' for ''determined under section 419A(c)''.

Subsec. (a)(3)(E)(ii). Pub. L. 99–514, §1851(a)(10)(B), (C), redesignated cl. (iii) as (ii), in subcl. I substituted ''an existing reserve'' for ''a existing reserve'', and substituted new subcl. (II) for former subcl. (II) which read as follows: ''For purposes of subclause (I), the term 'existing reserve or post-retirement medical or life insurance benefit' means the amount of assets set aside as of the close of the last plan year ending before the date of the enactment of the Tax Reform Act of 1984 for purposes of post-retirement medical benefits or life insurance benefits to be provided to covered employees.'' Former cl. (ii), which provided that no set aside for assets used in the provision of benefits described in cl. (ii) of subpar. (B), could be taken into account, was struck out.

Subsec. (a)(3)(E)(iii), (iv). Pub. L. 99–514, §1851(a)(10)(B), (D), redesignated former cl. (iv) as (iii) and substituted ''subparagraph shall not'' for ''paragraph shall not''. Former cl. (iii) redesignated (ii).

1984—Subsec. (a)(3). Pub. L. 98–369, §511(b)(1)(A), substituted ''paragraph (7), (9), (17), or (20) of section 501(c)'' for ''section 501(c)(7) or (9)'' wherever appearing in heading and in text.

Subsec. (a)(3)(B)(ii). Pub. L. 98–369, §511(b)(1)(B), substituted ''paragraph (9), (17), or (20) of section 501(c)'' for ''section 501(c)(9)''.

Subsec. (a)(3)(C), (D). Pub. L. 98–369, §511(b)(1)(A), substituted in subpars. (C) and (D) ''paragraph (7), (9), (17), or (20) of section 501(c)'' for ''section 501(c)(7) or (9)'' wherever appearing.

Subsec. (a)(3)(E). Pub. L. 98–369, §511(b)(2), added subpar. (E).

1983—Subsec. (b)(10). Pub. L. 97–448 substituted ''10 percent'' for ''5 percent''.

1978—Subsec. (a)(5). Pub. L. 95–345, §2(b), added par. (5).

Subsec. (b)(1). Pub. L. 95–345, §2(a)(2), inserted provision relating to payments with respect to securities loans.

1976—Subsec. (a)(3)(A). Pub. L. 94–568 provided that for purposes of the general rule, the deductions provided by sections 243, 244, and 245 (relating to dividends received by corporations) shall be treated as not directly connected with the production of gross income.

Subsec. (b). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (b)(5). Pub. L. 94–396 inserted provision relating to exclusion of gains on the lapse or termination of options to buy or sell securities.

Subsec. (b)(13), (14). Pub. L. 94–455, §1951(b)(8)(A), redesignated pars. (15) and (16) as (13) and (14), respectively. Former pars. (13) and (14), relating to exceptions, additions, and limitations applicable in determining unrelated business taxable income, were struck out.

Subsec. (b)(15). Pub. L. 94–455, §§1901(b)(8)(F), 1906(b)(13)(A), 1951(b)(8)(A), redesignated par. (17) as (15) and substituted in subpar. (B) ''educational organization described in section 170(b)(1)(A)(ii)'' for ''educational institution (as defined in section 151(e)(4))'' after ''order or by an'', and struck out ''or his delegate'' after ''Secretary''. Former par. (15) redesignated (13).

Subsec. (b)(16), (17). Pub. L. 94–455, § 1951(b)(8)(A), redesignated pars. (16) and (17) as (14) and (15), respectively.

1972—Subsec. (a)(4). Pub. L. 92–418 added par. (4).

1969—Subsec. (a). Pub. L. 91–172, § 121(b)(1), designated existing provisions as pars. (1) and (2)(B) and added pars. (2)(A) and (3).

Subsec. (b). Pub. L. 91–172, § 121(b)(2)(D), substituted ''Modifications'' for ''Exceptions, additions, and limitations'', in heading, and, in text preceding par. (1) substituted ''The modifications referred to in subsection (a)'' for ''The exceptions, additions, and limitations applicable in determining unrelated business taxable income''.

Subsec. (b)(3)(A). Pub. L. 91–172, § 121(b)(2)(A), inserted reference to exceptions set out in subsec. (b)(3)(B) in text preceding cl. (i), substituted ''property described in section 1245(a)(3)(C)'' for ''personal property leased with the real property'' in parenthetical of cl. (i), and added cl. (ii).

Subsec. (b)(3)(B). Pub. L. 91–172, § 121(b)(2)(A), added subpar. (B).

Subsec. (b)(3)(C). Pub. L. 91–172, § 121(b)(2)(A), substituted ''rents excluded under subparagraph (A)'' for ''such rents''.

Subsec. (b)(4). Pub. L. 91–172, § 121(b)(2)(A), inserted reference to pars. (1), (3) and (5) of this subsec., and substituted ''debt financed property'' for ''a business lease''.

Subsec. (b)(12). Pub. L. 91–172, § 121(b)(2)(B), made the allowance of the specific $1,000 deduction inapplicable for the purposes of computing the net operating loss under section 172 of this title and par. (6) of this subsec., and provided for the allowance of specific deductions equal to the lower of $1,000 or the gross income derived from any unrelated trade or business carried on by a parish, individual church, district, or other local unit.

Subsec. (b)(15) to (17). Pub. L. 91–172, § 121(b)(2)(C), added pars. (15) to (17).

1966—Subsec. (a). Pub. L. 89–809 substituted '', the unrelated business taxable income shall be its unrelated business taxable income which is effectively connected with the conduct of a trade or business within the United States'' for '', the unrelated business taxable income shall be its unrelated business taxable income derived from sources within the United States determined under subchapter N (sec. 861 and following), relating to tax based on income from sources within or without the United States''.

1964—Subsec. (b)(14). Pub. L. 88–380 added par. (14).

1958—Subsec. (b)(13). Pub. L. 85–367 added par. (13).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, § 747(b), Dec. 17, 2010, 124 Stat. 3320, provided that: ''The amendment made by this section [amending this section] shall apply to payments received or accrued after December 31, 2009.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, § 306(b), Oct. 3, 2008, 122 Stat. 3868, provided that: ''The amendment made by this section [amending this section] shall apply to payments received or accrued after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title XII, § 1205(c)(1), Aug. 17, 2006, 120 Stat. 1067, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to payments received or accrued after December 31, 2005.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, § 233(e), Oct. 22, 2004, 118 Stat. 1435, provided that: ''The amendments made by this section [amending this section and sections 1361 and 4975 of this title] shall take effect on the date of the enactment of this Act [Oct. 22, 2004].''

Amendment by section 319(c) of Pub. L. 108–357 applicable to taxable years beginning after Oct. 22, 2004, see section 319(e) of Pub. L. 108–357, set out as a note under section 501 of this title.

Pub. L. 108–357, title VII, § 702(d), Oct. 22, 2004, 118 Stat. 1546, provided that: ''The amendments made by this section [amending this section and section 514 of this title] shall apply to any gain or loss on the sale, exchange, or other disposition of any property acquired by the taxpayer after December 31, 2004.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6023(8) of Pub. L. 105–206 effective July 22, 1998, see section 6023(32) of Pub. L. 105–206, set out as a note under section 34 of this title.

Amendment by section 6010(j)(1), (2) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 312(d)(5) of Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d)[(e)] of Pub. L. 105–34, set out as a note under section 121 of this title.

Section 1041(b) of Pub. L. 105–34, as amended by Pub. L. 105–206, title VI, § 6010(j)(3), July 22, 1998, 112 Stat. 815, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997].

''(2) BINDING CONTRACTS.—The amendments made by this section shall not apply to any amount received or accrued during the first 2 taxable years beginning on or after the date of the enactment of this Act if such amount is received or accrued pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such amount is received or accrued. The preceding sentence shall not apply to any amount which would (but for the exercise of an option to accelerate payment of such amount) be received or accrued after such 2 taxable years.''

Section 1523(b) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997.''

Amendment by section 1601(c)(4)(A), (D) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 36C of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1115(b) of Pub. L. 104–188 provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.

''(2) TRANSITIONAL RULE.—If—

''(A) for purposes of applying part III of subchapter F of chapter 1 of the Internal Revenue Code of 1986 to any taxable year beginning before January 1, 1987, an agricultural or horticultural organization did not treat any portion of membership dues received by it as income derived in an unrelated trade or business, and

''(B) such organization had a reasonable basis for not treating such dues as income derived in an unrelated trade or business,

then, for purposes of applying such part III to any such taxable year, in no event shall any portion of such dues be treated as derived in an unrelated trade or business.

''(3) REASONABLE BASIS.—For purposes of paragraph (2), an organization shall be treated as having a reasonable basis for not treating membership dues as income derived in an unrelated trade or business if the taxpayer's treatment of such dues was in reasonable reliance on any of the following:

''(A) Judicial precedent, published rulings, technical advice with respect to the organization, or a letter ruling to the organization.

''(B) A past Internal Revenue Service audit of the organization in which there was no assessment attributable to the reclassification of membership dues for purposes of the tax on unrelated business income.

''(C) Long-standing recognized practice of agricultural or horticultural organizations.''

Amendment by section 1316(c) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1997, see section 1316(f) of Pub. L. 104–188, set out as a note under section 170 of this title.

Section 1603(b) of Pub. L. 104–188 provided that: ''The amendment made by this section [amending this section] shall apply to amounts included in gross income in any taxable year beginning after December 31, 1995.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13145(b) of Pub. L. 103–66 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to partnership years beginning on or after January 1, 1994.''

Section 13147(b) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to property acquired on or after January 1, 1994.''

Section 13148(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section] shall apply to amounts received on or after January 1, 1994.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10213(b) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to partnership interests acquired after December 17, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years ending after Dec. 31, 1985, with such amendments treated as a change in the rate of tax imposed by chapter 1 of this title for purposes of section 15 of this title, see section 511(e)(6) of Pub. L. 98–369, set out as an Effective Date note under section 419 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–345 applicable with respect to amounts received after Dec. 31, 1976, as payments with respect to securities loans (as defined in subsec. (a)(5) of this section), and transfers of securities, under agreements described in section 1058 of this title, occurring after such date, see section 2(e) of Pub. L. 95–345, set out as a note under section 509 of this title.

EFFECTIVE DATE OF 1976 AMENDMENTS

Amendment by Pub. L. 94–568 applicable to taxable years beginning after Oct. 20, 1976, see section 1(d) of Pub. L. 94–568, set out as a note under section 501 of this title.

Amendment by section 1901(b)(8)(F) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 1951(b)(8)(A) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1951(d) of Pub. L. 94–455, set out as a note under section 72 of this title.

Section 1(b) of Pub. L. 94–396 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to gain from options which lapse or terminate on or after January 1, 1976, in taxable years ending on or after such date.''

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–418 applicable to taxable years beginning after Dec. 31, 1969, see section 1(c) of Pub. L. 92–418, set out as a note under section 501 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91–172, set out as a note under section 511 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 2 of Pub. L. 88–380 provided that: ''The amendment made by the first section of this Act [amending this section] shall apply with respect to taxable years beginning after December 31, 1963.''

EFFECTIVE DATE OF 1958 AMENDMENT

Section 1(b) of Pub. L. 85–367 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years of trusts beginning after December 31, 1955.''

SAVINGS PROVISION

Pub. L. 108–357, title VII, §702(c), Oct. 22, 2004, 118 Stat. 1546, provided that: ''Nothing in the amendments made by this section [amending this section and section 514 of this title] shall affect any duty, liability, or other requirement imposed under any other Federal or State law. Notwithstanding section 128(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C. 9628(b)], a certification provided by the Environmental Protection Agency or an appropriate State agency (within the meaning of section 198(c)(4) of the Internal Revenue Code of 1986) shall not affect the liability of any person under section 107(a) of such Act [42 U.S.C. 9607(a)].''

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

Section 1951(b)(8)(B) of Pub. L. 94–455 provided that: ''Notwithstanding subparagraph (A) [amending this section], income received in a taxable year beginning after December 31, 1975, shall be excluded from gross income in determining unrelated business taxable income, if such income would have been excluded by paragraph (13) or (14) of section 512(b) if received in a taxable year beginning before such date. Any deductions directly connected with income excluded under the preceding sentence in determining unrelated business taxable income shall also be excluded for such purpose.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 513. Unrelated trade or business

(a) General rule

The term ''unrelated trade or business'' means, in the case of any organization subject to the tax imposed by section 511, any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501 (or, in the case of an organization described in section 511(a)(2)(B), to the exercise or performance of any purpose or function described in section 501(c)(3)), except that such term does not include any trade or business—

(1) in which substantially all the work in carrying on such trade or business is performed for the organization without compensation; or

(2) which is carried on, in the case of an organization described in section 501(c)(3) or in the case of a college or university described in section 511(a)(2)(B), by the organization primarily for the convenience of its members, students, patients, officers, or employees, or, in the case of a local association of employees described in section 501(c)(4) organized before May 27, 1969, which is the selling by the organization of items of work-related clothes and equipment and items normally sold through vending machines, through food dispensing facilities, or by snack bars, for the convenience of its members at their usual places of employment; or

(3) which is the selling of merchandise, substantially all of which has been received by the organization as gifts or contributions.

(b) Special rule for trusts

The term ''unrelated trade or business'' means, in the case of—

(1) a trust computing its unrelated business taxable income under section 512 for purposes of section 681; or

(2) a trust described in section 401(a), or section 501(c)(17), which is exempt from tax under section 501(a);

any trade or business regularly carried on by such trust or by a partnership of which it is a member.

(c) Advertising, etc., activities

For purposes of this section, the term ''trade or business'' includes any activity which is carried on for the production of income from the sale of goods or the performance of services. For purposes of the preceding sentence, an activity does not lose identity as a trade or business merely because it is carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which may, or may not, be related to the exempt purposes of the organization. Where an activity carried on for profit constitutes an unrelated trade or business, no part of such trade or business shall be excluded from such classification merely because it does not result in profit.

(d) Certain activities of trade shows, State fairs, etc.

(1) General rule

The term ''unrelated trade or business'' does not include qualified public entertainment activities of an organization described in paragraph (2)(C), or qualified convention and trade show activities of an organization described in paragraph (3)(C).

(2) Qualified public entertainment activities

For purposes of this subsection—

(A) Public entertainment activity

The term ''public entertainment activity'' means any entertainment or recreational activity of a kind traditionally conducted at fairs or expositions promoting agricultural and educational purposes, including, but not limited to, any activity one of the purposes of which is to attract the public to fairs or expositions or to promote the breeding of animals or the development of products or equipment.

(B) Qualified public entertainment activity

The term ''qualified public entertainment activity'' means a public entertainment activity which is conducted by a qualifying organization described in subparagraph (C) in—

(i) conjunction with an international, national, State, regional, or local fair or exposition,

(ii) accordance with the provisions of State law which permit the activity to be operated or conducted solely by such an organization, or by an agency, instrumentality, or political subdivision of such State, or

(iii) accordance with the provisions of State law which permit such an organization to be granted a license to conduct not more than 20 days of such activity on payment to the State of a lower percentage of the revenue from such licensed activity than the State requires from organizations not described in section 501(c)(3), (4), or (5).

(C) Qualifying organization

For purposes of this paragraph, the term ''qualifying organization'' means an organization which is described in section 501(c)(3), (4), or (5) which regularly conducts, as one of its substantial exempt purposes, an agricultural and educational fair or exposition.

(3) Qualified convention and trade show activities

(A) Convention and trade show activities

The term ''convention and trade show activity'' means any activity of a kind tradi-

tionally conducted at conventions, annual meetings, or trade shows, including, but not limited to, any activity one of the purposes of which is to attract persons in an industry generally (without regard to membership in the sponsoring organization) as well as members of the public to the show for the purpose of displaying industry products or to stimulate interest in, and demand for, industry products or services, or to educate persons engaged in the industry in the development of new products and services or new rules and regulations affecting the industry.

(B) Qualified convention and trade show activity

The term ''qualified convention and trade show activity'' means a convention and trade show activity carried out by a qualifying organization described in subparagraph (C) in conjunction with an international, national, State, regional, or local convention, annual meeting, or show conducted by an organization described in subparagraph (C) if one of the purposes of such organization in sponsoring the activity is the promotion and stimulation of interest in, and demand for, the products and services of that industry in general or to educate persons in attendance regarding new developments or products and services related to the exempt activities of the organization, and the show is designed to achieve such purpose through the character of the exhibits and the extent of the industry products displayed.

(C) Qualifying organization

For purposes of this paragraph, the term ''qualifying organization'' means an organization described in section 501(c)(3), (4), (5), or (6) which regularly conducts as one of its substantial exempt purposes a show which stimulates interest in, and demand for, the products of a particular industry or segment of such industry or which educates persons in attendance regarding new developments or products and services related to the exempt activities of the organization.

(4) Such activities not to affect exempt status

An organization described in section 501(c)(3), (4), or (5) shall not be considered as not entitled to the exemption allowed under section 501(a) solely because of qualified public entertainment activities conducted by it.

(e) Certain hospital services

In the case of a hospital described in section 170(b)(1)(A)(iii), the term ''unrelated trade or business'' does not include the furnishing of one or more of the services described in section 501(e)(1)(A) to one or more hospitals described in section 170(b)(1)(A)(iii) if—

(1) such services are furnished solely to such hospitals which have facilities to serve not more than 100 inpatients;

(2) such services, if performed on its own behalf by the recipient hospital, would constitute activities in exercising or performing the purpose or function constituting the basis for its exemption; and

(3) such services are provided at a fee or cost which does not exceed the actual cost of providing such services, such cost including straight line depreciation and a reasonable amount for return on capital goods used to provide such services.

(f) Certain bingo games

(1) In general

The term ''unrelated trade or business'' does not include any trade or business which consists of conducting bingo games.

(2) Bingo game defined

For purposes of paragraph (1), the term ''bingo game'' means any game of bingo—

(A) of a type in which usually—

(i) the wagers are placed,

(ii) the winners are determined, and

(iii) the distribution of prizes or other property is made,

in the presence of all persons placing wagers in such game,

(B) the conducting of which is not an activity ordinarily carried out on a commercial basis, and

(C) the conducting of which does not violate any State or local law.

(g) Certain pole rentals

In the case of a mutual or cooperative telephone or electric company, the term ''unrelated trade or business'' does not include engaging in qualified pole rentals (as defined in section 501(c)(12)(D)).

(h) Certain distributions of low cost articles without obligation to purchase and exchanges and rentals of member lists

(1) In general

In the case of an organization which is described in section 501 and contributions to which are deductible under paragraph (2) or (3) of section 170(c), the term ''unrelated trade or business'' does not include—

(A) activities relating to the distribution of low cost articles if the distribution of such articles is incidental to the solicitation of charitable contributions, or

(B) any trade or business which consists of—

(i) exchanging with another such organization names and addresses of donors to (or members of) such organization, or

(ii) renting such names and addresses to another such organization.

(2) Low cost article defined

For purposes of this subsection—

(A) In general

The term ''low cost article'' means any article which has a cost not in excess of $5 to the organization which distributes such item (or on whose behalf such item is distributed).

(B) Aggregation rule

If more than 1 item is distributed by or on behalf of an organization to a single distributee in any calendar year, the aggregate of the items so distributed in such calendar year to such distributee shall be treated as 1 article for purposes of subparagraph (A).

(C) Indexation of $5 amount

In the case of any taxable year beginning in a calendar year after 1987, the $5 amount in subparagraph (A) shall be increased by an amount equal to—

(i) $5, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting ''calendar year 1987'' for ''calendar year 1992'' in subparagraph (B) thereof.

(3) Distribution which is incidental to the solicitation of charitable contributions described

For purposes of this subsection, any distribution of low cost articles by an organization shall be treated as a distribution incidental to the solicitation of charitable contributions only if—

(A) such distribution is not made at the request of the distributee,

(B) such distribution is made without the express consent of the distributee, and

(C) the articles so distributed are accompanied by—

(i) a request for a charitable contribution (as defined in section 170(c)) by the distributee to such organization, and

(ii) a statement that the distributee may retain the low cost article regardless of whether such distributee makes a charitable contribution to such organization.

(i) Treatment of certain sponsorship payments

(1) In general

The term ''unrelated trade or business'' does not include the activity of soliciting and receiving qualified sponsorship payments.

(2) Qualified sponsorship payments

For purposes of this subsection—

(A) In general

The term ''qualified sponsorship payment'' means any payment made by any person engaged in a trade or business with respect to which there is no arrangement or expectation that such person will receive any substantial return benefit other than the use or acknowledgement of the name or logo (or product lines) of such person's trade or business in connection with the activities of the organization that receives such payment. Such a use or acknowledgement does not include advertising such person's products or services (including messages containing qualitative or comparative language, price information, or other indications of savings or value, an endorsement, or an inducement to purchase, sell, or use such products or services).

(B) Limitations

(i) Contingent payments

The term ''qualified sponsorship payment'' does not include any payment if the amount of such payment is contingent upon the level of attendance at one or more events, broadcast ratings, or other factors indicating the degree of public exposure to one or more events.

(ii) Safe harbor does not apply to periodicals and qualified convention and trade show activities

The term ''qualified sponsorship payment'' does not include—

(I) any payment which entitles the payor to the use or acknowledgement of the name or logo (or product lines) of the payor's trade or business in regularly scheduled and printed material published by or on behalf of the payee organization that is not related to and primarily distributed in connection with a specific event conducted by the payee organization, or

(II) any payment made in connection with any qualified convention or trade show activity (as defined in subsection (d)(3)(B)).

(3) Allocation of portions of single payment

For purposes of this subsection, to the extent that a portion of a payment would (if made as a separate payment) be a qualified sponsorship payment, such portion of such payment and the other portion of such payment shall be treated as separate payments.

(j) Debt management plan services

The term ''unrelated trade or business'' includes the provision of debt management plan services (as defined in section 501(q)(4)(B)) by any organization other than an organization which meets the requirements of section 501(q).

(Aug. 16, 1954, ch. 736, 68A Stat. 172; Pub. L. 86–667, § 4, July 14, 1960, 74 Stat. 536; Pub. L. 91–172, title I, § 121(b)(4), (c), Dec. 30, 1969, 83 Stat. 541, 542; Pub. L. 94–455, title XIII, §§ 1305(a), 1311(a), Oct. 4, 1976, 90 Stat. 1716, 1729; Pub. L. 95–502, title III, § 301(a), Oct. 21, 1978, 92 Stat. 1702; Pub. L. 96–605, title I, § 106(b), Dec. 28, 1980, 94 Stat. 3524; Pub. L. 99–514, title XVI, §§ 1601(a), 1602(a), (b), Oct. 22, 1986, 100 Stat. 2766, 2767; Pub. L. 101–508, title XI, § 11101(d)(1)(G), Nov. 5, 1990, 104 Stat. 1388–405; Pub. L. 103–66, title XIII, § 13201(b)(3)(H), Aug. 10, 1993, 107 Stat. 459; Pub. L. 105–34, title IX, § 965(a), Aug. 5, 1997, 111 Stat. 893; Pub. L. 109–280, title XII, § 1220(b), Aug. 17, 2006, 120 Stat. 1088.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENTS

2006—Subsec. (j). Pub. L. 109–280, which directed the addition of subsec. (j) to section 513, without specifying the act to be amended, was executed by making the addition to this section, which is section 513 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

1997—Subsec. (i). Pub. L. 105–34 added subsec. (i).

1993—Subsec. (h)(2)(C)(ii). Pub. L. 103–66 substituted ''calendar year 1992'' for ''calendar year 1989''.

1990—Subsec. (h)(2)(C)(ii). Pub. L. 101–508 inserted before period at end '', by substituting 'calendar year 1987' for 'calendar year 1989' in subparagraph (B) thereof''.

1986—Subsec. (d)(3)(B). Pub. L. 99–514, § 1602(a), inserted ''or to educate persons in attendance regarding new developments or products and services related to the exempt activities of the organization''.

Subsec. (d)(3)(C). Pub. L. 99–514, § 1602(b), substituted ''section 501(c)(3), (4), (5), or (6)'' for ''section 501(c)(5) or (6)'' and inserted ''or which educates persons in attendance regarding new developments or products and services related to the exempt activities of the organization''.

Subsec. (h). Pub. L. 99–514, § 1601(a), added subsec. (h).

1980—Subsec. (g). Pub. L. 96–605 added subsec. (g).

1978—Subsec. (f). Pub. L. 95–502 added subsec. (f).

1976—Subsec. (d). Pub. L. 94–455, § 1305(a), added subsec. (d).

Subsec. (e). Pub. L. 94–455, § 1311(a), added subsec. (e).

1969—Subsec. (a)(2). Pub. L. 91–172, § 121(b)(4), inserted reference to local associations of employees described in section 501(c)(4) of this title and organized before May 27, 1969.

Subsec. (c). Pub. L. 91–172, § 121(c), substituted ''Advertising, etc., activities'' for ''Special rule for certain publishing businesses'', in heading, and, in text, substituted provisions extending definition of trade or business to include any activity carried on for the production of income from the sale of goods or the performance of services, for provisions referring to publishing businesses carried on by an organization during a taxable year beginning before Jan. 1, 1953.

1960—Subsec. (b)(2). Pub. L. 86–667 included trusts described in section 501(c)(17).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to taxable years beginning after Aug. 17, 2006, with transition rule for existing organizations, see section 1220(c) of Pub. L. 109–280, set out as a note under section 501 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 965(b) of Pub. L. 105–34 provided that: ''The amendment made by this section [amending this section] shall apply to payments solicited or received after December 31, 1997.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see section 13201(c) of Pub. L. 103–66, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11101(e) of Pub. L. 101–508, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1601(b) of Pub. L. 99–514 provided that: ''The amendment made by this section [amending this section] shall apply to distributions of low cost articles and exchanges and rentals of member lists after the date of the enactment of this Act [Oct. 22, 1986].''

Section 1602(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section] shall apply to activities in taxable years beginning after the date of the enactment of this Act [Oct. 22, 1986].''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 106(c)(2) of Pub. L. 96–605 provided that: ''The amendment made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1969.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 301(b) of Pub. L. 95–502 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1969.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1305(b) of Pub. L. 94–455 provided that: ''The amendments made by subsection (a) [amending this section] apply to qualified public entertainment activities in taxable years beginning after December 31, 1962, and to qualified convention and trade show activities in taxable years beginning after the date of enactment of this Act [Oct. 4, 1976].''

Section 1311(b) of Pub. L. 94–455, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by this section [amending this section] shall apply to all taxable years to which the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [this title] applies.''

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91–172, set out as a note under section 511 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–667 applicable to taxable years beginning after Dec. 31, 1959, see section 6 of Pub. L. 86–667, set out as a note under section 501 of this title.

CONDUCTING OF CERTAIN GAMES OF CHANCE NOT TREATED AS UNRELATED TRADE OR BUSINESS

Pub. L. 98–369, div. A, title III, § 311, July 18, 1984, 98 Stat. 786, as amended by Pub. L. 99–514, § 2, title XVIII, § 1834, Oct. 22, 1986, 100 Stat. 2095, 2852, provided that:

''(a) GENERAL RULE.—For purposes of section 513 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (defining unrelated trade or business), the term 'unrelated trade or business' does not include any trade or business which consists of conducting any game of chance if—

''(1) such game of chance is conducted by a nonprofit organization,

''(2) the conducting of such game by such organization does not violate any State or local law, and

''(3) as of October 5, 1983—

''(A) there was a State law (originally enacted on April 22, 1977) in effect which permitted the conducting of such game of chance by such nonprofit organization, but

''(B) the conducting of such game of chance by organizations which were not nonprofit organizations would have violated such law.

''(b) EFFECTIVE DATE.—Subsection (a) shall apply to games of chance conducted after June 30, 1981, in taxable years ending after such date.''

[Section 1834 of Pub. L. 99–514, as amended by Pub. L. 100–647, title VI, § 6201, Nov. 10, 1988, 102 Stat. 3730, provided in part that: ''The amendment made by this section [amending section 311 of Pub. L. 98–369, set out above] shall apply to games of chance conducted after October 22, 1986, in taxable years ending after such date''.]

§ 514. Unrelated debt-financed income

(a) Unrelated debt-financed income and deductions

In computing under section 512 the unrelated business taxable income for any taxable year—

(1) Percentage of income taken into account

There shall be included with respect to each debt-financed property as an item of gross income derived from an unrelated trade or business an amount which is the same percentage (but not in excess of 100 percent) of the total gross income derived during the taxable year from or on account of such property as (A) the average acquisition indebtedness (as defined in subsection (c)(7)) for the taxable year with respect to the property is of (B) the average amount (determined under regulations pre-

scribed by the Secretary) of the adjusted basis of such property during the period it is held by the organization during such taxable year.

(2) Percentage of deductions taken into account

There shall be allowed as a deduction with respect to each debt-financed property an amount determined by applying (except as provided in the last sentence of this paragraph) the percentage derived under paragraph (1) to the sum determined under paragraph (3). The percentage derived under this paragraph shall not be applied with respect to the deduction of any capital loss resulting from the carryback or carryover of net capital losses under section 1212.

(3) Deductions allowable

The sum referred to in paragraph (2) is the sum of the deductions under this chapter which are directly connected with the debt-financed property or the income therefrom, except that if the debt-financed property is of a character which is subject to the allowance for depreciation provided in section 167, the allowance shall be computed only by use of the straight-line method.

(b) Definition of debt-financed property

(1) In general

For purposes of this section, the term ''debt-financed property'' means any property which is held to produce income and with respect to which there is an acquisition indebtedness (as defined in subsection (c)) at any time during the taxable year (or, if the property was disposed of during the taxable year, with respect to which there was an acquisition indebtedness at any time during the 12-month period ending with the date of such disposition), except that such term does not include—

(A)(i) any property substantially all the use of which is substantially related (aside from the need of the organization for income or funds) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501 (or, in the case of an organization described in section 511(a)(2)(B), to the exercise or performance of any purpose or function designated in section 501(c)(3)), or (ii) any property to which clause (i) does not apply, to the extent that its use is so substantially related;

(B) except in the case of income excluded under section 512(b)(5), any property to the extent that the income from such property is taken into account in computing the gross income of any unrelated trade or business;

(C) any property to the extent that the income from such property is excluded by reason of the provisions of paragraph (7), (8), or (9) of section 512(b) in computing the gross income of any unrelated trade or business;

(D) any property to the extent that it is used in any trade or business described in paragraph (1), (2), or (3) of section 513(a); or

(E) any property the gain or loss from the sale, exchange, or other disposition of which would be excluded by reason of the provisions of section 512(b)(19) in computing the gross income of any unrelated trade or business.

For purposes of subparagraph (A), substantially all the use of a property shall be considered to be substantially related to the exercise or performance by an organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501 if such property is real property subject to a lease to a medical clinic entered into primarily for purposes which are substantially related (aside from the need of such organization for income or funds or the use it makes of the rents derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501.

(2) Special rule for related uses

For purposes of applying paragraphs (1) (A), (C), and (D), the use of any property by an exempt organization which is related to an organization shall be treated as use by such organization.

(3) Special rules when land is acquired for exempt use within 10 years

(A) Neighborhood land

If an organization acquires real property for the principal purpose of using the land (commencing within 10 years of the time of acquisition) in the manner described in paragraph (1)(A) and at the time of acquisition the property is in the neighborhood of other property owned by the organization which is used in such manner, the real property acquired for such future use shall not be treated as debt-financed property so long as the organization does not abandon its intent to so use the land within the 10-year period. The preceding sentence shall not apply for any period after the expiration of the 10-year period, and shall apply after the first 5 years of the 10-year period only if the organization establishes to the satisfaction of the Secretary that it is reasonably certain that the land will be used in the described manner before the expiration of the 10-year period.

(B) Other cases

If the first sentence of subparagraph (A) is inapplicable only because—

(i) the acquired land is not in the neighborhood referred to in subparagraph (A), or

(ii) the organization (for the period after the first 5 years of the 10-year period) is unable to establish to the satisfaction of the Secretary that it is reasonably certain that the land will be used in the manner described in paragraph (1)(A) before the expiration of the 10-year period,

but the land is converted to such use by the organization within the 10-year period, the real property (subject to the provisions of subparagraph (D)) shall not be treated as debt-financed property for any period before such conversion. For purposes of this subparagraph, land shall not be treated as used in the manner described in paragraph (1)(A)

by reason of the use made of any structure which was on the land when acquired by the organization.

(C) Limitations

Subparagraphs (A) and (B)—

(i) shall apply with respect to any structure on the land when acquired by the organization, or to the land occupied by the structure, only if (and so long as) the intended future use of the land in the manner described in paragraph (1)(A) requires that the structure be demolished or removed in order to use the land in such manner;

(ii) shall not apply to structures erected on the land after the acquisition of the land; and

(iii) shall not apply to property subject to a lease which is a business lease (as defined in this section immediately before the enactment of the Tax Reform Act of 1976).

(D) Refund of taxes when subparagraph (B) applies

If an organization for any taxable year has not used land in the manner to satisfy the actual use condition of subparagraph (B) before the time prescribed by law (including extensions thereof) for filing the return for such taxable year, the tax for such year shall be computed without regard to the application of subparagraph (B), but if and when such use condition is satisfied, the provisions of subparagraph (B) shall then be applied to such taxable year. If the actual use condition of subparagraph (B) is satisfied for any taxable year after such time for filing the return, and if credit or refund of any overpayment for the taxable year resulting from the satisfaction of such use condition is prevented at the close of the taxable year in which the use condition is satisfied, by the operation of any law or rule of law (other than chapter 74, relating to closing agreements and compromises), credit or refund of such overpayment may nevertheless be allowed or made if claim therefor is filed before the expiration of 1 year after the close of the taxable year in which the use condition is satisfied.

(E) Special rule for churches

In applying this paragraph to a church or convention or association of churches, in lieu of the 10-year period referred to in subparagraphs (A) and (B) a 15-year period shall be applied, and subparagraphs (A) and (B)(ii) shall apply whether or not the acquired land meets the neighborhood test.

(c) Acquisition indebtedness

(1) General rule

For purposes of this section, the term ''acquisition indebtedness'' means, with respect to any debt-financed property, the unpaid amount of—

(A) the indebtedness incurred by the organization in acquiring or improving such property;

(B) the indebtedness incurred before the acquisition or improvement of such property if such indebtedness would not have been incurred but for such acquisition or improvement; and

(C) the indebtedness incurred after the acquisition or improvement of such property if such indebtedness would not have been incurred but for such acquisition or improvement and the incurrence of such indebtedness was reasonably foreseeable at the time of such acquisition or improvement.

(2) Property acquired subject to mortgage, etc.

For purposes of this subsection—

(A) General rule

Where property (no matter how acquired) is acquired subject to a mortgage or other similar lien, the amount of the indebtedness secured by such mortgage or lien shall be considered as an indebtedness of the organization incurred in acquiring such property even though the organization did not assume or agree to pay such indebtedness.

(B) Exceptions

Where property subject to a mortgage is acquired by an organization by bequest or devise, the indebtedness secured by the mortgage shall not be treated as acquisition indebtedness during a period of 10 years following the date of the acquisition. If an organization acquires property by gift subject to a mortgage which was placed on the property more than 5 years before the gift, which property was held by the donor more than 5 years before the gift, the indebtedness secured by such mortgage shall not be treated as acquisition indebtedness during a period of 10 years following the date of such gift. This subparagraph shall not apply if the organization, in order to acquire the equity in the property by bequest, devise, or gift, assumes and agrees to pay the indebtedness secured by the mortgage, or if the organization makes any payment for the equity in the property owned by the decedent or the donor.

(C) Liens for taxes or assessments

Where State law provides that—

(i) a lien for taxes, or

(ii) a lien for assessments,

made by a State or a political subdivision thereof attaches to property prior to the time when such taxes or assessments become due and payable, then such lien shall be treated as similar to a mortgage (within the meaning of subparagraph (A)) but only after such taxes or assessments become due and payable and the organization has had an opportunity to pay such taxes or assessments in accordance with State law.

(3) Extension of obligations

For purposes of this section, an extension, renewal, or refinancing of an obligation evidencing a pre-existing indebtedness shall not be treated as the creation of a new indebtedness.

(4) Indebtedness incurred in performing exempt purpose

For purposes of this section, the term ''acquisition indebtedness'' does not include in-

debtedness the incurrence of which is inherent in the performance or exercise of the purpose or function constituting the basis of the organization's exemption, such as the indebtedness incurred by a credit union described in section 501(c)(14) in accepting deposits from its members.

(5) Annuities

For purposes of this section, the term ''acquisition indebtedness'' does not include an obligation to pay an annuity which—

(A) is the sole consideration (other than a mortgage to which paragraph (2)(B) applies) issued in exchange for property if, at the time of the exchange, the value of the annuity is less than 90 percent of the value of the property received in the exchange,

(B) is payable over the life of one individual in being at the time the annuity is issued, or over the lives of two individuals in being at such time, and

(C) is payable under a contract which—

(i) does not guarantee a minimum amount of payments or specify a maximum amount of payments, and

(ii) does not provide for any adjustment of the amount of the annuity payments by reference to the income received from the transferred property or any other property.

(6) Certain Federal financing

(A) In general

For purposes of this section, the term ''acquisition indebtedness'' does not include—

(i) an obligation, to the extent that it is insured by the Federal Housing Administration, to finance the purchase, rehabilitation, or construction of housing for low and moderate income persons, or

(ii) indebtedness incurred by a small business investment company licensed after the date of the enactment of the American Jobs Creation Act of 2004 under the Small Business Investment Act of 1958 if such indebtedness is evidenced by a debenture—

(I) issued by such company under section 303(a) of such Act, and

(II) held or guaranteed by the Small Business Administration.

(B) Limitation

Subparagraph (A)(ii) shall not apply with respect to any small business investment company during any period that—

(i) any organization which is exempt from tax under this title (other than a governmental unit) owns more than 25 percent of the capital or profits interest in such company, or

(ii) organizations which are exempt from tax under this title (including governmental units other than any agency or instrumentality of the United States) own, in the aggregate, 50 percent or more of the capital or profits interest in such company.

(7) Average acquisition indebtedness

For purposes of this section, the term ''average acquisition indebtedness'' for any taxable year with respect to a debt-financed property means the average amount, determined under regulations prescribed by the Secretary of the acquisition indebtedness during the period the property is held by the organization during the taxable year, except that for the purpose of computing the percentage of any gain or loss to be taken into account on a sale or other disposition of debt-financed property, such term means the highest amount of the acquisition indebtedness with respect to such property during the 12-month period ending with the date of the sale or other disposition.

(8) Securities subject to loans

For purposes of this section—

(A) payments with respect to securities loans (as defined in section 512(a)(5)) shall be deemed to be derived from the securities loaned and not from collateral security or the investment of collateral security from such loans,

(B) any deductions which are directly connected with collateral security for such loan, or with the investment of collateral security, shall be deemed to be deductions which are directly connected with the securities loaned, and

(C) an obligation to return collateral security shall not be treated as acquisition indebtedness (as defined in paragraph (1)).

(9) Real property acquired by a qualified organization

(A) In general

Except as provided in subparagraph (B), the term ''acquisition indebtedness'' does not, for purposes of this section, include indebtedness incurred by a qualified organization in acquiring or improving any real property. For purposes of this paragraph, an interest in a mortgage shall in no event be treated as real property.

(B) Exceptions

The provisions of subparagraph (A) shall not apply in any case in which—

(i) the price for the acquisition or improvement is not a fixed amount determined as of the date of the acquisition or the completion of the improvement;

(ii) the amount of any indebtedness or any other amount payable with respect to such indebtedness, or the time for making any payment of any such amount, is dependent, in whole or in part, upon any revenue, income, or profits derived from such real property;

(iii) the real property is at any time after the acquisition leased by the qualified organization to the person selling such property to such organization or to any person who bears a relationship described in section 267(b) or 707(b) to such person;

(iv) the real property is acquired by a qualified trust from, or is at any time after the acquisition leased by such trust to, any person who—

(I) bears a relationship which is described in subparagraph (C), (E), or (G) of section 4975(e)(2) to any plan with respect to which such trust was formed, or

(II) bears a relationship which is described in subparagraph (F) or (H) of section 4975(e)(2) to any person described in subclause (I);

(v) any person described in clause (iii) or (iv) provides the qualified organization with financing in connection with the acquisition or improvement; or

(vi) the real property is held by a partnership unless the partnership meets the requirements of clauses (i) through (v) and unless—

(I) all of the partners of the partnership are qualified organizations,

(II) each allocation to a partner of the partnership which is a qualified organization is a qualified allocation (within the meaning of section 168(h)(6)), or

(III) such partnership meets the requirements of subparagraph (E).

For purposes of subclause (I) of clause (vi), an organization shall not be treated as a qualified organization if any income of such organization is unrelated business taxable income.

(C) Qualified organization

For purposes of this paragraph, the term ''qualified organization'' means—

(i) an organization described in section 170(b)(1)(A)(ii) and its affiliated support organizations described in section 509(a)(3);

(ii) any trust which constitutes a qualified trust under section 401;

(iii) an organization described in section 501(c)(25); or

(iv) a retirement income account described in section 403(b)(9).

(D) Other pass-thru entities; tiered entities

Rules similar to the rules of subparagraph (B)(vi) shall also apply in the case of any pass-thru entity other than a partnership and in the case of tiered partnerships and other entities.

(E) Certain allocations permitted

(i) In general

A partnership meets the requirements of this subparagraph if—

(I) the allocation of items to any partner which is a qualified organization cannot result in such partner having a share of the overall partnership income for any taxable year greater than such partner's share of the overall partnership loss for the taxable year for which such partner's loss share will be the smallest, and

(II) each allocation with respect to the partnership has substantial economic effect within the meaning of section 704(b)(2).

For purposes of this clause, items allocated under section 704(c) shall not be taken into account.

(ii) Special rules

(I) Chargebacks

Except as provided in regulations, a partnership may without violating the requirements of this subparagraph provide for chargebacks with respect to disproportionate losses previously allocated to qualified organizations and disproportionate income previously allocated to other partners. Any chargeback referred to in the preceding sentence shall not be at a ratio in excess of the ratio under which the loss or income (as the case may be) was allocated.

(II) Preferred rates of return, etc.

To the extent provided in regulations, a partnership may without violating the requirements of this subparagraph provide for reasonable preferred returns or reasonable guaranteed payments.

(iii) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph, including regulations which may provide for exclusion or segregation of items.

(F) Special rules for organizations described in section 501(c)(25)

(i) In general

In computing under section 512 the unrelated business taxable income of a disqualified holder of an interest in an organization described in section 501(c)(25), there shall be taken into account—

(I) as gross income derived from an unrelated trade or business, such holder's pro rata share of the items of income described in clause (ii)(I) of such organization, and

(II) as deductions allowable in computing unrelated business taxable income, such holder's pro rata share of the items of deduction described in clause (ii)(II) of such organization.

Such amounts shall be taken into account for the taxable year of the holder in which (or with which) the taxable year of such organization ends.

(ii) Description of amounts

For purposes of clause (i)—

(I) gross income is described in this clause to the extent such income would (but for this paragraph) be treated under subsection (a) as derived from an unrelated trade or business, and

(II) any deduction is described in this clause to the extent it would (but for this paragraph) be allowable under subsection (a)(2) in computing unrelated business taxable income.

(iii) Disqualified holder

For purposes of this subparagraph, the term ''disqualified holder'' means any shareholder (or beneficiary) which is not described in clause (i) or (ii) of subparagraph (C).

(G) Special rules for purposes of the exceptions

Except as otherwise provided by regulations—

(i) Small leases disregarded

For purposes of clauses (iii) and (iv) of subparagraph (B), a lease to a person described in such clause (iii) or (iv) shall be disregarded if no more than 25 percent of the leasable floor space in a building (or complex of buildings) is covered by the lease and if the lease is on commercially reasonable terms.

(ii) Commercially reasonable financing

Clause (v) of subparagraph (B) shall not apply if the financing is on commercially reasonable terms.

(H) Qualifying sales by financial institutions

(i) In general

In the case of a qualifying sale by a financial institution, except as provided in regulations, clauses (i) and (ii) of subparagraph (B) shall not apply with respect to financing provided by such institution for such sale.

(ii) Qualifying sale

For purposes of this clause, there is a qualifying sale by a financial institution if—

(I) a qualified organization acquires property described in clause (iii) from a financial institution and any gain recognized by the financial institution with respect to the property is ordinary income,

(II) the stated principal amount of the financing provided by the financial institution does not exceed the amount of the outstanding indebtedness (including accrued but unpaid interest) of the financial institution with respect to the property described in clause (iii) immediately before the acquisition referred to in clause (iii) or (v), whichever is applicable, and

(III) the present value (determined as of the time of the sale and by using the applicable Federal rate determined under section 1274(d)) of the maximum amount payable pursuant to the financing that is determined by reference to the revenue, income, or profits derived from the property cannot exceed 30 percent of the total purchase price of the property (including the contingent payments).

(iii) Property to which subparagraph applies

Property is described in this clause if such property is foreclosure property, or is real property which—

(I) was acquired by the qualified organization from a financial institution which is in conservatorship or receivership, or from the conservator or receiver of such an institution, and

(II) was held by the financial institution at the time it entered into conservatorship or receivership.

(iv) Financial institution

For purposes of this subparagraph, the term ''financial institution'' means—

(I) any financial institution described in section 581 or 591(a),

(II) any other corporation which is a direct or indirect subsidiary of an institution referred to in subclause (I) but only if, by virtue of being affiliated with such institution, such other corporation is subject to supervision and examination by a Federal or State agency which regulates institutions referred to in subclause (I), and

(III) any person acting as a conservator or receiver of an entity referred to in subclause (I) or (II) (or any government agency or corporation succeeding to the rights or interest of such person).

(v) Foreclosure property

For purposes of this subparagraph, the term ''foreclosure property'' means any real property acquired by the financial institution as the result of having bid on such property at foreclosure, or by operation of an agreement or process of law, after there was a default (or a default was imminent) on indebtedness which such property secured.

(d) Basis of debt-financed property acquired in corporate liquidation

For purposes of this subtitle, if the property was acquired in a complete or partial liquidation of a corporation in exchange for its stock, the basis of the property shall be the same as it would be in the hands of the transferor corporation, increased by the amount of gain recognized to the transferor corporation upon such distribution and by the amount of any gain to the organization which was included, on account of such distribution, in unrelated business taxable income under subsection (a).

(e) Allocation rules

Where debt-financed property is held for purposes described in subsection (b)(1)(A), (B), (C), or (D) as well as for other purposes, proper allocation shall be made with respect to basis, indebtedness, and income and deductions. The allocations required by this section shall be made in accordance with regulations prescribed by the Secretary to the extent proper to carry out the purposes of this section.

(f) Personal property leased with real property

For purposes of this section, the term ''real property'' includes personal property of the lessor leased by it to a lessee of its real estate if the lease of such personal property is made under, or in connection with, the lease of such real estate.

(g) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations to prevent the circumvention of any provision of this section through the use of segregated asset accounts.

(Aug. 16, 1954, ch. 736, 68A Stat. 172; Pub. L. 86–667, § 5, July 14, 1960, 74 Stat. 536; Pub. L. 91–172, title I, § 121(d)(1), (3)(A), (B), Dec. 30, 1969, 83 Stat. 543, 548; Pub. L. 93–625, § 7(b)(2), Jan. 3,

1975, 88 Stat. 2115; Pub. L. 94–455, title XIII, §1308(a), title XIX, §§1901(a)(72), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1729, 1776, 1834; Pub. L. 95–345, §2(c), Aug. 15, 1978, 92 Stat. 482; Pub. L. 96–605, title I, §110(a), Dec. 28, 1980, 94 Stat. 3525; Pub. L. 98–369, div. A, title I, §174(b)(5)(B), title X, §1034(a), (b), July 18, 1984, 98 Stat. 707, 1039, 1040; Pub. L. 99–514, title II, §201(d)(9), title XVI, §1603(b), title XVIII, §1878(e), Oct. 22, 1986, 100 Stat. 2141, 2768, 2903; Pub. L. 100–203, title X, §10214(a), (b), Dec. 22, 1987, 101 Stat. 1330–407; Pub. L. 100–647, title I, §§1016(a)(5)(A), (6), 1018(u)(13), title II, §2004(h), Nov. 10, 1988, 102 Stat. 3574, 3575, 3590, 3603; Pub. L. 101–239, title VII, §7811(*l*), Dec. 19, 1989, 103 Stat. 2412; Pub. L. 103–66, title XIII, §13144(a), (b), Aug. 10, 1993, 107 Stat. 441, 442; Pub. L. 108–357, title II, §247(a), title VII, §702(b), Oct. 22, 2004, 118 Stat. 1449, 1546; Pub. L. 109–135, title IV, §412(ee)(2), Dec. 21, 2005, 119 Stat. 2639; Pub. L. 109–280, title VIII, §866(a), Aug. 17, 2006, 120 Stat. 1025.)

REFERENCES IN TEXT

The Tax Reform Act of 1976, referred to in subsec. (b)(3)(C)(iii), is Pub. L. 94–455, Oct. 4, 1976, 90 Stat. 1520, as amended, which was enacted Oct. 4, 1976. For complete classification of this Act to the Code, see Tables.

The date of the enactment of the American Jobs Creation Act of 2004, referred to in subsec. (c)(6)(A)(ii), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

The Small Business Investment Act of 1958, referred to in subsec. (c)(6)(A)(ii), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§661 et seq.) of Title 15, Commerce and Trade. Section 303(a) of the Act is classified to section 683(a) of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 661 of Title 15 and Tables.

AMENDMENTS

2006—Subsec. (c)(9)(C)(iv). Pub. L. 109–280 added cl. (iv).

2005—Subsec. (b)(1)(E). Pub. L. 109–135 substituted ''section 512(b)(19)'' for ''section 512(b)(18)''.

2004—Subsec. (b)(1)(E). Pub. L. 108–357, §702(b), added subpar. (E).

Subsec. (c)(6). Pub. L. 108–357, §247(a), reenacted heading without change and amended text of par. (6) generally. Prior to amendment, text read as follows: ''For purposes of this section, the term 'acquisition indebtedness' does not include an obligation, to the extent that it is insured by the Federal Housing Administration, to finance the purchase, rehabilitation, or construction of housing for low and moderate income persons.''

1993—Subsec. (c)(9)(A). Pub. L. 103–66, §13144(b)(1), inserted at end ''For purposes of this paragraph, an interest in a mortgage shall in no event be treated as real property.''

Subsec. (c)(9)(B). Pub. L. 103–66, §13144(b)(2), struck out at end ''For purposes of this paragraph, an interest in a mortgage shall in no event be treated as real property.''

Subsec. (c)(9)(G), (H). Pub. L. 103–66, §13144(a), added subpars. (G) and (H).

1989—Subsec. (c)(9)(E), (F). Pub. L. 101–239 redesignated the subpar. (E), relating to special rules for organizations described in section 501(c)(25), as (F).

1988—Subsec. (c)(9)(B). Pub. L. 100–647, §1016(a)(6), substituted ''this paragraph'' for ''clause (vi)'' in last sentence.

Pub. L. 100–647, §1018(u)(13)(A), amended directory language of Pub. L. 99–514, §1878(e)(1), (3), to clarify that general amendment by section 1878(e)(3) included concluding provision as well as cl. (vi) and that amendment by section 1878(e)(1) should have been to the concluding provisions as amended by section 1878(e)(3).

Subsec. (c)(9)(E). Pub. L. 100–647, §1016(a)(5)(A), added subpar. (E) relating to special rules for organizations described in section 501(c)(25).

Subsec. (c)(9)(E)(i). Pub. L. 100–647, §2004(h)(2), in subsec. (c)(9)(E), relating to certain allocations permitted, redesignated subcls. (II) and (III) as (I) and (II), respectively, and struck out former subcl. (I) which read as follows: ''the allocation of items to any partner other than a qualified organization cannot result in such partner having a share of the overall partnership loss for any taxable year greater than such partner's share of the overall partnership income for the taxable year for which such partner's income share will be the smallest,''.

Subsec. (c)(9)(E)(iii). Pub. L. 100–647, §2004(h)(1), in subsec. (c)(9)(E) relating to certain allocations permitted, added cl. (iii).

1987—Subsec. (c)(9)(B)(vi). Pub. L. 100–203, §10214(a), amended cl. (vi) generally. Prior to amendment, cl. (vi) read as follows: ''the real property is held by a partnership (which does not fail to meet the requirements of clauses (i) through (v)), and—

''(I) any partner of the partnership is not a qualified organization, and

''(II) the principal purpose of any allocation to any partner of the partnership which is a qualified organization which is not a qualified allocation (within the meaning of section 168(h)(6)) is the avoidance of income tax.''

Subsec. (c)(9)(E). Pub. L. 100–203, §10214(b), added subpar. (E).

1986—Subsec. (c)(9)(B). Pub. L. 99–514, §1878(e)(1), as amended by Pub. L. 100–647, §1018(u)(13)(A), which directed amendment of penultimate sentence by substituting ''is unrelated business taxable income'' for ''would be unrelated business taxable income (determined without regard to this paragraph)'', was executed by making the substitution for ''would be unrelated business taxable income (determined without regard to this paragraph'', as the probable intent of Congress.

Pub. L. 99–514, §1878(e)(3), as amended by Pub. L. 100–647, §1018(u)(13)(B), amended concluding provisions generally. Prior to amendment, concluding provisions read as follows: ''For purposes of clause (vi)(I), an organization shall not be treated as a qualified organization if any income of such organization would be unrelated business taxable income (determined without regard to this paragraph).''

Subsec. (c)(9)(B)(vi). Pub. L. 99–514, §1878(e)(3), as amended by Pub. L. 100–647, §1018(u)(13)(B), amended cl. (vi) generally. Prior to amendment, cl. (vi) read as follows: ''the real property is held by a partnership unless the partnership meets the requirements of clauses (i) through (v) and unless—

''(I) all of the partners of the partnership are qualified organizations, or

''(II) each allocation to a partner of the partnership which is a qualified organization is a qualified allocation (within the meaning of section 168(j)(9)).''

Subsec. (c)(9)(B)(vi)(II). Pub. L. 99–514, §201(d)(9), substituted ''section 168(h)(6)'' for ''section 168(j)(9)''.

Subsec. (c)(9)(C)(i). Pub. L. 99–514, §1878(e)(2), substituted ''section 509(a)(3)'' for ''section 509(a)''.

Subsec. (c)(9)(C)(iii). Pub. L. 99–514, §1603(b), added cl. (iii).

1984—Subsec. (c)(9). Pub. L. 98–369, §1034(a), amended par. (9) generally, substituting provisions relating to real property acquired by a qualified organization for provisions relating to real property acquired by a qualified trust, with ''qualified organization'' expanded to include trusts constituting qualified trusts under section 401 of this title as well as organizations described in section 170(b)(1)(A)(ii) of this title and their affiliated support organizations described in section 509(a) of this title.

Subsec. (c)(9)(B)(iii). Pub. L. 98–369, §174(b)(5)(B), inserted reference to section 707(b).

Subsec. (g). Pub. L. 98–369, §1034(b), added subsec. (g).

1980—Subsec. (c)(9). Pub. L. 96–605 added par. (9).

1978—Subsec. (c)(8). Pub. L. 95–345 added par. (8).

1976—Subsecs. (a)(1), (b)(3)(A), (B)(ii). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (b)(3)(C)(iii). Pub. L. 94–455, § 1901(a)(72)(C), substituted ''(as defined in this section immediately before the enactment of the Tax Reform Act of 1976)'' for ''as (defined in subsection (f))'' after ''is a business lease''.

Subsec. (c)(1). Pub. L. 94–455, § 1901(a)(72)(A), struck out exception following subpar. (C) that in any taxable year beginning before January 1, 1972, any acquisition indebtedness incurred prior to June 28, 1966, would not be taken into account except for business lease indebtedness of certain organizations.

Subsec. (c)(2)(C). Pub. L. 94–455, § 1308(a), added subpar. (C).

Subsecs. (c)(7), (e). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (f). Pub. L. 94–455, § 1901(a)(72(B), struck out subsec. (f) relating to definition of business lease, special rules applicable to such leases, and exceptions to the definition and applicable rules, and redesignated subsec. (h) as (f).

Subsec. (g). Pub. L. 94–455, § 1901(a)(72)(B), struck out subsec. (g) relating to definition and special rules applicable to business lease indebtedness.

Subsec. (h). Pub. L. 94–455, § 1901(a)(72)(B), redesignated subsec. (h) as (f).

1975—Subsec. (b)(3)(D). Pub. L. 93–625 struck out last sentence providing for allowance and payment of interest on any overpayment for a taxable year resulting from application of subpar. (B) after actual use condition was satisfied at rate of 4 in lieu of 6 percent per annum.

1969—Subsec. (a). Pub. L. 91–172, § 121(d)(1), substituted ''Unrelated debt-financed income'' for ''Business leases'' in heading and substituted in text material covering unrelated debt-financed income and deductions for material covering business lease rents and deductions.

Subsecs. (b) to (e). Pub. L. 91–172, § 121(d)(1), (3)(A), added subsecs. (b), (c), (d) and (e). Former subsecs. (b), (c), and (d) redesignated (f), (g), and (h), respectively.

Subsec. (f). Pub. L. 91–172, § 121(d)(3)(A), (B), redesignated subsec. (b) as subsec. (f), and, in par. (1) of subsec. (f) as so redesignated, substituted reference to subsec. (g) for reference to subsec. (c).

Subsecs. (g), (h). Pub. L. 91–172, § 121(d)(3)(A), redesignated subsecs. (c) and (d) as (g) and (h), respectively.

1960—Subsec. (c)(8). Pub. L. 86–667 added par. (8).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, § 866(b), Aug. 17, 2006, 120 Stat. 1025, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning on or after the date of enactment of this Act [Aug. 17, 2006].''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, § 247(b), Oct. 22, 2004, 118 Stat. 1449, provided that: ''The amendment made by this section [amending this section] shall apply to indebtedness incurred after the date of the enactment of this Act [Oct. 22, 2004] by a small business investment company licensed after the date of the enactment of this Act.''

Amendment by section 702(b) of Pub. L. 108–357 applicable to any gain or loss on the sale, exchange, or other disposition of any property acquired by the taxpayer after Dec. 31, 2004, see section 702(d) of Pub. L. 108–357, set out as a note under section 512 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13144(c) of Pub. L. 103–66 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to acquisitions on or after January 1, 1994.

''(2) SMALL LEASES.—The provisions of section 514(c)(9)(G)(i) of the Internal Revenue Code of 1986 shall, in addition to any leases to which the provisions apply by reason of paragraph (1), apply to leases entered into on or after January 1, 1994.''

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1016(a)(5)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply with respect to interests in the organization acquired after June 10, 1987, except that such amendment shall not apply to any such interest acquired after June 10, 1987, pursuant to a binding written contract in effect on June 10, 1987, and at all times thereafter before such acquisition.''

Amendment by sections 1016(a)(6) and 1018(u)(13) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 2004(h) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10214(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section] shall apply to—

''(1) property acquired by the partnership after October 13, 1987, and

''(2) partnership interests acquired after October 13, 1987,

except that such amendments shall not apply in the case of any property (or partnership interest) acquired pursuant to a written binding contract in effect on October 13, 1987, and at all times thereafter before such property (or interest) is acquired.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 201(d)(9) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

Amendment by section 201(d)(9) of Pub. L. 99–514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99–514, set out as a note under section 46 of this title.

Amendment by section 1603(b) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1603(c) of Pub. L. 99–514, set out as a note under section 501 of this title.

Amendment by section 1878(e) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 174(b)(5)(B) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1983, in taxable years ending after that date, see section 174(c)(2)(A) of Pub. L. 98–369, set out as a note under section 267 of this title.

Section 1034(c) of Pub. L. 98–369 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to indebtedness incurred after the date of the enactment of this Act [July 18, 1984].

''(2) EXCEPTION FOR INDEBTEDNESS ON CERTAIN PROPERTY ACQUIRED BEFORE JANUARY 1, 1985.—

''(A) The amendment made by subsection (a) [amending this section] shall not apply to any indebtedness incurred before January 1, 1985, by a partnership described in subparagraph (B) if such indebtedness is incurred with respect to property acquired (directly or indirectly) by such partnership before such date.

''(B) A partnership is described in this subparagraph if—

''(i) before October 21, 1983, the partnership was organized, a request for exemption with respect to such partnership was filed with the Department of Labor, and a private placement memorandum stating the maximum number of units in the partnership that would be offered had been circulated,

''(ii) the interest in the property to be acquired, directly or indirectly (including through acquiring an interest in another partnership) by such partnership was described in such private placement memorandum, and

''(iii) the marketing of partnership interests in such partnership is completed not later than 2 years after the later of the date of enactment of this Act [July 18, 1984] or the date of publication in the Federal Register of such exemption by the Department of Labor and the aggregate number of units in such partnership sold does not exceed the amount described in clause (i).

''(3) EXCEPTION FOR INDEBTEDNESS ON CERTAIN PROPERTY ACQUIRED BEFORE JANUARY 1, 1986.—

''(A) The amendment made by subsection (a) [amending this section] shall not apply to any indebtedness incurred before January 1, 1986, by a partnership described in subparagraph (B) if such indebtedness is incurred with respect to property acquired (directly or indirectly) by such partnership before such date.

''(B) A partnership is described in this paragraph if—

''(i) before March 6, 1984, the partnership was organized and publicly announced, the maximum amount of interests which would be sold in such partnership, and

''(ii) the marketing of partnership interests in such partnership is completed not later than the 90th day after the date of the enactment of this Act [July 18, 1984] and the aggregate amount of interests in such partnership sold does not exceed the maximum amount described in clause (i).

For purposes of clause (i), the maximum amount taken into account shall be the greatest of the amounts shown in the registration statement, prospectus, or partnership agreement.

''(C) BINDING CONTRACTS.—For purposes of this paragraph, property shall be deemed to have been acquired before January 1, 1986, if such property is acquired pursuant to a written contract which, on January 1, 1986, and at all times thereafter, required the acquisition of such property and such property is placed in service not later than 6 months after the date such contract was entered into.''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 110(c) of Pub. L. 96–605 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1980.''

EXTENSION OF 1980 AMENDMENT OF THIS SECTION TO OTHER PERSONS

Section 110(b) of Pub. L. 96–605 provided that: ''The amendment made by subsection (a) [amending this section] shall not be considered a precedent with respect to extending such amendment (or similar rules) to any other person.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–345 applicable with respect to amounts received after Dec. 31, 1976, as payments with respect to securities loans (as defined in section 512(a)(5) of this title), and transfers of securities, under agreements described in section 1058 of this title, occurring after such date, see section 2(e) of Pub. L. 95–345, set out as a note under section 509 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1308(b) of Pub. L. 94–455 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years ending after December 31, 1969.''

Amendment by section 1901(a)(72) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–625 effective July 1, 1975, and applicable to amounts outstanding on such date or arising thereafter, see section 7(e) of Pub. L. 93–625, set out as an Effective Date note under section 6621 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, and to the manner of treatment to be accorded indebtednesses secured by certain mortgages on properties bargain-purchased before Oct. 9, 1969, see section 121(g) of Pub. L. 91–172, set out as a note under section 511 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–667 applicable to taxable years beginning after Dec. 31, 1959, see section 6 of Pub. L. 86–667, set out as a note under section 501 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TRANSITION RULE FOR ACQUISITION INDEBTEDNESS WITH RESPECT TO CERTAIN LAND

Section 1607 of Pub. L. 99–514 provided that: ''For purposes of applying section 514(c) of the Internal Revenue Code of 1986, with respect to a disposition during calendar year 1986 or calendar year 1987 of land acquired during calendar year 1984, the term 'acquisition indebtedness' does not include indebtedness incurred in connection with bonds issued after January 1, 1984, and before July 19, 1984, on behalf of an organization which is a community college and which is described in section 511(a)(2)(B) of such Code.''

§ 515. Taxes of foreign countries and possessions of the United States

The amount of taxes imposed by foreign countries and possessions of the United States shall be allowed as a credit against the tax of an organization subject to the tax imposed by section 511 to the extent provided in section 901; and in the case of the tax imposed by section 511, the term ''taxable income'' as used in section 901

shall be read as ''unrelated business taxable income''.

(Aug. 16, 1954, ch. 736, 68A Stat. 176.)

PART IV—FARMERS' COOPERATIVES

Sec.
521. Exemption of farmers' cooperatives from tax.
[522. Repealed.]

AMENDMENTS

1969—Pub. L. 91–172, title I, §101(a), Dec. 30, 1969, 83 Stat. 492, substituted ''PART IV'' for ''PART III'' as part designation.

1962—Pub. L. 87–834, §17(b)(5), Oct. 16, 1962, 76 Stat. 1051, struck out item 522 ''Tax on farmers' cooperatives''.

§ 521. Exemption of farmers' cooperatives from tax

(a) Exemption from tax

A farmers' cooperative organization described in subsection (b)(1) shall be exempt from taxation under this subtitle except as otherwise provided in part I of subchapter T (sec. 1381 and following). Notwithstanding part I of subchapter T (sec. 1381 and following), such an organization shall be considered an organization exempt from income taxes for purposes of any law which refers to organizations exempt from income taxes.

(b) Applicable rules

(1) Exempt farmers' cooperatives

The farmers' cooperatives exempt from taxation to the extent provided in subsection (a) are farmers', fruit growers', or like associations organized and operated on a cooperative basis (A) for the purpose of marketing the products of members or other producers, and turning back to them the proceeds of sales, less the necessary marketing expenses, on the basis of either the quantity or the value of the products furnished by them, or (B) for the purpose of purchasing supplies and equipment for the use of members or other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses.

(2) Organizations having capital stock

Exemption shall not be denied any such association because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the State of incorporation or 8 percent per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the association, upon dissolution or otherwise, beyond the fixed dividends) is owned by producers who market their products or purchase their supplies and equipment through the association.

(3) Organizations maintaining reserve

Exemption shall not be denied any such association because there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose.

(4) Transactions with nonmembers

Exemption shall not be denied any such association which markets the products of nonmembers in an amount the value of which does not exceed the value of the products marketed for members, or which purchases supplies and equipment for nonmembers in an amount the value of which does not exceed the value of the supplies and equipment purchased for members, provided the value of the purchases made for persons who are neither members nor producers does not exceed 15 percent of the value of all its purchases.

(5) Business for the United States

Business done for the United States or any of its agencies shall be disregarded in determining the right to exemption under this section.

(6) Netting of losses

Exemption shall not be denied any such association because such association computes its net earnings for purposes of determining any amount available for distribution to patrons in the manner described in paragraph (1) of section 1388(j).

(7) Cross reference

For treatment of value-added processing involving animals, see section 1388(k).

(Aug. 16, 1954, ch. 736, 68A Stat. 176; Pub. L. 87–834, §17(b)(1), Oct. 16, 1962, 76 Stat. 1051; Pub. L. 99–272, title XIII, §13210(b), Apr. 7, 1986, 100 Stat. 324; Pub. L. 108–357, title III, §316(b), Oct. 22, 2004, 118 Stat. 1469.)

AMENDMENTS

2004—Subsec. (b)(7). Pub. L. 108–357 added par. (7).

1986—Subsec. (b)(6). Pub. L. 99–272 added par. (6).

1962—Subsec. (a). Pub. L. 87–834 substituted ''part I of subchapter T (sec. 1381 and following)'' for ''section 522'' in two places.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title III, §316(c), Oct. 22, 2004, 118 Stat. 1469, provided that: ''The amendments made by this section [amending this section and section 1388 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 applicable to taxable years beginning after Dec. 31, 1962, see section 13210(c) of Pub. L. 99–272, set out as a note under section 1388 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable, except as otherwise provided, to taxable years of organizations described in section 1381(a) of this title beginning after Dec. 31, 1962, see section 17(c) of Pub. L. 87–834, set out as an Effective Date note under section 1381 of this title.

[§ 522. Repealed. Pub. L. 87–834, § 17(b)(2), Oct. 16, 1962, 76 Stat. 1051]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 177, related to tax on farmers' cooperatives.

EFFECTIVE DATE OF REPEAL

Repeal applicable, except as otherwise provided, to taxable years of organizations described in section 1381(a) of this title beginning after Dec. 31, 1962, see sec-

tion 17(c) of Pub. L. 87–834, set out as an Effective Date note under section 1381 of this title.

PART V—SHIPOWNERS' PROTECTION AND INDEMNITY ASSOCIATIONS

Sec.
526. Shipowners' protection and indemnity associations.

AMENDMENTS

1969—Pub. L. 91–172, title I, § 101(a), Dec. 30, 1969, 83 Stat. 492, substituted ''PART V'' for ''PART IV'' as part designation.

§ 526. Shipowners' protection and indemnity associations

There shall not be included in gross income the receipts of shipowners' mutual protection and indemnity associations not organized for profit, and no part of the net earnings of which inures to the benefit of any private shareholder; but such corporations shall be subject as other persons to the tax on their taxable income from interest, dividends, and rents.

(Aug. 16, 1954, ch. 736, 68A Stat. 178.)

PART VI—POLITICAL ORGANIZATIONS

Sec.
527. Political organizations.

§ 527. Political organizations

(a) General rule

A political organization shall be subject to taxation under this subtitle only to the extent provided in this section. A political organization shall be considered an organization exempt from income taxes for the purpose of any law which refers to organizations exempt from income taxes.

(b) Tax imposed

(1) In general

A tax is hereby imposed for each taxable year on the political organization taxable income of every political organization. Such tax shall be computed by multiplying the political organization taxable income by the highest rate of tax specified in section 11(b).

(2) Alternative tax in case of capital gains

If for any taxable year any political organization has a net capital gain, then, in lieu of the tax imposed by paragraph (1), there is hereby imposed a tax (if such a tax is less than the tax imposed by paragraph (1)) which shall consist of the sum of—

(A) a partial tax, computed as provided by paragraph (1), on the political organization taxable income determined by reducing such income by the amount of such gain, and

(B) an amount determined as provided in section 1201(a) on such gain.

(c) Political organization taxable income defined

(1) Taxable income defined

For purposes of this section, the political organization taxable income of any organization for any taxable year is an amount equal to the excess (if any) of—

(A) the gross income for the taxable year (excluding any exempt function income), over

(B) the deductions allowed by this chapter which are directly connected with the production of the gross income (excluding exempt function income), computed with the modifications provided in paragraph (2).

(2) Modifications

For purposes of this subsection—

(A) there shall be allowed a specific deduction of $100,

(B) no net operating loss deduction shall be allowed under section 172, and

(C) no deduction shall be allowed under part VIII of subchapter B (relating to special deductions for corporations).

(3) Exempt function income

For purposes of this subsection, the term ''exempt function income'' means any amount received as—

(A) a contribution of money or other property,

(B) membership dues, a membership fee or assessment from a member of the political organization,

(C) proceeds from a political fundraising or entertainment event, or proceeds from the sale of political campaign materials, which are not received in the ordinary course of any trade or business, or

(D) proceeds from the conducting of any bingo game (as defined in section 513(f)(2)),

to the extent such amount is segregated for use only for the exempt function of the political organization.

(d) Certain uses not treated as income to candidate

For purposes of this title, if any political organization—

(1) contributes any amount to or for the use of any political organization which is treated as exempt from tax under subsection (a) of this section,

(2) contributes any amount to or for the use of any organization described in paragraph (1) or (2) of section 509(a) which is exempt from tax under section 501(a), or

(3) deposits any amount in the general fund of the Treasury or in the general fund of any State or local government,

such amount shall be treated as an amount not diverted for the personal use of the candidate or any other person. No deduction shall be allowed under this title for the contribution or deposit of any amount described in the preceding sentence.

(e) Other definitions

For purposes of this section—

(1) Political organization

The term ''political organization'' means a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function.

(2) Exempt function

The term ''exempt function'' means the function of influencing or attempting to influ-

ence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed. Such term includes the making of expenditures relating to an office described in the preceding sentence which, if incurred by the individual, would be allowable as a deduction under section 162(a).

(3) Contributions

The term ''contributions'' has the meaning given to such term by section 271(b)(2).

(4) Expenditures

The term ''expenditures'' has the meaning given to such term by section 271(b)(3).

(5) Qualified State or local political organization

(A) In general

The term ''qualified State or local political organization'' means a political organization—

(i) all the exempt functions of which are solely for the purposes of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any State or local public office or office in a State or local political organization,

(ii) which is subject to State law that requires the organization to report (and it so reports)—

(I) information regarding each separate expenditure from and contribution to such organization, and

(II) information regarding the person who makes such contribution or receives such expenditure,

which would otherwise be required to be reported under this section, and

(iii) with respect to which the reports referred to in clause (ii) are (I) made public by the agency with which such reports are filed, and (II) made publicly available for inspection by the organization in the manner described in section 6104(d).

(B) Certain State law differences disregarded

An organization shall not be treated as failing to meet the requirements of subparagraph (A)(ii) solely by reason of 1 or more of the following:

(i) The minimum amount of any expenditure or contribution required to be reported under State law is not more than $300 greater than the minimum amount required to be reported under subsection (j).

(ii) The State law does not require the organization to identify 1 or more of the following:

(I) The employer of any person who makes contributions to the organization.

(II) The occupation of any person who makes contributions to the organization.

(III) The employer of any person who receives expenditures from the organization.

(IV) The occupation of any person who receives expenditures from the organization.

(V) The purpose of any expenditure of the organization.

(VI) The date any contribution was made to the organization.

(VII) The date of any expenditure of the organization.

(C) De minimis errors

An organization shall not fail to be treated as a qualified State or local political organization solely because such organization makes de minimis errors in complying with the State reporting requirements and the public inspection requirements described in subparagraph (A) as long as the organization corrects such errors within a reasonable period after the organization becomes aware of such errors.

(D) Participation of Federal candidate or office holder

The term ''qualified State or local political organization'' shall not include any organization otherwise described in subparagraph (A) if a candidate for nomination or election to Federal elective public office or an individual who holds such office—

(i) controls or materially participates in the direction of the organization,

(ii) solicits contributions to the organization (unless the Secretary determines that such solicitations resulted in de minimis contributions and were made without the prior knowledge and consent, whether explicit or implicit, of the organization or its officers, directors, agents, or employees), or

(iii) directs, in whole or in part, disbursements by the organization.

(f) Exempt organization, which is not political organization, must include certain amounts in gross income

(1) In general

If an organization described in section 501(c) which is exempt from tax under section 501(a) expends any amount during the taxable year directly (or through another organization) for an exempt function (within the meaning of subsection (e)(2)), then, notwithstanding any other provision of law, there shall be included in the gross income of such organization for the taxable year, and shall be subject to tax under subsection (b) as if it constituted political organization taxable income, an amount equal to the lesser of—

(A) the net investment income of such organization for the taxable year, or

(B) the aggregate amount so expended during the taxable year for such an exempt function.

(2) Net investment income

For purposes of this subsection, the term ''net investment income'' means the excess of—

(A) the gross amount of income from interest, dividends, rents, and royalties, plus the excess (if any) of gains from the sale or ex-

change of assets over the losses from the sale or exchange of assets, over

(B) the deductions allowed by this chapter which are directly connected with the production of the income referred to in subparagraph (A).

For purposes of the preceding sentence, there shall not be taken into account items taken into account for purposes of the tax imposed by section 511 (relating to tax on unrelated business income).

(3) Certain separate segregated funds

For purposes of this subsection and subsection (e)(1), a separate segregated fund (within the meaning of section 610 of title 18) or of any similar State statute, or within the meaning of any State statute which permits the segregation of dues moneys for exempt functions (within the meaning of subsection (e)(2)) which is maintained by an organization described in section 501(c) which is exempt from tax under section 501(a) shall be treated as a separate organization.

(g) Treatment of newsletter funds

(1) In general

For purposes of this section, a fund established and maintained by an individual who holds, has been elected to, or is a candidate (within the meaning of paragraph (3)) for nomination or election to, any Federal, State, or local elective public office, for use by such individual exclusively for the preparation and circulation of such individual's newsletter shall, except as provided in paragraph (2), be treated as if such fund constituted a political organization.

(2) Additional modifications

In the case of any fund described in paragraph (1)—

(A) the exempt function shall be only the preparation and circulation of the newsletter, and

(B) the specific deduction provided by subsection (c)(2)(A) shall not be allowed.

(3) Candidate

For purposes of paragraph (1), the term ''candidate'' means, with respect to any Federal, State, or local elective public office, an individual who—

(A) publicly announces that he is a candidate for nomination or election to such office, and

(B) meets the qualifications prescribed by law to hold such office.

(h) Special rule for principal campaign committees

(1) In general

In the case of a political organization, which is a principal campaign committee, paragraph (1) of subsection (b) shall be applied by substituting ''the appropriate rates'' for ''the highest rate''.

(2) Principal campaign committee defined

(A) In general

For purposes of this subsection, the term ''principal campaign committee'' means the political committee designated by a candidate for Congress as his principal campaign committee for purposes of—

(i) section 302(e) of the Federal Election Campaign Act of 1971 (2 U.S.C. 432(e)), and

(ii) this subsection.

(B) Designation

A candidate may have only 1 designation in effect under subparagraph (A)(ii) at any time and such designation—

(i) shall be made at such time and in such manner as the Secretary may prescribed by regulations, and

(ii) once made, may be revoked only with the consent of the Secretary.

Nothing in this subsection shall be construed to require any designation where there is only one political committee with respect to a candidate.

(i) Organizations must notify Secretary that they are section 527 organizations

(1) In general

Except as provided in paragraph (5), an organization shall not be treated as an organization described in this section—

(A) unless it has given notice to the Secretary electronically that it is to be so treated, or

(B) if the notice is given after the time required under paragraph (2), the organization shall not be so treated for any period before such notice is given or, in the case of any material change in the information required under paragraph (3), for the period beginning on the date on which the material change occurs and ending on the date on which such notice is given.

(2) Time to give notice

The notice required under paragraph (1) shall be transmitted not later than 24 hours after the date on which the organization is established or, in the case of any material change in the information required under paragraph (3), not later than 30 days after such material change.

(3) Contents of notice

The notice required under paragraph (1) shall include information regarding—

(A) the name and address of the organization (including any business address, if different) and its electronic mailing address,

(B) the purpose of the organization,

(C) the names and addresses of its officers, highly compensated employees, contact person, custodian of records, and members of its Board of Directors,

(D) the name and address of, and relationship to, any related entities (within the meaning of section 168(h)(4)),

(E) whether the organization intends to claim an exemption from the requirements of subsection (j) or section 6033, and

(F) such other information as the Secretary may require to carry out the internal revenue laws.

(4) Effect of failure

In the case of an organization failing to meet the requirements of paragraph (1) for any

period, the taxable income of such organization shall be computed by taking into account any exempt function income (and any deductions directly connected with the production of such income) or, in the case of a failure relating to a material change, by taking into account such income and deductions only during the period beginning on the date on which the material change occurs and ending on the date on which notice is given under this subsection. For purposes of the preceding sentence, the term ''exempt function income'' means any amount described in a subparagraph of subsection (c)(3), whether or not segregated for use for an exempt function.

(5) Exceptions

This subsection shall not apply to any organization—

(A) to which this section applies solely by reason of subsection (f)(1),

(B) which reasonably anticipates that it will not have gross receipts of $25,000 or more for any taxable year, or

(C) which is a political committee of a State or local candidate or which is a State or local committee of a political party.

(6) Coordination with other requirements

This subsection shall not apply to any person required (without regard to this subsection) to report under the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) as a political committee.

(j) Required disclosure of expenditures and contributions

(1) Penalty for failure

In the case of—

(A) a failure to make the required disclosures under paragraph (2) at the time and in the manner prescribed therefor, or

(B) a failure to include any of the information required to be shown by such disclosures or to show the correct information,

there shall be paid by the organization an amount equal to the rate of tax specified in subsection (b)(1) multiplied by the amount to which the failure relates. For purposes of subtitle F, the amount imposed by this paragraph shall be assessed and collected in the same manner as penalties imposed by section 6652(c).

(2) Required disclosure

A political organization which accepts a contribution, or makes an expenditure, for an exempt function during any calendar year shall file with the Secretary either—

(A)(i) in the case of a calendar year in which a regularly scheduled election is held—

(I) quarterly reports, beginning with the first quarter of the calendar year in which a contribution is accepted or expenditure is made, which shall be filed not later than the fifteenth day after the last day of each calendar quarter, except that the report for the quarter ending on December 31 of such calendar year shall be filed not later than January 31 of the following calendar year,

(II) a pre-election report, which shall be filed not later than the twelfth day before (or posted by registered or certified mail not later than the fifteenth day before) any election with respect to which the organization makes a contribution or expenditure, and which shall be complete as of the twentieth day before the election, and

(III) a post-general election report, which shall be filed not later than the thirtieth day after the general election and which shall be complete as of the twentieth day after such general election, and

(ii) in the case of any other calendar year, a report covering the period beginning January 1 and ending June 30, which shall be filed no later than July 31 and a report covering the period beginning July 1 and ending December 31, which shall be filed no later than January 31 of the following calendar year, or

(B) monthly reports for the calendar year, beginning with the first month of the calendar year in which a contribution is accepted or expenditure is made, which shall be filed not later than the twentieth day after the last day of the month and shall be complete as if the last day of the month, except that, in lieu of filing the reports otherwise due in November and December of any year in which a regularly scheduled general election is held, a pre-general election report shall be filed in accordance with subparagraph (A)(i)(II), a post-general election report shall be filed in accordance with subparagraph (A)(i)(III), and a year end report shall be filed not later than January 31 of the following calendar year.

(3) Contents of report

A report required under paragraph (2) shall contain the following information:

(A) The amount, date, and purpose of each expenditure made to a person if the aggregate amount of expenditures to such person during the calendar year equals or exceeds $500 and the name and address of the person (in the case of an individual, including the occupation and name of employer of such individual).

(B) The name and address (in the case of an individual, including the occupation and name of employer of such individual) of all contributors which contributed an aggregate amount of $200 or more to the organization during the calendar year and the amount and date of the contribution.

Any expenditure or contribution disclosed in a previous reporting period is not required to be included in the current reporting period.

(4) Contracts to spend or contribute

For purposes of this subsection, a person shall be treated as having made an expenditure or contribution if the person has contracted or is otherwise obligated to make the expenditure or contribution.

(5) Coordination with other requirements

This subsection shall not apply—

(A) to any person required (without regard to this subsection) to report under the Fed-

eral Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) as a political committee,

(B) to any State or local committee of a political party or political committee of a State or local candidate,

(C) to any organization which is a qualified State or local political organization,

(D) to any organization which reasonably anticipates that it will not have gross receipts of $25,000 or more for any taxable year,

(E) to any organization to which this section applies solely by reason of subsection (f)(1), or

(F) with respect to any expenditure which is an independent expenditure (as defined in section 301 of such Act).

(6) Election

For purposes of this subsection, the term ''election'' means—

(A) a general, special, primary, or runoff election for a Federal office,

(B) a convention or caucus of a political party which has authority to nominate a candidate for Federal office,

(C) a primary election held for the selection of delegates to a national nominating convention of a political party, or

(D) a primary election held for the expression of a preference for the nomination of individuals for election to the office of President.

(7) Electronic filing

Any report required under paragraph (2) with respect to any calendar year shall be filed in electronic form if the organization has, or has reason to expect to have, contributions exceeding $50,000 or expenditures exceeding $50,000 in such calendar year.

(k) Public availability of notices and reports

(1) In general

The Secretary shall make any notice described in subsection (i)(1) or report described in subsection (j)(7) available for public inspection on the Internet not later than 48 hours after such notice or report has been filed (in addition to such public availability as may be made under section 6104(d)(7)).

(2) Access

The Secretary shall make the entire database of notices and reports which are made available to the public under paragraph (1) searchable by the following items (to the extent the items are required to be included in the notices and reports):

(A) Names, States, zip codes, custodians of records, directors, and general purposes of the organizations.

(B) Entities related to the organizations.

(C) Contributors to the organizations.

(D) Employers of such contributors.

(E) Recipients of expenditures by the organizations.

(F) Ranges of contributions and expenditures.

(G) Time periods of the notices and reports.

Such database shall be downloadable.

***(l)* Authority to waive**

The Secretary may waive all or any portion of the—

(1) tax assessed on an organization by reason of the failure of the organization to comply with the requirements of subsection (i), or

(2) amount imposed under subsection (j) for a failure to comply with the requirements thereof,

on a showing that such failure was due to reasonable cause and not due to willful neglect.

(Added Pub. L. 93–625, §10(a), Jan. 3, 1975, 88 Stat. 2116; amended Pub. L. 94–455, title XIX, §1901(b)(33)(C), Oct. 4, 1976, 90 Stat. 1801; Pub. L. 95–502, title III, §302(a), Oct. 21, 1978, 92 Stat. 1702; Pub. L. 95–600, title III, §301(b)(6), Nov. 6, 1978, 92 Stat. 2821; Pub. L. 97–34, title I, §128(a), Aug. 13, 1981, 95 Stat. 203; Pub. L. 98–369, div. A, title IV, §474(r)(16), title VII, §722(c), July 18, 1984, 98 Stat. 843, 973; Pub. L. 99–514, title I, §112(b)(1), Oct. 22, 1986, 100 Stat. 2108; Pub. L. 100–647, title I, §1001(b)(3)(B), Nov. 10, 1988, 102 Stat. 3349; Pub. L. 106–230, §§1(a), 2(a), July 1, 2000, 114 Stat. 477, 479; Pub. L. 107–276, §§1(a), 2(a), (b), 5(a), 6(a)–(c), (e)–(g), Nov. 2, 2002, 116 Stat. 1929, 1932–1934.)

REFERENCES IN TEXT

Section 610 of title 18, referred to in subsec. (f)(3), was repealed by Pub. L. 94–283, title II, §201(a), May 11, 1976, 90 Stat. 496. See section 441b of Title 2, The Congress.

The Federal Election Campaign Act of 1971, referred to in subsecs. (i)(6) and (j)(5)(A), is Pub. L. 92–225, Feb. 7, 1972, 86 Stat. 3, as amended, which is classified principally to chapter 14 (§431 et seq.) of Title 2, The Congress. Section 301 of the Act is classified to section 431 of Title 2. For complete classification of this Act to the Code, see Short Title note set out under section 431 of Title 2 and Tables.

AMENDMENTS

2002—Subsec. (e)(5). Pub. L. 107–276, §2(b), added par. (5).

Subsec. (i)(1)(A). Pub. L. 107–276, §6(c), substituted ''electronically'' for '', electronically and in writing,''.

Subsec. (i)(1)(B). Pub. L. 107–276, §6(g)(1), which directed the insertion of ''or, in the case of any material change in the information required under paragraph (3), for the period beginning on the date on which the material change occurs and ending on the date on which such notice is given'' after ''given'', was executed by making the insertion after ''given'' the second time appearing, to reflect the probable intent of Congress.

Subsec. (i)(2). Pub. L. 107–276, §6(g)(2), inserted ''or, in the case of any material change in the information required under paragraph (3), not later than 30 days after such material change'' after ''established''.

Subsec. (i)(3)(E), (F). Pub. L. 107–276, §6(f), added subpar. (E) and redesignated former subpar. (E) as (F).

Subsec. (i)(4). Pub. L. 107–276, §6(g)(3), which directed the insertion of ''or, in the case of a failure relating to a material change, by taking into account such income and deductions only during the period beginning on the date on which the material change occurs and ending on the date on which notice is given under this subsection'' before period at end, was executed by making the insertion before period at end of first sentence, to reflect the probable intent of Congress.

Pub. L. 107–276, §6(a), inserted at end ''For purposes of the preceding sentence, the term 'exempt function income' means any amount described in a subparagraph of subsection (c)(3), whether or not segregated for use for an exempt function.''

Subsec. (i)(5)(C). Pub. L. 107–276, §1(a), added subpar. (C).

Subsec. (j)(1). Pub. L. 107–276, § 6(b), inserted ''For purposes of subtitle F, the amount imposed by this paragraph shall be assessed and collected in the same manner as penalties imposed by section 6652(c).''

Subsec. (j)(3)(A). Pub. L. 107–276, § 6(e)(1)(A), inserted '', date, and purpose'' after ''The amount''.

Subsec. (j)(3)(B). Pub. L. 107–276, § 6(e)(1)(B), inserted ''and date'' after ''the amount''.

Subsec. (j)(5)(C) to (F). Pub. L. 107–276, § 2(a), added subpar. (C) and redesignated former subpars. (C) to (E) as (D) to (F), respectively.

Subsec. (j)(7). Pub. L. 107–276, § 6(e)(2), added par. (7).

Subsec. (k). Pub. L. 107–276, § 6(e)(3), added subsec. (k). Former subsec. (k) redesignated (*l*).

Pub. L. 107–276, § 5(a), added subsec. (k).

Subsec. (*l*). Pub. L. 107–276, § 6(e)(3), redesignated subsec. (k) as (*l*).

2000—Subsec. (i). Pub. L. 106–230, § 1(a), added subsec. (i).

Subsec. (j). Pub. L. 106–230, § 2(a), added subsec. (j).

1988—Subsec. (e)(2). Pub. L. 100–647 inserted at end ''Such term includes the making of expenditures relating to an office described in the preceding sentence which, if incurred by the individual, would be allowable as a deduction under section 162(a).''

1986—Subsec. (g)(1). Pub. L. 99–514, § 112(b)(1)(A), substituted ''paragraph (3)'' for ''section 24(c)(2)''.

Subsec. (g)(3). Pub. L. 99–514, § 112(b)(1)(B), added par. (3).

1984—Subsec. (g)(1). Pub. L. 98–369, § 474(r)(16), substituted ''section 24(c)(2)'' for ''section 41(c)(2)''.

Subsec. (h)(2)(B). Pub. L. 98–369, § 722(c), inserted ''Nothing in this subsection shall be construed to require any designation where there is only one political committee with respect to a candidate.''

1981—Subsec. (h). Pub. L. 97–34 added subsec. (h).

1978—Subsec. (b)(1). Pub. L. 95–600 substituted ''Such tax shall be computed by multiplying the political organization taxable income by the highest rate of tax specified in section 11(b)'' for ''Such tax shall consist of a normal tax and a surtax computed as provided in section 11 as though the political organization were a corporation and as though the political organization taxable income were the taxable income referred to in section 11'' and struck out provision that for purposes of this subsection, the surtax exemption provided by section 11(d) not be allowed.

Subsec. (c)(3)(D). Pub. L. 95–502 added subpar. (D).

1976—Subsec. (b)(2). Pub. L. 94–455 substituted ''net capital gain'' for ''net section 1201 gain'' after ''organization has a''.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–276, § 1(b), Nov. 2, 2002, 116 Stat. 1929, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect as if included in the amendments made by Public Law 106–230.''

Pub. L. 107–276, § 2(c), Nov. 2, 2002, 116 Stat. 1931, provided that: ''The amendments made by this section [amending this section] shall take effect as if included in the amendments made by Public Law 106–230.''

Pub. L. 107–276, § 5(b), Nov. 2, 2002, 116 Stat. 1932, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to any tax assessed or amount imposed after June 30, 2000.''

Pub. L. 107–276, § 6(h)(1), (2), Nov. 2, 2002, 116 Stat. 1934, provided that:

''(1) SUBSECTIONS (a) AND (b).—The amendments made by subsections (a) and (b) [amending this section] shall apply to failures occurring on or after the date of the enactment of this Act [Nov. 2, 2002].

''(2) SUBSECTION (c).—The amendments made by subsection (c) [amending this section] shall take effect as if included in the amendments made by Public Law 106–230.''

Pub. L. 107–276, § 6(h)(4)–(6), Nov. 2, 2002, 116 Stat. 1934, provided that:

''(4) SUBSECTIONS (e)(1) AND (f).—The amendments made by subsections (e)(1) and (f) [amending this section] shall apply to reports and notices required to be filed more than 30 days after the date of the enactment of this Act [Nov. 2, 2002].

''(5) SUBSECTIONS (e)(2) AND (e)(3).—The amendments made by subsections (e)(2) and (e)(3) [amending this section] shall apply to reports required to be filed on or after June 30, 2003.

''(6) SUBSECTION (g).—

''(A) IN GENERAL.—The amendments made by subsection (g) [amending this section] shall apply to material changes on or after the date of the enactment of this Act.

''(B) TRANSITION RULE.—In the case of a material change occurring during the 30-day period beginning on the date of the enactment of this Act, a notice under section 527(i) of the Internal Revenue Code of 1986 (as amended by this Act) shall not be required to be filed under such section before the later of—

''(i) 30 days after the date of such material change, or

''(ii) 45 days after the date of the enactment of this Act [Nov. 2, 2002].''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–230, § 1(d), July 1, 2000, 114 Stat. 479, provided that:

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section and sections 6104 and 6652 of this title] shall take effect on the date of the enactment of this section [July 1, 2000].

''(2) ORGANIZATIONS ALREADY IN EXISTENCE.—In the case of an organization established before the date of the enactment of this section, the time to file the notice under section 527(i)(2) of the Internal Revenue Code of 1986, as added by this section, shall be 30 days after the date of the enactment of this section.

''(3) INFORMATION AVAILABILITY.—The amendment made by subsection (b)(2) [amending section 6104 of this title] shall take effect on the date that is 45 days after the date of the enactment of this section.''

Pub. L. 106–230, § 2(d), July 1, 2000, 114 Stat. 482, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to expenditures made and contributions received after the date of the enactment of this Act [July 1, 2000], except that such amendment shall not apply to expenditures made, or contributions received, after such date pursuant to a contract entered into on or before such date.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(16) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Section 722(c) of Pub. L. 98–369 provided that the amendment made by that section is effective for taxable years beginning after Dec. 31, 1981.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 128(b) of Pub. L. 97–34 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1981.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 301(b)(6) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978,

see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT; ELECTION CAMPAIGN CONTRIBUTIONS; COLLATERAL

Section 302(b) of Pub. L. 95–502, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1974, except that notwithstanding any other provision of law to the contrary, no amounts held at the date of enactment of this bill [Oct. 21, 1978] by an organization described in section 527(e)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] in escrow, in separate accounts for the payment of Federal taxes, or in any other fund which are proceeds described in section 527(c)(3)(D) of such Code may be used, directly or indirectly, to make a contribution or expenditure (as defined in section 301(e) and (f) of the Federal Election Campaign Act of 1971; 2 U.S.C. 431(f)) in connection with any election held before January 1, 1979.

''(2) Such amounts as described in (1) above shall not be considered as security or collateral for any loan by any State or national bank or any other person or organization.''

EFFECTIVE DATE OF 1976 AMENDMENT

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

EFFECTIVE DATE

Section 10(e) of Pub. L. 93–625 provided that: ''The amendments made by subsections (a), (b), (c), and (d) [enacting this section and amending sections 501 and 6012 of this title] shall apply to taxable years beginning after December 31, 1974.''

NOTIFICATION OF INTERACTION OF REPORTING REQUIREMENTS

Pub. L. 107–276, § 4, Nov. 2, 2002, 116 Stat. 1932, provided that:

''(a) IN GENERAL.—The Secretary of the Treasury, in consultation with the Federal Election Commission, shall publicize—

''(1) the effect of the amendments made by this Act [amending this section and sections 6012, 6033, 6104, and 7207 of this title], and

''(2) the interaction of requirements to file a notification or report under section 527 of the Internal Revenue Code of 1986 and reports under the Federal Election Campaign Act of 1971 [2 U.S.C. 431 et seq.].

''(b) INFORMATION.—Information provided under subsection (a) shall be included in any appropriate form, instruction, notice, or other guidance issued to the public by the Secretary of the Treasury or the Federal Election Commission regarding reporting requirements of political organizations (as defined in section 527 of the Internal Revenue Code of 1986) or reporting requirements under the Federal Election Campaign Act of 1971 [2 U.S.C. 431 et seq.].''

PART VII—CERTAIN HOMEOWNERS ASSOCIATIONS

Sec.
528. Certain homeowners associations.

AMENDMENTS

1976—Pub. L. 94–455, title XXI, § 2101(a), Oct. 4, 1976, 90 Stat. 1897, added part heading and analysis for part VII.

§ 528. Certain homeowners associations

(a) General rule

A homeowners association (as defined in subsection (c)) shall be subject to taxation under this subtitle only to the extent provided in this section. A homeowners association shall be considered an organization exempt from income taxes for the purpose of any law which refers to organizations exempt from income taxes.

(b) Tax imposed

A tax is hereby imposed for each taxable year on the homeowners association taxable income of every homeowners association. Such tax shall be equal to 30 percent of the homeowners association taxable income (32 percent of such income in the case of a timeshare association).

(c) Homeowners association defined

For purposes of this section—

(1) Homeowners association

The term ''homeowners association'' means an organization which is a condominium management association, a residential real estate management association, or a timeshare association if—

(A) such organization is organized and operated to provide for the acquisition, construction, management, maintenance, and care of association property,

(B) 60 percent or more of the gross income of such organization for the taxable year consists solely of amounts received as membership dues, fees, or assessments from—

(i) owners of residential units in the case of a condominium management association,

(ii) owners of residences or residential lots in the case of a residential real estate management association, or

(iii) owners of timeshare rights to use, or timeshare ownership interests in, association property in the case of a timeshare association,

(C) 90 percent or more of the expenditures of the organization for the taxable year are expenditures for the acquisition, construction, management, maintenance, and care of association property and, in the case of a timeshare association, for activities provided to or on behalf of members of the association,

(D) no part of the net earnings of such organization inures (other than by acquiring, constructing, or providing management, maintenance, and care of association property, and other than by a rebate of excess membership dues, fees, or assessments) to the benefit of any private shareholder or individual, and

(E) such organization elects (at such time and in such manner as the Secretary by regulations prescribes) to have this section apply for the taxable year.

(2) Condominium management association

The term ''condominium management association'' means any organization meeting the requirement of subparagraph (A) of paragraph (1) with respect to a condominium project substantially all of the units of which are used by individuals for residences.

(3) Residential real estate management association

The term ''residential real estate management association'' means any organization

meeting the requirements of subparagraph (A) of paragraph (1) with respect to a subdivision, development, or similar area substantially all the lots or buildings of which may only be used by individuals for residences.

(4) Timeshare association

The term ''timeshare association'' means any organization (other than a condominium management association) meeting the requirement of subparagraph (A) of paragraph (1) if any member thereof holds a timeshare right to use, or a timeshare ownership interest in, real property constituting association property.

(5) Association property

The term ''association property'' means—

(A) property held by the organization,

(B) property commonly held by the members of the organization,

(C) property within the organization privately held by the members of the organization, and

(D) property owned by a governmental unit and used for the benefit of residents of such unit.

In the case of a timeshare association, such term includes property in which the timeshare association, or members of the association, have rights arising out of recorded easements, covenants, or other recorded instruments to use property related to the timeshare project.

(d) Homeowners association taxable income defined

(1) Taxable income defined

For purposes of this section, the homeowners association taxable income of any organization for any taxable year is an amount equal to the excess (if any) of—

(A) the gross income for the taxable year (excluding any exempt function income), over

(B) the deductions allowed by this chapter which are directly connected with the production of the gross income (excluding exempt function income), computed with the modifications provided in paragraph (2).

(2) Modifications

For purposes of this subsection—

(A) there shall be allowed a specific deduction of $100,

(B) no net operating loss deduction shall be allowed under section 172, and

(C) no deduction shall be allowed under part VIII of subchapter B (relating to special deductions for corporations).

(3) Exempt function income

For purposes of this subsection, the term ''exempt function income'' means any amount received as membership dues, fees, or assessments from—

(A) owners of condominium housing units in the case of a condominium management association,

(B) owners of real property in the case of a residential real estate management association, or

(C) owners of timeshare rights to use, or timeshare ownership interests in, real property in the case of a timeshare association.

(Added Pub. L. 94–455, title XXI, § 2101(a), Oct. 4, 1976, 90 Stat. 1897; amended Pub. L. 95–600, title III, § 301(b)(7), title IV, § 403(c)(2), title VII, § 701(n)(1), Nov. 6, 1978, 92 Stat. 2821, 2868, 2907; Pub. L. 96–605, title I, § 105(a), Dec. 28, 1980, 94 Stat. 3523; Pub. L. 105–34, title IX, § 966(a)–(d), Aug. 5, 1997, 111 Stat. 894, 895.)

AMENDMENTS

1997—Subsec. (b). Pub. L. 105–34, § 966(d), which directed amendment of subsec. (b) by inserting before the period ''(32 percent of such income in the case of a timeshare association)'', was executed by making the insertion before the period at end to reflect the probable intent of Congress.

Subsec. (c)(1). Pub. L. 105–34, § 966(a)(1)(A), substituted '', a residential real estate management association, or a timeshare association'' for ''or a residential real estate management association'' in introductory provisions.

Subsec. (c)(1)(B)(iii). Pub. L. 105–34, § 966(a)(1)(B), added cl. (iii).

Subsec. (c)(1)(C). Pub. L. 105–34, § 966(a)(1)(C), inserted before comma at end ''and, in the case of a timeshare association, for activities provided to or on behalf of members of the association''.

Subsec. (c)(4). Pub. L. 105–34, § 966(a)(2), added par. (4). Former par. (4) redesignated (5).

Subsec. (c)(5). Pub. L. 105–34, § 966(c), inserted concluding provisions ''In the case of a timeshare association, such term includes property in which the timeshare association, or members of the association, have rights arising out of recorded easements, covenants, or other recorded instruments to use property related to the timeshare project.''

Pub. L. 105–34, § 966(a)(2), redesignated par. (4) as (5).

Subsec. (d)(3)(C). Pub. L. 105–34, § 966(b), added subpar. (C).

1980—Subsec. (b). Pub. L. 96–605 substituted provision that all income of a homeowners association be taxed at a rate of 30 per cent for provision that all income of a homeowners association be taxed a sum computed by multiplying the homeowners association taxable income by the highest rate of tax specified in section 11(b) of this title and struck out provision providing for alternative tax in case of capital gains.

1978—Subsec. (b)(1). Pub. L. 95–600, § 301(b)(7), substituted ''Such tax shall be computed by multiplying the homeowners association taxable income by the highest rate of tax specified in section 11(b)'' for ''Such tax shall consist of a normal tax and a surtax computed as provided in section 11 as though the homeowners association were a corporation and as though the homeowners association taxable income were the taxable income referred to in section 11'' and struck out provision that for purposes of this subsection, the surtax exemption provided by section 11(d) not be allowed.

Subsec. (b)(2)(B). Pub. L. 95–600, § 403(c)(2), substituted provision related to amount being determined according to section 1201(a) for provision requiring an amount of 30 percent.

Subsec. (c)(2). Pub. L. 95–600, § 701(n)(1), substituted ''by individuals for residences'' for ''as residences''.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 966(e) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1996.''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 105(b) of Pub. L. 96–605 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1980.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 301(b)(7) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978,

see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

Section 403(d)(3) of Pub. L. 95–600 provided that: ''The amendments made by paragraphs (2), (3), and (4) of subsection (c) [amending this section and sections 857 and 904 of this title] shall take effect on the date of the enactment of this Act [Nov. 6, 1978].''

Section 701(n)(2) of Pub. L. 95–600 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1973.''

EFFECTIVE DATE

Section 2101(e) of Pub. L. 94–455 provided that: ''Except as provided in subsection (f)(2) [set out as a note under section 216 of this title], the amendments made by this section [enacting this section and amending sections 216 and 6012 of this title] shall apply to taxable years beginning after December 31, 1973.''

PART VIII—HIGHER EDUCATION SAVINGS ENTITIES

Sec.
529. Qualified tuition programs.
530. Coverdell education savings accounts.

AMENDMENTS

2004—Pub. L. 108–311, title IV, § 408(b)(2), Oct. 4, 2004, 118 Stat. 1192, amended directory language of Pub. L. 107–22, § 1(a)(6). See 2001 Amendment note below.

2001—Pub. L. 107–22, § 1(a)(6), July 26, 2001, 115 Stat. 196, as amended by Pub. L. 108–311, title IV, § 408(b)(2), Oct. 4, 2004, 118 Stat. 1192, substituted ''Coverdell education savings accounts'' for ''Education individual retirement accounts'' in item 530.

Pub. L. 107–16, title IV, § 402(a)(4)(E), June 7, 2001, 115 Stat. 61, struck out ''State'' before ''tuition'' in item 529.

1997—Pub. L. 105–34, title II, §§ 211(e)(1)(A), 213(e)(3), Aug. 5, 1997, 111 Stat. 812, 817, substituted ''HIGHER EDUCATION SAVINGS ENTITIES'' for ''QUALIFIED STATE TUITION PROGRAMS'' in heading and added item 530.

§ 529. Qualified tuition programs

(a) General rule

A qualified tuition program shall be exempt from taxation under this subtitle. Notwithstanding the preceding sentence, such program shall be subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable organizations).

(b) Qualified tuition program

For purposes of this section—

(1) In general

The term ''qualified tuition program'' means a program established and maintained by a State or agency or instrumentality thereof or by 1 or more eligible educational institutions—

(A) under which a person—

(i) may purchase tuition credits or certificates on behalf of a designated beneficiary which entitle the beneficiary to the waiver or payment of qualified higher education expenses of the beneficiary, or

(ii) in the case of a program established and maintained by a State or agency or instrumentality thereof, may make contributions to an account which is established for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account, and

(B) which meets the other requirements of this subsection.

Except to the extent provided in regulations, a program established and maintained by 1 or more eligible educational institutions shall not be treated as a qualified tuition program unless such program provides that amounts are held in a qualified trust and such program has received a ruling or determination that such program meets the applicable requirements for a qualified tuition program. For purposes of the preceding sentence, the term ''qualified trust'' means a trust which is created or organized in the United States for the exclusive benefit of designated beneficiaries and with respect to which the requirements of paragraphs (2) and (5) of section 408(a) are met.

(2) Cash contributions

A program shall not be treated as a qualified tuition program unless it provides that purchases or contributions may only be made in cash.

(3) Separate accounting

A program shall not be treated as a qualified tuition program unless it provides separate accounting for each designated beneficiary.

(4) No investment direction

A program shall not be treated as a qualified tuition program unless it provides that any contributor to, or designated beneficiary under, such program may not directly or indirectly direct the investment of any contributions to the program (or any earnings thereon).

(5) No pledging of interest as security

A program shall not be treated as a qualified tuition program if it allows any interest in the program or any portion thereof to be used as security for a loan.

(6) Prohibition on excess contributions

A program shall not be treated as a qualified tuition program unless it provides adequate safeguards to prevent contributions on behalf of a designated beneficiary in excess of those necessary to provide for the qualified higher education expenses of the beneficiary.

(c) Tax treatment of designated beneficiaries and contributors

(1) In general

Except as otherwise provided in this subsection, no amount shall be includible in gross income of—

(A) a designated beneficiary under a qualified tuition program, or

(B) a contributor to such program on behalf of a designated beneficiary,

with respect to any distribution or earnings under such program.

(2) Gift tax treatment of contributions

For purposes of chapters 12 and 13—

(A) In general

Any contribution to a qualified tuition program on behalf of any designated beneficiary—

(i) shall be treated as a completed gift to such beneficiary which is not a future interest in property, and

(ii) shall not be treated as a qualified transfer under section 2503(e).

(B) Treatment of excess contributions

If the aggregate amount of contributions described in subparagraph (A) during the calendar year by a donor exceeds the limitation for such year under section 2503(b), such aggregate amount shall, at the election of the donor, be taken into account for purposes of such section ratably over the 5-year period beginning with such calendar year.

(3) Distributions

(A) In general

Any distribution under a qualified tuition program shall be includible in the gross income of the distributee in the manner as provided under section 72 to the extent not excluded from gross income under any other provision of this chapter.

(B) Distributions for qualified higher education expenses

For purposes of this paragraph—

(i) In-kind distributions

No amount shall be includible in gross income under subparagraph (A) by reason of a distribution which consists of providing a benefit to the distributee which, if paid for by the distributee, would constitute payment of a qualified higher education expense.

(ii) Cash distributions

In the case of distributions not described in clause (i), if—

(I) such distributions do not exceed the qualified higher education expenses (reduced by expenses described in clause (i)), no amount shall be includible in gross income, and

(II) in any other case, the amount otherwise includible in gross income shall be reduced by an amount which bears the same ratio to such amount as such expenses bear to such distributions.

(iii) Exception for institutional programs

In the case of any taxable year beginning before January 1, 2004, clauses (i) and (ii) shall not apply with respect to any distribution during such taxable year under a qualified tuition program established and maintained by 1 or more eligible educational institutions.

(iv) Treatment as distributions

Any benefit furnished to a designated beneficiary under a qualified tuition program shall be treated as a distribution to the beneficiary for purposes of this paragraph.

(v) Coordination with Hope and Lifetime Learning credits

The total amount of qualified higher education expenses with respect to an individual for the taxable year shall be reduced—

(I) as provided in section 25A(g)(2), and

(II) by the amount of such expenses which were taken into account in determining the credit allowed to the taxpayer or any other person under section 25A.

(vi) Coordination with Coverdell education savings accounts

If, with respect to an individual for any taxable year—

(I) the aggregate distributions to which clauses (i) and (ii) and section 530(d)(2)(A) apply, exceed

(II) the total amount of qualified higher education expenses otherwise taken into account under clauses (i) and (ii) (after the application of clause (v)) for such year,

the taxpayer shall allocate such expenses among such distributions for purposes of determining the amount of the exclusion under clauses (i) and (ii) and section 530(d)(2)(A).

(C) Change in beneficiaries or programs

(i) Rollovers

Subparagraph (A) shall not apply to that portion of any distribution which, within 60 days of such distribution, is transferred—

(I) to another qualified tuition program for the benefit of the designated beneficiary, or

(II) to the credit of another designated beneficiary under a qualified tuition program who is a member of the family of the designated beneficiary with respect to which the distribution was made.

(ii) Change in designated beneficiaries

Any change in the designated beneficiary of an interest in a qualified tuition program shall not be treated as a distribution for purposes of subparagraph (A) if the new beneficiary is a member of the family of the old beneficiary.

(iii) Limitation on certain rollovers

Clause (i)(I) shall not apply to any transfer if such transfer occurs within 12 months from the date of a previous transfer to any qualified tuition program for the benefit of the designated beneficiary.

(D) Operating rules

For purposes of applying section 72—

(i) to the extent provided by the Secretary, all qualified tuition programs of which an individual is a designated beneficiary shall be treated as one program,

(ii) except to the extent provided by the Secretary, all distributions during a taxable year shall be treated as one distribution, and

(iii) except to the extent provided by the Secretary, the value of the contract, income on the contract, and investment in the contract shall be computed as of the close of the calendar year in which the taxable year begins.

(4) Estate tax treatment

(A) In general

No amount shall be includible in the gross estate of any individual for purposes of chapter 11 by reason of an interest in a qualified tuition program.

(B) Amounts includible in estate of designated beneficiary in certain cases

Subparagraph (A) shall not apply to amounts distributed on account of the death of a beneficiary.

(C) Amounts includible in estate of donor making excess contributions

In the case of a donor who makes the election described in paragraph (2)(B) and who dies before the close of the 5-year period referred to in such paragraph, notwithstanding subparagraph (A), the gross estate of the donor shall include the portion of such contributions properly allocable to periods after the date of death of the donor.

(5) Other gift tax rules

For purposes of chapters 12 and 13—

(A) Treatment of distributions

Except as provided in subparagraph (B), in no event shall a distribution from a qualified tuition program be treated as a taxable gift.

(B) Treatment of designation of new beneficiary

The taxes imposed by chapters 12 and 13 shall apply to a transfer by reason of a change in the designated beneficiary under the program (or a rollover to the account of a new beneficiary) unless the new beneficiary is—

(i) assigned to the same generation as (or a higher generation than) the old beneficiary (determined in accordance with section 2651), and

(ii) a member of the family of the old beneficiary.

(6) Additional tax

The tax imposed by section 530(d)(4) shall apply to any payment or distribution from a qualified tuition program in the same manner as such tax applies to a payment or distribution from an[1] Coverdell education savings account. This paragraph shall not apply to any payment or distribution in any taxable year beginning before January 1, 2004, which is includible in gross income but used for qualified higher education expenses of the designated beneficiary.

(d) Reports

Each officer or employee having control of the qualified tuition program or their designee shall make such reports regarding such program to the Secretary and to designated beneficiaries with respect to contributions, distributions, and such other matters as the Secretary may require. The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by the Secretary.

(e) Other definitions and special rules

For purposes of this section—

(1) Designated beneficiary

The term ''designated beneficiary'' means—

(A) the individual designated at the commencement of participation in the qualified tuition program as the beneficiary of amounts paid (or to be paid) to the program,

(B) in the case of a change in beneficiaries described in subsection (c)(3)(C), the individual who is the new beneficiary, and

(C) in the case of an interest in a qualified tuition program purchased by a State or local government (or agency or instrumentality thereof) or an organization described in section 501(c)(3) and exempt from taxation under section 501(a) as part of a scholarship program operated by such government or organization, the individual receiving such interest as a scholarship.

(2) Member of family

The term ''member of the family'' means, with respect to any designated beneficiary—

(A) the spouse of such beneficiary;

(B) an individual who bears a relationship to such beneficiary which is described in subparagraphs (A) through (G) of section 152(d)(2);

(C) the spouse of any individual described in subparagraph (B); and

(D) any first cousin of such beneficiary.

(3) Qualified higher education expenses

(A) In general

The term ''qualified higher education expenses'' means—

(i) tuition, fees, books, supplies, and equipment required for the enrollment or attendance of a designated beneficiary at an eligible educational institution;

(ii) expenses for special needs services in the case of a special needs beneficiary which are incurred in connection with such enrollment or attendance[2]

(iii) expenses paid or incurred in 2009 or 2010 for the purchase of any computer technology or equipment (as defined in section 170(e)(6)(F)(i)) or Internet access and related services, if such technology, equipment, or services are to be used by the beneficiary and the beneficiary's family during any of the years the beneficiary is enrolled at an eligible educational institution.

Clause (iii) shall not include expenses for computer software designed for sports, games, or hobbies unless the software is predominantly educational in nature.

(B) Room and board included for students who are at least half-time

(i) In general

In the case of an individual who is an eligible student (as defined in section 25A(b)(3)) for any academic period, such term shall also include reasonable costs for such period (as determined under the

[1] So in original. Probably should be ''a''.

[2] So in original. Probably should be followed by ''; and''.

qualified tuition program) incurred by the designated beneficiary for room and board while attending such institution. For purposes of subsection (b)(6), a designated beneficiary shall be treated as meeting the requirements of this clause.

(ii) Limitation

The amount treated as qualified higher education expenses by reason of clause (i) shall not exceed—

(I) the allowance (applicable to the student) for room and board included in the cost of attendance (as defined in section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087*ll*), as in effect on the date of the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001) as determined by the eligible educational institution for such period, or

(II) if greater, the actual invoice amount the student residing in housing owned or operated by the eligible educational institution is charged by such institution for room and board costs for such period.

(4) Application of section 514

An interest in a qualified tuition program shall not be treated as debt for purposes of section 514.

(5) Eligible educational institution

The term ''eligible educational institution'' means an institution—

(A) which is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088), as in effect on the date of the enactment of this paragraph, and

(B) which is eligible to participate in a program under title IV of such Act.

(f) Regulations

Notwithstanding any other provision of this section, the Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section and to prevent abuse of such purposes, including regulations under chapters 11, 12, and 13 of this title.

(Added Pub. L. 104–188, title I, § 1806(a), Aug. 20, 1996, 110 Stat. 1895; amended Pub. L. 105–34, title II, § 211(a), (b), (d), (e)(2)(A), title XVI, § 1601(h)(1)(A), (B), Aug. 5, 1997, 111 Stat. 810, 812, 1092; Pub. L. 105–206, title VI, § 6004(c)(2), (3), July 22, 1998, 112 Stat. 793; Pub. L. 106–554, § 1(a)(7) [title III, § 319(5)], Dec. 21, 2000, 114 Stat. 2763, 2763A–646; Pub. L. 107–16, title IV, § 402(a)(1)–(3), (4)(A), (C), (D), (b)(1), (c)–(g), June 7, 2001, 115 Stat. 60–63; Pub. L. 107–22, § 1(b)(3)(C), July 26, 2001, 115 Stat. 197; Pub. L. 107–147, title IV, § 417(11), Mar. 9, 2002, 116 Stat. 56; Pub. L. 108–311, title II, § 207(21), title IV, § 406(a), Oct. 4, 2004, 118 Stat. 1178, 1189; Pub. L. 109–135, title IV, § 412(ee)(3), Dec. 21, 2005, 119 Stat. 2639; Pub. L. 109–280, title XIII, § 1304(b), Aug. 17, 2006, 120 Stat. 1110; Pub. L. 111–5, div. B, title I, § 1005(a), Feb. 17, 2009, 123 Stat. 316.)

REFERENCES IN TEXT

The date of the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001, referred to in subsec. (e)(3)(B)(ii)(I), is the date of enactment of Pub. L. 107–16, which was approved June 7, 2001.

The date of the enactment of this paragraph, referred to in subsec. (e)(5)(A), probably means the date of enactment of Pub. L. 105–34, which enacted subsec. (e)(5) and which was approved Aug. 5, 1997.

The Higher Education Act of 1965, referred to in subsec. (e)(5), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Title IV of the Act is classified generally to subchapter IV (§ 1070 et seq.) of chapter 28 of Title 20, Education, and part C (§ 2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

AMENDMENTS

2009—Subsec. (e)(3)(A). Pub. L. 111–5 added cl. (iii) and concluding provisions.

2006—Subsec. (f). Pub. L. 109–280, which directed the addition of subsec. (f) to section 529, without specifying the act to be amended, was executed by making the addition to this section, which is section 529 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

2005—Subsec. (c)(6). Pub. L. 109–135 substituted ''Coverdell education savings account'' for ''education individual retirement account''.

2004—Subsec. (c)(5)(B). Pub. L. 108–311, § 406(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The taxes imposed by chapters 12 and 13 shall apply to a transfer by reason of a change in the designated beneficiary under the program (or a rollover to the account of a new beneficiary) only if the new beneficiary is a generation below the generation of the old beneficiary (determined in accordance with section 2651).''

Subsec. (e)(2)(B). Pub. L. 108–311, § 207(21), substituted ''subparagraphs (A) through (G) of section 152(d)(2)'' for ''paragraphs (1) through (8) of section 152(a)''.

2002—Subsec. (e)(3)(B)(i). Pub. L. 107–147 substituted ''subsection (b)(6)'' for ''subsection (b)(7)''.

2001—Pub. L. 107–16, § 402(a)(4)(D), struck out ''State'' before ''tuition'' in section catchline.

Subsec. (a). Pub. L. 107–16, § 402(a)(4)(A), substituted ''qualified tuition'' for ''qualified State tuition''.

Subsec. (b). Pub. L. 107–16, § 402(a)(4)(C), substituted ''Qualified tuition'' for ''Qualified State tuition'' in heading.

Subsec. (b)(1). Pub. L. 107–16, § 402(a)(1), (4)(A), in introductory provisions, substituted ''qualified tuition'' for ''qualified State tuition'' and inserted ''or by 1 or more eligible educational institutions'' after ''thereof'', and added concluding provisions.

Subsec. (b)(1)(A)(ii). Pub. L. 107–16, § 402(a)(2), inserted ''in the case of a program established and maintained by a State or agency or instrumentality thereof,'' before ''may make''.

Subsec. (b)(2). Pub. L. 107–16, § 402(a)(4)(A), substituted ''qualified tuition'' for ''qualified State tuition''.

Subsec. (b)(3) to (7). Pub. L. 107–16, § 402(a)(3)(A), (4)(A), redesignated pars. (4) to (7) as (3) to (6), respectively, substituted ''qualified tuition'' for ''qualified State tuition'' wherever appearing, and struck out heading and text of former par. (3). Text read as follows: ''A program shall not be treated as a qualified State tuition program unless it imposes a more than de minimis penalty on any refund of earnings from the account which are not—

''(A) used for qualified higher education expenses of the designated beneficiary,

''(B) made on account of the death or disability of the designated beneficiary, or

''(C) made on account of a scholarship (or allowance or payment described in section 135(d)(1)(B) or (C)) received by the designated beneficiary to the extent the amount of the refund does not exceed the amount of the scholarship, allowance, or payment.''

Subsec. (c)(1)(A), (3)(A). Pub. L. 107–16, § 402(a)(4)(A), substituted ''qualified tuition'' for ''qualified State tuition''.

Subsec. (c)(3)(B). Pub. L. 107–16, § 402(b)(1), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''Any benefit furnished to a designated beneficiary under a qualified tuition program shall be treated as a distribution to the beneficiary.''

Pub. L. 107–16, § 402(a)(4)(A), substituted ''qualified tuition'' for ''qualified State tuition''.

Subsec. (c)(3)(B)(vi). Pub. L. 107–22 substituted ''Coverdell education savings'' for ''education individual retirement'' in heading.

Subsec. (c)(3)(C). Pub. L. 107–16, § 402(c)(3), inserted ''or programs'' after ''beneficiaries'' in heading.

Subsec. (c)(3)(C)(i). Pub. L. 107–16, § 402(c)(1), substituted ''transferred—'' for ''transferred'', added subcl. (I), and designated existing provisions ''to the credit'' as subcl. (II).

Pub. L. 107–16, § 402(a)(4)(A), substituted ''qualified tuition'' for ''qualified State tuition''.

Subsec. (c)(3)(C)(ii). Pub. L. 107–16, § 402(a)(4)(A), substituted ''qualified tuition'' for ''qualified State tuition''.

Subsec. (c)(3)(C)(iii). Pub. L. 107–16, § 402(c)(2), added cl. (iii).

Subsec. (c)(3)(D)(i). Pub. L. 107–16, § 402(a)(4)(A), substituted ''qualified tuition'' for ''qualified State tuition''.

Subsec. (c)(3)(D)(ii). Pub. L. 107–16, § 402(g)(1), inserted ''except to the extent provided by the Secretary,'' before ''all distributions''.

Subsec. (c)(3)(D)(iii). Pub. L. 107–16, § 402(g)(2), inserted ''except to the extent provided by the Secretary,'' before ''the value''.

Subsec. (c)(6). Pub. L. 107–16, § 402(a)(3)(B), added par. (6).

Subsecs. (d), (e)(1)(A), (C). Pub. L. 107–16, § 402(a)(4)(A), substituted ''qualified tuition'' for ''qualified State tuition''.

Subsec. (e)(2)(D). Pub. L. 107–16, § 402(d), added subpar. (D).

Subsec. (e)(3)(A). Pub. L. 107–16, § 402(f), reenacted heading without change and amended text of subpar. (A) generally. Prior to amendment, text read as follows: ''The term 'qualified higher education expenses' means tuition, fees, books, supplies, and equipment required for the enrollment or attendance of a designated beneficiary at an eligible educational institution.''

Subsec. (e)(3)(B)(i). Pub. L. 107–16, § 402(a)(4)(A), substituted ''qualified tuition'' for ''qualified State tuition''.

Subsec. (e)(3)(B)(ii). Pub. L. 107–16, § 402(e), reenacted heading without change and amended text of cl. (ii) generally. Prior to amendment, text read as follows: ''The amount treated as qualified higher education expenses by reason of the preceding sentence shall not exceed the minimum amount (applicable to the student) included for room and board for such period in the cost of attendance (as defined in section 472 of the Higher Education Act of 1965, 20 U.S.C. 1087*ll*, as in effect on the date of the enactment of this paragraph) for the eligible educational institution for such period.''

Subsec. (e)(4). Pub. L. 107–16, § 402(a)(4)(A), substituted ''qualified tuition'' for ''qualified State tuition''.

2000—Subsec. (e)(3)(B). Pub. L. 106–554 struck out ''under guaranteed plans'' after ''students'' in heading.

1998—Subsec. (c)(3)(A). Pub. L. 105–206, § 6004(c)(2), substituted ''section 72'' for ''section 72(b)''.

Subsec. (e)(2). Pub. L. 105–206, § 6004(c)(3), reenacted heading without change and amended text of par. (2) generally. Prior to amendment, text read as follows: ''The term 'member of the family' means—

''(A) an individual who bears a relationship to another individual which is a relationship described in paragraphs (1) through (8) of section 152(a), and

''(B) the spouse of any individual described in subparagraph (A).''

1997—Subsec. (b)(5). Pub. L. 105–34, § 211(b)(4), inserted ''directly or indirectly'' after ''may not''.

Subsec. (c)(2). Pub. L. 105–34, § 211(b)(3)(A)(i), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''In no event shall a contribution to a qualified State tuition program on behalf of a designated beneficiary be treated as a taxable gift for purposes of chapter 12.''

Subsec. (c)(3)(A). Pub. L. 105–34, § 211(d), substituted ''section 72(b)'' for ''section 72''.

Subsec. (c)(4). Pub. L. 105–34, § 211(b)(3)(B), amended heading and text of par. (4) generally. Prior to amendment, text read as follows: ''The value of any interest in any qualified State tuition program which is attributable to contributions made by an individual to such program on behalf of any designated beneficiary shall be includible in the gross estate of the contributor for purposes of chapter 11.''

Subsec. (c)(5). Pub. L. 105–34, § 211(b)(3)(A)(ii), amended heading and text of par. (5) generally. Prior to amendment, text read as follows: ''For purposes of section 2503(e), the waiver (or payment to an educational institution) of qualified higher education expenses of a designated beneficiary under a qualified State tuition program shall be treated as a qualified transfer.''

Subsec. (d). Pub. L. 105–34, § 211(e)(2)(A), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows:

''(d) REPORTING REQUIREMENTS.—

''(1) IN GENERAL.—If there is a distribution to any individual with respect to an interest in a qualified State tuition program during any calendar year, each officer or employee having control of the qualified State tuition program or their designee shall make such reports as the Secretary may require regarding such distribution to the Secretary and to the designated beneficiary or the individual to whom the distribution was made. Any such report shall include such information as the Secretary may prescribe.

''(2) Timing of reports.—Any report required by this subsection—

''(A) shall be filed at such time and in such matter as the Secretary prescribes, and

''(B) shall be furnished to individuals not later than January 31 of the calendar year following the calendar year to which such report relates.''

Subsec. (e)(1)(B). Pub. L. 105–34, § 1601(h)(1)(A), substituted ''subsection (c)(3)(C)'' for ''subsection (c)(2)(C)''.

Subsec. (e)(1)(C). Pub. L. 105–34, § 1601(h)(1)(B), inserted ''(or agency or instrumentality thereof)'' after ''local government''.

Subsec. (e)(2). Pub. L. 105–34, § 211(b)(1), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''The term 'member of the family' has the same meaning given such term as section 2032A(e)(2).''

Subsec. (e)(3). Pub. L. 105–34, § 211(a), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''The term 'qualified higher education expenses' means tuition, fees, books, supplies, and equipment required for the enrollment or attendance of a designated beneficiary at an eligible educational institution (as defined in section 135(c)(3)).''

Subsec. (e)(5). Pub. L. 105–34, § 211(b)(2), added par. (5).

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, § 1005(b), Feb. 17, 2009, 123 Stat. 316, provided that: ''The amendments made by this section [amending this section] shall apply to expenses paid or incurred after December 31, 2008.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 207(21) of Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

Amendment by section 406(a) of Pub. L. 108–311 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 406(h) of Pub. L. 108–311, set out as a note under section 55 of this title.

EFFECTIVE DATE OF 2001 AMENDMENTS

Amendment by Pub. L. 107–22 effective July 26, 2001, see section 1(c) of Pub. L. 107–22, set out as a note under section 26 of this title.

Amendment by Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 402(h) of Pub. L. 107–16, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 211(f) of Pub. L. 105–34 provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 135 and 6693 of this title] shall take effect on January 1, 1998.

''(2) EXPENSES TO INCLUDE ROOM AND BOARD.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 1806 of the Small Business Job Protection Act of 1996 [Pub. L. 104–188].

''(3) ELIGIBLE EDUCATIONAL INSTITUTION.—The amendment made by subsection (b)(2) [amending this section] shall apply to distributions after December 31, 1997, with respect to expenses paid after such date (in taxable years ending after such date), for education furnished in academic periods beginning after such date.

''(4) COORDINATION WITH EDUCATION SAVINGS BONDS.—The amendment made by subsection (c) [amending section 135 of this title] shall apply to taxable years beginning after December 31, 1997.

''(5) ESTATE AND GIFT TAX CHANGES.—

''(A) GIFT TAX CHANGES.—Paragraphs (2) and (5) of section 529(c) of the Internal Revenue Code of 1986, as amended by this section, shall apply to transfers (including designations of new beneficiaries) made after the date of the enactment of this Act [Aug. 5, 1997].

''(B) ESTATE TAX CHANGES.—Paragraph (4) of such section 529(c) shall apply to estates of decedents dying after June 8, 1997.

''(6) TRANSITION RULE FOR PRE-AUGUST 20, 1996 CONTRACTS.—In the case of any contract issued prior to August 20, 1996, section 529(c)(3)(C) of the Internal Revenue Code of 1986 shall be applied for taxable years ending after August 20, 1996, without regard to the requirement that a distribution be transferred to a member of the family or the requirement that a change in beneficiaries may be made only to a member of the family.''

Amendment by section 1601(h)(1)(A), (B) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 36C of this title.

EFFECTIVE DATE

Section 1806(c) of Pub. L. 104–188, as amended by Pub. L. 105–34, title XVI, § 1601(h)(1)(C), Aug. 5, 1997, 111 Stat. 1092, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section and amending section 135 of this title] shall apply to taxable years ending after the date of the enactment of this Act [Aug. 20, 1996].

''(2) TRANSITION RULE.—If—

''(A) a State or agency or instrumentality thereof maintains, on the date of the enactment of this Act, a program under which persons may purchase tuition credits or certificates on behalf of, or make contributions for education expenses of, a designated beneficiary, and

''(B) such program meets the requirements of a qualified State tuition program before the later of—

''(i) the date which is 1 year after such date of enactment, or

''(ii) the first day of the first calendar quarter after the close of the first regular session of the State legislature that begins after such date of enactment,

then such program (as in effect on August 20, 1996) shall be treated as a qualified State tuition program with respect to contributions (and earnings allocable thereto) pursuant to contracts entered into under such program before the first date on which such program meets such requirements (determined without regard to this paragraph) and the provisions of such program (as so in effect) shall apply in lieu of section 529(b) of the Internal Revenue Code of 1986 with respect to such contributions and earnings.

For purposes of subparagraph (B)(ii), if a State has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

§ 530. Coverdell education savings accounts

(a) General rule

A Coverdell education savings account shall be exempt from taxation under this subtitle. Notwithstanding the preceding sentence, the Coverdell education savings account shall be subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable organizations).

(b) Definitions and special rules

For purposes of this section—

(1) Coverdell education savings account

The term ''Coverdell education savings account'' means a trust created or organized in the United States exclusively for the purpose of paying the qualified education expenses of an individual who is the designated beneficiary of the trust (and designated as a Coverdell education savings account at the time created or organized), but only if the written governing instrument creating the trust meets the following requirements:

(A) No contribution will be accepted—

(i) unless it is in cash,

(ii) after the date on which such beneficiary attains age 18, or

(iii) except in the case of rollover contributions, if such contribution would result in aggregate contributions for the taxable year exceeding $2,000.

(B) The trustee is a bank (as defined in section 408(n)) or another person who demonstrates to the satisfaction of the Secretary that the manner in which that person will administer the trust will be consistent with the requirements of this section or who has so demonstrated with respect to any individual retirement plan.

(C) No part of the trust assets will be invested in life insurance contracts.

(D) The assets of the trust shall not be commingled with other property except in a common trust fund or common investment fund.

(E) Except as provided in subsection (d)(7), any balance to the credit of the designated beneficiary on the date on which the beneficiary attains age 30 shall be distributed within 30 days after such date to the beneficiary or, if the beneficiary dies before attaining age 30, shall be distributed within 30 days after the date of death of such beneficiary.

The age limitations in subparagraphs (A)(ii) and (E), and paragraphs (5) and (6) of subsection (d), shall not apply to any designated beneficiary with special needs (as determined under regulations prescribed by the Secretary).

(2) Qualified education expenses

(A) In general

The term ''qualified education expenses'' means—

(i) qualified higher education expenses (as defined in section 529(e)(3)), and

(ii) qualified elementary and secondary education expenses (as defined in paragraph (3)).

(B) Qualified tuition programs

Such term shall include any contribution to a qualified tuition program (as defined in section 529(b)) on behalf of the designated beneficiary (as defined in section 529(e)(1)); but there shall be no increase in the investment in the contract for purposes of applying section 72 by reason of any portion of such contribution which is not includible in gross income by reason of subsection (d)(2).

(3) Qualified elementary and secondary education expenses

(A) In general

The term ''qualified elementary and secondary education expenses'' means—

(i) expenses for tuition, fees, academic tutoring, special needs services in the case of a special needs beneficiary, books, supplies, and other equipment which are incurred in connection with the enrollment or attendance of the designated beneficiary of the trust as an elementary or secondary school student at a public, private, or religious school,

(ii) expenses for room and board, uniforms, transportation, and supplementary items and services (including extended day programs) which are required or provided by a public, private, or religious school in connection with such enrollment or attendance, and

(iii) expenses for the purchase of any computer technology or equipment (as defined in section 170(e)(6)(F)(i)) or Internet access and related services, if such technology, equipment, or services are to be used by the beneficiary and the beneficiary's family during any of the years the beneficiary is in school.

Clause (iii) shall not include expenses for computer software designed for sports, games, or hobbies unless the software is predominantly educational in nature.

(B) School

The term ''school'' means any school which provides elementary education or secondary education (kindergarten through grade 12), as determined under State law.

(4) Time when contributions deemed made

An individual shall be deemed to have made a contribution to an education individual retirement account on the last day of the preceding taxable year if the contribution is made on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (not including extensions thereof).

(c) Reduction in permitted contributions based on adjusted gross income

(1) In general

In the case of a contributor who is an individual, the maximum amount the contributor could otherwise make to an account under this section shall be reduced by an amount which bears the same ratio to such maximum amount as—

(A) the excess of—

(i) the contributor's modified adjusted gross income for such taxable year, over

(ii) $95,000 ($190,000 in the case of a joint return), bears to

(B) $15,000 ($30,000 in the case of a joint return).

(2) Modified adjusted gross income

For purposes of paragraph (1), the term ''modified adjusted gross income'' means the adjusted gross income of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933.

(d) Tax treatment of distributions

(1) In general

Any distribution shall be includible in the gross income of the distributee in the manner as provided in section 72.

(2) Distributions for qualified education expenses

(A) In general

No amount shall be includible in gross income under paragraph (1) if the qualified education expenses of the designated beneficiary during the taxable year are not less than the aggregate distributions during the taxable year.

(B) Distributions in excess of expenses

If such aggregate distributions exceed such expenses during the taxable year, the amount otherwise includible in gross income under paragraph (1) shall be reduced by the amount which bears the same ratio to the amount which would be includible in gross income under paragraph (1) (without regard to this subparagraph) as the qualified education expenses bear to such aggregate distributions.

(C) Coordination with Hope and Lifetime Learning credits and qualified tuition programs

For purposes of subparagraph (A)—

(i) Credit coordination

The total amount of qualified education expenses with respect to an individual for the taxable year shall be reduced—

(I) as provided in section 25A(g)(2), and

(II) by the amount of such expenses which were taken into account in determining the credit allowed to the tax-

payer or any other person under section 25A.

(ii) Coordination with qualified tuition programs

If, with respect to an individual for any taxable year—

(I) the aggregate distributions during such year to which subparagraph (A) and section 529(c)(3)(B) apply, exceed

(II) the total amount of qualified education expenses (after the application of clause (i)) for such year,

the taxpayer shall allocate such expenses among such distributions for purposes of determining the amount of the exclusion under subparagraph (A) and section 529(c)(3)(B).

(D) Disallowance of excluded amounts as deduction, credit, or exclusion

No deduction, credit, or exclusion shall be allowed to the taxpayer under any other section of this chapter for any qualified education expenses to the extent taken into account in determining the amount of the exclusion under this paragraph.

(3) Special rules for applying estate and gift taxes with respect to account

Rules similar to the rules of paragraphs (2), (4), and (5) of section 529(c) shall apply for purposes of this section.

(4) Additional tax for distributions not used for educational expenses

(A) In general

The tax imposed by this chapter for any taxable year on any taxpayer who receives a payment or distribution from a Coverdell education savings account which is includible in gross income shall be increased by 10 percent of the amount which is so includible.

(B) Exceptions

Subparagraph (A) shall not apply if the payment or distribution is—

(i) made to a beneficiary (or to the estate of the designated beneficiary) on or after the death of the designated beneficiary,

(ii) attributable to the designated beneficiary's being disabled (within the meaning of section 72(m)(7)),

(iii) made on account of a scholarship, allowance, or payment described in section 25A(g)(2) received by the designated beneficiary to the extent the amount of the payment or distribution does not exceed the amount of the scholarship, allowance, or payment,

(iv) made on account of the attendance of the designated beneficiary at the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, the United States Coast Guard Academy, or the United States Merchant Marine Academy, to the extent that the amount of the payment or distribution does not exceed the costs of advanced education (as defined by section 2005(e)(3) of title 10, United States Code, as in effect on the date of the enactment of this section) attributable to such attendance, or

(v) an amount which is includible in gross income solely by application of paragraph (2)(C)(i)(II) for the taxable year.

(C) Contributions returned before certain date

Subparagraph (A) shall not apply to the distribution of any contribution made during a taxable year on behalf of the designated beneficiary if—

(i) such distribution is made before the first day of the sixth month of the taxable year following the taxable year, and

(ii) such distribution is accompanied by the amount of net income attributable to such excess contribution.

Any net income described in clause (ii) shall be included in gross income for the taxable year in which such excess contribution was made.

(5) Rollover contributions

Paragraph (1) shall not apply to any amount paid or distributed from a Coverdell education savings account to the extent that the amount received is paid, not later than the 60th day after the date of such payment or distribution, into another Coverdell education savings account for the benefit of the same beneficiary or a member of the family (within the meaning of section 529(e)(2)) of such beneficiary who has not attained age 30 as of such date. The preceding sentence shall not apply to any payment or distribution if it applied to any prior payment or distribution during the 12-month period ending on the date of the payment or distribution.

(6) Change in beneficiary

Any change in the beneficiary of a Coverdell education savings account shall not be treated as a distribution for purposes of paragraph (1) if the new beneficiary is a member of the family (as so defined) of the old beneficiary and has not attained age 30 as of the date of such change.

(7) Special rules for death and divorce

Rules similar to the rules of paragraphs (7) and (8) of section 220(f) shall apply. In applying the preceding sentence, members of the family (as so defined) of the designated beneficiary shall be treated in the same manner as the spouse under such paragraph (8).

(8) Deemed distribution on required distribution date

In any case in which a distribution is required under subsection (b)(1)(E), any balance to the credit of a designated beneficiary as of the close of the 30-day period referred to in such subsection for making such distribution shall be deemed distributed at the close of such period.

(9) Military death gratuity

(A) In general

For purposes of this section, the term ''rollover contribution'' includes a contribu-

tion to a Coverdell education savings account made before the end of the 1-year period beginning on the date on which the contributor receives an amount under section 1477 of title 10, United States Code, or section 1967 of title 38 of such Code, with respect to a person, to the extent that such contribution does not exceed—

(i) the sum of the amounts received during such period by such contributor under such sections with respect to such person, reduced by

(ii) the amounts so received which were contributed to a Roth IRA under section 408A(e)(2) or to another Coverdell education savings account.

(B) Annual limit on number of rollovers not to apply

The last sentence of paragraph (5) shall not apply with respect to amounts treated as a rollover by the[1] subparagraph (A).

(C) Application of section 72

For purposes of applying section 72 in the case of a distribution which is includible in gross income under paragraph (1), the amount treated as a rollover by reason of subparagraph (A) shall be treated as investment in the contract.

(e) Tax treatment of accounts

Rules similar to the rules of paragraphs (2) and (4) of section 408(e) shall apply to any Coverdell education savings account.

(f) Community property laws

This section shall be applied without regard to any community property laws.

(g) Custodial accounts

For purposes of this section, a custodial account shall be treated as a trust if the assets of such account are held by a bank (as defined in section 408(n)) or another person who demonstrates, to the satisfaction of the Secretary, that the manner in which he will administer the account will be consistent with the requirements of this section, and if the custodial account would, except for the fact that it is not a trust, constitute an account described in subsection (b)(1). For purposes of this title, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of such account shall be treated as the trustee thereof.

(h) Reports

The trustee of a Coverdell education savings account shall make such reports regarding such account to the Secretary and to the beneficiary of the account with respect to contributions, distributions, and such other matters as the Secretary may require. The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required.

(Added Pub. L. 105–34, title II, §213(a), Aug. 5, 1997, 111 Stat. 813; amended Pub. L. 105–206, title VI, §6004(d)(1)–(3)(A), (5)–(8), July 22, 1998, 112 Stat. 793, 794; Pub. L. 106–554, §1(a)(7) [title III, §319(6)], Dec. 21, 2000, 114 Stat. 2763, 2763A–646; Pub. L. 107–16, title IV, §§401(a)(1), (b)–(g)(1), (2)(C), 402(a)(4)(A), (C), June 7, 2001, 115 Stat. 57–61; Pub. L. 107–22, §1(a)(1)–(5), July 26, 2001, 115 Stat. 196; Pub. L. 107–147, title IV, §411(f), Mar. 9, 2002, 116 Stat. 46; Pub. L. 108–121, title I, §107(a), Nov. 11, 2003, 117 Stat. 1339; Pub. L. 108–311, title IV, §§404(a), 406(b), Oct. 4, 2004, 118 Stat. 1188, 1189; Pub. L. 109–135, title IV, §412(ff), Dec. 21, 2005, 119 Stat. 2639; Pub. L. 110–245, title I, §109(c), June 17, 2008, 122 Stat. 1632.)

AMENDMENT OF SECTION

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (d)(4)(B)(iv), is the date of enactment of Pub. L. 105–34, which enacted this section and was approved Aug. 5, 1997.

AMENDMENTS

2008—Subsec. (d)(9). Pub. L. 110–245 added par. (9).

2005—Subsec. (b)(2)(A)(ii). Pub. L. 109–135, §412(ff)(2), substituted ''paragraph (3)'' for ''paragraph (4)''.

Subsec. (b)(3) to (5). Pub. L. 109–135, §412(ff)(1), redesignated pars. (4) and (5) as (3) and (4), respectively, and struck out former par. (3) which read as follows: ''The term 'eligible educational institution' has the meaning given such term by section 529(e)(5).''

2004—Subsec. (d)(2)(C)(i). Pub. L. 108–311, §404(a), struck out ''higher'' after ''qualified'' in introductory provisions.

Subsec. (d)(4)(B)(iii). Pub. L. 108–311, §406(b), substituted ''designated beneficiary'' for ''account holder''.

2003—Subsec. (d)(4)(B)(iv), (v). Pub. L. 108–121 added cl. (iv) and redesignated former cl. (iv) as (v).

2002—Subsec. (d)(4)(B)(iv). Pub. L. 107–147 substituted ''by application of paragraph (2)(C)(i)(II)'' for ''because the taxpayer elected under paragraph (2)(C) to waive the application of paragraph (2)''.

2001—Pub. L. 107–22, §1(a)(5), amended section catchline generally, substituting ''Coverdell education savings'' for ''Education individual retirement''.

Subsec. (a). Pub. L. 107–22, §1(a)(2), substituted ''A Coverdell education savings account'' for ''An education individual retirement account'' and ''the Coverdell education savings account'' for ''the education individual retirement account''.

Subsec. (b)(1). Pub. L. 107–22, §1(a)(1), (3), in heading, substituted ''Coverdell education savings account'' for ''Education individual retirement account'' and, in introductory provisions, substituted '' 'Coverdell education savings account' '' for '' 'education individual retirement account' '' and ''designated as a Coverdell education savings account'' for ''designated as an education individual retirement account''.

Pub. L. 107–16, §§401(d), 901, temporarily inserted concluding provisions. See Effective and Termination Dates of 2001 Amendment note below.

Pub. L. 107–16, §§401(c)(3)(A), 901, temporarily struck out ''higher'' before ''education expenses'' in introductory provisions. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (b)(1)(A)(iii). Pub. L. 107–16, §§401(a)(1), 901, temporarily substituted ''$2,000'' for ''$500''. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (b)(2). Pub. L. 107–16, §§401(c)(1), 901, temporarily amended heading and text of par. (2) generally, substituting present provisions for provisions which defined ''qualified higher education expenses'' as having the meaning given such term by section 529(e)(3), re-

[1] So in original. The word ''the'' probably should not appear.

duced as provided in section 25A(g)(2), and including amounts paid or incurred to purchase tuition credits or certificates, or to make contributions to an account, under a qualified State tuition program for the benefit of the beneficiary of the account. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (b)(2)(B). Pub. L. 107–16, § 402(a)(4)(A), (C), in heading, substituted ''Qualified tuition'' for ''Qualified State tuition'' and in text, substituted ''qualified tuition'' for ''qualified State tuition''.

Subsec. (b)(4). Pub. L. 107–16, §§ 401(c)(2), 901, temporarily added par. (4). See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (b)(5). Pub. L. 107–16, §§ 401(f)(1), 901, temporarily added par. (5). See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (c)(1). Pub. L. 107–16, §§ 401(e), 901, temporarily substituted ''In the case of a contributor who is an individual, the maximum amount the contributor'' for ''The maximum amount which a contributor'' in introductory provisions. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (c)(1)(A)(ii). Pub. L. 107–16, §§ 401(b)(1), 901, temporarily substituted ''$190,000'' for ''$150,000''. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (c)(1)(B). Pub. L. 107–16, §§ 401(b)(2), 901, temporarily substituted ''$30,000'' for ''$10,000''. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (d)(2). Pub. L. 107–16, §§ 401(c)(3)(B), 901, temporarily struck out ''higher'' before ''education'' in heading. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (d)(2)(A), (B). Pub. L. 107–16, §§ 401(c)(3)(A), 901, temporarily struck out ''higher'' before ''education''. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (d)(2)(C). Pub. L. 107–16, §§ 401(g)(1), 901, temporarily amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: ''A taxpayer may elect to waive the application of this paragraph for any taxable year.'' See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (d)(2)(D). Pub. L. 107–16, §§ 401(g)(2)(C), 901, in heading, temporarily substituted ''deduction, credit, or exclusion'' for ''credit or deduction'' and in text, temporarily substituted '', credit, or exclusion'' for ''or credit''. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (d)(4)(A). Pub. L. 107–22, § 1(a)(1), substituted ''a Coverdell education savings account'' for ''an education individual retirement account''.

Subsec. (d)(4)(C). Pub. L. 107–16, §§ 401(f)(2)(B), 901, temporarily substituted ''certain date'' for ''due date of return'' in heading. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (d)(4)(C)(i). Pub. L. 107–16, §§ 401(f)(2)(A), 901, temporarily added cl. (i) and struck out former cl. (i) which read as follows: ''such distribution is made on or before the day prescribed by law (including extensions of time) for filing the beneficiary's return of tax for the taxable year or, if the beneficiary is not required to file such a return, the 15th day of the 4th month of the taxable year following the taxable year; and''. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (d)(5). Pub. L. 107–22, § 1(a)(1), (4), substituted ''distributed from a Coverdell education savings account'' for ''distributed from an education individual retirement account'' and ''another Coverdell education savings account'' for ''another education individual retirement account''.

Subsec. (d)(6). Pub. L. 107–22, § 1(a)(1), substituted ''a Coverdell education savings account'' for ''an education individual retirement account''.

Subsec. (e). Pub. L. 107–22, § 1(a)(4), substituted ''Coverdell education savings account'' for ''education individual retirement account''.

Subsec. (h). Pub. L. 107–22, § 1(a)(1), substituted ''a Coverdell education savings account'' for ''an education individual retirement account''.

2000—Subsec. (d)(4)(B)(iii). Pub. L. 106–554 substituted a comma for a semicolon before ''or'' at end.

1998—Subsec. (b)(1). Pub. L. 105–206, § 6004(d)(1), inserted ''an individual who is'' before ''the designated beneficiary'' in introductory provisions.

Subsec. (b)(1)(E). Pub. L. 105–206, § 6004(d)(2)(A), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: ''Upon the death of the designated beneficiary, any balance to the credit of the beneficiary shall be distributed within 30 days after the date of death to the estate of such beneficiary.''

Subsec. (d)(1). Pub. L. 105–206, § 6004(d)(3)(A), substituted ''section 72'' for ''section 72(b)''.

Subsec. (d)(2)(D). Pub. L. 105–206, § 6004(d)(5), added subpar. (D).

Subsec. (d)(4)(B)(iv). Pub. L. 105–206, § 6004(d)(6), added cl. (iv).

Subsec. (d)(4)(C). Pub. L. 105–206, § 6004(d)(7), substituted ''Contributions'' for ''Excess contributions'' in heading and amended text of introductory provisions and cl. (i) generally. Prior to amendment, text read as follows: ''Subparagraph (A) shall not apply to the distribution of any contribution made during a taxable year on behalf of a designated beneficiary to the extent that such contribution exceeds $500 if—

''(i) such distribution is received on or before the day prescribed by law (including extensions of time) for filing such contributor's return for such taxable year, and''.

Subsec. (d)(5). Pub. L. 105–206, § 6004(d)(8)(A), added first sentence and struck out former first sentence which read as follows: ''Paragraph (1) shall not apply to any amount paid or distributed from an education individual retirement account to the extent that the amount received is paid into another education individual retirement account for the benefit of the same beneficiary or a member of the family (within the meaning of section 529(e)(2)) of such beneficiary not later than the 60th day after the date of such payment or distribution.''

Subsec. (d)(6). Pub. L. 105–206, § 6004(d)(8)(B), inserted before period at end ''and has not attained age 30 as of the date of such change''.

Subsec. (d)(7). Pub. L. 105–206, § 6004(d)(2)(B), inserted at end ''In applying the preceding sentence, members of the family (as so defined) of the designated beneficiary shall be treated in the same manner as the spouse under such paragraph (8).''

Subsec. (d)(8). Pub. L. 105–206, § 6004(d)(2)(C), added par. (8).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–245 applicable with respect to deaths from injuries occurring on or after June 17, 2008, with provision for application of amendment to deaths from injuries occurring on or after Oct. 7, 2001, and before June 17, 2008, see section 109(d)(1), (2) of Pub. L. 110–245, set out as a note under section 408A of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 404(a) of Pub. L. 108–311 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 404(f) of Pub. L. 108–311, set out as a note under section 45A of this title.

Amendment by section 406(b) of Pub. L. 108–311 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 406(h) of Pub. L. 108–311, set out as a note under section 55 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–121, title I, § 107(b), Nov. 11, 2003, 117 Stat. 1339, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2002.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Re-

lief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107–22 effective July 26, 2001, see section 1(c) of Pub. L. 107–22, set out as a note under section 26 of this title.

Amendment by section 401(a)(1), (b)–(g)(1), (2)(C) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 401(h) of Pub. L. 107–16, set out as a note under section 25A of this title.

Amendment by section 402(a)(4)(A), (C) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 402(h) of Pub. L. 107–16, set out as an Effective Date of 2001 Amendment note under section 72 of this title.

Amendment by section 401(a)(1), (b)–(g)(1), (2)(C) of Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1997, see section 213(f) of Pub. L. 105–34, set out as an Effective Date of 1997 Amendment note under section 26 of this title.

Subchapter G—Corporations Used to Avoid Income Tax on Shareholders

Part

I. Corporations improperly accumulating surplus.
II. Personal holding companies.
[III. Repealed.]
IV. Deduction for dividends paid.

AMENDMENTS

2004—Pub. L. 108–357, title IV, §413(c)(31), Oct. 22, 2004, 118 Stat. 1509, struck out item for part III ''Foreign personal holding companies''.

PART I—CORPORATIONS IMPROPERLY ACCUMULATING SURPLUS

Sec.

531. Imposition of accumulated earnings tax.
532. Corporations subject to accumulated earnings tax.
533. Evidence of purpose to avoid income tax.
534. Burden of proof.
535. Accumulated taxable income.
536. Income not placed on annual basis.
537. Reasonable needs of the business.

§ 531. Imposition of accumulated earnings tax

In addition to other taxes imposed by this chapter, there is hereby imposed for each taxable year on the accumulated taxable income (as defined in section 535) of each corporation described in section 532, an accumulated earnings tax equal to 15 percent of the accumulated taxable income.

(Aug. 16, 1954, ch. 736, 68A Stat. 179; Pub. L. 100–647, title I, §1001(a)(2)(A), Nov. 10, 1988, 102 Stat. 3349; Pub. L. 103–66, title XIII, §§13201(b)(1), 13202(b), Aug. 10, 1993, 107 Stat. 459, 461; Pub. L. 107–16, title I, §101(c)(4), June 7, 2001, 115 Stat. 43; Pub. L. 108–27, title III, §302(e)(5), May 28, 2003, 117 Stat. 764.)

AMENDMENT OF SECTION

For termination of amendment by section 303 of Pub. L. 108–27, see Effective and Termination Dates of 2003 Amendment note below.

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

AMENDMENTS

2003—Pub. L. 108–27, §§302(e)(5), 303, temporarily substituted ''equal to 15 percent of the accumulated taxable income.'' for ''equal to the product of the highest rate of tax under section 1(c) and the accumulated taxable income.'' See Effective and Termination Dates of 2003 Amendment note below.

2001—Pub. L. 107–16, §§101(c)(4), 901, temporarily substituted ''equal to the product of the highest rate of tax under section 1(c) and the accumulated taxable income.'' for ''equal to 39.6 percent of the accumulated taxable income.'' See Effective and Termination Dates of 2001 Amendment note below.

1993—Pub. L. 103–66, §13202(b), substituted ''39.6 percent'' for ''36 percent''.

Pub. L. 103–66, §13201(b)(1), substituted ''36 percent'' for ''28 percent''.

1988—Pub. L. 100–647 amended section generally. Prior to amendment, section read as follows: ''In addition to other taxes imposed by this chapter, there is hereby imposed for each taxable year on the accumulated taxable income (as defined in section 535) of every corporation described in section 532, an accumulated earnings tax equal to the sum of—

''(1) 27½ percent of the accumulated taxable income not in excess of $100,000, plus

''(2) 38½ percent of the accumulated taxable income in excess of $100,000.''

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as a note under section 1 of this title.

Amendment by Pub. L. 108–27 inapplicable to taxable years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 303 of Pub. L. 108–27, as amended, set out as a note under section 1 of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2000, see section 101(d)(1) of Pub. L. 107–16, set out as a note under section 1 of this title.

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see sections 13201(c) and 13202(c) of Pub. L. 103–66, set out as notes under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1001(a)(2)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending

this section] shall apply to taxable years beginning after December 31, 1987. Such amendment shall not be treated as a change in a rate of tax for purposes of section 15 of the 1986 Code.''

§ 532. Corporations subject to accumulated earnings tax

(a) General rule

The accumulated earnings tax imposed by section 531 shall apply to every corporation (other than those described in subsection (b)) formed or availed of for the purpose of avoiding the income tax with respect to its shareholders or the shareholders of any other corporation, by permitting earnings and profits to accumulate instead of being divided or distributed.

(b) Exceptions

The accumulated earnings tax imposed by section 531 shall not apply to—

(1) a personal holding company (as defined in section 542),

(2) a corporation exempt from tax under subchapter F (section 501 and following), or

(3) a passive foreign investment company (as defined in section 1297).

(c) Application determined without regard to number of shareholders

The application of this part to a corporation shall be determined without regard to the number of shareholders of such corporation.

(Aug. 16, 1954, ch. 736, 68A Stat. 179; Pub. L. 98–369, div. A, title I, § 58(a), July 18, 1984, 98 Stat. 574; Pub. L. 99–514, title XII, § 1235(f)(1), Oct. 22, 1986, 100 Stat. 2575; Pub. L. 105–34, title XI, § 1122(d)(1), Aug. 5, 1997, 111 Stat. 977; Pub. L. 109–135, title IV, § 403(n)(1), Dec. 21, 2005, 119 Stat. 2626.)

AMENDMENTS

2005—Subsec. (b)(2) to (4). Pub. L. 109–135 redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which read as follow: ''a foreign personal holding company (as defined in section 552),''.

1997—Subsec. (b)(4). Pub. L. 105–34 substituted ''section 1297'' for ''section 1296''.

1986—Subsec. (b)(4). Pub. L. 99–514 added par. (4).

1984—Subsec. (c). Pub. L. 98–369 added subsec. (c).

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1124 of Pub. L. 105–34 provided that: ''The amendments made by this subtitle [subtitle C (§§ 1121–1124) of title XI of Pub. L. 105–34, enacting section 1296 of this title, amending this section and sections 542, 551, 852, 1291, 1293, 1296 to 1298, and 4982 of this title, redesignating subpart C of part VI of subchapter P of this chapter as subpart D of part VI of subchapter P of this chapter, and renumbering sections 1296 and 1297 of this title as sections 1297 and 1298, respectively, of this title] shall apply to—

''(1) taxable years of United States persons beginning after December 31, 1997, and

''(2) taxable years of foreign corporations ending with or within such taxable years of United States persons.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, see section 1235(h) of Pub. L. 99–514, set out as an Effective Date note under section 1291 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 58(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and section 535 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [July 18, 1984].''

§ 533. Evidence of purpose to avoid income tax

(a) Unreasonable accumulation determinative of purpose

For purposes of section 532, the fact that the earnings and profits of a corporation are permitted to accumulate beyond the reasonable needs of the business shall be determinative of the purpose to avoid the income tax with respect to shareholders, unless the corporation by the preponderance of the evidence shall prove to the contrary.

(b) Holding or investment company

The fact that any corporation is a mere holding or investment company shall be prima facie evidence of the purpose to avoid the income tax with respect to shareholders.

(Aug. 16, 1954, ch. 736, 68A Stat. 179.)

§ 534. Burden of proof

(a) General rule

In any proceeding before the Tax Court involving a notice of deficiency based in whole or in part on the allegation that all or any part of the earnings and profits have been permitted to accumulate beyond the reasonable needs of the business, the burden of proof with respect to such allegation shall—

(1) if notification has not been sent in accordance with subsection (b), be on the Secretary, or

(2) if the taxpayer has submitted the statement described in subsection (c), be on the Secretary with respect to the grounds set forth in such statement in accordance with the provisions of such subsection.

(b) Notification by Secretary

Before mailing the notice of deficiency referred to in subsection (a), the Secretary may send by certified mail or registered mail a notification informing the taxpayer that the proposed notice of deficiency includes an amount with respect to the accumulated earnings tax imposed by section 531.

(c) Statement by taxpayer

Within such time (but not less than 30 days) after the mailing of the notification described in subsection (b) as the Secretary may prescribe by regulations, the taxpayer may submit a statement on the grounds (together with facts sufficient to show the basis thereof) on which the taxpayer relies to establish that all or any part of the earnings and profits have not been permitted to accumulate beyond the reasonable needs of the business.

(d) Jeopardy assessment

If pursuant to section 6861(a) a jeopardy assessment is made before the mailing of the no-

tice of deficiency referred to in subsection (a), for purposes of this section such notice of deficiency shall, to the extent that it informs the taxpayer that such deficiency includes the accumulated earnings tax imposed by section 531, constitute the notification described in subsection (b), and in that event the statement described in subsection (c) may be included in the taxpayer's petition to the Tax Court.

(Aug. 16, 1954, ch. 736, 68A Stat. 180; Aug. 11, 1955, ch. 805, §§4, 5, 69 Stat. 690, 691; Pub. L. 85–866, title I, §89(b), Sept. 2, 1958, 72 Stat. 1665; Pub. L. 94–455, title XIX, §§1901(a)(73), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1776, 1834.)

AMENDMENTS

1976—Subsec. (a)(1), (2). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (b). Pub. L. 94–455, §§1901(a)(73)(A), 1906(b)(13)(A), struck out ''In the case of a notice of deficiency to which subsection (e)(2) applies and which is mailed on or before the 30th day after the date of enactment of this sentence, the notification referred to in the preceding sentence may be mailed at any time on or before such 30th day'' after ''section 531'', and ''or his delegate'' after ''Secretary''.

Subsec. (c). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (e). Pub. L. 94–455, §1901(a)(73)(B), struck out subsec. (e) relating to application of provisions of section.

1958—Subsec. (b). Pub. L. 85–866 inserted ''certified mail or'' before ''registered mail''.

1955—Subsec. (b). Act Aug. 11, 1955, §5, inserted second sentence relating to notice of deficiency to which subsec. (e)(2) applies.

Subsec. (e). Act Aug. 11, 1955, §4, permitted, in certain instances, application of this section to cases involving taxable years to which prior revenue laws apply.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(73) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable only if mailing occurred after Sept. 2, 1958, see section 89(d) of Pub. L. 85–866, set out as a note under section 7502 of this title.

§ 535. Accumulated taxable income

(a) Definition

For purposes of this subtitle, the term ''accumulated taxable income'' means the taxable income, adjusted in the manner provided in subsection (b), minus the sum of the dividends paid deduction (as defined in section 561) and the accumulated earnings credit (as defined in subsection (c)).

(b) Adjustments to taxable income

For purposes of subsection (a), taxable income shall be adjusted as follows:

(1) Taxes

There shall be allowed as a deduction Federal income and excess profits taxes and income, war profits, and excess profits taxes of foreign countries and possessions of the United States (to the extent not allowable as a deduction under section 275(a)(4)), accrued during the taxable year or deemed to be paid by a domestic corporation under section 902(a) or 960(a)(1) for the taxable year, but not including the accumulated earnings tax imposed by section 531, the personal holding company tax imposed by section 541, or the taxes imposed by corresponding sections of a prior income tax law.

(2) Charitable contributions

The deduction for charitable contributions provided under section 170 shall be allowed without regard to section 170(b)(2).

(3) Special deductions disallowed

The special deductions for corporations provided in part VIII (except section 248) of subchapter B (section 241 and following, relating to the deduction for dividends received by corporations, etc.) shall not be allowed.

(4) Net operating loss

The net operating loss deduction provided in section 172 shall not be allowed.

(5) Capital losses

(A) In general

Except as provided in subparagraph (B), there shall be allowed as a deduction an amount equal to the net capital loss for the taxable year (determined without regard to paragraph (7)(A)).

(B) Recapture of previous deductions for capital gains

The aggregate amount allowable as a deduction under subparagraph (A) for any taxable year shall be reduced by the lesser of—

(i) the nonrecaptured capital gains deductions, or

(ii) the amount of the accumulated earnings and profits of the corporation as of the close of the preceding taxable year.

(C) Nonrecaptured capital gains deductions

For purposes of subparagraph (B), the term ''nonrecaptured capital gains deductions'' means the excess of—

(i) the aggregate amount allowable as a deduction under paragraph (6) for preceding taxable years beginning after July 18, 1984, over

(ii) the aggregate of the reductions under subparagraph (B) for preceding taxable years.

(6) Net capital gains

(A) In general

There shall be allowed as a deduction—

(i) the net capital gain for the taxable year (determined with the application of paragraph (7)), reduced by

(ii) the taxes attributable to such net capital gain.

(B) Attributable taxes

For purposes of subparagraph (A), the taxes attributable to the net capital gain shall be an amount equal to the difference between—

(i) the taxes imposed by this subtitle (except the tax imposed by this part) for the taxable year, and

(ii) such taxes computed for such year without including in taxable income the

net capital gain for the taxable year (determined without the application of paragraph (7)).

(7) Capital loss carryovers

(A) Unlimited carryforward

The net capital loss for any taxable year shall be treated as a short-term capital loss in the next taxable year.

(B) Section 1212 inapplicable

No allowance shall be made for the capital loss carryback or carryforward provided in section 1212.

(8) Special rules for mere holding or investment companies

In the case of a mere holding or investment company—

(A) Capital loss deduction, etc., not allowed

Paragraphs (5) and (7)(A) shall not apply.

(B) Deduction for certain offsets

There shall be allowed as a deduction the net short-term capital gain for the taxable year to the extent such gain does not exceed the amount of any capital loss carryover to such taxable year under section 1212 (determined without regard to paragraph (7)(B)).

(C) Earnings and profits

For purposes of subchapter C, the accumulated earnings and profits at any time shall not be less than they would be if this subsection had applied to the computation of earnings and profits for all taxable years beginning after July 18, 1984.

(9) Special rule for capital gains and losses of foreign corporations

In the case of a foreign corporation, paragraph (6) shall be applied by taking into account only gains and losses which are effectively connected with the conduct of a trade or business within the United States and are not exempt from tax under treaty.

(10) Controlled foreign corporations

There shall be allowed as a deduction the amount of the corporation's income for the taxable year which is included in the gross income of a United States shareholder under section 951(a). In the case of any corporation the accumulated taxable income of which would (but for this sentence) be determined without allowance of any deductions, the deduction under this paragraph shall be allowed and shall be appropriately adjusted to take into account any deductions which reduced such inclusion.

(c) Accumulated earnings credit

(1) General rule

For purposes of subsection (a), in the case of a corporation other than a mere holding or investment company the accumulated earnings credit is (A) an amount equal to such part of the earnings and profits for the taxable year as are retained for the reasonable needs of the business, minus (B) the deduction allowed by subsection (b)(6). For purposes of this paragraph, the amount of the earnings and profits for the taxable year which are retained is the amount by which the earnings and profits for the taxable year exceed the dividends paid deduction (as defined in section 561) for such year.

(2) Minimum credit

(A) In general

The credit allowable under paragraph (1) shall in no case be less than the amount by which $250,000 exceeds the accumulated earnings and profits of the corporation at the close of the preceding taxable year.

(B) Certain service corporations

In the case of a corporation the principal function of which is the performance of services in the field of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting, subparagraph (A) shall be applied by substituting ''$150,000'' for ''$250,000''.

(3) Holding and investment companies

In the case of a corporation which is a mere holding or investment company, the accumulated earnings credit is the amount (if any) by which $250,000 exceeds the accumulated earnings and profits of the corporation at the close of the preceding taxable year.

(4) Accumulated earnings and profits

For purposes of paragraphs (2) and (3), the accumulated earnings and profits at the close of the preceding taxable year shall be reduced by the dividends which under section 563(a) (relating to dividends paid after the close of the taxable year) are considered as paid during such taxable year.

(5) Cross reference

For denial of credit provided in paragraph (2) or (3) where multiple corporations are formed to avoid tax, see section 1551, and for limitation on such credit in the case of certain controlled corporations, see section 1561.

(d) Income distributed to United States-owned foreign corporation retains United States connection

(1) In general

For purposes of this part, if 10 percent or more of the earnings and profits of any foreign corporation for any taxable year—

(A) is derived from sources within the United States, or

(B) is effectively connected with the conduct of a trade or business within the United States,

any distribution out of such earnings and profits (and any interest payment) received (directly or through 1 or more other entities) by a United States-owned foreign corporation shall be treated as derived by such corporation from sources within the United States.

(2) United States-owned foreign corporation

The term ''United States-owned foreign corporation'' has the meaning given to such term by section 904(h)(6).

(Aug. 16, 1954, ch. 736, 68A Stat. 180; Pub. L. 85–866, title I, § 31, title II, § 205(a), Sept. 2, 1958,

72 Stat. 1631, 1680; Pub. L. 87–403, § 3(b), Feb. 2, 1962, 76 Stat. 6; Pub. L. 87–834, § 9(d)(2), Oct. 16, 1962, 76 Stat. 1001; Pub. L. 88–272, title II, § 207(b)(4), Feb. 26, 1964, 78 Stat. 42; Pub. L. 91–172, title IV, § 401(b)(2)(C), title V, § 512(f)(5), (6), Dec. 30, 1969, 83 Stat. 602, 641; Pub. L. 94–12, title III, § 304(a), Mar. 29, 1975, 89 Stat. 45; Pub. L. 94–455, title X, § 1033(b)(3), title XIX, §§ 1901(a)(74), (b)(20)(A), (32)(C), (33)(D), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1628, 1777, 1797, 1800, 1801, 1834; Pub. L. 97–34, title II, § 232(a), (b)(1), Aug. 13, 1981, 95 Stat. 250; Pub. L. 98–369, div. A, title I, §§ 58(b), 125(a), July 18, 1984, 98 Stat. 575, 647; Pub. L. 99–514, title XII, § 1225(a), title XVIII, § 1899A(17), Oct. 22, 1986, 100 Stat. 2558, 2959; Pub. L. 101–508, title XI, § 11801(c)(18), Nov. 5, 1990, 104 Stat. 1388–528; Pub. L. 108–357, title IV, § 402(b)(1), Oct. 22, 2004, 118 Stat. 1492; Pub. L. 109–135, title IV, § 403(n)(2), Dec. 21, 2005, 119 Stat. 2626.)

AMENDMENTS

2005—Subsec. (b)(10). Pub. L. 109–135 added par. (10).

2004—Subsec. (d)(2). Pub. L. 108–357 substituted ''section 904(h)(6)'' for ''section 904(g)(6)''.

1990—Subsec. (c)(5). Pub. L. 101–508 substituted ''section 1561'' for ''sections 1561 and 1564''.

1986—Subsec. (b)(5)(C)(i), (8)(C). Pub. L. 99–514, § 1899A(17), substituted ''July 18, 1984'' for ''the date of the enactment of the Tax Reform Act of 1984''.

Subsec. (b)(9). Pub. L. 99–514, § 1225(a), added par. (9).

1984—Subsec. (b)(5). Pub. L. 98–369, § 58(b), designated existing provisions as subpar. (A), substituted ''Except as provided in subparagraph (B), there shall be allowed as a deduction an amount equal to the net capital loss for the taxable year (determined without regard to paragraph (7)(A)'' for ''There shall be allowed as deductions losses from sales or exchanges of capital assets during the taxable year which are disallowed as deductions under section 1211(a) in subpar. (A) as so redesignated, and added subpars. (B) and (C).

Subsec. (b)(6). Pub. L. 98–369, § 58(b), divided existing par. (6) into subpars. (A) and (B) and substituted references to the application of paragraph (7) for references to capital loss carryback and carryover provided in section 1212.

Subsec. (b)(7). Pub. L. 98–369, § 58(b), substituted ''Capital loss carryovers'' for ''Capital loss'' in heading, redesignated existing provisions as subpar. (B), and added subpar. (A).

Subsec. (b)(8). Pub. L. 98–369, § 58(b), added par. (8).

Subsec. (d). Pub. L. 98–369, § 125(a), added subsec. (d).

1981—Subsec. (c)(2). Pub. L. 97–34, § 232(a), designated existing provisions as subpar. (A), substituted ''$250,000'' for ''$150,000'', and added subpar. (B).

Subsec. (c)(3). Pub. L. 97–34, § 232(b)(1), substituted ''$250,000'' for ''$150,000''.

1976—Subsec. (b)(1). Pub. L. 94–455, §§ 1033(b)(3), 1901(a)(74), struck out ''(other than the excess profits tax imposed by subchapter E of chapter 2 of the Internal Revenue Code of 1939 for taxable years beginning after December 31, 1940)'' after ''income and excess profits taxes'', and substituted ''section 902(a) or 960(a)(1)'' for ''section 902(a)(1) or 960(a)(1)(C)'' after ''domestic corporation under''.

Subsec. (b)(6). Pub. L. 94–455, § 1901(b)(33)(D), substituted ''Net'' for ''Long-term'' after ''(6)''.

Subsec. (b)(8). Pub. L. 94–455, § 1901(b)(20)(A), struck out par. (8) relating to allowance of deduction by bank affiliates.

Subsec. (b)(9), (10). Pub. L. 94–455, § 1901(b)(32)(C), struck out par. (9) relating to allowance of deduction for distributions of divested stock, and struck out par. (10) relating to special adjustment on disposition of antitrust stock received as a dividend.

1975—Subsec. (c)(2), (3). Pub. L. 94–12 substituted ''$150,000'' for ''$100,000''.

1969—Subsec. (b)(6). Pub. L. 91–172, § 512(f)(5), substituted ''capital loss carryback or carryover'' for ''capital loss carryover'' and ''capital loss carryback and carryover'' for ''capital loss carryover'' in subpar. (B).

Subsec. (b)(7). Pub. L. 91–172, § 512(f)(6), substituted ''Capital loss'' for ''Capital loss carryover'' in heading and ''capital loss carryback or carryover'' for ''capital loss carryover'' in text.

Subsec. (c)(5). Pub. L. 91–172, § 401(b)(2)(C), substituted ''section 1551, and for limitation on such credit in the case of certain controlled corporations, see sections 1561 and 1564'' for ''section 1551''.

1964—Subsec. (b)(1). Pub. L. 88–272 substituted ''section 275(a)(4)'' for ''section 164(b)(6)''.

1962—Subsec. (b)(1). Pub. L. 87–834 substituted ''accrued during the taxable year or deemed to be paid by a domestic corporation under section 902(a)(1) or 960(a)(1)(C) for the taxable year'' for ''accrued during the taxable year''.

Subsec. (b)(9), (10). Pub. L. 87–403 added pars. (9) and (10).

1958—Subsec. (b)(2). Pub. L. 85–866, § 31(a), struck out ''the limitation in'' after ''without regard to''.

Subsec. (b)(6)(B). Pub. L. 85–866, § 31(a), substituted ''in taxable income the excess of the net long-term capital gain for the taxable year over the net short-term capital loss for such year (determined without regard to the capital loss carryover provided in section 1212)'' for ''such excess in taxable income''.

Subsec. (c)(2), (3). Pub. L. 85–866, § 205(a), substituted ''$100,000'' for ''$60,000''.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title IV, § 402(c), Oct. 22, 2004, 118 Stat. 1492, provided that: ''The amendments made by this section [amending this section and sections 904 and 936 of this title] shall apply to losses for taxable years beginning after December 31, 2006.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1225(c) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1012(k), Nov. 10, 1988, 102 Stat. 3513, provided that: ''The amendments made by this section [amending this section and section 545 of this title] shall apply to gains and losses realized on or after January 1, 1986.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 58(b) of Pub. L. 98–369 applicable to taxable years beginning after July 18, 1984, see section 58(c) of Pub. L. 98–369, set out as a note under section 532 of this title.

Section 125(b) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to distributions and interest payments received by a United States-owned foreign corporation (within the meaning of section 535(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) on or after May 23, 1983, in taxable years ending on or after such date.

''(2) CORPORATIONS IN EXISTENCE ON MAY 23, 1983.—In the case of a United States-owned foreign corporation (as so defined) in existence on May 23, 1983, the amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1984.''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 232(c) of Pub. L. 97–34 provided that: ''The amendments made by this section [amending this section and sections 243, 1551, and 1561 of this title] shall apply to taxable years beginning after December 31, 1981.''

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1033(b)(3) of Pub. L. 94–455, see section 1033(c) of Pub. L. 94–455, set out as a note under section 902 of this title.

Amendment by section 1901(a)(74), (b)(20)(A), (32)(C), (33)(D) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 305(c) of Pub. L. 94–12 provided that: ''The amendments made by section 304 [amending this section and sections 243, 1551, and 1561 of this title] apply to taxable years beginning after December 31, 1974.''

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 401(b)(2)(C) of Pub. L. 91–172 applicable with respect to taxable years beginning after Dec. 31, 1969, see section 401(h)(2) of Pub. L. 91–172, set out as a note under section 1561 of this title.

Amendment by section 512(f)(5), (6) of Pub. L. 91–172 applicable with respect to net capital losses sustained in taxable years beginning after Dec. 31, 1969, see section 512(g) of Pub. L. 91–172, set out as a note under section 1212 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 207(c) of Pub. L. 88–272, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Amendment by Pub. L. 87–834 applicable in respect of any distribution received by a domestic corporation after Dec. 31, 1964, and in respect of any distribution received by a domestic corporation before Jan. 1, 1965, in a taxable year of such corporation beginning after Dec. 31, 1962, but only to the extent that such distribution is made out of the accumulated profits of a foreign corporation for a taxable year (of such foreign corporation) beginning after Dec. 31, 1962, see section 9(e) of Pub. L. 87–834, set out as a note under section 902 of this title.

Amendment by Pub. L. 87–403 applicable only with respect to distributions made after Feb. 2, 1962, see section 3(g) of Pub. L. 87–403, set out as a note under section 312 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 31 of Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

Section 205(b) of Pub. L. 85–866 provided that: ''The amendments made by subsection (a) [amending this section and section 1551 of this title] shall apply with respect to taxable years beginning after December 31, 1957.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 536. Income not placed on annual basis

Section 443(b) (relating to computation of tax on change of annual accounting period) shall not apply in the computation of the accumulated earnings tax imposed by section 531.

(Aug. 16, 1954, ch. 736, 68A Stat. 182.)

§ 537. Reasonable needs of the business

(a) General rule

For purposes of this part, the term ''reasonable needs of the business'' includes—

(1) the reasonably anticipated needs of the business,

(2) the section 303 redemption needs of the business, and

(3) the excess business holdings redemption needs of the business.

(b) Special rules

For purposes of subsection (a)—

(1) Section 303 redemption needs

The term ''section 303 redemption needs'' means, with respect to the taxable year of the corporation in which a shareholder of the corporation died or any taxable year thereafter, the amount needed (or reasonably anticipated to be needed) to make a redemption of stock included in the gross estate of the decedent (but not in excess of the maximum amount of stock to which section 303(a) may apply).

(2) Excess business holdings redemption needs

The term ''excess business holdings redemption needs'' means the amount needed (or reasonably anticipated to be needed) to redeem from a private foundation stock which—

(A) such foundation held on May 26, 1969 (or which was received by such foundation pursuant to a will or irrevocable trust to which section 4943(c)(5) applies), and

(B) constituted excess business holdings on May 26, 1969, or would have constituted excess business holdings as of such date if there were taken into account (i) stock received pursuant to a will or trust described in subparagraph (A), and (ii) the reduction in the total outstanding stock of the corporation which would have resulted solely from the redemption of stock held by the private foundation.

(3) Obligations incurred to make redemptions

In applying paragraphs (1) and (2), the discharge of any obligation incurred to make a redemption described in such paragraphs shall be treated as the making of such redemption.

(4) Product liability loss reserves

The accumulation of reasonable amounts for the payment of reasonably anticipated product liability losses (as defined in section 172(f)), as determined under regulations prescribed by the Secretary, shall be treated as accumulated for the reasonably anticipated needs of the business.

(5) No inference as to prior taxable years

The application of this part to any taxable year before the first taxable year specified in

paragraph (1) shall be made without regard to the fact that distributions in redemption coming within the terms of such paragraphs were subsequently made.

(Aug. 16, 1954, ch. 736, 68A Stat. 182; Pub. L. 91–172, title IX, §906(a), Dec. 30, 1969, 83 Stat. 714; Pub. L. 94–455, title XIX, §1901(a)(75), Oct. 4, 1976, 90 Stat. 1777; Pub. L. 95–600, title III, §371(c), Nov. 6, 1978, 92 Stat. 2859; Pub. L. 104–188, title I, §1704(t)(33), Aug. 20, 1996, 110 Stat. 1889.)

AMENDMENTS

1996—Subsec. (b)(4). Pub. L. 104–188 substituted ''section 172(f)'' for ''section 172(i)''.

1978—Subsec. (b)(4), (5). Pub. L. 95–600 added par. (4) and redesignated former par. (4) as (5).

1976—Subsec. (b)(2). Pub. L. 94–455, §1901(a)(75)(A), struck out ''with respect to taxable years of the corporation ending after May 26, 1969'' after '' 'redemption needs' means''.

Subsec. (b)(4). Pub. L. 94–455, §1901(a)(75)(B), struck out ''or (2)'' after ''paragraph (1)''.

1969—Pub. L. 91–172 designated existing provisions as subsec. (a)(1) and added subsecs. (a)(2), (3) and (b).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable with respect to taxable years beginning after Sept. 30, 1979, see section 371(d) of Pub. L. 95–600, set out as a note under section 172 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

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

EFFECTIVE DATE OF 1969 AMENDMENT

Section 906(b) of Pub. L. 91–172, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to the tax imposed under section 531 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] with respect to taxable years ending after May 26, 1969.''

PART II—PERSONAL HOLDING COMPANIES

Sec.
541. Imposition of personal holding company tax.
542. Definition of personal holding company.
543. Personal holding company income.
544. Rules for determining stock ownership.
545. Undistributed personal holding company income.
546. Income not placed on annual basis.
547. Deduction for deficiency dividends.

§541. Imposition of personal holding company tax

In addition to other taxes imposed by this chapter, there is hereby imposed for each taxable year on the undistributed personal holding company income (as defined in section 545) of every personal holding company (as defined in section 542) a personal holding company tax equal to 15 percent of the undistributed personal holding company income.

(Aug. 16, 1954, ch. 736, 68A Stat. 182; Pub. L. 88–272, title II, §225(a), Feb. 26, 1964, 78 Stat. 79; Pub. L. 97–34, title I, §101(d)(2), Aug. 13, 1981, 95 Stat. 184; Pub. L. 99–514, title I, §104(b)(8), Oct. 22, 1986, 100 Stat. 2105; Pub. L. 101–508, title XI, §11802(f)(1), Nov. 5, 1990, 104 Stat. 1388–530; Pub. L. 103–66, title XIII, §§13201(b)(2), 13202(b), Aug. 10, 1993, 107 Stat. 459, 461; Pub. L. 107–16, title I, §101(c)(5), June 7, 2001, 115 Stat. 43; Pub. L. 108–27, title III, §302(e)(6), May 28, 2003, 117 Stat. 764.)

AMENDMENT OF SECTION

For termination of amendment by section 303 of Pub. L. 108–27, see Effective and Termination Dates of 2003 Amendment note below.

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

AMENDMENTS

2003—Pub. L. 108–27, §§302(e)(6), 303, temporarily substituted ''equal to 15 percent of the undistributed personal holding company income.'' for ''equal to the product of the highest rate of tax under section 1(c) and the undistributed personal holding company income.'' See Effective and Termination Dates of 2003 Amendment note below.

2001—Pub. L. 107–16, §§101(c)(5), 901, temporarily substituted ''equal to the product of the highest rate of tax under section 1(c) and the undistributed personal holding company income.'' for ''equal to 39.6 percent of the undistributed personal holding company income.'' See Effective and Termination Dates of 2001 Amendment note below.

1993—Pub. L. 103–66, §13202(b), substituted ''39.6 percent'' for ''36 percent''.

Pub. L. 103–66, §13201(b)(2), substituted ''36 percent'' for ''28 percent''.

1990—Pub. L. 101–508 struck out ''(38.5 percent in the case of taxable years beginning in 1987)'' after ''28 percent''.

1986—Pub. L. 99–514 substituted ''28 percent (38.5 percent in the case of taxable years beginning in 1987)'' for ''50 percent''.

1981—Pub. L. 97–34 substituted ''50 percent'' for ''70 percent''.

1964—Pub. L. 88–272 reduced the tax from 75 percent of undistributed income not in excess of $2,000, and 85 percent when in excess of $2,000, to 70 percent.

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as a note under section 1 of this title.

Amendment by Pub. L. 108–27 inapplicable to taxable years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 303 of Pub. L. 108–27, as amended, set out as a note under section 1 of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to payments made in taxable years beginning after Dec. 31, 2000, see section 431(d) of Pub. L. 107–16, set out as a note under section 62 of this title.

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see sections 13201(c) and 13202(c) of Pub. L. 103–66, set out as notes under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of

Pub. L. 99–514, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 101(f)(1) of Pub. L. 97–34, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(*l*) of Pub. L. 88–272 set out as a note under section 316 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§ 542. Definition of personal holding company

(a) General rule

For purposes of this subtitle, the term ''personal holding company'' means any corporation (other than a corporation described in subsection (c)) if—

(1) Adjusted ordinary gross income requirement

At least 60 percent of its adjusted ordinary gross income (as defined in section 543(b)(2)) for the taxable year is personal holding company income (as defined in section 543(a)), and

(2) Stock ownership requirement

At any time during the last half of the taxable year more than 50 percent in value of its outstanding stock is owned, directly or indirectly, by or for not more than 5 individuals. For purposes of this paragraph, an organization described in section 401(a), 501(c)(17), or 509(a) or a portion of a trust permanently set aside or to be used exclusively for the purposes described in section 642(c) or a corresponding provision of a prior income tax law shall be considered an individual.

(b) Corporations filing consolidated returns

(1) General rule

In the case of an affiliated group of corporations filing or required to file a consolidated return under section 1501 for any taxable year, the adjusted ordinary gross income requirement of subsection (a)(1) of this section shall, except as provided in paragraphs (2) and (3), be applied for such year with respect to the consolidated adjusted ordinary gross income and the consolidated personal holding company income of the affiliated group. No member of such an affiliated group shall be considered to meet such adjusted ordinary gross income requirement unless the affiliated group meets such requirement.

(2) Ineligible affiliated group

Paragraph (1) shall not apply to an affiliated group of corporations if—

(A) any member of the affiliated group of corporations (including the common parent corporation) derived 10 percent or more of its adjusted ordinary gross income for the taxable year from sources outside the affiliated group, and

(B) 80 percent or more of the amount described in subparagraph (A) consists of personal holding company income (as defined in section 543).

For purposes of this paragraph, section 543 shall be applied as if the amount described in subparagraph (A) were the adjusted ordinary gross income of the corporation.

(3) Excluded corporations

Paragraph (1) shall not apply to an affiliated group of corporations if any member of the affiliated group (including the common parent corporation) is a corporation excluded from the definition of personal holding company under subsection (c).

(4) Certain dividend income received by a common parent

In applying paragraph (2) (A) and (B), personal holding company income and adjusted ordinary gross income shall not include dividends received by a common parent corporation from another corporation if—

(A) the common parent corporation owns, directly or indirectly, more than 50 percent of the outstanding voting stock of such other corporation, and

(B) such other corporation is not a personal holding company for the taxable year in which the dividends are paid.

(5) Certain dividend income received from a nonincludible life insurance company

In the case of an affiliated group of corporations filing or required to file a consolidated return under section 1501 for any taxable year, there shall be excluded from consolidated personal holding company income and consolidated adjusted ordinary gross income for purposes of this part dividends received by a member of the affiliated group from a life insurance company taxable under section 801 that is not a member of the affiliated group solely by reason of the application of paragraph (2) of subsection (b) of section 1504.

(c) Exceptions

The term ''personal holding company'' as defined in subsection (a) does not include—

(1) a corporation exempt from tax under subchapter F (sec. 501 and following);

(2) a bank as defined in section 581, or a domestic building and loan association within the meaning of section 7701(a)(19);

(3) a life insurance company;

(4) a surety company;

(5) a foreign corporation,[1]

(6) a lending or finance company if—

(A) 60 percent or more of its ordinary gross income (as defined in section 543(b)(1)) is derived directly from the active and regular conduct of a lending or finance business;

(B) the personal holding company income for the taxable year (computed without regard to income described in subsection (d)(3)

[1] So in original. The comma probably should be a semicolon.

and income derived directly from the active and regular conduct of a lending or finance business, and computed by including as personal holding company income the entire amount of the gross income from rents, royalties, produced film rents, and compensation for use of corporate property by shareholders) is not more than 20 percent of the ordinary gross income;

(C) the sum of the deductions which are directly allocable to the active and regular conduct of its lending or finance business equals or exceeds the sum of—

(i) 15 percent of so much of the ordinary gross income derived therefrom as does not exceed $500,000, plus

(ii) 5 percent of so much of the ordinary gross income derived therefrom as exceeds $500,000; and

(D) the loans to a person who is a shareholder in such company during the taxable year by or for whom 10 percent or more in value of its outstanding stock is owned directly or indirectly (including, in the case of an individual, stock owned by members of his family as defined in section 544(a)(2)), outstanding at any time during such year do not exceed $5,000 in principal amount;

(7) A[2] small business investment company which is licensed by the Small Business Administration and operating under the Small Business Investment Act of 1958 (15 U.S.C. 661 and following) and which is actively engaged in the business of providing funds to small business concerns under that Act. This paragraph shall not apply if any shareholder of the small business investment company owns at any time during the taxable year directly or indirectly (including, in the case of an individual, ownership by the members of his family as defined in section 544(a)(2)) a 5 per centum or more proprietary interest in a small business concern to which funds are provided by the investment company or 5 per centum or more in value of the outstanding stock of such concern; and

(8) a corporation which is subject to the jurisdiction of the court in a title 11 or similar case (within the meaning of section 368(a)(3)(A)) unless a major purpose of instituting or continuing such case is the avoidance of the tax imposed by section 541.

(d) Special rules for applying subsection (c)(6)

(1) Lending or finance business defined

(A) In general

Except as provided in subparagraph (B), for purposes of subsection (c)(6), the term ''lending or finance business'' means a business of—

(i) making loans,

(ii) purchasing or discounting accounts receivable, notes, or installment obligations,

(iii) rendering services or making facilities available in connection with activities described in clauses (i) and (ii) carried on by the corporation rendering services or making facilities available, or

(iv) rendering services or making facilities available to another corporation which is engaged in the lending or finance business (within the meaning of this paragraph), if such services or facilities are related to the lending or finance business (within such meaning) of such other corporation and such other corporation and the corporation rendering services or making facilities available are members of the same affiliated group (as defined in section 1504).

(B) Exceptions

For purposes of subparagraph (A), the term ''lending or finance business'' does not include the business of—

(i) making loans, or purchasing or discounting accounts receivable, notes, or installment obligations, if (at the time of the loan, purchase, or discount) the remaining maturity exceeds 144 months; unless—

(I) the loans, notes, or installment obligations are evidenced or secured by contracts of conditional sale, chattel mortgages, or chattel lease agreements arising out of the sale of goods or services in the course of the borrower's or transferor's trade or business, or

(II) the loans, notes, or installment obligations are made or acquired by the taxpayer and meet the requirements of subparagraph (C), or

(ii) making loans evidenced by, or purchasing, certificates of indebtedness issued in a series, under a trust indenture, and in registered form or with interest coupons attached.

For purposes of clause (i), the remaining maturity shall be treated as including any period for which there may be a renewal or extension under the terms of an option exercisable by the borrower.

(C) Indefinite maturity credit transactions

For purposes of subparagraph (B)(i), a loan, note, or installment obligation meets the requirements of this subparagraph if it is made under an agreement—

(i) under which the creditor agrees to make loans or advances (not in excess of an agreed upon maximum amount) from time to time to or for the account of the debtor upon request, and

(ii) under which the debtor may repay the loan or advance in full or in installments.

(2) Business deductions

For purposes of subsection (c)(6)(C), the deductions which may be taken into account shall include only—

(A) deductions which are allowable only by reason of section 162 or section 404, except there shall not be included any such deduction in respect of compensation for personal services rendered by shareholders (including members of the shareholder's family as described in section 544(a)(2)), and

(B) deductions allowable under section 167, and deductions allowable under section 164

[2] So in original. Probably should not be capitalized.

for real property taxes, but in either case only to the extent that the property with respect to which such deductions are allowable is used directly in the active and regular conduct of the lending or finance business.

(3) Income received from certain affiliated corporations

For purposes of subsection (c)(6)(B), in the case of a lending or finance company which meets the requirements of subsection (c)(6)(A), there shall not be treated as personal holding company income the lawful income received from a corporation which meets the requirements of subsection (c)(6) and which is a member of the same affiliated group (as defined in section 1504) of which such company is a member.

(Aug. 16, 1954, ch. 736, 68A Stat. 182; ch. 871, § 3, Aug. 12, 1955, 69 Stat. 718; Pub. L. 86–376, § 3(a), Sept. 23, 1959, 73 Stat. 700; Pub. L. 87–768, § 1, Oct. 9, 1962, 76 Stat. 766; Pub. L. 88–272, title II, § 225(b), (c), (k)(1), Feb. 26, 1964, 78 Stat. 79, 93; Pub. L. 89–809, title I, § 104(h)(1), Nov. 13, 1966, 80 Stat. 1559; Pub. L. 91–172, title I, § 101(j)(16), Dec. 30, 1969, 83 Stat. 528; Pub. L. 93–480, § 3(a), Oct. 26, 1974, 88 Stat. 1454; Pub. L. 94–455, title XIX, § 1901(a)(76), Oct. 4, 1976, 90 Stat. 1777; Pub. L. 96–589, § 5(a), Dec. 24, 1980, 94 Stat. 3405; Pub. L. 97–248, title II, § 293(a)–(c), Sept. 3, 1982, 96 Stat. 575; Pub. L. 98–369, div. A, title II, § 211(b)(7), July 18, 1984, 98 Stat. 755; Pub. L. 99–514, title XII, § 1235(f)(2), Oct. 22, 1986, 100 Stat. 2575; Pub. L. 105–34, title XI, § 1122(d)(1), Aug. 5, 1997, 111 Stat. 977; Pub. L. 108–357, title IV, § 413(b)(1), Oct. 22, 2004, 118 Stat. 1506.)

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in subsec. (c)(7), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§ 661 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to this Code, see Short Title note set out under section 661 of Title 15 and Tables.

AMENDMENTS

2004—Subsec. (c)(5). Pub. L. 108–357, § 413(b)(1)(A), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''a foreign personal holding company as defined in section 552;''.

Subsec. (c)(7) to (10). Pub. L. 108–357, § 413(b)(1)(B)–(D), redesignated pars. (8) and (9) as (7) and (8), respectively, inserted ''and'' at end of par. (7), substituted period for ''; and'' at end of par. (8), and struck out former pars. (7) and (10) relating to foreign corporations whose outstanding stock during the last half of the taxable year is owned, directly or indirectly, by nonresident aliens and passive foreign investment companies, respectively.

1997—Subsec. (c)(10). Pub. L. 105–34 substituted ''section 1297'' for ''section 1296''.

1986—Subsec. (c)(10). Pub. L. 99–514 added par. (10).

1984—Subsec. (b)(5). Pub. L. 98–369 substituted ''section 801'' for ''section 802''.

1982—Subsec. (c)(6)(C)(ii). Pub. L. 97–248, § 293(a), struck out ''but not $1,000,000'' after ''exceeds $500,000''.

Subsec. (d)(1)(B)(i). Pub. L. 97–248, § 293(b), substituted ''144 months'' for ''60 months'' after ''remaining maturity exceeds'', designated existing provisions from ''the loans'' through ''transferor's trade or business, or'' as subcl. (I), and added subcl. (II).

Subsec. (d)(1)(C). Pub. L. 97–248, § 293(c), added subpar. (C).

1980—Subsec. (c)(9). Pub. L. 96–589, added par. (9).

1976—Subsec. (a)(2). Pub. L. 94–455, § 1901(a)(76)(A), struck out last sentence providing that the preceding sentence shall not apply in the case of an organization or trust organized or created before July 1, 1950, if at all times on or after July 1, 1950, and before the close of the taxable year such organization or trust has owned all of the common stock and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

Subsec. (b)(2). Pub. L. 94–455, § 1901(a)(76)(B), struck out ''other than an affiliated group of railroad corporations the common parent of which would be eligible to file a consolidated return under section 141 of the Internal Revenue Act of 1942'' after ''group of corporations''.

Subsec. (c)(2). Pub. L. 94–455, § 1901(a)(76)(C), struck out ''without regard to subparagraphs (D) and (E) thereof'' after ''meaning of section 7701(a)(19)''.

Subsec. (c)(8). Pub. L. 94–455, § 1901(a)(76)(D), inserted ''(15 U.S.C. 661 and following)'' after ''Small Business Investment Act of 1958''.

1974—Subsec. (b)(5). Pub. L. 93–480 added par. (5).

1969—Subsec. (a)(2). Pub. L. 91–172 substituted ''section 401(a), 501(c)(17), or 509(a)'' for ''section 503(b)'' in the list of sections that contain the description of organizations that may be considered as individuals for the purpose of establishing stock ownership, and struck out provisions which would have kept an organization or trust created before July 1, 1950, from being so designated if it had been denied exemption under section 504 or an unlimited charitable deduction under section 681(c) of this title.

1966—Subsec. (c)(7). Pub. L. 89–809 substituted requirement that the foreign corporation be other than a corporation which has income to which section 543(a)(7) applies for the taxable year for requirement that the foreign corporation's gross income from sources within the United States for the period specified in section 861(a)(2)(B) be less than 50 percent of its total gross income from all sources, and expanded the devices included in methods of indirect ownership to encompass foreign estates, foreign trusts, and foreign partnerships.

1964—Subsec. (a)(1). Pub. L. 88–272, § 225(b), substituted ''60 percent of its adjusted ordinary gross income (as defined in section 543(b)(2)) for the taxable year is personal holding company income (as defined in section 543(a))'' for ''80 percent of its gross income for the taxable year is personal holding company income as defined in section 543''.

Subsec. (b). Pub. L. 88–272, § 225(k)(1), substituted ''adjusted ordinary gross income'' for ''gross income'', wherever appearing.

Subsec. (c)(2), (6) to (11). Pub. L. 88–272, § 225(c)(1), (2), inserted among the exceptions, domestic building and loan associations within section 7701(a)(19) without regard to subpars. (D) and (E) thereof, added par. (6), redesignated former pars. (10) and (11) as (7) and (8), respectively, and omitted former pars. (6) to (9) which related to licensed personal finance companies, lending companies, loan or investment corporations, and finance companies, respectively.

Subsec. (d). Pub. L. 88–272, § 225(c)(3), added subsec. (d).

1962—Subsec. (c)(7). Pub. L. 87–768 substituted ''authorized to engage in and actively and regularly engaged in the small loan business (consumer finance business)'' for ''authorized to engage in the small loan business'', inserted provisions excepting from the definition of ''personal holding company'' a lending company that received 80 percent or more of its gross income from lawful income from domestic subsidiary corporations (of which stock possessing at least 80 percent of the voting power of all classes of stock and of which at least 80 percent of each class of the nonvoting stock is owned directly by such lending company), which are themselves excepted under pars. (6), (7), (8), or (9) of this subsection, increased the maximum amount of the loan where no limit is prescribed from $500 to $1,500, and eliminated provisions which required loans to mature in not more than 36 months, and which limited in-

terest, discount and other charges to not more than an amount equal to simple interest at 3 percent per month payable in advance and computed only on unpaid balances.

1959—Subsec. (c)(11). Pub. L. 86–376 added par. (11).

1955—Subsec. (a)(2). Act Aug. 12, 1955, § 3, inserted sentence at end excepting from consideration as ''individuals'' certain charitable foundations created before July 1, 1950.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, see section 1235(h) of Pub. L. 99–514, set out as an Effective Date note under section 1291 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 293(d) of Pub. L. 97–248 provided that:

''(1) SUBSECTION (a).—The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1981.

''(2) SUBSECTIONS (b) AND (c).—The amendments made by subsections (b) and (c) [amending this section] shall apply to taxable years beginning after December 31, 1980.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 applicable to bankruptcy cases or similar judicial proceedings commenced after Dec. 31, 1980, with exception permitting the debtor to make the amendment applicable to such cases or judicial proceedings commenced after Sept. 30, 1979, see section 7(d)(1), (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

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

EFFECTIVE DATE OF 1974 AMENDMENT

Section 3(b) of Pub. L. 93–480 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1973.''

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 101(k)(2)(B) of Pub. L. 91–172, set out as a note under section 4940 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 225(b), (c)(2), (3), (k)(1) of Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, and amendment by section 225(c)(1) of Pub. L. 88–272 applicable to taxable years beginning after Oct. 16, 1962, see section 225(*l*) of Pub. L. 88–272, set out as a note under section 316 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 2 of Pub. L. 87–768 provided that: ''The amendment made by the first section of this Act [amending this section] shall apply with respect to taxable years beginning after December 31, 1961.''

EFFECTIVE DATE OF 1959 AMENDMENT

Section 3(b) of Pub. L. 86–376 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1958.''

EFFECTIVE DATE OF 1955 AMENDMENT

Section 4 of act Aug. 12, 1955, provided that: ''The amendment made by section 3 of this Act [amending this section] shall apply only with respect to taxable years beginning after December 31, 1954.''

STOCK OWNERSHIP REQUIREMENT; ORGANIZATION OR TRUST ORGANIZED OR CREATED BEFORE JULY 1, 1950

Pub. L. 95–600, title VII, § 701(*o*), Nov. 6, 1978, 92 Stat. 2907, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The last sentence of section 542(a)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to stock ownership requirement) shall not apply in the case of an organization or trust organized or created before July 1, 1950, if at all times on or after July 1, 1950, and before the close of the taxable year such organization or trust has owned all of the common stock and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

''(2) EFFECTIVE DATE.—The provisions of paragraph (1) shall apply with respect to taxable years beginning after December 31, 1976.''

§ 543. Personal holding company income

(a) General rule

For purposes of this subtitle, the term ''personal holding company income'' means the portion of the adjusted ordinary gross income which consists of:

(1) Dividends, etc.

Dividends, interest, royalties (other than mineral, oil, or gas royalties or copyright royalties), and annuities. This paragraph shall not apply to—

(A) interest constituting rent (as defined in subsection (b)(3)),

(B) interest on amounts set aside in a reserve fund under chapter 533 or 535 of title 46, United States Code,

(C) active business computer software royalties (within the meaning of subsection (d)), and

(D) interest received by a broker or dealer (within the meaning of section 3(a)(4) or (5) of the Securities and Exchange Act of 1934) in connection with—

(i) any securities or money market instruments held as property described in section 1221(a)(1),

(ii) margin accounts, or

(iii) any financing for a customer secured by securities or money market instruments.

(2) Rents

The adjusted income from rents; except that such adjusted income shall not be included if—

(A) such adjusted income constitutes 50 percent or more of the adjusted ordinary gross income, and

(B) the sum of—

(i) the dividends paid during the taxable year (determined under section 562),

(ii) the dividends considered as paid on the last day of the taxable year under section 563(d)[1] (as limited by the second sentence of section 563(b)), and

(iii) the consent dividends for the taxable year (determined under section 565),

equals or exceeds the amount, if any, by which the personal holding company income for the taxable year (computed without regard to this paragraph and paragraph (6), and computed by including as personal holding company income copyright royalties and the adjusted income from mineral, oil, and gas royalties) exceeds 10 percent of the ordinary gross income.

(3) Mineral, oil, and gas royalties

The adjusted income from mineral, oil, and gas royalties; except that such adjusted income shall not be included if—

(A) such adjusted income constitutes 50 percent or more of the adjusted ordinary gross income,

(B) the personal holding company income for the taxable year (computed without regard to this paragraph, and computed by including as personal holding company income copyright royalties and the adjusted income from rents) is not more than 10 percent of the ordinary gross income, and

(C) the sum of the deductions which are allowable under section 162 (relating to trade or business expenses) other than—

(i) deductions for compensation for personal services rendered by the shareholders, and

(ii) deductions which are specifically allowable under sections other than section 162,

equals or exceeds 15 percent of the adjusted ordinary gross income.

(4) Copyright royalties

Copyright royalties; except that copyright royalties shall not be included if—

(A) such royalties (exclusive of royalties received for the use of, or right to use, copyrights or interests in copyrights on works created in whole, or in part, by any shareholder) constitute 50 percent or more of the ordinary gross income,

(B) the personal holding company income for the taxable year computed—

(i) without regard to copyright royalties, other than royalties received for the use of, or right to use, copyrights or interests in copyrights in works created in whole, or in part, by any shareholder owning more than 10 percent of the total outstanding capital stock of the corporation,

(ii) without regard to dividends from any corporation in which the taxpayer owns at least 50 percent of all classes of stock entitled to vote and at least 50 percent of the total value of all classes of stock and which corporation meets the requirements of this subparagraph and subparagraphs (A) and (C), and

(iii) by including as personal holding company income the adjusted income from rents and the adjusted income from mineral, oil, and gas royalties,

is not more than 10 percent of the ordinary gross income, and

(C) the sum of the deductions which are properly allocable to such royalties and which are allowable under section 162, other than—

(i) deductions for compensation for personal services rendered by the shareholders,

(ii) deductions for royalties paid or accrued, and

(iii) deductions which are specifically allowable under sections other than section 162,

equals or exceeds 25 percent of the amount by which the ordinary gross income exceeds the sum of the royalties paid or accrued and the amounts allowable as deductions under section 167 (relating to depreciation) with respect to copyright royalties.

For purposes of this subsection, the term ''copyright royalties'' means compensation, however designated, for the use of, or the right to use, copyrights in works protected by copyright issued under title 17 of the United States Code and to which copyright protection is also extended by the laws of any country other than the United States of America by virtue of any international treaty, convention, or agreement, or interests in any such copyrighted works, and includes payments from any person for performing rights in any such copyrighted work and payments (other than produced film rents as defined in paragraph (5)(B)) received for the use of, or right to use, films. For purposes of this paragraph, the term ''shareholder'' shall include any person who owns stock within the meaning of section 544. This paragraph shall not apply to active business computer software royalties.

(5) Produced film rents

(A) Produced film rents; except that such rents shall not be included if such rents constitute 50 percent or more of the ordinary gross income.

(B) For purposes of this section, the term ''produced film rents'' means payments received with respect to an interest in a film for the use of, or right to use, such film, but only to the extent that such interest was acquired before substantial completion of production of such film. In the case of a producer who actively participates in the pro-

[1] See References in Text note below.

duction of the film, such term includes an interest in the proceeds or profits from the film, but only to the extent such interest is attributable to such active participation.

(6) Use of corporate property by shareholder

(A) Amounts received as compensation (however designated and from whomever received) for the use of, or the right to use, tangible property of the corporation in any case where, at any time during the taxable year, 25 percent or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for an individual entitled to the use of the property (whether such right is obtained directly from the corporation or by means of a sublease or other arrangement).

(B) Subparagraph (A) shall apply only to a corporation which has personal holding company income in excess of 10 percent of its ordinary gross income.

(C) For purposes of the limitation in subparagraph (B), personal holding company income shall be computed—

(i) without regard to subparagraph (A) or paragraph (2),

(ii) by excluding amounts received as compensation for the use of (or right to use) intangible property (other than mineral, oil, or gas royalties or copyright royalties) if a substantial part of the tangible property used in connection with such intangible property is owned by the corporation and all such tangible and intangible property is used in the active conduct of a trade or business by an individual or individuals described in subparagraph (A), and

(iii) by including copyright royalties and adjusted income from mineral, oil, and gas royalties.

(7) Personal service contracts

(A) Amounts received under a contract under which the corporation is to furnish personal services; if some person other than the corporation has the right to designate (by name or by description) the individual who is to perform the services, or if the individual who is to perform the services is designated (by name or by description) in the contract; and

(B) amounts received from the sale or other disposition of such a contract.

This paragraph shall apply with respect to amounts received for services under a particular contract only if at some time during the taxable year 25 percent or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual who has performed, is to perform, or may be designated (by name or by description) as the one to perform, such services.

(8) Estates and trusts

Amounts includible in computing the taxable income of the corporation under part I of subchapter J (sec. 641 and following, relating to estates, trusts, and beneficiaries).

(b) Definitions

For purposes of this part—

(1) Ordinary gross income

The term ''ordinary gross income'' means the gross income determined by excluding—

(A) all gains from the sale or other disposition of capital assets, and

(B) all gains (other than those referred to in subparagraph (A)) from the sale or other disposition of property described in section 1231(b).

(2) Adjusted ordinary gross income

The term ''adjusted ordinary gross income'' means the ordinary gross income adjusted as follows:

(A) Rents

From the gross income from rents (as defined in the second sentence of paragraph (3) of this subsection) subtract the amount allowable as deductions for—

(i) exhaustion, wear and tear, obsolescence, and amortization of property other than tangible personal property which is not customarily retained by any one lessee for more than three years,

(ii) property taxes,

(iii) interest, and

(iv) rent,

to the extent allocable, under regulations prescribed by the Secretary, to such gross income from rents. The amount subtracted under this subparagraph shall not exceed such gross income from rents.

(B) Mineral royalties, etc.

From the gross income from mineral, oil, and gas royalties described in paragraph (4), and from the gross income from working interests in an oil or gas well, subtract the amount allowable as deductions for—

(i) exhaustion, wear and tear, obsolescence, amortization, and depletion,

(ii) property and severance taxes,

(iii) interest, and

(iv) rent,

to the extent allocable, under regulations prescribed by the Secretary, to such gross income from royalties or such gross income from working interests in oil or gas wells. The amount subtracted under this subparagraph with respect to royalties shall not exceed the gross income from such royalties, and the amount subtracted under this subparagraph with respect to working interests shall not exceed the gross income from such working interests.

(C) Interest

There shall be excluded—

(i) interest received on a direct obligation of the United States held for sale to customers in the ordinary course of trade or business by a regular dealer who is making a primary market in such obligations, and

(ii) interest on a condemnation award, a judgment, and a tax refund.

(D) Certain excluded rents

From the gross income consisting of compensation described in subparagraph (D) of

paragraph (3) subtract the amount allowable as deductions for the items described in clauses (i), (ii), (iii), and (iv) of subparagraph (A) to the extent allocable, under regulations prescribed by the Secretary, to such gross income. The amount subtracted under this subparagraph shall not exceed such gross income.

(3) Adjusted income from rents

The term ''adjusted income from rents'' means the gross income from rents, reduced by the amount subtracted under paragraph (2)(A) of this subsection. For purposes of the preceding sentence, the term ''rents'' means compensation, however designated, for the use of, or right to use, property, and the interest on debts owed to the corporation, to the extent such debts represent the price for which real property held primarily for sale to customers in the ordinary course of its trade or business was sold or exchanged by the corporation; but such term does not include—

(A) amounts constituting personal holding company income under subsection (a)(6),

(B) copyright royalties (as defined in subsection (a)(4)),

(C) produced film rents (as defined in subsection (a)(5)(B)),

(D) compensation, however designated, for the use of, or the right to use, any tangible personal property manufactured or produced by the taxpayer, if during the taxable year the taxpayer is engaged in substantial manufacturing or production of tangible personal property of the same type, or

(E) active business computer software royalties (as defined in subsection (d)).

(4) Adjusted income from mineral, oil, and gas royalties

The term ''adjusted income from mineral, oil, and gas royalties'' means the gross income from mineral, oil, and gas royalties (including production payments and overriding royalties), reduced by the amount subtracted under paragraph (2)(B) of this subsection in respect of such royalties.

(c) Gross income of insurance companies other than life insurance companies

In the case of an insurance company other than a life insurance company, the term ''gross income'' as used in this part means the gross income, as defined in section 832(b)(1), increased by the amount of losses incurred, as defined in section 832(b)(5), and the amount of expenses incurred, as defined in section 832(b)(6), and decreased by the amount deductible under section 832(c)(7) (relating to tax-free interest).

(d) Active business computer software royalties

(1) In general

For purposes of this section, the term ''active business computer software royalties'' means any royalties—

(A) received by any corporation during the taxable year in connection with the licensing of computer software, and

(B) with respect to which the requirements of paragraphs (2), (3), (4), and (5) are met.

(2) Royalties must be received by corporation actively engaged in computer software business

The requirements of this paragraph are met if the royalties described in paragraph (1)—

(A) are received by a corporation engaged in the active conduct of the trade or business of developing, manufacturing, or producing computer software, and

(B) are attributable to computer software which—

(i) is developed, manufactured, or produced by such corporation (or its predecessor) in connection with the trade or business described in subparagraph (A), or

(ii) is directly related to such trade or business.

(3) Royalties must constitute at least 50 percent of income

The requirements of this paragraph are met if the royalties described in paragraph (1) constitute at least 50 percent of the ordinary gross income of the corporation for the taxable year.

(4) Deductions under sections 162 and 174 relating to royalties must equal or exceed 25 percent of ordinary gross income

(A) In general

The requirements of this paragraph are met if—

(i) the sum of the deductions allowable to the corporation under sections 162, 174, and 195 for the taxable year which are properly allocable to the trade or business described in paragraph (2) equals or exceeds 25 percent of the ordinary gross income of such corporation for such taxable year, or

(ii) the average of such deductions for the 5-taxable year period ending with such taxable year equals or exceeds 25 percent of the average ordinary gross income of such corporation for such period.

If a corporation has not been in existence during the 5-taxable year period described in clause (ii), then the period of existence of such corporation shall be substituted for such 5-taxable year period.

(B) Deductions allowable under section 162

For purposes of subparagraph (A), a deduction shall not be treated as allowable under section 162 if it is specifically allowable under another section.

(C) Limitation on allowable deductions

For purposes of subparagraph (A), no deduction shall be taken into account with respect to compensation for personal services rendered by the 5 individual shareholders holding the largest percentage (by value) of the outstanding stock of the corporation. For purposes of the preceding sentence—

(i) individuals holding less than 5 percent (by value) of the stock of such corporation shall not be taken into account, and

(ii) stock deemed to be owned by a shareholder solely by attribution from a partner under section 544(a)(2) shall be disregarded.

(5) Dividends must equal or exceed excess of personal holding company income over 10 percent of ordinary gross income

(A) In general

The requirements of this paragraph are met if the sum of—

(i) the dividends paid during the taxable year (determined under section 562),

(ii) the dividends considered as paid on the last day of the taxable year under section 563(d)[1] (as limited by the second sentence of section 563(b)), and

(iii) the consent dividends for the taxable year (determined under section 565),

equals or exceeds the amount, if any, by which the personal holding company income for the taxable year exceeds 10 percent of the ordinary gross income of such corporation for such taxable year.

(B) Computation of personal holding company income

For purposes of this paragraph, personal holding company income shall be computed—

(i) without regard to amounts described in subsection (a)(1)(C),

(ii) without regard to interest income during any taxable year—

(I) which is in the 5-taxable year period beginning with the later of the 1st taxable year of the corporation or the 1st taxable year in which the corporation conducted the trade or business described in paragraph (2)(A), and

(II) during which the corporation meets the requirements of paragraphs (2), (3), and (4), and

(iii) by including adjusted income from rents and adjusted income from mineral, oil, and gas royalties (within the meaning of paragraphs (2) and (3) of subsection (a)).

(6) Special rules for affiliated group members

(A) In general

In any case in which—

(i) the taxpayer receives royalties in connection with the licensing of computer software, and

(ii) another corporation which is a member of the same affiliated group as the taxpayer meets the requirements of paragraphs (2), (3), (4), and (5) with respect to such computer software,

the taxpayer shall be treated as having met such requirements.

(B) Affiliated group

For purposes of this paragraph, the term ''affiliated group'' has the meaning given such term by section 1504(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 186; Pub. L. 86–435, §1(a), (b), Apr. 22, 1960, 74 Stat. 77; Pub. L. 87–403, §3(c), Feb. 2, 1962, 76 Stat. 6; Pub. L. 88–272, title II, §225(d), (k)(2), Feb. 26, 1964, 78 Stat. 81, 93; Pub. L. 88–484, §3(a), Aug. 22, 1964, 78 Stat. 598; Pub. L. 89–809, title I, §104(h)(2), title II, §206(a), (b), Nov. 13, 1966, 80 Stat. 1559, 1578, 1579; Pub. L. 94–455, title II, §211(a), title XIX, §§1901(b)(32)(D), 1906(b)(13)(A), title XXI, §2106(a), Oct. 4, 1976, 90 Stat. 1544, 1800, 1834, 1902; Pub. L. 94–553, §105(d), Oct. 19, 1976, 90 Stat. 2599; Pub. L. 97–248, title II, §222(e)(6), Sept. 3, 1982, 96 Stat. 480; Pub. L. 98–369, div. A, title VII, §712(i)(3), July 18, 1984, 98 Stat. 948; Pub. L. 99–514, title VI, §645(a)(1), (2), (4), title XVIII, §1899A(18), Oct. 22, 1986, 100 Stat. 2289, 2291, 2959; Pub. L. 100–647, title I, §1010(f)(5), title VI, §6279(a), Nov. 10, 1988, 102 Stat. 3454, 3754; Pub. L. 104–188, title I, §1704(t)(6), Aug. 20, 1996, 110 Stat. 1887; Pub. L. 105–206, title VI, §6023(9), July 22, 1998, 112 Stat. 825; Pub. L. 106–170, title V, §532(c)(2)(E), Dec. 17, 1999, 113 Stat. 1930; Pub. L. 108–357, title IV, §413(c)(8), Oct. 22, 2004, 118 Stat. 1507; Pub. L. 109–304, §17(e)(3), Oct. 6, 2006, 120 Stat. 1708.)

REFERENCES IN TEXT

Section 3(a)(4) and (5) of the Securities and Exchange Act of 1934, referred to in subsec. (a)(1)(D), is classified to section 78c(a)(4) and (5) of Title 15, Commerce and Trade.

Section 563(d), referred to in subsecs. (a)(2)(B)(ii) and (d)(5)(A)(ii), was redesignated section 563(c) by Pub. L. 108–357, title IV, §413(c)(10)(B), Oct. 22, 2004, 118 Stat. 1507.

AMENDMENTS

2006—Subsec. (a)(1)(B). Pub. L. 109–304 substituted ''chapter 533 or 535 of title 46, United States Code'' for ''section 511 or 607 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1161 or 1177)''.

2004—Subsec. (b)(1). Pub. L. 108–357 inserted ''and'' at end of subpar. (A), substituted a period for '', and'' at end of subpar. (B), and struck out subpar. (C) which read as follows: ''in the case of a foreign corporation all of the outstanding stock of which during the last half of the taxable year is owned by nonresident alien individuals (whether directly or indirectly through foreign estates, foreign trusts, foreign partnerships, or other foreign corporations), all items of income which would, but for this subparagraph, constitute personal holding company income under any paragraph of subsection (a) other than paragraph (7) thereof:''.

1999—Subsec. (a)(1)(D)(i). Pub. L. 106–170 substituted ''1221(a)(1)'' for ''1221(1)''.

1998—Subsec. (d)(5)(A)(ii). Pub. L. 105–206 substituted ''section 563(d)'' for ''section 563(c)''.

1996—Subsec. (a)(2)(B)(ii). Pub. L. 104–188 substituted ''563(d)'' for ''563(c)''.

1988—Subsec. (a)(1)(D). Pub. L. 100–647, §6279(a), added subpar. (D).

Subsec. (c). Pub. L. 100–647, §1010(f)(5), substituted ''other than life insurance companies'' for ''other than life or mutual'' in heading and ''other than a life insurance company'' for ''other than life or mutual'' in text.

1986—Subsec. (a)(1)(B). Pub. L. 99–514, §1899A(18), substituted ''46 U.S.C. App.'' for ''46 U.S.C.''.

Subsec. (a)(1)(C). Pub. L. 99–514, §645(a)(1), added subpar. (C).

Subsec. (a)(4). Pub. L. 99–514, §645(a)(4)(A), inserted ''This paragraph shall not apply to active business computer software royalties.''

Subsec. (b)(3)(E). Pub. L. 99–514, §645(a)(4)(B), added subpar. (E).

Subsec. (d). Pub. L. 99–514, §645(a)(2), added subsec. (d).

1984—Subsec. (a)(1)(C). Pub. L. 98–369 struck out subpar. (C) providing for nonapplication of par. (1) to dividends to which section 302(b)(4) would apply if the corporation were an individual.

1982—(a)(1)(C). Pub. L. 97–248 added subpar. (C).

1976—Subsec. (a)(1). Pub. L. 94–455, §1901(b)(32)(D), inserted in subpar. (B) ''(46 U.S.C. 1161 or 1177)'' after ''Merchant Marine Act, 1936'', and struck out subpar. (C) relating to a dividend distribution of divested stock.

Subsec. (a)(4). Pub. L. 94–553 struck out ''(other than by reason of section 2 or 6 thereof)'' after ''title 17 of the United States Code''.

Subsec. (a)(5)(B). Pub. L. 94–455, § 211(a), inserted ''In the case of a producer who actually participates in the production of the film, such term includes an interest in the proceeds or profits from the film, but only to the extent such interest is attributable to such active participation''.

Subsec. (a)(6). Pub. L. 94–455, § 2106(a), redesignated existing provisions as subpars. (A), (B), and (C) and, as redesignated, inserted in subpar. (A) ''tangible'' after ''right to use'' and in subpar. (C) inserted exclusions from income embodied in cl. (ii).

Subsec. (b)(2)(A), (B), (D). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

1966—Subsec. (a)(2). Pub. L. 89–809, § 206(b)(1), struck out provision that royalties received for the use of, or for the privilege of using, a patent, invention, model, or design, secret formula, process, or other similar property right be treated as rent if such property right is also used by the corporation receiving such royalties in the manufacture or production of tangible personal property held for lease to customers and if the amount constituting rent from such leases to customers meets the requirement of subparagraph (A).

Subsec. (b)(1)(C). Pub. L. 89–809, § 104(h)(2), added subpar. (C).

Subsec. (b)(2)(D). Pub. L. 89–809, § 206(b)(2), added subpar. (D).

Subsec. (b)(3). Pub. L. 89–809, § 206(a), struck out ''amounts constituting personal holding company income under subsection (a)(6), nor copyright royalties (as defined in subsection (a)(4)), nor produced film rents (as defined in subsection (a)(5)(B)).'' after ''but does not include'', and added subpars. (A) to (D).

1964—Subsec. (a). Pub. L. 88–272, § 225(d), amended subsec. (a) generally, and among other changes, substituted ''adjusted ordinary gross income'' for ''gross income'', provided, relative to rental income, that in addition to the 50-percent test of par. (2)(A), now applied on the basis of adjusted income from rents and adjusted ordinary gross income, a second test for exclusion shall be whether the sum on the dividends paid during the taxable year, the dividends paid on the last day of the year, and the consent dividends for the taxable year, equals or exceeds the amount by which the personal holding company income for the year exceeds 10 percent of the ordinary gross income, relative to mineral, oil, and gas royalties, that in addition to the 50-percent test of par. (3)(A), now applied on the basis of adjusted ordinary gross income, and the 15-percent test of par. (3)(C), from which test have been excluded deductions ''specifically allowable under sections other than section 162'' and is also now applied on the basis of adjusted gross income, the royalties shall be excluded if the personal holding company income for the taxable year is not more than 10 percent of the ordinary gross income, relative to copyright royalties, retained the 50-percent test as in par. (4)(A), making it applicable to ordinary gross income, included in the computation of the income for the taxable year the adjusted income from rents and the adjusted income from mineral, oil, and gas royalties, excluded from the sum of deductions allocable to royalties, deductions specifically allowable under sections other than 162, and changed the requirement that deductions constitute 50 percent or more of gross income to provide that they must equal 25 percent of ordinary gross income reduced by royalties paid and by depreciation deductions with respect to copyrights, relative to produced film rents, that they be treated on their own basis and not as rentals, and defined ''produced film rents'', relative to use of corporation property by shareholders, that personal holding company income includes copyright royalties and the adjusted income from mineral, oil, and gas royalties, eliminated gains from the sale or other disposition of any interest in an estate or trust, from the sale or exchange of stock or securities, and from futures transactions in any commodity, and also definition of ''rents''. See subsec. (b)(3).

Subsec. (a)(2). Pub. L. 88–484 inserted sentence requiring royalties received for the use of, or for the privilege of using, a patent, invention, model, or design (whether or not patented), secret formula or process, or any other similar property right to be treated as rent, if such property right is also used by the corporation receiving such royalties in the manufacture or production of tangible personal property held for lease to customers, and if the amount (computed without regard to this sentence) constituting rent from such leases to customers meets the requirements of subparagraph (A).

Subsec. (b). Pub. L. 88–272, § 225(d), added subsec. (b). Former subsec. (b), which provided that gross income and personal holding company income determined with respect to transactions relating to gains from stock and security transactions, and with respect to transactions relating to gains from commodity transactions, should include only the excess of gains over losses from such transactions, was struck out.

Subsec. (d). Pub. L. 88–272, § 225(k)(2), struck out subsec. (d) which related to special adjustment on disposition of antitrust stock received as a dividend.

1962—Subsec. (a)(1). Pub. L. 87–403 prescribed conditions making inapplicable the provisions of the paragraph to dividend distribution of divested stock.

Subsec. (d). Pub. L. 87–403 added subsec. (d).

1960—Subsec. (a)(1). Pub. L. 86–435, § 1(b)(1), excluded copyright royalties.

Subsec. (a)(6). Pub. L. 86–435, § 1(b)(2), inserted sentence providing that copyright royalties constitute personal holding company income.

Subsec. (a)(9). Pub. L. 86–435, § 1(a), added par. (9).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1010(f)(5) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6279(b) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section] shall apply to interest received after the date of the enactment of this Act [Nov. 10, 1988], in taxable years ending after such date.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 645(e) of Pub. L. 99–514 provided that: ''The amendments made by subsection (a) [amending this section and section 553 of this title] shall apply to royalties received before, on, and after December 31, 1986.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to distributions after Aug. 31, 1982, with exceptions for certain

partial liquidations, see section 222(f) of Pub. L. 97–248, set out as a note under section 302 of this title.

EFFECTIVE DATE OF 1976 AMENDMENTS

Amendment by Pub. L. 94–553 effective Jan. 1, 1978, see section 102 of Pub. L. 94–553, set out as an Effective Date note preceding section 101 of Title 17, Copyrights.

Section 211(b) of Pub. L. 94–455 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending on or after December 31, 1975.''

Amendment by section 1901(b)(32)(D) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Section 2106(b) of Pub. L. 94–455 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1976.''

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by section 104(h)(2) of Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

Section 206(c) of Pub. L. 89–809 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Nov. 13, 1966]. Such amendments shall also apply, at the election of the taxpayer (made at such time and in such manner as the Secretary or his delegate may prescribe), to taxable years beginning on or before such date and ending after December 31, 1965.''

EFFECTIVE DATE OF 1964 AMENDMENTS

Section 3(b) of Pub. L. 88–484 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1963.''

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(*l*) of Pub. L. 88–272, set out as a note under section 316 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–403 applicable only with respect to distributions made after Feb. 2, 1962, see section 3(g) of Pub. L. 87–403, set out as a note under section 312 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 2 of Pub. L. 86–435 provided that: ''The amendments made by the first section of this Act [amending this section and sections 544 and 553 of this title] shall apply only with respect to taxable years beginning after December 31, 1959.''

TREATMENT OF CERTAIN BANK HOLDING COMPANIES

Section 6280 of Pub. L. 100–647 provided that:

''(a) GENERAL RULE.—For purposes of subtitle A of the 1986 Code, the term 'personal holding company income' shall not include any dividend received by a qualified bank holding company from a 25-percent owned bank during any taxable year ending in 1989 or 1990.

''(b) $3,000,000 LIMITATION.—The aggregate amount excluded from the personal holding company income of any qualified bank holding company under subsection (a) for the taxable year shall not exceed $3,000,000.

''(c) QUALIFIED BANK HOLDING COMPANY.—For purposes of this section, the term 'qualified bank holding company' means any bank holding company (as defined in section 2(a) of the Bank Holding Company Act of 1956 [12 U.S.C. 1841(a)]) if 80 percent or more (by value) of the assets of such company at all times during the taxable year consist of stock in 1 or more 25-percent owned banks.

''(d) 25-PERCENT OWNED BANK.—For purposes of this section, the term '25-percent owned bank' means any bank (as defined in section 581 of the 1986 Code) if at least 25 percent of the stock of such bank (by vote and value) is owned by the bank holding company.''

SPECIAL RULES FOR BROKER-DEALERS, ROYALTIES RECEIVED BY QUALIFIED TAXPAYER, AND TREATMENT OF ACTIVE BUSINESS COMPUTER ROYALTIES FOR S CORPORATION PURPOSES

Pub. L. 99–514, title VI, §645(b)–(d), Oct. 22, 1986, 100 Stat. 2292, provided that:

''(b) SPECIAL RULES FOR BROKER-DEALERS.—In the case of a broker-dealer which is part of an affiliated group which files a consolidated Federal income tax return, the common parent of which was incorporated in Nevada on January 27, 1972, the personal holding company income (within the meaning of section 543 of the Internal Revenue Code of 1986) of such broker-dealer, shall not include any interest received after the date of the enactment of this Act [Oct. 22, 1986] with respect to—

''(1) any securities or money market instruments held as inventory,

''(2) margin accounts, or

''(3) any financing for a customer secured by securities or money market instruments.

''(c) SPECIAL RULE FOR ROYALTIES RECEIVED BY QUALIFIED TAXPAYER.—

''(1) IN GENERAL.—Any qualified royalty received or accrued in taxable years beginning after December 31, 1981, by a qualified taxpayer shall be treated in the same manner as a royalty with respect to software is treated under the amendments made by this section [amending this section and section 553 of this title].

''(2) QUALIFIED TAXPAYER.—For purposes of this subsection, a qualified taxpayer is any taxpayer incorporated on September 7, 1978, which is engaged in the trade or business of manufacturing dolls and accessories.

''(3) QUALIFIED ROYALTY.—For purposes of this subsection, the term 'qualified royalty' means any royalty arising from an agreement entered into in 1982 which permits the licensee to manufacture and sell dolls and accessories.

''(d) SPECIAL RULE FOR TREATMENT OF ACTIVE BUSINESS COMPUTER ROYALTIES FOR S CORPORATION PURPOSES.—In the case of a taxpayer which was incorporated on May 3, 1977, in California and which elected to be taxed as an S corporation for its taxable year ending on December 31, 1985, any active business computer royalties (within the meaning of section 543(d) of the Internal Revenue Code of 1986 as added by this Act) which are received by the taxpayer in taxable years beginning after December 31, 1984, shall not be treated as passive investment income (within the meaning of section 1362(d)(3)(D) [now section 1362(d)(3)(C)]) for purposes of subchapter S of chapter 1 of such Code.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 544. Rules for determining stock ownership

(a) Constructive ownership

For purposes of determining whether a corporation is a personal holding company, insofar as such determination is based on stock ownership under section 542(a)(2), section 543(a)(7), section 543(a)(6), or section 543(a)(4)—

(1) Stock not owned by individual

Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries.

(2) Family and partnership ownership

An individual shall be considered as owning the stock owned, directly or indirectly, by or for his family or by or for his partner. For purposes of this paragraph, the family of an individual includes only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(3) Options

If any person has an option to acquire stock, such stock shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

(4) Application of family-partnership and option rules

Paragraphs (2) and (3) shall be applied—

(A) for purposes of the stock ownership requirement provided in section 542(a)(2), if, but only if, the effect is to make the corporation a personal holding company;

(B) for purposes of section 543(a)(7) (relating to personal service contracts), of section 543(a)(6) (relating to use of property by shareholders), or of section 543(a)(4) (relating to copyright royalties), if, but only if, the effect is to make the amounts therein referred to includible under such paragraph as personal holding company income.

(5) Constructive ownership as actual ownership

Stock constructively owned by a person by reason of the application of paragraph (1) or (3), shall, for purposes of applying paragraph (1) or (2), be treated as actually owned by such person; but stock constructively owned by an individual by reason of the application of paragraph (2) shall not be treated as owned by him for purposes of again applying such paragraph in order to make another the constructive owner of such stock.

(6) Option rule in lieu of family and partnership rule

If stock may be considered as owned by an individual under either paragraph (2) or (3) it shall be considered as owned by him under paragraph (3).

(b) Convertible securities

Outstanding securities convertible into stock (whether or not convertible during the taxable year) shall be considered as outstanding stock—

(1) for purposes of the stock ownership requirement provided in section 542(a)(2), but only if the effect of the inclusion of all such securities is to make the corporation a personal holding company;

(2) for purposes of section 543(a)(7) (relating to personal service contracts), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such paragraph as personal holding company income;

(3) for purposes of section 543(a)(6) (relating to the use of property by shareholders), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such paragraphs as personal holding company income; and

(4) for purposes of section 543(a)(4) (relating to copyright royalties), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such paragraph as personal holding company income.

The requirement in paragraphs (1), (2), (3), and (4) that all convertible securities must be included if any are to be included shall be subject to the exception that, where some of the outstanding securities are convertible only after a later date than in the case of others, the class having the earlier conversion date may be included although the others are not included, but no convertible securities shall be included unless all outstanding securities having a prior conversion date are also included.

(Aug. 16, 1954, ch. 736, 68A Stat. 188; Pub. L. 86–435, §1(c), (d), Apr. 22, 1960, 74 Stat. 78; Pub. L. 88–272, title II, §225(k)(3), Feb. 26, 1964, 78 Stat. 93.)

AMENDMENTS

1964—Pub. L. 88–272 substituted ''section 543(a)(7)'' for ''section 543(a)(5)'', and ''section 543(a)(4)'' for ''section 543(a)(9),'' wherever appearing.

1960—Subsec. (a). Pub. L. 86–435, §1(c)(1), inserted reference to section 543(a)(9) in introductory provisions.

Subsec. (a)(4)(B). Pub. L. 86–435, §1(c)(2), included reference to section 543(a)(9).

Subsec. (b). Pub. L. 86–435, §1(d), added par. (4), and inserted reference to par. (4) in last sentence.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(*l*)(1) of Pub. L. 88–272 set out as a note under section 316 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–435 applicable only with respect to taxable years beginning after Dec. 31, 1959, see section 2 of Pub. L. 86–435, set out as a note under section 543 of this title.

§ 545. Undistributed personal holding company income

(a) Definition

For purposes of this part, the term ''undistributed personal holding company income'' means the taxable income of a personal holding company adjusted in the manner provided in subsections (b), (c), and (d), minus the dividends paid deduction as defined in section 561. In the case of a personal holding company which is a foreign corporation, not more than 10 percent in value of the outstanding stock of which is owned (within the meaning of section 958(a)) during the last half of the taxable year by United States persons, the term ''undistributed personal holding company income'' means the amount determined by multiplying the undistributed personal holding company income (determined

without regard to this sentence) by the percentage in value of its outstanding stock which is the greatest percentage in value of its outstanding stock so owned by United States persons on any one day during such period.

(b) Adjustments to taxable income

For the purposes of subsection (a), the taxable income shall be adjusted as follows:

(1) Taxes

There shall be allowed as a deduction Federal income and excess profits taxes and income, war profits and excess profits taxes of foreign countries and possessions of the United States (to the extent not allowable as a deduction under section 275(a)(4)), accrued during the taxable year or deemed to be paid by a domestic corporation under section 902(a) or 960(a)(1) for the taxable year, but not including the accumulated earnings tax imposed by section 531, the personal holding company tax imposed by section 541, or the taxes imposed by corresponding sections of a prior income tax law.

(2) Charitable contributions

The deduction for charitable contributions provided under section 170 shall be allowed, but in computing such deduction the limitations in section 170(b)(1)(A), (B), (D), and (E) shall apply, and section 170(b)(2) and (d)(1) shall not apply. For purposes of this paragraph, the term ''contribution base'' when used in section 170(b)(1) means the taxable income computed with the adjustments (other than the 10-percent limitation) provided in section 170(b)(2) and (d)(1) and without deduction of the amount disallowed under paragraph (6) of this subsection.

(3) Special deductions disallowed

The special deductions for corporations provided in part VIII (except section 248) of subchapter B (section 241 and following, relating to the deduction for dividends received by corporations, etc.) shall not be allowed.

(4) Net operating loss

The net operating loss deduction provided in section 172 shall not be allowed, but there shall be allowed as a deduction the amount of the net operating loss (as defined in section 172(c)) for the preceding taxable year computed without the deductions provided in part VIII (except section 248) of subchapter B.

(5) Net capital gains

There shall be allowed as a deduction the net capital gain for the taxable year, minus the taxes imposed by this subtitle attributable to such net capital gain. The taxes attributable to such net capital gain shall be an amount equal to the difference between—

(A) the taxes imposed by this subtitle (except the tax imposed by this part) for such year, and

(B) such taxes computed for such year without including such excess in taxable income.

(6) Expenses and depreciation applicable to property of the taxpayer

The aggregate of the deductions allowed under section 162 (relating to trade or business expenses) and section 167 (relating to depreciation), which are allocable to the operation and maintenance of property owned or operated by the corporation, shall be allowed only in an amount equal to the rent or other compensation received for the use of, or the right to use, the property, unless it is established (under regulations prescribed by the Secretary) to the satisfaction of the Secretary—

(A) that the rent or other compensation received was the highest obtainable, or, if none was received, that none was obtainable;

(B) that the property was held in the course of a business carried on bona fide for profit; and

(C) either that there was reasonable expectation that the operation of the property would result in a profit, or that the property was necessary to the conduct of the business.

(7) Special rule for capital gains and losses of foreign corporations

In the case of a foreign corporation, paragraph (5) shall be applied by taking into account only gains and losses which are effectively connected with the conduct of a trade or business within the United States and are not exempt from tax under treaty.

(c) Certain foreign corporations

In the case of a foreign corporation all of the outstanding stock of which during the last half of the taxable year is owned by nonresident alien individuals (whether directly or indirectly through foreign estates, foreign trusts, foreign partnerships, or other foreign corporations), the taxable income for purposes of subsection (a) shall be the income which constitutes personal holding company income under section 543(a)(7), reduced by the deductions attributable to such income, and adjusted, with respect to such income, in the manner provided in subsection (b).

(Aug. 16, 1954, ch. 736, 68A Stat. 189; Pub. L. 85–866, title I, §32(a), (b), Sept. 2, 1958, 72 Stat. 1631; Pub. L. 87–403, §3(d), Feb. 2, 1962, 76 Stat. 7; Pub. L. 87–834, §9(d)(2), Oct. 16, 1962, 76 Stat. 1001; Pub. L. 88–272, title II, §§207(b)(5), 209(c)(2), 225(i)(1), (2), Feb. 26, 1964, 78 Stat. 42, 46, 90; Pub. L. 89–719, title I, §101(b)(2), Nov. 2, 1966, 80 Stat. 1132; Pub. L. 89–809, title I, §104(h)(3), Nov. 13, 1966, 80 Stat. 1560; Pub. L. 91–172, title II, §201(a)(2)(B), Dec. 30, 1969, 83 Stat. 558; Pub. L. 94–455, title X, §1033(b)(4), title XIX, §§1901(a)(77), (b)(20)(B), (32)(E), (33)(D), 1906(b)(13)(A), 1951(b)(9)(A), Oct. 4, 1976, 90 Stat. 1628, 1777, 1797, 1800, 1801, 1834, 1839; Pub. L. 97–448, title I, §102(m)(2), Jan. 12, 1983, 96 Stat. 2374; Pub. L. 99–514, title XII, §1225(b), Oct. 22, 1986, 100 Stat. 2559; Pub. L. 101–508, title XI, §11801(a)(24), (c)(10)(B), Nov. 5, 1990, 104 Stat. 1388–521, 1388–527; Pub. L. 109–280, title XII, §1206(b)(2), Aug. 17, 2006, 120 Stat. 1070.)

AMENDMENTS

2006—Subsec. (b)(2). Pub. L. 109–280, which directed the substitution of ''(D), and (E)'' for ''and (D)'' in section 545(b)(2), without specifying the act to be amended, was executed by making the substitution in subsec. (b)(2) of this section, which is section 545 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

1990—Subsecs. (c), (d). Pub. L. 101–508 redesignated subsec. (d) as (c) and struck out former subsec. (c) which related to a special adjustment to taxable income for amounts used or set aside to pay or retire qualified indebtedness.

1986—Subsec. (b)(7). Pub. L. 99–514 added par. (7).

1983—Subsec. (b)(2). Pub. L. 97–448 substituted ''10-percent'' for ''5-percent''.

1976—Subsec. (b)(1). Pub. L. 94–455, §§1033(b)(4), 1901(a)(77)(A), struck out ''(other than excess profits tax imposed by subchapter E of chapter 2 of the Internal Revenue Code of 1939 for taxable years beginning after December 31, 1940)'' after ''Federal income and excess profits taxes''; substituted ''902(a) or 960(a)(1)'' for ''902(a)(1) or 960(a)(1)(C)'' after ''corporation under section''; and struck out provisions after ''prior income tax law'' relating to election by taxpayer who paid Federal income and excess profits taxes to deduct payments, when made, for purposes of computing subchapter A net income or, for a taxable year ending after June 30, 1954, to deduct such taxes when accrued, such election being irrevocable and applied to taxable year for which election was made and to all subsequent taxable years.

Subsec. (b)(2). Pub. L. 94–455, §1901(b)(20)(B)(ii), substituted ''paragraph (6)'' for ''paragraph (8)'' after ''amount disallowed under''.

Subsec. (b)(5). Pub. L. 94–455, §1901(b)(33)(D), substituted ''Net'' for ''Long-term'' after ''(5)''.

Subsec. (b)(6). Pub. L. 94–455, §§1901(b)(20)(B)(i), 1906(b)(13)(A), struck out par. (6) relating to deduction allowed to bank affiliates, redesignated former par. (8) as (6) and, as redesignated, struck out ''or his delegate'' in two places after ''Secretary''.

Subsec. (b)(7). Pub. L. 94–455, §1901(a)(77)(B), struck out par. (7) relating to payment of indebtedness incurred prior to January 1, 1934.

Subsec. (b)(8). Pub. L. 94–455, §1901(b)(20)(B)(i), redesignated par. (8) as (6).

Subsec. (b)(9). Pub. L. 94–455, §1951(b)(9)(A), struck out par. (9) relating to the deduction of the amount of a lien in favor of the United States.

Subsec. (b)(10), (11). Pub. L. 94–455, §1901(b)(32)(E), struck out par. (10) relating to deduction for distributions of divested stock, and struck out par. (11) relating to special adjustment on the disposition of antitrust stock received as a dividend.

Subsec. (c)(2)(A). Pub. L. 94–455, §1901(a)(77)(C), substituted ''February 26, 1964'' for ''the date of enactment of this subsection'' after ''years ending before''.

Subsec. (c)(4). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(5). Pub. L. 94–455, §1901(b)(20)(B)(iii), substituted ''subsection (b)(6)'' for ''subsection (b)(8)'' after ''company income under''.

1969—Subsec. (b)(2). Pub. L. 91–172 substituted ''section 170(b)(1)(A), (B), and (D)'', ''section 170(b)(2) and (d)(1)'' for ''section 170(b)(1)(A) and (B)'' and ''section 170(b)(2) and (5)'', respectively, in provisions of first sentence setting out the sections appropriate to the computation of the deduction, and in provisions of second sentence describing applicability of terms for purposes of this paragraph, substituted ''contribution base'' and ''section 170(b)(2) and (d)(1)'' for ''adjusted gross income'' and ''the first sentence of section 170(b)(2) and (5),'' respectively.

1966—Subsec. (a). Pub. L. 89–809, §104(h)(3)(A), substituted ''in the manner provided in subsections (b), (c), and (d)'' for ''in the manner provided in subsection (b) and (c)'' and inserted provisions governing the case of a personal holding company which is a foreign corporation, not more than 10 percent in value of the outstanding stock of which is owned (within the meaning of section 958(a)) during the last half of the taxable year by United States persons.

Subsec. (b)(9). Pub. L. 89–719 substituted ''section 6323(f)'' for ''section 6323(a)(1), (2), or (3)''.

Subsec. (d). Pub. L. 89–809, §104(h)(3)(B), added subsec. (d).

1964—Subsec. (a). Pub. L. 88–272, §225(i)(1), inserted reference to subsection (c).

Subsec. (b)(1), (2). Pub. L. 88–272, §§207(b)(5), 209(c)(2), substituted ''section 275(a)(4)'' for ''section 164(b)(6)'' in par. (1), and inserted reference to section 170(b)(5) in par. (2).

Subsec. (c). Pub. L. 88–272, §225(i)(2), added subsec. (c).

1962—Subsec. (b)(1). Pub. L. 87–834 substituted ''accrued during the taxable year or deemed to be paid by a domestic corporation under section 902(a)(1) or 960(a)(1)(C) for the taxable year'' for ''accrued during the taxable year''.

Subsec. (b)(10), (11). Pub. L. 87–403 added pars. (10) and (11).

1958—Subsec. (b)(2). Pub. L. 85–866, §32(a), substituted in first sentence '', but in computing such deduction the limitations in section 170(b)(1)(A) and (B) shall apply, and section 170(b) shall not apply'' for ''but with the limitations in section 170(b)(1)(A) and (B) (in lieu of the limitation in section 170(b)(2)'', and inserted in second sentence ''(other than the 5-percent limitation)'' and ''the first sentence'' after ''with the adjustments'' and ''provided in'', respectively.

Subsec. (b)(4). Pub. L. 85–866, §32(b), inserted ''computed without the deductions provided in part VIII (except section 248) of subchapter B''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to contributions made in taxable years beginning after Dec. 31, 2005, see section 1206(c) of Pub. L. 109–280, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to gains and losses realized on or after Jan. 1, 1986, see section 1225(c) of Pub. L. 99–514, as amended, set out as a note under section 535 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1033(b)(4) of Pub. L. 94–455, see section 1033(c) of Pub. L. 94–455, set out as a note under section 902 of this title.

Amendment by section 1901(a)(77), (b)(20)(B), (32)(E), (33)(D) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 1951(b)(9)(A) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1951(d) of Pub. L. 94–455 set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 201(g) of Pub. L. 91–172, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1966 AMENDMENTS

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

Amendment by Pub. L. 89–719 applicable after Nov. 2, 1966, regardless of when the title or lien of the United States arose or when the lien or interest of another person was acquired, except in a case in which a lien or title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before Nov. 2, 1966, or in a case in which the

amendment would impair a priority held by any person other than the United States holding a lien or interest prior to Nov. 2, 1966, operate to increase the liability of such person, or shorten the time for bringing suit with respect to transactions occurring before Nov. 2, 1966, see section 114(a)–(e) of Pub. L. 89–719, set out as a note under section 6323 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 207(b)(5) of Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 207(c) of Pub. L. 88–272, set out as a note under section 164 of this title.

Amendment by section 209(c)(2) of Pub. L. 88–272 applicable to contributions paid in taxable years beginning after Dec. 31, 1963, see section 209(f)(1) of Pub. L. 88–272, set out as a note under section 170 of this title.

Amendment by section 225(i)(1), (2) of Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(*l*)(1) of Pub. L. 88–272 set out as a note under section 316 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Amendment by Pub. L. 87–834 applicable in respect of any distribution received by a domestic corporation after Dec. 31, 1964, and in respect of any distribution received by a domestic corporation before Jan. 1, 1965, in a taxable year of such corporation beginning after Dec. 31, 1962, but only to the extent that such distribution is made out of the accumulated profits of a foreign corporation for a taxable year (of such foreign corporation) beginning after Dec. 31, 1962, see section 9(e) of Pub. L. 87–834, set out as a note under section 902 of this title.

Amendment by Pub. L. 87–403 applicable only with respect to distributions made after Feb. 2, 1962, see section 3(g) of Pub. L. 87–403, set out as a note under section 312 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 32(a) of Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

Section 32(c) of Pub. L. 85–866, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by subsection (b) of this section [amending this section] shall apply with respect to adjustments under section 545(b)(4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for taxable years beginning after December 31, 1957.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

Section 1951(b)(9)(B) of Pub. L. 94–455 provided that: ''Notwithstanding subparagraph (A) [amending this section], if any amount was deducted under paragraph (9) of section 545(b) in a taxable year beginning before January 1, 1977, on account of a lien which is satisfied or released in a taxable year beginning on or after such date, the amount so deducted shall be included in income, for purposes of section 545, as provided in the second sentence of such paragraph. Shareholders of any corporation which has amounts included in its income by reason of the preceding sentence may elect to compute the income tax on dividends attributable to amounts so included as provided in the third sentence of such paragraph.''

§ 546. Income not placed on annual basis

Section 443(b) (relating to computation of tax on change of annual accounting period) shall not apply in the computation of the personal holding company tax imposed by section 541.

(Aug. 16, 1954, ch. 736, 68A Stat. 191.)

§ 547. Deduction for deficiency dividends

(a) General rule

If a determination (as defined in subsection (c)) with respect to a taxpayer establishes liability for personal holding company tax imposed by section 541 (or by a corresponding provision of a prior income tax law) for any taxable year, a deduction shall be allowed to the taxpayer for the amount of deficiency dividends (as defined in subsection (d)) for the purpose of determining the personal holding company tax for such year, but not for the purpose of determining interest, additional amounts, or assessable penalties computed with respect to such personal holding company tax.

(b) Rules for application of section

(1) Allowance of deduction

The deficiency dividend deduction shall be allowed as of the date the claim for the deficiency dividend deduction is filed.

(2) Credit or refund

If the allowance of a deficiency dividend deduction results in an overpayment of personal holding company tax for any taxable year, credit or refund with respect to such overpayment shall be made as if on the date of the determination 2 years remained before the expiration of the period of limitation on the filing of claim for refund for the taxable year to which the overpayment relates. No interest shall be allowed on a credit or refund arising from the application of this section.

(c) Determination

For purposes of this section, the term ''determination'' means—

(1) a decision by the Tax Court or a judgment, decree, or other order by any court of competent jurisdiction, which has become final;

(2) a closing agreement made under section 7121; or

(3) under regulations prescribed by the Secretary, an agreement signed by the Secretary and by, or on behalf of, the taxpayer relating to the liability of such taxpayer for personal holding company tax.

(d) Deficiency dividends

(1) Definition

For purposes of this section, the term ''deficiency dividends'' means the amount of the dividends paid by the corporation on or after the date of the determination and before filing claim under subsection (e), which would have been includible in the computation of the deduction for dividends paid under section 561 for the taxable year with respect to which the liability for personal holding company tax exists, if distributed during such taxable year. No dividends shall be considered as deficiency dividends for purposes of subsection (a) unless distributed within 90 days after the determination.

(2) Effect on dividends paid deduction

(A) For taxable year in which paid

Deficiency dividends paid in any taxable year (to the extent of the portion thereof taken into account under subsection (a) in determining personal holding company tax) shall not be included in the amount of dividends paid for such year for purposes of computing the dividends paid deduction for such year and succeeding years.

(B) For prior taxable year

Deficiency dividends paid in any taxable year (to the extent of the portion thereof taken into account under subsection (a) in determining personal holding company tax) shall not be allowed for purposes of section 563(b) in the computation of the dividends paid deduction for the taxable year preceding the taxable year in which paid.

(e) Claim required

No deficiency dividend deduction shall be allowed under subsection (a) unless (under regulations prescribed by the Secretary) claim therefor is filed within 120 days after the determination.

(f) Suspension of statute of limitations and stay of collection

(1) Suspension of running of statute

If the corporation files a claim, as provided in subsection (e), the running of the statute of limitations provided in section 6501 on the making of assessments, and the bringing of distraint or a proceeding in court for collection, in respect of the deficiency and all interest, additional amounts, or assessable penalties, shall be suspended for a period of 2 years after the date of the determination.

(2) Stay of collection

In the case of any deficiency with respect to the tax imposed by section 541 established by a determination under this section—

(A) the collection of the deficiency and all interest, additional amounts, and assessable penalties shall, except in cases of jeopardy, be stayed until the expiration of 120 days after the date of the determination, and

(B) if claim for deficiency dividend deduction is filed under subsection (e), the collection of such part of the deficiency as is not reduced by the deduction for deficiency dividends provided in subsection (a) shall be stayed until the date the claim is disallowed (in whole or in part) and if disallowed in part collection shall be made only with respect to the part disallowed.

No distraint or proceeding in court shall be begun for the collection of an amount the collection of which is stayed under subparagraph (A) or (B) during the period for which the collection of such amount is stayed.

(g) Deduction denied in case of fraud, etc.

No deficiency dividend deduction shall be allowed under subsection (a) if the determination contains a finding that any part of the deficiency is due to fraud with intent to evade tax, or to wilful failure to file an income tax return within the time prescribed by law or prescribed by the Secretary in pursuance of law.

(Aug. 16, 1954, ch. 736, 68A Stat. 191; Pub. L. 94–455, title XIX, §§1901(a)(78), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1777, 1834.)

AMENDMENTS

1976—Subsecs. (c)(3), (e), (g). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' wherever appearing.

Subsec. (h). Pub. L. 94–455, §1901(a)(78), struck out subsec. (h) relating to the effective date of provisions concerning deduction of deficiency dividends.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(78) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

[PART III—REPEALED]

[§§ 551 to 558. Repealed. Pub. L. 108–357, title IV, § 413(a)(1), Oct. 22, 2004, 118 Stat. 1506]

Section 551, acts Aug. 16, 1954, ch. 736, 68A Stat. 193; Pub. L. 88–272, title II, §225(f)(4), Feb. 26, 1964, 78 Stat. 88; Pub. L. 94–455, title XIX, §1901(a)(79), (b)(1)(F)(i), (12)(A), Oct. 4, 1976, 90 Stat. 1777, 1790, 1795; Pub. L. 98–369, div. A, title I, §132(b), July 18, 1984, 98 Stat. 666; Pub. L. 99–514, title XII, §1235(e), title XVIII, §1810(h)(2), Oct. 22, 1986, 100 Stat. 2575, 2829; Pub. L. 100–647, title I, §1012(bb)(1)(A), (B), Nov. 10, 1988, 102 Stat. 3533; Pub. L. 105–34, title XI, §1122(d)(2), Aug. 5, 1997, 111 Stat. 977, provided for taxation of foreign personal holding company income to United States shareholders.

Section 552, acts Aug. 16, 1954, ch. 736, 68A Stat. 195; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title I, §132(c)(2), July 18, 1984, 98 Stat. 666; Pub. L. 99–514, title XII, §1222(b), title XVIII, §1810(h)(1), Oct. 22, 1986, 100 Stat. 2557, 2829; Pub. L. 100–647, title I, §1012(bb)(1)(C), Nov. 10, 1988, 102 Stat. 3533, defined ''foreign personal holding company''.

Section 553, acts Aug. 16, 1954, ch. 736, 68A Stat. 195; Pub. L. 86–435, §1(e), Apr. 22, 1960, 74 Stat. 78; Pub. L. 88–272, title II, §225(e), Feb. 26, 1964, 78 Stat. 85; Pub. L. 94–455, title XIX, §1901(b)(32)(F), Oct. 4, 1976, 90 Stat. 1800; Pub. L. 99–514, title VI, §645(a)(3), Oct. 22, 1986, 100 Stat. 2291, related to determination of foreign personal holding company income.

Section 554, acts Aug. 16, 1954, ch. 736, 68A Stat. 196; Pub. L. 88–272, title II, §225(e), Feb. 26, 1964, 78 Stat. 86; Pub. L. 98–369, div. A, title I, §132(a), July 18, 1984, 98 Stat. 665, related to constructive ownership of stock and treatment of convertible securities as outstanding stock.

Section 555, act Aug. 16, 1954, ch. 736, 68A Stat. 196, related to determination of gross income of foreign personal holding companies.

Section 556, acts Aug. 16, 1954, ch. 736, 68A Stat. 196; Pub. L. 85–866, title I, §33(a), (b)(1), (c)(1), Sept. 2, 1958, 72 Stat. 1632; Pub. L. 87–403, §3(e), Feb. 2, 1962, 76 Stat. 7; Pub. L. 88–272, title II, §§207(b)(6), 209(c)(2), Feb. 26, 1964, 78 Stat. 42, 46; Pub. L. 91–172, title II, §201(a)(2)(B), Dec. 30, 1969, 83 Stat. 558; Pub. L. 94–455, title XIX, §§1901(a)(80), (b)(32)(G), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1778, 1800, 1834; Pub. L. 97–448, title I, §102(m)(2), Jan. 12, 1983, 96 Stat. 2374; Pub. L. 101–508, title XI, §11802(d)(1), Nov. 5, 1990, 104 Stat. 1388–529, related to undistributed foreign personal holding company income.

Section 557, act Aug. 16, 1954, ch. 736, 68A Stat. 198, related to inapplicability of section 443(b) of this title in the computation of income.

Section 558, added Pub. L. 85–866, title I, §33(d)(1), Sept. 2, 1958, 72 Stat. 1632, related to returns of officers, directors, and shareholders of foreign personal holding companies.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

PART IV—DEDUCTION FOR DIVIDENDS PAID

Sec.
561. Definition of deduction for dividends paid.
562. Rules applicable in determining dividends eligible for dividends paid deduction.
563. Rules relating to dividends paid after close of taxable year.
564. Dividend carryover.
565. Consent dividends.

§ 561. Definition of deduction for dividends paid

(a) General rule

The deduction for dividends paid shall be the sum of—

(1) the dividends paid during the taxable year,

(2) the consent dividends for the taxable year (determined under section 565), and

(3) in the case of a personal holding company, the dividend carryover described in section 564.

(b) Special rules applicable

In determining the deduction for dividends paid, the rules provided in section 562 (relating to rules applicable in determining dividends eligible for dividends paid deduction) and section 563 (relating to dividends paid after the close of the taxable year) shall be applicable.

(Aug. 16, 1954, ch. 736, 68A Stat. 198; Pub. L. 87–403, § 3(f), Feb. 2, 1962, 76 Stat. 8; Pub. L. 94–455, title XIX, § 1901(b)(32)(H), Oct. 4, 1976, 90 Stat. 1800.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94–455 redesignated existing provisions of par. (1) as subsec. (b) and struck out par. (2) relating to special adjustment on disposition of antitrust stock as a dividend.

1962—Subsec. (b). Pub. L. 87–403 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1976 AMENDMENT

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

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–403 applicable only with respect to distributions made after Feb. 2, 1962, see section 3(g) of Pub. L. 87–403, set out as a note under section 312 of this title.

§ 562. Rules applicable in determining dividends eligible for dividends paid deduction

(a) General rule

For purposes of this part, the term ''dividend'' shall, except as otherwise provided in this section, include only dividends described in section 316 (relating to definition of dividends for purposes of corporate distributions).

(b) Distributions in liquidation

(1) Except in the case of a personal holding company described in section 542—

(A) in the case of amounts distributed in liquidation, the part of such distribution which is properly chargeable to earnings and profits accumulated after February 28, 1913, shall be treated as a dividend for purposes of computing the dividends paid deduction, and

(B) in the case of a complete liquidation occurring within 24 months after the adoption of a plan of liquidation, any distribution within such period pursuant to such plan shall, to the extent of the earnings and profits (computed without regard to capital losses) of the corporation for the taxable year in which such distribution is made, be treated as a dividend for purposes of computing the dividends paid deduction.

For purposes of subparagraph (A), a liquidation includes a redemption of stock to which section 302 applies. Except to the extent provided in regulations, the preceding sentence shall not apply in the case of any mere holding or investment company which is not a regulated investment company.

(2) In the case of a complete liquidation of a personal holding company, occurring within 24 months after the adoption of a plan of liquidation, the amount of any distribution within such period pursuant to such plan shall be treated as a dividend for purposes of computing the dividends paid deduction, to the extent that such amount is distributed to corporate distributees and represents such corporate distributees' allocable share of the undistributed personal holding company income for the taxable year of such distribution computed without regard to this paragraph and without regard to subparagraph (B) of section 316(b)(2).

(c) Preferential dividends

Except in the case of a publicly offered regulated investment company (as defined in section 67(c)(2)(B)), the amount of any distribution shall not be considered as a dividend for purposes of computing the dividends paid deduction, unless such distribution is pro rata, with no preference to any share of stock as compared with other shares of the same class, and with no preference to one class of stock as compared with another class except to the extent that the former is entitled (without reference to waivers of their rights by shareholders) to such preference. In the case of a distribution by a regulated investment company (other than a publicly offered regulated investment company (as so defined)) to a shareholder who made an initial investment of at least $10,000,000 in such company, such distribution shall not be treated as not being pro rata or as being preferential solely by reason of an increase in the distribution by reason of reductions in administrative expenses of the company.

(d) Distributions by a member of an affiliated group

In the case where a corporation which is a member of an affiliated group of corporations filing or required to file a consolidated return for a taxable year is required to file a separate

personal holding company schedule for such taxable year, a distribution by such corporation to another member of the affiliated group shall be considered as a dividend for purposes of computing the dividends paid deduction if such distribution would constitute a dividend under the other provisions of this section to a recipient which is not a member of an affiliated group.

(e) Special rules for real estate investment trusts

In the case of a real estate investment trust, in determining the amount of dividends under section 316 for purposes of computing the dividends paid deduction, the earnings and profits of such trust for any taxable year beginning after December 31, 1980, shall be increased by the total amount of gain (if any) on the sale or exchange of real property by such trust during such taxable year.

(Aug. 16, 1954, ch. 736, 68A Stat. 198; Pub. L. 88–272, title II, § 225(f)(3), Feb. 26, 1964, 78 Stat. 88; Pub. L. 97–248, title II, § 222(e)(7), Sept. 3, 1982, 96 Stat. 480; Pub. L. 97–448, title I, § 102(c)(2), Jan. 12, 1983, 96 Stat. 2370; Pub. L. 99–514, title VI, § 657(a), title XVIII, § 1804(d)(1), Oct. 22, 1986, 100 Stat. 2299, 2800; Pub. L. 108–357, title IV, § 413(c)(9), Oct. 22, 2004, 118 Stat. 1507; Pub. L. 111–325, title III, § 307(a), (b), Dec. 22, 2010, 124 Stat. 3550.)

AMENDMENTS

2010—Subsec. (c). Pub. L. 111–325 substituted ''Except in the case of a publicly offered regulated investment company (as defined in section 67(c)(2)(B)), the amount'' for ''The amount'' in first sentence and inserted ''(other than a publicly offered regulated investment company (as so defined))'' after ''regulated investment company'' in second sentence.

2004—Subsec. (b)(1). Pub. L. 108–357 struck out ''or a foreign personal holding company described in section 552'' after ''section 542'' in introductory provisions.

1986—Subsec. (b)(1). Pub. L. 99–514, § 1804(d)(1), inserted at end ''Except to the extent provided in regulations, the preceding sentence shall not apply in the case of any mere holding or investment company which is not a regulated investment company.''

Subsec. (c). Pub. L. 99–514, § 657(a), inserted at end ''In the case of a distribution by a regulated investment company to a shareholder who made an initial investment of at least $10,000,000 in such company, such distribution shall not be treated as not being pro rata or as being preferential solely by reason of an increase in the distribution by reason of reductions in administrative expenses of the company.''

1983—Subsec. (e). Pub. L. 97–448 added subsec. (e).

1982—Subsec. (b)(1). Pub. L. 97–248 inserted sentence at end providing that, for purposes of subpar. (A), a liquidation includes a redemption of stock to which section 302 applies.

1964—Subsec. (b). Pub. L. 88–272 designated existing provisions as subpars. (A) and (B) of par. (1), excepted personal holding companies in section 542, and foreign personal holding companies in section 552 therefrom, and added par. (2).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–325, title III, § 307(c), Dec. 22, 2010, 124 Stat. 3550, provided that: ''The amendments made by this section [amending this section] shall apply to distributions in taxable years beginning after the date of the enactment of this Act [Dec. 22, 2010].''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 657(b) of Pub. L. 99–514 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to distributions after the date of the enactment of this Act [Oct. 22, 1986].''

Section 1804(d)(2) of Pub. L. 99–514 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to distributions after September 27, 1985.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to distributions after Aug. 31, 1982, with exceptions for certain partial liquidations, see section 222(f) of Pub. L. 97–248, set out as a note under section 302 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment Pub. L. 88–272 applicable to distributions made in any taxable year of the distributing corporation beginning after Dec. 31, 1963, see section 225(*l*) of Pub. L. 88–272, set out as a note under section 316 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 563. Rules relating to dividends paid after close of taxable year

(a) Accumulated earnings tax

In the determination of the dividends paid deduction for purposes of the accumulated earnings tax imposed by section 531, a dividend paid after the close of any taxable year and on or before the 15th day of the third month following the close of such taxable year shall be considered as paid during such taxable year.

(b) Personal holding company tax

In the determination of the dividends paid deduction for purposes of the personal holding company tax imposed by section 541, a dividend paid after the close of any taxable year and on or before the 15th day of the third month following the close of such taxable year shall, to the extent the taxpayer elects in its return for the taxable year, be considered as paid during such taxable year. The amount allowed as a dividend by reason of the application of this subsection with respect to any taxable year shall not exceed either—

(1) The undistributed personal holding company income of the corporation for the taxable year, computed without regard to this subsection, or

(2) 20 percent of the sum of the dividends paid during the taxable year, computed without regard to this subsection.

(c) Dividends considered as paid on last day of taxable year

For the purpose of applying section 562(a), with respect to distributions under subsection (a) or (b) of this section, a distribution made after the close of a taxable year and on or before the 15th day of the third month following the close of the taxable year shall be considered as made on the last day of such taxable year.

(Aug. 16, 1954, ch. 736, 68A Stat. 199; Pub. L. 91–172, title IX, §914(a), Dec. 30, 1969, 83 Stat. 723; Pub. L. 101–239, title VII, §7401(b), Dec. 19, 1989, 103 Stat. 2356; Pub. L. 108–357, title IV, §413(c)(10), Oct. 22, 2004, 118 Stat. 1507.)

AMENDMENTS

2004—Subsecs. (c), (d). Pub. L. 108–357 redesignated subsec. (d) as (c), substituted ''subsection (a) or (b)'' for ''subsection (a), (b), or (c)'', and struck out former subsec. (c) which related to foreign personal holding company tax.

1989—Subsec. (c). Pub. L. 101–239, §7401(b)(1), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 101–239, §7401(b)(2), substituted ''subsection (a), (b), or (c)'' for ''subsection (a) or (b)''.

Pub. L. 101–239, §7401(b)(1), redesignated former subsec. (c) as (d).

1969—Subsec. (b)(2). Pub. L. 91–172 substituted ''20 percent'' for ''10 percent''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to taxable years of foreign corporations beginning after July 10, 1989, with special rules for any foreign corporation required by the amendments made by section 7401 of Pub. L. 101–239 to change its taxable year for its first taxable year beginning after July 10, 1989, see section 7401(d) of Pub. L. 101–239, set out as an Effective Date note under section 898 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 914(b) of Pub. L. 91–172 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1969.''

§ 564. Dividend carryover

(a) General rule

For purposes of computing the dividends paid deduction under section 561, in the case of a personal holding company the dividend carryover for any taxable year shall be the dividend carryover to such taxable year, computed as provided in subsection (b), from the two preceding taxable years.

(b) Computation of dividend carryover

The dividend carryover to the taxable year shall be determined as follows:

(1) For each of the 2 preceding taxable years there shall be determined the taxable income computed with the adjustments provided in section 545 (whether or not the taxpayer was a personal holding company for either of such preceding taxable years), and there shall also be determined for each such year the deduction for dividends paid during such year as provided in section 561 (but determined without regard to the dividend carryover to such year).

(2) There shall be determined for each such taxable year whether there is an excess of such taxable income over such deduction for dividends paid or an excess of such deduction for dividends paid over such taxable income, and the amount of each such excess.

(3) If there is an excess of such deductions for dividends paid over such taxable income for the first preceding taxable year, such excess shall be allowed as a dividend carryover to the taxable year.

(4) If there is an excess of such deduction for dividends paid over such taxable income for the second preceding taxable year, such excess shall be reduced by the amount determined in paragraph (5), and the remainder of such excess shall be allowed as a dividend carryover to the taxable year.

(5) The amount of the reduction specified in paragraph (4) shall be the amount of the excess of the taxable income, if any, for the first preceding taxable year over such deduction for dividends paid, if any, for the first preceding taxable year.

(Aug. 16, 1954, ch. 736, 68A Stat. 200; Pub. L. 94–455, title XIX, §1901(a)(81), Oct. 4, 1976, 90 Stat. 1778.)

AMENDMENTS

1976—Subsec. (c). Pub. L. 94–455 struck out subsec. (c) which related to the determination of dividend carryover from taxable years to which this subtitle does not apply.

EFFECTIVE DATE OF 1976 AMENDMENT

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

§ 565. Consent dividends

(a) General rule

If any person owns consent stock (as defined in subsection (f)(1)) in a corporation on the last day of the taxable year of such corporation, and such person agrees, in a consent filed with the return of such corporation in accordance with regulations prescribed by the Secretary, to treat as a dividend the amount specified in such consent, the amount so specified shall, except as provided in subsection (b), constitute a consent dividend for purposes of section 561 (relating to the deduction for dividends paid).

(b) Limitations

A consent dividend shall not include—

(1) an amount specified in a consent which, if distributed in money, would constitute, or be part of, a distribution which would be disqualified for purposes of the dividends paid deduction under section 562(c) (relating to preferential dividends), or

(2) an amount specified in a consent which would not constitute a dividend (as defined in section 316) if the total amounts specified in consents filed by the corporation had been distributed in money to shareholders on the last day of the taxable year of such corporation.

(c) Effect of consent

The amount of a consent dividend shall be considered, for purposes of this title—

(1) as distributed in money by the corporation to the shareholder on the last day of the taxable year of the corporation, and

(2) as contributed to the capital of the corporation by the shareholder on such day.

(d) Consent dividends and other distributions

If a distribution by a corporation consists in part of consent dividends and in part of money or other property, the entire amount specified in the consents and the amount of such money or other property shall be considered together for purposes of applying this title.

(e) Nonresident aliens and foreign corporations

In the case of a consent dividend which, if paid in money would be subject to the provisions of section 1441 (relating to withholding of tax on nonresident aliens) or section 1442 (relating to withholding of tax on foreign corporations), this section shall not apply unless the consent is accompanied by money, or such other medium of payment as the Secretary may by regulations authorize, in an amount equal to the amount that would be required to be deducted and withheld under sections 1441 or 1442 if the consent dividend had been, on the last day of the taxable year of the corporation, paid to the shareholder in money as a dividend. The amount accompanying the consent shall be credited against the tax imposed by this subtitle on the shareholder.

(f) Definitions

(1) Consent stock

Consent stock, for purposes of this section, means the class or classes of stock entitled, after the payment of preferred dividends, to a share in the distribution (other than in complete or partial liquidation) within the taxable year of all the remaining earnings and profits, which share constitutes the same proportion of such distribution regardless of the amount of such distribution.

(2) Preferred dividends

Preferred dividends, for purposes of this section, means a distribution (other than in complete or partial liquidation), limited in amount, which must be made on any class of stock before a further distribution (other than in complete or partial liquidation) of earnings and profits may be made within the taxable year.

(Aug. 16, 1954, ch. 736, 68A Stat. 200; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsecs. (a), (e). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

Subchapter H—Banking Institutions

Part
I. Rules of general application to banking institutions.
II. Mutual savings banks, etc.

AMENDMENTS

1976—Pub. L. 94–455, title XIX, § 1901(b)(20)(C), Oct. 4, 1976, 90 Stat. 1797, struck out item for part III ''Bank affiliates''.

PART I—RULES OF GENERAL APPLICATION TO BANKING INSTITUTIONS

Sec.
581. Definition of bank.
582. Bad debts, losses, and gains with respect to securities held by financial institutions.
[583. Repealed.]
584. Common trust funds.
585. Reserves for losses on loans of banks.
[586. Repealed.]

AMENDMENTS

1986—Pub. L. 99–514, title IX, § 901(d)(4)(H), Oct. 22, 1986, 100 Stat. 2380, struck out item 586 ''Reserves for losses on loans of small business investment companies, etc.''

1976—Pub. L. 94–455, title XIX, § 1901(b)(18), Oct. 4, 1976, 90 Stat. 1796, struck out item 583 ''Deductions of dividends paid on certain preferred stock''.

1969—Pub. L. 91–172, title IV, § 431(c)(2), Dec. 30, 1969, 83 Stat. 620, substituted ''Bad debts, losses, and gains with respect to securities held by financial institutions'', for ''Bad debt and loss deduction with respect to securities held by banks'' in item 582, and added items 585 and 586.

§ 581. Definition of bank

For purposes of sections 582 and 584, the term ''bank'' means a bank or trust company incorporated and doing business under the laws of the United States (including laws relating to the District of Columbia) or of any State, a substantial part of the business of which consists of receiving deposits and making loans and discounts, or of exercising fiduciary powers similar to those permitted to national banks under authority of the Comptroller of the Currency, and which is subject by law to supervision and examination by State, Territorial, or Federal authority having supervision over banking institutions. Such term also means a domestic building and loan association.

(Aug. 16, 1954, ch. 736, 68A Stat. 202; Pub. L. 87–722, § 5, Sept. 28, 1962, 76 Stat. 670; Pub. L. 94–455, title XIX, § 1901(c)(5), Oct. 4, 1976, 90 Stat. 1803.)

AMENDMENTS

1976—Pub. L. 94–455 substituted ''or of any State'' for ''of any State, or of any Territory'' after ''District of Columbia)'' and struck out ''Territorial'' after ''examination by State''.

1962—Pub. L. 87–722 substituted ''authority of the Comptroller of the Currency'' for ''section 11(k) of the Federal Reserve Act (38 Stat. 262; 12 U.S.C. 248(k))''.

§ 582. Bad debts, losses, and gains with respect to securities held by financial institutions

(a) Securities

Notwithstanding sections 165(g)(1) and 166(e), subsections (a) and (b) of section 166 (relating to allowance of deduction for bad debts) shall apply in the case of a bank to a debt which is evidenced by a security as defined in section 165(g)(2)(C).

(b) Worthless stock in affiliated bank

For purposes of section 165(g)(1), where the taxpayer is a bank and owns directly at least 80 percent of each class of stock of another bank, stock in such other bank shall not be treated as a capital asset.

(c) Bond, etc., losses and gains of financial institutions

(1) General rule

For purposes of this subtitle, in the case of a financial institution referred to in paragraph (2), the sale or exchange of a bond, debenture, note, or certificate or other evidence of indebtedness shall not be considered a sale or exchange of a capital asset. For purposes of the preceding sentence, any regular or residual interest in a REMIC shall be treated as an evidence of indebtedness.

(2) Financial institutions to which paragraph (1) applies

(A) In general

For purposes of paragraph (1), the financial institutions referred to in this paragraph are—

(i) any bank (and any corporation which would be a bank except for the fact it is a foreign corporation),

(ii) any financial institution referred to in section 591,

(iii) any small business investment company operating under the Small Business Investment Act of 1958, and

(iv) any business development corporation.

(B) Business development corporation

For purposes of subparagraph (A), the term ''business development corporation'' means a corporation which was created by or pursuant to an act of a State legislature for purposes of promoting, maintaining, and assisting the economy and industry within such State on a regional or statewide basis by making loans to be used in trades and businesses which would generally not be made by banks within such region or State in the ordinary course of their business (except on the basis of a partial participation), and which is operated primarily for such purposes.

(C) Limitations on foreign banks

In the case of a foreign corporation referred to in subparagraph (A)(i), paragraph (1) shall only apply to gains and losses which are effectively connected with the conduct of a banking business in the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 202; Pub. L. 85–866, title I, §34, Sept. 2, 1958, 72 Stat. 1632; Pub. L. 91–172, title IV, §433(a), (c), Dec. 30, 1969, 83 Stat. 623, 624; Pub. L. 94–455, title X, §1044(a), title XIV, §1402(b)(1)(G), (2), Oct. 4, 1976, 90 Stat. 1642, 1732; Pub. L. 98–369, div. A, title X, §1001(b)(6), (e), July 18, 1984, 98 Stat. 1011, 1012; Pub. L. 99–514, title VI, §671(b)(4), title IX, §901(d)(3), Oct. 22, 1986, 100 Stat. 2318, 2379; Pub. L. 100–647, title I, §1008(d)(3), Nov. 10, 1988, 102 Stat. 3439; Pub. L. 101–508, title XI, §11801(a)(25), (c)(11), Nov. 5, 1990, 104 Stat. 1388–521, 1388–527; Pub. L. 104–188, title I, §1621(b)(4), Aug. 20, 1996, 110 Stat. 1867; Pub. L. 108–357, title VIII, §835(b)(3), Oct. 22, 2004, 118 Stat. 1593.)

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in subsec. (c)(2)(A)(iii), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§661 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 661 of Title 15 and Tables.

AMENDMENTS

2004—Subsec. (c)(1). Pub. L. 108–357 struck out '', and any regular interest in a FASIT,'' before ''shall be treated''.

1996—Subsec. (c)(1). Pub. L. 104–188 inserted '', and any regular interest in a FASIT,'' after ''REMIC''.

1990—Subsec. (c)(1). Pub. L. 101–508, §11801(c)(11)(A), substituted ''paragraph (2)'' for ''paragraph (5)''.

Subsec. (c)(2). Pub. L. 101–508, §11801(a)(25), (c)(11)(B), redesignated par. (5) as (2) and struck out former par. (2) ''Transitional rule for banks'' which read as follows: ''In the case of a bank, if the net long-term capital gains of the taxable year from sales or exchanges of qualifying securities exceed the net short-term capital losses of the taxable year from such sales or exchanges, such excess shall be considered as gain from the sale of a capital asset held for more than 6 months to the extent it does not exceed the net gain on sales and exchanges described in paragraph (1).''

Subsec. (c)(3). Pub. L. 101–508, §11801(a)(25), struck out par. (3) ''Special rules'' which read as follows: ''For purposes of this subsection—

''(A) The term 'qualifying security' means a bond, debenture, note, or certificate or other evidence of indebtedness held by a bank on July 11, 1969.

''(B) The amount treated as capital gain or loss from the sale or exchange of a qualifying security shall be determined by multiplying the amount of capital gain or loss from the sale or exchange of such security (determined without regard to this subsection) by a fraction, the numerator of which is the number of days before July 12, 1969, that such security was held by the bank, and the denominator of which is the number of days the security was held by the bank.''

Subsec. (c)(4). Pub. L. 101–508, §11801(a)(25), struck out par. (4) ''Transitional rule for banks'' which read as follows: ''In the case of a corporation which would be a bank except for the fact that it is a foreign corporation, the net gain, if any, for the taxable year on sales and exchanges described in paragraph (1) shall be considered as gain from the sale or exchange of a capital asset to the extent such net gain does not exceed the portion of any capital loss carryover to such taxable year which is attributable to capital losses on sales or exchanges described in paragraph (1) for a taxable year beginning before July 12, 1969. For purposes of the preceding sentence, the portion of a net capital loss for a taxable year which is attributable to capital losses on sales or exchanges described in paragraph (1) is the amount of the net capital loss on such sales or exchanges for such taxable year (but not in excess of the net capital loss for such taxable year).''

Subsec. (c)(5). Pub. L. 101–508, §11801(c)(11)(B), redesignated par. (5) as (2).

1988—Subsec. (a). Pub. L. 100–647 substituted ''subsections (a) and (b) of section 166'' for ''subsections (a), (b), and (c) of section 166''.

1986—Subsec. (c)(1). Pub. L. 99–514, §901(d)(3)(A), substituted ''referred to in paragraph (5)'' for ''to which section 585, 586, or 593 applies''.

Pub. L. 99–514, §671(b)(4), inserted ''For purposes of the preceding sentence, any regular or residual interest in a REMIC shall be treated as an evidence of indebtedness.''

Subsec. (c)(5). Pub. L. 99–514, §901(d)(3)(B), added par. (5).

1984—Subsec. (c)(2). Pub. L. 98–369 substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

1976—Subsec. (c)(2). Pub. L. 94–455, § 1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, § 1402(b)(1)(G), (2), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

Subsec. (c)(4). Pub. L. 94–455, § 1044(a), added par. (4).

1969—Pub. L. 91–172, § 433(c), substituted ''Bad debts, losses, and gains with respect to securities held by financial institutions'' for ''Bad debt and loss deduction with respect to securities held by banks'' in section catchline.

Subsec. (c). Pub. L. 91–172, § 433(a), redesignated existing provisions as par. (1), inserted reference to sections 585, 586 and 593, and added pars. (2) and (3).

1958—Subsec. (c). Pub. L. 85–866 struck out ''with interest coupons or in registered form,'' before ''exceed the gains''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 effective Jan. 1, 2005, with exception for any FASIT in existence on Oct. 22, 2004, to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance, see section 835(c) of Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 671(b)(4) of Pub. L. 99–514 effective Jan. 1, 1987, see section 675(a) of Pub. L. 99–514, as amended, set out as an Effective Date note under section 860A of this title.

Amendment by section 901(d)(3) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 901(e) of Pub. L. 99–514, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1044(b) of Pub. L. 94–455, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after July 11, 1969.

''(2) If the refund or credit of any overpayment attributable to the application of the amendment made by subsection (a) to any taxable year is otherwise prevented by the operation of any law or rule of law (other than section 7122 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], relating to compromises) on the day which is one year after the date of the enactment of this Act [Oct. 4, 1976], such credit or refund shall be nevertheless allowed or made if claim therefor is filed on or before such day.''

Section 1402(b)(1) of Pub. L. 94–455 provided that amendment made by that section is effective with respect to taxable years beginning in 1977.

Section 1402(b)(2) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 433(d) of Pub. L. 91–172, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 1243 of this title] shall apply to taxable years beginning after July 11, 1969.

''(2) ELECTION FOR SMALL BUSINESS INVESTMENT COMPANIES AND BUSINESS DEVELOPMENT CORPORATIONS.—Notwithstanding paragraph (1), in the case of a financial institution described in section 586(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the amendments made by this section [amending this section and section 1243 of this title] shall not apply for its taxable years beginning after July 11, 1969, and before July 11, 1974, unless the taxpayer so elects at such time and in such manner as shall be prescribed by the Secretary of the Treasury or his delegate. Such election shall be irrevocable and shall apply to all such taxable years.''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[§ 583. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(82), Oct. 4, 1976, 90 Stat. 1778]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 202, related to deductions by certain taxpayers of dividends paid to the United States or any instrumentality thereof exempt from Federal income taxes on the preferred stock of the corporation owned by the United States or such instrumentality.

EFFECTIVE DATE OF REPEAL

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

§ 584. Common trust funds

(a) Definitions

For purposes of this subtitle, the term ''common trust fund'' means a fund maintained by a bank—

(1) exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity—

(A) as a trustee, executor, administrator, or guardian, or

(B) as a custodian of accounts—

(i) which the Secretary determines are established pursuant to a State law which is substantially similar to the Uniform Gifts to Minors Act as published by the American Law Institute, and

(ii) with respect to which the bank establishes, to the satisfaction of the Secretary, that it has duties and responsibilities

similar to duties and responsibilities of a trustee or guardian; and

(2) in conformity with the rules and regulations, prevailing from time to time, of the Board of Governors of the Federal Reserve System or the Comptroller of the Currency pertaining to the collective investment of trust funds by national banks.

For purposes of this subsection, two or more banks which are members of the same affiliated group (within the meaning of section 1504) shall be treated as one bank for the period of affiliation with respect to any fund of which any of the member banks is trustee or two or more of the member banks are cotrustees.

(b) Taxation of common trust funds

A common trust fund shall not be subject to taxation under this chapter and for purposes of this chapter shall not be considered a corporation.

(c) Income of participants in fund

Each participant in the common trust fund in computing its taxable income shall include, whether or not distributed and whether or not distributable—

(1) as part of its gains and losses from sales or exchanges of capital assets held for not more than 1 year, its proportionate share of the gains and losses of the common trust fund from sales or exchanges of capital assets held for not more than 1 year,

(2) as part of its gains and losses from sales or exchanges of capital assets held for more than 1 year, its proportionate share of the gains and losses of the common trust fund from sales or exchanges of capital assets held for more than 1 year, and

(3) its proportionate share of the ordinary taxable income or the ordinary net loss of the common trust fund, computed as provided in subsection (d).

The proportionate share of each participant in the amount of dividends received by the common trust fund and to which section 1(h)(11) applies shall be considered for purposes of such paragraph as having been received by such participant.

(d) Computation of common trust fund income

The taxable income of a common trust fund shall be computed in the same manner and on the same basis as in the case of an individual, except that—

(1) there shall be segregated the gains and losses from sales or exchanges of capital assets;

(2) after excluding all items of gain and loss from sales or exchanges of capital assets, there shall be computed—

(A) an ordinary taxable income which shall consist of the excess of the gross income over deductions; or

(B) an ordinary net loss which shall consist of the excess of the deductions over the gross income; and

(3) the deduction provided by section 170 (relating to charitable, etc., contributions and gifts) shall not be allowed.

(e) Admission and withdrawal

No gain or loss shall be realized by the common trust fund by the admission or withdrawal of a participant. The admission of a participant shall be treated with respect to the participant as the purchase of, or an exchange for, the participating interest. The withdrawal of any participating interest by a participant shall be treated as a sale or exchange of such interest by the participant.

(f) Different taxable years of common trust fund and participant

If the taxable year of the common trust fund is different from that of a participant, the inclusions with respect to the taxable income of the common trust fund, in computing the taxable income of the participant for its taxable year, shall be based upon the taxable income of the common trust fund for any taxable year of the common trust fund ending within or with the taxable year of the participant.

(g) Net operating loss deduction

The benefit of the deduction for net operating losses provided by section 172 shall not be allowed to a common trust fund, but shall be allowed to the participants in the common trust fund under regulations prescribed by the Secretary.

(h) Nonrecognition treatment for certain transfers to regulated investment companies

(1) In general

If—

(A) a common trust fund transfers substantially all of its assets to one or more regulated investment companies in exchange solely for stock in the company or companies to which such assets are so transferred, and

(B) such stock is distributed by such common trust fund to participants in such common trust fund in exchange solely for their interests in such common trust fund,

no gain or loss shall be recognized by such common trust fund by reason of such transfer or distribution, and no gain or loss shall be recognized by any participant in such common trust fund by reason of such exchange.

(2) Basis rules

(A) Regulated investment company

The basis of any asset received by a regulated investment company in a transfer referred to in paragraph (1)(A) shall be the same as it would be in the hands of the common trust fund.

(B) Participants

The basis of the stock which is received in an exchange referred to in paragraph (1)(B) shall be the same as that of the property exchanged. If stock in more than one regulated investment company is received in such exchange, the basis determined under the preceding sentence shall be allocated among the stock in each such company on the basis of respective fair market values.

(3) Treatment of assumptions of liability

(A) In general

In determining whether the transfer referred to in paragraph (1)(A) is in exchange

solely for stock in one or more regulated investment companies, the assumption by any such company of a liability of the common trust fund shall be disregarded.

(B) Special rule where assumed liabilities exceed basis

(i) In general

If, in any transfer referred to in paragraph (1)(A), the assumed liabilities exceed the aggregate adjusted bases (in the hands of the common trust fund) of the assets transferred to the regulated investment company or companies—

(I) notwithstanding paragraph (1), gain shall be recognized to the common trust fund on such transfer in an amount equal to such excess,

(II) the basis of the assets received by the regulated investment company or companies in such transfer shall be increased by the amount so recognized, and

(III) any adjustment to the basis of a participant's interest in the common trust fund as a result of the gain so recognized shall be treated as occurring immediately before the exchange referred to in paragraph (1)(B).

If the transfer referred to in paragraph (1)(A) is to two or more regulated investment companies, the basis increase under subclause (II) shall be allocated among such companies on the basis of the respective fair market values of the assets received by each of such companies.

(ii) Assumed liabilities

For purposes of clause (i), the term ''assumed liabilities'' means any liability of the common trust fund assumed by any regulated investment company in connection with the transfer referred to in paragraph (1)(A).

(C) Assumption

For purposes of this paragraph, in determining the amount of any liability assumed, the rules of section 357(d) shall apply.

(4) Common trust fund must meet diversification rules

This subsection shall not apply to any common trust fund which would not meet the requirements of section 368(a)(2)(F)(ii) if it were a corporation. For purposes of the preceding sentence, Government securities shall not be treated as securities of an issuer in applying the 25-percent and 50-percent test and such securities shall not be excluded for purposes of determining total assets under clause (iv) of section 368(a)(2)(F).

(i) Taxable year of common trust fund

For purposes of this subtitle, the taxable year of any common trust fund shall be the calendar year.

(Aug. 16, 1954, ch. 736, 68A Stat. 203; Pub. L. 87–722, § 4, Sept. 28, 1962, 76 Stat. 670; Pub. L. 88–272, title II, § 201(d)(5), Feb. 26, 1964, 78 Stat. 32; Pub. L. 94–414, § 1, Sept. 17, 1976, 90 Stat. 1273; Pub. L. 94–455, title XIV, § 1402(b)(1)(H), (2), title XIX, §§ 1901(b)(1)(G), 1906(b)(13)(A), title XXI, §§ 2131(d), 2138, Oct. 4, 1976, 90 Stat. 1732, 1790, 1834, 1924, 1932; Pub. L. 95–30, title I, § 101(d)(7), May 23, 1977, 91 Stat. 133; Pub. L. 96–223, title IV, § 404(b)(3), Apr. 2, 1980, 94 Stat. 306; Pub. L. 97–34, title III, § 301(b)(3), (6)(A), Aug. 13, 1981, 95 Stat. 270; Pub. L. 97–448, title I, § 103(a)(2), Jan. 12, 1983, 96 Stat. 2375; Pub. L. 98–369, div. A, title X, § 1001(b)(7), (e), July 18, 1984, 98 Stat. 1011, 1012; Pub. L. 99–514, title VI, § 612(b)(2), Oct. 22, 1986, 100 Stat. 2250; Pub. L. 100–647, title I, § 1008(e)(5)(A), Nov. 10, 1988, 102 Stat. 3440; Pub. L. 104–188, title I, § 1805(a), Aug. 20, 1996, 110 Stat. 1894; Pub. L. 106–36, title III, § 3001(c)(1), June 25, 1999, 113 Stat. 183; Pub. L. 108–27, title III, § 302(e)(7), May 28, 2003, 117 Stat. 764.)

AMENDMENT OF SECTION

For termination of amendment by section 303 of Pub. L. 108–27, see Effective and Termination Dates of 2003 Amendment note below.

AMENDMENTS

2003—Subsec. (c). Pub. L. 108–27, §§ 302(e)(7), 303, temporarily inserted concluding provisions. See Effective and Termination Dates of 2003 Amendment note below.

1999—Subsec. (h)(3)(A). Pub. L. 106–36, § 3001(c)(1)(A), struck out '', and the fact that any property transferred by the common trust fund is subject to a liability,'' before ''shall be disregarded''.

Subsec. (h)(3)(B)(ii). Pub. L. 106–36, § 3001(c)(1)(B), added cl. (ii) and struck out heading and text of former cl. (ii). Text read as follows: ''For purposes of clause (i), the term 'assumed liabilities' means the aggregate of—

''(I) any liability of the common trust fund assumed by any regulated investment company in connection with the transfer referred to in paragraph (1)(A), and

''(II) any liability to which property so transferred is subject.''

Subsec. (h)(3)(C). Pub. L. 106–36, § 3001(c)(1)(B), added subpar. (C).

1996—Subsecs. (h), (i). Pub. L. 104–188 added subsec. (h) and redesignated former subsec. (h) as (i).

1988—Subsec. (h). Pub. L. 100–647 added subsec. (h).

1986—Subsec. (c). Pub. L. 99–514, § 612(b)(2)(B), substituted ''1 year'' for ''6 months'' wherever appearing in pars. (1) and (2).

Pub. L. 99–514, § 612(b)(2)(A), amended subsec. (c) generally, restating subpars. (A) to (C) of former par. (1) as pars. (1) to (3) and striking out former par. (2) which read as follows: ''The proportionate share of each participant in the amount of dividends or interest received by the common trust fund and to which section 116 or 128 applies shall be considered for purposes of such section as having been received by such participant.''

1984—Subsec. (c)(1)(A), (B). Pub. L. 98–369 substituted ''6 months'' for ''1 year'', wherever appearing, applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

1983—Subsec. (c)(2). Pub. L. 97–448 reenacted par. (2) without change.

1981—Subsec. (c)(2). Pub. L. 97–34, § 301(b)(6)(A), inserted reference to ''interest'' in heading and text, which continued the amendment made by Pub. L. 96–223.

Pub. L. 97–34, § 301(b)(3), inserted ''or 128'' after ''section 116''.

1980—Subsec. (c)(2). Pub. L. 96–223 inserted ''or interest'' after ''dividends'' in heading and text.

1977—Subsec. (d)(4). Pub. L. 95–30 struck out par. (4) relating to standard deduction.

1976—Subsec. (a). Pub. L. 94–414 inserted provision relating to treatment of two or more bank members of same affiliated group.

Subsec. (a)(1). Pub. L. 94–455, § 2138, designated existing provisions relating to trustee, executor, adminis-

trator and guardian as subpar. (A) and added subpar. (B).

Subsec. (c)(1)(A), (B). Pub. L. 94–455, §1402(b)(2), provided that ''9 months'' would be changed to ''1 year'' wherever appearing.

Pub. L. 94–455, §1402(b)(1)(H), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

Subsec. (c)(2). Pub. L. 94–455, §1901(b)(1)(G), struck out provisions relating to partially tax exempt interest and election of a common trust fund to amortize premiums on bonds and other obligations.

Subsec. (e). Pub. L. 94–455, §2131(d), inserted ''The admission of a participant shall be treated with respect to the participant as the purchase of, or exchange for, the participating interest''.

Subsec. (g). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

1964—Subsec. (c)(2). Pub. L. 88–272 struck out ''section 34 or'' before ''section 116 applies''.

1962—Subsec. (a)(2). Pub. L. 87–722 inserted ''or the Comptroller of the Currency'' after ''the Board of Governors of the Federal Reserve System''.

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as a note under section 1 of this title.

Amendment by Pub. L. 108–27 inapplicable to taxable years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 303 of Pub. L. 108–27, as amended, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–36 applicable to transfers after Oct. 18, 1998, see section 3001(e) of Pub. L. 106–36, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1805(b) of Pub. L. 104–188 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to transfers after December 31, 1995.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1008(e)(5)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect as if included in the amendments made by section 806 of the Reform Act [Pub. L. 99–514], except that section 806(e)(1) [set out as a note under section 1378 of this title] shall be applied by substituting 'December 31, 1987' for 'December 31, 1986'. For purposes of section 806(e)(2) of the Reform Act [set out as a note under section 1378 of this title]—

''(i) a participant in a common trust fund shall be treated in the same manner as a partner, and

''(ii) subparagraph (C) thereof shall be applied by substituting 'December 31, 1987' for 'December 31, 1986' and as if it did not contain the election to include all income in the short taxable year.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 612(b)(2)(B) of Pub. L. 99–514 provided that: ''If the amendments made by section 1001 of the Tax Reform Act of 1984 [Pub. L. 98–369, amending this section and sections 166, 341, 402, 403, 423, 582, 631, 642, 702, 818, 852, 856, 857, 1222, 1223, 1231, 1232, 1233, 1234, 1235, 1246, 1247, and 1248 of this title] cease to apply [see Effective Date of 1984 Amendment note below], effective with respect to property to which such amendments do not apply, subsection (c) of section 584 is amended by striking out '6 months' each place it appears and inserting in lieu thereof '1 year'.''

Amendment by section 612(b)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 612(c) of Pub. L. 99–514, set out as a note under section 301 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 301(b)(3) of Pub. L. 97–34 applicable to taxable years ending after Sept. 30, 1981, and amendment by section 301(b)(6)(A) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 301(d) of Pub. L. 97–34, set out as a note under section 265 of this title.

EFFECTIVE AND TERMINATION DATES OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 applicable with respect to taxable years beginning after Dec. 31, 1980, and before Jan. 1, 1982, see section 404(c) of Pub. L. 96–223, set out as a note under section 265 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENTS

Section 2131(f)(6) of Pub. L. 94–455 provided that: ''The amendments made by subsections (d) and (e) [amending this section and section 683 of this title] shall take effect on April 8, 1976, in taxable years ending on or after such date.''

Section 1402(b)(1) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Section 1402(b)(2) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Amendment by section 1901(b)(1)(G) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

Section 2 of Pub. L. 94–414 provided that: ''The amendment made by the first section of this Act [amending this section] shall apply to taxable years beginning after December 31, 1975.''

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable with respect to dividends received after Dec. 31, 1964, in taxable years ending after such date, see section 201(e) of Pub. L. 88–272, set out as a note under section 22 of this title.

§ 585. Reserves for losses on loans of banks

(a) Reserve for bad debts

(1) In general

Except as provided in subsection (c), a bank shall be allowed a deduction for a reasonable addition to a reserve for bad debts. Such deduction shall be in lieu of any deduction under section 166(a).

(2) Bank

For purposes of this section—

(A) In general

The term ''bank'' means any bank (as defined in section 581).

(B) Banking business of United States branch of foreign corporation

The term ''bank'' also includes any corporation to which subparagraph (A) would apply except for the fact that it is a foreign corporation. In the case of any such foreign corporation, this section shall apply only with respect to loans outstanding the interest on which is effectively connected with the conduct of a banking business within the United States.

(b) Addition to reserves for bad debts

(1) General rule

For purposes of subsection (a), the reasonable addition to the reserve for bad debts of any financial institution to which this section applies shall be an amount determined by the taxpayer which shall not exceed the addition to the reserve for losses on loans determined under the experience method as provided in paragraph (2).

(2) Experience method

The amount determined under this paragraph for a taxable year shall be the amount necessary to increase the balance of the reserve for losses on loans (at the close of the taxable year) to the greater of—

(A) the amount which bears the same ratio to loans outstanding at the close of the taxable year as (i) the total bad debts sustained during the taxable year and the 5 preceding taxable years (or, with the approval of the Secretary, a shorter period), adjusted for recoveries of bad debts during such period, bears to (ii) the sum of the loans outstanding at the close of such 6 or fewer taxable years, or

(B) the lower of—

(i) the balance of the reserve at the close of the base year, or

(ii) if the amount of loans outstanding at the close of the taxable year is less than the amount of loans outstanding at the close of the base year, the amount which bears the same ratio to loans outstanding at the close of the taxable year as the balance of the reserve at the close of the base year bears to the amount of loans outstanding at the close of the base year.

For purposes of this paragraph, the base year shall be the last taxable year before the most recent adoption of the experience method, except that for taxable years beginning after 1987 the base year shall be the last taxable year beginning before 1988.

(3) Regulations; definition of loan

The Secretary shall define the term loan and prescribe such regulations as may be necessary to carry out the purposes of this section.

(c) Section not to apply to large banks

(1) In general

In the case of a large bank, this section shall not apply (and no deduction shall be allowed under any other provision of this subtitle for any addition to a reserve for bad debts).

(2) Large banks

For purposes of this subsection, a bank is a large bank if, for the taxable year (or for any preceding taxable year beginning after December 31, 1986)—

(A) the average adjusted bases of all assets of such bank exceeded $500,000,000, or

(B) such bank was a member of a parent-subsidiary controlled group and the average adjusted bases of all assets of such group exceeded $500,000,000.

(3) 4-year spread of adjustments

(A) In general

Except as provided in paragraph (4), in the case of any bank which for its last taxable year before the disqualification year maintained a reserve for bad debts—

(i) the provisions of this subsection shall be treated as a change in the method of accounting of such bank for the disqualification year,

(ii) such change shall be treated as having been made with the consent of the Secretary, and

(iii) the net amount of adjustments required by section 481(a) to be taken into account by the taxpayer shall be taken into account in each of the 4 taxable years beginning with the disqualification year with—

(I) the amount taken into account for the 1st of such taxable years being the greater of 10 percent of such net amount or such higher percentage of such net amount as the taxpayer may elect, and

(II) the amount taken into account in each of the 3 succeeding taxable years being equal to the applicable fraction (determined in accordance with the following table for the taxable year involved) of the portion of such net amount not taken into account under subclause (I).

If the case of the—	The applicable fraction is—
1st succeeding year	2/9
2nd succeeding year	1/3
3rd succeeding year	4/9.

(B) Suspension of recapture for taxable year for which bank is financially troubled

(i) In general

In the case of a bank which is a financially troubled bank for any taxable year—

(I) no adjustment shall be taken into account under subparagraph (A) for such taxable year, and

(II) such taxable year shall be disregarded in determining whether any other taxable year is a taxable year for which an adjustment is required to be taken into account under subparagraph (A) or the amount of such adjustment.

(ii) Exception for elective recapture for 1st year

Clause (i) shall not apply to the 1st taxable year referred to in subparagraph (A)(iii)(I) if the taxpayer elects a higher percentage in accordance with such subparagraph.

(iii) Financially troubled bank

For purposes of clause (i), the term ''financially troubled bank'' means any bank

if, for the taxable year, the nonperforming loan percentage of such bank exceeds 75 percent.

(iv) Nonperforming loan percentage

For purposes of clause (iii), the term ''nonperforming loan percentage'' means the percentage determined by dividing—

(I) the sum of the outstanding balances of nonperforming loans of the bank as of the close of each quarter of the taxable year, by

(II) the sum of the amounts of equity of the bank as of the close of each such quarter.

In the case of a bank which is a member of a parent-subsidiary controlled group for the taxable year, the preceding sentence shall be applied with respect to such group.

(v) Other definitions

For purposes of this subparagraph—

(I) Nonperforming loans

The term ''nonperforming loan'' means any loan which is considered to be nonperforming by the primary Federal regulatory agency with respect to the bank.

(II) Equity

The term ''equity'' means the equity of the bank as determined for Federal regulatory purposes.

(C) Coordination with estimated tax payments

For purposes of applying section 6655(e)(2)(A)(i) with respect to any installment, the determination under subparagraph (B) of whether an adjustment is required to be taken into account under subparagraph (A) shall be made as of the last day prescribed for payment of such installment.

(4) Elective cut-off method

If a bank makes an election under this paragraph for the disqualification year—

(A) the provisions of this subsection shall not be treated as a change in the method of accounting of the taxpayer for purposes of section 481,

(B) the taxpayer shall continue to maintain its reserve for loans held by the bank as of the 1st day of the disqualification year and charge against such reserve any losses resulting from loans held by the bank as of such 1st day, and

(C) no deduction shall be allowed under this section (or any other provision of this subtitle) for any addition to such reserve for the disqualification year or any subsequent taxable year.

If the amount of the reserve referred to in subparagraph (B) as of the close of any taxable year exceeds the outstanding balance (as of such time) of the loans referred to in subparagraph (B), such excess shall be included in gross income for such taxable year.

(5) Definitions

For purposes of this subsection—

(A) Parent-subsidiary controlled group

The term ''parent-subsidiary controlled group'' means any controlled group of corporations described in section 1563(a)(1). In determining the average adjusted bases of assets held by such a group, interests held by one member of such group in another member of such group shall be disregarded.

(B) Disqualification year

The term ''disqualification year'' means, with respect to any bank, the 1st taxable year beginning after December 31, 1986, for which such bank was a large bank if such bank maintained a reserve for bad debts for the preceding taxable year.

(C) Election made by each member

In the case of a parent-subsidiary controlled group, any election under this section shall be made separately by each member of such group.

(Added Pub. L. 91–172, title IV, §431(a), Dec. 30, 1969, 83 Stat. 616; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–34, title II, §267(a), Aug. 13, 1981, 95 Stat. 266; Pub. L. 99–514, title IX, §901(a), (d)(1), Oct. 22, 1986, 100 Stat. 2375, 2378; Pub. L. 100–203, title X, §10301(b)(2), Dec. 22, 1987, 101 Stat. 1330–429; Pub. L. 100–647, title I, §1009(a)(2), (3), Nov. 10, 1988, 102 Stat. 3445; Pub. L. 101–508, title XI, §11801(a)(26), (c)(12)(C)–(E), Nov. 5, 1990, 104 Stat. 1388–521, 1388–527; Pub. L. 104–188, title I, §1616(b)(6), Aug. 20, 1996, 110 Stat. 1856.)

AMENDMENTS

1996—Subsec. (a)(2)(A). Pub. L. 104–188 struck out ''other than an organization to which section 593 applies'' after ''section 581)''.

1990—Subsec. (b)(1). Pub. L. 101–508, §11801(c)(12)(C), substituted ''shall not exceed the addition to the reserve for losses on loans determined under the experience method as provided in paragraph (2).'' for ''shall not exceed the greater of—

''(A) for taxable years beginning before 1988 the addition to the reserve for losses on loans determined under the percentage method as provided in paragraph (2), or

''(B) the addition to the reserve for losses on loans determined under the experience method as provided in paragraph (3).''

Subsec. (b)(2). Pub. L. 101–508, §11801(a)(26), (c)(12)(D), redesignated par. (3) as (2) and struck out former par. (2) which related to use of percentage method for determining amount to add to reserve for bad debts.

Subsec. (b)(3). Pub. L. 101–508, §11801(c)(12)(D), (E), redesignated par. (4) as (3), substituted heading for one which read: ''Regulations; definition of eligible loan, etc.'', and amended text generally. Prior to amendment, text read as follows: ''The Secretary shall define the terms 'loan' and 'eligible loan' and prescribe such regulations as may be necessary to carry out the purposes of this section; except that the term 'eligible loan' shall not include—

''(A) a loan to a bank (as defined in section 581),

''(B) a loan to a domestic branch of a foreign corporation to which subsection (a)(2) applies,

''(C) a loan secured by a deposit (i) in the lending bank, or (ii) in an institution described in subparagraph (A) or (B) if the lending bank has control over withdrawal of such deposit,

''(D) a loan to or guaranteed by the United States, a possession or instrumentality thereof, or a State or a political subdivision thereof,

''(E) a loan evidenced by a security as defined in section 165(g)(2)(C),

''(F) a loan of Federal funds, and

''(G) commercial paper, including short-term promissory notes which may be purchased on the open market.'' Former par. (3) redesignated (2).

Subsec. (b)(4). Pub. L. 101–508, §11801(c)(12)(D), redesignated par. (4) as (3).

1988—Subsec. (c)(3)(A)(iii)(I). Pub. L. 100–647, §1009(a)(2)(B), substituted ''such higher percentage of such net amount as the taxpayer may elect'' for ''such greater amount as the taxpayer may designate''.

Subsec. (c)(3)(B)(ii). Pub. L. 100–647, §1009(a)(2)(C), substituted ''elects a higher percentage'' for ''designates an amount''.

Subsec. (c)(4). Pub. L. 100–647, §1009(a)(3), inserted at end ''If the amount of the reserve referred to in subparagraph (B) as of the close of any taxable year exceeds the outstanding balance (as of such time) of the loans referred to in subparagraph (B), such excess shall be included in gross income for such taxable year.''

Subsec. (c)(5)(C). Pub. L. 100–647, §1009(a)(2)(A), added subpar. (C).

1987—Subsec. (c)(3)(C). Pub. L. 100–203 substituted ''section 6655(e)(2)(A)(i)'' for ''section 6655(d)(3)''.

1986—Subsec. (a). Pub. L. 99–514, §901(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''This section shall apply to the following financial institutions:

''(1) any bank (as defined in section 581) other than an organization to which section 593 applies, and

''(2) any corporation to which paragraph (1) would apply except for the fact that it is a foreign corporation, and in the case of any such foreign corporation this section shall apply only with respect to loans outstanding the interest on which is effectively connected with the conduct of a banking business within the United States.''

Subsec. (b)(1). Pub. L. 99–514, §901(d)(1), substituted ''subsection (a)'' for ''section 166(c)''.

Subsec. (c). Pub. L. 99–514, §901(a)(2), added subsec. (c).

1981—Subsec. (b)(2). Pub. L. 97–34 defined ''allowable percentage'' to mean 1.0 percent for taxable years beginning in 1982 and 0.6 percent for taxable years beginning after 1982, previously so applicable for taxable years beginning after 1981 and redefined ''base year'' by substituting the last taxable year beginning before 1976 for taxable years beginning after 1975 but before 1983, for the last taxable year beginning before 1976 for taxable years after 1975 but before 1982; and the last taxable year beginning before 1983 for taxable years beginning after 1982, for the last taxable year beginning before 1982 for taxable years beginning after 1981.

1976—Subsec. (b)(3), (4). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, see section 1616(c) of Pub. L. 104–188, set out as a note under section 593 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10301(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and sections 6201, 6425, 6601, 6651, and 6655 of this title and repealing section 6154 of this title] shall apply to taxable years beginning after December 31, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 901(e) of Pub. L. 99–514, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 267(b) of Pub. L. 97–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after 1981.''

EFFECTIVE DATE

Section 431(d) of Pub. L. 91–172 provided that: ''The amendments made by subsections (a) [enacting this section and section 586 of this title] and (c) [amending section 166 of this title] shall apply to taxable years beginning after July 11, 1969.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[§ 586. Repealed. Pub. L. 99–514, title IX, § 901(c), Oct. 22, 1986, 100 Stat. 2378]

Section, added Pub. L. 91–172, title IV, §431(a), Dec. 30, 1969, 83 Stat. 618; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to reserves for losses on loans of small business investment companies, etc.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1986, see section 901(e) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 166 of this title.

PART II—MUTUAL SAVINGS BANKS, ETC.

Sec.

591. Deduction for dividends paid on deposits.
[592. Repealed.]
593. Reserves for losses on loans.
594. Alternative tax for mutual savings banks conducting life insurance business.
[595, 596. Repealed.]
597. Treatment of transactions in which Federal financial assistance provided.

AMENDMENTS

1996—Pub. L. 104–188, title I, §1616(b)(16), Aug. 20, 1996, 110 Stat. 1857, struck out items 595 ''Foreclosure on property securing loans'' and 596 ''Limitation on dividends received deduction''.

1989—Pub. L. 101–73, title XIV, §1401(b)(1), Aug. 9, 1989, 103 Stat. 549, repealed amendment made by Pub. L. 99–514, §904(b)(2), see 1986 Amendment note below.

Pub. L. 101–73, title XIV, §1401(a)(3)(C), Aug. 9, 1989, 103 Stat. 549, substituted ''Treatment of transactions in which Federal financial assistance provided'' for ''FSLIC or FDIC financial assistance'' in item 597.

1988—Pub. L. 100–647, title IV, §4012(b)(2)(D)(ii), Nov. 10, 1988, 102 Stat. 3658, substituted ''FSLIC or FDIC'' for ''FSLIC'' in item 597.

1986—Pub. L. 99–514, title IX, §904(b)(2), (c)(2)(A), Oct. 22, 1986, 100 Stat. 2385, as amended by Pub. L. 100–647, title IV, §4012(a)(2), Nov. 10, 1988, 102 Stat. 3656, which, applicable to transfers after Dec. 31, 1989, in taxable years ending after that date, directed amendment of analysis by striking out item 597, was repealed by Pub. L. 101–73, title XIV, §1401(b)(1), (c)(4), Aug. 9, 1989, 103 Stat. 549, 550, eff. Oct. 22, 1986, and applicable as if the amendments made by such section had not been enacted.

1981—Pub. L. 97–34, title II, §244(b), Aug. 13, 1981, 95 Stat. 255, added item 597.

1976—Pub. L. 94–455, title XIX, §1901(b)(19), Oct. 4, 1976, 90 Stat. 1796, struck out item 592 ''Deduction for repayment of certain loans''.

1969—Pub. L. 91–172, title IV, § 434(b)(2), Dec. 30, 1969, 83 Stat. 625, added item 596.

1962—Pub. L. 87–834, § 6(d), Oct. 16, 1962, 76 Stat. 984, substituted ''Reserves for losses on loans'' for ''Additions to reserve for bad debts'' in item 593, and added item 595.

§ 591. Deduction for dividends paid on deposits

(a) In general

In the case of mutual savings banks, cooperative banks, and domestic building and loan associations and other savings institutions chartered and supervised as savings and loan or similar associations under Federal or State law, there shall be allowed as deductions in computing taxable income amounts paid to, or credited to the accounts of, depositors or holders of accounts as dividends or interest on their deposits or withdrawable accounts, if such amounts paid or credited are withdrawable on demand subject only to customary notice of intention to withdraw.

(b) Mutual savings bank to include certain banks with capital stock

For purposes of this part, the term ''mutual savings bank'' includes any bank—

(1) which has capital stock represented by shares, and

(2) which is subject to, and operates under, Federal or State laws relating to mutual savings bank.

(Aug. 16, 1954, ch. 736, 68A Stat. 204; Pub. L. 87–834, § 6(f), Oct. 16, 1962, 76 Stat. 984; Pub. L. 97–34, title II, § 245(a), Aug. 13, 1981, 95 Stat. 255.)

AMENDMENTS

1981—Pub. L. 97–34 designated existing provisions as subsec. (a), inserted heading ''In general'', and added subsec. (b).

1962—Pub. L. 87–834 included other savings institutions chartered and supervised as savings and loan or similar associations under Federal or State law, and authorized amounts paid as interest as a deduction.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 246(d) of Pub. L. 97–34 provided that: ''The amendments made by section 245 [amending this section and section 593 of this title] shall apply with respect to taxable years ending after the date of the enactment of this Act [Aug. 13, 1981].''

[§ 592. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(83), Oct. 4, 1976, 90 Stat. 1778]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 205, authorized a deduction by mutual savings banks for repayment of loans made before Sept. 1, 1951, by the United States or any agency or instrumentality thereof, or any mutual fund established under the authority of the laws of any State.

EFFECTIVE DATE OF REPEAL

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

§ 593. Reserves for losses on loans

(a) Reserve for bad debts

(1) In general

Except as provided in paragraph (2), in the case of—

(A) any domestic building and loan association,

(B) any mutual savings bank, or

(C) any cooperative bank without capital stock organized and operated for mutual purposes and without profit,

there shall be allowed a deduction for a reasonable addition to a reserve for bad debts. Such deduction shall be in lieu of any deduction under section 166(a).

(2) Organization must meet 60-percent asset test of section 7701(a)(19)

This section shall apply to an association or bank referred to in paragraph (1) only if it meets the requirements of section 7701(a)(19)(C).

(b) Addition to reserves for bad debts

(1) In general

For purposes of subsection (a), the reasonable addition for the taxable year to the reserve for bad debts of any taxpayer described in subsection (a) shall be an amount equal to the sum of—

(A) the amount determined to be a reasonable addition to the reserve for losses on nonqualifying loans, computed in the same manner as is provided with respect to additions to the reserves for losses on loans of banks under section 585(b)(2), plus

(B) the amount determined by the taxpayer to be a reasonable addition to the reserve for losses on qualifying real property loans, but such amount shall not exceed the amount determined under paragraph (2) or (3), whichever is the larger, but the amount determined under this subparagraph shall in no case be greater than the larger of—

(i) the amount determined under paragraph (3), or

(ii) the amount which, when added to the amount determined under subparagraph (A), equals the amount by which 12 percent of the total deposits or withdrawable accounts of depositors of the taxpayer at the close of such year exceeds the sum of its surplus, undivided profits, and reserves at the beginning of such year (taking into account any portion thereof attributable to the period before the first taxable year beginning after December 31, 1951).

(2) Percentage of taxable income method

(A) In general

Subject to subparagraphs (B) and (C), the amount determined under this paragraph for the taxable year shall be an amount equal to 8 percent of the taxable income for such year.

(B) Reduction for amounts referred to in paragraph (1)(A)

The amount determined under subparagraph (A) shall be reduced (but not below 0) by the amount determined under paragraph (1)(A).

(C) Overall limitation on paragraph

The amount determined under this paragraph shall not exceed the amount necessary to increase the balance at the close of the

taxable year of the reserve for losses on qualifying real property loans to 6 percent of such loans outstanding at such time.

(D) Computation of taxable income

For purposes of this paragraph, taxable income shall be computed—

(i) by excluding from gross income any amount included therein by reason of subsection (e),

(ii) without regard to any deduction allowable for any addition to the reserve for bad debts,

(iii) by excluding from gross income an amount equal to the net gain for the taxable year arising from the sale or exchange of stock of a corporation or of obligations the interest on which is excludable from gross income under section 103,

(iv) by excluding from gross income dividends with respect to which a deduction is allowable by part VIII of subchapter B, reduced by an amount equal to 8 percent of the dividends received deduction (determined without regard to section 596)[1] for the taxable year, and

(v) if there is a capital gain rate differential (as defined in section 904(b)(3)(D)) for the taxable year, by excluding from gross income the rate differential portion (within the meaning of section 904(b)(3)(E)) of the lesser of—

(I) the net long-term capital gain for the taxable year, or

(II) the net long-term capital gain for the taxable year from the sale or exchange of property other than property described in clause (iii).

(3) Experience method

The amount determined under this paragraph for the taxable year shall be computed in the same manner as is provided with respect to additions to the reserves for losses on loans of banks under section 585(b)(2).

(c) Treatment of reserve for bad debts

(1) Establishment of reserves

Each taxpayer described in subsection (a) which uses the reserve method of accounting for bad debts shall establish and maintain a reserve for losses on qualifying real property loans, a reserve for losses on nonqualifying loans, and a supplemental reserve for losses on loans. For purposes of this title, such reserves shall be treated as reserves for bad debts, but no deduction shall be allowed for any addition to the supplemental reserve for losses on loans.

(2) Certain pre-1963 reserves

Notwithstanding the second sentence of paragraph (1), any amount allocated pursuant to paragraph (5) (as in effect immediately before the enactment of the Tax Reform Act of 1976) during a taxable year beginning before January 1, 1977, to the reserve for losses on qualifying real property loans out of the surplus, undivided profits, and bad debt reserves (determined as of December 31, 1962) attributable to the period before the first taxable year beginning after December 31, 1951, shall not be treated as a reserve for bad debts for any purpose other than determining the amount referred to in subsection (b)(1)(B), and for such purpose such amount shall be treated as remaining in such reserve.

(3) Charging of bad debts to reserves

Any debt becoming worthless or partially worthless in respect of a qualifying real property loan shall be charged to the reserve for losses on such loans, and any debt becoming worthless or partially worthless in respect of a nonqualifying loan shall be charged to the reserve for losses on nonqualifying loans; except that any such debt may, at the election of the taxpayer, be charged in whole or in part to the supplemental reserve for losses on loans.

(d) Loans defined

For purposes of this section—

(1) Qualifying real property loans

The term ''qualifying real property loan'' means any loan secured by an interest in improved real property or secured by an interest in real property which is to be improved out of the proceeds of the loan, but such term does not include—

(A) any loan evidenced by a security (as defined in section 165(g)(2)(C));

(B) any loan, whether or not evidenced by a security (as defined in section 165(g)(2)(C)), the primary obligor on which is—

(i) a government or political subdivision or instrumentality thereof;

(ii) a bank (as defined in section 581); or

(iii) another member of the same affiliated group;

(C) any loan, to the extent secured by a deposit in or share of the taxpayer; or

(D) any loan which, within a 60-day period beginning in one taxable year of the creditor and ending in its next taxable year, is made or acquired and then repaid or disposed of, unless the transactions by which such loan was made or acquired and then repaid or disposed of are established to be for bona fide business purposes. For purposes of subparagraph (B)(iii), the term ''affiliated group'' has the meaning assigned to such term by section 1504(a); except that (i) the phrase ''more than 50 percent'' shall be substituted for the phrase ''at least 80 percent'' each place it appears in section 1504(a), and (ii) all corporations shall be treated as includible corporations (without any exclusion under section 1504(b)).

(2) Nonqualifying loans

The term ''nonqualifying loan'' means any loan which is not a qualifying real property loan.

(3) Loan

The term ''loan'' means debt, as the term ''debt'' is used in section 166.

(4) Treatment of interests in REMIC's

A regular or residual interest in a REMIC shall be treated as a qualifying real property loan; except that, if less than 95 percent of the

[1] See References in Text note below.

assets of such REMIC are qualifying real property loans (determined as if the taxpayer held the assets of the REMIC), such interest shall be so treated only in the proportion which the assets of such REMIC consist of such loans. For purposes of determining whether any interest in a REMIC qualifies under the preceding sentence, any interest in another REMIC held by such REMIC shall be treated as a qualifying real property loan under principles similar to the principles of the preceding sentence, except that if such REMIC's are part of a tiered structure, they shall be treated as 1 REMIC for purposes of this paragraph.

(e) Distributions to shareholders

(1) In general

For purposes of this chapter, any distribution of property (as defined in section 317(a)) by a taxpayer having a balance described in subsection (g)(2)(A)(ii) to a shareholder with respect to its stock, if such distribution is not allowable as a deduction under section 591, shall be treated as made—

(A) first out of its earnings and profits accumulated in taxable years beginning after December 31, 1951, (and, in the case of an S corporation, the accumulated adjustments account, as defined in section 1368(e)(1)) to the extent thereof,

(B) then out of the balance taken into account under subsection (g)(2)(A)(ii) (properly adjusted for amounts charged against such reserves for taxable years beginning after December 31, 1987),

(C) then out of the supplemental reserve for losses on loans, to the extent thereof,

(D) then out of such other accounts as may be proper.

This paragraph shall apply in the case of any distribution in redemption of stock or in partial or complete liquidation of a taxpayer having a balance described in subsection (g)(2)(A)(ii), except that any such distribution shall be treated as made first out of the amount referred to in subparagraph (B), second out of the amount referred to in subparagraph (C), third out of the amount referred to in subparagraph (A), and then out of such other accounts as may be proper. This paragraph shall not apply to any transaction to which section 381 applies, or to any distribution to the Federal Savings and Loan Insurance Corporation (or any successor thereof) or the Federal Deposit Insurance Corporation in redemption of an interest in a taxpayer having a balance described in subsection (g)(2)(A)(ii), if such interest was originally received by any such entity in exchange for assistance provided under a provision of law referred to in section 597(c). This paragraph shall not apply to any distribution of all of the stock of a bank (as defined in section 581) to another corporation if, immediately after the distribution, such bank and such other corporation are members of the same affiliated group (as defined in section 1504) and the provisions of section 5(e) of the Federal Deposit Insurance Act (as in effect on December 31, 1995) or similar provisions are in effect.

(2) Amounts charged to reserve accounts and included in gross income

If any distribution is treated under paragraph (1) as having been made out of the reserves described in subparagraphs (B) and (C) of such paragraph, the amount charged against such reserve shall be the amount which, when reduced by the amount of tax imposed under this chapter and attributable to the inclusion of such amount in gross income, is equal to the amount of such distribution; and the amount so charged against such reserve shall be included in gross income of the taxpayer.

(3) Special rules

(A) For purposes of paragraph (1)(B), additions to the reserve for losses on qualifying real property loans for the taxable year in which the distribution occurs shall be taken into account.

(B) For purposes of computing under this section the amount of a reasonable addition to the reserve for losses on qualifying real property loans for any taxable year, any amount charged during any year to such reserve pursuant to the provisions of paragraph (2) shall not be taken into account.

(f) Termination of reserve method

Subsections (a), (b), (c), and (d) shall not apply to any taxable year beginning after December 31, 1995.

(g) 6-year spread of adjustments

(1) In general

In the case of any taxpayer who is required by reason of subsection (f) to change its method of computing reserves for bad debts—

(A) such change shall be treated as a change in a method of accounting,

(B) such change shall be treated as initiated by the taxpayer and as having been made with the consent of the Secretary, and

(C) the net amount of the adjustments required to be taken into account by the taxpayer under section 481(a)—

(i) shall be determined by taking into account only applicable excess reserves, and

(ii) as so determined, shall be taken into account ratably over the 6-taxable year period beginning with the first taxable year beginning after December 31, 1995.

(2) Applicable excess reserves

(A) In general

For purposes of paragraph (1), the term ''applicable excess reserves'' means the excess (if any) of—

(i) the balance of the reserves described in subsection (c)(1) (other than the supplemental reserve) as of the close of the taxpayer's last taxable year beginning before January 1, 1996, over

(ii) the lesser of—

(I) the balance of such reserves as of the close of the taxpayer's last taxable year beginning before January 1, 1988, or

(II) the balance of the reserves described in subclause (I), reduced in the same manner as under section

585(b)(2)(B)(ii) on the basis of the taxable years described in clause (i) and this clause.

(B) Special rule for thrifts which become small banks

In the case of a bank (as defined in section 581) which was not a large bank (as defined in section 585(c)(2)) for its first taxable year beginning after December 31, 1995—

(i) the balance taken into account under subparagraph (A)(ii) shall not be less than the amount which would be the balance of such reserves as of the close of its last taxable year beginning before such date if the additions to such reserves for all taxable years had been determined under section 585(b)(2)(A), and

(ii) the opening balance of the reserve for bad debts as of the beginning of such first taxable year shall be the balance taken into account under subparagraph (A)(ii) (determined after the application of clause (i) of this subparagraph).

The preceding sentence shall not apply for purposes of paragraphs (5) and (6) or subsection (e)(1).

(3) Recapture of pre-1988 reserves where taxpayer ceases to be bank

If, during any taxable year beginning after December 31, 1995, a taxpayer to which paragraph (1) applied is not a bank (as defined in section 581), paragraph (1) shall apply to the reserves described in paragraph (2)(A)(ii) and the supplemental reserve; except that such reserves shall be taken into account ratably over the 6-taxable year period beginning with such taxable year.

(4) Suspension of recapture if residential loan requirement met

(A) In general

In the case of a bank which meets the residential loan requirement of subparagraph (B) for the first taxable year beginning after December 31, 1995, or for the following taxable year—

(i) no adjustment shall be taken into account under paragraph (1) for such taxable year, and

(ii) such taxable year shall be disregarded in determining—

(I) whether any other taxable year is a taxable year for which an adjustment is required to be taken into account under paragraph (1), and

(II) the amount of such adjustment.

(B) Residential loan requirement

A taxpayer meets the residential loan requirement of this subparagraph for any taxable year if the principal amount of the residential loans made by the taxpayer during such year is not less than the base amount for such year.

(C) Residential loan

For purposes of this paragraph, the term ''residential loan'' means any loan described in clause (v) of section 7701(a)(19)(C) but only if such loan is incurred in acquiring, constructing, or improving the property described in such clause.

(D) Base amount

For purposes of subparagraph (B), the base amount is the average of the principal amounts of the residential loans made by the taxpayer during the 6 most recent taxable years beginning on or before December 31, 1995. At the election of the taxpayer who made such loans during each of such 6 taxable years, the preceding sentence shall be applied without regard to the taxable year in which such principal amount was the highest and the taxable year in such principal amount was the lowest. Such an election may be made only for the first taxable year beginning after such date, and, if made for such taxable year, shall apply to the succeeding taxable year unless revoked with the consent of the Secretary.

(E) Controlled groups

In the case of a taxpayer which is a member of any controlled group of corporations described in section 1563(a)(1), subparagraph (B) shall be applied with respect to such group.

(5) Continued application of fresh start under section 585 transitional rules

In the case of a taxpayer to which paragraph (1) applied and which was not a large bank (as defined in section 585(c)(2)) for its first taxable year beginning after December 31, 1995:

(A) In general

For purposes of determining the net amount of adjustments referred to in section 585(c)(3)(A)(iii), there shall be taken into account only the excess (if any) of the reserve for bad debts as of the close of the last taxable year before the disqualification year over the balance taken into account by such taxpayer under paragraph (2)(A)(ii) of this subsection.

(B) Treatment under elective cut-off method

For purposes of applying section 585(c)(4)—

(i) the balance of the reserve taken into account under subparagraph (B) thereof shall be reduced by the balance taken into account by such taxpayer under paragraph (2)(A)(ii) of this subsection, and

(ii) no amount shall be includible in gross income by reason of such reduction.

(6) Suspended reserve included as section 381(c) items

The balance taken into account by a taxpayer under paragraph (2)(A)(ii) of this subsection and the supplemental reserve shall be treated as items described in section 381(c).

(7) Conversions to credit unions

In the case of a taxpayer to which paragraph (1) applied which becomes a credit union described in section 501(c) and exempt from taxation under section 501(a)—

(A) any amount required to be included in the gross income of the credit union by reason of this subsection shall be treated as derived from an unrelated trade or business (as defined in section 513), and

(B) for purposes of paragraph (3), the credit union shall not be treated as if it were a bank.

(8) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out this subsection and subsection (e), including regulations providing for the application of such subsections in the case of acquisitions, mergers, spin-offs, and other reorganizations.

(Aug. 16, 1954, ch. 736, 68A Stat. 205; Pub. L. 87–834, §6(a), Oct. 16, 1962, 76 Stat. 977; Pub. L. 91–172, title IV, §432(a), (b), Dec. 30, 1969, 83 Stat. 620, 622; Pub. L. 94–455, title XIX, §1901(a)(84), Oct. 4, 1976, 90 Stat. 1778; Pub. L. 96–222, title I, §104(a)(3)(C), Apr. 1, 1980, 94 Stat. 215; Pub. L. 97–34, title II, §§243, 245(b), (c), Aug. 13, 1981, 95 Stat. 255, 256; Pub. L. 99–514, title III, §311(b)(2), title VI, §671(b)(2), title IX, §901(b)(1)–(3), (d)(2), Oct. 22, 1986, 100 Stat. 2219, 2317, 2378; Pub. L. 100–647, title I, §§1003(c)(3), 1006(t)(25)(B), Nov. 10, 1988, 102 Stat. 3384, 3426; Pub. L. 101–73, title XIV, §1401(b)(3), Aug. 9, 1989, 103 Stat. 550; Pub. L. 101–508, title XI, §11801(c)(12)(F), Nov. 5, 1990, 104 Stat. 1388–527; Pub. L. 104–188, title I, §§1616(a), (b)(7), 1704(t)(51), Aug. 20, 1996, 110 Stat. 1854, 1857, 1890; Pub. L. 105–34, title XVI, §1601(f)(5)(A), Aug. 5, 1997, 111 Stat. 1091.)

REFERENCES IN TEXT

Section 596, referred to in subsec. (b)(2)(D)(iv), was repealed by Pub. L. 104–188, title I, §1616(b)(9), Aug. 20, 1996, 110 Stat. 1857.

The Tax Reform Act of 1976, referred to in subsec. (c)(2), is Pub. L. 94–455, Oct. 4, 1976, 90 Stat. 1520, as amended, which was enacted Oct. 4, 1976. For complete classification of this Act to the Code, see Tables.

Section 5(e) of the Federal Deposit Insurance Act, referred to in subsec. (e)(1), is classified to section 1815(e) of Title 12, Banks and Banking.

AMENDMENTS

1997—Subsec. (e)(1)(A). Pub. L. 105–34 inserted ''(and, in the case of an S corporation, the accumulated adjustments account, as defined in section 1368(e)(1))'' after ''1951,''.

1996—Subsec. (b)(1)(A), (3). Pub. L. 104–188, §1704(t)(51), provided that the amendment made by section 11801(c)(12)(F) of Pub. L. 101–508 shall be applied as if ''and (3)'' appeared instead of ''and (E)''. See 1990 Amendment note below.

Subsec. (e)(1). Pub. L. 104–188, §1616(b)(7)(A), substituted ''by a taxpayer having a balance described in subsection (g)(2)(A)(ii)'' for ''by a domestic building and loan association or an institution that is treated as a mutual savings bank under section 591(b)'' in introductory provisions.

Pub. L. 104–188, §1616(b)(7)(C)–(E), in closing provisions, substituted ''a taxpayer having a balance described in subsection (g)(2)(A)(ii)'' for ''the association or an institution that is treated as a mutual savings bank under section 591(b)'' after ''complete liquidation of'' and for ''an association'' after ''an interest in'' and inserted at end ''This paragraph shall not apply to any distribution of all of the stock of a bank (as defined in section 581) to another corporation if, immediately after the distribution, such bank and such other corporation are members of the same affiliated group (as defined in section 1504) and the provisions of section 5(e) of the Federal Deposit Insurance Act (as in effect on December 31, 1995) or similar provisions are in effect.''

Subsec. (e)(1)(B). Pub. L. 104–188, §1616(b)(7)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''then out of the reserve for losses on qualifying real property loans, to the extent additions to such reserve exceed the additions which would have been allowed under subsection (b)(3),''.

Subsecs. (f), (g). Pub. L. 104–188, §1616(a), added subsecs. (f) and (g).

1990—Subsec. (b). Pub. L. 101–508, §11801(c)(12)(F), which directed the amendment of pars. (1)(A) and (E) by substituting ''section 585(b)(2)'' for ''section 585(b)(3)'', was executed to pars. (1)(A) and (3). See 1996 Amendment note above.

1989—Subsec. (e)(1). Pub. L. 101–73 amended last sentence generally. Prior to amendment, last sentence read as follows: ''This paragraph shall not apply to any transaction to which section 381 (relating to carryovers in certain corporate acquisitions) applies, or to any distribution to the Federal Savings and Loan Insurance Corporation in redemption of an interest in an association, if such interest was originally received by the Federal Savings and Loan Insurance Corporation in exchange for financial assistance pursuant to section 406(f) of the National Housing Act (12 U.S.C. sec. 1729(f)).''

1988—Subsec. (b)(2)(D)(v). Pub. L. 100–647, §1003(c)(3), added cl. (v).

Subsec. (d)(4). Pub. L. 100–647, §1006(t)(25)(B), inserted at end ''For purposes of determining whether any interest in a REMIC qualifies under the preceding sentence, any interest in another REMIC held by such REMIC shall be treated as a qualifying real property loan under principles similar to the principles of the preceding sentence, except that if such REMIC's are part of a tiered structure, they shall be treated as 1 REMIC for purposes of this paragraph.''

1986—Subsec. (a). Pub. L. 99–514, §901(b)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''This section shall apply to any mutual savings bank, domestic building and loan association, or cooperative bank without capital stock organized and operated for mutual purposes and without profit.''

Subsec. (b)(1). Pub. L. 99–514, §901(d)(2)(A), (B), in introductory provisions, substituted ''subsection (a)'' for ''section 166(c)'' and in subpar. (B), substituted ''paragraph (2) or (3), whichever is the larger'' for ''paragraph (2), (3), or (4), whichever amount is the largest'' in introductory provisions and ''paragraph (3)'' for ''paragraph (4)'' in cl. (i).

Subsec. (b)(2)(A). Pub. L. 99–514, §901(b)(2)(A), added subpar. (A) and struck out former subpar. (A) which provided that subject to subpars. (B), (C), and (D), the amount determined under par. (2) was to be an amount equal to applicable percentage of taxable income for such year determined under a table which fixed specific percentages for taxable years 1976, 1977, 1978, and 1979 or thereafter.

Subpar. (b)(2)(B). Pub. L. 99–514, §901(b)(2)(A), added subpar. (B), which incorporated provisions of former subpar. (C), relating to reducing amounts referred to in par. (1)(A), and struck out former subpar. (B) which provided for reduction of applicable percentage in certain cases.

Subsec. (b)(2)(C). Pub. L. 99–514, §901(b)(2)(A), (B), redesignated former subpar. (D) as (C) and struck out former subpar. (C) which related to reduction for amounts referred to in par. (1)(A). See par. (1)(B).

Subsec. (b)(2)(D). Pub. L. 99–514, §901(b)(2)(B), (d)(2)(B), redesignated subpar. (E) as (D) and substituted in cl. (iv) ''8 percent'' for ''the applicable percentage (determined under subparagraphs (A) and (B))''. Former subpar. (D) redesignated (C).

Subsec. (b)(2)(E). Pub. L. 99–514, §901(b)(2)(B), redesignated subpar. (E) as (D).

Pub. L. 99–514, §311(b)(2), redesignated former cl. (v) as (iv), and struck out former cl. (iv) which read as follows: ''by excluding from gross income an amount equal to the lesser of 18/46 of the net long-term capital gain for the taxable year or 18/46 of the net long-term capital gain for the taxable year from the sale or exchange of property other than property described in clause (iii), and''.

Subsec. (b)(3), (4). Pub. L. 99–514, § 901(b)(3), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''The amount determined under this paragraph to be a reasonable addition to the reserve for losses on qualifying real property loans shall be computed in the same manner as is provided with respect to additions to the reserves for losses on loans of banks under section 585(b)(2), reduced by the amount referred to in paragraph (1)(A) for the taxable year.''

Subsec. (b)(5). Pub. L. 99–514, § 901(b)(3), struck out par. (5) which read as follows: ''For purposes of paragraph (3), the amount deemed to be the balance of the reserve for losses on loans at the beginning of the taxable year shall be the total of the balances at such time of the reserve for losses on nonqualifying loans, the reserve for losses on qualifying real property loans, and the supplemental reserve for losses on loans.''

Subsec. (d)(4). Pub. L. 99–514, § 671(b)(2), added par. (4).

Subsec. (e)(1)(B). Pub. L. 99–514, § 901(d)(2)(C), substituted ''subsection (b)(3)'' for ''subsection (B)(4)''.

1981—Subsec. (a). Pub. L. 97–34, § 245(c)(1), struck out ''not having capital stock represented by shares'' after ''mutual savings bank''.

Subsec. (b)(2)(B). Pub. L. 97–34, § 245(b)(1), inserted ''which is not described in section 591(b)'' after ''mutual savings bank'' in cls. (i) and (ii) and in last sentence.

Subsec. (b)(2)(C). Pub. L. 97–34, § 245(b)(2), inserted ''which are not described in section 591(b)'' after ''mutual savings banks'' in cl. (i).

Subsec. (e)(1). Pub. L. 97–34, § 245(c)(2), inserted ''or an institution that is treated as a mutual savings bank under section 591(b)'' after ''domestic building and loan association'' and ''liquidation of the association''.

Pub. L. 97–34, § 243, inserted provisions making par. (1) inapplicable to any distribution to the Federal Savings and Loan Insurance Corporation in redemption of an interest in an association, if such interest was originally received by the Corporation in exchange for financial assistance pursuant to section 1729(f) of title 12.

1980—Subsec. (b)(2)(E)(iv). Pub. L. 96–222 substituted ''18/46'' for ''3/8'' in two places.

1976—Subsec. (b)(2)(A). Pub. L. 94–455, § 1901(a)(84)(A), struck from the percentage table the years 1969 to 1975, inclusive.

Subsec. (b)(2)(E)(i). Pub. L. 94–455, § 1901(a)(84)(D), substituted ''subsection (e)'' for ''subsection (f)'' after ''by reason of''.

Subsec. (c)(2). Pub. L. 94–455, § 1901(a)(84)(B), added par. (2). Former par. (2), relating to allocation of pre-1963 reserves for bad debts, was struck out.

Subsec. (c)(3). Pub. L. 94–455, § 1901(a)(84)(B), redesignated par. (6) as par. (3). Former par. (3), relating to the method of allocation to reserves for bad debts, was struck out.

Subsec. (c)(4), (5). Pub. L. 94–455, § 1901(a)(84)(B), struck out par. (4) which defined ''pre-1963 reserves'', and struck out par. (5) which related to certain pre-1952 surplus.

Subsec. (c)(6). Pub. L. 94–455, § 1901(a)(84)(B), redesignated par. (6) as (3).

Subsecs. (d) to (f). Pub. L. 94–455, § 1901(a)(84)(C), struck out subsec. (d) relating to the determination of taxable income for taxpayer which uses the reserve method of accounting for bad debts for taxable years beginning in 1962 and ending in 1963, and redesignated subsecs. (e) and (f) as (d) and (e), respectively.

Subsecs. (e), (f). Pub. L. 94–455, § 1901(a)(84)(C), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

1969—Subsec. (b)(1)(A). Pub. L. 91–172, § 432(a)(1), inserted provisions for the method of computing the amount of the reasonable addition to the reserve for losses on nonqualifying loans.

Subsec. (b)(2). Pub. L. 91–172, § 432(a)(2), substituted a table of applicable percentages of the taxable income for each year up to 1979 and thereafter for the amount in excess of 60 percent over the amount referred to in former subsec. (b)(1)(A), transferred the remaining provisions of former subsec. (b)(2) to subpart (D), and added subpars. (B) to (E).

Subsec. (b)(3). Pub. L. 91–172, § 432(a)(2), substantially changed method of computation of the amount by conforming it to the method of determining the additions to the reserves for losses on loans of banks under section 585(b)(2).

Subsec. (b)(4). Pub. L. 91–172, § 432(a)(2), changed method of computation of the amount by conforming it to the method of determining the additions to the reserves for losses on loans of banks under section 585(b)(3).

Subsec. (b)(5). Pub. L. 91–172, § 432(a)(2), substituted provisions relating to determination of reserve for percentage method for provisions relating to limitation in case of certain domestic building and loan associations.

Subsec. (f). Pub. L. 91–172, § 432(b), excepted the application of par. (1) to any transaction to which section 381 of this title applied.

1962—Pub. L. 87–834 amended section generally. Prior to such amendment, section read as follows:

''§ 593. Additions to reserve for bad debts

''In the case of a mutual savings bank not having capital stock represented by shares, a domestic building and loan association, and a cooperative bank without capital stock organized and operated for mutual purposes and without profit, the reasonable addition to a reserve for bad debts under section 166(c) shall be determined with due regard to the amount of the taxpayer's surplus or bad debt reserves existing at the close of December 31, 1951. In the case of a taxpayer described in the preceding sentence, the reasonable addition to a reserve for bad debts for any taxable year shall in no case be less than the amount determined by the taxpayer as the reasonable addition for such year; except that the amount determined by the taxpayer under this sentence shall not be greater than the lesser of—

''(1) the amount of its taxable income for the taxable year, computed without regard to this section, or

''(2) the amount by which 12 percent of the total deposits or withdrawable accounts of its depositors at the close of such year exceeds the sum of its surplus, undivided profits, and reserves at the beginning of the taxable year.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 36C of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1616(c) of Pub. L. 104–188 provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 50, 52, 57, 246, 291, 585, 860E, 992, 1038, 1042, 1277, and 1361 of this title and repealing sections 595 and 596 of this title] shall apply to taxable years beginning after December 31, 1995.

''(2) SUBSECTION (b)(7)(B).—The amendments made by subsection (b)(7)(B) [amending this section] shall not apply to any distribution with respect to preferred stock if—

''(A) such stock is outstanding at all times after October 31, 1995, and before the distribution, and

''(B) such distribution is made before the date which is 1 year after the date of the enactment of this Act [Aug. 20, 1996] (or, in the case of stock which may be redeemed, if later, the date which is 30 days after the earliest date that such stock may be redeemed).

''(3) SUBSECTION (b)(8).—The amendment made by subsection (b)(8) [repealing section 595 of this title] shall apply to property acquired in taxable years beginning after December 31, 1995.

''(4) SUBSECTION (b)(10).—The amendments made by subsection (b)(10) [amending section 860E of this title] shall not apply to any residual interest held by a taxpayer if such interest has been held by such taxpayer at all times after October 31, 1995.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 1401(c)(6) of Pub. L. 101–73 provided that: ''The amendment made by subsection (b)(3) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 9, 1989].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 311(b)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 311(c) of Pub. L. 99–514, set out as a note under section 1201 of this title.

Amendment by section 671(b)(2) of Pub. L. 99–514 effective Jan. 1, 1987, see section 675(a) of Pub. L. 99–514, as amended, set out as an Effective Date note under section 860A of this title.

Amendment by section 901(b)(1)–(3), (d)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 901(e) of Pub. L. 99–514, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 246(b) of Pub. L. 97–34 provided that: ''The amendment made by section 243 [amending this section] shall apply to any distribution made on or after January 1, 1981.''

Amendment by section 245(b), (c) of Pub. L. 97–34 applicable with respect to taxable years ending after Aug. 13, 1981, see section 246(d) of Pub. L. 97–34, set out as a note under section 591 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

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

EFFECTIVE DATE OF 1969 AMENDMENT

Section 432(e) of Pub. L. 91–172 provided that: ''The amendments made by this section [amending this section and section 7701 of this title] shall be effective for taxable years beginning after July 11, 1969.''

EFFECTIVE DATE OF 1962 AMENDMENT

Section 6(g)(1) of Pub. L. 87–834, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after December 31, 1962, except that section 593(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall apply to distributions after December 31, 1962, in taxable years ending after such date.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

TRANSFER OF FUNCTIONS

Federal Savings and Loan Insurance Corporation abolished and its functions transferred, see sections 401 to 406 of Pub. L. 101–73, set out as a note under section 1437 of Title 12, Banks and Banking.

§ 594. Alternative tax for mutual savings banks conducting life insurance business

(a) Alternative tax

In the case of a mutual savings bank not having capital stock represented by shares, authorized under State law to engage in the business of issuing life insurance contracts, and which conducts a life insurance business in a separate department the accounts of which are maintained separately from the other accounts of the mutual savings bank, there shall be imposed in lieu of the taxes imposed by section 11 or section 1201(a), a tax consisting of the sum of the partial taxes determined under paragraphs (1) and (2):

(1) A partial tax computed on the taxable income determined without regard to any items of gross income or deductions properly allocable to the business of the life insurance department, at the rates and in the manner as if this section had not been enacted; and

(2) a partial tax computed on the income of the life insurance department determined without regard to any items of gross income or deductions not properly allocable to such department, at the rates and in the manner provided in subchapter L (sec. 801 and following) with respect to life insurance companies.

(b) Limitations of section

Subsection (a) shall apply only if the life insurance department would, if it were treated as a separate corporation, qualify as a life insurance company under section 816.

(Aug. 16, 1954, ch. 736, 68A Stat. 205; Mar. 13, 1956, ch. 83, § 5(3), 70 Stat. 49; Pub. L. 98–369, div. A, title II, § 211(b)(8), July 18, 1984, 98 Stat. 755.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–369 substituted ''section 816'' for ''section 801''.

1956—Subsec. (a)(2). Act Mar. 13, 1956, substituted ''the income'' for ''the taxable income (as defined in section 803)''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956, applicable only to taxable years beginning after Dec. 31, 1954, see section 6 of act Mar. 13, 1956, set out as a note under section 821 of this title.

[§§ 595, 596. Repealed. Pub. L. 104–188, title I, § 1616(b)(8), (9), Aug. 20, 1996, 110 Stat. 1857]

Section 595, added Pub. L. 87–834, § 6(b), Oct. 16, 1962, 76 Stat. 982; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to foreclosure on property securing loans, including provisions relating to nonrecognition of gain or loss as result of foreclosure, character of property, basis, and regulatory authority.

Section 596, added Pub. L. 91–172, title IV, § 434(a), Dec. 30, 1969, 83 Stat. 624; amended Pub. L. 99–514, title IX, § 901(d)(4)(D), Oct. 22, 1986, 100 Stat. 2380, provided that in case of organization to which section 593 of this title applied and which computed additions to reserve

for losses on loans for taxable year under section 593(b)(2) of this title, total amount allowed under sections 243, 244, and 245 of this title for taxable year as deduction with respect to dividends received was to be reduced by amount equal to 8 percent of such total amount.

EFFECTIVE DATE OF REPEAL

Repeal of section 595 applicable to property acquired in taxable years beginning after Dec. 31, 1995, and repeal of section 596 applicable to taxable years beginning after Dec. 31, 1995, see section 1616(c)(1), (3) of Pub. L. 104–188, set out as an Effective Date of 1996 Amendment note under section 593 of this title.

§ 597. Treatment of transactions in which Federal financial assistance provided

(a) General rule

The treatment for purposes of this chapter of any transaction in which Federal financial assistance is provided with respect to a bank or domestic building and loan association shall be determined under regulations prescribed by the Secretary.

(b) Principles used in prescribing regulations

(1) Treatment of taxable asset acquisitions

In the case of any acquisition of assets to which section 381(a) does not apply, the regulations prescribed under subsection (a) shall—

(A) provide that Federal financial assistance shall be properly taken into account by the institution from which the assets were acquired, and

(B) provide the proper method of allocating basis among the assets so acquired (including rights to receive Federal financial assistance).

(2) Other transactions

In the case of any transaction not described in paragraph (1), the regulations prescribed under subsection (a) shall provide for the proper treatment of Federal financial assistance and appropriate adjustments to basis or other tax attributes in connection with such assistance.

(3) Denial of double benefit

No regulations prescribed under this section shall permit the utilization of any deduction (or other tax benefit) if such amount was in effect reimbursed by nontaxable Federal financial assistance.

(c) Federal financial assistance

For purposes of this section, the term ''Federal financial assistance'' means—

(1) any money or other property provided with respect to a domestic building and loan association by the Federal Savings and Loan Insurance Corporation or the Resolution Trust Corporation pursuant to section 406(f) of the National Housing Act or section 21A of the Federal Home Loan Bank Act (or under any other similar provision of law), and

(2) any money or other property provided with respect to a bank or domestic building and loan association by the Federal Deposit Insurance Corporation pursuant to section 11(f) or 13(c) of the Federal Deposit Insurance Act (or under any other similar provision of law),

regardless of whether any note or other instrument is issued in exchange therefor.

(d) Domestic building and loan association

For purposes of this section, the term ''domestic building and loan association'' has the meaning given such term by section 7701(a)(19) without regard to subparagraph (C) thereof.

(Added Pub. L. 97–34, title II, § 244(a), Aug. 13, 1981, 95 Stat. 255; amended Pub. L. 99–514, title IX, § 904(b)(1), Oct. 22, 1986, 100 Stat. 2385; Pub. L. 100–647, title IV, § 4012(b)(2)(A)–(D)(i), (c)(1), Nov. 10, 1988, 102 Stat. 3657, 3658; Pub. L. 101–73, title XIV, § 1401(a)(3)(A), (b)(1), Aug. 9, 1989, 103 Stat. 548, 549; Pub. L. 101–239, title VII, § 7841(e)(1), Dec. 19, 1989, 103 Stat. 2429; Pub. L. 101–508, title XI, § 11704(a)(7), Nov. 5, 1990, 104 Stat. 1388–518.)

REFERENCES IN TEXT

Section 406 of the National Housing Act, referred to in subsec. (c)(1), which was classified to section 1729 of Title 12, Banks and Banking, was repealed by Pub. L. 101–73, title IV, § 407, Aug. 9, 1989, 103 Stat. 363.

Section 21A of the Federal Home Loan Bank Act, referred to in subsec. (c)(1), is classified to section 1441a of Title 12.

Sections 11(f) and 13(c) of the Federal Deposit Insurance Act, referred to in subsec. (c)(2), are classified to sections 1821(f) and 1823(c), respectively, of Title 12.

AMENDMENTS

1990—Subsec. (c). Pub. L. 101–508 substituted ''For purposes of'' for ''The purposes of''.

1989—Pub. L. 101–73, § 1401(b)(1), repealed amendment made by Pub. L. 99–514, § 904(b)(1), see 1986 Amendment note below.

Pub. L. 101–73, § 1401(a)(3)(A), amended section generally, substituting present provisions for former provisions which contained section catchline that read ''FSLIC or FDIC financial assistance'' and which provided: in subsec. (a) for an exclusion from gross income; in subsec. (b) for no reduction in basis of assets; in subsec. (c) for a reduction of tax attributes by 50 percent of amounts excludable under subsection (a); and in subsec. (d) for a definition of ''domestic building and loan association''.

Subsec. (b)(2). Pub. L. 101–239 substituted ''in connection with such assistance'' for ''to reflect such treatment''.

1988—Pub. L. 100–647, § 4012(b)(2)(D)(i), substituted ''FSLIC or FDIC'' for ''FSLIC'' in section catchline.

Subsec. (a). Pub. L. 100–647, § 4012(b)(2)(A), inserted at end ''Gross income of a bank does not include any amount of money or other property received from the Federal Deposit Insurance Corporation pursuant to sections 13(c), 15(c)(1), and 15(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1821(f) and 1823(c)(1) and (c)(2)), regardless of whether any note or other instrument is issued in exchange therefor.''

Subsec. (b). Pub. L. 100–647, § 4012(b)(2)(C), substituted ''association or bank'' for ''association''.

Subsec. (c). Pub. L. 100–647, § 4012(c)(1), added subsec. (c).

Subsec. (d). Pub. L. 100–647, § 4012(b)(2)(B), which directed amendment of section 597(b), as amended by section 4012(c)(1) of Pub. L. 100–647, by adding at the end thereof subsec. (d), was executed by adding subsec. (d) at the end of section 597, as amended by section 4012(c)(1) of Pub. L. 100–647, as the probable intent of Congress.

1986—Pub. L. 99–514, § 904(b)(1), (c)(2)(A), as amended by Pub. L. 100–647, title IV, § 4012(a)(2), which (applicable to transfers after Dec. 31, 1989, in taxable years ending after such date, with exceptions) directed repeal of this section, was repealed by Pub. L. 101–73, § 1401(b)(1), (c)(4), eff. Oct. 22, 1986, and I.R.C. of 1986 applicable as if the amendments made by such section had not been enacted.

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 7841(e)(2) of Pub. L. 101–239 provided that: ''The amendment made by this subsection [amending this section] shall apply as if included in the amendments made by section 1401 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [Pub. L. 101–73].''

Section 1401(c)(3)–(5) of Pub. L. 101–73 provided that: ''(3) SUBSECTION (a)(3).—

''(A) IN GENERAL.—The amendments made by subsection (a)(3) [amending this section and repealing provisions set out below] shall apply to any amount received or accrued by the financial institution on or after May 10, 1989, except that such amendments shall not apply to transfers on or after such date pursuant to an acquisition to which the amendment made by subsection (a)(1) [amending section 368 of this title] does not apply.

''(B) INTERIM RULE.—In the case of any payment pursuant to a transaction on or after May 10, 1989, and before the date on which the Secretary of the Treasury (or his delegate) takes action in exercise of his regulatory authority under section 597 of the Internal Revenue Code of 1986 (as amended by subsection (a)(3)), the taxpayer may rely on the legislative history for the amendments made by subsection (a)(3) in determining the proper treatment of such payment.

''(4) SUBSECTION (b)(1).—The provisions of subsection (b)(1) [set out below] shall take effect on the date of the enactment of the Tax Reform Act of 1986 [Oct. 22, 1986].

''(5) SUBSECTION (b)(2).—The amendment made by subsection (b)(2) [amending provisions set out below] shall take effect on the date of the enactment of the Technical and Miscellaneous Revenue Act of 1988 [Nov. 10, 1988].''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 4012(b)(2)(E) of Pub. L. 100–647 provided that: ''The amendments made by this paragraph [amending this section] shall apply to any transfer—

''(i) after the date of the enactment of this Act [Nov. 10, 1988], and before January 1, 1990, unless such transfer is pursuant to an acquisition occurring on or before such date of enactment, and

''(ii) after December 31, 1989, if such transfer is pursuant to an acquisition occurring after such date of enactment and before January 1, 1990.''

Section 4012(c)(3) of Pub. L. 100–647, as amended by Pub. L. 101–73, title XIV, §1401(b)(2), Aug. 9, 1989, 103 Stat. 549, provided that: ''The amendments made by this subsection [amending this section and provisions set out below] shall apply to any transfer—

''(A) after December 31, 1988, and before January 1, 1990, unless such transfer is pursuant to an acquisition occurring before January 1, 1989, and

''(B) after December 31, 1989, if such transfer is pursuant to an acquisition occurring after December 31, 1988, and before January 1, 1990.

In the case of any bank or any institution treated as a domestic building and loan association for purposes of section 597 of the 1986 Code by reason of the amendment made by subsection (b)(2)(B), the amendments made by this subsection shall also apply to any transfer before January 1, 1989, to which the amendments made by subsection (b)(2) [amending this section] apply.''

EFFECTIVE DATE OF REPEAL

Pub. L. 99–514, title IX, §904(c)(2), Oct. 22, 1986, 100 Stat. 2385, as amended by Pub. L. 100–647, title IV, §4012(a)(2), (c)(2), Nov. 10, 1988, 102 Stat. 3656, 3660, which provided that repeal of this section was to be applicable to transfers after Dec. 31, 1989, in taxable years ending after such date, with exceptions, and which related to clarification of treatment of amounts excluded under this section, was repealed by Pub. L. 101–73, title XIV, §1401(a)(3)(B), (b)(1), Aug. 9, 1989, 103 Stat. 549.

EFFECTIVE DATE

Section 246(c) of Pub. L. 97–34 provided that: ''The amendment made by section 244 [enacting this section] shall apply to any payment made on or after January 1, 1981.''

TRANSFER OF FUNCTIONS

Federal Savings and Loan Insurance Corporation abolished and its functions transferred, see sections 401 to 406 of Pub. L. 101–73, set out as a note under section 1437 of Title 12, Banks and Banking.

REPEAL OF PROVISIONS RELATING TO REPEAL OF SPECIAL REORGANIZATION RULES FOR FINANCIAL INSTITUTIONS

Section 1401(b)(1) of Pub. L. 101–73 provided that: ''Section 904 of the Tax Reform Act of 1986 [Pub. L. 99–514, amending section 368 of this title, repealing this section and enacting provisions set out as notes under sections 368 and 597 of this title] (other than subsection (c)(2)(B) thereof [section 904(c)(2)(B) of Pub. L. 99–514, formerly set out as a note above]) is hereby repealed and the Internal Revenue Code of 1986 shall be applied as if the amendments made by such section had not been enacted.''

REFERENCES TO FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

Section 1401(c)(7) of Pub. L. 101–73 provided that: ''Any reference to the Federal Savings and Loan Insurance Corporation in section 597 of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act [Aug. 9, 1989]) shall be treated as including a reference to the Resolution Trust Corporation and the FSLIC Resolution Fund.''

ANNUAL REPORTS ON TRANSACTIONS IN WHICH FEDERAL FINANCIAL ASSISTANCE PROVIDED

Pub. L. 101–73, title XIV, §1403, Aug. 9, 1989, 103 Stat. 551, which required the Secretary of the Treasury to submit annual reports to the Senate and to the Committee on Ways and Means of the House of Representatives on transactions with respect to which Federal financial assistance subject to this section was provided, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 142 of House Document No. 103–7.

[§ 601. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(85), Oct. 4, 1976, 90 Stat. 1778]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 206, related to a special deduction for bank affiliates.

EFFECTIVE DATE OF REPEAL

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

Subchapter I—Natural Resources

Part
I. Deductions.
[II. Repealed.]
III. Sales and exchanges.
IV. Mineral production payments.
V. Continental shelf areas.

PART I—DEDUCTIONS

Sec.
611. Allowance of deduction for depletion.
612. Basis for cost depletion.
613. Percentage depletion.
613A. Limitations on percentage depletion in case of oil and gas wells.[1]
614. Definition of property.

[1] Editorially supplied. Section 613A added by Pub. L. 94–12 without corresponding amendment of part analysis.

[615. Repealed.]
616. Development expenditures.
617. Deduction and recapture of certain mining exploration expenditures.

AMENDMENTS

1990—Pub. L. 101–508, title XI, § 11801(b)(7), Nov. 5, 1990, 104 Stat. 1388–522, struck out item for part II ''Exclusions from gross income''.

1976—Pub. L. 94–455, title XIX, § 1901(b)(21)(H), Oct. 4, 1976, 90 Stat. 1798, struck out item 615 ''Exploration expenditures''.

1969—Pub. L. 91–172, title V, §§ 503(b), 505(c), Dec. 30, 1969, 83 Stat. 631, 634, added items for parts IV and V.

Pub. L. 91–172, title V, § 504(c)(5), Dec. 30, 1969, 83 Stat. 633, substituted ''Pre-1970 exploration expenditures'' for ''Exploration expenditures'' in item 615 and substituted ''Deduction and recapture of certain mining exploration expenditures'' for ''Additional exploration expenditures in the case of domestic mining'' in item 617.

1966—Pub. L. 89–570, § 1(d), Sept. 12, 1966, 80 Stat. 762, added item 617.

§ 611. Allowance of deduction for depletion

(a) General rule

In the case of mines, oil and gas wells, other natural deposits, and timber, there shall be allowed as a deduction in computing taxable income a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case; such reasonable allowance in all cases to be made under regulations prescribed by the Secretary. For purposes of this part, the term ''mines'' includes deposits of waste or residue, the extraction of ores or minerals from which is treated as mining under section 613(c). In any case in which it is ascertained as a result of operations or of development work that the recoverable units are greater or less than the prior estimate thereof, then such prior estimate (but not the basis for depletion) shall be revised and the allowance under this section for subsequent taxable years shall be based on such revised estimate.

(b) Special rules

(1) Leases

In the case of a lease, the deduction under this section shall be equitably apportioned between the lessor and lessee.

(2) Life tenant and remainderman

In the case of property held by one person for life with remainder to another person, the deduction under this section shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant.

(3) Property held in trust

In the case of property held in trust, the deduction under this section shall be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each.

(4) Property held by estate

In the case of an estate, the deduction under this section shall be apportioned between the estate and the heirs, legatees, and devisees on the basis of the income of the estate allocable to each.

(c) Cross reference

For other rules applicable to depreciation of improvements, see section 167.

(Aug. 16, 1954, ch. 736, 68A Stat. 207; Pub. L. 85–866, title I, § 35, Sept. 2, 1958, 72 Stat. 1632; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1958—Subsec. (d)(4). Pub. L. 85–866 substituted ''devisees'' for ''devises''.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

§ 612. Basis for cost depletion

Except as otherwise provided in this subchapter, the basis on which depletion is to be allowed in respect of any property shall be the adjusted basis provided in section 1011 for the purpose of determining the gain upon the sale or other disposition of such property.

(Aug. 16, 1954, ch. 736, 68A Stat. 208.)

§ 613. Percentage depletion

(a) General rule

In the case of the mines, wells, and other natural deposits listed in subsection (b), the allowance for depletion under section 611 shall be the percentage, specified in subsection (b), of the gross income from the property excluding from such gross income an amount equal to any rents or royalties paid or incurred by the taxpayer in respect of the property. Such allowance shall not exceed 50 percent (100 percent in the case of oil and gas properties) of the taxpayer's taxable income from the property (computed without allowance for depletion and without the deduction under section 199). For purposes of the preceding sentence, the allowable deductions taken into account with respect to expenses of mining in computing the taxable income from the property shall be decreased by an amount equal to so much of any gain which (1) is treated under section 1245 (relating to gain from disposition of certain depreciable property) as ordinary income, and (2) is properly allocable to the property. In no case shall the allowance for depletion under section 611 be less than it would be if computed without reference to this section.

(b) Percentage depletion rates

The mines, wells, and other natural deposits, and the percentages, referred to in subsection (a) are as follows:

(1) 22 percent

(A) sulphur and uranium; and

(B) if from deposits in the United States—anorthosite, clay, laterite, and nephelite syenite (to the extent that alumina and aluminum compounds are extracted therefrom), asbestos, bauxite, celestite, chromite, corundum, fluorspar, graphite, ilmenite, kyanite, mica, olivine, quartz crystals (radio grade), ru-

tile, block steatite talc, and zircon, and ores of the following metals: antimony, beryllium, bismuth, cadmium, cobalt, columbium, lead, lithium, manganese, mercury, molybdenum, nickel, platinum and platinum group metals, tantalum, thorium, tin, titanium, tungsten, vanadium, and zinc.

(2) 15 percent

If from deposits in the United States—

(A) gold, silver, copper, and iron ore, and

(B) oil shale (except shale described in paragraph (5)).

(3) 14 percent

(A) metal mines (if paragraph (1)(B) or (2)(A) does not apply), rock asphalt, and vermiculite; and

(B) if paragraph (1)(B), (5), or (6)(B) does not apply, ball clay, bentonite, china clay, sagger clay, and clay used or sold for use for purposes dependent on its refractory properties.

(4) 10 percent

Asbestos (if paragraph (1)(B) does not apply), brucite, coal, lignite, perlite, sodium chloride, and wollastonite.

(5) 7½ percent

Clay and shale used or sold for use in the manufacture of sewer pipe or brick, and clay, shale, and slate used or sold for use as sintered or burned lightweight aggregates.

(6) 5 percent

(A) gravel, peat, pumice, sand, scoria, shale (except shale described in paragraph (2)(B) or (5)), and stone (except stone described in paragraph (7));

(B) clay used, or sold for use, in the manufacture of drainage and roofing tile, flower pots, and kindred products; and

(C) if from brine wells—bromine, calcium chloride, and magnesium chloride.

(7) 14 percent

All other minerals, including, but not limited to, aplite, barite, borax, calcium carbonates, diatomaceous earth, dolomite, feldspar, fullers earth, garnet, gilsonite, granite, limestone, magnesite, magnesium carbonates, marble, mollusk shells (including clam shells and oyster shells), phosphate rock, potash, quartzite, slate, soapstone, stone (used or sold for use by the mine owner or operator as dimension stone or ornamental stone), thenardite, tripoli, trona, and (if paragraph (1)(B) does not apply) bauxite, flake graphite, fluorspar, lepidolite, mica, spodumene, and talc (including pyrophyllite), except that, unless sold on bid in direct competition with a bona fide bid to sell a mineral listed in paragraph (3), the percentage shall be 5 percent for any such other mineral (other than slate to which paragraph (5) applies) when used, or sold for use, by the mine owner or operator as rip rap, ballast, road material, rubble, concrete aggregates, or for similar purposes. For purposes of this paragraph, the term ''all other minerals'' does not include—

(A) soil, sod, dirt, turf, water, or mosses;

(B) minerals from sea water, the air, or similar inexhaustible sources; or

(C) oil and gas wells.

For the purposes of this subsection, minerals (other than sodium chloride) extracted from brines pumped from a saline perennial lake within the United States shall not be considered minerals from an inexhaustible source.

(c) Definition of gross income from property

For purposes of this section—

(1) Gross income from the property

The term ''gross income from the property'' means, in the case of a property other than an oil or gas well and other than a geothermal deposit, the gross income from mining.

(2) Mining

The term ''mining'' includes not merely the extraction of the ores or minerals from the ground but also the treatment processes considered as mining described in paragraph (4) (and the treatment processes necessary or incidental thereto), and so much of the transportation of ores or minerals (whether or not by common carrier) from the point of extraction from the ground to the plants or mills in which such treatment processes are applied thereto as is not in excess of 50 miles unless the Secretary finds that the physical and other requirements are such that the ore or mineral must be transported a greater distance to such plants or mills.

(3) Extraction of the ores or minerals from the ground

The term ''extraction of the ores or minerals from the ground'' includes the extraction by mine owners or operators of ores or minerals from the waste or residue of prior mining. The preceding sentence shall not apply to any such extraction of the mineral or ore by a purchaser of such waste or residue or of the rights to extract ores or minerals therefrom.

(4) Treatment processes considered as mining

The following treatment processes where applied by the mine owner or operator shall be considered as mining to the extent they are applied to the ore or mineral in respect of which he is entitled to a deduction for depletion under section 611:

(A) In the case of coal—cleaning, breaking, sizing, dust allaying, treating to prevent freezing, and loading for shipment;

(B) in the case of sulfur recovered by the Frasch process—cleaning, pumping to vats, cooling, breaking, and loading for shipment;

(C) in the case of iron ore, bauxite, ball and sagger clay, rock asphalt, and ores or minerals which are customarily sold in the form of a crude mineral product—sorting, concentrating, sintering, and substantially equivalent processes to bring to shipping grade and form, and loading for shipment;

(D) in the case of lead, zinc, copper, gold, silver, uranium, or fluorspar ores, potash, and ores or minerals which are not customarily sold in the form of the crude mineral product—crushing, grinding, and beneficiation by concentration (gravity, flotation, amalgamation, electrostatic, or magnetic), cyanidation, leaching, crystalliza-

tion, precipitation (but not including electrolytic deposition, roasting, thermal or electric smelting, or refining), or by substantially equivalent processes or combination of processes used in the separation or extraction of the product or products from the ore or the mineral or minerals from other material from the mine or other natural deposit;

(E) the pulverization of talc, the burning of magnesite, the sintering and nodulizing of phosphate rock, the decarbonation of trona, and the furnacing of quicksilver ores;

(F) in the case of calcium carbonates and other minerals when used in making cement—all processes (other than preheating of the kiln feed) applied prior to the introduction of the kiln feed into the kiln, but not including any subsequent process;

(G) in the case of clay to which paragraph (5) or (6)(B) of subsection (b) applies—crushing, grinding, and separating the mineral from waste, but not including any subsequent process;

(H) in the case of oil shale—extraction from the ground, crushing, loading into the retort, and retorting (including in situ retorting), but not hydrogenation, refining, or any other process subsequent to retorting; and

(I) any other treatment process provided for by regulations prescribed by the Secretary which, with respect to the particular ore or mineral, is not inconsistent with the preceding provisions of this paragraph.

(5) Treatment processes not considered as mining

Unless such processes are otherwise provided for in paragraph (4) (or are necessary or incidental to processes so provided for), the following treatment processes shall not be considered as ''mining'': electrolytic deposition, roasting, calcining, thermal or electric smelting, refining, polishing, fine pulverization, blending with other materials, treatment effecting a chemical change, thermal action, and molding or shaping.

(d) Denial of percentage depletion in case of oil and gas wells

Except as provided in section 613A, in the case of any oil or gas well, the allowance for depletion shall be computed without reference to this section.

(e) Percentage depletion for geothermal deposits

(1) In general

In the case of geothermal deposits located in the United States or in a possession of the United States, for purposes of subsection (a)—

(A) such deposits shall be treated as listed in subsection (b), and

(B) 15 percent shall be deemed to be the percentage specified in subsection (b).

(2) Geothermal deposit defined

For purposes of paragraph (1), the term ''geothermal deposit'' means a geothermal reservoir consisting of natural heat which is stored in rocks or in an aqueous liquid or vapor (whether or not under pressure). Such a deposit shall in no case be treated as a gas well for purposes of this section or section 613A, and this section shall not apply to a geothermal deposit which is located outside the United States or its possessions.

(3) Percentage depletion not to include lease bonuses, etc.

In the case of any geothermal deposit, the term ''gross income from the property'' shall, for purposes of this section, not include any amount described in section 613A(d)(5).

(Aug. 16, 1954, ch. 736, 68A Stat. 208; Pub. L. 85–866, title I, § 36(a), Sept. 2, 1958, 72 Stat. 1633; Pub. L. 86–564, title III, § 302(a), (b), June 30, 1960, 74 Stat. 291, 292; Pub. L. 87–834, § 13(e), Oct. 16, 1962, 76 Stat. 1034; Pub. L. 88–571, § 6(a), Sept. 2, 1964, 78 Stat. 860; Pub. L. 89–809, title II, §§ 207(a), 208(a), 209(a), (b), Nov. 13, 1966, 80 Stat. 1579, 1580; Pub. L. 91–172, title V, §§ 501(a), 502(a), Dec. 30, 1969, 83 Stat. 629, 630; Pub. L. 93–499, § 2(a), Oct. 29, 1974, 88 Stat. 1550; Pub. L. 94–12, title V, § 501(b)(1), (2), Mar. 29, 1975, 89 Stat. 53; Pub. L. 94–455, title XIX, §§ 1901(b)(3)(K), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1793, 1834; Pub. L. 95–618, title IV, § 403(a)(1), (2)(A), Nov. 9, 1978, 92 Stat. 3203; Pub. L. 99–514, title IV, § 412(a)(2), Oct. 22, 1986, 100 Stat. 2227; Pub. L. 101–508, title XI, §§ 11522(a), 11815(b)(1), (2), Nov. 5, 1990, 104 Stat. 1388–486, 1388–557, 1388–558; Pub. L. 104–188, title I, § 1704(t)(34), Aug. 20, 1996, 110 Stat. 1889; Pub. L. 108–357, title I, § 102(d)(6), Oct. 22, 2004, 118 Stat. 1429; Pub. L. 109–135, title IV, § 412(gg), Dec. 21, 2005, 119 Stat. 2639.)

AMENDMENTS

2005—Subsec. (c)(4)(H). Pub. L. 109–135 inserted ''(including in situ retorting)'' after ''and retorting''.

2004—Subsec. (a). Pub. L. 108–357, which directed the insertion of ''and without the deduction under section 199'' after ''without allowances for depletion'', was executed by making the insertion after ''without allowance for depletion'', to reflect the probable intent of Congress.

1996—Subsec. (e)(1)(B). Pub. L. 104–188 substituted ''subsection (b).'' for ''subsection (b),''.

1990—Subsec. (a). Pub. L. 101–508, § 11522(a), inserted ''(100 percent in the case of oil and gas properties)'' after ''50 percent''.

Subsec. (e)(1)(B). Pub. L. 101–508, § 11815(b)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the applicable percentage (determined under the table contained in paragraph (2)) shall be deemed to be the percentage specified in subsection (b).''

Subsec. (e)(2) to (4). Pub. L. 101–508, § 11815(b)(1), redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which related to the applicable percentage depletion for geothermal deposits.

1986—Subsec. (e)(4). Pub. L. 99–514 added par. (4).

1978—Subsec. (c)(1). Pub. L. 95–618, § 403(a)(2)(A), inserted ''and other than a geothermal deposit'' after ''oil or gas well''.

Subsec. (e). Pub. L. 95–618, § 403(a)(1), added subsec. (e).

1976—Subsec. (a). Pub. L. 94–455, § 1901(b)(3)(K), substituted ''ordinary income'' for ''gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231''.

Subsec. (c)(2), (4)(I). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

1975—Subsec. (b)(1). Pub. L. 94–12, § 501(b)(2)(A), struck out subpar. (A) ''oil and gas wells'' and redesignated former subpars. (B) and (C) as (A) and (B), respectively.

Subsec. (b)(3), (4). Pub. L. 94–12, § 501(b)(2)(B), substituted ''(1)(B)'' for ''(1)(C)'' wherever appearing.

Subsec. (b)(7). Pub. L. 94–12, § 501(b)(2) (B), (C), substituted ''(1)(B)'' for ''(1)(C)'' in provisions preceding subpar. (A) and added subpar. (C).

Subsec. (d). Pub. L. 94–12, § 501(b)(1), substituted provisions denying the percentage depletion allowance in the case of oil and gas wells except as provided in section 613A for provisions governing the application of percentage depletion rates to certain taxable years ending in 1954.

1974—Subsec. (c)(4)(E). Pub. L. 93–499 inserted reference to decarbonation of trona.

1969—Subsec. (b). Pub. L. 91–172, § 501(a), reduced the percentage depletion rate on oil and gas wells from 27½ percent to 22 percent, reduced to 22 percent other minerals formerly receiving percentage depletion at a rate of 23 percent, added molybdenum in the category of minerals subject to the 22 percent depletion rate, reduced to 14 percent the rate on minerals formerly receiving depletion at a 15 percent rate except in the case of domestic gold, silver, oil shale, copper, and iron ore, and inserted provision that for percentage depletion purposes, minerals other than sodium chloride, extracted from brine pumped from a saline perennial lake within the United States are not to be considered minerals from an inexhaustible source.

Subsec. (c)(4)(H), (I). Pub. L. 91–172, § 502(a), added subpar. (H) and redesignated former subpar. (H) as (I).

1966—Subsec. (b)(2)(B). Pub. L. 89–809, § 207(a)(1), inserted ''clay, laterite, and nephelite syenite'' after ''anorthosite''.

Subsec. (b)(3)(B). Pub. L. 89–809, §§ 207(a)(2), 209(a)(2), substituted ''if neither paragraph (2)(B), (5), or (6)(B) applies'' for ''if paragraph (5)(B) does not apply''.

Subsec. (b)(5). Pub. L. 89–809, § 209(a)(1), added par. (5). Former par. (5) redesignated (6).

Subsec. (b)(6). Pub. L. 89–809, §§ 208(a)(1), 209(a)(1), (3), (4), redesignated par. (5) as (6), struck out ''mollusk shells (including clam shells and oyster shells),'', substituted ''shale (except shale described in paragraph (5)), and stone (except stone described in paragraph (7))'' for ''shale, and stone, except stone described in paragraph (6)'' in subpar. (A), and struck out ''building or paving brick,'' and ''sewer pipe,'' in subpar. (B). Former par. (6) redesignated (7).

Subsec. (b)(7). Pub. L. 89–809, §§ 208(a)(2), 209(a)(1), (5), redesignated par. (6) as (7) and inserted ''mollusk shells (including clam shells and oyster shells),'' after ''marble,'' and ''(other than slate to which paragraph (5) applies)'' after ''any other such mineral''.

Subsec. (c)(4)(G). Pub. L. 89–809, § 209(b), substituted ''paragraph (5) or (6)(B)'' for ''paragraph (5)(B)''.

1964—Subsec. (b)(2)(B), (6). Pub. L. 88–571 inserted ''beryllium'' after ''antimony'' in par. (2)(B), and deleted ''beryl'' after ''bauxite'' in pars. (2)(B) and (6).

1962—Subsec. (a). Pub. L. 87–834 inserted provisions requiring the allowable deductions taken into account with respect to expenses of mining in computing the taxable income from the property to be decreased by an amount equal to so much of any gain which is treated under section 1245 as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231, and is properly allocable to the property.

1960—Subsec. (b)(3). Pub. L. 86–564, § 302(a)(1), limited the 15 percent allowance for ball clay, bentonite, china clay, and sagger clay to cases where paragraph (5)(B) does not apply, and authorized a 15 percent allowance, if paragraph (5)(B) does not apply, for clay used or sold for use for purposes dependent on its refractory properties.

Subsec. (b)(5). Pub. L. 86–564, § 302(a)(2), substituted provisions authorizing a 5 percent allowance for clay used, or sold for use, in the manufacture of building or paving brick, drainage and roofing tile, sewer pipe, flower pots, and kindred products for provisions which authorized a 5 percent allowance for brick and tile clay.

Subsec. (b)(6). Pub. L. 86–564, § 302(a)(3), struck out provisions which authorized a 15 percent allowance for refractory and fire clay. See subsec. (b)(3) of this section.

Subsec. (c)(2). Pub. L. 86–564, § 302(b)(1), substituted ''the treatment processes considered as mining described in paragraph (4) (and the treatment processes necessary or incidental thereto)'' for ''the ordinary treatment processes normally applied by mine owners or operators in order to obtain the commercially marketable mineral product or products'', and ''such treatment processes'' for ''the ordinary treatment processes''.

Subsec. (c)(4). Pub. L. 86–564, § 302(b)(2), substituted ''The following treatment processes where applied by the mine owner or operator shall be considered as mining to the extent they are applied to the ore or mineral in respect of which he is entitled to a deduction for depletion under section 611'' for ''The term 'ordinary treatment processes' includes the following'' in opening provisions, included cleaning in subpar. (B), substituted ''ores or minerals which'' for ''minerals which'' and included substantially equivalent processes in subpar. (C), included uranium and minerals which are not customarily sold in the form of the crude mineral product and substituted ''from the ore or the mineral or minerals from other material from the mine or other natural deposit'' for ''from the ore, including the furnacing of quicksilver ores'' in subpar. (D), included the furnacing of quicksilver ores in subpar. (E), and added subpars. (F) to (H).

Subsec. (c)(5). Pub. L. 86–564, § 302(b)(2), added par. (5).

1958—Subsec. (d). Pub. L. 85–866 added subsec. (d).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2004, see section 102(e) of Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11522(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and sections 613A and 614 of this title] shall apply to taxable years beginning after December 31, 1990.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 412(a)(3) of Pub. L. 99–514 provided that: ''The amendment made by this subsection [amending this section and section 613A of this title] shall apply to amounts received or accrued after August 16, 1986, in taxable years ending after such date.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 403(c) of Pub. L. 95–618 provided that: ''The amendments made by this section [amending this section and sections 613A and 614 of this title] shall take effect on October 1, 1978, and shall apply to taxable years ending on or after such date.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(3)(K) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–12 effective Jan. 1, 1975, applicable to taxable years ending after Dec. 31, 1974, see section 501(c) of Pub. L. 94–12, set out as an Effective Note under section 613A of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 2(b) of Pub. L. 93–499 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1970.''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 501(b) of Pub. L. 91–172 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after October 9, 1969.''

Section 502(b) of Pub. L. 91–172 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 30, 1969].''

EFFECTIVE DATE OF 1966 AMENDMENT

Section 207(b) of Pub. L. 89–809 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Nov. 13, 1966].''

Section 208(b) of Pub. L. 89–809 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Nov. 13, 1966].''

Section 209(c) of Pub. L. 89–809 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Nov. 13, 1966].''

EFFECTIVE DATE OF 1964 AMENDMENT

Section 6(b) of Pub. L. 88–571 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1963.''

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable to taxable years beginning after Dec. 31, 1962, see section 13(g) of Pub. L. 87–834, set out as an Effective Date note under section 1245 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 302(c) of Pub. L. 86–564, as amended by Pub. L. 86–781, § 4, Sept. 14, 1960, 74 Stat. 1018; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(c) EFFECTIVE DATE.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsections (a) and (b) [amending this section] shall be applicable only with respect to taxable years beginning after December 31, 1960.

''(2) CALCIUM CARBONATES, ETC.—

''(A) ELECTION FOR PAST YEARS.—In the case of calcium carbonates or other minerals when used in making cement, if an election is made by the taxpayer under subparagraph (C)—

''(i) the amendments made by subsection (b) [amending this section] shall apply to taxable years with respect to which such election is effective and

''(ii) provisions having the same effect as the amendments made by subsection (b) [amending this section] shall be deemed to be included in the Internal Revenue Code of 1939 and shall apply to taxable years with respect to which such election is effective in lieu of the corresponding provisions of such Code.

''(B) YEARS TO WHICH APPLICABLE.—An election made under subparagraph (C) to have the provisions of this paragraph apply shall be effective for all taxable years beginning before January 1, 1961, in respect of which—

''(i) the assessment of a deficiency,

''(ii) the refund or credit of an overpayment, or

''(iii) the commencement of a suit for recovery of a refund under section 7405 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [section 7405 of this title],

is not prevented on the date of the enactment of this paragraph [Sept. 14, 1960] by the operation of any law or rule of law. Such election shall also be effective for any taxable year beginning before January 1, 1961, in respect of which an assessment of a deficiency has been made but not collected on or before the date of the enactment of this paragraph.

''(C) TIME AND MANNER OF ELECTION.—An election to have the provisions of this paragraph apply shall be made by the taxpayer on or before the 60th day after the date of publication in the Federal Register of final regulations issued under authority of subparagraph (F), and shall be made in such form and manner as the Secretary of the Treasury or his delegate shall prescribe by regulations. Such election, if made, may not be revoked.

''(D) STATUTES OF LIMITATION.—Notwithstanding any other law, the period within which an assessment of a deficiency attributable to the application of the amendments made by subsection (b) [amending this section] may be made with respect to any taxable year to which such amendments apply under an election made under subparagraph (C), and the period within which a claim for refund or credit of an overpayment attributable to the application of such amendments may be made with respect to any such taxable year, shall not expire prior to one year after the last day for making an election under subparagraph (C). An election by a taxpayer under subparagraph (C) shall be considered as a consent to the application of the provisions of this subparagraph.

''(E) TERMS; APPLICABILITY OF OTHER LAWS.—Except where otherwise distinctly expressed or manifestly intended, terms used in this paragraph shall have the same meaning as when used in the Internal Revenue Code of 1986 [this title] (or corresponding provisions of the Internal Revenue Code of 1939) and all provisions of law shall apply with respect to this paragraph as if this paragraph were a part of such Code (or corresponding provisions of the Internal Revenue Code of 1939).

''(F) REGULATIONS.—The Secretary of the Treasury or his delegate shall prescribe such regulations as may be necessary to carry out the provisions of this paragraph.''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by section 11815(b)(1), (2) of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

ELECTION FOR CLAY AND SHALE USED IN MANUFACTURE OF CLAY PRODUCTS

Pub. L. 87–312, Sept. 26, 1961, 75 Stat. 674, provided for the election of, and procedure for, a differing rate of depletion for clay and shale used in the manufacture of clay products, such election to be effective for all taxable years beginning before Jan. 1, 1961, in respect of which the assessment of a deficiency, a refund or credit of overpayment, or the commencement of a suit for recovery is not prevented on Sept. 26, 1961, by operation of any law or rule of law, and also effective for any taxable year beginning before Jan. 1961, in respect of which an assessment of a deficiency has been made but not collected on or before Sept. 26, 1961.

ELECTION FOR QUARTZITE AND CLAY USED IN PRODUCTION OF REFRACTORY PRODUCTS

Pub. L. 87–321, § 2, Sept. 26, 1961, 75 Stat. 683, provided for an election of, and procedures for, a differing rate of depletion for quartzite and clay used in production of refractory products, such election to be effective on and after Jan. 1, 1951, for all taxable years beginning before Jan. 1, 1961, in respect of which the assessment of a deficiency, the refund or credit of an overpayment, or the commencement of a suit for recovery is not prevented on Sept. 26, 1961, by the operation of any law or

rule of law, and also effective on and after Jan. 1, 1951, for any taxable year beginning before Jan. 1, 1961, in respect of which an assessment of a deficiency has been made but not collected on or before Sept. 26, 1961.

REFUND OR CREDIT OF OVERPAYMENTS; LIMITATIONS; INTEREST

Section 36(b) of Pub. L. 85–866 provided for the filing of a claim within 6 months of Sept. 2, 1958, and for the refund or credit of any overpayment, without interest, if such refund or credit, resulting from the addition of subsec. (d) of this section, was prevented on Sept. 2, 1958, or within 6 months thereof, by the operation of any law or rule of law other than certain specified sections of the Internal Revenue Codes of 1939 and 1954.

§ 613A. Limitations on percentage depletion in case of oil and gas wells

(a) General rule

Except as otherwise provided in this section, the allowance for depletion under section 611 with respect to any oil or gas well shall be computed without regard to section 613.

(b) Exemption for certain domestic gas wells

(1) In general

The allowance for depletion under section 611 shall be computed in accordance with section 613 with respect to—

(A) regulated natural gas, and

(B) natural gas sold under a fixed contract,

and 22 percent shall be deemed to be specified in subsection (b) of section 613 for purposes of subsection (a) of that section.

(2) Natural gas from geopressured brine

The allowance for depletion under section 611 shall be computed in accordance with section 613 with respect to any qualified natural gas from geopressured brine, and 10 percent shall be deemed to be specified in subsection (b) of section 613 for purposes of subsection (a) of such section.

(3) Definitions

For purposes of this subsection—

(A) Natural gas sold under a fixed contract

The term ''natural gas sold under a fixed contract'' means domestic natural gas sold by the producer under a contract, in effect on February 1, 1975, and at all times thereafter before such sale, under which the price for such gas cannot be adjusted to reflect to any extent the increase in liabilities of the seller for tax under this chapter by reason of the repeal of percentage depletion for gas. Price increases after February 1, 1975, shall be presumed to take increases in tax liabilities into account unless the taxpayer demonstrates to the contrary by clear and convincing evidence.

(B) Regulated natural gas

The term ''regulated natural gas'' means domestic natural gas produced and sold by the producer, before July 1, 1976, subject to the jurisdiction of the Federal Power Commission, the price for which has not been adjusted to reflect to any extent the increase in liability of the seller for tax under this chapter by reason of the repeal of percentage depletion for gas. Price increases after February 1, 1975, shall be presumed to take increases in tax liabilities into account unless the taxpayer demonstrates the contrary by clear and convincing evidence.

(C) Qualified natural gas from geopressured brine

The term ''qualified natural gas from geopressured brine'' means any natural gas—

(i) which is determined in accordance with section 503 of the Natural Gas Policy Act of 1978 to be produced from geopressured brine, and

(ii) which is produced from any well the drilling of which began after September 30, 1978, and before January 1, 1984.

(c) Exemption for independent producers and royalty owners

(1) In general

Except as provided in subsection (d), the allowance for depletion under section 611 shall be computed in accordance with section 613 with respect to—

(A) so much of the taxpayer's average daily production of domestic crude oil as does not exceed the taxpayer's depletable oil quantity; and

(B) so much of the taxpayer's average daily production of domestic natural gas as does not exceed the taxpayer's depletable natural gas quantity;

and 15 percent shall be deemed to be specified in subsection (b) of section 613 for purposes of subsection (a) of that section.

(2) Average daily production

For purposes of paragraph (1)—

(A) the taxpayer's average daily production of domestic crude oil or natural gas for any taxable year, shall be determined by dividing his aggregate production of domestic crude oil or natural gas, as the case may be, during the taxable year by the number of days in such taxable year, and

(B) in the case of a taxpayer holding a partial interest in the production from any property (including an interest held in a partnership) such taxpayer's production shall be considered to be that amount of such production determined by multiplying the total production of such property by the taxpayer's percentage participation in the revenues from such property.

(3) Depletable oil quantity

(A) In general

For purposes of paragraph (1), the taxpayer's depletable oil quantity shall be equal to—

(i) the tentative quantity determined under subparagraph (B), reduced (but not below zero) by

(ii) except in the case of a taxpayer making an election under paragraph (6)(B), the taxpayer's average daily marginal production for the taxable year.

(B) Tentative quantity

For purposes of subparagraph (A), the tentative quantity is 1,000 barrels.

(4) Daily depletable natural gas quantity

For purposes of paragraph (1), the depletable natural gas quantity of any taxpayer for any

taxable year shall be equal to 6,000 cubic feet multiplied by the number of barrels of the taxpayer's depletable oil quantity to which the taxpayer elects to have this paragraph apply. The taxpayer's depletable oil quantity for any taxable year shall be reduced by the number of barrels with respect to which an election under this paragraph applies. Such election shall be made at such time and in such manner as the Secretary shall by regulations prescribe.

[(5) Repealed. Pub. L. 101–508, title XI, § 11815(a)(1)(C), Nov. 5, 1990, 104 Stat. 1388–557]

(6) Oil and natural gas produced from marginal properties

(A) In general

Except as provided in subsection (d) and subparagraph (B), the allowance for depletion under section 611 shall be computed in accordance with section 613 with respect to—

(i) so much of the taxpayer's average daily marginal production of domestic crude oil as does not exceed the taxpayer's depletable oil quantity (determined without regard to paragraph (3)(A)(ii)), and

(ii) so much of the taxpayer's average daily marginal production of domestic natural gas as does not exceed the taxpayer's depletable natural gas quantity (determined without regard to paragraph (3)(A)(ii)),

and the applicable percentage shall be deemed to be specified in subsection (b) of section 613 for purposes of subsection (a) of that section.

(B) Election to have paragraph apply to pro rata portion of marginal production

If the taxpayer elects to have this subparagraph apply for any taxable year, the rules of subparagraph (A) shall apply to the average daily marginal production of domestic crude oil or domestic natural gas of the taxpayer to which paragraph (1) would have applied without regard to this paragraph.

(C) Applicable percentage

For purposes of subparagraph (A), the term ''applicable percentage'' means the percentage (not greater than 25 percent) equal to the sum of—

(i) 15 percent, plus

(ii) 1 percentage point for each whole dollar by which $20 exceeds the reference price for crude oil for the calendar year preceding the calendar year in which the taxable year begins.

For purposes of this paragraph, the term ''reference price'' means, with respect to any calendar year, the reference price determined for such calendar year under section 45K(d)(2)(C).

(D) Marginal production

The term ''marginal production'' means domestic crude oil or domestic natural gas which is produced during any taxable year from a property which—

(i) is a stripper well property for the calendar year in which the taxable year begins, or

(ii) is a property substantially all of the production of which during such calendar year is heavy oil.

(E) Stripper well property

For purposes of this paragraph, the term ''stripper well property'' means, with respect to any calendar year, any property with respect to which the amount determined by dividing—

(i) the average daily production of domestic crude oil and domestic natural gas from producing wells on such property for such calendar year, by

(ii) the number of such wells,

is 15 barrel equivalents or less.

(F) Heavy oil

For purposes of this paragraph, the term ''heavy oil'' means domestic crude oil produced from any property if such crude oil had a weighted average gravity of 20 degrees API or less (corrected to 60 degrees Fahrenheit).

(G) Average daily marginal production

For purposes of this subsection—

(i) the taxpayer's average daily marginal production of domestic crude oil or natural gas for any taxable year shall be determined by dividing the taxpayer's aggregate marginal production of domestic crude oil or natural gas, as the case may be, during the taxable year by the number of days in such taxable year, and

(ii) in the case of a taxpayer holding a partial interest in the production from any property (including any interest held in any partnership), such taxpayer's production shall be considered to be that amount of such production determined by multiplying the total production of such property by the taxpayer's percentage participation in the revenues from such property.

(H) Temporary suspension of taxable income limit with respect to marginal production

The second sentence of subsection (a) of section 613 shall not apply to so much of the allowance for depletion as is determined under subparagraph (A) for any taxable year—

(i) beginning after December 31, 1997, and before January 1, 2008, or

(ii) beginning after December 31, 2008, and before January 1, 2012.

(7) Special rules

(A) Production of crude oil in excess of depletable oil quantity

If the taxpayer's average daily production of domestic crude oil exceeds his depletable oil quantity, the allowance under paragraph (1)(A) with respect to oil produced during the taxable year from each property in the United States shall be that amount which bears the same ratio to the amount of depletion which would have been allowable under section 613(a) for all of the taxpayer's oil

produced from such property during the taxable year (computed as if section 613 applied to all of such production at the rate specified in paragraph (1) or (6), as the case may be) as his depletable oil quantity bears to the aggregate number of barrels representing the average daily production of domestic crude oil of the taxpayer for such year.

(B) Production of natural gas in excess of depletable natural gas quantity

If the taxpayer's average daily production of domestic natural gas exceeds his depletable natural gas quantity, the allowance under paragraph (1)(B) with respect to natural gas produced during the taxable year from each property in the United States shall be that amount which bears the same ratio to the amount of depletion which would have been allowable under section 613(a) for all of the taxpayers[1] natural gas produced from such property during the taxable year (computed as if section 613 applied to all of such production at the rate specified in paragraph (1) or (6), as the case may be) as the amount of his depletable natural gas quantity in cubic feet bears to the aggregate number of cubic feet representing the average daily production of domestic natural gas of the taxpayer for such year.

(C) Taxable income from the property

If both oil and gas are produced from the property during the taxable year, for purposes of subparagraphs (A) and (B) the taxable income from the property, in applying the taxable income limitation in section 613(a), shall be allocated between the oil production and the gas production in proportion to the gross income during the taxable year from each.

(D) Partnerships

In the case of a partnership, the depletion allowance shall be computed separately by the partners and not by the partnership. The partnership shall allocate to each partner his proportionate share of the adjusted basis of each partnership oil or gas property. The allocation is to be made as of the later of the date of acquisition of the oil or gas property by the partnership, or January 1, 1975. A partner's proportionate share of the adjusted basis of partnership property shall be determined in accordance with his interest in partnership capital or income and, in the case of property contributed to the partnership by a partner, section 704(c) (relating to contributed property) shall apply in determining such share. Each partner shall separately keep records of his share of the adjusted basis in each oil and gas property of the partnership, adjust such share of the adjusted basis for any depletion taken on such property, and use such adjusted basis each year in the computation of his cost depletion or in the computation of his gain or loss on the disposition of such property by the partnership. For purposes of section 732 (relating to basis of distributed property other than money), the partnership's adjusted basis in mineral property shall be an amount equal to the sum of the partners' adjusted basis in such property as determined under this paragraph.

(8) Business under common control; members of the same family

(A) Component members of controlled group treated as one taxpayer

For purposes of this subsection, persons who are members of the same controlled group of corporations shall be treated as one taxpayer.

(B) Aggregation of business entities under common control

If 50 percent or more of the beneficial interest in two or more corporations, trusts, or estates is owned by the same or related persons (taking into account only persons who own at least 5 percent of such beneficial interest), the tentative quantity determined under paragraph (3)(B) shall be allocated among all such entities in proportion to the respective production of domestic crude oil during the period in question by such entities.

(C) Allocation among members of the same family

In the case of individuals who are members of the same family, the tentative quantity determined under paragraph (3)(B) shall be allocated among such individuals in proportion to the respective production of domestic crude oil during the period in question by such individuals.

(D) Definition and special rules

For purposes of this paragraph—

(i) the term ''controlled group of corporations'' has the meaning given to such term by section 1563(a), except that section 1563(b)(2) shall not apply and except that ''more than 50 percent'' shall be substituted for ''at least 80 percent'' each place it appears in section 1563(a),

(ii) a person is a related person to another person if such persons are members of the same controlled group of corporations or if the relationship between such persons would result in a disallowance of losses under section 267 or 707(b), except that for this purpose the family of an individual includes only his spouse and minor children.

(iii) the family of an individual includes only his spouse and minor children, and

(iv) each 6,000 cubic feet of domestic natural gas shall be treated as 1 barrel of domestic crude oil.

(9) Special rule for fiscal year taxpayers

In applying this subsection to a taxable year which is not a calendar year, each portion of such taxable year which occurs during a single calendar year shall be treated as if it were a short taxable year.

(10) Certain production not taken into account

In applying this subsection, there shall not be taken into account the production of natu-

[1] So in original. Probably should be ''taxpayer's''.

ral gas with respect to which subsection (b) applies.

(11) Subchapter S corporations

(A) Computation of depletion allowance at shareholder level

In the case of an S corporation, the allowance for depletion with respect to any oil or gas property shall be computed separately by each shareholder.

(B) Allocation of basis

The S corporation shall allocate to each shareholder his pro rata share of the adjusted basis of the S corporation in each oil or gas property held by the S corporation. The allocation shall be made as of the later of the date of acquisition of the property by the S corporation, or the first day of the first taxable year of the S corporation to which the Subchapter S Revision Act of 1982 applies. Each shareholder shall separately keep records of his share of the adjusted basis in each oil and gas property of the S corporation, adjust such share of the adjusted basis for any depletion taken on such property, and use such adjusted basis each year in the computation of his cost depletion or in the computation of his gain or loss on the disposition of such property by the S corporation. In the case of any distribution of oil or gas property to its shareholders by the S corporation, the corporation's adjusted basis in the property shall be an amount equal to the sum of the shareholders' adjusted bases in such property, as determined under this subparagraph.

(d) Limitations on application of subsection (c)

(1) Limitation based on taxable income

The deduction for the taxable year attributable to the application of subsection (c) shall not exceed 65 percent of the taxpayer's taxable income for the year computed without regard to—

(A) any depletion on production from an oil or gas property which is subject to the provisions of subsection (c),

(B) any deduction allowable under section 199,

(C) any net operating loss carryback to the taxable year under section 172,

(D) any capital loss carryback to the taxable year under section 1212, and

(E) in the case of a trust, any distributions to its beneficiary, except in the case of any trust where any beneficiary of such trust is a member of the family (as defined in section 267(c)(4)) of a settlor who created inter vivos and testamentary trusts for members of the family and such settlor died within the last six days of the fifth month in 1970, and the law in the jurisdiction in which such trust was created requires all or a portion of the gross or net proceeds of any royalty or other interest in oil, gas, or other mineral representing any percentage depletion allowance to be allocated to the principal of the trust.

If an amount is disallowed as a deduction for the taxable year by reason of application of the preceding sentence, the disallowed amount shall be treated as an amount allowable as a deduction under subsection (c) for the following taxable year, subject to the application of the preceding sentence to such taxable year. For purposes of basis adjustments and determining whether cost depletion exceeds percentage depletion with respect to the production from a property, any amount disallowed as a deduction on the application of this paragraph shall be allocated to the respective properties from which the oil or gas was produced in proportion to the percentage depletion otherwise allowable to such properties under subsection (c).

(2) Retailers excluded

Subsection (c) shall not apply in the case of any taxpayer who directly, or through a related person, sells oil or natural gas (excluding bulk sales of such items to commercial or industrial users), or any product derived from oil or natural gas (excluding bulk sales of aviation fuels to the Department of Defense)—

(A) through any retail outlet operated by the taxpayer or a related person, or

(B) to any person—

(i) obligated under an agreement or contract with the taxpayer or a related person to use a trademark, trade name, or service mark or name owned by such taxpayer or a related person, in marketing or distributing oil or natural gas or any product derived from oil or natural gas, or

(ii) given authority, pursuant to an agreement or contract with the taxpayer or a related person, to occupy any retail outlet owned, leased, or in any way controlled by the taxpayer or a related person.

Notwithstanding the preceding sentence this paragraph shall not apply in any case where the combined gross receipts from the sale of such oil, natural gas, or any product derived therefrom, for the taxable year of all retail outlets taken into account for purposes of this paragraph do not exceed $5,000,000. For purposes of this paragraph, sales of oil, natural gas, or any product derived from oil or natural gas shall not include sales made of such items outside the United States, if no domestic production of the taxpayer or a related person is exported during the taxable year or the immediately preceding taxable year.

(3) Related person

For purposes of this subsection, a person is a related person with respect to the taxpayer if a significant ownership interest in either the taxpayer or such person is held by the other, or if a third person has a significant ownership interest in both the taxpayer and such person. For purposes of the preceding sentence, the term ''significant ownership interest'' means—

(A) with respect to any corporation, 5 percent or more in value of the outstanding stock of such corporation,

(B) with respect to a partnership, 5 percent or more interest in the profits or capital of such partnership, and

(C) with respect to an estate or trust, 5 percent or more of the beneficial interests in such estate or trust.

For purposes of determining a significant ownership interest, an interest owned by or for a corporation, partnership, trust, or estate shall be considered as owned directly both by itself and proportionately by its shareholders, partners, or beneficiaries, as the case may be.

(4) Certain refiners excluded

If the taxpayer or one or more related persons engages in the refining of crude oil, subsection (c) shall not apply to the taxpayer for a taxable year if the average daily refinery runs of the taxpayer and such persons for the taxable year exceed 75,000 barrels. For purposes of this paragraph, the average daily refinery runs for any taxable year shall be determined by dividing the aggregate refinery runs for the taxable year by the number of days in the taxable year.

(5) Percentage depletion not allowed for lease bonuses, etc.

In the case of any oil or gas property to which subsection (c) applies, for purposes of section 613, the term ''gross income from the property'' shall not include any lease bonus, advance royalty, or other amount payable without regard to production from property.

(e) Definitions

For purposes of this section—

(1) Crude oil

The term ''crude oil'' includes a natural gas liquid recovered from a gas well in lease separators or field facilities.

(2) Natural gas

The term ''natural gas'' means any product (other than crude oil) of an oil or gas well if a deduction for depletion is allowable under section 611 with respect to such product.

(3) Domestic

The term ''domestic'' refers to production from an oil or gas well located in the United States or in a possession of the United States.

(4) Barrel

The term ''barrel'' means 42 United States gallons.

(Added Pub. L. 94–12, title V, §501(a), Mar. 29, 1975, 89 Stat. 47; amended Pub. L. 94–455, title XIX, §§1901(a)(86), 1906(b)(13)(A), title XXI, §2115(a)–(c)(1), (d), (e), Oct. 4, 1976, 90 Stat. 1779, 1834, 1907–1909; Pub. L. 95–30, title I, §102(b)(7), May 23, 1977, 91 Stat. 138; Pub. L. 95–618, title IV, §403(a)(2)(B), (b), Nov. 9, 1978, 92 Stat. 3204; Pub. L. 96–603, §3(a), Dec. 28, 1980, 94 Stat. 3511; Pub. L. 97–354, §3(a), Oct. 19, 1982, 96 Stat. 1687; Pub. L. 97–448, title II, §202(d), Jan. 12, 1983, 96 Stat. 2396; Pub. L. 98–369, div. A, title I, §§25(b), 71(b), July 18, 1984, 98 Stat. 506, 589; Pub. L. 99–514, title I, §104(b)(9), title IV, §412(a)(1), Oct. 22, 1986, 100 Stat. 2105, 2227; Pub. L. 101–508, title XI, §§11521(a), (b), 11522(b)(1), 11523(a), (b), 11815(a), Nov. 5, 1990, 104 Stat. 1388–485 to 1388–487, 1388–557; Pub. L. 104–188, title I, §1702(e)(2), Aug. 20, 1996, 110 Stat. 1870; Pub. L. 105–34, title IX, §972(a), Aug. 5, 1997, 111 Stat. 897; Pub. L. 106–170, title V, §504(a), Dec. 17, 1999, 113 Stat. 1921; Pub. L. 107–147, title VI, §607(a), Mar. 9, 2002, 116 Stat. 60; Pub. L. 108–311, title III, §314(a), Oct. 4, 2004, 118 Stat. 1181; Pub. L. 109–58, title XIII, §§1322(a)(3)(B), 1328(a), Aug. 8, 2005, 119 Stat. 1011, 1019; Pub. L. 109–135, title IV, §403(a)(18), Dec. 21, 2005, 119 Stat. 2619; Pub. L. 109–432, div. A, title I, §118(a), Dec. 20, 2006, 120 Stat. 2942; Pub. L. 110–343, div. B, title II, §210, Oct. 3, 2008, 122 Stat. 3840; Pub. L. 111–312, title VII, §706(a), Dec. 17, 2010, 124 Stat. 3311.)

REFERENCES IN TEXT

Section 503 of the Natural Gas Policy Act of 1978, referred to in subsec. (b)(3)(C)(i), which was classified to section 3413 of Title 15, Commerce and Trade, was repealed by Pub. L. 101–60, §3(b)(5), July 26, 1989, 103 Stat. 159, effective Jan. 1, 1993.

The Subchapter S Revision Act of 1982, referred to in subsec. (c)(11)(B), is Pub. L. 97–354, Oct. 19, 1982, 96 Stat. 1669, which is classified principally to subchapter S (§1361 et seq.) of chapter 1 of this title. For complete classification of this Act to the Code, see Short Title of 1982 Amendments note set out under section 1 of this title and Tables.

AMENDMENTS

2010—Subsec. (c)(6)(H)(ii). Pub. L. 111–312 substituted ''January 1, 2012'' for ''January 1, 2010''.

2008—Subsec. (c)(6)(H). Pub. L. 110–343 substituted ''for any taxable year—'' for ''for any taxable year beginning after December 31, 1997, and before January 1, 2008.'' and added cls. (i) and (ii).

2006—Subsec. (c)(6)(H). Pub. L. 109–432 substituted ''2008'' for ''2006''.

2005—Subsec. (c)(6)(C). Pub. L. 109–58, §1322(a)(3)(B), substituted ''section 45K(d)(2)(C)'' for ''section 29(d)(2)(C)'' in concluding provisions.

Subsec. (d)(1)(B) to (E). Pub. L. 109–135 added subpar. (B) and redesignated former subpars. (B) to (D) as (C) to (E), respectively.

Subsec. (d)(4). Pub. L. 109–58, §1328(a), reenacted heading without change and amended text of par. (4) generally. Prior to amendment, text read as follows: ''If the taxpayer or a related person engages in the refining of crude oil, subsection (c) shall not apply to such taxpayer if on any day during the taxable year the refinery runs of the taxpayer and such person exceed 50,000 barrels.''

2004—Subsec. (c)(6)(H). Pub. L. 108–311 substituted ''2006'' for ''2004''.

2002—Subsec. (c)(6)(H). Pub. L. 107–147 substituted ''2004'' for ''2002''.

1999—Subsec. (c)(6)(H). Pub. L. 106–170 substituted ''January 1, 2002'' for ''January 1, 2000''.

1997—Subsec. (c)(6)(H). Pub. L. 105–34 added subpar. (H).

1996—Subsec. (c)(3)(A)(i). Pub. L. 104–188 struck out ''the table contained in'' before ''subparagraph (B)''.

1990—Subsec. (c)(1). Pub. L. 101–508, §11815(a)(1)(A), substituted ''15 percent'' for ''the applicable percentage (determined in accordance with the table contained in paragraph (5))'' in concluding provisions.

Subsec. (c)(3)(A). Pub. L. 101–508, §11523(b)(2), struck out at end ''Clause (ii) shall not apply after December 31, 1983.''

Subsec. (c)(3)(A)(ii). Pub. L. 101–508, §11523(b)(1), added cl. (ii) and struck out former cl. (ii) which read as follows: ''the taxpayer's average daily secondary or tertiary production for the taxable year.''

Subsec. (c)(3)(B). Pub. L. 101–508, §11815(a)(1)(B), amended subpar. (B) generally, substituting present provisions for provisions which set out a phase-out table for determining tentative quantity in barrels.

Subsec. (c)(5). Pub. L. 101–508, §11815(a)(1)(C), struck out par. (5) which provided table of applicable percentages for purposes of par. (1).

Subsec. (c)(6). Pub. L. 101–508, §11523(a), amended par. (6) generally, providing for an increase in percentage depletion allowance for marginal production, and substituting provisions relating to oil and gas produced

from marginal properties for former provisions which related to oil and gas resulting from secondary or tertiary processes.

Subsec. (c)(7)(A), (B). Pub. L. 101–508, §11815(a)(2)(A), substituted ''specified in paragraph (1)'' for ''specified in paragraph (5)''.

Subsec. (c)(7)(C). Pub. L. 101–508, §11522(b)(1), substituted ''taxable income'' for ''50-percent'' before ''limitation''.

Subsec. (c)(7)(E). Pub. L. 101–508, §11815(a)(1)(C), struck out subpar. (E) which provided special rules relating to production from secondary or tertiary recovery processes.

Subsec. (c)(8)(B), (C). Pub. L. 101–508, §11815(a)(2)(B), which directed amendment of subpars. (B) and (C) by substituting ''determined under paragraph (3)(B)'' for ''determined under the table contained in paragraph (3)(B)'', was executed by making the substitution for ''determined under the table in paragraph (3)(B)'' as the probable intent of Congress.

Subsec. (c)(9). Pub. L. 101–508, §11815(a)(2)(B), which directed amendment of par. (9) by substituting ''determined under paragraph (3)(B)'' for ''determined under the table contained in paragraph (3)(B)'', could not be executed because that phrase did not appear after execution of amendment by Pub. L. 101–508, §11521(a). See below.

Pub. L. 101–508, §11521(a), redesignated par. (11) as (9) and struck out former par. (9) which related to transfer of oil or gas property.

Subsec. (c)(10). Pub. L. 101–508, §11521(a), redesignated par. (12) as (10) and struck out former par. (10) which related to transfers by individuals to corporations.

Subsec. (c)(11). Pub. L. 101–508, §11521(a), redesignated par. (13) as (11). Former par. (11) redesignated (9).

Subsec. (c)(11)(C), (D). Pub. L. 101–508, §11521(b), struck out subpars. (C) and (D) which related to coordination with the transfer rules of former pars. (9) and (10).

Subsec. (c)(12), (13). Pub. L. 101–508, §11521(a), redesignated pars. (12) and (13) as (10) and (11), respectively.

1986—Subsec. (d)(1). Pub. L. 99–514, §104(b)(9), struck out ''(reduced in the case of an individual by the zero bracket amount)'' after ''taxable income'' in introductory provisions.

Subsec. (d)(5). Pub. L. 99–514, §412(a)(1), added par. (5).

1984—Subsec. (c)(2). Pub. L. 98–369, §25(b)(1), struck out last sentence providing that in applying this paragraph, there shall not be taken into account any production of crude oil or natural gas resulting from secondary or tertiary processes (as defined in regulations prescribed by the Secretary).

Subsec. (c)(3)(A). Pub. L. 98–369, §25(b)(2), inserted at end ''Clause (ii) shall not apply after December 31, 1983.''

Subsec. (c)(7)(D). Pub. L. 98–369, §71(b), substituted ''property contributed to the partnership by a partner, section 704(c) (relating to contributed property) shall apply in determining such share'' for ''an agreement described in section 704(c)(2) (relating to effect of partnership agreement on contributed property), such share shall be determined by taking such agreement into account'' in fourth sentence.

Subsec. (c)(7)(E). Pub. L. 98–369, §25(b)(3), inserted at end ''This subparagraph shall not apply after December 31, 1983.''

Subsec. (c)(9)(A). Pub. L. 98–369, §25(b)(4), substituted ''this subsection'' for ''paragraph (1)''.

1983—Subsec. (c)(10)(E). Pub. L. 97–448, §202(d)(1), inserted provision that ''oil and gas property'' includes, in the case of any property, necessary production equipment for such property which is in place when the property is transferred.

Subsec. (d)(2). Pub. L. 97–448, §202(d)(2), inserted ''(excluding bulk sales of aviation fuels to the Department of Defense)'' after ''any product derived from oil or natural gas''.

1982—Subsec. (c)(13). Pub. L. 97–354 added par. (13).

1980—Subsec. (c)(10) to (12). Pub. L. 96–603 added par. (10) and redesignated former pars. (10) and (11) as (11) and (12), respectively.

1978—Subsec. (b)(1)(C). Pub. L. 95–618, §403(a)(2)(B), struck out subpar. (C) which related to a computation in accordance with section 613 with respect to any geothermal deposit in the United States or in a possession of the United States which is determined to be a gas well.

Subsec. (b)(2), (3). Pub. L. 95–618, §403(b)(1), (2), added par. (2), redesignated former par. (2) as (3) and, as so redesignated, added subpar. (C).

1977—Subsec. (d)(1). Pub. L. 95–30 inserted ''(reduced in the case of an individual by the zero bracket amount)'' after ''the taxpayer's taxable income'' in introductory provisions.

1976—Subsec. (b)(1)(C). Pub. L. 94–455, §1901(a)(86)(A), struck out ''within the meaning of section 613(b)(1)(A)'' after ''determined to be a gas well''.

Subsec. (c)(2), (4). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(6)(A)(i). Pub. L. 94–455, §1901(a)(86)(B), substituted ''determined without'' for ''determined with''.

Subsec. (c)(7)(D). Pub. L. 94–455, §2115(c)(1), inserted provision relating to the method to be employed by the partners in computing the depletion allowance.

Subsec. (c)(7)(E). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(9)(B). Pub. L. 94–455, §2115(b)(1), (e), added cls. (iii) to (vi) and provision following cl. (vi).

Subsec. (d)(1). Pub. L. 94–455, §2115(b)(2), substituted in subpar. (A) reference to any depletion on production from an oil or gas property which is subject to the provisions of subsection (c) for reference to depletion with respect to production of oil and gas subject to the provisions of subsection (c), and added subpar. (D).

Subsec. (d)(2). Pub. L. 94–455, §2115(a), inserted ''(excluding bulk sales of such items to commercial or industrial users)'' before '', or any product derived'' and inserted provisions following subpar. (B) relating to the application of this paragraph where combined gross receipts from the sale of oil, natural gas, or any product derived therefrom, for the taxable year of all retail outlets taken into account do not exceed $5,000,000 and relating to the exclusion of sales made outside the United States.

Subsec. (d)(3). Pub. L. 94–455, §2115(d), inserted provision following subpar. (C) relating to the determination of a significant ownership interest of a corporation, partnership, trust, or estate.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §706(b), Dec. 17, 2010, 124 Stat. 3312, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §118(b), Dec. 20, 2006, 120 Stat. 2942, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2005.''

EFFECTIVE DATE OF 2005 AMENDMENTS

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

Amendment by section 1322(a)(3)(B) of Pub. L. 109–58 applicable to credits determined under the Internal Revenue Code of 1986 for taxable years ending after Dec. 31, 2005, see section 1322(c)(1) of Pub. L. 109–58, set out as a note under section 45K of this title.

Pub. L. 109–58, title XIII, §1328(b), Aug. 8, 2005, 119 Stat. 1020, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Aug. 8, 2005].''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title III, §314(b), Oct. 4, 2004, 118 Stat. 1181, provided that: ''The amendment made by sub-

section (a) [amending this section] shall apply to taxable years beginning after December 31, 2003.''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title VI, § 607(b), Mar. 9, 2002, 116 Stat. 60, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2001.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, § 504(b), Dec. 17, 1999, 113 Stat. 1921, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1999.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 972(b) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11521(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section] shall apply to transfers after October 11, 1990.''

Amendment by section 11522(b)(1) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11522(c) of Pub. L. 101–508, set out as a note under section 613 of this title.

Section 11523(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1990.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(9) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 412(a)(1) of Pub. L. 99–514 applicable to amounts received or accrued after Aug. 16, 1986, in taxable years ending after such date, see section 412(a)(3) of Pub. L. 99–514, set out as a note under section 613 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 25(c)(2) of Pub. L. 98–369 provided that: ''The amendments made by subsection (b) [amending this section] shall take effect on January 1, 1984.''

Amendment by section 71(b) of Pub. L. 98–369 applicable with respect to property contributed to the partnership after Mar. 31, 1984, in taxable years ending after such date, see section 71(c) of Pub. L. 98–369, set out as a note under section 704 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 202(d)(1) of Pub. L. 97–448 applicable to transfers in taxable years ending after Dec. 31, 1974, but only for purposes of applying this section to periods after Dec. 31, 1979, and amendment by section 202(d)(2) of Pub. L. 97–448 applicable to bulk sales after Sept. 18, 1982, see section 203(b)(3) of Pub. L. 97–448, set out as a note under section 6652 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 3(b) of Pub. L. 96–603, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to transfers in taxable years ending after December 31, 1974, but only for purposes of applying section 613A of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] to periods after December 31, 1979.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–618 effective on Oct. 1, 1978, and applicable to taxable years ending on or after such date, see section 403(c) of Pub. L. 95–618, set out as a note under section 613 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(86) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Section 2115(f) of Pub. L. 94–455 provided that: ''The amendments made by this section [amending this section and sections 703 and 705 of this title] shall take effect on January 1, 1975, and shall apply to taxable years ending after December 31, 1974.''

EFFECTIVE DATE

Section 501(c) of Pub. L. 94–12 provided that: ''The amendments made by this section [enacting this section and amending sections 613 and 703 of this title] shall take effect on January 1, 1975, and shall apply to taxable years ending after December 31, 1974.''

SAVINGS PROVISION

For provisions that nothing in amendment by section 11815(a) of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

TRANSFER OF FUNCTIONS

Federal Power Commission terminated and its functions, personnel, property, funds, etc., transferred to Secretary of Energy (except for certain functions which were transferred to Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of Title 42, The Public Health and Welfare.

COORDINATION WITH OTHER PROVISION

Section 403(d) of Pub. L. 95–618 provided that: ''Any allowance for depletion allowed by reason of the amendments made by subsection (b) [amending this section] shall not be treated as a credit, exemption, deduction, or comparable adjustment applicable to the computation of any Federal tax which is specifically allowable with respect to any high-cost natural gas (or category thereof) for purposes of section 107(d) of the Natural Gas Policy Act of 1978 [section 3317(d) of Title 15, Commerce and Trade].''

§ 614. Definition of property

(a) General rule

For the purpose of computing the depletion allowance in the case of mines, wells, and other natural deposits, the term ''property'' means each separate interest owned by the taxpayer in each mineral deposit in each separate tract or parcel of land.

(b) Special rules as to operating mineral interests in oil and gas wells or geothermal deposits

In the case of oil and gas wells or geothermal deposits—

(1) In general

Except as otherwise provided in this subsection—

(A) all of the taxpayer's operating mineral interests in a separate tract or parcel of land shall be combined and treated as one property, and

(B) the taxpayer may not combine an operating mineral interest in one tract or parcel of land with an operating mineral interest in another tract or parcel of land.

(2) Election to treat operating mineral interests as separate properties

If the taxpayer has more than one operating mineral interest in a single tract or parcel of land, he may elect to treat one or more of such operating mineral interests as separate properties. The taxpayer may not have more than one combination of operating mineral interests in a single tract or parcel of land. If the taxpayer makes the election provided in this paragraph with respect to any interest in a tract or parcel of land, each operating mineral interest which is discovered or acquired by the taxpayer in such tract or parcel of land after the taxable year for which the election is made shall be treated—

(A) if there is no combination of interests in such tract or parcel, as a separate property unless the taxpayer elects to combine it with another interest, or

(B) if there is a combination of interests in such tract or parcel, as part of such combination unless the taxpayer elects to treat it as a separate property.

(3) Certain unitization or pooling arrangements

(A) In general

Under regulations prescribed by the Secretary, if one or more of the taxpayer's operating mineral interests participate, under a voluntary or compulsory unitization or pooling agreement, in a single cooperative or unit plan of operation, then for the period of such participation—

(i) they shall be treated for all purposes of this subtitle as one property, and

(ii) the application of paragraphs (1), (2), and (4) in respect of such interests shall be suspended.

(B) Limitation

Subparagraph (A) shall apply to a voluntary agreement only if all the operating mineral interests covered by such agreement—

(i) are in the same deposit, or are in 2 or more deposits the joint development or production of which is logical from the standpoint of geology, convenience, economy, or conservation, and

(ii) are in tracts or parcels of land which are contiguous or in close proximity.

(C) Special rule in the case of arrangements entered into a taxable years beginning before January 1, 1964

If—

(i) two or more of the taxpayer's operating mineral interests participate under a voluntary or compulsory unitization or pooling agreement entered into in any taxable year beginning before January 1, 1964, in a single cooperative or unit plan of operation,

(ii) the taxpayer, for the last taxable year beginning before January 1, 1964, treated such interests as two or more separate properties, and

(iii) it is determined that such treatment was proper under the law applicable to such taxable year,

such taxpayer may continue to treat such interests in a consistent manner for the period of such participation.

(4) Manner, time, and scope of election

(A) Manner and time

Any election provided in paragraph (2) shall be made for each operating mineral interest, in the manner prescribed by the Secretary by regulations, not later than the time prescribed by law for filing the return (including extensions thereof) for whichever of the following taxable years is the later: The first taxable year beginning after December 31, 1963, or the first taxable year in which any expenditure for development or operation in respect of such operating mineral interest is made by the taxpayer after the acquisition of such interest.

(B) Scope

Any election under paragraph (2) shall be for all purposes of this subtitle and shall be binding on the taxpayer for all subsequent taxable years.

(5) Treatment of certain properties

If, on the day preceding the first day of the first taxable year beginning after December 31, 1963, the taxpayer has any operating mineral interests which he treats under subsection (d) of this section (as in effect before the amendments made by the Revenue Act of 1964), such treatment shall be continued and shall be deemed to have been adopted pursuant to paragraphs (1) and (2) of this subsection (as amended by such Act).

(c) Special rules as to operating mineral interests in mines

(1) Election to aggregate separate interests

Except in the case of oil and gas wells and geothermal deposits, if a taxpayer owns two or more separate operating mineral interests which constitute part or all of an operating unit, he may elect (for all purposes of this subtitle)—

(A) to form an aggregation of, and to treat as one property, all such interests owned by him which comprise any one mine or any two or more mines; and

(B) to treat as a separate property each such interest which is not included within

an aggregation referred to in subparagraph (A).

For purposes of this paragraph, separate operating mineral interests which constitute part or all of an operating unit may be aggregated whether or not they are included in a single tract or parcel of land and whether or not they are included in contiguous tracts or parcels. For purposes of this paragraph, a taxpayer may elect to form more than one aggregation of operating mineral interests within any one operating unit; but no aggregation may include any operating mineral interest which is a part of a mine without including all of the operating mineral interests which are a part of such mine in the first taxable year for which the election to aggregate is effective, and any operating mineral interest which thereafter becomes a part of such mine shall be included in such aggregation.

(2) Election to treat a single interest as more than one property

Except in the case of oil and gas wells and geothermal deposits, if a single tract or parcel of land contains a mineral deposit which is being extracted, or will be extracted by means of two or more mines for which expenditures for development or operation have been made by the taxpayer, then the taxpayer may elect to allocate to such mines, under regulations prescribed by the Secretary, all of the tract or parcel of land and of the mineral deposit contained therein, and to treat as a separate property that portion of the tract or parcel of land and of the mineral deposit so allocated to each mine. A separate property formed pursuant to an election under this paragraph shall be treated as a separate property for all purposes of this subtitle (including this paragraph). A separate property so formed may, under regulations prescribed by the Secretary, be included as a part of an aggregation in accordance with paragraphs (1) and (3). The election provided by this paragraph may not be made with respect to any property which is a part of an aggregation formed by the taxpayer under paragraph (1) except with the consent of the Secretary.

(3) Manner and scope of election

The elections provided by paragraphs (1) and (2) shall be made, in accordance with regulations prescribed by the Secretary, not later than the time prescribed for filing the return (including extensions thereof) for the first taxable year—

(A) in which, in the case of an election under paragraph (1), any expenditure for development or operation in respect of the separate operating mineral interest is made by the taxpayer after the acquisition of such interest, or

(B) in which, in the case of an election under paragraph (2), expenditures for development or operation of more than one mine in respect of a property are made by the taxpayer after the acquisition of the property.

An election made under paragraph (1) or (2) for a taxable year shall be binding upon the taxpayer for such year and all subsequent taxable years, except that the Secretary may consent to a different treatment of any interest with respect to which an election has been made.

(d) Operating mineral interests defined

For purposes of this section, the term ''operating mineral interest'' includes only an interest in respect of which the costs of production of the mineral are required to be taken into account by the taxpayer for purposes of computing the taxable income limitation provided for in section 613, or would be so required if the mine, well, or other natural deposit were in the production stage.

(e) Special rule as to nonoperating mineral interests

(1) Aggregation of separate interests

If a taxpayer owns two or more separate nonoperating mineral interests in a single tract or parcel of land or in two or more adjacent tracts or parcels of land, the Secretary shall, on showing by the taxpayer that a principal purpose is not the avoidance of tax, permit the taxpayer to treat (for all purposes of this subtitle) all such mineral interests in each separate kind of mineral deposit as one property. If such permission is granted for any taxable year, the taxpayer shall treat such interests as one property for all subsequent taxable years unless the Secretary consents to a different treatment.

(2) Nonoperating mineral interests defined

For purposes of this subsection, the term ''nonoperating mineral interests'' includes only interests which are not operating mineral interests.

(Aug. 16, 1954, ch. 736, 68A Stat. 210; Pub. L. 85–866, title I, §37(a)–(d), Sept. 2, 1958, 72 Stat. 1633–1637; Pub. L. 88–272, title II, §226(a), (b), Feb. 26, 1964, 78 Stat. 94, 96; Pub. L. 94–455, title XIX, §§1901(a)(87)(A)(i), (B), (C), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1779, 1834; Pub. L. 95–618, title IV, §403(a)(2)(C), (D), Nov. 9, 1978, 92 Stat. 3204; Pub. L. 101–508, title XI, §11522(b)(2), Nov. 5, 1990, 104 Stat. 1388–486.)

REFERENCES IN TEXT

The Revenue Act of 1964, referred to in subsec. (b)(5), is Pub. L. 88–272, Feb. 26, 1964, 78 Stat. 19. For complete classification of this Act to the Code, see Short Title of 1964 Amendments note set out under section 1 of this title and Tables.

AMENDMENTS

1990—Subsec. (d). Pub. L. 101–508 substituted ''taxable income'' for ''50 percent''.

1978—Subsec. (b). Pub. L. 95–618, §403(a)(2)(C), inserted ''or geothermal deposits'' after ''gas wells'' in heading and introductory provisions.

Subsec. (c). Pub. L. 95–618, §403(a)(2)(D), substituted ''oil and gas wells and geothermal deposits'' for ''oil and gas wells'' wherever appearing.

1976—Subsecs. (b)(3)(A), (4)(A), (e). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(2). Pub. L. 94–455, §§1901(a)(87)(B), 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' wherever appearing and '', but the provisions of paragraph (4) shall not apply with respect to such separate property'' after ''in accordance with paragraphs (1) and (3)''.

Subsec. (c)(3). Pub. L. 94–455, §1901(a)(87)(C), among other changes, struck out references to the first tax-

able year beginning after Dec. 31, 1957, and provisions relating to elections for taxable years beginning before Jan. 1, 1958, relating to election after final regulations, and relating to statute of limitations.

Subsec. (c)(4). Pub. L. 94–455, §1901(a)(87)(A)(i), struck out par. (4) which related to a special rule as to deductions under section 615(a) of this title prior to aggregation.

1964—Subsec. (b). Pub. L. 88–272, §226(a), amended subsec. (b) generally, and among other changes, substituted provisions stating that except as otherwise provided, all of the taxpayer's operating mineral interests in a separate tract or parcel of land will be combined and treated as one property, that the taxpayer may not combine any operating mineral interest in one tract or parcel of land with an operating mineral interest in another tract or parcel of land, that if he has more than one operating mineral interest in a single tract of land he may elect to treat one or more of such interests as separate properties, limited, however, to one combination of interests in a single tract of land, and providing, in the event the election in par. (2) is made with respect to any tract of land, for the treatment of interests discovered or acquired by the taxpayer in such a tract after the taxable year for which the election is made, for provisions which permitted a taxpayer who owned two or more separate operating mineral interests which constituted all or a part of an operating unit, to elect to form one aggregation and treat as one property any two or more of these interests, treating as separate properties any interests which he did not include in the one aggregation, to aggregate separate interests whether or not in a single tract of land, or contiguous tracts of land, and which forbade him to form more than one aggregation within a single operating unit, inserted provisions in par. (3) relating to unitization or pooling arrangements, and in par (5), providing that if the taxpayer has operating mineral interests on the day preceding the first day of the first taxable year beginning after Dec. 31, 1963, which he treats under subsec. (d) of this section as in effect before amendment by Pub. L. 88–272, he shall continue such treatment and it shall be deemed adopted pursuant to pars. (1) and (2) of this subsection, and struck out provisions defining ''operating mineral interests'', and providing for termination of election with respect to mines, excepting oil and gas wells. For definition of ''operating mineral interests'', see subsec. (d) of this section.

Subsec. (c). Pub. L. 88–272, §226(b)(1), (2), struck out par. (5) which defined operating mineral interests, and ''1958'' before ''Special rules'' in heading.

Subsec. (d). Pub. L. 88–272, §226(b)(3), amended subsec. (d) generally, substituting the definition of operating mineral interests, for provisions relating to the 1939 Code treatment respecting operating mineral interest in case of oil and gas wells.

Subsec. (e)(2). Pub. L. 88–272, §226(b)(4), struck out ''within the meaning of subsection (b)(3)'' at end.

1958—Subsec. (b)(4). Pub. L. 85–866, §37(a), added par. (4).

Subsecs. (c) to (e). Pub. L. 85–866, §37(b)–(d), added subsecs. (c) and (d), redesignated former subsec. (c) as (e), and substituted in first sentence of par. (1) ''or in two or more adjacent tracts'' for ''or in two or more contiguous tracts'' and ''shall, on showing by the taxpayer that a principal purpose is not the avoidance of tax, permit the taxpayer to treat (for all purposes of this subtitle) all such mineral interests in each separate kind of mineral deposit as one property'' for ''may, on showing of undue hardship, permit the taxpayer to treat (for all purposes of this subtitle) all such mineral interests as one property''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11522(c) of Pub. L. 101–508, set out as a note under section 613 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–618 effective Oct. 1, 1978, and applicable to taxable years ending on or after such date, see section 403(c) of Pub. L. 95–618, set out as a note under section 613 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1901(a)(87)(A)(ii) of Pub. L. 94–455, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by clause (i) [amending this section] shall apply with respect to elections to form aggregations of operating mineral interests made under section 614(c)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for taxable years beginning after December 31, 1976.''

EFFECTIVE DATE OF 1964 AMENDMENT

Section 226(d) of Pub. L. 88–272 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to taxable years beginning after December 31, 1963.''

EFFECTIVE DATE OF 1958 AMENDMENT

Section 37(e) of Pub. L. 85–866 provided that: ''The amendments made by subsections (a) and (c) [amending this section] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954. The amendments made by subsection (b) [amending this section] shall apply with respect to taxable years beginning after December 31, 1957, except that such amendments shall, at the election of the taxpayer made in conformity with such amendments, apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954. The amendment made by subsection (d) [amending this section] shall apply with respect to taxable years beginning after December 31, 1957, except that with respect to any taxpayer such amendment shall, at the election of the taxpayer, apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954.''

ALLOCATION OF BASIS IN CERTAIN CASES

Section 226(c) of Pub. L. 88–272, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''For purposes of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]—

''(1) FAIR MARKET VALUE RULE.—Except as provided in paragraph (2), if a taxpayer has a section 614(b) aggregation, then the adjusted basis (as of the first day of the first taxable year beginning after December 31, 1963) of each property included in such aggregation shall be determined by multiplying the adjusted basis of the aggregation by a fraction—

''(A) the numerator of which is the fair market value of such property, and

''(B) the denominator of which is the fair market value of such aggregation.

For purposes of this paragraph, the adjusted basis and the fair market value of the aggregation, and the fair market value of each property included therein, shall be determined as of the day preceding the first day of the first taxable year which begins after December 31, 1963.

''(2) ALLOCATION OF ADJUSTMENTS, ETC.—If the taxpayer makes an election under this paragraph with respect to any section 614(b) aggregation, then the adjusted basis (as of the first day of the first taxable year beginning December 31, 1963) of each property included in such aggregation shall be the adjusted basis of such property at the time it was first included in the aggregation by the taxpayer, adjusted for that portion of those adjustments to the basis of the aggregation which are reasonably attributable to such property. If, under the preceding sentence, the total of the adjusted bases of the interests included in the aggregation exceeds the adjusted basis of the aggregation (as of the day preceding the first day of the

first taxable year which begins after December 31, 1963), the adjusted bases of the properties which include such interests shall be adjusted, under regulations prescribed by the Secretary of the Treasury or his delegate, so that the total of the adjusted bases of such interests equals the adjusted basis of the aggregation. An election under this paragraph shall be made at such time and in such manner as the Secretary of the Treasury or his delegate shall by regulations prescribe.

''(3) DEFINITIONS.—For purposes of this subsection—

''(A) SECTION 614(b) AGGREGATION.—The term 'section 614(b) aggregation' means any aggregation to which section 614(b)(1)(A) of the Internal Revenue Code of 1986 (as in effect before the amendments made by subsection (a) of this section) applied for the day preceding the first day of the first taxable year beginning after December 31, 1963.

''(B) PROPERTY.—The term 'property' has the same meaning as is applicable, under section 614 of the Internal Revenue Code of 1986, to the taxpayer for the first taxable year beginning after December 31, 1963.''

[§ 615. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(88), Oct. 4, 1976, 90 Stat. 1779]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 211; July 6, 1960, Pub. L. 86–594, § 1, 74 Stat. 333; Sept. 12, 1966, Pub. L. 89–570, § 2(a), 80 Stat. 763; Dec. 30, 1969, Pub. L. 91–172, title V, § 504(a), 83 Stat. 632, related to pre-1970 exploration expenditures.

EFFECTIVE DATE OF REPEAL

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

§ 616. Development expenditures

(a) In general

Except as provided in subsections (b) and (d), there shall be allowed as a deduction in computing taxable income all expenditures paid or incurred during the taxable year for the development of a mine or other natural deposit (other than an oil or gas well) if paid or incurred after the existence of ores or minerals in commercially marketable quantities has been disclosed. This section shall not apply to expenditures for the acquisition or improvement of property of a character which is subject to the allowance for depreciation provided in section 167, but allowances for depreciation shall be considered, for purposes of this section, as expenditures.

(b) Election of taxpayer

At the election of the taxpayer, made in accordance with regulations prescribed by the Secretary, expenditures described in subsection (a) paid or incurred during the taxable year shall be treated as deferred expenses and shall be deductible on a ratable basis as the units of produced ores or minerals benefited by such expenditures are sold. In the case of such expenditures paid or incurred during the development stage of the mine or deposit, the election shall apply only with respect to the excess of such expenditures during the taxable year over the net receipts during the taxable year from the ores or minerals produced from such mine or deposit. The election under this subsection, if made, must be for the total amount of such expenditures, or the total amount of such excess, as the case may be, with respect to the mine or deposit, and shall be binding for such taxable year.

(c) Adjusted basis of mine or deposit

The amount of expenditures which are treated under subsection (b) as deferred expenses shall be taken into account in computing the adjusted basis of the mine or deposit, except that such amount, and the adjustments to basis provided in section 1016(a)(9), shall be disregarded in determining the adjusted basis of the property for the purpose of computing a deduction for depletion under section 611.

(d) Special rules for foreign development

In the case of any expenditures paid or incurred with respect to the development of a mine or other natural deposit (other than an oil, gas, or geothermal well) located outside of the United States—

(1) subsections (a) and (b) shall not apply, and

(2) such expenditures shall—

(A) at the election of the taxpayer, be included in adjusted basis for purposes of computing the amount of any deduction allowable under section 611 (without regard to section 613), or

(B) if subparagraph (A) does not apply, be allowed as a deduction ratably over the 10-taxable year period beginning with the taxable year in which such expenditures were paid or incurred.

(e) Cross reference

For election of 10-year amortization of expenditures allowable as a deduction under subsection (a), see section 59(e).

(Aug. 16, 1954, ch. 736, 68A Stat. 212; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–248, title II, § 201(d)(9)(C), formerly § 201(c)(9)(C), Sept. 3, 1982, 96 Stat. 420, renumbered § 201(d)(9)(C), Pub. L. 97–448, title III, § 306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 99–514, title IV, § 411(b)(2)(A), (C)(i), Oct. 22, 1986, 100 Stat. 2226; Pub. L. 100–647, title I, § 1007(g)(7), Nov. 10, 1988, 102 Stat. 3435.)

AMENDMENTS

1988—Subsec. (e). Pub. L. 100–647 substituted ''section 59(e)'' for ''section 58(i)''.

1986—Subsec. (a). Pub. L. 99–514, § 411(b)(2)(C)(i), inserted reference to subsec. (d).

Subsecs. (d), (e). Pub. L. 99–514, § 411(b)(2)(A), added subsec. (d) and redesignated former subsec. (d) as (e).

1982—Subsec. (d). Pub. L. 97–248 added subsec. (d).

1976—Subsec. (b). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to costs paid or incurred after Dec. 31, 1986, in taxable years ending after such date, with transition rule, see section 411(c) of Pub. L. 99–514 set out as a note under section 263 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, see section 201(e)(1)

of Pub. L. 97–248, set out as a note under section 5 of this title.

§ 617. Deduction and recapture of certain mining exploration expenditures

(a) Allowance of deduction

(1) General rule

At the election of the taxpayer, expenditures paid or incurred during the taxable year for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral, and paid or incurred before the beginning of the development stage of the mine, shall be allowed as a deduction in computing taxable income. This subsection shall apply only with respect to the amount of such expenditures which, but for this subsection, would not be allowable as a deduction for the taxable year. This subsection shall not apply to expenditures for the acquisition or improvement of property of a character which is subject to the allowance for depreciation provided in section 167, but allowances for depreciation shall be considered, for purposes of this subsection, as expenditures paid or incurred. In no case shall this subsection apply with respect to amounts paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of oil or gas or of any mineral with respect to which a deduction for percentage depletion is not allowable under section 613.

(2) Elections

(A) Method

Any election under this subsection shall be made in such manner as the Secretary may by regulations prescribe.

(B) Time and scope

The election provided by paragraph (1) for the taxable year may be made at any time before the expiration of the period prescribed for making a claim for credit or refund of the tax imposed by this chapter for the taxable year. Such an election for the taxable year shall apply to all expenditures described in paragraph (1) paid or incurred by the taxpayer during the taxable year or during any subsequent taxable year. Such an election may not be revoked unless the Secretary consents to such revocation.

(C) Deficiencies

The statutory period for the assessment of any deficiency for any taxable year, to the extent such deficiency is attributable to an election or revocation of an election under this subsection, shall not expire before the last day of the 2-year period beginning on the day after the date on which such election or revocation of election is made; and such deficiency may be assessed at any time before the expiration of such 2-year period, notwithstanding any law or rule of law which would otherwise prevent such assessment.

(b) Recapture on reaching producing stage

(1) Recapture

If, in any taxable year, any mine with respect to which expenditures were deducted pursuant to subsection (a) reaches the producing stage, then—

(A) If the taxpayer so elects with respect to all such mines reaching the producing stage during the taxable year, he shall include in gross income for the taxable year an amount equal to the adjusted exploration expenditures with respect to such mines, and the amount so included in income shall be treated for purposes of this subtitle as expenditures which (i) are paid or incurred on the respective dates on which the mines reach the producing stage, and (ii) are properly chargeable to capital account.

(B) If subparagraph (A) does not apply with respect to any such mine, then the deduction for depletion under section 611 with respect to the property shall be disallowed until the amount of depletion which would be allowable but for this subparagraph equals the amount of the adjusted exploration expenditures with respect to such mine.

(2) Elections

(A) Method

Any election under this subsection shall be made in such manner as the Secretary may by regulations prescribe.

(B) Time and scope

The election provided by paragraph (1) for any taxable year may be made or changed not later than the time prescribed by law for filing the return (including extensions thereof) for such taxable year.

(c) Recapture in case of bonus or royalty

If an election has been made under subsection (a) with respect to expenditures relating to a mining property and the taxpayer receives or accrues a bonus or a royalty with respect to such property, then the deduction for depletion under section 611 with respect to the bonus or royalty shall be disallowed until the amount of depletion which would be allowable but for this subsection equals the amount of the adjusted exploration expenditures with respect to the property to which the bonus or royalty relates.

(d) Gain from dispositions of certain mining property

(1) General rule

Except as otherwise provided in this subsection, if mining property is disposed of the lower of—

(A) the adjusted exploration expenditures with respect to such property, or

(B) the excess of—

(i) the amount realized (in the case of a sale, exchange, or involuntary conversion), or the fair market value (in the case of any other disposition), over

(ii) the adjusted basis of such property,

shall be treated as ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(2) Disposition of portion of property

For purposes of paragraph (1)—

(A) In the case of the disposition of a portion of a mining property (other than an undivided interest), the entire amount of the

adjusted exploration expenditures with respect to such property shall be treated as attributable to such portion to the extent of the amount of the gain to which paragraph (1) applies.

(B) In the case of the disposition of an undivided interest in a mining property (or a portion thereof), a proportionate part of the adjusted exploration expenditures with respect to such property shall be treated as attributable to such undivided interest to the extent of the amount of the gain to which paragraph (1) applies.

This paragraph shall not apply to any expenditure to the extent the taxpayer establishes to the satisfaction of the Secretary that such expenditure relates neither to the portion (or interest therein) disposed of nor to any mine, in the property held by the taxpayer before the disposition, which has reached the producing stage.

(3) Exceptions and limitations

Paragraphs (1), (2), and (3) of section 1245(b) (relating to exceptions and limitations with respect to gain from disposition of certain depreciable property) shall apply in respect of this subsection in the same manner and with the same effect as if references in section 1245(b) to section 1245 or any provision thereof were references to this subsection or the corresponding provisions of this subsection and as if references to section 1245 property were references to mining property.

(4) Application of subsection

This subsection shall apply notwithstanding any other provision of this subtitle.

(5) Coordination with section 1254

This subsection shall not apply to any disposition to which section 1254 applies.

(e) Basis of property

(1) Basis

The basis of any property shall not be reduced by the amount of any depletion which would be allowable but for the application of this section.

(2) Adjustments

The Secretary shall prescribe such regulations as he may deem necessary to provide for adjustments to the basis of property to reflect gain recognized under subsection (d)(1).

(f) Definitions

For purposes of this section

(1) Adjusted exploration expenditures

The term ''adjusted exploration expenditures'' means, with respect to any property or mine—

(A) the amount of the expenditures allowed for the taxable year and all preceding taxable years as deductions under subsection (a) to the taxpayer or any other person which are properly chargeable to such property or mine and which (but for the election under subsection (a)) would be reflected in the adjusted basis of such property or mine, reduced by

(B) for the taxable year and for each preceding taxable year, the amount (if any) by which (i) the amount which would have been allowable for percentage depletion under section 613 but for the deduction of such expenditures, exceeds (ii) the amount allowable for depletion under section 611,

properly adjusted for any amounts included in gross income under subsection (b) or (c) and for any amounts of gain to which subsection (d) applied.

(2) Mining property

The term ''mining property'' means any property (within the meaning of section 614 after the application of subsections (c) and (e) thereof) with respect to which any expenditures allowed as a deduction under subsection (a)(1) are properly chargeable.

(3) Disposal of coal or domestic iron ore with a retained economic interest

A transaction which constitutes a disposal of coal or iron ore under section 631(c) shall be treated as a disposition. In such a case, the excess referred to in subsection (d)(1)(B) shall be treated as equal to the gain (if any) referred to in section 631(c).

(g) Special rules relating to partnership property

(1) Property distributed to partner

In the case of any property or mine received by the taxpayer in a distribution with respect to part or all of his interest in a partnership, the adjusted exploration expenditures with respect to such property or mine include the adjusted exploration expenditures (not otherwise included under subsection (f)(1)) with respect to such property or mine immediately prior to such distribution, but the adjusted exploration expenditures with respect to any such property or mine shall be reduced by the amount of gain to which section 751(b) applied realized by the partnership (as constituted after the distribution) on the distribution of such property or mine.

(2) Property retained by partnership

In the case of any property or mine held by a partnership after a distribution to a partner to which section 751(b) applied, the adjusted exploration expenditures with respect to such property or mine shall, under regulations prescribed by the Secretary, be reduced by the amount of gain to which section 751(b) applied realized by such partner with respect to such distribution on account of such property or mine.

(h) Special rules for foreign exploration

In the case of any expenditures paid or incurred before the development stage for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral (other than an oil, gas, or geothermal well) located outside the United States—

(1) subsection (a) shall not apply, and

(2) such expenditures shall—

(A) at the election of the taxpayer, be included in adjusted basis for purposes of computing the amount of any deduction allowable under section 611 (without regard to section 613), or

(B) if subparagraph (A) does not apply, be allowed as a deduction ratably over the 10-

taxable year period beginning with the taxable year in which such expenditures were paid or incurred.

(i) Cross reference

For election of 10-year amortization of expenditures allowable as a deduction under this section, see section 59(e).

(Added Pub. L. 89–570, §1(a), Sept. 12, 1966, 80 Stat. 759; amended Pub. L. 91–172, title V, §504(b), Dec. 30, 1969, 83 Stat. 632; Pub. L. 94–455, title XIX, §§1901(a)(89), (b)(3)(K), (21)(C)–(E), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1779, 1793, 1797, 1834; Pub. L. 97–248, title II, §201(d)(9)(D), formerly §201(c)(9)(D), §224(c)(8), Sept. 3, 1982, 96 Stat. 420, 489, renumbered §201(d)(9)(D), Pub. L. 97–448, title III, §306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 99–514, title IV, §§411(b)(2)(B), 413(b), Oct. 22, 1986, 100 Stat. 2226, 2228; Pub. L. 100–647, title I, §1007(g)(7), Nov. 10, 1988, 102 Stat. 3435; Pub. L. 101–508, title XI, §11801(a)(27), (c)(13), Nov. 5, 1990, 104 Stat. 1388–521, 1388–527.)

AMENDMENTS

1990—Subsecs. (i), (j). Pub. L. 101–508 redesignated subsec. (j) as (i) and struck out former subsec. (i) which related to deduction of certain pre-1970 exploration expenditures.

1988—Subsec. (j). Pub. L. 100–647 substituted ''section 59(e)'' for ''section 58(i)''.

1986—Subsec. (d)(5). Pub. L. 99–514, §413(b), added par. (5).

Subsec. (h). Pub. L. 99–514, §411(b)(2)(B), amended subsec. (h) generally, substituting provisions relating to special rules for foreign exploration for provisions relating to limitations.

1982—Subsec. (h)(3)(B). Pub. L. 97–248, §224(c)(8), inserted ''338,'' after ''334(b),''.

Subsec. (j). Pub. L. 97–248, §201(d)(9)(D), formerly §201(c)(9)(D), added subsec. (j).

1976—Subsec. (a)(2)(A). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (a)(2)(B). Pub. L. 94–455, §§1901(a)(89), 1906(b)(13)(A), substituted ''may not be revoked unless'' for ''may not be revoked after the last day of the third month following the month in which the final regulations issued under the authority of this subsection are published in the Federal Register, unless'', and struck out ''or his delegate'' after ''Secretary''.

Subsec. (b)(2)(A). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d)(1). Pub. L. 94–455, §1901(b)(3)(K), substituted ''ordinary income'' for ''gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231''.

Subsecs. (d)(2), (e)(2), (g)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (h)(1). Pub. L. 94–455, §1901(b)(21)(C), substituted ''and subsection (a) of section 615 (as in effect before the enactment of the Tax Reform Act of 1976)'' for ''and section 615(a) and the amounts which are or have been treated as deferred expenses under section 615(b)''.

Subsec. (h)(3). Pub. L. 94–455, §1901(b)(21)(D), struck out ''and all amounts treated as deferred expenses which were paid or incurred'' after ''amounts deducted'' in introductory provisions, redesignated subpar. (C) as (B), and in subpar. (B) as so redesignated, substituted ''374(b)(1)'' for ''373(b)(1)''. Former subpar. (B), which related to the application of par. (2)(B) where the taxpayer would be entitled under section 381(c)(10) to deduct expenses deferred under section 615(b) had the distributor or transferor corporation elected to defer such expenses, was struck out.

Subsec. (i). Pub. L. 94–455, §1901(b)(21)(E), added subsec. (i).

1969—Pub. L. 91–172, §504(b)(1), substituted ''Deduction and recapture of certain mining exploration expenditures'' for ''Additional exploration expenditures in the case of domestic mining'' in heading.

Subsec. (a)(1). Pub. L. 91–172, §504(b)(2), struck out reference to United States, the Outer Continental Shelf and the Outer Continental Shelf Lands Act from general rule dealing with allowance of deductions for expenditures in ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral.

Subsec. (h). Pub. L. 91–172, §504(b)(3), substituted provisions imposing limitations on the operation of this section for provision making cross reference to subsecs. (f) and (g) of section 615.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 411(b)(2)(B) of Pub. L. 99–514 applicable to costs paid or incurred after Dec. 31, 1986, in taxable years ending after such date, with transition rule, see section 411(c) of Pub. L. 99–514 set out as a note under section 263 of this title.

Amendment by section 413(b) of Pub. L. 99–514 applicable to any disposition of property placed in service by taxpayer after Dec. 31, 1986, but inapplicable if such property was acquired pursuant to written contract entered into before Sept. 26, 1985, and binding at all times thereafter, see section 413(c) of Pub. L. 99–514, set out as a note under section 1254 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 201(d)(9)(D) of Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, see section 201(e)(1) of Pub. L. 97–248, set out as a note under section 5 of this title.

Amendment by section 224(c)(8) of Pub. L. 97–248 applicable to any target corporation with respect to which the acquisition date occurs after Aug. 31, 1982, with special rules for certain acquisitions before Sept. 1, 1982, and certain acquisitions of financial institutions in which there was a binding contract on July 22, 1982, to acquire control, see section 224(d) of Pub. L. 97–248, set out as an Effective Date note under section 338 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(89), (b)(3)(K), (21)(C)–(E) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to exploration expenditures paid or incurred after Dec. 31, 1969, and for purposes of this section, elections under section 615(e) of this title, effective with respect to exploration expenditures paid or incurred before Jan. 1, 1970, to be treated as an election under subsec. (a) of this section with respect to exploration expenditures paid or incurred after Dec. 31, 1969, see section 504(d) of Pub. L. 91–172, set out as a note under section 243 of this title.

EFFECTIVE DATE

Section 3 of Pub. L. 89–570 provided that: ''The amendments made by this Act [enacting this section and amending sections 170, 301, 312, 341, 453, 615, 703, and 751 of this title] shall apply to taxable years ending after the date of the enactment of this Act [Sept. 12, 1966] but only in respect of expenditures paid or incurred after such date.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain

transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[PART II—REPEALED]

[§ 621. Repealed. Pub. L. 101–508, title XI, § 11801(a)(28), Nov. 5, 1990, 104 Stat. 1388–521]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 212, related to payments to encourage exploration, development, and mining for defense purposes.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PART III—SALES AND EXCHANGES

Sec.
631. Gain or loss in the case of timber, coal, or domestic iron ore.
[632. Repealed.]

AMENDMENTS

1976—Pub. L. 94–455, title XIX, § 1901(b)(22)(A), Oct. 4, 1976, 90 Stat. 1798, struck out item 632 ''Sale of oil or gas properties''.

1964—Pub. L. 88–272, title II, § 227(b)(2), Feb. 26, 1964, 78 Stat. 98, inserted reference to domestic iron ore in item 631.

§ 631. Gain or loss in the case of timber, coal, or domestic iron ore

(a) Election to consider cutting as sale or exchange

If the taxpayer so elects on his return for a taxable year, the cutting of timber (for sale or for use in the taxpayer's trade or business) during such year by the taxpayer who owns, or has a contract right to cut, such timber (providing he has owned such timber or has held such contract right for a period of more than 1 year) shall be considered as a sale or exchange of such timber cut during such year. If such election has been made, gain or loss to the taxpayer shall be recognized in an amount equal to the difference between the fair market value of such timber, and the adjusted basis for depletion of such timber in the hands of the taxpayer. Such fair market value shall be the fair market value as of the first day of the taxable year in which such timber is cut, and shall thereafter be considered as the cost of such cut timber to the taxpayer for all purposes for which such cost is a necessary factor. If a taxpayer makes an election under this subsection, such election shall apply with respect to all timber which is owned by the taxpayer or which the taxpayer has a contract right to cut and shall be binding on the taxpayer for the taxable year for which the election is made and for all subsequent years, unless the Secretary, on showing of undue hardship, permits the taxpayer to revoke his election; such revocation, however, shall preclude any further elections under this subsection except with the consent of the Secretary. For purposes of this subsection and subsection (b), the term ''timber'' includes evergreen trees which are more than 6 years old at the time severed from the roots and are sold for ornamental purposes.

(b) Disposal of timber

In the case of the disposal of timber held for more than 1 year before such disposal, by the owner thereof under any form or type of contract by virtue of which such owner either retains an economic interest in such timber or makes an outright sale of such timber, the difference between the amount realized from the disposal of such timber and the adjusted depletion basis thereof, shall be considered as though it were a gain or loss, as the case may be, on the sale of such timber. In determining the gross income, the adjusted gross income, or the taxable income of the lessee, the deductions allowable with respect to rents and royalties shall be determined without regard to the provisions of this subsection. In the case of disposal of timber with a retained economic interest, the date of disposal of such timber shall be deemed to be the date such timber is cut, but if payment is made to the owner under the contract before such timber is cut the owner may elect to treat the date of such payment as the date of disposal of such timber. For purposes of this subsection, the term ''owner'' means any person who owns an interest in such timber, including a sublessor and a holder of a contract to cut timber.

(c) Disposal of coal or domestic iron ore with a retained economic interest

In the case of the disposal of coal (including lignite), or iron ore mined in the United States, held for more than 1 year before such disposal, by the owner thereof under any form of contract by virtue of which such owner retains an economic interest in such coal or iron ore, the difference between the amount realized from the disposal of such coal or iron ore and the adjusted depletion basis thereof plus the deductions disallowed for the taxable year under section 272 shall be considered as though it were a gain or loss, as the case may be, on the sale of such coal or iron ore. If for the taxable year of such gain or loss the maximum rate of tax imposed by this chapter on any net capital gain is less than such maximum rate for ordinary income, such owner shall not be entitled to the allowance for percentage depletion provided in section 613 with respect to such coal or iron ore. This subsection shall not apply to income realized by any owner as a co-adventurer, partner, or principal in the mining of such coal or iron ore, and the word ''owner'' means any person who owns an economic interest in coal or iron ore in place, including a sublessor. The date of disposal of such coal or iron ore shall be deemed to be the date such coal or iron ore is mined. In determining the gross income, the adjusted gross income, or the taxable income of the lessee, the deductions allowable with respect to rents and royalties shall be determined without regard to the provisions of this subsection. This subsection shall have no application, for purposes of applying subchapter G, relating to corporations used to avoid income tax on share-

holders (including the determinations of the amount of the deductions under section 535(b)(6) or section 545(b)(5)). This subsection shall not apply to any disposal of iron ore or coal—

(1) to a person whose relationship to the person disposing of such iron ore or coal would result in the disallowance of losses under section 267 or 707(b), or

(2) to a person owned or controlled directly or indirectly by the same interests which own or control the person disposing of such iron ore or coal.

(Aug. 16, 1954, ch. 736, 68A Stat. 213; Pub. L. 88–272, title II, § 227(a)(1), (b)(1), Feb. 26, 1964, 78 Stat. 97, 98; Pub. L. 94–455, title XIV, § 1402(b)(1)(I), (2), (3), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1732, 1733, 1834; Pub. L. 98–369, div. A, title I, § 178(a), title X, § 1001(c), (e), July 18, 1984, 98 Stat. 712, 1012; Pub. L. 99–514, title III, § 311(b)(3), Oct. 22, 1986, 100 Stat. 2219; Pub. L. 108–357, title III, § 315(a), (b), Oct. 22, 2004, 118 Stat. 1469.)

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–357, in heading, struck out ''with a retained economic interest'' after ''timber'', in first sentence, substituted ''either retains an economic interest in such timber or makes an outright sale of such timber'' for ''retains an economic interest in such timber'', and, in third sentence, substituted ''In the case of disposal of timber with a retained economic interest, the date of disposal'' for ''The date of disposal''.

1986—Subsec. (c). Pub. L. 99–514 substituted ''If for the taxable year of such gain or loss the maximum rate of tax imposed by this chapter on any net capital gain is less than such maximum rate for ordinary income, such owner'' for ''Such owner''.

1984—Subsec. (a). Pub. L. 98–369, § 1001(c)(1), (e), substituted ''on the first day of such year and for a period of more than 6 months before such cutting'' for ''for a period of more than 1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsecs. (b), (c). Pub. L. 98–369, § 1001(c)(2), (e), substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Pub. L. 98–369, § 178(a), inserted ''or coal'' after ''iron ore'' wherever appearing in last sentence of subsec. (c).

1976—Subsec. (a). Pub. L. 94–455, § 1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, §§ 1402(b)(1)(I), (3), 1906(b)(13)(A), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977 and struck out ''before the beginning of such year'' before '') shall be considered as a sale'' effective for taxable years beginning after Dec. 31, 1976, and ''or his delegate'' after ''Secretary'' wherever appearing.

Subsec. (b). Pub. L. 94–455, § 1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, § 1402(b)(1)(I), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

Subsec. (c). Pub. L. 94–455, § 1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, § 1402(b)(1)(I), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

1964—Pub. L. 88–272, § 227(b)(1), inserted reference to domestic iron ore in heading.

Subsec. (c). Pub. L. 88–272, § 227(a)(1), inserted ''or domestic iron ore'' in heading, ''or iron ore mined in the United States'' after ''coal (including lignite)'', ''or iron ore'' after ''coal'' wherever appearing, and provided that the subsection shall not apply to any disposal of iron ore to a person whose relationship to the person disposing of such ore would result in the disallowance of losses under section 267 of 717(b), or to a person owned or controlled by the same interests which own or control the person disposing of such iron ore.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title III, § 315(c), Oct. 22, 2004, 118 Stat. 1469, provided that: ''The amendments made by this section [amending this section] shall apply to sales after December 31, 2004.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 311(c) of Pub. L. 99–514, set out as a note under section 1201 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 178(b) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to dispositions after September 30, 1985.

''(2) SPECIAL RULE FOR FIXED CONTRACTS.—

''(A) IN GENERAL.—The amendment made by subsection (a) shall not apply to any disposition of an interest in coal by a person to a related person if such coal is subsequently sold before January 1, 1990, by either such person—

''(i) to a person who is not a related person with respect to either such person, and

''(ii) pursuant to a qualified fixed contract.

''(B) ALLOCATION WHERE MORE THAN 1 CONTRACT.—If, for any taxable year, there is a disposition described in subparagraph (A) which is not specifically allocable to a qualified fixed contract or to a contract which is not a qualified fixed contract, such disposition shall be treated as first allocable to the qualified fixed contract.

''(C) QUALIFIED FIXED CONTRACT DEFINED.—The term 'qualified fixed contract' means any contract for the sale of coal which—

''(i) was entered into before June 12, 1984,

''(ii) is binding at all times thereafter, and

''(iii) cannot be adjusted to reflect to any extent the increase in liabilities of the person disposing of the coal for tax under chapter 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] by reason of the amendment made by subsection (a).

''(D) RELATED PERSON.—For purposes of this paragraph, the term 'related person' means a person who bears a relationship to another person described in the last sentence of section 631(c). ''

Amendment by section 1001(c) of Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(b)(1) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Section 1402(b)(2) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Section 1402(b)(3) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1976.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable with respect to amounts received or accrued in taxable years beginning after Dec. 31, 1963, attributable to iron ore mined in such years, see section 227(c) of Pub. L. 88–272, set out as a note under section 272 of this title.

REVOCATION OF ELECTIONS UNDER SECTION 631(a)

Pub. L. 108–357, title I, § 102(c), Oct. 22, 2004, 118 Stat. 1428, provided that: ''Any election under section 631(a)

of the Internal Revenue Code of 1986 made for a taxable year ending on or before the date of the enactment of this Act [Oct. 22, 2004] may be revoked by the taxpayer for any taxable year ending after such date. For purposes of determining whether such taxpayer may make a further election under such section, such election (and any revocation under this section) shall not be taken into account.''

Section 311(d)(2) of Pub. L. 99–514 provided that: ''Any election under section 631(a) of the Internal Revenue Code of 1954 made (whether by a corporation or a person other than a corporation) for a taxable year beginning before January 1, 1987, may be revoked by the taxpayer for any taxable year ending after December 31, 1986. For purposes of determining whether the taxpayer may make a further election under such section, such election (and any revocation under this paragraph) shall not be taken into account.''

[§ 632. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(90), Oct. 4, 1976, 90 Stat. 1779]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 214; Dec. 30, 1969, Pub. L. 91–172, title VIII, § 803(d)(4), 83 Stat. 684, related to tax in case of sale of oil and gas properties.

EFFECTIVE DATE OF REPEAL

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

PART IV—MINERAL PRODUCTION PAYMENTS

Sec.
636. Income tax treatment of mineral production payments.

AMENDMENTS

1969—Pub. L. 91–172, title V, § 503(a), Dec. 30, 1969, 83 Stat. 630, added part heading and section analysis.

§ 636. Income tax treatment of mineral production payments

(a) Carved-out production payments

A production payment carved out of mineral property shall be treated, for purposes of this subtitle, as if it were a mortgage loan on the property, and shall not qualify as an economic interest in the mineral property. In the case of a production payment carved out for exploration or development of a mineral property, the preceding sentence shall apply only if and to the extent gross income from the property (for purposes of section 613) would be realized, in the absence of the application of such sentence, by the person creating the production payment.

(b) Retained production payment on sale of mineral property

A production payment retained on the sale of a mineral property shall be treated, for purposes of this subtitle, as if it were a purchase money mortgage loan and shall not qualify as an economic interest in the mineral property.

(c) Retained production payment on lease of mineral property

A production payment retained in a mineral property by the lessor in a leasing transaction shall be treated, for purposes of this subtitle, insofar as the lessee (or his successors in interest) is concerned, as if it were a bonus granted by the lessee to the lessor payable in installments. The treatment of the production payment in the hands of the lessor shall be determined without regard to the provisions of this subsection.

(d) Definition

As used in this section, the term ''mineral property'' has the meaning assigned to the term ''property'' in section 614(a).

(e) Regulations

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

(Added Pub. L. 91–172, title V, § 503(a), Dec. 30, 1969, 83 Stat. 630; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (e). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE

Section 503(c) of Pub. L. 91–172, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) GENERAL RULE.—The amendments made by this section [enacting this section] shall apply with respect to mineral production payments created on or after August 7, 1969, other than mineral production payments created before January 1, 1971, pursuant to a binding contract entered into before August 7, 1969.

''(2) ELECTION.—At the election of the taxpayer (made at such time and in such manner as the Secretary of the Treasury or his delegate prescribes by regulations), the amendments made by this section shall apply with respect to all mineral production payments which the taxpayer carved out of mineral properties after the beginning of his last taxable year ending before August 7, 1969. No interest shall be allowed on any refund or credit of any overpayment resulting from such election for any taxable year ending before August 7, 1969.

''(3) SPECIAL RULE.—With respect to a taxpayer who does not elect the treatment provided in paragraph (2) and who carves out one or more mineral production payments on or after August 7, 1969, during the taxable year which includes such date, the amendments made by this section shall apply to such production payments only to the extent the aggregate amount of such production payments exceeds the lesser of—

''(A) the excess of

''(i) the aggregate amount of production payments carved out and sold by the taxpayer during the 12-month period immediately preceding his taxable year which includes August 7, 1969, over

''(ii) the aggregate amount of production payments carved out before August 7, 1969, by the taxpayer during his taxable year which includes such date, or

''(B) the amount necessary to increase the amount of the taxpayer's gross income, within the meaning of chapter 1 of subtitle A of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [this title], for the taxable year which includes August 7, 1969, to an amount equal to the amount of deductions (other than any deduction under section 172 of such Code) allowable for such year under such chapter.

The preceding sentence shall not apply for purposes of determining the amount of any deduction allowable under section 611 or the amount of foreign tax credit allowable under section 904 of such Code.''

PART V—CONTINENTAL SHELF AREAS

Sec.
638. Continental shelf areas.

AMENDMENTS

1969—Pub. L. 91–172, title V, § 505(a), Dec. 30, 1969, 83 Stat. 634, added part heading and section analysis.

§ 638. Continental shelf areas

For purposes of applying the provisions of this chapter (including sections 861(a)(3) and 862(a)(3) in the case of the performance of personal services) with respect to mines, oil and gas wells, and other natural deposits—

(1) the term ''United States'' when used in a geographical sense includes the seabed and subsoil of those submarine areas which are adjacent to the territorial waters of the United States and over which the United States has exclusive rights, in accordance with international law, with respect to the exploration and exploitation of natural resources; and

(2) the terms ''foreign country'' and ''possession of the United States'' when used in a geographical sense include the seabed and subsoil of those submarine areas which are adjacent to the territorial waters of the foreign country or such possession and over which the foreign country (or the United States in case of such possession) has exclusive rights, in accordance with international law, with respect to the exploration and exploitation of natural resources, but this paragraph shall apply in the case of a foreign country only if it exercises, directly or indirectly, taxing jurisdiction with respect to such exploration or exploitation.

No foreign country shall, by reason of the application of this section, be treated as a country contiguous to the United States.

(Added Pub. L. 91–172, title V, § 505(a), Dec. 30, 1969, 83 Stat. 634.)

Subchapter J—Estates, Trusts, Beneficiaries, and Decedents

Part
I. Estates, trusts, and beneficiaries.
II. Income in respect of decedents.

PART I—ESTATES, TRUSTS, AND BENEFICIARIES

Subpart
A. General rules for taxation of estates and trusts.
B. Trusts which distribute current income only.
C. Estates and trusts which may accumulate income or which distribute corpus.
D. Treatment of excess distributions by trusts.
E. Grantors and others treated as substantial owners.
F. Miscellaneous.

SUBPART A—GENERAL RULES FOR TAXATION OF ESTATES AND TRUSTS

Sec.
641. Imposition of tax.
642. Special rules for credits and deductions.
643. Definitions applicable to subparts A, B, C, and D.
644. Taxable year of trusts.
645. Certain revocable trusts treated as part of estate.
646. Tax treatment of electing Alaska Native Settlement Trusts.

AMENDMENTS

2001—Pub. L. 107–16, title VI, § 671(c)(1), June 7, 2001, 115 Stat. 147, added item 646.

1998—Pub. L. 105–206, title VI, § 6013(a)(2), July 22, 1998, 112 Stat. 819, renumbered item 646 as 645.

1997—Pub. L. 105–34, title V, § 507(b)(3), title XIII, § 1305(c), Aug. 5, 1997, 111 Stat. 857, 1041, added items 644 and 646 and struck out former items 644 ''Special rule for gain on property transferred to trust at less than fair market value'' and 645 ''Taxable year of trusts''.

1986—Pub. L. 99–514, title XIV, § 1403(b), Oct. 22, 1986, 100 Stat. 2713, added item 645.

1976—Pub. L. 94–455, title VII, § 701(g)(2), Oct. 4, 1976, 90 Stat. 1580, added item 644.

§ 641. Imposition of tax

(a) Application of tax

The tax imposed by section 1(e) shall apply to the taxable income of estates or of any kind of property held in trust, including—

(1) income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust;

(2) income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of an infant which is to be held or distributed as the court may direct;

(3) income received by estates of deceased persons during the period of administration or settlement of the estate; and

(4) income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated.

(b) Computation and payment

The taxable income of an estate or trust shall be computed in the same manner as in the case of an individual, except as otherwise provided in this part. The tax shall be computed on such taxable income and shall be paid by the fiduciary. For purposes of this subsection, a foreign trust or foreign estate shall be treated as a nonresident alien individual who is not present in the United States at any time.

(c) Special rules for taxation of electing small business trusts

(1) In general

For purposes of this chapter—

(A) the portion of any electing small business trust which consists of stock in 1 or more S corporations shall be treated as a separate trust, and

(B) the amount of the tax imposed by this chapter on such separate trust shall be determined with the modifications of paragraph (2).

(2) Modifications

For purposes of paragraph (1), the modifications of this paragraph are the following:

(A) Except as provided in section 1(h), the amount of the tax imposed by section 1(e) shall be determined by using the highest rate of tax set forth in section 1(e).

(B) The exemption amount under section 55(d) shall be zero.

(C) The only items of income, loss, deduction, or credit to be taken into account are the following:

(i) The items required to be taken into account under section 1366.

(ii) Any gain or loss from the disposition of stock in an S corporation.

(iii) To the extent provided in regulations, State or local income taxes or administrative expenses to the extent allocable to items described in clauses (i) and (ii).

(iv) Any interest expense paid or accrued on indebtedness incurred to acquire stock in an S corporation.

No deduction or credit shall be allowed for any amount not described in this paragraph, and no item described in this paragraph shall be apportioned to any beneficiary.

(D) No amount shall be allowed under paragraph (1) or (2) of section 1211(b).

(3) Treatment of remainder of trust and distributions

For purposes of determining—

(A) the amount of the tax imposed by this chapter on the portion of any electing small business trust not treated as a separate trust under paragraph (1), and

(B) the distributable net income of the entire trust,

the items referred to in paragraph (2)(C) shall be excluded. Except as provided in the preceding sentence, this subsection shall not affect the taxation of any distribution from the trust.

(4) Treatment of unused deductions where termination of separate trust

If a portion of an electing small business trust ceases to be treated as a separate trust under paragraph (1), any carryover or excess deduction of the separate trust which is referred to in section 642(h) shall be taken into account by the entire trust.

(5) Electing small business trust

For purposes of this subsection, the term ''electing small business trust'' has the meaning given such term by section 1361(e)(1).

(Aug. 16, 1954, ch. 736, 68A Stat. 215; Pub. L. 91–172, title VIII, § 803(d)(3), Dec. 30, 1969, 83 Stat. 684; Pub. L. 94–455, title VII, § 701(e)(2), Oct. 4, 1976, 90 Stat. 1579; Pub. L. 95–30, title I, § 101(d)(8), May 23, 1977, 91 Stat. 134; Pub. L. 104–188, title I, § 1302(d), Aug. 20, 1996, 110 Stat. 1778; Pub. L. 105–34, title XVI, § 1601(i)(3)(B), Aug. 5, 1997, 111 Stat. 1093; Pub. L. 105–206, title VI, § 6007(f)(2), July 22, 1998, 112 Stat. 810; Pub. L. 110–28, title VIII, § 8236(a), May 25, 2007, 121 Stat. 199.)

AMENDMENTS

2007—Subsec. (c)(2)(C)(iv). Pub. L. 110–28 added cl. (iv).

1998—Subsecs. (c), (d). Pub. L. 105–206 redesignated subsec. (d) as (c) and struck out heading and text of former subsec. (c). Text read as follows:

''(1) GENERAL RULE.—For purposes of this part, the taxable income of a trust does not include the amount of any includible gain as defined in section 644(b) reduced by any deductions properly allocable thereto.

''(2) CROSS REFERENCE.—

''For the taxation of any includible gain, see section 644.''

1997—Subsec. (b). Pub. L. 105–34 inserted at end ''For purposes of this subsection, a foreign trust or foreign estate shall be treated as a nonresident alien individual who is not present in the United States at any time.''

1996—Subsec. (d). Pub. L. 104–188 added subsec. (d).

1977—Subsec. (a). Pub. L. 95–30 substituted ''section 1(e)'' for ''section 1(d)'' in introductory provisions.

1976—Subsec. (c). Pub. L. 94–455 added subsec. (c).

1969—Subsec. (a). Pub. L. 91–172 substituted ''The tax imposed by section 1(d)'' for ''The taxes imposed by this chapter on individuals''.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–28, title VIII, § 8236(b), May 25, 2007, 121 Stat. 199, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 36C of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1317(a) of title I of Pub. L. 104–188 provided that: ''Except as otherwise provided in this subtitle [subtitle C (§§ 1301–1317) of title I of Pub. L. 104–188], the amendments made by this subtitle [amending this section and sections 170, 404, 512, 1042, 1237, 1361, 1362, 1366 to 1368, 1371, 1375, 1377, 1504, 6037, and 6233 of this title and repealing sections 6241 to 6245 of this title] shall apply to taxable years beginning after December 31, 1996.''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable to transfers in trust made after May 21, 1976, see section 701(h) of Pub. L. 94–455, set out as a note under section 667 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1970, see section 803(f) of Pub. L. 91–172, set out as a note under section 1 of this title.

§ 642. Special rules for credits and deductions

(a) Foreign tax credit allowed

An estate or trust shall be allowed the credit against tax for taxes imposed by foreign countries and possessions of the United States, to the extent allowed by section 901, only in respect of so much of the taxes described in such section as is not properly allocable under such section to the beneficiaries.

(b) Deduction for personal exemption

(1) Estates

An estate shall be allowed a deduction of $600.

(2) Trusts

(A) In general

Except as otherwise provided in this paragraph, a trust shall be allowed a deduction of $100.

(B) Trusts distributing income currently

A trust which, under its governing instrument, is required to distribute all of its income currently shall be allowed a deduction of $300.

(C) Disability trusts

(i) In general

A qualified disability trust shall be allowed a deduction equal to the exemption amount under section 151(d), determined—

(I) by treating such trust as an individual described in section 151(d)(3)(C)(iii), and

(II) by applying section 67(e) (without the reference to section 642(b)) for purposes of determining the adjusted gross income of the trust.

(ii) Qualified disability trust

For purposes of clause (i), the term ''qualified disability trust'' means any trust if—

(I) such trust is a disability trust described in subsection (c)(2)(B)(iv) of section 1917 of the Social Security Act (42 U.S.C. 1396p), and

(II) all of the beneficiaries of the trust as of the close of the taxable year are determined by the Commissioner of Social Security to have been disabled (within the meaning of section 1614(a)(3) of the Social Security Act, 42 U.S.C. 1382c(a)(3)) for some portion of such year.

A trust shall not fail to meet the requirements of subclause (II) merely because the corpus of the trust may revert to a person who is not so disabled after the trust ceases to have any beneficiary who is so disabled.

(3) Deductions in lieu of personal exemption

The deductions allowed by this subsection shall be in lieu of the deductions allowed under section 151 (relating to deduction for personal exemption).

(c) Deduction for amounts paid or permanently set aside for a charitable purpose

(1) General rule

In the case of an estate or trust (other then[1] a trust meeting the specifications of subpart B), there shall be allowed as a deduction in computing its taxable income (in lieu of the deduction allowed by section 170(a), relating to deduction for charitable, etc., contributions and gifts) any amount of the gross income, without limitation, which pursuant to the terms of the governing instrument is, during the taxable year, paid for a purpose specified in section 170(c) (determined without regard to section 170(c)(2)(A)). If a charitable contribution is paid after the close of such taxable year and on or before the last day of the year following the close of such taxable year, then the trustee or administrator may elect to treat such contribution as paid during such taxable year. The election shall be made at such time and in such manner as the Secretary prescribes by regulations.

(2) Amounts permanently set aside

In the case of an estate, and in the case of a trust (other than a trust meeting the specifications of subpart B) required by the terms of its governing instrument to set aside amounts which was—

(A) created on or before October 9, 1969, if—

(i) an irrevocable remainder interest is transferred to or for the use of an organization described in section 170(c), or

(ii) the grantor is at all times after October 9, 1969, under a mental disability to change the terms of the trust; or

(B) established by a will executed on or before October 9, 1969, if—

(i) the testator dies before October 9, 1972, without having republished the will after October 9, 1969, by codicil or otherwise,

(ii) the testator at no time after October 9, 1969, had the right to change the portions of the will which pertain to the trust, or

(iii) the will is not republished by codicil or otherwise before October 9, 1972, and the testator is on such date and at all times thereafter under a mental disability to republish the will by codicil or otherwise,

there shall also be allowed as a deduction in computing its taxable income any amount of the gross income, without limitation, which pursuant to the terms of the governing instrument is, during the taxable year, permanently set aside for a purpose specified in section 170(c), or is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, or for the establishment, acquisition, maintenance, or operation of a public cemetery not operated for profit. In the case of a trust, the preceding sentence shall apply only to gross income earned with respect to amounts transferred to the trust before October 9, 1969, or transferred under a will to which subparagraph (B) applies.

(3) Pooled income funds

In the case of a pooled income fund (as defined in paragraph (5)), there shall also be allowed as a deduction in computing its taxable income any amount of the gross income attributable to gain from the sale of a capital asset held for more than 1 year, without limitation, which pursuant to the terms of the governing instrument is, during the taxable year, permanently set aside for a purpose specified in section 170(c).

(4) Adjustments

To the extent that the amount otherwise allowable as a deduction under this subsection consists of gain described in section 1202(a), proper adjustment shall be made for any exclusion allowable to the estate or trust under section 1202. In the case of a trust, the deduction allowed by this subsection shall be sub-

[1] So in original. Probably should be ''than''.

ject to section 681 (relating to unrelated business income).

(5) Definition of pooled income fund

For purposes of paragraph (3), a pooled income fund is a trust—

(A) to which each donor transfers property, contributing an irrevocable remainder interest in such property to or for the use of an organization described in section 170(b)(1)(A) (other than in clauses (vii) or (viii)), and retaining an income interest for the life of one or more beneficiaries (living at the time of such transfer),

(B) in which the property transferred by each donor is commingled with property transferred by other donors who have made or make similar transfers,

(C) which cannot have investments in securities which are exempt from the taxes imposed by this subtitle,

(D) which includes only amounts received from transfers which meet the requirements of this paragraph,

(E) which is maintained by the organization to which the remainder interest is contributed and of which no donor or beneficiary of an income interest is a trustee, and

(F) from which each beneficiary of an income interest receives income, for each year for which he is entitled to receive the income interest referred to in subparagraph (A), determined by the rate of return earned by the trust for such year.

For purposes of determining the amount of any charitable contribution allowable by reason of a transfer of property to a pooled fund, the value of the income interest shall be determined on the basis of the highest rate of return earned by the fund for any of the 3 taxable years immediately preceding the taxable year of the fund in which the transfer is made. In the case of funds in existence less than 3 taxable years preceding the taxable year of the fund in which a transfer is made the rate of return shall be deemed to be 6 percent per annum, except that the Secretary may prescribe a different rate of return.

(6) Taxable private foundations

In the case of a private foundation which is not exempt from taxation under section 501(a) for the taxable year, the provisions of this subsection shall not apply and the provisions of section 170 shall apply.

(d) Net operating loss deduction

The benefit of the deduction for net operating losses provided by section 172 shall be allowed to estates and trusts under regulations prescribed by the Secretary.

(e) Deduction for depreciation and depletion

An estate or trust shall be allowed the deduction for depreciation and depletion only to the extent not allowable to beneficiaries under section 167(d) and 611(b).

(f) Amortization deductions

The benefit of the deductions for amortization provided by sections 169 and 197 shall be allowed to estates and trusts in the same manner as in the case of an individual. The allowable deduction shall be apportioned between the income beneficiaries and the fiduciary under regulations prescribed by the Secretary.

(g) Disallowance of double deductions

Amounts allowable under section 2053 or 2054 as a deduction in computing the taxable estate of a decedent shall not be allowed as a deduction (or as an offset against the sales price of property in determining gain or loss) in computing the taxable income of the estate or of any other person, unless there is filed, within the time and in the manner and form prescribed by the Secretary, a statement that the amounts have not been allowed as deductions under section 2053 or 2054 and a waiver of the right to have such amounts allowed at any time as deductions under section 2053 or 2054. Rules similar to the rules of the preceding sentence shall apply to amounts which may be taken into account under section 2621(a)(2) or 2622(b). This subsection shall not apply with respect to deductions allowed under part II (relating to income in respect of decedents).

(h) Unused loss carryovers and excess deductions on termination available to beneficiaries

If on the termination of an estate or trust, the estate or trust has—

(1) a net operating loss carryover under section 172 or a capital loss carryover under section 1212, or

(2) for the last taxable year of the estate or trust deductions (other than the deductions allowed under subsections (b) or (c)) in excess of gross income for such year,

then such carryover or such excess shall be allowed as a deduction, in accordance with regulations prescribed by the Secretary, to the beneficiaries succeeding to the property of the estate or trust.

(i) Certain distributions by cemetery perpetual care funds

In the case of a cemetery perpetual care fund which—

(1) was created pursuant to local law by a taxable cemetery corporation for the care and maintenance of cemetery property, and

(2) is treated for the taxable year as a trust for purposes of this subchapter,

any amount distributed by such fund for the care and maintenance of gravesites which have been purchased from the cemetery corporation before the beginning of the taxable year of the trust and with respect to which there is an obligation to furnish care and maintenance shall be considered to be a distribution solely for purposes of sections 651 and 661, but only to the extent that the aggregate amount so distributed during the taxable year does not exceed $5 multiplied by the aggregate number of such gravesites.

(Aug. 16, 1954, ch. 736, 68A Stat. 215; Pub. L. 87–834, §13(c)(2)(A), Oct. 16, 1962, 76 Stat. 1034; Pub. L. 88–272, title II, §201(d)(6)(A), (B), Feb. 26, 1964, 78 Stat. 32; Pub. L. 89–621, §2(a), Oct. 4, 1966, 80 Stat. 872; Pub. L. 91–172, title II, §201(b), title

VII, §704(b)(2), Dec. 30, 1969, 83 Stat. 558, 669; Pub. L. 92–178, title III, §303(c)(4), title VII, §§701(b), 702(b), Dec. 10, 1971, 85 Stat. 522, 561, 562; Pub. L. 94–455, title XIV, §1402(b)(1)(J), (2), title XIX, §§1901(b)(1)(H)(i), 1906(b)(13)(A), 1951(c)(2)(B), title XX, §2009(d), title XXI, §2124(a)(3)(B), Oct. 4, 1976, 90 Stat. 1732, 1791, 1834, 1840, 1896, 1917; Pub. L. 94–528, §1(a), Oct. 17, 1976, 90 Stat. 2483; Pub. L. 95–30, title I, §101(d)(9), May 23, 1977, 91 Stat. 134; Pub. L. 95–600, title I, §113(a)(2)(B), Nov. 6, 1978, 92 Stat. 2778; Pub. L. 97–34, title II, §212(d)(2)(D), Aug. 13, 1981, 95 Stat. 239; Pub. L. 98–369, div. A, title IV, §474(r)(17), title X, §1001(b)(8), (e), July 18, 1984, 98 Stat. 843, 1011, 1012; Pub. L. 99–514, title I, §112(b)(2), title III, §301(b)(6), title VI, §612(b)(3), Oct. 22, 1986, 100 Stat. 2108, 2217, 2250; Pub. L. 101–239, title VII, §7811(j)(3), Dec. 19, 1989, 103 Stat. 2411; Pub. L. 101–508, title XI, §§11801(c)(6)(B), 11812(b)(9), Nov. 5, 1990, 104 Stat. 1388–524, 1388–535; Pub. L. 103–66, title XIII, §§13113(d)(2), 13261(f)(2), Aug. 10, 1993, 107 Stat. 429, 539; Pub. L. 104–188, title I, §1704(t)(8), Aug. 20, 1996, 110 Stat. 1887; Pub. L. 107–134, title I, §116(a), Jan. 23, 2002, 115 Stat. 2439.)

AMENDMENTS

2002—Subsec. (b). Pub. L. 107–134 reenacted heading without change and amended text of subsec. (b) generally. Prior to amendment, text read as follows: ''An estate shall be allowed a deduction of $600. A trust which, under its governing instrument, is required to distribute all of its income currently shall be allowed a deduction of $300. All other trusts shall be allowed a deduction of $100. The deductions allowed by this subsection shall be in lieu of the deductions allowed under section 151 (relating to deduction for personal exemption).''

1996—Subsec. (g). Pub. L. 104–188 substituted ''under section 2621(a)(2)'' for ''under 2621(a)(2)''.

1993—Subsec. (c)(4). Pub. L. 103–66, §13113(d)(2), amended heading and text of par. (4) generally. Prior to amendment, text read as follows: ''In the case of a trust, the deduction allowed by this subsection shall be subject to section 681 (relating to unrelated business income).''

Subsec. (f). Pub. L. 103–66, §13261(f)(2), substituted ''sections 169 and 197'' for ''section 169''.

1990—Subsec. (e). Pub. L. 101–508, §11812(b)(9), substituted ''167(d)'' for ''167(h)''.

Subsec. (f). Pub. L. 101–508, §11801(c)(6)(B), substituted ''section 169'' for ''sections 169, 184, 187, and 188''.

1989—Subsec. (g). Pub. L. 101–239 inserted after first sentence ''Rules similar to the rules of the preceding sentence shall apply to amounts which may be taken into account under 2621(a)(2) or 2622(b).''

1986—Subsec. (a). Pub. L. 99–514, §112(b)(2), amended subsec. (a) generally, substituting ''Foreign tax credit allowed'' for ''Credits against tax'' in heading, striking out designation and heading for par. (1), and striking out par. (2) which read as follows: ''An estate or trust shall not be allowed the credit against tax for political contributions provided by section 24.''

Subsec. (c)(4). Pub. L. 99–514, §301(b)(6), in heading, substituted ''Coordination with section 681'' for ''Adjustments'', and in text struck out first sentence which read as follows: ''To the extent that the amount otherwise allowable as a deduction under this subsection consists of gain from the sale or exchange of capital assets held for more than 6 months, proper adjustment shall be made for any deduction allowable to the estate or trust under section 1202 (relating to deduction for excess of capital gains over capital losses).''

Subsec. (j). Pub. L. 99–514, §612(b)(3), struck out subsec. (j) which provided a cross reference to section 116(c)(3).

1984—Subsec. (a)(2). Pub. L. 98–369, §474(r)(17), substituted ''section 24'' for ''section 41''.

Subsec. (c)(3), (4). Pub. L. 98–369, §1001(b)(8), (e), substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

1981—Subsec. (f). Pub. L. 97–34 substituted ''and 188'' for ''188, and 191''.

1978—Subsecs. (i) to (k). Pub. L. 95–600 redesignated subsecs. (j) and (k) as (i) and (j), respectively. Former subsec. (i), which did not allow estates or trusts the deduction for contributions to candidates for public office provided by section 218, was struck out.

1977—Subsec. (k). Pub. L. 95–30 struck out par. (1) which made a cross reference to section 142(b)(4) for disallowance of the standard deduction in the case of estates and trusts and struck out ''(2)'' at beginning of single remaining cross reference.

1976—Subsec. (a). Pub. L. 94–455, §1901(b)(1)(H)(i), redesignated former pars. (2) and (3) as (1) and (2), respectively. Former par. (1), relating to the credit against tax for partially tax-exempt interest, was struck out.

Subsec. (c)(1). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(3), (4). Pub. L. 94–455, §1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Subsec. (c)(3), (4). Pub. L. 94–455, §1402(b)(1)(J), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

Subsecs. (c)(5), (d). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (f). Pub. L. 94–455, §§1906(b)(13)(A), 1951(c)(2)(B), 2124(a)(3)(B), substituted ''sections 169, 184, 187, 188, and 191'' for ''sections 168, 169, 184, 187, and 188'', and struck out ''or his delegate'' after ''Secretary''.

Subsec. (g). Pub. L. 94–455, §§1906(b)(13)(A), 2009(d), inserted ''(or as an offset against the sales price of property in determining gain or loss)'' after ''shall not be allowed as a deduction'', and struck out ''or his delegate'' after ''Secretary''.

Subsec. (h). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsecs. (j), (k). Pub. L. 94–528 added subsec. (j) and redesignated former subsec. (j) as (k).

1971—Subsec. (a)(3). Pub. L. 92–178, §701(b), added par. (3).

Subsec. (f). Pub. L. 92–178, §303(c)(4), inserted reference to section 188.

Subsecs. (i), (j). Pub. L. 92–178, §702(b), added subsec. (i) and redesignated former subsec. (i) as (j).

1969—Subsec. (c). Pub. L. 91–172, §201(b), designated existing provisions, with minor changes, as par. (1) and added pars. (2) to (6).

Subsec. (f). Pub. L. 91–172, §704(b)(2), struck out reference to emergency or grain storage facilities both in heading and in text, and inserted reference to sections 184 and 187 in text.

1966—Subsec. (g). Pub. L. 89–621 inserted ''or of any other person'' after ''shall not be allowed as a deduction in computing the taxable income of the estate''.

1964—Subsec. (a)(3). Pub. L. 88–272, §201(d)(6)(A), struck out par. (3) which related to dividends received by individuals.

Subsec. (i). Pub. L. 88–272, §201(d)(6)(B), designated existing provisions as par. (1) and added par. (2).

1962—Subsec. (e). Pub. L. 87–834 substituted a reference to section 167(h) for a reference to section 167(g).

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–134, title I, §116(b), Jan. 23, 2002, 115 Stat. 2440, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years ending on or after September 11, 2001.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13113(d)(2) of Pub. L. 103–66 applicable to stock issued after Aug. 10, 1993, see section 13113(e) of Pub. L. 103–66, set out as a note under section 53 of this title.

Amendment by section 13261(f)(2) of Pub. L. 103–66 applicable, except as otherwise provided, with respect to

property acquired after Aug. 10, 1993, see section 13261(g) of Pub. L. 103–66, set out as an Effective Date note under section 197 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11812(b)(9) of Pub. L. 101–508 applicable to property placed in service after Nov. 5, 1990, but not applicable to any property to which section 168 of this title does not apply by reason of subsec. (f)(5) of section 168, and not applicable to rehabilitation expenditures described in section 252(f)(5) of Pub. L. 99–514, see section 11812(c) of Pub. L. 101–508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 112(b)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 301(b)(6) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 301(c) of Pub. L. 99–514, set out as a note under section 62 of this title.

Amendment by section 612(b)(3) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 612(c) of Pub. L. 99–514, set out as a note under section 301 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(17) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 1001(b)(8) of Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to expenditures incurred after Dec. 31, 1981, in taxable years ending after such date, see section 212(e) of Pub. L. 97–34, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 113(d) of Pub. L. 95–600 provided that: ''The amendments made by this section [amending this section and section 24 of this title and repealing section 218 of this title] shall apply with respect to contributions the payment of which is made after December 31, 1978, in taxable years beginning after such date.''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENTS

Section 1402(b)(1) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Section 1402(b)(2) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Amendment by section 1901(b)(1)(H)(i) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 1951(c)(2)(B) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1952(d) of Pub. L. 94–455, set out as a note under section 72 of this title.

Section 2009(e)(4) of Pub. L. 94–455 provided that: ''The amendment made by subsection (d) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 4, 1976].''

Section 2124(a)(4) of Pub. L. 94–455 provided that: ''The amendments made by this subsection [enacting section 191 of this title and amending this section and sections 1082, 1245, and 1250 of this title] shall apply with respect to additions to capital account made after June 14, 1976 and before June 15, 1981.''

Section 1(b) of Pub. L. 94–528 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1977, and shall apply to amounts distributed during taxable years ending after December 31, 1963.''

EFFECTIVE DATE OF 1971 AMENDMENT

Section 303(d) of Pub. L. 92–178 provided that: ''The amendments made by this section [enacting section 188 of this title and amending this section and sections 57, 1082, 1245, and 1250 of this title] shall apply to taxable years ending after December 31, 1971.''

Section 703 of Pub. L. 92–178 provided that: ''The amendments made by this title [enacting sections 24 and 218 of this title and amending this section] shall apply to taxable years ending after December 31, 1971, but only with respect to political contributions, payment of which is made after such date.''

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 201(b) of Pub. L. 91–172 applicable with respect to amounts paid, permanently set aside, or to be used for a charitable purpose in taxable years beginning after Dec. 31, 1969, except that subsec. (c)(5) applicable to transfers in trust made after July 31, 1969, see section 201(g) of Pub. L. 91–172, set out as a note under section 170 of this title.

Amendment by section 704(b)(2) of Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1968, see section 704(c) of Pub. L. 91–172, set out as an Effective Date note under section 169 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 2(b) of Pub. L. 89–621 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 4, 1966], but only with respect to amounts paid or incurred, and losses sustained, after such date.''

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to dividends received after December 31, 1964, in taxable years ending after such date, see section 201(e) of Pub. L. 88–272, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable to taxable years beginning after Dec. 31, 1961, and ending after Oct. 16, 1962, see section 13(g) of Pub. L. 87–834, set out as an Effective Date note under section 1245 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§ 643. Definitions applicable to subparts A, B, C, and D

(a) Distributable net income

For purposes of this part, the term ''distributable net income'' means, with respect to any taxable year, the taxable income of the estate or trust computed with the following modifications—

(1) Deduction for distributions

No deduction shall be taken under sections 651 and 661 (relating to additional deductions).

(2) Deduction for personal exemption

No deduction shall be taken under section 642(b) (relating to deduction for personal exemptions).

(3) Capital gains and losses

Gains from the sale or exchange of capital assets shall be excluded to the extent that such gains are allocated to corpus and are not (A) paid, credited, or required to be distributed to any beneficiary during the taxable year, or (B) paid, permanently set aside, or to be used for the purposes specified in section 642(c). Losses from the sale or exchange of capital assets shall be excluded, except to the extent such losses are taken into account in determining the amount of gains from the sale or exchange of capital assets which are paid, credited, or required to be distributed to any beneficiary during the taxable year. The exclusion under section 1202 shall not be taken into account.

(4) Extraordinary dividends and taxable stock dividends

For purposes only of subpart B (relating to trusts which distribute current income only), there shall be excluded those items of gross income constituting extraordinary dividends or taxable stock dividends which the fiduciary, acting in good faith, does not pay or credit to any beneficiary by reason of his determination that such dividends are allocable to corpus under the terms of the governing instrument and applicable local law.

(5) Tax-exempt interest

There shall be included any tax-exempt interest to which section 103 applies, reduced by any amounts which would be deductible in respect of disbursements allocable to such interest but for the provisions of section 265 (relating to disallowance of certain deductions).

(6) Income of foreign trust

In the case of a foreign trust—

(A) There shall be included the amounts of gross income from sources without the United States, reduced by any amounts which would be deductible in respect of disbursements allocable to such income but for the provisions of section 265(a)(1) (relating to disallowance of certain deductions).

(B) Gross income from sources within the United States shall be determined without regard to section 894 (relating to income exempt under treaty).

(C) Paragraph (3) shall not apply to a foreign trust. In the case of such a trust, there shall be included gains from the sale or exchange of capital assets, reduced by losses from such sales or exchanges to the extent such losses do not exceed gains from such sales or exchanges.

(7) Abusive transactions

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this part, including regulations to prevent avoidance of such purposes.

If the estate or trust is allowed a deduction under section 642(c), the amount of the modifications specified in paragraphs (5) and (6) shall be reduced to the extent that the amount of income which is paid, permanently set aside, or to be used for the purposes specified in section 642(c) is deemed to consist of items specified in those paragraphs. For this purpose, such amount shall (in the absence of specific provisions in the governing instrument) be deemed to consist of the same proportion of each class of items of income of the estate or trust as the total of each class bears to the total of all classes.

(b) Income

For purposes of this subpart and subparts B, C, and D, the term ''income'', when not preceded by the words ''taxable'', ''distributable net'', ''undistributed net'', or ''gross'', means the amount of income of the estate or trust for the taxable year determined under the terms of the governing instrument and applicable local law. Items of gross income constituting extraordinary dividends or taxable stock dividends which the fiduciary, acting in good faith, determines to be allocable to corpus under the terms of the governing instrument and applicable local law shall not be considered income.

(c) Beneficiary

For purposes of this part, the term ''beneficiary'' includes heir, legatee, devisee.

(d) Coordination with back-up withholding

Except to the extent otherwise provided in regulations, this subchapter shall be applied with respect to payments subject to withholding under section 3406—

(1) by allocating between the estate or trust and its beneficiaries any credit allowable under section 31(c) (on the basis of their respective shares of any such payment taken into account under this subchapter),

(2) by treating each beneficiary to whom such credit is allocated as if an amount equal to such credit has been paid to him by the estate or trust, and

(3) by allowing the estate or trust a deduction in an amount equal to the credit so allocated to beneficiaries.

(e) Treatment of property distributed in kind

(1) Basis of beneficiary

The basis of any property received by a beneficiary in a distribution from an estate or trust shall be—

(A) the adjusted basis of such property in the hands of the estate or trust immediately before the distribution, adjusted for

(B) any gain or loss recognized to the estate or trust on the distribution.

(2) Amount of distribution

In the case of any distribution of property (other than cash), the amount taken into account under sections 661(a)(2) and 662(a)(2) shall be the lesser of—

(A) the basis of such property in the hands of the beneficiary (as determined under paragraph (1)), or

(B) the fair market value of such property.

(3) Election to recognize gain

(A) In general

In the case of any distribution of property (other than cash) to which an election under this paragraph applies—

(i) paragraph (2) shall not apply,

(ii) gain or loss shall be recognized by the estate or trust in the same manner as if such property had been sold to the distributee at its fair market value, and

(iii) the amount taken into account under sections 661(a)(2) and 662(a)(2) shall be the fair market value of such property.

(B) Election

Any election under this paragraph shall apply to all distributions made by the estate or trust during a taxable year and shall be made on the return of such estate or trust for such taxable year.

Any such election, once made, may be revoked only with the consent of the Secretary.

(4) Exception for distributions described in section 663(a)

This subsection shall not apply to any distribution described in section 663(a).

(f) Treatment of multiple trusts

For purposes of this subchapter, under regulations prescribed by the Secretary, 2 or more trusts shall be treated as 1 trust if—

(1) such trusts have substantially the same grantor or grantors and substantially the same primary beneficiary or beneficiaries, and

(2) a principal purpose of such trusts is the avoidance of the tax imposed by this chapter.

For purposes of the preceding sentence, a husband and wife shall be treated as 1 person.

(g) Certain payments of estimated tax treated as paid by beneficiary

(1) In general

In the case of a trust—

(A) the trustee may elect to treat any portion of a payment of estimated tax made by such trust for any taxable year of the trust as a payment made by a beneficiary of such trust,

(B) any amount so treated shall be treated as paid or credited to the beneficiary on the last day of such taxable year, and

(C) for purposes of subtitle F, the amount so treated—

(i) shall not be treated as a payment of estimated tax made by the trust, but

(ii) shall be treated as a payment of estimated tax made by such beneficiary on January 15 following the taxable year.

(2) Time for making election

An election under paragraph (1) shall be made on or before the 65th day after the close of the taxable year of the trust and in such manner as the Secretary may prescribe.

(3) Extension to last year of estate

In the case of a taxable year reasonably expected to be the last taxable year of an estate—

(A) any reference in this subsection to a trust shall be treated as including a reference to an estate, and

(B) the fiduciary of the estate shall be treated as the trustee.

(h) Distributions by certain foreign trusts through nominees

For purposes of this part, any amount paid to a United States person which is derived directly or indirectly from a foreign trust of which the payor is not the grantor shall be deemed in the year of payment to have been directly paid by the foreign trust to such United States person.

(i) Loans from foreign trusts

For purposes of subparts B, C, and D—

(1) General rule

Except as provided in regulations, if a foreign trust makes a loan of cash or marketable securities (or permits the use of any other trust property) directly or indirectly to or by—

(A) any grantor or beneficiary of such trust who is a United States person, or

(B) any United States person not described in subparagraph (A) who is related to such grantor or beneficiary,

the amount of such loan (or the fair market value of the use of such property) shall be treated as a distribution by such trust to such grantor or beneficiary (as the case may be).

(2) Definitions and special rules

For purposes of this subsection—

(A) Cash

The term ''cash'' includes foreign currencies and cash equivalents.

(B) Related person

(i) In general

A person is related to another person if the relationship between such persons would result in a disallowance of losses under section 267 or 707(b). In applying section 267 for purposes of the preceding sentence, section 267(c)(4) shall be applied as if the family of an individual includes the spouses of the members of the family.

(ii) Allocation

If any person described in paragraph (1)(B) is related to more than one person, the grantor or beneficiary to whom the treatment under this subsection applies shall be determined under regulations prescribed by the Secretary.

(C) Exclusion of tax-exempts

The term ''United States person'' does not include any entity exempt from tax under this chapter.

(D) Trust not treated as simple trust

Any trust which is treated under this subsection as making a distribution shall be treated as not described in section 651.

(E) Exception for compensated use of property

In the case of the use of any trust property other than a loan of cash or marketable securities, paragraph (1) shall not apply to the extent that the trust is paid the fair market value of such use within a reasonable period of time of such use.

(3) Subsequent transactions

If any loan (or use of property) is taken into account under paragraph (1), any subsequent transaction between the trust and the original borrower regarding the principal of the loan (by way of complete or partial repayment, satisfaction, cancellation, discharge, or otherwise) or the return of such property shall be disregarded for purposes of this title.

(Aug. 16, 1954, ch. 736, 68A Stat. 217; Pub. L. 87–834, §7(a), Oct. 16, 1962, 76 Stat. 985; Pub. L. 94–455, title X, §1013(c), (e)(2), Oct. 4, 1976, 90 Stat. 1615, 1616; Pub. L. 96–223, title IV, §404(b)(4), Apr. 2, 1980, 94 Stat. 306; Pub. L. 97–34, title III, §301(b)(4), (6)(B), Aug. 13, 1981, 95 Stat. 270; Pub. L. 97–248, title III, §§302(b)(1), 308(a), Sept. 3, 1982, 96 Stat. 586, 591; Pub. L. 97–448, title I, §103(a)(3), Jan. 12, 1983, 96 Stat. 2375; Pub. L. 98–67, title I, §102(a), Aug. 5, 1983, 97 Stat. 369; Pub. L. 98–369, div. A, title I, §§81(a), 82(a), title VII, §722(h)(3), July 18, 1984, 98 Stat. 597, 598, 975; Pub. L. 99–514, title III, §301(b)(7), title VI, §612(b)(4), title XIV, §1404(b), title XVIII, §1806(a), (c), Oct. 22, 1986, 100 Stat. 2217, 2250, 2713, 2810, 2811; Pub. L. 100–647, title I, §1014(d)(3), (4), Nov. 10, 1988, 102 Stat. 3561; Pub. L. 101–239, title VII, §7811(b), (f)(1), Dec. 19, 1989, 103 Stat. 2406, 2409; Pub. L. 103–66, title XIII, §13113(d)(3), Aug. 10, 1993, 107 Stat. 430; Pub. L. 104–188, title I, §§1904(c)(1), 1906(b), (c)(1), Aug. 20, 1996, 110 Stat. 1912, 1915; Pub. L. 111–147, title V, §533(a), (b), (d), Mar. 18, 2010, 124 Stat. 114.)

AMENDMENTS

2010—Subsec. (i)(1). Pub. L. 111–147, §533(a), substituted ''(or permits the use of any other trust property) directly or indirectly to or by'' for ''directly or indirectly to'' in introductory provisions and inserted ''(or the fair market value of the use of such property)'' after ''the amount of such loan'' in concluding provisions.

Subsec. (i)(2)(E). Pub. L. 111–147, §533(b), added subpar. (E).

Subsec. (i)(3). Pub. L. 111–147, §533(d), struck out ''regarding loan principal'' after ''transactions'' in heading and inserted ''(or use of property)'' after ''If any loan'' and ''or the return of such property'' after ''otherwise)''.

1996—Subsec. (a)(7). Pub. L. 104–188, §1906(b), added par. (7).

Subsec. (h). Pub. L. 104–188, §1904(c)(1), added subsec. (h).

Subsec. (i). Pub. L. 104–188, §1906(c)(1), added subsec. (i).

1993—Subsec. (a)(3). Pub. L. 103–66 inserted at end ''The exclusion under section 1202 shall not be taken into account.''

1989—Subsec. (a)(6)(A). Pub. L. 101–239, §7811(f)(1), substituted ''section 265(a)(1)'' for ''section 265(1)''.

Subsec. (a)(6)(C). Pub. L. 101–239, §7811(b)(1), struck out ''(i)'' after ''such a trust,'' and '', and (ii) the deduction under section 1202 (relating to deduction for excess of capital gains over capital losses) shall not be taken into account'' before period at end.

Subsec. (a)(6)(D). Pub. L. 101–239, §7811(b)(2), struck out subpar. (D) which read as follows: ''Effective for distributions made in taxable years beginning after December 31, 1975, the undistributed net income of each foreign trust for each taxable year beginning on or before December 31, 1975, remaining undistributed at the close of the last taxable year beginning on or before December 31, 1975, shall be redetermined by taking into account the deduction allowed by section 1202.''

1988—Subsec. (g)(1). Pub. L. 100–647, §1014(d)(3)(A), struck out at end ''The preceding sentence shall apply only to the extent the payments of estimated tax made by the trust for the taxable year exceed the tax imposed by this chapter shown on its return for the taxable year.''

Subsec. (g)(2). Pub. L. 100–647, §1014(d)(3)(B), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''An election under paragraph (1) may be made—

''(A) only on the trust's return of the tax imposed by this chapter for the taxable year, and

''(B) only if such return is filed on or before the 65th day after the close of the taxable year.''

Subsec. (g)(3). Pub. L. 100–647, §1014(d)(4), added par. (3).

1986—Subsec. (a)(3). Pub. L. 99–514, §301(b)(7), struck out ''The deduction under section 1202 (relating to deduction for excess of capital gains over capital losses) shall not be taken into account.''

Subsec. (a)(7). Pub. L. 99–514, §612(b)(4), struck out par. (7), dividends or interest, which read as follows: ''There shall be included the amount of any dividends or interest excluded from gross income pursuant to section 116 (relating to partial exclusion of dividends) or section 128 (relating to certain interest).''

Subsec. (d). Pub. L. 99–514, §1806(c)(1), redesignated subsec. (d), relating to treatment of property distributed in kind, as (e). Former subsec. (e) redesignated (f).

Subsec. (e). Pub. L. 99–514, §1806(a), (c)(1), redesignated subsec. (d) relating to treatment of property distributed in kind as (e) and amended par. (3)(B) generally, substituting ''shall apply to all distributions made by the estate or trust during a taxable year and shall be made on the return of such estate or trust for such taxable year'' for ''shall be made by the estate or trust on its return for the taxable year for which the distribution was made''. Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 99–514, §1806(c)(2), redesignated subsec. (e) as (f).

Subsec. (g). Pub. L. 99–514, §1404(b), added subsec. (g).

1984—Subsec. (d). Pub. L. 98–369, §81(a), added subsec. (d) relating to treatment of property distributed in kind.

Pub. L. 98–369, §722(h)(3), added subsec. (d) relating to coordination with back-up withholding.

Subsec. (e). Pub. L. 98–369, §82(a), added subsec. (e).

1983—Subsec. (a)(7). Pub. L. 97–448 substituted ''section 116 (relating to partial exclusion of dividends) or section 128 (relating to certain interest)'' for ''section 116 (relating to partial exclusion of dividends or interest received) or section 128 (relating to interest on certain savings certificates)''.

Subsec. (d). Pub. L. 98–67 repealed amendments made by Pub. L. 97–248. See 1982 Amendment note below.

1982—Subsec. (d). Pub. L. 97–248 provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, this section is amended by adding subsec. (d) relating to coordination with withholding on interest and dividends. Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 (this title) shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

1981—Subsec. (a)(7). Pub. L. 97–34, §301(b)(6)(A), inserted reference to ''interest'' in heading and text, which continued the amendment made by Pub. L. 96–223.

Pub. L. 97–34, §301(b)(4), inserted ''or section 128 (relating to interest on certain savings certificates)'' after ''received)''.

1980—Subsec. (a)(7). Pub. L. 96–223 inserted ''or interest'' after ''dividends'' in heading and text.

1976—Subsec. (a)(6)(C). Pub. L. 94–455, §1013(c)(1), struck out ''created by a United States person'' after ''foreign trust''.

Subsec. (a)(6)(D). Pub. L. 94–455, §1013(c)(2), added subpar. (D).

Subsec. (d). Pub. L. 94–455, §1013(e)(2), struck out subsec. (a) which defined a foreign trust created by a United States person.

1962—Subsec. (a)(6). Pub. L. 87–834, §7(a)(1), substituted ''Income of foreign trust'' for ''Foreign income'' in heading, designated existing provisions as subpar. (A), and added subpars. (B) and (C).

Subsec. (d). Pub. L. 87–834, §7(a)(2), added subsec. (d).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–147, title V, §533(e), Mar. 18, 2010, 124 Stat. 114, provided that: ''The amendments made by this section [amending this section and section 679 of this title] shall apply to loans made, and uses of property, after the date of the enactment of this Act [Mar. 18, 2010].''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1904(d) of Pub. L. 104–188 provided that:

''(1) IN GENERAL.—Except as provided by paragraph (2), the amendments made by this section [amending this section and sections 665, 672, and 901 of this title] shall take effect on the date of the enactment of this Act [Aug. 20, 1996].

''(2) EXCEPTION FOR CERTAIN TRUSTS.—The amendments made by this section shall not apply to any trust—

''(A) which is treated as owned by the grantor under section 676 or 677 (other than subsection (a)(3) thereof) of the Internal Revenue Code of 1986, and

''(B) which is in existence on September 19, 1995.

The preceding sentence shall not apply to the portion of any such trust attributable to any transfer to such trust after September 19, 1995.''

Section 1906(d)(2), (3) of Pub. L. 104–188 provided that:

''(2) ABUSIVE TRANSACTIONS.—The amendment made by subsection (b) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 20, 1996].

''(3) LOANS FROM TRUSTS.—The amendment made by subsection (c) [amending this section and section 7872 of this title] shall apply to loans of cash or marketable securities made after September 19, 1995.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to stock issued after Aug. 10, 1993, see section 13113(e) of Pub. L. 103–66, set out as a note under section 53 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 301(b)(7) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 301(c) of Pub. L. 99–514, set out as a note under section 62 of this title.

Amendment by section 612(b)(4) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 612(c) of Pub. L. 99–514, set out as a note under section 301 of this title.

Section 1404(d) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section and sections 6215, 6601, and 6654 of this title and repealing section 6152 of this title] shall apply to taxable years beginning after December 31, 1986.''

Amendment by section 1806(a), (c) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 81(b) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to distributions after June 1, 1984, in taxable years ending after such date.

''(2) TIME FOR MAKING ELECTION.—In the case of any distribution before the date of the enactment of this Act [July 18, 1984]—

''(A) the time for making an election under section 643(d)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this section) shall not expire before January 1, 1985, and

''(B) the requirement that such election be made on the return of the estate or trust shall not apply.''

Section 82(b) of Pub. L. 98–369, as amended by Pub. L. 99–514, title XVIII, §1806(b), Oct. 22, 1986, 100 Stat. 2811, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after March 1, 1984; except that, in the case of a trust which was irrevocable on March 1, 1984, such amendment shall so apply only to that portion of the trust which is attributable to contributions to corpus after March 1, 1984.''

Section 722(h)(5) of Pub. L. 98–369 provided that:

''(A) Except as provided in this paragraph, the amendments made by this subsection [amending this section and sections 3405, 3406, and 6041 of this title] shall apply as if included in the amendments made by the Interest and Dividend Tax Compliance Act of 1983 [Pub. L. 98–67].

''(B) The amendments made by paragraph (4) [amending sections 3405 and 6041 of this title] shall apply to payments or distributions after December 31, 1984, unless the payor elects to have such amendments apply to payments or distributions before January 1, 1985.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 301(b)(4) of Pub. L. 97–34 applicable to taxable years ending after Sept. 30, 1981, and amendment by section 301(b)(6)(A) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 301(d) of Pub. L. 97–34, set out as a note under section 265 of this title.

EFFECTIVE AND TERMINATION DATES OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 applicable with respect to taxable years beginning after Dec. 31, 1980, and before Jan. 1, 1982, see section 404(c) of Pub. L. 96–223, set out as a note under section 265 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1013(e)(2) of Pub. L. 94–455, see section 1013(f)(1) of Pub. L. 94–455, set out as an Effective Date note under section 679 of this title.

Section 1013(f)(2) of Pub. L. 94–455 provided that: ''The amendments made by subsection (c) [amending this section] shall apply to taxable years beginning after December 31, 1975.''

EFFECTIVE DATE OF 1962 AMENDMENT

Section 7(j) of Pub. L. 87–834 provided that: ''The amendments made by this section [amending this section and sections 665, 666, and 668 of this title and enacting section 669 of this title] (other than by subsections (f), (g) and (h) [enacting sections 6048 and 6677 of this title and amending section 7701 of this title]), shall apply with respect to distributions made after December 31, 1962.''

TREATMENT AS SINGLE TRUST

Section 1018(e) of Pub. L. 100–647 provided that: ''If—

''(1) on a return for the 1st taxable year of the trusts involved beginning after March 1, 1984, 2 or more trusts were treated as a single trust for purposes of the tax imposed by chapter 1 of the Internal Revenue Code of 1954 [now 1986],

''(2) such trusts would have been required to be so treated but for the amendment made by section 1806(b) of the Reform Act [Pub. L. 99–514, which amended provisions set out as an Effective Date of 1984 Amendment note above], and

''(3) such trusts did not accumulate any income during such taxable year and did not make any accumulation distributions during such taxable year,

then, notwithstanding the amendment made by section 1806(b) of the Reform Act, such trusts shall be treated as one trust for purposes of such taxable year.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 644. Taxable year of trusts

(a) In general

For purposes of this subtitle, the taxable year of any trust shall be the calendar year.

(b) Exception for trusts exempt from tax and charitable trusts

Subsection (a) shall not apply to a trust exempt from taxation under section 501(a) or to a trust described in section 4947(a)(1).

(Added Pub. L. 99–514, title XIV, § 1403(a), Oct. 22, 1986, 100 Stat. 2713, § 645; renumbered § 644, Pub. L. 105–34, title V, § 507(b)(1), Aug. 5, 1997, 111 Stat. 856.)

PRIOR PROVISIONS

A prior section 644, added Pub. L. 94–455, title VII, § 701(e)(1), Oct. 4, 1976, 90 Stat. 1578; amended Pub. L. 95–600, title VII, § 701(p)(1)–(3), Nov. 6, 1978, 92 Stat. 2908; Pub. L. 96–471, § 2(b)(4), Oct. 19, 1980, 94 Stat. 2254; Pub. L. 99–514, title XV, § 1511(c)(5), Oct. 22, 1986, 100 Stat. 2745, related to special rule for gain on property transferred to trust at less than fair market value, prior to repeal by Pub. L. 105–34, title V, § 507(b)(1), Aug. 5, 1997, 111 Stat. 856.

AMENDMENTS

1997—Pub. L. 105–34 renumbered section 645 of this title as this section.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 507(c)(2) of Pub. L. 105–34 provided that: ''The amendments made by subsection (b) [amending section 706 of this title, repealing section 644 of this title, and renumbering section 645 of this title as this section] shall apply to sales or exchanges after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE; TRANSITION RULE

Section 1403(c) of Pub. L. 99–514 provided that:

''(1) EFFECTIVE DATE.—The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1986.

''(2) TRANSITION RULE.—With respect to any trust beneficiary who is required to include in gross income amounts under sections 652(a) or 662(a) of the Internal Revenue Code of 1986 in the 1st taxable year of the beneficiary beginning after December 31, 1986, by reason of any short taxable year of the trust required by the amendments made by this section, such income shall be ratably included in the income of the trust beneficiary over the 4-taxable year period beginning with such taxable year.''

APPLICATION OF TRANSITION RULES TO TRUST BENEFICIARIES TO WHICH SECTION 664 APPLIES

Pub. L. 100–647, title I, § 1014(c), Nov. 10, 1988, 102 Stat. 3559, provided that:

''(1) If a beneficiary of a trust to which section 664 of the 1986 Code applies elects (at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe) to have this paragraph apply, such beneficiary shall be entitled to the benefits of section 1403(c)(2) of the Reform Act [Pub. L. 99–514, set out as an Effective Date; Transition Rule note above] with respect to amounts included in gross income under section 664(b) of the 1986 Code in the same manner as if such amounts were included in gross income under section 652(a) of the 1986 Code.

''(2) Any trust beneficiary may elect (at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe) to waive the benefits of section 1403(c)(2) of the Reform Act.

''(3)(A) For purposes of determining the gross income of any pass-thru entity, such pass-thru entity shall not be allowed the benefits of section 806(e)(2)(C) [Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 1378 of this title] (other than with respect to income from a common trust fund) or 1403(c)(2) of the Reform Act if such pass-thru entity is required to change its taxable year by reason of the amendments made by section 806 or 1403 of the Reform Act [Pub. L. 99–514, which enacted this section and amended sections 267, 441, 706, and 1378 of this title].

''(B) For purposes of subparagraph (A), the term 'pass-thru entity' means any trust, partnership, S corporation, or common trust fund.

''(4) If any trust was required to change its taxable year by the amendments made by section 1403 of the Reform Act [Pub. L. 99–514, which enacted this section], such change shall be treated as initiated by such trust and approved by the Secretary of the Treasury or his delegate.''

§ 645. Certain revocable trusts treated as part of estate

(a) General rule

For purposes of this subtitle, if both the executor (if any) of an estate and the trustee of a qualified revocable trust elect the treatment provided in this section, such trust shall be treated and taxed as part of such estate (and not as a separate trust) for all taxable years of the estate ending after the date of the decedent's death and before the applicable date.

(b) Definitions

For purposes of subsection (a)—

(1) Qualified revocable trust

The term ''qualified revocable trust'' means any trust (or portion thereof) which was treat-

ed under section 676 as owned by the decedent of the estate referred to in subsection (a) by reason of a power in the grantor (determined without regard to section 672(e)).

(2) Applicable date

The term ''applicable date'' means—

(A) if no return of tax imposed by chapter 11 is required to be filed, the date which is 2 years after the date of the decedent's death, and

(B) if such a return is required to be filed, the date which is 6 months after the date of the final determination of the liability for tax imposed by chapter 11.

(c) Election

The election under subsection (a) shall be made not later than the time prescribed for filing the return of tax imposed by this chapter for the first taxable year of the estate (determined with regard to extensions) and, once made, shall be irrevocable.

(Added Pub. L. 105–34, title XIII, § 1305(a), Aug. 5, 1997, 111 Stat. 1040, § 646; renumbered § 645, Pub. L. 105–206, title VI, § 6013(a)(1), July 22, 1998, 112 Stat. 819.)

PRIOR PROVISIONS

A prior section 645 was renumbered section 644 of this title.

AMENDMENTS

1998—Pub. L. 105–206 renumbered section 646 of this title as this section.

EFFECTIVE DATE

Section 1305(d) of Pub. L. 105–34 provided that: ''The amendments made by this section [enacting this section and amending section 2652 of this title] shall apply with respect to estates of decedents dying after the date of the enactment of this Act [Aug. 5, 1997].''

§ 646. Tax treatment of electing Alaska Native Settlement Trusts

(a) In general

If an election under this section is in effect with respect to any Settlement Trust, the provisions of this section shall apply in determining the income tax treatment of the Settlement Trust and its beneficiaries with respect to the Settlement Trust.

(b) Taxation of income of trust

Except as provided in subsection (f)(1)(B)(ii)—

(1) In general

There is hereby imposed on the taxable income of an electing Settlement Trust, other than its net capital gain, a tax at the lowest rate specified in section 1(c).

(2) Capital gain

In the case of an electing Settlement Trust with a net capital gain for the taxable year, a tax is hereby imposed on such gain at the rate of tax which would apply to such gain if the taxpayer were subject to a tax on its other taxable income at only the lowest rate specified in section 1(c).

Any such tax shall be in lieu of the income tax otherwise imposed by this chapter on such income or gain.

(c) One-time election

(1) In general

A Settlement Trust may elect to have the provisions of this section apply to the trust and its beneficiaries.

(2) Time and method of election

An election under paragraph (1) shall be made by the trustee of such trust—

(A) on or before the due date (including extensions) for filing the Settlement Trust's return of tax for the first taxable year of such trust ending after the date of the enactment of this section, and

(B) by attaching to such return of tax a statement specifically providing for such election.

(3) Period election in effect

Except as provided in subsection (f), an election under this subsection—

(A) shall apply to the first taxable year described in paragraph (2)(A) and all subsequent taxable years, and

(B) may not be revoked once it is made.

(d) Contributions to trust

(1) Beneficiaries of electing trust not taxed on contributions

In the case of an electing Settlement Trust, no amount shall be includible in the gross income of a beneficiary of such trust by reason of a contribution to such trust.

(2) Earnings and profits

The earnings and profits of the sponsoring Native Corporation shall not be reduced on account of any contribution to such Settlement Trust.

(e) Tax treatment of distributions to beneficiaries

Amounts distributed by an electing Settlement Trust during any taxable year shall be considered as having the following characteristics in the hands of the recipient beneficiary:

(1) First, as amounts excludable from gross income for the taxable year to the extent of the taxable income of such trust for such taxable year (decreased by any income tax paid by the trust with respect to the income) plus any amount excluded from gross income of the trust under section 103.

(2) Second, as amounts excludable from gross income to the extent of the amount described in paragraph (1) for all taxable years for which an election is in effect under subsection (c) with respect to the trust, and not previously taken into account under paragraph (1).

(3) Third, as amounts distributed by the sponsoring Native Corporation with respect to its stock (within the meaning of section 301(a)) during such taxable year and taxable to the recipient beneficiary as amounts described in section 301(c)(1), to the extent of current or accumulated earnings and profits of the sponsoring Native Corporation as of the close of such taxable year after proper adjustment is made for all distributions made by the sponsoring Native Corporation during such taxable year.

(4) Fourth, as amounts distributed by the trust in excess of the distributable net income of such trust for such taxable year.

Amounts distributed to which paragraph (3) applies shall not be treated as a corporate distribution subject to section 311(b), and for purposes of determining the amount of a distribution for purposes of paragraph (3) and the basis to the recipients, section 643(e) and not section 301(b) or (d) shall apply.

(f) Special rules where transfer restrictions modified

(1) Transfer of beneficial interests

If, at any time, a beneficial interest in an electing Settlement Trust may be disposed of to a person in a manner which would not be permitted by section 7(h) of the Alaska Native Claims Settlement Act (43 U.S.C. 1606(h)) if such interest were Settlement Common Stock—

(A) no election may be made under subsection (c) with respect to such trust, and

(B) if such an election is in effect as of such time—

(i) such election shall cease to apply as of the first day of the taxable year in which such disposition is first permitted,

(ii) the provisions of this section shall not apply to such trust for such taxable year and all taxable years thereafter, and

(iii) the distributable net income of such trust shall be increased by the current or accumulated earnings and profits of the sponsoring Native Corporation as of the close of such taxable year after proper adjustment is made for all distributions made by the sponsoring Native Corporation during such taxable year.

In no event shall the increase under clause (iii) exceed the fair market value of the trust's assets as of the date the beneficial interest of the trust first becomes so disposable. The earnings and profits of the sponsoring Native Corporation shall be adjusted as of the last day of such taxable year by the amount of earnings and profits so included in the distributable net income of the trust.

(2) Stock in corporation

If—

(A) stock in the sponsoring Native Corporation may be disposed of to a person in a manner which would not be permitted by section 7(h) of the Alaska Native Claims Settlement Act (43 U.S.C. 1606(h)) if such stock were Settlement Common Stock, and

(B) at any time after such disposition of stock is first permitted, such corporation transfers assets to a Settlement Trust,

paragraph (1)(B) shall be applied to such trust on and after the date of the transfer in the same manner as if the trust permitted dispositions of beneficial interests in the trust in a manner not permitted by such section 7(h).

(3) Certain distributions

For purposes of this section, the surrender of an interest in a Native Corporation or an electing Settlement Trust in order to accomplish the whole or partial redemption of the interest of a shareholder or beneficiary in such corporation or trust, or to accomplish the whole or partial liquidation of such corporation or trust, shall be deemed to be a transfer permitted by section 7(h) of the Alaska Native Claims Settlement Act.

(g) Taxable income

For purposes of this title, the taxable income of an electing Settlement Trust shall be determined under section 641(b) without regard to any deduction under section 651 or 661.

(h) Definitions

For purposes of this section—

(1) Electing Settlement Trust

The term ''electing Settlement Trust'' means a Settlement Trust which has made the election, effective for a taxable year, described in subsection (c).

(2) Native Corporation

The term ''Native Corporation'' has the meaning given such term by section 3(m) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(m)).

(3) Settlement Common Stock

The term ''Settlement Common Stock'' has the meaning given such term by section 3(p) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(p)).

(4) Settlement Trust

The term ''Settlement Trust'' means a trust that constitutes a settlement trust under section 3(t) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(t)).

(5) Sponsoring Native Corporation

The term ''sponsoring Native Corporation'' means the Native Corporation which transfers assets to an electing Settlement Trust.

(i) Special loss disallowance rule

Any loss that would otherwise be recognized by a shareholder upon a disposition of a share of stock of a sponsoring Native Corporation shall be reduced (but not below zero) by the per share loss adjustment factor. The per share loss adjustment factor shall be the aggregate of all contributions to all electing Settlement Trusts sponsored by such Native Corporation made on or after the first day each trust is treated as an electing Settlement Trust expressed on a per share basis and determined as of the day of each such contribution.

(j) Cross reference

For information required with respect to electing Settlement Trusts and sponsoring Native Corporations, see section 6039H.

(Added Pub. L. 107–16, title VI, § 671(a), June 7, 2001, 115 Stat. 144.)

TERMINATION OF SECTION

For termination of section by section 901 of Pub. L. 107–16, see Effective and Termination Dates note below.

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (c)(2)(A), is the date of enactment of Pub. L. 107–16, which was approved June 7, 2001.

PRIOR PROVISIONS

A prior section 646 was renumbered section 645 of this title.

EFFECTIVE AND TERMINATION DATES

Pub. L. 107–16, title VI, § 671(d), June 7, 2001, 115 Stat. 148, provided that: ''The amendments made by this section [enacting this section and section 6039H of this title] shall apply to taxable years ending after the date of the enactment of this Act [June 7, 2001] and to contributions made to electing Settlement Trusts for such year or any subsequent year.''

Section inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if it had never been enacted, see section 901 of Pub. L. 107–16, set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title.

SUBPART B—TRUSTS WHICH DISTRIBUTE CURRENT INCOME ONLY

Sec.
651. Deduction for trusts distributing current income only.
652. Inclusion of amounts in gross income of beneficiaries of trusts distributing current income only.

§ 651. Deduction for trusts distributing current income only

(a) Deduction

In the case of any trust the terms of which—

(1) provide that all of its income is required to be distributed currently, and

(2) do not provide that any amounts are to be paid, permanently set aside, or used for the purposes specified in section 642(c) (relating to deduction for charitable, etc., purposes),

there shall be allowed as a deduction in computing the taxable income of the trust the amount of the income for the taxable year which is required to be distributed currently. This section shall not apply in any taxable year in which the trust distributes amounts other than amounts of income described in paragraph (1).

(b) Limitation on deduction

If the amount of income required to be distributed currently exceeds the distributable net income of the trust for the taxable year, the deduction shall be limited to the amount of the distributable net income. For this purpose, the computation of distributable net income shall not include items of income which are not included in the gross income of the trust and the deductions allocable thereto.

(Aug. 16, 1954, ch. 736, 68A Stat. 219.)

§ 652. Inclusion of amounts in gross income of beneficiaries of trusts distributing current income only

(a) Inclusion

Subject to subsection (b), the amount of income for the taxable year required to be distributed currently by a trust described in section 651 shall be included in the gross income of the beneficiaries to whom the income is required to be distributed, whether distributed or not. If such amount exceeds the distributable net income, there shall be included in the gross income of each beneficiary an amount which bears the same ratio to distributable net income as the amount of income required to be distributed to such beneficiary bears to the amount of income required to be distributed to all beneficiaries.

(b) Character of amounts

The amounts specified in subsection (a) shall have the same character in the hands of the beneficiary as in the hands of the trust. For this purpose, the amounts shall be treated as consisting of the same proportion of each class of items entering into the computation of distributable net income of the trust as the total of each class bears to the total distributable net income of the trust, unless the terms of the trust specifically allocate different classes of income to different beneficiaries. In the application of the preceding sentence, the items of deduction entering into the computation of distributable net income shall be allocated among the items of distributable net income in accordance with regulations prescribed by the Secretary.

(c) Different taxable years

If the taxable year of a beneficiary is different from that of the trust, the amount which the beneficiary is required to include in gross income in accordance with the provisions of this section shall be based upon the amount of income of the trust for any taxable year or years of the trust ending within or with his taxable year.

(Aug. 16, 1954, ch. 736, 68A Stat. 219; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

SUBPART C—ESTATES AND TRUSTS WHICH MAY ACCUMULATE INCOME OR WHICH DISTRIBUTE CORPUS

Sec.
661. Deductions for estates and trusts accumulating income or distributing corpus.[1]
662. Inclusion of amounts in gross income of beneficiaries of estates and trusts accumulating income or distributing corpus.
663. Special rules applicable to sections 661 and 662.
664. Charitable remainder trusts.

AMENDMENTS

1969—Pub. L. 91–172, title II, § 201(e)(2), Dec. 30, 1969, 83 Stat. 564, added item 664.

§ 661. Deduction for estates and trusts accumulating income or distributing corpus

(a) Deduction

In any taxable year there shall be allowed as a deduction in computing the taxable income of an estate or trust (other than a trust to which subpart B applies), the sum of—

(1) any amount of income for such taxable year required to be distributed currently (including any amount required to be distributed which may be paid out of income or corpus to the extent such amount is paid out of income for such taxable year); and

(2) any other amounts properly paid or credited or required to be distributed for such taxable year;

[1] So in original. Does not conform to section catchline.

but such deduction shall not exceed the distributable net income of the estate or trust.

(b) Character of amounts distributed

The amount determined under subsection (a) shall be treated as consisting of the same proportion of each class of items entering into the computation of distributable net income of the estate or trust as the total of each class bears to the total distributable net income of the estate or trust in the absence of the allocation of different classes of income under the specific terms of the governing instrument. In the application of the preceding sentence, the items of deduction entering into the computation of distributable net income (including the deduction allowed under section 642(c)) shall be allocated among the items of distributable net income in accordance with regulations prescribed by the Secretary.

(c) Limitation on deduction

No deduction shall be allowed under subsection (a) in respect of any portion of the amount allowed as a deduction under that subsection (without regard to this subsection) which is treated under subsection (b) as consisting of any item of distributable net income which is not included in the gross income of the estate or trust.

(Aug. 16, 1954, ch. 736, 68A Stat. 220; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–248, title III, §§ 302(b)(2), 308(a), Sept. 3, 1982, 96 Stat. 586, 591; Pub. L. 98–67, title I, § 102(a), Aug. 5, 1983, 97 Stat. 369.)

AMENDMENTS

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

1982—Subsec. (a). Pub. L. 97–248 provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, subsec. (a) is amended by inserting at end ''For purposes of paragraph (1), the amount of distributable net income shall be computed without the deduction allowed by section 642(c).''. Section 102(a), (b) of Pub. L. 98–67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§ 301–308) of title III of Pub. L. 97–248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 (this title) shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

1976—Subsec. (b). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

§ 662. Inclusion of amounts in gross income of beneficiaries of estates and trusts accumulating income or distributing corpus

(a) Inclusion

Subject to subsection (b), there shall be included in the gross income of a beneficiary to whom an amount specified in section 661(a) is paid, credited, or required to be distributed (by an estate or trust described in section 661), the sum of the following amounts:

(1) Amounts required to be distributed currently

The amount of income for the taxable year required to be distributed currently to such beneficiary, whether distributed or not. If the amount of income required to be distributed currently to all beneficiaries exceeds the distributable net income (computed without the deduction allowed by section 642(c), relating to deduction for charitable, etc., purposes) of the estate or trust, then, in lieu of the amount provided in the preceding sentence, there shall be included in the gross income of the beneficiary an amount which bears the same ratio to distributable net income (as so computed) as the amount of income required to be distributed currently to such beneficiary bears to the amount required to be distributed currently to all beneficiaries. For purposes of this section, the phrase ''the amount of income for the taxable year required to be distributed currently'' includes any amount required to be paid out of income or corpus to the extent such amount is paid out of income for such taxable year.

(2) Other amounts distributed

All other amounts properly paid, credited, or required to be distributed to such beneficiary for the taxable year. If the sum of—

(A) the amount of income for the taxable year required to be distributed currently to all beneficiaries, and

(B) all other amounts properly paid, credited, or required to be distributed to all beneficiaries

exceeds the distributable net income of the estate or trust, then, in lieu of the amount provided in the preceding sentence, there shall be included in the gross income of the beneficiary an amount which bears the same ratio to distributable net income (reduced by the amounts specified in (A)) as the other amounts properly paid, credited or required to be distributed to the beneficiary bear to the other amounts properly paid, credited, or required to be distributed to all beneficiaries.

(b) Character of amounts

The amounts determined under subsection (a) shall have the same character in the hands of the beneficiary as in the hands of the estate or trust. For this purpose, the amounts shall be treated as consisting of the same proportion of each class of items entering into the computation of distributable net income as the total of each class bears to the total distributable net income of the estate or trust unless the terms of the governing instrument specifically allocate different classes of income to different beneficiaries. In the application of the preceding sentence, the items of deduction entering into the computation of distributable net income (including the deduction allowed under section 642(c)) shall be allocated among the items of distributable net income in accordance with regulations prescribed by the Secretary. In the application of this subsection to the amount determined under paragraph (1) of subsection (a), distributable net income shall be computed without regard to any portion of the deduction under section 642(c) which is not attributable to income of the taxable year.

(c) Different taxable years

If the taxable year of a beneficiary is different from that of the estate or trust, the amount to

be included in the gross income of the beneficiary shall be based on the distributable net income of the estate or trust and the amounts properly paid, credited, or required to be distributed to the beneficiary during any taxable year or years of the estate or trust ending within or with his taxable year.

(Aug. 16, 1954, ch. 736, 68A Stat. 220; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

§ 663. Special rules applicable to sections 661 and 662

(a) Exclusions

There shall not be included as amounts falling within section 661(a) or 662(a)—

(1) Gifts, bequests, etc.

Any amount which, under the terms of the governing instrument, is properly paid or credited as a gift or bequest of a specific sum of money or of specific property and which is paid or credited all at once or in not more than 3 installments. For this purpose an amount which can be paid or credited only from the income of the estate or trust shall not be considered as a gift or bequest of a specific sum of money.

(2) Charitable, etc., distributions

Any amount paid or permanently set aside or otherwise qualifying for the deduction provided in section 642(c) (computed without regard to sections 508(d), 681, and 4948(c)(4)).

(3) Denial of double deduction

Any amount paid, credited, or distributed in the taxable year, if section 651 or section 661 applied to such amount for a preceding taxable year of an estate or trust because credited or required to be distributed in such preceding taxable year.

(b) Distributions in first sixty-five days of taxable year

(1) General rule

If within the first 65 days of any taxable year of an estate or a trust, an amount is properly paid or credited, such amount shall be considered paid or credited on the last day of the preceding taxable year.

(2) Limitation

Paragraph (1) shall apply with respect to any taxable year of an estate or a trust only if the executor of such estate or the fiduciary of such trust (as the case may be) elects, in such manner and at such time as the Secretary prescribes by regulations, to have paragraph (1) apply for such taxable year.

(c) Separate shares treated as separate estates or trusts

For the sole purpose of determining the amount of distributable net income in the application of sections 661 and 662, in the case of a single trust having more than one beneficiary, substantially separate and independent shares of different beneficiaries in the trust shall be treated as separate trusts. Rules similar to the rules of the preceding provisions of this subsection shall apply to treat substantially separate and independent shares of different beneficiaries in an estate having more than 1 beneficiary as separate estates. The existence of such substantially separate and independent shares and the manner of treatment as separate trusts or estates, including the application of subpart D, shall be determined in accordance with regulations prescribed by the Secretary.

(Aug. 16, 1954, ch. 736, 68A Stat. 222; Pub. L. 91–172, title I, §101(j)(17), title III, §331(b), Dec. 30, 1969, 83 Stat. 528, 598; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105–34, title XIII, §§1306(a), (b), 1307(a), (b), Aug. 5, 1997, 111 Stat. 1041.)

AMENDMENTS

1997—Subsec. (b). Pub. L. 105–34, §1306(a), inserted ''an estate or'' before ''a trust'' in pars. (1) and (2).

Subsec. (b)(2). Pub. L. 105–34, §1306(b), substituted ''the executor of such estate or the fiduciary of such trust (as the case may be)'' for ''the fiduciary of such trust''.

Subsec. (c). Pub. L. 105–34, §1307(a), (b), inserted ''estates or'' before ''trusts'' in heading, ''Rules similar to the rules of the preceding provisions of this subsection shall apply to treat substantially separate and independent shares of different beneficiaries in an estate having more than 1 beneficiary as separate estates.'' before last sentence, and ''or estates'' after ''trusts'' in last sentence.

1976—Subsecs. (b)(2), (c). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1969—Subsec. (a)(2). Pub. L. 91–172, §101(j)(17), substituted ''sections 508(d), 681, and 4948(c)(4)'' for ''section 681''.

Subsec. (b)(2). Pub. L. 91–172, §331(b), incorporated existing provisions of subpar. (C) of former first sentence making subsec. (b) applicable only to a trust where the fiduciary elected to have the subsec. apply and part of former second sentence making the election applicable in accordance with prescribed regulations; substituted provisions for regulations to spell out manner and time of election for part of former second sentence requiring the election to be made not later than the time prescribed by law for filing the return for the year, including any extension; and omitted: subpars. (A) and (B) of former first sentence which had provided for application of subsec. (b) only to a trust ''(A) which was in existence prior to January 1, 1954'' and ''(B) which, under the terms of its governing instrument, may not distribute in any taxable year amounts in excess of the income of the preceding taxable year''; part of former second sentence which required the election to be made for first taxable year to which this part is applicable; and third sentence that ''If such election is made with respect to a taxable year, this subsection shall apply to all amounts properly paid or credited within the first 65 days of all subsequent taxable years of such trust.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1306(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997].''

Section 1307(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply to estates of decedents dying after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 101(j)(17) of Pub. L. 91–172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L.

91–172, set out as an Effective Date note under section 4940 of this title.

Amendment by section 331(b) of Pub. L. 91–172 applicable to taxable years beginning before Jan. 1, 1970, see section 331(d) of Pub. L. 91–172, set out as a note under section 665 of this title.

§ 664. Charitable remainder trusts

(a) General rule

Notwithstanding any other provision of this subchapter, the provisions of this section shall, in accordance with regulations prescribed by the Secretary, apply in the case of a charitable remainder annuity trust and a charitable remainder unitrust.

(b) Character of distributions

Amounts distributed by a charitable remainder annuity trust or by a charitable remainder unitrust shall be considered as having the following characteristics in the hands of a beneficiary to whom is paid the annuity described in subsection (d)(1)(A) or the payment described in subsection (d)(2)(A):

(1) First, as amounts of income (other than gains, and amounts treated as gains, from the sale or other disposition of capital assets) includible in gross income to the extent of such income of the trust for the year and such undistributed income of the trust for prior years;

(2) Second, as a capital gain to the extent of the capital gain of the trust for the year and the undistributed capital gain of the trust for prior years;

(3) Third, as other income to the extent of such income of the trust for the year and such undistributed income of the trust for prior years; and

(4) Fourth, as a distribution of trust corpus.

For purposes of this section, the trust shall determine the amount of its undistributed capital gain on a cumulative net basis.

(c) Taxation of trusts

(1) Income tax

A charitable remainder annuity trust and a charitable remainder unitrust shall, for any taxable year, not be subject to any tax imposed by this subtitle.

(2) Excise tax

(A) In general

In the case of a charitable remainder annuity trust or a charitable remainder unitrust which has unrelated business taxable income (within the meaning of section 512, determined as if part III of subchapter F applied to such trust) for a taxable year, there is hereby imposed on such trust or unitrust an excise tax equal to the amount of such unrelated business taxable income.

(B) Certain rules to apply

The tax imposed by subparagraph (A) shall be treated as imposed by chapter 42 for purposes of this title other than subchapter E of chapter 42.

(C) Tax court proceedings

For purposes of this paragraph, the references in section 6212(c)(1) to section 4940 shall be deemed to include references to this paragraph.

(d) Definitions

(1) Charitable remainder annuity trust

For purposes of this section, a charitable remainder annuity trust is a trust—

(A) from which a sum certain (which is not less than 5 percent nor more than 50 percent of the initial net fair market value of all property placed in trust) is to be paid, not less often than annually, to one or more persons (at least one of which is not an organization described in section 170(c) and, in the case of individuals, only to an individual who is living at the time of the creation of the trust) for a term of years (not in excess of 20 years) or for the life or lives of such individual or individuals,

(B) from which no amount other than the payments described in subparagraph (A) and other than qualified gratuitous transfers described in subparagraph (C) may be paid to or for the use of any person other than an organization described in section 170(c),

(C) following the termination of the payments described in subparagraph (A), the remainder interest in the trust is to be transferred to, or for the use of, an organization described in section 170(c) or is to be retained by the trust for such a use or, to the extent the remainder interest is in qualified employer securities (as defined in subsection (g)(4)), all or part of such securities are to be transferred to an employee stock ownership plan (as defined in section 4975(e)(7)) in a qualified gratuitous transfer (as defined by subsection (g)), and

(D) the value (determined under section 7520) of such remainder interest is at least 10 percent of the initial net fair market value of all property placed in the trust.

(2) Charitable remainder unitrust

For purposes of this section, a charitable remainder unitrust is a trust—

(A) from which a fixed percentage (which is not less than 5 percent nor more than 50 percent) of the net fair market value of its assets, valued annually, is to be paid, not less often than annually, to one or more persons (at least one of which is not an organization described in section 170(c) and, in the case of individuals, only to an individual who is living at the time of the creation of the trust) for a term of years (not in excess of 20 years) or for the life or lives of such individual or individuals,

(B) from which no amount other than the payments described in subparagraph (A) and other than qualified gratuitous transfers described in subparagraph (C) may be paid to or for the use of any person other than an organization described in section 170(c),

(C) following the termination of the payments described in subparagraph (A), the remainder interest in the trust is to be transferred to, or for the use of, an organization described in section 170(c) or is to be retained by the trust for such a use or, to the extent the remainder interest is in qualified employer securities (as defined in subsection (g)(4)), all or part of such securities are to be transferred to an employee stock ownership

plan (as defined in section 4975(e)(7)) in a qualified gratuitous transfer (as defined by subsection (g)), and

(D) with respect to each contribution of property to the trust, the value (determined under section 7520) of such remainder interest in such property is at least 10 percent of the net fair market value of such property as of the date such property is contributed to the trust.

(3) Exception

Notwithstanding the provisions of paragraphs (2)(A) and (B), the trust instrument may provide that the trustee shall pay the income beneficiary for any year—

(A) the amount of the trust income, if such amount is less than the amount required to be distributed under paragraph (2)(A), and

(B) any amount of the trust income which is in excess of the amount required to be distributed under paragraph (2)(A), to the extent that (by reason of subparagraph (A)) the aggregate of the amounts paid in prior years was less than the aggregate of such required amounts.

(4) Severance of certain additional contributions

If—

(A) any contribution is made to a trust which before the contribution is a charitable remainder unitrust, and

(B) such contribution would (but for this paragraph) result in such trust ceasing to be a charitable unitrust by reason of paragraph (2)(D),

such contribution shall be treated as a transfer to a separate trust under regulations prescribed by the Secretary.

(e) Valuation for purposes of charitable contribution

For purposes of determining the amount of any charitable contribution, the remainder interest of a charitable remainder annuity trust or charitable remainder unitrust shall be computed on the basis that an amount equal to 5 percent of the net fair market value of its assets (or a greater amount, if required under the terms of the trust instrument) is to be distributed each year.

(f) Certain contingencies permitted

(1) General rule

If a trust would, but for a qualified contingency, meet the requirements of paragraph (1)(A) or (2)(A) of subsection (d), such trust shall be treated as meeting such requirements.

(2) Value determined without regard to qualified contingency

For purposes of determining the amount of any charitable contribution (or the actuarial value of any interest), a qualified contingency shall not be taken into account.

(3) Qualified contingency

For purposes of this subsection, the term ''qualified contingency'' means any provision of a trust which provides that, upon the happening of a contingency, the payments described in paragraph (1)(A) or (2)(A) of subsection (d) (as the case may be) will terminate not later than such payments would otherwise terminate under the trust.

(g) Qualified gratuitous transfer of qualified employer securities

(1) In general

For purposes of this section, the term ''qualified gratuitous transfer'' means a transfer of qualified employer securities to an employee stock ownership plan (as defined in section 4975(e)(7)) but only to the extent that—

(A) the securities transferred previously passed from a decedent dying before January 1, 1999, to a trust described in paragraph (1) or (2) of subsection (d),

(B) no deduction under section 404 is allowable with respect to such transfer,

(C) such plan contains the provisions required by paragraph (3),

(D) such plan treats such securities as being attributable to employer contributions but without regard to the limitations otherwise applicable to such contributions under section 404, and

(E) the employer whose employees are covered by the plan described in this paragraph files with the Secretary a verified written statement consenting to the application of sections 4978 and 4979A with respect to such employer.

(2) Exception

The term ''qualified gratuitous transfer'' shall not include a transfer of qualified employer securities to an employee stock ownership plan unless—

(A) such plan was in existence on August 1, 1996,

(B) at the time of the transfer, the decedent and members of the decedent's family (within the meaning of section 2032A(e)(2)) own (directly or through the application of section 318(a)) no more than 10 percent of the value of the stock of the corporation referred to in paragraph (4), and

(C) immediately after the transfer, such plan owns (after the application of section 318(a)(4)) at least 60 percent of the value of the outstanding stock of the corporation.

(3) Plan requirements

A plan contains the provisions required by this paragraph if such plan provides that—

(A) the qualified employer securities so transferred are allocated to plan participants in a manner consistent with section 401(a)(4),

(B) plan participants are entitled to direct the plan as to the manner in which such securities which are entitled to vote and are allocated to the account of such participant are to be voted,

(C) an independent trustee votes the securities so transferred which are not allocated to plan participants,

(D) each participant who is entitled to a distribution from the plan has the rights described in subparagraphs (A) and (B) of section 409(h)(1),

(E) such securities are held in a suspense account under the plan to be allocated each

year, up to the applicable limitation under paragraph (7) (determined on the basis of fair market value of securities when allocated to participants), after first allocating all other annual additions for the limitation year, up to the limitations under sections 415(c) and (e),[1] and

(F) on termination of the plan, all securities so transferred which are not allocated to plan participants as of such termination are to be transferred to, or for the use of, an organization described in section 170(c).

For purposes of the preceding sentence, the term ''independent trustee'' means any trustee who is not a member of the family (within the meaning of section 2032A(e)(2)) of the decedent or a 5-percent shareholder. A plan shall not fail to be treated as meeting the requirements of section 401(a) by reason of meeting the requirements of this subsection.

(4) Qualified employer securities

For purposes of this section, the term ''qualified employer securities'' means employer securities (as defined in section 409(*l*)) which are issued by a domestic corporation—

(A) which has no outstanding stock which is readily tradable on an established securities market, and

(B) which has only 1 class of stock.

(5) Treatment of securities allocated by employee stock ownership plan to persons related to decedent or 5-percent shareholders

(A) In general

If any portion of the assets of the plan attributable to securities acquired by the plan in a qualified gratuitous transfer are allocated to the account of—

(i) any person who is related to the decedent (within the meaning of section 267(b)) or a member of the decedent's family (within the meaning of section 2032A(e)(2)), or

(ii) any person who, at the time of such allocation or at any time during the 1-year period ending on the date of the acquisition of qualified employer securities by the plan, is a 5-percent shareholder of the employer maintaining the plan,

the plan shall be treated as having distributed (at the time of such allocation) to such person or shareholder the amount so allocated.

(B) 5-percent shareholder

For purposes of subparagraph (A), the term ''5-percent shareholder'' means any person who owns (directly or through the application of section 318(a)) more than 5 percent of the outstanding stock of the corporation which issued such qualified employer securities or of any corporation which is a member of the same controlled group of corporations (within the meaning of section 409(*l*)(4)) as such corporation. For purposes of the preceding sentence, section 318(a) shall be applied without regard to the exception in paragraph (2)(B)(i) thereof.

(C) Cross reference

For excise tax on allocations described in subparagraph (A), see section 4979A.

(6) Tax on failure to transfer unallocated securities to charity on termination of plan

If the requirements of paragraph (3)(F) are not met with respect to any securities, there is hereby imposed a tax on the employer maintaining the plan in an amount equal to the sum of—

(A) the amount of the increase in the tax which would be imposed by chapter 11 if such securities were not transferred as described in paragraph (1), and

(B) interest on such amount at the underpayment rate under section 6621 (and compounded daily) from the due date for filing the return of the tax imposed by chapter 11.

(7) Applicable limitation

(A) In general

For purposes of paragraph (3)(E), the applicable limitation under this paragraph with respect to a participant is an amount equal to the lesser of—

(i) $30,000, or

(ii) 25 percent of the participant's compensation (as defined in section 415(c)(3)).

(B) Cost-of-living adjustment

The Secretary shall adjust annually the $30,000 amount under subparagraph (A)(i) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning October 1, 1993, and any increase under this subparagraph which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000.

(Added Pub. L. 91–172, title II, § 201(e)(1), Dec. 30, 1969, 83 Stat. 562; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title X, § 1022(d), July 18, 1984, 98 Stat. 1029; Pub. L. 105–34, title X, § 1089(a)(1), (b)(1), (2), (4), title XV, § 1530(a), (b), (c)(5), 111 Stat. 960, 1075, 1078; Pub. L. 105–206, title VI, § 6010(r), July 22, 1998, 112 Stat. 817; Pub. L. 106–554, § 1(a)(7) [title III, § 319(7)], Dec. 21, 2000, 114 Stat. 2763, 2763A–646; Pub. L. 107–16, title VI, § 632(a)(3)(H), June 7, 2001, 115 Stat. 114; Pub. L. 109–280, title VIII, § 868(a), Aug. 17, 2006, 120 Stat. 1025; Pub. L. 109–432, div. A, title IV, § 424(a), Dec. 20, 2006, 120 Stat. 2974.)

REFERENCES IN TEXT

Section 415(e) of this title, referred to in subsec. (g)(3)(E), was repealed by Pub. L. 104–188, title I, § 1452(a), Aug. 20, 1996, 110 Stat. 1816.

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–432 amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: ''A charitable remainder annuity trust and a charitable remainder unitrust shall, for any taxable year, not be subject to any tax imposed by this subtitle, unless such trust, for such year, has unrelated business taxable income (within the meaning of section 512, determined as if part III of subchapter F applied to such trust).''

Subsec. (g)(3)(E). Pub. L. 109–280 inserted ''(determined on the basis of fair market value of securities when allocated to participants)'' after ''paragraph (7)''.

[1] See References in Text note below.

2001—Subsec. (g)(3)(E). Pub. L. 107–16, §632(a)(3)(H)(i), substituted ''applicable limitation under paragraph (7)'' for ''limitations under section 415(c)''.

Subsec. (g)(7). Pub. L. 107–16, §632(a)(3)(H)(ii), added par. (7).

2000—Subsec. (d)(1)(C), (2)(C). Pub. L. 106–554 struck out period after ''(as defined by subsection (g))''. See 1997 Amendment notes below.

1998—Subsec. (d)(1)(C), (2)(C). Pub. L. 105–206 inserted '', and'' at end.

1997—Subsec. (d)(1)(A). Pub. L. 105–34, §1089(a)(1), inserted ''nor more than 50 percent'' after ''not less than 5 percent''.

Subsec. (d)(1)(B). Pub. L. 105–34, §1530(c)(5), inserted ''and other than qualified gratuitous transfers described in subparagraph (C)'' after ''subparagraph (A)''.

Pub. L. 105–34, §1089(b)(1), struck out ''and'' at end.

Subsec. (d)(1)(C). Pub. L. 105–34, §1530(a), which directed amendment of subpar. (C) by striking period at end and inserting ''or, to the extent the remainder interest is in qualified employer securities (as defined in subsection (g)(4)), all or part of such securities are to be transferred to an employee stock ownership plan (as defined in section 4975(e)(7)) in a qualified gratuitous transfer (as defined by subsection (g)).'', was executed by making the insertion after ''for such a use'' to reflect the probable intent of Congress. Subpar. (C) did not contain a period after amendment by Pub. L. 105–34, §1089(b)(1). See below.

Pub. L. 105–34, §1089(b)(1), struck out period after ''for such a use''.

Subsec. (d)(1)(D). Pub. L. 105–34, §1089(b)(1), added subpar. (D).

Subsec. (d)(2)(A). Pub. L. 105–34, §1089(a)(1), inserted ''nor more than 50 percent'' after ''not less than 5 percent''.

Subsec. (d)(2)(B). Pub. L. 105–34, §1530(c)(5), inserted ''and other than qualified gratuitous transfers described in subparagraph (C)'' after ''subparagraph (A)''.

Pub. L. 105–34, §1089(b)(2), struck out ''and'' at end.

Subsec. (d)(2)(C). Pub. L. 105–34, §1530(a), which directed amendment of subpar. (C) by striking period at end and inserting ''or, to the extent the remainder interest is in qualified employer securities (as defined in subsection (g)(4)), all or part of such securities are to be transferred to an employee stock ownership plan (as defined in section 4975(e)(7)) in a qualified gratuitous transfer (as defined by subsection (g)).'', was executed by making the insertion after ''for such a use'' to reflect the probable intent of Congress. Subpar. (C) did not contain a period after amendment by Pub. L. 105–34, §1089(b)(2). See below.

Pub. L. 105–34, §1089(b)(2), struck out period after ''for such a use''.

Subsec. (d)(2)(D). Pub. L. 105–34, §1089(b)(2), added subpar. (D).

Subsec. (d)(4). Pub. L. 105–34, §1089(b)(4), added par. (4).

Subsec. (g). Pub. L. 105–34, §1530(b), added subsec. (g).

1984—Subsec. (f). Pub. L. 98–369 added subsec. (f).

1976—Subsec. (a). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §424(b), Dec. 20, 2006, 120 Stat. 2974, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006.''

Pub. L. 109–280, title VIII, §868(b), Aug. 17, 2006, 120 Stat. 1025, provided that: ''The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 17, 2006].''

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 632(a)(4) of Pub. L. 107–16, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1089(a)(2) of Pub. L. 105–34 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to transfers in trust after June 18, 1997.''

Section 1089(b)(6) of Pub. L. 105–34 provided that:

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by this subsection [amending this section and section 2055 of this title] shall apply to transfers in trust after July 28, 1997.

''(B) SPECIAL RULE FOR CERTAIN DECEDENTS.—The amendments made by this subsection shall not apply to transfers in trust under the terms of a will (or other testamentary instrument) executed on or before July 28, 1997, if the decedent—

''(i) dies before January 1, 1999, without having republished the will (or amended such instrument) by codicil or otherwise, or

''(ii) was on July 28, 1997, under a mental disability to change the disposition of his property and did not regain his competence to dispose of such property before the date of his death.''

Amendment by section 1530(a), (b), (c)(5) of Pub. L. 105–34 applicable to transfers made by trusts to, or for the use of, an employee stock ownership plan after Aug. 5, 1997, see section 1530(d) of Pub. L. 105–34, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369, applicable to transfers after Dec. 31, 1978, see section 1022(e)(2) of Pub. L. 98–369, set out as a note under section 2055 of this title.

EFFECTIVE DATE

Section applicable to transfers in trust made after July 31, 1969, see section 201(g)(5), set out as an Effective Date of 1969 Amendment note under section 170 of this title.

SUBPART D—TREATMENT OF EXCESS DISTRIBUTIONS BY TRUSTS

Sec.
665. Definitions applicable to subpart D.
666. Accumulation distribution allocated to preceding years.
667. Treatment of amounts deemed distributed by trust in preceding years.
668. Interest charge on accumulation distributions from foreign trusts.
[669. Repealed.]

AMENDMENTS

1976—Pub. L. 94–455, title VII, §701(g)(1), title X, §1014(c), Oct. 4, 1976, 90 Stat. 1580, 1617, substituted in item 667 ''Treatment of amounts deemed distributed by trust in preceding years'' for ''Denial of refund to trusts; authorization of credit to beneficiaries'', in item 668 ''Interest charge on accumulation distributions from foreign trusts'' for ''Treatment of amounts deemed distributed in preceding years'', and struck out item 669 ''Treatment of capital gain deemed distributed in preceding years''.

1969—Pub. L. 91–172, title III, §331(a), Dec. 30, 1969, 83 Stat. 592, struck out ''5'' after ''allocated to'' in item 666, inserted ''authorization of credit to beneficiaries'' in item 667, and substituted ''Treatment of capital gain deemed distributed in preceding years'' for ''Special rules applicable to certain foreign trusts'' in item 669.

1962—Pub. L. 87–834, §7(i)(1), Oct. 16, 1962, 76 Stat. 988, added item 669.

§ 665. Definitions applicable to subpart D

(a) Undistributed net income

For purposes of this subpart, the term ''undistributed net income'' for any taxable year

means the amount by which distributable net income of the trust for such taxable year exceeds the sum of—

(1) the amounts for such taxable year specified in paragraphs (1) and (2) of section 661(a), and

(2) the amount of taxes imposed on the trust attributable to such distributable net income.

(b) Accumulation distribution

For purposes of this subpart, except as provided in subsection (c), the term ''accumulation distribution'' means, for any taxable year of the trust, the amount by which—

(1) the amounts specified in paragraph (2) of section 661(a) for such taxable year, exceed

(2) distributable net income for such year reduced (but not below zero) by the amounts specified in paragraph (1) of section 661(a).

For purposes of section 667 (other than subsection (c) thereof, relating to multiple trusts), the amounts specified in paragraph (2) of section 661(a) shall not include amounts properly paid, credited, or required to be distributed to a beneficiary from a trust (other than a foreign trust) as income accumulated before the birth of such beneficiary or before such beneficiary attains the age of 21. If the amounts properly paid, credited, or required to be distributed by the trust for the taxable year do not exceed the income of the trust for such year, there shall be no accumulation distribution for such year.

(c) Exception for accumulation distributions from certain domestic trusts

For purposes of this subpart—

(1) In general

In the case of a qualified trust, any distribution in any taxable year beginning after the date of the enactment of this subsection shall be computed without regard to any undistributed net income.

(2) Qualified trust

For purposes of this subsection, the term ''qualified trust'' means any trust other than—

(A) a foreign trust (or, except as provided in regulations, a domestic trust which at any time was a foreign trust), or

(B) a trust created before March 1, 1984, unless it is established that the trust would not be aggregated with other trusts under section 643(f) if such section applied to such trust.

(d) Taxes imposed on the trust

For purposes of this subpart—

(1) In general

The term ''taxes imposed on the trust'' means the amount of the taxes which are imposed for any taxable year of the trust under this chapter (without regard to this subpart or part IV of subchapter A) and which, under regulations prescribed by the Secretary, are properly allocable to the undistributed portions of distributable net income and gains in excess of losses from sales or exchanges of capital assets. The amount determined in the preceding sentence shall be reduced by any amount of such taxes deemed distributed under section 666(b) and (c) to any beneficiary.

(2) Foreign trusts

In the case of any foreign trust, the term ''taxes imposed on the trust'' includes the amount, reduced as provided in the last sentence of paragraph (1), of any income, war profits, and excess profits taxes imposed by any foreign country or possession of the United States on such foreign trust which, as determined under paragraph (1), are so properly allocable. Under rules or regulations prescribed by the Secretary, in the case of any foreign trust of which the settlor or another person would be treated as owner of any portion of the trust under subpart E but for section 672(f), the term ''taxes imposed on the trust'' includes the allocable amount of any income, war profits, and excess profits taxes imposed by any foreign country or possession of the United States on the settlor or such other person in respect of trust income.

(e) Preceding taxable year

For purposes of this subpart—

(1) In the case of a foreign trust created by a United States person, the term ''preceding taxable year'' does not include any taxable year of the trust to which this part does not apply.

(2) In the case of a preceding taxable year with respect to which a trust qualified, without regard to this subpart, under the provisions of subpart B, for purposes of the application of this subpart to such trust for such taxable year, such trust shall, in accordance with regulations prescribed by the Secretary, be treated as a trust to which subpart C applies.

(Aug. 16, 1954, ch. 736, 68A Stat. 223; Pub. L. 87–834, § 7(b), Oct. 16, 1962, 76 Stat. 985; Pub. L. 91–172, title III, § 331(a), Dec. 30, 1969, 83 Stat. 592; Pub. L. 92–178, title III, § 306(a), Dec. 10, 1971, 85 Stat. 524; Pub. L. 94–455, title VII, §§ 701(b), (c), (d)(2), (3), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1577, 1578, 1834; Pub. L. 95–600, title VII, § 701(q)(1)(A), Nov. 6, 1978, 92 Stat. 2909; Pub. L. 99–514, title XVIII, § 1847(b)(16), Oct. 22, 1986, 100 Stat. 2857; Pub. L. 101–508, title XI, § 11802(f)(2), Nov. 5, 1990, 104 Stat. 1388–530; Pub. L. 104–188, title I, § 1904(b)(1), (c)(2), Aug. 20, 1996, 110 Stat. 1912; Pub. L. 105–34, title V, § 507(a), title XVI, § 1604(g)(2), Aug. 5, 1997, 111 Stat. 856, 1099.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (c)(1), is the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

AMENDMENTS

1997—Subsec. (b). Pub. L. 105–34, § 507(a)(2), inserted ''except as provided in subsection (c),'' after ''subpart,'' in introductory provisions.

Subsec. (c). Pub. L. 105–34, § 507(a)(1), added subsec. (c).

Subsec. (d)(1). Pub. L. 105–34, § 1604(g)(2), struck out ''or 669(d) and (e)'' after ''666(b) and (c)''.

1996—Subsec. (c). Pub. L. 104–188, § 1904(c)(2), struck out subsec. (c) which read as follows: ''SPECIAL RULE APPLICABLE TO DISTRIBUTIONS BY CERTAIN FOREIGN TRUSTS.—For purposes of this subpart, any amount paid to a United States person which is from a payor who is not a United States person and which is derived directly or indirectly from a foreign trust created by a United States person shall be deemed in the year of payment to have been directly paid by the foreign trust.''

Subsec. (d)(2). Pub. L. 104–188, §1904(b)(1), inserted at end ''Under rules or regulations prescribed by the Secretary, in the case of any foreign trust of which the settlor or another person would be treated as owner of any portion of the trust under subpart E but for section 672(f), the term 'taxes imposed on the trust' includes the allocable amount of any income, war profits, and excess profits taxes imposed by any foreign country or possession of the United States on the settlor or such other person in respect of trust income.''

1990—Subsec. (e). Pub. L. 101–508 amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''For purposes of this subpart—

''(1) in the case of a trust (other than a foreign trust created by a United States person), the term 'preceding taxable year' does not include any taxable year of the trust—

''(A) which precedes by more than 5 years the taxable year of the trust in which an accumulation distribution is made, if it is made in a taxable year beginning before January 1, 1974, or

''(B) which begins before January 1, 1969, in the case of an accumulation distribution made during a taxable year beginning after December 31, 1973, and

''(2) in the case of a foreign trust created by a United States person, such term does not include any taxable year of the trust to which this part does not apply.

In the case of a preceding taxable year with respect to which a trust qualifies (without regard to this subpart) under the provisions of subpart B, for purposes of the application of this subpart to such trust for such taxable year, such trust shall, in accordance with regulations prescribed by the Secretary, be treated as a trust to which subpart C applies.''

1986—Subsec. (d)(1). Pub. L. 99–514 substituted ''part IV'' for ''subpart A of part IV''.

1978—Subsec. (d). Pub. L. 95–600 designated existing provisions as par. (1), defined ''taxes imposed on the trust'' to mean imposition of taxes without regard to subpart A of part IV of subchapter (A), and added par. (2).

1976—Subsec. (b). Pub. L. 94–455, §701(b), (c), inserted provisions that for purposes of sec. 667 the amounts specified in par. (2) of sec. 661(a) not include amounts paid, credited, or required to be distributed to a beneficiary from a trust as income accumulated before the birth of such beneficiary or before such beneficiary reaches 21, and that if the amounts paid, credited, or required to be distributed by the trust for the taxable year do not exceed the income of the trust for such year, there be no accumulation distribution for such year.

Subsecs. (d), (e). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (e)(1). Pub. L. 94–455, §701(d)(2), struck out provision that preceding taxable year does not include any taxable year of the trust which begins before Jan. 1, 1969, in the case of a capital gain distribution made during a taxable year beginning after Dec. 31, 1968.

Subsecs. (f), (g). Pub. L. 94–455, §701(d)(3), struck out subsec. (f) which related to undistributed capital gains, and subsec. (g) which related to capital gain distribution.

1971—Subsec. (g). Pub. L. 92–178 struck out ''for such taxable year'' after ''undistributed capital gain'' in introductory text.

1969—Subsec. (a)(2). Pub. L. 91–172 inserted ''attributable to such distributable net income'' after ''on the trust''.

Subsec. (b). Pub. L. 91–172 substituted ''Accumulation distribution'' for ''Accumulation distributions of trusts other than certain foreign trusts'' in heading, combined existing provisions of subsecs. (b) and (c) defining ''accumulation distribution'' in the case of a trust (other than a foreign trust created by a United States person) and of a foreign trust created by a United States person, respectively, in provisions now designated as pars. (1) and (2), deleting ''the amount (if in excess of $2,000)'' before ''by which'' in introductory text and inserting ''(but not below zero)'' in par. (2), and deleted second sentence providing that for purposes of this subsection, the amount specified in par. (2) of section 661(a) shall be determined without regard to section 666 and excepting from ''accumulation distributions'': accumulations before birth or attainment of age 21; distributions for emergency needs; distributions, where beneficiary attained specified age or ages and there were not more than 4 distributions, at intervals of 4 or more years; and final distribution of trust was made more than 9 years after date of last transfer to the trust.

Subsec. (c). Pub. L. 91–172 substituted ''Special rule applicable to distributions by certain foreign trusts'' for ''Accumulation distribution of certain foreign trusts'' in heading, inserted introductory phrase ''For purposes of this subpart'', reenacted provisions of former third sentence as the subsection, struck out first sentence which defined in the case of a foreign trust created by a United States person the term ''accumulation distribution'', (see subsec. (b) of this section), and deleted second sentence which stated that ''For purposes of this subsection, the amount specified in paragraph (2) of section 661(a) shall be determined without regard to section 666.''

Subsec. (d). Pub. L. 91–172 substituted ''taxable year of the trust'' for ''taxable year on the trust'', ''allocable to the undistributed portions of distributable net income and gains to excess of losses from sales or exchanges of capital assets'' for ''allocable to the undistributed portion of the distributable net income'', and ''reduced by any amount of such taxes deemed distributed under section 666(b) and (c) or 669(d) and (e) to any beneficiary'' for ''reduced by any amount of such taxes allowed, under sections 667 and 668, as a credit to any beneficiary on account of any accumulation distribution determined for any taxable year''.

Subsec. (e). Pub. L. 91–172 substituted provisions of first sentence contained in pars. 1(A) to (C) and (2) for prior first sentence which read ''For purposes of this subpart, the term 'preceding taxable year' does not include any taxable year of the trust to which this part does not apply'' and reenacted provisions of second sentence.

Subsecs. (f), (g). Pub. L. 91–172 added subsecs. (f) and (g).

1962—Subsec. (b). Pub. L. 87–834, §7(b)(1), substituted ''Accumulation distributions of trusts other than certain foreign trusts'' for ''Accumulation distribution'' in heading, and inserted ''in the case of a trust (other than a foreign trust created by a United States person),'' after ''purposes of this subpart,''.

Subsecs. (c) to (e). Pub. L. 87–834, §7(b)(2), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 507(c)(1) of Pub. L. 105–34 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to distributions in taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective Aug. 20, 1996, with exception for certain trusts, see section 1904(d) of Pub. L. 104–188, set out as a note under section 643 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(q)(3)(A) of Pub. L. 95–600 provided that: ''The amendments made by paragraph (1) [amending this section and section 667 of this title] shall apply to

distributions made in taxable years beginning after December 31, 1975.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 701(b), (c), (d)(2), (3) of Pub. L. 94–455 applicable to distributions made in taxable years beginning after Dec. 31, 1975, see section 701(h), set out as a note under section 667 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 306(a) of Pub. L. 92–178 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1968.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 331(d) of Pub. L. 91–172, as amended by Pub. L. 92–178, title III, § 306(b), Dec. 10, 1971, 85 Stat. 524; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) GENERAL RULE.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 663, 666 to 669, and 6401 of this title] shall apply to taxable years beginning after December 31, 1968.

''(2) EXCEPTIONS.—

''(A) Amounts paid, credited, or required to be distributed by a trust (other than a foreign trust created by a United States person) on or before the last day of a taxable year of the trust beginning before January 1, 1974, shall not be deemed to be accumulation distributions to the extent that such amounts were accumulated by a trust in taxable years of such trust beginning before January 1, 1969, and would have been excepted from the definition of an accumulation distribution by reason of paragraph (1), (2), (3), or (4) of section 665(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as in effect on December 31, 1968, if they had been distributed on the last day of the last taxable year of the trust beginning before January 1, 1969.

''(B) For taxable years of a trust beginning before January 1, 1970, the first sentence of section 666(a) of the Internal Revenue Code of 1986 (as amended by this section) shall not apply, and the amount of the accumulation distribution of the trust for such taxable years shall be deemed to be an amount within the meaning of paragraph (2) of section 661(a) distributed on the last day of each of the preceding taxable years to the extent that such amount exceeds the total of any undistributed net income for any taxable years intervening between the taxable year with respect of which the accumulation distribution is determined and such preceding taxable year.

''(C) In the case of a trust which was in existence on December 31, 1969, section 669 of the Internal Revenue Code of 1986, as amended by this section, shall not apply to capital gain distributions made to a beneficiary before January 1, 1973. If the beneficiary receives capital gain distributions from more than one such trust before January 1, 1973, the preceding sentence shall apply to capital gain distributions from only one such trust, such one to be designated by the taxpayer in accordance with regulations prescribed by the Secretary or his delegate. For purposes of the preceding sentence, capital gain distributions received from a trust qualifying under section 2056(b)(5) of the Internal Revenue Code of 1986 by a surviving spouse (who is the beneficiary of only one such trust) shall be disregarded.''

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section by Pub. L. 87–834 applicable with respect to distributions made after Dec. 31, 1962, see section 7(j) of Pub. L. 87–834, set out as a note under section 643 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 666. Accumulation distribution allocated to preceding years

(a) Amount allocated

In the case of a trust which is subject to subpart C, the amount of the accumulation distribution of such trust for a taxable year shall be deemed to be an amount within the meaning of paragraph (2) of section 661(a) distributed on the last day of each of the preceding taxable years, commencing with the earliest of such years, to the extent that such amount exceeds the total of any undistributed net income for all earlier preceding taxable years. The amount deemed to be distributed in any such preceding taxable year under the preceding sentence shall not exceed the undistributed net income for such preceding taxable year. For purposes of this subsection, undistributed net income for each of such preceding taxable years shall be computed without regard to such accumulation distribution and without regard to any accumulation distribution determined for any succeeding taxable year.

(b) Total taxes deemed distributed

If any portion of an accumulation distribution for any taxable year is deemed under subsection (a) to be an amount within the meaning of paragraph (2) of section 661(a) distributed on the last day of any preceding taxable year, and such portion of such distribution is not less than the undistributed net income for such preceding taxable year, the trust shall be deemed to have distributed on the last day of such preceding taxable year an additional amount within the meaning of paragraph (2) of section 661(a). Such additional amount shall be equal to the taxes (other than the tax imposed by section 55) imposed on the trust for such preceding taxable year attributable to the undistributed net income. For purposes of this subsection, the undistributed net income and the taxes imposed on the trust for such preceding taxable year attributable to such undistributed net income shall be computed without regard to such accumulation distribution and without regard to any accumulation distribution determined for any succeeding taxable year.

(c) Pro rata portion of taxes deemed distributed

If any portion of an accumulation distribution for any taxable year is deemed under subsection (a) to be an amount within the meaning of paragraph (2) of section 661(a) distributed on the last day of any preceding taxable year and such por-

tion of the accumulation distribution is less than the undistributed net income for such preceding taxable year, the trust shall be deemed to have distributed on the last day of such preceding taxable year an additional amount within the meaning of paragraph (2) of section 661(a). Such additional amount shall be equal to the taxes (other than the tax imposed by section 55) imposed on the trust for such taxable year attributable to the undistributed net income multiplied by the ratio of the portion of the accumulation distribution to the undistributed net income of the trust for such year. For purposes of this subsection, the undistributed net income and the taxes imposed on the trust for such preceding taxable year attributable to such undistributed net income shall be computed without regard to the accumulation distribution and without regard to any accumulation distribution determined for any succeeding taxable year.

(d) Rule when information is not available

If adequate records are not available to determine the proper application of this subpart to an amount distributed by a trust, such amount shall be deemed to be an accumulation distribution consisting of undistributed net income earned during the earliest preceding taxable year of the trust in which it can be established that the trust was in existence.

(e) Denial of refund to trusts and beneficiaries

No refund or credit shall be allowed to a trust or a beneficiary of such trust for any preceding taxable year by reason of a distribution deemed to have been made by such trust in such year under this section.

(Aug. 16, 1954, ch. 736, 68A Stat. 224; Pub. L. 87–834, §7(c), Oct. 16, 1962, 76 Stat. 986; Pub. L. 91–172, title III, §331(a), Dec. 30, 1969, 83 Stat. 593; Pub. L. 94–455, title VII, §701(a)(2), Oct. 4, 1976, 90 Stat. 1577; Pub. L. 95–600, title IV, §421(d), Nov. 6, 1978, 92 Stat. 2875; Pub. L. 96–222, title I, §104(a)(4)(H)(vi), Apr. 1, 1980, 94 Stat. 218.)

AMENDMENTS

1980—Subsec. (c). Pub. L. 96–222 inserted ''(other than the tax imposed by section 55)'' after ''equal to the taxes''.

1978—Subsec. (b). Pub. L. 95–600 inserted ''(other than the tax imposed by section 55)'' after ''equal to the taxes''.

1976—Subsec. (e). Pub. L. 94–455 added subsec. (e).

1969—Subsec. (a). Pub. L. 91–172 substituted in first sentence ''In the case of a trust which is subject to subpart (C)'' for ''In the case of a trust (other than a foreign trust created by a United States person) which for a taxable year beginning after December 31, 1953, is subject to subpart (C)'', ''for a taxable year'' for ''for such taxable year'', and ''undistributed net income for all earlier preceding taxable years'' for ''undistributed net incomes for any taxable years intervening between the taxable year with respect to which the accumulation distribution is determined and such preceding taxable year'' and in second sentence ''for such'' for ''of such'', inserted in first sentence '', commencing with the earliest of such years,'' after ''preceding taxable years'', struck out ''5'' before ''preceding taxable years'' in first and third sentences and last sentence which read as follows: ''In the case of a foreign trust created by a United States person, this subsection shall apply to the preceding taxable years of the trust without regard to any provision of the preceding sentences which would (but for this sentence) limit its application to the 5 preceding taxable years.''

Subsec. (b). Pub. L. 91–172 inserted ''attributable to the undistributed net income'' after ''taxable year'' in second sentence and ''attributable to such undistributed net income'' before ''shall be computed'' in third sentence.

Subsec. (c). Pub. L. 91–172 inserted ''attributable to the undistributed net income'' before ''multiplied by the ratio'' in second sentence and ''attributable to such undistributed net income'' before ''shall be computed'' in third sentence.

Subsec. (d). Pub. L. 91–172 added subsec. (d).

1962—Subsec. (a). Pub. L. 87–834 inserted ''(other than a foreign trust created by a United States person)'' after ''In the case of a trust'', and inserted sentence making this subsection applicable, in the case of a foreign trust created by a United States person, to the preceding taxable years of the trust without regard to any provision of the preceding sentences of this subsection which would (but for this sentence) limit its application to the 5 preceding taxable years.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 421(g) of Pub. L. 95–600, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable to distributions made in taxable years beginning after Dec. 31, 1975, see section 701(h) of Pub. L. 94–455, set out as a note under section 667 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1968, except that for taxable years of a trust beginning before Jan. 1, 1970, first sentence of subsec. (a) not applicable and amount of accumulation distribution stated, see section 331(d)(1), (2)(B) of Pub. L. 91–172, set out as a note under section 665 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable with respect to distributions made after Dec. 31, 1962, see section 7(j) of Pub. L. 87–834, set out as a note under section 643 of this title.

§ 667. Treatment of amounts deemed distributed by trust in preceding years

(a) General rule

The total of the amounts which are treated under section 666 as having been distributed by a trust in a preceding taxable year shall be included in the income of a beneficiary of the trust when paid, credited, or required to be distributed to the extent that such total would have been included in the income of such beneficiary under section 662(a)(2) (and, with respect to any tax-exempt interest to which section 103 applies, under section 662(b)) if such total had been paid to such beneficiary on the last day of such preceding taxable year. The tax imposed by this subtitle on a beneficiary for a taxable year in which any such amount is included in his income shall be determined only as provided in this section and shall consist of the sum of—

(1) a partial tax computed on the taxable income reduced by an amount equal to the total of such amounts, at the rate and in the manner as if this section had not been enacted,

(2) a partial tax determined as provided in subsection (b) of this section, and

(3) in the case of a foreign trust, the interest charge determined as provided in section 668.

(b) Tax on distribution

(1) In general

The partial tax imposed by subsection (a)(2) shall be determined.

(A) by determining the number of preceding taxable years of the trust on the last day of which an amount is deemed under section 666(a) to have been distributed,

(B) by taking from the 5 taxable years immediately preceding the year of the accumulation distribution the 1 taxable year for which the beneficiary's taxable income was the highest and the 1 taxable year for which his taxable income was the lowest,

(C) by adding to the beneficiary's taxable income for each of the 3 taxable years remaining after the application of subparagraph (B) an amount determined by dividing the amount deemed distributed under section 666 and required to be included in income under subsection (a) by the number of preceding taxable years determined under subparagraph (A), and

(D) by determining the average increase in tax for the 3 taxable years referred to in subparagraph (C) resulting from the application of such subparagraph.

The partial tax imposed by subsection (a)(2) shall be the excess (if any) of the average increase in tax determined under subparagraph (D), multiplied by the number of preceding taxable years determined under subparagraph (A), over the amount of taxes (other than the amount of taxes described in section 665(d)(2)) deemed distributed to the beneficiary under sections 666(b) and (c).

(2) Treatment of loss years

For purposes of paragraph (1), the taxable income of the beneficiary for any taxable year shall be deemed to be not less than zero.

(3) Certain preceding taxable years not taken into account

For purposes of paragraph (1), if the amount of the undistributed net income deemed distributed in any preceding taxable year of the trust is less than 25 percent of the amount of the accumulation distribution divided by the number of preceding taxable years to which the accumulation distribution is allocated under section 666(a), the number of preceding taxable years of the trust with respect to which an amount is deemed distributed to a beneficiary under section 666(a) shall be determined without regard to such year.

(4) Effect of other accumulation distributions

In computing the partial tax under paragraph (1) for any beneficiary, the income of such beneficiary for each of his prior taxable years shall include amounts previously deemed distributed to such beneficiary in such year under section 666 as a result of prior accumulation distributions (whether from the same or another trust).

(5) Multiple distributions in the same taxable year

In the case of accumulation distributions made from more than one trust which are includible in the income of a beneficiary in the same taxable year, the distributions shall be deemed to have been made consecutively in whichever order the beneficiary shall determine.

(6) Adjustment in partial tax for estate and generation-skipping transfer taxes attributable to partial tax

(A) In general

The partial tax shall be reduced by an amount which is equal to the pre-death portion of the partial tax multiplied by a fraction—

(i) the numerator of which is that portion of the tax imposed by chapter 11 or 13, as the case may be, which is attributable (on a proportionate basis) to amounts included in the accumulation distribution, and

(ii) the denominator of which is the amount of the accumulation distribution which is subject to the tax imposed by chapter 11 or 13, as the case may be.

(B) Partial tax determined without regard to this paragraph

For purposes of this paragraph, the term ''partial tax'' means the partial tax imposed by subsection (a)(2) determined under this subsection without regard to this paragraph.

(C) Pre-death portion

For purposes of this paragraph, the pre-death portion of the partial tax shall be an amount which bears the same ratio to the partial tax as the portion of the accumulation distribution which is attributable to the period before the date of the death of the decedent or the date of the generation-skipping transfer bears to the total accumulation distribution.

(c) Special rule for multiple trusts

(1) In general

If, in the same prior taxable year of the beneficiary in which any part of the accumulation distribution from a trust (hereinafter in this paragraph referred to as ''third trust'') is deemed under section 666(a) to have been distributed to such beneficiary, some part of prior distributions by each of 2 or more other trusts is deemed under section 666(a) to have been distributed to such beneficiary, then subsections (b) and (c) of section 666 shall not apply with respect to such part of the accumulation distribution from such third trust.

(2) Accumulation distributions from trust not taken into account unless they equal or exceed $1,000

For purposes of paragraph (1), an accumulation distribution from a trust to a beneficiary shall be taken into account only if such dis-

tribution, when added to any prior accumulation distributions from such trust which are deemed under section 666(a) to have been distributed to such beneficiary for the same prior taxable year of the beneficiary, equals or exceeds $1,000.

(d) Special rules for foreign trust

(1) Foreign tax deemed paid by beneficiary

(A) In general

In determining the increase in tax under subsection (b)(1)(D) for any computation year, the taxes described in section 665(d)(2) which are deemed distributed under section 666(b) or (c) and added under subsection (b)(1)(C) to the taxable income of the beneficiary for any computation year shall, except as provided in subparagraphs (B) and (C), be treated as a credit against the increase in tax for such computation year under subsection (b)(1)(D).

(B) Deduction in lieu of credit

If the beneficiary did not choose the benefits of subpart A of part III of subchapter N with respect to the computation year, the beneficiary may in lieu of treating the amounts described in subparagraph (A) (without regard to subparagraph (C)) as a credit may treat such amounts as a deduction in computing the beneficiary's taxable income under subsection (b)(1)(C) for the computation year.

(C) Limitation on credit; retention of character

(i) Limitation on credit

For purposes of determining under subparagraph (A) the amount treated as a credit for any computation year, the limitations under subpart A of part III of subchapter N shall be applied separately with respect to amounts added under subsection (b)(1)(C) to the taxable income of the beneficiary for such computation year. For purposes of computing the increase in tax under subsection (b)(1)(D) for any computation year for which the beneficiary did not choose the benefits of subpart A of part III of subchapter N, the beneficiary shall be treated as having chosen such benefits for such computation year.

(ii) Retention of character

The items of income, deduction, and credit of the Trust shall retain their character (subject to the application of section 904(f)(5)) to the extent necessary to apply this paragraph.

(D) Computation year

For purposes of this paragraph, the term ''computation year'' means any of the three taxable years remaining after application of subsection (b)(1)(B).

(e) Retention of character of amounts distributed from accumulation trust to nonresident aliens and foreign corporations

In the case of a distribution from a trust to a nonresident alien individual or to a foreign corporation, the first sentence of subsection (a) shall be applied as if the reference to the determination of character under section 662(b) applied to all amounts instead of just to tax-exempt interest.

(Aug. 16, 1954, ch. 736, 68A Stat. 225; Pub. L. 91–172, title III, §331(a), Dec. 30, 1969, 83 Stat. 594; Pub. L. 94–455, title VII, §701(a)(1), title X, §1014(a), Oct. 4, 1976, 90 Stat. 1575, 1617; Pub. L. 95–30, title I, §102(b)(8), May 23, 1977, 91 Stat. 138; Pub. L. 95–600, title VII, §§701(q)(1)(B), (C), (r)(1), 702(*o*)(1), Nov. 6, 1978, 92 Stat. 2909, 2910, 2936; Pub. L. 99–514, title I, §104(b)(10), Oct. 22, 1986, 100 Stat. 2105.)

AMENDMENTS

1986—Subsec. (b)(2). Pub. L. 99–514 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''For purposes of paragraph (1), the taxable income of the beneficiary for any taxable year shall be deemed to be not less than—

''(A) in the case of a beneficiary who is an individual, the zero bracket amount for such year, or

''(B) in the case of a beneficiary who is a corporation, zero.''

1978—Subsec. (b)(1). Pub. L. 95–600, §701(q)(1)(C), inserted in last sentence ''(other than the amount of taxes described in section 665(d)(2))'' after ''taxes''.

Subsec. (b)(6). Pub. L. 95–600, §702(*o*)(1), added par. (6).

Subsec. (d). Pub. L. 95–600, §701(q)(1)(B), added subsec. (d).

Subsec. (e). Pub. L. 95–600, §701(r)(1), added subsec. (e).

1977—Subsec. (b)(2). Pub. L. 95–30 substituted ''not less than (A) in the case of a beneficiary who is an individual, the zero bracket amount for such year, or (B) in the case of a beneficiary who is a corporation, zero'' for ''not less than zero''.

1976—Pub. L. 94–455, §§701(a)(1), 1014(a), substituted provisions relating to the treatment of amounts deemed distributed by trust in preceding years for provisions that no refund or credit be allowed to a trust for any preceding taxable year by reason of a distribution deemed to have been made by such trust in such year under section 666 or 669 and that there be allowed as a credit against the tax imposed by this subtitle on the beneficiary an amount equal to the amount of the taxes deemed distributed to such beneficiary by the trust under sections 666(b) and (c) and 669(d) and (e) during preceding taxable years of the trust on the last day of which the beneficiary was in being, reduced by the amount of the taxes deemed distributed to such beneficiary for such preceding taxable years to the extent that such taxes are taken into account under sections 668(b)(1) and 669(b) in determining the amount of the tax imposed by section 668. See section 666(e) of this title.

1969—Subsec. (a). Pub. L. 91–172 incorporated existing provisions of first sentence in provisions designated as subsec. (a), included distributions made under section 669 of this title, and struck out provisions for credit of taxes imposed on the trust against tax of beneficiary. See subsec. (b) of this section.

Subsec. (b). Pub. L. 91–172 incorporated provision of first sentence for credit of taxes imposed on the trust against tax of beneficiary, and provided for interest free credit and method of computation of its amount. The second sentence had provided that the amount of taxes which may not be refunded or credited to the trust shall be an amount equal to the excess of (1) the taxes imposed on the trust for any preceding taxable year (computed without regard to the accumulation distribution for the taxable year) over (2) the amount of taxes for such preceding taxable year imposed on the undistributed portion of distributable net income of the trust for such preceding taxable year after the application of this subpart on account of the accumulation distribution determined for such taxable year.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 701(q)(1)(B), (C) of Pub. L. 95–600 applicable to distributions made in taxable years beginning after Dec. 31, 1975, see section 701(q)(3)(A) of Pub. L. 95–600, set out as a note under section 665 of this title.

Section 702(*o*)(2) of Pub. L. 95–600, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply—

''(A) in the case of the tax imposed by chapter 11 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954, section 2001 et seq. of this title], to the estates of decedents dying after December 31, 1979, and

''(B) in the case of the tax imposed by chapter 13 [section 2601 et seq. of this title], to any generation-skipping transfer (within the meaning of section 2611(a) of such Code) made after June 11, 1976.''

Section 701(r)(2) of Pub. L. 95–600 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to distributions made in taxable years beginning after December 31, 1975.''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 701(h) of Pub. L. 94–455 provided that: ''The amendments made by subsections (a), (b), (c), (d), and (f) of this section [amending this section and sections 665, 666, 1302, and 6401 of this title and repealing sections 668 and 669 of this title] shall apply to distributions made in taxable years beginning after December 31, 1975. The amendments made by subsection (e) of this section [enacting section 644 of this title and amending section 641 of this title] shall apply to transfers in trust made after May 21, 1976.''

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1968, see section 331(d) of Pub. L. 91–172, set out as a note under section 665 of this title.

§ 668. Interest charge on accumulation distributions from foreign trusts

(a) General rule

For purposes of the tax determined under section 667(a)—

(1) Interest determined using underpayment rates

The interest charge determined under this section with respect to any distribution is the amount of interest which would be determined on the partial tax computed under section 667(b) for the period described in paragraph (2) using the rates and the method under section 6621 applicable to underpayments of tax.

(2) Period

For purposes of paragraph (1), the period described in this paragraph is the period which begins on the date which is the applicable number of years before the date of the distribution and which ends on the date of the distribution.

(3) Applicable number of years

For purposes of paragraph (2)—

(A) In general

The applicable number of years with respect to a distribution is the number determined by dividing—

(i) the sum of the products described in subparagraph (B) with respect to each undistributed income year, by

(ii) the aggregate undistributed net income.

The quotient determined under the preceding sentence shall be rounded under procedures prescribed by the Secretary.

(B) Product described

For purposes of subparagraph (A), the product described in this subparagraph with respect to any undistributed income year is the product of—

(i) the undistributed net income for such year, and

(ii) the sum of the number of taxable years between such year and the taxable year of the distribution (counting in each case the undistributed income year but not counting the taxable year of the distribution).

(4) Undistributed income year

For purposes of this subsection, the term ''undistributed income year'' means any prior taxable year of the trust for which there is undistributed net income, other than a taxable year during all of which the beneficiary receiving the distribution was not a citizen or resident of the United States.

(5) Determination of undistributed net income

Notwithstanding section 666, for purposes of this subsection, an accumulation distribution from the trust shall be treated as reducing proportionately the undistributed net income for undistributed income years.

(6) Periods before 1996

Interest for the portion of the period described in paragraph (2) which occurs before January 1, 1996, shall be determined—

(A) by using an interest rate of 6 percent, and

(B) without compounding until January 1, 1996.

(b) Limitation

The total amount of the interest charge shall not, when added to the total partial tax computed under section 667(b), exceed the amount of the accumulation distribution (other than the amount of tax deemed distributed by section 666(b) or (c)) in respect of which such partial tax was determined.

(c) Interest charge not deductible

The interest charge determined under this section shall not be allowed as a deduction for purposes of any tax imposed by this title.

(Added Pub. L. 94–455, title X, § 1014(b), Oct. 4, 1976, 90 Stat. 1617; amended Pub. L. 101–508, title XI, § 11802(f)(3), Nov. 5, 1990, 104 Stat. 1388–530; Pub. L. 104–188, title I, § 1906(a), Aug. 20, 1996, 110 Stat. 1914.)

PRIOR PROVISIONS

A prior section 668, acts Aug. 16, 1954, ch. 736, 68A Stat. 225; Oct. 16, 1962, Pub. L. 87–834, §7(d), 76 Stat. 986; Dec. 30, 1969, Pub. L. 91–172, title III, §331(a), 83 Stat. 594, related to treatment of amounts deemed distributed in preceding years, prior to repeal by Pub. L. 94–455, title VII, §701(a)(3), Oct. 4, 1976, 90 Stat. 1577. See section 667 of this title.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–188 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of the tax determined under section 667(a), the interest charge is an amount equal to 6 percent of the partial tax computed under section 667(b) multiplied by a fraction—

''(1) the numerator of which is the sum of the number of taxable years between each taxable year to which the distribution is allocated under section 666(a) and the taxable year of the distribution (counting in each case the taxable year to which the distribution is allocated but not counting the taxable year of the distribution), and

''(2) the denominator of which is the number of taxable years to which the distribution is allocated under section 666(a).''

1990—Subsec. (c). Pub. L. 101–508 substituted heading for one which read ''Special rules'' and amended text generally, restating provisions of former par. (1) as entire subsection and striking out former par. (2) which provided that for purposes of this section, undistributed net income existing in a trust as of January 1, 1977, would be treated as allocated under section 666(a) to the first taxable year beginning after December 31, 1976.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1906(d)(1) of Pub. L. 104–188 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to distributions after the date of the enactment of this Act [Nov. 20, 1996].''

EFFECTIVE DATE

Section 1014(d) of Pub. L. 94–455 provided that: ''The amendments made by this section [enacting this section and amending section 667 of this title] shall apply to taxable years beginning after December 31, 1976.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[§ 669. Repealed. Pub. L. 94–455, title VII, § 701(d)(1), Oct. 4, 1976, 90 Stat. 1578]

Section, acts Oct. 16, 1962, Pub. L. 87–834, §7(e), 76 Stat. 986; Dec. 30, 1969, Pub. L. 91–172, title III, §331(a), 83 Stat. 596, related to the treatment of capital gain deemed distributed in preceding years.

EFFECTIVE DATE OF REPEAL

Repeal applicable to distributions made in taxable years beginning after Dec. 31, 1975, see section 701(h) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 667 of this title.

SUBPART E—GRANTORS AND OTHERS TREATED AS SUBSTANTIAL OWNERS

Sec.
671. Trust income, deductions, and credits attributable to grantors and others as substantial owners.
672. Definitions and rules.
673. Reversionary interests.
674. Power to control beneficial enjoyment.
675. Administrative powers.
676. Power to revoke.
677. Income for benefit of grantor.
678. Person other than grantor treated as substantial owner.
679. Foreign trusts having one or more United States beneficiaries.

AMENDMENTS

1976—Pub. L. 94–455, title X, §1013(e)(1), Oct. 4, 1976, 90 Stat. 1616, added item 679.

§ 671. Trust income, deductions, and credits attributable to grantors and others as substantial owners

Where it is specified in this subpart that the grantor or another person shall be treated as the owner of any portion of a trust, there shall then be included in computing the taxable income and credits of the grantor or the other person those items of income, deductions, and credits against tax of the trust which are attributable to that portion of the trust to the extent that such items would be taken into account under this chapter in computing taxable income or credits against the tax of an individual. Any remaining portion of the trust shall be subject to subparts A through D. No items of a trust shall be included in computing the taxable income and credits of the grantor or of any other person solely on the grounds of his dominion and control over the trust under section 61 (relating to definition of gross income) or any other provision of this title, except as specified in this subpart.

(Aug. 16, 1954, ch. 736, 68A Stat. 226.)

CERTAIN ENTITIES NOT TREATED AS CORPORATIONS

Pub. L. 99–514, title VI, §646, Oct. 22, 1986, 100 Stat. 2292, as amended by Pub. L. 100–647, title I, §1006(k), Nov. 10, 1988, 102 Stat. 3411, provided that:

''(a) GENERAL RULE.—For purposes of the Internal Revenue Code of 1986, if the entity described in subsection (b) makes an election under subsection (c), such entity shall be treated as a trust to which subpart E of part 1 of subchapter J of chapter 1 of such Code applies.

''(b) ENTITY.—An entity is described in this subsection if—

''(1) such entity was created in 1906 as a common law trust and is governed by the trust laws of the State of Minnesota,

''(2) such entity is exclusively engaged in the leasing of mineral property and activities incidental thereto, and

''(3) income interests in such entity are publicly traded as of October 22, 1986, on a national stock exchange.

''(c) ELECTION.—

''(1) IN GENERAL.—An election under this subsection to have the provisions of this section apply—

''(A) shall be made by the board of trustees of the entity before January 1, 1991, and

''(B) shall not be valid unless accompanied by an agreement described in paragraph (2).

''(2) AGREEMENT.—

''(A) IN GENERAL.—The agreement described in this paragraph is a written agreement signed by the board of trustees of the entity which provides that the entity will not acquire any additional property other than property described in subparagraph (B).

''(B) PERMISSIBLE ACQUISITIONS.—Property is described in this paragraph if it is—

''(i) surface rights to property the acquisition of which—

''(I) is necessary to mine mineral rights held on October 22, 1986, and

''(II) is required by a written binding agreement between the entity and an unrelated person entered into on or before October 22, 1986,

''(ii) surface rights to property which are not described in clause (i) and which—

''(I) are acquired in an exchange to which section 1031 [probably means section 1031 of this title] applies, and

''(II) are necessary to mine mineral rights held on October 22, 1986,

''(iii) tangible personal property incidental to the leasing of mineral property and activities incidental thereto, or

''(iv) part of any required reserves of the entity.

''(3) BEGINNING OF PERIOD FOR WHICH ELECTION IS IN EFFECT.—The period during which an election is in effect under this subsection shall begin on the 1st day of the 1st taxable year beginning after the date of the enactment of this Act [Oct. 22, 1986] and following the taxable year in which the election is made.

''(4) MANNER OF ELECTION.—Any election under this subsection shall be made in such manner as the Secretary of the Treasury or his delegate may prescribe.

''(d) SPECIAL RULES FOR TAXATION OF TRUST.—

''(1) ELECTION TREATED AS A LIQUIDATION.—If an election is made under subsection (c) with respect to any entity—

''(A) such entity shall be treated as having been liquidated into a trust immediately before the period described in subsection (c)(3) in a liquidation to which section 333 of the Internal Revenue Code of 1954 (as in effect before the amendments made by this Act) applies, and

''(B) for purposes of section 333 of such Code (as so in effect)—

''(i) any person holding an income interest in such entity as of such time shall be treated as a qualified electing shareholder, and

''(ii) the earnings and profits, and the value of money or stock or securities, of such entity shall be apportioned ratably among persons described in clause (i).

The amendments made by subtitle D of this title [subtitle D (§§ 631–634) of title VI of Pub. L. 99–514, see Tables for classification] and section 1804 of this Act [see Tables for classification] shall not apply to any liquidation under this paragraph.

''(2) TERMINATION OF ELECTION.—If an entity ceases to be described in subsection (b) or violates any term of the agreement described in subsection (c)(2), the entity shall, for purposes of the Internal Revenue Code of 1986, be treated as a corporation for the taxable year in which such cessation or violation occurs and for all subsequent taxable years.

''(3) TRUST CEASING TO EXIST.—Paragraph (2) shall not apply if the trust ceases to be described in subsection (b) or violates the agreement in subsection (c)(2) because the trust ceases to exist.

''(e) SPECIAL RULE FOR PERSONS HOLDING INCOME INTERESTS.—In applying subpart E of part I of subchapter J of chapter 1 of the Internal Revenue Code of 1986 to any entity to which this section applies—

''(1) a reversionary interest shall not be taken into account until it comes into possession, and

''(2) all items of income, gain, loss, deduction, and credit shall be allocated to persons holding income interests for the period of the allocation.''

§ 672. Definitions and rules

(a) Adverse party

For purposes of this subpart, the term ''adverse party'' means any person having a substantial beneficial interest in the trust which would be adversely affected by the exercise or nonexercise of the power which he possesses respecting the trust. A person having a general power of appointment over the trust property shall be deemed to have a beneficial interest in the trust.

(b) Nonadverse party

For purposes of this subpart, the term ''nonadverse party'' means any person who is not an adverse party.

(c) Related or subordinate party

For purposes of this subpart, the term ''related or subordinate party'' means any nonadverse party who is—

(1) the grantor's spouse if living with the grantor;

(2) any one of the following: The grantor's father, mother, issue, brother or sister; an employee of the grantor; a corporation or any employee of a corporation in which the stock holdings of the grantor and the trust are significant from the viewpoint of voting control; a subordinate employee of a corporation in which the grantor is an executive.

For purposes of subsection (f) and sections 674 and 675, a related or subordinate party shall be presumed to be subservient to the grantor in respect of the exercise or nonexercise of the powers conferred on him unless such party is shown not to be subservient by a preponderance of the evidence.

(d) Rule where power is subject to condition precedent

A person shall be considered to have a power described in this subpart even though the exercise of the power is subject to a precedent giving of notice or takes effect only on the expiration of a certain period after the exercise of the power.

(e) Grantor treated as holding any power or interest of grantor's spouse

(1) In general

For purposes of this subpart, a grantor shall be treated as holding any power or interest held by—

(A) any individual who was the spouse of the grantor at the time of the creation of such power or interest, or

(B) any individual who became the spouse of the grantor after the creation of such power or interest, but only with respect to periods after such individual became the spouse of the grantor.

(2) Marital status

For purposes of paragraph (1)(A), an individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(f) Subpart not to result in foreign ownership

(1) In general

Notwithstanding any other provision of this subpart, this subpart shall apply only to the extent such application results in an amount (if any) being currently taken into account (directly or through 1 or more entities) under this chapter in computing the income of a citizen or resident of the United States or a domestic corporation.

(2) Exceptions

(A) Certain revocable and irrevocable trusts

Paragraph (1) shall not apply to any portion of a trust if—

(i) the power to revest absolutely in the grantor title to the trust property to which such portion is attributable is exercisable solely by the grantor without the approval or consent of any other person or with the consent of a related or subordinate party who is subservient to the grantor, or

(ii) the only amounts distributable from such portion (whether income or corpus) during the lifetime of the grantor are amounts distributable to the grantor or the spouse of the grantor.

(B) Compensatory trusts

Except as provided in regulations, paragraph (1) shall not apply to any portion of a trust distributions from which are taxable as compensation for services rendered.

(3) Special rules

Except as otherwise provided in regulations prescribed by the Secretary—

(A) a controlled foreign corporation (as defined in section 957) shall be treated as a domestic corporation for purposes of paragraph (1), and

(B) paragraph (1) shall not apply for purposes of applying section 1297.

(4) Recharacterization of purported gifts

In the case of any transfer directly or indirectly from a partnership or foreign corporation which the transferee treats as a gift or bequest, the Secretary may recharacterize such transfer in such circumstances as the Secretary determines to be appropriate to prevent the avoidance of the purposes of this subsection.

(5) Special rule where grantor is foreign person

If—

(A) but for this subsection, a foreign person would be treated as the owner of any portion of a trust, and

(B) such trust has a beneficiary who is a United States person,

such beneficiary shall be treated as the grantor of such portion to the extent such beneficiary has made (directly or indirectly) transfers of property (other than in a sale for full and adequate consideration) to such foreign person. For purposes of the preceding sentence, any gift shall not be taken into account to the extent such gift would be excluded from taxable gifts under section 2503(b).

(6) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including regulations providing that paragraph (1) shall not apply in appropriate cases.

(Aug. 16, 1954, ch. 736, 68A Stat. 226; Pub. L. 99–514, title XIV, §1401(a), Oct. 22, 1986, 100 Stat. 2711; Pub. L. 100–647, title I, §1014(a)(1), Nov. 10, 1988, 102 Stat. 3559; Pub. L. 101–508, title XI, §11343(a), Nov. 5, 1990, 104 Stat. 1388–472; Pub. L. 104–188, title I, §1904(a), Aug. 20, 1996, 110 Stat. 1910; Pub. L. 105–206, title VI, §6011(c)(1), July 22, 1998, 112 Stat. 818.)

AMENDMENTS

1998—Subsec. (f)(3)(B). Pub. L. 105–206 substituted ''section 1297'' for ''section 1296''.

1996—Subsec. (c). Pub. L. 104–188, §1904(a)(2), inserted ''subsection (f) and'' before ''sections 674'' in closing provisions.

Subsec. (f). Pub. L. 104–188, §1904(a)(1), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: ''SPECIAL RULE WHERE GRANTOR IS FOREIGN PERSON.—

''(1) IN GENERAL.—If—

''(A) but for this subsection, a foreign person would be treated as the owner of any portion of a trust, and

''(B) such trust has a beneficiary who is a United States person,

such beneficiary shall be treated as the grantor of such portion to the extent such beneficiary has made transfers of property by gift (directly or indirectly) to such foreign person. For purposes of the preceding sentence, any gift shall not be taken into account to the extent such gift would be excluded from taxable gifts under section 2503(b).

''(2) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.''

1990—Subsec. (f). Pub. L. 101–508 added subsec. (f).

1988—Subsec. (e). Pub. L. 100–647 amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''For purposes of this subpart, if a grantor's spouse is living with the grantor at the time of the creation of any power or interest held by such spouse, the grantor shall be treated as holding such power or interest.''

1986—Subsec. (e). Pub. L. 99–514 added subsec. (e).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective Aug. 20, 1996, with exception for certain trusts, see section 1904(d) of Pub. L. 104–188, set out as a note under section 643 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11343(b) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section] shall apply to—

''(1) any trust created after the date of the enactment of this Act [Nov. 5, 1990], and

''(2) any portion of a trust created on or before such date which is attributable to amounts contributed to the trust after such date.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1401(b) of Pub. L. 99–514 provided that: ''The amendment made by this section [amending this section] shall apply with respect to transfers in trust made after March 1, 1986.''

§ 673. Reversionary interests

(a) General rule

The grantor shall be treated as the owner of any portion of a trust in which he has a reversionary interest in either the corpus or the income therefrom, if, as of the inception of that portion of the trust, the value of such interest exceeds 5 percent of the value of such portion.

(b) Reversionary interest taking effect at death of minor lineal descendant beneficiary

In the case of any beneficiary who—

(1) is a lineal descendant of the grantor, and

(2) holds all of the present interests in any portion of a trust,

the grantor shall not be treated under subsection (a) as the owner of such portion solely by reason of a reversionary interest in such portion which takes effect upon the death of such beneficiary before such beneficiary attains age 21.

(c) Special rule for determining value of reversionary interest

For purposes of subsection (a), the value of the grantor's reversionary interest shall be determined by assuming the maximum exercise of discretion in favor of the grantor.

(d) Postponement of date specified for reacquisition

Any postponement of the date specified for the reacquisition of possession or enjoyment of the reversionary interest shall be treated as a new transfer in trust commencing with the date on which the postponement is effective and terminating with the date prescribed by the postponement. However, income for any period shall not be included in the income of the grantor by reason of the preceding sentence if such income would not be so includible in the absence of such postponement.

(Aug. 16, 1954, ch. 736, 68A Stat. 227; Pub. L. 91–172, title II, § 201(c), Dec. 30, 1969, 83 Stat. 560; Pub. L. 99–514, title XIV, § 1402(a), Oct. 22, 1986, 100 Stat. 2711; Pub. L. 100–647, title I, § 1014(b), Nov. 10, 1988, 102 Stat. 3559.)

AMENDMENTS

1988—Subsecs. (c), (d). Pub. L. 100–647 added subsecs. (c) and (d).

1986—Pub. L. 99–514 amended section generally, substituting ''the value of such interest exceeds 5 percent of the value of such portion'' for ''the interest will or may reasonably be expected to take effect in possession or enjoyment within 10 years commencing with the date of the transfer of that portion of the trust'' in subsec. (a), adding subsec. (b), striking out subsec. (c) which provided that the grantor not be treated under subsec. (a) as the owner of any portion of a trust where his reversionary interest in such portion was not to take effect in possession or enjoyment until the death of the persons to whom the income therefrom was payable, and subsec. (d) which provided that any postponement of the date specified for the reacquisition of possession or enjoyment of the reversionary interest be treated as a new transfer in trust commencing with the date on which the postponement was effected and terminating with the date prescribed by the postponement.

1969—Subsec. (b). Pub. L. 91–172 struck out provisions relating to trusts where the income was payable to a charitable beneficiary for at least a two-year period.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1402(c) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 674, 676, and 677 of this title] shall apply with respect to transfers in trust made after March 1, 1986.

''(2) TRANSFERS PURSUANT TO PROPERTY SETTLEMENT AGREEMENT.—The amendments made by this section shall not apply to any transfer in trust made after March 1, 1986, pursuant to a binding property settlement agreement entered into on or before March 1, 1986, which required the taxpayer to establish a grantor trust and for the transfer of a specified sum of money or property to the trust by the taxpayer. This paragraph shall apply only to the extent of the amount required to be transferred under the agreement described in the preceding sentence.''

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to transfers in trust made after April 22, 1969, see section 201(g)(3) of Pub. L. 91–172, set out as a note under section 170 of this title.

§ 674. Power to control beneficial enjoyment

(a) General rule

The grantor shall be treated as the owner of any portion of a trust in respect of which the beneficial enjoyment of the corpus or the income therefrom is subject to a power of disposition, exercisable by the grantor or a nonadverse party, or both, without the approval or consent of any adverse party.

(b) Exceptions for certain powers

Subsection (a) shall not apply to the following powers regardless of by whom held:

(1) Power to apply income to support of a dependent

A power described in section 677(b) to the extent that the grantor would not be subject to tax under that section.

(2) Power affecting beneficial enjoyment only after occurrence of event

A power, the exercise of which can only affect the beneficial enjoyment of the income for a period commencing after the occurrence of an event such that a grantor would not be treated as the owner under section 673 if the power were a reversionary interest; but the grantor may be treated as the owner after the occurrence of the event unless the power is relinquished.

(3) Power exercisable only by will

A power exercisable only by will, other than a power in the grantor to appoint by will the income of the trust where the income is accumulated for such disposition by the grantor or may be so accumulated in the discretion of the grantor or a nonadverse party, or both, without the approval or consent of any adverse party.

(4) Power to allocate among charitable beneficiaries

A power to determine the beneficial enjoyment of the corpus or the income therefrom if the corpus or income is irrevocably payable for a purpose specified in section 170(c) (relating to definition of charitable contributions) or to an employee stock ownership plan (as defined in section 4975(e)(7)) in a qualified gratuitous transfer (as defined in section 664(g)(1)).

(5) Power to distribute corpus

A power to distribute corpus either—

(A) to or for a beneficiary or beneficiaries or to or for a class of beneficiaries (whether or not income beneficiaries) provided that the power is limited by a reasonably definite standard which is set forth in the trust instrument; or

(B) to or for any current income beneficiary, provided that the distribution of corpus must be chargeable against the proportionate share of corpus held in trust for the payment of income to the beneficiary as if the corpus constituted a separate trust.

A power does not fall within the powers described in this paragraph if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus, except where such action is to provide for after-born or after-adopted children.

(6) Power to withhold income temporarily

A power to distribute or apply income to or for any current income beneficiary or to accumulate the income for him, provided that any accumulated income must ultimately be payable—

(A) to the beneficiary from whom distribution or application is withheld, to his estate, or to his appointees (or persons named as alternate takers in default of appointment) provided that such beneficiary possesses a power of appointment which does not exclude from the class of possible appointees any person other than the beneficiary, his estate, his creditors, or the creditors of his estate, or

(B) on termination of the trust, or in conjunction with a distribution of corpus which is augmented by such accumulated income, to the current income beneficiaries in shares which have been irrevocably specified in the trust instrument.

Accumulated income shall be considered so payable although it is provided that if any beneficiary does not survive a date of distribution which could reasonably have been expected to occur within the beneficiary's lifetime, the share of the deceased beneficiary is to be paid to his appointees or to one or more designated alternate takers (other than the grantor or the grantor's estate) whose shares have been irrevocably specified. A power does not fall within the powers described in this paragraph if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus except where such action is to provide for after-born or after-adopted children.

(7) Power to withhold income during disability of a beneficiary

A power exercisable only during—

(A) the existence of a legal disability of any current income beneficiary, or

(B) the period during which any income beneficiary shall be under the age of 21 years,

to distribute or apply income to or for such beneficiary or to accumulate and add the income to corpus. A power does not fall within the powers described in this paragraph if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus, except where such action is to provide for after-born or after-adopted children.

(8) Power to allocate between corpus and income

A power to allocate receipts and disbursements as between corpus and income, even though expressed in broad language.

(c) Exception for certain powers of independent trustees

Subsection (a) shall not apply to a power solely exercisable (without the approval or consent of any other person) by a trustee or trustees, none of whom is the grantor, and no more than half of whom are related or subordinate parties who are subservient to the wishes of the grantor—

(1) to distribute, apportion, or accumulate income to or for a beneficiary or beneficiaries, or to, for, or within a class of beneficiaries; or

(2) to pay out corpus to or for a beneficiary or beneficiaries or to or for a class of beneficiaries (whether or not income beneficiaries).

A power does not fall within the powers described in this subsection if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus, except where such action is to provide for after-born or after-adopted children. For periods during which an individual is the spouse of the grantor (within the meaning of section 672(e)(2)), any reference in this subsection to the grantor shall be treated as including a reference to such individual.

(d) Power to allocate income if limited by a standard

Subsection (a) shall not apply to a power solely exercisable (without the approval or consent of any other person) by a trustee or trustees, none of whom is the grantor or spouse living with the grantor, to distribute, apportion, or accumulate income to or for a beneficiary or beneficiaries, or to, for, or within a class of beneficiaries, whether or not the conditions of paragraph (6) or (7) of subsection (b) are satisfied, if such power is limited by a reasonably definite external standard which is set forth in the trust instrument. A power does not fall within the powers described in this subsection if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus except where such action is to provide for after-born or after-adopted children.

(Aug. 16, 1954, ch. 736, 68A Stat. 227; Pub. L. 99–514, title XIV, § 1402(b)(1), Oct. 22, 1986, 100 Stat. 2712; Pub. L. 100–647, title I, § 1014(a)(3), Nov. 10, 1988, 102 Stat. 3559; Pub. L. 105–34, title XV, § 1530(c)(6), Aug. 5, 1997, 111 Stat. 1078.)

AMENDMENTS

1997—Subsec. (b)(4). Pub. L. 105–34 inserted before period ''or to an employee stock ownership plan (as defined in section 4975(e)(7)) in a qualified gratuitous transfer (as defined in section 664(g)(1))''.

1988—Subsec. (c). Pub. L. 100–647 inserted at end ''For periods during which an individual is the spouse of the grantor (within the meaning of section 672(e)(2)), any reference in this subsection to the grantor shall be treated as including a reference to such individual.''

1986—Subsec. (b)(2). Pub. L. 99–514 substituted ''occurrence of event'' for ''expiration of 10-year period'' in heading and in text substituted ''the occurrence of an event'' for ''the expiration of a period'' and ''the occurrence of the event'' for ''the expiration of the period''.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to transfers made by trusts to, or for the use of, an employee stock ownership plan after Aug. 5, 1997, see section 1530(d) of Pub. L. 105–34, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable with respect to transfers in trust made after Mar. 1, 1986, except for transfers pursuant to a certain binding property settlement agreement, see section 1402(c) of Pub. L. 99–514, set out as a note under section 673 of this title.

§ 675. Administrative powers

The grantor shall be treated as the owner of any portion of a trust in respect of which—

(1) Power to deal for less than adequate and full consideration

A power exercisable by the grantor or a nonadverse party, or both, without the approval or consent of any adverse party enables the grantor or any person to purchase, exchange, or otherwise deal with or dispose of the corpus or the income therefrom for less than an adequate consideration in money or money's worth.

(2) Power to borrow without adequate interest or security

A power exercisable by the grantor or a nonadverse party, or both, enables the grantor to borrow the corpus or income, directly or indirectly, without adequate interest or without adequate security except where a trustee (other than the grantor) is authorized under a general lending power to make loans to any person without regard to interest or security.

(3) Borrowing of the trust funds

The grantor has directly or indirectly borrowed the corpus or income and has not completely repaid the loan, including any interest, before the beginning of the taxable year. The preceding sentence shall not apply to a loan which provides for adequate interest and adequate security, if such loan is made by a trustee other than the grantor and other than a related or subordinate trustee subservient to the grantor. For periods during which an individual is the spouse of the grantor (within the meaning of section 672(e)(2)), any reference in this paragraph to the grantor shall be treated as including a reference to such individual.

(4) General powers of administration

A power of administration is exercisable in a nonfiduciary capacity by any person without the approval or consent of any person in a fiduciary capacity. For purposes of this paragraph, the term ''power of administration'' means any one or more of the following powers: (A) a power to vote or direct the voting of stock or other securities of a corporation in which the holdings of the grantor and the trust are significant from the viewpoint of voting control; (B) a power to control the investment of the trust funds either by directing investments or reinvestments, or by vetoing proposed investments or reinvestments, to the extent that the trust funds consist of stocks or securities of corporations in which the holdings of the grantor and the trust are significant from the viewpoint of voting control; or (C) a power to reacquire the trust corpus by substituting other property of an equivalent value.

(Aug. 16, 1954, ch. 736, 68A Stat. 229; Pub. L. 100–647, title I, § 1014(a)(2), Nov. 10, 1988, 102 Stat. 3559.)

AMENDMENTS

1988—Par. (3). Pub. L. 100–647 inserted at end ''For periods during which an individual is the spouse of the grantor (within the meaning of section 672(e)(2)), any reference in this paragraph to the grantor shall be treated as including a reference to such individual.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

§ 676. Power to revoke

(a) General rule

The grantor shall be treated as the owner of any portion of a trust, whether or not he is treated as such owner under any other provision of this part, where at any time the power to revest in the grantor title to such portion is exercisable by the grantor or a non-adverse party, or both.

(b) Power affecting beneficial enjoyment only after occurrence of event

Subsection (a) shall not apply to a power the exercise of which can only affect the beneficial enjoyment of the income for a period commencing after the occurrence of an event such that a grantor would not be treated as the owner under section 673 if the power were a reversionary interest. But the grantor may be treated as the owner after the occurrence of such event unless the power is relinquished.

(Aug. 16, 1954, ch. 736, 68A Stat. 230; Pub. L. 99–514, title XIV, § 1402(b)(2), Oct. 22, 1986, 100 Stat. 2712.)

AMENDMENTS

1986—Subsec. (b)(2). Pub. L. 99–514 substituted ''occurrence of event'' for ''expiration of 10-year period'' in heading and in text substituted ''the occurrence of an event'' for ''the expiration of a period'' and ''the occurrence of such event'' for ''the expiration of such period''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable with respect to transfers in trust made after Mar. 1, 1986, except for transfers pursuant to a certain binding property settlement agreement, see section 1402(c) of Pub. L. 99–514, set out as a note under section 673 of this title.

§ 677. Income for benefit of grantor

(a) General rule

The grantor shall be treated as the owner of any portion of a trust, whether or not he is treated as such owner under section 674, whose income without the approval or consent of any adverse party is, or, in the discretion of the grantor or a nonadverse party, or both, may be—

(1) distributed to the grantor or the grantor's spouse;

(2) held or accumulated for future distribution to the grantor or the grantor's spouse; or

(3) applied to the payment of premiums on policies of insurance on the life of the grantor or the grantor's spouse (except policies of insurance irrevocably payable for a purpose specified in section 170(c) (relating to definition of charitable contributions)).

This subsection shall not apply to a power the exercise of which can only affect the beneficial enjoyment of the income for a period commencing after the occurrence of an event such that the grantor would not be treated as the owner under section 673 if the power were a reversionary interest; but the grantor may be treated as the owner after the occurrence of the event unless the power is relinquished.

(b) Obligations of support

Income of a trust shall not be considered taxable to the grantor under subsection (a) or any other provision of this chapter merely because such income in the discretion of another person, the trustee, or the grantor acting as trustee or co-trustee, may be applied or distributed for the support or maintenance of a beneficiary (other than the grantor's spouse) whom the grantor is legally obligated to support or maintain, except to the extent that such income is so applied or distributed. In cases where the amounts so applied or distributed are paid out of corpus or out of other than income for the taxable year, such amounts shall be considered to be an amount paid or credited within the meaning of paragraph (2) of section 661(a) and shall be taxed to the grantor under section 662.

(Aug. 16, 1954, ch. 736, 68A Stat. 230; Pub. L. 91–172, title III, § 332(a), Dec. 30, 1969, 83 Stat. 599; Pub. L. 99–514, title XIV, § 1402(b)(3), Oct. 22, 1986, 100 Stat. 2712.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–514 substituted ''the occurrence of an event'' for ''the expiration of a period'' and ''the occurrence of the event'' for ''the expiration of the period'' in last sentence.

1969—Subsec. (a)(1) to (3). Pub. L. 91–172, § 332(a)(1), inserted ''or the grantor's spouse'' after ''the grantor'' in pars. (1), (2), and (3).

Subsec. (b). Pub. L. 91–172, § 332(a)(2), inserted ''(other than the grantor's spouse)'' after ''beneficiary''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable with respect to transfers in trust made after Mar. 1, 1986, except for transfers pursuant to a certain binding property settlement agreement, see section 1402(c) of Pub. L. 99–514, set out as a note under section 673 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 332(b) of Pub. L. 91–172 provided that: ''The amendments made by subsection (a) [amending this section] shall apply in respect of property transferred in trust after October 9, 1969.''

§ 678. Person other than grantor treated as substantial owner

(a) General rule

A person other than the grantor shall be treated as the owner of any portion of a trust with respect to which:

(1) such person has a power exercisable solely by himself to vest the corpus or the income therefrom in himself, or

(2) such person has previously partially released or otherwise modified such a power and after the release or modification retains such control as would, within the principles of sections 671 to 677, inclusive, subject to grantor of a trust to treatment as the owner thereof.

(b) Exception where grantor is taxable

Subsection (a) shall not apply with respect to a power over income, as originally granted or thereafter modified, if the grantor of the trust or a transferor (to whom section 679 applies) is otherwise treated as the owner under the provisions of this subpart other than this section.

(c) Obligations of support

Subsection (a) shall not apply to a power which enables such person, in the capacity of trustee or cotrustee, merely to apply the income of the trust to the support or maintenance of a person whom the holder of the power is obligated to support or maintain except to the extent that such income is so applied. In cases where the amounts so applied or distributed are paid out of corpus or out of other than income of the taxable year, such amounts shall be considered to be an amount paid or credited within the meaning of paragraph (2) of section 661(a) and shall be taxed to the holder of the power under section 662.

(d) Effect of renunciation or disclaimer

Subsection (a) shall not apply with respect to a power which has been renounced or disclaimed within a reasonable time after the holder of the power first became aware of its existence.

(e) Cross reference

For provision under which beneficiary of trust is treated as owner of the portion of the trust which consists of stock in an S corporation, see section 1361(d).

(Aug. 16, 1954, ch. 736, 68A Stat. 231; Pub. L. 94–455, title X, § 1013(b), Oct. 4, 1976, 90 Stat. 1615;

Pub. L. 97–448, title I, § 102(i)(2), Jan. 12, 1983, 96 Stat. 2373; Pub. L. 106–554, § 1(a)(7) [title III, § 319(8)(A)], Dec. 21, 2000, 114 Stat. 2763, 2763A–646.)

AMENDMENTS

2000—Subsec. (e). Pub. L. 106–554 substituted ''an S corporation'' for ''an electing small business corporation''.

1983—Subsec. (e). Pub. L. 97–448 added subsec. (e).

1976—Subsec. (b). Pub. L. 94–455 substituted ''if the grantor of the trust or a transferor (to whom section 679 applies) is otherwise treated as the owner under the provisions of this subpart other than this section'' for ''if the grantor of the trust is otherwise treated as the owner under sections 671 to 677, inclusive''.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by Pub. L. 94–455, see section 1013(f)(1) of Pub. L. 94–455, set out as an Effective Date note under section 679 of this title.

§ 679. Foreign trusts having one or more United States beneficiaries

(a) Transferor treated as owner

(1) In general

A United States person who directly or indirectly transfers property to a foreign trust (other than a trust described in section 6048(a)(3)(B)(ii)) shall be treated as the owner for his taxable year of the portion of such trust attributable to such property if for such year there is a United States beneficiary of any portion of such trust.

(2) Exceptions

Paragraph (1) shall not apply—

(A) Transfers by reason of death

To any transfer by reason of the death of the transferor.

(B) Transfers at fair market value

To any transfer of property to a trust in exchange for consideration of at least the fair market value of the transferred property. For purposes of the preceding sentence, consideration other than cash shall be taken into account at its fair market value.

(3) Certain obligations not taken into account under fair market value exception

(A) In general

In determining whether paragraph (2)(B) applies to any transfer by a person described in clause (ii) or (iii) of subparagraph (C), there shall not be taken into account—

(i) except as provided in regulations, any obligation of a person described in subparagraph (C), and

(ii) to the extent provided in regulations, any obligation which is guaranteed by a person described in subparagraph (C).

(B) Treatment of principal payments on obligation

Principal payments by the trust on any obligation referred to in subparagraph (A) shall be taken into account on and after the date of the payment in determining the portion of the trust attributable to the property transferred.

(C) Persons described

The persons described in this subparagraph are—

(i) the trust,

(ii) any grantor, owner, or beneficiary of the trust, and

(iii) any person who is related (within the meaning of section 643(i)(2)(B)) to any grantor, owner, or beneficiary of the trust.

(4) Special rules applicable to foreign grantor who later becomes a United States person

(A) In general

If a nonresident alien individual has a residency starting date within 5 years after directly or indirectly transferring property to a foreign trust, this section and section 6048 shall be applied as if such individual transferred to such trust on the residency starting date an amount equal to the portion of such trust attributable to the property transferred by such individual to such trust in such transfer.

(B) Treatment of undistributed income

For purposes of this section, undistributed net income for periods before such individual's residency starting date shall be taken into account in determining the portion of the trust which is attributable to property transferred by such individual to such trust but shall not otherwise be taken into account.

(C) Residency starting date

For purposes of this paragraph, an individual's residency starting date is the residency starting date determined under section 7701(b)(2)(A).

(5) Outbound trust migrations

If—

(A) an individual who is a citizen or resident of the United States transferred property to a trust which was not a foreign trust, and

(B) such trust becomes a foreign trust while such individual is alive,

then this section and section 6048 shall be applied as if such individual transferred to such trust on the date such trust becomes a foreign trust an amount equal to the portion of such trust attributable to the property previously transferred by such individual to such trust. A rule similar to the rule of paragraph (4)(B) shall apply for purposes of this paragraph.

(b) Trusts acquiring United States beneficiaries

If—

(1) subsection (a) applies to a trust for the transferor's taxable year, and

(2) subsection (a) would have applied to the trust for his immediately preceding taxable year but for the fact that for such preceding taxable year there was no United States beneficiary for any portion of the trust,

then, for purposes of this subtitle, the transferor shall be treated as having income for the tax-

able year (in addition to his other income for such year) equal to the undistributed net income (at the close of such immediately preceding taxable year) attributable to the portion of the trust referred to in subsection (a).

(c) Trusts treated as having a United States beneficiary

(1) In general

For purposes of this section, a trust shall be treated as having a United States beneficiary for the taxable year unless—

(A) under the terms of the trust, no part of the income or corpus of the trust may be paid or accumulated during the taxable year to or for the benefit of a United States person, and

(B) if the trust were terminated at any time during the taxable year, no part of the income or corpus of such trust could be paid to or for the benefit of a United States person.

For purposes of subparagraph (A), an amount shall be treated as accumulated for the benefit of a United States person even if the United States person's interest in the trust is contingent on a future event.

(2) Attribution of ownership

For purposes of paragraph (1), an amount shall be treated as paid or accumulated to or for the benefit of a United States person if such amount is paid to or accumulated for a foreign corporation, foreign partnership, or foreign trust or estate, and—

(A) in the case of a foreign corporation, such corporation is a controlled foreign corporation (as defined in section 957(a)),

(B) in the case of a foreign partnership, a United States person is a partner of such partnership, or

(C) in the case of a foreign trust or estate, such trust or estate has a United States beneficiary (within the meaning of paragraph (1)).

(3) Certain United States beneficiaries disregarded

A beneficiary shall not be treated as a United States person in applying this section with respect to any transfer of property to foreign trust if such beneficiary first became a United States person more than 5 years after the date of such transfer.

(4) Special rule in case of discretion to identify beneficiaries

For purposes of paragraph (1)(A), if any person has the discretion (by authority given in the trust agreement, by power of appointment, or otherwise) of making a distribution from the trust to, or for the benefit of, any person, such trust shall be treated as having a beneficiary who is a United States person unless—

(A) the terms of the trust specifically identify the class of persons to whom such distributions may be made, and

(B) none of those persons are United States persons during the taxable year.

(5) Certain agreements and understandings treated as terms of the trust

For purposes of paragraph (1)(A), if any United States person who directly or indirectly transfers property to the trust is directly or indirectly involved in any agreement or understanding (whether written, oral, or otherwise) that may result in the income or corpus of the trust being paid or accumulated to or for the benefit of a United States person, such agreement or understanding shall be treated as a term of the trust.

(6) Uncompensated use of trust property treated as a payment

For purposes of this subsection, a loan of cash or marketable securities (or the use of any other trust property) directly or indirectly to or by any United States person (whether or not a beneficiary under the terms of the trust) shall be treated as paid or accumulated for the benefit of a United States person. The preceding sentence shall not apply to the extent that the United States person repays the loan at a market rate of interest (or pays the fair market value of the use of such property) within a reasonable period of time.

(d) Presumption that foreign trust has United States beneficiary

If a United States person directly or indirectly transfers property to a foreign trust (other than a trust described in section 6048(a)(3)(B)(ii)), the Secretary may treat such trust as having a United States beneficiary for purposes of applying this section to such transfer unless such person—

(1) submits such information to the Secretary as the Secretary may require with respect to such transfer, and

(2) demonstrates to the satisfaction of the Secretary that such trust satisfies the requirements of subparagraphs (A) and (B) of subsection (c)(1).

(e) Regulations

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

(Added Pub. L. 94–455, title X, §1013(a), Oct. 4, 1976, 90 Stat. 1614; amended Pub. L. 96–603, §2(b), Dec. 28, 1980, 94 Stat. 3509; Pub. L. 104–188, title I, §1903(a)–(f), Aug. 20, 1996, 110 Stat. 1909, 1910; Pub. L. 105–34, title XVI, §1601(i)(2), Aug. 5, 1997, 111 Stat. 1093; Pub. L. 105–206, title VI, §6018(g), July 22, 1998, 112 Stat. 823; Pub. L. 111–147, title V, §§531, 532(a), 533(c), Mar. 18, 2010, 124 Stat. 113, 114.)

AMENDMENTS

2010—Subsec. (c)(1). Pub. L. 111–147, §531(a), inserted concluding provisions.

Subsec. (c)(4), (5). Pub. L. 111–147, §531(b), (c), added pars. (4) and (5).

Subsec. (c)(6). Pub. L. 111–147, §533(c), added par. (6).

Subsecs. (d), (e). Pub. L. 111–147, §532(a), added subsec. (d) and redesignated former subsec. (d) as (e).

1998—Subsec. (a)(1). Pub. L. 105–206 provided that the amendment made by section 1903(b) of Pub. L. 104–188 shall be applied as if ''or'' in the material proposed to be stricken were capitalized. See 1996 Amendment note below.

1997—Subsec. (a)(3)(C)(ii), (iii). Pub. L. 105–34 inserted '', owner,'' after ''grantor''.

1996—Subsec. (a)(1). Pub. L. 104–188, §1903(b), which directed that subsec. (a) of this section be amended by substituting ''section 6048(a)(3)(B)(ii)'' for ''section

404(a)(4) or 404A'', was executed to par. (1) by making the substitution for ''section 404(a)(4) Or section 404A'' to reflect the probable intent of Congress. See 1998 Amendment note above.

Subsec. (a)(2)(B). Pub. L. 104–188, §1903(a)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''TRANSFERS WHERE GAIN IS RECOGNIZED TO TRANSFEROR.—To any sale or exchange of the property at its fair market value in a transaction in which all of the gain to the transferor is realized at the time of the transfer and is recognized either at such time or is returned as provided in section 453.''

Subsec. (a)(3). Pub. L. 104–188, §1903(a)(2), added par. (3).

Subsec. (a)(4), (5). Pub. L. 104–188, §1903(c), added pars. (4) and (5).

Subsec. (c)(2)(A). Pub. L. 104–188, §1903(e), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''in the case of a foreign corporation, more than 50 percent of the total combined voting power of all classes of stock entitled to vote of such corporation is owned (within the meaning of section 958(a)) or is considered to be owned (within the meaning of section 958(b)) by United States shareholders (as defined in section 951(b)),''.

Subsec. (c)(3). Pub. L. 104–188, §1903(d), added par. (3).

Subsec. (d). Pub. L. 104–188, §1903(f), added subsec. (d).

1980—Subsec. (a)(1). Pub. L. 96–603 inserted ''Or section 404A'' after ''section 404(a)(4)''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–147, title V, §532(b), Mar. 18, 2010, 124 Stat. 114, provided that: ''The amendments made by this section [amending this section] shall apply to transfers of property after the date of the enactment of this Act [Mar. 18, 2010].''

Amendment by section 533(c) of Pub. L. 111–147 applicable to loans made, and uses of property, after Mar. 18, 2010, see section 533(e) of Pub. L. 111–147, set out as a note under section 643 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6018 of Pub. L. 105–206 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which such amendment relates, see section 6018(h) of Pub. L. 105–206, set out as a note under section 36C of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 36C of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1903(g) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section] shall apply to transfers of property after February 6, 1995.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–603 applicable with respect to employer contributions or accruals for taxable years beginning after Dec. 31, 1979, election to apply amendments retroactively with respect to foreign subsidiaries, allowance or prior deductions in case of certain funded branch plans, and time and manner for making elections, see section 2(e) of Pub. L. 96–603, set out as an Effective Date note under section 404A of this title.

EFFECTIVE DATE

Section 1013(f)(1) of Pub. L. 94–455 provided that: ''The amendments made by this section (other than subsection (c)) [enacting this section and amending sections 643, 678, 6048, and 6678 of this title] shall apply to taxable years ending after December 31, 1975, but only in the case of—

''(A) foreign trusts created after May 21, 1974, and

''(B) transfers of property to foreign trusts after May 21, 1974.''

SUBPART F—MISCELLANEOUS

Sec.
681. Limitation on charitable deduction.
682. Income of an estate or trust in case of divorce, etc.
683. Use of trust as an exchange fund.
684. Recognition of gain on certain transfers to certain foreign trusts and estates.
685. Treatment of funeral trusts.

AMENDMENT OF ANALYSIS

For termination of amendment by section 304 of Pub. L. 111–312, see Effective and Termination Dates of 2010 Amendment note set out under section 121 of this title.

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note set out under section 1 of this title.

AMENDMENTS

2010—Pub. L. 111–312, title III, §§301(a), 304, Dec. 17, 2010, 124 Stat. 3300, 3304, temporarily amended analysis to read as if amendment by Pub. L. 107–16, §542(e)(1)(D), had never been enacted. See 2001 Amendment note below.

2001—Pub. L. 107–16, title V, §542(e)(1)(D), title IX, §901, June 7, 2001, 115 Stat. 85, 150, temporarily inserted ''and nonresident aliens'' after ''estates'' in item 684.

1997—Pub. L. 105–34, title XI, §1131(c)(6), title XIII, §1309(b), Aug. 5, 1997, 111 Stat. 980, 1043, added items 684 and 685.

1976—Pub. L. 94–455, title XXI, §2131(e)(2), Oct. 4, 1976, 90 Stat. 1924, substituted ''Use of trust as an exchange fund'' for ''Applicability of provisions'' in item 683.

§ 681. Limitation on charitable deduction

(a) Trade or business income

In computing the deduction allowable under section 642(c) to a trust, no amount otherwise allowable under section 642(c) as a deduction shall be allowed as a deduction with respect to income of the taxable year which is allocable to its unrelated business income for such year. For purposes of the preceding sentence, the term ''unrelated business income'' means an amount equal to the amount which, if such trust were exempt from tax under section 501(a) by reason of section 501(c)(3), would be computed as its unrelated business taxable income under section 512 (relating to income derived from certain business activities and from certain property acquired with borrowed funds).

(b) Cross reference

For disallowance of certain charitable, etc., deductions otherwise allowable under section 642(c), see sections 508(d) and 4948(c)(4).

(Aug. 16, 1954, ch. 736, 68A Stat. 232; Pub. L. 90–630, §6(b), Oct. 22, 1968, 82 Stat. 1330; Pub. L. 91–172, title I, §§101(j)(18), (19), 121(d)(2)(B), Dec. 30, 1969, 83 Stat. 528, 547.)

AMENDMENTS

1969—Subsec. (a). Pub. L. 91–172, §121(d)(2)(B), substituted reference to certain property acquired with borrowed funds for reference to certain leases.

Subsec. (b). Pub. L. 91–172, §101(j)(18), (19), redesignated subsec. (d) as (b) and substituted ''sections 518(d)

and 4948(c)(4)'' for ''section 503(e)''. Former subsec. (b), dealing generally with the operation of trusts, was struck out.

Subsec. (c). Pub. L. 91–172, §101(j)(18), struck out subsec. (c) dealing with accumulated income.

Subsec. (d). Pub. L. 91–172, §101(j)(19), redesignated subsec. (d) as (b).

1968—Subsec. (c). Pub. L. 90–630 inserted provision that par. (1) does not apply to income attributable to property transferred to a trust before January 1, 1951, by the creator thereof if the trust was irrevocable on such date and if the income is required to be accumulated pursuant to the mandatory terms of the instrument creating the trust.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 101(j)(18), (19) of Pub. L. 91–172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

Amendment by section 121(d)(2)(B) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 121(g) of Pub. L. 91–172, set out as a note under section 511 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 6(c) of Pub. L. 90–630 provided that: ''The amendments made by subsection (a) [amending section 504 of this title] and (b) [amending this section] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954. For purposes of sections 3814 and 162(g)(4) of the Internal Revenue Code of 1939, provisions having the same effect as such amendments shall be treated as included in such sections effective with respect to taxable years beginning after December 31, 1950.''

§ 682. Income of an estate or trust in case of divorce, etc.

(a) Inclusion in gross income of wife

There shall be included in the gross income of a wife who is divorced or legally separated under a decree of divorce or of separate maintenance (or who is separated from her husband under a written separation agreement) the amount of the income of any trust which such wife is entitled to receive and which, except for this section, would be includible in the gross income of her husband, and such amount shall not, despite any other provision of this subtitle, be includible in the gross income of such husband. This subsection shall not apply to that part of any such income of the trust which the terms of the decree, written separation agreement, or trust instrument fix, in terms of an amount of money or a portion of such income, as a sum which is payable for the support of minor children of such husband. In case such income is less than the amount specified in the decree, agreement, or instrument, for the purpose of applying the preceding sentence, such income, to the extent of such sum payable for such support, shall be considered a payment for such support.

(b) Wife considered a beneficiary

For purposes of computing the taxable income of the estate or trust and the taxable income of a wife to whom subsection (a) applies, such wife shall be considered as the beneficiary specified in this part.

(c) Cross reference

For definitions of "husband" and "wife", as used in this section, see section 7701(a)(17).

(Aug. 16, 1954, ch. 736, 68A Stat. 234; Pub. L. 98–369, div. A, title IV, §422(d)(2), July 18, 1984, 98 Stat. 798.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–369 struck out ''or section 71'' after ''subsection (a)'' and struck out provision that a periodic payment under section 71 to any portion of which this part applied shall be included in the gross income of the beneficiary in the taxable year in which under this part such portion is required to be included.

EFFECTIVE DATE OF 1984 AMENDMENT

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

§ 683. Use of trust as an exchange fund

(a) General rule

Except as provided in subsection (b), if property is transferred to a trust in exchange for an interest in other trust property and if the trust would be an investment company (within the meaning of section 351) if it were a corporation, then gain shall be recognized to the transferor.

(b) Exception for pooled income funds

Subsection (a) shall not apply to any transfer to a pooled income fund (within the meaning of section 642(c)(5)).

(Aug. 16, 1954, ch. 736, 68A Stat. 235; Pub. L. 94–455, title XXI, §2131(e)(1), Oct. 4, 1976, 90 Stat. 1924.)

AMENDMENTS

1976—Pub. L. 94–455 substituted provisions relating to use of trust as an exchange fund for provisions setting forth rule that this part applies only to taxable years beginning after Dec. 31, 1953, and ending after the date of the enactment of this title and exceptions thereto.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment of section by Pub. L. 94–455 effective on Apr. 8, 1976, in taxable years ending on or after such date, see section 2131(f)(6) of Pub. L. 94–455, set out as a note under section 584 of this title.

§ 684. Recognition of gain on certain transfers to certain foreign trusts and estates

(a) In general

Except as provided in regulations, in the case of any transfer of property by a United States person to a foreign estate or trust, for purposes of this subtitle, such transfer shall be treated as a sale or exchange for an amount equal to the fair market value of the property transferred, and the transferor shall recognize as gain the excess of—

(1) the fair market value of the property so transferred, over

(2) the adjusted basis (for purposes of determining gain) of such property in the hands of the transferor.

(b) Exception

Subsection (a) shall not apply to a transfer to a trust by a United States person to the extent that any person is treated as the owner of such trust under section 671.

(c) Treatment of trusts which become foreign trusts

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

(Added Pub. L. 105–34, title XI, § 1131(b), Aug. 5, 1997, 111 Stat. 978; amended Pub. L. 107–16, title V, § 542(e)(1)(A)–(C), June 7, 2001, 115 Stat. 84, 85; Pub. L. 111–312, title III, § 301(a), Dec. 17, 2010, 124 Stat. 3300.)

AMENDMENT OF SECTION

For termination of amendment by section 304 of Pub. L. 111–312, see Effective and Termination Dates of 2010 Amendment note below.

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

CODIFICATION

Another section 1131(b) of Pub. L. 105–34 amended sections 367, 721, and 1035 of this title.

AMENDMENTS

2010—Pub. L. 111–312, §§ 301(a), 304, temporarily amended catchline, introductory provisions of subsec. (a), and subsec. (b) to read as if amendment by Pub. L. 107–16, § 542(e)(1)(A)–(C), had never been enacted. See 2001 Amendment note and Effective and Termination Dates of 2010 Amendment note below. Prior to amendment, subsec. (b) read as follows: ''EXCEPTIONS.—

''(1) TRANSFERS TO CERTAIN TRUSTS.—Subsection (a) shall not apply to a transfer to a trust by a United States person to the extent that any United States person is treated as the owner of such trust under section 671.

''(2) LIFETIME TRANSFERS TO NONRESIDENT ALIENS.—Subsection (a) shall not apply to a lifetime transfer to a nonresident alien.''

2001—Pub. L. 107–16, §§ 542(e)(1)(A)–(C), 901, temporarily amended section by inserting ''and nonresident aliens'' after ''estates'' in section catchline and ''or to a nonresident alien'' after ''or trust'' in introductory provisions of subsec. (a) and amending subsec. (b) generally. Prior to amendment, text of subsec. (b) read as follows: ''Subsection (a) shall not apply to a transfer to a trust by a United States person to the extent that any person is treated as the owner of such trust under section 671.'' See Effective and Termination Dates of 2001 Amendment note below.

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Amendment by Pub. L. 111–312 applicable to estates of decedents dying, and transfers made after Dec. 31, 2009, except as otherwise provided, see section 301(e) of Pub. L. 111–312, set out as a note under section 121 of this title.

Section 901 of Pub. L. 107–16 applicable to amendments by section 301(a) of Pub. L. 111–312, see section 304 of Pub. L. 111–312, set out as a note under section 121 of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to transfers after Dec. 31, 2009, see section 542(f)(2) of Pub. L. 107–16, set out as a note under section 121 of this title.

Amendment by Pub. L. 107–16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

§ 685. Treatment of funeral trusts

(a) In general

In the case of a qualified funeral trust—

(1) subparts B, C, D, and E shall not apply, and

(2) no deduction shall be allowed by section 642(b).

(b) Qualified funeral trust

For purposes of this subsection, the term ''qualified funeral trust'' means any trust (other than a foreign trust) if—

(1) the trust arises as a result of a contract with a person engaged in the trade or business of providing funeral or burial services or property necessary to provide such services,

(2) the sole purpose of the trust is to hold, invest, and reinvest funds in the trust and to use such funds solely to make payments for such services or property for the benefit of the beneficiaries of the trust,

(3) the only beneficiaries of such trust are individuals with respect to whom such services or property are to be provided at their death under contracts described in paragraph (1),

(4) the only contributions to the trust are contributions by or for the benefit of such beneficiaries,

(5) the trustee elects the application of this subsection, and

(6) the trust would (but for the election described in paragraph (5)) be treated as owned under subpart E by the purchasers of the contracts described in paragraph (1).

A trust shall not fail to be treated as meeting the requirement of paragraph (6) by reason of the death of an individual but only during the 60-day period beginning on the date of such death.

(c) Application of rate schedule

Section 1(e) shall be applied to each qualified funeral trust by treating each beneficiary's interest in each such trust as a separate trust.

(d) Treatment of amounts refunded to purchaser on cancellation

No gain or loss shall be recognized to a purchaser of a contract described in subsection (b)(1) by reason of any payment from such trust to such purchaser by reason of cancellation of such contract. If any payment referred to in the preceding sentence consists of property other than money, the basis of such property in the hands of such purchaser shall be the same as the trust's basis in such property immediately before the payment.

(e) Simplified reporting

The Secretary may prescribe rules for simplified reporting of all trusts having a single trustee and of trusts terminated during the year.

(Added Pub. L. 105–34, title XIII, § 1309(a), Aug. 5, 1997, 111 Stat. 1042; amended Pub. L. 105–206, title VI, § 6013(b), July 22, 1998, 112 Stat. 820; Pub. L. 110–317, § 9(a), (b), Aug. 29, 2008, 122 Stat. 3530.)

AMENDMENTS

2008—Subsecs. (c) to (f). Pub. L. 110–317 redesignated subsecs. (d) to (f) as (c) to (e), respectively, and struck

out former subsec. (c), which related to dollar limitation on contributions to qualified funeral trusts.

1998—Subsec. (b). Pub. L. 105–206, § 6013(b)(1), inserted concluding provisions.

Subsec. (f). Pub. L. 105–206, § 6013(b)(2), inserted ''and of trusts terminated during the year'' before period at end.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–317, § 9(c), Aug. 29, 2008, 122 Stat. 3530, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 29, 2008].''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section 1309(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [enacting this section] shall apply to taxable years ending after the date of the enactment of this Act [Aug. 5, 1997].''

PART II—INCOME IN RESPECT OF DECEDENTS

Sec.
691. Recipients of income in respect of decedents.
692. Income taxes of members of Armed Forces, astronauts, and victims of certain terrorist attacks on death.

AMENDMENTS

2003—Pub. L. 108–121, title I, § 110(a)(3)(B), Nov. 11, 2003, 117 Stat. 1342, inserted '', astronauts,'' after ''Forces'' in item 692.

2002—Pub. L. 107–134, title I, § 101(c)(2), Jan. 23, 2002, 115 Stat. 2429, substituted ''Income taxes of members of Armed Forces and victims of certain terrorist attacks on death'' for ''Income taxes of members of Armed Forces on death'' in item 692.

§ 691. Recipients of income in respect of decedents

(a) Inclusion in gross income

(1) General rule

The amount of all items of gross income in respect of a decedent which are not properly includible in respect of the taxable period in which falls the date of his death or a prior period (including the amount of all items of gross income in respect of a prior decedent, if the right to receive such amount was acquired by reason of the death of the prior decedent or by bequest, devise, or inheritance from the prior decedent) shall be included in the gross income, for the taxable year when received, of:

(A) the estate of the decedent, if the right to receive the amount is acquired by the decedent's estate from the decedent;

(B) the person who, by reason of the death of the decedent, acquires the right to receive the amount, if the right to receive the amount is not acquired by the decedent's estate from the decedent; or

(C) the person who acquires from the decedent the right to receive the amount by bequest, devise, or inheritance, if the amount is received after a distribution by the decedent's estate of such right.

(2) Income in case of sale, etc.

If a right, described in paragraph (1), to receive an amount is transferred by the estate of the decedent or a person who received such right by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent, there shall be included in the gross income of the estate or such person, as the case may be, for the taxable period in which the transfer occurs, the fair market value of such right at the time of such transfer plus the amount by which any consideration for the transfer exceeds such fair market value. For purposes of this paragraph, the term ''transfer'' includes sale, exchange, or other disposition, or the satisfaction of an installment obligation at other than face value, but does not include transmission at death to the estate of the decedent or a transfer to a person pursuant to the right of such person to receive such amount by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent.

(3) Character of income determined by reference to decedent

The right, described in paragraph (1), to receive an amount shall be treated, in the hands of the estate of the decedent or any person who acquired such right by reason of the death of the decedent, or by bequest, devise, or inheritance from the decedent, as if it had been acquired by the estate or such person in the transaction in which the right to receive the income was originally derived and the amount includible in gross income under paragraph (1) or (2) shall be considered in the hands of the estate or such person to have the character which it would have had in the hands of the decedent if the decedent had lived and received such amount.

(4) Installment obligations acquired from decedent

In the case of an installment obligation reportable by the decedent on the installment method under section 453, if such obligation is acquired by the decedent's estate from the decedent or by any person by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent—

(A) an amount equal to the excess of the face amount of such obligation over the basis of the obligation in the hands of the decedent (determined under section 453B) shall, for the purpose of paragraph (1), be considered as an item of gross income in respect of the decedent; and

(B) such obligation shall, for purposes of paragraphs (2) and (3), be considered a right to receive an item of gross income in respect of the decedent, but the amount includible in gross income under paragraph (2) shall be reduced by an amount equal to the basis of the obligation in the hands of the decedent (determined under section 453B).

(5) Other rules relating to installment obligations

(A) In general

In the case of an installment obligation reportable by the decedent on the installment

method under section 453, for purposes of paragraph (2)—

(i) the second sentence of paragraph (2) shall be applied by inserting ''(other than the obligor)'' after ''or a transfer to a person'',

(ii) any cancellation of such an obligation shall be treated as a transfer, and

(iii) any cancellation of such an obligation occurring at the death of the decedent shall be treated as a transfer by the estate of the decedent (or, if held by a person other than the decedent before the death of the decedent, by such person).

(B) Face amount treated as fair market value in certain cases

In any case to which the first sentence of paragraph (2) applies by reason of subparagraph (A), if the decedent and the obligor were related persons (within the meaning of section 453(f)(1)), the fair market value of the installment obligation shall be treated as not less than its face amount.

(C) Cancellation includes becoming unenforceable

For purposes of subparagraph (A), an installment obligation which becomes unenforceable shall be treated as if it were canceled.

(b) Allowance of deductions and credit

The amount of any deduction specified in section 162, 163, 164, 212, or 611 (relating to deductions for expenses, interest, taxes, and depletion) or credit specified in section 27 (relating to foreign tax credit), in respect of a decedent which is not properly allowable to the decedent in respect of the taxable period in which falls the date of his death, or a prior period, shall be allowed:

(1) Expenses, interest, and taxes

In the case of a deduction specified in sections 162, 163, 164, or 212 and a credit specified in section 27, in the taxable year when paid—

(A) to the estate of the decedent; except that

(B) if the estate of the decedent is not liable to discharge the obligation to which the deduction or credit relates, to the person who, by reason of the death of the decedent or by bequest, devise, or inheritance acquires, subject to such obligation, from the decedent an interest in property of the decedent.

(2) Depletion

In the case of the deduction specified in section 611, to the person described in subsection (a)(1)(A), (B), or (C) who, in the manner described therein, receives the income to which the deduction relates, in the taxable year when such income is received.

(c) Deduction for estate tax

(1) Allowance of deduction

(A) General rule

A person who includes an amount in gross income under subsection (a) shall be allowed, for the same taxable year, as a deduction an amount which bears the same ratio to the estate tax attributable to the net value for estate tax purposes of all the items described in subsection (a)(1) as the value for estate tax purposes of the items of gross income or portions thereof in respect of which such person included the amount in gross income (or the amount included in gross income, whichever is lower) bears to the value for estate tax purposes of all the items described in subsection (a)(1).

(B) Estates and trusts

In the case of an estate or trust, the amount allowed as a deduction under subparagraph (A) shall be computed by excluding from the gross income of the estate or trust the portion (if any) of the items described in subsection (a)(1) which is properly paid, credited, or to be distributed to the beneficiaries during the taxable year.

(2) Method of computing deduction

For purposes of paragraph (1)—

(A) The term ''estate tax'' means the tax imposed on the estate of the decedent or any prior decedent under section 2001 or 2101, reduced by the credits against such tax.

(B) The net value for estate tax purposes of all the items described in subsection (a)(1) shall be the excess of the value for estate tax purposes of all the items described in subsection (a)(1) over the deductions from the gross estate in respect of claims which represent the deductions and credit described in subsection (b). Such net value shall be determined with respect to the provisions of section 421(c)(2), relating to the deduction for estate tax with respect to stock options to which part II of subchapter D applies.

(C) The estate tax attributable to such net value shall be an amount equal to the excess of the estate tax over the estate tax computed without including in the gross estate such net value.

(3) Special rule for generation-skipping transfers

In the case of any tax imposed by chapter 13 on a taxable termination or a direct skip occurring as a result of the death of the transferor, there shall be allowed a deduction (under principles similar to the principles of this subsection) for the portion of such tax attributable to items of gross income of the trust which were not properly includible in the gross income of the trust for periods before the date of such termination.

(4) Coordination with capital gain provisions

For purposes of sections 1(h), 1201, 1202, and 1211, the amount taken into account with respect to any item described in subsection (a)(1) shall be reduced (but not below zero) by the amount of the deduction allowable under paragraph (1) of this subsection with respect to such item.

(d) Amounts received by surviving annuitant under joint and survivor annuity contract

(1) Deduction for estate tax

For purposes of computing the deduction under subsection (c)(1)(A), amounts received by a surviving annuitant—

(A) as an annuity under a joint and survivor annuity contract where the decedent annuitant died after December 31, 1953, and after the annuity starting date (as defined in section 72(c)(4)), and

(B) during the surviving annuitant's life expectancy period, shall, to the extent included in gross income under section 72, be considered as amounts included in gross income under subsection (a).

(2) Net value for estate tax purposes

In determining the net value for estate tax purposes under subsection (c)(2)(B) for purposes of this subsection, the value for estate tax purposes of the items described in paragraph (1) of this subsection shall be computed—

(A) by determining the excess of the value of the annuity at the date of the death of the deceased annuitant over the total amount excludable from the gross income of the surviving annuitant under section 72 during the surviving annuitant's life expectancy period, and

(B) by multiplying the figure so obtained by the ratio which the value of the annuity for estate tax purposes bears to the value of the annuity at the date of the death of the deceased.

(3) Definitions

For purposes of this subsection—

(A) The term ''life expectancy period'' means the period beginning with the first day of the first period for which an amount is received by the surviving annuitant under the contract and ending with the close of the taxable year with or in which falls the termination of the life expectancy of the surviving annuitant. For purposes of this subparagraph, the life expectancy of the surviving annuitant shall be determined, as of the date of the death of the deceased annuitant, with reference to actuarial tables prescribed by the Secretary.

(B) The surviving annuitant's expected return under the contract shall be computed, as of the death of the deceased annuitant, with reference to actuarial tables prescribed by the Secretary.

(e) Cross reference

For application of this section to income in respect of a deceased partner, see section 753.

(Aug. 16, 1954, ch. 736, 68A Stat. 235; Pub. L. 88–272, title II, §221(c)(2), Feb. 26, 1964, 78 Stat. 75; Pub. L. 88–570, §1, Sept. 2, 1964, 78 Stat. 854; Pub. L. 94–455, title XIX, §§1901(a)(91), 1906(b)(13)(A), 1951(b)(10)(A), title XX, §§2005(a)(4), 2006(b)(3), Oct. 4, 1976, 90 Stat. 1779, 1834, 1839, 1876, 1889; Pub. L. 95–600, title VII, §702(b)(1), Nov. 6, 1978, 92 Stat. 2925; Pub. L. 96–222, title I, §101(a)(8)(A), Apr. 1, 1980, 94 Stat. 201; Pub. L. 96–223, title IV, §401(a), Apr. 2, 1980, 94 Stat. 299; Pub. L. 96–471, §§2(b)(5), 3, Oct. 19, 1980, 94 Stat. 2254; Pub. L. 97–34, title IV, §403(a)(2)(C), Aug. 13, 1981, 95 Stat. 301; Pub. L. 98–369, div. A, title IV, §474(r)(18), July 18, 1984, 98 Stat. 843; Pub. L. 99–514, title III, §301(b)(8), title XIV, §1432(a)(3), Oct. 22, 1986, 100 Stat. 2217, 2729; Pub. L. 100–203, title X, §10202(c)(3), Dec. 22, 1987, 101 Stat. 1330–392; Pub. L. 100–647, title I, §1011A(g)(10), Nov. 10, 1988, 102 Stat. 3482; Pub. L. 101–239, title VII, §7841(d)(3), Dec. 19, 1989, 103 Stat. 2428; Pub. L. 101–508, title XI, §11101(d)(4), Nov. 5, 1990, 104 Stat. 1388–405; Pub. L. 102–318, title V, §521(b)(27), July 3, 1992, 106 Stat. 312; Pub. L. 103–66, title XIII, §13113(d)(4), Aug. 10, 1993, 107 Stat. 430; Pub. L. 104–188, title I, §§1401(b)(9), 1704(t)(73), Aug. 20, 1996, 110 Stat. 1789, 1891; Pub. L. 105–34, title X, §1073(b)(1), Aug. 5, 1997, 111 Stat. 948; Pub. L. 108–311, title IV, §402(a)(4), Oct. 4, 2004, 118 Stat. 1184.)

AMENDMENTS

2004—Subsec. (c)(4). Pub. L. 108–311 struck out ''of any gain'' before ''taken into account''.

1997—Subsec. (c)(1)(C). Pub. L. 105–34 struck out heading and text of subpar. (C). Text read as follows: ''For purposes of this subsection, no deduction shall be allowed for the portion of the estate tax attributable to the increase in such tax under section 4980A(d).''

1996—Subsec. (c)(5). Pub. L. 104–188, §1704(t)(73), provided that section 521(b)(27) of Pub. L. 102–318 shall be applied as if ''Section 691(c)(5)'' appeared instead of ''Section 691(c)''. See 1992 Amendment note below.

Pub. L. 104–188, §1401(b)(9), struck out par. (5) which read as follows:

''(5) COORDINATION WITH SECTION 402(d).—For purposes of section 402(d) (other than paragraph (1)(C) thereof), the total taxable amount of any lump sum distribution shall be reduced by the amount of the deduction allowable under paragraph (1) of this subsection which is attributable to the total taxable amount (determined without regard to this paragraph).''

1993—Subsec. (c)(4). Pub. L. 103–66 inserted ''1202,'' after ''1201,''.

1992—Subsec. (c)(5). Pub. L. 102–318, which directed that section 691(c) be amended ''in the text and heading'' by substituting ''402(d)'' for ''402(e)'', was executed by making the substitution in subsec. (c)(5). See 1996 Amendment note above.

1990—Subsec. (c)(4). Pub. L. 101–508 substituted ''1(h)'' for ''1(j)''.

1989—Subsec. (c)(5). Pub. L. 101–239 substituted ''paragraph (1)(C)'' for ''paragraph (1)(D)''.

1988—Subsec. (c)(1)(C). Pub. L. 100–647 added subpar. (C).

1987—Subsec. (a)(4), (5)(A). Pub. L. 100–203 struck out ''or 453A'' after ''section 453''.

1986—Subsec. (c)(3). Pub. L. 99–514, §1432(a)(3), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''For purposes of this section—

''(A) the tax imposed by section 2601 or any State inheritance tax described in section 2602(c)(5)(B) on any generation-skipping transfer shall be treated as a tax imposed by section 2001 on the estate of the deemed transferor (as defined in section 2612(a));

''(B) any property transferred in such a transfer shall be treated as if it were included in the gross estate of the deemed transferor at the value of such property taken into account for purposes of the tax imposed by section 2601; and

''(C) under regulations prescribed by the Secretary, any item of gross income subject to the tax imposed under section 2601 shall be treated as income described in subsection (a) if such item is not properly includible in the gross income of the trust on or before the date of the generation-skipping transfer (within the meaning of section 2611(a)) and if such transfer occurs at or after the death of the deemed transferor (as so defined).''

Subsec. (c)(4). Pub. L. 99–514, §301(b)(8), substituted ''capital gain provisions'' for ''capital gain deduction, etc.'' in heading and in text substituted ''1(j), 1201, and 1211'' for ''1201, 1202, and 1211, and for purposes of section 57(a)(9)''.

1984—Subsec. (b). Pub. L. 98–369 substituted ''section 27'' for ''section 33'' in provisions preceding par. (1) and in provisions of par. (1) preceding subpar. (A).

1981—Subsec. (c)(3)(A). Pub. L. 97–34 substituted ''section 2602(c)(5)(B)'' for ''section 2602(c)(5)(C)''.

1980—Subsec. (a)(4). Pub. L. 96–471, §2(b)(5), substituted ''reportable by the decedent on the installment method under section 453 or 453A'' for ''received by a decedent on the sale or other disposition of property, the income from which was properly reportable by the decedent on the installment basis under section 453'' in text preceding subpar. (A) and ''section 453B'' for ''section 453(d)'' in subpars. (A) and (B).

Subsec. (a)(5). Pub. L. 96–471, §3, added par. (5).

Subsec. (c)(2)(A), (C). Pub. L. 96–223 repealed the amendments made by Pub. L. 94–455, §2005(a)(4). See 1976 Amendment notes below.

Subsec. (c)(5). Pub. L. 96–222 added par. (5).

1978—Subsec. (c)(4). Pub. L. 95–600 added par. (4).

1976—Subsec. (c)(1)(B). Pub. L. 94–455, §1901(a)(91), struck out provision that this subparagraph applies to same taxable years, and to same extent, as is provided in section 683 of this title.

Subsec. (c)(2)(A). Pub. L. 94–455, §2005(a)(4)(A), substituted ''Federal and State estate taxes (within the meaning of section 1023(f)(3))'' for ''the tax imposed on the estate of the decedent or any prior decedent under section 2001 or 2101, reduced by the credits against such tax''. See Repeals note below.

Subsec. (c)(2)(C). Pub. L. 94–455, §2005(a)(4)(B), substituted ''which bears the same ratio to the estate tax as such net value bears to the value of the gross estate'' for ''equal to the excess of the estate tax over the estate tax computed without including in the gross estate such net value''. See Repeals note below.

Subsec. (c)(3). Pub. L. 94–455, §2006(b)(3), added par. (3).

Subsec. (d)(3)(A), (B). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsecs. (e), (f). Pub. L. 94–455, §1951(b)(10)(A), redesignated subsec. (f) as (e) and struck out former subsec. (e) relating to certain installment obligations transmitted at death.

1964—Subsec. (c)(2)(B). Pub. L. 88–272 substituted ''421(c)(2), relating to the deduction for estate tax with respect to stock options to which part II of subchapter D applies'' for ''421(d)(6)(B), relating to the deduction for estate tax with respect to restricted stock options''.

Subsecs. (e), (f). Pub. L. 88–570 added subsec. (e) and redesignated former subsec. (e) as (f).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 effective as if included in section 302 of the Jobs and Growth Tax Relief Reconciliation Act of 2003, Pub. L. 108–27, see section 402(b) of Pub. L. 108–311, set out a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to estates of decedents dying after Dec. 31, 1996, see section 1073(c) of Pub. L. 105–34, set out as an Effective Date of Repeal note under section 4980A of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1401(b)(9) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1999, with retention of certain transition rules, see section 1401(c) of Pub. L. 104–188, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to stock issued after Aug. 10, 1993, see section 13113(e) of Pub. L. 103–66, set out as a note under section 53 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

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

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11101(e) of Pub. L. 101–508, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to dispositions in taxable years beginning after Dec. 31, 1987, with special rules for non-dealers and coordination with Tax Reform Act of 1986, see section 10202(e)(1), (3), (5) of Pub. L. 100–203, set out as a note under section 453 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 301(b)(8) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 301(c) of Pub. L. 99–514, set out as a note under section 62 of this title.

Amendment by section 1432(a)(3) of Pub. L. 99–514 applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99–514, set out as an Effective Date note under section 2601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to estates of decedents dying after Dec. 31, 1981, but inapplicable under certain conditions under will executed before date which is 30 days after Aug. 13, 1981, or under trust created by such date, see section 403(e) of Pub. L. 97–34, set out as a note under section 2056 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS AND REVIVAL OF PRIOR LAW

For effective date of amendment by section 2(b)(5) of Pub. L. 96–471, see section 6(a)(1) of Pub. L. 96–471, set out as an Effective Date note under section 453 of this title.

Section 6(b) of Pub. L. 96–471 provided: ''The amendment made by section 3 [amending this section] shall apply in the case of decedents dying after the date of the enactment of this Act [Oct. 19, 1980].''

Amendment by Pub. L. 96–223 (repealing section 2005(a)(4) of Pub. L. 94–455 and the amendments made thereby, which had amended this section) applicable in respect of decedents dying after Dec. 31, 1976, and except for certain elections, this title to be applied and administered as if those repealed provisions had not been enacted, see section 401(b), (e) of Pub. L. 96–223, set out as a note under section 1023 of this title.

Section 101(b)(1)(D) of Pub. L. 96–222 provided that: ''The amendment made by subsection (a)(7) [probably means subsection (a)(8), which amended this section and section 2039 of this title] shall apply with respect to the estates of decedents dying after the date of the enactment of this Act [Apr. 1, 1980].''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 702(b)(2) of Pub. L. 95–600 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to decedents dying after the date of the enactment of this Act [Nov. 6, 1978].''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(91) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976,

see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 1951(b)(10)(A) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1951(d) of Pub. L. 94–455, set out as a note under section 72 of this title.

Amendment by section 2005(a)(4)(A), (B) of Pub. L. 94–455 applicable in respect of decedents dying after Dec. 31, 1979, see section 2005(f)(1) of Pub. L. 94–455, set out as a note under section 1015 of this title.

For effective date of amendment by section 2006(b)(3) of Pub. L. 94–455, see section 2006(c) of Pub. L. 94–455, set out as an Effective Date note under section 2601 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years ending after Dec. 31, 1963, see section 221(e) of Pub. L. 88–272, set out as a note under section 421 of this title.

REPEALS

Pub. L. 94–455, § 2005(a)(4), cited as a credit to this section, and the amendments made thereby, were repealed by Pub. L. 96–223, title IV, § 401(a), 94 Stat. 299, resulting in the text of this section reading as it read prior to enactment of section 2005(a)(4). See Effective Date of 1980 Amendments and Revival of Prior Law note above.

SAVINGS PROVISION

Section 1951(b)(10)(B) of Pub. L. 94–455 provided that: ''Notwithstanding subparagraph (A) [amending this section], any election made under section 691(e) to have subsection (a)(4) of such section apply in the case of an installment obligation shall continue to be effective with respect to taxable years beginning after December 31, 1976. Section 691(c) shall not apply in respect of any amount included in gross income by reason of the preceding sentence. The liability under bond filed under section 44(d) of the Internal Revenue Code of 1939 (or corresponding provisions of prior law) in respect of which such an election applies is hereby released with respect to taxable years to which such election applies.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

§ 692. Income taxes of members of Armed Forces, astronauts, and victims of certain terrorist attacks on death

(a) General rule

In the case of any individual who dies while in active service as a member of the Armed Forces of the United States, if such death occurred while serving in a combat zone (as determined under section 112) or as a result of wounds, disease, or injury incurred while so serving—

(1) any tax imposed by this subtitle shall not apply with respect to the taxable year in which falls the date of his death, or with respect to any prior taxable year ending on or after the first day he so served in a combat zone after June 24, 1950; and

(2) any tax under this subtitle and under the corresponding provisions of prior revenue laws for taxable years preceding those specified in paragraph (1) which is unpaid at the date of his death (including interest, additions to the tax, and additional amounts) shall not be assessed, and if assessed the assessment shall be abated, and if collected shall be credited or refunded as an overpayment.

(b) Individuals in missing status

For purposes of this section, in the case of an individual who was in a missing status within the meaning of section 6013(f)(3)(A), the date of his death shall be treated as being not earlier than the date on which a determination of his death is made under section 556 of title 37 of the United States Code. Except in the case of the combat zone designated for purposes of the Vietnam conflict, the preceding sentence shall not cause subsection (a)(1) to apply for any taxable year beginning more than 2 years after the date designated under section 112 as the date of termination of combatant activities in a combat zone.

(c) Certain military or civilian employees of the United States dying as a result of injuries

(1) In general

In the case of any individual who dies while a military or civilian employee of the United States, if such death occurs as a result of wounds or injury which was incurred while the individual was a military or civilian employee of the United States and which was incurred in a terroristic or military action, any tax imposed by this subtitle shall not apply—

(A) with respect to the taxable year in which falls the date of his death, and

(B) with respect to any prior taxable year in the period beginning with the last taxable year ending before the taxable year in which the wounds or injury were incurred.

(2) Terroristic or military action

For purposes of paragraph (1), the term ''terroristic or military action'' means—

(A) any terroristic activity which a preponderance of the evidence indicates was directed against the United States or any of its allies, and

(B) any military action involving the Armed Forces of the United States and resulting from violence or aggression against the United States or any of its allies (or threat thereof).

For purposes of the preceding sentence, the term ''military action'' does not include training exercises.

(3) Treatment of multinational forces

For purposes of paragraph (2), any multinational force in which the United States is participating shall be treated as an ally of the United States.

(d) Individuals dying as a result of certain attacks

(1) In general

In the case of a specified terrorist victim, any tax imposed by this chapter shall not apply—

(A) with respect to the taxable year in which falls the date of death, and

(B) with respect to any prior taxable year in the period beginning with the last taxable year ending before the taxable year in which the wounds, injury, or illness referred to in paragraph (3) were incurred.

(2) $10,000 minimum benefit

If, but for this paragraph, the amount of tax not imposed by paragraph (1) with respect to a specified terrorist victim is less than $10,000, then such victim shall be treated as having made a payment against the tax imposed by this chapter for such victim's last taxable year in an amount equal to the excess of $10,000 over the amount of tax not so imposed.

(3) Taxation of certain benefits

Subject to such rules as the Secretary may prescribe, paragraph (1) shall not apply to the amount of any tax imposed by this chapter which would be computed by only taking into account the items of income, gain, or other amounts attributable to—

(A) deferred compensation which would have been payable after death if the individual had died other than as a specified terrorist victim, or

(B) amounts payable in the taxable year which would not have been payable in such taxable year but for an action taken after September 11, 2001.

(4) Specified terrorist victim

For purposes of this subsection, the term ''specified terrorist victim'' means any decedent—

(A) who dies as a result of wounds or injury incurred as a result of the terrorist attacks against the United States on April 19, 1995, or September 11, 2001, or

(B) who dies as a result of illness incurred as a result of an attack involving anthrax occurring on or after September 11, 2001, and before January 1, 2002.

Such term shall not include any individual identified by the Attorney General to have been a participant or conspirator in any such attack or a representative of such an individual.

(5) Relief with respect to astronauts

The provisions of this subsection shall apply to any astronaut whose death occurs in the line of duty, except that paragraph (3)(B) shall be applied by using the date of the death of the astronaut rather than September 11, 2001.

(Aug. 16, 1954, ch. 736, 68A Stat. 238; Pub. L. 93–597, §4(a), Jan. 2, 1975, 88 Stat. 1952; Pub. L. 94–455, title XIX, §1901(a)(92), Oct. 4, 1976, 90 Stat. 1780; Pub. L. 94–569, §3(c), Oct. 20, 1976, 90 Stat. 2699; Pub. L. 97–448, title III, §307(b), Jan. 12, 1983, 96 Stat. 2407; Pub. L. 98–259, §1(a), Apr. 10, 1984, 98 Stat. 142; Pub. L. 98–369, div. A, title VII, §722(g)(2), (3), July 18, 1984, 98 Stat. 974; Pub. L. 99–514, title XVII, §1708(a)(2), Oct. 22, 1986, 100 Stat. 2782; Pub. L. 107–134, title I, §§101(a), (c)(1), 113(b), Jan. 23, 2002, 115 Stat. 2428, 2435; Pub. L. 108–121, title I, §110(a)(1), (3)(A), Nov. 11, 2003, 117 Stat. 1342.)

AMENDMENTS

2003—Pub. L. 108–121, §110(a)(3)(A), inserted '', astronauts,'' after ''Forces'' in section catchline.

Subsec. (d)(5). Pub. L. 108–121, §110(a)(1), added par. (5).

2002—Pub. L. 107–134, §101(c)(1), amended section catchline generally. Prior to amendment, catchline read as follows: ''Income taxes on members of Armed Forces on death''.

Subsec. (c). Pub. L. 107–134, §113(b)(2), struck out ''sustained overseas'' after ''injuries'' in heading.

Subsec. (c)(1). Pub. L. 107–134, §113(b)(1), struck out ''outside the United States'' before ''in a terroristic or military action'' in introductory provisions.

Subsec. (d). Pub. L. 107–134, §101(a), added subsec. (d).

1986—Subsec. (b). Pub. L. 99–514 amended last sentence generally. Prior to amendment, sentence read as follows: ''The preceding sentence shall not cause subsection (a)(1) to apply for any taxable year beginning—

''(1) after December 31, 1982, in the case of service in the combat zone designated for purposes of the Vietnam conflict, or

''(2) more than 2 years after the date designated under section 112 as the date of termination of combatant activities in that zone, in the case of any combat zone other than that referred to in paragraph (1).''

1984—Subsec. (c). Pub. L. 98–259 added subsec. (c).

Subsec. (c)(1). Pub. L. 98–369, §722(g)(2), which directed amendment of par. (1) of this section by substituting ''as a result of wounds or injury which was incurred while the individual was a military or civilian employee of the United States and which was incurred'' for ''as a result of wounds or injury incurred'' was executed to par. (1) of subsec. (c) to reflect the probable intent of Congress.

Subsec. (c)(2)(A). Pub. L. 98–369, §722(g)(3), inserted ''which a preponderance of the evidence indicates was''.

1983—Subsec. (b)(1). Pub. L. 97–448 substituted ''December 31, 1982'' for ''January 2, 1978''.

1976—Subsec. (b). Pub. L. 94–569 substituted ''to apply for any taxable year beginning'' for ''to apply for any taxable year beginning more than 2 years after'' in provisions preceding par. (1), substituted ''after January 2, 1978'' for ''the date of enactment of this subsection'' in par. (1), and substituted ''more than 2 years after the date designated'' for ''the date designated'' in par. (2).

Pub. L. 94–455 substituted ''of members'' for ''on members'' in heading.

1975—Subsec. (a). Pub. L. 93–597, §4(a)(1), (2), designated existing provisions as subsec. (a), added heading, and in subsec. (a) as so designated, struck out ''during an induction period (as defined in section 112(c)(5))'', respectively.

Subsec. (b). Pub. L. 93–597, §4(a)(3), added subsec. (b).

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–121 applicable with respect to any astronaut whose death occurs after Dec. 31, 2002, see section 110(a)(4) of Pub. L. 108–121, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–134, title I, §101(d), Jan. 23, 2002, 115 Stat. 2429, provided that:

''(1) EFFECTIVE DATE.—The amendments made by this section [amending this section and sections 5 and 6013 of this title] shall apply to taxable years ending before, on, or after September 11, 2001.

''(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amend-

ments made by this section is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act [Jan. 23, 2002] by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period.''

Amendment by section 113(b) of Pub. L. 107–134 applicable to taxable years ending on or after Sept. 11, 2001, see section 113(c) of Pub. L. 107–134, set out as a note under section 104 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1982, see section 1708(b) of Pub. L. 99–514, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 722(g)(5) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(A) IN GENERAL.—The amendments made by this subsection [amending this section and enacting and amending provisions set out below] shall take effect as if they were included in the amendments made by section 1 of Public Law 98–259 [amending this section and enacting provisions set out below].

''(B) STATUTE OF LIMITATIONS WAIVED.—Notwithstanding section 6511 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the time for filing a claim for credit or refund of any overpayment of tax resulting from the amendments made by this subsection shall not expire before the date 1 year after the date of the enactment of this Act [July 18, 1984].''

Section 1(b) of Pub. L. 98–259 as amended by Pub. L. 98–369, div. A, title VII, § 722(g)(1), July 18, 1984, 98 Stat. 974; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply with respect to all taxable years (whether beginning before, on, or after the date of enactment of this Act [Apr. 10, 1984]) of individuals dying after November 17, 1978, as a result of wounds or injuries incurred after such date.

''(2) STATUTE OF LIMITATIONS WAIVED.—Notwithstanding section 6511 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the time for filing a claim for credit or refund of any overpayment of tax resulting from the amendment made by subsection (a) shall not expire before the date 1 year after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 4(b) of Pub. L. 93–597 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxable years ending on or after February 28, 1961.''

REFUNDS AND CREDITS OF OVERPAYMENTS FOR TAXABLE YEARS ENDING ON OR AFTER FEBRUARY 28, 1961, RESULTING FROM APPLICATION OF PROVISIONS

Section 4(c) of Pub. L. 93–597, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''If the refund or credit of any overpayment for any taxable year ending on or after February 28, 1961, resulting from the application of section 692 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (a) of this section) is prevented at any time before the expiration of one year after the date of the enactment of this Act [Jan. 2, 1975] by the operation of any law or rule of law, but would not have been so prevented if claim for refund or credit therefor were made on the due date for the return for the taxable year of his death (or any later year), refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed before the expiration of such one-year period.''

TREATMENT OF DIRECTOR GENERAL OF MULTINATIONAL FORCE IN SINAI

Section 722(g)(4) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''For purposes of section 692(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the Director General of the Multinational Force and Observers in the Sinai who died on February 15, 1984, shall be treated as if he were a civilian employee of the United States while he served as such Director General.''

Subchapter K—Partners and Partnerships

Part
I. Determination of tax liability.
II. Contributions, distributions, and transfers.
III. Definitions.
IV. Special rules for electing large partnerships.

AMENDMENTS

1997—Pub. L. 105–34, title XII, § 1221(b), Aug. 5, 1997, 111 Stat. 1008, added item for part IV.

PART I—DETERMINATION OF TAX LIABILITY

Sec.
701. Partners, not partnership, subject to tax.
702. Income and credits of partner.
703. Partnership computations.
704. Partner's distributive share.
705. Determination of basis of partner's interest.
706. Taxable years of partner and partnership.
707. Transactions between partner and partnership.
708. Continuation of partnership.
709. Treatment of organization and syndication fees.

AMENDMENTS

1976—Pub. L. 94–455, title II, § 213(b)(2), title XIX, § 1901(b)(23), Oct. 4, 1976, 90 Stat. 1547, 1798, struck out part IV ''Effective date for subchapter'' in table of parts of subchapter K of chapter 1 and added item 709.

§ 701. Partners, not partnership, subject to tax

A partnership as such shall not be subject to the income tax imposed by this chapter. Persons carrying on business as partners shall be liable for income tax only in their separate or individual capacities.

(Aug. 16, 1954, ch. 736, 68A Stat. 239.)

§ 702. Income and credits of partner

(a) General rule

In determining his income tax, each partner shall take into account separately his distributive share of the partnership's—

(1) gains and losses from sales or exchanges of capital assets held for not more than 1 year,

(2) gains and losses from sales or exchanges of capital assets held for more than 1 year,

(3) gains and losses from sales or exchanges of property described in section 1231 (relating to certain property used in a trade or business and involuntary conversions),

(4) charitable contributions (as defined in section 170(c)),

(5) dividends with respect to which section 1(h)(11) or part VIII of subchapter B applies,

(6) taxes, described in section 901, paid or accrued to foreign countries and to possessions of the United States,

(7) other items of income, gain, loss, deduction, or credit, to the extent provided by regulations prescribed by the Secretary, and

(8) taxable income or loss, exclusive of items requiring separate computation under other paragraphs of this subsection.

(b) Character of items constituting distributive share

The character of any item of income, gain, loss, deduction, or credit included in a partner's distributive share under paragraphs (1) through (7) of subsection (a) shall be determined as if such item were realized directly from the source from which realized by the partnership, or incurred in the same manner as incurred by the partnership.

(c) Gross income of a partner

In any case where it is necessary to determine the gross income of a partner for purposes of this title, such amount shall include his distributive share of the gross income of the partnership.

(d) Cross reference

For rules relating to procedures for determining the tax treatment of partnership items see subchapter C of chapter 63 (section 6221 and following).

(Aug. 16, 1954, ch. 736, 68A Stat. 239; Pub. L. 88–272, title II, § 201(d)(7), Feb. 26, 1964, 78 Stat. 32; Pub. L. 94–455, title XIV, § 1402(b)(1)(L), (2), title XIX, §§ 1901(b)(1)(I)(i), (ii), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1732, 1791, 1834; Pub. L. 96–223, title IV, § 404(b)(5), Apr. 2, 1980, 94 Stat. 307; Pub. L. 97–34, title III, § 301(b)(5), (6)(C), Aug. 13, 1981, 95 Stat. 270; Pub. L. 97–248, title IV, § 402(c)(1), Sept. 3, 1982, 96 Stat. 667; Pub. L. 97–448, title I, § 103(a)(4), Jan. 12, 1983, 96 Stat. 2375; Pub. L. 98–369, div. A, title X, § 1001(b)(9), (e), July 18, 1984, 98 Stat. 1011, 1012; Pub. L. 99–514, title VI, § 612(b)(5), Oct. 22, 1986, 100 Stat. 2250; Pub. L. 108–27, title III, § 302(e)(8), May 28, 2003, 117 Stat. 764.)

AMENDMENT OF SECTION

For termination of amendment by section 303 of Pub. L. 108–27, see Effective and Termination Dates of 2003 Amendment note below.

AMENDMENTS

2003—Subsec. (a)(5). Pub. L. 108–27, §§ 302(e)(8), 303, temporarily amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''dividends with respect to which there is a deduction under part VIII of subchapter B,''. See Effective and Termination Dates of 2003 Amendment note below.

1986—Subsec. (a)(5). Pub. L. 99–514 amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''dividends or interest with respect to which there is an exclusion under section 116 or 128, or a deduction under part VIII of subchapter B,''.

1984—Subsec. (a)(1), (2). Pub. L. 98–369 substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

1983—Subsec. (a)(5). Pub. L. 97–448 substituted ''an exclusion under section 116 or 128,'' for ''provided an exclusion under section 116 or 128''.

1982—Subsec. (d). Pub. L. 97–248 added subsec. (d).

1981—Subsec. (a)(5). Pub. L. 97–34, § 301(b)(6)(C), inserted reference to ''interest'' in heading and text which continued the amendment made by Pub. L. 96–223.

Pub. L. 97–34, § 301(b)(5), inserted ''or 128'' after ''section 116''.

1980—Subsec. (a)(5). Pub. L. 96–223 inserted ''or interest'' after ''dividends''.

1976—Subsec. (a)(1), (2). Pub. L. 94–455, § 1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, § 1402(b)(1)(L), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

Subsec. (a)(7) to (9). Pub. L. 94–455, §§ 1901(b)(1)(I)(i), 1906(b)(13)(A), redesignated pars. (8) and (9) as (7) and (8), respectively, and in par. (7), as so redesignated, struck out ''or his delegate'' after ''Secretary''. Former par. (7), which related partially tax-exempt interest on obligations of the United States or its instrumentalities, was struck out.

Subsec. (b). Pub. L. 94–455, § 1901(b)(1)(I)(ii), substituted ''paragraphs (1) through (7)'' for ''paragraphs (1) through (8)''.

1964—Subsec. (a)(5). Pub. L. 88–272 struck out ''a credit under section 34,'' before ''an exclusion''.

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as a note under section 1 of this title.

Amendment by Pub. L. 108–27 inapplicable to taxable years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 303 of Pub. L. 108–27, as amended, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 612(c) of Pub. L. 99–514, set out as a note under section 301 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to partnership taxable years beginning after Sept. 3, 1982, with provision for the applicability of the amendment to any partnership taxable year ending after Sept. 3, 1982, if the partnership, each partner, and each indirect partner requests such application and the Secretary of the Treasury or his delegate consents to such application, see section 407(a)(1), (3) of Pub. L. 97–248, set out as an Effective Date note under section 6221 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 301(b)(5) of Pub. L. 97–34 applicable to taxable years ending after Sept. 30, 1981, and amendment by section 301(b)(6)(C) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 301(d) of Pub. L. 97–34, set out as a note under section 265 of this title.

EFFECTIVE AND TERMINATION DATES OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 applicable with respect to taxable years beginning after Dec. 31, 1980, and be-

fore Jan. 1, 1982, see section 404(c) of Pub. L. 96–223, set out as a note under section 265 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(b)(1) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Section 1402(b)(2) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Amendment by section 1901(b)(1)(I)(i), (ii) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable with respect to dividends received after Dec. 31, 1964, in taxable years ending after such date, see section 201(e) of Pub. L. 88–272, set out as a note under section 22 of this title.

§ 703. Partnership computations

(a) Income and deductions

The taxable income of a partnership shall be computed in the same manner as in the case of an individual except that—

(1) the items described in section 702(a) shall be separately stated, and

(2) the following deductions shall not be allowed to the partnership:

(A) the deductions for personal exemptions provided in section 151,

(B) the deduction for taxes provided in section 164(a) with respect to taxes, described in section 901, paid or accrued to foreign countries and to possessions of the United States,

(C) the deduction for charitable contributions provided in section 170,

(D) the net operating loss deduction provided in section 172,

(E) the additional itemized deductions for individuals provided in part VII of subchapter B (sec. 211 and following), and

(F) the deduction for depletion under section 611 with respect to oil and gas wells.

(b) Elections of the partnership

Any election affecting the computation of taxable income derived from a partnership shall be made by the partnership, except that any election under—

(1) subsection (b)(5) or (c)(3) of section 108 (relating to income from discharge of indebtedness),

(2) section 617 (relating to deduction and recapture of certain mining exploration expenditures), or

(3) section 901 (relating to taxes of foreign countries and possessions of the United States),

shall be made by each partner separately.

(Aug. 16, 1954, ch. 736, 68A Stat. 240; Pub. L. 89–570, §2(b), Sept. 12, 1966, 80 Stat. 764; Pub. L. 91–172, title V, §504(c)(3), Dec. 30, 1969, 83 Stat. 633; Pub. L. 92–178, title III, §304(c), Dec. 10, 1971, 85 Stat. 523; Pub. L. 94–12, title V, §501(b)(3), Mar. 29, 1975, 89 Stat. 53; Pub. L. 94–455, title XIX, §1901(b)(21)(F), title XXI, §2115(c)(2), Oct. 4, 1976, 90 Stat. 1798, 1909; Pub. L. 95–30, title I, §101(d)(10), May 23, 1977, 91 Stat. 134; Pub. L. 96–589, §2(e)(1), Dec. 24, 1980, 94 Stat. 3396; Pub. L. 99–514, title V, §511(d)(2)(B), title VII, §701(e)(4)(E), Oct. 22, 1986, 100 Stat. 2249, 2343; Pub. L. 100–647, title I, §1008(i), Nov. 10, 1988, 102 Stat. 3445; Pub. L. 103–66, title XIII, §13150(c)(9), Aug. 10, 1993, 107 Stat. 448.)

AMENDMENTS

1993—Subsec. (b)(1). Pub. L. 103–66 substituted ''subsection (b)(5) or (c)(3)'' for ''subsection (b)(5)''.

1988—Subsec. (b)(1). Pub. L. 100–647 substituted ''subsection (b)(5)'' for ''subsection (b)(5) or (d)(4)''.

1986—Subsec. (b). Pub. L. 99–514 struck out former pars. (1) and (3) which related to elections under sections 57(c) and 163(d), respectively, and redesignated former pars. (2), (4), and (5), as pars. (1), (2), and (3), respectively.

1980—Subsec. (b). Pub. L. 96–589 inserted reference to section 108(b)(5) and (d)(4).

1977—Subsec. (a)(2). Pub. L. 95–30 struck out subpar. (A) which made reference to the standard deduction provided in section 141, and redesignated subpars. (B) to (G) as (A) to (F), respectively.

1976—Subsec. (a)(2)(G). Pub. L. 94–455, §2115(c)(2), substituted ''wells'' for ''production subject to the provisions of section 613A(c)''.

Subsec. (b). Pub. L. 94–455, §1901(b)(21)(F), struck out ''under section 615 (relating to pre-1970 exploration expenditures),'' after ''of the United States, and any election''.

1975—Subsec. (a)(2)(G). Pub. L. 94–12 added subpar. (G).

1971—Subsec. (b). Pub. L. 92–178 substituted '','' for ''or'' after ''(relating to pre-1970 exploration expenditures)'' and inserted ''under section 57(c) (relating to definition of net lease), or under section 163(d) (relating to limitation on interest on investment indebtedness)'' after ''(relating to deduction and recapture of certain mining exploration expenditures)''.

1969—Subsec. (b). Pub. L. 91–172 substituted ''(relating to pre-1970 exploration expenditures) or under section 617 (relating to deduction and recapture of certain mining exploration expenditures)'' for ''(relating to exploration expenditures) or under section 617 (relating to additional exploration expenditures in the case of domestic mining)''.

1966—Subsec. (b). Pub. L. 89–570 provided for election under section 615 (relating to exploration expenditures) or under section 617 (relating to additional exploration expenditures in the case of domestic mining).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to discharges after Dec. 31, 1992, in taxable years ending after such date, see section 13150(d) of Pub. L. 103–66, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 511(d)(2)(B) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 511(e) of Pub. L. 99–514, set out as a note under section 163 of this title.

Amendment by section 701(e)(4)(E) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 applicable to transactions which occur after Dec. 31, 1980, other than transactions which occur in a proceeding in a bankruptcy case or similar judicial proceeding or in a pro-

ceeding under Title 11 commencing on or after Dec. 31, 1980, with an exception permitting the debtor to make the amendment applicable to transactions occurring after Sept. 30, 1979; in a specified manner, see section 7(a)(1), (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(21)(F) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 2115(c)(2) of Pub. L. 94–455 effective on Jan. 1, 1975 and applicable to taxable years ending after Dec. 31, 1974, see section 2115(f) of Pub. L. 94–455, set out as a note under section 613A of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–12 effective Jan. 1, 1975, to apply to taxable years ending after Dec. 31, 1974, see section 501(c) of Pub. L. 94–12, set out as an Effective Date note under section 613A of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to exploration expenditures paid or incurred after Dec. 31, 1969, see section 504(d)(1) of Pub. L. 91–172, set out as an Effective Date note under section 243 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–570 applicable to taxable years ending after Sept. 12, 1966, but only in respect of expenditures paid or incurred after such date, see section 3 of Pub. L. 89–570, set out as an Effective Date note under section 617 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(4)(E) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

§ 704. Partner's distributive share

(a) Effect of partnership agreement

A partner's distributive share of income, gain, loss, deduction, or credit shall, except as otherwise provided in this chapter, be determined by the partnership agreement.

(b) Determination of distributive share

A partner's distributive share of income, gain, loss, deduction, or credit (or item thereof) shall be determined in accordance with the partner's interest in the partnership (determined by taking into account all facts and circumstances), if—

(1) the partnership agreement does not provide as to the partner's distributive share of income, gain, loss, deduction, or credit (or item thereof), or

(2) the allocation to a partner under the agreement of income, gain, loss, deduction, or credit (or item thereof) does not have substantial economic effect.

(c) Contributed property

(1) In general

Under regulations prescribed by the Secretary—

(A) income, gain, loss, and deduction with respect to property contributed to the partnership by a partner shall be shared among the partners so as to take account of the variation between the basis of the property to the partnership and its fair market value at the time of contribution,

(B) if any property so contributed is distributed (directly or indirectly) by the partnership (other than to the contributing partner) within 7 years of being contributed—

(i) the contributing partner shall be treated as recognizing gain or loss (as the case may be) from the sale of such property in an amount equal to the gain or loss which would have been allocated to such partner under subparagraph (A) by reason of the variation described in subparagraph (A) if the property had been sold at its fair market value at the time of the distribution,

(ii) the character of such gain or loss shall be determined by reference to the character of the gain or loss which would have resulted if such property had been sold by the partnership to the distributee, and

(iii) appropriate adjustments shall be made to the adjusted basis of the contributing partner's interest in the partnership and to the adjusted basis of the property distributed to reflect any gain or loss recognized under this subparagraph, and

(C) if any property so contributed has a built-in loss—

(i) such built-in loss shall be taken into account only in determining the amount of items allocated to the contributing partner, and

(ii) except as provided in regulations, in determining the amount of items allocated to other partners, the basis of the contributed property in the hands of the partnership shall be treated as being equal to its fair market value at the time of contribution.

For purposes of subparagraph (C), the term ''built-in loss'' means the excess of the adjusted basis of the property (determined without regard to subparagraph (C)(ii)) over its fair market value at the time of contribution.

(2) Special rule for distributions where gain or loss would not be recognized outside partnerships

Under regulations prescribed by the Secretary, if—

(A) property contributed by a partner (hereinafter referred to as the ''contributing partner'') is distributed by the partnership to another partner, and

(B) other property of a like kind (within the meaning of section 1031) is distributed by

the partnership to the contributing partner not later than the earlier of—

(i) the 180th day after the date of the distribution described in subparagraph (A), or

(ii) the due date (determined with regard to extensions) for the contributing partner's return of the tax imposed by this chapter for the taxable year in which the distribution described in subparagraph (A) occurs,

then to the extent of the value of the property described in subparagraph (B), paragraph (1)(B) shall be applied as if the contributing partner had contributed to the partnership the property described in subparagraph (B).

(3) Other rules

Under regulations prescribed by the Secretary, rules similar to the rules of paragraph (1) shall apply to contributions by a partner (using the cash receipts and disbursements method of accounting) of accounts payable and other accrued but unpaid items. Any reference in paragraph (1) or (2) to the contributing partner shall be treated as including a reference to any successor of such partner.

(d) Limitation on allowance of losses

A partner's distributive share of partnership loss (including capital loss) shall be allowed only to the extent of the adjusted basis of such partner's interest in the partnership at the end of the partnership year in which such loss occurred. Any excess of such loss over such basis shall be allowed as a deduction at the end of the partnership year in which such excess is repaid to the partnership.

(e) Family partnerships

(1) Recognition of interest created by purchase or gift

A person shall be recognized as a partner for purposes of this subtitle if he owns a capital interest in a partnership in which capital is a material income-producing factor, whether or not such interest was derived by purchase or gift from any other person.

(2) Distributive share of donee includible in gross income

In the case of any partnership interest created by gift, the distributive share of the donee under the partnership agreement shall be includible in his gross income, except to the extent that such share is determined without allowance of reasonable compensation for services rendered to the partnership by the donor, and except to the extent that the portion of such share attributable to donated capital is proportionately greater than the share of the donor attributable to the donor's capital. The distributive share of a partner in the earnings of the partnership shall not be diminished because of absence due to military service.

(3) Purchase of interest by member of family

For purposes of this section, an interest purchased by one member of a family from another shall be considered to be created by gift from the seller, and the fair market value of the purchased interest shall be considered to be donated capital. The ''family'' of any individual shall include only his spouse, ancestors, and lineal descendants, and any trusts for the primary benefit of such persons.

(f) Cross reference

For rules in the case of the sale, exchange, liquidation, or reduction of a partner's interest, see section 706(c)(2).

(Aug. 16, 1954, ch. 736, 68A Stat. 240; Pub. L. 94–455, title II, §213(c)(2), (3)(A), (d), (e), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1548, 1834; Pub. L. 95–600, title II, §201(b)(1), Nov. 6, 1978, 92 Stat. 2816; Pub. L. 98–369, div. A, title I, §71(a), July 18, 1984, 98 Stat. 589; Pub. L. 101–239, title VII, §7642(a), Dec. 19, 1989, 103 Stat. 2379; Pub. L. 102–486, title XIX, §1937(b)(1), Oct. 24, 1992, 106 Stat. 3033; Pub. L. 105–34, title X, §1063(a), Aug. 5, 1997, 111 Stat. 947; Pub. L. 108–357, title VIII, §833(a), Oct. 22, 2004, 118 Stat. 1589.)

AMENDMENTS

2004—Subsec. (c)(1)(C). Pub. L. 108–357 added subpar. (C).

1997—Subsec. (c)(1)(B). Pub. L. 105–34 substituted ''7 years'' for ''5 years'' in introductory provisions.

1992—Subsec. (c)(1)(B). Pub. L. 102–486 substituted ''is distributed (directly or indirectly)'' for ''is distributed''.

1989—Subsec. (c). Pub. L. 101–239 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Under regulations prescribed by the Secretary, income, gain, loss, and deduction with respect to property contributed to the partnership by a partner shall be shared among partners so as to take account of the variation between the basis of the property to the partnership and its fair market value at the time of contribution. Under regulations prescribed by the Secretary, rules similar to the rules of the preceding sentence shall apply to contributions by a partner (using the cash receipts and disbursements method of accounting) of accounts payable and other accrued but unpaid items.''

1984—Subsec. (c). Pub. L. 98–369 amended subsec. (c) generally, substituting provisions directing that, under regulations prescribed by the Secretary, income, gain, loss, and deduction with respect to property contributed to the partnership by a partner be shared among partners so as to take account of the variation between the basis of the property to the partnership and its fair market value at the time of contribution, and that similar rules apply to contributions by a partner (using the cash receipts and disbursements method of accounting) of accounts payable and other accrued but unpaid items for provisions which had directed that, if the partnership agreement so provided, depreciation, depletion, or gain or loss with respect to property contributed to the partnership by a partner would under regulations prescribed by the Secretary, be shared among the partners so as to take account of the variation between the basis of the property to the partnership and its fair market value at the time of contribution, and struck out provisions which had directed that in determining a partner's distributive share of items described in section 702(a), depreciation, depletion, or gain or loss with respect to property contributed to the partnership by a partner would, except to the extent otherwise provided, be allocated among the partners in the same manner as if such property had been purchased by the partnership and that if the partnership agreement did not provide otherwise, depreciation, depletion, or gain or loss with respect to undivided interests in property contributed to a partnership would be determined as though such undivided interests had not been contributed to the partnership.

1978—Subsec. (d). Pub. L. 95–600 struck out provisions relating to adjusted basis of a partner's interest.

1976—Subsec. (a). Pub. L. 94–455, § 213(c)(2), substituted ''except as otherwise provided in this chapter'' for ''except as otherwise provided in this section''.

Subsec. (b). Pub. L. 94–455, § 213(d), among other changes, substituted ''Determination of distributive share'' for ''Distributive share determined by income or loss ratio'' in heading, in provisions preceding par. (1) ''the partner's interest in the partnership (determined by taking into account all facts and circumstances)'' for ''his distributive share of taxable income or loss of the partnership, as described in section 702(a)(9), for the taxable year'', and in par. (2) provision relating to a lack of substantial economic effect in a partnership agreement for provisions relating to the partnership agreement's purpose being the avoidance or evasion of taxes.

Subsec. (c)(2). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d). Pub. L. 94–455, § 213(e), inserted provision relating to the determination of the adjusted basis of a partner's liability where there is no personal liability and the applicability of such determination where section 465 of this title applies or the principal activity of the partnership is real estate investment.

Subsec. (f). Pub. L. 94–455, § 213(c)(3)(A), added subsec. (f).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, § 833(d)(1), Oct. 22, 2004, 118 Stat. 1592, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to contributions made after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1063(b) of Pub. L. 105–34 provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section and section 737 of this title] shall apply to property contributed to a partnership after June 8, 1997.

''(2) BINDING CONTRACTS.—The amendment made by subsection (a) shall not apply to any property contributed pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such contribution if such contract provides for the contribution of a fixed amount of property.''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1937(c) of Pub. L. 102–486 provided that: ''The amendments made by this section [enacting section 737 of this title and amending this section and section 731 of this title] shall apply to distributions on or after June 25, 1992.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7642(b) of Pub. L. 101–239 provided that: ''The amendment made by subsection (a) [amending this section] shall apply in the case of property contributed to the partnership after October 3, 1989, in taxable years ending after such date.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 71(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and sections 613A and 743 of this title] shall apply with respect to property contributed to the partnership after March 31, 1984, in taxable years ending after such date.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 and enactment of provision set out as a note under this section by section 201(b)(2) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 204(a) of Pub. L. 95–600, set out as a note under section 465 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 213(c)(2), (c)(3)(A), (d) of Pub. L. 94–455 applicable in the case of partnership taxable years beginning after Dec. 31, 1975, see section 213(f)(1) of Pub. L. 94–455, set out as an Effective Date note under section 709 of this title.

Amendment by section 213(e) of Pub. L. 94–455 applicable to liabilities incurred after Dec. 31, 1976, see section 213(f)(2) of Pub. L. 94–455, set out as an Effective Date note under section 709 of this title.

TRANSITIONAL RULE FOR LIMITATION ON ALLOWANCE OF LOSSES

Section 201(b)(2) of Pub. L. 95–600, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of a loss which was not allowed for any taxable year by reason of the last 2 sentences of section 704(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect before the date of the enactment of this Act [Nov. 6, 1978]), such loss shall be treated as a deduction (subject to section 465(a) of such Code) for the first taxable year beginning after December 31, 1978. Section 465(a) of such Code (as amended by this section) shall not apply with respect to partnership liabilities to which the last 2 sentences of section 704(d) of such Code (as in effect on the day before the date of enactment of this Act) did not apply because of the provisions of section 213(f)(2) of the Tax Reform Act of 1976 [set out as a note under section 709 of this title].''

§ 705. Determination of basis of partner's interest

(a) General rule

The adjusted basis of a partner's interest in a partnership shall, except as provided in subsection (b), be the basis of such interest determined under section 722 (relating to contributions to a partnership) or section 742 (relating to transfers of partnership interests)—

(1) increased by the sum of his distributive share for the taxable year and prior taxable years of—

(A) taxable income of the partnership as determined under section 703(a),

(B) income of the partnership exempt from tax under this title, and

(C) the excess of the deductions for depletion over the basis of the property subject to depletion;

(2) decreased (but not below zero) by distributions by the partnership as provided in section 733 and by the sum of his distributive share for the taxable year and prior taxable years of—

(A) losses of the partnership, and

(B) expenditures of the partnership not deductible in computing its taxable income and not properly chargeable to capital account; and

(3) decreased (but not below zero) by the amount of the partner's deduction for depletion for any partnership oil and gas property to the extent such deduction does not exceed the proportionate share of the adjusted basis of such property allocated to such partner under section 613A(c)(7)(D).

(b) Alternative rule

The Secretary shall prescribe by regulations the circumstances under which the adjusted basis of a partner's interest in a partnership may be determined by reference to his proportionate share of the adjusted basis of partnership property upon a termination of the partnership.

(Aug. 16, 1954, ch. 736, 68A Stat. 242; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), title XXI,

§ 2115(c)(3), Oct. 4, 1976, 90 Stat. 1834, 1909; Pub. L. 98–369, div. A, title VII, § 722(e)(1), July 18, 1984, 98 Stat. 974.)

AMENDMENTS

1984—Subsec. (a)(3). Pub. L. 98–369 substituted ''for any partnership oil and gas property to the extent such deduction does not exceed the proportionate share of the adjusted basis of such property allocated to such partner under section 613A(c)(7)(D)'' for ''under section 611 with respect to oil and gas wells''.

1976—Subsec. (a)(3). Pub. L. 94–455, § 2115(c)(3), added par. (3).

Subsec. (b). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 722(e)(3)(A) of Pub. L. 98–369 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on January 1, 1975.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 2115(c)(3) of Pub. L. 94–455 effective on Jan. 1, 1975, and applicable to taxable years ending after Dec. 31, 1974, see section 2115(f) of Pub. L. 94–455, set out as a note under section 613A of this title.

§ 706. Taxable years of partner and partnership

(a) Year in which partnership income is includible

In computing the taxable income of a partner for a taxable year, the inclusions required by section 702 and section 707(c) with respect to a partnership shall be based on the income, gain, loss, deduction, or credit of the partnership for any taxable year of the partnership ending within or with the taxable year of the partner.

(b) Taxable year

(1) Partnership's taxable year

(A) Partnership treated as taxpayer

The taxable year of a partnership shall be determined as though the partnership were a taxpayer.

(B) Taxable year determined by reference to partners

Except as provided in subparagraph (C), a partnership shall not have a taxable year other than—

(i) the majority interest taxable year (as defined in paragraph (4)),

(ii) if there is no taxable year described in clause (i), the taxable year of all the principal partners of the partnership, or

(iii) if there is no taxable year described in clause (i) or (ii), the calendar year unless the Secretary by regulations prescribes another period.

(C) Business purpose

A partnership may have a taxable year not described in subparagraph (B) if it establishes, to the satisfaction of the Secretary, a business purpose therefor. For purposes of this subparagraph, any deferral of income to partners shall not be treated as a business purpose.

(2) Partner's taxable year

A partner may not change to a taxable year other than that of a partnership in which he is a principal partner unless he establishes, to the satisfaction of the Secretary, a business purpose therefor.

(3) Principal partner

For the purpose of this subsection, a principal partner is a partner having an interest of 5 percent or more in partnership profits or capital.

(4) Majority interest taxable year; limitation on required changes

(A) Majority interest taxable year defined

For purposes of paragraph (1)(B)(i)—

(i) In general

The term ''majority interest taxable year'' means the taxable year (if any) which, on each testing day, constituted the taxable year of 1 or more partners having (on such day) an aggregate interest in partnership profits and capital of more than 50 percent.

(ii) Testing days

The testing days shall be—

(I) the 1st day of the partnership taxable year (determined without regard to clause (i)), or

(II) the days during such representative period as the Secretary may prescribe.

(B) Further change not required for 3 years

Except as provided in regulations necessary to prevent the avoidance of this section, if, by reason of paragraph (1)(B)(i), the taxable year of a partnership is changed, such partnership shall not be required to change to another taxable year for either of the 2 taxable years following the year of change.

(5) Application with other sections

Except as provided in regulations, for purposes of determining the taxable year to which a partnership is required to change by reason of this subsection, changes in taxable years of other persons required by this subsection, section 441(i), section 584(h),[1] section 644, or section 1378(a) shall be taken into account.

(c) Closing of partnership year

(1) General rule

Except in the case of a termination of a partnership and except as provided in paragraph (2) of this subsection, the taxable year of a partnership shall not close as the result of the death of a partner, the entry of a new partner, the liquidation of a partner's interest in the partnership, or the sale or exchange of a partner's interest in the partnership.

(2) Treatment of dispositions

(A) Disposition of entire interest

The taxable year of a partnership shall close with respect to a partner whose entire interest in the partnership terminates (whether by reason of death, liquidation, or otherwise).

(B) Disposition of less than entire interest

The taxable year of a partnership shall not close (other than at the end of a partner-

[1] See References in Text note below.

ship's taxable year as determined under subsection (b)(1)) with respect to a partner who sells or exchanges less than his entire interest in the partnership or with respect to a partner whose interest is reduced (whether by entry of a new partner, partial liquidation of a partner's interest, gift, or otherwise).

(d) Determination of distributive share when partner's interest changes

(1) In general

Except as provided in paragraphs (2) and (3), if during any taxable year of the partnership there is a change in any partner's interest in the partnership, each partner's distributive share of any item of income, gain, loss, deduction, or credit of the partnership for such taxable year shall be determined by the use of any method prescribed by the Secretary by regulations which takes into account the varying interests of the partners in the partnership during such taxable year.

(2) Certain cash basis items prorated over period to which attributable

(A) In general

If during any taxable year of the partnership there is a change in any partner's interest in the partnership, then (except to the extent provided in regulations) each partner's distributive share of any allocable cash basis item shall be determined—

(i) by assigning the appropriate portion of such item to each day in the period to which it is attributable, and

(ii) by allocating the portion assigned to any such day among the partners in proportion to their interests in the partnership at the close of such day.

(B) Allocable cash basis item

For purposes of this paragraph, the term ''allocable cash basis item'' means any of the following items with respect to which the partnership uses the cash receipts and disbursements method of accounting:

(i) Interest.

(ii) Taxes.

(iii) Payments for services or for the use of property.

(iv) Any other item of a kind specified in regulations prescribed by the Secretary as being an item with respect to which the application of this paragraph is appropriate to avoid significant misstatements of the income of the partners.

(C) Items attributable to periods not within taxable year

If any portion of any allocable cash basis item is attributable to—

(i) any period before the beginning of the taxable year, such portion shall be assigned under subparagraph (A)(i) to the first day of the taxable year, or

(ii) any period after the close of the taxable year, such portion shall be assigned under subparagraph (A)(i) to the last day of the taxable year.

(D) Treatment of deductible items attributable to prior periods

If any portion of a deductible cash basis item is assigned under subparagraph (C)(i) to the first day of any taxable year—

(i) such portion shall be allocated among persons who are partners in the partnership during the period to which such portion is attributable in accordance with their varying interests in the partnership during such period, and

(ii) any amount allocated under clause (i) to a person who is not a partner in the partnership on such first day shall be capitalized by the partnership and treated in the manner provided for in section 755.

(3) Items attributable to interest in lower tier partnership prorated over entire taxable year

If—

(A) during any taxable year of the partnership there is a change in any partner's interest in the partnership (hereinafter in this paragraph referred to as the ''upper tier partnership''), and

(B) such partnership is a partner in another partnership (hereinafter in this paragraph referred to as the ''lower tier partnership''),

then (except to the extent provided in regulations) each partner's distributive share of any item of the upper tier partnership attributable to the lower tier partnership shall be determined by assigning the appropriate portion (determined by applying principles similar to the principles of subparagraphs (C) and (D) of paragraph (2)) of each such item to the appropriate days during which the upper tier partnership is a partner in the lower tier partnership and by allocating the portion assigned to any such day among the partners in proportion to their interests in the upper tier partnership at the close of such day.

(4) Taxable year determined without regard to subsection (c)(2)(A)

For purposes of this subsection, the taxable year of a partnership shall be determined without regard to subsection (c)(2)(A).

(Aug. 16, 1954, ch. 736, 68A Stat. 242; Pub. L. 94–455, title II, § 213(c)(1), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1547, 1834; Pub. L. 98–369, div. A, title I, § 72(a), (b), July 18, 1984, 98 Stat. 589, 591; Pub. L. 99–514, title VIII, § 806(a), title XVIII, § 1805(a), Oct. 22, 1986, 100 Stat. 2362, 2810; Pub. L. 100–647, title I, § 1008(e)(1)–(3), Nov. 10, 1988, 102 Stat. 3439, 3440; Pub. L. 105–34, title V, § 507(b)(2), title XII, § 1246(a), (b), Aug. 5, 1997, 111 Stat. 857, 1030.)

REFERENCES IN TEXT

Section 584(h), referred to in subsec. (b)(5), was redesignated section 584(i) by Pub. L. 104–188, title I, § 1805(a), 110 Stat. 1894.

AMENDMENTS

1997—Subsec. (b)(5). Pub. L. 105–34, § 507(b)(2), substituted ''section 644'' for ''section 645''.

Subsec. (c)(2). Pub. L. 105–34, § 1246(b), substituted ''Treatment of dispositions'' for ''Partner who retires or sells interest in partnership'' as heading.

Subsec. (c)(2)(A). Pub. L. 105–34, §1246(a), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows: ''The taxable year of a partnership shall close—

''(i) with respect to a partner who sells or exchanges his entire interest in a partnership, and

''(ii) with respect to a partner whose interest is liquidated, except that the taxable year of a partnership with respect to a partner who dies shall not close prior to the end of the partnership's taxable year.''

1988—Subsec. (b)(1)(B)(i). Pub. L. 100–647, §1008(e)(1)(A), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''the taxable year of 1 or more of its partners who have an aggregate interest in partnership profits and capital of greater than 50 percent,''.

Subsec. (b)(1)(B)(iii). Pub. L. 100–647, §1008(e)(2), substituted ''unless the Secretary by regulations prescribes another period'' for ''or such other period as the Secretary may prescribe in regulations''.

Subsec. (b)(4). Pub. L. 100–647, §1008(e)(1)(B), substituted ''Majority interest taxable year; limitation on required changes'' for ''Application of majority interest rule'' in heading and amended text generally. Prior to amendment, text read as follows: ''Clause (i) of paragraph (1)(B) shall not apply to any taxable year of a partnership unless the period which constitutes the taxable year of 1 or more of its partners who have an aggregate interest in partnership profits and capital of greater than 50 percent has been the same for—

''(A) the 3-taxable year period of such partner or partners ending on or before the beginning of such taxable year of the partnership, or

''(B) if the partnership has not been in existence during all of such 3-taxable year period, the taxable years of such partner or partners ending with or within the period of existence.

This paragraph shall apply without regard to whether the same partners or interests are taken into account in determining the 50 percent interest during any period.''

Subsec. (b)(5). Pub. L. 100–647, §1008(e)(3), added par. (5).

1986—Subsec. (b). Pub. L. 99–514, §806(a)(3), struck out ''Adoption of'' before ''taxable year'' in heading.

Subsec. (b)(1). Pub. L. 99–514, §806(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The taxable year of a partnership shall be determined as though the partnership were a taxpayer. A partnership may not change to, or adopt, a taxable year other than that of all its principal partners unless it establishes, to the satisfaction of the Secretary, a business purpose therefor.''

Subsec. (b)(4). Pub. L. 99–514, §806(a)(2), added par. (4).

Subsec. (d)(2)(A)(i). Pub. L. 99–514, §1805(a)(1)(A), substituted ''such item'' for ''each such item''.

Subsec. (d)(2)(B). Pub. L. 99–514, §1805(a)(1)(B), in introductory provisions, struck out ''which are described in paragraph (1) and'' after ''the following items''.

Subsec. (d)(2)(C)(i). Pub. L. 99–514, §1805(a)(2), substituted ''the first day of the taxable year'' for ''the first day of such taxable year''.

1984—Subsec. (c)(2)(A). Pub. L. 98–369, §72(b)(1), struck out last sentence providing that such partner's distributive share of item described in section 702(a) for such year shall be determined, under regulations prescribed by the Secretary, for the period ending with such sale, exchange, or liquidation.

Subsec. (c)(2)(B). Pub. L. 98–369, §72(b)(2), struck out '', but such partner's distributive share of items described in section 702(a) shall be determined by taking into account his varying interests in the partnership during the taxable year'' after ''otherwise)''.

Subsec. (d). Pub. L. 98–369, §72(a), added subsec. (d).

1976—Subsec. (b)(1), (2). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(2). Pub. L. 94–455, §§213(c)(1), 1906(b)(13)(A), substituted ''or with respect to a partner whose interest is reduced (whether by entry of a new partner, partial liquidation of a partner's interest, gift, or otherwise)'' for ''or with respect to a partner whose interest is reduced'', in par. (B), and struck out ''or his delegate'' after ''Secretary'' in par. (A).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 507(b)(2) of Pub. L. 105–34 applicable to sales or exchanges after Aug. 5, 1997, see section 507(c)(2) of Pub. L. 105–34, set out as a note under section 644 of this title.

Section 1246(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply to partnership taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 806(a) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with special provisions applicable to taxpayers who are required to change their accounting periods, see section 806(e) of Pub. L. 99–514, set out as a note under section 1378 of this title.

Amendment by section 1805(a) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 72(c) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [amending this section] shall apply—

''(1) in the case of items described in section 706(d)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)), to amounts attributable to periods after March 31, 1984, and

''(2) in the case of items described in section 706(d)(3) of such Code (as added by subsection (a)), to amounts paid or accrued by the other partnership after March 31, 1984.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 213(c)(1) of Pub. L. 94–455 applicable in the case of partnership taxable years beginning after Dec. 31, 1975, see section 213(f) of Pub. L. 94–455, set out as an Effective Date note under section 709 of this title.

CONSTRUCTION OF SECTION 806 OF PUB. L. 99–514

Nothing in section 806 of Pub. L. 99–514 or in any legislative history relating thereto to be construed as requiring the Secretary of the Treasury or his delegate to permit an automatic change of a taxable year, see section 1008(e)(9) of Pub. L. 100–647, set out as a note under section 1378 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 707. Transactions between partner and partnership

(a) Partner not acting in capacity as partner

(1) In general

If a partner engages in a transaction with a partnership other than in his capacity as a member of such partnership, the transaction shall, except as otherwise provided in this section, be considered as occurring between the partnership and one who is not a partner.

(2) Treatment of payments to partners for property or services

Under regulations prescribed by the Secretary—

(A) Treatment of certain services and transfers of property

If—

(i) a partner performs services for a partnership or transfers property to a partnership,

(ii) there is a related direct or indirect allocation and distribution to such partner, and

(iii) the performance of such services (or such transfer) and the allocation and distribution, when viewed together, are properly characterized as a transaction occurring between the partnership and a partner acting other than in his capacity as a member of the partnership,

such allocation and distribution shall be treated as a transaction described in paragraph (1).

(B) Treatment of certain property transfers

If—

(i) there is a direct or indirect transfer of money or other property by a partner to a partnership,

(ii) there is a related direct or indirect transfer of money or other property by the partnership to such partner (or another partner), and

(iii) the transfers described in clauses (i) and (ii), when viewed together, are properly characterized as a sale or exchange of property,

such transfers shall be treated either as a transaction described in paragraph (1) or as a transaction between 2 or more partners acting other than in their capacity as members of the partnership.

(b) Certain sales or exchanges of property with respect to controlled partnerships

(1) Losses disallowed

No deduction shall be allowed in respect of losses from sales or exchanges of property (other than an interest in the partnership), directly or indirectly, between—

(A) a partnership and a person owning, directly or indirectly, more than 50 percent of the capital interest, or the profits interest, in such partnership, or

(B) two partnerships in which the same persons own, directly or indirectly, more than 50 percent of the capital interests or profits interests.

In the case of a subsequent sale or exchange by a transferee described in this paragraph, section 267(d) shall be applicable as if the loss were disallowed under section 267(a)(1). For purposes of section 267(a)(2), partnerships described in subparagraph (B) of this paragraph shall be treated as persons specified in section 267(b).

(2) Gains treated as ordinary income

In the case of a sale or exchange, directly or indirectly, of property, which in the hands of the transferee, is property other than a capital asset as defined in section 1221—

(A) between a partnership and a person owning, directly or indirectly, more than 50 percent of the capital interest, or profits interest, in such partnership, or

(B) between two partnerships in which the same persons own, directly or indirectly, more than 50 percent of the capital interest or profits interests,

any gain recognized shall be considered as ordinary income.

(3) Ownership of a capital or profits interest

For purposes of paragraphs (1) and (2) of this subsection, the ownership of a capital or profits interest in a partnership shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) other than paragraph (3) of such section.

(c) Guaranteed payments

To the extent determined without regard to the income of the partnership, payments to a partner for services or the use of capital shall be considered as made to one who is not a member of the partnership, but only for the purposes of section 61(a) (relating to gross income) and, subject to section 263, for purposes of section 162(a) (relating to trade or business expenses).

(Aug. 16, 1954, ch. 736, 68A Stat. 243; Pub. L. 94–455, title II, § 213(b)(3), title XIX, § 1901(b)(3)(C), Oct. 4, 1976, 90 Stat. 1547, 1792; Pub. L. 98–369, div. A, title I, § 73(a), July 18, 1984, 98 Stat. 591; Pub. L. 99–514, title VI, § 642(a)(2), title XVIII, §§ 1805(b), 1812(c)(3)(A), (B), Oct. 22, 1986, 100 Stat. 2284, 2810, 2834.)

AMENDMENTS

1986—Subsec. (a)(2)(B)(iii). Pub. L. 99–514, § 1805(b), substituted ''sale or exchange of property'' for ''sale of property''.

Subsec. (b)(1). Pub. L. 99–514, § 1812(c)(3)(B), inserted at end ''For purposes of section 267(a)(2), partnerships described in subparagraph (B) of this paragraph shall be treated as persons specified in section 267(b).''

Subsec. (b)(1)(A). Pub. L. 99–514, § 1812(c)(3)(A), substituted ''a person'' for ''a partner''.

Subsec. (b)(2)(A). Pub. L. 99–514, § 1812(c)(3)(A), substituted ''a person'' for ''a partner''.

Pub. L. 99–514, § 642(a)(2), substituted ''50 percent'' for ''80 percent''.

Subsec. (b)(2)(B). Pub. L. 99–514, § 642(a)(2), substituted ''50 percent'' for ''80 percent''.

1984—Subsec. (a). Pub. L. 98–369 designated existing provisions as par. (1) and added par. (2).

1976—Subsec. (b)(2). Pub. L. 94–455, § 1901(b)(3)(C), substituted ''as ordinary income'' for ''as gain from the sale or exchange of property other than a capital asset''.

Subsec. (c). Pub. L. 94–455, § 213(b)(3), substituted ''and, subject to section 263, for purposes of section 162(a)'' for ''and section 162(a)''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 642(a)(2) of Pub. L. 99–514 applicable to sales after Oct. 22, 1986, in taxable years ending after such date, but not applicable to sales made after Aug. 14, 1986, which are made pursuant to a binding contract in effect on Aug. 14, 1986, and at all times thereafter, see section 642(c) of Pub. L. 99–514, set out as a note under section 1239 of this title.

Amendment by sections 1805(b) and 1812(c)(3)(B) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Section 1812(c)(3)(A) of Pub. L. 99–514 provided that the amendment made by that section is effective with respect to sales or exchanges after Sept. 27, 1985.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 73(b) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply—

''(A) in the case of arrangements described in section 707(a)(2)(A) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (a)), to services performed or property transferred after February 29, 1984, and

''(B) in the case of transfers described in section 707(a)(2)(B) of such Code (as so amended), to property transferred after March 31, 1984.

''(2) BINDING CONTRACT EXCEPTION.—The amendment made by subsection (a) shall not apply to a transfer of property described in section 707(a)(2)(B)(i) if such transfer is pursuant to a binding contract in effect on March 31, 1984, and at all times thereafter before the transfer.

''(3) EXCEPTION FOR CERTAIN TRANSFERS.—The amendment made by subsection (a) shall not apply to a transfer of property described in section 707(a)(2)(B)(i) that is made before December 31, 1984, if—

''(A) such transfer was proposed in a written private offering memorandum circulated before February 28, 1984;

''(B) the out-of-pocket costs incurred with respect to such offering exceeded $250,000 as of February 28, 1984;

''(C) the encumbrances placed on such property in anticipation of such transfer all constitute obligations for which neither the partnership nor any partner is liable; and

''(D) the transferor of such property is the sole general partner of the partnership.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 213(b)(3) of Pub. L. 94–455 applicable in the case of partnership taxable years beginning after Dec. 31, 1975, see section 213(f)(1) of Pub. L. 94–455, set out as an Effective Date note under section 709 of this title.

Amendment by section 1901(b)(3)(C) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 708. Continuation of partnership

(a) General rule

For purposes of this subchapter, an existing partnership shall be considered as continuing if it is not terminated.

(b) Termination

(1) General rule

For purposes of subsection (a), a partnership shall be considered as terminated only if—

(A) no part of any business, financial operation, or venture of the partnership continues to be carried on by any of its partners in a partnership, or

(B) within a 12-month period there is a sale or exchange of 50 percent or more of the total interest in partnership capital and profits.

(2) Special rules

(A) Merger or consolidation

In the case of the merger or consolidation of two or more partnerships, the resulting partnership shall, for purposes of this section, be considered the continuation of any merging or consolidating partnership whose members own an interest of more than 50 percent in the capital and profits of the resulting partnership.

(B) Division of a partnership

In the case of a division of a partnership into two or more partnerships, the resulting partnerships (other than any resulting partnership the members of which had an interest of 50 percent or less in the capital and profits of the prior partnership) shall, for purposes of this section, be considered a continuation of the prior partnership.

(Aug. 16, 1954, ch. 736, 68A Stat. 244.)

§ 709. Treatment of organization and syndication fees

(a) General rule

Except as provided in subsection (b), no deduction shall be allowed under this chapter to the partnership or to any partner for any amounts paid or incurred to organize a partnership or to promote the sale of (or to sell) an interest in such partnership.

(b) Deduction of organization fees

(1) Allowance of deduction

If a partnership elects the application of this subsection (in accordance with regulations prescribed by the Secretary) with respect to any organizational expenses—

(A) the partnership shall be allowed a deduction for the taxable year in which the partnership begins business in an amount equal to the lesser of—

(i) the amount of organizational expenses with respect to the partnership, or

(ii) $5,000, reduced (but not below zero) by the amount by which such organizational expenses exceed $50,000, and

(B) the remainder of such organizational expenses shall be allowed as a deduction ratably over the 180-month period beginning

with the month in which the partnership begins business.

(2) Dispositions before close of amortization period

In any case in which a partnership is liquidated before the end of the period to which paragraph (1)(B) applies, any deferred expenses attributable to the partnership which were not allowed as a deduction by reason of this section may be deducted to the extent allowable under section 165.

(3) Organizational expenses defined

The organizational expenses to which paragraph (1) applies, are expenditures which—

(A) are incident to the creation of the partnership;

(B) are chargeable to capital account; and

(C) are of a character which, if expended incident to the creation of a partnership having an ascertainable life, would be amortized over such life.

(Added Pub. L. 94–455, title II, § 213(b)(1), Oct. 4, 1976, 90 Stat. 1547; amended Pub. L. 108–357, title VIII, § 902(c), Oct. 22, 2004, 118 Stat. 1651; Pub. L. 109–135, title IV, § 403(*ll*), Dec. 21, 2005, 119 Stat. 2632.)

AMENDMENTS

2005—Subsec. (b)(1). Pub. L. 109–135 substituted ''partnership'' for ''taxpayer'' in introductory provisions and before ''shall be allowed'' in subpar. (A).

2004—Subsec. (b). Pub. L. 108–357 substituted ''Deduction'' for ''Amortization'' in heading, added par. (2), redesignated former par. (2) as (3), and amended heading and text of par. (1) generally. Prior to amendment, text of par. (1) read as follows: ''Amounts paid or incurred to organize a partnership may, at the election of the partnership (made in accordance with regulations prescribed by the Secretary), be treated as deferred expenses. Such deferred expenses shall be allowed as a deduction ratably over such period of not less than 60 months as may be selected by the partnership (beginning with the month in which the partnership begins business), or if the partnership is liquidated before the end of such 60-month period, such deferred expenses (to the extent not deducted under this section) may be deducted to the extent provided in section 165.''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to amounts paid or incurred after Oct. 22, 2004, see section 902(d) of Pub. L. 108–357, set out as a note under section 195 of this title.

EFFECTIVE DATE

Section 213(f) of Pub. L. 94–455, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section and amending sections 179, 704, 706, 707, and 761 of this title] shall apply in the case of partnership taxable years beginning after December 31, 1975.

''(2) SUBSECTION (e).—The amendment made by subsection (e) [amending section 704 of this title] shall apply to liabilities incurred after December 31, 1976.

''(3) SECTION 709(b) OF THE CODE.—Section 709(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by the amendment made by subsection (b)(1) of this section) shall apply in the case of amounts paid or incurred in taxable years beginning after December 31, 1976.''

PART II—CONTRIBUTIONS, DISTRIBUTIONS, AND TRANSFERS

Subpart
A. Contributions to a partnership.
B. Distributions by a partnership.
C. Transfers of interests in a partnership.
D. Provisions common to other subparts.

SUBPART A—CONTRIBUTIONS TO A PARTNERSHIP

Sec.
721. Nonrecognition of gain or loss on contribution.
722. Basis of contributing partner's interest.
723. Basis of property contributed to partnership.
724. Character of gain or loss on contributed unrealized receivables, inventory items, and capital loss property.

AMENDMENTS

1984—Pub. L. 98–369, div. A, title I, § 74(c), July 18, 1984, 98 Stat. 593, added item 724.

§ 721. Nonrecognition of gain or loss on contribution

(a) General rule

No gain or loss shall be recognized to a partnership or to any of its partners in the case of a contribution of property to the partnership in exchange for an interest in the partnership.

(b) Special rule

Subsection (a) shall not apply to gain realized on a transfer of property to a partnership which would be treated as an investment company (within the meaning of section 351) if the partnership were incorporated.

(c) Regulations relating to certain transfers to partnerships

The Secretary may provide by regulations that subsection (a) shall not apply to gain realized on the transfer of property to a partnership if such gain, when recognized, will be includible in the gross income of a person other than a United States person.

(d) Transfers of intangibles

For regulatory authority to treat intangibles transferred to a partnership as sold, see section 367(d)(3).

(Aug. 16, 1954, ch. 736, 68A Stat. 245; Pub. L. 94–455, title XXI, § 2131(b), Oct. 4, 1976, 90 Stat. 1924; Pub. L. 105–34, title XI, § 1131(b)(3), (5)(B), Aug. 5, 1997, 111 Stat. 979, 980.)

CODIFICATION

Another section 1131(b) of Pub. L. 105–34 enacted section 684 of this title.

AMENDMENTS

1997—Subsec. (c). Pub. L. 105–34, § 1131(b)(3), added subsec. (c).

Subsec. (d). Pub. L. 105–34, § 1131(b)(5)(B), added subsec. (d).

1976—Pub. L. 94–455 designated existing provisions as subsec. (a), added subsec. (a) heading ''General rule'', and added subsec. (b).

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2131(f)(3)–(5) of Pub. L. 94–455 provided that:

''(3) Except as provided in paragraph (4), the amendments made by subsections (b) and (c) [amending this section and sections 722 and 723 of this title] shall apply to transfers made after February 17, 1976, in taxable years ending after such date.

''(4) The amendments made by subsections (b) and (c) shall not apply to transfers to a partnership made on or before the 90th day after the date of the enactment of this Act [Oct. 4, 1976] if—

''(A) either—

''(i) a ruling request with respect to such transfers was filed with the Internal Revenue Service before March 27, 1976, or

''(ii) a registration statement with respect to such transfers was filed with the Securities and Exchange Commission before March 27, 1976,

''(B) the securities transferred were deposited on or before the 60th day after the date of the enactment of this Act [Oct. 4, 1976], and

''(C) either—

''(i) the aggregate value (determined as of the close of the 60th day referred to in subparagraph (B), or, if earlier, the close of the deposit period) of the securities so transferred does not exceed $100,000,000, or

''(ii) the securities transferred were all on deposit on February 29, 1976, pursuant to a registration statement referred to in subparagraph (A)(ii).

''(5) If no registration statement was required to be filed with the Securities and Exchange Commission with respect to the transfer of securities to any partnership, then paragraph (4) shall be applied to such transfers—

''(A) as if paragraph (4) did not contain subparagraph (A)(ii) thereof, and

''(B) by substituting '$25,000,000' for '$100,000,000' in subparagraph (C)(i) thereof.''

§ 722. Basis of contributing partner's interest

The basis of an interest in a partnership acquired by a contribution of property, including money, to the partnership shall be the amount of such money and the adjusted basis of such property to the contributing partner at the time of the contribution increased by the amount (if any) of gain recognized under section 721(b) to the contributing partner at such time.

(Aug. 16, 1954, ch. 736, 68A Stat. 245; Pub. L. 94–455, title XXI, § 2131(c), Oct. 4, 1976, 90 Stat. 1924; Pub. L. 98–369, div. A, title VII, § 722(f)(1), July 18, 1984, 98 Stat. 974.)

AMENDMENTS

1984—Pub. L. 98–369 inserted ''under section 721(b)'' after ''gain recognized''.

1976—Pub. L. 94–455 inserted ''increased by the amount (if any) of gain recognized to the contributing partner at such time'' after ''at the time of the contribution''.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 722(f)(2) of Pub. L. 98–369 provided that: ''The amendments made by paragraph (1) [amending this section and section 723 of this title] shall take effect as if included in the amendments made by section 2131 of the Tax Reform Act of 1976 [Pub. L. 94–455].''

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment made by Pub. L. 94–455, see section 2131(f)(3)–(5) of Pub. L. 94–455, set out as a note under section 721 of this title.

§ 723. Basis of property contributed to partnership

The basis of property contributed to a partnership by a partner shall be the adjusted basis of such property to the contributing partner at the time of the contribution increased by the amount (if any) of gain recognized under section 721(b) to the contributing partner at such time.

(Aug. 16, 1954, ch. 736, 68A Stat. 245; Pub. L. 94–455, title XXI, § 2131(c), Oct. 4, 1976, 90 Stat. 1924; Pub. L. 98–369, div. A, title VII, § 722(f)(1), July 18, 1984, 98 Stat. 974.)

AMENDMENTS

1984—Pub. L. 98–369 inserted ''under section 721(b)'' after ''gain recognized''.

1976—Pub. L. 94–455 inserted ''increased by the amount (if any) of gain recognized to the contributing partner at such time'' after ''at the time of the contribution''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in amendments made by section 2131 of the Tax Reform Act of 1976, Pub. L. 94–455, see section 722(f)(2) of Pub. L. 98–369, set out as a note under section 722 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment made by Pub. L. 94–455, see section 2131(f)(3)–(5) of Pub. L. 94–455, set out as a note under section 721 of this title.

§ 724. Character of gain or loss on contributed unrealized receivables, inventory items, and capital loss property

(a) Contributions of unrealized receivables

In the case of any property which—

(1) was contributed to the partnership by a partner, and

(2) was an unrealized receivable in the hands of such partner immediately before such contribution,

any gain or loss recognized by the partnership on the disposition of such property shall be treated as ordinary income or ordinary loss, as the case may be.

(b) Contributions of inventory items

In the case of any property which—

(1) was contributed to the partnership by a partner, and

(2) was an inventory item in the hands of such partner immediately before such contribution,

any gain or loss recognized by the partnership on the disposition of such property during the 5-year period beginning on the date of such contribution shall be treated as ordinary income or ordinary loss, as the case may be.

(c) Contributions of capital loss property

In the case of any property which—

(1) was contributed by a partner to the partnership, and

(2) was a capital asset in the hands of such partner immediately before such contribution,

any loss recognized by the partnership on the disposition of such property during the 5-year period beginning on the date of such contribution shall be treated as a loss from the sale of a capital asset to the extent that, immediately before such contribution, the adjusted basis of such property in the hands of the partner exceeded the fair market value of such property.

(d) Definitions

For purposes of this section—

(1) Unrealized receivable

The term ''unrealized receivable'' has the meaning given such term by section 751(c) (determined by treating any reference to the partnership as referring to the partner).

(2) Inventory item

The term ''inventory item'' has the meaning given such term by section 751(d) (determined by treating any reference to the partnership as referring to the partner and by applying section 1231 without regard to any holding period therein provided).

(3) Substituted basis property

(A) In general

If any property described in subsection (a), (b), or (c) is disposed of in a nonrecognition transaction, the tax treatment which applies to such property under such subsection shall also apply to any substituted basis property resulting from such transaction. A similar rule shall also apply in the case of a series of non-recognition transactions.

(B) Exception for stock in C corporation

Subparagraph (A) shall not apply to any stock in a C corporation received in an exchange described in section 351.

(Added Pub. L. 98–369, div. A, title I, § 74(a), July 18, 1984, 98 Stat. 592; amended Pub. L. 104–188, title I, § 1704(t)(63), Aug. 20, 1996, 110 Stat. 1890; Pub. L. 105–34, title X, § 1062(b)(3), Aug. 5, 1997, 111 Stat. 947.)

AMENDMENTS

1997—Subsec. (d)(2). Pub. L. 105–34 substituted ''section 751(d)'' for ''section 751(d)(2)''.

1996—Subsec. (d)(3)(B). Pub. L. 104–188 substituted ''Subparagraph'' for ''Subparagaph''.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1062(c) of Pub. L. 105–34 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 731, 732, 735, and 751 of this title] shall apply to sales, exchanges, and distributions after the date of the enactment of this Act [Aug. 5, 1997].

''(2) BINDING CONTRACTS.—The amendments made by this section shall not apply to any sale or exchange pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such sale or exchange.''

EFFECTIVE DATE

Section 74(d)(1) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [enacting this section] shall apply to property contributed to a partnership after March 31, 1984, in taxable years ending after such date.''

SUBPART B—DISTRIBUTIONS BY A PARTNERSHIP

Sec.
731. Extent of recognition of gain or loss on distribution.
732. Basis of distributed property other than money.
733. Basis of distributee partner's interest.
734. Adjustment to basis of undistributed partnership property where section 754 election or substantial basis reduction.
735. Character of gain or loss on disposition of distributed property.
736. Payments to a retiring partner or a deceased partner's successor in interest.
737. Recognition of precontribution gain in case of certain distributions to contributing partner.

AMENDMENTS

2004—Pub. L. 108–357, title VIII, § 833(c)(5)(B), Oct. 22, 2004, 118 Stat. 1592, substituted ''Adjustment to basis of undistributed partnership property where section 754 election or substantial basis reduction'' for ''Optional adjustment to basis of undistributed partnership property'' in item 734.

1992—Pub. L. 102–486, title XIX, § 1937(b)(3), Oct. 24, 1992, 106 Stat. 3033, added item 737.

§ 731. Extent of recognition of gain or loss on distribution

(a) Partners

In the case of a distribution by a partnership to a partner—

(1) gain shall not be recognized to such partner, except to the extent that any money distributed exceeds the adjusted basis of such partner's interest in the partnership immediately before the distribution, and

(2) loss shall not be recognized to such partner, except that upon a distribution in liquidation of a partner's interest in a partnership where no property other than that described in subparagraph (A) or (B) is distributed to such partner, loss shall be recognized to the extent of the excess of the adjusted basis of such partner's interest in the partnership over the sum of—

(A) any money distributed, and

(B) the basis to the distributee, as determined under section 732, of any unrealized receivables (as defined in section 751(c)) and inventory (as defined in section 751(d)).

Any gain or loss recognized under this subsection shall be considered as gain or loss from the sale or exchange of the partnership interest of the distributee partner.

(b) Partnerships

No gain or loss shall be recognized to a partnership on a distribution to a partner of property, including money.

(c) Treatment of marketable securities

(1) In general

For purposes of subsection (a)(1) and section 737—

(A) the term ''money'' includes marketable securities, and

(B) such securities shall be taken into account at their fair market value as of the date of the distribution.

(2) Marketable securities

For purposes of this subsection:

(A) In general

The term ''marketable securities'' means financial instruments and foreign currencies which are, as of the date of the distribution, actively traded (within the meaning of section 1092(d)(1)).

(B) Other property

Such term includes—

(i) any interest in—

(I) a common trust fund, or

(II) a regulated investment company which is offering for sale or has outstanding any redeemable security (as defined in section 2(a)(32) of the Investment Company Act of 1940) of which it is the issuer,

(ii) any financial instrument which, pursuant to its terms or any other arrangement, is readily convertible into, or exchangeable for, money or marketable securities,

(iii) any financial instrument the value of which is determined substantially by reference to marketable securities,

(iv) except to the extent provided in regulations prescribed by the Secretary, any interest in a precious metal which, as of the date of the distribution, is actively traded (within the meaning of section 1092(d)(1)) unless such metal was produced, used, or held in the active conduct of a trade or business by the partnership,

(v) except as otherwise provided in regulations prescribed by the Secretary, interests in any entity if substantially all of the assets of such entity consist (directly or indirectly) of marketable securities, money, or both, and

(vi) to the extent provided in regulations prescribed by the Secretary, any interest in an entity not described in clause (v) but only to the extent of the value of such interest which is attributable to marketable securities, money, or both.

(C) Financial instrument

The term ''financial instrument'' includes stocks and other equity interests, evidences of indebtedness, options, forward or futures contracts, notional principal contracts, and derivatives.

(3) Exceptions

(A) In general

Paragraph (1) shall not apply to the distribution from a partnership of a marketable security to a partner if—

(i) the security was contributed to the partnership by such partner, except to the extent that the value of the distributed security is attributable to marketable securities or money contributed (directly or indirectly) to the entity to which the distributed security relates,

(ii) to the extent provided in regulations prescribed by the Secretary, the property was not a marketable security when acquired by such partnership, or

(iii) such partnership is an investment partnership and such partner is an eligible partner thereof.

(B) Limitation on gain recognized

In the case of a distribution of marketable securities to a partner, the amount taken into account under paragraph (1) shall be reduced (but not below zero) by the excess (if any) of—

(i) such partner's distributive share of the net gain which would be recognized if all of the marketable securities of the same class and issuer as the distributed securities held by the partnership were sold (immediately before the transaction to which the distribution relates) by the partnership for fair market value, over

(ii) such partner's distributive share of the net gain which is attributable to the marketable securities of the same class and issuer as the distributed securities held by the partnership immediately after the transaction, determined by using the same fair market value as used under clause (i).

Under regulations prescribed by the Secretary, all marketable securities held by the partnership may be treated as marketable securities of the same class and issuer as the distributed securities.

(C) Definitions relating to investment partnerships

For purposes of subparagraph (A)(iii):

(i) Investment partnership

The term ''investment partnership'' means any partnership which has never been engaged in a trade or business and substantially all of the assets (by value) of which have always consisted of—

(I) money,

(II) stock in a corporation,

(III) notes, bonds, debentures, or other evidences of indebtedness,

(IV) interest rate, currency, or equity notional principal contracts,

(V) foreign currencies,

(VI) interests in or derivative financial instruments (including options, forward or futures contracts, short positions, and similar financial instruments) in any asset described in any other subclause of this clause or in any commodity traded on or subject to the rules of a board of trade or commodity exchange,

(VII) other assets specified in regulations prescribed by the Secretary, or

(VIII) any combination of the foregoing.

(ii) Exception for certain activities

A partnership shall not be treated as engaged in a trade or business by reason of—

(I) any activity undertaken as an investor, trader, or dealer in any asset described in clause (i), or

(II) any other activity specified in regulations prescribed by the Secretary.

(iii) Eligible partner

(I) In general

The term ''eligible partner'' means any partner who, before the date of the distribution, did not contribute to the partnership any property other than assets described in clause (i).

(II) Exception for certain nonrecognition transactions

The term ''eligible partner'' shall not include the transferor or transferee in a nonrecognition transaction involving a

transfer of any portion of an interest in a partnership with respect to which the transferor was not an eligible partner.

(iv) Look-thru of partnership tiers

Except as otherwise provided in regulations prescribed by the Secretary—

(I) a partnership shall be treated as engaged in any trade or business engaged in by, and as holding (instead of a partnership interest) a proportionate share of the assets of, any other partnership in which the partnership holds a partnership interest, and

(II) a partner who contributes to a partnership an interest in another partnership shall be treated as contributing a proportionate share of the assets of the other partnership.

If the preceding sentence does not apply under such regulations with respect to any interest held by a partnership in another partnership, the interest in such other partnership shall be treated as if it were specified in a subclause of clause (i).

(4) Basis of securities distributed

(A) In general

The basis of marketable securities with respect to which gain is recognized by reason of this subsection shall be—

(i) their basis determined under section 732, increased by

(ii) the amount of such gain.

(B) Allocation of basis increase

Any increase in basis attributable to the gain described in subparagraph (A)(ii) shall be allocated to marketable securities in proportion to their respective amounts of unrealized appreciation before such increase.

(5) Subsection disregarded in determining basis of partner's interest in partnership and of basis of partnership property

Sections 733 and 734 shall be applied as if no gain were recognized, and no adjustment were made to the basis of property, under this subsection.

(6) Character of gain recognized

In the case of a distribution of a marketable security which is an unrealized receivable (as defined in section 751(c)) or an inventory item (as defined in section 751(d)), any gain recognized under this subsection shall be treated as ordinary income to the extent of any increase in the basis of such security attributable to the gain described in paragraph (4)(A)(ii).

(7) Regulations

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

(d) Exceptions

This section shall not apply to the extent otherwise provided by section 736 (relating to payments to a retiring partner or a deceased partner's successor in interest), section 751 (relating to unrealized receivables and inventory items), and section 737 (relating to recognition of precontribution gain in case of certain distributions).

(Aug. 16, 1954, ch. 736, 68A Stat. 245; Pub. L. 102–486, title XIX, § 1937(b)(2), Oct. 24, 1992, 106 Stat. 3033; Pub. L. 103–465, title VII, § 741(a), Dec. 8, 1994, 108 Stat. 5006; Pub. L. 105–34, title X, § 1062(b)(3), Aug. 5, 1997, 111 Stat. 947.)

REFERENCES IN TEXT

Section 2(a)(32) of the Investment Company Act of 1940, referred to in subsec. (c)(2)(B)(i)(II), is classified to section 80a–2(a)(32) of Title 15, Commerce and Trade.

AMENDMENTS

1997—Subsecs. (a)(2)(B), (c)(6). Pub. L. 105–34 substituted ''section 751(d)'' for ''section 751(d)(2)''.

1994—Subsecs. (c), (d). Pub. L. 103–465 added subsec. (c) and redesignated former subsec. (c) as (d).

1992—Subsec. (c). Pub. L. 102–486 substituted '', section 751'' for ''and section 751'' and inserted before period at end '', and section 737 (relating to recognition of precontribution gain in case of certain distributions)''.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to sales, exchanges, and distributions after Aug. 5, 1997, but not applicable to any sale or exchange pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such sale or exchange, see section 1062(c) of Pub. L. 105–34, set out as a note under section 724 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 741(c) of Pub. L. 103–465 provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 737 of this title] shall apply to distributions after the date of the enactment of this Act [Dec. 8, 1994].

''(2) CERTAIN DISTRIBUTIONS BEFORE JANUARY 1, 1995.—The amendments made by this section shall not apply to any marketable security distributed before January 1, 1995, by the partnership which held such security on July 27, 1994.

''(3) DISTRIBUTIONS IN LIQUIDATION OF PARTNER'S INTEREST.—The amendments made by this section shall not apply to the distribution of a marketable security in liquidation of a partner's interest in a partnership if—

''(A) such liquidation is pursuant to a written contract which was binding on July 15, 1994, and at all times thereafter before the distribution, and

''(B) such contract provides for the purchase of such interest not later than a date certain for—

''(i) a fixed value of marketable securities that are specified in the contract, or

''(ii) other property.

The preceding sentence shall not apply if the partner has the right to elect that such distribution be made other than in marketable securities.

''(4) DISTRIBUTIONS IN COMPLETE LIQUIDATION OF PUBLICLY TRADED PARTNERSHIPS.—

''(A) IN GENERAL.—The amendments made by this section shall not apply to the distribution of a marketable security in a qualified partnership liquidation if—

''(i) the marketable securities were received by the partnership in a nonrecognition transaction in exchange for substantially all of the assets of the partnership,

''(ii) the marketable securities are distributed by the partnership within 90 days after their receipt by the partnership, and

''(iii) the partnership is liquidated before the beginning of the 1st taxable year of the partnership beginning after December 31, 1997.

''(B) QUALIFIED PARTNERSHIP LIQUIDATION.—For purposes of subparagraph (A), the term 'qualified partnership liquidation' means—

''(i) a complete liquidation of a publicly traded partnership (as defined in section 7704(b) of the Internal Revenue Code of 1986) which is an existing partnership (as defined in section 10211(c)(2) of the Revenue Act of 1987 [Pub. L. 100–203, set out as an Effective Date note under section 7704 of this title]), and

''(ii) a complete liquidation of a partnership which is related to a partnership described in clause (i) if such liquidation is related to a complete liquidation of the partnership described in clause (i).

''(5) MARKETABLE SECURITIES.—For purposes of this subsection, the term 'marketable securities' has the meaning given such term by section 731(c) of the Internal Revenue Code of 1986, as added by this section.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–486 applicable to distributions on or after June 25, 1992, see section 1937(c) of Pub. L. 102–486, set out as a note under section 704 of this title.

§ 732. Basis of distributed property other than money

(a) Distributions other than in liquidation of a partner's interest

(1) General rule

The basis of property (other than money) distributed by a partnership to a partner other than in liquidation of the partner's interest shall, except as provided in paragraph (2), be its adjusted basis to the partnership immediately before such distribution.

(2) Limitation

The basis to the distributee partner of property to which paragraph (1) is applicable shall not exceed the adjusted basis of such partner's interest in the partnership reduced by any money distributed in the same transaction.

(b) Distributions in liquidation

The basis of property (other than money) distributed by a partnership to a partner in liquidation of the partner's interest shall be an amount equal to the adjusted basis of such partner's interest in the partnership reduced by any money distributed in the same transaction.

(c) Allocation of basis

(1) In general

The basis of distributed properties to which subsection (a)(2) or (b) is applicable shall be allocated—

(A)(i) first to any unrealized receivables (as defined in section 751(c)) and inventory items (as defined in section 751(d)) in an amount equal to the adjusted basis of each such property to the partnership, and

(ii) if the basis to be allocated is less than the sum of the adjusted bases of such properties to the partnership, then, to the extent any decrease is required in order to have the adjusted bases of such properties equal the basis to be allocated, in the manner provided in paragraph (3), and

(B) to the extent of any basis remaining after the allocation under subparagraph (A), to other distributed properties—

(i) first by assigning to each such other property such other property's adjusted basis to the partnership, and

(ii) then, to the extent any increase or decrease in basis is required in order to have the adjusted bases of such other distributed properties equal such remaining basis, in the manner provided in paragraph (2) or (3), whichever is appropriate.

(2) Method of allocating increase

Any increase required under paragraph (1)(B) shall be allocated among the properties—

(A) first to properties with unrealized appreciation in proportion to their respective amounts of unrealized appreciation before such increase (but only to the extent of each property's unrealized appreciation), and

(B) then, to the extent such increase is not allocated under subparagraph (A), in proportion to their respective fair market values.

(3) Method of allocating decrease

Any decrease required under paragraph (1)(A) or (1)(B) shall be allocated—

(A) first to properties with unrealized depreciation in proportion to their respective amounts of unrealized depreciation before such decrease (but only to the extent of each property's unrealized depreciation), and

(B) then, to the extent such decrease is not allocated under subparagraph (A), in proportion to their respective adjusted bases (as adjusted under subparagraph (A)).

(d) Special partnership basis to transferee

For purposes of subsections (a), (b), and (c), a partner who acquired all or a part of his interest by a transfer with respect to which the election provided in section 754 is not in effect, and to whom a distribution of property (other than money) is made with respect to the transferred interest within 2 years after such transfer, may elect, under regulations prescribed by the Secretary, to treat as the adjusted partnership basis of such property the adjusted basis such property would have if the adjustment provided in section 743(b) were in effect with respect to the partnership property. The Secretary may by regulations require the application of this subsection in the case of a distribution to a transferee partner, whether or not made within 2 years after the transfer, if at the time of the transfer the fair market value of the partnership property (other than money) exceeded 110 percent of its adjusted basis to the partnership.

(e) Exception

This section shall not apply to the extent that a distribution is treated as a sale or exchange of property under section 751(b) (relating to unrealized receivables and inventory items).

(f) Corresponding adjustment to basis of assets of a distributed corporation controlled by a corporate partner

(1) In general

If—

(A) a corporation (hereafter in this subsection referred to as the ''corporate partner'') receives a distribution from a partnership of stock in another corporation (hereafter in this subsection referred to as the ''distributed corporation''),

(B) the corporate partner has control of the distributed corporation immediately

after the distribution or at any time thereafter, and

(C) the partnership's adjusted basis in such stock immediately before the distribution exceeded the corporate partner's adjusted basis in such stock immediately after the distribution,

then an amount equal to such excess shall be applied to reduce (in accordance with subsection (c)) the basis of property held by the distributed corporation at such time (or, if the corporate partner does not control the distributed corporation at such time, at the time the corporate partner first has such control).

(2) Exception for certain distributions before control acquired

Paragraph (1) shall not apply to any distribution of stock in the distributed corporation if—

(A) the corporate partner does not have control of such corporation immediately after such distribution, and

(B) the corporate partner establishes to the satisfaction of the Secretary that such distribution was not part of a plan or arrangement to acquire control of the distributed corporation.

(3) Limitations on basis reduction

(A) In general

The amount of the reduction under paragraph (1) shall not exceed the amount by which the sum of the aggregate adjusted bases of the property and the amount of money of the distributed corporation exceeds the corporate partner's adjusted basis in the stock of the distributed corporation.

(B) Reduction not to exceed adjusted basis of property

No reduction under paragraph (1) in the basis of any property shall exceed the adjusted basis of such property (determined without regard to such reduction).

(4) Gain recognition where reduction limited

If the amount of any reduction under paragraph (1) (determined after the application of paragraph (3)(A)) exceeds the aggregate adjusted bases of the property of the distributed corporation—

(A) such excess shall be recognized by the corporate partner as long-term capital gain, and

(B) the corporate partner's adjusted basis in the stock of the distributed corporation shall be increased by such excess.

(5) Control

For purposes of this subsection, the term ''control'' means ownership of stock meeting the requirements of section 1504(a)(2).

(6) Indirect distributions

For purposes of paragraph (1), if a corporation acquires (other than in a distribution from a partnership) stock the basis of which is determined (by reason of being distributed from a partnership) in whole or in part by reference to subsection (a)(2) or (b), the corporation shall be treated as receiving a distribution of such stock from a partnership.

(7) Special rule for stock in controlled corporation

If the property held by a distributed corporation is stock in a corporation which the distributed corporation controls, this subsection shall be applied to reduce the basis of the property of such controlled corporation. This subsection shall be reapplied to any property of any controlled corporation which is stock in a corporation which it controls.

(8) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations to avoid double counting and to prevent the abuse of such purposes.

(Aug. 16, 1954, ch. 736, 68A Stat. 246; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105–34, title X, §§ 1061(a), 1062(b)(3), Aug. 5, 1997, 111 Stat. 945, 947; Pub. L. 106–170, title V, § 538(a), Dec. 17, 1999, 113 Stat. 1939.)

AMENDMENTS

1999—Subsec. (f). Pub. L. 106–170 added subsec. (f).

1997—Subsec. (c). Pub. L. 105–34, § 1061(a), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: ''The basis of distributed properties to which subsection (a)(2) or subsection (b) is applicable shall be allocated—

''(1) first to any unrealized receivables (as defined in section 751(c)) and inventory items (as defined in section 751(d)(2)) in an amount equal to the adjusted basis of each such property to the partnership (or if the basis to be allocated is less than the sum of the adjusted bases of such properties to the partnership, in proportion to such bases), and

''(2) to the extent of any remaining basis, to any other distributed properties in proportion to their adjusted bases to the partnership.''

Subsec. (c)(1)(A)(i). Pub. L. 105–34, § 1062(b)(3), substituted ''section 751(d)'' for ''section 751(d)(2)''.

1976—Subsec. (d). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, § 538(b), Dec. 17, 1999, 113 Stat. 1940, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by this section [amending this section] shall apply to distributions made after July 14, 1999.

''(2) PARTNERSHIPS IN EXISTENCE ON JULY 14, 1999.—In the case of a corporation which is a partner in a partnership as of July 14, 1999, the amendment made by this section shall apply to any distribution made (or treated as made) to such partner from such partnership after June 30, 2001, except that this paragraph shall not apply to any distribution after the date of the enactment of this Act [Dec. 17, 1999] unless the partner makes an election to have this paragraph apply to such distribution on the partner's return of Federal income tax for the taxable year in which such distribution occurs.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1061(b) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to distributions after the date of the enactment of this Act [Aug. 5, 1997].''

Amendment by section 1062(b)(3) of Pub. L. 105–34 applicable to sales, exchanges, and distributions after Aug. 5, 1997, but not applicable to any sale or exchange pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such sale or exchange, see section 1062(c) of Pub. L. 105–34, set out as a note under section 724 of this title.

§ 733. Basis of distributee partner's interest

In the case of a distribution by a partnership to a partner other than in liquidation of a partner's interest, the adjusted basis to such partner of his interest in the partnership shall be reduced (but not below zero) by—

(1) the amount of any money distributed to such partner, and

(2) the amount of the basis to such partner of distributed property other than money, as determined under section 732.

(Aug. 16, 1954, ch. 736, 68A Stat. 247.)

§ 734. Adjustment to basis of undistributed partnership property where section 754 election or substantial basis reduction

(a) General rule

The basis of partnership property shall not be adjusted as the result of a distribution of property to a partner unless the election, provided in section 754 (relating to optional adjustment to basis of partnership property), is in effect with respect to such partnership or unless there is a substantial basis reduction with respect to such distribution.

(b) Method of adjustment

In the case of a distribution of property to a partner by a partnership with respect to which the election provided in section 754 is in effect or with respect to which there is a substantial basis reduction, the partnership shall—

(1) increase the adjusted basis of partnership property by—

(A) the amount of any gain recognized to the distributee partner with respect to such distribution under section 731(a)(1), and

(B) in the case of distributed property to which section 732(a)(2) or (b) applies, the excess of the adjusted basis of the distributed property to the partnership immediately before the distribution (as adjusted by section 732(d)) over the basis of the distributed property to the distributee, as determined under section 732, or

(2) decrease the adjusted basis of partnership property by—

(A) the amount of any loss recognized to the distributee partner with respect to such distribution under section 731(a)(2), and

(B) in the case of distributed property to which section 732(b) applies, the excess of the basis of the distributed property to the distributee, as determined under section 732, over the adjusted basis of the distributed property to the partnership immediately before such distribution (as adjusted by section 732(d)).

Paragraph (1)(B) shall not apply to any distributed property which is an interest in another partnership with respect to which the election provided in section 754 is not in effect.

(c) Allocation of basis

The allocation of basis among partnership properties where subsection (b) is applicable shall be made in accordance with the rules provided in section 755.

(d) Substantial basis reduction

(1) In general

For purposes of this section, there is a substantial basis reduction with respect to a distribution if the sum of the amounts described in subparagraphs (A) and (B) of subsection (b)(2) exceeds $250,000.

(2) Regulations

For regulations to carry out this subsection, see section 743(d)(2).

(e) Exception for securitization partnerships

For purposes of this section, a securitization partnership (as defined in section 743(f)) shall not be treated as having a substantial basis reduction with respect to any distribution of property to a partner.

(Aug. 16, 1954, ch. 736, 68A Stat. 247; Pub. L. 98–369, div. A, title I, § 78(a), July 18, 1984, 98 Stat. 597; Pub. L. 108–357, title VIII, § 833(c)(1)–(5)(A), Oct. 22, 2004, 118 Stat. 1591, 1592; Pub. L. 109–135, title IV, § 403(bb), Dec. 21, 2005, 119 Stat. 2630.)

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–135, § 403(bb)(1), inserted ''with respect to such distribution'' before period at end.

Subsec. (b). Pub. L. 109–135, § 403(bb)(2), reenacted heading without change and amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: ''In the case of a distribution of property to a partner, a partnership, with respect to which the election provided in section 754 is in effect or unless there is a substantial basis reduction, shall—''.

2004—Pub. L. 108–357, § 833(c)(5)(A), substituted ''Adjustment to basis of undistributed partnership property where section 754 election or substantial basis reduction'' for ''Optional adjustment to basis of undistributed partnership property'' in section catchline.

Subsec. (a). Pub. L. 108–357, § 833(c)(1), inserted ''or unless there is a substantial basis reduction'' before period at end.

Subsec. (b). Pub. L. 108–357, § 833(c)(2), inserted ''or unless there is a substantial basis reduction'' after ''section 754 is in effect'' in introductory provisions.

Subsec. (d). Pub. L. 108–357, § 833(c)(3), added subsec. (d).

Subsec. (e). Pub. L. 108–357, § 833(c)(4), added subsec. (e).

1984—Subsec. (b). Pub. L. 98–369 inserted at end ''Paragraph (1)(B) shall not apply to any distributed property which is an interest in another partnership with respect to which the election provided in section 754 is not in effect.''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, § 833(d)(3), Oct. 22, 2004, 118 Stat. 1592, provided that: ''The amendments made by subsection (c) [amending this section] shall apply to distributions after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 78(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this sec-

tion] shall apply to distributions after March 1, 1984, in taxable years ending after such date.''

§ 735. Character of gain or loss on disposition of distributed property

(a) Sale or exchange of certain distributed property

(1) Unrealized receivables

Gain or loss on the disposition by a distributee partner of unrealized receivables (as defined in section 751(c)) distributed by a partnership, shall be considered as ordinary income or as ordinary loss, as the case may be.

(2) Inventory items

Gain or loss on the sale or exchange by a distributee partner of inventory items (as defined in section 751(d)) distributed by a partnership shall, if sold or exchanged within 5 years from the date of the distribution, be considered as ordinary income or as ordinary loss, as the case may be.

(b) Holding period for distributed property

In determining the period for which a partner has held property received in a distribution from a partnership (other than for purposes of subsection (a)(2)), there shall be included the holding period of the partnership, as determined under section 1223, with respect to such property.

(c) Special rules

(1) Waiver of holding periods contained in section 1231

For purposes of this section, section 751(d) (defining inventory item) shall be applied without regard to any holding period in section 1231(b).

(2) Substituted basis property

(A) In general

If any property described in subsection (a) is disposed of in a nonrecognition transaction, the tax treatment which applies to such property under such subsection shall also apply to any substituted basis property resulting from such transaction. A similar rule shall also apply in the case of a series of nonrecognition transactions.

(B) Exception for stock in C corporation

Subparagraph (A) shall not apply to any stock in a C corporation received in an exchange described in section 351.

(Aug. 16, 1954, ch. 763, 68A Stat. 247; Pub. L. 94–455, title XIX, § 1901(b)(3)(D), Oct. 4, 1976, 90 Stat. 1792; Pub. L. 98–369, div. A, title I, § 74(b), July 18, 1984, 98 Stat. 593; Pub. L. 105–34, title X, § 1062(b)(3), Aug. 5, 1997, 111 Stat. 947.)

AMENDMENTS

1997—Subsecs. (a)(2), (c)(1). Pub. L. 105–34 substituted ''section 751(d)'' for ''section 751(d)(2)''.

1984—Subsec. (c). Pub. L. 98–369 added subsec. (c).

1976—Subsec. (a)(1), (2). Pub. L. 94–455 substituted ''as ordinary income or as ordinary loss, as the case may be'' for ''gain or loss from the sale or exchange of property other than a capital asset''.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to sales, exchanges, and distributions after Aug. 5, 1997, but not applicable to any sale or exchange pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such sale or exchange, see section 1062(c) of Pub. L. 105–34, set out as a note under section 724 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 74(d)(2) of Pub. L. 98–369 provided that: ''The amendment made by subsection (b) [amending this section] shall apply to property distributed after March 31, 1984, in taxable years ending after such date.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

§ 736. Payments to a retiring partner or a deceased partner's successor in interest

(a) Payments considered as distributive share or guaranteed payment

Payments made in liquidation of the interest of a retiring partner or a deceased partner shall, except as provided in subsection (b), be considered—

(1) as a distributive share to the recipient of partnership income if the amount thereof is determined with regard to the income of the partnership, or

(2) as a guaranteed payment described in section 707(c) if the amount thereof is determined without regard to the income of the partnership.

(b) Payments for interest in partnership

(1) General rule

Payments made in liquidation of the interest of a retiring partner or a deceased partner shall, to the extent such payments (other than payments described in paragraph (2)) are determined, under regulations prescribed by the Secretary, to be made in exchange for the interest of such partner in partnership property, be considered as a distribution by the partnership and not as a distributive share or guaranteed payment under subsection (a).

(2) Special rules

For purposes of this subsection, payments in exchange for an interest in partnership property shall not include amounts paid for—

(A) unrealized receivables of the partnership (as defined in section 751(c)), or

(B) good will of the partnership, except to the extent that the partnership agreement provides for a payment with respect to good will.

(3) Limitation on application of paragraph (2)

Paragraph (2) shall apply only if—

(A) capital is not a material income-producing factor for the partnership, and

(B) the retiring or deceased partner was a general partner in the partnership.

(Aug. 16, 1954, ch. 736, 68A Stat. 248; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–600, title VII, § 701(u)(13)(B), Nov. 6, 1978, 92 Stat. 2918; Pub. L. 103–66, title XIII, § 13262(a), (b)(2)(B), Aug. 10, 1993, 107 Stat. 541.)

AMENDMENTS

1993—Subsec. (b)(3). Pub. L. 103–66, § 13262(a), added par. (3).

Subsec. (c). Pub. L. 103–66, §13262(b)(2)(B), struck out heading and text of subsec. (c). Text read as follows: ''For limitation on the tax attributable to certain gain connected with section 1248 stock, see section 751(e).''

1978—Subsec. (c). Pub. L. 95–600 added subsec. (c).

1976—Subsec. (b)(1). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13262(c) of Pub. L. 103–66 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 751 of this title] shall apply in the case of partners retiring or dying on or after January 5, 1993.

''(2) BINDING CONTRACT EXCEPTION.—The amendments made by this section shall not apply to any partner retiring on or after January 5, 1993, if a written contract to purchase such partner's interest in the partnership was binding on January 4, 1993, and at all times thereafter before such purchase.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to transfers beginning after Oct. 9, 1975, and to sales, exchanges, and distributions taking place after Oct. 9, 1975, see section 701(u)(13)(C) of Pub. L. 95–600, set out as a note under section 751 of this title.

§ 737. Recognition of precontribution gain in case of certain distributions to contributing partner

(a) General rule

In the case of any distribution by a partnership to a partner, such partner shall be treated as recognizing gain in an amount equal to the lesser of—

(1) the excess (if any) of (A) the fair market value of property (other than money) received in the distribution over (B) the adjusted basis of such partner's interest in the partnership immediately before the distribution reduced (but not below zero) by the amount of money received in the distribution, or

(2) the net precontribution gain of the partner.

Gain recognized under the preceding sentence shall be in addition to any gain recognized under section 731. The character of such gain shall be determined by reference to the proportionate character of the net precontribution gain.

(b) Net precontribution gain

For purposes of this section, the term ''net precontribution gain'' means the net gain (if any) which would have been recognized by the distributee partner under section 704(c)(1)(B) if all property which—

(1) had been contributed to the partnership by the distributee partner within 7 years of the distribution, and

(2) is held by such partnership immediately before the distribution,

had been distributed by such partnership to another partner.

(c) Basis rules

(1) Partner's interest

The adjusted basis of a partner's interest in a partnership shall be increased by the amount of any gain recognized by such partner under subsection (a). For purposes of determining the basis of the distributed property (other than money), such increase shall be treated as occurring immediately before the distribution.

(2) Partnership's basis in contributed property

Appropriate adjustments shall be made to the adjusted basis of the partnership in the contributed property referred to in subsection (b) to reflect gain recognized under subsection (a).

(d) Exceptions

(1) Distributions of previously contributed property

If any portion of the property distributed consists of property which had been contributed by the distributee partner to the partnership, such property shall not be taken into account under subsection (a)(1) and shall not be taken into account in determining the amount of the net precontribution gain. If the property distributed consists of an interest in an entity, the preceding sentence shall not apply to the extent that the value of such interest is attributable to property contributed to such entity after such interest had been contributed to the partnership.

(2) Coordination with section 751

This section shall not apply to the extent section 751(b) applies to such distribution.

(e) Marketable securities treated as money

For treatment of marketable securities as money for purposes of this section, see section 731(c).

(Added Pub. L. 102–486, title XIX, §1937(a), Oct. 24, 1992, 106 Stat. 3032; amended Pub. L. 103–465, title VII, §741(b), Dec. 8, 1994, 108 Stat. 5009; Pub. L. 104–188, title I, §1704(j)(8), Aug. 20, 1996, 110 Stat. 1882; Pub. L. 105–34, title X, §1063(a), Aug. 5, 1997, 111 Stat. 947.)

AMENDMENTS

1997—Subsec. (b)(1). Pub. L. 105–34 substituted ''7 years'' for ''5 years''.

1996—Pub. L. 104–188 provided that section 1937(a) of Pub. L. 102–486, shall be applied as if ''Subpart B'' appeared instead of ''Subpart C''. Section 1937(a) of Pub. L. 102–486 directed amendment of subpart C of this part by adding this section at the end thereof.

1994—Subsec. (c)(1). Pub. L. 103–465, §741(b)(1), amended last sentence generally. Prior to amendment, last sentence read as follows: ''Except for purposes of determining the amount recognized under subsection (a), such increase shall be treated as occurring immediately before the distribution.''

Subsec. (e). Pub. L. 103–465, §741(b)(2), added subsec. (e).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to property contributed to a partnership after June 8, 1997, but not applicable to any property contributed pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such contribution if such contract provides for the contribution of a fixed amount of property, see section 1063(b) of Pub. L. 105–34, set out as a note under section 704 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 applicable to distributions after Dec. 8, 1994, and not applicable to certain distributions before Jan. 1, 1995, distributions in liquidation of partner's interest, or distributions in complete liquidation of publicly traded partnerships, see section 741(c) of Pub. L. 103–465, set out as a note under section 731 of this title.

EFFECTIVE DATE

Section applicable to distributions on or after June 25, 1992, see section 1937(c) of Pub. L. 102–486, set out as an Effective Date of 1992 Amendment note under section 704 of this title.

SUBPART C—TRANSFERS OF INTERESTS IN A PARTNERSHIP

Sec.
741. Recognition and character of gain or loss on sale or exchange.
742. Basis of transferee partner's interest.
743. Special rules where section 754 election or substantial built-in loss.

AMENDMENTS

2004—Pub. L. 108–357, title VIII, § 833(b)(6)(B), Oct. 22, 2004, 118 Stat. 1591, substituted ''Special rules where section 754 election or substantial built-in loss'' for ''Optional adjustment to basis of partnership property'' in item 743.

§ 741. Recognition and character of gain or loss on sale or exchange

In the case of a sale or exchange of an interest in a partnership, gain or loss shall be recognized to the transferor partner. Such gain or loss shall be considered as gain or loss from the sale or exchange of a capital asset, except as otherwise provided in section 751 (relating to unrealized receivables and inventory items).

(Aug. 16, 1954, ch. 736, 68A Stat. 248; Pub. L. 107–147, title IV, § 417(12), Mar. 9, 2002, 116 Stat. 56.)

AMENDMENTS

2002—Pub. L. 107–147 struck out ''which have appreciated substantially in value'' after ''inventory items''.

§ 742. Basis of transferee partner's interest

The basis of an interest in a partnership acquired other than by contribution shall be determined under part II of subchapter O (sec. 1011 and following).

(Aug. 16, 1954, ch. 736, 68A Stat. 249.)

§ 743. Special rules where section 754 election or substantial built-in loss

(a) General rule

The basis of partnership property shall not be adjusted as the result of a transfer of an interest in a partnership by sale or exchange or on the death of a partner unless the election provided by section 754 (relating to optional adjustment to basis of partnership property) is in effect with respect to such partnership or unless the partnership has a substantial built-in loss immediately after such transfer.

(b) Adjustment to basis of partnership property

In the case of a transfer of an interest in a partnership by sale or exchange or upon the death of a partner, a partnership with respect to which the election provided in section 754 is in effect or which has a substantial built-in loss immediately after such transfer shall—

(1) increase the adjusted basis of the partnership property by the excess of the basis to the transferee partner of his interest in the partnership over his proportionate share of the adjusted basis of the partnership property, or

(2) decrease the adjusted basis of the partnership property by the excess of the transferee partner's proportionate share of the adjusted basis of the partnership property over the basis of his interest in the partnership.

Under regulations prescribed by the Secretary, such increase or decrease shall constitute an adjustment to the basis of partnership property with respect to the transferee partner only. A partner's proportionate share of the adjusted basis of partnership property shall be determined in accordance with his interest in partnership capital and, in the case of property contributed to the partnership by a partner, section 704(c) (relating to contributed property) shall apply in determining such share. In the case of an adjustment under this subsection to the basis of partnership property subject to depletion, any depletion allowable shall be determined separately for the transferee partner with respect to his interest in such property.

(c) Allocation of basis

The allocation of basis among partnership properties where subsection (b) is applicable shall be made in accordance with the rules provided in section 755.

(d) Substantial built-in loss

(1) In general

For purposes of this section, a partnership has a substantial built-in loss with respect to a transfer of an interest in a partnership if the partnership's adjusted basis in the partnership property exceeds by more than $250,000 the fair market value of such property.

(2) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of paragraph (1) and section 734(d), including regulations aggregating related partnerships and disregarding property acquired by the partnership in an attempt to avoid such purposes.

(e) Alternative rules for electing investment partnerships

(1) No adjustment of partnership basis

For purposes of this section, an electing investment partnership shall not be treated as having a substantial built-in loss with respect to any transfer occurring while the election under paragraph (6)(A) is in effect.

(2) Loss deferral for transferee partner

In the case of a transfer of an interest in an electing investment partnership, the transferee partner's distributive share of losses (without regard to gains) from the sale or exchange of partnership property shall not be allowed except to the extent that it is established that such losses exceed the loss (if any) recognized by the transferor (or any prior transferor to the extent not fully offset by a prior disallowance under this paragraph) on the transfer of the partnership interest.

(3) No reduction in partnership basis

Losses disallowed under paragraph (2) shall not decrease the transferee partner's basis in the partnership interest.

(4) Effect of termination of partnership

This subsection shall be applied without regard to any termination of a partnership under section 708(b)(1)(B).

(5) Certain basis reductions treated as losses

In the case of a transferee partner whose basis in property distributed by the partnership is reduced under section 732(a)(2), the amount of the loss recognized by the transferor on the transfer of the partnership interest which is taken into account under paragraph (2) shall be reduced by the amount of such basis reduction.

(6) Electing investment partnership

For purposes of this subsection, the term ''electing investment partnership'' means any partnership if—

(A) the partnership makes an election to have this subsection apply,

(B) the partnership would be an investment company under section 3(a)(1)(A) of the Investment Company Act of 1940 but for an exemption under paragraph (1) or (7) of section 3(c) of such Act,

(C) such partnership has never been engaged in a trade or business,

(D) substantially all of the assets of such partnership are held for investment,

(E) at least 95 percent of the assets contributed to such partnership consist of money,

(F) no assets contributed to such partnership had an adjusted basis in excess of fair market value at the time of contribution,

(G) all partnership interests of such partnership are issued by such partnership pursuant to a private offering before the date which is 24 months after the date of the first capital contribution to such partnership,

(H) the partnership agreement of such partnership has substantive restrictions on each partner's ability to cause a redemption of the partner's interest, and

(I) the partnership agreement of such partnership provides for a term that is not in excess of 15 years.

The election described in subparagraph (A), once made, shall be irrevocable except with the consent of the Secretary.

(7) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this subsection, including regulations for applying this subsection to tiered partnerships.

(f) Exception for securitization partnerships

(1) No adjustment of partnership basis

For purposes of this section, a securitization partnership shall not be treated as having a substantial built-in loss with respect to any transfer.

(2) Securitization partnership

For purposes of paragraph (1), the term ''securitization partnership'' means any partnership the sole business activity of which is to issue securities which provide for a fixed principal (or similar) amount and which are primarily serviced by the cash flows of a discrete pool (either fixed or revolving) of receivables or other financial assets that by their terms convert into cash in a finite period, but only if the sponsor of the pool reasonably believes that the receivables and other financial assets comprising the pool are not acquired so as to be disposed of.

(Aug. 16, 1954, ch. 736, 68A Stat. 249; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title I, §71(b), July 18, 1984, 98 Stat. 589; Pub. L. 108–357, title VIII, §833(b)(1)–(4)(A), (5), (6)(A), Oct. 22, 2004, 118 Stat. 1589, 1591.)

REFERENCES IN TEXT

Section 3(a)(1)(A), (c)(1), (7) of the Investment Company Act of 1940, referred to in subsec. (e)(6)(B), is classified to section 80a–3(a)(1)(A), (c)(1), (7) of Title 15, Commerce and Trade.

AMENDMENTS

2004—Pub. L. 108–357, §833(b)(6)(A), substituted ''Special rules where section 754 election or substantial built-in loss'' for ''Optional adjustment to basis of partnership property'' in section catchline.

Subsec. (a). Pub. L. 108–357, §833(b)(1), inserted ''or unless the partnership has a substantial built-in loss immediately after such transfer'' before period at end.

Subsec. (b). Pub. L. 108–357, §833(b)(2), inserted ''or which has a substantial built-in loss immediately after such transfer'' after ''section 754 is in effect'' in introductory provisions.

Subsec. (d). Pub. L. 108–357, §833(b)(3), added subsec. (d).

Subsec. (e). Pub. L. 108–357, §833(b)(4)(A), added subsec. (e).

Subsec. (f). Pub. L. 108–357, §833(b)(5), added subsec. (f).

1984—Subsec. (b). Pub. L. 98–369 substituted ''property contributed to the partnership by a partner, section 704(c) (relating to contributed property) shall apply in determining such share'' for ''an agreement described in section 704(c)(2) (relating to effect of partnership agreement on contributed property), such share shall be determined by taking such agreement into account'' in penultimate sentence.

1976—Subsec. (b). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §833(d)(2), Oct. 22, 2004, 118 Stat. 1592, provided that:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by subsection (b) [amending this section and section 6031 of this title] shall apply to transfers after the date of the enactment of this Act [Oct. 22, 2004].

''(B) TRANSITION RULE.—In the case of an electing investment partnership which is in existence on June 4, 2004, section 743(e)(6)(H) of the Internal Revenue Code of 1986, as added by this section, shall not apply to such partnership and section 743(e)(6)(I) of such Code, as so added, shall be applied by substituting '20 years' for '15 years'.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to property contributed to the partnership after Mar. 31, 1984, in taxable years ending after such date, see section 71(c) of Pub. L. 98–369, set out as a note under section 704 of this title.

SUBPART D—PROVISIONS COMMON TO OTHER SUBPARTS

Sec.

751. Unrealized receivables and inventory items.

Sec.
752. Treatment of certain liabilities.
753. Partner receiving income in respect of decedent.
754. Manner of electing optional adjustment to basis of partnership property.
755. Rules for allocation of basis.

§ 751. Unrealized receivables and inventory items

(a) Sale or exchange of interest in partnership

The amount of any money, or the fair market value of any property, received by a transferor partner in exchange for all or a part of his interest in the partnership attributable to—

(1) unrealized receivables of the partnership, or

(2) inventory items of the partnership,

shall be considered as an amount realized from the sale or exchange of property other than a capital asset.

(b) Certain distributions treated as sales or exchanges

(1) General rule

To the extent a partner receives in a distribution—

(A) partnership property which is—

(i) unrealized receivables, or

(ii) inventory items which have appreciated substantially in value,

in exchange for all or a part of his interest in other partnership property (including money), or

(B) partnership property (including money) other than property described in subparagraph (A)(i) or (ii) in exchange for all or a part of his interest in partnership property described in subparagraph (A)(i) or (ii),

such transactions shall, under regulations prescribed by the Secretary, be considered as a sale or exchange of such property between the distributee and the partnership (as constituted after the distribution).

(2) Exceptions

Paragraph (1) shall not apply to—

(A) a distribution of property which the distributee contributed to the partnership, or

(B) payments, described in section 736(a), to a retiring partner or successor in interest of a deceased partner.

(3) Substantial appreciation

For purposes of paragraph (1)—

(A) In general

Inventory items of the partnership shall be considered to have appreciated substantially in value if their fair market value exceeds 120 percent of the adjusted basis to the partnership of such property.

(B) Certain property excluded

For purposes of subparagraph (A), there shall be excluded any inventory property if a principal purpose for acquiring such property was to avoid the provisions of this subsection relating to inventory items.

(c) Unrealized receivables

For purposes of this subchapter, the term ''unrealized receivables'' includes, to the extent not previously includible in income under the method of accounting used by the partnership, any rights (contractual or otherwise) to payment for—

(1) goods delivered, or to be delivered, to the extent the proceeds therefrom would be treated as amounts received from the sale or exchange of property other than a capital asset, or

(2) services rendered, or to be rendered.

For purposes of this section and,[1] sections 731, 732, and 741 (but not for purposes of section 736), such term also includes mining property (as defined in section 617(f)(2)), stock in a DISC (as described in section 992(a)), section 1245 property (as defined in section 1245(a)(3)), stock in certain foreign corporations (as described in section 1248), section 1250 property (as defined in section 1250(c)), farm land (as defined in section 1252(a)), franchises, trademarks, or trade names (referred to in section 1253(a)), and an oil, gas, or geothermal property (described in section 1254) but only to the extent of the amount which would be treated as gain to which section 617(d)(1), 995(c), 1245(a), 1248(a), 1250(a), 1252(a), 1253(a), or 1254(a) would apply if (at the time of the transaction described in this section or section 731, 732, or 741, as the case may be) such property had been sold by the partnership at its fair market value. For purposes of this section and,[1] sections 731, 732, and 741 (but not for purposes of section 736), such term also includes any market discount bond (as defined in section 1278) and any short-term obligation (as defined in section 1283) but only to the extent of the amount which would be treated as ordinary income if (at the time of the transaction described in this section or section 731, 732, or 741, as the case may be) such property had been sold by the partnership.

(d) Inventory items

For purposes of this subchapter, the term ''inventory items'' means—

(1) property of the partnership of the kind described in section 1221(a)(1),

(2) any other property of the partnership which, on sale or exchange by the partnership, would be considered property other than a capital asset and other than property described in section 1231, and

(3) any other property held by the partnership which, if held by the selling or distributee partner, would be considered property of the type described in paragraph (1) or (2).

(e) Limitation on tax attributable to deemed sales of section 1248 stock

For purposes of applying this section and sections 731 and 741 to any amount resulting from the reference to section 1248(a) in the second sentence of subsection (c), in the case of an individual, the tax attributable to such amount shall be limited in the manner provided by subsection (b) of section 1248 (relating to gain from certain sales or exchanges of stock in certain foreign corporation).

(f) Special rules in the case of tiered partnerships, etc.

In determining whether property of a partnership is—

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[1] So in original. The comma probably should not appear.

(1) an unrealized receivable, or
(2) an inventory item,

such partnership shall be treated as owning its proportionate share of the property of any other partnership in which it is a partner. Under regulations, rules similar to the rules of the preceding sentence shall also apply in the case of interests in trusts.

(Aug. 16, 1954, ch. 736, 68A Stat. 250; Pub. L. 87–834, §§13(f)(1), 14(b)(2), Oct. 16, 1962, 76 Stat. 1035, 1041; Pub. L. 88–272, title II, §231(b)(6), Feb. 26, 1964, 78 Stat. 105; Pub. L. 89–570, §1(c), Sept. 12, 1966, 80 Stat. 762; Pub. L. 91–172, title II, §211(b)(6), Dec. 30, 1969, 83 Stat. 570; Pub. L. 94–455, title II, §205(b), title X, §1042(c)(2), title XI, §1101(d)(2), title XIX, §§1901(a)(93), 1906(b)(13)(A), title XXI, §2110(a), Oct. 4, 1976, 90 Stat. 1535, 1637, 1658, 1780, 1834, 1905; Pub. L. 95–600, title VII, §701(u)(13)(A), Nov. 6, 1978, 92 Stat. 2918; Pub. L. 95–618, title IV, §402(c)(5), Nov. 9, 1978, 92 Stat. 3202; Pub. L. 97–448, title I, §102(a)(6), Jan. 12, 1983, 96 Stat. 2368; Pub. L. 98–369, div. A, title I, §§43(c)(3), 76(a), title IV, §492(b)(4), July 18, 1984, 98 Stat. 558, 595, 854; Pub. L. 99–514, title II, §201(d)(10), title XVIII, §1899A(19), Oct. 22, 1986, 100 Stat. 2141, 2959; Pub. L. 103–66, title XIII, §§13206(e)(1), 13262(b)(1), (2)(A), Aug. 10, 1993, 107 Stat. 467, 541; Pub. L. 105–34, title X, §1062(a)–(b)(2), Aug. 5, 1997, 111 Stat. 946, 947; Pub. L. 105–206, title VI, §6010(m), July 22, 1998, 112 Stat. 816; Pub. L. 106–170, title V, §532(c)(2)(F), Dec. 17, 1999, 113 Stat. 1930; Pub. L. 108–357, title IV, §413(c)(11), Oct. 22, 2004, 118 Stat. 1507.)

AMENDMENTS

2004—Subsec. (d)(2) to (4). Pub. L. 108–357 inserted ''and'' at end of par. (2), redesignated par. (4) as (3) and substituted ''paragraph (1) or (2)'' for ''paragraph (1), (2), or (3)'', and struck out former par. (3) which read as follows: ''any other property of the partnership which, if sold or exchanged by the partnership, would result in a gain taxable under subsection (a) of section 1246 (relating to gain on foreign investment company stock), and''.

1999—Subsec. (d)(1). Pub. L. 106–170 substituted ''section 1221(a)(1)'' for ''section 1221(1)''.

1998—Subsec. (c). Pub. L. 105–206 substituted ''731, 732,'' for ''731'' wherever appearing in concluding provisions.

1997—Subsec. (a)(2). Pub. L. 105–34, §1062(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''inventory items of the partnership which have appreciated substantially in value,''.

Subsec. (b)(1). Pub. L. 105–34, §1062(b)(1)(A), added subpars. (A) and (B) and struck out former subpars. (A) and (B) which read as follows:

''(A) partnership property described in subsection (a)(1) or (2) in exchange for all or a part of his interest in other partnership property (including money), or

''(B) partnership property (including money) other than property described in subsection (a)(1) or (2) in exchange for all or a part of his interest in partnership property described in subsection (a)(1) or (2),''.

Subsec. (b)(3). Pub. L. 105–34, §1062(b)(1)(B), added par. (3).

Subsec. (d). Pub. L. 105–34, §1062(b)(2), amended heading and text of subsec. (d) generally. Prior to amendment, subsec. (d) consisted of pars. (1) and (2) relating to inventory items which have appreciated substantially in value.

1993—Subsec. (c). Pub. L. 103–66, §13262(b)(1), in concluding provisions, substituted ''section 731 or 741'' for ''section 731, 736, or 741'' in two places and '', sections 731 and 741 (but not for purposes of section 736)'' for ''sections 731, 736, and 741'' in two places.

Subsec. (d)(1). Pub. L. 103–66, §13206(e)(1), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''Inventory items of the partnership shall be considered to have appreciated substantially in value if their fair market value exceeds—

''(A) 120 percent of the adjusted basis to the partnership of such property, and

''(B) 10 percent of the fair market value of all partnership property, other than money.''

Subsec. (e). Pub. L. 103–66, §13262(b)(2)(A), substituted ''sections 731 and 741'' for ''sections 731, 736, and 741''.

1986—Subsec. (c). Pub. L. 99–514, §1899A(19), substituted ''section 617(f)(2)), stock'' for ''section 617(f)(2), stock'' in second sentence.

Pub. L. 99–514, §201(d)(10), struck out ''section 1245 recovery property (as defined in section 1245(a)(5)),'' before ''stock in certain foreign corporations'' in second sentence.

1984—Subsec. (c). Pub. L. 98–369, §492(b)(4), struck out ''farm recapture property (as defined in section 1251(e)(1)),'' before ''farm land'', and ''1251(c),'' after ''1250(a),'' in second sentence.

Pub. L. 98–369, §43(c)(3), inserted last sentence.

Subsec. (f). Pub. L. 98–369, §76(a), added subsec. (f).

1983—Subsec. (c). Pub. L. 97–448 inserted reference to section 1245 recovery property (as defined in section 1245(a)(5)) in second sentence.

1978—Subsec. (c). Pub. L. 95–618 substituted ''oil, gas, or geothermal property'' for ''oil or gas property'' in second sentence.

Subsec. (e). Pub. L. 95–600 added subsec. (e).

1976—Subsec. (b)(1). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c). Pub. L. 94–455, §§205(b), 1042(c)(2), 1101(d)(2), 1901(a)(93), 2110(a), in second sentence, inserted reference to stock in a DISC (as described in section 992(a)), reference to stock in certain foreign corporations (as described in section 1248), and reference to farm land (as defined in section 1252(a)), franchises, trademarks or trade names (referred to in section 1253(a)), and an oil or gas property (described in section 1254), substituted ''1252(a), 1253(a), or 1254(a)'' for ''or 1252(a)'', and inserted ''1248(a),'' after ''1245(a),'' and ''995(c),'' after ''617(d)(1),''.

1969—Subsec. (c). Pub. L. 91–172, in second sentence, substituted ''section 1250 property (as defined in section 1250(c)), farm recapture property (as defined in section 1251(e)(1)), and farm land (as defined in section 1252(a))'', and ''1250(a), 1251(c), or 1252(a)'', for ''and section 1250 property (as defined in section 1250(c))'' and ''1250(a)'', respectively.

1966—Subsec. (c). Pub. L. 89–570, in second sentence, inserted reference to mining property (as defined in section 617(f)(2)) and to section 617(d)(1).

1964—Subsec. (c). Pub. L. 88–272, in second sentence, inserted reference to section 1250.

1962—Subsec. (c). Pub. L. 87–834, §13(f)(1), defined ''unrealized receivables'' for purposes of this section and section 731, 736, and 741, as including section 1245 property, but only to the extent of the amount which would be treated as gain to which section 1245(a) would apply if (at the time of the transaction described in this section or section 731, 736, or 741, as the case may be) such property had been sold by the partnership at its fair market value.

Subsec. (d)(2). Pub. L. 87–834, §14(b)(2), added subpar. (C), redesignated former subpar. (C) as (D), and substituted ''subparagraph (A), (B), or (C)'' for ''subparagraph (A) or (B)''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to sales, exchanges, and distributions after Aug. 5, 1997, but not applicable to any sale or exchange pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such sale or exchange, see section 1062(c) of Pub. L. 105–34, set out as a note under section 724 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13206(e)(2) of Pub. L. 103–66 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to sales, exchanges, and distributions after April 30, 1993.''

Amendment by section 13262(b)(1) and (2)(A) of Pub. L. 103–66 applicable in the case of partners retiring or dying on or after Jan. 5, 1993, with a binding contract exception, see section 13262(c) of Pub. L. 103–66, set out as a note under section 736 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 201(d)(10) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

Amendment by section 201(d)(10) of Pub. L. 99–514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99–514, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 43(c)(3) of Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

Section 76(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to distributions, sales, and exchanges made after March 31, 1984, in taxable years ending after such date.''

Amendment by section 492(b)(4) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 492(d) of Pub. L. 98–369, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–618 applicable with respect to wells commenced on or after Oct. 1, 1978, in taxable years ending on or after such date, see section 402(e) of Pub. L. 95–618, set out as a note under section 263 of this title.

Section 701(u)(13)(C) of Pub. L. 95–600 provided that: ''The amendments made by this paragraph [amending this section and section 736 of this title] shall apply to transfers beginning after October 9, 1975, and to sales, exchanges, and distributions taking place after such date.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 205(b) of Pub. L. 94–455 effective for taxable years ending after Dec. 31, 1975, see section 205(e) of Pub. L. 94–455, set out as an Effective Date note under section 1254 of this title.

Amendment by section 1042(c)(2) of Pub. L. 94–455 applicable to transfers beginning after Oct. 9, 1975, and to sales, exchanges and distributions taking place after that date, see section 1042(e)(1) of Pub. L. 94–455, set out as a note under section 367 of this title.

Amendment by section 1101(d)(2) of Pub. L. 94–455 applicable to sales, exchanges, or other dispositions after Dec. 31, 1975, in taxable years ending after such date, see section 1101(g)(4) of Pub. L. 94–455, set out as a note under section 995 of this title.

Amendment by section 1901(a)(93) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Section 2110(b) of Pub. L. 94–455, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Subsection (a) [amending this section] shall apply to transactions described in sections 731, 736, 741, or 751 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] which occur after December 31, 1976, in taxable years ending after that date.''

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 211(c) of Pub. L. 91–172, set out as a note under section 301 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–570 applicable to taxable years ending after Sept. 12, 1966, but only in respect of expenditures paid or incurred after such date see section 3 of Pub. L. 89–570, set out as an Effective Date note under section 617 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to dispositions after Dec. 31, 1963, in taxable years ending after such date, see section 231(c) of Pub. L. 88–272, set out as an Effective Date note under section 1250 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 13(f)(1) of Pub. L. 87–834 applicable to taxable years beginning after Dec. 31, 1962, see section 13(g) of Pub. L. 87–834, set out as an Effective Date note under section 1245 of this title.

Amendment by section 14(b)(2) of Pub. L. 87–834 applicable with respect to taxable years beginning after Dec. 31, 1962, see section 14(c) of Pub. L. 87–834, set out as a note under section 312 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 752. Treatment of certain liabilities

(a) Increase in partner's liabilities

Any increase in a partner's share of the liabilities of a partnership, or any increase in a partner's individual liabilities by reason of the as-

sumption by such partner of partnership liabilities, shall be considered as a contribution of money by such partner to the partnership.

(b) Decrease in partner's liabilities

Any decrease in a partner's share of the liabilities of a partnership, or any decrease in a partner's individual liabilities by reason of the assumption by the partnership of such individual liabilities, shall be considered as a distribution of money to the partner by the partnership.

(c) Liability to which property is subject

For purposes of this section, a liability to which property is subject shall, to the extent of the fair market value of such property, be considered as a liability of the owner of the property.

(d) Sale or exchange of an interest

In the case of a sale or exchange of an interest in a partnership, liabilities shall be treated in the same manner as liabilities in connection with the sale or exchange of property not associated with partnerships.

(Aug. 16, 1954, ch. 736, 68A Stat. 251.)

OVERRULING OF RAPHAN CASE

Pub. L. 98–369, div. A, title I, §79, July 18, 1984, 98 Stat. 597, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) GENERAL RULE.—Section 752 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (and the regulations prescribed thereunder) shall be applied without regard to the result reached in the case of Raphan vs the United States, 3 Cl. Ct. 457 (1983).

''(b) REGULATIONS.—In amending the regulations prescribed under section 752 of such Code to reflect subsection (a), the Secretary of the Treasury or his delegate shall prescribe regulations relating to liabilities, including the treatment of guarantees, assumptions, indemnity agreements, and similar arrangements.''

§ 753. Partner receiving income in respect of decedent

The amount includible in the gross income of a successor in interest of a deceased partner under section 736(a) shall be considered income in respect of a decedent under section 691.

(Aug. 16, 1954, ch. 736, 68A Stat. 251.)

§ 754. Manner of electing optional adjustment to basis of partnership property

If a partnership files an election, in accordance with regulations prescribed by the Secretary, the basis of partnership property shall be adjusted, in the case of a distribution of property, in the manner provided in section 734 and, in the case of a transfer of a partnership interest, in the manner provided in section 743. Such an election shall apply with respect to all distributions of property by the partnership and to all transfers of interests in the partnership during the taxable year with respect to which such election was filed and all subsequent taxable years. Such election may be revoked by the partnership, subject to such limitations as may be provided by regulations prescribed by the Secretary.

(Aug. 16, 1954, ch. 736, 68A Stat. 251; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary'' wherever appearing.

§ 755. Rules for allocation of basis

(a) General rule

Any increase or decrease in the adjusted basis of partnership property under section 734(b) (relating to the optional adjustment to the basis of undistributed partnership property) or section 743(b) (relating to the optional adjustment to the basis of partnership property in the case of a transfer of an interest in a partnership) shall, except as provided in subsection (b), be allocated—

(1) in a manner which has the effect of reducing the difference between the fair market value and the adjusted basis of partnership properties, or

(2) in any other manner permitted by regulations prescribed by the Secretary.

(b) Special rule

In applying the allocation rules provided in subsection (a), increases or decreases in the adjusted basis of partnership property arising from a distribution of, or a transfer of an interest attributable to, property consisting of—

(1) capital assets and property described in section 1231(b), or

(2) any other property of the partnership,

shall be allocated to partnership property of a like character except that the basis of any such partnership property shall not be reduced below zero. If, in the case of a distribution, the adjustment to basis of property described in paragraph (1) or (2) is prevented by the absence of such property or by insufficient adjusted basis for such property, such adjustment shall be applied to subsequently acquired property of a like character in accordance with regulations prescribed by the Secretary.

(c) No allocation of basis decrease to stock of corporate partner

In making an allocation under subsection (a) of any decrease in the adjusted basis of partnership property under section 734(b)—

(1) no allocation may be made to stock in a corporation (or any person related (within the meaning of sections 267(b) and 707(b)(1)) to such corporation) which is a partner in the partnership, and

(2) any amount not allocable to stock by reason of paragraph (1) shall be allocated under subsection (a) to other partnership property.

Gain shall be recognized to the partnership to the extent that the amount required to be allocated under paragraph (2) to other partnership property exceeds the aggregate adjusted basis of such other property immediately before the allocation required by paragraph (2).

(Aug. 16, 1954, ch. 736, 68A Stat. 252; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 108–357, title VIII, §834(a), Oct. 22, 2004, 118 Stat. 1592.)

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–357 added subsec. (c).

1976—Subsecs. (a), (b). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary'' wherever appearing.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, § 834(b), Oct. 22, 2004, 118 Stat. 1592, provided that: ''The amendment made by this section [amending this section] shall apply to distributions after the date of the enactment of this Act [Oct. 22, 2004].''

PART III—DEFINITIONS

Sec.
761. Terms defined.

§ 761. Terms defined

(a) Partnership

For purposes of this subtitle, the term ''partnership'' includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a corporation or a trust or estate. Under regulations the Secretary may, at the election of all the members of an unincorporated organization, exclude such organization from the application of all or part of this subchapter, if it is availed of—

(1) for investment purposes only and not for the active conduct of a business,

(2) for the joint production, extraction, or use of property, but not for the purpose of selling services or property produced or extracted, or

(3) by dealers in securities for a short period for the purpose of underwriting, selling, or distributing a particular issue of securities,

if the income of the members of the organization may be adequately determined without the computation of partnership taxable income.

(b) Partner

For purposes of this subtitle, the term ''partner'' means a member of a partnership.

(c) Partnership agreement

For purposes of this subchapter, a partnership agreement includes any modifications of the partnership agreement made prior to, or at, the time prescribed by law for the filing of the partnership return for the taxable year (not including extensions) which are agreed to by all the partners, or which are adopted in such other manner as may be provided by the partnership agreement.

(d) Liquidation of a partner's interest

For purposes of this subchapter, the term ''liquidation of a partner's interest'' means the termination of a partner's entire interest in a partnership by means of a distribution, or a series of distributions, to the partner by the partnership.

(e) Distributions of partnership interests treated as exchanges

Except as otherwise provided in regulations, for purposes of—

(1) section 708 (relating to continuation of partnership),

(2) section 743 (relating to optional adjustment to basis of partnership property), and

(3) any other provision of this subchapter specified in regulations prescribed by the Secretary,

any distribution of an interest in a partnership (not otherwise treated as an exchange) shall be treated as an exchange.

(f) Qualified joint venture

(1) In general

In the case of a qualified joint venture conducted by a husband and wife who file a joint return for the taxable year, for purposes of this title—

(A) such joint venture shall not be treated as a partnership,

(B) all items of income, gain, loss, deduction, and credit shall be divided between the spouses in accordance with their respective interests in the venture, and

(C) each spouse shall take into account such spouse's respective share of such items as if they were attributable to a trade or business conducted by such spouse as a sole proprietor.

(2) Qualified joint venture

For purposes of paragraph (1), the term ''qualified joint venture'' means any joint venture involving the conduct of a trade or business if—

(A) the only members of such joint venture are a husband and wife,

(B) both spouses materially participate (within the meaning of section 469(h) without regard to paragraph (5) thereof) in such trade or business, and

(C) both spouses elect the application of this subsection.

(g) Cross reference

For rules in the case of the sale, exchange, liquidation, or reduction of a partner's interest, see sections 704(b) and 706(c)(2).

(Aug. 16, 1954, ch. 736, 68A Stat. 252; Pub. L. 94–455, title II, § 213(c)(3)(B), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1548, 1834; Pub. L. 96–222, title I, § 102(a)(2)(C), Apr. 1, 1980, 94 Stat. 208; Pub. L. 98–369, div. A, title I, § 75(b), July 18, 1984, 98 Stat. 594; Pub. L. 99–514, title XVIII, § 1805(c)(2), Oct. 22, 1986, 100 Stat. 2810; Pub. L. 110–28, title VIII, § 8215(a), May 25, 2007, 121 Stat. 193.)

AMENDMENTS

2007—Subsecs. (f), (g). Pub. L. 110–28 added subsec. (f) and redesignated former subsec. (f) as (g).

1986—Subsec. (e). Pub. L. 99–514 substituted ''Distributions of partnership interests'' for ''Distributions'' in heading, substituted ''Except as otherwise provided in regulations, for purposes of'' for ''For purposes of'' in introductory provision, and ''any distribution of an interest in a partnership'' for ''any distribution'' in closing provisions.

1984—Subsecs. (e), (f). Pub. L. 98–369 added subsec. (e) and redesignated former subsec. (e) as (f).

1980—Subsec. (a)(3). Pub. L. 96–222 added par. (3).

1976—Subsec. (a). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (e). Pub. L. 94–455, § 213(c)(3)(B), added subsec. (e).

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–28, title VIII, § 8215(c), May 25, 2007, 121 Stat. 194, provided that: ''The amendments made by this section [amending this section, section 1402 of this title, and section 411 of Title 42, The Public Health and Welfare] shall apply to taxable years beginning after December 31, 2006.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

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

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 213(c)(3)(B) of Pub. L. 94–455 applicable in the case of partnership taxable years beginning after Dec. 31, 1975, see section 213(f)(1) of Pub. L. 94–455, set out as a note under section 709 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

PART IV—SPECIAL RULES FOR ELECTING LARGE PARTNERSHIPS

Sec.
771. Application of subchapter to electing large partnerships.
772. Simplified flow-through.
773. Computations at partnership level.
774. Other modifications.
775. Electing large partnership defined.
776. Special rules for partnerships holding oil and gas properties.
777. Regulations.

PRIOR PROVISIONS

A prior part IV, relating to effective date for subchapter, consisted of section 771 of this title, prior to repeal by Pub. L. 94–455, title XIX, § 1901(a)(94), Oct. 4, 1976, 90 Stat. 1780.

AMENDMENTS

1997—Pub. L. 105–34, title XII, § 1221(a), Aug. 5, 1997, 111 Stat. 1001, added part heading and section analysis.

§ 771. Application of subchapter to electing large partnerships

The preceding provisions of this subchapter to the extent inconsistent with the provisions of this part shall not apply to an electing large partnership and its partners.

(Added Pub. L. 105–34, title XII, § 1221(a), Aug. 5, 1997, 111 Stat. 1002.)

PRIOR PROVISIONS

A prior section 771, act Aug. 16, 1954, ch. 736, 68A Stat. 253, related to the effective date for this subchapter, prior to repeal by Pub. L. 94–455, title XIX, § 1901(a)(94), Oct. 4, 1976, 90 Stat. 1780.

EFFECTIVE DATE

Section 1221(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [enacting this part] shall apply to partnership taxable years beginning after December 31, 1997.''

This part applicable to partnership taxable years beginning after Dec. 31, 1997, see section 1226 of Pub. L. 105–34, as amended, set out as an Effective Date of 1997 Amendment note under section 6011 of this title.

§ 772. Simplified flow-through

(a) General rule

In determining the income tax of a partner of an electing large partnership, such partner shall take into account separately such partner's distributive share of the partnership's—

(1) taxable income or loss from passive loss limitation activities,

(2) taxable income or loss from other activities,

(3) net capital gain (or net capital loss)—

(A) to the extent allocable to passive loss limitation activities, and

(B) to the extent allocable to other activities,

(4) tax-exempt interest,

(5) applicable net AMT adjustment separately computed for—

(A) passive loss limitation activities, and

(B) other activities,

(6) general credits,

(7) low-income housing credit determined under section 42,

(8) rehabilitation credit determined under section 47,

(9) foreign income taxes, and

(10) other items to the extent that the Secretary determines that the separate treatment of such items is appropriate.

(b) Separate computations

In determining the amounts required under subsection (a) to be separately taken into account by any partner, this section and section 773 shall be applied separately with respect to such partner by taking into account such partner's distributive share of the items of income, gain, loss, deduction, or credit of the partnership.

(c) Treatment at partner level

(1) In general

Except as provided in this subsection, rules similar to the rules of section 702(b) shall apply to any partner's distributive share of the amounts referred to in subsection (a).

(2) Income or loss from passive loss limitation activities

For purposes of this chapter, any partner's distributive share of any income or loss described in subsection (a)(1) shall be treated as an item of income or loss (as the case may be) from the conduct of a trade or business which is a single passive activity (as defined in section 469). A similar rule shall apply to a partner's distributive share of amounts referred to in paragraphs (3)(A) and (5)(A) of subsection (a).

(3) Income or loss from other activities

(A) In general

For purposes of this chapter, any partner's distributive share of any income or loss de-

scribed in subsection (a)(2) shall be treated as an item of income or expense (as the case may be) with respect to property held for investment.

(B) Deductions for loss not subject to section 67

The deduction under section 212 for any loss described in subparagraph (A) shall not be treated as a miscellaneous itemized deduction for purposes of section 67.

(4) Treatment of net capital gain or loss

For purposes of this chapter, any partner's distributive share of any gain or loss described in subsection (a)(3) shall be treated as a long-term capital gain or loss, as the case may be.

(5) Minimum tax treatment

In determining the alternative minimum taxable income of any partner, such partner's distributive share of any applicable net AMT adjustment shall be taken into account in lieu of making the separate adjustments provided in sections 56, 57, and 58 with respect to the items of the partnership. Except as provided in regulations, the applicable net AMT adjustment shall be treated, for purposes of section 53, as an adjustment or item of tax preference not specified in section 53(d)(1)(B)(ii).

(6) General credits

A partner's distributive share of the amount referred to in paragraph (6) of subsection (a) shall be taken into account as a current year business credit.

(d) Operating rules

For purposes of this section—

(1) Passive loss limitation activity

The term ''passive loss limitation activity'' means—

(A) any activity which involves the conduct of a trade or business, and

(B) any rental activity.

For purposes of the preceding sentence, the term ''trade or business'' includes any activity treated as a trade or business under paragraph (5) or (6) of section 469(c).

(2) Tax-exempt interest

The term ''tax-exempt interest'' means interest excludable from gross income under section 103.

(3) Applicable net AMT adjustment

(A) In general

The applicable net AMT adjustment is—

(i) with respect to taxpayers other than corporations, the net adjustment determined by using the adjustments applicable to individuals, and

(ii) with respect to corporations, the net adjustment determined by using the adjustments applicable to corporations.

(B) Net adjustment

The term ''net adjustment'' means the net adjustment in the items attributable to passive loss activities or other activities (as the case may be) which would result if such items were determined with the adjustments of sections 56, 57, and 58.

(4) Treatment of certain separately stated items

(A) Exclusion for certain purposes

In determining the amounts referred to in paragraphs (1) and (2) of subsection (a), any net capital gain or net capital loss (as the case may be), and any item referred to in subsection (a)(11), shall be excluded.

(B) Allocation rules

The net capital gain shall be treated—

(i) as allocable to passive loss limitation activities to the extent the net capital gain does not exceed the net capital gain determined by only taking into account gains and losses from sales and exchanges of property used in connection with such activities, and

(ii) as allocable to other activities to the extent such gain exceeds the amount allocated under clause (i).

A similar rule shall apply for purposes of allocating any net capital loss.

(C) Net capital loss

The term ''net capital loss'' means the excess of the losses from sales or exchanges of capital assets over the gains from sales or exchange of capital assets.

(5) General credits

The term ''general credits'' means any credit other than the low-income housing credit, the rehabilitation credit, and the foreign tax credit.

(6) Foreign income taxes

The term ''foreign income taxes'' means taxes described in section 901 which are paid or accrued to foreign countries and to possessions of the United States.

(e) Special rule for unrelated business tax

In the case of a partner which is an organization subject to tax under section 511, such partner's distributive share of any items shall be taken into account separately to the extent necessary to comply with the provisions of section 512(c)(1).

(f) Special rules for applying passive loss limitations

If any person holds an interest in an electing large partnership other than as a limited partner—

(1) paragraph (2) of subsection (c) shall not apply to such partner, and

(2) such partner's distributive share of the partnership items allocable to passive loss limitation activities shall be taken into account separately to the extent necessary to comply with the provisions of section 469.

The preceding sentence shall not apply to any items allocable to an interest held as a limited partner.

(Added Pub. L. 105–34, title XII, § 1221(a), Aug. 5, 1997, 111 Stat. 1002; amended Pub. L. 109–58, title XIII, § 1322(a)(3)(I), (J), Aug. 8, 2005, 119 Stat. 1012.)

AMENDMENTS

2005—Subsec. (a)(9) to (11). Pub. L. 109–58, § 1322(a)(3)(I), inserted ''and'' at end of par. (9), redesig-

nated par. (11) as (10), and struck out former par. (10) which read as follows: ''the credit allowable under section 29, and''.

Subsec. (d)(5). Pub. L. 109–58, §1322(a)(3)(J), substituted ''and the foreign tax credit'' for ''the foreign tax credit, and the credit allowable under section 29''.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–58 applicable to credits determined under the Internal Revenue Code of 1986 for taxable years ending after Dec. 31, 2005, see section 1322(c)(1) of Pub. L. 109–58, set out as a note under section 45K of this title.

§ 773. Computations at partnership level

(a) General rule

(1) Taxable income

The taxable income of an electing large partnership shall be computed in the same manner as in the case of an individual except that—

(A) the items described in section 772(a) shall be separately stated, and

(B) the modifications of subsection (b) shall apply.

(2) Elections

All elections affecting the computation of the taxable income of an electing large partnership or the computation of any credit of an electing large partnership shall be made by the partnership; except that the election under section 901, and any election under section 108, shall be made by each partner separately.

(3) Limitations, etc.

(A) In general

Except as provided in subparagraph (B), all limitations and other provisions affecting the computation of the taxable income of an electing large partnership or the computation of any credit of an electing large partnership shall be applied at the partnership level (and not at the partner level).

(B) Certain limitations applied at partner level

The following provisions shall be applied at the partner level (and not at the partnership level):

(i) Section 68 (relating to overall limitation on itemized deductions).

(ii) Sections 49 and 465 (relating to at risk limitations).

(iii) Section 469 (relating to limitation on passive activity losses and credits).

(iv) Any other provision specified in regulations.

(4) Coordination with other provisions

Paragraphs (2) and (3) shall apply notwithstanding any other provision of this chapter other than this part.

(b) Modifications to determination of taxable income

In determining the taxable income of an electing large partnership—

(1) Certain deductions not allowed

The following deductions shall not be allowed:

(A) The deduction for personal exemptions provided in section 151.

(B) The net operating loss deduction provided in section 172.

(C) The additional itemized deductions for individuals provided in part VII of subchapter B (other than section 212 thereof).

(2) Charitable deductions

In determining the amount allowable under section 170, the limitation of section 170(b)(2) shall apply.

(3) Coordination with section 67

In lieu of applying section 67, 70 percent of the amount of the miscellaneous itemized deductions shall be disallowed.

(c) Special rules for income from discharge of indebtedness

If an electing large partnership has income from the discharge of any indebtedness—

(1) such income shall be excluded in determining the amounts referred to in section 772(a), and

(2) in determining the income tax of any partner of such partnership—

(A) such income shall be treated as an item required to be separately taken into account under section 772(a), and

(B) the provisions of section 108 shall be applied without regard to this part.

(Added Pub. L. 105–34, title XII, §1221(a), Aug. 5, 1997, 111 Stat. 1004.)

§ 774. Other modifications

(a) Treatment of certain optional adjustments, etc.

In the case of an electing large partnership—

(1) computations under section 773 shall be made without regard to any adjustment under section 743(b) or 108(b), but

(2) a partner's distributive share of any amount referred to in section 772(a) shall be appropriately adjusted to take into account any adjustment under section 743(b) or 108(b) with respect to such partner.

(b) Credit recapture determined at partnership level

(1) In general

In the case of an electing large partnership—

(A) any credit recapture shall be taken into account by the partnership, and

(B) the amount of such recapture shall be determined as if the credit with respect to which the recapture is made had been fully utilized to reduce tax.

(2) Method of taking recapture into account

An electing large partnership shall take into account a credit recapture by reducing the amount of the appropriate current year credit to the extent thereof, and if such recapture exceeds the amount of such current year credit, the partnership shall be liable to pay such excess.

(3) Dispositions not to trigger recapture

No credit recapture shall be required by reason of any transfer of an interest in an electing large partnership.

(4) Credit recapture

For purposes of this subsection, the term ''credit recapture'' means any increase in tax under section 42(j) or 50(a).

(c) Partnership not terminated by reason of change in ownership

Subparagraph (B) of section 708(b)(1) shall not apply to an electing large partnership.

(d) Partnership entitled to certain credits

The following shall be allowed to an electing large partnership and shall not be taken into account by the partners of such partnership:

(1) The credit provided by section 34.

(2) Any credit or refund under section 852(b)(3)(D) or 857(b)(3)(D).

(e) Treatment of REMIC residuals

For purposes of applying section 860E(e)(6) to any electing large partnership—

(1) all interests in such partnership shall be treated as held by disqualified organizations,

(2) in lieu of applying subparagraph (C) of section 860E(e)(6), the amount subject to tax under section 860E(e)(6) shall be excluded from the gross income of such partnership, and

(3) subparagraph (D) of section 860E(e)(6) shall not apply.

(f) Special rules for applying certain installment sale rules

In the case of an electing large partnership—

(1) the provisions of sections 453(*l*)(3) and 453A shall be applied at the partnership level, and

(2) in determining the amount of interest payable under such sections, such partnership shall be treated as subject to tax under this chapter at the highest rate of tax in effect under section 1 or 11.

(Added Pub. L. 105–34, title XII, § 1221(a), Aug. 5, 1997, 111 Stat. 1005; amended Pub. L. 105–206, title VI, § 6012(c), July 22, 1998, 112 Stat. 819.)

AMENDMENTS

1998—Subsec. (d)(2). Pub. L. 105–206 inserted ''or 857(b)(3)(D)'' before period at end.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

§ 775. Electing large partnership defined

(a) General rule

For purposes of this part—

(1) In general

The term ''electing large partnership'' means, with respect to any partnership taxable year, any partnership if—

(A) the number of persons who were partners in such partnership in the preceding partnership taxable year equaled or exceeded 100, and

(B) such partnership elects the application of this part.

To the extent provided in regulations, a partnership shall cease to be treated as an electing large partnership for any partnership taxable year if in such taxable year fewer than 100 persons were partners in such partnership.

(2) Election

The election under this subsection shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(b) Special rules for certain service partnerships

(1) Certain partners not counted

For purposes of this section, the term ''partner'' does not include any individual performing substantial services in connection with the activities of the partnership and holding an interest in such partnership, or an individual who formerly performed substantial services in connection with such activities and who held an interest in such partnership at the time the individual performed such services.

(2) Exclusion

For purposes of this part, an election under subsection (a) shall not be effective with respect to any partnership if substantially all the partners of such partnership—

(A) are individuals performing substantial services in connection with the activities of such partnership or are personal service corporations (as defined in section 269A(b)) the owner-employees (as defined in section 269A(b)) of which perform such substantial services,

(B) are retired partners who had performed such substantial services, or

(C) are spouses of partners who are performing (or had previously performed) such substantial services.

(3) Special rule for lower tier partnerships

For purposes of this subsection, the activities of a partnership shall include the activities of any other partnership in which the partnership owns directly an interest in the capital and profits of at least 80 percent.

(c) Exclusion of commodity pools

For purposes of this part, an election under subsection (a) shall not be effective with respect to any partnership the principal activity of which is the buying and selling of commodities (not described in section 1221(a)(1)), or options, futures, or forwards with respect to such commodities.

(d) Secretary may rely on treatment on return

If, on the partnership return of any partnership, such partnership is treated as an electing large partnership, such treatment shall be binding on such partnership and all partners of such partnership but not on the Secretary.

(Added Pub. L. 105–34, title XII, § 1221(a), Aug. 5, 1997, 111 Stat. 1006; amended Pub. L. 106–170, title V, § 532(c)(2)(G), Dec. 17, 1999, 113 Stat. 1930.)

AMENDMENTS

1999—Subsec. (c). Pub. L. 106–170 substituted ''section 1221(a)(1)'' for ''section 1221(1)''.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any trans-

action entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

§ 776. Special rules for partnerships holding oil and gas properties

(a) Computation of percentage depletion

In the case of an electing large partnership, except as provided in subsection (b)—

(1) the allowance for depletion under section 611 with respect to any partnership oil or gas property shall be computed at the partnership level without regard to any provision of section 613A requiring such allowance to be computed separately by each partner,

(2) such allowance shall be determined without regard to the provisions of section 613A(c) limiting the amount of production for which percentage depletion is allowable and without regard to paragraph (1) of section 613A(d), and

(3) paragraph (3) of section 705(a) shall not apply.

(b) Treatment of certain partners

(1) In general

In the case of a disqualified person, the treatment under this chapter of such person's distributive share of any item of income, gain, loss, deduction, or credit attributable to any partnership oil or gas property shall be determined without regard to this part. Such person's distributive share of any such items shall be excluded for purposes of making determinations under sections 772 and 773.

(2) Disqualified person

For purposes of paragraph (1), the term ''disqualified person'' means, with respect to any partnership taxable year—

(A) any person referred to in paragraph (2) or (4) of section 613A(d) for such person's taxable year in which such partnership taxable year ends, and

(B) any other person if such person's average daily production of domestic crude oil and natural gas for such person's taxable year in which such partnership taxable year ends exceeds 500 barrels.

(3) Average daily production

For purposes of paragraph (2), a person's average daily production of domestic crude oil and natural gas for any taxable year shall be computed as provided in section 613A(c)(2)—

(A) by taking into account all production of domestic crude oil and natural gas (including such person's proportionate share of any production of a partnership),

(B) by treating 6,000 cubic feet of natural gas as a barrel of crude oil, and

(C) by treating as 1 person all persons treated as 1 taxpayer under section 613A(c)(8) or among whom allocations are required under such section.

(Added Pub. L. 105–34, title XII, § 1221(a), Aug. 5, 1997, 111 Stat. 1007.)

§ 777. Regulations

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

(Added Pub. L. 105–34, title XII, § 1221(a), Aug. 5, 1997, 111 Stat. 1008.)

Subchapter L—Insurance Companies

Part
I. Life insurance companies.
II. Other insurance companies.
III. Provisions of general application.

AMENDMENTS

1988—Pub. L. 100–647, title I, § 1018(u)(32), Nov. 10, 1988, 102 Stat. 3592, redesignated parts III and IV as II and III, respectively, and struck out former Part II ''Mutual insurance companies (other than life and certain marine insurance companies and other than fire or flood insurance companies which operate on basis of perpetual policies of premium deposits).''

1962—Pub. L. 87–834, § 8(g)(4)(A), Oct. 16, 1962, 76 Stat. 999, substituted ''and certain marine insurance companies and other than fire or flood insurance companies which operate on basis of perpetual policies or premium deposits'' for ''or marine or fire insurance companies issuing perpetual policies'' in heading of part II.

PART I—LIFE INSURANCE COMPANIES

Subpart
A. Tax imposed.
B. Life insurance gross income.
C. Life insurance deductions.
D. Accounting, allocation, and foreign provisions.
E. Definitions and special rules.

SUBPART A—TAX IMPOSED

Sec.
801. Tax imposed.

§ 801. Tax imposed

(a) Tax imposed

(1) In general

A tax is hereby imposed for each taxable year on the life insurance company taxable income of every life insurance company. Such tax shall consist of a tax computed as provided in section 11 as though the life insurance company taxable income were the taxable income referred to in section 11.

(2) Alternative tax in case of capital gains

(A) In general

If a life insurance company has a net capital gain for the taxable year, then (in lieu of the tax imposed by paragraph (1)), there is hereby imposed a tax (if such tax is less than the tax imposed by paragraph (1)).

(B) Amount of tax

The amount of the tax imposed by this paragraph shall be the sum of—

(i) a partial tax, computed as provided by paragraph (1), on the life insurance company taxable income reduced by the amount of the net capital gain, and

(ii) an amount determined as provided in section 1201(a) on such net capital gain.

(C) Net capital gain not taken into account in determining small life insurance company deduction

For purposes of subparagraph (B)(i), the amount allowable as a deduction under paragraph (2) of section 804 shall be determined

by reducing the tentative LICTI by the amount of the net capital gain (determined without regard to items attributable to noninsurance businesses).

(b) Life insurance company taxable income

For purposes of this part, the term ''life insurance company taxable income'' means—

(1) life insurance gross income, reduced by

(2) life insurance deductions.

(c) Taxation of distributions from pre-1984 policyholders surplus account

For provision taxing distributions to shareholders from pre-1984 policyholders surplus account, see section 815.

(Added Pub. L. 98–369, div. A, title II, § 211(a), July 18, 1984, 98 Stat. 720; amended Pub. L. 99–514, title X, § 1011(b)(3), Oct. 22, 1986, 100 Stat. 2389.)

PRIOR PROVISIONS

A prior section 801, added Pub. L. 86–69, § 2(a), June 25, 1959, 73 Stat. 112; amended Pub. L. 87–858, § 3(a), Oct. 23, 1962, 76 Stat. 1134; Pub. L. 91–172, title I, § 121(b)(5)(B), Dec. 30, 1969, 83 Stat. 541; Pub. L. 93–406, title II, § 2002(g)(11), Sept. 2, 1974, 88 Stat. 970; Pub. L. 94–455, title XV, § 1505(a), title XIX, §§ 1901(c)(6), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1738, 1803, 1834; Pub. L. 95–600, title VII, § 703(j)(4), Nov. 6, 1978, 92 Stat. 2941, defined ''life insurance company'' and related terms, prior to the general revision of this part by Pub. L. 98–369, § 211(a). See section 816 of this title.

Another prior section 801, acts Aug. 16, 1954, ch. 736, 68A Stat. 255; Mar. 13, 1956, ch. 83, § 2, 70 Stat. 36, contained provisions similar to this section, prior to the the general revision of this part by Pub. L. 86–69, § 2(a).

A prior section 802, added Pub. L. 86–69, § 2(a), June 25, 1959, 73 Stat. 115; amended Pub. L. 87–858, § 3(b)(1), Oct. 23, 1962, 76 Stat. 1136; Pub. L. 88–272, title II, § 235(c)(1), Feb. 26, 1964, 78 Stat. 126; Pub. L. 91–172, title V, § 511(c)(1), Dec. 30, 1969, 83 Stat. 637; Pub. L. 94–455, title XIX, § 1901(a)(95), (b)(33)(E), Oct. 4, 1976, 90 Stat. 1780, 1801; Pub. L. 95–600, title III, § 301(b)(8), Nov. 6, 1978, 92 Stat. 2821, contained provisions similar to this section, prior to the general revision of this part by Pub. L. 98–369, § 211(a).

Another prior section 802, acts Aug. 16, 1954, ch. 736, 68A Stat. 255; Mar. 13, 1956, ch. 83, § 2, 70 Stat. 38; July 24, 1956, ch. 696, §§ 1, 2(b), 70 Stat. 633; Mar. 17, 1958, Pub. L. 85–345, §§ 1, 2(a), 72 Stat. 36, contained provision similar to this section, prior to the general revision of this part by Pub. L. 86–69, § 2(a).

AMENDMENTS

1986—Subsec. (a)(2)(C). Pub. L. 99–514 substituted ''the amount allowable as a deduction under paragraph (2)'' for ''the amounts allowable as deductions under paragraphs (2) and (3)'' in text and struck from heading ''special life insurance company deduction and'' before ''small''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1011(c)(1) of Pub. L. 99–514, set out as a note under section 453B of this title.

EFFECTIVE DATE

Section 215 of Pub. L. 98–369 provided that: ''The amendments made by this subtitle [subtitle A (§§ 211–219) of title II of div. A of Pub. L. 98–369, amending this part, enacting section 845 of this title, amending sections 72, 80, 243, 381, 401, 453B, 542, 594, 832, 841, 844, 891, 953, 1016, 1035, 1201, 1232A, 1351, 1503, 1504, 1561, 1563, 4371, 6501, 6511, 6601, and 6611 of this title, and enacting provisions set out as notes under this section and sections 453B, 806, 807, 809, 814, 816, 845, and 6655 of this title] shall apply to taxable years beginning after December 31, 1983.''

TREATMENT OF CERTAIN WORKERS' COMPENSATION FUNDS

Pub. L. 100–647, title VI, § 6076, Nov. 10, 1988, 102 Stat. 3706, provided that:

''(a) TREATMENT FOR TAXABLE YEARS BEGINNING BEFORE 1987.—In the case of any taxable year beginning before January 1, 1987, a deficiency shall not be assessed against (and if assessed, shall not be collected from) any qualified group self-insurers' fund to the extent such deficiency is attributable to the timing of policyholder dividend deductions.

''(b) QUALIFIED GROUP SELF-INSURERS' FUND.—For purposes of this section, the term 'qualified group self-insurers' fund' means any group of 2 or more employers which has been in existence for not less than 2 years, and who enter into agreements to pool their liabilities under the State workers' disability compensation laws for the purpose of qualifying as a self-insurer under such laws, if—

''(1) the group has received a certificate of approval from, and is subject to regulation by, the State board or agency that is responsible for administering the State workers' disability compensation laws,

''(2) each employer who is a member of the group, by written agreement, is jointly and severally bound to assume and discharge, by payment, any lawful judgment or award entered by a court of competent jurisdiction or by the State agency responsible for administering the State workers' disability compensation laws against a member of the group,

''(3) the group is prohibited by State law or regulation from using the monies collected for a purpose other than to pay, or to reserve against, claims under the State workers' disability compensation laws and expenses,

''(4) the group is prohibited by State law or regulation from taking projected investment income into account in determining members' premiums,

''(5) the group is required by State law or regulation to submit to the State board or agency that is responsible for administering the State workers' disability compensation laws an audited financial statement,

''(6) the group's investments are limited by State law or regulation to bonds, notes, or other evidences of indebtedness issued, assumed or guaranteed by the United States of America, or by an agency or instrumentality thereof, certificates of deposit in a federally insured bank, shares or savings deposits in a federally insured savings and loan association or credit union, and certificates of deposit issued by a commercial bank duly chartered under State law, and other investments which are approved by the State board or agency that is responsible for administering the State workers' disability compensation laws, and

''(7) the group exclusively covers workers' compensation liability, is not a commercial insurance carrier or company licensed by the State board, agency, or commissioner responsible for regulating and licensing insurance carriers and companies; and is not subject to filing under the regulatory statements of the National Association of Insurance Commissioners.''

TREATMENT OF CERTAIN MARKET DISCOUNT BONDS

Section 1011(d) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1010(a)(2), (3), Nov. 10, 1988, 102 Stat. 3450, 3451, provided that:

''(1) IN GENERAL.—Notwithstanding the amendments made by subtitle B of title III [amending sections 593, 631, 852, 1201, and 1445 of this title and enacting provisions set out as notes under sections 631 and 1201 of this title], any gain recognized by a qualified life insurance company on the redemption at maturity of any market discount bond (as defined in section 1278 of the Internal

Revenue Code of 1986) which was issued before July 19, 1984, and acquired by such company on or before September 25, 1985, shall be subject to tax at the rate of 31.6 percent. The preceding sentence shall apply only if the tax determined under the preceding sentence is less than the tax which would otherwise be imposed.

''(2) QUALIFIED LIFE INSURANCE COMPANY.—For purposes of paragraph (1), the term 'qualified life insurance company' means any life insurance company subject to tax under part I of subchapter L of chapter 1 of the Internal Revenue Code of 1986.''

WAIVER OF INTEREST ON CERTAIN UNDERPAYMENTS OF TAX

Section 1829 of Pub. L. 99–514 provided that: ''No interest shall be payable for any period before July 19, 1984, on any underpayment of a tax imposed by the Internal Revenue Code of 1954 [now 1986], to the extent such underpayment was created or increased by any provision of subtitle A of title II of the Tax Reform Act of 1984 [see Effective Date note above] (relating to taxation of life insurance companies).''

SCOPE OF SECTION 255 OF THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982

Section 1830 of Pub. L. 99–514 provided that: ''In the case of any taxable year beginning before January 1, 1982, in applying the provisions of section 255(c)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 255(c)(2) of Pub. L. 97–248, 96 Stat. 534, formerly set out as a note under section 809 of this title], the Internal Revenue Service shall give full and complete effect to the terms of any modified coinsurance contract. The terms to be given effect within the meaning of this provision shall include, but are not limited to, the effective date and investment income rate as stated in such contract.''

TREATMENT OF CERTAIN SELF-INSURED WORKERS' COMPENSATION FUNDS

Section 1879(q) of Pub. L. 99–514 provided that:

''(1) MORATORIUM ON COLLECTION ACTIVITIES.—During the period beginning on the date of the enactment of this Act [Oct. 22, 1986] and ending on August 16, 1987, the Secretary of the Treasury or his delegate—

''(A) shall suspend any pending audit of any self-insured workers' compensation fund where the audit involves the issue of whether such fund is a mutual insurance company,

''(B) shall not initiate any audit of any such fund involving such issue, and

''(C) shall take no steps to collect from such fund any underpayment, interest, or penalty involving such issue.

''(2) SUSPENSION OF RUNNING OF INTEREST.—No interest shall be payable under chapter 67 of the Internal Revenue Code of 1986 on any underpayment by a self-insured workers' compensation fund involving such issue for the period beginning on August 16, 1986, and ending on August 16, 1987.

''(3) ADDITIONAL TIME TO FILE TAX COURT PROCEEDING.—If the period during which a petition involving such issue could have been filed with the Tax Court by any self-insured workers' compensation fund had not expired before August 16, 1986, such period shall not expire before August 16, 1987.

''(4) SELF-INSURED WORKERS' COMPENSATION FUND.—For purposes of this subsection, the term 'self-insured workers' compensation fund' means any self-insured workers' compensation fund established pursuant to applicable State law regulating self-insured workers' compensation funds.''

RESERVES COMPUTED ON NEW BASIS; FRESH START

Pub. L. 98–369, title II, § 216, July 18, 1984, 98 Stat. 758, as amended by Pub. L. 99–514, § 2, title XVIII, § 1822, Oct. 22, 1986, 100 Stat. 2095, 2844; Pub. L. 100–647, title I, § 1018(i), Nov. 10, 1988, 102 Stat. 3583, provided that:

''(a) RECOMPUTATION OF RESERVES.—

''(1) IN GENERAL.—As of the beginning of the first taxable year beginning after December 31, 1983, for purposes of subchapter L of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (other than section 816 thereof), the reserve for any contract shall be recomputed as if the amendments made by this subtitle [see Effective Date note above] had applied to such contract when it was issued.

''(2) PREMIUMS EARNED.—For the first taxable year beginning after December 31, 1983, in determining 'premiums earned on insurance contracts during the taxable year' as provided in section 832(b)(4) of the Internal Revenue Code of 1986, life insurance reserves which are included in unearned premiums on outstanding business at the end of the preceding taxable year shall be determined as provided in section 807 of the Internal Revenue Code of 1986, as amended by this subtitle, as though section 807 was applicable to such reserves in such preceding taxable year.

''(3) ISSUANCE DATE FOR GROUP CONTRACTS.—For purposes of this subsection, the issuance date of any group contract shall be determined under section 807(e)(2) of the Internal Revenue Code of 1986 (as added by this subtitle), except that if such issuance date cannot be determined, the issuance date shall be determined on the basis prescribed by the Secretary of the Treasury or his delegate for purposes of this subsection.

''(b) FRESH START.—

''(1) IN GENERAL.—Except as provided in paragraph (2), in the case of any insurance company, any change in the method of accounting (and any change in the method of computing reserves) between such company's first taxable year beginning after December 31, 1983, and the preceding taxable year which is required solely by the amendments made by this subtitle [see Effective Date note above] shall be treated as not being a change in the method of accounting (or change in the method of computing reserves) for purposes of the Internal Revenue Code of 1986. The preceding sentence shall apply for purposes of computing the earnings and profits of any insurance company for its 1st taxable year beginning in 1984. The preceding sentence shall be applied by substituting '1985' for '1984' in the case of an insurance company which is a member of a controlled group (as defined in section 806(d)(3)), the common parent of which is

''(A) a company having its principal place of business in Alabama and incorporated in Delaware on November 29, 1979, or

''(B) a company having its principal place of business in Houston, Texas, and incorporated in Delaware on June 9, 1947.

''(2) TREATMENT OF ADJUSTMENTS FROM YEARS BEFORE 1984.—

''(A) ADJUSTMENTS ATTRIBUTABLE TO DECREASES IN RESERVES.—No adjustment under section 810(d) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act [July 18, 1984]) attributable to any decrease in reserves as a result of a change in a taxable year beginning before 1984 shall be taken into account in any taxable year beginning after 1983.

''(B) ADJUSTMENTS ATTRIBUTABLE TO INCREASES IN RESERVES.—

''(i) IN GENERAL.—Any adjustment under section 810(d) of the Internal Revenue Code of 1986 (as so in effect) attributable to an increase in reserves as a result of a change in a taxable year beginning before 1984 shall be taken into account in taxable years beginning after 1983 to the extent that—

''(I) the amount of the adjustments which would be taken into account under such section in taxable years beginning after 1983 without regard to this subparagraph, exceeds

''(II) the amount of any fresh start adjustment attributable to contracts for which there was such an increase in reserves as a result of such change.

''(ii) FRESH START ADJUSTMENT.—For purposes of clause (i), the fresh start adjustment with respect to any contract is the excess (if any) of—

''(I) the reserve attributable to such contract as of the close of the taxpayer's last taxable year beginning before January 1, 1984, over

''(II) the reserve for such contract as of the beginning of the taxpayer's first taxable year beginning after 1983 as recomputed under subsection (a) of this section.

''(C) RELATED INCOME INCLUSIONS NOT TAKEN INTO ACCOUNT TO THE EXTENT DEDUCTION DISALLOWED UNDER SUBPARAGRAPH (b).—No premium shall be included in income to the extent such premium is directly related to an increase in a reserve for which a deduction is disallowed by subparagraph (B).

''(3) REINSURANCE TRANSACTIONS, AND RESERVE STRENGTHENING, AFTER SEPTEMBER 27, 1983.—

''(A) IN GENERAL.—Paragraph (1) shall not apply (and section 807(f) of the Internal Revenue Code of 1986 as amended by this subtitle shall apply)—

''(i) to any reserve transferred pursuant to—

''(I) a reinsurance agreement entered into after September 27, 1983, and before January 1, 1984, or

''(II) a modification of a reinsurance agreement made after September 27, 1983, and before January 1, 1984, and

''(ii) to any reserve strengthening reported for Federal income tax purposes after September 27, 1983, for a taxable year ending before January 1, 1984.

Clause (ii) shall not apply to the computation of reserves on any contract issued if such computation employs the reserve practice used for purposes of the most recent annual statement filed before September 27, 1983, for the type of contract with respect to which such reserves are set up. For purposes of this subparagraph, if the reinsurer's taxable year is not a calendar year, the first day of the reinsurer's first taxable year beginning after December 31, 1983, shall be substituted for 'January 1, 1984' each place it appears.

''(B) TREATMENT OF RESERVE ATTRIBUTABLE TO SECTION 818(c) ELECTION.—In the case of any reserve described in subparagraph (A), for purposes of section 807(f) of the Internal Revenue Code of 1986, any change in the treatment of any contract to which an election under section 818(c) of such Code (as in effect on the day before the date of the enactment of this Act) applied shall be treated as a change in the basis for determining the amount of any reserve.

''(C) 10-YEAR SPREAD INAPPLICABLE WHERE NO 10-YEAR SPREAD UNDER PRIOR LAW.—In the case of any item to which section 807(f) of such Code applies by reason of subparagraph (A) or (B), such item shall be taken into account for the first taxable year beginning after December 31, 1983 (in lieu of over the 10-year period otherwise provided in such section) unless the item would have been required to be taken into account over a period of 10 taxable years under section 810(d) of such Code (as in effect on the day before the date of the enactment of this Act).

''(D) DISALLOWANCE OF SPECIAL LIFE INSURANCE COMPANY DEDUCTION AND SMALL LIFE INSURANCE COMPANY DEDUCTION.—Any amount included in income under section 807(f) of such Code by reason of subparagraph (A) or (B) (and any income attributable to expenses transferred in connection with the transfer of reserves described in subparagraph (A)) shall not be taken into account for purposes of determining the amount of special life insurance company deduction and the small life insurance company deduction.

''(E) DISALLOWANCE OF DEDUCTIONS UNDER [FORMER] SECTION 809(d).—No deduction shall be allowed under paragraph (5) or (6) of [former] section 809(d) of such Code (as in effect before the amendments made by this subtitle) with respect to any amount described in either such paragraph which is transferred in connection with the transfer of reserves described in subparagraph (A).

''(4) ELECTIONS UNDER SECTION 818(c) AFTER SEPTEMBER 27, 1983, NOT TO TAKE EFFECT.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), any election after September 27, 1983, under section 818(c) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act) shall not take effect.

''(B) EXCEPTION FOR CERTAIN CONTRACTS ISSUED UNDER PLAN OF INSURANCE FIRST FILED AFTER MARCH 1, 1982, AND BEFORE SEPTEMBER 28, 1983.—Paragraph (3) and subparagraph (A) of this paragraph shall not apply to any election under such section 818(c) if more than 95 percent of the reserves computed in accordance with such election are attributable to risks under life insurance contracts issued by the taxpayer under a plan of insurance first filed after March 1, 1982, and before September 28, 1983.

''(C) SECTION 818(c) ELECTIONS MADE BY CERTAIN ACQUIRED COMPANIES.—

''(i) IN GENERAL.—If the case of any corporation—

''(I) which made an election under such section 818(c) BEFORE SEPTEMBER 28, 1983, AND

''(II) which was acquired in a qualified stock purchase (as defined in section 338(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) before December 31, 1983,

the fact that such corporation is treated as a new corporation under section 338 of such Code shall not result in the election described in subclause (I) not applying to such new corporation.

''(ii) TIME FOR MAKING SECTION 818(c) OR 338 ELECTION.—In the case of any corporation described in clause (i), the time for making an election under section 818(c) of such Code (with respect to the first taxable year of the corporation beginning in 1983 and ending after September 28, 1983), or making an election under section 338 of such Code with respect to the qualified stock purchase described in clause (i)(II), shall not expire before the close of the 60th day after the date of the enactment of the Tax Reform Act of 1986 [Oct. 22, 1986].

''(iii) STATUTE OF LIMITATIONS.—In the case of any such election under section 818(c) or 338 of such Code which would not have been timely made but for clause (ii), the period for assessing any deficiency attributable to such election (or for filing claim for credit or refund of any overpayment attributable to such election) shall not expire before the date 2 years after the date of the enactment of this Act [July 18, 1984].

''(5) RECAPTURE OF REINSURANCE AFTER DECEMBER 31, 1983.—If (A) insurance or annuity contracts in force on December 31, 1983, are subject to a conventional coinsurance agreement entered into after December 31, 1981, and before January 1, 1984, and (B) such contracts are recaptured by the reinsured in any taxable year beginning after December 31, 1983, then—

''(i) if the amount of the reserves with respect to the recaptured contracts, computed at the date of recapture, that the reinsurer would have taken into account under section 810(c) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act) exceeds the amount of the reserves with respect to the recaptured contracts, computed at the date of recapture, taken into account by the reinsurer under section 807(c) of the Internal Revenue Code of 1986 (as amended by this subtitle), such excess (but not greater than the amount of such excess if computed on January 1, 1984) shall be taken into account by the reinsurer under the method described in section 807(f)(1)(B)(ii) of the Internal Revenue Code of 1986 (as amended by this subtitle) commencing with the taxable year of recapture, and

''(ii) the amount, if any, taken into account by the reinsurer under clause (i) for purposes of part I

of subchapter L of chapter 1 of the Internal Revenue Code of 1986 shall be taken into account by the reinsured under the method described in section 807(f)(1)(B)(i) of the Internal Revenue Code of 1986 (as amended by this subtitle) commencing with the taxable year of recapture.

The excess described in clause (i) shall be reduced by any portion of such excess to which section 807(f) of the Internal Revenue Code of 1986 applies by reason of paragraph (3) of this subsection. For purposes of this paragraph, the term 'reinsurer' refers to the taxpayer that held reserves with respect to the recaptured contracts as of the end of the taxable year preceding the first taxable year beginning after December 31, 1983, and the term 'reinsured' refers to the taxpayer to which such reserves are ultimately transferred upon termination.

''(c) ELECTION NOT TO HAVE RESERVES RECOMPUTED.—

''(1) IN GENERAL.—If a qualified life insurance company makes an election under this paragraph—

''(A) subsection (a) shall not apply to such company, and

''(B) as of the beginning of the first taxable year beginning after December 31, 1983, and thereafter, the reserve for any contract issued before the first day of such taxable year by such company shall be the statutory reserve for such contract (within the meaning of [former] section 809(b)(4)(B)(i) of the Internal Revenue Code of 1986).

''(2) ELECTION WITH RESPECT TO CONTRACTS ISSUED AFTER 1983 AND BEFORE 1989.—

''(A) IN GENERAL.—If—

''(i) a qualified life insurance company makes an election under paragraph (1), and

''(ii) the tentative LICTI (within the meaning of section 806(c) of such Code) of such company for its first taxable year beginning after December 31, 1983, does not exceed $3,000,000 (determined with regard to this paragraph),

such company may elect under this paragraph to have the reserve for any contract issued on or after the first day of such first taxable year and before January 1, 1989, be equal to the greater of the statutory reserve for such contract (adjusted as provided in subparagraph (B)) or the net surrender value of such contract (as defined in section 807(e)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]).

''(B) ADJUSTMENT TO RESERVES.—If this paragraph applies to any contract, the opening and closing statutory reserves for such contract shall be adjusted as provided under the principles of section 805(c)(1) of such Code (as in effect for taxable years beginning in 1982 and 1983), except that section 805(c)(1)(B)(ii) of such Code (as so in effect) shall be applied by substituting—

''(i) the prevailing State assumed interest rate (within the meaning of section 807(c)(4) of such Code), for

''(ii) the adjusted reserves rate.

''(3) QUALIFIED LIFE INSURANCE COMPANY.—For purposes of this subsection, the term 'qualified life insurance company' means any life insurance company which, as of December 31, 1983, had assets of less than $100,000,000 (determined in the same manner as under section 806(b)(3) of such Code).

''(4) SPECIAL RULES FOR CONTROLLED GROUPS.—For purposes of applying the dollar limitations of paragraphs (2) and (3), rules similar to the rules of section 806(d) of such Code shall apply.

''(5) ELECTIONS.—Any election under paragraph (1) or (2)—

''(A) shall be made at such time and in such manner as the Secretary of the Treasury may prescribe, and

''(B) once made, shall be irrevocable.''

TREATMENT OF CERTAIN COMPANIES OPERATING BOTH AS STOCK AND MUTUAL COMPANY

Section 217(e) of Pub. L. 98–369 provided that: ''If, during the 10-year period ending on December 31, 1983, a company has, as authorized by the law of the State in which the company is domiciled, been operating as a mutual life insurance company with shareholders, such company shall be treated as a stock life insurance company.''

TREATMENT OF REINSURANCE AGREEMENTS REQUIRED BY NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

Section 217(g) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Effective for taxable years beginning after December 31, 1981, and before January 1, 1984, subsections (c)(1)(F) and (d)(12) of section 809 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect on the day before the date of the enactment of this Act [July 18, 1984]) shall not apply to dividends to policyholders reimbursed to the taxpayer by a reinsurer in respect of accident and health policies reinsured under a reinsurance agreement entered into before June 30, 1955, pursuant to the direction of the National Association of Insurance Commissioners and approved by the State insurance commissioner of the taxpayer's State of domicile. For purposes of subchapter L of chapter 1 of such Code (as in effect on the day before the date of the enactment of this Act) any such dividends shall be treated as dividends of the reinsurer and not the taxpayer.''

REPORTS TO CONGRESS ON REVENUE, SEGMENT BALANCE, ETC.

Section 231 of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) REVENUE REPORTS.—Not later than July 1, 1985, and July 1 of each calendar year thereafter, the Secretary of the Treasury shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on—

''(1) the aggregate amount of revenue received under part I of subchapter L of chapter 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for the most recent taxable years for which data are available,

''(2) a comparison between the amount of such revenue and the amount anticipated by reason of changes made by the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248] or the Life Insurance Tax Act of 1984 [probably means title II of div. A of Pub. L. 98–369], and

''(3) the reasons for any difference between such aggregate revenues and anticipated revenues.

''(b) REPORT WITH RESPECT TO SEGMENT BALANCE, ETC.—

''(1) IN GENERAL.—The Secretary of the Treasury (in consultation with the Joint Committee on Taxation, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate) shall conduct a full and complete study of the operation of part I of subchapter L of chapter 1 of the Internal Revenue Code of 1986 during 1984, 1985, and 1986. Such study shall also include an analysis of life insurance products and the taxation thereof. Such study shall also include an analysis of whether part I of such subchapter L operates as a disincentive to growing companies.

''(2) ITEMS TO BE INCLUDED.—The study conducted under paragraph (1) shall include—

''(A) an analysis of the portion of the taxes paid by mutual life insurance companies and stock life insurance companies, and

''(B) any other data considered relevant by either stock life insurance companies or mutual life insurance companies in determining appropriate segment balance, such as the respective amounts of the following items held by each segment of the industry—

''(i) equity,

''(ii) life insurance reserves,

''(iii) other types of reserves,

''(iv) dividends paid to policyholders and shareholders,

''(v) pension business,

''(vi) total assets, and

''(vii) gross receipts.

Such report shall also include an analysis of the extent to which taxes paid by stockholders of life insurance companies shall be included in analyzing segment balance.

''(3) REPORTS.—

''(A) INTERIM REPORTS.—The Secretary of the Treasury shall submit interim reports on the study conducted under this subsection to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than July 1, 1986, 1987, and 1988.

''(B) FINAL REPORT.—Not later than January 1, 1989, the Secretary of the Treasury shall submit a final report on the study conducted under this subsection to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

''(c) AUTHORITY TO REQUIRE DATA.—The Secretary of the Treasury shall have authority to require reporting of such data with respect to life insurance companies and their products as may be necessary to carry out the purposes of this section.''

SUBPART B—LIFE INSURANCE GROSS INCOME

Sec.
803. Life insurance gross income.

§ 803. Life insurance gross income

(a) In general

For purposes of this part, the term ''life insurance gross income'' means the sum of the following amounts:

(1) Premiums

(A) The gross amount of premiums and other consideration on insurance and annuity contracts, less

(B) return premiums, and premiums and other consideration arising out of indemnity reinsurance.

(2) Decreases in certain reserves

Each net decrease in reserves which is required by section 807(a) to be taken into account under this paragraph.

(3) Other amounts

All amounts not includible under paragraph (1) or (2) which under this subtitle are includible in gross income.

(b) Special rules for premiums

(1) Certain items included

For purposes of subsection (a)(1)(A), the term ''gross amount of premiums and other consideration'' includes—

(A) advance premiums,

(B) deposits,

(C) fees,

(D) assessments,

(E) consideration in respect of assuming liabilities under contracts not issued by the taxpayer, and

(F) the amount of policyholder dividends reimbursable to the taxpayer by a reinsurer in respect of reinsured policies,

on insurance and annuity contracts.

(2) Policyholder dividends excluded from return premiums

For purposes of subsection (a)(1)(B)—

(A) In general

Except as provided in subparagraph (B), the term ''return premiums'' does not include any policyholder dividends.

(B) Exception for indemnity reinsurance

Subparagraph (A) shall not apply to amounts of premiums or other consideration returned to another life insurance company in respect of indemnity reinsurance.

(Added Pub. L. 98–369, div. A, title II, § 211(a), July 18, 1984, 98 Stat. 721.)

PRIOR PROVISIONS

A prior section 803, acts Aug. 16, 1954, ch. 736, 68A Stat. 256; Mar. 13, 1956, ch. 83, § 2, 70 Stat. 39, related to income and deductions in the case of life insurance companies, prior to the general revision of this part by Pub. L. 86–69, § 2(a), June 25, 1959, 73 Stat. 112.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as a note under section 801 of this title.

SUBPART C—LIFE INSURANCE DEDUCTIONS

Sec.
804. Life insurance deductions.
805. General deductions.
806. Small life insurance company deduction.
807. Rules for certain reserves.
808. Policyholder dividends deduction.
[809. Repealed.]
810. Operations loss deduction.

AMENDMENTS

2004—Pub. L. 108–218, title II, § 205(b)(7), Apr. 10, 2004, 118 Stat. 610, struck out item 809 ''Reduction in certain deductions of mutual life insurance companies''.

1986—Pub. L. 99–514, title X, § 1011(b)(11)(B), Oct. 22, 1986, 100 Stat. 2389, substituted ''Small life insurance company deduction'' for ''Special deductions'' in item 806.

§ 804. Life insurance deductions

For purposes of this part, the term ''life insurance deductions'' means—

(1) the general deductions provided in section 805, and

(2) the small life insurance company deduction (if any) determined under section 806(a).

(Added Pub. L. 98–369, div. A, title II, § 211(a), July 18, 1984, 98 Stat. 722; amended Pub. L. 99–514, title X, § 1011(b)(2), Oct. 22, 1986, 100 Stat. 2389.)

PRIOR PROVISIONS

A prior section 804, added Pub. L. 86–69, § 2(a), June 25, 1959, 73 Stat. 115; amended Pub. L. 87–858, § 3(b)(2), Oct. 23, 1962, 76 Stat. 1137; Pub. L. 88–272, title II, § 214(b)(3), Feb. 26, 1964, 78 Stat. 55; Pub. L. 91–172, title IV, § 401(b)(2)(D), Dec. 30, 1969, 83 Stat. 602; Pub. L. 94–455, title XIX, § 1901(a)(96), (b)(1)(J)(i), (iii), (K), (M), (33)(F), Oct. 4, 1976, 90 Stat. 1780, 1791, 1801, defined the term ''taxable investment income'' and provided for the computation of such income, prior to the general revision of this part by Pub. L. 98–369, § 211(a).

Another prior section 804, acts Aug. 16, 1954, ch. 736, 68A Stat. 258; Mar. 13, 1956, ch. 83, § 2, 70 Stat. 41, related to reserve and other policy liability deductions, prior to the general revision of this part by Pub. L. 86–69, § 2(a).

AMENDMENTS

1986—Pars. (2), (3). Pub. L. 99–514 redesignated par. (3) as (2), substituted ''section 806(a)'' for ''section 806(b)'',

and struck out former par. (2), which read as follows: ''the special life insurance company deduction determined under section 806(a), and''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1011(c)(1) of Pub. L. 99–514, set out as a note under section 453B of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as a note under section 801 of this title.

§ 805. General deductions

(a) General rule

For purposes of this part, there shall be allowed the following deductions:

(1) Death benefits, etc.

All claims and benefits accrued, and all losses incurred (whether or not ascertained), during the taxable year on insurance and annuity contracts.

(2) Increases in certain reserves

The net increase in reserves which is required by section 807(b) to be taken into account under this paragraph.

(3) Policyholder dividends

The deduction for policyholder dividends (determined under section 808(c)).

(4) Dividends received by company

(A) In general

The deductions provided by sections 243, 244, and 245 (as modified by subparagraph (B))—

(i) for 100 percent dividends received, and

(ii) for the life insurance company's share of the dividends (other than 100 percent dividends) received.

(B) Application of section 246(b)

In applying section 246(b) (relating to limitation on aggregate amount of deductions for dividends received) for purposes of subparagraph (A), the limit on the aggregate amount of the deductions allowed by sections 243(a)(1), 244(a), and 245 shall be the percentage determined under section 246(b)(3) of the life insurance company taxable income (and such limitation shall be applied as provided in section 246(b)(3)), computed without regard to—

(i) the small life insurance company deduction,

(ii) the operations loss deduction provided by section 810,

(iii) the deductions allowed by sections 243(a)(1), 244(a), and 245, and

(iv) any capital loss carryback to the taxable year under section 1212(a)(1),

but such limit shall not apply for any taxable year for which there is a loss from operations.

(C) 100 percent dividend

For purposes of subparagraph (A)—

(i) In general

Except as provided in clause (ii), the term ''100 percent dividend'' means any dividend if the percentage used for purposes of determining the deduction allowable under section 243, 244, or 245(b) is 100 percent.

(ii) Treatment of dividends from noninsurance companies

The term ''100 percent dividend'' does not include any distribution by a corporation which is not an insurance company to the extent such distribution is out of tax-exempt interest, or out of the increase for the taxable year in policy cash values (within the meaning of subparagraph (F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies, or out of dividends which are not 100 percent dividends (determined with the application of this clause as if it applies to distributions by all corporations including insurance companies).

(D) Special rules for certain dividends from insurance companies

(i) In general

In the case of any 100 percent dividend paid to any life insurance company out of the earnings and profits for any taxable year beginning after December 31, 1983, of another life insurance company if—

(I) the paying company's share determined under section 812 for such taxable year, exceeds

(II) the receiving company's share determined under section 812 for its taxable year in which the dividend is received or accrued,

the deduction allowed under section 243, 244, or 245(b) (as the case may be) shall be reduced as provided in clause (ii).

(ii) Amount of reduction

The reduction under this clause for a dividend is an amount equal to—

(I) the portion of such dividend attributable to prorated amounts, multiplied by

(II) the percentage obtained by subtracting the share described in subclause (II) of clause (i) from the share described in subclause (I) of such clause.

(iii) Prorated amounts

For purposes of this subparagraph, the term ''prorated amounts'' means tax-exempt interest, the increase for the taxable year in policy cash values (within the meaning of subparagraph (F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies, and dividends other than 100 percent dividends.

(iv) Portion of dividend attributable to prorated amounts

For purposes of this subparagraph, in determining the portion of any dividend attributable to prorated amounts—

(I) any dividend by the paying corporation shall be treated as paid first out of earnings and profits for taxable years beginning after December 31, 1983, attrib-

utable to prorated amounts (to the extent thereof), and

(II) by determining the portion of earnings and profits so attributable without any reduction for the tax imposed by this chapter.

(v) Subparagraph to apply to dividends from other insurance companies

Rules similar to the rules of this subsection shall apply in the case of 100 percent dividends paid by an insurance company which is not a life insurance company.

(E) Certain dividends received by foreign corporations

Subparagraph (A)(i) (and not subparagraph (A)(ii)) shall apply to any dividend received by a foreign corporation from a domestic corporation which would be a 100 percent dividend if section 1504(b)(3) did not apply for purposes of applying section 243(b)(2).

(F) Increase in policy cash values

For purposes of subparagraphs (C) and (D)—

(i) In general

The increase in the policy cash value for any taxable year with respect to policy or contract is the amount of the increase in the adjusted cash value during such taxable year determined without regard to—

(I) gross premiums paid during such taxable year, and

(II) distributions (other than amounts includible in the policyholder's gross income) during such taxable year to which section 72(e) applies.

(ii) Adjusted cash value

For purposes of clause (i), the term ''adjusted cash value'' means the cash surrender value of the policy or contract increased by the sum of—

(I) commissions payable with respect to such policy or contract for the taxable year, and

(II) asset management fees, surrender charges, mortality and expense charges, and any other fees or charges specified in regulations prescribed by the Secretary which are imposed (or which would be imposed were the policy or contract canceled) with respect to such policy or contract for the taxable year.

(5) Operations loss deduction

The operations loss deduction (determined under section 810).

(6) Assumption by another person of liabilities under insurance, etc., contracts

The consideration (other than consideration arising out of indemnity reinsurance) in respect of the assumption by another person of liabilities under insurance and annuity contracts.

(7) Reimbursable dividends

The amount of policyholder dividends which—

(A) are paid or accrued by another insurance company in respect of policies the taxpayer has reinsured, and

(B) are reimbursable by the taxpayer under the terms of the reinsurance contract.

(8) Other deductions

Subject to the modifications provided by subsection (b), all other deductions allowed under this subtitle for purposes of computing taxable income.

Except as provided in paragraph (3), no amount shall be allowed as a deduction under this part in respect of policyholder dividends.

(b) Modifications

The modifications referred to in subsection (a)(8) are as follows:

(1) Interest

In applying section 163 (relating to deduction for interest), no deduction shall be allowed for interest in respect of items described in section 807(c).

(2) Charitable, etc., contributions and gifts

In applying section 170—

(A) the limit on the total deductions under such section provided by section 170(b)(2) shall be 10 percent of the life insurance company taxable income computed without regard to—

(i) the deduction provided by section 170,

(ii) the deductions provided by paragraphs (3) and (4) of subsection (a),

(iii) the small life insurance company deduction,

(iv) any operations loss carryback to the taxable year under section 810, and

(v) any capital loss carryback to the taxable year under section 1212(a)(1), and

(B) under regulations prescribed by the Secretary, a rule similar to the rule contained in section 170(d)(2)(B) (relating to special rule for net operating loss carryovers) shall be applied.

(3) Amortizable bond premium

(A) In general

Section 171 shall not apply.

(B) Cross reference

For rules relating to amortizable bond premium, see section 811(b).

(4) Net operating loss deduction

Except as provided by section 844, the deduction for net operating losses provided in section 172 shall not be allowed.

(5) Dividends received deduction

Except as provided in subsection (a)(4), the deductions for dividends received provided by sections 243, 244, and 245 shall not be allowed.

(Added Pub. L. 98–369, div. A, title II, § 211(a), July 18, 1984, 98 Stat. 722; amended Pub. L. 99–514, title VI, § 611(a)(5), title VIII, § 805(c)(6), title X, § 1011(b)(4), title XVIII, § 1821(p), Oct. 22, 1986, 100 Stat. 2249, 2362, 2389, 2842; Pub. L. 100–203, title X, § 10221(c)(2), Dec. 22, 1987, 101 Stat. 1330–409; Pub. L. 104–188, title I, § 1702(h)(3), Aug. 20, 1996, 110 Stat. 1873; Pub. L. 105–34, title X, § 1084(b)(1), Aug. 5, 1997, 111 Stat. 954.)

CODIFICATION

Another section 1084(b) of Pub. L. 105–34 amended sections 101 and 264 of this title.

PRIOR PROVISIONS

A prior section 805, added Pub. L. 86–69, §2(a), June 25, 1959, 73 Stat. 118; amended Pub. L. 87–792, §7(g), Oct. 10, 1962, 76 Stat. 829; Pub. L. 88–571, §5(a), Sept. 2, 1964, 78 Stat. 860; Pub. L. 91–172, title IX, §907(a)(1), Dec. 30, 1969, 83 Stat. 715; Pub. L. 93–406, title II, §§1016(a)(6), 2002(g)(9), 2004(c)(3), Sept. 2, 1974, 88 Stat. 929, 970, 986; Pub. L. 94–267, §(1)(c)(4), Apr. 15, 1976, 90 Stat. 367; Pub. L. 94–455, title XIX, §1901(a)(97), Oct. 4, 1976, 90 Stat. 1780; Pub. L. 95–600, title I, §§141(f)(9), 155(a), Nov. 6, 1978, 92 Stat. 2795, 2801; Pub. L. 97–248, title II, §§257(a), 260(b), 261, 264(a)–(c)(1), Sept. 3, 1982, 96 Stat. 537, 540, 543, 544, related to policy and other contract liability requirements, prior to general revision of this part by Pub. L. 98–369, §211(a).

Another prior section 805, acts Aug. 16, 1954, ch. 736, 68A Stat. 258; Mar. 13, 1956, ch. 83, §2, 70 Stat. 43, authorized a special interest deduction, prior to the general revision of this part by Pub. L. 86–69, §2(a).

AMENDMENTS

1997—Subsec. (a)(4)(C)(ii). Pub. L. 105–34, §1084(b)(1)(A), inserted '', or out of the increase for the taxable year in policy cash values (within the meaning of subparagraph (F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies,'' after ''tax-exempt interest''.

Subsec. (a)(4)(D)(iii). Pub. L. 105–34, §1084(b)(1)(B), substituted '', the increase for the taxable year in policy cash values (within the meaning of subparagraph (F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies, and'' for ''and''.

Subsec. (a)(4)(F). Pub. L. 105–34, §1084(b)(1)(C), added subpar. (F).

1996—Subsec. (a)(4)(E). Pub. L. 104–188 substituted ''243(b)(2)'' for ''243(b)(5)''.

1987—Subsec. (a)(4)(B). Pub. L. 100–203 substituted ''shall be the percentage determined under section 246(b)(3) of the life insurance company taxable income (and such limitation shall be applied as provided in section 246(b)(3))'' for ''shall be 80 percent of the life insurance company taxable income''.

1986—Subsec. (a)(4)(B). Pub. L. 99–514, §611(a)(5), substituted ''80 percent'' for ''85 percent'' in introductory provisions.

Subsec. (a)(4)(B)(i). Pub. L. 99–514, §1011(b)(4), struck out ''the special life insurance company deduction and'' before ''the small life''.

Subsec. (a)(4)(C) to (E). Pub. L. 99–514, §1821(p), added subpars. (C) and (D), redesignated former subpar. (D) as (E), and struck out former subpar. (C) which read as follows: ''For purposes of subparagraph (A), the term '100 percent dividend' means any dividend if the percentage used for purposes of determining the deduction allowable under section 243 or 244 is 100 percent. Such term does not include any dividend to the extent it is a distribution out of tax-exempt interest or out of dividends which are not 100 percent dividends (determined with the application of this sentence).''

Subsec. (b)(2). Pub. L. 99–514, §805(c)(6), redesignated par. (3) as (2). Former par. (2), which provided that section 166(c) (relating to reserve for bad debts) shall not apply, was struck out.

Subsec. (b)(2)(A)(iii). Pub. L. 99–514, §1011(b)(4), which directed that subsec. (b)(3)(A)(iii) be amended by striking out ''the special life insurance company deduction and'' before ''the small life'', was executed to subsec. (b)(2)(A)(iii) to reflect the probable intent of Congress and the redesignation of subsec. (b)(3) as (b)(2) by Pub. L. 99–514, §805(c)(6).

Subsec. (b)(3) to (6). Pub. L. 99–514, §805(c)(6), redesignated pars. (3) to (6) as (2) to (5), respectively.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to contracts issued after June 8, 1997, in taxable years ending after such date, with special provisions relating to changes in contracts to be treated as new contracts, see section 1084(d) of Pub. L. 105–34, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to taxable years beginning after Dec. 31, 1987, see section 10221(e)(2) of Pub. L. 100–203, as amended, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 611(a)(5) of Pub. L. 99–514 applicable to dividends received or accrued after Dec. 31, 1986, in taxable years ending after such date, see section 611(b)(1) of Pub. L. 99–514, set out as a note under section 246 of this title.

Amendment by section 805(c)(6) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain changes required in method of accounting, see section 805(d) of Pub. L. 99–514, set out as a note under section 166 of this title.

Amendment by section 1011(b)(4) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1011(c)(1) of Pub. L. 99–514, set out as a note under section 453B of this title.

Amendment by section 1821(p) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as a note under section 801 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 806. Small life insurance company deduction

(a) Small life insurance company deduction

(1) In general

For purposes of section 804, the small life insurance company deduction for any taxable year is 60 percent of so much of the tentative LICTI for such taxable year as does not exceed $3,000,000.

(2) Phaseout between $3,000,000 and $15,000,000

The amount of the small life insurance company deduction determined under paragraph (1) for any taxable year shall be reduced (but not below zero) by 15 percent of so much of the tentative LICTI for such taxable year as exceeds $3,000,000.

(3) Small life insurance company deduction not allowable to company with assets of $500,000,000 or more

(A) In general

The small life insurance company deduction shall not be allowed for any taxable year to any life insurance company which, at the close of such taxable year, has assets equal to or greater than $500,000,000.

(B) Assets

For purposes of this paragraph, the term ''assets'' means all assets of the company.

(C) Valuation of assets

For purposes of this paragraph, the amount attributable to—

(i) real property and stock shall be the fair market value thereof, and

(ii) any other asset shall be the adjusted basis of such asset for purposes of determining gain on sale or other disposition.

(D) Special rule for interests in partnerships and trusts

For purposes of this paragraph—

(i) an interest in a partnership or trust shall not be treated as an asset of the company, but

(ii) the company shall be treated as actually owning its proportionate share of the assets held by the partnership or trust (as the case may be).

(b) Tentative LICTI

For purposes of this part—

(1) In general

The term ''tentative LICTI'' means life insurance company taxable income determined without regard to the small life insurance company deduction.

(2) Exclusion of items attributable to noninsurance businesses

The amount of the tentative LICTI for any taxable year shall be determined without regard to all items attributable to noninsurance businesses.

(3) Noninsurance business

(A) In general

The term ''noninsurance business'' means any activity which is not an insurance business.

(B) Certain activities treated as insurance businesses

For purposes of subparagraph (A), any activity which is not an insurance business shall be treated as an insurance business if—

(i) it is of a type traditionally carried on by life insurance companies for investment purposes, but only if the carrying on of such activity (other than in the case of real estate) does not constitute the active conduct of a trade or business, or

(ii) it involves the performance of administrative services in connection with plans providing life insurance, pension, or accident and health benefits.

(C) Limitation on amount of loss from noninsurance business which may offset income from insurance business

In computing the life insurance company taxable income of any life insurance company, any loss from a noninsurance business shall be limited under the principles of section 1503(c).

(c) Special rule for controlled groups

(1) Small life insurance company deduction determined on controlled group basis

For purposes of subsection (a)—

(A) all life insurance companies which are members of the same controlled group shall be treated as 1 life insurance company, and

(B) any small life insurance company deduction determined with respect to such group shall be allocated among the life insurance companies which are members of such group in proportion to their respective tentative LICTI's.

(2) Nonlife insurance members included for asset test

For purposes of subsection (a)(3), all members of the same controlled group (whether or not life insurance companies) shall be treated as 1 company.

(3) Controlled group

For purposes of this subsection, the term ''controlled group'' means any controlled group of corporations (as defined in section 1563(a)); except that subsections (a)(4) and (b)(2)(D) of section 1563 shall not apply.

(4) Adjustments to prevent excess detriment or benefit

Under regulations prescribed by the Secretary, proper adjustments shall be made in the application of this subsection to prevent any excess detriment or benefit (whether from year-to-year or otherwise) arising from the application of this subsection.

(Added Pub. L. 98–369, div. A, title II, § 211(a), July 18, 1984, 98 Stat. 724; amended Pub. L. 99–514, title X, § 1011(a), (b)(5)–(8), (11)(A), Oct. 22, 1986, 100 Stat. 2388, 2389.)

PRIOR PROVISIONS

A prior section 806, added Pub. L. 86–69, § 2(a), June 25, 1959, 73 Stat. 120; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to certain changes in reserves and assets, prior to the general revision of this part by Pub. L. 98–369, § 211(a).

Another prior section 806, act Aug. 16, 1954, ch. 736, 68A Stat. 258, related to adjustment for certain reserves, prior to the general revision of this part by act Mar. 13, 1956, ch. 83, § 2, 70 Stat. 36.

AMENDMENTS

1986—Pub. L. 99–514, § 1011(b)(11)(A), substituted ''Small life insurance company deduction'' for ''Special deductions'' in section catchline.

Subsec. (a). Pub. L. 99–514, § 1011(a), redesignated subsec. (b) as (a) and struck out former subsec. (a), special life insurance company deduction, which read as follows: ''For purposes of section 804, the special life insurance company deduction for any taxable year is 20 percent of the excess of the tentative LICTI for such taxable year over the small life insurance company deduction (if any).''

Subsec. (b). Pub. L. 99–514, §1011(a), (b)(5), redesignated subsec. (c) as (b), and in par. (1), substituted ''without regard to the small life insurance company deduction'' for ''without regard to— (A) the special life insurance company deduction, and (B) the small life insurance company deduction''. Former subsec. (b) redesignated (a).

Subsecs. (c), (d). Pub. L. 99–514, §1011(a), (b)(6)–(8), redesignated subsec. (d) as (c), in par. (1), in heading, substituted ''Small'' for ''Special life insurance company deduction and small'', in introductory provisions, substituted ''subsection (a)'' for ''subsections (a) and (b)'', and in subpar. (B), struck out ''any special life insurance company deduction and'', in par. (2), substituted ''subsection (a)(3)'' for ''subsection (b)(3)'', redesignated par. (5) as (4), and struck out former par. (4) which provided for election with respect to loss from operations of member of group. Former subsec. (c) redesignated (b).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1011(c)(1) of Pub. L. 99–514, set out as a note under section 453B of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as a note under section 801 of this title.

DETERMINATION OF TENTATIVE LICTI WHERE CORPORATION MADE CERTAIN ACQUISITIONS IN 1980, 1981, 1982, AND 1983

Section 217(c) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''If—

''(1) a corporation domiciled or having its principal place of business in Alabama, Arkansas, Oklahoma, or Texas acquired the assets of 1 or more insurance companies after 1979 and before April 1, 1983, and

''(2) the bases of such assets in the hands of the corporation were determined under section 334(b)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] or such corporation made an election under section 338 of such Code with respect to such assets,

then the tentative LICTI of the corporation holding such assets for taxable years beginning after December 31, 1983, shall, for purposes of determining the amount of the special deductions under section 806 of such Code, be increased by the deduction allowable under chapter 1 of such Code for the amortization of the cost of insurance contracts acquired in such asset acquisition (and any portion of any operations loss deduction attributable to such amortization).''

DETERMINATION OF ASSETS OF CONTROLLED GROUP FOR PURPOSES OF SMALL LIFE INSURANCE COMPANY DEDUCTION FOR 1984

Section 217(h) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—For purposes of applying paragraph (2) of section 806(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to nonlife insurance members included for asset test) for the first taxable year beginning after December 31, 1983, the members of the controlled group referred to in such paragraph shall be treated as including only those members of such group which are described in paragraph (2) of this subsection if—

''(A) an election under section 1504(c)(2) of such Code is not in effect for the controlled group for such taxable year,

''(B) during such taxable year, the controlled group does not include a member which is taxable under part I of subchapter L of chapter 1 of such Code and which became a member of such group after September 27, 1983, and

''(C) the sum of the contributions to capital received by members of the controlled group which are taxable under such part I during such taxable year from the members of the controlled group which are not taxable under such part does not exceed the aggregate dividends paid during such taxable year by the members of such group which are taxable under such part I.

''(2) MEMBERS OF GROUP TAKEN INTO ACCOUNT.—For purposes of paragraph (1), the members of the controlled group which are described in this paragraph are—

''(A) any financial institution to which section 585 or 593 of such Code applies,

''(B) any lending or finance business (as defined by section 542(d)),

''(C) any insurance company subject to tax imposed by subchapter L of chapter 1 of such Code, and

''(D) any securities broker.''

SPECIAL RULE FOR CERTAIN DEBT-FINANCED ACQUISITION OF STOCK

Section 217(k) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, title X, §1011(c)(2), Oct. 22, 1986, 100 Stat. 2095, 2389, provided that: ''If—

''(1) a life insurance company owns the stock of another corporation through a partnership of which it is a partner,

''(2) the stock of the corporation was acquired on January 14, 1981, and

''(3) such stock was acquired by debt financing,

then, for purposes of determining the small life insurance company deduction under section 806a of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this subtitle [subtitle A (§§211–219) of title II of div. A of Pub. L. 98–369, see Tables for classifications]), the amount of tentative LICTI of such life insurance company shall be computed without taking into account any income, gain, loss, or deduction attributable to the ownership of such stock. For purposes of determining taxable income, the amount of any income, gain, loss, or deduction attributable to the ownership of such stock shall be an amount equal to 46 times the amount of such income, gain, loss, or deduction, divided by 36.8.''

TREATMENT OF LOSSES FROM CERTAIN GUARANTEED INTEREST CONTRACTS

Section 217(*l*) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—For purposes of determining the amount of the special deductions under section 806 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this subtitle [subtitle A (§§211–219) of title II of div. A of Pub. L. 98–369, see Tables for classification]), for any taxable year beginning before January 1, 1988, the amount of tentative LICTI of any qualified life insurance company shall be computed without taking into account any income, gain, loss, or deduction attributable to a qualified GIC.

''(2) QUALIFIED LIFE INSURANCE COMPANY.—For purposes of this subsection, the term 'qualified life insurance company' means any life insurance company if—

''(A) the accrual of discount less amortization of premium for bonds and short-term investments (as shown in the first footnote to Exhibit 3 of its 1983 annual statement for life insurance companies approved by the National Association of Insurance Commissioners (but excluding separate accounts) filed in its State of domicile) exceeds $72,000,000 but does not exceed $73,000,000, and

''(B) such life insurance company makes an election under this subsection on its return for its first taxable year beginning after December 31, 1983.

''(3) QUALIFIED GIC.—The term 'qualified GIC' means any group contract—

''(A) which is issued before January 1, 1984,

''(B) which specifies the contract maturity or renewal date,

''(C) under which funds deposited by the contract holder plus interest guaranteed at the inception of

the contract for the term of the contract and net of any specified expenses are paid as directed by the contract holder, and

''(D) which is a pension plan contract (as defined in section 818(a) of the Internal Revenue Code of 1986).

''(4) SCOPE OF ELECTION.—An election under this subsection shall apply to all qualified GIC's of a qualified life insurance company. Any such election, once made, shall be irrevocable.

''(5) INCOME ON UNDERLYING ASSETS TAKEN INTO ACCOUNT.—In determining the amount of any income attributable to a qualified GIC, income on any asset attributable to such contract (as determined in the manner provided by the Secretary of the Treasury or his delegate) shall be taken into account.

''(6) LIMITATION ON TAX BENEFIT.—The amount of any reduction in tax for any taxable year by reason of this subsection for any qualified life insurance company (or controlled group within the meaning of section 806(d)(3) of the Internal Revenue Code of 1986) shall not exceed the applicable amount set forth in the following table:

"In the case of taxable years beginning in:	The reduction may not exceed:
1984	$4,500,000
1985	$4,500,000
1986	$3,000,000
1987	$2,000,000''

SPECIAL RULE FOR CERTAIN INTERESTS IN OIL AND GAS PROPERTIES

Section 217(m) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—For purposes of section 806 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the ownership by a qualified life insurance company of any undivided interest in operating mineral interests with respect to any oil or gas properties held on December 31, 1983, shall be treated as an insurance business.

''(2) QUALIFIED LIFE INSURANCE COMPANY.—For purposes of paragraph (1), the term 'qualified life insurance company' means a mutual life insurance company which—

''(A) was originally incorporated in March of 1857, and

''(B) has a cost to such company (as of December 31, 1983) in the operating mineral interests described in paragraph (1) in excess of $250,000,000.''

§ 807. Rules for certain reserves

(a) Decrease treated as gross income

If for any taxable year—

(1) the opening balance for the items described in subsection (c), exceeds

(2)(A) the closing balance for such items, reduced by

(B) the amount of the policyholders' share of tax-exempt interest and the amount of the policyholder's share of the increase for the taxable year in policy cash values (within the meaning of section 805(a)(4)(F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies,

such excess shall be included in gross income under section 803(a)(2).

(b) Increase treated as deduction

If for any taxable year—

(1)(A) the closing balance for the items described in subsection (c), reduced by

(B) the amount of the policyholders' share of tax-exempt interest and the amount of the policyholder's share of the increase for the taxable year in policy cash values (within the meaning of section 805(a)(4)(F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies, exceeds

(2) the opening balance for such items,

such excess shall be taken into account as a deduction under section 805(a)(2).

(c) Items taken into account

The items referred to in subsections (a) and (b) are as follows:

(1) The life insurance reserves (as defined in section 816(b)).

(2) The unearned premiums and unpaid losses included in total reserves under section 816(c)(2).

(3) The amounts (discounted at the appropriate rate of interest) necessary to satisfy the obligations under insurance and annuity contracts, but only if such obligations do not involve (at the time with respect to which the computation is made under this paragraph) life, accident, or health contingencies.

(4) Dividend accumulations, and other amounts, held at interest in connection with insurance and annuity contracts.

(5) Premiums received in advance, and liabilities for premium deposit funds.

(6) Reasonable special contingency reserves under contracts of group term life insurance or group accident and health insurance which are established and maintained for the provision of insurance on retired lives, for premium stabilization, or for a combination thereof.

For purposes of paragraph (3), the appropriate rate of interest for any obligation is whichever of the following rates is the highest as of the time such obligation first did not involve life, accident, or health contingencies: the applicable Federal interest rate under subsection (d)(2)(B)(i), the prevailing State assumed interest rate under subsection (d)(2)(B)(ii), or the rate of interest assumed by the company in determining the guaranteed benefit. In no case shall the amount determined under paragraph (3) for any contract be less than the net surrender value of such contract. For purposes of paragraph (2) and section 805(a)(1), the amount of the unpaid losses (other than losses on life insurance contracts) shall be the amount of the discounted unpaid losses as defined in section 846.

(d) Method of computing reserves for purposes of determining income

(1) In general

For purposes of this part (other than section 816), the amount of the life insurance reserves for any contract shall be the greater of—

(A) the net surrender value of such contract, or

(B) the reserve determined under paragraph (2).

In no event shall the reserve determined under the preceding sentence for any contract as of any time exceed the amount which would be taken into account with respect to such contract as of such time in determining statutory reserves (as defined in paragraph (6)).

(2) Amount of reserve

The amount of the reserve determined under this paragraph with respect to any contract shall be determined by using—

(A) the tax reserve method applicable to such contract,

(B) the greater of—

(i) the applicable Federal interest rate, or

(ii) the prevailing State assumed interest rate, and

(C) the prevailing commissioners' standard tables for mortality and morbidity adjusted as appropriate to reflect the risks (such as substandard risks) incurred under the contract which are not otherwise taken into account.

(3) Tax reserve method

For purposes of this subsection—

(A) In general

The term ''tax reserve method'' means—

(i) Life insurance contracts

The CRVM in the case of a contract covered by the CRVM.

(ii) Annuity contracts

The CARVM in the case of a contract covered by the CARVM.

(iii) Noncancellable accident and health insurance contracts

In the case of any noncancellable accident and health insurance contract (other than a qualified long-term care insurance contract, as defined in section 7702B(b)), a 2-year full preliminary term method.

(iv) Other contracts

In the case of any contract not described in clause (i), (ii), or (iii)—

(I) the reserve method prescribed by the National Association of Insurance Commissioners which covers such contract (as of the date of issuance), or

(II) if no reserve method has been prescribed by the National Association of Insurance Commissioners which covers such contract, a reserve method which is consistent with the reserve method required under clause (i), (ii), or (iii) or under subclause (I) of this clause as of the date of the issuance of such contract (whichever is most appropriate).

(B) Definition of CRVM and CARVM

For purposes of this paragraph—

(i) CRVM

The term ''CRVM'' means the Commissioners' Reserve Valuation Method prescribed by the National Association of Insurance Commissioners which is in effect on the date of the issuance of the contract.

(ii) CARVM

The term ''CARVM'' means the Commissioners' Annuities Reserve Valuation Method prescribed by the National Association of Insurance Commissioners which is in effect on the date of the issuance of the contract.

(C) No additional reserve deduction allowed for deficiency reserves

Nothing in any reserve method described under this paragraph shall permit any increase in the reserve because the net premium (computed on the basis of assumptions required under this subsection) exceeds the actual premiums or other consideration charged for the benefit.

(4) Applicable Federal interest rate; prevailing State assumed interest rate

For purposes of this subsection—

(A) Applicable Federal interest rate

(i) In general

Except as provided in clause (ii), the term ''applicable Federal interest rate'' means the annual rate determined by the Secretary under section 846(c)(2) for the calendar year in which the contract was issued.

(ii) Election to recompute Federal interest rate every 5 years

(I) In general

In computing the amount of the reserve with respect to any contract to which an election under this clause applies for periods during any recomputation period, the applicable Federal interest rate shall be the annual rate determined by the Secretary under section 846(c)(2) for the 1st year of such period. No change in the applicable Federal interest rate shall be made under the preceding sentence unless such change would equal or exceed ½ of 1 percentage point.

(II) Recomputation period

For purposes of subclause (I), the term ''recomputation period'' means, with respect to any contract, the 5 calendar year period beginning with the 5th calendar year beginning after the calendar year in which the contract was issued (and each subsequent 5 calendar year period).

(III) Election

An election under this clause shall apply to all contracts issued during the calendar year for which the election was made or during any subsequent calendar year unless such election is revoked with the consent of the Secretary.

(IV) Spread not available

Subsection (f) shall not apply to any adjustment required under this clause.

(B) Prevailing State assumed interest rate

(i) In general

The term ''prevailing State assumed interest rate'' means, with respect to any contract, the highest assumed interest rate permitted to be used in computing life insurance reserves for insurance contracts or annuity contracts (as the case may be) under the insurance laws of at least 26 States. For purposes of the preceding sentence, the effect of nonforfeiture laws of a State on interest rates for reserves shall not be taken into account.

(ii) When rate determined

The prevailing State assumed interest rate with respect to any contract shall be

determined as of the beginning of the calendar year in which the contract was issued.

(5) Prevailing commissioners' standard tables

For purposes of this subsection—

(A) In general

The term ''prevailing commissioners' standard tables'' means, with respect to any contract, the most recent commissioners' standard tables prescribed by the National Association of Insurance Commissioners which are permitted to be used in computing reserves for that type of contract under the insurance laws of at least 26 States when the contract was issued.

(B) Insurer may use old tables for 3 years when tables change

If the prevailing commissioners' standard tables as of the beginning of any calendar year (hereinafter in this subparagraph referred to as the ''year of change'') is different from the prevailing commissioners' standard tables as of the beginning of the preceding calendar year, the issuer may use the prevailing commissioners' standard tables as of the beginning of the preceding calendar year with respect to any contract issued after the change and before the close of the 3-year period beginning on the first day of the year of change.

(C) Special rule for contracts for which there are no commissioners' standard tables

If there are no commissioners' standard tables applicable to any contract when it is issued, the mortality and morbidity tables used for purposes of paragraph (2)(C) shall be determined under regulations prescribed by the Secretary. When the Secretary by regulation changes the table applicable to a type of contract, the new table shall be treated (for purposes of subparagraph (B) and for purposes of determining the issue dates of contracts for which it shall be used) as if it were a new prevailing commissioner's standard table adopted by the twenty-sixth State as of a date (no earlier than the date the regulation is issued) specified by the Secretary.

(D) Special rule for contracts issued before 1948

If—

(i) a contract was issued before 1948, and

(ii) there were no commissioners' standard tables applicable to such contract when it was issued,

the mortality and morbidity tables used in computing statutory reserves for such contracts shall be used for purposes of paragraph (2)(C).

(E) Special rule where more than 1 table or option applicable

If, with respect to any category of risks, there are 2 or more tables (or options under 1 or more tables) which meet the requirements of subparagraph (A) (or, where applicable, subparagraph (B) or (C)), the table (and option thereunder) which generally yields the lowest reserves shall be used for purposes of paragraph (2)(C).

(6) Statutory reserves

The term ''statutory reserves'' means the aggregate amount set forth in the annual statement with respect to items described in section 807(c). Such term shall not include any reserve attributable to a deferred and uncollected premium if the establishment of such reserve is not permitted under section 811(c).

(e) Special rules for computing reserves

(1) Net surrender value

For purposes of this section—

(A) In general

The net surrender value of any contract shall be determined—

(i) with regard to any penalty or charge which would be imposed on surrender, but

(ii) without regard to any market value adjustment on surrender.

(B) Special rule for pension plan contracts

In the case of a pension plan contract, the balance in the policyholder's fund shall be treated as the net surrender value of such contract. For purposes of the preceding sentence, such balance shall be determined with regard to any penalty or forfeiture which would be imposed on surrender but without regard to any market value adjustment.

(2) Issuance date in case of group contracts

For purposes of this section, in the case of a group contract, the date on which such contract is issued shall be the date as of which the master plan is issued (or, with respect to a benefit guaranteed to a participant after such date, the date as of which such benefit is guaranteed).

(3) Supplemental benefits

(A) Qualified supplemental benefits treated separately

For purposes of this part, the amount of the life insurance reserve for any qualified supplemental benefit—

(i) shall be computed separately as though such benefit were under a separate contract, and

(ii) shall, except to the extent otherwise provided in regulations, be the reserve taken into account for purposes of the annual statement approved by the National Association of Insurance Commissioners.

(B) Supplemental benefits which are not qualified supplemental benefits

In the case of any supplemental benefit described in subparagraph (D) which is not a qualified supplemental benefit, the amount of the reserve determined under paragraph (2) of subsection (d) shall, except to the extent otherwise provided in regulations, be the reserve taken into account for purposes of the annual statement approved by the National Association of Insurance Commissioners.

(C) Qualified supplemental benefit

For purposes of this paragraph, the term ''qualified supplemental benefit'' means any supplemental benefit described in subparagraph (D) if—

(i) there is a separately identified premium or charge for such benefit, and

(ii) any net surrender value under the contract attributable to any other benefit is not available to fund such benefit.

(D) Supplemental benefits

For purposes of this paragraph, the supplemental benefits described in this subparagraph are any—

(i) guaranteed insurability,

(ii) accidental death or disability benefit,

(iii) convertibility,

(iv) disability waiver benefit, or

(v) other benefit prescribed by regulations,

which is supplemental to a contract for which there is a reserve described in subsection (c).

(4) Certain contracts issued by foreign branches of domestic life insurance companies

(A) In general

In the case of any qualified foreign contract, the amount of the reserve shall be not less than the minimum reserve required by the laws, regulations, or administrative guidance of the regulatory authority of the foreign country referred to in subparagraph (B) (but not to exceed the net level reserves for such contract).

(B) Qualified foreign contract

For purposes of subparagraph (A), the term ''qualified foreign contract'' means any contract issued by a foreign life insurance branch (which has its principal place of business in a foreign country) of a domestic life insurance company if—

(i) such contract is issued on the life or health of a resident of such country,

(ii) such domestic life insurance company was required by such foreign country (as of the time it began operations in such country) to operate in such country through a branch, and

(iii) such foreign country is not contiguous to the United States.

(5) Treatment of substandard risks

(A) Separate computation

Except to the extent provided in regulations, the amount of the life insurance reserve for any qualified substandard risk shall be computed separately under subsection (d)(1) from any other reserve under the contract.

(B) Qualified substandard risk

For purposes of subparagraph (A), the term ''qualified substandard risk'' means any substandard risk if—

(i) the insurance company maintains a separate reserve for such risk,

(ii) there is a separately identified premium or charge for such risk,

(iii) the amount of the net surrender value under the contract is not increased or decreased by reason of such risk, and

(iv) the net surrender value under the contract is not regularly used to pay premium charges for such risk.

(C) Limitation on amount of life insurance reserve

The amount of the life insurance reserve determined for any qualified substandard risk shall in no event exceed the sum of the separately identified premiums charged for such risk plus interest less mortality charges for such risk.

(D) Limitation on amount of contracts to which paragraph applies

The aggregate amount of insurance in force under contracts to which this paragraph applies shall not exceed 10 percent of the insurance in force (other than term insurance) under life insurance contracts of the company.

(6) Special rules for contracts issued before January 1, 1989, under existing plans of insurance, with term insurance or annuity benefits

For purposes of this part—

(A) In general

In the case of a life insurance contract issued before January 1, 1989, under an existing plan of insurance, the life insurance reserve for any benefit to which this paragraph applies shall be computed separately under subsection (d)(1) from any other reserve under the contract.

(B) Benefits to which this paragraph applies

This paragraph applies to any term insurance or annuity benefit with respect to which the requirements of clauses (i) and (ii) of paragraph (3)(C) are met.

(C) Existing plan of insurance

For purposes of this paragraph, the term ''existing plan of insurance'' means, with respect to any contract, any plan of insurance which was filed by the company using such contract in one or more States before January 1, 1984, and is on file in the appropriate State for such contract.

(7) Special rules for treatment of certain nonlife reserves

(A) In general

The amount taken into account for purposes of subsections (a) and (b) as—

(i) the opening balance of the items referred to in subparagraph (C), and

(ii) the closing balance of such items,

shall be 80 percent of the amount which (without regard to this subparagraph) would have been taken into account as such opening or closing balance, as the case may be.

(B) Transitional rule

(i) In general

In the case of any taxable year beginning on or after September 30, 1990, and before September 30, 1996, there shall be included in the gross income of any life insurance company an amount equal to 3⅓ percent of such company's closing balance of the items referred to in subparagraph (C) for its most recent taxable year beginning before September 30, 1990.

(ii) Termination as life insurance company

Except as provided in section 381(c)(22), if, for any taxable year beginning on or before September 30, 1996, the taxpayer ceases to be a life insurance company, the aggregate inclusions which would have been made under clause (i) for such taxable year and subsequent taxable years but for such cessation shall be taken into account for the taxable year preceding such cessation year.

(C) Description of items

For purposes of this paragraph, the items referred to in this subparagraph are the items described in subsection (c) which consist of unearned premiums and premiums received in advance under insurance contracts not described in section 816(b)(1)(B).

(f) Adjustment for change in computing reserves

(1) 10-year spread

(A) In general

For purposes of this part, if the basis for determining any item referred to in subsection (c) as of the close of any taxable year differs from the basis for such determination as of the close of the preceding taxable year, then so much of the difference between—

(i) the amount of the item at the close of the taxable year, computed on the new basis, and

(ii) the amount of the item at the close of the taxable year, computed on the old basis,

as is attributable to contracts issued before the taxable year shall be taken into account under the method provided in subparagraph (B).

(B) Method

The method provided in this subparagraph is as follows:

(i) if the amount determined under subparagraph (A)(i) exceeds the amount determined under subparagraph (A)(ii), 1/10 of such excess shall be taken into account, for each of the succeeding 10 taxable years, as a deduction under section 805(a)(2); or

(ii) if the amount determined under subparagraph (A)(ii) exceeds the amount determined under subparagraph (A)(i), 1/10 of such excess shall be included in gross income, for each of the 10 succeeding taxable years, under section 803(a)(2).

(2) Termination as life insurance company

Except as provided in section 381(c)(22) (relating to carryovers in certain corporate readjustments), if for any taxable year the taxpayer is not a life insurance company, the balance of any adjustments under this subsection shall be taken into account for the preceding taxable year.

(Added Pub. L. 98–369, div. A, title II, § 211(a), July 18, 1984, 98 Stat. 726; amended Pub. L. 99–514, title X, § 1023(b), title XVIII, § 1821(a), (s), Oct. 22, 1986, 100 Stat. 2399, 2837, 2843; Pub. L. 100–203, title X, § 10241(a)–(b)(2)(A), Dec. 22, 1987, 101 Stat. 1330–419, 1330–420; Pub. L. 101–508, title XI, § 11302(a), Nov. 5, 1990, 104 Stat. 1388–449; Pub. L. 104–188, title I, § 1704(t)(61), Aug. 20, 1996, 110 Stat. 1890; Pub. L. 104–191, title III, § 321(b), Aug. 21, 1996, 110 Stat. 2058; Pub. L. 105–34, title X, § 1084(b)(2), Aug. 5, 1997, 111 Stat. 954; Pub. L. 108–218, title II, § 205(b)(1), (2), Apr. 10, 2004, 118 Stat. 610.)

CODIFICATION

Another section 1084(b) of Pub. L. 105–34 amended sections 101 and 264 of this title.

PRIOR PROVISIONS

A prior section 807, act Aug. 16, 1954, ch. 736, 68A Stat. 259, related to adjustment for certain reserves, prior to the general revision of this part by act Mar. 13, 1956, ch. 83, § 2, 70 Stat. 36.

AMENDMENTS

2004—Subsecs. (a)(2)(B), (b)(1)(B). Pub. L. 108–218, § 205(b)(1), struck out ''the sum of (i)'' before ''the amount'' and struck out ''plus (ii) any excess described in section 809(a)(2) for the taxable year,'' after ''to which section 264(f) applies,''.

Subsec. (d)(1). Pub. L. 108–218, § 205(b)(2)(A), substituted ''paragraph (6)'' for ''section 809(b)(4)(B)'' in concluding provisions.

Subsec. (d)(6). Pub. L. 108–218, § 205(b)(2)(B), added par. (6).

1997—Subsec. (a)(2)(B). Pub. L. 105–34, § 1084(b)(2)(A), substituted ''interest and the amount of the policyholder's share of the increase for the taxable year in policy cash values (within the meaning of section 805(a)(4)(F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies,'' for ''interest,''.

Subsec. (b)(1)(B). Pub. L. 105–34, § 1084(b)(2)(B), substituted ''interest and the amount of the policyholder's share of the increase for the taxable year in policy cash values (within the meaning of section 805(a)(4)(F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies,'' for ''interest,''.

1996—Subsec. (d)(3)(A)(iii). Pub. L. 104–191 inserted ''(other than a qualified long-term care insurance contract, as defined in section 7702B(b))'' after ''insurance contract''.

Subsec. (d)(3)(B)(ii). Pub. L. 104–188 substituted ''Commissioners' Annuities'' for ''Commissoners' Annuities''.

1990—Subsec. (e)(7). Pub. L. 101–508 added par. (7).

1987—Subsec. (c). Pub. L. 100–203, § 10241(b)(2)(A), substituted ''whichever of the following rates is the highest as of the time such obligation first did not involve life, accident, or health contingencies: the applicable Federal interest rate under subsection (d)(2)(B)(i), the prevailing State assumed interest rate under subsection (d)(2)(B)(ii), or the rate of interest assumed by the company in determining the guaranteed benefit.'' for ''the higher of the prevailing State assumed interest rate as of the time such obligation first did not involve life, accident, or health contingencies or the rate of interest assumed by the company (as of such time) in determining the guaranteed benefit.'' in third to last sentence.

Subsec. (d)(2)(B). Pub. L. 100–203, § 10241(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the prevailing State assumed interest rate, and''.

Subsec. (d)(4). Pub. L. 100–203, § 10241(b)(1), substituted ''Applicable Federal interest rate; prevailing State assumed interest rate'' for ''Prevailing State assumed interest rate'' in heading and amended text generally, revising and restating as subpars. (A) and (B) provisions of former subpars. (A) to (D).

1986—Subsec. (c). Pub. L. 99–514, § 1023(b), inserted at end ''For purposes of paragraph (2) and section 805(a)(1), the amount of the unpaid losses (other than losses on life insurance contracts) shall be the amount of the discounted unpaid losses as defined in section 846.''

Pub. L. 99–514, § 1821(a), inserted at end ''In no case shall the amount determined under paragraph (3) for any contract be less than the net surrender value of such contract.''

Subsec. (d)(5)(C). Pub. L. 99–514, § 1821(s), inserted at end ''When the Secretary by regulation changes the table applicable to a type of contract, the new table shall be treated (for purposes of subparagraph (B) and for purposes of determining the issue dates of contracts for which it shall be used) as if it were a new prevailing commissioner's standard table adopted by the twenty-sixth State as of a date (no earlier than the date the regulation is issued) specified by the Secretary.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–218, title II, § 205(c), Apr. 10, 2004, 118 Stat. 610, provided that: ''The amendments made by this section [amending this section and sections 808, 812, 817, and 842 of this title and repealing section 809 of this title] shall apply to taxable years beginning after December 31, 2004.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to contracts issued after June 8, 1997, in taxable years ending after such date, with special provisions relating to changes in contracts to be treated as new contracts, see section 1084(d) of Pub. L. 105–34, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–191 applicable to contracts issued after Dec. 31, 1997, see section 321(f) of Pub. L. 104–191, set out as an Effective Date note under section 7702B of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11302(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning on or after September 30, 1990.''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10241(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and section 812 of this title] shall apply to contracts issued in taxable years beginning after December 31, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1023(b) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1023(e) of Pub. L. 99–514, set out as an Effective Date note under section 846 of this title.

Amendment by section 1821(a), (s) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as a note under section 801 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TREATMENT OF CERTAIN ASSESSMENT LIFE INSURANCE COMPANIES

Section 217(f) of subtitle A (§§ 211–219) of title II of div. A of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) MORTALITY AND MORBIDITY TABLES.—In the case of a contract issued by an assessment life insurance company, the mortality and morbidity tables used in computing statutory reserves for such contract shall be used for purposes of paragraph (2)(C) of section 807(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this subtitle) if such tables were—

''(A) in use since 1965, and

''(B) developed on the basis of the experience of assessment life insurance companies in the State in which such assessment life insurance company is domiciled.

''(2) TREATMENT OF CERTAIN MUTUAL ASSESSMENT LIFE INSURANCE COMPANIES.—In the case of any contract issued by a mutual assessment life insurance company which—

''(A) has been in existence since 1965, and

''(B) operates under chapter 13 or 14 of the Texas Insurance Code,

for purposes of part I of subchapter L of chapter 1 of the Internal Revenue Code of 1986, the amount of the life insurance reserves for such contract shall be equal to the amount taken into account with respect to such contract in determining statutory reserves.

''(3) STATUTORY RESERVES.—For purposes of this subsection, the term 'statutory reserves' has the meaning given to such term by [former] section 809(b)(4)(B) of such Code.''

SPECIAL RULE FOR COMPANIES USING NET LEVEL RESERVE METHOD FOR NONCANCELLABLE ACCIDENT AND HEALTH INSURANCE CONTRACTS

Section 217(n) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, title XVIII, § 1823, Oct. 22, 1986, 100 Stat. 2095, 2845, provided that: ''A company shall be treated as meeting the requirements of section 807(d)(3)(A)(iii) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended by this Act, with respect to any directly-written noncancellable accident and health insurance contract (whether under existing or new plans of insurance) for any taxable year if—

''(1) such company—

''(A) was using the net level reserve method to compute at least 99 percent of its statutory reserves on such contracts as of December 31, 1982, and

''(B) received more than half its total direct premiums in 1982 from directly-written noncancellable accident and health insurance,

''(2) after December 31, 1983, and through such taxable year, such company has continuously used the net level reserve method for computing at least 99 percent of its tax and statutory reserves on such contracts, and

''(3) for any such contract for which the company does not use the net level reserve method, such company uses the same method for computing tax reserves as such company uses for computing its statutory reserves.''

§ 808. Policyholder dividends deduction

(a) Policyholder dividend defined

For purposes of this part, the term ''policyholder dividend'' means any dividend or similar distribution to policyholders in their capacity as such.

(b) Certain amounts included

For purposes of this part, the term ''policyholder dividend'' includes—

(1) any amount paid or credited (including as an increase in benefits) where the amount is

not fixed in the contract but depends on the experience of the company or the discretion of the management,

(2) excess interest,

(3) premium adjustments, and

(4) experience-rated refunds.

(c) Amount of deduction

The deduction for policyholder dividends for any taxable year shall be an amount equal to the policyholder dividends paid or accrued during the taxable year.

(d) Definitions

For purposes of this section—

(1) Excess interest

The term ''excess interest'' means any amount in the nature of interest—

(A) paid or credited to a policyholder in his capacity as such, and

(B) in excess of interest determined at the prevailing State assumed rate for such contract.

(2) Premium adjustment

The term ''premium adjustment'' means any reduction in the premium under an insurance or annuity contract which (but for the reduction) would have been required to be paid under the contract.

(3) Experience-rated refund

The term ''experience-rated refund'' means any refund or credit based on the experience of the contract or group involved.

(e) Treatment of policyholder dividends

For purposes of this part, any policyholder dividend which—

(1) increases the cash surrender value of the contract or other benefits payable under the contract, or

(2) reduces the premium otherwise required to be paid,

shall be treated as paid to the policyholder and returned by the policyholder to the company as a premium.

(f) Coordination of 1984 fresh-start adjustment with acceleration of policyholder dividends deduction through change in business practice

(1) In general

The amount determined under paragraph (1) of subsection (c) for the year of change shall (before any reduction under paragraph (2) of subsection (c)) be reduced by so much of the accelerated policyholder dividends deduction for such year as does not exceed the 1984 fresh-start adjustment for policyholder dividends (to the extent such adjustment was not previously taken into account under this subsection).

(2) Year of change

For purposes of this subsection, the term ''year of change'' means the taxable year in which the change in business practices which results in the accelerated policyholder dividends deduction takes effect.

(3) Accelerated policyholder dividends deduction defined

For purposes of this subsection, the term ''accelerated policyholder dividends deduction'' means the amount which (but for this subsection) would be determined for the taxable year under paragraph (1) of subsection (c) but which would have been determined (under such paragraph) for a later taxable year under the business practices of the taxpayer as in effect at the close of the preceding taxable year.

(4) 1984 fresh-start adjustment for policyholder dividends

For purposes of this subsection, the term ''1984 fresh-start adjustment for policyholder dividends'' means the amounts held as of December 31, 1983, by the taxpayer as reserves for dividends to policyholders under section 811(b) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1984) other than for dividends which accrued before January 1, 1984. Such amounts shall be properly reduced to reflect the amount of previously nondeductible policyholder dividends (as determined under section 809(f) as in effect on the day before the date of the enactment of the Tax Reform Act of 1984).

(5) Separate application with respect to lines of business

This subsection shall be applied separately with respect to each line of business of the taxpayer.

(6) Subsection not to apply to mere change in dividend amount

This subsection shall not apply to a mere change in the amount of policyholder dividends.

(7) Subsection not to apply to policies issued after December 31, 1983

(A) In general

This subsection shall not apply to any policyholder dividend paid or accrued with respect to a policy issued after December 31, 1983.

(B) Exchanges of substantially similar policies

For purposes of subparagraph (A), any policy issued after December 31, 1983, in exchange for a substantially similar policy issued on or before such date shall be treated as issued before January 1, 1984. A similar rule shall apply in the case of a series of exchanges.

(8) Subsection to apply to policies provided under employee benefit plans

This subsection shall not apply to any policyholder dividend paid or accrued with respect to a group policy issued in connection with a plan to provide welfare benefits to employees (within the meaning of section 419(e)(2)).

(Added Pub. L. 98–369, div. A, title II, § 211(a), July 18, 1984, 98 Stat. 732; amended Pub. L. 99–514, title XVIII, § 1821(b), (c), Oct. 22, 1986, 100 Stat. 2838; Pub. L. 108–218, title II, § 205(b)(3), Apr. 10, 2004, 118 Stat. 610.)

REFERENCES IN TEXT

The date of enactment of the Tax Reform Act of 1984, referred to in subsec. (f)(4), is the date of enactment of Pub. L. 98–369, div. A, which was approved July 18, 1984.

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–218 reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

''(1) IN GENERAL.—Except as limited by paragraph (2), the deduction for policyholder dividends for any taxable year shall be an amount equal to the policyholder dividends paid or accrued during the taxable year.

''(2) REDUCTION IN CASE OF MUTUAL COMPANIES.—In the case of a mutual life insurance company, the deduction for policyholder dividends for any taxable year shall be reduced by the amount determined under section 809.''

1986—Subsec. (d)(1)(B). Pub. L. 99–514, §1821(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''determined at a rate in excess of the prevailing State assumed interest rate for such contract.''

Subsec. (f). Pub. L. 99–514, §1821(c), added subsec. (f).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–218 applicable to taxable years beginning after Dec. 31, 2004, see section 205(c) of Pub. L. 108–218, set out as a note under section 807 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as a note under section 801 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[§ 809. Repealed. Pub. L. 108–218, title II, § 205(a), Apr. 10, 2004, 118 Stat. 610]

Section, added Pub. L. 98–369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 733; amended Pub. L. 99–514, title XVIII, §1821(d)–(h), (r), Oct. 22, 1986, 100 Stat. 2839, 2840, 2843; Pub. L. 100–647, title I, §1018(u)(47), Nov. 10, 1988, 102 Stat. 3593; Pub. L. 107–147, title VI, §611(a), Mar. 9, 2002, 116 Stat. 61, related to reduction in certain deductions of mutual life insurance companies.

A prior section 809, added Pub. L. 86–69, §2(a), June 25, 1959, 73 Stat. 121; amended Pub. L. 87–59, §2(a), (b), June 27, 1961, 75 Stat. 120; Pub. L. 87–790, §3(a), Oct. 10, 1962, 76 Stat. 808; Pub. L. 87–858, §3(b)(3), (c), Oct. 23, 1962, 76 Stat. 1137; Pub. L. 88–272, title II, §§214(b)(4), 228(a), Feb. 26, 1964, 78 Stat. 55, 98; Pub. L. 91–172, title II, §201(a)(2)(C), title IX, §907(c)(2)(B), Dec. 30, 1969, 83 Stat. 558, 717; Pub. L. 94–455, title XV, §1508(a), title XIX, §§1901(a)(98), (b)(1)(J)(iv), (L)–(N), 33(G), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1741, 1781, 1791, 1801, 1834; Pub. L. 97–248, title II, §§255(b)(2)–(4), 259(a), 264(c)(2), (3), Sept. 3, 1982, 96 Stat. 534, 538, 544; Pub. L. 97–448, title I, §102(m)(1), Jan. 12, 1983, 96 Stat. 2374, related to general provisions regarding gain and loss from operations, prior to the general revision of this part by Pub. L. 98–369, §211(a).

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 2004, see section 205(c) of Pub. L. 108–218, set out as an Effective Date of 2004 Amendment note under section 807 of this title.

§ 810. Operations loss deduction

(a) Deduction allowed

There shall be allowed as a deduction for the taxable year an amount equal to the aggregate of—

(1) the operations loss carryovers to such year, plus

(2) the operations loss carrybacks to such year.

For purposes of this part, the term ''operations loss deduction'' means the deduction allowed by this subsection.

(b) Operations loss carrybacks and carryovers

(1) Years to which loss may be carried

The loss from operations for any taxable year (hereinafter in this section referred to as the ''loss year'') shall be—

(A) an operations loss carryback to each of the 3 taxable years preceding the loss year,

(B) an operations loss carryover to each of the 15 taxable years following the loss year, and

(C) if the life insurance company is a new company for the loss year, an operations loss carryover to each of the 3 taxable years following the 15 taxable years described in subparagraph (B).

(2) Amount of carrybacks and carryovers

The entire amount of the loss from operations for any loss year shall be carried to the earliest of the taxable years to which (by reason of paragraph (1)) such loss may be carried. The portion of such loss which shall be carried to each of the other taxable years shall be the excess (if any) of the amount of such loss over the sum of the offsets (as defined in subsection (d)) for each of the prior taxable years to which such loss may be carried.

(3) Election for operations loss carrybacks

In the case of a loss from operations for any taxable year, the taxpayer may elect to relinquish the entire carryback period for such loss. Such election shall be made by the due date (including extensions of time) for filing the return for the taxable year of the loss from operations for which the election is to be in effect, and, once made for any taxable year, such election shall be irrevocable for that taxable year.

(4) Carryback for 2008 or 2009 losses

(A) In general

In the case of an applicable loss from operations with respect to which the taxpayer has elected the application of this paragraph, paragraph (1)(A) shall be applied by substituting any whole number elected by the taxpayer which is more than 3 and less than 6 for ''3''.

(B) Applicable loss from operations

For purposes of this paragraph, the term ''applicable loss from operations'' means the taxpayer's loss from operations for a taxable year ending after December 31, 2007, and beginning before January 1, 2010.

(C) Election

(i) In general

Any election under this paragraph may be made only with respect to 1 taxable year.

(ii) Procedure

Any election under this paragraph shall be made in such manner as may be prescribed by the Secretary, and shall be made by the due date (including extension of time) for filing the return for the taxpayer's last taxable year beginning in 2009. Any such election, once made, shall be irrevocable.

(D) Limitation on amount of loss carryback to 5th preceding taxable year

(i) In general

The amount of any loss from operations which may be carried back to the 5th taxable year preceding the taxable year of such loss under subparagraph (A) shall not exceed 50 percent of the taxpayer's taxable income (computed without regard to the loss from operations for the loss year or any taxable year thereafter) for such preceding taxable year.

(ii) Carrybacks and carryovers to other taxable years

Appropriate adjustments in the application of the second sentence of paragraph (2) shall be made to take into account the limitation of clause (i).

(c) Computation of loss from operations

For purposes of this section—

(1) In general

The term ''loss from operations'' means the excess of the life insurance deductions for any taxable year over the life insurance gross income for such taxable year.

(2) Modifications

For purposes of paragraph (1)—

(A) the operations loss deduction shall not be allowed, and

(B) the deductions allowed by sections 243 (relating to dividends received by corporations), 244 (relating to dividends received on certain preferred stock of public utilities), and 245 (relating to dividends received from certain foreign corporations) shall be computed without regard to section 246(b) as modified by section 805(a)(4).

(d) Offset defined

(1) In general

For purposes of subsection (b)(2), the term ''offset'' means, with respect to any taxable year, an amount equal to that increase in the operations loss deduction for the taxable year which reduces the life insurance company taxable income (computed without regard to paragraphs (2) and (3) of section 804)[1] or such year to zero.

(2) Operations loss deduction

For purposes of paragraph (1), the operations loss deduction for any taxable year shall be computed without regard to the loss from operations for the loss year or for any taxable year thereafter.

(e) New company defined

For purposes of this part, a life insurance company is a new company for any taxable year only if such taxable year begins not more than 5 years after the first day on which it (or any predecessor, if section 381(c)(22) applies) was authorized to do business as an insurance company.

(f) Application of subtitles A and F in respect of operation losses

Except as provided in section 805(b)(5),[1] subtitles A and F shall apply in respect of operation loss carrybacks, operation loss carryovers, and the operations loss deduction under this part, in the same manner and to the same extent as such subtitles apply in respect of net operating loss carrybacks, net operating loss carryovers, and the net operating loss deduction.

(g) Transitional rule

For purposes of this section and section 812 (as in effect before the enactment of the Life Insurance Tax Act of 1984), this section shall be treated as a continuation of such section 812.

(Added Pub. L. 98–369, div. A, title II, § 211(a), July 18, 1984, 98 Stat. 738; amended Pub. L. 111–92, § 13(c), Nov. 6, 2009, 123 Stat. 2994.)

REFERENCES IN TEXT

Paragraphs (2) and (3) of section 804, referred to in subsec. (d)(1), were repealed and a new paragraph (2) enacted by Pub. L. 99–514, title X, § 1011(b)(2), Oct. 22, 1986, 100 Stat. 2389.

Section 805(b)(5) of this title, referred to in subsec. (f), was redesignated section 805(b)(4) of this title by Pub. L. 99–514, title VIII, § 805(c)(6), Oct. 22, 1986, 100 Stat. 2362.

The Life Insurance Tax Act of 1984, referred to in subsec. (g), probably means title II of div. A of Pub. L. 98–369, which amended this part generally and was approved July 18, 1984.

PRIOR PROVISIONS

A prior section 810, added Pub. L. 86–69, § 2(a), June 25, 1959, 73 Stat. 125; amended Pub. L. 91–172, title I, § 121(b)(5)(B), title IX, § 907(a)(2), Dec. 30, 1969, 83 Stat. 541, 715, related to rules for certain reserves, prior to the general revision of this part by Pub. L. 98–369, § 211(a).

AMENDMENTS

2009—Subsec. (b)(4). Pub. L. 111–92 added par. (4).

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–92 applicable to losses arising in taxable years ending after Dec. 31, 2007, with transition provisions and exception for TARP recipients, see section 13(e), (f) of Pub. L. 111–92, set out as a note under section 56 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as a note under section 801 of this title.

SUBPART D—ACCOUNTING, ALLOCATION, AND FOREIGN PROVISIONS

Sec.
811. Accounting provisions.

[1] See References in Text note below.

Sec.
812. Definition of company's share and policyholders' share.
[813. Repealed.]
814. Contiguous country branches of domestic life insurance companies.
815. Distributions to shareholders from pre-1984 policyholders surplus account.

AMENDMENTS

1987—Pub. L. 100–203, title X, §10242(c)(4), Dec. 22, 1987, 101 Stat. 1330–423, struck out item 813 ''Foreign life insurance companies''.

§ 811. Accounting provisions

(a) Method of accounting

All computations entering into the determination of the taxes imposed by this part shall be made—

(1) under an accrual method of accounting, or

(2) to the extent permitted under regulations prescribed by the Secretary, under a combination of an accrual method of accounting with any other method permitted by this chapter (other than the cash receipts and disbursements method).

To the extent not inconsistent with the preceding sentence or any other provision of this part, all such computations shall be made in a manner consistent with the manner required for purposes of the annual statement approved by the National Association of Insurance Commissioners.

(b) Amortization of premium and accrual of discount

(1) In general

The appropriate items of income, deductions, and adjustments under this part shall be adjusted to reflect the appropriate amortization of premium and the appropriate accrual of discount attributable to the taxable year on bonds, notes, debentures, or other evidences of indebtedness held by a life insurance company. Such amortization and accrual shall be determined—

(A) in accordance with the method regularly employed by such company, if such method is reasonable, and

(B) in all other cases, in accordance with regulations prescribed by the Secretary.

(2) Special rules

(A) Amortization of bond premium

In the case of any bond (as defined in section 171(d)), the amount of bond premium, and the amortizable bond premium for the taxable year, shall be determined under section 171(b) as if the election set forth in section 171(c) had been made.

(B) Convertible evidence of indebtedness

In no case shall the amount of premium on a convertible evidence of indebtedness include any amount attributable to the conversion features of the evidence of indebtedness.

(3) Exception

No accrual of discount shall be required under paragraph (1) on any bond (as defined in section 171(d)), except in the case of discount which is—

(A) interest to which section 103 applies, or

(B) original issue discount (as defined in section 1273).

(c) No double counting

Nothing in this part shall permit—

(1) a reserve to be established for any item unless the gross amount of premiums and other consideration attributable to such item are required to be included in life insurance gross income,

(2) the same item to be counted more than once for reserve purposes, or

(3) any item to be deducted (either directly or as an increase in reserves) more than once.

(d) Method of computing reserves on contract where interest is guaranteed beyond end of taxable year

For purposes of this part (other than section 816), amounts in the nature of interest to be paid or credited under any contract for any period which is computed at a rate which—

(1) exceeds the greater of the prevailing State assumed interest rate or applicable Federal interest rate in effect under section 807 for the contract for such period, and

(2) is guaranteed beyond the end of the taxable year on which the reserves are being computed,

shall be taken into account in computing the reserves with respect to such contract as if such interest were guaranteed only up to the end of the taxable year.

(e) Short taxable years

If any return of a corporation made under this part is for a period of less than the entire calendar year (referred to in this subsection as ''short period''), then section 443 shall not apply in respect to such period, but life insurance company taxable income shall be determined, under regulations prescribed by the Secretary, on an annual basis by a ratable daily projection of the appropriate figures for the short period.

(Added and amended Pub. L. 98–369, div. A, title I, §42(a)(8), title II, §211(a), July 18, 1984, 98 Stat. 557, 740; Pub. L. 100–647, title II, §2004(p)(1), Nov. 10, 1988, 102 Stat. 3608.)

PRIOR PROVISIONS

A prior section 811, added Pub. L. 86–69, §2(a), June 25, 1959, 73 Stat. 126; amended Pub. L. 97–248, title II, §255(b)(1), Sept. 3, 1982, 96 Stat. 533; Pub. L. 98–369, div. A, title VII, §714(a), July 18, 1984, 98 Stat. 960, related to dividends to policyholders, prior to the general revision of this part by Pub. L. 98–369, §211(a).

Another prior section 811, act Aug. 16, 1954, ch. 736, §811, as added Mar. 13, 1956, ch. 83, §2, 70 Stat. 44; amended July 24, 1956, ch. 696, §2(c), 70 Stat. 633; Mar. 17, 1958, Pub. L. 85–345, §2(c), 72 Stat. 37, imposed a tax on the life insurance company taxable income of all life insurance companies for taxable years beginning after Dec. 31, 1957, prior to the general revision of this part by Pub. L. 86–69, §2(a).

AMENDMENTS

1988—Subsec. (d)(1). Pub. L. 100–647 substituted ''the greater of the prevailing State assumed interest rate or applicable Federal interest rate in effect under section 807 for the contract'' for ''the prevailing State assumed interest rate for the contract''.

1984—Subsec. (b)(3). Pub. L. 98–369, § 42(a)(8), substituted ''section 1273'' for ''section 1232(b)''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 42(a)(8) of Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as a note under section 801 of this title.

§ 812. Definition of company's share and policyholders' share

(a) General rule

(1) Company's share

For purposes of section 805(a)(4), the term ''company's share'' means, with respect to any taxable year, the percentage obtained by dividing—

(A) the company's share of the net investment income for the taxable year, by

(B) the net investment income for the taxable year.

(2) Policyholders' share

For purposes of section 807, the term ''policyholders' share'' means, with respect to any taxable year, the excess of 100 percent over the percentage determined under paragraph (1).

(b) Company's share of net investment income

(1) In general

For purposes of this section, the company's share of net investment income is the excess (if any) of—

(A) the net investment income for the taxable year, over

(B) the sum of—

(i) the policy interest, for the taxable year, plus

(ii) the gross investment income's proportionate share of policyholder dividends for the taxable year.

(2) Policy interest

For purposes of this subsection, the term ''policy interest'' means—

(A) required interest (at the greater of the prevailing State assumed rate or the applicable Federal interest rate) on reserves under section 807(c) (other than paragraph (2) thereof),

(B) the deductible portion of excess interest,

(C) the deductible portion of any amount (whether or not a policyholder dividend), and not taken into account under subparagraph (A) or (B), credited to—

(i) a policyholder's fund under a pension plan contract for employees (other than retired employees), or

(ii) a deferred annuity contract before the annuity starting date, and

(D) interest on amounts left on deposit with the company.

In any case where neither the prevailing State assumed interest rate nor the applicable Federal interest rate is used, another appropriate rate shall be used for purposes of subparagraph (A).

(3) Gross investment income's proportionate share of policyholder dividends

For purposes of paragraph (1), the gross investment income's proportionate share of policyholder dividends is—

(A) the deduction for policyholders' dividends determined under section 808 for the taxable year, but not including—

(i) the deductible portion of excess interest,

(ii) the deductible portion of policyholder dividends on contracts referred to in clauses (i) and (ii) of paragraph (2)(C), and

(iii) the deductible portion of the premium and mortality charge adjustments with respect to contracts paying excess interest for such year,

multiplied by

(B) the fraction—

(i) the numerator of which is gross investment income for the taxable year (reduced by the policy interest for such year), and

(ii) the denominator of which is life insurance gross income reduced by the excess (if any) of the closing balance for the items described in section 807(c) over the opening balance for such items for the taxable year.

For purposes of subparagraph (B)(ii), life insurance gross income shall be determined by including tax-exempt interest and by applying section 807(a)(2)(B) as if it did not contain clause (i) thereof.

(c) Net investment income

For purposes of this section, the term ''net investment income'' means—

(1) except as provided in paragraph (2), 90 percent of gross investment income; or

(2) in the case of gross investment income attributable to assets held in segregated asset accounts under variable contracts, 95 percent of gross investment income.

(d) Gross investment income

For purposes of this section, the term ''gross investment income'' means the sum of the following:

(1) Interest, etc.

The gross amount of income from—

(A) interest (including tax-exempt interest), dividends, rents, and royalties,

(B) the entering into of any lease, mortgage, or other instrument or agreement from which the life insurance company derives interest, rents, or royalties,

(C) the alteration or termination of any instrument or agreement described in subparagraph (B), and

(D) the increase for any taxable year in the policy cash values (within the meaning of section 805(a)(4)(F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies.

(2) Short-term capital gain

The amount (if any) by which the net short-term capital gain exceeds the net long-term capital loss.

(3) Trade or business income

The gross income from any trade or business (other than an insurance business) carried on by the life insurance company, or by a partnership of which the life insurance company is a partner. In computing gross income under this paragraph, there shall be excluded any item described in paragraph (1).

Except as provided in paragraph (2), in computing gross investment income under this subsection, there shall be excluded any gain from the sale or exchange of a capital asset, and any gain considered as gain from the sale or exchange of a capital asset.

(e) Dividends from certain subsidiaries not included in gross investment income

(1) In general

For purposes of this section, the term ''gross investment income'' shall not include any dividend received by the life insurance company which is a 100 percent dividend.

(2) 100 percent dividend defined

(A) In general

Except as provided in subparagraphs (B) and (C), the term ''100 percent dividend'' means any dividend if the percentage used for purposes of determining the deduction allowable under section 243, 244, or 245(b) is 100 percent.

(B) Certain dividends out of tax-exempt interest, etc.

The term ''100 percent dividend'' does not include any distribution by a corporation to the extent such distribution is out of tax-exempt interest or out of dividends which are not 100 percent dividends (determined with the application of this subparagraph).

(C) Certain dividends received by foreign corporations

The term ''100 percent dividends'' does not include any dividend described in section 805(a)(4)(E) (relating to certain dividends in the case of foreign corporations).

(f) No double counting

Under regulations, proper adjustments shall be made in the application of this section to prevent an item from being counted more than once.

(Added Pub. L. 98–369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 741; amended Pub. L. 99–514, title XVIII, §1821(i), Oct. 22, 1986, 100 Stat. 2840; Pub. L. 100–203, title X, §10241(b)(2)(B), Dec. 22, 1987, 101 Stat. 1330–420; Pub. L. 100–647, title I, §1018(h)(1), title II, §2004(p)(2), Nov. 10, 1988, 102 Stat. 3583, 3608; Pub. L. 104–188, title I, §1602(b)(2), Aug. 20, 1996, 110 Stat. 1833; Pub. L. 105–34, title X, §1084(b)(3), Aug. 5, 1997, 111 Stat. 955; Pub. L. 108–218, title II, §205(b)(4), Apr. 10, 2004, 118 Stat. 610.)

CODIFICATION

Another section 1084(b) of Pub. L. 105–34 amended sections 101 and 264 of this title.

PRIOR PROVISIONS

A prior section 812, added Pub. L. 86–69, §2(a), June 25, 1959, 73 Stat. 127; amended Pub. L. 87–858, §3(d)(1), Oct. 23, 1962, 76 Stat. 1137; Pub. L. 88–571, §1(a), Sept. 2, 1964, 78 Stat. 857; Pub. L. 94–455, title VIII, §806(d)(1), title XIX, §1901(a)(99), Oct. 4, 1976, 90 Stat. 1598, 1781; Pub. L. 97–34, title II, §207(b), Aug. 13, 1981, 95 Stat. 225, related to operations loss deductions, prior to the general revision of this part by Pub. L. 98–369, §211(a).

Another prior section 812, act Aug. 16, 1954, ch. 736, §812, as added Mar. 13, 1956, ch. 83, §2, 70 Stat. 45, related to reserve and other policy liability deduction, prior to the general revision of this part by Pub. L. 86–69, §2(a).

AMENDMENTS

2004—Subsec. (b)(3)(A). Pub. L. 108–218 substituted ''section 808'' for ''sections 808 and 809''.

1997—Subsec. (d)(1)(D). Pub. L. 105–34 added subpar. (D).

1996—Subsec. (g). Pub. L. 104–188 struck out subsec. (g) which read as follows: ''TREATMENT OF INTEREST PARTIALLY TAX-EXEMPT UNDER SECTION 133.—For purposes of this section and subsections (a) and (b) of section 807, the terms 'gross investment income' and 'tax-exempt interest' shall not include any interest received with respect to a securities acquisition loan (as defined in section 133(b)). Such interest shall not be included in life insurance gross income for purposes of subsection (b)(3).''

1988—Subsec. (b)(2). Pub. L. 100–647, §2004(p)(2), substituted ''In any case where neither the prevailing State assumed interest rate nor the applicable Federal interest rate is used, another appropriate rate shall be used for purposes of subparagraph (A).'' for ''In any case where the prevailing State assumed rate is not used, another appropriate rate shall be treated as the prevailing State assumed rate for purposes of subparagraph (A).''

Subsec. (e). Pub. L. 100–647, §1018(h)(1), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''For purposes of this section, the term 'gross investment income' shall not include any dividend received by the life insurance company which is a 100-percent dividend (as defined in section 805(a)(4)(C)). Such term also shall not include any dividend described in section 805(a)(4)(D) (relating to certain dividends in the case of foreign corporations).''

1987—Subsec. (b)(2). Pub. L. 100–203 substituted ''at the greater of the prevailing State assumed rate or the applicable Federal interest rate'' for ''at the prevailing State assumed rate or, where such rate is not used, another appropriate rate'' in subpar. (A), and inserted provision at end that in any case where the prevailing State assumed rate is not used, another appropriate rate be treated as the prevailing State assumed rate for purposes of subpar. (A).

1986—Subsec. (b)(2). Pub. L. 99–514, §1821(i)(1), inserted ''or, where such rate is not used, another appropriate rate'' after ''assumed rate'', in subpar. (A) and added subpar. (D).

Subsec. (b)(3)(B). Pub. L. 99–514, §1821(i)(2), struck out ''(including tax-exempt interest)'' after ''insurance gross income'' in cl. (ii) and inserted at end ''For purposes of subparagraph (B)(ii), life insurance gross income shall be determined by including tax-exempt interest and by applying section 807(a)(2)(B) as if it did not contain clause (i) thereof.''

Subsec. (c). Pub. L. 99–514, §1821(i)(3), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''For purposes of this section, the term 'net

investment income' means 90 percent of gross investment income.''

Subsec. (g). Pub. L. 99–514, § 1821(i)(4), added subsec. (g).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–218 applicable to taxable years beginning after Dec. 31, 2004, see section 205(c) of Pub. L. 108–218, set out as a note under section 807 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to contracts issued after June 8, 1997, in taxable years ending after such date, with special provisions relating to changes in contracts to be treated as new contracts, see section 1084(d) of Pub. L. 105–34, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1602(b)(1) of Pub. L. 104–188 applicable to loans made after Aug. 20, 1996, with exception, and provisions relating to certain refinancings, see section 1602(c) of Pub. L. 104–188, set out as an Effective Date of Repeal note under former section 133 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1018(h)(2) of Pub. L. 100–647 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 211 of the Tax Reform Act of 1984 [Pub. L. 98–369].''

Amendment by section 2004(p)(2) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to contracts issued in taxable years beginning after Dec. 31, 1987, see section 10241(c) of Pub. L. 100–203, set out as a note under section 807 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as a note under section 801 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[§ 813. Repealed. Pub. L. 100–203, title X, § 10242(c)(1), Dec. 22, 1987, 101 Stat. 1330–423]

Section, added Pub. L. 98–369, div. A, title II, § 211(a), July 18, 1984, 98 Stat. 743; amended Pub. L. 99–514, title X, § 1011(b)(9), title XVIII, § 1821(j), Oct. 22, 1986, 100 Stat. 2389, 2841; Pub. L. 100–647, title I, § 1010(a)(1), Nov. 10, 1988, 102 Stat. 3450, related to foreign life insurance companies.

A prior section 813, act Aug. 16, 1954, ch. 736, § 813, as added Mar. 13, 1956, ch. 83, § 2, 70 Stat. 46, related to adjustment for certain reserves, prior to the general revision of this part by Pub. L. 86–69, § 2(a).

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1987, see section 10242(d) of Pub. L. 100–203, set out as an Effective Date of 1987 Amendment note under section 816 of this title.

§ 814. Contiguous country branches of domestic life insurance companies

(a) Exclusion of items

In the case of a domestic mutual insurance company which—

(1) is a life insurance company,

(2) has a contiguous country life insurance branch, and

(3) makes the election provided by subsection (g) with respect to such branch,

there shall be excluded from each item involved in the determination of life insurance company taxable income the items separately accounted for in accordance with subsection (c).

(b) Contiguous country life insurance branch

For purposes of this section, the term contiguous country life insurance branch means a branch which—

(1) issues insurance contracts insuring risks in connection with the lives or health of residents of a country which is contiguous to the United States,

(2) has its principal place of business in such contiguous country, and

(3) would constitute a mutual life insurance company if such branch were a separate domestic insurance company.

For purposes of this section, the term ''insurance contract'' means any life, health, accident, or annuity contract or reinsurance contract or any contract relating thereto.

(c) Separate accounting required

Any taxpayer which makes the election provided by subsection (g) shall establish and maintain a separate account for the various income, exclusion, deduction, asset, reserve, liability, and surplus items properly attributable to the contracts described in subsection (b). Such separate accounting shall be made—

(1) in accordance with the method regularly employed by such company, if such method clearly reflects income derived from, and the other items attributable to, the contracts described in subsection (b), and

(2) in all other cases, in accordance with regulations prescribed by the Secretary.

(d) Recognition of gain on assets in branch account

If the aggregate fair market value of all the invested assets and tangible property which are separately accounted for by the domestic life insurance company in the branch account established pursuant to subsection (c) exceeds the aggregate adjusted basis of such assets for purposes of determining gain, then the domestic life insurance company shall be treated as having sold all such assets on the first day of the first

taxable year for which the election is in effect at their fair market value on such first day. Notwithstanding any other provision of this chapter, the net gain shall be recognized to the domestic life insurance company on the deemed sale described in the preceding sentence.

(e) Transactions between contiguous country branch and domestic life insurance company

(1) Reimbursement for home office services, etc.

Any payment, transfer, reimbursement, credit, or allowance which is made from a separate account established pursuant to subsection (c) to one or more other accounts of a domestic life insurance company as reimbursement for costs incurred for or with respect to the insurance (or reinsurance) of risks accounted for in such separate account shall be taken into account by the domestic life insurance company in the same manner as if such payment, transfer, reimbursement, credit, or allowance had been received from a separate person.

(2) Repatriation of income

(A) In general

Except as provided in subparagraph (B), any amount directly or indirectly transferred or credited from a branch account established pursuant to subsection (c) to one or more other accounts of such company shall, unless such transfer or credit is a reimbursement to which paragraph (1) applies, be added to the income of the domestic life insurance company.

(B) Limitation

The addition provided by subparagraph (A) for the taxable year with respect to any contiguous country life insurance branch shall not exceed the amount by which—

(i) the aggregate decrease in the tentative LICTI of the domestic life insurance company for the taxable year and for all prior taxable years resulting solely from the application of subsection (a) of this section with respect to such branch, exceeds

(ii) the amount of additions to tentative LICTI pursuant to subparagraph (A) with respect to such contiguous country branch for all prior taxable years.

(C) Transitional rule

For purposes of this paragraph, in the case of a prior taxable year beginning before January 1, 1984, the term ''tentative LICTI'' means life insurance company taxable income determined under this part (as in effect for such year) without regard to this paragraph.

(f) Other rules

(1) Treatment of foreign taxes

(A) In general

No income, war profits, or excess profits taxes paid or accrued to any foreign country or possession of the United States which is attributable to income excluded under subsection (a) shall be taken into account for purposes of subpart A of part III of subchapter N (relating to foreign tax credit) or allowable as a deduction.

(B) Treatment of repatriated amounts

For purposes of sections 78 and 902, where any amount is added to the life insurance company taxable income of the domestic life insurance company by reason of subsection (e)(2), the contiguous country life insurance branch shall be treated as a foreign corporation. Any amount so added shall be treated as a dividend paid by a foreign corporation, and the taxes paid to any foreign country or possession of the United States with respect to such amount shall be deemed to have been paid by such branch.

(2) United States source income allocable to contiguous country branch

For purposes of sections 881, 882, and 1442, each contiguous country life insurance branch shall be treated as a foreign corporation. Such sections shall be applied to each such branch in the same manner as if such sections contained the provisions of any treaty to which the United States and the contiguous country are parties, to the same extent such provisions would apply if such branch were incorporated in such contiguous country.

(g) Election

A taxpayer may make the election provided by this subsection with respect to any contiguous country for any taxable year. An election made under this subsection for any taxable year shall remain in effect for all subsequent taxable years, except that it may be revoked with the consent of the Secretary. The election provided by this subsection shall be made not later than the time prescribed by law for filing the return for the taxable year (including extensions thereof) with respect to which such election is made, and such election and any approved revocation thereof shall be made in the manner provided by the Secretary.

(h) Special rule for domestic stock life insurance companies

At the election of a domestic stock life insurance company which has a contiguous country life insurance branch described in subsection (b) (without regard to the mutual requirement in subsection (b)(3)), the assets of such branch may be transferred to a foreign corporation organized under the laws of the contiguous country without the application of section 367. Subsection (a) shall apply to the stock of such foreign corporation as if such domestic company were a mutual company and as if the stock were an item described in subsection (c). Subsection (e)(2) shall apply to amounts transferred or credited to such domestic company as if such domestic company and such foreign corporation constituted one domestic mutual life insurance company. The insurance contracts which may be transferred pursuant to this subsection shall include only those which are similar to the types of insurance contracts issued by a mutual life insurance company. Notwithstanding the first sentence of this subsection, if the aggregate fair market value of the invested assets and tangible property which

are separately accounted for by the domestic life insurance company in the branch account exceeds the aggregate adjusted basis of such assets for purposes of determining gain, the domestic life insurance company shall be deemed to have sold all such assets on the first day of the taxable year for which the election under this subsection applies and the net gain shall be recognized to the domestic life insurance company on the deemed sale, but not in excess of the proportion of such net gain which equals the proportion which the aggregate fair market value of such assets which are transferred pursuant to this subsection is of the aggregate fair market value of all such assets.

(Added Pub. L. 98–369, div. A, title II, § 211(a), July 18, 1984, 98 Stat. 744; amended Pub. L. 105–34, title XI, § 1131(c)(1), Aug. 5, 1997, 111 Stat. 980.)

AMENDMENTS

1997—Subsec. (h). Pub. L. 105–34 struck out ''or 1491'' after ''section 367''.

NEW SECTION 814 TREATED AS CONTINUATION OF SECTION 819A

Section 217(a) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''For purposes of section 814 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to contiguous country branches of domestic life insurance companies)—

''(1) any election under section 819A of such Code (as in effect on the day before the date of the enactment of this Act [July 18, 1984]) shall be treated as an election under such section 814, and

''(2) any reference to a provision of such section 814 shall be treated as including a reference to the corresponding provision of such section 819A.''

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as a note under section 801 of this title.

§ 815. Distributions to shareholders from pre-1984 policyholders surplus account

(a) General rule

In the case of a stock life insurance company which has an existing policyholders surplus account, the tax imposed by section 801 for any taxable year shall be the amount which would be imposed by such section for such year on the sum of—

(1) life insurance company taxable income for such year (but not less than zero), plus

(2) the amount of direct and indirect distributions during such year to shareholders from such account.

For purposes of the preceding sentence, the term ''indirect distribution'' shall not include any bona fide loan with arms-length terms and conditions.

(b) Ordering rule

For purposes of this section, any distribution to shareholders shall be treated as made—

(1) first out of the shareholders surplus account, to the extent thereof,

(2) then out of the policyholders surplus account, to the extent thereof, and

(3) finally, out of other accounts.

(c) Shareholders surplus account

(1) In general

Each stock life insurance company which has an existing policyholders surplus account shall continue its shareholders surplus account for purposes of this part.

(2) Additions to account

The amount added to the shareholders surplus account for any taxable year beginning after December 31, 1983, shall be the excess of—

(A) the sum of—

(i) the life insurance company's taxable income (but not below zero),

(ii) the small life insurance company deduction provided by section 806, and

(iii) the deductions for dividends received provided by sections 243, 244, and 245 (as modified by section 805(a)(4)) and the amount of interest excluded from gross income under section 103, over

(B) the taxes imposed for the taxable year by section 801 (determined without regard to this section).

If for any taxable year a tax is imposed by section 55, under regulations proper adjustments shall be made for such year and all subsequent taxable years in the amounts taken into account under subparagraphs (A) and (B) of this paragraph and subparagraph (B) of subsection (d)(3).

(3) Subtractions from account

There shall be subtracted from the shareholders surplus account for any taxable year the amount which is treated under this section as distributed out of such account.

(d) Policyholders surplus account

(1) In general

Each stock life insurance company which has an existing policyholders surplus account shall continue such account.

(2) No additions to account

No amount shall be added to the policyholders surplus account for any taxable year beginning after December 31, 1983.

(3) Subtractions from account

There shall be subtracted from the policyholders surplus account for any taxable year an amount equal to the sum of—

(A) the amount which (without regard to subparagraph (B)) is treated under this section as distributed out of the policyholders surplus account, and

(B) the amount by which the tax imposed for the taxable year by section 801 is increased by reason of this section.

(e) Existing policyholders surplus account

For purposes of this section, the term ''existing policyholders surplus account'' means any policyholders surplus account which has a balance as of the close of December 31, 1983.

(f) Other rules applicable to policyholders surplus account continued

Except to the extent inconsistent with the provisions of this part, the provisions of sub-

sections (d), (e), (f), and (g) of section 815 (and of sections 819(b), 6501(c)(6), 6501(k), 6511(d)(6), 6601(d)(3), and 6611(f)(4)) as in effect before the enactment of the Tax Reform Act of 1984 are hereby made applicable in respect of any policyholders surplus account for which there was a balance as of December 31, 1983.

(g) Special rules applicable during 2005 and 2006

In the case of any taxable year of a stock life insurance company beginning after December 31, 2004, and before January 1, 2007—

(1) the amount under subsection (a)(2) for such taxable year shall be treated as zero, and

(2) notwithstanding subsection (b), in determining any subtractions from an account under subsections (c)(3) and (d)(3), any distribution to shareholders during such taxable year shall be treated as made first out of the policyholders surplus account, then out of the shareholders surplus account, and finally out of other accounts.

(Added Pub. L. 98–369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 747; amended Pub. L. 99–514, title X, §1011(b)(10), title XVIII, §1821(k)(1), (2), Oct. 22, 1986, 100 Stat. 2389, 2841; Pub. L. 100–647, title I, §1010(j)(1), Nov. 10, 1988, 102 Stat. 3456; Pub. L. 108–357, title VII, §705(a), Oct. 22, 2004, 118 Stat. 1549.)

REFERENCES IN TEXT

The enactment of the Tax Reform Act of 1984, referred to in subsec. (f), means the enactment of division A of Pub. L. 98–369, which was approved July 18, 1984.

PRIOR PROVISIONS

A prior section 815, added Pub. L. 86–69, §2(a), June 25, 1959, 73 Stat. 129; amended Pub. L. 87–790, §3(b), Oct. 10, 1962, 76 Stat. 808; Pub. L. 87–858, §3(b)(4), (e), Oct. 23, 1962, 76 Stat. 1137; Pub. L. 88–571, §§2, 3(a), 4(a), Sept. 2, 1964, 78 Stat. 857, 859; Pub. L. 90–225, §4(a), (b), Dec. 27, 1967, 81 Stat. 733, 734; Pub. L. 91–172, title IX, §907(b), Dec. 30, 1969, 83 Stat. 715; Pub. L. 94–331, §1(a), June 30, 1976, 90 Stat. 781; Pub. L. 94–455, title XIX, §§1901(b)(1)(O), (24), (33)(H), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1791, 1798, 1801, 1834, contained provisions similar to this section, prior to the general revision of this part by Pub. L. 98–369, §211(a).

AMENDMENTS

2004—Subsec. (g). Pub. L. 108–357 added subsec. (g).

1988—Subsec. (c)(2). Pub. L. 100–647 inserted at end ''If for any taxable year a tax is imposed by section 55, under regulations proper adjustments shall be made for such year and all subsequent taxable years in the amounts taken into account under subparagraphs (A) and (B) of this paragraph and subparagraph (B) of subsection (d)(3).''

1986—Subsec. (a). Pub. L. 99–514, §1821(k)(2), inserted at end ''For purposes of the preceding sentence, the term 'indirect distribution' shall not include any bona fide loan with arms-length terms and conditions.''

Subsec. (c)(2)(A)(ii). Pub. L. 99–514, §1011(b)(10), substituted ''small life insurance company deduction'' for ''special deductions''.

Subsec. (f). Pub. L. 99–514, §1821(k)(1), inserted reference to section 819(b).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VII, §705(b), Oct. 22, 2004, 118 Stat. 1549, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2004.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1010(j)(2) of Pub. L. 100–647 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1986.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1011(b)(10) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1011(c)(1) of Pub. L. 99–514, set out as a note under section 453B of this title.

Amendment by section 1821(k)(1), (2) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as a note under section 801 of this title.

OPERATIONS LOSS DEDUCTION OF INSOLVENT COMPANIES MAY OFFSET DISTRIBUTIONS FROM POLICYHOLDERS SURPLUS ACCOUNT

Section 1013 of Pub. L. 99–514 provided that:

''(a) IN GENERAL.—If—

''(1) on November 15, 1985, a life insurance company was insolvent,

''(2) pursuant to the order of any court of competent jurisdiction in a title 11 or similar case (as defined in section 368(a)(3) of the Internal Revenue Code of 1954 [now 1986]), such company is liquidated, and

''(3) as a result of such liquidation, the tax imposed by section 801 of such Code for any taxable year (hereinafter in this subsection referred to as the 'liquidation year') would (but for this subsection) be increased under section 815(a) of such Code,

then the amount described in section 815(a)(2) of such Code shall be reduced by the loss from operations (if any) for the liquidation year, and by the unused operations loss carryovers (if any) to the liquidation year (determined after the application of section 810 of such Code for such year). No carryover of any loss from operations of such company arising during the liquidation year (or any prior taxable year) shall be allowable for any taxable year succeeding the liquidation year.

''(b) DEFINITIONS.—For purposes of subsection (a)—

''(1) INSOLVENT.—The term 'insolvent' means the excess of liabilities over the fair market value of assets.

''(2) LOSS FROM OPERATIONS.—The term 'loss from operations' has the meaning given such term by section 810(c) of such Code.

''(c) EFFECTIVE DATE.—This section shall apply to liquidations on or after November 15, 1985, in taxable years ending after such date.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

AMOUNT OF INDIRECT DISTRIBUTION FOR LOANS BEFORE MARCH 1, 1986; DETERMINATION; EXCEPTION

Section 1821(k)(3) of Pub. L. 99–514 provided that: ''In the case of any loan made before March 1, 1986 (other than a loan which is renegotiated, extended, renewed, or revised after February 28, 1986), which does not meet the requirements of the last sentence of section 815(a) of the Internal Revenue Code of 1954 [now 1986] (as added by paragraph (2)), the amount of the indirect distribution for purposes of such section 815(a) shall be the foregone interest on the loan (determined by using the lowest rate which would have met the arms-length requirements of such sentence for such a loan).''

SUBPART E—DEFINITIONS AND SPECIAL RULES

Sec.
816. Life insurance company defined.
817. Treatment of variable contracts.
817A. Special rules for modified guaranteed contracts.
818. Other definitions and special rules.

AMENDMENTS

1996—Pub. L. 104–188, title I, § 1612(b), Aug. 20, 1996, 110 Stat. 1847, added item 817A.

§ 816. Life insurance company defined

(a) Life insurance company defined

For purposes of this subtitle, the term ''life insurance company'' means an insurance company which is engaged in the business of issuing life insurance and annuity contracts (either separately or combined with accident and health insurance), or noncancellable contracts of health and accident insurance, if—

(1) its life insurance reserves (as defined in subsection (b)), plus

(2) unearned premiums, and unpaid losses (whether or not ascertained), on noncancellable life, accident, or health policies not included in life insurance reserves,

comprise more than 50 percent of its total reserves (as defined in subsection (c)). For purposes of the preceding sentence, the term ''insurance company'' means any company more than half of the business of which during the taxable year is the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies.

(b) Life insurance reserves defined

(1) In general

For purposes of this part, the term ''life insurance reserves'' means amounts—

(A) which are computed or estimated on the basis of recognized mortality or morbidity tables and assumed rates of interest, and

(B) which are set aside to mature or liquidate, either by payment or reinsurance, future unaccrued claims arising from life insurance, annuity, and noncancellable accident and health insurance contracts (including life insurance or annuity contracts combined with noncancellable accident and health insurance) involving, at the time with respect to which the reserve is computed, life, accident, or health contingencies.

(2) Reserves must be required by law

Except—

(A) in the case of policies covering life, accident, and health insurance combined in one policy issued on the weekly premium payment plan, continuing for life and not subject to cancellation, and

(B) as provided in paragraph (3),

in addition to the requirements set forth in paragraph (1), life insurance reserves must be required by law.

(3) Assessment companies

In the case of an assessment life insurance company or association, the term ''life insurance reserves'' includes—

(A) sums actually deposited by such company or association with State officers pursuant to law as guaranty or reserve funds, and

(B) any funds maintained, under the charter or articles of incorporation or association (or bylaws approved by a State insurance commissioner) of such company or association, exclusively for the payment of claims arising under certificates of membership or policies issued on the assessment plan and not subject to any other use.

(4) Amount of reserves

For purposes of this subsection, subsection (a), and subsection (c), the amount of any reserve (or portion thereof) for any taxable year shall be the mean of such reserve (or portion thereof) at the beginning and end of the taxable year.

(c) Total reserves defined

For purposes of subsection (a), the term ''total reserves'' means—

(1) life insurance reserves,

(2) unearned premiums, and unpaid losses (whether or not ascertained), not included in life insurance reserves, and

(3) all other insurance reserves required by law.

(d) Adjustments in reserves for policy loans

For purposes only of determining under subsection (a) whether or not an insurance company is a life insurance company, the life insurance reserves, and the total reserves, shall each be reduced by an amount equal to the mean of the aggregates, at the beginning and end of the taxable year, of the policy loans outstanding with respect to contracts for which life insurance reserves are maintained.

(e) Guaranteed renewable contracts

For purposes of this part, guaranteed renewable life, accident, and health insurance shall be treated in the same manner as noncancellable life, accident, and health insurance.

(f) Amounts not involving life, accident, or health contingencies

For purposes only of determining under subsection (a) whether or not an insurance company is a life insurance company, amounts set aside and held at interest to satisfy obligations under contracts which do not contain permanent guarantees with respect to life, accident, or health contingencies shall not be included in reserves described in paragraph (1) or (3) of subsection (c).

(g) Burial and funeral benefit insurance companies

A burial or funeral benefit insurance company engaged directly in the manufacture of funeral supplies or the performance of funeral services shall not be taxable under this part but shall be taxable under section 831.

(h) Treatment of deficiency reserves

For purposes of this section and section 842(b)(2)(B)(i), the terms ''life insurance reserves'' and ''total reserves'' shall not include deficiency reserves.

(Added Pub. L. 98–369, div. A, title II, § 211(a), July 18, 1984, 98 Stat. 748; amended Pub. L. 99–514, title XVIII, § 1821(*l*), Oct. 22, 1986, 100 Stat. 2841; Pub. L. 100–203, title X, § 10242(c)(2), Dec. 22, 1987, 101 Stat. 1330–423; Pub. L. 100–647, title I, § 1010(f)(6), title II, § 2004(q)(1), Nov. 10, 1988, 102 Stat. 3454, 3608.)

PRIOR PROVISIONS

A prior section 816, act Aug. 16, 1954, ch. 736, § 816, as added Mar. 13, 1956, ch. 83, § 2, 70 Stat. 46, related to taxation of foreign life insurance companies, prior to the general revision of this part by Pub. L. 86–69, § 2(a).

AMENDMENTS

1988—Subsec. (g). Pub. L. 100–647, § 1010(f)(6), substituted ''section 831'' for ''section 821 or section 831''.

Subsec. (h). Pub. L. 100–647, § 2004(q)(1), substituted ''section 842(b)(2)(B)(i)'' for ''section 842(c)(1)(A)''.

1987—Subsec. (h). Pub. L. 100–203 substituted ''section 842(c)(1)(A)'' for ''section 813(a)(4)(B)''.

1986—Subsec. (h). Pub. L. 99–514 added subsec. (h).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1010(f)(6) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 2004(q)(1) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10242(d) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and sections 842, 864, and 4371 of this title and repealing section 813 of this title] shall apply to taxable years beginning after December 31, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as a note under section 801 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

SPECIAL ELECTION TO TREAT INDIVIDUAL NONCANCELLABLE ACCIDENT AND HEALTH CONTRACTS AS CANCELLABLE

Section 217(i) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–647, title I, § 1010(h)(1), Nov. 10, 1988, 102 Stat. 3455, provided that:

''(1) IN GENERAL.—A mutual life insurance company may elect to treat all individual noncancellable (or guaranteed renewable) accident and health insurance contracts as though they were cancellable for purposes of section 816 of subchapter L of chapter 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

''(2) EFFECT OF ELECTION ON SUBSIDIARIES OF ELECTING PARENT.—For purposes of determining the amount of the small life insurance company deduction of any controlled group which includes a mutual company which made an election under paragraph (1), the taxable income of such electing company shall be taken into account under section 806(b)(2) of the Internal Revenue Code of 1986 (relating to phaseout of small life insurance company deduction).

''(3) ELECTION.—An election under paragraph (1) shall apply to the company's first taxable year beginning after December 31, 1983, and all taxable years thereafter.

''(4) TIME AND MANNER.—An election under paragraph (1) shall be made—

''(A) on the return of the taxpayer for its first taxable year beginning after December 31, 1983, and

''(B) in such manner as the Secretary of the Treasury or his delegate may prescribe.''

[Section 1010(h)(2), (3) of Pub. L. 100–647 provided that:

[''(2) EFFECTIVE DATE.—The amendment made by this subsection [amending section 217(i) of Pub. L. 98–369, set out above] shall apply to taxable years beginning after December 31, 1986, and before January 1, 1992.

[''(3) REVENUE LOSS LIMITED.—The decrease in the amount of Federal revenue by reason of the amendment made by this subsection shall not exceed $300,000 per taxable year.'']

§ 817. Treatment of variable contracts

(a) Increases and decreases in reserves

For purposes of subsections (a) and (b) of section 807, the sum of the items described in section 807(c) taken into account as of the close of the taxable year with respect to any variable contract shall, under regulations prescribed by the Secretary, be adjusted—

(1) by subtracting therefrom an amount equal to the sum of the amounts added from time to time (for the taxable year) to the reserves separately accounted for in accordance with subsection (c) by reason of appreciation in value of assets (whether or not the assets have been disposed of), and

(2) by adding thereto an amount equal to the sum of the amounts subtracted from time to time (for the taxable year) from such reserves by reason of depreciation in value of assets (whether or not the assets have been disposed of).

The deduction allowable for items described in paragraphs (1) and (6) of section 805(a) with respect to variable contracts shall be reduced to the extent that the amount of such items is increased for the taxable year by appreciation (or increased to the extent that the amount of such items is decreased for the taxable year by depreciation) not reflected in adjustments under the preceding sentence.

(b) Adjustment to basis of assets held in segregated asset account

In the case of variable contracts, the basis of each asset in a segregated asset account shall (in addition to all other adjustments to basis) be—

(1) increased by the amount of any appreciation in value, and

(2) decreased by the amount of any depreciation in value,

to the extent such appreciation and depreciation are from time to time reflected in the increases and decreases in reserves or other items referred to in subsection (a) with respect to such contracts.

(c) Separate accounting

For purposes of this part, a life insurance company which issues variable contracts shall separately account for the various income, exclusion, deduction, asset, reserve, and other liability items properly attributable to such variable contracts. For such items as are not accounted for directly, separate accounting shall be made—

(1) in accordance with the method regularly employed by such company, if such method is reasonable, and

(2) in all other cases, in accordance with regulations prescribed by the Secretary.

(d) Variable contract defined

For purposes of this part, the term ''variable contract'' means a contract—

(1) which provides for the allocation of all or part of the amounts received under the contract to an account which, pursuant to State law or regulation, is segregated from the general asset accounts of the company,

(2) which—

(A) provides for the payment of annuities,

(B) is a life insurance contract, or

(C) provides for funding of insurance on retired lives as described in section 807(c)(6), and

(3) under which—

(A) in the case of an annuity contract, the amounts paid in, or the amount paid out, reflect the investment return and the market value of the segregated asset account,

(B) in the case of a life insurance contract, the amount of the death benefit (or the period of coverage) is adjusted on the basis of the investment return and the market value of the segregated asset account, or

(C) in the case of funds held under a contract described in paragraph (2)(C), the amounts paid in, or the amounts paid out, reflect the investment return and the market value of the segregated asset account.

If a contract ceases to reflect current investment return and current market value, such contract shall not be considered as meeting the requirements of paragraph (3) after such cessation. Paragraph (3) shall be applied without regard to whether there is a guarantee, and obligations under such guarantee which exceed obligations under the contract without regard to such guarantee shall be accounted for as part of the company's general account.

(e) Pension plan contracts treated as paying annuity

A pension plan contract which is not a life, accident, or health, property, casualty, or liability insurance contract shall be treated as a contract which provides for the payments of annuities for purposes of subsection (d).

(f) Other special rules

(1) Life insurance reserves

For purposes of subsection (b)(1)(A) of section 816, the reflection of the investment return and the market value of the segregated asset account shall be considered an assumed rate of interest.

(2) Additional separate computations

Under regulations prescribed by the Secretary, such additional separate computations shall be made, with respect to the items separately accounted for in accordance with subsection (c), as may be necessary to carry out the purposes of this section and this part.

(g) Variable annuity contracts treated as annuity contracts

For purposes of this part, the term ''annuity contract'' includes a contract which provides for the payment of a variable annuity computed on the basis of—

(1) recognized mortality tables, and

(2)(A) the investment experience of a segregated asset account, or

(B) the company-wide investment experience of the company.

Paragraph (2)(B) shall not apply to any company which issues contracts which are not variable contracts.

(h) Treatment of certain nondiversified contracts

(1) In general

For purposes of subchapter L, section 72 (relating to annuities), and section 7702(a) (relating to definition of life insurance contract), a variable contract (other than a pension plan contract) which is otherwise described in this section and which is based on a segregated asset account shall not be treated as an annuity, endowment, or life insurance contract for any period (and any subsequent period) for which the investments made by such account are not, in accordance with regulations prescribed by the Secretary, adequately diversified.

(2) Safe harbor for diversification

A segregated asset account shall be treated as meeting the requirements of paragraph (1) for any quarter of a taxable year if as of the close of such quarter—

(A) it meets the requirements of section 851(b)(3), and

(B) no more than 55 percent of the value of the total assets of the account are assets described in section 851(b)(3)(A)(i).

(3) Special rule for investments in United States obligations

To the extent that any segregated asset account with respect to a variable life insurance contract is invested in securities issued by the United States Treasury, the investments made by such account shall be treated as adequately diversified for purposes of paragraph (1).

(4) Look-through in certain cases

For purposes of this subsection, if all of the beneficial interests in a regulated investment company or in a trust are held by 1 or more—

(A) insurance companies (or affiliated companies) in their general account or in segregated asset accounts, or

(B) fund managers (or affiliated companies) in connection with the creation or

management of the regulated investment company or trust,

the diversification requirements of paragraph (1) shall be applied by taking into account the assets held by such regulated investment company or trust.

(5) Independent investment advisors permitted

Nothing in this subsection shall be construed as prohibiting the use of independent investment advisors.

(6) Government securities funds

In determining whether a segregated asset account is adequately diversified for purposes of paragraph (1), each United States Government agency or instrumentality shall be treated as a separate issuer.

(Added Pub. L. 98–369, div. A, title II, §211(a), July 18, 1984, 98 Stat. 750; amended Pub. L. 99–514, title XVIII, §1821(m), (t)(1), Oct. 22, 1986, 100 Stat. 2841, 2844; Pub. L. 100–647, title VI, §6080(a), Nov. 10, 1988, 102 Stat. 3710; Pub. L. 104–188, title I, §1611(a), Aug. 20, 1996, 110 Stat. 1845; Pub. L. 105–34, title XII, §1271(b)(8), Aug. 5, 1997, 111 Stat. 1037; Pub. L. 108–218, title II, §205(b)(5), Apr. 10, 2004, 118 Stat. 610.)

PRIOR PROVISIONS

A prior section 817, added Pub. L. 86–69, §2(a), June 25, 1959, 73 Stat. 132; amended Pub. L. 94–455, title XIV, §1402(b)(1)(M), (2), title XIX, §§1901(a)(100), 1951(b)(11)(A), Oct. 4, 1976, 90 Stat. 1732, 1781, 1839, related to rules regarding certain gains and losses, prior to the general revision of this part by Pub. L. 98–369, §211(a).

Another prior section 817, act Aug. 16, 1954, ch. 736, §817, as added Mar. 13, 1956, ch. 83, §2, 70 Stat. 46, related to denial of double deductions, prior to the general revision of this part by Pub. L. 86–69, §2(a).

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–218, in introductory provisions, struck out ''(other than section 809)'' after ''For purposes of this part''.

1997—Subsec. (h)(2)(A). Pub. L. 105–34, §1271(b)(8)(A), substituted ''851(b)(3)'' for ''851(b)(4)''.

Subsec. (h)(2)(B). Pub. L. 105–34, §1271(b)(8)(B), substituted ''851(b)(3)(A)(i)'' for ''851(b)(4)(A)(i)''.

1996—Subsec. (d)(2)(C). Pub. L. 104–188, §1611(a)(1), added subpar. (C).

Subsec. (d)(3)(C). Pub. L. 104–188, §1611(a)(2), added subpar. (C).

1988—Subsec. (h)(6). Pub. L. 100–647 added par. (6).

1986—Subsec. (d). Pub. L. 99–514, §1821(t)(1), inserted at end ''Paragraph (3) shall be applied without regard to whether there is a guarantee, and obligations under such guarantee which exceed obligations under the contract without regard to such guarantee shall be accounted for as part of the company's general account.''

Subsec. (h)(1). Pub. L. 99–514, §1821(m)(2), struck out last sentence which read as follows: ''For purposes of this paragraph and paragraph (2), beneficial interests in a regulated investment company or in a trust shall not be treated as 1 investment if all of the beneficial interests in such company or trust are held by 1 or more segregated asset accounts of 1 or more insurance companies.''

Subsec. (h)(3) to (5). Pub. L. 99–514, §1821(m)(1), added pars. (3) and (4), redesignated former par. (4) as (5), and struck out former par. (3) which read as follows: ''In the case of a segregated asset account with respect to variable life insurance contracts, paragraph (1) shall not apply in the case of securities issued by the United States Treasury which are owned by a regulated investment company or by a trust all the beneficial interests in which are held by 1 or more segregated asset accounts of the company issuing the contract.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–218 applicable to taxable years beginning after Dec. 31, 2004, see section 205(c) of Pub. L. 108–218, set out as a note under section 807 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1271(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section and sections 851 and 1092 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1611(b) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1995.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 6080(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1821(t)(2) of Pub. L. 99–514 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply—

''(A) to contracts issued after December 31, 1986, and

''(B) to contracts issued before January 1, 1987, if such contract was treated as a variable contract on the taxpayer's return.''

Amendment by section 1821(m) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as a note under section 801 of this title.

DELAY IN EFFECTIVE DATE FOR DIVERSIFICATION REQUIREMENTS WITH RESPECT TO ACCOUNTS FOR CERTAIN IMMEDIATE ANNUITIES

Section 1010(i) of Pub. L. 100–647 provided that: ''Section 817(h) of the 1986 Code shall not apply until January 1, 1989, with respect to a variable contract (as defined in section 817(d) of the 1986 Code) if—

''(1) such contract provides for the payment of an immediate annuity (as defined in section 72(u)(4) of the 1986 Code),

''(2) such contract was outstanding on September 12, 1986, and

''(3) the segregated asset account on which such contract is based was, on September 12, 1986, wholly invested in deposits insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 817A. Special rules for modified guaranteed contracts

(a) Computation of reserves

In the case of a modified guaranteed contract, clause (ii) of section 807(e)(1)(A) shall not apply.

(b) Segregated assets under modified guaranteed contracts marked to market

(1) In general

In the case of any life insurance company, for purposes of this subtitle—

(A) Any gain or loss with respect to a segregated asset shall be treated as ordinary income or loss, as the case may be.

(B) If any segregated asset is held by such company as of the close of any taxable year—

(i) such company shall recognize gain or loss as if such asset were sold for its fair market value on the last business day of such taxable year, and

(ii) any such gain or loss shall be taken into account for such taxable year.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence. The Secretary may provide by regulations for the application of this subparagraph at times other than the times provided in this subparagraph.

(2) Segregated asset

For purposes of paragraph (1), the term ''segregated asset'' means any asset held as part of a segregated account referred to in subsection (d)(1) under a modified guaranteed contract.

(c) Special rule in computing life insurance reserves

For purposes of applying section 816(b)(1)(A) to any modified guaranteed contract, an assumed rate of interest shall include a rate of interest determined, from time to time, with reference to a market rate of interest.

(d) Modified guaranteed contract defined

For purposes of this section, the term ''modified guaranteed contract'' means a contract not described in section 817—

(1) all or part of the amounts received under which are allocated to an account which, pursuant to State law or regulation, is segregated from the general asset accounts of the company and is valued from time to time with reference to market values,

(2) which—

(A) provides for the payment of annuities,

(B) is a life insurance contract, or

(C) is a pension plan contract which is not a life, accident, or health, property, casualty, or liability contract,

(3) for which reserves are valued at market for annual statement purposes, and

(4) which provides for a net surrender value or a policyholder's fund (as defined in section 807(e)(1)).

If only a portion of a contract is not described in section 817, such portion shall be treated for purposes of this section as a separate contract.

(e) Regulations

The Secretary may prescribe regulations—

(1) to provide for the treatment of market value adjustments under sections 72, 7702, 7702A, and 807(e)(1)(B),

(2) to determine the interest rates applicable under sections 807(c)(3), 807(d)(2)(B), and 812 with respect to a modified guaranteed contract annually, in a manner appropriate for modified guaranteed contracts and, to the extent appropriate for such a contract, to modify or waive the applicability of section 811(d),

(3) to provide rules to limit ordinary gain or loss treatment to assets constituting reserves for modified guaranteed contracts (and not other assets) of the company,

(4) to provide appropriate treatment of transfers of assets to and from the segregated account, and

(5) as may be necessary or appropriate to carry out the purposes of this section.

(Added Pub. L. 104–188, title I, § 1612(a), Aug. 20, 1996, 110 Stat. 1846.)

EFFECTIVE DATE

Section 1612(c) of Pub. L. 104–188 provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1995.

''(2) TREATMENT OF NET ADJUSTMENTS.—Except as provided in paragraph (3), in the case of any taxpayer required by the amendments made by this section to change its calculation of reserves to take into account market value adjustments and to mark segregated assets to market for any taxable year—

''(A) such changes shall be treated as a change in method of accounting initiated by the taxpayer,

''(B) such changes shall be treated as made with the consent of the Secretary, and

''(C) the adjustments required by reason of section 481 of the Internal Revenue Code of 1986, shall be taken into account as ordinary income by the taxpayer for the taxpayer's first taxable year beginning after December 31, 1995.

''(3) LIMITATION ON LOSS RECOGNITION AND ON DEDUCTION FOR RESERVE INCREASES.—

''(A) LIMITATION ON LOSS RECOGNITION.—

''(i) IN GENERAL.—The aggregate loss recognized by reason of the application of section 481 of the Internal Revenue Code of 1986 with respect to section 817A(b) of such Code (as added by this section) for the first taxable year of the taxpayer beginning after December 31, 1995, shall not exceed the amount included in the taxpayer's gross income for such year by reason of the excess (if any) of—

''(I) the amount of life insurance reserves as of the close of the prior taxable year, over

''(II) the amount of such reserves as of the beginning of such first taxable year,

to the extent such excess is attributable to subsection (a) of such section 817A. Notwithstanding the preceding sentence, the adjusted basis of each segregated asset shall be determined as if all such losses were recognized.

''(ii) DISALLOWED LOSS ALLOWED OVER PERIOD.—The amount of the loss which is not allowed under clause (i) shall be allowed ratably over the period of 7 taxable years beginning with the taxpayer's first taxable year beginning after December 31, 1995.

''(B) LIMITATION ON DEDUCTION FOR INCREASE IN RESERVES.—

''(i) IN GENERAL.—The deduction allowed for the first taxable year of the taxpayer beginning after December 31, 1995, by reason of the application of section 481 of such Code with respect to section 817A(a) of such Code (as added by this section) shall

not exceed the aggregate built-in gain recognized by reason of the application of such section 481 with respect to section 817A(b) of such Code (as added by this section) for such first taxable year.

''(ii) DISALLOWED DEDUCTION ALLOWED OVER PERIOD.—The amount of the deduction which is disallowed under clause (i) shall be allowed ratably over the period of 7 taxable years beginning with the taxpayer's first taxable year beginning after December 31, 1995.

''(iii) BUILT-IN GAIN.—For purposes of this subparagraph, the built-in gain on an asset is the amount equal to the excess of—

''(I) the fair market value of the asset as of the beginning of the first taxable year of the taxpayer beginning after December 31, 1995, over

''(II) the adjusted basis of such asset as of such time.''

§ 818. Other definitions and special rules

(a) Pension plan contracts

For purposes of this part, the term ''pension plan contract'' means any contract—

(1) entered into with trusts which (as of the time the contracts were entered into) were deemed to be trusts described in section 401(a) and exempt from tax under section 501(a) (or trusts exempt from tax under section 165 of the Internal Revenue Code of 1939 or the corresponding provisions of prior revenue laws);

(2) entered into under plans which (as of the time the contracts were entered into) were deemed to be plans described in section 403(a), or plans meeting the requirements of paragraphs (3), (4), (5), and (6) of section 165(a) of the Internal Revenue Code of 1939;

(3) provided for employees of the life insurance company under a plan which, for the taxable year, meets the requirements of paragraphs (3), (4), (5), (6), (7), (8), (11), (12), (13), (14), (15), (16), (17), (19), (20), (22), (26), and (27) of section 401(a);

(4) purchased to provide retirement annuities for its employees by an organization which (as of the time the contracts were purchased) was an organization described in section 501(c)(3) which was exempt from tax under section 501(a) (or was an organization exempt from tax under section 101(6) of the Internal Revenue Code of 1939 or the corresponding provisions of prior revenue laws), or purchased to provide retirement annuities for employees described in section 403(b)(1)(A)(ii) by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of any one or more of the foregoing;

(5) entered into with trusts which (at the time the contracts were entered into) were individual retirement accounts described in section 408(a) or under contracts entered into with individual retirement annuities described in section 408(b); or

(6) purchased by—

(A) a governmental plan (within the meaning of section 414(d)) or an eligible deferred compensation plan (within the meaning of section 457(b)), or

(B) the Government of the United States, the government of any State or political subdivision thereof, or by any agency or instrumentality of the foregoing, or any organization (other than a governmental unit) exempt from tax under this subtitle, for use in satisfying an obligation of such government, political subdivision, agency or instrumentality, or organization to provide a benefit under a plan described in subparagraph (A).

(b) Treatment of capital gains and losses, etc.

In the case of a life insurance company—

(1) in applying section 1231(a), the term ''property used in the trade or business'' shall be treated as including only—

(A) property used in carrying on an insurance business, of a character which is subject to the allowance for depreciation provided in section 167, held for more than 1 year, and real property used in carrying on an insurance business, held for more than 1 year, which is not described in section 1231(b)(1)(A), (B), or (C), and

(B) property described in section 1231(b)(2), and

(2) in applying section 1221(a)(2), the reference to property used in trade or business shall be treated as including only property used in carrying on an insurance business.

(c) Gain on property held on December 31, 1958 and certain substituted property acquired after 1958

(1) Property held on December 31, 1958

In the case of property held by the taxpayer on December 31, 1958, if—

(A) the fair market value of such property on such date exceeds the adjusted basis for determining gain as of such date, and

(B) the taxpayer has been a life insurance company at all times on and after December 31, 1958,

the gain on the sale or other disposition of such property shall be treated as an amount (not less than zero) equal to the amount by which the gain (determined without regard to this subsection) exceeds the difference between the fair market value on December 31, 1958, and the adjusted basis for determining gain as of such date.

(2) Certain property acquired after December 31, 1958

In the case of property acquired after December 31, 1958, and having a substituted basis (within the meaning of section 1016(b))—

(A) for purposes of paragraph (1), such property shall be deemed held continuously by the taxpayer since the beginning of the holding period thereof, determined with reference to section 1223,

(B) the fair market value and adjusted basis referred to in paragraph (1) shall be that of that property for which the holding period taken into account includes December 31, 1958,

(C) paragraph (1) shall apply only if the property or properties the holding periods of which are taken into account were held only by life insurance companies after December 31, 1958, during the holding periods so taken into account,

(D) the difference between the fair market value and adjusted basis referred to in para-

graph (1) shall be reduced (to not less than zero) by the excess of (i) the gain that would have been recognized but for this subsection on all prior sales or dispositions after December 31, 1958, of properties referred to in subparagraph (C), over (ii) the gain which was recognized on such sales or other dispositions, and

(E) the basis of such property shall be determined as if the gain which would have been recognized but for this subsection were recognized gain.

(3) Property defined

For purposes of paragraphs (1) and (2), the term ''property'' does not include insurance and annuity contracts and property described in paragraph (1) of section 1221(a).

(d) Insurance or annuity contract includes contracts supplementary thereto

For purposes of this part, the term ''insurance or annuity contract'' includes any contract supplementary thereto.

(e) Special rules for consolidated returns

(1) Items of companies other than life insurance companies

If an election under section 1504(c)(2) is in effect with respect to an affiliated group for the taxable year, all items of the members of such group which are not life insurance companies shall not be taken into account in determining the amount of the tentative LICTI of members of such group which are life insurance companies.

(2) Dividends within group

In the case of a life insurance company filing or required to file a consolidated return under section 1501 with respect to any affiliated group for any taxable year, any determination under this part with respect to any dividend paid by one member of such group to another member of such group shall be made as if such group was not filing a consolidated return.

(f) Allocation of certain items for purposes of foreign tax credit, etc.

(1) In general

Under regulations, in applying sections 861, 862, and 863 to a life insurance company, the deduction for policyholder dividends (determined under section 808(c)), reserve adjustments under subsections (a) and (b) of section 807, and death benefits and other amounts described in section 805(a)(1) shall be treated as items which cannot definitely be allocated to an item or class of gross income.

(2) Election of alternative allocation

(A) In general

On or before September 15, 1985, any life insurance company may elect to treat items described in paragraph (1) as properly apportioned or allocated among items of gross income to the extent (and in the manner) prescribed in regulations.

(B) Election irrevocable

Any election under subparagraph (A), once made, may be revoked only with the consent of the Secretary.

(3) Items described in section 807(c) treated as not interest for source rules, etc.

For purposes of part I of subchapter N, items described in any paragraph of section 807(c) shall be treated as amounts which are not interest.

(g) Qualified accelerated death benefit riders treated as life insurance

For purposes of this part—

(1) In general

Any reference to a life insurance contract shall be treated as including a reference to a qualified accelerated death benefit rider on such contract.

(2) Qualified accelerated death benefit riders

For purposes of this subsection, the term ''qualified accelerated death benefit rider'' means any rider on a life insurance contract if the only payments under the rider are payments meeting the requirements of section 101(g).

(3) Exception for long-term care riders

Paragraph (1) shall not apply to any rider which is treated as a long-term care insurance contract under section 7702B.

(Added and amended Pub. L. 98–369, div. A, title II, § 211(a), title X, § 1001(b)(10), (e), July 18, 1984, 98 Stat. 752, 1011, 1012; Pub. L. 99–514, title XI, §§ 1106(d)(3)(C), 1112(d)(4), 1136(b), title XVIII, § 1821(n), (*o*), Oct. 22, 1986, 100 Stat. 2424, 2445, 2486, 2842; Pub. L. 100–647, title I, §§ 1010(k), 1011(e)(5)(A), Nov. 10, 1988, 102 Stat. 3456, 3461; Pub. L. 104–191, title III, § 332(a), Aug. 21, 1996, 110 Stat. 2069; Pub. L. 106–170, title V, § 532(c)(1)(D), (3), Dec. 17, 1999, 113 Stat. 1930, 1931.)

REFERENCES IN TEXT

Section 165 of the Internal Revenue Code of 1939, referred to in subsec. (a)(1), (2), was classified to section 165 of former Title 26, Internal Revenue Code. Section 101 of the Internal Revenue Code of 1939, referred to in subsec. (a)(4) was classified to section 101 of former Title 26, Internal Revenue Code. Sections 101 and 165 were repealed by section 7851(a)(1)(A) of this title. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title. See, also, section 7851(e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

PRIOR PROVISIONS

A prior section 818, added Pub. L. 86–69, § 2(a), June 25, 1959, 73 Stat. 133; amended Pub. L. 88–272, title II, § 228(b)(1), Feb. 26, 1964, 78 Stat. 98; Pub. L. 91–688, § 1(a), Jan. 12, 1971, 84 Stat. 2072; Pub. L. 94–455, title XIX, §§ 1901(a)(101), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1781, 1834; Pub. L. 97–248, title II, §§ 258(a), 260(a), 262, 267(a), Sept. 3, 1982, 96 Stat. 538–540, 550, related to accounting provisions generally, prior to the general revision of this part by Pub. L. 98–369, § 211(a).

Another prior section 818, act Aug. 16, 1954, ch. 736, § 818, as added Mar. 13, 1956, ch. 83, § 2, 70 Stat. 46, related to certain new insurance companies, prior to the general revision of this part by Pub. L. 86–69, § 2(a).

A prior section 819, added Pub. L. 86–69, § 2(a), June 25, 1959, 73 Stat. 136; amended Pub. L. 89–809, title I, § 104(i)(3), Nov. 13, 1966, 80 Stat. 1561; Pub. L. 94–455, title XIX, §§ 1901(a)(102), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1781, 1834, related to foreign life insurance companies,

prior to the general revision of this part by Pub. L. 98–369, §211(a). See section 813 of this title.

A prior section 819A, added Pub. L. 94–455, title X, §1043(a), Oct. 4, 1976, 90 Stat. 1639, related to contiguous country branches of domestic life insurance companies, prior to the general revision of this part by Pub. L. 98–369, §211(a). See section 814 of this title.

A prior section 820, added Pub. L. 86–69, §2(a), June 25, 1959, 73 Stat. 137; amended Pub. L. 94–455, title XIX, §§1901(a)(103), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1782, 1834, related to optional treatment of policies reinsured under modified coinsurance contracts, prior to repeal by Pub. L. 97–248, title II, §255(a), (c), Sept. 3, 1982, 96 Stat. 533, 534, applicable to taxable years beginning after Dec. 31, 1981, with exception.

A prior section 821, acts Aug. 16, 1954, ch. 736, 68A Stat. 260; Mar. 30, 1955, ch. 18, §2, 69 Stat. 14; Mar. 13, 1956, ch. 83, §3(a)(1), (2), 70 Stat. 47; Mar. 29, 1956, ch. 115, §2, 70 Stat. 66; Mar. 29, 1957, Pub. L. 85–12, §2, 71 Stat. 9; June 30, 1958, Pub. L. 85–475, §2, 72 Stat. 259; June 30, 1959, Pub. L. 86–75, §2, 73 Stat. 157; June 30, 1960, Pub. L. 86–564, title II, §201, 74 Stat. 290; June 30, 1961, Pub. L. 87–72, §2, 75 Stat. 193; June 28, 1962, Pub. L. 87–508, §2, 76 Stat. 114; Oct. 16, 1962, Pub. L. 87–834, §8(a), 76 Stat. 989; June 29, 1963 Pub. L. 88–52, §2, 77 Stat. 72; Feb. 26, 1964, Pub. L. 88–272, title I, §123(a), 78 Stat. 29; Nov. 13, 1966, Pub. L. 89–809, title I, §104(i)(4), 80 Stat. 1562; Oct. 4, 1976, Pub. L. 94–455, title IX, §901(b), title XV, §1507(b)(1), title XIX, §§1901(a)(104), 1906(b)(13)(A), 90 Stat. 1607, 1739, 1782, 1834; May 23, 1977, Pub. L. 95–30, title II, §201(3), (4), 91 Stat. 141; Nov. 6, 1978, Pub. L. 95–600, title III, §301(b)(9), 92 Stat. 2821; Aug. 13, 1981, Pub. L. 97–34, title II, §231(b)(1), (2), 95 Stat. 249, related to tax on mutual insurance companies to which former part II applied, prior to repeal by Pub. L. 99–514, title X, §1024(a)(1), Oct. 22, 1986, 100 Stat. 2405, effective for taxable years beginning after Dec. 31, 1986.

A prior section 822 was renumbered section 834 of this title by Pub. L. 99–514, title X, §1024(a)(3), Oct. 22, 1986, 100 Stat. 2405.

A prior section 823, added Pub. L. 87–834, §8(c), Oct. 16, 1962, 76 Stat. 992; amended Pub. L. 91–172, title IX, §907(c)(2)(B), Dec. 30, 1969, 83 Stat. 717, related to determination of statutory underwriting income or loss, prior to repeal by Pub. L. 99–514, title X, §1024(a)(1), Oct. 22, 1986, 100 Stat. 2405, effective for taxable years beginning after Dec. 31, 1986.

Another prior section 823, act Aug. 16, 1954, ch. 736, 68A Stat. 263, which defined ''net premiums'' and ''dividends to policyholders'', was redesignated section 822(f) of this title by section 8(b)(4) of Pub. L. 87–834.

A prior section 824, added Pub. L. 87–834, §8(c), Oct. 16, 1962, 76 Stat. 993; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to adjustments to provide protection against losses, prior to repeal by Pub. L. 99–514, title X, §1024(a)(1), Oct. 22, 1986, 100 Stat. 2405, effective for taxable years beginning after Dec. 31, 1986.

A prior section 825, added Pub. L. 87–834, §8(c), Oct. 16, 1962, 76 Stat. 995; amended Pub. L. 91–172 title IX, §907(c)(2)(C), (D), Dec. 30, 1969, 83 Stat. 717; Pub. L. 94–455, title VIII, §806(d)(2), title XIX, §1901(a)(106), Oct. 4, 1976, 90 Stat. 1599, 1782; Pub. L. 97–34, title II, §207(b), Aug. 13, 1981, 95 Stat. 225, related to unused loss deduction, prior to repeal by Pub. L. 99–514, title X, §1024(a)(1), Oct. 22, 1986, 100 Stat. 2405, effective for taxable years beginning after Dec. 31, 1986.

A prior section 826 was renumbered section 835 of this title by Pub. L. 99–514, title X, §1024(a)(3), Oct. 22, 1986, 100 Stat. 2405.

AMENDMENTS

1999—Subsec. (b)(2). Pub. L. 106–170, §532(c)(3), substituted ''section 1221(a)(2)'' for ''section 1221(2)''.

Subsec. (c)(3). Pub. L. 106–170, §532(c)(1)(D), substituted ''section 1221(a)'' for ''section 1221''.

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

1988—Subsec. (a)(6). Pub. L. 100–647, §1011(e)(5)(A), in subpar. (A) substituted ''eligible deferred compensation plan'' for ''eligible State deferred compensation plan'', and in subpar. (B), inserted ''or any organization (other than a governmental unit) exempt from tax under this subtitle,'' after ''foregoing,'' and substituted ''agency or instrumentality, or organization'' for ''or agency or instrumentality''.

Subsec. (f)(3). Pub. L. 100–647, §1010(k), added par. (3).

1986—Subsec. (a)(3). Pub. L. 99–514, §1136(b), substituted ''(26), and (27)'' for ''and (26)''.

Pub. L. 99–514, §1112(d)(4), substituted ''(22), and (26)'' for ''and (22)''.

Pub. L. 99–514, §1106(d)(3)(C), inserted ''(17),'' after ''(16),''.

Subsec. (a)(6)(A). Pub. L. 99–514, §1821(n), in amending subpar. (A) generally, inserted ''an eligible State deferred compensation plan (within the meaning of section 457(b)), or''.

Subsec. (e). Pub. L. 99–514, §1821(*o*), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''If an election under section 1504(c)(2) is in effect with respect to an affiliated group for the taxable year, all items of the members of such group which are not life insurance companies shall not be taken into account in determining the amount of the tentative LICTI of members of such group which are life insurance companies.''

1984—Subsec. (b)(1)(A). Pub. L. 98–369, §1001(b)(10), (e), substituted ''6 months'' for ''1 year'' in two places, applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 332(b) of Pub. L. 104–191 provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall take effect on January 1, 1997.

''(2) ISSUANCE OF RIDER NOT TREATED AS MATERIAL CHANGE.—For purposes of applying sections 101(f), 7702, and 7702A of the Internal Revenue Code of 1986 to any contract—

''(A) the issuance of a qualified accelerated death benefit rider (as defined in section 818(g) of such Code (as added by this Act)), and

''(B) the addition of any provision required to conform an accelerated death benefit rider to the requirements of such section 818(g),

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

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1011(e)(5)(B) of Pub. L. 100–647 provided that: ''The amendments made by this paragraph [amending this section] shall apply to contracts issued after December 31, 1986.''

Amendment by section 1010(k) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1106(d)(3)(C) of Pub. L. 99–514 applicable to benefits accruing in years beginning after Dec. 31, 1988, except as otherwise provided, see section 1106(i)(5) of Pub. L. 99–514 set out as a note under section 415 of this title.

Amendment by section 1112(d)(4) of Pub. L. 99–514 applicable to plan years beginning after Dec. 31, 1988, with special rule regarding collective bargaining agreements ratified before Mar. 1, 1986, and with provision for waiver of the excise tax on reversions, see section 1112(e) of

Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 1821(n), (*o*) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1112 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

PART II—OTHER INSURANCE COMPANIES

Sec.
831. Tax on insurance companies other than life insurance companies.
832. Insurance company taxable income.
833. Treatment of Blue Cross and Blue Shield organizations, etc.
834. Determination of taxable investment income.
835. Election by reciprocal.

PRIOR PROVISIONS

A prior part II (§§ 821 to 826) related to mutual insurance companies other than life and certain marine insurance companies and other than fire and flood insurance companies which operated on the basis of perpetual policies or premium deposits, consisted of sections 821–826, prior to repeal (except for sections 822 and 826 which were renumbered sections 834 and 835, respectively, by Pub. L. 99–514, title X, § 1024(a)(1)–(3), Oct. 22, 1986, 100 Stat. 2405. See Prior Provisions note set out under section 818 of this title.

AMENDMENTS

1988—Pub. L. 100–647, title I, § 1010(f)(7), Nov. 10, 1988, 102 Stat. 3454, substituted ''Tax on insurance companies other than life insurance companies'' for ''Tax on insurance companies (other than life or mutual), mutual marine insurance companies, and certain mutual fire or flood insurance companies'' in item 831.

1986—Pub. L. 99–514, title X, §§ 1012(b)(2), 1024(a)(2), (c)(18), Oct. 22, 1986, 100 Stat. 2393, 2405, 2408, redesignated part III (§ 831 et seq.) as II and added items 833, 834, and 835. Former part II (§ 821 et seq.) was repealed.

1962—Pub. L. 87–834, § 8(g)(4)(C), Oct. 16, 1962, 76 Stat. 999, substituted ''and certain mutual fire or flood insurance companies'' for ''and mutual fire insurance companies issuing perpetual policies'' in item 831.

§ 831. Tax on insurance companies other than life insurance companies

(a) General rule

Taxes computed as provided in section 11 shall be imposed for each taxable year on the taxable income of every insurance company other than a life insurance company.

(b) Alternative tax for certain small companies

(1) In general

In lieu of the tax otherwise applicable under subsection (a), there is hereby imposed for each taxable year on the income of every insurance company to which this subsection applies a tax computed by multiplying the taxable investment income of such company for such taxable year by the rates provided in section 11(b).

(2) Companies to which this subsection applies

(A) In general

This subsection shall apply to every insurance company other than life (including interinsurers and reciprocal underwriters) if—

(i) the net written premiums (or, if greater, direct written premiums) for the taxable year do not exceed $1,200,000, and

(ii) such company elects the application of this subsection for such taxable year.

The election under clause (ii) shall apply to the taxable year for which made and for all subsequent taxable years for which the requirements of clause (i) are met. Such an election, once made, may be revoked only with the consent of the Secretary.

(B) Controlled group rules

(i) In general

For purposes of subparagraph (A), in determining whether any company is described in clause (i) of subparagraph (A), such company shall be treated as receiving during the taxable year amounts described in such clause (i) which are received during such year by all other companies which are members of the same controlled group as the insurance company for which the determination is being made.

(ii) Controlled group

For purposes of clause (i), the term ''controlled group'' means any controlled group of corporations (as defined in section 1563(a)); except that—

(I) ''more than 50 percent'' shall be substituted for ''at least 80 percent'' each place it appears in section 1563(a), and

(II) subsections (a)(4) and (b)(2)(D) of section 1563 shall not apply.

(3) Limitation on use of net operating losses

For purposes of this part, except as provided in section 844, a net operating loss (as defined in section 172) shall not be carried—

(A) to or from any taxable year for which the insurance company is not subject to the tax imposed by subsection (a), or

(B) to any taxable year if, between the taxable year from which such loss is being carried and such taxable year, there is an intervening taxable year for which the insurance company was not subject to the tax imposed by subsection (a).

(c) Insurance company defined

For purposes of this section, the term ''insurance company'' has the meaning given to such term by section 816(a)).[1]

(d) Cross references

(1) For alternative tax in case of capital gains, see section 1201(a).

(2) For taxation of foreign corporations carrying on an insurance business within the United States, see section 842.

(3) For exemption from tax for certain insurance companies other than life, see section 501(c)(15).

(Aug. 16, 1954, ch. 736, 68A Stat. 264; Pub. L. 87–834, §8(e)(1), (f), (g)(4)(B), Oct. 16, 1962, 76 Stat. 997–999; Pub. L. 89–809, title I, §104(i)(6), Nov. 13, 1966, 80 Stat. 1562; Pub. L. 94–455, title XIX, §§1901(a)(107), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1782, 1834; Pub. L. 99–514, title X, §1024(a)(4), Oct. 22, 1986, 100 Stat. 2405; Pub. L. 100–647, title I, §1010(f)(1), (9), Nov. 10, 1988, 102 Stat. 3454, 3455; Pub. L. 108–218, title II, §206(c), (d), Apr. 10, 2004, 118 Stat. 611.)

AMENDMENTS

2004—Subsec. (b)(2)(A)(i). Pub. L. 108–218, §206(d), struck out ''exceed $350,000 but'' after ''taxable year''.

Subsecs. (c), (d). Pub. L. 108–218, §206(c), added subsec. (c) and redesignated former subsec. (c) as (d).

1988—Subsec. (b)(2)(A). Pub. L. 100–647, §1010(f)(1), inserted at end ''The election under clause (ii) shall apply to the taxable year for which made and for all subsequent taxable years for which the requirements of clause (i) are met. Such an election, once made, may be revoked only with the consent of the Secretary.''

Subsec. (b)(3). Pub. L. 100–647, §1010(f)(9), added par. (3).

1986—Pub. L. 99–514 amended section generally, substituting provisions imposing taxes on insurance companies other than life insurance companies, with an alternative tax on certain small companies, for provisions imposing taxes on insurance companies (other than life or mutual), mutual marine insurance companies, and certain mutual fire or flood insurance companies, with an election for multiple line companies to be taxed on total income.

1976—Subsec. (a). Pub. L. 94–455, §1901(a)(107), substituted ''on the taxable income'' for ''or the taxable income''.

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

1966—Subsec. (b). Pub. L. 89–809, §104(i)(6)(A), redesignated subsec. (c) as (b). Former subsec. (b), which excepted foreign insurance companies other than life or mutual insurance companies, foreign mutual marine insurance companies, and foreign mutual fire insurance companies not carrying on an insurance business within the United States and provided that they would be taxable as other foreign corporations, was struck out.

Subsecs. (c), (d). Pub. L. 89–809, §104(i)(6)(B), redesignated subsec. (d) as (c) and added item (2). Former subsec. (c) redesignated (b).

1962—Pub. L. 87–834, §8(g)(4)(B), substituted ''and certain mutual fire or flood insurance companies'' for ''and mutual fire insurance companies issuing perpetual policies'' in section catchline.

Subsec. (a). Pub. L. 87–834, §8(e)(1), included flood insurance companies, and substituted provisions authorizing imposition of the tax on those companies whose principal business is the issuance of policies for which the premium deposits are the same, regardless of the length of the term for which the policies are written, if the unabsorbed portion of such premium deposits not required for losses, expenses, or establishment of reserves is returned or credited to the policyholder on cancellation or expiration of the policy for provisions which authorized imposition of tax on those companies which issued policies for which the sole premium charged is a single deposit which (except for such deduction of underwriting costs as may be provided) is refundable on cancellation or expiration of the policy.

Subsecs. (c), (d). Pub. L. 87–834, §8(f), added subsec. (c) and redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–218 applicable to taxable years beginning after Dec. 31, 2003, with exception for companies in receivership or liquidation, see section 206(e) of Pub. L. 108–218, set out as a note under section 501 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1024(e) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section and sections 501, 832, 834, 835, 841, 842, 844, 891, 1201, 1504, and 1563 of this title, redesignating former sections 822 and 826 of this title as sections 834 and 835 of this title, respectively, and repealing sections 821, 823, 824, and 825 of this title] (and the provisions of subsection (d) [set out below]) shall apply to taxable years beginning after December 31, 1986.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(107) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable with respect to taxable years beginning after Dec. 31, 1962, see section 8(h) of Pub. L. 87–834, set out as a note under section 501 of this title.

TRANSITIONAL RULES FOR 1984 AMENDMENT

Section 1024(d) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1010(f)(8), Nov. 10, 1988, 102 Stat. 3454, provided that:

''(1) TREATMENT OF AMOUNTS IN PROTECTION AGAINST LOSS ACCOUNT.—In the case of any insurance company which had a protection against loss account for its last taxable year beginning before January 1, 1987, there shall be included in the gross income of such company for any taxable year beginning after December 31, 1986, the amount which would have been included in gross income for such taxable year under section 824 of the Internal Revenue Code of 1954 [now 1986] (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]). For purposes of the preceding sentence, no addition to such account shall be made for any taxable year beginning after December 31, 1986. In the case of a company taxable under section 831(b) of the Internal Revenue Code of 1986 (as amended by subsection (a)), any amount included in gross income under this paragraph shall be treated as gross investment income.

''(2) TRANSITIONAL RULE FOR UNUSED LOSS CARRYOVER UNDER SECTION 825.—Any unused loss carryover under section 825 of the Internal Revenue Code of 1954 (as in

[1] So in original. Second closing parenthesis probably should not appear.

effect on the day before the date of the enactment of this Act [Oct. 22, 1986]) which—

''(A) is from a taxable year beginning before January 1, 1987, and

''(B) could have been carried under such section to a taxable year beginning after December 31, 1986, but for the repeal made by subsection (a)(1) [repealing sections 821 and 823 to 825 of this title],

shall be included in the net operating loss deduction under section 832(c)(10) of such Code without regard to the limitations of section 844(b) of such Code.''

§ 832. Insurance company taxable income

(a) Definition of taxable income

In the case of an insurance company subject to the tax imposed by section 831, the term ''taxable income'' means the gross income as defined in subsection (b)(1) less the deductions allowed by subsection (c).

(b) Definitions

In the case of an insurance company subject to the tax imposed by section 831—

(1) Gross income

The term ''gross income'' means the sum of—

(A) the combined gross amount earned during the taxable year, from investment income and from underwriting income as provided in this subsection, computed on the basis of the underwriting and investment exhibit of the annual statement approved by the National Association of Insurance Commissioners,

(B) gain during the taxable year from the sale or other disposition of property, and

(C) all other items constituting gross income under subchapter B, except that, in the case of a mutual fire insurance company exclusively issuing perpetual policies, the amount of single deposit premiums paid to such company shall not be included in gross income,

(D) in the case of a mutual fire or flood insurance company whose principal business is the issuance of policies—

(i) for which the premium deposits are the same (regardless of the length of the term for which the policies are written), and

(ii) under which the unabsorbed portion of such premium deposits not required for losses, expenses, or establishment of reserves is returned or credited to the policyholder on cancellation or expiration of the policy,

an amount equal to 2 percent of the premiums earned on insurance contracts during the taxable year with respect to such policies after deduction of premium deposits returned or credited during the same taxable year, and

(E) in the case of a company which writes mortgage guaranty insurance, the amount required by subsection (e)(5) to be subtracted from the mortgage guaranty account.

(2) Investment income

The term ''investment income'' means the gross amount of income earned during the taxable year from interest, dividends, and rents, computed as follows: To all interest, dividends, and rents received during the taxable year, add interest, dividends, and rents due and accrued at the end of the taxable year, and deduct all interest, dividends, and rents due and accrued at the end of the preceding taxable year.

(3) Underwriting income

The term ''underwriting income'' means the premiums earned on insurance contracts during the taxable year less losses incurred and expenses incurred.

(4) Premiums earned

The term ''premiums earned on insurance contracts during the taxable year'' means an amount computed as follows:

(A) From the amount of gross premiums written on insurance contracts during the taxable year, deduct return premiums and premiums paid for reinsurance.

(B) To the result so obtained, add 80 percent of the unearned premiums on outstanding business at the end of the preceding taxable year and deduct 80 percent of the unearned premiums on outstanding business at the end of the taxable year.

(C) To the result so obtained, in the case of a taxable year beginning after December 31, 1986, and before January 1, 1993, add an amount equal to 3⅓ percent of unearned premiums on outstanding business at the end of the most recent taxable year beginning before January 1, 1987.

For purposes of this subsection, unearned premiums shall include life insurance reserves, as defined in section 816(b) but determined as provided in section 807. For purposes of this subsection, unearned premiums of mutual fire or flood insurance companies described in paragraph (1)(D) means (with respect to the policies described in paragraph (1)(D)) the amount of unabsorbed premium deposits which the company would be obligated to return to its policyholders at the close of the taxable year if all of its policies were terminated at such time; and the determination of such amount shall be based on the schedule of unabsorbed premium deposit returns for each such company then in effect. Premiums paid by the subscriber of a mutual flood insurance company described in paragraph (1)(D) or issuing exclusively perpetual policies shall be treated, for purposes of computing the taxable income of such subscriber, in the same manner as premiums paid by a policyholder to a mutual fire insurance company described in subparagraph (C) or (D) of paragraph (1).

(5) Losses incurred

(A) In general

The term ''losses incurred'' means losses incurred during the taxable year on insurance contracts computed as follows:

(i) To losses paid during the taxable year, deduct salvage and reinsurance recovered during the taxable year.

(ii) To the result so obtained, add all unpaid losses on life insurance contracts plus all discounted unpaid losses (as defined in

section 846) outstanding at the end of the taxable year and deduct all unpaid losses on life insurance contracts plus all discounted unpaid losses outstanding at the end of the preceding taxable year.

(iii) To the results so obtained, add estimated salvage and reinsurance recoverable as of the end of the preceding taxable year and deduct estimated salvage and reinsurance recoverable as of the end of the taxable year.

The amount of estimated salvage recoverable shall be determined on a discounted basis in accordance with procedures established by the Secretary.

(B) Reduction of deduction

The amount which would (but for this subparagraph) be taken into account under subparagraph (A) shall be reduced by an amount equal to 15 percent of the sum of—

(i) tax-exempt interest received or accrued during such taxable year,

(ii) the aggregate amount of deductions provided by sections 243, 244, and 245 for—

(I) dividends (other than 100 percent dividends) received during the taxable year, and

(II) 100 percent dividends received during the taxable year to the extent attributable (directly or indirectly) to prorated amounts, and

(iii) the increase for the taxable year in policy cash values (within the meaning of section 805(a)(4)(F)) of life insurance policies and annuity and endowment contracts to which section 264(f) applies.

In the case of a 100 percent dividend paid by an insurance company, the portion attributable to prorated amounts shall be determined under subparagraph (E)(ii).

(C) Exception for investments made before August 8, 1986

(i) In general

Except as provided in clause (ii), subparagraph (B) shall not apply to any dividend or interest received or accrued on any stock or obligation acquired before August 8, 1986.

(ii) Special rule for 100 percent dividends

For purposes of clause (i), the portion of any 100 percent dividend which is attributable to prorated amounts shall be treated as received with respect to stock acquired on the later of—

(I) the date the payor acquired the stock or obligation to which the prorated amounts are attributable, or

(II) the 1st day on which the payor and payee were members of the same affiliated group (as defined in section 243(b)(2)).

(D) Definitions

For purposes of this paragraph—

(i) Prorated amounts

The term ''prorated amounts'' means tax-exempt interest and dividends with respect to which a deduction is allowable under section 243, 244, or 245 (other than 100 percent dividends).

(ii) 100 percent dividend

(I) In general

The term ''100 percent dividend'' means any dividend if the percentage used for purposes of determining the deduction allowable under section 243, 244, or 245(b) is 100 percent.

(II) Certain dividends received by foreign corporations

A dividend received by a foreign corporation from a domestic corporation which would be a 100 percent dividend if section 1504(b)(3) did not apply for purposes of applying section 243(b)(2) shall be treated as a 100 percent dividend.

(E) Special rules for dividends subject to proration at subsidiary level

(i) In general

In the case of any 100 percent dividend paid to an insurance company to which this part applies by any insurance company, the amount of the decrease in the deductions of the payee company by reason of the portion of such dividend attributable to prorated amounts shall be reduced (but not below zero) by the amount of the decrease in the deductions (or increase in income) of the payor company attributable to the application of this section or section 805(a)(4)(A) to such amounts.

(ii) Portion of dividend attributable to prorated amounts

For purposes of this subparagraph, in determining the portion of any dividend attributable to prorated amounts—

(I) any dividend by the paying corporation shall be treated as paid first out of earnings and profits attributable to prorated amounts (to the extent thereof), and

(II) by determining the portion of earnings and profits so attributable without any reduction for the tax imposed by this chapter.

(6) Expenses incurred

The term ''expenses incurred'' means all expenses shown on the annual statement approved by the National Association of Insurance Commissioners, and shall be computed as follows: To all expenses paid during the taxable year, add expenses unpaid at the end of the taxable year and deduct expenses unpaid at the end of the preceding taxable year. For purposes of this subchapter, the term ''expenses unpaid'' shall not include any unpaid loss adjustment expenses shown on the annual statement, but such unpaid loss adjustment expenses shall be included in unpaid losses. For the purpose of computing the taxable income subject to the tax imposed by section 831, there shall be deducted from expenses incurred (as defined in this paragraph) all expenses incurred which are not allowed as deductions by subsection (c).

(7) Special rules for applying paragraph (4)

(A) Reduction not to apply to life insurance reserves

Subparagraph (B) of paragraph (4) shall be applied with respect to insurance contracts described in section 816(b)(1)(B) by substituting ''100 percent'' for ''80 percent'' each place it appears in such subparagraph (B), and subparagraph (C) of paragraph (4) shall be applied by not taking such contracts into account.

(B) Special treatment of premiums attributable to insuring certain securities

In the case of premiums attributable to insurance against default in the payment of principal or interest on securities described in section 165(g)(2)(C) with maturities of more than 5 years—

(i) subparagraph (B) of paragraph (4) shall be applied by substituting ''90 percent'' for ''80 percent'' each place it appears, and

(ii) subparagraph (C) of paragraph (4) shall be applied by substituting ''1⅔ percent'' for ''3⅓ percent''.

(C) Termination as insurance company taxable under section 831(a)

Except as provided in section 381(c)(22) (relating to carryovers in certain corporate readjustments), if, for any taxable year beginning before January 1, 1993, the taxpayer ceases to be an insurance company taxable under section 831(a), the aggregate adjustments which would be made under paragraph (4)(C) for such taxable year and subsequent taxable years but for such cessation shall be made for the taxable year preceding such cessation year.

(D) Treatment of companies which become taxable under section 831(a)

(i) Exception to phase-in for companies which were not taxable, etc., before 1987

Subparagraph (C) of paragraph (4) shall not apply to any insurance company which, for each taxable year beginning before January 1, 1987, was not subject to the tax imposed by section 821(a)[1] or 831(a) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) by reason of being—

(I) subject to tax under section 821(c)[1] (as so in effect), or

(II) described in section 501(c) (as so in effect) and exempt from tax under section 501(a).

(ii) Phase-in beginning at later date for companies not 1st taxable under section 831(a) in 1987

In the case of an insurance company—

(I) which was not subject to the tax imposed by section 831(a) for its 1st taxable year beginning after December 31, 1986, by reason of being subject to tax under section 831(b), or described in section 501(c) and exempt from tax under section 501(a), and

(II) which, for any taxable year beginning before January 1, 1987, was subject to the tax imposed by section 821(a)[1] or 831(a) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986),

subparagraph (C) of paragraph (4) shall apply beginning with the 1st taxable year beginning after December 31, 1986, for which such company is subject to the tax imposed by section 831(a) and shall be applied by substituting the last day of the preceding taxable year for ''December 31, 1986'' and the 1st day of the 7th succeeding taxable year for ''January 1, 1993''.

(E) Treatment of certain reciprocal insurers

In the case of a reciprocal (within the meaning of section 835(a)) which reports (as required by State law) on its annual statement reserves on unearned premiums net of premium acquisition expenses—

(i) subparagraph (B) of paragraph (4) shall be applied by treating unearned premiums as including an amount equal to such expenses, and

(ii) appropriate adjustments shall be made under subparagraph (c) of paragraph (4) to reflect the amount by which—

(I) such reserves at the close of the most recent taxable year beginning before January 1, 1987, are greater or less than,

(II) 80 percent of the sum of the amount under subclause (I) plus such premium acquisition expenses,[2]

(8) Special rules for applying paragraph (4) to title insurance premiums

(A) In general

In the case of premiums attributable to title insurance—

(i) subparagraph (B) of paragraph (4) shall be applied by substituting ''the discounted unearned premiums'' for ''80 percent of the unearned premiums'' each place it appears, and

(ii) subparagraph (C) of paragraph (4) shall not apply.

(B) Method of discounting

For purposes of subparagraph (A), the amount of the discounted unearned premiums as of the end of any taxable year shall be the present value of such premiums (as of such time and separately with respect to premiums received in each calendar year) determined by using—

(i) the amount of the undiscounted unearned premiums at such time,

(ii) the applicable interest rate, and

(iii) the applicable statutory premium recognition pattern.

(C) Determination of applicable factors

In determining the amount of the discounted unearned premiums as of the end of any taxable year—

[1] See References in Text note below.

[2] So in original. The comma probably should be a period.

(i) Undiscounted unearned premiums

The term ''undiscounted unearned premiums'' means the unearned premiums shown in the yearly statement filed by the taxpayer for the year ending with or within such taxable year.

(ii) Applicable interest rate

The term ''applicable interest rate'' means the annual rate determined under 846(c)(2) for the calendar year in which the premiums are received.

(iii) Applicable statutory premium recognition pattern

The term ''applicable statutory premium recognition pattern'' means the statutory premium recognition pattern—

(I) which is in effect for the calendar year in which the premiums are received, and

(II) which is based on the statutory premium recognition pattern which applies to premiums received by the taxpayer in such calendar year.

For purposes of the preceding sentence, premiums received during any calendar year shall be treated as received in the middle of such year.

(c) Deductions allowed

In computing the taxable income of an insurance company subject to the tax imposed by section 831, there shall be allowed as deductions:

(1) all ordinary and necessary expenses incurred, as provided in section 162 (relating to trade or business expenses);

(2) all interest, as provided in section 163;

(3) taxes, as provided in section 164;

(4) losses incurred, as defined in subsection (b)(5) of this section;

(5) capital losses to the extent provided in subchapter P (sec. 1201 and following, relating to capital gains and losses) plus losses from capital assets sold or exchanged in order to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders. Capital assets shall be considered as sold or exchanged in order to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders to the extent that the gross receipts from their sale or exchange are not greater than the excess, if any, for the taxable year of the sum of dividends and similar distributions paid to policyholders in their capacity as such, losses paid, and expenses paid over the sum of the items described in section 834(b) (other than paragraph (1)(D) thereof) and net premiums received. In the application of section 1212 for purposes of this section, the net capital loss for the taxable year shall be the amount by which losses for such year from sales or exchanges of capital assets exceeds the sum of the gains from such sales or exchanges and whichever of the following amounts is the lesser:

(A) the taxable income (computed without regard to gains or losses from sales or exchanges of capital assets; or

(B) losses from the sale or exchange of capital assets sold or exchanged to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders;

(6) debts in the nature of agency balances and bills receivable which become worthless within the taxable year;

(7) the amount of interest earned during the taxable year which under section 103 is excluded from gross income;

(8) the depreciation deduction allowed by section 167 and the deduction allowed by section 611 (relating to depletion);

(9) charitable, etc., contributions, as provided in section 170;

(10) deductions (other than those specified in this subsection) as provided in part VI of subchapter B (sec. 161 and following, relating to itemized deductions for individuals and corporations) and in part I of subchapter D (sec. 401 and following, relating to pension, profit-sharing, stock bonus plans, etc.);

(11) dividends and similar distributions paid or declared to policyholders in their capacity as such, except in the case of a mutual fire insurance company described in subsection (b)(1)(C). For purposes of the preceding sentence, the term ''dividends and similar distributions'' includes amounts returned or credited to policyholders on cancellation or expiration of policies described in subsection (b)(1)(D). For purposes of this paragraph, the term ''paid or declared'' shall be construed according to the method of accounting regularly employed in keeping the books of the insurance company;

(12) the special deductions allowed by part VIII of subchapter B (sec. 241 and following, relating to dividends received); and

(13) in the case of a company which writes mortgage guaranty insurance, the deduction allowed by subsection (e).

(d) Double deductions

Nothing in this section shall permit the same item to be deducted more than once.

(e) Special deduction and income account

In the case of taxable years beginning after December 31, 1966, of a company which writes mortgage guaranty insurance—

(1) Additional deduction

There shall be allowed as a deduction for the taxable year, if bonds are purchased as required by paragraph (2), the sum of—

(A) an amount representing the amount required by State law or regulation to be set aside in a reserve for mortgage guaranty insurance losses resulting from adverse economic cycles; and

(B) an amount representing the aggregate of amounts so set aside in such reserve for the 8 preceding taxable years to the extent such amounts were not deducted under this paragraph in such preceding taxable years,

except that the deduction allowable for the taxable year under this paragraph shall not exceed the taxable income for the taxable year computed without regard to this paragraph or

to any carryback of a net operating loss. For purposes of this paragraph, the amount required by State law or regulation to be so set aside in any taxable year shall not exceed 50 percent of premiums earned on insurance contracts (as defined in subsection (b)(4)) with respect to mortgage guaranty insurance for such year. For purposes of this subsection, all amounts shall be taken into account on a first-in-time basis. The computation and deduction under this section of losses incurred (including losses resulting from adverse economic cycles) shall not be affected by the provisions of this subsection. For purposes of this subsection, the terms ''preceding taxable years'' and ''preceding taxable year'' shall not include taxable years which began before January 1, 1967.

(2) Purchase of bonds

The deduction under paragraph (1) shall be allowed only to the extent that tax and loss bonds are purchased in an amount equal to the tax benefit attributable to such deduction, as determined under regulations prescribed by the Secretary, on or before the date that any taxes (determined without regard to this subsection) due for the taxable year for which the deduction is allowed are due to be paid. If a deduction would be allowed but for the fact that tax and loss bonds were not timely purchased, such deduction shall be allowed to the extent such purchases are made within a reasonable time, as determined by the Secretary, if all interest and penalties, computed as if this sentence did not apply, are paid.

(3) Mortgage guaranty account

Each company which writes mortgage guaranty insurance shall, for purposes of this part, establish and maintain a mortgage guaranty account.

(4) Additions to account

There shall be added to the mortgage guaranty account for each taxable year an amount equal to the amount allowed as a deduction for the taxable year under paragraph (1).

(5) Subtractions from account and inclusion in gross income

After applying paragraph (4), there shall be subtracted for the taxable year from the mortgage guaranty account and included in gross income—

(A) the amount (if any) remaining which was added to the account for the tenth preceding taxable year,

(B) the excess (if any) of the aggregate amount in the mortgage guaranty account over the aggregate amount in the reserve referred to in paragraph (1)(A). For purposes of determining such excess, the aggregate amount in the mortgage guaranty account shall be determined after applying subparagraph (A), and the aggregate amount in the reserve referred to in paragraph (1)(A) shall be determined by disregarding any amounts remaining in such reserve added for taxable years beginning before January 1, 1967,

(C) an amount (if any) equal to the net operating loss for the taxable year computed without regard to this subparagraph, and

(D) any amount improperly subtracted from the account under subparagraph (A), (B), or (C) to the extent that tax and loss bonds were redeemed with respect to such amount.

If a company liquidates or otherwise terminates its mortgage guaranty insurance business and does not transfer or distribute such business in an acquisition of assets referred to in section 381(a), the entire amount remaining in such account shall be subtracted. Except in the case where a company transfers or distributes its mortgage guaranty insurance in an acquisition of assets referred to in section 381(a), if the company is not subject to the tax imposed by section 831 for any taxable year, the entire amount in the account at the close of the preceding taxable year shall be subtracted from the account in such preceding taxable year.

(6) Lease guaranty insurance; insurance of State and local obligations

In the case of any taxable year beginning after December 31, 1970, the provisions of this subsection shall also apply in all respects to a company which writes lease guaranty insurance or insurance on obligations the interest on which is excludable from gross income under section 103. In applying this subsection to such a company, any reference to mortgage guaranty insurance contained in this section shall be deemed to be a reference also to lease guaranty insurance and to insurance on obligations the interest on which is excludable from gross income under section 103; and in the case of insurance on obligations the interest on which is excludable from gross income under section 103, the references in paragraph (1) to ''losses resulting from adverse economic cycles'' include losses from declining revenues related to such obligations (as well as losses resulting from adverse economic cycles), and the time specified in subparagraph (A) of paragraph (5) shall be the twentieth preceding taxable year.

(f) Interinsurers

In the case of a mutual insurance company which is an interinsurer or reciprocal underwriter—

(1) there shall be allowed as a deduction the increase for the taxable year in savings credited to subscriber accounts, or

(2) there shall be included as an item of gross income the decrease for the taxable year in savings credited to subscriber accounts.

For purposes of the preceding sentence, the term ''savings credited to subscriber accounts'' means such portion of the surplus as is credited to the individual accounts of subscribers before the 16th day of the 3rd month following the close of the taxable year, but only if the company would be obligated to pay such amount promptly to such subscriber if he terminated his contract at the close of the company's taxable year. For purposes of determining his taxable income, the subscriber shall treat any such savings credited to his account as a dividend paid or declared.

(g) Dividends within group

In the case of an insurance company subject to tax under section 831(a) filing or required to file

a consolidated return under section 1501 with respect to any affiliated group for any taxable year, any determination under this part with respect to any dividend paid by one member of such group to another member of such group shall be made as if such group were not filing a consolidated return.

(Aug. 16, 1954, ch. 736, 68A Stat. 264; Mar. 13, 1956, ch. 83, §3(b), 70 Stat. 48; Pub. L. 87–834, §8(e)(2)–(5), Oct. 16, 1962, 76 Stat. 997, 998; Pub. L. 88–272, title II, §228(c), Feb. 26, 1964, 78 Stat. 99; Pub. L. 89–809, title I, §104(i)(7), Nov. 13, 1966, 80 Stat. 1562; Pub. L. 90–240, §5(a)–(c), Jan. 2, 1968, 81 Stat. 776, 777; Pub. L. 93–483, §5, Oct. 26, 1974, 88 Stat. 1458; Pub. L. 94–455, title XIX, §§1901(a)(108), (b)(1)(T), (U), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1782, 1792, 1834; Pub. L. 97–248, title II, §234(b)(2)(A), Sept. 3, 1982, 96 Stat. 503; Pub. L. 98–369, div. A, title II, §211(b)(9), July 18, 1984, 98 Stat. 755; Pub. L. 99–514, title X, §§1021(a), (b), 1022(a), 1023(a), 1024(c)(1)–(6), Oct. 22, 1986, 100 Stat. 2395, 2397, 2399, 2406, 2407; Pub. L. 100–647, title I, §1010(c), (d)(1), (2), Nov. 10, 1988, 102 Stat. 3451–3453; Pub. L. 101–508, title XI, §§11303(a), (b), 11305(a), Nov. 5, 1990, 104 Stat. 1388–450, 1388–451; Pub. L. 104–188, title I, §§1702(h)(3), 1704(t)(45), Aug. 20, 1996, 110 Stat. 1873, 1889; Pub. L. 105–34, title X, §1084(b)(4), Aug. 5, 1997, 111 Stat. 955.)

REFERENCES IN TEXT

Section 821, referred to in subsec. (b)(7)(D), was repealed by Pub. L. 99–514, title X, §1024(a)(1), Oct. 22, 1986, 100 Stat. 2405.

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (b)(7)(D), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

CODIFICATION

Another section 1084(b) of Pub. L. 105–34 amended sections 101 and 264 of this title.

AMENDMENTS

1997—Subsec. (b)(5)(B)(iii). Pub. L. 105–34, which directed amendment of subpar. (B) by adding cl. (iii) at the end, was executed by adding cl. (iii) after cl. (ii) to reflect the probable intent of Congress.

1996—Subsec. (b)(5)(C)(ii)(II), (D)(ii)(II). Pub. L. 104–188, §1702(h)(3), substituted ''243(b)(2)'' for ''243(b)(5)''.

Subsec. (b)(7)(A). Pub. L. 104–188, §1704(t)(45), provided that section 11303(b)(1) of Pub. L. 101–508 shall be applied as if ''paragraph'' appeared instead of ''subparagraph'' in the material proposed to be stricken. See 1990 Amendment note below.

1990—Subsec. (b)(4). Pub. L. 101–508, §11303(a), substituted ''section 807.'' for ''section 807, pertaining to the life, burial, or funeral insurance, or annuity business of an insurance company subject to the tax imposed by section 831 and not qualifying as a life insurance company under section 816.'' in first sentence after subpar. (C).

Subsec. (b)(5)(A). Pub. L. 101–508, §11305(a), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''The term 'losses incurred' means losses incurred during the taxable year on insurance contracts, computed as follows:

''(i) To losses paid during the taxable year, add salvage and reinsurance recoverable outstanding at the end of the preceding taxable year and deduct salvage and reinsurance recoverable outstanding at the end of the taxable year.

''(ii) To the result so obtained, add all unpaid losses on life insurance contracts plus all discounted unpaid losses (as defined in section 846) outstanding at the end of the taxable year and deduct unpaid losses on life insurance contracts plus all discounted unpaid losses outstanding at the end of the preceding taxable year.''

Subsec. (b)(7)(A). Pub. L. 101–508, §11303(b)(2), substituted ''such contracts into account'' for ''such amounts into account''.

Pub. L. 101–508, §11303(b)(1), which directed the substitution of ''insurance contracts described in section 816(b)(1)(B)'' for ''amounts included in unearned premiums under the 2nd sentence of such subparagraph'', was executed by making the substitution for ''amounts included in unearned premiums under the 2nd sentence of such paragraph''. See 1996 Amendment note above.

1988—Subsec. (b)(5)(B)(ii)(II). Pub. L. 100–647, §1010(d)(2), inserted ''(directly or indirectly)'' after ''attributable''.

Subsec. (b)(7)(C). Pub. L. 100–647, §1010(c)(1), substituted ''insurance company taxable under section 831(a)'' for ''nonlife insurance company'' in heading and ''section 831(a)'' for ''this part'' in text.

Subsec. (b)(7)(D), (E). Pub. L. 100–647, §1010(c)(2), added subpars. (D) and (E).

Subsec. (e)(5)(A). Pub. L. 100–647, §1010(c)(3), struck out ''and'' after ''preceding taxable year,''.

Subsec. (e)(5)(B). Pub. L. 100–647, §1010(c)(3), which directed amendment of subpar. (B) by substituting a comma for the period at end, could not be executed because there was no period at end of subpar. (B).

Subsec. (g). Pub. L. 100–647, §1010(d)(1), added subsec. (g).

1986—Subsec. (b)(1)(C). Pub. L. 99–514, §1024(c)(1), substituted ''exclusively issuing perpetual policies'' for ''described in section 831(a)(3)(A)''.

Subsec. (b)(1)(D). Pub. L. 99–514, §1024(c)(2), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''in the case of a mutual fire or flood insurance company described in section 831(a)(3)(B), an amount equal to 2 percent of the premiums earned on insurance contracts during the taxable year with respect to policies described in section 831(a)(3)(B) after deduction of premium deposits returned or credited during the same taxable year, and''.

Subsec. (b)(4). Pub. L. 99–514, §1024(c)(3), substituted ''paragraph (1)(D)'' for ''section 831(a)(3)(B)'' in two places and amended last sentence generally, substituting ''described in paragraph (1)(D) or issuing exclusively perpetual policies'' for ''referred to in paragraph (3) of section 831(a)'' and ''described in subparagraph (C) or (D) of paragraph (1)'' for ''referred to in such paragraph (3)''.

Subsec. (b)(4)(B), (C). Pub. L. 99–514, §1021(a), added subpars. (B) and (C) and struck out former subpar. (B) which read as follows: ''To the result so obtained, add unearned premiums on outstanding business at the end of the preceding taxable year and deduct unearned premiums on outstanding business at the end of the taxable year.''

Subsec. (b)(5)(A). Pub. L. 99–514, §1022(a), in amending par. (5) generally, designated existing provisions of par. (5) as subpar. (A), inserted subpar. heading ''In general'', and redesignated former subpars. (A) and (B) as cls. (i) and (ii).

Subsec. (b)(5)(A)(ii). Pub. L. 99–514, §1023(a)(1), amended cl. (ii) generally, inserting ''on life insurance contracts plus all discounted unpaid losses (as defined in section 846)'' and ''on life insurance contracts plus all discounted unpaid losses''.

Subsec. (b)(5)(B) to (E). Pub. L. 99–514, §1022(a), in amending par. (5) generally, added subpars. (B) to (E). Former subpar. (B) redesignated (A)(ii).

Subsec. (b)(6). Pub. L. 99–514, §1023(a)(2), inserted second sentence defining ''expenses unpaid''.

Subsec. (b)(7), (8). Pub. L. 99–514, §1021(b), added pars. (7) and (8).

Subsec. (c)(5). Pub. L. 99–514, §1024(c)(4), substituted ''section 834(b)'' for ''section 822(b)''.

Subsec. (c)(11). Pub. L. 99–514, §1024(c)(5), substituted ''subsection (b)(1)(C)'' for ''section 831(a)(3)(A)'' and ''subsection (b)(1)(D)'' for ''section 831(a)(3)(B)''.

Subsec. (f). Pub. L. 99–514, § 1024(c)(6), added subsec. (f).

1984—Subsec. (b)(4). Pub. L. 98–369, in provisions following subpar. (B), substituted ''section 816(b) but determined as provided in section 807'' and ''section 816'' for ''section 801(b)'' and ''section 801'', respectively.

1982—Subsec. (e)(2). Pub. L. 97–248 struck out '', as if no election to make installment payments under section 6152 is made'' after ''due to be paid''.

1976—Subsec. (b)(1), (6). Pub. L. 94–455, § 1901(a)(108), substituted ''Association'' for ''Convention''.

Subsec. (c)(5)(A). Pub. L. 94–455, § 1901(b)(1)(T), struck out ''or to the deductions provided in section 242 for partially tax-exempt interest'' after ''exchanges of capital assets''.

Subsec. (c)(12). Pub. L. 94–455, § 1901(b)(1)(U), struck out ''partially tax-exempt interest and to'' after ''and following, relating to''.

Subsec. (e)(2). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

1974—Subsec. (e)(6). Pub. L. 93–483 added par. (6).

1968—Subsec. (b)(1)(E). Pub. L. 90–240, § 5(a), added subpar. (E).

Subsec. (c)(13). Pub. L. 90–240, § 5(b), added par. (13).

Subsec. (e). Pub. L. 90–240, § 5(c), added subsec. (e).

1966—Subsec. (d). Pub. L. 89–809 redesignated subsec. (e) as (d). Former subsec. (d), having reference to the taxable income of foreign insurance companies other than life or mutual and foreign mutual marine, was struck out.

Subsec. (e). Pub. L. 89–809 redesignated subsec. (e) as (d).

1964—Subsec. (c)(10). Pub. L. 88–272 inserted reference to part I of subchapter D.

1962—Subsec. (b)(1)(C). Pub. L. 87–834, § 8(e)(3), (5), substituted ''section 831(a)(3)(A)'' for ''section 831(a)''.

Subsec. (b)(1)(D). Pub. L. 87–834, § 8(e)(5), added subpar. (D).

Subsec. (b)(4). Pub. L. 87–834, § 8(e)(2), inserted provisions defining unearned premiums of mutual fire or flood insurance companies, and which require premiums paid by the subscriber of a mutual flood insurance company to be treated, for purposes of computing the taxable income of such subscriber, in the same manner as premiums paid by a policyholder to a mutual fire insurance company referred to in par. (3) of section 831(a) of this title.

Subsec. (c)(11). Pub. L. 87–834, § 8(e)(4), substituted ''section 831(a)(3)(A)'' for ''section 831(a)'', and inserted definition of ''dividends and similar distributions''.

1956—Subsec. (b)(4). Act Mar. 13, 1956, § 3(b)(1), substituted ''section 801(b)'' for ''section 806''.

Subsec. (c). Act Mar. 13, 1956, § 3(b)(2), (3), substituted ''the items described in section 822(b) (other than paragraph (1)(D) thereof) and net premiums received. In the application of section 1212'' for ''interest, dividends, rents, and net premiums received. In the application of section 1211'' in par. (5), and authorized the deduction for depletion in par. (8).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to contracts issued after June 8, 1997, in taxable years ending after such date, with special provisions relating to changes in contracts to be treated as new contracts, see section 1084(d) of Pub. L. 105–34, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1702(h)(3) of Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11303(c) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to taxable years beginning on or after September 30, 1990.

''(2) AMENDMENTS TREATED AS CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer who is required by reason of the amendments made by this section to change his method of computing reserves—

''(A) such change shall be treated as a change in a method of accounting,

''(B) such change shall be treated as initiated by the taxpayer,

''(C) such change shall be treated as having been made with the consent of the Secretary, and

''(D) the net adjustments which are required by section 481 of the Internal Revenue Code of 1986 to be taken into account by the taxpayer shall be taken into account over a period not to exceed 4 taxable years beginning with the taxpayer's first taxable year beginning on or after September 30, 1990.

''(3) COORDINATION WITH SECTION 832(b)(4)(C).—The amendments made by this section shall not affect the application of section 832(b)(4)(C) of the Internal Revenue Code of 1986.''

Section 11305(c) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 846 of this title] shall apply to taxable years beginning after December 31, 1989.

''(2) AMENDMENTS TREATED AS CHANGE IN METHOD OF ACCOUNTING.—

''(A) IN GENERAL.—In the case of any taxpayer who is required by reason of the amendments made by this section to change his method of computing losses incurred—

''(i) such change shall be treated as a change in a method of accounting,

''(ii) such change shall be treated as initiated by the taxpayer, and

''(iii) such change shall be treated as having been made with the consent of the Secretary.

''(B) ADJUSTMENTS.—In applying section 481 of the Internal Revenue Code of 1986 with respect to the change referred to in subparagraph (A)—

''(i) only 13 percent of the net amount of adjustments (otherwise required by such section 481 to be taken into account by the taxpayer) shall be taken into account, and

''(ii) the portion of such net adjustments which is required to be taken into account by the taxpayer (after the application of clause (i)) shall be taken into account over a period not to exceed 4 taxable years beginning with the taxpayer's 1st taxable year beginning after December 31, 1989.

''(3) TREATMENT OF COMPANIES WHICH TOOK INTO ACCOUNT SALVAGE RECOVERABLE.—In the case of any insurance company which took into account salvage recoverable in determining losses incurred for its last taxable year beginning before January 1, 1990, 87 percent of the discounted amount of estimated salvage recoverable as of the close of such last taxable year shall be allowed as a deduction ratably over its 1st 4 taxable years beginning after December 31, 1989.

''(4) SPECIAL RULE FOR OVERESTIMATES.—If for any taxable year beginning after December 31, 1989—

''(A) the amount of the section 481 adjustment which would have been required without regard to paragraph (2) and any discounting, exceeds

''(B) the sum of the amount of salvage recovered taken into account under section 832(b)(5)(A)(i) for the taxable year and any preceding taxable year beginning after December 31, 1989, attributable to losses incurred with respect to any accident year beginning before 1990 and the undiscounted amount of estimated salvage recoverable as of the close of the taxable year on account of such losses,

87 percent of such excess (adjusted for discounting used in determining the amount of salvage recoverable as of the close of the last taxable year of the taxpayer beginning before January 1, 1990) shall be included in gross income for such taxable year.

''(5) EFFECT ON EARNINGS AND PROFITS.—The earnings and profits of any insurance company for its 1st taxable year beginning after December 31, 1989, shall be in-

creased by the amount of the section 481 adjustment which would have been required but for paragraph (2). For purposes of applying sections 56, 902, 952(c)(1), and 960 of the Internal Revenue Code of 1986, earnings and profits of a corporation shall be determined by applying the principles of paragraph (2)(B).''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1021(c) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.

''(2) SPECIAL TRANSITIONAL RULE FOR TITLE INSURANCE COMPANIES.—For the 1st taxable year beginning after December 31, 1986, in the case of premiums attributable to title insurance—

''(A) IN GENERAL.—The unearned premiums at the end of the preceding taxable year as defined in paragraph (4) of section 832(b) [of the Internal Revenue Code of 1986] shall be determined as if the amendments made by this section had applied to such unearned premiums in the preceding taxable year and by using the interest rate and premium recognition pattern applicable to years ending in calendar year 1987.

''(B) FRESH START.—Except as provided in subparagraph (C), any difference between—

''(i) the amount determined to be unearned premiums for the year preceding the first taxable year of a title insurance company beginning after December 31, 1986, determined without regard to subparagraph (A), and

''(ii) such amount determined with regard to subparagraph (A),

shall not be taken into account for purposes of the Internal Revenue Code of 1986.

''(C) EFFECT ON EARNINGS AND PROFITS.—The earnings and profits of any insurance company for its 1st taxable year beginning after December 31, 1986, shall be increased by the amount of the difference determined under subparagraph (A) with respect to such company.''

Section 1022(b) of Pub. L. 99–514 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.''

Amendment by section 1023(a) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1023(e) of Pub. L. 99–514, set out as an Effective Date note under section 846 of this title.

Amendment by section 1024(c)(1)–(6) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1024(e) of Pub. L. 99–514, set out as a note under section 831 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, see section 234(e) of Pub. L. 97–248, set out as a note under section 6655 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(108), (b)(1)(T), (U) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 5(e) of Pub. L. 90–240, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by subsections (a), (b), (c), and (d) [amending this section and section 381 of this title] shall apply to taxable years beginning after December 31, 1966, except that so much of section 832(e)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by the amendment made by subsection (c)) as provides for payment of interest and penalties for failure to make a timely purchase of tax and loss bonds shall not apply with respect to any period during which such bonds are not available for purchase.''

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 228(d) of Pub. L. 88–272 provided that: ''The amendment made by subsection (a) [amending former section 809 of this title] shall apply to taxable years beginning after December 31, 1961. The amendment made by subsection (c) [amending this section] shall apply to taxable years beginning after December 31, 1953, and ending after August 16, 1954.''

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable with respect to taxable years beginning after Dec. 31, 1962, see section 8(h) of Pub. L. 87–834, set out as a note under section 501 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956, applicable only to taxable years beginning after Dec. 31, 1954, see section 6 of act Mar. 13, 1956, set out as a note under section 316 of this title.

DEDUCTION FROM EARNINGS AND PROFITS OF INSURANCE COMPANIES TO WHICH SECTION 11305(c)(3) OF PUB. L. 101–508 APPLIES

Section 1702(c)(4) of Pub. L. 104–188 provided that: ''The earnings and profits of any insurance company to which section 11305(c)(3) of the Revenue Reconciliation Act of 1990 [Pub. L. 101–508, set out above] applies shall be determined without regard to any deduction allowed under such section; except that, for purposes of applying sections 56 and 902, and subpart F of part III of subchapter N of chapter 1 of the Internal Revenue Code of 1986, such deduction shall be taken into account.''

ACQUISITION DATE OF CERTAIN STOCKS OR OBLIGATIONS FOR PURPOSES OF SUBSECTION (b)(5)(C)(i)

Section 1010(d)(3) of Pub. L. 100–647 provided that: ''For purposes of section 832(b)(5)(C)(i) of the 1986 Code, any stock or obligation acquired on or after August 8, 1986, by an insurance company subject to the tax imposed by section 831 of the 1986 Code (hereinafter in this paragraph referred to as the 'acquiring company') from another insurance company so subject (hereinafter in this paragraph referred to as the 'transferor company') shall be treated as acquired on the date on which such stock or obligation was acquired by the transferor company if—

''(A) the transferor company acquired such stock or obligation before August 8, 1986, and

''(B) at all times after the date on which such stock or obligation was acquired by the transferor company and before the date of the acquisition by the acquiring company, the transferor company and the acquiring company were members of the same affiliated group filing a consolidated return.

For purposes of the preceding sentence, the date on which the stock or obligation was acquired by the transferor company shall be determined with regard to

any prior application of the preceding sentence. For purposes of this paragraph, if the acquiring corporation or transferor corporation was a party to a reorganization described in section 368(a)(1)(F) of the 1986 Code, any reference to such corporation shall include a reference to any predecessor thereof involved in such reorganization.''

STUDY OF TREATMENT OF PROPERTY AND CASUALTY INSURANCE COMPANIES

Section 1025 of subtitle C (§§1021–1025) of title X of Pub. L. 99–514 directed Secretary of the Treasury or his delegate to conduct a study of the treatment of policyholder dividends by mutual property and casualty insurance companies, the treatment of property and casualty insurance companies under the minimum tax, and the operation and effect of, and revenue raised by, the amendments made by this subtitle, and not later than Jan. 1, 1989 (due date extended to Jan. 1, 1992, by Pub. L. 101–508, title XI, §11831(b), Nov. 5, 1990, 104 Stat. 1388–559), such Secretary to submit to Committee on Ways and Means of House of Representatives, Committee on Finance of Senate, and Joint Committee on Taxation, the results of such study, together with such recommendations as he determined to be appropriate.

PHYSICIANS' AND SURGEONS' MUTUAL PROTECTION AND INTERINDEMNITY ARRANGEMENTS OR ASSOCIATIONS

Section 1031 of subtitle D of title X of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1010(g), Nov. 10, 1988, 102 Stat. 3455, provided that:

''(a) CERTAIN PHYSICIANS' AND SURGEONS' MUTUAL PROTECTION AND INTERINDEMNITY ARRANGEMENTS OR ASSOCIATIONS.—

''(1) TREATMENT OF ARRANGEMENTS OR ASSOCIATIONS.—

''(A) CAPITAL CONTRIBUTIONS.—There shall not be included in the gross income of any eligible physicians' and surgeons' mutual protection and interindemnity arrangement or association any initial payment (whether made in a lump sum or a series of substantially equal payments over a period of not more than 6 years) made during any taxable year to such arrangement or association by a member joining such arrangement or association which—

''(i) does not release such member from obligations to pay current or future dues, assessments, or premiums; and

''(ii) is a condition precedent to receiving benefits of membership.

Such initial payment shall be included in the gross income of such arrangement or association for such taxable year if it is reasonable to expect that such payment will be deductible pursuant to paragraph (2) by any member of such arrangement or association.

''(B) RETURN OF CONTRIBUTIONS.—

''(i) IN GENERAL.—The repayment to any member of any amount of any payment excluded under subparagraph (A) shall not be treated as policyholder dividend, and is not deductible by the arrangement or association.

''(ii) SOURCE OF RETURNS.—Except in the case of the termination of a member's interest in the arrangement or association, any amount distributed to any member shall be treated as paid out of surplus in excess of amounts excluded under subparagraph (A).

''(2) DEDUCTION FOR MEMBERS OF ELIGIBLE ARRANGEMENTS OR ASSOCIATIONS.—

''(A) PAYMENT AS TRADE OR BUSINESS EXPENSES.—To the extent not otherwise allowable under the Internal Revenue Code of 1986, any member of any eligible arrangement or association may treat any initial payment referred to in paragraph (1) made during a taxable year to such arrangement or association as an ordinary and necessary expense incurred in connection with a trade or business for purposes of the deduction allowable under section 162, to the extent such payment does not exceed the amount which would be payable to an independent insurance company for similar annual insurance coverage (as determined by the Secretary), and further reduced by any annual dues, assessments, or premiums paid during such taxable year. Such deduction shall not be allowable as to any initial payment referred to in paragraph (1) made to an eligible arrangement or association by any person who is a member of any other eligible arrangement or association on or after the effective date of the Tax Reform Act of 1986. Any excess amount not allowed as a deduction for the taxable year in which such payment was made pursuant to the limitation contained in the 1st sentence of this subparagraph shall, subject to such limitation, be allowable as a deduction in any of the 5 succeeding taxable years, in order of time, to the extent not previously allowed as a deduction under this sentence.

''(B) REFUNDS OF INITIAL PAYMENTS.—Any amount attributable to any initial payment referred to in paragraph (1) to such arrangement or association described in paragraph (1) which is later refunded for any reason shall be included in the gross income of the recipient in the taxable year received, to the extent a deduction for such payment was allowed. Any amount refunded in excess of such payment shall be included in gross income except to the extent otherwise excluded from income by the Internal Revenue Code of 1986.

''(3) ELIGIBLE ARRANGEMENTS OR ASSOCIATIONS.—The terms 'eligible physicans' [sic] and surgeons' mutual protection and interindemnity arrangement or association' and 'eligible arrangement or association' mean and are limited to any mutual protection and interindemnity arrangement or association that provides only medical malpractice liability protection for its members or medical malpractice liability protection in conjunction with protection against other liability claims incurred in the course of, or related to, the professional practice of a physician or surgeon and which—

''(A) was operative and was providing such protection, or had received a permit for the offer and sale of memberships, under the laws of any State before January 1, 1984,

''(B) is not subject to regulation by any State insurance department,

''(C) has a right to make unlimited assessments against all members to cover current claims and losses, and

''(D) is not a member of, nor subject to protection by, any insurance guaranty plan or association of any State.

''(b) EFFECTIVE DATE.—The provisions of subsection (a) shall apply to payments made to and receipts of physicians' and surgeons' mutual protection and interindemnity arrangements or associations, and refunds of payments by such arrangements or associations, after the date of the enactment of this Act [Oct. 22, 1986], in taxable years ending after such date.''

TREATMENT AS UNEARNED PREMIUMS OF ADDITIONS TO RESERVES REQUIRED BY STATE LAW OR REGULATIONS FOR MORTGAGE GUARANTY INSURANCE LOSSES

Section 5(g) of Pub. L. 90–240, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) In the case of taxable years beginning before 1967, a company shall treat additions to a reserve, required by State law or regulations for mortgage guaranty insurance losses resulting from adverse economic cycles, as unearned premiums for purposes of section 832(b)(4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], but the amount so treated as unearned premiums in a taxable year shall not exceed 50 percent of premiums earned on insurance contracts (as defined in section 832(b)(4) of such Code), determined without regard to amounts added to the reserve, with respect to mortgage guaranty insurance for such year. The

amount of unearned premiums at the close of 1966 shall be determined without regard to the preceding sentence for the purpose of applying section 832(b)(4) of such Code to 1967. Additions to such a reserve shall not be treated as unearned premiums for any taxable year beginning after 1966.

''(2) If a mortgage guaranty insurance company made additions to a reserve which were so treated as unearned premiums described in paragraph (1), such company, in taxable years beginning after 1966, shall include in gross income (in addition to the items specified in section 832(b)(1) of such Code) the sum of the following amounts until there is included in gross income an amount equal to the aggregate additions to the reserve described in paragraph (1) for taxable years beginning before 1967:

''(A) an amount (if any) equal to the excess of losses incurred (as defined in section 832(b)(5) of such Code) for the taxable year over 35 percent of premiums earned on insurance contracts during the taxable year (as defined in section 832(b)(4) of such Code), determined without regard to amounts added to the reserve referred to in paragraph (1), with respect to mortgage guaranty insurance,

''(B) the amount (if any) remaining which was added to the reserve for the tenth preceding taxable year, and

''(C) the excess (if any) of—

''(i) the aggregate of amounts so treated as unearned premiums for all taxable years beginning before 1967 less the total of the amounts included in gross income under this paragraph for prior taxable years and the amounts included in gross income under subparagraphs (A) and (B) for the taxable year, over

''(ii) the aggregate of the additions made for taxable years beginning before 1967 which remain in the reserve at the close of the taxable year.

Amounts shall be taken into account on a first-in-time basis. For purposes of section 832(e) of such Code and this paragraph, if part of the reserve is reduced under State law or regulation, such reduction shall first apply to the extent of amounts added to the reserve for taxable years beginning before 1967, and only then to amounts added thereafter.

''(3) The provisions of this subsection shall apply to taxable years beginning after December 31, 1956.''

§ 833. Treatment of Blue Cross and Blue Shield organizations, etc.

(a) General rule

In the case of any organization to which this section applies—

(1) Treated as stock company

Such organization shall be taxable under this part in the same manner as if it were a stock insurance company.

(2) Special deduction allowed

The deduction determined under subsection (b) for any taxable year shall be allowed.

(3) Reductions in unearned premium reserves not to apply

Subparagraph (B) of paragraph (4) of section 832(b) shall be applied by substituting ''100 percent'' for ''80 percent'', and subparagraph (C) of such paragraph (4) shall not apply.

(b) Amount of deduction

(1) In general

Except as provided in paragraph (2), the deduction determined under this subsection for any taxable year is the excess (if any) of—

(A) 25 percent of the sum of—

(i) the claims incurred during the taxable year and liabilities incurred during the taxable year under cost-plus contracts, and

(ii) the expenses incurred during the taxable year in connection with the administration, adjustment, or settlement of claims or in connection with the administration of cost-plus contracts, over

(B) the adjusted surplus as of the beginning of the taxable year.

(2) Limitation

The deduction determined under paragraph (1) for any taxable year shall not exceed taxable income for such taxable year (determined without regard to such deduction).

(3) Adjusted surplus

For purposes of this subsection—

(A) In general

The adjusted surplus as of the beginning of any taxable year is an amount equal to the adjusted surplus as of the beginning of the preceding taxable year—

(i) increased by the amount of any adjusted taxable income for such preceding taxable year, or

(ii) decreased by the amount of any adjusted net operating loss for such preceding taxable year.

(B) Special rule

The adjusted surplus as of the beginning of the organization's 1st taxable year beginning after December 31, 1986, shall be its surplus as of such time. For purposes of the preceding sentence and subsection (c)(3)(C), the term ''surplus'' means the excess of the total assets over total liabilities as shown on the annual statement.

(C) Adjusted taxable income

The term ''adjusted taxable income'' means taxable income determined—

(i) without regard to the deduction determined under this subsection,

(ii) without regard to any carryforward or carryback to such taxable year, and

(iii) by increasing gross income by an amount equal to the net exempt income for the taxable year.

(D) Adjusted net operating loss

The term ''adjusted net operating loss'' means the net operating loss for any taxable year determined with the adjustments set forth in subparagraph (C).

(E) Net exempt income

The term ''net exempt income'' means—

(i) any tax-exempt interest received or accrued during the taxable year, reduced by any amount (not otherwise deductible) which would have been allowable as a deduction for the taxable year if such interest were not tax-exempt, and

(ii) the aggregate amount allowed as a deduction for the taxable year under sections 243, 244, and 245.

The amount determined under clause (ii) shall be reduced by the amount of any decrease in deductions allowable for the tax-

able year by reason of section 832(b)(5)(B) to the extent such decrease is attributable to deductions under sections 243, 244, and 245.

(4) Only health-related items taken into account

Any determination under this subsection shall be made by only taking into account items attributable to the health-related business of the taxpayer.

(c) Organizations to which section applies

(1) In general

This section shall apply to—

(A) any existing Blue Cross or Blue Shield organization, and

(B) any other organization meeting the requirements of paragraph (3).

(2) Existing Blue Cross or Blue Shield organization

The term ''existing Blue Cross or Blue Shield organization'' means any Blue Cross or Blue Shield organization if—

(A) such organization was in existence on August 16, 1986,

(B) such organization is determined to be exempt from tax for its last taxable year beginning before January 1, 1987, and

(C) no material change has occurred in the operations of such organization or in its structure after August 16, 1986, and before the close of the taxable year.

To the extent permitted by the Secretary, any successor to an organization meeting the requirements of the preceding sentence, and any organization resulting from the merger or consolidation of organizations each of which met such requirements, shall be treated as an existing Blue Cross or Blue Shield organization.

(3) Other organizations

(A) In general

An organization meets the requirements of this paragraph for any taxable year if—

(i) substantially all the activities of such organization involve the providing of health insurance,

(ii) at least 10 percent of the health insurance provided by such organization is provided to individuals and small groups (not taking into account any medicare supplemental coverage),

(iii) such organization provides continuous full-year open enrollment (including conversions) for individuals and small groups,

(iv) such organization's policies covering individuals provide full coverage of pre-existing conditions of high-risk individuals without a price differential (with a reasonable waiting period), and coverage is provided without regard to age, income, or employment status of individuals under age 65,

(v) at least 35 percent of its premiums are determined on a community rated basis, and

(vi) no part of its net earnings inures to the benefit of any private shareholder or individual.

(B) Small group defined

For purposes of subparagraph (A), the term ''small group'' means the lesser of—

(i) 15 individuals, or

(ii) the number of individuals required for a small group under applicable State law.

(C) Special rule for determining adjusted surplus

For purposes of subsection (b), the adjusted surplus of any organization meeting the requirements of this paragraph as of the beginning of the 1st taxable year for which it meets such requirements shall be its surplus as of such time.

(4) Treatment as existing Blue Cross or Blue Shield organization

(A) In general

Paragraph (2) shall be applied to an organization described in subparagraph (B) as if it were a Blue Cross or Blue Shield organization.

(B) Applicable organization

An organization is described in this subparagraph if it—

(i) is organized under, and governed by, State laws which are specifically and exclusively applicable to not-for-profit health insurance or health service type organizations, and

(ii) is not a Blue Cross or Blue Shield organization or health maintenance organization.

(5) Nonapplication of section in case of low medical loss ratio

Notwithstanding the preceding paragraphs, this section shall not apply to any organization unless such organization's percentage of total premium revenue expended on reimbursement for clinical services provided to enrollees under its policies during such taxable year (as reported under section 2718 of the Public Health Service Act) is not less than 85 percent.

(Added Pub. L. 99–514, title X, § 1012(b)(1), Oct. 22, 1986, 100 Stat. 2391; amended Pub. L. 104–191, title III, § 351(a), Aug. 21, 1996, 110 Stat. 2071; Pub. L. 105–34, title XVI, § 1604(d)(2)(A), Aug. 5, 1997, 111 Stat. 1098; Pub. L. 111–148, title IX, § 9016(a), Mar. 23, 2010, 124 Stat. 872.)

REFERENCES IN TEXT

Section 2718 of the Public Health Service Act, referred to in subsec. (c)(5), is classified to section 300gg–18 of Title 42, The Public Health and Welfare.

AMENDMENTS

2010—Subsec. (c)(5). Pub. L. 111–148 added par. (5).

1997—Subsec. (b)(1)(A)(i). Pub. L. 105–34, § 1604(d)(2)(A)(i), inserted ''and liabilities incurred during the taxable year under cost-plus contracts'' before the comma.

Subsec. (b)(1)(A)(ii). Pub. L. 105–34, § 1604(d)(2)(A)(ii), inserted ''or in connection with the administration of cost-plus contracts'' before the last comma.

1996—Subsec. (c)(4). Pub. L. 104–191 added par. (4).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title IX, § 9016(b), Mar. 23, 2010, 124 Stat. 872, provided that: ''The amendment made by this

section [amending this section] shall apply to taxable years beginning after December 31, 2009.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1604(d)(2)(B) of Pub. L. 105–34 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect as if included in the amendments made by section 1012 of the Tax Reform Act of 1986 [Pub. L. 99–514].''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 351(b) of Pub. L. 104–191 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years ending after December 31, 1996.''

EFFECTIVE DATE

Section 1012(c) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1010(b)(1), (2), Nov. 10, 1988, 102 Stat. 3451, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section and amending section 501 of this title] shall apply to taxable years beginning after December 31, 1986.

''(2) STUDY OF FRATERNAL BENEFICIARY ASSOCIATIONS.—The Secretary of the Treasury or his delegate shall conduct a study of organizations described in section 501(c)(8) of the Internal Revenue Code of 1986 and which received gross annual insurance premiums in excess of $25,000,000 for the taxable years of such organizations which ended during 1984. Not later than January 1, 1988, the Secretary of the Treasury shall submit to the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and the Joint Committee on Taxation the results of such study, together with such recommendations as he determines to be appropriate. The Secretary of the Treasury shall have authority to require the furnishing of such information as may be necessary to carry out the purposes of this paragraph.

''(3) SPECIAL RULES FOR EXISTING BLUE CROSS OR BLUE SHIELD ORGANIZATIONS.—

''(A) IN GENERAL.—In the case of any existing Blue Cross or Blue Shield organization (as defined in section 833(c)(2) of the Internal Revenue Code of 1986 as added by this section)—

''(i) no adjustment shall be made under section 481 (or any other provision) of such Code on account of a change in its method of accounting for its 1st taxable year beginning after December 31, 1986, and

''(ii) for purposes of determining gain or loss, the adjusted basis of any asset held on the 1st day of such taxable year shall be treated as equal to its fair market value as of such day.

''(B) TREATMENT OF CERTAIN DISTRIBUTIONS.—For purposes of section 833(b)(3)(B), the surplus of any organization as of the beginning of its 1st taxable year beginning after December 31, 1986, shall be increased by the amount of any distribution (other than to policyholders) made by such organization after August 16, 1986, and before the beginning of such taxable year.

''(C) RESERVE WEAKENING AFTER AUGUST 16, 1986.—Any reserve weakening after August 16, 1986, by an existing Blue Cross or Blue Shield organization shall be treated as occurring in such organization's 1st taxable year beginning after December 31, 1986.

''(4) OTHER SPECIAL RULES.—

''(A) The amendments made by this section shall not apply with respect to that portion of the business of Mutual of America which is attributable to pension business.

''(B) The amendments made by this section shall not apply to that portion of the business of the Teachers Insurance Annuity Association-College Retirement Equities Fund which is attributable to pension business.

''(C) The amendments made by this section shall not apply to—

''(i) the retirement fund of the YMCA,

''(ii) the Missouri Hospital Plan,

''(iii) administrative services performed by municipal leagues, and

''(iv) dental benefit coverage provided by a Delta Dental Plans Association organization through contracts with independent professional service providers so long as the provision of such coverage is the principal activity of such organization.

''(D) For purposes of this paragraph, the term 'pension business' means the administration of any plan described in section 401(a) of the Internal Revenue Code of 1954 [now 1986] which includes a trust exempt from tax under section 501(a), any plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b) of such Code, any individual retirement plan described in section 408 of such Code, and any eligible deferred compensation plan to which section 457(a) of such Code applies.''

[The due date for the report referred to in section 1012(c)(2) of Pub. L. 99–514, set out above, extended to July 1, 1992, by Pub. L. 101–508, title XI, §11831(b), Nov. 5, 1990, 104 Stat. 1388–559.]

TERMINATION OF CERTAIN EXCEPTIONS FROM RULES RELATING TO EXEMPT ORGANIZATIONS WHICH PROVIDE COMMERCIAL-TYPE INSURANCE

Pub. L. 105–277, div. J, title IV, §4003(g), Oct. 21, 1998, 112 Stat. 2681–910, provided that: ''Rules similar to the rules of section 1.1502–75(d)(5) of the Treasury Regulations shall apply with respect to any organization described in section 1042(b) of the 1997 Act [section 1042(b) of Pub. L. 105–34, set out below].''

Section 1042 of Pub. L. 105–34 provided that:

''(a) IN GENERAL.—Subparagraphs (A) and (B) of section 1012(c)(4) of the Tax Reform Act of 1986 [Pub. L. 99–514, set out as an Effective Date note above] shall not apply to any taxable year beginning after December 31, 1997.

''(b) SPECIAL RULES.—In the case of an organization to which section 501(m) of the Internal Revenue Code of 1986 applies solely by reason of the amendment made by subsection (a)—

''(1) no adjustment shall be made under section 481 (or any other provision) of such Code on account of a change in its method of accounting for its first taxable year beginning after December 31, 1997, and

''(2) for purposes of determining gain or loss, the adjusted basis of any asset held on the 1st day of such taxable year shall be treated as equal to its fair market value as of such day.

''(c) RESERVE WEAKENING AFTER JUNE 8, 1997.—Any reserve weakening after June 8, 1997, by an organization described in subsection (b) shall be treated as occurring in such organization's 1st taxable year beginning after December 31, 1997.

''(d) REGULATIONS.—The Secretary of the Treasury or his delegate may prescribe rules for providing proper adjustments for organizations described in subsection (b) with respect to short taxable years which begin during 1998 by reason of section 843 of the Internal Revenue Code of 1986.''

RULES PROVIDING ADJUSTMENTS FOR CERTAIN TAXPAYERS AFFECTED BY SECTION 1012 OF PUB. L. 99–514

Pub. L. 100–647, title I, §1010(b)(3), Nov. 10, 1988, 102 Stat. 3451, provided that: ''The Secretary of the Treasury or his delegate may prescribe rules providing proper adjustments for taxpayers which become subject to subchapter L of chapter 1 of the 1986 Code by reason of the amendments made by section 1012 of the Reform Act [Pub. L. 99–514, enacting this section and amending section 501 of this title] with respect to short taxable years which begin during 1987 by reason of section 843 of such Code.''

§ 834. Determination of taxable investment income

(a) General rule

For purposes of section 831(b), the term ''taxable investment income'' means the gross investment income, minus the deductions provided in subsection (c).

(b) Gross investment income

For purposes of subsection (a), the term ''gross investment income'' means the sum of the following:

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

(A) interest, dividends, rents, and royalties,

(B) the entering into of any lease, mortgage, or other instrument or agreement from which the insurance company derives interest, rents, or royalties,

(C) the alteration or termination of any instrument or agreement described in subparagraph (B), and

(D) gains from sales or exchanges of capital assets to the extent provided in subchapter P (sec. 1201 and following, relating to capital gains and losses).

(2) The gross income during the taxable year from any trade or business (other than an insurance business) carried on by the insurance company, or by a partnership of which the insurance company is a partner. In computing gross income under this paragraph, there shall be excluded any item described in paragraph (1).

(c) Deductions

In computing taxable investment income, the following deductions shall be allowed:

(1) Tax-free interest

The amount of interest which under section 103 is excluded for the taxable year from gross income.

(2) Investment expenses

Investment expenses paid or accrued during the taxable year. If any general expenses are in part assigned to or included in the investment expenses, the total deduction under this paragraph shall not exceed one-fourth of 1 percent of the mean of the book value of the invested assets held at the beginning and end of the taxable year plus one-fourth of the amount by which taxable investment income (computed without any deduction for investment expenses allowed by this paragraph, for tax-free interest allowed by paragraph (1), or for dividends received allowed by paragraph (7)), exceeds 3¾ percent of the book value of the mean of the invested assets held at the beginning and end of the taxable year.

(3) Real estate expenses

Taxes (as provided in section 164), and other expenses, paid or accrued during the taxable year exclusively on or with respect to the real estate owned by the company. No deduction shall be allowed under this paragraph for any amount paid out for new buildings, or for permanent improvements or betterments made to increase the value of any property.

(4) Depreciation

The depreciation deduction allowed by section 167.

(5) Interest paid or accrued

All interest paid or accrued within the taxable year on indebtedness, except on indebtedness incurred or continued to purchase or carry obligations the interest on which is wholly exempt from taxation under this subtitle.

(6) Capital losses

Capital losses to the extent provided in subchapter P (sec. 1201 and following) plus losses from capital assets sold or exchanged in order to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders. Capital assets shall be considered as sold or exchanged in order to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders to the extent that the gross receipts from their sale or exchange are not greater than the excess, if any, for the taxable year of the sum of dividends and similar distributions paid to policyholders, losses paid, and expenses paid over the sum of the items described in subsection (b) (other than paragraph (1)(D) thereof) and net premiums received. In the application of section 1212 for purposes of this section, the net capital loss for the taxable year shall be the amount by which losses for such year from sales or exchanges of capital assets exceeds the sum of the gains from such sales or exchanges and whichever of the following amounts is the lesser:

(A) the taxable investment income (computed without regard to gains or losses from sales or exchanges of capital assets); or

(B) losses from the sale or exchange of capital assets sold or exchanged to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders.

(7) Special deductions

The special deductions allowed by part VIII (except section 248) of subchapter B (sec. 241 and following, relating to dividends received). In applying section 246(b) (relating to limitation on aggregate amount of deductions for dividends received) for purposes of this paragraph, the reference in such section to ''taxable income'' shall be treated as a reference to ''taxable investment income''.

(8) Trade or business deductions

The deductions allowed by this subtitle (without regard to this part) which are attributable to any trade or business (other than an insurance business) carried on by the insurance company, or by a partnership of which the insurance company is a partner; except that for purposes of this paragraph—

(A) any item, to the extent attributable to the carrying on of the insurance business, shall not be taken into account, and

(B) the deduction for net operating losses provided in section 172 shall not be allowed.

(9) Depletion

The deduction allowed by section 611 (relating to depletion).

(d) Other applicable rules

(1) Rental value of real estate

The deduction under subsection (c)(3) or (4) on account of any real estate owned and occupied in whole or in part by a mutual insurance company subject to the tax imposed by section 831 shall be limited to an amount which bears the same ratio to such deduction (computed without regard to this paragraph) as the rental value of the space not so occupied bears to the rental value of the entire property.

(2) Amortization of premium and accrual of discount

The gross amount of income during the taxable year from interest and the deduction provided in subsection (c)(1) shall each be decreased to reflect the appropriate amortization of premium and increased to reflect the appropriate accrual of discount attributable to the taxable year on bonds, notes, debentures, or other evidences of indebtedness held by a mutual insurance company subject to the tax imposed by section 831. Such amortization and accrual shall be determined—

(A) in accordance with the method regularly employed by such company, if such method is reasonable, and

(B) in all other cases, in accordance with regulations prescribed by the Secretary.

No accrual of discount shall be required under this paragraph on any bond (as defined in section 171(d)) except in the case of discount which is original issue discount (as defined in section 1273).

(3) Double deductions

Nothing in this part shall permit the same item to be deducted more than once.

(e) Definitions

For purposes of this part—

(1) Net premiums

The term ''net premiums'' means gross premiums (including deposits and assessments) written or received on insurance contracts during the taxable year less return premiums and premiums paid or incurred for reinsurance. Amounts returned where the amount is not fixed in the insurance contract but depends on the experience of the company or the discretion of the management shall not be included in return premiums but shall be treated as dividends to policyholders under paragraph (2).

(2) Dividends to policyholders

The term ''dividends to policyholders'' means dividends and similar distributions paid or declared to policyholders. For purposes of the preceding sentence, the term ''paid or declared'' shall be construed according to the method regularly employed in keeping the books of the insurance company.

(Aug. 16, 1954, ch. 736, 68A Stat. 261, §822; Mar. 13, 1956, ch. 83, §3(a)(3)–(8), 70 Stat. 47, 48; Pub. L. 87–834, §8(b), Oct. 16, 1962, 76 Stat. 991; Pub. L. 88–272, title II, §228(b)(2), Feb. 26, 1964, 78 Stat. 99; Pub. L. 89–809, title I, §104(i)(5), Nov. 13, 1966, 80 Stat. 1562; Pub. L. 94–455, title XIX, §§1901(a)(105), (b)(1)(P)–(S), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1782, 1792, 1834; renumbered §834 and amended Pub. L. 99–514, title X, §1024(a)(3), (c)(7), (8), Oct. 22, 1986, 100 Stat. 2405, 2407.)

AMENDMENTS

1986—Pub. L. 99–514, §1024(a)(3), renumbered section 822 of this title as this section.

Subsec. (a). Pub. L. 99–514, §1024(c)(7), amended subsec. (a) generally. Prior to amendment, subsec. (a), definitions, read as follows: ''For purposes of this part—

''(1) The term 'taxable investment income' means the gross investment income, minus the deductions provided in subsection (c).

''(2) The term 'investment loss' means the amount by which the deductions provided in subsection (c) exceed the gross investment income.''

Subsec. (d). Pub. L. 99–514, §1024(c)(8), substituted ''section 831'' for ''section 821'' in pars. (1) and (2), and inserted ''except in the case of discount which is original issue discount (as defined in section 1273)'' at end of last sentence in par.

1976—Subsec. (c)(2). Pub. L. 94–455, §1901(b)(1)(P), struck out ''partially tax-exempt interest and'' before ''dividends received allowed by''.

Subsec. (c)(5). Pub. L. 94–455, §1901(a)(105)(A), struck out ''(other than obligations of the United States issued after September 24, 1917, and originally subscribed for by the taxpayer)'' after ''purchase or carry obligations''.

Subsec. (c)(6)(A). Pub. L. 94–455, §1901(b)(1)(Q), struck out ''or to the deduction provided in section 242 for partially tax-exempt interest'' after ''exchanges of capital assets''.

Subsec. (c)(7). Pub. L. 94–455, §1901(b)(1)(R), struck out ''partially tax-exempt interest and to'' after ''and following, relating to''.

Subsec. (d)(2). Pub. L. 94–455, §§1901(a)(105)(B), (b)(1)(S), 1906(b)(13)(A), struck out in subpar. (B) ''or his delegate'' after ''Secretary'' and substituted in provisions preceding subpar. (A) ''and the deduction provided in subsection (c)(1)'' for '', the deduction provided in subsection (c)(1), and the deduction allowed by section 242 (relating to partially tax-exempt interest)'' and in provisions following subpar. (B) ''No accrual'' for ''For taxable years beginning after December 31, 1962, no accrual''.

1966—Subsecs. (e), (f). Pub. L. 89–809 redesignated subsec. (f) as (e). Former subsec. (e), dealing with foreign mutual insurance companies other than life or marine, was struck out.

1964—Subsec. (d)(2). Pub. L. 88–272 provided that for taxable years beginning after Dec. 31, 1962, no accrual of discount shall be required under par. (2) on any bond.

1962—Pub. L. 87–834, §8(b)(1), substituted ''Determination of taxable investment income'' for ''Determination of mutual insurance company taxable income'' in section catchline.

Subsec. (a). Pub. L. 87–834, §8(b)(1), defined ''taxable investment income'' and ''investment loss'' for purposes of this part, and struck out provisions which defined ''mutual insurance company taxable income'' for purposes of section 821 of this title, which provisions are now contained in section 821(b) of this title.

Subsec. (c). Pub. L. 87–834, §8(b)(2), (3), substituted ''taxable investment income'' for ''mutual insurance company taxable income'' in opening provisions and in pars. (2) and (6)(A), and inserted sentence in par. (7) providing that in applying section 246(b) (relating to limitations on aggregate amount of deductions for dividends received) for purposes of par. (7), reference in such section to ''taxable income'' shall be treated as a reference to ''taxable investment income''.

Subsec. (e). Pub. L. 87–834, §8(b)(2), substituted ''taxable investment income'' for ''mutual insurance company taxable income''.

Subsec. (f). Pub. L. 87–834, § 8(b)(4), added subsec. (f). Provisions of subsec. (f) were formerly contained in section 823 of this title.

1956—Subsec. (b). Act Mar. 13, 1956, § 3(a)(3), principally included royalties, and the income from a trade or business other than the insurance business carried on by the insurance company in ''gross investment income''.

Subsec. (c). Act Mar. 13, 1956, § 3(a)(4), (5), (6), clarified the deduction for real estate expenses in par. (3), substituted in par. (6) ''the sum of the items described in subsection (b) (other than paragraph (1)(D) thereof) and net premiums received. In the application of section 1212'' for ''the sum of interest, dividends, rents, and net premiums received. In the application of section 1211'', and inserted pars. (8) and (9).

Subsec. (d)(1). Act Mar. 13, 1956, § 3(a)(7), substituted ''subsection (c)(3) or (4)'' for ''subsection (e)(3) or (4)''.

Subsec. (e). Act Mar. 13, 1956, § 3(a)(8), substituted ''items described in subsection (b) (other than paragraph (1)(D) thereof'' for ''interest, dividends, rents,''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1024(e) of Pub. L. 99–514, set out as a note under section 831 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(105), (b)(1)(P)–(S) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable with respect to taxable years beginning after Dec. 31, 1962, see section 8(h) of Pub. L. 87–834, set out as a note under section 501 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956, applicable only to taxable years beginning after Dec. 31, 1954, see section 6 of act Mar. 13, 1956, set out as a note set out under section 316 of this title.

§ 835. Election by reciprocal

(a) In general

Except as otherwise provided in this section, any mutual insurance company which is an interinsurer or reciprocal underwriter (hereinafter in this section referred to as a ''reciprocal'') subject to the taxes imposed by section 831(a) may, under regulations prescribed by the Secretary, elect to be subject to the limitation provided in subsection (b). Such election shall be effective for the taxable year for which made and for all succeeding taxable years, and shall not be revoked except with the consent of the Secretary.

(b) Limitation

The deduction for amounts paid or incurred in the taxable year to the attorney-in-fact by a reciprocal making the election provided in subsection (a) shall be limited to, but in no case increased by, the deductions of the attorney-in-fact allocable, in accordance with regulations prescribed by the Secretary, to the income received by the attorney-in-fact from the reciprocal.

(c) Exception

An election may not be made by a reciprocal under subsection (a) unless the attorney-in-fact of such reciprocal—

(1) is subject to the tax imposed by section 11;

(2) consents in such manner as the Secretary shall prescribe by regulations to make available such information as may be required during the period in which the election provided in subsection (a) is in effect, under regulations prescribed by the Secretary;

(3) reports the income received from the reciprocal and the deductions allocable thereto under the same method of accounting under which the reciprocal reports deductions for amounts paid to the attorney-in-fact; and

(4) files its return on the calendar year basis.

(d) Credit

Any reciprocal electing to be subject to the limitation provided in subsection (b) shall be credited with so much of the tax paid by the attorney-in-fact as is attributable, under regulations prescribed by the Secretary, to the income received by the attorney-in-fact from the reciprocal in such taxable year.

(e) Benefits of graduated rates denied

Any increase in the taxable income of a reciprocal attributable to the limits provided in subsection (b) shall be taxed at the highest rate of tax specified in section 11(b).

(f) Adjustment for refund

If for any taxable year an attorney-in-fact is allowed a credit or refund for taxes paid with respect to which credit or refund to the reciprocal resulted under subsection (d), the taxes of such reciprocal for such taxable year shall be properly adjusted under regulations prescribed by the Secretary.

(g) Taxes of attorney-in-fact unaffected

Nothing in this section shall increase or decrease the taxes imposed by this chapter on the income of the attorney-in-fact.

(Added Pub. L. 87–834, § 8(c), Oct. 16, 1962, 76 Stat. 996, § 826; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–600, title III, § 301(b)(10), Nov. 6, 1978, 92 Stat. 2822; renumbered § 835 and amended Pub. L. 99–514, title X, § 1024(a)(3), (c)(9), Oct. 22, 1986, 100 Stat. 2405, 2407; Pub. L. 100–647, title I, § 1010(f)(2), (3), Nov. 10, 1988, 102 Stat. 3454.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–647, § 1010(f)(2), substituted ''section 831(a)'' for ''section 821(a)''.

Subsec. (f). Pub. L. 100–647, § 1010(f)(3), substituted ''subsection (d)'' for ''subsection (e)''.

1986—Pub. L. 99–514, § 1024(a)(3), renumbered section 826 of this title as this section.

Subsec. (d). Pub. L. 99–514, § 1024(c)(9)(A), redesignated subsec. (e) as (d) and struck out former subsec. (d), special rule, which read as follows: ''In applying section 824(d)(1)(D), any amount which was added to the protection against loss account by reason of an election under this section shall be treated as having been added by reason of section 824(a)(1)(A).''

Subsec. (e). Pub. L. 99–514, § 1024(c)(9), redesignated subsec. (f) as (e), substituted ''Benefits of graduated

rates'' for ''Surtax exemption'' in heading, and amended text generally. Prior to amendment, text read as follows: ''Any increase in taxable income of a reciprocal attributable to the limitation provided in subsection (b) shall be taxed without regard to the surtax exemption provided in section 821(a)(2).'' Former subsec. (e) redesignated (d).

Subsecs. (f) to (h). Pub. L. 99–514, § 1024(c)(9)(A), redesignated subsecs. (f) to (h) as (e) to (g), respectively.

1978—Subsec. (c)(1). Pub. L. 95–600 substituted ''the tax imposed by section 11'' for ''the taxes imposed by section 11(b) and (c)''.

1976—Subsecs. (a), (b), (c)(2), (e), (g). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1024(e) of Pub. L. 99–514, set out as a note under section 831 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1962, see section 8(h) of Pub. L. 87–834, set out as an Effective Date of 1962 Amendment note under section 501 of this title.

PART III—PROVISIONS OF GENERAL APPLICATION

Sec.

841. Credit for foreign taxes.
842. Foreign companies carrying on insurance business.
843. Annual accounting period.
844. Special loss carryover rules.
845. Certain reinsurance agreements.
846. Discounted unpaid losses defined.
847. Special estimated tax payments.
848. Capitalization of certain policy acquisition expenses.

AMENDMENTS

1990—Pub. L. 101–508, title XI, § 11301(c), Nov. 5, 1990, 104 Stat. 1388–449, added item 848.

1989—Pub. L. 101–239, title VII, § 7821(d)(1), Dec. 19, 1989, 103 Stat. 2424, substituted ''companies'' for ''corporations'' in item 842.

1988—Pub. L. 100–647, title VI, § 6077(b), Nov. 10, 1988, 102 Stat. 3709, added item 847.

1986—Pub. L. 99–514, title X, §§ 1023(d), 1024(a)(2), Oct. 22, 1986, 100 Stat. 2404, 2405, redesignated part IV as III and added item 846. Former part III redesignated II.

1984—Pub. L. 98–369, div. A, title II, § 212(b), July 18, 1984, 98 Stat. 758, added item 845.

1969—Pub. L. 91–172, title IX, § 907(c)(2)(A), Dec. 30, 1969, 83 Stat. 717, added item 844.

1966—Pub. L. 89–809, title I, § 104(i)(2), Nov. 13, 1966, 80 Stat. 1561, substituted ''Foreign corporations carrying on insurance business'' for ''Computation of gross income'' in item 842.

1956—Act Mar. 13, 1956, ch. 83, § 4(b), 70 Stat. 49, added item 843.

§ 841. Credit for foreign taxes

The taxes imposed by foreign countries or possessions of the United States shall be allowed as a credit against the tax of a domestic insurance company subject to the tax imposed by section 801 or 831, to the extent provided in the case of a domestic corporation in section 901 (relating to foreign tax credit). For purposes of the preceding sentence (and for purposes of applying section 906 with respect to a foreign corporation subject to tax under this subchapter), the term ''taxable income'' as used in section 904 means—

(1) in the case of the tax imposed by section 801, the life insurance company taxable income (as defined in section 801(b)), and

(2) in the case of the tax imposed by section 831, the taxable income (as defined in section 832(a)).

(Aug. 16, 1954, ch. 736, 68A Stat. 267; Mar. 13, 1956, ch. 83, § 5(4), 70 Stat. 49; Pub. L. 86–69, § 3(b), June 25, 1959, 73 Stat. 139; Pub. L. 87–834, § 8(g)(1), Oct. 16, 1962, 76 Stat. 998; Pub. L. 89–809, title I, § 104(i)(8), Nov. 13, 1966, 80 Stat. 1562; Pub. L. 98–369, div. A, title II, § 211(b)(10), July 18, 1984, 98 Stat. 755; Pub. L. 99–514, title X, § 1024(c)(10), Oct. 22, 1986, 100 Stat. 2407.)

AMENDMENTS

1986—Pub. L. 99–514 substituted ''section 801 or 831'' for ''section 801, 821, or 831'' in introductory provisions, redesignated par. (3) as (2), and struck out former par. (2) which read as follows: ''in the case of the tax imposed by section 821(a), the mutual insurance company taxable income (as defined in section 821(b)); and in the case of the tax imposed by section 821(c), the taxable investment income (as defined in section 822(a)), and''.

1984—Pub. L. 98–369 substituted ''section 801'' for ''section 802'', wherever appearing, and ''section 801(b)'' for ''section 802(b)''.

1966—Pub. L. 89–809 substituted ''For purposes of the preceding sentence (and for purposes of applying section 906 with respect to a foreign corporation subject to tax under this subchapter), the term 'taxable income' as used in section 904'' for ''For purposes of the preceding sentence, the term 'taxable income' as used in section 904''.

1962—Pub. L. 87–834 added par. (2) and redesignated former par. (2) as (3).

1959—Pub. L. 86–69 struck out reference to section 811 of this title in first sentence, and substituted ''section 802, the life insurance company taxable income (as defined in section 802(b)), and'' for ''section 802 or 811, the net investment income (as defined in section 803(c))'' in par. (1).

1956—Act Mar. 13, 1956, inserted references to section 811.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1024(e) of Pub. L. 99–514, set out as a note under section 831 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable with respect to taxable years beginning after Dec. 31, 1962, see sec-

tion 8(h) of Pub. L. 87–834, set out as a note under section 501 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–69 applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86–69, set out as a note under section 381 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956, applicable only to taxable years beginning after Dec. 31, 1954, see section 6 of act Mar. 13, 1956, set out as a note under section 316 of this title.

§ 842. Foreign companies carrying on insurance business

(a) Taxation under this subchapter

If a foreign company carrying on an insurance business within the United States would qualify under part I or II of this subchapter for the taxable year if (without regard to income not effectively connected with the conduct of any trade or business within the United States) it were a domestic corporation, such company shall be taxable under such part on its income effectively connected with its conduct of any trade or business within the United States. With respect to the remainder of its income which is from sources within the United States, such a foreign company shall be taxable as provided in section 881.

(b) Minimum effectively connected net investment income

(1) In general

In the case of a foreign company taxable under part I or II of this subchapter for the taxable year, its net investment income for such year which is effectively connected with the conduct of an insurance business within the United States shall be not less than the product of—

(A) the required United States assets of such company, and

(B) the domestic investment yield applicable to such company for such year.

(2) Required U.S. assets

(A) In general

For purposes of paragraph (1), the required United States assets of any foreign company for any taxable year is an amount equal to the product of—

(i) the mean of such foreign company's total insurance liabilities on United States business, and

(ii) the domestic asset/liability percentage applicable to such foreign company for such year.

(B) Total insurance liabilities

For purposes of this paragraph—

(i) Companies taxable under part I

In the case of a company taxable under part I, the term ''total insurance liabilities'' means the sum of the total reserves (as defined in section 816(c)) plus (to the extent not included in total reserves) the items referred to in paragraphs (3), (4), (5), and (6) of section 807(c).

(ii) Companies taxable under part II

In the case of a company taxable under part II, the term ''total insurance liabilities'' means the sum of unearned premiums and unpaid losses.

(C) Domestic asset/liability percentage

The domestic asset/liability percentage applicable for purposes of subparagraph (A)(ii) to any foreign company for any taxable year is a percentage determined by the Secretary on the basis of a ratio—

(i) the numerator of which is the mean of the assets of domestic insurance companies taxable under the same part of this subchapter as such foreign company, and

(ii) the denominator of which is the mean of the total insurance liabilities of the same companies.

(3) Domestic investment yield

The domestic investment yield applicable for purposes of paragraph (1)(B) to any foreign company for any taxable year is the percentage determined by the Secretary on the basis of a ratio—

(A) the numerator of which is the net investment income of domestic insurance companies taxable under the same part of this subchapter as such foreign company, and

(B) the denominator of which is the mean of the assets of the same companies.

(4) Election to use worldwide yield

(A) In general

If the foreign company makes an election under this paragraph, such company's worldwide current investment yield shall be taken into account in lieu of the domestic investment yield for purposes of paragraph (1)(B).

(B) Worldwide current investment yield

For purposes of subparagraph (A), the term ''worldwide current investment yield'' means the percentage obtained by dividing—

(i) the net investment income of the company from all sources, by

(ii) the mean of all assets of the company (whether or not held in the United States).

(C) Election

An election under this paragraph shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(5) Net investment income

For purposes of this subsection, the term ''net investment income'' means—

(A) gross investment income (within the meaning of section 834(b)), reduced by

(B) expenses allocable to such income.

(c) Special rules for purposes of subsection (b)

(1) Coordination with small life insurance company deduction

In the case of a foreign company taxable under part I, subsection (b) shall be applied before computing the small life insurance company deduction.

(2) Reduction in section 881 taxes

(A) In general

The tax under section 881 (determined without regard to this paragraph) shall be

reduced (but not below zero) by an amount which bears the same ratio to such tax as—

(i) the amount of the increase in effectively connected income of the company resulting from subsection (b), bears to

(ii) the amount which would be subject to tax under section 881 if the amount taxable under such section were determined without regard to sections 103 and 894.

(B) Limitation on reduction

The reduction under subparagraph (A) shall not exceed the increase in taxes under part I or II (as the case may be) by reason of the increase in effectively connected income of the company resulting from subsection (b).

(3) Data used in determining domestic asset/liability percentages and domestic investment yields

Each domestic asset/liability percentage, and each domestic investment yield, for any taxable year shall be based on such representative data with respect to domestic insurance companies for the second preceding taxable year as the Secretary considers appropriate.

(d) Regulations

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

(1) providing for the proper treatment of segregated asset accounts,

(2) providing for proper adjustments in succeeding taxable years where the company's actual net investment income for any taxable year which is effectively connected with the conduct of an insurance business within the United States exceeds the amount required under subsection (b)(1),

(3) providing for the proper treatment of investments in domestic subsidiaries, and

(4) which may provide that, in the case of companies taxable under part II of this subchapter, determinations under subsection (b) will be made separately for categories of such companies established in such regulations.

(Aug. 16, 1954, ch. 736, 68A Stat. 267; Mar. 13, 1956, ch. 83, § 5(5), 70 Stat. 49; Pub. L. 86–69, § 3(f)(1), June 25, 1959, 73 Stat. 140; Pub. L. 89–809, title I, § 104(i)(1), Nov. 13, 1966, 80 Stat. 1561; Pub. L. 99–514, title X, § 1024(c)(11), Oct. 22, 1986, 100 Stat. 2408; Pub. L. 100–203, title X, § 10242(a), Dec. 22, 1987, 101 Stat. 1330–420; Pub. L. 100–647, title II, § 2004(q)(2), (3), Nov. 10, 1988, 102 Stat. 3609; Pub. L. 101–239, title VII, § 7821(d)(2), Dec. 19, 1989, 103 Stat. 2424; Pub. L. 108–218, title II, § 205(b)(6), Apr. 10, 2004, 118 Stat. 610.)

AMENDMENTS

2004—Subsec. (c)(3), (4). Pub. L. 108–218 redesignated par. (4) as (3) and struck out heading and text of former par. (3). Text read as follows: ''For purposes of section 809, the equity base of any foreign mutual life insurance company as of the close of any taxable year shall be increased by the excess of—

''(A) the required United States assets of the company (determined under subsection (b)(2)), over

''(B) the mean of the assets held in the United States during the taxable year.''

1989—Subsec. (c)(4). Pub. L. 101–239 substituted ''yields'' for ''yeilds'' in heading.

1988—Subsec. (b)(3)(B). Pub. L. 100–647, § 2004(q)(2)(A), struck out ''held for the production of such income'' after ''same companies''.

Subsec. (b)(4)(B)(ii). Pub. L. 100–647, § 2004(q)(2)(B), struck out ''held for the production of investment income'' after ''United States)''.

Subsec. (d)(4). Pub. L. 100–647, § 2004(q)(3), added par. (4).

1987—Pub. L. 100–203 substituted ''companies'' for ''corporations'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''If a foreign corporation carrying on an insurance business within the United States would qualify under part I or II of this subchapter for the taxable year if (without regard to income not effectively connected with the conduct of any trade or business within the United States) it were a domestic corporation, such corporation shall be taxable under such part on its income effectively connected with its conduct of any trade or business within the United States. With respect to the remainder of its income, which is from sources within the United States, such a foreign corporation shall be taxable as provided in section 881.''

1986—Pub. L. 99–514 struck out reference to part III of this subchapter.

1966—Pub. L. 89–809 substituted provisions covering the taxability of foreign corporations that are carrying on an insurance business within the United States which would qualify under part I, II, or III of this subchapter for the taxable year if (without regard to income not effectively connected with the conduct of any trade or business within the United States) it were a domestic corporation for provisions that the gross income of insurance companies subject to the tax imposed by section 802 or 831 shall not be determined in the manner provided in part I of subchapter N (relating to determination of sources of income).

1959—Pub. L. 86–69 struck out reference to section 811.

1956—Act Mar. 13, 1956, inserted reference to section 811.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–218 applicable to taxable years beginning after Dec. 31, 2004, see section 205(c) of Pub. L. 108–218, set out as a note under section 807 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective as if included in the provision of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 7823 of Pub. L. 101–239, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to taxable years beginning after Dec. 31, 1987, see section 10242(d) of Pub. L. 100–203, set out as a note under section 816 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1024(e) of Pub. L. 99–514, set out as a note under section 831 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–69 applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86–69, set out as a note under section 381 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956, applicable only to taxable years beginning after Dec. 31, 1954, see section 6 of act Mar. 13, 1956, set out as a note under section 316 of this title.

STUDY OF UNITED STATES REINSURANCE INDUSTRY

Section 1244 of Pub. L. 99–514 directed Secretary of the Treasury or his delegate to conduct a study to determine whether United States reinsurance corporations are placed at a significant competitive disadvantage with foreign reinsurance corporations by existing treaties between the United States and foreign countries, and to report before Jan. 1, 1988, the results of such study to Committee on Finance of United States Senate and Committee on Ways and Means of House of Representatives.

§ 843. Annual accounting period

For purposes of this subtitle, the annual accounting period for each insurance company subject to a tax imposed by this subchapter shall be the calendar year. Under regulations prescribed by the Secretary, an insurance company which joins in the filing of a consolidated return (or is required to so file) may adopt the taxable year of the common parent corporation even though such year is not a calendar year.

(Added Mar. 13, 1956, ch. 83, § 4(a), 70 Stat. 48; amended Pub. L. 94–455, title XV, § 1507(b)(2), Oct. 4, 1976, 90 Stat. 1740.)

AMENDMENTS

1976—Pub. L. 94–455 inserted provision permitting an insurance company which joins in the filing of a consolidated return to adopt the taxable year of the common parent corporation even though such year is not a calendar year.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1980, see section 1507(c)(1) of Pub. L. 94–455, set out as a note under section 1504 of this title.

EFFECTIVE DATE

Section applicable only to taxable years beginning after Dec. 31, 1954, see Effective Date of 1956 Amendment note set out under section 316 of this title.

§ 844. Special loss carryover rules

(a) General rule

If an insurance company—

(1) is subject to the tax imposed by part I or II of this subchapter for the taxable year, and

(2) was subject to the tax imposed by a different part of this subchapter for a prior taxable year,

then any operations loss carryover under section 810 (or the corresponding provisions of prior law) or net operating loss carryover under section 172 (as the case may be) arising in such prior taxable year shall be included in its operations loss deduction under section 810(a) or net operating loss deduction under section 832(c)(10), as the case may be.

(b) Limitation

The amount included under section 810(a) or 832(c)(10) (as the case may be) by reason of the application of subsection (a) shall not exceed the amount that would have constituted the loss carryover under such section if for all relevant taxable years the company had been subject to the tax imposed by the part referred to in subsection (a)(1) rather than the part referred to in subsection (a)(2). For purposes of applying the preceding sentence, section 810(b)(1)(C) (relating to additional years to which losses may be carried by new life insurance companies) shall not apply.

(c) Regulations

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

(Added Pub. L. 91–172, title IX, § 907(c)(1), Dec. 30, 1969, 83 Stat. 716; amended Pub. L. 94–455, title XIX, §§ 1901(b)(25), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1798, 1834; Pub. L. 98–369, div. A, title II, § 211(b)(11), July 18, 1984, 98 Stat. 755; Pub. L. 99–514, title X, § 1024(c)(12), title XVIII, § 1899A(20), Oct. 22, 1986, 100 Stat. 2408, 2959; Pub. L. 101–239, title VII, § 7841(d)(16), Dec. 19, 1989, 103 Stat. 2429.)

AMENDMENTS

1989—Subsec. (a)(2). Pub. L. 101–239 substituted ''a prior taxable year'' for ''the taxable year''.

1986—Subsec. (a). Pub. L. 99–514, § 1024(c)(12), added subsec. (a) and struck out former subsec. (a) which read as follows: ''If an insurance company—

''(1) is subject to the tax imposed by part I, II, or III of this subchapter for the taxable year, and

''(2) was subject to the tax imposed by a different part of this subchapter for a prior taxable year beginning after December 31, 1962,

then any operations loss carryover under section 810 (or the corresponding provisions of prior law), unused loss carryover under section 825, or net operating loss carryover under section 172, as the case may be, arising in such prior taxable year shall be included in its operations loss deduction under section 810(a), unused loss deduction under section 825(a), or net operating loss deduction under section 832(c)(10), as the case may be.''

Pub. L. 99–514, § 1899A(20), substituted ''prior law), unused loss'' for ''prior law),, unused loss'' in concluding provisions.

Subsec. (b). Pub. L. 99–514, § 1024(c)(12), added subsec. (b) and struck out former subsec. (b) which read as follows: ''The amount included under section 810(a), 825(a), or 832(c)(10), as the case may be, by reason of the application of subsection (a) shall not exceed the amount that would have constituted the loss carryover under such section if for all relevant taxable years such company had been subject to the tax imposed by the part referred to in subsection (a)(1) rather than the part referred to in subsection (a)(2). For purposes of applying the preceding sentence—

''(1) in the case of a mutual insurance company which becomes a stock insurance company, an amount equal to 25 percent of the deduction under section 832(c)(11) (relating to dividends to policyholders) shall not be allowed, and

''(2) section 810(b)(1)(C) (relating to additional years to which losses may be carried by new life insurance companies) shall not apply.''

1984—Subsec. (a). Pub. L. 98–369, § 211(b)(11)(A), substituted ''section 810 (or the corresponding provisions of prior law),'' for ''section 812'' and ''section 810(a)'' for ''section 812(a)'' in provisions following par. (2).

Subsec. (b). Pub. L. 98–369, § 211(b)(11)(B), substituted ''section 810(a)'' for ''section 812(a)'' in introductory

provisions, and ''section 810(b)(1)(C)'' for ''section 812(b)(1)(C)'' in par. (2).

1976—Subsec. (b)(2). Pub. L. 94–455, § 1901(b)(25), substituted ''section 812(b)(1)(C)'' for ''section 812(b)(1)(A)(iii)''.

Subsec. (c). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1024(c)(12) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1024(e) of Pub. L. 99–514, set out as a note under section 831 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(25) of Pub. L. 94–455, effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section 907(d) of Pub. L. 91–172 provided that: ''The amendments made by subsection (a) [amending sections 805 and 810 of this title] shall apply to taxable years beginning after December 31, 1957. The amendments made by subsection (b) [amending section 815 of this title] shall apply to taxable years beginning after December 31, 1968. The amendments made by subsection (c) [enacting this section and amending sections 809, 823, and 825 of this title] shall apply with respect to losses incurred in taxable years beginning after December 31, 1962, but shall not affect any tax liability for any taxable year beginning before January 1, 1967.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 845. Certain reinsurance agreements

(a) Allocation in case of reinsurance agreement involving tax avoidance or evasion

In the case of 2 or more related persons (within the meaning of section 482) who are parties to a reinsurance agreement (or where one of the parties to a reinsurance agreement is, with respect to any contract covered by the agreement, in effect an agent of another party to such agreement or a conduit between related persons), the Secretary may—

(1) allocate between or among such persons income (whether investment income, premium, or otherwise), deductions, assets, reserves, credits, and other items related to such agreement,

(2) recharacterize any such items, or

(3) make any other adjustment,

if he determines that such allocation, recharacterization, or adjustment is necessary to reflect the proper amount, source, or character of the taxable income (or any item described in paragraph (1) relating to such taxable income) of each such person.

(b) Reinsurance contract having significant tax avoidance effect

If the Secretary determines that any reinsurance contract has a significant tax avoidance effect on any party to such contract, the Secretary may make proper adjustments with respect to such party to eliminate such tax avoidance effect (including treating such contract with respect to such party as terminated on December 31 of each year and reinstated on January 1 of the next year).

(Added Pub. L. 98–369, div. A, title II, § 212(a), July 18, 1984, 98 Stat. 757; amended Pub. L. 108–357, title VIII, § 803(a), Oct. 22, 2004, 118 Stat. 1569.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–357 substituted ''amount, source, or character'' for ''source and character'' in concluding provisions.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, § 803(b), Oct. 22, 2004, 118 Stat. 1569, provided that: ''The amendments made by this section [amending this section] shall apply to any risk reinsured after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE

Section 217(d) of title II of div. A of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) Subsection (a) of section 845 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this title) shall apply with respect to any risk reinsured on or after September 27, 1983.

''(2) Subsection (b) of section 845 of such Code (as so added) shall apply with respect to risks reinsured after December 31, 1984.''

§ 846. Discounted unpaid losses defined

(a) Discounted losses determined

(1) Separately computed for each accident year

The amount of the discounted unpaid losses as of the end of any taxable year shall be the sum of the discounted unpaid losses (as of such time) separately computed under this section with respect to unpaid losses in each line of business attributable to each accident year.

(2) Method of discounting

The amount of the discounted unpaid losses as of the end of any taxable year attributable to any accident year shall be the present value of such losses (as of such time) determined by using—

(A) the amount of the undiscounted unpaid losses as of such time,

(B) the applicable interest rate, and

(C) the applicable loss payment pattern.

(3) Limitation on amount of discounted losses

In no event shall the amount of the discounted unpaid losses with respect to any line of business attributable to any accident year exceed the aggregate amount of unpaid losses with respect to such line of business for such accident year included on the annual statement filed by the taxpayer for the year ending with or within the taxable year.

(4) Determination of applicable factors

In determining the amount of the discounted unpaid losses attributable to any accident year—

(A) the applicable interest rate shall be the interest rate determined under subsection (c) for the calendar year with which such accident year ends, and

(B) the applicable loss payment pattern shall be the loss payment pattern determined under subsection (d) which is in effect for the calendar year with which such accident year ends.

(b) Determination of undiscounted unpaid losses

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the term ''undiscounted unpaid losses'' means the unpaid losses shown in the annual statement filed by the taxpayer for the year ending with or within the taxable year of the taxpayer.

(2) Adjustment if losses discounted on annual statement

If—

(A) the amount of unpaid losses shown in the annual statement is determined on a discounted basis, and

(B) the extent to which the losses were discounted can be determined on the basis of information disclosed on or with the annual statement,

the amount of the unpaid losses shall be determined without regard to any reduction attributable to such discounting.

(c) Rate of interest

(1) In general

For purposes of this section, the rate of interest determined under this subsection shall be the annual rate determined by the Secretary under paragraph (2).

(2) Determination of annual rate

(A) In general

The annual rate determined by the Secretary under this paragraph for any calendar year shall be a rate equal to the average of the applicable Federal mid-term rates (as defined in section 1274(d) but based on annual compounding) effective as of the beginning of each of the calendar months in the test period.

(B) Test period

For purposes of subparagraph (A), the test period is the most recent 60-calendar-month period ending before the beginning of the calendar year for which the determination is made; except that there shall be excluded from the test period any month beginning before August 1, 1986.

(d) Loss payment pattern

(1) In general

For each determination year, the Secretary shall determine a loss payment pattern for each line of business by reference to the historical loss payment pattern applicable to such line of business. Any loss payment pattern determined by the Secretary shall apply to the accident year ending with the determination year and to each of the 4 succeeding accident years.

(2) Method of determination

Determinations under paragraph (1) for any determination year shall be made by the Secretary—

(A) by using the aggregate experience reported on the annual statements of insurance companies,

(B) on the basis of the most recent published aggregate data from such annual statements relating to loss payment patterns available on the 1st day of the determination year,

(C) as if all losses paid or treated as paid during any year are paid in the middle of such year, and

(D) in accordance with the computational rules prescribed in paragraph (3).

(3) Computational rules

For purposes of this subsection—

(A) In general

Except as otherwise provided in this paragraph, the loss payment pattern for any line of business shall be based on the assumption that all losses are paid—

(i) during the accident year and the 3 calendar years following the accident year, or

(ii) in the case of any line of business reported in the schedule or schedules of the annual statement relating to auto liability, other liability, medical malpractice, workers' compensation, and multiple peril lines, during the accident year and the 10 calendar years following the accident year.

(B) Treatment of certain losses

Except as otherwise provided in this paragraph—

(i) in the case of any line of business not described in subparagraph (A)(ii), losses paid after the 1st year following the accident year shall be treated as paid equally in the 2nd and 3rd year following the accident year, and

(ii) in the case of a line of business described in subparagraph (A)(ii), losses paid after the close of the period applicable under subparagraph (A)(ii) shall be treated as paid in the last year of such period.

(C) Special rule for certain long-tail lines

In the case of any long-tail line of business—

(i) the period taken into account under subparagraph (A)(ii) shall be extended (but not by more than 5 years) to the extent required under clause (ii), and

(ii) the amount of losses which would have been treated as paid in the 10th year after the accident year shall be treated as paid in such 10th year and each subsequent year in an amount equal to the amount of the losses treated as paid in the 9th year after the accident year (or, if lesser, the portion of the unpaid losses not theretofore taken into account).

Notwithstanding clause (ii), to the extent such unpaid losses have not been treated as paid before the last year of the extension, they shall be treated as paid in such last year.

(D) Long-tail line of business

For purposes of subparagraph (C), the term ''long-tail line of business'' means any line of business described in subparagraph (A)(ii) if the amount of losses which (without regard to subparagraph (C)) would be treated as paid in the 10th year after the accident year exceeds the losses treated as paid in the 9th year after the accident year.

(E) Special rule for international and reinsurance lines of business

Except as otherwise provided by regulations, any determination made under subsection (a) with respect to unpaid losses relating to the international or reinsurance lines of business shall be made using, in lieu of the loss payment pattern applicable to the respective lines of business, a pattern determined by the Secretary under paragraphs (1) and (2) based on the combined losses for all lines of business described in subparagraph (A)(ii).

(F) Adjustments if loss experience information available for longer periods

The Secretary shall make appropriate adjustments in the application of this paragraph if annual statement data with respect to payment of losses is available for longer periods after the accident year than the periods assumed under the rules of this paragraph.

(G) Special rule for 9th year if negative or zero

If the amount of the losses treated as paid in the 9th year after the accident year is zero or a negative amount, subparagraphs (C)(ii) and (D) shall be applied by substituting the average of the losses treated as paid in the 7th, 8th, and 9th years after the accident year for the losses treated as paid in the 9th year after the accident year.

(4) Determination year

For purposes of this section, the term ''determination year'' means calendar year 1987 and each 5th calendar year thereafter.

(e) Election to use company's historical payment pattern

(1) In general

The taxpayer may elect to apply subsection (a)(2)(C) with respect to all lines of business by using a loss payment pattern determined by reference to the taxpayer's loss payment pattern for the most recent calendar year for which an annual statement was filed before the beginning of the accident year. Any such determination shall be made with the application of the rules of paragraphs (2)(C) and (3) of subsection (d).

(2) Election

(A) In general

An election under paragraph (1) shall be made separately with respect to each determination year under subsection (d).

(B) Period for which election in effect

Unless revoked with the consent of the Secretary, an election under paragraph (1) with respect to any determination year shall apply to accident years ending with the determination year and to each of the 4 succeeding accident years.

(C) Time for making election

An election under paragraph (1) with respect to any determination year shall be made on the taxpayer's return for the taxable year in which (or with which) the determination year ends.

(3) No election for international or reinsurance business

No election under this subsection shall apply to any international or reinsurance line of business.

(4) Regulations

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

(A) regulations providing that a taxpayer may not make an election under this subsection if such taxpayer does not have sufficient historical experience for the line of business to determine a loss payment pattern, and

(B) regulations to prevent the avoidance (through the use of separate corporations or otherwise) of the requirement of this subsection that an election under this subsection applies to all lines of business of the taxpayer.

(f) Other definitions and special rules

For purposes of this section—

(1) Accident year

The term ''accident year'' means the calendar year in which the incident occurs which gives rise to the related unpaid loss.

(2) Unpaid loss adjustment expenses

The term ''unpaid losses'' includes any unpaid loss adjustment expenses shown on the annual statement.

(3) Annual statement

The term ''annual statement'' means the annual statement approved by the National Association of Insurance Commissioners which the taxpayer is required to file with insurance regulatory authorities of a State.

(4) Line of business

The term ''line of business'' means a category for the reporting of loss payment patterns determined on the basis of the annual statement for fire and casualty insurance companies for the calendar year ending with or within the taxable year, except that the multiple peril lines shall be treated as a single line of business.

(5) Multiple peril lines

The term ''multiple peril lines'' means the lines of business relating to farmowners multiple peril, homeowners multiple peril, commercial multiple peril, ocean marine, aircraft (all perils) and boiler and machinery.

(6) Special rule for certain accident and health insurance lines of business

Any determination under subsection (a) with respect to unpaid losses relating to accident

and health insurance lines of businesses (other than credit disability insurance) shall be made—

(A) in the case of unpaid losses relating to disability income, by using the general rules prescribed under section 807(d) applicable to noncancellable accident and health insurance contracts and using a mortality or morbidity table reflecting the taxpayer's experience; except that—

(i) the prevailing State assumed interest rate shall be the rate in effect for the year in which the loss occurred rather than the year in which the contract was issued, and

(ii) the limitation of subsection (a)(3) shall apply in lieu of the limitation of the last sentence of section 807(d)(1), and

(B) in all other cases, by using an assumption (in lieu of a loss payment pattern) that unpaid losses are paid in the middle of the year following the accident year.

(g) Regulations

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

(1) regulations providing proper treatment of allocated reinsurance, and

(2) regulations providing appropriate adjustments in the application of this section to a taxpayer having a taxable year which is not the calendar year.

(Added Pub. L. 99–514, title X, §1023(c), Oct. 22, 1986, 100 Stat. 2399; amended Pub. L. 100–647, title I, §1010(e)(1), (2), Nov. 10, 1988, 102 Stat. 3453; Pub. L. 101–508, title XI, §11305(b), Nov. 5, 1990, 104 Stat. 1388–451.)

AMENDMENTS

1990—Subsec. (g). Pub. L. 101–508 inserted ''and'' at end of par. (1), redesignated par. (3) as (2), and struck out former par. (2) which required regulations providing proper treatment of salvage and reinsurance recoverable attributable to unpaid losses.

1988—Subsec. (f)(6)(B). Pub. L. 100–647, §1010(e)(1), substituted ''paid in the middle of the year'' for ''paid during the year''.

Subsec. (g)(3). Pub. L. 100–647, §1010(e)(2), added par. (3).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1989, see section 11305(c)(1) of Pub. L. 101–508, set out as a note under section 832 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section 1023(e) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1010(e)(3), Nov. 10, 1988, 102 Stat. 3453, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section and amending sections 807 and 832 of this title] shall apply to taxable years beginning after December 31, 1986.

''(2) TRANSITIONAL RULE.—For the first taxable year beginning after December 31, 1986—

''(A) the unpaid losses and the expenses unpaid (as defined in paragraphs (5)(B) and (6) of section 832(b) of the Internal Revenue Code of 1986) at the end of the preceding taxable year, and

''(B) the unpaid losses as defined in sections 807(c)(2) and 805(a)(1) of such Code at the end of the preceding taxable year,

shall be determined as if the amendments made by this section had applied to such unpaid losses and expenses unpaid in the preceding taxable year and by using the interest rate and loss payment patterns applicable to accident years ending with calendar year 1987. For subsequent taxable years, such amendments shall be applied with respect to such unpaid losses and expenses unpaid by using the interest rate and loss payment patterns applicable to accident years ending with calendar year 1987.

''(3) FRESH START.—

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, any difference between—

''(i) the amount determined to be the unpaid losses and expenses unpaid for the year preceding the 1st taxable year of an insurance company beginning after December 31, 1986, determined without regard to paragraph (2), and

''(ii) such amount determined with regard to paragraph (2),

shall not be taken into account for purposes of the Internal Revenue Code of 1986.

''(B) RESERVE STRENGTHENING IN YEARS AFTER 1985.—Subparagraph (A) shall not apply to any reserve strengthening in a taxable year beginning in 1986, and such strengthening shall be treated as occurring in the taxpayer's 1st taxable year beginning after December 31, 1986.

''(C) EFFECT ON EARNINGS AND PROFITS.—The earnings and profits of any insurance company for its 1st taxable year beginning after December 31, 1986, shall be increased by the amount of the difference determined under subparagraph (A) with respect to such company.

''(4) APPLICATION OF FRESH START TO COMPANIES WHICH BECOME SUBJECT TO SECTION 831(a) TAX IN LATER TAXABLE YEAR.—If—

''(A) an insurance company was not subject to tax under section 831(a) of the Internal Revenue Code of 1986 for its 1st taxable year beginning after December 31, 1986, by reason of being—

''(i) subject to tax under section 831(b) of such Code, or

''(ii) described in section 501(c) of such Code and exempt from tax under section 501(a) of such Code, and

''(B) such company becomes subject to tax under such section 831(a) for any later taxable year,

paragraph (2) and subparagraphs (A) and (C) of paragraph (3) shall be applied by treating such later taxable year as its 1st taxable year beginning after December 31, 1986, and by treating the calendar year in which such later taxable year begins as 1987; and paragraph (3)(B) shall not apply.''

§ 847. Special estimated tax payments

In the case of taxable years beginning after December 31, 1987, of an insurance company required to discount unpaid losses (as defined in section 846)—

(1) Additional deduction

There shall be allowed as a deduction for the taxable year, if special estimated tax payments are made as required by paragraph (2), an amount not to exceed the excess of—

(A) the amount of the undiscounted, unpaid losses (as defined in section 846(b)) attributable to losses incurred in taxable years beginning after December 31, 1986, over

(B) the amount of the related discounted, unpaid losses determined under section 846,

to the extent such amount was not deducted under this paragraph in a preceding taxable

year. Section 6655 shall be applied to any taxable year without regard to the deduction allowed under the preceding sentence.

(2) Special estimated tax payments

The deduction under paragraph (1) shall be allowed only to the extent that such deduction would result in a tax benefit for the taxable year for which such deduction is allowed or any carryback year and only to the extent that special estimated tax payments are made in an amount equal to the tax benefit attributable to such deduction on or before the due date (determined without regard to extensions) for filing the return for the taxable year for which the deduction is allowed. If a deduction would be allowed but for the fact that special estimated tax payments were not timely made, such deduction shall be allowed to the extent such payments are made within a reasonable time, as determined by the Secretary, if all interest and penalties, computed as if this sentence did not apply, are paid. If amounts are included in gross income under paragraph (5) or (6) for any taxable year and an additional tax is due for such year (or any other year) as a result of such inclusion, an amount of special estimated tax payments equal to such additional tax shall be applied against such additional tax. If, after any such payment is so applied, there is an adjustment reducing the amount of such additional tax, in lieu of any credit or refund for such reduction, a special estimated tax payment shall be treated as made in an amount equal to the amount otherwise allowable as a credit or refund. To the extent that a special estimated tax payment is not used to offset additional tax due for any of the first 15 taxable years beginning after the year for which the payment was made, such special estimated tax payment shall be treated as an estimated tax payment made under section 6655 for the 16th year after the year for which the payment was made.

(3) Special loss discount account

Each company which is allowed a deduction under paragraph (1) shall, for purposes of this part, establish and maintain a special loss discount account.

(4) Additions to special loss discount account

There shall be added to the special loss discount account for each taxable year an amount equal to the amount allowed as a deduction for the taxable year under paragraph (1).

(5) Subtractions from special loss discount account and inclusion in gross income

After applying paragraph (4), there shall be subtracted for the taxable year from the special loss discount account and included in gross income:

(A) The excess (if any) of the amount in the special loss discount account with respect to losses incurred in each taxable year over the amount of the excess referred to in paragraph (1) with respect to losses incurred in that year, and

(B) Any amount improperly subtracted from the special loss discount account under subparagraph (A) to the extent special estimated tax payments were used with respect to such amount.

To the extent that any amount added to the special loss discount account is not subtracted from such account before the 15th year after the year for which the amount was so added, such amount shall be subtracted from such account for such 15th year and included in gross income for such 15th year.

(6) Rules in the case of liquidation or termination of taxpayer's insurance business

(A) In general

If a company liquidates or otherwise terminates its insurance business and does not transfer or distribute such business in an acquisition of assets referred to in section 381(a), the entire amount remaining in such special loss discount account shall be subtracted and included in gross income. Except in the case where a company transfers or distributes its insurance business in an acquisition of assets, referred to in section 381(a), if the company is not subject to the tax imposed by section 801 or section 831 for any taxable year, the entire amount in the account at the close of the preceding taxable year shall be subtracted from the account in such preceding taxable year and included in gross income.

(B) Elimination of balance of payments

In any case to which subparagraph (A) applies, any special estimated tax payment remaining after the credit attributable to the inclusion under subparagraph (A) shall be voided.

(7) Modification of the amount of special estimated tax payments in the event of subsequent marginal rate reduction or increase

In the event of a reduction in any tax rate provided under section 11 for any tax year after the enactment of this section, the Secretary shall prescribe regulations providing for a reduction in the amount of any special estimated tax payments made for years before the effective date of such section 11 rate reductions. Such reduction in the amount of such payments shall reduce the amount of such payments to the amount that they would have been if the special deduction permitted under paragraph (1) had occurred during a year that the lower marginal rate under section 11 applied. Similar rules shall be applied in the event of a marginal rate increase.

(8) Tax benefit determination

The tax benefit attributable to the deduction under paragraph (1) shall be determined under regulations prescribed by the Secretary, by taking into account tax benefits that would arise from the carryback of any net operating loss for the year, as well as current year tax benefits. Tax benefits for the current year and carryback years shall include those that would arise from the filing of a consolidated return with another insurance company required to determine discounted, unpaid losses under section 846 without regard to the limitations on consolidation contained in section

1503(c). The limitations on consolidation contained in section 1503(c) shall not apply to the deduction allowed under paragraph (1).

(9) Effect on earnings and profits

In determining the earnings and profits—

(A) any special estimated tax payment made for any taxable year shall be treated as a payment of income tax imposed by this title for such taxable year, and

(B) any deduction or inclusion under this section shall not be taken into account.

Nothing in the preceding sentence shall be construed to affect the application of section 56(g) (relating to adjustments based on adjusted current earnings).

(10) Regulations

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

(A) providing for the separate application of this section with respect to each accident year,

(B) such adjustments in the application of this section as may be necessary to take into account the tax imposed by section 55, and

(C) providing for the application of this section in cases where the deduction allowed under paragraph (1) for any taxable year is less than the excess referred to in paragraph (1) for such year.

(Added Pub. L. 100–647, title VI, § 6077(a), Nov. 10, 1988, 102 Stat. 3707; amended Pub. L. 101–239, title VII, § 7816(n), Dec. 19, 1989, 103 Stat. 2422.)

REFERENCES IN TEXT

Enactment of this section, referred to in par. (7), means enactment of Pub. L. 100–647, which enacted this section and was approved Nov. 10, 1988.

AMENDMENTS

1989—Par. (1). Pub. L. 101–239, § 7816(n)(1), substituted ''special estimated tax'' for ''separate estimated tax'' in introductory provisions and inserted ''in taxable years beginning'' after ''attributable to losses incurred'' in subpar. (A).

Par. (2). Pub. L. 101–239, § 7816(n)(2), amended first sentence generally. Prior to amendment, first sentence read as follows: ''The deduction under paragraph (1) shall be allowed only to the extent that special estimated tax payments are made in an amount equal to the tax benefit attributable to such deduction, on or before the date that any taxes (determined without regard to this section) for the taxable year for which the deduction is allowed are due to be paid.''

Par. (5). Pub. L. 101–239, § 7816(n)(3), inserted at end ''To the extent that any amount added to the special loss discount account is not subtracted from such account before the 15th year after the year for which the amount was so added, such amount shall be subtracted from such account for such 15th year and included in gross income for such 15th year.''

Par. (8). Pub. L. 101–239, § 7816(n)(6), inserted at end ''The limitations on consolidation contained in section 1503(c) shall not apply to the deduction allowed under paragraph (1).''

Par. (9). Pub. L. 101–239, § 7816(n)(5), added par. (9). Former par. (9) redesignated (10).

Pub. L. 101–239, § 7816(n)(4), added subpar. (C).

Par. (10). Pub. L. 101–239, § 7816(n)(5), redesignated par. (9) as (10).

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE

Section 6077(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1987.''

§ 848. Capitalization of certain policy acquisition expenses

(a) General rule

In the case of an insurance company—

(1) specified policy acquisition expenses for any taxable year shall be capitalized, and

(2) such expenses shall be allowed as a deduction ratably over the 120-month period beginning with the first month in the second half of such taxable year.

(b) 5-year amortization for first $5,000,000 of specified policy acquisition expenses

(1) In general

Paragraph (2) of subsection (a) shall be applied with respect to so much of the specified policy acquisition expenses of an insurance company for any taxable year as does not exceed $5,000,000 by substituting ''60-month'' for ''120-month''.

(2) Phase-out

If the specified policy acquisition expenses of an insurance company exceed $10,000,000 for any taxable year, the $5,000,000 amount under paragraph (1) shall be reduced (but not below zero) by the amount of such excess.

(3) Special rule for members of controlled group

In the case of any controlled group—

(A) all insurance companies which are members of such group shall be treated as 1 company for purposes of this subsection, and

(B) the amount to which paragraph (1) applies shall be allocated among such companies in such manner as the Secretary may prescribe.

For purposes of the preceding sentence, the term ''controlled group'' means any controlled group of corporations as defined in section 1563(a); except that subsections (a)(4) and (b)(2)(D) of section 1563 shall not apply, and subsection (b)(2)(C) of section 1563 shall not apply to the extent it excludes a foreign corporation to which section 842 applies.

(4) Exception for acquisition expenses attributable to certain reinsurance contracts

Paragraph (1) shall not apply to any specified policy acquisition expenses for any taxable year which are attributable to premiums or other consideration under any reinsurance contract.

(c) Specified policy acquisition expenses

For purposes of this section—

(1) In general

The term ''specified policy acquisition expenses'' means, with respect to any taxable

year, so much of the general deductions for such taxable year as does not exceed the sum of—

(A) 1.75 percent of the net premiums for such taxable year on specified insurance contracts which are annuity contracts,

(B) 2.05 percent of the net premiums for such taxable year on specified insurance contracts which are group life insurance contracts, and

(C) 7.7 percent of the net premiums for such taxable year on specified insurance contracts not described in subparagraph (A) or (B).

(2) General deductions

The term ''general deductions'' means the deductions provided in part VI of subchapter B (sec. 161 and following, relating to itemized deductions) and in part I of subchapter D (sec. 401 and following, relating to pension, profit sharing, stock bonus plans, etc.).

(d) Net premiums

For purposes of this section—

(1) In general

The term ''net premiums'' means, with respect to any category of specified insurance contracts set forth in subsection (c)(1), the excess (if any) of—

(A) the gross amount of premiums and other consideration on such contracts, over

(B) return premiums on such contracts and premiums and other consideration incurred for reinsurance of such contracts.

The rules of section 803(b) shall apply for purposes of the preceding sentence.

(2) Amounts determined on accrual basis

In the case of an insurance company subject to tax under part II of this subchapter, all computations entering into determinations of net premiums for any taxable year shall be made in the manner required under section 811(a) for life insurance companies.

(3) Treatment of certain policyholder dividends and similar amounts

Net premiums shall be determined without regard to section 808(e) and without regard to other similar amounts treated as paid to, and returned by, the policyholder.

(4) Special rules for reinsurance

(A) Premiums and other consideration incurred for reinsurance shall be taken into account under paragraph (1)(B) only to the extent such premiums and other consideration are includible in the gross income of an insurance company taxable under this subchapter or are subject to tax under this chapter by reason of subpart F of part III of subchapter N.

(B) The Secretary shall prescribe such regulations as may be necessary to ensure that premiums and other consideration with respect to reinsurance are treated consistently by the ceding company and the reinsurer.

(e) Classification of contracts

For purposes of this section—

(1) Specified insurance contract

(A) In general

Except as otherwise provided in this paragraph, the term ''specified insurance contract'' means any life insurance, annuity, or noncancellable accident and health insurance contract (or any combination thereof).

(B) Exceptions

The term ''specified insurance contract'' shall not include—

(i) any pension plan contract (as defined in section 818(a)),

(ii) any flight insurance or similar contract,

(iii) any qualified foreign contract (as defined in section 807(e)(4) without regard to paragraph (5) of this subsection),

(iv) any contract which is an Archer MSA (as defined in section 220(d)), and

(v) any contract which is a health savings account (as defined in section 223(d)).

(2) Group life insurance contract

The term ''group life insurance contract'' means any life insurance contract—

(A) which covers a group of individuals defined by reference to employment relationship, membership in an organization, or similar factor,

(B) the premiums for which are determined on a group basis, and

(C) the proceeds of which are payable to (or for the benefit of) persons other than the employer of the insured, an organization to which the insured belongs, or other similar person.

(3) Treatment of annuity contracts combined with noncancellable accident and health insurance

Any annuity contract combined with noncancellable accident and health insurance shall be treated as a noncancellable accident and health insurance contract and not as an annuity contract.

(4) Treatment of guaranteed renewable contracts

The rules of section 816(e) shall apply for purposes of this section.

(5) Treatment of reinsurance contract

A contract which reinsures another contract shall be treated in the same manner as the reinsured contract.

(6) Treatment of certain qualified long-term care insurance contract arrangements

An annuity or life insurance contract which includes a qualified long-term care insurance contract as a part of or a rider on such annuity or life insurance contract shall be treated as a specified insurance contract not described in subparagraph (A) or (B) of subsection (c)(1).

(f) Special rule where negative net premiums

(1) In general

If for any taxable year there is a negative capitalization amount with respect to any category of specified insurance contracts set forth in subsection (c)(1)—

(A) the amount otherwise required to be capitalized under this section for such taxable year with respect to any other category of specified insurance contracts shall be reduced (but not below zero) by such negative capitalization amount, and

(B) such negative capitalization amount (to the extent not taken into account under subparagraph (A))—

(i) shall reduce (but not below zero) the unamortized balance (as of the beginning of such taxable year) of the amounts previously capitalized under subsection (a) (beginning with the amount capitalized for the most recent taxable year), and

(ii) to the extent taken into account as such a reduction, shall be allowed as a deduction for such taxable year.

(2) Negative capitalization amount

For purposes of paragraph (1), the term ''negative capitalization amount'' means, with respect to any category of specified insurance contracts, the percentage (applicable under subsection (c)(1) to such category) of the amount (if any) by which—

(A) the amount determined under subparagraph (B) of subsection (d)(1) with respect to such category, exceeds

(B) the amount determined under subparagraph (A) of subsection (d)(1) with respect to such category.

(g) Treatment of certain ceding commissions

Nothing in any provision of law (other than this section or section 197) shall require the capitalization of any ceding commission incurred on or after September 30, 1990, under any contract which reinsures a specified insurance contract.

(h) Secretarial authority to adjust capitalization amounts

(1) In general

Except as provided in paragraph (2), the Secretary may provide that a type of insurance contract will be treated as a separate category for purposes of this section (and prescribe a percentage applicable to such category) if the Secretary determines that the deferral of acquisition expenses for such type of contract which would otherwise result under this section is substantially greater than the deferral of acquisition expenses which would have resulted if actual acquisition expenses (including indirect expenses) and the actual useful life for such type of contract had been used.

(2) Adjustment to other contracts

If the Secretary exercises his authority with respect to any type of contract under paragraph (1), the Secretary shall adjust the percentage which would otherwise have applied under subsection (c)(1) to the category which includes such type of contract so that the exercise of such authority does not result in a decrease in the amount of revenue received under this chapter by reason of this section for any fiscal year.

(i) Treatment of qualified foreign contracts under adjusted current earnings preference

For purposes of determining adjusted current earnings under section 56(g), acquisition expenses with respect to contracts described in clause (iii) of subsection (e)(1)(B) shall be capitalized and amortized in accordance with the treatment generally required under generally accepted accounting principles as if this subsection applied to such contracts for all taxable years.

(j) Transitional rule

In the case of any taxable year which includes September 30, 1990, the amount taken into account as the net premiums (or negative capitalization amount) with respect to any category of specified insurance contracts shall be the amount which bears the same ratio to the amount which (but for this subsection) would be so taken into account as the number of days in such taxable year on or after September 30, 1990, bears to the total number of days in such taxable year.

(Added Pub. L. 101–508, title XI, § 11301(a), Nov. 5, 1990, 104 Stat. 1388–445; amended Pub. L. 103–66, title XIII, § 13261(d), Aug. 10, 1993, 107 Stat. 539; Pub. L. 104–191, title III, § 301(h), Aug. 21, 1996, 110 Stat. 2052; Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(5), (b)(10)], Dec. 21, 2000, 114 Stat. 2763, 2763A–628, 2763A–629; Pub. L. 108–173, title XII, § 1201(h), Dec. 8, 2003, 117 Stat. 2479; Pub. L. 109–280, title VIII, § 844(e), Aug. 17, 2006, 120 Stat. 1013.)

AMENDMENTS

2006—Subsec. (e)(6). Pub. L. 109–280 added par. (6).

2003—Subsec. (e)(1)(B)(v). Pub. L. 108–173 added cl. (v).

2000—Subsec. (e)(1)(B)(iv). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(10)], substituted ''an Archer MSA'' for ''a Archer MSA''.

Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(5)], substituted ''Archer MSA'' for ''medical savings account''.

1996—Subsec. (e)(1)(B)(iv). Pub. L. 104–191 added cl. (iv).

1993—Subsec. (g). Pub. L. 103–66 substituted ''this section or section 197'' for ''this section''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to contracts issued after Dec. 31, 1996, but only with respect to taxable years beginning after Dec. 31, 2009, and to specified policy acquisition expenses determined for taxable years beginning after Dec. 31, 2009, see section 844(g)(1), (4) of Pub. L. 109–280, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–173 applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108–173, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–191 applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104–191, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable, except as otherwise provided, with respect to property acquired after Aug. 10, 1993, see section 13261(g) of Pub. L. 103–66, set out as an Effective Date note under section 197 of this title.

EFFECTIVE DATE

Section 11301(d)(1) of Pub. L. 101–508 provided that: ''The amendments made by subsections (a) and (c) [enacting this section] shall apply to taxable years ending on or after September 30, 1990. Any capitalization required by reason of such amendments shall not be treated as a change in method of accounting for purposes of the Internal Revenue Code of 1986.''

Subchapter M—Regulated Investment Companies and Real Estate Investment Trusts

Part
I. Regulated investment companies.
II. Real estate investment trusts.
III. Provisions which apply to both regulated investment companies and real estate investment trusts.
IV. Real estate mortgage investment conduits.
[V. Repealed.]

AMENDMENTS

2004—Pub. L. 108–357, title VIII, § 835(b)(12), Oct. 22, 2004, 118 Stat. 1594, struck out item for part V ''Financial asset securitization investment trusts''.

1996—Pub. L. 104–188, title I, § 1621(c), Aug. 20, 1996, 110 Stat. 1867, added item for part V.

1988—Pub. L. 100–647, title I, § 1018(u)(30), Nov. 10, 1988, 102 Stat. 3591, added item for part IV.

1978—Pub. L. 95–600, title III, § 362(d)(8), Nov. 6, 1978, 92 Stat. 2852, added item for part III.

PART I—REGULATED INVESTMENT COMPANIES

Sec.
851. Definition of regulated investment company.
852. Taxation of regulated investment companies and their shareholders.
853. Foreign tax credit allowed to shareholders.
853A. Credits from tax credit bonds allowed to shareholders.
854. Limitations applicable to dividends received from regulated investment company.
855. Dividends paid by regulated investment company after close of taxable year.

AMENDMENTS

2009—Pub. L. 111–5, div. B, title I, § 1541(b)(3), Feb. 17, 2009, 123 Stat. 362, added item 853A.

1980—Pub. L. 96–223, title IV, § 404(b)(7), Apr. 2, 1980, 94 Stat. 307, inserted ''and taxable interest'' after ''dividends'' in item 854 for taxable years after Dec. 31, 1980, and before Jan. 1, 1982.

1960—Pub. L. 86–779, § 10(b)(1), Sept. 14, 1960, 74 Stat. 1008, inserted ''and Real Estate Investment Trusts'' in subchapter M heading, part I and part II designations thereunder and part I designation preceding table of sections numbered 851 to 855.

§ 851. Definition of regulated investment company

(a) General rule

For purposes of this subtitle, the term ''regulated investment company'' means any domestic corporation—

(1) which, at all times during the taxable year—

(A) is registered under the Investment Company Act of 1940, as amended (15 U.S.C. 80a–1 to 80b–2) as a management company or unit investment trust, or

(B) has in effect an election under such Act to be treated as a business development company, or

(2) which is a common trust fund or similar fund excluded by section 3(c)(3) of such Act (15 U.S.C. 80a–3(c)) from the definition of ''investment company'' and is not included in the definition of ''common trust fund'' by section 584(a).

(b) Limitations

A corporation shall not be considered a regulated investment company for any taxable year unless—

(1) it files with its return for the taxable year an election to be a regulated investment company or has made such election for a previous taxable year;

(2) at least 90 percent of its gross income is derived from—

(A) dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), and gains from the sale or other disposition of stock or securities (as defined in section 2(a)(36) of the Investment Company Act of 1940, as amended) or foreign currencies, or other income (including but not limited to gains from options, futures or forward contracts) derived with respect to its business of investing in such stock, securities, or currencies, and

(B) net income derived from an interest in a qualified publicly traded partnership (as defined in subsection (h)); and

(3) at the close of each quarter of the taxable year—

(A) at least 50 percent of the value of its total assets is represented by—

(i) cash and cash items (including receivables), Government securities and securities of other regulated investment companies, and

(ii) other securities for purposes of this calculation limited, except and to the extent provided in subsection (e), in respect of any one issuer to an amount not greater in value than 5 percent of the value of the total assets of the taxpayer and to not more than 10 percent of the outstanding voting securities of such issuer, and

(B) not more than 25 percent of the value of its total assets is invested in—

(i) the securities (other than Government securities or the securities of other regulated investment companies) of any one issuer,

(ii) the securities (other than the securities of other regulated investment companies) of two or more issuers which the taxpayer controls and which are determined, under regulations prescribed by the Secretary, to be engaged in the same or similar trades or businesses or related trades or businesses, or

(iii) the securities of one or more qualified publicly traded partnerships (as defined in subsection (h)).

For purposes of paragraph (2), there shall be treated as dividends amounts included in gross income under section 951(a)(1)(A)(i) or 1293(a) for the taxable year to the extent that, under section 959(a)(1) or 1293(c) (as the case may be), there is a distribution out of the earnings and profits of the taxable year which are attributable to the amounts so included. For purposes of paragraph (2), the Secretary may by regulation exclude from qualifying income foreign currency gains which are not directly related to the company's principal business of investing in stock or securities (or options and futures with respect to stock or securities). For purposes of paragraph (2), amounts excludable from gross income under section 103(a) shall be treated as included in gross income. Income derived from a

partnership (other than a qualified publicly traded partnership as defined in subsection (h)) or trust shall be treated as described in paragraph (2) only to the extent such income is attributable to items of income of the partnership or trust (as the case may be) which would be described in paragraph (2) if realized by the regulated investment company in the same manner as realized by the partnership or trust.

(c) Rules applicable to subsection (b)(3)

For purposes of subsection (b)(3) and this subsection—

(1) In ascertaining the value of the taxpayer's investment in the securities of an issuer, for the purposes of subparagraph (B), there shall be included its proper proportion of the investment of any other corporation, a member of a controlled group, in the securities of such issuer, as determined under regulations prescribed by the Secretary.

(2) The term ''controls'' means the ownership in a corporation of 20 percent or more of the total combined voting power of all classes of stock entitled to vote.

(3) The term ''controlled group'' means one or more chains of corporations connected through stock ownership with the taxpayer if—

(A) 20 percent or more of the total combined voting power of all classes of stock entitled to vote of each of the corporations (except the taxpayer) is owned directly by one or more of the other corporations, and

(B) the taxpayer owns directly 20 percent or more of the total combined voting power of all classes of stock entitled to vote, of at least one of the other corporations.

(4) The term ''value'' means, with respect to securities (other than those of majority-owned subsidiaries) for which market quotations are readily available, the market value of such securities; and with respect to other securities and assets, fair value as determined in good faith by the board of directors, except that in the case of securities of majority-owned subsidiaries which are investment companies such fair value shall not exceed market value or asset value, whichever is higher.

(5) The term ''outstanding voting securities of such issuer'' shall include the equity securities of a qualified publicly traded partnership (as defined in subsection (h)).

(6) All other terms shall have the same meaning as when used in the Investment Company Act of 1940, as amended.

(d) Determination of status

(1) In general

A corporation which meets the requirements of subsections (b)(3) and (c) at the close of any quarter shall not lose its status as a regulated investment company because of a discrepancy during a subsequent quarter between the value of its various investments and such requirements unless such discrepancy exists immediately after the acquisition of any security or other property and is wholly or partly the result of such acquisition. A corporation which does not meet such requirements at the close of any quarter by reason of a discrepancy existing immediately after the acquisition of any security or other property which is wholly or partly the result of such acquisition during such quarter shall not lose its status for such quarter as a regulated investment company if such discrepancy is eliminated within 30 days after the close of such quarter and in such cases it shall be considered to have met such requirements at the close of such quarter for purposes of applying the preceding sentence.

(2) Special rules regarding failure to satisfy requirements

If paragraph (1) does not preserve a corporation's status as a regulated investment company for any particular quarter—

(A) In general

A corporation that fails to meet the requirements of subsection (b)(3) (other than a failure described in subparagraph (B)(i)) for such quarter shall nevertheless be considered to have satisfied the requirements of such subsection for such quarter if—

(i) following the corporation's identification of the failure to satisfy the requirements of such subsection for such quarter, a description of each asset that causes the corporation to fail to satisfy the requirements of such subsection at the close of such quarter is set forth in a schedule for such quarter filed in the manner provided by the Secretary,

(ii) the failure to meet the requirements of such subsection for such quarter is due to reasonable cause and not due to willful neglect, and

(iii)(I) the corporation disposes of the assets set forth on the schedule specified in clause (i) within 6 months after the last day of the quarter in which the corporation's identification of the failure to satisfy the requirements of such subsection occurred or such other time period prescribed by the Secretary and in the manner prescribed by the Secretary, or

(II) the requirements of such subsection are otherwise met within the time period specified in subclause (I).

(B) Rule for certain de minimis failures

A corporation that fails to meet the requirements of subsection (b)(3) for such quarter shall nevertheless be considered to have satisfied the requirements of such subsection for such quarter if—

(i) such failure is due to the ownership of assets the total value of which does not exceed the lesser of—

(I) 1 percent of the total value of the corporation's assets at the end of the quarter for which such measurement is done, or

(II) $10,000,000, and

(ii)(I) the corporation, following the identification of such failure, disposes of assets in order to meet the requirements of such subsection within 6 months after the last day of the quarter in which the corporation's identification of the failure to satisfy the requirements of such subsection occurred or such other time period

prescribed by the Secretary and in the manner prescribed by the Secretary, or

(II) the requirements of such subsection are otherwise met within the time period specified in subclause (I).

(C) Tax

(i) Tax imposed

If subparagraph (A) applies to a corporation for any quarter, there is hereby imposed on such corporation a tax in an amount equal to the greater of—

(I) $50,000, or

(II) the amount determined (pursuant to regulations promulgated by the Secretary) by multiplying the net income generated by the assets described in the schedule specified in subparagraph (A)(i) for the period specified in clause (ii) by the highest rate of tax specified in section 11.

(ii) Period

For purposes of clause (i)(II), the period described in this clause is the period beginning on the first date that the failure to satisfy the requirements of subsection (b)(3) occurs as a result of the ownership of such assets and ending on the earlier of the date on which the corporation disposes of such assets or the end of the first quarter when there is no longer a failure to satisfy such subsection.

(iii) Administrative provisions

For purposes of subtitle F, a tax imposed by this subparagraph shall be treated as an excise tax with respect to which the deficiency procedures of such subtitle apply.

(e) Investment companies furnishing capital to development corporations

(1) General rule

If the Securities and Exchange Commission determines, in accordance with regulations issued by it, and certifies to the Secretary not earlier than 60 days prior to the close of the taxable year of a management company or a business development company described in subsection (a)(1), that such investment company is principally engaged in the furnishing of capital to other corporations which are principally engaged in the development or exploitation of inventions, technological improvements, new processes, or products not previously generally available, such investment company may, in the computation of 50 percent of the value of its assets under subparagraph (A) of subsection (b)(3) for any quarter of such taxable year, include the value of any securities of an issuer, whether or not the investment company owns more than 10 percent of the outstanding voting securities of such issuer, the basis of which, when added to the basis of the investment company for securities of such issuer previously acquired, did not exceed 5 percent of the value of the total assets of the investment company at the time of the subsequent acquisition of securities. The preceding sentence shall not apply to the securities of an issuer if the investment company has continuously held any security of such issuer (or of any predecessor company of such issuer as determined under regulations prescribed by the Secretary) for 10 or more years preceding such quarter of such taxable year.

(2) Limitation

The provisions of this subsection shall not apply at the close of any quarter of a taxable year to an investment company if at the close of such quarter more than 25 percent of the value of its total assets is represented by securities of issuers with respect to each of which the investment company holds more than 10 percent of the outstanding voting securities of such issuer and in respect of each of which or any predecessor thereof the investment company has continuously held any security for 10 or more years preceding such quarter unless the value of its total assets so represented is reduced to 25 percent or less within 30 days after the close of such quarter.

(3) Determination of status

For purposes of this subsection, unless the Securities and Exchange Commission determines otherwise, a corporation shall be considered to be principally engaged in the development or exploitation of inventions, technological improvements, new processes, or products not previously generally available, for at least 10 years after the date of the first acquisition of any security in such corporation or any predecessor thereof by such investment company if at the date of such acquisition the corporation or its predecessor was principally so engaged, and an investment company shall be considered at any date to be furnishing capital to any company whose securities it holds if within 10 years prior to such date it has acquired any of such securities, or any securities surrendered in exchange therefor, from such other company or predecessor thereof. For purposes of the certification under this subsection, the Securities and Exchange Commission shall have authority to issue such rules, regulations and orders, and to conduct such investigations and hearings, either public or private, as it may deem appropriate.

(4) Definitions

The terms used in this subsection shall have the same meaning as in subsections (b)(3) and (c) of this section.

(f) Certain unit investment trusts

For purposes of this title—

(1) A unit investment trust (as defined in the Investment Company Act of 1940)—

(A) which is registered under such Act and issues periodic payment plan certificates (as defined in such Act) in one or more series,

(B) substantially all of the assets of which, as to all such series, consist of (i) securities issued by a single management company (as defined in such Act) and securities acquired pursuant to subparagraph (C), or (ii) securities issued by a single other corporation, and

(C) which has no power to invest in any other securities except securities issued by a single other management company, when permitted by such Act or the rules and regu-

lations of the Securities and Exchange Commission,

shall not be treated as a person.

(2) In the case of a unit investment trust described in paragraph (1)—

(A) each holder of an interest in such trust shall, to the extent of such interest, be treated as owning a proportionate share of the assets of such trust;

(B) the basis of the assets of such trust which are treated under subparagraph (A) as being owned by a holder of an interest in such trust shall be the same as the basis of his interest in such trust; and

(C) in determining the period for which the holder of an interest in such trust has held the assets of the trust which are treated under subparagraph (A) as being owned by him, there shall be included the period for which such holder has held his interest in such trust.

This subsection shall not apply in the case of a unit investment trust which is a segregated asset account under the insurance laws or regulations of a State.

(g) Special rule for series funds

(1) In general

In the case of a regulated investment company (within the meaning of subsection (a)) having more than one fund, each fund of such regulated investment company shall be treated as a separate corporation for purposes of this title (except with respect to the definitional requirement of subsection (a)).

(2) Fund defined

For purposes of paragraph (1) the term ''fund'' means a segregated portfolio of assets, the beneficial interests in which are owned by the holders of a class or series of stock of the regulated investment company that is preferred over all other classes or series in respect of such portfolio of assets.

(h) Qualified publicly traded partnership

For purposes of this section, the term ''qualified publicly traded partnership'' means a publicly traded partnership described in section 7704(b) other than a partnership which would satisfy the gross income requirements of section 7704(c)(2) if qualifying income included only income described in subsection (b)(2)(A).

(i) Failure to satisfy gross income test

(1) Disclosure requirement

A corporation that fails to meet the requirement of paragraph (2) of subsection (b) for any taxable year shall nevertheless be considered to have satisfied the requirement of such paragraph for such taxable year if—

(A) following the corporation's identification of the failure to meet such requirement for such taxable year, a description of each item of its gross income described in such paragraph is set forth in a schedule for such taxable year filed in the manner provided by the Secretary, and

(B) the failure to meet such requirement is due to reasonable cause and not due to willful neglect.

(2) Imposition of tax on failures

If paragraph (1) applies to a regulated investment company for any taxable year, there is hereby imposed on such company a tax in an amount equal to the excess of—

(A) the gross income of such company which is not derived from sources referred to in subsection (b)(2), over

(B) 1/9 of the gross income of such company which is derived from such sources.

(Aug. 16, 1954, ch. 736, 68A Stat. 268; Pub. L. 85–866, title I, § 38, Sept. 2, 1958, 72 Stat. 1638; Pub. L. 91–172, title IX, § 908(a), Dec. 30, 1969, 83 Stat. 717; Pub. L. 94–12, title VI, § 602(a)(2), Mar. 29, 1975, 89 Stat. 58; Pub. L. 94–455, title XIX, §§ 1901(a)(109), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1783, 1834; Pub. L. 95–345, § 2(a)(3), Aug. 15, 1978, 92 Stat. 481; Pub. L. 95–600, title VII, § 701(s)(1), Nov. 6, 1978, 92 Stat. 2911; Pub. L. 97–424, title V, § 547(b)(1), Jan. 6, 1983, 96 Stat. 2199; Pub. L. 98–369, div. A, title X, § 1071(a)(1), July 18, 1984, 98 Stat. 1049; Pub. L. 99–514, title VI, §§ 652(a), (b), 653(a)–(c), 654(a), title XII, § 1235(f)(3), Oct. 22, 1986, 100 Stat. 2297, 2298, 2575; Pub. L. 100–647, title I, § 1006(m), (n)(1), (2)(A), (B), (4), (5), (*o*), Nov. 10, 1988, 102 Stat. 3415, 3416; Pub. L. 105–34, title XII, § 1271(a)–(b)(7), Aug. 5, 1997, 111 Stat. 1036, 1037; Pub. L. 108–357, title III, § 331(a)–(d), (f), Oct. 22, 2004, 118 Stat. 1476; Pub. L. 111–325, title II, § 201(a), (b), Dec. 22, 2010, 124 Stat. 3539, 3540.)

REFERENCES IN TEXT

The Investment Company Act of 1940, as amended, referred to in subsecs. (a)(1), (b)(2)(A), (c)(6), and (f)(1), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§ 80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. Section 2(a)(36) of the Act is classified to section 80a–2(a)(36) of Title 15. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

AMENDMENTS

2010—Subsec. (d). Pub. L. 111–325, § 201(a), designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsec. (i). Pub. L. 111–325, § 201(b), added subsec. (i).

2004—Subsec. (b). Pub. L. 108–357, § 331(b), inserted ''(other than a qualified publicly traded partnership as defined in subsection (h))'' after ''derived from a partnership'' in concluding provisions.

Subsec. (b)(2). Pub. L. 108–357, § 331(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''at least 90 percent of its gross income is derived from dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), and gains from the sale or other disposition of stock or securities (as defined in section 2(a)(36) of the Investment Company Act of 1940, as amended) or foreign currencies, or other income (including but not limited to gains from options, futures, or forward contracts) derived with respect to its business of investing in such stock, securities, or currencies; and''.

Subsec. (b)(3)(B). Pub. L. 108–357, § 331(f), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''not more than 25 percent of the value of its total assets is invested in the securities (other than Government securities or the securities of other regulated investment companies) of any one issuer, or of two or more issuers which the taxpayer controls and which are determined, under regulations prescribed by the Secretary, to be engaged in the same or similar trades or businesses or related trades or businesses.''

Subsec. (c)(5), (6). Pub. L. 108–357, § 331(c), added par. (5) and redesignated former par. (5) as (6).

Subsec. (h). Pub. L. 108–357, §331(d), added subsec. (h).

1997—Subsec. (b). Pub. L. 105–34, §1271(b)(1), in concluding provisions, substituted ''paragraph (2), amounts excludable'' for ''paragraphs (2) and (3), amounts excludable'' and struck out ''In the case of the taxable year in which a regulated investment company is completely liquidated, there shall not be taken into account under paragraph (3) any gain from the sale, exchange, or distribution of any property after the adoption of the plan of complete liquidation.'' at end.

Subsec. (b)(2). Pub. L. 105–34, §1271(a), inserted ''and'' at end.

Subsec. (b)(3), (4). Pub. L. 105–34, §1271(a), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''less than 30 percent of its gross income is derived from the sale or disposition of any of the following which was held for less than 3 months:

''(A) stock or securities (as defined in section 2(a)(36) of the Investment Company Act of 1940, as amended),

''(B) options, futures, or forward contracts (other than options, futures, or forward contracts on foreign currencies), or

''(C) foreign currencies (or options, futures, or forward contracts on foreign currencies) but only if such currencies (or options, futures, or forward contracts) are not directly related to the company's principal business of investing in stock or securities (or options and futures with respect to stocks or securities), and''.

Subsec. (c). Pub. L. 105–34, §1271(b)(2), substituted ''subsection (b)(3)'' for ''subsection (b)(4)'' in heading and introductory provisions.

Subsec. (d). Pub. L. 105–34, §1271(b)(3), substituted ''subsections (b)(3)'' for ''subsections (b)(4)''.

Subsec. (e)(1). Pub. L. 105–34, §1271(b)(4), substituted ''subsection (b)(3)'' for ''subsection (b)(4)''.

Subsec. (e)(4). Pub. L. 105–34, §1271(b)(5), substituted ''subsections (b)(3)'' for ''subsections (b)(4)''.

Subsec. (g). Pub. L. 105–34, §1271(b)(6), redesignated subsec. (h) as (g) and struck out former subsec. (g) which provided for treatment of certain hedging transactions.

Subsec. (g)(3). Pub. L. 105–34, §1271(b)(7), struck out par. (3) which provided special rule for abnormal redemptions.

Subsec. (h). Pub. L. 105–34, §1271(b)(6), redesignated subsec. (h) as (g).

1988—Subsec. (a)(1). Pub. L. 100–647, §1006(m)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''which, at all times during the taxable year, is registered under the Investment Company Act of 1940, as amended (15 U.S.C. 80a–1 to 80b–2), as a management company, business development company, or unit investment trust, or''.

Subsec. (b). Pub. L. 100–647, §1006(n)(1), (5), inserted at end ''Income derived from a partnership or trust shall be treated as described in paragraph (2) only to the extent such income is attributable to items of income of the partnership or trust (as the case may be) which would be described in paragraph (2) if realized by the regulated investment company in the same manner as realized by the partnership or trust. In the case of the taxable year in which a regulated investment company is completely liquidated, there shall not be taken into account under paragraph (3) any gain from the sale, exchange, or distribution of any property after the adoption of the plan of complete liquidation.''

Pub. L. 100–647, §1006(n)(2)(B), substituted ''which are not directly related'' for ''which are not ancillary'' in last sentence.

Subsec. (b)(3). Pub. L. 100–647, §1006(n)(2)(A), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''less than 30 percent of its gross income is derived from the sale or other disposition of stock or securities held for less than 3 months; and''.

Subsec. (e)(1). Pub. L. 100–647, §1006(m)(2), substituted ''a management company or a business development company described in subsection (a)(1)'' for ''a registered management company or registered business development company''.

Subsec. (g)(2)(A)(i). Pub. L. 100–647, §1006(n)(4), substituted ''contractual obligation'' for ''contractual option''.

Subsec. (h). Pub. L. 100–647, §1006(*o*)(1), redesignated subsec. (q) as (h).

Subsec. (h)(3). Pub. L. 100–647, §1006(*o*)(2), added par. (3).

Subsec. (q). Pub. L. 100–647, §1006(*o*)(1), redesignated subsec. (q) as (h).

1986—Subsec. (a)(1). Pub. L. 99–514, §652(a), substituted ''as a management company, business development company, or unit investment trust'' for ''either as a management company or as a unit investment trust''.

Subsec. (b). Pub. L. 99–514, §1235(f)(3), inserted ''or 1293(a)'' and ''or 1293(c) (as the case may be)'', in concluding provision.

Pub. L. 99–514, §653(c), inserted before last sentence ''For purposes of paragraph (2), the Secretary may by regulation exclude from qualifying income foreign currency gains which are not ancillary to the company's principal business of investing in stock or securities (or options and futures with respect to stock or securities).''

Subsec. (b)(2). Pub. L. 99–514, §653(b), inserted ''(as defined in section 2(a)(36) of the Investment Company Act of 1940, as amended) or foreign currencies, or other income (including but not limited to gains from options, futures, or forward contracts) derived with respect to its business of investing in such stock, securities, or currencies''.

Subsec. (e)(1). Pub. L. 99–514, §652(b), substituted ''registered management company or registered business development company'' for ''registered management company''.

Subsec. (g). Pub. L. 99–514, §653(a), added subsec. (g).

Subsec. (q). Pub. L. 99–514, §654(a), added subsec. (q).

1984—Subsec. (a). Pub. L. 98–369 struck out ''(other than a personal holding company as defined in section 542)'' after ''any domestic corporation'' in introductory provisions.

1983—Subsec. (b). Pub. L. 97–424 substituted ''section 103(a)'' for ''section 103(a)(1)'' after ''gross income under''.

1978—Subsec. (b). Pub. L. 95–600 required that for purposes of pars. (2) and (3), amounts excludable from gross income under section 103(a)(1) shall be treated as included in gross income.

Subsec. (b)(2). Pub. L. 95–345 inserted provision relating to payments with respect to securities loans.

1976—Subsec. (a)(1). Pub. L. 94–455, §1901(a)(109)(A), struck out ''54 Stat. 789;'' before ''15 U.S.C. 80a–1 to 80b–2)''.

Subsec. (b)(1), (4)(B). Pub. L. 94–455, §1901(a)(109)(B), struck out ''which began after December 31, 1941'' after ''previous taxable year'' in par. (1), and ''or his delegate'' after ''Secretary'' in par. (4)(B).

Subsecs. (c), (d). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' wherever appearing.

1975—Subsec. (b). Pub. L. 94–12 inserted provisions directing that, for purposes of par. (2), there shall be treated as dividends amounts included in gross income under section 951(a)(1)(A)(i) for the taxable year to the extent that, under section 959(a)(1), there is a distribution out of earnings and profits of the taxable year which are attributable to the amounts so included.

1969—Subsec. (f). Pub. L. 91–172 added subsec. (f).

1958—Subsec. (e)(1). Pub. L. 85–866, §38(a), substituted ''not earlier than 60 days'' for ''not less than 60 days'' in first sentence.

Subsec. (e)(2). Pub. L. 85–866, §38(b), substituted ''issuer'' for ''issues''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–325, title II, §201(d), Dec. 22, 2010, 124 Stat. 3541, provided that: ''The amendments made by this section [amending this section and section 852 of this title] shall apply to taxable years with respect to which the due date (determined with regard to any exten-

sions) of the return of tax for such taxable year is after the date of the enactment of this Act [Dec. 22, 2010].''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years beginning after Oct. 22, 2004, see section 331(h) of Pub. L. 108–357, set out as a note under section 469 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to taxable years beginning after Aug. 5, 1997, see section 1271(c) of Pub. L. 105–34, set out as a note under section 817 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1006(n)(2)(C) of Pub. L. 100–647 provided that: ''Subparagraph (C) of section 851(b)(3) of the 1986 Code (as amended by subparagraph (A)), and the amendment made by subparagraph (B) [amending this section], shall apply to taxable years beginning after the date of the enactment of this Act [Nov. 10, 1988].''

Amendment by section 1006(m), (n)(1), (2)(A), (4), (5), (*o*) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 652(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.''

Section 653(d) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 1986].''

Section 654(b) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 1986].

''(2) TREATMENT OF CERTAIN EXISTING SERIES FUNDS.—In the case of a regulated investment company which has more than one fund on the date of the enactment of this act, and has before such date been treated for Federal income tax purposes as a single corporation—

''(A) the amendment made by subsection (a), and the resulting treatment of each fund as a separate corporation, shall not give rise to the realization or recognition of income or loss by such regulated investment company, its funds, or its shareholders, and

''(B) the tax attributes of such regulated investment company shall be appropriately allocated among its funds.''

Amendment by section 1235(f)(3) of Pub. L. 99–514 applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, see section 1235(h) of Pub. L. 99–514, set out as an Effective Date note under section 1291 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1982, with certain exceptions, see section 1071(a)(5) of Pub. L. 98–369, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 1978 AMENDMENTS

Section 701(s)(3) of Pub. L. 95–600 provided that: ''The amendments made by this section [amending this section and section 852 of this title] shall apply to taxable years beginning after December 31, 1975.''

Amendment by Pub. L. 95–345 applicable with respect to amounts received after Dec. 31, 1976, as payments with respect to securities loans (as defined in section 512(a)(5) of this title), and transfers of securities, under agreements described in section 1058 of this title, occurring after such date, see section 2(e) of Pub. L. 95–345, set out as a note under section 509 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(109) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–12 applicable to taxable years of foreign corporations beginning after Dec. 31, 1975, and to taxable years of United States shareholders (within the meaning of section 951(b) of this title) within which or with which such taxable years of such foreign corporations end, see section 602(f) of Pub. L. 94–12, set out as an Effective Date note under section 955 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 908(b) of Pub. L. 91–172 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years of unit investment trusts ending after December 31, 1968, and to taxable years of holders of interests in such trusts ending with or within such taxable years of such trusts. The enactment of this section shall not be construed to result in the realization of gain or loss by any unit investment trust or by any holder of an interest in a unit investment trust.''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

§ 852. Taxation of regulated investment companies and their shareholders

(a) Requirements applicable to regulated investment companies

The provisions of this part (other than subsection (c) of this section) shall not be applicable to a regulated investment company for a taxable year unless—

(1) the deduction for dividends paid during the taxable year (as defined in section 561, but without regard to capital gain dividends) equals or exceeds the sum of—

(A) 90 percent of its investment company taxable income for the taxable year determined without regard to subsection (b)(2)(D); and

(B) 90 percent of the excess of (i) its interest income excludable from gross income under section 103(a) over (ii) its deductions disallowed under sections 265, 171(a)(2), and

(2) either—

(A) the provisions of this part applied to the investment company for all taxable years ending on or after November 8, 1983, or

(B) as of the close of the taxable year, the investment company has no earnings and profits accumulated in any taxable year to which the provisions of this part (or the corresponding provisions of prior law) did not apply to it.

The Secretary may waive the requirements of paragraph (1) for any taxable year if the regulated investment company establishes to the satisfaction of the Secretary that it was unable to meet such requirements by reason of distributions previously made to meet the requirements of section 4982.

(b) Method of taxation of companies and shareholders

(1) Imposition of tax on regulated investment companies

There is hereby imposed for each taxable year upon the investment company taxable income of every regulated investment company a tax computed as provided in section 11, as though the investment company taxable income were the taxable income referred to in section 11. In the case of a regulated investment company which is a personal holding company (as defined in section 542) or which fails to comply for the taxable year with regulations prescribed by the Secretary for the purpose of ascertaining the actual ownership of its stock, such tax shall be computed at the highest rate of tax specified in section 11(b).

(2) Investment company taxable income

The investment company taxable income shall be the taxable income of the regulated investment company adjusted as follows:

(A) There shall be excluded the amount of the net capital gain, if any.

(B) The net operating loss deduction provided in section 172 shall not be allowed.

(C) The deductions for corporations provided in part VIII (except section 248) in subchapter B (section 241 and following, relating to the deduction for dividends received, etc.) shall not be allowed.

(D) the[1] deduction for dividends paid (as defined in section 561) shall be allowed, but shall be computed without regard to capital gain dividends and exempt-interest dividends.

(E) The taxable income shall be computed without regard to section 443(b) (relating to computation of tax on change of annual accounting period).

(F) The taxable income shall be computed without regard to section 454(b) (relating to short-term obligations issued on a discount basis) if the company so elects in a manner prescribed by the Secretary.

(G) There shall be deducted an amount equal to the tax imposed by subsections (d)(2) and (i) of section 851 for the taxable year.

(3) Capital gains

(A) Imposition of tax

There is hereby imposed for each taxable year in the case of every regulated investment company a tax, determined as provided in section 1201(a), on the excess, if any, of the net capital gain over the deduction for dividends paid (as defined in section 561) determined with reference to capital gain dividends only.

(B) Treatment of capital gain dividends by shareholders

A capital gain dividend shall be treated by the shareholders as a gain from the sale or exchange of a capital asset held for more than 1 year.

(C) Definition of capital gain dividend

For purposes of this part—

(i) In general

Except as provided in clause (ii), a capital gain dividend is any dividend, or part thereof, which is reported by the company as a capital gain dividend in written statements furnished to its shareholders.

(ii) Excess reported amounts

If the aggregate reported amount with respect to the company for any taxable year exceeds the net capital gain of the company for such taxable year, a capital gain dividend is the excess of—

(I) the reported capital gain dividend amount, over

(II) the excess reported amount which is allocable to such reported capital gain dividend amount.

(iii) Allocation of excess reported amount

(I) In general

Except as provided in subclause (II), the excess reported amount (if any) which is allocable to the reported capital gain dividend amount is that portion of the excess reported amount which bears the same ratio to the excess reported amount as the reported capital gain dividend amount bears to the aggregate reported amount.

(II) Special rule for noncalendar year taxpayers

In the case of any taxable year which does not begin and end in the same calendar year, if the post-December reported amount equals or exceeds the excess reported amount for such taxable year, subclause (I) shall be applied by substituting ''post-December reported amount'' for ''aggregate reported amount'' and no excess reported amount shall be allocated to any dividend paid on or before December 31 of such taxable year.

(iv) Definitions

For purposes of this subparagraph—

(I) Reported capital gain dividend amount

The term ''reported capital gain dividend amount'' means the amount reported to its shareholders under clause (i) as a capital gain dividend.

(II) Excess reported amount

The term ''excess reported amount'' means the excess of the aggregate reported amount over the net capital gain of the company for the taxable year.

(III) Aggregate reported amount

The term ''aggregate reported amount'' means the aggregate amount of dividends reported by the company under clause (i) as capital gain dividends for the taxable year (including capital gain dividends paid after the close of the taxable year described in section 855).

(IV) Post-December reported amount

The term ''post-December reported amount'' means the aggregate reported

[1] So in original. Probably should be capitalized.

amount determined by taking into account only dividends paid after December 31 of the taxable year.

(v) Adjustment for determinations

If there is an increase in the excess described in subparagraph (A) for the taxable year which results from a determination (as defined in section 860(e)), the company may, subject to the limitations of this subparagraph, increase the amount of capital gain dividends reported under clause (i).

(vi) Special rule for losses late in the calendar year

For special rule for certain losses after October 31, see paragraph (8).

(D) Treatment by shareholders of undistributed capital gains

(i) Every shareholder of a regulated investment company at the close of the company's taxable year shall include, in computing his long-term capital gains in his return for his taxable year in which the last day of the company's taxable year falls, such amount as the company shall designate in respect of such shares in a written notice mailed to its shareholders at any time prior to the expiration of 60 days after close of its taxable year, but the amount so includible by any shareholder shall not exceed that part of the amount subjected to tax in subparagraph (A) which he would have received if all of such amount had been distributed as capital gain dividends by the company to the holders of such shares at the close of its taxable year.

(ii) For purposes of this title, every such shareholder shall be deemed to have paid, for his taxable year under clause (i), the tax imposed by subparagraph (A) on the amounts required by this subparagraph to be included in respect of such shares in computing his long-term capital gains for that year; and such shareholder shall be allowed credit or refund, as the case may be, for the tax so deemed to have been paid by him.

(iii) The adjusted basis of such shares in the hands of the shareholder shall be increased, with respect to the amounts required by this subparagraph to be included in computing his long-term capital gains, by the difference between the amount of such includible gains and the tax deemed paid by such shareholder in respect of such shares under clause (ii).

(iv) In the event of such designation the tax imposed by subparagraph (A) shall be paid by the regulated investment company within 30 days after close of its taxable year.

(v) The earnings and profits of such regulated investment company, and the earnings and profits of any such shareholder which is a corporation, shall be appropriately adjusted in accordance with regulations prescribed by the Secretary.

(E) Certain distributions

In the case of a distribution to which section 897 does not apply by reason of the second sentence of section 897(h)(1), the amount of such distribution which would be included in computing long-term capital gains for the shareholder under subparagraph (B) or (D) (without regard to this subparagraph)—

(i) shall not be included in computing such shareholder's long-term capital gains, and

(ii) shall be included in such shareholder's gross income as a dividend from the regulated investment company.

(4) Loss on sale or exchange of stock held 6 months or less

(A) Loss attributable to capital gain dividend

If—

(i) subparagraph (B) or (D) of paragraph (3) provides that any amount with respect to any share is to be treated as long-term capital gain, and

(ii) such share is held by the taxpayer for 6 months or less,

then any loss (to the extent not disallowed under subparagraph (B)) on the sale or exchange of such share shall, to the extent of the amount described in clause (i), be treated as a long-term capital loss.

(B) Loss attributable to exempt-interest dividend

If—

(i) a shareholder of a regulated investment company receives an exempt-interest dividend with respect to any share, and

(ii) such share is held by the taxpayer for 6 months or less,

then any loss on the sale or exchange of such share shall, to the extent of the amount of such exempt-interest dividend, be disallowed.

(C) Determination of holding periods

For purposes of this paragraph, in determining the period for which the taxpayer has held any share of stock—

(i) the rules of paragraphs (3) and (4) of section 246(c) shall apply, and

(ii) there shall not be taken into account any day which is more than 6 months after the date on which such share becomes ex-dividend.

(D) Losses incurred under a periodic liquidation plan

To the extent provided in regulations, subparagraphs (A) and (B) shall not apply to losses incurred on the sale or exchange of shares of stock in a regulated investment company pursuant to a plan which provides for the periodic liquidation of such shares.

(E) Exception to holding period requirement for certain regularly declared exempt-interest dividends

(i) Daily dividend companies

Except as otherwise provided by regulations, subparagraph (B) shall not apply with respect to a regular dividend paid by a regulated investment company which declares exempt-interest dividends on a daily basis in an amount equal to at least 90 percent of its net tax-exempt interest and distributes such dividends on a monthly or more frequent basis.

(ii) Authority to shorten required holding period with respect to other companies

In the case of a regulated investment company (other than a company described in clause (i)) which regularly distributes at least 90 percent of its net tax-exempt interest, the Secretary may by regulations prescribe that subparagraph (B) (and subparagraph (C) to the extent it relates to subparagraph (B)) shall be applied on the basis of a holding period requirement shorter than 6 months; except that such shorter holding period requirement shall not be shorter than the greater of 31 days or the period between regular distributions of exempt-interest dividends.

(5) Exempt-interest dividends

If, at the close of each quarter of its taxable year, at least 50 percent of the value (as defined in section 851(c)(4)) of the total assets of the regulated investment company consists of obligations described in section 103(a), such company shall be qualified to pay exempt-interest dividends, as defined herein, to its shareholders.

(A) Definition of exempt-interest dividend

(i) In general

Except as provided in clause (ii), an exempt-interest dividend is any dividend or part thereof (other than a capital gain dividend) paid by a regulated investment company and reported by the company as an exempt-interest dividend in written statements furnished to its shareholders.

(ii) Excess reported amounts

If the aggregate reported amount with respect to the company for any taxable year exceeds the exempt interest of the company for such taxable year, an exempt-interest dividend is the excess of—

(I) the reported exempt-interest dividend amount, over

(II) the excess reported amount which is allocable to such reported exempt-interest dividend amount.

(iii) Allocation of excess reported amount

(I) In general

Except as provided in subclause (II), the excess reported amount (if any) which is allocable to the reported exempt-interest dividend amount is that portion of the excess reported amount which bears the same ratio to the excess reported amount as the reported exempt-interest dividend amount bears to the aggregate reported amount.

(II) Special rule for noncalendar year taxpayers

In the case of any taxable year which does not begin and end in the same calendar year, if the post-December reported amount equals or exceeds the excess reported amount for such taxable year, subclause (I) shall be applied by substituting ''post-December reported amount'' for ''aggregate reported amount'' and no excess reported amount shall be allocated to any dividend paid on or before December 31 of such taxable year.

(iv) Definitions

For purposes of this subparagraph—

(I) Reported exempt-interest dividend amount

The term ''reported exempt-interest dividend amount'' means the amount reported to its shareholders under clause (i) as an exempt-interest dividend.

(II) Excess reported amount

The term ''excess reported amount'' means the excess of the aggregate reported amount over the exempt interest of the company for the taxable year.

(III) Aggregate reported amount

The term ''aggregate reported amount'' means the aggregate amount of dividends reported by the company under clause (i) as exempt-interest dividends for the taxable year (including exempt-interest dividends paid after the close of the taxable year described in section 855).

(IV) Post-December reported amount

The term ''post-December reported amount'' means the aggregate reported amount determined by taking into account only dividends paid after December 31 of the taxable year.

(V) Exempt interest

The term ''exempt interest'' means, with respect to any regulated investment company, the excess of the amount of interest excludable from gross income under section 103(a) over the amounts disallowed as deductions under sections 265 and 171(a)(2).

(B) Treatment of exempt-interest dividends by shareholders

An exempt-interest dividend shall be treated by the shareholders for all purposes of this subtitle as an item of interest excludable from gross income under section 103(a). Such purposes include but are not limited to—

(i) the determination of gross income and taxable income,

(ii) the determination of distributable net income under subchapter J,

(iii) the allowance of, or calculation of the amount of, any credit or deduction, and

(iv) the determination of the basis in the hands of any shareholder of any share of stock of the company.

(6) Section 311(b) not to apply to certain distributions

Section 311(b) shall not apply to any distribution by a regulated investment company to which this part applies, if such distribution is in redemption of its stock upon the demand of the shareholder.

(7) Time certain dividends taken into account

For purposes of this title, any dividend declared by a regulated investment company in

October, November, or December of any calendar year and payable to shareholders of record on a specified date in such a month shall be deemed—

(A) to have been received by each shareholder on December 31 of such calendar year, and

(B) to have been paid by such company on December 31 of such calendar year (or, if earlier, as provided in section 855).

The preceding sentence shall apply only if such dividend is actually paid by the company during January of the following calendar year.

(8) Elective deferral of certain late-year losses

(A) In general

Except as otherwise provided by the Secretary, a regulated investment company may elect for any taxable year to treat any portion of any qualified late-year loss for such taxable year as arising on the first day of the following taxable year for purposes of this title.

(B) Qualified late-year loss

For purposes of this paragraph, the term ''qualified late-year loss'' means—

(i) any post-October capital loss, and

(ii) any late-year ordinary loss.

(C) Post-October capital loss

For purposes of this paragraph, the term ''post-October capital loss'' means the greatest of—

(i) the net capital loss attributable to the portion of the taxable year after October 31,

(ii) the net long-term capital loss attributable to such portion of the taxable year, or

(iii) the net short-term capital loss attributable to such portion of the taxable year.

(D) Late-year ordinary loss

For purposes of this paragraph, the term ''late-year ordinary loss'' means the excess (if any) of—

(i) the sum of—

(I) the specified losses (as defined in section 4982(e)(5)(B)(ii)) attributable to the portion of the taxable year after October 31, plus

(II) the ordinary losses not described in subclause (I) attributable to the portion of the taxable year after December 31, over

(ii) the sum of—

(I) the specified gains (as defined in section 4982(e)(5)(B)(i)) attributable to the portion of the taxable year after October 31, plus

(II) the ordinary income not described in subclause (I) attributable to the portion of the taxable year after December 31.

(E) Special rule for companies determining required capital gain distributions on taxable year basis

In the case of a company to which an election under section 4982(e)(4) applies—

(i) if such company's taxable year ends with the month of November, the amount of qualified late-year losses (if any) shall be computed without regard to any income, gain, or loss described in subparagraphs (C), (D)(i)(I), and (D)(ii)(I), and

(ii) if such company's taxable year ends with the month of December, subparagraph (A) shall not apply.

(9) Dividends treated as received by company on ex-dividend date

For purposes of this title, if a regulated investment company is the holder of record of any share of stock on the record date for any dividend payable with respect to such stock, such dividend shall be included in gross income by such company as of the later of—

(A) the date such share became ex-dividend with respect to such dividend, or

(B) the date such company acquired such share.

(c) Earnings and profits

(1) Treatment of nondeductible items

(A) Net capital loss

If a regulated investment company has a net capital loss for any taxable year—

(i) such net capital loss shall not be taken into account for purposes of determining the company's earnings and profits, and

(ii) any capital loss arising on the first day of the next taxable year by reason of clause (ii) or (iii) of section 1212(a)(3)(A) shall be treated as so arising for purposes of determining earnings and profits.

(B) Other nondeductible items

(i) In general

The earnings and profits of a regulated investment company for any taxable year (but not its accumulated earnings and profits) shall not be reduced by any amount which is not allowable as a deduction (other than by reason of section 265 or 171(a)(2)) in computing its taxable income for such taxable year.

(ii) Coordination with treatment of net capital losses

Clause (i) shall not apply to a net capital loss to which subparagraph (A) applies.

(2) Coordination with tax on undistributed income

For purposes of applying this chapter to distributions made by a regulated investment company with respect to any calendar year, the earnings and profits of such company shall be determined without regard to any net capital loss attributable to the portion of the taxable year after October 31 and without regard to any late-year ordinary loss (as defined in subsection (b)(8)(D)). The preceding sentence shall apply—

(A) only to the extent that the amount distributed by the company with respect to the calendar year does not exceed the required distribution for such calendar year (as determined under section 4982 by substituting ''100 percent'' for each percentage set forth in section 4982(b)(1)), and

(B) except as provided in regulations, only if an election under section 4982(e)(4) is not in effect with respect to such company.

(3) Distributions to meet requirements of subsection (a)(2)(B)

Any distribution which is made in order to comply with the requirements of subsection (a)(2)(B)—

(A) shall be treated for purposes of this subsection and subsection (a)(2)(B) as made from earnings and profits which, but for the distribution, would result in a failure to meet such requirements (and allocated to such earnings on a first-in, first-out basis), and

(B) to the extent treated under subparagraph (A) as made from accumulated earnings and profits, shall not be treated as a distribution for purposes of subsection (b)(2)(D) and section 855.

(4) Regulated investment company

For purposes of this subsection, the term ''regulated investment company'' includes a domestic corporation which is a regulated investment company determined without regard to the requirements of subsection (a).

(d) Distributions in redemption of interests in unit investment trusts

In the case of a unit investment trust—

(1) which is registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 and following) and issues periodic payment plan certificates (as defined in such Act), and

(2) substantially all of the assets of which consist of securities issued by a management company (as defined in such Act),

section 562(c) (relating to preferential dividends) shall not apply to a distribution by such trust to a holder of an interest in such trust in redemption of part or all of such interest, with respect to the capital gain net income of such trust attributable to such redemption.

(e) Procedures similar to deficiency dividend procedures made applicable

(1) In general

If—

(A) there is a determination that the provisions of this part do not apply to an investment company for any taxable year (hereinafter in this subsection referred to as the ''non-RIC year''), and

(B) such investment company meets the distribution requirements of paragraph (2) with respect to the non-RIC year,

for purposes of applying subsection (a)(2) to subsequent taxable years, the provisions of this part shall be treated as applying to such investment company for the non-RIC year. If the determination under subparagraph (A) is solely as a result of the failure to meet the requirements of subsection (a)(2), the preceding sentence shall also apply for purposes of applying subsection (a)(2) to the non-RIC year and the amount referred to in paragraph (2)(A)(i) shall be the portion of the accumulated earnings and profits which resulted in such failure.

(2) Distribution requirements

(A) In general

The distribution requirements of this paragraph are met with respect to any non-RIC year if, within the 90-day period beginning on the date of the determination (or within such longer period as the Secretary may permit), the investment company makes 1 or more qualified designated distributions and the amount of such distributions is not less than the excess of—

(i) the portion of the accumulated earnings and profits of the investment company (as of the date of the determination) which are attributable to the non-RIC year, over

(ii) any interest payable under paragraph (3).

(B) Qualified designated distribution

For purposes of this paragraph, the term ''qualified designated distribution'' means any distribution made by the investment company if—

(i) section 301 applies to such distribution, and

(ii) such distribution is designated (at such time and in such manner as the Secretary shall by regulations prescribe) as being taken into account under this paragraph with respect to the non-RIC year.

(C) Effect on dividends paid deduction

Any qualified designated distribution shall not be included in the amount of dividends paid for purposes of computing the dividends paid deduction for any taxable year.

(3) Interest charge

(A) In general

If paragraph (1) applies to any non-RIC year of an investment company, such investment company shall pay interest at the underpayment rate established under section 6621—

(i) on an amount equal to 50 percent of the amount referred to in paragraph (2)(A)(i),

(ii) for the period—

(I) which begins on the last day prescribed for payment of the tax imposed for the non-RIC year (determined without regard to extensions), and

(II) which ends on the date the determination is made.

(B) Coordination with subtitle F

Any interest payable under subparagraph (A) may be assessed and collected at any time during the period during which any tax imposed for the taxable year in which the determination is made may be assessed and collected.

(4) Provision not to apply in the case of fraud

The provisions of this subsection shall not apply if the determination contains a finding that the failure to meet any requirement of this part was due to fraud with intent to evade tax.

(5) Determination

For purposes of this subsection, the term ''determination'' has the meaning given to

such term by section 860(e). Such term also includes a determination by the investment company filed with the Secretary that the provisions of this part do not apply to the investment company for a taxable year.

(f) Treatment of certain load charges

(1) In general

If—

(A) the taxpayer incurs a load charge in acquiring stock in a regulated investment company and, by reason of incurring such charge or making such acquisition, the taxpayer acquires a reinvestment right,

(B) such stock is disposed of before the 91st day after the date on which such stock was acquired, and

(C) the taxpayer acquires, during the period beginning on the date of the disposition referred to in subparagraph (B) and ending on January 31 of the calendar year following the calendar year that includes the date of such disposition, stock in such regulated investment company or in another regulated investment company and the otherwise applicable load charge is reduced by reason of the reinvestment right,

the load charge referred to in subparagraph (A) (to the extent it does not exceed the reduction referred to in subparagraph (C)) shall not be taken into account for purposes of determining the amount of gain or loss on the disposition referred to in subparagraph (B). To the extent such charge is not taken into account in determining the amount of such gain or loss, such charge shall be treated as incurred in connection with the acquisition referred to in subparagraph (C) (including for purposes of reapplying this paragraph).

(2) Definitions and special rules

For purposes of this subsection—

(A) Load charge

The term ''load charge'' means any sales or similar charge incurred by a person in acquiring stock of a regulated investment company. Such term does not include any charge incurred by reason of the reinvestment of a dividend.

(B) Reinvestment right

The term ''reinvestment right'' means any right to acquire stock of 1 or more regulated investment companies without the payment of a load charge or with the payment of a reduced charge.

(C) Nonrecognition transactions

If the taxpayer acquires stock in a regulated investment company from another person in a transaction in which gain or loss is not recognized, the taxpayer shall succeed to the treatment of such other person under this subsection.

(g) Special rules for fund of funds

(1) In general

In the case of a qualified fund of funds—

(A) such fund shall be qualified to pay exempt-interest dividends to its shareholders without regard to whether such fund satisfies the requirements of the first sentence of subsection (b)(5), and

(B) such fund may elect the application of section 853 (relating to foreign tax credit allowed to shareholders) without regard to the requirement of subsection (a)(1) thereof.

(2) Qualified fund of funds

For purposes of this subsection, the term ''qualified fund of funds'' means a regulated investment company if (at the close of each quarter of the taxable year) at least 50 percent of the value of its total assets is represented by interests in other regulated investment companies.

(Aug. 16, 1954, ch. 736, 68A Stat. 271; July 11, 1956, ch. 573, § 2(a), 70 Stat. 530; Pub. L. 85–866, title I, §§ 39(a), 101(a), (b), Sept. 2, 1958, 72 Stat. 1638, 1674; Pub. L. 86–779, § 10(b)(2), (3), Sept. 14, 1960, 74 Stat. 1009; Pub. L. 88–272, title II, § 229(a)(1), (2), (b), Feb. 26, 1964, 78 Stat. 99; Pub. L. 91–172, title V, § 511(c)(2), Dec. 30, 1969, 83 Stat. 637; Pub. L. 94–455, title XIV, § 1402(b)(1)(N), (2), title XIX, §§ 1901(a)(110)(A), (B)(i), (C), (b)(1)(V), (6)(B), (33)(I), (J), (N), 1906(b)(13)(A), title XXI, § 2137(a)–(c), Oct. 4, 1976, 90 Stat. 1732, 1783, 1792, 1794, 1801, 1802, 1834, 1930, 1931; Pub. L. 95–600, title III, §§ 301(b)(11), 362(c), title VII, § 701(s)(2), Nov. 6, 1978, 92 Stat. 2822, 2851, 2911; Pub. L. 96–222, title I, § 104(a)(3)(B), Apr. 1, 1980, 94 Stat. 215; Pub. L. 97–424, title V, § 547(b)(2), Jan. 6, 1983, 96 Stat. 2199; Pub. L. 98–369, div. A, title I, § 55(a), title X, §§ 1001(b)(11), (e), 1071(a)(2)–(4), (b)(1), July 18, 1984, 98 Stat. 571, 1011, 1012, 1049, 1050, 1052; Pub. L. 99–514, title III, § 311(b)(1), title VI, §§ 631(e)(11), 651(b)(1)(A), (2), (3), 655(a)(1), (2), title XI, § 1173(b)(1)(B), title XV, § 1511(c)(6), title XVIII, §§ 1804(c)(1)–(5), 1878(j), Oct. 22, 1986, 100 Stat. 2219, 2274, 2296, 2298, 2299, 2515, 2745, 2799, 2800, 2905; Pub. L. 100–647, title I, §§ 1006(*l*)(1)(A), (3), (4), (7)–(10), 1011B(h)(4), 1018(p), Nov. 10, 1988, 102 Stat. 3413–3415, 3491, 3585; Pub. L. 101–239, title VII, § 7204(b)(1), (c)(1), Dec. 19, 1989, 103 Stat. 2334, 2335; Pub. L. 103–66, title XIII, § 13221(c)(1), Aug. 10, 1993, 107 Stat. 477; Pub. L. 104–188, title I, § 1602(b)(3), Aug. 20, 1996, 110 Stat. 1833; Pub. L. 105–34, title XI, § 1122(c)(2), (3), title XII, § 1254(b)(2), Aug. 5, 1997, 111 Stat. 977, 1033; Pub. L. 106–170, title V, § 566(a)(1), (c), Dec. 17, 1999, 113 Stat. 1950; Pub. L. 109–222, title V, § 505(c)(1), May 17, 2006, 120 Stat. 356; Pub. L. 110–172, § 11(a)(17)(A), Dec. 29, 2007, 121 Stat. 2486; Pub. L. 111–325, title II, § 201(c), title III, §§ 301(a)(1), (b), 302(a), (b)(1), 303(a), 308(a)–(b)(2), 309(a), (b), title V, § 502(a), Dec. 22, 2010, 124 Stat. 3541, 3542, 3547, 3548, 3550–3552, 3554.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (d), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§ 80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

AMENDMENTS

2010—Subsec. (b)(2)(G). Pub. L. 111–325, § 201(c), added subpar. (G).

Subsec. (b)(3)(C). Pub. L. 111–325, § 301(a)(1), amended subpar. (C) generally. Prior to amendment, subpar. (C) related to definition of capital gain dividend.

Subsec. (b)(4)(E). Pub. L. 111–325, §309(a), (b), substituted ''Exception to holding period requirement for certain regularly declared exempt-interest dividends'' for ''Authority to shorten required holding period'' in heading, added cl. (i), inserted cl. (ii) designation and heading before ''In the case of'', and inserted ''(other than a company described in clause (i))'' after ''regulated investment company''.

Subsec. (b)(5)(A). Pub. L. 111–325, §301(b), amended subpar. (A) generally. Prior to amendment, text read as follows: ''An exempt-interest dividend means any dividend or part thereof (other than a capital gain dividend) paid by a regulated investment company and designated by it as an exempt-interest dividend in a written notice mailed to its shareholders not later than 60 days after the close of its taxable year. If the aggregate amount so designated with respect to a taxable year of the company (including exempt-interest dividends paid after the close of the taxable year as described in section 855) is greater than the excess of—

''(i) the amount of interest excludable from gross income under section 103(a), over

''(ii) the amounts disallowed as deductions under sections 265 and 171(a)(2),

the portion of such distribution which shall constitute an exempt-interest dividend shall be only that proportion of the amount so designated as the amount of such excess for such taxable year bears to the amount so designated.''

Subsec. (b)(8). Pub. L. 111–325, §308(a), amended par. (8) generally. Prior to amendment, text read as follows: ''To the extent provided in regulations, the taxable income of a regulated investment company (other than a company to which an election under section 4982(e)(4) applies) shall be computed without regard to any net foreign currency loss attributable to transactions after October 31 of such year, and any such net foreign currency loss shall be treated as arising on the 1st day of the following taxable year.''

Subsec. (b)(10). Pub. L. 111–325, §308(b)(1), struck out par. (10). Text read as follows: ''To the extent provided in regulations, the taxable income of a regulated investment company (other than a company to which an election under section 4982(e)(4) applies) shall be computed without regard to any net reduction in the value of any stock of a passive foreign investment company with respect to which an election under section 1296(k) is in effect occurring after October 31 of the taxable year, and any such reduction shall be treated as occurring on the first day of the following taxable year.''

Subsec. (c)(1). Pub. L. 111–325, §302(a), amended par. (1) generally. Prior to amendment, text read as follows: ''The earnings and profits of a regulated investment company for any taxable year (but not its accumulated earnings and profits) shall not be reduced by any amount which is not allowable as a deduction in computing its taxable income for such taxable year. For purposes of this subsection, the term 'regulated investment company' includes a domestic corporation which is a regulated investment company determined without regard to the requirements of subsection (a).''

Subsec. (c)(2). Pub. L. 111–325, §308(b)(2), in introductory provisions, substituted ''For purposes of applying this chapter to distributions made by a regulated investment company with respect to any calendar year, the earnings and profits of such company shall be determined without regard to any net capital loss attributable to the portion of the taxable year after October 31 and without regard to any late-year ordinary loss (as defined in subsection (b)(8)(D)).'' for ''For purposes of applying this chapter to distributions made by a regulated investment company with respect to any calendar year, the earnings and profits of such company shall be determined without regard to any net capital loss (or net foreign currency loss) attributable to transactions after October 31 of such year, without regard to any net reduction in the value of any stock of a passive foreign investment company with respect to which an election under section 1296(k) is in effect occurring after October 31 of such year, and with such other adjustments as the Secretary may by regulations prescribe.''

Subsec. (c)(4). Pub. L. 111–325, §302(b)(1), added par. (4).

Subsec. (f)(1)(C). Pub. L. 111–325, §502(a), substituted ''acquires, during the period beginning on the date of the disposition referred to in subparagraph (B) and ending on January 31 of the calendar year following the calendar year that includes the date of such disposition,'' for ''subsequently acquires''.

Subsec. (g). Pub. L. 111–325, §303(a), added subsec. (g).

2007—Subsec. (b)(4)(C). Pub. L. 110–172 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of this paragraph, the rules of paragraphs (3) and (4) of section 246(c) shall apply in determining the period for which the taxpayer has held any share of stock; except that '6 months' shall be substituted for each number of days specified in subparagraph (B) of section 246(c)(3).''

2006—Subsec. (b)(3)(E). Pub. L. 109–222 added subpar. (E).

1999—Subsec. (c)(3). Pub. L. 106–170, §566(a)(1), added par. (3).

Subsec. (e)(1). Pub. L. 106–170, §566(c), inserted at end ''If the determination under subparagraph (A) is solely as a result of the failure to meet the requirements of subsection (a)(2), the preceding sentence shall also apply for purposes of applying subsection (a)(2) to the non-RIC year and the amount referred to in paragraph (2)(A)(i) shall be the portion of the accumulated earnings and profits which resulted in such failure.''

1997—Subsec. (b)(3)(D)(iii). Pub. L. 105–34, §1254(b)(2), substituted ''by the difference between the amount of such includible gains and the tax deemed paid by such shareholder in respect of such shares under clause (ii).'' for ''by 65 percent of so much of such amounts as equals the amount subject to tax in accordance with section 1201(a).''

Subsec. (b)(10). Pub. L. 105–34, §1122(c)(2), added par. (10).

Subsec. (c)(2). Pub. L. 105–34, §1122(c)(3), inserted '', without regard to any net reduction in the value of any stock of a passive foreign investment company with respect to which an election under section 1296(k) is in effect occurring after October 31 of such year,'' after ''October 31 of such year''.

1996—Subsec. (b)(5)(C). Pub. L. 104–188 struck out subpar. (C). Prior to amendment, subpar. (C) read as follows:

''(C) INTEREST ON CERTAIN LOANS USED TO ACQUIRE EMPLOYER SECURITIES.—For purposes of this section—

''(i) 50 percent of the amount of any loan of the regulated investment company which qualifies as a securities acquisition loan (as defined in section 133) shall be treated as an obligation described in section 103(a), and

''(ii) 50 percent of the interest received on such loan shall be treated as interest excludable from gross income under section 103.''

1993—Subsec. (b)(3)(D)(iii). Pub. L. 103–66 substituted ''65 percent'' for ''66 percent''.

1989—Subsec. (b)(9). Pub. L. 101–239, §7204(c)(1), added par. (9).

Subsec. (f). Pub. L. 101–239, §7204(b)(1), added subsec. (f).

1988—Subsec. (a). Pub. L. 100–647, §1006(*l*)(8), inserted at end ''The Secretary may waive the requirements of paragraph (1) for any taxable year if the regulated investment company establishes to the satisfaction of the Secretary that it was unable to meet such requirements by reason of distributions previously made to meet the requirements of section 4982.''

Subsec. (b)(3)(C). Pub. L. 100–647, §1006(*l*)(4), substituted ''net capital loss or net long-term capital loss'' for ''net capital loss'' in two places in third sentence, and ''computing the taxable income of the regulated investment company'' for ''computing regulated investment company taxable income'' in fourth sentence.

Subsec. (b)(5)(C). Pub. L. 100–647, §1011B(h)(4), substituted ''section'' for ''paragraph''.

Subsec. (b)(6). Pub. L. 100–647, §1006(*l*)(1)(A), redesignated par. (6), relating to time certain dividends are taken into account, as (7).

Subsec. (b)(7). Pub. L. 100–647, § 1006(*l*)(9), substituted ''in October, November, or December'' for ''in December'' and ''in such a month'' for ''in such month'', in introductory text, ''on December 31 of such calendar year'' for ''on such date'' in subpars. (A) an (B), and ''during January'' for ''before February 1'' in last sentence.

Pub. L. 100–647, § 1006(*l*)(1)(A), redesignated par. (6), relating to time certain dividends are taken into account, as (7).

Subsec. (b)(8). Pub. L. 100–647, § 1006(*l*)(7), added par. (8).

Subsec. (c)(2). Pub. L. 100–647, § 1006(*l*)(3), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''A regulated investment company shall be treated as having sufficient earnings and profits to treat as a dividend any distribution (other than in a redemption to which section 302(a) applies) which is treated as a dividend by such company. The preceding sentence shall not apply to the extent that the amount distributed during any calendar year by the company exceeds the required distribution for such calendar year (as determined under section 4982).''

Subsec. (e)(1). Pub. L. 100–647, §§ 1006(*l*)(10), 1018(p), amended par. (1) identically, substituting ''subsection (a)(2)'' for ''subsection (a)(3)'' in last sentence.

1986—Subsec. (a)(2), (3). Pub. L. 99–514, § 1878(j)(1), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''the investment company complies for such year with regulations prescribed by the Secretary for the purpose of ascertaining the actual ownership of its outstanding stock, and''.

Subsec. (b)(1). Pub. L. 99–514, § 1878(j)(2), substituted last sentence for former last sentence which read as follows: ''In the case of a regulated investment company which is a personal holding company (as defined in section 542), that tax shall be computed at the highest rate of tax specified in section 11(b).''

Subsec. (b)(3)(C). Pub. L. 99–514, § 655(a)(1), substituted ''60 days'' for ''45 days''.

Pub. L. 99–514, § 651(b)(3), inserted provision for determination of the amount of the net capital gain for a taxable year (to which an election under section 4982(e)(4) does not apply) and made such provision applicable also for purposes of computing regulated investment company taxable income.

Subsec. (b)(3)(D)(i). Pub. L. 99–514, § 655(a)(1), substituted ''60 days'' for ''45 days''.

Subsec. (b)(3)(D)(iii). Pub. L. 99–514, § 311(b)(1), substituted ''66 percent'' for ''72 percent''.

Subsec. (b)(4). Pub. L. 99–514, § 1804(c)(5), substituted ''6 months or less'' for ''less than 31 days'' in heading.

Subsec. (b)(4)(B)(ii). Pub. L. 99–514, § 1804(c)(1), substituted ''6 months or less'' for ''less than 31 days''.

Subsec. (b)(4)(C). Pub. L. 99–514, § 1804(c)(2), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''For purposes of this paragraph, the rules of paragraphs (3) and (4) of section 246(c) shall apply in determining the period for which the taxpayer held any share of stock; except that for the number of days specified in subparagraph (B) of section 246(c)(3) there shall be substituted—

''(i) '6 months' for purposes of subparagraph (A), and

''(ii) '30 days' for purposes of subparagraph (B).''

Subsec. (b)(4)(D). Pub. L. 99–514, § 1804(c)(3), substituted ''subparagraphs (A) and (B)'' for ''subparagraph (A)''.

Subsec. (b)(4)(E). Pub. L. 99–514, § 1804(c)(4), added subpar. (E).

Subsec. (b)(5)(A). Pub. L. 99–514, § 655(a)(2), substituted ''60 days'' for ''45 days''.

Subsec. (b)(5)(C). Pub. L. 99–514, § 1173(b)(1)(B), added subpar. (C).

Subsec. (b)(6). Pub. L. 99–514, § 651(b)(1)(A), added par. (6) relating to time certain dividends are taken into account.

Pub. L. 99–514, § 631(e)(11), added par. (6) relating to inapplicability of section 311(b) to certain distributions.

Subsec. (c). Pub. L. 99–514, § 651(b)(2), amended subsec. (c) generally, designating existing provisions as par. (1), inserting heading, and adding par. (2).

Subsec. (e)(3)(A). Pub. L. 99–514, § 1511(c)(6), substituted ''the underpayment rate established under section 6621'' for ''the annual rate established under section 6621''.

1984—Subsec. (a)(3). Pub. L. 98–369, § 1071(a)(3), added par. (3).

Subsec. (b)(1). Pub. L. 98–369, § 1071(a)(2), inserted provision that in the case of a regulated investment company which is a personal holding company (as defined in section 542), that tax shall be computed at the highest rate of tax specified in section 11.

Subsec. (b)(2)(F). Pub. L. 98–369, § 1071(b)(1), added subpar. (F).

Subsec. (b)(3)(B). Pub. L. 98–369, § 1001(b)(11), (e), substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsec. (b)(4)(A)(i). Pub. L. 98–369, § 55(a)(1), substituted ''subparagraph (B) or (D) of paragraph (3) provides that any amount with respect to any share is to be treated as long-term capital gain'' for ''under subparagraph (B) or (D) of paragraph (3) a shareholder of a regulated investment company is required, with respect to any share, to treat any amount as a long-term capital gain''.

Subsec. (b)(4)(A)(ii). Pub. L. 98–369, § 55(a)(1), substituted ''6 months or less'' for ''less than 31 days''.

Subsec. (b)(4)(C). Pub. L. 98–369, § 55(a)(2), substituted ''the rules of paragraphs (3) and (4) of section 246(c) shall apply in determining the period for which the taxpayer held any share of stock;'' for ''the rules of section 246(c)(3) shall apply in determining whether any share of stock has been held for less than 31 days;'' and substituted provisions dealing with the applicable number of days for former provisions which set forth different applicable days.

Subsec. (b)(4)(D). Pub. L. 98–369, § 55(a)(3), added subpar. (D).

Subsec. (e). Pub. L. 98–369, § 1071(a)(4), added subsec. (e).

1983—Subsec. (b)(5). Pub. L. 97–424 substituted ''section 103(a)'' for ''section 103(a)(1)'' wherever appearing.

1980—Subsec. (b)(3)(D)(iii). Pub. L. 96–222 substituted ''72 percent'' for ''70 percent''.

1978—Subsec. (b)(1). Pub. L. 95–600, § 301(b)(11), substituted ''a tax'' for ''a normal tax and surtax''.

Subsec. (b)(3)(C). Pub. L. 95–600, § 362(c), inserted '', except that, if there is an increase in the excess described in subparagraph (A) of this paragraph for such year which results from a determination (as defined in section 860(e)), such designation may be made with respect to such increase at any time before the expiration of 120 days after the date of such determination'' after ''amount so designated''.

Subsec. (b)(4). Pub. L. 95–600, § 701(s)(2), designated first sentence, including subpars. (A) and (B), as subpar. (A), cls. (i) and (ii); added subpar. (A) heading and substituted ''shall, to the extent of the amount described in clause (i), be treated as a long-term capital loss'' for ''shall, to the extent of the amount described in subparagraph (A) of this paragraph, be treated as loss from the sale or exchange of a capital asset held for more than 1 year''; added subpar. (B); and designated second sentence as subpar. (C).

1976—Subsec. (a)(1). Pub. L. 94–455, §§ 1901(b)(6)(B), 2137(a), designated existing provisions as introductory material and subpar. (A) and added subpar. (B).

Subsec. (a)(2). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (b)(1). Pub. L. 94–455, § 1901(b)(1)(V), struck out provision relating to the computation of the normal tax under section 11 of this title.

Subsec. (b)(2)(A). Pub. L. 94–455, § 1901(b)(33)(I), substituted ''the amount of the net capital gain, if any'' for ''the excess, if any, of the net long-term capital gain over the short-term capital loss''.

Subsec. (b)(2)(D). Pub. L. 94–455, § 2137(b), inserted reference to exempt-interest dividends.

Subsec. (b)(3)(A). Pub. L. 94–455, §1901(b)(33)(J)(i), among other changes, struck out reference to the sum of the net short-term capital loss.

Subsec. (b)(3)(B). Pub. L. 94–455, §1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, §1402(b)(1)(N), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

Subsec. (b)(3)(C). Pub. L. 94–455, §1901(a)(110)(A), (b)(33)(J)(ii), substituted ''net capital gain'' for ''excess of the net long-term capital gain over the net short-term capital loss'' in two places and struck out provision requiring for purpose of the deduction for capital gains dividends paid, the deductions shall in the case of a taxable year beginning before Jan. 1, 1975, first be made from the amount subject to tax in accordance with section 1201(a)(1)(B), to the extent thereof, and then from the amount subject to tax in accordance with section 1201(a)(1)(A).

Subsec. (b)(3)(D)(iii). Pub. L. 94–455, §1901(a)(110)(B)(i), struck out ''by 75 percent of so much of such amounts as equals the amount subject to tax in accordance with section 1201(a)(1)(A) and'' after ''his long term capital gains,'' and ''(72 percent in the case of a taxable year beginning after December 31, 1969, and before January 1, 1971)'' after ''by 70 percent'' and substituted ''section 1201(a)'' for ''section 1201(a)(1)(B) or (2)''.

Subsec. (b)(3)(D)(v). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (b)(4). Pub. L. 94–455, §1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, §1402(b)(1)(N), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

Subsec. (b)(5). Pub. L. 94–455, §2137(c), added par. (5).

Subsec. (d). Pub. L. 94–455, §1901(a)(110)(C), (b)(33)(N), inserted in par. (1) ''(15 U.S.C. 80a–1 and following)'' after ''Investment company Act of 1940'' and substituted in provision following par. (2) ''capital gain net income'' for ''net capital gain''.

1969—Subsec. (b)(3)(A). Pub. L. 91–172, §511(c)(2)(A), substituted ''determined as provided in section 1201(a), on'' for ''of 25 percent of''.

Subsec. (b)(3)(C). Pub. L. 91–172, §511(c)(2)(B), inserted provision requiring for the purposes of the deduction for capital gains dividends paid the deduction shall, in the case of a taxable year beginning before Jan. 1, 1975, first be made from the amount subject to tax in accordance with section 1201(a)(1)(B), to the extent thereof, and then from the amount subject to tax in accordance with section 1201(a)(1)(A).

Subsec. (b)(3)(D). Pub. L. 91–172, §511(c)(2)(C), (D), struck out ''of 25 percent'' in cl. (ii), substituted reference in cl. (iii) to the increase of the adjusted basis of shares in the hands of the shareholder, with respect to the amounts required by this subpar., by 75 percent of so much of such amounts as equals the amount subject to tax in accordance with section 1201(a)(1)(A) and by 70 percent (72 percent in the case of a taxable year beginning after Dec. 31, 1969, and before Jan. 1, 1971) of so much of such amounts as equals the amount subject to tax in accordance with section 1201(a)(1)(B) or (2), for reference to the increase of the adjusted basis of shares in the hand of the shareholder by 75 percent of the amounts required by this subpar. to be included in computing his long-term capital gains.

1964—Subsec. (b)(3)(C), (D)(i). Pub. L. 88–272, §229(a)(1), (2), substituted ''45 days'' for ''30 days''.

Subsec. (d). Pub. L. 88–272, §229(b), added subsec. (d).

1960—Subsec. (a). Pub. L. 86–779, §10(b)(2), substituted ''this part'' for ''this subchapter''.

Subsec. (b)(3)(C). Pub. L. 86–779, §10(b)(3), substituted ''For purposes of this part, a capital gain dividend is'' for ''A capital gain dividend means''.

1958—Subsec. (a). Pub. L. 85–866, §101(a), inserted ''(other than subsection (c) of this section)''.

Subsec. (b)(4). Pub. L. 85–866, §39(a), added par. (4).

Subsec. (c). Pub. L. 85–866, §101(b), inserted sentence defining regulated investment company.

1956—Subsec. (b)(3)(D). Act July 11, 1956, added subpar. (D).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 201(c) of Pub. L. 111–325 applicable to taxable years with respect to which the due date (determined with regard to any extensions) of the return of tax for such taxable year is after Dec. 22, 2010, see section 201(d) of Pub. L. 111–325, set out as a note under section 851 of this title.

Pub. L. 111–325, title III, §301(h), Dec. 22, 2010, 124 Stat. 3547, provided that: ''The amendments made by this section [amending this section and sections 853, 853A, 854, 855, 860, and 871 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 22, 2010].''

Pub. L. 111–325, title III, §302(c), Dec. 22, 2010, 124 Stat. 3548, provided that: ''The amendments made by this section [amending this section and section 871 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 22, 2010].''

Pub. L. 111–325, title III, §303(b), Dec. 22, 2010, 124 Stat. 3548, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 22, 2010].''

Pub. L. 111–325, title III, §308(c), Dec. 22, 2010, 124 Stat. 3551, provided that: ''The amendments made by this section [amending this section and section 871 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 22, 2010].''

Pub. L. 111–325, title III, §309(c), Dec. 22, 2010, 124 Stat. 3552, provided that: ''The amendments made by this section [amending this section] shall apply to losses incurred on shares of stock for which the taxpayer's holding period begins after the date of the enactment of this Act [Dec. 22, 2010].''

Pub. L. 111–325, title V, §502(b), Dec. 22, 2010, 124 Stat. 3555, provided that: ''The amendment made by this section [amending this section] shall apply to charges incurred in taxable years beginning after the date of the enactment of this Act [Dec. 22, 2010].''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–222, title V, §505(d), May 17, 2006, 120 Stat. 357, provided that: ''The amendments made by this section [amending this section and sections 871, 897, and 1445 of this title] shall apply to taxable years of qualified investment entities beginning after December 31, 2005, except that no amount shall be required to be withheld under section 1441, 1442, or 1445 of the Internal Revenue Code of 1986 with respect to any distribution before the date of the enactment of this Act [May 17, 2006] if such amount was not otherwise required to be withheld under any such section as in effect before such amendments.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, §566(d), Dec. 17, 1999, 113 Stat. 1950, provided that: ''The amendments made by this section [amending this section and section 857 of this title] shall apply to distributions after December 31, 2000.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1122(c)(2), (3) of Pub. L. 105–34 applicable to taxable years of United States persons beginning after Dec. 31, 1997, and to taxable years of foreign corporations ending with or within such taxable years of United States persons, see section 1124 of Pub. L. 105–34, set out as a note under section 532 of this title.

Section 1263 of title XII of Pub. L. 105–34 provided that: ''The amendments made by this part [probably means subtitle D (§§1251–1263) of title XII of Pub. L. 105–34, amending this section and sections 856 and 857 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1602(b)(1) of Pub. L. 104–188 applicable to loans made after Aug. 20, 1996, with excep-

tion and provisions relating to certain refinancings, see section 1602(c) of Pub. L. 104–188, set out as an Effective Date of Repeal note under former section 133 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years beginning on or after Jan. 1, 1993, see section 13221(d) of Pub. L. 103–66 set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7204(b)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to charges incurred after October 3, 1989, in taxable years ending after such date.''

Section 7204(c)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to dividends in cases where the stock becomes ex-dividend after the date of the enactment of this Act [Dec. 19, 1989].''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1006(*l*)(9) of Pub. L. 100–647 provided that the amendment made by that section is effective with respect to dividends declared in 1988 and subsequent calendar years.

Amendment by sections 1006(*l*)(1)(A), (3), (4), (7), (8), (10), 1011B(h)(4), and 1018(p) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 311(b)(1) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 311(c) of Pub. L. 99–514, set out as a note under section 1201 of this title.

Amendment by section 631(e)(11) of Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

Amendment by section 651(b)(1)(A), (2), (3) of Pub. L. 99–514 applicable to calendar years beginning after Dec. 31, 1986, see section 651(d) of Pub. L. 99–514, set out as an Effective Date note under section 4982 of this title.

Section 655(b) of Pub. L. 99–514 provided that: ''The amendments made by subsection (a) [amending this section and sections 853 to 855 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 1986].''

Section 1173(c)(2)(A) of Pub. L. 99–514 provided that: ''The amendments made by subsection (b)(1) [amending this section and former section 133 of this title] shall apply to loans used to acquire employer securities after the date of the enactment of this Act [Oct. 22, 1986], including loans used to refinance loans used to acquire employer securities before such date if such loans were used to acquire employer securities after May 23, 1984.''

Amendment by section 1511(c)(6) of Pub. L. 99–514 applicable for purposes of determining interest for periods after Dec. 31, 1986, see section 1511(d) of Pub. L. 99–514, set out as a note under section 47 of this title.

Section 1804(c)(6) of Pub. L. 99–514 provided that: ''The amendments made by this subsection [amending this section] shall apply to stock with respect to which the taxpayer's holding period begins after March 28, 1985.''

Amendment by section 1878(j) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 55(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and section 857 of this title] shall apply to losses incurred with respect to shares of stock and beneficial interests with respect to which the taxpayer's holding period begins after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 1001(b)(11) of Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

Section 1071(a)(5) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by this subsection [amending this section and section 851 of this title] shall apply to taxable years beginning after December 31, 1982.

''(B) INVESTMENT COMPANIES WHICH WERE REGULATED INVESTMENT COMPANIES FOR YEARS ENDING BEFORE NOVEMBER 8, 1983.—In the case of any investment company to which the provisions of part I of subchapter M of chapter 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applied for any taxable year ending before November 8, 1983, for purposes of section 852(a)(3)(B) of the Internal Revenue Code of 1986 (as amended by this subsection), no earnings and profits accumulated in any taxable year ending before January 1, 1984, shall be taken into account.

''(C) INVESTMENT COMPANIES BEGINNING BUSINESS IN 1983.—In the case of an investment company which began business in 1983 (and was not a successor corporation), earnings and profits accumulated during its first taxable year shall not be taken into account for purposes of section 852(a)(3)(B) of such Code (as so amended).

''(D) INVESTMENT COMPANIES REGISTERING BEFORE NOVEMBER 8, 1983.—In the case of any investment company—

''(i) which, during the period after December 31, 1981, and before November 8, 1983—

''(I) was engaged in the active conduct of a trade or business,

''(II) sold substantially all of its operating assets, and

''(III) registered under the Investment Company Act of 1940 [15 U.S.C. § 80a–1 et seq.] as either a management company or a unit investment trust, and

''(ii) to which the provisions of part I of subchapter M of chapter 1 of the Internal Revenue Code of 1986 applied for its first taxable year beginning after November 8, 1983,

for purposes of section 852(a)(3)(A) of such Code (as amended by paragraph (3)), the provisions of part I of subchapter M of chapter 1 of such Code shall be treated as applying to such investment company for its first taxable year ending after November 8, 1983. For purposes of the preceding sentence, all members of an affiliated group (as defined in section 1504(a) of such Code) filing a consolidated return shall be treated as 1 taxpayer.''

Section 1071(b)(2) of Pub. L. 98–369 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1978.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 301(b)(11) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

Amendment by section 362(c) of Pub. L. 95–600 applicable with respect to determinations (as defined in section 860(e) of this title) after Nov. 6, 1978, see section 362(e) of Pub. L. 95–600, set out as an Effective Date note under section 860 of this title.

Amendment by section 701(s)(2) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1975, see section 701(s)(3) of Pub. L. 95–600, set out as a note under section 851 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(b)(1) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Section 1402(b)(2) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Amendment by section 1901(a)(110)(A), (C), (b)(1)(V), (6)(B), (33)(I), (J), (N) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

Section 1901(a)(110)(B)(ii) of Pub. L. 94–455, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by clause (i) [amending this section] shall not be considered to affect the amount of any increase in the basis of stock under the provisions of section 852(b)(3)(D)(iii) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] which is based upon amounts subject to tax under section 1201 of such Code [section 1201 of this title] in taxable years beginning before January 1, 1975.''

Section 2137(e) of Pub. L. 94–455 provided that: ''The amendments made by this section [amending this section and sections 103 and 265 of this title] shall apply to taxable years beginning after December 31, 1975.''

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to taxable years beginning after Dec. 31, 1969, see section 511(d) of Pub. L. 91–172, set out as an Effective Date note under section 1201 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 229(c) of Pub. L. 88–272 provided that: ''The amendments made by subsection (a) [amending this section and sections 853, 854, and 855 of this title] shall apply to taxable years of regulated investment companies ending on or after the date of the enactment of this Act [Feb. 26, 1964]. The amendment made by subsection (b) [amending this section] shall apply to taxable years of regulated investment companies ending after December 31, 1963.''

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment of section by Pub. L. 86–779 applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86–779, set out as an Effective Date note under section 856 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 39(b) of Pub. L. 85–866 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years ending after December 31, 1957, but only with respect to shares of stock acquired after December 31, 1957.''

Section 101(c) of Pub. L. 85–866 provided that: ''The amendments made by this section [amending this section] shall apply with respect to taxable years of regulated investment companies beginning on or after March 1, 1958.''

EFFECTIVE DATE OF 1956 AMENDMENT

Section 2(b) of act July 11, 1956, provided that: ''The amendment made by this section [amending this section] shall apply only with respect to taxable years of regulated investment companies beginning after December 31, 1956.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 853. Foreign tax credit allowed to shareholders

(a) General rule

A regulated investment company—

(1) more than 50 percent of the value (as defined in section 851(c)(4)) of whose total assets at the close of the taxable year consists of stock or securities in foreign corporations, and

(2) which meets the requirements of section 852(a) for the taxable year,

may, for such taxable year, elect the application of this section with respect to income, war profits, and excess profits taxes described in section 901(b)(1), which are paid by the investment company during such taxable year to foreign countries and possessions of the United States.

(b) Effect of election

If the election provided in subsection (a) is effective for a taxable year—

(1) the regulated investment company—

(A) shall not, with respect to such taxable year, be allowed a deduction under section 164(a) or a credit under section 901 for taxes to which subsection (a) is applicable, and

(B) shall be allowed as an addition to the dividends paid deduction for such taxable year the amount of such taxes;

(2) each shareholder of such investment company shall—

(A) include in gross income and treat as paid by him his proportionate share of such taxes, and

(B) treat as gross income from sources within the respective foreign countries and possessions of the United States, for purposes of applying subpart A of part III of subchapter N, the sum of his proportionate share of such taxes and the portion of any dividend paid by such investment company which represents income derived from sources within foreign countries or possessions of the United States.

(c) Statements to shareholders

The amounts to be treated by the shareholder, for purposes of subsection (b)(2), as his proportionate share of—

(1) taxes paid to any foreign country or possession of the United States, and

(2) gross income derived from sources within any foreign country or possession of the United States,

shall not exceed the amounts so reported by the company in a written statement furnished to such shareholder.

(d) Manner of making election

The election provided in subsection (a) shall be made in such manner as the Secretary may prescribe by regulations.

(e) Treatment of certain taxes not allowed as a credit under section 901

This section shall not apply to any tax with respect to which the regulated investment company is not allowed a credit under section 901 by reason of subsection (k) or (*l*) of such section.

(f) Cross references

(1) For treatment by shareholders of taxes paid to foreign countries and possessions of the United States, see section 164(a) and section 901.

(2) For definition of foreign corporation, see section 7701(a)(5).

(Aug. 16, 1954, ch. 736, 68A Stat. 272; Pub. L. 88–272, title II, § 229(a)(3), Feb. 26, 1964, 78 Stat. 99; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99–514, title VI, § 655(a)(3), Oct. 22, 1986, 100 Stat. 2299; Pub. L. 105–34, title X, § 1053(b), Aug. 5, 1997, 111 Stat. 943; Pub. L. 105–206, title VI, § 6010(k)(1), (2), July 22, 1998, 112 Stat. 815; Pub. L. 109–135, title IV, § 403(aa)(1), Dec. 21, 2005, 119 Stat. 2630; Pub. L. 111–325, title III, § 301(c), Dec. 22, 2010, 124 Stat. 3544.)

AMENDMENTS

2010—Subsec. (c). Pub. L. 111–325, § 301(c)(1)(B), substituted ''Statements'' for ''Notice'' in heading.

Pub. L. 111–325, § 301(c)(1)(A), which directed amendment by substituting ''so reported by the company in a written statement furnished to such shareholder'' for ''so designated by the company in a written notice mailed to its shareholders not later than 60 days after the close of the taxable year'', was executed by making the substitution for ''so designated by the company in a written notice mailed to its shareholders not later than 60 days after the close of its taxable year'' in concluding provisions to reflect the probable intent of Congress.

Subsec. (d). Pub. L. 111–325, § 301(c)(2), struck out ''and notifying shareholders'' after ''election'' in heading and ''and the notice to shareholders required by subsection (c)'' after ''subsection (a)'' in text.

2005—Subsec. (e). Pub. L. 109–135 amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: ''This section shall not apply to any tax with respect to which the regulated investment company is not allowed a credit under section 901 by reason of section 901(k).''

1998—Subsec. (c). Pub. L. 105–206, § 6010(k)(2), struck out at end ''Such notice shall also include the amount of such taxes which (without regard to the election under this section) would not be allowable as a credit under section 901(a) to the regulated investment company by reason of section 901(k).''

Subsecs. (e), (f). Pub. L. 105–206, § 6010(k)(1), added subsec. (e) and redesignated former subsec. (e) as (f).

1997—Subsec. (c). Pub. L. 105–34 inserted at end ''Such notice shall also include the amount of such taxes which (without regard to the election under this section) would not be allowable as a credit under section 901(a) to the regulated investment company by reason of section 901(k).''

1986—Subsec. (c). Pub. L. 99–514 substituted ''60 days'' for ''45 days''.

1976—Subsec. (d). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1964—Subsec. (c). Pub. L. 88–272 substituted ''45 days'' for ''30 days''.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–325 applicable to taxable years beginning after Dec. 22, 2010, see section 301(h) of Pub. L. 111–325, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1053(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section and section 901 of this title] shall apply to dividends paid or accrued more than 30 days after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Oct. 22, 1986, see section 655(b) of Pub. L. 99–514, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years of regulated investment companies ending on or after Feb. 26, 1964, see section 229(c) of Pub. L. 88–272, set out as a note under section 852 of this title.

§ 853A. Credits from tax credit bonds allowed to shareholders

(a) General rule

A regulated investment company—

(1) which holds (directly or indirectly) one or more tax credit bonds on one or more applicable dates during the taxable year, and

(2) which meets the requirements of section 852(a) for the taxable year,

may elect the application of this section with respect to credits allowable to the investment company during such taxable year with respect to such bonds.

(b) Effect of election

If the election provided in subsection (a) is in effect for any taxable year—

(1) the regulated investment company shall not be allowed any credits to which subsection (a) applies for such taxable year,

(2) the regulated investment company shall—

(A) include in gross income (as interest) for such taxable year an amount equal to the amount that such investment company would have included in gross income with respect to such credits if this section did not apply, and

(B) increase the amount of the dividends paid deduction for such taxable year by the amount of such income, and

(3) each shareholder of such investment company shall—

(A) include in gross income an amount equal to such shareholder's proportionate share of the interest income attributable to such credits, and

(B) be allowed the shareholder's proportionate share of such credits against the tax imposed by this chapter.

(c) Statements to shareholders

For purposes of subsection (b)(3), the shareholder's proportionate share of—

(1) credits described in subsection (a), and

(2) gross income in respect of such credits,

shall not exceed the amounts so reported by the regulated investment company in a written statement furnished to such shareholder.

(d) Manner of making election

The election provided in subsection (a) shall be made in such manner as the Secretary may prescribe.

(e) Definitions and special rules

(1) Definitions

For purposes of this subsection—

(A) Tax credit bond

The term ''tax credit bond'' means—

(i) a qualified tax credit bond (as defined in section 54A(d)),

(ii) a build America bond (as defined in section 54AA(d)), and

(iii) any bond for which a credit is allowable under subpart H of part IV of subchapter A of this chapter.

(B) Applicable date

The term ''applicable date'' means—

(i) in the case of a qualified tax credit bond or a bond described in subparagraph (A)(iii), any credit allowance date (as defined in section 54A(e)(1)), and

(ii) in the case of a build America bond (as defined in section 54AA(d)), any interest payment date (as defined in section 54AA(e)).

(2) Stripped tax credit bonds

If the ownership of a tax credit bond is separated from the credit with respect to such bond, subsection (a) shall be applied by reference to the instruments evidencing the entitlement to the credit rather than the tax credit bond.

(f) Regulations, etc.

The Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this section, including methods for determining a shareholder's proportionate share of credits.

(Added Pub. L. 111–5, div. B, title I, §1541(a), Feb. 17, 2009, 123 Stat. 360; amended Pub. L. 111–325, title III, §301(d), Dec. 22, 2010, 124 Stat. 3544.)

AMENDMENTS

2010—Subsec. (c). Pub. L. 111–325, §301(d)(1), substituted ''Statements'' for ''Notice'' in heading and ''so reported by the regulated investment company in a written statement furnished to such shareholder'' for ''so designated by the regulated investment company in a written notice mailed to its shareholders not later than 60 days after the close of its taxable year'' in concluding provisions.

Subsec. (d). Pub. L. 111–325, §301(d)(2), struck out ''and notifying shareholders'' after ''election'' in heading and ''and the notice to shareholders required by subsection (c)'' after ''subsection (a)'' in text.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–325 applicable to taxable years beginning after Dec. 22, 2010, see section 301(h) of Pub. L. 111–325, set out as a note under section 852 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after Feb. 17, 2009, see section 1541(c) of Pub. L. 111–5, set out as an Effective Date of 2009 Amendment note under section 54 of this title.

§ 854. Limitations applicable to dividends received from regulated investment company

(a) Capital gain dividend

For purposes of section 1(h)(11) (relating to maximum rate of tax on dividends) and section 243 (relating to deductions for dividends received by corporations), a capital gain dividend (as defined in section 852(b)(3)) received from a regulated investment company shall not be considered as a dividend.

(b) Other dividends

(1) Amount treated as dividend

(A) Deduction under section 243

In any case in which—

(i) a dividend is received from a regulated investment company (other than a dividend to which subsection (a) applies), and

(ii) such investment company meets the requirements of section 852(a) for the taxable year during which it paid such dividend,

then, in computing any deduction under section 243, there shall be taken into account only that portion of such dividend reported by the regulated investment company as eligible for such deduction in written statements furnished to its shareholders and such dividend shall be treated as received from a corporation which is not a 20-percent owned corporation.

(B) Maximum rate under section 1(h)

(i) In general

In any case in which—

(I) a dividend is received from a regulated investment company (other than a dividend to which subsection (a) applies),

(II) such investment company meets the requirements of section 852(a) for the taxable year during which it paid such dividend, and

(III) the qualified dividend income of such investment company for such taxable year is less than 95 percent of its gross income,

then, in computing qualified dividend income, there shall be taken into account only that portion of such dividend reported by the regulated investment company as qualified dividend income in written statements furnished to its shareholders.

(ii) Gross income

For purposes of clause (i), in the case of 1 or more sales or other dispositions of stock or securities, the term ''gross income'' includes only the excess of—

(I) the net short-term capital gain from such sales or dispositions, over

(II) the net long-term capital loss from such sales or dispositions.

(C) Limitations

(i) Subparagraph (a)

The aggregate amount which may be reported as dividends under subparagraph (A) shall not exceed the aggregate dividends received by the company for the taxable year.

(ii) Subparagraph (b)

The aggregate amount which may be reported as qualified dividend income under subparagraph (B) shall not exceed the sum of—

(I) the qualified dividend income of the company for the taxable year, and

(II) the amount of any earnings and profits which were distributed by the company for such taxable year and accumulated in a taxable year with respect to which this part did not apply.

(2) Aggregate dividends

For purposes of this subsection—

(A) In general

In computing the amount of aggregate dividends received, there shall only be taken into account dividends received from domestic corporations.

(B) Dividends

For purposes of subparagraph (A), the term ''dividend'' shall not include any distribution from—

(i) a corporation which, for the taxable year of the corporation in which the distribution is made, or for the next preceding taxable year of the corporation, is a corporation exempt from tax under section 501 (relating to certain charitable, etc., organizations) or section 521 (relating to farmers' cooperative associations), or

(ii) a real estate investment trust which, for the taxable year of the trust in which the dividend is paid, qualifies under part II of subchapter M (section 856 and following).

(C) Limitations on dividends from regulated investment companies

In determining the amount of any dividend for purposes of this paragraph, a dividend received from a regulated investment company shall be subject to the limitations prescribed in this section.

(3) Special rule for computing deduction under section 243

For purposes of subparagraph (A) of paragraph (1), an amount shall be treated as a dividend for the purpose of paragraph (1) only if a deduction would have been allowable under section 243 to the regulated investment company determined—

(A) as if section 243 applied to dividends received by a regulated investment company,

(B) after the application of section 246 (but without regard to subsection (b) thereof), and

(C) after the application of section 246A.

(4) Qualified dividend income

For purposes of this subsection, the term ''qualified dividend income'' has the meaning given such term by section 1(h)(11)(B).

(Aug. 16, 1954, ch. 736, 68A Stat. 273; Pub. L. 88–272, title II, §§ 201(d)(8)–(10), 229(a)(4), Feb. 26, 1964, 78 Stat. 32, 99; Pub. L. 96–223, title IV, § 404(b)(6), Apr. 2, 1980, 94 Stat. 307; Pub. L. 97–34, title III, § 302(c)(4), (d)(1), Aug. 13, 1981, 95 Stat. 272, 274; Pub. L. 98–369, div. A, title I, §§ 16(a), 52(a)–(c), July 18, 1984, 98 Stat. 505, 564, 565; Pub. L. 99–514, title VI, §§ 612(b)(6), 655(a)(4), Oct. 22, 1986, 100 Stat. 2250, 2299; Pub. L. 100–203, title X, § 10221(d)(3), Dec. 22, 1987, 101 Stat. 1330–409; Pub. L. 100–647, title I, § 1006(b)(2), Nov. 10, 1988, 102 Stat. 3393; Pub. L. 108–27, title III, § 302(c), May 28, 2003, 117 Stat. 762; Pub. L. 108–311, title IV, § 402(a)(5)(A)–(D), Oct. 4, 2004, 118 Stat. 1184; Pub. L. 111–325, title III, § 301(e), Dec. 22, 2010, 124 Stat. 3544.)

AMENDMENT OF SECTION

For termination of amendment by section 301(i) of Pub. L. 111–325, see Effective and Termination Dates of 2010 Amendment note below.

For termination of amendment by section 303 of Pub. L. 108–27, see Effective and Termination Dates of 2003 Amendment note below.

AMENDMENTS

2010—Subsec. (b)(1)(A). Pub. L. 111–325, § 301(e)(1)(A), in concluding provisions, substituted ''reported by the regulated investment company as eligible for such deduction in written statements furnished to its shareholders'' for ''designated under this subparagraph by the regulated investment company''.

Subsec. (b)(1)(B)(i). Pub. L. 111–325, § 301(e)(1)(B), (i), in concluding provisions, temporarily substituted ''reported by the regulated investment company as qualified dividend income in written statements furnished to its shareholders'' for ''designated by the regulated investment company''. See Effective and Termination Dates of 2010 Amendment note below.

Subsec. (b)(1)(C)(i). Pub. L. 111–325, § 301(e)(1)(C), substituted ''reported'' for ''designated''.

Subsec. (b)(1)(C)(ii). Pub. L. 111–325, § 301(e)(1)(D), (i), temporarily substituted ''reported'' for ''designated'' in introductory provisions. See Effective and Termination Dates of 2010 Amendment note below.

Subsec. (b)(2) to (5). Pub. L. 111–325, § 301(e)(2), redesignated pars. (3) to (5) as (2) to (4), respectively, and struck out former par. (2). Prior to amendment, text read as follows: ''The amount of any distribution by a regulated investment company which may be taken into account as qualified dividend income for purposes of section 1(h)(11) and as dividends for purposes of the deduction under section 243 shall not exceed the amount so designated by the company in a written notice to its shareholders mailed not later than 60 days after the close of its taxable year.''

2004—Subsec. (b)(1)(B)(i). Pub. L. 108–311, § 402(a)(5)(A)(ii), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''If the aggregate dividends received by a regulated investment company during any taxable year are less than 95 percent of its gross income, then, in computing the maximum rate under section 1(h)(11), rules similar to the rules of subparagraph (A) shall apply.''

Subsec. (b)(1)(B)(iii), (iv). Pub. L. 108–311, § 402(a)(5)(A)(i), struck out cls. (iii) and (iv) which related to dividends from real estate investment trusts and dividends from qualified foreign corporations, respectively.

Subsec. (b)(1)(C). Pub. L. 108–311, § 402(a)(5)(B), amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: ''The aggregate amount which may be designated as dividends under subparagraph (A) or (B) shall not exceed the aggregate dividends received by the company for the taxable year.''

Subsec. (b)(2). Pub. L. 108–311, § 402(a)(5)(C), substituted ''as qualified dividend income for purposes of section 1(h)(11) and as dividends for purposes of'' for ''as a dividend for purposes of the maximum rate under section 1(h)(11) and''.

Subsec. (b)(5). Pub. L. 108–311, § 402(a)(5)(D), amended heading and text of par. (5) generally. Prior to amendment, text read as follows: ''For purposes of paragraph (1)(B), an amount shall be treated as a dividend only if the amount is qualified dividend income (within the meaning of section 1(h)(11)(B)).''

2003—Subsec. (a). Pub. L. 108–27, §§ 302(c)(1), 303, temporarily inserted ''section 1(h)(11) (relating to maximum rate of tax on dividends) and'' after ''For purposes of''. See Effective and Termination Dates of 2003 Amendment note below.

Subsec. (b)(1)(B). Pub. L. 108–27, §§ 302(c)(2), 303, temporarily added subpar. (B). Former subpar. (B) redesignated (C). See Effective and Termination Dates of 2003 Amendment note below.

Subsec. (b)(1)(C). Pub. L. 108–27, §§ 302(c)(2), (3), 303, temporarily redesignated subpar. (B) as (C) and substituted ''subparagraph (A) or (B)'' for ''subparagraph (A)''. See Effective and Termination Dates of 2003 Amendment note below.

Subsec. (b)(2). Pub. L. 108–27, §§ 302(c)(4), 303, temporarily inserted ''the maximum rate under section 1(h)(11) and'' after ''for purposes of''. See Effective and Termination Dates of 2003 Amendment note below.

Subsec. (b)(5). Pub. L. 108–27, §§ 302(c)(5), 303, temporarily added par. (5). See Effective and Termination Dates of 2003 Amendment note below.

1988—Subsec. (b)(3). Pub. L. 100–647 substituted ''Aggregate dividends'' for ''Definitions'' in heading and amended text generally, substituting subpars. (A) to (C) for former subpars. (A) and (B).

1987—Subsec. (b)(1)(A). Pub. L. 100–203 inserted ''and such dividend shall be treated as received from a corporation which is not a 20-percent owned corporation'' before period at end.

1986—Subsec. (a). Pub. L. 99–514, § 612(b)(6)(A), which directed that ''section 116 (relating to an exclusion for dividends received by individuals), and'' be struck out, was executed by striking out ''section 116 (relating to an exclusion for dividends received by individuals) and'' before ''section 243'' as the probable intent of Congress.

Subsec. (b)(1)(B), (C). Pub. L. 99–514, § 612(b)(6)(B)(i), (ii), redesignated subpar. (C) as (B), struck out ''or (B)'' before ''shall not exceed'', and struck out former subpar. (B), exclusion under section 116, which read as follows: ''If the aggregate dividends received by a regulated investment company during any taxable year are less than 95 percent of its gross income, then, in computing the exclusion under section 116, rules similar to the rules of subparagraph (A) shall apply.''

Subsec. (b)(2). Pub. L. 99–514, § 655(a)(4), substituted ''60 days'' for ''45 days''.

Pub. L. 99–514, § 612(b)(6)(B)(iii), struck out ''the exclusion under section 116 and'' before ''the deduction under section 243''.

Subsec. (b)(3)(B). Pub. L. 99–514, § 612(b)(6)(B)(iv), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The term 'aggregate dividends received' includes only dividends received from domestic corporations other than dividends described in section 116(b) (relating to dividends excluded from gross income). In determining the amount of any dividend for purposes of this subparagraph, the rules provided in section 116(c) (relating to certain distributions) shall apply.''

1984—Subsec. (b). Pub. L. 98–369, § 16(a), repealed amendments made by Pub. L. 97–34, § 302(c). See 1981 Amendment note below.

Subsec. (b)(1). Pub. L. 98–369, § 52(a), increased the required amount of dividends by substituting provisions directing that in any case in which (i) a dividend is received from a regulated investment company (other than a dividend to which subsection (a) applies), and (ii) such investment company meets the requirements of section 852(a) for the taxable year during which it paid such dividend, then, in computing any deduction under section 243, there shall be taken into account only that portion of such dividend thus designated by the regulated investment company, that if the aggregate dividends received by a regulated investment company during any taxable year are less than 95 percent of its gross income, then, in computing the exclusion under section 116, similar rules applied, and that the aggregate amount which may be designated thus dividends shall not exceed the aggregate dividends received by the company for the taxable year for provisions which had directed that in the case of a dividend received from a regulated investment company (other than a dividend to which subsection (a) applied) (A) if such investment company met the requirements of section 852(a) for the taxable year during which it paid such dividend; and (B) the aggregate dividends received by such company during such taxable year were less than 75 percent of its gross income, then, in computing the exclusion under section 116 and the deduction under section 243, there was taken into account only that portion of the dividend which bore the same ratio to the amount of such dividend as the aggregate dividends received by such company during such taxable year to its gross income for such taxable year.

Subsec. (b)(3)(A). Pub. L. 98–369, § 52(c), substituted provisions directing that in the case of 1 or more sales or other dispositions of stock and securities, the term ''gross income'' include only the excess of (i) the net short-term capital gain from such sales or dispositions, over (ii) the net long-term capital loss from such sales or dispositions for provisions which had directed that the term ''gross income'' not include gain from the sale or other disposition of stock or securities.

Subsec. (b)(4). Pub. L. 98–369, § 52(b), added par. (4).

1981—Subsec. (b). Pub. L. 97–34, § 302(c)(4), (d)(1), provided for general amendment of subsec. (b) so as to include provisions relating to taxable interest described in section 128 of this title, applicable to taxable years beginning after Dec. 31, 1984. Section 16(a) of Pub. L. 98–369, repealed section 302(c) of Pub. L. 97–34, and provided that this title shall be applied and administered as if section 302(c), and the amendments made by section 302(c), had not been enacted.

1980—Subsec. (b). Pub. L. 96–223, § 404(b)(6), temporarily substituted ''Other dividends and taxable interest'' for ''Other dividends'' in heading, substituted ''Deduction under section 243'' for ''General rule'' in heading for par. (1), struck out ''the exclusion under section 116 and'' after ''in computing'' in text of par. (1) following subpar. (B), added par. (2), redesignated former pars. (2) and (3) as (3) and (4), respectively, and, in par. (4) as so redesignated, substituted ''116(b)(2)'' for ''116(b)'' and ''116(c)(2)'' for ''116(c)'' in subpar. (B) and added subpar. (C).

1964—Subsec. (a). Pub. L. 88–272, § 201(d)(8), struck out ''section 34(a) (relating to credit for dividends received by individuals),'' before ''section 116'' and the comma before ''and''.

Subsec. (b). Pub. L. 88–272, §§ 201(d)(9), (10), 229(a)(4), substituted ''45 days'' for ''30 days'' in par. (2), and struck out ''the credit under section 34(a),'' before ''the exclusion'' in par. (1), and ''the credit under section 34,'' before ''the exclusion'' in par. (2).

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Amendment by Pub. L. 111–325 applicable to taxable years beginning after Dec. 22, 2010, see section 301(h) of Pub. L. 111–325, set out as an Effective Date of 2010 Amendment note under section 852 of this title.

Pub. L. 111–325, title III, § 301(i), Dec. 22, 2010, 124 Stat. 3547, provided that: ''Section 303 of the Jobs and

Growth Tax Relief Reconciliation Act of 2003 [Pub. L. 108–27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title] shall apply to the amendments made by subparagraphs (B) and (D) of subsection (e)(1) [amending this section] to the same extent and in the same manner as section 303 of such Act applies to the amendments made by section 302 of such Act [amending this section and sections 1, 163, 301, 306, 338, 467, 531, 541, 584, 702, 857, 1255, and 1257 of this title and repealing section 341 of this title].''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 effective as if included in section 302 of the Jobs and Growth Tax Relief Reconciliation Act of 2003, Pub. L. 108–27, see section 402(b) of Pub. L. 108–311, set out a note under section 1 of this title.

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as a note under section 1 of this title.

Amendment by Pub. L. 108–27 inapplicable to taxable years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 303 of Pub. L. 108–27, as amended, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to dividends received or accrued after Dec. 31, 1987, in taxable years ending after such date, see section 10221(e)(1) of Pub. L. 100–203, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 612(b)(6) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 612(c) of Pub. L. 99–514, set out as a note under section 301 of this title.

Amendment by section 655(a)(4) of Pub. L. 99–514 applicable to taxable years beginning after Oct. 22, 1986, see section 655(b) of Pub. L. 99–514, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 16(a) of Pub. L. 98–369 applicable to taxable years ending after Dec. 31, 1983, see section 18(a) of Pub. L. 98–369, set out as a note under section 48 of this title.

Section 52(d) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years of regulated investment companies beginning after the date of the enactment of this Act [July 18, 1984].''

EFFECTIVE AND TERMINATION DATES OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 applicable with respect to taxable years beginning after Dec. 31, 1980, and before Jan. 1, 1982, see section 404(c) of Pub. L. 96–223, set out as a note under section 265 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 201(d)(8)–(10) of Pub. L. 88–272 applicable to dividends received after Dec. 31, 1964, in taxable years ending after such date, see section 201(e) of Pub. L. 88–272, set out as a note under section 22 of this title.

Amendment by section 229(a)(4) of Pub. L. 88–272 applicable to taxable years of regulated investment companies ending on or after Feb. 26, 1964, see section 229(c) of Pub. L. 88–272, set out as a note under section 852 of this title.

QUALIFIED DIVIDEND NOTICE PERIOD

Pub. L. 108–311, title IV, § 402(a)(5)(F), Oct. 4, 2004, 118 Stat. 1185, provided that: ''With respect to any taxable year of a regulated investment company or real estate investment trust ending on or before November 30, 2003, the period for providing notice of the qualified dividend amount to shareholders under [former, as to 854(b)(2)] sections 854(b)(2) and 857(c)(2)(C) of the Internal Revenue Code of 1986, as amended by this section, shall not expire before the date on which the statement under section 6042(c) of such Code is required to be furnished with respect to the last calendar year beginning in such taxable year.''

§ 855. Dividends paid by regulated investment company after close of taxable year

(a) General rule

For purposes of this chapter, if a regulated investment company—

(1) declares a dividend before the later of—

(A) the 15th day of the 9th month following the close of the taxable year, or

(B) in the case of an extension of time for filing the company's return for the taxable year, the due date for filing such return taking into account such extension, and

(2) distributes the amount of such dividend to shareholders in the 12-month period following the close of such taxable year and not later than the date of the first dividend payment of the same type of dividend made after such declaration,

the amount so declared and distributed shall, to the extent the company elects in such return in accordance with regulations prescribed by the Secretary, be considered as having been paid during such taxable year, except as provided in subsections (b) and (c). For purposes of paragraph (2), a dividend attributable to any short-term capital gain with respect to which a notice is required under the Investment Company Act of 1940 shall be treated as the same type of dividend as a capital gain dividend.

(b) Receipt by shareholder

Except as provided in section 852(b)(7), amounts to which subsection (a) is applicable shall be treated as received by the shareholder in the taxable year in which the distribution is made.

(c) Foreign tax election

If an investment company to which section 853 is applicable for the taxable year makes a distribution as provided in subsection (a) of this section, the shareholders shall consider the amounts described in section 853(b)(2) allocable to such distribution as paid or received, as the case may be, in the taxable year in which the distribution is made.

(Aug. 16, 1954, ch. 736, 68A Stat. 274; Pub. L. 86–779, § 10(b)(2), Sept. 14, 1960, 74 Stat. 1009; Pub. L. 88–272, title II, § 229(a)(5), Feb. 26, 1964, 78 Stat. 99; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99–514, title VI, §§ 651(b)(1)(B), 655(a)(5), Oct. 22, 1986, 100 Stat.

2296, 2299; Pub. L. 100–647, title I, §1006(*l*)(1)(B), Nov. 10, 1988, 102 Stat. 3413; Pub. L. 111–325, title III, §§301(g), 304(a)–(c), Dec. 22, 2010, 124 Stat. 3547–3549.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (a), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–325, §304(c), in concluding provisions, inserted at end ''For purposes of paragraph (2), a dividend attributable to any short-term capital gain with respect to which a notice is required under the Investment Company Act of 1940 shall be treated as the same type of dividend as a capital gain dividend.''

Pub. L. 111–325, §301(g)(2), substituted ''and (c)'' for '', (c) and (d)'' in concluding provisions.

Subsec. (a)(1). Pub. L. 111–325, §304(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''declares a dividend prior to the time prescribed by law for the filing of its return for a taxable year (including the period of any extension of time granted for filing such return), and''.

Subsec. (a)(2). Pub. L. 111–325, §304(b), substituted ''the first dividend payment of the same type of dividend'' for ''the first regular dividend payment''.

Subsecs. (c), (d). Pub. L. 111–325, §301(g)(1), redesignated subsec. (d) as (c) and struck out former subsec. (c). Text of former subsec. (c) read as follows: ''In the case of amounts to which subsection (a) is applicable, any notice to shareholders required under this part with respect to such amounts shall be made not later than 60 days after the close of the taxable year in which the distribution is made.''

1988—Subsec. (b). Pub. L. 100–647 substituted ''section 852(b)(7)'' for ''section 852(b)(6)''.

1986—Subsec. (b). Pub. L. 99–514, §651(b)(1)(B), substituted ''Except as provided in section 852(b)(6), amounts'' for ''Amounts''.

Subsec. (c). Pub. L. 99–514, §655(a)(5), substituted ''60 days'' for ''45 days''.

1976—Subsec. (a). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1964—Subsec. (c). Pub. L. 88–272 substituted ''45 days'' for ''30 days''.

1960—Subsec. (c). Pub. L. 86–779 substituted ''this part'' for ''this subchapter''.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 301(g) of Pub. L. 111–325 applicable to taxable years beginning after Dec. 22, 2010, see section 301(h) of Pub. L. 111–325, set out as a note under section 852 of this title.

Pub. L. 111–325, title III, §304(d), Dec. 22, 2010, 124 Stat. 3549, provided that: ''The amendments made by this section [amending this section] shall apply to distributions in taxable years beginning after the date of the enactment of this Act [Dec. 22, 2010].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 651(b)(1)(B) of Pub. L. 99–514 applicable to calendar years beginning after Dec. 31, 1986, see section 651(d) of Pub. L. 99–514, set out as an Effective Date note under section 4982 of this title.

Amendment by section 655(a)(5) of Pub. L. 99–514 applicable to taxable years beginning after Oct. 22, 1986, see section 655(b) of Pub. L. 99–514, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years of regulated investment companies ending on or after Feb. 26, 1964, see section 229(c) of Pub. L. 88–272, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–779 applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86–779, set out as an Effective Date note under section 856 of this title.

PART II—REAL ESTATE INVESTMENT TRUSTS

Sec.
856. Definition of real estate investment trust.
857. Taxation of real estate investment trusts and their beneficiaries.
858. Dividends paid by real estate investment trust after close of taxable year.
859. Adoption of annual accounting period.

AMENDMENTS

1978—Pub. L. 95–600, title III, §362(d)(7), Nov. 6, 1978, 92 Stat. 2852, substituted in item 859 ''Adoption of annual accounting period'' for ''Deduction of deficiency dividends'' and struck out item 860 ''Adoption of annual accounting period''.

1976—Pub. L. 94–455, title XVI, §§1601(a)(2), 1604(i)(2), Oct. 4, 1976, 90 Stat. 1745, 1752, added items 859 and 860.

1960—Pub. L. 86–779, §10(a), Sept. 14, 1960, 74 Stat. 1003, added part II analysis.

§ 856. Definition of real estate investment trust

(a) In general

For purposes of this title, the term ''real estate investment trust'' means a corporation, trust, or association—

(1) which is managed by one or more trustees or directors;

(2) the beneficial ownership of which is evidenced by transferable shares, or by transferable certificates of beneficial interest;

(3) which (but for the provisions of this part) would be taxable as a domestic corporation;

(4) which is neither (A) a financial institution referred to in section 582(c)(2), nor (B) an insurance company to which subchapter L applies;

(5) the beneficial ownership of which is held by 100 or more persons;

(6) subject to the provisions of subsection (k), which is not closely held (as determined under subsection (h)); and

(7) which meets the requirements of subsection (c).

(b) Determination of status

The conditions described in paragraphs (1) to (4), inclusive, of subsection (a) must be met during the entire taxable year, and the condition described in paragraph (5) must exist during at least 335 days of a taxable year of 12 months, or during a proportionate part of a taxable year of less than 12 months.

(c) Limitations

A corporation, trust, or association shall not be considered a real estate investment trust for any taxable year unless—

(1) it files with its return for the taxable year an election to be a real estate investment trust or has made such election for a previous taxable year, and such election has not been terminated or revoked under subsection (g);

(2) at least 95 percent (90 percent for taxable years beginning before January 1, 1980) of its gross income (excluding gross income from prohibited transactions) is derived from—

(A) dividends;

(B) interest;

(C) rents from real property;

(D) gain from the sale or other disposition of stock, securities, and real property (including interests in real property and interests in mortgages on real property) which is not property described in section 1221(a)(1);

(E) abatements and refunds of taxes on real property;

(F) income and gain derived from foreclosure property (as defined in subsection (e));

(G) amounts (other than amounts the determination of which depends in whole or in part on the income or profits of any person) received or accrued as consideration for entering into agreements (i) to make loans secured by mortgages on real property or on interests in real property or (ii) to purchase or lease real property (including interests in real property and interests in mortgages on real property);

(H) gain from the sale or other disposition of a real estate asset which is not a prohibited transaction solely by reason of section 857(b)(6); and

(I) mineral royalty income earned in the first taxable year beginning after the date of the enactment of this subparagraph from real property owned by a timber real estate investment trust and held, or once held, in connection with the trade or business of producing timber by such real estate investment trust;

(3) at least 75 percent of its gross income (excluding gross income from prohibited transactions) is derived from—

(A) rents from real property;

(B) interest on obligations secured by mortgages on real property or on interests in real property;

(C) gain from the sale or other disposition of real property (including interests in real property and interests in mortgages on real property) which is not property described in section 1221(a)(1);

(D) dividends or other distributions on, and gain (other than gain from prohibited transactions) from the sale or other disposition of, transferable shares (or transferable certificates of beneficial interest) in other real estate investment trusts which meet the requirements of this part;

(E) abatements and refunds of taxes on real property;

(F) income and gain derived from foreclosure property (as defined in subsection (e));

(G) amounts (other than amounts the determination of which depends in whole or in part on the income or profits of any person) received or accrued as consideration for entering into agreements (i) to make loans secured by mortgages on real property or on interests in real property or (ii) to purchase or lease real property (including interests in real property and interests in mortgages on real property);

(H) gain from the sale or other disposition of a real estate asset which is not a prohibited transaction solely by reason of section 857(b)(6); and

(I) qualified temporary investment income; and

(4) at the close of each quarter of the taxable year—

(A) at least 75 percent of the value of its total assets is represented by real estate assets, cash and cash items (including receivables), and Government securities; and

(B)(i) not more than 25 percent of the value of its total assets is represented by securities (other than those includible under subparagraph (A)),

(ii) not more than 25 percent of the value of its total assets is represented by securities of one or more taxable REIT subsidiaries,[1]

(iii) except with respect to a taxable REIT subsidiary and securities includible under subparagraph (A)—

(I) not more than 5 percent of the value of its total assets is represented by securities of any one issuer,

(II) the trust does not hold securities possessing more than 10 percent of the total voting power of the outstanding securities of any one issuer, and

(III) the trust does not hold securities having a value of more than 10 percent of the total value of the outstanding securities of any one issuer.

A real estate investment trust which meets the requirements of this paragraph at the close of any quarter shall not lose its status as a real estate investment trust because of a discrepancy during a subsequent quarter between the value of its various investments and such requirements (including a discrepancy caused solely by the change in the foreign currency exchange rate used to value a foreign asset) unless such discrepancy exists immediately after the acquisition of any security or other property and is wholly or partly the result of such acquisition. A real estate investment trust which does not meet such requirements at the close of any quarter by reason of a discrepancy existing immediately after the acquisition of any security or other property which is wholly or partly the result of such acquisition during such quarter shall not lose its status for such quarter as a real estate investment trust if such discrepancy is eliminated within 30 days after the close of such quarter and in such cases it shall be considered to have met such requirements at the close of such quarter for purposes of applying the preceding sentence.

(5) For purposes of this part—

[1] So in original. Probably should be followed by ''and''.

(A) The term ''value'' means, with respect to securities for which market quotations are readily available, the market value of such securities; and with respect to other securities and assets, fair value as determined in good faith by the trustees, except that in the case of securities of real estate investment trusts such fair value shall not exceed market value or asset value, whichever is higher.

(B) The term ''real estate assets'' means real property (including interests in real property and interests in mortgages on real property) and shares (or transferable certificates of beneficial interest) in other real estate investment trusts which meet the requirements of this part. Such term also includes any property (not otherwise a real estate asset) attributable to the temporary investment of new capital, but only if such property is stock or a debt instrument, and only for the 1-year period beginning on the date the real estate trust receives such capital.

(C) The term ''interests in real property'' includes fee ownership and co-ownership of land or improvements thereon, leaseholds of land or improvements thereon, options to acquire land or improvements thereon, and options to acquire leaseholds of land or improvements thereon, but does not include mineral, oil, or gas royalty interests.

(D) QUALIFIED TEMPORARY INVESTMENT INCOME.—

(i) IN GENERAL.—The term ''qualified temporary investment income'' means any income which—

(I) is attributable to stock or a debt instrument (within the meaning of section 1275(a)(1)),

(II) is attributable to the temporary investment of new capital, and

(III) is received or accrued during the 1-year period beginning on the date on which the real estate investment trust receives such capital.

(ii) NEW CAPITAL.—The term ''new capital'' means any amount received by the real estate investment trust—

(I) in exchange for stock (or certificates of beneficial interests) in such trust (other than amounts received pursuant to a dividend reinvestment plan), or

(II) in a public offering of debt obligations of such trust which have maturities of at least 5 years.

(E) A regular or residual interest in a REMIC shall be treated as a real estate asset, and any amount includible in gross income with respect to such an interest shall be treated as interest on an obligation secured by a mortgage on real property; except that, if less than 95 percent of the assets of such REMIC are real estate assets (determined as if the real estate investment trust held such assets), such real estate investment trust shall be treated as holding directly (and as receiving directly) its proportionate share of the assets and income of the REMIC. For purposes of determining whether any interest in a REMIC qualifies under the preceding sentence, any interest held by such REMIC in another REMIC shall be treated as a real estate asset under principles similar to the principles of the preceding sentence, except that, if such REMIC's are part of a tiered structure, they shall be treated as one REMIC for purposes of this subparagraph.

(F) All other terms shall have the same meaning as when used in the Investment Company Act of 1940, as amended (15 U.S.C. 80a–1 and following).

(G) TREATMENT OF CERTAIN HEDGING INSTRUMENTS.—Except to the extent as determined by the Secretary—

(i) any income of a real estate investment trust from a hedging transaction (as defined in clause (ii) or (iii) of section 1221(b)(2)(A)) which is clearly identified pursuant to section 1221(a)(7), including gain from the sale or disposition of such a transaction, shall not constitute gross income under paragraphs (2) and (3) to the extent that the transaction hedges any indebtedness incurred or to be incurred by the trust to acquire or carry real estate assets, and

(ii) any income of a real estate investment trust from a transaction entered into by the trust primarily to manage risk of currency fluctuations with respect to any item of income or gain described in paragraph (2) or (3) (or any property which generates such income or gain), including gain from the termination of such a transaction, shall not constitute gross income under paragraphs (2) and (3), but only if such transaction is clearly identified as such before the close of the day on which it was acquired, originated, or entered into (or such other time as the Secretary may prescribe).

(H) TREATMENT OF TIMBER GAINS.—

(i) IN GENERAL.—Gain from the sale of real property described in paragraph (2)(D) and (3)(C) shall include gain which is—

(I) recognized by an election under section 631(a) from timber owned by the real estate investment trust, the cutting of which is provided by a taxable REIT subsidiary of the real estate investment trust;

(II) recognized under section 631(b); or

(III) income which would constitute gain under subclause (I) or (II) but for the failure to meet the 1-year holding period requirement.

(ii) SPECIAL RULES.—

(I) For purposes of this subtitle, cut timber, the gain from which is recognized by a real estate investment trust pursuant to an election under section 631(a) described in clause (i)(I) or so much of clause (i)(III) as relates to clause (i)(I), shall be deemed to be sold to the taxable REIT subsidiary of the real estate investment trust on the first day of the taxable year.

(II) For purposes of this subtitle, income described in this subparagraph shall not be treated as gain from the sale of property described in section 1221(a)(1).

(iii) TERMINATION.—This subparagraph shall not apply to dispositions after the termination date.

(I) TIMBER REAL ESTATE INVESTMENT TRUST.—The term ''timber real estate investment trust'' means a real estate investment trust in which more than 50 percent in value of its total assets consists of real property held in connection with the trade or business of producing timber.

(J) SECRETARIAL AUTHORITY TO EXCLUDE OTHER ITEMS OF INCOME.—To the extent necessary to carry out the purposes of this part, the Secretary is authorized to determine, solely for purposes of this part, whether any item of income or gain which—

(i) does not otherwise qualify under paragraph (2) or (3) may be considered as not constituting gross income for purposes of paragraphs (2) or (3), or

(ii) otherwise constitutes gross income not qualifying under paragraph (2) or (3) may be considered as gross income which qualifies under paragraph (2) or (3).

(K) CASH.—If the real estate investment trust or its qualified business unit (as defined in section 989) uses any foreign currency as its functional currency (as defined in section 985(b)), the term ''cash'' includes such foreign currency but only to the extent such foreign currency—

(i) is held for use in the normal course of the activities of the trust or qualified business unit which give rise to items of income or gain described in paragraph (2) or (3) of subsection (c) or are directly related to acquiring or holding assets described in subsection (c)(4), and

(ii) is not held in connection with an activity described in subsection (n)(4).

(6) A corporation, trust, or association which fails to meet the requirements of paragraph (2) or (3), or of both such paragraphs, for any taxable year shall nevertheless be considered to have satisfied the requirements of such paragraphs for such taxable year if—

(A) following the corporation, trust, or association's identification of the failure to meet the requirements of paragraph (2) or (3), or of both such paragraphs, for any taxable year, a description of each item of its gross income described in such paragraphs is set forth in a schedule for such taxable year filed in accordance with regulations prescribed by the Secretary, and

(B) the failure to meet the requirements of paragraph (2) or (3), or of both such paragraphs, is due to reasonable cause and not due to willful neglect.

(7) RULES OF APPLICATION FOR FAILURE TO SATISFY PARAGRAPH (4).—

(A) IN GENERAL.—A corporation, trust, or association that fails to meet the requirements of paragraph (4) (other than a failure to meet the requirements of paragraph (4)(B)(iii) which is described in subparagraph (B)(i) of this paragraph) for a particular quarter shall nevertheless be considered to have satisfied the requirements of such paragraph for such quarter if—

(i) following the corporation, trust, or association's identification of the failure to satisfy the requirements of such paragraph for a particular quarter, a description of each asset that causes the corporation, trust, or association to fail to satisfy the requirements of such paragraph at the close of such quarter of any taxable year is set forth in a schedule for such quarter filed in accordance with regulations prescribed by the Secretary,

(ii) the failure to meet the requirements of such paragraph for a particular quarter is due to reasonable cause and not due to willful neglect, and

(iii)(I) the corporation, trust, or association disposes of the assets set forth on the schedule specified in clause (i) within 6 months after the last day of the quarter in which the corporation, trust or association's identification of the failure to satisfy the requirements of such paragraph occurred or such other time period prescribed by the Secretary and in the manner prescribed by the Secretary, or

(II) the requirements of such paragraph are otherwise met within the time period specified in subclause (I).

(B) RULE FOR CERTAIN DE MINIMIS FAILURES.—A corporation, trust, or association that fails to meet the requirements of paragraph (4)(B)(iii) for a particular quarter shall nevertheless be considered to have satisfied the requirements of such paragraph for such quarter if—

(i) such failure is due to the ownership of assets the total value of which does not exceed the lesser of—

(I) 1 percent of the total value of the trust's assets at the end of the quarter for which such measurement is done, and

(II) $10,000,000, and

(ii)(I) the corporation, trust, or association, following the identification of such failure, disposes of assets in order to meet the requirements of such paragraph within 6 months after the last day of the quarter in which the corporation, trust or association's identification of the failure to satisfy the requirements of such paragraph occurred or such other time period prescribed by the Secretary and in the manner prescribed by the Secretary, or

(II) the requirements of such paragraph are otherwise met within the time period specified in subclause (I).

(C) TAX.—

(i) TAX IMPOSED.—If subparagraph (A) applies to a corporation, trust, or association for any taxable year, there is hereby imposed on such corporation, trust, or association a tax in an amount equal to the greater of—

(I) $50,000, or

(II) the amount determined (pursuant to regulations promulgated by the Secretary) by multiplying the net income generated by the assets described in the schedule specified in subparagraph (A)(i) for the period specified in clause (ii) by the highest rate of tax specified in section 11.

(ii) PERIOD.—For purposes of clause (i)(II), the period described in this clause is the period beginning on the first date that the failure to satisfy the requirements of such paragraph (4) occurs as a result of the ownership of such assets and ending on the earlier of the date on which the trust disposes of such assets or the end of the first quarter when there is no longer a failure to satisfy such paragraph (4).

(iii) ADMINISTRATIVE PROVISIONS.—For purposes of subtitle F, the taxes imposed by this subparagraph shall be treated as excise taxes with respect to which the deficiency procedures of such subtitle apply.

(8) TERMINATION DATE.—For purposes of this subsection, the term ''termination date'' means, with respect to any taxpayer, the last day of the taxpayer's first taxable year beginning after the date of the enactment of this paragraph and before the date that is 1 year after such date of enactment.

(d) Rents from real property defined

(1) Amounts included

For purposes of paragraphs (2) and (3) of subsection (c), the term ''rents from real property'' includes (subject to paragraph (2))—

(A) rents from interests in real property,

(B) charges for services customarily furnished or rendered in connection with the rental of real property, whether or not such charges are separately stated, and

(C) rent attributable to personal property which is leased under, or in connection with, a lease of real property, but only if the rent attributable to such personal property for the taxable year does not exceed 15 percent of the total rent for the taxable year attributable to both the real and personal property leased under, or in connection with, such lease.

For purposes of subparagraph (C), with respect to each lease of real property, rent attributable to personal property for the taxable year is that amount which bears the same ratio to total rent for the taxable year as the average of the fair market values of the personal property at the beginning and at the end of the taxable year bears to the average of the aggregate fair market values of both the real property and the personal property at the beginning and at the end of such taxable year.

(2) Amounts excluded

For purposes of paragraphs (2) and (3) of subsection (c), the term ''rents from real property'' does not include—

(A) except as provided in paragraphs (4) and (6), any amount received or accrued, directly or indirectly, with respect to any real or personal property, if the determination of such amount depends in whole or in part on the income or profits derived by any person from such property (except that any amount so received or accrued shall not be excluded from the term ''rents from real property'' solely by reason of being based on a fixed percentage or percentages of receipts or sales);

(B) except as provided in paragraph (8), any amount received or accrued directly or indirectly from any person if the real estate investment trust owns, directly or indirectly—

(i) in the case of any person which is a corporation, stock of such person possessing 10 percent or more of the total combined voting power of all classes of stock entitled to vote, or 10 percent or more of the total value of shares of all classes of stock of such person; or

(ii) in the case of any person which is not a corporation, an interest of 10 percent or more in the assets or net profits of such person; and

(C) any impermissible tenant service income (as defined in paragraph (7)).

(3) Independent contractor defined

For purposes of this subsection and subsection (e), the term ''independent contractor'' means any person—

(A) who does not own, directly or indirectly, more than 35 percent of the shares, or certificates of beneficial interest, in the real estate investment trust; and

(B) if such person is a corporation, not more than 35 percent of the total combined voting power of whose stock (or 35 percent of the total shares of all classes of whose stock), or, if such person is not a corporation, not more than 35 percent of the interest in whose assets or net profits is owned, directly or indirectly, by one or more persons owning 35 percent or more of the shares or certificates of beneficial interest in the trust.

In the event that any class of stock of either the real estate investment trust or such person is regularly traded on an established securities market, only persons who own, directly or indirectly, more than 5 percent of such class of stock shall be taken into account as owning any of the stock of such class for purposes of applying the 35 percent limitation set forth in subparagraph (B) (but all of the outstanding stock of such class shall be considered outstanding in order to compute the denominator for purpose of determining the applicable percentage of ownership).

(4) Special rule for certain contingent rents

Where a real estate investment trust receives or accrues, with respect to real or personal property, any amount which would be excluded from the term ''rents from real property'' solely because the tenant of the real estate investment trust receives or accrues, directly or indirectly, from subtenants any amount the determination of which depends in whole or in part on the income or profits derived by any person from such property, only

a proportionate part (determined pursuant to regulations prescribed by the Secretary) of the amount received or accrued by the real estate investment trust from that tenant will be excluded from the term ''rents from real property''.

(5) Constructive ownership of stock

For purposes of this subsection, the rules prescribed by section 318(a) for determining the ownership of stock shall apply in determining the ownership of stock, assets, or net profits of any person; except that—

(A) ''10 percent'' shall be substituted for ''50 percent'' in subparagraph (C) of paragraphs (2) and (3) of section 318(a), and

(B) section 318(a)(3)(A) shall be applied in the case of a partnership by taking into account only partners who own (directly or indirectly) 25 percent or more of the capital interest, or the profits interest, in the partnership.

(6) Special rule for certain property subleased by tenant of real estate investment trusts

(A) In general

If—

(i) a real estate investment trust receives or accrues, with respect to real or personal property, amounts from a tenant which derives substantially all of its income with respect to such property from the subleasing of substantially all of such property, and

(ii) a portion of the amount such tenant receives or accrues, directly or indirectly, from subtenants consists of qualified rents,

then the amounts which the trust receives or accrues from the tenant shall not be excluded from the term ''rents from real property'' by reason of being based on the income or profits of such tenant to the extent the amounts so received or accrued are attributable to qualified rents received or accrued by such tenant.

(B) Qualified rents

For purposes of subparagraph (A), the term ''qualified rents'' means any amount which would be treated as rents from real property if received by the real estate investment trust.

(7) Impermissible tenant service income

For purposes of paragraph (2)(C)—

(A) In general

The term ''impermissible tenant service income'' means, with respect to any real or personal property, any amount received or accrued directly or indirectly by the real estate investment trust for—

(i) services furnished or rendered by the trust to the tenants of such property, or

(ii) managing or operating such property.

(B) Disqualification of all amounts where more than de minimis amount

If the amount described in subparagraph (A) with respect to a property for any taxable year exceeds 1 percent of all amounts received or accrued during such taxable year directly or indirectly by the real estate investment trust with respect to such property, the impermissible tenant service income of the trust with respect to the property shall include all such amounts.

(C) Exceptions

For purposes of subparagraph (A)—

(i) services furnished or rendered, or management or operation provided, through an independent contractor from whom the trust itself does not derive or receive any income or through a taxable REIT subsidiary of such trust shall not be treated as furnished, rendered, or provided by the trust, and

(ii) there shall not be taken into account any amount which would be excluded from unrelated business taxable income under section 512(b)(3) if received by an organization described in section 511(a)(2).

(D) Amount attributable to impermissible services

For purposes of subparagraph (A), the amount treated as received for any service (or management or operation) shall not be less than 150 percent of the direct cost of the trust in furnishing or rendering the service (or providing the management or operation).

(E) Coordination with limitations

For purposes of paragraphs (2) and (3) of subsection (c), amounts described in subparagraph (A) shall be included in the gross income of the corporation, trust, or association.

(8) Special rule for taxable REIT subsidiaries

For purposes of this subsection, amounts paid to a real estate investment trust by a taxable REIT subsidiary of such trust shall not be excluded from rents from real property by reason of paragraph (2)(B) if the requirements of either of the following subparagraphs are met:

(A) Limited rental exception

(i) In general

The requirements of this subparagraph are met with respect to any property if at least 90 percent of the leased space of the property is rented to persons other than taxable REIT subsidiaries of such trust and other than persons described in paragraph (2)(B).

(ii) Rents must be substantially comparable

Clause (i) shall apply only to the extent that the amounts paid to the trust as rents from real property (as defined in paragraph (1) without regard to paragraph (2)(B)) from such property are substantially comparable to such rents paid by the other tenants of the trust's property for comparable space.

(iii) Times for testing rent comparability

The substantial comparability requirement of clause (ii) shall be treated as met with respect to a lease to a taxable REIT

subsidiary of the trust if such requirement is met under the terms of the lease—

(I) at the time such lease is entered into,

(II) at the time of each extension of the lease, including a failure to exercise a right to terminate, and

(III) at the time of any modification of the lease between the trust and the taxable REIT subsidiary if the rent under such lease is effectively increased pursuant to such modification.

With respect to subclause (III), if the taxable REIT subsidiary of the trust is a controlled taxable REIT subsidiary of the trust, the term ''rents from real property'' shall not in any event include rent under such lease to the extent of the increase in such rent on account of such modification.

(iv) Controlled taxable REIT subsidiary

For purposes of clause (iii), the term ''controlled taxable REIT subsidiary'' means, with respect to any real estate investment trust, any taxable REIT subsidiary of such trust if such trust owns directly or indirectly—

(I) stock possessing more than 50 percent of the total voting power of the outstanding stock of such subsidiary, or

(II) stock having a value of more than 50 percent of the total value of the outstanding stock of such subsidiary.

(v) Continuing qualification based on third party actions

If the requirements of clause (i) are met at a time referred to in clause (iii), such requirements shall continue to be treated as met so long as there is no increase in the space leased to any taxable REIT subsidiary of such trust or to any person described in paragraph (2)(B).

(vi) Correction period

If there is an increase referred to in clause (v) during any calendar quarter with respect to any property, the requirements of clause (iii) shall be treated as met during the quarter and the succeeding quarter if such requirements are met at the close of such succeeding quarter.

(B) Exception for certain lodging facilities and health care property

The requirements of this subparagraph are met with respect to an interest in real property which is a qualified lodging facility (as defined in paragraph (9)(D)) or a qualified health care property (as defined in subsection (e)(6)(D)(i)) leased by the trust to a taxable REIT subsidiary of the trust if the property is operated on behalf of such subsidiary by a person who is an eligible independent contractor. For purposes of this section, a taxable REIT subsidiary is not considered to be operating or managing a qualified health care property or qualified lodging facility solely because it—

(i) directly or indirectly possesses a license, permit, or similar instrument enabling it to do so, or

(ii) employs individuals working at such facility or property located outside the United States, but only if an eligible independent contractor is responsible for the daily supervision and direction of such individuals on behalf of the taxable REIT subsidiary pursuant to a management agreement or similar service contract.

(9) Eligible independent contractor

For purposes of paragraph (8)(B)—

(A) In general

The term ''eligible independent contractor'' means, with respect to any qualified lodging facility or qualified health care property (as defined in subsection (e)(6)(D)(i)), any independent contractor if, at the time such contractor enters into a management agreement or other similar service contract with the taxable REIT subsidiary to operate such qualified lodging facility or qualified health care property, such contractor (or any related person) is actively engaged in the trade or business of operating qualified lodging facilities or qualified health care properties, respectively, for any person who is not a related person with respect to the real estate investment trust or the taxable REIT subsidiary.

(B) Special rules

Solely for purposes of this paragraph and paragraph (8)(B), a person shall not fail to be treated as an independent contractor with respect to any qualified lodging facility or qualified health care property (as so defined) by reason of the following:

(i) The taxable REIT subsidiary bears the expenses for the operation of such qualified lodging facility or qualified health care property pursuant to the management agreement or other similar service contract.

(ii) The taxable REIT subsidiary receives the revenues from the operation of such qualified lodging facility or qualified health care property, net of expenses for such operation and fees payable to the operator pursuant to such agreement or contract.

(iii) The real estate investment trust receives income from such person with respect to another property that is attributable to a lease of such other property to such person that was in effect as of the later of—

(I) January 1, 1999, or

(II) the earliest date that any taxable REIT subsidiary of such trust entered into a management agreement or other similar service contract with such person with respect to such qualified lodging facility or qualified health care property.

(C) Renewals, etc., of existing leases

For purposes of subparagraph (B)(iii)—

(i) a lease shall be treated as in effect on January 1, 1999, without regard to its renewal after such date, so long as such renewal is pursuant to the terms of such

lease as in effect on whichever of the dates under subparagraph (B)(iii) is the latest, and

(ii) a lease of a property entered into after whichever of the dates under subparagraph (B)(iii) is the latest shall be treated as in effect on such date if—

(I) on such date, a lease of such property from the trust was in effect, and

(II) under the terms of the new lease, such trust receives a substantially similar or lesser benefit in comparison to the lease referred to in subclause (I).

(D) Qualified lodging facility

For purposes of this paragraph—

(i) In general

The term ''qualified lodging facility'' means any lodging facility unless wagering activities are conducted at or in connection with such facility by any person who is engaged in the business of accepting wagers and who is legally authorized to engage in such business at or in connection with such facility.

(ii) Lodging facility

The term ''lodging facility'' means a—

(I) hotel,

(II) motel, or

(III) other establishment more than one-half of the dwelling units in which are used on a transient basis.

(iii) Customary amenities and facilities

The term ''lodging facility'' includes customary amenities and facilities operated as part of, or associated with, the lodging facility so long as such amenities and facilities are customary for other properties of a comparable size and class owned by other owners unrelated to such real estate investment trust.

(E) Operate includes manage

References in this paragraph to operating a property shall be treated as including a reference to managing the property.

(F) Related person

Persons shall be treated as related to each other if such persons are treated as a single employer under subsection (a) or (b) of section 52.

(e) Special rules for foreclosure property

(1) Foreclosure property defined

For purposes of this part, the term ''foreclosure property'' means any real property (including interests in real property), and any personal property incident to such real property, acquired by the real estate investment trust as the result of such trust having bid in such property at foreclosure, or having otherwise reduced such property to ownership or possession by agreement or process of law, after there was default (or default was imminent) on a lease of such property or on an indebtedness which such property secured. Such term does not include property acquired by the real estate investment trust as a result of indebtedness arising from the sale or other disposition of property of the trust described in section 1221(a)(1) which was not originally acquired as foreclosure property.

(2) Grace period

Except as provided in paragraph (3), property shall cease to be foreclosure property with respect to the real estate investment trust as of the close of the 3d taxable year following the taxable year in which the trust acquired such property.

(3) Extensions

If the real estate investment trust establishes to the satisfaction of the Secretary that an extension of the grace period is necessary for the orderly liquidation of the trust's interests in such property, the Secretary may grant one extension of the grace period for such property. Any such extension shall not extend the grace period beyond the close of the 3d taxable year following the last taxable year in the period under paragraph (2).

(4) Termination of grace period in certain cases

Any foreclosure property shall cease to be such on the first day (occurring on or after the day on which the real estate investment trust acquired the property) on which—

(A) a lease is entered into with respect to such property which, by its terms, will give rise to income which is not described in subsection (c)(3) (other than subparagraph (F) of such subsection), or any amount is received or accrued, directly or indirectly, pursuant to a lease entered into on or after such day which is not described in such subsection,

(B) any construction takes place on such property (other than completion of a building, or completion of any other improvement, where more than 10 percent of the construction of such building or other improvement was completed before default became imminent), or

(C) if such day is more than 90 days after the day on which such property was acquired by the real estate investment trust and the property is used in a trade or business which is conducted by the trust (other than through an independent contractor (within the meaning of section (d)(3)) from whom the trust itself does not derive or receive any income).

For purposes of subparagraph (C), property shall not be treated as used in a trade or business by reason of any activities of the real estate investment trust with respect to such property to the extent that such activities would not result in amounts received or accrued, directly or indirectly, with respect to such property being treated as other than rents from real property.

(5) Taxpayer must make election

Property shall be treated as foreclosure property for purposes of this part only if the real estate investment trust so elects (in the manner provided in regulations prescribed by the Secretary) on or before the due date (including any extensions of time) for filing its return of tax under this chapter for the tax-

able year in which such trust acquires such property. A real estate investment trust may revoke any such election for a taxable year by filing the revocation (in the manner provided by the Secretary) on or before the due date (including any extension of time) for filing its return of tax under this chapter for the taxable year. If a trust revokes an election for any property, no election may be made by the trust under this paragraph with respect to the property for any subsequent taxable year.

(6) Special rule for qualified health care properties

For purposes of this subsection—

(A) Acquisition at expiration of lease

The term ''foreclosure property'' shall include any qualified health care property acquired by a real estate investment trust as the result of the termination of a lease of such property (other than a termination by reason of a default, or the imminence of a default, on the lease).

(B) Grace period

In the case of a qualified health care property which is foreclosure property solely by reason of subparagraph (A), in lieu of applying paragraphs (2) and (3)—

(i) the qualified health care property shall cease to be foreclosure property as of the close of the second taxable year after the taxable year in which such trust acquired such property, and

(ii) if the real estate investment trust establishes to the satisfaction of the Secretary that an extension of the grace period in clause (i) is necessary to the orderly leasing or liquidation of the trust's interest in such qualified health care property, the Secretary may grant one or more extensions of the grace period for such qualified health care property.

Any such extension shall not extend the grace period beyond the close of the 6th year after the taxable year in which such trust acquired such qualified health care property.

(C) Income from independent contractors

For purposes of applying paragraph (4)(C) with respect to qualified health care property which is foreclosure property by reason of subparagraph (A) or paragraph (1), income derived or received by the trust from an independent contractor shall be disregarded to the extent such income is attributable to—

(i) any lease of property in effect on the date the real estate investment trust acquired the qualified health care property (without regard to its renewal after such date so long as such renewal is pursuant to the terms of such lease as in effect on such date), or

(ii) any lease of property entered into after such date if—

(I) on such date, a lease of such property from the trust was in effect, and

(II) under the terms of the new lease, such trust receives a substantially similar or lesser benefit in comparison to the lease referred to in subclause (I).

(D) Qualified health care property

(i) In general

The term ''qualified health care property'' means any real property (including interests therein), and any personal property incident to such real property, which—

(I) is a health care facility, or

(II) is necessary or incidental to the use of a health care facility.

(ii) Health care facility

For purposes of clause (i), the term ''health care facility'' means a hospital, nursing facility, assisted living facility, congregate care facility, qualified continuing care facility (as defined in section 7872(g)(4)), or other licensed facility which extends medical or nursing or ancillary services to patients and which, immediately before the termination, expiration, default, or breach of the lease of or mortgage secured by such facility, was operated by a provider of such services which was eligible for participation in the medicare program under title XVIII of the Social Security Act with respect to such facility.

(f) Interest

(1) In general

For purposes of paragraphs (2)(B) and (3)(B) of subsection (c), the term ''interest'' does not include any amount received or accrued, directly or indirectly, if the determination of such amount depends in whole or in part on the income or profits of any person except that—

(A) any amount so received or accrued shall not be excluded from the term ''interest'' solely by reason of being based on a fixed percentage or percentages of receipts or sales, and

(B) where a real estate investment trust receives any amount which would be excluded from the term ''interest'' solely because the debtor of the real estate investment trust receives or accrues any amount the determination of which depends in whole or in part on the income or profits of any person, only a proportionate part (determined pursuant to regulations prescribed by the Secretary) of the amount received or accrued by the real estate investment trust from the debtor will be excluded from the term ''interest''.

(2) Special rule

If—

(A) a real estate investment trust receives or accrues with respect to an obligation secured by a mortgage on real property or an interest in real property amounts from a debtor which derives substantially all of its gross income with respect to such property (not taking into account any gain on any disposition) from the leasing of substantially all of its interests in such property to tenants, and

(B) a portion of the amount which such debtor receives or accrues, directly or indirectly, from tenants consists of qualified rents (as defined in subsection (d)(6)(B)),

then the amounts which the trust receives or accrues from such debtor shall not be excluded from the term ''interest'' by reason of being based on the income or profits of such debtor to the extent the amounts so received are attributable to qualified rents received or accrued by such debtor.

(g) Termination of election

(1) Failure to qualify

An election under subsection (c)(1) made by a corporation, trust, or association shall terminate if the corporation, trust, or association is not a real estate investment trust to which the provisions of this part apply for the taxable year with respect to which the election is made, or for any succeeding taxable year unless paragraph (5) applies. Such termination shall be effective for the taxable year for which the corporation, trust, or association is not a real estate investment trust to which the provisions of this part apply, and for all succeeding taxable years.

(2) Revocation

An election under subsection (c)(1) made by a corporation, trust, or association may be revoked by it for any taxable year after the first taxable year for which the election is effective. A revocation under this paragraph shall be effective for the taxable year in which made and for all succeeding taxable years. Such revocation must be made on or before the 90th day after the first day of the first taxable year for which the revocation is to be effective. Such revocation shall be made in such manner as the Secretary shall prescribe by regulations.

(3) Election after termination or revocation

Except as provided in paragraph (4), if a corporation, trust, or association has made an election under subsection (c)(1) and such election has been terminated or revoked under paragraph (1) or paragraph (2), such corporation, trust, or association (and any successor corporation, trust, or association) shall not be eligible to make an election under subsection (c)(1) for any taxable year prior to the fifth taxable year which begins after the first taxable year for which such termination or revocation is effective.

(4) Exception

If the election of a corporation, trust, or association has been terminated under paragraph (1), paragraph (3) shall not apply if—

(A) the corporation, trust, or association does not willfully fail to file within the time prescribed by law an income tax return for the taxable year with respect to which the termination of the election under subsection (c)(1) occurs;

(B) the inclusion of any incorrect information in the return referred to in subparagraph (A) is not due to fraud with intent to evade tax; and

(C) the corporation, trust, or association establishes to the satisfaction of the Secretary that its failure to qualify as a real estate investment trust to which the provisions of this part apply is due to reasonable cause and not due to willful neglect.

(5) Entities to which paragraph applies

This paragraph applies to a corporation, trust, or association—

(A) which is not a real estate investment trust to which the provisions of this part apply for the taxable year due to one or more failures to comply with one or more of the provisions of this part (other than paragraph (2), (3), or (4) of subsection (c)),

(B) such failures are due to reasonable cause and not due to willful neglect, and

(C) if such corporation, trust, or association pays (as prescribed by the Secretary in regulations and in the same manner as tax) a penalty of $50,000 for each failure to satisfy a provision of this part due to reasonable cause and not willful neglect.

(h) Closely held determinations

(1) Section 542(a)(2) applied

(A) In general

For purposes of subsection (a)(6), a corporation, trust, or association is closely held if the stock ownership requirement of section 542(a)(2) is met.

(B) Waiver of partnership attribution, etc.

For purposes of subparagraph (A)—

(i) paragraph (2) of section 544(a) shall be applied as if such paragraph did not contain the phrase ''or by or for his partner'', and

(ii) sections 544(a)(4)(A) and 544(b)(1) shall be applied by substituting ''the entity meet the stock ownership requirement of section 542(a)(2)'' for ''the corporation a personal holding company''.

(2) Subsections (a)(5) and (6) not to apply to 1st year

Paragraphs (5) and (6) of subsection (a) shall not apply to the 1st taxable year for which an election is made under subsection (c)(1) by any corporation, trust, or association.

(3) Treatment of trusts described in section 401(a)

(A) Look-thru treatment

(i) In general

Except as provided in clause (ii), in determining whether the stock ownership requirement of section 542(a)(2) is met for purposes of paragraph (1)(A), any stock held by a qualified trust shall be treated as held directly by its beneficiaries in proportion to their actuarial interests in such trust and shall not be treated as held by such trust.

(ii) Certain related trusts not eligible

Clause (i) shall not apply to any qualified trust if one or more disqualified persons (as defined in section 4975(e)(2), without regard to subparagraphs (B) and (I) thereof) with respect to such qualified trust hold in the aggregate 5 percent or more in value of the interests in the real estate investment trust and such real estate investment trust has accumulated earnings and profits attributable to any period for which it did not qualify as a real estate investment trust.

(B) Coordination with personal holding company rules

If any entity qualifies as a real estate investment trust for any taxable year by reason of subparagraph (A), such entity shall not be treated as a personal holding company for such taxable year for purposes of part II of subchapter G of this chapter.

(C) Treatment for purposes of unrelated business tax

If any qualified trust holds more than 10 percent (by value) of the interests in any pension-held REIT at any time during a taxable year, the trust shall be treated as having for such taxable year gross income from an unrelated trade or business in an amount which bears the same ratio to the aggregate dividends paid (or treated as paid) by the REIT to the trust for the taxable year of the REIT with or within which the taxable year of the trust ends (the ''REIT year'') as—

(i) the gross income (less direct expenses related thereto) of the REIT for the REIT year from unrelated trades or businesses (determined as if the REIT were a qualified trust), bears to

(ii) the gross income (less direct expenses related thereto) of the REIT for the REIT year.

This subparagraph shall apply only if the ratio determined under the preceding sentence is at least 5 percent.

(D) Pension-held REIT

The purposes of subparagraph (C)—

(i) In general

A real estate investment trust is a pension-held REIT if such trust would not have qualified as a real estate investment trust but for the provisions of this paragraph and if such trust is predominantly held by qualified trusts.

(ii) Predominantly held

For purposes of clause (i), a real estate investment trust is predominantly held by qualified trusts if—

(I) at least 1 qualified trust holds more than 25 percent (by value) of the interests in such real estate investment trust, or

(II) 1 or more qualified trusts (each of whom own more than 10 percent by value of the interests in such real estate investment trust) hold in the aggregate more than 50 percent (by value) of the interests in such real estate investment trust.

(E) Qualified trust

For purposes of this paragraph, the term ''qualified trust'' means any trust described in section 401(a) and exempt from tax under section 501(a).

(i) Treatment of certain wholly owned subsidiaries

(1) In general

For purposes of this title—

(A) a corporation which is a qualified REIT subsidiary shall not be treated as a separate corporation, and

(B) all assets, liabilities, and items of income, deduction, and credit of a qualified REIT subsidiary shall be treated as assets, liabilities, and such items (as the case may be) of the real estate investment trust.

(2) Qualified REIT subsidiary

For purposes of this subsection, the term ''qualified REIT subsidiary'' means any corporation if 100 percent of the stock of such corporation is held by the real estate investment trust. Such term shall not include a taxable REIT subsidiary.

(3) Treatment of termination of qualified subsidiary status

For purposes of this subtitle, if any corporation which was a qualified REIT subsidiary ceases to meet the requirements of paragraph (2), such corporation shall be treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) immediately before such cessation from the real estate investment trust in exchange for its stock.

(j) Treatment of shared appreciation mortgages

(1) In general

Solely for purposes of subsection (c) of this section and section 857(b)(6), any income derived from a shared appreciation provision shall be treated as gain recognized on the sale of the secured property.

(2) Treatment of income

For purposes of applying subsection (c) of this section and section 857(b)(6) to any income described in paragraph (1)—

(A) the real estate investment trust shall be treated as holding the secured property for the period during which it held the shared appreciation provision (or, if shorter, for the period during which the secured property was held by the person holding such property), and

(B) the secured property shall be treated as property described in section 1221(a)(1) if it is so described in the hands of the person holding the secured property (or it would be so described if held by the real estate investment trust).

(3) Coordination with prohibited transactions safe harbor

For purposes of section 857(b)(6)(C)—

(A) the real estate investment trust shall be treated as having sold the secured property when it recognizes any income described in paragraph (1), and

(B) any expenditures made by any holder of the secured property shall be treated as made by the real estate investment trust.

(4) Coordination with 4-year holding period

(A) In general

For purposes of section 857(b)(6)(C), if a real estate investment trust is treated as having sold secured property under paragraph (3)(A), the trust shall be treated as having held such property for at least 4 years if—

(i) the secured property is sold or otherwise disposed of pursuant to a case under title 11 of the United States Code,

(ii) the seller is under the jurisdiction of the court in such case, and

(iii) the disposition is required by the court or is pursuant to a plan approved by the court.

(B) Exception

Subparagraph (A) shall not apply if—

(i) the secured property was acquired by the seller with the intent to evict or foreclose, or

(ii) the trust knew or had reason to know that default on the obligation described in paragraph (5)(A) would occur.

(5) Definitions

For purposes of this subsection—

(A) Shared appreciation provision

The term ''shared appreciation provision'' means any provision—

(i) which is in connection with an obligation which is held by the real estate investment trust and is secured by an interest in real property, and

(ii) which entitles the real estate investment trust to receive a specified portion of any gain realized on the sale or exchange of such real property (or of any gain which would be realized if the property were sold on a specified date) or appreciation in value as of any specified date.

(B) Secured property

The term ''secured property'' means the real property referred to in subparagraph (A).

(k) Requirement that entity not be closely held treated as met in certain cases

A corporation, trust, or association—

(1) which for a taxable year meets the requirements of section 857(f)(1), and

(2) which does not know, or exercising reasonable diligence would not have known, whether the entity failed to meet the requirement of subsection (a)(6),

shall be treated as having met the requirement of subsection (a)(6) for the taxable year.

***(l)* Taxable REIT subsidiary**

For purposes of this part—

(1) In general

The term ''taxable REIT subsidiary'' means, with respect to a real estate investment trust, a corporation (other than a real estate investment trust) if—

(A) such trust directly or indirectly owns stock in such corporation, and

(B) such trust and such corporation jointly elect that such corporation shall be treated as a taxable REIT subsidiary of such trust for purposes of this part.

Such an election, once made, shall be irrevocable unless both such trust and corporation consent to its revocation. Such election, and any revocation thereof, may be made without the consent of the Secretary.

(2) Thirty-five percent ownership in another taxable REIT subsidiary

The term ''taxable REIT subsidiary'' includes, with respect to any real estate investment trust, any corporation (other than a real estate investment trust) with respect to which a taxable REIT subsidiary of such trust owns directly or indirectly—

(A) securities possessing more than 35 percent of the total voting power of the outstanding securities of such corporation, or

(B) securities having a value of more than 35 percent of the total value of the outstanding securities of such corporation.

The preceding sentence shall not apply to a qualified REIT subsidiary (as defined in subsection (i)(2)). For purposes of subparagraph (B), securities described in subsection (m)(2)(A) shall not be taken into account.

(3) Exceptions

The term ''taxable REIT subsidiary'' shall not include—

(A) any corporation which directly or indirectly operates or manages a lodging facility or a health care facility, and

(B) any corporation which directly or indirectly provides to any other person (under a franchise, license, or otherwise) rights to any brand name under which any lodging facility or health care facility is operated.

Subparagraph (B) shall not apply to rights provided to an eligible independent contractor to operate or manage a lodging facility or a health care facility if such rights are held by such corporation as a franchisee, licensee, or in a similar capacity and such lodging facility or health care facility is either owned by such corporation or is leased to such corporation from the real estate investment trust.

(4) Definitions

For purposes of paragraph (3)—

(A) Lodging facility

The term ''lodging facility'' has the meaning given to such term by subsection (d)(9)(D)(ii).

(B) Health care facility

The term ''health care facility'' has the meaning given to such term by subsection (e)(6)(D)(ii).

(m) Safe harbor in applying subsection (c)(4)

(1) In general

In applying subclause (III) of subsection (c)(4)(B)(iii), except as otherwise determined by the Secretary in regulations, the following shall not be considered securities held by the trust:

(A) Straight debt securities of an issuer which meet the requirements of paragraph (2).

(B) Any loan to an individual or an estate.

(C) Any section 467 rental agreement (as defined in section 467(d)), other than with a person described in subsection (d)(2)(B).

(D) Any obligation to pay rents from real property (as defined in subsection (d)(1)).

(E) Any security issued by a State or any political subdivision thereof, the District of Columbia, a foreign government or any political subdivision thereof, or the Commonwealth of Puerto Rico, but only if the deter-

mination of any payment received or accrued under such security does not depend in whole or in part on the profits of any entity not described in this subparagraph or payments on any obligation issued by such an entity,

(F) Any security issued by a real estate investment trust.

(G) Any other arrangement as determined by the Secretary.

(2) Special rules relating to straight debt securities

(A) In general

For purposes of paragraph (1)(A), securities meet the requirements of this paragraph if such securities are straight debt, as defined in section 1361(c)(5) (without regard to subparagraph (B)(iii) thereof).

(B) Special rules relating to certain contingencies

For purposes of subparagraph (A), any interest or principal shall not be treated as failing to satisfy section 1361(c)(5)(B)(i) solely by reason of the fact that—

(i) the time of payment of such interest or principal is subject to a contingency, but only if—

(I) any such contingency does not have the effect of changing the effective yield to maturity, as determined under section 1272, other than a change in the annual yield to maturity which does not exceed the greater of ¼ of 1 percent or 5 percent of the annual yield to maturity, or

(II) neither the aggregate issue price nor the aggregate face amount of the issuer's debt instruments held by the trust exceeds $1,000,000 and not more than 12 months of unaccrued interest can be required to be prepaid thereunder, or

(ii) the time or amount of payment is subject to a contingency upon a default or the exercise of a prepayment right by the issuer of the debt, but only if such contingency is consistent with customary commercial practice.

(C) Special rules relating to corporate or partnership issuers

In the case of an issuer which is a corporation or a partnership, securities that otherwise would be described in paragraph (1)(A) shall be considered not to be so described if the trust holding such securities and any of its controlled taxable REIT subsidiaries (as defined in subsection (d)(8)(A)(iv)) hold any securities of the issuer which—

(i) are not described in paragraph (1) (prior to the application of this subparagraph), and

(ii) have an aggregate value greater than 1 percent of the issuer's outstanding securities determined without regard to paragraph (3)(A)(i).

(3) Look-through rule for partnership securities

(A) In general

For purposes of applying subclause (III) of subsection (c)(4)(B)(iii)—

(i) a trust's interest as a partner in a partnership (as defined in section 7701(a)(2)) shall not be considered a security, and

(ii) the trust shall be deemed to own its proportionate share of each of the assets of the partnership.

(B) Determination of trust's interest in partnership assets

For purposes of subparagraph (A), with respect to any taxable year beginning after the date of the enactment of this subparagraph—

(i) the trust's interest in the partnership assets shall be the trust's proportionate interest in any securities issued by the partnership (determined without regard to subparagraph (A)(i) and paragraph (4), but not including securities described in paragraph (1)), and

(ii) the value of any debt instrument shall be the adjusted issue price thereof, as defined in section 1272(a)(4).

(4) Certain partnership debt instruments not treated as a security

For purposes of applying subclause (III) of subsection (c)(4)(B)(iii)—

(A) any debt instrument issued by a partnership and not described in paragraph (1) shall not be considered a security to the extent of the trust's interest as a partner in the partnership, and

(B) any debt instrument issued by a partnership and not described in paragraph (1) shall not be considered a security if at least 75 percent of the partnership's gross income (excluding gross income from prohibited transactions) is derived from sources referred to in subsection (c)(3).

(5) Secretarial guidance

The Secretary is authorized to provide guidance (including through the issuance of a written determination, as defined in section 6110(b)) that an arrangement shall not be considered a security held by the trust for purposes of applying subclause (III) of subsection (c)(4)(B)(iii) notwithstanding that such arrangement otherwise could be considered a security under subparagraph (F) of subsection (c)(5).

(6) Transition rule

(A) In general

Notwithstanding paragraph (2)(C), securities held by a trust shall not be considered securities held by the trust for purposes of subsection (c)(4)(B)(iii)(III) during any period beginning on or before October 22, 2004, if such securities—

(i) are held by such trust continuously during such period, and

(ii) would not be taken into account for purposes of such subsection by reason of paragraph (7)(C) of subsection (c) (as in effect on October 22, 2004) if the amendments made by section 243 of the American Jobs Creation Act of 2004 had never been enacted.

(B) Rule not to apply to securities held after maturity date

Subparagraph (A) shall not apply with respect to any security after the later of October 22, 2004, or the latest maturity date under the contract (as in effect on October 22, 2004) taking into account any renewal or extension permitted under the contract if such renewal or extension does not significantly modify any other terms of the contract.

(C) Successors

If the successor of a trust to which this paragraph applies acquires securities in a transaction to which section 381 applies, such trusts shall be treated as a single entity for purposes of determining the holding period of such securities under subparagraph (A).

(n) Rules regarding foreign currency transactions

(1) In general

For purposes of this part—

(A) passive foreign exchange gain for any taxable year shall not constitute gross income for purposes of subsection (c)(2), and

(B) real estate foreign exchange gain for any taxable year shall not constitute gross income for purposes of subsection (c)(3).

(2) Real estate foreign exchange gain

For purposes of this subsection, the term ''real estate foreign exchange gain'' means—

(A) foreign currency gain (as defined in section 988(b)(1)) which is attributable to—

(i) any item of income or gain described in subsection (c)(3),

(ii) the acquisition or ownership of obligations secured by mortgages on real property or on interests in real property (other than foreign currency gain attributable to any item of income or gain described in clause (i)), or

(iii) becoming or being the obligor under obligations secured by mortgages on real property or on interests in real property (other than foreign currency gain attributable to any item of income or gain described in clause (i)),

(B) section 987 gain attributable to a qualified business unit (as defined by section 989) of the real estate investment trust, but only if such qualified business unit meets the requirements under—

(i) subsection (c)(3) for the taxable year, and

(ii) subsection (c)(4)(A) at the close of each quarter that the real estate investment trust has directly or indirectly held the qualified business unit, and

(C) any other foreign currency gain as determined by the Secretary.

(3) Passive foreign exchange gain

For purposes of this subsection, the term ''passive foreign exchange gain'' means—

(A) real estate foreign exchange gain,

(B) foreign currency gain (as defined in section 988(b)(1)) which is not described in subparagraph (A) and which is attributable to—

(i) any item of income or gain described in subsection (c)(2),

(ii) the acquisition or ownership of obligations (other than foreign currency gain attributable to any item of income or gain described in clause (i)), or

(iii) becoming or being the obligor under obligations (other than foreign currency gain attributable to any item of income or gain described in clause (i)), and

(C) any other foreign currency gain as determined by the Secretary.

(4) Exception for income from substantial and regular trading

Notwithstanding this subsection or any other provision of this part, any section 988 gain derived by a corporation, trust, or association from dealing, or engaging in substantial and regular trading, in securities (as defined in section 475(c)(2)) shall constitute gross income which does not qualify under paragraph (2) or (3) of subsection (c). This paragraph shall not apply to income which does not constitute gross income by reason of subsection (c)(5)(G).

(Added Pub. L. 86–779, §10(a), Sept. 14, 1960, 74 Stat. 1004; amended Pub. L. 88–272, title II, §225(k)(4), Feb. 26, 1964, 78 Stat. 94; Pub. L. 88–554, §4(b)(4), Aug. 31, 1964, 78 Stat. 763; Pub. L. 93–625, §6(a), (b), (d)(1), Jan. 3, 1975, 88 Stat. 2112–2114; Pub. L. 94–455, title XIV, §1402(b)(1)(O), (2), title XVI, §§1602(a), 1603(a), (c)(1)–(4), 1604(a)–(c)(1), (d)–(f)(3)(A), (g), (k)(1), (2)(A), title XIX, §§1901(a)(111), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1732, 1746, 1748–1753, 1783, 1834; Pub. L. 95–600, title III, §363(a), (c), title VII, §701(t)(2), Nov. 6, 1978, 92 Stat. 2852, 2853, 2912; Pub. L. 98–369, div. A, title X, §1001(b)(12), (e), July 18, 1984, 98 Stat. 1011, 1012; Pub. L. 99–514, title VI, §§661(a), 662, 663, 671(b)(1), title IX, §901(d)(4)(E), Oct. 22, 1986, 100 Stat. 2299, 2300, 2302, 2317, 2380; Pub. L. 100–647, title I, §1006(p)(1), (3), (4)(A), (5), (q), (t)(11), Nov. 10, 1988, 102 Stat. 3416, 3417, 3422; Pub. L. 103–66, title XIII, §13149(a), Aug. 10, 1993, 107 Stat. 445; Pub. L. 104–188, title I, §§1621(b)(5), 1704(t)(35), Aug. 20, 1996, 110 Stat. 1867, 1889; Pub. L. 105–34, title XII, §§1251(b)–1253, 1255(a), (b)(1), 1257, 1258, 1261, 1262, Aug. 5, 1997, 111 Stat. 1031–1036; Pub. L. 106–170, title V, §§532(c)(2)(H)–(K), 541–542(b)(3)(A)(i), (B)(i), 543, 551(a), 561(a), Dec. 17, 1999, 113 Stat. 1930, 1940–1943, 1948, 1949; Pub. L. 106–554, §1(a)(7) [title III, §319(9), (10)], Dec. 21, 2000, 114 Stat. 2763, 2763A–646; Pub. L. 108–357, title II, §243(a), (b), (d), (f)(1)–(3), title VIII, §835(b)(4), Oct. 22, 2004, 118 Stat. 1439, 1441–1444, 1593; Pub. L. 109–135, title IV, §§403(d)(1), (2), 412(hh), Dec. 21, 2005, 119 Stat. 2620, 2622, 2639; Pub. L. 110–172, §§9(b), 11(a)(18), Dec. 29, 2007, 121 Stat. 2484, 2486; Pub. L. 110–234, title XV, §§15312(a), (b), 15313(a), (b), 15314(a), May 22, 2008, 122 Stat. 1503, 1504; Pub. L. 110–246, §4(a), title XV, §§15312(a), (b), 15313(a), (b), 15314(a), June 18, 2008, 122 Stat. 1664, 2265, 2266; Pub. L. 110–289, div. C, title II, §§3031, 3032, 3041, 3061, July 30, 2008, 122 Stat. 2897, 2899–2901.)

REFERENCES IN TEXT

The date of the enactment of this subparagraph, referred to in subsec. (c)(2)(I), is the date of enactment of Pub. L. 110–246, which was approved June 18, 2008.

The Investment Company Act of 1940, referred to in subsec. (c)(5)(F), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§ 80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

The date of the enactment of this paragraph and such date of enactment, referred to in subsec. (c)(8), is the date of enactment of Pub. L. 110–246, which was approved June 18, 2008.

The Social Security Act, referred to in subsec. (e)(6)(D)(ii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The date of the enactment of this subparagraph, referred to in subsec. (m)(3)(B), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

Section 243 of the American Jobs Creation Act of 2004, referred to in subsec. (m)(6)(A)(ii), is section 243 of Pub. L. 108–357, which amended this section and sections 857 and 860 of this title and enacted provisions set out as a note under this section.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Subsec. (c)(2)(I). Pub. L. 110–246, § 15313(a), added subpar. (I).

Subsec. (c)(4). Pub. L. 110–289, § 3032(a), inserted ''(including a discrepancy caused solely by the change in the foreign currency exchange rate used to value a foreign asset)'' after ''such requirements'' in first sentence of concluding provisions.

Subsec. (c)(4)(B)(ii). Pub. L. 110–289, § 3041, substituted ''than 25 percent'' for ''than 20 percent'' and ''REIT subsidiaries,'' for ''REIT subsidiaries (in the case of a quarter which closes on or before the termination date, 25 percent in the case of a timber real estate investment trust), and''.

Pub. L. 110–246, § 15314(a), inserted ''(in the case of a quarter which closes on or before the termination date, 25 percent in the case of a timber real estate investment trust)'' after ''REIT subsidiaries''.

Subsec. (c)(5)(G). Pub. L. 110–289, § 3031(b), amended subpar. (G) generally. Prior to amendment, text read as follows: ''Except to the extent provided by regulations, any income of a real estate investment trust from a hedging transaction (as defined in clause (ii) or (iii) of section 1221(b)(2)(A)) which is clearly identified pursuant to section 1221(a)(7), including gain from the sale or disposition of such a transaction, shall not constitute gross income under paragraph (2) to the extent that the transaction hedges any indebtedness incurred or to be incurred by the trust to acquire or carry real estate assets.''

Subsec. (c)(5)(H). Pub. L. 110–246, § 15312(a), added subpar. (H).

Subsec. (c)(5)(I). Pub. L. 110–246, § 15313(b), added subpar. (I).

Subsec. (c)(5)(J). Pub. L. 110–289, § 3031(c), added subpar. (J).

Subsec. (c)(5)(K). Pub. L. 110–289, § 3032(b), added subpar. (K).

Subsec. (c)(8). Pub. L. 110–246, § 15312(b), added par. (8).

Subsec. (d)(8)(B). Pub. L. 110–289, § 3061(a), amended subpar. (B) generally. Prior to amendment, text read as follows: ''The requirements of this subparagraph are met with respect to an interest in real property which is a qualified lodging facility leased by the trust to a taxable REIT subsidiary of the trust if the property is operated on behalf of such subsidiary by a person who is an eligible independent contractor.''

Subsec. (d)(9)(A), (B). Pub. L. 110–289, § 3061(b), amended subpars. (A) and (B) generally. Prior to amendment, subpar. (A) defined ''eligible independent contractor'' with respect to any qualified lodging facility and subpar. (B) set forth reasons by which a person would not fail to be treated as an independent contractor with respect to any qualified lodging facility.

Subsec. (*l*)(3). Pub. L. 110–289, § 3061(c), inserted ''or a health care facility'' after ''a lodging facility'' and ''or health care facility'' after ''such lodging facility'' in concluding provisions.

Subsec. (n). Pub. L. 110–289, § 3031(a), added subsec. (n).

2007—Subsec. (d)(9)(D)(ii). Pub. L. 110–172, § 9(b), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'lodging facility' means a hotel, motel, or other establishment more than one-half of the dwelling units in which are used on a transient basis.''

Subsec. (*l*)(2). Pub. L. 110–172, § 11(a)(18), in concluding provisions, inserted last sentence and struck out former last sentence which read as follows: ''The rule of section 856(c)(7) shall apply for purposes of subparagraph (B).''

2005—Subsec. (c)(7). Pub. L. 109–135, § 403(d)(1), reenacted heading without change and amended text generally. Prior to amendment, text consisted of subpars. (A) to (C) relating to rules of application for a corporation, trust, or association that fails to satisfy the requirements of paragraph (4) of this subsection.

Subsec. (g)(5)(A). Pub. L. 109–135, § 412(hh), substituted ''paragraph (2), (3), or (4) of subsection (c)'' for ''subsection (c)(6) or (c)(7) of section 856''.

Subsec. (m)(6). Pub. L. 109–135, § 403(d)(2), added par. (6).

2004—Subsec. (c)(5)(E). Pub. L. 108–357, § 835(b)(4), struck out last sentence which read as follows: ''The principles of the preceding provisions of this subparagraph shall apply to regular interests in a FASIT.''

Subsec. (c)(5)(G). Pub. L. 108–357, § 243(d), reenacted heading without change and amended text of subpar. (G) generally. Prior to amendment, subpar. (G) provided that, except to the extent provided by regulations, payment to a real estate investment trust under an interest rate swap or cap agreement, option, futures contract, forward rate agreement, or any similar financial instrument, entered into by the trust in a transaction to reduce the interest rate risks with respect to any indebtedness incurred or to be incurred by the trust to acquire or carry real estate assets, and gain from the sale or other disposition of any such investment, would be treated as income qualifying under par. (2).

Subsec. (c)(6)(A). Pub. L. 108–357, § 243(f)(2), added subpar. (A) and struck out former subpar. (A) which read as follows: ''the nature and amount of each item of its gross income described in such paragraphs is set forth in a schedule attached to its income tax return for such taxable year;''.

Subsec. (c)(6)(B), (C). Pub. L. 108–357, § 243(f)(2), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: ''the inclusion of any incorrect information in the schedule referred to in subparagraph (A) is not due to fraud with intent to evade tax; and''.

Subsec. (c)(7). Pub. L. 108–357, § 243(f)(1), added par. (7).

Pub. L. 108–357, § 243(a)(1), struck out par. (7) which provided that securities of an issuer which were straight debt would not be taken into account in applying paragraph (4)(B)(iii)(III), if the issuer was an individual, if the only securities of such issuer which were held by the trust or a taxable REIT subsidiary of the trust were straight debt, or if the issuer was a partnership and the trust held at least a 20 percent profits interest in the partnership.

Subsec. (d)(8)(A). Pub. L. 108–357, §243(b), reenacted heading without change and amended text of subpar. (A) generally. Prior to amendment, text read as follows: ''The requirements of this subparagraph are met with respect to any property if at least 90 percent of the leased space of the property is rented to persons other than taxable REIT subsidiaries of such trust and other than persons described in section 856(d)(2)(B). The preceding sentence shall apply only to the extent that the amounts paid to the trust as rents from real property (as defined in paragraph (1) without regard to paragraph (2)(B)) from such property are substantially comparable to such rents made by the other tenants of the trust's property for comparable space.''

Subsec. (g)(1). Pub. L. 108–357, §243(f)(3)(A), inserted ''unless paragraph (5) applies'' before ''. Such termination''.

Subsec. (g)(5). Pub. L. 108–357, §243(f)(3)(B), added par. (5).

Subsec. (m). Pub. L. 108–357, §243(a)(2), added subsec. (m).

2000—Subsec. (c)(7). Pub. L. 106–554, §1(a)(7) [title III, §319(9)], substituted ''paragraph (4)(B)(iii)(III)'' for ''paragraph (4)(B)(ii)(III)'' in introductory provisions.

Subsec. (*l*)(4)(A). Pub. L. 106–554, §1(a)(7) [title III, §319(10)], substituted ''subsection (d)(9)(D)(ii)'' for ''paragraph (9)(D)(ii)''.

1999—Subsec. (c)(2)(D), (3)(C). Pub. L. 106–170, §532(c)(2)(H), (I), substituted ''section 1221(a)(1)'' for ''section 1221(1)''.

Subsec. (c)(4)(B). Pub. L. 106–170, §541(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''not more than 25 percent of the value of its total assets is represented by securities (other than those includible under subparagraph (A)) for purposes of this calculation limited in respect of any one issuer to an amount not greater in value than 5 percent of the value of the total assets of the trust and to not more than 10 percent of the outstanding voting securities of such issuer.''

Subsec. (c)(7). Pub. L. 106–170, §541(b), added par. (7).

Subsec. (d)(1). Pub. L. 106–170, §542(b)(3)(A)(i), substituted ''fair market values'' for ''adjusted bases'' in two places in concluding provisions.

Subsec. (d)(2)(B). Pub. L. 106–170, §542(b)(2), inserted ''except as provided in paragraph (8),'' after ''(B)'' in introductory provisions.

Subsec. (d)(2)(B)(i). Pub. L. 106–170, §542(b)(3)(B)(i), substituted ''value'' for ''number''.

Subsec. (d)(3). Pub. L. 106–170, §561(a), inserted concluding provisions.

Subsec. (d)(7)(C)(i). Pub. L. 106–170, §542(a), inserted ''or through a taxable REIT subsidiary of such trust'' after ''income''.

Subsec. (d)(8), (9). Pub. L. 106–170, §542(b)(1), added pars. (8) and (9).

Subsec. (e)(1). Pub. L. 106–170, §532(c)(2)(J), substituted ''section 1221(a)(1)'' for ''section 1221(1)''.

Subsec. (e)(6). Pub. L. 106–170, §551(a), added par. (6).

Subsec. (i)(2). Pub. L. 106–170, §543(b), inserted at end ''Such term shall not include a taxable REIT subsidiary.''

Subsec. (j)(2)(B). Pub. L. 106–170, §532(c)(2)(K), substituted ''section 1221(a)(1)'' for ''section 1221(1)''.

Subsec. (*l*). Pub. L. 106–170, §543(a), added subsec. (*l*).

1997—Subsec. (a)(6). Pub. L. 105–34, §1251(b)(2), inserted ''subject to the provisions of subsection (k),'' before ''which is not''.

Subsec. (c)(3)(I). Pub. L. 105–34, §1255(a)(1), inserted ''and'' at end.

Subsec. (c)(4). Pub. L. 105–34, §1255(a)(2), (3), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: ''less than 30 percent of its gross income is derived from the sale or other disposition of—

''(A) stock or securities held for less than 1 year;

''(B) property in a transaction which is a prohibited transaction; and

''(C) real property (including interests in real property and interests in mortgages on real property) held for less than 4 years other than—

''(i) property compulsorily or involuntarily converted within the meaning of section 1033, and

''(ii) property which is foreclosure property within the definition of section 856(e); and''.

Subsec. (c)(5). Pub. L. 105–34, §1255(a)(3), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Subsec. (c)(5)(G). Pub. L. 105–34, §1258, amended heading and text of subpar. (G) generally. Prior to amendment, text read as follows: ''Except to the extent provided by regulations, any—

''(i) payment to a real estate investment trust under a bona fide interest rate swap or cap agreement entered into by the real estate investment trust to hedge any variable rate indebtedness of such trust incurred or to be incurred to acquire or carry real estate assets, and

''(ii) any gain from the sale or other disposition of such agreement,

shall be treated as income qualifying under paragraph (2).''

Pub. L. 105–34, §1255(b)(1), struck out ''and such agreement shall be treated as a security for purposes of paragraph (4)(A)'' after ''under paragraph (2)'' in concluding provisions.

Subsec. (c)(6), (7). Pub. L. 105–34, §1255(a)(3), redesignated par. (7) as (6). Former par. (6) redesignated (5).

Subsec. (c)(8). Pub. L. 105–34, §1255(a)(2), struck out heading and text of par. (8). Text read as follows: ''In the case of the taxable year in which a real estate investment trust is completely liquidated, there shall not be taken into account under paragraph (4) any gain from the sale, exchange, or distribution of any property after the adoption of the plan of complete liquidation.''

Subsec. (d)(2). Pub. L. 105–34, §1252(a), added subpar. (C) and struck out former subpar. (C) and concluding provisions which read as follows:

''(C) any amount received or accrued, directly or indirectly, with respect to any real or personal property if the real estate investment trust furnishes or renders services to the tenants of such property, or manages or operates such property, other than through an independent contractor from whom the trust itself does not derive or receive any income.

Subparagraph (C) shall not apply with respect to any amount if such amount would be excluded from unrelated business taxable income under section 512(b)(3) if received by an organization described in section 511(a)(2).''

Subsec. (d)(5). Pub. L. 105–34, §1253, substituted ''except that—'' and subpars. (A) and (B) for ''except that '10 percent' shall be substituted for '50 percent' in subparagraph (C) of section 318(a)(2) and 318(a)(3).''

Subsec. (d)(7). Pub. L. 105–34, §1252(b), added par. (7).

Subsec. (e)(2). Pub. L. 105–34, §1257(a)(1), which directed amendment of par. (2) by substituting ''as of the close of the 3d taxable year following the taxable year in which the trust acquired such property'' for ''on the date which is 2 years after the date the trust acquired such property'', was executed by making the substitution for ''on the date which is 2 years after the date such trust acquired such property'' to reflect the probable intent of Congress.

Subsec. (e)(3). Pub. L. 105–34, §1257(a)(2), substituted ''grant one extension'' for ''grant one or more extensions'' and ''Any such extension shall not extend the grace period beyond the close of the 3d taxable year following the last taxable year in the period under paragraph (2).'' for ''Any such extension shall not extend the grace period beyond the date which is 6 years after the date such trust acquired such property.''

Subsec. (e)(4). Pub. L. 105–34, §1257(c), inserted concluding provisions ''For purposes of subparagraph (C), property shall not be treated as used in a trade or business by reason of any activities of the real estate investment trust with respect to such property to the extent that such activities would not result in amounts received or accrued, directly or indirectly, with respect to such property being treated as other than rents from real property.''

Subsec. (e)(5). Pub. L. 105–34, §1257(b), substituted ''A real estate investment trust may revoke any such elec-

tion for a taxable year by filing the revocation (in the manner provided by the Secretary) on or before the due date (including any extension of time) for filing its return of tax under this chapter for the taxable year. If a trust revokes an election for any property, no election may be made by the trust under this paragraph with respect to the property for any subsequent taxable year.'' for ''Any such election shall be irrevocable.''

Subsec. (i)(2). Pub. L. 105–34, §1262, struck out ''at all times during the period such corporation was in existence'' after ''real estate investment trust''.

Subsec. (j)(4). Pub. L. 105–34, §1261(a), added par. (4). Former par. (4) redesignated (5).

Subsec. (j)(5). Pub. L. 105–34, §1261(a), redesignated par. (4) as (5).

Subsec. (j)(5)(A)(ii). Pub. L. 105–34, §1261(b), inserted before period at end ''or appreciation in value as of any specified date''.

Subsec. (k). Pub. L. 105–34, §1251(b)(1), added subsec. (k).

1996—Subsec. (a)(4). Pub. L. 104–188, §1704(t)(35), substituted ''section 582(c)(2)'' for ''section 582(c)(5)''.

Subsec. (c)(6)(E). Pub. L. 104–188, §1621(b)(5), inserted at end ''The principles of the preceding provisions of this subparagraph shall apply to regular interests in a FASIT.''

1993—Subsec. (h)(3). Pub. L. 103–66 added par. (3).

1988—Subsec. (c)(6)(D). Pub. L. 100–647, §1006(t)(11), struck out subpar. (D), as added by Pub. L. 99–514, §671(b)(1), which read as follows: ''A regular or residual interest in a REMIC shall be treated as an interest in real property, and any amount includible in gross income with respect to such an interest shall be treated as interest; except that, if less than 95 percent of the assets of such REMIC are interests in real property (determined as if the taxpayer held such assets), such interest shall be so treated only in the proportion which the assets of the REMIC consist of such interests.''

Subsec. (c)(6)(D)(i)(I). Pub. L. 100–647, §1006(p)(1), substituted ''debt instrument (within the meaning of section 1275(a)(1))'' for ''debt instrument''.

Subsec. (c)(6)(D)(ii)(I). Pub. L. 100–647, §1006(p)(5), substituted ''stock (or certificates of beneficial interests) in such trust'' for ''stock in such trust''.

Subsec. (c)(6)(E), (F). Pub. L. 100–647, §1006(t)(11), added subpar. (E) and redesignated former subpar. (E) as (F).

Subsec. (c)(6)(G). Pub. L. 100–647, §1006(p)(4)(A), added subpar. (G).

Subsec. (c)(8). Pub. L. 100–647, §1006(p)(3), added par. (8).

Subsec. (d)(6)(A). Pub. L. 100–647, §1006(q)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''If—

> ''(i) a real estate investment trust receives or accrues, with respect to real or personal property, amounts from a tenant which derives substantially all of its income with respect to such property from the subleasing of substantially all of such property, and
>
> ''(ii) such tenant receives or accrues, directly or indirectly, from subtenants only amounts which are qualified rents,

then the amounts that the trust receives or accrues from the tenant shall not be excluded from the term 'rents from real property' solely by reason of being based on the income or profits of such tenant.''

Subsec. (f). Pub. L. 100–647, §1006(q)(2), amended subsec. (f) generally, making changes in content and structure.

1986—Subsec. (a)(4). Pub. L. 99–514, §901(d)(4)(E), substituted ''referred to in section 582(c)(5)'' for ''to which section 585, 586, or 593 applies''.

Subsec. (a)(6). Pub. L. 99–514, §661(a)(1), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''which would not be a personal holding company (as defined in section 542) if all of its adjusted ordinary gross income (as defined in section 543(b)(2)) constituted personal holding company income (as defined in section 543); and''.

Subsec. (c)(3)(I). Pub. L. 99–514, §662(b)(1), added subpar. (I).

Subsec. (c)(6)(B). Pub. L. 99–514, §662(b)(2), inserted ''Such term also includes any property (not otherwise a real estate asset) attributable to the temporary investment of new capital, but only if such property is stock or a debt instrument, and only for the 1-year period beginning on the date the real estate trust receives such capital.''

Subsec. (c)(6)(D). Pub. L. 99–514, §671(b)(1), added subpar. (D) relating to REMIC interest. Former subpar. (D) redesignated (E).

Pub. L. 99–514, §662(b)(3), added subpar. (D) relating to qualified temporary investment income. Former subpar. (D) redesignated (E).

Subsec. (c)(6)(E). Pub. L. 99–514, §§662(b)(3), 671(b)(1), made identical redesignations of former subpar. (D) as (E).

Subsec. (d)(2). Pub. L. 99–514, §663(a), (b)(3), inserted reference to par. (6) in subpar. (A) and inserted at end ''Subparagraph (C) shall not apply with respect to any amount if such amount would be excluded from unrelated business taxable income under section 512(b)(3) if received by an organization described in section 511(a)(2).''

Subsec. (d)(6). Pub. L. 99–514, §663(b)(1), added par. (6).

Subsec. (f). Pub. L. 99–514, §663(b)(2), amended subsec. (f) generally, restating former introductory provisions and par. (1) as introductory provisions of par. (1) and as subpar. (A), restating provisions of par. (2), adding subpar. (1)(B), and striking out former concluding provisions which read as follows: ''The provisions of this subsection shall apply only with respect to amounts received or accrued pursuant to loans made after May 27, 1976. For purposes of the preceding sentence, a loan is considered to be made before May 28, 1976, if such loan is made pursuant to a binding commitment entered into before May 28, 1976.''

Subsec. (h). Pub. L. 99–514, §661(a)(2), added subsec. (h).

Subsec. (i). Pub. L. 99–514, §662(a), added subsec. (i).

Subsec. (j). Pub. L. 99–514, §662(c), added subsec. (j).

1984—Subsec. (c)(4)(A). Pub. L. 98–369 substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

1978—Subsec. (c)(2)(H). Pub. L. 95–600, §363(a)(1), added subpar. (H).

Subsec. (c)(3)(D). Pub. L. 95–600, §701(t)(2), inserted ''(other than gain from prohibited transactions)'' after ''on, and gain''.

Subsec. (c)(3)(H). Pub. L. 95–600, §363(a)(2), added subpar. (H).

Subsec. (c)(4)(B). Pub. L. 95–600, §363(a)(3), substituted ''property in a transaction which is a prohibited transaction'' for ''section 1221(1) property (other than foreclosure property)''.

Subsec. (e)(3). Pub. L. 95–600, §363(c), substituted ''the Secretary may grant one or more extensions of the grace period for such property'' for ''the Secretary may extend the grace period for such property'' and ''shall not extend the grace period beyond the date which is 6 years after the date such trust acquired such property'' for ''shall be for a period of not more than one year, and not more than two extensions shall be granted with respect to any property''.

1976—Subsec. (a). Pub. L. 94–455, §§1603(a), 1604(f)(1), (2), in introductory provisions substituted ''this title'' for ''this subtitle'' and ''a corporation, trust, or association'' for ''an unincorporated trust or an unincorporated association'', in par. (1) inserted ''or directors'' after ''trustees'', and in par. (4) substituted reference to which is neither (A) a financial institution to which section 585, 586, or 593 applies, nor (B) an insurance company to which subchapter L applies for reference to which does not hold any property primarily for sale to customers in the ordinary course of its trade or business.

Subsec. (c). Pub. L. 94–455, §1604(f)(3)(A), in introductory provision substituted ''A corporation, trust, or association'' for ''A trust or association''.

Subsec. (c)(1). Pub. L. 94–455, §§1604(k)(2)(A), 1901(a)(111)(A), struck out reference to which began after Dec. 31, 1960 and inserted reference to such election has not been terminated or revoked under subsec. (g).

Subsec. (c)(2). Pub. L. 94–455, §§1603(c)(2), 1604(a), (c)(1), in introductory provision substituted ''95 percent (90 percent for taxable years beginning before January 1, 1980) of its gross income (excluding gross income from prohibited transactions)'' for ''90 percent of its gross income'', in subpar. (D) inserted reference to which is not property not described in section 1221(1), and added subpar. (G).

Subsec. (c)(3). Pub. L. 94–455, §§1603(c)(1), (3), 1604(c)(1), in introductory provision inserted ''(excluding gross income from prohibited transactions) 75 percent of its gross income'', in subpar. (C) inserted reference to which is not property described in section 1221(1), and added subpar. (G).

Subsec. (c)(4). Pub. L. 94–455, §1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, §§1402(b)(1)(O), 1604(d), in subpar. (A) provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977, added subpar. (B), and redesignated former subpar. (B) as (C), and in subpar. (C) as so redesignated, substituted ''(including interest in real property and interest in mortgages on real property'' for ''(including interest in real property)'' and inserted reference to property which is foreclosure property within the definition of section 856(e).

Subsec. (c)(6)(C). Pub. L. 94–455, §1604(e), inserted reference to options to acquire land or improvements thereon, and options to acquire leaseholds of land or improvements thereon.

Subsec. (c)(6)(D). Pub. L. 94–455, §1901(a)(111)(B), inserted ''(15 U.S.C. 80a–1 and following)'' after '', as amended''.

Subsec. (c)(7). Pub. L. 94–455, §1602(a), added par. (7).

Subsec. (d). Pub. L. 94–455, §1604(b), among other changes, inserted provisions including in definition of rents from real property charges for services customarily furnished or rendered in connection with rental of real property and rent attributable to personal property which is leased under, or in connection with, a lease of real property, provisions relating to the computation of the amount of rent attributable to personal property, and provisions relating to the special rule for certain contingent rents.

Subsec. (e)(1). Pub. L. 94–455, §1603(c)(4), inserted provision relating to the exclusion, from definition of foreclosure property, of property acquired by the real estate investment trust or other disposition of property of the trust described in section 1221(1) of this title.

Subsec. (e)(3), (5). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' each time appearing.

Subsec. (f). Pub. L. 94–455, §1604(g), added subsec. (f).

Subsec. (g). Pub. L. 94–455, §1604(k)(1), added subsec. (g).

1975—Subsec. (a)(4). Pub. L. 93–625, §6(b), inserted ''(other than foreclosure property, as defined in subsection (e))'' after ''property''.

Subsec. (c)(2)(F), (3)(F). Pub. L. 93–625, §6(d)(1), added subpar. (F) to pars. (2) and (3).

Subsec. (e). Pub. L. 93–625, §6(a), added subsec. (e).

1964—Subsec. (a)(6). Pub. L. 88–272 substituted ''adjusted ordinary gross income (as defined in section 543(b)(2))'' for ''gross income''.

Subsec. (d). Pub. L. 88–554 inserted reference to subparagraph (C) of section 318(a)(3) of this title.

EFFECTIVE DATES OF 2008 AMENDMENT

Pub. L. 110–289, div. C, title II, §3071, July 30, 2008, 122 Stat. 2902, provided that:

''(a) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this title [amending this section and section 857 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [July 30, 2008].

''(b) REIT INCOME TESTS.—

''(1) The amendments made by section 3031(a) and (c) [amending this section] shall apply to gains and items of income recognized after the date of the enactment of this Act [July 30, 2008].

''(2) The amendment made by section 3031(b) [amending this section] shall apply to transactions entered into after the date of the enactment of this Act [July 30, 2008].

''(c) CONFORMING FOREIGN CURRENCY REVISIONS.—

''(1) The amendment made by section 3033(a) [amending section 857 of this title] shall apply to gains recognized after the date of the enactment of this Act [July 30, 2008].

''(2) The amendment made by section 3033(b) [amending section 857 of this title] shall apply to gains and deductions recognized after the date of the enactment of this Act [July 30, 2008].

''(d) DEALER SALES.—The amendments made by subtitle C [subtitle C (§§3051, 3052) of title II of div. C of Pub. L. 110–289, amending section 857 of this title] shall apply to sales made after the date of the enactment of this Act [July 30, 2008].''

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110–234, title XV, §15312(c), May 22, 2008, 122 Stat. 1504, and Pub. L. 110–246, §4(a), title XV, §15312(c), June 18, 2008, 122 Stat. 1664, 2266, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to dispositions in taxable years beginning after the date of the enactment of this Act [June 18, 2008].''

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

Pub. L. 110–234, title XV, §15313(c), May 22, 2008, 122 Stat. 1504, and Pub. L. 110–246, §4(a), title XV, §15313(c), June 18, 2008, 122 Stat. 1664, 2266, provided that: ''The amendments by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [June 18, 2008].''

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

Pub. L. 110–234, title XV, §15314(b), May 22, 2008, 122 Stat. 1504, and Pub. L. 110–246, §4(a), title XV, §15314(b), June 18, 2008, 122 Stat. 1664, 2266, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [June 18, 2008].''

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by section 9(b) of Pub. L. 110–172 effective as if included in the provision of the Tax Relief Extension Act of 1999, Pub. L. 106–170, to which such amendment relates, see section 9(c) of Pub. L. 110–172, set out as a note under section 45 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendments by section 403(d)(1), (2) of Pub. L. 109–135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which they relate, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, §243(g), Oct. 22, 2004, 118 Stat. 1445, as amended by Pub. L. 109–135, title IV, §403(d)(4), Dec. 21, 2005, 119 Stat. 2622, provided that:

''(1) SUBSECTIONS (a) AND (b).—The amendments made by subsections (a) and (b) [amending this section] shall

apply to taxable years beginning after December 31, 2000.

''(2) SUBSECTIONS (c) AND (e).—The amendments made by subsections (c) and (e) [amending section 857 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004].

''(3) SUBSECTION (d).—The amendment made by subsection (d) [amending this section] shall apply to transactions entered into after December 31, 2004.

''(4) SUBSECTION (f).—

''(A) The amendment made by paragraph (1) of subsection (f) [amending this section] shall apply to failures with respect to which the requirements of subparagraph (A) or (B) of section 856(c)(7) of the Internal Revenue Code of 1986 (as added by such paragraph) are satisfied after the date of the enactment of this Act [Oct. 22, 2004].

''(B) The amendment made by paragraph (2) of subsection (f) [amending this section] shall apply to failures with respect to which the requirements of paragraph (6) of section 856(c) of the Internal Revenue Code of 1986 (as amended by such paragraph) are satisfied after the date of the enactment of this Act.

''(C) The amendments made by paragraph (3) of subsection (f) [amending this section] shall apply to failures with respect to which the requirements of paragraph (5) of section 856(g) of the Internal Revenue Code of 1986 (as added by such paragraph) are satisfied after the date of the enactment of this Act.

''(D) The amendment made by paragraph (4) of subsection (f) [amending section 857 of this title] shall apply to taxable years ending after the date of the enactment of this Act.

''(E) The amendments made by paragraph (5) of subsection (f) [amending section 860 of this title] shall apply to statements filed after the date of the enactment of this Act.''

Amendment by section 835(b)(4) of Pub. L. 108–357 effective Jan. 1, 2005, with exception for any FASIT in existence on Oct. 22, 2004, to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance, see section 835(c) of Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 532(c)(2)(H)–(K) of Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

Pub. L. 106–170, title V, §542(b)(3)(A)(ii), Dec. 17, 1999, 113 Stat. 1943, provided that: ''The amendment made by this subparagraph [amending this section] shall apply to taxable years beginning after December 31, 2000.''

Pub. L. 106–170, title V, §542(b)(3)(B)(ii), Dec. 17, 1999, 113 Stat. 1943, provided that: ''The amendment made by this subparagraph [amending this section] shall apply to amounts received or accrued in taxable years beginning after December 31, 2000, except for amounts paid pursuant to leases in effect on July 12, 1999, or pursuant to a binding contract in effect on such date and at all times thereafter.''

Pub. L. 106–170, title V, §546, Dec. 17, 1999, 113 Stat. 1946, provided that:

''(a) IN GENERAL.—The amendments made by this subpart [subpart A (§§541–547) of title V of Pub. L. 106–170, amending this section and sections 163 and 857 of this title] shall apply to taxable years beginning after December 31, 2000.

''(b) TRANSITIONAL RULES RELATED TO SECTION 541.—

''(1) EXISTING ARRANGEMENTS.—

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendment made by section 541 [amending this section] shall not apply to a real estate investment trust with respect to—

''(i) securities of a corporation held directly or indirectly by such trust on July 12, 1999;

''(ii) securities of a corporation held by an entity on July 12, 1999, if such trust acquires control of such entity pursuant to a written binding contract in effect on such date and at all times thereafter before such acquisition;

''(iii) securities received by such trust (or a successor) in exchange for, or with respect to, securities described in clause (i) or (ii) in a transaction in which gain or loss is not recognized; and

''(iv) securities acquired directly or indirectly by such trust as part of a reorganization (as defined in section 368(a)(1) of the Internal Revenue Code of 1986) with respect to such trust if such securities are described in clause (i), (ii), or (iii) with respect to any other real estate investment trust.

''(B) NEW TRADE OR BUSINESS OR SUBSTANTIAL NEW ASSETS.—Subparagraph (A) shall cease to apply to securities of a corporation as of the first day after July 12, 1999, on which such corporation engages in a substantial new line of business, or acquires any substantial asset, other than—

''(i) pursuant to a binding contract in effect on such date and at all times thereafter before the acquisition of such asset;

''(ii) in a transaction in which gain or loss is not recognized by reason of section 1031 or 1033 of the Internal Revenue Code of 1986; or

''(iii) in a reorganization (as so defined) with another corporation the securities of which are described in paragraph (1)(A) of this subsection.

''(C) LIMITATION ON TRANSITION RULES.—Subparagraph (A) shall cease to apply to securities of a corporation held, acquired, or received, directly or indirectly, by a real estate investment trust as of the first day after July 12, 1999, on which such trust acquires any additional securities of such corporation other than—

''(i) pursuant to a binding contract in effect on July 12, 1999, and at all times thereafter; or

''(ii) in a reorganization (as so defined) with another corporation the securities of which are described in paragraph (1)(A) of this subsection.

''(2) TAX-FREE CONVERSION.—If—

''(A) at the time of an election for a corporation to become a taxable REIT subsidiary, the amendment made by section 541 does not apply to such corporation by reason of paragraph (1); and

''(B) such election first takes effect before January 1, 2004,

such election shall be treated as a reorganization qualifying under section 368(a)(1)(A) of such Code.''

Pub. L. 106–170, title V, §551(b), Dec. 17, 1999, 113 Stat. 1949, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2000.''

Pub. L. 106–170, title V, §561(b), Dec. 17, 1999, 113 Stat. 1950, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2000.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to taxable years beginning after Aug. 5, 1997, see section 1263 of Pub. L. 105–34, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1621(b)(5) of Pub. L. 104–188 effective Sept. 1, 1997, see section 1621(d) of Pub. L. 104–188, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13149(b) of Pub. L. 103–66 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1993.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1006(p)(4)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending

this section] shall apply to taxable years ending after the date of the enactment of this Act [Nov. 10, 1988].''

Amendment by section 1006(p)(1), (3), (5), (q), (t)(11) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1006(p)(2) of Pub. L. 100–647 provided that: ''Notwithstanding section 669 of the Reform Act [Pub. L. 99–514, set out below], the amendment made by section 662(c) of the Reform Act [amending this section] shall apply to taxable years beginning after December 31, 1986, but only in the case of obligations acquired after October 22, 1986.''

Section 669 of subtitle G (§§ 661–668) of title VI of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1018(u)(29), Nov. 10, 1988, 102 Stat. 3591, provided that:

''(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this subtitle [amending this section and sections 857 to 860, 4981, and 6697 of this title] shall apply to taxable years beginning after December 31, 1986.

''(b) SECTION 668.—The amendments made by section 668 [amending sections 857, 858, and 4981 of this title] shall apply to calendar years beginning after December 31, 1986.

''(c) RETENTION OF EXISTING TRANSITIONAL RULE.—The amendment made by section 663(b)(2) [amending this section] shall not apply with respect to amounts received or accrued pursuant to loans made before May 28, 1976. For purposes of the preceding sentence, a loan is considered to be made before May 28, 1976, if such loan is made pursuant to a binding commitment entered into before May 28, 1976.''

Amendment by section 671(b)(1) of Pub. L. 99–514 effective Jan. 1, 1987, see section 675(a) of Pub. L. 99–514, as amended, set out as an Effective Date note under section 860A of this title.

Amendment by section 901(d)(4)(E) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 901(e) of Pub. L. 99–514, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 363(d) of Pub. L. 95–600 provided that: ''The amendments made by subsections (a) [amending this section] and (b) [amending section 857 of this title] shall apply to taxable years ending after the date of the enactment of this Act [Nov. 6, 1978]. The amendment made by subsection (c) [amending this section] shall apply to extensions granted after the date of the enactment of this Act with respect to periods beginning after December 31, 1977.''

Amendment by section 701(t)(2) of Pub. L. 95–600 effective Oct. 4, 1976, see section 701(t)(5) of Pub. L. 95–600, set out as a note under section 859 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(b)(1) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Section 1402(b)(2) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Section 1608(d) of Pub. L. 94–455, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) Except as provided in paragraphs (2) and (3), the amendments made by sections 1603, 1604, and 1605 [enacting sections 860 and 4981 of this title and amending this section and sections 275, 857, 858, 6161, 6211 to 6214, 6344, 6512, 6601, and 7422 of this title] shall apply to taxable years of real estate investment trusts beginning after the date of the enactment of this Act [Oct. 4, 1976].

''(2) If, as a result of a determination (as defined in section 859(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]), occurring after the date of enactment of this Act [Oct. 4, 1976], with respect to the real estate investment trust, such trust does not meet the requirement of section 856(a)(4) of the Internal Revenue Code of 1986 (as in effect before the amendment of such section by this Act) for any taxable year beginning on or before the date of the enactment of this Act, such trust may elect, within 60 days after such determination in the manner provided in regulations prescribed by the Secretary of the Treasury or his delegate, to have the provisions of section 1603 (other than paragraphs (1), (2), (3), and (4) of section 1603(c)) apply with respect to such taxable year. Where the provisions of section 1603 apply to a real estate investment trust with respect to any taxable year beginning on or before the date of the enactment of this Act—

''(A) credit or refund of any overpayment of tax which results from the application of section 1603 to such taxable year shall be made as if on the date of the determination (as defined in section 859(c) of the Internal Revenue Code of 1986) 2 years remained before the expiration of the period of limitation prescribed by section 6511 of such Code on the filing of claim for refund for the taxable year to which the overpayment relates,

''(B) the running of the statute of limitations provided in section 6501 of such Code on the making of assessments, and the bringing of distraint or a proceeding in court for collection, in respect of any deficiency (as defined in section 6211 of such Code) established by such a determination, and all interest, additions to tax, additional amounts, or assessable penalties in respect thereof, shall be suspended for a period of 2 years after the date of such determination, and

''(C) the collection of any deficiency (as defined in section 6211 of such Code) established by such determination and all interest, additions to tax, additional amounts, and assessable penalties in respect thereof shall, except in cases of jeopardy, be stayed until the expiration of 60 days after the date of such determination.

No distraint or proceeding in court shall be begun for the collection of an amount the collection of which is stayed under subparagraph (C) during the period for which the collection of such amount is stayed.

''(3) Section 856(g)(3) of the Internal Revenue Code of 1986, as added by section 1604 of this Act, shall not apply with respect to a termination of an election, filed by a taxpayer under section 856(c)(1) of such Code on or before the date of the enactment of this Act [Oct. 4, 1976], unless the provisions of part II of subchapter M of chapter 1 of subtitle A of such Code apply to such taxpayer for a taxable year ending after the date of the enactment of this Act for which such election is in effect.''

EFFECTIVE DATE OF 1975 AMENDMENT

Section 6(e) of Pub. L. 93–625, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [amending this section and section 857 of this title] apply to foreclosure property acquired after December 31, 1973. Notwithstanding the provisions of section 856(e)(5) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a) of this section) any taxpayer required to make an election with respect to foreclosure property sooner than 90 days after the date of enactment of this Act [Jan. 3, 1975], may make that election at any time before the 91st day after the date of enactment of this Act.''

EFFECTIVE DATE OF 1964 AMENDMENTS

Amendment by Pub. L. 88–554 effective Aug. 31, 1964, except that for purposes of sections 302 and 304 of this

title, such amendments shall not apply to distributions in payment for stock acquisitions or redemptions, if such acquisitions or redemptions occurred before Aug. 31, 1964, see section 4(c) of Pub. L. 88–554, set out as a note under section 318 of this title.

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(*l*) of Pub. L. 88–272, set out as a note under section 316 of this title.

EFFECTIVE DATE

Section 10(k) of Pub. L. 86–779 provided that: ''The amendments made by this section [enacting this section and sections 857 and 858 and amending sections 11, 34, 116, 243, 318, 443, 852, 855, and 1504 of this title] shall apply with respect to taxable years of real estate investment trusts beginning after December 31, 1960.''

STUDY RELATING TO TAXABLE REIT SUBSIDIARIES

Pub. L. 106–170, title V, § 547, Dec. 17, 1999, 113 Stat. 1947, provided that: ''The Secretary of the Treasury shall conduct a study to determine how many taxable REIT subsidiaries are in existence and the aggregate amount of taxes paid by such subsidiaries. The Secretary shall submit a report to the Congress describing the results of such study.''

TRUST NOT DISQUALIFIED IN CERTAIN CASES WHERE INCOME TESTS NOT MET

Section 1608(b) of Pub. L. 94–455, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by section 1602 [amending this section and section 857 of this title] shall apply to taxable years of real estate investment trusts beginning after the date of the enactment of this Act [Oct. 4, 1976]. In addition, the amendments made by section 1602 shall apply to a taxable year of a real estate investment trust beginning before the date of the enactment of this Act if, as the result of a determination (as defined in section 859(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) with respect to such trust occurring after the date of the enactment of this Act, such trust for such taxable years does not meet the requirements of section 856(c)(2) or section 856(c)(3), or of both such sections, of such Code as in effect for such taxable year. In any case, the amendment made by section 1602(a) requiring a schedule to be attached to the income tax return of certain real estate investment trusts shall apply only to taxable years of such trusts beginning after the date of the enactment of this Act. If the amendments made by section 1602 apply to a taxable year ending on or before the date of enactment of this Act, the reference to paragraph (2)(B) in section 857(b)(5) of such Code, as amended, shall be considered to be a reference to paragraph (2)(C) of section 857(b) of such Code, as in effect immediately before the enactment of this Act.''

§ 857. Taxation of real estate investment trusts and their beneficiaries

(a) Requirements applicable to real estate investment trusts

The provisions of this part (other than subsection (d) of this section and subsection (g) of section 856) shall not apply to a real estate investment trust for a taxable year unless—

(1) the deduction for dividends paid during the taxable year (as defined in section 561, but determined without regard to capital gains dividends) equals or exceeds—

(A) the sum of—

(i) 90 percent of the real estate investment trust taxable income for the taxable year (determined without regard to the deduction for dividends paid (as defined in section 561) and by excluding any net capital gain); and

(ii) 90 percent of the excess of the net income from foreclosure property over the tax imposed on such income by subsection (b)(4)(A); minus

(B) any excess noncash income (as determined under subsection (e)); and

(2) either—

(A) the provisions of this part apply to the real estate investment trust for all taxable years beginning after February 28, 1986, or

(B) as of the close of the taxable year, the real estate investment trust has no earnings and profits accumulated in any non-REIT year.

For purposes of the preceding sentence, the term ''non-REIT year'' means any taxable year to which the provisions of this part did not apply with respect to the entity. The Secretary may waive the requirements of paragraph (1) for any taxable year if the real estate investment trust establishes to the satisfaction of the Secretary that it was unable to meet such requirements by reason of distributions previously made to meet the requirements of section 4981.

(b) Method of taxation of real estate investment trusts and holders of shares or certificates of beneficial interest

(1) Imposition of tax on real estate investment trusts

There is hereby imposed for each taxable year on the real estate investment trust taxable income of every real estate investment trust a tax computed as provided in section 11, as though the real estate investment trust taxable income were the taxable income referred to in section 11.

(2) Real estate investment trust taxable income

For purposes of this part, the term ''real estate investment trust taxable income'' means the taxable income of the real estate investment trust, adjusted as follows:

(A) The deductions for corporations provided in part VIII (except section 248) of subchapter B (section 241 and following, relating to the deduction for dividends received, etc.) shall not be allowed.

(B) The deduction for dividends paid (as defined in section 561) shall be allowed, but shall be computed without regard to that portion of such deduction which is attributable to the amount excluded under subparagraph (D).

(C) The taxable income shall be computed without regard to section 443(b) (relating to computation of tax on change of annual accounting period).

(D) There shall be excluded an amount equal to the net income from foreclosure property.

(E) There shall be deducted an amount equal to the tax imposed by paragraphs (5) and (7) of this subsection, section 856(c)(7)(C), and section 856(g)(5) for the taxable year.

(F) There shall be excluded an amount equal to any net income derived from prohibited transactions.

(3) Capital gains

(A) Alternative tax in case of capital gains

If for any taxable year a real estate investment trust has a net capital gain, then, in lieu of the tax imposed by subsection (b)(1), there is hereby imposed a tax (if such tax is less than the tax imposed by such subsection) which shall consist of the sum of—

(i) a tax, computed as provided in subsection (b)(1), on the real estate investment trust taxable income (determined by excluding such net capital gain and by computing the deduction for dividends paid without regard to capital gain dividends), and

(ii) a tax determined at the rates provided in section 1201(a) on the excess of the net capital gain over the deduction for dividends paid (as defined in section 561) determined with reference to capital gains dividends only.

(B) Treatment of capital gain dividends by shareholders

A capital gain dividend shall be treated by the shareholders or holders of beneficial interests as a gain from the sale or exchange of a capital asset held for more than 1 year.

(C) Definition of capital gain dividend

For purposes of this part, a capital gain dividend is any dividend, or part thereof, which is designated by the real estate investment trust as a capital gain dividend in a written notice mailed to its shareholders or holders of beneficial interests at any time before the expiration of 30 days after the close of its taxable year (or mailed to its shareholders or holders of beneficial interests with its annual report for the taxable year); except that, if there is an increase in the excess described in subparagraph (A)(ii) of this paragraph for such year which results from a determination (as defined in section 860(e)), such designation may be made with respect to such increase at any time before the expiration of 120 days after the date of such determination. If the aggregate amount so designated with respect to a taxable year of the trust (including capital gain dividends paid after the close of the taxable year described in section 858) is greater than the net capital gain of the taxable year, the portion of each distribution which shall be a capital gain dividend shall be only that proportion of the amount so designated which such net capital gain bears to the aggregate amount so designated. For purposes of this subparagraph, the amount of the net capital gain for any taxable year which is not a calendar year shall be determined without regard to any net capital loss attributable to transactions after December 31 of such year, and any such net capital loss shall be treated as arising on the 1st day of the next taxable year. To the extent provided in regulations, the preceding sentence shall apply also for purposes of computing the taxable income of the real estate investment trust.

(D) Treatment by shareholders of undistributed capital gains

(i) Every shareholder of a real estate investment trust at the close of the trust's taxable year shall include, in computing his long-term capital gains in his return for his taxable year in which the last day of the trust's taxable year falls, such amount as the trust shall designate in respect of such shares in a written notice mailed to its shareholders at any time prior to the expiration of 60 days after the close of its taxable year (or mailed to its shareholders or holders of beneficial interests with its annual report for the taxable year), but the amount so includible by any shareholder shall not exceed that part of the amount subjected to tax in subparagraph (A)(ii) which he would have received if all of such amount had been distributed as capital gain dividends by the trust to the holders of such shares at the close of its taxable year.

(ii) For purposes of this title, every such shareholder shall be deemed to have paid, for his taxable year under clause (i), the tax imposed by subparagraph (A)(ii) on the amounts required by this subparagraph to be included in respect of such shares in computing his long-term capital gains for that year; and such shareholders shall be allowed credit or refund as the case may be, for the tax so deemed to have been paid by him.

(iii) The adjusted basis of such shares in the hands of the holder shall be increased with respect to the amounts required by this subparagraph to be included in computing his long-term capital gains, by the difference between the amount of such includible gains and the tax deemed paid by such shareholder in respect of such shares under clause (ii).

(iv) In the event of such designation, the tax imposed by subparagraph (A)(ii) shall be paid by the real estate investment trust within 30 days after the close of its taxable year.

(v) The earnings and profits of such real estate investment trust, and the earnings and profits of any such shareholder which is a corporation, shall be appropriately adjusted in accordance with regulations prescribed by the Secretary.

(vi) As used in this subparagraph, the terms ''shares'' and ''shareholders'' shall include beneficial interests and holders of beneficial interests, respectively.

(E) Coordination with net operating loss provisions

For purposes of section 172, if a real estate investment trust pays capital gain dividends during any taxable year, the amount of the net capital gain for such taxable year (to the extent such gain does not exceed the amount of such capital gain dividends) shall be excluded in determining—

(i) the net operating loss for the taxable year, and

(ii) the amount of the net operating loss of any prior taxable year which may be carried through such taxable year under section 172(b)(2) to a succeeding taxable year.

(F) Certain distributions

In the case of a shareholder of a real estate investment trust to whom section 897 does not apply by reason of the second sentence of section 897(h)(1), the amount which would be included in computing long-term capital gains for such shareholder under subparagraph (B) or (D) (without regard to this subparagraph)—

(i) shall not be included in computing such shareholder's long-term capital gains, and

(ii) shall be included in such shareholder's gross income as a dividend from the real estate investment trust.

(4) Income from foreclosure property

(A) Imposition of tax

A tax is hereby imposed for each taxable year on the net income from foreclosure property of every real estate investment trust. Such tax shall be computed by multiplying the net income from foreclosure property by the highest rate of tax specified in section 11(b).

(B) Net income from foreclosure property

For purposes of this part, the term ''net income from foreclosure property'' means the excess of—

(i) gain (including any foreign currency gain, as defined in section 988(b)(1)) from the sale or other disposition of foreclosure property described in section 1221(a)(1) and the gross income for the taxable year derived from foreclosure property (as defined in section 856(e)), but only to the extent such gross income is not described in (or, in the case of foreign currency gain, not attributable to gross income described in) section 856(c)(3) other than subparagraph (F) thereof, over

(ii) the deductions allowed by this chapter which are directly connected with the production of the income referred to in clause (i).

(5) Imposition of tax in case of failure to meet certain requirements

If section 856(c)(6) applies to a real estate investment trust for any taxable year, there is hereby imposed on such trust a tax in an amount equal to the greater of—

(A) the excess of—

(i) 95 percent of the gross income (excluding gross income from prohibited transactions) of the real estate investment trust, over

(ii) the amount of such gross income which is derived from sources referred to in section 856(c)(2); or

(B) the excess of—

(i) 75 percent of the gross income (excluding gross income from prohibited transactions) of the real estate investment trust, over

(ii) the amount of such gross income which is derived from sources referred to in section 856(c)(3),

multiplied by a fraction the numerator of which is the real estate investment trust taxable income for the taxable year (determined without regard to the deductions provided in paragraphs (2)(B) and (2)(E), without regard to any net operating loss deduction, and by excluding any net capital gain) and the denominator of which is the gross income for the taxable year (excluding gross income from prohibited transactions; gross income and gain from foreclosure property (as defined in section 856(e), but only to the extent such gross income and gain is not described in subparagraph (A), (B), (C), (D), (E), or (G) of section 856(c)(3)); long-term capital gain; and short-term capital gain to the extent of any short-term capital loss).

(6) Income from prohibited transactions

(A) Imposition of tax

There is hereby imposed for each taxable year of every real estate investment trust a tax equal to 100 percent of the net income derived from prohibited transactions.

(B) Definitions

For purposes of this part—

(i) the term ''net income derived from prohibited transactions'' means the excess of the gain (including any foreign currency gain, as defined in section 988(b)(1)) from prohibited transactions over the deductions (including any foreign currency loss, as defined in section 988(b)(2)) allowed by this chapter which are directly connected with prohibited transactions;

(ii) in determining the amount of the net income derived from prohibited transactions, there shall not be taken into account any item attributable to any prohibited transaction for which there was a loss; and

(iii) the term ''prohibited transaction'' means a sale or other disposition of property described in section 1221(a)(1) which is not foreclosure property.

(C) Certain sales not to constitute prohibited transactions

For purposes of this part, the term ''prohibited transaction'' does not include a sale of property which is a real estate asset (as defined in section 856(c)(5)(B)) and which is described in section 1221(a)(1) if—

(i) the trust has held the property for not less than 2 years;

(ii) aggregate expenditures made by the trust, or any partner of the trust, during the 2-year period preceding the date of sale which are includible in the basis of the property do not exceed 30 percent of the net selling price of the property;

(iii)(I) during the taxable year the trust does not make more than 7 sales of property (other than sales of foreclosure property or sales to which section 1033 applies), or (II) the aggregate adjusted bases (as determined for purposes of computing earnings and profits) of property (other than sales of foreclosure property or sales to which section 1033 applies) sold during the taxable year does not exceed 10 percent of the aggregate bases (as so determined) of all of the assets of the trust as of the be-

ginning of the taxable year, or (III) the fair market value of property (other than sales of foreclosure property or sales to which section 1033 applies) sold during the taxable year does not exceed 10 percent of the fair market value of all of the assets of the trust as of the beginning of the taxable year;

(iv) in the case of property, which consists of land or improvements, not acquired through foreclosure (or deed in lieu of foreclosure), or lease termination, the trust has held the property for not less than 2 years for production of rental income; and

(v) if the requirement of clause (iii)(I) is not satisfied, substantially all of the marketing and development expenditures with respect to the property were made through an independent contractor (as defined in section 856(d)(3)) from whom the trust itself does not derive or receive any income.

(D) Certain sales not to constitute prohibited transactions

For purposes of this part, the term ''prohibited transaction'' does not include a sale of property which is a real estate asset (as defined in section 856(c)(5)(B)) and which is described in section 1221(a)(1) if—

(i) the trust held the property for not less than 2 years in connection with the trade or business of producing timber,

(ii) the aggregate expenditures made by the trust, or a partner of the trust, during the 2-year period preceding the date of sale which—

(I) are includible in the basis of the property (other than timberland acquisition expenditures), and

(II) are directly related to operation of the property for the production of timber or for the preservation of the property for use as timberland,

do not exceed 30 percent of the net selling price of the property,

(iii) the aggregate expenditures made by the trust, or a partner of the trust, during the 2-year period preceding the date of sale which—

(I) are includible in the basis of the property (other than timberland acquisition expenditures), and

(II) are not directly related to operation of the property for the production of timber, or for the preservation of the property for use as timberland,

do not exceed 5 percent of the net selling price of the property,

(iv)(I) during the taxable year the trust does not make more than 7 sales of property (other than sales of foreclosure property or sales to which section 1033 applies), or

(II) the aggregate adjusted bases (as determined for purposes of computing earnings and profits) of property (other than sales of foreclosure property or sales to which section 1033 applies) sold during the taxable year does not exceed 10 percent of the aggregate bases (as so determined) of all of the assets of the trust as of the beginning of the taxable year, or

(III) the fair market value of property (other than sales of foreclosure property or sales to which section 1033 applies) sold during the taxable year does not exceed 10 percent of the fair market value of all of the assets of the trust as of the beginning of the taxable year,

(v) in the case that the requirement of clause (iv)(I) is not satisfied, substantially all of the marketing expenditures with respect to the property were made through an independent contractor (as defined in section 856(d)(3)) from whom the trust itself does not derive or receive any income, or, in the case of a sale on or before the termination date, a taxable REIT subsidiary, and

(vi) the sales price of the property sold by the trust is not based in whole or in part on income or profits, including income or profits derived from the sale or operation of such property.

(E) Special rules

In applying subparagraphs (C) and (D) the following special rules apply:

(i) The holding period of property acquired through foreclosure (or deed in lieu of foreclosure), or termination of the lease, includes the period for which the trust held the loan which such property secured, or the lease of such property.

(ii) In the case of a property acquired through foreclosure (or deed in lieu of foreclosure), or termination of a lease, expenditures made by, or for the account of, the mortgagor or lessee after default became imminent will be regarded as made by the trust.

(iii) Expenditures (including expenditures regarded as made directly by the trust, or indirectly by any partner of the trust, under clause (ii)) will not be taken into account if they relate to foreclosure property and did not cause the property to lose its status as foreclosure property.

(iv) Expenditures will not be taken into account if they are made solely to comply with standards or requirements of any government or governmental authority having relevant jurisdiction, or if they are made to restore the property as a result of losses arising from fire, storm or other casualty.

(v) The term ''expenditures'' does not include advances on a loan made by the trust.

(vi) The sale of more than one property to one buyer as part of one transaction constitutes one sale.

(vii) The term ''sale'' does not include any transaction in which the net selling price is less than $10,000.

(F) Sales not meeting requirements

In determining whether or not any sale constitutes a ''prohibited transaction'' for purposes of subparagraph (A), the fact that such sale does not meet the requirements of

subparagraph (C) or (D) shall not be taken into account; and such determination, in the case of a sale not meeting such requirements, shall be made as if subparagraphs (C), (D), and (E) had not been enacted.

(G) Sales of property that are not a prohibited transaction

In the case of a sale on or before the termination date, the sale of property which is not a prohibited transaction through the application of subparagraph (D) shall be considered property held for investment or for use in a trade or business and not property described in section 1221(a)(1) for all purposes of this subtitle. For purposes of the preceding sentence, the reference to subparagraph (D) shall be a reference to such subparagraph as in effect on the day before the enactment of the Housing Assistance Tax Act of 2008, as modified by subparagraph (G) as so in effect.

(H) Termination date

For purposes of this paragraph, the term ''termination date'' has the meaning given such term by section 856(c)(8).

(7) Income from redetermined rents, redetermined deductions, and excess interest

(A) Imposition of tax

There is hereby imposed for each taxable year of the real estate investment trust a tax equal to 100 percent of redetermined rents, redetermined deductions, and excess interest.

(B) Redetermined rents

(i) In general

The term ''redetermined rents'' means rents from real property (as defined in section 856(d)) to the extent the amount of the rents would (but for subparagraph (E)) be reduced on distribution, apportionment, or allocation under section 482 to clearly reflect income as a result of services furnished or rendered by a taxable REIT subsidiary of the real estate investment trust to a tenant of such trust.

(ii) Exception for de minimis amounts

Clause (i) shall not apply to amounts described in section 856(d)(7)(A) with respect to a property to the extent such amounts do not exceed the one percent threshold described in section 856(d)(7)(B) with respect to such property.

(iii) Exception for comparably priced services

Clause (i) shall not apply to any service rendered by a taxable REIT subsidiary of a real estate investment trust to a tenant of such trust if—

(I) such subsidiary renders a significant amount of similar services to persons other than such trust and tenants of such trust who are unrelated (within the meaning of section 856(d)(8)(F)) to such subsidiary, trust, and tenants, but

(II) only to the extent the charge for such service so rendered is substantially comparable to the charge for the similar services rendered to persons referred to in subclause (I).

(iv) Exception for certain separately charged services

Clause (i) shall not apply to any service rendered by a taxable REIT subsidiary of a real estate investment trust to a tenant of such trust if—

(I) the rents paid to the trust by tenants (leasing at least 25 percent of the net leasable space in the trust's property) who are not receiving such service from such subsidiary are substantially comparable to the rents paid by tenants leasing comparable space who are receiving such service from such subsidiary, and

(II) the charge for such service from such subsidiary is separately stated.

(v) Exception for certain services based on subsidiary's income from the services

Clause (i) shall not apply to any service rendered by a taxable REIT subsidiary of a real estate investment trust to a tenant of such trust if the gross income of such subsidiary from such service is not less than 150 percent of such subsidiary's direct cost in furnishing or rendering the service.

(vi) Exceptions granted by Secretary

The Secretary may waive the tax otherwise imposed by subparagraph (A) if the trust establishes to the satisfaction of the Secretary that rents charged to tenants were established on an arms' length basis even though a taxable REIT subsidiary of the trust provided services to such tenants.

(C) Redetermined deductions

The term ''redetermined deductions'' means deductions (other than redetermined rents) of a taxable REIT subsidiary of a real estate investment trust to the extent the amount of such deductions would (but for subparagraph (E)) be decreased on distribution, apportionment, or allocation under section 482 to clearly reflect income as between such subsidiary and such trust.

(D) Excess interest

The term ''excess interest'' means any deductions for interest payments by a taxable REIT subsidiary of a real estate investment trust to such trust to the extent that the interest payments are in excess of a rate that is commercially reasonable.

(E) Coordination with section 482

The imposition of tax under subparagraph (A) shall be in lieu of any distribution, apportionment, or allocation under section 482.

(F) Regulatory authority

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph. Until the Secretary prescribes such regulations, real estate investment trusts and their taxable REIT subsidiaries may base their allocations on any reasonable method.

(8) Loss on sale or exchange of stock held 6 months or less

(A) In general

If—

(i) subparagraph (B) or (D) of paragraph (3) provides that any amount with respect to any share or beneficial interest is to be treated as a long-term capital gain, and

(ii) the taxpayer has held such share or interest for 6 months or less,

then any loss on the sale or exchange of such share or interest shall, to the extent of the amount described in clause (i), be treated as a long-term capital loss.

(B) Determination of holding periods

For purposes of this paragraph, in determining the period for which the taxpayer has held any share of stock or beneficial interest—

(i) the rules of paragraphs (3) and (4) of section 246(c) shall apply, and

(ii) there shall not be taken into account any day which is more than 6 months after the date on which such share or interest becomes ex-dividend.

(C) Exception for losses incurred under periodic liquidation plans

To the extent provided in regulations, subparagraph (A) shall not apply to any loss incurred on the sale or exchange of shares of stock of, or beneficial interest in, a real estate investment trust pursuant to a plan which provides for the periodic liquidation of such shares or interests.

(9) Time certain dividends taken into account

For purposes of this title, any dividend declared by a real estate investment trust in October, November, or December of any calendar year and payable to shareholders of record on a specified date in such a month shall be deemed—

(A) to have been received by each shareholder on December 31 of such calendar year, and

(B) to have been paid by such trust on December 31 of such calendar year (or, if earlier, as provided in section 858).

The preceding sentence shall apply only if such dividend is actually paid by the company during January of the following calendar year.

(c) Restrictions applicable to dividends received from real estate investment trusts

(1) Section 243

For purposes of section 243 (relating to deductions for dividends received by corporations), a dividend received from a real estate investment trust which meets the requirements of this part shall not be considered a dividend.

(2) Section (1)(h)(11)

(A) In general

In any case in which—

(i) a dividend is received from a real estate investment trust (other than a capital gain dividend), and

(ii) such trust meets the requirements of section 856(a) for the taxable year during which it paid such dividend,

then, in computing qualified dividend income, there shall be taken into account only that portion of such dividend designated by the real estate investment trust.

(B) Limitation

The aggregate amount which may be designated as qualified dividend income under subparagraph (A) shall not exceed the sum of—

(i) the qualified dividend income of the trust for the taxable year,

(ii) the excess of—

(I) the sum of the real estate investment trust taxable income computed under section 857(b)(2) for the preceding taxable year and the income subject to tax by reason of the application of the regulations under section 337(d) for such preceding taxable year, over

(II) the sum of the taxes imposed on the trust for such preceding taxable year under section 857(b)(1) and by reason of the application of such regulations, and

(iii) the amount of any earnings and profits which were distributed by the trust for such taxable year and accumulated in a taxable year with respect to which this part did not apply.

(C) Notice to shareholders

The amount of any distribution by a real estate investment trust which may be taken into account as qualified dividend income shall not exceed the amount so designated by the trust in a written notice to its shareholders mailed not later than 60 days after the close of its taxable year.

(D) Qualified dividend income

For purposes of this paragraph, the term ''qualified dividend income'' has the meaning given such term by section 1(h)(11)(B).

(d) Earnings and profits

(1) In general

The earnings and profits of a real estate investment trust for any taxable year (but not its accumulated earnings) shall not be reduced by any amount which is not allowable in computing its taxable income for such taxable year. For purposes of this subsection, the term ''real estate investment trust'' includes a domestic corporation, trust, or association which is a real estate investment trust determined without regard to the requirements of subsection (a).

(2) Coordination with tax on undistributed income

A real estate investment trust shall be treated as having sufficient earnings and profits to treat as a dividend any distribution (other than in a redemption to which section 302(a) applies) which is treated as a dividend by such trust. The preceding sentence shall not apply to the extent that the amount distributed during any calendar year by the trust

exceeds the required distribution for such calendar year (as determined under section 4981).

(3) Distributions to meet requirements of subsection (a)(2)(B)

Any distribution which is made in order to comply with the requirements of subsection (a)(2)(B)—

(A) shall be treated for purposes of this subsection and subsection (a)(2)(B) as made from earnings and profits which, but for the distribution, would result in a failure to meet such requirements (and allocated to such earnings on a first-in, first-out basis), and

(B) to the extent treated under subparagraph (A) as made from accumulated earnings and profits, shall not be treated as a distribution for purposes of subsection (b)(2)(B) and section 858.

(e) Excess noncash income

(1) In general

For purposes of subsection (a)(1)(B), the term ''excess noncash income'' means the excess (if any) of—

(A) the amount determined under paragraph (2) for the taxable year, over

(B) 5 percent of the real estate investment trust taxable income for the taxable year determined without regard to the deduction for dividends paid (as defined in section 561) and by excluding any net capital gain.

(2) Determination of amount

The amount determined under this paragraph for the taxable year is the sum of—

(A) the amount (if any) by which—

(i) the amounts includible in gross income under section 467 (relating to certain payments for the use of property or services), exceed

(ii) the amounts which would have been includible in gross income without regard to such section,

(B) any income on the disposition of a real estate asset if—

(i) there is a determination (as defined in section 860(e)) that such income is not eligible for nonrecognition under section 1031, and

(ii) failure to meet the requirements of section 1031 was due to reasonable cause and not to willful neglect,

(C) the amount (if any) by which—

(i) the amounts includible in gross income with respect to instruments to which section 860E(a) or 1272 applies, exceed

(ii) the amount of money and the fair market value of other property received during the taxable year under such instruments, and

(D) amounts includible in income by reason of cancellation of indebtedness.

(f) Real estate investment trusts to ascertain ownership

(1) In general

Each real estate investment trust shall each taxable year comply with regulations prescribed by the Secretary for the purposes of ascertaining the actual ownership of the outstanding shares, or certificates of beneficial interest, of such trust.

(2) Failure to comply

(A) In general

If a real estate investment trust fails to comply with the requirements of paragraph (1) for a taxable year, such trust shall pay (on notice and demand by the Secretary and in the same manner as tax) a penalty of $25,000.

(B) Intentional disregard

If any failure under paragraph (1) is due to intentional disregard of the requirement under paragraph (1), the penalty under subparagraph (A) shall be $50,000.

(C) Failure to comply after notice

The Secretary may require a real estate investment trust to take such actions as the Secretary determines appropriate to ascertain actual ownership if the trust fails to meet the requirements of paragraph (1). If the trust fails to take such actions, the trust shall pay (on notice and demand by the Secretary and in the same manner as tax) an additional penalty equal to the penalty determined under subparagraph (A) or (B), whichever is applicable.

(D) Reasonable cause

No penalty shall be imposed under this paragraph with respect to any failure if it is shown that such failure is due to reasonable cause and not to willful neglect.

(g) Cross reference

For provisions relating to excise tax based on certain real estate investment trust taxable income not distributed during the taxable year, see section 4981.

(Added Pub. L. 86–779, §10(a), Sept. 14, 1960, 74 Stat. 1006; amended Pub. L. 88–272, title II, §201(d)(11), Feb. 26, 1964, 78 Stat. 32; Pub. L. 91–172, title V, §511(c)(3), Dec. 30, 1969, 83 Stat. 637; Pub. L. 93–625, §6(c), (d)(2)–(4), Jan. 3, 1975, 88 Stat. 2113, 2114; Pub. L. 94–455, title XIV, §1402(b)(1)(P), (2), title XVI, §§1601(c), 1602(b), 1603(b), (c)(5), 1604(c)(2), (f)(3)(B), (j), (k)(2)(B), 1605(b)(2), 1606(a), (d), 1607(a), (b)(1)(A), (2), (3), title XIX, §§1901(a)(112), (b)(1)(V), (33)(K), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1732, 1746–1748, 1750–1757, 1783, 1792, 1801, 1834; Pub. L. 95–600, title III, §§301(b)(12), 362(d)(3), 363(b), title IV, §403(c)(3), Nov. 6, 1978, 92 Stat. 2822, 2851, 2852, 2868; Pub. L. 96–222, title I, §103(a)(1), Apr. 1, 1980, 94 Stat. 208; Pub. L. 96–223, title IV, §404(b)(8), Apr. 2, 1980, 94 Stat. 307; Pub. L. 97–34, title III, §302(c)(5), (d)(1), Aug. 13, 1981, 95 Stat. 273, 274; Pub. L. 98–369, div. A, title I, §§16(a), 55(b), title X, §1001(b)(13), (e), July 18, 1984, 98 Stat. 505, 572, 1011, 1012; Pub. L. 99–514, title VI, §§612(b)(7), 661(b), 664, 665(a), (b)(1), 666, 668(b)(1)(A), (2), (3), Oct. 22, 1986, 100 Stat. 2251, 2300, 2303–2305, 2307, 2308; Pub. L. 100–647, title I, §§1006(r), (s)(2), (4), (5), 1018(u)(28), Nov. 10, 1988, 102 Stat. 3418, 3419, 3591; Pub. L. 101–508, title XI, §11704(a)(37), Nov. 5, 1990, 104 Stat. 1388–520; Pub. L. 105–34, title XII, §§1251(a), 1254(a), (b)(1), 1255(b)(2), (3), 1256,

1259, 1260, Aug. 5, 1997, 111 Stat. 1030, 1032–1035; Pub. L. 105–206, title VI, § 6012(g), July 22, 1998, 112 Stat. 819; Pub. L. 106–170, title V, §§ 532(c)(2)(L), (M), 545, 556(a), (b), 566(a)(2), (b), Dec. 17, 1999, 113 Stat. 1930, 1944, 1949, 1950; Pub. L. 106–554, § 1(a)(7) [title III, § 311(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–640; Pub. L. 107–147, title IV, §§ 413(a), 417(13), Mar. 9, 2002, 116 Stat. 54, 56; Pub. L. 108–27, title III, § 302(d), May 28, 2003, 117 Stat. 763; Pub. L. 108–311, title IV, § 402(a)(5)(E), Oct. 4, 2004, 118 Stat. 1185; Pub. L. 108–357, title II, § 243(c), (e), (f)(4), title III, § 321(a), title IV, § 418(b), Oct. 22, 2004, 118 Stat. 1442, 1445, 1473, 1512; Pub. L. 109–135, title IV, §§ 403(d)(3), 412(ii), Dec. 21, 2005, 119 Stat. 2622, 2639; Pub. L. 110–172, § 11(a)(17)(B), Dec. 29, 2007, 121 Stat. 2486; Pub. L. 110–234, title XV, §§ 15311(c), 15315(a)–(d), May 22, 2008, 122 Stat. 1503–1505; Pub. L. 110–246, § 4(a), title XV, §§ 15311(c), 15315(a)–(d), June 18, 2008, 122 Stat. 1664, 2265–2267; Pub. L. 110–289, div. C, title II, §§ 3033, 3051, 3052, July 30, 2008, 122 Stat. 2900, 2901.)

AMENDMENT OF SECTION

For termination of amendment by section 303 of Pub. L. 108–27, see Effective and Termination Dates of 2003 Amendment note below.

REFERENCES IN TEXT

The date of enactment of the Housing Assistance Tax Act of 2008, referred to in subsec. (b)(6)(G), is the date of enactment of div. C of Pub. L. 110–289, which was approved July 30, 2008.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Subsec. (b)(3)(A)(ii). Pub. L. 110–246, § 15311(c), substituted ''rates'' for ''rate''.

Subsec. (b)(4)(B)(i). Pub. L. 110–289, § 3033(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''gain from the sale or other disposition of foreclosure property described in section 1221(a)(1) and the gross income for the taxable year derived from foreclosure property (as defined in section 856(e)), but only to the extent such gross income is not described in subparagraph (A), (B), (C), (D), (E), or (G) of section 856(c)(3), over''.

Subsec. (b)(6)(B)(i). Pub. L. 110–289, § 3033(b), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''the term 'net income derived from prohibited transactions' means the excess of the gain from prohibited transactions over the deductions allowed by this chapter which are directly connected with prohibited transactions;''.

Subsec. (b)(6)(C). Pub. L. 110–289, § 3051(a)(3), substituted ''real estate asset (as defined in section 856(c)(5)(B)) and which is described in section 1221(a)(1) if'' for ''real estate asset as defined in section 856(c)(5)(B) if'' in introductory provisions.

Subsec. (b)(6)(C)(i). Pub. L. 110–289, § 3051(a)(1), substituted ''2 years'' for ''4 years''.

Subsec. (b)(6)(C)(ii). Pub. L. 110–289, § 3051(a)(2), substituted ''2-year period'' for ''4-year period''.

Subsec. (b)(6)(C)(iii)(III). Pub. L. 110–289, § 3052(1), added subcl. (III).

Subsec. (b)(6)(C)(iv). Pub. L. 110–289, § 3051(a)(1), substituted ''2 years'' for ''4 years''.

Subsec. (b)(6)(D). Pub. L. 110–289, § 3051(a)(3), substituted ''real estate asset (as defined in section 856(c)(5)(B)) and which is described in section 1221(a)(1) if'' for ''real estate asset (as defined in section 856(c)(5)(B)) if'' in introductory provisions.

Subsec. (b)(6)(D)(i). Pub. L. 110–289, § 3051(a)(1), substituted ''2 years'' for ''4 years''.

Subsec. (b)(6)(D)(ii), (iii). Pub. L. 110–289, § 3051(a)(2), substituted ''2-year period'' for ''4-year period'' in introductory provisions.

Subsec. (b)(6)(D)(iv)(III). Pub. L. 110–289, § 3052(2), added subcl. (III).

Subsec. (b)(6)(D)(v). Pub. L. 110–246, § 15315(b), inserted '', or, in the case of a sale on or before the termination date, a taxable REIT subsidiary'' after ''any income''.

Subsec. (b)(6)(G). Pub. L. 110–289, § 3051(b), redesignated subpar. (H) as (G), inserted at end ''For purposes of the preceding sentence, the reference to subparagraph (D) shall be a reference to such subparagraph as in effect on the day before the enactment of the Housing Assistance Tax Act of 2008, as modified by subparagraph (G) as so in effect.'', and struck out former subpar. (G). Prior to amendment, text of subpar. (G) read as follows:

''(i) IN GENERAL.—In the case of the sale of a real estate asset (as defined in section 856(c)(5)(B)) to a qualified organization (as defined in section 170(h)(3)) exclusively for conservation purposes (within the meaning of section 170(h)(1)(C)), subparagraph (D) shall be applied—

''(I) by substituting '2 years' for '4 years' in clause (i), and

''(II) by substituting '2-year period' for '4-year period' in clauses (ii) and (iii).

''(ii) TERMINATION.—This subparagraph shall not apply to sales after the termination date.''

Pub. L. 110–246, § 15315(a), added subpar. (G).

Subsec. (b)(6)(H), (I). Pub. L. 110–289, § 3051(b)(1), redesignated subpar. (I) as (H). Former subpar. (H) redesignated (G).

Pub. L. 110–246, § 15315(c), (d), added subpars. (H) and (I).

2007—Subsec. (b)(8)(B). Pub. L. 110–172 amended heading and text generally. Prior to amendment, text read as follows: ''For purposes of this paragraph, the rules of paragraphs (3) and (4) of section 246(c) shall apply in determining the period for which the taxpayer has held any share of stock or beneficial interest; except that '6 months' shall be substituted for the number of days specified in subparagraph (B) of section 246(c)(3).''

2005—Subsec. (b)(2)(E). Pub. L. 109–135, § 403(d)(3), substituted ''section 856(c)(7)(C), and section 856(g)(5)'' for ''section 856(c)(7)(B)(iii), and section 856(g)(1).''

Subsec. (b)(6)(E). Pub. L. 109–135, § 412(ii)(1), substituted ''subparagraphs (C) and (D)'' for ''subparagraph (C)'' in introductory provisions.

Subsec. (b)(6)(F). Pub. L. 109–135, § 412(ii)(2), substituted ''subparagraph (C) or (D)'' for ''subparagraph (C) of this paragraph'' and ''subparagraphs (C), (D), and (E)'' for ''subparagraphs (C) and (D)''.

2004—Subsec. (b)(2)(E). Pub. L. 108–357, § 243(f)(4), substituted ''(7) of this subsection, section 856(c)(7)(B)(iii), and section 856(g)(1).'' for ''(7)''.

Subsec. (b)(3)(F). Pub. L. 108–357, § 418(b), added subpar. (F).

Subsec. (b)(5)(A)(i). Pub. L. 108–357, § 243(e), substituted ''95 percent'' for ''90 percent''.

Subsec. (b)(6)(D) to (F). Pub. L. 108–357, § 321(a), added subpar. (D) and redesignated former subpars. (D) and (E) as (E) and (F), respectively.

Subsec. (b)(7)(B)(ii) to (vii). Pub. L. 108–357, § 243(c), redesignated cls. (iii) to (vii) as (ii) to (vi), respectively, and struck out former cl. (ii), which related to exception for amounts received by a REIT for services furnished or rendered by a taxable REIT subsidiary that were described in section 856(d)(1)(B) of this title, or from a taxable REIT subsidiary that were described in par. (7)(C)(ii) of such section.

Subsec. (c)(2). Pub. L. 108–311, § 402(a)(5)(E), reenacted heading without change and amended text generally. Prior to amendment, text related to rules applicable to dividends received from real estate investment trusts for purposes of section 1(h)(11) of this title.

2003—Subsec. (c). Pub. L. 108–27, §§302(d), 303, temporarily reenacted subsec. heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of section 243 (relating to deductions for dividends received by corporations), a dividend received from a real estate investment trust which meets the requirements of this part shall not be considered as a dividend.'' See Effective and Termination Dates of 2003 Amendment note below.

2002—Subsec. (b)(7)(B)(i). Pub. L. 107–147, §417(13), substituted ''section 856(d)'' for ''subsection 856(d)''.

Pub. L. 107–147, §413(a)(1), substituted ''to the extent the amount of the rents'' for ''the amount of which''.

Subsec. (b)(7)(C). Pub. L. 107–147, §413(a)(2), substituted ''to the extent the amount'' for ''if the amount''.

2000—Subsec. (b)(7)(B)(ii). Pub. L. 106–554 amended heading and text of cl. (ii) generally. Prior to amendment, text read as follows: ''Clause (i) shall not apply to amounts received directly or indirectly by a real estate investment trust for services described in paragraph (1)(B) or (7)(C)(i) of section 856(d).''

1999—Subsec. (a)(1)(A)(i), (ii). Pub. L. 106–170, §556(a), substituted ''90 percent'' for ''95 percent (90 percent for taxable years beginning before January 1, 1980)''.

Subsec. (b)(2)(E). Pub. L. 106–170, §545(b), substituted ''paragraphs (5) and (7)'' for ''paragraph (5)''.

Subsec. (b)(4)(B)(i). Pub. L. 106–170, §532(c)(2)(L), substituted ''section 1221(a)(1)'' for ''section 1221(1)''.

Subsec. (b)(5)(A)(i). Pub. L. 106–170, §556(b), substituted ''90 percent'' for ''95 percent (90 percent in the case of taxable years beginning before January 1, 1980)''.

Subsec. (b)(6)(B)(iii). Pub. L. 106–170, §532(c)(2)(M), substituted ''section 1221(a)(1)'' for ''section 1221(1)''.

Subsec. (b)(7) to (9). Pub. L. 106–170, §545(a), added par. (7) and redesignated former pars. (7) and (8) as (8) and (9), respectively.

Subsec. (d)(3)(A). Pub. L. 106–170, §566(a)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''shall be treated for purposes of this subsection and subsection (a)(2)(B) as made from the earliest earnings and profits accumulated in any taxable year to which the provisions of this part did not apply rather than the most recently accumulated earnings and profits, and''.

Subsec. (d)(3)(B). Pub. L. 106–170, §566(b), inserted ''and section 858'' before period at end.

1998—Subsec. (d)(3)(A). Pub. L. 105–206 substituted ''earliest earnings and profits accumulated in any taxable year to which the provisions of this part did not apply'' for ''earliest accumulated earnings and profits (other than earnings and profits to which subsection (a)(2)(A) applies)''.

1997—Subsec. (a)(2), (3). Pub. L. 105–34, §1251(a)(1), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''the real estate investment trust complies for such year with regulations prescribed by the Secretary for the purpose of ascertaining the actual ownership of the outstanding shares, or certificates of beneficial interest, of such trust, and''.

Subsec. (b)(3)(D), (E). Pub. L. 105–34, §1254(a), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (b)(5). Pub. L. 105–34, §1255(b)(2), substituted ''section 856(c)(6)'' for ''section 856(c)(7)'' in introductory provisions.

Subsec. (b)(6)(C). Pub. L. 105–34, §1255(b)(3), substituted ''section 856(c)(5)(B)'' for ''section 856(c)(6)(B)'' in introductory provisions.

Subsec. (b)(6)(C)(iii). Pub. L. 105–34, §1260, substituted ''(other than sales of foreclosure property or sales to which section 1033 applies)'' for ''(other than foreclosure property)'' in subcls. (I) and (II).

Subsec. (b)(7)(A)(i). Pub. L. 105–34, §1254(b)(1), substituted ''subparagraph (B) or (D)'' for ''subparagraph (B)''.

Subsec. (d)(3). Pub. L. 105–34, §1256, added par. (3).

Subsec. (e)(2)(B) to (D). Pub. L. 105–34, §1259, redesignated subpar. (C) as (B) and substituted a comma for period at end, added subpars. (C) and (D), and struck out former subpar. (B) which read as follows: ''in the case of a real estate investment trust using the cash receipts and disbursements method of accounting, the amount (if any) by which—

''(i) the amounts includible in gross income with respect to instruments to which section 1274 (relating to certain debt instruments issued for property) applies, exceed

''(ii) the amount of money and the fair market value of other property received during the taxable year under such instruments; plus''.

Subsecs. (f), (g). Pub. L. 105–34, §1251(a)(2), added subsec. (f) and redesignated former subsec. (f) as (g).

1990—Subsec. (b)(3)(C). Pub. L. 101–508 amended Pub. L. 100–647, §1018(u)(28). See 1988 Amendment note below.

1988—Subsec. (a). Pub. L. 100–647, §1006(s)(4), inserted at end ''The Secretary may waive the requirements of paragraph (1) for any taxable year if the real estate investment trust establishes to the satisfaction of the Secretary that it was unable to meet such requirements by reason of distributions previously made to meet the requirements of section 4981.''

Subsec. (b)(3)(C). Pub. L. 100–647, §1018(u)(28), as amended by Pub. L. 101–508, substituted ''such net capital loss shall'' for ''such net capital loss such''.

Pub. L. 100–647, §1006(s)(2), substituted ''the taxable income of the real estate investment trust'' for ''real estate investment trust taxable income''.

Subsec. (b)(8). Pub. L. 100–647, §1006(s)(5), substituted ''in October, November, or December'' for ''in December'' and ''in such a month'' for ''in such month'' in introductory text, ''on December 31 of such calendar year'' for ''on such date'', in subpars. (A) and (B), and ''during January'' for ''before February 1'' in last sentence.

Subsec. (e)(2)(B)(i). Pub. L. 100–647, §1006(r), substituted ''with respect to instruments'' for ''as original issue discount on instruments''.

1986—Subsec. (a). Pub. L. 99–514, §661(b), struck out ''and'' at end of par. (1), substituted '', and'' for the period at end of par. (2), and added par. (3) and last sentence.

Subsec. (a)(1)(B). Pub. L. 99–514, §664(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the sum of—

''(i) the amount of any penalty imposed on the real estate investment trust by section 6697 which is paid by such trust during the taxable year; and

''(ii) the net loss derived from prohibited transactions,''.

Subsec. (b)(2)(F). Pub. L. 99–514, §666(b)(2), struck out ''and there shall be included an amount equal to any net loss derived from prohibited transactions'' after ''prohibited transactions''.

Subsec. (b)(3)(C). Pub. L. 99–514, §668(b)(3), inserted at end ''For purposes of this subparagraph, the amount of the net capital gain for any taxable year which is not a calendar year shall be determined without regard to any net capital loss attributable to transactions after December 31 of such year, and any such net capital loss such be treated as arising on the 1st day of the next taxable year. To the extent provided in regulations, the preceding sentence shall apply also for purposes of computing real estate investment trust taxable income.''

Pub. L. 99–514, §665(a)(2), (b)(1), inserted ''(or mailed to its shareholders or holders of beneficial interests with its annual report for the taxable year)'', struck out last sentence which read as follows: ''For purposes of this subparagraph, the net capital gain shall be deemed not to exceed the real estate investment trust taxable income (determined without regard to the deduction for dividends paid (as defined in section 561) for the taxable year).''

Subsec. (b)(3)(D). Pub. L. 99–514, §665(a)(1), added subpar. (D).

Subsec. (b)(6)(B)(ii). Pub. L. 99–514, §666(b)(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''the term 'net loss derived from prohibited transactions' means the excess of the deductions al-

lowed by this chapter which are directly connected with prohibited transactions over the gain from prohibited transactions; and''.

Subsec. (b)(6)(C)(ii). Pub. L. 99–514, § 666(a)(2), substituted ''30 percent'' for ''20 percent''.

Subsec. (b)(6)(C)(iii). Pub. L. 99–514, § 666(a)(1), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''during the taxable year the trust does not make more than 5 sales of property (other than foreclosure property); and''.

Subsec. (b)(6)(C)(v). Pub. L. 99–514, § 666(a)(3), added cl. (v).

Subsec. (b)(8). Pub. L. 99–514, § 668(b)(1)(A), added par. (8).

Subsec. (c). Pub. L. 99–514, § 612(b)(7), which directed that ''section 116 (relating to an exclusion for dividends received by individuals), and'' be struck out, was executed by striking out ''section 116 (relating to an exclusion for dividends received by individuals) and'' before ''section 243'' as the probable intent of Congress.

Subsec. (d). Pub. L. 99–514, § 668(b)(2), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''The earnings and profits of a real estate investment trust for any taxable year (but not its accumulated earnings and profits) shall not be reduced by any amount which is not allowable as a deduction in computing its taxable income for such taxable year. For purposes of this subsection, the term 'real estate investment trust' includes a domestic corporation, trust, or association which is a real estate investment trust determined without regard to the requirements of subsection (a).''

Subsecs. (e), (f). Pub. L. 99–514, § 664(b), added subsec. (e) and redesignated former subsec. (e) as (f).

1984—Subsec. (b)(3)(B). Pub. L. 98–369, § 1001(b)(13), (e), substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsec. (b)(7). Pub. L. 98–369, § 55(b), substituted provisions relating to loss on sale or exchange of stock held 6 months or less for provisions which related to loss on sale or exchange of stock held 31 days or less.

Pub. L. 98–369, § 1001(b)(13), (e), substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsec. (c). Pub. L. 98–369, § 16(a), repealed amendments made by Pub. L. 97–34, § 302(c). See 1981 Amendment note below.

1981—Subsec. (c). Pub. L. 97–34, § 302(c)(5), (d)(1), provided for general amendment of subsec. (c) so as to include provisions relating to treatment for section 128 of this title, adjustments to gross income and aggregate interest received, and notice to shareholders, applicable to taxable years beginning after Dec. 31, 1984. Section 16(a) of Pub. L. 98–369, repealed section 302(c) of Pub. L. 97–34, and provided that this title shall be applied and administered as if section 302(c), and the amendments made by section 302(c), had not been enacted.

1980—Subsec. (b)(4)(A). Pub. L. 96–222 substituted provisions computing the tax on the net income from foreclosure property of every real estate investment trust by multiplying the net income from foreclosure property by the highest rate of tax specified in section 11(b) for provisions determining the tax on the net income from foreclosure of property of every real estate investment trust by applying section 11 to such income as if such income constituted the taxable income of a corporation taxable under section 11 and struck out provisions requiring that for purposes of the preceding sentence, the surtax exemption be zero.

Subsec. (c). Pub. L. 96–223 temporarily substituted ''Limitations applicable to dividends received from real estate investment trusts'' for ''Restrictions applicable to dividends received from real estate investment trusts'' in heading, designated existing provisions as par. (1), substituted ''(1) CAPITAL GAIN DIVIDEND.—For purposes of section 116 (relating to exclusion for dividends and interest received by individuals), a capital gain dividend (as defined in subsection (b)(3)(C)) received from a real estate investment trust shall not be considered a dividend'' for ''For purposes of section 116 (relating to an exclusion for dividends received by individuals) and section 243 (relating to deductions for dividends received by corporations), a dividend received from a real estate investment trust which meets the requirements of this part shall not be considered as a dividend'' in par. (1) as so designated, and added pars. (2) to (6).

1978—Subsec. (b)(1). Pub. L. 95–600, § 301(b)(12), substituted ''a tax'' for ''a normal tax and surtax''.

Subsec. (b)(3)(A)(ii). Pub. L. 95–600, § 403(c)(3), substituted ''a tax determined at the rate provided in section 1201(a) on'' for ''a tax of 30 percent of''.

Subsec. (b)(3)(C). Pub. L. 95–600, § 362(d)(3), substituted ''section 860(e)'' for ''section 859(c)''.

Subsec. (b)(6)(C) to (E). Pub. L. 95–600, § 363(b), added subpars. (C) to (E).

1976—Subsec. (a). Pub. L. 94–455, §§ 1604(j), (k)(2)(B), 1906(b)(13)(A), substituted ''(other than subsection (d) of this section and subsection (g) of section 856)'' for ''(other than subsection (d) of this section)'' in provisions preceding par. (1), in par. (1) redesignated existing subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A), added subpar. (B), in both cls. (i) and (ii) of subpar. (A) as redesignated raised the percentage to 95 percent for taxable years beginning on and after Jan. 1, 1980, and, in cl. (i) of subpar. (A) as redesignated, inserted provision for the exclusion of net capital gain, and struck out ''or his delegate'' after ''Secretary'' in par. (2).

Subsec. (b)(1). Pub. L. 94–455, § 1901(b)(1)(V), struck out provision that, for purposes of computing the normal tax under section 11, the taxable income and the dividends paid deduction of such real estate investment trust for the taxable year (computed without regard to capital gains dividends) would be reduced by the deduction provided by section 22 (relating to partially tax-exempt interest.

Subsec. (b)(2). Pub. L. 94–455, §§ 1602(b)(2), 1603(c)(5), 1606(a), (d), 1607(b)(1)(A), (2), struck out subpar. (A) which provided for the exclusion of the excess, if any, of the net long-term capital gain over the net short-term capital loss, and subpar. (E) which prohibited the allowance of the net operating loss deduction provided in section 172, redesignated subpars. (B), (C), (D), and (F) as subpars. (A), (B), (C), and (D), respectively, added subpars. (E) and (F), and in subpar. (B) as redesignated substituted ''subparagraph (D)'' for ''paragraph (F)'' and struck out ''shall be computed without regard to capital gains dividends and'' after ''shall be allowed, but''.

Subsec. (b)(3)(A). Pub. L. 94–455, § 1607(a), substituted provisions setting an alternative tax in case of capital gains under which, if for any taxable year, a real estate investment trust has a net capital gain, then, in lieu of the tax imposed by subsection (b)(1), there is imposed a tax (if such tax is less than the tax imposed by such subsection) to consist of the sum of a tax, computed as provided in subsection (b)(1), on the real estate investment trust taxable income (determined by excluding such net capital gain and by computing the deduction for dividends paid without regard to capital gain dividends), and a tax of 30 percent of the excess of the net capital gain over the deduction for dividends paid (as defined in section 561) determined with reference to capital gains dividends only, for provisions posing a tax for each taxable year determined as provided in section 1201(a), on the excess, if any, of the net long-term capital gain over the sum of the net short-term capital loss and the deduction for dividends paid (as defined in section 561) determined with reference to capital gains dividends only.

Subsec. (b)(3)(B). Pub. L. 94–455, § 1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, § 1402(b)(1)(P), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

Subsec. (b)(3)(C). Pub. L. 94–455, §§ 1601(c), 1607(b)(3), 1901(a)(112), (b)(33)(K), inserted ''; except that, if there

is an increase in the excess described in subparagraph (A)(ii) of this paragraph for such year which results from a determination (as defined in section 859(c)), such designation may be made with respect to such increase at any time before the expiration of 120 days after the date of such determination'' after ''30 days after the close of its taxable year'', substituted ''net capital gain'' for ''excess of the net long-term capital gain over the net short-term capital loss'' in provision covering the portion of distributions which shall be capital gain dividends, inserted provision that the net capital gain be deemed not to exceed the real estate investment trust taxable income, and struck out provision which specified the source of deductions for dividends paid in the case of taxable years beginning before Jan. 1, 1975.

Subsec. (b)(4)(B)(i). Pub. L. 94–455, §1604(c)(2), inserted reference to subparagraph (G) of section 856(c)(3).

Subsec. (b)(5). Pub. L. 94–455, §1602(b)(1), added par. (5). Former par. (5) redesignated (7) and amended.

Subsec. (b)(6). Pub. L. 94–455, §1603(b), added par. (6).

Subsec. (b)(7). Pub. L. 94–455, §1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, §§1402(b)(1)(P), 1602(b)(1), redesignated par. (5) as (7) and provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

Subsec. (d). Pub. L. 94–455, §1604(f)(3)(B), substituted ''a domestic corporation, trust,'' for ''a domestic unincorporated trust''.

Subsec. (e). Pub. L. 94–455, §1605(b)(2), added subsec. (e).

1975—Subsec. (a)(1). Pub. L. 93–625, §6(d)(2), incorporated existing par. (1) provisions in par. (1) introductory text and provisions designated as subpar. (A), substituted in subpar. (A) ''(determined without regard to the deduction for dividends paid (as defined in section 561))'' for ''(determined without regard to subsection (b)(2)(C))'', and added subpar. (B).

Subsec. (b)(2)(C). Pub. L. 93–625, §6(d)(4), provided for computation of deduction for dividends paid without regard to that portion of such deduction which is attributable to the amount excluded under subparagraph (F).

Subsec. (b)(2)(F). Pub. L. 93–625, §6(d)(3), added subpar. (F).

Subsec. (b)(4), (5). Pub. L. 93–625, §6(c), added par. (4) and redesignated former par. (4) as (5).

1969—Subsec. (b)(3)(A). Pub. L. 91–172, §511(c)(3)(A), substituted ''determined as provided in section 1201(a), on'' for ''of 25 percent of.''

Subsec. (b)(3)(C). Pub. L. 91–172, §511(c)(3)(B), inserted provision requiring for the purposes of the deduction for capital gains dividends paid, in the case of a taxable year beginning before Jan. 1, 1975, the deduction for dividends paid shall first be made from the amount subject to tax in accordance with section 1201(a)(1)(B), to the extent thereof, and then from the amount subject to tax in accordance with section 1201(a)(1)(A).

1964—Subsec. (c). Pub. L. 88–272 struck out ''section 34(a) (relating to credit for dividends received by individuals),'' before ''section 116'' and the comma before ''and''.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 3033(a) of Pub. L. 110–289 applicable to gains recognized after July 30, 2008, and amendment by section 3033(b) of Pub. L. 110–289 applicable to gains and deductions recognized after July 30, 2008, see section 3071(c) of Pub. L. 110–289, set out as a note under section 856 of this title.

Amendment by sections 3051 and 3052 of Pub. L. 110–289 applicable to sales made after July 30, 2008, see section 3071(d) of Pub. L. 110–289, set out as a note under section 856 of this title.

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 15311(c) of Pub. L. 110–246 applicable to taxable years ending after June 18, 2008, see section 15311(d) of Pub. L. 110–246, set out as a note under section 55 of this title.

Pub. L. 110–234, title XV, §15315(e), May 22, 2008, 122 Stat. 1505, and Pub. L. 110–246, §4(a), title XV, §15315(e), June 18, 2008, 122 Stat. 1664, 2267, provided that: ''The amendments made by this section [amending this section] shall apply to dispositions in taxable years beginning after the date of the enactment of this Act [June 18, 2008].''

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 403(d)(3) of Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENTS

Amendment by section 243(c), (e) of Pub. L. 108–357 applicable to taxable years beginning after Oct. 22, 2004, and amendment by section 243(f)(4) of Pub. L. 108–357 applicable to taxable years ending after Oct. 22, 2004, see section 243(g)(2), (4)(D) of Pub. L. 108–357, set out as a note under section 856 of this title.

Pub. L. 108–357, title III, §321(b), Oct. 22, 2004, 118 Stat. 1474, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004].''

Pub. L. 108–357, title IV, §418(c), Oct. 22, 2004, 118 Stat. 1513, as amended by Pub. L. 109–135, title IV, §403(p)(2), Dec. 21, 2005, 119 Stat. 2626, provided that: ''The amendments made by this section [amending this section and section 897 of this title] shall apply to—

''(1) any distribution by a real estate investment trust which is treated as a deduction for a taxable year of such trust beginning after the date of the enactment of this Act [Oct. 22, 2004], and

''(2) any distribution by a real estate investment trust made after such date which is treated as a deduction under section 860 [probably means section 860 of the Internal Revenue Code of 1986] for a taxable year of such trust beginning on or before such date.''

Amendment by Pub. L. 108–311 effective as if included in section 302 of the Jobs and Growth Tax Relief Reconciliation Act of 2003, Pub. L. 108–27, see section 402(b) of Pub. L. 108–311, set out a note under section 1 of this title.

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as a note under section 1 of this title.

Amendment by Pub. L. 108–27 inapplicable to taxable years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 303 of Pub. L. 108–27, as amended, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title IV, §413(b), Mar. 9, 2002, 116 Stat. 54, provided that: ''The amendments made by this section [amending this section] shall take effect as if included in section 545 of the Tax Relief Extension Act of 1999 [Pub. L. 106–170].''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the provisions of the Ticket to Work and Work Incentives Improvement Act of 1999, Pub. L. 106–170, to

which such amendment relates, see section 1(a)(7) [title III, §311(d)] of Pub. L. 106–554, set out as a note under section 30A of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 532(c)(2)(L), (M) of Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

Amendment by section 545 of Pub. L. 106–170 applicable to taxable years beginning after Dec. 31, 2000, see section 546(a) of Pub. L. 106–170, set out as a note under section 856 of this title.

Pub. L. 106–170, title V, §556(c), Dec. 17, 1999, 113 Stat. 1949, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2000.''

Amendment by section 566(a)(2), (b) of Pub. L. 106–170 applicable to distributions after Dec. 31, 2000, see section 566(d) of Pub. L. 106–170, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to taxable years beginning after Aug. 5, 1997, see section 1263 of Pub. L. 105–34, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1006(s)(5) of Pub. L. 100–647 provided that the amendment made by that section is effective with respect to dividends declared in 1988 and subsequent calendar years.

Amendment by sections 1006(r), (s)(2), (4) and 1018(u)(28) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 612(b)(7) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 612(c) of Pub. L. 99–514, set out as a note under section 301 of this title.

Amendments by sections 661(b), 664, 665(a), (b)(1), and 666 of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 669(a) of Pub. L. 99–514, set out as a note under section 856 of this title.

Amendment by section 668(b)(1)(A), (2), (3) of Pub. L. 99–514 applicable to calendar years beginning after Dec. 31, 1986, see section 669(b) of Pub. L. 99–514, set out as a note under section 856 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 16(a) of Pub. L. 98–369 applicable to taxable years ending after Dec. 31, 1983, see section 18(a) of Pub. L. 98–369, set out as a note under section 48 of this title.

Amendment by section 55(b) of Pub. L. 98–369 applicable to losses incurred with respect to shares of stock and beneficial interest with respect to which the taxpayer's holding period begins after July 18, 1984, see section 55(c) of Pub. L. 98–369, set out as a note under section 852 of this title.

Amendment by section 1001(b)(13) of Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE AND TERMINATION DATES OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 applicable with respect to taxable years beginning after Dec. 31, 1980, and before Jan. 1, 1982, see section 404(c) of Pub. L. 96–223, set out as a note under section 265 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 301(b)(12) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

Amendment by section 362(d)(3) of Pub. L. 95–600 applicable with respect to determinations (as defined in section 860(e) of this title) after Nov. 6, 1978, see section 362(e) of Pub. L. 95–600, set out as an Effective Date note under section 860 of this title.

Amendment by section 363(b) of Pub. L. 95–600 applicable to taxable years ending after Nov. 6, 1978, see section 363(d) of Pub. L. 95–600, set out as a note under section 856 of this title.

Amendment by section 403(c)(3) of Pub. L. 95–600 effective on Nov. 6, 1978, see section 403(d)(3) of Pub. L. 95–600, set out as a note under section 528 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(b)(1) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Section 1402(b)(2) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Section 1608(a) of Pub. L. 94–455, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by section 1601 [enacting sections 859 and 6697 of this title and amending this section and sections 316, 381, 6422, 6503, and 6515 of this title] shall apply with respect to determinations (as defined in section 859(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) occurring after the date of the enactment of this Act [Oct. 4, 1976]. If the amendments made by section 1601 apply to a taxable year ending on or before the date of enactment of this Act:

''(1) the reference to section 857(b)(3)(A)(ii) in sections 857(b)(3)(C) and 859(b)(1)(B) of such Code as amended, shall be considered to be a reference to section 857(b)(3)(A) of such Code, as in effect immediately before the enactment of this Act [Oct. 4, 1976], and

''(2) the reference to section 857(b)(2)(B) in section 859(a) of such Code, as amended, shall be considered to be a reference to section 857(b)(2)(C) of such Code, as in effect immediately before the enactment of this Act [Oct. 4, 1976].''

For effective date of amendment by section 1602(b)(1), (2) of Pub. L. 94–455, see section 1608(b) of Pub. L. 94–455, set out as a Trust Not Disqualified in Certain Cases Where Income Tests Not Met note under section 856 of this title.

For effective date of amendment by sections 1603, 1604, and 1605 of Pub. L. 94–455, see section 1608(d) of Pub. L. 94–455, set out as a note under section 856 of this title.

Section 1608(c) of Pub. L. 94–455, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by sections 1606 and 1607 [amending this section and sections 46, 172, and 443 of this title] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 4, 1976]; except that in the case of a taxpayer which has a net operating loss (as defined in section 172(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) for any taxable year

ending after the date of enactment of this Act [Oct. 4, 1976] for which the provisions of part II of subchapter M of chapter 1 of subtitle A of such Code apply to such taxpayer, such loss shall not be a net operating loss carryback under section 172 of such Code to any taxable year ending on or before the date of enactment of this Act [Oct. 4, 1976].''

Amendment by section 1901(a)(112), (b)(1)(V), (33)(K) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–625 applicable to foreclosure property acquired after Dec. 31, 1973, see section 6(e) of Pub. L. 93–625, set out as a note under section 856 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to taxable years beginning after Dec. 31, 1969, see section 511(d) of Pub. L. 91–172, set out as an Effective Date note under section 1201 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable with respect to dividends received after Dec. 31, 1964, in taxable years ending after such date, see section 201(e) of Pub. L. 88–272, set out as a note under section 22 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86–779, set out as a note under section 856 of this title.

§ 858. Dividends paid by real estate investment trust after close of taxable year

(a) General rule

For purposes of this part, if a real estate investment trust—

(1) declares a dividend before the time prescribed by law for the filing of its return for a taxable year (including the period of any extension of time granted for filing such return), and

(2) distributes the amount of such dividend to shareholders or holders of beneficial interests in the 12-month period following the close of such taxable year and not later than the date of the first regular dividend payment made after such declaration,

the amount so declared and distributed shall, to the extent the trust elects in such return (and specifies in dollar amounts) in accordance with regulations prescribed by the Secretary, be considered as having been paid only during such taxable year, except as provided in subsections (b) and (c).

(b) Receipt by shareholder

Except as provided in section 857(b)(8), amounts to which subsection (a) applies shall be treated as received by the shareholder or holder of a beneficial interest in the taxable year in which the distribution is made.

(c) Notice to shareholders

In the case of amounts to which subsection (a) applies, any notice to shareholders or holders of beneficial interests required under this part with respect to such amounts shall be made not later than 30 days after the close of the taxable year in which the distribution is made (or mailed to its shareholders or holders of beneficial interests with its annual report for the taxable year).

(Added Pub. L. 86–779, §10(a), Sept. 14, 1960, 74 Stat. 1008; amended Pub. L. 94–455, title XVI, §§1604(h), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1752, 1834; Pub. L. 99–514, title VI, §§665(b)(2), 668(b)(1)(B), Oct. 22, 1986, 100 Stat. 2304, 2307; Pub. L. 100–647, title I, §1018(u)(27), Nov. 10, 1988, 102 Stat. 3591.)

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–647, §1018(u)(27), made technical correction to directory language of Pub. L. 99–514, see 1986 Amendment note below.

1986—Subsec. (b). Pub. L. 99–514, §668(b)(1)(B), as amended by Pub. L. 100–647, §1018(u)(27), substituted ''Except as provided in section 857(b)(8), amounts'' for ''Amounts''.

Subsec. (c). Pub. L. 99–514, §665(b)(2), inserted ''(or mailed to its shareholders or holders of beneficial interests with its annual report for the taxable year)''.

1976—Subsec. (a). Pub. L. 94–455, §§1604(h), 1906(b)(13)(A), inserted ''(and specifies in dollar amounts)'' after ''to the extent the trust elects in such return'' and substituted ''paid only during such taxable year'' for ''paid during such taxable year'', and struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 665(b)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, and by section 668(b)(1)(B) of Pub. L. 99–514 applicable to calendar years beginning after Dec. 31, 1986, see section 669 of Pub. L. 99–514, set out as a note under section 856 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1604(h) of Pub. L. 94–455, see section 1608(d) of Pub. L. 94–455, set out as a note under section 856 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years of real estate investment trusts beginning after Dec. 31, 1960, see section 10(k) of Pub. L. 86–779, set out as a note under section 856 of this title.

§ 859. Adoption of annual accounting period

(a) General rule

For purposes of this subtitle—

(1) a real estate investment trust shall not change to any accounting period other than the calendar year, and

(2) a corporation, trust, or association may not elect to be a real estate investment trust for any taxable year beginning after October 4, 1976, unless its accounting period is the calendar year.

Paragraph (2) shall not apply to a corporation, trust, or association which was considered to be a real estate investment trust for any taxable year beginning on or before October 4, 1976.

(b) Change of accounting period without approval

Notwithstanding section 442, an entity which has not engaged in any active trade or business

may change its accounting period to a calendar year without the approval of the Secretary if such change is in connection with an election under section 856(c).

(Added Pub. L. 94–455, title XVI, § 1604(i)(1), Oct. 4, 1976, 90 Stat. 1752, § 860; renumbered § 859 and amended Pub. L. 95–600, title III, § 362(d)(6), title VII, § 701(t)(1), Nov. 6, 1978, 92 Stat. 2852, 2911; Pub. L. 99–514, title VI, § 661(c), Oct. 22, 1986, 100 Stat. 2300.)

PRIOR PROVISIONS

A prior section 859, added Pub. L. 94–455, title XVI, § 1601(a)(1), Oct. 4, 1976, 90 Stat. 1742; amended Pub. L. 95–600, title VII, § 701(t)(4), Nov. 6, 1978, 92 Stat. 2912, related to a deduction for deficiency dividends, prior to repeal by Pub. L. 95–600, title III, § 362(d)(6), Nov. 6, 1978, 92 Stat. 2852. See section 860 of this title.

AMENDMENTS

1986—Pub. L. 99–514 designated existing provisions as subsec. (a) and added subsec. (b).

1978—Pub. L. 95–600, § 701(t)(1), designated existing provisions as par. (1), substituted ''change to any accounting period'' for ''change to or adopt any annual accounting period'', and added par. (2) and provision for nonapplicability of par. (2) to a real estate investment trust for any taxable year beginning on or before Oct. 4, 1976.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 669 of Pub. L. 99–514, set out as a note under section 856 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Repeal of prior section 859 of this title and redesignation of section 860 of this title as this section by section 362(d)(6) of Pub. L. 95–600 applicable with respect to determinations (as defined in section 860(e) of this title) after Nov. 6, 1978, see section 362(e) of Pub. L. 95–600, set out as an Effective Date note under section 860 of this title.

Section 701(t)(5) of Pub. L. 95–600 provided that: ''The amendments made by this subsection [amending this section and sections 275, 856, 6212, and 6501 of this title] shall take effect on October 4, 1976.''

PART III—PROVISIONS WHICH APPLY TO BOTH REGULATED INVESTMENT COMPANIES AND REAL ESTATE INVESTMENT TRUSTS

Sec.
860. Deduction for deficiency dividends.

§ 860. Deduction for deficiency dividends

(a) General rule

If a determination with respect to any qualified investment entity results in any adjustment for any taxable year, a deduction shall be allowed to such entity for the amount of deficiency dividends for purposes of determining the deduction for dividends paid (for purposes of section 852 or 857, whichever applies) for such year.

(b) Qualified investment entity defined

For purposes of this section, the term ''qualified investment entity'' means—

(1) a regulated investment company, and

(2) a real estate investment trust.

(c) Rules for application of section

(1) Interest and additions to tax determined with respect to the amount of deficiency dividend deduction allowed

For purposes of determining interest, additions to tax, and additional amounts—

(A) the tax imposed by this chapter (after taking into account the deduction allowed by subsection (a)) on the qualified investment entity for the taxable year with respect to which the determination is made shall be deemed to be increased by an amount equal to the deduction allowed by subsection (a) with respect to such taxable year,

(B) the last date prescribed for payment of such increase in tax shall be deemed to have been the last date prescribed for the payment of tax (determined in the manner provided by section 6601(b)) for the taxable year with respect to which the determination is made, and

(C) such increase in tax shall be deemed to be paid as of the date the claim for the deficiency dividend deduction is filed.

(2) Credit or refund

If the allowance of a deficiency dividend deduction results in an overpayment of tax for any taxable year, credit or refund with respect to such overpayment shall be made as if on the date of the determination 2 years remained before the expiration of the period of limitations on the filing of claim for refund for the taxable year to which the overpayment relates.

(d) Adjustment

For purposes of this section—

(1) Adjustment in the case of regulated investment company

In the case of any regulated investment company, the term ''adjustment'' means—

(A) any increase in the investment company taxable income of the regulated investment company (determined without regard to the deduction for dividends paid (as defined in section 561)),

(B) any increase in the amount of the excess described in section 852(b)(3)(A) (relating to the excess of the net capital gain over the deduction for capital gain dividends paid), and

(C) any decrease in the deduction for dividends paid (as defined in section 561) determined without regard to capital gains dividends.

(2) Adjustment in the case of real estate investment trust

In the case of any real estate investment trust, the term ''adjustment'' means—

(A) any increase in the sum of—

(i) the real estate investment trust taxable income of the real estate investment trust (determined without regard to the deduction for dividends paid (as defined in section 561) and by excluding any net capital gain), and

(ii) the excess of the net income from foreclosure property (as defined in section

857(b)(4)(B)) over the tax on such income imposed by section 857(b)(4)(A),

(B) any increase in the amount of the excess described in section 857(b)(3)(A)(ii) (relating to the excess of the net capital gain over the deduction for capital gains dividends paid), and

(C) any decrease in the deduction for dividends paid (as defined in section 561) determined without regard to capital gains dividends.

(e) Determination

For purposes of this section, the term ''determination'' means—

(1) a decision by the Tax Court, or a judgment, decree, or other order by any court of competent jurisdiction, which has become final;

(2) a closing agreement made under section 7121;

(3) under regulations prescribed by the Secretary, an agreement signed by the Secretary and by, or on behalf of, the qualified investment entity relating to the liability of such entity for tax; or

(4) a statement by the taxpayer attached to its amendment or supplement to a return of tax for the relevant tax year.

(f) Deficiency dividends

(1) Definition

For purposes of this section, the term ''deficiency dividends'' means a distribution of property made by the qualified investment entity on or after the date of the determination and before filing claim under subsection (g), which would have been includible in the computation of the deduction for dividends paid under section 561 for the taxable year with respect to which the liability for tax resulting from the determination exists if distributed during such taxable year. No distribution of property shall be considered as deficiency dividends for purposes of subsection (a) unless distributed within 90 days after the determination, and unless a claim for a deficiency dividend deduction with respect to such distribution is filed pursuant to subsection (g).

(2) Limitations

(A) Ordinary dividends

The amount of deficiency dividends (other than deficiency dividends qualifying as capital gain dividends) paid by a qualified investment entity for the taxable year with respect to which the liability for tax resulting from the determination exists shall not exceed the sum of—

(i) the excess of the amount of increase referred to in subparagraph (A) of paragraph (1) or (2) of subsection (d) (whichever applies) over the amount of any increase in the deduction for dividends paid (computed without regard to capital gain dividends) for such taxable year which results from such determination, and

(ii) the amount of decreased[1] referred to in subparagraph (C) of paragraph (1) or (2) of subsection (d) (whichever applies).

[1] So in original. Probably should be ''decrease''.

(B) Capital gain dividends

The amount of deficiency dividends qualifying as capital gain dividends paid by a qualified investment entity for the taxable year with respect to which the liability for tax resulting from the determination exists shall not exceed the amount by which (i) the increase referred to in subparagraph (B) of paragraph (1) or (2) of subsection (d) (whichever applies), exceeds (ii) the amount of any dividends paid during such taxable year which are designated or reported (as the case may be) as capital gain dividends after such determination.

(3) Effect on dividends paid deduction

(A) For taxable year in which paid

Deficiency dividends paid in any taxable year shall not be included in the amount of dividends paid for such year for purposes of computing the dividends paid deduction for such year.

(B) For prior taxable year

Deficiency dividends paid in any taxable year shall not be allowed for purposes of section 855(a) or 858(a) in the computation of the dividends paid deduction for the taxable year preceding the taxable year in which paid.

(g) Claim required

No deficiency dividend deduction shall be allowed under subsection (a) unless (under regulations prescribed by the Secretary) claim therefore is filed within 120 days after the date of the determination.

(h) Suspension of statute of limitations and stay of collection

(1) Suspension of running of statute

If the qualified investment entity files a claim as provided in subsection (g), the running of the statute of limitations provided in section 6501 on the making of assessments, and the bringing of distraint or a proceeding in court for collection, in respect of the deficiency established by a determination under this section, and all interest, additions to tax, additional amounts, or assessable penalties in respect thereof, shall be suspended for a period of 2 years after the date of the determination.

(2) Stay of collection

In the case of any deficiency established by a determination under this section—

(A) the collection of the deficiency, and all interest, additions to tax, additional amounts, and assessable penalties in respect thereof, shall, except in cases of jeopardy, be stayed until the expiration of 120 days after the date of the determination, and

(B) if claim for a deficiency dividend deduction is filed under subsection (g), the collection of such part of the deficiency as is not reduced by the deduction for deficiency dividends provided in subsection (a) shall be stayed until the date the claim is disallowed (in whole or in part), and if disallowed in part collection shall be made only with respect to the part disallowed.

No distraint or proceeding in court shall be begun for the collection of an amount the col-

lection of which is stayed under subparagraph (A) or (B) during the period for which the collection of such amount is stayed.

(i) Deduction denied in case of fraud

No deficiency dividend deduction shall be allowed under subsection (a) if the determination contains a finding that any part of any deficiency attributable to an adjustment with respect to the taxable year is due to fraud with intent to evade tax or to willfull[2] failure to file an income tax return within the time prescribed by law or prescribed by the Secretary in pursuance of law.

(Added Pub. L. 95–600, title III, § 362(a), Nov. 6, 1978, 92 Stat. 2848; amended Pub. L. 96–222, title I, § 103(a)(11)(B), (C), Apr. 1, 1980, 94 Stat. 213; Pub. L. 99–514, title VI, § 667(b)(1), Oct. 22, 1986, 100 Stat. 2306; Pub. L. 108–357, title II, § 243(f)(5), Oct. 22, 2004, 118 Stat. 1445; Pub. L. 111–325, title III, § 301(a)(2), title V, § 501(b), Dec. 22, 2010, 124 Stat. 3542, 3554.)

PRIOR PROVISIONS

A prior section 860 was renumbered section 859 of this title.

AMENDMENTS

2010—Subsec. (f)(2)(B). Pub. L. 111–325, § 301(a)(2), inserted ''or reported (as the case may be)'' after ''designated''.

Subsec. (j). Pub. L. 111–325, § 501(b), struck out subsec. (j). Text read as follows: ''For assessable penalty with respect to liability for tax of a regulated investment company which is allowed a deduction under subsection (a), see section 6697.''

2004—Subsec. (e)(4). Pub. L. 108–357 added par. (4).

1986—Subsec. (j). Pub. L. 99–514 substituted ''regulated investment company'' for ''qualified investment entity''.

1980—Subsec. (f). Pub. L. 96–222 substituted in heading ''Deficiency'' for ''Efficiency'' and in par. (2)(A)(i) ''(computed without regard'' for ''computed without regard''.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 301(a)(2) of Pub. L. 111–325 applicable to taxable years beginning after Dec. 22, 2010, see section 301(h) of Pub. L. 111–325, set out as a note under section 852 of this title.

Pub. L. 111–325, title V, § 501(c), Dec. 22, 2010, 124 Stat. 3554, provided that: ''The amendments made by this section [amending this section and repealing section 6697 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 22, 2010].''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to statements filed after Oct. 22, 2004, see section 243(g)(4)(E) of Pub. L. 108–357, set out as a note under section 856 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 669 of Pub. L. 99–514, set out as a note under section 856 of this title.

EFFECTIVE DATE

Section 362(e) of Pub. L. 95–600, as amended by Pub. L. 96–222, title I, § 103(a)(11)(A), Apr. 1, 1980, 94 Stat. 212; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [enacting this section, amending sections 316, 381, 852, 857, 6422, 6503, 6515, and 6697 of this title, repealing section 859 of this title, and redesignating prior section 860 as 859 of this title] shall apply with respect to determinations (as defined in section 860(e) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) after the date of the enactment of this Act [Nov. 6, 1978].''

[2] So in original. Probably should be ''willful''.

PART IV—REAL ESTATE MORTGAGE INVESTMENT CONDUITS

Sec.
860A. Taxation of REMIC's.
860B. Taxation of holders of regular interests.
860C. Taxation of residual interests.
860D. REMIC defined.
860E. Treatment of income in excess of daily accruals on residual interests.
860F. Other rules.
860G. Other definitions and special rules.

§ 860A. Taxation of REMIC's

(a) General rule

Except as otherwise provided in this part, a REMIC shall not be subject to taxation under this subtitle (and shall not be treated as a corporation, partnership, or trust for purposes of this subtitle).

(b) Income taxable to holders

The income of any REMIC shall be taxable to the holders of interests in such REMIC as provided in this part.

(Added Pub. L. 99–514, title VI, § 671(a), Oct. 22, 1986, 100 Stat. 2309; amended Pub. L. 100–647, title I, § 1006(t)(20), Nov. 10, 1988, 102 Stat. 3426.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–647 substituted ''this subtitle'' for ''this chapter'' in two places.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section 675(a)–(c) of subtitle H (§§ 671–675) of title VI of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1006(w)(1), Nov. 10, 1988, 102 Stat. 3427, provided that:

''(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this subtitle [enacting this part and amending sections 582, 593, 856, 1272, 6049, and 7701 of this title] shall take effect on January 1, 1987.

''(b) RULES FOR ACCRUING ORIGINAL ISSUE DISCOUNT.—The amendment made by section 672 [amending section 1272 of this title] shall apply to debt instruments issued after December 31, 1986, in taxable years ending after such date.

''(c) TREATMENT OF TAXABLE MORTGAGE POOLS.—

''(1) IN GENERAL.—The amendment made by section 673 [amending section 7701 of this title] shall take effect on January 1, 1992.

''(2) TREATMENT OF EXISTING ENTITIES.—The amendment made by section 673 shall not apply to any entity in existence on December 31, 1991. The preceding sentence shall cease to apply with respect to any entity as of the 1st day after December 31, 1991, on which there is a substantial transfer of cash or other property to such entity.

''(3) SPECIAL RULE FOR COORDINATION WITH WASH-SALE RULES.—Notwithstanding paragraphs (1) and (2),

for purposes of applying section 860F(d) of the Internal Revenue Code of 1986 (as added by this part [this subtitle]), the amendment made by section 673 shall apply to taxable years beginning after December 31, 1986.''

STUDY OF AMENDMENTS BY PUB. L. 99–514

Section 675(d) of Pub. L. 99–514, as added by Pub. L. 100–647, title I, §1006(w)(2), Nov. 10, 1988, 102 Stat. 3427, directed Secretary of the Treasury to conduct a study of the operation of the amendments made by this part [this subtitle] and their competitive impact on savings and loan institutions and similar financial institutions and, not later than Jan. 1, 1990, report to Congress, prior to repeal by Pub. L. 101–508, title XI, §11832(5), Nov. 5, 1990, 104 Stat. 1388–559.

§ 860B. Taxation of holders of regular interests

(a) General rule

In determining the tax under this chapter of any holder of a regular interest in a REMIC, such interest (if not otherwise a debt instrument) shall be treated as a debt instrument.

(b) Holders must use accrual method

The amounts includible in gross income with respect to any regular interest in a REMIC shall be determined under the accrual method of accounting.

(c) Portion of gain treated as ordinary income

Gain on the disposition of a regular interest shall be treated as ordinary income to the extent such gain does not exceed the excess (if any) of—

(1) the amount which would have been includible in the gross income of the taxpayer with respect to such interest if the yield on such interest were 110 percent of the applicable Federal rate (as defined in section 1274(d) without regard to paragraph (2) thereof) as of the beginning of the taxpayer's holding period, over

(2) the amount actually includible in gross income with respect to such interest by the taxpayer.

(d) Cross reference

For special rules in determining inclusion of original issue discount on regular interests, see section 1272(a)(6).

(Added Pub. L. 99–514, title VI, §671(a), Oct. 22, 1986, 100 Stat. 2309.)

§ 860C. Taxation of residual interests

(a) Pass-thru of income or loss

(1) In general

In determining the tax under this chapter of any holder of a residual interest in a REMIC, such holder shall take into account his daily portion of the taxable income or net loss of such REMIC for each day during the taxable year on which such holder held such interest.

(2) Daily portion

The daily portion referred to in paragraph (1) shall be determined—

(A) by allocating to each day in any calendar quarter its ratable portion of the taxable income (or net loss) for such quarter, and

(B) by allocating the amount so allocated to any day among the holders (on such day) of residual interests in proportion to their respective holdings on such day.

(b) Determination of taxable income or net loss

For purposes of this section—

(1) Taxable income

The taxable income of a REMIC shall be determined under an accrual method of accounting and, except as provided in regulations, in the same manner as in the case of an individual, except that—

(A) regular interests in such REMIC (if not otherwise debt instruments) shall be treated as indebtedness of such REMIC,

(B) market discount on any market discount bond shall be included in gross income for the taxable years to which it is attributable as determined under the rules of section 1276(b)(2) (and sections 1276(a) and 1277 shall not apply),

(C) there shall not be taken into account any item of income, gain, loss, or deduction allocable to a prohibited transaction,

(D) the deductions referred to in section 703(a)(2) (other than any deduction under section 212) shall not be allowed, and

(E) the amount of the net income from foreclosure property (if any) shall be reduced by the amount of the tax imposed by section 860G(c).

(2) Net loss

The net loss of any REMIC is the excess of—

(A) the deductions allowable in computing the taxable income of such REMIC, over

(B) its gross income.

Such amount shall be determined with the modifications set forth in paragraph (1).

(c) Distributions

Any distribution by a REMIC—

(1) shall not be included in gross income to the extent it does not exceed the adjusted basis of the interest, and

(2) to the extent it exceeds the adjusted basis of the interest, shall be treated as gain from the sale or exchange of such interest.

(d) Basis rules

(1) Increase in basis

The basis of any person's residual interest in a REMIC shall be increased by the amount of the taxable income of such REMIC taken into account under subsection (a) by such person with respect to such interest.

(2) Decreases in basis

The basis of any person's residual interest in a REMIC shall be decreased (but not below zero) by the sum of the following amounts:

(A) any distributions to such person with respect to such interest, and

(B) any net loss of such REMIC taken into account under subsection (a) by such person with respect to such interest.

(e) Special rules

(1) Amounts treated as ordinary

Any amount taken into account under subsection (a) by any holder of a residual interest in a REMIC shall be treated as ordinary income or ordinary loss, as the case may be.

(2) Limitation on losses

(A) In general

The amount of the net loss of any REMIC taken into account by a holder under subsection (a) with respect to any calendar quarter shall not exceed the adjusted basis of such holder's residual interest in such REMIC as of the close of such calendar quarter (determined without regard to the adjustment under subsection (d)(2)(B) for such calendar quarter).

(B) Indefinite carryforward

Any loss disallowed by reason of subparagraph (A) shall be treated as incurred by the REMIC in the succeeding calendar quarter with respect to such holder.

(3) Cross reference

For special treatment of income in excess of daily accruals, see section 860E.

(Added Pub. L. 99–514, title VI, § 671(a), Oct. 22, 1986, 100 Stat. 2309; amended Pub. L. 100–647, title I, § 1006(t)(1), (8)(C), (21), Nov. 10, 1988, 102 Stat. 3419, 3421, 3426.)

AMENDMENTS

1988—Subsec. (b)(1). Pub. L. 100–647, § 1006(t)(21), substituted ''and, except as provided in regulations, in the same manner'' for ''and in the same manner'' in introductory provisions.

Subsec. (b)(1)(E). Pub. L. 100–647, § 1006(t)(8)(C), added subpar. (E).

Subsec. (e)(1). Pub. L. 100–647, § 1006(t)(1), substituted ''ordinary'' for ''ordinary income'' in heading and amended text generally. Prior to amendment, text read as follows: ''Any amount included in the gross income of any holder of a residual interest in a REMIC by reason of subsection (a) shall be treated as ordinary income.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

§ 860D. REMIC defined

(a) General rule

For purposes of this title, the terms ''real estate mortgage investment conduit'' and ''REMIC'' mean any entity—

(1) to which an election to be treated as a REMIC applies for the taxable year and all prior taxable years,

(2) all of the interests in which are regular interests or residual interests,

(3) which has 1 (and only 1) class of residual interests (and all distributions, if any, with respect to such interests are pro rata),

(4) as of the close of the 3rd month beginning after the startup day and at all times thereafter, substantially all of the assets of which consist of qualified mortgages and permitted investments,

(5) which has a taxable year which is a calendar year, and

(6) with respect to which there are reasonable arrangements designed to ensure that—

(A) residual interests in such entity are not held by disqualified organizations (as defined in section 860E(e)(5)), and

(B) information necessary for the application of section 860E(e) will be made available by the entity.

In the case of a qualified liquidation (as defined in section 860F(a)(4)(A)), paragraph (4) shall not apply during the liquidation period (as defined in section 860F(a)(4)(B)).

(b) Election

(1) In general

An entity (otherwise meeting the requirements of subsection (a)) may elect to be treated as a REMIC for its 1st taxable year. Such an election shall be made on its return for such 1st taxable year. Except as provided in paragraph (2), such an election shall apply to the taxable year for which made and all subsequent taxable years.

(2) Termination

(A) In general

If any entity ceases to be a REMIC at any time during the taxable year, such entity shall not be treated as a REMIC for such taxable year or any succeeding taxable year.

(B) Inadvertent terminations

If—

(i) an entity ceases to be a REMIC,

(ii) the Secretary determines that such cessation was inadvertent,

(iii) no later than a reasonable time after the discovery of the event resulting in such cessation, steps are taken so that such entity is once more a REMIC, and

(iv) such entity, and each person holding an interest in such entity at any time during the period specified pursuant to this subsection, agrees to make such adjustments (consistent with the treatment of such entity as a REMIC or a C corporation) as may be required by the Secretary with respect to such period,

then, notwithstanding such terminating event, such entity shall be treated as continuing to be a REMIC (or such cessation shall be disregarded for purposes of subparagraph (A)) whichever the Secretary determines to be appropriate.

(Added Pub. L. 99–514, title VI, § 671(a), Oct. 22, 1986, 100 Stat. 2311; amended Pub. L. 100–647, title I, § 1006(t)(2)(A), (16)(A), (19), Nov. 10, 1988, 102 Stat. 3419, 3423, 3426; Pub. L. 101–508, title XI, § 11704(a)(8), Nov. 5, 1990, 104 Stat. 1388–518.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–508 inserted closing parenthesis before period at end.

1988—Subsec. (a). Pub. L. 100–647, § 1006(t)(19), inserted at end ''In the case of a qualified liquidation (as defined in section 860F(a)(4)(A)), paragraph (4) shall not apply during the liquidation period (as defined in section 860F(a)(4)(B).''

Subsec. (a)(4). Pub. L. 100–647, § 1006(t)(2)(A)(i), substituted ''3rd month beginning after'' for ''4th month ending after''.

Pub. L. 100–647, § 1006(t)(2)(A)(ii), substituted ''and at all times thereafter'' for ''and each quarter ending thereafter''.

Subsec. (a)(6). Pub. L. 100–647, § 1006(t)(16)(A), added par. (6).

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1006(t)(2)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A)(ii) [amending this section] shall take effect on January 1, 1988.''

Section 1006(t)(16)(D)(i) of Pub. L. 100–647 provided that: ''The amendments made by subparagraph (A) [amending this section] shall apply in the case of any REMIC where the start-up day (as defined in section 860G(a)(9) of the 1986 Code, as in effect on the day before the date of the enactment of this Act [Nov. 10, 1988]) is after March 31, 1988; except that such amendments shall not apply in the case of a REMIC formed pursuant to a binding written contract in effect on such date.''

Amendment by section 1006(t)(2)(A)(i), (19) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

§ 860E. Treatment of income in excess of daily accruals on residual interests

(a) Excess inclusions may not be offset by net operating losses

(1) In general

The taxable income of any holder of a residual interest in a REMIC for any taxable year shall in no event be less than the excess inclusion for such taxable year.

(2) Special rule for affiliated groups

All members of an affiliated group filing a consolidated return shall be treated as 1 taxpayer for purposes of this subsection.

(3) Coordination with section 172

Any excess inclusion for any taxable year shall not be taken into account—

(A) in determining under section 172 the amount of any net operating loss for such taxable year, and

(B) in determining taxable income for such taxable year for purposes of the 2nd sentence of section 172(b)(2).

(4) Coordination with minimum tax

For purposes of part VI of subchapter A of this chapter—

(A) the reference in section 55(b)(2) to taxable income shall be treated as a reference to taxable income determined without regard to this subsection,

(B) the alternative minimum taxable income of any holder of a residual interest in a REMIC for any taxable year shall in no event be less than the excess inclusion for such taxable year, and

(C) any excess inclusion shall be disregarded for purposes of computing the alternative tax net operating loss deduction.

(b) Organizations subject to unrelated business tax

If the holder of any residual interest in a REMIC is an organization subject to the tax imposed by section 511, the excess inclusion of such holder for any taxable year shall be treated as unrelated business taxable income of such holder for purposes of section 511.

(c) Excess inclusion

For purposes of this section—

(1) In general

The term ''excess inclusion'' means, with respect to any residual interest in a REMIC for any calendar quarter, the excess (if any) of—

(A) the amount taken into account with respect to such interest by the holder under section 860C(a), over

(B) the sum of the daily accruals with respect to such interest for days during such calendar quarter while held by such holder.

To the extent provided in regulations, if residual interests in a REMIC do not have significant value, the excess inclusions with respect to such interests shall be the amount determined under subparagraph (A) without regard to subparagraph (B).

(2) Determination of daily accruals

(A) In general

For purposes of this subsection, the daily accrual with respect to any residual interest for any day in any calendar quarter shall be determined by allocating to each day in such quarter its ratable portion of the product of—

(i) the adjusted issue price of such interest at the beginning of such quarter, and

(ii) 120 percent of the long-term Federal rate (determined on the basis of compounding at the close of each calendar quarter and properly adjusted for the length of such quarter).

(B) Adjusted issue price

For purposes of this paragraph, the adjusted issue price of any residual interest at the beginning of any calendar quarter is the issue price of the residual interest (adjusted for contributions)—

(i) increased by the amount of daily accruals for prior quarters, and

(ii) decreased (but not below zero) by any distribution made with respect to such interest before the beginning of such quarter.

(C) Federal long-term rate

For purposes of this paragraph, the term ''Federal long-term rate'' means the Federal long-term rate which would have applied to the residual interest under section 1274(d) (determined without regard to paragraph (2) thereof) if it were a debt instrument.

(d) Treatment of residual interests held by real estate investment trusts

If a residual interest in a REMIC is held by a real estate investment trust, under regulations prescribed by the Secretary—

(1) any excess of—

(A) the aggregate excess inclusions determined with respect to such interests, over

(B) the real estate investment trust taxable income (within the meaning of section 857(b)(2), excluding any net capital gain),

shall be allocated among the shareholders of such trust in proportion to the dividends received by such shareholders from such trust, and

(2) any amount allocated to a shareholder under paragraph (1) shall be treated as an excess inclusion with respect to a residual interest held by such shareholder.

Rules similar to the rules of the preceding sentence shall apply also in the case of regulated

investment companies, common trust funds, and organizations to which part I of subchapter T applies.

(e) Tax on transfers of residual interests to certain organizations, etc.

(1) In general

A tax is hereby imposed on any transfer of a residual interest in a REMIC to a disqualified organization.

(2) Amount of tax

The amount of the tax imposed by paragraph (1) on any transfer of a residual interest shall be equal to the product of—

(A) the amount (determined under regulations) equal to the present value of the total anticipated excess inclusions with respect to such interest for periods after such transfer, multiplied by

(B) the highest rate of tax specified in section 11(b)(1).

(3) Liability

The tax imposed by paragraph (1) on any transfer shall be paid by the transferor; except that, where such transfer is through an agent for a disqualified organization, such tax shall be paid by such agent.

(4) Transferee furnishes affidavit

The person (otherwise liable for any tax imposed by paragraph (1)) shall be relieved of liability for the tax imposed by paragraph (1) with respect to any transfer if—

(A) the transferee furnishes to such person an affidavit that the transferee is not a disqualified organization, and

(B) as of the time of the transfer, such person does not have actual knowledge that such affidavit is false.

(5) Disqualified organization

For purposes of this section, the term ''disqualified organization'' means—

(A) the United States, any State or political subdivision thereof, any foreign government, any international organization, or any agency or instrumentality of any of the foregoing,

(B) any organization (other than a cooperative described in section 521) which is exempt from tax imposed by this chapter unless such organization is subject to the tax imposed by section 511, and

(C) any organization described in section 1381(a)(2)(C).

For purposes of subparagraph (A), the rules of section 168(h)(2)(D) (relating to treatment of certain taxable instrumentalities) shall apply; except that, in the case of the Federal Home Loan Mortgage Corporation, clause (ii) of such section shall not apply.

(6) Treatment of pass-thru entities

(A) Imposition of tax

If, at any time during any taxable year of a pass-thru entity, a disqualified organization is the record holder of an interest in such entity, there is hereby imposed on such entity for such taxable year a tax equal to the product of—

(i) the amount of excess inclusions for such taxable year allocable to the interest held by such disqualified organization, multiplied by

(ii) the highest rate of tax specified in section 11(b)(1).

(B) Pass-thru entity

For purposes of this paragraph, the term ''pass-thru entity'' means—

(i) any regulated investment company, real estate investment trust, or common trust fund,

(ii) any partnership, trust, or estate, and

(iii) any organization to which part I of subchapter T applies.

Except as provided in regulations, a person holding an interest in a pass-thru entity as a nominee for another person shall, with respect to such interest, be treated as a pass-thru entity.

(C) Tax to be deductible

Any tax imposed by this paragraph with respect to any excess inclusion of any pass-thru entity for any taxable year shall, for purposes of this title (other than this subsection), be applied against (and operate to reduce) the amount included in gross income with respect to the residual interest involved.

(D) Exception where holder furnishes affidavit

No tax shall be imposed by subparagraph (A) with respect to any interest in a pass-thru entity for any period if—

(i) the record holder of such interest furnishes to such pass-thru entity an affidavit that such record holder is not a disqualified organization, and

(ii) during such period, the pass-thru entity does not have actual knowledge that such affidavit is false.

(7) Waiver

The Secretary may waive the tax imposed by paragraph (1) on any transfer if—

(A) within a reasonable time after discovery that the transfer was subject to tax under paragraph (1), steps are taken so that the interest is no longer held by the disqualified organization, and

(B) there is paid to the Secretary such amounts as the Secretary may require.

(8) Administrative provisions

For purposes of subtitle F, the taxes imposed by this subsection shall be treated as excise taxes with respect to which the deficiency procedures of such subtitle apply.

(f) Treatment of variable insurance contracts

Except as provided in regulations, with respect to any variable contract (as defined in section 817), there shall be no adjustment in the reserve to the extent of any excess inclusion.

(Added Pub. L. 99–514, title VI, § 671(a), Oct. 22, 1986, 100 Stat. 2311; amended Pub. L. 100–647, title I, § 1006(t)(13), (15), (16)(B), (17), (23), (26), (27), Nov. 10, 1988, 102 Stat. 3423, 3426, 3427; Pub. L. 104–188, title I, §§ 1616(b)(10), 1704(h)(1), Aug. 20, 1996, 110 Stat. 1857, 1881.)

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–188, §1616(b)(10)(A), substituted ''The'' for ''Except as provided in paragraph (2), the''.

Subsec. (a)(2). Pub. L. 104–188, §1616(b)(10)(B), (C), redesignated par. (3) as (2), struck out '', except that paragraph (2) shall be applied separately with respect to each corporation which is a member of such group and to which section 593 applies'' after ''of this subsection'', and struck out former par. (2) which read as follows: ''EXCEPTION FOR CERTAIN FINANCIAL INSTITUTIONS.—Paragraph (1) shall not apply to any organization to which section 593 applies. The Secretary may by regulations provide that the preceding sentence shall not apply where necessary or appropriate to prevent avoidance of tax imposed by this chapter.''

Subsec. (a)(3). Pub. L. 104–188, §1616(b)(10)(B), redesignated par. (5) as (3). Former par. (3) redesignated (2).

Subsec. (a)(4). Pub. L. 104–188, §1616(b)(10)(B), (D), redesignated par. (6) as (4), struck out at end ''The preceding sentence shall not apply to any organization to which section 593 applies, except to the extent provided in regulations prescribed by the Secretary under paragraph (2).'', and struck out former par. (4) which related to certain subsidiaries being treated as single corporations to which section 593 applied.

Subsec. (a)(5). Pub. L. 104–188, §1616(b)(10)(B), redesignated par. (5) as (3).

Subsec. (a)(6). Pub. L. 104–188, §1616(b)(10)(B), redesignated par. (6) as (4).

Pub. L. 104–188, §1704(h)(1), added par. (6).

1988—Subsec. (a)(3), (4). Pub. L. 100–647, §1006(t)(15), added pars. (3) and (4).

Subsec. (a)(5). Pub. L. 100–647, §1006(t)(27), added par. (5).

Subsec. (c)(2)(B). Pub. L. 100–647, §1006(t)(13), (17), substituted ''issue price of the residual interest (adjusted for contributions)'' for ''issue price of residual interest'' in introductory text, and in cl. (ii) inserted ''(but not below zero)'' after ''decreased''.

Subsec. (d). Pub. L. 100–647, §1006(t)(23), inserted at end ''Rules similar to the rules of the preceding sentence shall apply also in the case of regulated investment companies, common trust funds, and organizations to which part I of subchapter T applies.''

Subsec. (e). Pub. L. 100–647, §1006(t)(16)(B), added subsec. (e).

Subsec. (f). Pub. L. 100–647, §1006(t)(26), added subsec. (f).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1616(b)(10) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, but not applicable to any residual interest held by a taxpayer if such interest has been held by such taxpayer at all times since Oct. 31, 1995, see section 1616(c)(1), (4) of Pub. L. 104–188, set out as a note under section 593 of this title.

Section 1704(h)(2) of Pub. L. 104–188 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 671 of the Tax Reform Act of 1986 [Pub. L. 99–514] unless the taxpayer elects to apply such amendment only to taxable years beginning after the date of the enactment of this Act [Aug. 20, 1996].''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1006(t)(16)(D)(ii)–(iv) of Pub. L. 100–647 provided that:

''(ii) The amendments made by subparagraphs (B) and (C) [amending this section and section 26 of this title] (except to the extent they relate to paragraph (6) of section 860E(e) of the 1986 Code as added by such amendments) shall apply to transfers after March 31, 1988; except that such amendments shall not apply to any transfer pursuant to a binding written contract in effect on such date.

''(iii) Except as provided in clause (iv), the amendments made by subparagraphs (B) and (C) (to the extent they relate to paragraph (6) of section 860E(e) of the 1986 Code as so added) shall apply to excess inclusions for periods after March 31, 1988 but only to the extent such inclusions are—

''(I) allocable to an interest in a pass-thru entity acquired after March 31, 1988, or

''(II) allocable to an interest in a pass-thru entity acquired on or before March 31, 1988, but attributable to a residual interest acquired by the pass-thru entity after March 31, 1988.

For purposes of the preceding sentence, any interest in a pass-thru entity (or residual interest) acquired after March 31, 1988, pursuant to a binding written contract in effect on such date shall be treated as acquired before such date.

''(iv) In the case of any real estate investment trust, regulated investment company, common trust fund, or publicly traded partnership, no tax shall be imposed under section 860E(e)(6) of the 1986 Code (as added by the amendment made by subparagraph (B)) for any taxable year beginning before January 1, 1989.''

Amendment by section 1006(t)(13), (15), (17), (23), (26), (27) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

§ 860F. Other rules

(a) 100 percent tax on prohibited transactions

(1) Tax imposed

There is hereby imposed for each taxable year of a REMIC a tax equal to 100 percent of the net income derived from prohibited transactions.

(2) Prohibited transaction

For purposes of this part, the term ''prohibited transaction'' means—

(A) Disposition of qualified mortgage

The disposition of any qualified mortgage transferred to the REMIC other than a disposition pursuant to—

(i) the substitution of a qualified replacement mortgage for a qualified mortgage (or the repurchase in lieu of substitution of a defective obligation),

(ii) a disposition incident to the foreclosure, default, or imminent default of the mortgage,

(iii) the bankruptcy or insolvency of the REMIC, or

(iv) a qualified liquidation.

(B) Income from nonpermitted assets

The receipt of any income attributable to any asset which is neither a qualified mortgage nor a permitted investment.

(C) Compensation for services

The receipt by the REMIC of any amount representing a fee or other compensation for services.

(D) Gain from disposition of cash flow investments

Gain from the disposition of any cash flow investment other than pursuant to any qualified liquidation.

(3) Determination of net income

For purposes of paragraph (1), the term ''net income derived from prohibited transactions'' means the excess of the gross income from

prohibited transactions over the deductions allowed by this chapter which are directly connected with such transactions; except that there shall not be taken into account any item attributable to any prohibited transaction for which there was a loss.

(4) Qualified liquidation

For purposes of this part—

(A) In general

The term ''qualified liquidation'' means a transaction in which—

(i) the REMIC adopts a plan of complete liquidation,

(ii) such REMIC sells all its assets (other than cash) within the liquidation period, and

(iii) all proceeds of the liquidation (plus the cash), less assets retained to meet claims, are credited or distributed to holders of regular or residual interests on or before the last day of the liquidation period.

(B) Liquidation period

The term ''liquidation period'' means the period—

(i) beginning on the date of the adoption of the plan of liquidation, and

(ii) ending at the close of the 90th day after such date.

(5) Exceptions

Notwithstanding subparagraphs (A) and (D) of paragraph (2), the term ''prohibited transaction'' shall not include any disposition—

(A) required to prevent default on a regular interest where the threatened default resulted from a default on 1 or more qualified mortgages, or

(B) to facilitate a clean-up call (as defined in regulations).

(b) Treatment of transfers to the REMIC

(1) Treatment of transferor

(A) Nonrecognition gain or loss

No gain or loss shall be recognized to the transferor on the transfer of any property to a REMIC in exchange for regular or residual interests in such REMIC.

(B) Adjusted bases of interests

The adjusted bases of the regular and residual interests received in a transfer described in subparagraph (A) shall be equal to the aggregate adjusted bases of the property transferred in such transfer. Such amount shall be allocated among such interests in proportion to their respective fair market values.

(C) Treatment of nonrecognized gain

If the issue price of any regular or residual interest exceeds its adjusted basis as determined under subparagraph (B), for periods during which such interest is held by the transferor (or by any other person whose basis is determined in whole or in part by reference to the basis of such interest in the hand of the transferor)—

(i) in the case of a regular interest, such excess shall be included in gross income (as determined under rules similar to rules of section 1276(b)), and

(ii) in the case of a residual interest, such excess shall be included in gross income ratably over the anticipated period during which the REMIC will be in existence.

(D) Treatment of nonrecognized loss

If the adjusted basis of any regular or residual interest received in a transfer described in subparagraph (A) exceeds its issue price, for periods during which such interest is held by the transferor (or by any other person whose basis is determined in whole or in part by reference to the basis of such interest in the hand of the transferor)—

(i) in the case of a regular interest, such excess shall be allowable as a deduction under rules similar to the rules of section 171, and

(ii) in the case of a residual interest, such excess shall be allowable as a deduction ratably over the anticipated period during which the REMIC will be in existence.

(2) Basis to REMIC

The basis of any property received by a REMIC in a transfer described in paragraph (1)(A) shall be its fair market value immediately after such transfer.

(c) Distributions of property

If a REMIC makes a distribution of property with respect to any regular or residual interest—

(1) notwithstanding any other provision of this subtitle, gain shall be recognized to such REMIC on the distribution in the same manner as if it had sold such property to the distributee at its fair market value, and

(2) the basis of the distributee in such property shall be its fair market value.

(d) Coordination with wash sale rules

For purposes of section 1091—

(1) any residual interest in a REMIC shall be treated as a security, and

(2) in applying such section to any loss claimed to have been sustained on the sale or other disposition of a residual interest in a REMIC—

(A) except as provided in regulations, any residual interest in any REMIC and any interest in a taxable mortgage pool (as defined in section 7701(i)) comparable to a residual interest in a REMIC shall be treated as substantially identical stock or securities, and

(B) subsections (a) and (e) of such section shall be applied by substituting ''6 months'' for ''30 days'' each place it appears.

(e) Treatment under subtitle F

For purposes of subtitle F, a REMIC shall be treated as a partnership (and holders of residual interests in such REMIC shall be treated as partners). Any return required by reason of the preceding sentence shall include the amount of the daily accruals determined under section 860E(c). Such return shall be filed by the REMIC. The determination of who may sign such return shall be made without regard to the first sentence of this subsection.

(Added Pub. L. 99–514, title VI, § 671(a), Oct. 22, 1986, 100 Stat. 2313; amended Pub. L. 100–647, title I, § 1006(t)(3), (4), (14), (18)(A), (22)(B)–(E), Nov. 10, 1988, 102 Stat. 3419, 3420, 3423, 3426; Pub. L. 104–188, title I, § 1704(t)(74), Aug. 20, 1996, 110 Stat. 1891.)

AMENDMENTS

1996—Subsec. (a)(5). Pub. L. 104–188 substituted ''paragraph (2)'' for ''paragraph (1)'' in introductory provisions.

1988—Subsec. (a)(2)(A). Pub. L. 100–647, § 1006(t)(3)(B)(i), struck out at end ''Notwithstanding the preceding sentence, the term 'prohibited transaction' shall not include any disposition required to prevent default on a regular interest where the threatened default resulted from a default on 1 or more qualified mortgages.''

Subsec. (a)(2)(A)(i). Pub. L. 100–647, § 1006(t)(3)(A), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''the substitution of a qualified replacement mortgage for a qualified mortgage,''.

Subsec. (a)(2)(A)(iii), (C). Pub. L. 100–647, § 1006(t)(22)(B), (C), substituted ''REMIC'' for ''real estate mortgage pool''.

Subsec. (a)(2)(D). Pub. L. 100–647, § 1006(t)(3)(C), struck out ''described in subsection (b)'' before period at end.

Subsec. (a)(5). Pub. L. 100–647, § 1006(t)(3)(B)(ii), added par. (5).

Subsec. (b)(1)(A). Pub. L. 100–647, § 1006(t)(4), substituted ''the transfer of any property to a REMIC in exchange for regular or residual interests in such REMIC'' for ''the transfer of any property to a REMIC''.

Subsec. (b)(1)(C)(ii). Pub. L. 100–647, § 1006(t)(22)(D), substituted ''REMIC'' for ''real estate mortgage pool''.

Subsec. (b)(1)(D)(ii). Pub. L. 100–647, § 1006(t)(14), (22)(E), amended cl. (ii) identically, substituting ''REMIC'' for ''real estate mortgage pool''.

Subsec. (e). Pub. L. 100–647, § 1006(t)(18)(A), inserted at end ''Such return shall be filed by the REMIC. The determination of who may sign such return shall be made without regard to the first sentence of this subsection.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1006(t)(18)(B) of Pub. L. 100–647 provided that: ''Unless the REMIC otherwise elects, the amendment made by subparagraph (A) [amending this section] shall not apply to any REMIC where the start-up day (as defined in section 860G(a)(9) of the 1986 Code as in effect on the day before the date of the enactment of this Act [Nov. 10, 1988]) is before the date of the enactment of this Act.''

Amendment by section 1006(t)(3), (4), (14), (22)(B)–(E) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

§ 860G. Other definitions and special rules

(a) Definitions

For purposes of this part—

(1) Regular interest

The term ''regular interest'' means any interest in a REMIC which is issued on the startup day with fixed terms and which is designated as a regular interest if—

(A) such interest unconditionally entitles the holder to receive a specified principal amount (or other similar amount), and

(B) interest payments (or other similar amount), if any, with respect to such interest at or before maturity—

(i) are payable based on a fixed rate (or to the extent provided in regulations, at a variable rate), or

(ii) consist of a specified portion of the interest payments on qualified mortgages and such portion does not vary during the period such interest is outstanding.

The interest shall not fail to meet the requirements of subparagraph (A) merely because the timing (but not the amount) of the principal payments (or other similar amounts) may be contingent on the extent of prepayments on qualified mortgages and the amount of income from permitted investments. An interest shall not fail to qualify as a regular interest solely because the specified principal amount of the regular interest (or the amount of interest accrued on the regular interest) can be reduced as a result of the nonoccurrence of 1 or more contingent payments with respect to any reverse mortgage loan held by the REMIC if, on the startup day for the REMIC, the sponsor reasonably believes that all principal and interest due under the regular interest will be paid at or prior to the liquidation of the REMIC.

(2) Residual interest

The term ''residual interest'' means an interest in a REMIC which is issued on the startup day, which is not a regular interest, and which is designated as a residual interest.

(3) Qualified mortgage

The term ''qualified mortgage'' means—

(A) any obligation (including any participation or certificate of beneficial ownership therein) which is principally secured by an interest in real property and which—

(i) is transferred to the REMIC on the startup day in exchange for regular or residual interests in the REMIC,

(ii) is purchased by the REMIC within the 3-month period beginning on the startup day if, except as provided in regulations, such purchase is pursuant to a fixed-price contract in effect on the startup day, or

(iii) represents an increase in the principal amount under the original terms of an obligation described in clause (i) or (ii) if such increase—

(I) is attributable to an advance made to the obligor pursuant to the original terms of a reverse mortgage loan or other obligation,

(II) occurs after the startup day, and

(III) is purchased by the REMIC pursuant to a fixed price contract in effect on the startup day.[1]

(B) any qualified replacement mortgage, and

(C) any regular interest in another REMIC transferred to the REMIC on the startup day in exchange for regular or residual interests in the REMIC.

For purposes of subparagraph (A), any obligation secured by stock held by a person as a

[1] So in original. The period probably should be a comma.

tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as so defined) shall be treated as secured by an interest in real property. For purposes of subparagraph (A), any obligation originated by the United States or any State (or any political subdivision, agency, or instrumentality of the United States or any State) shall be treated as principally secured by an interest in real property if more than 50 percent of such obligations which are transferred to, or purchased by, the REMIC are principally secured by an interest in real property (determined without regard to this sentence).

(4) Qualified replacement mortgage

The term ''qualified replacement mortgage'' means any obligation—

(A) which would be a qualified mortgage if transferred on the startup day in exchange for regular or residual interests in the REMIC, and

(B) which is received for—

(i) another obligation within the 3-month period beginning on the startup day, or

(ii) a defective obligation within the 2-year period beginning on the startup day.

(5) Permitted investments

The term ''permitted investments'' means any—

(A) cash flow investment,

(B) qualified reserve asset, or

(C) foreclosure property.

(6) Cash flow investment

The term ''cash flow investment'' means any investment of amounts received under qualified mortgages for a temporary period before distribution to holders of interests in the REMIC.

(7) Qualified reserve asset

(A) In general

The term ''qualified reserve asset'' means any intangible property which is held for investment and as part of a qualified reserve fund.

(B) Qualified reserve fund

For purposes of subparagraph (A), the term ''qualified reserve fund'' means any reasonably required reserve to—

(i) provide for full payment of expenses of the REMIC or amounts due on regular interests in the event of defaults on qualified mortgages or lower than expected returns on cash flow investments, or

(ii) provide a source of funds for the purchase of obligations described in clause (ii) or (iii) of paragraph (3)(A).

The aggregate fair market value of the assets held in any such reserve shall not exceed 50 percent of the aggregate fair market value of all of the assets of the REMIC on the startup day, and the amount of any such reserve shall be promptly and appropriately reduced to the extent the amount held in such reserve is no longer reasonably required for purposes specified in clause (i) or (ii) of this subparagraph.

(C) Special rule

A reserve shall not be treated as a qualified reserve for any taxable year (and all subsequent taxable years) if more than 30 percent of the gross income from the assets in such fund for the taxable year is derived from the sale or other disposition of property held for less than 3 months. For purposes of the preceding sentence, gain on the disposition of a qualified reserve asset shall not be taken into account if the disposition giving rise to such gain is required to prevent default on a regular interest where the threatened default resulted from a default on 1 or more qualified mortgages.

(8) Foreclosure property

The term ''foreclosure property'' means property—

(A) which would be foreclosure property under section 856(e) (without regard to paragraph (5) thereof) if acquired by a real estate investment trust, and

(B) which is acquired in connection with the default or imminent default of a qualified mortgage held by the REMIC.

Solely for purposes of section 860D(a), the determination of whether any property is foreclosure property shall be made without regard to section 856(e)(4).

(9) Startup day

The term ''startup day'' means the day on which the REMIC issues all of its regular and residual interests. To the extent provided in regulations, all interests issued (and all transfers to the REMIC) during any period (not exceeding 10 days) permitted in such regulations shall be treated as occurring on the day during such period selected by the REMIC for purposes of this paragraph.

(10) Issue price

The issue price of any regular or residual interest in a REMIC shall be determined under section 1273(b) in the same manner as if such interest were a debt instrument; except that if the interest is issued for property, paragraph (3) of section 1273(b) shall apply whether or not the requirements of such paragraph are met.

(b) Treatment of nonresident aliens and foreign corporations

If the holder of a residual interest in a REMIC is a nonresident alien individual or a foreign corporation, for purposes of sections 871(a), 881, 1441, and 1442—

(1) amounts includible in the gross income of such holder under this part shall be taken into account when paid or distributed (or when the interest is disposed of), and

(2) no exemption from the taxes imposed by such sections (and no reduction in the rates of such taxes) shall apply to any excess inclusion.

The Secretary may by regulations provide that such amounts shall be taken into account earlier than as provided in paragraph (1) where necessary or appropriate to prevent the avoidance of tax imposed by this chapter.

(c) Tax on income from foreclosure property

(1) In general

A tax is hereby imposed for each taxable year on the net income from foreclosure property of each REMIC. Such tax shall be computed by multiplying the net income from foreclosure property by the highest rate of tax specified in section 11(b).

(2) Net income from foreclosure property

For purposes of this part, the term ''net income from foreclosure property'' means the amount which would be the REMIC's net income from foreclosure property under section 857(b)(4)(B) if the REMIC were a real estate investment trust.

(d) Tax on contributions after startup date

(1) In general

Except as provided in paragraph (2), if any amount is contributed to a REMIC after the startup day, there is hereby imposed a tax for the taxable year of the REMIC in which the contribution is received equal to 100 percent of the amount of such contribution.

(2) Exceptions

Paragraph (1) shall not apply to any contribution which is made in cash and is described in any of the following subparagraphs:

(A) Any contribution to facilitate a clean-up call (as defined in regulations) or a qualified liquidation.

(B) Any payment in the nature of a guarantee.

(C) Any contribution during the 3-month period beginning on the startup day.

(D) Any contribution to a qualified reserve fund by any holder of a residual interest in the REMIC.

(E) Any other contribution permitted in regulations.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this part, including regulations—

(1) to prevent unreasonable accumulations of assets in a REMIC,

(2) permitting determinations of the fair market value of property transferred to a REMIC and issue price of interests in a REMIC to be made earlier than otherwise provided,

(3) requiring reporting to holders of residual interests of such information as frequently as is necessary or appropriate to permit such holders to compute their taxable income accurately,

(4) providing appropriate rules for treatment of transfers of qualified replacement mortgages to the REMIC where the transferor holds any interest in the REMIC, and

(5) providing that a mortgage will be treated as a qualified replacement mortgage only if it is part of a bona fide replacement (and not part of a swap of mortgages).

(Added Pub. L. 99–514, title VI, §671(a), Oct. 22, 1986, 100 Stat. 2315; amended Pub. L. 100–647, title I, §1006(t)(5)(A)–(E), (6)–(8)(B), (9)(A), (10), Nov. 10, 1988, 102 Stat. 3420–3422; Pub. L. 101–239, title VII, §7811(c)(9), Dec. 19, 1989, 103 Stat. 2408; Pub. L. 101–508, title XI, §11704(a)(9), Nov. 5, 1990, 104 Stat. 1388–518; Pub. L. 104–188, title I, §1621(b)(6), Aug. 20, 1996, 110 Stat. 1867; Pub. L. 108–357, title VIII, §835(b)(5)–(8), Oct. 22, 2004, 118 Stat. 1593; Pub. L. 109–135, title IV, §403(cc), Dec. 21, 2005, 119 Stat. 2630.)

AMENDMENTS

2005—Subsec. (a)(3). Pub. L. 109–135, §403(cc)(2), inserted concluding provisions and struck out former concluding provisions which read as follows: ''For purposes of subparagraph (A), any obligation secured by stock held by a person as a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as so defined) shall be treated as secured by an interest in real property, and any reverse mortgage loan (and each balance increase on such loan meeting the requirements of subparagraph (A)(iii)) shall be treated as an obligation secured by an interest in real property. For purposes of subparagraph (A), if more than 50 percent of the obligations transferred to, or purchased by, the REMIC are originated by the United States or any State (or any political subdivision, agency, or instrumentality of the United States or any State) and are principally secured by an interest in real property, then each obligation transferred to, or purchased by, the REMIC shall be treated as secured by an interest in real property.''

Subsec. (a)(3)(A)(iii)(I). Pub. L. 109–135, §403(cc)(1), substituted ''a reverse mortgage loan or other obligation'' for ''the obligation''.

2004—Subsec. (a)(1). Pub. L. 108–357, §835(b)(5)(A), inserted at end of concluding provisions ''An interest shall not fail to qualify as a regular interest solely because the specified principal amount of the regular interest (or the amount of interest accrued on the regular interest) can be reduced as a result of the nonoccurrence of 1 or more contingent payments with respect to any reverse mortgage loan held by the REMIC if, on the startup day for the REMIC, the sponsor reasonably believes that all principal and interest due under the regular interest will be paid at or prior to the liquidation of the REMIC.''

Subsec. (a)(3). Pub. L. 108–357, §835(b)(7), inserted at end of concluding provisions ''For purposes of subparagraph (A), if more than 50 percent of the obligations transferred to, or purchased by, the REMIC are originated by the United States or any State (or any political subdivision, agency, or instrumentality of the United States or any State) and are principally secured by an interest in real property, then each obligation transferred to, or purchased by, the REMIC shall be treated as secured by an interest in real property.''

Pub. L. 108–357, §835(b)(5)(B), inserted before period at end of concluding provisions '', and any reverse mortgage loan (and each balance increase on such loan meeting the requirements of subparagraph (A)(iii)) shall be treated as an obligation secured by an interest in real property''.

Subsec. (a)(3)(A)(iii). Pub. L. 108–357, §835(b)(8)(A), added cl. (iii).

Subsec. (a)(3)(B) to (D). Pub. L. 108–357, §835(b)(6), inserted ''and'' at end of subpar. (B), substituted period for '', and'' at end of subpar. (C), and struck out subpar. (D) which read as follows: ''any regular interest in a FASIT which is transferred to, or purchased by, the REMIC as described in clauses (i) and (ii) of subparagraph (A) but only if 95 percent or more of the value of the assets of such FASIT is at all times attributable to obligations described in subparagraph (A) (without regard to such clauses).''

Subsec. (a)(7)(B). Pub. L. 108–357, §835(b)(8)(B), reenacted heading without change and amended text of subpar. (B) generally. Prior to amendment, text read as follows: ''For purposes of subparagraph (A), the term 'qualified reserve fund' means any reasonably required reserve to provide for full payment of expenses of the REMIC or amounts due on regular interests in the

event of defaults on qualified mortgages or lower than expected returns on cash flow investments. The amount of any such reserve shall be promptly and appropriately reduced as payments of qualified mortgages are received.''

1996—Subsec. (a)(3)(D). Pub. L. 104–188 added subpar. (D).

1990—Subsec. (a)(3)(A). Pub. L. 101–508 struck out comma after ''secured'' in introductory provisions.

1989—Subsec. (a)(3). Pub. L. 101–239 substituted ''subparagraph (A)'' for ''this subparagraph'' in last sentence.

1988—Subsec. (a)(1). Pub. L. 100–647, §1006(t)(5)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The term 'regular interest' means an interest in a REMIC the terms of which are fixed on the startup day, and which—

''(A) unconditionally entitles the holder to receive a specified principal amount (or other similar amount), and

''(B) provides that interest payments (or other similar amounts), if any, at or before maturity are payable based on a fixed rate (or to the extent provided in regulations, at a variable rate).

An interest shall not fail to meet the requirements of subparagraph (A) merely because the timing (but not the amount) of the principal payments (or other similar amounts) may be contingent on the extent of prepayments on qualified mortgages and the amount of income from permitted investments.''

Subsec. (a)(2). Pub. L. 100–647, §1006(t)(5)(B), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The term 'residual interest' means an interest in a REMIC which is not a regular interest and is designated as a residual interest.''

Subsec. (a)(3). Pub. L. 100–647, §1006(t)(6)(B), inserted at end ''For purposes of this subparagraph, any obligation secured by stock held by a person as a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as so defined) shall be treated as secured by an interest in real property.''

Subsec. (a)(3)(A). Pub. L. 100–647, §1006(t)(6)(A), struck out ''directly or indirectly,''.

Subsec. (a)(3)(A)(i). Pub. L. 100–647, §1006(t)(5)(C)(i), substituted ''on the startup day in exchange for regular or residual interests in the REMIC'' for ''on or before the startup day''.

Subsec. (a)(3)(A)(ii). Pub. L. 100–647, §1006(t)(5)(C)(ii), inserted before comma at end ''if, except as provided in regulations, such purchase is pursuant to a fixed-price contract in effect on the startup day''.

Subsec. (a)(3)(C). Pub. L. 100–647, §1006(t)(5)(C)(iii), substituted ''on the startup day in exchange for regular or residual interests in the REMIC'' for ''on or before the startup day''.

Subsec. (a)(4)(A). Pub. L. 100–647, §1006(t)(5)(D), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''which would be described in paragraph (3)(A) if it were transferred to the REMIC on or before the startup day, and''.

Subsec. (a)(7)(B). Pub. L. 100–647, §1006(t)(7), inserted before period at end of first sentence ''or lower than expected returns on cash flow investments''.

Subsec. (a)(8). Pub. L. 100–647, §1006(t)(8)(A), substituted ''section 856(e) (without regard to paragraph (5) thereof)'' for ''section 856(e)'' in subpar. (A) and amended last sentence generally. Prior to amendment, last sentence read as follows: ''Property shall cease to be foreclosure property with respect to the REMIC on the date which is 1 year after the date such real estate mortgage pool acquired such property.''

Subsec. (a)(9). Pub. L. 100–647, §1006(t)(5)(E), amended par. (9) generally. Prior to amendment, par. (9) read as follows: ''The term 'startup day' means any day selected by a REMIC which is on or before the 1st day on which interests in such REMIC are issued.''

Subsec. (c). Pub. L. 100–647, §1006(t)(8)(B), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 100–647, §1006(t)(9)(A), added subsec. (d). Former subsec. (d) redesignated (e).

Pub. L. 100–647, §1006(t)(8)(B), redesignated former subsec. (c) as (d).

Subsec. (e). Pub. L. 100–647, §1006(t)(9)(A), redesignated former subsec. (d) as (e).

Subsec. (e)(4), (5). Pub. L. 100–647, §1006(t)(10), added pars. (4) and (5).

EFFECTIVE DATE OF 2005 AMENDMENT

Amendments by Pub. L. 109–135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which they relate, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 effective Jan. 1, 2005, with exception for any FASIT in existence on Oct. 22, 2004, to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance, see section 835(c) of Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

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

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1006(t)(5)(F) of Pub. L. 100–647 provided that: ''The amendments made by this paragraph [amending this section] shall not apply to any REMIC where the startup day (as defined in section 860G(a)(9) of the 1986 Code as in effect on the day before the date of the enactment of this Act [Nov. 10, 1988]) is before July 1, 1987.''

Section 1006(t)(9)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending this section] shall not apply to any REMIC where the startup day (as defined in section 860G(a)(9) of the 1986 Code as in effect on the day before the date of the enactment of this Act [Nov. 10, 1988]) is before July 1, 1987.''

Amendment by section 1006(t)(6)–(8)(B), (10) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

[PART V—REPEALED]

[§§ 860H to 860L. Repealed. Pub. L. 108–357, title VIII, § 835(a), Oct. 22, 2004, 118 Stat. 1593]

Section 860H, added Pub. L. 104–188, title I, §1621(a), Aug. 20, 1996, 110 Stat. 1858, set forth general rules relating to taxation of a FASIT.

Section 860I, added Pub. L. 104–188, title I, §1621(a), Aug. 20, 1996, 110 Stat. 1859, related to gain recognition on contributions to a FASIT and in other cases.

Section 860J, added Pub. L. 104–188, title I, §1621(a), Aug. 20, 1996, 110 Stat. 1860, prohibited offset of certain FASIT inclusions by non-FASIT losses.

Section 860K, added Pub. L. 104–188, title I, §1621(a), Aug. 20, 1996, 110 Stat. 1861, related to treatment of transfers of high-yield interests to disqualified holders.

Section 860L, added Pub. L. 104–188, title I, §1621(a), Aug. 20, 1996, 110 Stat. 1862; amended Pub. L. 105–34, title XVI, §1601(f)(6), Aug. 5, 1997, 111 Stat. 1091, defined terms and set forth special rules relating to FASITs.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2005, with exception for any FASIT in existence on Oct. 22, 2004, to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance, see section 835(c) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendments note under section 56 of this title.

Subchapter N—Tax Based on Income From Sources Within or Without the United States

Part
I. Source rules and other general rules relating to foreign income.
II. Nonresident aliens and foreign corporations.
III. Income from sources without the United States.
IV. Domestic international sales corporations.[1]
V. International boycott determinations.

AMENDMENTS

1988—Pub. L. 100–647, title I, §1012(h)(2)(D), Nov. 10, 1988, 102 Stat. 3503, substituted ''Source rules and other general rules relating to foreign income'' for ''Determination of sources of income'' in item for part I.

1976—Pub. L. 94–455, title X, §1064(b), Oct. 4, 1976, 90 Stat. 1653, added item V.

PART I—SOURCE RULES AND OTHER GENERAL RULES RELATING TO FOREIGN INCOME

Sec.
861. Income from sources within the United States.
862. Income from sources without the United States.
863. Special rules for determining source.
864. Definitions and special rules.
865. Source rules for personal property sales.

AMENDMENTS

1988—Pub. L. 100–647, title I, §§1012(e)(3)(B), (h)(2)(C), 1018(u)(37), Nov. 11, 1988, 102 Stat. 3500, 3502, 3592, substituted ''SOURCE RULES AND OTHER GENERAL RULES RELATING TO FOREIGN INCOME'' for ''DETERMINATION OF SOURCES OF INCOME'' as part I heading, substituted ''Special rules for determining source'' for ''Items not specified in section 861 or 862'' in item 863, and added item 865.

1986—Pub. L. 99–514, title XII, §1215(b)(2), Oct. 22, 1986, 100 Stat. 2545, substituted ''Definitions and special rules'' for ''Definitions'' in item 864.

§ 861. Income from sources within the United States

(a) Gross income from sources within United States

The following items of gross income shall be treated as income from sources within the United States:

(1) Interest

Interest from the United States or the District of Columbia, and interest on bonds, notes, or other interest-bearing obligations of noncorporate residents or domestic corporations not including—

(A) interest—

(i) on deposits with a foreign branch of a domestic corporation or a domestic partnership if such branch is engaged in the commercial banking business, and

(ii) on amounts satisfying the requirements of subparagraph (B) of section 871(i)(3) which are paid by a foreign branch of a domestic corporation or a domestic partnership, and

(B) in the case of a foreign partnership, which is predominantly engaged in the active conduct of a trade or business outside the United States, any interest not paid by a trade or business engaged in by the partnership in the United States and not allocable to income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States.

(2) Dividends

The amount received as dividends—

(A) from a domestic corporation other than a corporation which has an election in effect under section 936, or

(B) from a foreign corporation unless less than 25 percent of the gross income from all sources of such foreign corporation for the 3-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence) was effectively connected (or treated as effectively connected other than income described in section 884(d)(2)) with the conduct of a trade or business within the United States; but only in an amount which bears the same ratio to such dividends as the gross income of the corporation for such period which was effectively connected (or treated as effectively connected other than income described in section 884(d)(2)) with the conduct of a trade or business within the United States bears to its gross income from all sources; but dividends (other than dividends for which a deduction is allowable under section 245(b)) from a foreign corporation shall, for purposes of subpart A of part III (relating to foreign tax credit), be treated as income from sources without the United States to the extent (and only to the extent) exceeding the amount which is 100/70th of the amount of the deduction allowable under section 245 in respect of such dividends, or

(C) from a foreign corporation to the extent that such amount is required by section 243(e) (relating to certain dividends from foreign corporations) to be treated as dividends from a domestic corporation which is subject to taxation under this chapter, and to such extent subparagraph (B) shall not apply to such amount, or

(D) from a DISC or former DISC (as defined in section 992(a)) except to the extent attributable (as determined under regulations prescribed by the Secretary) to qualified export receipts described in section 993(a)(1) (other than interest and gains described in section 995(b)(1)).

In the case of any dividend from a 20-percent owned corporation (as defined in section 243(c)(2)), subparagraph (B) shall be applied by substituting ''100/80th'' for ''100/70th''.

[1] Editorially supplied. Part IV added by Pub. L. 92–178 without corresponding amendment of subchapter analysis.

(3) Personal services

Compensation for labor or personal services performed in the United States; except that compensation for labor or services performed in the United States shall not be deemed to be income from sources within the United States if—

(A) the labor or services are performed by a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of 90 days during the taxable year,

(B) such compensation does not exceed $3,000 in the aggregate, and

(C) the compensation is for labor or services performed as an employee of or under a contract with—

(i) a nonresident alien, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, or

(ii) an individual who is a citizen or resident of the United States, a domestic partnership, or a domestic corporation, if such labor or services are performed for an office or place of business maintained in a foreign country or in a possession of the United States by such individual, partnership, or corporation.

In addition, compensation for labor or services performed in the United States shall not be deemed to be income from sources within the United States if the labor or services are performed by a nonresident alien individual in connection with the individual's temporary presence in the United States as a regular member of the crew of a foreign vessel engaged in transportation between the United States and a foreign country or a possession of the United States.

(4) Rentals and royalties

Rentals or royalties from property located in the United States or from any interest in such property, including rentals or royalties for the use of or for the privilege of using in the United States patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like property.

(5) Disposition of United States real property interest

Gains, profits, and income from the disposition of a United States real property interest (as defined in section 897(c)).

(6) Sale or exchange of inventory property

Gains, profits, and income derived from the purchase of inventory property (within the meaning of section 865(i)(1)) without the United States (other than within a possession of the United States) and its sale or exchange within the United States.

(7) Amounts received as underwriting income (as defined in section 832(b)(3)) derived from the issuing (or reinsuring) of any insurance or annuity contract—

(A) in connection with property in, liability arising out of an activity in, or in connection with the lives or health of residents of, the United States, or

(B) in connection with risks not described in subparagraph (A) as a result of any arrangement whereby another corporation receives a substantially equal amount of premiums or other consideration in respect to issuing (or reinsuring) any insurance or annuity contract in connection with property in, liability arising out of activity in, or in connection with the lives or health of residents of, the United States.

(8) Social security benefits

Any social security benefit (as defined in section 86(d)).

(9) Guarantees

Amounts received, directly or indirectly, from—

(A) a noncorporate resident or domestic corporation for the provision of a guarantee of any indebtedness of such resident or corporation, or

(B) any foreign person for the provision of a guarantee of any indebtedness of such person, if such amount is connected with income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States.

(b) Taxable income from sources within United States

From the items of gross income specified in subsection (a) as being income from sources within the United States there shall be deducted the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of any expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income. The remainder, if any, shall be included in full as taxable income from sources within the United States. In the case of an individual who does not itemize deductions, an amount equal to the standard deduction shall be considered a deduction which cannot definitely be allocated to some item or class of gross income.

(c) Special rule for application of subsection (a)(2)(B)

For purposes of subsection (a)(2)(B), if the foreign corporation has no gross income from any source for the 3-year period (or part thereof) specified, the requirements of such subsection shall be applied with respect to the taxable year of such corporation in which the payment of the dividend is made.

(d) Income from certain railroad rolling stock treated as income from sources within the United States

(1) General rule

For purposes of subsection (a) and section 862(a), if—

(A) a taxpayer leases railroad rolling stock which is section 1245 property (as defined in section 1245(a)(3)) to a domestic common carrier by railroad or a corporation which is controlled, directly or indirectly, by one or more such common carriers, and

(B) the use under such lease is expected to be use within the United States,

all amounts includible in gross income by the taxpayer with respect to such railroad rolling stock (including gain from sale or other disposition of such railroad rolling stock) shall be treated as income from sources within the United States. The requirements of subparagraph (B) of the preceding sentence shall be treated as satisfied if the only expected use outside the United States is use by a person (whether or not a United States person) in Canada or Mexico on a temporary basis which is not expected to exceed a total of 90 days in any taxable year.

(2) Paragraph (1) not to apply where lessor is a member of controlled group which includes a railroad

Paragraph (1) shall not apply to a lease between two members of the same controlled group of corporations (as defined in section 1563) if any member of such group is a domestic common carrier by railroad or a switching or terminal company all of whose stock is owned by one or more domestic common carriers by railroad.

(3) Denial of foreign tax credit

No credit shall be allowed under section 901 for any payments to foreign countries with respect to any amount received by the taxpayer with respect to railroad rolling stock which is subject to paragraph (1).

(e) Cross reference

For treatment of interest paid by the branch of a foreign corporation, see section 884(f).

(Aug. 16, 1954, ch. 736, 68A Stat. 275; Pub. L. 86–779, §3(b), Sept. 14, 1960, 74 Stat. 998; Pub. L. 87–834, §9(c), Oct. 16, 1962, 76 Stat. 1001; Pub. L. 89–809, title I, §102(a)(1)–(3), (b), (c), Nov. 13, 1966, 80 Stat. 1541–1543; Pub. L. 91–172, title IV, §435(a), Dec. 30, 1969, 83 Stat. 625; Pub. L. 92–9, §3(a)(2), Apr. 1, 1971, 85 Stat. 15; Pub. L. 92–178, title III, §314(a), title V, §503, Dec. 10, 1971, 85 Stat. 528, 550; Pub. L. 93–625, §§8, 9(a), Jan. 3, 1975, 88 Stat. 2116; Pub. L. 94–455, title X, §§1036(a), 1041, 1051(h)(3), title XIX, §§1901(b)(26)(A), (B), (c)(7), 1904(b)(10)(B), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1633, 1634, 1647, 1798, 1803, 1817, 1834; Pub. L. 95–30, title I, §102(b)(9), May 23, 1977, 91 Stat. 138; Pub. L. 95–600, title III, §370(a), title V, §540(a), Nov. 6, 1978, 92 Stat. 2858, 2887; Pub. L. 96–499, title XI, §1124, Dec. 5, 1980, 94 Stat. 2690; Pub. L. 96–605, title I, §104(a), Dec. 28, 1980, 94 Stat. 3523; Pub. L. 98–21, title I, §121(d), Apr. 20, 1983, 97 Stat. 83; Pub. L. 99–514, title I, §104(b)(11), title XII, §§1211(b)(1)(B), 1212(d), 1214(a), (b), (c)(5), 1241(b), Oct. 22, 1986, 100 Stat. 2105, 2536, 2539, 2541–2543, 2579; Pub. L. 100–203, title X, §10221(d)(4), Dec. 22, 1987, 101 Stat. 1330–409; Pub. L. 100–647, title I, §§1012(g)(3), (i)(10), (14)(B), (q)(7), (9), (15), 1018(u)(39), Nov. 10, 1988, 102 Stat. 3501, 3509, 3510, 3524, 3525, 3592; Pub. L. 101–239, title VII, §§7811(i)(2), 7841(d)(9), Dec. 19, 1989, 103 Stat. 2409, 2428; Pub. L. 101–508, title XI, §§11801(a)(29), (c)(6)(C), (14), 11813(b)(17), Nov. 5, 1990, 104 Stat. 1388–521, 1388–524, 1388–527, 1388–555; Pub. L. 104–188, title I, §1702(h)(9), Aug. 20, 1996, 110 Stat. 1874; Pub. L. 105–34, title XI, §1174(a)(1), Aug. 5, 1997, 111 Stat. 989; Pub. L. 107–16, title VI, §621(a), June 7, 2001, 115 Stat. 111; Pub. L. 108–357, title IV, §410(a), Oct. 22, 2004, 118 Stat. 1500; Pub. L. 111–226, title II, §217(a), (c)(1), Aug. 10, 2010, 124 Stat. 2400, 2402; Pub. L. 111–240, title II, §2122(a), Sept. 27, 2010, 124 Stat. 2567.)

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111–226, §217(a), redesignated subpars. (B) and (C) as (A) and (B), respectively, and struck out former subpar. (A) which read as follows: ''interest from a resident alien individual or domestic corporation, if such individual or corporation meets the 80-percent foreign business requirements of subsection (c)(1),''.

Subsec. (a)(9). Pub. L. 111–240 added par. (9).

Subsecs. (c) to (f). Pub. L. 111–226, §217(c)(1), redesignated subsecs. (d) to (f) as (c) to (e), respectively, and struck out former subsec. (c) which related to foreign business requirements.

2004—Subsec. (a)(1)(C). Pub. L. 108–357 added subpar. (C).

2001—Subsec. (a)(3). Pub. L. 107–16 struck out ''except for purposes of sections 79 and 105 and subchapter D,'' after ''In addition,'' in concluding provisions.

1997—Subsec. (a)(3). Pub. L. 105–34 inserted concluding provisions ''In addition, except for purposes of sections 79 and 105 and subchapter D, compensation for labor or services performed in the United States shall not be deemed to be income from sources within the United States if the labor or services are performed by a nonresident alien individual in connection with the individual's temporary presence in the United States as a regular member of the crew of a foreign vessel engaged in transportation between the United States and a foreign country or a possession of the United States.''

1996—Subsec. (e)(1)(A). Pub. L. 104–188 provided that the amendment made by section 11813(b)(17) of Pub. L. 101–508 shall be applied as if the material stricken by such amendment included the closing parenthesis after ''section 48(a)(5)''. See 1990 Amendment note below.

1990—Subsec. (a)(1)(A), (B). Pub. L. 101–508, §11801(a)(29), (c)(14), inserted ''and'' at end of subpar. (A), substituted a period for a comma at end of subpar. (B), and struck out subpars. (C) and (D) which read as follows:

''(C) interest on a debt obligation which was part of an issue with respect to which an election has been made under subsection (c) of section 4912 (as in effect before July 1, 1974) and which, when issued (or treated as issued under subsection (c)(2) of such section), had a maturity not exceeding 15 years and, when issued, was purchased by one or more underwriters with a view to distribution through resale, but only with respect to interest attributable to periods after the date of such election, and

''(D) interest on a debt obligation which was part of an issue which—

''(i) was part of an issue outstanding on April 1, 1971,

''(ii) was guaranteed by a United States person,

''(iii) was treated under chapter 41 as a debt obligation of a foreign obligor,

''(iv) as of June 30, 1974, had a maturity of not more than 15 years, and

''(v) when issued, was purchased by one or more underwriters for the purpose of distribution through resale.''

Subsec. (e)(1)(A). Pub. L. 101–508, §11813(b)(17), which directed the substitution of ''which is section 1245 property (as defined in section 1245(a)(3))'' for ''which is section 38 property (or would be section 38 property but for section 48(a)(5)'', was executed by making the substitution for ''which is section 38 property (or would be section 38 property but for section 48(a)(5))''. See 1996 Amendment note above.

Subsec. (e)(2). Pub. L. 101–508, §11801(c)(6)(C), substituted ''all of whose stock is owned by one or more domestic common carriers by railroad'' for ''referred to in subparagraph (B) of section 184(d)(1)''.

1989—Subsec. (a)(6). Pub. L. 101–239, §7811(i)(2), substituted ''865(i)(1)'' for ''865(h)(1)''.

Subsec. (e)(1). Pub. L. 101–239, § 7841(d)(9), substituted ''section 862(a)'' for ''section 826(a)'' in introductory provisions.

1988—Subsec. (a)(2)(B). Pub. L. 100–647, § 1012(q)(7), substituted ''other than income described in section 884(d)(2)'' for ''other than under section 884(d)(2)'' in two places.

Subsec. (a)(2)(C). Pub. L. 100–647, § 1012(q)(15), substituted ''section 243(e)'' for ''section 243(d)''.

Subsec. (a)(6). Pub. L. 100–647, § 1018(u)(39), substituted ''inventory property'' for ''personal property'' in heading.

Subsec. (a)(7). Pub. L. 100–647, § 1012(i)(10), amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''Amounts received as underwriting income (as defined in section 832(b)(3)) derived from the insurance of United States risks (as defined in section 953(a)).''

Subsec. (c)(1)(B). Pub. L. 100–647, § 1012(g)(3), inserted ''or, in the case of a corporation, is attributable to income so derived by a subsidiary of such corporation'' after parenthetical in cl. (i), struck out ''or chain of subsidiaries of such corporation'' after ''by a subsidiary'' in cl. (ii), and inserted sentence at end defining ''subsidiary''.

Subsec. (c)(2)(B)(ii). Pub. L. 100–647, § 1012(i)(14)(B), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''such section shall be applied by substituting '10 percent' for '50 percent' each place it appears.''

Subsec. (f). Pub. L. 100–647, § 1012(g)(9), added subsec. (f).

1987—Subsec. (a)(2). Pub. L. 100–203, § 10221(d)(4)(B), inserted at end ''In the case of any dividend from a 20-percent owned corporation (as defined in section 243(c)(2)), subparagraph (B) shall be applied by substituting '100/80th' for '100/70th'.''

Subsec. (a)(2)(B). Pub. L. 100–203, § 10221(d)(4)(A), which directed that subpar. (B) be amended by substituting ''100/70th'' for ''100/85th'', was executed by substituting ''100/70th'' for ''100/85ths'' to reflect the probable intent of Congress.

1986—Subsec. (a)(1). Pub. L. 99–514, § 1241(b)(1)(A), substituted ''noncorporate residents or domestic corporations'' for ''residents, corporate or otherwise,'' in introductory text.

Subsec. (a)(1)(A). Pub. L. 99–514, § 1214(a)(1), (c)(5)(A), amended subpar. (B) generally and redesignated it as (A). Prior to amendment and redesignation, former subpar. (B) read as follows: ''interest received from a resident alien individual or a domestic corporation, when it is shown to the satisfaction of the Secretary that less than 20 percent of the gross income from all sources of such individual or such corporation has been derived from sources within the United States, as determined under the provisions of this part, for the 3-year period ending with the close of the taxable year of such individual or such corporation preceding the payment of such interest, or for such part of such period as may be applicable,''. Former subpar. (A), which read ''interest on amounts described in subsection (c) received by a nonresident alien individual or a foreign corporation, if such interest is not effectively connected with the conduct of a trade or business within the United States,'', was struck out.

Subsec. (a)(1)(B). Pub. L. 99–514, § 1241(b)(1)(B), redesignated subpar. (D), as previously redesignated and amended by § 1214(c)(5)(A), (B) of Pub. L. 99–514, as (B) and struck out former subpar. (B) [previously (C)] which read as follows: ''interest received from a foreign corporation (other than interest paid or credited by a domestic branch of a foreign corporation, if such branch is engaged in the commercial banking business), when it is shown to the satisfaction of the Secretary that less than 50 percent of the gross income from all sources of such foreign corporation for the 3-year period ending with the close of its taxable year preceding the payment of such interest (or for such part of such period as the corporation has been in existence) was effectively connected with the conduct of a trade or business within the United States,''.

Pub. L. 99–514, § 1214(c)(5)(A), (B), redesignated former subpar. (F) as (D), substituted in cl. (ii), ''subparagraph (B) of section 871(i)(3)'' for ''paragraph (2) of subsection (c)'', and redesignated former subpar. (C) as (B). Former subpar. (B) redesignated (A).

Subsec. (a)(1)(C). Pub. L. 99–514, § 1241(b)(1)(B), redesignated subpar. (E), as previously redesignated by § 1214(c)(5)(A) of Pub. L. 99–514, as (C) and struck out former subpar. (C) [previously (D)] which read as follows: ''in the case of interest received from a foreign corporation (other than interest paid or credited by a domestic branch of a foreign corporation, if such branch is engaged in the commercial banking business), 50 percent or more of the gross income of which from all sources for the 3-year period ending with the close of its taxable year preceding the payment of such interest (or for such part of such period as the corporation has been in existence) was effectively connected with the conduct of a trade or business within the United States, an amount of such interest which bears the same ratio to such interest as the gross income of such foreign corporation for such period which was not effectively connected with the conduct of a trade or business within the United States bears to its gross income from all sources,''.

Pub. L. 99–514, § 1214(c)(5)(A), redesignated subpar. (D) as (C). Former subpar. (C) redesignated (B).

Subsec. (a)(1)(D). Pub. L. 99–514, § 1214(c)(5)(A), redesignated subpar. (H) as (F). Pub. L. 99–514, § 1241(b)(1)(B), then redesignated such subpar. (F) as (D). The original subpar. (D) was redesignated (C) and struck out, and the original subpar. (F) was redesignated (D), then (B).

Subsec. (a)(1)(E). Pub. L. 99–514, § 1241(b)(1)(B), redesignated subpar. (E), as previously redesignated by § 1214(c)(5)(A) of Pub. L. 99–514, as (C).

Pub. L. 99–514, § 1214(c)(5)(A), redesignated subpar. (G) as (E) and struck out former subpar. (E) which read as follows: ''income derived by a foreign central bank of issue from bankers' acceptances,''.

Subsec. (a)(1)(F). Pub. L. 99–514, §§ 1214(c)(5)(A), 1241(b)(1)(B), redesignated successively former subpar. (F) as (D) and (B), respectively.

Subsec. (a)(1)(G). Pub. L. 99–514, §§ 1214(c)(5)(A), 1241(b)(1)(B), redesignated successively former subpar. (G) as (E) and (C), respectively.

Subsec. (a)(1)(H). Pub. L. 99–514, §§ 1214(c)(5)(A), 1241(b)(1)(B), redesignated successively former subpar. (H) as (F) and (D), respectively.

Subsec. (a)(2)(A). Pub. L. 99–514, § 1214(b), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''from a domestic corporation other than a corporation which has an election in effect under section 936, and other than a corporation less than 20 percent of whose gross income is shown to the satisfaction of the Secretary to have been derived from sources within the United States, as determined under the provisions of this part, for the 3-year period ending with the close of the taxable year of such corporation preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence), or''.

Subsec. (a)(2)(B). Pub. L. 99–514, § 1241(b)(2), substituted ''25 percent'' for ''50 percent'' and inserted ''(or treated as effectively connected other than under section 884(d)(2))'' in two places.

Subsec. (a)(6). Pub. L. 99–514, § 1211(b)(1)(B), substituted ''inventory property (within the meaning of section 865(h)(1))'' for ''personal property''.

Subsec. (b). Pub. L. 99–514, § 104(b)(11), substituted ''the standard deduction'' for ''the zero bracket amount''.

Subsec. (c). Pub. L. 99–514, § 1214(a)(2), amended subsec. (c) generally, substituting provisions relating to foreign business requirements for provisions relating to interest on deposits.

Subsec. (d). Pub. L. 99–514, § 1214(c)(5)(C), amended subsec. (d) generally, substituting provision for special rule for application of subsec. (a)(2)(B) for former provision for special rules for application of subsec. (a), pars. (1)(B) to (1)(D) and (2)(B), pars. (1) and (2) thereof relating to new entities and transition rule provisions.

Subsecs. (e), (f). Pub. L. 99–514, §1212(d), redesignated subsec. (f) as (e) and struck out former subsec. (e) relating to treatment of income from certain leased aircraft, vessels, and spacecraft as income from sources within the United States.

1983—Subsec. (a)(8). Pub. L. 98–21 added par. (8).

1980—Subsec. (a)(5). Pub. L. 96–499 substituted ''Disposition of United States real property interest'' for ''Sale or exchange of real property'' in heading and ''disposition of a United States real property interest (as defined in section 897(c))'' for ''sale or exchange of real property located in the United States'' in text.

Subsec. (e). Pub. L. 96–605 substituted provision directing that income from certain leased aircraft, vessels, and spacecraft be treated as income from sources within the United States for provision permitting the taxpayer to elect to treat income from certain aircraft and vessels as income from sources within the United States and prescribing the manner of revocating such an election.

1978—Subsec. (a)(1)(F). Pub. L. 95–600, §540(a), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (f). Pub. L. 95–600, §370(a), added subsec. (f).

1977—Subsec. (b). Pub. L. 95–30 provided that, in the case of an individual who does not itemize deductions, an amount equal to the zero bracket amount shall be considered a deduction which cannot definitely be allocated to some item or class of gross income.

1976—Subsec. (a)(1). Pub. L. 94–455, §§1901(c)(7), 1904(b)(10)(B), struck out '', any Territory, any political subdivision of a Territory,'' after ''United States'' in provisions preceding subpar. (A) and, in subpar. (G), substituted ''subsection (c) of section 4912 (as in effect before July 1, 1974)'' for ''section 4912(c)'' and ''subsection (c)(2) of such section'' for ''section 4912(c)(2)''.

Subsec. (a)(2)(A). Pub. L. 94–455, §§1051(h)(3), 1906(b)(13)(A), substituted ''other than a corporation which has an election in effect under section 936'' for ''other than a corporation entitled to the benefits of section 931'' and struck out ''or his delegate'' after ''Secretary''.

Subsec. (a)(2)(D). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (a)(5), (6). Pub. L. 94–455, §1901(b)(26)(A), substituted ''sale or exchange'' for ''sale'' in headings and text.

Subsec. (a)(7). Pub. L. 94–455, §1036(a), added par. (7).

Subsec. (c)(3). Pub. L. 94–455, §1041, struck out provision that subsecs. (a)(1)(A) and (c) would cease to apply effective with respect to amounts paid or credited after Dec. 31, 1976.

Subsec. (e)(1). Pub. L. 94–455, §1901(b)(26)(B), substituted ''sale, exchange, or other disposition'' for ''sale or other disposition''.

Subsecs. (e)(2), (3). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

1975—Subsec. (a)(1)(H). Pub. L. 93–625, §9(a), added subpar. (H).

Subsec. (c)(3). Pub. L. 93–625, §8, substituted ''1976'' for ''1975''.

1971—Subsec. (a)(1)(G). Pub. L. 92–9 added subpar. (G).

Subsec. (a)(2)(D). Pub. L. 92–178, §503, added subpar. (D).

Subsec. (e). Pub. L. 92–178, §314(a), added subsec. (e).

1969—Subsec. (a)(1)(C), (D). Pub. L. 91–172, §435(a)(1), struck out ''after December 31, 1972,'' after ''interest paid or credited'' in parenthetical after ''interest received from a foreign corporation''.

Subsec. (c)(3). Pub. L. 91–172, §435(a)(2), substituted ''1975'' for ''1972''.

1966—Subsec. (a)(1)(A). Pub. L. 89–809, §102(a)(1)(A), substituted ''interest on amounts described in subsection (c) received by a nonresident alien individual or a foreign corporation, if such interest is not effectively connected with the conduct of a trade or business within the United States'' for ''interest on deposits with persons carrying on the banking business paid to persons not engaged in business within the United States''.

Subsec. (a)(1)(B). Pub. L. 89–809, §102(a)(2), struck out interest received from a resident foreign corporation, and substituted ''gross income from all sources of such individual or such corporation'' for ''gross income of such resident payor or domestic corporation'', and ''taxable year of such individual or such corporation'' for ''taxable year of such payor''.

Subsec. (a)(1)(C) to (F). Pub. L. 89–809, §102(a)(2), added subpars. (C), (D), and (F), and redesignated former subpar. (C) as (E).

Subsec. (a)(2)(B). Pub. L. 89–809, §102(b), substituted ''50 percent of the gross income from all sources'' for ''50 percent of the gross income'', ''effectively connected with the conduct of a trade or business within the United States'' for ''derived from sources within the United States as determined from the provisions of this part'', and ''ratio to such dividends as the gross income of the corporation for such period which was effectively connected with the conduct of a trade or business within the United States bears to its gross income from all sources'' for ''ratio to such dividends as the gross income of the corporation for such period derived from sources within the United States bears to its gross income from all sources'' and inserted ''(other than dividends for which a deduction is allowable under section 245(b))'' after ''dividends'' and ''(and only to the extent)'' after ''extent''.

Subsec. (a)(3)(C)(ii). Pub. L. 89–809, §102(c), inserted ''an individual who is a citizen or resident of the United States, a domestic partnership, or'' before ''a domestic corporation'' and ''individual, partnership, or'' after ''United States by such''.

Subsecs. (c), (d). Pub. L. 89–809, §102(a)(1)(B), (3), added subsecs. (c) and (d).

1962—Subsec. (a)(2)(B). Pub. L. 87–834 substituted ''to the extent exceeding the amount which is 100/85ths of the amount of the deduction allowable under section 245 in respect of such dividends'' for ''to the extent exceeding the amount of the deduction allowable under section 245 in respect of such dividends.''

1960—Subsec. (a)(2)(C). Pub. L. 86–779 added subpar. (C).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title II, §2122(d), Sept. 27, 2010, 124 Stat. 2568, provided that: ''The amendments made by this section [amending this section and sections 862 and 864 of this title] shall apply to guarantees issued after the date of the enactment of this Act [Sept. 27, 2010].''

Pub. L. 111–226, title II, §217(d), Aug. 10, 2010, 124 Stat. 2402, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 871, 904, and 2104 of this title] shall apply to taxable years beginning after December 31, 2010.

''(2) GRANDFATHER RULE FOR OUTSTANDING DEBT OBLIGATIONS.—

''(A) IN GENERAL.—The amendments made by this section shall not apply to payments of interest on obligations issued before the date of the enactment of this Act [Aug. 10, 2010].

''(B) EXCEPTION FOR RELATED PARTY DEBT.—Subparagraph (A) shall not apply to any interest which is payable to a related person (determined under rules similar to the rules of section 954(d)(3)).

''(C) SIGNIFICANT MODIFICATIONS TREATED AS NEW ISSUES.—For purposes of subparagraph (A), a significant modification of the terms of any obligation (including any extension of the term of such obligation) shall be treated as a new issue.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title IV, §410(b), Oct. 22, 2004, 118 Stat. 1500, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2003.''

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title VI, §621(b), June 7, 2001, 115 Stat. 111, provided that: ''The amendment made by sub-

section (a) [amending this section] shall apply to remuneration for services performed in plan years beginning after December 31, 2001.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to remuneration for services performed in taxable years beginning after Dec. 31, 1997, see section 1174(c) of Pub. L. 105–34, set out as a note under section 7701 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11813(b)(17) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7811(i)(2) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to dividends received or accrued after Dec. 31, 1987, in taxable years ending after such date, see section 10221(e)(1) of Pub. L. 100–203, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(11) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1211(b)(1)(B) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1211(c) of Pub. L. 99–514, set out as an Effective Date note under section 865 of this title.

Amendment by section 1212(d) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with special rules for certain leased property and for certain ships leased by United States Navy, see section 1212(f) of Pub. L. 99–514, set out as a note under section 863 of this title.

Section 1214(d) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1012(g)(1)(A), (2), Nov. 10, 1988, 102 Stat. 3500, 3501, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 871, 881, 1441, and 6049 of this title] shall apply to payments made in a taxable year of the payor beginning after December 31, 1986.

''(2) TREATMENT OF CERTAIN INTEREST.—

''(A) IN GENERAL.—The amendments made by this section shall not apply to any interest paid or accrued on any obligation outstanding on December 31, 1985. The preceding sentence shall not apply to any interest paid pursuant to any extension or renewal of such an obligation agreed to after December 31, 1985.

''(B) SPECIAL RULE FOR RELATED PAYEE.—If the payee of any interest to which subparagraph (A) applies is related (within the meaning of section 904(d)(2)(H) of the Internal Revenue Code of 1986) to the payor, such interest shall be treated for purposes of section 904 of such Code as if the payor were a controlled foreign corporation (within the meaning of section 957(a) of such Code).

''(3) TRANSITIONAL RULE.—

''(A) YEARS BEFORE 1988.—In applying the amendments made by this section to any payment made by a corporation in a taxable year of such corporation beginning before January 1, 1988, the requirements of clause (ii) of [former] section 861(c)(1)(B) of the Internal Revenue Code of 1986 (relating to active business requirements), as amended by this section, shall not apply to gross income of such corporation for taxable years beginning before January 1, 1987.

''(B) YEARS AFTER 1987.—In applying the amendments made by this section to any payment made by a corporation in a taxable year of such corporation beginning after December 31, 1987, the testing period for purposes of [former] section 861(c) of such Code (as so amended) shall not include any taxable year beginning before January 1, 1987.

''(4) CERTAIN DIVIDENDS.—

''(A) IN GENERAL.—The amendments made by this section shall not apply to any dividend paid before January 1, 1991, by a qualified corporation with respect to stock which was outstanding on May 31, 1985.

''(B) QUALIFIED CORPORATION.—For purposes of subparagraph (A), the term 'qualified corporation' means any business systems corporation which—

''(i) was incorporated in Delaware in February, 1979,

''(ii) is headquartered in Garden City, New York, and

''(iii) the parent corporation of which is a resident of Sweden.''

[Section 1012(g)(1)(B) of Pub. L. 100–647 provided that: ''A taxpayer may elect not to have the amendment made by subparagraph (A) [amending section 1214(d)(1) of Pub. L. 99–514, set out above] apply and to have section 1214(d)(1) of the Reform Act [section 1214(d)(1) of Pub. L. 99–514, set out above] apply as in effect before such amendment. Such election shall be made at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe.'']

Amendment by section 1241(b) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1241(e) of Pub. L. 99–514, set out as an Effective Date note under section 884 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to benefits received after Dec. 31, 1983, in taxable years ending after such date, except for any portion of a lump-sum payment of social security benefits received after Dec. 31, 1983, if the generally applicable payment date for such portion was before Jan. 1, 1984, see section 121(g) of Pub. L. 98–21, set out as an Effective Date note under section 86 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 104(b) of Pub. L. 96–605 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to property first leased after the date of the enactment of this Act [Dec. 28, 1980].''

Amendment by Pub. L. 96–499 applicable to dispositions after June 18, 1980, see section 1125(a) of Pub. L. 96–499, set out as an Effective Date note under section 897 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 370(b) of Pub. L. 95–600 provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to all railroad rolling stock placed in service with respect to the taxpayer after the date of the enactment of this Act [Nov. 6, 1978].

''(2) ELECTION TO EXTEND SECTION 861(f) [now 861(e)] TO RAILROAD ROLLING STOCK PLACED IN SERVICE BEFORE DATE OF ENACTMENT.

''(A) IN GENERAL.—At the election of the taxpayer, the amendment made by subsection (a) shall also apply, for taxable years beginning after the date of the enactment of this Act, to all railroad rolling stock placed in service with respect to the taxpayer on or before such date of enactment. Such an election may not be revoked except with the consent of the Secretary of the Treasury or his delegate.

''(B) MANNER AND TIME OF ELECTION AND REVOCATION.—An election under subparagraph (A), and any revocation of such an election, shall be made in such manner and at such time as the Secretary of the Treasury or his delegate may by regulations prescribe.''

Section 540(b) of Pub. L. 95–600 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Nov. 6, 1978].''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1036(c) of Pub. L. 94–455 provided that: ''The amendments made by this section [amending this section and section 862 of this title] shall apply to taxable years beginning after December 31, 1976.''

For effective date of amendment by section 1051(h)(3) of Pub. L. 94–455, see section 1051(i)(1) of Pub. L. 94–455, set out as a note under section 27 of this title.

Amendment by section 1901(b)(26)(A), (B), (c)(7) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 1904(b)(10)(B) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after date of enactment of this Act [Oct. 4, 1976], see section 1904(d) of Pub. L. 94–455, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 9(c) of Pub. L. 93–625 provided that: ''The amendment made by subsection (a) [amending this section] applies to interest paid after the date of enactment of this Act [Jan. 3, 1975], and the amendment made by subsection (b) [amending section 2104 of this title] applies with respect to estates of decedents dying after such date.''

EFFECTIVE DATE OF 1971 AMENDMENTS

Section 3(a)(3) of Pub. L. 92–9 provided that: ''The amendments made by this subsection [amending this section and section 4912 of this title] shall take effect on the date of the enactment of this Act [Apr. 1, 1971].''

Section 314(c) of Pub. L. 92–178 provided that: ''The amendments made by this section [amending this section and section 862 of this title] shall apply to taxable years ending after August 15, 1971, but only with respect to leases entered into after such date.''

Amendment by section 503 of Pub. L. 92–178 applicable with respect to taxable years ending after Dec. 31, 1971, except that a corporation may not be a DISC for any taxable year beginning before Jan. 1, 1972, see section 507 of Pub. L. 92–178, set out as an Effective Date note under section 991 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 435(a)(1) of Pub. L. 91–172 provided that the amendment made by that section is effective with respect to amounts paid or credited after Dec. 31, 1969.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 102(e) of Pub. L. 89–809, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) The amendments made by subsections (a), (c), and (d) [amending this section and sections 864 and 895 of this title] shall apply with respect to taxable years beginning after December 31, 1966; except that in applying section 864(c)(4)(B)(iii) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (d)) with respect to a binding contract entered into on or before February 24, 1966, activities in the United States on or before such date in negotiating or carrying out such contract shall not be taken into account.

''(2) The amendments made by subsection (b) [amending this section] shall apply with respect to amounts received after December 31, 1966.''

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable in respect of any distribution received by a domestic corporation after Dec. 31, 1964, and in respect of any distribution received by a domestic corporation before Jan. 1, 1965, in a taxable year of such corporation beginning after Dec. 31, 1962, but only to the extent that such distribution is made out of the accumulated profits of a foreign corporation for a taxable year (of such foreign corporation) beginning after Dec. 31, 1962, see section 9(e) of Pub. L. 87–834, set out as a note under section 902 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–779 applicable to dividends received after Dec. 31, 1959, in taxable years ending after such date, see section 3(c) of Pub. L. 86–779, set out as a note under section 243 of this title.

SHORT TITLE OF 1971 AMENDMENT

Section 1(a) of Pub. L. 92–9 provided that: ''This Act [amending this section and sections 4911, 4912, 4914 to 4916, 4919 to 4921, 6651, 6680, and 6681 of this title and enacting provisions set out as notes under this section and sections 6680 and 6681 of this title] may be cited as the 'Interest Equalization Tax Extension Act of 1971'.''

SHORT TITLE OF 1966 AMENDMENT

Section 101 of title I of Pub. L. 89–809 provided that: ''This title [enacting sections 877, 896, 906, 981, 2107, 2108, and 6683 of this title, amending this section and sections 1, 11, 116, 154, 245, 301, 512, 542, 543, 545, 819, 821, 822, 831, 832, 841, 842, 864, 871, 872, 873, 874, 875, 881, 882, 884, 894, 895, 901, 904, 911, 931, 932, 952, 953, 1248, 1249, 1441, 1442, 1461, 2014, 2101, 2102, 2104, 2105, 2106, 2501, 2511, 3401, 6015, 6016, 6018, 6501, 6513, and 7701 of this title, redesignating former section 877 as 878, repealing section 1493, and enacting provisions set out as notes under this section and sections 11, 871, 874, 894, 901, 904, 931, 2101, 2501, and 6501 of this title] may be cited as the 'Foreign Investors Tax Act of 1966'.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

DIVIDENDS RECEIVED OR ACCRUED DURING 1987

Subsec. (a)(2)(B) of this section to be applied by substituting ''100/80ths'' for the fraction specified therein with regard to dividends received or accrued during

1987, see section 1006(b)(1)(B) of Pub. L. 100–647 set out as a note under section 245 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

Section 1012(aa)(2)–(4) of title I of Pub. L. 100–647 provided that:

''(2) CERTAIN AMENDMENTS TO APPLY NOTWITHSTANDING TREATIES.—The following amendments made by the Reform Act [Pub. L. 99–514] shall apply notwithstanding any treaty obligation of the United States in effect on the date of the enactment of the Reform Act [Oct. 22, 1986]:

''(A) The amendments made by section 1201 of the Reform Act [amending sections 864, 904, and 954 of this title].

''(B) The amendments made by title VII of the Reform Act [enacting sections 53 and 55 to 59 of this title and amending sections 5, 12, 26, 28, 29, 38, 48, 173, 174, 263, 381, 443, 703, 882, 897, 904, 936, 1016, 1363, 1366, 1561, 6154, 6425, and 6655 of this title] to the extent such amendments relate to the alternative minimum tax foreign tax credit.

''(3) CERTAIN AMENDMENTS NOT TO APPLY TO THE EXTENT INCONSISTENT WITH TREATIES.—The following amendments made by the Reform Act [Pub. L. 99–514] shall not apply to the extent the application of such amendments would be contrary to any treaty obligation of the United States in effect on the date of the enactment of the Reform Act [Oct. 22, 1986]:

''(A) The amendments made by section 1211 of the Reform Act [enacting section 865 of this title and amending this section and sections 862 to 864, 871, 881, and 904 of this title] to the extent—

''(i) such amendments apply in the case of an individual treated as a resident of a foreign country under a treaty obligation of the United States as so in effect, or

''(ii) such amendments relate to income of a nonresident from the sale or exchange of inventory property which would otherwise be sourced under section 865(e)(2) of the 1986 Code.

''(B) The amendments made by section 1212(a) of the Reform Act [amending section 863 of this title]; except for purposes of determining the amount of the foreign tax credit.

''(C) The amendments made by subsections (b) and (c) of section 1212 of the Reform Act [enacting section 887 of this title and amending sections 872 and 883 of this title].

''(D) The amendments made by section 1214 of the Reform Act [amending this section and sections 871, 881, 1441, and 6049 of this title]; except for purposes of determining the amount of the foreign tax credit.

''(E) The amendment made by section 1241(a) of the Reform Act [enacting section 884 of this title and renumbering former section 884 as 885] to the extent that, under a treaty obligation of the United States, interest described in section 884(f)(1)(A) of the 1986 Code (as added by such amendment) which is in excess of amounts deducted would be treated as other than United States source.

''(F) The amendment made by section 1241(b)(2)(A) of the Reform Act [amending this section].

''(G) The amendment made by section 1241(a) of the Reform Act [enacting section 884 of this title and renumbering former section 884 as 885] to the extent such amendment relates to section 884(f)(1)(B) of the 1986 Code.

''(H) The amendments made by section 1242 of the Reform Act [amending section 864 of this title] to the extent they relate to paragraph (7) of section 864(c) of the 1986 Code.

''(I) The amendment made by section 1247(a) of the Reform Act [amending section 892 of this title].

''(J) The amendments made by section 123 of the Reform Act [amending sections 74, 117, 1441, and 7871 of this title].

''(4) TREATMENT OF TECHNICAL CORRECTIONS.—For purposes of paragraphs (2) and (3), any amendment made by this title [see Tables for classification] shall be treated as if it had been included in the provision of the Reform Act [Pub. L. 99–514] to which such amendment relates.''

QUALIFIED RESEARCH AND EXPERIMENTAL EXPENDITURES; ALLOCATION AND APPORTIONMENT; DEFINITIONS; SPECIAL RULES; EFFECTIVE DATES

Section 4009 of Pub. L. 100–647 provided that:

''(a) GENERAL RULE.—For purposes of sections 861(b), 862(b), and 863(b) of the 1986 Code, qualified research and experimental expenditures shall be allocated and apportioned as follows:

''(1) Any qualified research and experimental expenditures expended solely to meet legal requirements imposed by a political entity with respect to the improvement or marketing of specific products or processes for purposes not reasonably expected to generate gross income (beyond de minimis amounts) outside the jurisdiction of the political entity shall be allocated only to gross income from sources within such jurisdiction.

''(2) In the case of any qualified research and experimental expenditures (not allocated under paragraph (1)) to the extent—

''(A) that such expenditures are attributable to activities conducted in the United States, 64 percent of such expenditures shall be allocated and apportioned to income from sources within the United States and deducted from such income in determining the amount of taxable income from sources within the United States, and

''(B) that such expenditures are attributable to activities conducted outside the United States, 64 percent of such expenditures shall be allocated and apportioned to income from sources outside the United States and deducted from such income in determining the amount of taxable income from sources outside the United States.

''(3) The remaining portion of qualified research and experimental expenditures (not allocated under paragraphs (1) and (2)) shall be apportioned, at the annual election of the taxpayer, on the basis of gross sales or gross income, except that, if the taxpayer elects to apportion on the basis of gross income, the amount apportioned to income from sources outside the United States shall be at least 30 percent of the amount which would be so apportioned on the basis of gross sales.

''(b) QUALIFIED RESEARCH AND EXPERIMENTAL EXPENDITURES.—For purposes of this section, the term 'qualified research and experimental expenditures' means amounts which are research and experimental expenditures within the meaning of section 174 of the 1986 Code. For purposes of this subsection, rules similar to the rules of subsection (c) of section 174 of the 1986 Code shall apply.

''(c) SPECIAL RULES FOR EXPENDITURES ATTRIBUTABLE TO ACTIVITIES CONDUCTED IN SPACE, ETC.—

''(1) IN GENERAL.—Any qualified research and experimental expenditures described in paragraph (2)—

''(A) if incurred by a United States person, shall be allocated and apportioned under this section in the same manner as if they were attributable to activities conducted in the United States, and

''(B) if incurred by a person other than a United States person, shall be allocated and apportioned under this section in the same manner as if they were attributable to activities conducted outside the United States.

''(2) DESCRIPTION OF EXPENDITURES.—For purposes of paragraph (1), qualified research and experimental expenditures are described in this paragraph if such expenditures are attributable to activities conducted—

''(A) in space,

''(B) on or under water not within the jurisdiction (as recognized by the United States) of a foreign country, possession of the United States, or the United States, or

''(C) in Antarctica.

''(d) AFFILIATED GROUP.—

''(1) Except as provided in paragraph (2), the allocation and apportionment required by subsection (a) shall be determined as if all members of the affiliated group (as defined in subsection (e)(5) of section 864 of the 1986 Code) were a single corporation.

''(2) For purposes of the allocation and apportionment required by subsection (a)—

''(A) sales and gross income from products produced in whole or in part in a possession by an electing corporation (within the meaning of section 936(h)(5)(E) of the 1986 Code); and

''(B) dividends from an electing corporation,

shall not be taken into account, except that this paragraph shall not apply to sales of (and gross income and dividends attributable to sales of) products with respect to which an election under section 936(h)(5)(F) of the 1986 Code is not in effect.

''(3) The qualified research and experimental expenditures taken into account for purposes of subsection (a) shall be adjusted to reflect the amount of such expenditures included in computing the cost-sharing amount (determined under section 936(h)(5)(C)(i)(I) of the 1986 Code).

''(4) The Secretary of the Treasury or his delegate may prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations providing for the source of gross income and the allocation and apportionment of deductions to take into account the adjustments required by paragraph (3).

''(5) Paragraph (6) of section 864(e) of the 1986 Code shall not apply to qualified research and experimental expenditures.

''(e) YEARS TO WHICH SECTION APPLIES.—

''(1) IN GENERAL.—Except as provided in this subsection, this section shall apply to the taxpayer's 1st taxable year beginning after August 1, 1987.

''(2) REDUCTION IN AMOUNTS TO WHICH SECTION APPLIES.—Notwithstanding paragraph (1), this section shall only apply to that portion of the qualified research and experimental expenditures for the taxable year referred to in paragraph (1) which bears the same ratio to the total amount of such expenditures as—

''(A) the lesser of 4 months or the number of months in the taxable year, bears to

''(B) the number of months in the taxable year.''

1-YEAR MODIFICATION IN REGULATIONS PROVIDING FOR ALLOCATION OF RESEARCH AND EXPERIMENTAL EXPENDITURES

Section 1216 of Pub. L. 99–514 provided that:

''(a) GENERAL RULE.—For purposes of section 861(b), section 862(b), and section 863(b) of the Internal Revenue Code of 1954 [now 1986], notwithstanding section 864(e) of such Code—

''(1) 50 percent of all amounts allowable as a deduction for qualified research and experimental expenditures shall be apportioned to income from sources within the United States and deducted from such income in determining the amount of taxable income from sources within the United States, and

''(2) the remaining portion of such amounts shall be apportioned on the basis of gross sales or gross income.

The preceding sentence shall not apply to any expenditures described in section 1.861–8(e)(3)(i)(B) of the Income Tax Regulations.

''(b) QUALIFIED RESEARCH AND EXPERIMENTAL EXPENDITURES.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified research and experimental expenditures' means amounts—

''(A) which are research and experimental expenditures within the meaning of section 174 of such Code, and

''(B) which are attributable to activities conducted in the United States.

''(2) TREATMENT OF DEPRECIATION, ETC.—Rules similar to the rules of section 174(c) of such Code shall apply.

''(c) EFFECTIVE DATE.—This section shall apply to taxable years beginning after August 1, 1986, and on or before August 1, 1987.''

ALLOCATION UNDER SECTION 861 OF RESEARCH AND EXPERIMENTAL EXPENDITURES

Pub. L. 98–369, div. A, title I, § 126, July 18, 1984, 98 Stat. 648, as amended by Pub. L. 99–272, title XIII, § 13211, Apr. 7, 1986, 100 Stat. 324; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) IN GENERAL.—For purposes of section 861(b), section 862(b), and section 863(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], all amounts allowable as a deduction for qualified research and experimental expenditures shall be allocated to income from sources within the United States and deducted from such income in determining the amount of taxable income from sources within the United States.

''(b) QUALIFIED RESEARCH AND EXPERIMENTAL EXPENDITURES.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified research and experimental expenditures' means amounts—

''(A) which are research and experimental expenditures within the meaning of section 174 of such Code, and

''(B) which are attributable to activities conducted in the United States.

''(2) TREATMENT OF DEPRECIATION, ETC.—Rules similar to the rules of subsection (c) of section 174 of such Code shall apply.

''(c) EFFECTIVE DATES.—

''(1) IN GENERAL.—This section shall apply to taxable years beginning after August 13, 1983, and on or before August 1, 1986.

''(2) SPECIAL RULE.—If the taxpayer's 4th taxable year beginning after August 13, 1981, is not described in paragraph (1), this section shall apply also to such 4th taxable year.''

CONFORMITY OF AMENDMENTS MADE BY FOREIGN INVESTORS TAX ACT OF 1966 WITH TREATY OBLIGATIONS OF THE UNITED STATES

Section 110 of title I of Pub. L. 89–809 provided that: ''No amendment made by this title [see Short Title note above] shall apply in any case where its application would be contrary to any treaty obligation of the United States. For purposes of the preceding sentence, the extension of a benefit provided by any amendment made by this title shall not be deemed to be contrary to a treaty obligation of the United States.''

§ 862. Income from sources without the United States

(a) Gross income from sources without United States

The following items of gross income shall be treated as income from sources without the United States:

(1) interest other than that derived from sources within the United States as provided in section 861(a)(1);

(2) dividends other than those derived from sources within the United States as provided in section 861(a)(2);

(3) compensation for labor or personal services performed without the United States;

(4) rentals or royalties from property located without the United States or from any interest in such property, including rentals or royalties for the use of or for the privilege of using without the United States patents, copyrights, secret processes and formulas, good will, trade-marks, trade brands, franchises, and other like properties;

(5) gains, profits, and income from the sale or exchange of real property located without the United States;

(6) gains, profits, and income derived from the purchase of inventory property (within the meaning of section 865(i)(1)) within the United States and its sale or exchange without the United States;

(7) underwriting income other than that derived from sources within the United States as provided in section 861(a)(7);

(8) gains, profits, and income from the disposition of a United States real property interest (as defined in section 897(c)) when the real property is located in the Virgin Islands; and

(9) amounts received, directly or indirectly, from a foreign person for the provision of a guarantee of indebtedness of such person other than amounts which are derived from sources within the United States as provided in section 861(a)(9).

(b) Taxable income from sources without United States

From the items of gross income specified in subsection (a) there shall be deducted the expenses, losses, and other deductions properly apportioned or allocated thereto, and a ratable part of any expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income. The remainder, if any, shall be treated in full as taxable income from sources without the United States. In the case of an individual who does not itemize deductions, an amount equal to the standard deduction shall be considered a deduction which cannot definitely be allocated to some item or class of gross income.

(Aug. 16, 1954, ch. 736, 68A Stat. 276; Pub. L. 92–178, title III, § 314(b), Dec. 10, 1971, 85 Stat. 528; Pub. L. 94–455, title X, § 1036(b), title XIX, § 1901(b)(26)(C), Oct. 4, 1976, 90 Stat. 1633, 1798; Pub. L. 95–30, title I, § 102(b)(10), May 23, 1977, 91 Stat. 138; Pub. L. 97–34, title VIII, § 831(a)(2), Aug. 13, 1981, 95 Stat. 352; Pub. L. 99–514, title I, § 104(b)(12), title XII, § 1211(b)(1)(C), Oct. 22, 1986, 100 Stat. 2105, 2536; Pub. L. 100–647, title I, § 1012(e)(4), Nov. 10, 1988, 102 Stat. 3500; Pub. L. 101–239, title VII, § 7811(i)(2), Dec. 19, 1989, 103 Stat. 2409; Pub. L. 111–240, title II, § 2122(b), Sept. 27, 2010, 124 Stat. 2568.)

AMENDMENTS

2010—Subsec. (a)(9). Pub. L. 111–240 added par. (9).

1989—Subsec. (a)(6). Pub. L. 101–239 substituted ''865(i)(1)'' for ''865(h)(1)''.

1988—Subsec. (c). Pub. L. 100–647 repealed subsec. (c) which read as follows:

''(c) CROSS REFERENCE.—For source of amounts attributable to certain aircraft and vessels, see section 861(e).''

1986—Subsec. (a)(6). Pub. L. 99–514, § 1211(b)(1)(C), substituted ''inventory property (within the meaning of section 865(h)(1))'' for ''personal property''.

Subsec. (b). Pub. L. 99–514, § 104(b)(12), substituted ''the standard deduction'' for ''the zero bracket amount''.

1981—Subsec. (a)(8). Pub. L. 97–34 added par. (8).

1977—Subsec. (b). Pub. L. 95–30 provided that, in the case of an individual who does not itemize deductions, an amount equal to the zero bracket amount shall be considered a deduction which cannot definitely be allocated to some item or class of gross income.

1976—Subsec. (a)(5), (6). Pub. L. 94–455, § 1901(b)(26)(C), inserted ''or exchange'' after ''sale''.

Subsec. (a)(7). Pub. L. 94–455, § 1036(b), added par. (7).

1971—Subsec. (c). Pub. L. 92–178 added subsec. (c).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–240 applicable to guarantees issued after Sept. 27, 2010, see section 2122(d) of Pub. L. 111–240, set out as a note under section 861 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(12) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1211(b)(1)(C) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1211(c) of Pub. L. 99–514, set out as an Effective Date note under section 865 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to dispositions after June 18, 1980, in taxable years ending after such date, see section 831(i) of Pub. L. 97–34, set out as a note under section 897 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1036(b) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1976, see section 1036(c) of Pub. L. 94–455, set out as a note under section 861 of this title.

Amendment by section 1901(b)(26)(C) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable to taxable years ending after Aug. 15, 1971, but only with respect to leases entered into after such date, see section 314(c) of Pub. L. 92–178, set out as a note under section 861 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 1211(b)(1)(C) of Pub. L. 99–514 to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of

Pub. L. 100–647, set out as a note under section 861 of this title.

QUALIFIED RESEARCH AND EXPERIMENTAL EXPENDITURES; ALLOCATION AND APPORTIONMENT; DEFINITIONS; SPECIAL RULES; EFFECTIVE DATES

For allocation and apportionment of qualified research and experimental expenditures for purposes of sections 861 to 863 of this title, see section 4009 of Pub. L. 100–647, set out as a note under section 861 of this title.

1-YEAR MODIFICATION IN REGULATIONS PROVIDING FOR ALLOCATION OF RESEARCH AND EXPERIMENTAL EXPENDITURES

For rule governing allocation under subsec. (b) of this section of amounts allowable as a deduction for qualified research and experimental expenditures during taxable years beginning after Aug. 1, 1986, and on or before Aug. 1, 1987, see section 1216 of Pub. L. 99–514, set out as a note under section 861 of this title.

ALLOCATION UNDER SECTION 861 OF RESEARCH AND EXPERIMENTAL EXPENDITURES

For purposes of subsec. (b) of this section, all amounts allowable as a deduction for qualified research and experimental expenditures are to be allocated to income from sources within the United States and deducted from such income in determining the amount of taxable income from sources within the United States for taxable years beginning after Aug. 13, 1983, and on or before Aug. 1, 1986, see section 126 of Pub. L. 98–369, set out as a note under section 861 of this title.

§ 863. Special rules for determining source

(a) Allocation under regulations

Items of gross income, expenses, losses, and deductions, other than those specified in sections 861(a) and 862(a), shall be allocated or apportioned to sources within or without the United States, under regulations prescribed by the Secretary. Where items of gross income are separately allocated to sources within the United States, there shall be deducted (for the purpose of computing the taxable income therefrom) the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of other expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income. The remainder, if any, shall be included in full as taxable income from sources within the United States.

(b) Income partly from within and partly from without the United States

In the case of gross income derived from sources partly within and partly without the United States, the taxable income may first be computed by deducting the expenses, losses, or other deductions apportioned or allocated thereto and a ratable part of any expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income; and the portion of such taxable income attributable to sources within the United States may be determined by processes or formulas of general apportionment prescribed by the Secretary. Gains, profits, and income—

(1) from services rendered partly within and partly without the United States,

(2) from the sale or exchange of inventory property (within the meaning of section 865(i)(1)) produced (in whole or in part) by the taxpayer within and sold or exchanged without the United States, or produced (in whole or in part) by the taxpayer without and sold or exchanged within the United States, or

(3) derived from the purchase of inventory property (within the meaning of section 865(i)(1)) within a possession of the United States and its sale or exchange within the United States,

shall be treated as derived partly from sources within and partly from sources without the United States.

(c) Source rule for certain transportation income

(1) Transportation beginning and ending in the United States

All transportation income attributable to transportation which begins and ends in the United States shall be treated as derived from sources within the United States.

(2) Other transportation having United States connection

(A) In general

50 percent of all transportation income attributable to transportation which—

(i) is not described in paragraph (1), and

(ii) begins or ends in the United States,

shall be treated as from sources in the United States.

(B) Special rule for personal service income

Subparagraph (A) shall not apply to any transportation income which is income derived from personal services performed by the taxpayer, unless such income is attributable to transportation which—

(i) begins in the United States and ends in a possession of the United States, or

(ii) begins in a possession of the United States and ends in the United States.

In the case of transportation income derived from, or in connection with, a vessel, this subparagraph shall only apply if the taxpayer is a citizen or resident alien.

(3) Transportation income

For purposes of this subsection, the term ''transportation income'' means any income derived from, or in connection with—

(A) the use (or hiring or leasing for use) of a vessel or aircraft, or

(B) the performance of services directly related to the use of a vessel or aircraft.

For purposes of the preceding sentence, the term ''vessel or aircraft'' includes any container used in connection with a vessel or aircraft.

(d) Source rules for space and certain ocean activities

(1) In general

Except as provided in regulations, any income derived from a space or ocean activity—

(A) if derived by a United States person, shall be sourced in the United States, and

(B) if derived by a person other than a United States person, shall be sourced outside the United States.

(2) Space or ocean activity

For purposes of paragraph (1)—

(A) In general

The term ''space or ocean activity'' means—

(i) any activity conducted in space, and

(ii) any activity conducted on or under water not within the jurisdiction (as recognized by the United States) of a foreign country, possession of the United States, or the United States.

Such term includes any activity conducted in Antarctica.

(B) Exception for certain activities

The term ''space or ocean activity'' shall not include—

(i) any activity giving rise to transportation income (as defined in section 863(c)),

(ii) any activity giving rise to international communications income (as defined in subsection (e)(2)), and

(iii) any activity with respect to mines, oil and gas wells, or other natural deposits to the extent within the United States or any foreign country or possession of the United States (as defined in section 638).

For purposes of applying section 638, the jurisdiction of any foreign country shall not include any jurisdiction not recognized by the United States.

(e) International communications income

(1) Source rules

(A) United States persons

In the case of any United States person, 50 percent of any international communications income shall be sourced in the United States and 50 percent of such income shall be sourced outside the United States.

(B) Foreign persons

(i) In general

Except as provided in regulations or clause (ii), in the case of any person other than a United States person, any international communications income shall be sourced outside the United States.

(ii) Special rule for income attributable to office or fixed place of business in the United States

In the case of any person (other than a United States person) who maintains an office or other fixed place of business in the United States, any international communications income attributable to such office or other fixed place of business shall be sourced in the United States.

(2) Definition

For purposes of this section, the term ''international communications income'' includes all income derived from the transmission of communications or data from the United States to any foreign country (or possession of the United States) or from any foreign country (or possession of the United States) to the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 277; Pub. L. 94–455, title XIX, §§1901(b)(26)(C), (D), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1798, 1799, 1834; Pub. L. 98–369, div. A, title I, §124(a), July 18, 1984, 98 Stat. 646; Pub. L. 99–514, title XII, §§1211(b)(1)(A), 1212(a), (e), 1213(a), Oct. 22, 1986, 100 Stat. 2536, 2539, 2540; Pub. L. 100–647, title I, §1012(e)(3)(A), (f), Nov. 10, 1988, 102 Stat. 3500; Pub. L. 101–239, title VII, §7811(i)(2), Dec. 19, 1989, 103 Stat. 2409; Pub. L. 105–34, title XI, §1174(a)(2), Aug. 5, 1997, 111 Stat. 989.)

AMENDMENTS

1997—Subsec. (c)(2)(B). Pub. L. 105–34 inserted concluding provisions ''In the case of transportation income derived from, or in connection with, a vessel, this subparagraph shall only apply if the taxpayer is a citizen or resident alien.''

1989—Subsec. (b)(2), (3). Pub. L. 101–239 substituted ''865(i)(1)'' for ''865(h)(1)''.

1988—Pub. L. 100–647, §1012(e)(3)(A), substituted ''Special rules for determining source'' for ''Item not specified in section 861 or 862'' in section catchline.

Subsec. (e)(2). Pub. L. 100–647, §1012(f), substituted ''foreign country (or possession of the United States)'' for ''foreign country'' in two places.

1986—Subsec. (b)(1). Pub. L. 99–514, §1212(e), substituted ''services'' for ''transportation or other services''.

Subsec. (b)(2), (3). Pub. L. 99–514, §1211(b)(1)(A), substituted ''inventory property (within the meaning of section 865(h)(1))'' for ''personal property''.

Subsec. (c)(2). Pub. L. 99–514, §1212(a), amended par. (2) generally, in subpar. (A) substituting provisions relating to other transportation having United States connections for provisions relating to transportation between United States and any possession, and in subpar. (B) substituting provisions relating to special rule for personal service income for provisions relating to special rule for certain lessors of aircraft.

Subsecs. (d), (e). Pub. L. 99–514, §1213(a), added subsecs. (d) and (e).

1984—Subsec. (c). Pub. L. 98–369 added subsec. (c).

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (b). Pub. L. 94–455, §§1901(b)(26)(C), (D), 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' in introductory provisions, and inserted ''or exchange'' after ''sale'' in pars. (2) and (3), and ''or exchanged'' after ''sold'' in par. (2) wherever appearing.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to remuneration for services performed in taxable years beginning after Dec. 31, 1997, see section 1174(c) of Pub. L. 105–34, set out as a note under section 7701 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1211(b)(1)(A) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1211(c) of Pub. L. 99–514, set out as an Effective Date note under section 865 of this title.

Section 1212(f) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section

887 of this title and amending this section and sections 861, 872, and 883 of this title] shall apply to taxable years beginning after December 31, 1986.

''(2) SPECIAL RULE FOR CERTAIN LEASED PROPERTY.—The amendments made by subsections (a) and (d) [amending this section and section 861 of this title] shall not apply to any income attributable to property held by the taxpayer on January 1, 1986, if such property was first leased by the taxpayer before January 1, 1986, in a lease to which section 863(c)(2)(B) or 861(e) of the Internal Revenue Code of 1954 [now 1986] (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]) applied.

''(3) SPECIAL RULE FOR CERTAIN SHIPS LEASED BY THE UNITED STATES NAVY.—

''(A) IN GENERAL.—In the case of any property described in subparagraph (B), paragraph (2) shall be applied by substituting '1987' for '1986' each place it appears.

''(B) PROPERTY TO WHICH PARAGRAPH APPLIES.—Property described in this subparagraph consists of 4 ships which are to be leased by the United States Navy and which are the subject of Internal Revenue Service rulings bearing the following dates and which involved the following amount of financing, respectively:

''March 5, 1986	$176,844,000
February 5, 1986	64,567,000
April 22, 1986	64,598,000
May 22, 1986	175,300,000.''

Section 1213(b) of Pub. L. 99–514 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1986.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 124(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to transportation beginning after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(26)(C), (D) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendments by sections 1211(b)(1)(A) and 1212(a) of Pub. L. 99–514 to the extent application of such amendments would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

QUALIFIED RESEARCH AND EXPERIMENTAL EXPENDITURES; ALLOCATION AND APPOINTMENT; DEFINITIONS; SPECIAL RULES; EFFECTIVE DATES

For allocation and apportionment of qualified research and experimental expenditures for purposes of sections 861 to 863 of this title, see section 4009 of Pub. L. 100–647, set out as a note under section 861 of this title.

1-YEAR MODIFICATION IN REGULATIONS PROVIDING FOR ALLOCATION OF RESEARCH AND EXPERIMENTAL EXPENDITURES

For rule governing allocation under subsec. (b) of this section of amounts allowable as a deduction for qualified research and experimental expenditures during taxable years beginning after Aug. 1, 1986, and on or before Aug. 1, 1987, see section 1216 of Pub. L. 99–514, set out as a note under section 861 of this title.

ALLOCATION UNDER SECTION 861 OF RESEARCH AND EXPERIMENTAL EXPENDITURES

For purposes of subsec. (b) of this section, all amounts allowable as a deduction for qualified research and experimental expenditures are to be allocated to income from sources within the United States and deducted from such income in determining the amount of taxable income from sources within the United States for taxable years beginning after Aug. 13, 1983, and on or before Aug. 1, 1986, see section 126 of Pub. L. 98–369, set out as a note under section 861 of this title.

§ 864. Definitions and special rules

(a) Produced

For purposes of this part, the term ''produced'' includes created, fabricated, manufactured, extracted, processed, cured, or aged.

(b) Trade or business within the United States

For purposes of this part, part II, and chapter 3, the term ''trade or business within the United States'' includes the performance of personal services within the United States at any time within the taxable year, but does not include—

(1) Performance of personal services for foreign employer

The performance of personal services—

(A) for a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, or

(B) for an office or place of business maintained in a foreign country or in a possession of the United States by an individual who is a citizen or resident of the United States or by a domestic partnership or a domestic corporation,

by a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of 90 days during the taxable year and whose compensation for such services does not exceed in the aggregate $3,000.

(2) Trading in securities or commodities

(A) Stocks and securities

(i) In general

Trading in stocks or securities through a resident broker, commission agent, custodian, or other independent agent.

(ii) Trading for taxpayer's own account

Trading in stocks or securities for the taxpayer's own account, whether by the taxpayer or his employees or through a resident broker, commission agent, custodian, or other agent, and whether or not any such employee or agent has discretionary authority to make decisions in effecting the transactions. This clause shall not apply in the case of a dealer in stocks or securities.

(B) Commodities

(i) In general

Trading in commodities through a resident broker, commission agent, custodian, or other independent agent.

(ii) Trading for taxpayer's own account

Trading in commodities for the taxpayer's own account, whether by the taxpayer or his employees or through a resident broker, commission agent, custodian, or other agent, and whether or not any such employee or agent has discretionary authority to make decisions in effecting the transactions. This clause shall not apply in the case of a dealer in commodities.

(iii) Limitation

Clauses (i) and (ii) shall apply only if the commodities are of a kind customarily dealt in on an organized commodity exchange and if the transaction is of a kind customarily consummated at such place.

(C) Limitation

Subparagraphs (A)(i) and (B)(i) shall apply only if, at no time during the taxable year, the taxpayer has an office or other fixed place of business in the United States through which or by the direction of which the transactions in stocks or securities, or in commodities, as the case may be, are effected.

(c) Effectively connected income, etc.

(1) General rule

For purposes of this title—

(A) In the case of a nonresident alien individual or a foreign corporation engaged in trade or business within the United States during the taxable year, the rules set forth in paragraphs (2), (3), (4), (6), and (7) shall apply in determining the income, gain, or loss which shall be treated as effectively connected with the conduct of a trade or business within the United States.

(B) Except as provided in paragraph (6) or (7) or in section 871(d) or sections 882(d) and (e), in the case of a nonresident alien individual or a foreign corporation not engaged in trade or business within the United States during the taxable year, no income, gain, or loss shall be treated as effectively connected with the conduct of a trade or business within the United States.

(2) Periodical, etc., income from sources within United States—factors

In determining whether income from sources within the United States of the types described in section 871(a)(1), section 871(h), section 881(a), or section 881(c), or whether gain or loss from sources within the United States from the sale or exchange of capital assets, is effectively connected with the conduct of a trade or business within the United States, the factors taken into account shall include whether—

(A) the income, gain, or loss is derived from assets used in or held for use in the conduct of such trade or business, or

(B) the activities of such trade or business were a material factor in the realization of the income, gain, or loss.

In determining whether an asset is used in or held for use in the conduct of such trade or business or whether the activities of such trade or business were a material factor in realizing an item of income, gain, or loss, due regard shall be given to whether or not such asset or such income, gain, or loss was accounted for through such trade or business.

(3) Other income from sources within United States

All income, gain, or loss from sources within the United States (other than income, gain, or loss to which paragraph (2) applies) shall be treated as effectively connected with the conduct of a trade or business within the United States.

(4) Income from sources without United States

(A) Except as provided in subparagraphs (B) and (C), no income, gain, or loss from sources without the United States shall be treated as effectively connected with the conduct of a trade or business within the United States.

(B) Income, gain, or loss from sources without the United States shall be treated as effectively connected with the conduct of a trade or business within the United States by a nonresident alien individual or a foreign corporation if such person has an office or other fixed place of business within the United States to which such income, gain, or loss is attributable and such income, gain, or loss—

(i) consists of rents or royalties for the use of or for the privilege of using intangible property described in section 862(a)(4) derived in the active conduct of such trade or business;

(ii) consists of dividends, interest, or amounts received for the provision of guarantees of indebtedness, and either is derived in the active conduct of a banking, financing, or similar business within the United States or is received by a corporation the principal business of which is trading in stocks or securities for its own account; or

(iii) is derived from the sale or exchange (outside the United States) through such office or other fixed place of business of personal property described in section 1221(a)(1), except that this clause shall not apply if the property is sold or exchanged for use, consumption, or disposition outside the United States and an office or other fixed place of business of the taxpayer in a foreign country participated materially in such sale.

Any income or gain which is equivalent to any item of income or gain described in clause (i), (ii), or (iii) shall be treated in the same manner as such item for purposes of this subparagraph.

(C) In the case of a foreign corporation taxable under part I or part II of subchapter L, any income from sources without the United States which is attributable to its United States business shall be treated as effectively connected with the conduct of a trade or business within the United States.

(D) No income from sources without the United States shall be treated as effectively connected with the conduct of a trade or business within the United States if it either—

(i) consists of dividends, interest, or royalties paid by a foreign corporation in which

the taxpayer owns (within the meaning of section 958(a)), or is considered as owning (by applying the ownership rules of section 958(b)), more than 50 percent of the total combined voting power of all classes of stock entitled to vote, or

(ii) is subpart F income within the meaning of section 952(a).

(5) Rules for application of paragraph (4)(B)

For purposes of subparagraph (B) of paragraph (4)—

(A) in determining whether a nonresident alien individual or a foreign corporation has an office or other fixed place of business, an office or other fixed place of business of an agent shall be disregarded unless such agent (i) has the authority to negotiate and conclude contracts in the name of the nonresident alien individual or foreign corporation and regularly exercises that authority or has a stock of merchandise from which he regularly fills orders on behalf of such individual or foreign corporation, and (ii) is not a general commission agent, broker, or other agent of independent status acting in the ordinary course of his business,

(B) income, gain, or loss shall not be considered as attributable to an office or other fixed place of business within the United States unless such office or fixed place of business is a material factor in the production of such income, gain, or loss and such office or fixed place of business regularly carries on activities of the type from which such income, gain, or loss is derived, and

(C) the income, gain, or loss which shall be attributable to an office or other fixed place of business within the United States shall be the income, gain, or loss property allocable thereto, but, in the case of a sale or exchange described in clause (iii) of such subparagraph, the income which shall be treated as attributable to an office or other fixed place of business within the United States shall not exceed the income which would be derived from sources within the United States if the sale or exchange were made in the United States.

(6) Treatment of certain deferred payments, etc.

For purposes of this title, in the case of any income or gain of a nonresident alien individual or a foreign corporation which—

(A) is taken into account for any taxable year, but

(B) is attributable to a sale or exchange of property or the performance of services (or any other transaction) in any other taxable year,

the determination of whether such income or gain is taxable under section 871(b) or 882 (as the case may be) shall be made as if such income or gain were taken into account in such other taxable year and without regard to the requirement that the taxpayer be engaged in a trade or business within the United States during the taxable year referred to in subparagraph (A).

(7) Treatment of certain property transactions

For purposes of this title, if—

(A) any property ceases to be used or held for use in connection with the conduct of a trade or business within the United States, and

(B) such property is disposed of within 10 years after such cessation,

the determination of whether any income or gain attributable to such disposition is taxable under section 871(b) or 882 (as the case may be) shall be made as if such sale or exchange occurred immediately before such cessation and without regard to the requirement that the taxpayer be engaged in a trade or business within the United States during the taxable year for which such income or gain is taken into account.

(d) Treatment of related person factoring income

(1) In general

For purposes of the provisions set forth in paragraph (2), if any person acquires (directly or indirectly) a trade or service receivable from a related person, any income of such person from the trade or service receivable so acquired shall be treated as if it were interest on a loan to the obligor under the receivable.

(2) Provisions to which paragraph (1) applies

The provisions set forth in this paragraph are as follows:

(A) Section 904 (relating to limitation on foreign tax credit).

(B) Subpart F of part III of this subchapter (relating to controlled foreign corporations).

(3) Trade or service receivable

For purposes of this subsection, the term ''trade or service receivable'' means any account receivable or evidence of indebtedness arising out of—

(A) the disposition by a related person of property described in section 1221(a)(1), or

(B) the performance of services by a related person.

(4) Related person

For purposes of this subsection, the term ''related person'' means—

(A) any person who is a related person (within the meaning of section 267(b)), and

(B) any United States shareholder (as defined in section 951(b)) and any person who is a related person (within the meaning of section 267(b)) to such a shareholder.

(5) Certain provisions not to apply

(A) Certain exceptions

The following provisions shall not apply to any amount treated as interest under paragraph (1) or (6):

(i) Subparagraphs (A)(iii)(II), (B)(ii), and (C)(iii)(II) of section 904(d)(2) (relating to exceptions for export financing interest).

(ii) Subparagraph (A) of section 954(b)(3) (relating to exception where foreign base company income is less than 5 percent or $1,000,000).

(iii) Subparagraph (B) of section 954(c)(2) (relating to certain export financing).

(iv) Clause (i) of section 954(c)(3)(A) (relating to certain income received from related persons).

(B) Special rules for possessions

An amount treated as interest under paragraph (1) shall not be treated as income described in subparagraph (A) or (B) of section 936(a)(1) unless such amount is from sources within a possession of the United States (determined after the application of paragraph (1)).

(6) Special rule for certain income from loans of a controlled foreign corporation

Any income of a controlled foreign corporation (within the meaning of section 957(a)) from a loan to a person for the purpose of financing—

(A) the purchase of property described in section 1221(a)(1) of a related person, or

(B) the payment for the performance of services by a related person,

shall be treated as interest described in paragraph (1).

(7) Exception for certain related persons doing business in same foreign country

Paragraph (1) shall not apply to any trade or service receivable acquired by any person from a related person if—

(A) the person acquiring such receivable and such related person are created or organized under the laws of the same foreign country and such related person has a substantial part of its assets used in its trade or business located in such same foreign country, and

(B) such related person would not have derived any foreign base company income (as defined in section 954(a), determined without regard to section 954(b)(3)(A)), or any income effectively connected with the conduct of a trade or business within the United States, from such receivable if it had been collected by such related person.

(8) Regulations

The Secretary shall prescribe such regulations as may be necessary to prevent the avoidance of the provisions of this subsection or section 956(b)(3).[1]

(e) Rules for allocating interest, etc.

For purposes of this subchapter—

(1) Treatment of affiliated groups

The taxable income of each member of an affiliated group shall be determined by allocating and apportioning interest expense of each member as if all members of such group were a single corporation.

(2) Gross income method may not be used for interest

All allocations and apportionments of interest expense shall be made on the basis of assets rather than gross income.

(3) Tax-exempt assets not taken into account

For purposes of allocating and apportioning any deductible expense, any tax-exempt asset (and any income from such an asset) shall not be taken into account. A similar rule shall apply in the case of the portion of any dividend (other than a qualifying dividend as defined in section 243(b)) equal to the deduction allowable under section 243 or 245(a) with respect to such dividend and in the case of a like portion of any stock the dividends on which would be so deductible and would not be qualifying dividends (as so defined).

(4) Basis of stock in nonaffiliated 10-percent owned corporations adjusted for earnings and profits changes

(A) In general

For purposes of allocating and apportioning expenses on the basis of assets, the adjusted basis of any stock in a nonaffiliated 10-percent owned corporation shall be—

(i) increased by the amount of the earnings and profits of such corporation attributable to such stock and accumulated during the period the taxpayer held such stock, or

(ii) reduced (but not below zero) by any deficit in earnings and profits of such corporation attributable to such stock for such period.

(B) Nonaffiliated 10-percent owned corporation

For purposes of this paragraph, the term ''nonaffiliated 10-percent owned corporation'' means any corporation if—

(i) such corporation is not included in the taxpayer's affiliated group, and

(ii) members of such affiliated group own 10 percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote.

(C) Earnings and profits of lower tier corporations taken into account

(i) In general

If, by reason of holding stock in a nonaffiliated 10-percent owned corporation, the taxpayer is treated under clause (iii) as owning stock in another corporation with respect to which the stock ownership requirements of clause (ii) are met, the adjustment under subparagraph (A) shall include an adjustment for the amount of the earnings and profits (or deficit therein) of such other corporation which are attributable to the stock the taxpayer is so treated as owning and to the period during which the taxpayer is treated as owning such stock.

(ii) Stock ownership requirements

The stock ownership requirements of this clause are met with respect to any corporation if members of the taxpayer's affiliated group own (directly or through the application of clause (iii)) 10 percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote.

(iii) Stock owned through entities

For purposes of this subparagraph, stock owned (directly or indirectly) by a corporation, partnership, or trust shall be treated as being owned proportionately by

[1] See References in Text note below.

its shareholders, partners, or beneficiaries. Stock considered to be owned by a person by reason of the application of the preceding sentence, shall, for purposes of applying such sentence, be treated as actually owned by such person.

(D) Coordination with subpart F, etc.

For purposes of this paragraph, proper adjustment shall be made to the earnings and profits of any corporation to take into account any earnings and profits included in gross income under section 951 or under any other provision of this title and reflected in the adjusted basis of the stock.

(5) Affiliated group

For purposes of this subsection—

(A) In general

Except as provided in subparagraph (B), the term ''affiliated group'' has the meaning given such term by section 1504 (determined without regard to paragraph (4) of section 1504(b)). Notwithstanding the preceding sentence, a foreign corporation shall be treated as a member of the affiliated group if—

(i) more than 50 percent of the gross income of such foreign corporation for the taxable year is effectively connected with the conduct of a trade or business within the United States, and

(ii) at least 80 percent of either the vote or value of all outstanding stock of such foreign corporation is owned directly or indirectly by members of the affiliated group (determined with regard to this sentence).

(B) Treatment of certain financial institutions

For purposes of subparagraph (A), any corporation described in subparagraph (C) shall be treated as an includible corporation for purposes of section 1504 only for purposes of applying such section separately to corporations so described. This subparagraph shall not apply for purposes of paragraph (6).

(C) Description

A corporation is described in this subparagraph if—

(i) such corporation is a financial institution described in section 581 or 591,

(ii) the business of such financial institution is predominantly with persons other than related persons (within the meaning of subsection (d)(4)) or their customers, and

(iii) such financial institution is required by State or Federal law to be operated separately from any other entity which is not such an institution.

(D) Treatment of bank holding companies

To the extent provided in regulations—

(i) a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956), and

(ii) any subsidiary of a financial institution described in section 581 or 591 or of any bank holding company if such subsidiary is predominantly engaged (directly or indirectly) in the active conduct of a banking, financing, or similar business,

shall be treated as a corporation described in subparagraph (C).

(6) Allocation and apportionment of other expenses

Expenses other than interest which are not directly allocable or apportioned to any specific income producing activity shall be allocated and apportioned as if all members of the affiliated group were a single corporation.

(7) Regulations

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

(A) for the resourcing of income of any member of an affiliated group or modifications to the consolidated return regulations to the extent such resourcing or modification is necessary to carry out the purposes of this section,

(B) for direct allocation of interest expense incurred to carry out an integrated financial transaction to any interest (or interest-type income) derived from such transaction and in other circumstances where such allocation would be appropriate to carry out the purposes of this subsection,

(C) for the apportionment of expenses allocated to foreign source income among the members of the affiliated group and various categories of income described in section 904(d)(1),

(D) for direct allocation of interest expense in the case of indebtedness resulting in a disallowance under section 246A,

(E) for appropriate adjustments in the application of paragraph (3) in the case of an insurance company,

(F) preventing assets or interest expense from being taken into account more than once, and

(G) that this subsection shall not apply for purposes of any provision of this subchapter to the extent the Secretary determines that the application of this subsection for such purposes would not be appropriate.

(f) Election to allocate interest, etc. on worldwide basis

For purposes of this subchapter, at the election of the worldwide affiliated group—

(1) Allocation and apportionment of interest expense

(A) In general

The taxable income of each domestic corporation which is a member of a worldwide affiliated group shall be determined by allocating and apportioning interest expense of each member as if all members of such group were a single corporation.

(B) Treatment of worldwide affiliated group

The taxable income of the domestic members of a worldwide affiliated group from sources outside the United States shall be determined by allocating and apportioning the interest expense of such domestic mem-

bers to such income in an amount equal to the excess (if any) of—

(i) the total interest expense of the worldwide affiliated group multiplied by the ratio which the foreign assets of the worldwide affiliated group bears to all the assets of the worldwide affiliated group, over

(ii) the interest expense of all foreign corporations which are members of the worldwide affiliated group to the extent such interest expense of such foreign corporations would have been allocated and apportioned to foreign source income if this subsection were applied to a group consisting of all the foreign corporations in such worldwide affiliated group.

(C) Worldwide affiliated group

For purposes of this paragraph, the term ''worldwide affiliated group'' means a group consisting of—

(i) the includible members of an affiliated group (as defined in section 1504(a), determined without regard to paragraphs (2) and (4) of section 1504(b)), and

(ii) all controlled foreign corporations in which such members in the aggregate meet the ownership requirements of section 1504(a)(2) either directly or indirectly through applying paragraph (2) of section 958(a) or through applying rules similar to the rules of such paragraph to stock owned directly or indirectly by domestic partnerships, trusts, or estates.

(2) Allocation and apportionment of other expenses

Expenses other than interest which are not directly allocable or apportioned to any specific income producing activity shall be allocated and apportioned as if all members of the affiliated group were a single corporation. For purposes of the preceding sentence, the term ''affiliated group'' has the meaning given such term by section 1504 (determined without regard to paragraph (4) of section 1504(b)).

(3) Treatment of tax-exempt assets; basis of stock in nonaffiliated 10-percent owned corporations

The rules of paragraphs (3) and (4) of subsection (e) shall apply for purposes of this subsection, except that paragraph (4) shall be applied on a worldwide affiliated group basis.

(4) Treatment of certain financial institutions

(A) In general

For purposes of paragraph (1), any corporation described in subparagraph (B) shall be treated as an includible corporation for purposes of section 1504 only for purposes of applying this subsection separately to corporations so described.

(B) Description

A corporation is described in this subparagraph if—

(i) such corporation is a financial institution described in section 581 or 591,

(ii) the business of such financial institution is predominantly with persons other than related persons (within the meaning of subsection (d)(4)) or their customers, and

(iii) such financial institution is required by State or Federal law to be operated separately from any other entity which is not such an institution.

(C) Treatment of bank and financial holding companies

To the extent provided in regulations—

(i) a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)),

(ii) a financial holding company (within the meaning of section 2(p) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(p)), and

(iii) any subsidiary of a financial institution described in section 581 or 591, or of any such bank or financial holding company, if such subsidiary is predominantly engaged (directly or indirectly) in the active conduct of a banking, financing, or similar business,

shall be treated as a corporation described in subparagraph (B).

(5) Election to expand financial institution group of worldwide group

(A) In general

If a worldwide affiliated group elects the application of this subsection, all financial corporations which—

(i) are members of such worldwide affiliated group, but

(ii) are not corporations described in paragraph (4)(B),

shall be treated as described in paragraph (4)(B) for purposes of applying paragraph (4)(A). This subsection (other than this paragraph) shall apply to any such group in the same manner as this subsection (other than this paragraph) applies to the pre-election worldwide affiliated group of which such group is a part.

(B) Financial corporation

For purposes of this paragraph, the term ''financial corporation'' means any corporation if at least 80 percent of its gross income is income described in section 904(d)(2)(D)(ii) and the regulations thereunder which is derived from transactions with persons who are not related (within the meaning of section 267(b) or 707(b)(1)) to the corporation. For purposes of the preceding sentence, there shall be disregarded any item of income or gain from a transaction or series of transactions a principal purpose of which is the qualification of any corporation as a financial corporation.

(C) Anti-abuse rules

In the case of a corporation which is a member of an electing financial institution group, to the extent that such corporation—

(i) distributes dividends or makes other distributions with respect to its stock after the date of the enactment of this paragraph to any member of the pre-elec-

tion worldwide affiliated group (other than to a member of the electing financial institution group) in excess of the greater of—

(I) its average annual dividend (expressed as a percentage of current earnings and profits) during the 5-taxable-year period ending with the taxable year preceding the taxable year, or

(II) 25 percent of its average annual earnings and profits for such 5-taxable-year period, or

(ii) deals with any person in any manner not clearly reflecting the income of the corporation (as determined under principles similar to the principles of section 482),

an amount of indebtedness of the electing financial institution group equal to the excess distribution or the understatement or overstatement of income, as the case may be, shall be recharacterized (for the taxable year and subsequent taxable years) for purposes of this paragraph as indebtedness of the worldwide affiliated group (excluding the electing financial institution group). If a corporation has not been in existence for 5 taxable years, this subparagraph shall be applied with respect to the period it was in existence.

(D) Election

An election under this paragraph with respect to any financial institution group may be made only by the common parent of the pre-election worldwide affiliated group and may be made only for the first taxable year beginning after December 31, 2020, in which such affiliated group includes 1 or more financial corporations. Such an election, once made, shall apply to all financial corporations which are members of the electing financial institution group for such taxable year and all subsequent years unless revoked with the consent of the Secretary.

(E) Definitions relating to groups

For purposes of this paragraph—

(i) Pre-election worldwide affiliated group

The term ''pre-election worldwide affiliated group'' means, with respect to a corporation, the worldwide affiliated group of which such corporation would (but for an election under this paragraph) be a member for purposes of applying paragraph (1).

(ii) Electing financial institution group

The term ''electing financial institution group'' means the group of corporations to which this subsection applies separately by reason of the application of paragraph (4)(A) and which includes financial corporations by reason of an election under subparagraph (A).

(F) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out this subsection, including regulations—

(i) providing for the direct allocation of interest expense in other circumstances where such allocation would be appropriate to carry out the purposes of this subsection,

(ii) preventing assets or interest expense from being taken into account more than once, and

(iii) dealing with changes in members of any group (through acquisitions or otherwise) treated under this paragraph as an affiliated group for purposes of this subsection.

(6) Election

An election to have this subsection apply with respect to any worldwide affiliated group may be made only by the common parent of the domestic affiliated group referred to in paragraph (1)(C) and may be made only for the first taxable year beginning after December 31, 2020, in which a worldwide affiliated group exists which includes such affiliated group and at least 1 foreign corporation. Such an election, once made, shall apply to such common parent and all other corporations which are members of such worldwide affiliated group for such taxable year and all subsequent years unless revoked with the consent of the Secretary.

(g) Allocation of research and experimental expenditures

(1) In general

For purposes of sections 861(b), 862(b), and 863(b), qualified research and experimental expenditures shall be allocated and apportioned as follows:

(A) Any qualified research and experimental expenditures expended solely to meet legal requirements imposed by a political entity with respect to the improvement or marketing of specific products or processes for purposes not reasonably expected to generate gross income (beyond de minimis amounts) outside the jurisdiction of the political entity shall be allocated only to gross income from sources within such jurisdiction.

(B) In the case of any qualified research and experimental expenditures (not allocated under subparagraph (A)) to the extent—

(i) that such expenditures are attributable to activities conducted in the United States, 50 percent of such expenditures shall be allocated and apportioned to income from sources within the United States and deducted from such income in determining the amount of taxable income from sources within the United States, and

(ii) that such expenditures are attributable to activities conducted outside the United States, 50 percent of such expenditures shall be allocated and apportioned to income from sources outside the United States and deducted from such income in determining the amount of taxable income from sources outside the United States.

(C) The remaining portion of qualified research and experimental expenditures (not allocated under subparagraphs (A) and (B)) shall be apportioned, at the annual election of the taxpayer, on the basis of gross sales or

gross income, except that, if the taxpayer elects to apportion on the basis of gross income, the amount apportioned to income from sources outside the United States shall at least be 30 percent of the amount which would be so apportioned on the basis of gross sales.

(2) Qualified research and experimental expenditures

For purposes of this section, the term ''qualified research and experimental expenditures'' means amounts which are research and experimental expenditures within the meaning of section 174. For purposes of this paragraph, rules similar to the rules of subsection (c) of section 174 shall apply. Any qualified research and experimental expenditures treated as deferred expenses under subsection (b) of section 174 shall be taken into account under this subsection for the taxable year for which such expenditures are allowed as a deduction under such subsection.

(3) Special rules for expenditures attributable to activities conducted in space, etc.

(A) In general

Any qualified research and experimental expenditures described in subparagraph (B)—

(i) if incurred by a United States person, shall be allocated and apportioned under this section in the same manner as if they were attributable to activities conducted in the United States, and

(ii) if incurred by a person other than a United States person, shall be allocated and apportioned under this section in the same manner as if they were attributable to activities conducted outside the United States.

(B) Description of expenditures

For purposes of subparagraph (A), qualified research and experimental expenditures are described in this subparagraph if such expenditures are attributable to activities conducted—

(i) in space,

(ii) on or under water not within the jurisdiction (as recognized by the United States) of a foreign country, possession of the United States, or the United States, or

(iii) in Antarctica.

(4) Affiliated group

(A) Except as provided in subparagraph (B), the allocation and apportionment required by paragraph (1) shall be determined as if all members of the affiliated group (as defined in subsection (e)(5)) were a single corporation.

(B) For purposes of the allocation and apportionment required by paragraph (1)—

(i) sales and gross income from products produced in whole or in part in a possession by an electing corporation (within the meaning of section 936(h)(5)(E)), and

(ii) dividends from an electing corporation,

shall not be taken into account, except that this subparagraph shall not apply to sales of (and gross income and dividends attributable to sales of) products with respect to which an election under section 936(h)(5)(F) is not in effect.

(C) The qualified research and experimental expenditures taken into account for purposes of paragraph (1) shall be adjusted to reflect the amount of such expenditures included in computing the cost-sharing amount (determined under section 936(h)(5)(C)(i)(I)).

(D) The Secretary may prescribe such regulations as may be necessary to carry out the purposes of this paragraph, including regulations providing for the source of gross income and the allocation and apportionment of deductions to take into account the adjustments required by subparagraph (B) or (C).

(E) Paragraph (6) of subsection (e) shall not apply to qualified research and experimental expenditures.

(5) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this subsection, including regulations relating to the determination of whether any expenses are attributable to activities conducted in the United States or outside the United States and regulations providing such adjustments to the provisions of this subsection as may be appropriate in the case of cost-sharing arrangements and contract research.

(6) Applicability

This subsection shall apply to the taxpayer's first taxable year (beginning on or before August 1, 1994) following the taxpayer's last taxable year to which Revenue Procedure 92–56 applies or would apply if the taxpayer elected the benefits of such Revenue Procedure.

(Aug. 16, 1954, ch. 736, 68A Stat. 278; Pub. L. 89–809, title I, § 102(d), Nov. 13, 1966, 80 Stat. 1544; Pub. L. 94–455, title XIX, § 1901(a)(113), Oct. 4, 1976, 90 Stat. 1783; Pub. L. 98–369, div. A, title I, §§ 123(a), 127(c), July 18, 1984, 98 Stat. 644, 651; Pub. L. 99–514, title XII, §§ 1201(d)(4), 1211(b)(2), 1215(a), (b)(1), 1221(a)(2), 1223(b)(1), 1242(a), (b), 1275(c)(7), title XVIII, §§ 1810(c)(2), (3), 1899A(21), Oct. 22, 1986, 100 Stat. 2525, 2536, 2544, 2545, 2550, 2558, 2580, 2599, 2824, 2959; Pub. L. 100–203, title X, § 10242(b), Dec. 22, 1987, 101 Stat. 1330–423; Pub. L. 100–647, title I, § 1012(a)(1)(B), (d)(7), (10), (g)(5), (h)(1), (2)(A), (3)–(6), (p)(30), (r), Nov. 10, 1988, 102 Stat. 3494, 3498, 3499, 3501–3503, 3521, 3525; Pub. L. 101–239, title VII, § 7111, Dec. 19, 1989, 103 Stat. 2326; Pub. L. 101–508, title XI, § 11401(a), Nov. 5, 1990, 104 Stat. 1388–472; Pub. L. 102–227, title I, § 101(a), Dec. 11, 1991, 105 Stat. 1686; Pub. L. 103–66, title XIII, § 13234, Aug. 10, 1993, 107 Stat. 504; Pub. L. 105–34, title XI, § 1162(a), Aug. 5, 1997, 111 Stat. 987; Pub. L. 106–170, title V, § 532(c)(2)(N)–(P), Dec. 17, 1999, 113 Stat. 1931; Pub. L. 106–519, § 4(3), Nov. 15, 2000, 114 Stat. 2432; Pub. L. 108–357, title I, § 101(b)(6), title IV, §§ 401(a), (b), 403(b)(6), 413(c)(12), title VIII, § 894(a), Oct. 22, 2004, 118 Stat. 1423, 1488, 1491, 1494, 1507, 1647; Pub. L. 110–289, div. C, title III, § 3093(a), (b), July 30, 2008, 122 Stat. 2912; Pub. L. 111–92, § 15(a), (b), Nov. 6, 2009, 123 Stat. 2996; Pub. L. 111–147, title V, § 551(a), Mar. 18, 2010, 124 Stat. 117; Pub. L. 111–226, title II, § 216(a), Aug. 10, 2010, 124 Stat. 2400; Pub. L. 111–240, title II, § 2122(c), Sept. 27, 2010, 124 Stat. 2568.)

REFERENCES IN TEXT

Section 956(b)(3), referred to in subsec. (d)(8), was redesignated section 956(c)(3) by Pub. L. 103–66, title XIII, §13232(a)(1), Aug. 10, 1993, 107 Stat. 501.

Section 2(a) of the Bank Holding Company Act of 1956, referred to in subsec. (e)(5)(D)(i), is classified to section 1841(a) of Title 12, Banks and Banking.

The date of the enactment of this paragraph, referred to in subsec. (f)(5)(C)(i), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

AMENDMENTS

2010—Subsec. (c)(4)(B)(ii). Pub. L. 111–240 substituted ''dividends, interest, or amounts received for the provision of guarantees of indebtedness'' for ''dividends or interest''.

Subsec. (e)(5)(A). Pub. L. 111–226 inserted at end ''Notwithstanding the preceding sentence, a foreign corporation shall be treated as a member of the affiliated group if—'' and added cls. (i) and (ii).

Subsec. (f)(5)(D), (6). Pub. L. 111–147 substituted ''December 31, 2020'' for ''December 31, 2017''.

2009—Subsec. (f)(5)(D), (6). Pub. L. 111–92, §15(a), substituted ''December 31, 2017'' for ''December 31, 2010''.

Subsec. (f)(7). Pub. L. 111–92, §15(b), struck out par. (7). Text read as follows: ''In the case of the first taxable year to which this subsection applies, the increase (if any) in the amount of the interest expense allocable to sources within the United States by reason of the application of this subsection shall be 30 percent of the amount of such increase determined without regard to this paragraph.''

2008—Subsec. (f)(5)(D), (6). Pub. L. 110–289, §3093(a), substituted ''December 31, 2010'' for ''December 31, 2008''.

Subsec. (f)(7). Pub. L. 110–289, §3093(b), added par. (7).

2004—Subsec. (c)(4)(B). Pub. L. 108–357, §894(a), added concluding provisions.

Subsec. (d)(2). Pub. L. 108–357, §413(c)(12), redesignated subpars. (B) and (C) as (A) and (B), respectively, and struck out former subpar. (A) which read as follows: ''Part III of subchapter G of this chapter (relating to foreign personal holding companies).''

Subsec. (d)(5)(A)(i). Pub. L. 108–357, §403(b)(6), substituted ''(C)(iii)(II)'' for ''(C)(iii)(III)''.

Subsec. (e)(3). Pub. L. 108–357, §101(b)(6), struck out ''(A) In general'' before ''For purposes'' and struck out heading and text of subpar. (B). Text read as follows: ''For purposes of allocating and apportioning any interest expense, there shall not be taken into account any qualifying foreign trade property (as defined in section 943(a)) which is held by the taxpayer for lease or rental in the ordinary course of trade or business for use by the lessee outside the United States (as defined in section 943(b)(2)).''

Subsec. (e)(7)(B). Pub. L. 108–357, §401(b)(1), inserted ''and in other circumstances where such allocation would be appropriate to carry out the purposes of this subsection'' before comma at end.

Subsec. (e)(7)(F), (G). Pub. L. 108–357, §401(b)(2), added subpar. (F) and redesignated former subpar. (F) as (G).

Subsecs. (f), (g). Pub. L. 108–357, §401(a), added subsec. (f) and redesignated former subsec. (f) as (g).

2000—Subsec. (e)(3). Pub. L. 106–519 designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

1999—Subsecs. (c)(4)(B)(iii), (d)(3)(A), (6)(A). Pub. L. 106–170 substituted ''section 1221(a)(1)'' for ''section 1221(1)''.

1997—Subsec. (b)(2)(A)(ii). Pub. L. 105–34 struck out '', or in the case of a corporation (other than a corporation which is, or but for section 542(c)(7), 542(c)(10), or 543(b)(1)(C) would be, a personal holding company) the principal business of which is trading in stocks or securities for its own account, if its principal office is in the United States'' after ''dealer in stocks or securities''.

1993—Subsec. (f)(1)(B). Pub. L. 103–66, §13234(a), substituted ''50 percent'' for ''64 percent'' in cls. (i) and (ii).

Subsec. (f)(4)(D). Pub. L. 103–66, §13234(b)(2), substituted ''subparagraph (B) or (C)'' for ''subparagraph (C)''.

Subsec. (f)(5), (6). Pub. L. 103–66, §13234(b)(1), added pars. (5) and (6) and struck out heading and text of former par. (5). Text read as follows:

''(A) IN GENERAL.—This subsection shall apply to the taxpayer's first 3 taxable years beginning after August 1, 1989, and on or before August 1, 1992.

''(B) REDUCTION.—Notwithstanding subparagraph (A), in the case of the taxpayer's first taxable year beginning after August 1, 1991, this subsection shall only apply to qualified research and experimental expenditures incurred during the first 6 months of such taxable year.''

1991—Subsec. (f)(5). Pub. L. 102–227 amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''This subsection shall apply to the taxpayer's first 2 taxable years beginning after August 1, 1989, and on or before August 1, 1991.''

1990—Subsec. (f)(5). Pub. L. 101–508 substituted ''Years'' for ''Year'' in heading and amended text generally. Prior to amendment, text read as follows:

''(A) IN GENERAL.—Except as provided in this paragraph, this subsection shall apply to the taxpayer's first taxable year beginning after August 1, 1989, and before August 2, 1990.

''(B) REDUCTION.—Notwithstanding subparagraph (A), this subsection shall only apply to that portion of the qualified research and experimental expenditures for the taxable year referred to in subparagraph (A) which bears the same ratio to the total amount of such expenditures as—

''(i) the lesser of 9 months or the number of months in the taxable year, bears to

''(ii) the number of months in the taxable year.''

1989—Subsec. (f). Pub. L. 101–239 added subsec. (f).

1988—Subsec. (b)(2)(A)(ii). Pub. L. 100–647, §1012(p)(30), substituted ''section 542(c)(7), 542(c)(10),'' for ''section 542(c)(7)''.

Subsec. (c)(2). Pub. L. 100–647, §1012(g)(5), struck out at end ''In applying this paragraph and paragraph (4), interest referred to in section 861(a)(1)(A) shall be considered income from sources within the United States.''

Subsec. (c)(4)(B)(i), (ii). Pub. L. 100–647, §1012(d)(10), struck out ''(including any gain or loss realized on the sale or exchange of such property)'' after ''section 862(a)(4)'' in cl. (i) and '', or gain or loss from the sale or exchange of stock or notes, bonds, or other evidences of indebtedness'' after ''dividends or interest'' in cl. (ii).

Subsec. (c)(4)(B)(iii). Pub. L. 100–647, §1012(d)(7), added cl. (iii).

Subsec. (c)(6). Pub. L. 100–647, §1012(r)(2), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''For purposes of this title, any income or gain of a nonresident alien individual or a foreign corporation for any taxable year which is attributable to a sale or exchange of property or the performance of services (or any other transaction) in any other taxable year shall be treated as effectively connected with the conduct of a trade or business within the United States if it would have been so treated if such income or gain were taken into account in such other taxable year.''

Subsec. (c)(7). Pub. L. 100–647, §1012(r)(1), amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''For purposes of this title, if any property ceases to be used or held for use in connection with the conduct of a trade or business within the United States, the determination of whether any income or gain attributable to a sale or exchange of such property occurring within 10 years after such cessation is effectively connected with the conduct of a trade or business within the United States shall be made as if such sale or exchange occurred immediately before such cessation.''

Subsec. (d)(5)(A)(i). Pub. L. 100–647, §1012(a)(1)(B), substituted ''(C)(iii)(III)'' for ''(C)(iii)''.

Subsec. (e). Pub. L. 100–647, §1012(h)(6)(B), struck out ''(except as provided in regulations)'' after ''subchapter''.

Subsec. (e)(1). Pub. L. 100–647, §1012(h)(2)(A), struck out ''from sources outside the United States'' after ''affiliated group''.

Subsec. (e)(3). Pub. L. 100–647, §1012(h)(3), inserted sentence at end and struck out former last sentence which read as follows: ''A similar rule shall apply in the case of any dividend (other than a qualifying dividend as defined in section 243(b)) for which a deduction is allowable under section 243 or 245(a) and any stock the dividends on which would be so deductible and would not be qualifying dividends (as so defined).''

Subsec. (e)(4). Pub. L. 100–647, §1012(h)(1), substituted ''nonaffiliated 10-percent owned corporations'' for ''certain corporations'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of allocating and apportioning expenses on the basis of assets, the adjusted basis of any asset which is stock in a corporation which is not included in the affiliated group and in which members of the affiliated group own 10 percent or more of the total combined voting power of all classes of stock entitled to vote in such corporation shall be—

''(A) increased by the amount of the earnings and profits of such corporation attributable to such stock and accumulated during the period the taxpayer held such stock, or

''(B) reduced (but not below zero) by any deficit in earnings and profits of such corporation attributable to such stock for such period.''

Subsec. (e)(5)(B). Pub. L. 100–647, §1012(h)(4)(B), inserted at end ''This subparagraph shall not apply for purposes of paragraph (6).''

Subsec. (e)(5)(D). Pub. L. 100–647, §1012(h)(4)(A), added subpar. (D).

Subsec. (e)(6). Pub. L. 100–647, §1012(h)(5), substituted ''directly allocable or apportioned'' for ''directly allocable and apportioned''.

Subsec. (e)(7)(D) to (F). Pub. L. 100–647, §1012(h)(6)(A), added subpars. (D) to (F).

1987—Subsec. (c)(4)(C). Pub. L. 100–203 inserted ''or part II'' after ''part I''.

1986—Pub. L. 99–514, §1215(b)(1), inserted ''and special rules'' in section catchline.

Subsec. (c)(1)(A). Pub. L. 99–514, §1242(b)(1), inserted reference to pars. (6) and (7).

Subsec. (c)(1)(B). Pub. L. 99–514, §1242(b)(2), inserted ''paragraph (6) or (7) or in''.

Subsec. (c)(2). Pub. L. 99–514, §1899A(21), inserted a comma between ''section 871(h)'' and ''section 881(a)''.

Subsec. (c)(4)(B)(iii). Pub. L. 99–514, §1211(b)(2), struck out cl. (iii), which read as follows: ''is derived from the sale or exchange (without the United States) through such office or other fixed place of business of personal property described in section 1221(1), except that this clause shall not apply if the property is sold or exchanged for use, consumption, or disposition outside the United States and an office or other fixed place of business of the taxpayer outside the United States participated materially in such sale or exchange.''

Subsec. (c)(6), (7). Pub. L. 99–514, §1242(a), added pars. (6) and (7).

Subsec. (d)(5)(A)(i). Pub. L. 99–514, §1201(d)(4), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''Subparagraphs (A), (B), (C), and (D) of section 904(d)(2) (relating to interest income to which separate limitation applies) and subparagraph (J) of section 904(d)(3) (relating to interest from members of same affiliated group).''

Pub. L. 99–514, §1810(c)(3), inserted ''and subparagraph (J) of section 904(d)(3) (relating to interest from members of same affiliated group)''.

Subsec. (d)(5)(A)(ii). Pub. L. 99–514, §1223(b)(1), substituted ''less than 5 percent or $1,000,000'' for ''less than 10 percent''.

Subsec. (d)(5)(A)(iii). Pub. L. 99–514, §1221(a)(2), amended cl. (iii) generally, substituting ''section 954(c)(2) (relating to certain export financing)'' for ''section 954(c)(3) (relating to certain income derived in active conduct of trade or business)''.

Subsec. (d)(5)(A)(iv). Pub. L. 99–514, §1221(a)(2), amended cl. (iv) generally, substituting ''Clause (i) of section 954(c)(3)(A) (relating to'' for ''Subparagraphs (A) and (B) of section 954(c)(4) (relating to exception for''.

Subsec. (d)(5)(B). Pub. L. 99–514, §1275(c)(7), amended subpar. (B) generally, striking out cl. (i) heading, substituting ''An amount'' for ''Any amount'', and striking out cl. (ii), Virgin Islands corporations, which read as follows: ''Subsection (b) of section 934 shall not apply to any amount treated as interest under paragraph (1) unless such amount is from sources within the Virgin Islands (determined after the application of paragraph (1)).''

Subsec. (d)(7), (8). Pub. L. 99–514, §1810(c)(2), added par. (7) and redesignated former par. (7) as (8).

Subsec. (e). Pub. L. 99–514, §1215(a), added subsec. (e).

1984—Subsec. (c)(2). Pub. L. 98–369, §127(c), substituted ''section 871(a)(1), section 871(h) section 881(a), or section 881(c)'' for ''section 871(a)(1) or section 881(a)''.

Subsec. (d). Pub. L. 98–369, §123(a), added subsec. (d).

1976—Subsec. (a). Pub. L. 94–455, §1901(a)(113)(A), substituted in heading ''Produced'' for ''Sale, etc.'' and struck out in text provisions relating to the definition of sale and sold.

Subsec. (c)(4)(B)(i). Pub. L. 94–455, §1901(a)(113)(B), substituted ''sale or exchange'' for ''sale''.

Subsec. (c)(4)(B)(iii). Pub. L. 94–455, §1901(a)(113)(B), (C), substituted ''sold or exchanged'' for ''sold'' and ''sale or exchange'' for ''sale'' wherever appearing.

Subsec. (c)(5)(C). Pub. L. 94–455, §1901(a)(113)(B), substituted ''sale or exchange'' for ''sale'' wherever appearing.

1966—Pub. L. 89–809 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–240 applicable to guarantees issued after Sept. 27, 2010, see section 2122(d) of Pub. L. 111–240, set out as a note under section 861 of this title.

Pub. L. 111–226, title II, §216(b), Aug. 10, 2010, 124 Stat. 2400, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 10, 2010].''

Pub. L. 111–147, title V, §551(b), Mar. 18, 2010, 124 Stat. 117, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Mar. 18, 2010].''

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–92, §15(c), Nov. 6, 2009, 123 Stat. 2996, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2010.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–289, div. C, title III, §3093(c), July 30, 2008, 122 Stat. 2912, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 101(b)(6) of Pub. L. 108–357 applicable to transactions after Dec. 31, 2004, see section 101(c) of Pub. L. 108–357, set out as a note under section 56 of this title.

Pub. L. 108–357, title IV, §401(c), Oct. 22, 2004, 118 Stat. 1491, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008.''

Pub. L. 108–357, title IV, §403(c), Oct. 22, 2004, 118 Stat. 1494, provided that: ''The amendments made by this section [amending this section and section 904 of this title] shall apply to taxable years beginning after December 31, 2002.''

Pub. L. 108–357, title IV, §403(d), as added by Pub. L. 109–135, title IV, §403(*l*), Dec. 21, 2005, 119 Stat. 2625, provided that: ''If the taxpayer elects (at such time and in such form and manner as the Secretary of the Treasury may prescribe) to have the rules of this subsection apply—

''(1) the amendments made by this section [amending this section and section 904 of this title] shall not apply to taxable years beginning after December 31, 2002, and before January 1, 2005, and

''(2) in the case of taxable years beginning after December 31, 2004, clause (iv) of section 904(d)(4)(C) of the Internal Revenue Code of 1986 (as amended by this section) shall be applied by substituting 'January 1, 2005' for 'January 1, 2003' both places it appears.''

[Amendment by Pub. L. 109–135 adding section 403(d) of Pub. L. 108–357, set out above, effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as an Effective Date of 2005 Amendment note under section 26 of this title.]

Amendment by section 413(c)(12) of Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

Pub. L. 108–357, title VIII, §894(b), Oct. 22, 2004, 118 Stat. 1647, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–519 applicable to transactions after Sept. 30, 2000, with special rules relating to existing foreign sales corporations, see section 5 of Pub. L. 106–519, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1162(b) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1991 AMENDMENT

Section 101(b) of Pub. L. 102–227 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after August 1, 1989.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11401(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after August 1, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to taxable years beginning after Dec. 31, 1987, see section 10242(d) of Pub. L. 100–203, set out as a note under section 816 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1201(d)(4) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1201(e) of Pub. L. 99–514, set out as a note under section 904 of this title.

Amendment by section 1211(b)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1211(c) of Pub. L. 99–514, set out as an Effective Date note under section 865 of this title.

Section 1215(c) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1012(h)(7), Nov. 10, 1988, 102 Stat. 3504; Pub. L. 104–191, title V, §521(a), Aug. 21, 1996, 110 Stat. 2103, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.

''(2) TRANSITIONAL RULES.—

''(A) GENERAL PHASE-IN.—

''(i) IN GENERAL.—In the case of the 1st 3 taxable years of the taxpayer beginning after December 31, 1986, the amendments made by this section shall not apply to interest expenses paid or accrued by the taxpayer during the taxable year with respect to an aggregate amount of indebtedness which does not exceed the general phase-in amount.

''(ii) GENERAL PHASE-IN AMOUNT.—Except as provided in clause (iii), the general phase-in amount for purposes of clause (i) is the applicable percentage (determined under the following table) of the aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985:

''In the case of the:	The applicable percentage is:
1st taxable year	75
2nd taxable year	50
3rd taxable year	25.

''(iii) LOWER LIMIT WHERE TAXPAYER REDUCES INDEBTEDNESS.—For purposes of applying this subparagraph to interest expenses attributable to any month, the general phase-in amount shall in no event exceed the lowest amount of indebtedness of the taxpayer outstanding as of the close of any preceding month beginning after November 16, 1985. To the extent provided in regulations, the average amount of indebtedness outstanding during any month shall be used (in lieu of the amount outstanding as of the close of such month) for purposes of the preceding sentence.

''(B) CONSOLIDATION RULE NOT TO APPLY TO CERTAIN INTEREST.—

''(i) IN GENERAL.—In the case of the 1st 5 taxable years of the taxpayer beginning after December 31, 1986—

''(I) subparagraph (A) shall not apply for purposes of paragraph (1) of section 864(e) of the Internal Revenue Code of 1986 (as added by this section), but

''(II) such paragraph (1) shall not apply to interest expenses paid or accrued by the taxpayer during the taxable year with respect to an aggregate amount of indebtedness which does not exceed the special phase-in amount.

''(ii) SPECIAL PHASE-IN AMOUNT.—The special phase-in amount for purposes of clause (i) is the sum of—

''(I) the general phase-in amount as determined for purposes of subparagraph (A),

''(II) the 5-year phase-in amount, and

''(III) the 4-year phase-in amount.

For purposes of applying this subparagraph to interest expense attributable to any month, the special phase-in amount shall in no event exceed the limitation determined under subparagraph (A)(iii).

''(iii) 5-YEAR PHASE-IN AMOUNT.—The 5-year phase-in amount is the lesser of—

''(I) the applicable percentage (determined under the following table for purposes of this subclause) of the 5-year debt amount, or

''(II) the applicable percentage (determined under the following table for purposes of this subclause) of the 5-year debt amount reduced by paydowns:

"In the case of the:	The applicable percentage for purposes of subclause (I) is:	The applicable percentage for purposes of subclause (II) is:
1st taxable year	8⅓	10
2nd taxable year ...	16⅔	25
3rd taxable year	25	50
4th taxable year ...	33⅓	100
5th taxable year ...	16⅔	100.

''(iv) 4-YEAR PHASE-IN AMOUNT.—The 4-year phase-in amount is the lesser of—

''(I) the applicable percentage (determined under the following table for purposes of this subclause) of the 4-year debt amount, or

''(II) the applicable percentage (determined under the following table for purposes of this subclause) of the 4-year debt amount reduced by paydowns to the extent such paydowns exceed the 5-year debt amount:

"In the case of the:	The applicable percentage for purposes of subclause (I) is:	The applicable percentage for purposes of subclause (II) is:
1st taxable year	5	6¼
2nd taxable year ...	10	16⅔
3rd taxable year	15	37½
4th taxable year ...	20	100
5th taxable year ...	0	0.

''(v) 5-YEAR DEBT AMOUNT.—The term '5-year debt amount' means the excess (if any) of—

''(I) the amount of the outstanding indebtedness of the taxpayer on May 29, 1985, over

''(II) the amount of the outstanding indebtedness of the taxpayer as of the close of December 31, 1983.

The 5-year debt amount shall not exceed the aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985.

''(vi) 4-YEAR DEBT AMOUNT.—The term '4-year debt amount' means the excess (if any) of—

''(I) the amount referred to in clause (v)(II), over

''(II) the amount of the outstanding indebtedness of the taxpayer as of the close of December 31, 1982.

The 4-year debt amount shall not exceed the aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985, reduced by the 5-year debt amount.

''(vii) PAYDOWNS.—For purposes of applying this subparagraph to interest expenses attributable to any month, the term 'paydowns' means the excess (if any) of—

''(I) the aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985, over

''(II) the lowest amount of indebtedness of the taxpayer outstanding as of the close of any preceding month beginning after November 16, 1985 (or, to the extent provided in regulations under subparagraph (A)(iii), the average amount of indebtedness outstanding during any such month).

''(C) COORDINATION OF SUBPARAGRAPHS (A) AND (B).—In applying subparagraph (B), there shall first be taken into account indebtedness to which subparagraph (A) applies.

''(D) SPECIAL RULES.—

''(i) In the case of the 1st 9 taxable years of the taxpayer beginning after December 31, 1986, the amendments made by this section shall not apply to interest expenses paid or accrued by the taxpayer during the taxable year with respect to an aggregate amount of indebtedness which does not exceed the applicable percentage (determined under the following table) of the indebtedness described in clause (iii) or (iv):

"In the case of the:	The applicable percentage is:
1st taxable year	90
2nd taxable year	80
3rd taxable year	70
4th taxable year	60
5th taxable year	50
6th taxable year	40
7th taxable year	30
8th taxable year	20
9th taxable year	10.

''(ii) The provisions of this subparagraph shall apply in lieu of the provisions of subparagraphs (A) and (B).

''(iii) INDEBTEDNESS OUTSTANDING ON MAY 29, 1985.—Indebtedness is described in this clause if it is indebtedness (which was outstanding on May 29, 1985) of a corporation incorporated on June 13, 1917, which has its principal place of business in Bartlesville, Oklahoma.

''(iv) INDEBTEDNESS OUTSTANDING ON MAY 29, 1985.—Indebtedness is described in this clause if it is indebtedness (which was outstanding on May 29, 1985) of a member of an affiliated group (as defined in section 1504(a) [of the Internal Revenue Code of 1986]), the common parent of which was incorporated on August 26, 1926, and has its principal place of business in Harrison, New York.

''(E) TREATMENT OF AFFILIATED GROUP.—For purposes of this paragraph, all members of the same affiliated group of corporations (as defined in section 864(e)(5)(A) of the Internal Revenue Code of 1986, as added by this section) shall be treated as 1 taxpayer whether or not such members filed a consolidated return.

''(F) ELECTION TO HAVE PARAGRAPH NOT APPLY.—A taxpayer may elect (at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe) to have this paragraph not apply. In the case of members of the same affiliated group (as so defined), such an election may be made only if each member consents to such election.

''(3) SPECIAL RULE.—

''(A) IN GENERAL.—In the case of a qualified corporation, in lieu of applying paragraph (2), the amendments made by this section shall not apply to interest expenses allocable to any indebtedness to the extent such indebtedness does not exceed $500,000,000 if—

''(i) the indebtedness was incurred to develop or improve existing property that is owned by the taxpayer on November 16, 1985, and was acquired with the intent to develop or improve the property,

''(ii) the loan agreement with respect to the indebtedness provides that the funds are to be utilized for purposes of developing or improving the above property, and

''(iii) the debt to equity ratio of the companies that join in the filing of the consolidated return is less than 15 percent.

''(B) QUALIFIED CORPORATION.—For purposes of subparagraph (A), the term 'qualified corporation' means a corporation—

''(i) which was incorporated in Delaware on June 29, 1964,

''(ii) the principal subsidiary of which is a resident of Arkansas, and

''(iii) which is a member of an affiliated group the average daily United States production of oil of which is less than 50,000 barrels and the average daily United States refining of which is less than 150,000 barrels.

''(4) SPECIAL RULES FOR SUBSIDIARY.—The amendments made by this section shall not apply to interest on up to the applicable dollar amount of indebtedness

of a subsidiary incorporated on February 11, 1975, the indebtedness of which on May 6, 1986, included—

''(A) $100,000,000 face amount of 11¾ percent notes due in 1990,

''(B) $100,000,000 of 8¾ percent notes due in 1989,

''(C) 6¾ percent Japanese yen notes due in 1991, and

''(D) 5⅜ percent Swiss franc bonds due in 1994.

For purposes of this paragraph, the term 'applicable dollar amount' means $600,000,000 in the case of taxable years beginning in 1987 through 1991, $500,000,000 in the case of the taxable year beginning in 1992, $400,000,000 in the case of the taxable year beginning in 1993, $300,000,000 in the case of the taxable year beginning in 1994, $200,000,000 in the case of the taxable year beginning in 1995, $100,000,000 in the case of the taxable year beginning in 1996, and zero in the case of taxable years beginning after 1996.

''[(5) Repealed. Pub. L. 104–191, title V, § 521(a), Aug. 21, 1996, 110 Stat. 2103.]

''(6) SPECIAL RULES FOR ALLOCATING GENERAL AND ADMINISTRATIVE EXPENSES.—

''(A) IN GENERAL.—In the case of an affiliated group of domestic corporations the common parent of which has its principal office in New Brunswick, New Jersey, and has a certificate of organization which was filed with the Secretary of the State of New Jersey on November 10, 1887, the amendments made by this section shall not apply to the phase-in percentage of general and administrative expenses paid or incurred in its 1st 3 taxable years beginning after December 31, 1986.

''(B) PHASE-IN PERCENTAGE.—For purposes of subparagraph (A):

"In the case of taxable years beginning in:	The phase-in percentage is:
1987	75
1988	50
1989	25.''

[Section 521(b) of Pub. L. 104–191 provided that:

['' (1) IN GENERAL.—The amendment made by this section [amending section 1215(c) of Pub. L. 99–514, set out above] shall apply to taxable years beginning after December 31, 1995.

['' (2) SPECIAL RULE.—In the case of the first taxable year beginning after December 31, 1995, the pre-effective date portion of the interest expense of the corporation referred to in such paragraph (5) of such section 1215(c) [of Pub. L. 99–514] for such taxable year shall be allocated and apportioned without regard to such amendment. For purposes of the preceding sentence, the pre-effective date portion is the amount which bears the same ratio to the interest expense for such taxable year as the number of days during such taxable year before the date of the enactment of this Act [Aug. 21, 1996] bears to 366.'']

Amendment by section 1221(a)(2) of Pub. L. 99–514 applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, except as otherwise provided, see section 1221(g) of Pub. L. 99–514, set out as a note under section 954 of this title.

Section 1223(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section and sections 881 and 954 of this title] shall apply to taxable years beginning after December 31, 1986.''

Section 1242(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.''

Amendment by section 1275(c)(7) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

Amendment by section 1810(c)(2), (3) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 123(c) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 956 of this title] shall apply to accounts receivable and evidences of indebtedness transferred after March 1, 1984, in taxable years ending after such date.

''(2) TRANSITIONAL RULE.—The amendments made by this section shall not apply to accounts receivable and evidences of indebtedness acquired after March 1, 1984, and before March 1, 1994, by a Belgian corporation in existence on March 1, 1984, in any taxable year ending after such date, but only to the extent that the amount includible in gross income by reason of section 956 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] with respect to such corporation for all such taxable years is not reduced by reason of this paragraph by more than the lesser of—

''(A) $15,000,000 or

''(B) the amount of the Belgian corporation's adjusted basis on March 1, 1984, in stock of a foreign corporation formed to issue bonds outside the United States to the public.''

Amendment by section 127(c) of Pub. L. 98–369 applicable to interest received after July 18, 1984, with respect to obligations issued after such date, in taxable years ending after such date, see section 127(g)(1) of Pub. L. 98–369, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, except that in applying section 864(c)(4)(B)(iii) of this title with respect to a binding contract entered into on or before Feb. 24, 1966, activities in the United States on or before such date in negotiating or carrying out such contract shall not be taken into account, see section 102(e)(1) of Pub. L. 89–809, set out as a note under section 861 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 1201(d)(4) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, and for nonapplication of amendments by sections 1211(b)(2) and 1242(a) of Pub. L. 99–514 to the extent application of such amendments would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2) to (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 865. Source rules for personal property sales

(a) General rule

Except as otherwise provided in this section, income from the sale of personal property—

(1) by a United States resident shall be sourced in the United States, or

(2) by a nonresident shall be sourced outside the United States.

(b) Exception for inventory property

In the case of income derived from the sale of inventory property—

(1) this section shall not apply, and

(2) such income shall be sourced under the rules of sections 861(a)(6), 862(a)(6), and 863.

Notwithstanding the preceding sentence, any income from the sale of any unprocessed timber which is a softwood and was cut from an area in the United States shall be sourced in the United States and the rules of sections 862(a)(6) and 863(b) shall not apply to any such income. For purposes of the preceding sentence, the term ''unprocessed timber'' means any log, cant, or similar form of timber.

(c) Exception for depreciable personal property

(1) In general

Gain (not in excess of the depreciation adjustments) from the sale of depreciable personal property shall be allocated between sources in the United States and sources outside the United States—

(A) by treating the same proportion of such gain as sourced in the United States as the United States depreciation adjustments with respect to such property bear to the total depreciation adjustments, and

(B) by treating the remaining portion of such gain as sourced outside the United States.

(2) Gain in excess of depreciation

Gain (in excess of the depreciation adjustments) from the sale of depreciable personal property shall be sourced as if such property were inventory property.

(3) United States depreciation adjustments

For purposes of this subsection—

(A) In general

The term ''United States depreciation adjustments'' means the portion of the depreciation adjustments to the adjusted basis of the property which are attributable to the depreciation deductions allowable in computing taxable income from sources in the United States.

(B) Special rule for certain property

Except in the case of property of a kind described in section 168(g)(4), if, for any taxable year—

(i) such property is used predominantly in the United States, or

(ii) such property is used predominantly outside the United States,

all of the depreciation deductions allowable for such year shall be treated as having been allocated to income from sources in the United States (or, where clause (ii) applies, from sources outside the United States).

(4) Other definitions

For purposes of this subsection—

(A) Depreciable personal property

The term ''depreciable personal property'' means any personal property if the adjusted basis of such property includes depreciation adjustments.

(B) Depreciation adjustments

The term ''depreciation adjustments'' means adjustments reflected in the adjusted basis of any property on account of depreciation deductions (whether allowed with respect to such property or other property and whether allowed to the taxpayer or to any other person).

(C) Depreciation deductions

The term ''depreciation deductions'' means any deductions for depreciation or amortization or any other deduction allowable under any provision of this chapter which treats an otherwise capital expenditure as a deductible expense.

(d) Exception for intangibles

(1) In general

In the case of any sale of an intangible—

(A) this section shall apply only to the extent the payments in consideration of such sale are not contingent on the productivity, use, or disposition of the intangible, and

(B) to the extent such payments are so contingent, the source of such payments shall be determined under this part in the same manner as if such payments were royalties.

(2) Intangible

For purposes of paragraph (1), the term ''intangible'' means any patent, copyright, secret process or formula, goodwill, trademark, trade brand, franchise, or other like property.

(3) Special rule in the case of goodwill

To the extent this section applies to the sale of goodwill, payments in consideration of such sale shall be treated as from sources in the country in which such goodwill was generated.

(4) Coordination with subsection (c)

(A) Gain not in excess of depreciation adjustments sourced under subsection (c)

Notwithstanding paragraph (1), any gain from the sale of an intangible shall be sourced under subsection (c) to the extent such gain does not exceed the depreciation adjustments with respect to such intangible.

(B) Subsection (c)(2) not to apply to intangibles

Paragraph (2) of subsection (c) shall not apply to any gain from the sale of an intangible.

(e) Special rules for sales through offices or fixed places of business

(1) Sales by residents

(A) In general

In the case of income not sourced under subsection (b), (c), (d)(1)(B) or (3), or (f), if a

United States resident maintains an office or other fixed place of business in a foreign country, income from sales of personal property attributable to such office or other fixed place of business shall be sourced outside the United States.

(B) Tax must be imposed

Subparagraph (A) shall not apply unless an income tax equal to at least 10 percent of the income from the sale is actually paid to a foreign country with respect to such income.

(2) Sales by nonresidents

(A) In general

Notwithstanding any other provisions of this part, if a nonresident maintains an office or other fixed place of business in the United States, income from any sale of personal property (including inventory property) attributable to such office or other fixed place of business shall be sourced in the United States. The preceding sentence shall not apply for purposes of section 971 (defining export trade corporation).

(B) Exception

Subparagraph (A) shall not apply to any sale of inventory property which is sold for use, disposition, or consumption outside the United States if an office or other fixed place of business of the taxpayer in a foreign country materially participated in the sale.

(3) Sales attributable to an office or other fixed place of business

The principles of section 864(c)(5) shall apply in determining whether a taxpayer has an office or other fixed place of business and whether a sale is attributable to such an office or other fixed place of business.

(f) Stock of affiliates

If—

(1) a United States resident sells stock in an affiliate which is a foreign corporation,

(2) such sale occurs in a foreign country in which such affiliate is engaged in the active conduct of a trade or business, and

(3) more than 50 percent of the gross income of such affiliate for the 3-year period ending with the close of such affiliate's taxable year immediately preceding the year in which the sale occurred was derived from the active conduct of a trade or business in such foreign country,

any gain from such sale shall be sourced outside the United States. For purposes of paragraphs (2) and (3), the United States resident may elect to treat an affiliate and all other corporations which are wholly owned (directly or indirectly) by the affiliate as one corporation.

(g) United States resident; nonresident

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection—

(A) United States resident

The term ''United States resident'' means—

(i) any individual who—

(I) is a United States citizen or a resident alien and does not have a tax home (as defined in section 911(d)(3)) in a foreign country, or

(II) is a nonresident alien and has a tax home (as so defined) in the United States, and

(ii) any corporation, trust, or estate which is a United States person (as defined in section 7701(a)(30)).

(B) Nonresident

The term ''nonresident'' means any person other than a United States resident.

(2) Special rules for United States citizens and resident aliens

For purposes of this section, a United States citizen or resident alien shall not be treated as a nonresident with respect to any sale of personal property unless an income tax equal to at least 10 percent of the gain derived from such sale is actually paid to a foreign country with respect to that gain.

(3) Special rule for certain stock sales by residents of Puerto Rico

Paragraph (2) shall not apply to the sale by an individual who was a bona fide resident of Puerto Rico during the entire taxable year of stock in a corporation if—

(A) such corporation is engaged in the active conduct of a trade or business in Puerto Rico, and

(B) more than 50 percent of its gross income for the 3-year period ending with the close of such corporation's taxable year immediately preceding the year in which such sale occurred was derived from the active conduct of a trade or business in Puerto Rico.

For purposes of the preceding sentence, the taxpayer may elect to treat a corporation and all other corporations which are wholly owned (directly or indirectly) by such corporation as one corporation.

(h) Treatment of gains from sale of certain stock or intangibles and from certain liquidations

(1) In general

In the case of gain to which this subsection applies—

(A) such gain shall be sourced outside the United States, but

(B) subsections (a), (b), and (c) of section 904 and sections 902, 907, and 960 shall be applied separately with respect to such gain.

(2) Gain to which subsection applies

This subsection shall apply to—

(A) Gain from sale of certain stock or intangibles

Any gain—

(i) which is from the sale of stock in a foreign corporation or an intangible (as defined in subsection (d)(2)) and which would otherwise be sourced in the United States under this section,

(ii) which, under a treaty obligation of the United States (applied without regard

to this section), would be sourced outside the United States, and

(iii) with respect to which the taxpayer chooses the benefits of this subsection.

(B) Gain from liquidation in possession

Any gain which is derived from the receipt of any distribution in liquidation of a corporation—

(i) which is organized in a possession of the United States, and

(ii) more than 50 percent of the gross income of which during the 3-taxable year period ending with the close of the taxable year immediately preceding the taxable year in which the distribution is received is from the active conduct of a trade or business in such possession.

(i) Other definitions

For purposes of this section—

(1) Inventory property

The term ''inventory property'' means personal property described in paragraph (1) of section 1221(a).

(2) Sale includes exchange

The term ''sale'' includes an exchange or any other disposition.

(3) Treatment of possessions

Any possession of the United States shall be treated as a foreign country.

(4) Affiliate

The term ''affiliate'' means a member of the same affiliated group (within the meaning of section 1504(a) without regard to section 1504(b)).

(5) Treatment of partnerships

In the case of a partnership, except as provided in regulations, this section shall be applied at the partner level.

(j) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purpose of this section, including regulations—

(1) relating to the treatment of losses from sales of personal property,

(2) applying the rules of this section to income derived from trading in futures contracts, forward contracts, options contracts, and other instruments, and

(3) providing that, subject to such conditions (which may include provisions comparable to section 877) as may be provided in such regulations, subsections (e)(1)(B) and (g)(2) shall not apply for purposes of sections 931, 933, and 936.

(k) Cross references

(1) For provisions relating to the characterization as dividends for source purposes of gains from the sale of stock in certain foreign corporations, see section 1248.

(2) For sourcing of income from certain foreign currency transactions, see section 988.

(Added Pub. L. 99–514, title XII, §1211(a), Oct. 22, 1986, 100 Stat. 2533; amended Pub. L. 100–647, title I, §1012(d)(1)–(6), (8), (9), (11), (12), Nov. 10, 1988, 102 Stat. 3497–3499; Pub. L. 101–508, title XI, §11813(b)(18), Nov. 5, 1990, 104 Stat. 1388–555; Pub. L. 103–66, title XIII, §13239(c), Aug. 10, 1993, 107 Stat. 509; Pub. L. 104–188, title I, §1704(f)(4)(A), Aug. 20, 1996, 110 Stat. 1880; Pub. L. 106–170, title V, §532(c)(1)(E), Dec. 17, 1999, 113 Stat. 1930.)

AMENDMENTS

1999—Subsec. (i)(1). Pub. L. 106–170 substituted ''section 1221(a)'' for ''section 1221''.

1996—Subsec. (b)(2). Pub. L. 104–188 substituted ''863'' for ''863(b)''.

1993—Subsec. (b). Pub. L. 103–66 inserted at end ''Notwithstanding the preceding sentence, any income from the sale of any unprocessed timber which is a softwood and was cut from an area in the United States shall be sourced in the United States and the rules of sections 862(a)(6) and 863(b) shall not apply to any such income. For purposes of the preceding sentence, the term 'unprocessed timber' means any log, cant, or similar form of timber.''

1990—Subsec. (c)(3)(B). Pub. L. 101–508 substituted ''section 168(g)(4)'' for ''section 48(a)(2)(B)''.

1988—Subsec. (d)(2). Pub. L. 100–647, §1012(d)(12), inserted ''franchise,'' after ''trade brand,''.

Subsec. (d)(4). Pub. L. 100–647, §1012(d)(1), added par. (4).

Subsec. (e)(1)(A). Pub. L. 100–647, §1012(d)(2), (9), substituted ''(d)(1)(B) or (3)'' for ''(d)'' and ''in a foreign country'' for first reference to ''outside the United States''.

Subsec. (e)(2)(B). Pub. L. 100–647, §1012(d)(5), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Subparagraph (A) shall not apply to—

''(i) any sale of inventory property which is sold for use, disposition, or consumption outside the United States if an office or other fixed place of business of the taxpayer outside the United States materially participated in the sale, or

''(ii) any amount included in gross income under section 951(a)(1)(A).''

Subsec. (f). Pub. L. 100–647, §1012(d)(4), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: ''If—

''(1) a United States resident sells stock in an affiliate which is a foreign corporation,

''(2) such affiliate is engaged in the active conduct of a trade or business, and

''(3) such sale occurs in the foreign country in which the affiliate derived more than 50 percent of its gross income for the 3-year period ending with the close of the affiliate's taxable year immediately preceding the year during which such sale occurred,

any gain from such sale shall be sourced outside the United States.''

Subsec. (g)(1)(A)(i). Pub. L. 100–647, §1012(d)(11), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''any individual who has a tax home (as defined in section 911(d)(3)) in the United States, and''.

Subsec. (g)(1)(A)(ii). Pub. L. 100–647, §1012(d)(3)(A), struck out ''partnership,'' after ''corporation,''.

Subsec. (g)(3). Pub. L. 100–647, §1012(d)(6)(A), added par. (3).

Subsec. (h). Pub. L. 100–647, §1012(d)(8), added subsec. (h) and redesignated former subsec. (h) as (i).

Pub. L. 100–647, §1012(d)(3)(B), added par. (5) to subsec. (h) prior to redesignation as subsec. (i).

Subsec. (i). Pub. L. 100–647, §1012(d)(8), redesignated former subsec. (h) as (i). Former subsec. (i) redesignated (j).

Pub. L. 100–647, §1012(d)(6)(B), added par. (3) to subsec. (i) prior to redesignation as subsec. (j).

Subsec. (i)(5). Pub. L. 100–647, §1012(d)(3)(B), added par. (5) to subsec. (h) prior to redesignation as subsec. (i).

Subsec. (j). Pub. L. 100–647, §1012(d)(8), redesignated former subsec. (i) as (j). Former subsec. (j) redesignated (k).

Subsec. (j)(3). Pub. L. 100–647, §1012(d)(6)(B), added par. (3) to subsec. (i) prior to redesignation as subsec. (j).

Subsec. (k). Pub. L. 100–647, §1012(d)(8), redesignated former subsec. (j) as (k).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1704(f)(4)(B) of Pub. L. 104–188 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect as if included in the amendments made by section 1211 of the Tax Reform Act of 1986 [Pub. L. 99–514].''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13239(e) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and sections 927, 954, and 993 of this title] shall apply to sales, exchanges, or other dispositions after the date of the enactment of this Act [Aug. 10, 1993].''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1012(d)(5) of Pub. L. 100–647 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1987.

Amendment by section 1012(d)(1)–(4), (6), (8), (9), (11), (12) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section 1211(c) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section, amending sections 861 to 864, 871, 881, and 904 of this title, and enacting provisions set out below] shall apply to taxable years beginning after December 31, 1986.

''(2) SPECIAL RULE FOR FOREIGN PERSONS.—In the case of any foreign person other than any controlled foreign corporations (within the meaning of section 957(a) of the Internal Revenue Code of 1954 [now 1986]), the amendments made by this section shall apply to transactions entered into after March 18, 1986.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 1211(a) of Pub. L. 99–514 (enacting this section) to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

STUDY OF SOURCE RULES FOR SALES OF INVENTORY PROPERTY

Section 1211(d) of Pub. L. 99–514 directed Secretary of the Treasury or his delegate to conduct a study of source rules for sales of inventory property and, not later than Sept. 30, 1987 (due date extended to Jan. 1, 1992, by Pub. L. 101–508, title XI, §11831(b), Nov. 5, 1990, 104 Stat. 1388–559), to submit to Committee on Ways and Means of House of Representatives and Committee on Finance of Senate a report of such study (together with recommendations he deemed advisable).

PART II—NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

Subpart
A. Nonresident alien individuals.
B. Foreign corporations.
C. Tax on gross transportation income.
D. Miscellaneous provisions.

AMENDMENTS

1986—Pub. L. 99–514, title XII, §1212(b)(2), Oct. 22, 1986, 100 Stat. 2538, added item for subpart C and redesignated item for former subpart C as D.

SUBPART A—NONRESIDENT ALIEN INDIVIDUALS

Sec.
871. Tax on nonresident alien individuals.
872. Gross income.
873. Deductions.
874. Allowance of deductions and credits.
875. Partnerships; beneficiaries of estates and trusts.
876. Alien residents of Puerto Rico, Guam, American Samoa, or the Northern Mariana Islands.
877. Expatriation to avoid tax.
877A. Tax responsibilities of expatriation.
878. Foreign educational, charitable, and certain other exempt organizations.
879. Tax treatment of certain community income in the case of nonresident alien individuals.

AMENDMENTS

2008—Pub. L. 110–245, title III, §301(f), June 17, 2008, 122 Stat. 1647, added item 877A.

1986—Pub. L. 99–514, title XII, §1272(d)(13), Oct. 22, 1986, 100 Stat. 2595, inserted '', Guam, American Samoa, or the Northern Mariana Islands'' in item 876.

1984—Pub. L. 98–369, div. A, title I, §139(b)(2), July 18, 1984, 98 Stat. 677, substituted ''nonresident alien individuals'' for ''a resident or citizen of the United States who is married to a nonresident alien individual'' in item 879.

1976—Pub. L. 94–455, title X, §1012(b)(3)(A), Oct. 4, 1976, 90 Stat. 1614, added item 879.

1966—Pub. L. 89–809, title I, §103(e)(2), (f)(2), Nov. 13, 1966, 80 Stat. 1551, 1552, inserted ''; beneficiaries of estates and trusts'' in item 875, added item 877, and redesignated former item 877 as 878.

§ 871. Tax on nonresident alien individuals

(a) Income not connected with United States business—30 percent tax

(1) Income other than capital gains

Except as provided in subsection (h), there is hereby imposed for each taxable year a tax of

30 percent of the amount received from sources within the United States by a nonresident alien individual as—

(A) interest (other than original issue discount as defined in section 1273), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income,

(B) gains described in section 631(b) or (c), and gains on transfers described in section 1235 made on or before October 4, 1966,

(C) in the case of—

(i) a sale or exchange of an original issue discount obligation, the amount of the original issue discount accruing while such obligation was held by the nonresident alien individual (to the extent such discount was not theretofore taken into account under clause (ii)), and

(ii) a payment on an original issue discount obligation, an amount equal to the original issue discount accruing while such obligation was held by the nonresident alien individual (except that such original issue discount shall be taken into account under this clause only to the extent such discount was not theretofore taken into account under this clause and only to the extent that the tax thereon does not exceed the payment less the tax imposed by subparagraph (A) thereon), and

(D) gains from the sale or exchange after October 4, 1966, of patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like property, or of any interest in any such property, to the extent such gains are from payments which are contingent on the productivity, use, or disposition of the property or interest sold or exchanged,

but only to the extent the amount so received is not effectively connected with the conduct of a trade or business within the United States.

(2) Capital gains of aliens present in the United States 183 days or more

In the case of a nonresident alien individual present in the United States for a period or periods aggregating 183 days or more during the taxable year, there is hereby imposed for such year a tax of 30 percent of the amount by which his gains, derived from sources within the United States, from the sale or exchange at any time during such year of capital assets exceed his losses, allocable to sources within the United States, from the sale or exchange at any time during such year of capital assets. For purposes of this paragraph, gains and losses shall be taken into account only if, and to the extent that, they would be recognized and taken into account if such gains and losses were effectively connected with the conduct of a trade or business within the United States, except that such gains and losses shall be determined without regard to section 1202 and such losses shall be determined without the benefits of the capital loss carryover provided in section 1212. Any gain or loss which is taken into account in determining the tax under paragraph (1) or subsection (b) shall not be taken into account in determining the tax under this paragraph. For purposes of the 183-day requirement of this paragraph, a nonresident alien individual not engaged in trade or business within the United States who has not established a taxable year for any prior period shall be treated as having a taxable year which is the calendar year.

(3) Taxation of social security benefits

For purposes of this section and section 1441—

(A) 85 percent of any social security benefit (as defined in section 86(d)) shall be included in gross income (notwithstanding section 207 of the Social Security Act), and

(B) section 86 shall not apply.

For treatment of certain citizens of possessions of the United States, see section 932(c).[1]

(b) Income connected with United States business—graduated rate of tax

(1) Imposition of tax

A nonresident alien individual engaged in trade or business within the United States during the taxable year shall be taxable as provided in section 1 or 55 on his taxable income which is effectively connected with the conduct of a trade or business within the United States.

(2) Determination of taxable income

In determining taxable income for purposes of paragraph (1), gross income includes only gross income which is effectively connected with the conduct of a trade or business within the United States.

(c) Participants in certain exchange or training programs

For purposes of this section, a nonresident alien individual who (without regard to this subsection) is not engaged in trade or business within the United States and who is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act, as amended (8 U.S.C. 1101(a)(15)(F), (J), (M), or (Q)), shall be treated as a nonresident alien individual engaged in trade or business within the United States, and any income described in the second sentence of section 1441(b) which is received by such individual shall, to the extent derived from sources within the United States, be treated as effectively connected with the conduct of a trade or business within the United States.

(d) Election to treat real property income as income connected with United States business

(1) In general

A nonresident alien individual who during the taxable year derives any income—

(A) from real property held for the production of income and located in the United States, or from any interest in such real property, including (i) gains from the sale or exchange of such real property or an interest

[1] See References in Text note below.

therein, (ii) rents or royalties from mines, wells, or other natural deposits, and (iii) gains described in section 631(b) or (c), and

(B) which, but for this subsection, would not be treated as income which is effectively connected with the conduct of a trade or business within the United States,

may elect for such taxable year to treat all such income as income which is effectively connected with the conduct of a trade or business within the United States. In such case, such income shall be taxable as provided in subsection (b)(1) whether or not such individual is engaged in trade or business within the United States during the taxable year. An election under this paragraph for any taxable year shall remain in effect for all subsequent taxable years, except that it may be revoked with the consent of the Secretary with respect to any taxable year.

(2) Election after revocation

If an election has been made under paragraph (1) and such election has been revoked, a new election may not be made under such paragraph for any taxable year before the 5th taxable year which begins after the first taxable year for which such revocation is effective, unless the Secretary consents to such new election.

(3) Form and time of election and revocation

An election under paragraph (1), and any revocation of such an election, may be made only in such manner and at such time as the Secretary may by regulations prescribe.

[(e) Repealed. Pub. L. 99–514, title XII, § 1211(b)(5), Oct. 22, 1986, 100 Stat. 2536]

(f) Certain annuities received under qualified plans

(1) In general

For purposes of this section, gross income does not include any amount received as an annuity under a qualified annuity plan described in section 403(a)(1), or from a qualified trust described in section 401(a) which is exempt from tax under section 501(a), if—

(A) all of the personal services by reason of which the annuity is payable were either—

(i) personal services performed outside the United States by an individual who, at the time of performance of such personal services, was a nonresident alien, or

(ii) personal services described in section 864(b)(1) performed within the United States by such individual, and

(B) at the time the first amount is paid as an annuity under the annuity plan or by the trust, 90 percent or more of the employees for whom contributions or benefits are provided under such annuity plan, or under the plan or plans of which the trust is a part, are citizens or residents of the United States.

(2) Exclusion

Income received during the taxable year which would be excluded from gross income under this subsection but for the requirement of paragraph (1)(B) shall not be included in gross income if—

(A) the recipient's country of residence grants a substantially equivalent exclusion to residents and citizens of the United States; or

(B) the recipient's country of residence is a beneficiary developing country under title V of the Trade Act of 1974 (19 U.S.C. 2461 et seq.).

(g) Special rules for original issue discount

For purposes of this section and section 881—

(1) Original issue discount obligation

(A) In general

Except as provided in subparagraph (B), the term ''original issue discount obligation'' means any bond or other evidence of indebtedness having original issue discount (within the meaning of section 1273).

(B) Exceptions

The term ''original issue discount obligation'' shall not include—

(i) Certain short-term obligations

Any obligation payable 183 days or less from the date of original issue (without regard to the period held by the taxpayer).

(ii) Tax-exempt obligations

Any obligation the interest on which is exempt from tax under section 103 or under any other provision of law without regard to the identity of the holder.

(2) Determination of portion of original issue discount accruing during any period

The determination of the amount of the original issue discount which accrues during any period shall be made under the rules of section 1272 (or the corresponding provisions of prior law) without regard to any exception for short-term obligations.

(3) Source of original issue discount

Except to the extent provided in regulations prescribed by the Secretary, the determination of whether any amount described in subsection (a)(1)(C) is from sources within the United States shall be made at the time of the payment (or sale or exchange) as if such payment (or sale or exchange) involved the payment of interest.

(4) Stripped bonds

The provisions of section 1286 (relating to the treatment of stripped bonds and stripped coupons as obligations with original issue discount) shall apply for purposes of this section.

(h) Repeal of tax on interest of nonresident alien individuals received from certain portfolio debt investments

(1) In general

In the case of any portfolio interest received by a nonresident individual from sources within the United States, no tax shall be imposed under paragraph (1)(A) or (1)(C) of subsection (a).

(2) Portfolio interest

For purposes of this subsection, the term ''portfolio interest'' means any interest (including original issue discount) which would

be subject to tax under subsection (a) but for this subsection and which is described in any of the following subparagraphs:

(A) Certain obligations which are not registered

Interest which is paid on any obligation which—

(i) is not in registered form, and

(ii) is described in section 163(f)(2)(B).

(B) Certain registered obligations

Interest which is paid on an obligation—

(i) which is in registered form, and

(ii) with respect to which the United States person who would otherwise be required to deduct and withhold tax from such interest under section 1441(a) receives a statement (which meets the requirements of paragraph (5)) that the beneficial owner of the obligation is not a United States person.

(3) Portfolio interest not to include interest received by 10-percent shareholders

For purposes of this subsection—

(A) In general

The term ''portfolio interest'' shall not include any interest described in subparagraph (A) or (B) of paragraph (2) which is received by a 10-percent shareholder.

(B) 10-Percent shareholder

The term ''10-percent shareholder'' means—

(i) in the case of an obligation issued by a corporation, any person who owns 10 percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote, or

(ii) in the case of an obligation issued by a partnership, any person who owns 10 percent or more of the capital or profits interest in such partnership.

(C) Attribution rules

For purposes of determining ownership of stock under subparagraph (B)(i) the rules of section 318(a) shall apply, except that—

(i) section 318(a)(2)(C) shall be applied without regard to the 50-percent limitation therein,

(ii) section 318(a)(3)(C) shall be applied—

(I) without regard to the 50-percent limitation therein; and

(II) in any case where such section would not apply but for subclause (I), by considering a corporation as owning the stock (other than stock in such corporation) which is owned by or for any shareholder of such corporation in that proportion which the value of the stock which such shareholder owns in such corporation bears to the value of all stock in such corporation, and

(iii) any stock which a person is treated as owning after application of section 318(a)(4) shall not, for purposes of applying paragraphs (2) and (3) of section 318(a), be treated as actually owned by such person.

Under regulations prescribed by the Secretary, rules similar to the rules of the preceding sentence shall be applied in determining the ownership of the capital or profits interest in a partnership for purposes of subparagraph (B)(ii).

(4) Portfolio interest not to include certain contingent interest

For purposes of this subsection—

(A) In general

Except as otherwise provided in this paragraph, the term ''portfolio interest'' shall not include—

(i) any interest if the amount of such interest is determined by reference to—

(I) any receipts, sales or other cash flow of the debtor or a related person,

(II) any income or profits of the debtor or a related person,

(III) any change in value of any property of the debtor or a related person, or

(IV) any dividend, partnership distributions, or similar payments made by the debtor or a related person, or

(ii) any other type of contingent interest that is identified by the Secretary by regulation, where a denial of the portfolio interest exemption is necessary or appropriate to prevent avoidance of Federal income tax.

(B) Related person

The term ''related person'' means any person who is related to the debtor within the meaning of section 267(b) or 707(b)(1), or who is a party to any arrangement undertaken for a purpose of avoiding the application of this paragraph.

(C) Exceptions

Subparagraph (A)(i) shall not apply to—

(i) any amount of interest solely by reason of the fact that the timing of any interest or principal payment is subject to a contingency,

(ii) any amount of interest solely by reason of the fact that the interest is paid with respect to nonrecourse or limited recourse indebtedness,

(iii) any amount of interest all or substantially all of which is determined by reference to any other amount of interest not described in subparagraph (A) (or by reference to the principal amount of indebtedness on which such other interest is paid),

(iv) any amount of interest solely by reason of the fact that the debtor or a related person enters into a hedging transaction to manage the risk of interest rate or currency fluctuations with respect to such interest,

(v) any amount of interest determined by reference to—

(I) changes in the value of property (including stock) that is actively traded (within the meaning of section 1092(d)) other than property described in section 897(c)(1) or (g),

(II) the yield on property described in subclause (I), other than a debt instrument that pays interest described in sub-

paragraph (A), or stock or other property that represents a beneficial interest in the debtor or a related person, or

(III) changes in any index of the value of property described in subclause (I) or of the yield on property described in subclause (II), and

(vi) any other type of interest identified by the Secretary by regulation.

(D) Exception for certain existing indebtedness

Subparagraph (A) shall not apply to any interest paid or accrued with respect to any indebtedness with a fixed term—

(i) which was issued on or before April 7, 1993, or

(ii) which was issued after such date pursuant to a written binding contract in effect on such date and at all times thereafter before such indebtedness was issued.

(5) Certain statements

A statement with respect to any obligation meets the requirements of this paragraph if such statement is made by—

(A) the beneficial owner of such obligation, or

(B) a securities clearing organization, a bank, or other financial institution that holds customers' securities in the ordinary course of its trade or business.

The preceding sentence shall not apply to any statement with respect to payment of interest on any obligation by any person if, at least one month before such payment, the Secretary has published a determination that any statement from such person (or any class including such person) does not meet the requirements of this paragraph.

(6) Secretary may provide subsection not to apply in cases of inadequate information exchange

(A) In general

If the Secretary determines that the exchange of information between the United States and a foreign country is inadequate to prevent evasion of the United States income tax by United States persons, the Secretary may provide in writing (and publish a statement) that the provisions of this subsection shall not apply to payments of interest to any person within such foreign country (or payments addressed to, or for the account of, persons within such foreign country) during the period—

(i) beginning on the date specified by the Secretary, and

(ii) ending on the date that the Secretary determines that the exchange of information between the United States and the foreign country is adequate to prevent the evasion of United States income tax by United States persons.

(B) Exception for certain obligations

Subparagraph (A) shall not apply to the payment of interest on any obligation which is issued on or before the date of the publication of the Secretary's determination under such subparagraph.

(7) Registered form

For purposes of this subsection, the term ''registered form'' has the same meaning given such term by section 163(f).

(i) Tax not to apply to certain interest and dividends

(1) In general

No tax shall be imposed under paragraph (1)(A) or (1)(C) of subsection (a) on any amount described in paragraph (2).

(2) Amounts to which paragraph (1) applies

The amounts described in this paragraph are as follows:

(A) Interest on deposits, if such interest is not effectively connected with the conduct of a trade or business within the United States.

(B) The active foreign business percentage of—

(i) any dividend paid by an existing 80/20 company, and

(ii) any interest paid by an existing 80/20 company.

(C) Income derived by a foreign central bank of issue from bankers' acceptances.

(D) Dividends paid by a foreign corporation which are treated under section 861(a)(2)(B) as income from sources within the United States.

(3) Deposits

For purposes of paragraph (2), the term ''deposits'' means amounts which are—

(A) deposits with persons carrying on the banking business,

(B) deposits or withdrawable accounts with savings institutions chartered and supervised as savings and loan or similar associations under Federal or State law, but only to the extent that amounts paid or credited on such deposits or accounts are deductible under section 591 (determined without regard to sections 265 and 291) in computing the taxable income of such institutions, and

(C) amounts held by an insurance company under an agreement to pay interest thereon.

(j) Exemption for certain gambling winnings

No tax shall be imposed under paragraph (1)(A) of subsection (a) on the proceeds from a wager placed in any of the following games: blackjack, baccarat, craps, roulette, or big-6 wheel. The preceding sentence shall not apply in any case where the Secretary determines by regulation that the collection of the tax is administratively feasible.

(k) Exemption for certain dividends of regulated investment companies

(1) Interest-related dividends

(A) In general

Except as provided in subparagraph (B), no tax shall be imposed under paragraph (1)(A) of subsection (a) on any interest-related dividend received from a regulated investment company which meets the requirements of section 852(a) for the taxable year with respect to which the dividend is paid.

(B) Exceptions

Subparagraph (A) shall not apply—

(i) to any interest-related dividend received from a regulated investment company by a person to the extent such dividend is attributable to interest (other than interest described in subparagraph (E)(i) or (iii)) received by such company on indebtedness issued by such person or by any corporation or partnership with respect to which such person is a 10-percent shareholder,

(ii) to any interest-related dividend with respect to stock of a regulated investment company unless the person who would otherwise be required to deduct and withhold tax from such dividend under chapter 3 receives a statement (which meets requirements similar to the requirements of subsection (h)(5)) that the beneficial owner of such stock is not a United States person, and

(iii) to any interest-related dividend paid to any person within a foreign country (or any interest-related dividend payment addressed to, or for the account of, persons within such foreign country) during any period described in subsection (h)(6) with respect to such country.

Clause (iii) shall not apply to any dividend with respect to any stock which was acquired on or before the date of the publication of the Secretary's determination under subsection (h)(6).

(C) Interest-related dividend

For purposes of this paragraph—

(i) In general

Except as provided in clause (ii), an interest related dividend is any dividend, or part thereof, which is reported by the company as an interest related dividend in written statements furnished to its shareholders.

(ii) Excess reported amounts

If the aggregate reported amount with respect to the company for any taxable year exceeds the qualified net interest income of the company for such taxable year, an interest related dividend is the excess of—

(I) the reported interest related dividend amount, over

(II) the excess reported amount which is allocable to such reported interest related dividend amount.

(iii) Allocation of excess reported amount

(I) In general

Except as provided in subclause (II), the excess reported amount (if any) which is allocable to the reported interest related dividend amount is that portion of the excess reported amount which bears the same ratio to the excess reported amount as the reported interest related dividend amount bears to the aggregate reported amount.

(II) Special rule for noncalendar year taxpayers

In the case of any taxable year which does not begin and end in the same calendar year, if the post-December reported amount equals or exceeds the excess reported amount for such taxable year, subclause (I) shall be applied by substituting ''post-December reported amount'' for ''aggregate reported amount'' and no excess reported amount shall be allocated to any dividend paid on or before December 31 of such taxable year.

(iv) Definitions

For purposes of this subparagraph—

(I) Reported interest related dividend amount

The term ''reported interest related dividend amount'' means the amount reported to its shareholders under clause (i) as an interest related dividend.

(II) Excess reported amount

The term ''excess reported amount'' means the excess of the aggregate reported amount over the qualified net interest income of the company for the taxable year.

(III) Aggregate reported amount

The term ''aggregate reported amount'' means the aggregate amount of dividends reported by the company under clause (i) as interest related dividends for the taxable year (including interest related dividends paid after the close of the taxable year described in section 855).

(IV) Post-December reported amount

The term ''post-December reported amount'' means the aggregate reported amount determined by taking into account only dividends paid after December 31 of the taxable year.

(v) Termination

The term ''interest related dividend'' shall not include any dividend with respect to any taxable year of the company beginning after December 31, 2011.

(D) Qualified net interest income

For purposes of subparagraph (C), the term ''qualified net interest income'' means the qualified interest income of the regulated investment company reduced by the deductions properly allocable to such income.

(E) Qualified interest income

For purposes of subparagraph (D), the term ''qualified interest income'' means the sum of the following amounts derived by the regulated investment company from sources within the United States:

(i) Any amount includible in gross income as original issue discount (within the meaning of section 1273) on an obligation payable 183 days or less from the date of original issue (without regard to the period held by the company).

(ii) Any interest includible in gross income (including amounts recognized as ordinary income in respect of original issue discount or market discount or acquisition

discount under part V of subchapter P and such other amounts as regulations may provide) on an obligation which is in registered form; except that this clause shall not apply to—

(I) any interest on an obligation issued by a corporation or partnership if the regulated investment company is a 10-percent shareholder in such corporation or partnership, and

(II) any interest which is treated as not being portfolio interest under the rules of subsection (h)(4).

(iii) Any interest referred to in subsection (i)(2)(A) (without regard to the trade or business of the regulated investment company).

(iv) Any interest-related dividend includable in gross income with respect to stock of another regulated investment company.

(F) 10-percent shareholder

For purposes of this paragraph, the term ''10-percent shareholder'' has the meaning given such term by subsection (h)(3)(B).

(2) Short-term capital gain dividends

(A) In general

Except as provided in subparagraph (B), no tax shall be imposed under paragraph (1)(A) of subsection (a) on any short-term capital gain dividend received from a regulated investment company which meets the requirements of section 852(a) for the taxable year with respect to which the dividend is paid.

(B) Exception for aliens taxable under subsection (a)(2)

Subparagraph (A) shall not apply in the case of any nonresident alien individual subject to tax under subsection (a)(2).

(C) Short-term capital gain dividend

For purposes of this paragraph—

(i) In general

Except as provided in clause (ii), the term ''short-term capital gain dividend'' means any dividend, or part thereof, which is reported by the company as a short-term capital gain dividend in written statements furnished to its shareholders.

(ii) Excess reported amounts

If the aggregate reported amount with respect to the company for any taxable year exceeds the qualified short-term gain of the company for such taxable year, the term ''short-term capital gain dividend'' means the excess of—

(I) the reported short-term capital gain dividend amount, over

(II) the excess reported amount which is allocable to such reported short-term capital gain dividend amount.

(iii) Allocation of excess reported amount

(I) In general

Except as provided in subclause (II), the excess reported amount (if any) which is allocable to the reported short-term capital gain dividend amount is that portion of the excess reported amount which bears the same ratio to the excess reported amount as the reported short-term capital gain dividend amount bears to the aggregate reported amount.

(II) Special rule for noncalendar year taxpayers

In the case of any taxable year which does not begin and end in the same calendar year, if the post-December reported amount equals or exceeds the excess reported amount for such taxable year, subclause (I) shall be applied by substituting ''post-December reported amount'' for ''aggregate reported amount'' and no excess reported amount shall be allocated to any dividend paid on or before December 31 of such taxable year.

(iv) Definitions

For purposes of this subparagraph—

(I) Reported short-term capital gain dividend amount

The term ''reported short-term capital gain dividend amount'' means the amount reported to its shareholders under clause (i) as a short-term capital gain dividend.

(II) Excess reported amount

The term ''excess reported amount'' means the excess of the aggregate reported amount over the qualified short-term gain of the company for the taxable year.

(III) Aggregate reported amount

The term ''aggregate reported amount'' means the aggregate amount of dividends reported by the company under clause (i) as short-term capital gain dividends for the taxable year (including short-term capital gain dividends paid after the close of the taxable year described in section 855).

(IV) Post-December reported amount

The term ''post-December reported amount'' means the aggregate reported amount determined by taking into account only dividends paid after December 31 of the taxable year.

(v) Termination

The term ''short-term capital gain dividend'' shall not include any dividend with respect to any taxable year of the company beginning after December 31, 2011.

(D) Qualified short-term gain

For purposes of subparagraph (C), the term ''qualified short-term gain'' means the excess of the net short-term capital gain of the regulated investment company for the taxable year over the net long-term capital loss (if any) of such company for such taxable year. For purposes of this subparagraph, the net short-term capital gain of the regulated investment company shall be computed by treating any short-term capital gain divi-

dend includible in gross income with respect to stock of another regulated investment company as a short-term capital gain.

(E) Certain distributions

In the case of a distribution to which section 897 does not apply by reason of the second sentence of section 897(h)(1), the amount which would be treated as a short-term capital gain dividend to the shareholder (without regard to this subparagraph)—

(i) shall not be treated as a short-term capital gain dividend, and

(ii) shall be included in such shareholder's gross income as a dividend from the regulated investment company.

(*l*) Rules relating to existing 80/20 companies

For purposes of this subsection and subsection (i)(2)(B)—

(1) Existing 80/20 company

(A) In general

The term ''existing 80/20 company'' means any corporation if—

(i) such corporation met the 80-percent foreign business requirements of section 861(c)(1) (as in effect before the date of the enactment of this subsection) for such corporation's last taxable year beginning before January 1, 2011,

(ii) such corporation meets the 80-percent foreign business requirements of subparagraph (B) with respect to each taxable year after the taxable year referred to in clause (i), and

(iii) there has not been an addition of a substantial line of business with respect to such corporation after the date of the enactment of this subsection.

(B) Foreign business requirements

(i) In general

Except as provided in clause (iv), a corporation meets the 80-percent foreign business requirements of this subparagraph if it is shown to the satisfaction of the Secretary that at least 80 percent of the gross income from all sources of such corporation for the testing period is active foreign business income.

(ii) Active foreign business income

For purposes of clause (i), the term ''active foreign business income'' means gross income which—

(I) is derived from sources outside the United States (as determined under this subchapter), and

(II) is attributable to the active conduct of a trade or business in a foreign country or possession of the United States.

(iii) Testing period

For purposes of this subsection, the term ''testing period'' means the 3-year period ending with the close of the taxable year of the corporation preceding the payment (or such part of such period as may be applicable). If the corporation has no gross income for such 3-year period (or part thereof), the testing period shall be the taxable year in which the payment is made.

(iv) Transition rule

In the case of a taxable year for which the testing period includes 1 or more taxable years beginning before January 1, 2011—

(I) a corporation meets the 80-percent foreign business requirements of this subparagraph if and only if the weighted average of—

(aa) the percentage of the corporation's gross income from all sources that is active foreign business income (as defined in subparagraph (B) of section 861(c)(1) (as in effect before the date of the enactment of this subsection)) for the portion of the testing period that includes taxable years beginning before January 1, 2011, and

(bb) the percentage of the corporation's gross income from all sources that is active foreign business income (as defined in clause (ii) of this subparagraph) for the portion of the testing period, if any, that includes taxable years beginning on or after January 1, 2011,

is at least 80 percent, and

(II) the active foreign business percentage for such taxable year shall equal the weighted average percentage determined under subclause (I).

(2) Active foreign business percentage

Except as provided in paragraph (1)(B)(iv), the term ''active foreign business percentage'' means, with respect to any existing 80/20 company, the percentage which—

(A) the active foreign business income of such company for the testing period, is of

(B) the gross income of such company for the testing period from all sources.

(3) Aggregation rules

For purposes of applying paragraph (1) (other than subparagraphs (A)(i) and (B)(iv) thereof) and paragraph (2)—

(A) In general

The corporation referred to in paragraph (1)(A) and all of such corporation's subsidiaries shall be treated as one corporation.

(B) Subsidiaries

For purposes of subparagraph (A), the term ''subsidiary'' means any corporation in which the corporation referred to in subparagraph (A) owns (directly or indirectly) stock meeting the requirements of section 1504(a)(2) (determined by substituting ''50 percent'' for ''80 percent'' each place it appears and without regard to section 1504(b)(3)).

(4) Regulations

The Secretary may issue such regulations or other guidance as is necessary or appropriate to carry out the purposes of this section, including regulations or other guidance which provide for the proper application of the aggregation rules described in paragraph (3).

(m) Treatment of dividend equivalent payments

(1) In general

For purposes of subsection (a), sections 881 and 4948(a), and chapters 3 and 4, a dividend equivalent shall be treated as a dividend from sources within the United States.

(2) Dividend equivalent

For purposes of this subsection, the term ''dividend equivalent'' means—

(A) any substitute dividend made pursuant to a securities lending or a sale-repurchase transaction that (directly or indirectly) is contingent upon, or determined by reference to, the payment of a dividend from sources within the United States,

(B) any payment made pursuant to a specified notional principal contract that (directly or indirectly) is contingent upon, or determined by reference to, the payment of a dividend from sources within the United States, and

(C) any other payment determined by the Secretary to be substantially similar to a payment described in subparagraph (A) or (B).

(3) Specified notional principal contract

For purposes of this subsection, the term ''specified notional principal contract'' means—

(A) any notional principal contract if—

(i) in connection with entering into such contract, any long party to the contract transfers the underlying security to any short party to the contract,

(ii) in connection with the termination of such contract, any short party to the contract transfers the underlying security to any long party to the contract,

(iii) the underlying security is not readily tradable on an established securities market,

(iv) in connection with entering into such contract, the underlying security is posted as collateral by any short party to the contract with any long party to the contract, or

(v) such contract is identified by the Secretary as a specified notional principal contract,

(B) in the case of payments made after the date which is 2 years after the date of the enactment of this subsection, any notional principal contract unless the Secretary determines that such contract is of a type which does not have the potential for tax avoidance.

(4) Definitions

For purposes of paragraph (3)(A)—

(A) Long party

The term ''long party'' means, with respect to any underlying security of any notional principal contract, any party to the contract which is entitled to receive any payment pursuant to such contract which is contingent upon, or determined by reference to, the payment of a dividend from sources within the United States with respect to such underlying security.

(B) Short party

The term ''short party'' means, with respect to any underlying security of any notional principal contract, any party to the contract which is not a long party with respect to such underlying security.

(C) Underlying security

The term ''underlying security'' means, with respect to any notional principal contract, the security with respect to which the dividend referred to in paragraph (2)(B) is paid. For purposes of this paragraph, any index or fixed basket of securities shall be treated as a single security.

(5) Payments determined on gross basis

For purposes of this subsection, the term ''payment'' includes any gross amount which is used in computing any net amount which is transferred to or from the taxpayer.

(6) Prevention of over-withholding

In the case of any chain of dividend equivalents one or more of which is subject to tax under subsection (a) or section 881, the Secretary may reduce such tax, but only to the extent that the taxpayer can establish that such tax has been paid with respect to another dividend equivalent in such chain, or is not otherwise due, or as the Secretary determines is appropriate to address the role of financial intermediaries in such chain. For purposes of this paragraph, a dividend shall be treated as a dividend equivalent.

(7) Coordination with chapters 3 and 4

For purposes of chapters 3 and 4, each person that is a party to any contract or other arrangement that provides for the payment of a dividend equivalent shall be treated as having control of such payment.

(n) Cross references

(1) For tax treatment of certain amounts distributed by the United States to nonresident alien individuals, see section 402(e)(2).

(2) For taxation of nonresident alien individuals who are expatriate United States citizens, see section 877.

(3) For doubling of tax on citizens of certain foreign countries, see section 891.

(4) For adjustment of tax in case of nationals or residents of certain foreign countries, see section 896.

(5) For withholding of tax at source on nonresident alien individuals, see section 1441.

(6) For election to treat married nonresident alien individual as resident of United States in certain cases, see subsections (g) and (h) of section 6013.

(7) For special tax treatment of gain or loss from the disposition by a nonresident alien individual of a United States real property interest, see section 897.

(Aug. 16, 1954, ch. 736, 68A Stat. 278; Pub. L. 85–866, title I, §§ 40(a), 41(a), Sept. 2, 1958, 72 Stat. 1638, 1639; Pub. L. 86–437, § 2(b), Apr. 22, 1960, 74 Stat. 79; Pub. L. 87–256, § 110(b), Sept. 21, 1961, 75 Stat. 535; Pub. L. 88–272, title I, § 113(b), title II, § 201(d)(12), Feb. 26, 1964, 78 Stat. 24, 32; Pub. L. 89–809, title I, § 103(a)(1), Nov. 13, 1966, 80 Stat. 1547; Pub. L. 92–178, title III, § 313(a), (b), Dec. 10, 1971, 85 Stat. 526, 527; Pub. L. 93–406, title II, § 2005(c)(8), Sept. 2, 1974, 88 Stat. 992; Pub. L.

94–455, title X, § 1012(a)(2), title XIX, §§ 1901(b)(3)(I), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1613, 1793, 1834; Pub. L. 95–600, title IV, §§ 401(b)(3), 421(e)(4), Nov. 6, 1978, 92 Stat. 2867, 2876; Pub. L. 96–222, title I, § 104(a)(4)(H)(v), Apr. 1, 1980, 94 Stat. 217; Pub. L. 96–499, title XI, § 1122(c)(1), Dec. 5, 1980, 94 Stat. 2687; Pub. L. 96–605, title II, § 227(a), Dec. 28, 1980, 94 Stat. 3530; Pub. L. 97–34, title VII, § 725(c)(1), Aug. 13, 1981, 95 Stat. 346; Pub. L. 98–21, title I, § 121(c)(1), title III, § 335(b)(2)(B), Apr. 20, 1983, 97 Stat. 82, 130; Pub. L. 98–369, div. A, title I, §§ 42(a)(9), 127(a), 128(a), title IV, § 412(b)(1), July 18, 1984, 98 Stat. 557, 648, 653, 792; Pub. L. 99–272, title XII, § 12103(b), Apr. 7, 1986, 100 Stat. 285; Pub. L. 99–514, title III, § 301(b)(9), title XII, §§ 1211(b)(4), (5), 1214(c)(1), title XVIII, § 1810(d)(1)(A), (2), (3)(A), (B), (e)(2)(A), Oct. 22, 1986, 100 Stat. 2217, 2536, 2542, 2825, 2826; Pub. L. 100–647, title I, § 1001(d)(2)(B), title VI, § 6134(a)(1), Nov. 10, 1988, 102 Stat. 3350, 3721; Pub. L. 102–318, title V, § 521(b)(28)–(30), July 3, 1992, 106 Stat. 312; Pub. L. 103–66, title XIII, §§ 13113(d)(5), 13237(a)(1), (c)(1), Aug. 10, 1993, 107 Stat. 430, 506, 508; Pub. L. 103–296, title III, § 320(a)(1)(A), Aug. 15, 1994, 108 Stat. 1535; Pub. L. 103–465, title VII, § 733(a), Dec. 8, 1994, 108 Stat. 5006; Pub. L. 104–188, title I, §§ 1401(b)(10), 1954(b)(1), Aug. 20, 1996, 110 Stat. 1789, 1928; Pub. L. 105–206, title VI, § 6023(10), July 22, 1998, 112 Stat. 825; Pub. L. 106–170, title V, § 532(b)(2), Dec. 17, 1999, 113 Stat. 1930; Pub. L. 106–554, § 1(a)(7) [title III, § 319(11)], Dec. 21, 2000, 114 Stat. 2763, 2763A–646; Pub. L. 108–357, title IV, §§ 409(a), 411(a)(1), Oct. 22, 2004, 118 Stat. 1500; Pub. L. 109–222, title V, § 505(c)(2), May 17, 2006, 120 Stat. 356; Pub. L. 110–343, div. C, title II, § 206(a), (b), Oct. 3, 2008, 122 Stat. 3865; Pub. L. 111–147, title V, §§ 502(b)(1), (2)(A), 541(a), Mar. 18, 2010, 124 Stat. 107, 115; Pub. L. 111–226, title II, § 217(b), Aug. 10, 2010, 124 Stat. 2400; Pub. L. 111–312, title VII, § 748(a), Dec. 17, 2010, 124 Stat. 3320; Pub. L. 111–325, title III, §§ 301(f), 302(b)(2), 308(b)(3), Dec. 22, 2010, 124 Stat. 3544, 3548, 3551.)

AMENDMENT OF SUBSECTION (h)

Pub. L. 111–147, title V, § 502(b)(1), (2)(A), (f), Mar. 18, 2010, 124 Stat. 107, 108, provided that, applicable to obligations issued after the date which is 2 years after Mar. 18, 2010, subsection (h) of this section is amended as follows:

(1) by amending paragraph (2) to read as follows:

''(2) Portfolio interest

''For purposes of this subsection, the term 'portfolio interest' means any interest (including original issue discount) which—

''(A) would be subject to tax under subsection (a) but for this subsection, and

''(B) is paid on an obligation—

''(i) which is in registered form, and

''(ii) with respect to which—

''(I) the United States person who would otherwise be required to deduct and withhold tax from such interest under section 1441(a) receives a statement (which meets the requirements of paragraph (5)) that the beneficial owner of the obligation is not a United States person, or

''(II) the Secretary has determined that such a statement is not required in order to carry out the purposes of this subsection.''; and

(2) in paragraph (3)(A), by striking ''subparagraph (A) or (B) of''.

REFERENCES IN TEXT

Section 207 of the Social Security Act, referred to in subsec. (a)(3)(A), is classified to section 407 of Title 42, The Public Health and Welfare.

Section 932(c), referred to in subsec. (a)(3), was repealed and a new section 932(c) of this title, which does not relate to taxation of social security benefits, was enacted by Pub. L. 99–514, title XII, §§ 1272(d)(1), 1274(a), Oct. 22, 1986, 100 Stat. 2594, 2596.

The Trade Act of 1974, referred to in subsec. (f)(2)(B), is Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended. Title V of the Trade Act of 1974 is classified generally to subchapter V (§ 2461 et seq.) of chapter 12 of Title 19, Customs Duties. For complete classification of this Act to the Code, see section 2101 of Title 19 and Tables.

The date of the enactment of this subsection, referred to in subsec. (*l*)(1)(A)(i), (iii), (B)(iv)(I)(aa), is the date of enactment of Pub. L. 111–226, which was approved Aug. 10, 2010.

The date of the enactment of this subsection, referred to in subsec. (m)(3)(B), is the date of enactment of Pub. L. 111–147, which was approved Mar. 18, 2010.

AMENDMENTS

2010—Subsec. (i)(2)(B). Pub. L. 111–226, § 217(b)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''A percentage of any dividend paid by a domestic corporation meeting the 80-percent foreign business requirements of section 861(c)(1) equal to the percentage determined for purposes of section 861(c)(2)(A).''

Subsec. (k)(1)(A). Pub. L. 111–325, § 302(b)(2), inserted ''which meets the requirements of section 852(a) for the taxable year with respect to which the dividend is paid'' before period at end.

Subsec. (k)(1)(C). Pub. L. 111–325, § 301(f)(1), substituted introductory provisions, cls. (i) to (iv), and cl. (v) heading and ''The term 'interest related dividend' shall not include any dividend with respect to'' for ''For purposes of this paragraph, the term 'interest-related dividend' means any dividend (or part thereof) which is designated by the regulated investment company as an interest-related dividend in a written notice mailed to its shareholders not later than 60 days after the close of its taxable year. If the aggregate amount so designated with respect to a taxable year of the company (including amounts so designated with respect to dividends paid after the close of the taxable year described in section 855) is greater than the qualified net interest income of the company for such taxable year, the portion of each distribution which shall be an interest-related dividend shall be only that portion of the amounts so designated which such qualified net interest income bears to the aggregate amount so designated. Such term shall not include any dividend with respect to''.

Pub. L. 111–312, § 748(a), substituted ''December 31, 2011'' for ''December 31, 2009''.

Subsec. (k)(2)(A). Pub. L. 111–325, § 302(b)(2), inserted ''which meets the requirements of section 852(a) for the taxable year with respect to which the dividend is paid'' before period at end.

Subsec. (k)(2)(C). Pub. L. 111–325, § 301(f)(2), substituted introductory provisions, cls. (i) to (iv), and cl. (v) heading and ''The term 'short-term capital gain dividend' shall not include any dividend with respect to'' for ''For purposes of this paragraph, the term 'short-term capital gain dividend' means any dividend (or part thereof) which is designated by the regulated investment company as a short-term capital gain dividend in a written notice mailed to its shareholders not later than 60 days after the close of its taxable year. If the aggregate amount so designated with respect to a tax-

able year of the company (including amounts so designated with respect to dividends paid after the close of the taxable year described in section 855) is greater than the qualified short-term gain of the company for such taxable year, the portion of each distribution which shall be a short-term capital gain dividend shall be only that portion of the amounts so designated which such qualified short-term gain bears to the aggregate amount so designated. Such term shall not include any dividend with respect to''.

Pub. L. 111–312, §748(a), substituted ''December 31, 2011'' for ''December 31, 2009''.

Subsec. (k)(2)(D). Pub. L. 111–325, §308(b)(3), substituted ''For purposes of this subparagraph, the net short-term capital gain of the regulated investment company shall be computed by treating any short-term capital gain dividend includible in gross income with respect to stock of another regulated investment company as a short-term capital gain.'' for ''For purposes of this subparagraph—

''(i) the net short-term capital gain of the regulated investment company shall be computed by treating any short-term capital gain dividend includible in gross income with respect to stock of another regulated investment company as a short-term capital gain, and

''(ii) the excess of the net short-term capital gain for a taxable year over the net long-term capital loss for a taxable year (to which an election under section 4982(e)(4) does not apply) shall be determined without regard to any net capital loss or net short-term capital loss attributable to transactions after October 31 of such year, and any such net capital loss or net short-term capital loss shall be treated as arising on the 1st day of the next taxable year.

To the extent provided in regulations, clause (ii) shall apply also for purposes of computing the taxable income of the regulated investment company.''

Subsec. (*l*). Pub. L. 111–226, §217(b)(2), added subsec. (*l*). Former subsec. (*l*) redesignated (m).

Pub. L. 111–147, §541(a), added subsec. (*l*). Former subsec. (*l*) redesignated (m).

Subsec. (m). Pub. L. 111–226, §217(b)(2), redesignated subsec. (*l*) as (m). Former subsec. (m) redesignated (n).

Pub. L. 111–147, §541(a), redesignated subsec. (*l*) as (m).

Subsec. (n). Pub. L. 111–226, §217(b)(2), redesignated subsec. (m) as (n).

2008—Subsec. (k)(1)(C), (2)(C). Pub. L. 110–343 substituted ''December 31, 2009'' for ''December 31, 2007''.

2006—Subsec. (k)(2)(E). Pub. L. 109–222 added subpar. (E).

2004—Subsec. (i)(2)(D). Pub. L. 108–357, §409(a), added subpar. (D).

Subsecs. (k), (*l*). Pub. L. 108–357, §411(a)(1), added subsec. (k) and redesignated former subsec. (k) as (*l*).

2000—Subsec. (f)(2)(B). Pub. L. 106–554 inserted opening parenthesis before ''19 U.S.C.''.

1999—Subsec. (h)(4)(C)(iv). Pub. L. 106–170 substituted ''to manage'' for ''to reduce''.

1998—Subsec. (f)(2)(B). Pub. L. 105–206 substituted ''19 U.S.C. 2461 et seq.)'' for ''(19 U.S.C. 2462)''.

1996—Subsec. (b)(1). Pub. L. 104–188, §1401(b)(10), substituted ''section 1 or 55'' for ''section 1, 55, or 402(d)(1)''.

Subsec. (f)(2)(B). Pub. L. 104–188, §1954(b)(1), substituted ''under title V'' for ''within the meaning of section 502''.

1994—Subsec. (a)(3)(A). Pub. L. 103–465 substituted ''85 percent'' for ''one-half''.

Subsec. (c). Pub. L. 103–296 substituted ''(J), (M), or (Q)'' for ''(J), or (M)'' in two places.

1993—Subsec. (a)(2). Pub. L. 103–66, §13113(d)(5), inserted ''such gains and losses shall be determined without regard to section 1202 and'' after ''except that'' in second sentence.

Subsec. (h)(2)(B)(ii). Pub. L. 103–66, §13237(c)(1), substituted ''paragraph (5)'' for ''paragraph (4)''.

Subsec. (h)(4) to (7). Pub. L. 103–66, §13237(a)(1), added par. (4) and redesignated former pars. (4) to (6) as (5) to (7), respectively.

1992—Subsec. (a)(1)(B). Pub. L. 102–318, §521(b)(28), struck out ''402(a)(2), 403(a)(2), or'' before ''631(b)''.

Subsec. (b)(1). Pub. L. 102–318, §521(b)(29), substituted ''402(d)(1)'' for ''402(e)(1)''.

Subsec. (k)(1). Pub. L. 102–318, §521(b)(30), substituted ''402(e)(2)'' for ''402(a)(4)''.

1988—Subsec. (c). Pub. L. 100–647, §1001(d)(2)(B), substituted ''the second sentence of section 1441(b)'' for ''section 1441(b)(1) or (2)'', and ''(F), (J), or (M)'' for ''(F) or (J)'' in two places.

Subsecs. (j), (k). Pub. L. 100–647, §6134(a)(1), added subsec. (j) and redesignated former subsec. (j) as (k).

1986—Subsec. (a)(1). Pub. L. 99–514, §1810(d)(3)(A), substituted ''subsection (h)'' for ''subsection (i)'' in introductory provisions.

Subsec. (a)(1)(C). Pub. L. 99–514, §1810(e)(2)(A), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''in the case of—

''(i) a sale or exchange of an original issue discount obligation, the amount of any gain not in excess of the original issue discount accruing while such obligation was held by the nonresident alien individual (to the extent such discount was not theretofore taken into account under clause (ii)), and

''(ii) the payment of interest on an original issue discount obligation, an amount equal to the original issue discount accrued on such obligation since the last payment of interest thereon (except that such original issue discount shall be taken into account under this clause only to the extent that the tax thereon does not exceed the interest payment less the tax imposed by subparagraph (A) thereon), and''.

Subsec. (a)(1)(D). Pub. L. 99–514, §1211(b)(4), struck out ''or from payments which are treated as being so contingent under subsection (e),'' after ''sold or exchanged,''.

Subsec. (a)(2). Pub. L. 99–514, §301(b)(9), struck out ''such gains and losses shall be determined without regard to section 1202 (relating to deduction for capital gains) and'' after ''United States, except that''.

Subsec. (a)(3). Pub. L. 99–272 inserted at end ''For treatment of certain citizens of possessions of the United States, see section 932(c).''

Subsec. (e). Pub. L. 99–514, §1211(b)(5), struck out subsec. (e) which related to gains from sale or exchange of certain intangible property, par. (1) treating payments as contingent on use, etc., and par. (2) containing source rule.

Subsec. (h)(2). Pub. L. 99–514, §1810(d)(1)(A), (3)(B), inserted ''which would be subject to tax under subsection (a) but for this subsection and'' in introductory provisions and substituted ''receives a statement'' for ''has received a statement'' in subpar. (B)(ii).

Subsec. (h)(3)(C)(ii), (iii). Pub. L. 99–514, §1810(d)(2), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsecs. (i), (j). Pub. L. 99–514, §1214(c)(1), added subsec. (i) and redesignated former subsec. (i) as (j).

1984—Subsec. (a)(1). Pub. L. 98–369, §127(a)(2), substituted ''Except as provided in subsection (i), there'' for ''There''.

Subsec. (a)(1)(A). Pub. L. 98–369, §42(a)(9), substituted ''section 1273'' for ''section 1232(b)''.

Subsec. (a)(1)(C). Pub. L. 98–369, §128(a)(1), amended subpar. (C) generally, substituting in cl. (i), ''a sale or exchange of an original issue discount obligation, the amount of any gain not in excess of the original issue discount accruing while such obligation was held by the nonresident alien individual (to the extent such discount was not theretofore taken into account under clause (ii)), and'' for ''bonds or other evidences of indebtedness issued after September 28, 1965, and before April 1, 1972, amounts which under section 1232(a)(2)(B) are considered as ordinary income, and, in the case of corporate obligations issued after May 27, 1969, and before April 1, 1972, amounts which would be so considered but for the fact the obligations were issued after May 27, 1969,'', substituting in cl. (ii), ''the payment of interest on an original issue discount obligation, an amount equal to the original issue discount accrued on such obligation since the last payment of interest

thereon (except that such original issue discount shall be taken into account under this clause only to the extent that the tax thereon does not exceed the interest payment less the tax imposed by subparagraph (A) thereon), and'' for ''bonds or other evidences of indebtedness issued after March 31, 1972, and payable more than 6 months from the date of original issue (without regard to the period held by the taxpayer), amounts which under section 1232(a)(2)(B) would be considered as ordinary income but for the fact such obligations were issued after May 27, 1969, and'', and striking out cl. (iii) which required that in the case of the payment of interest on an obligation described in cl. (ii), an amount equal to the original issue discount, but not in excess of such interest less the tax imposed by subpar. (A) thereon, accrued on such obligation since the last payment of interest thereon, be included for purpose of the 30 percent tax.

Subsec. (g). Pub. L. 98–369, §128(a)(2), added subsec. (g). Former subsec. (g), relating to cross references, redesignated (h).

Subsec. (g)(6) to (8). Pub. L. 98–369, §412(b)(1), amended subsec. (g), relating to cross references, by striking out par. (6) referring to section 6015(j) for the requirement of making a declaration of estimated tax by certain nonresident alien individuals and redesignating pars. (7) and (8) as (6) and (7), respectively.

Subsec. (h). Pub. L. 98–369, §127(a), added subsec. (h). Former subsec. (h), relating to cross references, redesignated (i).

Pub. L. 98–369, §128(a)(2), redesignated subsec. (g), relating to cross references, as (h).

Subsec. (i). Pub. L. 98–369, §127(a)(1), redesignated subsec. (h), relating to cross references, as (i).

1983—Subsec. (a)(3). Pub. L. 98–21, §121(c)(1), added par. (3).

Subsec. (a)(3)(A). Pub. L. 98–21, §335(b)(2)(B), inserted ''(notwithstanding section 207 of the Social Security Act)'' after ''income''.

1981—Subsec. (g)(6). Pub. L. 97–34 substituted ''6015(j)'' for ''6015(i)''.

1980—Subsec. (b)(1). Pub. L. 96–222 substituted ''55'' for ''section 55''.

Subsec. (f). Pub. L. 96–605 designated existing provision as par. (1), inserted heading ''In general'' and redesignated par. (1) as subpar. (A), cls. (A) and (B) of subpar. (A) as so redesignated as cls. (i) and (ii), and par. (2) as subpar. (B), and added par. (2).

Subsec. (g)(8). Pub. L. 96–499 added par. (8).

1978—Subsec. (b)(1). Pub. L. 95–600, §§401(b)(3), 421(e)(4), substituted ''section 1, section 55, or 402(e)(1)'' for ''section 1, 402(e)(1), or 1201(b)''.

1976—Subsec. (a)(1)(C)(i), (ii). Pub. L. 94–455, §1901(b)(3)(I), substituted ''ordinary income'' for ''gain from the sale or exchange of property which is not a capital asset''.

Subsec. (d). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'', each time appearing.

Subsec. (g)(7). Pub. L. 94–455, §1012(a)(2), added par. (7).

1974—Subsec. (b)(1). Pub. L. 93–406 inserted reference to section 402(e)(1).

1971—Subsec. (a)(1)(A). Pub. L. 92–178, §313(a), inserted ''(other than original issue discount as defined in section 1232(b))'' after ''interest''.

Subsec. (a)(1)(C). Pub. L. 92–178, §313(b), designated existing provisions as cl. (i), inserted ''and before April 1, 1972,'' after ''September 28, 1965,'', substituted ''section 1232(a)(2)(B)'' for ''section 1232'', and inserted '', in the case of corporate obligations issued after May 27, 1969, and before April 1, 1972, amounts which would be so considered but for the fact the obligations were issued after May 27, 1969,'', and added cls. (ii) and (iii).

1966—Subsecs. (a), (b). Pub. L. 89–809 consolidated the substance of former subsecs. (a) to (c) and, as part of the consolidation, revised the overall income tax treatment of nonresident alien individuals by substituting provisions dividing their income for tax purposes into two basic groups according to whether or not the income is effectively connected with a United States trade or business for provisions calling for different tax treatment based upon whether or not they are, or are not, engaged in a trade or business in the United States, with a further breakdown of those not engaged in trade or business in the United States as to whether their income is over or under $21,200.

Subsec. (c). Pub. L. 89–809 redesignated subsec. (d) as (c) and inserted provisions that any income described in section 1441(b)(1) or (2) which is received by such individual shall, to the extent derived from sources within the United States, be treated as effectively connected with the conduct of a trade or business within the United States. Substance of former subsec. (c) revised and incorporated into subsecs. (a) and (b).

Subsecs. (d) to (f). Pub. L. 89–809 added subsecs. (d) to (f) and redesignated former subsecs. (d) and (e) as (c) and (g), respectively.

Subsec. (g). Pub. L. 89–809 redesignated former subsec. (e) as (g), added pars. (2) and (4) to (6), and redesignated former pars. (1) and (2) as (3) and (1), respectively.

1964—Subsec. (a). Pub. L. 88–272, §113(b)(2), substituted ''30 percent tax'' for ''and gross income of not more than $15,400'' in heading.

Subsec. (b). Pub. L. 88–272, §§113(b)(1), (3), 201(d)(12), substituted ''$19,000 in the case of a taxable year beginning in 1964 or more than $21,200 in the case of a taxable year beginning after 1964'' for ''$15,400'', ''the credit under section 35'' for ''the sum of the credits under sections 34 and 35'' in text, and ''Regular tax'' for ''and gross income of more than $15,400'' in heading.

1961—Subsecs. (d), (e). Pub. L. 87–256 added subsec. (d) and redesignated former subsec. (d) as (e).

1960—Subsec. (d). Pub. L. 86–437 substituted ''Cross references'' for ''Doubling of tax'' in heading, and inserted cross reference to section 402(a)(4).

1958—Subsec. (a)(1). Pub. L. 85–866, §40(a), inserted ''section 403(a)(2),'' after ''section 402(a)(2),''.

Subsec. (b). Pub. L. 85–866, §41(a), inserted last par. covering former provisions of par. (3), which was struck out by the amendment, and containing new provisions with references to credits under section 34 and 35 and exclusion under section 116 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 301(f) of Pub. L. 111–325 applicable to taxable years beginning after Dec. 22, 2010, see section 301(h) of Pub. L. 111–325, set out as a note under section 852 of this title.

Amendment by section 302(b)(2) of Pub. L. 111–325 applicable to taxable years beginning after Dec. 22, 2010, see section 302(c) of Pub. L. 111–325, set out as a note under section 852 of this title.

Amendment by section 308(b)(3) of Pub. L. 111–325 applicable to taxable years beginning after Dec. 22, 2010, see section 308(c) of Pub. L. 111–325, set out as a note under section 852 of this title.

Pub. L. 111–312, title VII, §748(b), Dec. 17, 2010, 124 Stat. 3320, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009.''

Amendment by Pub. L. 111–226 applicable to taxable years beginning after Dec. 31, 2010, with certain exceptions, see section 217(d) of Pub. L. 111–226, set out as a note under section 861 of this title.

Amendment by section 502(b)(1), (2)(A) of Pub. L. 111–147 applicable to obligations issued after the date which is 2 years after Mar. 18, 2010, see section 502(f) of Pub. L. 111–147, set out as a note under section 149 of this title.

Pub. L. 111–147, title V, §541(b), Mar. 18, 2010, 124 Stat. 117, provided that: ''The amendments made by this section [amending this section] shall apply to payments made on or after the date that is 180 days after the date of the enactment of this Act [Mar. 18, 2010].''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title II, §206(c), Oct. 3, 2008, 122 Stat. 3865, provided that: ''The amendments made by

this section [amending this section] shall apply to dividends with respect to taxable years of regulated investment companies beginning after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–222 applicable to taxable years of qualified investment entities beginning after December 31, 2005, except that no amount shall be required to be withheld under section 1441, 1442, or 1445 of the Internal Revenue Code of 1986 with respect to any distribution before May 17, 2006 if such amount was not otherwise required to be withheld under any such section as in effect before such amendments, see section 505(d) of Pub. L. 109–222, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title IV, § 409(b), Oct. 22, 2004, 118 Stat. 1500, provided that: ''The amendment made by this section [amending this section] shall apply to payments made after December 31, 2004.''

Pub. L. 108–357, title IV, § 411(d), Oct. 22, 2004, 118 Stat. 1505, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 881, 897, 1441, 1442, and 2105 of this title] shall apply to dividends with respect to taxable years of regulated investment companies beginning after December 31, 2004.

''(2) ESTATE TAX TREATMENT.—The amendment made by subsection (b) [amending section 2105 of this title] shall apply to estates of decedents dying after December 31, 2004.

''(3) CERTAIN OTHER PROVISIONS.—The amendments made by subsection (c) [amending section 897 of this title] (other than paragraph (1) thereof) shall take effect after December 31, 2004.''

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1401(b)(10) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1999, with retention of certain transition rules, see section 1401(c) of Pub. L. 104–188, set out as a note under section 402 of this title.

Amendment by section 1954(b)(1) of Pub. L. 104–188 applicable to articles entered on or after Oct. 1, 1996, with provisions relating to retroactive application, see section 1953 of Pub. L. 104–188, set out as an Effective Date note under section 2461 of Title 19, Customs Duties.

EFFECTIVE DATE OF 1994 AMENDMENTS

Section 733(b) of Pub. L. 103–465 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to benefits paid after December 31, 1994, in taxable years ending after such date.''

Section 320(c) of Pub. L. 103–296 provided that: ''The amendments made by this subsection [probably means this section, which amended this section, sections 872, 1441, 3121, 3231, 3306, and 7701 of this title, and section 410 of Title 42, The Public Health and Welfare] shall take effect with the calendar quarter following the date of the enactment of this Act [Aug. 15, 1994].''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13113(d)(5) of Pub. L. 103–66 applicable to stock issued after Aug. 10, 1993, see section 13113(e) of Pub. L. 103–66, set out as a note under section 53 of this title.

Section 13237(d) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and sections 881, 1441, 1442, and 2105 of this title] shall apply to interest received after December 31, 1993; except that the amendments made by subsection (b) [amending section 2105 of this title] shall apply to the estates of decedents dying after December 31, 1993.''

EFFECTIVE DATE OF 1992 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1001(d)(2)(B) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6134(b) of Pub. L. 100–647 provided that: ''The amendments made by subsection (a) [amending this section and section 1441 of this title] shall take effect on the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 301(b)(9) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 301(c) of Pub. L. 99–514, set out as a note under section 62 of this title.

Amendment by section 1211(b)(4), (5) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1211(c) of Pub. L. 99–514, set out as an Effective Date note under section 865 of this title.

Amendment by section 1214(c)(1) of Pub. L. 99–514 applicable to payments made in taxable year of payor beginning after Dec. 31, 1986, except as otherwise provided, see section 1214(d) of Pub. L. 99–514, as amended, set out as a note under section 861 of this title.

Amendment by section 1810(d)(1)(A), (2), (3)(A), (B), (e)(2)(A) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Section 12103(c) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section and section 932 of this title] shall apply to benefits received after December 31, 1983, in taxable years ending after such date.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 42(a)(9) of Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

Section 127(g) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–647, title VI, § 6128(a), Nov. 10, 1988, 102 Stat. 3716, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 163, 864, 881, 1441, 1442, and 2105 of this title] shall apply to interest received after the date of the enactment of this Act [July 18, 1984] with respect to obligations issued after such date, in taxable years ending after such date.

''(2) SUBSECTION (d).—The amendment made by subsection (d) [amending section 2105 of this title] shall apply to obligations issued after the date of the enactment of this Act [July 18, 1984] with respect to the estates of decedents dying after such date.

''(3) SPECIAL RULE FOR CERTAIN UNITED STATES AFFILIATE OBLIGATIONS.—

''(A) IN GENERAL.—For purposes of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], payments of interest on a United States affiliate obligation to an applicable CFC in existence on or before June 22, 1984, shall be treated as payments to a resident of the country in which the applicable CFC is incorporated.

''(B) EXCEPTION.—Subparagraph (A) shall not apply to any applicable CFC which did not meet requirements which are based on the principles set forth in Revenue Rulings 69–501, 69–377, 70–645, and 73–110 as such principles are applied in Revenue Ruling 86–6, except that the maximum debt-to-equity ratio described in such Revenue Rulings shall be increased from 5-to-1 to 25-to-1.

''(C) DEFINITIONS.—

''(i) The term 'applicable CFC' has the meaning given such term by section 121(b)(2)(D) of this Act [set out as a note under section 904 of this title], except that such section shall be applied by substituting 'the date of interest payment' for 'March 31, 1984,' in clause (i) thereof.

''(ii) The term 'United States affiliate obligation' means an obligation described in section 121(b)(2)(F) of this Act [set out as a note under section 904 of this title] which was issued before June 22, 1984.''

[Section 6128(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending section 127(g) of Pub. L. 98–369, set out above] shall apply to taxable years ending after the date of the enactment of this Act [Nov. 10, 1988].'']

Section 128(d) of Pub. L. 98–369 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 163 and 881 of this title] shall apply to payments made on or after the 60th day after the date of the enactment of this Act [July 18, 1984] with respect to obligations issued after March 31, 1972.

''(2) SUBSECTION (c).—The amendment made by subsection (c) [amending section 163 of this title] shall apply to obligations issued after June 9, 1984.''

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

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 121(c)(1) of Pub. L. 98–21 applicable to benefits received after Dec. 31, 1983, in taxable years ending after such date, except for any portion of a lump-sum payment of social security benefits received after Dec. 31, 1983, if the generally applicable payment date for such portion was before Jan. 1, 1984, see section 121(g) of Pub. L. 98–21, set out as an Effective Date note under section 86 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 725(d) of Pub. L. 97–34 provided that: ''The amendments made by this section [amending this section and sections 6015, 6153, 6654, and 7701 of this title] shall apply to estimated tax for taxable years beginning after December 31, 1980.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 227(b) of Pub. L. 96–605 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to amounts received after July 1, 1979.''

Amendment by Pub. L. 96–499 applicable to dispositions after June 18, 1980, see section 1125(a) of Pub. L. 96–499, set out as an Effective Date note under section 897 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 401(b)(3) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 401(c) of Pub. L. 95–600, set out as a note under section 1201 of this title.

Amendment by section 421(e)(4) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 421(g) of Pub. L. 95–600, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1012(a)(2) of Pub. L. 94–455 applicable to taxable years ending on or after Dec. 31, 1975, see section 1012(d) of Pub. L. 94–455, set out as a note under section 6013 of this title.

Amendment by section 1901(b)(3)(I) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 313(f) of Pub. L. 92–178, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments to section 871 and 881 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] made by this section shall apply with respect to taxable years beginning after December 31, 1966. The amendments to sections 1441 and 1442 of such Code made by this section shall apply with respect to payments occurring on or after April 1, 1972.''

EFFECTIVE DATE OF 1966 AMENDMENT

Section 103(n) of Pub. L. 89–809 provided that:

''(1) The amendments made by this section (other than the amendments made by subsections (h), (i), and (k)) [amending this section and sections 1, 116, 154, 872 to 874, 875, 932, 6015, and 7701 of this title, redesignating section 877 as 878, enacting section 877 of this title, and repealing section 1493 of this title] shall apply with respect to taxable years beginning after December 31, 1966.

''(2) The amendments made by subsection (h) [amending section 1441 of this title] shall apply with respect to payments made in taxable years of recipients beginning after December 31, 1966.

''(3) The amendments made by subsection (i) [amending section 1461 of this title] shall apply with respect to payments occurring after December 31, 1966.

''(4) The amendments made by subsection (k) [amending section 3401 of this title] shall apply with respect to remuneration paid after December 31, 1966.''

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 113(b)(1) of Pub. L. 88–272 effective, except for purposes of section 21 of this title, with respect to taxable years beginning after Dec. 31, 1963, see section 131 of Pub. L. 88–272, set out as a note under section 1 of this title.

Amendment by section 201(d)(12) of Pub. L. 88–272 applicable with respect to dividends received after Dec. 31, 1964, in taxable years ending after such date, see section 201(e) of Pub. L. 88–272, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–256 applicable to taxable years beginning after Dec. 31, 1961, see section 110(h)(1) of Pub. L. 87–256, set out as a note under section 117 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–437 applicable only with respect to taxable years beginning after Dec. 31, 1959, see section 3 of Pub. L. 86–437, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 40(c) of Pub. L. 85–866 provided that: ''The amendment made by subsection (a) [amending this sec-

tion] shall apply only with respect to taxable years ending after the date of the enactment of this Act [Sept. 2, 1958]. The amendments made by subsection (b) [amending section 1441 of this title] shall take effect on the day following the date of the enactment of this Act [Sept. 2, 1958].''

Section 41(c) of Pub. L. 85–866 provided that: ''The amendments made by this section [amending this section and section 35 of this title] shall apply only with respect to taxable years beginning after December 31, 1957.''

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendments by sections 1211(b)(4), (5) and 1214(c)(1) of Pub. L. 99–514 to the extent application of such amendments would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 872. Gross income

(a) General rule

In the case of a nonresident alien individual, except where the context clearly indicates otherwise, gross income includes only—

(1) gross income which is derived from sources within the United States and which is not effectively connected with the conduct of a trade or business within the United States, and

(2) gross income which is effectively connected with the conduct of a trade or business within the United States.

(b) Exclusions

The following items shall not be included in gross income of a nonresident alien individual, and shall be exempt from taxation under this subtitle:

(1) Ships operated by certain nonresidents

Gross income derived by an individual resident of a foreign country from the international operation of a ship or ships if such foreign country grants an equivalent exemption to individual residents of the United States.

(2) Aircraft operated by certain nonresidents

Gross income derived by an individual resident of a foreign country from the international operation of aircraft if such foreign country grants an equivalent exemption to individual residents of the United States.

(3) Compensation of participants in certain exchange or training programs

Compensation paid by a foreign employer to a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), or (Q) of section 101(a)(15) of the Immigration and Nationality Act, as amended. For purposes of this paragraph, the term ''foreign employer'' means—

(A) a nonresident alien individual, foreign partnership, or foreign corporation, or

(B) an office or place of business maintained in a foreign country or in a possession of the United States by a domestic corporation, a domestic partnership, or an individual who is a citizen or resident of the United States.

(4) Certain bond income of residents of the Ryukyu Islands or the Trust Territory of the Pacific Islands

Income derived by a nonresident alien individual from a series E or series H United States savings bond, if such individual acquired such bond while a resident of the Ryukyu Islands or the Trust Territory of the Pacific Islands.

(5) Income derived from wagering transactions in certain parimutuel pools

Gross income derived by a nonresident alien individual from a legal wagering transaction initiated outside the United States in a parimutuel pool with respect to a live horse race or dog race in the United States.

(6) Certain rental income

Income to which paragraphs (1) and (2) apply shall include income which is derived from the rental on a full or bareboat basis of a ship or ships or aircraft, as the case may be.

(7) Application to different types of transportation

The Secretary may provide that this subsection be applied separately with respect to income from different types of transportation.

(8) Treatment of possessions

To the extent provided in regulations, a possession of the United States shall be treated as a foreign country for purposes of this subsection.

(Aug. 16, 1954, ch. 736, 68A Stat. 280; Pub. L. 87–256, §110(c), Sept. 21, 1961, 75 Stat. 536; Pub. L. 89–809, title I, §103(b), Nov. 13, 1966, 80 Stat. 1550; Pub. L. 99–514, title XII, §1212(c)(1), (2), Oct. 22,

1986, 100 Stat. 2538; Pub. L. 100–647, title I, § 1012(e)(2)(B), (5), (s)(2)(A), Nov. 10, 1988, 102 Stat. 3500, 3527; Pub. L. 101–239, title VII, § 7811(i)(8)(C), Dec. 19, 1989, 103 Stat. 2411; Pub. L. 103–296, title III, § 320(a)(2), Aug. 15, 1994, 108 Stat. 1535; Pub. L. 108–357, title IV, § 419(a), Oct. 22, 2004, 118 Stat. 1513.)

REFERENCES IN TEXT

Section 101 of the Immigration and Nationality Act, referred to in subsec. (b)(3), is classified to section 1101 of Title 8, Aliens and Nationality.

AMENDMENTS

2004—Subsec. (b)(5) to (8). Pub. L. 108–357 added par. (5) and redesignated former pars. (5) to (7) as (6) to (8), respectively.

1994—Subsec. (b)(3). Pub. L. 103–296 substituted ''(F), (J), or (Q)'' for ''(F) or (J)''.

1989—Subsec. (b)(7). Pub. L. 101–239 added par. (7).

1988—Subsec. (a). Pub. L. 100–647, § 1012(s)(2)(A), inserted '', except where the context clearly indicates otherwise'' after ''individual''.

Subsec. (b)(1), (2). Pub. L. 100–647, § 1012(e)(2)(B), (5), substituted ''to individual residents of the United States'' for ''to citizens of the United States and to corporations organized in the United States'' and ''international operation'' for ''operation''.

1986—Subsec. (b)(1). Pub. L. 99–514, § 1212(c)(1), added par. (1) and struck out former par. (1), ships under foreign flag, which read as follows: ''Earnings derived from the operation of a ship or ships documented under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States.''

Subsec. (b)(2). Pub. L. 99–514, § 1212(c)(1), added par. (2) and struck out former par. (2), aircraft of foreign registry, which read as follows: ''Earnings derived from the operation of aircraft registered under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States.''

Subsec. (b)(5), (6). Pub. L. 99–514, § 1212(c)(2), added pars. (5) and (6).

1966—Subsec. (a). Pub. L. 89–809, § 103(b)(1), limited the inclusion of gross income which is derived from sources within the United States to such income which is not effectively connected with the conduct of a trade or business within the United States and inserted provision including gross income without the limitation as to source which is effectively connected with the conduct of a trade or business within the United States.

Subsec. (b)(3)(B). Pub. L. 89–809, § 103(b)(2), substituted ''by a domestic corporation, a domestic partnership, or an individual who is a citizen or resident of the United States'' for ''by a domestic corporation''.

Subsec. (b)(4). Pub. L. 89–809, § 102(b)(3), added par. (4).

1961—Subsec. (b)(3). Pub. L. 87–256 added par. (3).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title IV, § 419(c), Oct. 22, 2004, 118 Stat. 1513, provided that: ''The amendments made by this section [amending this section and section 883 of this title] shall apply to wagers made after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1994 AMENDMENT

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

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1212(f) of Pub. L. 99–514, set out as a note under section 863 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

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

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–256 applicable to taxable years beginning after Dec. 31, 1961, see section 110(h)(1) of Pub. L. 87–256, set out as a note under section 117 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 1212(c)(1), (2) of Pub. L. 99–514 to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

§ 873. Deductions

(a) General rule

In the case of a nonresident alien individual, the deductions shall be allowed only for purposes of section 871(b) and (except as provided by subsection (b)) only if and to the extent that they are connected with income which is effectively connected with the conduct of a trade or business within the United States; and the proper apportionment and allocation of the deductions for this purpose shall be determined as provided in regulations prescribed by the Secretary.

(b) Exceptions

The following deductions shall be allowed whether or not they are connected with income which is effectively connected with the conduct of a trade or business within the United States:

(1) Losses

The deduction allowed by section 165 for casualty or theft losses described in paragraph (2) or (3) of section 165(c), but only if the loss is of property located within the United States.

(2) Charitable contributions

The deduction for charitable contributions and gifts allowed by section 170.

(3) Personal exemption

The deduction for personal exemptions allowed by section 151, except that only one ex-

emption shall be allowed under section 151 unless the taxpayer is a resident of a contiguous country or is a national of the United States.

(c) Cross reference

For rule that certain foreign taxes are not to be taken into account in determining deduction or credit, see section 906(b)(1).

(Aug. 16, 1954, ch. 736, 68A Stat. 280; Pub. L. 89–809, title I, §103(c)(1), Nov. 13, 1966, 80 Stat. 1550; Pub. L. 92–580, §1(b), Oct. 27, 1972, 86 Stat. 1276; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–30, title I, §101(d)(11), May 23, 1977, 91 Stat. 134; Pub. L. 98–369, div. A, title VII, §711(c)(2)(A)(iv), July 18, 1984, 98 Stat. 945; Pub. L. 105–277, div. J, title IV, §4004(b)(3), Oct. 21, 1998, 112 Stat. 2681–911.)

AMENDMENTS

1998—Subsec. (b)(1). Pub. L. 105–277 amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''The deduction for losses allowed by section 165(c)(3), but only if the loss is of property located within the United States.''

1984—Subsec. (b)(1). Pub. L. 98–369 substituted ''for losses'' for '', for losses of property not connected with the trade or business if arising from certain casualties or theft,''.

1977—Subsec. (c). Pub. L. 95–30 struck out par. (1) which made a cross reference to section 142(b)(1) for disallowance of the standard deduction and struck out ''(2)'' at beginning of single remaining cross reference.

1976—Subsec. (a). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1972—Subsec. (b)(3). Pub. L. 92–580 substituted exception that only one exemption be allowed under section 151 unless the taxpayer is a resident of a contiguous country or is a national of the United States, for exception that in the case of a non-resident alien individual who is not a resident of a contiguous country only one exception be allowed under section 151.

1966—Pub. L. 89–809 amended section generally, substituting ''connected with income which is effectively connected with the conduct of a trade or business within the United States'' for ''connected with income from sources within the United States'' in subsec. (a), striking out provisions relating to the deduction of losses not connected with a trade or business but incurred in transactions entered into for profit in subsec. (b), making the casualty loss deduction available even if the property giving rise to the loss is not effectively connected with the conduct of a trade or business in the United States if the property is located in this country, making the charitable contribution deduction available even though not related to the trade or business, and adding subsec. (c)(2) making a cross reference to section 906(b)(1) for rule that certain foreign taxes are not to be taken into account in determining deduction or credit.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 applicable to taxable years beginning after Dec. 31, 1983, see section 4004(c)(1) of Pub. L. 105–277, set out as a note under section 172 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 711(c)(2)(A)(v) of Pub. L. 98–369, set out as a note under section 165 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–580 applicable to taxable years beginning after Dec. 31, 1971, see section 1(c) of Pub. L. 92–580, set out as a note under section 152 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

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

§ 874. Allowance of deductions and credits

(a) Return prerequisite to allowance

A nonresident alien individual shall receive the benefit of the deductions and credits allowed to him in this subtitle only by filing or causing to be filed with the Secretary a true and accurate return, in the manner prescribed in subtitle F (sec. 6001 and following, relating to procedure and administration), including therein all the information which the Secretary may deem necessary for the calculation of such deductions and credits. This subsection shall not be construed to deny the credits provided by sections 31 and 33 for tax withheld at source or the credit provided by section 34 for certain uses of gasoline and special fuels.

(b) Tax withheld at source

The benefit of the deduction for exemptions under section 151 may, in the discretion of the Secretary, and under regulations prescribed by the Secretary, be received by a non-resident alien individual entitled thereto, by filing a claim therefor with the withholding agent.

(c) Foreign tax credit

Except as provided in section 906, a nonresident alien individual shall not be allowed the credits against the tax for taxes of foreign countries and possessions of the United States allowed by section 901.

(Aug. 16, 1954, ch. 736, 68A Stat. 281; Pub. L. 89–44, title VIII, §809(d)(3), June 21, 1965, 79 Stat. 167; Pub. L. 89–809, title I, §§103(d), 106(a)(3), Nov. 13, 1966, 80 Stat. 1551, 1569; Pub. L. 91–258, title II, §207(d)(1), May 21, 1970, 84 Stat. 248; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–424, title V, §515(b)(6)(E), Jan. 6, 1983, 96 Stat. 2182; Pub. L. 98–369, div. A, title IV, §474(r)(19), July 18, 1984, 98 Stat. 843.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–369 substituted reference to section ''33'' for ''32'' and ''34'' for ''39''.

1983—Subsec. (a). Pub. L. 97–424 substituted ''and special fuels'' for '', special fuels, and lubricating oil''.

1976—Subsecs. (a), (b). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1970—Subsec. (a). Pub. L. 91–258 included provision against construction of subsec. (a) to deny credit provided by section 39 for certain uses of special fuels.

1966—Subsec. (a). Pub. L. 89–809, §103(d), struck out ''of his total income received from all sources in the United States'' after ''true and accurate return''.

Subsec. (c). Pub. L. 89–809, §106(a)(3), substituted ''Foreign tax credit'' for ''Foreign tax credit not allowed'' in heading and inserted reference to an exception provided in section 906.

1965—Subsec. (a). Pub. L. 89–44 inserted ''or the credit provided by section 39 for certain uses of gasoline and lubricating oil''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–424 applicable with respect to articles sold after Jan. 6, 1983, see section 515(c) of Pub. L. 97–424, set out as a note under section 34 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–258 effective July 1, 1970, see section 211(a) of Pub. L. 91–258, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

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

Section 106(a)(6) of Pub. L. 89–809, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this subsection [enacting section 906 of this title and amending this section and section 901 of this title] shall apply with respect to taxable years beginning after Dec. 31, 1966. In applying section 904 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] with respect to section 906 of such Code, no amount may be carried from or to any taxable year beginning before Jan. 1, 1967, and no such year shall be taken into account.''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 applicable to taxable years beginning on or after July 1, 1965, see section 809(f) of Pub. L. 89–44, set out as a note under section 6420 of this title.

§ 875. Partnerships; beneficiaries of estates and trusts

For purposes of this subtitle—

(1) a nonresident alien individual or foreign corporation shall be considered as being engaged in a trade or business within the United States if the partnership of which such individual or corporation is a member is so engaged, and

(2) a nonresident alien individual or foreign corporation which is a beneficiary of an estate or trust which is engaged in any trade or business within the United States shall be treated as being engaged in such trade or business within the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 281; Pub. L. 89–809, title I, § 103(e)(1), Nov. 13, 1966, 80 Stat. 1551.)

AMENDMENTS

1966—Pub. L. 89–809 designated existing provisions as par. (1), substituted reference to nonresident alien individuals or foreign corporations for reference simply to nonresident alien individuals, and added par. (2).

EFFECTIVE DATE OF 1966 AMENDMENT

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

§ 876. Alien residents of Puerto Rico, Guam, American Samoa, or the Northern Mariana Islands

(a) General rule

This subpart shall not apply to any alien individual who is a bona fide resident of Puerto Rico, Guam, American Samoa, or the Northern Mariana Islands during the entire taxable year and such alien shall be subject to the tax imposed by section 1.

(b) Cross references

For exclusion from gross income of income derived from sources within—

(1) Guam, American Samoa, and the Northern Mariana Islands, see section 931, and

(2) Puerto Rico, see section 933.

(Aug. 16, 1954, ch. 736, 68A Stat. 281; Pub. L. 99–514, title XII, § 1272(b), Oct. 22, 1986, 100 Stat. 2593.)

AMENDMENTS

1986—Pub. L. 99–514, § 1272(b), inserted '', Guam, American Samoa, or the Northern Mariana Islands'' in section catchline.

Subsec. (a). Pub. L. 99–514, § 1272(b), amended subsec. (a) generally, substituting ''General rule'' for ''No application to certain alien residents of Puerto Rico'' in heading and inserting references to residents of Guam, American Samoa, and the Northern Mariana Islands in text.

Subsec. (b). Pub. L. 99–514, § 1272(b), amended subsec. (b) generally, inserting references to Guam, American Samoa, and the Northern Mariana Islands.

EFFECTIVE DATE OF 1986 AMENDMENT

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

§ 877. Expatriation to avoid tax

(a) Treatment of expatriates

(1) In general

Every nonresident alien individual to whom this section applies and who, within the 10-year period immediately preceding the close of the taxable year, lost United States citizenship shall be taxable for such taxable year in the manner provided in subsection (b) if the tax imposed pursuant to such subsection (after any reduction in such tax under the last sentence of such subsection) exceeds the tax which, without regard to this section, is imposed pursuant to section 871.

(2) Individuals subject to this section

This section shall apply to any individual if—

(A) the average annual net income tax (as defined in section 38(c)(1)) of such individual for the period of 5 taxable years ending before the date of the loss of United States citizenship is greater than $124,000,

(B) the net worth of the individual as of such date is $2,000,000 or more, or

(C) such individual fails to certify under penalty of perjury that he has met the requirements of this title for the 5 preceding taxable years or fails to submit such evidence of such compliance as the Secretary may require.

In the case of the loss of United States citizenship in any calendar year after 2004, such $124,000 amount shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting ''2003'' for ''1992'' in subparagraph (B) thereof. Any increase under the preceding sentence shall be rounded to the nearest multiple of $1,000.

(b) Alternative tax

A nonresident alien individual described in subsection (a) shall be taxable for the taxable year as provided in section 1 or 55, except that—

(1) the gross income shall include only the gross income described in section 872(a) (as modified by subsection (d) of this section), and

(2) the deductions shall be allowed if and to the extent that they are connected with the gross income included under this section, except that the capital loss carryover provided by section 1212(b) shall not be allowed; and the proper allocation and apportionment of the deductions for this purpose shall be determined as provided under regulations prescribed by the Secretary.

For purposes of paragraph (2), the deductions allowed by section 873(b) shall be allowed; and the deduction (for losses not connected with the trade or business if incurred in transactions entered into for profit) allowed by section 165(c)(2) shall be allowed, but only if the profit, if such transaction had resulted in a profit, would be included in gross income under this section. The tax imposed solely by reason of this section shall be reduced (but not below zero) by the amount of any income, war profits, and excess profits taxes (within the meaning of section 903) paid to any foreign country or possession of the United States on any income of the taxpayer on which tax is imposed solely by reason of this section.

(c) Exceptions

(1) In general

Subparagraphs (A) and (B) of subsection (a)(2) shall not apply to an individual described in paragraph (2) or (3).

(2) Dual citizens

(A) In general

An individual is described in this paragraph if—

(i) the individual became at birth a citizen of the United States and a citizen of another country and continues to be a citizen of such other country, and

(ii) the individual has had no substantial contacts with the United States.

(B) Substantial contacts

An individual shall be treated as having no substantial contacts with the United States only if the individual—

(i) was never a resident of the United States (as defined in section 7701(b)),

(ii) has never held a United States passport, and

(iii) was not present in the United States for more than 30 days during any calendar year which is 1 of the 10 calendar years preceding the individual's loss of United States citizenship.

(3) Certain minors

An individual is described in this paragraph if—

(A) the individual became at birth a citizen of the United States,

(B) neither parent of such individual was a citizen of the United States at the time of such birth,

(C) the individual's loss of United States citizenship occurs before such individual attains age 18½, and

(D) the individual was not present in the United States for more than 30 days during any calendar year which is 1 of the 10 calendar years preceding the individual's loss of United States citizenship.

(d) Special rules for source, etc.

For purposes of subsection (b)—

(1) Source rules

The following items of gross income shall be treated as income from sources within the United States:

(A) Sale of property

Gains on the sale or exchange of property (other than stock or debt obligations) located in the United States.

(B) Stock or debt obligations

Gains on the sale or exchange of stock issued by a domestic corporation or debt obligations of United States persons or of the United States, a State or political subdivision thereof, or the District of Columbia.

(C) Income or gain derived from controlled foreign corporation

Any income or gain derived from stock in a foreign corporation but only—

(i) if the individual losing United States citizenship owned (within the meaning of section 958(a)), or is considered as owning (by applying the ownership rules of section 958(b)), at any time during the 2-year period ending on the date of the loss of United States citizenship, more than 50 percent of—

(I) the total combined voting power of all classes of stock entitled to vote of such corporation, or

(II) the total value of the stock of such corporation, and

(ii) to the extent such income or gain does not exceed the earnings and profits attributable to such stock which were earned or accumulated before the loss of citizenship and during periods that the ownership requirements of clause (i) are met.

(2) Gain recognition on certain exchanges

(A) In general

In the case of any exchange of property to which this paragraph applies, notwithstanding any other provision of this title, such property shall be treated as sold for its fair market value on the date of such exchange,

and any gain shall be recognized for the taxable year which includes such date.

(B) Exchanges to which paragraph applies

This paragraph shall apply to any exchange during the 10-year period beginning on the date the individual loses United States citizenship if—

(i) gain would not (but for this paragraph) be recognized on such exchange in whole or in part for purposes of this subtitle,

(ii) income derived from such property was from sources within the United States (or, if no income was so derived, would have been from such sources), and

(iii) income derived from the property acquired in the exchange would be from sources outside the United States.

(C) Exception

Subparagraph (A) shall not apply if the individual enters into an agreement with the Secretary which specifies that any income or gain derived from the property acquired in the exchange (or any other property which has a basis determined in whole or part by reference to such property) during such 10-year period shall be treated as from sources within the United States. If the property transferred in the exchange is disposed of by the person acquiring such property, such agreement shall terminate and any gain which was not recognized by reason of such agreement shall be recognized as of the date of such disposition.

(D) Secretary may extend period

To the extent provided in regulations prescribed by the Secretary, subparagraph (B) shall be applied by substituting the 15-year period beginning 5 years before the loss of United States citizenship for the 10-year period referred to therein. In the case of any exchange occurring during such 5 years, any gain recognized under this subparagraph shall be recognized immediately after such loss of citizenship.

(E) Secretary may require recognition of gain in certain cases

To the extent provided in regulations prescribed by the Secretary—

(i) the removal of appreciated tangible personal property from the United States, and

(ii) any other occurrence which (without recognition of gain) results in a change in the source of the income or gain from property from sources within the United States to sources outside the United States,

shall be treated as an exchange to which this paragraph applies.

(3) Substantial diminishing of risks of ownership

For purposes of determining whether this section applies to any gain on the sale or exchange of any property, the running of the 10-year period described in subsection (a) and the period applicable under paragraph (2) shall be suspended for any period during which the individual's risk of loss with respect to the property is substantially diminished by—

(A) the holding of a put with respect to such property (or similar property),

(B) the holding by another person of a right to acquire the property, or

(C) a short sale or any other transaction.

(4) Treatment of property contributed to controlled foreign corporations

(A) In general

If—

(i) an individual losing United States citizenship contributes property during the 10-year period beginning on the date the individual loses United States citizenship to any corporation which, at the time of the contribution, is described in subparagraph (B), and

(ii) income derived from such property immediately before such contribution was from sources within the United States (or, if no income was so derived, would have been from such sources),

any income or gain on such property (or any other property which has a basis determined in whole or part by reference to such property) received or accrued by the corporation shall be treated as received or accrued directly by such individual and not by such corporation. The preceding sentence shall not apply to the extent the property has been treated under subparagraph (C) as having been sold by such corporation.

(B) Corporation described

A corporation is described in this subparagraph with respect to an individual if, were such individual a United States citizen—

(i) such corporation would be a controlled foreign corporation (as defined in [1] 957), and

(ii) such individual would be a United States shareholder (as defined in section 951(b)) with respect to such corporation.

(C) Disposition of stock in corporation

If stock in the corporation referred to in subparagraph (A) (or any other stock which has a basis determined in whole or part by reference to such stock) is disposed of during the 10-year period referred to in subsection (a) and while the property referred to in subparagraph (A) is held by such corporation, a pro rata share of such property (determined on the basis of the value of such stock) shall be treated as sold by the corporation immediately before such disposition.

(D) Anti-abuse rules

The Secretary shall prescribe such regulations as may be necessary to prevent the avoidance of the purposes of this paragraph, including where—

(i) the property is sold to the corporation, and

(ii) the property taken into account under subparagraph (A) is sold by the corporation.

[1] So in original. Probably should be followed by ''section''.

(E) Information reporting

The Secretary shall require such information reporting as is necessary to carry out the purposes of this paragraph.

(e) Comparable treatment of lawful permanent residents who cease to be taxed as residents

(1) In general

Any long-term resident of the United States who ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)) shall be treated for purposes of this section and sections 2107, 2501, and 6039G in the same manner as if such resident were a citizen of the United States who lost United States citizenship on the date of such cessation or commencement.

(2) Long-term resident

For purposes of this subsection, the term ''long-term resident'' means any individual (other than a citizen of the United States) who is a lawful permanent resident of the United States in at least 8 taxable years during the period of 15 taxable years ending with the taxable year during which the event described in subparagraph (A) or (B) of paragraph (1) occurs. For purposes of the preceding sentence, an individual shall not be treated as a lawful permanent resident for any taxable year if such individual is treated as a resident of a foreign country for the taxable year under the provisions of a tax treaty between the United States and the foreign country and does not waive the benefits of such treaty applicable to residents of the foreign country.

(3) Special rules

(A) Exceptions not to apply

Subsection (c) shall not apply to an individual who is treated as provided in paragraph (1).

(B) Step-up in basis

Solely for purposes of determining any tax imposed by reason of this subsection, property which was held by the long-term resident on the date the individual first became a resident of the United States shall be treated as having a basis on such date of not less than the fair market value of such property on such date. The preceding sentence shall not apply if the individual elects not to have such sentence apply. Such an election, once made, shall be irrevocable.

(4) Authority to exempt individuals

This subsection shall not apply to an individual who is described in a category of individuals prescribed by regulation by the Secretary.

(5) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out this subsection, including regulations providing for the application of this subsection in cases where an alien individual becomes a resident of the United States during the 10-year period after being treated as provided in paragraph (1).

(f) Burden of proof

If the Secretary establishes that it is reasonable to believe that an individual's loss of United States citizenship would, but for this section, result in a substantial reduction for the taxable year in the taxes on his probable income for such year, the burden of proving for such taxable year that such loss of citizenship did not have for one of its principal purposes the avoidance of taxes under this subtitle or subtitle B shall be on such individual.

(g) Physical presence

(1) In general

This section shall not apply to any individual to whom this section would otherwise apply for any taxable year during the 10-year period referred to in subsection (a) in which such individual is physically present in the United States at any time on more than 30 days in the calendar year ending in such taxable year, and such individual shall be treated for purposes of this title as a citizen or resident of the United States, as the case may be, for such taxable year.

(2) Exception

(A) In general

In the case of an individual described in any of the following subparagraphs of this paragraph, a day of physical presence in the United States shall be disregarded if the individual is performing services in the United States on such day for an employer. The preceding sentence shall not apply if—

(i) such employer is related (within the meaning of section 267 and 707) to such individual, or

(ii) such employer fails to meet such requirements as the Secretary may prescribe by regulations to prevent the avoidance of the purposes of this paragraph.

Not more than 30 days during any calendar year may be disregarded under this subparagraph.

(B) Individuals with ties to other countries

An individual is described in this subparagraph if—

(i) the individual becomes (not later than the close of a reasonable period after loss of United States citizenship or termination of residency) a citizen or resident of the country in which—

(I) such individual was born,

(II) if such individual is married, such individual's spouse was born, or

(III) either of such individual's parents were born, and

(ii) the individual becomes fully liable for income tax in such country.

(C) Minimal prior physical presence in the United States

An individual is described in this subparagraph if, for each year in the 10-year period ending on the date of loss of United States citizenship or termination of residency, the individual was physically present in the United States for 30 days or less. The rule of section 7701(b)(3)(D) shall apply for purposes of this subparagraph.

(h) Termination

This section shall not apply to any individual whose expatriation date (as defined in section

877A(g)(3)) is on or after the date of the enactment of this subsection.

(Added Pub. L. 89–809, title I, §103(f)(1), Nov. 13, 1966, 80 Stat. 1551; amended Pub. L. 93–406, title II, §2005(c)(8), Sept. 2, 1974, 88 Stat. 992; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–600, title IV, §421(e)(5), Nov. 6, 1978, 92 Stat. 2876; Pub. L. 96–222, title I, §104(a)(1), (4)(H)(v), Apr. 1, 1980, 94 Stat. 214, 217; Pub. L. 99–514, title XII, §1243(a), Oct. 22, 1986, 100 Stat. 2580; Pub. L. 102–318, title V, §521(b)(31), July 3, 1992, 106 Stat. 312; Pub. L. 104–188, title I, §1401(b)(11), Aug. 20, 1996, 110 Stat. 1789; Pub. L. 104–191, title V, §511(a)–(d), (f)(1), Aug. 21, 1996, 110 Stat. 2093–2098; Pub. L. 105–34, title XVI, §1602(g)(1)–(4), (h)(3), Aug. 5, 1997, 111 Stat. 1095, 1096; Pub. L. 108–357, title VIII, §804(a)(1), (2), (c), Oct. 22, 2004, 118 Stat. 1569, 1570; Pub. L. 109–135, title IV, §403(v)(1), Dec. 21, 2005, 119 Stat. 2628; Pub. L. 110–245, title III, §301(c)(2)(A), (d), June 17, 2008, 122 Stat. 1646.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (h), is the date of enactment of Pub. L. 110–245, which was approved June 17, 2008.

PRIOR PROVISIONS

A prior section 877 was renumbered section 878 of this title.

AMENDMENTS

2008—Subsec. (e)(1). Pub. L. 110–245, §301(c)(2)(A), amended par. (1) generally. Prior to amendment, text read as follows: ''Any long-term resident of the United States who—

''(A) ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)), or

''(B) commences to be treated as a resident of a foreign country under the provisions of a tax treaty between the United States and the foreign country and who does not waive the benefits of such treaty applicable to residents of the foreign country,

shall be treated for purposes of this section and sections 2107, 2501, and 6039G in the same manner as if such resident were a citizen of the United States who lost United States citizenship on the date of such cessation or commencement.''

Subsec. (h). Pub. L. 110–245, §301(d), added subsec. (h).

2005—Subsec. (g)(2)(C). Pub. L. 109–135 substituted ''section 7701(b)(3)(D)'' for ''section 7701(b)(3)(D)(ii)''.

2004—Subsec. (a). Pub. L. 108–357, §804(a)(1), reenacted heading without change and amended text of subsec. (a) generally. Prior to amendment, subsec. (a) stated general rule on taxation of nonresident alien individuals who lost United States citizenship and provided that an individual would be treated as having a tax avoidance purpose if the average annual net income tax was greater than $100,000 or the net worth of the individual was $500,000 or more.

Subsec. (c). Pub. L. 108–357, §804(a)(2), amended heading and text of subsec. (c) generally, substituting provisions setting forth exceptions for dual citizens and certain minors for provisions relating to inapplicability of presumption of tax avoidance to dual citizens, long-term foreign residents, minors who renounced citizenship upon reaching age of majority, and individuals specified in regulations.

Subsec. (g). Pub. L. 108–357, §804(c), added subsec. (g).

1997—Subsec. (d)(2)(B). Pub. L. 105–34, §1602(g)(1), substituted ''the 10-year period beginning on the date the individual loses United States citizenship'' for ''the 10-year period described in subsection (a)'' in introductory provisions.

Subsec. (d)(2)(D). Pub. L. 105–34, §1602(g)(2), inserted at end ''In the case of any exchange occurring during such 5 years, any gain recognized under this subparagraph shall be recognized immediately after such loss of citizenship.''

Subsec. (d)(3). Pub. L. 105–34, §1602(g)(3), inserted ''and the period applicable under paragraph (2)'' after ''subsection (a)'' in introductory provisions.

Subsec. (d)(4)(A). Pub. L. 105–34, §1602(g)(4)(C), struck out ''during the 10-year period referred to in subsection (a),'' before ''any income or gain'' in concluding provisions.

Subsec. (d)(4)(A)(i). Pub. L. 105–34, §1602(g)(4)(A), inserted ''during the 10-year period beginning on the date the individual loses United States citizenship'' after ''contributes property''.

Subsec. (d)(4)(A)(ii). Pub. L. 105–34, §1602(g)(4)(B), inserted ''immediately before such contribution'' after ''from such property''.

Subsec. (e)(1). Pub. L. 105–34, §1602(h)(3), substituted ''6039G'' for ''6039F'' in concluding provisions.

1996—Subsec. (a). Pub. L. 104–191, §511(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows:

''(a) IN GENERAL.—Every nonresident alien individual who at any time after March 8, 1965, and within the 10-year period immediately preceding the close of the taxable year lost United States citizenship, unless such loss did not have for one of its principal purposes the avoidance of taxes under this subtitle or subtitle B, shall be taxable for such taxable year in the manner provided in subsection (b) if the tax imposed pursuant to such subsection exceeds the tax which, without regard to this section, is imposed pursuant to section 871.''

Subsec. (a)(1). Pub. L. 104–191, §511(d)(2), inserted ''(after any reduction in such tax under the last sentence of such subsection)'' after ''such subsection''.

Subsec. (b). Pub. L. 104–191, §511(d)(1), inserted at end ''The tax imposed solely by reason of this section shall be reduced (but not below zero) by the amount of any income, war profits, and excess profits taxes (within the meaning of section 903) paid to any foreign country or possession of the United States on any income of the taxpayer on which tax is imposed solely by reason of this section.''

Pub. L. 104–188 substituted ''section 1 or 55'' for ''section 1, 55, or 402(d)(1)''.

Subsec. (b)(1). Pub. L. 104–191, §511(b)(2), substituted ''subsection (d)'' for ''subsection (c)''.

Subsec. (c). Pub. L. 104–191, §511(b)(1), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 104–191, §511(c), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows:

''(d) SPECIAL RULES OF SOURCE.—For purposes of subsection (b), the following items of gross income shall be treated as income from sources within the United States:

''(1) SALE OF PROPERTY.—Gains on the sale or exchange of property (other than stock or debt obligations) located in the United States.

''(2) STOCK OR DEBT OBLIGATIONS.—Gains on the sale or exchange of stock issued by a domestic corporation or debt obligations of United States persons or of the United States, a State or political subdivision thereof, or the District of Columbia.

For purposes of this section, gain on the sale or exchange of property which has a basis determined in whole or in part by reference to property described in paragraph (1) or (2) shall be treated as gain described in paragraph (1) or (2).''

Pub. L. 104–191, §511(b)(1), redesignated subsec. (c) as (d) and struck out former subsec. (d) which read as follows:

''(d) EXCEPTION FOR LOSS OF CITIZENSHIP FOR CERTAIN CAUSES.—Subsection (a) shall not apply to a nonresident alien individual whose loss of United States citizenship resulted from the application of section 301(b), 350, or 355 of the Immigration and Nationality Act, as amended (8 U.S.C. 1401(b), 1482, or 1487).''

Subsecs. (e), (f). Pub. L. 104–191, § 511(f)(1), added subsec. (e) and redesignated former subsec. (e) as (f).

1992—Subsec. (b). Pub. L. 102–318 substituted ''402(d)(1)'' for ''402(e)(1)''.

1986—Subsec. (c). Pub. L. 99–514 inserted at end ''For purposes of this section, gain on the sale or exchange of property which has a basis determined in whole or in part by reference to property described in paragraph (1) or (2) shall be treated as gain described in paragraph (1) or (2).''

1980—Subsec. (b). Pub. L. 96–222 substituted ''55, or 402(e)(1)'' for ''section 55, 402(e)(1), or section 1201(b)''.

1978—Subsec. (b). Pub. L. 95–600 substituted ''section 1, section 55,'' for ''section 1''.

1976—Subsecs. (b)(2), (e). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1974—Subsec. (b). Pub. L. 93–406 inserted reference to section 402(e)(1).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–245 applicable to any individual whose expatriation date is on or after June 17, 2008, see section 301(g)(1) of Pub. L. 110–245, set out as an Effective Date note under section 2801 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, § 804(f), Oct. 22, 2004, 118 Stat. 1573, provided that: ''The amendments made by this section [amending this section and sections 2107, 2501, 6039G, and 7701 of this title] shall apply to individuals who expatriate after June 3, 2004.''

EFFECTIVE DATE OF 1997 AMENDMENT

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

EFFECTIVE DATE OF 1996 AMENDMENT

Section 511(g) of Pub. L. 104–191 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 2107 and 2501 of this title] shall apply to—

''(A) individuals losing United States citizenship (within the meaning of section 877 of the Internal Revenue Code of 1986) on or after February 6, 1995, and

''(B) long-term residents of the United States with respect to whom an event described in [former] subparagraph (A) or (B) of section 877(e)(1) of such Code occurs on or after February 6, 1995.

''(2) RULING REQUESTS.—In no event shall the 1-year period referred to in section 877(c)(1)(B) of such Code, as amended by this section, expire before the date which is 90 days after the date of the enactment of this Act [Aug. 21, 1996].

''(3) SPECIAL RULE.—

''(A) IN GENERAL.—In the case of an individual who performed an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)–(4)) before February 6, 1995, but who did not, on or before such date, furnish to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of such act, the amendments made by this section and section 512 [enacting section 6039F of this title] shall apply to such individual except that the 10-year period described in section 877(a) of such Code shall not expire before the end of the 10-year period beginning on the date such statement is so furnished.

''(B) EXCEPTION.—Subparagraph (A) shall not apply if the individual establishes to the satisfaction of the Secretary of the Treasury that such loss of United States citizenship occurred before February 6, 1994.''

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1999, with retention of certain transition rules, see section 1401(c) of Pub. L. 104–188, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1243(b) of Pub. L. 99–514 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to sales or exchanges of property received in exchanges after September 25, 1985.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 421(g) of Pub. L. 95–600, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

EFFECTIVE DATE

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

§ 877A. Tax responsibilities of expatriation

(a) General rules

For purposes of this subtitle—

(1) Mark to market

All property of a covered expatriate shall be treated as sold on the day before the expatriation date for its fair market value.

(2) Recognition of gain or loss

In the case of any sale under paragraph (1)—

(A) notwithstanding any other provision of this title, any gain arising from such sale shall be taken into account for the taxable year of the sale, and

(B) any loss arising from such sale shall be taken into account for the taxable year of the sale to the extent otherwise provided by this title, except that section 1091 shall not apply to any such loss.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence, determined without regard to paragraph (3).

(3) Exclusion for certain gain

(A) In general

The amount which would (but for this paragraph) be includible in the gross income of any individual by reason of paragraph (1) shall be reduced (but not below zero) by $600,000.

(B) Adjustment for inflation

(i) In general

In the case of any taxable year beginning in a calendar year after 2008, the dollar amount in subparagraph (A) shall be increased by an amount equal to—

(I) such dollar amount, multiplied by

(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting ''calendar year 2007'' for ''calendar year 1992'' in subparagraph (B) thereof.

(ii) Rounding

If any amount as adjusted under clause (i) is not a multiple of $1,000, such amount shall be rounded to the nearest multiple of $1,000.

(b) Election to defer tax

(1) In general

If the taxpayer elects the application of this subsection with respect to any property treated as sold by reason of subsection (a), the time for payment of the additional tax attributable to such property shall be extended until the due date of the return for the taxable year in which such property is disposed of (or, in the case of property disposed of in a transaction in which gain is not recognized in whole or in part, until such other date as the Secretary may prescribe).

(2) Determination of tax with respect to property

For purposes of paragraph (1), the additional tax attributable to any property is an amount which bears the same ratio to the additional tax imposed by this chapter for the taxable year solely by reason of subsection (a) as the gain taken into account under subsection (a) with respect to such property bears to the total gain taken into account under subsection (a) with respect to all property to which subsection (a) applies.

(3) Termination of extension

The due date for payment of tax may not be extended under this subsection later than the due date for the return of tax imposed by this chapter for the taxable year which includes the date of death of the expatriate (or, if earlier, the time that the security provided with respect to the property fails to meet the requirements of paragraph (4), unless the taxpayer corrects such failure within the time specified by the Secretary).

(4) Security

(A) In general

No election may be made under paragraph (1) with respect to any property unless adequate security is provided with respect to such property.

(B) Adequate security

For purposes of subparagraph (A), security with respect to any property shall be treated as adequate security if—

(i) it is a bond which is furnished to, and accepted by, the Secretary, which is conditioned on the payment of tax (and interest thereon), and which meets the requirements of section 6325, or

(ii) it is another form of security for such payment (including letters of credit) that meets such requirements as the Secretary may prescribe.

(5) Waiver of certain rights

No election may be made under paragraph (1) unless the taxpayer makes an irrevocable waiver of any right under any treaty of the United States which would preclude assessment or collection of any tax imposed by reason of this section.

(6) Elections

An election under paragraph (1) shall only apply to property described in the election and, once made, is irrevocable.

(7) Interest

For purposes of section 6601, the last date for the payment of tax shall be determined without regard to the election under this subsection.

(c) Exception for certain property

Subsection (a) shall not apply to—

(1) any deferred compensation item (as defined in subsection (d)(4)),

(2) any specified tax deferred account (as defined in subsection (e)(2)), and

(3) any interest in a nongrantor trust (as defined in subsection (f)(3)).

(d) Treatment of deferred compensation items

(1) Withholding on eligible deferred compensation items

(A) In general

In the case of any eligible deferred compensation item, the payor shall deduct and

withhold from any taxable payment to a covered expatriate with respect to such item a tax equal to 30 percent thereof.

(B) Taxable payment

For purposes of subparagraph (A), the term ''taxable payment'' means with respect to a covered expatriate any payment to the extent it would be includible in the gross income of the covered expatriate if such expatriate continued to be subject to tax as a citizen or resident of the United States. A deferred compensation item shall be taken into account as a payment under the preceding sentence when such item would be so includible.

(2) Other deferred compensation items

In the case of any deferred compensation item which is not an eligible deferred compensation item—

(A)(i) with respect to any deferred compensation item to which clause (ii) does not apply, an amount equal to the present value of the covered expatriate's accrued benefit shall be treated as having been received by such individual on the day before the expatriation date as a distribution under the plan, and

(ii) with respect to any deferred compensation item referred to in paragraph (4)(D), the rights of the covered expatriate to such item shall be treated as becoming transferable and not subject to a substantial risk of forfeiture on the day before the expatriation date,

(B) no early distribution tax shall apply by reason of such treatment, and

(C) appropriate adjustments shall be made to subsequent distributions from the plan to reflect such treatment.

(3) Eligible deferred compensation items

For purposes of this subsection, the term ''eligible deferred compensation item'' means any deferred compensation item with respect to which—

(A) the payor of such item is—

(i) a United States person, or

(ii) a person who is not a United States person but who elects to be treated as a United States person for purposes of paragraph (1) and meets such requirements as the Secretary may provide to ensure that the payor will meet the requirements of paragraph (1), and

(B) the covered expatriate—

(i) notifies the payor of his status as a covered expatriate, and

(ii) makes an irrevocable waiver of any right to claim any reduction under any treaty with the United States in withholding on such item.

(4) Deferred compensation item

For purposes of this subsection, the term ''deferred compensation item'' means—

(A) any interest in a plan or arrangement described in section 219(g)(5),

(B) any interest in a foreign pension plan or similar retirement arrangement or program,

(C) any item of deferred compensation, and

(D) any property, or right to property, which the individual is entitled to receive in connection with the performance of services to the extent not previously taken into account under section 83 or in accordance with section 83.

(5) Exception

Paragraphs (1) and (2) shall not apply to any deferred compensation item to the extent attributable to services performed outside the United States while the covered expatriate was not a citizen or resident of the United States.

(6) Special rules

(A) Application of withholding rules

Rules similar to the rules of subchapter B of chapter 3 shall apply for purposes of this subsection.

(B) Application of tax

Any item subject to the withholding tax imposed under paragraph (1) shall be subject to tax under section 871.

(C) Coordination with other withholding requirements

Any item subject to withholding under paragraph (1) shall not be subject to withholding under section 1441 or chapter 24.

(e) Treatment of specified tax deferred accounts

(1) Account treated as distributed

In the case of any interest in a specified tax deferred account held by a covered expatriate on the day before the expatriation date—

(A) the covered expatriate shall be treated as receiving a distribution of his entire interest in such account on the day before the expatriation date,

(B) no early distribution tax shall apply by reason of such treatment, and

(C) appropriate adjustments shall be made to subsequent distributions from the account to reflect such treatment.

(2) Specified tax deferred account

For purposes of paragraph (1), the term ''specified tax deferred account'' means an individual retirement plan (as defined in section 7701(a)(37)) other than any arrangement described in subsection (k) or (p) of section 408, a qualified tuition program (as defined in section 529), a Coverdell education savings account (as defined in section 530), a health savings account (as defined in section 223), and an Archer MSA (as defined in section 220).

(f) Special rules for nongrantor trusts

(1) In general

In the case of a distribution (directly or indirectly) of any property from a nongrantor trust to a covered expatriate—

(A) the trustee shall deduct and withhold from such distribution an amount equal to 30 percent of the taxable portion of the distribution, and

(B) if the fair market value of such property exceeds its adjusted basis in the hands of the trust, gain shall be recognized to the

trust as if such property were sold to the expatriate at its fair market value.

(2) Taxable portion

For purposes of this subsection, the term ''taxable portion'' means, with respect to any distribution, that portion of the distribution which would be includible in the gross income of the covered expatriate if such expatriate continued to be subject to tax as a citizen or resident of the United States.

(3) Nongrantor trust

For purposes of this subsection, the term ''nongrantor trust'' means the portion of any trust that the individual is not considered the owner of under subpart E of part I of subchapter J. The determination under the preceding sentence shall be made immediately before the expatriation date.

(4) Special rules relating to withholding

For purposes of this subsection—

(A) rules similar to the rules of subsection (d)(6) shall apply, and

(B) the covered expatriate shall be treated as having waived any right to claim any reduction under any treaty with the United States in withholding on any distribution to which paragraph (1)(A) applies unless the covered expatriate agrees to such other treatment as the Secretary determines appropriate.

(5) Application

This subsection shall apply to a nongrantor trust only if the covered expatriate was a beneficiary of the trust on the day before the expatriation date.

(g) Definitions and special rules relating to expatriation

For purposes of this section—

(1) Covered expatriate

(A) In general

The term ''covered expatriate'' means an expatriate who meets the requirements of subparagraph (A), (B), or (C) of section 877(a)(2).

(B) Exceptions

An individual shall not be treated as meeting the requirements of subparagraph (A) or (B) of section 877(a)(2) if—

(i) the individual—

(I) became at birth a citizen of the United States and a citizen of another country and, as of the expatriation date, continues to be a citizen of, and is taxed as a resident of, such other country, and

(II) has been a resident of the United States (as defined in section 7701(b)(1)(A)(ii)) for not more than 10 taxable years during the 15-taxable year period ending with the taxable year during which the expatriation date occurs, or

(ii)(I) the individual's relinquishment of United States citizenship occurs before such individual attains age 18½, and

(II) the individual has been a resident of the United States (as so defined) for not more than 10 taxable years before the date of relinquishment.

(C) Covered expatriates also subject to tax as citizens or residents

In the case of any covered expatriate who is subject to tax as a citizen or resident of the United States for any period beginning after the expatriation date, such individual shall not be treated as a covered expatriate during such period for purposes of subsections (d)(1) and (f) and section 2801.

(2) Expatriate

The term ''expatriate'' means—

(A) any United States citizen who relinquishes his citizenship, and

(B) any long-term resident of the United States who ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)).

(3) Expatriation date

The term ''expatriation date'' means—

(A) the date an individual relinquishes United States citizenship, or

(B) in the case of a long-term resident of the United States, the date on which the individual ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)).

(4) Relinquishment of citizenship

A citizen shall be treated as relinquishing his United States citizenship on the earliest of—

(A) the date the individual renounces his United States nationality before a diplomatic or consular officer of the United States pursuant to paragraph (5) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(5)),

(B) the date the individual furnishes to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)–(4)),

(C) the date the United States Department of State issues to the individual a certificate of loss of nationality, or

(D) the date a court of the United States cancels a naturalized citizen's certificate of naturalization.

Subparagraph (A) or (B) shall not apply to any individual unless the renunciation or voluntary relinquishment is subsequently approved by the issuance to the individual of a certificate of loss of nationality by the United States Department of State.

(5) Long-term resident

The term ''long-term resident'' has the meaning given to such term by section 877(e)(2).

(6) Early distribution tax

The term ''early distribution tax'' means any increase in tax imposed under section 72(t), 220(e)(4),[1] 223(f)(4), 409A(a)(1)(B), 529(c)(6), or 530(d)(4).

[1] See References in Text note below.

(h) Other rules

(1) Termination of deferrals, etc.

In the case of any covered expatriate, notwithstanding any other provision of this title—

(A) any time period for acquiring property which would result in the reduction in the amount of gain recognized with respect to property disposed of by the taxpayer shall terminate on the day before the expatriation date, and

(B) any extension of time for payment of tax shall cease to apply on the day before the expatriation date and the unpaid portion of such tax shall be due and payable at the time and in the manner prescribed by the Secretary.

(2) Step-up in basis

Solely for purposes of determining any tax imposed by reason of subsection (a), property which was held by an individual on the date the individual first became a resident of the United States (within the meaning of section 7701(b)) shall be treated as having a basis on such date of not less than the fair market value of such property on such date. The preceding sentence shall not apply if the individual elects not to have such sentence apply. Such an election, once made, shall be irrevocable.

(3) Coordination with section 684

If the expatriation of any individual would result in the recognition of gain under section 684, this section shall be applied after the application of section 684.

(i) Regulations

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

(Added Pub. L. 110–245, title III, § 301(a), June 17, 2008, 122 Stat. 1638.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

REFERENCES IN TEXT

Section 220(e), referred to in subsec. (g)(6), does not contain a par. (4).

EFFECTIVE DATE

Section applicable to any individual whose expatriation date is on or after June 17, 2008, see section 301(g)(1) of Pub. L. 110–245, set out as a note under section 2801 of this title.

§ 878. Foreign educational, charitable, and certain other exempt organizations

For special provisions relating to foreign educational, charitable, and other exempt organizations, see sections 512(a) and 4948.

(Aug. 16, 1954, ch. 736, 68A Stat. 282, § 877; renumbered § 878, Pub. L. 89–809, title I, § 103(f)(1), Nov. 13, 1966, 80 Stat. 1551; amended Pub. L. 91–172, title I, § 101(j)(20), Dec. 30, 1969, 83 Stat. 528.)

AMENDMENTS

1969—Pub. L. 91–172 substituted provisions requiring reference to organizations in sections 512(a) and 4948 for provisions requiring reference to trusts in section 512(a), and struck out reference to unrelated business income.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 101(k)(2)(B) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

§ 879. Tax treatment of certain community income in the case of nonresident alien individuals

(a) General rule

In the case of a married couple 1 or both of whom are nonresident alien individuals and who have community income for the taxable year, such community income shall be treated as follows:

(1) Earned income (within the meaning of section 911(d)(2)), other than trade or business income and a partner's distributive share of partnership income, shall be treated as the income of the spouse who rendered the personal services,

(2) Trade or business income, and a partner's distributive share of partnership income, shall be treated as provided in section 1402(a)(5),

(3) Community income not described in paragraph (1) or (2) which is derived from the separate property (as determined under the applicable community property law) of one spouse shall be treated as the income of such spouse, and

(4) All other such community income shall be treated as provided in the applicable community property law.

(b) Exception where election under section 6013(g) is in effect

Subsection (a) shall not apply for any taxable year for which an election under subsection (g) or (h) of section 6013 (relating to election to treat nonresident alien individual as resident of the United States) is in effect.

(c) Definitions and special rules

For purposes of this section—

(1) Community income

The term ''community income'' means income which, under applicable community property laws, is treated as community income.

(2) Community property laws

The term ''community property laws'' means the community property laws of a State, a foreign country, or a possession of the United States.

(3) Determination of marital status

The determination of marital status shall be made under section 7703(a).

(Added Pub. L. 94–455, title X, § 1012(b)(1), Oct. 4, 1976, 90 Stat. 1613; amended Pub. L. 97–34, title I, § 111(b)(4), Aug. 13, 1981, 95 Stat. 194; Pub. L. 98–369, div. A, title I, § 139(a), (b)(1), July 18, 1984, 98 Stat. 677; Pub. L. 99–514, title XIII, § 1301(j)(9), Oct. 22, 1986, 100 Stat. 2658.)

AMENDMENTS

1986—Subsec. (c)(3). Pub. L. 99–514 substituted ''section 7703(a)'' for ''section 143(a)''.

1984—Pub. L. 98–369, §139(b)(1), substituted ''nonresident alien individuals'' for ''a resident or citizen of the United States who is married to a nonresident alien individual'' in section catchline.

Subsec. (a). Pub. L. 98–369, §139(a), substituted in provision preceding par. (1) ''married couple 1 or both of whom are nonresident alien individuals'' for ''citizen or resident of the United States who is married to a nonresident alien individual''.

1981—Subsec. (a)(1). Pub. L. 97–34 substituted ''section 911(d)(2)'' for ''section 911(b)''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 139(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1984.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to taxable years beginning after Dec. 31, 1981, see section 115 of Pub. L. 97–34, set out as a note under section 911 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1976, see section 1012(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 6013 of this title.

SUBPART B—FOREIGN CORPORATIONS

Sec.
881. Tax on income of foreign corporations not connected with United States business.
882. Tax on income of foreign corporations connected with United States business.
883. Exclusions from gross income.
884. Branch profits tax.
885. Cross references.

AMENDMENTS

1986—Pub. L. 99–514, title XII, §1241(d), Oct. 22, 1986, 100 Stat. 2580, added item 884 and redesignated former item 884 as 885.

1966—Pub. L. 89–809, title I, §104(b)(3), Nov. 13, 1966, 80 Stat. 1557, substituted ''Tax on income of foreign corporations not connected with United States business'' for ''Tax on foreign corporations not engaged in business in United States'' in item 881, and ''Tax on income of foreign corporations connected with United States business'' for ''Tax on resident foreign corporations'' in item 882.

§ 881. Tax on income of foreign corporations not connected with United States business

(a) Imposition of tax

Except as provided in subsection (c), there is hereby imposed for each taxable year a tax of 30 percent of the amount received from sources within the United States by a foreign corporation as—

(1) interest (other than original issue discount as defined in section 1273), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income,

(2) gains described in section 631(b) or (c),

(3) in the case of—

(A) a sale or exchange of an original issue discount obligation, the amount of the original issue discount accruing while such obligation was held by the foreign corporation (to the extent such discount was not theretofore taken into account under subparagraph (B)), and

(B) a payment on an original issue discount obligation, an amount equal to the original issue discount accruing while such obligation was held by the foreign corporation (except that such original issue discount shall be taken into account under this subparagraph only to the extent such discount was not theretofore taken into account under this subparagraph and only to the extent that the tax thereon does not exceed the payment less the tax imposed by paragraph (1) thereon), and

(4) gains from the sale or exchange after October 4, 1966, of patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like property, or of any interest in any such property, to the extent such gains are from payments which are contingent on the productivity, use, or disposition of the property or interest sold or exchanged,

but only to the extent the amount so received is not effectively connected with the conduct of a trade or business within the United States.

(b) Exception for certain possessions

(1) Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands

For purposes of this section and section 884, a corporation created or organized in Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands or under the law of any such possession shall not be treated as a foreign corporation for any taxable year if—

(A) at all times during such taxable year less than 25 percent in value of the stock of such corporation is beneficially owned (directly or indirectly) by foreign persons,

(B) at least 65 percent of the gross income of such corporation is shown to the satisfaction of the Secretary to be effectively connected with the conduct of a trade or business in such a possession or the United States for the 3-year period ending with the close of the taxable year of such corporation (or for such part of such period as the corporation or any predecessor has been in existence), and

(C) no substantial part of the income of such corporation is used (directly or indirectly) to satisfy obligations to persons who are not bona fide residents of such a possession or the United States.

(2) Commonwealth of Puerto Rico

(A) In general

If dividends are received during a taxable year by a corporation—

(i) created or organized in, or under the law of, the Commonwealth of Puerto Rico, and

(ii) with respect to which the requirements of subparagraphs (A), (B), and (C) of paragraph (1) are met for the taxable year,

subsection (a) shall be applied for such taxable year by substituting ''10 percent'' for ''30 percent''.

(B) Applicability

If, on or after the date of the enactment of this paragraph, an increase in the rate of the Commonwealth of Puerto Rico's withholding tax which is generally applicable to dividends paid to United States corporations not engaged in a trade or business in the Commonwealth to a rate greater than 10 percent takes effect, this paragraph shall not apply to dividends received on or after the effective date of the increase.

(3) Definitions

(A) Foreign person

For purposes of paragraph (1), the term ''foreign person'' means any person other than—

(i) a United States person, or

(ii) a person who would be a United States person if references to the United States in section 7701 included references to a possession of the United States.

(B) Indirect ownership rules

For purposes of paragraph (1), the rules of section 318(a)(2) shall apply except that ''5 percent'' shall be substituted for ''50 percent'' in subparagraph (C) thereof.

(c) Repeal of tax on interest of foreign corporations received from certain portfolio debt investments

(1) In general

In the case of any portfolio interest received by a foreign corporation from sources within the United States, no tax shall be imposed under paragraph (1) or (3) of subsection (a).

(2) Portfolio interest

For purposes of this subsection, the term ''portfolio interest'' means any interest (including original issue discount) which would be subject to tax under subsection (a) but for this subsection and which is described in any of the following subparagraphs:

(A) Certain obligations which are not registered

Interest which is paid on any obligation which is described in section 871(h)(2)(A).

(B) Certain registered obligations

Interest which is paid on an obligation—

(i) which is in registered form, and

(ii) with respect to which the person who would otherwise be required to deduct and withhold tax from such interest under section 1442(a) receives a statement which meets the requirements of section 871(h)(5) that the beneficial owner of the obligation is not a United States person.

(3) Portfolio interest shall not include interest received by certain persons

For purposes of this subsection, the term ''portfolio interest'' shall not include any portfolio interest which—

(A) except in the case of interest paid on an obligation of the United States, is received by a bank on an extension of credit made pursuant to a loan agreement entered into in the ordinary course of its trade or business,

(B) is received by a 10-percent shareholder (within the meaning of section 871(h)(3)(B)), or

(C) is received by a controlled foreign corporation from a related person (within the meaning of section 864(d)(4)).

(4) Portfolio interest not to include certain contingent interest

For purposes of this subsection, the term ''portfolio interest'' shall not include any interest which is treated as not being portfolio interest under the rules of section 871(h)(4).

(5) Special rules for controlled foreign corporations

(A) In general

In the case of any portfolio interest received by a controlled foreign corporation, the following provisions shall not apply:

(i) Subparagraph (A) of section 954(b)(3) (relating to exception where foreign base company income is less than 5 percent or $1,000,000).

(ii) Paragraph (4) of section 954(b) (relating to exception for certain income subject to high foreign taxes).

(iii) Clause (i) of section 954(c)(3)(A) (relating to certain income received from related persons).

(B) Controlled foreign corporation

For purposes of this subsection, the term ''controlled foreign corporation'' has the meaning given to such term by section 957(a).

(6) Secretary may cease application of this subsection

Under rules similar to the rules of section 871(h)(6), the Secretary may provide that this subsection shall not apply to payments of interest described in section 871(h)(6).

(7) Registered form

For purposes of this subsection, the term ''registered form'' has the meaning given such term by section 163(f).

(d) Tax not to apply to certain interest and dividends

No tax shall be imposed under paragraph (1) or (3) of subsection (a) on any amount described in section 871(i)(2).

(e) Tax not to apply to certain dividends of regulated investment companies

(1) Interest-related dividends

(A) In general

Except as provided in subparagraph (B), no tax shall be imposed under paragraph (1) of subsection (a) on any interest-related dividend (as defined in section 871(k)(1)) received from a regulated investment company.

(B) Exception

Subparagraph (A) shall not apply—

(i) to any dividend referred to in section 871(k)(1)(B), and

(ii) to any interest-related dividend received by a controlled foreign corporation (within the meaning of section 957(a)) to the extent such dividend is attributable to interest received by the regulated investment company from a person who is a related person (within the meaning of section 864(d)(4)) with respect to such controlled foreign corporation.

(C) Treatment of dividends received by controlled foreign corporations

The rules of subsection (c)(5)(A) shall apply to any interest-related dividend received by a controlled foreign corporation (within the meaning of section 957(a)) to the extent such dividend is attributable to interest received by the regulated investment company which is described in clause (ii) of section 871(k)(1)(E) (and not described in clause (i) or (iii) of such section).

(2) Short-term capital gain dividends

No tax shall be imposed under paragraph (1) of subsection (a) on any short-term capital gain dividend (as defined in section 871(k)(2)) received from a regulated investment company.

(f) Cross reference

For doubling of tax on corporations of certain foreign countries, see section 891.

For special rules for original issue discount, see section 871(g).

(Aug. 16, 1954, ch. 736, 68A Stat. 282; Pub. L. 89–809, title I, § 104(a), Nov. 13, 1966, 80 Stat. 1555; Pub. L. 92–178, title III, § 313(a), (c), Dec. 10, 1971, 85 Stat. 526, 527; Pub. L. 92–606, § 1(e)(1), Oct. 31, 1972, 86 Stat. 1497; Pub. L. 94–455, title XIX, § 1901(b)(3)(I), Oct. 4, 1976, 90 Stat. 1793; Pub. L. 98–369, div. A, title I, §§ 42(a)(10), 127(b), 128(b), 130(a), July 18, 1984, 98 Stat. 557, 650, 654, 660; Pub. L. 99–514, title XII, §§ 1211(b)(6), 1214(c)(2), 1223(b)(2), 1273(b)(1), (2)(A), title XVIII, §§ 1810(d)(1)(B), (3)(C), (e)(2)(B), 1899A(22), (23), (68), Oct. 22, 1986, 100 Stat. 2536, 2542, 2558, 2595, 2596, 2825, 2826, 2959, 2962; Pub. L. 100–647, title I, § 1012(i)(17), Nov. 10, 1988, 102 Stat. 3510; Pub. L. 103–66, title XIII, § 13237(a)(2), (c)(2), (3), Aug. 10, 1993, 107 Stat. 507, 508; Pub. L. 108–357, title IV, §§ 411(a)(2), 420(a), (c), Oct. 22, 2004, 118 Stat. 1503, 1513, 1514; Pub. L. 109–135, title IV, § 412(jj), Dec. 21, 2005, 119 Stat. 2639; Pub. L. 111–147, title V, § 502(b)(2)(B), Mar. 18, 2010, 124 Stat. 107.)

AMENDMENT OF SUBSECTION (c)(2)

Pub. L. 111–147, title V, § 502(b)(2)(B), (f), Mar. 18, 2010, 124 Stat. 107, 108, provided that, applicable to obligations issued after the date which is 2 years after Mar. 18, 2010, subsection (c)(2) of this section is amended to read as follows:

(2) Portfolio interest

For purposes of this subsection, the term ''portfolio interest'' means any interest (including original issue discount) which—

(A) would be subject to tax under subsection (a) but for this subsection, and

(B) is paid on an obligation—

(i) which is in registered form, and

(ii) with respect to which—

(I) the person who would otherwise be required to deduct and withhold tax from such interest under section 1442(a) receives a statement which meets the requirements of section 871(h)(5) that the beneficial owner of the obligation is not a United States person, or

(II) the Secretary has determined that such a statement is not required in order to carry out the purposes of this subsection.

REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (b)(2)(B), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

AMENDMENTS

2005—Subsec. (e)(1)(C). Pub. L. 109–135 inserted ''interest-related dividend received by a controlled foreign corporation'' after ''shall apply to any''.

2004—Subsec. (b). Pub. L. 108–357, § 420(c)(1), substituted ''possessions'' for ''Guam and Virgin Islands corporations'' in heading.

Subsec. (b)(1). Pub. L. 108–357, § 420(c)(2), substituted ''Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands'' for ''In general'' in heading.

Subsec. (b)(2), (3). Pub. L. 108–357, § 420(a), added par. (2) and redesignated former par. (2) as (3).

Subsec. (e), (f). Pub. L. 108–357, § 411(a)(2), added subsec. (e) and redesignated former subsec. (e) as (f).

1993—Subsec. (c)(2)(B)(ii). Pub. L. 103–66, § 13237(c)(2), substituted ''section 871(h)(5)'' for ''section 871(h)(4)''.

Subsec. (c)(4), (5). Pub. L. 103–66, § 13237(a)(2), added par. (4) and redesignated former par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (c)(6). Pub. L. 103–66, § 13237(a)(2), (c)(3), redesignated par. (5) as (6) and substituted ''section 871(h)(6)'' for ''section 871(h)(5)'' in two places. Former par. (6) redesignated (7).

Subsec. (c)(7). Pub. L. 103–66, § 13237(a)(2), redesignated par. (6) as (7).

1988—Subsec. (c)(4)(A)(ii) to (v). Pub. L. 100–647 added cls. (ii) and (iii) and struck out former cls. (ii) to (v), which read as follows:

''(ii) Paragraph (4) of section 954(b) (relating to corporations not formed or availed of to avoid tax).

''(iii) Subparagraph (B) of section 954(c)(3) (relating to certain income derived in active conduct of trade or business).

''(iv) Subparagraph (C) of section 954(c)(3) (relating to certain income derived by an insurance company).

''(v) Subparagraphs (A) and (B) of section 954(c)(4) (relating to exception for certain income received from related persons).''

1986—Subsec. (a)(3)(A). Pub. L. 99–514, § 1810(e)(2)(B), amended subpar. (A) generally, striking out ''any gain not in excess of'' before ''the original issue discount''.

Subsec. (a)(3)(B). Pub. L. 99–514, § 1810(e)(2)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the payment of interest on an original issue discount obligation, an amount equal to the original issue discount accrued on such obligation since the last payment of interest thereon (except that such original issue discount shall be taken into account under this subparagraph only to the extent that the tax thereon does not exceed the interest payment less the tax imposed by paragraph (1) thereon), and''.

Subsec. (a)(4). Pub. L. 99–514, § 1211(b)(6), struck out ''or from payments which are treated as being so contingent under section 871(e),'' after ''sold or exchanged,''.

Subsec. (b)(1). Pub. L. 99–514, § 1273(b)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''For purposes of this section, a corporation created or organized in Guam or the Virgin Islands or under the law of Guam or the Virgin Islands shall not be treated as a foreign corporation for any taxable year if—

''(A) at all times during such taxable year less than 25 percent in value of the stock of such corporation is owned (directly or indirectly) by foreign persons, and

''(B) at least 20 percent of the gross income of such corporation is shown to the satisfaction of the Secretary to have been derived from sources within Guam or the Virgin Islands (as the case may be) for the 3-year period ending with the close of the preceding taxable year of such corporation (or for such part of such period as the corporation has been in existence).''

Subsec. (b)(2). Pub. L. 99–514, §1273(b)(1), (2)(A), redesignated par. (3) as (2) and struck out former par. (2) which provided that par. (1) of this subsection not apply with respect to income tax liability incurred to Guam.

Subsec. (b)(2)(A). Pub. L. 99–514, §1899A(22), substituted ''paragraph'' for ''Paragraph''.

Subsec. (b)(3), (4). Pub. L. 99–514, §1273(b)(2)(A), redesignated par. (3) as (2) and struck out par. (4) which provided a cross reference to sections 934 and 934A.

Subsec. (c). Pub. L. 99–514, §1899A(68), made clarifying amendment to directory language of Pub. L. 98–369, §127(b)(1). See 1984 Amendment note below.

Subsec. (c)(2). Pub. L. 99–514, §1810(d)(1)(B), (3)(C), inserted ''which would be subject to tax under subsection (a) but for this subsection and'' in introductory provisions and substituted ''receives a statement'' for ''has received a statement'' in subpar. (B)(ii).

Subsec. (c)(3)(C). Pub. L. 99–514, §1899A(23), inserted a closing parenthesis following ''section 864(d)(4)''.

Subsec. (c)(4)(A)(i). Pub. L. 99–514, §1223(b)(2), substituted ''less than 5 percent or $1,000,000'' for ''less than 10 percent''.

Subsecs. (d), (e). Pub. L. 99–514, §1214(c)(2), added subsec. (d) and redesignated former subsec. (d) as (e).

1984—Subsec. (a). Pub. L. 98–369, §127(b)(2), substituted ''Except as provided in subsection (c), there'' for ''There'' in introductory provision.

Subsec. (a)(1). Pub. L. 98–369, §42(a)(10), substituted ''section 1273'' for ''section 1232(b)''.

Subsec. (a)(3). Pub. L. 98–369, §128(b)(1), amended par. (3) generally, substituting in subpar. (A), ''a sale or exchange of an original issue discount obligation, the amount of any gain not in excess of the original issue discount accruing while such obligation was held by the foreign corporation (to the extent such discount was not theretofore taken into account under subparagraph (B)), and'' for ''bonds or other evidences of indebtedness issued after September 28, 1965, and before April 1, 1972, amounts which under section 1232(a)(2)(B) are considered as ordinary income, and, in the case of corporate obligations issued after May 27, 1969, and before April 1, 1972, amounts which would be so considered but for the fact the obligations were issued after May 27, 1969,'', substituting in subpar. (B), ''the payment of interest on an original issue discount obligation, an amount equal to the original issue discount accrued on such obligation since the last payment of interest thereon (except that such original issue discount shall be taken into account under this subparagraph only to the extent that the tax thereon does not exceed the interest payment less the tax imposed by paragraph (1) thereon), and'' for ''bonds or other evidences of indebtedness issued after March 31, 1972, and payable more than 6 months from the date of original issue (without regard to the period held by the taxpayer), amounts which under section 1232(a)(2)(B) would be considered as ordinary income but for the fact such obligations were issued after May 27, 1969, and'', and striking out subpar. (C) which required that in the case of the payment of interest on an obligation described in subpar. (B), an amount equal to the original issue discount, but not in excess of such interest less the tax imposed by par. (1) thereon, accrued on such obligation since the last payment of interest thereon, be included for purpose of the 30 percent tax.

Subsec. (b). Pub. L. 98–369, §130(a), amended subsec. (b) generally, substituting provision establishing an exception for certain Guam and Virgin Islands corporations for provision establishing an exception for Guam corporations.

Subsec. (c). Pub. L. 98–369, §127(b)(1), as amended by Pub. L. 99–514, §1899A(68), added subsec. (c). Former subsec. (c) redesignated (d).

Pub. L. 98–369, §128(b)(2), amended subsec. (c) generally, substituting in heading ''Cross reference'' for ''Doubling of tax'' and inserting provision directing that for special rules for original issue discount, see section 871(g).

Subsec. (d). Pub. L. 98–369, §127(b)(1), as amended by Pub. L. 99–514, §1899A(68), redesignated subsec. (c) as (d).

1976—Subsec. (a)(3)(A), (B). Pub. L. 94–455 substituted ''ordinary income'' for ''gain from the sale or exchange of property which is not a capital asset''.

1972—Subsecs. (b), (c). Pub. L. 92–606 added subsec. (b) and redesignated former subsec. (b) as (c).

1971—Subsec. (a)(1). Pub. L. 92–178, §313(a), inserted ''(other than original issue discount as defined in section 1232(b))'' after ''interest''.

Subsec. (a)(3). Pub. L. 92–178, §313(c), designated existing provisions as subpar. (A), inserted ''and before April 1, 1972,'' after ''September 28, 1965,'', substituted ''section 1232(a)(2)(B)'' for ''section 1232'', and inserted '', in the case of corporate obligations issued after May 27, 1969, and before April 1, 1972, amounts which would be so considered but for the fact that the obligations were issued after May 27, 1969,'', and added subpars. (B) and (C).

1966—Subsec. (a). Pub. L. 89–809 substantially revised the income tax treatment of foreign corporations, substituted the concept of amounts received from sources within the United States by foreign corporations but not effectively connected with the conduct of a trade or business within the United States for the concept of amounts received from sources within the United States by foreign corporations not engaged in trade or business within the United States as the amount upon which the existing 30 percent levy should be imposed, and added contingent income received from the sale of patents and other intangibles and amounts of original issue discount which are treated as ordinary income received on retirement or sale or exchange of bonds or other evidences of indebtedness issued after Sept. 28, 1965, to the specified types of fixed or determinable income.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–147 applicable to obligations issued after the date which is 2 years after Mar. 18, 2010, see section 502(f) of Pub. L. 111–147, set out as a note under section 149 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 411(a)(2) of Pub. L. 108–357 applicable to dividends with respect to taxable years of regulated investment companies beginning after Dec. 31, 2004, see section 411(d)(1) of Pub. L. 108–357, set out as a note under section 871 of this title.

Pub. L. 108–357, title IV, §420(d), Oct. 22, 2004, 118 Stat. 1514, provided that: ''The amendments made by this section [amending this section and section 1442 of this title] shall apply to dividends paid after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to interest received after Dec. 31, 1993, see section 13237(d) of Pub. L. 103–66, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1211(b)(6) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1211(c) of Pub. L. 99–514, set out as an Effective Date note under section 865 of this title.

Amendment by section 1214(c)(2) of Pub. L. 99–514 applicable to payments made in taxable year of payor beginning after Dec. 31, 1986, except as otherwise provided, see section 1214(d) of Pub. L. 99–514, as amended, set out as a note under section 861 of this title.

Amendment by section 1223(b)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1223(c) of Pub. L. 99–514, set out as a note under section 864 of this title.

Amendment by section 1273(b)(1), (2)(A) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

Amendment by section 1810(d)(1)(B), (3)(C), (e)(2)(B) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 42(a)(10) of Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

Amendment by section 127(b) of Pub. L. 98–369 applicable to interest received after July 18, 1984, with respect to obligations issued after such date, in taxable years after such date, see section 127(g)(1) of Pub. L. 98–369, set out as a note under section 871 of this title.

Amendment by section 128(b) of Pub. L. 98–369 applicable to payments made on or after the 60th day after July 18, 1984, with respect to obligations issued after Mar. 31, 1972, see section 128(d)(1) of Pub. L. 98–369, set out as a note under section 871 of this title.

Section 130(d) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and sections 1442 and 7651 of this title] shall apply to payments made after March 1, 1984, in taxable years ending after such date.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 2 of Pub. L. 92–606 provided in part that: ''The amendments made by section 1(e)(1) [amending this section] shall apply with respect to taxable years beginning after December 31, 1971.''

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 313(f) of Pub. L. 92–178, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendments by sections 1211(b)(6) and 1214(c)(2) of Pub. L. 99–514 to the extent application of such amendments would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 882. Tax on income of foreign corporations connected with United States business

(a) Imposition of tax

(1) In general

A foreign corporation engaged in trade or business within the United States during the taxable year shall be taxable as provided in section 11, 55, 59A, or 1201(a) on its taxable income which is effectively connected with the conduct of a trade or business within the United States.

(2) Determination of taxable income

In determining taxable income for purposes of paragraph (1), gross income includes only gross income which is effectively connected with the conduct of a trade or business within the United States.

(3) [Cross reference [1]]

For special tax treatment of gain or loss from the disposition by a foreign corporation of a United States real property interest, see section 897.

(b) Gross income

In the case of a foreign corporation, except where the context clearly indicates otherwise, gross income includes only—

(1) gross income which is derived from sources within the United States and which is not effectively connected with the conduct of a trade or business within the United States, and

(2) gross income which is effectively connected with the conduct of a trade or business within the United States.

(c) Allowance of deductions and credits

(1) Allocation of deductions

(A) General rule

In the case of a foreign corporation, the deductions shall be allowed only for purposes of subsection (a) and (except as provided by subparagraph (B)) only if and to the extent that they are connected with income which is effectively connected with the conduct of a trade or business within the United States; and the proper apportionment and allocation of the deductions for this purpose shall be determined as provided in regulations prescribed by the Secretary.

(B) Charitable contributions

The deduction for charitable contributions and gifts provided by section 170 shall be al-

[1] Par. (3) heading editorially supplied.

lowed whether or not connected with income which is effectively connected with the conduct of a trade or business within the United States.

(2) Deductions and credits allowed only if return filed

A foreign corporation shall receive the benefit of the deductions and credits allowed to it in this subtitle only by filing or causing to be filed with the Secretary a true and accurate return, in the manner prescribed in subtitle F, including therein all the information which the Secretary may deem necessary for the calculation of such deductions and credits. The preceding sentence shall not apply for purposes of the tax imposed by section 541 (relating to personal holding company tax), and shall not be construed to deny the credit provided by section 33 for tax withheld at source or the credit provided by section 34 for certain uses of gasoline.

(3) Foreign tax credit

Except as provided by section 906, foreign corporations shall not be allowed the credit against the tax for taxes of foreign countries and possessions of the United States allowed by section 901.

(4) Cross reference

For rule that certain foreign taxes are not to be taken into account in determining deduction or credit, see section 906(b)(1).

(d) Election to treat real property income as income connected with United States business

(1) In general

A foreign corporation which during the taxable year derives any income—

(A) from real property located in the United States, or from any interest in such real property, including (i) gains from the sale or exchange of real property or an interest therein, (ii) rents or royalties from mines, wells, or other natural deposits, and (iii) gains described in section 631(b) or (c), and

(B) which, but for this subsection, would not be treated as income effectively connected with the conduct of a trade or business within the United States,

may elect for such taxable year to treat all such income as income which is effectively connected with the conduct of a trade or business within the United States. In such case, such income shall be taxable as provided in subsection (a)(1) whether or not such corporation is engaged in trade or business within the United States during the taxable year. An election under this paragraph for any taxable year shall remain in effect for all subsequent taxable years, except that it may be revoked with the consent of the Secretary with respect to any taxable year.

(2) Election after revocation, etc.

Paragraphs (2) and (3) of section 871(d) shall apply in respect of elections under this subsection in the same manner and to the same extent as they apply in respect of elections under section 871(d).

(e) Interest on United States obligations received by banks organized in possessions

In the case of a corporation created or organized in, or under the law of, a possession of the United States which is carrying on the banking business in a possession of the United States, interest on obligations of the United States which is not portfolio interest (as defined in section 881(c)(2)) shall—

(1) for purposes of this subpart, be treated as income which is effectively connected with the conduct of a trade or business within the United States, and

(2) shall be taxable as provided in subsection (a)(1) whether or not such corporation is engaged in trade or business within the United States during the taxable year.

(f) Returns of tax by agent

If any foreign corporation has no office or place of business in the United States but has an agent in the United States, the return required under section 6012 shall be made by the agent.

(Aug. 16, 1954, ch. 736, 68A Stat. 282; Pub. L. 89–809, title I, §104(b)(1), Nov. 13, 1966, 80 Stat. 1555; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–600, title III, §301(b)(13), Nov. 6, 1978, 92 Stat. 2822; Pub. L. 96–499, title XI, §1122(c)(2), Dec. 5, 1980, 94 Stat. 2687; Pub. L. 97–424, title V, §515(b)(6)(F), Jan. 6, 1983, 96 Stat. 2182; Pub. L. 98–369, div. A, title IV, §474(r)(19), July 18, 1984, 98 Stat. 843; Pub. L. 99–514, title VII, §701(e)(4)(F), title XII, §1236(a), Oct. 22, 1986, 100 Stat. 2343, 2576; Pub. L. 100–647, title I, §1012(s)(2)(B), title II, §2001(c)(2), title VI, §6133(a), Nov. 10, 1988, 102 Stat. 3527, 3594, 3721.)

AMENDMENTS

1988—Subsec. (a)(1). Pub. L. 100–647, §2001(c)(2), inserted reference to section 59A.

Subsec. (b). Pub. L. 100–647, §1012(s)(2)(B), inserted '', except where the context clearly indicates otherwise'' after ''foreign corporation''.

Subsec. (e). Pub. L. 100–647, §6133(a), substituted ''interest on obligations of the United States which is not portfolio interest (as defined in section 881(c)(2))'' for ''interest on obligations of the United States'', and struck out at end ''The preceding sentence shall not apply to any Guam corporation which is treated as not being a foreign corporation by section 881(b)(1) for the taxable year.''

1986—Subsec. (a)(1). Pub. L. 99–514, §701(e)(4)(F), inserted reference to section 55.

Subsec. (e). Pub. L. 99–514, §1236(a), inserted ''The preceding sentence shall not apply to any Guam corporation which is treated as not being a foreign corporation by section 881(b)(1) for the taxable year.''

1984—Subsec. (c)(2). Pub. L. 98–369 substituted reference to section ''33'' for ''32'' and ''34'' for ''39''.

1983—Subsec. (c)(2). Pub. L. 97–424 struck out ''and lubricating oil'' after ''gasoline''.

1980—Subsec. (a)(3). Pub. L. 96–499 added par. (3).

1978—Subsec. (a). Pub. L. 95–600 substituted in subsec. (a) heading ''Imposition of tax'' for ''Normal tax and surtax'' and in par. (1) heading ''In general'' for ''Imposition of tax''.

1976—Subsecs. (c)(1)(A), (2), (d). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1966—Pub. L. 89–809 substantially revised the income tax treatment of foreign corporations, introduced the concept of taxable income effectively connected with the conduct of a trade or business within the United States into provisions dealing with the imposition of tax, substituted a concept of gross income that included gross income derived from sources within the

United States not effectively connected with the conduct of a trade or business within the United States and gross income effectively connected with the conduct of a trade or business within the United States for a concept of gross income that included only gross income from sources within the United States, and inserted provisions for an election to treat real property income as income connected with United States business, treatment of interest on United States obligations received by banks organized in possessions, and the returns of tax by agents, and inserted cross reference to section 906(b)(1).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 701(e)(4)(F) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Superfund Revenue Act of 1986, Pub. L. 99–499, title V, to which it relates, see section 2001(e) of Pub. L. 100–647, set out as a note under section 56 of this title.

Section 6133(c) of Pub. L. 100–647 provided that: ''The amendments made by this subsection [probably means 'this section', which amended sections 882 and 884 of this title] shall apply to taxable years beginning after December 31, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 701(e)(4)(F) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

Section 1236(b) of Pub. L. 99–514 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after November 16, 1985.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–424 applicable with respect to articles sold after Jan. 6, 1983, see section 515(c) of Pub. L. 97–424, set out as a note under section 34 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–499 applicable to disposition after June 18, 1980, see section 1125(a) of Pub. L. 96–499, set out as an Effective Date note under section 897 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(4)(F) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

§ 883. Exclusions from gross income

(a) Income of foreign corporations from ships and aircraft

The following items shall not be included in gross income of a foreign corporation, and shall be exempt from taxation under this subtitle:

(1) Ships operated by certain foreign corporations

Gross income derived by a corporation organized in a foreign country from the international operation of a ship or ships if such foreign country grants an equivalent exemption to corporations organized in the United States.

(2) Aircraft operated by certain foreign corporations

Gross income derived by a corporation organized in a foreign country from the international operation of aircraft if such foreign country grants an equivalent exemption to corporations organized in the United States.

(3) Railroad rolling stock of foreign corporations

Earnings derived from payments by a common carrier for the use on a temporary basis (not expected to exceed a total of 90 days in any taxable year) of railroad rolling stock owned by a corporation of a foreign country which grants an equivalent exemption to corporations organized in the United States.

(4) Special rules

The rules of paragraphs (6), (7), and (8) of section 872(b) shall apply for purposes of this subsection.

(5) Special rule for countries which tax on residence basis

For purposes of this subsection, there shall not be taken into account any failure of a foreign country to grant an exemption to a corporation organized in the United States if such corporation is subject to tax by such foreign country on a residence basis pursuant to provisions of foreign law which meets such standards (if any) as the Secretary may prescribe.

(b) Earnings derived from communications satellite system

The earnings derived from the ownership or operation of a communications satellite system by a foreign entity designated by a foreign government to participate in such ownership or operation shall be exempt from taxation under this subtitle, if the United States, through its designated entity, participates in such system pursuant to the Communications Satellite Act of 1962 (47 U.S.C. 701 and following).

(c) Treatment of certain foreign corporations

(1) In general

Paragraph (1) or (2) of subsection (a) (as the case may be) shall not apply to any foreign

corporation if 50 percent or more of the value of the stock of such corporation is owned by individuals who are not residents of such foreign country or another foreign country meeting the requirements of such paragraph.

(2) Treatment of controlled foreign corporations

Paragraph (1) shall not apply to any foreign corporation which is a controlled foreign corporation (as defined in section 957(a)).

(3) Special rules for publicly traded corporations

(A) Exception

Paragraph (1) shall not apply to any corporation which is organized in a foreign country meeting the requirements of paragraph (1) or (2) of subsection (a) (as the case may be) and the stock of which is primarily and regularly traded on an established securities market in such foreign country, another foreign country meeting the requirements of such paragraph, or the United States.

(B) Treatment of stock owned by publicly traded corporation

Any stock in another corporation which is owned (directly or indirectly) by a corporation meeting the requirements of subparagraph (A) shall be treated as owned by individuals who are residents of the foreign country in which the corporation meeting the requirements of subparagraph (A) is organized.

(4) Stock ownership through entities

For purposes of paragraph (1), stock owned (directly or indirectly) by or for a corporation, partnership, trust, or estate shall be treated as being owned proportionately by its shareholders, partners, or beneficiaries. Stock considered to be owned by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person.

(Aug. 16, 1954, ch. 736, 68A Stat. 283; Pub. L. 90–622, §1(a), Oct. 22, 1968, 82 Stat. 1311; Pub. L. 94–164, §6(a), Dec. 23, 1975, 89 Stat. 975; Pub. L. 99–514, title XII, §1212(c)(3)–(5), Oct. 22, 1986, 100 Stat. 2538; Pub. L. 100–647, title I, §1012(e)(1), (2)(A), (5), Nov. 10, 1988, 102 Stat. 3499, 3500; Pub. L. 101–239, title VII, §7811(i)(8)(D), (10), Dec. 19, 1989, 103 Stat. 2411; Pub. L. 108–357, title IV, §419(b), Oct. 22, 2004, 118 Stat. 1513.)

REFERENCES IN TEXT

The Communications Satellite Act of 1962, referred to in subsec. (b), is Pub. L. 87–624, Aug. 31, 1962, 76 Stat. 419, as amended, which is classified generally to chapter 6 (§701 et seq.) of Title 47, Telegraphs, Telephones, and Radiotelegraphs. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 47 and Tables.

AMENDMENTS

2004—Subsec. (a)(4). Pub. L. 108–357 substituted ''(6), (7), and (8)'' for ''(5), (6), and (7)''.

1989—Subsec. (a)(4). Pub. L. 101–239, §7811(i)(8)(D), substituted ''(5), (6), and (7)'' for ''(5) and (6)''.

Subsec. (a)(5). Pub. L. 101–239, §7811(i)(10), added par. (5).

1988—Subsec. (a)(1), (2). Pub. L. 100–647, §1012(e)(2)(A), (5), struck out ''to citizens of the United States and'' after ''exemption'' and substituted ''international operation'' for ''operation''.

Subsec. (c)(1). Pub. L. 100–647, §1012(e)(1)(B), substituted ''Paragraph (1) or (2) of subsection (a) (as the case may be)'' for ''Paragraphs (1) and (2) of subsection (a)'' and ''such paragraph'' for ''such paragraphs (1) and (2)''.

Subsec. (c)(3). Pub. L. 100–647, §1012(e)(1)(A), substituted ''Special rules'' for ''Exception'' in heading and amended text generally. Prior to amendment, text read as follows: ''Paragraph (1) shall not apply to any foreign corporation—

''(A) the stock of which is primarily and regularly traded on an established securities market in the foreign country in which such corporation is organized, or

''(B) which is wholly owned (either directly or indirectly) by another corporation meeting the requirements of subparagraph (A) and is organized in the same foreign country as such other corporation.''

1986—Subsec. (a)(1). Pub. L. 99–514, §1212(c)(3), added par. (1) and struck out former par. (1), ships under foreign flag, which read as follows: ''Earnings derived from the operation of a ship or ships documented under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States.''

Subsec. (a)(2). Pub. L. 99–514, §1212(c)(3), added par. (2) and struck out former par. (2), aircraft of foreign registry, which read as follows: ''Earnings derived from the operation of aircraft registered under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States.''

Subsec. (a)(4). Pub. L. 99–514, §1212(c)(4), added par. (4).

Subsec. (c). Pub. L. 99–514, §1212(c)(5), added subsec. (c).

1975—Subsec. (a)(3). Pub. L. 94–164 added par. (3).

1968—Pub. L. 90–622 designated existing provisions as subsec. (a), added subsec. (a) heading, and added subsec. (b).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to wagers made after Oct. 22, 2004, see section 419(c) of Pub. L. 108–357, set out as a note under section 872 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1212(f) of Pub. L. 99–514, set out as a note under section 863 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 6(b) of Pub. L. 94–164 provided that: ''The amendment made by this section [amending this section] shall apply to payments made after November 18, 1974.''

EFFECTIVE DATE OF 1968 AMENDMENT

Section 1(b) of Pub. L. 90–622 provided that: ''The amendment made by subsection (a) [amending this sec-

tion] shall apply with respect to taxable years beginning after December 31, 1966.''

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 1212(c)(3)–(5) of Pub. L. 99–514 to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

§ 884. Branch profits tax

(a) Imposition of tax

In addition to the tax imposed by section 882 for any taxable year, there is hereby imposed on any foreign corporation a tax equal to 30 percent of the dividend equivalent amount for the taxable year.

(b) Dividend equivalent amount

For purposes of subsection (a), the term ''dividend equivalent amount'' means the foreign corporation's effectively connected earnings and profits for the taxable year adjusted as provided in this subsection:

(1) Reduction for increase in U.S. net equity

If—

(A) the U.S. net equity of the foreign corporation as of the close of the taxable year, exceeds

(B) the U.S. net equity of the foreign corporation as of the close of the preceding taxable year,

the effectively connected earnings and profits for the taxable year shall be reduced (but not below zero) by the amount of such excess.

(2) Increase for decrease in net equity

(A) In general

If—

(i) the U.S. net equity of the foreign corporation as of the close of the preceding taxable year, exceeds

(ii) the U.S. net equity of the foreign corporation as of the close of the taxable year,

the effectively connected earnings and profits for the taxable year shall be increased by the amount of such excess.

(B) Limitation

(i) In general

The increase under subparagraph (A) for any taxable year shall not exceed the accumulated effectively connected earnings and profits as of the close of the preceding taxable year.

(ii) Accumulated effectively connected earnings and profits

For purposes of clause (i), the term ''accumulated effectively connected earnings and profits'' means the excess of—

(I) the aggregate effectively connected earnings and profits for preceding taxable years beginning after December 31, 1986, over

(II) the aggregate dividend equivalent amounts determined for such preceding taxable years.

(c) U.S. net equity

For purposes of this section—

(1) In general

The term ''U.S. net equity'' means—

(A) U.S. assets, reduced (including below zero) by

(B) U.S. liabilities.

(2) U.S. assets and U.S. liabilities

For purposes of paragraph (1)—

(A) U.S. assets

The term ''U.S. assets'' means the money and aggregate adjusted bases of property of the foreign corporation treated as connected with the conduct of a trade or business in the United States under regulations prescribed by the Secretary. For purposes of the preceding sentence, the adjusted basis of any property shall be its adjusted basis for purposes of computing earnings and profits.

(B) U.S. liabilities

The term ''U.S. liabilities'' means the liabilities of the foreign corporation treated as connected with the conduct of a trade or business in the United States under regulations prescribed by the Secretary.

(C) Regulations to be consistent with allocation of deductions

The regulations prescribed under subparagraphs (A) and (B) shall be consistent with the allocation of deductions under section 882(c)(1).

(d) Effectively connected earnings and profits

For purposes of this section—

(1) In general

The term ''effectively connected earnings and profits'' means earnings and profits (without diminution by reason of any distributions made during the taxable year) which are attributable to income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business within the United States.

(2) Exception for certain income

The term ''effectively connected earnings and profits'' shall not include any earnings and profits attributable to—

(A) income not includible in gross income under paragraph (1) or (2) of section 883(a),

(B) income treated as effectively connected with the conduct of a trade or business within the United States under section 921(d) or 926(b) (as in effect before their repeal by the FSC Repeal and Extraterritorial Income Exclusion Act of 2000),

(C) gain on the disposition of a United States real property interest described in section 897(c)(1)(A)(ii),

(D) income treated as effectively connected with the conduct of a trade or business within the United States under section 953(c)(3)(C), or

(E) income treated as effectively connected with the conduct of a trade or business within the United States under section 882(e).

Property and liabilities of the foreign corporation treated as connected with such income under regulations prescribed by the Secretary shall not be taken into account in determining the U.S. assets or U.S. liabilities of the foreign corporation.

(e) Coordination with income tax treaties; etc.

(1) Limitation on treaty exemption

No treaty between the United States and a foreign country shall exempt any foreign corporation from the tax imposed by subsection (a) (or reduce the amount thereof) unless—

(A) such treaty is an income tax treaty, and

(B) such foreign corporation is a qualified resident of such foreign country.

(2) Treaty modifications

If a foreign corporation is a qualified resident of a foreign country with which the United States has an income tax treaty—

(A) the rate of tax under subsection (a) shall be the rate of tax specified in such treaty—

(i) on branch profits if so specified, or

(ii) if not so specified, on dividends paid by a domestic corporation to a corporation resident in such country which wholly owns such domestic corporation, and

(B) any other limitations under such treaty on the tax imposed by subsection (a) shall apply.

(3) Coordination with withholding tax

(A) In general

If a foreign corporation is subject to the tax imposed by subsection (a) for any taxable year (determined after the application of any treaty), no tax shall be imposed by section 871(a), 881(a), 1441, or 1442 on any dividends paid by such corporation out of its earnings and profits for such taxable year.

(B) Limitation on certain treaty benefits

If—

(i) any dividend described in section 861(a)(2)(B) is received by a foreign corporation, and

(ii) subparagraph (A) does not apply to such dividend,

rules similar to the rules of subparagraphs (A) and (B) of subsection (f)(3) shall apply to such dividend.

(4) Qualified resident

For purposes of this subsection—

(A) In general

Except as otherwise provided in this paragraph, the term ''qualified resident'' means, with respect to any foreign country, any foreign corporation which is a resident of such foreign country unless—

(i) 50 percent or more (by value) of the stock of such foreign corporation is owned (within the meaning of section 883(c)(4)) by individuals who are not residents of such foreign country and who are not United States citizens or resident aliens, or

(ii) 50 percent or more of its income is used (directly or indirectly) to meet liabilities to persons who are not residents of such foreign country or citizens or residents of the United States.

(B) Special rule for publicly traded corporations

A foreign corporation which is a resident of a foreign country shall be treated as a qualified resident of such foreign country if—

(i) the stock of such corporation is primarily and regularly traded on an established securities market in such foreign country, or

(ii) such corporation is wholly owned (either directly or indirectly) by another foreign corporation which is organized in such foreign country and the stock of which is so traded.

(C) Corporations owned by publicly traded domestic corporations

A foreign corporation which is a resident of a foreign country shall be treated as a qualified resident of such foreign country if—

(i) such corporation is wholly owned (directly or indirectly) by a domestic corporation, and

(ii) the stock of such domestic corporation is primarily and regularly traded on an established securities market in the United States.

(D) Secretarial authority

The Secretary may, in his sole discretion, treat a foreign corporation as being a qualified resident of a foreign country if such corporation establishes to the satisfaction of the Secretary that such corporation meets such requirements as the Secretary may establish to ensure that individuals who are not residents of such foreign country do not use the treaty between such foreign country and the United States in a manner inconsistent with the purposes of this subsection.

(5) Exception for international organizations

This section shall not apply to an international organization (as defined in section 7701(a)(18)).

(f) Treatment of interest allocable to effectively connected income

(1) In general

In the case of a foreign corporation engaged in a trade or business in the United States (or having gross income treated as effectively connected with the conduct of a trade or business in the United States), for purposes of this subtitle—

(A) any interest paid by such trade or business in the United States shall be treated as if it were paid by a domestic corporation, and

(B) to the extent that the allocable interest exceeds the interest described in sub-

paragraph (A), such foreign corporation shall be liable for tax under section 881(a) in the same manner as if such excess were interest paid to such foreign corporation by a wholly owned domestic corporation on the last day of such foreign corporation's taxable year.

To the extent provided in regulations, subparagraph (A) shall not apply to interest in excess of the amounts reasonably expected to be allocable interest.

(2) Allocable interest

For purposes of this subsection, the term ''allocable interest'' means any interest which is allocable to income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States.

(3) Coordination with treaties

(A) Payor must be qualified resident

In the case of any interest described in paragraph (1) which is paid or accrued by a foreign corporation, no benefit under any treaty between the United States and the foreign country of which such corporation is a resident shall apply unless—

(i) such treaty is an income tax treaty, and

(ii) such foreign corporation is a qualified resident of such foreign country.

(B) Recipient must be qualified resident

In the case of any interest described in paragraph (1) which is received or accrued by any corporation, no benefit under any treaty between the United States and the foreign country of which such corporation is a resident shall apply unless—

(i) such treaty is an income tax treaty, and

(ii) such foreign corporation is a qualified resident of such foreign country.

(g) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations providing for appropriate adjustments in the determination of the dividend equivalent amount in connection with the distribution to shareholders or transfer to a controlled corporation of the taxpayer's U.S. assets and other adjustments in such determination as are necessary or appropriate to carry out the purposes of this section.

(Added Pub. L. 99–514, title XII, § 1241(a), Oct. 22, 1986, 100 Stat. 2576; amended Pub. L. 100–647, title I, § 1012(q)(1)(A), (2)–(6), (14), title VI, § 6133(b), Nov. 10, 1988, 102 Stat. 3522–3525, 3721; Pub. L. 104–188, title I, § 1704(f)(3)(A), Aug. 20, 1996, 110 Stat. 1879; Pub. L. 110–172, § 11(g)(8), Dec. 29, 2007, 121 Stat. 2490.)

REFERENCES IN TEXT

The FSC Repeal and Extraterritorial Income Exclusion Act of 2000, referred to in subsec. (d)(2)(B), is Pub. L. 106–519, Nov. 15, 2000, 114 Stat. 2423. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under section 1 of this title and Tables.

PRIOR PROVISIONS

A prior section 884 was renumbered section 885 of this title.

AMENDMENTS

2007—Subsec. (d)(2)(B). Pub. L. 110–172 inserted ''(as in effect before their repeal by the FSC Repeal and Extraterritorial Income Exclusion Act of 2000)'' before comma at end.

1996—Subsec. (f)(1). Pub. L. 104–188, § 1704(f)(3)(A)(ii), substituted ''reasonably expected to be allocable interest'' for ''reasonably expected to be deductible under section 882 in computing the effectively connected taxable income of such foreign corporation'' in closing provisions.

Subsec. (f)(1)(B). Pub. L. 104–188, § 1704(f)(3)(A)(i), substituted ''to the extent that the allocable interest exceeds the interest described in subparagraph (A)'' for ''to the extent the amount of interest allowable as a deduction under section 882 in computing the effectively connected taxable income of such foreign corporation exceeds the interest described in subparagraph (A)''.

Subsec. (f)(2). Pub. L. 104–188, § 1704(f)(3)(A)(iii), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''EFFECTIVELY CONNECTED TAXABLE INCOME.—For purposes of this subsection, the term 'effectively connected taxable income' means taxable income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business within the United States.''

1988—Subsec. (b)(2)(B). Pub. L. 100–647, § 1012(q)(1)(A), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The increase under subparagraph (A) for any taxable year shall not exceed the aggregate reductions under paragraph (1) for prior taxable years to the extent not previously taken into account under subparagraph (A).''

Subsec. (d)(2)(E). Pub. L. 100–647, § 6133(b), added subpar. (E).

Subsec. (e)(1). Pub. L. 100–647, § 1012(q)(2)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''No income tax treaty between the United States and a foreign country shall exempt any foreign corporation from the tax imposed by subsection (a) (or reduce the amount thereof) unless—

''(A) such foreign corporation is a qualified resident of such foreign country, or

''(B) such foreign corporation is not a qualified resident of such foreign country but such income tax treaty permits a withholding tax on dividends described in section 861(a)(2)(B) which are paid by such foreign corporation.''

Subsec. (e)(3). Pub. L. 100–647, § 1012(q)(2)(B), substituted ''withholding tax'' for ''2nd tier withholding tax'' in heading and amended text generally. Prior to amendment, text read as follows:

''(A) IN GENERAL.—If a foreign corporation is not exempt for any taxable year from the tax imposed by subsection (a) by reason of a treaty, no tax shall be imposed by section 871(a), 881(a), 1441, or 1442 on any dividends paid by such corporation during the taxable year.

''(B) LIMITATION ON CERTAIN TREATY BENEFITS.—No foreign corporation which is not a qualified resident of a foreign country shall be entitled to claim benefits under any income tax treaty between the United States and such foreign country with respect to dividends—

''(i) which are paid by such foreign corporation and with respect to which such foreign corporation is otherwise required to deduct and withhold tax under section 1441 or 1442, or

''(ii) which are received by such foreign corporation and are described in section 861(a)(2)(B).''

Subsec. (e)(4)(A)(i), (ii). Pub. L. 100–647, § 1012(q)(5), substituted ''50 percent or more'' for ''more than 50 percent'' in cl. (i) and ''citizens or residents of the United States'' for ''the United States'' in cl. (ii).

Subsec. (e)(4)(C), (D). Pub. L. 100–647, § 1012(q)(4), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (e)(5). Pub. L. 100–647, §1012(q)(6), added par. (5).

Subsec. (f)(1). Pub. L. 100–647, §1012(f)(3)(A), (14), substituted ''this subtitle'' for ''sections 871, 881, 1441, and 1442'' and inserted ''(or having gross income treated as effectively connected with the conduct of a trade or business in the United States)'' after ''United States''.

Pub. L. 100–647, §1012(q)(2)(C)(i), (3)(B), inserted sentence at end and struck out former last sentence which read as follows: ''Rules similar to the rules of subsection (e)(3)(B) shall apply to interest described in the preceding sentence.''

Subsec. (f)(3). Pub. L. 100–647, §1012(q)(2)(C)(ii), added par. (3).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1704(f)(3)(B) of Pub. L. 104–188 provided that: ''The amendments made by subparagraph (A) [amending this section] shall take effect as if included in the amendments made by section 1241(a) of the Tax Reform Act of 1986 [Pub. L. 99–514].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1012(q)(1)(A), (2)–(6), (14) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 6133(b) of Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1988, see section 6133(c) of Pub. L. 100–647, set out as a note under section 882 of this title.

EFFECTIVE DATE

Section 1241(e) of Pub. L. 99–514 provided that: ''The amendments made by this section [enacting section 884 of this title, renumbering former section 884 as section 885 of this title, and amending sections 861 and 906 of this title] shall apply to taxable years beginning after December 31, 1986.''

DETERMINATION OF EARNINGS AND PROFITS OF FOREIGN CORPORATIONS

Section 1012(q)(1)(B) of Pub. L. 100–647, as amended by Pub. L. 101–239, title VII, §7811(i)(5), Dec. 19, 1989, 103 Stat. 2410, provided that: ''For purposes of applying section 884 of the 1986 Code, the earnings and profits of any corporation shall be determined without regard to any increase in earnings and profits under sections 1023(e)(3)(C) [section 1023(e)(3)(C) of Pub. L. 99–514, set out as an Effective Date note under section 846 of this title] and 1021(c)(2)(C) of the Reform Act [Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 832 of this title] or arising from section 832(b)(4)(C) of the 1986 Code.''

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 1241(a) of Pub. L. 99–514 (enacting this section) to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

§ 885. Cross references

(1) For special provisions relating to foreign corporations carrying on an insurance business within the United States, see section 842.

(2) For rules applicable in determining whether any foreign corporation is engaged in trade or business within the United States, see section 864(b).

(3) For adjustment of tax in case of corporations of certain foreign countries, see section 896.

(4) For allowance of credit against the tax in case of a foreign corporation having income effectively connected with the conduct of a trade or business within the United States, see section 906.

(5) For withholding at source of tax on income of foreign corporations, see section 1442.

(Aug. 16, 1954, ch. 736, 68A Stat. 283, §884; Pub. L. 89–809, title I, §104(m)(1), Nov. 13, 1966, 80 Stat. 1563; Pub. L. 91–172, title I, §101(j)(21), Dec. 30, 1969, 83 Stat. 528; renumbered §885, Pub. L. 99–514, title XII, §1241(a), Oct. 22, 1986, 100 Stat. 2576.)

AMENDMENTS

1986—Pub. L. 99–514 renumbered section 884 of this title as this section.

1969—Pub. L. 91–172 redesignated pars. (2) to (6) as (1) to (5), respectively. Former par. (1), referring to section 512(a), was struck out.

1966—Par. (1). Pub. L. 89–809 redesignated par. (4) as (1). Former par. (1) redesignated (6).

Par. (2). Pub. L. 89–809 redesignated par. (3) as (2) and substituted ''foreign corporations carrying on an insurance business within the United States, see section 842'' for ''foreign insurance companies, see subchapter L (sec. 801 and following)''. Former par. (2) redesignated (3).

Par. (3). Pub. L. 89–809 redesignated former par. (2) as (3) and, in par. (3) as so redesignated, substituted ''section 864(b)'' for ''section 871(c)''. Former par. (3) redesignated (2).

Pars. (4), (5). Pub. L. 89–809 added pars. (4) and (5). Former par. (4) redesignated (1).

Par. (6). Pub. L. 89–809 redesignated former par. (1) as (6).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 101(k)(2)(B) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

SUBPART C—TAX ON GROSS TRANSPORTATION INCOME

Sec.
887. Imposition of tax on gross transportation income of nonresident aliens and foreign corporations.

§ 887. Imposition of tax on gross transportation income of nonresident aliens and foreign corporations

(a) Imposition of tax

In the case of any nonresident alien individual or foreign corporation, there is hereby imposed for each taxable year a tax equal to 4 percent of such individual's or corporation's United States source gross transportation income for such taxable year.

(b) United States source gross transportation income

(1) In general

Except as provided in paragraphs (2) and (3), the term ''United States source gross transportation income'' means any gross income

which is transportation income (as defined in section 863(c)(3)) to the extent such income is treated as from sources in the United States under section 863(c)(2). To the extent provided in regulations, such term does not include any income of a kind to which an exemption under paragraph (1) or (2) of section 883(a) would not apply.

(2) Exception for certain income effectively connected with business in the United States

The term ''United States source gross transportation income'' shall not include any income taxable under section 871(b) or 882.

(3) Exception for certain income taxable in possessions

The term ''United States source gross transportation income'' does not include any income taxable in a possession of the United States under the provisions of this title as made applicable in such possession.

(4) Determination of effectively connected income

For purposes of this chapter, United States source gross transportation income of any taxpayer shall not be treated as effectively connected with the conduct of a trade or business in the United States unless—

(A) the taxpayer has a fixed place of business in the United States involved in the earning of United States source gross transportation income, and

(B) substantially all of the United States source gross transportation income (determined without regard to paragraph (2)) of the taxpayer is attributable to regularly scheduled transportation (or, in the case of income from the leasing of a vessel or aircraft, is attributable to a fixed place of business in the United States).

(c) Coordination with other provisions

Any income taxable under this section shall not be taxable under section 871, 881, or 882.

(Added Pub. L. 99–514, title XII, § 1212(b)(1), Oct. 22, 1986, 100 Stat. 2537; amended Pub. L. 100–647, title I, § 1012(e)(6), Nov. 10, 1988, 102 Stat. 3500; Pub. L. 101–239, title VII, § 7811(i)(8)(A), (B), (9), Dec. 19, 1989, 103 Stat. 2410, 2411.)

AMENDMENTS

1989—Subsec. (b)(1). Pub. L. 101–239, § 7811(i)(8)(B), substituted ''paragraphs (2) and (3)'' for ''paragraph (2)''.

Subsec. (b)(3). Pub. L. 101–239, § 7811(i)(8)(A), added par. (3). Former par. (3) redesignated (4).

Subsec. (b)(4). Pub. L. 101–239, § 7811(i)(8)(A), (9), redesignated former par. (3) as (4) and substituted ''United States source gross transportation income'' for ''transportation income'' in introductory provisions and in subpar. (A).

1988—Subsec. (b)(1). Pub. L. 100–647 substituted ''under section 863(c)(2)'' for ''under section 863(c)'' and inserted at end ''To the extent provided in regulations, such term does not include any income of a kind to which an exemption under paragraph (1) or (2) of section 883(a) would not apply.''

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, see section 1212(f) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 863 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 1212(b)(1) of Pub. L. 99–514 (enacting this section) to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

SUBPART D—MISCELLANEOUS PROVISIONS

Sec.

891. Doubling of rates of tax on citizens and corporations of certain foreign countries.
892. Income of foreign governments and of international organizations.
893. Compensation of employees of foreign governments or international organizations.
894. Income affected by treaty.
895. Income derived by a foreign central bank of issue from obligations of the United States or from bank deposits.
896. Adjustment of tax on nationals, residents, and corporations of certain foreign countries.
897. Disposition of investment in United States real property.
898. Taxable year of certain foreign corporations.

AMENDMENTS

1989—Pub. L. 101–239, title VII, § 7401(c), Dec. 19, 1989, 103 Stat. 2357, added item 898.

1986—Pub. L. 99–514, title XII, § 1212(b)(1), Oct. 22, 1986, 100 Stat. 2537, redesignated former subpart (C) as (D).

1980—Pub. L. 96–499, title XI, § 1122(b), Dec. 5, 1980, 94 Stat. 2687, added item 897.

1966—Pub. L. 89–809, title I, §§ 102(a)(4)(B), 105(c), Nov. 13, 1966, 80 Stat. 1543, 1565, substituted ''affected by treaty'' for ''exempt under treaty'' in item 894, inserted ''or from bank deposits'' in item 895, and added item 896.

1961—Pub. L. 87–29, § 1(b), May 4, 1961, 75 Stat. 64, added item 895.

§ 891. Doubling of rates of tax on citizens and corporations of certain foreign countries

Whenever the President finds that, under the laws of any foreign country, citizens or corporations of the United States are being subjected to discriminatory or extraterritorial taxes, the President shall so proclaim and the rates of tax imposed by sections 1, 3, 11, 801, 831, 852, 871, and 881 shall, for the taxable year during which such proclamation is made and for each taxable year thereafter, be doubled in the case of each citizen

and corporation of such foreign country; but the tax at such doubled rate shall be considered as imposed by such sections as the case may be. In no case shall this section operate to increase the taxes imposed by such sections (computed without regard to this section) to an amount in excess of 80 percent of the taxable income of the taxpayer (computed without regard to the deductions allowable under section 151 and under part VIII of subchapter B). Whenever the President finds that the laws of any foreign country with respect to which the President has made a proclamation under the preceding provisions of this section have been modified so that discriminatory and extraterritorial taxes applicable to citizens and corporations of the United States have been removed, he shall so proclaim, and the provisions of this section providing for doubled rates of tax shall not apply to any citizen or corporation of such foreign country with respect to any taxable year beginning after such proclamation is made.

(Aug. 16, 1954, ch. 736, 68A Stat. 283; Mar. 13, 1956, ch. 83, §5(6), 70 Stat. 49; Pub. L. 86–69, §3(f)(1), June 25, 1959, 73 Stat. 140; Pub. L. 98–369, div. A, title II, §211(b)(12), July 18, 1984, 98 Stat. 755; Pub. L. 99–514, title X, §1024(c)(13), Oct. 22, 1986, 100 Stat. 2408.)

AMENDMENTS

1986—Pub. L. 99–514 struck out reference to section 821.

1984—Pub. L. 98–369 substituted ''801'' for ''802''.

1959—Pub. L. 86–69 struck out reference to section 811.

1956—Act Mar. 13, 1956, inserted reference to section 811.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1024(e) of Pub. L. 99–514, set out as a note under section 831 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–69 applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86–69, set out an Effective Date note under section 381 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956, applicable only to taxable years beginning after Dec. 31, 1954, see section 6 of act Mar. 13, 1956, set out as a note under section 316 of this title.

§ 892. Income of foreign governments and of international organizations

(a) Foreign governments

(1) In general

The income of foreign governments received from—

(A) investments in the United States in—

(i) stocks, bonds, or other domestic securities owned by such foreign governments, or

(ii) financial instruments held in the execution of governmental financial or monetary policy, or

(B) interest on deposits in banks in the United States of moneys belonging to such foreign governments,

shall not be included in gross income and shall be exempt from taxation under this subtitle.

(2) Income received directly or indirectly from commercial activities

(A) In general

Paragraph (1) shall not apply to any income—

(i) derived from the conduct of any commercial activity (whether within or outside the United States),

(ii) received by a controlled commercial entity or received (directly or indirectly) from a controlled commercial entity, or

(iii) derived from the disposition of any interest in a controlled commercial entity.

(B) Controlled commercial entity

For purposes of subparagraph (A), the term ''controlled commercial entity'' means any entity engaged in commercial activities (whether within or outside the United States) if the government—

(i) holds (directly or indirectly) any interest in such entity which (by value or voting interest) is 50 percent or more of the total of such interests in such entity, or

(ii) holds (directly or indirectly) any other interest in such entity which provides the foreign government with effective control of such entity.

For purposes of the preceding sentence, a central bank of issue shall be treated as a controlled commercial entity only if engaged in commercial activities within the United States.

(3) Treatment as resident

For purposes of this title, a foreign government shall be treated as a corporate resident of its country. A foreign government shall be so treated for purposes of any income tax treaty obligation of the United States if such government grants equivalent treatment to the Government of the United States.

(b) International organizations

The income of international organizations received from investments in the United States in stocks, bonds, or other domestic securities owned by such international organizations, or from interest on deposits in banks in the United States of moneys belonging to such international organizations, or from any other source within the United States, shall not be included in gross income and shall be exempt from taxation under this subtitle.

(c) Regulations

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

(Aug. 16, 1954, ch. 736, 68A Stat. 284; Pub. L. 99–514, title XII, §1247(a), Oct. 22, 1986, 100 Stat. 2583; Pub. L. 100–647, title I, §1012(t)(1)–(3), Nov. 10, 1988, 102 Stat. 3527; Pub. L. 101–508, title XI, §11704(a)(35), Nov. 5, 1990, 104 Stat. 1388–519.)

AMENDMENTS

1990—Subsec. (a)(2)(A). Pub. L. 101–508 made clarifying amendment to Pub. L. 100–647, §1012(t)(1). See 1988 Amendment note below.

1988—Subsec. (a)(2)(A). Pub. L. 100–647, §1012(t)(1), (2), as amended by Pub. L. 101–508, amended cl. (ii) generally and added cl. (iii). Prior to amendment, cl. (ii) read as follows: ''received from or by a controlled commercial entity.''

Subsec. (a)(3). Pub. L. 100–647, §1012(t)(3), added par. (3).

1986—Pub. L. 99–514 amended section generally. Prior to amendment, section read as follows: ''The income of foreign governments or international organizations received from investments in the United States in stocks, bonds, or other domestic securities, owned by such foreign governments or by international organizations, or from interest on deposits in banks in the United States of moneys belonging to such foreign governments or international organizations, or from any other source within the United States, shall not be included in gross income and shall be exempt from taxation under this subtitle.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1247(b) of Pub. L. 99–514 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to amounts received on or after July 1, 1986, except that no amount shall be required to be deducted and withheld by reason of the amendment made by subsection (a) from any payment made before the date of the enactment of this Act [Oct. 22, 1986].''

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 1247(a) of Pub. L. 99–514 to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

§ 893. Compensation of employees of foreign governments or international organizations

(a) Rule for exclusion

Wages, fees, or salary of any employee of a foreign government or of an international organization (including a consular or other officer, or a nondiplomatic representative), received as compensation for official services to such government or international organization shall not be included in gross income and shall be exempt from taxation under this subtitle if—

(1) such employee is not a citizen of the United States, or is a citizen of the Republic of the Philippines (whether or not a citizen of the United States); and

(2) in the case of an employee of a foreign government, the services are of a character similar to those performed by employees of the Government of the United States in foreign countries; and

(3) in the case of an employee of a foreign government, the foreign government grants an equivalent exemption to employees of the Government of the United States performing similar services in such foreign country.

(b) Certificate by Secretary of State

The Secretary of State shall certify to the Secretary of the Treasury the names of the foreign countries which grant an equivalent exemption to the employees of the Government of the United States performing services in such foreign countries, and the character of the services performed by employees of the Government of the United States in foreign countries.

(c) Limitation on exclusion

Subsection (a) shall not apply to—

(1) any employee of a controlled commercial entity (as defined in section 892(a)(2)(B)), or

(2) any employee of a foreign government whose services are primarily in connection with a commercial activity (whether within or outside the United States) of the foreign government.

(Aug. 16, 1954, ch. 736, 68A Stat. 284; Pub. L. 100–647, title I, §1012(t)(4), Nov. 10, 1988, 102 Stat. 3527.)

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–647 added subsec. (c).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

§ 894. Income affected by treaty

(a) Treaty provisions

(1) In general

The provisions of this title shall be applied to any taxpayer with due regard to any treaty obligation of the United States which applies to such taxpayer.

(2) Cross reference

For relationship between treaties and this title, see section 7852(d).

(b) Permanent establishment in United States

For purposes of applying any exemption from, or reduction of, any tax provided by any treaty to which the United States is a party with respect to income which is not effectively connected with the conduct of a trade or business within the United States, a nonresident alien individual or a foreign corporation shall be deemed not to have a permanent establishment in the United States at any time during the taxable year. This subsection shall not apply in respect of the tax computed under section 877(b).

(c) Denial of treaty benefits for certain payments through hybrid entities

(1) Application to certain payments

A foreign person shall not be entitled under any income tax treaty of the United States with a foreign country to any reduced rate of any withholding tax imposed by this title on an item of income derived through an entity which is treated as a partnership (or is otherwise treated as fiscally transparent) for purposes of this title if—

(A) such item is not treated for purposes of the taxation laws of such foreign country as an item of income of such person,

(B) the treaty does not contain a provision addressing the applicability of the treaty in the case of an item of income derived through a partnership, and

(C) the foreign country does not impose tax on a distribution of such item of income from such entity to such person.

(2) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to determine the extent to which a taxpayer to which paragraph (1) does not apply shall not be entitled to benefits under any income tax treaty of the United States with respect to any payment received by, or income attributable to any activities of, an entity organized in any jurisdiction (including the United States) that is treated as a partnership or is otherwise treated as fiscally transparent for purposes of this title (including a common investment trust under section 584, a grantor trust, or an entity that is disregarded for purposes of this title) and is treated as fiscally nontransparent for purposes of the tax laws of the jurisdiction of residence of the taxpayer.

(Aug. 16, 1954, ch. 736, 68A Stat. 284; Pub. L. 89–809, title I, §105(a), Nov. 13, 1966, 80 Stat. 1563; Pub. L. 100–647, title I, §1012(aa)(6), Nov. 10, 1988, 102 Stat. 3533; Pub. L. 105–34, title X, §1054(a), Aug. 5, 1997, 111 Stat. 943.)

AMENDMENTS

1997—Subsec. (c). Pub. L. 105–34 added subsec. (c).

1988—Subsec. (a). Pub. L. 100–647 substituted ''Treaty provisions'' for ''Income affected by treaty'' in heading and amended text generally. Prior to amendment, text read as follows: ''Income of any kind, to the extent required by any treaty obligation of the United States, shall not be included in gross income and shall be exempt from taxation under this subtitle.''

1966—Pub. L. 89–809 designated existing provisions as subsec. (a), added subsec. (b), and substituted ''affected by treaty'' for ''exempt under treaty'' in section catchline.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1054(b) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply upon the date of enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 105(d) of Pub. L. 89–809 provided that: ''The amendments made by this section (other than subsections (d) and (f)) [amending this section and enacting section 896 of this title] shall apply with respect to taxable years beginning after December 31, 1966.''

§ 895. Income derived by a foreign central bank of issue from obligations of the United States or from bank deposits

Income derived by a foreign central bank of issue from obligations of the United States or of any agency or instrumentality thereof (including beneficial interests, participations, and other instruments issued under section 302(c) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717)) which are owned by such foreign central bank of issue, or derived from interest on deposits with persons carrying on the banking business, shall not be included in gross income and shall be exempt from taxation under this subtitle unless such obligations or deposits are held for, or used in connection with, the conduct of commercial banking functions or other commercial activities. For purposes of the preceding sentence the Bank for International Settlements shall be treated as a foreign central bank of issue.

(Added Pub. L. 87–29, §1(a), May 4, 1961, 75 Stat. 64; amended Pub. L. 89–809, title I, §102(a)(4)(A), Nov. 13, 1966, 80 Stat. 1543.)

AMENDMENTS

1966—Pub. L. 89–809 exempted income derived from obligations of agencies or instrumentalities of the United States and income derived from interest on deposits with persons carrying on the banking business, inserted ''(including beneficial interests, participations, and other instruments issued under section 302(c) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717)),'' and inserted sentence requiring the Bank for International Settlements to be treated as a foreign central bank of issue.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, except that in applying section 864(c)(4)(B)(iii) of this title with respect to a binding contract entered into on or before Feb. 24, 1966, activities in the United States on or before such date in negotiating or carrying out such contract shall not be taken into account, see section 102(e)(1) of Pub. L. 89–809, set out as a note under section 861 of this title.

EFFECTIVE DATE

Section 1(c) of Pub. L. 87–29 provided that: ''The amendments made by subsections (a) and (b) [enacting this section and amending analysis preceding section 891 of this title] shall be effective with respect to income received in taxable years beginning after December 31, 1960.''

§ 896. Adjustment of tax on nationals, residents, and corporations of certain foreign countries

(a) Imposition of more burdensome taxes by foreign country

Whenever the President finds that—

(1) under the laws of any foreign country, considering the tax system of such foreign country, citizens of the United States not residents of such foreign country or domestic corporations are being subjected to more burdensome taxes, on any item of income received by such citizens or corporations from sources within such foreign country, than taxes imposed by the provisions of this subtitle on similar income derived from sources within the United States by residents or corporations of such foreign country,

(2) such foreign country, when requested by the United States to do so, has not acted to revise or reduce such taxes so that they are no more burdensome than taxes imposed by the provisions of this subtitle on similar income

derived from sources within the United States by residents or corporations of such foreign country, and

(3) it is in the public interest to apply pre-1967 tax provisions in accordance with the provisions of this subsection to residents or corporations of such foreign country,

the President shall proclaim that the tax on such similar income derived from sources within the United States by residents or corporations of such foreign country shall, for taxable years beginning after such proclamation, be determined under this subtitle without regard to amendments made to this subchapter and chapter 3 on or after the date of enactment of this section.

(b) Imposition of discriminatory taxes by foreign country

Whenever the President finds that—

(1) under the laws of any foreign country, citizens of the United States or domestic corporations (or any class of such citizens or corporations) are, with respect to any item of income, being subjected to a higher effective rate of tax than are nationals, residents, or corporations of such foreign country (or a similar class of such nationals, residents, or corporations) under similar circumstances;

(2) such foreign country, when requested by the United States to do so, has not acted to eliminate such higher effective rate of tax; and

(3) it is in the public interest to adjust, in accordance with the provisions of this subsection, the effective rate of tax imposed by this subtitle on similar income of nationals, residents, or corporations of such foreign country (or such similar class of such nationals, residents, or corporations),

the President shall proclaim that the tax on similar income of nationals, residents, or corporations of such foreign country (or such similar class of such nationals, residents, or corporations) shall, for taxable years beginning after such proclamation, be adjusted so as to cause the effective rate of tax imposed by this subtitle on such similar income to be substantially equal to the effective rate of tax imposed by such foreign country on such item of income of citizens of the United States or domestic corporations (or such class of citizens or corporations). In implementing a proclamation made under this subsection, the effective rate of tax imposed by this subtitle on an item of income may be adjusted by the disallowance, in whole or in part, of any deduction, credit, or exemption which would otherwise be allowed with respect to that item of income or by increasing the rate of tax otherwise applicable to that item of income.

(c) Alleviation of more burdensome or discriminatory taxes

Whenever the President finds that—

(1) the laws of any foreign country with respect to which the President has made a proclamation under subsection (a) have been modified so that citizens of the United States not residents of such foreign country or domestic corporations are no longer subject to more burdensome taxes on the item of income derived by such citizens or corporations from sources within such foreign country, or

(2) the laws of any foreign country with respect to which the President has made a proclamation under subsection (b) have been modified so that citizens of the United States or domestic corporations (or any class of such citizens or corporations) are no longer subject to a higher effective rate of tax on the item of income,

he shall proclaim that the tax imposed by this subtitle on the similar income of nationals, residents, or corporations of such foreign country shall, for any taxable year beginning after such proclamation, be determined under this subtitle without regard to such subsection.

(d) Notification of Congress required

No proclamation shall be issued by the President pursuant to this section unless, at least 30 days prior to such proclamation, he has notified the Senate and the House of Representatives of his intention to issue such proclamation.

(e) Implementation by regulations

The Secretary shall prescribe such regulations as he deems necessary or appropriate to implement this section.

(Added Pub. L. 89–809, title I, § 105(b), Nov. 13, 1966, 80 Stat. 1563; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

REFERENCES IN TEXT

The date of enactment of this section, referred to in the provisions following subsec. (a)(3), is the date of enactment of Pub. L. 89–809, which was approved Nov. 13, 1966.

AMENDMENTS

1976—Subsec. (e). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1966, see section 105(d) of Pub. L. 89–809, set out as an Effective Date of 1966 Amendment note under section 894 of this title.

§ 897. Disposition of investment in United States real property

(a) General rule

(1) Treatment as effectively connected with United States trade or business

For purposes of this title, gain or loss of a nonresident alien individual or a foreign corporation from the disposition of a United States real property interest shall be taken into account—

(A) in the case of a nonresident alien individual, under section 871(B)(1), or

(B) in the case of a foreign corporation, under section 882(a)(1),

as if the taxpayer were engaged in a trade or business within the United States during the taxable year and as if such gain or loss were effectively connected with such trade or business.

(2) Minimum tax on nonresident alien individuals

(A) In general

In the case of any nonresident alien individual, the taxable excess for purposes of

section 55(b)(1)(A) shall not be less than the lesser of—

(i) the individual's alternative minimum taxable income (as defined in section 55(b)(2)) for the taxable year, or

(ii) the individual's net United States real property gain for the taxable year.

(B) Net United States real property gain

For purposes of subparagraph (A), the term ''net United States real property gain'' means the excess of—

(i) the aggregate of the gains for the taxable year from dispositions of United States real property interests, over

(ii) the aggregate of the losses for the taxable year from dispositions of such interests.

(b) Limitation on losses of individuals

In the case of an individual, a loss shall be taken into account under subsection (a) only to the extent such loss would be taken into account under section 165(c) (determined without regard to subsection (a) of this section).

(c) United States real property interest

For purposes of this section—

(1) United States real property interest

(A) In general

Except as provided in subparagraph (B), the term ''United States real property interest'' means—

(i) an interest in real property (including an interest in a mine, well, or other natural deposit) located in the United States or the Virgin Islands, and

(ii) any interest (other than an interest solely as a creditor) in any domestic corporation unless the taxpayer establishes (at such time and in such manner as the Secretary by regulations prescribes) that such corporation was at no time a United States real property holding corporation during the shorter of—

(I) the period after June 18, 1980, during which the taxpayer held such interest, or

(II) the 5-year period ending on the date of the disposition of such interest.

(B) Exclusion for interest in certain corporations

The term ''United States real property interest'' does not include any interest in a corporation if—

(i) as of the date of the disposition of such interest, such corporation did not hold any United States real property interests, and

(ii) all of the United States real property interests held by such corporation at any time during the shorter of the periods described in subparagraph (A)(ii)—

(I) were disposed of in transactions in which the full amount of the gain (if any) was recognized, or

(II) ceased to be United States real property interests by reason of the application of this subparagraph to 1 or more other corporations.

(2) United States real property holding corporation

The term ''United States real property holding corporation'' means any corporation if—

(A) the fair market value of its United States real property interests equals or exceeds 50 percent of

(B) the fair market value of—

(i) its United States real property interests,

(ii) its interests in real property located outside the United States, plus

(iii) any other of its assets which are used or held for use in a trade or business.

(3) Exception for stock regularly traded on established securities markets

If any class of stock of a corporation is regularly traded on an established securities market, stock of such class shall be treated as a United States real property interest only in the case of a person who, at some time during the shorter of the periods described in paragraph (1)(A)(ii), held more than 5 percent of such class of stock.

(4) Interests held by foreign corporations and by partnerships, trusts, and estates

For purposes of determining whether any corporation is a United States real property holding corporation—

(A) Foreign corporations

Paragraph (1)(A)(ii) shall be applied by substituting ''any corporation (whether foreign or domestic)'' for ''any domestic corporation''.

(B) Interests held by partnerships, etc.

Under regulations prescribed by the Secretary, assets held by a partnership, trust, or estate shall be treated as held proportionately by its partners or beneficiaries. Any asset treated as held by a partner or beneficiary by reason of this subparagraph which is used or held for use by the partnership, trust, or estate in a trade or business shall be treated as so used or held by the partner or beneficiary. Any asset treated as held by a partner or beneficiary by reason of this subparagraph shall be so treated for purposes of applying this subparagraph successively to partnerships, trusts, or estates which are above the first partnership, trust, or estate in a chain thereof.

(5) Treatment of controlling interests

(A) In general

Under regulations, for purposes of determining whether any corporation is a United States real property holding corporation, if any corporation (hereinafter in this paragraph referred to as the ''first corporation'') holds a controlling interest in a second corporation—

(i) the stock which the first corporation holds in the second corporation shall not be taken into account,

(ii) the first corporation shall be treated as holding a portion of each asset of the second corporation equal to the percentage of the fair market value of the stock of the second corporation represented by the stock held by the first corporation, and

(iii) any asset treated as held by the first corporation by reason of clause (ii) which

is used or held for use by the second corporation in a trade or business shall be treated as so used or held by the first corporation.

Any asset treated as held by the first corporation by reason of the preceding sentence shall be so treated for purposes of applying the preceding sentence successively to corporations which are above the first corporation in a chain of corporations.

(B) Controlling interest

For purposes of subparagraph (A), the term ''controlling interest'' means 50 percent or more of the fair market value of all classes of stock of a corporation.

(6) Other special rules

(A) Interest in real property

The term ''interest in real property'' includes fee ownership and co-ownership of land or improvements thereon, leaseholds of land or improvements thereon, options to acquire land or improvements thereon, and options to acquire leaseholds of land or improvements thereon.

(B) Real property includes associated personal property

The term ''real property'' includes movable walls, furnishings, and other personal property associated with the use of the real property.

(C) Constructive ownership rules

For purposes of determining under paragraph (3) whether any person holds more than 5 percent of any class of stock and of determining under paragraph (5) whether a person holds a controlling interest in any corporation, section 318(a) shall apply (except that paragraphs (2)(C) and (3)(C) of section 318(a) shall be applied by substituting ''5 percent'' for ''50 percent'').

(d) Treatment of distributions by foreign corporations

(1) In general

Except to the extent otherwise provided in regulations, notwithstanding any other provision of this chapter, gain shall be recognized by a foreign corporation on the distribution (including a distribution in liquidation or redemption) of a United States real property interest in an amount equal to the excess of the fair market value of such interest (as of the time of the distribution) over its adjusted basis.

(2) Exceptions

Gain shall not be recognized under paragraph (1)—

(A) if—

(i) at the time of the receipt of the distributed property, the distributee would be subject to taxation under this chapter on a subsequent disposition of the distributed property, and

(ii) the basis of the distributed property in the hands of the distributee is no greater than the adjusted basis of such property before the distribution, increased by the amount of gain (if any) recognized by the distributing corporation, or

(B) if such nonrecognition is provided in regulations prescribed by the Secretary under subsection (e)(2).

(e) Coordination with nonrecognition provisions

(1) In general

Except to the extent otherwise provided in subsection (d) and paragraph (2) of this subsection, any nonrecognition provision shall apply for purposes of this section to a transaction only in the case of an exchange of a United States real property interest for an interest the sale of which would be subject to taxation under this chapter.

(2) Regulations

The Secretary shall prescribe regulations (which are necessary or appropriate to prevent the avoidance of Federal income taxes) providing—

(A) the extent to which nonrecognition provisions shall, and shall not, apply for purposes of this section, and

(B) the extent to which—

(i) transfers of property in reorganization, and

(ii) changes in interests in, or distributions from, a partnership, trust, or estate,

shall be treated as sales of property at fair market value.

(3) Nonrecognition provision defined

For purposes of this subsection, the term ''nonrecognition provision'' means any provision of this title for not recognizing gain or loss.

[(f) Repealed. Pub. L. 104–188, title I, § 1702(g)(2), Aug. 20, 1996, 110 Stat. 1873]

(g) Special rule for sales of interest in partnerships, trusts, and estates

Under regulations prescribed by the Secretary, the amount of any money, and the fair market value of any property, received by a nonresident alien individual or foreign corporation in exchange for all or part of its interest in a partnership, trust, or estate shall, to the extent attributable to United States real property interests, be considered as an amount received from the sale or exchange in the United States of such property.

(h) Special rules for certain investment entities

For purposes of this section—

(1) Look-through of distributions

Any distribution by a qualified investment entity to a nonresident alien individual, a foreign corporation, or other qualified investment entity shall, to the extent attributable to gain from sales or exchanges by the qualified investment entity of United States real property interests, be treated as gain recognized by such nonresident alien individual, foreign corporation, or other qualified investment entity from the sale or exchange of a United States real property interest. Notwithstanding the preceding sentence, any distribution by a qualified investment entity to a non-

resident alien individual or a foreign corporation with respect to any class of stock which is regularly traded on an established securities market located in the United States shall not be treated as gain recognized from the sale or exchange of a United States real property interest if such individual or corporation did not own more than 5 percent of such class of stock at any time during the 1-year period ending on the date of such distribution.

(2) Sale of stock in domestically controlled entity not taxed

The term ''United States real property interest'' does not include any interest in a domestically controlled qualified investment entity.

(3) Distributions by domestically controlled qualified investment entities

In the case of a domestically controlled qualified investment entity, rules similar to the rules of subsection (d) shall apply to the foreign ownership percentage of any gain.

(4) Definitions

(A) Qualified investment entity

(i) In general

The term ''qualified investment entity'' means—

(I) any real estate investment trust, and

(II) any regulated investment company which is a United States real property holding corporation or which would be a United States real property holding corporation if the exceptions provided in subsections (c)(3) and (h)(2) did not apply to interests in any real estate investment trust or regulated investment company.

(ii) Termination

Clause (i)(II) shall not apply after December 31, 2011. Notwithstanding the preceding sentence, an entity described in clause (i)(II) shall be treated as a qualified investment entity for purposes of applying paragraphs (1) and (5) and section 1445 with respect to any distribution by the entity to a nonresident alien individual or a foreign corporation which is attributable directly or indirectly to a distribution to the entity from a real estate investment trust.

(B) Domestically controlled

The term ''domestically controlled qualified investment entity'' means any qualified investment entity in which at all times during the testing period less than 50 percent in value of the stock was held directly or indirectly by foreign persons.

(C) Foreign ownership percentage

The term ''foreign ownership percentage'' means that percentage of the stock of the qualified investment entity which was held (directly or indirectly) by foreign persons at the time during the testing period during which the direct and indirect ownership of stock by foreign persons was greatest.

(D) Testing period

The term ''testing period'' means whichever of the following periods is the shortest:

(i) the period beginning on June 19, 1980, and ending on the date of the disposition or of the distribution, as the case may be,

(ii) the 5-year period ending on the date of the disposition or of the distribution, as the case may be, or

(iii) the period during which the qualified investment entity was in existence.

(5) Treatment of certain wash sale transactions

(A) In general

If an interest in a domestically controlled qualified investment entity is disposed of in an applicable wash sale transaction, the taxpayer shall, for purposes of this section, be treated as having gain from the sale or exchange of a United States real property interest in an amount equal to the portion of the distribution described in subparagraph (B) with respect to such interest which, but for the disposition, would have been treated by the taxpayer as gain from the sale or exchange of a United States real property interest under paragraph (1).

(B) Applicable wash sales transaction

For purposes of this paragraph—

(i) In general

The term ''applicable wash sales transaction'' means any transaction (or series of transactions) under which a nonresident alien individual, foreign corporation, or qualified investment entity—

(I) disposes of an interest in a domestically controlled qualified investment entity during the 30-day period preceding the ex-dividend date of a distribution which is to be made with respect to the interest and any portion of which, but for the disposition, would have been treated by the taxpayer as gain from the sale or exchange of a United States real property interest under paragraph (1), and

(II) acquires, or enters into a contract or option to acquire, a substantially identical interest in such entity during the 61-day period beginning with the 1st day of the 30-day period described in subclause (I).

For purposes of subclause (II), a nonresident alien individual, foreign corporation, or qualified investment entity shall be treated as having acquired any interest acquired by a person related (within the meaning of section 267(b) or 707(b)(1)) to the individual, corporation, or entity, and any interest which such person has entered into any contract or option to acquire.

(ii) Application to substitute dividend and similar payments

Subparagraph (A) shall apply to—

(I) any substitute dividend payment (within the meaning of section 861), or

(II) any other similar payment specified in regulations which the Secretary determines necessary to prevent avoidance of the purposes of this paragraph.

The portion of any such payment treated by the taxpayer as gain from the sale or

exchange of a United States real property interest under subparagraph (A) by reason of this clause shall be equal to the portion of the distribution such payment is in lieu of which would have been so treated but for the transaction giving rise to such payment.

(iii) Exception where distribution actually received

A transaction shall not be treated as an applicable wash sales transaction if the nonresident alien individual, foreign corporation, or qualified investment entity receives the distribution described in clause (i)(I) with respect to either the interest which was disposed of, or acquired, in the transaction.

(iv) Exception for certain publicly traded stock

A transaction shall not be treated as an applicable wash sales transaction if it involves the disposition of any class of stock in a qualified investment entity which is regularly traded on an established securities market within the United States but only if the nonresident alien individual, foreign corporation, or qualified investment entity did not own more than 5 percent of such class of stock at any time during the 1-year period ending on the date of the distribution described in clause (i)(I).

(i) Election by foreign corporation to be treated as domestic corporation

(1) In general

If—

(A) a foreign corporation holds a United States real property interest, and

(B) under any treaty obligation of the United States the foreign corporation is entitled to nondiscriminatory treatment with respect to that interest,

then such foreign corporation may make an election to be treated as a domestic corporation for purposes of this section, section 1445, and section 6039C.

(2) Revocation only with consent

Any election under paragraph (1), once made, may be revoked only with the consent of the Secretary.

(3) Making of election

An election under paragraph (1) may be made only—

(A) if all of the owners of all classes of interests (other than interests solely as a creditor) in the foreign corporation at the time of the election consent to the making of the election and agree that gain, if any, from the disposition of such interest after June 18, 1980, which would be taken into account under subsection (a) shall be taxable notwithstanding any provision to the contrary in a treaty to which the United States is a party, and

(B) subject to such other conditions as the Secretary may prescribe by regulations with respect to the corporation or its shareholders.

In the case of a class of interest (other than an interest solely as a creditor) which is regularly traded on an established securities market, the consent described in subparagraph (A) need only be made by any person if such person held more than 5 percent of such class of interest at some time during the shorter of the periods described in subsection (c)(1)(A)(ii). The constructive ownership rules of subsection (c)(6)(C) shall apply in determining whether a person held more than 5 percent of a class of interest.

(4) Exclusive method of claiming nondiscrimination

The election provided by paragraph (1) shall be the exclusive remedy for any person claiming discriminatory treatment with respect to this section, section 1145, and section 6039C.

(j) Certain contributions to capital

Except to the extent otherwise provided in regulations, gain shall be recognized by a nonresident alien individual or foreign corporation on the transfer of a United States real property interest to a foreign corporation if the transfer is made as paid in surplus or as a contribution to capital, in the amount of the excess of—

(1) the fair market value of such property transferred, over

(2) the sum of—

(A) the adjusted basis of such property in the hands of the transferor, plus

(B) the amount of gain, if any, recognized to the transferor under any other provision at the time of the transfer.

(Added Pub. L. 96–499, title XI, § 1122(a), Dec. 5, 1980, 94 Stat. 2682; amended Pub. L. 97–34, title VIII, § 831(a)(1), (b)–(d), (f), (g), Aug. 13, 1981, 95 Stat. 352–354; Pub. L. 97–248, title II, § 201(d)(6), formerly § 201(c)(6), Sept. 3, 1982, 96 Stat. 419, renumbered § 201(d)(6), Pub. L. 97–448, title III, § 306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 99–514, title VI, § 631(e)(12), title VII, § 701(e)(4)(G), title XVIII, § 1810(f)(1), Oct. 22, 1986, 100 Stat. 2275, 2343, 2826; Pub. L. 100–647, title I, § 1006(e)(19), Nov. 10, 1988, 102 Stat. 3403; Pub. L. 101–508, title XI, § 11801(a)(30), Nov. 5, 1990, 104 Stat. 1388–521; Pub. L. 103–66, title XIII, § 13203(c)(2), Aug. 10, 1993, 107 Stat. 462; Pub. L. 104–188, title I, § 1702(g)(2), Aug. 20, 1996, 110 Stat. 1873; Pub. L. 108–357, title IV, §§ 411(c), 418(a), Oct. 22, 2004, 118 Stat. 1504, 1512; Pub. L. 109–135, title IV, § 403(p)(1), Dec. 21, 2005, 119 Stat. 2626; Pub. L. 109–222, title V, §§ 504(a), 505(a), 506(a), May 17, 2006, 120 Stat. 355, 357; Pub. L. 110–343, div. C, title II, § 208(a), Oct. 3, 2008, 122 Stat. 3865; Pub. L. 111–312, title VII, § 749(a), Dec. 17, 2010, 124 Stat. 3320.)

AMENDMENTS

2010—Subsec. (h)(4)(A)(ii). Pub. L. 111–312 substituted ''December 31, 2011'' for ''December 31, 2009''.

2008—Subsec. (h)(4)(A)(ii). Pub. L. 110–343 substituted ''December 31, 2009'' for ''December 31, 2007''.

2006—Subsec. (h)(1). Pub. L. 109–222, § 505(a)(1), in first sentence, substituted ''a nonresident alien individual, a foreign corporation, or other qualified investment entity'' for ''a nonresident alien individual or a foreign corporation'' and ''such nonresident alien individual, foreign corporation, or other qualified investment entity'' for ''such nonresident alien individual or foreign

corporation'' and inserted second sentence and struck out former second sentence which read as follows: ''Notwithstanding the preceding sentence, any distribution by a real estate investment trust with respect to any class of stock which is regularly traded on an established securities market located in the United States shall not be treated as gain recognized from the sale or exchange of a United States real property interest if the shareholder did not own more than 5 percent of such class of stock at any time during the 1-year period ending on the date of the distribution.''

Subsec. (h)(4)(A)(i)(II). Pub. L. 109–222, §504(a), inserted ''which is a United States real property holding corporation or which would be a United States real property holding corporation if the exceptions provided in subsections (c)(3) and (h)(2) did not apply to interests in any real estate investment trust or regulated investment company'' after ''any regulated investment company''.

Subsec. (h)(4)(A)(ii). Pub. L. 109–222, §505(a)(2), inserted at end ''Notwithstanding the preceding sentence, an entity described in clause (i)(II) shall be treated as a qualified investment entity for purposes of applying paragraphs (1) and (5) and section 1445 with respect to any distribution by the entity to a nonresident alien individual or a foreign corporation which is attributable directly or indirectly to a distribution to the entity from a real estate investment trust.''

Subsec. (h)(5). Pub. L. 109–222, §506(a), added par. (5).

2005—Subsec. (h)(1). Pub. L. 109–135 substituted ''any distribution by a real estate investment trust with respect to any class of stock'' for ''any distribution by a REIT with respect to any class of stock'' and ''the 1-year period ending on the date of the distribution'' for ''the taxable year''.

2004—Subsec. (h). Pub. L. 108–357, §411(c)(5), substituted ''certain investment entities'' for ''REITS'' in heading.

Subsec. (h)(1). Pub. L. 108–357, §418(a), inserted at end ''Notwithstanding the preceding sentence, any distribution by a REIT with respect to any class of stock which is regularly traded on an established securities market located in the United States shall not be treated as gain recognized from the sale or exchange of a United States real property interest if the shareholder did not own more than 5 percent of such class of stock at any time during the taxable year.''

Pub. L. 108–357, §411(c)(1), substituted ''qualified investment entity'' for ''REIT'' in two places.

Subsec. (h)(2). Pub. L. 108–357, §411(c)(2), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''The term 'United States real property interest' does not include any interest in a domestically-controlled REIT.''

Subsec. (h)(3). Pub. L. 108–357, §411(c)(2), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''In the case of a domestically-controlled REIT, rules similar to the rules of subsection (d) shall apply to the foreign ownership percentage of any gain.''

Subsec. (h)(4)(A). Pub. L. 108–357, §411(c)(3), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows: ''The term 'REIT' means a real estate investment trust.''

Subsec. (h)(4)(B). Pub. L. 108–357, §411(c)(3), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''The term 'domestically-controlled REIT' means a REIT in which at all times during the testing period less than 50 percent in value of the stock was held directly or indirectly by foreign persons.''

Subsec. (h)(4)(C), (D)(iii). Pub. L. 108–357, §411(c)(4), substituted ''qualified investment entity'' for ''REIT''.

1996—Subsec. (f). Pub. L. 104–188 struck out subsec. (f) which read as follows:

''(f) DISTRIBUTIONS BY DOMESTIC CORPORATIONS TO FOREIGN SHAREHOLDERS.—If a domestic corporation distributes a United States real property interest to a nonresident alien individual or a foreign corporation in a distribution to which section 301 applies, notwithstanding any other provision of this chapter, the basis of such United States real property interest in the hands of such nonresident alien individual or foreign corporation shall not exceed—

''(1) the adjusted basis of such property before the distribution, increased by

''(2) the sum of—

''(A) any gain recognized by the distributing corporation on the distribution, and

''(B) any tax paid under this chapter by the distributee on such distribution.''

1993—Subsec. (a)(2). Pub. L. 103–66 substituted ''Minimum'' for ''21-percent minimum'' in heading and ''the taxable excess for purposes of section 55(b)(1)(A) shall not be less than'' for ''the amount determined under section 55(b)(1)(A) shall not be less than 21 percent of'' in subpar. (A).

1990—Subsec. (k). Pub. L. 101–508 struck out subsec. (k) which read as follows: ''If—

''(1) a foreign corporation adopts, or has adopted, a plan of liquidation described in section 334(b)(2)(A), and

''(2) the 12-month period described in section 334(b)(2)(B) for the acquisition by purchase of the stock of the foreign corporation, began after December 31, 1979, and before November 26, 1980,

then such foreign corporation may make an election to be treated, for the period following June 18, 1980, as a domestic corporation pursuant to section 897(i)(1). Notwithstanding an election under the preceding sentence, any selling shareholder of such corporation shall be considered to have sold the stock of a foreign corporation.''

1988—Subsec. (*l*). Pub. L. 100–647 struck out subsec. (*l*) which provided special rule for certain United States shareholders of liquidating foreign corporations.

1986—Subsec. (a)(2). Pub. L. 99–514, §701(e)(4)(G), substituted ''21-percent'' for ''20-percent'' in heading and amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''In the case of any nonresident alien individual, the amount determined under section 55(a)(1) for the taxable year shall not be less than 20 percent of the lesser of—

''(i) the individual's alternative minimum taxable income (as defined in section 55(b)) for the taxable year, or

''(ii) the individual's net United States real property gain for the taxable year.''

Subsec. (d). Pub. L. 99–514, §631(e)(12), in heading, struck out '', etc.,'' after ''distributions'', and in text, struck out heading and designation for par. (1), redesignated subpar. (A) as par. (1), redesignated subpar. (B) as par. (2) and substituted ''paragraph (1)'' for ''subparagraph (A)'' in introductory provisions, redesignated cl. (i) and its subcls. (I) and (II) as subpar. (A) and cls. (i) and (ii), respectively, redesignated cl. (ii) as subpar. (B), and struck out former par. (2) which provided that section 337 not apply to any sale or exchange of a United States real property interest by a foreign corporation.

Subsec. (i)(1), (4). Pub. L. 99–514, §1810(f)(1), inserted reference to section 1445.

1982—Subsec. (a)(2)(A). Pub. L. 97–248 substituted ''section 55(a)(1) for the taxable year shall not be less than 20 percent of the lesser of—'' for ''section 55(a)(1)(A) for the taxable year shall not be less than 20 percent of whichever of the following is the least:'' in introductory provisions, in cl. (i) struck out ''(1)'' after ''section 55(b)'' and inserted ''or'' at the end, in cl. (ii) substituted a period for a comma and struck out ''or'' at the end, and struck out former cl. (iii), which had provided for the amount of $60,000 as a third alternative.

1981—Subsec. (c)(1)(A)(i). Pub. L. 97–34, §831(a)(1), defined ''United States real property interest'' to also mean an interest in real property located in the Virgin Islands.

Subsec. (c)(4)(B). Pub. L. 97–34, §831(b), substituted ''Assets'' for ''Interests'' in heading and in first sentence ''Under regulations prescribed by the Secretary,

assets held by a partnership, trust or estate shall be treated as held'' for ''United States real property interests held by a partnership, trust, or estate shall be treated as owned'' before ''proportionately by its partners or beneficiaries'', and inserted provisions respecting treatment of an asset as used or held for use in a trade or business by a partner or beneficiary when used or held by the partnership, trust, or estate in a trade or business and attributing chain treatment of such trade or business to partnership, trust, or estate which are above the first such entity.

Subsec. (d)(1)(B). Pub. L. 97–34, § 831(c), substituted ''Exceptions'' for ''Exception where there is a carryover basis'' in heading, inserted introductory text ''Gain shall not be recognized under subparagraph (A)'', inserted cls. (i)(I) and (ii), and substituted cl. (i)(II) the basis of the distributed property in the hands of the distributee is no greater than the adjusted basis of such property before the distribution, increased by the amount of gain (if any) recognized by the distributing corporation'' for subpar. (B) provision ''Subparagraph (A) shall not apply if the basis of the distributed property in the hands of the distributee is the same as the adjusted basis of such property before the distribution increased by the amount of any gain recognized by the distributing corporation.''

Subsec. (i). Pub. L. 97–34, § 831(d), in par. (1)(A) substituted ''holds a United States real property interest'' for ''has a permanent establishment in the United States'', in par. (1)(B) substituted ''treaty obligation of the United States the foreign corporation is entitled to nondiscriminatory treatment with respect to that interest'' for ''treaty, such permanent establishment may not be treated less favorably than domestic corporations carrying on the same activities'', in par. (3) inserted subpar. (A), designated existing provisions as subpar. (B), in subpar. (B) substituted ''such other conditions as the Secretary may prescribe by regulations with respect to the corporation or its shareholders'' for ''such conditions as may be prescribed by the Secretary'', and prescribed percentage interest required for making the requisite election and application of constructive ownership rules in determining existence of the required percentage of a class of interest.

Subsecs. (j) to (*l*). Pub. L. 97–34, § 831(f), (g), added subsecs. (j) to (*l*).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, § 749(b), Dec. 17, 2010, 124 Stat. 3320, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall take effect on January 1, 2010. Notwithstanding the preceding sentence, such amendment shall not apply with respect to the withholding requirement under section 1445 of the Internal Revenue Code of 1986 for any payment made before the date of the enactment of this Act [Dec. 17, 2010].

''(2) AMOUNTS WITHHELD ON OR BEFORE DATE OF ENACTMENT.—In the case of a regulated investment company—

''(A) which makes a distribution after December 31, 2009, and before the date of the enactment of this Act [Dec. 17, 2010]; and

''(B) which would (but for the second sentence of paragraph (1)) have been required to withhold with respect to such distribution under section 1445 of such Code,

such investment company shall not be liable to any person to whom such distribution was made for any amount so withheld and paid over to the Secretary of the Treasury.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title II, § 208(b), Oct. 3, 2008, 122 Stat. 3865, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on January 1, 2008.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–222, title V, § 504(b), May 17, 2006, 120 Stat. 355, provided that: ''The amendment made by this section [amending this section] shall take effect as if included in the provisions of section 411 of the American Jobs Creation Act of 2004 [Pub. L. 108–357] to which it relates.''

Amendment by section 505(a) of Pub. L. 109–222 applicable to taxable years of qualified investment entities beginning after Dec. 31, 2005, except that no amount shall be required to be withheld under section 1441, 1442, or 1445 of the Internal Revenue Code of 1986 with respect to any distribution before May 17, 2006 if such amount was not otherwise required to be withheld under any such section as in effect before such amendments, see section 505(d) of Pub. L. 109–222, set out as a note under section 852 of this title.

Pub. L. 109–222, title V, § 506(c), May 17, 2006, 120 Stat. 358, provided that: ''The amendments made by this section [amending this section and section 1445 of this title] shall apply to taxable years beginning after December 31, 2005, except that such amendments shall not apply to any distribution, or substitute dividend payment, occurring before the date that is 30 days after the date of the enactment of this Act [May 17, 2006].''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 411(c)(1) of Pub. L. 108–357 applicable to dividends with respect to taxable years of regulated investment companies beginning after Dec. 31, 2004, and amendment by section 411(c)(2)–(5) of Pub. L. 108–357 effective after Dec. 31, 2004, see section 411(d)(1), (3) of Pub. L. 108–357, set out as a note under section 871 of this title.

Amendment by section 418(a) of Pub. L. 108–357 applicable to any distribution by a real estate investment trust which is either treated as a deduction for a taxable year of such trust beginning after Oct. 22, 2004, or made after Oct. 22, 2004, and treated as a deduction under section 860 of this title for a taxable year of such trust beginning on or before Oct. 22, 2004, see section 418(c) of Pub. L. 108–357, as amended, set out as a note under section 857 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see section 13203(d) of Pub. L. 103–66, set out as a note under section 55 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 631(e)(12) of Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in

section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

Amendment by section 701(e)(4)(G) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

Amendment by section 1810(f)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

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

EFFECTIVE DATE OF 1981 AMENDMENT

Section 831(i) of Pub. L. 97–34 provided that: ''The amendments made by this section [amending this section and sections 862 and 6039C of this title and provisions set out as a note below] shall apply to dispositions after June 18, 1980, in taxable years ending after such date.''

EFFECTIVE DATE

Section 1125(a), (b) of subtitle C (§§1121–1125) of title XI of Pub. L. 96–499 provided that:

''(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this subtitle [enacting this section and provisions set out as notes under this section, and amending sections 861, 871, 882 of this title] shall apply to dispositions after June 18, 1980.

''(b) REPORTING.—The amendments made by section 1123 [enacting section 6039C of this title and amending section 6652 of this title] shall apply to 1980 and subsequent calendar years. In applying such amendments to 1980, such calendar year shall be treated as beginning on June 19, 1980, and ending on December 31, 1980.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(4)(G) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

SPECIAL RULE FOR APPLYING SECTION 897

Section 1228 of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1012(m), Nov. 10, 1988, 102 Stat. 3513, provided that:

''(a) IN GENERAL.—For purposes of section 897 of the Internal Revenue Code of 1986, gain shall not be recognized on the transfer, sale, exchange, or other disposition, of shares of stock of a United States real property holding company, if—

''(1) such United States real property holding company is a Delaware corporation incorporated on January 17, 1984,

''(2) the transfer, sale, exchange, or other disposition is to any member of a qualified ownership group,

''(3) the recipient of the share of stock elects, for purposes of such section 897, a carryover basis in the transferred shares,

''(4) the transfer, sale, exchange, or other disposition is part of a single integrated plan, whereby the stock of the corporation described in paragraph (1) becomes owned directly by the 2 corporations specifically referred to in subsection (b) or by such 2 corporations and by 1 or both of their jointly owned direct subsidiaries,

''(5) within 20 days after each transfer, sale, exchange, or other disposition, the person making such transfer, sale, exchange, or other disposition notifies the Internal Revenue Service of the transaction, the date of the transaction, the basis of the stock involved, the holding period for such stock, and such other information as the Internal Revenue Service may require, and

''(6) the integrated plan is completed before the date 4 years after the date of the enactment of the Technical and Miscellaneous Revenue Act of 1988 [Nov. 10, 1988].

In the case of any underpayment attributable to a failure to meet any requirement of this subsection, the period during which such underpayment may be assessed shall in no event expire before the date 5 years after the date of the enactment of the Technical and Miscellaneous Revenue Act of 1988.

''(b) MEMBER OF A QUALIFIED OWNERSHIP GROUP.—For purposes of this section, the term 'member of a qualified ownership group' means a corporation incorporated on June 16, 1890, under the laws of the Netherlands or a corporation incorporated on October 18, 1897, under the laws of the United Kingdom or any corporation owned directly or indirectly by either or both such corporations.

''(c) [Repealed. Pub. L. 100–647, title I, §1012(m)(2), Nov. 10, 1988, 102 Stat. 3513.]

''(d) EFFECTIVE DATE.—The provisions of this section shall take effect on the date of the enactment of this section [Oct. 22, 1986].''

GAIN FROM DISPOSITION OF INVESTMENT IN UNITED STATES REAL PROPERTY BY NONRESIDENT ALIEN INDIVIDUALS AND FOREIGN CORPORATIONS

Section 1125(c) of Pub. L. 96–499, as amended by Pub. L. 97–34, title VIII, §831(h), Aug. 13, 1981, 95 Stat. 355; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), after December 31, 1984, nothing in section 894(a) or 7852(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] or in any other provision of law shall be treated as requiring, by reason of any treaty obligation of the United States, an exemption from (or reduction of) any tax imposed by section 871 or 882 of such Code on a gain described in section 897 of such Code.

''(2) SPECIAL RULE FOR TREATIES RENEGOTIATED BEFORE 1985.—If—

''(A) any treaty (hereinafter in this paragraph referred to as the 'old treaty') is renegotiated to resolve conflicts between such treaty and the provisions of section 897 of the Internal Revenue Code of 1986, and

''(B) the new treaty is signed on or after January 1, 1981, and before January 1, 1985,

then paragraph (1) shall be applied with respect to obligations under the old treaty by substituting for 'December 31, 1984' the date (not later than 2 years after the new treaty was signed) specified in the new treaty (or accompanying exchange of notes).''

ADJUSTMENT IN BASIS FOR CERTAIN TRANSACTIONS BETWEEN RELATED PERSONS

Section 1125(d) of Pub. L. 96–499, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—In the case of any disposition after December 31, 1979, of a United States real property interest (as defined in section 897(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) to a related person (within the meaning of section 453(f)(1) of such Code), the basis of the interest in the hands of the person acquiring it shall be reduced by the amount of any nontaxed gain.

''(2) NONTAXED GAIN.—For purposes of paragraph (1), the term 'nontaxed gain' means any gain which is not subject to tax under section 871(b)(1) or 882(a)(1) of such Code—

''(A) because the disposition occurred before June 19, 1980, or

''(B) because of any treaty obligation of the United States.''

§ 898. Taxable year of certain foreign corporations

(a) General rule

For purposes of this title, the taxable year of any specified foreign corporation shall be the required year determined under subsection (c).

(b) Specified foreign corporation

For purposes of this section—

(1) In general

The term ''specified foreign corporation'' means any foreign corporation—

(A) which is treated as a controlled foreign corporation for any purpose under subpart F of part III of this subchapter, and

(B) with respect to which the ownership requirements of paragraph (2) are met.

(2) Ownership requirements

(A) In general

The ownership requirements of this paragraph are met with respect to any foreign corporation if a United States shareholder owns, on each testing day, more than 50 percent of—

(i) the total voting power of all classes of stock of such corporation entitled to vote, or

(ii) the total value of all classes of stock of such corporation.

(B) Ownership

For purposes of subparagraph (A), the rules of subsections (a) and (b) of section 958 shall apply in determining ownership.

(3) United States shareholder

The term ''United States shareholder'' has the meaning given to such term by section 951(b), except that, in the case of a foreign corporation having related person insurance income (as defined in section 953(c)(2)), the Secretary may treat any person as a United States shareholder for purposes of this section if such person is treated as a United States shareholder under section 953(c)(1).

(c) Determination of required year

(1) In general

The required year is—

(A) the majority U.S. shareholder year, or

(B) if there is no majority U.S. shareholder year, the taxable year prescribed under regulations.

(2) 1-month deferral allowed

A specified foreign corporation may elect, in lieu of the taxable year under paragraph (1)(A), a taxable year beginning 1 month earlier than the majority U.S. shareholder year.

(3) Majority U.S. shareholder year

(A) In general

For purposes of this subsection, the term ''majority U.S. shareholder year'' means the taxable year (if any) which, on each testing day, constituted the taxable year of—

(i) each United States shareholder described in subsection (b)(2)(A), and

(ii) each United States shareholder not described in clause (i) whose stock was treated as owned under subsection (b)(2)(B) by any shareholder described in such clause.

(B) Testing day

The testing days shall be—

(i) the first day of the corporation's taxable year (determined without regard to this section), or

(ii) the days during such representative period as the Secretary may prescribe.

(Added Pub. L. 101–239, title VII, § 7401(a), Dec. 19, 1989, 103 Stat. 2355; amended Pub. L. 108–357, title IV, § 413(c)(13), Oct. 22, 2004, 118 Stat. 1507.)

AMENDMENTS

2004—Subsec. (b)(1)(A). Pub. L. 108–357, § 413(c)(13)(A), amended subpar. (A) generally. Prior to amendment, subpar (A) read as follows:

''(A) which is—

''(i) treated as a controlled foreign corporation for any purpose under subpart F of part III of this subchapter, or

''(ii) a foreign personal holding company (as defined in section 552), and''.

Subsec. (b)(2)(B). Pub. L. 108–357, § 413(c)(13)(B), struck out ''and sections 551(f) and 554, whichever are applicable,'' after ''section 958''.

Subsec. (b)(3). Pub. L. 108–357, § 413(c)(13)(C), reenacted heading without change, struck out ''(A) In general'' before ''The term'', and struck out heading and text of subpar. (B). Text read as follows: ''In the case of any foreign personal holding company (as defined in section 552) which is not a specified foreign corporation by reason of paragraph (1)(A)(i), the term 'United States shareholder' means any person who is treated as a United States shareholder under section 551.''

Subsec. (c). Pub. L. 108–357, § 413(c)(13)(D), reenacted heading without change and amended text of subsec. (c) generally, substituting provisions stating general rule and relating to 1-month deferral and majority U.S. shareholder year, consisting of pars. (1) to (3), for provisions stating general rule and relating to 1-month deferral and majority U.S. shareholder year, consisting of par. (1), and provisions relating to required year in the case of a foreign personal holding company, consisting of par. (2).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31,

2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE

Section 7401(d) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section and amending section 563 of this title] shall apply to taxable years of foreign corporations beginning after July 10, 1989.

''(2) SPECIAL RULES.—If any foreign corporation is required by the amendments made by this section to change its taxable year for its first taxable year beginning after July 10, 1989—

''(A) such change shall be treated as initiated by the taxpayer,

''(B) such change shall be treated as having been made with the consent of the Secretary of the Treasury or his delegate, and

''(C) if, by reason of such change, any United States person is required to include in gross income for 1 taxable year amounts attributable to 2 taxable years of such foreign corporation, the amount which would otherwise be required to be included in gross income for such 1 taxable year by reason of the short taxable year of the foreign corporation resulting from such change shall be included in gross income ratably over the 4-taxable-year period beginning with such 1 taxable year.''

PART III—INCOME FROM SOURCES WITHOUT THE UNITED STATES

Subpart

A. Foreign tax credit.

B. Earned income of citizens or residents of United States.

[C. Repealed.]

D. Possessions of the United States.

[E. Repealed.]

F. Controlled foreign corporations.

[G. Repealed.][1]

H. Income of certain nonresident United States citizens subject to foreign community property laws.[1]

I. Admissibility of documentation maintained in foreign countries.

J. Foreign currency transactions.

AMENDMENTS

2004—Pub. L. 108–357, title I, §101(b)(2), Oct. 22, 2004, 118 Stat. 1423, struck out item for subpart E ''Qualifying foreign trade income''.

2000—Pub. L. 106–519, §4(8), Nov. 15, 2000, 114 Stat. 2433, struck out item for subpart C ''Taxation of foreign sales corporations''.

Pub. L. 106–519, §4(7), Nov. 15, 2000, 114 Stat. 2433, added item for subpart E and directed that former item for subpart E be struck out, which could not be executed because the item for subpart E had previously been struck out by Pub. L. 94–455, §1053(d)(5). See 1976 Amendment note below.

1986—Pub. L. 99–514, title XII, §1261(d), Oct. 22, 1986, 100 Stat. 2591, added item for subpart J.

1984—Pub. L. 98–369, div. A, title VIII, §802(c)(4), July 18, 1984, 98 Stat. 999, added item for subpart C.

1982—Pub. L. 97–248, title III, §337(b), Sept. 3, 1982, 96 Stat. 630, added item for subpart I.

1978—Pub. L. 95–615, §202(g)(4), formerly §202(f)(4), Nov. 8, 1978, 92 Stat. 3100, renumbered Pub. L. 96–222, title I, §108(a)(1)(A), Apr. 1, 1980, 94 Stat. 223, inserted in item for subpart B ''or residents'' after ''citizens.''

1976—Pub. L. 94–455, title X, §1012(b)(3)(B), Oct. 4, 1976, 90 Stat. 1614, struck out item for subpart G ''Export Trade Corporation'' from analysis without a corresponding repeal of text in such subpart. The amendment probably should have struck out item for subpart H.

Pub. L. 94–455, title X, §§1052(c)(7), 1053(d)(5), Oct. 4, 1976, 90 Stat. 1648, 1649, struck out item for subpart C, relating to Western Hemisphere trade corporations, effective for taxable years beginning after Dec. 31, 1979, and item for subpart E, relating to China Trade Act corporations, effective for taxable years beginning after Dec. 31, 1977.

1966—Pub. L. 89–809, title I, §105(e)(2), Nov. 13, 1966, 80 Stat. 1567, added item for subpart H.

1962—Pub. L. 87–834, §12(b)(3), Oct. 16, 1962, 76 Stat. 1031, added items for subparts F and G.

SUBPART A—FOREIGN TAX CREDIT

Sec.

901. Taxes of foreign countries and of possessions of United States.

902. Deemed paid credit where domestic corporation owns 10 percent or more of voting stock of foreign corporation.

903. Credit for taxes in lieu of income, etc., taxes.

904. Limitation on credit.

905. Applicable rules.

906. Nonresident alien individuals and foreign corporations.

907. Special rules in case of foreign oil and gas income.

908. Reduction of credit for participation in or cooperation with an international boycott.

909. Suspension of taxes and credits until related income taken into account.

AMENDMENTS

2010—Pub. L. 111–226, title II, §211(b), Aug. 10, 2010, 124 Stat. 2395, added item 909.

1986—Pub. L. 99–514, title XII, §1202(d), Oct. 22, 1986, 100 Stat. 2531, substituted ''Deemed paid credit where domestic corporation owns 10 percent or more of voting stock of foreign corporation'' for ''Credit for corporate stockholder in foreign corporation'' in item 902.

1976—Pub. L. 94–455, title X, §1061(b), Oct. 4, 1976, 90 Stat. 1650, added item 908.

1975—Pub. L. 94–12, title VI, §601(c), Mar. 29, 1975, 89 Stat. 57, added item 907.

1966—Pub. L. 89–809, title I, §106(a)(2), Nov. 13, 1966, 80 Stat. 1569, added item 906.

§ 901. Taxes of foreign countries and of possessions of United States

(a) Allowance of credit

If the taxpayer chooses to have the benefits of this subpart, the tax imposed by this chapter shall, subject to the limitation of section 904, be credited with the amounts provided in the applicable paragraph of subsection (b) plus, in the case of a corporation, the taxes deemed to have been paid under sections 902 and 960. Such choice for any taxable year may be made or changed at any time before the expiration of the period prescribed for making a claim for credit or refund of the tax imposed by this chapter for such taxable year. The credit shall not be allowed against any tax treated as a tax not imposed by this chapter under section 26(b).

(b) Amount allowed

Subject to the limitation of section 904, the following amounts shall be allowed as the credit under subsection (a):

(1) Citizens and domestic corporations

In the case of a citizen of the United States and of a domestic corporation, the amount of

[1] See 1976 Amendment note below.

any income, war profits, and excess profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States; and

(2) Resident of the United States or Puerto Rico

In the case of a resident of the United States and in the case of an individual who is a bona fide resident of Puerto Rico during the entire taxable year, the amount of any such taxes paid or accrued during the taxable year to any possession of the United States; and

(3) Alien resident of the United States or Puerto Rico

In the case of an alien resident of the United States and in the case of an alien individual who is a bona fide resident of Puerto Rico during the entire taxable year, the amount of any such taxes paid or accrued during the taxable year to any foreign country; and

(4) Nonresident alien individuals and foreign corporations

In the case of any nonresident alien individual not described in section 876 and in the case of any foreign corporation, the amount determined pursuant to section 906; and

(5) Partnerships and estates

In the case of any person described in paragraph (1), (2), (3), or (4), who is a member of a partnership or a beneficiary of an estate or trust, the amount of his proportionate share of the taxes (described in such paragraph) of the partnership or the estate or trust paid or accrued during the taxable year to a foreign country or to any possession of the United States, as the case may be. Under rules or regulations prescribed by the Secretary, in the case of any foreign trust of which the settlor or another person would be treated as owner of any portion of the trust under subpart E but for section 672(f), the allocable amount of any income, war profits, and excess profits taxes imposed by any foreign country or possession of the United States on the settlor or such other person in respect of trust income.

(c) Similar credit required for certain alien residents

Whenever the President finds that—

(1) a foreign country, in imposing income, war profits, and excess profits taxes, does not allow to citizens of the United States residing in such foreign country a credit for any such taxes paid or accrued to the United States or any foreign country, as the case may be, similar to the credit allowed under subsection (b)(3),

(2) such foreign country, when requested by the United States to do so, has not acted to provide such a similar credit to citizens of the United States residing in such foreign country, and

(3) it is in the public interest to allow the credit under subsection (b)(3) to citizens or subjects of such foreign country only if it allows such a similar credit to citizens of the United States residing in such foreign country,

the President shall proclaim that, for taxable years beginning while the proclamation remains in effect, the credit under subsection (b)(3) shall be allowed to citizens or subjects of such foreign country only if such foreign country, in imposing income, war profits, and excess profits taxes, allows to citizens of the United States residing in such foreign country such a similar credit.

(d) Treatment of dividends from a DISC or former DISC

For purposes of this subpart, dividends from a DISC or former DISC (as defined in section 992(a)) shall be treated as dividends from a foreign corporation to the extent such dividends are treated under part I as income from sources without the United States.

(e) Foreign taxes on mineral income

(1) Reduction in amount allowed

Notwithstanding subsection (b), the amount of any income, war profits, and excess profits taxes paid or accrued during the taxable year to any foreign country or possession of the United States with respect to foreign mineral income from sources within such country or possession which would (but for this paragraph) be allowed under such subsection shall be reduced by the amount (if any) by which—

(A) the amount of such taxes (or, if smaller, the amount of the tax which would be computed under this chapter with respect to such income determined without the deduction allowed under section 613), exceeds

(B) the amount of the tax computed under this chapter with respect to such income.

(2) Foreign mineral income defined

For purposes of paragraph (1), the term ''foreign mineral income'' means income derived from the extraction of minerals from mines, wells, or other natural deposits, the processing of such minerals into their primary products, and the transportation, distribution, or sale of such minerals or primary products. Such term includes, but is not limited to—

(A) dividends received from a foreign corporation in respect of which taxes are deemed paid by the taxpayer under section 902, to the extent such dividends are attributable to foreign mineral income, and

(B) that portion of the taxpayer's distributive share of the income of partnerships attributable to foreign mineral income.

(f) Certain payments for oil or gas not considered as taxes

Notwithstanding subsection (b) and sections 902 and 960, the amount of any income, or profits, and excess profits taxes paid or accrued during the taxable year to any foreign country in connection with the purchase and sale of oil or gas extracted in such country is not to be considered as tax for purposes of section 275(a) and this section if—

(1) the taxpayer has no economic interest in the oil or gas to which section 611(a) applies, and

(2) either such purchase or sale is at a price which differs from the fair market value for such oil or gas at the time of such purchase or sale.

(g) Certain taxes paid with respect to distributions from possessions corporations

(1) In general

For purposes of this chapter, any tax of a foreign country or possession of the United States which is paid or accrued with respect to any distribution from a corporation—

(A) to the extent that such distribution is attributable to periods during which such corporation is a possessions corporation, and

(B)(i) if a dividends received deduction is allowable with respect to such distribution under part VIII of subchapter B, or

(ii) to the extent that such distribution is received in connection with a liquidation or other transaction with respect to which gain or loss is not recognized,

shall not be treated as income, war profits, or excess profits taxes paid or accrued to a foreign country or possession of the United States, and no deduction shall be allowed under this title with respect to any amount so paid or accrued.

(2) Possessions corporation

For purposes of paragraph (1), a corporation shall be treated as a possessions corporation for any period during which an election under section 936 applied to such corporation, during which section 931 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1976) applied to such corporation, or during which section 957(c) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) applied to such corporation.

[(h) Repealed. Pub. L. 110–172, § 11(g)(9), Dec. 29, 2007, 121 Stat. 2490]

(i) Taxes used to provide subsidies

Any income, war profits, or excess profits tax shall not be treated as a tax for purposes of this title to the extent—

(1) the amount of such tax is used (directly or indirectly) by the country imposing such tax to provide a subsidy by any means to the taxpayer, a related person (within the meaning of section 482), or any party to the transaction or to a related transaction, and

(2) such subsidy is determined (directly or indirectly) by reference to the amount of such tax, or the base used to compute the amount of such tax.

(j) Denial of foreign tax credit, etc., with respect to certain foreign countries

(1) In general

Notwithstanding any other provision of this part—

(A) no credit shall be allowed under subsection (a) for any income, war profits, or excess profits taxes paid or accrued (or deemed paid under section 902 or 960) to any country if such taxes are with respect to income attributable to a period during which this subsection applies to such country, and

(B) subsections (a), (b), and (c) of section 904 and sections 902 and 960 shall be applied separately with respect to income attributable to such a period from sources within such country.

(2) Countries to which subsection applies

(A) In general

This subsection shall apply to any foreign country—

(i) the government of which the United States does not recognize, unless such government is otherwise eligible to purchase defense articles or services under the Arms Export Control Act,

(ii) with respect to which the United States has severed diplomatic relations,

(iii) with respect to which the United States has not severed diplomatic relations but does not conduct such relations, or

(iv) which the Secretary of State has, pursuant to section 6(j) of the Export Administration Act of 1979, as amended, designated as a foreign country which repeatedly provides support for acts of international terrorisms.

(B) Period for which subsection applies

This subsection shall apply to any foreign country described in subparagraph (A) during the period—

(i) beginning on the later of—

(I) January 1, 1987, or

(II) 6 months after such country becomes a country described in subparagraph (A), and

(ii) ending on the date the Secretary of State certifies to the Secretary of the Treasury that such country is no longer described in subparagraph (A).

(3) Taxes allowed as a deduction, etc.

Sections 275 and 78 shall not apply to any tax which is not allowable as a credit under subsection (a) by reason of this subsection.

(4) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including regulations which treat income paid through 1 or more entities as derived from a foreign country to which this subsection applies if such income was, without regard to such entities, derived from such country.

(5) Waiver of denial

(A) In general

Paragraph (1) shall not apply with respect to taxes paid or accrued to a country if the President—

(i) determines that a waiver of the application of such paragraph is in the national interest of the United States and will expand trade and investment opportunities for United States companies in such country; and

(ii) reports such waiver under subparagraph (B).

(B) Report

Not less than 30 days before the date on which a waiver is granted under this paragraph, the President shall report to Congress—

(i) the intention to grant such waiver; and

(ii) the reason for the determination under subparagraph (A)(i).

(k) Minimum holding period for certain taxes on dividends

(1) Withholding taxes

(A) In general

In no event shall a credit be allowed under subsection (a) for any withholding tax on a dividend with respect to stock in a corporation if—

(i) such stock is held by the recipient of the dividend for 15 days or less during the 31-day period beginning on the date which is 15 days before the date on which such share becomes ex-dividend with respect to such dividend, or

(ii) to the extent that the recipient of the dividend is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property.

(B) Withholding tax

For purposes of this paragraph, the term ''withholding tax'' includes any tax determined on a gross basis; but does not include any tax which is in the nature of a prepayment of a tax imposed on a net basis.

(2) Deemed paid taxes

In the case of income, war profits, or excess profits taxes deemed paid under section 853, 902, or 960 through a chain of ownership of stock in 1 or more corporations, no credit shall be allowed under subsection (a) for such taxes if—

(A) any stock of any corporation in such chain (the ownership of which is required to obtain credit under subsection (a) for such taxes) is held for less than the period described in paragraph (1)(A)(i), or

(B) the corporation holding the stock is under an obligation referred to in paragraph (1)(A)(ii).

(3) 45-day rule in the case of certain preference dividends

In the case of stock having preference in dividends and dividends with respect to such stock which are attributable to a period or periods aggregating in excess of 366 days, paragraph (1)(A)(i) shall be applied—

(A) by substituting ''45 days'' for ''15 days'' each place it appears, and

(B) by substituting ''91-day period'' for ''31-day period''.

(4) Exception for certain taxes paid by securities dealers

(A) In general

Paragraphs (1) and (2) shall not apply to any qualified tax with respect to any security held in the active conduct in a foreign country of a business as a securities dealer of any person—

(i) who is registered as a securities broker or dealer under section 15(a) of the Securities Exchange Act of 1934,

(ii) who is registered as a Government securities broker or dealer under section 15C(a) of such Act, or

(iii) who is licensed or authorized in such foreign country to conduct securities activities in such country and is subject to bona fide regulation by a securities regulating authority of such country.

(B) Qualified tax

For purposes of subparagraph (A), the term ''qualified tax'' means a tax paid to a foreign country (other than the foreign country referred to in subparagraph (A)) if—

(i) the dividend to which such tax is attributable is subject to taxation on a net basis by the country referred to in subparagraph (A), and

(ii) such country allows a credit against its net basis tax for the full amount of the tax paid to such other foreign country.

(C) Regulations

The Secretary may prescribe such regulations as may be appropriate to carry out this paragraph, including regulations to prevent the abuse of the exception provided by this paragraph and to treat other taxes as qualified taxes.

(5) Certain rules to apply

For purposes of this subsection, the rules of paragraphs (3) and (4) of section 246(c) shall apply.

(6) Treatment of bona fide sales

If a person's holding period is reduced by reason of the application of the rules of section 246(c)(4) to any contract for the bona fide sale of stock, the determination of whether such person's holding period meets the requirements of paragraph (2) with respect to taxes deemed paid under section 902 or 960 shall be made as of the date such contract is entered into.

(7) Taxes allowed as deduction, etc.

Sections 275 and 78 shall not apply to any tax which is not allowable as a credit under subsection (a) by reason of this subsection.

***(l)* Minimum holding period for withholding taxes on gain and income other than dividends etc.**

(1) In general

In no event shall a credit be allowed under subsection (a) for any withholding tax (as defined in subsection (k)) on any item of income or gain with respect to any property if—

(A) such property is held by the recipient of the item for 15 days or less during the 31-day period beginning on the date which is 15 days before the date on which the right to receive payment of such item arises, or

(B) to the extent that the recipient of the item is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property.

This paragraph shall not apply to any dividend to which subsection (k) applies.

(2) Exception for taxes paid by dealers

(A) In general

Paragraph (1) shall not apply to any qualified tax with respect to any property held in

the active conduct in a foreign country of a business as a dealer in such property.

(B) Qualified tax

For purposes of subparagraph (A), the term ''qualified tax'' means a tax paid to a foreign country (other than the foreign country referred to in subparagraph (A)) if—

(i) the item to which such tax is attributable is subject to taxation on a net basis by the country referred to in subparagraph (A), and

(ii) such country allows a credit against its net basis tax for the full amount of the tax paid to such other foreign country.

(C) Dealer

For purposes of subparagraph (A), the term ''dealer'' means—

(i) with respect to a security, any person to whom paragraphs (1) and (2) of subsection (k) would not apply by reason of paragraph (4) thereof, and

(ii) with respect to any other property, any person with respect to whom such property is described in section 1221(a)(1).

(D) Regulations

The Secretary may prescribe such regulations as may be appropriate to carry out this paragraph, including regulations to prevent the abuse of the exception provided by this paragraph and to treat other taxes as qualified taxes.

(3) Exceptions

The Secretary may by regulation provide that paragraph (1) shall not apply to property where the Secretary determines that the application of paragraph (1) to such property is not necessary to carry out the purposes of this subsection.

(4) Certain rules to apply

Rules similar to the rules of paragraphs (5), (6), and (7) of subsection (k) shall apply for purposes of this subsection.

(5) Determination of holding period

Holding periods shall be determined for purposes of this subsection without regard to section 1235 or any similar rule.

(m) Denial of foreign tax credit with respect to foreign income not subject to United States taxation by reason of covered asset acquisitions

(1) In general

In the case of a covered asset acquisition, the disqualified portion of any foreign income tax determined with respect to the income or gain attributable to the relevant foreign assets—

(A) shall not be taken into account in determining the credit allowed under subsection (a), and

(B) in the case of a foreign income tax paid by a section 902 corporation (as defined in section 909(d)(5)), shall not be taken into account for purposes of section 902 or 960.

(2) Covered asset acquisition

For purposes of this section, the term ''covered asset acquisition'' means—

(A) a qualified stock purchase (as defined in section 338(d)(3)) to which section 338(a) applies,

(B) any transaction which—

(i) is treated as an acquisition of assets for purposes of this chapter, and

(ii) is treated as the acquisition of stock of a corporation (or is disregarded) for purposes of the foreign income taxes of the relevant jurisdiction,

(C) any acquisition of an interest in a partnership which has an election in effect under section 754, and

(D) to the extent provided by the Secretary, any other similar transaction.

(3) Disqualified portion

For purposes of this section—

(A) In general

The term ''disqualified portion'' means, with respect to any covered asset acquisition, for any taxable year, the ratio (expressed as a percentage) of—

(i) the aggregate basis differences (but not below zero) allocable to such taxable year under subparagraph (B) with respect to all relevant foreign assets, divided by

(ii) the income on which the foreign income tax referred to in paragraph (1) is determined (or, if the taxpayer fails to substantiate such income to the satisfaction of the Secretary, such income shall be determined by dividing the amount of such foreign income tax by the highest marginal tax rate applicable to such income in the relevant jurisdiction).

(B) Allocation of basis difference

For purposes of subparagraph (A)(i)—

(i) In general

The basis difference with respect to any relevant foreign asset shall be allocated to taxable years using the applicable cost recovery method under this chapter.

(ii) Special rule for disposition of assets

Except as otherwise provided by the Secretary, in the case of the disposition of any relevant foreign asset—

(I) the basis difference allocated to the taxable year which includes the date of such disposition shall be the excess of the basis difference with respect to such asset over the aggregate basis difference with respect to such asset which has been allocated under clause (i) to all prior taxable years, and

(II) no basis difference with respect to such asset shall be allocated under clause (i) to any taxable year thereafter.

(C) Basis difference

(i) In general

The term ''basis difference'' means, with respect to any relevant foreign asset, the excess of—

(I) the adjusted basis of such asset immediately after the covered asset acquisition, over

(II) the adjusted basis of such asset immediately before the covered asset acquisition.

(ii) Built-in loss assets

In the case of a relevant foreign asset with respect to which the amount described in clause (i)(II) exceeds the amount described in clause (i)(I), such excess shall be taken into account under this subsection as a basis difference of a negative amount.

(iii) Special rule for section 338 elections

In the case of a covered asset acquisition described in paragraph (2)(A), the covered asset acquisition shall be treated for purposes of this subparagraph as occurring at the close of the acquisition date (as defined in section 338(h)(2)).

(4) Relevant foreign assets

For purposes of this section, the term ''relevant foreign asset'' means, with respect to any covered asset acquisition, any asset (including any goodwill, going concern value, or other intangible) with respect to such acquisition if income, deduction, gain, or loss attributable to such asset is taken into account in determining the foreign income tax referred to in paragraph (1).

(5) Foreign income tax

For purposes of this section, the term ''foreign income tax'' means any income, war profits, or excess profits tax paid or accrued to any foreign country or to any possession of the United States.

(6) Taxes allowed as a deduction, etc.

Sections 275 and 78 shall not apply to any tax which is not allowable as a credit under subsection (a) by reason of this subsection.

(7) Regulations

The Secretary may issue such regulations or other guidance as is necessary or appropriate to carry out the purposes of this subsection, including to exempt from the application of this subsection certain covered asset acquisitions, and relevant foreign assets with respect to which the basis difference is de minimis.

(n) Cross reference

(1) For deductions of income, war profits, and excess profits taxes paid to a foreign country or a possession of the United States, see sections 164 and 275.

(2) For right of each partner to make election under this section, see section 703(b).

(3) For right of estate or trust to the credit for taxes imposed by foreign countries and possessions of the United States under this section, see section 642(a).

(4) For reduction of credit for failure of a United States person to furnish certain information with respect to a foreign corporation or partnership controlled by him, see section 6038.

(Aug. 16, 1954, ch. 736, 68A Stat. 285; Pub. L. 86–780, § 3(a), (b), Sept. 14, 1960, 74 Stat. 1013; Pub. L. 87–834, §§ 9(d)(3), 12(b)(1), Oct. 16, 1962, 76 Stat. 1001, 1031; Pub. L. 88–272, title II, § 207(b)(7), Feb. 26, 1964, 78 Stat. 42; Pub. L. 89–384, § 1(c)(2), Apr. 8, 1966, 80 Stat. 102; Pub. L. 89–809, title I, § 106(a)(4), (5), (b)(1), (2), Nov. 13, 1966, 80 Stat. 1569; Pub. L. 91–172, title III, § 301(b)(9), title V, § 506(a), Dec. 30, 1969, 83 Stat. 585, 634; Pub. L. 92–178, title V, § 502(b)(1), Dec. 10, 1971, 85 Stat. 549; Pub. L. 93–406, title II, §§ 2001(g)(2)(C), 2002(g)(3), 2005(c)(5), Sept. 2, 1974, 88 Stat. 957, 968, 991; Pub. L. 94–12, title VI, § 601(b), Mar. 29, 1975, 89 Stat. 57; Pub. L. 94–455, title X, §§ 1031(b)(1), 1051(d), title XIX, § 1901(b)(1)(H)(iii), (37)(A), Oct. 4, 1976, 90 Stat. 1622, 1645, 1791, 1803; Pub. L. 95–600, title VII, § 701(u)(1)(A), (B), Nov. 6, 1978, 92 Stat. 2912; Pub. L. 97–248, title II, § 201(d)(8)(A), formerly § 201(c)(8)(A), § 265(b)(2)(A)(iv), Sept. 3, 1982, 96 Stat. 420, 547, renumbered § 201(d)(8)(A), Pub. L. 97–448, title III, § 306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 98–369, div. A, title IV, § 474(r)(20), title VI, § 612(e)(1), title VII, § 713(c)(1)(C), title VIII, § 801(d)(1), July 18, 1984, 98 Stat. 843, 912, 957, 995; Pub. L. 99–509, title VIII, § 8041(a), Oct. 21, 1986, 100 Stat. 1962; Pub. L. 99–514, title I, § 112(b)(3), title XII, § 1204(a), title XVIII, § 1876(p)(2), Oct. 22, 1986, 100 Stat. 2109, 2532, 2902; Pub. L. 100–203, title X, § 10231(a), (b), Dec. 22, 1987, 101 Stat. 1330–418, 1330–419; Pub. L. 100–647, title I, § 1012(j), title II, § 2003(c)(1), Nov. 10, 1988, 102 Stat. 3512, 3598; Pub. L. 103–149, § 4(b)(8)(A), Nov. 23, 1993, 107 Stat. 1505; Pub. L. 104–188, title I, § 1904(b)(2), Aug. 20, 1996, 110 Stat. 1912; Pub. L. 105–34, title X, § 1053(a), title XI, § 1142(e)(4), Aug. 5, 1997, 111 Stat. 941, 983; Pub. L. 105–206, title VI, § 6010(k)(3), July 22, 1998, 112 Stat. 815; Pub. L. 106–200, title VI, § 601(a), May 18, 2000, 114 Stat. 305; Pub. L. 108–311, title IV, § 406(g), Oct. 4, 2004, 118 Stat. 1190; Pub. L. 108–357, title IV, § 405(b), title VIII, § 832(a), (b), Oct. 22, 2004, 118 Stat. 1498, 1587, 1588; Pub. L. 109–135, title IV, § 403(aa)(2), Dec. 21, 2005, 119 Stat. 2630; Pub. L. 110–172, § 11(g)(9), Dec. 29, 2007, 121 Stat. 2490; Pub. L. 111–226, title II, § 212(a), Aug. 10, 2010, 124 Stat. 2396.)

REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1976, referred to in subsec. (g)(2), is the date of enactment of Pub. L. 94–455, which was approved Oct. 4, 1976.

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (g)(2), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

The Arms Export Control Act, referred to in subsec. (j)(2)(A)(i), is Pub. L. 90–269, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§ 2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

Section 6(j) of the Export Administration Act of 1979, referred to in subsec. (j)(2)(A)(iv), is classified to section 2405(j) of Title 50, Appendix, War and National Defense.

Sections 15(a) and 15C(a) of the Securities Exchange Act of 1934, referred to in subsec. (k)(4)(A)(i), (ii), are classified to sections 78*o*(a) and 78*o*–5(a), respectively, of Title 15, Commerce and Trade.

AMENDMENTS

2010—Subsecs. (m), (n). Pub. L. 111–226 added subsec. (m) and redesignated former subsec. (m) as (n).

2007—Subsec. (h). Pub. L. 110–172 struck out subsec. (h), which read as follows: ''No credit shall be allowed under this section for any income, war profits, and excess profits taxes paid or accrued with respect to the foreign trade income (within the meaning of section 923(b)) of a FSC, other than section 923(a)(2) non-exempt income (within the meaning of section 927(d)(6)).''

2005—Subsec. (*l*)(2)(C)(i). Pub. L. 109–135 struck out ''if such security were stock'' after ''paragraph (4) thereof''.

2004—Subsec. (b)(5). Pub. L. 108–357, § 405(b), substituted ''any person'' for ''any individual''.

Subsec. (k). Pub. L. 108–357, § 832(b), inserted ''on dividends'' after ''taxes'' in heading.

Subsec. (k)(1)(A)(i). Pub. L. 108–311, § 406(g)(1), substituted ''31-day period'' for ''30-day period''.

Subsec. (k)(3)(B). Pub. L. 108–311, § 406(g)(2), substituted ''91-day period'' for ''90-day period'' and ''31-day period'' for ''30-day period''.

Subsecs. (*l*), (m). Pub. L. 108–357, § 832(a), added subsec. (*l*) and redesignated former subsec. (*l*) as (m).

2000—Subsec. (j)(5). Pub. L. 106–200 added par. (5).

1998—Subsec. (k)(4)(A). Pub. L. 105–206 substituted ''business as a securities dealer'' for ''securities business'' in introductory provisions.

1997—Subsec. (k). Pub. L. 105–34, § 1053(a), added subsec. (k). Former subsec. (k) redesignated (*l*).

Subsec. (*l*). Pub. L. 105–34, § 1053(a), redesignated subsec. (k) as (*l*).

Subsec. (*l*)(4). Pub. L. 105–34, § 1142(e)(4), which directed amendment of subsec. (k)(4) by substituting ''foreign corporation or partnership'' for ''foreign corporation'', was executed to subsec. (*l*)(4) to reflect the probable intent of Congress and the redesignation of subsec. (k) as (*l*) by Pub. L. 105–34, § 1053(a). See above.

1996—Subsec. (b)(5). Pub. L. 104–188 inserted at end ''Under rules or regulations prescribed by the Secretary, in the case of any foreign trust of which the settlor or another person would be treated as owner of any portion of the trust under subpart E but for section 672(f), the allocable amount of any income, war profits, and excess profits taxes imposed by any foreign country or possession of the United States on the settlor or such other person in respect of trust income.''

1993—Subsec. (j)(2)(C). Pub. L. 103–149 struck out heading and text of subpar. (C). Text read as follows:

''(i) IN GENERAL.—In addition to any period during which this subsection would otherwise apply to South Africa, this subsection shall apply to South Africa during the period—

''(I) beginning on January 1, 1988, and

''(II) ending on the date the Secretary of State certifies to the Secretary of the Treasury that South Africa meets the requirements of section 311(a) of the Comprehensive Anti-Apartheid Act of 1986 (as in effect on the date of the enactment of this subparagraph).

''(ii) SOUTH AFRICA DEFINED.—For purposes of clause (i), the term 'South Africa' has the meaning given to such term by paragraph (6) of section 3 of the Comprehensive Anti-Apartheid Act of 1986 (as so in effect).''

1988—Subsec. (g)(2). Pub. L. 100–647, § 1012(j), inserted ''(as in effect on the day before the date of the enactment of the Tax Reform Act of 1986)'' after ''section 957(c)''.

Subsec. (j)(3). Pub. L. 100–647, § 2003(c)(1), inserted '', etc.'' at end of heading and substituted ''Sections 275 and 78'' for ''Section 275'' in text.

1987—Subsec. (j)(1). Pub. L. 100–203, § 10231(b), substituted ''during which'' for ''to which'' in subpar. (A) and ''such country'' for ''any country so identified'' in subpar. (B).

Subsec. (j)(2)(C). Pub. L. 100–203, § 10231(a), added subpar. (C).

1986—Subsec. (h). Pub. L. 99–514, § 1876(p)(2), inserted closing parenthesis after ''section 927(d)(6)''.

Subsec. (i). Pub. L. 99–514, § 1204(a), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (i)(3). Pub. L. 99–514, § 112(b)(3), substituted ''section 642(a)'' for ''section 642(a)(1)''.

Subsec. (j). Pub. L. 99–509 added subsec. (j). Former subsec. (j) redesignated (k).

Pub. L. 99–514, § 1204(a), redesignated former subsec. (i) as (j).

Subsec. (k). Pub. L. 99–509 redesignated former subsec. (j) as (k).

1984—Subsec. (a). Pub. L. 98–369, § 612(e)(1), substituted ''section 26(b)'' for ''section 25(b)''.

Pub. L. 98–369, § 474(r)(20), substituted ''The credit shall not be allowed against any tax treated as a tax not imposed by this chapter under section 25(b)'' for ''The credit shall not be allowed against the tax imposed by section 56 (relating to corporate minimum tax), against the tax imposed for the taxable year under section 72(m)(5)(B) (relating to 10 percent tax on premature distributions to owner-employees) section 72(q)(1) (relating to 5-percent tax on premature distributions under annuity contracts),, against the tax imposed by section 402(e) (relating to tax on lump sum distributions), against the tax imposed for the taxable year by section 408(f) (relating to additional tax on income from certain retirement accounts), against the tax imposed by section 531 (relating to the tax on accumulated earnings), against the additional tax imposed for the taxable year under section 1351 (relating to recoveries of foreign expropriation losses), or against the personal holding company tax imposed by section 541''.

Pub. L. 98–369, § 713(c)(1)(C), substituted ''premature distributions to key employees'' for ''premature distributions to owner-employees''.

Subsecs. (h), (i). Pub. L. 98–369, § 801(d)(1), added subsec. (h) and redesignated former subsec. (h) as (i).

1982—Subsec. (a). Pub. L. 97–248 substituted ''(relating to corporate minimum tax)'' for ''(relating to minimum tax for tax preferences)'' after ''section 56'', and inserted ''section 72(q)(1) (relating to 5-percent tax on premature distributions under annuity contracts),'' after ''owner employees)''.

1978—Subsec. (g)(1). Pub. L. 95–600, § 701(u)(1)(A), inserted provisions prohibiting a deduction for any tax of a foreign country or possession of the United States which is paid or accrued with respect to any distribution from a corporation if a dividends received deduction is allowable with respect to that distribution from a corporation under part VIII of subchapter B.

Subsec. (g)(2). Pub. L. 95–600, § 701(u)(1)(B), inserted provision relating to application of section 957(c) of this title.

1976—Subsec. (a). Pub. L. 94–455, §§ 1031(b)(1), 1901(b)(37)(A), struck out ''under section 1333 (relating to war loss recoveries) or'' after ''imposed for the taxable year'' and ''applicable'' after ''subject to the''.

Subsec. (b). Pub. L. 94–455, § 1031(b)(1), struck out ''applicable'' after ''Subject to the''.

Subsec. (d). Pub. L. 94–455, § 1051(d)(1), struck out provisions relating to corporations receiving a large percentage of their gross receipts from sources within a possession of the United States and a corporation organized under the China Trade Act, 1922 (15 U.S.C. chapter 4).

Subsecs. (g), (h). Pub. L. 94–455, §§ 1051(d)(2), 1901(b)(1)(H)(iii), added subsec. (g), redesignated former subsec. (g) as (h), and, as redesignated, substituted ''section 642(a)(1)'' for ''section 642(a)(2)'' in par. (3).

1975—Subsecs. (f), (g). Pub. L. 94–12 added subsec. (f) and redesignated former subsec. (f) as (g).

1974—Subsec. (a). Pub. L. 93–460 inserted references to the tax imposed for the taxable year under section 72(m)(5)(B) (relating to 10 percent tax on premature distributions to owner-employees), the tax imposed for the taxable year by section 408(f) (relating to additional tax on income from certain retirement accounts), and the tax imposed by section 402(e) (relating to tax on lump sum distributions).

1971—Subsec. (d). Pub. L. 92–178 inserted provision for treatment of dividends from a DISC or former DISC as dividends from a foreign corporation to the extent such dividends are treated under part I as income from sources without the United States.

1969—Subsec. (a). Pub. L. 91–172, § 301(b)(9), inserted ''against the tax imposed by section 56 (relating to minimum tax for tax preferences),'' after ''not be allowed'' in last sentence.

Subsecs. (e), (f). Pub. L. 91–172, § 506(a), added subsec. (e) and redesignated former subsec. (e) as (f).

1966—Subsec. (a). Pub. L. 89–384 added the additional tax imposed under section 1351 (relating to recoveries of foreign expropriation losses) to the list of taxes against which the foreign tax credit may not be allowed.

Subsec. (b)(3). Pub. L. 89–809, § 106(b)(1), struck out provisions which made the allowance of the credit de-

pendent upon whether the foreign country of which the alien resident was a citizen or subject, in imposing such taxes, allowed a similar credit to citizens of the United States residing in such country.

Subsec. (b)(4), (5). Pub. L. 89–809, § 106(a)(4), (5), added par. (4), redesignated former par. (4) as (5) and inserted reference to par. (4).

Subsecs. (c) to (e). Pub. L. 89–809, § 106(b)(2), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

1964—Subsec. (d)(1). Pub. L. 88–272 inserted reference to section 275.

1962—Subsec. (a). Pub. L. 87–834, § 12(b)(1), substituted ''sections 902 and 960'' for ''section 902''.

Subsec. (d)(4). Pub. L. 87–834, § 9(d)(3), added par. (4).

1960—Subsec. (a). Pub. L. 86–780, § 3(a), (b), inserted ''applicable'' before ''limitation'' and substituted ''Such choice for any taxable year may be made or changed at any time before the expiration of the period prescribed for making a claim for credit or refund of the tax imposed by this chapter for such taxable year'' for ''Such choice may be made or changed at any time prior to the expiration of the period prescribed for making a claim for credit or refund of the tax against which the credit is allowable.''

Subsec. (b). Pub. L. 86–780, § 3(b), inserted ''applicable'' before ''limitation''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–226, title II, § 212(b), Aug. 10, 2010, 124 Stat. 2398, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to covered asset acquisitions (as defined in section 901(m)(2) of the Internal Revenue Code of 1986, as added by this section) after December 31, 2010.

''(2) TRANSITION RULE.—The amendments made by this section shall not apply to any covered asset acquisition (as so defined) with respect to which the transferor and the transferee are not related if such acquisition is—

''(A) made pursuant to a written agreement which was binding on January 1, 2011, and at all times thereafter,

''(B) described in a ruling request submitted to the Internal Revenue Service on or before July 29, 2010, or

''(C) described on or before January 1, 2011, in a public announcement or in a filing with the Securities and Exchange Commission.

''(3) RELATED PERSONS.—For purposes of this subsection, a person shall be treated as related to another person if the relationship between such persons is described in section 267 or 707(b) of the Internal Revenue Code of 1986.''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENTS

Pub. L. 108–357, title IV, § 405(c), Oct. 22, 2004, 118 Stat. 1498, provided that: ''The amendments made by this section [amending this section and section 902 of this title] shall apply to taxes of foreign corporations for taxable years of such corporations beginning after the date of the enactment of this Act [Oct. 22, 2004].''

Pub. L. 108–357, title VIII, § 832(c), Oct. 22, 2004, 118 Stat. 1588, provided that: ''The amendments made by this section [amending this section] shall apply to amounts paid or accrued more than 30 days after the date of the enactment of this Act [Oct. 22, 2004].''

Amendment by Pub. L. 108–311 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 406(h) of Pub. L. 108–311, set out as a note under section 55 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–200, title VI, § 601(b), May 18, 2000, 114 Stat. 305, provided that: ''The amendment made by this section [amending this section] shall apply on or after February 1, 2001.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1053(a) of Pub. L. 105–34 applicable to dividends paid or accrued more than 30 days after Aug. 5, 1997, see section 1053(c) of Pub. L. 105–34, set out as a note under section 853 of this title.

Amendment by section 1142(e)(4) of Pub. L. 105–34 applicable to annual accounting periods beginning after Aug. 5, 1997, see section 1142(f) of Pub. L. 105–34, set out as a note under section 318 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective Aug. 20, 1996, with exception for certain trusts, see section 1904(d) of Pub. L. 104–188, set out as a note under section 643 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1012(j) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 2003(c)(2) of Pub. L. 100–647 provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect on January 1, 1987.''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10231(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 112(b)(3) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Section 1204(b) of Pub. L. 99–514 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to foreign taxes paid or accrued in taxable years beginning after December 31, 1986.''

Amendment by section 1876(p)(2) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Section 8041(c) of Pub. L. 99–509 provided that: ''The amendments made by this section [amending this section and section 952 of this title] shall take effect on January 1, 1987.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(20) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 612(e)(1) of Pub. L. 98–369 applicable to interest paid or accrued after Dec. 31, 1984, on indebtedness incurred after Dec. 31, 1984, see section 612(g) of Pub. L. 98–369, set out as an Effective Date note under section 25 of this title.

Amendment by section 713(c)(1)(C) of Pub. L. 98–369 effective as if included in the provision of the Tax Eq-

uity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

Amendment by section 801(d)(1) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 201(d)(8)(A) of Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, see section 201(e)(1) of Pub. L. 97–248, set out as a note under section 5 of this title.

Amendment by section 265(b)(2)(A)(iv) of Pub. L. 97–248 applicable to distributions after Dec. 31, 1982, see section 265(c)(2) of Pub. L. 97–248, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(u)(1)(C) of Pub. L. 95–600, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply as if included in section 901(g) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as added by section 1051(d)(2) of the Tax Reform Act of 1976 [section 1051(d)(2) of Pub. L. 94–455]. The amendments made by subparagraph (B) [amending this section] shall apply to distributions made after the date of the enactment of this Act [Nov. 6, 1978] in taxable years ending after such date.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1031(b)(1) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, with certain exceptions, see section 1031(c) of Pub. L. 94–455, set out as a note under section 904 of this title.

Amendment by section 1051(d)(1) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, with certain exceptions, and the provisions of subsec. (g) not to apply to any tax imposed by a possession of the United States with respect to the complete liquidation occurring before Jan. 1, 1979, of a corporation to the extent that such tax is attributable to earnings and profits accumulated by such corporation during periods ending before Jan. 1, 1976, see section 1051(i) of Pub. L. 94–455, set out as a note under section 27 of this title.

Amendment by section 1901(b)(1)(H)(iii), (37)(A) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–12 applicable to taxable years ending after Dec. 31, 1974, see section 601(d) of Pub. L. 94–12, set out as an Effective Date note under section 907 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 2001(g)(2)(C) of Pub. L. 93–406, which inserted reference to the tax imposed for the taxable year under section 72(m)(5)(B) (relating to 10 percent tax on premature distributions to owner-employees), applicable to distributions made in taxable years beginning after Dec. 31, 1975, see section 2001(i)(4) of Pub. L. 93–406, set out as a note under section 72 of this title.

Amendment by section 2002(g)(3) of Pub. L. 93–406, which inserted reference to the tax imposed for the taxable year by section 408(f) (relating to additional tax on income from certain retirement accounts), effective on Jan. 1, 1975, see section 2002(i)(2) of Pub. L. 93–406, set out as an Effective Date note under section 4973 of this title.

Amendment by section 2005(c)(5) of Pub. L. 93–406, which inserted reference to the tax imposed for the taxable year under section 402(e) (relating to tax on lump sum distributions), applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable with respect to taxable years ending after Dec. 31, 1971, except that a corporation may not be a DISC for any taxable year beginning before Jan. 1, 1972, see section 507 of Pub. L. 92–178, set out as an Effective Date note under section 991 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 301(b)(9) of Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 301(c) of Pub. L. 91–172, set out as a note under section 5 of this title.

Section 506(c) of Pub. L. 91–172 provided that: ''The amendments made by this section [amending this section and section 904 of this title] shall apply with respect to taxable years beginning after December 31, 1969.''

EFFECTIVE DATE OF 1966 AMENDMENTS

Amendment by section 106(a)(4), (5) of Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 106(a)(6) of Pub. L. 89–809, set out as a note under section 874 of this title.

Section 106(b)(4) of Pub. L. 89–809 provided that: ''The amendments made by this subsection (other than paragraph (3)) [amending this section] shall apply with respect to taxable years beginning after December 31, 1966. The amendment made by paragraph (3) [amending section 2014 of this title] shall apply with respect to estates of decedents dying after the date of enactment of this Act [Nov. 13, 1966].''

Amendment by Pub. L. 89–384 applicable with respect to amounts received after December 31, 1964, in respect of foreign expropriation losses (as defined in section 1351(b) of this title) sustained after December 31, 1958, see section 2 of Pub. L. 89–384, set out as an Effective Date note under section 1351 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 207(c) of Pub. L. 88–272, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 12(b)(1) of Pub. L. 87–834 applicable with respect to taxable years of foreign corporations beginning after Dec. 31, 1962, and to taxable years of United States shareholders within which or with which such taxable years of such foreign corporations end, see section 12(c) of Pub. L. 87–834, set out as an Effective Date note under section 951 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by section 3(a) of Pub. L. 86–780 applicable to taxable years beginning after Dec. 31, 1960, and amendment by section 3(b) of Pub. L. 86–780 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 4 of Pub. L. 86–780, set out as a note under section 904 of this title.

EFFECT OF AMENDMENT BY PUB. L. 103–149 ON REVENUE RULING 92–62

Amendment by section 4(b)(8)(A) of Pub. L. 103–149 not to be construed as affecting any of the transitional rules contained in Revenue Ruling 92–62 which apply by reason of the termination of the period for which subsec. (j) of this section was applicable to South Africa, see section 4(b)(8)(B) of Pub. L. 103–149 set out in a Repeal of Chapter; South African Democratic Transition Support note under section 5001 of Title 22, Foreign Relations and Intercourse.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 902. Deemed paid credit where domestic corporation owns 10 percent or more of voting stock of foreign corporation

(a) Taxes paid by foreign corporation treated as paid by domestic corporation

For purposes of this subpart, a domestic corporation which owns 10 percent or more of the voting stock of a foreign corporation from which it receives dividends in any taxable year shall be deemed to have paid the same proportion of such foreign corporation's post-1986 foreign income taxes as—

(1) the amount of such dividends (determined without regard to section 78), bears to

(2) such foreign corporation's post-1986 undistributed earnings.

(b) Deemed taxes increased in case of certain lower tier corporations

(1) In general

If—

(A) any foreign corporation is a member of a qualified group, and

(B) such foreign corporation owns 10 percent or more of the voting stock of another member of such group from which it receives dividends in any taxable year,

such foreign corporation shall be deemed to have paid the same proportion of such other member's post-1986 foreign income taxes as would be determined under subsection (a) if such foreign corporation were a domestic corporation.

(2) Qualified group

For purposes of paragraph (1), the term ''qualified group'' means—

(A) the foreign corporation described in subsection (a), and

(B) any other foreign corporation if—

(i) the domestic corporation owns at least 5 percent of the voting stock of such other foreign corporation indirectly through a chain of foreign corporations connected through stock ownership of at least 10 percent of their voting stock,

(ii) the foreign corporation described in subsection (a) is the first tier corporation in such chain, and

(iii) such other corporation is not below the sixth tier in such chain.

The term ''qualified group'' shall not include any foreign corporation below the third tier in the chain referred to in clause (i) unless such foreign corporation is a controlled foreign corporation (as defined in section 957) and the domestic corporation is a United States shareholder (as defined in section 951(b)) in such foreign corporation. Paragraph (1) shall apply to those taxes paid by a member of the qualified group below the third tier only with respect to periods during which it was a controlled foreign corporation.

(c) Definitions and special rules

For purposes of this section—

(1) Post-1986 undistributed earnings

The term ''post-1986 undistributed earnings'' means the amount of the earnings and profits of the foreign corporation (computed in accordance with sections 964(a) and 986) accumulated in taxable years beginning after December 31, 1986—

(A) as of the close of the taxable year of the foreign corporation in which the dividend is distributed, and

(B) without diminution by reason of dividends distributed during such taxable year.

(2) Post-1986 foreign income taxes

The term ''post-1986 foreign income taxes'' means the sum of—

(A) the foreign income taxes with respect to the taxable year of the foreign corporation in which the dividend is distributed, and

(B) the foreign income taxes with respect to prior taxable years beginning after December 31, 1986, to the extent such foreign taxes were not attributable to dividends distributed by the foreign corporation in prior taxable years.

(3) Special rule where foreign corporation first qualifies after December 31, 1986

(A) In general

If the 1st day on which the requirements of subparagraph (B) are met with respect to any foreign corporation is in a taxable year of such corporation beginning after December 31, 1986, the post-1986 undistributed earnings and the post-1986 foreign income taxes of such foreign corporation shall be determined by taking into account only periods beginning on and after the 1st day of the 1st taxable year in which such requirements are met.

(B) Ownership requirements

The requirements of this subparagraph are met with respect to any foreign corporation if—

(i) 10 percent or more of the voting stock of such foreign corporation is owned by a domestic corporation, or

(ii) the requirements of subsection (b)(2) are met with respect to such foreign corporation.

(4) Foreign income taxes

(A) In general

The term ''foreign income taxes'' means any income, war profits, or excess profits taxes paid by the foreign corporation to any foreign country or possession of the United States.

(B) Treatment of deemed taxes

Except for purposes of determining the amount of the post-1986 foreign income taxes of a sixth tier foreign corporation referred to in subsection (b)(2), the term ''foreign in-

come taxes'' includes any such taxes deemed to be paid by the foreign corporation under this section.

(5) Accounting periods

In the case of a foreign corporation the income, war profits, and excess profits taxes of which are determined on the basis of an accounting period of less than 1 year, the word ''year'' as used in this subsection shall be construed to mean such accounting period.

(6) Treatment of distributions from earnings before 1987

(A) In general

In the case of any dividend paid by a foreign corporation out of accumulated profits (as defined in this section as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) for taxable years beginning before the 1st taxable year taken into account in determining the post-1986 undistributed earnings of such corporation—

(i) this section (as amended by the Tax Reform Act of 1986) shall not apply, but

(ii) this section (as in effect on the day before the date of the enactment of such Act) shall apply.

(B) Dividends paid first out of post-1986 earnings

Any dividend in a taxable year beginning after December 31, 1986, shall be treated as made out of post-1986 undistributed earnings to the extent thereof.

(7) Constructive ownership through partnerships

Stock owned, directly or indirectly, by or for a partnership shall be considered as being owned proportionately by its partners. Stock considered to be owned by a person by reason of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person. The Secretary may prescribe such regulations as may be necessary to carry out the purposes of this paragraph, including rules to account for special partnership allocations of dividends, credits, and other incidents of ownership of stock in determining proportionate ownership.

(8) Regulations

The Secretary shall provide such regulations as may be necessary or appropriate to carry out the provisions of this section and section 960, including provisions which provide for the separate application of this section and section 960 to reflect the separate application of section 904 to separate types of income and loss.

(d) Cross references

(1) For inclusion in gross income of an amount equal to taxes deemed paid under subsection (a), see section 78.

(2) For application of subsections (a) and (b) with respect to taxes deemed paid in a prior taxable year by a United States shareholder with respect to a controlled foreign corporation, see section 960.

(3) For reduction of credit with respect to dividends paid out of post-1986 undistributed earnings for years for which certain information is not furnished, see section 6038.

(Aug. 16, 1954, ch. 736, 68A Stat. 286; Pub. L. 86–780, §6(b)(2), Sept. 14, 1960, 74 Stat. 1016; Pub. L. 87–834, §9(a), Oct. 16, 1962, 76 Stat. 999; Pub. L. 91–684, §§1, 2, Jan. 12, 1971, 84 Stat. 2068, 2069; Pub. L. 94–12, title VI, §602(c)(6), Mar. 29, 1975, 89 Stat. 59; Pub. L. 94–455, title X, §1033(a), Oct. 4, 1976, 90 Stat. 1626; Pub. L. 99–514, title XII, §1202(a), Oct. 22, 1986, 100 Stat. 2528; Pub. L. 100–647, title I, §1012(b)(1), (2), Nov. 10, 1988, 102 Stat. 3496; Pub. L. 105–34, title XI, §§1113(a), 1163(a), Aug. 5, 1997, 111 Stat. 970, 987; Pub. L. 108–357, title IV, §405(a), Oct. 22, 2004, 118 Stat. 1498.)

REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (c)(6)(A), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

The Tax Reform Act of 1986, referred to in subsec. (c)(6)(A)(i), is Pub. L. 99–514, Oct. 22, 1986, 100 Stat. 2085. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2004—Subsec. (c)(7), (8). Pub. L. 108–357 added par. (7) and redesignated former par. (7) as (8).

1997—Subsec. (b). Pub. L. 105–34, §1113(a)(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) consisted of pars. (1) to (3) relating to deemed taxes increased in case of certain 2nd and 3rd tier foreign corporations.

Subsec. (c)(2)(B). Pub. L. 105–34, §1163(a), substituted ''attributable to'' for ''deemed paid with respect to''.

Subsec. (c)(3). Pub. L. 105–34, §1113(a)(2)(C), substituted ''where foreign corporation first qualifies'' for ''where domestic corporation acquires 10 percent of foreign corporation'' in heading.

Pub. L. 105–34, §1113(a)(2)(D), struck out ''ownership'' after ''on which the'' and ''in which such'' in subpar. (A) and before ''requirements of this subparagraph'' in introductory provisions of subpar. (B).

Subsec. (c)(3)(B). Pub. L. 105–34, §1113(a)(2)(A), inserted ''or'' at end of cl. (i), added cl. (ii), and struck out former cls. (ii) and (iii) which read as follows:

''(ii) the requirements of subsection (b)(3)(A) are met with respect to such foreign corporation and 10 percent or more of the voting stock of such foreign corporation is owned by another foreign corporation described in clause (i), or

''(iii) the requirements of subsection (b)(3)(B) are met with respect to such foreign corporation and 10 percent or more of the voting stock of such foreign corporation is owned by another foreign corporation described in clause (ii).''

Subsec. (c)(4)(B). Pub. L. 105–34, §1113(a)(2)(B), substituted ''sixth tier foreign corporation'' for ''3rd foreign corporation''.

1988—Subsec. (c)(1). Pub. L. 100–647, §1012(b)(2), substituted ''sections 964(a) and 986'' for ''sections 964 and 986''.

Subsec. (c)(7). Pub. L. 100–647, §1012(b)(1), substituted ''section 960'' for ''secton 960'' and ''this section and section 960'' for second reference to ''this section''.

1986—Pub. L. 99–514 amended section generally, substituting ''Deemed paid credit where domestic corporation owns 10 percent or more of voting stock of foreign corporation'' for ''Credit for corporate stockholder in foreign corporation'' as section catchline and substituting present provisions generally relating to post-1986 earnings and taxes for former provisions which had provided in subsec. (a) for a general rule with respect to treatment of taxes paid by foreign corporations, in subsec. (b) for treatment of taxes by a foreign subsidiary of first and second foreign corporations, in subsec. (c) for rules defining accumulated profits and determining accounting periods, and in subsec. (d) for cross references.

1976—Pub. L. 94–455, §1033(a), struck out provisions by which dividends from less developed country corpora-

tions are not grossed-up by the amount of foreign taxes paid on the underlying income and the deemed-paid foreign tax credits attributable to those dividends are reduced proportionately, struck out subsec. (d) which defined less developed country corporations, and redesignated subsec. (e) as (d).

1975—Subsec. (d). Pub. L. 94–12 substituted ''paragraph (3) or (4)'', ''paragraph (3)'', ''paragraph (3)(A)'', and ''paragraph (3)(B)'' for ''section 955(c)(1) or (2)'', ''section 955(c)(1)'', ''section 955(c)(1)(A)'', and ''section 955(c)(1)(B)'', respectively, in existing provisions and added pars. (3), (4), and (5) and provisions following par. (5).

1971—Subsec. (b). Pub. L. 91–684, §1, substituted ''Foreign subsidiary of first and second foreign corporation'' for ''Foreign subsidiary of foreign corporation'' in heading, designated existing provisions as par. (1) and inserted terminology denominating corporations involved as first foreign corporation and second foreign corporation, and reduced the ownership percentage requirement in voting stock from 50 percent to 10 percent between the first and second foreign corporations, and added pars. (2) and (3).

Subsec. (c)(1)(A). Pub. L. 91–684, §2(1), substituted ''(b)(1)(A), and (b)(2)(A)'' for ''and (b)(1)''.

Subsec. (c)(1)(B). Pub. L. 91–684, §2(2), substituted ''(b)(1)(B), and (b)(2)(B)'' for ''and (b)(2)''.

1962—Subsec. (a). Pub. L. 87–834 limited provisions which required a domestic corporation owning at least 10 per cent of the voting stock of a foreign corporation from which it receives dividends in any taxable year to be deemed to have paid the same proportion of any income, war profits, or excess profits taxes paid or deemed to be paid by such foreign corporation to any foreign country or to any possession of the United States which the amount of such dividends bears to the amount of accumulated profits to those cases where a foreign corporation paid such dividends out of accumulated profits of a year for which such foreign corporation is a less developed country corporation, and inserted provisions requiring, in the case of a domestic corporation which owns at least 10 percent of the voting stock of a foreign corporation from which it receives dividends in a taxable year, to the extent such dividends are paid by such foreign corporation out of accumulated profits of a year for which such foreign corporation is not a less developed country corporation, to be deemed to have paid the same proportion of any income, war profits, or excess profits taxes paid or deemed to be paid by such foreign corporation to any foreign country or to any possession of the United States on or with respect to such accumulated profits, which the amount of such dividends (determined without regard to section 78) bears to the amount of such accumulated profits in excess of such income, war profits, and excess profits taxes (other than those deemed paid).

Subsec. (b). Pub. L. 87–834 substituted ''from which such dividends were paid which—

''(1) for purposes of applying subsection (a)(1), the amount of such dividends bears to the amount of the accumulated profits (as defined in subsection (c)(1)(A)) of such other foreign corporation from which such dividends were paid in excess of such income, war profits, and excess profits taxes, or

''(2) for purposes of applying subsection (a)(2), the amount of such dividends bears to the amount of the accumulated profits (as defined in subsection (c)(1)(B)) of such other foreign corporation from which such dividends were paid''

for ''from which such dividends were paid, which the amount of such dividends bears to the amount of such accumulated profits''.

Subsec. (c). Pub. L. 87–834 defined ''accumulated profits'' for purposes of subsecs. (a)(1) and (b)(1) as meaning the amount of its gains, profits, or income computed without reduction by the amount of the income, war profits, and excess profits taxes imposed on or with respect to such profits or income by and foreign country or any possession of the United States, and limited provisions defining ''accumulated profits'' as the amount of its gains, profits, or income in excess of the income, war profits, and excess profits taxes imposed on or with respect to such profits or income to subsecs. (a)(2) and (b)(2).

Subsec. (d). Pub. L. 87–834 substituted provisions defining ''less developed country corporation'' for provisions which established special rules for certain wholly-owned foreign corporations.

Subsec. (e). Pub. L. 87–834 designated existing provisions as par. (3) and added pars. (1) and (2).

1960—Subsec. (e). Pub. L. 86–780 added subsec. (e).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxes of foreign corporations for taxable years of such corporations beginning after Oct. 22, 2004, see section 405(c) of Pub. L. 108–357, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1113(c) of Pub. L. 105–34 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 960 of this title] shall apply to taxes of foreign corporations for taxable years of such corporations beginning after the date of enactment of this Act [Aug. 5, 1997].

''(2) SPECIAL RULE.—In the case of any chain of foreign corporations described in clauses (i) and (ii) of section 902(b)(2)(B) of the Internal Revenue Code of 1986 (as amended by this section), no liquidation, reorganization, or similar transaction in a taxable year beginning after the date of the enactment of this Act shall have the effect of permitting taxes to be taken into account under section 902 of the Internal Revenue Code of 1986 which could not have been taken into account under such section but for such transaction.''

Section 1163(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section and section 904 of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1202(e) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section and sections 960 and 6038 of this title] shall apply to distributions by foreign corporations out of, and to inclusions under section 951(a) of the Internal Revenue Code of 1986 attributable to, earnings and profits for taxable years beginning after December 31, 1986.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1033(c) of Pub. L. 94–455, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [amending this section and sections 78, 535, 545, and 960 of this title] shall apply—

''(1) in respect of any distribution received by a domestic corporation after December 31, 1977, and

''(2) in respect of any distribution received by a domestic corporation before January 1, 1978, in a taxable year of such corporation beginning after December 31, 1975, but only to the extent that such distribution is made out of the accumulated profits of a foreign corporation for a taxable year (of such foreign corporation) beginning after December 31, 1975.

For purposes of paragraph (2), a distribution made by a foreign corporation out of its profits which are attributable to a distribution received from a foreign corporation to which section 902(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applies shall be treated as made out of the accumulated profits of a for-

eign corporation for a taxable year beginning before January 1, 1976, to the extent that such distribution was paid out of the accumulated profits of such foreign corporation for a taxable year beginning before January 1, 1976.''

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–12 applicable to taxable years of foreign corporations beginning after Dec. 31, 1975, and to taxable years of United States shareholders (within the meaning of section 951(b) of this title) within which or with which such taxable years of such foreign corporations end, see section 602(f) of Pub. L. 94–12, set out as an Effective Date note under section 955 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 3 of Pub. L. 91–684 provided that: ''The amendments made by this Act [amending this section] shall apply with respect to all taxable years of domestic corporations, ending after the date of enactment of this Act [Jan. 12, 1971], but only in respect of dividends paid by one corporation to another corporation after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1962 AMENDMENT

Section 9(e) of Pub. L. 87–834 provided that: ''The amendments made by this section [enacting section 78 of this title and amending this section and sections 535, 545, 861, and 901 of this title] shall apply—

''(1) in respect of any distribution received by a domestic corporation after December 31, 1964, and

''(2) in respect of any distribution received by a domestic corporation before January 1, 1965, in a taxable year of such corporation beginning after December 31, 1962, but only to the extent that such distribution is made out of the accumulated profits of a foreign corporation for a taxable year (of such foreign corporation) beginning after December 31, 1962.

For purposes of paragraph (2), a distribution made by a foreign corporation out of its profits which are attributable to a distribution received from a foreign subsidiary to which section 902(b) applies shall be treated as made out of the accumulated profits of a foreign corporation for a taxable year beginning before January 1, 1963, to the extent that such distribution was paid out of the accumulated profits of such foreign subsidiary for a taxable year beginning before January 1, 1963.''

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–780 applicable to taxable years beginning after Dec. 31, 1960, see section 6(c) of Pub. L. 86–780), set out as an Effective Date note under section 6038 of this title.

INCREASE IN EARNINGS AND PROFITS OF FOREIGN CORPORATIONS UNDER SECTION 1023(e)(3)(C) OF PUB. L. 99–514

Section 1012(b)(3) of Pub. L. 100–647 provided that: ''For purposes of sections 902 and 960 of the 1986 Code, the increase in earnings and profits of any foreign corporation under section 1023(e)(3)(C) of the Reform Act [Pub. L. 99–514, set out as an Effective Date note under section 846 of this title] shall be taken into account ratably over the 10-year period beginning with the corporation's first taxable year beginning after December 31, 1986.''

§ 903. Credit for taxes in lieu of income, etc., taxes

For purposes of this part and of sections 164(a) and 275(a), the term ''income, war profits, and excess profits taxes'' shall include a tax paid in lieu of a tax on income, war profits, or excess profits otherwise generally imposed by any foreign country or by any possession of the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 287; Pub. L. 88–272, title II, § 207(b)(8), Feb. 26, 1964, 78 Stat. 42; Pub. L. 100–647, title I, § 1012(v)(9), Nov. 10, 1988, 102 Stat. 3530; Pub. L. 106–519, § 4(4), Nov. 15, 2000, 114 Stat. 2433; Pub. L. 108–357, title I, § 101(b)(7), Oct. 22, 2004, 118 Stat. 1423.)

AMENDMENTS

2004—Pub. L. 108–357 substituted ''164(a)'' for ''114, 164(a),''.

2000—Pub. L. 106–519 substituted ''114, 164(a),'' for ''164(a)''.

1988—Pub. L. 100–647 substituted ''this part'' for ''this subpart''.

1964—Pub. L. 88–272 substituted ''sections 164(a) and 275(a)'' for ''section 164(b)''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to transactions after Dec. 31, 2004, see section 101(c) of Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–519 applicable to transactions after Sept. 30, 2000, with special rules relating to existing foreign sales corporations, see section 5 of Pub. L. 106–519, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 207(c) of Pub. L. 88–272, set out as a note under section 164 of this title.

§ 904. Limitation on credit

(a) Limitation

The total amount of the credit taken under section 901(a) shall not exceed the same proportion of the tax against which such credit is taken which the taxpayer's taxable income from sources without the United States (but not in excess of the taxpayer's entire taxable income) bears to his entire taxable income for the same taxable year.

(b) Taxable income for purpose of computing limitation

(1) Personal exemptions

For purposes of subsection (a), the taxable income in the case of an individual, estate, or trust shall be computed without any deduction for personal exemptions under section 151 or 642(b).

(2) Capital gains

For purposes of this section—

(A) In general

Taxable income from sources outside the United States shall include gain from the sale or exchange of capital assets only to the extent of foreign source capital gain net income.

(B) Special rules where capital gain rate differential

In the case of any taxable year for which there is a capital gain rate differential—

(i) in lieu of applying subparagraph (A), the taxable income from sources outside the United States shall include gain from the sale or exchange of capital assets only in an amount equal to foreign source capital gain net income reduced by the rate differential portion of foreign source net capital gain,

(ii) the entire taxable income shall include gain from the sale or exchange of capital assets only in an amount equal to capital gain net income reduced by the rate differential portion of net capital gain, and

(iii) for purposes of determining taxable income from sources outside the United States, any net capital loss (and any amount which is a short-term capital loss under section 1212(a)) from sources outside the United States to the extent taken into account in determining capital gain net income for the taxable year shall be reduced by an amount equal to the rate differential portion of the excess of net capital gain from sources within the United States over net capital gain.

(C) Coordination with capital gains rates

The Secretary may by regulations modify the application of this paragraph and paragraph (3) to the extent necessary to properly reflect any capital gain rate differential under section 1(h) or 1201(a) and the computation of net capital gain.

(3) Definitions

For purposes of this subsection—

(A) Foreign source capital gain net income

The term ''foreign source capital gain net income'' means the lesser of—

(i) capital gain net income from sources without the United States, or

(ii) capital gain net income.

(B) Foreign source net capital gain

The term ''foreign source net capital gain'' means the lesser of—

(i) net capital gain from sources without the United States, or

(ii) net capital gain.

(C) Section 1231 gains

The term ''gain from the sale or exchange of capital assets'' includes any gain so treated under section 1231.

(D) Capital gain rate differential

There is a capital gain rate differential for any taxable year if—

(i) in the case of a taxpayer other than a corporation, subsection (h) of section 1 applies to such taxable year, or

(ii) in the case of a corporation, any rate of tax imposed by section 11, 511, or 831(a) or (b) (whichever applies) exceeds the alternative rate of tax under section 1201(a) (determined without regard to the last sentence of section 11(b)(1)).

(E) Rate differential portion

(i) In general

The rate differential portion of foreign source net capital gain, net capital gain, or the excess of net capital gain from sources within the United States over net capital gain, as the case may be, is the same proportion of such amount as—

(I) the excess of the highest applicable tax rate over the alternative tax rate, bears to

(II) the highest applicable tax rate.

(ii) Highest applicable tax rate

For purposes of clause (i), the term ''highest applicable tax rate'' means—

(I) in the case of a taxpayer other than a corporation, the highest rate of tax set forth in subsection (a), (b), (c), (d), or (e) of section 1 (whichever applies), or

(II) in the case of a corporation, the highest rate of tax specified in section 11(b).

(iii) Alternative tax rate

For purposes of clause (i), the term ''alternative tax rate'' means—

(I) in the case of a taxpayer other than a corporation, the alternative rate of tax determined under section 1(h), or

(II) in the case of a corporation, the alternative rate of tax under section 1201(a).

(4) Coordination with section 936

For purposes of subsection (a), in the case of a corporation, the taxable income shall not include any portion thereof taken into account for purposes of the credit (if any) allowed by section 936 (without regard to subsections (a)(4) and (i) thereof).

(c) Carryback and carryover of excess tax paid

Any amount by which all taxes paid or accrued to foreign countries or possessions of the United States for any taxable year for which the taxpayer chooses to have the benefits of this subpart exceed the limitation under subsection (a) shall be deemed taxes paid or accrued to foreign countries or possessions of the United States in the first preceding taxable year and in any of the first 10 succeeding taxable years, in that order and to the extent not deemed taxes paid or accrued in a prior taxable year, in the amount by which the limitation under subsection (a) for such preceding or succeeding taxable year exceeds the sum of the taxes paid or accrued to foreign countries or possessions of the United States for such preceding or succeeding taxable year and the amount of the taxes for any taxable year earlier than the current taxable year which shall be deemed to have been paid or accrued in such preceding or subsequent taxable year (whether or not the taxpayer chooses to have the benefits of this subpart with respect to such earlier taxable year). Such amount deemed paid or accrued in any year may be availed of only as a tax credit and not as a deduction and only if the taxpayer for such year chooses to have the benefits of this subpart as to taxes paid or accrued for that year to foreign countries or possessions of the United States.

(d) Separate application of section with respect to certain categories of income

(1) In general

The provisions of subsections (a), (b), and (c) and sections 902, 907, and 960 shall be applied separately with respect to—

(A) passive category income, and
(B) general category income.

(2) Definitions and special rules

For purposes of this subsection—

(A) Categories

(i) Passive category income

The term ''passive category income'' means passive income and specified passive category income.

(ii) General category income

The term ''general category income'' means income other than passive category income.

(B) Passive income

(i) In general

Except as otherwise provided in this subparagraph, the term ''passive income'' means any income received or accrued by any person which is of a kind which would be foreign personal holding company income (as defined in section 954(c)).

(ii) Certain amounts included

Except as provided in clause (iii), the term ''passive income'' includes, except as provided in subparagraph (E)(iii)[1] or paragraph (3)(I)[1], any amount includible in gross income under section 1293 (relating to certain passive foreign investment companies).

(iii) Exceptions

The term ''passive income'' shall not include—

(I) any export financing interest, and
(II) any high-taxed income.

(iv) Clarification of application of section 864(d)(6)

In determining whether any income is of a kind which would be foreign personal holding company income, the rules of section 864(d)(6) shall apply only in the case of income of a controlled foreign corporation.

(v) Specified passive category income

The term ''specified passive category income'' means—

(I) dividends from a DISC or former DISC (as defined in section 992(a)) to the extent such dividends are treated as income from sources without the United States, and

(II) distributions from a former FSC (as defined in section 922) out of earnings and profits attributable to foreign trade income (within the meaning of section 923(b)) or interest or carrying charges (as defined in section 927(d)(1)) derived from a transaction which results in foreign trade income (as defined in section 923(b)).

Any reference in subclause (II) to section 922, 923, or 927 shall be treated as a reference to such section as in effect before its repeal by the FSC Repeal and Extraterritorial Income Exclusion Act of 2000.

(C) Treatment of financial services income and companies

(i) In general

Financial services income shall be treated as general category income in the case of—

(I) a member of a financial services group, and

(II) any other person if such person is predominantly engaged in the active conduct of a banking, insurance, financing, or similar business.

(ii) Financial services group

The term ''financial services group'' means any affiliated group (as defined in section 1504(a) without regard to paragraphs (2) and (3) of section 1504(b)) which is predominantly engaged in the active conduct of a banking, insurance, financing, or similar business. In determining whether such a group is so engaged, there shall be taken into account only the income of members of the group that are—

(I) United States corporations, or

(II) controlled foreign corporations in which such United States corporations own, directly or indirectly, at least 80 percent of the total voting power and value of the stock.

(iii) Pass-thru entities

The Secretary shall by regulation specify for purposes of this subparagraph the treatment of financial services income received or accrued by partnerships and by other pass-thru entities which are not members of a financial services group.

(D) Financial services income

(i) In general

Except as otherwise provided in this subparagraph, the term ''financial services income'' means any income which is received or accrued by any person predominantly engaged in the active conduct of a banking, insurance, financing, or similar business, and which is—

(I) described in clause (ii), or

(II) passive income (determined without regard to subparagraph (B)(iii)(II)).

(ii) General description of financial services income

Income is described in this clause if such income is—

(I) derived in the active conduct of a banking, financing, or similar business,

(II) derived from the investment by an insurance company of its unearned premiums or reserves ordinary and necessary for the proper conduct of its insurance business, or

(III) of a kind which would be insurance income as defined in section 953(a) determined without regard to those provisions of paragraph (1)(A) of such section which limit insurance income to income from countries other than the

[1] See References in Text note below.

country in which the corporation was created or organized.

(E) Noncontrolled section 902 corporation

(i) In general

The term ''noncontrolled section 902 corporation'' means any foreign corporation with respect to which the taxpayer meets the stock ownership requirements of section 902(a) (or, for purposes of applying paragraph (3) or (4), the requirements of section 902(b)). A controlled foreign corporation shall not be treated as a noncontrolled section 902 corporation with respect to any distribution out of its earnings and profits for periods during which it was a controlled foreign corporation.

(ii) Treatment of inclusions under section 1293

If any foreign corporation is a non-controlled section 902 corporation with respect to the taxpayer, any inclusion under section 1293 with respect to such corporation shall be treated as a dividend from such corporation.

(F) High-taxed income

The term ''high-taxed income'' means any income which (but for this subparagraph) would be passive income if the sum of—

(i) the foreign income taxes paid or accrued by the taxpayer with respect to such income, and

(ii) the foreign income taxes deemed paid by the taxpayer with respect to such income under section 902 or 960,

exceeds the highest rate of tax specified in section 1 or 11 (whichever applies) multiplied by the amount of such income (determined with regard to section 78). For purposes of the preceding sentence, the term ''foreign income taxes'' means any income, war profits, or excess profits tax imposed by any foreign country or possession of the United States.

(G) Export financing interest

For purposes of this paragraph, the term ''export financing interest'' means any interest derived from financing the sale (or other disposition) for use or consumption outside the United States of any property—

(i) which is manufactured, produced, grown, or extracted in the United States by the taxpayer or a related person, and

(ii) not more than 50 percent of the fair market value of which is attributable to products imported into the United States.

For purposes of clause (ii), the fair market value of any property imported into the United States shall be its appraised value, as determined by the Secretary under section 402 of the Tariff Act of 1930 (19 U.S.C. 1401a) in connection with its importation.

(H) Treatment of income tax base differences

(i) In general

In the case of taxable years beginning after December 31, 2006, tax imposed under the law of a foreign country or possession of the United States on an amount which does not constitute income under United States tax principles shall be treated as imposed on income described in paragraph (1)(B).

(ii) Special rule for years before 2007

(I) In general

In the case of taxes paid or accrued in taxable years beginning after December 31, 2004, and before January 1, 2007, a taxpayer may elect to treat tax imposed under the law of a foreign country or possession of the United States on an amount which does not constitute income under United States tax principles as tax imposed on income described in subparagraph (C) or (I) of paragraph (1).

(II) Election irrevocable

Any such election shall apply to the taxable year for which made and all subsequent taxable years described in subclause (I) unless revoked with the consent of the Secretary.

(I) Related person

For purposes of this paragraph, the term ''related person'' has the meaning given such term by section 954(d)(3), except that such section shall be applied by substituting ''the person with respect to whom the determination is being made'' for ''controlled foreign corporation'' each place it appears.

(J) Transitional rule

For purposes of paragraph (1)—

(i) taxes paid or accrued in a taxable year beginning before January 1, 1987, with respect to income which was described in subparagraph (A) of paragraph (1) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) shall be treated as taxes paid or accrued with respect to income described in subparagraph (A) of paragraph (1) (as in effect after such date),

(ii) taxes paid or accrued in a taxable year beginning before January 1, 1987, with respect to income which was described in subparagraph (E) of paragraph (1) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) shall be treated as taxes paid or accrued with respect to income described in subparagraph (I) of paragraph (1) (as in effect after such date) except that—

(I) such taxes shall be treated as paid or accrued with respect to shipping income to the extent the taxpayer establishes to the satisfaction of the Secretary that such taxes were paid or accrued with respect to such income,

(II) in the case of a person described in subparagraph (C)(i), such taxes shall be treated as paid or accrued with respect to financial services income to the extent the taxpayer establishes to the satisfaction of the Secretary that such taxes were paid or accrued with respect to such income, and

(III) such taxes shall be treated as paid or accrued with respect to high with-

holding tax interest to the extent the taxpayer establishes to the satisfaction of the Secretary that such taxes were paid or accrued with respect to such income, and

(iii) taxes paid or accrued in a taxable year beginning before January 1, 1987, with respect to income described in any other subparagraph of paragraph (1) (as so in effect before such date) shall be treated as taxes paid or accrued with respect to income described in the corresponding subparagraph of paragraph (1) (as so in effect after such date).

(K) Transitional rules for 2007 changes

For purposes of paragraph (1)—

(i) taxes carried from any taxable year beginning before January 1, 2007, to any taxable year beginning on or after such date, with respect to any item of income, shall be treated as described in the subparagraph of paragraph (1) in which such income would be described were such taxes paid or accrued in a taxable year beginning on or after such date, and

(ii) the Secretary may by regulations provide for the allocation of any carryback of taxes with respect to income from a taxable year beginning on or after January 1, 2007, to a taxable year beginning before such date for purposes of allocating such income among the separate categories in effect for the taxable year to which carried.

(3) Look-thru in case of controlled foreign corporations

(A) In general

Except as otherwise provided in this paragraph, dividends, interest, rents, and royalties received or accrued by the taxpayer from a controlled foreign corporation in which the taxpayer is a United States shareholder shall not be treated as passive category income.

(B) Subpart F inclusions

Any amount included in gross income under section 951(a)(1)(A) shall be treated as passive category income to the extent the amount so included is attributable to passive category income.

(C) Interest, rents, and royalties

Any interest, rent, or royalty which is received or accrued from a controlled foreign corporation in which the taxpayer is a United States shareholder shall be treated as passive category income to the extent it is properly allocable (under regulations prescribed by the Secretary) to passive category income of the controlled foreign corporation.

(D) Dividends

Any dividend paid out of the earnings and profits of any controlled foreign corporation in which the taxpayer is a United States shareholder shall be treated as passive category income in proportion to the ratio of—

(i) the portion of the earnings and profits attributable to passive category income, to

(ii) the total amount of earnings and profits.

(E) Look-thru applies only where subpart F applies

If a controlled foreign corporation meets the requirements of section 954(b)(3)(A) (relating to de minimis rule) for any taxable year, for purposes of this paragraph, none of its foreign base company income (as defined in section 954(a) without regard to section 954(b)(5)) and none of its gross insurance income (as defined in section 954(b)(3)(C)) for such taxable year shall be treated as passive category income, except that this sentence shall not apply to any income which (without regard to this sentence) would be treated as financial services income. Solely for purposes of applying subparagraph (D), passive income of a controlled foreign corporation shall not be treated as passive category income if the requirements of section 954(b)(4) are met with respect to such income.

(F) Coordination with high-taxed income provisions

(i) In determining whether any income of a controlled foreign corporation is passive category income, subclause (II) of paragraph (2)(B)(iii) shall not apply.

(ii) Any income of the taxpayer which is treated as passive category income under this paragraph shall be so treated notwithstanding any provision of paragraph (2); except that the determination of whether any amount is high-taxed income shall be made after the application of this paragraph.

(G) Dividend

For purposes of this paragraph, the term ''dividend'' includes any amount included in gross income in section 951(a)(1)(B). Any amount included in gross income under section 78 to the extent attributable to amounts included in gross income in section 951(a)(1)(A) shall not be treated as a dividend but shall be treated as included in gross income under section 951(a)(1)(A).

(H) Look-thru applies to passive foreign investment company inclusion

If—

(i) a passive foreign investment company is a controlled foreign corporation, and

(ii) the taxpayer is a United States shareholder in such controlled foreign corporation,

any amount included in gross income under section 1293 shall be treated as income in a separate category to the extent such amount is attributable to income in such category.

(4) Look-thru applies to dividends from noncontrolled section 902 corporations

(A) In general

For purposes of this subsection, any dividend from a noncontrolled section 902 corporation with respect to the taxpayer shall be treated as income described in a subparagraph of paragraph (1) in proportion to the ratio of—

(i) the portion of earnings and profits attributable to income described in such subparagraph, to

(ii) the total amount of earnings and profits.

(B) Earnings and profits of controlled foreign corporations

In the case of any distribution from a controlled foreign corporation to a United States shareholder, rules similar to the rules of subparagraph (A) shall apply in determining the extent to which earnings and profits of the controlled foreign corporation which are attributable to dividends received from a noncontrolled section 902 corporation may be treated as income in a separate category.

(C) Special rules

For purposes of this paragraph—

(i) Earnings and profits

(I) In general

The rules of section 316 shall apply.

(II) Regulations

The Secretary may prescribe regulations regarding the treatment of distributions out of earnings and profits for periods before the taxpayer's acquisition of the stock to which the distributions relate.

(ii) Inadequate substantiation

If the Secretary determines that the proper subparagraph of paragraph (1) in which a dividend is described has not been substantiated, such dividend shall be treated as income described in paragraph (1)(A).

(iii) Coordination with high-taxed income provisions

Rules similar to the rules of paragraph (3)(F) shall apply for purposes of this paragraph.

(iv) Look-thru with respect to carryover of credit

Rules similar to subparagraph (A) also shall apply to any carryforward under subsection (c) from a taxable year beginning before January 1, 2003, of tax allocable to a dividend from a noncontrolled section 902 corporation with respect to the taxpayer. The Secretary may by regulations provide for the allocation of any carryback of tax allocable to a dividend from a noncontrolled section 902 corporation from a taxable year beginning on or after January 1, 2003, to a taxable year beginning before such date for purposes of allocating such dividend among the separate categories in effect for the taxable year to which carried.

(5) Controlled foreign corporation; United States shareholder

For purposes of this subsection—

(A) Controlled foreign corporation

The term ''controlled foreign corporation'' has the meaning given such term by section 957 (taking into account section 953(c)).

(B) United States shareholder

The term ''United States shareholder'' has the meaning given such term by section 951(b) (taking into account section 953(c)).

(6) Separate application to items resourced under treaties

(A) In general

If—

(i) without regard to any treaty obligation of the United States, any item of income would be treated as derived from sources within the United States,

(ii) under a treaty obligation of the United States, such item would be treated as arising from sources outside the United States, and

(iii) the taxpayer chooses the benefits of such treaty obligation,

subsections (a), (b), and (c) of this section and sections 902, 907, and 960 shall be applied separately with respect to each such item.

(B) Coordination with other provisions

This paragraph shall not apply to any item of income to which subsection (h)(10) or section 865(h) applies.

(C) Regulations

The Secretary may issue such regulations or other guidance as is necessary or appropriate to carry out the purposes of this paragraph, including regulations or other guidance which provides that related items of income may be aggregated for purposes of this paragraph.

(7) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate for the purposes of this subsection, including regulations—

(A) for the application of paragraph (3) and subsection (f)(5) in the case of income paid (or loans made) through 1 or more entities or between 2 or more chains of entities,

(B) preventing the manipulation of the character of income the effect of which is to avoid the purposes of this subsection, and

(C) providing that rules similar to the rules of paragraph (3)(C) shall apply to interest, rents, and royalties received or accrued from entities which would be controlled foreign corporations if they were foreign corporations.

[(e) Repealed. Pub. L. 101–508, title XI, § 11801(a)(31), Nov. 5, 1990, 104 Stat. 1388–521]

(f) Recapture of overall foreign loss

(1) General rule

For purposes of this subpart and section 936, in the case of any taxpayer who sustains an overall foreign loss for any taxable year, that portion of the taxpayer's taxable income from sources without the United States for each succeeding taxable year which is equal to the lesser of—

(A) the amount of such loss (to the extent not used under this paragraph in prior taxable years), or

(B) 50 percent (or such larger percent as the taxpayer may choose) of the taxpayer's taxable income from sources without the United States for such succeeding taxable year,

shall be treated as income from sources within the United States (and not as income from sources without the United States).

(2) Overall foreign loss defined

For purposes of this subsection, the term ''overall foreign loss'' means the amount by which the gross income for the taxable year from sources without the United States (whether or not the taxpayer chooses the benefits of this subpart for such taxable year) for such year is exceeded by the sum of the deductions properly apportioned or allocated thereto, except that there shall not be taken into account—

(A) any net operating loss deduction allowable for such year under section 172(a), and

(B) any—

(i) foreign expropriation loss for such year, as defined in section 172(h) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990), or

(ii) loss for such year which arises from fire, storm, shipwreck, or other casualty, or from theft,

to the extent such loss is not compensated for by insurance or otherwise.

(3) Dispositions

(A) In general

For purposes of this chapter, if property which has been used predominantly without the United States in a trade or business is disposed of during any taxable year—

(i) the taxpayer, notwithstanding any other provision of this chapter (other than paragraph (1)), shall be deemed to have received and recognized taxable income from sources without the United States in the taxable year of the disposition, by reason of such disposition, in an amount equal to the lesser of the excess of the fair market value of such property over the taxpayer's adjusted basis in such property or the remaining amount of the overall foreign losses which were not used under paragraph (1) for such taxable year or any prior taxable year, and

(ii) paragraph (1) shall be applied with respect to such income by substituting ''100 percent'' for ''50 percent''.

In determining for purposes of this subparagraph whether the predominant use of any property has been without the United States, there shall be taken into account use during the 3-year period ending on the date of the disposition (or, if shorter, the period during which the property has been used in the trade or business).

(B) Disposition defined and special rules

(i) For purposes of this subsection, the term ''disposition'' includes a sale, exchange, distribution, or gift of property whether or not gain or loss is recognized on the transfer.

(ii) Any taxable income recognized solely by reason of subparagraph (A) shall have the same characterization it would have had if the taxpayer had sold or exchanged the property.

(iii) The Secretary shall prescribe such regulations as he may deem necessary to provide for adjustments to the basis of property to reflect taxable income recognized solely by reason of subparagraph (A).

(C) Exceptions

Notwithstanding subparagraph (B), the term ''disposition'' does not include—

(i) a disposition of property which is not a material factor in the realization of income by the taxpayer, or

(ii) a disposition of property to a domestic corporation in a distribution or transfer described in section 381(a).

(D) Application to certain dispositions of stock in controlled foreign corporation

(i) In general

This paragraph shall apply to an applicable disposition in the same manner as if it were a disposition of property described in subparagraph (A), except that the exception contained in subparagraph (C)(i) shall not apply.

(ii) Applicable disposition

For purposes of clause (i), the term ''applicable disposition'' means any disposition of any share of stock in a controlled foreign corporation in a transaction or series of transactions if, immediately before such transaction or series of transactions, the taxpayer owned more than 50 percent (by vote or value) of the stock of the controlled foreign corporation. Such term shall not include a disposition described in clause (iii) or (iv), except that clause (i) shall apply to any gain recognized on any such disposition.

(iii) Exception for certain exchanges where ownership percentage retained

A disposition shall not be treated as an applicable disposition under clause (ii) if it is part of a transaction or series of transactions—

(I) to which section 351 or 721 applies, or under which the transferor receives stock in a foreign corporation in exchange for the stock in the controlled foreign corporation and the stock received is exchanged basis property (as defined in section 7701(a)(44)), and

(II) immediately after which, the transferor owns (by vote or value) at least the same percentage of stock in the controlled foreign corporation (or, if the controlled foreign corporation is not in existence after such transaction or series of transactions, in another foreign corporation stock in[2] which was received by the transferor in exchange for stock in the controlled foreign corporation) as the percentage of stock in the controlled foreign corporation which the taxpayer owned immediately before such transaction or series of transactions.

(iv) Exception for certain asset acquisitions

A disposition shall not be treated as an applicable disposition under clause (ii) if it

[2] So in original.

is part of a transaction or series of transactions in which the taxpayer (or any member of an affiliated group of corporations filing a consolidated return under section 1501 which includes the taxpayer) acquires the assets of a controlled foreign corporation in exchange for the shares of the controlled foreign corporation in a liquidation described in section 332 or a reorganization described in section 368(a)(1).

(v) Controlled foreign corporation

For purposes of this subparagraph, the term ''controlled foreign corporation'' has the meaning given such term by section 957.

(vi) Stock ownership

For purposes of this subparagraph, ownership of stock shall be determined under the rules of subsections (a) and (b) of section 958.

(4) Accumulation distributions of foreign trust

For purposes of this chapter, in the case of amounts of income from sources without the United States which are treated under section 666 (without regard to subsections (b) and (c) thereof if the taxpayer chose to take a deduction with respect to the amounts described in such subsections under section 667(d)(1)(B)) as having been distributed by a foreign trust in a preceding taxable year, that portion of such amounts equal to the amount of any overall foreign loss sustained by the beneficiary in a year prior to the taxable year of the beneficiary in which such distribution is received from the trust shall be treated as income from sources within the United States (and not income from sources without the United States) to the extent that such loss was not used under this subsection in prior taxable years, or in the current taxable year, against other income of the beneficiary.

(5) Treatment of separate limitation losses

(A) In general

The amount of the separate limitation losses for any taxable year shall reduce income from sources within the United States for such taxable year only to the extent the aggregate amount of such losses exceeds the aggregate amount of the separate limitation incomes for such taxable year.

(B) Allocation of losses

The separate limitation losses for any taxable year (to the extent such losses do not exceed the separate limitation incomes for such year) shall be allocated among (and operate to reduce) such incomes on a proportionate basis.

(C) Recharacterization of subsequent income

If—

(i) a separate limitation loss from any income category (hereinafter in this subparagraph referred to as ''the loss category'') was allocated to income from any other category under subparagraph (B), and

(ii) the loss category has income for a subsequent taxable year,

such income (to the extent it does not exceed the aggregate separate limitation losses from the loss category not previously recharacterized under this subparagraph) shall be recharacterized as income from such other category in proportion to the prior reductions under subparagraph (B) in such other category not previously taken into account under this subparagraph. Nothing in the preceding sentence shall be construed as recharacterizing any tax.

(D) Special rules for losses from sources in the United States

Any loss from sources in the United States for any taxable year (to the extent such loss does not exceed the separate limitation incomes from such year) shall be allocated among (and operate to reduce) such incomes on a proportionate basis. This subparagraph shall be applied after subparagraph (B).

(E) Definitions

For purposes of this paragraph—

(i) Income category

The term ''income category'' means each separate category of income described in subsection (d)(1).

(ii) Separate limitation income

The term ''separate limitation income'' means, with respect to any income category, the taxable income from sources outside the United States, separately computed for such category.

(iii) Separate limitation loss

The term ''separate limitation loss'' means, with respect to any income category, the loss from such category determined under the principles of section 907(c)(4)(B).

(F) Dispositions

If any separate limitation loss for any taxable year is allocated against any separate limitation income for such taxable year, except to the extent provided in regulations, rules similar to the rules of paragraph (3) shall apply to any disposition of property if gain from such disposition would be in the income category with respect to which there was such separate limitation loss.

(g) Recharacterization of overall domestic loss

(1) General rule

For purposes of this subpart and section 936, in the case of any taxpayer who sustains an overall domestic loss for any taxable year beginning after December 31, 2006, that portion of the taxpayer's taxable income from sources within the United States for each succeeding taxable year which is equal to the lesser of—

(A) the amount of such loss (to the extent not used under this paragraph in prior taxable years), or

(B) 50 percent of the taxpayer's taxable income from sources within the United States for such succeeding taxable year,

shall be treated as income from sources without the United States (and not as income from sources within the United States).

(2) Overall domestic loss

For purposes of this subsection—

(A) In general

The term ''overall domestic loss'' means—

(i) with respect to any qualified taxable year, the domestic loss for such taxable year to the extent such loss offsets taxable income from sources without the United States for the taxable year or for any preceding qualified taxable year by reason of a carryback, and

(ii) with respect to any other taxable year, the domestic loss for such taxable year to the extent such loss offsets taxable income from sources without the United States for any preceding qualified taxable year by reason of a carryback.

(B) Domestic loss

For purposes of subparagraph (A), the term ''domestic loss'' means the amount by which the gross income for the taxable year from sources within the United States is exceeded by the sum of the deductions properly apportioned or allocated thereto (determined without regard to any carryback from a subsequent taxable year).

(C) Qualified taxable year

For purposes of subparagraph (A), the term ''qualified taxable year'' means any taxable year for which the taxpayer chose the benefits of this subpart.

(3) Characterization of subsequent income

(A) In general

Any income from sources within the United States that is treated as income from sources without the United States under paragraph (1) shall be allocated among and increase the income categories in proportion to the loss from sources within the United States previously allocated to those income categories.

(B) Income category

For purposes of this paragraph, the term ''income category'' has the meaning given such term by subsection (f)(5)(E)(i).

(4) Coordination with subsection (f)

The Secretary shall prescribe such regulations as may be necessary to coordinate the provisions of this subsection with the provisions of subsection (f).

(h) Source rules in case of United States-owned foreign corporations

(1) In general

The following amounts which are derived from a United States-owned foreign corporation and which would be treated as derived from sources outside the United States without regard to this subsection shall, for purposes of this section, be treated as derived from sources within the United States to the extent provided in this subsection:

(A) Any amount included in gross income under—

(i) section 951(a) (relating to amounts included in gross income of United States shareholders), or

(ii) section 1293 (relating to current taxation of income from qualified funds).

(B) Interest.

(C) Dividends.

(2) Subpart F and passive foreign investment company inclusions

Any amount described in subparagraph (A) of paragraph (1) shall be treated as derived from sources within the United States to the extent such amount is attributable to income of the United States-owned foreign corporation from sources within the United States.

(3) Certain interest allocable to United States source income

Any interest which—

(A) is paid or accrued by a United States-owned foreign corporation during any taxable year,

(B) is paid or accrued to a United States shareholder (as defined in section 951(b)) or a related person (within the meaning of section 267(b)) to such a shareholder, and

(C) is properly allocable (under regulations prescribed by the Secretary) to income of such foreign corporation for the taxable year from sources within the United States,

shall be treated as derived from sources within the United States.

(4) Dividends

(A) In general

The United States source ratio of any dividend paid or accrued by a United States-owned foreign corporation shall be treated as derived from sources within the United States.

(B) United States source ratio

For purposes of subparagraph (A), the term ''United States source ratio'' means, with respect to any dividend paid out of the earnings and profits for any taxable year, a fraction—

(i) the numerator of which is the portion of the earnings and profits for such taxable year from sources within the United States, and

(ii) the denominator of which is the total amount of earnings and profits for such taxable year.

(5) Exception where United States-owned foreign corporation has small amount of United States source income

Paragraph (3) shall not apply to interest paid or accrued during any taxable year (and paragraph (4) shall not apply to any dividends paid out of the earnings and profits for such taxable year) if—

(A) the United States-owned foreign corporation has earnings and profits for such taxable year, and

(B) less than 10 percent of such earnings and profits is attributable to sources within the United States.

For purposes of the preceding sentence, earnings and profits shall be determined without any reduction for interest described in paragraph (3) (determined without regard to subparagraph (C) thereof).

(6) United States-owned foreign corporation

For purposes of this subsection, the term ''United States-owned foreign corporation'' means any foreign corporation if 50 percent or more of—

(A) the total combined voting power of all classes of stock of such corporation entitled to vote, or

(B) the total value of the stock of such corporation,

is held directly (or indirectly through applying paragraphs (2) and (3) of section 958(a) and paragraph (4) of section 318(a)) by United States persons (as defined in section 7701(a)(30)).

(7) Dividend

For purposes of this subsection, the term ''dividend'' includes any gain treated as ordinary income under section 1246[3] or as a dividend under section 1248.

(8) Coordination with subsection (f)

This subsection shall be applied before subsection (f).

(9) Treatment of certain domestic corporations

In the case of any dividend treated as not from sources within the United States under section 861(a)(2)(A), the corporation paying such dividend shall be treated for purposes of this subsection as a United States-owned foreign corporation.

(10) Coordination with treaties

(A) In general

If—

(i) any amount derived from a United States-owned foreign corporation would be treated as derived from sources within the United States under this subsection by reason of an item of income of such United States-owned foreign corporation,

(ii) under a treaty obligation of the United States (applied without regard to this subsection and by treating any amount included in gross income under section 951(a)(1) as a dividend), such amount would be treated as arising from sources outside the United States, and

(iii) the taxpayer chooses the benefits of this paragraph,

this subsection shall not apply to such amount to the extent attributable to such item of income (but subsections (a), (b), and (c) of this section and sections 902, 907, and 960 shall be applied separately with respect to such amount to the extent so attributable).

(B) Special rule

Amounts included in gross income under section 951(a)(1) shall be treated as a dividend under subparagraph (A)(ii) only if dividends paid by each corporation (the stock in which is taken into account in determining whether the shareholder is a United States shareholder in the United States-owned foreign corporation), if paid to the United States shareholder, would be treated under a treaty obligation of the United States as arising from sources outside the United States (applied without regard to this subsection).

(11) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate for purposes of this subsection, including—

(A) regulations for the application of this subsection in the case of interest or dividend payments through 1 or more entities, and

(B) regulations providing that this subsection shall apply to interest paid or accrued to any person (whether or not a United States shareholder).

(i) Coordination with nonrefundable personal credits

In the case of any taxable year of an individual to which section 26(a)(2) does not apply, for purposes of subsection (a), the tax against which the credit is taken is such tax reduced by the sum of the credits allowable under subpart A of part IV of subchapter A of this chapter (other than sections 24, 25A(i), 25B, 30 30B,,[2] and 30D).

(j) Limitation on use of deconsolidation to avoid foreign tax credit limitations

If 2 or more domestic corporations would be members of the same affiliated group if—

(1) section 1504(b) were applied without regard to the exceptions contained therein, and

(2) the constructive ownership rules of section 1563(e) applied for purposes of section 1504(a),

the Secretary may by regulations provide for resourcing the income of any of such corporations or for modifications to the consolidated return regulations to the extent that such resourcing or modifications are necessary to prevent the avoidance of the provisions of this subpart.

(k) Certain individuals exempt

(1) In general

In the case of an individual to whom this subsection applies for any taxable year—

(A) the limitation of subsection (a) shall not apply,

(B) no taxes paid or accrued by the individual during such taxable year may be deemed paid or accrued under subsection (c) in any other taxable year, and

(C) no taxes paid or accrued by the individual during any other taxable year may be deemed paid or accrued under subsection (c) in such taxable year.

(2) Individuals to whom subsection applies

This subsection shall apply to an individual for any taxable year if—

(A) the entire amount of such individual's gross income for the taxable year from sources without the United States consists of qualified passive income,

(B) the amount of the creditable foreign taxes paid or accrued by the individual during the taxable year does not exceed $300 ($600 in the case of a joint return), and

(C) such individual elects to have this subsection apply for the taxable year.

[3] See References in Text note below.

(3) Definitions

For purposes of this subsection—

(A) Qualified passive income

The term ''qualified passive income'' means any item of gross income if—

(i) such item of income is passive income (as defined in subsection (d)(2)(B) without regard to clause (iii) thereof), and

(ii) such item of income is shown on a payee statement furnished to the individual.

(B) Creditable foreign taxes

The term ''creditable foreign taxes'' means any taxes for which a credit is allowable under section 901; except that such term shall not include any tax unless such tax is shown on a payee statement furnished to such individual.

(C) Payee statement

The term ''payee statement'' has the meaning given to such term by section 6724(d)(2).

(D) Estates and trusts not eligible

This subsection shall not apply to any estate or trust.

(*l*) Cross reference

(1) For increase of limitation under subsection (a) for taxes paid with respect to amounts received which were included in the gross income of the taxpayer for a prior taxable year as a United States shareholder with respect to a controlled foreign corporation, see section 960(b).

(2) For modification of limitation under subsection (a) for purposes of determining the amount of credit which can be taken against the alternative minimum tax, see section 59(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 287; Pub. L. 85–866, title I, §42(a), Sept. 2, 1958, 72 Stat. 1639; Pub. L. 86–780, §1, Sept. 14, 1960, 74 Stat. 1010; Pub. L. 87–834, §§10(a), 12(b)(2), Oct. 16, 1962, 76 Stat. 1002, 1031; Pub. L. 88–272, title II, §234(b)(6), Feb. 26, 1964, 78 Stat. 116; Pub. L. 89–809, title I, §106(c)(1), Nov. 13, 1966, 80 Stat. 1570; Pub. L. 91–172, title V, §506(b), Dec. 30, 1969, 83 Stat. 635; Pub. L. 92–178, title V, §502(b)(2)–(4), Dec. 10, 1971, 85 Stat. 549; Pub. L. 94–455, title V, §503(b)(1), title X, §§1031(a), 1032(a), 1034(a), 1051(e), title XIX, §1901(b)(10)(B), Oct. 4, 1976, 90 Stat. 1562, 1620, 1624, 1629, 1646, 1795; Pub. L. 95–30, title I, §102(b)(11), May 23, 1977, 91 Stat. 138; Pub. L. 95–600, title IV, §§403(c)(4), 421(e)(6), title VII, §701(q)(2), (u)(2)(A)–(C), (3)(A), (4)(A), (B), (8)(C), Nov. 6, 1978, 92 Stat. 2868, 2876, 2910, 2913, 2916; Pub. L. 96–222, title I, §104(a)(3)(D), Apr. 1, 1980, 94 Stat. 215; Pub. L. 97–248, title II, §211(c)(2), Sept. 3, 1982, 96 Stat. 449; Pub. L. 98–21, title I, §122(c)(1), Apr. 20, 1983, 97 Stat. 87; Pub. L. 98–369, div. A, title I, §§121(a), 122(a), title IV, §474(r)(21), title VIII, §801(d)(2), July 18, 1984, 98 Stat. 638, 643, 843, 995; Pub. L. 99–514, title I, §104(b)(13), title VII, §701(e)(4)(H), title XII, §§1201(a), (b), (d)(1)–(3), 1203(a), 1211(b)(3), 1235(f)(4), title XVIII, §§1810(a)(1)(A), (b)(1)–(4)(A), 1876(d)(2), 1899A(24), Oct. 22, 1986, 100 Stat. 2105, 2343, 2520, 2525, 2531, 2536, 2575, 2821, 2823, 2899, 2959; Pub. L. 100–647, title I, §§1003(b)(2), 1012(a)(1)(A), (2)–(4), (6)–(11), (c), (p)(11), (29), (q)(12), (bb)(4)(A), title II, §2004(*l*), Nov. 10, 1988, 102 Stat. 3383, 3493–3497, 3517, 3521, 3525, 3534, 3606; Pub. L. 101–239, title VII, §§7402(a), 7811(i)(1), Dec. 19, 1989, 103 Stat. 2357, 2409; Pub. L. 101–508, title XI, §§11101(d)(5), 11801(a)(31), Nov. 5, 1990, 104 Stat. 1388–405, 1388–521; Pub. L. 103–66, title XIII, §§13227(d), 13235(a)(2), Aug. 10, 1993, 107 Stat. 494, 504; Pub. L. 104–188, title I, §§1501(b)(1), (12), 1703(i)(1), 1704(t)(36), Aug. 20, 1996, 110 Stat. 1825, 1826, 1876, 1889; Pub. L. 105–34, title III, §311(c)(3), title XI, §§1101(a), 1105(a), (b), 1111(b), 1163(b), Aug. 5, 1997, 111 Stat. 835, 963, 967, 969, 987; Pub. L. 106–170, title V, §501(b)(2), Dec. 17, 1999, 113 Stat. 1919; Pub. L. 107–16, title II, §§201(b)(2)(G), 202(f)(2)(C), title VI, §618(b)(2)(D), June 7, 2001, 115 Stat. 46, 49, 108; Pub. L. 107–147, title IV, §417(23)(B), title VI, §601(b)(1), Mar. 9, 2002, 116 Stat. 57, 59; Pub. L. 108–311, title III, §312(b)(1), Oct. 4, 2004, 118 Stat. 1181; Pub. L. 108–357, title IV, §§402(a), 403(a)–(b)(5), 404(a)–(f), 413(c)(14), (15), 417(a), title VIII, §895(a), Oct. 22, 2004, 118 Stat. 1491–1495, 1508, 1512, 1647; Pub. L. 109–135, title IV, §§402(i)(3)(G), 403(k), (*o*), Dec. 21, 2005, 119 Stat. 2614, 2625, 2626; Pub. L. 110–172, §11(f)(3), (g)(10), Dec. 29, 2007, 121 Stat. 2489, 2490; Pub. L. 111–5, div. B, title I, §§1004(b)(5), 1142(b)(1)(E), 1144(b)(1)(E), Feb. 17, 2009, 123 Stat. 314, 330, 332; Pub. L. 111–148, title X, §10909(b)(2)(K), (c), Mar. 23, 2010, 124 Stat. 1023; Pub. L. 111–226, title II, §§213(a), 217(c)(2), Aug. 10, 2010, 124 Stat. 2398, 2402; Pub. L. 111–312, title I, §101(b)(1), Dec. 17, 2010, 124 Stat. 3298.)

AMENDMENT OF SECTION

For termination of amendment by section 10909(c) of Pub. L. 111–148, see Effective and Termination Dates of 2010 Amendment note below.

For termination of amendment by section 402(i)(3)(H) of Pub. L. 109–135, see Effective and Termination Dates of 2005 Amendment note below.

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

REFERENCES IN TEXT

Subparagraph (E)(iii) of subsection (d)(2) of this section, referred to in subsec. (d)(2)(B)(ii), was redesignated as subparagraph (E)(ii) by Pub. L. 108–357, title IV, §403(b)(4)(B), Oct. 22, 2004, 118 Stat. 1494.

Paragraph (3) of subsection (d) of this section, referred to in subsec. (d)(2)(B)(ii), was amended generally by Pub. L. 108–357, title IV, §404(f)(4), Oct. 22, 2004, 118 Stat. 1496, and as so amended, no longer contains a subpar. (I).

The FSC Repeal and Extraterritorial Income Exclusion Act of 2000, referred to in subsec. (d)(2)(B)(v), is Pub. L. 106–519, Nov. 15, 2000, 114 Stat. 2423. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under section 1 of this title and Tables.

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (d)(2)(J), is the date of the enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

Section 172(h), referred to in subsec. (f)(2)(B)(i), was repealed by Pub. L. 101–508, title XI, §11811(b)(1), Nov. 5, 1990, 104 Stat. 1388–532.

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsec. (f)(2)(B)(i), is the date of enactment of Pub. L. 101–508, title XI, which was approved Nov. 5, 1990.

Section 1246, referred to in subsec. (h)(7), was repealed by Pub. L. 108–357, title IV, §413(a)(2), Oct. 22, 2004, 118 Stat. 1506.

AMENDMENTS

2010—Subsec. (d)(6), (7). Pub. L. 111–226, § 213(a), added par. (6) and redesignated former par. (6) as (7).

Subsec. (h)(9). Pub. L. 111–226, § 217(c)(2), amended par. (9) generally. Prior to amendment, text read as follows: ''For purposes of this subsection—

''(A) in the case of interest treated as not from sources within the United States under section 861(a)(1)(A), the corporation paying such interest shall be treated as a United States-owned foreign corporation, and

''(B) in the case of any dividend treated as not from sources within the United States under section 861(a)(2)(A), the corporation paying such dividend shall be treated as a United States-owned foreign corporation.''

Subsec. (i). Pub. L. 111–148, § 10909(b)(2)(K), (c), as amended by Pub. L. 111–312, temporarily struck out ''23,'' after ''than sections''. See Effective and Termination Dates of 2010 Amendment note below.

2009—Subsec. (i). Pub. L. 111–5, § 1144(b)(1)(E), inserted ''30B,'' after ''30''.

Pub. L. 111–5, § 1142(b)(1)(E), substituted ''25B, 30, and 30D'' for ''and 25B''.

Pub. L. 111–5, § 1004(b)(5), inserted ''25A(i),'' after ''24,''.

2007—Subsec. (d)(2)(B)(v). Pub. L. 110–172, § 11(g)(10), inserted ''and'' at end of subcl. (I), redesignated subcl. (III) as (II), substituted ''a former FSC (as defined in section 922)'' for ''a FSC (or a former FSC)'' in subcl. (II), struck out former subcl. (II), which read as follows: ''taxable income attributable to foreign trade income (within the meaning of section 923(b)), and'', and added concluding provisions.

Subsec. (f)(3)(D)(iv). Pub. L. 110–172, § 11(f)(3), substituted ''an affiliated group'' for ''a controlled group''.

2005—Subsec. (d)(2)(D). Pub. L. 109–135, § 403(*o*), inserted ''as in effect before its repeal'' after ''section 954(f)''.

Subsec. (g)(2). Pub. L. 109–135, § 403(k), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''For purposes of this subsection—

''(A) IN GENERAL.—The term 'overall domestic loss' means any domestic loss to the extent such loss offsets taxable income from sources without the United States for the taxable year or for any preceding taxable year by reason of a carryback. For purposes of the preceding sentence, the term 'domestic loss' means the amount by which the gross income for the taxable year from sources within the United States is exceeded by the sum of the deductions properly apportioned or allocated thereto (determined without regard to any carryback from a subsequent taxable year).

''(B) TAXPAYER MUST HAVE ELECTED FOREIGN TAX CREDIT FOR YEAR OF LOSS.—The term 'overall domestic loss' shall not include any loss for any taxable year unless the taxpayer chose the benefits of this subpart for such taxable year.''

Subsec. (i). Pub. L. 109–135, § 402(i)(3)(G), (H), temporarily reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''In the case of an individual, for purposes of subsection (a), the tax against which the credit is taken is such tax reduced by the sum of the credits allowable under subpart A of part IV of subchapter A of this chapter (other than sections 23, 24, and 25B). This subsection shall not apply to taxable years beginning during 2000, 2001, 2002, 2003, 2004, or 2005.'' See Effective and Termination Dates of 2005 Amendment note below.

2004—Subsec. (c). Pub. L. 108–357, § 417(a), struck out ''in the second preceding taxable year,'' before ''in the first preceding taxable year'' and substituted ''and in any of the first 10'' for '', and in the first, second, third, fourth, or fifth''.

Subsec. (d)(1). Pub. L. 108–357, § 404(a), reenacted heading without change and amended text of par. (1) generally, substituting provisions relating to applicability of subsecs. (a), (b), and (c) and sections 902, 907, and 960 to passive category income and general category income, for provisions relating to applicability of subsecs. (a), (b), and (c) and sections 902, 907, and 960 to passive income, high withholding tax interest, financial services income, shipping income, certain dividends from a DISC or former DISC, taxable income attributable to foreign trade income, certain distributions from a FSC or a former FSC, and income other than income previously described.

Subsec. (d)(1)(E). Pub. L. 108–357, § 403(b)(1), struck out subpar. (E) which read as follows: ''in the case of a corporation, dividends from noncontrolled section 902 corporations out of earnings and profits accumulated in taxable years beginning before January 1, 2003,''.

Subsec. (d)(2)(A). Pub. L. 108–357, § 404(b), added subpar. (A). Former subpar. (A) redesignated (B).

Subsec. (d)(2)(A)(ii). Pub. L. 108–357, § 413(c)(14), reenacted heading without change and amended text of cl. (ii) generally. Prior to amendment, text read as follows: ''Except as provided in clause (iii), the term 'passive income' includes any amount includible in gross income under section 551 or, except as provided in subparagraph (E)(iii) or paragraph (3)(I), section 1293 (relating to certain passive foreign investment companies).''

Subsec. (d)(2)(B). Pub. L. 108–357, § 404(b), redesignated subpar. (A) as (B) and struck out former subpar. (B), which defined the term ''high withholding tax interest''.

Subsec. (d)(2)(B)(iii). Pub. L. 108–357, § 404(f)(1), redesignated subcls. (II) and (III) as (I) and (II), respectively, and struck out former subcl. (I) which read as follows: ''any income described in a subparagraph of paragraph (1) other than subparagraph (A),''.

Subsec. (d)(2)(B)(v). Pub. L. 108–357, § 404(c), added cl. (v).

Subsec. (d)(2)(C). Pub. L. 108–357, § 404(d), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (d)(2)(C)(iii). Pub. L. 108–357, § 403(b)(2), inserted ''and'' at end of subcl. (I), redesignated subcl. (III) as (II), and struck out former subcl. (II) which read as follows: ''any dividend from a noncontrolled section 902 corporation out of earnings and profits accumulated in taxable years beginning before January 1, 2003, and''.

Subsec. (d)(2)(D). Pub. L. 108–357, § 404(d), redesignated subpar. (C) as (D) and struck out heading and text of former subpar. (D). Text read as follows: ''The term 'shipping income' means any income received or accrued by any person which is of a kind which would be foreign base company shipping income (as defined in section 954(f) as in effect before its repeal). Such term does not include any financial services income.''

Pub. L. 108–357, § 403(b)(3), substituted ''Such term does not include any financial services income'' for ''Such term does not include any dividend from a noncontrolled section 902 corporation out of earnings and profits accumulated in taxable years beginning before January 1, 2003 and does not include any financial services income''.

Subsec. (d)(2)(D)(i). Pub. L. 108–357, § 404(f)(2), inserted ''or'' at end of subcl. (I), added subcl. (II), and struck out former subcls. (II) and (III) which read as follows:

''(II) passive income (determined without regard to subclauses (I) and (III) of subparagraph (A)(iii)), or

''(III) export financing interest which (but for subparagraph (B)(ii)) would be high withholding tax interest.''

Subsec. (d)(2)(D)(iii). Pub. L. 108–357, § 404(f)(3), which directed striking out of cl. (iii) ''as so redesignated and amended by section 404(b)(3)'', was executed by striking out heading and text of cl. (iii) as amended by section 403(b)(2) and redesignated by section 404(d), to reflect the probable intent of Congress. Text read as follows: ''The term 'financial services income' does not include—

''(I) any high withholding tax interest, and

''(II) any export financing interest not described in clause (i)(III).''

Subsec. (d)(2)(E)(i). Pub. L. 108–357, § 403(b)(4)(A), inserted ''or (4)'' after ''paragraph (3)''.

Subsec. (d)(2)(E)(ii), (iii). Pub. L. 108–357, § 403(b)(4)(B), redesignated cl. (iii) as (ii) and struck out heading and text of former cl. (ii). Text read as follows: ''If a foreign corporation is a noncontrolled section 902 corporation with respect to the taxpayer, taxes on high withholding tax interest (to the extent imposed at a rate in excess of 5 percent) shall not be treated as foreign taxes for purposes of determining the amount of foreign taxes deemed paid by the taxpayer under section 902.''

Subsec. (d)(2)(E)(iv). Pub. L. 108–357, § 403(b)(4)(B), struck out heading and text of cl. (iv). Text read as follows: ''All noncontrolled section 902 corporations which are not passive foreign investment companies (as defined in section 1297) shall be treated as one noncontrolled section 902 corporation for purposes of paragraph (1).''

Subsec. (d)(2)(H) to (J). Pub. L. 108–357, § 404(e), added subpar. (H) and redesignated former subpars. (H) and (I) as (I) and (J), respectively.

Subsec. (d)(2)(K). Pub. L. 108–357, § 404(f)(5), added subpar. (K).

Subsec. (d)(3). Pub. L. 108–357, § 404(f)(4), reenacted heading without change and amended text of par. (3) generally, substituting provisions consisting of subpars. (A) to (H) for former subpars. (A) to (I) which contained similar provisions.

Subsec. (d)(3)(F)(i). Pub. L. 108–357, § 403(b)(5), substituted ''or (D)'' for ''(D), or (E)''.

Subsec. (d)(4). Pub. L. 108–357, § 403(a), reenacted heading without change and amended text of par. (4) generally, substituting provisions relating to dividends from noncontrolled section 902 corporations, earnings and profits of controlled foreign corporations, and setting forth special rules, for provisions relating to treatment of applicable dividends, defining the term ''applicable dividend'', and setting forth special rules.

Subsec. (f)(3)(D). Pub. L. 108–357, § 895(a), added subpar. (D).

Subsec. (g). Pub. L. 108–357, § 402(a), added subsec. (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 108–357, § 402(a), redesignated subsec. (g) as (h). Former subsec. (h) redesignated (i).

Pub. L. 108–311 substituted ''2003, 2004, or 2005'' for ''or 2003''.

Subsec. (h)(1)(A). Pub. L. 108–357, § 413(c)(15)(A), inserted ''or'' at end of cl. (i), redesignated cl. (iii) as (ii), and struck out former cl. (ii) which read as follows: ''section 551 (relating to foreign personal holding company income taxed to United States shareholders), or''.

Subsec. (h)(2). Pub. L. 108–357, § 413(c)(15)(B), struck out ''foreign personal holding or'' before ''passive foreign investment'' in heading.

Subsecs. (i), (j). Pub. L. 108–357, § 402(a), redesignated subsecs. (h) and (i) as (i) and (j), respectively. Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 108–357, § 402(a), redesignated subsec. (j) as (k). Former subsec. (k) redesignated (*l*).

Subsec. (k)(3)(A)(i). Pub. L. 108–357, § 404(f)(6), which directed amendment of subsec. (j)(3)(A)(i) by substituting ''subsection (d)(2)(B)'' for ''subsection (d)(2)(A)'', was executed to subsec. (k)(3)(A)(i) to reflect the probable intent of Congress and the amendment by Pub. L. 108–357, § 402(a). See above.

Subsec. (*l*). Pub. L. 108–357, § 402(a), redesignated subsec. (k) as (*l*).

2002—Subsec. (h). Pub. L. 107–147, § 601(b)(1), substituted ''during 2000, 2001, 2002, or 2003'' for ''during 2000 or 2001''.

Pub. L. 107–147, § 417(23)(B), amended directory language of Pub. L. 107–16, § 618(b)(2)(D). See 2001 Amendment note below.

2001—Subsec. (h). Pub. L. 107–16, § 618(b)(2)(D), as amended by Pub. L. 107–147, § 417(23)(B), substituted '', 24, and 25B'' for ''and 24''.

Pub. L. 107–16, §§ 202(f)(2)(C), 901, temporarily substituted ''sections 23 and 24'' for ''section 24''. See Effective and Termination Dates of 2001 Amendment note below.

Pub. L. 107–16, §§ 201(b)(2)(G), 901, inserted ''(other than section 24)'' after ''chapter''. See Effective and Termination Dates of 2001 Amendment note below.

1999—Subsec. (h). Pub. L. 106–170 inserted at end ''This subsection shall not apply to taxable years beginning during 2000 or 2001.''

1997—Subsec. (b)(2)(C). Pub. L. 105–34, § 311(c)(3), added subpar. (C).

Subsec. (d)(1)(E). Pub. L. 105–34, § 1105(a)(1), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: ''in the case of a corporation, dividends from each noncontrolled section 902 corporation,''.

Subsec. (d)(2)(C)(i)(II). Pub. L. 105–34, § 1163(b), substituted ''subclauses (I) and (III)'' for ''subclause (I)''.

Subsec. (d)(2)(C)(iii)(II), (D). Pub. L. 105–34, § 1105(a)(3), inserted ''out of earnings and profits accumulated in taxable years beginning before January 1, 2003'' after ''corporation''.

Subsec. (d)(2)(E)(i). Pub. L. 105–34, § 1111(b), struck out ''and except as provided in regulations, the taxpayer was a United States shareholder in such corporation'' after ''was a controlled foreign corporation''.

Subsec. (d)(2)(E)(iv). Pub. L. 105–34, § 1105(a)(2), added cl. (iv).

Subsec. (d)(4) to (6). Pub. L. 105–34, § 1105(b), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

Subsecs. (j), (k). Pub. L. 105–34, § 1101(a), added subsec. (j) and redesignated former subsec. (j) as (k).

1996—Subsec. (d)(3)(G). Pub. L. 104–188, § 1501(b)(1), (12), amended subpar. (G) identically, substituting ''section 951(a)(1)(B)'' for ''subparagraph (B) or (C) of section 951(a)(1)''.

Pub. L. 104–188, § 1703(i)(1), substituted ''subparagraph (B) or (C) of section 951(a)(1)'' for ''section 951(a)(1)(B)''.

Subsec. (f)(2)(B)(i). Pub. L. 104–188, § 1704(t)(36), inserted ''(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)'' after ''section 172(h)''.

1993—Subsec. (b)(4). Pub. L. 103–66, § 13227(d), inserted before period at end ''(without regard to subsections (a)(4) and (i) thereof)''.

Subsec. (d)(2)(A)(iii)(II) to (IV). Pub. L. 103–66, § 13235(a)(2), inserted ''and'' at end of subcl. II, substituted ''income.'' for ''income, and'' in subcl. III, and struck out subcl. (IV) which read as follows: ''any foreign oil and gas extraction income (as defined in section 907(c)).''

1990—Subsec. (b)(3)(D)(i). Pub. L. 101–508, § 11101(d)(5)(A), substituted ''subsection (h)'' for ''subsection (j)''.

Subsec. (b)(3)(E)(iii)(I). Pub. L. 101–508, § 11101(d)(5)(B), substituted ''section 1(h)'' for ''section 1(j)''.

Subsec. (e). Pub. L. 101–508, § 11801(a)(31), struck out subsec. (e) which related to transitional rules for carrybacks and carryovers for taxpayers on the per-country limitation.

1989—Subsec. (d)(1)(H). Pub. L. 101–239, § 7811(i)(1), substituted ''interest or carrying charges (as defined in section 927(d)(1)) derived from a transaction which results in foreign trade income (as defined in section 923(b))'' for ''qualified interest and carrying charges (as defined in section 245(c))''.

Subsecs. (i), (j). Pub. L. 101–239, § 7402(a), added subsec. (i) and redesignated former subsec. (i) as (j).

1988—Subsec. (b)(2). Pub. L. 100–647, § 1003(b)(2)(A), amended par. (2) generally, substituting general provisions and provisions setting special rules where there is a capital gain rate differential for provisions for corporations and for other taxpayers.

Subsec. (b)(3)(D). Pub. L. 100–647, § 1003(b)(2)(B), added subpar. (D) and struck out former subpar. (D), Rate differential portion, which read as follows: ''The 'rate differential portion' of foreign source net capital gain, net capital gain, or the excess of net capital gain from sources within the United States over net capital gain, as the case may be, is the same proportion of such amount as the excess of the highest rate of tax specified in section 11(b) over the alternative rate of tax under section 1201(a) bears to the highest rate of tax specified in section 11(b).''

Subsec. (b)(3)(D)(ii). Pub. L. 100–647, § 2004(*l*), substituted ''section 11(b)(1)'' for ''section 11(b)''.

Subsec. (b)(3)(E). Pub. L. 100–647, §1003(b)(2)(B), added subpar. (E).

Subsec. (d)(1)(E). Pub. L. 100–647, §1012(a)(11), inserted ''in the case of a corporation,'' before ''dividends''.

Subsec. (d)(2)(A)(ii). Pub. L. 100–647, §1012(a)(6)(A), (p)(29)(A), substituted ''Except as provided in clause (iii), the term'' for ''The term'' and ''or, except as provided in subparagraph (E)(iii) or paragraph (3)(I), section 1293'' for ''or section 1293''.

Subsec. (d)(2)(A)(iv). Pub. L. 100–647, §1012(a)(6)(B), added cl. (iv).

Subsec. (d)(2)(B)(iii). Pub. L. 100–647, §1012(a)(8), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''The Secretary may by regulations provide that amounts (not otherwise high withholding tax interest) shall be treated as high withholding tax interest where necessary to prevent avoidance of the purposes of this subparagraph.''

Subsec. (d)(2(C). Pub. L. 100–647, §1012(a)(1)(A), amended subpar. (C) generally, revising and restating as cls. (i) to (iii) provisions of former cls. (i) to (iv).

Subsec. (d)(2)(D). Pub. L. 100–647, §1012(a)(2), provided for exclusion from term ''shipping income'' any dividend from a noncontrolled section 902 corporation and any financial services income.

Subsec. (d)(2)(E)(i). Pub. L. 100–647, §1012(a)(10), inserted ''and except as provided in regulations, the taxpayer was a United States shareholder in such corporation'' before period at end.

Subsec. (d)(2)(E)(iii). Pub. L. 100–647, §1012(p)(29)(B), added cl. (iii).

Subsec. (d)(2)(I)(ii). Pub. L. 100–647, §1012(a)(9), substituted ''except that—'' for ''except to the extent that—'', added subcls. (I) to (III), and struck out former subcls. (I) and (II) which read as follows:

''(I) the taxpayer establishes to the satisfaction of the Secretary that such taxes were paid or accrued with respect to shipping income, or

''(II) in the case of an entity meeting the requirements of subparagraph (C)(ii), the taxpayer establishes to the satisfaction of the Secretary that such taxes were paid or accrued with respect to financial services income, and''.

Subsec. (d)(3)(E). Pub. L. 100–647, §1012(a)(4), inserted first sentence, struck out former first sentence which read ''If a controlled foreign corporation meets the requirements of section 954(b)(3)(A) (relating to de minimis rule) for any taxable year, for purposes of this paragraph, none of its income for such taxable year shall be treated as income in a separate category.'', and in second sentence substituted ''passive income'' for ''income (other than high withholding tax interest and dividends from a noncontrolled section 902 corporation)''.

Subsec. (d)(3)(F). Pub. L. 100–647, §1012(a)(7), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: ''For purposes of this paragraph, the term 'separate category' means any category of income described in subparagraph (A), (B), (C), (D), or (E) of paragraph (1).''

Subsec. (d)(3)(H). Pub. L. 100–647, §1012(a)(3), added subpar. (H).

Subsec. (d)(3)(I). Pub. L. 100–647, §1012(p)(11), added subpar. (I).

Subsec. (f)(5)(F). Pub. L. 100–647, §1012(c), added subpar. (F).

Subsec. (g)(9)(A). Pub. L. 100–647, §1012(q)(12), substituted ''861(a)(1)(A)'' for ''861(a)(1)(B)''.

Subsec. (g)(10), (11). Pub. L. 100–647, §1012(bb)(4)(A), added par. (10) and redesignated former par. (10) as (11).

1986—Subsec. (a). Pub. L. 99–514, §104(b)(13), struck out last sentence ''For purposes of the preceding sentence, in the case of an individual the entire taxable income shall be reduced by an amount equal to the zero bracket amount.''

Subsec. (b)(3)(C). Pub. L. 99–514, §1211(b)(3), redesignated subpar. (E) as (C) and struck out former subpar. (C), exception for gain from the sale of certain personal property, which read as follows: ''There shall be included as gain from sources within the United States any gain from sources without the United States from the sale or exchange of a capital asset which is personal property which—

''(i) in the case of an individual, is sold or exchanged outside of the country (or possession) of the individual's residence,

''(ii) in the case of a corporation, is stock in a second corporation sold or exchanged other than in a country (or possession) in which such second corporation derived more than 50 percent of its gross income for the 3-year period ending with the close of such second corporation's taxable year immediately preceding the year during which the sale or exchange occurred, or

''(iii) in the case of any taxpayer, is personal property (other than stock in a corporation) sold or exchanged other than in a country (or possession) in which such property is used in a trade or business of the taxpayer or in which such taxpayer derived more than 50 percent of its gross income for the 3-year period ending with the close of its taxable year immediately preceding the year during which the sale or exchange occurred,

unless such gain is subject to an income, war profits, or excess profits tax of a foreign country or possession of the United States, and the rate of tax applicable to such gain is 10 percent or more of the gain from the sale or exchange (computed under this chapter).''

Subsec. (b)(3)(D). Pub. L. 99–514, §1211(b)(3), redesignated subpar. (F) as (D) and struck out former subpar. (D), gain from liquidation of certain foreign corporations, which read as follows: ''Subparagraph (C) shall not apply with respect to a distribution in liquidation of a foreign corporation to which part II of subchapter C applies if such corporation derived less than 50 percent of its gross income from sources within the United States for the 3-year period ending with the close of such corporation's taxable year immediately preceding the year during which the distribution occurred.''

Subsec. (b)(3)(E), (F). Pub. L. 99–514, §1211(b)(3), redesignated former subpars. (E) and (F) as (C) and (D), respectively.

Subsec. (d). Pub. L. 99–514, §1201(d)(1), substituted ''certain categories of income'' for ''certain interest income and income from DISC, former DISC, FSC, or former FSC'' in heading.

Subsec. (d)(1). Pub. L. 99–514, §1201(a), (d)(2), (3), inserted ''and sections 902, 907, and 960'' in introductory provisions, added subpars. (A) to (E), struck out former subpar. (A) which read ''the interest income described in paragraph (2)'', redesignated former subpars. (B), (C), (D), and (E) as (F), (G), (H), and (I), respectively, and in subpar. (I), substituted ''in any of the preceding subparagraphs'' for ''in subparagraph (A), (B), (C), or (D)''.

Pub. L. 99–514, §1899A(24), made technical correction clarifying heading. See 1984 Amendment note below.

Subsec. (d)(1)(D). Pub. L. 99–514, §1876(d)(2), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''distributions from a FSC (or former FSC) out of earnings and profits attributable to foreign trade income (within the meaning of section 923(b)), and''.

Subsec. (d)(2). Pub. L. 99–514, §1201(b), added par. (2) and struck out former par. (2), interest income to which applicable, which read as follows: ''For purposes of this subsection, the interest income described in this paragraph is interest other than interest—

''(A) derived from any transaction which is directly related to the active conduct by the taxpayer of a trade or business in a foreign country or a possession of the United States,

''(B) derived in the conduct by the taxpayer of a banking, financing, or similar business,

''(C) received from a corporation in which the taxpayer (or one or more includible corporations in an affiliated group, as defined in section 1504, of which the taxpayer is a member) owns, directly or indirectly, at least 10 percent of the voting stock, or

''(D) received on obligations acquired as a result of the disposition of a trade or business actively con-

ducted by the taxpayer in a foreign country or possession of the United States or as a result of the disposition of stock or obligations of a corporation in which the taxpayer owned at least 10 percent of the voting stock.

For purposes of subparagraph (C), stock owned, directly or indirectly, by or for a foreign corporation, shall be considered as being proportionately owned by its shareholders. For purposes of this subsection, interest (after the operation of section 904(d)(3)) received from a designated payor corporation described in section 904(d)(3)(E)(iii) by a taxpayer which owns directly or indirectly less than 10 percent of the voting stock of such designated payor corporation shall be treated as interest described in subparagraph (A) to the extent such interest would have been so treated had such taxpayer received it from other than a designated payor corporation.''

Pub. L. 99–514, §1810(b)(3), inserted at end ''For purposes of this subsection, interest (after the operation of section 904(d)(3)) received from a designated payor corporation described in section 904(d)(3)(E)(iii) by a taxpayer which owns directly or indirectly less than 10 percent of the voting stock of such designated payor corporation shall be treated as interest described in subparagraph (A) to the extent such interest would have been so treated had such taxpayer received it from other than a designated payor corporation.''

Subsec. (d)(3). Pub. L. 99–514, §1201(b), added par. (3) and struck out former par. (3) treating as interest certain amounts attributable to United States-owned foreign corporations, etc., subpars. thereof relating to following subject matter: (A) general provisions, (B) separate limitation interest, (C) exception where designated corporation has small amount of separate limitation interest, (D) treatment of certain interest, (E) designated payor corporation, (F) determination of year to which amount is attributable, (G) ordering rules, (H) dividend, (I) interest and dividends from members of same affiliated group, and (J) distributions through other entities.

Subsec. (d)(3)(C). Pub. L. 99–514, §1810(b)(1), inserted at end ''The preceding sentence shall not apply to any amount includible in gross income under section 551 or 951.''

Subsec. (d)(3)(E). Pub. L. 99–514, §1810(b)(4)(A), inserted at end:

''(iv) any other corporation formed or availed of for purposes of avoiding the provisions of this paragraph.

For purposes of this paragraph, the rules of paragraph (9) of subsection (g) shall apply.''

Subsec. (d)(3)(I). Pub. L. 99–514, §1810(b)(2), redesignated subpar. (I) as (J) and added a new subpar. (I), interest and dividends from members of same affiliated group, which read as follows: ''For purposes of this paragraph, dividends and interest received or accrued by the designated payor corporation from another member of the same affiliated group (determined under section 1504 without regard to subsection (b)(3) thereof) shall be treated as separate limitation interest if (and only if) such amounts are attributable (directly or indirectly) to separate limitation interest of any other member of such group.''

Subsec. (d)(3)(J). Pub. L. 99–514, §1810(b)(2), redesignated subpar. (I) as (J) and struck out former subpar. (J), interest from members of same affiliated group, which read as follows: ''For purposes of this paragraph, interest received or accrued by the designated payor corporation from another member of the same affiliated group (determined under section 1504 without regard to subsection (b)(3) thereof) shall not be treated as separate limitation interest, unless such interest is attributable directly or indirectly to separate limitation interest of such other member.''

Subsec. (d)(4), (5). Pub. L. 99–514, §1201(b), added pars. (4) and (5).

Subsec. (f)(5). Pub. L. 99–514, §1203(a), added par. (5).

Subsec. (g)(1)(A)(iii). Pub. L. 99–514, §1235(f)(4)(A), added cl. (iii).

Subsec. (g)(2). Pub. L. 99–514, §1235(f)(4)(B), substituted ''holding or passive foreign investment company'' for ''holding company'' in heading.

Subsec. (g)(9), (10). Pub. L. 99–514, §1810(a)(1)(A), added par. (9) and redesignated former par. (9) as (10).

Subsec. (i)(2). Pub. L. 99–514, §701(e)(4)(H), struck out ''by an individual'' after ''can be taken'' and substituted ''section 59(a)'' for ''section 55(c)''.

1984—Subsec. (d). Pub. L. 98–369, §801(d)(2)(C), which directed amendment of par. (1) heading by substituting ''Separate application of section with respect to certain interest income and income from DISC, former DISC, FSC, or former FSC'' for ''Application of section in case of certain interest income and dividends from a DISC or former DISC'' was executed to subsec. (d) heading to reflect the probable intent of Congress.

Subsec. (d)(1)(B) to (E). Pub. L. 98–369, §801(d)(2)(A), (B), struck out ''and'' after ''United States,'' at end of subpar. (B), substituted ''taxable income attributable to foreign trade income (within the meaning of section 923(b)),'' for ''income other than the interest income described in paragraph (2) and dividends described in subparagraph (B),'' in subpar. (C), and added subpars. (D) and (E).

Subsec. (d)(3). Pub. L. 98–369, §122(a), added par. (3).

Subsec. (g). Pub. L. 98–369, §121(a), added subsec. (g). Former subsec. (g) redesignated (h).

Pub. L. 98–369, §474(r)(21), amended subsec. (g) generally, substituting ''Coordination with nonrefundable personal credits'' for ''Coordination with credit for the elderly'' in heading and in text substituting ''reduced by the sum of the credits allowable under subpart A of part IV of subchapter A of this chapter'' for ''reduced by the amount of the credit (if any) for the taxable year allowable under section 37 (relating to credit for the elderly and the permanently and totally disabled)''.

Subsecs. (h), (i). Pub. L. 98–369, §121(a), redesignated former subsecs. (g) and (h) as (h) and (i), respectively.

1983—Subsec. (g). Pub. L. 98–21 substituted ''relating to credit for the elderly and the permanently and totally disabled'' for ''relating to credit for the elderly''.

1982—Subsec. (f)(4) to (6). Pub. L. 97–248 struck out par. (4) which provided for the determination of foreign oil related loss where section 907 was applicable, redesignated par. (5) as (4), and purported to redesignate par. (6) as (5). However, subsec. (f) did not contain a par. (6).

1980—Subsec. (b)(3)(F). Pub. L. 96–222, §104(a)(3)(D)(i), redesignated subpar. (E) ''Rate differential portion'', added by Pub. L. 95–600, as (F).

1978—Subsec. (b)(2). Pub. L. 95–600, §§403(c)(4)(A), 701(u)(2)(A), (3)(A), in subpar. (A) substituted ''this section'' for ''subsection (a)'', ''the rate differential portion'' for ''three eighths'' wherever appearing, and ''for purposes of determining taxable income from sources without the United States, any net capital loss (and any amount which is a short term capital loss under section 1212(a))'' for ''any net capital loss''.

Subsec. (b)(3). Pub. L. 95–600, §§403(c)(4)(B), 701(u)(2)(B), (C), as amended by Pub. L. 96–222, §104(a)(3)(D)(ii), substituted ''There'' for ''For purposes of this paragraph, there'', added subpar. (D), redesignated former subpar. (D), relating to section 1231 gains, as subpar. (E), and added another subpar. (E), relating to rate differential portion. See 1980 Amendment note above.

Subsec. (f)(2)(A). Pub. L. 95–600, §701(u)(4)(A), struck out provision relating to capital loss carrybacks and carryovers.

Subsec. (f)(4). Pub. L. 95–600, §701(u)(4)(B), (8)(C), substituted in introductory provisions ''In making the separate computation under this subsection with respect to foreign oil related income which is required by section 907(b)'' for ''In the case of a corporation to which section 907(b)(1) applies'' and in subpar. (A) struck out provision relating to capital loss carrybacks and carryovers.

Subsec. (f)(5). Pub. L. 95–600, §701(q)(2), added par. (5).

Subsec. (h). Pub. L. 95–600, §421(e)(6), designated existing provisions as par. (1) and added par. (2).

1977—Subsec. (a). Pub. L. 95–30 provided that, for purposes of determining the maximum total amount of the credit taken under section 901(a), in the case of an individual, the entire taxable income shall be reduced by an amount equal to the zero bracket amount.

1976—Subsec. (a). Pub. L. 94–455, §1031(a), struck out provisions allowing the per-country limitation, made the overall limitation applicable to all taxpayers to determine their foreign tax credit limitation, and inserted reference to section 901(a).

Subsec. (b). Pub. L. 94–455, §§1031(a), 1034(a), 1051(e), redesignated subsec. (c) as (b)(1), inserted provisions that the net United States capital losses would offset net foreign capital gains and, in the case of corporations, that only 30/48 of the net foreign source gain would be included in the foreign tax credit limitation, and that the gain from the sale or exchange of personal property outside the United States would be considered United States source income unless one of three exceptions applied, and added par. (4).

Subsec. (c). Pub. L. 94–455, §1031(a), redesignated subsec. (d) as (c), and amended the redesignated subsec. (c) generally to conform to the elimination of the per-country limitation in subsec. (a). Former subsec. (c) redesignated (b)(1).

Subsec. (d). Pub. L. 94–455, §1031(a), redesignated subsec. (f)(1), (2), as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 94–455, §1031(a), added subsec. (e). Former subsec. (e) was eliminated in view of the amendment of subsec. (a).

Subsec. (f). Pub. L. 94–455, §§1031(a), 1032(a), 1901(b)(10)(B), added subsec. (f), and substituted ''section 172(h)'' for ''section 172(k)(1)'' in pars. (2)(B)(i) and (4)(B)(i). Former subsec. (f)(1), (2), was redesignated (d). Former subsecs. (f)(3), (4), (5) were omitted.

Subsec. (g). Pub. L. 94–455, §§1032(a), 503(b)(1), added subsec. (g). Former subsec. (f) redesignated (g), and further redesignated (h).

Subsec. (h). Pub. L. 94–455, §503(b)(1), redesignated former subsec. (g) as (h).

1971—Subsec. (f). Pub. L. 92–178, §502(b)(2), inserted ''and dividends from a DISC or former DISC'' after ''interest income'' in the heading.

Subsec. (f)(1). Pub. L. 92–178, §502(b)(2), inserted ''each of the following items of income'' in introductory text, added subpar. (B), and redesignated former subpar. (B) as (C), inserting therein provisions respecting dividends described in subparagraph (B).

Subsec. (f)(3). Pub. L. 92–178, §502(b)(3), provided that the limitation provided by subsec. (a)(2) shall not apply to dividends described in paragraph (1)(B) and substituted ''limitation provided by subsection (a)(2) applies with respect to income described in paragraph (1)(B) and (C)'' for ''limitation provided by subsection (a)(2) applies with respect to income other than the interest income described in paragraph (2)''.

Subsec. (f)(5). Pub. L. 92–178, §502(b)(4), added par. (5).

1969—Subsec. (b)(1). Pub. L. 91–172, §506(b)(1), substituted ''(A) with the consent of the Secretary or his delegate with respect to any taxable year or (B) for the taxpayer's first taxable year beginning after December 31, 1969'' for ''with the consent of the Secretary or his delegate with respect to any taxable year''.

Subsec. (b)(2). Pub. L. 91–172, §506(b)(2), substituted ''Except in a case to which paragraph (1)(B) applies, if the taxpayer'' for ''If a taxpayer''.

1966—Subsec. (f)(2). Pub. L. 89–809 inserted reference to includible corporations in an affiliated group, as defined in section 1504, of which the taxpayer is a member and inserted reference to both direct and indirect ownership in subpar. (C) and inserted provision that, for purposes of subpar. (C), stock owned directly or indirectly by or for a foreign corporation shall be considered as being proportionately owned by its shareholders.

1964—Subsec. (g)(2). Pub. L. 88–272 substituted ''section 1503(b)'' for ''section 1503(d)''.

1962—Subsec. (f). Pub. L. 87–834, §10(a), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 87–834, §§10(a), 12(b)(2), redesignated former subsec. (f) as (g), designated existing provisions as par. (2), and added par. (1).

1960—Subsec. (a). Pub. L. 86–780, §1(a), designated existing provisions as par. (1), inserted introductory clause ''In the case of any taxpayer who elects the limitation provided by this paragraph'' and inserted ''foreign'', ''or possession of the United States'' and ''or possession'' therein and added par. (2).

Subsec. (b). Pub. L. 86–780, §1(a), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 86–780, §1(b), redesignated former subsec. (b) as (c) and inserted ''applicable'' before ''limitation'' therein. Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 86–780, §1(c), redesignated former subsec. (c) as (d) and inserted ''applicable'' before ''limitation'' in two places.

Subsecs. (e), (f). Pub. L. 86–780, §1(d), added subsecs. (e) and (f).

1958—Subsec. (c). Pub. L. 85–866 added subsec. (c).

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Pub. L. 111–226, title II, §213(b), Aug. 10, 2010, 124 Stat. 2399, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 10, 2010].''

Amendment by section 217(c)(2) of Pub. L. 111–226 applicable to taxable years beginning after Dec. 31, 2010, with certain exceptions, see section 217(d) of Pub. L. 111–226, set out as an Effective Date of 2010 Amendment note under section 861 of this title.

Amendment by Pub. L. 111–148 terminated applicable to taxable years beginning after Dec. 31, 2011, and section is amended to read as if such amendment had never been enacted, see section 10909(c) of Pub. L. 111–148, set out as a note under section 1 of this title.

Amendment by Pub. L. 111–148 applicable to taxable years beginning after Dec. 31, 2009, see section 10909(d) of Pub. L. 111–148, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by section 1004(b)(5) of Pub. L. 111–5 applicable to taxable years beginning after Dec. 31, 2008, see section 1004(d) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Amendment by section 1142(b)(1)(E) of Pub. L. 111–5 applicable to vehicles acquired after Feb. 17, 2009, see section 1142(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Amendment by section 1144(b)(1)(E) of Pub. L. 111–5 applicable to taxable years beginning after Dec. 31, 2008, see section 1144(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–172, §11(f)(4), Dec. 29, 2007, 121 Stat. 2489, provided that: ''The amendments made by this subsection [amending this section and sections 1298 and 9502 of this title] shall take effect as if included in the provisions of the American Jobs Creation Act of 2004 [Pub. L. 108–357] to which they relate.''

EFFECTIVE AND TERMINATION DATES OF 2005 AMENDMENT

Amendment by section 402(i)(3)(G) of Pub. L. 109–135 subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, §901, in the same manner as the provisions of such Act to which such amendment relates, see section 402(i)(3)(H) of Pub. L. 109–135, set out as a note under section 36C of this title.

Amendment by section 402(i)(3)(G) of Pub. L. 109–135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which it relates and applicable to taxable years beginning after Dec. 31, 2005, see section 402(m) of Pub. L. 109–135, set out as a note under section 36C of this title.

Amendments by section 403(k), (*o*) of Pub. L. 109–135 effective as if included in the provisions of the Amer-

ican Jobs Creation Act of 2004, Pub. L. 108–357, to which they relate, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENTS

Amendment by section 402(a) of Pub. L. 108–357 applicable to losses for taxable years beginning after Dec. 31, 2006, see section 402(c) of Pub. L. 108–357, set out as a note under section 535 of this title.

Amendment by section 403(a), (b)(1)–(5) of Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2002, see section 403(c) of Pub. L. 108–357, set out as a note under section 864 of this title.

Amendment by section 403(a), (b)(1)–(5) of Pub. L. 108–357 not applicable to taxable years beginning after Dec. 31, 2002, and before Jan. 1, 2005, with a specific provision for application of subsec. (d)(4)(C)(iv) of this section, if taxpayer so elects, see section 403(d) of Pub. L. 108–357, set out as a note under section 864 of this title.

Pub. L. 108–357, title IV, § 404(g), Oct. 22, 2004, 118 Stat. 1497, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006.

''(2) TRANSITIONAL RULE RELATING TO INCOME TAX BASE DIFFERENCE.—Section 904(d)(2)(H)(ii) of the Internal Revenue Code of 1986, as added by subsection (e), shall apply to taxable years beginning after December 31, 2004.''

Amendment by section 413(c)(14), (15) of Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

Pub. L. 108–357, title IV, § 417(c), Oct. 22, 2004, 118 Stat. 1512, provided that:

''(1) CARRYBACK.—The amendments made by subsections (a)(1) and (b)(1) [amending this section and section 907 of this title] shall apply to excess foreign taxes arising in taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004].

''(2) CARRYOVER.—The amendments made by subsections (a)(2) and (b)(2) [amending this section and section 907 of this title] shall apply to excess foreign taxes which (without regard to the amendments made by this section [amending this section and section 907 of this title]) may be carried to any taxable year ending after the date of the enactment of this Act [Oct. 22, 2004].''

Pub. L. 108–357, title VIII, § 895(b), Oct. 22, 2004, 118 Stat. 1648, provided that: ''The amendment made by this section [amending this section] shall apply to dispositions after the date of the enactment of this Act [Oct. 22, 2004].''

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2003, see section 312(c) of Pub. L. 108–311, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by section 601(b)(1) of Pub. L. 107–147 applicable to taxable years beginning after Dec. 31, 2001, see section 601(c) of Pub. L. 107–147, set out as a note under section 26 of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by sections 201(b), 202(f), and 618(b) of Pub. L. 107–16 inapplicable to taxable years beginning during 2004 or 2005, see section 312(b)(2) of Pub. L. 108–311, set out as a note under section 36C of this title.

Amendment by sections 201(b), 202(f), and 618(b) of Pub. L. 107–16 inapplicable to taxable years beginning during 2002 and 2003, see section 601(b)(2) of Pub. L. 107–147, set out as a note under section 36C of this title.

Amendment by section 201(b)(2)(G) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 201(e)(2) of Pub. L. 107–16, set out as a note under section 24 of this title.

Amendment by section 202(f)(2)(C) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 202(g)(1) of Pub. L. 107–16, set out as a note under section 36C of this title.

Amendment by section 618(b)(2)(D) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 618(d) of Pub. L. 107–16, set out as a note under section 24 of this title.

Amendment by sections 201(b)(2)(G) and 202(f)(2)(C) of Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to taxable years beginning after Dec. 31, 1998, see section 501(c) of Pub. L. 106–170, set out as a note under section 24 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 311(c)(3) of Pub. L. 105–34 applicable to taxable years ending after May 6, 1997, see section 311(d) of Pub. L. 105–34, set out as a note under section 1 of this title.

Section 1101(b) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1997.''

Section 1105(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2002.''

Section 1111(c)(2) of Pub. L. 105–34 provided that: ''The amendment made by subsection (b) [amending this section] shall apply to distributions after the date of the enactment of this Act [Aug. 5, 1997].''

Amendment by section 1163(b) of Pub. L. 105–34 effective Aug. 5, 1997, see section 1163(c) of Pub. L. 105–34, set out as a note under section 902 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1501(d) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section and sections 951, 956, 959, 989, and 1297 of this title and repealing section 956A of this title] shall apply to taxable years of foreign corporations beginning after December 31, 1996, and to taxable years of United States shareholders within which or with which such taxable years of foreign corporations end.''

Amendment by section 1703(i)(1) of Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§ 13001–13444, to which such amendment relates, see section 1703(*o*) of Pub. L. 104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13227(d) of Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1993, see section 13227(f) of Pub. L. 103–66 set out as a note under section 56 of this title.

Section 13235(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and sections 907 and 954 of this title] shall apply to taxable years beginning after December 31, 1992.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11101(d)(5) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11101(e) of Pub. L. 101–508, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7402(b) of Pub. L. 101–239 provided that: ''The amendment made by subsection (a) [amending this sec-

tion] shall apply to taxable years beginning after July 10, 1989.''

Amendment by section 7811(i)(1) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1012(bb)(4)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect as if included in the amendment made by section 121 of the Tax Reform Act of 1984 [Pub. L. 98–369].''

Amendment by sections 1003(b)(2) and 1012(a)(1)(A), (2)–(4), (6)–(11), (c), (p)(11), (29), (q)(12) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 2004(*l*) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(13) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 701(e)(4)(H) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

Section 1201(e) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1012(a)(5), Nov. 10, 1988, 102 Stat. 3495; Pub. L. 101–239, title VII, § 7404(a), Dec. 19, 1989, 103 Stat. 2361, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 864 and 954 of this title] shall apply to taxable years beginning after December 31, 1986.

''[(2) Repealed. Pub. L. 101–239, title VII, § 7404(a), Dec. 19, 1989, 103 Stat. 2361.]

''(3) SPECIAL RULE FOR TAXPAYER WITH OVERALL FOREIGN LOSS.—

''(A) IN GENERAL.—If a taxpayer incorporated on June 20, 1928, the principal headquarters of which is in Minneapolis, Minnesota, sustained an overall foreign loss (as defined in section 904(f)(2) of the Internal Revenue Code of 1954 [now 1986]) in taxable years beginning before January 1, 1986, in connection with 2 separate trades or businesses which the taxpayer had, during 1985, substantially disposed of in tax-free transactions pursuant to section 355 of such Code, then an amount, not to exceed $40,000,000 of foreign source income, which, but for this paragraph, would not be treated as overall limitation income, shall be so treated.

''(B) SUBSTANTIAL DISPOSITION.—For purposes of this paragraph, a taxpayer shall be treated as having substantially disposed of a trade or business if the retained portion of such business had sales of less than 10 percent of the annual sales of such business for taxable years ending in 1985.''

[Section 7404(b), (c) of Pub. L. 101–239 provided that:

[''(b) EFFECTIVE DATE.—The repeal made by subsection (a) [amending section 1201(e) of Pub. L. 99–514, set out above] shall apply to taxable years beginning after December 31, 1989.

[''(c) EXCEPTION FOR CERTAIN TAXPAYERS WITH SUBSTANTIAL LOAN LOSS RESERVES.—

[''(1) IN GENERAL.—The repeal made by subsection (a) shall not apply to any taxpayer if, on any financial statement filed by such taxpayer for regulatory purposes with respect to any quarter ending during the period beginning on March 31, 1989, and ending on December 31, 1989, such taxpayer showed loss reserves against its qualified loans equal to at least 25 percent of the amount of such loans.

[''(2) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

[''(A) QUALIFIED LOAN.—The term 'qualified loan' has the meaning given such term by section 1201(e)(2)(H) of the Tax Reform Act of 1986 [Pub. L. 99–514, formerly set out above] (as in effect before its repeal by subsection (a)).

[''(B) PARENT-SUBSIDIARY CONTROLLED GROUPS.—In the case of any taxpayer which is a member of a parent-subsidiary controlled group (as defined in section 585(c)(5)(A) [26 U.S.C. 585(c)(5)(A)]), this subsection shall be applied by treating all members of such group as 1 taxpayer.'']

Section 1203(b) of Pub. L. 99–514 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to losses incurred in taxable years beginning after December 31, 1986.''

Amendment by section 1211(b)(3) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1211(c) of Pub. L. 99–514, set out as an Effective Date note under section 865 of this title.

Amendment by section 1235(f)(4) of Pub. L. 99–514 applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, see section 1235(h) of Pub. L. 99–514, set out as an Effective Date note under section 1291 of this title.

Section 1810(a)(1)(B) of Pub. L. 99–514 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect on March 28, 1985. In the case of any taxable year ending after such date of any corporation treated as a United States-owned foreign corporation by reason of the amendment made by subparagraph (A)—

''(i) only income received or accrued by such corporation after such date shall be taken into account under section 904(g) of the Internal Revenue Code of 1954 [now 1986]; except that

''(ii) paragraph (5) of such section 904(g) shall be applied by taking into account all income received or accrued by such corporation during such taxable year.''

Section 1810(b)(4)(B) of Pub. L. 99–514 provided that:

''(i) The amendment made by subparagraph (A) [amending this section] insofar as it adds the last sentence to subparagraph (E) of section 905(d)(3) [904(d)(3)] shall take effect on March 28, 1985. In the case of any taxable year ending after such date of any corporation treated as a designated payor corporation by reason of the amendment made by subparagraph (A)—

''(I) only income received or accrued by such corporation after such date shall be taken into account under section 904(d)(3) of the Internal Revenue Code of 1954 [now 1986]; except that

''(II) subparagraph (C) of such section 904(d)(3) shall be applied by taking into account all income received or accrued by such corporation during such taxable year.

''(ii) The amendment made by subparagraph (A) insofar as it adds clause (iv) to subparagraph (E) of section 904(d)(3) shall take effect on December 31, 1985. For purposes of such amendment, the rule of the second sentence of clause (i) shall be applied by taking into account December 31, 1985, in lieu of March 28, 1985.''

Amendment by sections 1810(b)(1)–(3) and 1876(d)(2) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 121(b) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, title XVIII, § 1810(a)(2), (3), Oct. 22, 1986, 100 Stat. 2095, 2822, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [July 18, 1984]. In the case of any taxable year of any United States-owned foreign corporation ending after the date of the enactment of this Act—

''(A) only income received or accrued by such foreign corporation after such date of enactment shall be taken into account under section 904(g) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)); except that

''(B) paragraph (5) of such section 904(g) (relating to exception where small amount of United States source income) shall be applied by taking into account all income received or accrued by such foreign corporation during such taxable year.

''(2) SPECIAL RULE FOR APPLICABLE CFC.—

''(A) IN GENERAL.—In the case of qualified interest received or accrued by an applicable CFC before January 1, 1992—

''(i) such interest shall not be taken into account under section 904(g) of the Internal Revenue Code of 1986 (as added by subsection (a)), except that

''(ii) such interest shall be taken into account for purposes of applying paragraph (5) of such section 904(g) (relating to exception where small amount of United States source income).

''(B) QUALIFIED INTEREST.—For purposes of subparagraph (A), the term 'qualified interest' means—

''(i) the aggregate amount of interest received or accrued during any taxable year by an applicable CFC on United States affiliate obligations held by such applicable CFC, multiplied by,

''(ii) a fraction (not in excess of 1)—

''(I) the numerator of which is the sum of the aggregate principal amount of United States affiliate obligations held by the applicable CFC on March 31, 1984, but not in excess of the applicable limit, and

''(II) the denominator of which is the average daily principal amount of United States affiliate obligations held by such applicable CFC during the taxable year.

Proper adjustments shall be made to the numerator described in clause (ii)(I) for original issue discount accruing after March 31, 1984, on CFC obligations and United States affiliate obligations.

''(C) ADJUSTMENT FOR RETIREMENT OF CFC OBLIGATIONS.—The amount described in subparagraph (B)(ii)(I) for any taxable year shall be reduced by the sum of—

''(i) the excess of (I) the aggregate principal amount of CFC obligations which are outstanding on March 31, 1984, but only with respect to obligations issued before March 8, 1984, or issued after March 7, 1984, by the applicable CFC pursuant to a binding commitment in effect on March 7, 1984, over (II) the average daily outstanding principal amount during the taxable year of the CFC obligations described in subclause (I), and

''(ii) the portion of the equity of such applicable CFC allocable to the excess described in clause (i) (determined on the basis of the debt-equity ratio of such applicable CFC on March 31, 1984).

''(D) APPLICABLE CFC.—For purposes of this paragraph, the term 'applicable CFC' means any controlled foreign corporation (within the meaning of section 957)—

''(i) which was in existence on March 31, 1984, and

''(ii) the principal purpose of which on such date consisted of the issuing of CFC obligations (or short-term borrowing from nonaffiliated persons) and lending the proceeds of such obligations (or such borrowing) to affiliates.

''(E) AFFILIATES; UNITED STATES AFFILIATES.—For purposes of this paragraph—

''(i) AFFILIATE.—The term 'affiliate' means any person who is a related person (within the meaning of section 482 of the Internal Revenue Code of 1986) to the applicable CFC.

''(ii) UNITED STATES AFFILIATE.—The term 'United States affiliate' means any United States person which is an affiliate of the applicable CFC.

''(iii) TREATMENT OF CERTAIN FOREIGN CORPORATIONS ENGAGED IN BUSINESS IN UNITED STATES.—For purposes of clause (ii), a foreign corporation shall be treated as a United States person with respect to any interest payment made by such corporation if—

''(I) at least 50 percent of the gross income from all sources of such corporation for the 3-year period ending with the close of its last taxable year ending on or before March 31, 1984, was effectively connected with the conduct of a trade or business within the United States, and

''(II) at least 50 percent of the gross income from all sources of such corporation for the 3-year period ending with the close of its taxable year preceding the payment of such interest was effectively connected with the conduct of a trade or business within the United States.

''(F) UNITED STATES AFFILIATE OBLIGATIONS.—For purposes of this paragraph, the term 'United States affiliate obligations' means any obligation of (and payable by) a United States affiliate.

''(G) CFC OBLIGATION.—For purposes of this paragraph, the term 'CFC obligation' means any obligation of (and issued by) a CFC if—

''(i) the requirements of clause (i) of [former] section 163(f)(2)(B) of the Internal Revenue Code of 1986 are met with respect to such obligation, and

''(ii) in the case of an obligation issued after December 31, 1982, the requirements of clause (ii) of such [former] section 163(f)(2)(B) are met with respect to such obligation.

''(H) TREATMENT OF OBLIGATIONS WITH ORIGINAL ISSUE DISCOUNT.—For purposes of this paragraph, in the case of any obligation with original issue discount, the principal amount of such obligation as of any day shall be treated as equal to the revised issue price as of such day (as defined in section 1278(a)(4) of the Internal Revenue Code of 1986).

''(I) APPLICABLE LIMIT.—For purposes of subparagraph (B)(ii)(I), the term 'applicable limit' means the sum of—

''(i) the equity of the applicable CFC on March 31, 1984, and

''(ii) the aggregate principal amount of CFC obligations outstanding on March 31, 1984, which were issued by an applicable CFC—

''(I) before March 8, 1984, or

''(II) after March 7, 1984, pursuant to a binding commitment in effect on March 7, 1984.

''(3) EXCEPTION FOR CERTAIN TERM OBLIGATIONS.—The amendments made by subsection (a) shall not apply to interest on any term obligations held by a foreign corporation on March 7, 1984. The preceding sentence shall not apply to any United States affiliate obligation (as defined in paragraph (2)(F)) held by an applicable CFC (as defined in paragraph (2)(D)).

''(4) DEFINITIONS.—Any term used in this subsection which is also used in section 904(g) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall have the meaning given such term by such section 904(g).

''(5) SEPARATE APPLICATION OF SECTION 904 IN CASE OF INCOME COVERED BY TRANSITIONAL RULES.—Subsections (a), (b), and (c) of section 904 of the Internal Revenue Code of 1986 shall be applied separately to any amount not treated as income derived from sources within the United States but which (but for the provisions of paragraph (2) or (3) of this subsection) would be so treated under the amendments made by subsection (a). Any such separate application shall be made before any separate application required under section 904(d) of such Code.

''(6) APPLICATION OF PARAGRAPH (5) DELAYED IN CERTAIN CASES.—In the case of a foreign corporation—

''(A) which is a subsidiary of a domestic corporation which has been engaged in manufacturing for more than 50 years, and

''(B) which issued certificates with respect to obligations on—

''(i) September 24, 1979, denominated in French francs,

''(ii) September 10, 1981, denominated in Swiss francs,

''(iii) July 14, 1982, denominated in Swiss francs, and

''(iv) December 1, 1982, denominated in United States dollars,

with a total principal amount of less than 200,000,000 United States dollars.[,]

then paragraph (5) shall not apply to the proceeds from relending such obligations or related capital before January 1, 1986.''

Section 122(b) of Pub. L. 98–369 provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [July 18, 1984].

''(2) SPECIAL RULES FOR INTEREST INCOME.—

''(A) IN GENERAL.—Interest income received or accrued by a designated payor corporation shall be taken into account for purposes of the amendment made by subsection (a) only in taxable years beginning after the date of the enactment of this Act.

''(B) EXCEPTION FOR INVESTMENT AFTER JUNE 22, 1984.—Notwithstanding subparagraph (A), the amendment made by subsection (a) shall apply to interest income received or accrued by a designated payor corporation after the date of enactment of this Act if it is attributable to investment in the designated payor corporation after June 22, 1984.

''(3) TERM OBLIGATIONS OF DESIGNATED PAYOR CORPORATION WHICH IS NOT APPLICABLE CFC.—In the case of any designated payor corporation which is not an applicable CFC (as defined in section 121(b)(2)(D) [section 121(b)(2)(D) of Pub. L. 98–369, set out above]), any interest received or accrued by such corporation on a term obligation held by such corporation on March 7, 1984, shall not be taken into account.''

Amendment by section 474(r)(21) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 801(d)(2) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual's annuity starting date was deferred under section 105(d)(6) of this title as in effect on the day before Apr. 20, 1983, such deferral shall end on the first day of such individual's first taxable year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98–21, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, except that former subsec. (f)(4), which had provided for the determination of foreign oil related loss where section 907 of this title was applicable, shall continue to apply in certain instances where the taxpayer has had a foreign loss from an activity not related to oil and gas, see section 211(e) of Pub. L. 97–248, set out as a note under section 907 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 403(c)(4) of Pub. L. 95–600 effective on Nov. 6, 1978, see section 403(d)(3) of Pub. L. 95–600, set out as a note under section 528 of this title.

Amendment by section 421(e)(6) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 421(g) of Pub. L. 95–600, set out as note under section 5 of this title.

Amendment by section 701(a)(8)(C) of Pub. L. 95–600 applicable, in the case of individuals, to taxable years ending after Dec. 31, 1974, and, in the case of corporations, to taxable years ending after Dec. 31, 1976, see section 701(u)(8)(D) of Pub. L. 95–600, set out as a note under section 907 of this title.

Section 701(q)(3)(B) of Pub. L. 95–600, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by paragraph (2) [amending this section] shall take effect as if included in section 904(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as such provision was added to such Code by section 1032(a) of the Tax Reform Act of 1976 [section 1032(a) of Pub. L. 94–455].''

Section 701(u)(2)(D) of Pub. L. 95–600 provided that: ''The amendments made by this paragraph [amending this section] shall apply to taxable years beginning after December 31, 1975.''

Section 701(u)(3)(B) of Pub. L. 95–600 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to taxable years beginning after December 31, 1975.''

Section 701(u)(4)(C) of Pub. L. 95–600 provided that: ''The amendments made by this paragraph [amending this section] shall apply—

''(i) to overall foreign losses sustained in taxable years beginning after December 31, 1975, and

''(ii) to foreign oil related losses sustained in taxable years ending after December 31, 1975.''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 503(b)(1) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, see section 508 of Pub. L. 94–455, set out as a note under section 3 of this title.

Section 1031(c) of Pub. L. 94–455, as amended by Pub. L. 95–600, title VII, § 701(u)(6), (7)(B)(ii), Nov. 6, 1978, 92 Stat. 2914, 2916; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section and sections 243, 383, 901, 907, 960, 1351, 1503, 6038, and 6501 of this title] shall apply to taxable years beginning after December 31, 1975.

''(2) EXCEPTION FOR CERTAIN MINING OPERATIONS.—In the case of a domestic corporation or includible corporation in an affiliated group (as defined in section 1504 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) which has as of October 1, 1975—

''(A) been engaged in the active conduct of the trade or business of the extraction of minerals (of a character with respect to which a deduction for depletion is allowable under section 613 of such Code) outside the United States or its possessions for less than 5 years preceding the date of enactment of this Act [Oct. 4, 1976],

''(B) had deductions properly apportioned or allocated to its gross income from such trade or business in excess of such gross income in at least 2 taxable years,

''(C) 80 percent of its gross receipts are from the sale of such minerals, and

''(D) made commitments for substantial expansion of such mineral extraction activities,

the amendments made by this section [amending this section and sections 243, 383, 901, 907, 960, 1351, 1503, 6038, and 6501 of this title] shall apply to taxable years beginning after December 31, 1978. In the case of a loss sustained in a taxable year beginning before January 1,

1979, by any corporation to which this paragraph applies, if section 904(a)(1) of such Code (as in effect before the enactment of this Act [Oct. 4, 1976]) applies with respect to such taxable year, the provisions of section 904(f) of such Code shall be applied with respect to such loss under the principles of such section 904(a)(1).

''(3) EXCEPTION FOR INCOME FROM POSSESSIONS.—In the case of gross income from sources within a possession of the United States (and the deductions properly apportioned or allocated thereto), the amendments made by this section [amending this section and sections 243, 383, 901, 907, 960, 1351, 1503, 6038, and 6501 of this title] shall apply to taxable years beginning after December 31, 1978.

''(4) CARRYBACKS AND CARRYOVERS IN THE CASE OF MINING OPERATIONS AND INCOME FROM A POSSESSION.—In the case of a taxpayer to whom paragraph (2) or (3) of this subsection applies, section 904(e) of such Code [section 904(e) of this title] shall apply except that 'January 1, 1979' shall be substituted for 'January 1, 1976' each place it appears therein. If such a taxpayer elects the overall limitation for a taxable year beginning before January 1, 1979, such section 904(e) shall be applied by substituting 'the January 1, of the last year for which such taxpayer is on the per-country limitation' for 'January 1, 1976' each place it appears therein.''

Section 1032(c) of Pub. L. 94–455, as amended by Pub. L. 95–600, title VII, §701(u)(5), (7)(A), (B)(i), Nov. 6, 1978, 92 Stat. 2914; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraphs (2), (3), and (5), the amendment made by subsection (a) [amending this section] shall apply to losses sustained in taxable years beginning after December 31, 1975. The amendment made by subsection (b)(1) [amending section 907 of this title] shall apply to taxable years beginning after December 31, 1975. The amendment made by subsection (b)(2) [amending section 907 of this title] shall apply to losses sustained in taxable years ending after December 31, 1975.

''(2) OBLIGATIONS OF FOREIGN GOVERNMENTS.—The amendments made by subsection (a) [amending this section] shall not apply to losses on the sale, exchange, or other disposition of bonds, notes, or other evidences of indebtedness issued before May 14, 1976, by a foreign government or instrumentality thereof for the acquisition of property located in that country or stock of a corporation (created or organized in or under the laws of that foreign country) or indebtedness of such corporation.

''(3) SUBSTANTIAL WORTHLESSNESS BEFORE ENACTMENT.—The amendments made by subsection (a) [amending this section] shall not apply to losses incurred on the loss from stock or indebtedness of a corporation in which the taxpayer owned at least 10 percent of the voting stock and which has sustained losses in 3 out of the last 5 taxable years beginning before January 1, 1976, which has sustained an overall loss for those 5 years, and with respect to which the taxpayer has terminated or will terminate all operations by reason of sale, liquidation, or other disposition before January 1, 1977, of such corporation or its assets.

''(4) LIMITATION BASED ON DEFICIT IN EARNINGS AND PROFITS.—If paragraph (3) would apply to a taxpayer but for the fact that the loss is sustained after December 31, 1976, and if the loss is sustained in a taxable year beginning before January 1, 1979, the amendments made by subsection (a) [amending this section] shall not apply to such loss to the extent that there was on December 31, 1975, a deficit in earnings and profits in the corporation from which the loss arose. For purposes of the preceding sentence, there shall be taken into account only earnings and profits of the corporation which (A) were accumulated in taxable years of the corporation beginning after December 31, 1962, and during the period in which the stock of such corporation from which the loss arose was held by the taxpayer and (B) are attributable to such stock.

''(5) FOREIGN OIL RELATED LOSSES.—The amendment made by subsection (a) [amending this section] shall apply to foreign oil related losses sustained in taxable years ending after December 31, 1975.

''(6) RECAPTURE OF POSSESSION LOSSES DURING TRANSITIONAL PERIOD WHERE TAXPAYER IS ON A PER-COUNTRY BASIS.—

''(A) APPLICATION OF PARAGRAPH.—This paragraph shall apply if—

''(i) the taxpayer sustained a loss in a possession of the United States in a taxable year beginning after December 31, 1975, and before January 1, 1979,

''(ii) such loss is attributable to a trade or business engaged in by the taxpayer in such possession on January 1, 1976, and

''(iii) the taxpayer chooses to have the benefits of subpart A of part III of subchapter N apply for such taxable year and section 904(a)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect before the enactment of this Act [Oct. 4, 1976]) applies with respect to such taxable year.

''(B) NO RECAPTURE DURING TRANSITION PERIOD.—In any case to which this paragraph applies, for purposes of determining the liability for tax of the taxpayer for taxable years beginning before January 1, 1979, section 904(f) of the Internal Revenue Code of 1986 shall not apply with respect to the loss described in subparagraph (A)(i).

''(C) RECAPTURE OF LOSS AFTER THE TRANSITION PERIOD.—In any case to which this paragraph applies—

''(i) for purposes of determining the liability for tax of the taxpayer for taxable years beginning after December 31, 1978, section 904(f) of the Internal Revenue Code of 1986 [subsec. (f) of this section] shall be applied with respect to the loss described in subparagraph (A)(i) under the principles of section 904(a)(1) of such Code (as in effect before the enactment of this Act [Oct. 4, 1976]); but

''(ii) in the case of any taxpayer and any possession, the aggregate amount to which such section 904(f) applies by reason of clause (i) shall not exceed the sum of the net incomes of all affiliated corporations from such possession for taxable years of such affiliated corporations beginning after December 31, 1975, and before January 1, 1979.

''(D) TAXPAYERS NOT ENGAGED IN TRADE OR BUSINESS ON JANUARY 1, 1976.—In any case to which this paragraph applies but for the fact that the taxpayer was not engaged in a trade or business in such possession on January 1, 1976, for purposes of determining the liability for tax of the taxpayer for taxable years beginning before January 1, 1979; if section 904(a)(1) of such Code (as in effect before the enactment of this Act [Oct. 4, 1976]) applies with respect to such taxable year, the provisions of section 904(f) of such Code shall be applied with respect to the loss described in subparagraph (A)(i) under the principles of such section 904(a)(1).

''(E) AFFILIATED CORPORATION DEFINED.—For purposes of subparagraph (C)(ii), the term 'affiliated corporation' means a corporation which, for the taxable year for which the net income is being determined, was not a member of the same affiliated group (within the meaning of section 1504 of the Internal Revenue Code of 1986) as the taxpayer but would have been a member of such group but for the application of subsection (b) of such section 1504.''

Section 1034(b) of Pub. L. 94–455 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1975, except that the provisions of section 904(b)(3)(C) shall only apply to sales or exchanges made after November 12, 1975.''

Amendment by section 1051(e) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, with certain exceptions, see section 1051(i) of Pub. L. 94–455, set out as a note under section 27 of this title.

Amendment by section 1901(b)(10) of Pub. L. 94–455 applicable with respect to taxable years ending after Oct. 4, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable with respect to taxable years ending after Dec. 31, 1971, except that a corporation may not be a DISC for any taxable year beginning before Jan. 1, 1972, see section 507 of Pub. L. 92–178, set out as a note under section 991 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to taxable years beginning after Dec. 31, 1969, see section 506(c) of Pub. L. 91–172, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 106(c)(2) of Pub. L. 89–809 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to interest received after December 31, 1965, in taxable years ending after such date.''

EFFECTIVE DATE OF 1964 AMENDMENT

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

EFFECTIVE DATE OF 1962 AMENDMENT

Section 10(b) of Pub. L. 87–834 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after the date of the enactment of this Act [Oct. 16, 1962], but only with respect to interest resulting from transactions consummated after April 2, 1962.''

EFFECTIVE DATE OF 1960 AMENDMENT

Section 4 of Pub. L. 86–780 provided that: ''The amendments made by the first section [amending this section], section 2 [amending section 1503 of this title], and subsection (a) of section 3 of this Act [amending section 901 of this title] shall apply with respect to taxable years beginning after December 31, 1960. The amendment made by subsection (b) of section 3 of this Act [amending section 901 of this title] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954. The amendments made by subsection (c) of section 3 of this Act [enacting section 6501 of this title] shall apply with respect to taxable years beginning after December 31, 1957.''

EFFECTIVE DATE OF 1958 AMENDMENT

Section 42(c) of Pub. L. 85–866 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 6611 of this title] shall apply only with respect to taxable years beginning after December 31, 1957.''

SAVINGS PROVISION

For provisions that nothing in amendment by section 11801(a)(31) of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendments by sections 701(e)(4)(H) and 1201(a), (b), (d)(1)–(3) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, and for nonapplication of amendment by section 1211(b)(3) of Pub. L. 99–514 to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2)–(4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

LIMITATION ON CARRYBACK OF FOREIGN TAX CREDITS TO TAXABLE YEARS BEGINNING BEFORE 1987

Section 1205 of Pub. L. 99–514 provided that:

''(a) DETERMINATION OF EXCESS CREDITS.—

''(1) IN GENERAL.—Any taxes paid or accrued in a taxable year beginning after 1986 may be treated under section 904(c) of the Internal Revenue Code of 1954 as paid or accrued in a taxable year beginning before 1987 only to the extent such taxes would be so treated if the tax imposed by chapter 1 of such Code for the taxable year beginning after 1986 were determined by applying section 1 or 11 of such Code (as the case may be) as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986].

''(2) ADJUSTMENTS.—Under regulations prescribed by the Secretary of the Treasury or his delegate proper adjustments shall be made in the application of paragraph (1) to take into account—

''(A) the repeal of the zero bracket amount, and

''(B) the changes in the treatment of capital gains.

''(b) COORDINATION WITH SEPARATE BASKETS.—Any taxes paid or accrued in a taxable year beginning after 1986 which (after the application of subsection (a)) are treated as paid or accrued in a taxable year beginning before 1987 shall be treated as imposed on income described in section 904(d)(1)(E) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]). No taxes paid or accrued in a taxable year beginning after 1986 with respect to high withholding tax interest (as defined in section 904(d)(2)(B) of the Internal Revenue Code of 1986 as amended by this Act) may be treated as paid or accrued in a taxable year beginning before 1987.''

COORDINATION WITH TREATY OBLIGATIONS

Section 1810(a)(4) of Pub. L. 99–514 provided that: ''Section 904(g) of the Internal Revenue Code of 1954 shall apply notwithstanding any treaty obligation of the United States to the contrary (whether entered into on, before, or after the date of the enactment of this Act [Oct. 22, 1986]) unless (in the case of a treaty entered into after the date of the enactment of this Act) such treaty by specific reference to such section 904(g) clearly expresses the intent to override the provisions of such section.''

SEPARATE APPLICATION OF SECTION 904 IN CASE OF INCOME COVERED BY TRANSITIONAL RULES

Section 1810(a)(5) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1018(g)(1), Nov. 10, 1988, 102 Stat. 3582, provided that: ''For purposes of section 121(b)(5) of the Tax Reform Act of 1984 [Pub. L. 98–369, set out above] (relating to separate application of section 904 [of the Internal Revenue Code of 1954 [now 1986]] in case of income covered by transitional rules), any carryover under section 904(c) of the Internal Revenue Code of 1954 [now 1986] allowed to a taxpayer which was incorporated on August 31, 1962, attributable to taxes paid or accrued in taxable years beginning in 1981, 1982, 1983, or 1984, with respect to amounts included in gross income under section 951 of such Code

in respect of a controlled foreign corporation which was incorporated on May 27, 1977, shall be treated as taxes paid or accrued on income separately treated under such section 121(b)(5).''

§ 905. Applicable rules

(a) Year in which credit taken

The credits provided in this subpart may, at the option of the taxpayer and irrespective of the method of accounting employed in keeping his books, be taken in the year in which the taxes of the foreign country or the possession of the United States accrued, subject, however, to the conditions prescribed in subsection (c). If the taxpayer elects to take such credits in the year in which the taxes of the foreign country or the possession of the United States accrued, the credits for all subsequent years shall be taken on the same basis, and no portion of any such taxes shall be allowed as a deduction in the same or any succeeding year.

(b) Proof of credits

The credits provided in this subpart shall be allowed only if the taxpayer establishes to the satisfaction of the Secretary—

(1) the total amount of income derived from sources without the United States, determined as provided in part I,

(2) the amount of income derived from each country, the tax paid or accrued to which is claimed as a credit under this subpart, such amount to be determined under regulations prescribed by the Secretary, and

(3) all other information necessary for the verification and computation of such credits.

(c) Adjustments to accrued taxes

(1) In general

If—

(A) accrued taxes when paid differ from the amounts claimed as credits by the taxpayer,

(B) accrued taxes are not paid before the date 2 years after the close of the taxable year to which such taxes relate, or

(C) any tax paid is refunded in whole or in part,

the taxpayer shall notify the Secretary, who shall redetermine the amount of the tax for the year or years affected. The Secretary may prescribe adjustments to the pools of post-1986 foreign income taxes and the pools of post-1986 undistributed earnings under sections 902 and 960 in lieu of the redetermination under the preceding sentence.

(2) Special rule for taxes not paid within 2 years

(A) In general

Except as provided in subparagraph (B), in making the redetermination under paragraph (1), no credit shall be allowed for accrued taxes not paid before the date referred to in subparagraph (B) of paragraph (1).

(B) Taxes subsequently paid

Any such taxes if subsequently paid—

(i) shall be taken into account—

(I) in the case of taxes deemed paid under section 902 or section 960, for the taxable year in which paid (and no redetermination shall be made under this section by reason of such payment), and

(II) in any other case, for the taxable year to which such taxes relate, and

(ii) shall be translated as provided in section 986(a)(2)(A).

(3) Adjustments

The amount of tax (if any) due on any redetermination under paragraph (1) shall be paid by the taxpayer on notice and demand by the Secretary, and the amount of tax overpaid (if any) shall be credited or refunded to the taxpayer in accordance with subchapter B of chapter 66 (section 6511 et seq.).

(4) Bond requirements

In the case of any tax accrued but not paid, the Secretary, as a condition precedent to the allowance of the credit provided in this subpart, may require the taxpayer to give a bond, with sureties satisfactory to and approved by the Secretary, in such sum as the Secretary may require, conditioned on the payment by the taxpayer of any amount of tax found due on any such redetermination. Any such bond shall contain such further conditions as the Secretary may require.

(5) Other special rules

In any redetermination under paragraph (1) by the Secretary of the amount of tax due from the taxpayer for the year or years affected by a refund, the amount of the taxes refunded for which credit has been allowed under this section shall be reduced by the amount of any tax described in section 901 imposed by the foreign country or possession of the United States with respect to such refund; but no credit under this subpart, or deduction under section 164, shall be allowed for any taxable year with respect to any such tax imposed on the refund. No interest shall be assessed or collected on any amount of tax due on any redetermination by the Secretary, resulting from a refund to the taxpayer, for any period before the receipt of such refund, except to the extent interest was paid by the foreign country or possession of the United States on such refund for such period.

(Aug. 16, 1954, ch. 736, 68A Stat. 288; Pub. L. 85–866, title I, §103(b), Sept. 2, 1958, 72 Stat. 1675; Pub. L. 94–455, title XIX, §§1901(a)(114), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1784, 1834; Pub. L. 96–603, §2(c)(1), Dec. 28, 1980, 94 Stat. 3509; Pub. L. 97–248, title III, §343(a), Sept. 3, 1982, 96 Stat. 635; Pub. L. 105–34, title XI, §1102(a)(2), Aug. 5, 1997, 111 Stat. 964.)

AMENDMENTS

1997—Subsec. (c). Pub. L. 105–34 amended heading and text of subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''If accrued taxes when paid differ from the amounts claimed as credits by the taxpayer, or if any tax paid is refunded in whole or in part, the taxpayer shall notify the Secretary, who shall redetermine the amount of the tax for the year or years affected. The amount of tax due on such redetermination, if any, shall be paid by the taxpayer on notice and demand by the Secretary, or the amount of tax overpaid, if any, shall be credited or refunded to the taxpayer in

accordance with subchapter B of chapter 66 (sec. 6511 and following). In the case of such a tax accrued but not paid, the Secretary, as a condition precedent to the allowance of this credit, may require the taxpayer to give a bond, with sureties satisfactory to and to be approved by the Secretary, in such sum as the Secretary may require, conditioned on the payment by the taxpayer of any amount of tax found due on any such redetermination; and the bond herein prescribed shall contain such further conditions as the Secretary may require. In such redetermination by the Secretary of the amount of tax due from the taxpayer for the year or years affected by a refund, the amount of the taxes refunded for which credit has been allowed under this section shall be reduced by the amount of any tax described in section 901 imposed by the foreign country or possession of the United States with respect to such refund; but no credit under this subpart, and no deduction under section 164 (relating to deduction for taxes) shall be allowed for any taxable year with respect to such tax imposed on the refund. No interest shall be assessed or collected on any amount of tax due on any redetermination by the Secretary, resulting from a refund to the taxpayer, for any period before the receipt of such refund, except to the extent interest was paid by the foreign country or possession of the United States on such refund for such period.''

1982—Subsec. (c). Pub. L. 97–248, § 343(a), struck out provision that, although no interest can be assessed or collected on any amount of tax due on any redetermination by the Secretary, resulting from a refund to the taxpayer, for any period before the receipt of such refund, except to the extent interest has been paid by the foreign country or possession of the United States on such refund for such period, that prohibition does not apply (with respect to any period after the refund or adjustment in the foreign taxes) if the taxpayer fails to notify the Secretary (on or before the date prescribed by regulations for giving such notice) unless it is shown that such failure is due to reasonable cause and not due to willful neglect.

1980—Subsec. (c). Pub. L. 96–603 inserted provision that the preceding sentence not apply, with respect to any period after the refund or adjustment in the foreign taxes, if the taxpayer fails to notify the Secretary, on or before the date prescribed by regulations for giving such notice, unless it is shown that such failure is due to reasonable cause and not due to willful neglect.

1976—Subsec. (b). Pub. L. 94–455, §§ 1901(a)(114), 1906(b)(13)(A), struck out provision allowing credits to be taken for tax on royalties paid, accrued and derived from sources within the United Kingdom of Britain and Northern Ireland and struck out ''or his delegate'' after ''Secretary'', in two places.

Subsec. (c). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' in eight places.

1958—Subsec. (b). Pub. L. 85–866 inserted sentence deeming recipient of a royalty or other amount for use of copyright, patent, and other like property derived from sources within United Kingdom, to have paid or accrued taxes paid or accrued to United Kingdom with respect to royalty if recipient elects to include in its gross income the amount of such United Kingdom tax.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1102(c)(2) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a)(2) [amending this section] shall apply to taxes which relate to taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1982 AMENDMENT

Section 343(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall have the same effect as if the last sentence of section 905(c) had never been enacted.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–603 applicable with respect to employer contributions or accruals for taxable years beginning after Dec. 31, 1979, election to apply amendments retroactively with respect to foreign subsidiaries, allowance or prior deductions in case of certain funded branch plans, and time and manner for making elections, see section 2(e) of Pub. L. 96–603, set out as an Effective Date note under section 404A of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(114) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 103(c) of Pub. L. 85–866 provided that: ''The amendment made by subsection (a) of this section [amending section 131(e) of Internal Revenue Code of 1939] shall apply for all taxable years beginning on or after January 1, 1950, as to which section 131 of the Internal Revenue Code of 1939 is the applicable provision. The amendment made by subsection (b) of this section [amending this section] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954. No interest shall be allowed or paid on any overpayment resulting from the amendments made by subsections (a) and (b) of this section.''

§ 906. Nonresident alien individuals and foreign corporations

(a) Allowance of credit

A nonresident alien individual or a foreign corporation engaged in trade or business within the United States during the taxable year shall be allowed a credit under section 901 for the amount of any income, war profits, and excess profits taxes paid or accrued during the taxable year (or deemed, under section 902, paid or accrued during the taxable year) to any foreign country or possession of the United States with respect to income effectively connected with the conduct of a trade or business within the United States.

(b) Special rules

(1) For purposes of subsection (a) and for purposes of determining the deductions allowable under sections 873(a) and 882(c), in determining the amount of any tax paid or accrued to any foreign country or possession there shall not be taken into account any amount of tax to the extent the tax so paid or accrued is imposed with respect to income from sources within the United States which would not be taxed by such foreign country or possession but for the fact that—

(A) in the case of a nonresident alien individual, such individual is a citizen or resident of such foreign country or possession, or

(B) in the case of a foreign corporation, such corporation was created or organized under the law of such foreign country or possession or is domiciled for tax purposes in such country or possession.

(2) For purposes of subsection (a), in applying section 904 the taxpayer's taxable income shall be treated as consisting only of the taxable income effectively connected with the taxpayer's conduct of a trade or business within the United States.

(3) The credit allowed pursuant to subsection (a) shall not be allowed against any tax imposed by section 871(a) (relating to income of nonresident alien individual not connected with

United States business) or 881 (relating to income of foreign corporations not connected with United States business).

(4) For purposes of sections 902(a) and 78, a foreign corporation choosing the benefits of this subpart which receives dividends shall, with respect to such dividends, be treated as a domestic corporation.

(5) For purposes of section 902, any income, war profits, and excess profits taxes paid or accrued (or deemed paid or accrued) to any foreign country or possession of the United States with respect to income effectively connected with the conduct of a trade or business within the United States shall not be taken into account, and any accumulated profits attributable to such income shall not be taken into account.

(6) No credit shall be allowed under this section against the tax imposed by section 884.

(Added Pub. L. 89–809, title I, §106(a)(1), Nov. 13, 1966, 80 Stat. 1568; amended Pub. L. 98–369, div. A, title VIII, §801(d)(3), July 18, 1984, 98 Stat. 996; Pub. L. 99–514, title XII, §1241(c), title XVIII, §1876(d)(3), Oct. 22, 1986, 100 Stat. 2580, 2899; Pub. L. 100–647, title I, §1012(q)(10), Nov. 10, 1988, 102 Stat. 3524; Pub. L. 110–172, §11(g)(11), Dec. 29, 2007, 121 Stat. 2490.)

AMENDMENTS

2007—Subsec. (b)(5) to (7). Pub. L. 110–172 redesignated pars. (6) and (7) as (5) and (6), respectively, and struck out former par. (5) which read as follows: ''No credit shall be allowed under this section for any income, war profits, and excess profits taxes paid or accrued with respect to the foreign trade income (within the meaning of section 923(b)) of a FSC.''

1988—Subsec. (b)(6), (7). Pub. L. 100–647 redesignated par. (6), relating to credit against tax imposed by section 884, as (7).

1986—Subsec. (b)(6). Pub. L. 99–514, §1876(d)(3), added par. (6) relating to credit for income, war profits, and excess profits taxes paid or accrued to a foreign country or possession of the United States.

Pub. L. 99–514, §1241(c), added par. (6) relating to credit against tax imposed by section 884.

1984—Subsec. (b)(5). Pub. L. 98–369 added par. (5).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1241(c) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1241(e) of Pub. L. 99–514, set out as an Effective Date note under section 884 of this title.

Amendment by section 1876(d)(3) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1966, and, in applying section 904 of this title with respect to this section, no amount to be carried from or to any taxable year beginning before Jan. 1, 1967, and no such year to be taken into account, see section 106(a)(6) of Pub. L. 89–809, set out as an Effective Date of 1966 Amendment note under section 874 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 907. Special rules in case of foreign oil and gas income

(a) Reduction in amount allowed as foreign tax under section 901

In applying section 901, the amount of any foreign oil and gas taxes paid or accrued (or deemed to have been paid) during the taxable year which would (but for this subsection) be taken into account for purposes of section 901 shall be reduced by the amount (if any) by which the amount of such taxes exceeds the product of—

(1) the amount of the combined foreign oil and gas income for the taxable year,

(2) multiplied by—

(A) in the case of a corporation, the percentage which is equal to the highest rate of tax specified under section 11(b), or

(B) in the case of an individual, a fraction the numerator of which is the tax against which the credit under section 901(a) is taken and the denominator of which is the taxpayer's entire taxable income.

(b) Combined foreign oil and gas income; foreign oil and gas taxes

For purposes of this section—

(1) Combined foreign oil and gas income

The term ''combined foreign oil and gas income'' means, with respect to any taxable year, the sum of—

(A) foreign oil and gas extraction income, and

(B) foreign oil related income.

(2) Foreign oil and gas taxes

The term ''foreign oil and gas taxes'' means, with respect to any taxable year, the sum of—

(A) oil and gas extraction taxes, and

(B) any income, war profits, and excess profits taxes paid or accrued (or deemed to have been paid or accrued under section 902 or 960) during the taxable year with respect to foreign oil related income (determined without regard to subsection (c)(4)) or loss which would be taken into account for purposes of section 901 without regard to this section.

(c) Foreign income definitions and special rules

For purposes of this section—

(1) Foreign oil and gas extraction income

The term ''foreign oil and gas extraction income'' means the taxable income derived from

sources without the United States and its possessions from—

(A) the extraction (by the taxpayer or any other person) of minerals from oil or gas wells, or

(B) the sale or exchange of assets used by the taxpayer in the trade or business described in subparagraph (A).

Such term does not include any dividend or interest income which is passive income (as defined in section 904(d)(2)(A)).

(2) Foreign oil related income

The term ''foreign oil related income'' means the taxable income derived from sources outside the United States and its possessions from—

(A) the processing of minerals extracted (by the taxpayer or by any other person) from oil or gas wells into their primary products,

(B) the transportation of such minerals or primary products,

(C) the distribution or sale of such minerals or primary products,

(D) the disposition of assets used by the taxpayer in the trade or business described in subparagraph (A), (B), or (C), or

(E) the performance of any other related service.

Such term does not include any dividend or interest income which is passive income (as defined in section 904(d)(2)(A)).

(3) Dividends, interest, partnership distribution, etc.

The term ''foreign oil and gas extraction income'' and the term ''foreign oil related income'' include—

(A) dividends and interest from a foreign corporation in respect of which taxes are deemed paid by the taxpayer under section 902,

(B) amounts with respect to which taxes are deemed paid under section 960(a), and

(C) the taxpayer's distributive share of the income of partnerships.[1]

to the extent such dividends, interest, amounts, or distributive share is attributable to foreign oil and gas extraction income, or to foreign oil related income, as the case may be; except that interest described in subparagraph (A) shall not be taken into account in computing foreign oil and gas extraction income but shall be taken into account in computing foreign oil-related income.

(4) Recapture of foreign oil and gas losses by recharacterizing later combined foreign oil and gas income

(A) In general

The combined foreign oil and gas income of a taxpayer for a taxable year (determined without regard to this paragraph) shall be reduced—

(i) first by the amount determined under subparagraph (B), and

(ii) then by the amount determined under subparagraph (C).

The aggregate amount of such reductions shall be treated as income (from sources without the United States) which is not combined foreign oil and gas income.

(B) Reduction for pre-2009 foreign oil extraction losses

The reduction under this paragraph shall be equal to the lesser of—

(i) the foreign oil and gas extraction income of the taxpayer for the taxable year (determined without regard to this paragraph), or

(ii) the excess of—

(I) the aggregate amount of foreign oil extraction losses for preceding taxable years beginning after December 31, 1982, and before January 1, 2009, over

(II) so much of such aggregate amount as was recharacterized under this paragraph (as in effect before and after the date of the enactment of the Energy Improvement and Extension Act of 2008) for preceding taxable years beginning after December 31, 1982.

(C) Reduction for post-2008 foreign oil and gas losses

The reduction under this paragraph shall be equal to the lesser of—

(i) the combined foreign oil and gas income of the taxpayer for the taxable year (determined without regard to this paragraph), reduced by an amount equal to the reduction under subparagraph (A) for the taxable year, or

(ii) the excess of—

(I) the aggregate amount of foreign oil and gas losses for preceding taxable years beginning after December 31, 2008, over

(II) so much of such aggregate amount as was recharacterized under this paragraph for preceding taxable years beginning after December 31, 2008.

(D) Foreign oil and gas loss defined

(i) In general

For purposes of this paragraph, the term ''foreign oil and gas loss'' means the amount by which—

(I) the gross income for the taxable year from sources without the United States and its possessions (whether or not the taxpayer chooses the benefits of this subpart for such taxable year) taken into account in determining the combined foreign oil and gas income for such year, is exceeded by

(II) the sum of the deductions properly apportioned or allocated thereto.

(ii) Net operating loss deduction not taken into account

For purposes of clause (i), the net operating loss deduction allowable for the taxable year under section 172(a) shall not be taken into account.

(iii) Expropriation and casualty losses not taken into account

For purposes of clause (i), there shall not be taken into account—

[1] So in original. The period probably should be a comma.

(I) any foreign expropriation loss (as defined in section 172(h) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)) for the taxable year, or

(II) any loss for the taxable year which arises from fire, storm, shipwreck, or other casualty, or from theft,

to the extent such loss is not compensated for by insurance or otherwise.

(iv) Foreign oil extraction loss

For purposes of subparagraph (B)(ii)(I), foreign oil extraction losses shall be determined under this paragraph as in effect on the day before the date of the enactment of the Energy Improvement and Extension Act of 2008.

(5) Oil and gas extraction taxes

The term ''oil and gas extraction taxes'' means any income, war profits, and excess profits tax paid or accrued (or deemed to have been paid under section 902 or 960) during the taxable year with respect to foreign oil and gas extraction income (determined without regard to paragraph (4)) or loss which would be taken into account for purposes of section 901 without regard to this section.

(d) Disregard of certain posted prices, etc.

For purposes of this chapter, in determining the amount of taxable income in the case of foreign oil and gas extraction income, if the oil or gas is disposed of, or is acquired other than from the government of a foreign country, at a posted price (or other pricing arrangement) which differs from the fair market value for such oil or gas, such fair market value shall be used in lieu of such posted price (or other pricing arrangement).

[(e) Repealed. Pub. L. 101–508, title XI, § 11801(a)(32), Nov. 5, 1990, 104 Stat. 1388–521]

(f) Carryback and carryover of disallowed credits

(1) In general

If the amount of the foreign oil and gas taxes paid or accrued during any taxable year exceeds the limitation provided by subsection (a) for such taxable year (hereinafter in this subsection referred to as the ''unused credit year''), such excess shall be deemed to be foreign oil and gas taxes paid or accrued in the first preceding taxable year and in any of the first 10 succeeding taxable year,[2] in that order and to the extent not deemed tax paid or accrued in a prior taxable year by reason of the limitation imposed by paragraph (2). Such amount deemed paid or accrued in any taxable year may be availed of only as a tax credit and not as a deduction and only if the taxpayer for such year chooses to have the benefits of this subpart as to taxes paid or accrued for that year to foreign countries or possessions.

(2) Limitation

The amount of the unused foreign oil and gas taxes which under paragraph (1) may be deemed paid or accrued in any preceding or succeeding taxable year shall not exceed the lesser of—

(A) the amount by which the limitation provided by subsection (a) for such taxable year exceeds the sum of—

(i) the foreign oil and gas taxes paid or accrued during such taxable year, plus

(ii) the amounts of the foreign oil and gas taxes which by reason of this subsection are deemed paid or accrued in such taxable year and are attributable to taxable years preceding the unused credit year; or

(B) the amount by which the limitation provided by section 904 for such taxable year exceeds the sum of—

(i) the taxes paid or accrued (or deemed to have been paid under section 902 or 960) to all foreign countries and possessions of the United States during such taxable year,

(ii) the amount of such taxes which were deemed paid or accrued in such taxable year under section 904(c) and which are attributable to taxable years preceding the unused credit year, plus

(iii) the amount of the foreign oil and gas taxes which by reason of this subsection are deemed paid or accrued in such taxable year and are attributable to taxable years preceding the unused credit year.

(3) Special rules

(A) In the case of any taxable year which is an unused credit year under this subsection and which is an unused credit year under section 904(c), the provisions of this subsection shall be applied before section 904(c).

(B) For purposes of determining the amount of taxes paid or accrued in any taxable year which may be deemed paid or accrued in a preceding or succeeding taxable year under section 904(c), any tax deemed paid or accrued in such preceding or succeeding taxable year under this subsection shall be considered to be tax paid or accrued in such preceding or succeeding taxable year.

(4) Transition rules for pre-2009 and 2009 disallowed credits

(A) Pre-2009 credits

In the case of any unused credit year beginning before January 1, 2009, this subsection shall be applied to any unused oil and gas extraction taxes carried from such unused credit year to a year beginning after December 31, 2008—

(i) by substituting ''oil and gas extraction taxes'' for ''foreign oil and gas taxes'' each place it appears in paragraphs (1), (2), and (3), and

(ii) by computing, for purposes of paragraph (2)(A), the limitation under subparagraph (A) for the year to which such taxes are carried by substituting ''foreign oil and gas extraction income'' for ''foreign oil and gas income'' in subsection (a).

(B) 2009 credits

In the case of any unused credit year beginning in 2009, the amendments made to

[2] So in original. Probably should be ''years,''.

this subsection by the Energy Improvement and Extension Act of 2008 shall be treated as being in effect for any preceding year beginning before January 1, 2009, solely for purposes of determining how much of the unused foreign oil and gas taxes for such unused credit year may be deemed paid or accrued in such preceding year.

(Added Pub. L. 94–12, title VI, § 601(a), Mar. 29, 1975, 89 Stat. 54; amended Pub. L. 94–455, title X, §§ 1031(b)(6), 1032(b), 1035(a), (b), (d)(1), (2), 1052(c)(4), Oct. 4, 1976, 90 Stat. 1623, 1626, 1630–1632, 1648; Pub. L. 95–600, title III, § 301(b)(14), title VII, § 701(u)(8)(A), (B), Nov. 6, 1978, 92 Stat. 2822, 2916; Pub. L. 97–248, title II, § 211(a)–(c)(1), (d), Sept. 3, 1982, 96 Stat. 448–450; Pub. L. 100–647, title I, § 1012(g)(6), Nov. 10, 1988, 102 Stat. 3501; Pub. L. 101–508, title XI, § 11801(a)(32), Nov. 5, 1990, 104 Stat. 1388–521; Pub. L. 103–66, title XIII, § 13235(a)(1), Aug. 10, 1993, 107 Stat. 504; Pub. L. 104–188, title I, § 1704(t)(36), Aug. 20, 1996, 110 Stat. 1889; Pub. L. 108–357, title IV, § 417(b), Oct. 22, 2004, 118 Stat. 1512; Pub. L. 110–343, div. B, title IV, § 402(a)–(c), Oct. 3, 2008, 122 Stat. 3852, 3854.)

REFERENCES IN TEXT

The date of the enactment of the Energy Improvement and Extension Act of 2008, referred to in subsec. (c)(4)(B)(ii)(II), (D)(iv), is the date of enactment of div. B of Pub. L. 110–343, which was approved Oct. 3, 2008.

Section 172(h), referred to in subsec. (c)(4)(D)(iii)(I), was repealed by Pub. L. 101–508, title XI, § 11811(b)(1), Nov. 5, 1990, 104 Stat. 1388–532.

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsec. (c)(4)(D)(iii)(I), is the date of enactment of Pub. L. 101–508, title XI, which was approved Nov. 5, 1990.

The Energy Improvement and Extension Act of 2008, referred to in subsec. (f)(4)(B), is div. B of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3807. For the amendments made to subsec. (f) of this section by the Act, see 2008 Amendment notes below.

AMENDMENTS

2008—Subsecs. (a), (b). Pub. L. 110–343, § 402(a), amended subsecs. (a) and (b) generally. Prior to amendment, subsec. (a) related to reduction in amount of oil and gas extraction taxes paid or accrued for purposes of section 901 and subsec. (b) excepted certain amounts of foreign oil related income taxes paid or accrued to any foreign country from the definition of ''income, war profits, and excess profits taxes''.

Subsec. (c)(4). Pub. L. 110–343, § 402(b), amended par. (4) generally. Prior to amendment, par. (4) provided for recapture of foreign oil and gas extraction losses by recharacterizing later extraction income.

Subsec. (f). Pub. L. 110–343, § 402(c)(1), substituted ''foreign oil and gas taxes'' for ''oil and gas extraction taxes'' wherever appearing.

Subsec. (f)(4). Pub. L. 110–343, § 402(c)(2), added par. (4).

2004—Subsec. (f)(1). Pub. L. 108–357, § 417(b)(3), struck out at end ''For purposes of this subsection, the terms 'second preceding taxable year', and 'first preceding taxable year' do not include any taxable year ending before January 1, 1975.''

Pub. L. 108–357, § 417(b)(2), substituted ''and in any of the first 10'' for '', and in the first, second, third, fourth, or fifth''.

Pub. L. 108–357, § 417(b)(1), struck out ''in the second preceding taxable year,'' before ''in the first preceding taxable year''.

1996—Subsec. (c)(4)(B)(iii)(I). Pub. L. 104–188 inserted ''(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)'' after ''section 172(h)''.

1993—Subsec. (c)(1), (2). Pub. L. 103–66 inserted concluding provisions.

1990—Subsec. (e). Pub. L. 101–508, § 11801(a)(32), struck out subsec. (e) which read as follows:

''(1) CREDITS ARISING IN TAXABLE YEARS BEGINNING BEFORE JANUARY 1, 1983.—The amount of taxes paid or accrued in any taxable year beginning before January 1, 1983 (hereinafter in this paragraph referred to as the 'excess credit year') which under section 904(c) or 907(f) may be deemed paid or accrued in a taxable year beginning after December 31, 1982, shall not exceed the amount which could have been deemed paid or accrued if sections 907(b), 907(f), and 904(f)(4) (as in effect on the day before the date of the enactment of the Tax Equity and Fiscal Responsibility Act of 1982) remained in effect for taxable years beginning after December 31, 1982.

''(2) CARRYBACK OF CREDITS ARISING IN TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1982.—The amount of the taxes paid or accrued in a taxable year beginning after December 31, 1982, which may be deemed paid or accrued under section 904(c) or 907(f) in a taxable year beginning before January 1, 1983, shall not exceed the amount which could have been deemed paid or accrued if sections 907(b), 907(f), and 904(f)(4) (as in effect on the day before the date of the enactment of the Tax Equity and Fiscal Responsibility Act of 1982) remained in effect for taxable years beginning after December 31, 1982.''

Subsec. (f)(3)(C). Pub. L. 101–508, § 11801(a)(32), struck out subpar. (C) which read as follows: ''For purposes of determining the amount of the unused oil and gas extraction taxes which under paragraph (1) may be deemed paid or accrued in any taxable year ending before January 1, 1977, subparagraph (A) of paragraph (2) shall be applied as if the amendment made by section 1035(a) of the Tax Reform Act of 1976 applied to such taxable year.''

1988—Subsec. (c)(3). Pub. L. 100–647, § 1012(g)(6)(B), struck out ''and dividends described in subparagraph (B)'' after ''described in subparagraph (A)'' in closing provisions.

Subsec. (c)(3)(B) to (D). Pub. L. 100–647, § 1012(g)(6)(A), redesignated subpars. (C) and (D) as (B) and (C), respectively, and struck out former subpar. (B) which read as follows: ''dividends from a domestic corporation which are treated under section 861(a)(2)(A) as income from sources without the United States,''.

1982—Subsec. (b). Pub. L. 97–248, § 211(c)(1), added subsec. (b). Former subsec. (b), which had provided that section 904 be applied separately with respect to foreign oil related income and other taxable income, was struck out.

Subsec. (c)(2). Pub. L. 97–248, § 211(b), in subpar. (A) substituted ''the processing of minerals extracted (by the taxpayer or by any other person) from oil or gas wells into their primary products'' for ''the extraction (by the taxpayer or any other person) of minerals from oil or gas wells'', deleted subpar. (B) which had provided that foreign oil related income meant the taxable income derived from sources outside the United States and its possessions from the processing of minerals from oil or gas wells into their primary products, redesignated subpar. (C) as (B), redesignated subpar. (D) as (C) and in subpar. (C) as so redesignated struck out ''or'' at the end, redesignated subpar. (E) as (D) and in subpar. (D) as so redesignated substituted ''disposition'' for ''sale or exchange'', and ''or (C), or'' for ''(C), or (D)'', struck out the period at the end, and added subpar. (E).

Subsec. (c)(4). Pub. L. 97–248, § 211(a), substituted provisions regarding the recapture of foreign oil and gas extraction losses by recharacterization of later extraction income for provisions that if, for any foreign country for any taxable year, the taxpayer would have had a net operating loss if only items from sources within such country (including deductions properly apportioned or allocated thereto) which related to the extraction of minerals from oil or gas wells had been taken into account, such items would not be taken into account in computing foreign oil and gas extraction in-

come for such year, but would be taken into account in computing foreign oil related income for such year.

Subsec. (e). Pub. L. 97–248, §211(d)(1), substituted rules regarding credits arising in taxable years beginning before Jan. 1, 1983, for rules regarding taxable years ending after Dec. 31, 1974, in par. (1), and in par. (2) substituted rules regarding carryback of credits arising in taxable years beginning after Dec. 31, 1982, for rules regarding taxable years ending after Dec. 31, 1975.

Subsec. (f)(1). Pub. L. 97–248, §211(d)(2)(A), substituted ''such excess'' for ''so much of such excess as does not exceed 2 percent of foreign oil and gas extraction income for such taxable year'' in first sentence, and struck out former provision that had directed that the above substitution be made regarding taxes deemed paid or accrued in any taxable year which ended in 1975, 1976, or 1977.

Subsec. (f)(2)(B). Pub. L. 97–248, §211(d)(2)(B)(i), substituted ''provided by section 904 for such taxable year'' for ''provided by section 904 on taxes paid or accrued with respect to foreign oil-related income for such taxable year'' in the introductory provisions, and in cl. (i) substituted ''the United States during such taxable year'' for ''the United States with respect to such income during such taxable year''.

Subsec. (f)(3)(A). Pub. L. 97–248, §211(d)(2)(B)(ii), substituted ''section 904(c)'' for ''section 904(c) with respect to oil-related income''.

Subsec. (f)(3)(B). Pub. L. 97–248, §211(d)(2)(B)(iii), struck out ''oil-related'' after ''determining the amount of''.

1978—Subsec. (a)(2). Pub. L. 95–600, §§301(b)(14), 701(u)(8)(A), designated existing provisions as subpar. (A), inserted applicability to corporations and generally reworked applicable formula, and added subpar. (B).

Subsec. (b). Pub. L. 95–600, §701(u)(8)(B), substituted provisions relating to applicability of section 904 separately to foreign oil related income and other taxable income for provisions relating to applicability of section 904 to corporations and other taxpayers.

1976—Subsec. (a). Pub. L. 94–455, §1035(a), substituted ''oil and gas extraction taxes'' for ''income, war profits, and excess profits taxes'' after ''the amount of any'' and, in par. (2), substituted ''the percentage which is the sum of the normal tax rate and the surtax rate for the taxable year specified in section 11'' for provisions giving the percentage multiplier for years ending 1975, 1976, and after 1976.

Subsec. (b). Pub. L. 94–455, §§1032(b)(1), 1035(b), inserted provisions making a distinction between corporations and other taxpayers and rules applicable to each and, as amended, struck out provision requiring the overall limitation, rather than the per-country limitation, be applied in the case of a corporation to foreign oil-related income and, a taxpayer other than a corporation, to foreign oil and gas extraction income.

Subsec. (c)(5). Pub. L. 94–455, §1035(d)(2), added par. (5).

Subsec. (e)(1). Pub. L. 94–455, §1031(b)(6)(A), substituted ''(d) and (e) of section 904 (as in effect on the day before the date of enactment of the Tax Reform Act of 1976)'' for ''(d) and (e) of section 904'' after ''In applying subsections''.

Subsec. (e)(2). Pub. L. 94–455, §1031(b)(6), substituted ''(d) and (e) of section 904 (as in effect on the day before the date of enactment of the Tax Reform Act of 1976)'' for ''(d) and (e) of section 904'' after ''In applying subsections'', ''section 904(a)(1) (as so in effect)'' for ''section 904(a)(1)'' after ''provided by section'' and, in subpar. (A), ''section 904(e)(2) (as so in effect)'' for ''section 904(e)(2)'' after ''sentence of section''.

Subsec. (f). Pub. L. 94–455, §§1032(b)(2), 1035(d)(1), added subsec. (f). Former subsec. (f), relating to recapture of foreign oil related loss, was struck out.

Subsec. (g). Pub. L. 94–455, §§1032(b)(2), 1035(d)(1), 1052(c)(4), struck out subsec. (g) relating to Western Hemisphere trade corporations which are members of an affiliated group.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title IV, §402(e), Oct. 3, 2008, 122 Stat. 3854, provided that: ''The amendments made by this section [amending this section and section 6501 of this title] shall apply to taxable years beginning after December 31, 2008.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 417(b)(1) of Pub. L. 108–357 applicable to excess foreign taxes arising in taxable years beginning after Oct. 22, 2004, and amendment by section 417(b)(2) of Pub. L. 108–357 applicable to excess foreign taxes which may be carried to any taxable year ending after Oct. 22, 2004, see section 417(c) of Pub. L. 108–357, set out as a note under section 904 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see section 13235(c) of Pub. L. 103–66, set out as a note under section 904 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 211(e) of Pub. L. 97–248, as amended by Pub. L. 97–448, title III, §306(a)(5), 96 Stat. 2401; Pub. L. 98–369, div. A, title VII, §712(e), July 18, 1984, 98 Stat. 947, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 904 of this title] shall apply to taxable years beginning after December 31, 1982.

''(2) RETENTION OF OLD SECTIONS 907(b) AND 904(f)(4) WHERE TAXPAYER HAD SEPARATE BASKET FOREIGN LOSS.—

''(A) IN GENERAL.—If, after applying old sections 907(b) and 904(f)(4) to a taxable year beginning before January 1, 1983, the taxpayer had a separate basket foreign loss, such loss shall not be recaptured from income of a kind not taken into account in computing the amount of such separate basket foreign loss more rapidly than ratably over the 8-year period (or such shorter period as the taxpayer may select) beginning with the first taxable year beginning after December 31, 1982.

''(B) DEFINITIONS.—For purposes of this paragraph—

''(i) The term 'separate basket foreign loss' means any foreign loss attributable to activities taken into account (or not taken into account) in determining foreign oil related income (as defined in old section 907(c)(2)).

''(ii) An 'old' section is such section as in effect on the day before the date of the enactment of this Act [Sept. 3, 1982].''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 301(b)(14) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

Section 701(u)(8)(D) of Pub. L. 95–600, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(i) The amendments made by this paragraph [amending this section and section 904 of this title] shall apply, in the case of individuals, to taxable years ending after December 31, 1974, and, in the case of corporations, to taxable years ending after December 31, 1976.

''(ii) In the case of any taxable year ending after December 31, 1975, with respect to foreign oil related income (within the meaning of section 907(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]), the

overall limitation provided by section 904(a)(2) of such Code shall apply and the per-country limitation provided by section 904(a)(1) of such Code shall not apply.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1031(b)(6)(A) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, with exceptions for certain mining operations, income from possessions, and carryback and carryover in the case of mining operations and income from a possession, see section 1031(c) of Pub. L. 94–455, set out as a note under section 904 of this title.

Amendment by section 1032(b)(1) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, and amendment by section 1032(b)(2) of Pub. L. 94–455 applicable to losses sustained in taxable years beginning after Dec. 31, 1975, see section 1032(c) of Pub. L. 94–455, set out as a note under section 904 of this title.

Section 1035(e) of Pub. L. 94–455, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after December 31, 1976.

''(2) The amendment made by subsection (b) [amending this section] shall apply to taxable years ending after December 31, 1974; except that the last sentence of section 907(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall only apply to taxable years ending after December 31, 1975.

''(3) The amendment made by subsection (c) [enacting provisions set out below] shall apply to taxable years beginning after June 29, 1976.

''(4) The amendments made by subsection (d) [amending this section] shall apply to taxes paid or accrued during taxable years ending after the date of the enactment of this Act [Oct. 4, 1976].''

Amendment by section 1052(c)(4) of Pub. L. 94–455 effective with respect to taxable years beginning after December 31, 1979, see section 1052(d) of Pub. L. 94–455, set out as a note under section 170 of this title.

EFFECTIVE DATE

Section 601(d) of Pub. L. 94–12 provided that: ''The amendments made by this section [enacting this section and amending section 901 of this title] shall apply to taxable years ending after December 31, 1974; except that—

''(1) the second sentence of section 907(b) shall apply to taxable years ending after December 31, 1975, and

''(2) the provisions of section 907(f) shall apply to losses sustained in taxable years ending after December 31, 1975.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

TAX CREDIT FOR PRODUCTION-SHARING CONTRACTS

Section 1035(c) of Pub. L. 94–455, as amended by Pub. L. 95–600, title VII, §§ 701(u)(9), 703(h)(1), Nov. 6, 1978, 92 Stat. 2916, 2940; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) For purposes of section 901 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], there shall be treated as income, war profits, and excess profits taxes to be taken into account under section 907(a) of such Code amounts designated as income taxes of a foreign government by such government (which otherwise would not be treated as taxes for purposes of section 901 of such Code) with respect to production-sharing contracts for the extraction of foreign oil or gas.

''(2) The amounts specified in paragraph (1) shall not exceed the lessor of—

''(A) the product of the foreign oil and gas extraction income (as defined in section 907(c) of such Code) with respect to all such production-sharing contracts multiplied by the sum of the normal tax rate and the surtax rate for the taxable year specified in section 11 of such Code, or

''(B) the excess of the total amount of foreign oil and gas extraction income (as so defined) for the taxable year multiplied by the sum of the normal tax rate and the surtax rate for the taxable year specified in section 11 of such Code over the amount of any income, war profits, and excess profits taxes paid or accrued (or deemed to have been paid) without regard to paragraph (1) during the taxable year with respect to foreign oil and gas extraction income.

''(3) The production-sharing contracts taken into account for purposes of paragraph (1) shall be those contracts which were entered into before April 8, 1976, for the sharing of foreign oil and gas production with a foreign government (or an entity owned by such government) with respect to which amounts claimed as taxes paid or accrued to such foreign government for taxable years beginning before June 30, 1976, will not be disallowed as taxes. A contract described in the preceding sentence shall be taken into account under paragraph (1) only with respect to amounts (A) paid or accrued to the foreign government before January 1, 1978, and (B) attributable to income earned before such date.''

§ 908. Reduction of credit for participation in or cooperation with an international boycott

(a) In general

If a person, or a member of a controlled group (within the meaning of section 993(a)(3)) which includes such person, participates in or cooperates with an international boycott during the taxable year (within the meaning of section 999(b)), the amount of the credit allowable under section 901 to such person, or under section 902 or 960 to United States shareholders of such person, for foreign taxes paid during the taxable year shall be reduced by an amount equal to the product of—

(1) the amount of the credit which, but for this section, would be allowed under section 901 for the taxable year, multiplied by

(2) the international boycott factor (determined under section 999).

(b) Application with sections 275(a)(4) and 78

Section 275(a)(4) and section 78 shall not apply to any amount of taxes denied credit under subsection (a).

(Added Pub. L. 94–455, title X, § 1061(a), Oct. 4, 1976, 90 Stat. 1649.)

EFFECTIVE DATE

Section 1066(a) of Pub. L. 94–455 provided that:

''(1) GENERAL RULE.—The amendments made by this part (other than by section 1065) [enacting this section and section 999 of this title and amending sections 952 and 995 of this title] apply to participation in or cooperation with an international boycott more than 30 days after the date of enactment of this Act [Oct. 4, 1976].

''(2) EXISTING CONTRACTS.—In the case of operations which constitute participation in or cooperation with an international boycott and which are carried out in accordance with the terms of a binding contract entered into before September 2, 1976, the amendments made by this part (other than by section 1065) apply to such participation or cooperation after December 31, 1977.''

§ 909. Suspension of taxes and credits until related income taken into account

(a) In general

If there is a foreign tax credit splitting event with respect to a foreign income tax paid or accrued by the taxpayer, such tax shall not be taken into account for purposes of this title before the taxable year in which the related income is taken into account under this chapter by the taxpayer.

(b) Special rules with respect to section 902 corporations

If there is a foreign tax credit splitting event with respect to a foreign income tax paid or accrued by a section 902 corporation, such tax shall not be taken into account—

(1) for purposes of section 902 or 960, or

(2) for purposes of determining earnings and profits under section 964(a),

before the taxable year in which the related income is taken into account under this chapter by such section 902 corporation or a domestic corporation which meets the ownership requirements of subsection (a) or (b) of section 902 with respect to such section 902 corporation.

(c) Special rules

For purposes of this section—

(1) Application to partnerships, etc.

In the case of a partnership, subsections (a) and (b) shall be applied at the partner level. Except as otherwise provided by the Secretary, a rule similar to the rule of the preceding sentence shall apply in the case of any S corporation or trust.

(2) Treatment of foreign taxes after suspension

In the case of any foreign income tax not taken into account by reason of subsection (a) or (b), except as otherwise provided by the Secretary, such tax shall be so taken into account in the taxable year referred to in such subsection (other than for purposes of section 986(a)) as a foreign income tax paid or accrued in such taxable year.

(d) Definitions

For purposes of this section—

(1) Foreign tax credit splitting event

There is a foreign tax credit splitting event with respect to a foreign income tax if the related income is (or will be) taken into account under this chapter by a covered person.

(2) Foreign income tax

The term ''foreign income tax'' means any income, war profits, or excess profits tax paid or accrued to any foreign country or to any possession of the United States.

(3) Related income

The term ''related income'' means, with respect to any portion of any foreign income tax, the income (or, as appropriate, earnings and profits) to which such portion of foreign income tax relates.

(4) Covered person

The term ''covered person'' means, with respect to any person who pays or accrues a foreign income tax (hereafter in this paragraph referred to as the ''payor'')—

(A) any entity in which the payor holds, directly or indirectly, at least a 10 percent ownership interest (determined by vote or value),

(B) any person which holds, directly or indirectly, at least a 10 percent ownership interest (determined by vote or value) in the payor,

(C) any person which bears a relationship to the payor described in section 267(b) or 707(b), and

(D) any other person specified by the Secretary for purposes of this paragraph.

(5) Section 902 corporation

The term ''section 902 corporation'' means any foreign corporation with respect to which one or more domestic corporations meets the ownership requirements of subsection (a) or (b) of section 902.

(e) Regulations

The Secretary may issue such regulations or other guidance as is necessary or appropriate to carry out the purposes of this section, including regulations or other guidance which provides—

(1) appropriate exceptions from the provisions of this section, and

(2) for the proper application of this section with respect to hybrid instruments.

(Added Pub. L. 111–226, title II, § 211(a), Aug. 10, 2010, 124 Stat. 2394.)

EFFECTIVE DATE

Pub. L. 111–226, title II, § 211(c), Aug. 10, 2010, 124 Stat. 2395, provided that: ''The amendments made by this section [enacting this section] shall apply to—

''(1) foreign income taxes (as defined in section 909(d) of the Internal Revenue Code of 1986, as added by this section) paid or accrued in taxable years beginning after December 31, 2010; and

''(2) foreign income taxes (as so defined) paid or accrued by a section 902 corporation (as so defined) in taxable years beginning on or before such date (and not deemed paid under section 902(a) or 960 of such Code on or before such date), but only for purposes of applying sections 902 and 960 with respect to periods after such date.

Section 909(b)(2) of the Internal Revenue Code of 1986, as added by this section, shall not apply to foreign income taxes described in paragraph (2).''

SUBPART B—EARNED INCOME OF CITIZENS OR RESIDENTS OF UNITED STATES

Sec.
911. Citizens or residents of the United States living abroad.
912. Exemption for certain allowances.
[913. Repealed.]

AMENDMENTS

1981—Pub. L. 97–34, title I, §§ 111(b)(1), 112(b)(1), Aug. 13, 1981, 95 Stat. 194, 195, substituted ''Citizens or residents of the United States living abroad'' for ''Income earned by individuals in certain camps or from charitable services'' in item 911 and struck out item 913 ''Deduction for certain expenses of living abroad''.

1980—Pub. L. 96–595, § 4(c)(2), Dec. 24, 1980, 94 Stat. 3467, inserted ''or from charitable services'' after ''camps'' in item 911.

1978—Pub. L. 95–615, §§ 202(g)(2), (3), 203(c), formerly §§ 202(f)(2), (3), 203(c), Nov. 8, 1978, 92 Stat. 3100, 3106, re-

numbered Pub. L. 96–222, title I, §108(a)(1)(A), Apr. 1, 1980, 94 Stat. 223, inserted in subpart heading ''or Residents'' after ''Citizens'', substituted in item 911 ''Income earned by individuals in certain camps'' for ''Earned income from sources without the United States'', and added item 913.

§ 911. Citizens or residents of the United States living abroad

(a) Exclusion from gross income

At the election of a qualified individual (made separately with respect to paragraphs (1) and (2)), there shall be excluded from the gross income of such individual, and exempt from taxation under this subtitle, for any taxable year—

(1) the foreign earned income of such individual, and

(2) the housing cost amount of such individual.

(b) Foreign earned income

(1) Definition

For purposes of this section—

(A) In general

The term ''foreign earned income'' with respect to any individual means the amount received by such individual from sources within a foreign country or countries which constitute earned income attributable to services performed by such individual during the period described in subparagraph (A) or (B) of subsection (d)(1), whichever is applicable.

(B) Certain amounts not included in foreign earned income

The foreign earned income for an individual shall not include amounts—

(i) received as a pension or annuity,

(ii) paid by the United States or an agency thereof to an employee of the United States or an agency thereof,

(iii) included in gross income by reason of section 402(b) (relating to taxability of beneficiary of nonexempt trust) or section 403(c) (relating to taxability of beneficiary under a nonqualified annuity), or

(iv) received after the close of the taxable year following the taxable year in which the services to which the amounts are attributable are performed.

(2) Limitation on foreign earned income

(A) In general

The foreign earned income of an individual which may be excluded under subsection (a)(1) for any taxable year shall not exceed the amount of foreign earned income computed on a daily basis at an annual rate equal to the exclusion amount for the calendar year in which such taxable year begins.

(B) Attribution to year in which services are performed

For purposes of applying subparagraph (A), amounts received shall be considered received in the taxable year in which the services to which the amounts are attributable are performed.

(C) Treatment of community income

In applying subparagraph (A) with respect to amounts received from services performed by a husband or wife which are community income under community property laws applicable to such income, the aggregate amount which may be excludable from the gross income of such husband and wife under subsection (a)(1) for any taxable year shall equal the amount which would be so excludable if such amounts did not constitute community income.

(D) Exclusion amount

(i) In general

The exclusion amount for any calendar year is the exclusion amount determined in accordance with the following table (as adjusted by clause (ii)):

For calendar year—	The exclusion amount is—
1998	$72,000
1999	74,000
2000	76,000
2001	78,000
2002 and thereafter	80,000.

(ii) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 2005, the $80,000 amount in clause (i) shall be increased by an amount equal to the product of—

(I) such dollar amount, and

(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ''2004'' for ''1992'' in subparagraph (B) thereof.

If any increase determined under the preceding sentence is not a multiple of $100, such increase shall be rounded to the next lowest multiple of $100.

(c) Housing cost amount

For purposes of this section—

(1) In general

The term ''housing cost amount'' means an amount equal to the excess of—

(A) the housing expenses of an individual for the taxable year to the extent such expenses do not exceed the amount determined under paragraph (2), over

(B) an amount equal to the product of—

(i) 16 percent of the amount (computed on a daily basis) in effect under subsection (b)(2)(D) for the calendar year in which such taxable year begins, multiplied by

(ii) the number of days of such taxable year within the applicable period described in subparagraph (A) or (B) of subsection (d)(1).

(2) Limitation

(A) In general

The amount determined under this paragraph is an amount equal to the product of—

(i) 30 percent (adjusted as may be provided under subparagraph (B)) of the amount (computed on a daily basis) in effect under subsection (b)(2)(D) for the calendar year in which the taxable year of the individual begins, multiplied by

(ii) the number of days of such taxable year within the applicable period described

in subparagraph (A) or (B) of subsection (d)(1).

(B) Regulations

The Secretary may issue regulations or other guidance providing for the adjustment of the percentage under subparagraph (A)(i) on the basis of geographic differences in housing costs relative to housing costs in the United States.

(3) Housing expenses

(A) In general

The term ''housing expenses'' means the reasonable expenses paid or incurred during the taxable year by or on behalf of an individual for housing for the individual (and, if they reside with him, for his spouse and dependents) in a foreign country. The term—

(i) includes expenses attributable to the housing (such as utilities and insurance), but

(ii) does not include interest and taxes of the kind deductible under section 163 or 164 or any amount allowable as a deduction under section 216(a).

Housing expenses shall not be treated as reasonable to the extent such expenses are lavish or extravagant under the circumstances.

(B) Second foreign household

(i) In general

Except as provided in clause (ii), only housing expenses incurred with respect to that abode which bears the closest relationship to the tax home of the individual shall be taken into account under paragraph (1).

(ii) Separate household for spouse and dependents

If an individual maintains a separate abode outside the United States for his spouse and dependents and they do not reside with him because of living conditions which are dangerous, unhealthful, or otherwise adverse, then—

(I) the words ''if they reside with him'' in subparagraph (A) shall be disregarded, and

(II) the housing expenses incurred with respect to such abode shall be taken into account under paragraph (1).

(4) Special rules where housing expenses not provided by employer

(A) In general

To the extent the housing cost amount of any individual for any taxable year is not attributable to employer provided amounts, such amount shall be treated as a deduction allowable in computing adjusted gross income to the extent of the limitation of subparagraph (B).

(B) Limitation

For purposes of subparagraph (A), the limitation of this subparagraph is the excess of—

(i) the foreign earned income of the individual for the taxable year, over

(ii) the amount of such income excluded from gross income under subsection (a) for the taxable year.

(C) 1-year carryover of housing amounts not allowed by reason of subparagraph (B)

(i) In general

The amount not allowable as a deduction for any taxable year under subparagraph (A) by reason of the limitation of subparagraph (B) shall be treated as a deduction allowable in computing adjusted gross income for the succeeding taxable year (and only for the succeeding taxable year) to the extent of the limitation of clause (ii) for such succeeding taxable year.

(ii) Limitation

For purposes of clause (i), the limitation of this clause for any taxable year is the excess of—

(I) the limitation of subparagraph (B) for such taxable year, over

(II) amounts treated as a deduction under subparagraph (A) for such taxable year.

(D) Employer provided amounts

For purposes of this paragraph, the term ''employer provided amounts'' means any amount paid or incurred on behalf of the individual by the individual's employer which is foreign earned income included in the individual's gross income for the taxable year (without regard to this section).

(E) Foreign earned income

For purposes of this paragraph, an individual's foreign earned income for any taxable year shall be determined without regard to the limitation of subparagraph (A) of subsection (b)(2).

(d) Definitions and special rules

For purposes of this section—

(1) Qualified individual

The term ''qualified individual'' means an individual whose tax home is in a foreign country and who is—

(A) a citizen of the United States and establishes to the satisfaction of the Secretary that he has been a bona fide resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year, or

(B) a citizen or resident of the United States and who, during any period of 12 consecutive months, is present in a foreign country or countries during at least 330 full days in such period.

(2) Earned income

(A) In general

The term ''earned income'' means wages, salaries, or professional fees, and other amounts received as compensation for personal services actually rendered, but does not include that part of the compensation derived by the taxpayer for personal services rendered by him to a corporation which represents a distribution of earnings or profits rather than a reasonable allowance as compensation for the personal services actually rendered.

(B) Taxpayer engaged in trade or business

In the case of a taxpayer engaged in a trade or business in which both personal

services and capital are material income-producing factors, under regulations prescribed by the Secretary, a reasonable allowance as compensation for the personal services rendered by the taxpayer, not in excess of 30 percent of his share of the net profits of such trade or business, shall be considered as earned income.

(3) Tax home

The term ''tax home'' means, with respect to any individual, such individual's home for purposes of section 162(a)(2) (relating to traveling expenses while away from home). An individual shall not be treated as having a tax home in a foreign country for any period for which his abode is within the United States.

(4) Waiver of period of stay in foreign country

Notwithstanding paragraph (1), an individual who—

(A) is a bona fide resident of, or is present in, a foreign country for any period,

(B) leaves such foreign country after August 31, 1978—

(i) during any period during which the Secretary determines, after consultation with the Secretary of State or his delegate, that individuals were required to leave such foreign country because of war, civil unrest, or similar adverse conditions in such foreign country which precluded the normal conduct of business by such individuals, and

(ii) before meeting the requirements of such paragraph (1), and

(C) establishes to the satisfaction of the Secretary that such individual could reasonably have been expected to have met such requirements but for the conditions referred to in clause (i) of subparagraph (B),

shall be treated as a qualified individual with respect to the period described in subparagraph (A) during which he was a bona fide resident of, or was present in, the foreign country, and in applying subsections (b)(2)(A), (c)(1)(B)(ii), and (c)(2)(A)(ii) with respect to such individual, only the days within such period shall be taken into account.

(5) Test of bona fide residence

If—

(A) an individual who has earned income from sources within a foreign country submits a statement to the authorities of that country that he is not a resident of that country, and

(B) such individual is held not subject as a resident of that country to the income tax of that country by its authorities with respect to such earnings,

then such individual shall not be considered a bona fide resident of that country for purposes of paragraph (1)(A).

(6) Denial of double benefits

No deduction or exclusion from gross income under this subtitle or credit against the tax imposed by this chapter (including any credit or deduction for the amount of taxes paid or accrued to a foreign country or possession of the United States) shall be allowed to the extent such deduction, exclusion, or credit is properly allocable to or chargeable against amounts excluded from gross income under subsection (a).

(7) Aggregate benefit cannot exceed foreign earned income

The sum of the amount excluded under subsection (a) and the amount deducted under subsection (c)(4)(A) for the taxable year shall not exceed the individual's foreign earned income for such year.

(8) Limitation on income earned in restricted country

(A) In general

If travel (or any transaction in connection with such travel) with respect to any foreign country is subject to the regulations described in subparagraph (B) during any period—

(i) the term ''foreign earned income'' shall not include any income from sources within such country attributable to services performed during such period,

(ii) the term ''housing expenses'' shall not include any expenses allocable to such period for housing in such country or for housing of the spouse or dependents of the taxpayer in another country while the taxpayer is present in such country, and

(iii) an individual shall not be treated as a bona fide resident of, or as present in, a foreign country for any day during which such individual was present in such country during such period.

(B) Regulations

For purposes of this paragraph, regulations are described in this subparagraph if such regulations—

(i) have been adopted pursuant to the Trading With the Enemy Act (50 U.S.C. App. 1 et seq.), or the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), and

(ii) include provisions generally prohibiting citizens and residents of the United States from engaging in transactions related to travel to, from, or within a foreign country.

(C) Exception

Subparagraph (A) shall not apply to any individual during any period in which such individual's activities are not in violation of the regulations described in subparagraph (B).

(9) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations providing rules—

(A) for cases where a husband and wife each have earned income from sources outside the United States, and

(B) for married individuals filing separate returns.

(e) Election

(1) In general

An election under subsection (a) shall apply to the taxable year for which made and to all

subsequent taxable years unless revoked under paragraph (2).

(2) Revocation

A taxpayer may revoke an election made under paragraph (1) for any taxable year after the taxable year for which such election was made. Except with the consent of the Secretary, any taxpayer who makes such a revocation for any taxable year may not make another election under this section for any subsequent taxable year before the 6th taxable year after the taxable year for which such revocation was made.

(f) Determination of tax liability

(1) In general

If, for any taxable year, any amount is excluded from gross income of a taxpayer under subsection (a), then, notwithstanding sections 1 and 55—

(A) if such taxpayer has taxable income for such taxable year, the tax imposed by section 1 for such taxable year shall be equal to the excess (if any) of—

(i) the tax which would be imposed by section 1 for such taxable year if the taxpayer's taxable income were increased by the amount excluded under subsection (a) for such taxable year, over

(ii) the tax which would be imposed by section 1 for such taxable year if the taxpayer's taxable income were equal to the amount excluded under subsection (a) for such taxable year, and

(B) if such taxpayer has a taxable excess (as defined in section 55(b)(1)(A)(ii)) for such taxable year, the amount determined under the first sentence of section 55(b)(1)(A)(i) for such taxable year shall be equal to the excess (if any) of—

(i) the amount which would be determined under such sentence for such taxable year (subject to the limitation of section 55(b)(3)) if the taxpayer's taxable excess (as so defined) were increased by the amount excluded under subsection (a) for such taxable year, over

(ii) the amount which would be determined under such sentence for such taxable year if the taxpayer's taxable excess (as so defined) were equal to the amount excluded under subsection (a) for such taxable year.

(2) Special rules

(A) Regular tax

In applying section 1(h) for purposes of determining the tax under paragraph (1)(A)(i) for any taxable year in which, without regard to this subsection, the taxpayer's net capital gain exceeds taxable income (hereafter in this subparagraph referred to as the capital gain excess)—

(i) the taxpayer's net capital gain (determined without regard to section 1(h)(11)) shall be reduced (but not below zero) by such capital gain excess,

(ii) the taxpayer's qualified dividend income shall be reduced by so much of such capital gain excess as exceeds the taxpayer's net capital gain (determined without regard to section 1(h)(11) and the reduction under clause (i)), and

(iii) adjusted net capital gain, unrecaptured section 1250 gain, and 28-percent rate gain shall each be determined after increasing the amount described in section 1(h)(4)(B) by such capital gain excess.

(B) Alternative minimum tax

In applying section 55(b)(3) for purposes of determining the tax under paragraph (1)(B)(i) for any taxable year in which, without regard to this subsection, the taxpayer's net capital gain exceeds the taxable excess (as defined in section 55(b)(1)(A)(ii))—

(i) the rules of subparagraph (A) shall apply, except that such subparagraph shall be applied by substituting ''the taxable excess (as defined in section 55(b)(1)(A)(ii))'' for ''taxable income'', and

(ii) the reference in section 55(b)(3)(B) to the excess described in section 1(h)(1)(B) shall be treated as a reference to such excess as determined under the rules of subparagraph (A) for purposes of determining the tax under paragraph (1)(A)(i).

(C) Definitions

Terms used in this paragraph which are also used in section 1(h) shall have the respective meanings given such terms by section 1(h), except that in applying subparagraph (B) the adjustments under part VI of subchapter A shall be taken into account.

(g) Cross references

For administrative and penal provisions relating to the exclusions provided for in this section, see sections 6001, 6011, 6012(c), and the other provisions of subtitle F.

(Aug. 16, 1954, ch. 736, 68A Stat. 289; Pub. L. 85–866, title I, §72(b), Sept. 2, 1958, 72 Stat. 1660; Pub. L. 87–834, §11(a), Oct. 16, 1962, 76 Stat. 1003; Pub. L. 88–272, title II, §237(a), Feb. 26, 1964, 78 Stat. 128; Pub. L. 89–809, title I, §105(e)(3), Nov. 13, 1966, 80 Stat. 1567; Pub. L. 94–455, title X, §1011(a), (b), title XIX, §§1901(a)(115), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1610, 1784, 1834; Pub. L. 95–30, title I, §102(b)(12), May 23, 1977, 91 Stat. 138; Pub. L. 95–600, title IV, §401(b)(4), title VII, §§701(u)(10)(A), 703(e), Nov. 6, 1978, 92 Stat. 2867, 2917, 2939; Pub. L. 95–615, title II, §202(a)–(e), (g)(1), formerly §202(a)–(f)(1), Nov. 8, 1978, 92 Stat. 3098–3100, renumbered §202(a)–(e), (g)(1), and amended Pub. L. 96–222, title I, §§107(a)(3)(B), 108(a)(1)(A), (C), (D), Apr. 1, 1980, 94 Stat. 223, 224; Pub. L. 96–595, §4(a)–(c)(1), Dec. 24, 1980, 94 Stat. 3466, 3467; Pub. L. 97–34, title I, §111(a), Aug. 13, 1981, 95 Stat. 190; Pub. L. 97–448, title I, §101(c), Jan. 12, 1983, 96 Stat. 2366; Pub. L. 98–369, div. A, title I, §17, July 18, 1984, 98 Stat. 505; Pub. L. 99–514, title XII, §1233(a), (b), Oct. 22, 1986, 100 Stat. 2564; Pub. L. 105–34, title XI, §1172(a), Aug. 5, 1997, 111 Stat. 988; Pub. L. 109–222, title V, §515(a)–(c), May 17, 2006, 120 Stat. 367; Pub. L. 110–172, §4(c), Dec. 29, 2007, 121 Stat. 2476.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

REFERENCES IN TEXT

The Trading With the Enemy Act, referred to in subsec. (d)(8)(B)(i), is act Oct. 6, 1917, ch. 106, 40 Stat. 411, as amended, which is classified to sections 1 to 6, 7 to 39, and 41 to 44 of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see Tables.

The International Emergency Economic Powers Act, referred to in subsec. (d)(8)(B)(i), is Pub. L. 95–223, title II, Dec. 28, 1977, 91 Stat. 1626, which is classified generally to chapter 35 (§1701 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 50 and Tables.

AMENDMENTS

2007—Subsec. (f). Pub. L. 110–172 amended heading and text generally, substituting provisions relating to determination of tax liability, special rules for determining regular tax and alternative minimum tax, and definitions for former provisions relating to determination of tax liability and tentative minimum tax.

2006—Subsec. (b)(2)(D)(ii). Pub. L. 109–222, §515(a)(1), substituted ''2005'' for ''2007'' in introductory provisions.

Subsec. (b)(2)(D)(ii)(II). Pub. L. 109–222, §515(a)(2), substituted ''2004'' for ''2006''.

Subsec. (c)(1)(A). Pub. L. 109–222, §515(b)(2)(A), inserted ''to the extent such expenses do not exceed the amount determined under paragraph (2)'' after ''the taxable year''.

Subsec. (c)(1)(B)(i). Pub. L. 109–222, §515(b)(1), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''16 percent of the salary (computed on a daily basis) of an employee of the United States who is compensated at a rate equal to the annual rate paid for step 1 of grade GS–14, multiplied by''.

Subsec. (c)(2) to (4). Pub. L. 109–222, §515(b)(2)(B), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (d)(4). Pub. L. 109–222, §515(b)(2)(C)(i), substituted '', (c)(1)(B)(ii), and (c)(2)(A)(ii)'' for ''and (c)(1)(B)(ii)'' in concluding provisions.

Subsec. (d)(7). Pub. L. 109–222, §515(b)(2)(C)(ii), which directed substitution of ''subsection (c)(4)'' for ''subsection (c)(3)'', was executed by substituting ''subsection (c)(4)(A)'' for ''subsection (c)(3)(A)'' to reflect the probable intent of Congress.

Subsecs. (f), (g). Pub. L. 109–222, §515(c), added subsec. (f) and redesignated former subsec. (f) as (g).

1997—Subsec. (b)(2)(A). Pub. L. 105–34, §1172(a)(1), substituted ''equal to the exclusion amount for the calendar year in which such taxable year begins'' for ''of $70,000''.

Subsec. (b)(2)(D). Pub. L. 105–34, §1172(a)(2), added subpar. (D).

1986—Subsec. (b)(2)(A). Pub. L. 99–514, §1233(a), in amending subpar. (A) generally, substituted ''an annual rate of $70,000'' for ''the annual rate set forth in the following table for each day of the taxable year within the applicable period described in subparagraph (A) or (B) of subsection (d)(1):

''In the case of taxable years beginning in:	**The annual rate is:**
1983, 1984, 1985, 1986, or 1987	$80,000
1988	85,000
1989	90,000
1990 and thereafter	95,000.''

Subsec. (d)(8), (9). Pub. L. 99–514, §1233(b), added par. (8) and redesignated former par. (8) as (9).

1984—Subsec. (b)(2)(A). Pub. L. 98–369 amended table by striking out item which set the annual rate at $75,000 for taxable years beginning in 1982, substituted item setting the annual rate at $80,000 for taxable years beginning in 1983, 1984, 1985, 1986, or 1987 for items which had set annual rates of $80,000 for taxable years beginning in 1983, $85,000 for taxable years beginning in 1984, $90,000 for taxable years beginning in 1985, and $95,000 for taxable years beginning in 1986 and thereafter, and added items setting annual rates of $85,000 for taxable years beginning in 1988, $90,000 for taxable years beginning in 1989, and $95,000 for taxable years beginning in 1990 and thereafter.

1983—Subsec. (c)(3)(B)(ii). Pub. L. 97–448, §101(c)(2), substituted ''subsection (a)'' for ''subsection (a)(1)''.

Subsec. (d)(7), (8). Pub. L. 97–448, §101(c)(1), added par. (7) and redesignated former par. (7) as (8).

1981—Pub. L. 97–34 amended section generally, modifying the eligibility standards of existing law, replacing the existing system of deduction for excess living costs with an exclusion of a portion of foreign earned income, and providing for an individual's election to exclude a portion of his income or to deduct an amount for housing, based on his housing expenses.

1980—Pub. L. 96–595 §4(c)(1), inserted ''or from charitable services'' after ''camps'' in section catchline.

Subsec. (a). Pub. L. 96–595, §4(a), inserted ''or who performs qualified charitable services in a lesser developed country,'' after ''hardship area''.

Pub. L. 96–222, §108(a)(1)(C), (D), substituted ''a foreign country or'' for ''qualified foreign'' in par. (2) and, in provisions following par. (2), substituted ''his gross income any deduction,'' for ''his gross income'' and ''other than the deduction allowed by section 217'' for ''other than the deductions allowed by sections 217''.

Subsec. (c)(1)(A). Pub. L. 96–595, §4(b)(1), substituted ''Dollar limitations'' for ''In general'' in heading, redesignated existing provisions as cl. (i), and in cl. (i) as so redesignated, inserted ''Camp residents—In the case of an individual who resides in a camp located in a hardship area'' before ''the amount excluded'', and added cls. (ii) and (iii).

Subsec. (c)(1)(D), (E). Pub. L. 96–595, §4(b)(2), added subpars. (D) and (E).

1978—Pub. L. 95–615, §202(f)(1), substituted ''Income earned by individuals in certain camps'' for ''Earned income from sources without the United States'' in section catchline.

Subsec. (a). Pub. L. 95–615, §202(a), in introductory provisions inserted reference to an individual described in section 913(a) who, because of his employment, resides in a camp located in a hardship area, in par. (1) substituted reference to amounts received from sources within a foreign country or countries for reference to amounts received from sources without the United States, in par. (2) substituted reference to amounts received from sources within qualified foreign countries for reference to amounts received from sources without the United States, and in provisions following par. (2) struck out ''any deductions (other than those allowed by section 151, relating to personal exemptions),'' after ''deduction from his gross income'' and inserted '', other than the deductions allowed by sections 217 (relating to moving expenses)'' after ''subsection''.

Pub. L. 95–600, §701(u)(10)(A), inserted provisions setting forth formula for determining amount of reduction of taxes, and struck out provisions relating to the credit against taxes.

Subsec. (c)(1)(A). Pub. L. 95–615, §202(b), substituted ''The amount excluded'' for ''Except as provided in subparagraphs (B) and (C), the amount excluded'' and ''an annual rate of $20,000 for days during which he resides in a camp'' for ''an annual rate of $15,000''.

Subsec. (c)(1)(B). Pub. L. 95–615, §202(b), substituted provisions relating to conditions upon which an individual will be considered to reside in a camp because of his employment for provisions which related to the amount excluded from the gross income of an individual performing qualified charitable services.

Subsec. (c)(1)(C). Pub. L. 95–615, §202(b), substituted provisions relating to definition of ''hardship area'' for provisions which related to the amount excluded from the gross income of an individual performing both qualified charitable services and other services.

Subsec. (c)(1)(D). Pub. L. 95–615, §202(b), struck out subpar. (D) which defined ''qualified charitable services''.

Subsec. (c)(7). Pub. L. 95–615, §202(c), added par. (7).

Pub. L. 95–600, § 703(e), redesignated former par. (8) as (7). Such par. (8) was subsequently repealed by section 202(e) of Pub. L. 95–615 without taking into account the redesignation of par. (8) as (7) by Pub. L. 95–600. See 1978 Amendment note for subsec. (c)(8) below.

Subsec. (c)(8). Pub. L. 95–615, § 202(e), struck out par. (8) which related to the nonexclusion under subsec. (a) of any amount attributable to services performed in a foreign country or countries if such amount was received outside of the foreign country or countries where such services were performed and if one of the purposes was the avoidance of any tax imposed by such foreign country or countries on such amount.

Subsec. (d). Pub. L. 95–615, § 202(d)(1), redesignated subsec. (e) as (d), inserted ''for the taxable year'' after ''section apply'', and struck out provision that an election was applicable to the taxable year for which made and to all subsequent taxable years. Former subsec. (d), which related to the computation of tax imposed by section 1 or section 1201 if an individual earned income which was excluded from gross income under subsec. (a) and which defined ''net taxable income'' and ''net excluded earned income'', was struck out.

Subsec. (d)(1). Pub. L. 95–600, § 401(b)(4), struck out provisions respecting applicability of section 1201 of this title.

Subsecs. (e), (f). Pub. L. 95–615, § 202(d)(1), (2), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

1977—Subsec. (d)(1)(B). Pub. L. 95–30 substituted ''on the sum of (i) the amount of net excluded earned income, and (ii) the zero bracket amount'' for ''on the amount of net excluded earned income''.

1976—Subsec. (a). Pub. L. 94–455, §§ 1011(b)(1), 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' in par. (1), and in provisions following par. (2), inserted ''or as a credit against the tax imposed by this chapter any credit for the amount of taxes paid or accrued to a foreign country or possession of the United States, to the extent that such deductions or credit is'' after ''personal exemptions)''.

Subsec. (b). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(1). Pub. L. 94–455, § 1011(a), reduced the amount excludable from individual's gross income from $20,000 to $15,000 and $20,000 for employees of charitable organizations, added special rule to be applied to income from charitable sources and other sources combined, inserted definition of ''qualified charitable services'', and struck out provisions relating to $25,000 exclusion for individual who has been a bona fide resident in a foreign country for an uninterrupted period of 3 years.

Subsec. (c)(7). Pub. L. 94–455, § 1901(a)(115), struck out par. (7) relating to certain noncash remuneration from sources outside the United States.

Subsec. (c)(8). Pub. L. 94–455, § 1011(b)(2), added par. (8).

Subsecs. (d) to (f). Pub. L. 94–455, § 1011(b)(3), added subsecs. (d) and (e) and redesignated former subsec. (d) as (f).

1966—Subsec. (d). Pub. L. 89–809 designated existing text as par. (1) and added par. (2).

1964—Subsec. (c)(1)(B). Pub. L. 88–272 substituted ''$25,000'' for ''$35,000''.

1962—Subsec. (a). Pub. L. 87–834 substituted ''which constitute earned income attributable to services performed during such uninterrupted period'' for ''if such amounts constitute earned income (as defined in subsection (b)) attributable to such period'' in par. (1), and ''which constitute earned income attributable to services performed during such 18-month period'' for ''if such amounts constitute earned income (as defined in subsection (b)) attributable to such period'' in par. (2), inserted provisions in pars. (1) and (2) requiring the amount excluded under such paragraphs to be computed by applying the special rules contained in subsec. (c), and eliminated provisions from par. (2) which limited the amount excluded under such paragraph to not more than $20,000 if the 18-month period includes the entire taxable year, and to not more than an amount which bears the same ratio to $20,000 as the number of days in the part of the taxable year within the 18-month period bears to the total number of days in such year if the 18-month period does not include the entire taxable year.

Subsecs. (c) and (d). Pub. L. 87–834 added subsec. (c) and redesignated former subsec. (c) as (d).

1958—Subsec. (c). Pub. L. 85–866 added subsec. (c).

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provisions of the Tax Increase Prevention and Reconciliation Act of 2005, Pub. L. 109–222, to which such amendment relates, with certain exceptions, see section 4(d) of Pub. L. 110–172, set out as a note under section 355 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–222, title V, § 515(d), May 17, 2006, 120 Stat. 368, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2005.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1172(b) of Pub. L. 105–34 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1233(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years ending after Dec. 31, 1983, see section 18(a) of Pub. L. 98–369, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 115 of subtitle B (§§ 111–115) of title I of Pub. L. 97–34 provided that: ''The amendments made by this subtitle [amending this section and sections 37, 43, 62, 63, 105, 119, 410, 879, 1034, 1302, 1303, 1304, 1402, 3401, 6012, and 6091 of this title and repealing section 913 of this title] (other than section 114 [amending section 208 of Pub. L. 95–615, set out below]) shall apply with respect to taxable years beginning after December 31, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 4(d) of Pub. L. 96–595 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1978.''

Amendment by section 107(a)(3)(B) of Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

Amendment by section 108(a)(1)(A), (C), (D) of Pub. L. 96–222 effective as if included in the Foreign Earned Income Act of 1978, Pub. L. 95–615, see section 108(a)(2)(A) of Pub. L. 96–222, set out as a note under section 3 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 401(b)(4) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978,

see section 401(c) of Pub. L. 95–600, set out as a note under section 1201 of this title.

Section 701(u)(10)(B) of Pub. L. 95–600, as amended by Pub. L. 96–222, title I, §107(a)(1)(B), Apr. 1, 1980, 94 Stat. 222, provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to taxable years beginning in calendar year 1978 but only in the case of taxpayers who make an election under section 209(c) of the Foreign Earned Income Act of 1978 [section 209(c) of Pub. L. 95–615, set out below].''

Amendment by section 703(e) of Pub. L. 95–600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT; ELECTION OF PRIOR LAW

Section 209 of Pub. L. 95–615 provided that:

''(a) GENERAL RULE.—Except as provided in subsections (b) and (c), the amendments made by this title [see section 201(a) of Pub. L. 95–615, set out as a Short Title of 1978 Amendment note under section 1 of this title] shall apply to taxable years beginning after December 31, 1977.

''(b) WAGE WITHHOLDING.—The amendment made by section 207(a) [amending section 3401 of this title] shall apply to remuneration paid after the date of the enactment of this Act. [Nov. 8, 1978].

''(c) ELECTION OF PRIOR LAW.—

''(1) A taxpayer may elect not to have the amendments made by this title [see section 201(a) of Pub. L. 95–615, set out as a Short Title of 1978 Amendment note under section 1 of this title] apply with respect to any taxable year beginning after December 31, 1977, and before January 1, 1979.

''(2) An election under this subsection shall be filed with a taxpayer's timely filed return for the first taxable year beginning after December 31, 1977.''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1011(d) of Pub. L. 94–455, as amended by Pub. L. 95–30, title III, §302, May 23, 1977, 91 Stat. 152; Pub. L. 95–615, §4(a), Nov. 8, 1978, 92 Stat. 3097, provided that: ''The amendments made by this section [amending this section and section 36 of this title] shall apply to taxable years beginning after December 31, 1977.''

Amendment by section 1901(a)(115) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 237(b) of Pub. L. 88–272 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1964.''

EFFECTIVE DATE OF 1962 AMENDMENT

Section 11(c)(1) of Pub. L. 87–834 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after September 4, 1962, but only with respect to amounts—

''(A) received after March 12, 1962, which are attributable to services performed after December 31, 1962, or

''(B) received after December 31, 1962, which are attributable to services performed on or before December 31, 1962, unless on March 12, 1962, there existed a right (whether forfeitable or nonforfeitable) to receive such amounts.''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1957, see section 72(c) of Pub. L. 85–866 set out as a note under section 6012 of this title.

REPEALS

Section 703(e) of Pub. L. 95–600, cited as a credit to this section, was repealed by Pub. L. 96–222, title I, §107(a)(3)(B), Apr. 1, 1980, 94 Stat. 223. See 1978 Amendment note for subsec. (c)(7) of this section set out above.

TREATMENT OF CERTAIN PERSONS IN PANAMA

Section 1232(a) of Pub. L. 99–514 provided that: ''Nothing in the Panama Canal Treaty (or in any agreement implementing such Treaty) shall be construed as exempting (in whole or in part) any citizen or resident of the United States from any tax under the Internal Revenue Code of 1954 or 1986. The preceding sentence shall apply to all taxable years whether beginning before, on, or after the date of the enactment of this Act [Oct. 22, 1986] (or in the case of any tax not imposed with respect to a taxable year, to taxable events after the date of enactment of this Act.)''

TAXABLE YEARS BEGINNING IN 1977 OR 1978; INDIVIDUALS WHO LEAVE FOREIGN COUNTRY AFTER AUGUST 31, 1978

Rules similar to the rules of section 913(j)(4) of this title to apply for the purposes of applying this section for taxable years beginning in 1977 or 1978 in the case of an individual who leaves a foreign country after Aug. 31, 1978, see section 1(b) of Pub. L. 96–608, set out as an Effective Date of 1980 Amendment note under section 913 of this title.

INDIVIDUALS FOR WHOM UNUSED ZERO BRACKET AMOUNT COMPUTATION IS PROVIDED FOR TAXABLE YEARS BEGINNING IN 1977

Section 4(b) of Pub. L. 95–615, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''If for any taxable year beginning in 1977—

''(1) an individual is entitled to the benefits of section 911 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], and

''(2) such individual chooses to take to any extent the benefits of section 901 of such Code,

then such individual shall be treated for such taxable year as an individual for whom an unused zero bracket amount computation is provided by section 63(e) of such Code.''

REPORTS TO CONGRESSIONAL COMMITTEES; INFORMATION FROM FEDERAL AGENCIES

Section 208 of Pub. L. 95–615, as amended by Pub. L. 97–34, title I, §114, Aug. 13, 1981, 95 Stat. 195; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 101–508, title XI, §11833, Nov. 5, 1990, 104 Stat. 1388–560, provided that:

''(a) GENERAL RULE.—As soon as practicable after December 31, 1993, and as soon as practicable after the close of each fifth calendar year thereafter, the Secretary of the Treasury shall transmit a report to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate on the operation and effects of sections 911 and 912 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

''(b) INFORMATION FROM FEDERAL AGENCIES.—Each agency of the Federal Government which pays allowances excludable from gross income under section 912 of such Code shall keep such records and furnish to the Secretary of the Treasury such information as he determines to be necessary to carry out his responsibility under subsection (a).''

§ 912. Exemption for certain allowances

The following items shall not be included in gross income, and shall be exempt from taxation under this subtitle:

(1) Foreign areas allowances

In the case of civilian officers and employees of the Government of the United States, amounts received as allowances or otherwise (but not amounts received as post differentials) under—

(A) chapter 9 of title I of the Foreign Service Act of 1980,

(B) section 4 of the Central Intelligence Agency Act of 1949, as amended (50 U.S.C., sec. 403e),

(C) title II of the Overseas Differentials and Allowances Act, or

(D) subsection (e) or (f) of the first section of the Administrative Expenses Act of 1946, as amended, or section 22 of such Act.

(2) Cost-of-living allowances

In the case of civilian officers or employees of the Government of the United States stationed outside the continental United States (other than Alaska), amounts (other than amounts received under title II of the Overseas Differentials and Allowances Act) received as cost-of-living allowances in accordance with regulations approved by the President (or in the case of judicial officers or employees of the United States, in accordance with rules similar to such regulations).

(3) Peace Corps allowances

In the case of an individual who is a volunteer or volunteer leader within the meaning of the Peace Corps Act and members of his family, amounts received as allowances under section 5 or 6 of the Peace Corps Act other than amounts received as—

(A) termination payments under section 5(c) or section 6(1) of such Act,

(B) leave allowances,

(C) if such individual is a volunteer leader training in the United States, allowances to members of his family, and

(D) such portion of living allowances as the President may determine under the Peace Corps Act as constituting basic compensation.

(Aug. 16, 1954, ch. 736, 68A Stat. 290; Pub. L. 86–707, title V, § 523(a), Sept. 6, 1960, 74 Stat. 802; Pub. L. 87–293, title II, § 201(a), Sept. 22, 1961, 75 Stat. 625; Pub. L. 96–465, title II, § 2206(e)(3), Oct. 17, 1980, 94 Stat. 2163; Pub. L. 100–647, title VI, § 6137(a), Nov. 10, 1988, 102 Stat. 3723.)

REFERENCES IN TEXT

The Foreign Service Act of 1980, referred to in par. (1)(A), is Pub. L. 96–465, Oct. 17, 1980, 94 Stat. 2071, as amended. Chapter 9 of title I of the Foreign Service Act of 1980 is classified generally to subchapter IX (§ 4081 et seq.) of chapter 52 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of Title 22 and Tables.

Title II of the Overseas Differentials and Allowances Act, referred to in pars. (1)(C) and (2), was title II of Pub. L. 86–707, Sept. 6, 1960, 74 Stat. 793, which was repealed and reenacted as sections 5922 to 5925 of Title 5, Government Organization and Employees, by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378.

Sections 1(e) and (f) and 22 of the Administrative Expenses Act of 1946, referred to in par. (1)(D), were repealed and the provisions thereof reenacted as sections 5726(b), 5727(b) to (e), and 5913 of Title 5, by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378.

The Peace Corps Act, referred to in par. (3), is Pub. L. 87–293, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§ 2501 et seq.) of Title 22, Foreign Relations and Intercourse. Sections 5 and 6 of that act are classified to sections 2504 and 2505 of Title 22. For complete classification of this act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

AMENDMENTS

1988—Par. (2). Pub. L. 100–647 inserted ''(or in the case of judicial officers or employees of the United States, in accordance with rules similar to such regulations)'' after ''President''.

1980—Par. (1)(A). Pub. L. 96–465 substituted reference to chapter 9 of title I of the Foreign Service Act of 1980 for reference to title IX of the Foreign Service Act of 1946.

1961—Par. (3). Pub. L. 87–293 added par. (3).

1960—Pub. L. 86–707 exempted foreign areas allowances received under section 4 of the Central Intelligence Agency Act of 1949, title II of the Overseas Differentials and Allowances Act, subsection (e) or (f) of the first section of the Administrative Expenses Act of 1946, or section 22 of such Act, provided that amounts received as post differentials shall not be exempt and in provisions relating to cost-of-living allowances excluded Alaska from term ''continental United States'' and amounts received under title II of the Overseas Differentials and Allowances Act.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 6137(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to allowances received after October 12, 1987, in taxable years ending after such date.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96–465, set out as an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1961 AMENDMENTS

Section 201(d) of Pub. L. 87–293 provided that: ''The amendments made by subsections (a) and (b) of this section [amending this section and section 1303 of this title] shall apply with respect to taxable years ending after March 1, 1961. The amendment made by subsection (c) [amending section 3401 of this title] shall apply with respect to remuneration paid after the date of the enactment of this Act [Sept. 22, 1961].''

[Section 201(d) of Pub. L. 87–293 was repealed by Pub. L. 89–572, § 5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments contained in such provisions, see sections 5(b) of Pub. L. 89–572, set out as a note under former section 2515 of Title 22, Foreign Relations and Intercourse.]

EFFECTIVE DATE OF 1960 AMENDMENT

Section 523(b) of Pub. L. 86–707, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Paragraphs (1) and (2) of section 912 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended by subsection (a) of this section, shall apply only with respect to amounts received on or after the date of the enactment of this Act [Sept. 6, 1960] in taxable years ending on or after such date.''

REPEALS; AMENDMENTS AND APPLICATION OF AMENDMENTS UNAFFECTED

Section 201(a) of Pub. L. 87–293, cited as a credit to this section, was repealed by Pub. L. 89–572, § 5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments to this section contained in such provisions, and continuation in full force and effect until modified by appropriate authority of all determinations, authorization, regulations, orders, contracts,

agreements, and other actions issued undertaken, or entered into under authority of the repealed provisions, see section 5(b) of Pub. L. 89–572, set out as a note under former section 2515 of Title 22, Foreign Relations and Intercourse.

DELEGATION OF FUNCTIONS

Function of determining the portion of living allowances constituting basic compensation for Peace Corps volunteers or volunteer leaders under par. (3) of this section delegated by President to Director of Peace Corps to be performed in consultation with the Secretary of the Treasury, see section 1–104 of Ex. Ord. No. 12137, May 16, 1979, 44 F.R. 29023, set out as a note under section 2501 of Title 22, Foreign Relations and Intercourse.

Authority of President under par. (2) of this section delegated to Secretary of Defense with respect to military departments, and to Secretary of Transportation with respect to Coast Guard when it is not operating as a service in the Navy, concerning civilian employees of nonappropriated fund instrumentalities of the armed forces, see section 201 of Ex. Ord. No. 11137, Jan. 7, 1964, as amended, set out as a note under section 5921 of Title 5, Government Organization and Employees.

TREATMENT OF EMPLOYEES OF PANAMA CANAL COMMISSION AND DEPARTMENT OF DEFENSE

Pub. L. 99–514, title XII, §1232(b), Oct. 22, 1986, 100 Stat. 2564, provided that: ''Employees of the Panama Canal Commission and civilian employees of the Defense Department of the United States stationed in Panama may exclude from gross income allowances which are comparable to the allowances excludable under section 912(1) of the Internal Revenue Code of 1986 by employees of the State Department of the United States stationed in Panama. The preceding sentence shall apply to taxable years beginning after December 31, 1986.''

[§ 913. Repealed. Pub. L. 97–34, title I, § 112(a), Aug. 13, 1981, 95 Stat. 194]

Section, added Pub. L. 95–615, title II, §203(a), Nov. 8, 1978, 92 Stat. 3100; amended Pub. L. 96–222, title I, §108(a)(1)(B), (F), Apr. 1, 1980. 94 Stat. 223, 225; Pub. L. 96–608, §1(a), Dec. 28, 1980, 94 Stat. 3550, related to a deduction for certain expenses of living abroad.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to taxable years beginning after Dec. 31, 1981, see section 115 of Pub. L. 97–34, set out as an Effective Date of 1981 Amendment note under section 911 of this title.

[SUBPART C—REPEALED]

[§§ 921 to 927. Repealed. Pub. L. 106–519, § 2, Nov. 15, 2000, 114 Stat. 2423]

Section 921, added Pub. L. 98–369, div. A, title VIII, §801(a), July 18, 1984, 98 Stat. 985, provided for exclusion from gross income of exempt foreign trade income.

A prior section 921, acts Aug. 16, 1954, ch. 736, 68A Stat. 290; Oct. 4, 1976, Pub. L. 94–455, title XIX, §1901(a)(116), 90 Stat. 1784, defined Western Hemisphere trade corporation, prior to repeal by Pub. L. 94–455, title X, §1052(b), Oct. 4, 1976, 90 Stat. 1648, effective with respect to taxable years beginning after Dec. 31, 1979.

Section 922, added Pub. L. 98–369, div. A, title VIII, §801(a), July 18, 1984, 98 Stat. 986, defined FSC's.

A prior section 922, acts Aug. 16, 1954, ch. 736, 68A Stat. 291; Dec. 10, 1971, Pub. L. 92–178, title V, §502(c), 85 Stat. 550; Oct. 4, 1976, Pub. L. 94–455, title X, §1052(a), (c)(1), 90 Stat. 1647, 1648; Nov. 6, 1978, Pub. L. 95–600, title III, §301(b)(15), 92 Stat. 2822, related to a special deduction for a Western Hemisphere trade corporation, prior to repeal by Pub. L. 94–455, title X, §1052(b), Oct. 4, 1976, 90 Stat. 1648, effective with respect to taxable years beginning after Dec. 31, 1979.

Section 923, added Pub. L. 98–369, div. A, title VIII, §801(a), July 18, 1984, 98 Stat. 986; amended Pub. L. 99–514, title XVIII, §1876(b)(3), Oct. 22, 1986, 100 Stat. 2898, related to exempt foreign trade income.

Section 924, added Pub. L. 98–369, div. A, title VIII, §801(a), July 18, 1984, 98 Stat. 987; amended Pub. L. 99–514, title XVIII, §1876(e)(2), (*l*), Oct. 22, 1986, 100 Stat. 2899, 2901, related to foreign trading gross receipts.

Section 925, added Pub. L. 98–369, div. A, title VIII, §801(a), July 18, 1984, 98 Stat. 990, related to transfer pricing rules.

Section 926, added Pub. L. 98–369, div. A, title VIII, §801(a), July 18, 1984, 98 Stat. 991, related to distributions to shareholders.

Section 927, added Pub. L. 98–369, div. A, title VIII, §801(a), July 18, 1984, 98 Stat. 991; amended Pub. L. 99–514, title XVIII, §1876(a)(1), (e)(1), (f)(1), (p)(5), Oct. 22, 1986, 100 Stat. 2897, 2899, 2902; Pub. L. 100–647, title I, §1012(bb)(8)(A), Nov. 10, 1988, 102 Stat. 3536; Pub. L. 101–508, title XI, §11704(a)(10), Nov. 5, 1990, 104 Stat. 1388–518; Pub. L. 103–66, title XIII, §13239(a), Aug. 10, 1993, 107 Stat. 509; Pub. L. 105–34, title XI, §1171(a), Aug. 5, 1997, 111 Stat. 987, related to other definitions and special rules.

EFFECTIVE DATE OF REPEAL

Repeal applicable to transactions after Sept. 30, 2000, with special rules relating to existing foreign sales corporations, see section 5 of Pub. L. 106–519, set out as an Effective Date of 2000 Amendments note under section 56 of this title.

SUBPART D—POSSESSIONS OF THE UNITED STATES

Sec.

931. Income from sources within Guam, American Samoa, or the Northern Mariana Islands.
932. Coordination of United States and Virgin Islands income taxes.
933. Income from sources within Puerto Rico.
934. Limitation on reduction in income tax liability incurred to the Virgin Islands.
[934A, 935. Repealed.]
936. Puerto Rico and possession tax credit.[1]
937. Residence and source rules involving possessions.

AMENDMENTS

2004—Pub. L. 108–357, title VIII, §908(c)(6), Oct. 22, 2004, 118 Stat. 1657, added item 937.

1986—Pub. L. 99–514, title XII, §§1272(d)(12), 1274(d), 1275(c)(8), Oct. 22, 1986, 100 Stat. 2595, 2598, 2599, substituted ''Guam, American Samoa, or the Northern Mariana Islands'' for ''possessions of the United States'' in item 931, added item 932, and struck out former item 932 ''Citizens of possessions of the United States'', item 934A ''Income tax rate on Virgin Islands source income'' and item 935 ''Coordination of United States and Guam individual income taxes''.

1983—Pub. L. 97–455, §1(d)(1), Jan. 12, 1983, 96 Stat. 2498, added item 934A.

1972—Pub. L. 92–606, §1(f)(5), Oct. 31, 1972, 86 Stat. 1497, added item 935.

1960—Pub. L. 86–779, §4(a)(2), Sept. 14, 1960, 74 Stat. 999, added item 934.

§ 931. Income from sources within Guam, American Samoa, or the Northern Mariana Islands

(a) General rule

In the case of an individual who is a bona fide resident of a specified possession during the entire taxable year, gross income shall not include—

[1] Editorially supplied. Section 936 added by Pub. L. 94–455 without corresponding amendment of subpart analysis.

(1) income derived from sources within any specified possession, and

(2) income effectively connected with the conduct of a trade or business by such individual within any specified possession.

(b) Deductions, etc. allocable to excluded amounts not allowable

An individual shall not be allowed—

(1) as a deduction from gross income any deductions (other than the deduction under section 151, relating to personal exemptions), or

(2) any credit,

properly allocable or chargeable against amounts excluded from gross income under this section.

(c) Specified possession

For purposes of this section, the term ''specified possession'' means Guam, American Samoa, and the Northern Mariana Islands.

(d) Employees of the United States

Amounts paid for services performed as an employee of the United States (or any agency thereof) shall be treated as not described in paragraph (1) or (2) of subsection (a).

(Aug. 16, 1954, ch. 736, 68A Stat. 291; Pub. L. 89–809, title I, §107(a), Nov. 13, 1966, 80 Stat. 1571; Pub. L. 92–178, title V, §502(d), Dec. 10, 1971, 85 Stat. 550; Pub. L. 92–606, §1(f)(1), Oct. 31, 1972, 86 Stat. 1497; Pub. L. 94–455, title X, §1051(c), title XIX, §§1901(a)(117), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1645, 1784, 1834; Pub. L. 95–30, title I, §101(d)(12), May 23, 1977, 91 Stat. 134; Pub. L. 98–369, div. A, title VII, §711(c)(2)(A)(iv), July 18, 1984, 98 Stat. 945; Pub. L. 99–514, title XII, §1272(a), Oct. 22, 1986, 100 Stat. 2593; Pub. L. 108–357, title VIII, §908(c)(1), Oct. 22, 2004, 118 Stat. 1656.)

AMENDMENTS

2004—Subsec. (d). Pub. L. 108–357 amended heading and text of subsec. (d) generally, substituting provisions relating to employees of the United States for provisions consisting of pars. (1) to (3) relating to special rules concerning employees of the United States, determination of source of income, and determination of residency.

1986—Pub. L. 99–514 amended section generally, substituting provisions relating to income from sources within Guam, American Samoa, or the Northern Mariana Islands, for former provisions relating to income from sources within possessions of the United States, which had declared in: subsec. (a), general rule as to gross income, including requirements relating to 3-year period and trade or business; subsec. (b), rule as to amounts received in United States; subsec. (c), definition of ''possession of the United States''; subsec. (d), general rule allowing deductions only to extent connected with income from sources within United States, and specific exceptions to limitations of general rule; subsec. (e), deduction for personal exemption; subsec. (f), allowance of deductions and credits; subsec. (g), foreign tax credit; subsec. (h), provisions relating to employees of United States.

1984—Subsec. (d)(2)(B). Pub. L. 98–369 substituted ''for losses'' for '', for losses of property not connected with the trade or business if arising from certain casualties or theft,''.

1977—Subsec. (d)(3). Pub. L. 95–30 struck out par. (3) which made a cross reference to section 142(b)(2) for disallowance of the standard deduction.

1976—Subsec. (a). Pub. L. 94–455, §1051(c)(1), struck out all references to domestic corporations and made subsection applicable only to individual citizens.

Subsec. (c). Pub. L. 94–455, §1051(c)(2), substituted ''Commonwealth of Puerto Rico, the Virgin Islands of the United States, or Guam'' for ''Virgin Islands of the United States, and such term when used with respect to citizens of the United States does not include Puerto Rico or Guam'' after ''does not include the''.

Subsec. (d)(1). Pub. L. 94–455, §§1051(c)(3), 1906(b)(13)(A), substituted ''a citizen of the United States'' for ''persons'' after ''in the case of'' and struck out ''or his delegate'' after ''Secretary''.

Subsec. (f). Pub. L. 94–455, §§1051(c)(3), 1906(b)(13)(A), substituted ''A citizen of the United States'' for ''Persons'' after ''Allowance of deductions and credits'' and struck out in two places ''or his delegate'' after ''Secretary''.

Subsecs. (h), (i). Pub. L. 94–455, §1901(a)(117), redesignated subsec. (i) as (h). Former subsec. (h), relating to the status of a citizen of the United States who has been interned by the enemy, was struck out.

1972—Subsec. (c). Pub. L. 92–606 substituted ''Puerto Rico or Guam'' for ''Puerto Rico''.

1971—Subsec. (a). Pub. L. 92–178 provided for non-application of section in the case of a corporation for a taxable year for which it is a DISC or in which it owns at any time stock in a DISC or former DISC.

1966—Subsec (d). Pub. L. 89–809 made applicable to United States citizens and domestic corporations engaged in trade or business in possessions, who qualify for the special tax treatment of income qualifying for the exclusion relating to income from United States possessions, provisions which allow deductions to nonresident aliens or foreign corporations engaged in trade or business in the United States by allowing deductions only where they are allocable to income effectively connected with the trade or business in the United States and by spelling out the exceptions allowing deductions whether or not connected with income from sources within the United States in the case of losses not connected with the trade or business but incurred in transactions entered into for profit, casualty losses, and charitable contributions.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years ending after Oct. 22, 2004, see section 908(d)(1) of Pub. L. 108–357, set out as an Effective Date note under section 937 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1277 of subtitle G (§§1271–1277) of title XII of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1012(z), Nov. 10, 1988, 102 Stat. 3530, provided that:

''(a) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this subtitle [enacting section 932 of this title, amending this section and sections 28, 32, 48, 63, 153, 246, 338, 864, 876, 881, 933, 934, 936, 957, 1402, 1442, 3401, 6091, 7651, 7654, and 7655 of this title, repealing sections 932, 934A, and 935 of this title, and enacting provisions set out as notes under this section and section 932 of this title] shall apply to taxable years beginning after December 31, 1986.

''(b) SPECIAL RULE FOR GUAM, AMERICAN SAMOA, AND THE NORTHERN MARIANA ISLANDS.—The amendments made by this subtitle shall apply with respect to Guam, American Samoa, or the Northern Mariana Islands (and to residents thereof and corporations created or organized therein) only if (and so long as) an implementing agreement under section 1271 [set out below] is in effect between the United States and such possession.

''(c) SPECIAL RULES FOR THE VIRGIN ISLANDS.—

''(1) IN GENERAL.—The amendments made by section 1275(c) [amending sections 28, 48, 338, 864, and 934 of this title and repealing section 934A of this title] shall apply with respect to the Virgin Islands (and residents thereof and corporations created or organized therein) only if (and so long as) an implementing agreement is in effect between the United States and the Virgin Islands with respect to the establishment of rules under which the evasion or avoidance of

United States income tax shall not be permitted or facilitated by such possession. Any such implementing agreement shall be executed on behalf of the United States by the Secretary of the Treasury, after consultation with the Secretary of the Interior.

''(2) SECTION 1275(b).—

''(A) IN GENERAL.—The amendment made by section 1275(b) [amending section 7651 of this title] shall apply with respect to—

''(i) any taxable year beginning after December 31, 1986, and

''(ii) any pre-1987 open year.

''(B) SPECIAL RULES.—In the case of any pre-1987 open year—

''(i) the amendment made by section 1275(b) shall not apply to income from sources in the Virgin Islands or income effectively connected with the conduct of a trade or business in the Virgin Islands, and

''(ii) the taxpayer shall be allowed a credit—

''(I) against any additional tax imposed by subtitle A of the Internal Revenue Code of 1954 [now 1986] (by reason of the amendment made by section 1275(b)) on income not described in clause (i),

''(II) for any tax paid to the Virgin Islands before the date of the enactment of this Act [Oct. 22, 1986] and attributable to such income.

For purposes of clause (ii)(II), any tax paid before January 1, 1987, pursuant to a process in effect before August 16, 1986, shall be treated as paid before the date of the enactment of this Act.

''(C) PRE-1987 OPEN YEAR.—For purposes of this paragraph, the term 'pre-1987 open year' means any taxable year beginning before January 1, 1987, if on the date of the enactment of this Act [Oct. 22, 1986] the assessment of a deficiency of income tax for such taxable year is not barred by any law or rule of law.

''(D) EXCEPTION.—In the case of any pre-1987 open year, the amendment made by section 1275(b) shall not apply to any domestic corporation if—

''(i) during the fiscal year which ended May 31, 1986, such corporation was actively engaged directly or through a subsidiary in the conduct of a trade or business in the Virgin Islands and such trade or business consists of business related to marine activities, and

''(ii) such corporation was incorporated on March 31, 1983, in Delaware.

''(E) EXCEPTION FOR CERTAIN TRANSACTIONS.—

''(i) IN GENERAL.—In the case of any pre-1987 open year, the amendment made by section 1275(b) shall not apply to any income derived from transactions described in clause (ii) by 1 or more corporations which were formed in Delaware on or about March 6, 1981, and which have owned 1 or more office buildings in St. Thomas, United States Virgin Islands, for at least 5 years before the date of the enactment of this Act [Oct. 22, 1986].

''(ii) DESCRIPTION OF TRANSACTIONS.—The transactions described in this clause are—

''(I) the redemptions of limited partnership interests for cash and property described in an agreement (as amended) dated March 12, 1981,

''(II) the subsequent disposition of the properties distributed in such redemptions, and

''(III) interest earned before January 1, 1987, on bank deposits of proceeds received from such redemptions to the extent such deposits are located in the United States Virgin Islands.

''(iii) LIMITATION.—The aggregate reduction in tax by reason of this subparagraph shall not exceed $8,312,000. If the taxes which would be payable as the result of the application of the amendment made by section 1275(b) to pre-1987 open years exceeds the limitation of the preceding sentence, such excess shall be treated as attributable to income received in taxable years in reverse chronological order.

''(d) REPORT ON IMPLEMENTING AGREEMENTS.—If, during the 1-year period beginning on the date of the enactment of this Act [Oct. 22, 1986], any implementing agreement described in subsection (b) or (c) is not executed, the Secretary of the Treasury or his delegate shall report to the Committee on Finance of the United States Senate, the Committee on Ways and Means, and the Committee on Interior and Insular Affairs [now Committee on Natural Resources] of the House of Representatives with respect to—

''(1) the status of such negotiations, and

''(2) the reason why such agreement has not been executed.

''(e) TREATMENT OF CERTAIN UNITED STATES PERSONS.—Except as otherwise provided in regulations prescribed by the Secretary of the Treasury or his delegate, if a United States person becomes a resident of Guam, American Samoa, or the Northern Mariana Islands, the rules of section 877(c) of the Internal Revenue Code of 1954 [now 1986] shall apply to such person during the 10-year period beginning when such person became such a resident. Notwithstanding subsection (b), the preceding sentence shall apply to dispositions after December 31, 1985, in taxable years ending after such date.

''(f) EXEMPTION FROM WITHHOLDING.—Notwithstanding subsection (b), the modification of section 884 of the Internal Revenue Code of 1986 by reason of the amendment to section 881 of such Code by section 1273(b)(1) of this Act shall apply to taxable years beginning after December 31, 1986.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 711(c)(2)(A)(v) of Pub. L. 98–369, set out as a note under section 165 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1051(c) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1975, with certain exceptions, see section 1051(i) of Pub. L. 94–455, set out as a note under section 27 of this title.

Amendment by section 1901(a)(117) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 2 of Pub. L. 92–606 provided in part that: ''The amendments made by section 1 [enacting sections 935 and 6688 of this title, amending this section, sections 932, 7654, and 7701 of this title, and section 1421i of Title 48, Territories and Insular Possessions, and enacting provisions set out as notes under sections 881 and 1442 of this title] (other than section 1(e)) [amending sections 881 and 1442 of this title] shall apply with respect to taxable years beginning after December 31, 1972.''

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable with respect to taxable years ending after Dec. 31, 1971, except that a corporation may not be a DISC for any taxable year beginning before Jan. 1, 1972, see section 507 of Pub. L. 92–178, set out as an Effective Date note under section 991 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 107(b) of Pub. L. 89–809 provided that: ''The amendment made by this section [amending this section] shall apply with respect to taxable years beginning after December 31, 1966.''

AUTHORITY OF GUAM, AMERICAN SAMOA, AND THE NORTHERN MARIANA ISLANDS TO ENACT REVENUE LAWS

Section 1271 of Pub. L. 99–514 provided that:

''(a) IN GENERAL.—Except as provided in subsection (b), nothing in the laws of the United States shall prevent Guam, American Samoa, or the Northern Mariana Islands from enacting tax laws (which shall apply in lieu of the mirror system) with respect to income—

''(1) from sources within, or effectively connected with the conduct of a trade or business within, any such possession, or

''(2) received or accrued by any resident of such possession.

''(b) AGREEMENTS TO ALLEVIATE CERTAIN PROBLEMS RELATING TO TAX ADMINISTRATION.—Subsection (a) shall apply to Guam, American Samoa, or the Northern Mariana Islands only if (and so long as) an implementing agreement is in effect between the United States and such possession with respect to—

''(1) the elimination of double taxation involving taxation by such possession and taxation by the United States,

''(2) the establishment of rules under which the evasion or avoidance of United States income tax shall not be permitted or facilitated by such possession,

''(3) the exchange of information between such possession and the United States for purposes of tax administration, and

''(4) the resolution of other problems arising in connection with the administration of the tax laws of such possession or the United States.

Any such implementing agreement shall be executed on behalf of the United States by the Secretary of the Treasury after consultation with the Secretary of the Interior.

''(c) REVENUES NOT TO DECREASE.—The total amount of the revenue received by any possession referred to in subsection (a) pursuant to its tax laws during the implementation year and each of the 4 fiscal years thereafter shall not be less than the revenue (adjusted for inflation) which was received by such possession pursuant to tax laws for its last fiscal year before the implementation year.

''(d) NONDISCRIMINATORY TREATMENT REQUIRED.—Nothing in any tax law of a possession referred to in subsection (a) may discriminate against any United States person or any resident (corporate or otherwise) of any other possession.

''(e) ENFORCEMENT.—

''(1) IN GENERAL.—If the Secretary of the Treasury (after consultation with the Secretary of the Interior) determines that any possession has failed to comply with subsection (c) or (d), the Secretary of the Treasury shall so notify the Governor of such possession in writing. If such possession does not comply with subsection (c) or (d) (as the case may be) within 90 days of such notification, the Secretary of the Treasury shall notify the Congress of such noncompliance. Unless the Congress by law provides otherwise, the mirror system of taxation shall be reinstated in such possession and shall be in full force and effect for taxable years beginning after such notification to the Congress.

''(2) SPECIAL RULE FOR REVENUE REQUIREMENTS.—If the failure to comply with subsection (c) is for good cause and does not jeopardize the fiscal integrity of the possession, the Secretary may waive the requirements of subsection (c) for such period as he determines appropriate.

''(f) DEFINITIONS AND SPECIAL RULES.—

''(1) IMPLEMENTATION YEAR.—For purposes of this section, the term ''implementation year'' means the 1st fiscal year of the possession in which the tax laws authorized by subsection (a) take effect.

''(2) MIRROR SYSTEM.—For purposes of this section, the mirror system of taxation consists of the provisions of law (in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]) which make the provisions of the income tax laws of the United States (as in effect from time to time) in effect in a possession of the United States.

''(3) SPECIAL RULE FOR NORTHERN MARIANA ISLANDS.—Notwithstanding the provisions of the last clause of section 601(a) of Public Law 94–241 [48 U.S.C. 1801 note], the Commonwealth of the Northern Mariana Islands may elect to continue its mirror system of taxation without regard to whether Guam enacts tax laws under the authority provided in subsection (a).''

§ 932. Coordination of United States and Virgin Islands income taxes

(a) Treatment of United States residents

(1) Application of subsection

This subsection shall apply to an individual for the taxable year if—

(A) such individual—

(i) is a citizen or resident of the United States (other than a bona fide resident of the Virgin Islands during the entire taxable year), and

(ii) has income derived from sources within the Virgin Islands, or effectively connected with the conduct of a trade or business within such possession, for the taxable year, or

(B) such individual files a joint return for the taxable year with an individual described in subparagraph (A).

(2) Filing requirement

Each individual to whom this subsection applies for the taxable year shall file his income tax return for the taxable year with both the United States and the Virgin Islands.

(3) Extent of income tax liability

In the case of an individual to whom this subsection applies in a taxable year for purposes of so much of this title (other than this section and section 7654) as relates to the taxes imposed by this chapter, the United States shall be treated as including the Virgin Islands.

(b) Portion of United States tax liability payable to the Virgin Islands

(1) In general

Each individual to whom subsection (a) applies for the taxable year shall pay the applicable percentage of the taxes imposed by this chapter for such taxable year (determined without regard to paragraph (3)) to the Virgin Islands.

(2) Applicable percentage

(A) In general

For purposes of paragraph (1), the term ''applicable percentage'' means the percentage which Virgin Islands adjusted gross income bears to adjusted gross income.

(B) Virgin Islands adjusted gross income

For purposes of subparagraph (A), the term ''Virgin Islands adjusted gross income'' means adjusted gross income determined by taking into account only income derived from sources within the Virgin Islands and deductions properly apportioned or allocable thereto.

(3) Amounts paid allowed as credit

There shall be allowed as a credit against the tax imposed by this chapter for the tax-

able year an amount equal to the taxes required to be paid to the Virgin Islands under paragraph (1) which are so paid.

(c) Treatment of Virgin Islands residents

(1) Application of subsection

This subsection shall apply to an individual for the taxable year if—

(A) such individual is a bona fide resident of the Virgin Islands during the entire taxable year, or

(B) such individual files a joint return for the taxable year with an individual described in subparagraph (A).

(2) Filing requirement

Each individual to whom this subsection applies for the taxable year shall file an income tax return for the taxable year with the Virgin Islands.

(3) Extent of income tax liability

In the case of an individual to whom this subsection applies in a taxable year for purposes of so much of this title (other than this section and section 7654) as relates to the taxes imposed by this chapter, the Virgin Islands shall be treated as including the United States.

(4) Residents of the Virgin Islands

In the case of an individual—

(A) who is a bona fide resident of the Virgin Islands during the entire taxable year,

(B) who, on his return of income tax to the Virgin Islands, reports income from all sources and identifies the source of each item shown on such return, and

(C) who fully pays his tax liability referred to in section 934(a) to the Virgin Islands with respect to such income,

for purposes of calculating income tax liability to the United States, gross income shall not include any amount included in gross income on such return, and allocable deductions and credits shall not be taken into account.

(d) Special rule for joint returns

In the case of a joint return, this section shall be applied on the basis of the residence of the spouse who has the greater adjusted gross income (determined without regard to community property laws) for the taxable year.

(e) Special rule for applying section to tax imposed in Virgin Islands

In applying this section for purposes of determining income tax liability incurred to the Virgin Islands, the provisions of this section shall not be affected by the provisions of Federal law referred to in section 934(a).

(Added Pub. L. 99–514, title XII, § 1274(a), Oct. 22, 1986, 100 Stat. 2596; amended Pub. L. 100–647, title I, § 1012(w)(1)–(3), Nov. 10, 1988, 102 Stat. 3530; Pub. L. 108–357, title VIII, § 908(c)(2), Oct. 22, 2004, 118 Stat. 1656.)

PRIOR PROVISIONS

A prior section 932, acts Aug. 16, 1954, ch. 736, 68A Stat. 292; Nov. 13, 1966, Pub. L. 89–809, title I, § 103(m), 80 Stat. 1554; Oct. 31, 1972, Pub. L. 92–606, § 1(f)(2), (3), 86 Stat. 1497; Apr. 7, 1986, Pub. L. 99–272, title XII, § 12103(a), 100 Stat. 285, related to income taxation of citizens of possessions of the United States, prior to repeal by Pub. L. 99–514, title XII, § 1272(d)(1), Oct. 22, 1986, 100 Stat. 2594.

AMENDMENTS

2004—Subsecs. (a)(1)(A)(i), (c)(1)(A), (4)(A). Pub. L. 108–357 substituted ''during the entire taxable year'' for ''at the close of the taxable year''.

1988—Subsec. (c)(2). Pub. L. 100–647, § 1012(w)(3), substituted ''an income tax return'' for ''his income tax return''.

Subsec. (c)(4). Pub. L. 100–647, § 1012(w)(2), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''In the case of an individual who is a bona fide resident of the Virgin Islands at the close of the taxable year and who, on his return of income tax to the Virgin Islands, reports income from all sources and identifies the source of each item shown on such return, for purposes of calculating income tax liability to the United States gross income shall not include any amount included in gross income on such return.''

Subsec. (e). Pub. L. 100–647, § 1012(w)(1), substituted current heading for ''Section not to apply to tax imposed in Virgin Islands'' and amended text generally. Prior to amendment, text read as follows: ''This section shall not apply for purposes of determining income tax liability incurred to the Virgin Islands.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years ending after Oct. 22, 2004, see section 908(d)(1) of Pub. L. 108–357, set out as an Effective Date note under section 937 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Enactment of section 932 and repeal of prior section 932 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 931 of this title.

REGULATIONS

Section 1274(c) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1012(w)(4), Nov. 10, 1988, 102 Stat. 3530, provided that: ''The Secretary of the Treasury or his delegate shall prescribe such regulations as may be necessary or appropriate for applying the Internal Revenue Code of 1986 [this title] for purposes of determining tax liability incurred to the Virgin Islands.''

AUTHORITY TO IMPOSE NONDISCRIMINATORY LOCAL INCOME TAXES

Section 1274(b) of Pub. L. 99–514 provided that: ''Nothing in any provision of Federal law shall prevent the Virgin Islands from imposing on any person nondiscriminatory local income taxes. Any taxes so imposed shall be treated in the same manner as State and local income taxes under section 164 of the Internal Revenue Code of 1954 [now 1986] and shall not be treated as taxes to which section 901 of such Code applies.''

§ 933. Income from sources within Puerto Rico

The following items shall not be included in gross income and shall be exempt from taxation under this subtitle:

(1) Resident of Puerto Rico for entire taxable year

In the case of an individual who is a bona fide resident of Puerto Rico during the entire

taxable year, income derived from sources within Puerto Rico (except amounts received for services performed as an employee of the United States or any agency thereof); but such individual shall not be allowed as a deduction from his gross income any deductions (other than the deduction under section 151, relating to personal exemptions), or any credit, properly allocable to or chargeable against amounts excluded from gross income under this paragraph.

(2) Taxable year of change of residence from Puerto Rico

In the case of an individual citizen of the United States who has been a bona fide resident of Puerto Rico for a period of at least 2 years before the date on which he changes his residence from Puerto Rico, income derived from sources therein (except amounts received for services performed as an employee of the United States or any agency thereof) which is attributable to that part of such period of Puerto Rican residence before such date; but such individual shall not be allowed as a deduction from his gross income any deductions (other than the deduction for personal exemptions under section 151), or any credit, properly allocable to or chargeable against amounts excluded from gross income under this paragraph.

(Aug. 16, 1954, ch. 736, 68A Stat. 293; Pub. L. 99–514, title XII, §1272(d)(3), Oct. 22, 1986, 100 Stat. 2594.)

AMENDMENTS

1986—Pub. L. 99–514 inserted ‘‘, or any credit,’’ in pars. (1) and (2).

EFFECTIVE DATE OF 1986 AMENDMENT

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

§934. Limitation on reduction in income tax liability incurred to the Virgin Islands

(a) General rule

Tax liability incurred to the Virgin Islands pursuant to this subtitle, as made applicable in the Virgin Islands by the Act entitled ‘‘An Act making appropriations for the naval service for the fiscal year ending June 30, 1922, and for other purposes’’, approved July 12, 1921 (48 U.S.C. 1397), or pursuant to section 28(a) of the Revised Organic Act of the Virgin Islands, approved July 22, 1954 (48 U.S.C. 1642), shall not be reduced or remitted in any way, directly or indirectly, whether by grant, subsidy, or other similar payment, by any law enacted in the Virgin Islands, except to the extent provided in subsection (b).

(b) Reductions permitted with respect to certain income

(1) In general

Except as provided in paragraph (2), subsection (a) shall not apply with respect to so much of the tax liability referred to in subsection (a) as is attributable to income derived from sources within the Virgin Islands or income effectively connected with the conduct of a trade or business within the Virgin Islands.

(2) Exception for liability paid by citizens or residents of the United States

Paragraph (1) shall not apply to any liability payable to the Virgin Islands under section 932(b).

(3) Special rule for non-United States income of certain foreign corporations

(A) In general

In the case of a qualified foreign corporation, subsection (a) shall not apply with respect to so much of the tax liability referred to in subsection (a) as is attributable to income which is derived from sources outside the United States and which is not effectively connected with the conduct of a trade or business within the United States.

(B) Qualified foreign corporation

For purposes of subparagraph (A), the term ‘‘qualified foreign corporation’’ means any foreign corporation if less than 10 percent of—

(i) the total voting power of the stock of such corporation, and

(ii) the total value of the stock of such corporation, is owned or treated as owned (within the meaning of section 958) by 1 or more United States persons.

(4) Determination of income source, etc.

The determination as to whether income is derived from sources within the United States or is effectively connected with the conduct of a trade or business within the United States shall be made under regulations prescribed by the Secretary.

(Added Pub. L. 86–779, §4(a)(1), Sept. 14, 1960, 74 Stat. 998; amended Pub. L. 94–455, title XIX, §§1901(a)(118), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1784, 1834; Pub. L. 97–248, title II, §213(b), Sept. 3, 1982, 96 Stat. 463; Pub. L. 97–455, §1(c), Jan. 12, 1983, 96 Stat. 2498; Pub. L. 98–369, div. A, title VIII, §801(d)(7), July 18, 1984, 98 Stat. 996; Pub. L. 99–514, title XII, §1275(a)(2)(A), (c)(1), (2), title XVIII, §1876(f)(2), Oct. 22, 1986, 100 Stat. 2598, 2900; Pub. L. 108–357, title VIII, §908(c)(3), Oct. 22, 2004, 118 Stat. 1656.)

AMENDMENTS

2004—Subsec. (b)(4). Pub. L. 108–357 struck out ‘‘the Virgin Islands or’’ before ‘‘the United States’’ in two places.

1986—Subsec. (a). Pub. L. 99–514, §1275(c)(2)(A), struck out ‘‘or (c) or in section 934A’’ after ‘‘subsection (b)’’.

Subsec. (b). Pub. L. 99–514, §1275(c)(1), (2)(B), added subsec. (b) and struck out former subsec. (b) which excepted from subsec. (a) domestic or Virgin Islands corporations to the extent they derived income from sources without the United States under certain conditions.

Subsec. (c). Pub. L. 99–514, §1275(c)(1), struck out subsec. (c) which provided an exception to subsec. (a) of this section for individual citizens of the United States residing in the Virgin Islands to the extent their income is derived from sources within the Virgin Islands.

Subsec. (d). Pub. L. 99–514, §1275(c)(1), struck out subsec. (d) which related to requirement to supply information.

Subsec. (e). Pub. L. 99–514, §1275(a)(2)(A), struck out subsec. (e) which provided for tax treatment of intangible property income of certain domestic corporations.

Subsec. (f). Pub. L. 99–514, § 1275(a)(2)(A), struck out subsec. (f) which provided a transitional rule for applying subsec. (b)(2) of this section with respect to taxable years beginning after Dec. 31, 1982, and before Jan. 1, 1985.

Pub. L. 99–514, § 1876(f)(2), struck out subsec. (f) which provided that subsec. (a) of this section not apply in the case of a Virgin Islands corporation which is a FSC.

1984—Subsec. (f). Pub. L. 98–369 added subsec. (f) relating to FSC.

1983—Subsec. (a). Pub. L. 97–455 inserted ''or in section 934A'' after ''subsection (b) or (c)''.

1982—Subsec. (b)(2). Pub. L. 97–248, § 213(b)(1), substituted ''65 percent'' for ''50 percent''.

Subsec. (e). Pub. L. 97–248, § 213(b)(2), added subsec. (e).

Subsec. (f). Pub. L. 97–248, § 213(b)(2), added a temporary subsec. (f) which provided that in applying subsec. (b)(2) with respect to taxable years beginning after December 31, 1982, and before January 1, 1985, ''55 percent'' shall be substituted for ''65 percent'' for taxable years beginning in calendar year 1983 and ''60 percent'' shall be substituted for ''65 percent'' for taxable years beginning in calendar year 1984.

1976—Subsec. (b). Pub. L. 94–455, § 1901(a)(118), struck out ''For the purposes of this subsection, all amounts received by such corporation within the United States, whether derived from sources within or without the United States, shall be considered as being derived from sources within the United States''.

Subsec. (d). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' in two places.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years ending after Oct. 22, 2004, see section 908(d)(1) of Pub. L. 108–357, set out as an Effective Date note under section 937 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1275(a)(2)(A), (c)(1), (2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

Amendment by section 1876(f)(2) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1(e) of Pub. L. 97–455 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 934A and amending this section] shall apply to amounts received after the date of the enactment of this Act [Jan. 12, 1983] in taxable years ending after such date.

''(2) WITHHOLDING.—The amendment made by subsection (b) [enacting section 1444 of this title] shall apply to payments made after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, except that so much of this section to which section 936(h)(6) applies by reason of subsec. (e)(4) of this section is applicable to taxable years ending after July 1, 1982, see section 213(e)(1), (2) of Pub. L. 97–248 set out as a note under section 936 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(118) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section 4(e)(1) of Pub. L. 86–779 provided that: ''The amendments made by subsection (a) [enacting this section] shall apply to tax liability incurred with respect to taxable years beginning on or after January 1, 1960.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

REPORT ON POSSESSIONS CORPORATIONS

For provisions requiring the Secretary of the Treasury to submit a report to Congress respecting the operation and effect of subsec. (b) of this section for the year 1981 and each second calendar year thereafter, see section 441(a) of Pub. L. 98–369, set out as a note under section 936 of this title.

[§ 934A. Repealed. Pub. L. 99–514, title XII, § 1275(c)(3), Oct. 22, 1986, 100 Stat. 2599]

Section, added Pub. L. 97–455, § 1(a), Jan. 12, 1983, 96 Stat. 2497, related to income tax rate on Virgin Islands source income.

EFFECTIVE DATE OF REPEAL

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

[§ 935. Repealed. Pub. L. 99–514, title XII, § 1272(d)(2), Oct. 22, 1986, 100 Stat. 2594]

Section, added Pub. L. 92–606, § 1(a), Oct. 31, 1972, 86 Stat. 1494; amended Pub. L. 108–357, title VIII, § 908(c)(4), Oct. 22, 2004, 118 Stat. 1656, related to coordination of United States and Guam individual income taxes.

AMENDMENT SUBSEQUENT TO REPEAL

Pub. L. 108–357, title IX, § 908(c)(4), (d), Oct. 22, 2004, 118 Stat. 1656, 1657, applicable to taxable years ending after Oct. 22, 2004, amended section, as in effect before the effective date of its repeal, in introductory provisions of subsec. (a), by substituting ''who, during the entire taxable year'' for ''for the taxable year who'', in subsecs. (a)(1) and (b)(1)(B), by inserting ''bona fide'' before ''resident'', in subsec. (b)(1)(A), by inserting ''(other a bona fide resident of Guam during the entire taxable year)'' after ''United States'', and, in subsection (b)(2), by striking out ''residence and'' before ''citizenship''.

EFFECTIVE DATE OF REPEAL

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

§ 936. Puerto Rico and possession tax credit

(a) Allowance of credit

(1) In general

Except as otherwise provided in this section, if a domestic corporation elects the applica-

tion of this section and if the conditions of both subparagraph (A) and subparagraph (B) of paragraph (2) are satisfied, there shall be allowed as a credit against the tax imposed by this chapter an amount equal to the portion of the tax which is attributable to the sum of—

(A) the taxable income, from sources without the United States, from—

(i) the active conduct of a trade or business within a possession of the United States, or

(ii) the sale or exchange of substantially all of the assets used by the taxpayer in the active conduct of such trade or business, and

(B) the qualified possession source investment income.

(2) Conditions which must be satisfied

The conditions referred to in paragraph (1) are:

(A) 3-year period

If 80 percent or more of the gross income of such domestic corporation for the 3-year period immediately preceding the close of the taxable year (or for such part of such period immediately preceding the close of such taxable year as may be applicable) was derived from sources within a possession of the United States (determined without regard to subsections (f) and (g) of section 904); and

(B) Trade or business

If 75 percent or more of the gross income of such domestic corporation for such period or such part thereof was derived from the active conduct of a trade or business within a possession of the United States.

(3) Credit not allowed against certain taxes

The credit provided by paragraph (1) shall not be allowed against the tax imposed by—

(A) section 59A (relating to environmental tax),

(B) section 531 (relating to the tax on accumulated earnings),

(C) section 541 (relating to personal holding company tax), or

(D) section 1351 (relating to recoveries of foreign expropriation losses).

(4) Limitations on credit for active business income

(A) In general

The amount of the credit determined under paragraph (1) for any taxable year with respect to income referred to in subparagraph (A) thereof shall not exceed the sum of the following amounts:

(i) 60 percent of the sum of—

(I) the aggregate amount of the possession corporation's qualified possession wages for such taxable year, plus

(II) the allocable employee fringe benefit expenses of the possession corporation for the taxable year.

(ii) The sum of—

(I) 15 percent of the depreciation allowances for the taxable year with respect to short-life qualified tangible property,

(II) 40 percent of the depreciation allowances for the taxable year with respect to medium-life qualified tangible property, and

(III) 65 percent of the depreciation allowances for the taxable year with respect to long-life qualified tangible property.

(iii) If the possession corporation does not have an election to use the method described in subsection (h)(5)(C)(ii) (relating to profit split) in effect for the taxable year, the amount of qualified possession income taxes for the taxable year allocable to nonsheltered income.

(B) Election to take reduced credit

(i) In general

If an election under this subparagraph applies to a possession corporation for any taxable year—

(I) subparagraph (A), and the provisions of subsection (i), shall not apply to such possession corporation for such taxable year, and

(II) the credit determined under paragraph (1) for such taxable year with respect to income referred to in subparagraph (A) thereof shall be the applicable percentage of the credit which would otherwise have been determined under such paragraph with respect to such income.

Notwithstanding subclause (I), a possession corporation to which an election under this subparagraph applies shall be entitled to the benefits of subsection (i)(3)(B) for taxes allocable (on a pro rata basis) to taxable income the tax on which is not offset by reason of this subparagraph.

(ii) Applicable percentage

The term ''applicable percentage'' means the percentage determined in accordance with the following table:

In the case of taxable years beginning in:	The percentage is:
1994	60
1995	55
1996	50
1997	45
1998 and thereafter	40.

(iii) Election

(I) In general

An election under this subparagraph by any possession corporation may be made only for the corporation's first taxable year beginning after December 31, 1993, for which it is a possession corporation.

(II) Period of election

An election under this subparagraph shall apply to the taxable year for which made and all subsequent taxable years unless revoked.

(III) Affiliated groups

If, for any taxable year, an election is not in effect for any possession corpora-

tion which is a member of an affiliated group, any election under this subparagraph for any other member of such group is revoked for such taxable year and all subsequent taxable years. For purposes of this subclause, members of an affiliated group shall be determined without regard to the exceptions contained in section 1504(b) and as if the constructive ownership rules of section 1563(e) applied for purposes of section 1504(a). The Secretary may prescribe regulations to prevent the avoidance of this subclause through deconsolidation or otherwise.

(C) Cross reference

For definitions and special rules applicable to this paragraph, see subsection (i).

(b) Amounts received in United States

In determining taxable income for purposes of subsection (a), there shall not be taken into account as income from sources without the United States any gross income which was received by such domestic corporation within the United States, whether derived from sources within or without the United States. This subsection shall not apply to any amount described in subsection (a)(1)(A)(i) received from a person who is not a related person (within the meaning of subsection (h)(3) but without regard to subparagraphs (D)(ii) and (E)(i) thereof) with respect to the domestic corporation.

(c) Treatment of certain foreign taxes

For purposes of this title, any tax of a foreign country or a possession of the United States which is paid or accrued with respect to taxable income which is taken into account in computing the credit under subsection (a) shall not be treated as income, war profits, or excess profits taxes paid or accrued to a foreign country or possession of the United States, and no deduction shall be allowed under this title with respect to any amounts so paid or accrued.

(d) Definitions and special rules

For purposes of this section—

(1) Possession

The term ''possession of the United States'' includes the Commonwealth of Puerto Rico and the Virgin Islands.

(2) Qualified possession source investment income

The term ''qualified possession source investment income'' means gross income which—

(A) is from sources within a possession of the United States in which a trade or business is actively conducted, and

(B) the taxpayer establishes to the satisfaction of the Secretary is attributable to the investment in such possession (for use therein) of funds derived from the active conduct of a trade or business in such possession, or from such investment,

less the deductions properly apportioned or allocated thereto.

(3) Carryover basis property

(A) In general

Income from the sale or exchange of any asset the basis of which is determined in whole or in part by reference to its basis in the hands of another person shall not be treated as income described in subparagraph (A) or (B) of subsection (a)(1).

(B) Exception for possessions corporations, etc.

For purposes of subparagraph (A), the holding of any asset by another person shall not be taken into account if throughout the period for which such asset was held by such person section 931, this section, or section 957(c) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) applied to such person.

(4) Investment in qualified Caribbean Basin countries

(A) In general

For purposes of paragraph (2)(B), an investment in a financial institution shall, subject to such conditions as the Secretary may prescribe by regulations, be treated as for use in Puerto Rico to the extent used by such financial institution (or by the Government Development Bank for Puerto Rico or the Puerto Rico Economic Development Bank)—

(i) for investment, consistent with the goals and purposes of the Caribbean Basin Economic Recovery Act, in—

(I) active business assets in a qualified Caribbean Basin country, or

(II) development projects in a qualified Caribbean Basin country, and

(ii) in accordance with a specific authorization granted by the Commissioner of Financial Institutions of Puerto Rico pursuant to regulations issued by such Commissioner.

A similar rule shall apply in the case of a direct investment in the Government Development Bank for Puerto Rico or the Puerto Rico Economic Development Bank.

(B) Qualified Caribbean Basin country

For purposes of this subsection, the term ''qualified Caribbean Basin country'' means any beneficiary country (within the meaning of section 212(a)(1)(A) of the Caribbean Basin Economic Recovery Act) which meets the requirements of clauses (i) and (ii) of section 274(h)(6)(A) and the Virgin Islands.

(C) Additional requirements

Subparagraph (A) shall not apply to any investment made by a financial institution (or by the Government Development Bank for Puerto Rico or the Puerto Rico Economic Development Bank) unless—

(i) the person in whose trade or business such investment is made (or such other recipient of the investment) and the financial institution or such Bank certify to the Secretary and the Commissioner of Financial Institutions of Puerto Rico that the

proceeds of the loan will be promptly used to acquire active business assets or to make other authorized expenditures, and

(ii) the financial institution (or the Government Development Bank for Puerto Rico or the Puerto Rico Economic Development Bank) and the recipient of the investment funds agree to permit the Secretary and the Commissioner of Financial Institutions of Puerto Rico to examine such of their books and records as may be necessary to ensure that the requirements of this paragraph are met.

(D) Requirement for investment in Caribbean Basin countries

(i) In general

For each calendar year, the government of Puerto Rico shall take such steps as may be necessary to ensure that at least $100,000,000 of qualified Caribbean Basin country investments are made during such calendar year.

(ii) Qualified Caribbean Basin country investment

For purposes of clause (i), the term ''qualified Caribbean Basin country investment'' means any investment if—

(I) the income from such investment is treated as qualified possession source investment income by reason of subparagraph (A), and

(II) such investment is not (directly or indirectly) a refinancing of a prior investment (whether or not such prior investment was a qualified Caribbean Basin country investment).

(e) Election

(1) Period of election

The election provided in subsection (a) shall be made at such time and in such manner as the Secretary may by regulations prescribe. Any such election shall apply to the first taxable year for which such election was made and for which the domestic corporation satisfied the conditions of subparagraphs (A) and (B) of subsection (a)(2) and for each taxable year thereafter until such election is revoked by the domestic corporation under paragraph (2). If any such election is revoked by the domestic corporation under paragraph (2), such domestic corporation may make a subsequent election under subsection (a) for any taxable year thereafter for which such domestic corporation satisfies the conditions of subparagraphs (A) and (B) of subsection (a)(2) and any such subsequent election shall remain in effect until revoked by such domestic corporation under paragraph (2).

(2) Revocation

An election under subsection (a)—

(A) may be revoked for any taxable year beginning before the expiration of the 9th taxable year following the taxable year for which such election first applies only with the consent of the Secretary; and

(B) may be revoked for any taxable year beginning after the expiration of such 9th taxable year without the consent of the Secretary.

(f) Limitation on credit for DISC's and FSC's

No credit shall be allowed under this section to a corporation for any taxable year—

(1) for which it is a DISC or former DISC, or

(2) in which it owns at any time stock in a—

(A) DISC or former DISC, or

(B) former FSC.

(g) Exception to accumulated earnings tax

(1) For purposes of section 535, the term ''accumulated taxable income'' shall not include taxable income entitled to the credit under subsection (a).

(2) For purposes of section 537, the term ''reasonable needs of the business'' includes assets which produce income eligible for the credit under subsection (a).

(h) Tax treatment of intangible property income

(1) In general

(A) Income attributable to shareholders

The intangible property income of a corporation electing the application of this section for any taxable year shall be included on a pro rata basis in the gross income of all shareholders of such electing corporation at the close of the taxable year of such electing corporation as income from sources within the United States for the taxable year of such shareholder in which or with which the taxable year of such electing corporation ends.

(B) Exclusion from the income of an electing corporation

Any intangible property income of a corporation electing the application of this section which is included in the gross income of a shareholder of such corporation by reason of subparagraph (A) shall be excluded from the gross income of such corporation.

(2) Foreign shareholders; shareholders not subject to tax

(A) In general

Paragraph (1)(A) shall not apply with respect to any shareholder—

(i) who is not a United States person, or

(ii) who is not subject to tax under this title on intangible property income which would be allocated to such shareholder (but for this subparagraph).

(B) Treatment of nonallocated intangible property income

For purposes of this subtitle, intangible property income of a corporation electing the application of this section which is not included in the gross income of a shareholder of such corporation by reason of subparagraph (A)—

(i) shall be treated as income from sources within the United States, and

(ii) shall not be taken into account under subsection (a)(2).

(3) Intangible property income

For purposes of this subsection—

(A) In general

The term ''intangible property income'' means the gross income of a corporation at-

tributable to any intangible property other than intangible property which has been licensed to such corporation since prior to 1948 and is in use by such corporation on the date of the enactment of this subparagraph.

(B) Intangible property

The term ''intangible property'' means any—

(i) patent, invention, formula, process, design, pattern, or know-how;

(ii) copyright, literary, musical, or artistic composition;

(iii) trademark, trade name, or brand name;

(iv) franchise, license, or contract;

(v) method, program, system, procedure, campaign, survey, study, forecast, estimate, customer list, or technical data; or

(vi) any similar item,

which has substantial value independent of the services of any individual.

(C) Exclusion of reasonable profit

The term ''intangible property income'' shall not include any portion of the income from the sale, exchange or other disposition of any product, or from the rendering of services, by a corporation electing the application of this section which is determined by the Secretary to be a reasonable profit on the direct and indirect costs incurred by such electing corporation which are attributable to such income.

(D) Related person

(i) In general

A person (hereinafter referred to as the ''related person'') is related to any person if—

(I) the related person bears a relationship to such person specified in section 267(b) or section 707(b)(1), or

(II) the related person and such person are members of the same controlled group of corporations.

(ii) Special rule

For purposes of clause (i), section 267(b) and section 707(b)(1) shall be applied by substituting ''10 percent'' for ''50 percent''.

(E) Controlled group of corporations

The term ''controlled group of corporations'' has the meaning given to such term by section 1563(a), except that—

(i) ''more than 10 percent'' shall be substituted for ''at least 80 percent'' and ''more than 50 percent'' each place either appears in section 1563(a), and

(ii) the determination shall be made without regard to subsections (a)(4), (b)(2), and (e)(3)(C) of section 1563.

(4) Distributions to meet qualification requirements

(A) In general

If the Secretary determines that a corporation does not satisfy a condition specified in subparagraph (A) or (B) of subsection (a)(2) for any taxable year by reason of the exclusion from gross income under paragraph (1)(B), such corporation shall nevertheless be treated as satisfying such condition for such year if it makes a pro rata distribution of property after the close of such taxable year to its shareholders (designated at the time of such distribution as a distribution to meet qualification requirements) with respect to their stock in an amount which is equal to—

(i) if the condition of subsection (a)(2)(A) is not satisfied, that portion of the gross income for the period described in subsection (a)(2)(A)—

(I) which was not derived from sources within a possession, and

(II) which exceeds the amount of such income for such period which would enable such corporation to satisfy the condition of subsection (a)(2)(A),

(ii) if the condition of subsection (a)(2)(B) is not satisfied, that portion of the gross income for such period—

(I) which was not derived from the active conduct of a trade or business within a possession, and

(II) which exceeds the amount of such income for such period which would enable such corporation to satisfy the conditions of subsection (a)(2)(B), or

(iii) if neither of such conditions is satisfied, that portion of the gross income which exceeds the amount of gross income for such period which would enable such corporation to satisfy the conditions of subparagraphs (A) and (B) of subsection (a)(2).

(B) Effectively connected income

In the case of a shareholder who is a nonresident alien individual or a foreign corporation, trust, or estate, any distribution described in subparagraph (A) shall be treated as income which is effectively connected with the conduct of a trade or business conducted through a permanent establishment of such shareholder within the United States.

(C) Distribution denied in case of fraud or willful neglect

Subparagraph (A) shall not apply to a corporation if the determination of the Secretary described in subparagraph (A) contains a finding that the failure of such corporation to satisfy the conditions in subsection (a)(2) was due in whole or in part to fraud with intent to evade tax or willful neglect on the part of such corporation.

(5) Election out

(A) In general

The rules contained in paragraphs (1) through (4) do not apply for any taxable year if an election pursuant to subparagraph (F) is in effect to use one of the methods specified in subparagraph (C).

(B) Eligibility

(i) Requirement of significant business presence

An election may be made to use one of the methods specified in subparagraph (C)

with respect to a product or type of service only if an electing corporation has a significant business presence in a possession with respect to such product or type of service. An election may remain in effect with respect to such product or type of service for any subsequent taxable year only if such electing corporation maintains a significant business presence in a possession with respect to such product or type of service in such subsequent taxable year. If an election is not in effect for a taxable year because of the preceding sentence, the electing corporation shall be deemed to have revoked the election on the first day of such taxable year.

(ii) Definition

For purposes of this subparagraph, an electing corporation has a ''significant business presence'' in a possession for a taxable year with respect to a product or type of service if:

(I) the total production costs (other than direct material costs and other than interest excluded by regulations prescribed by the Secretary) incurred by the electing corporation in the possession in producing units of that product sold or otherwise disposed of during the taxable year by the affiliated group to persons who are not members of the affiliated group are not less than 25 percent of the difference between (a) the gross receipts from sales or other dispositions during the taxable year by the affiliated group to persons who are not members of the affiliated group of such units of the product produced, in whole or in part, by the electing corporation in the possession, and (b) the direct material costs of the purchase of materials for such units of that product by all members of the affiliated group from persons who are not members of the affiliated group; or

(II) no less than 65 percent of the direct labor costs of the affiliated group for units of the product produced during the taxable year in whole or in part by the electing corporation or for the type of service rendered by the electing corporation during the taxable year, is incurred by the electing corporation and is compensation for services performed in the possession; or

(III) with respect to purchases and sales by an electing corporation of all goods not produced in whole or in part by any member of the affiliated group and sold by the electing corporation to persons other than members of the affiliated group, no less than 65 percent of the total direct labor costs of the affiliated group in connection with all purchases and sales of such goods sold during the taxable year by such electing corporation is incurred by such electing corporation and is compensation for services performed in the possession.

Notwithstanding satisfaction of one of the foregoing tests, an electing corporation shall not be treated as having a significant business presence in a possession with respect to a product produced in whole or in part by the electing corporation in the possession, for purposes of an election to use the method specified in subparagraph (C)(ii), unless such product is manufactured or produced in the possession by the electing corporation within the meaning of subsection (d)(1)(A) of section 954.

(iii) Special rules

(I) An electing corporation which produces a product or renders a type of service in a possession on the date of the enactment of this clause is not required to meet the significant business presence test in a possession with respect to such product or type of service for its taxable years beginning before January 1, 1986.

(II) For purposes of this subparagraph, the costs incurred by an electing corporation or any other member of the affiliated group in connection with contract manufacturing by a person other than a member of the affiliated group, or in connection with a similar arrangement thereto, shall be treated as direct labor costs of the affiliated group and shall not be treated as production costs incurred by the electing corporation in the possession or as direct material costs or as compensation for services performed in the possession, except to the extent as may be otherwise provided in regulations prescribed by the Secretary.

(iv) Regulations

The Secretary may prescribe regulations setting forth:

(I) an appropriate transitional (but not in excess of three taxable years) significant business presence test for commencement in a possession of operations with respect to products or types of service after the date of the enactment of this clause and not described in subparagraph (B)(iii)(I),

(II) a significant business presence test for other appropriate cases, consistent with the tests specified in subparagraph (B)(ii),

(III) rules for the definition of a product or type of service, and

(IV) rules for treating components produced in whole or in part by a related person as materials, and the costs (including direct labor costs) related thereto as a cost of materials, where there is an independent resale price for such components or where otherwise consistent with the intent of the substantial business presence tests.

(C) Methods of computation of taxable income

If an election of one of the following methods is in effect pursuant to subparagraph (F) with respect to a product or type of service, an electing corporation shall compute its income derived from the active conduct of a trade or business in a possession with re-

spect to such product or type of service in accordance with the method which is elected.

(i) Cost sharing

(I) Payment of cost sharing

If an election of this method is in effect, the electing corporation must make a payment for its share of the cost (if any) of product area research which is paid or accrued by the affiliated group during that taxable year. Such share shall not be less than the same proportion of 110 percent of the cost of such product area research which the amount of ''possession sales'' bears to the amount of ''total sales'' of the affiliated group. The cost of product area research paid or accrued solely by the electing corporation in a taxable year (excluding amounts paid directly or indirectly to or on behalf of related persons and excluding amounts paid under any cost sharing agreements with related persons) will reduce (but not below zero) the amount of the electing corporation's cost sharing payment under this method for that year. In the case of intangible property described in subsection (h)(3)(B)(i) which the electing corporation is treated as owning under subclause (II), in no event shall the payment required under this subclause be less than the inclusion or payment which would be required under section 367(d)(2)(A)(ii) or section 482 if the electing corporation were a foreign corporation.

(a) Product area research

For purposes of this section, the term ''product area research'' includes (notwithstanding any provision to the contrary) the research, development and experimental costs, losses, expenses and other related deductions—including amounts paid or accrued for the performance of research or similar activities by another person; qualified research expenses within the meaning of section 41(b); amounts paid or accrued for the use of, or the right to use, research or any of the items specified in subsection (h)(3)(B)(i); and a proper allowance for amounts incurred for the acquisition of any of the items specified in subsection (h)(3)(B)(i)—which are properly apportioned or allocated to the same product area as that in which the electing corporation conducts its activities, and a ratable part of any such costs, losses, expenses and other deductions which cannot definitely be allocated to a particular product area.

(b) Affiliated group

For purposes of this subsection, the term ''affiliated group'' shall mean the electing corporation and all other organizations, trades or businesses (whether or not incorporated, whether or not organized in the United States, and whether or not affiliated) owned or controlled directly or indirectly by the same interests, within the meaning of section 482.

(c) Possession sales

For purposes of this section, the term ''possession sales'' means the aggregate sales or other dispositions for the taxable year to persons who are not members of the affiliated group by members of the affiliated group of products produced, in whole or in part, by the electing corporation in the possession which are in the same product area as is used for determining the amount of product area research, and of services rendered, in whole or in part, in the possession in such product area to persons who are not members of the affiliated group.

(d) Total sales

For purposes of this section, the term ''total sales'' means the aggregate sales or other dispositions for the taxable year to persons who are not members of the affiliated group by members of the affiliated group of all products in the same product area as is used for determining the amount of product area research, and of services rendered in such product area to persons who are not members of the affiliated group.

(e) Product area

For purposes of this section, the term ''product area'' shall be defined by reference to the three-digit classification of the Standard Industrial Classification code. The Secretary may provide for the aggregation of two or more three-digit classifications where appropriate, and for a classification system other than the Standard Industrial Classification code in appropriate cases.

(II) Effect of election

For purposes of determining the amount of its gross income derived from the active conduct of a trade or business in a possession with respect to a product produced by, or type of service rendered by, the electing corporation for a taxable year, if an election of this method is in effect, the electing corporation shall be treated as the owner (for purposes of obtaining a return thereon) of intangible property described in subsection (h)(3)(B)(i) which is related to the units of the product produced, or type of service rendered, by the electing corporation. Such electing corporation shall not be treated as the owner (for purposes of obtaining a return thereon) of any intangible property described in subsection (h)(3)(B)(ii) through (v) (to the extent not described in subsection (h)(3)(B)(i)) or of any other nonmanufacturing intangible. Notwithstanding the preceding

sentence, an electing corporation shall be treated as the owner (for purposes of obtaining a return thereon) of (a) intangible property which was developed solely by such corporation in a possession and is owned by such corporation, (b) intangible property described in subsection (h)(3)(B)(i) acquired by such corporation from a person who was not related to such corporation (or to any person related to such corporation) at the time of, or in connection with, such acquisition, and (c) any intangible property described in subsection (h)(3)(B)(ii) through (v) (to the extent not described in subsection (h)(3)(B)(i)) and other nonmanufacturing intangibles which relate to sales of units of products, or services rendered, to unrelated persons for ultimate consumption or use in the possession in which the electing corporation conducts its trade or business.

(III) Payment provisions

(a) The cost sharing payment determined under subparagraph (C)(i)(I) for any taxable year shall be made to the person or persons specified in subparagraph (C)(i)(IV)(a) not later than the time prescribed by law for filing the electing corporation's return for such taxable year (including any extensions thereof). If all or part of such payment is not timely made, the amount of the cost sharing payment required to be paid shall be increased by the amount of interest that would have been due under section 6601(a) had the portion of the cost sharing payment that is not timely made been an amount of tax imposed by this title and had the last date prescribed for payment been the due date of the electing corporations[1] return (determined without regard to any extension thereof). The amount by which a cost sharing payment determined under subparagraph (C)(i)(I) is increased by reason of the preceding sentence shall not be treated as a cost sharing payment or as interest. If failure to make timely payment is due in whole or in part to fraud or willful neglect, the electing corporation shall be deemed to have revoked the election made under subparagraph (A) on the first day of the taxable year for which the cost sharing payment was required.

(b) For purposes of this title, any tax of a foreign country or possession of the United States which is paid or accrued with respect to the payment or receipt of a cost sharing payment determined under subparagraph (C)(i)(I) or of an amount of increase referred to in subparagraph (C)(i)(III)(a) shall not be treated as income, war profits, or excess profits taxes paid or accrued to a foreign country or possession of the United States, and no deduction shall be allowed under this title with respect to any amounts of such tax so paid or accrued.

(IV) Special rules

(a) The amount of the cost sharing payment determined under subparagraph (C)(i)(I), and any increase in the amount thereof in accordance with subparagraph (C)(i)(III)(a), shall not be treated as income of the recipient, but shall reduce the amount of the deductions (and the amount of reductions in earnings and profits) otherwise allowable to the appropriate domestic member or members (other than an electing corporation) of the affiliated group, or, if there is no such domestic member, to the foreign member or members of such affiliated group as the Secretary may provide under regulations.

(b) If an election of this method is in effect, the electing corporation shall determine its intercompany pricing under the appropriate section 482 method, provided, however, that an electing corporation shall not be denied use of the resale price method for purposes of such intercompany pricing merely because the reseller adds more than an insubstantial amount to the value of the product by the use of intangible property.

(c) The amount of qualified research expenses, within the meaning of section 41, of any member of the controlled group of corporations (as defined in section 41(f)) of which the electing corporation is a member shall not be affected by the cost sharing payment required under this method.

(ii) Profit split

(I) General rule

If an election of this method is in effect, the electing corporation's taxable income derived from the active conduct of a trade or business in a possession with respect to units of a product produced or type of service rendered, in whole or in part, by the electing corporation shall be equal to 50 percent of the combined taxable income of the affiliated group (other than foreign affiliates) derived from covered sales of units of the product produced or type of service rendered, in whole or in part, by the electing corporation in a possession.

(II) Computation of combined taxable income

Combined taxable income shall be computed separately for each product produced or type of service rendered, in whole or in part, by the electing corporation in a possession. Combined taxable income shall be computed (notwithstanding any provision to the contrary) for each such product or type of service rendered by deducting from the gross income of the affiliated group (other than foreign affiliates) derived from covered sales of such product or type of service

[1] So in original. Probably should be ''corporation's''.

all expenses, losses, and other deductions properly apportioned or allocated to gross income from such sales or services, and a ratable part of all expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income, which are incurred by the affiliated group (other than foreign affiliates). Notwithstanding any other provision to the contrary, in computing the combined taxable income for each such product or type of service rendered, the research, development, and experimental costs, expenses and related deductions for the taxable year which would otherwise be apportioned or allocated to the gross income of the affiliated group (other than foreign affiliates) derived from covered sales of such product produced or type of service rendered, in whole or in part, by the electing corporation in a possession, shall not be less than the same proportion of the amount of the share of product area research determined under subparagraph (C)(i)(I) (without regard to the third and fourth sentences thereof, but substituting ''120 percent'' for ''110 percent'' in the second sentence thereof) in the product area which includes such product or type of service, that such gross income from the product or type of service bears to such gross income from all products and types of services, within such product area, produced or rendered, in whole or part, by the electing corporation in a possession.

(III) Division of combined taxable income

50 percent of the combined taxable income computed as provided in subparagraph (C)(ii)(II) shall be allocated to the electing corporation. Combined taxable income, computed without regard to the last sentence of subparagraph (C)(ii)(II), less the amount allocated to the electing corporation under the preceding sentence, shall be allocated to the appropriate domestic member or members (other than any electing corporation) of the affiliated group and shall be treated as income from sources within the United States, or, if there is no such domestic member, to a foreign member or members of such affiliated group as the Secretary may provide under regulations.

(IV) Covered sales

For purposes of this paragraph, the term ''covered sales'' means sales by members of the affiliated group (other than foreign affiliates) to persons who are not members of the affiliated group or to foreign affiliates.

(D) Unrelated person

For purposes of this paragraph, the term ''unrelated person'' means any person other than a person related within the meaning of paragraph (3)(D) to the electing corporation.

(E) Electing corporation

For purposes of this subsection, the term ''electing corporation'' means a domestic corporation for which an election under this section is in effect.

(F) Time and manner of election; revocation

(i) In general

An election under subparagraph (A) to use one of the methods under subparagraph (C) shall be made only on or before the due date prescribed by law (including extensions) for filing the tax return of the electing corporation for its first taxable year beginning after December 31, 1982. If an election of one of such methods is made, such election shall be binding on the electing corporation and such method must be used for each taxable year thereafter until such election is revoked by the electing corporation under subparagraph (F)(iii). If any such election is revoked by the electing corporation under subparagraph (F)(iii), such electing corporation may make a subsequent election under subparagraph (A) only with the consent of the Secretary.

(ii) Manner of making election

An election under subparagraph (A) to use one of the methods under subparagraph (C) shall be made by filing a statement to such effect with the return referred to in subparagraph (F)(i) or in such other manner as the Secretary may prescribe by regulations.

(iii) Revocation

(I) Except as provided in subparagraph (F)(iii)(II), an election may be revoked for any taxable year only with the consent of the Secretary.

(II) An election shall be deemed revoked for the year in which the electing corporation is deemed to have revoked such election under subparagraph (B)(i) or (C)(i)(III)(a).

(iv) Aggregation

(I) Where more than one electing corporation in the affiliated group produces any product or renders any services in the same product area, all such electing corporations must elect to compute their taxable income under the same method under subparagraph (C).

(II) All electing corporations in the same affiliated group that produce any products or render any services in the same product area may elect, subject to such terms and conditions as the Secretary may prescribe by regulations, to compute their taxable income from export sales under a different method from that used for all other sales and services. For this purpose, export sales means all sales by the electing corporation of products to foreign persons for use or consumption outside the United States and its possessions, provided such products are manufactured or produced in the possession within the meaning of subsection (d)(1)(A) of section 954, and further pro-

vided (except to the extent otherwise provided by regulations) the income derived by such foreign person on resale of such products (in the same state or in an altered state) is not included in foreign base company income for purposes of section 954(a).

(III) All members of an affiliated group must consent to an election under this subsection at such time and in such manner as shall be prescribed by the Secretary by regulations.

(6) Treatment of certain sales made after July 1, 1982

(A) In general

For purposes of this section, in the case of a disposition of intangible property made by a corporation after July 1, 1982, any gain or loss from such disposition shall be treated as gain or loss from sources within the United States to which paragraph (5) does not apply.

(B) Exception

Subparagraph (A) shall not apply to any disposition by a corporation of intangible property if such disposition is to a person who is not a related person to such corporation.

(C) Paragraph does not affect eligibility

This paragraph shall not apply for purposes of determining whether the corporation meets the requirements of subsection (a)(2).

(7) Section 864(e)(1) not to apply

This subsection shall be applied as if section 864(e)(1) (relating to treatment of affiliated groups) had not been enacted.

(8) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including rules for the application of this subsection to income from leasing of products to unrelated persons.

(i) Definitions and special rules relating to limitations of subsection (a)(4)

(1) Qualified possession wages

For purposes of this section—

(A) In general

The term ''qualified possession wages'' means wages paid or incurred by the possession corporation during the taxable year in connection with the active conduct of a trade or business within a possession of the United States to any employee for services performed in such possession, but only if such services are performed while the principal place of employment of such employee is within such possession.

(B) Limitation on amount of wages taken into account

(i) In general

The amount of wages which may be taken into account under subparagraph (A) with respect to any employee for any taxable year shall not exceed 85 percent of the contribution and benefit base determined under section 230 of the Social Security Act for the calendar year in which such taxable year begins.

(ii) Treatment of part-time employees, etc.

If—

(I) any employee is not employed by the possession corporation on a substantially full-time basis at all times during the taxable year, or

(II) the principal place of employment of any employee with the possession corporation is not within a possession at all times during the taxable year,

the limitation applicable under clause (i) with respect to such employee shall be the appropriate portion (as determined by the Secretary) of the limitation which would otherwise be in effect under clause (i).

(C) Treatment of certain employees

The term ''qualified possession wages'' shall not include any wages paid to employees who are assigned by the employer to perform services for another person, unless the principal trade or business of the employer is to make employees available for temporary periods to other persons in return for compensation. All possession corporations treated as 1 corporation under paragraph (5) shall be treated as 1 employer for purposes of the preceding sentence.

(D) Wages

(i) In general

Except as provided in clause (ii), the term ''wages'' has the meaning given to such term by subsection (b) of section 3306 (determined without regard to any dollar limitation contained in such section). For purposes of the preceding sentence, such subsection (b) shall be applied as if the term ''United States'' included all possessions of the United States.

(ii) Special rule for agricultural labor and railway labor

In any case to which subparagraph (A) or (B) of paragraph (1) of section 51(h) applies, the term ''wages'' has the meaning given to such term by section 51(h)(2).

(2) Allocable employee fringe benefit expenses

(A) In general

The allocable employee fringe benefit expenses of any possession corporation for any taxable year is an amount which bears the same ratio to the amount determined under subparagraph (B) for such taxable year as—

(i) the aggregate amount of the possession corporation's qualified possession wages for such taxable year, bears to

(ii) the aggregate amount of the wages paid or incurred by such possession corporation during such taxable year.

In no event shall the amount determined under the preceding sentence exceed 15 percent of the amount referred to in clause (i).

(B) Expenses taken into account

For purposes of subparagraph (A), the amount determined under this subparagraph

for any taxable year is the aggregate amount allowable as a deduction under this chapter to the possession corporation for such taxable year with respect to—

(i) employer contributions under a stock bonus, pension, profit-sharing, or annuity plan,

(ii) employer-provided coverage under any accident or health plan for employees, and

(iii) the cost of life or disability insurance provided to employees.

Any amount treated as wages under paragraph (1)(D) shall not be taken into account under this subparagraph.

(3) Treatment of possession taxes

(A) Amount of credit for possession corporations not using profit split

(i) In general

For purposes of subsection (a)(4)(A)(iii), the amount of the qualified possession income taxes for any taxable year allocable to nonsheltered income shall be an amount which bears the same ratio to the possession income taxes for such taxable year as—

(I) the increase in the tax liability of the possession corporation under this chapter for the taxable year by reason of subsection (a)(4)(A) (without regard to clause (iii) thereof), bears to

(II) the tax liability of the possession corporation under this chapter for the taxable year determined without regard to the credit allowable under this section.

(ii) Limitation on amount of taxes taken into account

Possession income taxes shall not be taken into account under clause (i) for any taxable year to the extent that the amount of such taxes exceeds 9 percent of the amount of the taxable income for such taxable year.

(B) Deduction for possession corporations using profit split

Notwithstanding subsection (c), if a possession corporation is not described in subsection (a)(4)(A)(iii) for the taxable year, such possession corporation shall be allowed a deduction for such taxable year in an amount which bears the same ratio to the possession income taxes for such taxable year as—

(i) the increase in the tax liability of the possession corporation under this chapter for the taxable year by reason of subsection (a)(4)(A), bears to

(ii) the tax liability of the possession corporation under this chapter for the taxable year determined without regard to the credit allowable under this section.

In determining the credit under subsection (a) and in applying the preceding sentence, taxable income shall be determined without regard to the preceding sentence.

(C) Possession income taxes

For purposes of this paragraph, the term ''possession income taxes'' means any taxes of a possession of the United States which are treated as not being income, war profits, or excess profits taxes paid or accrued to a possession of the United States by reason of subsection (c).

(4) Depreciation rules

For purposes of this section—

(A) Depreciation allowances

The term ''depreciation allowances'' means the depreciation deductions allowable under section 167 to the possession corporation.

(B) Categories of property

(i) Qualified tangible property

The term ''qualified tangible property'' means any tangible property used by the possession corporation in a possession of the United States in the active conduct of a trade or business within such possession.

(ii) Short-life qualified tangible property

The term ''short-life qualified tangible property'' means any qualified tangible property to which section 168 applies and which is 3-year property or 5-year property for purposes of such section.

(iii) Medium-life qualified tangible property

The term ''medium-life qualified tangible property'' means any qualified tangible property to which section 168 applies and which is 7-year property or 10-year property for purposes of such section.

(iv) Long-life qualified tangible property

The term ''long-life qualified tangible property'' means any qualified tangible property to which section 168 applies and which is not described in clause (ii) or (iii).

(v) Transitional rule

In the case of any qualified tangible property to which section 168 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) applies, any reference in this paragraph to section 168 shall be treated as a reference to such section as so in effect.

(5) Election to compute credit on consolidated basis

(A) In general

Any affiliated group may elect to treat all possession corporations which would be members of such group but for section 1504(b)(3) or (4) as 1 corporation for purposes of this section. The credit determined under this section with respect to such 1 corporation shall be allocated among such possession corporations in such manner as the Secretary may prescribe.

(B) Election

An election under subparagraph (A) shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary.

(6) Possession corporation

The term ''possession corporation'' means a domestic corporation for which the election provided in subsection (a) is in effect.

(j) Termination

(1) In general

Except as otherwise provided in this subsection, this section shall not apply to any taxable year beginning after December 31, 1995.

(2) Transition rules for active business income credit

Except as provided in paragraph (3)—

(A) Economic activity credit

In the case of an existing credit claimant—

(i) with respect to a possession other than Puerto Rico, and

(ii) to which subsection (a)(4)(B) does not apply,

the credit determined under subsection (a)(1)(A) shall be allowed for taxable years beginning after December 31, 1995, and before January 1, 2002.

(B) Special rule for reduced credit

(i) In general

In the case of an existing credit claimant to which subsection (a)(4)(B) applies, the credit determined under subsection (a)(1)(A) shall be allowed for taxable years beginning after December 31, 1995, and before January 1, 1998.

(ii) Election irrevocable after 1997

An election under subsection (a)(4)(B)(iii) which is in effect for the taxpayer's last taxable year beginning before 1997 may not be revoked unless it is revoked for the taxpayer's first taxable year beginning in 1997 and all subsequent taxable years.

(C) Economic activity credit for Puerto Rico

For economic activity credit for Puerto Rico, see section 30A.

(3) Additional restricted credit

(A) In general

In the case of an existing credit claimant—

(i) the credit under subsection (a)(1)(A) shall be allowed for the period beginning with the first taxable year after the last taxable year to which subparagraph (A) or (B) of paragraph (2), whichever is appropriate, applied and ending with the last taxable year beginning before January 1, 2006, except that

(ii) the aggregate amount of taxable income taken into account under subsection (a)(1)(A) for any such taxable year shall not exceed the adjusted base period income of such claimant.

(B) Coordination with subsection (a)(4)

The amount of income described in subsection (a)(1)(A) which is taken into account in applying subsection (a)(4) shall be such income as reduced under this paragraph.

(4) Adjusted base period income

For purposes of paragraph (3)—

(A) In general

The term ''adjusted base period income'' means the average of the inflation-adjusted possession incomes of the corporation for each base period year.

(B) Inflation-adjusted possession income

For purposes of subparagraph (A), the inflation-adjusted possession income of any corporation for any base period year shall be an amount equal to the sum of—

(i) the possession income of such corporation for such base period year, plus

(ii) such possession income multiplied by the inflation adjustment percentage for such base period year.

(C) Inflation adjustment percentage

For purposes of subparagraph (B), the inflation adjustment percentage for any base period year means the percentage (if any) by which—

(i) the CPI for 1995, exceeds

(ii) the CPI for the calendar year in which the base period year for which the determination is being made ends.

For purposes of the preceding sentence, the CPI for any calendar year is the CPI (as defined in section 1(f)(5)) for such year under section 1(f)(4).

(D) Increase in inflation adjustment percentage for growth during base years

The inflation adjustment percentage (determined under subparagraph (C) without regard to this subparagraph) for each of the 5 taxable years referred to in paragraph (5)(A) shall be increased by—

(i) 5 percentage points in the case of a taxable year ending during the 1-year period ending on October 13, 1995;

(ii) 10.25 percentage points in the case of a taxable year ending during the 1-year period ending on October 13, 1994;

(iii) 15.76 percentage points in the case of a taxable year ending during the 1-year period ending on October 13, 1993;

(iv) 21.55 percentage points in the case of a taxable year ending during the 1-year period ending on October 13, 1992; and

(v) 27.63 percentage points in the case of a taxable year ending during the 1-year period ending on October 13, 1991.

(5) Base period year

For purposes of this subsection—

(A) In general

The term ''base period year'' means each of 3 taxable years which are among the 5 most recent taxable years of the corporation ending before October 14, 1995, determined by disregarding—

(i) one taxable year for which the corporation had the largest inflation-adjusted possession income, and

(ii) one taxable year for which the corporation had the smallest inflation-adjusted possession income.

(B) Corporations not having significant possession income throughout 5-year period

(i) In general

If a corporation does not have significant possession income for each of the

most recent 5 taxable years ending before October 14, 1995, then, in lieu of applying subparagraph (A), the term ''base period year'' means only those taxable years (of such 5 taxable years) for which the corporation has significant possession income; except that, if such corporation has significant possession income for 4 of such 5 taxable years, the rule of subparagraph (A)(ii) shall apply.

(ii) Special rule

If there is no year (of such 5 taxable years) for which a corporation has significant possession income—

(I) the term ''base period year'' means the first taxable year ending on or after October 14, 1995, but

(II) the amount of possession income for such year which is taken into account under paragraph (4) shall be the amount which would be determined if such year were a short taxable year ending on September 30, 1995.

(iii) Significant possession income

For purposes of this subparagraph, the term ''significant possession income'' means possession income which exceeds 2 percent of the possession income of the taxpayer for the taxable year (of the period of 6 taxable years ending with the first taxable year ending on or after October 14, 1995) having the greatest possession income.

(C) Election to use one base period year

(i) In general

At the election of the taxpayer, the term ''base period year'' means—

(I) only the last taxable year of the corporation ending in calendar year 1992, or

(II) a deemed taxable year which includes the first ten months of calendar year 1995.

(ii) Base period income for 1995

In determining the adjusted base period income of the corporation for the deemed taxable year under clause (i)(II), the possession income shall be annualized and shall be determined without regard to any extraordinary item.

(iii) Election

An election under this subparagraph by any possession corporation may be made only for the corporation's first taxable year beginning after December 31, 1995, for which it is a possession corporation. The rules of subclauses (II) and (III) of subsection (a)(4)(B)(iii) shall apply to the election under this subparagraph.

(D) Acquisitions and dispositions

Rules similar to the rules of subparagraphs (A) and (B) of section 41(f)(3) shall apply for purposes of this subsection.

(6) Possession income

For purposes of this subsection, the term ''possession income'' means, with respect to any possession, the income referred to in subsection (a)(1)(A) determined with respect to that possession. In no event shall possession income be treated as being less than zero.

(7) Short years

If the current year or a base period year is a short taxable year, the application of this subsection shall be made with such annualizations as the Secretary shall prescribe.

(8) Special rules for certain possessions

(A) In general

In the case of an existing credit claimant with respect to an applicable possession, this section (other than the preceding paragraphs of this subsection) shall apply to such claimant with respect to such applicable possession for taxable years beginning after December 31, 1995, and before January 1, 2006.

(B) Applicable possession

For purposes of this paragraph, the term ''applicable possession'' means Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(9) Existing credit claimant

For purposes of this subsection—

(A) In general

The term ''existing credit claimant'' means a corporation—

(i)(I) which was actively conducting a trade or business in a possession on October 13, 1995, and

(II) with respect to which an election under this section is in effect for the corporation's taxable year which includes October 13, 1995, or

(ii) which acquired all of the assets of a trade or business of a corporation which—

(I) satisfied the requirements of subclause (I) of clause (i) with respect to such trade or business, and

(II) satisfied the requirements of subclause (II) of clause (i).

(B) New lines of business prohibited

If, after October 13, 1995, a corporation which would (but for this subparagraph) be an existing credit claimant adds a substantial new line of business (other than in an acquisition described in subparagraph (A)(ii)), such corporation shall cease to be treated as an existing credit claimant as of the close of the taxable year ending before the date of such addition.

(C) Binding contract exception

If, on October 13, 1995, and at all times thereafter, there is in effect with respect to a corporation a binding contract for the acquisition of assets to be used in, or for the sale of assets to be produced from, a trade or business, the corporation shall be treated for purposes of this paragraph as actively conducting such trade or business on October 13, 1995. The preceding sentence shall not apply if such trade or business is not actively conducted before January 1, 1996.

(10) Separate application to each possession

For purposes of determining—

(A) whether a taxpayer is an existing credit claimant, and

(B) the amount of the credit allowed under this section,

this subsection (and so much of this section as relates to this subsection) shall be applied separately with respect to each possession.

(Added Pub. L. 94–455, title X, §1051(b), Oct. 4, 1976, 90 Stat. 1643; amended Pub. L. 94–455, title XIX, §1901(b)(37)(B), Oct. 4, 1976, 90 Stat. 1803; Pub. L. 95–600, title VII, §701(u)(11)(A), (B), Nov. 6, 1978, 92 Stat. 2917; Pub. L. 97–248, title II, §201(d)(8)(B), formerly §201(c)(8)(B), §213(a), Sept. 3, 1982, 96 Stat. 420, 452, renumbered §201(d)(8)(B), Pub. L. 97–448, title III, §306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 98–369, div. A, title IV, §474(r)(22), title VII, §712(g), title VIII, §801(d)(11), July 18, 1984, 98 Stat. 843, 947, 997; Pub. L. 99–499, title V, §516(b)(1)(B), Oct. 17, 1986, 100 Stat. 1770; Pub. L. 99–514, title II, §231(d)(3)(G), title VII, §701(e)(4)(I), title XII, §§1231(a)–(d), (f), 1275(a)(1), title XVIII, §1812(c)(4)(C), Oct. 22, 1986, 100 Stat. 2179, 2343, 2561–2563, 2598, 2835; Pub. L. 100–647, title I, §§1002(h)(3), 1012(h)(2)(B), (j), (n)(4), (5), title VI, §6132(a), Nov. 10, 1988, 102 Stat. 3370, 3502, 3512, 3515, 3721; Pub. L. 101–382, title II, §227(a), Aug. 20, 1990, 104 Stat. 661; Pub. L. 101–508, title XI, §11704(a)(11), Nov. 5, 1990, 104 Stat. 1388–518; Pub. L. 103–66, title XIII, §13227(a), (b), Aug. 10, 1993, 107 Stat. 489, 490; Pub. L. 104–188, title I, §§1601(a), 1704(t)(37), (80), Aug. 20, 1996, 110 Stat. 1827, 1889, 1891; Pub. L. 108–357, title IV, §402(b)(2), Oct. 22, 2004, 118 Stat. 1492; Pub. L. 110–172, §11(g)(12), Dec. 29, 2007, 121 Stat. 2490.)

REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1986, referred to in subsecs. (d)(3)(B) and (i)(4)(B)(v), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

The Caribbean Basin Economic Recovery Act, referred to in subsec. (d)(4)(A)(i), (B), is title II of Pub. L. 98–67, Aug. 5, 1983, 97 Stat. 384, which is classified principally to chapter 15 (§2701 et seq.) of Title 19, Customs Duties. Section 212 of that Act is classified to section 2702 of Title 19. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of Title 19 and Tables.

The date of the enactment of this subparagraph, referred to in subsec. (h)(3)(A), means the date of enactment of Pub. L. 97–248, which was approved Sept. 3, 1982.

The date of the enactment of this clause, referred to in subsec. (h)(5)(B)(iii)(I), (iv), means the date of enactment of Pub. L. 97–248, which was approved Sept. 3, 1982.

Section 230 of the Social Security Act, referred to in subsec. (i)(1)(B)(i), is classified to section 430 of Title 42, The Public Health and Welfare.

AMENDMENTS

2007—Subsec. (f)(2)(B). Pub. L. 110–172 struck out ''FSC or'' before ''former FSC''.

2004—Subsec. (a)(2)(A). Pub. L. 108–357 substituted ''subsections (f) and (g) of section 904'' for ''section 904(f)''.

1996—Subsec. (a)(4)(A)(ii)(I). Pub. L. 104–188, §1704(t)(80), which directed that subcl. (I) be amended by substituting ''depreciation'' for ''deprecation'', could not be executed, because the word ''deprecation'' did not appear in text.

Subsec. (b). Pub. L. 104–188, §1704(t)(37), substituted ''subparagraphs (D)(ii)'' for ''subparagraphs (D)(ii)(I)''.

Subsec. (j). Pub. L. 104–188, §1601(a), added subsec. (j).

1993—Subsec. (a)(1). Pub. L. 103–66, §13227(a)(1), substituted ''Except as otherwise provided in this section'' for ''Except as provided in paragraph (3)''.

Subsec. (a)(4). Pub. L. 103–66, §13227(a)(2), added par. (4).

Subsec. (i). Pub. L. 103–66, §13227(b), added subsec. (i).

1990—Subsec. (d)(4)(D). Pub. L. 101–382 added subpar. (D).

Subsec. (e)(1). Pub. L. 101–508 substituted ''subsection (a)(2)'' for ''subsection (a)(1)'' wherever appearing.

1988—Subsec. (d)(3)(B). Pub. L. 100–647, §1012(j), inserted ''(as in effect on the day before the date of the enactment of the Tax Reform Act of 1986)'' after ''section 957(c)''.

Subsec. (d)(4)(A)(ii). Pub. L. 100–647, §1012(n)(5)(A), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''in accordance with a specific authorization granted by the Government Development Bank for Puerto Rico pursuant to regulations issued by the Secretary of the Treasury of Puerto Rico.''

Subsec. (d)(4)(B). Pub. L. 100–647, §6132(a), inserted ''and the Virgin Islands'' after ''274(h)(6)(A)''.

Subsec. (d)(4)(C)(i), (ii). Pub. L. 100–647, §1012(n)(5)(B), substituted ''Commissioner of Financial Institutions of Puerto Rico'' for ''Secretary of the Treasury of Puerto Rico''.

Subsec. (h)(5)(C)(i)(I). Pub. L. 100–647, §1012(n)(4), amended directory language of Pub. L. 99–514, §1231(a)(1), see 1986 Amendment note below.

Subsec. (h)(5)(C)(i)(IV)(c). Pub. L. 100–647, §1002(h)(3), substituted ''section 41'' and ''section 41(f)'' for ''section 30'' and ''section 30(f)'', respectively.

Subsec. (h)(7), (8). Pub. L. 100–647, §1012(h)(2)(B), added par. (7) and redesignated former par. (7) as (8).

1986—Subsec. (a)(2)(B). Pub. L. 99–514, §1231(d)(1), substituted ''75 percent'' for ''65 percent''.

Subsec. (a)(2)(C). Pub. L. 99–514, §1231(d)(2), struck out subpar. (C), transitional rule, which read as follows: ''In applying subparagraph (B) with respect to taxable years beginning after December 31, 1982, and before January 1, 1985, the following percentage shall be substituted for '65 percent':

''For taxable years beginning in calendar year:	**The percentage is:**
1983	55
1984	60.''

Subsec. (a)(3). Pub. L. 99–499 in par. (3), as amended by Pub. L. 99–514, added subpar. (A) and redesignated former subpars. (A) to (C) as (B) to (D), respectively.

Pub. L. 99–514, §701(e)(4)(I), struck out subpar. (A) which read ''section 56 (relating to corporate minimum tax),'', and redesignated subpars. (B), (C), and (E) as (A), (B), and (C), respectively.

Subsec. (b). Pub. L. 99–514, §1231(b), inserted at end ''This subsection shall not apply to any amount described in subsection (a)(1)(A)(i) received from a person who is not a related person (within the meaning of subsection (h)(3) but without regard to subparagraphs (D)(ii)(I) and (E)(i) thereof) with respect to the domestic corporation.''

Subsec. (d)(1). Pub. L. 99–514, §1275(a)(1), substituted ''and the Virgin Islands'' for '', but does not include the Virgin Islands of the United States''.

Subsec. (d)(4). Pub. L. 99–514, §1231(c), added par. (4).

Subsec. (h)(3)(D)(ii). Pub. L. 99–514, §1812(c)(4)(C), amended cl. (ii) generally. Prior to amendment, cl. (ii), special rules, read as follows: ''For purposes of clause (i)—

''(I) section 267(b) and section 707(b)(1) shall be applied by substituting '10 percent' for '50 percent', and

''(II) section 267(b)(3) shall be applied without regard to whether a person was a personal holding company or a foreign personal holding company.''

Subsec. (h)(5)(C)(i)(I). Pub. L. 99–514, §1231(a)(1), as amended by Pub. L. 100–647, §1012(n)(4), in introductory provisions, substituted ''the same proportion of 110 percent of the cost'' for ''the same proportion of the cost'', and inserted at end of material relating to payment of

cost sharing ''In the case of intangible property described in subsection (h)(3)(B)(i) which the electing corporation is treated as owning under subclause (II), in no event shall the payment required under this subclause be less than the inclusion or payment which would be required under section 367(d)(2)(A)(ii) or section 482 if the electing corporation were a foreign corporation.''

Subsec. (h)(5)(C)(i)(I)(a). Pub. L. 99–514, § 231(d)(3)(G), substituted ''section 41(b)'' for ''section 30(b)''.

Subsec. (h)(5)(C)(ii)(II). Pub. L. 99–514, § 1231(f), substituted ''all products and types of services, within such product area, produced or rendered'' for ''all products produced and types of service rendered''.

Pub. L. 99–514, § 1231(a)(2), substituted ''the third and fourth sentences thereof, but substituting '120 percent' for '110 percent' in the second sentence thereof)'' for ''the third sentence thereof)''.

1984—Subsec. (a)(2)(C). Pub. L. 98–369, § 712(g), substituted in table heading ''The percentage is'' for ''The percentage tax is''.

Subsec. (f). Pub. L. 98–369, § 801(d)(11), amended subsec. (f) generally, substituting in heading ''Limitation on credit for DISC's and FSC's'' for ''DISC or former DISC corporation ineligible for credit'', and in text striking out reference to section 992(a) and inserting provision disallowing a credit to a corporation for a taxable year in which it owns at any time stock in a FSC or former FSC.

Subsec. (h)(5)(C)(i)(I)(a). Pub. L. 98–369, § 474(r)(22)(A), substituted ''section 30(b)'' for ''section 44F(b)''.

Subsec. (h)(5)(C)(i)(IV)(c). Pub. L. 98–369, § 474(r)(22)(B), substituted ''section 30'' for ''section 44F'' and ''section 30(f)'' for ''section 44F(f)''.

1982—Subsec. (a)(2)(B). Pub. L. 97–248, § 213(a)(1)(A), substituted ''65 percent'' for ''50 percent''.

Subsec. (a)(2)(C). Pub. L. 97–248, § 213(a)(1)(B), added subpar. (C).

Subsec. (a)(3)(A). Pub. L. 97–248, § 201(d)(8)(B), formerly § 201(c)(8)(B), substituted ''(relating to corporate minimum tax)'' for ''(relating to minimum tax)''.

Subsec. (h). Pub. L. 97–248, § 213(a)(2), added subsec. (h).

1978—Subsec. (a). Pub. L. 95–600, § 701(u)(11)(A), reworked provisions of par. (1) into introductory text, substituting reference to par. (3) for reference to par. (2), and subpars. (A) and (B), inserted introductory text of par. (2), redesignated former subpars. (A) and (B) of par. (1) as subpars. (A) and (B) of par. (2), and redesignated former par. (2) as (3).

Subsec. (d). Pub. L. 95–600, § 701(u)(11)(B), substituted in heading ''Definitions and special rules'' for ''Definitions'' and added par. (3).

1976—Subsec. (a)(2)(D). Pub. L. 94–455, § 1901(b)(37)(B), struck out subpar. (D) relating to war loss recoveries.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to losses for taxable years beginning after Dec. 31, 2006, see section 402(c) of Pub. L. 108–357, set out as a note under section 535 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1601(a) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, except as otherwise provided, see section 1601(c) of Pub. L. 104–188, set out as an Effective Date note under section 30A of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1993, see section 13227(f) of Pub. L. 103–66, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 227(b) of Pub. L. 101–382 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to calendar years after 1989.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1002(h)(3) and 1012(h)(2)(B), (j), (n)(4), (5) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6132(b) of Pub. L. 100–647 provided that: ''The amendment made by this section [amending this section] shall apply to investments made after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 231(d)(3)(G) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1985, see section 231(g) of Pub. L. 99–514, set out as a note under section 41 of this title.

Amendment by section 701(e)(4)(I) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

Section 1231(g) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1012(n)(1)–(3), Nov. 10, 1988, 102 Stat. 3514, provided that:

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section and sections 367 and 482 of this title] shall apply to taxable years beginning after December 31, 1986.

''(2) SPECIAL RULE FOR TRANSFER OF INTANGIBLES.—

''(A) IN GENERAL.—The amendments made by subsection (e) [amending sections 367 and 482 of this title] shall apply to taxable years beginning after December 31, 1986, but only with respect to transfers after November 16, 1985, or licenses granted after such date (or before such date with respect to property not in existence or owned by the taxpayer on such date). In the case of any transfer (or license) which is not to a foreign person, the preceding sentence shall be applied by substituting 'August 16, 1986' for 'November 16, 1985'.

''(B) SPECIAL RULE FOR SECTION 936.—For purposes of section 936(h)(5)(C) of the Internal Revenue Code of 1986 the amendments made by subsection (e) shall apply to taxable years beginning after December 31, 1986, without regard to when the transfer (or license), if any, was made.

''(3) SUBSECTION (f).—The amendment made by subsection (f) [amending this section] shall apply to taxable years beginning after December 31, 1982.

''(4) TRANSITIONAL RULE.—In the case of a corporation—

''(A) with respect to which an election under section 936 of the Internal Revenue Code of 1986 (relating to possessions tax credit) is in effect,

''(B) which produced an end-product form in Puerto Rico on or before September 3, 1982,

''(C) which began manufacturing a component of such product in Puerto Rico in its taxable year beginning in 1983, and

''(D) with respect to which a Puerto Rican tax exemption was granted on June 27, 1983,

such corporation shall treat such component as a separate product for such taxable year for purposes of determining whether such corporation had a significant business presence in Puerto Rico with respect to such product and its income with respect to such product.

''(5) TRANSITIONAL RULE FOR INCREASE IN GROSS INCOME TEST.—

''(A) IN GENERAL.—If—

''(i) a corporation fails to meet the requirements of subparagraph (B) of section 936(a)(2) of the Internal Revenue Code of 1986 (as amended by subsection (d)(1)) for any taxable year beginning in 1987 or 1988,

''(ii) such corporation would have met the requirements of such subparagraph (B) if such subparagraph had been applied without regard to the amendment made by subsection (d)(1), and

''(iii) 75 percent or more of the gross income of such corporation for such taxable year (or, in the case of a taxable year beginning in 1988, for the period consisting of such taxable year and the preceding taxable year) was derived from the active conduct of a trade or business within a possession of the United States, such corporation shall nevertheless be treated as meeting the requirements of such subparagraph (B) for such taxable year if it elects to reduce the amount of the qualified possession source investment income for the taxable year by the amount of the shortfall determined under subparagraph (B) of this paragraph.

''(B) DETERMINATION OF SHORTFALL.—The shortfall determined under this subparagraph for any taxable year is an amount equal to the excess of—

''(i) 75 percent of the gross income of the corporation for the 3-year period (or part thereof) referred to in section 936(a)(2)(A) of such Code, over

''(ii) the amount of the gross income of such corporation for such period (or part thereof) which was derived from the active conduct of a trade or business within a possession of the United States.

''(C) SPECIAL RULE.—Any income attributable to the investment of the amount not treated as qualified possession source investment income under subparagraph (A) shall not be treated as qualified possession source investment income for any taxable year.''

Amendment by section 1275(a)(1) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

Amendment by section 1812(c)(4)(C) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Amendment by Pub. L. 99–499 applicable to taxable years beginning after Dec. 31, 1986, see section 516(c) of Pub. L. 99–499, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(22) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 712(g) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

Amendment by section 801(d)(11) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 201(d)(8)(B) of Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, see section 201(e)(1) of Pub. L. 97–248, set out as a note under section 5 of this title.

Section 213(e) of Pub. L. 97–248, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section and sections 246, 367, and 934 of this title] shall apply to taxable years beginning after December 31, 1982.

''(2) CERTAIN SALES MADE AFTER JULY 1, 1982.—Paragraph (6) of section 936(h) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], and so much of section 934 to which such paragraph applies by reason of section 934(e)(4) of such Code, shall apply to taxable years ending after July 1, 1982.

''(3) CERTAIN TRANSFERS OF INTANGIBLES MADE AFTER AUGUST 14, 1982.—Subsection (d) [amending section 367 of this title] shall apply to taxable years ending after August 14, 1982.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(u)(11)(C) of Pub. L. 95–600, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this paragraph [amending this section] shall apply as if included in section 936 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] at the time of its addition by section 1051(b) of the Tax Reform Act of 1976 [Oct. 4, 1976].''

EFFECTIVE DATE OF 1976 AMENDMENT

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

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1975, except that qualified possession source investment income as defined in subsec. (d)(2) of this section shall include income from any source outside the United States if the taxpayer establishes to the satisfaction of the Secretary of the Treasury or his delegate that the income from such sources was earned before Oct. 1, 1976, see section 1051(i) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 27 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(4)(I) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

REPORT ON POSSESSIONS CORPORATIONS

Section 441(a) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–647, title VI, § 6252(b)(1), Nov. 10, 1988, 102 Stat. 3752, which directed Secretary of the Treasury to submit a report to Congress each fourth calendar year on the operation and effect of sections 936 and 934(b) of this title, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 142 of House Document No. 103–7.

§ 937. Residence and source rules involving possessions

(a) Bona fide resident

For purposes of this subpart, section 865(g)(3), section 876, section 881(b), paragraphs (2) and (3) of section 901(b), section 957(c), section 3401(a)(8)(C), and section 7654(a), except as provided in regulations, the term ''bona fide resident'' means a person—

(1) who is present for at least 183 days during the taxable year in Guam, American Samoa, the Northern Mariana Islands, Puerto Rico, or the Virgin Islands, as the case may be, and

(2) who does not have a tax home (determined under the principles of section 911(d)(3) without regard to the second sentence thereof) outside such specified possession during the taxable year and does not have a closer connection (determined under the principles of section 7701(b)(3)(B)(ii)) to the United States or a foreign country than to such specified possession.

For purposes of paragraph (1), the determination as to whether a person is present for any day shall be made under the principles of section 7701(b).

(b) Source rules

Except as provided in regulations, for purposes of this title—

(1) except as provided in paragraph (2), rules similar to the rules for determining whether income is income from sources within the United States or is effectively connected with the conduct of a trade or business within the United States shall apply for purposes of determining whether income is from sources within a possession specified in subsection (a)(1) or effectively connected with the conduct of a trade or business within any such possession, and

(2) any income treated as income from sources within the United States or as effectively connected with the conduct of a trade or business within the United States shall not be treated as income from sources within any such possession or as effectively connected with the conduct of a trade or business within any such possession.

(c) Reporting requirement

(1) In general

If, for any taxable year, an individual takes the position for United States income tax reporting purposes that the individual became, or ceases to be, a bona fide resident of a possession specified in subsection (a)(1), such individual shall file with the Secretary, at such time and in such manner as the Secretary may prescribe, notice of such position.

(2) Transition rule

If, for any of an individual's 3 taxable years ending before the individual's first taxable year ending after the date of the enactment of this subsection, the individual took a position described in paragraph (1), the individual shall file with the Secretary, at such time and in such manner as the Secretary may prescribe, notice of such position.

(Added Pub. L. 108–357, title VIII, §908(a), Oct. 22, 2004, 118 Stat. 1655.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (c)(2), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

EFFECTIVE DATE

Pub. L. 108–357, title VIII, §908(d), Oct. 22, 2004, 118 Stat. 1657, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section and amending sections 931, 932, 934, 935, 957, and 6688 of this title] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 22, 2004].

''(2) 183-DAY RULE.—Section 937(a)(1) of the Internal Revenue Code of 1986 (as added by this section) shall apply to taxable years beginning after the date of the enactment of this Act.

''(3) SOURCING.—Section 937(b)(2) of such Code (as so added) shall apply to income earned after the date of the enactment of this Act.''

[SUBPART E—REPEALED]

[§§ 941 to 943. Repealed. Pub. L. 108–357, title I, § 101(b)(1), Oct. 22, 2004, 118 Stat. 1423]

Section 941, added Pub. L. 106–519, §3(b), Nov. 15, 2000, 114 Stat. 2424, related to qualifying foreign trade income.

A prior section 941, acts Aug. 16, 1954, ch. 736, 68A Stat. 293; Oct. 4, 1976, Pub. L. 94–455, title X, §1053(a), title XIX, §1906(b)(1)(A), 90 Stat. 1648, 1834, set forth provisions authorizing special deduction for China Trade Act corporations, prior to repeal by Pub. L. 94–455, title X, §1053(c), (e), Oct. 4, 1976, 90 Stat. 1649, effective with respect to taxable years beginning after Dec. 31, 1977.

Section 942, added Pub. L. 106–519, §3(b), Nov. 15, 2000, 114 Stat. 2426, defined ''foreign trading gross receipts'' and set forth economic process requirements.

A prior section 942, act Aug. 16, 1954, ch. 736, 68A Stat. 294, disallowed foreign tax credit authorized by section 901 to any corporation organized under the China Trade Act, prior to repeal by Pub. L. 94–455, title X, §1053(c), (e), Oct. 4, 1976, 90 Stat. 1649, effective with respect to taxable years beginning after Dec. 31, 1977.

Section 943, added Pub. L. 106–519, §3(b), Nov. 15, 2000, 114 Stat. 2428; amended Pub. L. 107–147, title IV, §417(14), Mar. 9, 2002, 116 Stat. 56, set forth other definitions and special rules for purposes of this subpart.

A prior section 943, acts Aug. 16, 1954, ch. 736, 68A Stat. 294; Oct. 4, 1976, Pub. L. 94–455, title X, §1053(b), 90 Stat. 1648, set forth provisions relating to exclusion from gross income of residents of Formosa or Hong Kong of amounts distributed as dividends by China Trade Act corporations, prior to repeal by Pub. L. 94–455, title X, §1053(c), (e), Oct. 4, 1976, 90 Stat. 1649, effective with respect to taxable years beginning after Dec. 31, 1977.

EFFECTIVE DATE OF REPEAL

Repeal applicable to transactions after Dec. 31, 2004, see section 101(c) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendments note under section 56 of this title.

SUBPART F—CONTROLLED FOREIGN CORPORATIONS

Sec.
951. Amounts included in gross income of United States shareholders.
952. Subpart F income defined.
953. Insurance income.
954. Foreign base company income.
955. Withdrawal of previously excluded subpart F income from qualified investment.
956. Investment of earnings in United States property.
[956A. Repealed.]
957. Controlled foreign corporations; United States persons.
958. Rules for determining stock ownership.
959. Exclusion from gross income of previously taxed earnings and profits.
960. Special rules for foreign tax credit.
961. Adjustments to basis of stock in controlled foreign corporations and of other property.

Sec.
962. Election by individuals to be subject to tax at corporate rates.
[963. Repealed.]
964. Miscellaneous provisions.
965. Temporary dividends received deduction.

AMENDMENTS

2004—Pub. L. 108–357, title IV, § 422(c), Oct. 22, 2004, 118 Stat. 1519, added item 965.

1996—Pub. L. 104–188, title I, § 1501(c), Aug. 20, 1996, 110 Stat. 1826, which directed that the analysis for subpart F be amended by striking item 956A, could not be executed, because item 956A ''Earnings invested in excess passive assets'' had been editorially supplied.

1986—Pub. L. 99–514, title XII, § 1221(b)(3)(E), Oct. 22, 1986, 100 Stat. 2553, substituted ''Insurance income'' for ''Income from insurance of United States risks'' in item 953.

1975—Pub. L. 94–12, title VI, § 602(a)(3)(A), (c)(7), (d)(3)(B), Mar. 29, 1975, 89 Stat. 58, 60, 64, struck out existing item 955 and replaced it with an identical item 955 and struck out item 963 ''Receipt of minimum distributions by domestic corporations''.

1962—Pub. L. 87–834, § 12(a), Oct. 16, 1962, 76 Stat. 1006, added heading of subpart F, and items 951–964.

§ 951. Amounts included in gross income of United States shareholders

(a) Amounts included

(1) In general

If a foreign corporation is a controlled foreign corporation for an uninterrupted period of 30 days or more during any taxable year, every person who is a United States shareholder (as defined in subsection (b)) of such corporation and who owns (within the meaning of section 958(a)) stock in such corporation on the last day, in such year, on which such corporation is a controlled foreign corporation shall include in his gross income, for his taxable year in which or with which such taxable year of the corporation ends—

(A) the sum of—

(i) his pro rata share (determined under paragraph (2)) of the corporation's subpart F income for such year,

(ii) his pro rata share (determined under section 955(a)(3) as in effect before the enactment of the Tax Reduction Act of 1975) of the corporation's previously excluded subpart F income withdrawn from investment in less developed countries for such year, and

(iii) his pro rata share (determined under section 955(a)(3)) of the corporation's previously excluded subpart F income withdrawn from foreign base company shipping operations for such year; and

(B) the amount determined under section 956 with respect to such shareholder for such year (but only to the extent not excluded from gross income under section 959(a)(2)).

(2) Pro rata share of subpart F income

The pro rata share referred to in paragraph (1)(A)(i) in the case of any United States shareholder is the amount—

(A) which would have been distributed with respect to the stock which such shareholder owns (within the meaning of section 958(a)) in such corporation if on the last day, in its taxable year, on which the corporation is a controlled foreign corporation it had distributed pro rata to its shareholders an amount (i) which bears the same ratio to its subpart F income for the taxable year, as (ii) the part of such year during which the corporation is a controlled foreign corporation bears to the entire year, reduced by

(B) the amount of distributions received by any other person during such year as a dividend with respect to such stock, but only to the extent of the dividend which would have been received if the distribution by the corporation had been the amount (i) which bears the same ratio to the subpart F income of such corporation for the taxable year, as (ii) the part of such year during which such shareholder did not own (within the meaning of section 958(a)) such stock bears to the entire year.

For purposes of subparagraph (B), any gain included in the gross income of any person as a dividend under section 1248 shall be treated as a distribution received by such person with respect to the stock involved.

(3) Limitation on pro rata share of previously excluded subpart F income withdrawn from investment

For purposes of paragraph (1)(A)(iii), the pro rata share of any United States shareholder of the previously excluded subpart F income of a controlled foreign corporation withdrawn from investment in foreign base company shipping operations shall not exceed an amount—

(A) which bears the same ratio to his pro rata share of such income withdrawn (as determined under section 955(a)(3)) for the taxable year, as

(B) the part of such year during which the corporation is a controlled foreign corporation bears to the entire year.

(b) United States shareholder defined

For purposes of this subpart, the term ''United States shareholder'' means, with respect to any foreign corporation, a United States person (as defined in section 957(c)) who owns (within the meaning of section 958(a)), or is considered as owning by applying the rules of ownership of section 958(b), 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such foreign corporation.

(c) Coordination with passive foreign investment company provisions

If, but for this subsection, an amount would be included in the gross income of a United States shareholder for any taxable year both under subsection (a)(1)(A)(i) and under section 1293 (relating to current taxation of income from certain passive foreign investment companies), such amount shall be included in the gross income of such shareholder only under subsection (a)(1)(A).

(Added Pub. L. 87–834, § 12(a), Oct. 16, 1962, 76 Stat. 1006; amended Pub. L. 94–12, title VI, § 602(a)(3)(B), (c)(3), (4), (d)(2), Mar. 29, 1975, 89 Stat. 58, 62; Pub. L. 94–455, title XIX, § 1901(a)(119), Oct. 4, 1976, 90 Stat. 1784; Pub. L. 98–369, div. A, title I, § 132(c)(1), title VIII, § 801(d)(4), July 18, 1984, 98 Stat. 666, 996; Pub. L. 99–514, title XII, § 1235(c), title XVIII, § 1876(c)(2),

Oct. 22, 1986, 100 Stat. 2574, 2898; Pub. L. 100–647, title I, §1012(i)(15), Nov. 10, 1988, 102 Stat. 3510; Pub. L. 103–66, title XIII, §§13231(a), 13232(c), Aug. 10, 1993, 107 Stat. 495, 502; Pub. L. 104–188, title I, §1501(a)(1), Aug. 20, 1996, 110 Stat. 1825; Pub. L. 105–34, title XI, §1112(a)(1), Aug. 5, 1997, 111 Stat. 969; Pub. L. 108–357, title IV, §413(c)(16), Oct. 22, 2004, 118 Stat. 1508; Pub. L. 110–172, §11(g)(13), Dec. 29, 2007, 121 Stat. 2490.)

REFERENCES IN TEXT

The Tax Reduction Act of 1975, referred to in subsec. (a)(1)(A)(ii), is Pub. L. 94–12, Mar. 29, 1975, 89 Stat. 26, as amended, which was enacted Mar. 29, 1975. For complete classification of this Act to the Code, see Short Title of 1975 Amendment note set out under section 1 of this title and Tables.

AMENDMENTS

2007—Subsecs. (c), (d). Pub. L. 110–172 redesignated subsec. (d) as (c) and struck out heading and text of former subsec. (c). Text read as follows:

''(1) IN GENERAL.—The foreign trade income of a FSC and any deductions which are apportioned or allocated to such income shall not be taken into account under this subpart.

''(2) FOREIGN TRADE INCOME.—For purposes of this subsection, the term 'foreign trade income' has the meaning given such term by section 923(b), but does not include section 923(a)(2) non-exempt income (within the meaning of section 927(d)(6)).''

2004—Subsecs. (c) to (f). Pub. L. 108–357 redesignated subsecs. (e) and (f) as (c) and (d), respectively, and struck out former subsecs. (c) and (d), which related to coordination of provisions with election of a foreign investment company to distribute income and coordination with foreign personal holding company provisions, respectively.

1997—Subsec. (a)(2). Pub. L. 105–34 inserted concluding provisions ''For purposes of subparagraph (B), any gain included in the gross income of any person as a dividend under section 1248 shall be treated as a distribution received by such person with respect to the stock involved.''

1996—Subsec. (a)(1)(A) to (C). Pub. L. 104–188 inserted ''and'' at end of subpar. (A), substituted period for ''; and'' at end of subpar. (B), and struck out subpar. (C) which read as follows: ''the amount determined under section 956A with respect to such shareholder for such year (but only to the extent not excluded from gross income under section 959(a)(3)).''

1993—Subsec. (a)(1)(B). Pub. L. 103–66, §13232(c)(1), substituted ''the amount determined under section 956 with respect to such shareholder for such year (but only to the extent not excluded from gross income under section 959(a)(2)); and'' for ''his pro rata share (determined under section 956(a)(2)) of the corporation's increase in earnings invested in United States property for such year (but only to the extent not excluded from gross income under section 959(a)(2)); and''.

Subsec. (a)(1)(C). Pub. L. 103–66, §13231(a), added subpar. (C).

Subsec. (a)(4). Pub. L. 103–66, §13232(c)(2), struck out heading and text of par. (4). Text read as follows: ''For purposes of paragraph (1)(B), the pro rata share of any United States shareholder in the increase of the earnings of a controlled foreign corporation invested in United States property shall not exceed an amount (A) which bears the same ratio to his pro rata share of such increase (as determined under section 956(a)(2)) for the taxable year, as (B) the part of such year during which the corporation is a controlled foreign corporation bears to the entire year.''

1988—Subsec. (b). Pub. L. 100–647 substituted ''section 957(c)'' for ''section 957(d)''.

1986—Subsec. (e)(1). Pub. L. 99–514, §1876(c)(2), struck out last sentence which read as follows: ''For purposes of the preceding sentence, income described in paragraph (2) or (3) of section 921(d) shall be treated as derived from sources within the United States.''

Subsec. (f). Pub. L. 99–514, §1235(c), added subsec. (f).

1984—Subsec. (d). Pub. L. 98–369, §132(c)(1), amended subsec. (d) generally, substituting provision that, if a United States shareholder is required to include in gross income an amount under both subsec. (a)(1)(A)(ii) of this section and section 551(b) of this title, such amount be included only under subsec. (a)(1)(A)(ii) of this section for provision that, if a United States shareholder is subject to tax under section 551(b) of this title, such shareholder not be required to include as gross income any amount under subsec. (a) of this section.

Subsec. (e). Pub. L. 98–369, §801(d)(4), added subsec. (e).

1976—Subsec. (a)(1). Pub. L. 94–455 struck out ''beginning after December 31, 1962'' after ''during any taxable year''.

1975—Subsec. (a)(1)(A)(i). Pub. L. 94–12, §602(a)(3)(B), struck out ''except as provided in section 963,'' before ''his pro rata share''.

Subsec. (a)(1)(A)(ii). Pub. L. 94–12, §602(c)(3), substituted ''(determined under section 955(a)(3) as in effect before the enactment of the Tax Reduction Act of 1975)'' for ''(determined under section 955(a)(3))''.

Subsec. (a)(1)(A)(iii). Pub. L. 94–12, §602(d)(2)(A), added cl. (iii).

Subsec. (a)(3). Pub. L. 94–12, §602(c)(4), (d)(2)(B), substituted ''paragraph (i)(A)(iii)'' for ''paragraph (1)(A)(ii)'' and ''foreign base company shipping operations'' for ''less developed countries''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1112(a)(2) of Pub. L. 105–34 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to dispositions after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years of foreign corporations beginning after Dec. 31, 1996, and to taxable years of United States shareholders within which or with which such taxable years of foreign corporations end, see section 1501(d) of Pub. L. 104–188, set out as a note under section 904 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13231(e) of Pub. L. 103–66 provided that: ''The amendments made by this section [enacting section 956A of this title and amending this section and sections 959, 989, 1293, 1296, and 1297 of this title] shall apply to taxable years of foreign corporations beginning after September 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end.''

Section 13232(d) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and section 956 of this title] shall apply to taxable years of controlled foreign corporations beginning after September 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of controlled foreign corporations end.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1235(c) of Pub. L. 99–514 applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, see section 1235(h) of Pub. L. 99–514, set out as an Effective Date note under section 1291 of this title.

Amendment by section 1876(c)(2) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 132(d)(2)(A) of Pub. L. 98–369 provided that: ''The amendment made by paragraph (1) of subsection (c) [amending this section] shall apply to taxable years of United States shareholders beginning after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 801(d)(4) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–12 applicable to taxable years of foreign corporations beginning after Dec. 31, 1975, and to taxable years of United States shareholders (within the meaning of 951(b) of this title) within which or with which such taxable years of such foreign corporations end, see section 602(f) of Pub. L. 94–12, set out as an Effective Date note under section 955 of this title.

EFFECTIVE DATE

Section 12(c) of Pub. L. 87–834 provided that: ''The amendments made by this section [enacting this section and sections 952 to 964 and 970 to 972 of this title and amending sections 901, 904, and 1016 of this title] shall apply with respect to taxable years of foreign corporations beginning after December 31, 1962, and to taxable year of United States shareholders within which or with which such taxable years of such foreign corporations end.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 952. Subpart F income defined

(a) In general

For purposes of this subpart, the term ''subpart F income'' means, in the case of any controlled foreign corporation, the sum of—

(1) insurance income (as defined under section 953),

(2) the foreign base company income (as determined under section 954),

(3) an amount equal to the product of—

(A) the income of such corporation other than income which—

(i) is attributable to earnings and profits of the foreign corporation included in the gross income of a United States person under section 951 (other than by reason of this paragraph), or

(ii) is described in subsection (b),

multiplied by

(B) the international boycott factor (as determined under section 999),

(4) the sum of the amounts of any illegal bribes, kickbacks, or other payments (within the meaning of section 162(c)) paid by or on behalf of the corporation during the taxable year of the corporation directly or indirectly to an official, employee, or agent in fact of a government, and

(5) the income of such corporation derived from any foreign country during any period during which section 901(j) applies to such foreign country.

The payments referred to in paragraph (4) are payments which would be unlawful under the Foreign Corrupt Practices Act of 1977 if the payor were a United States person. For purposes of paragraph (5), the income described therein shall be reduced, under regulations prescribed by the Secretary, so as to take into account deductions (including taxes) properly allocable to such income.

(b) Exclusion of United States income

In the case of a controlled foreign corporation, subpart F income does not include any item of income from sources within the United States which is effectively connected with the conduct by such corporation of a trade or business within the United States unless such item is exempt from taxation (or is subject to a reduced rate of tax) pursuant to a treaty obligation of the United States. For purposes of this subsection, any exemption (or reduction) with respect to the tax imposed by section 884 shall not be taken into account.

(c) Limitation

(1) In general

(A) Subpart F income limited to current earnings and profits

For purposes of subsection (a), the subpart F income of any controlled foreign corporation for any taxable year shall not exceed the earnings and profits of such corporation for such taxable year.

(B) Certain prior year deficits may be taken into account

(i) In general

The amount included in the gross income of any United States shareholder under section 951(a)(1)(A)(i) for any taxable year and attributable to a qualified activity shall be reduced by the amount of such shareholder's pro rata share of any qualified deficit.

(ii) Qualified deficit

The term ''qualified deficit'' means any deficit in earnings and profits of the controlled foreign corporation for any prior taxable year which began after December 31, 1986, and for which the controlled foreign corporation was a controlled foreign corporation; but only to the extent such deficit—

(I) is attributable to the same qualified activity as the activity giving rise to the income being offset, and

(II) has not previously been taken into account under this subparagraph.

In determining the deficit attributable to qualified activities described in subclause (II) or (III) of clause (iii), deficits in earnings and profits (to the extent not previously taken into account under this section) for taxable years beginning after 1962 and before 1987 also shall be taken into account. In the case of the qualified activity described in clause (iii)(I), the rule of the preceding sentence shall apply, except that ''1982'' shall be substituted for ''1962''.

(iii) Qualified activity

For purposes of this paragraph, the term ''qualified activity'' means any activity giving rise to—

(I) foreign base company oil related income,

(II) foreign base company sales income,

(III) foreign base company services income,

(IV) in the case of a qualified insurance company, insurance income or foreign personal holding company income, or

(V) in the case of a qualified financial institution, foreign personal holding company income.

(iv) Pro rata share

For purposes of this paragraph, the shareholder's pro rata share of any deficit for any prior taxable year shall be determined under rules similar to rules under section 951(a)(2) for whichever of the following yields the smaller share:

(I) the close of the taxable year, or

(II) the close of the taxable year in which the deficit arose.

(v) Qualified insurance company

For purposes of this subparagraph, the term ''qualified insurance company'' means any controlled foreign corporation predominantly engaged in the active conduct of an insurance business in the taxable year and in the prior taxable years in which the deficit arose.

(vi) Qualified financial institution

For purposes of this paragraph, the term ''qualified financial institution'' means any controlled foreign corporation predominantly engaged in the active conduct of a banking, financing, or similar business in the taxable year and in the prior taxable year in which the deficit arose.

(vii) Special rules for insurance income

(I) In general

An election may be made under this clause to have section 953(a) applied for purposes of this title without regard to the same country exception under paragraph (1)(A) thereof. Such election, once made, may be revoked only with the consent of the Secretary.

(II) Special rules for affiliated groups

In the case of an affiliated group of corporations (within the meaning of section 1504 but without regard to section 1504(b)(3) and by substituting ''more than 50 percent'' for ''at least 80 percent'' each place it appears), no election may be made under subclause (I) for any controlled foreign corporation unless such election is made for all other controlled foreign corporations who are members of such group and who were created or organized under the laws of the same country as such controlled foreign corporation. For purposes of clause (v), in determining whether any controlled corporation described in the preceding sentence is a qualified insurance company, all such corporations shall be treated as 1 corporation.

(C) Certain deficits of member of the same chain of corporations may be taken into account

(i) In general

A controlled foreign corporation may elect to reduce the amount of its subpart F income for any taxable year which is attributable to any qualified activity by the amount of any deficit in earnings and profits of a qualified chain member for a taxable year ending with (or within) the taxable year of such controlled foreign corporation to the extent such deficit is attributable to such activity. To the extent any deficit reduces subpart F income under the preceding sentence, such deficit shall not be taken into account under subparagraph (B).

(ii) Qualified chain member

For purposes of this subparagraph, the term ''qualified chain member'' means, with respect to any controlled foreign corporation, any other corporation which is created or organized under the laws of the same foreign country as the controlled foreign corporation but only if—

(I) all the stock of such other corporation (other than directors' qualifying shares) is owned at all times during the taxable year in which the deficit arose (directly or through 1 or more corporations other than the common parent) by such controlled foreign corporation, or

(II) all the stock of such controlled foreign corporation (other than directors' qualifying shares) is owned at all times during the taxable year in which the deficit arose (directly or through 1 or more corporations other than the common parent) by such other corporation.

(iii) Coordination

This subparagraph shall be applied after subparagraphs (A) and (B).

(2) Recharacterization in subsequent taxable years

If the subpart F income of any controlled foreign corporation for any taxable year was reduced by reason of paragraph (1)(A), any excess of the earnings and profits of such corporation for any subsequent taxable year over the subpart F income of such foreign corpora-

tion for such taxable year shall be recharacterized as subpart F income under rules similar to the rules applicable under section 904(f)(5).

(3) Special rule for determining earnings and profits

For purposes of this subsection, earnings and profits of any controlled foreign corporation shall be determined without regard to paragraphs (4), (5), and (6) of section 312(n). Under regulations, the preceding sentence shall not apply to the extent it would increase earnings and profits by an amount which was previously distributed by the controlled foreign corporation.

(d) Income derived from foreign country

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of subsection (a)(5), including regulations which treat income paid through 1 or more entities as derived from a foreign country to which section 901(j) applies if such income was, without regard to such entities, derived from such country.

(Added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1008; amended Pub. L. 89–809, title I, §104(j), Nov. 13, 1966, 80 Stat. 1562; Pub. L. 94–455, title X, §§1062, 1065(a)(1), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1650, 1653, 1834; Pub. L. 97–248, title II, §288(b)(1), Sept. 3, 1982, 96 Stat. 571; Pub. L. 99–509, title VIII, §8041(b), Oct. 21, 1986, 100 Stat. 1963; Pub. L. 99–514, title XII, §1221(b)(3)(A), (f), title XVIII, §1876(c)(1), Oct. 22, 1986, 100 Stat. 2552, 2554, 2898; Pub. L. 100–647, title I, §1012(i)(16), (22)–(25)(A), title VI, §6131(a), Nov. 10, 1988, 102 Stat. 3510–3512, 3720; Pub. L. 105–34, title XI, §1112(c)(1), Aug. 5, 1997, 111 Stat. 969; Pub. L. 108–357, title IV, §415(c)(1), Oct. 22, 2004, 118 Stat. 1511; Pub. L. 109–135, title IV, §412(kk), Dec. 21, 2005, 119 Stat. 2639; Pub. L. 110–172, §11(g)(14), Dec. 29, 2007, 121 Stat. 2490.)

REFERENCES IN TEXT

The Foreign Corrupt Practices Act of 1977, referred to in subsec. (a), is title I of Pub. L. 95–213, Dec. 19, 1977, 91 Stat. 1494, as amended, which enacted sections 78dd–1 to 78dd–3 of Title 15, Commerce and Trade, and amended sections 78m and 78ff of Title 15. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 78a of Title 15 and Tables.

AMENDMENTS

2007—Subsec. (b). Pub. L. 110–172 struck out second sentence which read as follows: ''For purposes of the preceding sentence, income described in paragraph (2) or (3) of section 921(d) shall be treated as derived from sources within the United States.''

2005—Subsec. (c)(1)(B)(ii). Pub. L. 109–135 substituted ''subclause (II) or (III) of clause (iii)'' for ''clause (iii)(III) or (IV)'' and ''clause (iii)(I)'' for ''clause (iii)(II)'' in concluding provisions.

2004—Subsec. (c)(1)(B)(iii). Pub. L. 108–357 redesignated subcls. (II) to (VI) as (I) to (V), respectively, and struck out former subcl. (I) which read as follows: ''foreign base company shipping income,''.

1997—Subsec. (b). Pub. L. 105–34 inserted at end ''For purposes of this subsection, any exemption (or reduction) with respect to the tax imposed by section 884 shall not be taken into account.''

1988—Subsec. (c)(1)(B)(ii). Pub. L. 100–647, §1012(i)(24), inserted at end ''In determining the deficit attributable to qualified activities described in clause (iii)(III) or (IV), deficits in earnings and profits (to the extent not previously taken into account under this section) for taxable years beginning after 1962 and before 1987 also shall be taken into account. In the case of the qualified activity described in clause (iii)(II), the rule of the preceding sentence shall apply, except that '1982' shall be substituted for '1962'.''

Subsec. (c)(1)(B)(iii)(III) to (VI). Pub. L. 100–647, §1012(i)(22), (23), added subcls. (III) and (IV), redesignated former subcl. (III) as (V) and substituted ''insurance income or foreign personal holding company income,'' for ''insurance income'', and redesignated former subcl. (IV) as (VI).

Subsec. (c)(1)(B)(vii). Pub. L. 100–647, §6131(a), added cl. (vii).

Subsec. (c)(1)(C). Pub. L. 100–647, §1012(i)(25)(A), added subpar. (C).

Subsec. (c)(3). Pub. L. 100–647, §1012(i)(16), added par. (3).

1986—Subsec. (a). Pub. L. 99–509, §8041(b)(1), added par. (5) and last sentence.

Subsec. (a)(1). Pub. L. 99–514, §1221(b)(3)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''the income derived from the insurance of United States risks (as determined under section 953), and''.

Subsec. (b). Pub. L. 99–514, §1876(c)(1), inserted last sentence.

Subsec. (c). Pub. L. 99–514, §1221(f), added subsec. (c) and struck out former subsec. (c) which read as follows: ''For purposes of subsection (a), the subpart F income of any controlled foreign corporation for any taxable year shall not exceed the earnings and profits of such corporation for such year reduced by the amount (if any) by which—

''(1) an amount equal to—

''(A) the sum of the deficits in earnings and profits for prior taxable years beginning after December 31, 1962, plus

''(B) the sum of the deficits in earnings and profits for taxable years beginning after December 31, 1959, and before January 1, 1963 (reduced by the sum of the earnings and profits for such taxable years); exceeds

''(2) an amount equal to the sum of the earnings and profits for prior taxable years beginning after December 31, 1962, allocated to other earnings and profits under section 959(c)(3).

For purposes of the preceding sentence, any deficit in earnings and profits for any prior taxable year shall be taken into account under paragraph (1) for any taxable year only to the extent it has not been taken into account under such paragraph for any preceding taxable year to reduce earnings and profits of such preceding year.''

Subsec. (d). Pub. L. 99–509, §8041(b)(2), added subsec. (d).

Pub. L. 99–514, §1221(f), struck out subsec. (d), special rule in case of indirect ownership, which read as follows: ''For purposes of subsection (c), if—

''(1) a United States shareholder owns (within the meaning of section 958(a)) stock of a foreign corporation, and by reason of such ownership owns (within the meaning of such section) stock of any other foreign corporation, and

''(2) any of such foreign corporations has a deficit in earnings and profits for the taxable year,

then the earnings and profits for the taxable year of each such foreign corporation which is a controlled foreign corporation shall, with respect to such United States shareholder, be properly reduced to take into account any deficit described in paragraph (2) in such manner as the Secretary shall prescribe by regulations.''

1982—Subsec. (a). Pub. L. 97–248 inserted provision that the payments referred to in par. (4) are payments which would be unlawful under the Foreign Corrupt Practices Act of 1977 if the payor were a United States person.

1976—Subsec. (a)(3). Pub. L. 94–455, § 1062(a), added par. (3).

Subsec. (a)(4). Pub. L. 94–455, § 1065(a)(1), added par. (4).

Subsec. (d). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

1966—Subsec. (b). Pub. L. 89–809 substituted ''In the case of a controlled foreign corporation, subpart F income does not include any item of income from sources within the United States which is effectively connected with the conduct by such corporation of a trade or business within the United States unless such item is exempt from taxation (or is subject to a reduced rate of tax) pursuant to a treaty obligation of the United States'' for ''Subpart F income does not include any item includible in gross income under this chapter (other than this subpart) as income derived from sources within the United States of a foreign corporation engaged in trade or business in the United States''.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title IV, § 415(d), Oct. 22, 2004, 118 Stat. 1511, provided that: ''The amendments made by this section [amending this section and section 954 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1112(c)(2) of Pub. L. 105–34 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1986.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1012(i)(16), (22)–(25)(A) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6131(b) of Pub. L. 100–647 provided that: ''The amendment made by this section [amending this section] shall take effect as if included in the amendments made by section 1221(f) of the Reform Act [Pub. L. 99–514].''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1221(b)(3)(A), (f) of Pub. L. 99–514 applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, except as otherwise provided, see section 1221(g) of Pub. L. 99–514, set out as a note under section 954 of this title.

Amendment by section 1876(c)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Amendment by Pub. L. 99–509 effective Jan. 1, 1987, see section 8041(c) of Pub. L. 99–509, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to payments made after Sept. 3, 1982, see section 288(c) of Pub. L. 97–248, set out as a note under section 162 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1062 of Pub. L. 94–455 applicable to participation in or cooperation with an international boycott more than 30 days after Oct. 4, 1976, see section 1066(a) of Pub. L. 94–455, set out as a note under section 908 of this title.

Section 1066(b) of Pub. L. 94–455, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by section 1065 [amending this section and sections 995 and 964 of this title] apply to payments described in section 162(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] made more than 30 days after the date of enactment of this Act [Oct. 4, 1976].''

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

DETERMINATION OF CORPORATE EARNINGS AND PROFITS FOR PURPOSES OF APPLYING SUBSECTION (c)(1)(A)

Section 1012(i)(6) of Pub. L. 100–647 provided that: ''For purposes of applying section 952(c)(1)(A) of the 1986 Code, the earnings and profits of any corporation shall be determined without regard to any increase in earnings and profits under section 1023(e)(3)(C) of the Reform Act [Pub. L. 99–514, set out as an Effective Date note under section 846 of this title].''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 953. Insurance income

(a) Insurance income

(1) In general

For purposes of section 952(a)(1), the term ''insurance income'' means any income which—

(A) is attributable to the issuing (or reinsuring) of an insurance or annuity contract, and

(B) would (subject to the modifications provided by subsection (b)) be taxed under subchapter L of this chapter if such income were the income of a domestic insurance company.

(2) Exception

Such term shall not include any exempt insurance income (as defined in subsection (e)).

(b) Special rules

For purposes of subsection (a)—

(1) The following provisions of subchapter L shall not apply:

(A) The small life insurance company deduction.

(B) Section 805(a)(5) (relating to operations loss deduction).

(C) Section 832(c)(5) (relating to certain capital losses).

(2) The items referred to in—

(A) section 803(a)(1) (relating to gross amount of premiums and other considerations),

(B) section 803(a)(2) (relating to net decrease in reserves),

(C) section 805(a)(2) (relating to net increase in reserves), and

(D) section 832(b)(4) (relating to premiums earned on insurance contracts),

shall be taken into account only to the extent they are in respect of any reinsurance or the

issuing of any insurance or annuity contract described in subsection (a)(1).

(3) Reserves for any insurance or annuity contract shall be determined in the same manner as under section 954(i).

(4) All items of income, expenses, losses, and deductions shall be properly allocated or apportioned under regulations prescribed by the Secretary.

(c) Special rule for certain captive insurance companies

(1) In general

For purposes only of taking into account related person insurance income—

(A) the term ''United States shareholder'' means, with respect to any foreign corporation, a United States person (as defined in section 957(c)) who owns (within the meaning of section 958(a)) any stock of the foreign corporation,

(B) the term ''controlled foreign corporation'' has the meaning given to such term by section 957(a) determined by substituting ''25 percent or more'' for ''more than 50 percent'', and

(C) the pro rata share referred to in section 951(a)(1)(A)(i) shall be determined under paragraph (5) of this subsection.

(2) Related person insurance income

For purposes of this subsection, the term ''related person insurance income'' means any insurance income (within the meaning of subsection (a)) attributable to a policy of insurance or reinsurance with respect to which the person (directly or indirectly) insured is a United States shareholder in the foreign corporation or a related person to such a shareholder.

(3) Exceptions

(A) Corporations not held by insureds

Paragraph (1) shall not apply to any foreign corporation if at all times during the taxable year of such foreign corporation—

(i) less than 20 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, and

(ii) less than 20 percent of the total value of such corporation,

is owned (directly or indirectly under the principles of section 883(c)(4)) by persons who are (directly or indirectly) insured under any policy of insurance or reinsurance issued by such corporation or who are related persons to any such person.

(B) De minimis exception

Paragraph (1) shall not apply to any foreign corporation for a taxable year of such corporation if the related person insurance income (determined on a gross basis) of such corporation for such taxable year is less than 20 percent of its insurance income (as so determined) for such taxable year determined without regard to those provisions of subsection (a)(1) which limit insurance income to income from countries other than the country in which the corporation was created or organized.

(C) Election to treat income as effectively connected

Paragraph (1) shall not apply to any foreign corporation for any taxable year if—

(i) such corporation elects (at such time and in such manner as the Secretary may prescribe)—

(I) to treat its related person insurance income for such taxable year as income effectively connected with the conduct of a trade or business in the United States, and

(II) to waive all benefits (other than with respect to section 884) with respect to related person insurance income granted by the United States under any treaty between the United States and any foreign country, and

(ii) such corporation meets such requirements as the Secretary shall prescribe to ensure that the tax imposed by this chapter on such income is paid.

An election under this subparagraph made for any taxable year shall not be effective if the corporation (or any predecessor thereof) was a disqualified corporation for the taxable year for which the election was made or for any prior taxable year beginning after 1986.

(D) Special rules for subparagraph (C)

(i) Period during which election in effect

(I) In general

Except as provided in subclause (II), any election under subparagraph (C) shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(II) Termination

If a foreign corporation which made an election under subparagraph (C) for any taxable year is a disqualified corporation for any subsequent taxable year, such election shall not apply to any taxable year beginning after such subsequent taxable year.

(ii) Exemption from tax imposed by section 4371

The tax imposed by section 4371 shall not apply with respect to any related person insurance income treated as effectively connected with the conduct of a trade or business within the United States under subparagraph (C).

(E) Disqualified corporation

For purposes of this paragraph the term ''disqualified corporation'' means, with respect to any taxable year, any foreign corporation which is a controlled foreign corporation for an uninterrupted period of 30 days or more during such taxable year (determined without regard to this subsection) but only if a United States shareholder (determined without regard to this subsection) owns (within the meaning of section 958(a)) stock in such corporation at some time during such taxable year.

(4) Treatment of mutual insurance companies

In the case of a mutual insurance company—

(A) this subsection shall apply,

(B) policyholders of such company shall be treated as shareholders, and

(C) appropriate adjustments in the application of this subpart shall be made under regulations prescribed by the Secretary.

(5) Determination of pro rata share

(A) In general

The pro rata share determined under this paragraph for any United States shareholder is the lesser of—

(i) the amount which would be determined under paragraph (2) of section 951(a) if—

(I) only related person insurance income were taken into account,

(II) stock owned (within the meaning of section 958(a)) by United States shareholders on the last day of the taxable year were the only stock in the foreign corporation, and

(III) only distributions received by United States shareholders were taken into account under subparagraph (B) of such paragraph (2), or

(ii) the amount which would be determined under paragraph (2) of section 951(a) if the entire earnings and profits of the foreign corporation for the taxable year were subpart F income.

(B) Coordination with other provisions

The Secretary shall prescribe regulations providing for such modifications to the provisions of this subpart as may be necessary or appropriate by reason of subparagraph (A).

(6) Related person

For purposes of this subsection—

(A) In general

Except as provided in subparagraph (B), the term ''related person'' has the meaning given such term by section 954(d)(3).

(B) Treatment of certain liability insurance policies

In the case of any policy of insurance covering liability arising from services performed as a director, officer, or employee of a corporation or as a partner or employee of a partnership, the person performing such services and the entity for which such services are performed shall be treated as related persons.

(7) Coordination with section 1248

For purposes of section 1248, if any person is (or would be but for paragraph (3)) treated under paragraph (1) as a United States shareholder with respect to any foreign corporation which would be taxed under subchapter L if it were a domestic corporation and which is (or would be but for paragraph (3)) treated under paragraph (1) as a controlled foreign corporation—

(A) such person shall be treated as meeting the stock ownership requirements of section 1248(a)(2) with respect to such foreign corporation, and

(B) such foreign corporation shall be treated as a controlled foreign corporation.

(8) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including—

(A) regulations preventing the avoidance of this subsection through cross insurance arrangements or otherwise, and

(B) regulations which may provide that a person will not be treated as a United States shareholder under paragraph (1) with respect to any foreign corporation if neither such person (nor any related person to such person) is (directly or indirectly) insured under any policy of insurance or reinsurance issued by such foreign corporation.

(d) Election by foreign insurance company to be treated as domestic corporation

(1) In general

If—

(A) a foreign corporation is a controlled foreign corporation (as defined in section 957(a) by substituting ''25 percent or more'' for ''more than 50 percent'' and by using the definition of United States shareholder under 953(c)(1)(A)),

(B) such foreign corporation would qualify under part I or II of subchapter L for the taxable year if it were a domestic corporation,

(C) such foreign corporation meets such requirements as the Secretary shall prescribe to ensure that the taxes imposed by this chapter on such foreign corporation are paid, and

(D) such foreign corporation makes an election to have this paragraph apply and waives all benefits to such corporation granted by the United States under any treaty,

for purposes of this title, such corporation shall be treated as a domestic corporation.

(2) Period during which election is in effect

(A) In general

Except as provided in subparagraph (B), an election under paragraph (1) shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(B) Termination

If a corporation which made an election under paragraph (1) for any taxable year fails to meet the requirements of subparagraphs (A), (B), and (C), of paragraph (1) for any subsequent taxable year, such election shall not apply to any taxable year beginning after such subsequent taxable year.

(3) Treatment of losses

If any corporation treated as a domestic corporation under this subsection is treated as a member of an affiliated group for purposes of chapter 6 (relating to consolidated returns), any loss of such corporation shall be treated as a dual consolidated loss for purposes of sec-

tion 1503(d) without regard to paragraph (2)(B) thereof.

(4) Effect of election

(A) In general

For purposes of section 367, any foreign corporation making an election under paragraph (1) shall be treated as transferring (as of the 1st day of the 1st taxable year to which such election applies) all of its assets to a domestic corporation in connection with an exchange to which section 354 applies.

(B) Exception for pre-1988 earnings and profit

(i) In general

Earnings and profits of the foreign corporation accumulated in taxable years beginning before January 1, 1988, shall not be included in the gross income of the persons holding stock in such corporation by reason of subparagraph (A).

(ii) Treatment of distributions

For purposes of this title, any distribution made by a corporation to which an election under paragraph (1) applies out of earnings and profits accumulated in taxable years beginning before January 1, 1988, shall be treated as a distribution made by a foreign corporation.

(iii) Certain rules to continue to apply to pre-1988 earnings

The provisions specified in clause (iv) shall be applied without regard to paragraph (1), except that, in the case of a corporation to which an election under paragraph (1) applies, only earnings and profits accumulated in taxable years beginning before January 1, 1988, shall be taken into account.

(iv) Specified provisions

The provisions specified in this clause are:

(I) Section 1248 (relating to gain from certain sales or exchanges of stock in certain foreign corporations).

(II) Subpart F of part III of subchapter N to the extent such subpart relates to earnings invested in United States property or amounts referred to in clause (ii) or (iii) of section 951(a)(1)(A).

(III) Section 884 to the extent the foreign corporation reinvested 1987 earnings and profits in United States assets.

(5) Effect of termination

For purposes of section 367, if—

(A) an election is made by a corporation under paragraph (1) for any taxable year, and

(B) such election ceases to apply for any subsequent taxable year,

such corporation shall be treated as a domestic corporation transferring (as of the 1st day of such subsequent taxable year) all of its property to a foreign corporation in connection with an exchange to which section 354 applies.

(6) Additional tax on corporation making election

(A) In general

If a corporation makes an election under paragraph (1), the amount of tax imposed by this chapter for the 1st taxable year to which such election applies shall be increased by the amount determined under subparagraph (B).

(B) Amount of tax

The amount of tax determined under this paragraph shall be equal to the lesser of—

(i) ¾ of 1 percent of the aggregate amount of capital and accumulated surplus of the corporation as of December 31, 1987, or

(ii) $1,500,000.

(e) Exempt insurance income

For purposes of this section—

(1) Exempt insurance income defined

(A) In general

The term ''exempt insurance income'' means income derived by a qualifying insurance company which—

(i) is attributable to the issuing (or reinsuring) of an exempt contract by such company or a qualifying insurance company branch of such company, and

(ii) is treated as earned by such company or branch in its home country for purposes of such country's tax laws.

(B) Exception for certain arrangements

Such term shall not include income attributable to the issuing (or reinsuring) of an exempt contract as the result of any arrangement whereby another corporation receives a substantially equal amount of premiums or other consideration in respect of issuing (or reinsuring) a contract which is not an exempt contract.

(C) Determinations made separately

For purposes of this subsection and section 954(i), the exempt insurance income and exempt contracts of a qualifying insurance company or any qualifying insurance company branch of such company shall be determined separately for such company and each such branch by taking into account—

(i) in the case of the qualifying insurance company, only items of income, deduction, gain, or loss, and activities of such company not properly allocable or attributable to any qualifying insurance company branch of such company, and

(ii) in the case of a qualifying insurance company branch, only items of income, deduction, gain, or loss and activities properly allocable or attributable to such branch.

(2) Exempt contract

(A) In general

The term ''exempt contract'' means an insurance or annuity contract issued or reinsured by a qualifying insurance company or qualifying insurance company branch in connection with property in, liability aris-

ing out of activity in, or the lives or health of residents of, a country other than the United States.

(B) Minimum home country income required

(i) In general

No contract of a qualifying insurance company or of a qualifying insurance company branch shall be treated as an exempt contract unless such company or branch derives more than 30 percent of its net written premiums from exempt contracts (determined without regard to this subparagraph)—

(I) which cover applicable home country risks, and

(II) with respect to which no policyholder, insured, annuitant, or beneficiary is a related person (as defined in section 954(d)(3)).

(ii) Applicable home country risks

The term ''applicable home country risks'' means risks in connection with property in, liability arising out of activity in, or the lives or health of residents of, the home country of the qualifying insurance company or qualifying insurance company branch, as the case may be, issuing or reinsuring the contract covering the risks.

(C) Substantial activity requirements for cross border risks

A contract issued by a qualifying insurance company or qualifying insurance company branch which covers risks other than applicable home country risks (as defined in subparagraph (B)(ii)) shall not be treated as an exempt contract unless such company or branch, as the case may be—

(i) conducts substantial activity with respect to an insurance business in its home country, and

(ii) performs in its home country substantially all of the activities necessary to give rise to the income generated by such contract.

(3) Qualifying insurance company

The term ''qualifying insurance company'' means any controlled foreign corporation which—

(A) is subject to regulation as an insurance (or reinsurance) company by its home country, and is licensed, authorized, or regulated by the applicable insurance regulatory body for its home country to sell insurance, reinsurance, or annuity contracts to persons other than related persons (within the meaning of section 954(d)(3)) in such home country,

(B) derives more than 50 percent of its aggregate net written premiums from the issuance or reinsurance by such controlled foreign corporation and each of its qualifying insurance company branches of contracts—

(i) covering applicable home country risks (as defined in paragraph (2)) of such corporation or branch, as the case may be, and

(ii) with respect to which no policyholder, insured, annuitant, or beneficiary is a related person (as defined in section 954(d)(3)),

except that in the case of a branch, such premiums shall only be taken into account to the extent such premiums are treated as earned by such branch in its home country for purposes of such country's tax laws, and

(C) is engaged in the insurance business and would be subject to tax under subchapter L if it were a domestic corporation.

(4) Qualifying insurance company branch

The term ''qualifying insurance company branch'' means a qualified business unit (within the meaning of section 989(a)) of a controlled foreign corporation if—

(A) such unit is licensed, authorized, or regulated by the applicable insurance regulatory body for its home country to sell insurance, reinsurance, or annuity contracts to persons other than related persons (within the meaning of section 954(d)(3)) in such home country, and

(B) such controlled foreign corporation is a qualifying insurance company, determined under paragraph (3) as if such unit were a qualifying insurance company branch.

(5) Life insurance or annuity contract

For purposes of this section and section 954, the determination of whether a contract issued by a controlled foreign corporation or a qualified business unit (within the meaning of section 989(a)) is a life insurance contract or an annuity contract shall be made without regard to sections 72(s), 101(f), 817(h), and 7702 if—

(A) such contract is regulated as a life insurance or annuity contract by the corporation's or unit's home country, and

(B) no policyholder, insured, annuitant, or beneficiary with respect to the contract is a United States person.

(6) Home country

For purposes of this subsection, except as provided in regulations—

(A) Controlled foreign corporation

The term ''home country'' means, with respect to a controlled foreign corporation, the country in which such corporation is created or organized.

(B) Qualified business unit

The term ''home country'' means, with respect to a qualified business unit (as defined in section 989(a)), the country in which the principal office of such unit is located and in which such unit is licensed, authorized, or regulated by the applicable insurance regulatory body to sell insurance, reinsurance, or annuity contracts to persons other than related persons (as defined in section 954(d)(3)) in such country.

(7) Anti-abuse rules

For purposes of applying this subsection and section 954(i)—

(A) the rules of section 954(h)(7) (other than subparagraph (B) thereof) shall apply,

(B) there shall be disregarded any item of income, gain, loss, or deduction of, or de-

rived from, an entity which is not engaged in regular and continuous transactions with persons which are not related persons,

(C) there shall be disregarded any change in the method of computing reserves a principal purpose of which is the acceleration or deferral of any item in order to claim the benefits of this subsection or section 954(i),

(D) a contract of insurance or reinsurance shall not be treated as an exempt contract (and premiums from such contract shall not be taken into account for purposes of paragraph (2)(B) or (3)) if—

(i) any policyholder, insured, annuitant, or beneficiary is a resident of the United States and such contract was marketed to such resident and was written to cover a risk outside the United States, or

(ii) the contract covers risks located within and without the United States and the qualifying insurance company or qualifying insurance company branch does not maintain such contemporaneous records, and file such reports, with respect to such contract as the Secretary may require,

(E) the Secretary may prescribe rules for the allocation of contracts (and income from contracts) among 2 or more qualifying insurance company branches of a qualifying insurance company in order to clearly reflect the income of such branches, and

(F) premiums from a contract shall not be taken into account for purposes of paragraph (2)(B) or (3) if such contract reinsures a contract issued or reinsured by a related person (as defined in section 954(d)(3)).

For purposes of subparagraph (D), the determination of where risks are located shall be made under the principles of section 953.

(8) Coordination with subsection (c)

In determining insurance income for purposes of subsection (c), exempt insurance income shall not include income derived from exempt contracts which cover risks other than applicable home country risks.

(9) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection and section 954(i).

(10) Application

This subsection and section 954(i) shall apply only to taxable years of a foreign corporation beginning after December 31, 1998, and before January 1, 2012, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends. If this subsection does not apply to a taxable year of a foreign corporation beginning after December 31, 2011 (and taxable years of United States shareholders ending with or within such taxable year), then, notwithstanding the preceding sentence, subsection (a) shall be applied to such taxable years in the same manner as it would if the taxable year of the foreign corporation began in 1998.

(11) Cross reference

For income exempt from foreign personal holding company income, see section 954(i).

(Added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1008; amended Pub. L. 89–809, title I, §104(m)(2), Nov. 13, 1966, 80 Stat. 1563; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title II, §211(b)(13), July 18, 1984, 98 Stat. 755; Pub. L. 99–514, title XII, §1221(b)(1), (2), (3)(D), Oct. 22, 1986, 100 Stat. 2551, 2553; Pub. L. 100–647, title I, §1012(i)(1)–(3)(B), (4), (5), (7)–(9), (21), title VI, §6135(a), Nov. 10, 1988, 102 Stat. 3507–3509, 3511, 3721; Pub. L. 101–239, title VII, §7816(p), Dec. 19, 1989, 103 Stat. 2423; Pub. L. 105–277, div. J, title I, §1005(b)(1), (3), Oct. 21, 1998, 112 Stat. 2681–893, 2681–899; Pub. L. 106–170, title V, §503(a), (b), Dec. 17, 1999, 113 Stat. 1921; Pub. L. 107–147, title VI, §614(a)(1), Mar. 9, 2002, 116 Stat. 61; Pub. L. 109–222, title I, §103(a)(1), May 17, 2006, 120 Stat. 346; Pub. L. 110–343, div. C, title III, §303(a), Oct. 3, 2008, 122 Stat. 3866; Pub. L. 111–312, title VII, §750(a), (b), Dec. 17, 2010, 124 Stat. 3320.)

AMENDMENTS

2010—Subsec. (e)(10). Pub. L. 111–312 substituted ''January 1, 2012'' for ''January 1, 2010'' and ''December 31, 2011'' for ''December 31, 2009''.

2008—Subsec. (e)(10). Pub. L. 110–343 substituted ''January 1, 2010'' for ''January 1, 2009'' and ''December 31, 2009'' for ''December 31, 2008''.

2006—Subsec. (e)(10). Pub. L. 109–222 substituted ''January 1, 2009'' for ''January 1, 2007'' and ''December 31, 2008'' for ''December 31, 2006''.

2002—Subsec. (e)(10). Pub. L. 107–147 substituted ''January 1, 2007'' for ''January 1, 2002'' and ''December 31, 2006'' for ''December 31, 2001''.

1999—Subsec. (e)(10). Pub. L. 106–170 substituted ''taxable years'' for ''the first taxable year'', ''January 1, 2002'' for ''January 1, 2000'', and ''within which any such'' for ''within which such'', and inserted at end ''If this subsection does not apply to a taxable year of a foreign corporation beginning after December 31, 2001 (and taxable years of United States shareholders ending with or within such taxable year), then, notwithstanding the preceding sentence, subsection (a) shall be applied to such taxable years in the same manner as it would if the taxable year of the foreign corporation began in 1998.''

1998—Subsec. (a). Pub. L. 105–277, §1005(b)(1)(A), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''For purposes of section 952(a)(1), the term 'insurance income' means any income which—

''(1) is attributable to the issuing (or reinsuring) of any insurance or annuity contract—

''(A) in connection with property in, liability arising out of activity in, or in connection with the lives or health of residents of, a country other than the country under the laws of which the controlled foreign corporation is created or organized, or

''(B) in connection with risks not described in subparagraph (A) as the result of any arrangement whereby another corporation receives a substantially equal amount of premiums or other consideration in respect of issuing (or reinsuring) a contract described in subparagraph (A), and

''(2) would (subject to the modifications provided by paragraphs (1) and (2) of subsection (b)) be taxed under subchapter L of this chapter if such income were the income of a domestic insurance company.''

Subsec. (b)(3), (4). Pub. L. 105–277, §1005(b)(3), added par. (3) and redesignated former par. (3) as (4).

Subsec. (e). Pub. L. 105–277, §1005(b)(1)(B), added subsec. (e).

1989—Subsec. (d)(3). Pub. L. 101–239 substituted ''for purposes of section 1503(d) without regard to paragraph (2)(B) thereof'' for ''(as defined in section 1503(d))''.

1988—Subsec. (b)(1). Pub. L. 100–647, §1012(i)(7)(A), redesignated par. (2) as (1) and struck out former par. (1)

which read as follows: ''A corporation which would, if it were a domestic insurance corporation, be taxable under part II of subchapter L shall apply subsection (a) as if it were taxable under part III of subchapter L.''

Subsec. (b)(1)(A). Pub. L. 100–647, § 1012(i)(7)(B), added subpar. (A) and struck out former subpar. (A) which read as follows: ''The special life insurance company deduction and the small life insurance company deduction.''

Subsec. (b)(2) to (4). Pub. L. 100–647, § 1012(i)(7)(A), (C), redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out ''(other than those taken into account under paragraph (3))'' after ''and deductions'' in par. (3). Former par. (2) redesignated (1).

Subsec. (c)(1)(C). Pub. L. 100–647, § 1012(i)(2)(A), added subpar. (C).

Subsec. (c)(2). Pub. L. 100–647, § 1012(i)(3)(A), (4)(B), (5), substituted ''insurance income (within the meaning of subsection (a)) attributable'' for ''insurance income attributable'', ''with respect to which the person (directly or indirectly) insured is'' for ''with respect to which the primary insured is'', and ''related person'' for ''related person (within the meaning of section 954(d)(3))''.

Subsec. (c)(3)(A). Pub. L. 100–647, § 1012(i)(3)(B), (4)(B), substituted ''persons who are (directly or indirectly) insured'' for ''persons who are the primary insured'' and ''to any such person'' for ''(within the meaning of section 954(d)(3)) to any such primary insured''.

Subsec. (c)(3)(B). Pub. L. 100–647, § 1012(i)(8), substituted ''related person insurance income (determined on a gross basis)'' for ''related person insurance income'' and ''its insurance income (as so determined)'' for ''its insurance income''.

Subsec. (c)(3)(C). Pub. L. 100–647, § 1012(i)(1)(A), (9), substituted ''all benefits (other than with respect to section 884)'' for ''all benefits'' and ''granted by the United States under any treaty'' for ''under any income tax treaty'' in cl. (i)(II) and inserted at end ''An election under this subparagraph made for any taxable year shall not be effective if the corporation (or any predecessor thereof) was a disqualified corporation for the taxable year for which the election was made or for any prior taxable year beginning after 1986.''

Subsec. (c)(3)(D)(i). Pub. L. 100–647, § 1012(i)(1)(B), substituted ''Period during which election in effect'' for ''Election irrevocable'' in heading and amended text generally. Prior to amendment, text read as follows: ''Any election under subparagraph (C) shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.''

Subsec. (c)(3)(E). Pub. L. 100–647, § 1012(i)(1)(C), added subpar. (E).

Subsec. (c)(5). Pub. L. 100–647, § 1012(i)(2)(B), added par. (5) and redesignated former par. (5) as (6).

Subsec. (c)(6). Pub. L. 100–647, § 1012(i)(4)(A), added par. (6) and redesignated former par. (6) as (7).

Pub. L. 100–647, § 1012(i)(2)(B), redesignated former par. (5) as (6).

Subsec. (c)(7). Pub. L. 100–647, § 1012(i)(21), added par. (7) and struck out former par. (7) ''Regulations'', which read as follows: ''The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations preventing the avoidance of this subsection through cross insurance arrangements or otherwise.''

Pub. L. 100–647, § 1012(i)(4)(A), redesignated former par. (6) as (7).

Subsec. (c)(8). Pub. L. 100–647, § 1012(i)(21), added par. (8).

Subsec. (d). Pub. L. 100–647, § 6135(a), added subsec. (d).

1986—Pub. L. 99–514, § 1221(b)(3)(D), substituted ''Insurance income'' for ''Income from insurance of United States risks'' in section catchline.

Subsec. (a). Pub. L. 99–514, § 1221(b)(1), amended subsec. (a) generally, substituting provisions defining ''insurance income'' for former provisions defining ''income derived from the insurance of United States risks''.

Subsec. (c). Pub. L. 99–514, § 1221(b)(2), added subsec. (c).

1984—Subsec. (a)(2). Pub. L. 98–369, § 211(b)(13)(D), substituted ''and (2)'' for '', (2), and (3)''.

Subsec. (b)(1). Pub. L. 98–369, § 211(b)(13)(A), redesignated par. (2) as (1). Former par. (1), which provided that the application of part I of subchapter L of this chapter, life insurance company taxable income was the gain from operations as defined in section 809(b), was struck out.

Subsec. (b)(2). Pub. L. 98–369, § 211(b)(13)(B), in amending par. (2) generally, substituted

''(A) The special life insurance company deduction and the small life insurance company deduction.

''(B) Section 805(a)(5) (relating to operations loss deduction).

''(C) Section 832(c)(5) (relating to certain capital losses).''

for

''(A) Section 809(d)(4) (operations loss deduction).

''(B) Section 809(d)(5) (certain nonparticipating contracts).

''(C) Section 809(d)(6) (group life, accident, and health insurance).''

and struck out

''(D) Section 809(d)(10) (small business deduction).

''(E) Section 817(b) (gain on property held on December 31, 1958, and certain substituted property acquired after 1958).

''(F) Section 832(c)(5) (certain capital losses).''

Pub. L. 98–369, § 211(b)(13)(A), redesignated par. (3) as (2). Former par. (2) redesignated (1).

Subsec. (b)(3). Pub. L. 98–369, § 211(b)(13)(A), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (b)(3)(A). Pub. L. 98–369, § 211(b)(13)(C)(i), substituted ''section 803(a)(1)'' for ''section 809(c)(1)''.

Subsec. (b)(3)(B). Pub. L. 98–369, § 211(b)(13)(C)(ii), substituted ''section 803(a)(2)'' for ''section 809(c)(2)''.

Subsec. (b)(3)(C). Pub. L. 98–369, § 211(b)(13)(C)(iii), substituted ''section 805(a)(2)'' for ''section 809(d)(2)''.

Subsec. (b)(4), (5). Pub. L. 98–369, § 211(b)(13)(A), (E), redesignated par. (5) as (4) and substituted ''paragraph (3)'' for ''paragraph (4)''. Former par. (4) redesignated (3).

1976—Subsec. (b)(5). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1966—Subsec. (b)(3)(F). Pub. L. 89–809 substituted ''832(c)(5)'' for ''832(b)(5)''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, § 750(c), Dec. 17, 2010, 124 Stat. 3320, provided that: ''The amendments made by this section [amending this section and section 954 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 2009, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends.''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title VI, § 614(c), Mar. 9, 2002, 116 Stat. 62, provided that: ''The amendments made by this section [amending this section and section 954 of this title] shall apply to taxable years beginning after December 31, 2001.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, § 503(c), Dec. 17, 1999, 113 Stat. 1921, provided that: ''The amendments made by this section [amending this section and section 954 of this title] shall apply to taxable years beginning after December 31, 1999.''

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1012(i)(3)(C) of Pub. L. 100–647 provided that: ''The amendments made by this paragraph [amending

this section] to the extent such amendments add the phrase '(directly or indirectly)' shall apply only to taxable years beginning after December 31, 1987.''

Amendment by section 1012(i)(1), (2), (4), (5), (7)–(9), (21) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6135(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, except as otherwise provided, see section 1221(g) of Pub. L. 99–514, set out as a note under section 954 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

§ 954. Foreign base company income

(a) Foreign base company income

For purposes of section 952(a)(2), the term ''foreign base company income'' means for any taxable year the sum of—

(1) the foreign personal holding company income for the taxable year (determined under subsection (c) and reduced as provided in subsection (b)(5)),

(2) the foreign base company sales income for the taxable year (determined under subsection (d) and reduced as provided in subsection (b)(5)),

(3) the foreign base company services income for the taxable year (determined under subsection (e) and reduced as provided in subsection (b)(5)),

[(4) Repealed. Pub. L. 108–357, title IV, § 415(a)(1), Oct. 22, 2004, 118 Stat. 1511]

(5) the foreign base company oil related income for the taxable year (determined under subsection (g) and reduced as provided in subsection (b)(5)).

(b) Exclusion and special rules

[(1) Repealed. Pub. L. 94–12, title VI, § 602(c)(1), Mar. 29, 1975, 89 Stat. 58]

[(2) Repealed. Pub. L. 99–514, title XII, § 1221(c)(1), Oct. 22, 1986, 100 Stat. 2553]

(3) De minimis, etc., rules

For purposes of subsection (a) and section 953—

(A) De minimis rule

If the sum of foreign base company income (determined without regard to paragraph (5)) and the gross insurance income for the taxable year is less than the lesser of—

(i) 5 percent of gross income, or

(ii) $1,000,000,

no part of the gross income for the taxable year shall be treated as foreign base company income or insurance income.

(B) Foreign base company income and insurance income in excess of 70 percent of gross income

If the sum of the foreign base company income (determined without regard to paragraph (5)) and the gross insurance income for the taxable year exceeds 70 percent of gross income, the entire gross income for the taxable year shall, subject to the provisions of paragraphs (4) and (5), be treated as foreign base company income or insurance income (whichever is appropriate).

(C) Gross insurance income

For purposes of subparagraphs (A) and (B), the term ''gross insurance income'' means any item of gross income taken into account in determining insurance income under section 953.

(4) Exception for certain income subject to high foreign taxes

For purposes of subsection (a) and section 953, foreign base company income and insurance income shall not include any item of income received by a controlled foreign corporation if the taxpayer establishes to the satisfaction of the Secretary that such income was subject to an effective rate of income tax imposed by a foreign country greater than 90 percent of the maximum rate of tax specified in section 11. The preceding sentence shall not apply to foreign base company oil-related income described in subsection (a)(5).

(5) Deductions to be taken into account

For purposes of subsection (a), the foreign personal holding company income, the foreign base company sales income, the foreign base company services income,,[1] and the foreign base company oil related income shall be reduced, under regulations prescribed by the Secretary so as to take into account deductions (including taxes) properly allocable to such income. Except to the extent provided in regulations prescribed by the Secretary, any interest which is paid or accrued by the controlled foreign corporation to any United States shareholder in such corporation (or any controlled foreign corporation related to such a shareholder) shall be allocated first to foreign personal holding company income which is passive income (within the meaning of section 904(d)(2)) of such corporation to the extent thereof. The Secretary may, by regulations, provide that the preceding sentence shall apply also to interest paid or accrued to other persons.

(6) Foreign base company oil related income not treated as another kind of base company income

Income of a corporation which is foreign base company oil related income shall not be considered foreign base company income of

[1] So in original.

such corporation under paragraph (2),[2] or (3) of subsection (a).

(c) Foreign personal holding company income

(1) In general

For purposes of subsection (a)(1), the term ''foreign personal holding company income'' means the portion of the gross income which consists of:

(A) Dividends, etc.

Dividends, interest, royalties, rents, and annuities.

(B) Certain property transactions

The excess of gains over losses from the sale or exchange of property—

(i) which gives rise to income described in subparagraph (A) (after application of paragraph (2)(A)) other than property which gives rise to income not treated as foreign personal holding company income by reason of subsection (h) or (i) for the taxable year,

(ii) which is an interest in a trust, partnership, or REMIC, or

(iii) which does not give rise to any income.

Gains and losses from the sale or exchange of any property which, in the hands of the controlled foreign corporation, is property described in section 1221(a)(1) shall not be taken into account under this subparagraph.

(C) Commodities transactions

The excess of gains over losses from transactions (including futures, forward, and similar transactions) in any commodities. This subparagraph shall not apply to gains or losses which—

(i) arise out of commodity hedging transactions (as defined in paragraph (5)(A)),

(ii) are active business gains or losses from the sale of commodities, but only if substantially all of the controlled foreign corporation's commodities are property described in paragraph (1), (2), or (8) of section 1221(a), or

(iii) are foreign currency gains or losses (as defined in section 988(b)) attributable to any section 988 transactions.

(D) Foreign currency gains

The excess of foreign currency gains over foreign currency losses (as defined in section 988(b)) attributable to any section 988 transactions. This subparagraph shall not apply in the case of any transaction directly related to the business needs of the controlled foreign corporation.

(E) Income equivalent to interest

Any income equivalent to interest, including income from commitment fees (or similar amounts) for loans actually made.

(F) Income from notional principal contracts

(i) In general

Net income from notional principal contracts.

(ii) Coordination with other categories of foreign personal holding company income

Any item of income, gain, deduction, or loss from a notional principal contract entered into for purposes of hedging any item described in any preceding subparagraph shall not be taken into account for purposes of this subparagraph but shall be taken into account under such other subparagraph.

(G) Payments in lieu of dividends

Payments in lieu of dividends which are made pursuant to an agreement to which section 1058 applies.

(H) Personal service contracts

(i) Amounts received under a contract under which the corporation is to furnish personal services if—

(I) some person other than the corporation has the right to designate (by name or by description) the individual who is to perform the services, or

(II) the individual who is to perform the services is designated (by name or by description) in the contract, and

(ii) amounts received from the sale or other disposition of such a contract.

This subparagraph shall apply with respect to amounts received for services under a particular contract only if at some time during the taxable year 25 percent or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual who has performed, is to perform, or may be designated (by name or by description) as the one to perform, such services.

(2) Exception for certain amounts

(A) Rents and royalties derived in active business

Foreign personal holding company income shall not include rents and royalties which are derived in the active conduct of a trade or business and which are received from a person other than a related person (within the meaning of subsection (d)(3)). For purposes of the preceding sentence, rents derived from leasing an aircraft or vessel in foreign commerce shall not fail to be treated as derived in the active conduct of a trade or business if, as determined under regulations prescribed by the Secretary, the active leasing expenses are not less than 10 percent of the profit on the lease.

(B) Certain export financing

Foreign personal holding company income shall not include any interest which is derived in the conduct of a banking business and which is export financing interest (as defined in section 904(d)(2)(G)).

(C) Exception for dealers

Except as provided by regulations, in the case of a regular dealer in property which is property described in paragraph (1)(B), forward contracts, option contracts, or similar

[2] So in original. The comma probably should not appear.

financial instruments (including notional principal contracts and all instruments referenced to commodities), there shall not be taken into account in computing foreign personal holding company income—

(i) any item of income, gain, deduction, or loss (other than any item described in subparagraph (A), (E), or (G) of paragraph (1)) from any transaction (including hedging transactions and transactions involving physical settlement) entered into in the ordinary course of such dealer's trade or business as such a dealer, and

(ii) if such dealer is a dealer in securities (within the meaning of section 475), any interest or dividend or equivalent amount described in subparagraph (E) or (G) of paragraph (1) from any transaction (including any hedging transaction or transaction described in section 956(c)(2)(I)) entered into in the ordinary course of such dealer's trade or business as such a dealer in securities, but only if the income from the transaction is attributable to activities of the dealer in the country under the laws of which the dealer is created or organized (or in the case of a qualified business unit described in section 989(a), is attributable to activities of the unit in the country in which the unit both maintains its principal office and conducts substantial business activity).

(3) Certain income received from related persons

(A) In general

Except as provided in subparagraph (B), the term ''foreign personal holding company income'' does not include—

(i) dividends and interest received from a related person which (I) is a corporation created or organized under the laws of the same foreign country under the laws of which the controlled foreign corporation is created or organized, and (II) has a substantial part of its assets used in its trade or business located in such same foreign country, and

(ii) rents and royalties received from a corporation which is a related person for the use of, or the privilege of using, property within the country under the laws of which the controlled foreign corporation is created or organized.

To the extent provided in regulations, payments made by a partnership with 1 or more corporate partners shall be treated as made by such corporate partners in proportion to their respective interests in the partnership.

(B) Exception not to apply to items which reduce subpart F income

Subparagraph (A) shall not apply in the case of any interest, rent, or royalty to the extent such interest, rent, or royalty reduces the payor's subpart F income or creates (or increases) a deficit which under section 952(c) may reduce the subpart F income of the payor or another controlled foreign corporation.

(C) Exception for certain dividends

Subparagraph (A)(i) shall not apply to any dividend with respect to any stock which is attributable to earnings and profits of the distributing corporation accumulated during any period during which the person receiving such dividend did not hold such stock either directly, or indirectly through a chain of one or more subsidiaries each of which meets the requirements of subparagraph (A)(i).

(4) Look-thru rule for certain partnership sales

(A) In general

In the case of any sale by a controlled foreign corporation of an interest in a partnership with respect to which such corporation is a 25-percent owner, such corporation shall be treated for purposes of this subsection as selling the proportionate share of the assets of the partnership attributable to such interest. The Secretary shall prescribe such regulations as may be appropriate to prevent abuse of the purposes of this paragraph, including regulations providing for coordination of this paragraph with the provisions of subchapter K.

(B) 25-percent owner

For purposes of this paragraph, the term ''25-percent owner'' means a controlled foreign corporation which owns directly 25 percent or more of the capital or profits interest in a partnership. For purposes of the preceding sentence, if a controlled foreign corporation is a shareholder or partner of a corporation or partnership, the controlled foreign corporation shall be treated as owning directly its proportionate share of any such capital or profits interest held directly or indirectly by such corporation or partnership. If a controlled foreign corporation is treated as owning a capital or profits interest in a partnership under constructive ownership rules similar to the rules of section 958(b), the controlled foreign corporation shall be treated as owning such interest directly for purposes of this subparagraph.

(5) Definition and special rules relating to commodity transactions

(A) Commodity hedging transactions

For purposes of paragraph (1)(C)(i), the term ''commodity hedging transaction'' means any transaction with respect to a commodity if such transaction—

(i) is a hedging transaction as defined in section 1221(b)(2), determined—

(I) without regard to subparagraph (A)(ii) thereof,

(II) by applying subparagraph (A)(i) thereof by substituting ''ordinary property or property described in section 1231(b)'' for ''ordinary property'', and

(III) by substituting ''controlled foreign corporation'' for ''taxpayer'' each place it appears, and

(ii) is clearly identified as such in accordance with section 1221(a)(7).

(B) Treatment of dealer activities under paragraph (1)(C)

Commodities with respect to which gains and losses are not taken into account under paragraph (2)(C) in computing a controlled foreign corporation's foreign personal holding company income shall not be taken into account in applying the substantially all test under paragraph (1)(C)(ii) to such corporation.

(C) Regulations

The Secretary shall prescribe such regulations as are appropriate to carry out the purposes of paragraph (1)(C) in the case of transactions involving related parties.

(6) Look-thru rule for related controlled foreign corporations

(A) In general

For purposes of this subsection, dividends, interest, rents, and royalties received or accrued from a controlled foreign corporation which is a related person shall not be treated as foreign personal holding company income to the extent attributable or properly allocable (determined under rules similar to the rules of subparagraphs (C) and (D) of section 904(d)(3)) to income of the related person which is neither subpart F income nor income treated as effectively connected with the conduct of a trade or business in the United States. For purposes of this subparagraph, interest shall include factoring income which is treated as income equivalent to interest for purposes of paragraph (1)(E). The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this paragraph, including such regulations as may be necessary or appropriate to prevent the abuse of the purposes of this paragraph.

(B) Exception

Subparagraph (A) shall not apply in the case of any interest, rent, or royalty to the extent such interest, rent, or royalty creates (or increases) a deficit which under section 952(c) may reduce the subpart F income of the payor or another controlled foreign corporation.

(C) Application

Subparagraph (A) shall apply to taxable years of foreign corporations beginning after December 31, 2005, and before January 1, 2012, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

(d) Foreign base company sales income

(1) In general

For purposes of subsection (a)(2), the term ''foreign base company sales income'' means income (whether in the form of profits, commissions, fees, or otherwise) derived in connection with the purchase of personal property from a related person and its sale to any person, the sale of personal property to any person on behalf of a related person, the purchase of personal property from any person and its sale to a related person, or the purchase of personal property from any person on behalf of a related person where—

(A) the property which is purchased (or in the case of property sold on behalf of a related person, the property which is sold) is manufactured, produced, grown, or extracted outside the country under the laws of which the controlled foreign corporation is created or organized, and

(B) the property is sold for use, consumption, or disposition outside such foreign country, or, in the case of property purchased on behalf of a related person, is purchased for use, consumption, or disposition outside such foreign country.

For purposes of this subsection, personal property does not include agricultural commodities which are not grown in the United States in commercially marketable quantities.

(2) Certain branch income

For purposes of determining foreign base company sales income in situations in which the carrying on of activities by a controlled foreign corporation through a branch or similar establishment outside the country of incorporation of the controlled foreign corporation has substantially the same effect as if such branch or similar establishment were a wholly owned subsidiary corporation deriving such income, under regulations prescribed by the Secretary the income attributable to the carrying on of such activities of such branch or similar establishment shall be treated as income derived by a wholly owned subsidiary of the controlled foreign corporation and shall constitute foreign base company sales income of the controlled foreign corporation.

(3) Related person defined

For purposes of this section, a person is a related person with respect to a controlled foreign corporation, if—

(A) such person is an individual, corporation, partnership, trust, or estate which controls, or is controlled by, the controlled foreign corporation, or

(B) such person is a corporation, partnership, trust, or estate which is controlled by the same person or persons which control the controlled foreign corporation.

For purposes of the preceding sentence, control means, with respect to a corporation, the ownership, directly or indirectly, of stock possessing more than 50 percent of the total voting power of all classes of stock entitled to vote or of the total value of stock of such corporation. In the case of a partnership, trust, or estate, control means the ownership, directly or indirectly, of more than 50 percent (by value) of the beneficial interests in such partnership, trust, or estate. For purposes of this paragraph, rules similar to the rules of section 958 shall apply.

(4) Special rule for certain timber products

For purposes of subsection (a)(2), the term ''foreign base company sales income'' includes any income (whether in the form of profits, commissions, fees, or otherwise) derived in connection with—

(A) the sale of any unprocessed timber referred to in section 865(b), or

(B) the milling of any such timber outside the United States.

Subpart G shall not apply to any amount treated as subpart F income by reason of this paragraph.

(e) Foreign base company services income

(1) In general

For purposes of subsection (a)(3), the term ''foreign base company services income'' means income (whether in the form of compensation, commissions, fees, or otherwise) derived in connection with the performance of technical, managerial, engineering, architectural, scientific, skilled, industrial, commercial, or like services which—

(A) are performed for or on behalf of any related person (within the meaning of subsection (d)(3)), and

(B) are performed outside the country under the laws of which the controlled foreign corporation is created or organized.

(2) Exception

Paragraph (1) shall not apply to income derived in connection with the performance of services which are directly related to—

(A) the sale or exchange by the controlled foreign corporation of property manufactured, produced, grown, or extracted by it and which are performed before the time of the sale or exchange, or

(B) an offer or effort to sell or exchange such property.

Paragraph (1) shall also not apply to income which is exempt insurance income (as defined in section 953(e)) or which is not treated as foreign personal holding income by reason of subsection (c)(2)(C)(ii), (h), or (i).

[(f) Repealed. Pub. L. 108–357, title IV, § 415(a)(2), Oct. 22, 2004, 118 Stat. 1511]

(g) Foreign base company oil related income

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the term ''foreign base company oil related income'' means foreign oil related income (within the meaning of paragraphs (2) and (3) of section 907(c)) other than income derived from a source within a foreign country in connection with—

(A) oil or gas which was extracted from an oil or gas well located in such foreign country, or

(B) oil, gas, or a primary product of oil or gas which is sold by the foreign corporation or a related person for use or consumption within such country or is loaded in such country on a vessel or aircraft as fuel for such vessel or aircraft.

Such term shall not include any foreign personal holding company income (as defined in subsection (c)).

(2) Paragraph (1) applies only where corporation has produced 1,000 barrels per day or more

(A) In general

The term ''foreign base company oil related income'' shall not include any income of a foreign corporation if such corporation is not a large oil producer for the taxable year.

(B) Large oil producer

For purposes of subparagraph (A), the term ''large oil producer'' means any corporation if, for the taxable year or for the preceding taxable year, the average daily production of foreign crude oil and natural gas of the related group which includes such corporation equaled or exceeded 1,000 barrels.

(C) Related group

The term ''related group'' means a group consisting of the foreign corporation and any other person who is a related person with respect to such corporation.

(D) Average daily production of foreign crude oil and natural gas

For purposes of this paragraph, the average daily production of foreign crude oil or natural gas of any related group for any taxable year (and the conversion of cubic feet of natural gas into barrels) shall be determined under rules similar to the rules of section 613A except that only crude oil or natural gas from a well located outside the United States shall be taken into account.

(h) Special rule for income derived in the active conduct of banking, financing, or similar businesses

(1) In general

For purposes of subsection (c)(1), foreign personal holding company income shall not include qualified banking or financing income of an eligible controlled foreign corporation.

(2) Eligible controlled foreign corporation

For purposes of this subsection—

(A) In general

The term ''eligible controlled foreign corporation'' means a controlled foreign corporation which—

(i) is predominantly engaged in the active conduct of a banking, financing, or similar business, and

(ii) conducts substantial activity with respect to such business.

(B) Predominantly engaged

A controlled foreign corporation shall be treated as predominantly engaged in the active conduct of a banking, financing, or similar business if—

(i) more than 70 percent of the gross income of the controlled foreign corporation is derived directly from the active and regular conduct of a lending or finance business from transactions with customers which are not related persons,

(ii) it is engaged in the active conduct of a banking business and is an institution licensed to do business as a bank in the

United States (or is any other corporation not so licensed which is specified by the Secretary in regulations), or

(iii) it is engaged in the active conduct of a securities business and is registered as a securities broker or dealer under section 15(a) of the Securities Exchange Act of 1934 or is registered as a Government securities broker or dealer under section 15C(a) of such Act (or is any other corporation not so registered which is specified by the Secretary in regulations).

(3) Qualified banking or financing income

For purposes of this subsection—

(A) In general

The term ''qualified banking or financing income'' means income of an eligible controlled foreign corporation which—

(i) is derived in the active conduct of a banking, financing, or similar business by—

(I) such eligible controlled foreign corporation, or

(II) a qualified business unit of such eligible controlled foreign corporation,

(ii) is derived from one or more transactions—

(I) with customers located in a country other than the United States, and

(II) substantially all of the activities in connection with which are conducted directly by the corporation or unit in its home country, and

(iii) is treated as earned by such corporation or unit in its home country for purposes of such country's tax laws.

(B) Limitation on nonbanking and nonsecurities businesses

No income of an eligible controlled foreign corporation not described in clause (ii) or (iii) of paragraph (2)(B) (or of a qualified business unit of such corporation) shall be treated as qualified banking or financing income unless more than 30 percent of such corporation's or unit's gross income is derived directly from the active and regular conduct of a lending or finance business from transactions with customers which are not related persons and which are located within such corporation's or unit's home country.

(C) Substantial activity requirement for cross border income

The term ''qualified banking or financing income'' shall not include income derived from 1 or more transactions with customers located in a country other than the home country of the eligible controlled foreign corporation or a qualified business unit of such corporation unless such corporation or unit conducts substantial activity with respect to a banking, financing, or similar business in its home country.

(D) Determinations made separately

For purposes of this paragraph, the qualified banking or financing income of an eligible controlled foreign corporation and each qualified business unit of such corporation shall be determined separately for such corporation and each such unit by taking into account—

(i) in the case of the eligible controlled foreign corporation, only items of income, deduction, gain, or loss and activities of such corporation not properly allocable or attributable to any qualified business unit of such corporation, and

(ii) in the case of a qualified business unit, only items of income, deduction, gain, or loss and activities properly allocable or attributable to such unit.

(E) Direct conduct of activities

For purposes of subparagraph (A)(ii)(II), an activity shall be treated as conducted directly by an eligible controlled foreign corporation or qualified business unit in its home country if the activity is performed by employees of a related person and—

(i) the related person is an eligible controlled foreign corporation the home country of which is the same as the home country of the corporation or unit to which subparagraph (A)(ii)(II) is being applied,

(ii) the activity is performed in the home country of the related person, and

(iii) the related person is compensated on an arm's-length basis for the performance of the activity by its employees and such compensation is treated as earned by such person in its home country for purposes of the home country's tax laws.

(4) Lending or finance business

For purposes of this subsection, the term ''lending or finance business'' means the business of—

(A) making loans,

(B) purchasing or discounting accounts receivable, notes, or installment obligations,

(C) engaging in leasing (including entering into leases and purchasing, servicing, and disposing of leases and leased assets),

(D) issuing letters of credit or providing guarantees,

(E) providing charge and credit card services, or

(F) rendering services or making facilities available in connection with activities described in subparagraphs (A) through (E) carried on by—

(i) the corporation (or qualified business unit) rendering services or making facilities available, or

(ii) another corporation (or qualified business unit of a corporation) which is a member of the same affiliated group (as defined in section 1504, but determined without regard to section 1504(b)(3)).

(5) Other definitions

For purposes of this subsection—

(A) Customer

The term ''customer'' means, with respect to any controlled foreign corporation or qualified business unit, any person which has a customer relationship with such corporation or unit and which is acting in its capacity as such.

(B) Home country

Except as provided in regulations—

(i) Controlled foreign corporation

The term ''home country'' means, with respect to any controlled foreign corporation, the country under the laws of which the corporation was created or organized.

(ii) Qualified business unit

The term ''home country'' means, with respect to any qualified business unit, the country in which such unit maintains its principal office.

(C) Located

The determination of where a customer is located shall be made under rules prescribed by the Secretary.

(D) Qualified business unit

The term ''qualified business unit'' has the meaning given such term by section 989(a).

(E) Related person

The term ''related person'' has the meaning given such term by subsection (d)(3).

(6) Coordination with exception for dealers

Paragraph (1) shall not apply to income described in subsection (c)(2)(C)(ii) of a dealer in securities (within the meaning of section 475) which is an eligible controlled foreign corporation described in paragraph (2)(B)(iii).

(7) Anti-abuse rules

For purposes of applying this subsection and subsection (c)(2)(C)(ii)—

(A) there shall be disregarded any item of income, gain, loss, or deduction with respect to any transaction or series of transactions one of the principal purposes of which is qualifying income or gain for the exclusion under this section, including any transaction or series of transactions a principal purpose of which is the acceleration or deferral of any item in order to claim the benefits of such exclusion through the application of this subsection,

(B) there shall be disregarded any item of income, gain, loss, or deduction of an entity which is not engaged in regular and continuous transactions with customers which are not related persons,

(C) there shall be disregarded any item of income, gain, loss, or deduction with respect to any transaction or series of transactions utilizing, or doing business with—

(i) one or more entities in order to satisfy any home country requirement under this subsection, or

(ii) a special purpose entity or arrangement, including a securitization, financing, or similar entity or arrangement,

if one of the principal purposes of such transaction or series of transactions is qualifying income or gain for the exclusion under this subsection, and

(D) a related person, an officer, a director, or an employee with respect to any controlled foreign corporation (or qualified business unit) which would otherwise be treated as a customer of such corporation or unit with respect to any transaction shall not be so treated if a principal purpose of such transaction is to satisfy any requirement of this subsection.

(8) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, subsection (c)(1)(B)(i), subsection (c)(2)(C)(ii), and the last sentence of subsection (e)(2).

(9) Application

This subsection, subsection (c)(2)(C)(ii), and the last sentence of subsection (e)(2) shall apply only to taxable years of a foreign corporation beginning after December 31, 1998, and before January 1, 2012, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends.

(i) Special rule for income derived in the active conduct of insurance business

(1) In general

For purposes of subsection (c)(1), foreign personal holding company income shall not include qualified insurance income of a qualifying insurance company.

(2) Qualified insurance income

The term ''qualified insurance income'' means income of a qualifying insurance company which is—

(A) received from a person other than a related person (within the meaning of subsection (d)(3)) and derived from the investments made by a qualifying insurance company or a qualifying insurance company branch of its reserves allocable to exempt contracts or of 80 percent of its unearned premiums from exempt contracts (as both are determined in the manner prescribed under paragraph (4)), or

(B) received from a person other than a related person (within the meaning of subsection (d)(3)) and derived from investments made by a qualifying insurance company or a qualifying insurance company branch of an amount of its assets allocable to exempt contracts equal to—

(i) in the case of property, casualty, or health insurance contracts, one-third of its premiums earned on such insurance contracts during the taxable year (as defined in section 832(b)(4)), and

(ii) in the case of life insurance or annuity contracts, 10 percent of the reserves described in subparagraph (A) for such contracts.

(3) Principles for determining insurance income

Except as provided by the Secretary, for purposes of subparagraphs (A) and (B) of paragraph (2)—

(A) in the case of any contract which is a separate account-type contract (including any variable contract not meeting the requirements of section 817), income credited under such contract shall be allocable only to such contract, and

(B) income not allocable under subparagraph (A) shall be allocated ratably among contracts not described in subparagraph (A).

(4) Methods for determining unearned premiums and reserves

For purposes of paragraph (2)(A)—

(A) Property and casualty contracts

The unearned premiums and reserves of a qualifying insurance company or a qualifying insurance company branch with respect to property, casualty, or health insurance contracts shall be determined using the same methods and interest rates which would be used if such company or branch were subject to tax under subchapter L, except that—

(i) the interest rate determined for the functional currency of the company or branch, and which, except as provided by the Secretary, is calculated in the same manner as the Federal mid-term rate under section 1274(d), shall be substituted for the applicable Federal interest rate, and

(ii) such company or branch shall use the appropriate foreign loss payment pattern.

(B) Life insurance and annuity contracts

(i) In general

Except as provided in clause (ii), the amount of the reserve of a qualifying insurance company or qualifying insurance company branch for any life insurance or annuity contract shall be equal to the greater of—

(I) the net surrender value of such contract (as defined in section 807(e)(1)(A)), or

(II) the reserve determined under paragraph (5).

(ii) Ruling request, etc.

The amount of the reserve under clause (i) shall be the foreign statement reserve for the contract (less any catastrophe, deficiency, equalization, or similar reserves), if, pursuant to a ruling request submitted by the taxpayer or as provided in published guidance, the Secretary determines that the factors taken into account in determining the foreign statement reserve provide an appropriate means of measuring income.

(C) Limitation on reserves

In no event shall the reserve determined under this paragraph for any contract as of any time exceed the amount which would be taken into account with respect to such contract as of such time in determining foreign statement reserves (less any catastrophe, deficiency, equalization, or similar reserves).

(5) Amount of reserve

The amount of the reserve determined under this paragraph with respect to any contract shall be determined in the same manner as it would be determined if the qualifying insurance company or qualifying insurance company branch were subject to tax under subchapter L, except that in applying such subchapter—

(A) the interest rate determined for the functional currency of the company or branch, and which, except as provided by the Secretary, is calculated in the same manner as the Federal mid-term rate under section 1274(d), shall be substituted for the applicable Federal interest rate,

(B) the highest assumed interest rate permitted to be used in determining foreign statement reserves shall be substituted for the prevailing State assumed interest rate, and

(C) tables for mortality and morbidity which reasonably reflect the current mortality and morbidity risks in the company's or branch's home country shall be substituted for the mortality and morbidity tables otherwise used for such subchapter.

The Secretary may provide that the interest rate and mortality and morbidity tables of a qualifying insurance company may be used for 1 or more of its qualifying insurance company branches when appropriate.

(6) Definitions

For purposes of this subsection, any term used in this subsection which is also used in section 953(e) shall have the meaning given such term by section 953.

(Added Pub. L. 87–834, § 12(a), Oct. 16, 1962, 76 Stat. 1009; amended Pub. L. 91–172, title IX, § 909(a), Dec. 30, 1969, 83 Stat. 718; Pub. L. 94–12, title VI, § 602(b), (c)(1), (2), (d)(1), (e), Mar. 29, 1975, 89 Stat. 58, 60, 64; Pub. L. 94–455, title X, §§ 1023(a), 1024(a), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1620, 1834; Pub. L. 97–248, title II, § 212(a)–(e), Sept. 3, 1982, 96 Stat. 451, 452; Pub. L. 98–369, div. A, title I, § 137(a), title VII, § 712(f), July 18, 1984, 98 Stat. 672, 947; Pub. L. 99–514, title XII, §§ 1201(c), 1221(a)(1), (b)(3)(B), (c)(1)–(3)(A), (d), (e), 1223(a), title XVIII, § 1810(k), Oct. 22, 1986, 100 Stat. 2525, 2549, 2553, 2557, 2830; Pub. L. 100–647, title I, §§ 1012(i)(12), (14)(A), (18), (20), (25)(B), 1018(u)(38), Nov. 10, 1988, 102 Stat. 3509–3512, 3592; Pub. L. 101–239, title VII, § 7811(i)(3), Dec. 19, 1989, 103 Stat. 2409; Pub. L. 103–66, title XIII, §§ 13233(a)(1), 13235(a)(3), (b), 13239(d), Aug. 10, 1993, 107 Stat. 502, 504, 505, 509; Pub. L. 104–188, title I, § 1704(t)(25), Aug. 20, 1996, 110 Stat. 1888; Pub. L. 105–34, title X, § 1051(a), (b), title XI, § 1175(a), (b), Aug. 5, 1997, 111 Stat. 940, 990, 993; Pub. L. 105–277, div. J, title I, § 1005(a), (b)(2), (c)–(e), title IV, § 4003(j), Oct. 21, 1998, 112 Stat. 2681–890, 2681–897, 2681–899, 2681–900, 2681–910; Pub. L. 106–170, title V, §§ 503(a), 532(c)(2)(Q), Dec. 17, 1999, 113 Stat. 1921, 1931; Pub. L. 107–147, title IV, § 417(24)(B)(ii), title VI, § 614(a)(2), (b)(1), Mar. 9, 2002, 116 Stat. 57, 61; Pub. L. 108–357, title IV, §§ 412(a), 413(b)(2), 414(a)–(c), 415(a), (b), (c)(2), 416(a), Oct. 22, 2004, 118 Stat. 1505, 1506, 1510, 1511; Pub. L. 109–135, title IV, §§ 403(m), 412(*ll*), (mm), Dec. 21, 2005, 119 Stat. 2626, 2639; Pub. L. 109–222, title I, § 103(a)(2), (b)(1), May 17, 2006, 120 Stat. 346; Pub. L. 109–432, div. A, title IV, § 426(a)(1), Dec. 20, 2006, 120 Stat. 2974; Pub. L. 110–172, §§ 4(a), 11(a)(19), (20), (g)(15)(B), Dec. 29, 2007, 121 Stat. 2475, 2486, 2491; Pub. L. 110–343, div. C, title III, §§ 303(b), 304(a), Oct. 3, 2008, 122 Stat. 3866, 3867; Pub. L. 111–312, title VII, §§ 750(a), 751(a), Dec. 17, 2010, 124 Stat. 3320, 3321.)

REFERENCES IN TEXT

Sections 15(a) and 15C(a) of the Securities Exchange Act of 1934, referred to in subsec. (h)(2)(B)(iii), are classified to sections 78*o*(a) and 78*o*–5(a), respectively, of Title 15, Commerce and Trade.

AMENDMENTS

2010—Subsec. (c)(6)(C). Pub. L. 111–312, §751(a), substituted ''January 1, 2012'' for ''January 1, 2010''.

Subsec. (h)(9). Pub. L. 111–312, §750(a), substituted ''January 1, 2012'' for ''January 1, 2010''.

2008—Subsec. (c)(6)(C). Pub. L. 110–343, §304(a), substituted ''January 1, 2010'' for ''January 1, 2009''.

Subsec. (h)(9). Pub. L. 110–343, §303(b), substituted ''January 1, 2010'' for ''January 1, 2009''.

2007—Subsec. (c)(1)(F). Pub. L. 110–172, §11(a)(19), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Any item of income, gain, deduction, or loss from a notional principal contract entered into for purposes of hedging any item described in any preceding subparagraph shall not be taken into account for purposes of this subparagraph but shall be taken into account under such other subparagraph.''

Subsec. (c)(1)(H), (I). Pub. L. 110–172, §11(a)(20), redesignated subpar. (I) as (H).

Subsec. (c)(2)(C)(ii). Pub. L. 110–172, §11(g)(15)(B), substituted ''section 956(c)(2)(I)'' for ''section 956(c)(2)(J)''.

Subsec. (c)(6)(B), (C). Pub. L. 110–172, §4(a), added subpar. (B) and redesignated former subpar. (B) as (C).

2006—Subsec. (c)(6). Pub. L. 109–222, §103(b)(1), added par.(6).

Subsec. (c)(6)(A). Pub. L. 109–432, in first sentence, substituted ''which is neither subpart F income nor income treated as effectively connected with the conduct of a trade or business in the United States'' for ''which is not subpart F income'' and, in last sentence, substituted ''The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this paragraph, including such regulations as may be necessary or appropriate to prevent the abuse of the purposes of this paragraph'' for ''The Secretary shall prescribe such regulations as may be appropriate to prevent the abuse of the purposes of this paragraph''.

Subsec. (h)(9). Pub. L. 109–222, §103(a)(2), substituted ''January 1, 2009'' for ''January 1, 2007''.

2005—Subsec. (c)(1)(C)(i). Pub. L. 109–135, §412(*ll*), substituted ''paragraph (5)(A)'' for ''paragraph (4)(A)''.

Subsec. (c)(1)(F). Pub. L. 109–135, §412(mm), struck out ''Net income from notional principal contracts.'' before ''Any item of income''.

Subsec. (c)(4)(B). Pub. L. 109–135, §403(m), inserted at end ''If a controlled foreign corporation is treated as owning a capital or profits interest in a partnership under constructive ownership rules similar to the rules of section 958(b), the controlled foreign corporation shall be treated as owning such interest directly for purposes of this subparagraph.''

2004—Subsec. (a)(4). Pub. L. 108–357, §415(a)(1), struck out par. (4) which read as follows: ''the foreign base company shipping income for the taxable year (determined under subsection (f) and reduced as provided in subsection (b)(5)), and''.

Subsec. (b)(5). Pub. L. 108–357, §415(c)(2)(A), struck out ''the foreign base company shipping income,'' after ''the foreign base company services income,,''.

Subsec. (b)(6) to (8). Pub. L. 108–357, §415(c)(2)(B), (C), redesignated par. (8) as (6) and struck out former pars. (6) and (7) which set forth special rules and special exclusion for foreign base company shipping income.

Subsec. (c)(1)(C)(i), (ii). Pub. L. 108–357, §414(a), amended cls. (i) and (ii) generally. Prior to amendment, cls. (i) and (ii) read as follows:

''(i) arise out of bona fide hedging transactions reasonably necessary to the conduct of any business by a producer, processor, merchant, or handler of a commodity in the manner in which such business is customarily and usually conducted by others,

''(ii) are active business gains or losses from the sale of commodities, but only if substantially all of the controlled foreign corporation's business is as an active producer, processor, merchant, or handler of commodities, or''.

Subsec. (c)(1)(I). Pub. L. 108–357, §413(b)(2), added subpar. (I).

Subsec. (c)(2)(A). Pub. L. 108–357, §415(b), inserted at end ''For purposes of the preceding sentence, rents derived from leasing an aircraft or vessel in foreign commerce shall not fail to be treated as derived in the active conduct of a trade or business if, as determined under regulations prescribed by the Secretary, the active leasing expenses are not less than 10 percent of the profit on the lease.''

Subsec. (c)(2)(C)(i). Pub. L. 108–357, §414(c), inserted ''and transactions involving physical settlement'' after ''(including hedging transactions''.

Subsec. (c)(4). Pub. L. 108–357, §412(a), added par. (4).

Subsec. (c)(5). Pub. L. 108–357, §414(b), added par. (5).

Subsec. (f). Pub. L. 108–357, §415(a)(2), struck out subsec. (f) which defined ''foreign base company shipping income'' for purposes of subsec. (a)(4).

Subsec. (h)(3)(E). Pub. L. 108–357, §416(a), added subpar. (E).

2002—Subsec. (c)(1)(B). Pub. L. 107–147, §417(24)(B)(ii), which directed the amendment of Pub. L. 106–170, §532(c)(2)(Q), was executed to that section as if the amendment were retroactive to the effective date of the amendment by Pub. L. 106–170 to reflect the probable intent of Congress. See 1999 Amendment note below.

Subsec. (h)(9). Pub. L. 107–147, §614(a)(2), substituted ''January 1, 2007'' for ''January 1, 2002''.

Subsec. (i)(4)(B). Pub. L. 107–147, §614(b)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The amount of the reserve of a qualifying insurance company or qualifying insurance company branch for any life insurance or annuity contract shall be equal to the greater of—

''(i) the net surrender value of such contract (as defined in section 807(e)(1)(A)), or

''(ii) the reserve determined under paragraph (5).''

1999—Subsec. (c)(1)(B). Pub. L. 106–170, §532(c)(2)(Q), as amended by Pub. L. 107–147, §417(24)(B)(ii), substituted ''section 1221(a)(1)'' for ''section 1221(1)'' in concluding provisions.

Subsec. (h)(9). Pub. L. 106–170, §503(a), substituted ''taxable years'' for ''the first taxable year'', ''January 1, 2002'' for ''January 1, 2000'', and ''within which any such'' for ''within which such''.

1998—Subsec. (c)(1)(B)(i). Pub. L. 105–277, §1005(e), inserted ''other than property which gives rise to income not treated as foreign personal holding company income by reason of subsection (h) or (i) for the taxable year'' before comma at end.

Subsec. (c)(2)(C). Pub. L. 105–277, §1005(c), amended heading and text of subpar. (C), generally. Prior to amendment, text read as follows: ''Except as provided in subparagraph (A), (E), or (G) of paragraph (1) or by regulations, in the case of a regular dealer in property (within the meaning of paragraph (1)(B)), forward contracts, option contracts, or similar financial instruments (including notional principal contracts and all instruments referenced to commodities), there shall not be taken into account in computing foreign personal holding income any item of income, gain, deduction, or loss from any transaction (including hedging transactions) entered into in the ordinary course of such dealer's trade or business as such a dealer.''

Subsec. (e)(2). Pub. L. 105–277, §1005(d), inserted ''or'' at end of subpar. (A), substituted a period for '', or'' at end of subpar. (B), and inserted concluding provisions.

Subsec. (e)(2)(C). Pub. L. 105–277, §4003(j), substituted ''(h)(9)'' for ''(h)(8)''.

Pub. L. 105–277, §1005(d), struck out subpar. (C) which read as follows: ''in the case of taxable years described in subsection (h)(9), the active conduct by a controlled foreign corporation of a banking, financing, insurance, or similar business, but only if the corporation is predominantly engaged in the active conduct of such busi-

ness (within the meaning of subsection (h)(3)) or is a qualifying insurance company.''

Subsec. (h). Pub. L. 105–277, § 1005(a), amended heading and text of subsec. (h) generally. Prior to amendment, text consisted of pars. (1) to (9) relating to special rule for income derived in active conduct of banking, financing, or similar businesses, principles for determining applicable income, meaning of ''predominantly engaged'' for purposes of the special rule, methods of determining unearned premiums and reserves, definitions of certain terms for purposes of subsec. (h), anti-abuse rules, coordination with section 953 of this title, and taxable year applicability of subsec. (h).

Subsec. (i). Pub. L. 105–277, § 1005(b)(2), added subsec. (i).

1997—Subsec. (c)(1)(B). Pub. L. 105–34, § 1051(a)(2), in concluding provisions, struck out ''In the case of any regular dealer in property, gains and losses from the sale or exchange of any such property or arising out of bona fide hedging transactions reasonably necessary to the conduct of the business of being a dealer in such property shall not be taken into account under this subparagraph.'' before ''Gains and losses'' and ''also'' after ''section 1221(1)''.

Subsec. (c)(1)(F), (G). Pub. L. 105–34, § 1051(a)(1), added subpars. (F) and (G).

Subsec. (c)(2)(C). Pub. L. 105–34, § 1051(b), added subpar. (C).

Subsec. (e)(2)(C). Pub. L. 105–34, § 1175(b), added subpar. (C).

Subsec. (h). Pub. L. 105–34, § 1175(a), added subsec. (h).

1996—Subsec. (c)(3)(A)(i). Pub. L. 104–188 amended directory language of Pub. L. 101–239, § 7811(i)(3)(A). See 1989 Amendment note below.

1993—Subsec. (b)(8). Pub. L. 103–66, § 13235(a)(3)(B), struck out ''(1),'' after ''such corporation under paragraph''.

Subsec. (c)(3)(C). Pub. L. 103–66, § 13233(a)(1), added subpar. (C).

Subsec. (d)(4). Pub. L. 103–66, § 13239(d), added par. (4).

Subsec. (f). Pub. L. 103–66, § 13235(b), inserted at end of concluding provisions ''Except as provided in paragraph (1), such term shall not include any dividend or interest income which is foreign personal holding company income (as defined in subsection (c)).''

Subsec. (g)(1). Pub. L. 103–66, § 13235(a)(3)(A), inserted at end ''Such term shall not include any foreign personal holding company income (as defined in subsection (c)).''

1989—Subsec. (c)(3)(A). Pub. L. 101–239, § 7811(i)(3)(C), inserted at end ''To the extent provided in regulations, payments made by a partnership with 1 or more corporate partners shall be treated as made by such corporate partners in proportion to their respective interests in the partnership.''

Subsec. (c)(3)(A)(i). Pub. L. 101–239, § 7811(i)(3)(A), as amended by Pub. L. 104–188, substituted ''is a corporation created'' for ''is created'' after ''person which (I)''.

Subsec. (c)(3)(A)(ii). Pub. L. 101–239, § 7811(i)(3)(B), substituted ''from a corporation which is a related person'' for ''from a related person''.

1988—Subsec. (b)(6), (7). Pub. L. 100–647, § 1012(i)(12), struck out ''(determined without regard to the exclusion under paragraph (2) of this subsection)'' after ''paragraph (4) of subsection (a)''.

Subsec. (c)(1)(B). Pub. L. 100–647, § 1012(i)(18), (20), added cl. (ii), redesignated former cl. (ii) as (iii), added closing provisions, and struck out former closing provisions which read as follows: ''This subparagraph shall not apply to gain from the sale or exchange of any property which, in the hands of the taxpayer, is property described in section 1221(1) or to gain from the sale or exchange of any property by a regular dealer in such property.''

Subsec. (c)(3)(B). Pub. L. 100–647, § 1012(i)(25)(B), inserted before period at end ''or creates (or increases) a deficit which under section 952(c) may reduce the subpart F income of the payor or another controlled foreign corporation''.

Subsec. (d)(3). Pub. L. 100–647, § 1012(i)(14)(A), substituted ''more than 50 percent'' for ''50 percent or more'' in last two sentences.

Subsec. (e)(3). Pub. L. 100–647, § 1018(u)(38), related to execution of amendment by Pub. L. 99–514, § 1221(b)(3)(B), see 1986 Amendment note below.

1986—Subsec. (a)(5). Pub. L. 99–514, § 1221(c)(3)(A)(ii), substituted ''determined under subsection (g)'' for ''determined under subsection (h)''.

Subsec. (b)(2). Pub. L. 99–514, § 1221(c)(1), struck out par. (2), exclusion for reinvested shipping income, which read as follows: ''For purposes of subsection (a), foreign base company income does not include foreign base company shipping income to the extent that the amount of such income does not exceed the increase for the taxable year in qualified investments in foreign base company shipping operations of the controlled foreign corporation (as determined under subsection (g)).''

Subsec. (b)(3). Pub. L. 99–514, § 1223(a), amended par. (3) generally. Prior to amendment, par. (3), special rule where foreign base company income is less than 10 percent or more than 70 percent of gross income, read as follows: ''For purposes of subsection (a)—

''(A) If the foreign base company income (determined without regard to paragraphs (2) and (5)) is less than 10 percent of gross income, no part of the gross income of the taxable year shall be treated as foreign base company income.

''(B) If the foreign base company income (determined without regard to paragraphs (2) and (5)) exceeds 70 percent of gross income, the entire gross income of the taxable year shall, subject to the provisions of paragraphs (2), (4), and (5), be treated as foreign base company income.''

Subsec. (b)(4). Pub. L. 99–514, § 1221(d), amended par. (4) generally. Prior to amendment, par. (4), exception for foreign corporations not availed of to reduce taxes, read as follows: ''For purposes of subsection (a), foreign base company income does not include any item of income received by a controlled foreign corporation if it is established to the satisfaction of the Secretary that neither—

''(A) the creation or organization of such controlled foreign corporation under the laws of the foreign country in which it is incorporated (or, in the case of a controlled foreign corporation which is an acquired corporation, the acquisition of such corporation created or organized under the laws of the foreign country in which it is incorporated), nor

''(B) the effecting of the transaction giving rise to such income through the controlled foreign corporation,

has as one of its significant purposes a substantial reduction of income, war profits, or excess profits or similar taxes. The preceding sentence shall not apply to foreign base company oil related income described in subsection (a)(5).''

Subsec. (b)(5). Pub. L. 99–514, § 1201(c), inserted at end ''Except to the extent provided in regulations prescribed by the Secretary, any interest which is paid or accrued by the controlled foreign corporation to any United States shareholder in such corporation (or any controlled foreign corporation related to such a shareholder) shall be allocated first to foreign personal holding company income which is passive income (within the meaning of section 904(d)(2)) of such corporation to the extent thereof. The Secretary may, by regulations, provide that the preceding sentence shall apply also to interest paid or accrued to other persons.''

Subsec. (c). Pub. L. 99–514, § 1221(a)(1), amended subsec. (c) generally, substituting pars. (1) to (3) for former provisions which had provided: in par. (1), a reference to definition of ''foreign personal holding company income'' contained in section 553; in par. (2), that all rents would be included in ''foreign personal holding company income'' without regard to whether or not such rents constituted 50 percent or more of gross income; in par. (3), for exclusion of certain income derived in active conduct of a trade or business; and in par. (4), exclusion of certain income received from related persons from being included in ''foreign personal holding company income''. See subsec. (c)(3).

Subsec. (d)(3). Pub. L. 99–514, § 1221(e), added subpars. (A) and (B) and concluding provisions and struck out

former subpars. (A) to (C) and concluding provisions which read as follows:

''(A) such person is an individual, partnership, trust, or estate which controls the controlled foreign corporation;

''(B) such person is a corporation which controls, or is controlled by, the controlled foreign corporation; or

''(C) such person is a corporation which is controlled by the same person or persons which control the controlled foreign corporation.

For purposes of the preceding sentence, control means the ownership, directly or indirectly, of stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote. For purposes of this paragraph, the rules for determining ownership of stock prescribed by section 958 shall apply.''

Subsec. (e). Pub. L. 99–514, §1810(k), in amending subsec. (e) generally, designated existing provisions as par. (1), added par. heading, and substituted subpar. (A) and (B) designations for prior par. (1) and (2) designations, struck out provisions relating to nonapplicability of preceding sentence to services performed in connection with manufactured or grown or extracted property, and provisions determining the place of performance of services for purposes of paragraph (2) with respect to any policy of insurance and reinsurance, and added pars. (2) and (3).

Subsec. (e)(3). Pub. L. 99–514, §1221(b)(3)(B), and Pub. L. 100–647, §1018(u)(38), struck out par. (3) as enacted by section 1810(k) of Pub. L. 99–514, which read as follows: ''For purposes of paragraph (1), in the case of any services performed with respect to any policy of insurance or reinsurance with respect to which the primary insured is a related person (within the meaning of section 864(d)(4))—

''(A) such primary insured shall be treated as a related person for purposes of paragraph (1)(A) (whether or not the requirements of subsection (d)(3) are met),

''(B) such services shall be treated as performed in the country within which the insured hazards, risks, losses, or liabilities occur, and

''(C) except as otherwise provided in regulations by the Secretary, rules similar to the rules of section 953(b) shall be applied in determining the income from such services.''

Subsec. (f). Pub. L. 99–514, §1221(c)(2), inserted last sentence.

Subsecs. (g), (h). Pub. L. 99–514, §1221(c)(3)(A)(i), redesignated subsec. (h) as (g) and struck out former subsec. (g), increase in qualified investments in foreign base company shipping operations, which read as follows: ''For purposes of subsection (b)(2), the increase for any taxable year in qualified investments in foreign base company shipping operations of any controlled foreign corporation is the amount by which—

''(1) the qualified investments in foreign base company shipping operations (as defined in section 955(b)) of the controlled foreign corporation at the close of the taxable year, exceed

''(2) the qualified investments in foreign base company shipping operations (as so defined) of the controlled foreign corporation at the close of the preceding taxable year.''

1984—Subsec. (e). Pub. L. 98–369, §137(a), inserted provision that for purposes of par. (2) services performed with respect to any insurance or reinsurance policy be treated as performed in the country of risk.

Subsec. (h)(1). Pub. L. 98–369, §712(f), substituted ''paragraphs (2) and (3) of section 907(c)'' for ''section 907(c)(2)''.

1982—Subsec. (a)(5). Pub. L. 97–248, §212(a), (e), added par. (5).

Subsec. (b)(4). Pub. L. 97–248, §212(d), inserted at end ''The preceding sentence shall not apply to foreign base company oil related income described in subsection (a)(5).''

Subsec. (b)(5). Pub. L. 97–248, §212(b)(1), substituted '', the foreign base company shipping income, and the foreign base company oil related income'' for ''and the foreign base company shipping income''.

Subsec. (b)(8). Pub. L. 97–248, §212(b)(2), added par. (8).

Subsec. (h). Pub. L. 97–248, §212(c), added subsec. (h).

1976—Subsecs. (b)(4), (5). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (b)(7). Pub. L. 94–455, §1024(a), added par. (7).

Subsec. (c)(3)(C). Pub. L. 94–455, §1023(a), added subpar. (C).

1975—Subsec. (a)(4). Pub. L. 94–12, §602(d)(1)(A), added par. (4).

Subsec. (b)(1). Pub. L. 94–12, §602(c)(1), struck out subsec. (b)(1) which related to the exclusion of certain dividends, interest, and gains from qualified investments in less developed countries.

Subsec. (b)(2). Pub. L. 94–12, §602(d)(1)(B), substituted ''foreign base company shipping income to the extent that the amount of such income does not exceed the increase for the taxable year in qualified investments in foreign base company shipping operations of the controlled foreign corporation (as determined under subsection (g))'' for ''income derived from, or in connection with, the use (or hiring or leasing for use) of any aircraft or vessel in foreign commerce, or the performance of services directly related to the use of any such aircraft or vessel'' in text and ''Exclusion for reinvested shipping income'' for ''Exclusion of certain shipping income'' in heading.

Subsec. (b)(3). Pub. L. 94–12, §602(d)(1)(C), (D), (e), substituted ''10 percent'' for ''30 percent'' in heading, substituted ''paragraphs (2) and (5)'' for ''paragraphs (1) and (5)'' and ''10 percent'' for ''30 percent'' in subpar. (A), and substituted ''paragraphs (2) and (5)'' for ''paragraphs (1) and (5)'' and ''paragraphs (2), (4), and (5)'' for ''paragraphs (1), (2), (4), and (5)'' in subpar. (B).

Subsec. (b)(5). Pub. L. 94–12, §602(d)(1)(E), substituted ''the foreign base company services income, and the foreign base company shipping income'' for ''and the foreign base company services income''.

Subsec. (b)(6). Pub. L. 94–12, §602(d)(1)(F), added par. (6).

Subsec. (d)(1). Pub. L. 94–12, §602(b), provided that for purposes of subsec. (d) personal property does not include agricultural commodities which are not grown in the United States in commercially marketable quantities.

Subsecs. (f), (g). Pub. L. 94–12, §602(c)(2), (d)(1)(G), added subsecs. (f) and (g).

1969—Subsec. (b)(4). Pub. L. 91–172 inserted reference to a foreign corporation which is an acquired corporation, and made the effecting of a transaction giving rise to foreign base income through the controlled foreign corporation subject to the Secretary's power to disallow inclusion of any item of such income where such inclusion will have one of the effects prescribed by this section.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 750(a) of Pub. L. 111–312 applicable to taxable years of foreign corporations beginning after Dec. 31, 2009, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends, see section 750(c) of Pub. L. 111–312, set out as a note under section 953 of this title.

Pub. L. 111–312, title VII, §751(b), Dec. 17, 2010, 124 Stat. 3321, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2009, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, §304(b), Oct. 3, 2008, 122 Stat. 3867, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2007, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by section 4(a) of Pub. L. 110–172 effective as if included in the provisions of the Tax Increase Prevention and Reconciliation Act of 2005, Pub. L. 109–222, to which such amendment relates, with certain exceptions, see section 4(d) of Pub. L. 110–172, set out as a note under section 355 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §426(a)(2), Dec. 20, 2006, 120 Stat. 2974, provided that: ''The amendments made by this subsection [amending this section] shall take effect as if included in section 103(b) of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109–222].''

Pub. L. 109–222, title I, §103(b)(2), May 17, 2006, 120 Stat. 347, provided that: ''The amendment made by this subsection [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2005, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 403(m) of Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title IV, §412(b), Oct. 22, 2004, 118 Stat. 1506, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.''

Amendment by section 413(b)(2) of Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

Pub. L. 108–357, title IV, §414(d), Oct. 22, 2004, 118 Stat. 1511, provided that: ''The amendments made by this section [amending this section] shall apply to transactions entered into after December 31, 2004.''

Amendment by section 415(a), (b), (c)(2) of Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 415(d) of Pub. L. 108–357, set out as a note under section 952 of this title.

Pub. L. 108–357, title IV, §416(b), Oct. 22, 2004, 118 Stat. 1512, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years of such foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of such foreign corporations end.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by section 614(a)(2), (b)(1) of Pub. L. 107–147 applicable to taxable years beginning after Dec. 31, 2001, see section 614(c) of Pub. L. 107–147, set out as a note under section 953 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 503(a) of Pub. L. 106–170 applicable to taxable years beginning after Dec. 31, 1999, see section 503(c) of Pub. L. 106–170, set out as a note under section 953 of this title.

Amendment by section 532(c)(2)(Q) of Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 4003(j) of Pub. L. 105–277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 4003(*l*) of Pub. L. 105–277, set out as a note under section 86 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1051(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997].''

Section 1175(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply to the first full taxable year of a foreign corporation beginning after December 31, 1997, and before January 1, 1999, and to taxable years of United States shareholders with or within which such taxable year of such foreign corporation ends.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13233(a)(2) of Pub. L. 103–66 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years of controlled foreign corporations beginning after September 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of controlled foreign corporations end.''

Amendment by section 13235(a)(3) and (b) of Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see section 13235(c) of Pub. L. 103–66, set out as a note under section 904 of this title.

Amendment by section 13239(d) of Pub. L. 103–66 applicable to sales, exchanges, or other dispositions after Aug. 10, 1993, see section 13239(e) of Pub. L. 103–66, set out as a note under section 865 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1201(c) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1201(e) of Pub. L. 99–514, set out as a note under section 904 of this title.

Section 1221(g) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1012(i)(13), Nov. 10, 1988, 102 Stat. 3509, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 864, 952, 953, 955, and 957 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 1986.

''(2) SPECIAL RULE FOR REPEAL OF EXCLUSION FOR REINVESTMENT SHIPPING INCOME.—

''(A) IN GENERAL.—In the case of any qualified controlled foreign corporation—

''(i) the amendments made by subsection (c) [amending this section and section 955 of this title] shall apply to taxable years ending on or after January 1, 1992, and

''(ii) sections 955(a)(1)(A) and 955(a)(2)(A) of the Internal Revenue Code of 1986 (as amended by subsection (c)(3)) shall be applied by substituting 'ending before 1992' for 'beginning before 1987'.

''(B) QUALIFIED CONTROLLED FOREIGN CORPORATION.—For purposes of subparagraph (A), the term 'qualified controlled foreign corporation' means any controlled foreign corporation (as defined in section 957 of such Code)—

''(i) if the United States agent of such corporation is a domestic corporation incorporated on March 13, 1951, and

''(ii) if—

''(I) the certificate of incorporation of such corporation is dated November 23, 1963, and

''(II) such corporation has a wholly owned subsidiary and its certificate of incorporation is dated November 2, 1965.

''(3) EXCEPTION FOR CERTAIN REINSURANCE CONTRACTS.—

''(A) IN GENERAL.—In the case of the 1st 3 taxable years of a qualified controlled foreign insurer beginning after December 31, 1986, the amendments made by this section shall not apply to the phase-in percentage of any qualified reinsurance income.

''(B) PHASE-IN PERCENTAGE.—For purposes of subparagraph (A):

''In the case of taxable years beginning in:	**The phase-in percentage is:**
1987	75
1988	50
1989	25.

''(C) QUALIFIED CONTROLLED FOREIGN INSURER.—For purposes of this paragraph, the term 'qualified controlled foreign insurer' means—

''(i) any controlled foreign corporation which on August 16, 1986, was a member of an affiliated group (as defined in section 1504(a) of the Internal Revenue Code of 1986 without regard to subsection (b)(3) thereof) which had as its common parent a corporation incorporated in Delaware on June 9, 1967, with executive offices in New York, New York, or

''(ii) any controlled foreign corporation which on August 16, 1986, was a member of an affiliated group (as so defined) which had as its common parent a corporation incorporated in Delaware on November 3, 1981, with executive offices in Philadelphia, Pennsylvania.

''(D) QUALIFIED REINSURANCE INCOME.—For purposes of this paragraph, the term 'qualified reinsurance income' means any insurance income attributable to risks (other than risks described in section 953(a) or 954(e) of such Code as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]) assumed under a reinsurance contract. For purposes of this subparagraph, insurance income shall mean the underwriting income (as defined in section 832(b)(3) of such Code) and investment income derived from an amount of assets (to be segregated and separately identified) equivalent to the ordinary and necessary insurance reserves and necessary surplus equal to ⅓ of earned premium attributable to such contracts. For purposes of this paragraph, the amount of qualified reinsurance income shall not exceed the amount of insurance income from reinsurance contracts for calendar year 1985. In the case of controlled foreign corporations described in subparagraph (C)(ii), the preceding sentence shall not apply and the qualified reinsurance income of any such corporation shall not exceed such corporation's proportionate share of $27,000,000 (determined on the basis of respective amounts of qualified reinsurance income determined without regard to this subparagraph).''

Amendment by section 1223(a) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1223(c) of Pub. L. 99–514, set out as a note under section 864 of this title.

Amendment by section 1810(k) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 137(b) of Pub. L. 98–369 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxable years of controlled foreign corporations beginning after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 712(f) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 212(f) of Pub. L. 97–248 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 1982, and to taxable years of United States shareholders in which, or with which, such taxable years of foreign corporations end.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1023(b) of Pub. L. 94–455, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 1975, and to taxable years of United States shareholders (within the meaning of section 951(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) within which or with which such taxable years of such foreign corporations end.''

Section 1024(b) of Pub. L. 94–455, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 1975, and to taxable years of United States shareholders (within the meaning of section 951(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) within which or with which such taxable years of such foreign corporations end.''

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–12 applicable to taxable years of foreign corporations beginning after Dec. 31, 1975, and to taxable years of United States shareholders (within the meaning of section 951(b) of this title) within which or with which such taxable years of such foreign corporations end, see section 602(f) of Pub. L. 94–12, set out as an Effective Date note under section 955 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 909(b) of Pub. L. 91–172 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after October 9, 1969.''

LINE ITEM VETO

Section 1175 of Pub. L. 105–34, amending this section and enacting provisions set out as a note above, was subject to line item veto by the President, Cancellation No. 97–1, signed Aug. 11, 1997, 62 F.R. 43266, Aug. 12, 1997. For decision holding line item veto unconstitutional, see *Clinton v. City of New York*, 524 U.S. 417, 118 S.Ct. 2091, 141 L.Ed.2d 393 (1998).

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 1201(c) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included

in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

SPECIAL RULE FOR APPLICATION OF SECTION 954 TO CERTAIN DIVIDENDS

Section 1227 of Pub. L. 99–514 provided that:

''(a) IN GENERAL.—For purposes of section 954(c)(3)(A) of the Internal Revenue Code of 1986, any dividends received by a qualified controlled foreign corporation (within the meaning of section 951 of such Code) during any of its 1st 5 taxable years beginning after December 31, 1986, with respect to its 32.7 percent interest in a Brazilian corporation shall be treated as if such Brazilian corporation were a related person to the qualified controlled foreign corporation to the extent the Brazilian corporation's income is attributable to its interest in the trade or business of mining in Brazil.

''(b) QUALIFIED CONTROLLED FOREIGN CORPORATION.—For purposes of this section, a qualified controlled foreign corporation is a corporation the greater than 99 percent shareholder of which is a company originally incorporated in Montana on July 9, 1951 (the name of which was changed on August 10, 1966).

''(c) EFFECTIVE DATE.—The amendment made by this section shall apply to dividends received after December 31, 1986.''

§ 955. Withdrawal of previously excluded subpart F income from qualified investment

(a) General rules

(1) Amount withdrawn

For purposes of this subpart, the amount of previously excluded subpart F income of any controlled foreign corporation withdrawn from investment in foreign base company shipping operations for any taxable year is an amount equal to the decrease in the amount of qualified investments in foreign base company shipping operations of the controlled foreign corporation for such year, but only to the extent that the amount of such decrease does not exceed an amount equal to—

(A) the sum of the amounts excluded under section 954(b)(2) from the foreign base company income of such corporation for all prior taxable years beginning before 1987, reduced by

(B) the sum of the amounts of previously excluded subpart F income withdrawn from investment in foreign base company shipping operations of such corporation determined under this subsection for all prior taxable years.

(2) Decrease in qualified investments

For purposes of paragraph (1), the amount of the decrease in qualified investments in foreign base company shipping operations of any controlled foreign corporation for any taxable year is the amount by which—

(A) the amount of qualified investments in foreign base company shipping operations of the controlled foreign corporation as of the close of the last taxable year beginning before 1987 (to the extent such amount exceeds the sum of the decreases in qualified investments determined under this paragraph for prior taxable years beginning after 1986), exceeds

(B) the amount of qualified investments in foreign base company shipping operations of the controlled foreign corporation at the close of the taxable year,

to the extent that the amount of such decrease does not exceed the sum of the earnings and profits for the taxable year and the earnings and profits accumulated for prior taxable years beginning after December 31, 1975, and the amount of previously excluded subpart F income invested in less developed country corporations described in section 955(c)(2) (as in effect before the enactment of the Tax Reduction Act of 1975) to the extent attributable to earnings and profits accumulated for taxable years beginning after December 31, 1962. For purposes of this paragraph, if qualified investments in foreign base company shipping operations are disposed of by the controlled foreign corporation during the taxable year, the amount of the decrease in qualified investments in foreign base company shipping operations of such controlled foreign corporations for such year shall be reduced by an amount equal to the amount (if any) by which the losses on such dispositions during such year exceed the gains on such dispositions during such year.

(3) Pro rata share of amount withdrawn

In the case of any United States shareholder, the pro rata share of the amount of previously excluded subpart F income of any controlled foreign corporation withdrawn from investment in foreign base company shipping operations for any taxable year is his pro rata share of the amount determined under paragraph (1).

(b) Qualified investments in foreign base company shipping operations

(1) In general

For purposes of this subpart, the term ''qualified investments in foreign base company shipping operations'' means investments in—

(A) any aircraft or vessel used in foreign commerce, and

(B) other assets which are used in connection with the performance of services directly related to the use of any such aircraft or vessel.

Such term includes, but is not limited to, investments by a controlled foreign corporation in stock or obligations of another controlled foreign corporation which is a related person (within the meaning of section 954(d)(3)) and which holds assets described in the preceding sentence, but only to the extent that such assets are so used.

(2) Qualified investments by related persons

For purposes of determining the amount of qualified investments in foreign based com-

pany shipping operations, an investment (or a decrease in investment) in such operations by one or more controlled foreign corporations may, under regulations prescribed by the Secretary, be treated as an investment (or a decrease in investment) by another corporation which is a controlled foreign corporation and is a related person (as defined in section 954(d)(3) with respect to the corporation actually making or withdrawing the investment.

(3) Special rule

For purposes of this subpart, a United States shareholder of a controlled foreign corporation may, under regulations prescribed by the Secretary, elect to make the determinations under subsection (a)(2) of this section and under subsection (g) of section 954 as of the close of the years following the years referred to in such subsections, or as of the close of such longer period of time as such regulations may permit, in lieu of on the last day of such years. Any election under this paragraph made with respect to any taxable year shall apply to such year and to all succeeding taxable years unless the Secretary consents to the revocation of such election.

(4) Amount attributable to property

The amount taken into account under this subpart with respect to any property described in paragraph (1) shall be its adjusted basis, reduced by any liability to which such property is subject.

(5) Income excluded under prior law

Amounts invested in less developed country corporations described in section 955(c)(2) (as in effect before the enactment of the Tax Reduction Act of 1975) shall be treated as qualified investments in foreign base company shipping operations and shall not be treated as investments in less developed countries for purposes of section 951(a)(1)(A)(ii).

(Added Pub. L. 94–12, title VI, §602(d)(3)(A), Mar. 29, 1975, 89 Stat. 62; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99–514, title XII, §1221(c)(3)(B), (C), Oct. 22, 1986, 100 Stat. 2553; Pub. L. 100–647, title I, §1012(i)(11), Nov. 10, 1988, 102 Stat. 3509.)

REFERENCES IN TEXT

Section 955(c)(2) (as in effect before the enactment of the Tax Reduction Act of 1975), referred to in subsecs. (a)(2) and (b)(5), refers to section 955(c)(2) as added by Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1013, and as in effect from 1962 until the repeal of that section and the enactment of this section by Pub. L. 94–12.

The Tax Reduction Act of 1975, referred to in subsecs. (a)(2) and (b)(5), is Pub. L. 94–12, Mar. 29, 1975, 89 Stat. 26, as amended, which was enacted Mar. 29, 1975. For complete classification of this Act to the Code, see Short Title of 1975 Amendment note set out under section 1 of this title and Tables.

PRIOR PROVISIONS

A prior section 955, added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1013, related to investments in less developed countries and dealing with less developed country corporations, prior to repeal by Pub. L. 94–12, title VI, §602(c)(5), Mar. 29, 1975, 89 Stat. 59.

AMENDMENTS

1988—Subsec. (a)(2)(A). Pub. L. 100–647 inserted ''(to the extent such amount exceeds the sum of the decreases in qualified investments determined under this paragraph for prior taxable years beginning after 1986)'' after ''beginning before 1987''.

1986—Subsec. (a)(1)(A). Pub. L. 99–514, §1221(c)(3)(B), inserted ''beginning before 1987'' after ''all prior taxable years''.

Subsec. (a)(2)(A). Pub. L. 99–514, §1221(c)(3)(C), substituted ''as of the close of the last taxable year beginning before 1987'' for ''at the close of the preceding taxable year''.

1976—Subsec. (b)(2), (3). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary'' wherever appearing.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, except as otherwise provided, see section 1221(g) of Pub. L. 99–514, set out as a note under section 954 of this title.

EFFECTIVE DATE

Section 602(f) of Pub. L. 94–12, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [enacting this section, amending sections 851, 902, 951, and 954 of this title, and repealing section 963 and former section 955 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 1975, and to taxable years of United States shareholders (within the meaning of 951(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) within which or with which such taxable years of such foreign corporations end.''

§ 956. Investment of earnings in United States property

(a) General rule

In the case of any controlled foreign corporation, the amount determined under this section with respect to any United States shareholder for any taxable year is the lesser of—

(1) the excess (if any) of—

(A) such shareholder's pro rata share of the average of the amounts of United States property held (directly or indirectly) by the controlled foreign corporation as of the close of each quarter of such taxable year, over

(B) the amount of earnings and profits described in section 959(c)(1)(A) with respect to such shareholder, or

(2) such shareholder's pro rata share of the applicable earnings of such controlled foreign corporation.

The amount taken into account under paragraph (1) with respect to any property shall be its adjusted basis as determined for purposes of computing earnings and profits, reduced by any liability to which the property is subject.

(b) Special rules

(1) Applicable earnings

For purposes of this section, the term ''applicable earnings'' means, with respect to any controlled foreign corporation, the sum of—

(A) the amount (not including a deficit) referred to in section 316(a)(1) to the extent such amount was accumulated in prior taxable years, and

(B) the amount referred to in section 316(a)(2),

but reduced by distributions made during the taxable year and by earnings and profits described in section 959(c)(1).

(2) Special rule for U.S. property acquired before corporation is a controlled foreign corporation

In applying subsection (a) to any taxable year, there shall be disregarded any item of United States property which was acquired by the controlled foreign corporation before the first day on which such corporation was treated as a controlled foreign corporation. The aggregate amount of property disregarded under the preceding sentence shall not exceed the portion of the applicable earnings of such controlled foreign corporation which were accumulated during periods before such first day.

(3) Special rule where corporation ceases to be controlled foreign corporation

If any foreign corporation ceases to be a controlled foreign corporation during any taxable year—

(A) the determination of any United States shareholder's pro rata share shall be made on the basis of stock owned (within the meaning of section 958(a)) by such shareholder on the last day during the taxable year on which the foreign corporation is a controlled foreign corporation,

(B) the average referred to in subsection (a)(1)(A) for such taxable year shall be determined by only taking into account quarters ending on or before such last day, and

(C) in determining applicable earnings, the amount taken into account by reason of being described in paragraph (2) of section 316(a) shall be the portion of the amount so described which is allocable (on a pro rata basis) to the part of such year during which the corporation is a controlled foreign corporation.

(c) United States property defined

(1) In general

For purposes of subsection (a), the term ''United States property'' means any property acquired after December 31, 1962, which is—

(A) tangible property located in the United States;

(B) stock of a domestic corporation;

(C) an obligation of a United States person; or

(D) any right to the use in the United States of—

(i) a patent or copyright,

(ii) an invention, model, or design (whether or not patented),

(iii) a secret formula or process, or

(iv) any other similar right,

which is acquired or developed by the controlled foreign corporation for use in the United States.

(2) Exceptions

For purposes of subsection (a), the term ''United States property'' does not include—

(A) obligations of the United States, money, or deposits with—

(i) any bank (as defined by section 2(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)), without regard to subparagraphs (C) and (G) of paragraph (2) of such section), or

(ii) any corporation not described in clause (i) with respect to which a bank holding company (as defined by section 2(a) of such Act) or financial holding company (as defined by section 2(p) of such Act) owns directly or indirectly more than 80 percent by vote or value of the stock of such corporation;

(B) property located in the United States which is purchased in the United States for export to, or use in, foreign countries;

(C) any obligation of a United States person arising in connection with the sale or processing of property if the amount of such obligation outstanding at no time during the taxable year exceeds the amount which would be ordinary and necessary to carry on the trade or business of both the other party to the sale or processing transaction and the United States person had the sale or processing transaction been made between unrelated persons;

(D) any aircraft, railroad rolling stock, vessel, motor vehicle, or container used in the transportation of persons or property in foreign commerce and used predominantly outside the United States;

(E) an amount of assets of an insurance company equivalent to the unearned premiums or reserves ordinary and necessary for the proper conduct of its insurance business attributable to contracts which are not contracts described in section 953(a)(1);[1]

(F) the stock or obligations of a domestic corporation which is neither a United States shareholder (as defined in section 951(b)) of the controlled foreign corporation, nor a domestic corporation, 25 percent or more of the total combined voting power of which, immediately after the acquisition of any stock in such domestic corporation by the controlled foreign corporation, is owned, or is considered as being owned, by such United States shareholders in the aggregate;

(G) any movable property (other than a vessel or aircraft) which is used for the purpose of exploring for, developing, removing, or transporting resources from ocean waters or under such waters when used on the Continental Shelf of the United States;

(H) an amount of assets of the controlled foreign corporation equal to the earnings and profits accumulated after December 31, 1962, and excluded from subpart F income under section 952(b);

(I) deposits of cash or securities made or received on commercial terms in the ordinary course of a United States or foreign person's business as a dealer in securities or in commodities, but only to the extent such deposits are made or received as collateral or margin for (i) a securities loan, notional principal contract, options contract, forward

[1] See References in Text note below.

contract, or futures contract, or (ii) any other financial transaction in which the Secretary determines that it is customary to post collateral or margin;

(J) an obligation of a United States person to the extent the principal amount of the obligation does not exceed the fair market value of readily marketable securities sold or purchased pursuant to a sale and repurchase agreement or otherwise posted or received as collateral for the obligation in the ordinary course of its business by a United States or foreign person which is a dealer in securities or commodities;

(K) securities acquired and held by a controlled foreign corporation in the ordinary course of its business as a dealer in securities if—

(i) the dealer accounts for the securities as securities held primarily for sale to customers in the ordinary course of business, and

(ii) the dealer disposes of the securities (or such securities mature while held by the dealer) within a period consistent with the holding of securities for sale to customers in the ordinary course of business; and

(L) an obligation of a United States person which—

(i) is not a domestic corporation, and

(ii) is not—

(I) a United States shareholder (as defined in section 951(b)) of the controlled foreign corporation, or

(II) a partnership, estate, or trust in which the controlled foreign corporation, or any related person (as defined in section 954(d)(3)), is a partner, beneficiary, or trustee immediately after the acquisition of any obligation of such partnership, estate, or trust by the controlled foreign corporation.

For purposes of subparagraphs (I), (J), and (K), the term ''dealer in securities'' has the meaning given such term by section 475(c)(1), and the term ''dealer in commodities'' has the meaning given such term by section 475(e), except that such term shall include a futures commission merchant.

(3) Certain trade or service receivables acquired from related United States persons

(A) In general

Notwithstanding paragraph (2) (other than subparagraph (H) thereof), the term ''United States property'' includes any trade or service receivable if—

(i) such trade or service receivable is acquired (directly or indirectly) from a related person who is a United States person, and

(ii) the obligor under such receivable is a United States person.

(B) Definitions

For purposes of this paragraph, the term ''trade or service receivable'' and ''related person'' have the respective meanings given to such terms by section 864(d).

(d) Pledges and guarantees

For purposes of subsection (a), a controlled foreign corporation shall, under regulations prescribed by the Secretary, be considered as holding an obligation of a United States person if such controlled foreign corporation is a pledgor or guarantor of such obligations.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations to prevent the avoidance of the provisons[2] of this section through reorganizations or otherwise.

(Added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1015; amended Pub. L. 94–455, title X, §1021(a), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1618, 1834; Pub. L. 98–369, div. A, title I, §123(b), title VIII, §801(d)(8), July 18, 1984, 98 Stat. 646, 996; Pub. L. 99–514, title XVIII, §1810(c)(1), Oct. 22, 1986, 100 Stat. 2824; Pub. L. 103–66, title XIII, §13232(a), (b), Aug. 10, 1993, 107 Stat. 501; Pub. L. 104–188, title I, §1501(b)(2), (3), Aug. 20, 1996, 110 Stat. 1825; Pub. L. 105–34, title XI, §1173(a), title XVI, §1601(e), Aug. 5, 1997, 111 Stat. 988, 1090; Pub. L. 108–357, title IV, §407(a), (b), title VIII, §837(a), Oct. 22, 2004, 118 Stat. 1498, 1499, 1596; Pub. L. 110–172, §11(g)(15)(A), Dec. 29, 2007, 121 Stat. 2490.)

REFERENCES IN TEXT

Section 953(a)(1), referred to in subsec. (c)(2)(E), was subsequently amended, and section 953(a)(1) no longer describes contracts. However, contracts are described elsewhere in that section.

AMENDMENTS

2007—Subsec. (c)(2). Pub. L. 110–172, §11(g)(15)(A)(ii), substituted ''subparagraphs (I), (J), and (K)'' for ''subparagraphs (J), (K), and (L)'' in concluding provisions.

Subsec. (c)(2)(I) to (M). Pub. L. 110–172, §11(g)(15)(A)(i), redesignated subpars. (J) to (M) as (I) to (L), respectively, and struck out former subpar. (I) which read as follows: ''to the extent provided in regulations prescribed by the Secretary, property which is otherwise United States property which is held by a FSC and which is related to the export activities of such FSC;''.

2004—Subsec. (c)(2). Pub. L. 108–357, §407(b), substituted '', (K), and (L)'' for ''and (K)'' in concluding provisions.

Subsec. (c)(2)(A). Pub. L. 108–357, §837(a), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''obligations of the United States, money, or deposits with persons carrying on the banking business;''.

Subsec. (c)(2)(L), (M). Pub. L. 108–357, §407(a), added subpars. (L) and (M).

1997—Subsec. (b)(1)(A). Pub. L. 105–34, §1601(e), inserted ''to the extent such amount was accumulated in prior taxable years'' after ''section 316(a)(1)''.

Subsec. (c)(2). Pub. L. 105–34, §1173(a), added subpars. (J) and (K) and concluding provisions.

1996—Subsec. (b)(1). Pub. L. 104–188, §1501(b)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of this section, the term 'applicable earnings' has the meaning given to such term by section 956A(b), except that the provisions of such section excluding earnings and profits accumulated in taxable years beginning before October 1, 1993, shall be disregarded.''

Subsec. (b)(3). Pub. L. 104–188, §1501(b)(3), reenacted heading without change and amended text generally.

[2] So in original. Probably should be ''provisions''.

Prior to amendment, text read as follows: ''Rules similar to the rules of section 956A(e) shall apply for purposes of this section.''

1993—Subsec. (a). Pub. L. 103–66, § 13232(a)(2), added subsec. (a) and struck out former subsec. (a) which consisted of introductory provisions and pars. (1) to (3) setting out general rules for calculating amount of earnings of a controlled foreign corporation invested in United States and pro rata share of the increase for any taxable year in earnings of such a corporation invested in United States property.

Subsecs. (b) to (d). Pub. L. 103–66, § 13232(a), added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

Subsec. (e). Pub. L. 103–66, § 13232(b), added subsec. (e).

1986—Subsec. (b)(3)(A). Pub. L. 99–514 inserted ''(other than subparagraph (H) thereof)''.

1984—Subsec. (b)(2)(I). Pub. L. 98–369, § 801(d)(8), added subpar. (I).

Subsec. (b)(3). Pub. L. 98–369, § 123(b), added par. (3).

1976—Subsec. (b)(2)(F) to (H). Pub. L. 94–455, § 1021(a), added subpars. (F) and (G) and redesignated former subpar. (F) as (H).

Subsec. (c). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title IV, § 407(c), Oct. 22, 2004, 118 Stat. 1499, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.''

Pub. L. 108–357, title VIII, § 837(b), Oct. 22, 2004, 118 Stat. 1596, provided that: ''The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1173(b) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 1997, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.''

Amendment by section 1601(e) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 36C of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years of foreign corporations beginning after Dec. 31, 1996, and to taxable years of United States shareholders within which or with which such taxable years of foreign corporations end, see section 1501(d) of Pub. L. 104–188, set out as a note under section 904 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years of controlled foreign corporations beginning after Sept. 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of controlled foreign corporations end, see section 13232(d) of Pub. L. 103–66, set out as a note under section 951 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 123(b) of Pub. L. 98–369 applicable to accounts receivable and evidences of indebtedness transferred after Mar. 1, 1984, in taxable years ending after such date, with an exception, see section 123(c) of Pub. L. 98–369, set out as a note under section 864 of this title.

Amendment by section 801(d)(8) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1021(c) of Pub. L. 94–455, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [amending this section and section 958 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 1975, and to taxable years of United States shareholders (within the meaning of section 951(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) within which or with which such taxable years of such foreign corporations end. In determining for purposes of any taxable year referred to in the preceding sentence the amount referred to in section 956(a)(2)(A) of the Internal Revenue Code of 1986 for the last taxable year of a corporation beginning before January 1, 1976, the amendments made by this section shall be deemed also to apply to such last taxable year.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[§ 956A. Repealed. Pub. L. 104–188, title I, § 1501(a)(2), Aug. 20, 1996, 110 Stat. 1825]

Section, added Pub. L. 103–66, title XIII, § 13231(b), Aug. 10, 1993, 107 Stat. 496; amended Pub. L. 104–188, title I, § 1703(i)(2), (3), Aug. 20, 1996, 110 Stat. 1876, related to earnings invested in excess passive assets.

EFFECTIVE DATE OF REPEAL

Repeal by Pub. L. 104–188 applicable to taxable years of foreign corporations beginning after Dec. 31, 1996, and to taxable years of United States shareholders within which or with which such taxable years of foreign corporations end, see section 1501(d) of Pub. L. 104–188, set out as an Effective Date of 1996 Amendment note under section 904 of this title.

§ 957. Controlled foreign corporations; United States persons

(a) General rule

For purposes of this subpart, the term ''controlled foreign corporation'' means any foreign corporation if more than 50 percent of—

(1) the total combined voting power of all classes of stock of such corporation entitled to vote, or

(2) the total value of the stock of such corporation,

is owned (within the meaning of section 958(a)), or is considered as owned by applying the rules of ownership of section 958(b), by United States shareholders on any day during the taxable year of such foreign corporation.

(b) Special rule for insurance

For purposes only of taking into account income described in section 953(a) (relating to in-

surance income), the term ''controlled foreign corporation'' includes not only a foreign corporation as defined by subsection (a) but also one of which more than 25 percent of the total combined voting power of all classes of stock (or more than 25 percent of the total value of stock) is owned (within the meaning of section 958(a)), or is considered as owned by applying the rules of ownership of section 958(b), by United States shareholders on any day during the taxable year of such corporation, if the gross amount of premiums or other consideration in respect of the reinsurance or the issuing of insurance or annuity contracts described in section 953(a)(1)[1] exceeds 75 percent of the gross amount of all premiums or other consideration in respect of all risks.

(c) United States person

For purposes of this subpart, the term ''United States person'' has the meaning assigned to it by section 7701(a)(30) except that—

(1) with respect to a corporation organized under the laws of the Commonwealth of Puerto Rico, such term does not include an individual who is a bona fide resident of Puerto Rico, if a dividend received by such individual during the taxable year from such corporation would, for purposes of section 933(1), be treated as income derived from sources within Puerto Rico, and

(2) with respect to a corporation organized under the laws of Guam, American Samoa, or the Northern Mariana Islands—

(A) 80 percent or more of the gross income of which for the 3-year period ending at the close of the taxable year (or for such part of such period as such corporation or any predecessor has been in existence) was derived from sources within such a possession or was effectively connected with the conduct of a trade or business in such a possession, and

(B) 50 percent or more of the gross income of which for such period (or part) was derived from the active conduct of a trade or business within such a possession,

such term does not include an individual who is a bona fide resident of Guam, American Samoa, or the Northern Mariana Islands.

For purposes of subparagraphs (A) and (B) of paragraph (2), the determination as to whether income was derived from the active conduct of a trade or business within a possession shall be made under regulations prescribed by the Secretary.

(Added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1017; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99–514, title XII, §§1221(b)(3)(C), 1222(a), 1224(a), 1273(a), Oct. 22, 1986, 100 Stat. 2553, 2556, 2558, 2595; Pub. L. 108–357, title VIII, §908(c)(5), Oct. 22, 2004, 118 Stat. 1656.)

REFERENCES IN TEXT

Section 953(a)(1), referred to in subsec. (b), was subsequently amended, and section 953(a)(1) no longer describes insurance or annuity contracts. However, insurance or annuity contracts are described elsewhere in that section.

[1] See References in Text note below.

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–357, §908(c)(5)(B), struck out ''derived from sources within a possession, was effectively connected with the conduct of a trade or business within a possession, or'' after ''whether income was'' in concluding provisions.

Subsec. (c)(2)(B). Pub. L. 108–357, §908(c)(5)(A), substituted ''active conduct of a'' for ''conduct of an active''.

1986—Subsec. (a). Pub. L. 99–514, §1222(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''For purposes of this subpart, the term 'controlled foreign corporation' means any foreign corporation of which more than 50 percent of the total combined voting power of all classes of stock entitled to vote is owned (within the meaning of section 958(a)), or is considered as owned by applying the rules of ownership of section 958(b), by United States shareholders on any day during the taxable year of such foreign corporation.''

Subsec. (b). Pub. L. 99–514, §1222(a)(2), inserted ''(or more than 25 percent of the total value of stock)''.

Pub. L. 99–514, §1221(b)(3)(C), substituted ''insurance income'' for ''income derived from insurance of United States risks''.

Subsec. (c). Pub. L. 99–514, §1273(a), added par. (2) and concluding provisions and struck out former pars. (2) and (3) which read as follows:

''(2) with respect to a corporation organized under the laws of the Virgin Islands, such term does not include an individual who is a bona fide resident of the Virgin Islands and whose income tax obligation under this subtitle for the taxable year is satisfied pursuant to section 28(a) of the Revised Organic Act of the Virgin Islands, approved July 22, 1954 (48 U.S.C. 1642), by paying tax on income derived from all sources both within and outside the Virgin Islands into the treasury of the Virgin Islands, and

''(3) with respect to a corporation organized under the laws of any other possession of the United States, such term does not include an individual who is a bona fide resident of any such other possession and whose income derived from sources within possessions of the United States is not, by reason of section 931(a), includible in gross income under this subtitle for the taxable year.''

Pub. L. 99–514, §1224(a), redesignated subsec. (d) as (c) and struck out former subsec. (c) which provided circumstances under which for purposes of this subpart, the term ''controlled foreign corporation'' would not include certain corporations created or organized in Puerto Rico or a possession of the United States or under the laws of Puerto Rico or a possession of the United States.

Subsec. (d). Pub. L. 99–514, §1224(a), redesignated subsec. (d) as (c).

1976—Subsec. (c) Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years ending after Oct. 22, 2004, see section 908(d)(1) of Pub. L. 108–357, set out as an Effective Date note under section 937 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1221(b)(3)(C) of Pub. L. 99–514 applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, except as otherwise provided, see section 1221(g) of Pub. L. 99–514, set out as a note under section 954 of this title.

Pub. L. 99–514, title XII, §1222(c), Oct. 22, 1986, 100 Stat. 2557, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 552 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 1986; except that for purposes of applying sections 951(a)(1)(B) and 956 of the Internal Revenue Code of 1986, such amendments shall take effect on August 16, 1986.

''(2) TRANSITIONAL RULE.—In the case of any corporation treated as a controlled foreign corporation by reason of the amendments made by this section, property acquired before August 16, 1986, shall not be taken into account under section 956(b) of the Internal Revenue Code of 1986.

''(3) SPECIAL RULE FOR BENEFICIARY OF TRUST.—In the case of an individual—

''(A) who is a beneficiary of a trust which was established on December 7, 1979, under the laws of a foreign jurisdiction, and

''(B) who was not a citizen or resident of the United States on the date the trust was established,

amounts which are included in the gross income of such beneficiary under section 951(a) of the Internal Revenue Code of 1986 with respect to stock held by the trust (and treated as distributed to the trust) shall be treated as the first amounts which are distributed by the trust to such beneficiary and as amounts to which section 959(a) of such Code applies.''

Section 1224(b) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 1986; except that for purposes of applying sections 951(a)(1)(B) and 956 of the Internal Revenue Code of 1986, such amendments shall take effect on August 16, 1986.

''(2) TRANSITIONAL RULE.—In the case of any corporation treated as a controlled foreign corporation by reason of the amendment made by subsection (a), property acquired before August 16, 1986, shall not be taken into account under section 956(b) of the Internal Revenue Code of 1986.''

Amendment by section 1273(a) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

§ 958. Rules for determining stock ownership

(a) Direct and indirect ownership

(1) General rule

For purposes of this subpart (other than section 960(a)(1)), stock owned means—

(A) stock owned directly, and

(B) stock owned with the application of paragraph (2).

(2) Stock ownership through foreign entities

For purposes of subparagraph (B) of paragraph (1), stock owned, directly or indirectly, by or for a foreign corporation, foreign partnership, or foreign trust or foreign estate (within the meaning of section 7701(a)(31)) shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries. Stock considered to be owned by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person.

(3) Special rule for mutual insurance companies

For purposes of applying paragraph (1) in the case of a foreign mutual insurance company, the term ''stock'' shall include any certificate entitling the holder to voting power in the corporation.

(b) Constructive ownership

For purposes of sections 951(b), 954(d)(3), 956(c)(2), and 957, section 318(a) (relating to constructive ownership of stock) shall apply to the extent that the effect is to treat any United States person as a United States shareholder within the meaning of section 951(b), to treat a person as a related person within the meaning of section 954(d)(3), to treat the stock of a domestic corporation as owned by a United States shareholder of the controlled foreign corporation for purposes of section 956(c)(2), or to treat a foreign corporation as a controlled foreign corporation under section 957, except that—

(1) In applying paragraph (1)(A) of section 318(a), stock owned by a nonresident alien individual (other than a foreign trust or foreign estate) shall not be considered as owned by a citizen or by a resident alien individual.

(2) In applying subparagraphs (A), (B), and (C) of section 318(a)(2), if a partnership, estate, trust, or corporation owns, directly or indirectly, more than 50 percent of the total combined voting power of all classes of stock entitled to vote of a corporation, it shall be considered as owning all the stock entitled to vote.

(3) In applying subparagraph (C) of section 318(a)(2), the phrase ''10 percent'' shall be substituted for the phrase ''50 percent'' used in subparagraph (C).

(4) Subparagraph (A), (B), and (C) of section 318(a)(3) shall not be applied so as to consider a United States person as owning stock which is owned by a person who is not a United States person.

Paragraphs (1) and (4) shall not apply for purposes of section 956(c)(2) to treat stock of a domestic corporation as not owned by a United States shareholder.

(Added Pub. L. 87–834, § 12(a), Oct. 16, 1962, 76 Stat. 1018; amended Pub. L. 88–554, § 4(b)(5), Aug. 31, 1964, 78 Stat. 763; Pub. L. 94–455, title X, § 1021(b), Oct. 4, 1976, 90 Stat. 1619; Pub. L. 104–188, title I, §§ 1703(i)(4), 1704(t)(7), Aug. 20, 1996, 110 Stat. 1876, 1887.)

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–188, § 1704(t)(7), substituted ''section 960(a)(1)'' for ''sections 955(b)(1)(A) and (B), 955(c)(2)(A)(ii), and 960(a)(1)'' in introductory provisions.

Subsec. (b). Pub. L. 104–188, § 1703(i)(4), substituted ''956(c)(2)'' for ''956(b)(2)'' wherever appearing in introductory and closing provisions.

1976—Subsec. (b). Pub. L. 94–455 inserted ''956(b)(2)'' after ''purposes of sections 951(b), 954(d)(3),'', ''to treat the stock of a domestic corporation as owned by a United States shareholder of the controlled foreign corporation for purposes of section 956(b)(2)'' after ''meaning of section 954(d)(3)'' and ''Paragraphs (1) and (4) shall not apply for purposes of section 956(b)(2) to treat stock of a domestic corporation as not owned by a United States shareholder'' following subpar. (4).

1964—Subsec. (b). Pub. L. 88–554 redesignated pars. (4) and (5) as (3) and (4), respectively, struck out former par. (3) which related to ownership of stock by a partnership, estate, trust, or corporation for purposes of applying first sentence of subpars. (A) and (B), and subpar. (C)(i) of section 318(a)(2) of this title, and made amendments throughout subsec. (b) to conform to changes made in section 318 of this title by Pub. L. 88–554.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1703(i)(4) of Pub. L. 104–188 effective as if included in the provision of the Revenue

Reconciliation Act of 1993, Pub. L. 103–66, §§ 13001–13444, to which such amendment relates, see section 1703(*o*) of Pub. L. 104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable to taxable years of foreign corporations beginning after Dec. 31, 1975, and to taxable years of United States shareholders within which or with which such taxable years of such corporations end, see section 1021(c) of Pub. L. 94–455, set out as a note under section 956 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–554 effective Aug. 31, 1964, except that for purposes of sections 302 and 304 of this title, such amendments shall not apply to distributions in payment for stock acquisitions or redemptions, if such acquisitions or redemptions occurred before Aug. 31, 1964, see section 4(c) of Pub. L. 88–554, set out as a note under section 318 of this title.

§ 959. Exclusion from gross income of previously taxed earnings and profits

(a) Exclusion from gross income of United States persons

For purposes of this chapter, the earnings and profits of a foreign corporation attributable to amounts which are, or have been, included in the gross income of a United States shareholder under section 951(a) shall not, when—

(1) such amounts are distributed to, or

(2) such amounts would, but for this subsection, be included under section 951(a)(1)(B) in the gross income of,

such shareholder (or any other United States person who acquires from any person any portion of the interest of such United States shareholder in such foreign corporation, but only to the extent of such portion, and subject to such proof of the identity of such interest as the Secretary may by regulations prescribe) directly or indirectly through a chain of ownership described under section 958(a), be again included in the gross income of such United States shareholder (or of such other United States person). The rules of subsection (c) shall apply for purposes of paragraph (1) of this subsection and the rules of subsection (f) shall apply for purposes of paragraph (2) of this subsection.

(b) Exclusion from gross income of certain foreign subsidiaries

For purposes of section 951(a), the earnings and profits of a controlled foreign corporation attributable to amounts which are, or have been, included in the gross income of a United States shareholder under section 951(a), shall not, when distributed through a chain of ownership described under section 958(a), be also included in the gross income of another controlled foreign corporation in such chain for purposes of the application of section 951(a) to such other controlled foreign corporation with respect to such United States shareholder (or to any other United States shareholder who acquires from any person any portion of the interest of such United States shareholder in the controlled foreign corporation, but only to the extent of such portion, and subject to such proof of identity of such interest as the Secretary may prescribe by regulations).

(c) Allocation of distributions

For purposes of subsections (a) and (b), section 316(a) shall be applied by applying paragraph (2) thereof, and then paragraph (1) thereof—

(1) first to the aggregate of—

(A) earnings and profits attributable to amounts included in gross income under section 951(a)(1)(B) (or which would have been included except for subsection (a)(2) of this section), and

(B) earnings and profits attributable to amounts included in gross income under section 951(a)(1)(C) (or which would have been included except for subsection (a)(3) of this section),

with any distribution being allocated between earnings and profits described in subparagraph (A) and earnings and profits described in subparagraph (B) proportionately on the basis of the respective amounts of such earnings and profits,

(2) then to earnings and profits attributable to amounts included in gross income under section 951(a)(1)(A) (but reduced by amounts not included under subparagraph (B) or (C) of section 951(a)(1) because of the exclusions in paragraphs (2) and (3) of subsection (a) of this section), and

(3) then to other earnings and profits.

References in this subsection to section 951(a)(1)(C) and subsection (a)(3) shall be treated as references to such provisions as in effect on the day before the date of the enactment of the Small Business Job Protection Act of 1996.

(d) Distributions excluded from gross income not to be treated as dividends

Except as provided in section 960(a)(3), any distribution excluded from gross income under subsection (a) shall be treated, for purposes of this chapter, as a distribution which is not a dividend; except that such distributions shall immediately reduce earnings and profits.

(e) Coordination with amounts previously taxed under section 1248

For purposes of this section and section 960(b), any amount included in the gross income of any person as a dividend by reason of subsection (a) or (f) of section 1248 shall be treated as an amount included in the gross income of such person (or, in any case to which section 1248(e) applies, of the domestic corporation referred to in section 1248(e)(2)) under section 951(a)(1)(A).

(f) Allocation rules for certain inclusions

(1) In general

For purposes of this section, amounts that would be included under subparagraph (B) of section 951(a)(1) (determined without regard to this section) shall be treated as attributable first to earnings described in subsection (c)(2), and then to earnings described in subsection (c)(3).

(2) Treatment of distributions

In applying this section, actual distributions shall be taken into account before amounts that would be included under section 951(a)(1)(B) (determined without regard to this section).

(Added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1019; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title I, §133(b)(1), July 18, 1984, 98 Stat. 668; Pub. L. 99–514, title XII, §1226(b), Oct. 22, 1986, 100 Stat. 2560; Pub. L. 100–647, title I, §1012(bb)(7)(A), Nov. 10, 1988, 102 Stat. 3536; Pub. L. 103–66, title XIII, §13231(c)(1), (2), (4)(A), (B), Aug. 10, 1993, 107 Stat. 497, 498; Pub. L. 104–188, title I, §1501(b)(4)–(8), Aug. 20, 1996, 110 Stat. 1826.)

REFERENCES IN TEXT

The date of the enactment of the Small Business Job Protection Act of 1996, referred to in subsec. (c), is the date of enactment of Pub. L. 104–188, which was approved Aug. 20, 1996.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–188, §1501(b)(4), (5), substituted ''paragraph (2)'' for ''paragraphs (2) and (3)'' in closing provisions, inserted ''or'' at end of par. (1), struck out ''or'' at end of par. (2), and struck out par. (3) which read as follows: ''such amounts would, but for this subsection, be included under section 951(a)(1)(C) in the gross income of,''.

Subsec. (c). Pub. L. 104–188, §1501(b)(6), inserted at end ''References in this subsection to section 951(a)(1)(C) and subsection (a)(3) shall be treated as references to such provisions as in effect on the day before the date of the enactment of the Small Business Job Protection Act of 1996.''

Subsec. (f)(1). Pub. L. 104–188, §1501(b)(7), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of this section—

''(A) amounts that would be included under subparagraph (B) of section 951(a)(1) (determined without regard to this section) shall be treated as attributable first to earnings described in subsection (c)(2), and then to earnings described in subsection (c)(3), and

''(B) amounts that would be included under subparagraph (C) of section 951(a)(1) (determined without regard to this section) shall be treated as attributable first to earnings described in subsection (c)(2) to the extent the earnings so described were accumulated in taxable years beginning after September 30, 1993, and then to earnings described in subsection (c)(3).''

Subsec. (f)(2). Pub. L. 104–188, §1501(b)(8), substituted ''section 951(a)(1)(B)'' for ''subparagraphs (B) and (C) of section 951(a)(1)''.

1993—Subsec. (a). Pub. L. 103–66, §13231(c)(2)(A), (4)(A), substituted in introductory provisions ''earnings and profits'' for ''earnings and profits for taxable year'' and inserted at end of closing provisions ''The rules of subsection (c) shall apply for purposes of paragraph (1) of this subsection and the rules of subsection (f) shall apply for purposes of paragraphs (2) and (3) of this subsection.''

Subsec. (a)(3). Pub. L. 103–66, §13231(c)(1), added par. (3).

Subsec. (b). Pub. L. 103–66, §13231(c)(4)(A), substituted ''earnings and profits'' for ''earnings and profits for a taxable year''.

Subsec. (c)(1). Pub. L. 103–66, §13231(c)(2)(C), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''first to earnings and profits attributable to amounts included in gross income under section 951(a)(1)(B) (or which would have been included except for subsection (a)(2) of this section),''.

Subsec. (c)(2). Pub. L. 103–66, §13231(c)(4)(B), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''then to earnings and profits attributable to amounts included in gross income under section 951(a)(1)(A) (but reduced by amounts not included under section 951(a)(1)(B) because of the exclusion in subsection (a)(2) of this section), and''.

Subsec. (f). Pub. L. 103–66, §13231(c)(2)(B), added subsec. (f).

1988—Subsec. (e). Pub. L. 100–647 substituted ''such person (or, in any case to which section 1248(e) applies, of the domestic corporation referred to in section 1248(e)(2)) under'' for ''such person under''.

1986—Subsec. (d). Pub. L. 99–514 inserted ''; except that such distributions shall immediately reduce earnings and profits''.

1984—Subsec. (e). Pub. L. 98–369 added subsec. (e).

1976—Subsecs. (a), (b). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years of foreign corporations beginning after Dec. 31, 1996, and to taxable years of United States shareholders within which or with which such taxable years of foreign corporations end, see section 1501(d) of Pub. L. 104–188, set out as a note under section 904 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years of foreign corporations beginning after Sept. 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 13231(e) of Pub. L. 103–66, set out as a note under section 951 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1012(bb)(7)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply in the case of transactions to which section 1248(e) of the 1986 Code applies and which occur after December 31, 1986.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1226(c)(2) of Pub. L. 99–514 provided that: ''The amendment made by subsection (b) [amending this section] shall apply to distributions after the date of the enactment of this Act [Oct. 22, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 133(d)(2), (3) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, title XVIII, §1810(i)(2), Oct. 22, 1986, 100 Stat. 2095, 2829; Pub. L. 100–647, title I, §1018(g)(2), Nov. 10, 1988, 102 Stat. 3582, provided that:

''(2) SUBSECTIONS (b) AND (c).—Except as provided in paragraph (3), the amendments made by subsections (b) and (c) [amending this section and section 1248 of this title] shall apply with respect to transactions to which subsection (a) or (f) of section 1248 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applies occurring after the date of the enactment of this Act [July 18, 1984].

''(3) ELECTION OF EARLIER DATE FOR CERTAIN TRANSACTIONS.—

''(A) IN GENERAL.—If the appropriate election is made under subparagraph (B), the amendments made by subsection (b) [amending this section and section 1248 of this title] shall apply with respect to transactions to which subsection (a) or (f) of section 1248 of such Code applies occurring after October 9, 1975.

''(B) ELECTION.—

''(i) Subparagraph (A) shall apply with respect to transactions to which subsection (a) of section 1248 of such Code applies if the foreign corporation described in such subsection (or its successor in interest) so elects.

''(ii) Subparagraph (A) shall apply with respect to transactions to which subsection (f) of section 1248 of such Code applies if the domestic corporation described in section 1248(f)(1) of such Code (or its successor) so elects.

''(iii) Any election under clause (i) or (ii) shall be made not later than the date which is 1 year after the date of the enactment of the Tax Reform Act of 1986 [Oct. 22, 1986] and shall be made in such manner as the Secretary of the Treasury or his delegate shall prescribe.''

§ 960. Special rules for foreign tax credit

(a) Taxes paid by a foreign corporation

(1) Deemed paid credit

For purposes of subpart A of this part, if there is included under section 951(a) in the gross income of a domestic corporation any amount attributable to earnings and profits of a foreign corporation which is a member of a qualified group (as defined in section 902(b)) with respect to the domestic corporation, then, except to the extent provided in regulations, section 902 shall be applied as if the amount so included were a dividend paid by such foreign corporation (determined by applying section 902(c) in accordance with section 904(d)(3)(B)).

(2) Taxes previously deemed paid by domestic corporation

If a domestic corporation receives a distribution from a foreign corporation, any portion of which is excluded from gross income under section 959, the income, war profits, and excess profits taxes paid or deemed paid by such foreign corporation to any foreign country or to any possession of the United States in connection with the earnings and profits of such foreign corporation from which such distribution is made shall not be taken into account for purposes of section 902, to the extent such taxes were deemed paid by a domestic corporation under paragraph (1) for any prior taxable year.

(3) Taxes paid by foreign corporation and not previously deemed paid by domestic corporation

Any portion of a distribution from a foreign corporation received by a domestic corporation which is excluded from gross income under section 959(a) shall be treated by the domestic corporation as a dividend, solely for purposes of taking into account under section 902 any income, war profits, or excess profits taxes paid to any foreign country or to any possession of the United States, on or with respect to the accumulated profits of such foreign corporation from which such distribution is made, which were not deemed paid by the domestic corporation under paragraph (1) for any prior taxable year.

(b) Special rules for foreign tax credit in year of receipt of previously taxed earnings and profits

(1) Increase in section 904 limitation

In the case of any taxpayer who—

(A) either (i) chose to have the benefits of subpart A of this part for a taxable year beginning after September 30, 1993, in which he was required under section 951(a) to include any amount in his gross income, or (ii) did not pay or accrue for such taxable year any income, war profits, or excess profits taxes to any foreign country or to any possession of the United States,

(B) chooses to have the benefits of subpart A of this part for any taxable year in which he receives 1 or more distributions or amounts which are excludable from gross income under section 959(a) and which are attributable to amounts included in his gross income for taxable years referred to in subparagraph (A), and

(C) for the taxable year in which such distributions or amounts are received, pays, or is deemed to have paid, or accrues income, war profits, or excess profits taxes to a foreign country or to any possession of the United States with respect to such distributions or amounts,

the limitation under section 904 for the taxable year in which such distributions or amounts are received shall be increased by the lesser of the amount of such taxes paid, or deemed paid, or accrued with respect to such distributions or amounts or the amount in the excess limitation account as of the beginning of such taxable year.

(2) Excess limitation account

(A) Establishment of account

Each taxpayer meeting the requirements of paragraph (1)(A) shall establish an excess limitation account. The opening balance of such account shall be zero.

(B) Increases in account

For each taxable year beginning after September 30, 1993, the taxpayer shall increase the amount in the excess limitation account by the excess (if any) of—

(i) the amount by which the limitation under section 904(a) for such taxable year was increased by reason of the total amount of the inclusions in gross income under section 951(a) for such taxable year, over

(ii) the amount of any income, war profits, and excess profits taxes paid, or deemed paid, or accrued to any foreign country or possession of the United States which were allowable as a credit under section 901 for such taxable year and which would not have been allowable but for the inclusions in gross income described in clause (i).

Proper reductions in the amount added to the account under the preceding sentence for any taxable year shall be made for any increase in the credit allowable under section 901 for such taxable year by reason of a carryback if such increase would not have been allowable but for the inclusions in gross income described in clause (i).

(C) Decreases in account

For each taxable year beginning after September 30, 1993, for which the limitation under section 904 was increased under paragraph (1), the taxpayer shall reduce the amount in the excess limitation account by the amount of such increase.

(3) Distributions of income previously taxed in years beginning before October 1, 1993

If the taxpayer receives a distribution or amount in a taxable year beginning after September 30, 1993, which is excluded from gross income under section 959(a) and is attributable to any amount included in gross income under

section 951(a) for a taxable year beginning before October 1, 1993, the limitation under section 904 for the taxable year in which such amount or distribution is received shall be increased by the amount determined under this subsection as in effect on the day before the date of the enactment of the Revenue Reconcilation[1] Act of 1993.

(4) Cases in which taxes not to be allowed as deduction

In the case of any taxpayer who—

(A) chose to have the benefits of subpart A of this part for a taxable year in which he was required under section 951(a) to include in his gross income an amount in respect of a controlled foreign corporation, and

(B) does not choose to have the benefits of subpart A of this part for the taxable year in which he receives a distribution or amount which is excluded from gross income under section 959(a) and which is attributable to earnings and profits of the controlled foreign corporation which was included in his gross income for the taxable year referred to in subparagraph (A),

no deduction shall be allowed under section 164 for the taxable year in which such distribution or amount is received for any income, war profits, or excess profits taxes paid or accrued to any foreign country or to any possession of the United States on or with respect to such distribution or amount.

(5) Insufficient taxable income

If an increase in the limitation under this subsection exceeds the tax imposed by this chapter for such year, the amount of such excess shall be deemed an overpayment of tax for such year.

(c) Limitation with respect to section 956 inclusions

(1) In general

If there is included under section 951(a)(1)(B) in the gross income of a domestic corporation any amount attributable to the earnings and profits of a foreign corporation which is a member of a qualified group (as defined in section 902(b)) with respect to the domestic corporation, the amount of any foreign income taxes deemed to have been paid during the taxable year by such domestic corporation under section 902 by reason of subsection (a) with respect to such inclusion in gross income shall not exceed the amount of the foreign income taxes which would have been deemed to have been paid during the taxable year by such domestic corporation if cash in an amount equal to the amount of such inclusion in gross income were distributed as a series of distributions (determined without regard to any foreign taxes which would be imposed on an actual distribution) through the chain of ownership which begins with such foreign corporation and ends with such domestic corporation.

(2) Authority to prevent abuse

The Secretary shall issue such regulations or other guidance as is necessary or appropriate to carry out the purposes of this subsection, including regulations or other guidance which prevent the inappropriate use of the foreign corporation's foreign income taxes not deemed paid by reason of paragraph (1).

(Added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1020; amended Pub. L. 94–455, title X, §§1031(b)(1), 1033(b)(2), 1037(a), Oct. 4, 1976, 90 Stat. 1622, 1628, 1633; Pub. L. 99–514, title XII, §1202(b), Oct. 22, 1986, 100 Stat. 2530; Pub. L. 103–66, title XIII, §13233(b)(1), Aug. 10, 1993, 107 Stat. 502; Pub. L. 105–34, title XI, §1113(b), Aug. 5, 1997, 111 Stat. 971; Pub. L. 111–226, title II, §214(a), Aug. 10, 2010, 124 Stat. 2399.)

REFERENCES IN TEXT

The date of the enactment of the Revenue Reconciliation Act of 1993, referred to in subsec. (b)(3), is the date of enactment of Pub. L. 103–66, which was approved Aug. 10, 1993.

AMENDMENTS

2010—Subsec. (c). Pub. L. 111–226 added subsec. (c).

1997—Subsec. (a)(1). Pub. L. 105–34 amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''For purposes of subpart A of this part, if there is included, under section 951(a), in the gross income of a domestic corporation any amount attributable to earnings and profits—

''(A) of a foreign corporation (hereafter in this subsection referred to as the 'first foreign corporation') at least 10 percent of the voting stock of which is owned by such domestic corporation, or

''(B) of a second foreign corporation (hereinafter in this subsection referred to as the 'second foreign corporation') at least 10 percent of the voting stock of which is owned by the first foreign corporation, or

''(C) of a third foreign corporation (hereinafter in this subsection referred to as the 'third foreign corporation') at least 10 percent of the voting stock of which is owned by the second foreign corporation,

then, except to the extent provided in regulations, such domestic corporation shall be deemed to have paid a portion of such foreign corporation's post-1986 foreign income taxes determined under section 902 in the same manner as if the amount so included were a dividend paid by such foreign corporation (determined by applying section 902(c) in accordance with section 904(d)(3)(B)). This paragraph shall not apply with respect to any amount included in the gross income of such domestic corporation attributable to earnings and profits of the second foreign corporation or of the third foreign corporation unless, in the case of the second foreign corporation, the percentage-of-voting-stock requirement of section 902(b)(3)(A) is satisfied, and in the case of the third foreign corporation, the percentage-of-voting-stock requirement of section 902(b)(3)(B) is satisfied.''

1993—Subsec. (b). Pub. L. 103–66 added pars. (1) to (3), redesignated former pars. (3) and (4) as (4) and (5), respectively, and struck out former par. (1) relating to increase in section 904 limitation and former par. (2) relating to the amount of increase.

1986—Subsec. (a)(1). Pub. L. 99–514 substituted ''then, except to the extent provided in regulations, such domestic corporation shall be deemed to have paid a portion of such foreign corporation's post-1986 foreign income taxes determined under section 902 in the same manner as if the amount so included were a dividend paid by such foreign corporation (determined by applying section 902(c) in accordance with section 904(d)(3)(B))'' for ''then, under regulations prescribed by the Secretary, such domestic corporation shall be deemed to have paid the same proportion of the total income, war profits, and excess profits taxes paid (or deemed paid) by such foreign corporation to a foreign country or possession of the United States for the tax-

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

able year on or with respect to the earnings and profits of such foreign corporation which the amount of earnings and profits of such foreign corporation so included in gross income of the domestic corporation bears to the entire amount of the earnings and profits of such corporation for such taxable year''.

1976—Subsec. (a)(1). Pub. L. 94–455, §§1033(b)(2), 1037(a), substituted ''bears to the entire amount of the earnings and profits of such foreign corporation for such taxable year'' for ''bears to–'' after ''gross income of the domestic corporation'', struck out subpars. (C) and (D) relating to corporations which are and are not less developed country corporations, inserted in subpar. (A) ''(hereafter in this subsection referred to as the 'first foreign corporation')'' after ''foreign corporation'', substituted in subpar. (B) ''of a second foreign corporation (hereinafter in this subsection referred to as the 'second foreign corporation') at least 10 percent of the voting stock of which is owned by the first foreign corporation, or'' for ''of a foreign corporation at least 50 percent of the voting stock of which is owned by a foreign corporation at least 10 percent of the voting stock of which in turn owned by such domestic corporation'' after ''(B)'', added subpar. (C), and inserted at end ''This paragraph shall not apply with respect to any amount included in the gross income of such domestic corporation attributable to earning and profits of the second foreign corporation or of the third foreign corporation unless, in the case of the second foreign corporation, the percentage-of-voting-stock requirement of section 902(b)(3)(A) is satisfied, and in the case of the third foreign corporation, the percentage-of-voting-stock requirement of section 902(b)(3)(B) is satisfied.''

Subsec. (b). Pub. L. 94–455, §1031(b)(1), struck out ''applicable'' in par. (1) after ''amount, the'', in par. (2) after ''increase of the'', and in subpar. (A) of par. (2) after ''by which the''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–226, title II, §214(b), Aug. 10, 2010, 124 Stat. 2399, provided that: ''The amendment made by this section [amending this section] shall apply to acquisitions of United States property (as defined in section 956(c) of the Internal Revenue Code of 1986) after December 31, 2010.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable, with special rule, to taxes of foreign corporations for taxable years of such corporations beginning after Aug. 5, 1997, see section 1113(c) of Pub. L. 105–34, set out as a note under section 902 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13233(b)(2) of Pub. L. 103–66 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after September 30, 1993.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to distributions by foreign corporations out of, and to inclusions under section 951(a) of this title attributable to, earnings and profits for taxable years beginning after Dec. 31, 1986, see section 1202(e) of Pub. L. 99–514, set out as a note under section 902 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1031(b)(1) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, see section 1031(c) of Pub. L. 94–455, set out as a note under section 904 of this title.

Amendment by section 1033(b)(2) of Pub. L. 94–455 applicable in respect of any distribution received by a domestic corporation after Dec. 31, 1977, and in respect of any distribution received by a domestic corporation before Jan. 1, 1978, in a taxable year of such corporation beginning after Dec. 31, 1975, but only to the extent that such distribution is made out of the accumulated profits of a foreign corporation for a taxable year beginning after Dec. 31, 1975, see section 1033(c) of Pub. L. 94–455, set out as a note under section 902 of this title.

Section 1037(b) of Pub. L. 94–455, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by this section [amending this section] shall apply with respect to earnings and profits of a foreign corporation, included, under section 951(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], in the gross income of a domestic corporation in taxable years beginning after December 31, 1976.''

§ 961. Adjustments to basis of stock in controlled foreign corporations and of other property

(a) Increase in basis

Under regulations prescribed by the Secretary, the basis of a United States shareholder's stock in a controlled foreign corporation, and the basis of property of a United States shareholder by reason of which he is considered under section 958(a)(2) as owning stock of a controlled foreign corporation, shall be increased by the amount required to be included in his gross income under section 951(a) with respect to such stock or with respect to such property, as the case may be, but only to the extent to which such amount was included in the gross income of such United States shareholder. In the case of a United States shareholder who has made an election under section 962 for the taxable year, the increase in basis provided by this subsection shall not exceed an amount equal to the amount of tax paid under this chapter with respect to the amounts required to be included in his gross income under section 951(a).

(b) Reduction in basis

(1) In general

Under regulations prescribed by the Secretary, the adjusted basis of stock or other property with respect to which a United States shareholder or a United States person receives an amount which is excluded from gross income under section 959(a) shall be reduced by the amount so excluded. In the case of a United States shareholder who has made an election under section 962 for any prior taxable year, the reduction in basis provided by this paragraph shall not exceed an amount equal to the amount received which is excluded from gross income under section 959(a) after the application of section 962(d).

(2) Amount in excess of basis

To the extent that an amount excluded from gross income under section 959(a) exceeds the adjusted basis of the stock or other property with respect to which it is received, the amount shall be treated as gain from the sale or exchange of property.

(c) Basis adjustments in stock held by foreign corporations

Under regulations prescribed by the Secretary, if a United States shareholder is treated under section 958(a)(2) as owning stock in a controlled foreign corporation which is owned by another controlled foreign corporation, then adjustments similar to the adjustments provided by subsections (a) and (b) shall be made to—

(1) the basis of such stock, and

(2) the basis of stock in any other controlled foreign corporation by reason of which the United States shareholder is considered under section 958(a)(2) as owning the stock described in paragraph (1),

but only for the purposes of determining the amount included under section 951 in the gross income of such United States shareholder (or any other United States shareholder who acquires from any person any portion of the interest of such United States shareholder by reason of which such shareholder was treated as owning such stock, but only to the extent of such portion, and subject to such proof of identity of such interest as the Secretary may prescribe by regulations). The preceding sentence shall not apply with respect to any stock to which a basis adjustment applies under subsection (a) or (b).

(Added Pub. L. 87–834, § 12(a), Oct. 16, 1962, 76 Stat. 1022; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105–34, title XI, § 1112(b)(1), Aug. 5, 1997, 111 Stat. 969; Pub. L. 109–135, title IV, § 409(b), Dec. 21, 2005, 119 Stat. 2635.)

AMENDMENTS

2005—Subsec. (c). Pub. L. 109–135 amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: ''Under regulations prescribed by the Secretary, if a United States shareholder is treated under section 958(a)(2) as owning any stock in a controlled foreign corporation which is actually owned by another controlled foreign corporation, adjustments similar to the adjustments provided by subsections (a) and (b) shall be made to the basis of such stock in the hands of such other controlled foreign corporation, but only for the purposes of determining the amount included under section 951 in the gross income of such United States shareholder (or any other United States shareholder who acquires from any person any portion of the interest of such United States shareholder by reason of which such shareholder was treated as owning such stock, but only to the extent of such portion, and subject to such proof of identity of such interest as the Secretary may prescribe by regulations).''

1997—Subsec. (c). Pub. L. 105–34 added subsec. (c).

1976—Subsecs. (a), (b)(1). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–135, title IV, § 409(d), Dec. 21, 2005, 119 Stat. 2636, provided that: ''The amendments made by this section [amending this section and sections 6038B, 6411, and 6601 of this title] shall take effect as if included in the provisions of the Taxpayer Relief Act of 1997 [Pub. L. 105–34] to which they relate.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1112(b)(2) of Pub. L. 105–34 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply for purposes of determining inclusions for taxable years of United States shareholders beginning after December 31, 1997.''

DUAL RESIDENT COMPANIES

Basis adjustments of this section not applicable in certain circumstances involving dual resident companies, see section 6126 of Pub. L. 100–647, set out as a note under section 1502 of this title.

§ 962. Election by individuals to be subject to tax at corporate rates

(a) General rule

Under regulations prescribed by the Secretary, in the case of a United States shareholder who is an individual and who elects to have the provisions of this section apply for the taxable year—

(1) the tax imposed under this chapter on amounts which are included in his gross income under section 951(a) shall (in lieu of the tax determined under sections 1 and 55) be an amount equal to the tax which would be imposed under sections 11 and 55 if such amounts were received by a domestic corporation, and

(2) for purposes of applying the provisions of section 960 (relating to foreign tax credit) such amounts shall be treated as if they were received by a domestic corporation.

(b) Election

An election to have the provisions of this section apply for any taxable year shall be made by a United States shareholder at such time and in such manner as the Secretary shall prescribe by regulations. An election made for any taxable year may not be revoked except with the consent of the Secretary.

(c) Pro ration of each section 11 bracket amount

For purposes of applying subsection (a)(1), the amount in each taxable income bracket in the tax table in section 11(b) shall not exceed an amount which bears the same ratio to such bracket amount as the amount included in the gross income of the United States shareholder under section 951(a) for the taxable year bears to such shareholder's pro rata share of the earnings and profits for the taxable year of all controlled foreign corporations with respect to which such shareholder includes any amount in gross income under section 951(a).

(d) Special rule for actual distributions

The earnings and profits of a foreign corporation attributable to amounts which were included in the gross income of a United States shareholder under section 951(a) and with respect to which an election under this section applied shall, when such earnings and profits are distributed, notwithstanding the provisions of section 959(a)(1), be included in gross income to the extent that such earnings and profits so distributed exceed the amount of tax paid under this chapter on the amounts to which such election applied.

(Added Pub. L. 87–834, § 12(a), Oct. 16, 1962, 76 Stat. 1023; amended Pub. L. 94–12, title III, § 303(c)(3), Mar. 29, 1975, 89 Stat. 45; Pub. L. 94–164, § 4(d)(1), Dec. 23, 1975, 89 Stat. 975; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–600, title III, § 301(b)(16), Nov. 6, 1978, 92 Stat. 2822; Pub. L. 100–647, title I, § 1007(g)(11), Nov. 10, 1988, 102 Stat. 3435.)

AMENDMENTS

1988—Subsec. (a)(1). Pub. L. 100–647 substituted ''sections 1 and 55'' and ''sections 11 and 55'' for ''section 1'' and ''section 11'', respectively.

1978—Subsec. (c). Pub. L. 95–600 substituted provisions relating to the pro ration of each section 11 bracket amount for provisions relating to the surtax exemption.

1976—Subsecs. (a), (b). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary'' wherever appearing.

1975—Subsec. (c). Pub. L. 94–164 substituted ''same ratio to the surtax exemption'' for ''same ratio to $25,000'' in subsec. (c) as such subsec. (c) is in effect for taxable years ending after Dec. 31, 1975.

Pub. L. 94–12 substituted ''$50,000'' for ''$25,000''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

EFFECTIVE AND TERMINATION DATES OF 1975 AMENDMENTS

Amendment by Pub. L. 94–164 applicable to taxable years beginning after Dec. 31, 1975, see section 4(e) of Pub. L. 94–164, set out as a note under section 11 of this title.

Amendment by Pub. L. 94–12 applicable to taxable years ending after Dec. 31, 1974, but to cease to apply for taxable years ending after Dec. 31, 1975, see section 305(b)(1) of Pub. L. 94–12, set out as a note under section 11 of this title.

[§ 963. Repealed. Pub. L. 94–12, title VI, § 602(a)(1), Mar. 29, 1975, 89 Stat. 58]

Section, added Pub. L. 87–834, § 12(a), Oct. 16, 1962, 76 Stat. 1023; amended Pub. L. 88–272, title I, § 123(b), Feb. 26, 1964, 78 Stat. 29; Pub. L. 90–364, title I, § 102(b), June 28, 1968, 82 Stat. 255; Pub. L. 91–53, § 5(b), Aug. 7, 1969, 83 Stat. 95; Pub. L. 91–172, title VII, § 701(b), Dec. 30, 1969, 83 Stat. 659, dealt with the receipt of minimum distributions by domestic corporations.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to taxable years for foreign corporations beginning after Dec. 31, 1975, and to taxable years of United States shareholders (within the meaning of section 951(b) of this title) within which or with which such taxable years of such foreign corporations end, see section 602(f) of Pub. L. 94–12, set out as an Effective Date note under section 955 of this title.

§ 964. Miscellaneous provisions

(a) Earnings and profits

Except as provided in section 312(k)(4), for purposes of this subpart, the earnings and profits of any foreign corporation, and the deficit in earnings and profits of any foreign corporation, for any taxable year shall be determined according to rules substantially similar to those applicable to domestic corporations, under regulations prescribed by the Secretary. In determining such earnings and profits, or the deficit in such earnings and profits, the amount of any illegal bribe, kickback, or other payment (within the meaning of section 162(c)) shall not be taken into account to decrease such earnings and profits or to increase such deficit. The payments referred to in the preceding sentence are payments which would be unlawful under the Foreign Corrupt Practices Act of 1977 if the payor were a United States person.

(b) Blocked foreign income

Under regulations prescribed by the Secretary, no part of the earnings and profits of a controlled foreign corporation for any taxable year shall be included in earnings and profits for purposes of sections 952, 955, and 956, if it is established to the satisfaction of the Secretary that such part could not have been distributed by the controlled foreign corporation to United States shareholders who own (within the meaning of section 958(a)) stock of such controlled foreign corporation because of currency or other restrictions or limitations imposed under the laws of any foreign country.

(c) Records and accounts of United States shareholders

(1) Records and accounts to be maintained

The Secretary may by regulations require each person who is, or has been, a United States shareholder of a controlled foreign corporation to maintain such records and accounts as may be prescribed by such regulations as necessary to carry out the provisions of this subpart and subpart G.

(2) Two or more persons required to maintain or furnish the same records and accounts with respect to the same foreign corporation

Where, but for this paragraph, two or more United States persons would be required to maintain or furnish the same records and accounts as may by regulations be required under paragraph (1) with respect to the same controlled foreign corporation for the same period, the Secretary may by regulations provide that the maintenance or furnishing of such records and accounts by only one such person shall satisfy the requirements of paragraph (1) for such other persons.

(d) Treatment of certain branches

(1) In general

For purposes of this chapter, section 6038, section 6046, and such other provisions as may be specified in regulations—

(A) a qualified insurance branch of a controlled foreign corporation shall be treated as a separate foreign corporation created under the laws of the foreign country with respect to which such branch qualifies under paragraph (2), and

(B) except as provided in regulations, any amount directly or indirectly transferred or credited from such branch to one or more other accounts of such controlled foreign corporation shall be treated as a dividend paid to such controlled foreign corporation.

(2) Qualified insurance branch

For purposes of paragraph (1), the term ''qualified insurance branch'' means any branch of a controlled foreign corporation which is licensed and predominantly engaged on a permanent basis in the active conduct of an insurance business in a foreign country if—

(A) separate books and accounts are maintained for such branch,

(B) the principal place of business of such branch is in such foreign country,

(C) such branch would be taxable under subchapter L if it were a separate domestic corporation, and

(D) an election under this paragraph applies to such branch.

An election under this paragraph shall apply to the taxable year for which made and all

subsequent taxable years unless revoked with the consent of the Secretary.

(3) Regulations

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

(e) Gain on certain stock sales by controlled foreign corporations treated as dividends

(1) In general

If a controlled foreign corporation sells or exchanges stock in any other foreign corporation, gain recognized on such sale or exchange shall be included in the gross income of such controlled foreign corporation as a dividend to the same extent that it would have been so included under section 1248(a) if such controlled foreign corporation were a United States person. For purposes of determining the amount which would have been so includible, the determination of whether such other foreign corporation was a controlled foreign corporation shall be made without regard to the preceding sentence.

(2) Same country exception not applicable

Clause (i) of section 954(c)(3)(A) shall not apply to any amount treated as a dividend by reason of paragraph (1).

(3) Clarification of deemed sales

For purposes of this subsection, a controlled foreign corporation shall be treated as having sold or exchanged any stock if, under any provision of this subtitle, such controlled foreign corporation is treated as having gain from the sale or exchange of such stock.

(Added Pub. L. 87–834, § 12(a), Oct. 16, 1962, 76 Stat. 1027; amended Pub. L. 91–172, title IV, § 442(b)(1), Dec. 30, 1969, 83 Stat. 628; Pub. L. 94–455, title X, § 1065(b), title XIX, §§ 1901(b)(32)(B)(iii), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1654, 1800, 1834; Pub. L. 97–34, title II, § 206(c), Aug. 13, 1981, 95 Stat. 225; Pub. L. 97–248, title II, § 288(b)(2), Sept. 3, 1982, 96 Stat. 571; Pub. L. 100–647, title VI, § 6129(a), Nov. 10, 1988, 102 Stat. 3716; Pub. L. 105–34, title XI, § 1111(a), Aug. 5, 1997, 111 Stat. 968.)

REFERENCES IN TEXT

The Foreign Corrupt Practices Act of 1977, referred to in subsec. (a), is title I of Pub. L. 95–213, Dec. 19, 1977, 91 Stat. 1494, as amended, which enacted sections 78dd–1 to 78dd–3 of Title 15, Commerce and Trade, and amended sections 78m and 78ff of Title 15. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 78a of Title 15 and Tables.

AMENDMENTS

1997—Subsec. (e). Pub. L. 105–34 added subsec. (e).

1988—Subsec. (d). Pub. L. 100–647 added subsec. (d).

1982—Subsec. (a). Pub. L. 97–248 inserted provision that payments referred to in sentence beginning ''In determining such earnings and profits'' are payments which would be unlawful under the Foreign Corrupt Practices Act of 1977 if the payor were a United States person.

1981—Subsec. (a). Pub. L. 97–34 substituted ''section 312(k)(4)'' for ''section 312(k)(3)''.

1976—Subsec. (a). Pub. L. 94–455, §§ 1065(b), 1901(b)(32)(B)(ii), 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'', inserted second sentence, and substituted ''312(k)(3)'' for ''312(m)(3)'' after ''provided in section''.

Subsecs. (b), (c)(1), (2). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' whenever appearing.

1969—Subsec. (a). Pub. L. 91–172 inserted reference to the exception provided for in section 312(m)(3).

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1111(c)(1) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to gain recognized on transactions occurring after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 6129(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 1988.''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to payments made after Sept. 3, 1982, see section 288(c) of Pub. L. 97–248, set out as a note under section 162 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, see section 209(a) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1065(b) of Pub. L. 94–455 applicable to payments described in section 162(c) of this title made more than 30 days after Oct. 4, 1976, see section 1066(b) of Pub. L. 94–455, set out as a note under section 952 of this title.

§ 965. Temporary dividends received deduction

(a) Deduction

(1) In general

In the case of a corporation which is a United States shareholder and for which the election under this section is in effect for the taxable year, there shall be allowed as a deduction an amount equal to 85 percent of the cash dividends which are received during such taxable year by such shareholder from controlled foreign corporations.

(2) Dividends paid indirectly from controlled foreign corporations

If, within the taxable year for which the election under this section is in effect, a United States shareholder receives a cash distribution from a controlled foreign corporation which is excluded from gross income under section 959(a), such distribution shall be treated for purposes of this section as a cash dividend to the extent of any amount included in income by such United States shareholder under section 951(a)(1)(A) as a result of any cash dividend during such taxable year to—

(A) such controlled foreign corporation from another controlled foreign corporation that is in a chain of ownership described in section 958(a), or

(B) any other controlled foreign corporation in such chain of ownership from another controlled foreign corporation in such chain of ownership, but only to the extent of cash distributions described in section 959(b)

which are made during such taxable year to the controlled foreign corporation from which such United States shareholder received such distribution.

(b) Limitations

(1) In general

The amount of dividends taken into account under subsection (a) shall not exceed the greater of—

(A) $500,000,000,

(B) the amount shown on the applicable financial statement as earnings permanently reinvested outside the United States, or

(C) in the case of an applicable financial statement which fails to show a specific amount of earnings permanently reinvested outside the United States and which shows a specific amount of tax liability attributable to such earnings, the amount equal to the amount of such liability divided by 0.35.

The amounts described in subparagraphs (B) and (C) shall be treated as being zero if there is no such statement or such statement fails to show a specific amount of such earnings or liability, as the case may be.

(2) Dividends must be extraordinary

The amount of dividends taken into account under subsection (a) shall not exceed the excess (if any) of—

(A) the cash dividends received during the taxable year by such shareholder from controlled foreign corporations, over

(B) the annual average for the base period years of—

(i) the dividends received during each base period year by such shareholder from controlled foreign corporations,

(ii) the amounts includible in such shareholder's gross income for each base period year under section 951(a)(1)(B) with respect to controlled foreign corporations, and

(iii) the amounts that would have been included for each base period year but for section 959(a) with respect to controlled foreign corporations.

The amount taken into account under clause (iii) for any base period year shall not include any amount which is not includible in gross income by reason of an amount described in clause (ii) with respect to a prior taxable year. Amounts described in subparagraph (B) for any base period year shall be such amounts as shown on the most recent return filed for such year; except that amended returns filed after June 30, 2003, shall not be taken into account.

(3) Reduction of benefit if increase in related party indebtedness

The amount of dividends which would (but for this paragraph) be taken into account under subsection (a) shall be reduced by the excess (if any) of—

(A) the amount of indebtedness of the controlled foreign corporation to any related person (as defined in section 954(d)(3)) as of the close of the taxable year for which the election under this section is in effect, over

(B) the amount of indebtedness of the controlled foreign corporation to any related person (as so defined) as of the close of October 3, 2004.

All controlled foreign corporations with respect to which the taxpayer is a United States shareholder shall be treated as 1 controlled foreign corporation for purposes of this paragraph. The Secretary may prescribe such regulations as may be necessary or appropriate to prevent the avoidance of the purposes of this paragraph, including regulations which provide that cash dividends shall not be taken into account under subsection (a) to the extent such dividends are attributable to the direct or indirect transfer (including through the use of intervening entities or capital contributions) of cash or other property from a related person (as so defined) to a controlled foreign corporation.

(4) Requirement to invest in United States

Subsection (a) shall not apply to any dividend received by a United States shareholder unless the amount of the dividend is invested in the United States pursuant to a domestic reinvestment plan which—

(A) is approved by the taxpayer's president, chief executive officer, or comparable official before the payment of such dividend and subsequently approved by the taxpayer's board of directors, management committee, executive committee, or similar body, and

(B) provides for the reinvestment of such dividend in the United States (other than as payment for executive compensation), including as a source for the funding of worker hiring and training, infrastructure, research and development, capital investments, or the financial stabilization of the corporation for the purposes of job retention or creation.

(c) Definitions and special rules

For purposes of this section—

(1) Applicable financial statement

The term ''applicable financial statement'' means—

(A) with respect to a United States shareholder which is required to file a financial statement with the Securities and Exchange Commission (or which is included in such a statement so filed by another person), the most recent audited annual financial statement (including the notes which form an integral part of such statement) of such shareholder (or which includes such shareholder)—

(i) which was so filed on or before June 30, 2003, and

(ii) which was certified on or before June 30, 2003, as being prepared in accordance with generally accepted accounting principles, and

(B) with respect to any other United States shareholder, the most recent audited financial statement (including the notes which form an integral part of such statement) of such shareholder (or which includes such shareholder)—

(i) which was certified on or before June 30, 2003, as being prepared in accordance with generally accepted accounting principles, and

(ii) which is used for the purposes of a statement or report—

(I) to creditors,

(II) to shareholders, or

(III) for any other substantial nontax purpose.

(2) Base period years

(A) In general

The base period years are the 3 taxable years—

(i) which are among the 5 most recent taxable years ending on or before June 30, 2003, and

(ii) which are determined by disregarding—

(I) 1 taxable year for which the sum of the amounts described in clauses (i), (ii), and (iii) of subsection (b)(2)(B) is the largest, and

(II) 1 taxable year for which such sum is the smallest.

(B) Shorter period

If the taxpayer has fewer than 5 taxable years ending on or before June 30, 2003, then in lieu of applying subparagraph (A), the base period years shall include all the taxable years of the taxpayer ending on or before June 30, 2003.

(C) Mergers, acquisitions, etc.

(i) In general

Rules similar to the rules of subparagraphs (A) and (B) of section 41(f)(3) shall apply for purposes of this paragraph.

(ii) Spin-offs, etc.

If there is a distribution to which section 355 (or so much of section 356 as relates to section 355) applies during the 5-year period referred to in subparagraph (A)(i) and the controlled corporation (within the meaning of section 355) is a United States shareholder—

(I) the controlled corporation shall be treated as being in existence during the period that the distributing corporation (within the meaning of section 355) is in existence, and

(II) for purposes of applying subsection (b)(2) to the controlled corporation and the distributing corporation, amounts described in subsection (b)(2)(B) which are received or includible by the distributing corporation or controlled corporation (as the case may be) before the distribution referred to in subclause (I) from a controlled foreign corporation shall be allocated between such corporations in proportion to their respective interests as United States shareholders of such controlled foreign corporation immediately after such distribution.

Subclause (II) shall not apply if neither the controlled corporation nor the distributing corporation is a United States shareholder of such controlled foreign corporation immediately after such distribution.

(3) Dividend

The term ''dividend'' shall not include amounts includible in gross income as a dividend under section 78, 367, or 1248. In the case of a liquidation under section 332 to which section 367(b) applies, the preceding sentence shall not apply to the extent the United States shareholder actually receives cash as part of the liquidation.

(4) Coordination with dividends received deduction

No deduction shall be allowed under section 243 or 245 for any dividend for which a deduction is allowed under this section.

(5) Controlled groups

(A) In general

All United States shareholders which are members of an affiliated group filing a consolidated return under section 1501 shall be treated as one United States shareholder.

(B) Application of $500,000,000 limit

All corporations which are treated as a single employer under section 52(a) shall be limited to one $500,000,000 amount in subsection (b)(1)(A), and such amount shall be divided among such corporations under regulations prescribed by the Secretary.

(C) Permanently reinvested earnings

If a financial statement is an applicable financial statement for more than 1 United States shareholder, the amount applicable under subparagraph (B) or (C) of subsection (b)(1) shall be divided among such shareholders under regulations prescribed by the Secretary.

(d) Denial of foreign tax credit; denial of certain expenses

(1) Foreign tax credit

No credit shall be allowed under section 901 for any taxes paid or accrued (or treated as paid or accrued) with respect to the deductible portion of—

(A) any dividend, or

(B) any amount described in subsection (a)(2) which is included in income under section 951(a)(1)(A).

No deduction shall be allowed under this chapter for any tax for which credit is not allowable by reason of the preceding sentence.

(2) Expenses

No deduction shall be allowed for expenses directly allocable to the deductible portion described in paragraph (1).

(3) Deductible portion

For purposes of paragraph (1), unless the taxpayer otherwise specifies, the deductible portion of any dividend or other amount is the amount which bears the same ratio to the amount of such dividend or other amount as the amount allowed as a deduction under subsection (a) for the taxable year bears to the amount described in subsection (b)(2)(A) for such year.

(4) Coordination with section 78

Section 78 shall not apply to any tax which is not allowable as a credit under section 901 by reason of this subsection.

(e) Increase in tax on included amounts not reduced by credits, etc.

(1) In general

Any tax under this chapter by reason of nondeductible CFC dividends shall not be treated as tax imposed by this chapter for purposes of determining—

(A) the amount of any credit allowable under this chapter, or

(B) the amount of the tax imposed by section 55.

Subparagraph (A) shall not apply to the credit under section 53 or to the credit under section 27(a) with respect to taxes which are imposed by foreign countries and possessions of the United States and are attributable to such dividends.

(2) Limitation on reduction in taxable income, etc.

(A) In general

The taxable income of any United States shareholder for any taxable year shall in no event be less than the amount of nondeductible CFC dividends received during such year.

(B) Coordination with section 172

The nondeductible CFC dividends for any taxable year shall not be taken into account—

(i) in determining under section 172 the amount of any net operating loss for such taxable year, and

(ii) in determining taxable income for such taxable year for purposes of the 2nd sentence of section 172(b)(2).

(3) Nondeductible CFC dividends

For purposes of this subsection, the term ''nondeductible CFC dividends'' means the excess of the amount of dividends taken into account under subsection (a) over the deduction allowed under subsection (a) for such dividends.

(f) Election

The taxpayer may elect to apply this section to—

(1) the taxpayer's last taxable year which begins before the date of the enactment of this section, or

(2) the taxpayer's first taxable year which begins during the 1-year period beginning on such date.

Such election may be made for a taxable year only if made on or before the due date (including extensions) for filing the return of tax for such taxable year.

(Added Pub. L. 108–357, title IV, §422(a), Oct. 22, 2004, 118 Stat. 1514; amended Pub. L. 109–135, title IV, §403(q), Dec. 21, 2005, 119 Stat. 2627.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (f), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

AMENDMENTS

2005—Subsec. (a)(2)(B). Pub. L. 109–135, §403(q)(1), inserted ''from another controlled foreign corporation in such chain of ownership'' before '', but only to the extent''.

Subsec. (b)(2)(A). Pub. L. 109–135, §403(q)(2), inserted ''cash'' before ''dividends''.

Subsec. (b)(3). Pub. L. 109–135, §403(q)(3), inserted at end ''The Secretary may prescribe such regulations as may be necessary or appropriate to prevent the avoidance of the purposes of this paragraph, including regulations which provide that cash dividends shall not be taken into account under subsection (a) to the extent such dividends are attributable to the direct or indirect transfer (including through the use of intervening entities or capital contributions) of cash or other property from a related person (as so defined) to a controlled foreign corporation.''

Subsec. (c)(1). Pub. L. 109–135, §403(q)(4), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'applicable financial statement' means, with respect to a United States shareholder, the most recently audited financial statement (including notes and other documents which accompany such statement) which includes such shareholder—

''(A) which is certified on or before June 30, 2003, as being prepared in accordance with generally accepted accounting principles, and

''(B) which is used for the purposes of a statement or report—

''(i) to creditors,

''(ii) to shareholders, or

''(iii) for any other substantial nontax purpose.

In the case of a corporation required to file a financial statement with the Securities and Exchange Commission, such term means the most recent such statement filed on or before June 30, 2003.''

Subsec. (d)(2). Pub. L. 109–135, §403(q)(5), substituted ''directly allocable'' for ''properly allocated and apportioned''.

Subsec. (d)(4). Pub. L. 109–135, §403(q)(6), added par. (4).

Subsec. (e)(1). Pub. L. 109–135, §403(q)(7), inserted ''which are imposed by foreign countries and possessions of the United States and are'' after ''taxes'' in concluding provisions.

Subsec. (f). Pub. L. 109–135, §403(q)(8), inserted ''on or'' before ''before the due date'' in concluding provisions.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendments by Pub. L. 109–135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which they relate, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending on or after Oct. 22, 2004, see section 422(d) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendments note under section 56 of this title.

SUBPART G—EXPORT TRADE CORPORATIONS

Sec.
970. Reduction of subpart F income of export trade corporations.
971. Definitions.
[972. Repealed.]

AMENDMENTS

1976—Pub. L. 94–455, title XIX, §1901(b)(27)(B), Oct. 4, 1976, 90 Stat. 1799, struck out item 972 ''Consolidation of group of export trade corporations''.

1962—Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1027, added heading of subpart G, and items 970 to 972.

§ 970. Reduction of subpart F income of export trade corporations

(a) Export trade income constituting foreign base company income

(1) In general

In the case of a controlled foreign corporation (as defined in section 957) which for the taxable year is an export trade corporation, the subpart F income (determined without regard to this subpart) of such corporation for such year shall be reduced by an amount equal to so much of the export trade income (as defined in section 971(b)) of such corporation for such year as constitutes foreign base company income (as defined in section 954), but only to the extent that such amount does not exceed whichever of the following amounts is the lesser:

(A) an amount equal to 1½ times so much of the export promotion expenses (as defined in section 971(d)) of such corporation for such year as is probably allocable to the export trade income which constitutes foreign base company income of such corporation for such year, or

(B) an amount equal to 10 percent of so much of the gross receipts for such year (or, in the case of gross receipts arising from commissions, fees, or other compensation for its services, so much of the gross amount upon the basis of which such commissions, fees, or other compensation is computed) accruing to such export trade corporation from the sale, installation, operation, maintenance, or use of property in respect of which such corporation derives export trade income as is properly allocable to the export trade income which constitutes foreign base company income of such corporation for such year.

The allocations with respect to export trade income which constitutes foreign base company income under subparagraphs (A) and (B) shall be made under regulations prescribed by the Secretary.

(2) Overall limitation

The reduction under paragraph (1) for any taxable year shall not exceed an amount which bears the same ratio to the increase in the investments in export trade assets (as defined in section 971(c)) of such corporation for such year as the export trade income which constitutes foreign base company income of such corporation for such year bears to the entire export trade income of such corporation for such year.

(b) Inclusion of certain previously excluded amounts

Each United States shareholder of a controlled foreign corporation which for any prior taxable year was an export trade corporation shall include in his gross income under section 951(a)(1)(A)(ii), as an amount to which section 955 (relating to withdrawal of previously excluded subpart F income from qualified investment) applies, his pro rata share of the amount of decrease in the investments in export trade assets of such corporation for such year, but only to the extent that his pro rata share of such amount does not exceed an amount equal to—

(1) his pro rata share of the sum of (A) the amounts by which the subpart F income of such corporation was reduced for all prior taxable years under subsection (a), and (B) the amounts not included in subpart F income (determined without regard to this subpart) for all prior taxable years by reason of the treatment (under section 972 as in effect before the date of the enactment of the Tax Reform Act of 1976) of two or more controlled foreign corporations which are export trade corporations as a single controlled foreign corporation, reduced by

(2) the sum of the amounts which were included in his gross income under section 951(a)(1)(A)(ii) under the provisions of this subsection for all prior taxable years.

(c) Investments in export trade assets

(1) Amount of investments

For purposes of this section, the amount taken into account with respect to any export trade asset shall be its adjusted basis, reduced by any liability to which the asset is subject.

(2) Increase in investments in export trade assets

For purposes of subsection (a), the amount of increase in investments in export trade assets of any controlled foreign corporation for any taxable year is the amount by which—

(A) the amount of such investments at the close of the taxable year, exceeds

(B) the amount of such investments at the close of the preceding taxable year.

(3) Decrease in investments in export trade assets

For purposes of subsection (b), the amount of decrease in investments in export trade assets of any controlled foreign corporation for any taxable year is the amount by which—

(A) the amount of such investments at the close of the preceding taxable year (reduced by an amount equal to the amount of net loss sustained during the taxable year with respect to export trade assets), exceeds

(B) the amount of such investments at the close of the taxable year.

(4) Special rule

A United States shareholder of an export trade corporation may, under regulations prescribed by the Secretary, make the determinations under paragraphs (2) and (3) as of the close of the 75th day after the close of the years referred to in such paragraphs in lieu of on the last day of such years. A United States shareholder of an export trade corporation may, under regulations prescribed by the Secretary, make the determinations under paragraphs (2) and (3) with respect to export trade assets described in section 971(c)(3) as of the close of the years following the years referred to in such paragraphs, or as of the close of such longer period of time as such regulations may permit, in lieu of on the last day of such years and in lieu of on the day prescribed in the preceding sentence. Any election under

this paragraph made with respect to any taxable year shall apply to such year and to all succeeding taxable years unless the Secretary consents to the revocation of such election.

(Added Pub. L. 87–834, §12(a), Oct. 16, 1972, 76 Stat. 1027; amended Pub. L. 94–455, title XIX, §§1901(b)(27)(A), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1799, 1834.)

REFERENCES IN TEXT

The Tax Reform Act of 1976, referred to in subsec. (b)(1), is Pub. L. 94–455, Oct. 4, 1976, 90 Stat. 1250, as amended, which was enacted Oct. 4, 1976. Section 972 of this title was repealed by Pub. L. 94–455, title XIX, §1901(a)(120), Oct. 4, 1976, 90 Stat. 1784. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1976—Subsec. (a)(1). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (b)(1). Pub. L. 94–455, §1901(b)(27)(A), substituted ''treatment (under section 972 as in effect before the date of enactment of the Tax Reform Act of 1976) of two or more controlled foreign corporations which are export trade corporations as a single controlled corporation'' for ''application of section 972'' after ''reason of the''.

Subsec. (c)(4). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' in three places.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(27)(A) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EXPORT TRADE CORPORATIONS

Section 505(a), (b) of Pub. L. 92–178, title V, Dec. 10, 1971, 85 Stat. 551, provided as follows:

''(a) USE OF TERMS.—Except as otherwise expressly provided, whenever in this section a reference is made to a section, chapter, or other provision, the reference shall be considered to be made to a section, chapter, or other provision of the Internal Revenue Code of 1954, and terms used in this section shall have the same meaning as when used in such Code.

''(b) TRANSFER TO A DISC OF ASSETS OF EXPORT TRADE CORPORATION.—

''(1) IN GENERAL.—If a corporation (hereinafter in this section called 'parent') owns all of the outstanding stock of an export trade corporation (as defined in section 971), and the export trade corporation, during a taxable year beginning before January 1, 1976, transfers property, without receiving consideration, to a DISC (as defined in section 992(a)) all of whose outstanding stock is owned by the parent, and if the amount transferred by the export trade corporation is not less than the amount of its untaxed subpart F income (as defined in paragraph (2) of this subsection) at the time of such transfer, then—

''(A) notwithstanding section 367 or any other provision of chapter 1, no gain or loss to the export trade corporation, the parent, or the DISC shall be recognized by reason of such transfer;

''(B) the earnings and profits of the DISC shall be increased by the amount transferred to it by the export trade corporation and such amount shall be included in the accumulated DISC income, and for purposes of section 861(a)(2)(D) shall be considered to be qualified export receipts;

''(C) the adjusted basis of the assets transferred to the DISC shall be the same in the hands of the DISC as in the hands of the export trade corporation;

''(D) the earnings and profits of the export trade corporation shall be reduced by the amount transferred to the DISC, to the extent thereof, with the reduction being applied first to the untaxed subpart F income and then to the other earnings and profits in the order in which they were most recently accumulated;

''(E) the basis of the parent's stock in the export trade corporation shall be decreased by the amount obtained by multiplying its basis in such stock by a fraction the numerator of which is the amount transferred to the DISC and the denominator of which is the aggregate adjusted basis of all the assets of the export trade corporation immediately before such transfer;

''(F) the basis of the parent's stock in the DISC shall be increased by the amount of the reduction under subparagraph (E) of its basis in the stock of the export trade corporation;

''(G) the property transferred to the DISC shall not be considered to reduce the investments of the export trade corporation in export trade assets for purposes of applying section 970(b); and

''(H) any foreign income taxes which would have been deemed under section 902 to have been paid by the parent if the transfer had been made to the parent shall be treated as foreign income taxes paid by the DISC.

For purposes of this section, the amount transferred by the export trade corporation to the DISC shall be the aggregate of the adjusted basis of the properties transferred, with proper adjustment for any indebtedness secured by such property or assumed by the DISC in connection with the transfer. For purposes of this section, a foreign corporation which qualified as an export trade corporation for any 3 taxable years beginning before November 1, 1971, shall be treated as an export trade corporation.

''(2) DEFINITION OF UNTAXED SUBPART F INCOME.—For purposes of this section, the term 'untaxed subpart F income' means with respect to an export trade corporation the amount by which—

''(A) the sum of the amount by which the subpart F income of such corporation was reduced for the taxable year and all prior taxable years under section 970(a) and the amounts not included in subpart F income (determined without regard to subpart G of subchapter N of chapter 1) for all prior taxable years by reason of the application of section 972, exceeds

''(B) the sum of the amounts which were included in the gross income of the shareholders of such corporation under section 951(a)(1)(A)(ii) and under the provision of section 970(b) for all prior taxable years,

determined without regard to the transfer of property described in paragraph (1) of this subsection.

''(3) SPECIAL CASES.—If the provisions of paragraph (1) of this subsection are not applicable solely because the export trade corporation or the DISC, or both, are not owned in the manner prescribed in such paragraph, the provisions shall nevertheless be applicable in such cases to the extent, and in accordance with such rules, as may be prescribed by the Secretary or his delegate.

''(4) TREATMENT OF EXPORT TRADE ASSETS.—If the provisions of this subsection are applicable, accounts receivable held by an export trade corporation and transferred to a DISC, to the extent such receivables were export trade assets in the hands of the export trade corporation, shall be treated as qualified export assets for purposes of section 993(b).''

§ 971. Definitions

(a) Export trade corporations

For purposes of this subpart, the term ''export trade corporation'' means—

(1) In general

A controlled foreign corporation (as defined in section 957) which satisfies the following conditions:

(A) 90 percent or more of the gross income of such corporation for the 3–year period immediately preceding the close of the taxable year (or such part of such period subsequent to the effective date of this subpart during which the corporation was in existence) was derived from sources without the United States, and

(B) 75 percent or more of the gross income of such corporation for such period constituted gross income in respect of which such corporation derived export trade income.

(2) Special rule

If 50 percent or more of the gross income of a controlled foreign corporation in the period specified in subsection (a)(1)(A) is gross income in respect of which such corporation derived export trade income in respect of agricultural products grown in the United States, it may qualify as an export trade corporation although it does not meet the requirements of subsection (a)(1)(B).

(3) Limitation

No controlled foreign corporation may qualify as an export trade corporation for any taxable year beginning after October 31, 1971, unless it qualified as an export trade corporation for any taxable year beginning before such date. If a corporation fails to qualify as an export trade corporation for a period of any 3 consecutive taxable years beginning after such date, it may not qualify as an export trade corporation for any taxable year beginning after such period.

(b) Export trade income

For the purposes of this subpart, the term ''export trade income'' means net income from—

(1) the sale to an unrelated person for use, consumption, or disposition outside the United States of export property (as defined in subsection (e)), or from commissions, fees, compensation, or other income from the performance of commercial, industrial, financial, technical, scientific, managerial, engineering, architectural, skilled, or other services in respect to such sales or in respect of the installation or maintenance of such export property;

(2) commissions, fees, compensation, or other income from commercial, industrial, financial, technical, scientific, managerial, engineering, architectural, skilled, or other services performed in connection with the use by an unrelated person outside the United States of patents, copyrights, secret processes and formulas, goodwill, trademarks, trade brands, franchises, and other like property acquired or developed and owned by the manufacturer, producer, grower, or extractor of export property in respect of which the export trade corporation earns export trade income under paragraph (1);

(3) commissions, fees, rentals, or other compensation or income attributable to the use of export property by an unrelated person or attributable to the use of export property in the rendition of technical, scientific, or engineering services to an unrelated person; and

(4) interest from export trade assets described in subsection (c)(4).

For purposes of paragraph (3), if a controlled foreign corporation receives income from an unrelated person attributable to the use of export property in the rendition of services to such unrelated person together with income attributable to the rendition of other services to such unrelated person, including personal services, the amount of such aggregate income which shall be considered to be attributable to the use of the export property shall (if such amount cannot be established by reference to transactions between unrelated persons) be that part of such aggregate income which the cost of the export property consumed in the rendition of such services (including a reasonable allowance for depreciation) bears to the total cost and expenses attributable to such aggregate income.

(c) Export trade assets

For purposes of this subpart, the term ''export trade assets'' means—

(1) working capital reasonably necessary for the production of export trade income,

(2) inventory of export property held for use, consumption, or disposition outside the United States,

(3) facilities located outside the United States for the storage, handling, transportation, packaging, or servicing of export property, and

(4) evidences of indebtedness executed by persons, other than related persons, in connection with payment for purchases of export property for use, consumption, or disposition outside the United States, or in connection with the payment for services described in subsections (b)(2) and (3).

(d) Export promotion expenses

For purposes of this subpart, the term ''export promotion expenses'' means the following expenses paid or incurred in the receipt or production of export trade income—

(1) a reasonable allowance for salaries or other compensation for personal services actually rendered for such purpose,

(2) rentals or other payments for the use of property actually used for such purpose,

(3) a reasonable allowance for the exhaustion, wear and tear, or obsolescence of property actually used for such purpose, and

(4) any other ordinary and necessary expenses of the corporation to the extent reasonably allocable to the receipt or production of export trade income.

No expense incurred within the United States shall be treated as an export promotion expense within the meaning of the preceding sentence, unless at least 90 percent of each category of expenses described in such sentence is incurred outside the United States.

(e) Export property

For purposes of this subpart, the term ''export property'' means any property or any interest in property manufactured, produced, grown, or extracted in the United States.

(f) Unrelated person

For purposes of this subpart, the term ''unrelated person'' means a person other than a related person as defined in section 954(d)(3).

(Added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1029; amended Pub. L. 92–178, title V, §505(c), Dec. 10, 1971, 85 Stat. 553.)

AMENDMENTS

1971—Subsec. (a)(3). Pub. L. 92–178 added par. (3).

TREATMENT OF CERTAIN FORMER EXPORT TRADE CORPORATIONS

Pub. L. 99–514, title XVIII, §1876(m), Oct. 22, 1986, 100 Stat. 2901, provided that: ''If—

''(1) a corporation which is not an export trading corporation for its most recent taxable year ending before the date of the enactment of the Tax Reform Act of 1984 [July 18, 1984] but was an export trading corporation for any prior taxable year, and

''(2)(A) such corporation may not qualify as an export trade corporation for any taxable year beginning after December 31, 1984, by reason of section 971(a)(3) of the Internal Revenue Code of 1954 [now 1986], or (B) such corporation makes an election, before the date 6 months after the date of the enactment of this Act [Oct. 22, 1986], not to be treated as an export trade corporation with respect to taxable years beginning after December 31, 1984,

rules similar to the rules of paragraphs (2) and (4) of section 805(b) of the Tax Reform Act of 1984 [set out as a note under section 991 of this title] shall apply to such corporation. For purposes of the preceding sentence, the term 'export trade corporation' has the meaning given such term by section 971 of such Code.''

[§ 972. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(120), Oct. 4, 1976, 90 Stat. 1784]

Section, Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1031, related to the consolidation of a group of export trade corporations for treatment as a single controlled foreign corporation for tax purposes.

[SUBPART H—REPEALED]

[§ 981. Repealed. Pub. L. 94–455, title X, § 1012(b)(2), Oct. 4, 1976, 90 Stat. 1614]

Section, Pub. L. 89–809, title I, §105(e)(1), Nov. 13, 1966, 80 Stat. 1565, related to income of certain nonresident United States citizens subject to foreign community property laws.

SUBPART I—ADMISSIBILITY OF DOCUMENTATION MAINTAINED IN FOREIGN COUNTRIES

Sec.
982. Admissibility of documentation maintained in foreign countries.

AMENDMENTS

1982—Pub. L. 97–248, title III, §337(a), Sept. 3, 1982, 96 Stat. 629, added subpart I and item 982.

§ 982. Admissibility of documentation maintained in foreign countries

(a) General rule

If the taxpayer fails to substantially comply with any formal document request arising out of the examination of the tax treatment of any item (hereinafter in this section referred to as the ''examined item'') before the 90th day after the date of the mailing of such request on motion by the Secretary, any court having jurisdiction of a civil proceeding in which the tax treatment of the examined item is an issue shall prohibit the introduction by the taxpayer of any foreign-based documentation covered by such request.

(b) Reasonable cause exception

(1) In general

Subsection (a) shall not apply with respect to any documentation if the taxpayer establishes that the failure to provide the documentation as requested by the Secretary is due to reasonable cause.

(2) Foreign nondisclosure law not reasonable cause

For purposes of paragraph (1), the fact that a foreign jurisdiction would impose a civil or criminal penalty on the taxpayer (or any other person) for disclosing the requested documentation is not reasonable cause.

(c) Formal document request

For purposes of this section—

(1) Formal document request

The term ''formal document request'' means any request (made after the normal request procedures have failed to produce the requested documentation) for the production of foreign-based documentation which is mailed by registered or certified mail to the taxpayer at his last known address and which sets forth—

(A) the time and place for the production of the documentation,

(B) a statement of the reason the documentation previously produced (if any) is not sufficient,

(C) a description of the documentation being sought, and

(D) the consequences to the taxpayer of the failure to produce the documentation described in subparagraph (C).

(2) Proceeding to quash

(A) In general

Notwithstanding any other law or rule of law, any person to whom a formal document request is mailed shall have the right to begin a proceeding to quash such request not later than the 90th day after the day such request was mailed. In any such proceeding, the Secretary may seek to compel compliance with such request.

(B) Jurisdiction

The United States district court for the district in which the person (to whom the formal document request is mailed) resides or is found shall have jurisdiction to hear any proceeding brought under subparagraph (A). An order denying the petition shall be deemed a final order which may be appealed.

(C) Suspension of 90-day period

The running of the 90-day period referred to in subsection (a) shall be suspended during any period during which a proceeding brought under subparagraph (A) is pending.

(d) Definitions and special rules

For purposes of this section—

(1) Foreign-based documentation

The term ''foreign-based documentation'' means any documentation which is outside the United States and which may be relevant or material to the tax treatment of the examined item.

(2) Documentation

The term ''documentation'' includes books and records.

(3) Authority to extend 90-day period

The Secretary, and any court having jurisdiction over a proceeding under subsection (c)(2), may extend the 90-day period referred to in subsection (a).

(e) Suspension of statute of limitations

If any person takes any action as provided in subsection (c)(2), the running of any period of limitations under section 6501 (relating to the assessment and collection of tax) or under section 6531 (relating to criminal prosecutions) with respect to such person shall be suspended for the period during which the proceeding under such subsection, and appeals therein, are pending.

(Added Pub. L. 97–248, title III, § 337(a), Sept. 3, 1982, 96 Stat. 629; amended Pub. L. 98–369, div. A, title VII, § 714(k), July 18, 1984, 98 Stat. 963.)

AMENDMENTS

1984—Subsec. (d)(3), (4). Pub. L. 98–369 redesignated par. (4) as (3) and struck out former par. (3) which provided that an item was to be treated as foreign connected if directly or indirectly from a source outside the United States, or the item (in whole or in part) purported to arise outside the United States, or was otherwise dependent on transactions occurring outside the United States.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE

Section 337(c) of Pub. L. 97–248, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [enacting this section] shall apply with respect to formal document requests (as defined in section 982(c)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as added by this section) mailed after the date of the enactment of this Act [Sept. 3, 1982].''

SUBPART J—FOREIGN CURRENCY TRANSACTIONS

Sec.
985. Functional currency.
986. Determination of foreign taxes and foreign corporation's earnings and profits.
987. Branch transactions.
988. Treatment of certain foreign currency transactions.
989. Other definitions and special rules.

AMENDMENTS

1988—Pub. L. 100–647, title I, § 1012(v)(1)(C), Nov. 10, 1988, 102 Stat. 3529, added item 986 and struck out former item 986 ''Determination of foreign corporation's earnings and profits and foreign taxes''.

§ 985. Functional currency

(a) In general

Unless otherwise provided in regulations, all determinations under this subtitle shall be made in the taxpayer's functional currency.

(b) Functional currency

(1) In general

For purposes of this subtitle, the term ''functional currency'' means—

(A) except as provided in subparagraph (B), the dollar, or

(B) in the case of a qualified business unit, the currency of the economic environment in which a significant part of such unit's activities are conducted and which is used by such unit in keeping its books and records.

(2) Functional currency where activities primarily conducted in dollars

The functional currency of any qualified business unit shall be the dollar if activities of such unit are primarily conducted in dollars.

(3) Election

To the extent provided in regulations, the taxpayer may elect to use the dollar as the functional currency for any qualified business unit if—

(A) such unit keeps its books and records in dollars, or

(B) the taxpayer uses a method of accounting that approximates a separate transactions method.

Any such election shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(4) Change in functional currency treated as a change in method of accounting

Any change in the functional currency shall be treated as a change in the taxpayer's method of accounting for purposes of section 481 under procedures to be established by the Secretary.

(Added Pub. L. 99–514, title XII, § 1261(a), Oct. 22, 1986, 100 Stat. 2585.)

EFFECTIVE DATE

Section 1261(e) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this subpart and amending sections 1092 and 1256 of this title] shall apply to taxable years beginning after December 31, 1986.

''(2) SPECIAL RULES FOR PURPOSES OF SECTIONS 902 AND 960.—For purposes of applying sections 902 and 960 of the Internal Revenue Code of 1986, the amendments made by this section shall apply to—

''(A) earnings and profits of the foreign corporation for taxable years beginning after December 31, 1986, and

''(B) foreign taxes paid or accrued by the foreign corporation with respect to such earnings and profits.''

§ 986. Determination of foreign taxes and foreign corporation's earnings and profits

(a) Foreign income taxes

(1) Translation of accrued taxes

(A) In general

For purposes of determining the amount of the foreign tax credit, in the case of a taxpayer who takes foreign income taxes into account when accrued, the amount of any foreign income taxes (and any adjustment thereto) shall be translated into dollars by using the average exchange rate for the taxable year to which such taxes relate.

(B) Exception for certain taxes

Subparagraph (A) shall not apply to any foreign income taxes—

(i) paid after the date 2 years after the close of the taxable year to which such taxes relate, or

(ii) paid before the beginning of the taxable year to which such taxes relate.

(C) Exception for inflationary currencies

Subparagraph (A) shall not apply to any foreign income taxes the liability for which is denominated in any inflationary currency (as determined under regulations).

(D) Elective exception for taxes paid other than in functional currency

(i) In general

At the election of the taxpayer, subparagraph (A) shall not apply to any foreign income taxes the liability for which is denominated in any currency other than in the taxpayer's functional currency.

(ii) Application to qualified business units

An election under this subparagraph may apply to foreign income taxes attributable to a qualified business unit in accordance with regulations prescribed by the Secretary.

(iii) Election

Any such election shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(E) Special rule for regulated investment companies

In the case of a regulated investment company which takes into account income on an accrual basis, subparagraphs (A) through (D) shall not apply and foreign income taxes paid or accrued with respect to such income shall be translated into dollars using the exchange rate as of the date the income accrues.

(F) Cross reference

For adjustments where tax is not paid within 2 years, see section 905(c).

(2) Translation of taxes to which paragraph (1) does not apply

For purposes of determining the amount of the foreign tax credit, in the case of any foreign income taxes to which subparagraph (A) or (E) of paragraph (1) does not apply—

(A) such taxes shall be translated into dollars using the exchange rates as of the time such taxes were paid to the foreign country or possession of the United States, and

(B) any adjustment to the amount of such taxes shall be translated into dollars using—

(i) except as provided in clause (ii), the exchange rate as of the time when such adjustment is paid to the foreign country or possession, or

(ii) in the case of any refund or credit of foreign income taxes, using the exchange rate as of the time of the original payment of such foreign income taxes.

(3) Authority to permit use of average rates

To the extent prescribed in regulations, the average exchange rate for the period (specified in such regulations) during which the taxes or adjustment is paid may be used instead of the exchange rate as of the time of such payment.

(4) Foreign income taxes

For purposes of this subsection, the term ''foreign income taxes'' means any income, war profits, or excess profits taxes paid or accrued to any foreign country or to any possession of the United States.

(b) Earnings and profits and distributions

For purposes of determining the tax under this subtitle—

(1) of any shareholder of any foreign corporation, the earnings and profits of such corporation shall be determined in the corporation's functional currency, and

(2) in the case of any United States person, the earnings and profits determined under paragraph (1) (when distributed, deemed distributed, or otherwise taken into account under this subtitle) shall (if necessary) be translated into dollars using the appropriate exchange rate.

(c) Previously taxed earnings and profits

(1) In general

Foreign currency gain or loss with respect to distributions of previously taxed earnings and profits (as described in section 959 or 1293(c)) attributable to movements in exchange rates between the times of deemed and actual distribution shall be recognized and treated as ordinary income or loss from the same source as the associated income inclusion.

(2) Distributions through tiers

The Secretary shall prescribe regulations with respect to the treatment of distributions of previously taxed earnings and profits through tiers of foreign corporations.

(Added Pub. L. 99–514, title XII, §1261(a), Oct. 22, 1986, 100 Stat. 2586; amended Pub. L. 100–647, title I, §1012(v)(1)(A), Nov. 10, 1988, 102 Stat. 3528; Pub. L. 105–34, title XI, §1102(a)(1), (b)(1), Aug. 5, 1997, 111 Stat. 963, 965; Pub. L. 108–357, title IV, §408(a), (b), Oct. 22, 2004, 118 Stat. 1499.)

AMENDMENTS

2004—Subsec. (a)(1)(D). Pub. L. 108–357, §408(a), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (a)(1)(E). Pub. L. 108–357, §408(b)(1), added subpar. (E). Former subpar. (E) redesignated (F).

Pub. L. 108–357, §408(a), redesignated subpar. (D) as (E).

Subsec. (a)(1)(F). Pub. L. 108–357, §408(b)(1), redesignated subpar. (E) as (F).

Subsec. (a)(2). Pub. L. 108–357, §408(b)(2), inserted ''or (E)'' after ''subparagraph (A)'' in introductory provisions.

1997—Subsec. (a). Pub. L. 105–34, §1102(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows:

''(a) FOREIGN TAXES.—

''(1) IN GENERAL.—For purposes of determining the amount of the foreign tax credit—

''(A) any foreign income taxes shall be translated into dollars using the exchange rates as of the time such taxes were paid to the foreign country or possession of the United States, and

''(B) any adjustment to the amount of foreign income taxes shall be translated into dollars using—

''(i) except as provided in clause (ii), the exchange rate as of the time when such adjustment is paid to the foreign country or possession, or

''(ii) in the case of any refund or credit of foreign income taxes, using the exchange rate as of the time of original payment of such foreign income taxes.

''(2) FOREIGN INCOME TAXES.—For purposes of paragraph (1), 'foreign income taxes' means any income, war profits, or excess profits taxes paid to any foreign country or to any possession of the United States.''

Subsec. (a)(3), (4). Pub. L. 105–34, § 1102(b)(1), added par. (3) and redesignated former par. (3) as (4).

1988—Pub. L. 100–647 substituted ''foreign taxes and foreign corporation's earnings and profits'' for ''foreign corporation's earnings and profits and foreign taxes'' in heading, and revised and restructured the provisions of subsecs. (a) and (b).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title IV, § 408(c), Oct. 22, 2004, 118 Stat. 1500, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2004.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1102(c)(1) of Pub. L. 105–34 provided that: ''The amendments made by subsections (a)(1) and (b) [amending this section and section 989 of this title] shall apply to taxes paid or accrued in taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1261(e) of Pub. L. 99–514, set out as a note under section 985 of this title.

§ 987. Branch transactions

In the case of any taxpayer having 1 or more qualified business units with a functional currency other than the dollar, taxable income of such taxpayer shall be determined—

(1) by computing the taxable income or loss separately for each such unit in its functional currency,

(2) by translating the income or loss separately computed under paragraph (1) at the appropriate exchange rate, and

(3) by making proper adjustments (as prescribed by the Secretary) for transfers of property between qualified business units of the taxpayer having different functional currencies, including—

(A) treating post-1986 remittances from each such unit as made on a pro rata basis out of post-1986 accumulated earnings, and

(B) treating gain or loss determined under this paragraph as ordinary income or loss, respectively, and sourcing such gain or loss by reference to the source of the income giving rise to post-1986 accumulated earnings.

(Added Pub. L. 99–514, title XII, § 1261(a), Oct. 22, 1986, 100 Stat. 2586; amended Pub. L. 100–647, title I, § 1012(v)(1)(B), Nov. 10, 1988, 102 Stat. 3528.)

AMENDMENTS

1988—Par. (4). Pub. L. 100–647 struck out par. (4) which provided for translation of foreign income taxes paid by each qualified business unit of the taxpayer in the same manner as provided under section 986(b).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1261(e) of Pub. L. 99–514, set out as a note under section 985 of this title.

§ 988. Treatment of certain foreign currency transactions

(a) General rule

Notwithstanding any other provision of this chapter—

(1) Treatment as ordinary income or loss

(A) In general

Except as otherwise provided in this section, any foreign currency gain or loss attributable to a section 988 transaction shall be computed separately and treated as ordinary income or loss (as the case may be).

(B) Special rule for forward contracts, etc.

Except as provided in regulations, a taxpayer may elect to treat any foreign currency gain or loss attributable to a forward contract, a futures contract, or option described in subsection (c)(1)(B)(iii) which is a capital asset in the hands of the taxpayer and which is not a part of a straddle (within the meaning of section 1092(c), without regard to paragraph (4) thereof) as capital gain or loss (as the case may be) if the taxpayer makes such election and identifies such transaction before the close of the day on which such transaction is entered into (or such earlier time as the Secretary may prescribe).

(2) Gain or loss treated as interest for certain purposes

To the extent provided in regulations, any amount treated as ordinary income or loss under paragraph (1) shall be treated as interest income or expense (as the case may be).

(3) Source

(A) In general

Except as otherwise provided in regulations, in the case of any amount treated as ordinary income or loss under paragraph (1) (without regard to paragraph (1)(B)), the source of such amount shall be determined by reference to the residence of the taxpayer or the qualified business unit of the taxpayer on whose books the asset, liability, or item of income or expense is properly reflected.

(B) Residence

For purposes of this subpart—

(i) In general

The residence of any person shall be—

(I) in the case of an individual, the country in which such individual's tax home (as defined in section 911(d)(3)) is located,

(II) in the case of any corporation, partnership, trust, or estate which is a United States person (as defined in section 7701(a)(30)), the United States, and

(III) in the case of any corporation, partnership, trust, or estate which is not a United States person, a country other than the United States.

If an individual does not have a tax home (as so defined), the residence of such individual shall be the United States if such individual is a United States citizen or a resident alien and shall be a country other than the United States if such individual is not a United States citizen or a resident alien.

(ii) Exception

In the case of a qualified business unit of any taxpayer (including an individual), the residence of such unit shall be the country in which the principal place of business of such qualified business unit is located.

(iii) Special rule for partnerships

To the extent provided in regulations, in the case of a partnership, the determination of residence shall be made at the partner level.

(C) Special rule for certain related party loans

Except to the extent provided in regulations, in the case of a loan by a United States person or a related person to a 10-percent owned foreign corporation which is denominated in a currency other than the dollar and bears interest at a rate at least 10 percentage points higher than the Federal mid-term rate (determined under section 1274(d)) at the time such loan is entered into, the following rules shall apply:

(i) For purposes of section 904 only, such loan shall be marked to market on an annual basis.

(ii) Any interest income earned with respect to such loan for the taxable year shall be treated as income from sources within the United States to the extent of any loss attributable to clause (i).

For purposes of this subparagraph, the term ''related person'' has the meaning given such term by section 954(d)(3), except that such section shall be applied by substituting ''United States person'' for ''controlled foreign corporation'' each place such term appears.

(D) 10-percent owned foreign corporation

The term ''10-percent owned foreign corporation'' means any foreign corporation in which the United States person owns directly or indirectly at least 10 percent of the voting stock.

(b) Foreign currency gain or loss

For purposes of this section—

(1) Foreign currency gain

The term ''foreign currency gain'' means any gain from a section 988 transaction to the extent such gain does not exceed gain realized by reason of changes in exchange rates on or after the booking date and before the payment date.

(2) Foreign currency loss

The term ''foreign currency loss'' means any loss from a section 988 transaction to the extent such loss does not exceed the loss realized by reason of changes in exchange rates on or after the booking date and before the payment date.

(3) Special rule for certain contracts, etc.

In the case of any section 988 transaction described in subsection (c)(1)(B)(iii), any gain or loss from such transaction shall be treated as foreign currency gain or loss (as the case may be).

(c) Other definitions

For purposes of this section—

(1) Section 988 transaction

(A) In general

The term ''section 988 transaction'' means any transaction described in subparagraph (B) if the amount which the taxpayer is entitled to receive (or is required to pay) by reason of such transaction—

(i) is denominated in terms of a nonfunctional currency, or

(ii) is determined by reference to the value of 1 or more nonfunctional currencies.

(B) Description of transactions

For purposes of subparagraph (A), the following transactions are described in this subparagraph:

(i) The acquisition of a debt instrument or becoming the obligor under a debt instrument.

(ii) Accruing (or otherwise taking into account) for purposes of this subtitle any item of expense or gross income or receipts which is to be paid or received after the date on which so accrued or taken into account.

(iii) Entering into or acquiring any forward contract, futures contract, option, or similar financial instrument.

The Secretary may prescribe regulations excluding from the application of clause (ii) any class of items the taking into account of which is not necessary to carry out the purposes of this section by reason of the small amounts or short periods involved, or otherwise.

(C) Special rules for disposition of nonfunctional currency

(i) In general

In the case of any disposition of any nonfunctional currency—

(I) such disposition shall be treated as a section 988 transaction, and

(II) any gain or loss from such transaction shall be treated as foreign currency gain or loss (as the case may be).

(ii) Nonfunctional currency

For purposes of this section, the term ''nonfunctional currency'' includes coin or

currency, and nonfunctional currency denominated demand or time deposits or similar instruments issued by a bank or other financial institution.

(D) Exception for certain instruments marked to market

(i) In general

Clause (iii) of subparagraph (B) shall not apply to any regulated futures contract or nonequity option which would be marked to market under section 1256 if held on the last day of the taxable year.

(ii) Election out

(I) In general

The taxpayer may elect to have clause (i) not apply to such taxpayer. Such an election shall apply to contracts held at any time during the taxable year for which such election is made or any succeeding taxable year unless such election is revoked with the consent of the Secretary.

(II) Time for making election

Except as provided in regulations, an election under subclause (I) for any taxable year shall be made on or before the 1st day of such taxable year (or, if later, on or before the 1st day during such year on which the taxpayer holds a contract described in clause (i)).

(III) Special rule for partnerships, etc.

In the case of a partnership, an election under subclause (I) shall be made by each partner separately. A similar rule shall apply in the case of an S corporation.

(iii) Treatment of certain partnerships

This subparagraph shall not apply to any income or loss of a partnership for any taxable year if such partnership made an election under subparagraph (E)(iii)(V) for such year or any preceding year.

(E) Special rules for certain funds

(i) In general

In the case of a qualified fund, clause (iii) of subparagraph (B) shall not apply to any instrument which would be marked to market under section 1256 if held on the last day of the taxable year (determined after the application of clause (iv)).

(ii) Special rule where electing partnership does not qualify

If any partnership made an election under clause (iii)(V) for any taxable year and such partnership has a net loss for such year or any succeeding year from instruments referred to in clause (i), the rules of clauses (i) and (iv) shall apply to any such loss year whether or not such partnership is a qualified fund for such year.

(iii) Qualified fund defined

For purposes of this subparagraph, the term ''qualified fund'' means any partnership if—

(I) at all times during the taxable year (and during each preceding taxable year to which an election under subclause (V) applied), such partnership has at least 20 partners and no single partner owns more than 20 percent of the interests in the capital or profits of the partnership,

(II) the principal activity of such partnership for such taxable year (and each such preceding taxable year) consists of buying and selling options, futures, or forwards with respect to commodities,

(III) at least 90 percent of the gross income of the partnership for the taxable year (and for each such preceding taxable year) consisted of income or gains described in subparagraph (A), (B), or (G) of section 7704(d)(1) or gain from the sale or disposition of capital assets held for the production of interest or dividends,

(IV) no more than a de minimis amount of the gross income of the partnership for the taxable year (and each such preceding taxable year) was derived from buying and selling commodities, and

(V) an election under this subclause applies to the taxable year.

An election under subclause (V) for any taxable year shall be made on or before the 1st day of such taxable year (or, if later, on or before the 1st day during such year on which the partnership holds an instrument referred to in clause (i)). Any such election shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary.

(iv) Treatment of certain currency contracts

(I) In general

Except as provided in regulations, in the case of a qualified fund, any bank forward contract, any foreign currency futures contract traded on a foreign exchange, or to the extent provided in regulations any similar instrument, which is not otherwise a section 1256 contract shall be treated as a section 1256 contract for purposes of section 1256.

(II) Gains and losses treated as short-term

In the case of any instrument treated as a section 1256 contract under subclause (I), subparagraph (A) of section 1256(a)(3) shall be applied by substituting ''100 percent'' for ''40 percent'' (and subparagraph (B) of such section shall not apply).

(v) Special rules for clause (iii)(I)

(I) Certain general partners

The interest of a general partner in the partnership shall not be treated as failing to meet the 20-percent ownership requirements of clause (iii)(I) for any taxable year of the partnership if, for the taxable year of the partner in which such partnership taxable year ends, such part-

ner (and each corporation filing a consolidated return with such partner) had no ordinary income or loss from a section 988 transaction which is foreign currency gain or loss (as the case may be).

(II) Treatment of incentive compensation

For purposes of clause (iii)(I), any income allocable to a general partner as incentive compensation based on profits rather than capital shall not be taken into account in determining such partner's interest in the profits of the partnership.

(III) Treatment of tax-exempt partners

Except as provided in regulations, the interest of a partner in the partnership shall not be treated as failing to meet the 20-percent ownership requirements of clause (iii)(I) if none of the income of such partner from such partnership is subject to tax under this chapter (whether directly or through 1 or more pass-thru entities).

(IV) Look-thru rule

In determining whether the requirements of clause (iii)(I) are met with respect to any partnership, except to the extent provided in regulations, any interest in such partnership held by another partnership shall be treated as held proportionately by the partners in such other partnership.

(vi) Other special rules

For purposes of this subparagraph—

(I) Related persons

Interests in the partnership held by persons related to each other (within the meaning of sections 267(b) and 707(b)) shall be treated as held by 1 person.

(II) Predecessors

References to any partnership shall include a reference to any predecessor thereof.

(III) Inadvertent terminations

Rules similar to the rules of section 7704(e) shall apply.

(IV) Treatment of certain debt instruments

For purposes of clause (iii)(IV), any debt instrument which is a section 988 transaction shall be treated as a commodity.

(2) Booking date

The term ''booking date'' means—

(A) in the case of a transaction described in paragraph (1)(B)(i), the date of acquisition or on which the taxpayer becomes the obligor, or

(B) in the case of a transaction described in paragraph (1)(B)(ii), the date on which accrued or otherwise taken into account.

(3) Payment date

The term ''payment date'' means the date on which the payment is made or received.

(4) Debt instrument

The term ''debt instrument'' means a bond, debenture, note, or certificate or other evidence of indebtedness. To the extent provided in regulations, such term shall include preferred stock.

(5) Special rules where taxpayer takes or makes delivery

If the taxpayer takes or makes delivery in connection with any section 988 transaction described in paragraph (1)(B)(iii), any gain or loss (determined as if the taxpayer sold the contract, option, or instrument on the date on which he took or made delivery for its fair market value on such date) shall be recognized in the same manner as if such contract, option, or instrument were so sold.

(d) Treatment of 988 hedging transactions

(1) In general

To the extent provided in regulations, if any section 988 transaction is part of a 988 hedging transaction, all transactions which are part of such 988 hedging transaction shall be integrated and treated as a single transaction or otherwise treated consistently for purposes of this subtitle. For purposes of the preceding sentence, the determination of whether any transaction is a section 988 transaction shall be determined without regard to whether such transaction would otherwise be marked-to-market under section 475 or 1256 and such term shall not include any transaction with respect to which an election is made under subsection (a)(1)(B). Sections 475, 1092, and 1256 shall not apply to a transaction covered by this subsection.

(2) 988 hedging transaction

For purposes of paragraph (1), the term ''988 hedging transaction'' means any transaction—

(A) entered into by the taxpayer primarily—

(i) to manage risk of currency fluctuations with respect to property which is held or to be held by the taxpayer, or

(ii) to manage risk of currency fluctuations with respect to borrowings made or to be made, or obligations incurred or to be incurred, by the taxpayer, and

(B) identified by the Secretary or the taxpayer as being a 988 hedging transaction.

(e) Application to individuals

(1) In general

The preceding provisions of this section shall not apply to any section 988 transaction entered into by an individual which is a personal transaction.

(2) Exclusion for certain personal transactions

If—

(A) nonfunctional currency is disposed of by an individual in any transaction, and

(B) such transaction is a personal transaction,

no gain shall be recognized for purposes of this subtitle by reason of changes in exchange rates after such currency was acquired by such individual and before such disposition. The

preceding sentence shall not apply if the gain which would otherwise be recognized on the transaction exceeds $200.

(3) Personal transactions

For purposes of this subsection, the term ''personal transaction'' means any transaction entered into by an individual, except that such term shall not include any transaction to the extent that expenses properly allocable to such transaction meet the requirements of—

(A) section 162 (other than traveling expenses described in subsection (a)(2) thereof), or

(B) section 212 (other than that part of section 212 dealing with expenses incurred in connection with taxes).

(Added Pub. L. 99–514, title XII, §1261(a), Oct. 22, 1986, 100 Stat. 2587; amended Pub. L. 100–647, title I, §1012(v)(2)(A), (3), (4), (6)–(8), title VI, §6130(a), (b), Nov. 10, 1988, 102 Stat. 3529, 3530, 3717; Pub. L. 101–239, title VII, §7811(i)(7), Dec. 19, 1989, 103 Stat. 2410; Pub. L. 103–66, title XIII, §13223(b)(1), Aug. 10, 1993, 107 Stat. 484; Pub. L. 105–34, title XI, §1104(a), Aug. 5, 1997, 111 Stat. 967; Pub. L. 106–170, title V, §532(b)(3), Dec. 17, 1999, 113 Stat. 1930.)

AMENDMENTS

1999—Subsec. (d)(2)(A)(i), (ii). Pub. L. 106–170 substituted ''to manage'' for ''to reduce''.

1997—Subsec. (e). Pub. L. 105–34 amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: ''This section shall apply to section 988 transactions entered into by an individual only to the extent expenses properly allocable to such transactions meet the requirements of section 162 or 212 (other than that part of section 212 dealing with expenses incurred in connection with taxes).''

1993—Subsec. (d)(1). Pub. L. 103–66 substituted ''section 475 or 1256'' for ''section 1256'' and ''Sections 475, 1092, and 1256'' for ''Sections 1092 and 1256''.

1989—Subsec. (a). Pub. L. 101–239 inserted introductory provision ''Notwithstanding any other provision of this chapter—''.

1988—Subsec. (a)(3)(B)(i). Pub. L. 100–647, §1012(v)(8), inserted at end ''If an individual does not have a tax home (as so defined), the residence of such individual shall be the United States if such individual is a United States citizen or a resident alien and shall be a country other than the United States if such individual is not a United States citizen or a resident alien.''

Subsec. (a)(3)(B)(iii). Pub. L. 100–647, §1012(v)(7), added cl. (iii).

Subsec. (b)(3). Pub. L. 100–647, §1012(v)(3)(A), added par. (3).

Subsec. (c)(1)(B)(iii). Pub. L. 100–647, §6130(a), struck out ''unless such instrument would be marked to market under section 1256 if held on the last day of the taxable year'' after ''similar financial instrument''.

Pub. L. 100–647, §1012(v)(6), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''Entering into or acquiring any forward contract, futures contract, option, or similar financial instrument if such instrument is not marked to market at the close of the taxable year under section 1256.''

Subsec. (c)(1)(C)(i)(II). Pub. L. 100–647, §1012(v)(3)(B), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: ''for purposes of determining the foreign currency gain or loss from such transaction, paragraphs (1) and (2) of subsection (b) shall be applied by substituting 'acquisition date' for 'booking date' and 'disposition' for 'payment date'.''

Subsec. (c)(1)(D), (E). Pub. L. 100–647, §6130(b), added subpars. (D) and (E).

Subsec. (c)(2)(C). Pub. L. 100–647, §1012(v)(3)(C), struck out subpar. (C) which defined ''booking date'' in the case of a transaction described in par. (1)(B)(iii) as the date on which the position is entered into or acquired.

Subsec. (c)(3). Pub. L. 100–647, §1012(v)(3)(D), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The term 'payment date' means—

''(A) in the case of a transaction described in paragraph (1)(B)(i) or (ii), the date on which payment is made or received, or

''(B) in the case of a transaction described in paragraph (1)(B)(iii), the date payment is made or received or the date the taxpayer's rights with respect to the position are terminated.''

Subsec. (c)(5). Pub. L. 100–647, §1012(v)(2)(A), added par. (5).

Subsec. (d)(1). Pub. L. 100–647, §1012(v)(4), substituted ''this subtitle'' for ''this section''.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1104(b) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to all taxable years ending on or after Dec. 31, 1993, with special rules for taxpayers required to change accounting methods and for floor specialists and market makers, see section 13223(c) of Pub. L. 103–66, set out as an Effective Date note under section 475 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1012(v)(2)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending this section] shall not apply in any case in which the taxpayer takes or makes delivery before June 11, 1987.''

Amendment by section 1012(v)(3), (4), (6)–(8) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6130(d) of Pub. L. 100–647 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 1092 of this title] shall apply with respect to forward contracts, future contracts, options, and similar instruments entered into or acquired after October 21, 1988.

''(2) TIME FOR MAKING ELECTION.—The time for making any election under subparagraph (D) or (E) of section 988(c)(1) of the 1986 Code shall not expire before the date 30 days after the date of the enactment of this Act [Nov. 10, 1988].

''(3) TRANSITIONAL RULES.—

''(A) The requirements of subclause (IV) of section 988(c)(1)(E)(iii) of the 1986 Code (as added by subsection (b)) shall not apply to periods before the date of the enactment of this Act.

''(B) In the case of any partner in an existing partnership, the 20-percent ownership requirements of subclause (I) of such section 988(c)(1)(E)(iii) shall be treated as met during any period during which such partner does not own a percentage interest in the capital or profits of such partnership greater than

33⅓ percent (or, if lower, the lowest such percentage interest of such partner during any prior period after October 21, 1988, during which such partnership is in existence). For purposes of the preceding sentence, the term 'existing partnership' means any partnership if—

''(i) such partnership was in existence on October 21, 1988, and principally engaged on such date in buying and selling options, futures, or forwards with respect to commodities, or

''(ii) a registration statement was filed with respect to such partnership with the Securities and Exchange Commission on or before such date and such registration statement indicated that the principal activity of such partnership will consist of buying and selling instruments referred to in clause (i).''

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1261(e) of Pub. L. 99–514, set out as a note under section 985 of this title.

§ 989. Other definitions and special rules

(a) Qualified business unit

For purposes of this subpart, the term ''qualified business unit'' means any separate and clearly identified unit of a trade or business of a taxpayer which maintains separate books and records.

(b) Appropriate exchange rate

Except as provided in regulations, for purposes of this subpart, the term ''appropriate exchange rate'' means—

(1) in the case of an actual distribution of earnings and profits, the spot rate on the date such distribution is included in income,

(2) in the case of an actual or deemed sale or exchange of stock in a foreign corporation treated as a dividend under section 1248, the spot rate on the date the deemed dividend is included in income,

(3) in the case of any amounts included in income under section 951(a)(1)(A) or 1293(a), the average exchange rate for the taxable year of the foreign corporation, or

(4) in the case of any other qualified business unit of a taxpayer, the average exchange rate for the taxable year of such qualified business unit.

For purposes of the preceding sentence, any amount included in income under section 951(a)(1)(B) shall be treated as an actual distribution made on the last day of the taxable year for which such amount was so included.

(c) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subpart, including regulations—

(1) setting forth procedures to be followed by taxpayers with qualified business units using a net worth method of accounting before the enactment of this subpart,

(2) limiting the recognition of foreign currency loss on certain remittances from qualified business units,

(3) providing for the recharacterization of interest and principal payments with respect to obligations denominated in certain hyperinflationary currencies,

(4) providing for alternative adjustments to the application of section 905(c),

(5) providing for the appropriate treatment of related party transactions (including transactions between qualified business units of the same taxpayer), and

(6) setting forth procedures for determining the average exchange rate for any period.

(Added Pub. L. 99–514, title XII, §1261(a), Oct. 22, 1986, 100 Stat. 2590; amended Pub. L. 100–647, title I, §1012(v)(5), Nov. 10, 1988, 102 Stat. 3529; Pub. L. 103–66, title XIII, §13231(c)(4)(C), Aug. 10, 1993, 107 Stat. 499; Pub. L. 104–188, title I, §1501(b)(9), Aug. 20, 1996, 110 Stat. 1826; Pub. L. 105–34, title XI, §1102(b)(2), (3), Aug. 5, 1997, 111 Stat. 966; Pub. L. 108–357, title IV, §413(c)(17), Oct. 22, 2004, 118 Stat. 1508.)

REFERENCES IN TEXT

The enactment of this subpart, referred to in subsec. (c)(1), probably means the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

AMENDMENTS

2004—Subsec. (b)(3). Pub. L. 108–357 struck out '', 551(a),'' after ''section 951(a)(1)(A)''.

1997—Subsec. (b)(3), (4). Pub. L. 105–34, §1102(b)(3), struck out ''weighted'' before ''average exchange rate''.

Subsec. (c)(6). Pub. L. 105–34, §1102(b)(2), added par. (6).

1996—Subsec. (b). Pub. L. 104–188 substituted ''section 951(a)(1)(B)'' for ''subparagraph (B) or (C) of section 951(a)(1)'' in closing provisions.

1993—Subsec. (b). Pub. L. 103–66 substituted ''subparagraph (B) or (C) of section 951(a)(1)'' for ''section 951(a)(1)(B)'' in last sentence.

1988—Subsec. (b). Pub. L. 100–647 substituted in par. (3) ''section 951(a)(1)(A)'' for ''section 951(a)'' and inserted at end ''For purposes of the preceding sentence, any amount included in income under section 951(a)(1)(B) shall be treated as an actual distribution made on the last day of the taxable year for which such amount was so included.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to taxes paid or accrued in taxable years beginning after Dec. 31, 1997, see section 1102(c)(1) of Pub. L. 105–34, set out as a note under section 986 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years of foreign corporations beginning after Dec. 31, 1996, and to taxable years of United States shareholders within which or with which such taxable years of foreign corporations end, see section 1501(d) of Pub. L. 104–188, set out as a note under section 904 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years of foreign corporations beginning after Sept. 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 13231(e) of Pub. L. 103–66, set out as a note under section 951 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of

the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1261(e) of Pub. L. 99–514, set out as a note under section 985 of this title.

PART IV—DOMESTIC INTERNATIONAL SALES CORPORATIONS

Subpart		Sec.[1]
A.	Treatment of qualifying corporations ...	991
B.	Treatment of distributions to shareholders	995

AMENDMENTS

1971—Pub. L. 92–178, title V, § 501, Dec. 10, 1971, 85 Stat. 535, added part IV to subchapter N of chapter 1.

SUBPART A—TREATMENT OF QUALIFYING CORPORATIONS

Sec.
991. Taxation of a domestic international sales corporation.
992. Requirements of a domestic international sales corporation.
993. Definitions and special rules.[1]
994. Inter-company pricing rules.

§ 991. Taxation of a domestic international sales corporation

For purposes of the taxes imposed by this subtitle upon a DISC (as defined in section 992(a)), a DISC shall not be subject to the taxes imposed by this subtitle.

(Added Pub. L. 92–178, title V, § 501, Dec. 10, 1971, 85 Stat. 535; amended Pub. L. 105–206, title VI, § 6011(e)(1), July 22, 1998, 112 Stat. 818.)

AMENDMENTS

1998—Pub. L. 105–206 struck out ''except for the tax imposed by chapter 5'' before period at end.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates (section 1131(a) of Pub. L. 105–34), see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section 507 of title V of Pub. L. 92–178, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Except as provided in section 505 of this title [amending section 971 of this title and enacting provisions set out as a note under section 970 of this title], the amendments made by sections 501 through 504 of this title [enacting this section and sections 992 to 994, 995 to 997, and 6686 of this title and amending sections 246, 861, 901, 904, 922, 931, 1014, 1504, 6011, 6072, and 6501 of this title] shall apply with respect to taxable years ending after December 31, 1971, except that a corporation may not be a DISC (as defined in section 992(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], added by section 501 of this title) for any taxable year beginning before January 1, 1972.''

TRANSITION RULES FOR DISC'S

Pub. L. 98–369, div. A, title VIII, § 805(b), July 18, 1984, 98 Stat. 1001, as amended by Pub. L. 99–514, § 2, title XVIII, § 1876(h), (n), Oct. 22, 1986, 100 Stat. 2095, 2900, 2901, provided that:

''(1) CLOSE OF 1984 TAXABLE YEARS OF DISC'S.—

''(A) IN GENERAL.—For purposes of applying the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the taxable year of each DISC which begins before January 1, 1985, and which (but for this paragraph) would include January 1, 1985, shall close on December 31, 1984. For purposes of such Code, the requirements of section 992(a)(1)(B) of such Code (relating to percentage of qualified export assets on last day of the taxable year) shall not apply to any taxable year ending on December 31, 1984.

''(B) UNDERPAYMENTS OF ESTIMATED TAX.—To the extent provided in regulations prescribed by the Secretary of the Treasury or his delegate, no addition to tax shall be made under section 6654 or 6655 of such Code with respect to any underpayment of any installment required to be paid before April 13, 1985, to the extent the underpayment was created or increased by reason of subparagraph (A).

''(2) EXEMPTION OF ACCUMULATED DISC INCOME FROM TAX.—

''(A) IN GENERAL.—For purposes of applying the Internal Revenue Code of 1986 with respect to actual distributions made after December 31, 1984, by a DISC or former DISC which was a DISC on December 31, 1984, any accumulated DISC income of a DISC or former DISC (within the meaning of section 996(f)(1) of such Code) which is derived before January 1, 1985, shall be treated as previously taxed income (within the meaning of section 996(f)(2) of such Code) with respect to which there had previously been a deemed distribution to which section 996(e)(1) of such Code applied. For purposes of the preceding sentence, the term 'actual distribution' includes a distribution in liquidation, and the earnings and profits of any corporation receiving a distribution not included in gross income by reason of the preceding sentence shall be increased by the amount of such distribution.

''(B) EXCEPTION FOR DISTRIBUTION OF AMOUNTS PREVIOUSLY DISQUALIFIED.—Subparagraph (A) shall not apply to the distribution of any accumulated DISC income of a DISC or former DISC to which section 995(b)(2) of such Code applied by reason of any revocation or disqualification (other than a revocation which under regulations prescribed by the Secretary results solely from the provisions of this title [title VIII, §§ 801–805, of Pub. L. 98–369, see Effective Date of 1984 Amendment note set out under section 245 of this title].

''(C) TREATMENT OF DISTRIBUTION OF ACCUMULATED DISC INCOME RECEIVED BY COOPERATIVES.—In the case of any actual distribution received by an organization described in section 1381 of such Code and excluded from the gross income of such corporation by reason of subparagraph (A)—

''(i) such amount shall not be included in the gross income of any member of such organization when distributed in the form of a patronage dividend or otherwise, and

''(ii) no deduction shall be allowed to such organization by reason of any such distribution.

''(3) INSTALLMENT TREATMENT OF CERTAIN DEEMED DISTRIBUTIONS OF SHAREHOLDERS.—

''(A) IN GENERAL.—Notwithstanding section 995(b) of such Code, if a shareholder of a DISC elects the application of this paragraph, any qualified distribution shall be treated, for purposes of such Code, as received by such shareholder in 10 equal installments on the last day of each of the 10 taxable years of such shareholder which begins after the first taxable year of such shareholder beginning in 1984. The preceding sentence shall apply without regard to whether the DISC exists after December 31, 1984.

''(B) QUALIFIED DISTRIBUTION.—The term 'qualified distribution' means any distribution which a shareholder is deemed to have received by reason of section 995(b) of such Code with respect to income derived by the DISC in the first taxable year of the DISC beginning—

[1] Section numbers editorially supplied.

[1] So in original. Does not conform to section catchline.

''(i) in 1984, and

''(ii) after the date in 1984 on which the taxable year of such shareholder begins.

''(C) SHORTER PERIOD FOR INSTALLMENTS.—The Secretary of the Treasury or his delegate may by regulations provide for the election by any shareholder to be treated as receiving a qualified distribution over such shorter period as the taxpayer may elect.

''(D) ELECTIONS.—Any election under this paragraph shall be made at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe.

''(4) TREATMENT OF TRANSFERS FROM DISC TO FSC.—Except to the extent provided in regulations, section 367 of such Code shall not apply to transfers made before January 1, 1986 (or, if later, the date 1 year after the date on which the corporation ceases to be a DISC), to a FSC of qualified export assets (as defined in section 993(b) of such Code) held on August 4, 1983, by a DISC in a transaction described in section 351 or 368(a)(1) of such Code.

''(5) DEEMED TERMINATION OF A DISC.—Under regulations prescribed by the Secretary, if any controlled group of corporations of which a DISC is a member establishes a FSC, then any DISC which is a member of such group shall be treated as having terminated its DISC status.

''(6) DEFINITIONS.—For purposes of this subsection, the terms 'DISC' and 'former DISC' have the respective meanings given to such terms by section 992 of such Code.''

SPECIAL RULE FOR EXPORT TRADE CORPORATIONS

Pub. L. 98–369, div. A, title VIII, §805(c), July 18, 1984, 98 Stat. 1002, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—If, before January 1, 1985, any export trade corporation—

''(A) makes an election under [former] section 927(f)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] to be treated as a FSC, or

''(B) elects not to be treated as an export trade corporation with respect to taxable years beginning after December 31, 1984,

rules similar to the rules of paragraphs (2) and (4) of subsection (b) [section 805(b)(2) and (4) of Pub. L. 98–369, set out as a note above] shall apply to such export trade corporation.

''(2) TREATMENT OF TRANSFERS TO FSC.—In the case of any export trade corporation which—

''(A) makes an election described in paragraph (1), and

''(B) transfers before January 1, 1986, any portion of its property to a FSC in a transaction described in section 351 or 368(a)(1),

then, subject to such rules as the Secretary of the Treasury or his delegate may prescribe based on principles similar to the principles of section 505(a) and (b) of the Revenue Act of 1971 [Pub. L. 92–178, set out as a note under section 970 of this title], no income, gain, or loss shall be recognized on such transfer or on the distribution of any stock of the FSC received (or treated as received) in connection with such transfer.

''(3) EXPORT TRADE CORPORATION.—For purposes of this subsection, the term 'export trade corporation' has the meaning given such term by section 971 of the Internal Revenue Code of 1986.''

SUBMISSION OF ANNUAL REPORTS TO CONGRESS

Section 506 of Pub. L. 92–178, which directed, that commencing with calendar year 1972, the Secretary of the Treasury submit annual reports to Congress on the effect and operation of title V, §§501–507, of Pub. L. 92–178, was probably intended by Congress to be repealed by Pub. L. 98–369, div. A, title VIII, §804(b)(1), July 18, 1984, 98 Stat. 1000, which directed that section 806 of Pub. L. 98–178 relating to submission of annual reports to Congress be repealed. Section 804(b)(2) of Pub. L. 98–369 provided that the repeal is applicable to reports for calendar years after 1984.

§ 992. Requirements of a domestic international sales corporation

(a) Definition of "DISC" and "former DISC"

(1) DISC

For purposes of this title, the term ''DISC'' means, with respect to any taxable year, a corporation which is incorporated under the laws of any State and satisfies the following conditions for the taxable year:

(A) 95 percent or more of the gross receipts (as defined in section 993(f)) of such corporation consist of qualified export receipts (as defined in section 993(a)),

(B) the adjusted basis of the qualified export assets (as defined in section 993(b)) of the corporation at the close of the taxable year equals or exceeds 95 percent of the sum of the adjusted basis of all assets of the corporation at the close of the taxable year,

(C) such corporation does not have more than one class of stock and the par or stated value of its outstanding stock is at least $2,500 on each day of the taxable year, and

(D) the corporation has made an election pursuant to subsection (b) to be treated as a DISC and such election is in effect for the taxable year.

(2) Status as DISC after having filed a return as a DISC

The Secretary shall prescribe regulations setting forth the conditions under and the extent to which a corporation which has filed a return as a DISC for a taxable year shall be treated as a DISC for such taxable year for all purposes of this title, notwithstanding the fact that the corporation has failed to satisfy the conditions of paragraph (1).

(3) "Former DISC"

For purposes of this title, the term ''former DISC'' means, with respect to any taxable year, a corporation which is not a DISC for such year but was a DISC in a preceding taxable year and at the beginning of the taxable year has undistributed previously taxed income or accumulated DISC income.

(b) Election

(1) Election

(A) An election by a corporation to be treated as a DISC shall be made by such corporation for a taxable year at any time during the 90–day period immediately preceding the beginning of the taxable year, except that the Secretary may give his consent to the making of an election at such other times as he may designate.

(B) Such election shall be made in such manner as the Secretary shall prescribe and shall be valid only if all persons who are shareholders in such corporation on the first day of the first taxable year for which such election is effective consent to such election.

(2) Effect of election

If a corporation makes an election under paragraph (1), then the provisions of this part shall apply to such corporation for the taxable year of the corporation for which made and for all succeeding taxable years and shall apply to

each person who at any time is a shareholder of such corporation for all periods on or after the first day of the first taxable year of the corporation for which the election is effective.

(3) Termination of election

(A) Revocation

An election under this subsection made by any corporation may be terminated by revocation of such election for any taxable year of the corporation after the first taxable year of the corporation for which the election is effective. A termination under this paragraph shall be effective with respect to such election—

(i) for the taxable year in which made, if made at any time during the first 90 days of such taxable year, or

(ii) for the taxable year following the taxable year in which made, if made after the close of such 90 days,

and for all succeeding taxable years of the corporation. Such termination shall be made in such manner as the Secretary shall prescribe by regulations.

(B) Continued failure to be DISC

If a corporation is not a DISC for each of any 5 consecutive taxable years of the corporation for which an election under this subsection is effective, the election shall be terminated and not be in effect for any taxable year of the corporation after such 5th year.

(c) Distributions to meet qualification requirements

(1) In general

Subject to the conditions provided by paragraph (2), a corporation which for a taxable year does not satisfy a condition specified in paragraph (1)(A) (relating to gross receipts) or (1)(B) (relating to assets) of subsection (a) shall nevertheless be deemed to satisfy such condition for such year if it makes a pro rata distribution of property after the close of the taxable year to its shareholders (designated at the time of such distribution as a distribution to meet qualification requirements) with respect to their stock in an amount which is equal to—

(A) if the condition of subsection (a)(1)(A) is not satisfied, the portion of such corporation's taxable income attributable to its gross receipts which are not qualified export receipts for such year,

(B) if the condition of subsection (a)(1)(B) is not satisfied, the fair market value of those assets which are not qualified export assets on the last day of such taxable year, or

(C) if neither of such conditions is satisfied, the sum of the amounts required by subparagraphs (A) and (B).

(2) Reasonable cause for failure

The conditions under paragraph (1) shall be deemed satisfied in the case of a distribution made under such paragraph—

(A) if the failure to meet the requirements of subsection (a)(1)(A) or (B), and the failure to make such distribution prior to the date on which made, are due to reasonable cause; and

(B) the corporation pays, within the 30–day period beginning with the day on which such distribution is made, to the Secretary, if such corporation makes such distribution after the 15th day of the 9th months after the close of the taxable year, an amount determined by multiplying (i) the amount equal to 4½ percent of such distribution, by (ii) the number of its taxable years which begin after the taxable year with respect to which such distribution is made and before such distribution is made. For purposes of this title, any payment made pursuant to this paragraph shall be treated as interest.

(3) Certain distributions made within 8½ months after close of taxable year deemed for reasonable cause

A distribution made on or before the 15th day of the 9th month after the close of the taxable year shall be deemed for reasonable cause for purposes of paragraph (2)(A) if—

(A) at least 70 percent of the gross receipts of such corporation for such taxable year consist of qualified export receipts, and

(B) the adjusted basis of the qualified export assets held by the corporation on the last day of each month of the taxable year equals or exceeds 70 percent of the sum of the adjusted basis of all assets held by the corporation on such day.

(d) Ineligible corporations

The following corporations shall not be eligible to be treated as a DISC—

(1) a corporation exempt from tax by reason of section 501,

(2) a personal holding company (as defined in section 542),

(3) a financial institution to which section 581 applies,

(4) an insurance company subject to the tax imposed by subchapter L,

(5) a regulated investment company (as defined in section 851(a)),

(6) a China Trade Act corporation receiving the special deduction provided in section 941(a),[1] or

(7) an S corporation.

(e) Coordination with personal holding company provisions in case of certain produced film rents

If—

(1) a corporation (hereinafter in this subsection referred to as ''subsidiary'') was established to take advantage of the provisions of this part, and

(2) a second corporation (hereinafter in this subsection referred to as ''parent'') throughout the taxable year owns directly at least 80 percent of the stock of the subsidiary,

then, for purposes of applying subsection (d)(2) and section 541 (relating to personal holding company tax) to the subsidiary for the taxable year, there shall be taken into account under

[1] See References in Text note below.

section 543(a)(5) (relating to produced film rents) any interest in a film acquired by the parent and transferred to the subsidiary as if such interest were acquired by the subsidiary at the time it was acquired by the parent.

(Added Pub. L. 92–178, title V, §501, Dec. 10, 1971, 85 Stat. 535; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–354, §5(a)(32), Oct. 19, 1982, 96 Stat. 1695; Pub. L. 98–369, div. A, title VIII, §802(c)(1), July 18, 1984, 98 Stat. 999; Pub. L. 104–188, title I, §1616(b)(11), Aug. 20, 1996, 110 Stat. 1857; Pub. L. 110–172, §11(g)(16), Dec. 29, 2007, 121 Stat. 2491.)

REFERENCES IN TEXT

The China Trade Act, referred to in subsec. (d)(6), is act Sept. 19, 1922, ch. 346, 42 Stat. 849, as amended, which is classified generally to chapter 4 (§141 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 141 of Title 15 and Tables.

Section 941, referred to in subsec. (d)(6), was repealed by Pub. L. 94–455, title X, §1053(c), Oct. 4, 1976, 90 Stat. 1648.

AMENDMENTS

2007—Subsec. (a)(1)(C) to (E). Pub. L. 110–172 inserted ''and'' at end of subpar. (C), substituted period for '', and'' at end of subpar. (D), and struck out subpar. (E) which read as follows: ''such corporation is not a member of any controlled group of which a FSC is a member.''

1996—Subsec. (d)(3). Pub. L. 104–188 struck out ''or 593'' after ''section 581''.

1984—Subsec. (a)(1)(E). Pub. L. 98–369 added subpar. (E).

1982—Subsec. (d)(7). Pub. L. 97–354 substituted ''an S corporation'' for ''an electing small business corporation (as defined in section 1371(b))''.

1976—Subsecs. (a)(2), (b)(1), (3), (c)(2)(B). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary'' wherever appearing.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, see section 1616(c) of Pub. L. 104–188, set out as a note under section 593 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

§ 993. Definitions

(a) Qualified export receipts

(1) General rule

For purposes of this part, except as provided by regulations under paragraph (2), the qualified export receipts of a corporation are—

(A) gross receipts from the sale, exchange, or other disposition of export property,

(B) gross receipts from the lease or rental of export property, which is used by the lessee of such property outside the United States,

(C) gross receipts for services which are related and subsidiary to any qualified sale, exchange, lease, rental, or other disposition of export property by such corporation,

(D) gross receipts from the sale, exchange, or other disposition of qualified export assets (other than export property),

(E) dividends (or amounts includible in gross income under section 951) with respect to stock of a related foreign export corporation (as defined in subsection (e)),

(F) interest on any obligation which is a qualified export asset,

(G) gross receipts for engineering or architectural services for construction projects located (or proposed for location) outside the United States, and

(H) gross receipts for the performance of managerial services in furtherance of the production of other qualified export receipts of a DISC.

(2) Excluded receipts

The Secretary may under regulations designate receipts from the sale, exchange, lease, rental, or other disposition of export property, and from services, as not being receipts described in paragraph (1) if he determines that such sale, exchange, lease, rental, or other disposition, or furnishing of services—

(A) is for ultimate use in the United States;

(B) is accomplished by a subsidy granted by the United States or any instrumentality thereof;

(C) is for use by the United States or any instrumentality thereof where the use of such export property or services is required by law or regulation.

For purposes of this part, the term ''qualified export receipts'' does not include receipts from a corporation which is a DISC for its taxable year in which the receipts arise and which is a member of a controlled group (as defined in paragraph (3)) which includes the recipient corporation.

(3) Definition of controlled group

For purposes of this part, the term ''controlled group'' has the meaning assigned to the term ''controlled group of corporations'' by section 1563(a), except that the phrase ''more than 50 percent'' shall be substituted for the phrase ''at least 80 percent'' each place it appears therein, and section 1563(b) shall not apply.

(b) Qualified export assets

For purposes of this part, the qualified export assets of a corporation are—

(1) export property (as defined in subsection (c));

(2) assets used primarily in connection with the sale, lease, rental, storage, handling, transportation, packaging, assembly, or servicing of export property, or the performance of engineering or architectural services described in subparagraph (G) of subsection (a)(1) or managerial services in furtherance of the production of qualified export receipts described in subparagraphs (A), (B), (C), and (G) of subsection (a)(1);

(3) accounts receivable and evidences of indebtedness which arise by reason of transactions of such corporation or of another corporation which is a DISC and which is a member of a controlled group which includes such corporation described in subparagraph (A), (B), (C), (D), (G), or (H), of subsection (a)(1);

(4) money, bank deposits, and other similar temporary investments, which are reasonably necessary to meet the working capital requirements of such corporation;

(5) obligations arising in connection with a producer's loan (as defined in subsection (d));

(6) stock or securities of a related foreign export corporation (as defined in subsection (e));

(7) obligations issued, guaranteed, or insured, in whole or in part, by the Export-Import Bank of the United States or the Foreign Credit Insurance Association in those cases where such obligations are acquired from such Bank or Association or from the seller or purchaser of the goods or services with respect to which such obligations arose;

(8) obligations issued by a domestic corporation organized solely for the purpose of financing sales of export property pursuant to an agreement with the Export-Import Bank of the United States under which such corporation makes export loans guaranteed by such bank; and

(9) amounts (other than reasonable working capital) on deposit in the United States that are utilized during the period provided for in, and otherwise in accordance with, regulations prescribed by the Secretary to acquire other qualified export assets.

(c) Export property

(1) In general

For purposes of this part, the term ''export property'' means property—

(A) manufactured, produced, grown, or extracted in the United States by a person other than a DISC,

(B) held primarily for sale, lease, or rental, in the ordinary course of trade or business, by, or to, a DISC, for direct use, consumption, or disposition outside the United States, and

(C) not more than 50 percent of the fair market value of which is attributable to articles imported into the United States.

In applying subparagraph (C), the fair market value of any article imported into the United States shall be its appraised value as determined by the Secretary under section 402 of the Tariff Act of 1930 (19 U.S.C. 1401a) in connection with its importation.

(2) Excluded property

For purposes of this part, the term ''export property'' does not include—

(A) property leased or rented by a DISC for use by any member of a controlled group (as defined in subsection (a)(3)) which includes the DISC,

(B) patents, inventions, models, designs, formulas, or processes, whether or not patented, copyrights (other than films, tapes, records, or similar reproductions, for commercial or home use), goodwill, trademarks, trade brands, franchises, or other like property,

(C) products of a character with respect to which a deduction for depletion is allowable (including oil, gas, coal, or uranium products) under section 613 or 613A,

(D) products the export of which is prohibited or curtailed under section 7(a) of the Export Administration Act of 1979 to effectuate the policy set forth in paragraph (2)(C) of section 3 of such Act (relating to the protection of the domestic economy), or

(E) any unprocessed timber which is a softwood.

Subparagraph (C) shall not apply to any commodity or product at least 50 percent of the fair market value of which is attributable to manufacturing or processing, except that subparagraph (C) shall apply to any primary product from oil, gas, coal, or uranium. For purposes of the preceding sentence, the term ''processing'' does not include extracting or handling, packing, packaging, grading, storing, or transporting. For purposes of subparagraph (E), the term ''unprocessed timber'' means any log, cant, or similar form of timber.

(3) Property in short supply

If the President determines that the supply of any property described in paragraph (1) is insufficient to meet the requirements of the domestic economy, he may by Executive order designate the property as in short supply. Any property so designated shall be treated as property not described in paragraph (1) during the period beginning with the date specified in the Executive order and ending with the date specified in an Executive order setting forth the President's determination that the property is no longer in short supply.

(d) Producer's loans

(1) In general

An obligation, subject to the rules provided in paragraphs (2) and (3), shall be treated as arising out of a producer's loan if—

(A) the loan, when added to the unpaid balance of all other producer's loans made by the DISC, does not exceed the accumulated DISC income at the beginning of the month in which the loan is made;

(B) the obligation is evidenced by a note (or other evidence of indebtedness) with a stated maturity date not more than 5 years from the date of the loan;

(C) the loan is made to a person engaged in the United States in the manufacturing, production, growing, or extraction of export property determined without regard to subparagraph (C) or (D) of subsection (c)(2), (referred to hereinafter as the ''borrower''); and

(D) at the time of such loan it is designated as a producer's loan.

(2) Limitation

An obligation shall be treated as arising out of a producer's loan only to the extent that such loan, when added to the unpaid balance of all other producer's loans to the borrower outstanding at the time such loan is made, does

not exceed an amount determined by multiplying the sum of—

(A) the amount of the borrower's adjusted basis determined at the beginning of the borrower's taxable year in which the loan is made, in plant, machinery, and equipment, and supporting production facilities in the United States;

(B) the amount of the borrower's property held primarily for sale, lease, or rental, to customers in the ordinary course of trade or business, at the beginning of such taxable year; and

(C) the aggregate amount of the borrower's research and experimental expenditures (within the meaning of section 174) in the United States during all preceding taxable years beginning after December 31, 1971,

by the percentage which the borrower's receipts, during the 3 taxable years immediately preceding the taxable year (but not including any taxable year commencing prior to 1972) in which the loan is made, from the sale, lease, or rental outside the United States of property which would be export property (determined without regard to subparagraph (C) or (D) of subsection (c)(2)) if held by a DISC is of the gross receipts during such 3 taxable years from the sale, lease, or rental of property held by such borrower primarily for sale, lease, or rental to customers in the ordinary course of the trade or business of such borrower.

(3) Increased investment requirement

An obligation shall be treated as arising out of a producer's loan in a taxable year only to the extent that such loan, when added to the unpaid balance of all other producer's loans to the borrower made during such taxable year, does not exceed an amount equal to—

(A) the amount by which the sum of the adjusted basis of assets described in paragraph (2)(A) and (B) on the last day of the taxable year in which the loan is made exceeds the sum of the adjusted basis of such assets on the first day of such taxable year; plus

(B) the aggregate amount of the borrower's research and experimental expenditures (within the meaning of section 174) in the United States during such taxable year.

(4) Special limitation in the case of domestic film maker

(A) In general

In the case of a borrower who is a domestic film maker and who incurs an obligation to a DISC for the making of a film, and such DISC is engaged in the trade or business of selling, leasing, or renting films which are export property, the limitation described in paragraph (2) may be determined (to the extent provided under regulations prescribed by the Secretary) on the basis of—

(i) the sum of the amounts described in subparagraphs (A), (B), and (C) thereof plus reasonable estimates of all such amounts to be incurred at any time by the borrower with respect to films which are commenced within the taxable year in which the loan is made, and

(ii) the percentage which, based on the experience of producers of similar films, the annual receipts of such producers from the sale, lease, or rental of such films outside the United States is of the annual gross receipts of such producers from the sale, lease, or rental of such films.

(B) Domestic film maker

For purposes of this paragraph, a borrower is a domestic film maker with respect to a film if—

(i) such borrower is a United States person within the meaning of section 7701(a)(30), except that with respect to a partnership, all of the partners must be United States persons, and with respect to a corporation, all of its officers and at least a majority of its directors must be United States persons;

(ii) such borrower is engaged in the trade or business of making the film with respect to which the loan is made;

(iii) the studio, if any, used or to be used for the taking of photographs and the recording of sound incorporated into such film is located in the United States;

(iv) the aggregate playing time of portions of such film photographed outside the United States does not or will not exceed 20 percent of the playing time of such film; and

(v) not less than 80 percent of the total amount paid or to be paid for services performed in the making of such film is paid or to be paid to persons who are United States persons at the time such services are performed or consists of amounts which are fully taxable by the United States.

(C) Special rules for application of subparagraph (B)(v)

For purposes of clause (v) of subparagraph (B)—

(i) there shall not be taken into account any amount which is contingent upon receipts or profits of the film and which is fully taxable by the United States (within the meaning of clause (ii)); and

(ii) any amount paid or to be paid to a United States person, to a non-resident alien individual, or to a corporation which furnishes the services of an officer or employee to the borrower with respect to the making of a film, shall be treated as fully taxable by the United States only if the total amount received by such person, individual, officer, or employee for services performed in the making of such film is fully included in gross income for purposes of this chapter.

(e) Related foreign export corporation

In determining whether a corporation (hereinafter in this subsection referred to as ''the domestic corporation'') is a DISC—

(1) Foreign international sales corporation

A foreign corporation is a related foreign export corporation if—

(A) stock possessing more than 50 percent of the total combined voting power of all

classes of stock entitled to vote is owned directly by the domestic corporation,

(B) 95 percent or more of such foreign corporation's gross receipts for its taxable year ending with or within the taxable year of the domestic corporation consists of qualified export receipts described in subparagraphs (A), (B), (C), and (D) of subsection (a)(1) and interest on any obligation described in paragraphs (3) and (4) of subsection (b), and

(C) the adjusted basis of the qualified export assets (described in paragraphs (1), (2), (3), and (4) of subsection (b)) held by such foreign corporation at the close of such taxable year equals or exceeds 95 percent of the sum of the adjusted basis of all assets held by it at the close of such taxable year.

(2) Real property holding company

A foreign corporation is a related foreign export corporation if—

(A) stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote is owned directly by the domestic corporation, and

(B) its exclusive function is to hold real property for the exclusive use (under a lease or otherwise) of the domestic corporation.

(3) Associated foreign corporation

A foreign corporation is a related foreign export corporation if—

(A) less than 10 percent of the total combined voting power of all classes of stock entitled to vote of such foreign corporation is owned (within the meaning of section 1563 (d) and (e)) by the domestic corporation or by a controlled group of corporations (within the meaning of section 1563) of which the domestic corporation is a member, and

(B) the ownership of stock or securities in such foreign corporation by the domestic corporation is determined (under regulations prescribed by the Secretary) to be reasonably in furtherance of a transaction or transactions giving rise to qualified export receipts of the domestic corporation.

(f) Gross receipts

For purposes of this part, the term ''gross receipts'' means the total receipts from the sale, lease, or rental of property held primarily for sale, lease, or rental in the ordinary course of trade or business, and gross income from all other sources. In the case of commissions on the sale, lease, or rental of property, the amount taken into account for purposes of this part as gross receipts shall be the gross receipts on the sale, lease, or rental of the property on which such commissions arose.

(g) United States defined

For purposes of this part, the term ''United States'' includes the Commonwealth of Puerto Rico and the possessions of the United States.

(Added Pub. L. 92–178, title V, § 501, Dec. 10, 1971, 85 Stat. 538; amended Pub. L. 93–482, § 3(a), Oct. 26, 1974, 88 Stat. 1456; Pub. L. 94–12, title VI, § 603(a), Mar. 29, 1975, 89 Stat. 64; Pub. L. 94–455, title XI, § 1101(b), (c), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1658, 1834; Pub. L. 96–39, title II, § 202(c)(2), July 26, 1979, 93 Stat. 202; Pub. L. 96–72, § 22(c), Sept. 29, 1979, 93 Stat. 535; Pub. L. 98–369, div. A, title VIII, § 802(c)(2), July 18, 1984, 98 Stat. 999; Pub. L. 103–66, title XIII, § 13239(b), Aug. 10, 1993, 107 Stat. 509.)

REFERENCES IN TEXT

Sections 3(2)(C) and 7(a) of the Export Administration Act of 1979, referred to in subsec. (c)(2)(D), are classified, respectively, to sections 2402(2)(C) and 2406(a) of the Appendix to Title 50, War and National Defense.

AMENDMENTS

1993—Subsec. (c)(2). Pub. L. 103–66, § 13239(b)(2), inserted at end ''For purposes of subparagraph (E), the term 'unprocessed timber' means any log, cant, or similar form of timber.''

Subsec. (c)(2)(E). Pub. L. 103–66, § 13239(b)(1), added subpar. (E).

1984—Subsec. (a)(3). Pub. L. 98–369 substituted ''the term 'controlled group of corporations' by'' for ''such term by''.

1979—Subsec. (c)(1). Pub. L. 96–39 substituted ''of the Tariff Act of 1930 (19 U.S.C. 1401a)'' for ''402a of the Tariff Act of 1930 (19 U.S.C., sec. 1401a or 1402)''.

Subsec. (c)(2)(D). Pub. L. 96–72 substituted ''7(a) of the Export Administration Act of 1979'' for ''4(b) of the Export Administration Act of 1969 (50 U.S.C. App. 2403(b))'' and ''paragraph (2)(C)'' for ''paragraph (2)(A)''.

1976—Subsecs. (a)(2), (b)(9). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c). Pub. L. 94–455, §§ 1101(b), 1906(b)(13)(A), in par. (1) in provisions following subpar. (C), struck out ''or his delegate'' after ''Secretary'', in par. (2)(B) ''or'' after ''like property'', and in par. (2)(C), substituted ''under section 613 or 613A'' for ''under section 611'' after ''uranium products)''.

Subsec. (d)(1)(C). Pub. L. 94–455, § 1101(c)(1), inserted ''determined without regard to subparagraph (C) or (D) of subsection (c)(2)'' after ''export property''.

Subsec. (d)(2). Pub. L. 94–455, § 1101(c)(2), inserted ''(determined without regard to subparagraph (C) or (D) of subsection (c)(2))'' after ''would be export property''.

Subsecs. (d)(4)(A), (e)(3)(B). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

1975—Subsec. (c)(2). Pub. L. 94–12 added subpars. (C) and (D) and provisions following subpar. (D).

1974—Subsec. (b)(3). Pub. L. 93–482 inserted ''or of another corporation which is a DISC and which is a member of a controlled group which includes such corporation'' after ''such corporation''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to sales, exchanges, or other dispositions after Aug. 10, 1993, see section 13239(e) of Pub. L. 103–66, set out as a note under section 865 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1979 AMENDMENTS

Amendment by Pub. L. 96–72 effective upon the expiration of the Export Administration Act of 1969, which terminated on Sept. 30, 1979, or upon any prior date which the Congress by concurrent resolution or the President by proclamation designated, see References in Text note set out under section 2418 of Appendix to Title 50, War and National Defense.

Amendment by Pub. L. 96–39 effective Jan. 1, 1981, with provision for an earlier effective date under certain circumstances, see section 204 of Pub. L. 96–39, set out as a note under section 1401a of Title 19, Customs Duties.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1101(g)(2) of Pub. L. 94–455 provided that: ''The amendments made by subsection (b) [amending this section] shall apply to sales, exchanges, and other dispositions made after March 18, 1975, in taxable years ending after such date.''

Section 1101(g)(3) of Pub. L. 94–455 provided that: ''The amendments made by subsections (c) and (f) [amending this section] shall apply to taxable years ending after March 18, 1975.''

EFFECTIVE DATE OF 1975 AMENDMENT

Section 603(b) of Pub. L. 94–12, as amended by section 1101(f) of Pub. L. 94–455; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsection (a) [amending this section] shall apply to sales, exchanges, and other dispositions made after March 18, 1975, in taxable years ending after such date.

''(2) BINDING CONTRACT.—The amendments made by subsection (a) [amending this section] shall not apply to sales, exchanges, and other dispositions made after March 18, 1975, but before March 19, 1980, if such sales, exchanges, and other dispositions are made pursuant to a fixed contract. The term 'fixed contract' means a contract which was, on March 18, 1975, and is at all times thereafter binding on the DISC or a taxpayer which was a member of the same controlled group (within the meaning of section 993(a)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) as the DISC, which was entered into after the date on which the DISC qualified as a DISC and the DISC and the taxpayer became members of the same controlled group, and under which the price and quantity of the products sold, exchanged, or otherwise disposed of cannot be increased.''

EFFECTIVE DATE OF 1974 AMENDMENT

Section 3(b) of Pub. L. 93–482 provided that: ''The amendment made by subsection (a) [amending this section] applies to taxable years beginning after December 31, 1973. The amendment shall, at the election of the taxpayer made within 90 days after the date of enactment of this Act [Oct. 26, 1974], also apply to any taxable year beginning after December 31, 1971, and before January 1, 1974.''

§ 994. Inter-company pricing rules

(a) In general

In the case of a sale of export property to a DISC by a person described in section 482, the taxable income of such DISC and such person shall be based upon a transfer price which would allow such DISC to derive taxable income attributable to such sale (regardless of the sales price actually charged) in an amount which does not exceed the greatest of—

(1) 4 percent of the qualified export receipts on the sale of such property by the DISC plus 10 percent of the export promotion expenses of such DISC attributable to such receipts,

(2) 50 percent of the combined taxable income of such DISC and such person which is attributable to the qualified export receipts on such property derived as the result of a sale by the DISC plus 10 percent of the export promotion expenses of such DISC attributable to such receipts, or

(3) taxable income based upon the sale price actually charged (but subject to the rules provided in section 482).

(b) Rules for commissions, rentals, and marginal costing

The Secretary shall prescribe regulations setting forth—

(1) rules which are consistent with the rules set forth in subsection (a) for the application of this section in the case of commissions, rentals, and other income, and

(2) rules for the allocation of expenditures in computing combined taxable income under subsection (a)(2) in those cases where a DISC is seeking to establish or maintain a market for export property.

(c) Export promotion expenses

For purposes of this section, the term ''export promotion expenses'' means those expenses incurred to advance the distribution or sale of export property for use, consumption, or distribution outside of the United States, but does not include income taxes. Such expenses shall also include freight expenses to the extent of 50 percent of the cost of shipping export property aboard airplanes owned and operated by United States persons or ships documented under the laws of the United States in those cases where law or regulations does not require that such property be shipped aboard such airplanes or ships.

(Added Pub. L. 92–178, title V, § 501, Dec. 10, 1971, 85 Stat. 543; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

SUBPART B—TREATMENT OF DISTRIBUTIONS TO SHAREHOLDERS

Sec.
995. Taxation of DISC income to shareholders.
996. Rules for allocation in the case of distributions and losses.
997. Special subchapter C rules.

§ 995. Taxation of DISC income to shareholders

(a) General rule

A shareholder of a DISC or former DISC shall be subject to taxation on the earnings and profits of a DISC as provided in this chapter, but subject to the modifications of this subpart.

(b) Deemed distributions

(1) Distributions in qualified years

A shareholder of a DISC shall be treated as having received a distribution taxable as a dividend with respect to his stock in an amount which is equal to his pro rata share of the sum (or, if smaller, the earnings and profits for the taxable year) of—

(A) the gross interest derived during the taxable year from producer's loans,

(B) the gain recognized by the DISC during the taxable year on the sale or exchange of property, other than property which in the hands of the DISC is a qualified export asset, previously transferred to it in a transaction in which gain was not recognized in whole or in part, but only to the extent that the transferor's gain on the previous transfer was not recognized,

(C) the gain (other than the gain described in subparagraph (B)) recognized by the DISC during the taxable year on the sale or exchange of property (other than property

which in the hands of the DISC is stock in trade or other property described in section 1221(a)(1)) previously transferred to it in a transaction in which gain was not recognized in whole or in part, but only to the extent that the transferor's gain on the previous transfer was not recognized and would have been treated as ordinary income if the property has been sold or exchanged rather than transferred to the DISC,

(D) 50 percent of the taxable income of the DISC for the taxable year attributable to military property,

(E) the taxable income of the DISC attributable to qualified export receipts of the DISC for the taxable year which exceed $10,000,000,

(F) the sum of—

(i) in the case of a shareholder which is a C corporation, one-seventeenth of the excess of the taxable income of the DISC for the taxable year, before reduction for any distributions during the year, over the sum of the amounts deemed distributed for the taxable year under subparagraphs (A), (B), (C), (D), and (E),

(ii) an amount equal to 16/17 of the excess referred to in clause (i), multiplied by the international boycott factor determined under section 999, and

(iii) any illegal bribe, kickback, or other payment (within the meaning of section 162(c)) paid by or on behalf of the DISC directly or indirectly to an official, employee, or agent in fact of a government, and

(G) the amount of foreign investment attributable to producer's loans (as defined in subsection (d)) of a DISC for the taxable year.

Distributions described in this paragraph shall be deemed to be received on the last day of the taxable year of the DISC in which the income was derived. In the case of a distribution described in subparagraph (G), earnings and profits for the taxable year shall include accumulated earnings and profits.

(2) Distributions upon disqualification

(A) A shareholder of a corporation which revoked its election to be treated as a DISC or failed to satisfy the conditions of section 992(a)(1) for a taxable year shall be deemed to have received (at the time specified in subparagraph (B)) a distribution taxable as a dividend equal to his pro rata share of the DISC income of such corporation accumulated during the immediately preceding consecutive taxable years for which the corporation was a DISC.

(B) Distributions described in subparagraph (A) shall be deemed to be received in equal installments on the last day of each of the 10 taxable years of the corporation following the year of the termination or disqualification described in subparagraph (A) (but in no case over more than twice the number immediately preceding consecutive taxable years during which the corporation was a DISC).

(3) Taxable income attributable to military property

(A) In general

For purposes of paragraph (1)(D), taxable income of a DISC for the taxable year attributable to military property shall be determined by only taking into account—

(i) the gross income of the DISC for the taxable year which is attributable to military property, and

(ii) the deductions which are properly apportioned or allocated to such income.

(B) Military property

For purposes of subparagraph (A), the term ''military property'' means any property which is an arm, ammunition, or implement of war designated in the munitions list published pursuant to section 38 of the Arms Export Control Act (22 U.S.C. 2778).

(4) Aggregation of qualified export receipts

(A) In general

For purposes of applying paragraph (1)(E), all DISC's which are members of the same controlled group shall be treated as a single corporation.

(B) Allocation

The dollar amount under paragraph (1)(E) shall be allocated among the DISC's which are members of the same controlled group in a manner provided in regulations prescribed by the Secretary.

(c) Gain on disposition of stock in a DISC

(1) In general

If—

(A) a shareholder disposes of stock in a DISC or former DISC any gain recognized on such disposition shall be included in gross income as a dividend to the extent provided in paragraph (2), or

(B) stock of a DISC or former DISC is disposed of in a transaction in which the separate corporate existence of the DISC or former DISC is terminated other than by a mere change in place of organization, however effected, any gain realized on the disposition of such stock in the transaction shall be recognized notwithstanding any other provision of this title to the extent provided in paragraph (2) and to the extent so recognized shall be included in gross income as a dividend.

(2) Amount included

The amounts described in paragraph (1) shall be included in gross income as a dividend to the extent of the accumulated DISC income of the DISC or former DISC which is attributable to the stock disposed of and which was accumulated in taxable years of such corporation during the period or periods the stock disposed of was held by the shareholder which disposed of such stock.

(d) Foreign investment attributable to DISC earnings

For the purposes of this part—

(1) In general

The amount of foreign investment attributable to producer's loans of a DISC for a taxable year shall be the smallest of—

(A) the net increase in foreign assets by members of the controlled group (as defined in section 993(a)(3)) which includes the DISC,

(B) the actual foreign investment by domestic members of such group, or

(C) the amount of outstanding producer's loans by such DISC to members of such controlled group.

(2) Net increase in foreign assets

The term ''net increase in foreign assets'' of a controlled group means the excess of—

(A) the amount incurred by such group to acquire assets (described in section 1231(b)) located outside the United States over,

(B) the sum of—

(i) the depreciation with respect to assets of such group located outside the United States;

(ii) the outstanding amount of stock or debt obligations of such group issued after December 31, 1971, to persons other than the United States persons or any member of such group;

(iii) one-half the earnings and profits of foreign members of such group and foreign branches of domestic members of such group;

(iv) one-half the royalties and fees paid by foreign members of such group to domestic members of such group; and

(v) the uncommitted transitional funds of the group as determined under paragraph (4).

For purposes of this paragraph, assets which are qualified export assets of a DISC (or would be qualified export assets if owned by a DISC) shall not be taken into account. Amounts described in this paragraph (other than in subparagraphs (B)(ii) and (v)) shall be taken into account only to the extent they are attributable to taxable years beginning after December 31, 1971.

(3) Actual foreign investment

The term ''actual foreign investment'' by domestic members of a controlled group means the sum of—

(A) contributions to capital of foreign members of the group by domestic members of the group after December 31, 1971,

(B) the outstanding amount of stock or debt obligations of foreign members of such group (other than normal trade indebtedness) issued after December 31, 1971, to domestic members of such group,

(C) amounts transferred by domestic members of the group after the December 31, 1971, to foreign branches of such members, and

(D) one-half the earnings and profits of foreign members of such group and foreign branches of domestic members of such group for taxable years beginning after December 31, 1971.

As used in this subsection, the term ''domestic member'' means a domestic corporation which is a member of a controlled group (as defined in section 993(a)(3)), and the term ''foreign member'' means a foreign corporation which is a member of such a controlled group.

(4) Uncommitted transitional funds

The uncommitted transitional funds of the group shall be an amount equal to the sum of—

(A) the excess of—

(i) the amount of stock or debt obligations of domestic members of such group outstanding on December 31, 1971, and issued on or after January 1, 1968, to persons other than United States persons or any members of such group, but only to the extent the taxpayer establishes that such amount constitutes a long-term borrowing for purposes of the foreign direct investment program, over

(ii) the net amount of actual foreign investment by domestic members of such group during the period that such stock or debt obligations have been outstanding; and

(B) the amount of liquid assets to the extent not included in subparagraph (A) held by foreign members of such group and foreign branches of domestic members of such group on October 31, 1971, in excess of their reasonable working capital needs on such date.

For purposes of this paragraph, the term ''liquid assets'' means money, bank deposits (not including time deposits), and indebtedness of 2 years or less to maturity on the date of acquisition; and the actual foreign investment shall be determined under paragraph (3) without regard to the date in subparagraph (A) of such paragraph and without regard to subparagraph (D) of such paragraph.

(5) Special rule

Under regulations prescribed by the Secretary the determinations under this subsection shall be made on a cumulative basis with proper adjustments for amounts previously taken into account.

(e) Certain transfers of DISC assets

If—

(1) a corporation owns, directly or indirectly, all of the stock of a subsidiary and a DISC,

(2) the subsidiary has been engaged in the active conduct of a trade or business (within the meaning of section 355(b)) throughout the 5–year period ending on the date of the transfer and continues to be so engaged thereafter, and

(3) during the taxable year of the subsidiary in which its stock is transferred and its preceding taxable year, such trade or business gives rise to qualified export receipts of the subsidiary and the DISC,

then, under such terms and conditions as the Secretary by regulations shall prescribe, transfers of assets, stock, or both, will be deemed to be a reorganization within the meaning of section 368, a transaction to which section 355 applies, an exchange of stock to which section 351 applies, or a combination thereof. The preceding sentence shall apply only to the extent that the transfer or transfers involved are for the purpose of preventing the separation of the owner-

ship of the stock in the DISC from the ownership of the trade or business which (during the base period) produced the export gross receipts of the DISC.

(f) Interest on DISC-related deferred tax liability

(1) In general

A shareholder of a DISC shall pay for each taxable year interest in an amount equal to the product of—

(A) the shareholder's DISC-related deferred tax liability for such year, and

(B) the base period T-bill rate.

(2) Shareholder's DISC-related deferred tax liability

For purposes of this subsection—

(A) In general

The term ''shareholder's DISC-related deferred tax liability'' means, with respect to any taxable year of a shareholder of a DISC, the excess of—

(i) the amount which would be the tax liability of the shareholder for the taxable year if the deferred DISC income of such shareholder for such taxable year were included in gross income as ordinary income, over

(ii) the actual amount of the tax liability of such shareholder for such taxable year.

Determinations under the preceding sentence shall be made without regard to carrybacks to such taxable year.

(B) Adjustments for losses, credits, and other items

The Secretary shall prescribe regulations which provide such adjustments—

(i) to the accounts of the DISC, and

(ii) to the amount of any carryover or carryback of the shareholder,

as may be necessary or appropriate in the case of net operating losses, credits, and carryovers, and carrybacks of losses and credits.

(C) Tax liability

The term ''tax liability'' means the amount of the tax imposed by this chapter for the taxable year reduced by credits allowable against such tax (other than credits allowable under sections 31, 32, and 34).

(3) Deferred DISC income

For purposes of this subsection—

(A) In general

The term ''deferred DISC income'' means, with respect to any taxable year of a shareholder, the excess of—

(i) the shareholder's pro rata share of accumulated DISC income (for periods after 1984) of the DISC as of the close of the computation year, over

(ii) the amount of the distributions-in-excess-of-income for the taxable year of the DISC following the computation year.

(B) Computation year

For purposes of applying subparagraph (A) with respect to any taxable year of a shareholder, the computation year is the taxable year of the DISC which ends with (or within) the taxable year of the shareholder which precedes the taxable year of the shareholder for which the amount of deferred DISC income is being determined.

(C) Distributions-in-excess-of-income

For purposes of subparagraph (A), the term ''distributions-in-excess-of-income'' means, with respect to any taxable year of a DISC, the excess (if any) of—

(i) the amount of actual distributions to the shareholder out of accumulated DISC income, over

(ii) the shareholder's pro rata share of the DISC income for such taxable year.

(4) Base period T-bill rate

For purposes of this subsection, the term ''base period T-bill rate'' means the annual rate of interest determined by the Secretary to be equivalent to the average of the 1-year constant maturity Treasury yields, as published by the Board of Governors of the Federal Reserve System, for the 1-year period ending on September 30 of the calendar year ending with (or of the most recent calendar year ending before) the close of the taxable year of the shareholder.

(5) Short years

The Secretary shall prescribe such regulations as may be necessary for the application of this subsection to short years of the DISC, the shareholder, or both.

(6) Payment and assessment and collection of interest

The interest accrued during any taxable year which a shareholder is required to pay under paragraph (1) shall be treated, for purposes of this title, as interest payable under section 6601 and shall be paid by the shareholder at the time the tax imposed by this chapter for such taxable year is required to be paid.

(7) DISC includes former DISC

For purposes of this subsection, the term ''DISC'' includes a former DISC.

(g) Treatment of tax-exempt shareholders

If any organization described in subsection (a)(2) or (b)(2) of section 511 (or any other person otherwise subject to tax under section 511) is a shareholder in a DISC—

(1) any amount deemed distributed to such shareholder under subsection (b),

(2) any actual distribution to such shareholder which under section 996 is treated as out of accumulated DISC income, and

(3) any gain which is treated as a dividend under subsection (c),

shall be treated as derived from the conduct of an unrelated trade or business (and the modifications of section 512(b) shall not apply). The rules of the preceding sentence shall apply also for purposes of determining any such shareholder's DISC-related deferred tax liability under subsection (f).

(Added Pub. L. 92–178, title V, § 501, Dec. 10, 1971, 85 Stat. 544; amended Pub. L. 94–455, title X,

§§ 1063, 1065(a)(2), title XI, § 1101(a), (d)(1), title XIX, §§ 1901(b)(3)(K), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1650, 1654, 1655, 1658, 1793, 1834; Pub. L. 95–600, title VII, §§ 701(u)(12)(B), 703(i)(1), (2), Nov. 6, 1978, 92 Stat. 2918, 2940; Pub. L. 98–369, div. A, title I, § 68(d), title VIII, § 802(a), (b), July 18, 1984, 98 Stat. 588, 997, 999; Pub. L. 99–514, title XVIII, § 1876(b)(2), (g), (p)(1), Oct. 22, 1986, 100 Stat. 2898, 2900, 2902; Pub. L. 100–647, title I, §§ 1006(e)(15), 1012(bb)(6)(A), Nov. 10, 1988, 102 Stat. 3402, 3535; Pub. L. 101–239, title VII, § 7811(i)(12), Dec. 19, 1989, 103 Stat. 2411; Pub. L. 106–170, title V, § 532(c)(2)(R), Dec. 17, 1999, 113 Stat. 1931; Pub. L. 106–554, § 1(a)(7) [title III, §§ 307(c), 319(12)], Dec. 21, 2000, 114 Stat. 2763, 2763A–636, 2763A–646; Pub. L. 107–147, title IV, § 417(15), Mar. 9, 2002, 116 Stat. 56.)

AMENDMENTS

2002—Subsec. (b)(3)(B). Pub. L. 107–147 substituted ''Arms Export Control Act'' for ''International Security Assistance and Arms Export Control Act of 1976''.

2000—Subsec. (b)(3)(B). Pub. L. 106–554, § 1(a)(7) [title III, § 319(12)], substituted ''section 38 of the International Security Assistance and Arms Export Control Act of 1976 (22 U.S.C. 2778)'' for ''the Military Security Act of 1954 (22 U.S.C. 1934)''.

Subsec. (f)(4). Pub. L. 106–554, § 1(a)(7) [title III, § 307(c)], substituted ''the average of the 1-year constant maturity Treasury yields, as published by the Board of Governors of the Federal Reserve System, for the 1-year period'' for ''the average investment yield of United States Treasury bills with maturities of 52 weeks which were auctioned during the 1-year period''.

1999—Subsec. (b)(1)(C). Pub. L. 106–170 substituted ''1221(a)(1)'' for ''1221(1)''.

1989—Subsec. (g). Pub. L. 101–239 substituted ''section 511 (or any other person otherwise subject to tax under section 511)'' for ''section 511'' in introductory provisions.

1988—Subsec. (c)(1). Pub. L. 100–647, § 1006(e)(15), struck out subpar. (C) and last sentence which read as follows:

> ''(C) a shareholder distributes, sells, or exchanges stock in a DISC or former DISC in a transaction to which section 311, 336, or 337 applies, then an amount equal to the excess of the fair market value of such stock over its adjusted basis in the hands of the shareholder shall, notwithstanding any provision of this title, be included in gross income of the shareholder as a dividend to the extent provided in paragraph (2).

Subparagraph (C) shall not apply if the person receiving the stock in the disposition has a holding period for the stock which includes the period for which the stock was held by the shareholder disposing of such stock.''

Subsec. (g). Pub. L. 100–647, § 1012(bb)(6)(A), added subsec. (g).

1986—Subsec. (b)(1)(F)(i). Pub. L. 99–514, § 1876(b)(2)(A), inserted ''in the case of a shareholder which is a C corporation,''.

Subsec. (b)(1)(F)(ii). Pub. L. 99–514, § 1876(b)(2)(B), substituted ''16/17 of the excess referred to in clause (i),'' for ''the amount determined under clause (i)''.

Subsec. (f)(4) to (6). Pub. L. 99–514, § 1876(p)(1), redesignated as pars. (4), (5), and (6), respectively, former par. (3) relating to base period T-bill rate, (4) relating to short years, and (5) relating to payment and assessment and collection of interest.

Subsec. (f)(7). Pub. L. 99–514, § 1876(g), added par. (7).

1984—Subsec. (b)(1)(E). Pub. L. 98–369, § 802(b)(1), substituted ''of the DISC attributable to qualified export receipts of the DISC for the taxable year which exceed $10,000,000'' for ''for the taxable year attributable to base period export gross receipts (as defined in subsection (e))''.

Subsec. (b)(1)(F)(i). Pub. L. 98–369, § 68(d), substituted ''one-seventeenth'' for ''one/half''.

Subsec. (b)(4). Pub. L. 98–369, § 802(b)(2), added par. (4).

Subsec. (e). Pub. L. 98–369, § 802(a)(1), (2), redesignated subsec. (g) as (e). Former subsec. (e), which related to definitions and special rules relating to computation of taxable income attributable to base period export gross receipts, was struck out.

Subsec. (f). Pub. L. 98–369, § 802(a)(1), (3), added subsec. (f). Former subsec. (f), which related to small DISCs, was struck out.

Subsec. (g). Pub. L. 98–369, § 802(a)(2), redesignated subsec. (g) as (e).

1978—Subsec. (b)(1). Pub. L. 95–600, § 703(i)(1), (2), substituted in subpar. (G) ''subsection (d)'' for ''subsection (D)'', and in provisions following subpar. (G) ''income'' for ''gross income (taxable income in the case of subparagraph (D))'' and ''subparagraph (G)'' for ''subparagraph (E)''.

Subsec. (c)(1). Pub. L. 95–600, § 701(u)(12)(B), inserted provision relating to application of subpar. (C).

1976—Subsec. (b)(1)(C). Pub. L. 94–455, § 1901(b)(3)(K), substituted ''ordinary income'' for ''gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231'' after ''treated as''.

Subsec. (b)(1)(D), (E). Pub. L. 94–455, § 1101(a)(1), added subpars. (D) and (E) and redesignated former subpars. (D) and (E) as (F) and (G), respectively.

Subsec. (b)(1)(F). Pub. L. 94–455, §§ 1063(a), 1065(a)(2), 1101(a)(1), redesignated former subpar. (D) as (F), made existing provision cl. (i), added cls. (ii) and (iii), and substituted ''(C), (D), and (E)'' for ''(C)'' after ''(B), and''.

Subsec. (b)(1)(G). Pub. L. 94–455, § 1101(a)(1), redesignated former subpar. (E) as (G).

Subsec. (b)(2)(B). Pub. L. 94–455, § 1101(a)(2), substituted ''more than twice the number'' for ''more than the number'' after ''no case over''.

Subsec. (b)(3). Pub. L. 94–455, § 1101(a)(3), added par. (3).

Subsec. (c). Pub. L. 94–455, § 1101(d)(1), redesignated existing provisions as pars. (1) and (2) and, as redesignated, added subpar. (1)(C).

Subsec. (d)(5). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsecs. (e) to (g). Pub. L. 94–455, § 1101(a)(4), added subsecs. (e) to (g).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1012(bb)(6)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to taxable years beginning after December 31, 1987.''

Amendment by section 1006(e)(15) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 68(d) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1984, see section 68(e)(1) of Pub. L. 98–369, set out as a note under section 291 of this title.

Amendment by section 802(a), (b) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(u)(12)(C) of Pub. L. 95–600 provided that: ''The amendment made by subparagraph (B) [amending this section] shall apply to dispositions made after December 31, 1976, in taxable years ending after such date.''

Amendment by section 703(i)(1), (2) of Pub. L. 95–600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1063(a) of Pub. L. 94–455 applicable to participation in or cooperation with an international boycott more than 30 days after Oct. 4, 1976, with special provisions for existing contracts, see section 1066(a) of Pub. L. 94–455, set out as a note under section 908 of this title.

Amendment by section 1065(a)(2) of Pub. L. 94–455 applicable to payments described in section 162(c) of this title made more than 30 days after Oct. 4, 1976, see section 1066(b) of Pub. L. 94–455, set out as a note under section 952 of this title.

Section 1101(g)(1) of Pub. L. 94–455 provided that: ''The amendments made by subsections (a) and (e) [amending this section and section 996 of this title] shall apply to taxable years beginning after December 31, 1975.''

Section 1101(g)(4) of Pub. L. 94–455, as amended by Pub. L. 95–600, title VII, § 701(u)(12)(A), Nov. 6, 1978, 92 Stat. 2918, provided that: ''The amendments made by subsection (d) [amending this section and section 751 of this title] shall apply to sales, exchanges, or other dispositions after December 31, 1976, in taxable years ending after such date.''

Amendment by section 1901(b)(3)(K) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

PRORATION OF BASE PERIOD IN CASE OF FIXED CONTRACTS

Section 1101(g)(5) of Pub. L. 94–455, as amended by Pub. L. 95–600, title VII, § 703(i)(4), Nov. 6, 1978, 92 Stat. 2940; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''For purposes of determining adjusted base period export gross receipts (under section 995(e)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended by this section), if any DISC has export gross receipts from export property by reason of paragraph (2) of section 603(b) of the Tax Reduction Act of 1975, [set out as an Effective Date of 1975 Amendment note under section 993 of this title], then the export gross receipts of such DISC for the taxable years of the base period shall be increased by an amount equal to the amount of gross receipts which were excluded from export gross receipts during each taxable year of the base period by reason of the last sentence of section 995(e)(3) of such Code multiplied by a fraction, the numerator of which is the amount of the gross receipts in the taxable year which are export gross receipts by reason of paragraph (2) of section 603(b) of the Tax Reduction Act of 1975 and the denominator of which is the amount of total gross receipts which are excluded from export gross receipts in the taxable year by reason of subparagraph (C) or (D) of paragraph (2) of section 993(c) (determined without regard to paragraph (2) of section 603(b) of the Tax Reduction Act of 1975).''

§ 996. Rules for allocation in the case of distributions and losses

(a) Rules for actual distributions and certain deemed distributions

(1) In general

Any actual distribution (other than a distribution described in paragraph (2) or to which section 995(c) applies) to a shareholder by a DISC (or former DISC) which is made out of earnings and profits shall be treated as made—

(A) first, out of previously taxed income, to the extent thereof,

(B) second, out of accumulated DISC income, to the extent thereof, and

(C) finally, out of other earnings and profits.

(2) Qualifying distributions

Any actual distribution made pursuant to section 992(c) (relating to distributions to meet qualification requirements), and any deemed distribution pursuant to section 995(b)(1)(G) (relating to foreign investment attributable to producer's loans), shall be treated as made—

(A) first, out of accumulated DISC income, to the extent thereof,

(B) second, out of the earnings and profits described in paragraph (1)(C), to the extent thereof, and

(C) finally, out of previously taxed income.

In the case of any amount of any actual distribution to a C corporation made pursuant to section 992(c) which is required to satisfy the condition of section 992(a)(1)(A), the preceding sentence shall apply to 16/17ths of such amount and paragraph (1) shall apply to the remaining 1/17th of such amount.

(3) Exclusion from gross income

Amounts distributed out of previously taxed income shall be excluded by the distributee from gross income except for gains described in subsection (e)(2), and shall reduce the amount of the previously taxed income.

(b) Ordering rules for losses

If for any taxable year a DISC, or a former DISC, incurs a deficit in earnings and profits, such deficit shall be chargeable—

(1) first, to earnings and profits described in subsection (a)(1)(C), to the extent thereof,

(2) second, to accumulated DISC income, to the extent thereof, and

(3) finally, to previously taxed income, except that a deficit in earnings and profits shall not be applied against accumulated DISC income which has been determined is to be deemed distributed to the shareholders (pursu-

ant to section 995(b)(2)(A)) as a result of a revocation of election or other disqualification.

(c) Priority of distributions

Any actual distribution made during a taxable year shall be treated as being made subsequent to any deemed distribution made during such year. Any actual distribution made pursuant to section 992(c) (relating to distributions to meet qualification requirements) shall be treated as being made before any other actual distributions during the taxable year.

(d) Subsequent effect of previous disposition of DISC stock

(1) Shareholder previously taxed income adjustment

If—

(A) gain with respect to a share of stock of a DISC or former DISC is treated under section 995(c) as a dividend or as ordinary income, and

(B) any person subsequently receives an actual distribution made out of accumulated DISC income, or a deemed distribution made pursuant to section 995(b)(2), with respect to such share,

such person shall treat such distribution in the same manner as a distribution from previously taxed income to the extent that (i) the gain referred to in subparagraph (A), exceeds (ii) any other amounts with respect to such share which were treated under this paragraph as made from previously taxed income. In applying this paragraph with respect to a share of stock in a DISC or former DISC, gain on the acquisition of such share by the DISC or former DISC or gain on a transaction prior to such acquisition shall not be considered gain referred to in subparagraph (A).

(2) Corporate adjustment upon redemption

If section 995(c) applies to a redemption of stock in a DISC or former DISC, the accumulated DISC income shall be reduced by an amount equal to the gain described in section 995(c) with respect to such stock which is (or has been) treated as ordinary income, except to the extent distributions with respect to such stock have been treated under paragraph (1).

(e) Adjustment to basis

(1) Additions to basis

Amounts representing deemed distributions as provided in section 995(b) shall increase the basis of the stock with respect to which the distribution is made.

(2) Reductions of basis

The portion of an actual distribution made out of previously taxed income shall reduce the basis of the stock with respect to which it is made, and to the extent that it exceeds the adjusted basis of such stock, shall be treated as gain from the sale or exchange of property. In the case of stock includible in the gross estate of a decedent for which an election is made under section 2032 (relating to alternate valuation), this paragraph shall not apply to any distribution made after the date of the decedent's death and before the alternate valuation date provided by section 2032.

(f) Definition of divisions of earnings and profits

For purposes of this part:

(1) DISC income

The earnings and profits derived by a corporation during a taxable year in which such corporation is a DISC, before reduction for any distributions during the year, but reduced by amounts deemed distributed under section 995(b)(1), shall constitute the DISC income for such year. The earnings and profits of a DISC for a taxable year include any amounts includible in such DISC's gross income pursuant to section 951(a) for such year. Accumulated DISC income shall be reduced by deemed distributions under section 995(b)(2).

(2) Previously taxed income

Earnings and profits deemed distributed under section 995(b) for a taxable year shall constitute previously taxed income for such year.

(3) Other earnings and profits

The earnings and profits for a taxable year which are described in neither paragraph (1) nor (2) shall constitute the other earnings and profits for such year.

(g) Effectively connected income

In the case of a shareholder who is a nonresident alien individual or a foreign corporation, trust, or estate, gains referred to in section 995(c) and all distributions out of accumulated DISC income including deemed distributions shall be treated as gains and distributions which are effectively connected with the conduct of a trade or business conducted through a permanent establishment of such shareholder within the United States and which are derived from sources within the United States.

(Added Pub. L. 92–178, title V, §501 Dec. 10, 1971, 85 Stat. 547; amended Pub. L. 94–455, title XI, §1101(e), title XIX, §§1901(b)(3)(I), Oct. 4, 1976, 90 Stat. 1659, 1793; Pub. L. 95–600, title VII, §703(i)(3), Nov. 6, 1978, 92 Stat. 2940; Pub. L. 98–369, div. A, title VIII, §801(d)(10), July 18, 1984, 98 Stat. 997; Pub. L. 99–514, title XVIII, §1876(k), Oct. 22, 1986, 100 Stat. 2900.)

AMENDMENTS

1986—Subsec. (a)(2). Pub. L. 99–514 inserted last sentence and struck out former last sentence which read as follows: ''In the case of any amount of any actual distribution made pursuant to section 992(c) which is required to satisfy the condition of section 992(a)(1)(A), the preceding sentence shall apply to one-half of such amount, and paragraph (1) shall apply to the remaining one-half of such amount.''

1984—Subsec. (g). Pub. L. 98–369 inserted ''and which are derived from sources within the United States''.

1978—Subsec. (a)(2). Pub. L. 95–600 substituted ''section (b)(1)(G)'' for ''section (b)(1)(E)''.

1976—Subsec. (a)(2). Pub. L. 94–455, §1101(e), inserted at end ''In the case of any amount of any actual distribution made pursuant to section 992(c) which is required to satisfy the condition of section 992(a)(1)(A), the preceding sentence shall apply to one-half of such amount, and paragraph (1) shall apply to the remaining one-half of such amount.''

Subsec. (d). Pub. L. 94–455, §1901(b)(3)(I), substituted ''ordinary income'' for ''gain from the sale or exchange of property which is not a capital asset'' in par. (1)(A) after ''dividend or as'' and, in par. (2), after ''treated as''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to distributions on or after June 22, 1984, see section 805(a)(3) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1101(e) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, see section 1101(g)(1) of Pub. L. 94–455, set out as a note under section 905 of this title.

Amendment by section 1901(b)(3)(I) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 997. Special subchapter C rules

For purposes of applying the provisions of subchapter C of chapter 1, any distribution in property to a corporation by a DISC or former DISC which is made out of previously taxed income or accumulated DISC income shall—

(1) be treated as a distribution in the same amount as if such distribution of property were made to an individual, and

(2) have a basis, in the hands of the recipient corporation, equal to the amount determined under paragraph (1).

(Added Pub. L. 92–178, title V, § 501, Dec. 10, 1971, 85 Stat. 549.)

PART V—INTERNATIONAL BOYCOTT DETERMINATIONS

Sec.
999. Reports by taxpayers; determinations.
[1000. Reserved.]

AMENDMENTS

1976—Pub. L. 94–455, title X, § 1064(a), Oct. 4, 1976, 90 Stat. 1650, added part heading and analysis of sections.

§ 999. Reports by taxpayers; determinations

(a) International boycott reports by taxpayers

(1) Report required

If any person, or a member of a controlled group (within the meaning of section 993(a)(3)) which includes that person, has operations in, or related to—

(A) a country (or with the government, a company, or a national of a country) which is on the list maintained by the Secretary under paragraph (3), or

(B) any other country (or with the government, a company, or a national of that country) in which such person or such member had operations during the taxable year if such person (or, if such person is a foreign corporation, any United States shareholder of that corporation) knows or has reason to know that participation in or co-operation with an international boycott is required as a condition of doing business within such country or with such government, company, or national,

that person or shareholder (within the meaning of section 951(b)) shall report such operations to the Secretary at such time and in such manner as the Secretary prescribes, except that in the case of a foreign corporation such report shall be required only of a United States shareholder (within the meaning of such section) of such corporation.

(2) Participation and cooperation; request therefor

A taxpayer shall report whether he, a foreign corporation of which he is a United States shareholder, or any member of a controlled group which includes the taxpayer or such foreign corporation has participated in or cooperated with an international boycott at any time during the taxable year, or has been requested to participate in or cooperate with such a boycott, and, if so, the nature of any operation in connection with which there was participation in or cooperation with such boycott (or there was a request to participate or cooperate).

(3) List to be maintained

The Secretary shall maintain and publish not less frequently than quarterly a current list of countries which require or may require participation in or cooperation with an international boycott (within the meaning of subsection (b)(3)).

(b) Participation in or cooperation with an international boycott

(1) General rule

If the person or a member of a controlled group (within the meaning of section 993(a)(3)) which includes the person participates in or cooperates with an international boycott in the taxable year, all operations of the taxpayer or such group in that country and in any other country which requires participation in or cooperation with the boycott as a condition of doing business within that country, or with the government, a company, or a national of that country, shall be treated as operations in connection with which such participation or cooperation occurred, except to the extent that the person can clearly demonstrate that a particular operation is a clearly separate and identifiable operation in connection with which there was no participation in or cooperation with an international boycott.

(2) Special rule

(A) Nonboycott operations

A clearly separate and identifiable operation of a person, or of a member of the con-

trolled group (within the meaning of section 993(a)(3)) which includes that person, in or related to any country within the group of countries referred to in paragraph (1) shall not be treated as an operation in or related to a group of countries associated in carrying out an international boycott if the person can clearly demonstrate that he, or that such member, did not participate in or cooperate with the international boycott in connection with that operation.

(B) Separate and identifiable operations

A taxpayer may show that different operations within the same country, or operations in different countries, are clearly separate and identifiable operations.

(3) Definition of boycott participation and cooperation

For purposes of this section, a person participates in or cooperates with an international boycott if he agrees—

(A) as a condition of doing business directly or indirectly within a country or with the government, a company, or a national of a country—

(i) to refrain from doing business with or in a country which is the object of the boycott or with the government, companies, or nationals of that country;

(ii) to refrain from doing business with any United States person engaged in trade in a country which is the object of the boycott or with the government, companies, or nationals of that country;

(iii) to refrain from doing business with any company whose ownership or management is made up, all or in part, of individuals of a particular nationality, race, or religion, or to remove (or refrain from selecting) corporate directors who are individuals of a particular nationality, race, or religion; or

(iv) to refrain from employing individuals of a particular nationality, race, or religion; or

(B) as a condition of the sale of a product to the government, a company, or a national of a country, to refrain from shipping or insuring that product on a carrier owned, leased, or operated by a person who does not participate in or cooperate with an international boycott (within the meaning of subparagraph (A)).

(4) Compliance with certain laws

This section shall not apply to any agreement by a person (or such member)—

(A) to meet requirements imposed by a foreign country with respect to an international boycott if United States law or regulations, or an Executive Order, sanctions participation in, or cooperation with, that international boycott,

(B) to comply with a prohibition on the importation of goods produced in whole or in part in any country which is the object of an international boycott, or

(C) to comply with a prohibition imposed by a country on the exportation of products obtained in such country to any country which is the object of an international boycott.

(c) International boycott factor

(1) International boycott factor

For purposes of sections 908(a), 952(a)(3), and 995(b)(1)(F)(ii), the international boycott factor is a fraction, determined under regulations prescribed by the Secretary, the numerator of which reflects the world-wide operations of a person (or, in the case of a controlled group (within the meaning of section 993(a)(3)) which includes that person, of the group) which are operations in or related to a group of countries associated in carrying out an international boycott in or with which that person or a member of that controlled group has participated or cooperated in the taxable year, and the denominator of which reflects the world-wide operations of that person or group.

(2) Specifically attributable taxes and income

If the taxpayer clearly demonstrates that the foreign taxes paid and income earned for the taxable year are attributable to specific operations, then, in lieu of applying the international boycott factor for such taxable year, the amount of the credit disallowed under section 908(a), the addition to subpart F income under section 952(a)(3), and the amount of deemed distribution under section 995(b)(1)(F)(ii) for the taxable year, if any, shall be the amount specifically attributable to the operations in which there was participation in or cooperation with an international boycott under section 999(b)(1).

(3) World-wide operations

For purposes of this subsection, the term ''world-wide operations'' means operations in or related to countries other than the United States.

(d) Determination with respect to particular operations

Upon a request made by the taxpayer, the Secretary shall issue a determination with respect to whether a particular operation of a person, or of a member of a controlled group which includes that person, constitutes participation in or cooperation with an international boycott. The Secretary may issue such a determination in advance of such operation in cases which are of such a nature that an advance determination is possible and appropriate under the circumstances. If the request is made before the operation is commenced, or before the end of a taxable year in which the operation is carried out, the Secretary may decline to issue such a determination before close of the taxable year.

(e) Participation or cooperation by related persons

If a person controls (within the meaning of section 304(c)) a corporation—

(1) participation in or cooperation with an international boycott by such corporation shall be presumed to be such participation or cooperation by such person, and

(2) participation in or cooperation with such a boycott by such person shall be presumed to be such participation or cooperation by such corporation.

(f) Willful failure to report

Any person (within the meaning of section 6671(b)) required to report under this section who willfully fails to make such report shall, in addition to other penalties provided by law, be fined not more than $25,000, imprisoned for not more than one year, or both.

(Added Pub. L. 94–455, title X, § 1064(a), Oct. 4, 1976, 90 Stat. 1650; amended Pub. L. 95–600, title VII, § 703(h)(2), (3), Nov. 6, 1978, 92 Stat. 2940; Pub. L. 98–369, div. A, title VIII, § 802(c)(3), July 18, 1984, 98 Stat. 999; Pub. L. 99–514, title XVIII, § 1876(p)(3), Oct. 22, 1986, 100 Stat. 2902; Pub. L. 106–519, § 4(5), Nov. 15, 2000, 114 Stat. 2433; Pub. L. 108–357, title I, § 101(b)(8), Oct. 22, 2004, 118 Stat. 1423.)

AMENDMENTS

2004—Subsec. (c)(1). Pub. L. 108–357 struck out ''941(a)(5),'' after ''sections 908(a),''.

2000—Subsec. (c)(1). Pub. L. 106–519 inserted ''941(a)(5),'' after ''908(a),''.

1986—Subsec. (c)(1), (2). Pub. L. 99–514 repealed section 802(c)(3) of Pub. L. 98–369 thereby restoring former text. See 1984 Amendment note below.

1984—Subsec. (c)(1), (2). Pub. L. 98–369 which substituted ''995(b)(1)(F)(i)'' for ''995(b)(1)(F)(ii)'' wherever appearing was repealed. See 1986 Amendment note above.

1978—Subsec. (c)(1). Pub. L. 95–600, § 703(h)(2), substituted ''995(b)(1)(F)(ii)'' for ''995(b)(3)''.

Subsec. (c)(2). Pub. L. 95–600, § 703(h)(3), substituted ''995(b)(1)(F)(ii)'' for ''995(b)(1)(D)(ii)''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to transactions after Dec. 31, 2004, see section 101(c) of Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–519 applicable to transactions after Sept. 30, 2000, with special rules relating to existing foreign sales corporations, see section 5 of Pub. L. 106–519, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of this title.

EFFECTIVE DATE

Section applicable to participation in or cooperation with an international boycott more than 30 days after Oct. 4, 1976, with special provisions for existing contracts, see section 1066(a) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 908 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

REPORTS BY THE SECRETARY

Pub. L. 94–455, title X, § 1067, Oct. 4, 1976, 90 Stat. 1654, as amended by Pub. L. 98–369, div. A, title IV, § 441(c), July 18, 1984, 98 Stat. 815, which required the Secretary to transmit a report every four years to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate relating to reports filed under section 999(a) of this title and describing the administration of provisions relating to international boycott activity, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 141 of House Document No. 103–7.

[§ 1000. Reserved]

Subchapter O—Gain or Loss on Disposition of Property

Part
I. Determination of amount of and recognition of gain or loss.
II. Basis rules of general application.
III. Common nontaxable exchanges.
IV. Special rules.
[V. Repealed.]
[VI. Repealed.][1]
VII. Wash sales; straddles.

AMENDMENTS

1995—Pub. L. 104–7, § 2(c), Apr. 11, 1995, 109 Stat. 93, struck out item for part V ''Changes to effectuate F.C.C. policy''.

1990—Pub. L. 101–508, title XI, § 11801(b)(9), Nov. 5, 1990, 104 Stat. 1388–522, struck out item for part VIII ''Distributions pursuant to Bank Holding Company Act''.

1981—Pub. L. 97–34, title V, § 501(d)(3), Aug. 13, 1981, 95 Stat. 327, substituted ''Wash sales; straddles'' for ''Wash sales of stock or securities'' in item for part VII.

1976—Pub. L. 94–455, title XIX, § 1901(b)(32)(I), Oct. 4, 1976, 90 Stat. 1800, struck out item for part IX ''Distributions pursuant to orders enforcing the antitrust laws''.

Pub. L. 94–452, § 2(c), Oct. 2, 1976, 90 Stat. 1512, struck out ''of 1956'' after ''Bank Holding Company Act'' in item for part VIII.

1962—Pub. L. 87–403, § 1(b), Feb. 2, 1962, 76 Stat. 5, added item for part IX.

1956—Act May 9, 1956, ch. 240, § 10(b), 70 Stat. 146, added item for part VIII.

PART I—DETERMINATION OF AMOUNT OF AND RECOGNITION OF GAIN OR LOSS

Sec.
1001. Determination of amount of and recognition of gain or loss.
[1002. Repealed.]

AMENDMENTS

1976—Pub. L. 94–455, title XIX, § 1901(b)(28)(B)(ii), Oct. 4, 1976, 90 Stat. 1799, struck out item 1002 ''Recognition of gain or loss''.

§ 1001. Determination of amount of and recognition of gain or loss

(a) Computation of gain or loss

The gain from the sale or other disposition of property shall be the excess of the amount real-

[1] Part repealed by Pub. L. 109–135 without corresponding amendment of subchapter analysis.

ized therefrom over the adjusted basis provided in section 1011 for determining gain, and the loss shall be the excess of the adjusted basis provided in such section for determining loss over the amount realized.

(b) Amount realized

The amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received. In determining the amount realized—

(1) there shall not be taken into account any amount received as reimbursement for real property taxes which are treated under section 164(d) as imposed on the purchaser, and

(2) there shall be taken into account amounts representing real property taxes which are treated under section 164(d) as imposed on the taxpayer if such taxes are to be paid by the purchaser.

(c) Recognition of gain or loss

Except as otherwise provided in this subtitle, the entire amount of the gain or loss, determined under this section, on the sale or exchange of property shall be recognized.

(d) Installment sales

Nothing in this section shall be construed to prevent (in the case of property sold under contract providing for payment in installments) the taxation of that portion of any installment payment representing gain or profit in the year in which such payment is received.

(e) Certain term interests

(1) In general

In determining gain or loss from the sale or other disposition of a term interest in property, that portion of the adjusted basis of such interest which is determined pursuant to section 1014, 1015, or 1041 (to the extent that such adjusted basis is a portion of the entire adjusted basis of the property) shall be disregarded.

(2) Term interest in property defined

For purposes of paragraph (1), the term ''term interest in property'' means—

(A) a life interest in property,

(B) an interest in property for a term of years, or

(C) an income interest in a trust.

(3) Exception

Paragraph (1) shall not apply to a sale or other disposition which is a part of a transaction in which the entire interest in property is transferred to any person or persons.

(Aug. 16, 1954, ch. 736, 68A Stat. 295; Pub. L. 91–172, title II, §231(c)(2), title V, §516(a), Dec. 30, 1969, 83 Stat. 579, 646; Pub. L. 94–455, title XIX, §1901(a)(121), Oct. 4, 1976, 90 Stat. 1784; Pub. L. 95–600, title VII, §702(c)(9), Nov. 6, 1978, 92 Stat. 2928; Pub. L. 96–223, title IV, §401(a), Apr. 2, 1980, 94 Stat. 299; Pub. L. 98–369, div. A, title IV, §421(b)(4), July 18, 1984, 98 Stat. 794; Pub. L. 103–66, title XIII, §13213(a)(2)(E), Aug. 10, 1993, 107 Stat. 474.)

AMENDMENTS

1993—Subsec. (f). Pub. L. 103–66 struck out heading and text of subsec. (f). Text read as follows: ''For treatment of certain expenses incident to the sale of a residence which were deducted as moving expenses by the taxpayer or his spouse under section 217(a), see section 217(e).''

1984—Subsec. (e)(1). Pub. L. 98–369 inserted reference to section 1041.

1980—Subsec. (e)(1). Pub. L. 96–223 repealed the amendment made by Pub. L. 95–600. See 1978 Amendment note below.

1978—Subsec. (e)(1). Pub. L. 95–600 inserted reference to section 1023. See Repeals note below.

1976—Subsec. (c). Pub. L. 94–455 substituted provision recognizing the entire amount of gain or loss, except as otherwise provided, for provision referring to section 1002 for the determination of the extent of gain or loss to be recognized.

1969—Subsec. (e). Pub. L. 91–172, §516(a), added subsec. (e).

Subsec. (f). Pub. L. 91–172, §231(c)(2), added subsec. (f).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to expenses incurred after Dec. 31, 1993, see section 13213(e) of Pub. L. 103–66 set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to transfers after July 18, 1984, in taxable years ending after such date, subject to election to have amendment apply to transfers after 1983 or to transfers pursuant to existing decrees, see section 421(d) of Pub. L. 98–369, set out as an Effective Date note under section 1041 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT AND REVIVAL OF PRIOR LAW

Amendment by Pub. L. 96–223 (repealing section 702(c)(9) of Pub. L. 95–600 and the amendment made thereby, which had amended this section) applicable in respect of decedents dying after Dec. 31, 1976, and except for certain elections, this title to be applied and administered as if those repealed provisions had not been enacted, see section 401(b), (e) of Pub. L. 96–223, set out as a note under section 1023 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective as if included in the amendments and additions made by, and the appropriate provisions of Pub. L. 94–455, see section 702(c)(10) of Pub. L. 95–600, set out as a note under section 1014 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 231(c)(2) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 231(d) of Pub. L. 91–172, set out as a note under section 217 of this title.

Section 516(d) of Pub. L. 91–172, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) The amendment made by subsection (a) [amending this section] shall apply to sales or other dispositions after October 9, 1969.

''(2) The amendment made by subsection (b) [amending section 1231 of this title] shall apply to taxable years beginning after December 31, 1969.

''(3) The amendments made by subsection (c) [enacting section 1253 and amending sections 162 and 1016 of this title] shall apply to transfers after December 31, 1969, except that section 1253(d)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (c) shall, at the election of the taxpayer (made at such time and in such manner as the Secretary or his delegate may by regulations prescribe), apply to

transfers before January 1, 1970, but only with respect to payments made in taxable years ending after December 31, 1969, and beginning before January 1, 1980.''

REPEALS

Pub. L. 95–600, § 702(c)(9), cited as a credit to this section, and the amendment made thereby, were repealed by Pub. L. 96–223, title IV, § 401(a), 94 Stat. 299, resulting in the text of this section reading as it read prior to enactment of section 702(c)(9). See Effective Date of 1980 Amendment and Revival of Prior Law note set out above.

[§ 1002. Repealed. Pub. L. 94–455, title XIX, § 1901(b)(28)(B)(i), Oct. 4, 1976, 90 Stat. 1799]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 295, related to the recognition of the entire amount of gain or loss determined under section 1001 on the sale or exchange of property.

EFFECTIVE DATE OF REPEAL

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

PART II—BASIS RULES OF GENERAL APPLICATION

Sec.

1011. Adjusted basis for determining gain or loss.
1012. Basis of property—cost.
1013. Basis of property included in inventory.
1014. Basis of property acquired from a decedent.
1015. Basis of property acquired by gifts and transfers in trust.
1016. Adjustments to basis.
1017. Discharge of indebtedness.
[1018. Repealed.]
1019. Property on which lessee has made improvements.
[1020. Repealed.]
1021. Sale of annuities.
[1022. Repealed.]
1023. Cross references.
[1024. Renumbered.]

AMENDMENT OF ANALYSIS

For termination of amendment by section 304 of Pub. L. 111–312, see Effective and Termination Dates of 2010 Amendment note set out under section 121 of this title.

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note set out under section 1 of this title.

AMENDMENTS

2010—Pub. L. 111–312, title III, §§ 301(a), 304, Dec. 17, 2010, 124 Stat. 3300, 3304, temporarily amended analysis to read as if amendment by Pub. L. 107–16, § 542(e)(6), had never been enacted. See 2001 Amendment note below.

2001—Pub. L. 107–16, title V, § 542(e)(6), title IX, § 901, June 7, 2001, 115 Stat. 86, 150, temporarily added item 1022.

1980—Pub. L. 96–589, § 6(h)(2), Dec. 24, 1980, 94 Stat. 3410, struck out item 1018 ''Adjustments of capital structure before September 22, 1938''.

Pub. L. 96–223, title IV, § 401(a), Apr. 2, 1980, 94 Stat. 299, repealed section 2005(e)(1) of Pub. L. 94–455 and the amendment made thereby. See 1986 Amendment note below.

1978—Pub. L. 95–600, title V, § 515(5), Nov. 6, 1978, 92 Stat. 2884, substituted ''December 31, 1979'' for ''December 31, 1976'' in item 1023.

1976—Pub. L. 94–455, title XX, § 2005(e)(1), Oct. 4, 1976, 90 Stat. 1878, which added item 1023 and redesignated former item 1023 as 1024, was repealed by Pub. L. 96–223, § 401(a). See section 401(b), (e) of Pub. L. 96–223, set out as an Effective Date of 1980 Amendments and Revival of Prior Law note under section 1023 of this title.

Pub. L. 94–455, title XIX, § 1901(b)(29)(B), (30)(C), Oct. 4, 1976, 90 Stat. 1799, struck out item 1020 ''Election in respect of depreciation, etc., allowed before 1952'', and item 1022 ''Increase in basis with respect to certain foreign personal holding company stock or securities''.

1964—Pub. L. 88–272, title II, § 225(j)(3), Feb. 26, 1964, 78 Stat. 93, added item 1022 and redesignated former item 1022 as 1023.

§ 1011. Adjusted basis for determining gain or loss

(a) General rule

The adjusted basis for determining the gain or loss from the sale or other disposition of property, whenever acquired, shall be the basis (determined under section 1012 or other applicable sections of this subchapter and subchapters C (relating to corporate distributions and adjustments), K (relating to partners and partnerships), and P (relating to capital gains and losses)), adjusted as provided in section 1016.

(b) Bargain sale to a charitable organization

If a deduction is allowable under section 170 (relating to charitable contributions) by reason of a sale, then the adjusted basis for determining the gain from such sale shall be that portion of the adjusted basis which bears the same ratio to the adjusted basis as the amount realized bears to the fair market value of the property.

(Aug. 16, 1954, ch. 736, 68A Stat. 296; Pub. L. 91–172, title II, § 201(f), Dec. 30, 1969, 83 Stat. 564.)

AMENDMENTS

1969—Pub. L. 91–172 redesignated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to sales made after Dec. 19, 1969, see section 201(g)(6) of Pub. L. 91–172, set out as a note under section 170 of this title.

§ 1012. Basis of property—cost

(a) In general

The basis of property shall be the cost of such property, except as otherwise provided in this subchapter and subchapters C (relating to corporate distributions and adjustments), K (relating to partners and partnerships), and P (relating to capital gains and losses).

(b) Special rule for apportioned real estate taxes

The cost of real property shall not include any amount in respect of real property taxes which are treated under section 164(d) as imposed on the taxpayer.

(c) Determinations by account

(1) In general

In the case of the sale, exchange, or other disposition of a specified security on or after the applicable date, the conventions prescribed by regulations under this section shall be applied on an account by account basis.

(2) Application to certain funds

(A) In general

Except as provided in subparagraph (B), any stock for which an average basis method

is permissible under section 1012 which is acquired before January 1, 2012, shall be treated as a separate account from any such stock acquired on or after such date.

(B) Election fund for treatment as single account

If a fund described in subparagraph (A) elects to have this subparagraph apply with respect to one or more of its stockholders—

(i) subparagraph (A) shall not apply with respect to any stock in such fund held by such stockholders, and

(ii) all stock in such fund which is held by such stockholders shall be treated as covered securities described in section 6045(g)(3) without regard to the date of the acquisition of such stock.

A rule similar to the rule of the preceding sentence shall apply with respect to a broker holding such stock as a nominee.

(3) Definitions

For purposes of this section, the terms ''specified security'' and ''applicable date'' shall have the meaning given such terms in section 6045(g).

(d) Average basis for stock acquired pursuant to a dividend reinvestment plan

(1) In general

In the case of any stock acquired after December 31, 2010, in connection with a dividend reinvestment plan, the basis of such stock while held as part of such plan shall be determined using one of the methods which may be used for determining the basis of stock in an open-end fund.

(2) Treatment after transfer

In the case of the transfer to another account of stock to which paragraph (1) applies, such stock shall have a cost basis in such other account equal to its basis in the dividend reinvestment plan immediately before such transfer (properly adjusted for any fees or other charges taken into account in connection with such transfer).

(3) Separate accounts; election for treatment as single account

Rules similar to the rules of subsection (c)(2) shall apply for purposes of this subsection.

(4) Dividend reinvestment plan

For purposes of this subsection—

(A) In general

The term ''dividend reinvestment plan'' means any arrangement under which dividends on any stock are reinvested in stock identical to the stock with respect to which the dividends are paid.

(B) Initial stock acquisition treated as acquired in connection with plan

Stock shall be treated as acquired in connection with a dividend reinvestment plan if such stock is acquired pursuant to such plan or if the dividends paid on such stock are subject to such plan.

(Aug. 16, 1954, ch. 736, 68A Stat. 296; Pub. L. 110–343, div. B, title IV, §403(b), Oct. 3, 2008, 122 Stat. 3857.)

AMENDMENTS

2008—Pub. L. 110–343 designated first sentence as subsec. (a) and second sentence as subsec. (b), inserted headings, and added subsecs. (c) and (d).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title IV, §403(e), Oct. 3, 2008, 122 Stat. 3860, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting sections 6045A and 6045B of this title and amending this section and sections 6045 and 6724 of this title] shall take effect on January 1, 2011.

''(2) EXTENSION OF PERIOD FOR STATEMENTS SENT TO CUSTOMERS.—The amendments made by subsection (a)(3) [amending section 6045 of this title] shall apply to statements required to be furnished after December 31, 2008.''

§ 1013. Basis of property included in inventory

If the property should have been included in the last inventory, the basis shall be the last inventory value thereof.

(Aug. 16, 1954, ch. 736, 68A Stat. 296.)

§ 1014. Basis of property acquired from a decedent

(a) In general

Except as otherwise provided in this section, the basis of property in the hands of a person acquiring the property from a decedent or to whom the property passed from a decedent shall, if not sold, exchanged, or otherwise disposed of before the decedent's death by such person, be—

(1) the fair market value of the property at the date of the decedent's death,

(2) in the case of an election under either section 2032 or section 811(j) of the Internal Revenue Code of 1939 where the decedent died after October 21, 1942, its value at the applicable valuation date prescribed by those sections,

(3) in the case of an election under section 2032A, its value determined under such section, or

(4) to the extent of the applicability of the exclusion described in section 2031(c), the basis in the hands of the decedent.

(b) Property acquired from the decedent

For purposes of subsection (a), the following property shall be considered to have been acquired from or to have passed from the decedent:

(1) Property acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent;

(2) Property transferred by the decedent during his lifetime in trust to pay the income for life to or on the order or direction of the decedent, with the right reserved to the decedent at all times before his death to revoke the trust;

(3) In the case of decedents dying after December 31, 1951, property transferred by the decedent during his lifetime in trust to pay the income for life to or on the order or direction of the decedent with the right reserved to the decedent at all times before his death to make any change in the enjoyment thereof through the exercise of a power to alter, amend, or terminate the trust;

(4) Property passing without full and adequate consideration under a general power of appointment exercised by the decedent by will;

(5) In the case of decedents dying after August 26, 1937, and before January 1, 2005, property acquired by bequest, devise, or inheritance or by the decedent's estate from the decedent, if the property consists of stock or securities of a foreign corporation, which with respect to its taxable year next preceding the date of the decedent's death was, under the law applicable to such year, a foreign personal holding company. In such case, the basis shall be the fair market value of such property at the date of the decedent's death or the basis in the hands of the decedent, whichever is lower;

(6) In the case of decedents dying after December 31, 1947, property which represents the surviving spouse's one-half share of community property held by the decedent and the surviving spouse under the community property laws of any State, or possession of the United States or any foreign country, if at least one-half of the whole of the community interest in such property was includible in determining the value of the decedent's gross estate under chapter 11 of subtitle B (section 2001 and following, relating to estate tax) or section 811 of the Internal Revenue Code of 1939;

(7) In the case of decedents dying after October 21, 1942, and on or before December 31, 1947, such part of any property, representing the surviving spouse's one-half share of property held by a decedent and the surviving spouse under the community property laws of any State, or possession of the United States or any foreign country, as was included in determining the value of the gross estate of the decedent, if a tax under chapter 3 of the Internal Revenue Code of 1939 was payable on the transfer of the net estate of the decedent. In such case, nothing in this paragraph shall reduce the basis below that which would exist if the Revenue Act of 1948 had not been enacted;

(8) In the case of decedents dying after December 31, 1950, and before January 1, 1954, property which represents the survivor's interest in a joint and survivor's annuity if the value of any part of such interest was required to be included in determining the value of decedent's gross estate under section 811 of the Internal Revenue Code of 1939;

(9) In the case of decedents dying after December 31, 1953, property acquired from the decedent by reason of death, form of ownership, or other conditions (including property acquired through the exercise or non-exercise of a power of appointment), if by reason thereof the property is required to be included in determining the value of the decedent's gross estate under chapter 11 of subtitle B or under the Internal Revenue Code of 1939. In such case, if the property is acquired before the death of the decedent, the basis shall be the amount determined under subsection (a) reduced by the amount allowed to the taxpayer as deductions in computing taxable income under this subtitle or prior income tax laws for exhaustion, wear and tear, obsolescence, amortization, and depletion on such property before the death of the decedent. Such basis shall be applicable to the property commencing on the death of the decedent. This paragraph shall not apply to—

(A) annuities described in section 72;

(B) property to which paragraph (5) would apply if the property had been acquired by bequest; and

(C) property described in any other paragraph of this subsection.

(10) Property includible in the gross estate of the decedent under section 2044 (relating to certain property for which marital deduction was previously allowed). In any such case, the last 3 sentences of paragraph (9) shall apply as if such property were described in the first sentence of paragraph (9).

(c) Property representing income in respect of a decedent

This section shall not apply to property which constitutes a right to receive an item of income in respect of a decedent under section 691.

(d) Special rule with respect to DISC stock

If stock owned by a decedent in a DISC or former DISC (as defined in section 992(a)) acquires a new basis under subsection (a), such basis (determined before the application of this subsection) shall be reduced by the amount (if any) which would have been included in gross income under section 995(c) as a dividend if the decedent had lived and sold the stock at its fair market value on the estate tax valuation date. In computing the gain the decedent would have had if he had lived and sold the stock, his basis shall be determined without regard to the last sentence of section 996(e)(2) (relating to reductions of basis of DISC stock). For purposes of this subsection, the estate tax valuation date is the date of the decedent's death or, in the case of an election under section 2032, the applicable valuation date prescribed by that section.

(e) Appreciated property acquired by decedent by gift within 1 year of death

(1) In general

In the case of a decedent dying after December 31, 1981, if—

(A) appreciated property was acquired by the decedent by gift during the 1-year period ending on the date of the decedent's death, and

(B) such property is acquired from the decedent by (or passes from the decedent to) the donor of such property (or the spouse of such donor),

the basis of such property in the hands of such donor (or spouse) shall be the adjusted basis of such property in the hands of the decedent immediately before the death of the decedent.

(2) Definitions

For purposes of paragraph (1)—

(A) Appreciated property

The term ''appreciated property'' means any property if the fair market value of such property on the day it was transferred to the decedent by gift exceeds its adjusted basis.

(B) Treatment of certain property sold by estate

In the case of any appreciated property described in subparagraph (A) of paragraph (1) sold by the estate of the decedent or by a trust of which the decedent was the grantor, rules similar to the rules of paragraph (1) shall apply to the extent the donor of such property (or the spouse of such donor) is entitled to the proceeds from such sale.

(Aug. 16, 1954, ch. 736, 68A Stat. 296; Pub. L. 85–320, § 2, Feb. 11, 1958, 72 Stat. 5; Pub. L. 92–178, title V, § 502(f), Dec. 10, 1971, 85 Stat. 550; Pub. L. 94–455, title XIX, § 1901(c)(8), title XX, § 2005(a)(1), Oct. 4, 1976, 90 Stat. 1803, 1872; Pub. L. 95–600, title V, § 515(1), title VII, § 702(c)(1)(A), Nov. 6, 1978, 92 Stat. 2884, 2926; Pub. L. 96–222, title I, § 107(a)(2)(A), Apr. 1, 1980, 94 Stat. 222; Pub. L. 96–223, title IV, § 401(a), Apr. 2, 1980, 94 Stat. 299; Pub. L. 97–34, title IV, § 425(a), Aug. 13, 1981, 95 Stat. 318; Pub. L. 97–448, title I, § 104(a)(1)(A), Jan. 12, 1983, 96 Stat. 2379; Pub. L. 105–34, title V, § 508(b), Aug. 5, 1997, 111 Stat. 860; Pub. L. 107–16, title V, § 541, June 7, 2001, 115 Stat. 76; Pub. L. 108–357, title IV, § 413(c)(18), Oct. 22, 2004, 118 Stat. 1508; Pub. L. 111–312, title III, § 301(a), Dec. 17, 2010, 124 Stat. 3300.)

AMENDMENT OF SECTION

For termination of amendment by section 304 of Pub. L. 111–312, see Effective and Termination Dates of 2010 Amendment note below.

For termination of amendment by section 901 of Pub. L. 107–16, see Termination Date of 2001 Amendment note below.

REFERENCES IN TEXT

Section 811 of the Internal Revenue Code of 1939, referred to in subsecs. (a)(2) and (b)(6), (8), was classified to section 811 of former Title 26, Internal Revenue Code. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title. See, also, section 7851(e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

Chapter 3 of the Internal Revenue Code of 1939, referred to in subsec. (b)(7), was comprised of sections 800 to 951 of former Title 26, Internal Revenue Code. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title. See also section 7851(a)(2)(A) of this title for applicability of chapter 3 of former title 26. See also section 7851(e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

Revenue Act of 1948, referred to in subsec. (b)(7), is act Apr. 2, 1948, ch. 168, 62 Stat. 110. For complete classification of this Act to the Code, see Tables.

The Internal Revenue Code of 1939, referred to in subsec. (b)(9), is act Feb. 10, 1939, ch. 2, 53 Stat. 1, as amended. Prior to the enactment of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the 1939 Code was classified to former Title 26, Internal Revenue Code. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title.

AMENDMENTS

2010—Subsec. (f). Pub. L. 111–312, §§ 301(a), 304, temporarily amended section to read as if amendment by Pub. L. 107–16, § 541, had never been enacted. See 2001 Amendment note and Effective and Termination Dates of 2010 Amendment note below. Prior to amendment, text of subsec. (f) read as follows: ''This section shall not apply with respect to decedents dying after December 31, 2009.''

2004—Subsec. (b)(5). Pub. L. 108–357 inserted ''and before January 1, 2005,'' after ''August 26, 1937,''.

2001—Subsec. (f). Pub. L. 107–16, §§ 541, 901, temporarily added subsec. (f). See Termination Date of 2001 Amendment note below.

1997—Subsec. (a). Pub. L. 105–34 struck out ''or'' at end of pars. (1) and (2), struck out the period at end of par. (3) and inserted '', or'', and added par. (4).

1983—Subsec. (b)(10). Pub. L. 97–448 added par. (10).

1981—Subsec. (e). Pub. L. 97–34 added subsec. (e).

1980—Subsec. (a)(3). Pub. L. 96–222 substituted ''section 2032A'' for ''section 2032.1''.

Subsec. (d). Pub. L. 96–223 repealed the amendment made by Pub. L. 94–455, § 2005(a)(1). See 1976 Amendment note below.

1978—Subsec. (a). Pub. L. 95–600, § 702(c)(1)(A), designated existing provisions as pars. (1) and (2) and added par. (3).

Subsec. (d). Pub. L. 95–600, § 515(1), substituted ''December 31, 1979'' for ''December 31, 1976'' in heading and text.

1976—Subsec. (b)(6), (7). Pub. L. 94–455, § 1901(c)(8), struck out ''Territory,'' after ''under the community property laws of any State,''.

Subsec. (d). Pub. L. 94–455, § 2005(a)(1), substituted provision relating to the applicability of this section to decedents dying after 1976 for provision relating to a special rule with respect to DISC stock. See Repeals note below.

1971—Subsec. (d). Pub. L. 92–178 added subsec. (d).

1958—Subsec. (d). Pub. L. 85–320 repealed subsec. (d) which made section inapplicable to restricted stock options described in section 421 which the employee has not exercised at death.

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Amendment by Pub. L. 111–312 applicable to estates of decedents dying, and transfers made after Dec. 31, 2009, except as otherwise provided, see section 301(e) of Pub. L. 111–312, set out as a note under section 121 of this title.

Section 901 of Pub. L. 107–16 applicable to amendments by section 301(a) of Pub. L. 111–312, see section 304 of Pub. L. 111–312, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

TERMINATION DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 508(e)(1) of Pub. L. 105–34 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 2031 of this title] shall apply to estates of decedents dying after December 31, 1997.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the

provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 425(b) of Pub. L. 97–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to property acquired after the date of the enactment of this Act [Aug. 13, 1981] by decedents dying after December 31, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENTS AND REVIVAL OF PRIOR LAW

Amendment by Pub. L. 96–223 (repealing section 2005(a)(1) of Pub. L. 94–455 and the amendment made thereby, which had amended this section) applicable in respect of decedents dying after Dec. 31, 1976, and except for certain elections, this title to be applied and administered as if those repealed provisions had not been enacted, see section 401(b), (e) of Pub. L. 96–223, set out as a note under section 1023 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as an Effective Date of 1980 Amendment note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 702(c)(10) of Pub. L. 95–600 provided that: ''The amendments made by this subsection [amending this section and sections 1001, 1223, and 2614 of this title] shall take effect as if included in the amendments and additions made by, and the appropriate provisions of the Tax Reform Act of 1976 [Pub. L. 94–455, Oct. 4, 1976, 90 Stat 1525].''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(c)(8) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 2005(a)(1) of Pub. L. 94–455 applicable in respect of decedents dying after Dec. 31, 1976, see section 2005(f) of Pub. L. 94–455, set out as an Effective Date note under section 1015 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable with respect to taxable years ending after Dec. 31, 1971, except that a corporation may not be a DISC for any taxable year beginning before Jan. 1972, see section 507 of Pub. L. 92–178, set out as a note under section 991 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–320 applicable with respect to taxable years ending after Dec. 31, 1956, but only in the case of employees dying after such date, see section 3 of Pub. L. 85–320, set out as a note under section 421 of this title.

REPEALS

Pub. L. 94–455, § 2005(a)(1), cited as a credit to this section, and the amendment made thereby, were repealed by Pub. L. 96–223, title IV, § 401(a), 94 Stat. 299, resulting in the text of this section reading as it read prior to enactment of section 2005(a)(1). See Effective Date of 1980 Amendments and Revival of Prior Law note above.

ELECTION OF CARRYOVER BASIS RULES BY CERTAIN ESTATES

Pub. L. 96–223, title IV, § 401(d), Apr. 2, 1980, 94 Stat. 300, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Notwithstanding any other provision of law, in the case of a decedent dying after December 31, 1976, and before November 7, 1978, the executor (within the meaning of section 2203 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) of such decedent's estate may irrevocably elect, within 120 days following the date of enactment of this Act [Apr. 2, 1980] and in such manner as the Secretary of the Treasury or his delegate shall prescribe, to have the basis of all property acquired from or passing from the decedent (within the meaning of section 1014(b) of the Internal Revenue Code of 1986) determined for all purposes under such Code as though the provisions of section 2005 of the Tax Reform Act of 1976 [Pub. L. 94–455] (as amended by the provisions of section 702(c) of the Revenue Act of 1978 [Pub. L. 95–600] applied to such property acquired or passing from such decedent.''

§ 1015. Basis of property acquired by gifts and transfers in trust

(a) Gifts after December 31, 1920

If the property was acquired by gift after December 31, 1920, the basis shall be the same as it would be in the hands of the donor or the last preceding owner by whom it was not acquired by gift, except that if such basis (adjusted for the period before the date of the gift as provided in section 1016) is greater than the fair market value of the property at the time of the gift, then for the purpose of determining loss the basis shall be such fair market value. If the facts necessary to determine the basis in the hands of the donor or the last preceding owner are unknown to the donee, the Secretary shall, if possible, obtain such facts from such donor or last preceding owner, or any other person cognizant thereof. If the Secretary finds it impossible to obtain such facts, the basis in the hands of such donor or last preceding owner shall be the fair market value of such property as found by the Secretary as of the date or approximate date at which, according to the best information that the Secretary is able to obtain, such property was acquired by such donor or last preceding owner.

(b) Transfer in trust after December 31, 1920

If the property was acquired after December 31, 1920, by a transfer in trust (other than by a transfer in trust by a gift, bequest, or devise), the basis shall be the same as it would be in the hands of the grantor increased in the amount of gain or decreased in the amount of loss recognized to the grantor on such transfer under the law applicable to the year in which the transfer was made.

(c) Gift or transfer in trust before January 1, 1921

If the property was acquired by gift or transfer in trust on or before December 31, 1920, the basis shall be the fair market value of such property at the time of such acquisition.

(d) Increased basis for gift tax paid

(1) In general

If—

(A) the property is acquired by gift on or after September 2, 1958, the basis shall be the basis determined under subsection (a), increased (but not above the fair market value of the property at the time of the gift) by the amount of gift tax paid with respect to such gift, or

(B) the property was acquired by gift before September 2, 1958, and has not been sold,

exchanged, or otherwise disposed of before such date, the basis of the property shall be increased on such date by the amount of gift tax paid with respect to such gift, but such increase shall not exceed an amount equal to the amount by which the fair market value of the property at the time of the gift exceeded the basis of the property in the hands of the donor at the time of the gift.

(2) Amount of tax paid with respect to gift

For purposes of paragraph (1), the amount of gift tax paid with respect to any gift is an amount which bears the same ratio to the amount of gift tax paid under chapter 12 with respect to all gifts made by the donor for the calendar year (or preceding calendar period) in which such gift is made as the amount of such gift bears to the taxable gifts (as defined in section 2503(a) but computed without the deduction allowed by section 2521) made by the donor during such calendar year or period. For purposes of the preceding sentence, the amount of any gift shall be the amount included with respect to such gift in determining (for the purposes of section 2503(a)) the total amount of gifts made during the calendar year or period, reduced by the amount of any deduction allowed with respect to such gift under section 2522 (relating to charitable deduction) or under section 2523 (relating to marital deduction).

(3) Gifts treated as made one-half by each spouse

For purposes of paragraph (1), where the donor and his spouse elected, under section 2513 to have the gift considered as made one-half by each, the amount of gift tax paid with respect to such gift under chapter 12 shall be the sum of the amounts of tax paid with respect to each half of such gift (computed in the manner provided in paragraph (2)).

(4) Treatment as adjustment to basis

For purposes of section 1016(b), an increase in basis under paragraph (1) shall be treated as an adjustment under section 1016(a).

(5) Application to gifts before 1955

With respect to any property acquired by gift before 1955, references in this subsection to any provision of this title shall be deemed to refer to the corresponding provision of the Internal Revenue Code of 1939 or prior revenue laws which was effective for the year in which such gift was made.

(6) Special rule for gifts made after December 31, 1976

(A) In general

In the case of any gift made after December 31, 1976, the increase in basis provided by this subsection with respect to any gift for the gift tax paid under chapter 12 shall be an amount (not in excess of the amount of tax so paid) which bears the same ratio to the amount of tax so paid as—

(i) the net appreciation in value of the gift, bears to

(ii) the amount of the gift.

(B) Net appreciation

For purposes of paragraph (1), the net appreciation in value of any gift is the amount by which the fair market value of the gift exceeds the donor's adjusted basis immediately before the gift.

(e) Gifts between spouses

In the case of any property acquired by gift in a transfer described in section 1041(a), the basis of such property in the hands of the transferee shall be determined under section 1041(b)(2) and not this section.

(Aug. 16, 1954, ch. 736, 68A Stat. 298; Pub. L. 85–866, title I, §43(a), Sept. 2, 1958, 72 Stat. 1640; Pub. L. 91–614, title I, §102(d)(1), Dec. 31, 1970, 84 Stat. 1841; Pub. L. 94–455, title XIX, §§1901(a)(122), 1906(b)(13)(A), title XX, §2005(c), Oct. 4, 1976, 90 Stat. 1784, 1834, 1877; Pub. L. 97–34, title IV, §442(d)(1), Aug. 13, 1981, 95 Stat. 322; Pub. L. 98–369, div. A, title IV, §421(b)(5), July 18, 1984, 98 Stat. 794.)

REFERENCES IN TEXT

Section 2521, referred to in subsec. (d)(2), was repealed by Pub. L. 94–455, title XX, §2001(b)(3), Oct. 4, 1976, 90 Stat. 1849.

The Internal Revenue Code of 1939, referred to in subsec. (d)(5), is act Feb. 10, 1939, ch. 2, 53 Stat. 1, as amended. Prior to the enactment of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the 1939 Code was classified to former Title 26, Internal Revenue Code. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title.

AMENDMENTS

1984—Subsec. (e). Pub. L. 98–369 added subsec. (e).

1981—Subsec. (d)(2). Pub. L. 97–34 substituted ''calendar year (or preceding calendar period)'' for ''calendar quarter (or calendar year if the gift was made before January 1, 1971)'' and ''calendar year or period'' for ''calendar quarter or year'' in two places.

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' in four places.

Subsec. (d)(1)(A), (B). Pub. L. 94–455, §1901(a)(122), substituted ''September 2, 1958'' for ''the date of enactment of the Technical Amendments Act of 1958''.

Subsec. (d)(6). Pub. L. 94–455, §2005(c), added par. (6).

1970—Subsec. (d)(2). Pub. L. 91–614 substituted ''calendar quarter (or calendar year if the gift was made before January 1, 1971)'' for ''calendar year'' the first place it appears and ''calendar quarter or year'' for ''calendar year'' every other place it appears.

1958—Subsec. (d). Pub. L. 85–866 added subsec. (d).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to transfers after July 18, 1984, in taxable years ending after such date, subject to election to have amendment apply to transfers after 1983 or to transfers pursuant to existing decrees, see section 421(d) of Pub. L. 98–369, set out as an Effective Date note under section 1041 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to gifts made after Dec. 31, 1981, see section 442(e) of Pub. L. 97–34, set out as a note under section 2501 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(122) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Section 2005(f) of Pub. L. 94–455, as amended by Pub. L. 95–600, title V, §515(6), Nov. 6, 1978, 92 Stat. 2884, provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [enacting sections 1023,

1040, 6039A, and 6694 of this title, amending sections 691, 1016, and 1246 of this title, and renumbering former section 1023 as 1024] shall apply in respect of decedents dying after December 31, 1979.

''(2) The amendment made by subsection (c) [amending this section] shall apply to gifts made after December 31, 1976.''

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91–614, set out as a note under section 2501 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

§ 1016. Adjustments to basis

(a) General rule

Proper adjustment in respect of the property shall in all cases be made—

(1) for expenditures, receipts, losses, or other items, properly chargeable to capital account, but no such adjustment shall be made—

(A) for taxes or other carrying charges described in section 266, or

(B) for expenditures described in section 173 (relating to circulation expenditures),

for which deductions have been taken by the taxpayer in determining taxable income for the taxable year or prior taxable years;

(2) in respect of any period since February 28, 1913, for exhaustion, wear and tear, obsolescence, amortization, and depletion, to the extent of the amount—

(A) allowed as deductions in computing taxable income under this subtitle or prior income tax laws, and

(B) resulting (by reason of the deductions so allowed) in a reduction for any taxable year of the taxpayer's taxes under this subtitle (other than chapter 2, relating to tax on self-employment income), or prior income, war-profits, or excess-profits tax laws,

but not less than the amount allowable under this subtitle or prior income tax laws. Where no method has been adopted under section 167 (relating to depreciation deduction), the amount allowable shall be determined under the straight line method. Subparagraph (B) of this paragraph shall not apply in respect of any period since February 28, 1913, and before January 1, 1952, unless an election has been made under section 1020 (as in effect before the date of the enactment of the Tax Reform Act of 1976). Where for any taxable year before the taxable year 1932 the depletion allowance was based on discovery value or a percentage of income, then the adjustment for depletion for such year shall be based on the depletion which would have been allowable for such year if computed without reference to discovery value or a percentage of income;

(3) in respect of any period—

(A) before March 1, 1913,

(B) since February 28, 1913, during which such property was held by a person or an organization not subject to income taxation under this chapter or prior income tax laws,

(C) since February 28, 1913, and before January 1, 1958, during which such property was held by a person subject to tax under part I of subchapter L (or the corresponding provisions of prior income tax laws), to the extent that paragraph (2) does not apply, and

(D) since February 28, 1913, during which such property was held by a person subject to tax under part II[1] of subchapter L (or the corresponding provisions of prior income tax laws), to the extent that paragraph (2) does not apply,

for exhaustion, wear and tear, obsolescence, amortization, and depletion, to the extent sustained;

(4) in the case of stock (to the extent not provided for in the foregoing paragraphs) for the amount of distributions previously made which, under the law applicable to the year in which the distribution was made, either were tax-free or were applicable in reduction of basis (not including distributions made by a corporation which was classified as a personal service corporation under the provisions of the Revenue Act of 1918 (40 Stat. 1057), or the Revenue Act of 1921 (42 Stat. 227), out of its earnings or profits which were taxable in accordance with the provisions of section 218 of the Revenue Act of 1918 or 1921);

(5) in the case of any bond (as defined in section 171(d)) the interest on which is wholly exempt from the tax imposed by this subtitle, to the extent of the amortizable bond premium disallowable as a deduction pursuant to section 171(a)(2), and in the case of any other bond (as defined in section 171(d)) to the extent of the deductions allowable pursuant to section 171(a)(1) (or the amount applied to reduce interest payments under section 171(e)(2)) with respect thereto;

(6) in the case of any municipal bond (as defined in section 75(b)), to the extent provided in section 75(a)(2);

(7) in the case of a residence the acquisition of which resulted, under section 1034 (as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997), in the nonrecognition of any part of the gain realized on the sale, exchange, or involuntary conversion of another residence, to the extent provided in section 1034(e) (as so in effect);

(8) in the case of property pledged to the Commodity Credit Corporation, to the extent of the amount received as a loan from the Commodity Credit Corporation and treated by the taxpayer as income for the year in which received pursuant to section 77, and to the extent of any deficiency on such loan with respect to which the taxpayer has been relieved from liability;

(9) for amounts allowed as deductions as deferred expenses under section 616(b) (relating to certain expenditures in the development of mines) and resulting in a reduction of the taxpayer's taxes under this subtitle, but not less than the amounts allowable under such section for the taxable year and prior years;

[(10) Repealed. Pub. L. 94–455, title XIX, § 1901(b)(21)(G), Oct. 4, 1976, 90 Stat. 1798]

[1] See References in Text note below.

(11) for deductions to the extent disallowed under section 268 (relating to sale of land with unharvested crops), notwithstanding the provisions of any other paragraph of this subsection;

(12) to the extent provided in section 28(h) of the Internal Revenue Code of 1939 in the case of amounts specified in a shareholder's consent made under section 28 of such code;

[(13) Repealed. Pub. L. 108–357, title IV, § 413(c)(19), Oct. 22, 2004, 118 Stat. 1509]

(14) for amounts allowed as deductions as deferred expenses under section 174(b)(1) (relating to research and experimental expenditures) and resulting in a reduction of the taxpayers' taxes under this subtitle, but not less than the amounts allowable under such section for the taxable year and prior years;

(15) for deductions to the extent disallowed under section 272 (relating to disposal of coal or domestic iron ore), notwithstanding the provisions of any other paragraph of this subsection;

(16) in the case of any evidence of indebtedness referred to in section 811(b) (relating to amortization of premium and accrual of discount in the case of life insurance companies), to the extent of the adjustments required under section 811(b) (or the corresponding provisions of prior income tax laws) for the taxable year and all prior taxable years;

(17) to the extent provided in section 1367 in the case of stock of, and indebtedness owed to, shareholders of an S corporation;

(18) to the extent provided in section 961 in the case of stock in controlled foreign corporations (or foreign corporations which were controlled foreign corporations) and of property by reason of which a person is considered as owning such stock;

(19) to the extent provided in section 50(c), in the case of expenditures with respect to which a credit has been allowed under section 38;

(20) for amounts allowed as deductions under section 59(e) (relating to optional 10-year writeoff of certain tax preferences);

(21) to the extent provided in section 1059 (relating to reduction in basis for extraordinary dividends);

(22) in the case of qualified replacement property the acquisition of which resulted under section 1042 in the nonrecognition of any part of the gain realized on the sale or exchange of any property, to the extent provided in section 1042(d),[2]

(23) in the case of property the acquisition of which resulted under section 1043, 1044, 1045, or 1397B in the nonrecognition of any part of the gain realized on the sale of other property, to the extent provided in section 1043(c), 1044(d), 1045(b)(3), or 1397B(b)(4), as the case may be,[2]

(24) to the extent provided in section 179A(e)(6)(A),[2]

(25) to the extent provided in section 30(e)(1),[2]

(26) to the extent provided in sections 36C(g) and 137(e),[2]

(27) in the case of a residence with respect to which a credit was allowed under section 1400C, to the extent provided in section 1400C(h),[2]

(28) in the case of a facility with respect to which a credit was allowed under section 45F, to the extent provided in section 45F(f)(1),[2]

(29) in the case of railroad track with respect to which a credit was allowed under section 45G, to the extent provided in section 45G(e)(3),[2]

(30) to the extent provided in section 179B(c),[2]

(31) to the extent provided in section 179D(e),[2]

(32) to the extent provided in section 45L(e), in the case of amounts with respect to which a credit has been allowed under section 45L,[2]

(33) to the extent provided in section 25C(f), in the case of amounts with respect to which a credit has been allowed under section 25C,[2]

(34) to the extent provided in section 25D(f), in the case of amounts with respect to which a credit has been allowed under section 25D,[2]

(35) to the extent provided in section 30B(h)(4),[2]

(36) to the extent provided in section 30C(e)(1),[2] and

(37) to the extent provided in section 30D(f)(1).

(b) Substituted basis

Whenever it appears that the basis of property in the hands of the taxpayer is a substituted basis, then the adjustments provided in subsection (a) shall be made after first making in respect of such substituted basis proper adjustments of a similar nature in respect of the period during which the property was held by the transferor, donor, or grantor, or during which the other property was held by the person for whom the basis is to be determined. A similar rule shall be applied in the case of a series of substituted bases.

(c) Increase in basis of property on which additional estate tax is imposed

(1) Tax imposed with respect to entire interest

If an additional estate tax is imposed under section 2032A(c)(1) with respect to any interest in property and the qualified heir makes an election under this subsection with respect to the imposition of such tax, the adjusted basis of such interest shall be increased by an amount equal to the excess of—

(A) the fair market value of such interest on the date of the decedent's death (or the alternate valuation date under section 2032, if the executor of the decedent's estate elected the application of such section), over

(B) the value of such interest determined under section 2032A(a).

(2) Partial dispositions

(A) In general

In the case of any partial disposition for which an election under this subsection is made, the increase in basis under paragraph (1) shall be an amount—

(i) which bears the same ratio to the increase which would be determined under paragraph (1) (without regard to this paragraph) with respect to the entire interest, as

[2] So in original. The comma probably should be a semicolon.

(ii) the amount of the tax imposed under section 2032A(c)(1) with respect to such disposition bears to the adjusted tax difference attributable to the entire interest (as determined under section 2032A(c)(2)(B)).

(B) Partial disposition

For purposes of subparagraph (A), the term ''partial disposition'' means any disposition or cessation to which subsection (c)(2)(D), (h)(1)(B), or (i)(1)(B) of section 2032A applies.

(3) Time adjustment made

Any increase in basis under this subsection shall be deemed to have occurred immediately before the disposition or cessation resulting in the imposition of the tax under section 2032A(c)(1).

(4) Special rule in the case of substituted property

If the tax under section 2032A(c)(1) is imposed with respect to qualified replacement property (as defined in section 2032A(h)(3)(B)) or qualified exchange property (as defined in section 2032A(i)(3)), the increase in basis under paragraph (1) shall be made by reference to the property involuntarily converted or exchanged (as the case may be).

(5) Election

(A) In general

An election under this subsection shall be made at such time and in such manner as the Secretary shall by regulations prescribe. Such an election, once made, shall be irrevocable.

(B) Interest on recaptured amount

If an election is made under this subsection with respect to any additional estate tax imposed under section 2032A(c)(1), for purposes of section 6601 (relating to interest on underpayments), the last date prescribed for payment of such tax shall be deemed to be the last date prescribed for payment of the tax imposed by section 2001 with respect to the estate of the decedent (as determined for purposes of section 6601).

(d) Reduction in basis of automobile on which gas guzzler tax was imposed

If—

(1) the taxpayer acquires any automobile with respect to which a tax was imposed by section 4064, and

(2) the use of such automobile by the taxpayer begins not more than 1 year after the date of the first sale for ultimate use of such automobile,

the basis of such automobile shall be reduced by the amount of the tax imposed by section 4064 with respect to such automobile. In the case of importation, if the date of entry or withdrawal from warehouse for consumption is later than the date of the first sale for ultimate use, such later date shall be substituted for the date of such first sale in the preceding sentence.

(e) Cross reference

For treatment of separate mineral interests as one property, see section 614.

(Aug. 16, 1954, ch. 736, 68A Stat. 299; June 29, 1956, ch. 464, § 4(c), 70 Stat. 407; Pub. L. 85–866, title I, §§ 2(b), 64(d)(2), Sept. 2, 1958, 72 Stat. 1607, 1656; Pub. L. 86–69, § 3(d), June 25, 1959, 73 Stat. 139; Pub. L. 87–834, §§ 2(f), 8(g)(2), 12(b)(4), Oct. 16, 1962, 76 Stat. 972, 998, 1031; Pub. L. 88–272, title II, §§ 203(a)(3)(C), 225(j)(2), 227(b)(5), Feb. 26, 1964, 78 Stat. 34, 93, 98; Pub. L. 91–172, title II, § 231(c)(3), title V, §§ 504(c)(4), 516(c)(2)(B), Dec. 30, 1969, 83 Stat. 580, 633, 648; Pub. L. 94–455, title XIX, § 1901(a)(123), (b)(1)(F)(ii), (21)(G), (29)(A), (30)(A), title XX, § 2005(a)(3), Oct. 4, 1976, 90 Stat. 1784, 1790, 1798, 1799, 1876; Pub. L. 95–472, § 4(b), Oct. 17, 1978, 92 Stat. 1335; Pub. L. 95–600, title V, § 515(2), title VI, § 601(b)(3), title VII, § 702(r)(3), Nov. 6, 1978, 92 Stat. 2884, 2896, 2938; Pub. L. 95–618, title I, § 101(b)(3), title II, § 201(b), Nov. 9, 1978, 92 Stat. 3179, 3183; Pub. L. 96–222, title I, §§ 106(a)(2), (3), 107(a)(2)(C), Apr. 1, 1980, 94 Stat. 221, 222; Pub. L. 96–223, title IV, § 401(a), (c)(1), Apr. 2, 1980, 94 Stat. 299, 300; Pub. L. 97–34, title II, § 212(d)(2)(G), title IV, § 421(g), Aug. 13, 1981, 95 Stat. 239, 310; Pub. L. 97–248, title II, §§ 201(c)(2), 205(a)(5)(B), Sept. 3, 1982, 96 Stat. 418, 429; Pub. L. 97–354, § 5(a)(33), Oct. 19, 1982, 96 Stat. 1695; Pub. L. 98–369, div. A, title I, §§ 43(a)(2), 53(d)(3), title II, § 211(b)(14), title IV, § 474(r)(23), title V, § 541(b)(2), July 18, 1984, 98 Stat. 558, 568, 756, 844, 890; Pub. L. 99–514, title II, § 241(b)(2), title VII, § 701(e)(4)(D), title XIII, § 1303(b)(3), title XVIII, § 1899A(25), Oct. 22, 1986, 100 Stat. 2181, 2343, 2658, 2959; Pub. L. 100–647, title I, §§ 1006(j)(1)(B), 1018(u)(22), Nov. 10, 1988, 102 Stat. 3411, 3591; Pub. L. 101–194, title V, § 502(b)(2), Nov. 30, 1989, 103 Stat. 1755; Pub. L. 101–508, title XI, §§ 11801(c)(1), 11812(b)(10), 11813(b)(19), Nov. 5, 1990, 104 Stat. 1388–522, 1388–535, 1388–555; Pub. L. 102–486, title XIX, § 1913(a)(3)(A), (b)(2)(B), Oct. 24, 1992, 106 Stat. 3019, 3020; Pub. L. 103–66, title XIII, §§ 13114(b), 13213(a)(2)(F), 13261(f)(3), Aug. 10, 1993, 107 Stat. 431, 474, 539; Pub. L. 104–188, title I, §§ 1704(t)(56), 1807(c)(5), Aug. 20, 1996, 110 Stat. 1890, 1902; Pub. L. 105–34, title III, §§ 312(d)(6), 313(b)(1), title VII, § 701(b)(2), Aug. 5, 1997, 111 Stat. 840, 842, 869; Pub. L. 106–554, § 1(a)(7) [title I, § 116(b)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–603; Pub. L. 107–16, title II, § 205(b)(3), June 7, 2001, 115 Stat. 53; Pub. L. 108–357, title II, § 245(c)(2), title III, §§ 338(b)(4), 339(d), title IV, § 413(c)(19), Oct. 22, 2004, 118 Stat. 1448, 1481, 1484, 1509; Pub. L. 109–58, title XIII, §§ 1331(b)(1), 1332(c), 1333(b)(1), 1335(b)(4), 1341(b)(2), 1342(b)(2), Aug. 8, 2005, 119 Stat. 1023, 1026, 1029, 1036, 1049, 1051; Pub. L. 109–135, title IV, § 412(nn), Dec. 21, 2005, 119 Stat. 2639; Pub. L. 110–172, §§ 7(a)(1)(C), 11(a)(21), (22), Dec. 29, 2007, 121 Stat. 2481, 2486; Pub. L. 110–343, div. B, title II, § 205(d)(2), Oct. 3, 2008, 122 Stat. 3839; Pub. L. 111–5, div. B, title I, §§ 1141(b)(3), 1142(b)(6), Feb. 17, 2009, 123 Stat. 328, 331; Pub. L. 111–148, title X, § 10909(b)(2)(L), (c), Mar. 23, 2010, 124 Stat. 1023; Pub. L. 111–312, title I, § 101(b)(1), Dec. 17, 2010, 124 Stat. 3298.)

AMENDMENT OF SECTION

For termination of amendment by section 10909(c) of Pub. L. 111–148, see Effective and Termination Dates of 2010 Amendment note below.

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

REFERENCES IN TEXT

Section 1020, referred to in subsec. (a)(2), was repealed by Pub. L. 94–455, title XIX, §1901(a)(125), Oct. 4, 1976, 90 Stat. 1784.

The Tax Reform Act of 1976, referred to in subsec. (a)(2), is Pub. L. 94–455, Oct. 4, 1976, 90 Stat. 1520, as amended, which was enacted Oct. 4, 1976. For complete classification of this Act to the Code, see Tables.

Part II of subchapter L, referred to in subsec. (a)(3)(D), was repealed and part III of subchapter L was redesignated as part II by Pub. L. 99–514, title X, §1024(a)(1), (2), Oct. 22, 1986, 100 Stat. 2405.

The Revenue Act of 1918 (40 Stat. 1057), referred to in subsec. (a)(4), is act Feb. 24, 1919, ch. 18, 40 Stat. 1057. For complete classification of this Act to the Code, see Tables.

The Revenue Act of 1921 (42 Stat. 227), referred to in subsec. (a)(4), is act Nov. 23, 1921, ch. 136, 42 Stat. 227. For complete classification of this Act to the Code, see Tables.

Section 218 of the Revenue Act of 1918 or 1921, referred to in subsec. (a)(4), was not classified to the Code.

The date of the enactment of the Taxpayer Relief Act of 1997, referred to in subsec. (a)(7), is the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

Section 28 of the Internal Revenue Code of 1939, referred to in subsec. (a)(12), was classified to section 28 of former Title 26, Internal Revenue Code. Section 28 was repealed by section 7851(a)(1)(A) of this title. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title. See, also, section 7851(e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

CODIFICATION

Section 10909(b)(2)(L) of Pub. L. 111–148, which directed the amendment of section 1016(a)(26) without specifying the act to be amended, was executed to this section, which is section 1016 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2010 Amendment note below.

AMENDMENTS

2010—Subsec. (a)(26). Pub. L. 111–148, §10909(b)(2)(L), (c), as amended by Pub. L. 111–312, temporarily substituted ''36C(g)'' for ''23(g)''. See Codification note above and Effective and Termination Dates of 2010 Amendment note below.

2009—Subsec. (a)(25). Pub. L. 111–5, §1142(b)(6), substituted ''section 30(e)(1)'' for ''section 30(d)(1)''.

Subsec. (a)(37). Pub. L. 111–5, §1141(b)(3), which directed amendment of subsec. (a)(25) by substituting ''section 30D(f)(1)'' for ''section 30D(e)(4)'', was executed by making the substitution in subsec. (a)(37) to reflect the probable intent of Congress.

2008—Subsec. (a)(37). Pub. L. 110–343 added par. (37).

2007—Subsec. (a)(31), (32). Pub. L. 110–172, §7(a)(1)(C), redesignated pars. (32) and (33) as (31) and (32), respectively, and struck out former par. (31) which read as follows: ''in the case of a facility with respect to which a credit was allowed under section 45H, to the extent provided in section 45H(d),''.

Subsec. (a)(33). Pub. L. 110–172, §11(a)(21), substituted ''section 25C(f)'' for ''section 25C(e)''.

Pub. L. 110–172, §7(a)(1)(C), redesignated par. (34) as (33). Former par. (33) redesignated (32).

Subsec. (a)(34), (35). Pub. L. 110–172, §7(a)(1)(C), redesignated pars. (35) and (36) as (34) and (35), respectively. Former par. (34) redesignated (33).

Subsec. (a)(36). Pub. L. 110–172, §11(a)(22), substituted ''section 30C(e)(1)'' for ''section 30C(f)''.

Pub. L. 110–172, §7(a)(1)(C), redesignated par. (37) as (36). Former par. (36) redesignated (35).

Subsec. (a)(37). Pub. L. 110–172, §7(a)(1)(C), redesignated par. (37) as (36).

2005—Subsec. (a)(23). Pub. L. 109–135 substituted ''1045(b)(3)'' for ''1045(b)(4)''.

Subsec. (a)(32). Pub. L. 109–58, §1331(b)(1), added par. (32).

Subsec. (a)(33). Pub. L. 109–58, §1332(c), added par. (33).

Subsec. (a)(34). Pub. L. 109–58, §1333(b)(1), added par. (34).

Subsec. (a)(35). Pub. L. 109–58, §1335(b)(4), added par. (35).

Subsec. (a)(36). Pub. L. 109–58, §1341(b)(2), added par. (36).

Subsec. (a)(37). Pub. L. 109–58, §1342(b)(2), added par. (37).

2004—Subsec. (a)(13). Pub. L. 108–357, §413(c)(19), struck out par. (13) which read as follows: ''to the extent provided in section 551(e) in the case of the stock of United States shareholders in a foreign personal holding company;''.

Subsec. (a)(29). Pub. L. 108–357, §245(c)(2), added par. (29).

Subsec. (a)(30). Pub. L. 108–357, §338(b)(4), added par. (30).

Subsec. (a)(31). Pub. L. 108–357, §339(d), added par. (31).

2001—Subsec. (a)(28). Pub. L. 107–16, §§205(b)(3), 901, temporarily added par. (28). See Effective and Termination Dates of 2001 Amendment note below.

2000—Subsec. (a)(23). Pub. L. 106–554 substituted ''1045, or 1397B'' for ''or 1045'' and ''1045(b)(4), or 1397B(b)(4)'' for ''or 1045(b)(4)''.

1997—Subsec. (a)(7). Pub. L. 105–34, §312(d)(6), inserted ''(as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997)'' after ''section 1034'' and ''(as so in effect)'' after ''section 1034(e)''.

Subsec. (a)(23). Pub. L. 105–34, §313(b)(1), substituted '', 1044, or 1045'' for ''or 1044'' and '', 1044(d), or 1045(b)(4)'' for ''or 1044(d)''.

Subsec. (a)(27). Pub. L. 105–34, §701(b)(2), added par. (27).

1996—Subsec. (a)(20). Pub. L. 104–188, §1704(t)(56), provided that section 11813(b)(19) of Pub. L. 101–508 shall be applied as if ''Paragraph (20) of section 1016(a), as redesignated by section 11801,'' appeared instead of ''paragraph (21) of section 1016(a)''. See 1990 Amendment note below.

Subsec. (a)(26). Pub. L. 104–188, §1807(c)(5), added par. (26).

1993—Subsec. (a)(19) to (23). Pub. L. 103–66, §13261(f)(3), redesignated pars. (20) to (24) as (19) to (23), respectively, and struck out former par. (19) which read as follows: ''for amounts allowed as deductions for payments made on account of transfers of franchises, trademarks, or trade names under section 1253(d)(2);''.

Subsec. (a)(24). Pub. L. 103–66, §13261(f)(3), redesignated par. (25) as (24). Former par. (24) redesignated (23).

Pub. L. 103–66, §13114(b), substituted ''section 1043 or 1044'' for ''section 1043'' and ''section 1043(c) or 1044(d), as the case may be'' for ''section 1043(c)''.

Subsec. (a)(25), (26). Pub. L. 103–66, §13261(f)(3), redesignated pars. (25) and (26) as (24) and (25), respectively.

Subsec. (e). Pub. L. 103–66, §13213(a)(2)(F), amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows:

''(1) For treatment of certain expenses incident to the purchase of a residence which were deducted as moving expenses by the taxpayer or his spouse under section 217(a), see section 217(e).

''(2) For treatment of separate mineral interests as one property, see section 614.''

1992—Subsec. (a)(25), (26). Pub. L. 102–486 added pars. (25) and (26).

1990—Subsec. (a)(2). Pub. L. 101–508, §11812(b)(10), substituted ''under the straight line method'' for ''under section 167(b)(1)'' in concluding provisions.

Subsec. (a)(20). Pub. L. 101–508, §11813(b)(19), which directed the amendment of subsec. (a)(21) by striking ''section 48(q)'' and inserting ''section 50(c)'', was executed to subsec. (a)(20). See 1996 Amendment note above.

Pub. L. 101–508, §11801(c)(1), redesignated par. (21) as (20) and struck out former par. (20) which read as follows: ''to the extent provided in section 23(e), in the

case of property with respect to which a credit has been allowed under section 23;''.

Subsec. (a)(21) to (25). Pub. L. 101–508, §11801(c)(1), redesignated pars. (21) to (25) as (20) to (24), respectively.

1989—Subsec. (a)(25). Pub. L. 101–194 added par. (25).

1988—Subsec. (a)(5). Pub. L. 100–647, §1006(j)(1)(B), inserted ''(or the amount applied to reduce interest payments under section 171(e)(2))'' after ''allowable pursuant to section 171(a)(1)''.

Subsec. (a)(21) to (26). Pub. L. 100–647, §1018(u)(22), added pars. (21) to (24) and struck out former pars. (23) to (26) which read as follows:

''(23) to the extent provided in section 48(q) in the case of expenditures with respect to which a credit has been allowed under section 38;

''(24) for amounts allowed as deductions under section 59(d) (relating to optional 10-year writeoff of certain tax preferences);

''(25) to the extent provided in section 1059 (relating to reduction in basis for extraordinary dividends); and

''(26) in the case of qualified replacement property, the acquisition of which resulted under section 1042 in the nonrecognition of any part of the gain realized on the sale or exchange of any property, to the extent provided in section 1042(c).''

Former pars. (21) and (22) had been struck out previously.

1986—Subsec. (a). Pub. L. 99–514, §1899A(25), which directed the amendment of pars. (23) to (26) by substituting a semicolon for a comma at the end thereof was executed to pars. (24) to (26) in view of the prior repeal of par. (23).

Pub. L. 99–514, §1303(b)(3), which directed the amendment of subsec. (a) by striking out par. (22) and redesignating pars. (23) to (27) as (22) to (26), respectively, was executed by striking out par. (21) to reflect the probable intent of Congress in view of the amendment by section 241(b)(2) of Pub. L. 99–514. Prior to the amendment, par. (21) read as follows: ''to the extent provided in section 1395 in the case of stock of shareholders of a general stock ownership corporation (as defined in section 1391) which makes the election provided by section 1392;''.

Pub. L. 99–514, §241(b)(2), redesignated pars. (17) to (27) as (16) to (26), respectively, and struck out former par. (16) which read as follows: ''for amounts allowed as deductions for expenditures treated as deferred expenses under section 177 (relating to trademark and trade name expenditures) and resulting in a reduction of the taxpayer's taxes under this subtitle, but not less than the amounts allowable under such section for the taxable year and prior years;''.

Subsec. (a)(24). Pub. L. 99–514, §701(e)(4)(D), substituted ''section 59(d)'' for ''section 58(i)''.

1984—Subsec. (a)(17). Pub. L. 98–369, §211(b)(14), substituted ''section 811(b)'' for ''section 818(b)'' in two places.

Subsec. (a)(21). Pub. L. 98–369, §474(r)(23), substituted ''section 23(e)'' for ''section 44C(e)'' and ''section 23'' for ''section 44C''.

Subsec. (a)(26). Pub. L. 98–369, §53(d)(3), added par. (26).

Subsec. (a)(27). Pub. L. 98–369, §541(b)(2), added par. (27).

Subsec. (b). Pub. L. 98–369, §43(a)(2), struck out ''The term 'substituted basis' as used in this section means a basis determined under any provision of this subchapter and subchapters C (relating to corporate distributions and adjustments), K (relating to partners and partnerships), and P (relating to capital gains and losses), or under any corresponding provision of a prior income tax law, providing that the basis shall be determined (1) by reference to the basis in the hands of a transferor, donor, or grantor, or (2) by reference to other property held at any time by the person for whom the basis is to be determined.'' See section 7701(a)(42) of this title.

1982—Subsec. (a)(18). Pub. L. 97–354 substituted ''section 1367'' for ''section 1376'', ''indebtedness owed to'' for ''indebtedness owing'', and ''an S corporation'' for ''an electing small business corporation (as defined in section 1371(b))''.

Subsec. (a)(24). Pub. L. 97–248, §205(a)(5)(B), substituted ''to the extent provided in section 48(q)'' for ''to the extent provided in section 48(g)(5)''.

Subsec. (a)(25). Pub. L. 97–248, §201(c)(2), added par. (25).

1981—Subsec. (a)(24). Pub. L. 97–34, §212(d)(2)(G), added par. (24).

Subsec. (c). Pub. L. 97–34, §421(g), substituted provisions respecting increase in basis of property on which additional estate tax is imposed for provisions for increase in basis in the case of certain involuntary conversions, if such compulsory or involuntary conversions are within the meaning of section 1033, and an additional estate tax is imposed under section 2032A, and provisions respecting time adjustment made.

1980—Subsec. (a)(22). Pub. L. 96–222, §106(a)(2), redesignated par. (21), relating to the extent provided in section 1395 in the case of stock of shareholders of a general stock ownership corporation, as (22).

Subsec. (a)(23). Pub. L. 96–223, §401(a), repealed the amendments made by Pub. L. 94–455, §2005(a)(3), and Pub. L. 95–600, §702(r)(3). See 1976 and 1978 Amendment notes below.

Subsec. (c). Pub. L. 96–223, §401(c)(1), struck out provision relating to the net appreciation of in value of certain property and struck out references to section 1023 of this title.

1978—Subsec. (a)(21). Pub. L. 95–618, §101(b)(3), added par. (21) relating to an adjustment to the extent provided in section 44C.

Pub. L. 95–600, §601(b)(3), as amended by Pub. L. 96–222, §106(a)(3), added par. (21) relating to an adjustment to the extent provided in section 1395.

Subsec. (a)(23). Pub. L. 95–600, §702(r)(3), which redesignated par. (23) as (21), was repealed by Pub. L. 96–222, §107(a)(2)(C), and Pub. L. 96–223, §401(a). See Repeals note below.

Pub. L. 95–600, §515(2), substituted ''December 31, 1979'' for ''December 31, 1976''.

Subsec. (c). Pub. L. 95–472 added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 95–618, §201(b), added subsec. (d). Former subsec. (d) redesignated (e).

Pub. L. 95–472 redesignated former subsec. (c) as (d).

Subsec. (e). Pub. L. 95–618, §201(b), redesignated former subsec. (d) as (e).

1976—Subsec. (a)(2). Pub. L. 94–455, §1901(b)(29)(A), inserted ''(as in effect before the date of the enactment of the Tax Reform Act of 1976)'' after ''under section 1020''.

Subsec. (a)(10). Pub. L. 94–455, §1901(b)(21)(G), struck out par. (10) which related to adjustment for the amounts allowed as deductions as deferred expenses under section 615(b) of this title.

Subsec. (a)(13). Pub. L. 94–455, §1901(b)(1)(F)(ii), substituted ''section 551(e)'' for ''section 551(f)''.

Subsec. (a)(19). Pub. L. 94–455, §1901(a)(123), (b)(30)(A), redesignated par. (20) as (19). Former par. (19), which related to adjustment of section 38 property to the extent provided in sections 48(g) and 203 of this title, was struck out.

Subsec. (a)(20). Pub. L. 94–455, §1901(b)(30)(A), redesignated par. (22) as (20). Former par. (20) redesignated (19).

Subsec. (a)(21). Pub. L. 94–455, §1901(b)(30)(A), struck out par. (21) which related to property adjustment to the extent provided in section 1022 of this title.

Subsec. (a)(22). Pub. L. 94–455, §1901(b)(30)(A), redesignated par. (22) as (20).

Subsec. (a)(23). Pub. L. 94–455, §2005(a)(3), added par. (23). See Repeals note below.

1969—Subsec. (a)(22). Pub. L. 91–172, §516(c)(2)(B), added par. (22).

Subsec. (a)(10). Pub. L. 91–172, §504(c)(4), limited exploration expenditures referred to in this par. to pre-1970 exploration expenditures.

Subsec. (c). Pub. L. 91–172, §231(c)(3), redesignated existing provisions as par. (2) and added par. (1).

1964—Subsec. (a)(15). Pub. L. 88–272, §227(b)(5), inserted ''or domestic iron ore''.

Subsec. (a)(19). Pub. L. 88–272, §203(a)(3)(C), inserted ''and in section 203(a)(2) of the Revenue Act of 1964''.

Subsec. (a)(21). Pub. L. 88–272, §225(j)(2), added par. (21).

1962—Subsec. (a)(3)(D). Pub. L. 87–834, §8(g)(2), added subpar. (D).

Subsec. (a)(19). Pub. L. 87–834, §2(f), added par. (19).

Subsec. (a)(20). Pub. L. 87–834, §12(b)(4), added par. (20).

1959—Subsec. (a)(3)(C). Pub. L. 86–69, §3(d)(1), added subpar. (C).

Subsec. (a)(17). Pub. L. 86–69, §3(d)(2), added par. (17).

1958—Subsec. (a)(6). Pub. L. 85–866, §2(b), struck out ''short-term'' before ''municipal bond''.

Subsec. (a)(18). Pub. L. 85–866, §64(d)(2), added par. (18).

1956—Subsec. (a)(16). Act June 29, 1956, added par. (16).

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Amendment by Pub. L. 111–148 terminated applicable to taxable years beginning after Dec. 31, 2011, and section is amended to read as if such amendment had never been enacted, see section 10909(c) of Pub. L. 111–148, set out as a note under section 1 of this title.

Amendment by Pub. L. 111–148 applicable to taxable years beginning after Dec. 31, 2009, see section 10909(d) of Pub. L. 111–148, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by section 1141(b)(3) of Pub. L. 111–5 applicable to vehicles acquired after Dec. 31, 2009, see section 1141(c) of Pub. L. 111–5, set out as a note under section 30B of this title.

Amendment by section 1142(b)(6) of Pub. L. 111–5 applicable to vehicles acquired after Feb. 17, 2009, see section 1142(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2008, see section 205(e) of Pub. L. 110–343, set out as an Effective and Termination Dates of 2008 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by section 7(a)(1)(C) of Pub. L. 110–172 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 7(e) of Pub. L. 110–172, set out as a note under section 1092 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 1331(b)(1) of Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, see section 1331(d) of Pub. L. 109–58, set out as an Effective Date note under section 179D of this title.

Amendment by section 1332(c) of Pub. L. 109–58 applicable to qualified new energy efficient homes acquired after Dec. 31, 2005, in taxable years ending after such date, see section 1332(f) of Pub. L. 109–58, set out as a note under section 38 of this title.

Amendment by section 1333(b)(1) of Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, see section 1333(c) of Pub. L. 109–58, set out as an Effective Date note under section 25C of this title.

Amendment by section 1335(b)(4) of Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, in taxable years ending after such date, see section 1335(c) of Pub. L. 109–58, set out as a note under section 36C of this title.

Amendment by section 1341(b)(2) of Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, in taxable years ending after such date, see section 1341(c) of Pub. L. 109–58, set out as an Effective Date note under section 30B of this title.

Amendment by section 1342(b)(2) of Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, in taxable years ending after such date, see section 1342(c) of Pub. L. 109–58, set out as an Effective Date note under section 30C of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 245(c)(2) of Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2004, see section 245(e) of Pub. L. 108–357, set out as a note under section 38 of this title.

Amendment by section 338(b)(4) of Pub. L. 108–357 applicable to expenses paid or incurred after Dec. 31, 2002, in taxable years ending after such date, see section 338(c) of Pub. L. 108–357, set out as an Effective Date note under section 179B of this title.

Amendment by section 339(d) of Pub. L. 108–357 applicable to expenses paid or incurred after Dec. 31, 2002, in taxable years ending after such date, see section 339(f) of Pub. L. 108–357, set out as a note under section 38 of this title.

Amendment by section 413(c)(19) of Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 205(c) of Pub. L. 107–16, set out as a note under section 38 of this title.

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title I, §116(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–604, provided that: ''The amendments made by this section [enacting subpart C of part III of subchapter U of this chapter, amending this section and sections 1223, 1394, 1400, and 1400B of this title, redesignating subpart C of part III of subchapter U of this chapter as subpart D of part III of subchapter U of this chapter, and renumbering sections 1397B and 1397C of this title as 1397C and 1397D, respectively, of this title] shall apply to qualified empowerment zone assets acquired after the date of the enactment of this Act [Dec. 21, 2000].''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 312(d)(6) of Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 of this title.

Section 313(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [enacting section 1045 of this title and amending this section and section 1223 of this title] shall apply to sales after the date of enactment of this Act [Aug. 5, 1997].''

Amendment by section 701(b)(2) of Pub. L. 105–34 effective Aug. 5, 1997, see section 701(d) of Pub. L. 105–34, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1807(c)(5) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1807(e) of Pub. L. 104–188, set out as an Effective Date note under section 36C of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13114(d) of Pub. L. 103–66 provided that: ''The amendments made by this section [enacting section 1044 of this title and amending this section] shall apply to sales on and after the date of the enactment of this Act [Aug. 10, 1993], in taxable years ending on and after such date.''

Amendment by section 13213(a)(2)(F) of Pub. L. 103–66 applicable to expenses incurred after Dec. 31, 1993, see section 13213(e) of Pub. L. 103–66 set out as a note under section 62 of this title.

Amendment by section 13261(f)(3) of Pub. L. 103–66 applicable, except as otherwise provided, with respect to property acquired after Aug. 10, 1993, see section 13261(g) of Pub. L. 103–66, set out as an Effective Date note under section 197 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–486 applicable to property placed in service after June 30, 1993, see section 1913(c) of Pub. L. 102–486, set out as an Effective Date note under section 30 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11812(b)(10) of Pub. L. 101–508 applicable to property placed in service after Nov. 5, 1990, but not applicable to any property to which section 168 of this title does not apply by reason of subsec. (f)(5) of section 168, and not applicable to rehabilitation expenditures described in section 252(f)(5) of Pub. L. 99–514, see section 11812(c) of Pub. L. 101–508, set out as a note under section 42 of this title.

Amendment by section 11813(b)(19) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 502(c) of Pub. L. 101–194 provided that: ''The amendments made by this section [enacting section 1043 of this title and amending this section and section 1223 of this title] shall apply to sales after the date of the enactment of this Act [Nov. 30, 1989].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1006(j)(1)(B) of Pub. L. 100–647 applicable in the case of obligations acquired after Dec. 31, 1987, with exception allowing taxpayer to elect to have amendment apply to obligations acquired after Oct. 22, 1986, see section 1006(j)(1)(C) of Pub. L. 100–647, set out as a note under section 171 of this title.

Amendment by section 1018(u)(22) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 241(b)(2) of Pub. L. 99–514 applicable to expenditures paid or incurred after Dec. 31, 1986, except as otherwise provided, see section 241(c) of Pub. L. 99–514, set out as an Effective Date of Repeal note under former section 177 of this title.

Amendment by section 701(e)(4)(D) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

Amendment by section 1303(b)(3) of Pub. L. 99–514 effective Oct. 22, 1986, see section 1311(f) of Pub. L. 99–514, as amended, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 43(a)(2) of Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

Amendment by section 53(d)(3) of Pub. L. 98–369 applicable to distribution after Mar. 1, 1984, in taxable years ending after such date, see section 53(e)(1) of Pub. L. 98–369, set out as an Effective Date note under section 1059 of this title.

Amendment by section 211(b)(14) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

Amendment by section 474(r)(23) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 541(b)(2) of Pub. L. 98–369 applicable to sales of securities in taxable years beginning after July 18, 1984, see section 541(c) of Pub. L. 98–369, set out as an Effective Date note under section 1042 of this title.

EFFECTIVE DATE OF 1982 AMENDMENTS

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

Amendment by section 201(c)(2) of Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, see section 201(e)(1) of Pub. L. 97–248, set out as a note under section 5 of this title.

Amendment by section 205(a)(5)(B) of Pub. L. 97–248 applicable to periods after Dec. 31, 1982, under rules similar to the rules of section 48(m) of this title, with certain qualifications, see section 205(c)(1) of Pub. L. 97–248, set out as an Effective Date note under section 196 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 212(d)(2)(G) of Pub. L. 97–34 applicable to expenditures incurred after Dec. 31, 1981, in taxable years ending after that date, see section 212(e) of Pub. L. 97–34, set out as a note under section 46 of this title.

Amendment by section 421(g) of Pub. L. 97–34 applicable with respect to the estates of decedents dying after Dec. 31, 1981, see section 421(k) of Pub. L. 97–34, set out as a note under section 2032A of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS AND REVIVAL OF PRIOR LAW

Amendment by section 401(a) of Pub. L. 96–223 (repealing section 2005(a)(3) of Pub. L. 94–455 and section 702(r)(3) of Pub. L. 96–500 and the amendments made thereby, which had amended this section) applicable in respect of decedents dying after Dec. 31, 1976, and except for certain elections, this title to be applied as if those repealed provisions had not been enacted, see section 401(b), (e) of Pub. L. 96–223, set out as a note under section 1023 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as an Effective Date of 1980 Amendment note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENTS

Section 101(c) of Pub. L. 95–618 provided that: ''The amendments made by this section [enacting section 23 of this title and amending this section and sections 56 and 6096 of this title] shall apply to taxable years ending on or after April 20, 1977.''

Amendment by section 201(b) of Pub. L. 95–618 applicable with respect to 1980 and later model year auto-

mobiles, see section 201(g) of Pub. L. 95–618, set out as an Effective Date note under section 4064 of this title.

Amendment by section 601(b)(3) of Pub. L. 95–600 effective with respect to corporations chartered after Dec. 31, 1978, and before Jan. 1, 1984, see section 601(d) of Pub. L. 95–600, set out as a note under section 172 of this title.

Amendment by section 702(r)(3) of Pub. L. 95–600 applicable to estates of decedents dying after Dec. 31, 1976, see section 702(r)(5) of Pub. L. 95–600, set out as a note under section 2051 of this title.

Section 4(d) of Pub. L. 95–472 provided that: ''The amendments made by this section [amending this section and section 2032A of this title] shall apply to involuntary conversions after December 31, 1976.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(123), (b)(1)(F)(ii), (21)(G), (29)(A) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Section 1901(b)(30)(B) of Pub. L. 94–455 provided that: ''The amendment made by subparagraph (A)(i) [amending this section] shall apply with respect to stock or securities acquired from a decedent dying after the date of the enactment of this Act [Oct. 4, 1976].''

Amendment by section 2005(a)(3) of Pub. L. 94–455 applicable in respect of decedents dying after Dec. 31, 1976, see section 2005(f) of Pub. L. 94–455 set out as an Effective Date note under section 1015 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 231(c)(3) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 231(d) of Pub. L. 91–172, set out as a note under section 217 of this title.

Amendment by section 504(c)(4) of Pub. L. 91–172 applicable with respect to exploration expenditures paid or incurred after Dec. 31, 1969, see section 504(d)(1) of Pub. L. 91–172, set out as a note under section 243 of this title.

Amendment by section 516(c)(2)(B) of Pub. L. 91–172 applicable to transfers after Dec. 31, 1969, see section 516(d)(3) of Pub. L. 91–172, set out as an Effective Date note under section 1001 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 203(a)(3)(C) of Pub. L. 88–272 applicable in case of property placed in service after Dec. 31, 1963, with respect to taxable years ending after such date, and in case of property placed in service before Jan. 1, 1964, with respect to taxable years beginning after Dec. 31, 1963, see section 203(a)(4) of Pub. L. 88–272, set out as a note under section 48 of this title.

Amendment by section 225(j)(2) of Pub. L. 88–272 applicable in respect of decedents dying after Dec. 31, 1963, see section 225(*l*) of Pub. L. 88–272, set out as a note under section 316 of this title.

Amendment by section 227(b)(5) of Pub. L. 88–272 applicable with respect to amounts received or accrued in taxable years beginning after Dec. 31, 1963, attributable to iron ore mined in such years, see section 227(c) of Pub. L. 88–272, set out as a note under section 272 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 2(f) of Pub. L. 87–834 applicable with respect to taxable years ending after Dec. 31, 1961, see section 2(h) of Pub. L. 87–834, set out as an Effective Date note under section 46 of this title.

Amendment by section 8(g)(2) of Pub. L. 87–834 applicable with respect to taxable years beginning after Dec. 31, 1962, see section 8(h) of Pub. L. 87–834, set out as a note under section 501 of this title.

Amendment by section 12(b)(1) of Pub. L. 87–834 applicable with respect to taxable years of foreign corporations beginning after Dec. 31, 1962, and to taxable years of United States shareholders within which or with which such taxable years of such foreign corporations end, see section 12(c) of Pub. L. 87–834, set out as an Effective Date note under section 951 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–69 applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86–69, set out as a note under section 381 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 2(b) of Pub. L. 85–866 applicable with respect to taxable years ending after December 31, 1957, but only with respect to obligations acquired after such date, see section 2(c) of Pub. L. 85–866, set out as a note under section 75 of this title.

Amendment by section 64(d)(2) of Pub. L. 85–866 applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 64(e) of Pub. L. 85–866, set out as a note under section 172 of this title.

REPEALS

Section 2005(a)(3) of Pub. L. 94–455 and section 702(r)(3) of Pub. L. 95–600, cited as credits to this section, and the amendments made by those sections, were repealed by Pub. L. 96–223, title IV, § 401(a), 94 Stat. 299, resulting in the text of this section reading as it read prior to enactment of sections 2005(a)(3) and 702(r)(3). See Effective Date of 1980 Amendments and Revival of Prior Law note above.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(4)(D) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

CHANGE FROM RETIREMENT TO STRAIGHT LINE METHOD OF COMPUTING DEPRECIATION IN CERTAIN CASES

Section 94 of Pub. L. 85–866, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) SHORT TITLE.—This section may be cited as the 'Retirement-Straight Line Adjustment Act of 1958'.

''(b) MAKING OF ELECTION.—Any taxpayer who held retirement-straight line property on his 1956 adjustment date may elect to have this section apply. Such an election shall be made at such time and in such manner as the Secretary shall prescribe. Any election under this section shall be irrevocable and shall apply to all retirement-straight line property as hereinafter provided

in this section (including such property for periods when held by predecessors of the taxpayer).

''(c) RETIREMENT-STRAIGHT LINE PROPERTY DEFINED.—For purposes of this section, the term 'retirement-straight line property' means any property of a kind or class with respect to which the taxpayer or a predecessor (under the terms and conditions prescribed for him by the Commissioner) for any taxable year beginning after December 31, 1940, and before January 1, 1956, changed from the retirement to the straight line method of computing the allowance of deductions for depreciation.

''(d) BASIS ADJUSTMENTS AS OF 1956 ADJUSTMENT DATE.—If the taxpayer has made an election under this section, then in determining the adjusted basis on his 1956 adjustment date of all retirement-straight line property held by the taxpayer, in lieu of the adjustments for depreciation provided in section 1016(a)(2) and (3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the following adjustments shall be made (effective as of his 1956 adjustment date) in respect of all periods before the 1956 adjustment date:

''(1) DEPRECIATION SUSTAINED BEFORE MARCH 1, 1913.—For depreciation sustained before March 1, 1913, on retirement-straight line property held by the taxpayer or a predecessor on such date for which cost was or is claimed as basis and which either—

''(A) RETIRED BEFORE CHANGEOVER.—Was retired by the taxpayer or a predecessor before the changeover date, but only if (i) a deduction was allowed in computing net income by reason of such retirement, and (ii) such deduction was computed on the basis of cost without adjustment for depreciation sustained before March 1, 1913. In the case of any such property retired during any taxable year beginning after December 31, 1929, the adjustment under this subparagraph shall not exceed that portion of the amount attributable to depreciation sustained before March 1, 1913, which resulted (by reason of the deduction so allowed) in a reduction in taxes under the Internal Revenue Code of 1986 or prior income, war-profits, or excess-profits tax laws.

''(B) HELD ON CHANGEOVER DATE.—Was held by the taxpayer or a predecessor on the changeover date. This subparagraph shall not apply to property to which paragraph (2) applies.

The adjustment determined under this paragraph shall be allocated (in the manner prescribed by the Secretary) among all retirement-straight line property held by the taxpayer on his 1956 adjustment date.

''(2) PROPERTY DISPOSED OF AFTER CHANGEOVER AND BEFORE 1956 ADJUSTMENT DATE.—For that portion of the reserve prescribed by the Commissioner in connection with the changeover which was applicable to property—

''(A) sold, or

''(B) with respect to which a deduction was allowed for Federal income tax purposes by reason of casualty or 'abnormal' retirement in the nature of special obsolescence,

if such sale occurred in, or such deduction was allowed for, a period on or after the changeover date and before the taxpayer's 1956 adjustment date.

''(3) DEPRECIATION ALLOWABLE FROM CHANGEOVER TO 1956 ADJUSTMENT DATE.—For depreciation allowable, under the terms and conditions prescribed by the Commissioner in connection with the changeover, for all periods on and after the changeover date and before the taxpayer's 1956 adjustment date.

This subsection shall apply only with respect to taxable years beginning after December 31, 1955.

''(e) EFFECT ON PERIOD FROM CHANGEOVER TO 1956 ADJUSTMENT DATE.—If the taxpayer has made an election under this section, then in determining the adjusted basis of any retirement-straight line property as of any time on or after the changeover date and before the taxpayer's 1956 adjustment date, in lieu of the adjustments for depreciation provided in section 1016(a)(2) and (3) of the Internal Revenue Code of 1986 and the corresponding provisions of prior revenue laws, the following adjustments shall be made:

''(1) FOR PRESCRIBED RESERVE.—For the amount of the reserve prescribed by the Commissioner in connection with the changeover.

''(2) FOR ALLOWABLE DEPRECIATION.—For the depreciation allowable under the terms and conditions prescribed by the Commissioner in connection with the changeover.

This subsection shall not apply in determining adjusted basis for purposes of section 437(c) of the Internal Revenue Code of 1939. This subsection shall apply only with respect to taxable years beginning on or after the changeover date and before the taxpayer's 1956 adjustment date.

''(f) EQUITY INVESTED CAPITAL, ETC.—If an election is made under this section, then (not withstanding the terms and conditions prescribed by the Commissioner in connection with the changeover)—

''(1) EQUITY INVESTED CAPITAL.—In determining equity invested capital under sections 458 and 718 of the Internal Revenue Code of 1939, accumulated earnings and profits as of the changeover date, and as of the beginning of each taxable year thereafter, shall be reduced by the depreciation sustained before March 1, 1913, as computed under subsection (d)(1)(B); and

''(2) DEFINITION OF EQUITY CAPITAL.—In determining the adjusted basis of assets for the purpose of section 437(c) of the Internal Revenue Code of 1939 (and in addition to any other adjustments required by such Code), the basis shall be reduced by depreciation sustained before March 1, 1913 (as computed under subsection (d)), together with any depreciation allowable under subsection (e)(2) for any period before the year for which the excess profits credit is being computed.

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

''(1) DEPRECIATION.—The term 'depreciation' means exhaustion, wear and tear, and obsolescence.

''(2) CHANGEOVER.—The term 'changeover' means a change from the retirement to the straight line method of computing the allowance of deductions for depreciation.

''(3) CHANGEOVER DATE.—The term 'changeover date' means the first day of the first taxable year for which the changeover was effective.

''(4) 1956 ADJUSTMENT DATE.—The term '1956 adjustment date' means, in the case of any taxpayer, the first day of his first taxable year beginning after December 31, 1955.

''(5) PREDECESSOR.—The term 'predecessor' means any person from whom property of a kind or class to which this section refers was acquired, if the basis of such property is determined by reference to its basis in the hands of such person. Where a series of transfers of property has occurred and where in each instance the basis of the property was determined by reference to its basis in the hands of the prior holder, the term includes each such prior holder.

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

''(7) The term 'Commissioner' means the Commissioner of Internal Revenue.''

§ 1017. Discharge of indebtedness

(a) General rule

If—

(1) an amount is excluded from gross income under subsection (a) of section 108 (relating to discharge of indebtedness), and

(2) under subsection (b)(2)(E), (b)(5), or (c)(1) of section 108, any portion of such amount is to be applied to reduce basis,

then such portion shall be applied in reduction of the basis of any property held by the taxpayer at the beginning of the taxable year following the taxable year in which the discharge occurs.

(b) Amount and properties determined under regulations

(1) In general

The amount of reduction to be applied under subsection (a) (not in excess of the portion referred to in subsection (a)), and the particular properties the bases of which are to be reduced, shall be determined under regulations prescribed by the Secretary.

(2) Limitation in title 11 case or insolvency

In the case of a discharge to which subparagraph (A) or (B) of section 108(a)(1) applies, the reduction in basis under subsection (a) of this section shall not exceed the excess of—

(A) the aggregate of the bases of the property held by the taxpayer immediately after the discharge, over

(B) the aggregate of the liabilities of the taxpayer immediately after the discharge.

The preceding sentence shall not apply to any reduction in basis by reason of an election under section 108(b)(5).

(3) Certain reductions may only be made in the basis of depreciable property

(A) In general

Any amount which under subsection (b)(5) or (c)(1) of section 108 is to be applied to reduce basis shall be applied only to reduce the basis of depreciable property held by the taxpayer.

(B) Depreciable property

For purposes of this section, the term ''depreciable property'' means any property of a character subject to the allowance for depreciation, but only if a basis reduction under subsection (a) will reduce the amount of depreciation or amortization which otherwise would be allowable for the period immediately following such reduction.

(C) Special rule for partnership interests

For purposes of this section, any interest of a partner in a partnership shall be treated as depreciable property to the extent of such partner's proportionate interest in the depreciable property held by such partnership. The preceding sentence shall apply only if there is a corresponding reduction in the partnership's basis in depreciable property with respect to such partner.

(D) Special rule in case of affiliated group

For purposes of this section, if—

(i) a corporation holds stock in another corporation (hereinafter in this subparagraph referred to as the ''subsidiary''), and

(ii) such corporations are members of the same affiliated group which file a consolidated return under section 1501 for the taxable year in which the discharge occurs,

then such stock shall be treated as depreciable property to the extent that such subsidiary consents to a corresponding reduction in the basis of its depreciable property.

(E) Election to treat certain inventory as depreciable property

(i) In general

At the election of the taxpayer, for purposes of this section, the term ''depreciable property'' includes any real property which is described in section 1221(a)(1).

(ii) Election

An election under clause (i) shall be made on the taxpayer's return for the taxable year in which the discharge occurs or at such other time as may be permitted in regulations prescribed by the Secretary. Such an election, once made, may be revoked only with the consent of the Secretary.

(F) Special rules for qualified real property business indebtedness

In the case of any amount which under section 108(c)(1) is to be applied to reduce basis—

(i) depreciable property shall only include depreciable real property for purposes of subparagraphs (A) and (C),

(ii) subparagraph (E) shall not apply, and

(iii) in the case of property taken into account under section 108(c)(2)(B), the reduction with respect to such property shall be made as of the time immediately before disposition if earlier than the time under subsection (a).

(4) Special rules for qualified farm indebtedness

(A) In general

Any amount which under subsection (b)(2)(E) of section 108 is to be applied to reduce basis and which is attributable to an amount excluded under subsection (a)(1)(C) of section 108—

(i) shall be applied only to reduce the basis of qualified property held by the taxpayer, and

(ii) shall be applied to reduce the basis of qualified property in the following order:

(I) First the basis of qualified property which is depreciable property.

(II) Second the basis of qualified property which is land used or held for use in the trade or business of farming.

(III) Then the basis of other qualified property.

(B) Qualified property

For purposes of this paragraph, the term ''qualified property'' has the meaning given to such term by section 108(g)(3)(C).

(C) Certain rules made applicable

Rules similar to the rules of subparagraphs (C), (D), and (E) of paragraph (3) shall apply for purposes of this paragraph and section 108(g).

(c) Special rules

(1) Reduction not to be made in exempt property

In the case of an amount excluded from gross income under section 108(a)(1)(A), no reduction in basis shall be made under this section in the basis of property which the debtor treats as exempt property under section 522 of title 11 of the United States Code.

(2) Reductions in basis not treated as dispositions

For purposes of this title, a reduction in basis under this section shall not be treated as a disposition.

(d) Recapture of reductions

(1) In general

For purposes of sections 1245 and 1250—

(A) any property the basis of which is reduced under this section and which is neither section 1245 property nor section 1250 property shall be treated as section 1245 property, and

(B) any reduction under this section shall be treated as a deduction allowed for depreciation.

(2) Special rule for section 1250

For purposes of section 1250(b), the determination of what would have been the depreciation adjustments under the straight line method shall be made as if there had been no reduction under this section.

(Aug. 16, 1954, ch. 736, 68A Stat. 301; Pub. L. 94–455, title XIX, §§1906(b)(13)(A), 1951(c)(1), Oct. 4, 1976, 90 Stat. 1834, 1840; Pub. L. 96–589, §2(b), Dec. 24, 1980, 94 Stat. 3394; Pub. L. 99–514, title IV, §405(b), title VIII, §822(b)(4), (5), Oct. 22, 1986, 100 Stat. 2224, 2373; Pub. L. 100–647, title I, §1004(a)(5), Nov. 10, 1988, 102 Stat. 3386; Pub. L. 101–508, title XI, §11704(a)(12), Nov. 5, 1990, 104 Stat. 1388–518; Pub. L. 103–66, title XIII, §13150(c)(6)–(8), Aug. 10, 1993, 107 Stat. 448; Pub. L. 104–188, title I, §1703(n)(5), Aug. 20, 1996, 110 Stat. 1877; Pub. L. 105–206, title VI, §6023(11), July 22, 1998, 112 Stat. 825; Pub. L. 106–170, title V, §532(c)(2)(S), Dec. 17, 1999, 113 Stat. 1931.)

AMENDMENTS

1999—Subsec. (b)(3)(E)(i). Pub. L. 106–170 substituted ''1221(a)(1)'' for ''1221(1)''.

1998—Subsec. (a)(2). Pub. L. 105–206 substituted ''(b)(2)(E)'' for ''(b)(2)(D)''.

1996—Subsec. (b)(4)(A). Pub. L. 104–188 substituted ''subsection (b)(2)(E)'' for ''subsection (b)(2)(D)''.

1993—Subsec. (a)(2). Pub. L. 103–66, §13150(c)(6), substituted '', (b)(5), or (c)(1)'' for ''or (b)(5)''.

Subsec. (b)(3)(A). Pub. L. 103–66, §13150(c)(7), inserted ''or (c)(1)'' after ''subsection (b)(5)''.

Subsec. (b)(3)(F). Pub. L. 103–66, §13150(c)(8), added subpar. (F).

1990—Subsec. (b)(4)(C). Pub. L. 101–508 substituted ''subparagraphs'' for ''subparagraph''.

1988—Subsec. (b)(4). Pub. L. 100–647 substituted ''Special rules for'' for ''Ordering rule in the case of'' in heading, and amended text generally. Prior to amendment, text read as follows: ''Any amount which is excluded from gross income under section 108(a) by reason of the discharge of qualified farm indebtedness (within the meaning of section 108(g)(2)) and which under subsection (b) of section 108 is to be applied to reduce basis shall be applied—

''(A) first to reduce the tax attributes described in section 108(b)(2) (other than subparagraph (D) thereof),

''(B) then to reduce basis of property other than property described in subparagraph (C), and

''(C) then to reduce the basis of land used or held for use in the trade or business of farming.''

1986—Subsec. (a)(2). Pub. L. 99–514, §822(b)(4), substituted ''or (b)(5)'' for '', (b)(5), or (c)(1)(A)''.

Subsec. (b)(3)(A). Pub. L. 99–514, §822(b)(5), struck out ''or (c)(1)(A)'' after ''subsection (b)(5)''.

Subsec. (b)(4). Pub. L. 99–514, §405(b), added par. (4).

1980—Pub. L. 96–589 generally revised and expanded the section to specify the amount of reduction of basis of property under different subsections of section 108 of this title and the property to which such reduction is applicable, and provided for recapture of reductions for purposes of gains from depreciable property.

1976—Pub. L. 94–455, §§1906(b)(13)(A), 1951(c)(1), substituted ''section 108'' for ''section 108(a)'' in three places and struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§13001–13444, to which such amendment relates, see section 1703(*o*) of Pub. L. 104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to discharges after Dec. 31, 1992, in taxable years ending after such date, see section 13150(d) of Pub. L. 103–66, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 405(b) of Pub. L. 99–514 applicable to discharges of indebtedness occurring after Apr. 9, 1986, in taxable years ending after such date, see section 405(c) of Pub. L. 99–514, set out as a note under section 108 of this title.

Amendment by section 822(b)(4), (5) of Pub. L. 99–514 applicable to discharges after Dec. 31, 1986, see section 822(c) of Pub. L. 99–514, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 applicable to transactions which occur after Dec. 31, 1980, other than transactions which occur in a proceeding in a bankruptcy case or similar judicial proceeding or in a proceeding under Title 11 commencing on or after Dec. 31, 1980, with an exception permitting the debtor to make the amendment applicable to transactions occurring after Sept. 30, 1979 in a specified manner, see section 7(a) and (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

[§ 1018. Repealed. Pub. L. 96–589, §6(h)(1), Dec. 24, 1980, 94 Stat. 3410]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 301; Oct. 4, 1976, Pub. L. 94–455, title XIX, §1901(a)(124), 90 Stat. 1784, provided for adjustment of capital structure before Sept. 22, 1938.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1979, but not to apply to proceedings under Title 11, Bankruptcy, commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96–589, set out as an Effective Date of 1980 Amendment note under section 108 of this title.

§ 1019. Property on which lessee has made improvements

Neither the basis nor the adjusted basis of any portion of real property shall, in the case of the lessor of such property, be increased or diminished on account of income derived by the lessor in respect of such property and excludable from gross income under section 109 (relating to improvements by lessee on lessor's property). If an amount representing any part of the value of real property attributable to buildings erected or other improvements made by a lessee in respect of such property was included in gross income of the lessor for any taxable year beginning before January 1, 1942, the basis of each portion of such property shall be properly adjusted for the amount so included in gross income.

(Aug. 16, 1954, ch. 736, 68A Stat. 301.)

[§ 1020. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(125), Oct. 4, 1976, 90 Stat. 1784]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 302, related to election to have section 1016(a)(2)(B) of this title apply in respect of periods since Feb. 28, 1913, and before Jan. 1, 1952.

§ 1021. Sale of annuities

In case of the sale of an annuity contract, the adjusted basis shall in no case be less than zero.

(Aug. 16, 1954, ch. 736, 68A Stat. 302.)

[§ 1022. Repealed. Pub. L. 111–312, title III, § 301(a), Dec. 17, 2010, 124 Stat. 3300]

Section, added Pub. L. 107–16, title V, § 542(a), June 7, 2001, 115 Stat. 76, related to treatment of property acquired from a decedent dying after Dec. 31, 2009.

TERMINATION OF REPEAL

For termination of repeal of section by section 304 of Pub. L. 111–312, see Effective and Termination Dates of Repeal note below.

TERMINATION OF SECTION

For termination of section by section 901 of Pub. L. 107–16, see Effective and Termination Dates note below.

PRIOR PROVISIONS

A prior section 1022, added Pub. L. 88–272, title II, § 225(j)(1), Feb. 26, 1964, 78 Stat. 92, dealt with the increase in basis with respect to certain foreign personal holding company stock or securities, prior to repeal by Pub. L. 94–455, title XIX, § 1901(a)(126), Oct. 4, 1976, 90 Stat. 1784, applicable with respect to stock or securities acquired from a decedent dying after Oct. 4, 1976.

Another prior section 1022, act Aug. 16, 1954, ch. 736, 68A Stat. 302, relating to cross references, was renumbered section 1023.

EFFECTIVE AND TERMINATION DATES

Repeal of section applicable to estates of decedents dying, and transfers made after Dec. 31, 2009, except as otherwise provided, see section 301(e) of Pub. L. 111–312, set out as an Effective and Termination Dates of 2010 Amendment note under section 121 of this title.

Section 901 of Pub. L. 107–16 applicable to repeal by section 301(a) of Pub. L. 111–312, see section 304 of Pub. L. 111–312, set out as an Effective and Termination Dates of 2010 Amendment note under section 121 of this title.

Section applicable to estates of decedents dying after Dec. 31, 2009, see section 542(f)(1) of Pub. L. 107–16, set out as an Effective and Termination Dates of 2001 Amendment note under section 121 of this title.

Section inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if it had never been enacted, see section 901 of Pub. L. 107–16, set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title.

§ 1023. Cross references

(1) For certain distributions by a corporation which are applied in reduction of basis of stock, see section 301(c)(2).

(2) For basis in case of construction of new vessels, see chapter 533 of title 46, United States Code.

(Aug. 16, 1954, ch. 736, 68A Stat. 302, § 1022; renumbered § 1023, Pub. L. 88–272, title II, § 225(j)(1), Feb. 26, 1964, 78 Stat. 92; renumbered § 1024 and amended Pub. L. 94–455, title XIX, § 1901(a)(127), title XX, § 2005(a)(2), Oct. 4, 1976, 90 Stat. 1784, 1872; renumbered § 1023, Pub. L. 96–223, title IV, § 401(a), Apr. 2, 1980, 94 Stat. 299; Pub. L. 96–589, § 6(i)(4), Dec. 24, 1980, 94 Stat. 3410; Pub. L. 109–304, § 17(e)(4), Oct. 6, 2006, 120 Stat. 1708.)

PRIOR PROVISIONS

A prior section 1023, added Pub. L. 94–455, title XX, § 2005(a)(2), Oct. 4, 1976, 90 Stat. 1872; amended Pub. L. 95–600, title V, § 515(3), (4), title VII, § 702(c)(2)–(4), (6)–(8), Nov. 6, 1978, 92 Stat. 2884, 2926–2928, related to carryover basis for certain property acquired from a decedent dying after Dec. 31, 1979, prior to repeal by Pub. L. 96–223, title IV, § 401(a), Apr. 2, 1980, 94 Stat. 299. The repeal was achieved by repealing section 2005(a)(2) of Pub. L. 94–455 and the amendment made thereby, which had enacted prior section 1023.

AMENDMENTS

2006—Par. (2). Pub. L. 109–304 substituted ''chapter 533 of title 46, United States Code'' for ''section 511 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1161)''.

1980—Pub. L. 96–589 redesignated par. (3) as (2). Former par. (2), which provided reference to sections 670, 796, and 922 of Title 11, Bankruptcy, for basis of property in case of certain reorganizations and arrangements under the Bankruptcy Act, was struck out.

1976—Par. (4). Pub. L. 94–455, § 1901(a)(127), struck out par. (4) which referred to section 405 of the Defense Production Act of 1950 for rules applicable in case of payments in violation of that Act.

EFFECTIVE DATE OF 1980 AMENDMENTS AND REVIVAL OF PRIOR LAW

Amendment by Pub. L. 96–589 effective Oct. 1, 1979, but not to apply to proceedings under Title 11, Bankruptcy, commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96–589, set out as an Effective Date of 1980 Amendment note under section 108 of this title.

Section 401(b) of Pub. L. 96–223, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Except to the extent necessary to carry out subsection (d) [set out as a note under section 1014 of this title], the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be applied and administered as if the provisions repealed by subsection (a), and the amendments made by those provisions [enacting this section and sections 6039A and 6698A of this title, redesignating former section 1023 as section 1024 of this title, and amending sections 306, 691, 1001, 1014, 1016, 1223, and 1246 of this title], had not been enacted.''

Section 401(e) of Pub. L. 96–223 provided that: ''The amendments made by this section [amending sections 306, 691, 1001, 1014, 1016, 1040, 1223, 1246, and 2614 of this title, repealing former section 1023 and sections 6039A

and 6698A of this title, redesignating former section 1024 of this title as 1023, and enacting provisions set out as notes under this section and section 1014 of this title] shall apply in respect of decedents dying after December 31, 1976.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(127) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

REPEALS

Pub. L. 94–455, § 1901(a)(127), cited as a credit to this section, which renumbered this section as section 1024 of this title, was repealed by Pub. L. 96–223, title IV, § 401(a), Apr. 2, 1980, 94 Stat. 299, resulting in the redesignation of this section as section 1023 of this title. See Effective Date of 1980 Amendments and Revival of Prior Law note set out above.

[§ 1024. Renumbered § 1023]

PART III—COMMON NONTAXABLE EXCHANGES

Sec.
1031. Exchange of property held for productive use or investment.
1032. Exchange of stock for property.
1033. Involuntary conversions.
[1034. Repealed.]
1035. Certain exchanges of insurance policies.
1036. Stock for stock of same corporation.
1037. Certain exchanges of United States obligations.
1038. Certain reacquisitions of real property.
[1039. Repealed.]
1040. Transfer of certain farm, etc., real property.
1041. Transfers of property between spouses or incident to divorce.
1042. Sales of stock to employee stock ownership plans or certain cooperatives.
1043. Sale of property to comply with conflict-of-interest requirements.
1044. Rollover of publicly traded securities gain into specialized small business investment companies.
1045. Rollover of gain from qualified small business stock to another qualified small business stock.

AMENDMENT OF ANALYSIS

For termination of amendment by section 304 of Pub. L. 111–312, see Effective and Termination Dates of 2010 Amendment note set out under section 121 of this title.

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note set out under section 1 of this title.

AMENDMENTS

2010—Pub. L. 111–312, title III, §§ 301(a), 304, Dec. 17, 2010, 124 Stat. 3300, 3304, temporarily amended analysis to read as if amendment by Pub. L. 107–16, § 542(d)(2), had never been enacted. See 2001 Amendment note below.

2001—Pub. L. 107–16, title V, § 542(d)(2), title IX, § 901, June 7, 2001, 115 Stat. 84, 150, temporarily substituted ''Use of appreciated carryover basis property to satisfy pecuniary bequest'' for ''Transfer of certain farm, etc., real property'' in item 1040.

1997—Pub. L. 105–34, title III, §§ 312(d)(15), 313(b)(3), Aug. 5, 1997, 111 Stat. 841, 842, struck out item 1034 ''Rollover of gain on sale of principal residence'' and added item 1045.

1993—Pub. L. 103–66, title XIII, § 13114(c), Aug. 10, 1993, 107 Stat. 431, added item 1044.

1990—Pub. L. 101–508, title XI, § 11801(b)(8), Nov. 5, 1990, 104 Stat. 1388–522, struck out item 1039 ''Certain sales of low-income housing projects''.

1989—Pub. L. 101–194, title V, § 502(b)(3), Nov. 30, 1989, 103 Stat. 1755, added item 1043.

1986—Pub. L. 99–514, title XVIII, § 1854(a)(12), Oct. 22, 1986, 100 Stat. 2878, substituted ''employee stock ownership plans or certain cooperatives'' for ''employees'' in item 1042.

1984—Pub. L. 98–369, div. A, title IV, § 421(c), title V, § 541(b)(3), July 18, 1984, 98 Stat. 794, 890, added items 1041 and 1042.

1981—Pub. L. 97–34, title IV, § 421(j)(2)(C), Aug. 13, 1981, 95 Stat. 312, substituted ''Transfer of certain farm, etc., real property'' for ''Use of farm, etc., real property to satisfy pecuniary bequest'' in item 1040.

1980—Pub. L. 96–223, title IV, § 401(a), (c)(2)(B), Apr. 2, 1980, 94 Stat. 299, 300, amended item 1040 generally and repealed Pub. L. 94–455, § 2005(e)(1), and the amendment made thereby. See 1976 Amendment note below.

1978—Pub. L. 95–600, title IV, § 405(c)(2), Nov. 6, 1978, 92 Stat. 2871, substituted ''Rollover of gain on sale of principal residence'' for ''Sale or exchange of residence'' in item 1034.

1976—Pub. L. 94–455, title XX, § 2005(e)(2), Oct. 4, 1976, 90 Stat. 1878, which added item 1040, was repealed by Pub. L. 96–223, § 401(a). See section 401(b), (e) of Pub. L. 96–223, set out as an Effective Date of 1980 Amendments and Revival of Prior Law note under section 1023 of this title.

1969—Pub. L. 91–172, title IX, § 910(c), Dec. 30, 1969, 83 Stat. 722, added item 1039.

1964—Pub. L. 88–570, § 2(b), Sept. 2, 1964, 78 Stat. 856, added item 1038.

1959—Pub. L. 86–346, title II, § 201(b), Sept. 22, 1959, 73 Stat. 623, added item 1037.

§ 1031. Exchange of property held for productive use or investment

(a) Nonrecognition of gain or loss from exchanges solely in kind

(1) In general

No gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like kind which is to be held either for productive use in a trade or business or for investment.

(2) Exception

This subsection shall not apply to any exchange of—

(A) stock in trade or other property held primarily for sale,

(B) stocks, bonds, or notes,

(C) other securities or evidences of indebtedness or interest,

(D) interests in a partnership,

(E) certificates of trust or beneficial interests, or

(F) choses in action.

For purposes of this section, an interest in a partnership which has in effect a valid election under section 761(a) to be excluded from the application of all of subchapter K shall be treated as an interest in each of the assets of such partnership and not as an interest in a partnership.

(3) Requirement that property be identified and that exchange be completed not more than 180 days after transfer of exchanged property

For purposes of this subsection, any property received by the taxpayer shall be treated

as property which is not like-kind property if—

(A) such property is not identified as property to be received in the exchange on or before the day which is 45 days after the date on which the taxpayer transfers the property relinquished in the exchange, or

(B) such property is received after the earlier of—

(i) the day which is 180 days after the date on which the taxpayer transfers the property relinquished in the exchange, or

(ii) the due date (determined with regard to extension) for the transferor's return of the tax imposed by this chapter for the taxable year in which the transfer of the relinquished property occurs.

(b) Gain from exchanges not solely in kind

If an exchange would be within the provisions of subsection (a), of section 1035(a), of section 1036(a), or of section 1037(a), if it were not for the fact that the property received in exchange consists not only of property permitted by such provisions to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

(c) Loss from exchanges not solely in kind

If an exchange would be within the provisions of subsection (a), of section 1035(a), of section 1036(a), or of section 1037(a), if it were not for the fact that the property received in exchange consists not only of property permitted by such provisions to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

(d) Basis

If property was acquired on an exchange described in this section, section 1035(a), section 1036(a), or section 1037(a), then the basis shall be the same as that of the property exchanged, decreased in the amount of any money received by the taxpayer and increased in the amount of gain or decreased in the amount of loss to the taxpayer that was recognized on such exchange. If the property so acquired consisted in part of the type of property permitted by this section, section 1035(a), section 1036(a), or section 1037(a), to be received without the recognition of gain or loss, and in part of other property, the basis provided in this subsection shall be allocated between the properties (other than money) received, and for the purpose of the allocation there shall be assigned to such other property an amount equivalent to its fair market value at the date of the exchange. For purposes of this section, section 1035(a), and section 1036(a), where as part of the consideration to the taxpayer another party to the exchange assumed (as determined under section 357(d)) a liability of the taxpayer, such assumption shall be considered as money received by the taxpayer on the exchange.

(e) Exchanges of livestock of different sexes

For purposes of this section, livestock of different sexes are not property of a like kind.

(f) Special rules for exchanges between related persons

(1) In general

If—

(A) a taxpayer exchanges property with a related person,

(B) there is nonrecognition of gain or loss to the taxpayer under this section with respect to the exchange of such property (determined without regard to this subsection), and

(C) before the date 2 years after the date of the last transfer which was part of such exchange—

(i) the related person disposes of such property, or

(ii) the taxpayer disposes of the property received in the exchange from the related person which was of like kind to the property transferred by the taxpayer,

there shall be no nonrecognition of gain or loss under this section to the taxpayer with respect to such exchange; except that any gain or loss recognized by the taxpayer by reason of this subsection shall be taken into account as of the date on which the disposition referred to in subparagraph (C) occurs.

(2) Certain dispositions not taken into account

For purposes of paragraph (1)(C), there shall not be taken into account any disposition—

(A) after the earlier of the death of the taxpayer or the death of the related person,

(B) in a compulsory or involuntary conversion (within the meaning of section 1033) if the exchange occurred before the threat or imminence of such conversion, or

(C) with respect to which it is established to the satisfaction of the Secretary that neither the exchange nor such disposition had as one of its principal purposes the avoidance of Federal income tax.

(3) Related person

For purposes of this subsection, the term ''related person'' means any person bearing a relationship to the taxpayer described in section 267(b) or 707(b)(1).

(4) Treatment of certain transactions

This section shall not apply to any exchange which is part of a transaction (or series of transactions) structured to avoid the purposes of this subsection.

(g) Special rule where substantial diminution of risk

(1) In general

If paragraph (2) applies to any property for any period, the running of the period set forth in subsection (f)(1)(C) with respect to such property shall be suspended during such period.

(2) Property to which subsection applies

This paragraph shall apply to any property for any period during which the holder's risk of loss with respect to the property is substantially diminished by—

(A) the holding of a put with respect to such property,

(B) the holding by another person of a right to acquire such property, or

(C) a short sale or any other transaction.

(h) Special rules for foreign real and personal property

For purposes of this section—

(1) Real property

Real property located in the United States and real property located outside the United States are not property of a like kind.

(2) Personal property

(A) In general

Personal property used predominantly within the United States and personal property used predominantly outside the United States are not property of a like kind.

(B) Predominant use

Except as provided in subparagraphs (C) and (D), the predominant use of any property shall be determined based on—

(i) in the case of the property relinquished in the exchange, the 2-year period ending on the date of such relinquishment, and

(ii) in the case of the property acquired in the exchange, the 2-year period beginning on the date of such acquisition.

(C) Property held for less than 2 years

Except in the case of an exchange which is part of a transaction (or series of transactions) structured to avoid the purposes of this subsection—

(i) only the periods the property was held by the person relinquishing the property (or any related person) shall be taken into account under subparagraph (B)(i), and

(ii) only the periods the property was held by the person acquiring the property (or any related person) shall be taken into account under subparagraph (B)(ii).

(D) Special rule for certain property

Property described in any subparagraph of section 168(g)(4) shall be treated as used predominantly in the United States.

(i) Special rules for mutual ditch, reservoir, or irrigation company stock

For purposes of subsection (a)(2)(B), the term ''stocks'' shall not include shares in a mutual ditch, reservoir, or irrigation company if at the time of the exchange—

(1) the mutual ditch, reservoir, or irrigation company is an organization described in section 501(c)(12)(A) (determined without regard to the percentage of its income that is collected from its members for the purpose of meeting losses and expenses), and

(2) the shares in such company have been recognized by the highest court of the State in which such company was organized or by applicable State statute as constituting or representing real property or an interest in real property.

(Aug. 16, 1954, ch. 736, 68A Stat. 302; Pub. L. 85–866, title I, § 44, Sept. 2, 1958, 72 Stat. 1641; Pub. L. 86–346, title II, § 201(c)–(e), Sept. 22, 1959, 73 Stat. 624; Pub. L. 91–172, title II, § 212(c)(1), Dec. 30, 1969, 83 Stat. 571; Pub. L. 98–369, div. A, title I, § 77(a), July 18, 1984, 98 Stat. 595; Pub. L. 99–514, title XVIII, § 1805(d), Oct. 22, 1986, 100 Stat. 2810; Pub. L. 101–239, title VII, § 7601(a), Dec. 19, 1989, 103 Stat. 2370; Pub. L. 101–508, title XI, §§ 11701(h), 11703(d)(1), Nov. 5, 1990, 104 Stat. 1388–508, 1388–517; Pub. L. 105–34, title X, § 1052(a), Aug. 5, 1997, 111 Stat. 940; Pub. L. 106–36, title III, § 3001(c)(2), June 25, 1999, 113 Stat. 183; Pub. L. 109–135, title IV, § 412(pp), Dec. 21, 2005, 119 Stat. 2640; Pub. L. 110–234, title XV, § 15342(a), May 22, 2008, 122 Stat. 1518; Pub. L. 110–246, § 4(a), title XV, § 15342(a), June 18, 2008, 122 Stat. 1664, 2280.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Subsec. (i). Pub. L. 110–246 added subsec. (i).

2005—Subsec. (h)(2)(B). Pub. L. 109–135 substituted ''subparagraphs'' for ''subparagraph'' in introductory provisions.

1999—Subsec. (d). Pub. L. 106–36, in last sentence, substituted ''assumed (as determined under section 357(d)) a liability of the taxpayer'' for ''assumed a liability of the taxpayer or acquired from the taxpayer property subject to a liability'' and struck out ''or acquisition (in the amount of the liability)'' after ''such assumption''.

1997—Subsec. (h). Pub. L. 105–34 amended heading and text of subsec. (h) generally. Prior to amendment, text read as follows: ''For purposes of this section, real property located in the United States and real property located outside the United States are not property of a like kind.''

1990—Subsec. (a)(2). Pub. L. 101–508, § 11703(d)(1), inserted at end ''For purposes of this section, an interest in a partnership which has in effect a valid election under section 761(a) to be excluded from the application of all of subchapter K shall be treated as an interest in each of the assets of such partnership and not as an interest in a partnership.''

Subsec. (f)(3). Pub. L. 101–508, § 11701(h), substituted ''section 267(b) or 707(b)(1)'' for ''section 267(b)''.

1989—Subsecs. (f) to (h). Pub. L. 101–239 added subsecs. (f) to (h).

1986—Subsec. (a)(3)(A). Pub. L. 99–514 substituted ''on or before the day'' for ''before the day''.

1984—Subsec. (a). Pub. L. 98–369, § 77(a), in amending subsec. generally, designated existing provisions as par. (1), substituted ''No gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like kind which is to be held either for productive use in a trade or business or for investment'' for ''No gain or loss shall be recognized if property held for productive use in trade or business or for investment (not including stock in trade or other property held primarily for sale, nor stocks, bonds, notes, choses in action, certificates of trust or beneficial interest, or other securities or evidences of indebtedness or interest) is exchanged solely for property of a like kind to be held either for productive use in trade or business or for investment'', and added pars. (2) and (3).

1969—Subsec. (e). Pub. L. 91–172 added subsec. (e).

1959—Subsecs. (b) to (d). Pub. L. 86–346 inserted references to section 1037(a) in subsecs. (b) and (c) and in first two sentences of subsec. (d).

1958—Subsec. (d). Pub. L. 85–866 inserted in first sentence a comma between ''exchanged'' and ''decreased'' and ''or decreased in the amount of loss'', and substituted in second sentence ''subsection'' for ''paragraph''.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110–234, title XV, §15342(b), May 22, 2008, 122 Stat. 1518, and Pub. L. 110–246, §4(a), title XV, §15342(b), June 18, 2008, 122 Stat. 1664, 2280, provided that: ''The amendment made by this section [amending this section] shall apply to exchanges completed after the date of the enactment of this Act [June 18, 2008].''

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–36 applicable to transfers after Oct. 18, 1998, see section 3001(e) of Pub. L. 106–36, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1052(b) of Pub. L. 105–34 provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to transfers after June 8, 1997, in taxable years ending after such date.

''(2) BINDING CONTRACTS.—The amendment made by this section shall not apply to any transfer pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before the disposition of property. A contract shall not fail to meet the requirements of the preceding sentence solely because—

''(A) it provides for a sale in lieu of an exchange, or

''(B) the property to be acquired as replacement property was not identified under such contract before June 9, 1997.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11701(h) of Pub. L. 101–508 provided that the amendment made by that section is effective with respect to transfers after Aug. 3, 1990.

Section 11703(d)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to transfers after July 18, 1984.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7601(b) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to transfers after July 10, 1989, in taxable years ending after such date.

''(2) BINDING CONTRACT.—The amendments made by this section shall not apply to any transfer pursuant to a written binding contract in effect on July 10, 1989, and at all times thereafter before the transfer.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 77(b) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendment made by subsection (a) [amending this section] shall apply to transfers made after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

''(2) BINDING CONTRACT EXCEPTION FOR TRANSFER OF PARTNERSHIP INTERESTS.—Paragraph (2)(D) of section 1031(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (a)) shall not apply in the case of any exchange pursuant to a binding contract in effect on March 1, 1984, and at all times thereafter before the exchange.

''(3) REQUIREMENT THAT PROPERTY BE IDENTIFIED WITHIN 45 DAYS AND THAT EXCHANGE BE COMPLETED WITHIN 180 DAYS.—Paragraph (3) of section 1031(a) of the Internal Revenue Code of 1986 (as amended by subsection (a)) shall apply—

''(A) to transfers after the date of the enactment of this Act [July 18, 1984], and

''(B) to transfers on or before such date of enactment if the property to be received in the exchange is not received before January 1, 1987.

In the case of any transfer on or before the date of the enactment of this Act which the taxpayer treated as part of a like-kind exchange, the period for assessing any deficiency of tax attributable to the amendment made by subsection (a) [amending this section] shall not expire before January 1, 1988.

''(4) SPECIAL RULE WHERE PROPERTY IDENTIFIED IN BINDING CONTRACT.—If the property to be received in the exchange is identified in a binding contract in effect on June 13, 1984, and at all times thereafter before the transfer, paragraph (3) shall be applied—

''(A) by substituting 'January 1, 1989' for 'January 1, 1987', and

''(B) by substituting 'January 1, 1990' for 'January 1, 1988'.

''(5) SPECIAL RULE FOR LIKE-KIND EXCHANGE OF PARTNERSHIP INTERESTS.—Paragraph (2)(D) of section 1031(a) of the Internal Revenue Code of 1986 (as amended by subsection (a)) shall not apply to any exchange of an interest as general partner pursuant to a plan of reorganization of ownership interest under a contract which took effect on March 29, 1984, and which was executed on or before March 31, 1984, but only if all the exchanges contemplated by the reorganization plan are completed on or before December 31, 1984.''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 212(c)(2) of Pub. L. 91–172, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years to which the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applies.''

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–346 effective for taxable years ending after Sept. 22, 1959, see section 203 of Pub. L. 86–346, set out as an Effective Date note under section 1037 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 1032. Exchange of stock for property

(a) Nonrecognition of gain or loss

No gain or loss shall be recognized to a corporation on the receipt of money or other property in exchange for stock (including treasury stock) of such corporation. No gain or loss shall be recognized by a corporation with respect to any lapse or acquisition of an option, or with re-

spect to a securities futures contract (as defined in section 1234B), to buy or sell its stock (including treasury stock).

(b) Basis

For basis of property acquired by a corporation in certain exchanges for its stock, see section 362.

(Aug. 16, 1954, ch. 736, 68A Stat. 303; Pub. L. 98–369, div. A, title I, § 57(a), July 18, 1984, 98 Stat. 574; Pub. L. 106–554, § 1(a)(7) [title IV, § 401(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–649.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–554 inserted ‘‘, or with respect to a securities futures contract (as defined in section 1234B),’’ after ‘‘an option’’ in second sentence.

1984—Subsec. (a). Pub. L. 98–369 inserted provision that no gain or loss shall be recognized by a corporation with respect to any lapse or acquisition of an option to buy or sell its stock (including treasury stock).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(7) [title IV, § 401(j)], Dec. 21, 2000, 114 Stat. 2763, 2763A–651, provided that: ‘‘The amendments made by this section [enacting section 1234B of this title and amending this section and sections 1091, 1092, 1223, 1233, 1234A, 1256 and 7701 of this title] shall take effect on the date of the enactment of this Act [Dec. 21, 2000].’’

EFFECTIVE DATE OF 1984 AMENDMENT

Section 57(b) of Pub. L. 98–369 provided that: ‘‘The amendment made by subsection (a) [amending this section] shall apply to options acquired or lapsed after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.’’

§ 1033. Involuntary conversions

(a) General rule

If property (as a result of its destruction in whole or in part, theft, seizure, or requisition or condemnation or threat or imminence thereof) is compulsorily or involuntarily converted—

(1) Conversion into similar property

Into property similar or related in service or use to the property so converted, no gain shall be recognized.

(2) Conversion into money

Into money or into property not similar or related in service or use to the converted property, the gain (if any) shall be recognized except to the extent hereinafter provided in this paragraph:

(A) Nonrecognition of gain

If the taxpayer during the period specified in subparagraph (B), for the purpose of replacing the property so converted, purchases other property similar or related in service or use to the property so converted, or purchases stock in the acquisition of control of a corporation owning such other property, at the election of the taxpayer the gain shall be recognized only to the extent that the amount realized upon such conversion (regardless of whether such amount is received in one or more taxable years) exceeds the cost of such other property or such stock. Such election shall be made at such time and in such manner as the Secretary may by regulations prescribe. For purposes of this paragraph—

(i) no property or stock acquired before the disposition of the converted property shall be considered to have been acquired for the purpose of replacing such converted property unless held by the taxpayer on the date of such disposition; and

(ii) the taxpayer shall be considered to have purchased property or stock only if, but for the provisions of subsection (b) of this section, the unadjusted basis of such property or stock would be its cost within the meaning of section 1012.

(B) Period within which property must be replaced

The period referred to in subparagraph (A) shall be the period beginning with the date of the disposition of the converted property, or the earliest date of the threat or imminence of requisition or condemnation of the converted property, whichever is the earlier, and ending—

(i) 2 years after the close of the first taxable year in which any part of the gain upon the conversion is realized, or

(ii) subject to such terms and conditions as may be specified by the Secretary, at the close of such later date as the Secretary may designate on application by the taxpayer. Such application shall be made at such time and in such manner as the Secretary may by regulations prescribe.

(C) Time for assessment of deficiency attributable to gain upon conversion

If a taxpayer has made the election provided in subparagraph (A), then—

(i) the statutory period for the assessment of any deficiency, for any taxable year in which any part of the gain on such conversion is realized, attributable to such gain shall not expire prior to the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) of the replacement of the converted property or of an intention not to replace, and

(ii) such deficiency may be assessed before the expiration of such 3–year period notwithstanding the provisions of section 6212(c) or the provisions of any other law or rule of law which would otherwise prevent such assessment.

(D) Time for assessment of other deficiencies attributable to election

If the election provided in subparagraph (A) is made by the taxpayer and such other property or such stock was purchased before the beginning of the last taxable year in which any part of the gain upon such conversion is realized, any deficiency, to the extent resulting from such election, for any taxable year ending before such last taxable year may be assessed (notwithstanding the provisions of section 6212(c) or 6501 or the provisions of any other law or rule of law which would otherwise prevent such assessment) at any time before the expiration of the period within which a deficiency for such last taxable year may be assessed.

(E) Definitions

For purposes of this paragraph—

(i) Control

The term ''control'' means the ownership of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

(ii) Disposition of the converted property

The term ''disposition of the converted property'' means the destruction, theft, seizure, requisition, or condemnation of the converted property, or the sale or exchange of such property under threat or imminence of requisition or condemnation.

(b) Basis of property acquired through involuntary conversion

(1) Conversions described in subsection (a)(1)

If the property was acquired as the result of a compulsory or involuntary conversion described in subsection (a)(1), the basis shall be the same as in the case of the property so converted—

(A) decreased in the amount of any money received by the taxpayer which was not expended in accordance with the provisions of law (applicable to the year in which such conversion was made) determining the taxable status of the gain or loss upon such conversion, and

(B) increased in the amount of gain or decreased in the amount of loss to the taxpayer recognized upon such conversion under the law applicable to the year in which such conversion was made.

(2) Conversions described in subsection (a)(2)

In the case of property purchased by the taxpayer in a transaction described in subsection (a)(2) which resulted in the nonrecognition of any part of the gain realized as the result of a compulsory or involuntary conversion, the basis shall be the cost of such property decreased in the amount of the gain not so recognized; and if the property purchased consists of more than 1 piece of property, the basis determined under this sentence shall be allocated to the purchased properties in proportion to their respective costs.

(3) Property held by corporation the stock of which is replacement property

(A) In general

If the basis of stock in a corporation is decreased under paragraph (2), an amount equal to such decrease shall also be applied to reduce the basis of property held by the corporation at the time the taxpayer acquired control (as defined in subsection (a)(2)(E)) of such corporation.

(B) Limitation

Subparagraph (A) shall not apply to the extent that it would (but for this subparagraph) require a reduction in the aggregate adjusted bases of the property of the corporation below the taxpayer's adjusted basis of the stock in the corporation (determined immediately after such basis is decreased under paragraph (2)).

(C) Allocation of basis reduction

The decrease required under subparagraph (A) shall be allocated—

(i) first to property which is similar or related in service or use to the converted property,

(ii) second to depreciable property (as defined in section 1017(b)(3)(B)) not described in clause (i), and

(iii) then to other property.

(D) Special rules

(i) Reduction not to exceed adjusted basis of property

No reduction in the basis of any property under this paragraph shall exceed the adjusted basis of such property (determined without regard to such reduction).

(ii) Allocation of reduction among properties

If more than 1 property is described in a clause of subparagraph (C), the reduction under this paragraph shall be allocated among such property in proportion to the adjusted bases of such property (as so determined).

(c) Property sold pursuant to reclamation laws

For purposes of this subtitle, if property lying within an irrigation project is sold or otherwise disposed of in order to conform to the acreage limitation provisions of Federal reclamation laws, such sale or disposition shall be treated as an involuntary conversion to which this section applies.

(d) Livestock destroyed by disease

For purposes of this subtitle, if livestock are destroyed by or on account of disease, or are sold or exchanged because of disease, such destruction or such sale or exchange shall be treated as an involuntary conversion to which this section applies.

(e) Livestock sold on account of drought, flood, or other weather-related conditions

(1) In general

For purposes of this subtitle, the sale or exchange of livestock (other than poultry) held by a taxpayer for draft, breeding, or dairy purposes in excess of the number the taxpayer would sell if he followed his usual business practices shall be treated as an involuntary conversion to which this section applies if such livestock are sold or exchanged by the taxpayer solely on account of drought, flood, or other weather-related conditions.

(2) Extension of replacement period

(A) In general

In the case of drought, flood, or other weather-related conditions described in paragraph (1) which result in the area being designated as eligible for assistance by the Federal Government, subsection (a)(2)(B) shall be applied with respect to any con-

verted property by substituting ''4 years'' for ''2 years''.

(B) Further extension by Secretary

The Secretary may extend on a regional basis the period for replacement under this section (after the application of subparagraph (A)) for such additional time as the Secretary determines appropriate if the weather-related conditions which resulted in such application continue for more than 3 years.

(f) Replacement of livestock with other farm property in certain cases

For purposes of subsection (a), if, because of drought, flood, or other weather-related conditions, or soil contamination or other environmental contamination, it is not feasible for the taxpayer to reinvest the proceeds from compulsorily or involuntarily converted livestock in property similar or related in use to the livestock so converted, other property (including real property in the case of soil contamination or other environmental contamination) used for farming purposes shall be treated as property similar or related in service or use to the livestock so converted.

(g) Condemnation of real property held for productive use in trade or business or for investment

(1) Special rule

For purposes of subsection (a), if real property (not including stock in trade or other property held primarily for sale) held for productive use in trade or business or for investment is (as the result of its seizure, requisition, or condemnation, or threat or imminence thereof) compulsorily or involuntarily converted, property of a like kind to be held either for productive use in trade or business or for investment shall be treated as property similar or related in service or use to the property so converted.

(2) Limitations

Paragraph (1) shall not apply to the purchase of stock in the acquisition of control of a corporation described in subsection (a)(2)(A).

(3) Election to treat outdoor advertising displays as real property

(A) In general

A taxpayer may elect, at such time and in such manner as the Secretary may prescribe, to treat property which constitutes an outdoor advertising display as real property for purposes of this chapter. The election provided by this subparagraph may not be made with respect to any property with respect to which an election under section 179(a) (relating to election to expense certain depreciable business assets) is in effect.

(B) Election

An election made under subparagraph (A) may not be revoked without the consent of the Secretary.

(C) Outdoor advertising display

For purposes of this paragraph, the term ''outdoor advertising display'' means a rigidly assembled sign, display, or device permanently affixed to the ground or permanently attached to a building or other inherently permanent structure constituting, or used for the display of, a commercial or other advertisement to the public.

(D) Character of replacement property

For purposes of this subsection, an interest in real property purchased as replacement property for a compulsorily or involuntarily converted outdoor advertising display defined in subparagraph (C) (and treated by the taxpayer as real property) shall be considered property of a like kind as the property converted without regard to whether the taxpayer's interest in the replacement property is the same kind of interest the taxpayer held in the converted property.

(4) Special rule

In the case of a compulsory or involuntary conversion described in paragraph (1), subsection (a)(2)(B)(i) shall be applied by substituting ''3 years'' for ''2 years''.

(h) Special rules for property damaged by federally declared disasters

(1) Principal residences

If the taxpayer's principal residence or any of its contents is located in a disaster area and is compulsorily or involuntarily converted as a result of a federally declared disaster—

(A) Treatment of insurance proceeds

(i) Exclusion for unscheduled personal property

No gain shall be recognized by reason of the receipt of any insurance proceeds for personal property which was part of such contents and which was not scheduled property for purposes of such insurance.

(ii) Other proceeds treated as common fund

In the case of any insurance proceeds (not described in clause (i)) for such residence or contents—

(I) such proceeds shall be treated as received for the conversion of a single item of property, and

(II) any property which is similar or related in service or use to the residence so converted (or contents thereof) shall be treated for purposes of subsection (a)(2) as property similar or related in service or use to such single item of property.

(B) Extension of replacement period

Subsection (a)(2)(B) shall be applied with respect to any property so converted by substituting ''4 years'' for ''2 years''.

(2) Trade or business and investment property

If a taxpayer's property held for productive use in a trade or business or for investment[1] located in a disaster area and compulsorily or involuntarily converted as a result of a federally declared disaster, tangible property of a type held for productive use in a trade or busi-

[1] So in original. Probably should be followed by ''is''.

ness shall be treated for purposes of subsection (a) as property similar or related in service or use to the property so converted.

(3) Federally declared disaster; disaster area

The terms ''federally declared disaster'' and ''disaster area'' shall have the respective meaning given such terms by section 165(h)(3)(C).

(4) Principal residence

For purposes of this subsection, the term ''principal residence'' has the same meaning as when used in section 121, except that such term shall include a residence not treated as a principal residence solely because the taxpayer does not own the residence.

(i) Replacement property must be acquired from unrelated person in certain cases

(1) In general

If the property which is involuntarily converted is held by a taxpayer to which this subsection applies, subsection (a) shall not apply if the replacement property or stock is acquired from a related person. The preceding sentence shall not apply to the extent that the related person acquired the replacement property or stock from an unrelated person during the period applicable under subsection (a)(2)(B).

(2) Taxpayers to which subsection applies

This subsection shall apply to—

(A) a C corporation,

(B) a partnership in which 1 or more C corporations own, directly or indirectly (determined in accordance with section 707(b)(3)), more than 50 percent of the capital interest, or profits interest, in such partnership at the time of the involuntary conversion, and

(C) any other taxpayer if, with respect to property which is involuntarily converted during the taxable year, the aggregate of the amount of realized gain on such property on which there is realized gain exceeds $100,000.

In the case of a partnership, subparagraph (C) shall apply with respect to the partnership and with respect to each partner. A similar rule shall apply in the case of an S corporation and its shareholders.

(3) Related person

For purposes of this subsection, a person is related to another person if the person bears a relationship to the other person described in section 267(b) or 707(b)(1).

(j) Sales or exchanges to implement microwave relocation policy

(1) In general

For purposes of this subtitle, if a taxpayer elects the application of this subsection to a qualified sale or exchange, such sale or exchange shall be treated as an involuntary conversion to which this section applies.

(2) Qualified sale or exchange

For purposes of paragraph (1), the term ''qualified sale or exchange'' means a sale or exchange before January 1, 2000, which is certified by the Federal Communications Commission as having been made by a taxpayer in connection with the relocation of the taxpayer from the 1850–1990MHz spectrum by reason of the Federal Communications Commission's reallocation of that spectrum for use for personal communications services. The Commission shall transmit copies of certifications under this paragraph to the Secretary.

(k) Sales or exchanges under certain hazard mitigation programs

For purposes of this subtitle, if property is sold or otherwise transferred to the Federal Government, a State or local government, or an Indian tribal government to implement hazard mitigation under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (as in effect on the date of the enactment of this subsection) or the National Flood Insurance Act (as in effect on such date), such sale or transfer shall be treated as an involuntary conversion to which this section applies.

(*l*) Cross references

(1) For determination of the period for which the taxpayer has held property involuntarily converted, see section 1223.

(2) For treatment of gains from involuntary conversions as capital gains in certain cases, see section 1231(a).

(3) For exclusion from gross income of gain from involuntary conversion of principal residence, see section 121.

(Aug. 16, 1954, ch. 736, 68A Stat. 303; June 29, 1956, ch. 464, §5(a), 70 Stat. 407; Pub. L. 85–866, title I, §§45, 46(a), Sept. 2, 1958, 72 Stat. 1641; Pub. L. 88–272, title II, §206(b)(3), Feb. 26, 1964, 78 Stat. 40; Pub. L. 91–172, title IX, §915(a), Dec. 30, 1969, 83 Stat. 723; Pub. L. 94–455, title XIX, §§1901(a)(128), 1906(b)(13)(A), title XXI, §§2127(a), 2140(a), Oct. 4, 1976, 90 Stat. 1785, 1834, 1920, 1932; Pub. L. 95–600, title IV, §404(c)(4), title V, §542(a), title VII, §703(j)(5), Nov. 6, 1978, 92 Stat. 2870, 2888, 2941; Pub. L. 97–34, title II, §202(d)(2), Aug. 13, 1981, 95 Stat. 221; Pub. L. 98–369, div. A, title IV, §474(r)(24), July 18, 1984, 98 Stat. 844; Pub. L. 101–508, title XI, §11813(b)(20), Nov. 5, 1990, 104 Stat. 1388–555; Pub. L. 103–66, title XIII, §13431(a), Aug. 10, 1993, 107 Stat. 567; Pub. L. 104–7, §3(a)(1), (b)(1), Apr. 11, 1995, 109 Stat. 94, 95; Pub. L. 104–188, title I, §§1119(a), (b), 1610(a), Aug. 20, 1996, 110 Stat. 1765, 1844; Pub. L. 105–34, title III, §312(d)(1), (7), title IX, §913(b), title X, §1087(a), Aug. 5, 1997, 111 Stat. 839, 840, 878, 959; Pub. L. 108–311, title IV, §408(a)(7)(C), Oct. 4, 2004, 118 Stat. 1191; Pub. L. 108–357, title III, §311(a), (b), Oct. 22, 2004, 118 Stat. 1466, 1467; Pub. L. 109–7, §1(b), Apr. 15, 2005, 119 Stat. 22; Pub. L. 110–343, div. C, title VII, §706(a)(2)(D)(i)–(iii), Oct. 3, 2008, 122 Stat. 3922.)

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (k), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, which is classified principally to chapter 68 (§5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

The date of the enactment of this subsection, referred to in subsec. (k), is the date of enactment of Pub. L. 109–7, which was approved Apr. 15, 2005.

The National Flood Insurance Act, referred to in subsec. (k), probably means the National Flood Insurance

Act of 1968, title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, as amended, which is classified principally to chapter 50 (§ 4001 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of Title 42 and Tables.

AMENDMENTS

2008—Subsec. (h). Pub. L. 110–343, § 706(a)(2)(D)(i), amended heading generally. Prior to amendment, heading read as follows: ''Special rules for property damaged by Presidentially declared disasters''.

Subsec. (h)(1). Pub. L. 110–343, § 706(a)(2)(D)(i), reenacted heading without change and amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: ''If the taxpayer's principal residence or any of its contents is compulsorily or involuntarily converted as a result of a Presidentially declared disaster—''.

Subsec. (h)(2). Pub. L. 110–343, § 706(a)(2)(D)(ii), substituted ''investment located in a disaster area and compulsorily or involuntarily converted as a result of a federally declared disaster'' for ''investment is compulsorily or involuntarily converted as a result of a Presidentially declared disaster''.

Subsec. (h)(3). Pub. L. 110–343, § 706(a)(2)(D)(iii), amended par. (3) generally. Prior to amendment, par. (3) defined ''Presidentially declared disaster'' for purposes of subsec. (h).

2005—Subsecs. (k), (*l*). Pub. L. 109–7 added subsec. (k) and redesignated former subsec. (k) as (*l*).

2004—Subsec. (e). Pub. L. 108–357, § 311(b), designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsec. (f). Pub. L. 108–357, § 311(a), in heading, substituted ''in certain cases'' for ''where there has been environmental contamination'' and, in text, inserted ''drought, flood, or other weather-related conditions, or'' after ''because of'' and ''in the case of soil contamination or other environmental contamination'' after ''including real property''.

Subsec. (h)(3). Pub. L. 108–311 inserted ''Robert T. Stafford'' before ''Disaster Relief and Emergency Assistance Act''.

1997—Subsec. (e). Pub. L. 105–34, § 913(b), inserted '', flood, or other weather-related conditions'' after ''drought'' in heading and '', flood, or other weather-related conditions'' before period at end of text.

Subsec. (h)(4). Pub. L. 105–34, § 312(d)(1), substituted ''section 121'' for ''section 1034''.

Subsec. (i). Pub. L. 105–34, § 1087(a), amended heading and text of subsec. (i) generally. Prior to amendment, text read as follows:

''(1) IN GENERAL.—In the case of—

''(A) a C corporation, or

''(B) a partnership in which 1 or more C corporations own, directly or indirectly (determined in accordance with section 707(b)(3)), more than 50 percent of the capital interest, or profits interest, in such partnership at the time of the involuntary conversion,

subsection (a) shall not apply if the replacement property or stock is acquired from a related person. The preceding sentence shall not apply to the extent that the related person acquired the replacement property or stock from an unrelated person during the period described in subsection (a)(2)(B).

''(2) RELATED PERSON.—For purposes of this subsection, a person is related to another person if the person bears a relationship to the other person described in section 267(b) or 707(b)(1).''

Subsec. (k)(3). Pub. L. 105–34, § 312(d)(7), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''For one-time exclusion from gross income of gain from involuntary conversion of principal residence by individual who has attained age 55, see section 121.''

1996—Subsec. (b). Pub. L. 104–188, § 1610(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''If the property was acquired, after February 28, 1913, as the result of a compulsory or involuntary conversion described in subsection (a)(1) or section 112(f)(2) of the Internal Revenue Code of 1939, the basis shall be the same as in the case of the property so converted, decreased in the amount of any money received by the taxpayer which was not expended in accordance with the provisions of law (applicable to the year in which such conversion was made) determining the taxable status of the gain or loss upon such conversion, and increased in the amount of gain or decreased in the amount of loss to the taxpayer recognized upon such conversion under the law applicable to the year in which such conversion was made. This subsection shall not apply in respect of property acquired as a result of a compulsory or involuntary conversion of property used by the taxpayer as his principal residence if the destruction, theft, seizure, requisition, or condemnation of such residence, or the sale or exchange of such residence under threat or imminence thereof, occurred after December 31, 1950, and before January 1, 1954. In the case of property purchased by the taxpayer in a transaction described in subsection (a)(3) which resulted in the nonrecognition of any part of the gain realized as the result of a compulsory or involuntary conversion, the basis shall be the cost of such property decreased in the amount of the gain not so recognized; and if the property purchased consists of more than one piece of property, the basis determined under this sentence shall be allocated to the purchased properties in proportion to their respective costs.''

Subsec. (h). Pub. L. 104–188, § 1119(b)(2), substituted ''property'' for ''principal residences'' in heading.

Subsec. (h)(1). Pub. L. 104–188, § 1119(b)(3), substituted ''Principal residences'' for ''In general'' in heading.

Subsec. (h)(2). Pub. L. 104–188, § 1119(a), added par. (2). Former par. (2) redesignated (3).

Subsec. (h)(3). Pub. L. 104–188, § 1119(a), (b)(1), redesignated par. (2) as (3) and substituted ''property'' for ''residence'' before ''is located''. Former par. (3) redesignated (4).

Subsec. (h)(4). Pub. L. 104–188, § 1119(a), redesignated par. (3) as (4).

1995—Subsec. (i). Pub. L. 104–7, § 3(a)(1), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 104–7, § 3(b)(1), added subsec. (j). Former subsec. (j) redesignated (k).

Pub. L. 104–7, § 3(a)(1), redesignated subsec. (i) as (j).

Subsec. (k). Pub. L. 104–7, § 3(b)(1), redesignated subsec. (j) as (k).

1993—Subsecs. (h), (i). Pub. L. 103–66 added subsec. (h) and redesignated former subsec. (h) as (i).

1990—Subsec. (g)(3)(A). Pub. L. 101–508 struck out ''with respect to which the investment credit determined under section 46(a) is or has been claimed or'' after ''to any property''.

1984—Subsec. (g)(3)(A). Pub. L. 98–369 substituted ''the investment credit determined under section 46(a)'' for ''the credit allowed by section 38 (relating to investment in certain depreciable property)''.

1981—Subsec. (g)(3)(A). Pub. L. 97–34 substituted ''(relating to election to expense certain depreciable business assets)'' for ''(relating to additional first-year depreciation allowance for small business)''.

1978—Subsec. (a)(2)(A)(ii). Pub. L. 95–600, § 703(j)(5), substituted ''subsection (b)'' for ''subsection (c)''.

Subsecs. (f), (g). Pub. L. 95–600, § 542(a), added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

Subsec. (h). Pub. L. 95–600, §§ 404(c)(4), 542(a), redesignated subsec. (g) as (h) and substituted in par. (3) ''one-time exclusion'' for ''exclusion'' and ''age 55'' for ''age 65''.

1976—Subsec. (a)(2), (3). Pub. L. 94–455, §§ 1901(a)(128)(A), (B), 1906(b)(13)(A), redesignated par. (3) as (2), struck out in heading ''where disposition occurred after 1950'' after ''Conversion into money'', in provisions preceding subpar. (A) ''and the disposition of the converted property (as defined in paragraph (2)) occurred after December 31, 1950,'' after ''use to the converted property,'' and in subpar. (B)(ii) ''or his dele-

gate'' after ''Secretary'' wherever appearing, and added subpar. (E). Former par. (2), which related to involuntary conversions into money where dispositions occurred prior to 1951, was struck out.

Subsec. (b). Pub. L. 94–455, §1901(a)(128)(C), (D), redesignated subsec. (c) as (b) and substituted ''or section 112(f)(2) of the Internal Revenue Code of 1939'' for ''or (2)''. Former subsec. (b), which related to application of subsec. (a) in the case of property used by taxpayer as his principal residence, if the destruction, theft, etc., occurred after 1950 and before 1954, was struck out.

Subsecs. (c) to (e). Pub. L. 94–455, §1901(a)(128)(C), redesignated subsecs. (d) to (f) as (c) to (e), respectively. Former subsec. (c) redesignated (b).

Subsec. (f). Pub. L. 94–455, §§1901(a)(128)(C), (E), (F), 2127(a), 2140(a), redesignated subsec. (g) as (f), in par. (2) struck out provisions relating to conversion of real property before Jan. 1, 1958, and substituted reference to subsection (a)(2)(A) for reference to subsection (a)(3)(A), and added pars. (3) and (4). Former subsec. (f) redesignated (e).

Subsecs. (g), (h). Pub. L. 94–455, §1901(a)(128)(C), redesignated subsec. (h) as (g). Former subsec. (g) redesignated (f).

1969—Subsec. (a)(3)(B). Pub. L. 91–172 substituted ''2 years'' for ''one year''.

1964—Subsec. (h)(3). Pub. L. 88–272 added par. (3).

1958—Subsec. (a)(2). Pub. L. 85–866, §45, inserted provision defining ''control''.

Subsecs. (g), (h). Pub. L. 85–866, §46(a), added subsec. (g) and redesignated former subsec. (g) as (h).

1956—Subsecs. (f), (g). Act June 29, 1956, added subsec. (f) and redesignated former subsec. (f) as (g).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–343 applicable to disasters declared in taxable years beginning after Dec. 31, 2007, see section 706(d)(1) of Pub. L. 110–343, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–7, §1(c)(2), Apr. 15, 2005, 119 Stat. 22, provided that: ''The amendments made by subsection (b) [amending this section] shall apply to sales or other dispositions before, on, or after the date of the enactment of this Act [Apr. 15, 2005].''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to any taxable year with respect to which the due date (without regard to extensions) for the return is after Dec. 31, 2002, see section 311(d) of Pub. L. 108–357, set out as a note under section 451 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 312(d)(1), (7) of Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 of this title.

Amendment by section 913(b) of Pub. L. 105–34 applicable to sales and exchanges after Dec. 31, 1996, see section 913(c) of Pub. L. 105–34, set out as a note under section 451 of this title.

Section 1087(b) of Pub. L. 105–34 provided that: ''The amendment made by this section [amending this section] shall apply to involuntary conversions occurring after June 8, 1997.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1119(d)(1) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section] shall apply to disasters declared after December 31, 1994, in taxable years ending after such date.''

Section 1610(b) of Pub. L. 104–188 provided that: ''The amendment made by this section [amending this section] shall apply to involuntary conversions occurring after the date of the enactment of this Act [Aug. 20, 1996].''

EFFECTIVE DATE OF 1995 AMENDMENT

Section 3(a)(2) of Pub. L. 104–7 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to involuntary conversions occurring on or after February 6, 1995.''

Section 3(b)(2) of Pub. L. 104–7 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to sales or exchanges after March 14, 1995.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13431(b) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to property compulsorily or involuntarily converted as a result of disasters for which the determination referred to in section 1033(h)(2) of the Internal Revenue Code of 1986 (as added by this section) is made on or after September 1, 1991, and to taxable years ending on or after such date.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, see section 209(a) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 404(c)(4) of Pub. L. 95–600 applicable to sales or exchanges after July 26, 1978, in taxable years ending after such date, see section 404(d)(1) of Pub. L. 95–600, set out as a note under section 121 of this title.

Section 542(b) of Pub. L. 95–600 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1974.''

Amendment by section 703(j)(5) of Pub. L. 95–600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(128) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Section 2127(b) of Pub. L. 94–455 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1970.''

Section 2140(b) of Pub. L. 94–455, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by this section [amending this section] shall apply with respect to any disposition of converted property (within the meaning of section 1033(a)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) after December 31, 1974, unless a condemnation proceeding with respect to such property began before the date of the enactment of this Act [Oct. 4, 1976].''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 915(b) of Pub. L. 91–172, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''The amendment made by this section [amending this section] shall apply only if the disposition of the converted property (within the meaning of section 1033(a)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) occurs after the date of the enactment of this Act [Dec. 30, 1969].''

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to dispositions after Dec. 31, 1963, in taxable years ending after such date, see section 206(c) of Pub. L. 88–272, set out as an Effective Date note under section 121 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Section 5(b) of act June 29, 1956, provided that: ''The amendment made by this section [amending this section] shall apply with respect to taxable years ending after December 31, 1955, but only in the case of sales and exchanges of livestock after December 31, 1955.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[§ 1034. Repealed. Pub. L. 105–34, title III, § 312(b), Aug. 5, 1997, 111 Stat. 839]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 306; Sept. 2, 1958, Pub. L. 85–866, title I, § 46(b), 72 Stat. 1642; Feb. 26, 1964, Pub. L. 88–272, title II, § 206(b)(4), 78 Stat. 40; Jan. 2, 1975, Pub. L. 93–597, § 6(a), 88 Stat. 1953; Mar. 29, 1975, Pub. L. 94–12, title II, § 207, 89 Stat. 32; Oct. 4, 1976, Pub. L. 94–455, title XIX, §§ 1901(a)(129), 1906(b)(13)(A), 90 Stat. 1785, 1834; May 23, 1977, Pub. L. 95–30, title I, § 102(b)(13), 91 Stat. 138; Nov. 6, 1978, Pub. L. 95–600, title IV, §§ 404(c)(5), 405(a)–(c)(1), 92 Stat. 2870, 2871; Nov. 8, 1978, Pub. L. 95–615, title II, § 206, 92 Stat. 3107; Aug. 13, 1981, Pub. L. 97–34, title I, §§ 112(b)(4), 122(a), (b), 95 Stat. 195, 197; July 18, 1984, Pub. L. 98–369, div. A, title X, § 1053(a), 98 Stat. 1045; Oct. 22, 1986, Pub. L. 99–514, title XVIII, § 1878(g), 100 Stat. 2904; Nov. 10, 1988, Pub. L. 100–647, title VI, § 6002(a), 102 Stat. 3684, related to rollover of gain on sale of principal residence.

EFFECTIVE DATE OF REPEAL

Repeal applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as an Effective Date of 1997 Amendment note under section 121 of this title.

§ 1035. Certain exchanges of insurance policies

(a) General rules

No gain or loss shall be recognized on the exchange of—

(1) a contract of life insurance for another contract of life insurance or for an endowment or annuity contract or for a qualified long-term care insurance contract; or[1]

(2) a contract of endowment insurance (A) for another contract of endowment insurance which provides for regular payments beginning at a date not later than the date payments would have begun under the contract exchanged, or (B) for an annuity contract, or (C) for a qualified long-term care insurance contract;

(3) an annuity contract for an annuity contract or for a qualified long-term care insurance contract; or

(4) a qualified long-term care insurance contract for a qualified long-term care insurance contract.

(b) Definitions

For the purpose of this section—

(1) Endowment contract

A contract of endowment insurance is a contract with an insurance company which depends in part on the life expectancy of the insured, but which may be payable in full in a single payment during his life.

(2) Annuity contract

An annuity contract is a contract to which paragraph (1) applies but which may be payable during the life of the annuitant only in installments. For purposes of the preceding sentence, a contract shall not fail to be treated as an annuity contract solely because a qualified long-term care insurance contract is a part of or a rider on such contract.

(3) Life insurance contract

A contract of life insurance is a contract to which paragraph (1) applies but which is not ordinarily payable in full during the life of the insured. For purposes of the preceding sentence, a contract shall not fail to be treated as a life insurance contract solely because a qualified long-term care insurance contract is a part of or a rider on such contract.

(c) Exchanges involving foreign persons

To the extent provided in regulations, subsection (a) shall not apply to any exchange having the effect of transferring property to any person other than a United States person.

(d) Cross references

(1) For rules relating to recognition of gain or loss where an exchange is not solely in kind, see subsections (b) and (c) of section 1031.

(2) For rules relating to the basis of property acquired in an exchange described in subsection (a), see subsection (d) of section 1031.

(Aug. 16, 1954, ch. 736, 68A Stat. 309; Pub. L. 98–369, div. A, title II, §§ 211(b)(15), 224(a), July 18, 1984, 98 Stat. 756, 776; Pub. L. 99–514, title XVIII, § 1828, Oct. 22, 1986, 100 Stat. 2851; Pub. L. 105–34, title XI, § 1131(b)(1), Aug. 5, 1997, 111 Stat. 979; Pub. L. 109–280, title VIII, § 844(b), Aug. 17, 2006, 120 Stat. 1010.)

CODIFICATION

Another section 1131(b) of Pub. L. 105–34 enacted section 684 of this title.

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–280, § 844(b)(3)(A), which directed amendment by inserting ''or for a qualified long-term care insurance contract'' before semicolon ''at the end'', was executed by making the insertion before ''; or'' to reflect the probable intent of Congress.

Subsec. (a)(2). Pub. L. 109–280, § 844(b)(3)(B), which directed amendment by inserting '', or (C) for a qualified

[1] So in original. The word ''or'' probably should not appear.

long-term care insurance contract'' before semicolon ''at the end'', was executed by making the insertion before ''; or'' to reflect the probable intent of Congress.

Subsec. (a)(3). Pub. L. 109–280, § 844(b)(3)(C), inserted ''or for a qualified long-term care insurance contract'' after ''annuity contract''.

Subsec. (a)(4). Pub. L. 109–280, § 844(b)(4), added par. (4).

Subsec. (b)(2). Pub. L. 109–280, § 844(b)(1), inserted at end ''For purposes of the preceding sentence, a contract shall not fail to be treated as an annuity contract solely because a qualified long-term care insurance contract is a part of or a rider on such contract.''

Subsec. (b)(3). Pub. L. 109–280, § 844(b)(2), inserted at end ''For purposes of the preceding sentence, a contract shall not fail to be treated as a life insurance contract solely because a qualified long-term care insurance contract is a part of or a rider on such contract.''

1997—Subsecs. (c), (d). Pub. L. 105–34 added subsec. (c) and redesignated former subsec. (c) as (d).

1986—Subsec. (b)(1). Pub. L. 99–514 struck out ''subject to tax under subchapter L'' after ''with an insurance company''.

1984—Subsec. (b)(1). Pub. L. 98–369, § 224(a), which directed the substitution of ''an insurance company subject to tax under subchapter L'' for ''a life insurance company as defined in section 801'', was executed by making such substitution for ''a life insurance company as defined in section 816'' to reflect the probable intent of Congress and the earlier amendment by Pub. L. 98–369, § 211(b)(15), which substituted ''as defined in section 816'' for ''as defined in section 801''.

Pub. L. 98–369, § 211(b)(15), substituted ''section 816'' for ''section 801''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to contracts issued after Dec. 31, 1996, but only with respect to taxable years beginning after Dec. 31, 2009, and to exchanges occurring after Dec. 31, 2009, see section 844(g)(1), (2) of Pub. L. 109–280, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 211(b)(5) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

Section 224(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to all exchanges whether before, on, or after the date of the enactment of this Act [July 18, 1984].''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 1036. Stock for stock of same corporation

(a) General rule

No gain or loss shall be recognized if common stock in a corporation is exchanged solely for common stock in the same corporation, or if preferred stock in a corporation is exchanged solely for preferred stock in the same corporation.

(b) Nonqualified preferred stock not treated as stock

For purposes of this section, nonqualified preferred stock (as defined in section 351(g)(2)) shall be treated as property other than stock.

(c) Cross references

(1) For rules relating to recognition of gain or loss where an exchange is not solely in kind, see subsections (b) and (c) of section 1031.

(2) For rules relating to the basis of property acquired in an exchange described in subsection (a), see subsection (d) of section 1031.

(Aug. 16, 1954, ch. 736, 68A Stat. 309; Pub. L. 105–34, title X, § 1014(e)(3), Aug. 5, 1997, 111 Stat. 921.)

AMENDMENTS

1997—Subsecs. (b), (c). Pub. L. 105–34 added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable, with certain exceptions, to transactions after June 8, 1997, see section 1014(f) of Pub. L. 105–34, set out as a note under section 351 of this title.

§ 1037. Certain exchanges of United States obligations

(a) General rule

When so provided by regulations promulgated by the Secretary in connection with the issue of obligations of the United States, no gain or loss shall be recognized on the surrender to the United States of obligations of the United States issued under chapter 31 of title 31 in exchange solely for other obligations issued under such chapter.

(b) Application of original issue discount rules

(1) Exchanges involving obligations issued at a discount

In any case in which gain has been realized but not recognized because of the provisions of subsection (a) (or so much of section 1031(b) as relates to subsection (a) of this section), to the extent such gain is later recognized by reason of a disposition or redemption of an obligation received in an exchange subject to such provisions, the first sentence of section 1271(c)(2) shall apply to such gain as though the obligation disposed of or redeemed were the obligation surrendered to the Government in the exchange rather than the obligation actually disposed of or redeemed. For purposes of this paragraph and subpart A of part V of subchapter P, if the obligation surrendered in the exchange is a nontransferable obligation described in subsection (a) or (c) of section 454—

(A) the aggregate amount considered, with respect to the obligation surrendered, as ordinary income shall not exceed the difference between the issue price and the stated redemption price which applies at the time of the exchange, and

(B) the issue price of the obligation received in the exchange shall be considered to be the stated redemption price of the obliga-

tion surrendered in the exchange, increased by the amount of other consideration (if any) paid to the United States as a part of the exchange.

(2) Exchanges of transferable obligations issued at not less than par

In any case in which subsection (a) (or so much of section 1031(b) or (c) as relates to subsection (a) of this section) has applied to the exchange of a transferable obligation which was issued at not less than par for another transferable obligation, the issue price of the obligation received from the Government in the exchange shall be considered for purposes of applying subpart A of part V of subchapter P to be the same as the issue price of the obligation surrendered to the Government in the exchange, increased by the amount of other consideration (if any) paid to the United States as a part of the exchange.

(c) Cross references

(1) For rules relating to the recognition of gain or loss in a case where subsection (a) would apply except for the fact that the exchange was not made solely for other obligations of the United States, see subsections (b) and (c) of section 1031.

(2) For rules relating to the basis of obligations of the United States acquired in an exchange for other obligations described in subsection (a), see subsection (d) of section 1031.

(Added Pub. L. 86–346, title II, § 201(a), Sept. 22, 1959, 73 Stat. 622; amended Pub. L. 94–455, title XIX, § 1901(a)(130), (b)(3)(I), Oct. 4, 1976, 90 Stat. 1786, 1793; Pub. L. 97–452, § 2(c)(3), Jan. 12, 1983, 96 Stat. 2478; Pub. L. 98–369, div. A, title I, § 42(a)(11), July 18, 1984, 98 Stat. 557.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–369, § 42(a)(11)(C), substituted ''original issue discount rules'' for ''section 1232'' in heading.

Subsec. (b)(1). Pub. L. 98–369, § 42(a)(11)(A), (B), substituted ''section 1271(c)(2)'' for ''section 1232(a)(2)(B)'', and ''subpart A of part V of subchapter P'' for ''section 1232''.

Subsec. (b)(2). Pub. L. 98–369, § 42(a)(11)(B), substituted ''subpart A of part V of subchapter P'' for ''section 1232''.

1983—Subsec. (a). Pub. L. 97–452 substituted ''chapter 31 of title 31'' and ''chapter'' for ''the Second Liberty Bond Act'' and ''Act'', respectively.

1976—Subsec. (b)(1). Pub. L. 94–455 substituted in introductory provisions ''section 1232(a)(2)(B)'' for ''section 1232(a)(2)(A)'' and in subpar. (A) ''ordinary income'' for ''gain from the sale or exchange of property which is not a capital asset''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section 203 of Pub. L. 86–346 provided that: ''The amendments made by this title [enacting this section and amending section 1031 of this title and section 742a of former Title 31, Money and Finance] shall be effective for taxable years ending after the date of enactment of this Act [Sept. 22, 1959].''

§ 1038. Certain reacquisitions of real property

(a) General rule

If—

(1) a sale of real property gives rise to indebtedness to the seller which is secured by the real property sold, and

(2) the seller of such property reacquires such property in partial or full satisfaction of such indebtedness,

then, except as provided in subsections (b) and (d), no gain or loss shall result to the seller from such reacquisition, and no debt shall become worthless or partially worthless as a result of such reacquisition.

(b) Amount of gain resulting

(1) In general

In the case of a reacquisition of real property to which subsection (a) applies, gain shall result from such reacquisition to the extent that—

(A) the amount of money and the fair market value of other property (other than obligations of the purchaser) received, prior to such reacquisition, with respect to the sale of such property, exceeds

(B) the amount of the gain on the sale of such property returned as income for periods prior to such reacquisition.

(2) Limitation

The amount of gain determined under paragraph (1) resulting from a reacquisition during any taxable year beginning after the date of the enactment of this section shall not exceed the amount by which the price at which the real property was sold exceeded its adjusted basis, reduced by the sum of—

(A) the amount of the gain on the sale of such property returned as income for periods prior to the reacquisition of such property, and

(B) the amount of money and the fair market value of other property (other than obligations of the purchaser received with respect to the sale of such property) paid or transferred by the seller in connection with the reacquisition of such property.

For purposes of this paragraph, the price at which real property is sold is the gross sales price reduced by the selling commissions, legal fees, and other expenses incident to the sale of such property which are properly taken into account in determining gain or loss on such sale.

(3) Gain recognized

Except as provided in this section, the gain determined under this subsection resulting from a reacquisition to which subsection (a) applies shall be recognized, notwithstanding any other provision of this subtitle.

(c) Basis of reacquired real property

If subsection (a) applies to the reacquisition of any real property, the basis of such property upon such reacquisition shall be the adjusted

basis of the indebtedness to the seller secured by such property (determined as of the date of reacquisition), increased by the sum of—

(1) the amount of the gain determined under subsection (b) resulting from such reacquisition, and

(2) the amount described in subsection (b)(2)(B).

If any indebtedness to the seller secured by such property is not discharged upon the reacquisition of such property, the basis of such indebtedness shall be zero.

(d) Indebtedness treated as worthless prior to reacquisition

If, prior to a reacquisition of real property to which subsection (a) applies, the seller has treated indebtedness secured by such property as having become worthless or partially worthless—

(1) such seller shall be considered as receiving, upon the reacquisition of such property, an amount equal to the amount of such indebtedness treated by him as having become worthless, and

(2) the adjusted basis of such indebtedness shall be increased (as of the date of reacquisition) by an amount equal to the amount so considered as received by such seller.

(e) Principal residences

If—

(1) subsection (a) applies to a reacquisition of real property with respect to the sale of which gain was not recognized under section 121 (relating to gain on sale of principal residence); and

(2) within 1 year after the date of the reacquisition of such property by the seller, such property is resold by him,

then, under regulations prescribed by the Secretary, subsections (b), (c), and (d) of this section shall not apply to the reacquisition of such property and, for purposes of applying section 121, the resale of such property shall be treated as a part of the transaction constituting the original sale of such property.

[(f) Repealed. Pub. L. 104–188, title I, § 1616(b)(12), Aug. 20, 1996, 110 Stat. 1857]

(g) Acquisition by estate, etc., of seller

Under regulations prescribed by the Secretary, if an installment obligation is indebtedness to the seller which is described in subsection (a), and if such obligation is, in the hands of the taxpayer, an obligation with respect to which section 691(a)(4)(B) applies, then—

(1) for purposes of subsection (a), acquisition of real property by the taxpayer shall be treated as reacquisition by the seller, and

(2) the basis of the real property acquired by the taxpayer shall be increased by an amount equal to the deduction under section 691(c) which would (but for this subsection) have been allowable to the taxpayer with respect to the gain on the exchange of the obligation for the real property.

(Added Pub. L. 88–570, § 2(a), Sept. 2, 1964, 78 Stat. 854; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–600, title IV, §§ 404(c)(6), 405(c)(3), Nov. 6, 1978, 92 Stat. 2870, 2871; Pub. L. 96–471, § 4, Oct. 19, 1980, 94 Stat. 2255; Pub. L. 104–188, title I, § 1616(b)(12), Aug. 20, 1996, 110 Stat. 1857; Pub. L. 105–34, title III, § 312(d)(8), Aug. 5, 1997, 111 Stat. 840.)

AMENDMENTS

1997—Subsec. (e). Pub. L. 105–34 amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: ''If—

''(1) subsection (a) applies to a reacquisition of real property with respect to the sale of which—

''(A) an election under section 121 (relating to one-time exclusion of gain from sale of principal residence by individual who has attained age 55) is in effect, or

''(B) gain was not recognized under section 1034 (relating to rollover of gain on sale of principal residence); and

''(2) within one year after the date of the reacquisition of such property by the seller, such property is resold by him,

then, under regulations prescribed by the Secretary, subsections (b), (c), and (d) of this section shall not apply to the reacquisition of such property and, for purposes of applying sections 121 and 1034, the resale of such property shall be treated as a part of the transaction constituting the original sale of such property.''

1996—Subsec. (f). Pub. L. 104–188 struck out subsec. (f) which read as follows:

''(f) REACQUISITIONS BY DOMESTIC BUILDING AND LOAN ASSOCIATIONS.—This section shall not apply to a reacquisition of real property by an organization described in section 593(a) (relating to domestic building and loan associations, etc.).''

1980—Subsec. (g). Pub. L. 96–471 added subsec. (g).

1978—Subsec. (e)(1)(A). Pub. L. 95–600, § 404(c)(6), substituted ''relating to one-time exclusion of gain from sale of principal residence by individual who has attained age 55'' for ''relating to gain from sale or exchange of residence of an individual who has attained age 65''.

Subsec. (e)(1)(B). Pub. L. 95–600, § 405(c)(3), which directed the amendment of section 1083(e)(1)(B) of this title by substituting ''(relating to rollover of gain on sale of principal residence)'' for ''(relating to sale or exchange of residence)'', was executed to this section to reflect the probable intent of Congress because section 1083 does not contain a subsec. (e)(1)(B).

1976—Subsec. (e). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, see section 1616(c) of Pub. L. 104–188, set out as a note under section 593 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 6(c) of Pub. L. 96–471 provided: ''The amendment made by section 4 [amending this section] shall apply to acquisitions of real property by the taxpayer after the date of the enactment of this Act [Oct. 19, 1980].''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 404(c)(6) of Pub. L. 95–600 applicable to sales or exchanges after July 26, 1978, in taxable years ending after such date, see section 404(d)(1) of Pub. L. 95–600, set out as a note under section 121 of this title.

Section 405(d) of Pub. L. 95–600 provided that: ''The amendments made by this section [amending this sec-

tion and sections 1034, 1250, 6212, and 6504 of this title] shall apply to sales and exchanges of residences after July 26, 1978, in taxable years ending after such date.''

EFFECTIVE DATE; ELECTION TO APPLY TO TAXABLE YEARS BEGINNING AFTER DEC. 31, 1957

Section 2(c) of Pub. L. 88–570 provided that:

''(1) The amendments made by this section [enacting this section] shall apply to taxable years beginning after the date of the enactment of this Act [Sept. 2, 1964].

''(2) If the taxpayer makes an election under this paragraph, the amendments made by this section [enacting this section] shall also apply to taxable years beginning after December 31, 1957, except that such amendments shall not apply with respect to any reacquisition of real property in a taxable year for which the assessment of a deficiency, or the credit or refund of an overpayment, is prevented on the date of the enactment of this Act [Sept. 2, 1964] by the operation of any law or rule of law. An election under this paragraph shall be made within one year after the date of the enactment of this Act and shall be made in such form and manner as the Secretary of the Treasury or his delegate shall prescribe by regulations.

''(3) If an election is made by the taxpayer under paragraph (2), and if the assessment of a deficiency, or the credit or refund of an overpayment, for any taxable year to which such election applies is not prevented on the date of the enactment of this Act [Sept. 2, 1964] by the operation of any law or rule of law—

''(A) the period within which a deficiency for such taxable year may be assessed (to the extent such deficiency is attributable to the application of the amendments made by this section) shall not expire prior to one year after the date of such election; and

''(B) the period within which a claim for credit or refund of an overpayment for such taxable year may be filed (to the extent such overpayment is attributable to the application of such amendments) shall not expire prior to one year after the date of such election.

No interest shall be payable with respect to any deficiency attributable to the application of such amendments, and no interest shall be allowed with respect to any credit or refund of any overpayment attributable to the application of such amendments, for any period prior to the date of the enactment of this Act. An election by a taxpayer under paragraph (2) shall be deemed a consent to the application of this paragraph.''

[§ 1039. Repealed. Pub. L. 101–508, title XI, § 11801(a)(33), Nov. 5, 1990, 104 Stat. 1388–521]

Section, added Pub. L. 91–172, title IX, § 910(a), Dec. 30, 1969, 83 Stat. 718; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to the recognition of gain on certain sales of low-income housing projects.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§ 1040. Transfer of certain farm, etc., real property

(a) General rule

If the executor of the estate of any decedent transfers to a qualified heir (within the meaning of section 2032A(e)(1)) any property with respect to which an election was made under section 2032A, then gain on such transfer shall be recognized to the estate only to the extent that, on the date of such transfer, the fair market value of such property exceeds the value of such property for purposes of chapter 11 (determined without regard to section 2032A).

(b) Similar rule for certain trusts

To the extent provided in regulations prescribed by the Secretary, a rule similar to the rule provided in subsection (a) shall apply where the trustee of a trust (any portion of which is included in the gross estate of the decedent) transfers property with respect to which an election was made under section 2032A.

(c) Basis of property acquired in transfer described in subsection (a) or (b)

The basis of property acquired in a transfer with respect to which gain realized is not recognized by reason of subsection (a) or (b) shall be the basis of such property immediately before the transfer increased by the amount of the gain recognized to the estate or trust on the transfer.

(Added Pub. L. 94–455, title XX, § 2005(b), Oct. 4, 1976, 90 Stat. 1877; amended Pub. L. 95–600, title VII, § 702(d)(3), Nov. 6, 1978, 92 Stat. 2929; Pub. L. 96–222, title I, § 105(a)(5)(A), Apr. 1, 1980, 94 Stat. 219; Pub. L. 96–223, title IV, § 401(c)(2)(A), Apr. 2, 1980, 94 Stat. 300; Pub. L. 97–34, title IV, § 421(j)(2)(B), Aug. 13, 1981, 95 Stat. 312; Pub. L. 97–448, title I, § 104(b)(3)(A), (B), Jan. 12, 1983, 96 Stat. 2381; Pub. L. 107–16, title V, § 542(d)(1), June 7, 2001, 115 Stat. 84; Pub. L. 111–312, title III, § 301(a), Dec. 17, 2010, 124 Stat. 3300.)

AMENDMENT OF SECTION

For termination of amendment by section 304 of Pub. L. 111–312, see Effective and Termination Dates of 2010 Amendment note below.

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

AMENDMENTS

2010—Pub. L. 111–312, §§ 301(a), 304, temporarily amended section to read as if amendment by Pub. L. 107–16, § 542(d)(1), had never been enacted. See 2001 Amendment note and Effective and Termination Dates of 2010 Amendment note below.

2001—Pub. L. 107–16, §§ 542(d)(1), 901, temporarily amended section generally. Prior to amendment, text read as follows:

''(a) GENERAL RULE.—If the executor of the estate of any decedent transfers to a qualified heir (within the meaning of section 2032A(e)(1)) any property with respect to which an election was made under section 2032A, then gain on such transfer shall be recognized to the estate only to the extent that, on the date of such transfer, the fair market value of such property exceeds the value of such property for purposes of chapter 11 (determined without regard to section 2032A).

''(b) SIMILAR RULE FOR CERTAIN TRUSTS.—To the extent provided in regulations prescribed by the Secretary, a rule similar to the rule provided in subsection (a) shall apply where the trustee of a trust (any portion of which is included in the gross estate of the decedent) transfers property with respect to which an election was made under section 2032A.

''(c) BASIS OF PROPERTY ACQUIRED IN TRANSFER DESCRIBED IN SUBSECTION (a) OR (b).—The basis of property acquired in a transfer with respect to which gain realized is not recognized by reason of subsection (a) or (b) shall be the basis of such property immediately before the transfer increased by the amount of the gain recognized to the estate or trust on the transfer.''

See Effective and Termination Dates of 2001 Amendment note below.

1983—Subsec. (a). Pub. L. 97–448, § 104(b)(3)(A), substituted ''on the date of such transfer'' for ''on the date of such exchange''.

Subsec. (c). Pub. L. 97–448, § 104(b)(3)(B), substituted references to ''transfer'', ''a transfer'', and ''the transfer'' for references to ''exchange'', ''an exchange'', and ''the exchange'', respectively, wherever appearing in heading and text.

1981—Pub. L. 97–34 substituted ''Transfer of certain farm, etc., real property'' for ''Use of farm, etc., real property to satisfy pecuniary bequest'' in section catchline.

Subsec. (a). Pub. L. 97–34 revised subsec. (a) generally, substituting ''transfers to a qualified heir (within the meaning of section 2032A(e)(1)) any property'' for ''satisfies the right of a qualified heir (within the meaning of section 2032A(e)(1)) to receive a pecuniary bequest with property'' and ''such transfer'' for ''such exchange'' before ''shall be recognized''.

Subsec. (b). Pub. L. 97–34 substituted ''shall apply where the trustee of a trust (any portion of which is included in the gross estate of the decedent) transfers property with respect to which an election was made under section 2032A'' for ''shall apply where—

''(1) by reason of the death of the decedent, a qualified heir has a right to receive from a trust a specific dollar amount which is the equivalent of a pecuniary bequest, and

''(2) the trustee of the trust satisfies such right with property with respect to which an election was made under section 2032A''.

1980—Pub. L. 96–223 substituted ''Use of farm, etc., property to satisfy pecuniary bequest'' for ''Use of certain appreciated carryover basis property to satisfy pecuniary request'' in section catchline, generally revised subsecs. (a) and (b) to reflect the repeal elsewhere in the Code of carryover basis provisions, and struck out subsec. (d) which had provided that, for purposes of this section, references to carryover basis property should be treated as including a reference to property the valuation of which is determined under section 2032A. Pub. L. 96–222 added subsec. (d).

1978—Subsec. (a). Pub. L. 95–600 substituted ''chapter 11 (determined without regard to section 2032A)'' for ''chapter 11''.

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Amendment by Pub. L. 111–312 applicable to estates of decedents dying, and transfers made after Dec. 31, 2009, except as otherwise provided, see section 301(e) of Pub. L. 111–312, set out as a note under section 121 of this title.

Section 901 of Pub. L. 107–16 applicable to amendments by section 301(a) of Pub. L. 111–312, see section 304 of Pub. L. 111–312, set out as a note under section 121 of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to estates of decedents dying after Dec. 31, 2009, see section 542(f)(1) of Pub. L. 107–16, set out as a note under section 121 of this title.

Amendment by Pub. L. 107–16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to the estates of decedents dying after Dec. 31, 1976, upon compliance with certain conditions relating to timely election requirement, reinstatement of elections, and statute of limitations, see section 421(k)(5) of Pub. L. 97–34, set out as a note under section 2032A of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–223 applicable in respect of decedents dying after Dec. 31, 1976, see section 401(e) of Pub. L. 96–223, set out as a note under section 1023 of this title.

Section 105(a)(5)(B) of Pub. L. 96–222, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Notwithstanding section 515 of the Revenue Act of 1978 [section 515 of Pub. L. 95–600 which deferred carryover basis rules until Dec. 31, 1979], section 1040 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subparagraph (A) [amending this section]) shall apply with respect to the estates of decedents dying after December 31, 1976.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to estates of decedents dying after Dec. 31, 1976, see section 702(d)(6) of Pub. L. 95–600, set out as a note under section 2032A of this title.

EFFECTIVE DATE

Section applicable in respect of decedents dying after Dec. 31, 1976, see section 2005(f)(1) of Pub. L. 94–455, set out as a note under section 1015 of this title.

§ 1041. Transfers of property between spouses or incident to divorce

(a) General rule

No gain or loss shall be recognized on a transfer of property from an individual to (or in trust for the benefit of)—

(1) a spouse, or

(2) a former spouse, but only if the transfer is incident to the divorce.

(b) Transfer treated as gift; transferee has transferor's basis

In the case of any transfer of property described in subsection (a)—

(1) for purposes of this subtitle, the property shall be treated as acquired by the transferee by gift, and

(2) the basis of the transferee in the property shall be the adjusted basis of the transferor.

(c) Incident to divorce

For purposes of subsection (a)(2), a transfer of property is incident to the divorce if such transfer—

(1) occurs within 1 year after the date on which the marriage ceases, or

(2) is related to the cessation of the marriage.

(d) Special rule where spouse is nonresident alien

Subsection (a) shall not apply if the spouse (or former spouse) of the individual making the transfer is a nonresident alien.

(e) Transfers in trust where liability exceeds basis

Subsection (a) shall not apply to the transfer of property in trust to the extent that—

(1) the sum of the amount of the liabilities assumed, plus the amount of the liabilities to which the property is subject, exceeds

(2) the total of the adjusted basis of the property transferred.

Proper adjustment shall be made under subsection (b) in the basis of the transferee in such property to take into account gain recognized by reason of the preceding sentence.

(Added Pub. L. 98–369, div. A, title IV, § 421(a), July 18, 1984, 98 Stat. 793; amended Pub. L. 99–514, title XVIII, § 1842(b), Oct. 22, 1986, 100 Stat. 2853; Pub. L. 100–647, title I, § 1018(*l*)(3), Nov. 10, 1988, 102 Stat. 3584.)

AMENDMENTS

1988—Subsec. (d). Pub. L. 100–647 substituted ''Subsection (a)'' for ''Paragraph (1) of subsection (a)'' and ''the spouse (or former spouse)'' for ''the spouse''.

1986—Subsec. (e). Pub. L. 99–514 added subsec. (e).

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1018(*l*)(3) of Pub. L. 100–647 provided that the amendment made by that section is effective with respect to transfers after June 21, 1988.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section 421(d) of Pub. L. 98–369 provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section and amending sections 47, 72, 101, 453, 453B, 1001, 1015, and 1239 of this title] shall apply to transfers after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

''(2) ELECTION TO HAVE AMENDMENTS APPLY TO TRANSFERS AFTER 1983.—If both spouses or former spouses make an election under this paragraph, the amendments made by this section shall apply to all transfers made by such spouses (or former spouses) after December 31, 1983.

''(3) EXCEPTION FOR TRANSFERS PURSUANT TO EXISTING DECREES.—Except in the case of an election under paragraph (2), the amendments made by this section shall not apply to transfers under any instrument in effect on or before the date of the enactment of this Act unless both spouses (or former spouses) elect to have such amendments apply to transfers under such instrument.

''(4) ELECTION.—Any election under paragraph (2) or (3) shall be made in such manner, at such time, and subject to such conditions, as the Secretary of the Treasury or his delegate may by regulations prescribe.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 1042. Sales of stock to employee stock ownership plans or certain cooperatives

(a) Nonrecognition of gain

If—

(1) the taxpayer or executor elects in such form as the Secretary may prescribe the application of this section with respect to any sale of qualified securities,

(2) the taxpayer purchases qualified replacement property within the replacement period, and

(3) the requirements of subsection (b) are met with respect to such sale,

then the gain (if any) on such sale which would be recognized as long-term capital gain shall be recognized only to the extent that the amount realized on such sale exceeds the cost to the taxpayer of such qualified replacement property.

(b) Requirements to qualify for nonrecognition

A sale of qualified securities meets the requirements of this subsection if—

(1) Sale to employee organizations

The qualified securities are sold to—

(A) an employee stock ownership plan (as defined in section 4975(e)(7)), or

(B) an eligible worker-owned cooperative.

(2) Plan must hold 30 percent of stock after sale

The plan or cooperative referred to in paragraph (1) owns (after application of section 318(a)(4)), immediately after the sale, at least 30 percent of—

(A) each class of outstanding stock of the corporation (other than stock described in section 1504(a)(4)) which issued the qualified securities, or

(B) the total value of all outstanding stock of the corporation (other than stock described in section 1504(a)(4)).

(3) Written statement required

(A) In general

The taxpayer files with the Secretary the written statement described in subparagraph (B).

(B) Statement

A statement is described in this subparagraph if it is a verified written statement of—

(i) the employer whose employees are covered by the plan described in paragraph (1), or

(ii) any authorized officer of the cooperative described in paragraph (l),

consenting to the application of sections 4978 and 4979A with respect to such employer or cooperative.

(4) 3-year holding period

The taxpayer's holding period with respect to the qualified securities is at least 3 years (determined as of the time of the sale).

(c) Definitions; special rules

For purposes of this section—

(1) Qualified securities

The term ''qualified securities'' means employer securities (as defined in section 409(*l*)) which—

(A) are issued by a domestic C corporation that has no stock outstanding that is readily

tradable on an established securities market, and

(B) were not received by the taxpayer in—

(i) a distribution from a plan described in section 401(a), or

(ii) a transfer pursuant to an option or other right to acquire stock to which section 83, 422, or 423 applied (or to which section 422 or 424 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) applied).

(2) Eligible worker-owned cooperative

The term ''eligible worker-owned cooperative'' means any organization—

(A) to which part I of subchapter T applies,

(B) a majority of the membership of which is composed of employees of such organization,

(C) a majority of the voting stock of which is owned by members,

(D) a majority of the board of directors of which is elected by the members on the basis of 1 person 1 vote, and

(E) a majority of the allocated earnings and losses of which are allocated to members on the basis of—

(i) patronage,

(ii) capital contributions, or

(iii) some combination of clauses (i) and (ii).

(3) Replacement period

The term ''replacement period'' means the period which begins 3 months before the date on which the sale of qualified securities occurs and which ends 12 months after the date of such sale.

(4) Qualified replacement property

(A) In general

The term ''qualified replacement property'' means any security issued by a domestic operating corporation which—

(i) did not, for the taxable year preceding the taxable year in which such security was purchased, have passive investment income (as defined in section 1362(d)(3)(C)) in excess of 25 percent of the gross receipts of such corporation for such preceding taxable year, and

(ii) is not the corporation which issued the qualified securities which such security is replacing or a member of the same controlled group of corporations (within the meaning of section 1563(a)(1)) as such corporation.

For purposes of clause (i), income which is described in section 954(c)(3) (as in effect immediately before the Tax Reform Act of 1986) shall not be treated as passive investment income.

(B) Operating corporation

For purposes of this paragraph—

(i) In general

The term ''operating corporation'' means a corporation more than 50 percent of the assets of which were, at the time the security was purchased or before the close of the replacement period, used in the active conduct of the trade or business.

(ii) Financial institutions and insurance companies

The term ''operating corporation'' shall include—

(I) any financial institution described in section 581, and

(II) an insurance company subject to tax under subchapter L.

(C) Controlling and controlled corporations treated as 1 corporation

(i) In general

For purposes of applying this paragraph, if—

(I) the corporation issuing the security owns stock representing control of 1 or more other corporations,

(II) 1 or more other corporations own stock representing control of the corporation issuing the security, or

(III) both,

then all such corporations shall be treated as 1 corporation.

(ii) Control

For purposes of clause (i), the term ''control'' has the meaning given such term by section 304(c). In determining control, there shall be disregarded any qualified replacement property of the taxpayer with respect to the section 1042 sale being tested.

(D) Security defined

For purposes of this paragraph, the term ''security'' has the meaning given such term by section 165(g)(2), except that such term shall not include any security issued by a government or political subdivision thereof.

(5) Securities sold by underwriter

No sale of securities by an underwriter to an employee stock ownership plan or eligible worker-owned cooperative in the ordinary course of his trade or business as an underwriter, whether or not guaranteed, shall be treated as a sale for purposes of subsection (a).

(6) Time for filing election

An election under subsection (a) shall be filed not later than the last day prescribed by law (including extensions thereof) for filing the return of tax imposed by this chapter for the taxable year in which the sale occurs.

(7) Section not to apply to gain of C corporation

Subsection (a) shall not apply to any gain on the sale of any qualified securities which is includible in the gross income of any C corporation.

(d) Basis of qualified replacement property

The basis of the taxpayer in qualified replacement property purchased by the taxpayer during the replacement period shall be reduced by the amount of gain not recognized by reason of such purchase and the application of subsection (a). If more than one item of qualified replacement property is purchased, the basis of each of such items shall be reduced by an amount determined by multiplying the total gain not recognized by

reason of such purchase and the application of subsection (a) by a fraction—

(1) the numerator of which is the cost of such item of property, and

(2) the denominator of which is the total cost of all such items of property.

Any reduction in basis under this subsection shall not be taken into account for purposes of section 1278(a)(2)(A)(ii) (relating to definition of market discount).

(e) Recapture of gain on disposition of qualified replacement property

(1) In general

If a taxpayer disposes of any qualified replacement property, then, notwithstanding any other provision of this title, gain (if any) shall be recognized to the extent of the gain which was not recognized under subsection (a) by reason of the acquisition by such taxpayer of such qualified replacement property.

(2) Special rule for corporations controlled by the taxpayer

If—

(A) a corporation issuing qualified replacement property disposes of a substantial portion of its assets other than in the ordinary course of its trade or business, and

(B) any taxpayer owning stock representing control (within the meaning of section 304(c)) of such corporation at the time of such disposition holds any qualified replacement property of such corporation at such time,

then the taxpayer shall be treated as having disposed of such qualified replacement property at such time.

(3) Recapture not to apply in certain cases

Paragraph (1) shall not apply to any transfer of qualified replacement property—

(A) in any reorganization (within the meaning of section 368) unless the person making the election under subsection (a)(1) owns stock representing control in the acquiring or acquired corporation and such property is substituted basis property in the hands of the transferee,

(B) by reason of the death of the person making such election,

(C) by gift, or

(D) in any transaction to which section 1042(a) applies.

(f) Statute of limitations

If any gain is realized by the taxpayer on the sale or exchange of any qualified securities and there is in effect an election under subsection (a) with respect to such gain, then—

(1) the statutory period for the assessment of any deficiency with respect to such gain shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) of—

(A) the taxpayer's cost of purchasing qualified replacement property which the taxpayer claims results in nonrecognition of any part of such gain,

(B) the taxpayer's intention not to purchase qualified replacement property within the replacement period, or

(C) a failure to make such purchase within the replacement period, and

(2) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(g) Application of section to sales of stock in agricultural refiners and processors to eligible farm cooperatives

(1) In general

This section shall apply to the sale of stock of a qualified refiner or processor to an eligible farmers' cooperative.

(2) Qualified refiner or processor

For purposes of this subsection, the term ''qualified refiner or processor'' means a domestic corporation—

(A) substantially all of the activities of which consist of the active conduct of the trade or business of refining or processing agricultural or horticultural products, and

(B) which, during the 1-year period ending on the date of the sale, purchases more than one-half of such products to be refined or processed from—

(i) farmers who make up the eligible farmers' cooperative which is purchasing stock in the corporation in a transaction to which this subsection is to apply, or

(ii) such cooperative.

(3) Eligible farmers' cooperative

For purposes of this section, the term ''eligible farmers' cooperative'' means an organization to which part I of subchapter T applies and which is engaged in the marketing of agricultural or horticultural products.

(4) Special rules

In applying this section to a sale to which paragraph (1) applies—

(A) the eligible farmers' cooperative shall be treated in the same manner as a cooperative described in subsection (b)(1)(B),

(B) subsection (b)(2) shall be applied by substituting ''100 percent'' for ''30 percent'' each place it appears,

(C) the determination as to whether any stock in the domestic corporation is a qualified security shall be made without regard to whether the stock is an employer security or to subsection (c)(1)(A), and

(D) paragraphs (2)(D) and (7) of subsection (c) shall not apply.

(Added Pub. L. 98–369, div. A, title V, § 541(a), July 18, 1984, 98 Stat. 887; amended Pub. L. 99–514, title XVIII, §§ 1854(a)(1), (2)(A), (3)(B), (4), (5)(A), (6)(A), (7), (8)(A), (9)(B), (10), (11), (f)(3)(B), 1899A(26), Oct. 22, 1986, 100 Stat. 2872–2878, 2882, 2959; Pub. L. 100–647, title I, § 1018(t)(4)(D)–(F), Nov. 10, 1988, 102 Stat. 3588; Pub. L. 101–239, title VII, § 7303(a), Dec. 19, 1989, 103 Stat. 2352; Pub. L. 101–508, title XI, § 11801(c)(9)(H), Nov. 5, 1990, 104 Stat. 1388–526; Pub. L. 104–188, title I, §§ 1311(b)(3), 1316(d)(3), 1616(b)(13), 1704(t)(50), Aug. 20, 1996, 110 Stat. 1784, 1786, 1857, 1890; Pub. L. 105–34, title IX, § 968(a), Aug. 5, 1997, 111 Stat. 895.)

REFERENCES IN TEXT

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsec. (c)(1)(B)(ii), is the date of enactment of Pub. L. 101–508, which was approved Nov. 5, 1990.

The Tax Reform Act of 1986, referred to in subsec. (c)(4)(A), is Pub. L. 99–514, which was approved Oct. 22, 1986.

AMENDMENTS

1997—Subsec. (g). Pub. L. 105–34 added subsec. (g).

1996—Subsec. (c)(1)(A). Pub. L. 104–188, §1316(d)(3), substituted ''domestic C corporation'' for ''domestic corporation''.

Subsec. (c)(1)(B)(ii). Pub. L. 104–188, §1704(t)(50), provided that section 11801(c)(9)(H) of Pub. L. 101–508 shall be applied as if ''section 1042(c)(1)(B)'' appeared instead of ''section 1042(c)(2)(B)''. See 1990 Amendment note below.

Subsec. (c)(4)(A)(i). Pub. L. 104–188, §1311(b)(3), substituted ''section 1362(d)(3)(C)'' for ''section 1362(d)(3)(D)''.

Subsec. (c)(4)(B)(ii)(I). Pub. L. 104–188, §1616(b)(13), struck out ''or 593'' after ''section 581''.

1990—Subsec. (c)(1)(B)(ii). Pub. L. 101–508, which directed the amendment of subsec. (c)(2)(B)(ii) by substituting ''section 83, 422, or 423 applied (or to which section 422 or 424 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) applied)'' for ''section 83, 422, 422A, 423, or 424 applies'', was executed to subsec. (c)(1)(B)(ii). See 1996 Amendment note above.

1989—Subsec. (b)(4). Pub. L. 101–239 added par. (4).

1988—Subsec. (b)(3), (4). Pub. L. 100–647, §1018(t)(4)(F), made technical correction to Pub. L. 99–514, §1854(a)(3)(B), see 1986 Amendment notes below.

Subsec. (c)(4)(A). Pub. L. 100–647, §1018(t)(4)(D), inserted ''(as in effect immediately before the Tax Reform Act of 1986)'' after ''section 954(c)(3)'' in last sentence.

Subsec. (c)(4)(B)(i). Pub. L. 100–647, §1018(t)(4)(E), substituted ''replacement period'' for ''placement period''.

1986—Pub. L. 99–514, §1854(a)(11), which directed that ''employee'' be inserted before ''stock'' in section catchline was executed by making the insertion before ''stock'' the second time that term appears as the probable intent of Congress.

Subsec. (a). Pub. L. 99–514, §1854(a)(1), substituted ''the taxpayer or executor elects in such form as the Secretary may prescribe'' for ''the taxpayer elects'' in par. (1) and inserted ''which would be recognized as long-term capital gain'' in concluding provisions.

Subsec. (b)(2). Pub. L. 99–514, §1854(a)(2)(A), substituted ''Plan must hold'' for ''Employees must own'' in heading and amended text generally. Prior to amendment, par. (2) read as follows: ''The plan or cooperative referred to in paragraph (1) owns, immediately after the sale, at least 30 percent of the total value of the employer securities (within the meaning of section 409(*l*)) outstanding as of such time.''

Subsec. (b)(3). Pub. L. 99–514, §1854(a)(3)(B), as amended by Pub. L. 100–647, §1018(t)(4)(F), redesignated par. (4) as (3) and struck out former par. (3) which related to plans maintained for benefit of employees.

Subsec. (b)(3)(B). Pub. L. 99–514, §1854(f)(3)(B), amended subpar. (B) similar to amendment by section 1854(a)(9)(B) of Pub. L. 99–514, inserting reference to section 4979A.

Pub. L. 99–514, §1854(a)(9)(B), substituted ''sections 4978 and 4979A'' for ''section 4978(a)''.

Subsec. (b)(4). Pub. L. 99–514, §1854(a)(3)(B), as amended by Pub. L. 100–647, §1018(t)(4)(F), redesignated par. (4) as (3).

Subsec. (c). Pub. L. 99–514, §1899A(26), substituted ''this section—'' for ''this section.—'' in introductory provision.

Subsec. (c)(1). Pub. L. 99–514, §1854(a)(4), substituted ''stock outstanding that is'' for ''securities outstanding that are'' in subpar. (A), redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: ''at the time of the sale described in subsection (a)(1), have been held by the taxpayer for more than 1 year, and''.

Subsec. (c)(4). Pub. L. 99–514, §1854(a)(5)(A), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''The term 'qualified replacement property' means any securities (as defined in section 165(g)(2)) issued by a domestic corporation which does not, for the taxable year in which such stock is issued, have passive investment income (as defined in section 1362(d)(3)(D)) that exceeds 25 percent of the gross receipts of such corporation for such taxable year.''

Subsec. (c)(5). Pub. L. 99–514, §1854(a)(10), substituted ''sold'' for ''acquired'' in heading, and in text substituted ''sale of securities'' for ''acquisition of securities'' and inserted ''to an employee stock ownership plan or eligible worker-owned cooperative''.

Subsec. (c)(7). Pub. L. 99–514, §1854(a)(6)(A), added par. (7).

Subsec. (d). Pub. L. 99–514, §1854(a)(7), inserted last sentence.

Subsecs. (e), (f). Pub. L. 99–514, §1854(a)(8)(A), added subsec. (e) and redesignated former subsec. (e) as (f).

EFFECTIVE DATE OF 1997 AMENDMENT

Section 968(b) of Pub. L. 105–34 provided that: ''The amendment made by this section [amending this section] shall apply to sales after December 31, 1997.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1316(d)(3) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1997, see section 1316(f) of Pub. L. 104–188, set out as a note under section 170 of this title.

Amendment by section 1311(b)(3) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1317(a) of Pub. L. 104–188, set out as a note under section 641 of this title.

Amendment by section 1616(b)(13) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, see section 1616(c) of Pub. L. 104–188, set out as a note under section 593 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7303(b) of Pub. L. 101–239 provided that: ''The amendment made by this section [amending this section] shall apply to sales after July 10, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1854(a)(1), (2)(A), (4), (5)(A), (7), (10), (11) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Amendment by section 1854(a)(3)(B) of Pub. L. 99–514 applicable to sales of securities after Oct. 22, 1986, except that a taxpayer or executor may elect to have section 1042(b)(3) of the Internal Revenue Code of 1954 (as in effect before the amendment by section 1854(a)(3)(B) of Pub. L. 99–514) apply to sales before Oct. 22, 1986, as if section 1042(b)(3) included the last sentence of section 409(n)(1) of this title (as added by section 1854(a)(3)(A) of Pub. L. 99–514), see section 1854(a)(3)(C) of Pub. L. 99–514, as amended, set out as a note under section 409 of this title.

Section 1854(a)(6)(B)–(D) of Pub. L. 99–514 provided that:

''(B) The amendment made by subparagraph (A) [amending this section] shall apply to sales after March 28, 1985, except that such amendment shall not apply to

sales made before July 1, 1985, if made pursuant to a binding contract in effect on March 28, 1985, and at all times thereafter.

''(C) The amendment made by subparagraph (A) shall not apply to any sale occurring on December 20, 1985, with respect to which—

''(i) a commitment letter was issued by a bank on October 31, 1984, and

''(ii) a final purchase agreement was entered into on November 5, 1985.

''(D) In the case of a sale on September 27, 1985, with respect to which a preliminary commitment letter was issued by a bank on April 10, 1985, and with respect to which a commitment letter was issued by a bank on June 28, 1985, the amendment made by subparagraph (A) shall apply but such sale shall be treated as having occurred on September 27, 1986.''

Section 1854(a)(8)(B) of Pub. L. 99–514 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to dispositions after the date of the enactment of this Act [Oct. 22, 1986], in taxable years ending after such date.''

Amendment by section 1854(a)(9)(B) of Pub. L. 99–514 applicable to sales of securities after Oct. 22, 1986, see section 1854(a)(9)(D) of Pub. L. 99–514, set out as an Effective Date note under section 4979A of this title.

Amendment by section 1854(f)(3)(B) of Pub. L. 99–514 effective Oct. 22, 1986, see section 1854(f)(4)(A) of Pub. L. 99–514, set out as a note under section 409 of this title.

EFFECTIVE DATE

Section 541(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [enacting this section and amending sections 1016 and 1223 of this title] shall apply to sales of securities in taxable years beginning after the date of enactment of this Act [July 18, 1984].''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

LINE ITEM VETO

Section 968 of Pub. L. 105–34, amending this section and enacting provisions set out as a note above, was subject to line item veto by the President, Cancellation No. 97–2, signed Aug. 11, 1997, 62 F.R. 43267, Aug. 12, 1997. For decision holding line item veto unconstitutional, see *Clinton v. City of New York*, 524 U.S. 417, 118 S.Ct. 2091, 141 L.Ed.2d 393 (1998).

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

OWNERSHIP OF STOCK OPTIONS AS OWNERSHIP OF STOCK; EMPLOYEE OWNERSHIP OF STOCK AFTER SALE

Section 1854(a)(2)(B) of Pub. L. 99–514 provided that:

''(i) The requirement that section 1042(b) of the Internal Revenue Code of 1954 [now 1986] shall be applied with regard to section 318(a)(4) of such Code shall apply to sales after May 6, 1986.

''(ii) In the case of sales after July 18, 1984, and before the date of the enactment of this Act [Oct. 22, 1986], paragraph (2) of section 1042(b) of such Code shall apply as if it read as follows:

'''(2) EMPLOYEES MUST OWN 30 PERCENT OF STOCK AFTER SALE.—The plan or cooperative referred to in paragraph (1) owns, immediately after the sale, at least 30 percent of the employer securities or 30 percent of the value of employer securities (within the meaning of section 409(1)) outstanding at the time of sale.'''

REPLACEMENT PERIOD FOR CERTAIN SECURITIES

Section 1854(a)(5)(B) of Pub. L. 99–514 provided that: ''If—

''(i) before January 1, 1987, the taxpayer acquired any security (as defined in section 165(g)(2) of the Internal Revenue Code of 1954 [now 1986]) issued by a domestic corporation or by any State or political subdivision thereof,

''(ii) the taxpayer treated such security as qualified replacement property for purposes of section 1042 of such Code, and

''(iii) such property does not meet the requirements of section 1042(c)(4) of such Code (as amended by subparagraph (A)),

then, with respect to so much of any gain which the taxpayer treated as not recognized under section 1042(a) by reason of the acquisition of such property, the replacement period for purposes of such section shall not expire before January 1, 1987.''

§ 1043. Sale of property to comply with conflict-of-interest requirements

(a) Nonrecognition of gain

If an eligible person sells any property pursuant to a certificate of divestiture, at the election of the taxpayer, gain from such sale shall be recognized only to the extent that the amount realized on such sale exceeds the cost (to the extent not previously taken into account under this subsection) of any permitted property purchased by the taxpayer during the 60-day period beginning on the date of such sale.

(b) Definitions

For purposes of this section—

(1) Eligible person

The term ''eligible person'' means—

(A) an officer or employee of the executive branch, or a judicial officer, of the Federal Government, but does not mean a special Government employee as defined in section 202 of title 18, United States Code, and

(B) any spouse or minor or dependent child whose ownership of any property is attributable under any statute, regulation, rule, judicial canon, or executive order referred to in paragraph (2) to a person referred to in subparagraph (A).

(2) Certificate of divestiture

The term ''certificate of divestiture'' means any written determination—

(A) that states that divestiture of specific property is reasonably necessary to comply with any Federal conflict of interest statute, regulation, rule, judicial canon, or executive order (including section 208 of title 18, United States Code), or requested by a congressional committee as a condition of confirmation,

(B) that has been issued by the President or the Director of the Office of Government Ethics, in the case of executive branch officers or employees, or by the Judicial Conference of the United States (or its designee), in the case of judicial officers, and

(C) that identifies the specific property to be divested.

(3) Permitted property

The term ''permitted property'' means any obligation of the United States or any diversified investment fund approved by regulations issued by the Office of Government Ethics.

(4) Purchase

The taxpayer shall be considered to have purchased any permitted property if, but for subsection (c), the unadjusted basis of such property would be its cost within the meaning of section 1012.

(5) Special rule for trusts

For purposes of this section, the trustee of a trust shall be treated as an eligible person with respect to property which is held in the trust if—

(A) any person referred to in paragraph (1)(A) has a beneficial interest in the principal or income of the trust, or

(B) any person referred to in paragraph (1)(B) has a beneficial interest in the principal or income of the trust and such interest is attributable under any statute, regulation, rule, judicial canon, or executive order referred to in paragraph (2) to a person referred to in paragraph (1)(A).

(6) Judicial officer

The term ''judicial officer'' means the Chief Justice of the United States, the Associate Justices of the Supreme Court, and the judges of the United States courts of appeals, United States district courts, including the district courts in Guam, the Northern Mariana Islands, and the Virgin Islands, Court of Appeals for the Federal Circuit, Court of International Trade, Tax Court, Court of Federal Claims, Court of Appeals for Veterans Claims, United States Court of Appeals for the Armed Forces, and any court created by Act of Congress, the judges of which are entitled to hold office during good behavior.

(c) Basis adjustments

If gain from the sale of any property is not recognized by reason of subsection (a), such gain shall be applied to reduce (in the order acquired) the basis for determining gain or loss of any permitted property which is purchased by the taxpayer during the 60-day period described in subsection (a).

(Added Pub. L. 101–194, title V, §502(a), Nov. 30, 1989, 103 Stat. 1754; amended Pub. L. 101–280, §6(a)(1), May 4, 1990, 104 Stat. 160; Pub. L. 101–508, title XI, §11703(a)(1), Nov. 5, 1990, 104 Stat. 1388–516; Pub. L. 109–432, div. A, title IV, §418(a), (b), Dec. 20, 2006, 120 Stat. 2966.)

AMENDMENTS

2006—Subsec. (b)(1)(A). Pub. L. 109–432, §418(a)(1)(A), inserted '', or a judicial officer,'' after ''executive branch''.

Subsec. (b)(1)(B), (2)(A). Pub. L. 109–432, §418(a)(1)(B), (2)(A), inserted ''judicial canon,'' after ''rule,''.

Subsec. (b)(2)(B). Pub. L. 109–432, §418(a)(2)(B), inserted ''in the case of executive branch officers or employees, or by the Judicial Conference of the United States (or its designee), in the case of judicial officers,'' after ''Ethics,''.

Subsec. (b)(5)(B). Pub. L. 109–432, §418(a)(3), inserted ''judicial canon,'' after ''rule,''.

Subsec. (b)(6). Pub. L. 109–432, §418(b), added par. (6).

1990—Subsec. (a). Pub. L. 101–508 substituted ''to the extent not previously taken into account under this subsection'' for ''reduced by any basis adjustment under subsection (c) attributable to a prior sale''.

Subsec. (b)(5). Pub. L. 101–280 added par. (5).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §418(c), Dec. 20, 2006, 120 Stat. 2967, provided that: ''The amendments made by this section [amending this section] shall apply to sales after the date of enactment of this Act [Dec. 20, 2006].''

EFFECTIVE DATE OF 1990 AMENDMENTS

Section 11703(a)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to sales after November 30, 1989.''

Section 6(a)(3) of Pub. L. 101–280 provided that: ''The amendment made by paragraph (1) [amending this section] and the provisions of paragraph (2) [set out below] shall apply to sales after November 30, 1989.''

EFFECTIVE DATE

Section applicable to sales after Nov. 30, 1989, see section 502(c) of Pub. L. 101–194, set out as an Effective Date of 1989 Amendment note under section 1016 of this title.

PROPERTY SOLD BEFORE JUNE 19, 1990

Section 6(a)(2) of Pub. L. 101–280 provided that:

''(A) For purposes of section 1043 of such Code—

''(i) any property sold before June 19, 1990, shall be treated as sold pursuant to a certificate of divestiture (as defined in subsection (b)(2) thereof) if such a certificate is issued with respect to such sale before such date, and

''(ii) in any such case, the 60-day period referred to in subsection (a) thereof shall not expire before the end of the 60-day period beginning on the date on which the certificate of divestiture was issued.

''(B) Notwithstanding subparagraph (A), section 1043 of such Code shall not apply to any sale before April 19, 1990, unless—

''(i) the sale was made in order to comply with an ethics agreement or pursuant to specific direction from the appropriate agency or confirming committee, and

''(ii) the justification for the sale meets the criteria set forth in subsection (b)(2)(A) thereof as implemented by the interim regulations implementing such section 1043, published on April 18, 1990.''

§ 1044. Rollover of publicly traded securities gain into specialized small business investment companies

(a) Nonrecognition of gain

In the case of the sale of any publicly traded securities with respect to which the taxpayer elects the application of this section, gain from such sale shall be recognized only to the extent that the amount realized on such sale exceeds—

(1) the cost of any common stock or partnership interest in a specialized small business investment company purchased by the taxpayer during the 60-day period beginning on the date of such sale, reduced by

(2) any portion of such cost previously taken into account under this section.

This section shall not apply to any gain which is treated as ordinary income for purposes of this subtitle.

(b) Limitations

(1) Limitation on individuals

In the case of an individual, the amount of gain which may be excluded under subsection (a) for any taxable year shall not exceed the lesser of—

(A) $50,000, or

(B) $500,000, reduced by the amount of gain excluded under subsection (a) for all preceding taxable years.

(2) Limitation on C corporations

In the case of a C corporation, the amount of gain which may be excluded under subsection (a) for any taxable year shall not exceed the lesser of—

(A) $250,000, or

(B) $1,000,000, reduced by the amount of gain excluded under subsection (a) for all preceding taxable years.

(3) Special rules for married individuals

For purposes of this subsection—

(A) Separate returns

In the case of a separate return by a married individual, paragraph (1) shall be applied by substituting ''$25,000'' for ''$50,000'' and ''$250,000'' for ''$500,000''.

(B) Allocation of gain

In the case of any joint return, the amount of gain excluded under subsection (a) for any taxable year shall be allocated equally between the spouses for purposes of applying this subsection to subsequent taxable years.

(C) Marital status

For purposes of this subsection, marital status shall be determined under section 7703.

(4) Special rules for C corporation

For purposes of this subsection—

(A) all corporations which are members of the same controlled group of corporations (within the meaning of section 52(a)) shall be treated as 1 taxpayer, and

(B) any gain excluded under subsection (a) by a predecessor of any C corporation shall be treated as having been excluded by such C corporation.

(c) Definitions and special rules

For purposes of this section—

(1) Publicly traded securities

The term ''publicly traded securities'' means securities which are traded on an established securities market.

(2) Purchase

The taxpayer shall be considered to have purchased any property if, but for subsection (d), the unadjusted basis of such property would be its cost within the meaning of section 1012.

(3) Specialized small business investment company

The term ''specialized small business investment company'' means any partnership or corporation which is licensed by the Small Business Administration under section 301(d) of the Small Business Investment Act of 1958 (as in effect on May 13, 1993).

(4) Certain entities not eligible

This section shall not apply to any estate, trust, partnership, or S corporation.

(d) Basis adjustments

If gain from any sale is not recognized by reason of subsection (a), such gain shall be applied to reduce (in the order acquired) the basis for determining gain or loss of any common stock or partnership interest in any specialized small business investment company which is purchased by the taxpayer during the 60-day period described in subsection (a). This subsection shall not apply for purposes of section 1202.

(Added Pub. L. 103–66, title XIII, § 13114(a), Aug. 10, 1993, 107 Stat. 430; amended Pub. L. 104–188, title I, § 1703(a), Aug. 20, 1996, 110 Stat. 1875.)

REFERENCES IN TEXT

Section 301(d) of the Small Business Investment Act of 1958, referred to in subsec. (c)(3), was classified to section 681(d) of Title 15, Commerce and Trade, prior to repeal by Pub. L. 104–208, div. D, title II, § 208(b)(3)(A), Sept. 30, 1996, 110 Stat. 3009–742.

AMENDMENTS

1996—Subsec. (c)(2). Pub. L. 104–188 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'purchase' has the meaning given such term by section 1043(b)(4).''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§ 13001–13444, to which such amendment relates, see section 1703(*o*) of Pub. L. 104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE

Section applicable to sales on or after Aug. 10, 1993, in taxable years ending on or after such date, see section 13114(d) of Pub. L. 103–66, set out as an Effective Date of 1993 Amendment note under section 1016 of this title.

§ 1045. Rollover of gain from qualified small business stock to another qualified small business stock

(a) Nonrecognition of gain

In the case of any sale of qualified small business stock held by a taxpayer other than a corporation for more than 6 months and with respect to which such taxpayer elects the application of this section, gain from such sale shall be recognized only to the extent that the amount realized on such sale exceeds—

(1) the cost of any qualified small business stock purchased by the taxpayer during the 60-day period beginning on the date of such sale, reduced by

(2) any portion of such cost previously taken into account under this section.

This section shall not apply to any gain which is treated as ordinary income for purposes of this title.

(b) Definitions and special rules

For purposes of this section—

(1) Qualified small business stock

The term ''qualified small business stock'' has the meaning given such term by section 1202(c).

(2) Purchase

A taxpayer shall be treated as having purchased any property if, but for paragraph (3), the unadjusted basis of such property in the hands of the taxpayer would be its cost (within the meaning of section 1012).

(3) Basis adjustments

If gain from any sale is not recognized by reason of subsection (a), such gain shall be applied to reduce (in the order acquired) the basis for determining gain or loss of any qualified small business stock which is purchased by the taxpayer during the 60-day period described in subsection (a).

(4) Holding period

For purposes of determining whether the nonrecognition of gain under subsection (a) applies to stock which is sold—

(A) the taxpayer's holding period for such stock and the stock referred to in subsection (a)(1) shall be determined without regard to section 1223, and

(B) only the first 6 months of the taxpayer's holding period for the stock referred to in subsection (a)(1) shall be taken into account for purposes of applying section 1202(c)(2).

(5) Certain rules to apply

Rules similar to the rules of subsections (f), (g), (h), (i), (j), and (k) of section 1202 shall apply.

(Added Pub. L. 105–34, title III, §313(a), Aug. 5, 1997, 111 Stat. 841; amended Pub. L. 105–206, title VI, §6005(f), July 22, 1998, 112 Stat. 806.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–206, §6005(f)(1), in introductory provisions, substituted ''a taxpayer other than a corporation'' for ''an individual'' and ''such taxpayer'' for ''such individual''.

Subsec. (b)(5). Pub. L. 105–206, §6005(f)(2), added par. (5).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to sales after Aug. 5, 1997, see section 313(c) of Pub. L. 105–34, set out as an Effective Date of 1997 Amendment note under section 1016 of this title.

PART IV—SPECIAL RULES

Sec.
1051. Property acquired during affiliation.
1052. Basis established by the Revenue Act of 1932 or 1934 or by the Internal Revenue Code of 1939.
1053. Property acquired before March 1, 1913.
1054. Certain stock of Federal National Mortgage Association.
1055. Redeemable ground rents.
[1056, 1057. Repealed.]
1058. Transfers of securities under certain agreements.
1059. Corporate shareholder's basis in stock reduced by nontaxed portion of extraordinary dividends.
1059A. Limitation on taxpayer's basis or inventory cost in property imported from related persons.
1060. Special allocation rules for certain asset acquisitions.
1061. Cross references.

AMENDMENTS

2004—Pub. L. 108–357, title VIII, §886(b)(1)(B), Oct. 22, 2004, 118 Stat. 1641, struck out item 1056 ''Basis limitation for player contracts transferred in connection with the the sale of a franchise''.

1997—Pub. L. 105–34, title XI, §1131(c)(5), Aug. 5, 1997, 111 Stat. 980, struck out item 1057 ''Election to treat transfer to foreign trust, etc., as taxable exchange''.

1986—Pub. L. 99–514, title VI, §641(b), title XII, §1248(b), Oct. 22, 1986, 100 Stat. 2283, 2584, added items 1059A and 1060 and renumbered former item 1060 as 1061.

1984—Pub. L. 98–369, div. A, title I, §53(d), July 18, 1984, 98 Stat. 568, added item 1059 and renumbered former item 1059 as 1060.

1978—Pub. L. 95–345, §2(d)(2), Aug. 15, 1978, 92 Stat. 483, added item 1058 and renumbered former item 1058 as 1059.

1976—Pub. L. 94–455, title II, §212(a)(2), title X, 1015(c), Oct. 4, 1976, 90 Stat. 1546, 1618, added items 1056 and 1057 and renumbered former item 1056 as 1058.

1963—Pub. L. 88–9, §1(d), Apr. 10, 1963, 77 Stat. 8, added item 1055 and renumbered former item 1055 as 1056.

1960—Pub. L. 86–779, §8(c), Sept. 14, 1960, 74 Stat. 1003, renumbered former item 1054 as 1055 and added new item 1054.

§1051. Property acquired during affiliation

In the case of property acquired by a corporation, during a period of affiliation, from a corporation with which it was affiliated, the basis of such property, after such period of affiliation, shall be determined, in accordance with regulations prescribed by the Secretary, without regard to inter-company transactions in respect of which gain or loss was not recognized. For purposes of this section, the term ''period of affiliation'' means the period during which such corporations were affiliated (determined in accordance with the law applicable thereto) but does not include any taxable year beginning on or after January 1, 1922, unless a consolidated return was made, nor any taxable year after the taxable year 1928.

(Aug. 16, 1954, ch. 736, 68A Stat. 310; Pub. L. 94–455, title XIX, §§1901(a)(131), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1786, 1834.)

AMENDMENTS

1976—Pub. L. 94–455, §1901(a)(131), struck out last two sentences relating to the basis and adjustment of the basis of corporate property where a consolidated return was filed.

Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(131) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

§1052. Basis established by the Revenue Act of 1932 or 1934 or by the Internal Revenue Code of 1939

(a) Revenue Act of 1932

If the property was acquired, after February 28, 1913, in any taxable year beginning before

January 1, 1934, and the basis thereof, for purposes of the Revenue Act of 1932 was prescribed by section 113(a)(6), (7), or (9) of such Act (47 Stat. 199), then for purposes of this subtitle the basis shall be the same as the basis therein prescribed in the Revenue Act of 1932.

(b) Revenue Act of 1934

If the property was acquired, after February 28, 1913, in any taxable year beginning before January 1, 1936, and the basis thereof, for purposes of the Revenue Act of 1934, was prescribed by section 113(a)(6), (7), or (8) of such Act (48 Stat. 706), then for purposes of this subtitle the basis shall be the same as the basis therein prescribed in the Revenue Act of 1934.

(c) Internal Revenue Code of 1939

If the property was acquired, after February 28, 1913, in a transaction to which the Internal Revenue Code of 1939 applied, and the basis thereof, for purposes of the Internal Revenue Code of 1939, was prescribed by section 113(a)(6), (7), (8), (13), (15), (18), (19), or (23) of such code, then for purposes of this subtitle the basis shall be the same as the basis therein prescribed in the Internal Revenue Code of 1939.

(Aug. 16, 1954, ch. 736, 68A Stat. 310.)

REFERENCES IN TEXT

Revenue Act of 1932, referred to in section catchline and subsec. (a), is act June 6, 1932, ch. 209, 47 Stat. 169. For complete classification of the Act to the Code, see Tables.

Revenue Act of 1934, referred to in section catchline and subsec. (b), is act May 10, 1934, ch. 277, 48 Stat. 680. For complete classification of this Act to the Code, see Tables.

The Internal Revenue Code of 1939, referred to in section catchline and subsec. (c), is act Feb. 10, 1939, ch. 2, 53 Stat. 1, as amended. Prior to the enactment of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the 1939 Code was classified to former Title 26, Internal Revenue Code. For Table comparisons of the 1939 Code to the 1986 Code, see table I preceding section 1 of this title.

Section 113 of the Internal Revenue Code of 1939, referred to in subsec. (c), was classified to section 113 of former Title 26, Internal Revenue Code. Section 113 was repealed by section 7851(a)(1)(A) of this title. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title. See, also, section 7851(e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

§ 1053. Property acquired before March 1, 1913

In the case of property acquired before March 1, 1913, if the basis otherwise determined under this subtitle, adjusted (for the period before March 1, 1913) as provided in section 1016, is less than the fair market value of the property as of March 1, 1913, then the basis for determining gain shall be such fair market value. In determining the fair market value of stock in a corporation as of March 1, 1913, due regard shall be given to the fair market value of the assets of the corporation as of that date.

(Aug. 16, 1954, ch. 736, 68A Stat. 311; Pub. L. 85–866, title I, § 47, Sept. 2, 1958, 72 Stat. 1642.)

AMENDMENTS

1958—Pub. L. 85–866 substituted ''subtitle'' for ''part''.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

§ 1054. Certain stock of Federal National Mortgage Association

In the case of a share of stock issued pursuant to section 303(c) of the Federal National Mortgage Association Charter Act (12 U.S.C., sec. 1718), the basis of such share in the hands of the initial holder shall be an amount equal to the capital contributions evidenced by such share reduced by the amount (if any) required by section 162(d) to be treated (with respect to such share) as ordinary and necessary expenses paid or incurred in carrying on a trade or business.

(Added Pub. L. 86–779, § 8(b), Sept. 14, 1960, 74 Stat. 1003.)

PRIOR PROVISIONS

A prior section 1054 was renumbered section 1061 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1959, see section 8(d) of Pub. L. 86–779, set out as an Effective Date of 1960 Amendment note under section 162 of this title.

§ 1055. Redeemable ground rents

(a) Character

For purposes of this subtitle—

(1) a redeemable ground rent shall be treated as being in the nature of a mortgage, and

(2) real property held subject to liabilities under a redeemable ground rent shall be treated as held subject to liabilities under a mortgage.

(b) Application of subsection (a)

(1) In general

Subsection (a) shall take effect on the day after the date of the enactment of this section and shall apply with respect to taxable years ending after such date of enactment.

(2) Basis of holder

In determining the basis of real property held subject to liabilities under a redeemable ground rent, subsection (a) shall apply whether such real property was acquired before or after the enactment of this section.

(3) Basis of reserved redeemable ground rent

In the case of a redeemable ground rent reserved or created on or before the date of the enactment of this section in connection with a transfer of the right to hold real property subject to liabilities under such ground rent, the basis of such ground rent after such date in the hands of the person who reserved or created the ground rent shall be the amount taken into account in respect of such ground rent for Federal income tax purposes as consideration for the disposition of such real property. If no such amount was taken into account, such basis shall be determined as if this section had not been enacted.

(c) Redeemable ground rent defined

For purposes of this subtitle, the term ''redeemable ground rent'' means only a ground rent with respect to which—

(1) there is a lease of land which is assignable by the lessee without the consent of the lessor and which (together with periods for which the lease may be renewed at the option of the lessee) is for a term in excess of 15 years,

(2) the leaseholder has a present or future right to terminate, and to acquire the entire interest of the lessor in the land, by payment of a determined or determinable amount, which right exists by virtue of State or local law and not because of any private agreement or privately created condition, and

(3) the lessor's interest in the land is primarily a security interest to protect the rental payments to which the lessor is entitled under the lease.

(d) Cross reference

For treatment of rentals under redeemable ground rents as interest, see section 163(c).

(Added Pub. L. 88–9, §1(b), Apr. 10, 1963, 77 Stat. 7.)

REFERENCES IN TEXT

Date of the enactment of this section, referred to in subsec. (b)(1), (3), means Apr. 10, 1963, the date of approval of Pub. L. 88–9.

PRIOR PROVISIONS

A prior section 1055 was renumbered section 1061 of this title.

EFFECTIVE DATE

Section 2 of Pub. L. 88–9 provided that: ''The amendments made by subsection (a) of the first section of this Act [amending section 163 of this title] shall take effect as of January 1, 1962, and shall apply with respect to taxable years ending on or after such date. The amendments made by subsection (b) of the first section of this Act [enacting this section] shall take effect on the day after the date of the enactment of this Act [Apr. 10, 1963] and shall apply with respect to taxable years ending after such date of enactment.''

[§ 1056. Repealed. Pub. L. 108–357, title VIII, § 886(b)(1)(A), Oct. 22, 2004, 118 Stat. 1641]

Section, added Pub. L. 94–455, title II, §212(a)(1), Oct. 4, 1976, 90 Stat. 1545; amended Pub. L. 99–514, title VI, §631(e)(13), Oct. 22, 1986, 100 Stat. 2275, related to basis limitation for player contracts transferred in connection with the sale of a franchise.

A prior section 1056 was renumbered section 1061 of this title.

EFFECTIVE DATE OF REPEAL

Repeal applicable to property acquired after Oct. 22, 2004, see section 886(c)(1) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendment note under section 197 of this title.

[§ 1057. Repealed. Pub. L. 105–34, title XI, § 1131(c)(2), Aug. 5, 1997, 111 Stat. 980]

Section, added Pub. L. 94–455, title X, §1015(c), Oct. 4, 1976, 90 Stat. 1618, related to election to treat transfer to foreign trust, etc., as taxable exchange.

A prior section 1057 was renumbered section 1061 of this title.

§ 1058. Transfers of securities under certain agreements

(a) General rule

In the case of a taxpayer who transfers securities (as defined in section 1236(c)) pursuant to an agreement which meets the requirements of subsection (b), no gain or loss shall be recognized on the exchange of such securities by the taxpayer for an obligation under such agreement, or on the exchange of rights under such agreement by that taxpayer for securities identical to the securities transferred by that taxpayer.

(b) Agreement requirements

In order to meet the requirements of this subsection, an agreement shall—

(1) provide for the return to the transferor of securities identical to the securities transferred;

(2) require that payments shall be made to the transferor of amounts equivalent to all interest, dividends, and other distributions which the owner of the securities is entitled to receive during the period beginning with the transfer of the securities by the transferor and ending with the transfer of identical securities back to the transferor;

(3) not reduce the risk of loss or opportunity for gain of the transferor of the securities in the securities transferred; and

(4) meet such other requirements as the Secretary may by regulation prescribe.

(c) Basis

Property acquired by a taxpayer described in subsection (a), in a transaction described in that subsection, shall have the same basis as the property transferred by that taxpayer.

(Added Pub. L. 95–345, §2(d)(1), Aug. 15, 1978, 92 Stat. 482.)

PRIOR PROVISIONS

A prior section 1058 was renumbered section 1061 of this title.

EFFECTIVE DATE

Section applicable with respect to amounts received after Dec. 31, 1976, as payments with respect to securities loans (as defined in section 512(a)(5) of this title), and transfers of securities, under agreements described in this section, occurring after such date, see section 2(e) of Pub. L. 95–345, set out as an Effective Date of 1978 Amendment note under section 509 of this title.

§ 1059. Corporate shareholder's basis in stock reduced by nontaxed portion of extraordinary dividends

(a) General rule

If any corporation receives any extraordinary dividend with respect to any share of stock and such corporation has not held such stock for more than 2 years before the dividend announcement date—

(1) Reduction in basis

The basis of such corporation in such stock shall be reduced (but not below zero) by the nontaxed portion of such dividends.

(2) Amounts in excess of basis

If the nontaxed portion of such dividends exceeds such basis, such excess shall be treated

as gain from the sale or exchange of such stock for the taxable year in which the extraordinary dividend is received.

(b) Nontaxed portion

For purposes of this section—

(1) In general

The nontaxed portion of any dividend is the excess (if any) of—

(A) the amount of such dividend, over

(B) the taxable portion of such dividend.

(2) Taxable portion

The taxable portion of any dividend is—

(A) the portion of such dividend includible in gross income, reduced by

(B) the amount of any deduction allowable with respect to such dividend under section 243, 244, or 245.

(c) Extraordinary dividend defined

For purposes of this section—

(1) In general

The term ''extraordinary dividend'' means any dividend with respect to a share of stock if the amount of such dividend equals or exceeds the threshold percentage of the taxpayer's adjusted basis in such share of stock.

(2) Threshold percentage

The term ''threshold percentage'' means—

(A) 5 percent in the case of stock which is preferred as to dividends, and

(B) 10 percent in the case of any other stock.

(3) Aggregation of dividends

(A) Aggregation within 85-day period

All dividends—

(i) which are received by the taxpayer (or a person described in subparagraph (C)) with respect to any share of stock, and

(ii) which have ex-dividend dates within the same period of 85 consecutive days,

shall be treated as 1 dividend.

(B) Aggregation within 1 year where dividends exceed 20 percent of adjusted basis

All dividends—

(i) which are received by the taxpayer (or a person described in subparagraph (C)) with respect to any share of stock, and

(ii) which have ex-dividend dates during the same period of 365 consecutive days,

shall be treated as extraordinary dividends if the aggregate of such dividends exceeds 20 percent of the taxpayer's adjusted basis in such stock (determined without regard to this section).

(C) Substituted basis transactions

In the case of any stock, a person is described in this subparagraph if—

(i) the basis of such stock in the hands of such person is determined in whole or in part by reference to the basis of such stock in the hands of the taxpayer, or

(ii) the basis of such stock in the hands of the taxpayer is determined in whole or in part by reference to the basis of such stock in the hands of such person.

(4) Fair market value determination

If the taxpayer establishes to the satisfaction of the Secretary the fair market value of any share of stock as of the day before the ex-dividend date, the taxpayer may elect to apply paragraphs (1) and (3) by substituting such value for the taxpayer's adjusted basis.

(d) Special rules

For purposes of this section—

(1) Time for reduction

Any reduction in basis under subsection (a)(1) shall be treated as occurring at the beginning of the ex-dividend date of the extraordinary dividend to which the reduction relates.

(2) Distributions in kind

To the extent any dividend consists of property other than cash, the amount of such dividend shall be treated as the fair market value of such property (as of the date of the distribution) reduced as provided in section 301(b)(2).

(3) Determination of holding period

For purposes of determining the holding period of stock under subsection (a), rules similar to the rules of paragraphs (3) and (4) of section 246(c) shall apply; except that ''2 years'' shall be substituted for the number of days specified in subparagraph (B)[1] of section 246(c)(3).

(4) Ex-dividend date

The term ''ex-dividend date'' means the date on which the share of stock becomes ex-dividend.

(5) Dividend announcement date

The term ''dividend announcement date'' means, with respect to any dividend, the date on which the corporation declares, announces, or agrees to the amount or payment of such dividend, whichever is the earliest.

(6) Exception where stock held during entire existence of corporation

(A) In general

Subsection (a) shall not apply to any extraordinary dividend with respect to any share of stock of a corporation if—

(i) such stock was held by the taxpayer during the entire period such corporation was in existence, and

(ii) except as provided in regulations, no earnings and profits of such corporation were attributable to transfers of property from (or earnings and profits of) a corporation which is not a qualified corporation.

(B) Qualified corporation

For purposes of subparagraph (A), the term ''qualified corporation'' means any corporation (including a predecessor corporation)—

(i) with respect to which the taxpayer holds directly or indirectly during the entire period of such corporation's existence at least the same ownership interest as the taxpayer holds in the corporation distributing the extraordinary dividend, and

[1] See References in Text note below.

(ii) which has no earnings and profits—

(I) which were earned by, or

(II) which are attributable to gain on property which accrued during a period the corporation holding the property was,

a corporation not described in clause (i).

(C) Application of paragraph

This paragraph shall not apply to any extraordinary dividend to the extent such application is inconsistent with the purposes of this section.

(e) Special rules for certain distributions

(1) Treatment of partial liquidations and certain redemptions

Except as otherwise provided in regulations—

(A) Redemptions

In the case of any redemption of stock—

(i) which is part of a partial liquidation (within the meaning of section 302(e)) of the redeeming corporation,

(ii) which is not pro rata as to all shareholders, or

(iii) which would not have been treated (in whole or in part) as a dividend if—

(I) any options had not been taken into account under section 318(a)(4), or

(II) section 304(a) had not applied,

any amount treated as a dividend with respect to such redemption shall be treated as an extraordinary dividend to which paragraphs (1) and (2) of subsection (a) apply without regard to the period the taxpayer held such stock. In the case of a redemption described in clause (iii), only the basis in the stock redeemed shall be taken into account under subsection (a).

(B) Reorganizations, etc.

An exchange described in section 356 which is treated as a dividend shall be treated as a redemption of stock for purposes of applying subparagraph (A).

(2) Qualifying dividends

(A) In general

Except as provided in regulations, the term ''extraordinary dividend'' does not include any qualifying dividend (within the meaning of section 243).

(B) Exception

Subparagraph (A) shall not apply to any portion of a dividend which is attributable to earnings and profits which—

(i) were earned by a corporation during a period it was not a member of the affiliated group, or

(ii) are attributable to gain on property which accrued during a period the corporation holding the property was not a member of the affiliated group.

(3) Qualified preferred dividends

(A) In general

In the case of 1 or more qualified preferred dividends with respect to any share of stock—

(i) this section shall not apply to such dividends if the taxpayer holds such stock for more than 5 years, and

(ii) if the taxpayer disposes of such stock before it has been held for more than 5 years, the aggregate reduction under subsection (a)(1) with respect to such dividends shall not be greater than the excess (if any) of—

(I) the qualified preferred dividends paid with respect to such stock during the period the taxpayer held such stock, over

(II) the qualified preferred dividends which would have been paid during such period on the basis of the stated rate of return.

(B) Rate of return

For purposes of this paragraph—

(i) Actual rate of return

The actual rate of return shall be the rate of return for the period for which the taxpayer held the stock, determined—

(I) by only taking into account dividends during such period, and

(II) by using the lesser of the adjusted basis of the taxpayer in such stock or the liquidation preference of such stock.

(ii) Stated rate of return

The stated rate of return shall be the annual rate of the qualified preferred dividend payable with respect to any share of stock (expressed as a percentage of the amount described in clause (i)(II)).

(C) Definitions and special rules

For purposes of this paragraph—

(i) Qualified preferred dividend

The term ''qualified preferred dividend'' means any fixed dividend payable with respect to any share of stock which—

(I) provides for fixed preferred dividends payable not less frequently than annually, and

(II) is not in arrears as to dividends at the time the taxpayer acquires the stock.

Such term shall not include any dividend payable with respect to any share of stock if the actual rate of return on such stock exceeds 15 percent.

(ii) Holding period

In determining the holding period for purposes of subparagraph (A)(ii), subsection (d)(3) shall be applied by substituting ''5 years'' for ''2 years''.

(f) Treatment of dividends on certain preferred stock

(1) In general

Any dividend with respect to disqualified preferred stock shall be treated as an extraordinary dividend to which paragraphs (1) and (2) of subsection (a) apply without regard to the period the taxpayer held the stock.

(2) Disqualified preferred stock

For purposes of this subsection, the term ''disqualified preferred stock'' means any stock which is preferred as to dividends if—

(A) when issued, such stock has a dividend rate which declines (or can reasonably be expected to decline) in the future,

(B) the issue price of such stock exceeds its liquidation rights or its stated redemption price, or

(C) such stock is otherwise structured—

(i) to avoid the other provisions of this section, and

(ii) to enable corporate shareholders to reduce tax through a combination of dividend received deductions and loss on the disposition of the stock.

(g) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including regulations—

(1) providing for the application of this section in the case of stock dividends, stock splits, reorganizations, and other similar transactions, in the case of stock held by pass-thru entities, and in the case of consolidated groups, and

(2) providing that the rules of subsection (f) shall apply in the case of stock which is not preferred as to dividends in cases where stock is structured to avoid the purposes of this section.

(Added Pub. L. 98–369, div. A, title I, § 53(a), July 18, 1984, 98 Stat. 565; amended Pub. L. 99–514, title VI, § 614(a)–(e), Oct. 22, 1986, 100 Stat. 2251–2253; Pub. L. 100–647, title I, § 1006(c), Nov. 10, 1988, 102 Stat. 3393; Pub. L. 101–239, title VII, § 7206(a), Dec. 19, 1989, 103 Stat. 2336; Pub. L. 105–34, title X, §§ 1011(a)–(c), 1013(b), title XVI, § 1604(d)(1), Aug. 5, 1997, 111 Stat. 912, 913, 918, 1098; Pub. L. 105–206, title VI, § 6010(b), July 22, 1998, 112 Stat. 813.)

REFERENCES IN TEXT

Section 246(c)(3) of this title, referred to in subsec. (d)(3), was amended by Pub. L. 105–34, title X, § 1015(b)(2), Aug. 5, 1997, 111 Stat. 922, by striking out subpar. (B) and redesignating subpar. (C) as (B).

PRIOR PROVISIONS

A prior section 1059 was renumbered section 1061 of this title.

AMENDMENTS

1998—Subsec. (g)(1). Pub. L. 105–206 substituted '', in the case of stock held by pass-thru entities, and in the case of consolidated groups'' for ''and in the case of stock held by pass-thru entities''.

1997—Subsec. (a)(2). Pub. L. 105–34, § 1011(a), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''In addition to any gain recognized under this chapter, there shall be treated as gain from the sale or exchange of any stock for the taxable year in which the sale or disposition of such stock occurs an amount equal to the aggregate nontaxed portions of any extraordinary dividends with respect to such stock which did not reduce the basis of such stock by reason of the limitation on reducing basis below zero.''

Subsec. (d)(1). Pub. L. 105–34, § 1011(c), amended heading and text of par. (1) generally. Prior to amendment, text read as follows:

''(A) IN GENERAL.—Except as provided in subparagraph (B), any reduction in basis under subsection (a)(1) shall occur immediately before any sale or disposition of the stock.

''(B) SPECIAL RULE FOR COMPUTING EXTRAORDINARY DIVIDEND.—In determining a taxpayer's adjusted basis for purposes of subsection (c)(1), any reduction in basis under subsection (a)(1) by reason of a prior distribution which was an extraordinary dividend shall be treated as occurring at the beginning of the ex-dividend date for such distribution.''

Subsec. (d)(3). Pub. L. 105–34, § 1604(d)(1), substituted ''subsection (a)'' for ''subsection (a)(2)''.

Subsec. (e)(1). Pub. L. 105–34, § 1011(b), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''Except as otherwise provided in regulations, in the case of any redemption of stock which is—

''(A) part of a partial liquidation (within the meaning of section 302(e)) of the redeeming corporation, or

''(B) not pro rata as to all shareholders,

any amount treated as a dividend under section 301 with respect to such redemption shall be treated as an extraordinary dividend to which paragraphs (1) and (2) of subsection (a) apply without regard to the period the taxpayer held such stock.''

Subsec. (e)(1)(A)(iii). Pub. L. 105–34, § 1013(b), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''which would not have been treated (in whole or in part) as a dividend if any options had not been taken into account under section 318(a)(4).''

1989—Subsecs. (f), (g). Pub. L. 101–239 added subsecs. (f) and (g) and struck out former subsec. (f) which read as follows: ''REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including regulations providing for the application of this section in the case of stock dividends, stock splits, reorganizations, and other similar transactions and in the case of stock held by pass-thru entities.''

1988—Subsec. (d)(5). Pub. L. 100–647, § 1006(c)(2), inserted ''amount or'' after ''agrees to the''.

Pub. L. 100–647, § 1006(c)(1), redesignated par. (6) as (5) and struck out former par. (5) which related to extension to certain property distributions.

Subsec. (d)(6). Pub. L. 100–647, § 1006(c)(3), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''Subsection (a) shall not apply to any extraordinary dividend with respect to any share of stock of a corporation if—

''(A) such stock was held by the taxpayer during the entire period such corporation (and any precedessor [sic] corporation) was in existence,

''(B) except as provided in regulations, the only earnings and profits of such corporation were earnings and profits accumulated by such corporation (or any predecessor corporation) during such period, and

''(C) the application of this paragraph to such dividend is not inconsistent with the purposes of this section.''

Pub. L. 100–647, § 1006(c)(1), redesignated par. (7) as (6). Former par. (6) redesignated (5).

Subsec. (d)(7). Pub. L. 100–647, § 1006(c)(1), redesignated par. (7) as (6).

Subsec. (e)(1). Pub. L. 100–647, § 1006(c)(4), substituted ''to which paragraphs (1) and (2) of subsection (a) apply without regard to the period the taxpayer held such stock'' for ''for purposes of this section (without regard to the holding period of the stock)''.

Subsec. (e)(2). Pub. L. 100–647, § 1006(c)(5), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Except as provided in regulations, the term 'extraordinary dividend' shall not include any qualifying dividend (within the meaning of section 243(b)(1)).''

Subsec. (e)(3)(A). Pub. L. 100–647, § 1006(c)(6), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''A qualified preferred dividend shall be treated as an extraordinary dividend—

''(i) only if the actual rate of return of the taxpayer on the stock with respect to which such dividend was paid exceeds 15 percent, or

''(ii) if clause (i) does not apply, and the taxpayer disposes of such stock before the taxpayer has held such stock for more than 5 years, only to the extent the actual rate of return exceeds the stated rate of return.''

Subsec. (e)(3)(B). Pub. L. 100–647, §1006(c)(8)(A), which directed the amendment of subpar. (B) ''by striking out 'subparagraph (A)' and the material preceding clause (i) and inserting in lieu thereof 'this paragraph' '', was executed by striking out ''subparagraph (A)'' in the material preceding clause (i) and inserting in lieu thereof ''this paragraph'', to reflect the probable intent of Congress.

Subsec. (e)(3)(B)(ii). Pub. L. 100–647, §1006(c)(8)(B), substituted ''clause (i)(II)'' for ''subparagraph (B)(i)(II)''.

Subsec. (e)(3)(C)(i). Pub. L. 100–647, §1006(c)(7), inserted ''fixed'' before ''dividend payable'' in introductory provisions and inserted at end ''Such term shall not include any dividend payable with respect to any share of stock if the actual rate of return on such stock exceeds 15 percent.''

Subsec. (f). Pub. L. 100–647, §1006(c)(9), inserted ''and in the case of stock held by pass-thru entities'' after ''other similar transactions''.

1986—Subsec. (a). Pub. L. 99–514, §614(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''If any corporation—

''(1) receives an extraordinary dividend with respect to any share of stock, and

''(2) sells or otherwise disposes of such stock before such stock has been held for more than 1 year,

the basis of such corporation in such stock shall be reduced by the nontaxed portion of such dividend. If the nontaxed portion of such dividend exceeds such basis, such excess shall be treated as gain from the sale or exchange of such stock.''

Subsec. (c)(1). Pub. L. 99–514, §614(c)(2), struck out ''(determined without regard to this section)'' after ''such share of stock''.

Subsec. (c)(4). Pub. L. 99–514, §614(b), added par. (4).

Subsec. (d)(1). Pub. L. 99–514, §614(c)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Any reduction in basis under subsection (a) by reason of any distribution which is an extraordinary dividend shall occur at the beginning of the ex-dividend date for such distribution.''

Subsec. (d)(3). Pub. L. 99–514, §614(a)(3), substituted ''2 years'' for ''1 year''.

Subsec. (d)(6). Pub. L. 99–514, §614(a)(2), added par. (6).

Subsec. (d)(7). Pub. L. 99–514, §614(d), added par. (7).

Subsecs. (e), (f). Pub. L. 99–514, §614(e), added subsec. (e) and redesignated former subsec. (e) as (f).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1011(d) of Pub. L. 105–34 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to distributions after May 3, 1995.

''(2) TRANSITION RULE.—The amendments made by this section shall not apply to any distribution made pursuant to the terms of—

''(A) a written binding contract in effect on May 3, 1995, and at all times thereafter before such distribution, or

''(B) a tender offer outstanding on May 3, 1995.

''(3) CERTAIN DIVIDENDS NOT PURSUANT TO CERTAIN REDEMPTIONS.—In determining whether the amendment made by subsection (a) applies to any extraordinary dividend other than a dividend treated as an extraordinary dividend under section 1059(e)(1) of the Internal Revenue Code of 1986 (as amended by this Act), paragraphs (1) and (2) shall be applied by substituting 'September 13, 1995' for 'May 3, 1995'.''

Amendment by section 1013(b) of Pub. L. 105–34 applicable to distributions and acquisitions after June 8, 1997, with certain exceptions, see section 1013(d) of Pub. L. 105–34, set out as a note under section 304 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7206(b) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to stock issued after July 10, 1989, in taxable years ending after such date.

''(2) BINDING CONTRACT.—The amendment made by subsection (a) shall not apply to any stock issued pursuant to a written binding contract in effect on July 10, 1989, and at all times thereafter before the stock is issued.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 614(f) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section] shall apply to dividends declared after July 18, 1986, in taxable years ending after such date.

''(2) AGGREGATION.—For purposes of section 1059(c)(3) of the Internal Revenue Code of 1986, dividends declared after July 18, 1986, shall not be aggregated with dividends declared on or before July 18, 1986.

''(3) REDEMPTIONS.—Section 1059(e)(1) of the Internal Revenue Code of 1986 (as added by subsection (e)) shall apply to dividends declared after the date of the enactment of this Act [Oct. 22, 1986], in taxable years ending after such date.''

EFFECTIVE DATE

Section 53(e) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, title XVIII, §1804(b)(2), Oct. 22, 1986, 100 Stat. 2095, 2798, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [enacting this section and amending sections 246, 1016, and 7701 of this title] shall apply to distributions after March 1, 1984, in taxable years ending after such date.

''(2) SUBSECTION (b).—The amendments made by subsection (b) [amending section 246 of this title] shall apply to stock acquired after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

''(3) RELATED PERSON PROVISIONS.—

''(A) IN GENERAL.—Except as otherwise provided in subparagraph (B), the amendment made by subsection (c) [amending section 7701 of this title] shall take effect on July 18, 1984.

''(B) SPECIAL RULE FOR PURPOSES OF SECTION 265(2).—The amendment made by subsection (c) insofar as it relates to section 265(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall apply to—

''(i) term loans made after July 18, 1984, and

''(ii) demand loans outstanding after July 18, 1984 (other than any loan outstanding on July 18, 1984, and repaid before September 18, 1984).

''(C) TREATMENT OF RENEGOTIATIONS, ETC.—For purposes of this paragraph, any loan renegotiated, extended, or revised after July 18, 1984, shall be treated as a loan made after such date.

''(D) DEFINITION OF TERM AND DEMAND LOANS.—For purposes of this paragraph, the terms 'demand loan' and 'term loan' have the respective meanings given such terms by paragraphs (5) and (6) of section 7872(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], except that the second sentence of such paragraph (5) shall not apply.''

§ 1059A. Limitation on taxpayer's basis or inventory cost in property imported from related persons

(a) In general

If any property is imported into the United States in a transaction (directly or indirectly) between related persons (within the meaning of section 482), the amount of any costs—

(1) which are taken into account in computing the basis or inventory cost of such property by the purchaser, and

(2) which are also taken into account in computing the customs value of such property,

shall not, for purposes of computing such basis or inventory cost for purposes of this chapter, be greater than the amount of such costs taken into account in computing such customs value.

(b) Customs value; import

For purposes of this section—

(1) Customs value

The term ''customs value'' means the value taken into account for purposes of determining the amount of any customs duties or any other duties which may be imposed on the importation of any property.

(2) Import

Except as provided in regulations, the term ''import'' means the entering, or withdrawal from warehouse, for consumption.

(Added Pub. L. 99–514, title XII, § 1248(a), Oct. 22, 1986, 100 Stat. 2584.)

EFFECTIVE DATE

Section 1248(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [enacting this section] shall apply to transactions entered into after March 18, 1986.''

§ 1060. Special allocation rules for certain asset acquisitions

(a) General rule

In the case of any applicable asset acquisition, for purposes of determining both—

(1) the transferee's basis in such assets, and

(2) the gain or loss of the transferor with respect to such acquisition,

the consideration received for such assets shall be allocated among such assets acquired in such acquisition in the same manner as amounts are allocated to assets under section 338(b)(5). If in connection with an applicable asset acquisition, the transferee and transferor agree in writing as to the allocation of any consideration, or as to the fair market value of any of the assets, such agreement shall be binding on both the transferee and transferor unless the Secretary determines that such allocation (or fair market value) is not appropriate.

(b) Information required to be furnished to Secretary

Under regulations, the transferor and transferee in an applicable asset acquisition shall, at such times and in such manner as may be provided in such regulations, furnish to the Secretary the following information:

(1) The amount of the consideration received for the assets which is allocated to section 197 intangibles.

(2) Any modification of the amount described in paragraph (1).

(3) Any other information with respect to other assets transferred in such acquisition as the Secretary deems necessary to carry out the provisions of this section.

(c) Applicable asset acquisition

For purposes of this section, the term ''applicable asset acquisition'' means any transfer (whether directly or indirectly)—

(1) of assets which constitute a trade or business, and

(2) with respect to which the transferee's basis in such assets is determined wholly by reference to the consideration paid for such assets.

A transfer shall not be treated as failing to be an applicable asset acquisition merely because section 1031 applies to a portion of the assets transferred.

(d) Treatment of certain partnership transactions

In the case of a distribution of partnership property or a transfer of an interest in a partnership—

(1) the rules of subsection (a) shall apply but only for purposes of determining the value of section 197 intangibles for purposes of applying section 755, and

(2) if section 755 applies, such distribution or transfer (as the case may be) shall be treated as an applicable asset acquisition for purposes of subsection (b).

(e) Information required in case of certain transfers of interests in entities

(1) In general

If—

(A) a person who is a 10-percent owner with respect to any entity transfers an interest in such entity, and

(B) in connection with such transfer, such owner (or a related person) enters into an employment contract, covenant not to compete, royalty or lease agreement, or other agreement with the transferee,

such owner and the transferee shall, at such time and in such manner as the Secretary may prescribe, furnish such information as the Secretary may require.

(2) 10-percent owner

For purposes of this subsection—

(A) In general

The term ''10-percent owner'' means, with respect to any entity, any person who holds 10 percent or more (by value) of the interests in such entity immediately before the transfer.

(B) Constructive ownership

Section 318 shall apply in determining ownership of stock in a corporation. Similar principles shall apply in determining the ownership of interests in any other entity.

(3) Related person

For purposes of this subsection, the term ''related person'' means any person who is re-

lated (within the meaning of section 267(b) or 707(b)(1)) to the 10-percent owner.

(f) Cross reference

For provisions relating to penalties for failure to file a return required by this section, see section 6721.

(Added Pub. L. 99–514, title VI, §641(a), Oct. 22, 1986, 100 Stat. 2282; amended Pub. L. 100–647, title I, §1006(h)(1), (2), (3)(B), Nov. 10, 1988, 102 Stat. 3410; Pub. L. 101–508, title XI, §11323(a), (b)(1), Nov. 5, 1990, 104 Stat. 1388–464; Pub. L. 103–66, title XIII, §13261(e), Aug. 10, 1993, 107 Stat. 539.)

PRIOR PROVISIONS

A prior section 1060 was renumbered section 1061 of this title.

AMENDMENTS

1993—Subsec. (b)(1). Pub. L. 103–66, §13261(e)(1), substituted ''section 197 intangibles'' for ''goodwill or going concern value''.

Subsec. (d)(1). Pub. L. 103–66, §13261(e)(2), substituted ''section 197 intangibles'' for ''goodwill or going concern value (or similar items)''.

1990—Subsec. (a). Pub. L. 101–508, §11323(a), inserted at end ''If in connection with an applicable asset acquisition, the transferee and transferor agree in writing as to the allocation of any consideration, or as to the fair market value of any of the assets, such agreement shall be binding on both the transferee and transferor unless the Secretary determines that such allocation (or fair market value) is not appropriate.''

Subsecs. (e), (f). Pub. L. 101–508, §11323(b)(1), added subsec. (e) and redesignated former subsec. (e) as (f).

1988—Subsec. (b)(3). Pub. L. 100–647, §1006(h)(1), substituted ''deems'' for ''may find''.

Subsec. (d). Pub. L. 100–647, §1006(h)(2), added subsec. (d).

Subsec. (e). Pub. L. 100–647, §1006(h)(3)(B), added subsec. (e).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable, except as otherwise provided, with respect to property acquired after Aug. 10, 1993, see section 13261(g) of Pub. L. 103–66, set out as an Effective Date note under section 197 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to acquisitions after Oct. 9, 1990, but not applicable to any acquisition pursuant to a written binding contract in effect on Oct. 9, 1990, and at all times thereafter before such acquisition, see section 11323(d) of Pub. L. 101–508, set out as a note under section 338 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 641(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [enacting this section and renumbering former section 1060 as 1061] shall apply to any acquisition of assets after May 6, 1986, unless such acquisition is pursuant to a binding contract which was in effect on May 6, 1986, and at all times thereafter.''

§1061. Cross references

(1) For nonrecognition of gain in connection with the transfer of obsolete vessels to the Maritime Administration under chapter 573 of title 46, United States Code, see section 57307 of title 46.

(2) For recognition of gain or loss in connection with the construction of new vessels, see chapter 533 of title 46, United States Code.

(Aug. 16, 1954, ch. 736, 68A Stat. 311, §1054; renumbered §1055, Pub. L. 86–779, §8(b), Sept. 14, 1960, 74 Stat. 1003; renumbered §1056, Pub. L. 88–9, §1(b), Apr. 10, 1963, 77 Stat. 7; renumbered §1057, Pub. L. 94–455, title II, §212(a)(1), Oct. 4, 1976, 90 Stat. 1545; renumbered §1058, Pub. L. 94–455, title X, §1015(c), Oct. 4, 1976, 90 Stat. 1618; renumbered §1059, Pub. L. 95–345, §2(d)(1), Aug. 15, 1978, 92 Stat. 482; renumbered §1060, Pub. L. 98–369, div. A, title I, §53(a), July 18, 1984, 98 Stat. 565; renumbered §1061 and amended, Pub. L. 99–514, title VI, §641(a), title XVIII, §1899A(27), Oct. 22, 1986, 100 Stat. 2282, 2960; Pub. L. 109–304, §17(e)(5), Oct. 6, 2006, 120 Stat. 1708.)

AMENDMENTS

2006—Par. (1). Pub. L. 109–304, §17(e)(5)(A), substituted ''chapter 573 of title 46, United States Code, see section 57307 of title 46'' for ''section 510 of the Merchant Marine Act, 1936, see subsection (e) of that section, as amended August 4, 1939 (46 U.S.C. App. 1160)''.

Par. (2). Pub. L. 109–304, §17(e)(5)(B), substituted ''chapter 533 of title 46, United States Code'' for ''section 511 of such Act, as amended (46 U.S.C. App. 1161)''.

Par. (3). Pub. L. 109–304, §17(e)(5)(C), struck out par. (3), which read as follows: ''For nonrecognition of gain in connection with vessels exchanged with the Maritime Administration under section 8 of the Merchant Ship Sales Act of 1946, see subsection (a) of that section (50 U.S.C. App. 1741).''

1986—Pub. L. 99–514, §641(a), renumbered section 1060 of this title as this section.

Pars. (1), (2). Pub. L. 99–514, §1899A(27), which directed the amendment of pars. (1) and (2) of section 1060 by substituting ''46 U.S.C. App.'' for ''46 U.S.C.'' was executed to section 1061 to reflect the probable intent of Congress in view of the renumbering of section 1060 as 1061 by section 641(a) of Pub. L. 99–514.

[PART V—REPEALED]

[§1071. Repealed. Pub. L. 104–7, §2(a), Apr. 11, 1995, 109 Stat. 93]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 311; Sept. 2, 1958, Pub. L. 85–866, title I, §48(a), 72 Stat. 1642; Oct. 4, 1976, Pub. L. 94–455, title XIX, §§1901(b)(31)(E), 1906(b)(13)(A), 90 Stat. 1800, 1834, provided for nonrecognition on FCC certified sales and exchanges.

EFFECTIVE DATE OF REPEAL

Section 2(d) of Pub. L. 104–7 provided that:

''(1) IN GENERAL.—The amendments made by this section [repealing this section and amending sections 1245 and 1250 of this title] shall apply to—

''(A) sales and exchanges on or after January 17, 1995, and

''(B) sales and exchanges before such date if the FCC tax certificate with respect to such sale or exchange is issued on or after such date.

''(2) BINDING CONTRACTS.—

''(A) IN GENERAL.—The amendments made by this section shall not apply to any sale or exchange pursuant to a written contract which was binding on January 16, 1995, and at all times thereafter before the sale or exchange, if the FCC tax certificate with respect to such sale or exchange was applied for, or issued, on or before such date.

''(B) SALES CONTINGENT ON ISSUANCE OF CERTIFICATE.—

''(i) IN GENERAL.—A contract shall be treated as not binding for purposes of subparagraph (A) if the

sale or exchange pursuant to such contract, or the material terms of such contract, were contingent, at any time on January 16, 1995, on the issuance of an FCC tax certificate. The preceding sentence shall not apply if the FCC tax certificate for such sale or exchange is issued on or before January 16, 1995.

''(ii) MATERIAL TERMS.—For purposes of clause (i), the material terms of a contract shall not be treated as contingent on the issuance of an FCC tax certificate solely because such terms provide that the sales price would, if such certificate were not issued, be increased by an amount not greater than 10 percent of the sales price otherwise provided in the contract.

''(3) FCC TAX CERTIFICATE.—For purposes of this subsection, the term 'FCC tax certificate' means any certificate of the Federal Communications Commission for the effectuation of section 1071 of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act [Apr. 11, 1995]).''

[PART VI—REPEALED]

[§§ 1081 to 1083. Repealed. Pub. L. 109–135, title IV, § 402(a)(1), Dec. 21, 2005, 119 Stat. 2610]

Section 1081, acts Aug. 16, 1954, ch. 736, 68A Stat. 312; Pub. L. 94–455, title XIX, §§ 1901(a)(132), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1786, 1834, provided for nonrecognition of gain or loss on exchanges or distributions in obedience to orders of SEC.

Section 1082, acts Aug. 16, 1954, ch. 736, 68A Stat. 315; Pub. L. 91–172, title VII, § 704(b)(3), Dec. 30, 1969, 83 Stat. 669; Pub. L. 92–178, title III, § 303(c)(5), Dec. 10, 1971, 85 Stat. 522; Pub. L. 94–455, title XIX, §§ 1901(b)(11)(C), 1906(b)(13)(A), 1951(c)(2)(B), title XXI, § 2124(a)(3)(C), Oct. 4, 1976, 90 Stat. 1795, 1834, 1840, 1917; Pub. L. 97–34, title II, § 212(d)(2)(E), Aug. 13, 1981, 95 Stat. 239; Pub. L. 99–514, title II, § 242(b)(1), Oct. 22, 1986, 100 Stat. 2181; Pub. L. 101–508, title XI, § 11801(c)(6)(D), Nov. 5, 1990, 104 Stat. 1388–524, related to basis for determining gain or loss.

Section 1083, acts Aug. 16, 1954, ch. 736, 68A Stat. 317; Pub. L. 94–455, title XIX, § 1901(a)(133), Oct. 4, 1976, 90 Stat. 1786, related to definitions for this part.

EFFECTIVE DATE OF REPEAL

Repeal effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which it relates, but not applicable with respect to any transaction ordered in compliance with the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) before that Act's repeal, see section 402(m) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 36C of this title.

PART VII—WASH SALES; STRADDLES

Sec.
1091. Loss from wash sales of stock or securities.
1092. Straddles.

AMENDMENTS

1981—Pub. L. 97–34, title V, § 501(d)(1), (2), Aug. 13, 1981, 95 Stat. 326, 327, substituted as part heading ''WASH SALES; STRADDLES'' for ''WASH SALES OF STOCK OR SECURITIES'' and added item 1092.

§ 1091. Loss from wash sales of stock or securities

(a) Disallowance of loss deduction

In the case of any loss claimed to have been sustained from any sale or other disposition of shares of stock or securities where it appears that, within a period beginning 30 days before the date of such sale or disposition and ending 30 days after such date, the taxpayer has acquired (by purchase or by an exchange on which the entire amount of gain or loss was recognized by law), or has entered into a contract or option so to acquire, substantially identical stock or securities, then no deduction shall be allowed under section 165 unless the taxpayer is a dealer in stock or securities and the loss is sustained in a transaction made in the ordinary course of such business. For purposes of this section, the term ''stock or securities'' shall, except as provided in regulations, include contracts or options to acquire or sell stock or securities.

(b) Stock acquired less than stock sold

If the amount of stock or securities acquired (or covered by the contract or option to acquire) is less than the amount of stock or securities sold or otherwise disposed of, then the particular shares of stock or securities the loss from the sale or other disposition of which is not deductible shall be determined under regulations prescribed by the Secretary.

(c) Stock acquired not less than stock sold

If the amount of stock or securities acquired (or covered by the contract or option to acquire) is not less than the amount of stock or securities sold or otherwise disposed of, then the particular shares of stock or securities the acquisition of which (or the contract or option to acquire which) resulted in the nondeductibility of the loss shall be determined under regulations prescribed by the Secretary.

(d) Unadjusted basis in case of wash sale of stock

If the property consists of stock or securities the acquisition of which (or the contract or option to acquire which) resulted in the nondeductibility (under this section or corresponding provisions of prior internal revenue laws) of the loss from the sale or other disposition of substantially identical stock or securities, then the basis shall be the basis of the stock or securities so sold or disposed of, increased or decreased, as the case may be, by the difference, if any, between the price at which the property was acquired and the price at which such substantially identical stock or securities were sold or otherwise disposed of.

(e) Certain short sales of stock or securities and securities futures contracts to sell

Rules similar to the rules of subsection (a) shall apply to any loss realized on the closing of a short sale of (or the sale, exchange, or termination of a securities futures contract to sell) stock or securities if, within a period beginning 30 days before the date of such closing and ending 30 days after such date—

(1) substantially identical stock or securities were sold, or

(2) another short sale of (or securities futures contracts to sell) substantially identical stock or securities was entered into.

For purposes of this subsection, the term ''securities futures contract'' has the meaning provided by section 1234B(c).

(f) Cash settlement

This section shall not fail to apply to a contract or option to acquire or sell stock or securities solely by reason of the fact that the contract or option settles in (or could be settled in)

cash or property other than such stock or securities.

(Aug. 16, 1954, ch. 736, 68A Stat. 319; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title I, § 106(a), (b), July 18, 1984, 98 Stat. 629; Pub. L. 100–647, title V, § 5075(a), Nov. 10, 1988, 102 Stat. 3682; Pub. L. 106–554, § 1(a)(7) [title IV, § 401(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–649; Pub. L. 107–147, title IV, § 412(d)(2), Mar. 9, 2002, 116 Stat. 53.)

AMENDMENTS

2002—Subsec. (e). Pub. L. 107–147 substituted ''securities and securities futures contracts to sell'' for ''securities'' in heading, inserted ''(or the sale, exchange, or termination of a securities futures contract to sell)'' after ''closing of a short sale of'' in introductory provisions and ''(or securities futures contracts to sell)'' after ''short sale of'' in par. (2), and inserted concluding provisions.

2000—Subsec. (f). Pub. L. 106–554 added subsec. (f).

1988—Subsec. (a). Pub. L. 100–647 inserted sentence at end defining ''stock or securities''.

1984—Subsec. (a). Pub. L. 98–369, § 106(b), substituted ''no deduction shall be allowed under section 165 unless the taxpayer is a dealer in stock or securities and the loss is sustained in a transaction made in the ordinary course of such business'' for ''no deduction for the loss shall be allowed under section 165(c)(2); nor shall such deduction be allowed a corporation under section 165(a) unless it is a dealer in stocks or securities, and the loss is sustained in a transaction made in the ordinary course of business''.

Subsec. (e). Pub. L. 98–369, § 106(a), added subsec. (e).

1976—Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary'' wherever appearing.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Community Renewal Tax Relief Act of 2000 [H.R. 5662, as enacted by Pub. L. 106–554], to which such amendment relates, see section 412(e) of Pub. L. 107–147, set out as a note under section 151 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 5075(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to any sale after the date of enactment of this Act [Nov. 10, 1988], in taxable years ending after such date.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 106(c) of Pub. L. 98–369 provided that:

''(1) SUBSECTION (a).—The amendment made by subsection (a) [amending this section] shall apply to short sales of stock or securities after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

''(2) SUBSECTION (b).—The amendment made by subsection (b) [amending this section] shall apply to sales after December 31, 1984, in taxable years ending after such date.''

§ 1092. Straddles

(a) Recognition of loss in case of straddles, etc.

(1) Limitation on recognition of loss

(A) In general

Any loss with respect to 1 or more positions shall be taken into account for any taxable year only to the extent that the amount of such loss exceeds the unrecognized gain (if any) with respect to 1 or more positions which were offsetting positions with respect to 1 or more positions from which the loss arose.

(B) Carryover of loss

Any loss which may not be taken into account under subparagraph (A) for any taxable year shall, subject to the limitations under subparagraph (A), be treated as sustained in the succeeding taxable year.

(2) Special rule for identified straddles

(A) In general

In the case of any straddle which is an identified straddle—

(i) paragraph (1) shall not apply with respect to positions comprising the identified straddle,

(ii) if there is any loss with respect to any position of the identified straddle, the basis of each of the offsetting positions in the identified straddle shall be increased by an amount which bears the same ratio to the loss as the unrecognized gain with respect to such offsetting position bears to the aggregate unrecognized gain with respect to all such offsetting positions,

(iii) if the application of clause (ii) does not result in an increase in the basis of any offsetting position in the identified straddle, the basis of each of the offsetting positions in the identified straddle shall be increased in a manner which—

(I) is reasonable, consistent with the purposes of this paragraph, and consistently applied by the taxpayer, and

(II) results in an aggregate increase in the basis of such offsetting positions which is equal to the loss described in clause (ii), and

(iv) any loss described in clause (ii) shall not otherwise be taken into account for purposes of this title.

(B) Identified straddle

The term ''identified straddle'' means any straddle—

(i) which is clearly identified on the taxpayer's records as an identified straddle before the earlier of—

(I) the close of the day on which the straddle is acquired, or

(II) such time as the Secretary may prescribe by regulations.

(ii) to the extent provided by regulations, the value of each position of which (in the hands of the taxpayer immediately before the creation of the straddle) is not less than the basis of such position in the hands of the taxpayer at the time the straddle is created, and

(iii) which is not part of a larger straddle.

A straddle shall be treated as clearly identified for purposes of clause (i) only if such identification includes an identification of the positions in the straddle which are offsetting with respect[1] other positions in the straddle.

[1] So in original. Probably should be followed by ''to''.

(C) Application to liabilities and obligations

Except as otherwise provided by the Secretary, rules similar to the rules of clauses (ii) and (iii) of subparagraph (A) shall apply for purposes of this paragraph with respect to any position which is, or has been, a liability or obligation.

(D) Regulations

The Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this paragraph. Such regulations or other guidance may specify the proper methods for clearly identifying a straddle as an identified straddle (and for identifying the positions comprising such straddle), the rules for the application of this section to a taxpayer which fails to comply with those identification requirements, the rules for the application of this section to a position which is or has been a liability or obligation, methods of loss allocation which satisfy the requirements of subparagraph (A)(iii), and the ordering rules in cases where a taxpayer disposes (or otherwise ceases to be the holder) of any part of any position which is part of an identified straddle.

(3) Unrecognized gain

For purposes of this subsection—

(A) In general

The term ''unrecognized gain'' means—

(i) in the case of any position held by the taxpayer as of the close of the taxable year, the amount of gain which would be taken into account with respect to such position if such position were sold on the last business day of such taxable year at its fair market value, and

(ii) in the case of any position with respect to which, as of the close of the taxable year, gain has been realized but not recognized, the amount of gain so realized.

(B) Special rule for identified straddles

For purposes of paragraph (2)(A)(ii), the unrecognized gain with respect to any offsetting position shall be the excess of the fair market value of the position at the time of the determination over the fair market value of the position at the time the taxpayer identified the position as a position in an identified straddle.

(C) Reporting of gain

(i) In general

Each taxpayer shall disclose to the Secretary, at such time and in such manner and form as the Secretary may prescribe by regulations—

(I) each position (whether or not part of a straddle) with respect to which, as of the close of the taxable year, there is unrecognized gain, and

(II) the amount of such unrecognized gain.

(ii) Reports not required in certain cases

Clause (i) shall not apply—

(I) to any position which is part of an identified straddle,

(II) to any position which, with respect to the taxpayer, is property described in paragraph (1) or (2) of section 1221(a) or to any position which is part of a hedging transaction (as defined in section 1256(e)), or

(III) with respect to any taxable year if no loss on a position (including a regulated futures contract) has been sustained during such taxable year or if the only loss sustained on such position is a loss described in subclause (II).

(b) Regulations

(1) In general

The Secretary shall prescribe such regulations with respect to gain or loss on positions which are a part of a straddle as may be appropriate to carry out the purposes of this section and section 263(g). To the extent consistent with such purposes, such regulations shall include rules applying the principles of subsections (a) and (d) of section 1091 and of subsections (b) and (d) of section 1233.

(2) Regulations relating to mixed straddles

(A) Elective provisions in lieu of section 1233(d) principles

The regulations prescribed under paragraph (1) shall provide that—

(i) the taxpayer may offset gains and losses from positions which are part of mixed straddles—

(I) by straddle-by-straddle identification, or

(II) by the establishment (with respect to any class of activities) of a mixed straddle account for which gains and losses would be recognized (and offset) on a periodic basis,

(ii) such offsetting will occur before the application of section 1256, and section 1256(a)(3) will only apply to net gain or net loss attributable to section 1256 contracts, and

(iii) the principles of section 1233(d) shall not apply with respect to any straddle identified under clause (i)(I) or part of an account established under clause (i)(II).

(B) Limitation on net gain or net loss from mixed straddle account

In the case of any mixed straddle account referred to in subparagraph (A)(i)(II)—

(i) Not more than 50 percent of net gain may be treated as long-term capital gain

In no event shall more than 50 percent of the net gain from such account for any taxable year be treated as long-term capital gain.

(ii) Not more than 40 percent of net loss may be treated as short-term capital loss

In no event shall more than 40 percent of the net loss from such account for any taxable year be treated as short-term capital loss.

(C) Authority to treat certain positions as mixed straddles

The regulations prescribed under paragraph (1) may treat as a mixed straddle positions not described in section 1256(d)(4).

(D) Timing and character authority

The regulations prescribed under paragraph (1) shall include regulations relating to the timing and character of gains and losses in case of straddles where at least 1 position is ordinary and at least 1 position is capital.

(c) Straddle defined

For purposes of this section—

(1) In general

The term ''straddle'' means offsetting positions with respect to personal property.

(2) Offsetting positions

(A) In general

A taxpayer holds offsetting positions with respect to personal property if there is a substantial diminution of the taxpayer's risk of loss from holding any position with respect to personal property by reason of his holding 1 or more other positions with respect to personal property (whether or not of the same kind).

(B) Special rule for identified straddles

In the case of any position which is not part of an identified straddle (within the meaning of subsection (a)(2)(B)), such position shall not be treated as offsetting with respect to any position which is part of an identified straddle.

(3) Presumption

(A) In general

For purposes of paragraph (2), 2 or more positions shall be presumed to be offsetting if—

(i) the positions are in the same personal property (whether established in such property or a contract for such property),

(ii) the positions are in the same personal property, even though such property may be in a substantially altered form,

(iii) the positions are in debt instruments of a similar maturity or other debt instruments described in regulations prescribed by the Secretary,

(iv) the positions are sold or marketed as offsetting positions (whether or not such positions are called a straddle, spread, butterfly, or any similar name),

(v) the aggregate margin requirement for such positions is lower than the sum of the margin requirements for each such position (if held separately), or

(vi) there are such other factors (or satisfaction of subjective or objective tests) as the Secretary may by regulations prescribe as indicating that such positions are offsetting.

For purposes of the preceding sentence, 2 or more positions shall be treated as described in clause (i), (ii), (iii), or (vi) only if the value of 1 or more of such positions ordinarily varies inversely with the value of 1 or more other such positions.

(B) Presumption may be rebutted

Any presumption established pursuant to subparagraph (A) may be rebutted.

(4) Exception for certain straddles consisting of qualified covered call options and the optioned stock

(A) In general

If—

(i) all the offsetting positions making up any straddle consist of 1 or more qualified covered call options and the stock to be purchased from the taxpayer under such options, and

(ii) such straddle is not part of a larger straddle,

such straddle shall not be treated as a straddle for purposes of this section and section 263(g).

(B) Qualified covered call option defined

For purposes of subparagraph (A), the term ''qualified covered call option'' means any option granted by the taxpayer to purchase stock held by the taxpayer (or stock acquired by the taxpayer in connection with the granting of the option) but only if—

(i) such option is traded on a national securities exchange which is registered with the Securities and Exchange Commission or other market which the Secretary determines has rules adequate to carry out the purposes of this paragraph,

(ii) such option is granted more than 30 days before the day on which the option expires,

(iii) such option is not a deep-in-the-money option,

(iv) such option is not granted by an options dealer (within the meaning of section 1256(g)(8)) in connection with his activity of dealing in options, and

(v) gain or loss with respect to such option is not ordinary income or loss.

(C) Deep-in-the-money option

For purposes of subparagraph (B), the term ''deep-in-the-money option'' means an option having a strike price lower than the lowest qualified bench mark.

(D) Lowest qualified bench mark

(i) In general

Except as otherwise provided in this subparagraph, for purposes of subparagraph (C), the term ''lowest qualified bench mark'' means the highest available strike price which is less than the applicable stock price.

(ii) Special rule where option is for period more than 90 days and strike price exceeds $50

In the case of an option—

(I) which is granted more than 90 days before the date on which such option expires, and

(II) with respect to which the strike price is more than $50,

the lowest qualified bench mark is the second highest available strike price which is less than the applicable stock price.

(iii) 85 percent rule where applicable stock price $25 or less

If—

(I) the applicable stock price is $25 or less, and

(II) but for this clause, the lowest qualified bench mark would be less than 85 percent of the applicable stock price,

the lowest qualified bench mark shall be treated as equal to 85 percent of the applicable stock price.

(iv) Limitation where applicable stock price $150 or less

If—

(I) the applicable stock price is $150 or less, and

(II) but for this clause, the lowest qualified bench mark would be less than the applicable stock price reduced by $10,

the lowest qualified bench mark shall be treated as equal to the applicable stock price reduced by $10.

(E) Special year-end rule

Subparagraph (A) shall not apply to any straddle for purposes of section 1092(a) if—

(i) the qualified covered call options referred to in such subparagraph are closed or the stock is disposed of at a loss during any taxable year,

(ii) gain on disposition of the stock to be purchased from the taxpayer under such options or gains on such options are includible in gross income for a later taxable year, and

(iii) such stock or option was not held by the taxpayer for 30 days or more after the closing of such options or the disposition of such stock.

For purposes of the preceding sentence, the rules of paragraphs (3) (other than subparagraph (B)[2] thereof) and (4) of section 246(c) shall apply in determining the period for which the taxpayer holds the stock.

(F) Strike price

For purposes of this paragraph, the term ''strike price'' means the price at which the option is exercisable.

(G) Applicable stock price

For purposes of subparagraph (D), the term ''applicable stock price'' means, with respect to any stock for which an option has been granted—

(i) the closing price of such stock on the most recent day on which such stock was traded before the date on which such option was granted, or

(ii) the opening price of such stock on the day on which such option was granted, but only if such price is greater than 110 percent of the price determined under clause (i).

(H) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph. Such regulations may include modifications to the provisions of this paragraph which are appropriate to take account of changes in the practices of option exchanges or to prevent the use of options for tax avoidance purposes.

(d) Definitions and special rules

For purposes of this section—

(1) Personal property

The term ''personal property'' means any personal property of a type which is actively traded.

(2) Position

The term ''position'' means an interest (including a futures or forward contract or option) in personal property.

(3) Special rules for stock

For purposes of paragraph (1)—

(A) In general

In the case of stock, the term ''personal property'' includes stock only if—

(i) such stock is of a type which is actively traded and at least 1 of the positions offsetting such stock is a position with respect to such stock or substantially similar or related property, or

(ii) such stock is of a corporation formed or availed of to take positions in personal property which offset positions taken by any shareholder.

(B) Rule for application

For purposes of determining whether subsection (e) applies to any transaction with respect to stock described in subparagraph (A)(ii), all includible corporations of an affiliated group (within the meaning of section 1504(a)) shall be treated as 1 taxpayer.

(4) Positions held by related persons, etc.

(A) In general

In determining whether 2 or more positions are offsetting, the taxpayer shall be treated as holding any position held by a related person.

(B) Related person

For purposes of subparagraph (A), a person is a related person to the taxpayer if with respect to any period during which a position is held by such person, such person—

(i) is the spouse of the taxpayer, or

(ii) files a consolidated return (within the meaning of section 1501) with the taxpayer for any taxable year which includes a portion of such period.

(C) Certain flowthrough entities

If part or all of the gain or loss with respect to a position held by a partnership, trust, or other entity would properly be taken into account for purposes of this chapter by a taxpayer, then, except to the extent otherwise provided in regulations, such position shall be treated as held by the taxpayer.

[2] See References in Text note below.

(5) Special rule for section 1256 contracts

(A) General rule

In the case of a straddle at least 1 (but not all) of the positions of which are section 1256 contracts, the provisions of this section shall apply to any section 1256 contract and any other position making up such straddle.

(B) Special rule for identified straddles

For purposes of subsection (a)(2) (relating to identified straddles), subparagraph (A) and section 1256(a)(4) shall not apply to a straddle all of the offsetting positions of which consist of section 1256 contracts.

(6) Section 1256 contract

The term ''section 1256 contract'' has the meaning given such term by section 1256(b).

(7) Special rules for foreign currency

(A) Position to include interest in certain debt

For purposes of paragraph (2), an obligor's interest in a nonfunctional currency denominated debt obligation is treated as a position in the nonfunctional currency.

(B) Actively traded requirement

For purposes of paragraph (1), foreign currency for which there is an active interbank market is presumed to be actively traded.

(8) Special rules for physically settled positions

For purposes of subsection (a), if a taxpayer settles a position which is part of a straddle by delivering property to which the position relates (and such position, if terminated, would result in a realization of a loss), then such taxpayer shall be treated as if such taxpayer—

(A) terminated the position for its fair market value immediately before the settlement, and

(B) sold the property so delivered by the taxpayer at its fair market value.

(e) Exception for hedging transactions

This section shall not apply in the case of any hedging transaction (as defined in section 1256(e)).

(f) Treatment of gain or loss and suspension of holding period where taxpayer grantor of qualified covered call option

If a taxpayer holds any stock and grants a qualified covered call option to purchase such stock with a strike price less than the applicable stock price—

(1) Treatment of loss

Any loss with respect to such option shall be treated as long-term capital loss if, at the time such loss is realized, gain on the sale or exchange of such stock would be treated as long-term capital gain.

(2) Suspension of holding period

The holding period of such stock shall not include any period during which the taxpayer is the grantor of such option.

(g) Cross reference

For provision requiring capitalization of certain interest and carrying charges where there is a straddle, see section 263(g).

(Added Pub. L. 97–34, title V, §501(a), Aug. 13, 1981, 95 Stat. 323; amended Pub. L. 97–448, title I, §105(a)(1)(A)–(C), (2)–(4), Jan. 12, 1983, 96 Stat. 2384, 2385; Pub. L. 98–369, div. A, title I, §§101(a)–(d), 102(e)(2), 103(a), 107(a), July 18, 1984, 98 Stat. 616–619, 624, 627, 629; Pub. L. 99–514, title III, §331(a), title XII, §1261(b), title XVIII, §§1808(c), 1899A(66), Oct. 22, 1986, 100 Stat. 2220, 2591, 2817, 2962; Pub. L. 100–647, title VI, §6130(c), Nov. 10, 1988, 102 Stat. 3719; Pub. L. 105–34, title XII, §1271(b)(9), Aug. 5, 1997, 111 Stat. 1037; Pub. L. 106–170, title V, §532(c)(1)(F), Dec. 17, 1999, 113 Stat. 1930; Pub. L. 106–554, §1(a)(7) [title IV, §401(e)], Dec. 21, 2000, 114 Stat. 2763, 2763A–649; Pub. L. 108–357, title VIII, §888(a)–(c)(1), Oct. 22, 2004, 118 Stat. 1642, 1643; Pub. L. 109–135, title IV, §403(ii), Dec. 21, 2005, 119 Stat. 2632; Pub. L. 110–172, §7(d), Dec. 29, 2007, 121 Stat. 2482.)

REFERENCES IN TEXT

Section 246(c)(3) of this title, referred to in subsec. (c)(4)(E), was amended by Pub. L. 105–34, title X, §1015(b)(2), Aug. 5, 1997, 111 Stat. 922, by striking out subpar. (B) and redesignating subpar. (C) as (B).

AMENDMENTS

2007—Subsec. (a)(2)(A)(i). Pub. L. 110–172, §7(d)(2)(B)(i), substituted ''positions'' for ''identified positions''.

Subsec. (a)(2)(A)(ii). Pub. L. 110–172, §7(d)(2)(B)(ii), (iii), substituted ''any position'' for ''any identified position'' and ''the offsetting positions'' for ''the identified offsetting positions''.

Pub. L. 110–172, §7(d)(1), struck out ''and'' at end.

Subsec. (a)(2)(A)(iii), (iv). Pub. L. 110–172, §7(d)(1), added cl. (iii) and redesignated former cl. (iii) as (iv).

Subsec. (a)(2)(B). Pub. L. 110–172, §7(d)(2)(A), inserted concluding provisions.

Subsec. (a)(2)(C), (D). Pub. L. 110–172, §7(d)(3), (4), added subpar. (C), redesignated former subpar. (C) as (D), and inserted ''the rules for the application of this section to a position which is or has been a liability or obligation, methods of loss allocation which satisfy the requirements of subparagraph (A)(iii),'' before ''and the ordering rules'' in subpar. (D).

Subsec. (a)(3)(B). Pub. L. 110–172, §7(d)(2)(C), substituted ''offsetting position'' for ''identified offsetting position''.

2005—Subsec. (a)(2). Pub. L. 109–135 added subpar. (C) and struck out concluding provisions of subpar. (B) which read as follows: ''The Secretary shall prescribe regulations which specify the proper methods for clearly identifying a straddle as an identified straddle (and the positions comprising such straddle), which specify the rules for the application of this section for a taxpayer which fails to properly identify the positions of an identified straddle, and which specify the ordering rules in cases where a taxpayer disposes of less than an entire position which is part of an identified straddle.''

2004—Subsec. (a)(2)(A). Pub. L. 108–357, §888(a)(1), reenacted heading without change and amended text of subpar. (A) generally. Prior to amendment, text read as follows: ''In the case of any straddle which is an identified straddle as of the close of any taxable year—

''(i) paragraph (1) shall not apply for such taxable year, and

''(ii) any loss with respect to such straddle shall be treated as sustained not earlier than the day on which all of the positions making up the straddle are disposed of.''

Subsec. (a)(2)(B). Pub. L. 108–357, §888(a)(2)(B), inserted concluding provisions.

Subsec. (a)(2)(B)(ii). Pub. L. 108–357, §888(a)(2)(A), added cl. (ii) and struck out former cl. (ii) which read as follows: ''all of the original positions of which (as identified by the taxpayer) are acquired on the same day and with respect to which—

''(I) all of such positions are disposed of on the same day during the taxable year, or

''(II) none of such positions has been disposed of as of the close of the taxable year, and''.

Subsec. (a)(3)(B), (C). Pub. L. 108–357, § 888(a)(3), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (c)(2)(B), (C). Pub. L. 108–357, § 888(a)(4), redesignated subpar. (C) as (B) and struck out heading and text of former subpar. (B). Text read as follows: ''If 1 or more positions offset only a portion of 1 or more other positions, the Secretary shall by regulations prescribe the method for determining the portion of such other positions which is to be taken into account for purposes of this section.''

Subsec. (d)(3). Pub. L. 108–357, § 888(c)(1), reenacted heading without change and amended text of par. (3) generally, substituting provisions directing that the term ''personal property'' includes stock only if it is of a certain type or of a certain type of corporation and setting forth rule for application of subsec. (e), for provisions directing that the term ''personal property'' includes any stock which is part of a straddle at least 1 of the offsetting positions of which is an option, a securities futures contract, or a position with respect to substantially similar or related property (other than stock), and of a certain type of corporation, and setting forth special rules relating to application of subsecs. (c), (d)(4), and (e).

Subsec. (d)(8). Pub. L. 108–357, § 888(b), added par. (8).

2000—Subsec. (d)(3)(B)(i)(II), (III). Pub. L. 106–554 added subcl. (II) and redesignated former subcl. (II) as (III).

1999—Subsec. (a)(3)(B)(ii)(II). Pub. L. 106–170 substituted ''1221(a)'' for ''1221''.

1997—Subsec. (f)(2). Pub. L. 105–34 substituted ''The'' for ''Except for purposes of section 851(b)(3), the''.

1988—Subsec. (b)(2)(D). Pub. L. 100–647 added subpar. (D).

1986—Subsec. (c)(4)(E). Pub. L. 99–514, § 331(a), in cl. (i), inserted ''or the stock is disposed of at a loss'', in cl. (ii), substituted ''or gains on such options are'' for ''is'', and in cl. (iii), inserted ''or option'' and ''or the disposition of such stock''.

Subsec. (d)(3)(A). Pub. L. 99–514, § 1808(c), inserted at end ''The preceding sentence shall not apply to any interest in stock.''

Subsec. (d)(5), (6). Pub. L. 99–514, § 1899A(66), amended directory language of section 101(b)(2) of Pub. L. 98–369 to clarify general amendment by sections 101(d) and 102(e) of Pub. L. 98–369. See 1984 Amendment notes below.

Subsec. (d)(7). Pub. L. 99–514, § 1261(b), added par. (7).

1984—Subsec. (a)(2)(B)(i). Pub. L. 98–369, § 107(a), designated existing provisions as subcl. (I) and added subcl. (II).

Subsec. (b). Pub. L. 98–369, § 103(a), amended subsec. (b) generally, substituting provisions dealing with regulations for provisions dealing with character of gain or loss and wash sales.

Subsec. (c)(4). Pub. L. 98–369, § 101(a)(2), added par. (4).

Subsec. (d)(1). Pub. L. 98–369, § 101(b)(1), struck out ''(other than stock)'' before ''of a type''.

Subsec. (d)(2). Pub. L. 98–369, § 101(a)(1), redesignated former subpar. (A) as entire par. (2), and struck out former subpar. (B) which provided that ''position'' includes any stock option which is a part of a straddle and which is an option to buy or sell stock which is actively traded, but does not include a stock option which (i) is traded on a domestic exchange or on a similar foreign exchange designated by the Secretary, and (ii) is of a type with respect to which the maximum period during which such option may be exercised is less than the minimum period for which a capital asset must be held for gain to be treated as long-term capital gain under section 1222(3).

Subsec. (d)(3), (4). Pub. L. 98–369, § 101(b)(2), as amended by Pub. L. 99–514, § 1899A(66), added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively.

Subsec. (d)(5). Pub. L. 98–369, § 101(d), amended par. (4) generally, substituting provisions relating to special rules for section 1256 contracts for provisions relating to special rules for regulated futures contracts.

Pub. L. 98–369, § 101(b)(2), as amended by Pub. L. 99–514, § 1899A(66), redesignated former par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (d)(6). Pub. L. 98–369, § 102(e)(2), amended par. (5) generally, substituting references to section 1256 contracts for references to regulated futures contracts wherever appearing in heading and text.

Pub. L. 98–369, § 101(b)(2), as amended by Pub. L. 99–514, § 1899A(66), redesignated former par. (5) as (6).

Subsecs. (f), (g). Pub. L. 98–369, § 101(c), added subsec. (f) and redesignated former subsec. (f) as (g).

1983—Subsec. (a)(1)(A). Pub. L. 97–448, § 105(a)(1)(A), (2), substituted ''unrecognized gain'' for ''unrealized gain'' and ''which were offsetting positions with respect to 1 or more positions from which the loss arose'' for ''which— (i) were acquired by the taxpayer before the disposition giving rise to such loss, (ii) were offsetting positions with respect to the 1 or more positions from which the loss arose, and (iii) were not part of an identified straddle as of the close of the taxable year''.

Subsec. (a)(3). Pub. L. 97–448, § 105(a)(1)(B), substituted ''Unrecognized gain'' for ''Unrealized gain'' in heading.

Subsec. (a)(3)(A). Pub. L. 97–448, § 105(a)(1)(B), substituted ''unrecognized gain'' for ''unrealized gain'' as term defined, designated existing definition as cl. (i), and added cl. (ii).

Subsec. (a)(3)(B)(i)(I). Pub. L. 97–448, § 105(a)(1)(C), substituted ''with respect to which, as of the close of the taxable year, there is unrecognized gain, and'' for ''which is held by such taxpayer as of the close of the taxable year and with respect to which there is unrealized gain, and''.

Subsec. (a)(3)(B)(i)(II). Pub. L. 97–448, § 105(a)(1)(C), substituted ''unrecognized gain'' for ''unrealized gain''.

Subsec. (c)(2)(C). Pub. L. 97–448, § 105(a)(4), substituted ''subsection (a)(2)(B)'' for ''subsection (a)(3)(B)''.

Subsec. (d)(4). Pub. L. 97–448, § 105(a)(3), substituted ''a straddle at least 1 (but not all) of the positions of which are regulated futures contracts, the provisions of this section shall apply'' for ''a straddle— (A) at lease 1 (but not all) of the positions of which are regulated futures contracts, and (B) with respect to which the taxpayer has elected not to have the provisions of section 1256 apply, the provisions of this section shall apply''.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–172, § 7(e), Dec. 29, 2007, 121 Stat. 2483, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 45, 45H, 179B, 280C, 470, 1016, and 6501 of this title] shall take effect as if included in the provisions of the American Jobs Creation Act of 2004 [Pub. L. 108–357] to which they relate.

''(2) IDENTIFICATION REQUIREMENT OF AMENDMENT RELATED TO SECTION 888 OF THE AMERICAN JOBS CREATION ACT OF 2004.—The amendment made by subsection (d)(2)(A) [amending this section] shall apply to straddles acquired after the date of the enactment of this Act [Dec. 29, 2007].''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to positions established on or after Oct. 22, 2004, see section 888(e) of Pub. L. 108–357, set out as a note under section 246 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any trans-

action entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to taxable years beginning after Aug. 5, 1997, see section 1271(c) of Pub. L. 105–34, set out as a note under section 817 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable with respect to forward contracts, future contracts, options, and similar instruments entered into or acquired after Oct. 21, 1988, see section 6130(d)(1) of Pub. L. 100–647, set out as a note under section 988 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 331(b) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section] shall apply to positions established on or after January 1, 1987.''

Amendment by section 1261(b) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1261(e) of Pub. L. 99–514, set out as an Effective Date note under section 985 of this title.

Amendment by section 1808(c) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 101(e) of Pub. L. 98–369 provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section] shall apply to positions established after December 31, 1983, in taxable years ending after such date.

''(2) SPECIAL RULE FOR OFFSETTING POSITION STOCK.—In the case of any stock of a corporation formed or availed of to take positions in personal property which offset positions taken by any shareholder, the amendments made by this section shall apply to positions established on or after May 23, 1983, in taxable years ending on or after such date.

''(3) SUBSECTION (c).—The amendment made by subsection (c) [amending this section] shall apply to positions established after June 30, 1984, in taxable years ending after such date.

''(4) SUBSECTION (d).—The amendment made by subsection (d) [amending this section] shall apply to positions established after the date of the enactment of this Act in taxable years ending after such date.''

Amendment by section 102(e)(2) of Pub. L. 98–369 applicable to positions established after July 18, 1984, in taxable years ending after that date, except as otherwise provided, see section 102(f), (g) of Pub. L. 98–369, set out as a note under section 1256 of this title.

Section 103(b), (c) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(b) REQUIREMENT THAT REGULATIONS BE ISSUED WITHIN 6 MONTHS AFTER THE DATE OF ENACTMENT.—The Secretary of the Treasury or his delegate shall prescribe initial regulations under section 1092(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (including regulations relating to mixed straddles) not later than the date 6 months after the date of the enactment of this Act [July 18, 1984].

''(c) EFFECTIVE DATE OF REGULATIONS WITH RESPECT TO MIXED STRADDLES.—The regulations described in subsection (b) with respect to the application of section 1233 of the Internal Revenue Code of 1986 to mixed straddles shall not apply to mixed straddles all of the positions of which were established before January 1, 1984.''

Section 107(e) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and sections 1236 and 1256 of this title] shall apply to positions entered into after the date of the enactment of this Act [July 18, 1984], in taxable years ending after such date.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section 508 of title V of Pub. L. 97–34, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this title [enacting this section and sections 1234A and 1256 of this title, amending sections 263, 341, 1212, 1221, 1231, 1232, 1233, 1236, and 6653 of this title, and enacting provisions set out as a note under section 1256 of this title] shall apply to property acquired and positions established by the taxpayer after June 23, 1981, in taxable years ending after such date.

''(b) IDENTIFICATION REQUIREMENTS.—

''(1) UNDER SECTION 1236 OF CODE.—The amendments made by section 506 [amending section 1236 of this title] shall apply to property acquired by the taxpayer after the date of the enactment of this Act [Aug. 13, 1981] in taxable years ending after such date.

''(2) UNDER SECTION 1256(e)(2)(C) OF CODE.—Section 1256(e)(2)(C) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this title) shall apply to property acquired and positions established by the taxpayer after December 31, 1981, in taxable years ending after such date.

''(c) ELECTION WITH RESPECT TO PROPERTY HELD ON JUNE 23, 1981.—If the taxpayer so elects (at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe) with respect to all regulated futures contracts or positions held by the taxpayer on June 23, 1981, the amendments made by this title shall apply to all such contracts and positions, effective for periods after such date in taxable years ending after such date. For purposes of the preceding sentence, the term 'regulated futures contract' has the meaning given to such term by section 1256(b) of the Internal Revenue Code of 1986, and the term 'position' has the meaning given to such term by section 1092(d)(2) of such Code.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TREATMENT OF CERTAIN LOSSES ON STRADDLES ENTERED INTO BEFORE EFFECTIVE DATE OF ECONOMIC RECOVERY TAX ACT OF 1981

Section 108 of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, title XVIII, §1808(d), Oct. 22, 1986, 100 Stat. 2095, 2817, provided that:

''(a) GENERAL RULE.—For purposes of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], in the case of any disposition of 1 or more positions—

''(1) which were entered into before 1982 and form part of a straddle, and

''(2) to which the amendments made by title V of the Economic Recovery Tax Act of 1981 [Pub. L. 97–34, see Effective Date note above] do not apply,

any loss from such disposition shall be allowed for the taxable year of the disposition if such loss is incurred in a trade or business, or if such loss is incurred in a transaction entered into for profit though not connected with a trade or business.

''(b) LOSS INCURRED IN A TRADE OR BUSINESS.—For purposes of subsection (a), any loss incurred by a commodities dealer in the trading of commodities shall be treated as a loss incurred in a trade or business.

''(c) NET LOSS ALLOWED.—If any loss with respect to a position described in paragraphs (1) and (2) of subsection (a) is not allowable as a deduction (after applying subsections (a) and (b)), such loss shall be allowed in determining the gain or loss from dispositions of other positions in the straddle to the extent required to accurately reflect the taxpayer's net gain or loss from all positions in such straddle.

''(d) OTHER RULES.—Except as otherwise provided in subsections (a) and (c) and in sections 1233 and 1234 of such Code, the determination of whether there is recognized gain or loss with respect to a position, and the amount and timing of such gain or loss, and the treatment of such gain or loss as long-term or short-term shall be made without regard to whether such position constitutes part of a straddle.

''(e) STRADDLE.—For purposes of this section, the term 'straddle' has the meaning given to such term by section 1092(c) of the Internal Revenue Code of 1986 as in effect on the day after the date of the enactment of the Economic Recovery Tax Act of 1981 [Aug. 13, 1981], and shall include a straddle all the positions of which are regulated futures contracts.

''(f) COMMODITIES DEALER.—For purposes of this section, the term 'commodities dealer' means any taxpayer who—

''(1) at any time before January 1, 1982, was an individual described in section 1402(i)(2)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this subtitle), or

''(2) was a member of the family (within the meaning of section 704(e)(3) of such Code) of an individual described in paragraph (1) to the extent such member engaged in commodities trading through an organization the members of which consisted solely of—

''(A) 1 or more individuals described in paragraph (1), and

''(B) 1 or more members of the families (as so defined) of such individuals.

''(g) REGULATED FUTURES CONTRACTS.—For purposes of this section, the term 'regulated futures contracts' has the meaning given to such term by section 1256(b) of the Internal Revenue Code of 1986 (as in effect before the date of enactment of this Act [July 18, 1984]).

''(h) SYNDICATES.—For purposes of this section, any loss incurred by a person (other than a commodities dealer) with respect to an interest in a syndicate (within the meaning of section 1256(e)(3)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) shall not be considered to be a loss incurred in a trade or business.''

[PART VIII—REPEALED]

[§§ 1101 to 1103. Repealed. Pub. L. 101–508, title XI, § 11801(a)(34), Nov. 5, 1990, 104 Stat. 1388–521]

Section 1101, added May 9, 1956, ch. 240, § 10(a), 70 Stat. 139; amended Oct. 2, 1976, Pub. L. 94–452, § 2(a), 90 Stat. 1503; Oct. 4, 1976, Pub. L. 94–455, title XIX, § 1906(b)(13)(A), 90 Stat. 1834; Oct. 19, 1982, Pub. L. 97–354, § 5(a)(34), 96 Stat. 1695, related to distributions of property pursuant to Bank Holding Company Act.

Section 1102, added May 9, 1956, ch. 240, § 10(a), 70 Stat. 143; amended Dec. 27, 1967, Pub. L. 90–225, § 1, 81 Stat. 730; Oct. 2, 1976, Pub. L. 94–452, § 2(a), 90 Stat. 1508; Oct. 4, 1976, Pub. L. 94–455, title XIX, § 1906(b)(13)(A), 90 Stat. 1834, related to basis of property acquired in distributions, periods of limitation, allocation of earnings and profits, and itemization of property.

Section 1103, added May 9, 1956, ch. 240, § 10(a), 70 Stat. 144; amended Oct. 2, 1976, Pub. L. 94–452, § 2(a), 90 Stat. 1509; Oct. 4, 1976, Pub. L. 94–455, title XIX, § 1906(b)(13)(A), 90 Stat. 1834, related to definitions for this part.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[PART IX—REPEALED]

[§ 1111. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(134), Oct. 4, 1976, 90 Stat. 1786]

Section, added Pub. L. 87–403, § 1(a), Feb. 2, 1962, 76 Stat. 4, related to distribution of stock pursuant to order enforcing antitrust laws.

Subchapter P—Capital Gains and Losses

Part
I. Treatment of capital gains.
II. Treatment of capital losses.
III. General rules for determining capital gains and losses.
IV. Special rules for determining capital gains and losses.
V. Special rules for bonds and other debt instruments.
VI. Treatment of certain passive foreign investment companies.

AMENDMENTS

1986—Pub. L. 99–514, title XII, § 1235(g), Oct. 22, 1986, 100 Stat. 2576, added item for part VI.

1984—Pub. L. 98–369, div. A, title I, § 42(b)(1), July 18, 1984, 98 Stat. 557, added item for part V.

PART I—TREATMENT OF CAPITAL GAINS

Sec.
1201. Alternative tax for corporations.
1202. Partial exclusion for gain from certain small business stock.

AMENDMENTS

2000—Pub. L. 106–554, § 1(a)(7) [title I, § 117(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–604, substituted ''Partial'' for ''50-percent'' in item 1202.

1993—Pub. L. 103–66, title XIII, § 13113(d)(6), Aug. 10, 1993, 107 Stat. 430, added item 1202.

1986—Pub. L. 99–514, title III, § 301(b)(13), Oct. 22, 1986, 100 Stat. 2218, struck out item 1202 ''Deduction for capital gains''.

1978—Pub. L. 95–600, title IV, § 401(b)(6), Nov. 6, 1978, 92 Stat. 2867, substituted ''Alternative tax for corporations'' for ''Alternative tax'' in item 1201.

§ 1201. Alternative tax for corporations

(a) General rule

If for any taxable year a corporation has a net capital gain and any rate of tax imposed by section 11, 511, or 831(a) or (b) (whichever is applicable) exceeds 35 percent (determined without regard to the last 2 sentences of section 11(b)(1)), then, in lieu of any such tax, there is hereby imposed a tax (if such tax is less than the tax imposed by such sections) which shall consist of the sum of—

(1) a tax computed on the taxable income reduced by the amount of the net capital gain, at the rates and in the manner as if this subsection had not been enacted, plus

(2) a tax of 35 percent of the net capital gain (or, if less, taxable income).

(b) Special rate for qualified timber gains

(1) In general

If, for any taxable year ending after the date of the enactment of the Food, Conservation, and Energy Act of 2008 and beginning on or before the date which is 1 year after such date, a corporation has both a net capital gain and qualified timber gain—

(A) subsection (a) shall apply to such corporation for the taxable year without regard to whether the applicable tax rate exceeds 35 percent, and

(B) the tax computed under subsection (a)(2) shall be equal to the sum of—

(i) 15 percent of the least of—

(I) qualified timber gain,

(II) net capital gain, or

(III) taxable income, plus

(ii) 35 percent of the excess (if any) of taxable income over the sum of the amounts for which a tax was determined under subsection (a)(1) and clause (i).

(2) Qualified timber gain

For purposes of this section, the term ''qualified timber gain'' means, with respect to any taxpayer for any taxable year, the excess (if any) of—

(A) the sum of the taxpayer's gains described in subsections (a) and (b) of section 631 for such year, over

(B) the sum of the taxpayer's losses described in such subsections for such year.

For purposes of subparagraphs (A) and (B), only timber held more than 15 years shall be taken into account.

(3) Computation for taxable years in which rate first applies or ends

In the case of any taxable year which includes either of the dates set forth in paragraph (1), the qualified timber gain for such year shall not exceed the qualified timber gain properly taken into account for—

(A) in the case of the taxable year including the date of the enactment of the Food, Conservation, and Energy Act of 2008, the portion of the year after such date, and

(B) in the case of the taxable year including the date which is 1 year after such date of enactment, the portion of the year on or before such later date.

(c) Cross references

For computation of the alternative tax—

(1) in the case of life insurance companies, see section 801(a)(2),

(2) in the case of regulated investment companies and their shareholders, see section 852(b)(3)(A) and (D), and

(3) in the case of real estate investment trusts, see section 857(b)(3)(A).

(Aug. 16, 1954, ch. 736, 68A Stat. 320; Mar. 13, 1956, ch. 83, §5(7), 70 Stat. 49; Pub. L. 86–69, §3(f)(2), June 25, 1959, 73 Stat. 140; Pub. L. 87–834, §8(g)(3), Oct. 16, 1962, 76 Stat. 999; Pub. L. 91–172, title V, §511(b), Dec. 30, 1969, 83 Stat. 635; Pub. L. 94–455, title XIX, §1901(a)(135), (b)(33)(L), Oct. 4, 1976, 90 Stat. 1786, 1801; Pub. L. 95–600, title IV, §§401(a), 403(a), (b), Nov. 6, 1978, 92 Stat. 2866, 2868; Pub. L. 96–222, title I, §104(a)(2)(B), (3)(A), Apr. 1, 1980, 94 Stat. 214, 215; Pub. L. 98–369, div. A, title II, §211(b)(16), July 18, 1984, 98 Stat. 756; Pub. L. 99–514, title III, §311(a), title X, §1024(c)(14), Oct. 22, 1986, 100 Stat. 2219, 2408; Pub. L. 100–647, title I, §1003(c)(1), title II, §2004(*l*), Nov. 10, 1988, 102 Stat. 3384, 3606; Pub. L. 103–66, title XIII, §13221(c)(2), Aug. 10, 1993, 107 Stat. 477; Pub. L. 104–188, title I, §1703(f), Aug. 20, 1996, 110 Stat. 1876; Pub. L. 105–34, title III, §314(a), Aug. 5, 1997, 111 Stat. 842; Pub. L. 110–234, title XV, §15311(a), May 22, 2008, 122 Stat. 1502; Pub. L. 110–246, §4(a), title XV, §15311(a), June 18, 2008, 122 Stat. 1664, 2264.)

REFERENCES IN TEXT

The date of the enactment of the Food, Conservation, and Energy Act of 2008, referred to in subsec. (b)(1), (3), is the date of enactment of Pub. L. 110–246, which was approved June 18, 2008.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Subsecs. (b), (c). Pub. L. 110–246 added subsec. (b) and redesignated former subsec. (b) as (c).

1997—Subsec. (a)(2). Pub. L. 105–34 inserted ''(or, if less, taxable income)'' after ''capital gain''.

1996—Subsec. (a). Pub. L. 104–188 substituted ''last 2 sentences'' for ''last sentence''.

1993—Subsec. (a). Pub. L. 103–66 substituted ''35 percent'' for ''34 percent'' in introductory provisions and in par. (2).

1988—Subsec. (a). Pub. L. 100–647, §2004(*l*), substituted ''section 11(b)(1)'' for ''section 11(b)''.

Pub. L. 100–647, §1003(c)(1), substituted ''section 831(a) or (b)'' for ''section 831(a)''.

1986—Subsec. (a). Pub. L. 99–514, §1024(c)(14), which directed the amendment of subsec. (a) by substituting ''831(a) or (b)'' for ''821(a) or (c) and 831(a)'' could not be executed in view of amendment by section 311(a) of Pub. L. 99–514.

Pub. L. 99–514, §311(a), amended subsec. (a) generally. Prior to amendment, subsec. (a), corporations, read as follows: ''If for any taxable year a corporation has a net capital gain, then, in lieu of the tax imposed by sections 11, 511, 821(a) or (c) and 831(a), there is hereby imposed a tax (if such tax is less than the tax imposed by such sections) which shall consist of the sum of—

''(1) a tax computed on the taxable income reduced by the amount of the net capital gain, at the rates and in the manner as if this subsection had not been enacted, plus

''(2) a tax of 28 percent of the net capital gain.''

Subsec. (b). Pub. L. 99–514, §311(a), amended subsec. (b) generally, substituting a comma for the semicolon at end of par. (1) and after ''852(b)(3)(A) and (D)'' in par. (2).

Subsec. (c). Pub. L. 99–514, §311(a), in amending section generally, struck out subsec. (c), transitional rule, which read as follows: ''If for any taxable year ending after December 31, 1978, and beginning before January 1, 1980, a corporation has a net capital gain, then subsection (a) shall be applied by substituting for the language of paragraph (2) the following:

''(2)(A) a tax of 28 percent of the lesser of—

''(i) the net capital gain for the taxable year, or

''(ii) the net capital gain taking into account only gain or loss properly taken into account for the portion of the taxable year after December 31, 1978, plus

''(B) a tax of 30 percent of the excess of—

''(i) the net capital gains for the taxable year, over

''(ii) the amount of net capital gain taken into account under subparagraph (A).''

1984—Subsec. (b)(1). Pub. L. 98–369 substituted ''section 801(a)(2)'' for ''section 802(a)(2)''.

1980—Subsec. (b). Pub. L. 96–222, § 104(a)(2)(B)(i), substituted in subsec. (b), as subsec. (b) was in effect for taxable years beginning before Jan. 1, 1979, and prior to its repeal by Pub. L. 95–600 (see 1978 Amendment note below), ''the excess of the net capital gain over the deduction under section 1202'' for ''50 percent of the net capital gain''.

Subsec. (c). Pub. L. 96–222, § 104(a)(3)(A), substituted in heading ''Transitional rule'' for ''Taxable years which include January 1, 1979'', in provisions preceding par. (2) ''If for any taxable year ending after December 31, 1978, and beginning before January 1, 1980'' for ''If for any taxable year beginning before January 1, 1979, and ending after December 31, 1978'', and in par. (2)(A)(ii) ''gain or loss properly taken into account for the portion of the taxable year'' for ''sales and exchanges''.

Pub. L. 96–222, § 104(a)(2)(B)(ii), substituted in subsec. (c), as subsec. (c) was in effect for taxable years beginning before Jan. 1, 1979, and prior to its repeal by Pub. L. 95–600 (see 1978 Amendment note below), ''the excess of the net capital gain over the deduction under section 1202'' for ''50 percent of the net capital gain'', redesignated cls. (A) and (B) as pars. (1) and (2), respectively, and in par. (2) as so redesignated, substituted ''determined by multiplying the sum referred to in subsection (b)(2)(A) by a fraction'' for ''equal to 50 percent of the sum referred to in subsection (b)(2)(A)'' and added subpars. (A) and (B).

1978—Pub. L. 95–600, § 401(a)(3), inserted ''for corporations'' after ''tax'' in section catchline.

Subsec. (a)(2). Pub. L. 95–600, § 403(a), substituted ''28 percent'' for ''30 percent''.

Subsec. (b). Pub. L. 95–600, § 401(a)(1), (2), redesignated subsec. (d) as (b). Former subsec. (b), relating to imposition of the alternative tax on other taxpayers, was struck out. See 1980 Amendment note above.

Subsec. (c). Pub. L. 95–600, §§ 401(a)(1), 403(b), added subsec. (c). Former subsec. (c), which related to computation of the alternative tax where the capital gain exceeds $50,000, was struck out. See 1980 Amendment note above.

Subsec. (d). Pub. L. 95–600, § 401(a)(2), redesignated subsec. (d) as (b).

1976—Subsec. (a). Pub. L. 94–455, § 1901(a)(135)(A), substituted ''net capital gain'' for ''net section 1201 gain'' in three places, incorporated existing text in provisions designated par. (1), struck out prior par. (1) provision adding to the tax in the case of a taxable year beginning before Jan. 1, 1975—

(A) a tax of 25 percent of the lesser of—

(i) the amount of the subsec. (d) gain, or

(ii) the amount of the net section 1201 gain, and

(B) a tax of 30 percent (28 percent in the case of a taxable year beginning after Dec. 31, 1969, and before Jan. 1, 1971) of the excess (if any) of the net section 1201 gain over the subsec. (d) gain, and struck out from par. (2) introductory text ''in the case of a taxable year beginning after December 31, 1974,''.

Subsec. (b). Pub. L. 94–455, § 1901(b)(33)(L), substituted ''net capital gain'' for ''net section 1201 gain'' in introductory text and in par. (1).

Subsec. (b)(2)(A). Pub. L. 94–455, § 1901(a)(135)(C)(ii), substituted ''the sum of the long-term capital gains for the taxable year, but not to exceed $50,000 ($25,000 in the case of a married individual filing a separate return)'' for ''the amount of the subsection (d) gain''.

Subsec. (b)(2)(B). Pub. L. 94–455, § 1901(b)(33)(L), substituted ''net capital gain'' for ''net section 1201 gain''.

Subsec. (b)(3). Pub. L. 94–455, § 1901(a)(135)(C)(iii), (b)(33)(L), substituted ''the sum referred to in subparagraph (A)'' for ''the amount of the subsection (d) gain'' and ''net capital gain'' for ''net section 1201 gain''.

Subsec. (c). Pub. L. 94–455, § 1901(a)(135)(B), substituted in heading ''where capital gain exceeds $50,000'' for ''on capital gain in excess of subsection (d) gain'', struck out par. (1) designation, substituted ''net capital gain'' for ''net section 1201 gain'' and ''50 percent of the sum referred to in subsection (b)(2)(A)'' for ''50 percent of the subsection (d) gain'', and struck out par. (2) limitation that the tax computed for purposes of subsec. (b) shall not exceed an amount equal to the following percentage of the excess of the net section 1201 gain over the subsec. (d) gain:

(A) 29½ percent, in the case of a taxable year beginning after Dec. 31, 1969, and before Jan. 1, 1971, or

(B) 32½ percent, in the case of a taxable year beginning after Dec. 31, 1971, and before Jan. 1, 1972.

Subsecs. (d), (e). Pub. L. 94–455, § 1901(a)(135)(C)(i), redesignated subsec. (e) as (d) and struck out existing subsec. (d) defining ''subsection (d) gain''.

1969—Subsec. (a). Pub. L. 91–172 substituted reference to net section 1201 gain for reference to the excess of the net long-term capital gain of a corporation over the net short-term capital loss, substituted ''a tax computed on the taxable income reduced by the amount of the net section 1201 gain'' for ''a partial tax computed on the taxable income reduced by the taxable income reduced by the amount of such excess,'' struck out reference to tax of an amount equal to 25 percent of excess or in the case of a taxable year beginning before Apr. 1, 1954 an amount equal to 26 percent of such excess without regard to section 21 of this title, and inserted, in the case of a taxable year beginning Jan. 1, 1975, a tax of 25 percent of the lesser of the amount of the subsec. (d) gain, or the amount of the net section 1201 gain, and a tax of 30 percent (28 percent in the case of a taxable year beginning after Dec. 31, 1969 and before Jan. 1, 1971) of the excess (if any) of the net section 1201 gain over the subsec. (d) gain, and in case of a taxable year beginning after Dec. 31, 1974, a tax of 30 percent of the net section 1201 gain.

Subsec. (b). Pub. L. 91–172 substituted reference to net section 1201 gain for reference to the excess of the net long-term capital gain over the net short-term capital loss, substituted ''a tax computed on the taxable income reduced by an amount equal to 50 percent of the net section 1201 gain'' for ''a partial tax computed on the taxable income reduced by an amount equal to 50 percent of such excess,'' struck out reference to tax of an amount equal to 25 percent of the excess of the net long-term capital gain over the net short-term capital loss, and inserted reference to a tax of 25 percent of the lesser of the amount of the subsec. (d) gain, or the amount of the net section 1201 gain, and if the amount of the net section 1201 gain exceeds the amount of the subsec. (d) gain, a tax computed as provided in subsec. (c) on such excess.

Subsec. (c). Pub. L. 91–172 added subsec. (c). Former subsec. (c) redesignated (e)(1).

Subsec (d). Pub. L. 91–172 added subsec. (d).

Subsec. (e). Pub. L. 91–172 redesignated former subsec. (c) as par. (1) and added pars. (2) and (3).

1962—Subsec. (a). Pub. L. 87–834 substituted ''section 821(a) or (c)'' for section 821(a)(1) or (b)''.

1959—Subsec. (a). Pub. L. 86–69 struck out reference to section 802(a).

Subsec. (c). Pub. L. 86–69 added subsec. (c).

1956—Subsec. (a). Act Mar. 13, 1956, inserted reference to section 802(a).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 15311(a) of Pub. L. 110–246 applicable to taxable years ending after June 18, 2008, see section 15311(d) of Pub. L. 110–246, set out as a note under section 55 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 314(b) of Pub. L. 105–34 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years ending after December 31, 1997.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§13001–13444, to which such amendment relates, see section 1703(*o*) of Pub. L. 104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years beginning on or after Jan. 1, 1993, see section 13221(d) of Pub. L. 103–66, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1003(c)(1) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 2004(*l*) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 311(c) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1003(c)(2), Nov. 10, 1988, 102 Stat. 3384, provided that: ''The amendments made by subsections (a) and (b) [amending this section and sections 593, 631, 852, and 1445 of this title] shall apply to taxable years beginning after December 31, 1986; except that the amendment made by subsection (b)(4) [amending section 1445 of this title] shall apply to payments made after December 31, 1986.''

Amendment by section 1024 of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1024(e) of Pub. L. 99–514, set out as a note under section 831 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 104(a)(3)(A) of Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

Section 104(b)(1) of Pub. L. 96–222 provided that: ''The amendments made by subsection (a)(2)(B) [amending this section] shall apply to taxable years beginning in 1978.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 401(c) of Pub. L. 95–600 provided that: ''The amendments made by this section [amending this section and sections 3, 5, 871, 911, and 1304 of this title] shall apply to taxable years beginning after December 31, 1978.''

Section 403(d)(1) of Pub. L. 95–600 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to taxable years ending after December 31, 1978.''

EFFECTIVE DATE OF 1976 AMENDMENT

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

EFFECTIVE DATE OF 1969 AMENDMENT

Section 511(d) of Pub. L. 91–172 provided that: ''The amendments made by this section [amending this section and sections 802, 852, 857, and 1378 of this title] shall apply to taxable years beginning after December 31, 1969.''

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable with respect to taxable years beginning after Dec. 31, 1962, see section 8(h) of Pub. L. 87–834, set out as a note under section 501 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–69 applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86–69, set out as a note under section 381 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956, applicable only to taxable years beginning after Dec. 31, 1954, see section 6 of act Mar. 13, 1956, set out as a note under section 316 of this title.

TRANSITIONAL RULES

Section 311(d)(1) of Pub. L. 99–514 provided that:

''(1) TAXABLE YEARS WHICH BEGIN IN 1986 AND END IN 1987.—In the case of any taxable year which begins before January 1, 1987, and ends on or after such date, paragraph (2) of section 1201(a) of the Internal Revenue Code of 1954 [now 1986], as in effect on the date before the date of enactment of this Act [Oct. 22, 1986], shall be applied as if it read as follows:

'''(2) the sum of—

'''(A) 28 percent of the lesser of—

'''(i) the net capital gain determined by taking into account only gain or loss which is properly taken into account for the portion of the taxable year before January 1, 1987, or

'''(ii) the net capital gain for the taxable year, and

'''(B) 34 percent of the excess (if any) of—

'''(i) the net capital gain for the taxable year, over

'''(ii) the amount of the net capital gain taken into account under subparagraph (A).'''

RATE ON NET CAPITAL GAIN FOR PORTION OF 1981; 20-PERCENT MAXIMUM

Pub. L. 97–34, title I, §102, Aug. 13, 1981, 95 Stat. 186, as amended by Pub. L. 97–448, title I, §101(aa), Jan. 12, 1983, 96 Stat. 2366; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) IN GENERAL.—If for any taxable year ending after June 9, 1981, and beginning before January 1, 1982, a taxpayer other than a corporation has qualified net capital gain, then the tax imposed under section 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for such taxable year shall be equal to the lesser of—

''(1) the tax imposed under such section determined without regard to this subsection, or

''(2) the sum of—

''(A) the tax imposed under such section on the excess of—

''(i) the taxable income of the taxpayer, over

''(ii) 40 percent of the qualified net capital gain of the taxpayer, and

''(B) 20 percent of the qualified net capital gain.

''(b) APPLICATION WITH ALTERNATIVE MINIMUM TAX.—

''(1) IN GENERAL.—If subsection (a) applies to any taxpayer for any taxable year, then the amount determined under section 55(a)(1) of the Internal Revenue Code of 1986 for such taxable year shall be equal to the lesser of—

''(A) the amount determined under such section 55(a)(1) determined without regard to this subsection, or

''(B) the sum of—

''(i) the amount which would be determined under such section 55(a)(1) if the alternative minimum taxable income was the excess of—

''(I) the alternative minimum taxable income (within the meaning of section 55(b)(1) of such Code) of the taxpayer, over

''(II) the qualified net capital gain of the taxpayer, and

''(ii) 20 percent of the qualified net capital gain (or, if lesser, the alternative minimum taxable income within the meaning of section 55(b)(1) of such Code).

''(2) NO CREDITS ALLOWABLE.—For purposes of section 55(c) of such Code, no credit allowable under subpart A of part IV of subchapter A of chapter 1 of such Code [section 31 et seq. of this title] (other than section 33(a) of such Code) shall be allowable against the amount described in paragraph (1)(B)(ii).

''(c) QUALIFIED NET CAPITAL GAIN.—

''(1) IN GENERAL.—For purposes of this section, the term 'qualified net capital gain' means the lesser of—

''(A) the net capital gain for the taxable year, or

''(B) the net capital gain for the taxable year taking into account only gain or loss from sales or exchanges occurring after June 9, 1981.

''(2) NET CAPITAL GAIN.—For purposes of this subsection, the term 'net capital gain' has the meaning given such term by section 1222(11) of the Internal Revenue Code of 1986.

''(d) SPECIAL RULE FOR PASS-THRU ENTITIES.—

''(1) IN GENERAL.—In applying subsections (a), (b), and (c) with respect to any pass-thru entity, the determination of when a sale or exchange has occurred shall be made at the entity level.

''(2) PASS-THRU ENTITY DEFINED.—For purposes of paragraph (1), the term 'pass-thru entity' means—

''(A) a regulated investment company,

''(B) a real estate investment trust,

''(C) an electing small business corporation,

''(D) a partnership,

''(E) an estate or trust, and

''(F) a common trust fund.''

SPECIAL RULE FOR PASS-THROUGH ENTITIES

Section 104(a)(2)(C) of Pub. L. 96–222, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(i) IN GENERAL.—In applying sections 1201(c)(2)(A)(ii) and 1202(c)(1)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] with respect to any pass-through entity, the determination of the period for which gain or loss is properly taken into account shall be made at the entity level.

''(ii) PASS-THROUGH ENTITY DEFINED.—For purposes of clause (i), the term 'pass-through entity' means—

''(I) a regulated investment company,

''(II) a real estate investment trust,

''(III) an electing small business corporation,

''(IV) a partnership,

''(V) an estate or trust, and

''(VI) a common trust fund.''

STUDY OF EFFECTS OF CHANGES IN THE TAX TREATMENT OF CAPITAL GAINS ON STIMULATING INVESTMENT AND ECONOMIC GROWTH

Section 555 of Pub. L. 95–600 required the Secretary of the Treasury to submit to specific committees of Congress a report, not later than Sept. 30, 1981, respecting effects of changes in tax treatment of capital gains on stimulating investment and economic growth as a result of the enactment of title V of Pub. L. 95–600.

§ 1202. Partial exclusion for gain from certain small business stock

(a) Exclusion

(1) In general

In the case of a taxpayer other than a corporation, gross income shall not include 50 percent of any gain from the sale or exchange of qualified small business stock held for more than 5 years.

(2) Empowerment zone businesses

(A) In general

In the case of qualified small business stock acquired after the date of the enactment of this paragraph in a corporation which is a qualified business entity (as defined in section 1397C(b)) during substantially all of the taxpayer's holding period for such stock, paragraph (1) shall be applied by substituting ''60 percent'' for ''50 percent''.

(B) Certain rules to apply

Rules similar to the rules of paragraphs (5) and (7) of section 1400B(b) shall apply for purposes of this paragraph.

(C) Gain after 2016 not qualified

Subparagraph (A) shall not apply to gain attributable to periods after December 31, 2016.

(D) Treatment of DC zone

The District of Columbia Enterprise Zone shall not be treated as an empowerment zone for purposes of this paragraph.

(3) Special rules for 2009 and certain periods in 2010

In the case of qualified small business stock acquired after the date of the enactment of this paragraph and on or before the date of the enactment of the Creating Small Business Jobs Act of 2010—

(A) paragraph (1) shall be applied by substituting ''75 percent'' for ''50 percent'', and

(B) paragraph (2) shall not apply.

(4) 100 percent exclusion for stock acquired during certain periods in 2010 and 2011

In the case of qualified small business stock acquired after the date of the enactment of the Creating Small Business Jobs Act of 2010 and before January 1, 2012—

(A) paragraph (1) shall be applied by substituting ''100 percent'' for ''50 percent'',

(B) paragraph (2) shall not apply, and

(C) paragraph (7) of section 57(a) shall not apply.

(b) Per-issuer limitation on taxpayer's eligible gain

(1) In general

If the taxpayer has eligible gain for the taxable year from 1 or more dispositions of stock issued by any corporation, the aggregate amount of such gain from dispositions of stock issued by such corporation which may be taken into account under subsection (a) for the taxable year shall not exceed the greater of—

(A) $10,000,000 reduced by the aggregate amount of eligible gain taken into account

by the taxpayer under subsection (a) for prior taxable years and attributable to dispositions of stock issued by such corporation, or

(B) 10 times the aggregate adjusted bases of qualified small business stock issued by such corporation and disposed of by the taxpayer during the taxable year.

For purposes of subparagraph (B), the adjusted basis of any stock shall be determined without regard to any addition to basis after the date on which such stock was originally issued.

(2) Eligible gain

For purposes of this subsection, the term ''eligible gain'' means any gain from the sale or exchange of qualified small business stock held for more than 5 years.

(3) Treatment of married individuals

(A) Separate returns

In the case of a separate return by a married individual, paragraph (1)(A) shall be applied by substituting ''$5,000,000'' for ''$10,000,000''.

(B) Allocation of exclusion

In the case of any joint return, the amount of gain taken into account under subsection (a) shall be allocated equally between the spouses for purposes of applying this subsection to subsequent taxable years.

(C) Marital status

For purposes of this subsection, marital status shall be determined under section 7703.

(c) Qualified small business stock

For purposes of this section—

(1) In general

Except as otherwise provided in this section, the term ''qualified small business stock'' means any stock in a C corporation which is originally issued after the date of the enactment of the Revenue Reconciliation Act of 1993, if—

(A) as of the date of issuance, such corporation is a qualified small business, and

(B) except as provided in subsections (f) and (h), such stock is acquired by the taxpayer at its original issue (directly or through an underwriter)—

(i) in exchange for money or other property (not including stock), or

(ii) as compensation for services provided to such corporation (other than services performed as an underwriter of such stock).

(2) Active business requirement; etc.

(A) In general

Stock in a corporation shall not be treated as qualified small business stock unless, during substantially all of the taxpayer's holding period for such stock, such corporation meets the active business requirements of subsection (e) and such corporation is a C corporation.

(B) Special rule for certain small business investment companies

(i) Waiver of active business requirement

Notwithstanding any provision of subsection (e), a corporation shall be treated as meeting the active business requirements of such subsection for any period during which such corporation qualifies as a specialized small business investment company.

(ii) Specialized small business investment company

For purposes of clause (i), the term ''specialized small business investment company'' means any eligible corporation (as defined in subsection (e)(4)) which is licensed to operate under section 301(d) of the Small Business Investment Act of 1958 (as in effect on May 13, 1993).

(3) Certain purchases by corporation of its own stock

(A) Redemptions from taxpayer or related person

Stock acquired by the taxpayer shall not be treated as qualified small business stock if, at any time during the 4-year period beginning on the date 2 years before the issuance of such stock, the corporation issuing such stock purchased (directly or indirectly) any of its stock from the taxpayer or from a person related (within the meaning of section 267(b) or 707(b)) to the taxpayer.

(B) Significant redemptions

Stock issued by a corporation shall not be treated as qualified business stock if, during the 2-year period beginning on the date 1 year before the issuance of such stock, such corporation made 1 or more purchases of its stock with an aggregate value (as of the time of the respective purchases) exceeding 5 percent of the aggregate value of all of its stock as of the beginning of such 2-year period.

(C) Treatment of certain transactions

If any transaction is treated under section 304(a) as a distribution in redemption of the stock of any corporation, for purposes of subparagraphs (A) and (B), such corporation shall be treated as purchasing an amount of its stock equal to the amount treated as such a distribution under section 304(a).

(d) Qualified small business

For purposes of this section—

(1) In general

The term ''qualified small business'' means any domestic corporation which is a C corporation if—

(A) the aggregate gross assets of such corporation (or any predecessor thereof) at all times on or after the date of the enactment of the Revenue Reconciliation Act of 1993 and before the issuance did not exceed $50,000,000,

(B) the aggregate gross assets of such corporation immediately after the issuance (determined by taking into account amounts

received in the issuance) do not exceed $50,000,000, and

(C) such corporation agrees to submit such reports to the Secretary and to shareholders as the Secretary may require to carry out the purposes of this section.

(2) Aggregate gross assets

(A) In general

For purposes of paragraph (1), the term ''aggregate gross assets'' means the amount of cash and the aggregate adjusted bases of other property held by the corporation.

(B) Treatment of contributed property

For purposes of subparagraph (A), the adjusted basis of any property contributed to the corporation (or other property with a basis determined in whole or in part by reference to the adjusted basis of property so contributed) shall be determined as if the basis of the property contributed to the corporation (immediately after such contribution) were equal to its fair market value as of the time of such contribution.

(3) Aggregation rules

(A) In general

All corporations which are members of the same parent-subsidiary controlled group shall be treated as 1 corporation for purposes of this subsection.

(B) Parent-subsidiary controlled group

For purposes of subparagraph (A), the term ''parent-subsidiary controlled group'' means any controlled group of corporations as defined in section 1563(a)(1), except that—

(i) ''more than 50 percent'' shall be substituted for ''at least 80 percent'' each place it appears in section 1563(a)(1), and

(ii) section 1563(a)(4) shall not apply.

(e) Active business requirement

(1) In general

For purposes of subsection (c)(2), the requirements of this subsection are met by a corporation for any period if during such period—

(A) at least 80 percent (by value) of the assets of such corporation are used by such corporation in the active conduct of 1 or more qualified trades or businesses, and

(B) such corporation is an eligible corporation.

(2) Special rule for certain activities

For purposes of paragraph (1), if, in connection with any future qualified trade or business, a corporation is engaged in—

(A) start-up activities described in section 195(c)(1)(A),

(B) activities resulting in the payment or incurring of expenditures which may be treated as research and experimental expenditures under section 174, or

(C) activities with respect to in-house research expenses described in section 41(b)(4),

assets used in such activities shall be treated as used in the active conduct of a qualified trade or business. Any determination under this paragraph shall be made without regard to whether a corporation has any gross income from such activities at the time of the determination.

(3) Qualified trade or business

For purposes of this subsection, the term ''qualified trade or business'' means any trade or business other than—

(A) any trade or business involving the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset of such trade or business is the reputation or skill of 1 or more of its employees,

(B) any banking, insurance, financing, leasing, investing, or similar business,

(C) any farming business (including the business of raising or harvesting trees),

(D) any business involving the production or extraction of products of a character with respect to which a deduction is allowable under section 613 or 613A, and

(E) any business of operating a hotel, motel, restaurant, or similar business.

(4) Eligible corporation

For purposes of this subsection, the term ''eligible corporation'' means any domestic corporation; except that such term shall not include—

(A) a DISC or former DISC,

(B) a corporation with respect to which an election under section 936 is in effect or which has a direct or indirect subsidiary with respect to which such an election is in effect,

(C) a regulated investment company, real estate investment trust, or REMIC, and

(D) a cooperative.

(5) Stock in other corporations

(A) Look-thru in case of subsidiaries

For purposes of this subsection, stock and debt in any subsidiary corporation shall be disregarded and the parent corporation shall be deemed to own its ratable share of the subsidiary's assets, and to conduct its ratable share of the subsidiary's activities.

(B) Portfolio stock or securities

A corporation shall be treated as failing to meet the requirements of paragraph (1) for any period during which more than 10 percent of the value of its assets (in excess of liabilities) consists of stock or securities in other corporations which are not subsidiaries of such corporation (other than assets described in paragraph (6)).

(C) Subsidiary

For purposes of this paragraph, a corporation shall be considered a subsidiary if the parent owns more than 50 percent of the combined voting power of all classes of stock entitled to vote, or more than 50 percent in value of all outstanding stock, of such corporation.

(6) Working capital

For purposes of paragraph (1)(A), any assets which—

(A) are held as a part of the reasonably required working capital needs of a qualified trade or business of the corporation, or

(B) are held for investment and are reasonably expected to be used within 2 years to finance research and experimentation in a qualified trade or business or increases in working capital needs of a qualified trade or business,

shall be treated as used in the active conduct of a qualified trade or business. For periods after the corporation has been in existence for at least 2 years, in no event may more than 50 percent of the assets of the corporation qualify as used in the active conduct of a qualified trade or business by reason of this paragraph.

(7) Maximum real estate holdings

A corporation shall not be treated as meeting the requirements of paragraph (1) for any period during which more than 10 percent of the total value of its assets consists of real property which is not used in the active conduct of a qualified trade or business. For purposes of the preceding sentence, the ownership of, dealing in, or renting of real property shall not be treated as the active conduct of a qualified trade or business.

(8) Computer software royalties

For purposes of paragraph (1), rights to computer software which produces active business computer software royalties (within the meaning of section 543(d)(1)) shall be treated as an asset used in the active conduct of a trade or business.

(f) Stock acquired on conversion of other stock

If any stock in a corporation is acquired solely through the conversion of other stock in such corporation which is qualified small business stock in the hands of the taxpayer—

(1) the stock so acquired shall be treated as qualified small business stock in the hands of the taxpayer, and

(2) the stock so acquired shall be treated as having been held during the period during which the converted stock was held.

(g) Treatment of pass-thru entities

(1) In general

If any amount included in gross income by reason of holding an interest in a pass-thru entity meets the requirements of paragraph (2)—

(A) such amount shall be treated as gain described in subsection (a), and

(B) for purposes of applying subsection (b), such amount shall be treated as gain from a disposition of stock in the corporation issuing the stock disposed of by the pass-thru entity and the taxpayer's proportionate share of the adjusted basis of the pass-thru entity in such stock shall be taken into account.

(2) Requirements

An amount meets the requirements of this paragraph if—

(A) such amount is attributable to gain on the sale or exchange by the pass-thru entity of stock which is qualified small business stock in the hands of such entity (determined by treating such entity as an individual) and which was held by such entity for more than 5 years, and

(B) such amount is includible in the gross income of the taxpayer by reason of the holding of an interest in such entity which was held by the taxpayer on the date on which such pass-thru entity acquired such stock and at all times thereafter before the disposition of such stock by such pass-thru entity.

(3) Limitation based on interest originally held by taxpayer

Paragraph (1) shall not apply to any amount to the extent such amount exceeds the amount to which paragraph (1) would have applied if such amount were determined by reference to the interest the taxpayer held in the pass-thru entity on the date the qualified small business stock was acquired.

(4) Pass-thru entity

For purposes of this subsection, the term ''pass-thru entity'' means—

(A) any partnership,

(B) any S corporation,

(C) any regulated investment company, and

(D) any common trust fund.

(h) Certain tax-free and other transfers

For purposes of this section—

(1) In general

In the case of a transfer described in paragraph (2), the transferee shall be treated as—

(A) having acquired such stock in the same manner as the transferor, and

(B) having held such stock during any continuous period immediately preceding the transfer during which it was held (or treated as held under this subsection) by the transferor.

(2) Description of transfers

A transfer is described in this subsection if such transfer is—

(A) by gift,

(B) at death, or

(C) from a partnership to a partner of stock with respect to which requirements similar to the requirements of subsection (g) are met at the time of the transfer (without regard to the 5-year holding period requirement).

(3) Certain rules made applicable

Rules similar to the rules of section 1244(d)(2) shall apply for purposes of this section.

(4) Incorporations and reorganizations involving nonqualified stock

(A) In general

In the case of a transaction described in section 351 or a reorganization described in section 368, if qualified small business stock is exchanged for other stock which would not qualify as qualified small business stock but for this subparagraph, such other stock shall be treated as qualified small business stock acquired on the date on which the exchanged stock was acquired.

(B) Limitation

This section shall apply to gain from the sale or exchange of stock treated as qualified small business stock by reason of subparagraph (A) only to the extent of the gain which would have been recognized at the time of the transfer described in subparagraph (A) if section 351 or 368 had not applied at such time. The preceding sentence shall not apply if the stock which is treated as qualified small business stock by reason of subparagraph (A) is issued by a corporation which (as of the time of the transfer described in subparagraph (A)) is a qualified small business.

(C) Successive application

For purposes of this paragraph, stock treated as qualified small business stock under subparagraph (A) shall be so treated for subsequent transactions or reorganizations, except that the limitation of subparagraph (B) shall be applied as of the time of the first transfer to which such limitation applied (determined after the application of the second sentence of subparagraph (B)).

(D) Control test

In the case of a transaction described in section 351, this paragraph shall apply only if, immediately after the transaction, the corporation issuing the stock owns directly or indirectly stock representing control (within the meaning of section 368(c)) of the corporation whose stock was exchanged.

(i) Basis rules

For purposes of this section—

(1) Stock exchanged for property

In the case where the taxpayer transfers property (other than money or stock) to a corporation in exchange for stock in such corporation—

(A) such stock shall be treated as having been acquired by the taxpayer on the date of such exchange, and

(B) the basis of such stock in the hands of the taxpayer shall in no event be less than the fair market value of the property exchanged.

(2) Treatment of contributions to capital

If the adjusted basis of any qualified small business stock is adjusted by reason of any contribution to capital after the date on which such stock was originally issued, in determining the amount of the adjustment by reason of such contribution, the basis of the contributed property shall in no event be treated as less than its fair market value on the date of the contribution.

(j) Treatment of certain short positions

(1) In general

If the taxpayer has an offsetting short position with respect to any qualified small business stock, subsection (a) shall not apply to any gain from the sale or exchange of such stock unless—

(A) such stock was held by the taxpayer for more than 5 years as of the first day on which there was such a short position, and

(B) the taxpayer elects to recognize gain as if such stock were sold on such first day for its fair market value.

(2) Offsetting short position

For purposes of paragraph (1), the taxpayer shall be treated as having an offsetting short position with respect to any qualified small business stock if—

(A) the taxpayer has made a short sale of substantially identical property,

(B) the taxpayer has acquired an option to sell substantially identical property at a fixed price, or

(C) to the extent provided in regulations, the taxpayer has entered into any other transaction which substantially reduces the risk of loss from holding such qualified small business stock.

For purposes of the preceding sentence, any reference to the taxpayer shall be treated as including a reference to any person who is related (within the meaning of section 267(b) or 707(b)) to the taxpayer.

(k) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including regulations to prevent the avoidance of the purposes of this section through split-ups, shell corporations, partnerships, or otherwise.

(Added Pub. L. 103–66, title XIII, § 13113(a), Aug. 10, 1993, 107 Stat. 422; amended Pub. L. 104–188, title I, § 1621(b)(7), Aug. 20, 1996, 110 Stat. 1867; Pub. L. 106–554, § 1(a)(7) [title I, § 117(a), (b)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–604; Pub. L. 108–357, title VIII, § 835(b)(9), Oct. 22, 2004, 118 Stat. 1594; Pub. L. 111–5, div. B, title I, § 1241(a), Feb. 17, 2009, 123 Stat. 342; Pub. L. 111–240, title II, § 2011(a), (b), Sept. 27, 2010, 124 Stat. 2554; Pub. L. 111–312, title VII, §§ 753(b), 760(a), Dec. 17, 2010, 124 Stat. 3321, 3323.)

REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (a)(2)(A), is the date of enactment of Pub. L. 106–554, which was approved Dec. 21, 2000.

The date of the enactment of this paragraph, referred to in subsec. (a)(3), is the date of enactment of Pub. L. 111–5, which was approved Feb. 17, 2009.

The date of the enactment of the Creating Small Business Jobs Act of 2010, referred to in subsec. (a)(3), (4), is the date of enactment of Pub. L. 111–240, which was approved Sept. 27, 2010.

The date of the enactment of the Revenue Reconciliation Act of 1993, referred to in subsecs. (c)(1) and (d)(1)(A), is the date of enactment of Pub. L. 103–66, which was approved Aug. 10, 1993.

Section 301(d) of the Small Business Investment Act of 1958, referred to in subsec. (c)(2)(B)(ii), was classified to section 681(d) of Title 15, Commerce and Trade, prior to repeal by Pub. L. 104–208, div. D, title II, § 208(b)(3)(A), Sept. 30, 1996, 110 Stat. 3009–742.

PRIOR PROVISIONS

A prior section 1202, acts Aug. 16, 1954, ch. 736, 68A Stat. 320; Oct. 4, 1976, Pub. L. 94–455, title XIX, § 1901(b)(33)(M), 90 Stat. 1802; Nov. 6, 1978, Pub. L. 95–600, title IV, § 402(a), 92 Stat. 2867; Apr. 1, 1980, Pub. L. 96–222, title I, § 104(a)(2)(A), 94 Stat. 214, authorized deduction for capital gains, prior to repeal by Pub. L. 99–514, title III, § 301(a), (c), Oct. 22, 1986, 100 Stat. 2216, 2218, applicable to taxable years beginning after Dec. 31, 1986.

AMENDMENTS

2010—Subsec. (a)(2)(C). Pub. L. 111–312, §753(b), substituted ''2016'' for ''2014'' in heading and ''December 31, 2016'' for ''December 31, 2014'' in text.

Subsec. (a)(3). Pub. L. 111–240, §2011(b), inserted ''certain periods in'' before ''2010'' in heading and substituted ''on or before the date of the enactment of the Creating Small Business Jobs Act of 2010'' for ''before January 1, 2011'' in text.

Subsec. (a)(4). Pub. L. 111–312, §760(a), inserted ''and 2011'' after ''2010'' in heading and substituted ''January 1, 2012'' for ''January 1, 2011'' in introductory provisions.

Pub. L. 111–240, §2011(a), added par. (4).

2009—Subsec. (a)(3). Pub. L. 111–5 added par. (3).

2004—Subsec. (e)(4)(C). Pub. L. 108–357 substituted ''or REMIC'' for ''REMIC, or FASIT''.

2000—Pub. L. 106–554, §1(a)(7) [title I, §117(b)(2)], substituted ''Partial'' for ''50-percent'' in section catchline.

Subsec. (a). Pub. L. 106–554, §1(a)(7) [title I, §117(a)], amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''In the case of a taxpayer other than a corporation, gross income shall not include 50 percent of any gain from the sale or exchange of qualified small business stock held for more than 5 years.''

1996—Subsec. (e)(4)(C). Pub. L. 104–188 substituted ''REMIC, or FASIT'' for ''or REMIC''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §753(d), Dec. 17, 2010, 124 Stat. 3321, provided that: ''The amendments made by this section [amending this section and section 1391 of this title] shall apply to periods after December 31, 2009.''

Pub. L. 111–312, title VII, §760(b), Dec. 17, 2010, 124 Stat. 3323, provided that: ''The amendments made by this section [amending this section] shall apply to stock acquired after December 31, 2010.''

Pub. L. 111–240, title II, §2011(c), Sept. 27, 2010, 124 Stat. 2554, provided that: ''The amendments made by this section [amending this section] shall apply to stock acquired after the date of the enactment of this Act [Sept. 27, 2010].''

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1241(b), Feb. 17, 2009, 123 Stat. 342, provided that: ''The amendment made by this section [amending this section] shall apply to stock acquired after the date of the enactment of this Act [Feb. 17, 2009].''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 effective Jan. 1, 2005, with exception for any FASIT in existence on Oct. 22, 2004, to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance, see section 835(c) of Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 applicable to stock acquired after Dec. 21, 2000, see section 1(a)(7) [title I, §117(c)] of Pub. L. 106–554, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

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

EFFECTIVE DATE

Section applicable to stock issued after Aug. 10, 1993, see section 13113(e) of Pub. L. 103–66, set out as an Effective Date of 1993 Amendment note under section 53 of this title.

PART II—TREATMENT OF CAPITAL LOSSES

Sec.
1211. Limitation on capital losses.
1212. Capital loss carrybacks and carryovers.

AMENDMENTS

1969—Pub. L. 91–172, title V, §512(f)(2), Dec. 30, 1969, 83 Stat. 641, substituted ''carrybacks and carryovers'' for ''carryover'' in item 1212.

§ 1211. Limitation on capital losses

(a) Corporations

In the case of a corporation, losses from sales or exchanges of capital assets shall be allowed only to the extent of gains from such sales or exchanges.

(b) Other taxpayers

In the case of a taxpayer other than a corporation, losses from sales or exchanges of capital assets shall be allowed only to the extent of the gains from such sales or exchanges, plus (if such losses exceed such gains) the lower of—

(1) $3,000 ($1,500 in the case of a married individual filing a separate return), or

(2) the excess of such losses over such gains.

(Aug. 16, 1954, ch. 736, 68A Stat. 321; Pub. L. 91–172, title V, §513(a), Dec. 30, 1969, 83 Stat. 642; Pub. L. 94–455, title V, §501(b)(6), title XIV, §1401(a), (b), Oct. 4, 1976, 90 Stat. 1559, 1731; Pub. L. 95–30, title I, §102(b)(14), May 23, 1977, 91 Stat. 138; Pub. L. 99–514, title III, §301(b)(10), Oct. 22, 1986, 100 Stat. 2217.)

AMENDMENTS

1986—Subsec. (b). Pub. L. 99–514 amended subsec. (b) generally, substituting present provisions for provisions which had declared in: par. (1), general rule for limitation on capital losses for taxpayer other than corporation; in par. (2), meaning of term ''applicable amount''; and in par. (3), rule relating to computation of taxable income.

1977—Subsec. (b)(1)(A). Pub. L. 95–30 inserted ''reduced (but not below zero) by the zero bracket amount'' after ''taxable year''.

1976—Subsec. (b)(1)(B). Pub. L. 94–455, §1401(a), substituted ''the applicable amount'' for ''$1,000''.

Subsec. (b)(2). Pub. L. 94–455, §1401(b), substituted provision relating to ''applicable amount'' for prior provision limiting amount of capital losses for married individuals and reading ''In the case of a husband or wife who files a separate return, the amount specified in paragraph (1)(B) shall be $500 in lieu of $1,000.''

Subsec. (b)(3). Pub. L. 94–455, §501(b)(6), struck out last sentence ''If the taxpayer elects to pay the optional tax imposed by section 3, 'taxable income' as used in this subsection shall read as 'adjusted gross income'.''

1969—Subsec. (b). Pub. L. 91–172 provided for only 50 percent of an individual's long-term capital losses to be offset against his ordinary income up to the $1,000 limit although short-term capital losses continue to be fully deductible within the $1,000 limit and the deduction of capital losses against ordinary income for married persons filing separate returns to be limited to $500 for each spouse rather than the $1,000 formerly allowed.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 301(c) of Pub. L. 99–514, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of

Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 501(b)(6) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, see section 508 of Pub. L. 94–455, set out as a note under section 3 of this title.

Section 1401(c) of Pub. L. 94–455 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1976.''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 513(d) of Pub. L. 91–172 provided that: ''The amendments made by this section [amending this section and sections 1212 and 1222 of this title] shall apply to taxable years beginning after December 31, 1969.''

§ 1212. Capital loss carrybacks and carryovers

(a) Corporations

(1) In general

If a corporation has a net capital loss for any taxable year (hereinafter in this paragraph referred to as the ''loss year''), the amount thereof shall be—

(A) a capital loss carryback to each of the 3 taxable years preceding the loss year, but only to the extent—

(i) such loss is not attributable to a foreign expropriation capital loss, and

(ii) the carryback of such loss does not increase or produce a net operating loss (as defined in section 172(c)) for the taxable year to which it is being carried back;

(B) except as provided in subparagraph (C), a capital loss carryover to each of the 5 taxable years succeeding the loss year; and

(C) a capital loss carryover to each of the 10 taxable years succeeding the loss year, but only to the extent such loss is attributable to a foreign expropriation loss,

and shall be treated as a short-term capital loss in each such taxable year. The entire amount of the net capital loss for any taxable year shall be carried to the earliest of the taxable years to which such loss may be carried, and the portion of such loss which shall be carried to each of the other taxable years to which such loss may be carried shall be the excess, if any, of such loss over the total of the capital gain net income for each of the prior taxable years to which such loss may be carried. For purposes of the preceding sentence, the capital gain net income for any such prior taxable year shall be computed without regard to the net capital loss for the loss year or for any taxable year thereafter. In the case of any net capital loss which cannot be carried back in full to a preceding taxable year by reason of clause (ii) of subparagraph (A), the capital gain net income for such prior taxable year shall in no case be treated as greater than the amount of such loss which can be carried back to such preceding taxable year upon the application of such clause (ii).

(2) Definitions and special rules

(A) Foreign expropriation capital loss defined

For purposes of this subsection, the term ''foreign expropriation capital loss'' means, for any taxable year, the sum of the losses taken into account in computing the net capital loss for such year which are—

(i) losses sustained directly by reason of the expropriation, intervention, seizure, or similar taking of property by the government of any foreign country, any political subdivision thereof, or any agency or instrumentality of the foregoing, or

(ii) losses (treated under section 165(g)(1) as losses from the sale or exchange of capital assets) from securities which become worthless by reason of the expropriation, intervention, seizure, or similar taking of property by the government of any foreign country, any political subdivision thereof, or any agency or instrumentality of the foregoing.

(B) Portion of loss attributable to foreign expropriation capital loss

For purposes of paragraph (1), the portion of any net capital loss for any taxable year attributable to a foreign expropriation capital loss is the amount of the foreign expropriation capital loss for such year (but not in excess of the net capital loss for such year).

(C) Priority of application

For purposes of paragraph (1), if a portion of a net capital loss for any taxable year is attributable to a foreign expropriation capital loss, such portion shall be considered to be a separate net capital loss for such year to be applied after the other portion of such net capital loss.

(3) Regulated investment companies

(A) In general

If a regulated investment company has a net capital loss for any taxable year—

(i) paragraph (1) shall not apply to such loss,

(ii) the excess of the net short-term capital loss over the net long-term capital gain for such year shall be a short-term capital loss arising on the first day of the next taxable year, and

(iii) the excess of the net long-term capital loss over the net short-term capital gain for such year shall be a long-term capital loss arising on the first day of the next taxable year.

(B) Coordination with general rule

If a net capital loss to which paragraph (1) applies is carried over to a taxable year of a regulated investment company—

(i) Losses to which this paragraph applies

Clauses (ii) and (iii) of subparagraph (A) shall be applied without regard to any amount treated as a short-term capital loss under paragraph (1).

(ii) Losses to which general rule applies

Paragraph (1) shall be applied by substituting ''net capital loss for the loss year or any taxable year thereafter (other than a net capital loss to which paragraph (3)(A) applies)'' for ''net capital loss for the loss year or any taxable year thereafter''.

(4) Special rules on carrybacks

A net capital loss of a corporation shall not be carried back under paragraph (1)(A) to a taxable year—

(A) for which it is a regulated investment company (as defined in section 851), or

(B) for which it is a real estate investment trust (as defined in section 856).

(b) Other taxpayers

(1) In general

If a taxpayer other than a corporation has a net capital loss for any taxable year—

(A) the excess of the net short-term capital loss over the net long-term capital gain for such year shall be a short-term capital loss in the succeeding taxable year, and

(B) the excess of the net long-term capital loss over the net short-term capital gain for such year shall be a long-term capital loss in the succeeding taxable year.

(2) Treatment of amounts allowed under section 1211(b)(1) or (2)

(A) In general

For purposes of determining the excess referred to in subparagraph (A) or (B) of paragraph (1), there shall be treated as a short-term capital gain in the taxable year an amount equal to the lesser of—

(i) the amount allowed for the taxable year under paragraph (1) or (2) of section 1211(b), or

(ii) the adjusted taxable income for such taxable year.

(B) Adjusted taxable income

For purposes of subparagraph (A), the term ''adjusted taxable income'' means taxable income increased by the sum of—

(i) the amount allowed for the taxable year under paragraph (1) or (2) of section 1211(b), and

(ii) the deduction allowed for such year under section 151 or any deduction in lieu thereof.

For purposes of the preceding sentence, any excess of the deductions allowed for the taxable year over the gross income for such year shall be taken into account as negative taxable income.

(c) Carryback of losses from section 1256 contracts to offset prior gains from such contracts

(1) In general

If a taxpayer (other than a corporation) has a net section 1256 contracts loss for the taxable year and elects to have this subsection apply to such taxable year, the amount of such net section 1256 contracts loss—

(A) shall be a carryback to each of the 3 taxable years preceding the loss year, and

(B) to the extent that, after the application of paragraphs (2) and (3), such loss is allowed as a carryback to any such preceding taxable year—

(i) 40 percent of the amount so allowed shall be treated as a short-term capital loss from section 1256 contracts, and

(ii) 60 percent of the amount so allowed shall be treated as a long-term capital loss from section 1256 contracts.

(2) Amount carried to each taxable year

The entire amount of the net section 1256 contracts loss for any taxable year shall be carried to the earliest of the taxable years to which such loss may be carried back under paragraph (1). The portion of such loss which shall be carried to each of the 2 other taxable years to which such loss may be carried back shall be the excess (if any) of such loss over the portion of such loss which, after the application of paragraph (3), was allowed as a carryback for any prior taxable year.

(3) Amount which may be used in any prior taxable year

An amount shall be allowed as a carryback under paragraph (1) to any prior taxable year only to the extent—

(A) such amount does not exceed the net section 1256 contract gain for such year, and

(B) the allowance of such carryback does not increase or produce a net operating loss (as defined in section 172(c)) for such year.

(4) Net section 1256 contracts loss

For purposes of paragraph (1), the term ''net section 1256 contracts loss'' means the lesser of—

(A) the net capital loss for the taxable year determined by taking into account only gains and losses from section 1256 contracts, or

(B) the sum of the amounts which, but for paragraph (6)(A), would be treated as capital losses in the succeeding taxable year under subparagraphs (A) and (B) of subsection (b)(1).

(5) Net section 1256 contract gain

For purposes of paragraph (1)—

(A) In general

The term ''net section 1256 contract gain'' means the lesser of—

(i) the capital gain net income for the taxable year determined by taking into account only gains and losses from section 1256 contracts, or

(ii) the capital gain net income for the taxable year.

(B) Special rule

The net section 1256 contract gain for any taxable year before the loss year shall be computed without regard to the net section 1256 contracts loss for the loss year or for any taxable year thereafter.

(6) Coordination with carryforward provisions of subsection (b)(1)

(A) Carryforward amount reduced by amount used as carryback

For purposes of applying subsection (b)(1), if any portion of the net section 1256 contracts loss for any taxable year is allowed as a carryback under paragraph (1) to any preceding taxable year—

(i) 40 percent of the amount allowed as a carryback shall be treated as a short-term capital gain for the loss year, and

(ii) 60 percent of the amount allowed as a carryback shall be treated as a long-term capital gain for the loss year.

(B) Carryover loss retains character as attributable to section 1256 contract

Any amount carried forward as a short-term or long-term capital loss to any taxable year under subsection (b)(1) (after the application of subparagraph (A)) shall, to the extent attributable to losses from section 1256 contracts, be treated as loss from section 1256 contracts for such taxable year.

(7) Other definitions and special rules

For purposes of this subsection—

(A) Section 1256 contract

The term ''section 1256 contract'' means any section 1256 contract (as defined in section 1256(b)) to which section 1256 applies.

(B) Exclusion for estates and trusts

This subsection shall not apply to any estate or trust.

(Aug. 16, 1954, ch. 736, 68A Stat. 321; Pub. L. 88–272, title II, § 230(a), Feb. 26, 1964, 78 Stat. 99; Pub. L. 88–571, § 7(a), Sept. 2, 1964, 78 Stat. 860; Pub. L. 91–172, title V, §§ 512 (a), (b), (f)(1), 513(b), Dec. 30, 1969, 83 Stat. 638, 639, 641, 642; Pub. L. 94–455, title XIV, § 1403 (a), title XIX, § 1901(b)(33)(O), Oct. 4, 1976, 90 Stat. 1733, 1802; Pub. L. 95–600, title VII, § 703(k), Nov. 6, 1978, 92 Stat. 2942; Pub. L. 97–34, title V, § 504, Aug. 13, 1981, 95 Stat. 330; Pub. L. 97–354, § 5(a)(35), Oct. 19, 1982, 96 Stat. 1695; Pub. L. 97–448, title I, § 105(c)(7), Jan. 12, 1983, 96 Stat. 2387; Pub. L. 98–369, div. A, title I, § 102(e)(3), title X, § 1002(a), July 18, 1984, 98 Stat. 624, 1012; Pub. L. 99–514, title III, § 301(b)(11), title XVIII, § 1899A(67), Oct. 22, 1986, 100 Stat. 2218, 2962; Pub. L. 100–647, title I, § 1003(a)(3), Nov. 10, 1988, 102 Stat. 3382; Pub. L. 108–357, title IV, § 413(c)(20)(A), Oct. 22, 2004, 118 Stat. 1509; Pub. L. 111–325, title I, § 101(a), (b)(1), Dec. 22, 2010, 124 Stat. 3538.)

AMENDMENTS

2010—Subsec. (a)(1)(C). Pub. L. 111–325, § 101(b)(1), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''a capital loss carryover—

''(i) in the case of a regulated investment company (as defined in section 851) to each of the 8 taxable years succeeding the loss year, and

''(ii) to the extent such loss is attributable to a foreign expropriation capital loss, to each of the 10 taxable years succeeding the loss year.''

Subsec. (a)(3), (4). Pub. L. 111–325, § 101(a), added par. (3) and redesignated former par. (3) as (4).

2004—Subsec. (a)(3). Pub. L. 108–357 reenacted heading without change and amended text of par. (3) generally. Prior to amendment, par. (3) provided that a net capital loss of a corporation would not be carried back under par. (1)(A) to a taxable year for which it was a foreign personal holding company (as defined in section 552), for which it was a regulated investment company (as defined in section 851), for which it was a real estate investment trust (as defined in section 856), or for which an election made by it under section 1247 was applicable (relating to election by foreign investment companies to distribute income currently).

1988—Subsec. (b)(2). Pub. L. 100–647 substituted ''Treatment of amounts allowed under section 1211(b)(1) or (2)'' for ''Special rule'' as heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of determining the excess referred to in subparagraph (A) or (B) of paragraph (1), an amount equal to the amount allowed for the taxable year under paragraph (1) or (2) of section 1211(b) shall be treated as a short-term capital gain in such year.''

1986—Subsec. (b)(2). Pub. L. 99–514, § 301(b)(11), amended par. (2) generally. Prior to amendment, par. (2), special rules, read as follows:

''(A) For purposes of determining the excess referred to in paragraph (1)(A), an amount equal to the amount allowed for the taxable year under section 1211(b)(1)(A), (B), or (C) shall be treated as a short-term capital gain in such year.

''(B) For purposes of determining the excess referred to in paragraph (1)(B), an amount equal to the sum of—

''(i) the amount allowed for the taxable year under section 1211(b)(1)(A), (B), or (C), and

''(ii) the excess of the amount described in clause (i) over the net short-term capital loss (determined without regard to this subsection) for such year,

shall be treated as a short-term capital gain in such year.''

Subsec. (c)(6)(B), (7)(A). Pub. L. 99–514, § 1899A(67), amended directory language of Pub. L. 98–369, § 102(e)(3)(C), resulting in amendment of subsec. (c)(6)(B). See 1984 Amendment note below.

1984—Subsec. (b)(3). Pub. L. 98–369, § 1002(a), struck out par. (3) which read as follows: ''In the case of any amount which, under paragraph (1) and section 1211(b) (as in effect for taxable years beginning before January 1, 1970), is treated as a capital loss in the first taxable year beginning after December 31, 1969, paragraph (1) and section 1211(b) (as in effect for taxable years beginning before January 1, 1970) shall apply (and paragraph (1) and section 1211(b) as in effect for taxable years beginning after December 31, 1969, shall not apply) to the extent such amount exceeds the total of any net capital gains (determined without regard to this subsection) of taxable years beginning after December 31, 1969.''

Subsec. (c). Pub. L. 98–369, § 102(e)(3)(A), (B), substituted ''net section 1256 contracts loss'' for ''net commodity futures loss'' and ''section 1256 contracts'' for ''regulated futures contracts'' wherever appearing.

Subsec. (c)(3)(A), (5). Pub. L. 98–369, § 102(e)(3)(D), substituted ''net section 1256 contract gain'' for ''net commodity futures gain'' wherever appearing.

Subsec. (c)(6)(B), (7)(A). Pub. L. 98–369, § 102(e)(3)(C), as amended by Pub. L. 99–514, § 1899A(67), substituted ''section 1256 contract'' for ''regulated futures contract'' wherever appearing.

1983—Subsec. (c)(4)(A). Pub. L. 97–448 struck out ''and positions to which section 1256 applies'' after ''losses from regulated futures contracts''.

1982—Subsec. (a)(3), (4). Pub. L. 97–354 struck out par. (3) relating to electing small business corporations, and redesignated par. (4) as (3).

1981—Subsec. (c). Pub. L. 97–34 added subsec. (c).

1978—Subsec. (a)(1)(C)(ii). Pub. L. 95–600 substituted ''succeeding the loss year'' for ''exceeding the loss year''.

1976—Subsec. (a)(1). Pub. L. 94–455, §§ 1403(a), 1901(b)(33)(O), in subpar. (B) inserted introductory text ''except as provided in subparagraph (C),'' and struck out ''(10) taxable years to the extent such loss is attributable to a foreign expropriation capital loss)'' after ''5 taxable years'' and added subpar. (C), and substituted ''capital gain net income'' for ''net capital gains'', ''net capital gain'' and ''net capital gain'' in last three sentences, respectively.

1969—Pub. L. 91–172, § 512(f)(1), substituted ''carrybacks and carryovers'' for ''carryover'' in section catchline.

Subsec. (a)(1). Pub. L. 91–172, § 512(a), provided for a 3-year capital loss carryback for corporations, not available for foreign expropriation capital losses for which a special 10-year carryforward is presently available, in addition to the 5–year capital loss carryforward presently allowed corporations, to the extent the carryback of such loss does not increase or produce a net operating loss for the taxable year to which it is being carried back.

Subsec. (a)(3), (4). Pub. L. 91–172, § 512(b), added pars. (3) and (4).

Subsec. (b). Pub. L. 91–172, § 513(b), struck out reference to Dec. 31, 1963, struck out determination of a

short-term capital gain as an amount equal to the excess allowed for the taxable year under former section 1211(b) over the gains from sales or exchanges of capital assets, struck out par. (2) treating as a short-term capital loss in the first taxable year beginning after Dec. 31, 1963, any amount which is treated as a short-term capital loss in such year under this subchapter as in effect immediately before the enactment of the Revenue Act of 1964, added new par. (2) dealing with special rules for determining the excesses referred to in par. (1)(A) and par. (1)(B) and added par. (3).

1964—Subsec. (a). Pub. L. 88–571 provided that if any portion of a net capital loss is attributable to a foreign expropriation capital loss, such portion shall be a short-term capital loss in each of the 10 succeeding taxable years, defined foreign expropriation capital loss, stated what portion of loss is attributable to foreign expropriation capital loss and the priority of application of the net capital loss, and struck out provisions that net capital losses for taxable years beginning before Oct. 20, 1951, were to be determined under the applicable law relating to the computation of capital gains and losses in effect before such date.

Pub. L. 88–272 designated existing provisions as subsec. (a), limited such subsection to corporations, and added subsec. (b).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–325, title I, §101(c), Dec. 22, 2010, 124 Stat. 3538, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1222 of this title] shall apply to net capital losses for taxable years beginning after the date of the enactment of this Act [Dec. 22, 2010].

''(2) COORDINATION RULES.—Subparagraph (B) of section 1212(a)(3) of the Internal Revenue Code of 1986, as added by this section, shall apply to taxable years beginning after the date of the enactment of this Act.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title IV, §413(c)(20)(B), Oct. 22, 2004, 118 Stat. 1509, provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to taxable years beginning after December 31, 2004.''

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 301(b)(11) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 301(c) of Pub. L. 99–514, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 102(e)(3) of Pub. L. 98–369 applicable to positions established after July 18, 1984, in taxable years after that date, except as otherwise provided, see section 102(f), (g) of Pub. L. 98–369, set out as a note under section 1256 of this title.

Section 1002(b) of Pub. L. 98–369 provided that: ''The repeal made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1986.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to property acquired and positions established by the taxpayer after June 23, 1981, in taxable years ending after such date, and applicable when so elected with respect to property held on June 23, 1981, see section 508 of Pub. L. 97–34, set out as an Effective Date note under section 1092 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1403(b) of Pub. L. 94–455, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [amending this section] shall apply to loss years (within the meaning of section 1212(a)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) ending on or after January 1, 1970.''

Amendment by section 1901(b)(33)(O) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 512(g) of Pub. L. 91–172 provided that: ''The amendments made by this section [amending this section and sections 246, 381, 481, 535, 1314, 6411, 6501, 6511, 6601, and 6611 of this title] shall apply with respect to net capital losses sustained in taxable years beginning after December 31, 1969.''

Amendment by section 513(b) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 513(d) of Pub. L. 91–172, set out as a note under section 1211 of this title.

EFFECTIVE DATE OF 1964 AMENDMENTS

Section 7(b) of Pub. L. 88–571, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to net capital losses (to the extent attributable to foreign expropriation capital losses, as defined in section 1212(a)(2)(A) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) sustained in taxable years ending after December 31, 1958.''

Section 230(c) of Pub. L. 88–272 provided that: ''The amendments made by this section [amending this section and section 1222 of this title] shall apply to taxable years beginning after December 31, 1963.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

ELECTION NOT TO CARRYBACK CERTAIN NET CAPITAL LOSSES

Pub. L. 91–688, §3, Jan. 12, 1971, 84 Stat. 2073, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) For purposes of applying section 1212(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by section 512 of the Tax Reform Act of 1969) in the case of a corporation which makes an election under subsection (b), any net capital loss sustained in a taxable year beginning after December 31, 1969, may not be carried back to any taxable year beginning before January 1, 1970, for which it was subject to taxation under section 802 of such Code [section 802 of this title], if the carryback of such loss would result in an increase in such corporation's income tax liability for any such taxable year.

''(b) An election to have the provisions of subsection (a) apply shall be made by a corporation—

''(1) in such form and manner as the Secretary of the Treasury or his delegate may prescribe, and

''(2) not later than the time prescribed by law for filing a claim for credit or refund of overpayment of income tax for the first taxable year beginning after December 31, 1969, in which such corporation sustains a net capital loss.

''(c) The Secretary of the Treasury or his delegate shall prescribe such regulations as he determines necessary to carry out the purposes of this section.''

PART III—GENERAL RULES FOR DETERMINING CAPITAL GAINS AND LOSSES

Sec.
1221. Capital asset defined.
1222. Other items relating to capital gains and losses.[1]
1223. Holding period of property.

§ 1221. Capital asset defined

(a) In general

For purposes of this subtitle, the term ''capital asset'' means property held by the taxpayer (whether or not connected with his trade or business), but does not include—

(1) stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business;

(2) property, used in his trade or business, of a character which is subject to the allowance for depreciation provided in section 167, or real property used in his trade or business;

(3) a copyright, a literary, musical, or artistic composition, a letter or memorandum, or similar property, held by—

(A) a taxpayer whose personal efforts created such property,

(B) in the case of a letter, memorandum, or similar property, a taxpayer for whom such property was prepared or produced, or

(C) a taxpayer in whose hands the basis of such property is determined, for purposes of determining gain from a sale or exchange, in whole or part by reference to the basis of such property in the hands of a taxpayer described in subparagraph (A) or (B);

(4) accounts or notes receivable acquired in the ordinary course of trade or business for services rendered or from the sale of property described in paragraph (1);

(5) a publication of the United States Government (including the Congressional Record) which is received from the United States Government or any agency thereof, other than by purchase at the price at which it is offered for sale to the public, and which is held by—

(A) a taxpayer who so received such publication, or

(B) a taxpayer in whose hands the basis of such publication is determined, for purposes of determining gain from a sale or exchange, in whole or in part by reference to the basis of such publication in the hands of a taxpayer described in subparagraph (A);

(6) any commodities derivative financial instrument held by a commodities derivatives dealer, unless—

(A) it is established to the satisfaction of the Secretary that such instrument has no connection to the activities of such dealer as a dealer, and

(B) such instrument is clearly identified in such dealer's records as being described in subparagraph (A) before the close of the day on which it was acquired, originated, or entered into (or such other time as the Secretary may by regulations prescribe);

(7) any hedging transaction which is clearly identified as such before the close of the day on which it was acquired, originated, or entered into (or such other time as the Secretary may by regulations prescribe); or

(8) supplies of a type regularly used or consumed by the taxpayer in the ordinary course of a trade or business of the taxpayer.

(b) Definitions and special rules

(1) Commodities derivative financial instruments

For purposes of subsection (a)(6)—

(A) Commodities derivatives dealer

The term ''commodities derivatives dealer'' means a person which[1] regularly offers to enter into, assume, offset, assign, or terminate positions in commodities derivative financial instruments with customers in the ordinary course of a trade or business.

(B) Commodities derivative financial instrument

(i) In general

The term ''commodities derivative financial instrument'' means any contract or financial instrument with respect to commodities (other than a share of stock in a corporation, a beneficial interest in a partnership or trust, a note, bond, debenture, or other evidence of indebtedness, or a section 1256 contract (as defined in section 1256(b))), the value or settlement price of which is calculated by or determined by reference to a specified index.

(ii) Specified index

The term ''specified index'' means any one or more or any combination of—

(I) a fixed rate, price, or amount, or

(II) a variable rate, price, or amount,

which is based on any current, objectively determinable financial or economic infor-

[1] So in original. Does not conform to section catchline.

[1] So in original. Probably should be ''who''.

mation with respect to commodities which is not within the control of any of the parties to the contract or instrument and is not unique to any of the parties' circumstances.

(2) Hedging transaction

(A) In general

For purposes of this section, the term ''hedging transaction'' means any transaction entered into by the taxpayer in the normal course of the taxpayer's trade or business primarily—

(i) to manage risk of price changes or currency fluctuations with respect to ordinary property which is held or to be held by the taxpayer,

(ii) to manage risk of interest rate or price changes or currency fluctuations with respect to borrowings made or to be made, or ordinary obligations incurred or to be incurred, by the taxpayer, or

(iii) to manage such other risks as the Secretary may prescribe in regulations.

(B) Treatment of nonidentification or improper identification of hedging transactions

Notwithstanding subsection (a)(7), the Secretary shall prescribe regulations to properly characterize any income, gain, expense, or loss arising from a transaction—

(i) which is a hedging transaction but which was not identified as such in accordance with subsection (a)(7), or

(ii) which was so identified but is not a hedging transaction.

(3) Sale or exchange of self-created musical works

At the election of the taxpayer, paragraphs (1) and (3) of subsection (a) shall not apply to musical compositions or copyrights in musical works sold or exchanged by a taxpayer described in subsection (a)(3).

(4) Regulations

The Secretary shall prescribe such regulations as are appropriate to carry out the purposes of paragraph (6) and (7) of subsection (a) in the case of transactions involving related parties.

(Aug. 16, 1954, ch. 736, 68A Stat. 321; Pub. L. 91–172, title V, §514(a), Dec. 30, 1969, 83 Stat. 643; Pub. L. 94–455, title XIX, §1901(c)(9), title XXI, §2132(a), Oct. 4, 1976, 90 Stat. 1803, 1925; Pub. L. 97–34, title V, §505(a), Aug. 13, 1981, 95 Stat. 331; Pub. L. 106–170, title V, §532(a), Dec. 17, 1999, 113 Stat. 1928; Pub. L. 107–16, title V, §542(e)(2)(A), June 7, 2001, 115 Stat. 85; Pub. L. 107–147, title IV, §417(20), Mar. 9, 2002, 116 Stat. 57; Pub. L. 109–222, title II, §204(a), May 17, 2006, 120 Stat. 350; Pub. L. 109–432, div. A, title IV, §412(a), Dec. 20, 2006, 120 Stat. 2963; Pub. L. 111–312, title III, §301(a), Dec. 17, 2010, 124 Stat. 3300.)

AMENDMENT OF SECTION

For termination of amendment by section 304 of Pub. L. 111–312, see Effective and Termination Dates of 2010 Amendment note below.

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

AMENDMENTS

2010—Subsec. (a)(3)(C). Pub. L. 111–312, §§301(a), 304, temporarily amended subsec. (a)(3)(C) to read as if amendment by Pub. L. 107–16, §542(e)(2)(A), had never been enacted. See 2001 Amendment note and Effective and Termination Dates of 2010 Amendment note below.

2006—Subsec. (b)(3). Pub. L. 109–432 struck out ''before January 1, 2011,'' after ''exchanged''.

Pub. L. 109–222 added par. (3). Former par. (3) redesignated (4).

Subsec. (b)(4). Pub. L. 109–222 redesignated par. (3) as (4).

2002—Subsec. (b)(1)(B)(i). Pub. L. 107–147 substituted ''1256(b)))'' for ''1256(b))''.

2001—Subsec. (a)(3)(C). Pub. L. 107–16, §§542(e)(2)(A), 901, temporarily inserted ''(other than by reason of section 1022)'' after ''is determined''. See Effective and Termination Dates of 2001 Amendment note below.

1999—Pub. L. 106–170 designated existing provisions as subsec. (a), inserted heading, and added pars. (6) to (8) and subsec. (b).

1981—Pars. (5), (6). Pub. L. 97–34 redesignated par. (6) as (5) and struck out former par. (5), which excluded from definition of ''capital asset'' an obligation of the United States or any of its possessions, or of a State or any political subdivision thereof, or of the District of Columbia, issued on or after March 1, 1941, on a discount basis and payable without interest at a fixed maturity date not exceeding one year from the date of issue, and is covered by section 1232(a)(4)(B) of this title.

1976—Par. (5). Pub. L. 94–455, §1901(c)(9), struck out ''or Territory,'' after ''State''.

Par. (6). Pub. L. 94–455, §2132(a), added par. (6).

1969—Par. (3). Pub. L. 91–172 inserted reference to a letter or memorandum, added subpar. (B) dealing with a letter or memorandum, and redesignated former subpar. (B) as (C).

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Amendment by Pub. L. 111–312 applicable to estates of decedents dying, and transfers made after Dec. 31, 2009, except as otherwise provided, see section 301(e) of Pub. L. 111–312, set out as a note under section 121 of this title.

Section 901 of Pub. L. 107–16 applicable to amendments by section 301(a) of Pub. L. 111–312, see section 304 of Pub. L. 111–312, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §412(b), Dec. 20, 2006, 120 Stat. 2963, provided that: ''The amendment made by this section [amending this section] shall take effect as if included in section 204 of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109–222].''

Amendment by Pub. L. 109–222 applicable to sales and exchanges in taxable years beginning after May 17, 2006, see section 204(c) of Pub. L. 109–222, set out as a note under section 170 of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to estates of decedents dying after Dec. 31, 2009, see section 542(f)(1) of Pub. L. 107–16, set out as a note under section 121 of this title.

Amendment by Pub. L. 107–16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any trans-

action entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to property acquired and positions established by the taxpayer after June 23, 1981, in taxable years ending after such date, and applicable when so elected with respect to property held on June 23, 1981, see section 508 of Pub. L. 97–34, set out as an Effective Date note under section 1092 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2132(b) of Pub. L. 94–455 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to sales, exchanges, and contributions made after the date of enactment of this Act [Oct. 4, 1976].''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 514(c) of Pub. L. 91–172 provided that: ''The amendments made by this section [amending this section and sections 341 and 1231 of this title] shall apply to sales and other dispositions occurring after July 25, 1969.''

§ 1222. Other terms relating to capital gains and losses

For purposes of this subtitle—

(1) Short-term capital gain

The term ''short-term capital gain'' means gain from the sale or exchange of a capital asset held for not more than 1 year, if and to the extent such gain is taken into account in computing gross income.

(2) Short-term capital loss

The term ''short-term capital loss'' means loss from the sale or exchange of a capital asset held for not more than 1 year, if and to the extent that such loss is taken into account in computing taxable income.

(3) Long-term capital gain

The term ''long-term capital gain'' means gain from the sale or exchange of a capital asset held for more than 1 year, if and to the extent such gain is taken into account in computing gross income.

(4) Long-term capital loss

The term ''long-term capital loss'' means loss from the sale or exchange of a capital asset held for more than 1 year, if and to the extent that such loss is taken into account in computing taxable income.

(5) Net short-term capital gain

The term ''net short-term capital gain'' means the excess of short-term capital gains for the taxable year over the short-term capital losses for such year.

(6) Net short-term capital loss

The term ''net short-term capital loss'' means the excess of short-term capital losses for the taxable year over the short-term capital gains for such year.

(7) Net long-term capital gain

The term ''net long-term capital gain'' means the excess of long-term capital gains for the taxable year over the long-term capital losses for such year.

(8) Net long-term capital loss

The term ''net long-term capital loss'' means the excess of long-term capital losses for the taxable year over the long-term capital gains for such year.

(9) Capital gain net income

The term ''capital gain net income'' means the excess of the gains from sales or exchanges of capital assets over the losses from such sales or exchanges.

(10) Net capital loss

The term ''net capital loss'' means the excess of the losses from sales or exchanges of capital assets over the sum allowed under section 1211. In the case of a corporation, for the purpose of determining losses under this paragraph, amounts which are short-term capital losses under section 1212(a)(1) shall be excluded.

(11) Net capital gain

The term ''net capital gain'' means the excess of the net long-term capital gain for the taxable year over the net short-term capital loss for such year.

For purposes of this subtitle, in the case of futures transactions in any commodity subject to the rules of a board of trade or commodity exchange, the length of the holding period taken into account under this section or under any other section amended by section 1402 of the Tax Reform Act of 1976 shall be determined without regard to the amendments made by subsections (a) and (b) of such section 1402.

(Aug. 16, 1954, ch. 736, 68A Stat. 322; Pub. L. 88–272, title II, § 230(b), Feb. 26, 1964, 78 Stat. 100; Pub. L. 91–172, title V, §§ 511(a), 513(c), Dec. 30, 1969, 83 Stat. 635, 643; Pub. L. 94–455, title XIV, § 1402(a)(1), (2), (d), title XIX, § 1901(a)(136), Oct. 4, 1976, 90 Stat. 1731, 1733, 1787; Pub. L. 98–369, div. A, title X, § 1001(a), (e), July 18, 1984, 98 Stat. 1011, 1012; Pub. L. 111–325, title I, § 101(b)(2), Dec. 22, 2010, 124 Stat. 3538.)

REFERENCES IN TEXT

The Tax Reform Act of 1976, referred to in last sentence, is Pub. L. 94–455, Oct. 4, 1976, 90 Stat. 1520, as amended. For complete classification of this Act and of section 1402 of such Act to the Code, see Tables.

AMENDMENTS

2010—Par. (10). Pub. L. 111–325 substituted ''section 1212(a)(1)'' for ''section 1212''.

1984—Pars. (1) to (4). Pub. L. 98–369 substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

1976—Pars. (1) to (4). Pub. L. 94–455, § 1402(a)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, § 1402(a)(1), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

Par. (9). Pub. L. 94–455, § 1901(a)(136)(A), substituted ''Capital gain net income'' and ''capital gain net income'' for ''Net capital gain'' and ''net capital gain'' in heading and text.

Par. (11). Pub. L. 94–455, § 1901(a)(136)(B), substituted ''Net capital gain'' and ''net capital gain'' for ''Net section 1201 gain'' and ''net section 1201 gain'' in heading and text.

Pub. L. 94–455, § 1402(d), inserted sentence at end relating to length of holding period in case of futures transactions in commodities.

1969—Par. (9). Pub. L. 91–172, § 513(c), substituted ''The'' for ''In the case of a corporation, the''.

Par. (11). Pub. L. 91–172, § 511(a), added par. (11).

1964—Pars. (9), (10). Pub. L. 88–272 struck out provisions from par. (9) relating to taxpayers other than corporations, and inserted ''In the case of a corporation'' in par. (10).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–325 applicable to net capital losses for taxable years beginning after Dec. 22, 2010, see section 101(c)(1) of Pub. L. 111–325, set out as a note under section 1212 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(a)(1) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Section 1402(a)(2) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Amendment by section 1901(a)(136) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 513(c) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 513(d) of Pub. L. 91–172, set out as a note under section 1211 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 230(c) of Pub. L. 88–272, set out as a note under section 1212 of this title.

§ 1223. Holding period of property

For purposes of this subtitle—

(1) In determining the period for which the taxpayer has held property received in an exchange, there shall be included the period for which he held the property exchanged if, under this chapter, the property has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in his hands as the property exchanged, and, in the case of such exchanges after March 1, 1954, the property exchanged at the time of such exchange was a capital asset as defined in section 1221 or property described in section 1231. For purposes of this paragraph—

(A) an involuntary conversion described in section 1033 shall be considered an exchange of the property converted for the property acquired, and

(B) a distribution to which section 355 (or so much of section 356 as relates to section 355) applies shall be treated as an exchange.

(2) In determining the period for which the taxpayer has held property however acquired there shall be included the period for which such property was held by any other person, if under this chapter such property has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in his hands as it would have in the hands of such other person.

(3) In determining the period for which the taxpayer has held stock or securities the acquisition of which (or the contract or option to acquire which) resulted in the nondeductibility (under section 1091 relating to wash sales) of the loss from the sale or other disposition of substantially identical stock or securities, there shall be included the period for which he held the stock or securities the loss from the sale or other disposition of which was not deductible.

(4) In determining the period for which the taxpayer has held stock or rights to acquire stock received on a distribution, if the basis of such stock or rights is determined under section 307 (or under so much of section 1052(c) as refers to section 113(a)(23) of the Internal Revenue Code of 1939), there shall (under regulations prescribed by the Secretary) be included the period for which he held the stock in the distributing corporation before the receipt of such stock or rights upon such distribution.

(5) In determining the period for which the taxpayer has held stock or securities acquired from a corporation by the exercise of rights to acquire such stock or securities, there shall be included only the period beginning with the date on which the right to acquire was exercised.

(6) In determining the period for which the taxpayer has held a residence, the acquisition of which resulted under section 1034 (as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997) in the nonrecognition of any part of the gain realized on the sale or exchange of another residence, there shall be included the period for which such other residence had been held as of the date of such sale or exchange. For purposes of this paragraph, the term ''sale or exchange'' includes an involuntary conversion occurring after December 31, 1950, and before January 1, 1954.

(7) In determining the period for which the taxpayer has held a commodity acquired in satisfaction of a commodity futures contract (other than a commodity futures contract to which section 1256 applies) there shall be included the period for which he held the commodity futures contract if such commodity futures contract was a capital asset in his hands.

(8) Any reference in this section to a provision of this title shall, where applicable, be deemed a reference to the corresponding provision of the Internal Revenue Code of 1939, or prior internal revenue laws.

(9) In the case of a person acquiring property from a decedent or to whom property passed from a decedent (within the meaning of section 1014(b)), if—

(A) the basis of such property in the hands of such person is determined under section 1014, and

(B) such property is sold or otherwise disposed of by such person within 1 year after the decedent's death,

then such person shall be considered to have held such property for more than 1 year.

(10) If—

(A) property is acquired by any person in a transfer to which section 1040 applies,

(B) such property is sold or otherwise disposed of by such person within 1 year after the decedent's death, and

(C) such sale or disposition is to a person who is a qualified heir (as defined in section 2032A(e)(1)) with respect to the decedent,

then the person making such sale or other disposition shall be considered to have held such property for more than 1 year.

(11) In determining the period for which the taxpayer has held qualified replacement property (within the meaning of section 1042(b)) the acquisition of which resulted under section 1042 in the nonrecognition of any part of the gain realized on the sale of qualified securities (within the meaning of section 1042(b)), there shall be included the period for which such qualified securities had been held by the taxpayer.

(12) In determining the period for which the taxpayer has held property the acquisition of which resulted under section 1043 in the nonrecognition of any part of the gain realized on the sale of other property, there shall be included the period for which such other property had been held as of the date of such sale.

(13) Except for purposes of sections 1202(a)(2), 1202(c)(2)(A), 1400B(b), and 1400F(b), in determining the period for which the taxpayer has held property the acquisition of which resulted under section 1045 or 1397B in the nonrecognition of any part of the gain realized on the sale of other property, there shall be included the period for which such other property has been held as of the date of such sale.

(14) If the security to which a securities futures contract (as defined in section 1234B) relates (other than a contract to which section 1256 applies) is acquired in satisfaction of such contract, in determining the period for which the taxpayer has held such security, there shall be included the period for which the taxpayer held such contract if such contract was a capital asset in the hands of the taxpayer.

(15) CROSS REFERENCE.—

For special holding period provision relating to certain partnership distributions, see section 735(b).

(Aug. 16, 1954, ch. 736, 68A Stat. 323; Pub. L. 87–834, § 14(b)(3), Oct. 16, 1962, 76 Stat. 1041; Pub. L. 91–614, title I, § 101(g), Dec. 31, 1970, 84 Stat. 1838; Pub. L. 94–455, title XIV, § 1402(b)(1)(Q), (2), title XIX, § 1906(b) (13)(A), Oct. 4, 1976, 90 Stat. 1732, 1834; Pub. L. 95–600, title VII, § 702(c)(5), Nov. 6, 1978, 92 Stat. 2927; Pub. L. 96–223, title IV, § 401(a), Apr. 2, 1980, 94 Stat. 299; Pub. L. 97–448, title I, §§ 104(b)(3)(C), 105(c)(4), Jan. 12, 1983, 96 Stat. 2382, 2385; Pub. L. 98–369, div. A, title I, § 54(c), title V, § 541(b)(1), title X, § 1001(b)(14), (e), July 18, 1984, 98 Stat. 569, 890, 1011, 1012; Pub. L. 100–647, title I, § 1006(e)(17), Nov. 10, 1988, 102 Stat. 3403; Pub. L. 101–194, title V, § 502(b)(1), Nov. 30, 1989, 103 Stat. 1754; Pub. L. 105–34, title III, §§ 312(d)(9), 313(b)(2), Aug. 5, 1997, 111 Stat. 840, 842; Pub. L. 105–206, title V, § 5001(a)(5), title VI, § 6005(d)(4), July 22, 1998, 112 Stat. 788, 805; Pub. L. 106–554, § 1(a)(7) [title I, § 116(b)(2), title IV, § 401(h)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–603, 2763A–650; Pub. L. 108–357, title IV, § 413(c)(21), Oct. 22, 2004, 118 Stat. 1509; Pub. L. 109–135, title IV, § 402(a)(2), Dec. 21, 2005, 119 Stat. 2610.)

REFERENCES IN TEXT

Section 113(a)(23) of the Internal Revenue Code of 1939, referred to in par. (4), was classified to section 113(a)(23) of former Title 26, Internal Revenue Code. Section 113 was repealed by section 7851(a)(1) of this title. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title. See, also, section 7851(e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

The date of the enactment of the Taxpayer Relief Act of 1997, referred to in par. (6), is the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

The Internal Revenue Code of 1939, referred to in par. (8), is act Feb. 10, 1939, ch. 2, 53 Stat. 1, as amended. Prior to the enactment of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the 1939 Code was classified to former Title 26, Internal Revenue Code. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title.

AMENDMENTS

2005—Pars. (3) to (16). Pub. L. 109–135 redesignated pars. (4) to (16) as (3) to (15), respectively, and struck out former par. (3) which read as follows: ''In determining the period for which the taxpayer has held stock or securities received upon a distribution where no gain was recognized to the distributee under section 1081(c) (or under section 112(g) of the Revenue Act of 1928, 45 Stat. 818, or the Revenue Act of 1932, 48 Stat. 705), there shall be included the period for which he held the stock or securities in the distributing corporation before the receipt of the stock or securities on such distribution.''

2004—Pars. (10) to (17). Pub. L. 108–357 redesignated pars. (11) to (17) as (10) to (16), respectively, and struck out former par. (10) which read as follows: ''In determining the period for which the taxpayer has held trust certificates of a trust to which subsection (d) of section 1246 applies, or the period for which the taxpayer has held stock in a corporation to which subsection (d) of section 1246 applies, there shall be included the period for which the trust or corporation (as the case may be) held the stock of foreign investment companies.''

2000—Par. (15). Pub. L. 106–554, § 1(a)(7) [title I, § 116(b)(2)], amended par. (15) generally. Prior to amendment, par. (15) read as follows: ''In determining the period for which the taxpayer has held property the acquisition of which resulted under section 1045 in the nonrecognition of any part of the gain realized on the sale of other property, there shall be included the period for which such other property has been held as of the date of such sale.''

Pars. (16), (17). Pub. L. 106–554, § 1(a)(7) [title IV, § 401(h)(1)], added par. (16) and redesignated former par. (16) as (17).

1998—Pars. (11), (12). Pub. L. 105–206, § 6005(d)(4), substituted ''18 months'' for ''1 year'' in subpar. (B) and concluding provisions.

Pub. L. 105–206, § 5001(a)(5), substituted ''1 year'' for ''18 months'' in subpar. (B) and concluding provisions.

1997—Par. (7). Pub. L. 105–34, § 312(d)(9), inserted ''(as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997)'' after ''section 1034''.

Pars. (15), (16). Pub. L. 105–34, § 313(b)(2), added par. (15) and redesignated former par. (15) as (16).

1989—Pars. (14), (15). Pub. L. 101–194 added par. (14) and redesignated former par. (14) as (15).

1988—Par. (14). Pub. L. 100–647 amended par. (14) generally, substituting ''reference'' for ''references'' in heading, striking out ''(A)'' before ''For special holding'', and striking out subpar. (B) which related to distributions of appreciated property to corporations.

1984—Pars. (11), (12). Pub. L. 98–369, § 1001(b)(14), (e), substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Par. (13). Pub. L. 98–369, § 541(b)(1), added par. (13). Former par. (13) redesignated (14).

Par. (14). Pub. L. 98–369, §541(b)(1), redesignated former par. (13) as (14).

Pub. L. 98–369, §54(c), designated existing cross reference as subpar. (A) and added subpar. (B).

1983—Par. (8). Pub. L. 97–448, §105(c)(4), inserted ''(other than a commodity futures contract to which section 1256 applies)'' after ''acquired in satisfaction of a commodity futures contract''.

Pars. (12), (13). Pub. L. 97–448, §104(b)(3)(C), added par. (12) and redesignated former par. (12) as (13).

1980—Par. (11)(A). Pub. L. 96–223 repealed the amendment made by Pub. L. 95–600. See 1978 Amendment note below.

1978—Par. (11)(A). Pub. L. 95–600 inserted reference to determination of basis of property under section 1023. See Repeals note below.

1976—Par. (5). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Par. (11). Pub. L. 94–455, §1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, §1402(b)(1)(Q), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

1970—Pars. (11), (12). Pub. L. 91–614 added par. (11) and redesignated former par. (11) as (12).

1962—Pars. (10), (11). Pub. L. 87–834 added par. (10) and redesignated former par. (10) as (11).

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which it relates, but not applicable with respect to any transaction ordered in compliance with the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) before its repeal, see section 402(m) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 36C of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by section 1(a)(7) [title I, §116(b)(2)] of Pub. L. 106–554 applicable to qualified empowerment zone assets acquired after Dec. 21, 2000, see section 1(a)(7) [title I, §116(c)] of Pub. L. 106–554, set out as a note under section 1016 of this title.

Amendment by section 1(a)(7) [title IV, §401(h)(1)] of Pub. L. 106–554 effective Dec. 21, 2000, see section 1(a)(7) [title IV, §401(j)] of Pub. L. 106–554, set out as a note under section 1032 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 5001(a)(5) of Pub. L. 105–206 effective Jan. 1, 1998, see section 5001(b)(2) of Pub. L. 105–206, set out as a note under section 1 of this title.

Amendment by section 6005(d)(4) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 312(d)(9) of Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 of this title.

Amendment by section 313(b)(2) of Pub. L. 105–34 applicable to sales after Aug. 5, 1997, see section 313(c) of Pub. L. 105–34, set out as a note under section 1016 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–194 applicable to sales after Nov. 30, 1989, see section 502(c) of Pub. L. 101–194, set out as a note under section 1016 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 541(b)(1) of Pub. L. 98–369 applicable to sales of securities in taxable years beginning after July 18, 1984, see section 541(c) of Pub. L. 98–369, set out as an Effective Date note under section 1042 of this title.

Amendment by section 1001(b)(14) of Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT AND REVIVAL OF PRIOR LAW

Amendment by Pub. L. 96–223 (repealing section 702(c)(5) of Pub. L. 95–600 and the amendments made thereby, which had amended this section) applicable in respect of decedents dying after Dec. 31, 1976, and except for certain elections, this title to be applied and administered as if those repealed provisions had not been enacted, see section 401(b), (e) of Pub. L. 96–223, set out as a note under section 1023 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 to take effect as if included in the amendments and additions made by, and the appropriate provisions of Pub. L. 94–455, see section 702(c)(10) of Pub. L. 95–600, set out as a note under section 1014 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(b)(1) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Section 1402(b)(2) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–614 applicable with respect to decedents dying after Dec. 31, 1970, see section 101(j) of Pub. L. 91–614, set out as a note under section 2032 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable with respect to taxable years beginning after Dec. 31, 1962, see section 14(c) of Pub. L. 87–834, set out as a note under section 312 of this title.

REPEALS

Pub. L. 95–600, §702(c)(5), cited as a credit to this section, and the amendments made thereby, were repealed by Pub. L. 96–223, title IV, §401(a), 94 Stat. 299, resulting in the text of this section reading as it read prior to enactment of section 702(c)(5). See Effective Date of 1980 Amendment and Revival of Prior Law note set out above.

PART IV—SPECIAL RULES FOR DETERMINING CAPITAL GAINS AND LOSSES

Sec.
1231. Property used in the trade or business and involuntary conversions.
[1232 to 1232B. Repealed.]
1233. Gains and losses from short sales.
1234. Options to buy or sell.
1234A. Gains or losses from certain terminations.
1234B. Gains or losses from securities futures contracts.
1235. Sale or exchange of patents.
1236. Dealers in securities.
1237. Real property subdivided for sale.
[1238. Repealed.]
1239. Gain from sale of certain property between spouses or between an individual and a controlled corporation.[1]
[1240. Repealed.]
1241. Cancellation of lease or distributor's agreement.
1242. Losses on small business investment company stock.
1243. Loss of small business investment company.
1244. Losses on small business stock.
1245. Gain from dispositions of certain depreciable property.
[1246, 1247. Repealed.]
1248. Gain from certain sales or exchanges of stock in certain foreign corporations.
1249. Gain from certain sales or exchanges of patents, etc., to foreign corporations.
1250. Gain from dispositions of certain depreciable realty.
[1251. Repealed.]
1252. Gain from the disposition of farm land.[1]
1253. Transfers of franchises, trademarks, and trade names.
1254. Gain from disposition of interest in oil, gas, geothermal, or other mineral properties.
1255. Gain from disposition of section 126 property.
1256. Section 1256 contracts marked to market.
1257. Disposition of converted wetlands or highly erodible croplands.
1258. Recharacterization of gain from certain financial transactions.
1259. Constructive sales treatment for appreciated financial positions.
1260. Gains from constructive ownership transactions.

AMENDMENTS

2004—Pub. L. 108–357, title IV, § 413(c)(32), Oct. 22, 2004, 118 Stat. 1510, struck out items 1246 ''Gain on foreign investment company stock'' and 1247 ''Election by foreign investment companies to distribute income currently''.

Pub. L. 108–311, title IV, § 408(a)(18), Oct. 4, 2004, 118 Stat. 1192, substituted ''Gains or losses from securities futures contracts'' for ''Securities futures contracts'' in item 1234B.

2000—Pub. L. 106–554, § 1(a)(7) [title IV, § 401(h)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–650, which directed the amendment of the table of sections of subpart IV of subchapter P of chapter 1 by adding item 1234B, was executed by adding item 1234B to the table of sections for this part which is part IV of subchapter P of chapter 1 to reflect the probable intent of Congress.

1999—Pub. L. 106–170, title V, § 534(b), Dec. 17, 1999, 113 Stat. 1934, added item 1260.

1997—Pub. L. 105–34, title X, § 1001(c), Aug. 5, 1997, 111 Stat. 907, added item 1259.

1993—Pub. L. 103–66, title XIII, § 13206(a)(2), Aug. 10, 1993, 107 Stat. 465, added item 1258.

1990—Pub. L. 101–508, title XI, § 11801(b)(10), Nov. 5, 1990, 104 Stat. 1388–522, struck out item 1238 ''Amortization in excess of depreciation''.

1988—Pub. L. 100–647, title I, § 1018(u)(24), Nov. 10, 1988, 102 Stat. 3591, substituted ''geothermal, or other mineral properties'' for ''or geothermal property'' in item 1254.

1986—Pub. L. 99–514, title IV, § 403(b), Oct. 22, 1986, 100 Stat. 2222, added item 1257.

1984—Pub. L. 98–369, div. A, title I, §§ 42(b)(2), 102(e)(6), title IV, § 492(c), July 18, 1984, 98 Stat. 557, 624, 854, struck out items 1232 ''Bonds and other evidence of indebtedness'', 1232A ''Original issue discount'', 1232B ''Tax treatment of stripped bonds'', 1251 ''Gain from disposition of property used in farming where farm losses offset nonfarm income'', and substituted ''Section 1256 contracts'' for ''Regulated futures contracts'' in item 1256.

1982—Pub. L. 97–248, title II, §§ 231(d), 232(c), Sept. 3, 1982, 96 Stat. 499, 501, added items 1232A and 1232B.

1981—Pub. L. 97–34, title V, §§ 503(b), 507(b), Aug. 13, 1981, 95 Stat. 330, 333, added items 1234A and 1256.

1978—Pub. L. 95–618, title IV, § 402(c)(4), Nov. 9, 1978, 92 Stat. 3202, substituted ''oil, gas, or geothermal'' for ''oil or gas'' in item 1254.

Pub. L. 95–600, title V, § 543(c)(2), Nov. 6, 1978, 92 Stat. 2890, added item 1255.

1976—Pub. L. 94–455, title II, § 205(d), title XIX, § 1901(b)(34), Oct. 4, 1976, 90 Stat. 1535, 1802, added item 1254 and struck out item 1240 ''Taxability to employee of termination payments''.

1969—Pub. L. 91–172, title II, §§ 211(b)(7), 214(b), title V, § 516(c)(2)(C), Dec. 30, 1969, 83 Stat. 570, 573, 648, added items 1251 to 1253.

1964—Pub. L. 88–272, title II, § 231(b)(7), Feb. 26, 1964, 78 Stat. 105, added item 1250.

1962—Pub. L. 87–834, §§ 13(a)(2), 14(a)(2), 15(b), 16(b), Oct. 16, 1962, 76 Stat. 1033, 1040, 1044, 1045, added items 1245–1249.

1958—Pub. L. 85–866, title I, § 57(c)(3), title II, § 202(c), Sept. 2, 1958, 72 Stat. 1646, 1678, added items 1242–1244.

§ 1231. Property used in the trade or business and involuntary conversions

(a) General rule

(1) Gains exceed losses

If—

(A) the section 1231 gains for any taxable year, exceed

(B) the section 1231 losses for such taxable year,

such gains and losses shall be treated as long-term capital gains or long-term capital losses, as the case may be.

(2) Gains do not exceed losses

If—

(A) the section 1231 gains for any taxable year, do not exceed

(B) the section 1231 losses for such taxable year,

such gains and losses shall not be treated as gains and losses from sales or exchanges of capital assets.

(3) Section 1231 gains and losses

For purposes of this subsection—

(A) Section 1231 gain

The term ''section 1231 gain'' means—

(i) any recognized gain on the sale or exchange of property used in the trade or business, and

(ii) any recognized gain from the compulsory or involuntary conversion (as a result of destruction in whole or in part, theft or seizure, or an exercise of the

[1] So in original. Does not conform to section catchline.

power of requisition or condemnation or the threat or imminence thereof) into other property or money of—

(I) property used in the trade or business, or

(II) any capital asset which is held for more than 1 year and is held in connection with a trade or business or a transaction entered into for profit.

(B) Section 1231 loss

The term ''section 1231 loss'' means any recognized loss from a sale or exchange or conversion described in subparagraph (A).

(4) Special rules

For purposes of this subsection—

(A) In determining under this subsection whether gains exceed losses—

(i) the section 1231 gains shall be included only if and to the extent taken into account in computing gross income, and

(ii) the section 1231 losses shall be included only if and to the extent taken into account in computing taxable income, except that section 1211 shall not apply.

(B) Losses (including losses not compensated for by insurance or otherwise) on the destruction, in whole or in part, theft or seizure, or requisition or condemnation of—

(i) property used in the trade or business, or

(ii) capital assets which are held for more than 1 year and are held in connection with a trade or business or a transaction entered into for profit,

shall be treated as losses from a compulsory or involuntary conversion.

(C) In the case of any involuntary conversion (subject to the provisions of this subsection but for this sentence) arising from fire, storm, shipwreck, or other casualty, or from theft, of any—

(i) property used in the trade or business, or

(ii) any capital asset which is held for more than 1 year and is held in connection with a trade or business or a transaction entered into for profit,

this subsection shall not apply to such conversion (whether resulting in gain or loss) if during the taxable year the recognized losses from such conversions exceed the recognized gains from such conversions.

(b) Definition of property used in the trade or business

For purposes of this section—

(1) General rule

The term ''property used in the trade or business'' means property used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 167, held for more than 1 year, and real property used in the trade or business, held for more than 1 year, which is not—

(A) property of a kind which would properly be includible in the inventory of the taxpayer if on hand at the close of the taxable year,

(B) property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business,

(C) a copyright, a literary, musical, or artistic composition, a letter or memorandum, or similar property, held by a taxpayer described in paragraph (3) of section 1221(a), or

(D) a publication of the United States Government (including the Congressional Record) which is received from the United States Government, or any agency thereof, other than by purchase at the price at which it is offered for sale to the public, and which is held by a taxpayer described in paragraph (5) of section 1221(a).

(2) Timber, coal, or domestic iron ore

Such term includes timber, coal, and iron ore with respect to which section 631 applies.

(3) Livestock

Such term includes—

(A) cattle and horses, regardless of age, held by the taxpayer for draft, breeding, dairy, or sporting purposes, and held by him for 24 months or more from the date of acquisition, and

(B) other livestock, regardless of age, held by the taxpayer for draft, breeding, dairy, or sporting purposes, and held by him for 12 months or more from the date of acquisition.

Such term does not include poultry.

(4) Unharvested crop

In the case of an unharvested crop on land used in the trade or business and held for more than 1 year, if the crop and the land are sold or exchanged (or compulsorily or involuntarily converted) at the same time and to the same person, the crop shall be considered as ''property used in the trade or business.''

(c) Recapture of net ordinary losses

(1) In general

The net section 1231 gain for any taxable year shall be treated as ordinary income to the extent such gain does not exceed the non-recaptured net section 1231 losses.

(2) Non-recaptured net section 1231 losses

For purposes of this subsection, the term ''non-recaptured net section 1231 losses'' means the excess of—

(A) the aggregate amount of the net section 1231 losses for the 5 most recent preceding taxable years beginning after December 31, 1981, over

(B) the portion of such losses taken into account under paragraph (1) for such preceding taxable years.

(3) Net section 1231 gain

For purposes of this subsection, the term ''net section 1231 gain'' means the excess of—

(A) the section 1231 gains, over

(B) the section 1231 losses.

(4) Net section 1231 loss

For purposes of this subsection, the term ''net section 1231 loss'' means the excess of—

(A) the section 1231 losses, over

(B) the section 1231 gains.

(5) Special rules

For purposes of determining the amount of the net section 1231 gain or loss for any taxable year, the rules of paragraph (4) of subsection (a) shall apply.

(Aug. 16, 1954, ch. 736, 68A Stat. 325; Pub. L. 85–866, title I, § 49(a), Sept. 2, 1958, 72 Stat. 1642; Pub. L. 88–272, title II, § 227(a)(2), Feb. 26, 1964, 78 Stat. 97; Pub. L. 91–172, title II, § 212(b)(1), title V, §§ 514(b)(2), 516(b), Dec. 30, 1969, 83 Stat. 571, 643, 646; Pub. L. 94–455, title XIV, § 1402(b)(1)(R), (2), Oct. 4, 1976, 90 Stat. 1732; Pub. L. 95–600, title VII, § 701(ee)(1), Nov. 6, 1978, 92 Stat. 2924; Pub. L. 97–34, title V, § 505(c)(1), Aug. 13, 1981, 95 Stat. 332; Pub. L. 98–369, div. A, title I, § 176(a), title VII, § 711(c)(2)(A)(iii), title X, § 1001(b)(15), (e), July 18, 1984, 98 Stat. 709, 944, 1012; Pub. L. 106–170, title V, § 532(c)(1)(G), Dec. 17, 1999, 113 Stat. 1930.)

AMENDMENTS

1999—Subsec. (b)(1)(C), (D). Pub. L. 106–170 substituted ''section 1221(a)'' for ''section 1221''.

1984—Subsec. (a). Pub. L. 98–369, § 1001(b)(15), (e), substituted ''6 months'' for ''1 year'' wherever appearing, applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Pub. L. 98–369, § 711(c)(2)(A)(iii), amended subsec. (a) generally, substituting pars. (1) to (4), for ''If, during the taxable year, the recognized gains on sales or exchanges of property used in the trade or business, plus the recognized gains from the compulsory or involuntary conversion (as a result of destruction in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation or the threat or imminence thereof) of property used in the trade or business and capital assets held for more than 1 year into other property or money, exceed the recognized losses from such sales, exchanges, and conversions, such gains and losses shall be considered as gains and losses from sales or exchanges of capital assets held for more than 1 year. If such gains do not exceed such losses, such gains and losses shall not be considered as gains and losses from sales or exchanges of capital assets. For purposes of this subsection—

''(1) in determining under this subsection whether gains exceed losses, the gains described therein shall be included only if and to the extent taken into account in computing gross income and the losses described therein shall be included only if and to the extent taken into account in computing taxable income, except that section 1211 shall not apply; and

''(2) losses (including losses not compensated for by insurance or otherwise) upon the destruction, in whole or in part, theft or seizure, or requisition or condemnation of (A) property used in the trade or business or (B) capital assets held for more than 1 year shall be considered losses from a compulsory or involuntary conversion.

In the case of any involuntary conversion (subject to the provisions of this subsection but for this sentence) arising from fire, storm, shipwreck, or other casualty, or from theft, of any property used in the trade or business or of any capital asset held for more than 1 year, this subsection shall not apply to such conversion (whether resulting in gain or loss) if during the taxable year the recognized losses from such conversions exceed the recognized gains from such conversions.''

Subsec. (b)(1), (4). Pub. L. 98–369, § 1001(b)(15), (e), substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsec. (c). Pub. L. 98–369, § 176(a), added subsec. (c).

1981—Subsec. (b)(1)(D). Pub. L. 97–34 substituted ''paragraph (5)'' for ''paragraph (6)''.

1978—Subsec. (b)(1)(D). Pub. L. 95–600 added subpar. (D).

1976—Subsecs. (a), (b)(1), (4). Pub. L. 94–455, § 1402(b)(2), provided that ''9 months'' would be changed to ''1 year'' wherever appearing.

Pub. L. 94–455, § 1402(b)(1)(R), provided that in subsecs. (a), first and last sentences, (a)(2), and (b)(1), (4), ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

1969—Subsec. (a). Pub. L. 91–172, § 516(b), provided that casualty (or theft) losses with respect to depreciable property and real estate used in trade or business and capital assets held for the production of income as well as personal assets are to be consolidated with casualty (or theft) gains with respect to this type of property and if the casualty losses exceed the casualty gains, the net loss is treated as an ordinary loss without regard to whether there may be noncasualty gains under this section, but, if the casualty gains exceed the casualty losses, the net gain is treated as a gain under this section and must be consolidated with other gains and losses under this section.

Subsec. (b)(1)(C). Pub. L. 91–172, § 514(b)(2), inserted reference to a letter or memorandum.

Subsec. (b)(3). Pub. L. 91–172, § 212(b)(1), redesignated existing provisions as subpar. (B) and added subpar. (A).

1964—Subsec. (b)(2). Pub. L. 88–272 inserted reference to iron ore in text, and to domestic iron ore in heading.

1958—Subsec. (a). Pub. L. 85–866 inserted provision respecting casualty losses sustained upon certain uninsured property.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 176(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to net section 1231 gains for taxable years beginning after December 31, 1984.''

Amendment by section 711(c)(2)(A)(iii) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 711(c)(2)(A)(v) of Pub. L. 98–369, set out as a note under section 165 of this title.

Amendment by section 1001(b)(15) of Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to property acquired and positions established by the taxpayer after June 23, 1981, in taxable years ending after such date, and applicable when so elected with respect to property held on June 23, 1981, see section 508 of Pub. L. 97–34, set out as an Effective Date note under section 1092 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(ee)(2) of Pub. L. 95–600 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to sales, exchanges, and contributions made after October 4, 1976.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(b)(1) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Section 1402(b)(2) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 212(b)(2) of Pub. L. 91–172 provided that: ''The amendments made by paragraph (1) [amending this sec-

tion] shall apply to livestock acquired after December 31, 1969.''

Amendment by section 514(b)(2) of Pub. L. 91–172 applicable to sales and other dispositions occurring after July 25, 1969, see section 514(c) of Pub. L. 91–172, set out as a note under section 1221 of this title.

Amendment by section 516(b) of Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 516(d)(2) of Pub. L. 91–172, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable with respect to amounts received or accrued in taxable years beginning after Dec. 31, 1963, attributable to iron ore mined in such years, see section 227(c) of Pub. L. 88–272, set out as a note under section 272 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 49(b) of Pub. L. 85–866 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1957.''

[§§ 1232 to 1232B. Repealed. Pub. L. 98–369, div. A, title I, § 42(a)(1), July 18, 1984, 98 Stat. 556]

Section 1232, acts Aug. 16, 1954, ch. 736, 68A Stat. 326; Sept. 2, 1958, Pub. L. 85–866, title I, §§ 50(a), 51, 72 Stat. 1642, 1643; June 25, 1959, Pub. L. 86–69, § 3(e), 73 Stat. 140; Sept. 2, 1964, Pub. L. 88–563, § 5, 78 Stat. 845; Dec. 30, 1969, Pub. L. 91–172, title IV, § 413(a), (b), 83 Stat. 609, 611; Oct. 4, 1976, Pub. L. 94–455, title XIV, § 1402(b)(1)(S), (2), title XIX, §§ 1901(b)(3)(I), (14)(D), 1904(b)(10)(C), 90 Stat. 1732, 1793, 1796, 1817; Aug. 13, 1981, Pub. L. 97–34, title V, § 505(b), 95 Stat. 331; Sept. 3, 1982, Pub. L. 97–248, title II, §§ 231(c), 232(b), title III, § 310(b)(6), 96 Stat. 499, 501, 599; Jan. 12, 1983, Pub. L. 97–448, title III, § 306(a)(9)(B), (C)(i), (ii), 96 Stat. 2403, 2404; July 18, 1984, Pub. L. 98–369, div. A, title X, § 1001(b)(16), (d), (e), 98 Stat. 1012, related to bonds and other evidences of indebtedness. See section 1271 et seq. of this title.

Section 1232A, added Pub. L. 97–248, title II, § 231(a), Sept. 3, 1982, 96 Stat. 496; amended Pub. L. 98–369, div. A, title II, § 211(b)(17), July 18, 1984, 98 Stat. 756, related to original issue discount. See section 1271 et seq. of this title.

Section 1232B, added Pub. L. 97–248, title II, § 232(a), Sept. 3, 1982, 96 Stat. 499, related to stripped bonds. See section 1286 of this title.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

§ 1233. Gains and losses from short sales

(a) Capital assets

For purposes of this subtitle, gain or loss from the short sale of property shall be considered as gain or loss from the sale or exchange of a capital asset to the extent that the property, including a commodity future, used to close the short sale constitutes a capital asset in the hands of the taxpayer.

(b) Short-term gains and holding periods

If gain or loss from a short sale is considered as gain or loss from the sale or exchange of a capital asset under subsection (a) and if on the date of such short sale substantially identical property has been held by the taxpayer for not more than 1 year (determined without regard to the effect, under paragraph (2) of this subsection, of such short sale on the holding period), or if substantially identical property is acquired by the taxpayer after such short sale and on or before the date of the closing thereof—

(1) any gain on the closing of such short sale shall be considered as a gain on the sale or exchange of a capital asset held for not more than 1 year (notwithstanding the period of time any property used to close such short sale has been held); and

(2) the holding period of such substantially identical property shall be considered to begin (notwithstanding section 1223, relating to the holding period of property) on the date of the closing of the short sale, or on the date of a sale, gift, or other disposition of such property, whichever date occurs first. This paragraph shall apply to such substantially identical property in the order of the dates of the acquisition of such property, but only to so much of such property as does not exceed the quantity sold short.

For purposes of this subsection, the acquisition of an option to sell property at a fixed price shall be considered as a short sale, and the exercise or failure to exercise such option shall be considered as a closing of such short sale.

(c) Certain options to sell

Subsection (b) shall not include an option to sell property at a fixed price acquired on the same day on which the property identified as intended to be used in exercising such option is acquired and which, if exercised, is exercised through the sale of the property so identified. If the option is not exercised, the cost of the option shall be added to the basis of the property with which the option is identified. This subsection shall apply only to options acquired after August 16, 1954.

(d) Long-term losses

If on the date of such short sale substantially identical property has been held by the taxpayer for more than 1 year, any loss on the closing of such short sale shall be considered as a loss on the sale or exchange of a capital asset held for more than 1 year (notwithstanding the period of time any property used to close such short sale has been held, and notwithstanding section 1234).

(e) Rules for application of section

(1) Subsection (b)(1) or (d) shall not apply to the gain or loss, respectively, on any quantity of property used to close such short sale which is in excess of the quantity of the substantially identical property referred to in the applicable subsection.

(2) For purposes of subsections (b) and (d)—

(A) the term ''property'' includes only stocks and securities (including stocks and securities dealt with on a ''when issued'' basis), and commodity futures, which are capital assets in the hands of the taxpayer, but does not include any position to which section 1092(b) applies;

(B) in the case of futures transactions in any commodity on or subject to the rules of a board of trade or commodity exchange, a commodity future requiring delivery in 1 calendar month shall not be considered as property substantially identical to another commodity future requiring delivery in a different calendar month;

(C) in the case of a short sale of property by an individual, the term ''taxpayer'', in the application of this subsection and subsections (b) and (d), shall be read as ''taxpayer or his spouse''; but an individual who is legally separated from the taxpayer under a decree of divorce or of separate maintenance shall not be considered as the spouse of the taxpayer;

(D) a securities futures contract (as defined in section 1234B) to acquire substantially identical property shall be treated as substantially identical property; and

(E) entering into a securities futures contract (as so defined) to sell shall be considered to be a short sale, and the settlement of such contract shall be considered to be the closing of such short sale.

(3) Where the taxpayer enters into 2 commodity futures transactions on the same day, one requiring delivery by him in one market and the other requiring delivery to him of the same (or substantially identical) commodity in the same calendar month in a different market, and the taxpayer subsequently closes both such transactions on the same day, subsections (b) and (d) shall have no application to so much of the commodity involved in either such transaction as does not exceed in quantity the commodity involved in the other.

(4)(A) In the case of a taxpayer who is a dealer in securities (within the meaning of section 1236)—

(i) if, on the date of a short sale of stock, substantially identical property which is a capital asset in the hands of the taxpayer has been held for not more than 1 year, and

(ii) if such short sale is closed more than 20 days after the date on which it was made,

subsection (b)(2) shall apply in respect of the holding period of such substantially identical property.

(B) For purposes of subparagraph (A)—

(i) the last sentence of subsection (b) applies; and

(ii) the term ''stock'' means any share or certificate of stock in a corporation, any bond or other evidence of indebtedness which is convertible into any such share or certificate, or any evidence of an interest in, or right to subscribe to or purchase, any of the foregoing.

(f) Arbitrage operations in securities

In the case of a short sale which had been entered into as an arbitrage operation, to which sale the rule of subsection (b)(2) would apply except as otherwise provided in this subsection—

(1) subsection (b)(2) shall apply first to substantially identical assets acquired for arbitrage operations held at the close of business on the day such sale is made, and only to the extent that the quantity sold short exceeds the substantially identical assets acquired for arbitrage operations held at the close of business on the day such sale is made, shall the holding period of any other such identical assets held by the taxpayer be affected;

(2) in the event that assets acquired for arbitrage operations are disposed of in such manner as to create a net short position in assets acquired for arbitrage operations, such net short position shall be deemed to constitute a short sale made on that day;

(3) for the purpose of paragraphs (1) and (2) of this subsection the taxpayer will be deemed as of the close of any business day to hold property which he is or will be entitled to receive or acquire by virtue of any other asset acquired for arbitrage operations or by virtue of any contract he has entered into in an arbitrage operation; and

(4) for the purpose of this subsection arbitrage operations are transactions involving the purchase and sale of assets for the purpose of profiting from a current difference between the price of the asset purchased and the price of the asset sold, and in which the asset purchased, if not identical to the asset sold, is such that by virtue thereof the taxpayer is, or will be, entitled to acquire assets identical to the assets sold. Such operations must be clearly identified by the taxpayer in his records as arbitrage operations on the day of the transaction or as soon thereafter as may be practicable. Assets acquired for arbitrage operations will include stocks and securities and the right to acquire stocks and securities.

(g) Hedging transactions

This section shall not apply in the case of a hedging transaction in commodity futures.

(h) Short sales of property which becomes substantially worthless

(1) In general

If—

(A) the taxpayer enters into a short sale of property, and

(B) such property becomes substantially worthless,

the taxpayer shall recognize gain in the same manner as if the short sale were closed when the property becomes substantially worthless. To the extent provided in regulations prescribed by the Secretary, the preceding sentence also shall apply with respect to any option with respect to property, any offsetting notional principal contract with respect to property, any futures or forward contract to deliver any property, and any other similar transaction.

(2) Statute of limitations

If property becomes substantially worthless during a taxable year and any short sale of such property remains open at the time such property becomes substantially worthless, then—

(A) the statutory period for the assessment of any deficiency attributable to any part of the gain on such transaction shall not expire before the earlier of—

(i) the date which is 3 years after the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) of the substantial worthlessness of such property, or

(ii) the date which is 6 years after the date the return for such taxable year is filed, and

(B) such deficiency may be assessed before the date applicable under subparagraph (A)

notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(Aug. 16, 1954, ch. 736, 68A Stat. 327; Aug. 12, 1955, ch. 871, §1, 69 Stat. 717; Pub. L. 85–866, title I, §52(a), (b), Sept. 2, 1958, 72 Stat. 1643, 1644; Pub. L. 94–455, title XIV, §1402(b)(1)(T), (2), title XIX, §1901(a)(137), Oct. 4, 1976, 90 Stat. 1732, 1787; Pub. L. 97–34, title V, §501(c), Aug. 13, 1981, 95 Stat. 326; Pub. L. 98–369, div. A, title X, §1001(b)(17), (e), July 18, 1984, 98 Stat. 1012; Pub. L. 105–34, title X, §1003(b)(1), Aug. 5, 1997, 111 Stat. 910; Pub. L. 106–554, §1(a)(7) [title IV, §401(f)], Dec. 21, 2000, 114 Stat. 2763, 2763A–649; Pub. L. 107–147, title IV, §412(d)(3)(A), Mar. 9, 2002, 116 Stat. 54.)

AMENDMENTS

2002—Subsec. (e)(2)(E). Pub. L. 107–147 added subpar. (E).

2000—Subsec. (e)(2)(D). Pub. L. 106–554 added subpar. (D).

1997—Subsec. (h). Pub. L. 105–34 added subsec. (h).

1984—Subsecs. (b), (d), (e)(4)(A)(i). Pub. L. 98–369 substituted ''6 months'' for ''1 year'' wherever appearing, applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

1981—Subsec. (e)(2)(A). Pub. L. 97–34 inserted '', but does not include any position to which section 1092(b) applies'' after ''taxpayer''.

1976—Subsec. (b). Pub. L. 94–455, §1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, §1402(b)(1)(T), (2), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

Subsec. (c). Pub. L. 94–455, §1901(a)(137), substituted ''August 16, 1954'' for ''the date of enactment of this title''.

Subsecs. (d), (e)(4)(A)(i). Pub. L. 94–455, §1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, §1402(b)(1)(T), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

1958—Subsec. (a). Pub. L. 85–866, §52(b), struck out '', other than a hedging transaction in commodity futures,'' after ''sale of property''.

Subsec. (e)(4). Pub. L. 85–866, §52(a), added par. (4).

Subsec. (g). Pub. L. 85–866, §52(b), added subsec. (g).

1955—Subsec. (f). Act Aug. 12, 1955, added subsec. (f).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Community Renewal Tax Relief Act of 2000 [H.R. 5662, as enacted by Pub. L. 106–554], to which such amendment relates, see section 412(e) of Pub. L. 107–147, set out as a note under section 151 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1003(b)(2) of Pub. L. 105–34 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to property which becomes substantially worthless after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to property acquired and positions established by the taxpayer after June 23, 1981, in taxable years ending after such date, and applicable when so elected with respect to property held on June 23, 1981, see section 508 of Pub. L. 97–34, set out as an Effective Date note under section 1092 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(b)(1) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Section 1402(b)(2) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Amendment by section 1901(a)(137) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 52(b) of Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

Section 52(c) of Pub. L. 85–866 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to short sales made after December 31, 1957.''

EFFECTIVE DATE OF 1955 AMENDMENT

Section 2 of act Aug. 12, 1955, provided that: ''The amendment made by the first section of this Act [amending this section] shall apply only with respect to taxable years ending after the date of the enactment of this Act [Aug. 12, 1955] and only in the case of a short sale of property made by the taxpayer after such date.''

§ 1234. Options to buy or sell

(a) Treatment of gain or loss in the case of the purchaser

(1) General rule

Gain or loss attributable to the sale or exchange of, or loss attributable to failure to exercise, an option to buy or sell property shall be considered gain or loss from the sale or exchange of property which has the same character as the property to which the option relates has in the hands of the taxpayer (or would have in the hands of the taxpayer if acquired by him).

(2) Special rule for loss attributable to failure to exercise option

For purposes of paragraph (1), if loss is attributable to failure to exercise an option, the option shall be deemed to have been sold or exchanged on the day it expired.

(3) Nonapplication of subsection

This subsection shall not apply to—

(A) an option which constitutes property described in paragraph (1) of section 1221(a);

(B) in the case of gain attributable to the sale or exchange of an option, any income derived in connection with such option which, without regard to this subsection, is treated as other than gain from the sale or exchange of a capital asset; and

(C) a loss attributable to failure to exercise an option described in section 1233(c).

(b) Treatment of grantor of option in the case of stock, securities, or commodities

(1) General rule

In the case of the grantor of the option, gain or loss from any closing transaction with re-

spect to, and gain on lapse of, an option in property shall be treated as a gain or loss from the sale or exchange of a capital asset held not more than 1 year.

(2) Definitions

For purposes of this subsection—

(A) Closing transaction

The term ''closing transaction'' means any termination of the taxpayer's obligation under an option in property other than through the exercise or lapse of the option.

(B) Property

The term ''property'' means stocks and securities (including stocks and securities dealt with on a ''when issued'' basis), commodities, and commodity futures.

(3) Nonapplication of subsection

This subsection shall not apply to any option granted in the ordinary course of the taxpayer's trade or business of granting options.

(c) Treatment of options on section 1256 contracts and cash settlement options

(1) Section 1256 contracts

Gain or loss shall be recognized on the exercise of an option on a section 1256 contract (within the meaning of section 1256(b)).

(2) Treatment of cash settlement options

(A) In general

For purposes of subsections (a) and (b), a cash settlement option shall be treated as an option to buy or sell property.

(B) Cash settlement option

For purposes of subparagraph (A), the term ''cash settlement option'' means any option which on exercise settles in (or could be settled in) cash or property other than the underlying property.

(Aug. 16, 1954, ch. 376, 68A Stat. 329; Pub. L. 85–866, title I, § 53, Sept. 2, 1958, 72 Stat. 1644; Pub. L. 89–809, title II, § 210(a), Nov. 13, 1966, 80 Stat. 1580; Pub. L. 94–455, title XIV, § 1402(b)(1)(U), (2), title XXI, § 2136(a), Oct. 4, 1976, 90 Stat. 1732, 1929; Pub. L. 98–369, div. A, title I, § 105(a), title X, § 1001(b)(18), (e), July 18, 1984, 98 Stat. 629, 1012; Pub. L. 106–170, title V, § 532(c)(1)(H), Dec. 17, 1999, 113 Stat. 1930.)

AMENDMENTS

1999—Subsec. (a)(3)(A). Pub. L. 106–170 substituted ''section 1221(a)'' for ''section 1221''.

1984—Subsec. (b)(1). Pub. L. 98–369, § 1001(b)(18), (e), substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsec. (c). Pub. L. 98–369, § 105(a), added subsec. (c).

1976—Subsec. (a). Pub. L. 94–455, § 2136(a), inserted in heading ''in the case of the purchaser''; designated existing provisions as par. ''(1) General rule'' and substituted ''an option'' and ''the option'' for ''a privilege or option'' and ''the option or privilege''; redesignated existing subsec. (b) as par. (2) and substituted ''an option'' and ''the option'' for ''a privilege or option'' and ''the privilege or option''; and redesignated existing subsec. (d)(1) to (3) as par. (3)(A) to (C) and substituted in heading and introductory text ''Nonapplication'' and ''subsection'' for ''Non-application'' and ''section'', in par. (3)(A) ''an option'' for ''a privilege or option'', in par. (3)(B) ''an option'', ''such option'' and ''subsection'' for ''a privilege or option'', ''such privilege or option'' and ''section'' and in par. (3)(C) substituted a period for ''; or''.

Subsec. (b). Pub. L. 94–455, § 2136(a), added subsec. (b), incorporating provisions of a prior subsec. (c) providing for a special rule for grantors of straddles, par. (1) relating to ''gain on lapse'' and reading ''In the case of gain on lapse of an option granted by the taxpayer as part of a straddle, the gain shall be deemed to be gain from the sale or exchange of a capital asset held for not more than 6 months on the day that the option expired.''; par. (2) relating to ''exception'' and reading ''This subsection shall not apply to any person who holds securities for sale to customers in the ordinary course of his trade or business.'', now covered in subsec. (b)(3); and par. (3) relating to definitions of ''straddle'' and ''security''.

Subsec. (b)(1). Pub. L. 94–455, § 1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, § 1402(b)(1)(U), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

Subsec. (c). Pub. L. 94–455, § 2136(a), struck out provision respecting special rule for grantors of straddles, the paragraphs relating to: (1) gain on lapse; (2) exception, now covered in subsec. (b)(3); and (3) definitions of ''straddle'' and ''security'', such provision now covered generally by subsec. (b) of this section.

Subsec. (d). Pub. L. 94–455, § 2136(a), struck out provision respecting non-application of section, pars. (1) to (3) now covered in subsec. (a)(3)(A) to (C) of this section, and par. (4) providing for such non-application to gain attributable to the sale or exchange of a privilege or option acquired by the taxpayer before Mar. 1, 1954, if in the hands of the taxpayer such privilege or option was a capital asset.

1966—Subsecs. (c), (d). Pub. L. 89–809 added subsec. (c) and redesignated former subsec. (c) as (d).

1958—Pub. L. 85–866 amended section generally and among other changes provided in subsec. (a) that gain or loss resulting from option to buy or sell property is to be considered gain or loss arising from property which has the same character as the property underlying the option, incorporated existing provisions in subsecs. (b) and (c)(3), and inserted provisions set out in subsec. (c)(1), (2), (4).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 105(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to options purchased or granted after October 31, 1983, in taxable years ending after such date.''

Amendment by section 1001(b)(18) of Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(b)(1) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Section 1402(b)(2) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Section 2136(b) of Pub. L. 94–455 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to options granted after September 1, 1976.''

EFFECTIVE DATE OF 1966 AMENDMENT

Section 210(b) of Pub. L. 89–809 provided that: ''The amendments made by subsection (a) [amending this

section] shall apply to straddle transactions entered into after January 25, 1965, in taxable years ending after such date.''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

§ 1234A. Gains or losses from certain terminations

Gain or loss attributable to the cancellation, lapse, expiration, or other termination of—

(1) a right or obligation (other than a securities futures contract, as defined in section 1234B) with respect to property which is (or on acquisition would be) a capital asset in the hands of the taxpayer, or

(2) a section 1256 contract (as defined in section 1256) not described in paragraph (1) which is a capital asset in the hands of the taxpayer,

shall be treated as gain or loss from the sale of a capital asset. The preceding sentence shall not apply to the retirement of any debt instrument (whether or not through a trust or other participation arrangement).

(Added Pub. L. 97–34, title V, §507(a), Aug. 13, 1981, 95 Stat. 333; amended Pub. L. 97–448, title I, §105(e), Jan. 12, 1983, 96 Stat. 2387; Pub. L. 98–369, div. A, title I, §102(e)(4), (9), July 18, 1984, 98 Stat. 624, 625; Pub. L. 105–34, title X, §1003(a)(1), Aug. 5, 1997, 111 Stat. 909; Pub. L. 106–554, §1(a)(7) [title IV, §401(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–648; Pub. L. 107–147, title IV, §412(d)(1)(A), Mar. 9, 2002, 116 Stat. 53.)

AMENDMENTS

2002—Pars. (1) to (3). Pub. L. 107–147 inserted ''or'' at end of par. (1), struck out ''or'' at end of par. (2), and struck out par. (3) which read as follows: ''a securities futures contract (as so defined) which is a capital asset in the hands of the taxpayer,''.

2000—Par. (1). Pub. L. 106–554, §1(a)(7) [title IV, §401(b)(1)], inserted ''(other than a securities futures contract, as defined in section 1234B)'' after ''right or obligation''.

Par. (3). Pub. L. 106–554, §1(a)(7) [title IV, §401(b)(2)–(4)], added par. (3).

1997—Par. (1). Pub. L. 105–34 substituted ''property'' for ''personal property (as defined in section 1092(d)(1))''.

1984—Pub. L. 98–369, §102(e)(9), inserted at end ''The preceding sentence shall not apply to the retirement of any debt instrument (whether or not through a trust or other participation arrangement).''

Par. (2). Pub. L. 98–369, §102(e)(4), substituted ''a section 1256 contract'' for ''a regulated futures contract''.

1983—Pub. L. 97–448 inserted reference to a regulated futures contract (as defined in section 1256) not described in paragraph (1) which is a capital asset in the hands of the taxpayer.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Community Renewal Tax Relief Act of 2000 [H.R. 5662, as enacted by Pub. L. 106–554], to which such amendment relates, see section 412(e) of Pub. L. 107–147, set out as a note under section 151 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1003(a)(2) of Pub. L. 105–34 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to terminations more than 30 days after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 102(e)(4) of Pub. L. 98–369 applicable to positions established after July 18, 1984, in taxable years ending after that date, except as otherwise provided, and amendment by section 102(e)(9) of Pub. L. 98–369, applicable as if included in the amendment made by section 507(a) of Pub. L. 97–34, as amended by section 105(e) of Pub. L. 97–448, see section 102(f), (g) of Pub. L. 98–369, set out as a note under section 1256 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to property acquired and positions established by the taxpayer after June 23, 1981, in taxable years ending after such date, and applicable when so elected with respect to property held on June 23, 1981, see section 508 of Pub. L. 97–34, set out as a note under section 1092 of this title.

§ 1234B. Gains or losses from securities futures contracts

(a) Treatment of gain or loss

(1) In general

Gain or loss attributable to the sale, exchange, or termination of a securities futures contract shall be considered gain or loss from the sale or exchange of property which has the same character as the property to which the contract relates has in the hands of the taxpayer (or would have in the hands of the taxpayer if acquired by the taxpayer).

(2) Nonapplication of subsection

This subsection shall not apply to—

(A) a contract which constitutes property described in paragraph (1) or (7) of section 1221(a), and

(B) any income derived in connection with a contract which, without regard to this subsection, is treated as other than gain from the sale or exchange of a capital asset.

(b) Short-term gains and losses

Except as provided in the regulations under section 1092(b) or this section, or in section 1233, if gain or loss on the sale, exchange, or termination of a securities futures contract to sell property is considered as gain or loss from the sale or exchange of a capital asset, such gain or loss shall be treated as short-term capital gain or loss.

(c) Securities futures contract

For purposes of this section, the term ''securities futures contract'' means any security future (as defined in section 3(a)(55)(A) of the Securities Exchange Act of 1934, as in effect on the date of the enactment of this section). The Secretary may prescribe regulations regarding the status of contracts the values of which are determined directly or indirectly by reference to any index which becomes (or ceases to be) a nar-

row-based security index (as defined for purposes of section 1256(g)(6)).

(d) Contracts not treated as commodity futures contracts

For purposes of this title, a securities futures contract shall not be treated as a commodity futures contract.

(e) Regulations

The Secretary shall prescribe such regulations as may be appropriate to provide for the proper treatment of securities futures contracts under this title.

(f) Cross reference

For special rules relating to dealer securities futures contracts, see section 1256.

(Added Pub. L. 106–554, § 1(a)(7) [title IV, § 401(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–648; amended Pub. L. 107–147, title IV, § 412(d)(1)(B), (3)(B), Mar. 9, 2002, 116 Stat. 53, 54; Pub. L. 108–311, title IV, § 405(a)(1), Oct. 4, 2004, 118 Stat. 1188.)

REFERENCES IN TEXT

Section 3(a)(55)(A) of the Securities Exchange Act of 1934, referred to in subsec. (c), is classified to section 78c(a)(55)(A) of Title 15, Commerce and Trade.

The date of the enactment of this section, referred to in subsec. (c), is the date of enactment of Pub. L. 106–554, which was approved Dec. 21, 2000.

CODIFICATION

Pub. L. 106–554, § 1(a)(7) [title IV, § 401(a)], which directed amendment of subpart IV of subchapter P of chapter 1 by adding this section after section 1234A, was executed by adding this section after 1234A of this part which is part IV of subchapter P of chapter 1, to reflect the probable intent of Congress.

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–311 inserted at end ''The Secretary may prescribe regulations regarding the status of contracts the values of which are determined directly or indirectly by reference to any index which becomes (or ceases to be) a narrow-based security index (as defined for purposes of section 1256(g)(6)).''

2002—Subsec. (a)(1). Pub. L. 107–147, § 412(d)(1)(B)(i), substituted ''sale, exchange, or termination of a securities futures contract'' for ''sale or exchange of a securities futures contract''.

Subsec. (b). Pub. L. 107–147, § 412(d)(1)(B)(i), (3)(B), inserted ''or in section 1233,'' after ''or this section,'' and substituted ''sale, exchange, or termination of a securities futures contract'' for ''sale or exchange of a securities futures contract''.

Subsec. (f). Pub. L. 107–147, § 412(d)(1)(B)(ii), added subsec. (f).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title IV, § 405(b), Oct. 4, 2004, 118 Stat. 1189, provided that: ''The amendments made by subsection (a) [amending this section and section 1256 of this title] shall take effect as if included in section 401 of the Community Renewal Tax Relief Act of 2000 [H.R. 5662, as enacted by section 1(a)(7) of Pub. L. 106–554, Dec. 21, 2000, 114 Stat. 2763, 2763A–587].''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Community Renewal Tax Relief Act of 2000 [H.R. 5662, as enacted by Pub. L. 106–554], to which such amendment relates, see section 412(e) of Pub. L. 107–147, set out as a note under section 151 of this title.

§ 1235. Sale or exchange of patents

(a) General

A transfer (other than by gift, inheritance, or devise) of property consisting of all substantial rights to a patent, or an undivided interest therein which includes a part of all such rights, by any holder shall be considered the sale or exchange of a capital asset held for more than 1 year, regardless of whether or not payments in consideration of such transfer are—

(1) payable periodically over a period generally coterminous with the transferee's use of the patent, or

(2) contingent on the productivity, use, or disposition of the property transferred.

(b) "Holder" defined

For purposes of this section, the term ''holder'' means—

(1) any individual whose efforts created such property, or

(2) any other individual who has acquired his interest in such property in exchange for consideration in money or money's worth paid to such creator prior to actual reduction to practice of the invention covered by the patent, if such individual is neither—

(A) the employer of such creator, nor

(B) related to such creator (within the meaning of subsection (d)).

(c) Effective date

This section shall be applicable with regard to any amounts received, or payments made, pursuant to a transfer described in subsection (a) in any taxable year to which this subtitle applies, regardless of the taxable year in which such transfer occurred.

(d) Related persons

Subsection (a) shall not apply to any transfer, directly or indirectly, between persons specified within any one of the paragraphs of section 267(b) or persons described in section 707(b); except that, in applying section 267(b) and (c) and section 707(b) for purposes of this section—

(1) the phrase ''25 percent or more'' shall be substituted for the phrase ''more than 50 percent'' each place it appears in section 267(b) or 707(b), and

(2) paragraph (4) of section 267(c) shall be treated as providing that the family of an individual shall include only his spouse, ancestors, and lineal descendants.

(e) Cross reference

For special rule relating to nonresident aliens, see section 871(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 329; Pub. L. 85–866, title I, § 54(a), Sept. 2, 1958, 72 Stat. 1644; Pub. L. 94–455, title XIV, § 1402(b)(1)(V), (2), Oct. 4, 1976, 90 Stat. 1732; Pub. L. 98–369, div. A, title I, § 174(b)(5)(C), title X, § 1001(b)(19), (e), July 18, 1984, 98 Stat. 707, 1012; Pub. L. 105–206, title V, § 5001(a)(5), title VI, § 6005(d)(4), July 22, 1998, 112 Stat. 788, 805.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–206, § 6005(d)(4), substituted ''18 months'' for ''1 year'' in introductory provisions.

Pub. L. 105–206, §5001(a)(5), substituted ''1 year'' for ''18 months'' in introductory provisions.

1984—Subsec. (a). Pub. L. 98–369, §1001(b)(19), (e), substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsec. (d). Pub. L. 98–369, §174(b)(5)(C), substituted ''section 267(b) or persons described in section 707(b)'' for ''section 267(b)'' and ''section 267(b) and (c) and section 707(b)'' for ''section 267(b) and (c)'' in introductory provisions, and substituted ''section 267(b) or 707(b)'' for ''section 267(b)'' in par. (1).

1976—Subsec. (a). Pub. L. 94–455, §1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, §1402(b)(1)(V), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

1958—Subsec. (d). Pub. L. 85–866 substituted provisions set out as subsec. (d) for provisions reading ''Subsection (a) shall not apply to any sale or exchange between an individual and any other related person (as defined in section 267(b)), except brothers and sisters, whether by the whole or half blood.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 5001 of Pub. L. 105–206 effective Jan. 1, 1998, see section 5001(b)(2) of Pub. L. 105–206, set out as a note under section 1 of this title.

Amendment by section 6000(d)(4) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 174(b)(5)(C) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1983, in taxable years ending after that date, see section 174(c)(2)(A) of Pub. L. 98–369, set out as a note under section 267 of this title.

Amendment by section 1001(b)(19) of Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(b)(1) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Section 1402(b)(2) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 54(b) of Pub. L. 85–866 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years ending after the date of the enactment of this Act [Sept. 2, 1958], but only with respect to transfers after such date.''

§ 1236. Dealers in securities

(a) Capital gains

Gain by a dealer in securities from the sale or exchange of any security shall in no event be considered as gain from the sale or exchange of a capital asset unless—

(1) the security was, before the close of the day on which it was acquired (or such earlier time as the Secretary may prescribe by regulations), clearly identified in the dealer's records as a security held for investment; and

(2) the security was not, at any time after the close of such day (or such earlier time), held by such dealer primarily for sale to customers in the ordinary course of his trade or business.

(b) Ordinary losses

Loss by a dealer in securities from the sale or exchange of any security shall, except as otherwise provided in section 582(c), (relating to bond, etc., losses of banks), in no event be considered as ordinary loss if at any time after November 19, 1951, the security was clearly identified in the dealer's records as a security held for investment.

(c) Definition of security

For purposes of this section, the term ''security'' means any share of stock in any corporation, certificate of stock or interest in any corporation, note, bond, debenture, or evidence of indebtedness, or any evidence of an interest in or right to subscribe to or purchase any of the foregoing.

(d) Special rule for floor specialists

(1) In general

In the case of a floor specialist (but only with respect to acquisitions, in connection with his duties on an exchange, of stock in which the specialist is registered with the exchange), subsection (a) shall be applied—

(A) by inserting ''the 7th business day following'' before ''the day'' the first place it appears in paragraph (1) and by inserting ''7th business'' before ''day'' in paragraph (2), and

(B) by striking the parenthetical phrase in paragraph (1).

(2) Floor specialist

The term ''floor specialist'' means a person who is—

(A) a member of a national securities exchange,

(B) is registered as a specialist with the exchange, and

(C) meets the requirements for specialists established by the Securities and Exchange Commission.

(e) Special rule for options

For purposes of subsection (a), any security acquired by a dealer pursuant to an option held by such dealer may be treated as held for investment only if the dealer, before the close of the day on which the option was acquired, clearly identified the option on his records as held for investment. For purposes of the preceding sentence, the term ''option'' includes the right to subscribe to or purchase any security.

(Aug. 16, 1954, ch. 736, 68A Stat. 330; Pub. L. 94–455, title XIX, §1901(b)(3)(E), Oct. 4, 1976, 90 Stat. 1793; Pub. L. 97–34, title V, §506, Aug. 13, 1981, 95 Stat. 332; Pub. L. 97–448, title I, §105(d)(1), Jan. 12, 1983, 96 Stat. 2387; Pub. L. 98–369, div. A, title I, §107(b), July 18, 1984, 98 Stat. 630.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98–369, §107(b)(1), substituted ''the security was, before the close of the day on which it was acquired (or such earlier time as the Secretary may prescribe by regulations), clearly identified in the dealer's records as a security held for invest-

ment; and'' for ''the security was, before the close of the day on which it was acquired (before the close of the following day in the case of an acquisition before January 1, 1982), clearly identified in the dealer's records as a security held for investment or if acquired before October 20, 1951, was so identified before November 20, 1951; and''.

Subsec. (a)(2). Pub. L. 98–369, § 107(b)(2), inserted ''(or such earlier time)'' after ''such day''.

1983—Subsec. (e). Pub. L. 97–448 added subsec. (e).

1981—Subsec. (a). Pub. L. 97–34, § 506(a), substituted ''before the close of the day on which it was acquired (before the close of the following day in the case of an acquisition before January 1, 1982)'' for ''before the expiration of the 30th day after the date of its acquisition'' in par. (1) and ''close of such day'' for ''expiration of such 30th day'' in par. (2).

Subsec. (d). Pub. L. 97–34, § 506(b), added subsec. (d).

1976—Subsec. (b). Pub. L. 94–455 substituted ''ordinary loss'' for ''loss from the sale or exchange of property which is not a capital asset''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to positions entered into after July 18, 1984, in taxable years ending after that date, see section 107(e) of Pub. L. 98–369, set out as a note under section 1092 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 105(d)(2) of Pub. L. 97–448 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to securities acquired after September 22, 1982, in taxable years ending after such date.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to property acquired by the taxpayer after Aug. 13, 1981, in taxable years ending after such date, and applicable when so elected with respect to property held on June 23, 1981, see section 508 of Pub. L. 97–34, set out as an Effective Date note under section 1092 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

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

§ 1237. Real property subdivided for sale

(a) General

Any lot or parcel which is part of a tract of real property in the hands of a taxpayer other than a C corporation shall not be deemed to be held primarily for sale to customers in the ordinary course of trade or business at the time of sale solely because of the taxpayer having subdivided such tract for purposes of sale or because of any activity incident to such subdivision or sale, if—

(1) such tract, or any lot or parcel thereof, had not previously been held by such taxpayer primarily for sale to customers in the ordinary course of trade or business (unless such tract at such previous time would have been covered by this section) and, in the same taxable year in which the sale occurs, such taxpayer does not so hold any other real property; and

(2) no substantial improvement that substantially enhances the value of the lot or parcel sold is made by the taxpayer on such tract while held by the taxpayer or is made pursuant to a contract of sale entered into between the taxpayer and the buyer. For purposes of this paragraph, an improvement shall be deemed to be made by the taxpayer if such improvement was made by—

(A) the taxpayer or members of his family (as defined in section 267(c)(4)), by a corporation controlled by the taxpayer, an S corporation which included the taxpayer as a shareholder, or by a partnership which included the taxpayer as a partner; or

(B) a lessee, but only if the improvement constitutes income to the taxpayer; or

(C) Federal, State, or local government, or political subdivision thereof, but only if the improvement constitutes an addition to basis for the taxpayer; and

(3) such lot or parcel, except in the case of real property acquired by inheritance or devise, is held by the taxpayer for a period of 5 years.

(b) Special rules for application of section

(1) Gains

If more than 5 lots or parcels contained in the same tract of real property are sold or exchanged, gain from any sale or exchange (which occurs in or after the taxable year in which the sixth lot or parcel is sold or exchanged) of any lot or parcel which comes within the provisions of paragraphs (1), (2) and (3) of subsection (a) of this section shall be deemed to be gain from the sale of property held primarily for sale to customers in the ordinary course of the trade or business to the extent of 5 percent of the selling price.

(2) Expenditures of sale

For the purpose of computing gain under paragraph (1) of this subsection, expenditures incurred in connection with the sale or exchange of any lot or parcel shall neither be allowed as a deduction in computing taxable income, nor treated as reducing the amount realized on such sale or exchange; but so much of such expenditures as does not exceed the portion of gain deemed under paragraph (1) of this subsection to be gain from the sale of property held primarily for sale to customers in the ordinary course of trade or business shall be so allowed as a deduction, and the remainder, if any, shall be treated as reducing the amount realized on such sale or exchange.

(3) Necessary improvements

No improvement shall be deemed a substantial improvement for purposes of subsection (a) if the lot or parcel is held by the taxpayer for a period of 10 years and if—

(A) such improvement is the building or installation of water, sewer, or drainage facilities or roads (if such improvement would except for this paragraph constitute a substantial improvement);

(B) it is shown to the satisfaction of the Secretary that the lot or parcel, the value of which was substantially enhanced by such improvement, would not have been marketable at the prevailing local price for similar building sites without such improvement; and

(C) the taxpayer elects, in accordance with regulations prescribed by the Secretary, to make no adjustment to basis of the lot or

parcel, or of any other property owned by the taxpayer, on account of the expenditures for such improvements. Such election shall not make any item deductible which would not otherwise be deductible.

(c) Tract defined

For purposes of this section, the term ''tract of real property'' means a single piece of real property, except that 2 or more pieces of real property shall be considered a tract if at any time they were contiguous in the hands of the taxpayer or if they would be contiguous except for the interposition of a road, street, railroad, stream, or similar property. If, following the sale or exchange of any lot or parcel from a tract of real property, no further sales or exchanges of any other lots or parcels from the remainder of such tract are made for a period of 5 years, such remainder shall be deemed a tract.

(Aug. 16, 1954, ch. 736, 68A Stat. 330; Apr. 27, 1956, ch. 214, §§1, 2, 70 Stat. 118; Pub. L. 85–866, title I, §55, Sept. 2, 1958, 72 Stat. 1645; Pub. L. 91–686, §2(a), Jan. 12, 1971, 84 Stat. 2071; Pub. L. 94–455, title XIX, §§1901(a)(138), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1787, 1834; Pub. L. 104–188, title I, §1314, Aug. 20, 1996, 110 Stat. 1785.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–188, §1314(a), substituted ''other than a C corporation'' for ''other than a corporation'' in introductory provisions.

Subsec. (a)(2)(A). Pub. L. 104–188, §1314(b), inserted ''an S corporation which included the taxpayer as a shareholder,'' after ''controlled by the taxpayer,''.

1976—Subsec. (b)(3)(B), (C). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d). Pub. L. 94–455, §1901(a)(138), struck out effective date provision making the section applicable only with respect to sales of property occurring after Dec. 31, 1953, except that for purposes of subsec. (c) defining tract of real property and for determining the number of sales under subsec. (b)(1) of this section, all sales of lots and parcels from any tract of real property during the period of 5 years before Dec. 31, 1953, shall be taken into account, except as provided in subsec. (c).

1971—Subsec. (a). Pub. L. 91–686, §2(a)(1), substituted ''other than a corporation'' for ''(including corporations only if no shareholder directly or indirectly holds real property for sale to customers in the ordinary course of trade or business and only in the case of property described in the last sentence of subsection (b)(3))''.

Subsec. (b). Pub. L. 91–686, §2(a)(2), struck out sentence which made subpars. (B) and (C) inapplicable in the case of property acquired through the foreclosure of a lien thereon which secured the payment of an indebtedness to the taxpayer or (in the case of a corporation) to a creditor who has transferred the foreclosure bid to the taxpayer in exchange for all of its stock and other consideration and in the case of property adjacent to such property if 80 percent of the real property owned by the taxpayer was property described in the first part of the sentence.

1958—Subsec. (a)(1). Pub. L. 85–866 substituted ''and, in the same taxable year'' for ''or, in the same taxable year''.

1956—Subsec. (a). Act Apr. 27, 1956, §1, substituted ''(including corporations only if no shareholder directly or indirectly holds real property for sale to customers in the ordinary course of trade or business and only in the case of property described in the last sentence of subsection (b)(3))'' for ''other than a corporation''.

Subsec. (b)(3). Act Apr. 27, 1956, §2, substituted ''water, sewer, or drainage facilities'' for ''water or sewer facilities'' in subpar. (A), and inserted provision at end that requirements of subpars. (B) and (C) do not apply to certain specified property.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1317(a) of Pub. L. 104–188, set out as a note under section 641 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(138) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 2(b) of Pub. L. 91–686 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective for taxable years beginning after the date of enactment of this Act [Jan. 12, 1971].''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Section 3 of act Apr. 27, 1956, provided that: ''This Act [amending this section] shall apply to all taxable years beginning after Dec. 31, 1954.''

SALES OR EXCHANGES BY CORPORATIONS OF REAL PROPERTY HELD MORE THAN 25 YEARS

Section 1 of Pub. L. 91–686, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided: ''That (a) for purposes of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] any lot or parcel of real property sold or exchanged by a corporation which would, but for this Act, be treated as property held primarily for sale to customers in the ordinary course of trade or business shall not, except to the extent provided in (b), be so treated if—

''(1) no shareholder of the corporation directly or indirectly holds real property primarily for sale to customers in the ordinary course of trade or business; and

''(2)(A) such lot or parcel is a part of real property (i) held for more than twenty-five years at the time of sale or exchange, and (ii) acquired before January 1, 1934, by the corporation as a result of the foreclosure of a lien (or liens) thereon which secured the payment of indebtedness held by one or more creditors who transferred one or more foreclosure bids to the corporation in exchange for all its stock (with or without other consideration), or

''(B)(i) such lot or parcel is a part of additional real property acquired before January 1, 1957, by the corporation in the near vicinity of any real property to which subparagraph (A) applies, or

''(ii) such lot or parcel is wholly or to some extent a part of any minor acquisition made after December 31, 1956, by the corporation to adjust boundaries, to fill gaps in previously acquired property, to facilitate the installation of streets, utilities, and other public facilities, or to facilitate the sale of adjacent property, or

''(iii) such lot or parcel is wholly or to some extent a part of a reacquisition by the corporation after December 31, 1956, of property previously owned by the corporation;

but only if at least 80 percent (as measured by area) of the real property sold or exchanged by the corporation within the taxable year is property described in subparagraph (A); and

''(3) there were no acquisitions of real property by the corporation after December 31, 1956, other than—

''(A) acquisitions described in paragraph (2)(B)(ii) and reacquisitions described in paragraph (2)(B)(iii), or

''(B) acquisitions of real property used in a trade or business of the corporation or held for investment by the corporation; and

''(4) the corporation did not after December 31, 1957, sell or exchange (except in condemnation or under threat of condemnation) any residential lot or parcel on which, at the time of the sale or exchange, there existed any substantial improvements (other than improvements in existence at the time the land was acquired by the corporation) except subdivision, clearing, grubbing, and grading, building or installation of water, sewer, and drainage facilities, construction of roads, streets, and sidewalks, and installation of utilities.''

In any case in which a corporation referred to in paragraphs (1), (2), (3), and (4) is a member of an affiliated group as defined in section 1504(a) of the Internal Revenue Code of 1986, such affiliated group shall, for purposes of such paragraphs, be treated as a single corporation.

''(b)(1) Gain from any sale or exchange described in subsection (a) shall be deemed, for purposes of such Code, to be gain from the sale of property held primarily for sale to customers in the ordinary course of trade or business to the extent of 5 percent of the selling price.

''(2) For the purpose of computing gain under paragraph (1), expenditures incurred in connection with the sale or exchange of any lot or parcel shall neither be allowed as a deduction in computing taxable income, nor treated as reducing the amount realized on such sale or exchange; but so much of such expenditures as does not exceed the portion of gain deemed under paragraph (1) to be gain from the sale of property held primarily for sale to customers in the ordinary course of trade or business shall be so allowed as a deduction, and the remainder, if any, shall be treated as reducing the amount realized on such sale or exchange.

''(c) The provisions of subsections (a) and (b) shall apply to taxable years beginning after December 31, 1957, and before January 1, 1984.''

[§ 1238. Repealed. Pub. L. 101–508, title XI, § 11801(a)(35), Nov. 5, 1990, 104 Stat. 1388–521]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 332; Oct. 4, 1976, Pub. L. 94–455, title XIX, §§ 1901(b)(3)(K), 1951(c)(2)(A), 90 Stat. 1793, 1840, related to amortization in excess of depreciation.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§ 1239. Gain from sale of depreciable property between certain related taxpayers

(a) Treatment of gain as ordinary income

In the case of a sale or exchange of property, directly or indirectly, between related persons, any gain recognized to the transferor shall be treated as ordinary income if such property is, in the hands of the transferee, of a character which is subject to the allowance for depreciation provided in section 167.

(b) Related persons

For purposes of subsection (a), the term ''related persons'' means—

(1) a person and all entities which are controlled entities with respect to such person,

(2) a taxpayer and any trust in which such taxpayer (or his spouse) is a beneficiary, unless such beneficiary's interest in the trust is a remote contingent interest (within the meaning of section 318(a)(3)(B)(i)), and

(3) except in the case of a sale or exchange in satisfaction of a pecuniary bequest, an executor of an estate and a beneficiary of such estate.

(c) Controlled entity defined

(1) General rule

For purposes of this section, the term ''controlled entity'' means, with respect to any person—

(A) a corporation more than 50 percent of the value of the outstanding stock of which is owned (directly or indirectly) by or for such person,

(B) a partnership more than 50 percent of the capital interest or profits interest in which is owned (directly or indirectly) by or for such person, and

(C) any entity which is a related person to such person under paragraph (3), (10), (11), or (12) of section 267(b).

(2) Constructive ownership

For purposes of this section, ownership shall be determined in accordance with rules similar to the rules under section 267(c) (other than paragraph (3) thereof).

(d) Employer and related employee association

For purposes of subsection (a), the term ''related person'' also includes—

(1) an employer and any person related to the employer (within the meaning of subsection (b)), and

(2) a welfare benefit fund (within the meaning of section 419(e)) which is controlled directly or indirectly by persons referred to in paragraph (1).

(e) Patent applications treated as depreciable property

For purposes of this section, a patent application shall be treated as property which, in the hands of the transferee, is of a character which is subject to the allowance for depreciation provided in section 167.

(Aug. 16, 1954, ch. 736, 68A Stat. 332; Pub. L. 85–866, title I, § 56, Sept. 2, 1958, 72 Stat. 1645; Pub. L. 94–455, title XXI, § 2129(a), Oct. 4, 1976, 90 Stat. 1922; Pub. L. 95–600, title VII, § 701(v)(1), Nov. 6, 1978, 92 Stat. 2920; Pub. L. 96–471, § 5, Oct. 19, 1980, 94 Stat. 2255; Pub. L. 97–448, title III, § 301, Jan. 12, 1983, 96 Stat. 2397; Pub. L. 98–369, div. A, title I, § 175(a), (b), title IV, § 421(b)(6)(A), title V, § 557(a), July 18, 1984, 98 Stat. 708, 794, 898; Pub. L. 99–514, title VI, § 642(a)(1)(A)–(C), Oct. 22, 1986, 100 Stat. 2283, 2284; Pub. L. 105–34, title XIII, § 1308(b), Aug. 5, 1997, 111 Stat. 1041.)

AMENDMENTS

1997—Subsec. (b)(3). Pub. L. 105–34 added par. (3).

1986—Subsec. (b)(1). Pub. L. 99–514, § 642(a)(1)(A), substituted ''controlled entities'' for ''80-percent owned entities''.

Subsec. (c). Pub. L. 99–514, § 642(a)(1)(B), (C), in heading, substituted ''Controlled entity'' for ''80-percent

owned entity'', in par. (1), in introductory provisions, substituted ''controlled entity'' for ''80-percent owned entity'', in subpar. (A), substituted ''more than 50 percent of the value'' for ''80 percent or more in value'', in subpar. (B), substituted ''more than 50 percent'' for ''80 percent or more'', and added subpar. (C), and amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''For purposes of subparagraphs (A) and (B) of paragraph (1), the principles of section 318 shall apply, except that—

''(A) the members of an individual's family shall consist only of such individual and such individual's spouse,

''(B) paragraph (2)(C) of section 318(a) shall be applied without regard to the 50-percent limitation contained therein, and

''(C) paragraph (3) of section 318(a) shall not apply.''

1984—Subsec. (b). Pub. L. 98–369, §421(b)(6), redesignated pars. (2) and (3) as (1) and (2), respectively. Former par. (1), defining a husband and wife as ''related persons'', was struck out.

Pub. L. 98–369, §175(b), amended subsec. (b) generally, adding par. (3).

Subsec. (d). Pub. L. 98–369, §557(a), added subsec. (d).

Subsec. (e). Pub. L. 98–369, §175(a), added subsec. (e).

1983—Subsec. (b). Pub. L. 97–448, §301(a), substituted provisions that ''related persons'' means (1) a husband and wife, and (2) a person and all entities which are 80-percent owned entities with respect to such person, for provisions which provided that ''related persons'' meant (1) the taxpayer and the taxpayer's spouse, (2) the taxpayer and an 80-percent owned entity, or (3) two 80-percent owned entities.

Subsec. (c)(1). Pub. L. 97–448, §301(b), inserted '', with respect to any person'' after ''means'' in introductory provisions and substituted ''such person'' for ''the taxpayer'' in subpars. (A) and (B).

Subsec. (c)(2). Pub. L. 97–448, §301(b), struck out ''and'' at end of subpar. (A), substituted ''paragraph (2)(C)'' for ''paragraphs (2)(C) and (3)(C)'' in subpar. (B), and added subpar. (C).

1980—Subsec. (b)(1). Pub. L. 96–471 substituted ''the taxpayer and the taxpayer's spouse'' for ''a husband and wife''.

Subsec. (b)(2). Pub. L. 96–471 substituted ''the taxpayer and an 80-percent owned entity, or'' for ''an individual and a corporation 80 percent or more in value of the outstanding stock of which is owned, directly or indirectly, by or for such individual, or''.

Subsec. (b)(3). Pub. L. 96–471 substituted ''two 80-percent owned entities'' for ''two or more corporations 80 percent or more in value of the outstanding stock of each of which is owned, directly or indirectly, by or for the same individual''.

Subsec. (c). Pub. L. 96–471 substituted provisions defining an ''80-percent owned entity'' for provisions relating to constructive ownership of stock.

1978—Subsec. (a). Pub. L. 95–600 substituted ''of a character which is subject to the allowance for depreciation provided in section 167'' for ''subject to the allowance for depreciation provided in section 167''.

1976—Pub. L. 94–455 substituted ''sale of depreciable property between certain related taxpayers'' for ''sale of certain property between spouses or between an individual and a controlled corporation'' in section catchline.

Subsec. (a). Pub. L. 94–455 substituted provisions for transactions between related persons for such transactions (1) between a husband and wife; or (2) between an individual and a corporation more than 80 percent in value of the outstanding stock of which is owned by such individual, his spouse, and his minor children and minor grandchildren and ''any gain recognized to the transferee shall be treated as ordinary income if such property is, in the hands of the transferee, subject to the allowance for depreciation provided in section 167'' for ''any gain recognized to the transferor from the sale or exchange of such property shall be considered as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231''.

Subsec. (b). Pub. L. 94–455 substituted definition of ''related persons'' for prior provision making section applicable only to sales or exchanges of depreciable property.

Subsec. (c). Pub. L. 94–455 substituted provision respecting constructive ownership of stock for prior provision making section inapplicable with respect to sales or exchanges made on or before May 3, 1951.

1958—Subsec. (c). Pub. L. 85–866 added subsec. (c).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to taxable years beginning after Aug. 5, 1997, see section 1308(c) of Pub. L. 105–34, set out as a note under section 267 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 642(c) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1006(i)(3), Nov. 10, 1988, 102 Stat. 3411, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 453 and 707 of this title] shall apply to sales after the date of the enactment of this Act [Oct. 22, 1986], in taxable years ending after such date.

''(2) TRANSITIONAL RULE FOR BINDING CONTRACTS.—The amendments made by this section shall not apply to sales made after August 14, 1986, which are made pursuant to a binding contract in effect on August 14, 1986, and at all times thereafter.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 175(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall apply to sales or exchanges after March 1, 1984, in taxable years ending after such date.''

Amendment by section 421(b)(6) of Pub. L. 98–369 applicable to transfers after July 18, 1984, in taxable years ending after such date, subject to election to have amendment apply to transfers after 1983 or to transfers pursuant to existing decrees, see section 421(d) of Pub. L. 98–369, set out as an Effective Date note under section 1041 of this title.

Section 557(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to sales or exchanges after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 applicable to dispositions made after Oct. 19, 1980, in taxable years ending after such date, see section 311(a) of Pub. L. 97–448, set out as a note under section 453 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(v)(2) of Pub. L. 95–600, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply as if included in the amendment made to section 1239 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] by section 2129(a) of the Tax Reform Act of 1976 [section 2129(a) of Pub. L. 94–455].''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2129(b) of Pub. L. 94–455 provided that: ''The amendment made by this section [amending this section] shall apply to sales or exchanges after the date of the enactment of this Act [Oct. 4, 1976]. For purposes of the preceding sentence, a sale or exchange is considered to have occurred on or before such date of enactment if such sale or exchange is made pursuant to a binding contract entered into on or before that date.''

[§ 1240. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(139), Oct. 4, 1976, 90 Stat. 1787]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 332, related to taxability to employee of termination payments.

EFFECTIVE DATE OF REPEAL

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

§ 1241. Cancellation of lease or distributor's agreement

Amounts received by a lessee for the cancellation of a lease, or by a distributor of goods for the cancellation of a distributor's agreement (if the distributor has a substantial capital investment in the distributorship), shall be considered as amounts received in exchange for such lease or agreement.

(Aug. 16, 1954, ch. 736, 68A Stat. 333.)

§ 1242. Losses on small business investment company stock

If—

(1) a loss is on stock in a small business investment company operating under the Small Business Investment Act of 1958, and

(2) such loss would (but for this section) be a loss from the sale or exchange of a capital asset,

then such loss shall be treated as an ordinary loss. For purposes of section 172 (relating to the net operating loss deduction) any amount of loss treated by reason of this section as an ordinary loss shall be treated as attributable to a trade or business of the taxpayer.

(Added Pub. L. 85–866, title I, § 57(a), Sept. 2, 1958, 72 Stat. 1645; amended Pub. L. 94–455, title XIX, § 1901(b)(3)(F), Oct. 4, 1976, 90 Stat. 1793.)

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in cl. (1), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§ 661 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 661 of Title 15 and Tables.

AMENDMENTS

1976—Pub. L. 94–455 substituted ''an ordinary loss'' for ''a loss from the sale or exchange of property which is not a capital asset'', each time appearing.

EFFECTIVE DATE OF 1976 AMENDMENT

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

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Sept. 2, 1958, see section 57(d) of Pub. L. 85–866, set out as an Effective Date of 1958 Amendment note under section 243 of this title.

§ 1243. Loss of small business investment company

In the case of a small business investment company operating under the Small Business Investment Act of 1958, if—

(1) a loss is on stock received pursuant to the conversion privilege of convertible debentures acquired pursuant to section 304 of the Small Business Investment Act of 1958, and

(2) such loss would (but for this section) be a loss from the sale or exchange of a capital asset,

then such loss shall be treated as an ordinary loss.

(Added Pub. L. 85–866, title I, § 57(a), Sept. 2, 1958, 72 Stat. 1645; amended Pub. L. 91–172, title IV, § 433(b), Dec. 30, 1969, 83 Stat. 624; Pub. L. 94–455, title XIX, § 1901(b)(3)(F), Oct. 4, 1976, 90 Stat. 1793.)

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in text, is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§ 661 et seq.) of Title 15, Commerce and Trade. Section 304 of the Small Business Investment Act of 1958, is classified to section 684 of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 661 of Title 15 and Tables.

AMENDMENTS

1976—Pub. L. 94–455 substituted ''an ordinary loss'' for ''a loss from the sale or exchange of property which is not a capital asset''.

1969—Par. (1). Pub. L. 91–172 substituted ''stock received pursuant to the conversion privilege of convertible debentures'' for ''convertible debentures (including stock received pursuant to the conversion privilege)''.

EFFECTIVE DATE OF 1976 AMENDMENT

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

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after July 11, 1969, see section 433(d) of Pub. L. 91–172, set out as a note under section 582 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Sept. 2, 1958, see section 57(d) of Pub. L. 85–866, set out as an Effective Date of 1958 Amendment note under section 243 of this title.

§ 1244. Losses on small business stock

(a) General rule

In the case of an individual, a loss on section 1244 stock issued to such individual or to a partnership which would (but for this section) be treated as a loss from the sale or exchange of a capital asset shall, to the extent provided in this section, be treated as an ordinary loss.

(b) Maximum amount for any taxable year

For any taxable year the aggregate amount treated by the taxpayer by reason of this section as an ordinary loss shall not exceed—

(1) $50,000, or

(2) $100,000, in the case of a husband and wife filing a joint return for such year under section 6013.

(c) Section 1244 stock defined

(1) In general

For purposes of this section, the term ''section 1244 stock'' means stock in a domestic corporation if—

(A) at the time such stock is issued, such corporation was a small business corporation,

(B) such stock was issued by such corporation for money or other property (other than stock and securities), and

(C) such corporation, during the period of its 5 most recent taxable years ending before the date the loss on such stock was sustained, derived more than 50 percent of its aggregate gross receipts from sources other than royalties, rents, dividends, interests, annuities, and sales or exchanges of stocks or securities.

(2) Rules for application of paragraph (1)(C)

(A) Period taken into account with respect to new corporations

For purposes of paragraph (1)(C), if the corporation has not been in existence for 5 taxable years ending before the date the loss on the stock was sustained, there shall be substituted for such 5-year period—

(i) the period of the corporation's taxable years ending before such date, or

(ii) if the corporation has not been in existence for 1 taxable year ending before such date, the period such corporation has been in existence before such date.

(B) Gross receipts from sales of securities

For purposes of paragraph (1)(C), gross receipts from the sales or exchanges of stock or securities shall be taken into account only to the extent of gains therefrom.

(C) Nonapplication where deductions exceed gross income

Paragraph (1)(C) shall not apply with respect to any corporation if, for the period taken into account for purposes of paragraph (1)(C), the amount of the deductions allowed by this chapter (other than by sections 172, 243, 244, and 245) exceeds the amount of gross income.

(3) Small business corporation defined

(A) In general

For purposes of this section, a corporation shall be treated as a small business corporation if the aggregate amount of money and other property received by the corporation for stock, as a contribution to capital, and as paid-in surplus, does not exceed $1,000,000. The determination under the preceding sentence shall be made as of the time of the issuance of the stock in question but shall include amounts received for such stock and for all stock theretofore issued.

(B) Amount taken into account with respect to property

For purposes of subparagraph (A), the amount taken into account with respect to any property other than money shall be the amount equal to the adjusted basis to the corporation of such property for determining gain, reduced by any liability to which the property was subject or which was assumed by the corporation. The determination under the preceding sentence shall be made as of the time the property was received by the corporation.

(d) Special rules

(1) Limitations on amount of ordinary loss

(A) Contributions of property having basis in excess of value

If—

(i) section 1244 stock was issued in exchange for property,

(ii) the basis of such stock in the hands of the taxpayer is determined by reference to the basis in his hands of such property, and

(iii) the adjusted basis (for determining loss) of such property immediately before the exchange exceeded its fair market value at such time,

then in computing the amount of the loss on such stock for purposes of this section the basis of such stock shall be reduced by an amount equal to the excess described in clause (iii).

(B) Increases in basis

In computing the amount of the loss on stock for purposes of this section, any increase in the basis of such stock (through contributions to the capital of the corporation, or otherwise) shall be treated as allocable to stock which is not section 1244 stock.

(2) Recapitalizations, changes in name, etc.

To the extent provided in regulations prescribed by the Secretary, stock in a corporation, the basis of which (in the hands of a taxpayer) is determined in whole or in part by reference to the basis in his hands of stock in such corporation which meets the requirements of subsection (c)(1) (other than subparagraph (C) thereof), or which is received in a reorganization described in section 368(a)(1)(F) in exchange for stock which meets such requirements, shall be treated as meeting such requirements. For purposes of paragraphs (1)(C) and (3)(A) of subsection (c), a successor corporation in a reorganization described in section 368(a)(1)(F) shall be treated as the same corporation as its predecessor.

(3) Relationship to net operating loss deduction

For purposes of section 172 (relating to the net operating loss deduction), any amount of loss treated by reason of this section as an ordinary loss shall be treated as attributable to a trade or business of the taxpayer.

(4) Individual defined

For purposes of this section, the term ''individual'' does not include a trust or estate.

(e) Regulations

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

(Added Pub. L. 85–866, title II, §202(b), Sept. 2, 1958, 72 Stat. 1676; amended Pub. L. 94–455, title XIX, §§1901(b)(1)(W), (3)(G), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1792, 1793, 1834; Pub. L. 95–600, title III, §345(a)–(d), Nov. 6, 1978, 92 Stat. 2844, 2845; Pub. L. 98–369, div. A, title IV, §481(a), July 18, 1984, 98 Stat. 847.)

AMENDMENTS

1984—Subsecs. (c)(1), (d)(2). Pub. L. 98–369 substituted ''stock in a'' for ''common stock in a''.

1978—Subsec. (b). Pub. L. 95–600, § 345(b), substituted in par. (1) ''$50,000'' for ''$25,000'' and in par. (2) ''$100,000'' for ''$50,000''.

Subsec. (c). Pub. L. 95–600, § 345(a), (c), among other changes, substituted provisions permitting a corporation to issue common stock under the provisions of this section without a written plan for provisions requiring that a written plan to issue section 1244 stock must be adopted by the issuing corporation and increased the amount of section 1244 stock that a qualified small business corporation may issue from $500,000 to $1,000,000.

Subsec. (d)(2). Pub. L. 95–600, § 345(d), substituted ''subparagraph (C)'' for ''subparagraph (E)'' and ''paragraphs (1)(C) and (3)(A)'' for ''paragraphs (1)(E) and (2)(A)''.

1976—Subsecs. (a), (b). Pub. L. 94–455, § 1901(b)(3)(G), substituted ''an ordinary loss'' for ''a loss from the sale or exchange of an asset which is not a capital asset''.

Subsec. (c)(1)(E). Pub. L. 94–455, § 1901(b)(1)(W), struck out reference to section 242 of this title.

Subsec. (d)(2). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d)(3). Pub. L. 94–455, § 1901(b)(3)(G), substituted ''an ordinary loss'' for ''a loss from the sale or exchange of an asset which is not a capital asset''.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 481(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to stock issued after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 345(e) of Pub. L. 95–600, as amended by Pub. L. 96–222, title I, § 103(a)(9), Apr. 1, 1980, 94 Stat. 212, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to stock issued after November 6, 1978.

''(2) SUBSECTION (b).—The amendments made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1978.

''(3) TRANSITIONAL RULE FOR SUBSECTION (b).—In the case of a taxable year which includes November 6, 1978, the amendments made by subsection (b) [amending this section] shall apply with respect to stock issued after such date.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(1)(W), (3)(G) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

§ 1245. Gain from dispositions of certain depreciable property

(a) General rule

(1) Ordinary income

Except as otherwise provided in this section, if section 1245 property is disposed of the amount by which the lower of—

(A) the recomputed basis of the property, or

(B)(i) in the case of a sale, exchange, or involuntary conversion, the amount realized, or

(ii) in the case of any other disposition, the fair market value of such property,

exceeds the adjusted basis of such property shall be treated as ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(2) Recomputed basis

For purposes of this section—

(A) In general

The term ''recomputed basis'' means, with respect to any property, its adjusted basis recomputed by adding thereto all adjustments reflected in such adjusted basis on account of deductions (whether in respect of the same or other property) allowed or allowable to the taxpayer or to any other person for depreciation or amortization.

(B) Taxpayer may establish amount allowed

For purposes of subparagraph (A), if the taxpayer can establish by adequate records or other sufficient evidence that the amount allowed for depreciation or amortization for any period was less than the amount allowable, the amount added for such period shall be the amount allowed.

(C) Certain deductions treated as amortization

Any deduction allowable under section 179, 179A, 179B, 179C, 179D, 179E, 181, 190, 193, or 194 shall be treated as if it were a deduction allowable for amortization.

(3) Section 1245 property

For purposes of this section, the term ''section 1245 property'' means any property which is or has been property of a character subject to the allowance for depreciation provided in section 167 and is either—

(A) personal property,

(B) other property (not including a building or its structural components) but only if such other property is tangible and has an adjusted basis in which there are reflected adjustments described in paragraph (2) for a period in which such property (or other property)—

(i) was used as an integral part of manufacturing, production, or extraction or of furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services,

(ii) constituted a research facility used in connection with any of the activities referred to in clause (i), or

(iii) constituted a facility used in connection with any of the activities referred to in clause (i) for the bulk storage of fungible commodities (including commodities in a liquid or gaseous state),

(C) so much of any real property (other than any property described in subparagraph (B)) which has an adjusted basis in which there are reflected adjustments for amortization under section 169, 179, 179A, 179B, 179C, 179D, 179E, 185,[1] 188 (as in effect before its repeal by the Revenue Reconciliation Act of 1990), 190, 193, or 194,[2]

(D) a single purpose agricultural or horticultural structure (as defined in section 168(i)(13)),

(E) a storage facility (not including a building or its structural components) used

[1] See References in Text note below.

[2] Comma added editorially.

in connection with the distribution of petroleum or any primary product of petroleum, or

(F) any railroad grading or tunnel bore (as defined in section 168(e)(4)).

(b) Exceptions and limitations

(1) Gifts

Subsection (a) shall not apply to a disposition by gift.

(2) Transfers at death

Except as provided in section 691 (relating to income in respect of a decedent), subsection (a) shall not apply to a transfer at death.

(3) Certain tax-free transactions

If the basis of property in the hands of a transferee is determined by reference to its basis in the hands of the transferor by reason of the application of section 332, 351, 361, 721, or 731, then the amount of gain taken into account by the transferor under subsection (a)(1) shall not exceed the amount of gain recognized to the transferor on the transfer of such property (determined without regard to this section). Except as provided in paragraph (6), this paragraph shall not apply to a disposition to an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by this chapter.

(4) Like kind exchanges; involuntary conversions, etc.

If property is disposed of and gain (determined without regard to this section) is not recognized in whole or in part under section 1031 or 1033, then the amount of gain taken into account by the transferor under subsection (a)(1) shall not exceed the sum of—

(A) the amount of gain recognized on such disposition (determined without regard to this section), plus

(B) the fair market value of property acquired which is not section 1245 property and which is not taken into account under subparagraph (A).

(5) Property distributed by a partnership to a partner

(A) In general

For purposes of this section, the basis of section 1245 property distributed by a partnership to a partner shall be deemed to be determined by reference to the adjusted basis of such property to the partnership.

(B) Adjustments added back

In the case of any property described in subparagraph (A), for purposes of computing the recomputed basis of such property the amount of the adjustments added back for periods before the distribution by the partnership shall be—

(i) the amount of the gain to which subsection (a) would have applied if such property had been sold by the partnership immediately before the distribution at its fair market value at such time, reduced by

(ii) the amount of such gain to which section 751(b) applied.

(6) Transfers to tax-exempt organization where property will be used in unrelated business

(A) In general

The second sentence of paragraph (3) shall not apply to a disposition of section 1245 property to an organization described in section 511(a)(2) or 511(b)(2) if, immediately after such disposition, such organization uses such property in an unrelated trade or business (as defined in section 513).

(B) Later change in use

If any property with respect to the disposition of which gain is not recognized by reason of subparagraph (A) ceases to be used in an unrelated trade or business of the organization acquiring such property, such organization shall be treated for purposes of this section as having disposed of such property on the date of such cessation.

(7) Timber property

In determining, under subsection (a)(2), the recomputed basis of property with respect to which a deduction under section 194 was allowed for any taxable year, the taxpayer shall not take into account adjustments under section 194 to the extent such adjustments are attributable to the amortizable basis of the taxpayer acquired before the 10th taxable year preceding the taxable year in which gain with respect to the property is recognized.

(8) Disposition of amortizable section 197 intangibles

(A) In general

If a taxpayer disposes of more than 1 amortizable section 197 intangible (as defined in section 197(c)) in a transaction or a series of related transactions, all such amortizable 197 intangibles shall be treated as 1 section 1245 property for purposes of this section.

(B) Exception

Subparagraph (A) shall not apply to any amortizable section 197 intangible (as so defined) with respect to which the adjusted basis exceeds the fair market value.

(c) Adjustments to basis

The Secretary shall prescribe such regulations as he may deem necessary to provide for adjustments to the basis of property to reflect gain recognized under subsection (a).

(d) Application of section

This section shall apply notwithstanding any other provision of this subtitle.

(Added Pub. L. 87–834, §13(a)(1), Oct. 16, 1962, 76 Stat. 1032; amended Pub. L. 88–272, title II, §203(d), Feb. 26, 1964, 78 Stat. 35; Pub. L. 91–172, title II, §212(a)(1), (2), title VII, §704(b)(4), Dec. 30, 1969, 83 Stat. 571, 670; Pub. L. 92–178, title I, §104(a)(2), title III, §303(c)(1), (2), Dec. 10, 1971, 85 Stat. 501, 522; Pub. L. 94–81, §2(a), Aug. 9, 1975, 89 Stat. 417; Pub. L. 94–455, title II, §212(b)(1), title XIX, §§1901(a)(140), (b)(3)(K), (11)(D), 1906(b)(13)(A), 1951(c)(2)(C), title XXI, §§2122(b)(3), 2124(a)(2), Oct. 4, 1976, 90 Stat. 1546, 1787, 1793, 1795, 1834, 1840, 1915, 1917; Pub. L. 95–600, title VII, §701(f)(3)(A), (B), (w)(1), (2), Nov. 6, 1978, 92 Stat. 2901, 2920; Pub. L. 96–223, title II,

§ 251(a)(2)(C), Apr. 2, 1980, 94 Stat. 287; Pub. L. 96–451, title III, § 301(c)(1), Oct. 14, 1980, 94 Stat. 1990; Pub. L. 97–34, title II, §§ 201(b), 202(b), 204(a)–(d), 212(d)(2)(F), Aug. 13, 1981, 95 Stat. 218, 220, 222, 223, 239; Pub. L. 97–448, title I, § 102(e)(2)(B), Jan. 12, 1983, 96 Stat. 2371; Pub. L. 98–369, div. A, title I, § 111(e)(5), (10), July 18, 1984, 98 Stat. 633; Pub. L. 99–121, title I, § 103(b)(1)(D), Oct. 11, 1985, 99 Stat. 509; Pub. L. 99–514, title II, § 201(d)(11), Oct. 22, 1986, 100 Stat. 2141; Pub. L. 100–647, title I, § 1002(i)(2)(I), Nov. 10, 1988, 102 Stat. 3371; Pub. L. 101–239, title VII, § 7622(b)(2)[(d)(2)], Dec. 19, 1989, 103 Stat. 2378; Pub. L. 101–508, title XI, §§ 11704(a)(13), 11801(c)(6)(E), (8)(H), 11813(b)(21), Nov. 5, 1990, 104 Stat. 1388–518, 1388–524, 1388–555; Pub. L. 103–66, title XIII, § 13261(f)(4), (5), Aug. 10, 1993, 107 Stat. 539; Pub. L. 104–7, § 2(b), Apr. 11, 1995, 109 Stat. 93; Pub. L. 104–188, title I, § 1703(n)(6), Aug. 20, 1996, 110 Stat. 1877; Pub. L. 105–34, title XVI, § 1604(a)(3), Aug. 5, 1997, 111 Stat. 1097; Pub. L. 108–357, title III, § 338(b)(5), title VIII, § 886(b)(2), Oct. 22, 2004, 118 Stat. 1481, 1641; Pub. L. 109–58, title XIII, §§ 1323(b)(1), 1331(b)(2), 1363(a), Aug. 8, 2005, 119 Stat. 1014, 1024, 1060; Pub. L. 109–135, title IV, §§ 402(a)(6), 403(e)(2), (i)(2), Dec. 21, 2005, 119 Stat. 2610, 2623, 2625; Pub. L. 109–432, div. A, title IV, § 404(b)(3), Dec. 20, 2006, 120 Stat. 2956.)

REFERENCES IN TEXT

Section 185 of this title, referred to in subsec. (a)(3)(C), was repealed by Pub. L. 99–514, title II, § 242(a), Oct. 22, 1986, 100 Stat. 2181.

The Revenue Reconciliation Act of 1990, referred to in subsec. (a)(3)(C), is title XI of Pub. L. 101–508, Nov. 5, 1990, 104 Stat. 1388–400. Section 11801(a)(13) of the Act repealed section 188 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1 of this title and Tables.

AMENDMENTS

2006—Subsec. (a)(2)(C), (3)(C). Pub. L. 109–432 inserted ''179E,'' after ''179D,''.

2005—Subsec. (a)(2)(C). Pub. L. 109–135, § 403(e)(2), (i)(2), inserted ''181,'' after ''179B,'' and substituted ''193, or 194'' for ''or 193''.

Pub. L. 109–58, § 1331(b)(2), inserted ''179D,'' after ''179C,''.

Pub. L. 109–58, § 1323(b)(1), inserted ''179C,'' after ''179B,''.

Subsec. (a)(3)(C). Pub. L. 109–58, § 1331(b)(2), inserted ''179D,'' after ''179C,''.

Pub. L. 109–58, § 1323(b)(1), inserted ''179C,'' after ''179B,''.

Subsec. (b)(3). Pub. L. 109–135, § 402(a)(6)(B), substituted ''paragraph (6)'' for ''paragraph (7)''.

Subsec. (b)(5) to (8). Pub. L. 109–135, § 402(a)(6)(A), redesignated pars. (6) to (9) as (5) to (8), respectively, and struck out heading and text of former par. (5). Text read as follows: ''Under regulations prescribed by the Secretary, rules consistent with paragraphs (3) and (4) of this subsection shall apply in the case of transactions described in section 1081 (relating to exchanges in obedience to SEC orders).''

Subsec. (b)(9). Pub. L. 109–135, § 402(a)(6)(A), redesignated par. (9) as (8).

Pub. L. 109–58, § 1363(a), added par. (9).

2004—Subsec. (a)(2)(C), (3)(C). Pub. L. 108–357, § 338(b)(5), inserted ''179B,'' after ''179A,''.

Subsec. (a)(4). Pub. L. 108–357, § 886(b)(2), struck out par. (4) which related to special rule for player contracts if a franchise to conduct any sports enterprise is sold or exchanged.

1997—Subsec. (a)(2)(C), (3)(C). Pub. L. 105–34 inserted ''179A,'' after ''179,''.

1996—Subsec. (a)(3). Pub. L. 104–188 reenacted heading without change and amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: ''For purposes of this section, the term 'section 1245 property' means any property which is or has been property of a character subject to the allowance for depreciation provided in section 167 (or subject to the allowance of amortization provided in)) and is either—''.

1995—Subsec. (b)(5). Pub. L. 104–7 struck out ''1071 and'' before ''1081 transactions'' in heading and ''section 1071 (relating to gain from sale or exchange to effectuate policies of FCC) or'' before ''section 1081'' in text.

1993—Subsec. (a)(2)(C). Pub. L. 103–66, § 13261(f)(4), substituted ''or 193'' for ''193, or 1253(d)(2) or (3)''.

Subsec. (a)(3). Pub. L. 103–66, § 13261(f)(5), struck out ''section 185 or 1253(d)(2) or (3)'' after ''amortization provided in'' in introductory provisions.

1990—Subsec. (a)(3). Pub. L. 101–508, § 11704(a)(13), substituted ''or (3))'' for ''or (3)'' in introductory provisions.

Subsec. (a)(3)(C). Pub. L. 101–508, § 11801(c)(6)(E), substituted ''188 (as in effect before its repeal by the Revenue Reconciliation Act of 1990),'' for ''188,''.

Subsec. (a)(3)(D). Pub. L. 101–508, § 11813(b)(21), substituted ''section 168(i)(13)'' for ''section 48(p)''.

Subsec. (b)(3). Pub. L. 101–508, § 11801(c)(8)(H), struck out ''371(a), 374(a),'' after ''332, 351, 361,''.

1989—Subsec. (a)(2)(C). Pub. L. 101–239, § 7622(b)(2)(A)[(d)(2)(A)], substituted ''193, or 1253(d)(2) or (3)'' for ''or 193''.

Subsec. (a)(3). Pub. L. 101–239, § 7622(b)(2)(B)[(d)(2)(B)], substituted ''section 185 or 1253(d)(2) or (3)'' for ''section 185'' in introductory provisions.

1988—Subsec. (a)(3)(F). Pub. L. 100–647 added subpar. (F).

1986—Subsec. (a)(1). Pub. L. 99–514, § 201(d)(11)(A), struck out ''during a taxable year beginning after December 31, 1962, or section 1245 recovery property is disposed of after December 31, 1980,'' after ''if section 1245 property is disposed of''.

Subsec. (a)(2). Pub. L. 99–514, § 201(d)(11)(B), amended par. (2) generally, restating former subpars. (A) to (E) and concluding provisions as subpars. (A) to (C).

Subsec. (a)(3). Pub. L. 99–514, § 201(d)(11)(C), redesignated subpars. (D), (E), and (F) as (C), (D), and (E), respectively, and struck out former subpar. (C) which read as follows: ''an elevator or an escalator''.

Subsec. (a)(5), (6). Pub. L. 99–514, § 201(d)(11)(D), struck out par. (5) which defined ''section 1245 recovery property'' and par. (6) which provided special rule for qualified leased property.

1985—Subsec. (a)(5)(A) to (C). Pub. L. 99–121 substituted ''19-year real property'' for ''18-year real property''.

1984—Subsec. (a)(5)(A) to (C). Pub. L. 98–369, § 111(e)(5), substituted ''18-year real property and low-income housing'' for ''15-year real property''.

Subsec. (d)(5)(D). Pub. L. 98–369, § 111(e)(10), substituted ''low-income housing (within the meaning of section 168(c)(2)(F))'' for ''15-year real property which is described in clause (i), (ii), (iii), or (iv) of section 1250(a)(1)(B)''.

1983—Subsec. (a)(3)(F). Pub. L. 97–448 inserted ''(not including a building or its structural components)'' after ''a storage facility''.

1981—Subsec. (a)(1). Pub. L. 97–34, § 204(a), inserted reference to section 1245 recovery property disposed of after Dec. 31, 1980, in introductory provisions.

Subsec. (a)(2). Pub. L. 97–34, §§ 202(b)(1)–(3), 204(b), inserted reference to section 179 in subpar. (D), added subpar. (E), and, in provisions following subpar. (E), and inserted references to section 179 in three places. Pub. L. 97–34, § 212(d)(2)(F), in provisions following subpar. (E), substituted ''191 (as in effect before its repeal by the Economic Recovery Tax Act of 1981)'' for ''191'' in two places.

Subsec. (a)(3)(D). Pub. L. 97–34, § 202(b)(3), inserted reference to section 179.

Subsec. (a)(3)(E), (F). Pub. L. 97–34, § 201(b), added subpars. (E) and (F).

Subsec. (a)(5). Pub. L. 97–34, § 204(c), added par. (5).
Subsec. (a)(6). Pub. L. 97–34, § 204(d), added par. (6).
1980—Subsec. (a)(2). Pub. L. 96–451, § 301(c)(1)(A), (B), inserted references to section 194 in subpar. (D) and text following subpar. (D).
Pub. L. 96–223, § 251(a)(2)(C)(i)–(iii), inserted references to section 193 in subpar. (D) and text following subpar. (D).
Subsec. (a)(3)(D). Pub. L. 96–451, § 301(c)(1)(B), inserted reference to section 194.
Pub. L. 96–223, § 251(a)(2)(C)(i), inserted reference to section 193.
Subsec. (b)(8). Pub. L. 96–451, § 301(c)(1)(C), added par. (8).
1978—Subsec. (a)(2). Pub. L. 95–600, § 701(f)(3)(A), struck out from the listed sections in subpar. (D) reference to 191 and inserted ''(in the case of property described in paragraph (3)(C))'' before ''191'' in two places in next to last sentence.
Subsec. (a)(3)(D). Pub. L. 95–600, § 701(f)(3)(B), struck out reference to section 191.
Subsec. (a)(4)(B). Pub. L. 95–600, § 701(w)(2), inserted ''attributable to periods after December 31, 1975,'' after ''for the depreciation'', ''incurred after December 31, 1975,'' after ''allowable for losses'', and ''described in clause (i)'' after ''of the amounts''.
Subsec. (a)(4)(C). Pub. L. 95–600, § 701(w)(1), struck out provisions relating to the aggregate of the amounts treated as ordinary income.
1976—Subsec. (a)(1). Pub. L. 94–455, § 1901(b)(3)(K), substituted ''ordinary income'' for ''gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231''.
Subsec. (a)(2)(D). Pub. L. 94–455, §§ 2122(b)(3)(B), 2124(a)(2), inserted reference to sections 190 and 191.
Subsec. (a)(2) foll. (D). Pub. L. 94–455, §§ 1901(b)(11)(D), 1951(c)(2)(C), 2122(b)(3)(A), (C), 2124(a)(2), in text following subpar. (D): struck out reference to section 187 in two places; inserted ''(as in effect before its repeal by the Tax Reform Act of 1976),'' after ''section 168,'' in two places; inserted provision for treatment for purposes of this section of any deduction allowable under section 190 as if it were a deduction allowable for amortization; and inserted reference to section 191 in two places, respectively.
Subsec. (a)(3)(D). Pub. L. 94–455, §§ 2122(b)(3)(A), 2124(a)(2), inserted reference to sections 190 and 191.
Subsec. (a)(4). Pub. L. 94–455, § 212(b)(1), added par. (4).
Subsec. (b)(5). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.
Subsec. (b)(7)(B). Pub. L. 94–455, § 1901(a)(140), struck out ''such organization acquiring such property,'' before ''such organization''.
Subsec. (c). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.
1975—Subsec. (b)(3), (7). Pub. L. 94–81, § 2(a)(1), (2), inserted reference to par. (7) in par. (3), and added par. (7).
1971—Subsec. (a)(2). Pub. L. 92–178, § 303(c)(1), inserted reference to section 188 in two places in text following subpar. (D).
Subsec. (a)(3)(B)(ii), (iii). Pub. L. 92–178, § 104(a)(2), substituted ''research facility'' for ''research or storage facility'' in cl. (ii) and added cl. (iii).
Subsec. (a)(3)(D). Pub. L. 92–178, § 303(c)(2), inserted reference to section 188.
1969—Subsec. (a)(2). Pub. L. 91–172, §§ 212(a)(1), 704(b)(4)(A), (B), added subpar. (C) and inserted references to sections 169, 185, and 187, and added subpar. (D).
Subsec. (a)(3). Pub. L. 91–172, §§ 212(a)(2), 704(b)(4)(C)–(F), struck out ''(other than livestock)'' after ''means any property'' and substituted ''section 167 (or subject to the allowance of amortization provided in section 185)'' for ''section 167'' and added subpar. (D).
1964—Subsec. (a)(2), (3)(C). Pub. L. 88–272 redefined ''recomputed basis'' with respect to elevators or escalators in par. (2), and inserted subpar. (C) in par. (3).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–432 applicable to costs paid or incurred after Dec. 20, 2006, see section 404(c) of Pub. L. 109–432, set out as an Effective Date note under section 179E of this title.

EFFECTIVE DATE OF 2005 AMENDMENTS

Amendment by section 402(a)(6) of Pub. L. 109–135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which it relates, but not applicable with respect to any transaction ordered in compliance with the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) before its repeal, see section 402(m) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 36C of this title.
Amendments by section 403(e)(2), (i)(2) of Pub. L. 109–135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which they relate, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.
Amendment by section 1323(b)(1) of Pub. L. 109–58 applicable to properties placed in service after Aug. 8, 2005, see section 1323(c) of Pub. L. 109–58, set out as an Effective Date note under section 179C of this title.
Amendment by section 1331(b)(2) of Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, see section 1331(d) of Pub. L. 109–58, set out as an Effective Date note under section 179D of this title.
Pub. L. 109–58, title XIII, § 1363(b), Aug. 8, 2005, 119 Stat. 1060, provided that: ''The amendment made by this section [amending this section] shall apply to dispositions of property after the date of the enactment of this Act [Aug. 8, 2005].''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 338(b)(5) of Pub. L. 108–357 applicable to expenses paid or incurred after Dec. 31, 2002, in taxable years ending after such date, see section 338(c) of Pub. L. 108–357, set out as an Effective Date note under section 179B of this title.
Amendment by section 886(b)(2) of Pub. L. 108–357 applicable to franchises acquired after Oct. 22, 2004, see section 886(c)(2) of Pub. L. 108–357, set out as a note under section 197 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective as if included in the amendments made by section 1913 of the Energy Policy Act of 1992, Pub. L. 102–486, see section 1604(a)(4) of Pub. L. 105–34, set out as a note under section 263 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§ 13001–13444, to which such amendment relates, see section 1703(*o*) of Pub. L. 104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–7 applicable to sales and exchanges on or after January 17, 1995, and to sales and exchanges before such date if FCC tax certificate with respect to such sale or exchange was issued on or after such date, but not applicable with respect to certain binding contracts, see section 2(d) of Pub. L. 104–7, set out as an Effective Date of Repeal note under section 1071 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable, except as otherwise provided, with respect to property acquired after Aug. 10, 1993, see section 13261(g) of Pub. L. 103–66, set out as an Effective Date note under section 197 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11813(b)(21) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as

defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to transfers after Oct. 2, 1989, but not applicable to any transfer pursuant to a written binding contract in effect on Oct. 2, 1989, and at all times thereafter before the transfer, see section 7622(c)[(e)] of Pub. L. 101–239, set out as a note under section 167 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

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

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

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–121 applicable with respect to property placed in service by the taxpayer after May 8, 1985, with specified exceptions, see section 105(b) of Pub. L. 99–121, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to property placed in service by the taxpayer after Mar. 15, 1984, subject to certain exceptions, see section 111(g) of Pub. L. 98–369, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by sections 201(b), 202(b), and 204(a)–(d) of Pub. L. 97–34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, see section 209(a) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

Amendment by section 212(d)(2)(F) of Pub. L. 97–34 applicable to expenditures incurred after Dec. 31, 1981, in taxable years ending after such date, see section 212(e) of Pub. L. 97–34, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–451 applicable with respect to additions to capital account made after Dec. 31, 1979, see section 301(d) of Pub. L. 96–451, set out as an Effective Date note under section 194 of this title.

Amendment by Pub. L. 96–223 applicable to taxable years beginning after Dec. 31, 1979, see section 251(b) of Pub. L. 96–223, set out as an Effective Date note under section 193 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 701(f)(3)(A), (B) of Pub. L. 95–600 effective as if included within the amendment of subsec. (a)(2), (3)(D) by section 2124 of Pub. L. 94–455, see section 701(f)(8) of Pub. L. 95–600, set out as an Effective and Termination Dates of 1978 Amendments note under section 167 of this title.

Section 701(w)(3) of Pub. L. 95–600 provided that: ''The amendments made by this subsection [amending this section] shall apply to transfers of player contracts in connection with any sale or exchange of a franchise after December 31, 1975.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 212(b)(2) of Pub. L. 94–455 provided that: ''The amendment made by this subsection [amending this section] applies to transfers of player contracts in connection with any sale or exchange of a franchise after December 31, 1975.''

Amendment by section 1901(a)(140), (b)(3)(K), (11)(D) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 1951(c)(2)(C) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1976, see section 1951(d) of Pub. L. 94–455, set out as a note under section 72 of this title.

Amendment by section 2122(b)(3) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1976, see section 2122(c) of Pub. L. 94–455, as amended, set out as an Effective Date note under section 190 of this title.

Amendment by section 2124(a)(2) of Pub. L. 94–455 applicable with respect to additions to capital account made after June 14, 1976 and before June 15, 1981, see section 2124(a)(4) of Pub. L. 94–455, set out as an Effective Date note under section 642 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–81 applicable to dispositions after Dec. 31, 1969, in taxable years ending after such date, with special provision for an election in the case of dispositions occurring before Aug. 9, 1975, see section 2(c) of Pub. L. 94–81, set out as a note under section 1250 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by section 104(a)(2) of Pub. L. 92–178 applicable to property described in section 50 of this title relating to restoration of credit, see section 104(h) of Pub. L. 92–178, set out as a note under section 48 of this title.

Amendment by section 303(c)(1), (2) of Pub. L. 92–178 applicable to taxable years ending after Dec. 31, 1971, see section 303(d) of Pub. L. 92–178, set out as a note under section 642 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 212(a)(3) of Pub. L. 91–172 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section] shall apply with respect to taxable years beginning after December 31, 1969.''

Amendment by section 704(b)(4) of Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1968, see section 704(c) of Pub. L. 91–172, set out as a note under section 169 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable with respect to dispositions after Dec. 31, 1963, in taxable years ending after such date, see section 203(f)(3) of Pub. L. 88–272, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section 13(g) of Pub. L. 87–834 provided that: ''The amendments made by this section [enacting this section and amending sections 167, 170, 301, 312, 341, 453, 613, and 751 of this title] (other than the amendments made by subsection (c) [amending sections 167, 179, and

642 of this title]) shall apply to taxable years beginning after December 31, 1962. The amendments made by subsection (c) shall apply to taxable years beginning after December 31, 1961, and ending after the date of the enactment of this Act [Oct. 16, 1962].''

SAVINGS PROVISION

For provisions that nothing in amendment by sections 11801 and 11813 of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[§§ 1246, 1247. Repealed. Pub. L. 108–357, title IV, § 413(a)(2), (3), Oct. 22, 2004, 118 Stat. 1506]

Section 1246, added Pub. L. 87–834, § 14(a)(1), Oct. 16, 1962, 76 Stat. 1036; amended Pub. L. 94–455, title XIV, § 1402(b)(1)(W), (2), title XIX, §§ 1901(a)(141), (b)(3)(I), (32)(B)(ii), 1906(b)(13)(A), title XX, § 2005(a)(5), Oct. 4, 1976, 90 Stat. 1732, 1787, 1793, 1800, 1834, 1877; Pub. L. 96–223, title IV, § 401(a), Apr. 2, 1980, 94 Stat. 299; Pub. L. 97–34, title VIII, § 832(a), Aug. 13, 1981, 95 Stat. 355; Pub. L. 98–369, div. A, title I, § 134(a), title X, § 1001(b)(20), (e), July 18, 1984, 98 Stat. 668, 1012; Pub. L. 99–514, title XII, § 1235(b), Oct. 22, 1986, 100 Stat. 2574; Pub. L. 100–647, title I, §§ 1012(p)(21), 1018(*o*)(2), Nov. 10, 1988, 102 Stat. 3519, 3585; Pub. L. 107–16, title V, § 542(e)(5)(A), June 7, 2001, 115 Stat. 85; Pub. L. 111–312, title III, § 301(a), Dec. 17, 2010, 124 Stat. 3300, related to treatment of gain on foreign investment company stock.

Section 1247, added Pub. L. 87–834, § 14(a)(1), Oct. 16, 1962, 76 Stat. 1037; amended Pub. L. 94–455, title XIV, § 1402(b)(1)(X), (2), title XIX, §§ 1901(b)(33)(P), (R), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1732, 1802, 1834; Pub. L. 98–369, div. A, title X, § 1001(b)(21), (e), July 18, 1984, 98 Stat. 1012, related to election by foreign investment companies to distribute income currently.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

§ 1248. Gain from certain sales or exchanges of stock in certain foreign corporations

(a) General rule

If—

(1) a United States person sells or exchanges stock in a foreign corporation, and

(2) such person owns, within the meaning of section 958(a), or is considered as owning by applying the rules of ownership of section 958(b), 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such foreign corporation at any time during the 5-year period ending on the date of the sale or exchange when such foreign corporation was a controlled foreign corporation (as defined in section 957),

then the gain recognized on the sale or exchange of such stock shall be included in the gross income of such person as a dividend, to the extent of the earnings and profits of the foreign corporation attributable (under regulations prescribed by the Secretary) to such stock which were accumulated in taxable years of such foreign corporation beginning after December 31, 1962, and during the period or periods the stock sold or exchanged was held by such person while such foreign corporation was a controlled foreign corporation. For purposes of this section, a United States person shall be treated as having sold or exchanged any stock if, under any provision of this subtitle, such person is treated as realizing gain from the sale or exchange of such stock.

(b) Limitation on tax applicable to individuals

In the case of an individual, if the stock sold or exchanged is a capital asset (within the meaning of section 1221) and has been held for more than 1 year, the tax attributable to an amount included in gross income as a dividend under subsection (a) shall not be greater than a tax equal to the sum of—

(1) a pro rata share of the excess of—

(A) the taxes that would have been paid by the foreign corporation with respect to its income had it been taxed under this chapter as a domestic corporation (but without allowance for deduction of, or credit for, taxes described in subparagraph (B)), for the period or periods the stock sold or exchanged was held by the United States person in taxable years beginning after December 31, 1962, while the foreign corporation was a controlled foreign corporation, adjusted for distributions and amounts previously included in gross income of a United States shareholder under section 951, over

(B) the income, war profits, or excess profits taxes paid by the foreign corporation with respect to such income; and

(2) an amount equal to the tax that would result by including in gross income, as gain from the sale or exchange of a capital asset held for more than 1 year, an amount equal to the excess of (A) the amount included in gross income as a dividend under subsection (a), over (B) the amount determined under paragraph (1).

(c) Determination of earnings and profits

(1) In general

Except as provided in section 312(k)(4), for purposes of this section, the earnings and profits of any foreign corporation for any taxable year shall be determined according to rules substantially similar to those applicable to domestic corporations, under regulations prescribed by the Secretary.

(2) Earnings and profits of subsidiaries of foreign corporations

If—

(A) subsection (a) or (f) applies to a sale, exchange, or distribution by a United States person of stock of a foreign corporation and, by reason of the ownership of the stock sold or exchanged, such person owned within the meaning of section 958(a)(2) stock of any other foreign corporation; and

(B) such person owned, within the meaning of section 958(a), or was considered as owning by applying the rules of ownership of section 958(b), 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such other foreign cor-

poration at any time during the 5-year period ending on the date of the sale or exchange when such other foreign corporation was a controlled foreign corporation (as defined in section 957),

then, for purposes of this section, the earnings and profits of the foreign corporation the stock of which is sold or exchanged which are attributable to the stock sold or exchanged shall be deemed to include the earnings and profits of such other foreign corporation which—

(C) are attributable (under regulations prescribed by the Secretary) to the stock of such other foreign corporation which such person owned within the meaning of section 958(a)(2) (by reason of his ownership within the meaning of section 958(a)(1)(A) of the stock sold or exchanged) on the date of such sale or exchange (or on the date of any sale or exchange of the stock of such other foreign corporation occurring during the 5-year period ending on the date of the sale or exchange of the stock of such foreign corporation, to the extent not otherwise taken into account under this section but not in excess of the fair market value of the stock of such other foreign corporation sold or exchanged over the basis of such stock (for determining gain) in the hands of the transferor); and

(D) were accumulated in taxable years of such other corporation beginning after December 31, 1962, and during the period or periods—

(i) such other corporation was a controlled foreign corporation, and

(ii) such person owned within the meaning of section 958(a) the stock of such other foreign corporation.

(d) Exclusions from earnings and profits

For purposes of this section, the following amounts shall be excluded, with respect to any United States person, from the earnings and profits of a foreign corporation:

(1) Amounts included in gross income under section 951

Earnings and profits of the foreign corporation attributable to any amount previously included in the gross income of such person under section 951, with respect to the stock sold or exchanged, but only to the extent the inclusion of such amount did not result in an exclusion of an amount from gross income under section 959.

[(2) Repealed. Pub. L. 100–647, title I, § 1006(e)(14)(A), Nov. 10, 1988, 102 Stat. 3402]

(3) Less developed country corporations under prior law

Earnings and profits of a foreign corporation which were accumulated during any taxable year beginning before January 1, 1976, while such corporation was a less developed country corporation under section 902(d) as in effect before the enactment of the Tax Reduction Act of 1975.

(4) United States income

Any item includible in gross income of the foreign corporation under this chapter—

(A) for any taxable year beginning before January 1, 1967, as income derived from sources within the United States of a foreign corporation engaged in trade or business within the United States, or

(B) for any taxable year beginning after December 31, 1966, as income effectively connected with the conduct by such corporation of a trade or business within the United States.

This paragraph shall not apply with respect to any item which is exempt from taxation (or is subject to a reduced rate of tax) pursuant to a treaty obligation of the United States.

(5) Foreign trade income

Earnings and profits of the foreign corporation attributable to foreign trade income of a FSC (as defined in section 922) other than foreign trade income which—

(A) is section 923(a)(2) non-exempt income (within the meaning of section 927(d)(6)), or

(B) would not (but for section 923(a)(4)) be treated as exempt foreign trade income.

For purposes of the preceding sentence, the terms ''foreign trade income'' and ''exempt foreign trade income'' have the respective meanings given such terms by section 923. Any reference in this paragraph to section 922, 923, or 927 shall be treated as a reference to such section as in effect before its repeal by the FSC Repeal and Extraterritorial Income Exclusion Act of 2000.

(6) Amounts included in gross income under section 1293

Earnings and profits of the foreign corporation attributable to any amount previously included in the gross income of such person under section 1293 with respect to the stock sold or exchanged, but only to the extent the inclusion of such amount did not result in an exclusion of an amount under section 1293(c).

(e) Sales or exchanges of stock in certain domestic corporations

Except as provided in regulations prescribed by the Secretary, if—

(1) a United States person sells or exchanges stock of a domestic corporation, and

(2) such domestic corporation was formed or availed of principally for the holding, directly or indirectly, of stock of one or more foreign corporations,

such sale or exchange shall, for purposes of this section, be treated as a sale or exchange of the stock of the foreign corporation or corporations held by the domestic corporation.

(f) Certain nonrecognition transactions

Except as provided in regulations prescribed by the Secretary—

(1) In general

If—

(A) a domestic corporation satisfies the stock ownership requirements of subsection (a)(2) with respect to a foreign corporation, and

(B) such domestic corporation distributes stock of such foreign corporation in a dis-

tribution to which section 311(a), 337, 355(c)(1), or 361(c)(1) applies,

then, notwithstanding any other provision of this subtitle, an amount equal to the excess of the fair market value of such stock over its adjusted basis in the hands of the domestic corporation shall be included in the gross income of the domestic corporation as a dividend to the extent of the earnings and profits of the foreign corporation attributable (under regulations prescribed by the Secretary) to such stock which were accumulated in taxable years of such foreign corporation beginning after December 31, 1962, and during the period or periods the stock was held by such domestic corporation while such foreign corporation was a controlled foreign corporation. For purposes of subsections (c)(2), (d), and (h), a distribution of stock to which this subsection applies shall be treated as a sale of stock to which subsection (a) applies.

(2) Exception for certain distributions

In the case of any distribution of stock of a foreign corporation, paragraph (1) shall not apply if such distribution is to a domestic corporation—

(A) which is treated under this section as holding such stock for the period for which the stock was held by the distributing corporation, and

(B) which, immediately after the distribution, satisfies the stock ownership requirements of subsection (a)(2) with respect to such foreign corporation.

(3) Application to cases described in subsection (e)

To the extent that earnings and profits are taken into account under this subsection, they shall be excluded and not taken into account for purposes of subsection (e).

(g) Exceptions

This section shall not apply to—

(1) distributions to which section 303 (relating to distributions in redemption of stock to pay death taxes) applies; or

(2) any amount to the extent that such amount is, under any other provision of this title, treated as—

(A) a dividend (other than an amount treated as a dividend under subsection (f)),

(B) ordinary income, or

(C) gain from the sale of an asset held for not more than 1 year.

(h) Taxpayer to establish earnings and profits

Unless the taxpayer establishes the amount of the earnings and profits of the foreign corporation to be taken into account under subsection (a) or (f), all gain from the sale or exchange shall be considered a dividend under subsection (a) or (f), and unless the taxpayer establishes the amount of foreign taxes to be taken into account under subsection (b), the limitation of such subsection shall not apply.

(i) Treatment of certain indirect transfers

(1) In general

If any shareholder of a 10-percent corporate shareholder of a foreign corporation exchanges stock of the 10-percent corporate shareholder for stock of the foreign corporation, such 10-percent corporate shareholder shall recognize gain in the same manner as if the stock of the foreign corporation received in such exchange had been—

(A) issued to the 10-percent corporate shareholder, and

(B) then distributed by the 10-percent corporate shareholder to such shareholder in redemption or liquidation (whichever is appropriate).

The amount of gain recognized by such 10-percent corporate shareholder under the preceding sentence shall not exceed the amount treated as a dividend under this section.

(2) 10-percent corporate shareholder defined

For purposes of this subsection, the term ''10-percent corporate shareholder'' means any domestic corporation which, as of the day before the exchange referred to in paragraph (1), satisfies the stock ownership requirements of subsection (a)(2) with respect to the foreign corporation.

(j) Cross reference

For provision excluding amounts previously taxed under this section from gross income when subsequently distributed, see section 959(e).

(Added Pub. L. 87–834, §15(a), Oct. 16, 1962, 76 Stat. 1041; amended Pub. L. 89–809, title I, §104(k), Nov. 13, 1966, 80 Stat. 1562; Pub. L. 91–172, title IV, §442(b)(2), Dec. 30, 1969, 83 Stat. 628; Pub. L. 94–455, title X, §§1022(a), 1042(b), (c)(1), (3), title XIV, §1402(b)(1)(Y), (2), title XIX, §§1901(b)(3)(H), (32)(B)(iii), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1619, 1636, 1637, 1732, 1793, 1800, 1834; Pub. L. 97–448, title I, §102(c)(1), Jan. 12, 1983, 96 Stat. 2370; Pub. L. 98–369, div. A, title I, §133(a), (b)(2), (c), title VIII, §801(d)(6), title X, §1001(b)(22), (e), July 18, 1984, 98 Stat. 667, 668, 996, 1012; Pub. L. 99–514, title VI, §631(d)(2), title XVIII, §§1810(i)(1), 1875(g)(1), 1876(a)(2), Oct. 22, 1986, 100 Stat. 2272, 2829, 2897; Pub. L. 100–647, title I, §§1006(e)(14), 1012(p)(19), Nov. 10, 1988, 102 Stat. 3402, 3518; Pub. L. 104–188, title I, §1702(g)(1), Aug. 20, 1996, 110 Stat. 1872; Pub. L. 108–357, title IV, §413(c)(22), Oct. 22, 2004, 118 Stat. 1509; Pub. L. 110–172, §11(g)(17), Dec. 29, 2007, 121 Stat. 2491.)

REFERENCES IN TEXT

The Tax Reduction Act of 1975, referred to in subsec. (d)(3), is Pub. L. 94–12, Mar. 29, 1975, 89 Stat. 26, as amended. For complete classification of this Act to the Code, see Short Title of 1975 Amendment note set out under section 1 of this title and Tables.

The FSC Repeal and Extraterritorial Income Exclusion Act of 2000, referred to in subsec. (d)(5), is Pub. L. 106–519, Nov. 15, 2000, 114 Stat. 2423. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under section 1 of this title and Tables.

AMENDMENTS

2007—Subsec. (d)(5). Pub. L. 110–172 inserted ''(as defined in section 922)'' after ''a FSC'' in introductory provisions and inserted second sentence in concluding provisions.

2004—Subsec. (d)(5) to (7). Pub. L. 108–357 redesignated pars. (6) and (7) as (5) and (6), respectively, and struck out heading and text of former par. (5). Text read as fol-

lows: ''If the United States person whose stock is sold or exchanged was a qualified shareholder (as defined in section 1247(c)) of a foreign corporation which was a foreign investment company (as described in section 1246(b)(1)), the earnings and profits of the foreign corporation for taxable years in which such person was a qualified shareholder.''

1996—Subsec. (a). Pub. L. 104–188, § 1702(g)(1)(A)(ii), in closing provisions inserted at end ''For purposes of this section, a United States person shall be treated as having sold or exchanged any stock if, under any provision of this subtitle, such person is treated as realizing gain from the sale or exchange of such stock.''

Subsec. (a)(1). Pub. L. 104–188, § 1702(g)(1)(A)(i), struck out '', or if a United States person receives a distribution from a foreign corporation which, under section 302 or 331, is treated as an exchange of stock'' after ''in a foreign corporation''.

Subsec. (e)(1). Pub. L. 104–188, § 1702(g)(1)(B), struck out '', or receives a distribution from a domestic corporation which, under section 302 or 331, is treated as an exchange of stock'' after ''of a domestic corporation''.

Subsec. (f)(1)(B). Pub. L. 104–188, § 1702(g)(1)(C), substituted ''355(c)(1), or 361(c)(1)'' for ''or 361(c)(1)''.

Subsec. (i)(1). Pub. L. 104–188, § 1702(g)(1)(D), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''If any shareholder of a 10-percent corporate shareholder of a foreign corporation exchanges stock of the 10-percent corporate shareholder for stock of the foreign corporation, for purposes of this section, the stock of the foreign corporation received in such exchange shall be treated as if it had been—

''(A) issued to the 10-percent corporate shareholder, and

''(B) then distributed by the 10-percent corporate shareholder to such shareholder in redemption or liquidation (whichever is appropriate).''

1988—Subsec. (d)(2). Pub. L. 100–647, § 1006(e)(14)(A), struck out par. (2) which related to gain realized from sale or exchange of property in pursuance of plan of complete liquidation.

Subsec. (d)(7). Pub. L. 100–647, § 1012(p)(19), added par. (7).

Subsec. (f). Pub. L. 100–647, § 1006(e)(14)(E), substituted ''nonrecognition'' for ''section 311, 336, or 337'' in heading.

Subsec. (f)(1). Pub. L. 100–647, § 1006(e)(14)(C), struck out '', sale, or exchange'' after ''(h), a distribution'' in last sentence.

Subsec. (f)(1)(B). Pub. L. 100–647, § 1006(e)(14)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''such domestic corporation distributes, sells, or exchanges stock of such foreign corporation in a transaction to which section 311, 336, or 337 applies,''.

Subsec. (f)(3), (4). Pub. L. 100–647, § 1006(e)(14)(D), redesignated par. (4) as (3) and struck out former par. (3) which related to nonapplication of paragraph (1) in certain cases.

1986—Subsec. (d)(6). Pub. L. 99–514, § 1876(a)(2), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''Earnings and profits of the foreign corporation attributable to foreign trade income (within the meaning of section 923(b)) of a FSC.''

Subsec. (e). Pub. L. 99–514, § 631(d)(2)(A), substituted ''Except as provided in regulations'' for ''Under regulations''.

Subsec. (f). Pub. L. 99–514, § 631(d)(2)(B), inserted ''Except as provided in regulations prescribed by the Secretary—'' after heading.

Subsec. (g). Pub. L. 99–514, § 1875(g)(1), inserted ''or'' at end of par. (1), redesignated par. (3) as (2), and struck out former par. (2) which read as follows: ''gain realized on exchanges to which section 356 (relating to receipt of additional consideration in certain reorganizations) applies; or''.

Subsec. (i)(1)(B). Pub. L. 99–514, § 1810(i)(1), substituted ''in redemption or liquidation (whichever is appropriate)'' for ''in redemption of his stock''.

1984—Subsec. (b). Pub. L. 98–369, § 1001(b)(22), (e), substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsec. (c)(2)(D). Pub. L. 98–369, § 133(c), substituted ''section 958(a)'' for ''section 958(a)(2)''.

Subsec. (d)(6). Pub. L. 98–369, § 801(d)(6), added par. (6).

Subsec. (g)(3)(C). Pub. L. 98–369, § 1001(b)(22), (e), substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsec. (i). Pub. L. 98–369, § 133(a), added subsec. (i).

Subsec. (j). Pub. L. 98–369, § 133(b)(2), added subsec. (j).

1983—Subsec. (c)(1). Pub. L. 97–448 substituted ''section 312(k)(4)'' for ''section 312(k)(3)''.

1976—Subsec. (a). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (b). Pub. L. 94–455, § 1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, § 1402(b)(1)(Y), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

Subsec. (c)(1). Pub. L. 94–455, §§ 1901(b)(32)(B)(iii), 1906(b)(13(A), substituted ''section 312(k)'' for ''section 312(m)(3)'', and struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(2)(A). Pub. L. 94–455, § 1042(c)(3)(A), substituted ''subsection (a) or (f) applies to a sale, exchange, or distribution'' for ''subsection (a) applies to a sale or exchange''.

Subsec. (c)(2)(C). Pub. L. 94–455, § 1042(b), inserted ''(or on the date of any sale or exchange of the stock of such other foreign corporation occurring during the 5–year period ending on the date of the sale or exchange of the stock of such foreign corporation, to the extent not otherwise taken into account under this section but not in excess of the fair market value of the stock of such other foreign corporation sold or exchanged over the basis of such stock (for determining gain) in the hands of the transferor)''. § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d)(2). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d)(3). Pub. L. 94–455, § 1022(a), substituted provisions of par. (3) relating to ''Less developed country corporations under prior law'' and reading ''Earnings and profits of a foreign corporation which were accumulated during any taxable year beginning before January 1, 1976, while such corporation was a less developed country corporation under section 902(d) as in effect before the enactment of the Tax Reduction Act of 1975'' for prior par. (3) relating to ''Less developed country corporations'' and reading ''Earnings and profits accumulated by a foreign corporation while it was a less developed country corporation (as defined in section 902(d)), if the stock sold or exchanged was owned for a continuous period of at least 10 years, ending with the date of the sale or exchange, by the United States person who sold or exchanged such stock. In the case of stock sold or exchanged by a corporation, if United States persons who are individuals, estates, or trusts (each of whom owned within the meaning of section 958(a), or were considered as owning by applying the rules of ownership of section 958(b), 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such corporation) owned, or were considered as owning, at any time during the 10-year period ending on the date of the sale or exchange more than 50 percent of the total combined voting power of all classes of stock entitled to vote such corporation, this paragraph shall apply only if such United States persons owned, or were considered as owning, at all times during the remainder of such 10-year period more than 50 percent of the total combined voting power of all classes of stock entitled to vote of such corporation. For purposes of this paragraph, stock owned by a United States person who is an individual, estate, or trust which was acquired by reason of the death of the predecessor in interest of such United States person shall be considered as owned by such

United States person during the period such stock was owned by such predecessor in interest, and during the period such stock was owned by any other predecessor in interest if between such United States person and such other predecessor in interest there was no transfer other than by reason of the death of an individual.''

Subsec. (e). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (f). Pub. L. 94–455, §1042(c)(1), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 94–455, §§1042(c)(1), (3)(B), 1901(b)(3)(H), redesignated former subsec. (f) as (g); inserted ''(other than an amount treated as a dividend under subsection (f))'' in par. (3)(A); and substituted in par. (3)(B) ''ordinary income'' for ''gain from the sale of an asset which is not a capital asset'', respectively. Former subsec. (g) redesignated (h).

Subsec. (g)(3)(C). Pub. L. 94–455, §1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, §1402(b)(1)(Y), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

Subsec. (h). Pub. L. 94–455, §1042(c)(1), (3)(C), redesignated former subsec. (g) as (h) and inserted reference to subsec. (f) in two places.

1969—Subsec. (c)(1). Pub. L. 91–172 inserted reference to the exception provided for in section 312(m)(3).

1966—Subsec. (d)(4). Pub. L. 89–809 provided that for taxable years beginning after December 31, 1966, the earnings and profits of the foreign corporation, for purposes of this section, is not to include income effectively connected with the conduct of a trade or business within the United States, and inserted provision that the exclusion does not apply to income which is exempt from tax or subject to a reduced rate of tax pursuant to a treaty.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 631(d)(2) of Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

Section 1875(g)(2) of Pub. L. 99–514 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to exchanges after March 1, 1986.''

Amendment by sections 1810(i)(1) and 1876(a)(2) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 133(d)(1) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to exchanges after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.''

Amendment by section 133(b)(2), (c) of Pub. L. 98–369 applicable with respect to transactions to which subsec. (a) or (f) of this section applies occurring after July 18, 1984, with election of earlier date for certain transactions, see section 133(d)(2), (3) of Pub. L. 98–369, set out as a note under section 959 of this title.

Amendment by section 801(d)(6) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

Amendment by section 1001(b)(22) of Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1022(b) of Pub. L. 94–455 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1975.''

For effective date of amendment by section 1042 of Pub. L. 94–455, see section 1042(e) of Pub. L. 94–455, set out as a note under section 367 of this title.

Section 1402(b)(1) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Section 1402(b)(2) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Amendment by section 1901(b)(3)(H), (32)(B)(iii) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to sales or exchanges occurring after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

EFFECTIVE DATE

Section 15(c) of Pub. L. 87–834 provided that: ''The amendments made by this section [enacting this section] shall apply with respect to sales or exchanges occurring after December 31, 1962.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TRANSITIONAL RULE

Section 1875(g)(3) of Pub. L. 99–514 provided that: ''An exchange shall be treated as occurring on or before March 1, 1986, if—

''(A) on or before such date, the taxpayer adopts a plan of reorganization to which section 356 [of the Internal Revenue Code of 1986] applies, and

''(B) such plan or reorganization is implemented and distributions pursuant to such plan are completed on or before the date of enactment of this Act [Oct. 22, 1986].''

§ 1249. Gain from certain sales or exchanges of patents, etc., to foreign corporations

(a) General rule

Gain from the sale or exchange after December 31, 1962, of a patent, an invention, model, or design (whether or not patented), a copyright, a secret formula or process, or any other similar property right to any foreign corporation by any United States person (as defined in section 7701(a)(30)) which controls such foreign corporation shall, if such gain would (but for the provisions of this subsection) be gain from the sale or exchange of a capital asset or of property described in section 1231, be considered as ordinary income.

(b) Control

For purposes of subsection (a), control means, with respect to any foreign corporation, the ownership, directly or indirectly, of stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote. For purposes of this subsection, the rules for determining ownership of stock prescribed by section 958 shall apply.

(Added Pub. L. 87–834, § 16(a), Oct. 16, 1962, 76 Stat. 1045; amended Pub. L. 89–809, title I, § 104(m)(3), Nov. 13, 1966, 80 Stat. 1563; Pub. L. 94–455, title XIX, § 1901(b)(3)(K), Oct. 4, 1976, 90 Stat. 1793.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–455 substituted ''ordinary income'' for ''gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231''.

1966—Subsec. (a). Pub. L. 89–809 substituted ''Gain'' for ''Except as provided in subsection (c), gain''.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

EFFECTIVE DATE

Section 16(c) of Pub. L. 87–834 provided that: ''The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1962.''

§ 1250. Gain from dispositions of certain depreciable realty

(a) General rule

Except as otherwise provided in this section—

(1) Additional depreciation after December 31, 1975

(A) In general

If section 1250 property is disposed of after December 31, 1975, then the applicable percentage of the lower of—

(i) that portion of the additional depreciation (as defined in subsection (b)(1) or (4)) attributable to periods after December 31, 1975, in respect of the property, or

(ii) the excess of the amount realized (in the case of a sale, exchange, or involuntary conversion), or the fair market value of such property (in the case of any other disposition), over the adjusted basis of such property,

shall be treated as gain which is ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(B) Applicable percentage

For purposes of subparagraph (A), the term ''applicable percentage'' means—

(i) in the case of section 1250 property with respect to which a mortgage is insured under section 221(d)(3) or 236 of the National Housing Act, or housing financed or assisted by direct loan or tax abatement under similar provisions of State or local laws and with respect to which the owner is subject to the restrictions described in section 1039(b)(1)(B) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990), 100 percent minus 1 percentage point for each full month the property was held after the date the property was held 100 full months;

(ii) in the case of dwelling units which, on the average, were held for occupancy by families or individuals eligible to receive subsidies under section 8 of the United States Housing Act of 1937, as amended, or under the provisions of State or local law authorizing similar levels of subsidy for lower-income families, 100 percent minus 1 percentage point for each full month the property was held after the date the property was held 100 full months;

(iii) in the case of section 1250 property with respect to which a depreciation deduction for rehabilitation expenditures was allowed under section 167(k), 100 percent minus 1 percentage point for each full month in excess of 100 full months after the date on which such property was placed in service;

(iv) in the case of section 1250 property with respect to which a loan is made or insured under title V of the Housing Act of 1949, 100 percent minus 1 percentage point for each full month the property was held after the date the property was held 100 full months; and

(v) in the case of all other section 1250 property, 100 percent.

In the case of a building (or a portion of a building devoted to dwelling units), if, on the average, 85 percent or more of the dwelling units contained in such building (or por-

tion thereof) are units described in clause (ii), such building (or portion thereof) shall be treated as property described in clause (ii). Clauses (i), (ii), and (iv) shall not apply with respect to the additional depreciation described in subsection (b)(4) which was allowed under section 167(k).

(2) Additional depreciation after December 31, 1969, and before January 1, 1976

(A) In general

If section 1250 property is disposed of after December 31, 1969, and the amount determined under paragraph (1)(A)(ii) exceeds the amount determined under paragraph (1)(A)(i), then the applicable percentage of the lower of—

(i) that portion of the additional depreciation attributable to periods after December 31, 1969, and before January 1, 1976, in respect of the property, or

(ii) the excess of the amount determined under paragraph (1)(A)(ii) over the amount determined under paragraph (1)(A)(i),

shall also be treated as gain which is ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(B) Applicable percentage

For purposes of subparagraph (A), the term ''applicable percentage'' means—

(i) in the case of section 1250 property disposed of pursuant to a written contract which was, on July 24, 1969, and at all times thereafter, binding on the owner of the property, 100 percent minus 1 percentage point for each full month the property was held after the date the property was held 20 full months;

(ii) in the case of section 1250 property with respect to which a mortgage is insured under section 221(d)(3) or 236 of the National Housing Act, or housing financed or assisted by direct loan or tax abatement under similar provisions of State or local laws, and with respect to which the owner is subject to the restrictions described in section 1039(b)(1)(B) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990), 100 percent minus 1 percentage point for each full month the property was held after the date the property was held 20 full months;

(iii) in the case of residential rental property (as defined in section 167(j)(2)(B)) other than that covered by clauses (i) and (ii), 100 percent minus 1 percentage point for each full month the property was held after the date the property was held 100 full months;

(iv) in the case of section 1250 property with respect to which a depreciation deduction for rehabilitation expenditures was allowed under section 167(k), 100 percent minus 1 percentage point for each full month in excess of 100 full months after the date on which such property was placed in service; and

(v) in the case of all other section 1250 property, 100 percent.

Clauses (i), (ii), and (iii) shall not apply with respect to the additional depreciation described in subsection (b)(4).

(3) Additional depreciation before January 1, 1970

(A) In general

If section 1250 property is disposed of after December 31, 1963, and the amount determined under paragraph (1)(A)(ii) exceeds the sum of the amounts determined under paragraphs (1)(A)(i) and (2)(A)(i), then the applicable percentage of the lower of—

(i) that portion of the additional depreciation attributable to periods before January 1, 1970, in respect of the property, or

(ii) the excess of the amount determined under paragraph (1)(A)(ii) over the sum of the amounts determined under paragraphs (1)(A)(i) and (2)(A)(i),

shall also be treated as gain which is ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(B) Applicable percentage

For purposes of subparagraph (A), the term ''applicable percentage'' means 100 percent minus 1 percentage point for each full month the property was held after the date on which the property was held for 20 full months.

(4) Special rule

For purposes of this subsection, any reference to section 167(k) or 167(j)(2)(B) shall be treated as a reference to such section as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990.

(5) Cross reference

For reduction in the case of corporations on capital gain treatment under this section, see section 291(a)(1).

(b) Additional depreciation defined

For purposes of this section—

(1) In general

The term ''additional depreciation'' means, in the case of any property, the depreciation adjustments in respect of such property; except that, in the case of property held more than one year, it means such adjustments only to the extent that they exceed the amount of the depreciation adjustments which would have resulted if such adjustments had been determined for each taxable year under the straight line method of adjustment.

(2) Property held by lessee

In the case of a lessee, in determining the depreciation adjustments which would have resulted in respect of any building erected (or other improvement made) on the leased property, or in respect of any cost of acquiring the lease, the lease period shall be treated as including all renewal periods. For purposes of the preceding sentence—

(A) the term ''renewal period'' means any period for which the lease may be renewed, extended, or continued pursuant to an option exercisable by the lessee, but

(B) the inclusion of renewal periods shall not extend the period taken into account by more than ⅔ of the period on the basis of which the depreciation adjustments were allowed.

(3) Depreciation adjustments

The term ''depreciation adjustments'' means, in respect of any property, all adjustments attributable to periods after December 31, 1963, reflected in the adjusted basis of such property on account of deductions (whether in respect of the same or other property) allowed or allowable to the taxpayer or to any other person for exhaustion, wear and tear, obsolescence, or amortization (other than amortization under section 168 (as in effect before its repeal by the Tax Reform Act of 1976), 169, 185 (as in effect before its repeal by the Tax Reform Act of 1986), 188 (as in effect before its repeal by the Revenue Reconciliation Act of 1990), 190, or 193). For purposes of the preceding sentence, if the taxpayer can establish by adequate records or other sufficient evidence that the amount allowed as a deduction for any period was less than the amount allowable, the amount taken into account for such period shall be the amount allowed.

(4) Additional depreciation attributable to rehabilitation expenditures

The term ''additional depreciation'' also means, in the case of section 1250 property with respect to which a depreciation or amortization deduction for rehabilitation expenditures was allowed under section 167(k) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) or 191 (as in effect before its repeal by the Economic Recovery Tax Act of 1981), the depreciation or amortization adjustments allowed under such section to the extent attributable to such property, except that, in the case of such property held for more than one year after the rehabilitation expenditures so allowed were incurred, it means such adjustments only to the extent that they exceed the amount of the depreciation adjustments which would have resulted if such adjustments had been determined under the straight line method of adjustment without regard to the useful life permitted under section 167(k) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) or 191 (as in effect before its repeal by the Economic Recovery Tax Act of 1981).

(5) Method of computing straight line adjustments

For purposes of paragraph (1), the depreciation adjustments which would have resulted for any taxable year under the straight line method shall be determined—

(A) in the case of property to which section 168 applies, by determining the adjustments which would have resulted for such year if the taxpayer had elected the straight line method for such year using the recovery period applicable to such property, and

(B) in the case any property to which section 168 does not apply, if a useful life (or salvage value) was used in determining the amount allowable as a deduction for any taxable year, by using such life (or value).

(c) Section 1250 property

For purposes of this section, the term ''section 1250 property'' means any real property (other than section 1245 property, as defined in section 1245(a)(3)) which is or has been property of a character subject to the allowance for depreciation provided in section 167.

(d) Exceptions and limitations

(1) Gifts

Subsection (a) shall not apply to a disposition by gift.

(2) Transfers at death

Except as provided in section 691 (relating to income in respect of a decedent), subsection (a) shall not apply to a transfer at death.

(3) Certain tax-free transactions

If the basis of property in the hands of a transferee is determined by reference to its basis in the hands of the transferor by reason of the application of section 332, 351, 361, 721, or 731, then the amount of gain taken into account by the transferor under subsection (a) shall not exceed the amount of gain recognized to the transferor on the transfer of such property (determined without regard to this section). Except as provided in paragraph (9), this paragraph shall not apply to a disposition to an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by this chapter.

(4) Like kind exchanges; involuntary conversions, etc.

(A) Recognition limit

If property is disposed of and gain (determined without regard to this section) is not recognized in whole or in part under section 1031 or 1033, then the amount of gain taken into account by the transferor under subsection (a) shall not exceed the greater of the following:

(i) the amount of gain recognized on the disposition (determined without regard to this section), increased as provided in subparagraph (B), or

(ii) the amount determined under subparagraph (C).

(B) Increase for certain stock

With respect to any transaction, the increase provided by this subparagraph is the amount equal to the fair market value of any stock purchased in a corporation which (but for this paragraph) would result in nonrecognition of gain under section 1033(a)(2)(A).

(C) Adjustment where insufficient section 1250 property is acquired

With respect to any transaction, the amount determined under this subparagraph shall be the excess of—

(i) the amount of gain which would (but for this paragraph) be taken into account under subsection (a), over

(ii) the fair market value (or cost in the case of a transaction described in section

1033(a)(2)) of the section 1250 property acquired in the transaction.

(D) Basis of property acquired

In the case of property purchased by the taxpayer in a transaction described in section 1033(a)(2), in applying section 1033(b)(2), such sentence shall be applied—

(i) first solely to section 1250 properties and to the amount of gain not taken into account under subsection (a) by reason of this paragraph, and

(ii) then to all purchased properties to which such sentence applies and to the remaining gain not recognized on the transaction as if the cost of the section 1250 properties were the basis of such properties computed under clause (i).

In the case of property acquired in any other transaction to which this paragraph applies, rules consistent with the preceding sentence shall be applied under regulations prescribed by the Secretary.

(E) Additional depreciation with respect to property disposed of

In the case of any transaction described in section 1031 or 1033, the additional depreciation in respect of the section 1250 property acquired which is attributable to the section 1250 property disposed of shall be an amount equal to the amount of the gain which was not taken into account under subsection (a) by reason of the application of this paragraph.

(5) Property distributed by a partnership to a partner

(A) In general

For purposes of this section, the basis of section 1250 property distributed by a partnership to a partner shall be deemed to be determined by reference to the adjusted basis of such property to the partnership.

(B) Additional depreciation

In respect of any property described in subparagraph (A), the additional depreciation attributable to periods before the distribution by the partnership shall be—

(i) the amount of the gain to which subsection (a) would have applied if such property had been sold by the partnership immediately before the distribution at its fair market value at such time and the applicable percentage for the property had been 100 percent, reduced by

(ii) if section 751(b) applied to any part of such gain, the amount of such gain to which section 751(b) would have applied if the applicable percentage for the property had been 100 percent.

(6) Transfers to tax-exempt organization where property will be used in unrelated business

(A) In general

The second sentence of paragraph (3) shall not apply to a disposition of section 1250 property to an organization described in section 511(a)(2) or 511(b)(2) if, immediately after such disposition, such organization uses such property in an unrelated trade or business (as defined in section 513).

(B) Later change in use

If any property with respect to the disposition of which gain is not recognized by reason of subparagraph (A) ceases to be used in an unrelated trade or business of the organization acquiring such property, such organization shall be treated for purposes of this section as having disposed of such property on the date of such cessation.

(7) Foreclosure dispositions

If any section 1250 property is disposed of by the taxpayer pursuant to a bid for such property at foreclosure or by operation of an agreement or of process of law after there was a default on indebtedness which such property secured, the applicable percentage referred to in paragraph (1)(B), (2)(B), or (3)(B) of subsection (a), as the case may be, shall be determined as if the taxpayer ceased to hold such property on the date of the beginning of the proceedings pursuant to which the disposition occurred, or, in the event there are no proceedings, such percentage shall be determined as if the taxpayer ceased to hold such property on the date, determined under regulations prescribed by the Secretary, on which such operation of an agreement or process of law, pursuant to which the disposition occurred, began.

(e) Holding period

For purposes of determining the applicable percentage under this section, the provisions of section 1223 shall not apply, and the holding period of section 1250 property shall be determined under the following rules:

(1) Beginning of holding period

The holding period of section 1250 property shall be deemed to begin—

(A) in the case of property acquired by the taxpayer, on the day after the date of acquisition, or

(B) in the case of property constructed, reconstructed, or erected by the taxpayer, on the first day of the month during which the property is placed in service.

(2) Property with transferred basis

If the basis of property acquired in a transaction described in paragraph (1), (2), or (3) of subsection (d) is determined by reference to its basis in the hands of the transferor, then the holding period of the property in the hands of the transferee shall include the holding period of the property in the hands of the transferor.

(f) Special rules for property which is substantially improved

(1) Amount treated as ordinary income

If, in the case of a disposition of section 1250 property, the property is treated as consisting of more than one element by reason of paragraph (3), then the amount taken into account under subsection (a) in respect of such section 1250 property as ordinary income shall be the sum of the amounts determined under paragraph (2).

(2) Ordinary income attributable to an element

For purposes of paragraph (1), the amount taken into account for any element shall be

the sum of a series of amounts determined for the periods set forth in subsection (a), with the amount for any such period being determined by multiplying—

(A) the amount which bears the same ratio to the lower of the amounts specified in clause (i) or (ii) of subsection (a)(1)(A), in clause (i) or (ii) of subsection (a)(2)(A), or in clause (i) or (ii) of subsection (a)(3)(A), as the case may be, for the section 1250 property as the additional depreciation for such element attributable to such period bears to the sum of the additional depreciation for all elements attributable to such period, by

(B) the applicable percentage for such element for such period.

For purposes of this paragraph, determinations with respect to any element shall be made as if it were a separate property.

(3) Property consisting of more than one element

In applying this subsection in the case of any section 1250 property, there shall be treated as a separate element—

(A) each separate improvement,

(B) if, before completion of section 1250 property, units thereof (as distinguished from improvements) were placed in service, each such unit of section 1250 property, and

(C) the remaining property which is not taken into account under subparagraphs (A) and (B).

(4) Property which is substantially improved

For purposes of this subsection—

(A) In general

The term ''separate improvement'' means each improvement added during the 36–month period ending on the last day of any taxable year to the capital account for the property, but only if the sum of the amounts added to such account during such period exceeds the greatest of—

(i) 25 percent of the adjusted basis of the property,

(ii) 10 percent of the adjusted basis of the property, determined without regard to the adjustments provided in paragraphs (2) and (3) of section 1016(a), or

(iii) $5,000.

For purposes of clauses (i) and (ii), the adjusted basis of the property shall be determined as of the beginning of the first day of such 36–month period, or of the holding period of the property (within the meaning of subsection (e)), whichever is the later.

(B) Exception

Improvements in any taxable year shall be taken into account for purposes of subparagraph (A) only if the sum of the amounts added to the capital account for the property for such taxable year exceeds the greater of—

(i) $2,000, or

(ii) one percent of the adjusted basis referred to in subparagraph (A)(ii), determined, however, as of the beginning of such taxable year.

For purposes of this section, if the amount added to the capital account for any separate improvement does not exceed the greater of clause (i) or (ii), such improvement shall be treated as placed in service on the first day, of a calendar month, which is closest to the middle of the taxable year.

(C) Improvement

The term ''improvement'' means, in the case of any section 1250 property, any addition to capital account for such property after the initial acquisition or after completion of the property.

(g) Adjustments to basis

The Secretary shall prescribe such regulations as he may deem necessary to provide for adjustments to the basis of property to reflect gain recognized under subsection (a).

(h) Application of section

This section shall apply notwithstanding any other provision of this subtitle.

(Added Pub. L. 88–272, title II, § 231(a), Feb. 26, 1964, 78 Stat. 100; amended Pub. L. 91–172, title V, § 521(b), (c), (e), title VII, § 704(b)(5), title IX, § 910(b), Dec. 30, 1969, 83 Stat. 652, 653, 670, 720; Pub. L. 92–178, title III, § 303(c)(3), Dec. 10, 1971, 85 Stat. 522; Pub. L. 93–625, § 5(c), Jan. 3, 1975, 88 Stat. 2112; Pub. L. 94–81, § 2(b), Aug. 9, 1975, 89 Stat. 417; Pub. L. 94–455, title II, § 202(a)–(c)(1), (2), title XIX, §§ 1901(b)(3)(K), (31)(A), (B), (E), 1906(b)(13)(A), 1951(c)(2)(C), title XXI, §§ 2122(b)(4), 2124(a)(3)(D), Oct. 4, 1976, 90 Stat. 1527, 1529, 1530, 1793, 1799, 1800, 1834, 1840, 1915, 1918; Pub. L. 95–600, title IV, §§ 404(c)(7), 405(c)(4), title VII, § 701(f)(3)(C), (E), Nov. 6, 1978, 92 Stat. 2870, 2871, 2901; Pub. L. 96–222, title I, § 107(a)(1)(D), Apr. 1, 1980, 94 Stat. 222; Pub. L. 96–223, title II, § 251(a)(2)(D), Apr. 2, 1980, 94 Stat. 287; Pub. L. 97–34, title II, §§ 204(e), 212(d)(2)(F), Aug. 13, 1981, 95 Stat. 223, 239; Pub. L. 97–448, title I, § 102(a)(7), Jan. 12, 1983, 96 Stat. 2368; Pub. L. 98–369, div. A, title VII, § 712(a)(1)(B), July 18, 1984, 98 Stat. 946; Pub. L. 99–514, title II, § 242(b)(2), Oct. 22, 1986, 100 Stat. 2181; Pub. L. 100–647, title I, § 1002(a)(1), Nov. 10, 1988, 102 Stat. 3352; Pub. L. 101–239, title VII, § 7831(b), Dec. 19, 1989, 103 Stat. 2426; Pub. L. 101–508, title XI, §§ 11801(c)(6)(F), (8)(I), (15), 11812(b)(11), (12), Nov. 5, 1990, 104 Stat. 1388–524, 1388–527, 1388–536; Pub. L. 104–7, § 2(b), Apr. 11, 1995, 109 Stat. 93; Pub. L. 104–188, title I, § 1702(h)(18), Aug. 20, 1996, 110 Stat. 1874; Pub. L. 105–34, title III, § 312(d)(10), Aug. 5, 1997, 111 Stat. 840; Pub. L. 105–206, title VI, § 6023(12), July 22, 1998, 112 Stat. 825; Pub. L. 109–58, title XIII, § 1331(b)(3), Aug. 8, 2005, 119 Stat. 1024; Pub. L. 109–135, title IV, § 402(a)(7), (h), Dec. 21, 2005, 119 Stat. 2610, 2611.)

REFERENCES IN TEXT

Sections 221 and 236 of the National Housing Act, referred to in subsec. (a)(1)(B)(i), (2)(B)(ii), are classified to sections 1715*l* and 1715z–1, respectively, of Title 12, Banks and Banking.

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsecs. (a)(1)(B)(i), (2)(B)(ii), (4) and (b)(4), is the date of enactment of Pub. L. 101–508, which was approved Nov. 5, 1990.

Section 8 of the United States Housing Act of 1937, referred to in subsec. (a)(1)(B)(ii), is classified to section 1437f of Title 42, The Public Health and Welfare.

The Housing Act of 1949, referred to in subsec. (a)(1)(B)(iv), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title V of the Housing Act of 1949 is classified generally to subchapter III (§1471 et seq.) of chapter 8A of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of Title 42 and Tables.

The Tax Reform Act of 1976, referred to in subsec. (b)(3), is Pub. L. 94–455, Oct. 4, 1976, 90 Stat. 1520, as amended. Section 1951(a)(4)(A) of the Act repealed section 168 of this title. For complete classification of this Act to the Code, see Tables.

The Tax Reform Act of 1986, referred to in subsec. (b)(3), is Pub. L. 99–514, Oct. 22, 1986, 100 Stat. 2085. Section 242(a) of the Act repealed section 185 of this title. For complete classification of this Act to the Code, see Tables.

The Revenue Reconciliation Act of 1990, referred to in subsec. (b)(3), is title XI of Pub. L. 101–508, Nov. 5, 1990, 104 Stat. 1388–400. Section 11801(a)(13) of the Act repealed section 188 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1 of this title and Tables.

The Economic Recovery Tax Act of 1981, referred to in subsec. (b)(4), is Pub. L. 97–34, Aug. 13, 1981, 95 Stat. 172, as amended. Section 191 of this title was repealed by section 212(d)(1) of Pub. L. 97–34. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2005—Subsec. (b)(3). Pub. L. 109–135, §402(h), struck out ''or by section 179D'' after ''190, or 193)''.

Pub. L. 109–58, §1331(b)(3), inserted ''or by section 179D'' after ''190, or 193)''.

Subsec. (d)(5) to (8). Pub. L. 109–135, §402(a)(7)(A), redesignated pars. (6) to (8) as (5) to (7), respectively, and struck out heading and text of former par. (5). Text read as follows: ''Under regulations prescribed by the Secretary, rules consistent with paragraphs (3) and (4) of this subsection and with subsections (e) and (f) shall apply in the case of transactions described in section 1081 (relating to exchanges in obedience to SEC orders).''

Subsec. (e)(2). Pub. L. 109–135, §402(a)(7)(B), substituted ''or (3)'' for ''(3), or (5)''.

1998—Subsec. (d)(4)(D). Pub. L. 105–206 substituted ''section 1033(b)(2)'' for ''the last sentence of section 1033(b)'' in introductory provisions.

1997—Subsec. (d)(7) to (10). Pub. L. 105–34, §312(d)(10)(A), redesignated pars. (9) and (10) as (7) and (8), respectively, and struck out heading and text of former par. (7). Text read as follows: ''Subsection (a) shall not apply to a disposition of—

''(A) property to the extent used by the taxpayer as his principal residence (within the meaning of section 1034, relating to rollover of gain on sale of principal residence), and

''(B) property in respect of which the taxpayer meets the age and ownership requirements of section 121 (relating to one-time exclusion of gain from sale of principal residence by individual who has attained age 55) but only to the extent that he meets the use requirements of such section in respect of such property.''

Subsec. (e)(3). Pub. L. 105–34, §312(d)(10)(B), struck out heading and text of par. (3). Text read as follows: ''If the basis of property acquired in a transaction described in paragraph (7) of subsection (d) is determined by reference to the basis in the hands of the taxpayer of other property, then the holding period of the property acquired shall include the holding period of such other property.''

1996—Subsec. (e)(4). Pub. L. 104–188 struck out par. (4) which read as follows:

''(4) QUALIFIED LOW-INCOME HOUSING.—The holding period of any section 1250 property acquired which is described in subsection (d)(8)(E)(i) shall include the holding period of the corresponding element of section 1250 property disposed of.''

1995—Subsec. (d)(5). Pub. L. 104–7 struck out ''1071 and'' before ''1081 transactions'' in heading and ''section 1071 (relating to gain from sale or exchange to effectuate policies of FCC) or'' before ''section 1081'' in text.

1990—Subsec. (a)(1)(B)(i), (2)(B)(ii). Pub. L. 101–508, §11801(c)(15)(A), which directed the insertion of ''(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)'' after ''section 1039(b)(1)(B)'' in pars. (1)(A)(i) and (2)(B)(ii) of subsec. (a), was executed to pars. (1)(B)(i) and (2)(B)(ii) to reflect the probable intent of Congress.

Subsec. (a)(4), (5). Pub. L. 101–508, §11812(b)(11), added par. (4) and redesignated former par. (4) as (5).

Subsec. (b)(3). Pub. L. 101–508, §11801(c)(6)(F), substituted ''188 (as in effect before its repeal by the Revenue Reconciliation Act of 1990),'' for ''188,''.

Subsec. (b)(4). Pub. L. 101–508, §11812(b)(12), substituted ''section 167(k) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)'' for ''section 167(k)'' in two places.

Subsec. (d)(3). Pub. L. 101–508, §11801(c)(8)(I), struck out ''371(a), 374(a),'' after ''332, 351, 361,''.

Subsec. (d)(8). Pub. L. 101–508, §11801(c)(15)(B), struck out par. (8) which related to the treatment of gain from the disposition of qualified low-income housing.

Subsecs. (g) to (i). Pub. L. 101–508, §11801(c)(15)(C), redesignated subsecs. (h) and (i) as (g) and (h), respectively, and struck out former subsec. (g) which provided special rules for qualified low-income housing.

1989—Subsec. (b)(5)(A). Pub. L. 101–239, §7831(b)(1), substituted ''of property to which section 168 applies'' for ''of recovery property''.

Subsec. (b)(5)(B). Pub. L. 101–239, §7831(b)(2), substituted ''to which section 168 does not apply'' for ''which is not recovery property''.

1988—Subsec. (d)(11). Pub. L. 100–647 struck out par. (11) which related to section 1245 recovery property.

1986—Subsec. (b)(3). Pub. L. 99–514 inserted ''(as in effect before its repeal by the Tax Reform Act of 1986)'' after ''185''.

1984—Subsec. (a)(4). Pub. L. 98–369 added par. (4).

1983—Subsec. (b)(1). Pub. L. 97–448, §102(a)(7)(B), struck out last sentence providing that, for purposes of defining ''additional depreciation'', if a useful life (or salvage value) was used in determining the amount allowed as a deduction for any taxable year, such life (or value) was to be used in determining the depreciation adjustments which would have resulted for such year under the straight line method.

Subsec. (b)(5). Pub. L. 97–448, §102(a)(7)(A), added par. (5).

1981—Subsec. (b)(4). Pub. L. 97–34, §212(d)(2)(F), inserted ''(as in effect before its repeal by the Economic Recovery Tax Act of 1981)'' after ''section 167(k) or 191'' in two places.

Subsec. (d)(11). Pub. L. 97–34, §204(e), added par. (11).

1980—Subsec. (a)(1)(B). Pub. L. 96–222 inserted ''which was allowed under section 167(k)'' at end of last sentence.

Subsec. (b)(3). Pub. L. 96–223 inserted reference to section 193.

1978—Subsec. (b)(3). Pub. L. 95–600, §701(f)(3)(C), struck out reference to section 191.

Subsec. (b)(4). Pub. L. 95–600, §701(f)(3)(E), inserted reference to amortization deduction, amortization adjustments, and to section 191 in two places.

Subsec. (d)(7)(A). Pub. L. 95–600, §405(c)(4), substituted ''relating to rollover of gain on sale of principal residence'' for ''relating to sale or exchange of residence''.

Subsec. (d)(7)(B). Pub. L. 95–600, §404(c)(7), inserted provisions relating to a one-time exclusion and principal residence and substituted ''55'' for ''65''.

1976—Subsec. (a). Pub. L. 94–455, §202(a), in revising text generally, made the following changes:

(1) Added par. (1).

(2) Redesignated as pars. (2) and (3) existing pars. (1) and (2).

(3) Made the following changes in par. (2): inserted in heading '', and before January 1, 1976''; designated introductory text as subpar. ''(A) In general''; inserted therein ''and the amount determined under paragraph

(1)(A)(ii) exceeds the amount determined under paragraph (1)(A)(i), then''; redesignated as cl. (i) existing subpar. (A); substituted therein ''attributable to periods after December 31, 1969, and before January 1, 1976'' for ''(as defined in subsection (b)(1) or (4) attributable to periods after December 31, 1969''; substituted cl. (ii) and concluding text for subpar. (B) and concluding text which read:

''(B) the excess of—

''(i) the amount realized (in the case of a sale, exchange, or involuntary conversion), or the fair market value of such property (in the case of any other disposition), over

''(ii) the adjusted basis of such property,

shall be treated as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231. Such gain shall be recognized notwithstanding any other provision of this subtitle.''; redesignated as subpar. (B) existing subpar. (C); substituted therein introductory ''subparagraph (A)'' for ''paragraph (1)''; and deleted from cl. (ii) ''constructed, reconstructed, or acquired by the taxpayer before January 1, 1976,'' after ''section 1250 property'' and ''is'' before ''financed'', and substituted ''1'' for ''one''.

(4) Made the following changes in par. (3): substituted in subpar. (A) ''determined under paragraph (1)(A)(ii) exceeds the sum of the amounts determined under paragraphs (1)(A)(i) and (2)(A)(i)'' for ''determined under paragraph (1)(B) exceeds the amount determined under paragraph (1)(A)''; and substituted subpar. (A)(ii) and concluding text for par. (2)(A)(ii), and concluding text which read:

''(ii) the excess of the amount determined under paragraph (1)(B) over the amount determined under paragraph (1)(A),

shall also be treated as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231. Such gain shall be recognized notwithstanding any other provisions of this subtitle.''

Subsec. (b)(3). Pub. L. 94–455, §§1951(c)(2)(C), 2122(b)(4), 2124(a)(3)(D), inserted ''(as in effect before its repeal by the Tax Reform Act of 1976)'' after ''section 168'' and reference to sections 190 and 191.

Subsec. (d)(4)(B). Pub. L. 94–455, §1901(b)(31)(A), substituted reference to section ''1033(a)(2)(A)'' for ''1033(a)(3)(A)''.

Subsec. (d)(4)(C). Pub. L. 94–455, §1901(b)(31)(B), substituted reference to section ''1033(a)(2)'' for ''1033(a)(3)''.

Subsec. (d)(4)(D). Pub. L. 94–455, §1901(b)(31)(B), (E), substituted reference to sections ''1033(a)(2)'' and ''1033(b)'' for ''1033(a)(3)'' and ''1033(c)'' §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d)(5), (8)(F)(ii). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d)(10). Pub. L. 94–455, §202(b), added par. (10).

Subsec. (f)(1). Pub. L. 94–455, §1901(b)(3)(K), substituted ''ordinary income'' for ''gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231''.

Subsec. (f)(2). Pub. L. 94–455, §202(c)(1), substituted introductory text ''the sum of a series of amounts determined for the periods set forth in subsection (a), with the amount for any such period being determined by multiplying'' for ''the sum of—(A) the amount (if any) determined by multiplying''; substituted subpar. (A) as combined text for prior subpars. (A)(i) and (B)(i) reading ''(i) the amount which bears the same ratio to the lower of the amounts specified in subparagraph (A) or (B) of subsection (a)(1) for the section 1250 property as the additional depreciation for such element attributable to periods after December 31, 1969, bears to the sum of the additional depreciation for all elements attributable to periods after December 31, 1969, by'' and ''(i) the amount which bears the same ratio to the lower of the amounts specified in subsection (a)(2)(A)(i) or (ii) for the section 1250 property as the additional depreciation for such element attributable to periods before January 1, 1970, bears to the sum of the additional depreciation for all elements attributable to periods before January 1, 1970, by''; and substituted subpar. (B) as combined text for prior subpars. (A)(ii) and (B)(ii), inserting therein ''for such period'' after ''for such element''.

Subsec. (g)(1). Pub. L. 94–455, §1901(b)(3)(K), substituted ''ordinary income'' for ''gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231''.

Subsec. (g)(2). Pub. L. 94–455, §202(c)(2), substituted ''shall be determined in a manner similar to that provided by subsection (f)(2).'' for ''shall be the amount determined by multiplying—

''(A) the amount which bears the same ratio to the lower of the additional depreciation or the gain recognized for the section 1250 property disposed of as the additional depreciation for such element bears to the sum of the additional depreciation for all elements disposed of, by

''(B) the applicable percentage for such element.

For purposes of this paragraph, determinations with respect to any element shall be made as if it were a separate property.''

Subsec. (h). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

1975—Subsec. (a)(1)(C)(ii). Pub. L. 93–625 substituted ''January 1, 1976'' for ''January 1, 1975''.

Subsec. (d)(3), (9). Pub. L. 94–81, §2(b), inserted reference to par. (9) in par. (3), and added par. (9).

1971—Subsec. (b)(3). Pub. L. 92–178 inserted reference to section 188.

1969—Subsec. (a). Pub. L. 91–172, §521(b), modified the recapture rules pertaining to residential housing by allowing a 1 percent per month reduction in the amount to be recaptured as ordinary income after the property has been held for 100 full months, with other real property remaining subject to full recapture, applied the existing recapture rules where the sale of property was subject to a binding contract in existence prior to July 25, 1969, provided that changes in the recapture rules are not to apply in federally assisted projects (such as programs under section 221(d)(3) or 236 of the National Housing Act) or to other publicly assisted housing programs under which the return to the investor is limited on a comparable basis, thereby rendering these projects subject to a recapture of the depreciation in full if the sale occurs in the first 12 months and for a phaseout of the recapture of the excess of accelerated over straight-line depreciation after 20 months, the recapture being reduced at the rate of 1 percent per month until 120 months after which no recapture applies, with such recapture rules to continue to apply only with respect to such property constructed, reconstructed, or acquired before Jan. 1, 1975, and applied new recapture rules to depreciation attributable to periods after Dec. 31, 1969.

Subsec. (b)(4). Pub. L. 91–172, §512(c), added par. (4).

Subsec. (b)(3). Pub. L. 91–172, §704(b)(5), inserted reference to sections 169 and 185.

Subsec. (d). Pub. L. 91–172, §§521(e)(1), 910(b)(1), substituted ''subsection (a)'' for ''subsection (a)(1)'' wherever it appears and added par. (8).

Subsec. (e)(4). Pub. L. 91–172, §910(b)(2), added par. (4).

Subsec. (f)(1). Pub. L. 91–172, §521(e)(2)(A), substituted ''subsection (a)'' for ''subsection (a)(1)''.

Subsec. (f)(2). Pub. L. 91–172, §521(e)(2)(B), redesignated subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A) and, in cls. (i) and (ii) as so redesignated, inserted reference to depreciation attributable to periods after Dec. 31, 1969, and added subpar. (B).

Subsecs. (g) to (i). Pub. L. 91–172, §910(b)(3), added subsec. (g) and redesignated former subsecs. (g) and (h) as (h) and (i), respectively.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendments by Pub. L. 109–135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which they relate, but amendment by section 402(a)(7) of Pub. L. 109–135 not applicable with respect to any transaction ordered in compliance with the Public Utility Holding Company Act of

1935 (15 U.S.C. 79 et seq.) before its repeal, see section 402(m) of Pub. L. 109–135, set out as an Effective and Termination Dates of 2005 Amendments note under section 36C of this title.

Amendment by Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, see section 1331(d) of Pub. L. 109–58, set out as an Effective Date note under section 179D of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–7 applicable to sales and exchanges on or after January 17, 1995, and to sales and exchanges before such date if FCC tax certificate with respect to such sale or exchange was issued on or after such date, but not applicable with respect to certain binding contracts, see section 2(d) of Pub. L. 104–7, set out as an Effective Date of Repeal note under section 1071 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11812(b)(11), (12) of Pub. L. 101–508 applicable to property placed in service after Nov. 5, 1990, but not applicable to any property to which section 168 of this title does not apply by reason of subsec. (f)(5) of section 168, and not applicable to rehabilitation expenditures described in section 252(f)(5) of Pub. L. 99–514, see section 11812(c) of Pub. L. 101–508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7831(g) of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to that portion of the basis of any property which is attributable to expenditures paid or incurred after Dec. 31, 1986, except as otherwise provided, see section 242(c) of Pub. L. 99–514, set out as an Effective Date of Repeal note under former section 185 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 204(e) of Pub. L. 97–34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, see section 209(a) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

Amendment by section 212(d)(2)(F) of Pub. L. 97–34 applicable to expenditures incurred after Dec. 31, 1981, in taxable years ending after such date, see section 212(e) of Pub. L. 97–34, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–223 applicable to taxable years beginning after Dec. 31, 1979, see section 251(b) of Pub. L. 96–223, set out as an Effective Date note under section 193 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 404(c)(7) of Pub. L. 95–600 applicable to sales or exchanges after July 26, 1978, in taxable years ending after such date, see section 404(d)(1) of Pub. L. 95–600, set out as a note under section 121 of this title.

Amendment by section 405(c)(4) of Pub. L. 95–600 applicable to sales and exchanges of residences after July 26, 1978, in taxable years ending after such date, see section 405(d) of Pub. L. 95–600, set out as a note under section 1038 of this title.

Amendment by section 701(f)(3)(C), (E) of Pub. L. 95–600 effective as if included within the amendment of subsec. (b)(3) and (4) by section 2124 of Pub. L. 94–455, see section 701(f)(8) of Pub. L. 95–600, set out as an Effective and Termination Dates of 1978 Amendments note under section 167 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 202(d) of Pub. L. 94–455, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section (other than subsection (b)) [amending this section and section 167 of this title] shall apply for taxable years ending after December 31, 1975. The amendment made by subsection (b) [amending this section] shall apply with respect to proceedings (and to operations of law) referred to in section 1250(d)(10) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] which begin after December 31, 1975.''

Amendment by section 1901(b)(3)(K), (31)(A), (B), (E) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 1951(c)(2)(C) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1976, see section 1951(d) of Pub. L. 94–455, set out as a note under section 72 of this title.

Amendment by section 2122(b)(4) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1976, and before Jan. 1, 1983, see section 2122(c) of Pub. L. 94–455, as amended by Pub. L. 96–167, 9(c), Dec. 29, 1979, 93 Stat. 1278, set out as a note under section 190 of this title.

Amendment by section 2124(a)(3)(D) of Pub. L. 94–455 applicable with respect to additions to capital accounts made after June 14, 1976 and before June 15, 1981, see section 2124(a)(4) of Pub. L. 94–455, set out as an Effective Date note under section 642 of this title.

EFFECTIVE DATE OF 1975 AMENDMENTS

Section 2(c) of Pub. L. 94–81 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2) the amendments made by this section [amending this section and section 1245 of this title] shall apply to dis-

positions after December 31, 1969, in taxable years ending after such date.

''(2) ELECTION FOR PAST TRANSACTIONS.—In the case of any disposition occurring before the date of the enactment of this Act [Aug. 9, 1975], the amendments made by this section shall apply only if the organization acquiring the property elects (in the manner provided by regulations prescribed by the Secretary of the Treasury or his delegate) within 1 year after the date of the enactment of this Act to have such amendments apply with respect to such property.''

Amendment by Pub. L. 93–625 applicable with respect to property placed in service after Dec. 31, 1973, see section 5(d) of Pub. L. 93–625, set out as a note under section 167 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable to taxable years ending after Dec. 31, 1971, see section 303(d) of Pub. L. 92–178, set out as a note under section 642 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 521(b), (c), (e) of Pub. L. 91–172 applicable with respect to taxable years ending after July 24, 1969, see section 521(g) of Pub. L. 91–172, set out as a note under section 167 of this title.

Amendment by section 704(b)(5) of Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1968, see section 704(c) of Pub. L. 91–172, set out as an Effective Date note under section 169 of this title.

Section 910(d) of Pub. L. 91–172, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [enacting section 1039 of this title and amending this section] shall apply to approved dispositions of qualified housing projects (within the meaning of section 1039 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as added by subsection (a)) after October 9, 1969.''

EFFECTIVE DATE

Section 231(c) of Pub. L. 88–272 provided that: ''The amendments made by this section [enacting this section and amending sections 170, 301, 312, 341, 453, 751, and the analysis preceding section 1231 of this title] shall apply to dispositions after December 31, 1963, in taxable years ending after such date.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[§ 1251. Repealed. Pub. L. 98–369, div. A, title IV, § 492(a), July 18, 1984, 98 Stat. 853]

Section, added Pub. L. 91–172, title II, § 211(a), Dec. 30, 1969, 83 Stat. 566; amended Pub. L. 92–178, title III, § 305(a), Dec. 10, 1971, 85 Stat. 524; Pub. L. 94–455, title II, § 206(a), (b)(1), (2), title XIV, § 1402(b)(1)(Z), (2), title XIX, §§ 1901(b)(3)(K), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1535, 1732, 1793, 1834; Pub. L. 97–354, § 5(a)(36), Oct. 19, 1982, 96 Stat. 1695; Pub. L. 98–369, div. A, title X, § 1001(b)(23), (e), July 18, 1984, 98 Stat. 1012, related to gain from disposition of property used in farming where farm losses offset nonfarm income.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1983, see section 492(d) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 170 of this title.

§ 1252. Gain from disposition of farm land

(a) General rule

(1) Ordinary income

Except as otherwise provided in this section, if farm land which the taxpayer has held for less than 10 years is disposed of during a taxable year beginning after December 31, 1969, the lower of—

(A) the applicable percentage of the aggregate of the deductions allowed under sections 175 (relating to soil and water conservation expenditures) and 182 (relating to expenditures by farmers for clearing land) for expenditures made by the taxpayer after December 31, 1969, with respect to the farm land or

(B) the excess of—

(i) the amount realized (in the case of a sale, exchange, or involuntary conversion), or the fair market value of the farm land (in the case of any other disposition), over

(ii) the adjusted basis of such land,

shall be treated as ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(2) Farm land

For purposes of this section, the term ''farm land'' means any land with respect to which deductions have been allowed under sections 175 (relating to soil and water conservation expenditures) or 182 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986).

(3) Applicable percentage

For purposes of this section—

If the farm land is disposed of—	The applicable percentage is—
Within 5 years after the date it was acquired	100 percent.
Within the sixth year after it was acquired	80 percent.
Within the seventh year after it was acquired	60 percent.
Within the eighth year after it was acquired	40 percent.
Within the ninth year after it was acquired	20 percent.
10 years or more years after it was acquired	0 percent.

(b) Special rules

Under regulations prescribed by the Secretary, rules similar to the rules of section 1245 shall be applied for purposes of this section.

(Added Pub. L. 91–172, title II, § 214(a), Dec. 30, 1969, 83 Stat. 572; amended Pub. L. 94–455, title XIX, §§ 1901(b)(3)(K), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1793, 1834; Pub. L. 98–369, div. A, title IV, § 492(b)(5), July 18, 1984, 98 Stat. 854; Pub. L. 99–514, title IV, § 402(b)(2), Oct. 22, 1986, 100 Stat. 2221.)

REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (a)(1)(A), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986. Section 402(a) of the Tax Reform Act of 1986 repealed section 182 of this title.

AMENDMENTS

1986—Subsec. (a)(1)(A). Pub. L. 99–514 substituted ''(as in effect on the day before the date of the enactment of

the Tax Reform Act of 1986)'' for ''(relating to expenditures by farmers for clearing land)''.

1984—Subsec. (a)(1). Pub. L. 98–369 struck out '', except that this section shall not apply to the extent section 1251 applies to such gain'' after ''of this subtitle'' in last sentence.

1976—Subsec. (a)(1). Pub. L. 94–455, § 1901(b)(3)(K), substituted ''ordinary income'' for ''gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231''.

Subsec. (b). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to amounts paid or incurred after Dec. 31, 1985, in taxable years ending after such date, see section 402(c) of Pub. L. 99–514, set out as an Effective Date of Repeal note under former section 182 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 492(d) of Pub. L. 98–369, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(3)(K) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section 214(c) of Pub. L. 91–172 provided that: ''The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1969.''

§ 1253. Transfers of franchises, trademarks, and trade names

(a) General rule

A transfer of a franchise, trademark, or trade name shall not be treated as a sale or exchange of a capital asset if the transferor retains any significant power, right, or continuing interest with respect to the subject matter of the franchise, trademark, or trade name.

(b) Definitions

For purposes of this section—

(1) Franchise

The term ''franchise'' includes an agreement which gives one of the parties to the agreement the right to distribute, sell, or provide goods, services, or facilities, within a specified area.

(2) Significant power, right, or continuing interest

The term ''significant power, right, or continuing interest'' includes, but is not limited to, the following rights with respect to the interest transferred:

(A) A right to disapprove any assignment of such interest, or any part thereof.

(B) A right to terminate at will.

(C) A right to prescribe the standards of quality of products used or sold, or of services furnished, and of the equipment and facilities used to promote such products or services.

(D) A right to require that the transferee sell or advertise only products or services of the transferor.

(E) A right to require that the transferee purchase substantially all of his supplies and equipment from the transferor.

(F) A right to payments contingent on the productivity, use, or disposition of the subject matter of the interest transferred, if such payments constitute a substantial element under the transfer agreement.

(3) Transfer

The term ''transfer'' includes the renewal of a franchise, trademark, or trade name.

(c) Treatment of contingent payments by transferor

Amounts received or accrued on account of a transfer, sale, or other disposition of a franchise, trademark, or trade name which are contingent on the productivity, use, or disposition of the franchise, trademark, or trade name transferred shall be treated as amounts received or accrued from the sale or other disposition of property which is not a capital asset.

(d) Treatment of payments by transferee

(1) Contingent serial payments

(A) In general

Any amount described in subparagraph (B) which is paid or incurred during the taxable year on account of a transfer, sale, or other disposition of a franchise, trademark, or trade name shall be allowed as a deduction under section 162(a) (relating to trade or business expenses).

(B) Amounts to which paragraph applies

An amount is described in this subparagraph if it—

(i) is contingent on the productivity, use, or disposition of the franchise, trademark, or trade name, and

(ii) is paid as part of a series of payments—

(I) which are payable not less frequently than annually throughout the entire term of the transfer agreement, and

(II) which are substantially equal in amount (or payable under a fixed formula).

(2) Other payments

Any amount paid or incurred on account of a transfer, sale, or other disposition of a franchise, trademark, or trade name to which paragraph (1) does not apply shall be treated as an amount chargeable to capital account.

(3) Renewals, etc.

For purposes of determining the term of a transfer agreement under this section, there shall be taken into account all renewal options (and any other period for which the parties reasonably expect the agreement to be renewed).

(Added Pub. L. 91–172, title V, § 516(c)(1), Dec. 30, 1969, 83 Stat. 647; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 101–239, title VII, § 7622(a)–(c), Dec. 19, 1989, 103 Stat. 2377; Pub. L. 101–508, title XI, § 11701(i), Nov. 5, 1990, 104 Stat. 1388–508; Pub. L. 103–66, title XIII, § 13261(c), Aug. 10, 1993, 107

Stat. 539; Pub. L. 104–188, title I, § 1704(t)(47), Aug. 20, 1996, 110 Stat. 1889; Pub. L. 108–357, title VIII, § 886(b)(3), Oct. 22, 2004, 118 Stat. 1641.)

AMENDMENTS

2004—Subsec. (e). Pub. L. 108–357 struck out heading and text of subsec. (e). Text read as follows: ''This section shall not apply to the transfer of a franchise to engage in professional football, basketball, baseball, or other professional sport.''

1996—Subsec. (d)(4). Pub. L. 104–188 provided that section 11701(i) of Pub. L. 101–508 shall be applied as if ''subsection'' appeared instead of ''section'' in the material proposed to be stricken. See 1990 Amendment note below.

1993—Subsec. (d)(2) to (5). Pub. L. 103–66 added pars. (2) and (3) and struck out former pars. (2) relating to deduction of certain payments for transfer of a franchise, trademark, or trade name not treated as sale or exchange of capital asset, (3) relating to treatment of amounts paid or incurred on account of transfer, sale, or other disposition of a franchise, trademark, or trade name to which pars. (1) and (2) did not apply, (4) relating to renewals for purposes of determining term of transfer agreement under this section or period of amortization under this subtitle, and (5) relating to rules applicable to this subsection.

1990—Subsec. (d)(4). Pub. L. 101–508, § 11701(i), which directed the substitution of ''under this section or any period of amortization under this subtitle for any payment described in this section'' for ''or any period of amortization under this section'', was executed by making the substitution for ''or any period of amortization under this subsection''. See 1996 Amendment note above.

1989—Subsec. (d)(1). Pub. L. 101–239, § 7622(a), substituted ''serial payments'' for ''payments'' in heading and amended text generally. Prior to amendment, text read as follows: ''Amounts paid or incurred during the taxable year on account of a transfer, sale, or other disposition of a franchise, trademark, or trade name which are contingent on the productivity, use, or disposition of the franchise, trademark, or trade name transferred shall be allowed as a deduction under section 162(a) (relating to trade or business expenses).''

Subsec. (d)(2). Pub. L. 101–239, § 7622(b), designated existing provisions as subpar. (A), inserted subpar. heading, redesignated former subpars. (A) to (C) as cls. (i) to (iii), respectively, and former cls. (i) and (ii) of former subpar. (B) as subcls. (I) and (II), respectively, of cl. (ii), and added subpar. (B).

Subsec. (d)(3) to (5). Pub. L. 101–239, § 7622(c), added pars. (3) to (5).

1976—Subsec. (d)(2)(C). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to property acquired after Oct. 22, 2004, see section 886(c)(1) of Pub. L. 108–357, set out as a note under section 197 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable, except as otherwise provided, with respect to property acquired after Aug. 10, 1993, see section 13261(g) of Pub. L. 103–66, set out as an Effective Date note under section 197 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective, except as otherwise provided, as if included in the provision of the Revenue Reconciliation Act of 1989, Pub. L. 101–239, title VII, to which such amendment relates, see section 11701(n) of Pub. L. 101–508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to transfers after Oct. 2, 1989, but not applicable to any transfer pursuant to a written binding contract in effect on Oct. 2, 1989, and at all times thereafter before the transfer, see section 7622(c)[(e)] of Pub. L. 101–239, set out as a note under section 167 of this title.

EFFECTIVE DATE

Section applicable to transfers after Dec. 31, 1969, except that subsec. (d)(1) shall, at the election of the taxpayer (made at such time and in such manner as the Secretary or his delegate may by regulations prescribe), apply to transfers before Jan. 1, 1970, but only with respect to payments made in taxable years ending after Dec. 31, 1969, and beginning before Jan. 1, 1980, see section 516(d)(3) of Pub. L. 91–172, set out as a note under section 1001 of this title.

§ 1254. Gain from disposition of interest in oil, gas, geothermal, or other mineral properties

(a) General rule

(1) Ordinary income

If any section 1254 property is disposed of, the lesser of—

(A) the aggregate amount of—

(i) expenditures which have been deducted by the taxpayer or any person under section 263, 616, or 617 with respect to such property and which, but for such deduction, would have been included in the adjusted basis of such property, and

(ii) the deductions for depletion under section 611 which reduced the adjusted basis of such property, or

(B) the excess of—

(i) in the case of—

(I) a sale, exchange, or involuntary conversion, the amount realized, or

(II) in the case of any other disposition, the fair market value of such property, over

(ii) the adjusted basis of such property,

shall be treated as gain which is ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(2) Disposition of portion of property

For purposes of paragraph (1)—

(A) In the case of the disposition of a portion of section 1254 property (other than an undivided interest), the entire amount of the aggregate expenditures or deductions described in paragraph (1)(A) with respect to such property shall be treated as allocable to such portion to the extent of the amount of the gain to which paragraph (1) applies.

(B) In the case of the disposition of an undivided interest in a section 1254 property (or a portion thereof), a proportionate part of the expenditures or deductions described in paragraph (1)(A) with respect to such property shall be treated as allocable to such undivided interest to the extent of the amount of the gain to which paragraph (1) applies.

This paragraph shall not apply to any expenditures to the extent the taxpayer establishes to the satisfaction of the Secretary that such expenditures do not relate to the portion (or interest therein) disposed of.

(3) Section 1254 property

The term ''section 1254 property'' means any property (within the meaning of section 614) if—

(A) any expenditures described in paragraph (1)(A) are properly chargeable to such property, or

(B) the adjusted basis of such property includes adjustments for deductions for depletion under section 611.

(4) Adjustment for amounts included in gross income under section 617(b)(1)(A)

The amount of the expenditures referred to in paragraph (1)(A)(i) shall be properly adjusted for amounts included in gross income under section 617(b)(1)(A).

(b) Special rules under regulations

Under regulations prescribed by the Secretary—

(1) rules similar to the rule of subsection (g) of section 617 and to the rules of subsections (b) and (c) of section 1245 shall be applied for purposes of this section; and

(2) in the case of the sale or exchange of stock in an S corporation, rules similar to the rules of section 751 shall be applied to that portion of the excess of the amount realized over the adjusted basis of the stock which is attributable to expenditures referred to in subsection (a)(1)(A) of this section.

(Added Pub. L. 94–455, title II, §205(a), Oct. 4, 1976, 90 Stat. 1533; amended Pub. L. 95–618, title IV, §402(c)(1)–(3), Nov. 9, 1978, 92 Stat. 3202; Pub. L. 97–354, §5(a)(37), Oct. 19, 1982, 96 Stat. 1696; Pub. L. 99–514, title IV, §413(a), Oct. 22, 1986, 100 Stat. 2227; Pub. L. 100–647, title I, §1004(c), Nov. 10, 1988, 102 Stat. 3387.)

AMENDMENTS

1988—Subsec. (a)(4). Pub. L. 100–647 added par. (4).

1986—Pub. L. 99–514 amended section generally, substituting ''geothermal, or other mineral properties'' for ''or geothermal property'' in section catchline, revising and restating subsec. (a), pars. (1) to (4) as pars. (1) to (3), and reenacting subsec. (b) without change except for substituting ''rule of subsection (g)'' for ''rules of subsection (g)'' in par. (1).

1982—Subsec. (b)(2). Pub. L. 97–354 substituted ''an S corporation'' for ''an electing small business corporation (as defined in section 1371(b))''.

1978—Pub. L. 95–618, §402(c)(3), substituted ''oil, gas, or geothermal'' for ''oil or gas'' in section catchline.

Subsec. (a)(1), (2). Pub. L. 95–618, §402(c)(1), substituted ''oil, gas, or geothermal property'' for ''oil or gas property'' wherever appearing.

Subsec. (a)(3). Pub. L. 95–618, §402(c)(2), substituted ''Oil, gas, or geothermal'' for ''Oil or gas'' in heading and in text substituted ''The term 'oil, gas, or geothermal property' means'' for ''The term 'oil or gas property' means''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 413(c) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 617 of this title] shall apply to any disposition of property which is placed in service by the taxpayer after December 31, 1986.

''(2) EXCEPTION FOR BINDING CONTRACTS.—The amendments made by this section shall not apply to any disposition of property placed in service after December 31, 1986, if such property was acquired pursuant to a written contract which was entered into before September 26, 1985, and which was binding at all times thereafter.''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–618 applicable with respect to wells commenced on or after Oct. 1, 1978, in taxable years ending on or after such date, see section 402(e) of Pub. L. 95–618, set out as a note under section 263 of this title.

EFFECTIVE DATE

Section 205(e) of Pub. L. 94–455 provided that: ''The amendments made by this section [enacting this section and amending sections 163, 170, 301, 312, 341, 453, and 751 of this title] shall apply with respect to taxable years ending after December 31, 1975.''

§1255. Gain from disposition of section 126 property

(a) General rule

(1) Ordinary income

Except as otherwise provided in this section, if section 126 property is disposed of, the lower of—

(A) the applicable percentage of the aggregate payments, with respect to such property, excluded from gross income under section 126, or

(B) the excess of—

(i) the amount realized (in the case of a sale, exchange, or involuntary conversion), or the fair market value of such section 126 property (in the case of any other disposition), over

(ii) the adjusted basis of such property,

shall be treated as ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle, except that this section shall not apply to the extent such gain is recognized as ordinary income under any other provision of this part.

(2) Section 126 property

For purposes of this section, ''section 126 property'' means any property acquired, improved, or otherwise modified by the application of payments excluded from gross income under section 126.

(3) Applicable percentage

For purposes of this section, if section 126 property is disposed of less than 10 years after the date of receipt of payments excluded from gross income under section 126, the applicable percentage is 100 percent. If section 126 property is disposed of more than 10 years after such date, the applicable percentage is 100 percent reduced (but not below zero) by 10 percent for each year or part thereof in excess of 10 years such property was held after the date of receipt of the payments.

(b) Special rules

Under regulations prescribed by the Secretary—

(1) rules similar to the rules applicable under section 1245 shall be applied for purposes of this section, and

(2) for purposes of sections 170(e),[1] and 751(c), amounts treated as ordinary income under this section shall be treated in the same manner as amounts treated as ordinary income under section 1245.

(Added Pub. L. 95–600, title V, § 543(c)(1), Nov. 6, 1978, 92 Stat. 2890; amended Pub. L. 96–222, title I, § 105(a)(7)(B), (D), Apr. 1, 1980, 94 Stat. 221; Pub. L. 96–471, § 2(b)(6), Oct. 19, 1980, 94 Stat. 2254; Pub. L. 99–514, title V, § 511(d)(2)(A), title VI, § 631(e)(14), Oct. 22, 1986, 100 Stat. 2248, 2275; Pub. L. 100–647, title I, § 1005(c)(10), Nov. 10, 1988, 102 Stat. 3392; Pub. L. 108–27, title III, § 302(e)(4)(B)(ii), May 28, 2003, 117 Stat. 764.)

AMENDMENT OF SECTION

For termination of amendment by section 303 of Pub. L. 108–27, see Effective and Termination Dates of 2003 Amendment note below.

AMENDMENTS

2003—Subsec. (b)(2). Pub. L. 108–27, §§ 302(e)(4)(B)(ii), 303, temporarily struck out '', 341(e)(12),'' after ''170(e)''. See Effective and Termination Dates of 2003 Amendment note below.

1988—Subsec. (b)(2). Pub. L. 100–647 amended Pub. L. 99–514, § 511(d)(2)(A), see 1986 Amendment note below.

1986—Subsec. (b)(2). Pub. L. 99–514, § 511(d)(2)(A), as amended by Pub. L. 100–647, struck out ''163(d),'' after ''sections''.

Pub. L. 99–514, § 631(e)(14), struck out ''453B(d)(2)'' after ''341(e)(12),''.

1980—Subsec. (a)(1)(B). Pub. L. 96–222, § 105(a)(7)(B), inserted following cl. (ii) provisions requiring that such gain be recognized notwithstanding any other provision of this subtitle, except that this section shall not apply to the extent such gain is recognized as ordinary income under any other provision of this part.

Subsec. (b)(2). Pub. L. 96–471 substituted ''453B(d)(2)'' for ''453(d)(4)(B)''.

Pub. L. 96–222, § 105(a)(7)(D), inserted ''for purposes of sections 163(d), 170(e), 341(e)(12), 453(d)(4)(B), and 751(c)'' before ''amounts treated as''.

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as a note under section 1 of this title.

Amendment by Pub. L. 108–27 inapplicable to taxable years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 303 of Pub. L. 108–27, as amended, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 511(d)(2)(A) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 511(e) of Pub. L. 99–514, set out as a note under section 163 of this title.

Amendment by section 631(e)(14) of Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

For effective date of amendment by Pub. L. 96–471, see section 6(a)(1) of Pub. L. 96–471, set out as an Effective Date note under section 453 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE

Section effective with respect to grants made under the programs after Sept. 30, 1979, see section 543(d) of Pub. L. 95–600, set out as a note under section 126 of this title.

§ 1256. Section 1256 contracts marked to market

(a) General rule

For purposes of this subtitle—

(1) each section 1256 contract held by the taxpayer at the close of the taxable year shall be treated as sold for its fair market value on the last business day of such taxable year (and any gain or loss shall be taken into account for the taxable year),

(2) proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account by reason of paragraph (1),

(3) any gain or loss with respect to a section 1256 contract shall be treated as—

(A) short-term capital gain or loss, to the extent of 40 percent of such gain or loss, and

(B) long-term capital gain or loss, to the extent of 60 percent of such gain or loss, and

(4) if all the offsetting positions making up any straddle consist of section 1256 contracts to which this section applies (and such straddle is not part of a larger straddle), sections 1092 and 263(g) shall not apply with respect to such straddle.

(b) Section 1256 contract defined

(1) In general

For purposes of this section, the term ''section 1256 contract'' means—

(A) any regulated futures contract,

(B) any foreign currency contract,

(C) any nonequity option,

(D) any dealer equity option, and

(E) any dealer securities futures contract.

(2) Exceptions

The term ''section 1256 contract'' shall not include—

(A) any securities futures contract or option on such a contract unless such contract or option is a dealer securities futures contract, or

(B) any interest rate swap, currency swap, basis swap, interest rate cap, interest rate floor, commodity swap, equity swap, equity index swap, credit default swap, or similar agreement.

[1] So in original. The comma probably should not appear.

(c) Terminations, etc.

(1) In general

The rules of paragraphs (1), (2), and (3) of subsection (a) shall also apply to the termination (or transfer) during the taxable year of the taxpayer's obligation (or rights) with respect to a section 1256 contract by offsetting, by taking or making delivery, by exercise or being exercised, by assignment or being assigned, by lapse, or otherwise.

(2) Special rule where taxpayer takes delivery on or exercises part of straddle

If—

(A) 2 or more section 1256 contracts are part of a straddle (as defined in section 1092(c)), and

(B) the taxpayer takes delivery under or exercises any of such contracts,

then, for purposes of this section, each of the other such contracts shall be treated as terminated on the day on which the taxpayer took delivery.

(3) Fair market value taken into account

For purposes of this subsection, fair market value at the time of the termination (or transfer) shall be taken into account.

(d) Elections with respect to mixed straddles

(1) Election

The taxpayer may elect to have this section not to apply to all section 1256 contracts which are part of a mixed straddle.

(2) Time and manner

An election under paragraph (1) shall be made at such time and in such manner as the Secretary may by regulations prescribe.

(3) Election revocable only with consent

An election under paragraph (1) shall apply to the taxpayer's taxable year for which made and to all subsequent taxable years, unless the Secretary consents to a revocation of such election.

(4) Mixed straddle

For purposes of this subsection, the term ''mixed straddle'' means any straddle (as defined in section 1092(c))—

(A) at least 1 (but not all) of the positions of which are section 1256 contracts, and

(B) with respect to which each position forming part of such straddle is clearly identified, before the close of the day on which the first section 1256 contract forming part of the straddle is acquired (or such earlier time as the Secretary may prescribe by regulations), as being part of such straddle.

(e) Mark to market not to apply to hedging transactions

(1) Section not to apply

Subsection (a) shall not apply in the case of a hedging transaction.

(2) Definition of hedging transaction

For purposes of this subsection, the term ''hedging transaction'' means any hedging transaction (as defined in section 1221(b)(2)(A)) if, before the close of the day on which such transaction was entered into (or such earlier time as the Secretary may prescribe by regulations), the taxpayer clearly identifies such transaction as being a hedging transaction.

(3) Special rule for syndicates

(A) In general

Notwithstanding paragraph (2), the term ''hedging transaction'' shall not include any transaction entered into by or for a syndicate.

(B) Syndicate defined

For purposes of subparagraph (A), the term ''syndicate'' means any partnership or other entity (other than a corporation which is not an S corporation) if more than 35 percent of the losses of such entity during the taxable year are allocable to limited partners or limited entrepreneurs (within the meaning of section 464(e)(2)).

(C) Holdings attributable to active management

For purposes of subparagraph (B), an interest in an entity shall not be treated as held by a limited partner or a limited entrepreneur (within the meaning of section 464(e)(2))—

(i) for any period if during such period such interest is held by an individual who actively participates at all times during such period in the management of such entity,

(ii) for any period if during such period such interest is held by the spouse, children, grandchildren, and parents of an individual who actively participates at all times during such period in the management of such entity,

(iii) if such interest is held by an individual who actively participated in the management of such entity for a period of not less than 5 years,

(iv) if such interest is held by the estate of an individual who actively participated in the management of such entity or is held by the estate of an individual if with respect to such individual such interest was at any time described in clause (ii), or

(v) if the Secretary determines (by regulations or otherwise) that such interest should be treated as held by an individual who actively participates in the management of such entity, and that such entity and such interest are not used (or to be used) for tax–avoidance purposes.

For purposes of this subparagraph, a legally adopted child of an individual shall be treated as a child of such individual by blood.

(4) Limitation on losses from hedging transactions

(A) In general

(i) Limitation

Any hedging loss for a taxable year which is allocable to any limited partner or limited entrepreneur (within the meaning of paragraph (3)) shall be allowed only to the extent of the taxable income of such limited partner or entrepreneur for such

taxable year attributable to the trade or business in which the hedging transactions were entered into. For purposes of the preceding sentence, taxable income shall be determined by not taking into account items attributable to hedging transactions.

(ii) Carryover of disallowed loss

Any hedging loss disallowed under clause (i) shall be treated as a deduction attributable to a hedging transaction allowable in the first succeeding taxable year.

(B) Exception where economic loss

Subparagraph (A)(i) shall not apply to any hedging loss to the extent that such loss exceeds the aggregate unrecognized gains from hedging transactions as of the close of the taxable year attributable to the trade or business in which the hedging transactions were entered into.

(C) Exception for certain hedging transactions

In the case of any hedging transaction relating to property other than stock or securities, this paragraph shall apply only in the case of a taxpayer described in section 465(a)(1).

(D) Hedging loss

The term ''hedging loss'' means the excess of—

(i) the deductions allowable under this chapter for the taxable year attributable to hedging transactions (determined without regard to subparagraph (A)(i)), over

(ii) income received or accrued by the taxpayer during such taxable year from such transactions.

(E) Unrecognized gain

The term ''unrecognized gain'' has the meaning given to such term by section 1092(a)(3).

(f) Special rules

(1) Denial of capital gains treatment for property identified as part of a hedging transaction

For purposes of this title, gain from any property shall in no event be considered as gain from the sale or exchange of a capital asset if such property was at any time personal property (as defined in section 1092(d)(1)) identified under subsection (e)(2) by the taxpayer as being part of a hedging transaction.

(2) Subsection (a)(3) not to apply to ordinary income property

Paragraph (3) of subsection (a) shall not apply to any gain or loss which, but for such paragraph, would be ordinary income or loss.

(3) Capital gain treatment for traders in section 1256 contracts

(A) In general

For purposes of this title, gain or loss from trading of section 1256 contracts shall be treated as gain or loss from the sale or exchange of a capital asset.

(B) Exception for certain hedging transactions

Subparagraph (A) shall not apply to any section 1256 contract to the extent such contract is held for purposes of hedging property if any loss with respect to such property in the hands of the taxpayer would be ordinary loss.

(C) Treatment of underlying property

For purposes of determining whether gain or loss with respect to any property is ordinary income or loss, the fact that the taxpayer is actively engaged in dealing in or trading section 1256 contracts related to such property shall not be taken into account.

(4) Special rule for dealer equity options and dealer securities futures contracts of limited partners or limited entrepreneurs

In the case of any gain or loss with respect to dealer equity options, or dealer securities futures contracts, which are allocable to limited partners or limited entrepreneurs (within the meaning of subsection (e)(3))—

(A) paragraph (3) of subsection (a) shall not apply to any such gain or loss, and

(B) all such gains or losses shall be treated as short-term capital gains or losses, as the case may be.

(5) Special rule related to losses

Section 1091 (relating to loss from wash sales of stock or securities) shall not apply to any loss taken into account by reason of paragraph (1) of subsection (a).

(g) Definitions

For purposes of this section—

(1) Regulated futures contracts defined

The term ''regulated futures contract'' means a contract—

(A) with respect to which the amount required to be deposited and the amount which may be withdrawn depends on a system of marking to market, and

(B) which is traded on or subject to the rules of a qualified board or exchange.

(2) Foreign currency contract defined

(A) Foreign currency contract

The term ''foreign currency contract'' means a contract—

(i) which requires delivery of, or the settlement of which depends on the value of, a foreign currency which is a currency in which positions are also traded through regulated futures contracts,

(ii) which is traded in the interbank market, and

(iii) which is entered into at arm's length at a price determined by reference to the price in the interbank market.

(B) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of subparagraph (A), including regulations excluding from the application of subparagraph (A) any contract (or type of contract) if its application thereto would be inconsistent with such purposes.

(3) Nonequity option

The term ''nonequity option'' means any listed option which is not an equity option.

(4) Dealer equity option

The term ''dealer equity option'' means, with respect to an options dealer, any listed option which—

(A) is an equity option,

(B) is purchased or granted by such options dealer in the normal course of his activity of dealing in options, and

(C) is listed on the qualified board or exchange on which such options dealer is registered.

(5) Listed option

The term ''listed option'' means any option (other than a right to acquire stock from the issuer) which is traded on (or subject to the rules of) a qualified board or exchange.

(6) Equity option

The term ''equity option'' means any option—

(A) to buy or sell stock, or

(B) the value of which is determined directly or indirectly by reference to any stock or any narrow-based security index (as defined in section 3(a)(55) of the Securities Exchange Act of 1934, as in effect on the date of the enactment of this paragraph).

The term ''equity option'' includes such an option on a group of stocks only if such group meets the requirements for a narrow-based security index (as so defined). The Secretary may prescribe regulations regarding the status of options the values of which are determined directly or indirectly by reference to any index which becomes (or ceases to be) a narrow-based security index (as so defined).

(7) Qualified board or exchange

The term ''qualified board or exchange'' means—

(A) a national securities exchange which is registered with the Securities and Exchange Commission,

(B) a domestic board of trade designated as a contract market by the Commodity Futures Trading Commission, or

(C) any other exchange, board of trade, or other market which the Secretary determines has rules adequate to carry out the purposes of this section.

(8) Options dealer

(A) In general

The term ''options dealer'' means any person registered with an appropriate national securities exchange as a market maker or specialist in listed options.

(B) Persons trading in other markets

In any case in which the Secretary makes a determination under subparagraph (C) of paragraph (7), the term ''options dealer'' also includes any person whom the Secretary determines performs functions similar to the persons described in subparagraph (A). Such determinations shall be made to the extent appropriate to carry out the purposes of this section.

(9) Dealer securities futures contract

(A) In general

The term ''dealer securities futures contract'' means, with respect to any dealer, any securities futures contract, and any option on such a contract, which—

(i) is entered into by such dealer (or, in the case of an option, is purchased or granted by such dealer) in the normal course of his activity of dealing in such contracts or options, as the case may be, and

(ii) is traded on a qualified board or exchange.

(B) Dealer

For purposes of subparagraph (A), a person shall be treated as a dealer in securities futures contracts or options on such contracts if the Secretary determines that such person performs, with respect to such contracts or options, as the case may be, functions similar to the functions performed by persons described in paragraph (8)(A). Such determination shall be made to the extent appropriate to carry out the purposes of this section.

(C) Securities futures contract

The term ''securities futures contract'' has the meaning given to such term by section 1234B.

(Added Pub. L. 97–34, title V, §503(a), Aug. 13, 1981, 95 Stat. 327; amended Pub. L. 97–354, §5(a)(38), Oct. 19, 1982, 96 Stat. 1696; Pub. L. 97–448, title I, §105(c)(1)–(3), (5)(A)–(C), Jan. 12, 1983, 96 Stat. 2385, 2386; Pub. L. 98–369, div. A, title I, §§102(a), (b), (e)(1), (5), 104(a), 107(c), (d), title VII, §722(a)(2), July 18, 1984, 98 Stat. 620, 621, 623, 624, 628, 630, 972; Pub. L. 99–514, title XII, §1261(c), Oct. 22, 1986, 100 Stat. 2591; Pub. L. 106–170, title V, §532(b)(4), Dec. 17, 1999, 113 Stat. 1930; Pub. L. 106–554, §1(a)(7) [title IV, §401(g)(1)–(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–649, 2763A–650; Pub. L. 107–147, title IV, §416(b)(1), Mar. 9, 2002, 116 Stat. 55; Pub. L. 108–311, title IV, §405(a)(2), Oct. 4, 2004, 118 Stat. 1188; Pub. L. 109–135, title IV, §412(*oo*), Dec. 21, 2005, 119 Stat. 2639; Pub. L. 111–203, title XVI, §1601(a), July 21, 2010, 124 Stat. 2223.)

REFERENCES IN TEXT

Section 3(a)(55) of the Securities Exchange Act of 1934, referred to in subsec. (g)(6)(B), is classified to section 78c(a)(55) of Title 15, Commerce and Trade.

The date of the enactment of this paragraph, referred to in subsec. (g)(6)(B), probably means the date of enactment of Pub. L. 106–554, which amended subsec. (g)(6) generally and which was approved Dec. 21, 2000.

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–203 redesignated first sentence as par. (1), inserted heading, redesignated former pars. (1) to (5) as subpars. (A) to (E), respectively, of par. (1), added par. (2), and struck out concluding provisions which read as follows: ''The term 'section 1256 contract' shall not include any securities futures contract or option on such a contract unless such contract or option is a dealer securities futures contract.''

2005—Subsec. (f)(1). Pub. L. 109–135 substituted ''subsection (e)(2)'' for ''subsection (e)(2)(C)''.

2004—Subsec. (g)(6). Pub. L. 108–311 added at end of concluding provisions ''The Secretary may prescribe

regulations regarding the status of options the values of which are determined directly or indirectly by reference to any index which becomes (or ceases to be) a narrow-based security index (as so defined).''

2002—Subsec. (f)(5). Pub. L. 107–147 added par. (5).

2000—Subsec. (b). Pub. L. 106–554, §1(a)(7) [title IV, §401(g)(1)(A)], added par. (5) and concluding provisions.

Subsec. (f)(4). Pub. L. 106–554, §1(a)(7) [title IV, §401(g)(2)], inserted ''and dealer securities futures contracts'' after ''dealer equity options'' in heading and '', or dealer securities futures contracts,'' after ''dealer equity options'' in introductory provisions.

Subsec. (g)(6). Pub. L. 106–554, §1(a)(7) [title IV, §401(g)(3)], amended heading and text of par. (6) generally. Prior to amendment, text read as follows:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'equity option' means any option—

''(i) to buy or sell stock, or

''(ii) the value of which is determined directly or indirectly by reference to any stock (or group of stocks) or stock index.

''(B) EXCEPTION FOR CERTAIN OPTIONS REGULATED BY COMMODITIES FUTURES TRADING COMMISSION.—The term 'equity option' does not include any option with respect to any group of stocks or stock index if—

''(i) there is in effect a designation by the Commodities Futures Trading Commission of a contract market for a contract based on such group of stocks or index, or

''(ii) the Secretary determines that such option meets the requirements of law for such a designation.''

Subsec. (g)(9). Pub. L. 106–554, §1(a)(7) [title IV, §401(g)(1)(B)], added par. (9).

1999—Subsec. (e)(2). Pub. L. 106–170 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of this subsection, the term 'hedging transaction' means any transaction if—

''(A) such transaction is entered into by the taxpayer in the normal course of the taxpayer's trade or business primarily—

''(i) to reduce risk of price change or currency fluctuations with respect to property which is held or to be held by the taxpayer, or

''(ii) to reduce risk of interest rate or price changes or currency fluctuations with respect to borrowings made or to be made, or obligations incurred or to be incurred, by the taxpayer,

''(B) the gain or loss on such transactions is treated as ordinary income or loss, and

''(C) before the close of the day on which such transaction was entered into (or such earlier time as the Secretary may prescribe by regulations), the taxpayer clearly identifies such transaction as being a hedging transaction.''

1986—Subsec. (e)(4), (5). Pub. L. 99–514 redesignated par. (5) as (4) and struck out former par. (4), special rule for banks, which read as follows: ''In the case of a bank (as defined in section 581), subparagraph (A) of paragraph (2) shall be applied without regard to clause (i) or (ii) thereof.''

1984—Pub. L. 98–369, §102(e)(5), substituted ''Section 1256 contracts'' for ''Regulated futures contracts'' in section catchline.

Subsec. (a)(1), (3), (4). Pub. L. 98–369, §102(a)(1), substituted ''section 1256 contract'' for ''regulated futures contract'' and ''section 1256 contracts'' for ''regulated futures contracts'' wherever appearing.

Subsec. (b). Pub. L. 98–369, §102(a)(2), in par. (1), substituted ''any regulated futures contract'' for ''with respect to which the amount required to be deposited and the amount which may be withdrawn depends on the system of marking to market; and'', in par. (2), substituted ''any foreign currency contract,'' for ''which is traded on or subject to the rules of a domestic board of trade designated as a contract market by the Commodity Futures Trading Commission or of any board of trade or exchange which the Secretary determines has rules adequate to carry out the purposes of this section. Such term includes any foreign currency contract.'', and added pars. (3) and (4).

Subsec. (c)(1). Pub. L. 98–369, §102(a)(1)(A), (e)(1)(A), substituted ''section 1256 contracts'' for ''regulated futures contracts'', and ''by taking or making delivery, by exercise or being exercised, by assignment or being assigned, by lapse,'' for ''by taking or making delivery,''.

Subsec. (c)(2). Pub. L. 98–369, §102(e)(1)(C), substituted ''takes delivery on or exercises'' for ''takes delivery on'' in heading.

Subsec. (c)(2)(A). Pub. L. 98–369, §102(a)(1)(B), substituted ''section 1256 contracts'' for ''regulated futures contracts''.

Subsec. (c)(2)(B). Pub. L. 98–369, §102(e)(1)(B), substituted ''takes delivery under or exercises'' for ''takes delivery under''.

Subsec. (d)(1), (4)(A). Pub. L. 98–369, §102(a)(1)(B), substituted ''section 1256 contracts'' for ''regulated futures contracts''.

Subsec. (d)(4)(B). Pub. L. 98–369, §102(a)(1)(A), substituted ''section 1256 contract'' for ''regulated futures contract''.

Pub. L. 98–369, §107(c), inserted ''(or such earlier time as the Secretary may prescribe by regulations)''.

Subsec. (e)(2)(C). Pub. L. 98–369, §107(d), inserted ''(or such earlier time as the Secretary may prescribe by regulations''.

Subsec. (e)(5). Pub. L. 98–369, §104(a), added par. (5).

Subsec. (f)(3), (4). Pub. L. 98–369, §102(b), added pars. (3) and (4).

Subsec. (g). Pub. L. 98–369, §102(a)(3), in amending subsec. (g) generally, inserted provisions relating to regulated futures contracts as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (2), and added pars. (3) to (8).

Subsec. (g)(1)(A). Pub. L. 98–369, §722(a)(2), inserted '', or the settlement of which depends on the value of,'' after ''delivery of''.

1983—Subsec. (b). Pub. L. 97–448, §105(c)(5)(A), (B), struck out par. (1) which related to contracts requiring delivery of personal property (as defined in section 1092(d)(1)) or an interest in such property, redesignated pars. (2) and (3) as (1) and (2), respectively, and inserted last sentence providing that such term includes any foreign currency contract.

Subsec. (c). Pub. L. 97–448, §105(c)(1), inserted '', etc.'' after ''Terminations'' in heading and, in text, designated existing first and second sentences as pars. (1) and (3), respectively, added par. (2), inserted ''(or transfer)'' after ''termination'' and ''(or rights)'' after ''obligation'' in par. (1) as so designated, and substituted ''this subsection'' for ''the preceding sentence'' and inserted ''(or transfer)'' after ''termination'' in par. (3) as so designated.

Subsec. (d)(4)(B). Pub. L. 97–448, §105(c)(2), substituted ''day on which the first regulated futures contract forming part of the straddle is acquired'' for ''day on which such position is acquired''.

Subsec. (e)(3)(C)(v). Pub. L. 97–448, §105(c)(3), inserted ''(by regulations or otherwise)'' after ''determines''.

Subsec. (g). Pub. L. 97–448, §105(c)(5)(C), added subsec. (g).

1982—Subsec. (e)(3)(B). Pub. L. 97–354 substituted ''an S corporation'' for ''an electing small business corporation within the meaning of section 1371(b)''.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of Title 12, Banks and Banking.

Pub. L. 111–203, title XVI, §1601(b), July 21, 2010, 124 Stat. 2223, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [July 21, 2010].''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 effective as if included in section 401 of the Community Renewal Tax Relief

Act of 2000 [H.R. 5662, as enacted by Pub. L. 106–554], see section 405(b) of Pub. L. 108–311, set out as a note under section 1234B of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title IV, §416(b)(2), Mar. 9, 2002, 116 Stat. 55, provided that: ''The amendment made by this subsection [amending this section] shall take effect as if included in section 5075 of the Technical and Miscellaneous Revenue Act of 1988 [Pub. L. 100–647].''

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1261(e) of Pub. L. 99–514, set out as an Effective Date note under section 985 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 102(f)–(j) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, title XVIII, §1808(a)(1), Oct. 22, 1986, 100 Stat. 2095, 2817, provided that:

''(f) EFFECTIVE DATES.—

''(1) IN GENERAL.—Except as otherwise provided in this subsection or subsection (g), the amendments made by this section [amending this section, sections 263, 1092, 1212, 1234A, 1362, 1374, and 1402 of this title, and section 411 of Title 42, The Public Health and Welfare, and enacting provisions set out as a note under section 1362 of this title] shall apply to positions established after the date of the enactment of this Act [July 18, 1984], in taxable years ending after such date.

''(2) SPECIAL RULE FOR OPTIONS ON REGULATED FUTURES CONTRACTS.—In the case of any option with respect to a regulated futures contract (within the meaning of section 1256 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]), the amendments made by this section shall apply to positions established after October 31, 1983, in taxable years ending after such date.

''(3) SPECIAL RULE FOR SELF-EMPLOYMENT TAX.—Except as provided in subsection (g)(2), the amendments made by subsection (c) [amending section 1402 of this title and section 411 of Title 42] shall apply to taxable years beginning after the date of the enactment of this Act [July 18, 1984].

''(4) GAINS OR LOSSES FROM CERTAIN TERMINATIONS.—The amendment made by subsection (d)(9) [probably means subsec. (e)(9), which amended section 1234A of this title] shall apply as if included in the amendment made by section 505(a) [probably means section 507(a)] of the Economic Recovery Tax Act of 1981 [Pub. L. 97–34], as amended by section 105(e) of the Technical Corrections Act of 1982 [Pub. L. 97–448].

''(g) ELECTIONS WITH RESPECT TO PROPERTY HELD ON OR BEFORE THE DATE OF THE ENACTMENT OF THIS ACT.—At the election of the taxpayer—

''(1) the amendments made by this section [amending this section, sections 263, 1092, 1212, 1234A, 1362, 1374, and 1402 of this title, and section 411 of Title 42, The Public Health and Welfare, and enacting provisions set out as a note under section 1362 of this title] shall apply to all section 1256 contracts held by the taxpayer on the date of the enactment of this Act [July 18, 1984], effective for periods after such date in taxable years ending after such date, or

''(2) in lieu of an election under paragraph (1), the amendments made by this section shall apply to all section 1256 contracts held by the taxpayer at any time during the taxable year of the taxpayer which includes the date of the enactment of this Act.

''(h) ELECTIONS FOR INSTALLMENT PAYMENT OF TAX ATTRIBUTABLE TO STOCK OPTIONS.—

''(1) IN GENERAL.—If the taxpayer makes an election under subsection (g)(2) and under this subsection—

''(A) the taxpayer may pay part or all the tax for the taxable year referred to in subsection (g)(2) in 2 or more (but not exceeding 5) equal installments, and

''(B) the maximum amount of tax which may be paid in installments under this subsection shall be the excess of—

''(i) the tax for such taxable year determined by taking into account subsection (g)(2), over

''(ii) the tax for such taxable year determined by taking into account subsection (g)(2) and by treating—

''(I) all section 1256 contracts which are stock options, and

''(II) any stock which was a part of a straddle including any such stock options,

as having been acquired for a purchase price equal to their fair market value on the last business day of the preceding taxable year. Stock options and stock shall be taken into account under subparagraph (B)(ii) only if such options or stock were held on the last day of the preceding taxable year and only if income on such options or stock would have been ordinary income if such options or stock were sold at a gain on such last day.

''(2) DATE FOR PAYMENT OF INSTALLMENT.—

''(A) If an election is made under this subsection, the first installment under paragraph (1) shall be paid on or before the due date for filing the return for the taxable year described in paragraph (1), and each succeeding installment shall be paid on or before the date which is 1 year after the date prescribed for payment of the preceding installment.

''(B) If a bankruptcy case or insolvency proceeding involving the taxpayer is commenced before the final installment is paid, the total amount of any unpaid installments shall be treated as due and payable on the day preceding the day on which such case or proceeding is commenced.

''(3) INTEREST IMPOSED.—For purposes of section 6601 of the Internal Revenue Code of 1986, the time for payment of any tax with respect to which an election is made under this subsection shall be determined without regard to this subsection.

''(4) FORM OF ELECTION.—An election under this subsection shall be made not later than the time for filing the return for the taxable year described in paragraph (1) and shall be made in the manner and form required by regulations prescribed by Secretary of the Treasury or his delegate. The election shall set forth—

''(A) the amount determined under paragraph (1)(B) and the number of installments elected by the taxpayer,

''(B) the property described in paragraph (1)(B)(ii), and the date on which such property was acquired,

''(C) the fair market value of the property described in paragraph (1)(B)(ii) on the last business day of the taxable year preceding the taxable year described in paragraph (1), and

''(D) such other information for purposes of carrying out the provisions of this subsection as may be required by such regulations.

''(5) DELAY OF IDENTIFICATION REQUIREMENT.—Section 1256(e)(2)(C) of the Internal Revenue Code of 1986 shall not apply to any stock option or stock acquired on or before the 60th day after the date of the enactment of this Act [July 18, 1984].

''(i) DEFINITIONS.—For purposes of subsections (g) and (h)—

''(1) SECTION 1256 CONTRACT.—The term 'section 1256 contract' has the meaning given to such term by section 1256(b) of the Internal Revenue Code of 1986 (as amended by this section).

''(2) STOCK OPTION.—The term 'stock option' means any option to buy or sell stock.

''(j) COORDINATION OF ELECTION UNDER SUBSECTION (d)(3) WITH ELECTIONS UNDER SUBSECTIONS (g) AND (h).—The Secretary of the Treasury or his delegate shall prescribe such regulations as may be necessary to coordinate the election provided by subsection (d)(3) with the elections provided by subsections (g) and (h).''

Section 104(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1984.''

Amendment by section 107(c), (d) of Pub. L. 98–369 applicable to positions entered into after July 18, 1984, in taxable years ending after that date, see section 107(e) of Pub. L. 98–369 set out as a note under section 1092 of this title.

Amendment by section 722(a)(2) of Pub. L. 98–369 effective as if included in the provisions of the Technical Corrections Act of 1984, Pub. L. 97–448, to which such amendment relates, see section 722(a)(6) of Pub. L. 98–369, set out as a note under section 172 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

Section 105(c)(5)(D) of Pub. L. 97–448, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(i) IN GENERAL.—Except as provided in clauses (ii) and (iii), the amendments made by subparagraphs (B) and (C) [amending this section] shall apply only with respect to contracts entered into after May 11, 1982.

''(ii) ELECTION BY TAXPAYER OF RETROACTIVE APPLICATION.—

''(I) RETROACTIVE APPLICATION.—If the taxpayer so elects, the amendments made by subparagraphs (B) and (C) [amending this section] shall apply as if included within the amendments made by title V of the Economic Recovery Tax Act of 1981 [title V of Pub. L. 97–34].

''(II) ADDITIONAL CHOICES WITH RESPECT TO 1981.—If the taxpayer held a foreign currency contract after December 31, 1980, and before June 24, 1981, and such taxpayer makes an election under subclause (I), such taxpayer may revoke any election made under section 508(c) [set out as an Effective Date note under section 1092 of this title] or 509(a) [set out below] of such Act, and may make an election under section 508(c) or 509(a) of such Act.

''(III) ADDITIONAL CHOICES APPLY TO ALL REGULATED FUTURES CONTRACTS.—Except as provided in subclause (IV), in the case of any taxpayer who makes an election under subclause (I), any election under section 508(c) or 509(a) of such Act or any revocation of such an election shall apply to all regulated futures contracts (including foreign currency contracts).

''(IV) SECTION 509(a)(3) AND (4) NOT TO APPLY TO FOREIGN CURRENCY CONTRACTS.—Paragraphs (3) and (4) of section 509(a) of such Act shall not apply to any foreign currency contract.

''(V) TIME FOR MAKING ELECTION OR REVOCATION.—Any election under subclause (I) and any election or revocation under subclause (II) may be made only within the 90-day period beginning on the date of the enactment of this Act [Jan. 12, 1983]. Any such action, once taken, shall be irrevocable.

''(VI) DEFINITIONS.—For purposes of this clause, the terms 'regulated futures contract' and 'foreign currency contract' have the same respective meanings as when used in section 1256 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this Act).

''(iii) ELECTION BY TAXPAYER WITH RESPECT TO POSITIONS HELD DURING TAXABLE YEARS ENDING AFTER MAY 11, 1982.—In lieu of the election under clause (ii), a taxpayer may elect to have the amendments made by subparagraphs (B) and (C) [amending subsec. (b) of this section to include foreign currency contracts and enacting subsec. (g) of this section, respectively] applied to all positions held in taxable years ending after May 11, 1982, except that the provisions of section 509(a)(3) and (4) of the Economic Recovery Tax Act of 1981 [set out below] shall not apply.''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE

Section (other than subsec. (e)(2)(C)) applicable to property acquired and positions established by the taxpayer after June 23, 1981, in taxable years ending after such date, subsec. (e)(2)(C) of this section applicable to property acquired and positions established by the taxpayer after Dec. 31, 1981, in taxable years ending after such date, and section applicable when so elected with respect to property held on June 23, 1981, see section 508 of Pub. L. 97–34, set out as a note under section 1092 of this title.

DEADLINE FOR DETERMINATION

Pub. L. 106–554, § 1(a)(7) [title IV, § 401(g)(4)], Dec. 21, 2000, 114 Stat. 2763, 2763A–650, provided that: ''The Secretary of the Treasury or his delegate shall make the determinations under section 1256(g)(9)(B) of the Internal Revenue Code of 1986, as added by this Act, not later than July 1, 2001.''

ELECTION FOR EXTENSION OF TIME FOR PAYMENT AND APPLICATION OF THIS SECTION FOR THE TAXABLE YEAR INCLUDING JUNE 23, 1981

Section 509 of Pub. L. 97–34, as amended by Pub. L. 97–448, title I, § 105(c)(6), Jan. 12, 1983, 96 Stat. 2387; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) ELECTION.—

''(1) IN GENERAL.—In the case of any taxable year beginning before June 23, 1981, and ending after June 22, 1981, the taxpayer may elect, in lieu of any election under section 508(c) [set out as an Effective Date note under section 1092 of this title], to have this section apply to all regulated futures contracts held during such taxable year.

''(2) APPLICATION OF SECTION 1256.—If a taxpayer elects to have the provisions of this section apply to the taxable year described in paragraph (1).—

''(A) the provisions of section 1256 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (other than section 1256(e)(2)(C)) shall apply to regulated futures contracts held by the taxpayer at any time during such taxable year, and

''(B) for purposes of determining the rate of tax applicable to gains and losses from regulated futures contracts held at any time during such year, such gains and losses shall be treated as gain or loss from a sale or exchange occurring in a taxable year beginning in 1982.

''(3) DETERMINATION OF DEFERRED TAX LIABILITY.—If the taxpayer makes an election under this subsection.—

''(A) the taxpayer may pay part or all of the tax for such year in two or more (but not exceeding five) equal installments;

''(B) the maximum amount of tax which may be paid in installments under this section shall be the excess of—

''(i) the tax for such year, determined by taking into account paragraph (2), over

''(ii) the tax for such year, determined by taking into account paragraph (2) and by treating all regulated futures contracts which were held by the taxpayer on the first day of the taxable year described in paragraph (1), and which were acquired before the first day of such taxable year, as having been acquired for a purchase price equal

to their fair market value on the last business day of the preceding taxable year.

''(4) DATE FOR PAYMENT OF INSTALLMENT.—

''(A) If an election is made under this subsection, the first installment under subsection (a)(3)(A) shall be paid on or before the due date for filing the return for the taxable year described in paragraph (1), and each succeeding installment shall be paid on or before the date which is one year after the date prescribed for payment of the preceding installment.

''(B) If a bankruptcy case or insolvency proceeding involving the taxpayer is commenced before the final installment is paid, the total amount of any unpaid installments shall be treated as due and payable on the day preceding the day on which such case or proceeding is commenced.

''(5) INTEREST IMPOSED.—For purposes of section 6601 of the Internal Revenue Code of 1986, the time for payment of any tax with respect to which an election is made under this subsection shall be determined without regard to this subsection.

''(b) FORM OF ELECTION.—An election under this section shall be made not later than the time for filing the return for the taxable year described in subsection (a)(1) and shall be made in the manner and form required by regulations prescribed by the Secretary. The election shall set forth—

''(1) the amount determined under subsection (a)(3)(B) and the number of installments elected by the taxpayer,

''(2) each regulated futures contract held by the taxpayer on the first day of the taxable year described in subsection (a)(1), and the date such contract was acquired,

''(3) the fair market value on the last business day of the preceding taxable year for each regulated futures contract described in paragraph (2), and

''(4) such other information for purposes of carrying out the provisions of this section as may be required by such regulations.''

§ 1257. Disposition of converted wetlands or highly erodible croplands

(a) Gain treated as ordinary income

Any gain on the disposition of converted wetland or highly erodible cropland shall be treated as ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle, except that this section shall not apply to the extent such gain is recognized as ordinary income under any other provision of this part.

(b) Loss treated as long-term capital loss

Any loss recognized on the disposition of converted wetland or highly erodible cropland shall be treated as a long-term capital loss.

(c) Definitions

For purposes of this section—

(1) Converted wetland

The term ''converted wetland'' means any converted wetland (as defined in section 1201(4)[1] of the Food Security Act of 1985 (16 U.S.C. 3801(4))) held—

(A) by the person whose activities resulted in such land being converted wetland, or

(B) by any other person who at any time used such land for farming purposes.

(2) Highly erodible cropland

The term ''highly erodible cropland'' means any highly erodible cropland (as defined in section 1201(6)[1] of the Food Security Act of 1985 (16 U.S.C. 3801(6))), if at any time the taxpayer used such land for farming purposes (other than the grazing of animals).

(3) Treatment of successors

If any land is converted wetland or highly erodible cropland in the hands of any person, such land shall be treated as converted wetland or highly erodible cropland in the hands of any other person whose adjusted basis in such land is determined (in whole or in part) by reference to the adjusted basis of such land in the hands of such person.

(d) Special rules

Under regulations prescribed by the Secretary, rules similar to the rules applicable under section 1245 shall apply for purposes of subsection (a). For purposes of sections 170(e) and 751(c), amounts treated as ordinary income under subsection (a) shall be treated in the same manner as amounts treated as ordinary income under section 1245.

(Added Pub. L. 99–514, title IV, § 403(a), Oct. 22, 1986, 100 Stat. 2222; amended Pub. L. 108–27, title III, § 302(e)(4)(B)(ii), May 28, 2003, 117 Stat. 764.)

AMENDMENT OF SECTION

For termination of amendment by section 303 of Pub. L. 108–27, see Effective and Termination Dates of 2003 Amendment note below.

REFERENCES IN TEXT

Section 1201(4) of the Food Security Act of 1985 (16 U.S.C. 3801(4)) and section 1201(6) of the Food Security Act of 1985 (16 U.S.C. 3801(6)), referred to in subsec. (c)(1), (2), probably are references to section 1201(a)(4) and 1201(a)(6) of that Act (16 U.S.C. 3801(a)(4), (6)). Section 1201 of the Food Security Act of 1985 was subsequently amended, and subsecs. (a)(4) and (a)(6) of section 1201 no longer define the terms ''converted wetland'' and ''highly erodible cropland'', respectively. However, such terms are defined elsewhere in that section.

AMENDMENTS

2003—Subsec. (d). Pub. L. 108–27, §§ 302(e)(4)(B)(ii), 303, temporarily struck out '', 341(e)(12),'' after ''170(e)''. See Effective and Termination Dates of 2003 Amendment note below.

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as a note under section 1 of this title.

Amendment by Pub. L. 108–27 inapplicable to taxable years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 303 of Pub. L. 108–27, as amended, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section 403(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [enacting this section] shall apply to dispositions of converted wetland or highly erodible cropland (as defined in section 1257(c) of the Internal Revenue Code of 1986 as added by this section) first used for farming after March 1, 1986, in taxable years ending after that date.''

[1] See References in Text note below.

§ 1258. Recharacterization of gain from certain financial transactions

(a) General rule

In the case of any gain—

(1) which (but for this section) would be treated as gain from the sale or exchange of a capital asset, and

(2) which is recognized on the disposition or other termination of any position which was held as part of a conversion transaction,

such gain (to the extent such gain does not exceed the applicable imputed income amount) shall be treated as ordinary income.

(b) Applicable imputed income amount

For purposes of subsection (a), the term ''applicable imputed income amount'' means, with respect to any disposition or other termination referred to in subsection (a), an amount equal to—

(1) the amount of interest which would have accrued on the taxpayer's net investment in the conversion transaction for the period ending on the date of such disposition or other termination (or, if earlier, the date on which the requirements of subsection (c) ceased to be satisfied) at a rate equal to 120 percent of the applicable rate, reduced by

(2) the amount treated as ordinary income under subsection (a) with respect to any prior disposition or other termination of a position which was held as a part of such transaction.

The Secretary shall by regulations provide for such reductions in the applicable imputed income amount as may be appropriate by reason of amounts capitalized under section 263(g), ordinary income received, or otherwise.

(c) Conversion transaction

For purposes of this section, the term ''conversion transaction'' means any transaction—

(1) substantially all of the taxpayer's expected return from which is attributable to the time value of the taxpayer's net investment in such transaction, and

(2) which is—

(A) the holding of any property (whether or not actively traded), and the entering into a contract to sell such property (or substantially identical property) at a price determined in accordance with such contract, but only if such property was acquired and such contract was entered into on a substantially contemporaneous basis,

(B) an applicable straddle,

(C) any other transaction which is marketed or sold as producing capital gains from a transaction described in paragraph (1), or

(D) any other transaction specified in regulations prescribed by the Secretary.

(d) Definitions and special rules

For purposes of this section—

(1) Applicable straddle

The term ''applicable straddle'' means any straddle (within the meaning of section 1092(c)).

(2) Applicable rate

The term ''applicable rate'' means—

(A) the applicable Federal rate determined under section 1274(d) (compounded semiannually) as if the conversion transaction were a debt instrument, or

(B) if the term of the conversion transaction is indefinite, the Federal short-term rates in effect under section 6621(b) during the period of the conversion transaction (compounded daily).

(3) Treatment of built-in losses

(A) In general

If any position with a built-in loss becomes part of a conversion transaction—

(i) for purposes of applying this subtitle to such position for periods after such position becomes part of such transaction, such position shall be taken into account at its fair market value as of the time it became part of such transaction, except that

(ii) upon the disposition or other termination of such position in a transaction in which gain or loss is recognized, such built-in loss shall be recognized and shall have a character determined without regard to this section.

(B) Built-in loss

For purposes of subparagraph (A), the term ''built-in loss'' means the loss (if any) which would have been realized if the position had been disposed of or otherwise terminated at its fair market value as of the time such position became part of the conversion transaction.

(4) Position taken into account at fair market value

In determining the taxpayer's net investment in any conversion transaction, there shall be included the fair market value of any position which becomes part of such transaction (determined as of the time such position became part of such transaction).

(5) Special rule for options dealers and commodities traders

(A) In general

Subsection (a) shall not apply to transactions—

(i) of an options dealer in the normal course of the dealer's trade or business of dealing in options, or

(ii) of a commodities trader in the normal course of the trader's trade or business of trading section 1256 contracts.

(B) Definitions

For purposes of this paragraph—

(i) Options dealer

The term ''options dealer'' has the meaning given such term by section 1256(g)(8).

(ii) Commodities trader

The term ''commodities trader'' means any person who is a member (or, except as otherwise provided in regulations, is entitled to trade as a member) of a domestic board of trade which is designated as a contract market by the Commodity Futures Trading Commission.

(C) Limited partners and limited entrepreneurs

In the case of any gain from a transaction recognized by an entity which is allocable to a limited partner or limited entrepreneur (within the meaning of section 464(e)(2)), subparagraph (A) shall not apply if—

(i) substantially all of the limited partner's (or limited entrepreneur's) expected return from the entity is attributable to the time value of the partner's (or entrepreneur's) net investment in such entity,

(ii) the transaction (or the interest in the entity) was marketed or sold as producing capital gains treatment from a transaction described in subsection (c)(1), or

(iii) the transaction (or the interest in the entity) is a transaction (or interest) specified in regulations prescribed by the Secretary.

(Added Pub. L. 103–66, title XIII, §13206(a)(1), Aug. 10, 1993, 107 Stat. 462; amended Pub. L. 108–357, title VIII, §888(c)(2), Oct. 22, 2004, 118 Stat. 1643.)

AMENDMENTS

2004—Subsec. (d)(1). Pub. L. 108–357 struck out ''; except that the term 'personal property' shall include stock'' before period at end.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to positions established on or after Oct. 22, 2004, see section 888(e) of Pub. L. 108–357, set out as a note under section 246 of this title.

EFFECTIVE DATE

Section 13206(a)(3) of Pub. L. 103–66, as amended by Pub. L. 104–188, title I, §1703(n)(11), Aug. 20, 1996, 110 Stat. 1877, provided that: ''The amendments made by this subsection [enacting this section] shall apply to conversion transactions entered into after April 30, 1993.''

§ 1259. Constructive sales treatment for appreciated financial positions

(a) In general

If there is a constructive sale of an appreciated financial position—

(1) the taxpayer shall recognize gain as if such position were sold, assigned, or otherwise terminated at its fair market value on the date of such constructive sale (and any gain shall be taken into account for the taxable year which includes such date), and

(2) for purposes of applying this title for periods after the constructive sale—

(A) proper adjustment shall be made in the amount of any gain or loss subsequently realized with respect to such position for any gain taken into account by reason of paragraph (1), and

(B) the holding period of such position shall be determined as if such position were originally acquired on the date of such constructive sale.

(b) Appreciated financial position

For purposes of this section—

(1) In general

Except as provided in paragraph (2), the term ''appreciated financial position'' means any position with respect to any stock, debt instrument, or partnership interest if there would be gain were such position sold, assigned, or otherwise terminated at its fair market value.

(2) Exceptions

The term ''appreciated financial position'' shall not include—

(A) any position with respect to debt if—

(i) the position unconditionally entitles the holder to receive a specified principal amount,

(ii) the interest payments (or other similar amounts) with respect to such position meet the requirements of clause (i) of section 860G(a)(1)(B), and

(iii) such position is not convertible (directly or indirectly) into stock of the issuer or any related person,

(B) any hedge with respect to a position described in subparagraph (A), and

(C) any position which is marked to market under any provision of this title or the regulations thereunder.

(3) Position

The term ''position'' means an interest, including a futures or forward contract, short sale, or option.

(c) Constructive sale

For purposes of this section—

(1) In general

A taxpayer shall be treated as having made a constructive sale of an appreciated financial position if the taxpayer (or a related person)—

(A) enters into a short sale of the same or substantially identical property,

(B) enters into an offsetting notional principal contract with respect to the same or substantially identical property,

(C) enters into a futures or forward contract to deliver the same or substantially identical property,

(D) in the case of an appreciated financial position that is a short sale or a contract described in subparagraph (B) or (C) with respect to any property, acquires the same or substantially identical property, or

(E) to the extent prescribed by the Secretary in regulations, enters into 1 or more other transactions (or acquires 1 or more positions) that have substantially the same effect as a transaction described in any of the preceding subparagraphs.

(2) Exception for sales of nonpublicly traded property

A taxpayer shall not be treated as having made a constructive sale solely because the taxpayer enters into a contract for sale of any stock, debt instrument, or partnership interest which is not a marketable security (as defined in section 453(f)) if the contract settles within 1 year after the date such contract is entered into.

(3) Exception for certain closed transactions

(A) In general

In applying this section, there shall be disregarded any transaction (which would

otherwise cause a constructive sale) during the taxable year if—

(i) such transaction is closed on or before the 30th day after the close of such taxable year,

(ii) the taxpayer holds the appreciated financial position throughout the 60-day period beginning on the date such transaction is closed, and

(iii) at no time during such 60-day period is the taxpayer's risk of loss with respect to such position reduced by reason of a circumstance which would be described in section 246(c)(4) if references to stock included references to such position.

(B) Treatment of certain closed transactions where risk of loss on appreciated financial position diminished

If—

(i) a transaction, which would otherwise cause a constructive sale of an appreciated financial position, is closed during the taxable year or during the 30 days thereafter, and

(ii) another transaction is entered into during the 60-day period beginning on the date the transaction referred to in clause (i) is closed—

(I) which would (but for this subparagraph) cause the requirement of subparagraph (A)(iii) not to be met with respect to the transaction described in clause (i) of this subparagraph,

(II) which is closed on or before the 30th day after the close of the taxable year in which the transaction referred to in clause (i) occurs, and

(III) which meets the requirements of clauses (ii) and (iii) of subparagraph (A),

the transaction referred to in clause (ii) shall be disregarded for purposes of determining whether the requirements of subparagraph (A)(iii) are met with respect to the transaction described in clause (i).

(4) Related person

A person is related to another person with respect to a transaction if—

(A) the relationship is described in section 267(b) or 707(b), and

(B) such transaction is entered into with a view toward avoiding the purposes of this section.

(d) Other definitions

For purposes of this section—

(1) Forward contract

The term ''forward contract'' means a contract to deliver a substantially fixed amount of property (including cash) for a substantially fixed price.

(2) Offsetting notional principal contract

The term ''offsetting notional principal contract'' means, with respect to any property, an agreement which includes—

(A) a requirement to pay (or provide credit for) all or substantially all of the investment yield (including appreciation) on such property for a specified period, and

(B) a right to be reimbursed for (or receive credit for) all or substantially all of any decline in the value of such property.

(e) Special rules

(1) Treatment of subsequent sale of position which was deemed sold

If—

(A) there is a constructive sale of any appreciated financial position,

(B) such position is subsequently disposed of, and

(C) at the time of such disposition, the transaction resulting in the constructive sale of such position is open with respect to the taxpayer or any related person,

solely for purposes of determining whether the taxpayer has entered into a constructive sale of any other appreciated financial position held by the taxpayer, the taxpayer shall be treated as entering into such transaction immediately after such disposition. For purposes of the preceding sentence, an assignment or other termination shall be treated as a disposition.

(2) Certain trust instruments treated as stock

For purposes of this section, an interest in a trust which is actively traded (within the meaning of section 1092(d)(1)) shall be treated as stock unless substantially all (by value) of the property held by the trust is debt described in subsection (b)(2)(A).

(3) Multiple positions in property

If a taxpayer holds multiple positions in property, the determination of whether a specific transaction is a constructive sale and, if so, which appreciated financial position is deemed sold shall be made in the same manner as actual sales.

(f) Regulations

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

(Added Pub. L. 105–34, title X, § 1001(a), Aug. 5, 1997, 111 Stat. 903; amended Pub. L. 105–206, title VI, § 6010(a)(1), (2), July 22, 1998, 112 Stat. 812, 813; Pub. L. 108–311, title IV, § 406(e), Oct. 4, 2004, 118 Stat. 1189.)

AMENDMENTS

2004—Subsec. (c)(2). Pub. L. 108–311, § 406(e)(1), substituted ''A taxpayer shall not be treated as having made a constructive sale solely because the taxpayer enters into a contract'' for ''The term 'constructive sale' shall not include any contract''.

Subsec. (c)(3)(A). Pub. L. 108–311, § 406(e)(2), substituted ''cause a constructive sale'' for ''be treated as a constructive sale'' in introductory provisions.

Subsec. (c)(3)(A)(i). Pub. L. 108–311, § 406(e)(3), substituted ''on or before'' for ''before the end of''.

Subsec. (c)(3)(B). Pub. L. 108–311, § 406(e)(7), substituted ''certain closed transactions where risk of loss on appreciated financial position diminished'' for ''positions which are reestablished'' in heading.

Subsec. (c)(3)(B)(i). Pub. L. 108–311, § 406(e)(2), substituted ''cause a constructive sale'' for ''be treated as a constructive sale''.

Subsec. (c)(3)(B)(ii). Pub. L. 108–311, § 406(e)(4), struck out ''substantially similar'' after ''another'' in introductory provisions.

Subsec. (c)(3)(B)(ii)(I). Pub. L. 108–311, § 406(e)(5), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ''which also would otherwise be treated as a constructive sale of such position,''.

Subsec. (c)(3)(B)(ii)(II). Pub. L. 108–311, § 406(e)(6), inserted ''on or'' before ''before the 30th day''.

1998—Subsec. (b)(2)(A)(i) to (iii). Pub. L. 105–206, § 6010(a)(1)(A), substituted ''position'' for ''debt''.

Subsec. (b)(2)(B), (C). Pub. L. 105–206, § 6010(a)(1)(B), (C), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (d)(1). Pub. L. 105–206, § 6010(a)(2), inserted ''(including cash)'' after ''property''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 406(h) of Pub. L. 108–311, set out as a note under section 55 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to any constructive sale after June 8, 1997, with certain exceptions, see section 1001(d) of Pub. L. 105–34, set out as an Effective Date of 1997 Amendment note under section 475 of this title.

§ 1260. Gains from constructive ownership transactions

(a) In general

If the taxpayer has gain from a constructive ownership transaction with respect to any financial asset and such gain would (without regard to this section) be treated as a long-term capital gain—

(1) such gain shall be treated as ordinary income to the extent that such gain exceeds the net underlying long-term capital gain, and

(2) to the extent such gain is treated as a long-term capital gain after the application of paragraph (1), the determination of the capital gain rate (or rates) applicable to such gain under section 1(h) shall be determined on the basis of the respective rate (or rates) that would have been applicable to the net underlying long-term capital gain.

(b) Interest charge on deferral of gain recognition

(1) In general

If any gain is treated as ordinary income for any taxable year by reason of subsection (a)(1), the tax imposed by this chapter for such taxable year shall be increased by the amount of interest determined under paragraph (2) with respect to each prior taxable year during any portion of which the constructive ownership transaction was open. Any amount payable under this paragraph shall be taken into account in computing the amount of any deduction allowable to the taxpayer for interest paid or accrued during such taxable year.

(2) Amount of interest

The amount of interest determined under this paragraph with respect to a prior taxable year is the amount of interest which would have been imposed under section 6601 on the underpayment of tax for such year which would have resulted if the gain (which is treated as ordinary income by reason of subsection (a)(1)) had been included in gross income in the taxable years in which it accrued (determined by treating the income as accruing at a constant rate equal to the applicable Federal rate as in effect on the day the transaction closed). The period during which such interest shall accrue shall end on the due date (without extensions) for the return of tax imposed by this chapter for the taxable year in which such transaction closed.

(3) Applicable Federal rate

For purposes of paragraph (2), the applicable Federal rate is the applicable Federal rate determined under section 1274(d) (compounded semiannually) which would apply to a debt instrument with a term equal to the period the transaction was open.

(4) No credits against increase in tax

Any increase in tax under paragraph (1) shall not be treated as tax imposed by this chapter for purposes of determining—

(A) the amount of any credit allowable under this chapter, or

(B) the amount of the tax imposed by section 55.

(c) Financial asset

For purposes of this section—

(1) In general

The term ''financial asset'' means—

(A) any equity interest in any pass-thru entity, and

(B) to the extent provided in regulations—

(i) any debt instrument, and

(ii) any stock in a corporation which is not a pass-thru entity.

(2) Pass-thru entity

For purposes of paragraph (1), the term ''pass-thru entity'' means—

(A) a regulated investment company,

(B) a real estate investment trust,

(C) an S corporation,

(D) a partnership,

(E) a trust,

(F) a common trust fund,

(G) a passive foreign investment company (as defined in section 1297 without regard to subsection (d) thereof), and

(H) a REMIC.

(d) Constructive ownership transaction

For purposes of this section—

(1) In general

The taxpayer shall be treated as having entered into a constructive ownership transaction with respect to any financial asset if the taxpayer—

(A) holds a long position under a notional principal contract with respect to the financial asset,

(B) enters into a forward or futures contract to acquire the financial asset,

(C) is the holder of a call option, and is the grantor of a put option, with respect to the

financial asset and such options have substantially equal strike prices and substantially contemporaneous maturity dates, or

(D) to the extent provided in regulations prescribed by the Secretary, enters into one or more other transactions (or acquires one or more positions) that have substantially the same effect as a transaction described in any of the preceding subparagraphs.

(2) Exception for positions which are marked to market

This section shall not apply to any constructive ownership transaction if all of the positions which are part of such transaction are marked to market under any provision of this title or the regulations thereunder.

(3) Long position under notional principal contract

A person shall be treated as holding a long position under a notional principal contract with respect to any financial asset if such person—

(A) has the right to be paid (or receive credit for) all or substantially all of the investment yield (including appreciation) on such financial asset for a specified period, and

(B) is obligated to reimburse (or provide credit for) all or substantially all of any decline in the value of such financial asset.

(4) Forward contract

The term ''forward contract'' means any contract to acquire in the future (or provide or receive credit for the future value of) any financial asset.

(e) Net underlying long-term capital gain

For purposes of this section, in the case of any constructive ownership transaction with respect to any financial asset, the term ''net underlying long-term capital gain'' means the aggregate net capital gain that the taxpayer would have had if—

(1) the financial asset had been acquired for fair market value on the date such transaction was opened and sold for fair market value on the date such transaction was closed, and

(2) only gains and losses that would have resulted from the deemed ownership under paragraph (1) were taken into account.

The amount of the net underlying long-term capital gain with respect to any financial asset shall be treated as zero unless the amount thereof is established by clear and convincing evidence.

(f) Special rule where taxpayer takes delivery

Except as provided in regulations prescribed by the Secretary, if a constructive ownership transaction is closed by reason of taking delivery, this section shall be applied as if the taxpayer had sold all the contracts, options, or other positions which are part of such transaction for fair market value on the closing date. The amount of gain recognized under the preceding sentence shall not exceed the amount of gain treated as ordinary income under subsection (a). Proper adjustments shall be made in the amount of any gain or loss subsequently realized for gain recognized and treated as ordinary income under this subsection.

(g) Regulations

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

(1) to permit taxpayers to mark to market constructive ownership transactions in lieu of applying this section, and

(2) to exclude certain forward contracts which do not convey substantially all of the economic return with respect to a financial asset.

(Added Pub. L. 106–170, title V, § 534(a), Dec. 17, 1999, 113 Stat. 1931; amended Pub. L. 108–357, title IV, § 413(c)(23), Oct. 22, 2004, 118 Stat. 1509; Pub. L. 110–172, § 11(a)(23), (24)(B), Dec. 29, 2007, 121 Stat. 2486.)

AMENDMENTS

2007—Subsec. (c)(2)(G). Pub. L. 110–172 substituted ''subsection (d)'' for ''subsection (e)'' and inserted ''and'' at end.

2004—Subsec. (c)(2)(H) to (J). Pub. L. 108–357 redesignated subpar. (J) as (H) and struck out former subpars. (H) and (I), which included foreign personal holding company and foreign investment company (as defined in section 1246(b)) within definition of ''pass-thru entity''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 106–170, title V, § 534(c), Dec. 17, 1999, 113 Stat. 1934, provided that: ''The amendments made by this section [enacting this section] shall apply to transactions entered into after July 11, 1999.''

PART V—SPECIAL RULES FOR BONDS AND OTHER DEBT INSTRUMENTS

Subpart
A. Original issue discount.
B. Market discount on bonds.
C. Discount on short-term obligations.
D. Miscellaneous provisions.

AMENDMENTS

1986—Pub. L. 99–514, title XVIII, § 1899A(72), Oct. 22, 1986, 100 Stat. 2963, inserted ''on bonds'' after ''discount'' in item for subpart B.

SUBPART A—ORIGINAL ISSUE DISCOUNT

Sec.
1271. Treatment of amounts received on retirement or sale or exchange of debt instruments.
1272. Current inclusion in income of original issue discount.
1273. Determination of amount of original issue discount.
1274. Determination of issue price in the case of certain debt instruments issued for property.
1274A. Special rules for certain transactions where stated principal amount does not exceed $2,800,000.
1275. Other definitions and special rules.

Sec.

AMENDMENTS

1985—Pub. L. 99–121, title I, §102(d), Oct. 11, 1985, 99 Stat. 509, added item 1274A.

§ 1271. Treatment of amounts received on retirement or sale or exchange of debt instruments

(a) General rule

For purposes of this title—

(1) Retirement

Amounts received by the holder on retirement of any debt instrument shall be considered as amounts received in exchange therefor.

(2) Ordinary income on sale or exchange where intention to call before maturity

(A) In general

If at the time of original issue there was an intention to call a debt instrument before maturity, any gain realized on the sale or exchange thereof which does not exceed an amount equal to—

(i) the original issue discount, reduced by

(ii) the portion of original issue discount previously includible in the gross income of any holder (without regard to subsection (a)(7) or (b)(4) of section 1272 (or the corresponding provisions of prior law)),

shall be treated as ordinary income.

(B) Exceptions

This paragraph (and paragraph (2) of subsection (c)) shall not apply to—

(i) any tax-exempt obligation, or

(ii) any holder who has purchased the debt instrument at a premium.

(3) Certain short-term Government obligations

(A) In general

On the sale or exchange of any short-term Government obligation, any gain realized which does not exceed an amount equal to the ratable share of the acquisition discount shall be treated as ordinary income.

(B) Short-term Government obligation

For purposes of this paragraph, the term ''short-term Government obligation'' means any obligation of the United States or any of its possessions, or of a State or any political subdivision thereof, or of the District of Columbia, which has a fixed maturity date not more than 1 year from the date of issue. Such term does not include any tax-exempt obligation.

(C) Acquisition discount

For purposes of this paragraph, the term ''acquisition discount'' means the excess of the stated redemption price at maturity over the taxpayer's basis for the obligation.

(D) Ratable share

For purposes of this paragraph, except as provided in subparagraph (E), the ratable share of the acquisition discount is an amount which bears the same ratio to such discount as—

(i) the number of days which the taxpayer held the obligation, bears to

(ii) the number of days after the date the taxpayer acquired the obligation and up to (and including) the date of its maturity.

(E) Election of accrual on basis of constant interest rate

At the election of the taxpayer with respect to any obligation, the ratable share of the acquisition discount is the portion of the acquisition discount accruing while the taxpayer held the obligation determined (under regulations prescribed by the Secretary) on the basis of—

(i) the taxpayer's yield to maturity based on the taxpayer's cost of acquiring the obligation, and

(ii) compounding daily.

An election under this subparagraph, once made with respect to any obligation, shall be irrevocable.

(4) Certain short-term nongovernment obligations

(A) In general

On the sale or exchange of any short-term nongovernment obligation, any gain realized which does not exceed an amount equal to the ratable share of the original issue discount shall be treated as ordinary income.

(B) Short-term nongovernment obligation

For purposes of this paragraph, the term ''short-term nongovernment obligation'' means any obligation which—

(i) has a fixed maturity date not more than 1 year from the date of the issue, and

(ii) is not a short-term Government obligation (as defined in paragraph (3)(B) without regard to the last sentence thereof).

(C) Ratable share

For purposes of this paragraph, except as provided in subparagraph (D), the ratable share of the original issue discount is an amount which bears the same ratio to such discount as—

(i) the number of days which the taxpayer held the obligation, bears to

(ii) the number of days after the date of original issue and up to (and including) the date of its maturity.

(D) Election of accrual on basis of constant interest rate

At the election of the taxpayer with respect to any obligation, the ratable share of the original issue discount is the portion of the original issue discount accruing while the taxpayer held the obligation determined (under regulations prescribed by the Secretary) on the basis of—

(i) the yield to maturity based on the issue price of the obligation, and

(ii) compounding daily.

Any election under this subparagraph, once made with respect to any obligation, shall be irrevocable.

(b) Exception for certain obligations

(1) In general

This section shall not apply to—

(A) any obligation issued by a natural person before June 9, 1997, and

(B) any obligation issued before July 2, 1982, by an issuer which is not a corporation and is not a government or political subdivision thereof.

(2) Termination

Paragraph (1) shall not apply to any obligation purchased (within the meaning of section 1272(d)(1)) after June 8, 1997.

(c) Transition rules

(1) Special rule for certain obligations issued before January 1, 1955

Paragraph (1) of subsection (a) shall apply to a debt instrument issued before January 1, 1955, only if such instrument was issued with interest coupons or in registered form, or was in such form on March 1, 1954.

(2) Special rule for certain obligations with respect to which original issue discount not currently includible

(A) In general

On the sale or exchange of debt instruments issued by a government or political subdivision thereof after December 31, 1954, and before July 2, 1982, or by a corporation after December 31, 1954, and on or before May 27, 1969, any gain realized which does not exceed—

(i) an amount equal to the original issue discount, or

(ii) if at the time of original issue there was no intention to call the debt instrument before maturity, an amount which bears the same ratio to the original issue discount as the number of complete months that the debt instrument was held by the taxpayer bears to the number of complete months from the date of original issue to the date of maturity,

shall be considered as ordinary income.

(B) Subsection (a)(2)(A) not to apply

Subsection (a)(2)(A) shall not apply to any debt instrument referred to in subparagraph (A) of this paragraph.

(C) Cross reference

For current inclusion of original issue discount, see section 1272.

(d) Double inclusion in income not required

This section and sections 1272 and 1286 shall not require the inclusion of any amount previously includible in gross income.

(Added Pub. L. 98–369, div. A, title I, § 41(a), July 18, 1984, 98 Stat. 531; amended Pub. L. 99–514, title XVIII, § 1803(a)(1)(A), (2), (3), Oct. 22, 1986, 100 Stat. 2791, 2792; Pub. L. 100–647, title I, § 1006(u)(4), Nov. 10, 1988, 102 Stat. 3427; Pub. L. 105–34, title X, § 1003(c)(1), Aug. 5, 1997, 111 Stat. 910.)

AMENDMENTS

1997—Subsec. (b). Pub. L. 105–34 amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''This section shall not apply to—

''(1) NATURAL PERSONS.—Any obligation issued by a natural person.

''(2) OBLIGATIONS ISSUED BEFORE JULY 2, 1982, BY CERTAIN ISSUERS.—Any obligation issued before July 2, 1982, by an issuer which—

''(A) is not a corporation, and

''(B) is not a government or political subdivision thereof.''

1988—Subsec. (a)(2)(A)(ii). Pub. L. 100–647 substituted ''subsection (a)(7)'' for ''subsection (a)(6)''.

1986—Subsec. (a)(3)(B). Pub. L. 99–514, § 1803(a)(3), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''For purposes of this paragraph, the term 'short-term Government obligation' means any obligation of the United States or any of its possessions, or of a State or any political subdivision thereof, or of the District of Columbia which is—

''(i) issued on a discount basis, and

''(ii) payable without interest at a fixed maturity date not more than 1 year from the date of issue.

Such term does not include any tax-exempt obligation.''

Subsec. (a)(3)(D). Pub. L. 99–514, § 1803(a)(2)(B), inserted ''except as provided in subparagraph (E),''.

Subsec. (a)(3)(E). Pub. L. 99–514, § 1803(a)(2)(A), added subpar. (E).

Subsec. (a)(4). Pub. L. 99–514, § 1803(a)(1)(A), added par. (4).

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1003(c)(2) of Pub. L. 105–34 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to sales, exchanges, and retirements after the date of enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section 44 of subtitle C (§§ 41–44) of title I of division A of Pub. L. 98–369, as amended by Pub. L. 98–612, § 2, Oct. 31, 1984, 98 Stat. 3182; Pub. L. 99–514, § 2, title XVIII, § 1803(b), Oct. 22, 1986, 100 Stat. 2095, 2797, provided that:

''(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this subtitle [enacting this section and sections 1272 to 1288 and 6706, amending sections 103A, 163, 165, 249, 341, 405, 409, 453B, 483, 751, 811, 871, 881, 1016, 1037, 1351, 1441, 6049, 7701, and 7805, and repealing sections 1232, 1232A, and 1232B of this title] shall apply to taxable years ending after the date of the enactment of this Act [July 18, 1984].

''(b) TREATMENT OF DEBT INSTRUMENTS RECEIVED IN EXCHANGE FOR PROPERTY.—

''(1) IN GENERAL.—

''(A) Except as otherwise provided in this subsection, section 1274 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by section 41) and the amendment made by section 41(b) (relating to amendment of section 483) shall apply to sales or exchanges after December 31, 1984.

''(B) Section 1274 of such Code and the amendment made by section 41(b) shall not apply to any sale or exchange pursuant to a written contract which was binding on March 1, 1984, and at all times thereafter before the sale or exchange.

''(2) REVISION OF SECTION 482 REGULATIONS.—Not later than 180 days after the date of the enactment of this Act [July 18, 1984], the Secretary of the Treasury or his delegate shall modify the safe harbor interest

rates applicable under the regulations prescribed under section 482 of the Internal Revenue Code of 1986 so that such rates are consistent with the rates applicable under section 483 of such Code by reason of the amendments made by section 41.

''(3) CLARIFICATION OF INTEREST ACCRUAL; FAIR MARKET VALUE RULE IN CASE OF POTENTIALLY ABUSIVE SITUATIONS.—

''(A) IN GENERAL.—

''(i) CLARIFICATION OF INTEREST ACCRUAL.—In the case of any sale or exchange—

''(I) after March 1, 1984, nothing in section 483 of the Internal Revenue Code of 1986 shall permit any interest to be deductible before the period to which such interest is properly allocable, or

''(II) after June 8, 1984, notwithstanding section 483 of the Internal Revenue Code of 1986 or any other provision of law, no interest shall be deductible before the period to which such interest is properly allocable.

''(ii) FAIR MARKET RULE.—In the case of any sale or exchange after March 1, 1984, such section 483 shall be treated as including provisions similar to the provisions of section 1274(b)(3) of such Code (as added by section 41).

''(B) EXCEPTION FOR BINDING CONTRACTS.—

''(i) Subparagraph (A)(i)(I) shall not apply to any sale or exchange pursuant to a written contract which was binding on March 1, 1984, and at all times thereafter before the sale or exchange.

''(ii) Subparagraph (A)(i)(II) shall not apply to any sale or exchange pursuant to a written contract which was binding on June 8, 1984, and at all times thereafter before the sale or exchange.

''(C) INTEREST ACCRUAL RULE NOT TO APPLY WHERE SUBSTANTIALLY EQUAL ANNUAL PAYMENTS.—Clause (i) of subparagraph (A) shall not apply to any debt instrument with substantially equal annual payments.

''(4) SPECIAL RULES FOR SALES AFTER DECEMBER 31, 1984, AND BEFORE JULY 1, 1985.—

''(A) IN GENERAL.—In the case of any sale or exchange after December 31, 1984, and before July 1, 1985, of property other than new section 38 property—

''(i) sections 483(c)(1)(B) and 1274(c)(3) of the Internal Revenue Code of 1986 shall be applied by substituting the testing rate determined under subparagraph (B) for 110 percent of the applicable Federal rate determined under section 1274(d) of such Code, and

''(ii) sections 483(b) and 1274(b) of such Code shall be applied by substituting the imputation rate determined under subparagraph (C) for 120 percent of the applicable Federal rate determined under section 1274(d) of such Code.

''(B) TESTING RATE.—For purposes of this paragraph—

''(i) IN GENERAL.—The testing rate determined under this subparagraph is the sum of—

''(I) 9 percent, plus

''(II) if the borrowed amount exceeds $2,000,000, the excess determined under clause (ii) multiplied by a fraction the numerator of which is the borrowed amount to the extent it exceeds $2,000,000, and the denominator of which is the borrowed amount.

''(ii) EXCESS.—For purposes of clause (i), the excess determined under this clause is the excess of 110 percent of the applicable Federal rate determined under section 1274(d) of such Code over 9 percent.

''(C) IMPUTATION RATE.—For purposes of this paragraph—

''(i) IN GENERAL.—The imputation rate determined under this subparagraph is the sum of—

''(I) 10 percent, plus

''(II) if the borrowed amount exceeds $2,000,000, the excess determined under clause (ii) multiplied by a fraction the numerator of which is the borrowed amount to the extent it exceeds $2,000,000, and the denominator of which is the borrowed amount.

''(ii) EXCESS.—For purposes of clause (i), the excess determined under this clause is the excess of 120 percent of the applicable Federal rate determined under section 1274(d) of such Code over 10 percent.

''(D) BORROWED AMOUNT.—For purposes of this paragraph, the term 'borrowed amount' means the stated principal amount.

''(E) AGGREGATION RULES.—For purposes of this paragraph—

''(i) all sales or exchanges which are part of the same transaction (or a series of related transactions) shall be treated as one sale or exchange, and

''(ii) all debt instruments arising from the same transaction (or a series of related transactions) shall be treated as one debt instrument.

''(F) CASH METHOD OF ACCOUNTING.—In the case of any sale or exchange before July 1, 1985, of property (other than new section 38 property) used in the active business of farming and in which the borrowed amount does not exceed $2,000,000—

''(i) section 1274 of the Internal Revenue Code of 1986 shall not apply, and

''(ii) interest on the obligation issued in connection with such sale or exchange shall be taken into account by both buyer and seller on the cash receipts and disbursements method of accounting.

The Secretary of the Treasury or his delegate may by regulation prescribe rules to prevent the mismatching of interest income and interest deductions in connection with obligations on which interest is computed on the cash receipts and disbursements method of accounting.

''(G) CLARIFICATION OF APPLICATION OF THIS PARAGRAPH, ETC.—This paragraph and paragraphs (5), (6), and (7) shall apply only in the case of sales or exchanges to which section 1274 or 483 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by section 41) applies.

''(5) GENERAL RULE FOR ASSUMPTIONS OF LOANS.—Except as provided in paragraphs (6) and (7), if any person—

''(A) assumes, in connection with the sale or exchange of property, any debt obligation, or

''(B) acquires any property subject to any debt obligation,

sections 1274 and 483 of the Internal Revenue Code of 1986 shall apply to such debt obligation by reason of such assumption (or such acquisition).

''(6) EXCEPTION FOR ASSUMPTIONS OF LOANS MADE ON OR BEFORE OCTOBER 15, 1984.—

''(A) IN GENERAL.—If any person—

''(i) assumes, in connection with the sale or exchange of property, any debt obligation described in subparagraph (B) and issued on or before October 15, 1984, or

''(ii) acquires any property subject to any such debt obligation issued on or before October 15, 1984,

sections 1274 and 483 of the Internal Revenue Code of 1986 shall not be applied to such debt obligation by reason of such assumption (or such acquisition) unless the terms and conditions of such debt obligation are modified in connection with the assumption (or acquisition).

''(B) OBLIGATIONS DESCRIBED IN THIS SUBPARAGRAPH.—A debt obligation is described in this subparagraph if such obligation—

''(i) was issued on or before October 15, 1984, and

''(ii) was assumed (or property was taken subject to such obligation) in connection with the sale or exchange of property (including a deemed sale under section 338 (a)) the sales price of which is not greater than $100,000,000.

''(C) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to effect

the purpose of this paragraph and paragraph (5), including regulations relating to tax-exempt obligations, government subsidized loans, or other instruments.

''(D) CERTAIN EXEMPT TRANSACTIONS.—The Secretary shall prescribe regulations under which any transaction shall be exempt from the application of this paragraph if such exemption is not likely to significantly reduce the tax liability of the purchaser by reason of the overstatement of the adjusted basis of the acquired asset.

''(7) EXCEPTION FOR ASSUMPTIONS OF LOANS WITH RESPECT TO CERTAIN PROPERTY.—

''(A) IN GENERAL.—If any person—

''(i) assumes, in connection with the sale or exchange of property described in subparagraph (B), any debt obligation, or

''(ii) acquires any such property subject to any such debt obligation,

sections 1274 and 483 of the Internal Revenue Code of 1986 shall not be applied to such debt obligation by reason of such assumption (or such acquisition) unless the terms and conditions of such debt obligation are modified in connection with the assumption (or acquisition).

''(B) SALES OR EXCHANGES TO WHICH THIS PARAGRAPH APPLIES.—This paragraph shall apply to any of the following sales or exchanges:

''(i) RESIDENCES.—Any sale or exchange of a residence by an individual, an estate, or a testamentary trust, but only if—

''(I) either—

''(aa) such residence on the date of such sale or exchange (or in the case of an estate or testamentary trust, on the date of death of the decedent) was the principal residence (within the meaning of section 1034) of the individual or decedent, or

''(bb) during the 2-year period ending on such date, no substantial portion of such residence was of a character subject to an allowance under this title [probably means the Internal Revenue Code of 1986] for depreciation (or amortization in lieu thereof) in the hands of such individual or decedent, and

''(II) such residence was not at any time, in the hands of such individual, estate, testamentary trust, or decedent, described in section 1221(1) (relating to inventory, etc.).

''(ii) FARMS.—Any sale or exchange by a qualified person of—

''(I) real property which was used as a farm (within the meaning of section 6420(c)(2)) at all times during the 3-year period ending on the date of such sale or exchange, or

''(II) tangible personal property which was used in the active conduct of the trade or business of farming on such farm and is sold in connection with the sale of such farm,

but only if such property is sold or exchanged for use in the active conduct of the trade or business of farming by the transferee of such property.

''(iii) TRADES OR BUSINESSES.—

''(I) IN GENERAL.—Any sale or exchange by a qualified person of any trade or business.

''(II) APPLICATION WITH SUBPARAGRAPH (B).—This subparagraph shall not apply to any sale or exchange of any property described in subparagraph (B).

''(III) NEW SECTION 38 PROPERTY.—This subparagraph shall not apply to the sale or exchange of any property which, in the hands of the transferee, is new section 38 property.

''(iv) SALE OF BUSINESS REAL ESTATE.—Any sale or exchange of any real property used in an active trade or business by a person who would be a qualified person if he disposed of his entire interest.

This subparagraph shall not apply to any transaction described in the last sentence of paragraph (6)(B) (relating to transaction in excess of $100,000,000).

''(C) DEFINITIONS.—For purposes of this paragraph—

''(i) QUALIFIED PERSON DEFINED.—The term 'qualified person' means—

''(I) a person who—

''(aa) is an individual, estate, or testamentary trust,

''(bb) is a corporation which immediately prior to the date of the sale or exchange has 35 or fewer shareholders, or

''(cc) is a partnership which immediately prior to the date of the sale or exchange has 35 or fewer partners,

''(II) is a 10-percent owner of a farm or a trade or business,

''(III) pursuant to a plan, disposes of—

''(aa) an interest in a farm or farm property, or

''(bb) his entire interest in a trade or business and all substantially similar trades or businesses, and

''(IV) the ownership interest of whom may be readily established by reason of qualified allocations (of the type described in section 168(j)(9)(B), one class of stock, or the like).

''(ii) 10-PERCENT OWNER DEFINED.—The term '10-percent owner' means a person having at least a 10-percent ownership interest, applying the attribution rules of section 318 (other than subsection (a)(4)).

''(iii) TRADE OR BUSINESS DEFINED.—

''(I) IN GENERAL.—The term 'trade or business' means any trade or business, including any line of business, qualifying as an active trade or business within the meaning of section 355.

''(II) RENTAL OF REAL PROPERTY.—For purposes of this clause, the holding of real property for rental shall not be treated as an active trade or business.

''(c) MARKET DISCOUNT RULES.—

''(1) ORDINARY INCOME TREATMENT.—Section 1276 of the Internal Revenue Code of 1986 (as added by section 41) shall apply to obligations issued after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

''(2) INTEREST DEFERRAL RULES.—Section 1277 of such Code (as added by section 41) shall apply to obligations acquired after the date of the enactment of this Act in taxable years ending after such date.

''(d) RULES RELATING TO DISCOUNT ON SHORT-TERM OBLIGATIONS.—Subpart C of part V of subchapter P of chapter 1 of such Code (as added by section 41) shall apply to obligations acquired after the date of the enactment of this Act [July 18, 1984].

''(e) 5-YEAR SPREAD OF ADJUSTMENTS REQUIRED BY REASON OF ACCRUAL OF DISCOUNT ON CERTAIN SHORT-TERM OBLIGATIONS.—

''(1) ELECTION TO HAVE SECTION 1281 APPLY TO ALL OBLIGATIONS HELD DURING TAXABLE YEAR.—A taxpayer may elect for his first taxable year ending after the date of the enactment of this Act [July 18, 1984] to have section 1281 of the Internal Revenue Code of 1986 apply to all short-term obligations described in subsection (b) of such section which were held by the taxpayer at any time during such first taxable year.

''(2) 5-YEAR SPREAD.—

''(A) IN GENERAL.—In the case of any taxpayer who makes an election under paragraph (1)—

''(i) the provisions of section 1281 of the Internal Revenue Code of 1986 (as added by section 41) shall be treated as a change in the method of accounting of the taxpayer,

''(ii) such change shall be treated as having been made with the consent of the Secretary, and

''(iii) the net amount of the adjustments required by section 481(a) of such Code to be taken into account by the taxpayer in computing taxable income (hereinafter in this paragraph re-

ferred to as the 'net adjustments') shall be taken into account during the spread period with the amount taken into account in each taxable year in such period determined under subparagraph (B).

''(B) AMOUNT TAKEN INTO ACCOUNT DURING EACH YEAR OF SPREAD PERIOD.—

''(i) FIRST YEAR.—The amount taken into account for the first taxable year in the spread period shall be the sum of—

''(I) one-fifth of the net adjustments, and

''(II) the excess (if any) of—

''(a) the cash basis income over the accrual basis income, over

''(b) one-fifth of the net adjustments.

''(ii) FOR SUBSEQUENT YEARS IN SPREAD PERIOD.—The amount taken into account in the second or any succeeding taxable year in the spread period shall be the sum of—

''(I) the portion of the net adjustments not taken into account in the preceding taxable year of the spread period divided by the number of remaining taxable years in the spread period (including the year for which the determination is being made), and

''(II) the excess (if any) of—

''(a) the excess of the cash basis income over the accrual basis income, over

''(b) one-fifth of the net adjustments, multiplied by 5 minus the number of years remaining in the spread period (not including the current year).

The excess described in subparagraph (B)(ii)(II)(a) shall be reduced by any amount taken into account under this subclause or clause (i)(II) in any prior year.

''(C) SPREAD PERIOD.—For purposes of this paragraph, the term 'spread period' means the period consisting of the 5 taxable years beginning with the year for which the election is made under paragraph (1).

''(D) CASH BASIS INCOME.—For purposes of this paragraph, the term 'cash basis income' means for any taxable year the aggregate amount which would be includible in the gross income of the taxpayer with respect to short-term obligations described in subsection (b) of section 1281 of such Code if the provisions of section 1281 of such Code did not apply to such taxable year and all prior taxable years within the spread period.

''(E) ACCRUAL BASIS INCOME.—For purposes of this paragraph, the term 'accrual basis income' means for any taxable year the aggregate amount includible in gross income under section 1281(a) of such Code for such a taxable year and all prior taxable years within the spread period.

''(f) TREATMENT OF ORIGINAL ISSUE DISCOUNT ON TAX-EXEMPT OBLIGATIONS.—Section 1288 of such Code (as added by section 41) shall apply to obligations issued after September 3, 1982, and acquired after March 1, 1984.

''(g) REPEAL OF CAPITAL ASSET REQUIREMENT.—Section 1272 of such Code (as added by section 41) shall not apply to any obligation issued on or before December 31, 1984, which is not a capital asset in the hands of the taxpayer.

''(h) REPORTING REQUIREMENTS.—Section 1275(c) of such Code (as added by section 41) and the amendments made by section 41(c) [enacting section 6706 of this title] shall take effect on the day 30 days after the date of the enactment of this Act [July 18, 1984].

''(i) OTHER MISCELLANEOUS CHANGES.—

''(1) ACCRUAL PERIOD.—In the case of any obligation issued after July 1, 1982, and before January 1, 1985, the accrual period, for purposes of section 1272(a) of the Internal Revenue Code of 1986 (as amended by section 41(a)), shall be a 1-year period (or shorter period to maturity) beginning on the day in the calendar year which corresponds to the date of original issue of the obligation.

''(2) CHANGE IN REDUCTION FOR PURCHASE AFTER ORIGINAL ISSUE.—Section 1272(a)(6) of such Code (as so amended) shall not apply to any purchase on or before the date of the enactment of this Act [July 18, 1984], and the rules of section 1232A(a)(6) of such Code (as in effect on the day before the date of the enactment of this Act) shall continue to apply to such purchase.

''(j) CLARIFICATION THAT PRIOR EFFECTIVE DATE RULES NOT AFFECTED.—Nothing in the amendment made by section 41(a) shall affect the application of any effective date provision (including any transitional rule) for any provision which was a predecessor to any provision contained in part V of subchapter P of chapter 1 of the Internal Revenue Code of 1954 (as added by section 41).''

[Amendment of section 44 of Pub. L. 98–369, set out above, by Pub. L. 98–612 (which added pars. (4) to (7) to subsec. (b)) not applicable to sales and exchanges after June 30, 1985, in taxable years ending after such date, see section 105(a)(1) of Pub. L. 99–121, set out as an Effective Date of 1985 Amendment note under section 1274 of this title.]

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 1272. Current inclusion in income of original issue discount

(a) Original issue discount on debt instruments issued after July 1, 1982, included in income on basis of constant interest rate

(1) General rule

For purposes of this title, there shall be included in the gross income of the holder of any debt instrument having original issue discount issued after July 1, 1982, an amount equal to the sum of the daily portions of the original issue discount for each day during the taxable year on which such holder held such debt instrument.

(2) Exceptions

Paragraph (1) shall not apply to—

(A) Tax-exempt obligations

Any tax-exempt obligation.

(B) United States savings bonds

Any United States savings bond.

(C) Short-term obligations

Any debt instrument which has a fixed maturity date not more than 1 year from the date of issue.

(D) Obligations issued by natural persons before March 2, 1984

Any obligation issued by a natural person before March 2, 1984.

(E) Loans between natural persons

(i) In general

Any loan made by a natural person to another natural person if—

(I) such loan is not made in the course of a trade or business of the lender, and

(II) the amount of such loan (when increased by the outstanding amount of prior loans by such natural person to such other natural person) does not exceed $10,000.

(ii) Clause (i) not to apply where tax avoidance a principal purpose

Clause (i) shall not apply if the loan has as 1 of its principal purposes the avoidance of any Federal tax.

(iii) Treatment of husband and wife

For purposes of this subparagraph, a husband and wife shall be treated as 1 person. The preceding sentence shall not apply where the spouses lived apart at all times during the taxable year in which the loan is made.

(3) Determination of daily portions

For purposes of paragraph (1), the daily portion of the original issue discount on any debt instrument shall be determined by allocating to each day in any accrual period its ratable portion of the increase during such accrual period in the adjusted issue price of the debt instrument. For purposes of the preceding sentence, the increase in the adjusted issue price for any accrual period shall be an amount equal to the excess (if any) of—

(A) the product of—

(i) the adjusted issue price of the debt instrument at the beginning of such accrual period, and

(ii) the yield to maturity (determined on the basis of compounding at the close of each accrual period and properly adjusted for the length of the accrual period), over

(B) the sum of the amounts payable as interest on such debt instrument during such accrual period.

(4) Adjusted issue price

For purposes of this subsection, the adjusted issue price of any debt instrument at the beginning of any accrual period is the sum of—

(A) the issue price of such debt instrument, plus

(B) the adjustments under this subsection to such issue price for all periods before the first day of such accrual period.

(5) Accrual period

Except as otherwise provided in regulations prescribed by the Secretary, the term ''accrual period'' means a 6-month period (or shorter period from the date of original issue of the debt instrument) which ends on a day in the calendar year corresponding to the maturity date of the debt instrument or the date 6 months before such maturity date.

(6) Determination of daily portions where principal subject to acceleration

(A) In general

In the case of any debt instrument to which this paragraph applies, the daily portion of the original issue discount shall be determined by allocating to each day in any accrual period its ratable portion of the excess (if any) of—

(i) the sum of (I) the present value determined under subparagraph (B) of all remaining payments under the debt instrument as of the close of such period, and (II) the payments during the accrual period of amounts included in the stated redemption price of the debt instrument, over

(ii) the adjusted issue price of such debt instrument at the beginning of such period.

(B) Determination of present value

For purposes of subparagraph (A), the present value shall be determined on the basis of—

(i) the original yield to maturity (determined on the basis of compounding at the close of each accrual period and properly adjusted for the length of the accrual period),

(ii) events which have occurred before the close of the accrual period, and

(iii) a prepayment assumption determined in the manner prescribed by regulations.

(C) Debt instruments to which paragraph applies

This paragraph applies to—

(i) any regular interest in a REMIC or qualified mortgage held by a REMIC,

(ii) any other debt instrument if payments under such debt instrument may be accelerated by reason of prepayments of other obligations securing such debt instrument (or, to the extent provided in regulations, by reason of other events), or

(iii) any pool of debt instruments the yield on which may be affected by reason of prepayments (or to the extent provided in regulations, by reason of other events).

To the extent provided in regulations prescribed by the Secretary, in the case of a small business engaged in the trade or business of selling tangible personal property at retail, clause (iii) shall not apply to debt instruments incurred in the ordinary course of such trade or business while held by such business.

(7) Reduction where subsequent holder pays acquisition premium

(A) Reduction

For purposes of this subsection, in the case of any purchase after its original issue of a debt instrument to which this subsection applies, the daily portion for any day shall be reduced by an amount equal to the amount which would be the daily portion for such day (without regard to this paragraph) multiplied by the fraction determined under subparagraph (B).

(B) Determination of fraction

For purposes of subparagraph (A), the fraction determined under this subparagraph is a fraction—

(i) the numerator of which is the excess (if any) of—

(I) the cost of such debt instrument incurred by the purchaser, over

(II) the issue price of such debt instrument, increased by the portion of origi-

nal issue discount previously includible in the gross income of any holder (computed without regard to this paragraph), and

(ii) the denominator of which is the sum of the daily portions for such debt instrument for all days after the date of such purchase and ending on the stated maturity date (computed without regard to this paragraph).

(b) Ratable inclusion retained for corporate debt instruments issued before July 2, 1982

(1) General rule

There shall be included in the gross income of the holder of any debt instrument issued by a corporation after May 27, 1969, and before July 2, 1982—

(A) the ratable monthly portion of original issue discount, multiplied by

(B) the number of complete months (plus any fractional part of a month determined under paragraph (3)) such holder held such debt instrument during the taxable year.

(2) Determination of ratable monthly portion

Except as provided in paragraph (4), the ratable monthly portion of original issue discount shall equal—

(A) the original issue discount, divided by

(B) the number of complete months from the date of original issue to the stated maturity date of the debt instrument.

(3) Month defined

For purposes of this subsection—

(A) Complete month

A complete month commences with the date of original issue and the corresponding day of each succeeding calendar month (or the last day of a calendar month in which there is no corresponding day).

(B) Transfers during month

In any case where a debt instrument is acquired on any day other than a day determined under subparagraph (A), the ratable monthly portion of original issue discount for the complete month (or partial month) in which such acquisition occurs shall be allocated between the transferor and the transferee in accordance with the number of days in such complete (or partial) month each held the debt instrument.

(4) Reduction where subsequent holder pays acquisition premium

(A) Reduction

For purposes of this subsection, the ratable monthly portion of original issue discount shall not include its share of the acquisition premium.

(B) Share of acquisition premium

For purposes of subparagraph (A), any month's share of the acquisition premium is an amount (determined at the time of the purchase) equal to—

(i) the excess of—

(I) the cost of such debt instrument incurred by the holder, over

(II) the issue price of such debt instrument, increased by the portion of original issue discount previously includible in the gross income of any holder (computed without regard to this paragraph),

(ii) divided by the number of complete months (plus any fractional part of a month) from the date of such purchase to the stated maturity date of such debt instrument.

(c) Exceptions

This section shall not apply to any holder—

(1) who has purchased the debt instrument at a premium, or

(2) which is a life insurance company to which section 811(b) applies.

(d) Definition and special rule

(1) Purchase defined

For purposes of this section, the term ''purchase'' means—

(A) any acquisition of a debt instrument, where

(B) the basis of the debt instrument is not determined in whole or in part by reference to the adjusted basis of such debt instrument in the hands of the person from whom acquired.

(2) Basis adjustment

The basis of any debt instrument in the hands of the holder thereof shall be increased by the amount included in his gross income pursuant to this section.

(Added Pub. L. 98–369, div. A, title I, §41(a), July 18, 1984, 98 Stat. 533; amended Pub. L. 99–514, title VI, §672, Oct. 22, 1986, 100 Stat. 2318; Pub. L. 105–34, title X, §1004(a), Aug. 5, 1997, 111 Stat. 911.)

AMENDMENTS

1997—Subsec. (a)(6)(C). Pub. L. 105–34 added cl. (iii) and concluding provisions.

1986—Subsec. (a)(6), (7). Pub. L. 99–514 added par. (6) and redesignated former par. (6) as (7).

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1004(b)(1) of Pub. L. 105–34 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to debt instruments issued after Dec. 31, 1986, in taxable years ending after such date, see section 675(b) of Pub. L. 99–514, set out as an Effective Date note under section 860A of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, but not applicable to any obligation issued on or before Dec. 31, 1984, which is not a capital asset in the hands of the taxpayer, and subsec. (a)(6) of this section not applicable to any purchase on or before July 18, 1984, see section 44 of Pub. L. 98–369, as amended, set out as a note under section 1271 of this title.

CHANGE IN METHOD OF ACCOUNTING

Section 1004(b)(2) of Pub. L. 105–34 provided that: ''In the case of any taxpayer required by this section [amending this section and enacting provisions set out

as a note above] to change its method of accounting for its first taxable year beginning after the date of the enactment of this Act [Aug. 5, 1997]—

''(A) such change shall be treated as initiated by the taxpayer,

''(B) such change shall be treated as made with the consent of the Secretary of the Treasury, and

''(C) the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 shall be taken into account ratably over the 4-taxable year period beginning with such first taxable year.''

§ 1273. Determination of amount of original issue discount

(a) General rule

For purposes of this subpart—

(1) In general

The term ''original issue discount'' means the excess (if any) of—

(A) the stated redemption price at maturity, over

(B) the issue price.

(2) Stated redemption price at maturity

The term ''stated redemption price at maturity'' means the amount fixed by the last modification of the purchase agreement and includes interest and other amounts payable at that time (other than any interest based on a fixed rate, and payable unconditionally at fixed periodic intervals of 1 year or less during the entire term of the debt instrument).

(3) ¼ of 1 percent de minimis rule

If the original issue discount determined under paragraph (1) is less than—

(A) ¼ of 1 percent of the stated redemption price at maturity, multiplied by

(B) the number of complete years to maturity,

then the original issue discount shall be treated as zero.

(b) Issue price

For purposes of this subpart—

(1) Publicly offered debt instruments not issued for property

In the case of any issue of debt instruments—

(A) publicly offered, and

(B) not issued for property,

the issue price is the initial offering price to the public (excluding bond houses and brokers) at which price a substantial amount of such debt instruments was sold.

(2) Other debt instruments not issued for property

In the case of any issue of debt instruments not issued for property and not publicly offered, the issue price of each such instrument is the price paid by the first buyer of such debt instrument.

(3) Debt instruments issued for property where there is public trading

In the case of a debt instrument which is issued for property and which—

(A) is part of an issue a portion of which is traded on an established securities market, or

(B)(i) is issued for stock or securities which are traded on an established securities market, or

(ii) to the extent provided in regulations, is issued for property (other than stock or securities) of a kind regularly traded on an established market,

the issue price of such debt instrument shall be the fair market value of such property.

(4) Other cases

Except in any case—

(A) to which paragraph (1), (2), or (3) of this subsection applies, or

(B) to which section 1274 applies,

the issue price of a debt instrument which is issued for property shall be the stated redemption price at maturity.

(5) Property

In applying this subsection, the term ''property'' includes services and the right to use property, but such term does not include money.

(c) Special rules for applying subsection (b)

For purposes of subsection (b)—

(1) Initial offering price; price paid by the first buyer

The terms ''initial offering price'' and ''price paid by the first buyer'' include the aggregate payments made by the purchaser under the purchase agreement, including modifications thereof.

(2) Treatment of investment units

In the case of any debt instrument and an option, security, or other property issued together as an investment unit—

(A) the issue price for such unit shall be determined in accordance with the rules of this subsection and subsection (b) as if it were a debt instrument,

(B) the issue price determined for such unit shall be allocated to each element of such unit on the basis of the relationship of the fair market value of such element to the fair market value of all elements in such unit, and

(C) the issue price of any debt instrument included in such unit shall be the portion of the issue price of the unit allocated to the debt instrument under subparagraph (B).

(Added Pub. L. 98–369, div. A, title I, § 41(a), July 18, 1984, 98 Stat. 536; amended Pub. L. 99–514, title XVIII, § 1803(a)(10), Oct. 22, 1986, 100 Stat. 2794.)

AMENDMENTS

1986—Subsec. (b)(3)(B). Pub. L. 99–514 amended subpar. (B) generally, designating existing provisions as cl. (i) and adding cl. (ii).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, except as otherwise provided, see section 44 of

Pub. L. 98–369, set out as a note under section 1271 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 1274. Determination of issue price in the case of certain debt instruments issued for property

(a) In general

In the case of any debt instrument to which this section applies, for purposes of this subpart, the issue price shall be—

(1) where there is adequate stated interest, the stated principal amount, or

(2) in any other case, the imputed principal amount.

(b) Imputed principal amount

For purposes of this section—

(1) In general

Except as provided in paragraph (3), the imputed principal amount of any debt instrument shall be equal to the sum of the present values of all payments due under such debt instrument.

(2) Determination of present value

For purposes of paragraph (1), the present value of a payment shall be determined in the manner provided by regulations prescribed by the Secretary—

(A) as of the date of the sale or exchange, and

(B) by using a discount rate equal to the applicable Federal rate, compounded semiannually.

(3) Fair market value rule in potentially abusive situations

(A) In general

In the case of any potentially abusive situation, the imputed principal amount of any debt instrument received in exchange for property shall be the fair market value of such property adjusted to take into account other consideration involved in the transaction.

(B) Potentially abusive situation defined

For purposes of subparagraph (A), the term ''potentially abusive situation'' means—

(i) a tax shelter (as defined in section 6662(d)(2)(C)(iii)),[1] and

(ii) any other situation which, by reason of—

(I) recent sales transactions,

(II) nonrecourse financing,

(III) financing with a term in excess of the economic life of the property, or

(IV) other circumstances,

is of a type which the Secretary specifies by regulations as having potential for tax avoidance.

[1] See References in Text note below.

(c) Debt instruments to which section applies

(1) In general

Except as otherwise provided in this subsection, this section shall apply to any debt instrument given in consideration for the sale or exchange of property if—

(A) the stated redemption price at maturity for such debt instrument exceeds—

(i) where there is adequate stated interest, the stated principal amount, or

(ii) in any other case, the imputed principal amount of such debt instrument determined under subsection (b), and

(B) some or all of the payments due under such debt instrument are due more than 6 months after the date of such sale or exchange.

(2) Adequate stated interest

For purposes of this section, there is adequate stated interest with respect to any debt instrument if the stated principal amount for such debt instrument is less than or equal to the imputed principal amount of such debt instrument determined under subsection (b).

(3) Exceptions

This section shall not apply to—

(A) Sales for $1,000,000 or less of farms by individuals or small businesses

####### (i) In general

Any debt instrument arising from the sale or exchange of a farm (within the meaning of section 6420(c)(2))—

(I) by an individual, estate, or testamentary trust,

(II) by a corporation which as of the date of the sale or exchange is a small business corporation (as defined in section 1244(c)(3)), or

(III) by a partnership which as of the date of the sale or exchange meets requirements similar to those of section 1244(c)(3).

####### (ii) $1,000,000 limitation

Clause (i) shall apply only if it can be determined at the time of the sale or exchange that the sales price cannot exceed $1,000,000. For purposes of the preceding sentence, all sales and exchanges which are part of the same transaction (or a series of related transactions) shall be treated as 1 sale or exchange.

(B) Sales of principal residences

Any debt instrument arising from the sale or exchange by an individual of his principal residence (within the meaning of section 121).

(C) Sales involving total payments of $250,000 or less

####### (i) In general

Any debt instrument arising from the sale or exchange of property if the sum of the following amounts does not exceed $250,000:

(I) the aggregate amount of the payments due under such debt instrument

and all other debt instruments received as consideration for the sale or exchange, and

(II) the aggregate amount of any other consideration to be received for the sale or exchange.

(ii) Consideration other than debt instrument taken into account at fair market value

For purposes of clause (i), any consideration (other than a debt instrument) shall be taken into account at its fair market value.

(iii) Aggregation of transactions

For purposes of this subparagraph, all sales and exchanges which are part of the same transaction (or a series of related transactions) shall be treated as 1 sale or exchange.

(D) Debt instruments which are publicly traded or issued for publicly traded property

Any debt instrument to which section 1273(b)(3) applies.

(E) Certain sales of patents

In the case of any transfer described in section 1235(a) (relating to sale or exchange of patents), any amount contingent on the productivity, use, or disposition of the property transferred.

(F) Sales or exchanges to which section 483(e) applies

Any debt instrument to the extent section 483(e) (relating to certain land transfers between related persons) applies to such instrument.

(4) Exception for assumptions

If any person—

(A) in connection with the sale or exchange of property, assumes any debt instrument, or

(B) acquires any property subject to any debt instrument,

in determining whether this section or section 483 applies to such debt instrument, such assumption (or such acquisition) shall not be taken into account unless the terms and conditions of such debt instrument are modified (or the nature of the transaction is changed) in connection with the assumption (or acquisition).

(d) Determination of applicable Federal rate

For purposes of this section—

(1) Applicable Federal rate

(A) In general

In the case of a debt instrument with a term of:	The applicable Federal rate is:
Not over 3 years	The Federal short-term rate.
Over 3 years but not over 9 years	The Federal mid-term rate.
Over 9 years	The Federal long-term rate.

(B) Determination of rates

During each calendar month, the Secretary shall determine the Federal short-term rate, mid-term rate, and long-term rate which shall apply during the following calendar month.

(C) Federal rate for any calendar month

For purposes of this paragraph—

(i) Federal short-term rate

The Federal short-term rate shall be the rate determined by the Secretary based on the average market yield (during any 1-month period selected by the Secretary and ending in the calendar month in which the determination is made) on outstanding marketable obligations of the United States with remaining periods to maturity of 3 years or less.

(ii) Federal mid-term and long-term rates

The Federal mid-term and long-term rate shall be determined in accordance with the principles of clause (i).

(D) Lower rate permitted in certain cases

The Secretary may by regulations permit a rate to be used with respect to any debt instrument which is lower than the applicable Federal rate if the taxpayer establishes to the satisfaction of the Secretary that such lower rate is based on the same principles as the applicable Federal rate and is appropriate for the term of such instrument.

(2) Lowest 3-month rate applicable to any sale or exchange

(A) In general

In the case of any sale or exchange, the applicable Federal rate shall be the lowest 3-month rate.

(B) Lowest 3-month rate

For purposes of subparagraph (A), the term ''lowest 3-month rate'' means the lowest of the applicable Federal rates in effect for any month in the 3-calendar-month period ending with the 1st calendar month in which there is a binding contract in writing for such sale or exchange.

(3) Term of debt instrument

In determining the term of a debt instrument for purposes of this subsection, under regulations prescribed by the Secretary, there shall be taken into account options to renew or extend.

(e) 110 Percent rate where sale-leaseback involved

(1) In general

In the case of any debt instrument to which this subsection applies, the discount rate used under subsection (b)(2)(B) or section 483(b) shall be 110 percent of the applicable Federal rate, compounded semiannually.

(2) Lower discount rates shall not apply

Section 1274A shall not apply to any debt instrument to which this subsection applies.

(3) Debt instruments to which this subsection applies

This subsection shall apply to any debt instrument given in consideration for the sale or exchange of any property if, pursuant to a

plan, the transferor or any related person leases a portion of such property after such sale or exchange.

(Added Pub. L. 98–369, div. A, title I, § 41(a), July 18, 1984, 98 Stat. 538; amended Pub. L. 99–121, title I, §§ 101(a)(1), (b), (c), 102(b), Oct. 11, 1985, 99 Stat. 505, 506, 508; Pub. L. 99–514, title XVIII, § 1803(a)(14)(A), Oct. 22, 1986, 100 Stat. 2797; Pub. L. 101–239, title VII, § 7721(c)(11), Dec. 19, 1989, 103 Stat. 2400; Pub. L. 104–188, title I, § 1704(t)(78), Aug. 20, 1996, 110 Stat. 1891; Pub. L. 105–34, title III, § 312(d)(1), Aug. 5, 1997, 111 Stat. 839.)

REFERENCES IN TEXT

Section 6662(d)(2)(C), referred to in subsec. (b)(3)(B)(i), was subsequently amended and cl. (iii) no longer defines the term ''tax shelter''. However, such term is defined elsewhere in that section.

AMENDMENTS

1997—Subsec. (c)(3)(B). Pub. L. 105–34 substituted ''section 121'' for ''section 1034''.

1996—Subsec. (b)(3)(B)(i). Pub. L. 104–188 substituted ''section 6662(d)(2)(C)(iii)'' for ''section 6662(d)(2)(C)(ii)''.

1989—Subsec. (b)(3)(B)(i). Pub. L. 101–239 substituted ''section 6662(d)(2)(C)(ii)'' for ''section 6661(b)(2)(C)(ii)''.

1986—Subsec. (c)(3)(A). Pub. L. 99–514 substituted ''for $1,000,000 or less'' for ''for less than $1,000,000'' in heading of subsec. (c)(4)(A) as so designated prior to its redesignation as subsec. (c)(3)(A) by Pub. L. 99–121, § 101(a)(1)(D), see 1985 Amendment note below.

1985—Subsec. (b)(2)(B). Pub. L. 99–121, § 101(a)(1)(A), struck out ''120 percent of'' after ''rate equal to''.

Subsec. (c)(1)(A)(ii). Pub. L. 99–121, § 101(a)(1)(B), amended cl. (ii) generally, substituting ''the imputed principal amount of such debt instrument determined under subsection (b)'' for ''the testing amount''.

Subsec. (c)(2). Pub. L. 99–121, § 101(a)(1)(C), substituted ''the imputed principal amount of such debt instrument determined under subsection (b)'' for ''the testing amount''.

Subsec. (c)(3). Pub. L. 99–121, § 101(a)(1)(D), redesignated par. (4) as (3). Former par. (3), defining ''testing amount'', was struck out.

Subsec. (c)(4). Pub. L. 99–121, § 102(b), added par. (4). Former par. (4) redesignated (3).

Subsec. (d)(1)(B) to (D). Pub. L. 99–121, § 101(b)(1), amended subpars. (B) to (D) generally, in subpar. (B) substituting provisions setting a monthly schedule for the determination of Federal rates for provisions which had formerly set a semi-annual schedule for the determination of such rates, in subpar. (C) substituting provisions setting a monthly schedule for the determination of Federal short-term, mid-term, and long-term rates based on the average market yield during any 1-month period ending in the month in which the determination is made for former provisions which had directed that the Federal rate determined under subpar. (A) apply during the appropriate 6-month period, and in subpar. (D) substituting provisions allowing a lower rate in certain cases for provisions relating to the setting of the Federal rate for any 6-month period.

Subsec. (d)(2). Pub. L. 99–121, § 101(b)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''In the case of any sale or exchange, the determination of the applicable Federal rate shall be made as of the first day on which there is a binding contract in writing for the sale or exchange.''

Subsec. (e). Pub. L. 99–121, § 101(c), added subsec. (e).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105–34, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1989, see section 7721(d) of Pub. L. 101–239, set out as a note under section 461 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 105(a) of Pub. L. 99–121, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by sections 101 and 102 [enacting section 1274A and amending this section and sections 280G and 483 of this title] shall apply to sales and exchanges after June 30, 1985, in taxable years ending after such date. The amendment made by section 2 of Public Law 98–612 [amending section 44(b) of Pub. L. 98–369, set out as a note under section 1271 of this title] shall not apply to sales and exchanges after June 30, 1985, in taxable years ending after such date.

''(2) REGULATORY AUTHORITY TO ESTABLISH LOWER RATE.—Section 1274(d)(1)(D) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as added by section 101(b), shall apply as if included in the amendments made by section 41 of the Tax Reform Act of 1984 [Pub. L. 98–369, see Effective Date note set out under section 1271 of this title].''

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, and applicable to sales or exchanges after Dec. 31, 1984, but not applicable to any sale or exchange pursuant to a written contract which was binding on Mar. 1, 1984, and at all times thereafter before the sale or exchange, see section 44 of Pub. L. 98–369, set out as a note under section 1271 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TRANSITIONAL RULE FOR PURPOSES OF IMPUTED INTEREST RULES

Provisions respecting treatment of debt instruments received in exchange for property, relating to special rules for sales after Dec. 31, 1984, and before July 1, 1985, general rule for assumptions of loans, exception for assumptions of loans made on or before Oct. 15, 1984, and exception for assumptions of loans with respect to certain property, see section 44(b)(4)–(7) of Pub. L. 98–369, as amended, set out as an Effective Date note under section 1271 of this title.

§ 1274A. Special rules for certain transactions where stated principal amount does not exceed $2,800,000

(a) Lower discount rate

In the case of any qualified debt instrument, the discount rate used for purposes of sections 483 and 1274 shall not exceed 9 percent, compounded semiannually.

(b) Qualified debt instrument defined

For purposes of this section, the term ''qualified debt instrument'' means any debt instrument given in consideration for the sale or ex-

change of property (other than new section 38 property within the meaning of section 48(b), as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) if the stated principal amount of such instrument does not exceed $2,800,000.

(c) Election to use cash method where stated principal amount does not exceed $2,000,000

(1) In general

In the case of any cash method debt instrument—

(A) section 1274 shall not apply, and

(B) interest on such debt instrument shall be taken into account by both the borrower and the lender under the cash receipts and disbursements method of accounting.

(2) Cash method debt instrument

For purposes of paragraph (1), the term ''cash method debt instrument'' means any qualified debt instrument if—

(A) the stated principal amount does not exceed $2,000,000,

(B) the lender does not use an accrual method of accounting and is not a dealer with respect to the property sold or exchanged,

(C) section 1274 would have applied to such instrument but for an election under this subsection, and

(D) an election under this subsection is jointly made with respect to such debt instrument by the borrower and lender.

(3) Successors bound by election

(A) In general

Except as provided in subparagraph (B), paragraph (1) shall apply to any successor to the borrower or lender with respect to a cash method debt instrument.

(B) Exception where lender transfers debt instrument to accrual method taxpayer

If the lender (or any successor) transfers any cash method debt instrument to a taxpayer who uses an accrual method of accounting, this paragraph shall not apply with respect to such instrument for periods after such transfer.

(4) Fair market value rule in potentially abusive situations

In the case of any cash method debt instrument, section 483 shall be applied as if it included provisions similar to the provisions of section 1274(b)(3).

(d) Other special rules

(1) Aggregation rules

For purposes of this section—

(A) all sales or exchanges which are part of the same transaction (or a series of related transactions) shall be treated as 1 sale or exchange, and

(B) all debt instruments arising from the same transaction (or a series of related transactions) shall be treated as 1 debt instrument.

(2) Inflation adjustments

(A) In general

In the case of any debt instrument arising out of a sale or exchange during any calendar year after 1989, each dollar amount contained in the preceding provisions of this section shall be increased by the inflation adjustment for such calendar year. Any increase under the preceding sentence shall be rounded to the nearest multiple of $100 (or, if such increase is a multiple of $50, such increase shall be increased to the nearest multiple of $100).

(B) Inflation adjustment

For purposes of subparagraph (A), the inflation adjustment for any calendar year is the percentage (if any) by which—

(i) the CPI for the preceding calendar year exceeds

(ii) the CPI for calendar year 1988.

For purposes of the preceding sentence, the CPI for any calendar year is the average of the Consumer Price Index as of the close of the 12-month period ending on September 30 of such calendar year.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including—

(1) regulations coordinating the provisions of this section with other provisions of this title,

(2) regulations necessary to prevent the avoidance of tax through the abuse of the provisions of subsection (c), and

(3) regulations relating to the treatment of transfers of cash method debt instruments.

(Added Pub. L. 99–121, title I, § 102(a), Oct. 11, 1985, 99 Stat. 506; amended Pub. L. 101–508, title XI, § 11813(b)(22), Nov. 5, 1990, 104 Stat. 1388–555; Pub. L. 104–188, title I, § 1704(t)(62), Aug. 20, 1996, 110 Stat. 1890.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Rulings listed in a table below.

REFERENCES IN TEXT

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

AMENDMENTS

1996—Subsec. (c)(1)(B). Pub. L. 104–188 substituted ''instrument'' for ''instument''.

1990—Subsec. (b). Pub. L. 101–508 inserted '', as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990'' after ''section 48(b)''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE

Section applicable to sales and exchanges after June 30, 1985, in taxable years ending after such date, see sec-

tion 105(a)(1) of Pub. L. 99–121, set out as an Effective Date of 1985 Amendment note under section 1274 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

Provisions relating to inflation adjustment of items in this section for certain years were contained in the following:

2011—Revenue Ruling 2010–30.
2010—Revenue Ruling 2010–2.
2009—Revenue Ruling 2008–52.
2008—Revenue Ruling 2008–3.
2007—Revenue Ruling 2007–4.
2006—Revenue Ruling 2005–76.
2005—Revenue Ruling 2004–107.
2004—Revenue Ruling 2003–119.
2003—Revenue Ruling 2002–79.
2002—Revenue Ruling 2001–65.
2001—Revenue Ruling 2000–55.
2000—Revenue Ruling 99–50.
1999—Revenue Ruling 98–58.
1998—Revenue Ruling 97–56.
1997—Revenue Ruling 96–63.
1996—Revenue Ruling 96–4.

§ 1275. Other definitions and special rules

(a) Definitions

For purposes of this subpart—

(1) Debt instrument

(A) In general

Except as provided in subparagraph (B), the term ''debt instrument'' means a bond, debenture, note, or certificate or other evidence of indebtedness.

(B) Exception for certain annuity contracts

The term ''debt instrument'' shall not include any annuity contract to which section 72 applies and which—

(i) depends (in whole or in substantial part) on the life expectancy of 1 or more individuals, or

(ii) is issued by an insurance company subject to tax under subchapter L (or by an entity described in section 501(c) and exempt from tax under section 501(a) which would be subject to tax under subchapter L were it not so exempt)—

(I) in a transaction in which there is no consideration other than cash or another annuity contract meeting the requirements of this clause,

(II) pursuant to the exercise of an election under an insurance contract by a beneficiary thereof on the death of the insured party under such contract, or

(III) in a transaction involving a qualified pension or employee benefit plan.

(2) Issue date

(A) Publicly offered debt instruments

In the case of any debt instrument which is publicly offered, the term ''date of original issue'' means the date on which the issue was first issued to the public.

(B) Issues not publicly offered and not issued for property

In the case of any debt instrument to which section 1273(b)(2) applies, the term ''date of original issue'' means the date on which the debt instrument was sold by the issuer.

(C) Other debt instruments

In the case of any debt instrument not described in subparagraph (A) or (B), the term ''date of original issue'' means the date on which the debt instrument was issued in a sale or exchange.

(3) Tax-exempt obligation

The term ''tax-exempt obligation'' means any obligation if—

(A) the interest on such obligation is not includible in gross income under section 103, or

(B) the interest on such obligation is exempt from tax (without regard to the identity of the holder) under any other provision of law.

(4) Treatment of obligations distributed by corporations

Any debt obligation of a corporation distributed by such corporation with respect to its stock shall be treated as if it had been issued by such corporation for property.

(b) Treatment of borrower in the case of certain loans for personal use

(1) Sections 1274 and 483 not to apply

In the case of the obligor under any debt instrument given in consideration for the sale or exchange of property, sections 1274 and 483 shall not apply if such property is personal use property.

(2) Original issue discount deducted on cash basis in certain cases

In the case of any debt instrument, if—

(A) such instrument—

(i) is incurred in connection with the acquisition or carrying of personal use property, and

(ii) has original issue discount (determined after the application of paragraph (1)), and

(B) the obligor under such instrument uses the cash receipts and disbursements method of accounting,

notwithstanding section 163(e), the original issue discount on such instrument shall be deductible only when paid.

(3) Personal use property

For purposes of this subsection, the term ''personal use property'' means any property substantially all of the use of which by the taxpayer is not in connection with a trade or business of the taxpayer or an activity described in section 212. The determination of whether property is described in the preceding sentence shall be made as of the time of issuance of the debt instrument.

(c) Information requirements

(1) Information required to be set forth on instrument

(A) In general

In the case of any debt instrument having original issue discount, the Secretary may by regulations require that—

(i) the amount of the original issue discount, and

(ii) the issue date,

be set forth on such instrument.

(B) Special rule for instruments not publicly offered

In the case of any issue of debt instruments not publicly offered, the regulations prescribed under subparagraph (A) shall not require the information to be set forth on the debt instrument before any disposition of such instrument by the first buyer.

(2) Information required to be submitted to Secretary

In the case of any issue of publicly offered debt instruments having original issue discount, the issuer shall (at such time and in such manner as the Secretary shall by regulation prescribe) furnish the Secretary the following information:

(A) The amount of the original issue discount.

(B) The issue date.

(C) Such other information with respect to the issue as the Secretary may by regulations require.

For purposes of the preceding sentence, any person who makes a public offering of stripped bonds (or stripped coupons) shall be treated as the issuer of a publicly offered debt instrument having original issue discount.

(3) Exceptions

This subsection shall not apply to any obligation referred to in section 1272(a)(2) (relating to exceptions from current inclusion of original issue discount).

(4) Cross reference

For civil penalty for failure to meet requirements of this subsection, see section 6706.

(d) Regulation authority

The Secretary may prescribe regulations providing that where, by reason of varying rates of interest, put or call options, indefinite maturities, contingent payments, assumptions of debt instruments, or other circumstances, the tax treatment under this subpart (or section 163(e)) does not carry out the purposes of this subpart (or section 163(e)), such treatment shall be modified to the extent appropriate to carry out the purposes of this subpart (or section 163(e)).

(Added and amended Pub. L. 98–369, div. A, title I, §§ 41(a), 61(c)(2), July 18, 1984, 98 Stat. 540, 581; Pub. L. 99–514, title XVIII, § 1804(f)(2)(A), Oct. 22, 1986, 100 Stat. 2805; Pub. L. 100–647, title I, § 1006(u)(4), Nov. 10, 1988, 102 Stat. 3427; Pub. L. 101–508, title XI, § 11325(a)(2), Nov. 5, 1990, 104 Stat. 1388–466; Pub. L. 106–554, § 1(a)(7) [title III, § 318(c)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–645.)

AMENDMENTS

2000—Subsec. (a)(1)(B)(ii). Pub. L. 106–554, in introductory provisions, substituted ''subchapter L (or by an entity described in section 501(c) and exempt from tax under section 501(a) which would be subject to tax under subchapter L were it not so exempt)'' for ''subchapter L''.

1990—Subsec. (a)(4), (5). Pub. L. 101–508 redesignated par. (5) as (4) and struck out former par. (4) which related to a special rule for determination of issue price in case of exchange of debt instruments in reorganization.

1988—Subsec. (a)(4)(B)(ii)(I). Pub. L. 100–647 substituted ''subsection (a)(7)'' for ''subsection (a)(6)''.

1986—Subsec. (a)(4), (5). Pub. L. 99–514 redesignated par. (4), relating to treatment of obligations distributed to corporations, as (5), and substituted ''by corporations'' for ''to corporations'' in heading.

1984—Subsec. (a)(4). Pub. L. 98–369, § 61(c)(2), added par. (4) relating to treatment of obligations distributed to corporations.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(7) [title III, § 318(c)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–645, provided that: ''The amendment made by this subsection [amending this section] shall take effect as if included in the amendments made by section 41 of the Tax Reform Act of 1984 [Pub. L. 98–369, div. A].''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable, with certain exceptions, to debt instruments issued and stock transferred after Oct. 1, 1990, in satisfaction of any indebtedness, see section 11325(c) of Pub. L. 101–508, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to distributions declared Mar. 15, 1984, in taxable years ending after that date, see section 61(e)(3) of Pub. L. 98–369, set out as a note under section 312 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, but subsec. (c) of this section effective on the day 30 days after July 18, 1984, see section 44 of Pub. L. 98–369, set out as a note under section 1271 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

SUBPART B—MARKET DISCOUNT ON BONDS

Sec.

1276. Disposition gain representing accrued market discount treated as ordinary income.

Sec.
1277. Deferral of interest deduction allocable to accrued market discount.
1278. Definitions and special rules.

§ 1276. Disposition gain representing accrued market discount treated as ordinary income

(a) Ordinary income

(1) In general

Except as otherwise provided in this section, gain on the disposition of any market discount bond shall be treated as ordinary income to the extent it does not exceed the accrued market discount on such bond. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(2) Dispositions other than sales, etc.

For purposes of paragraph (1), a person disposing of any market discount bond in any transaction other than a sale, exchange, or involuntary conversion shall be treated as realizing an amount equal to the fair market value of the bond.

(3) Treatment of partial principal payments

(A) In general

Any partial principal payment on a market discount bond shall be included in gross income as ordinary income to the extent such payment does not exceed the accrued market discount on such bond.

(B) Adjustment

If subparagraph (A) applies to any partial principal payment on any market discount bond, for purposes of applying this section to any disposition of (or subsequent partial principal payment on) such bond, the amount of accrued market discount shall be reduced by the amount of such partial principal payment included in gross income under subparagraph (A).

(4) Gain treated as interest for certain purposes

Except for purposes of sections 103, 871(a),,[1] 881, 1441, 1442, and 6049 (and such other provisions as may be specified in regulations), any amount treated as ordinary income under paragraph (1) or (3) shall be treated as interest for purposes of this title.

(b) Accrued market discount

For purposes of this section—

(1) Ratable accrual

Except as otherwise provided in this subsection or subsection (c), the accrued market discount on any bond shall be an amount which bears the same ratio to the market discount on such bond as—

(A) the number of days which the taxpayer held the bond, bears to

(B) the number of days after the date the taxpayer acquired the bond and up to (and including) the date of its maturity.

(2) Election of accrual on basis of constant interest rate (in lieu of ratable accrual)

(A) In general

At the election of the taxpayer with respect to any bond, the accrued market discount on such bond shall be the aggregate amount which would have been includible in the gross income of the taxpayer under section 1272(a) (determined without regard to paragraph (2) thereof) with respect to such bond for all periods during which the bond was held by the taxpayer if such bond had been—

(i) originally issued on the date on which such bond was acquired by the taxpayer,

(ii) for an issue price equal to the basis of the taxpayer in such bond immediately after its acquisition.

(B) Coordination where bond has original issue discount

In the case of any bond having original issue discount, for purposes of applying subparagraph (A)—

(i) the stated redemption price at maturity of such bond shall be treated as equal to its revised issue price, and

(ii) the determination of the portion of the original issue discount which would have been includible in the gross income of the taxpayer under section 1272(a) shall be made under regulations prescribed by the Secretary.

(C) Election irrevocable

An election under subparagraph (A), once made with respect to any bond, shall be irrevocable.

(3) Special rule where partial principal payments

In the case of a bond the principal of which may be paid in 2 or more payments, the amount of accrued market discount shall be determined under regulations prescribed by the Secretary.

(c) Treatment of nonrecognition transactions

Under regulations prescribed by the Secretary—

(1) Transferred basis property

If a market discount bond is transferred in a nonrecognition transaction and such bond is transferred basis property in the hands of the transferee, for purposes of determining the amount of the accrued market discount with respect to the transferee—

(A) the transferee shall be treated as having acquired the bond on the date on which it was acquired by the transferor for an amount equal to the basis of the transferor, and

(B) proper adjustments shall be made for gain recognized by the transferor on such transfer (and for any original issue discount or market discount included in the gross income of the transferor).

(2) Exchanged basis property

If any market discount bond is disposed of by the taxpayer in a nonrecognition transaction and paragraph (1) does not apply to such transaction, any accrued market discount determined with respect to the property disposed of to the extent not theretofore treated as ordinary income under subsection (a)—

(A) shall be treated as accrued market discount with respect to the exchanged basis

[1] So in original.

property received by the taxpayer in such transaction if such property is a market discount bond, and

(B) shall be treated as ordinary income on the disposition of the exchanged basis property received by the taxpayer in such exchange if such property is not a market discount bond.

(3) Paragraph (1) to apply to certain distributions by corporations or partnerships

For purposes of paragraph (1), if the basis of any market discount bond in the hands of a transferee is determined under section 732(a), or 732(b), such property shall be treated as transferred basis property in the hands of such transferee.

(d) Special rules

Under regulations prescribed by the Secretary—

(1) rules similar to the rules of subsection (b) of section 1245 shall apply for purposes of this section; except that—

(A) paragraph (1) of such subsection shall not apply,

(B) an exchange qualifying under section 354(a), 355(a), or 356(a) (determined without regard to subsection (a) of this section) shall be treated as an exchange described in paragraph (3) of such subsection, and

(C) paragraph (3) of section 1245(b) shall be applied as if it did not contain a reference to section 351, and

(2) appropriate adjustments shall be made to the basis of any property to reflect gain recognized under subsection (a).

(Added Pub. L. 98–369, div. A, title I, § 41(a), July 18, 1984, 98 Stat. 543; amended Pub. L. 99–514, title VI, § 631(e)(15), title XVIII, §§ 1803(a)(5), (13)(A), 1899A(28), Oct. 22, 1986, 100 Stat. 2275, 2793, 2796, 2960; Pub. L. 100–647, title I, § 1018(u)(46), Nov. 10, 1988, 102 Stat. 3592; Pub. L. 103–66, title XIII, § 13206(b)(1)(A), (2)(B)(i), Aug. 10, 1993, 107 Stat. 465.)

AMENDMENTS

1993—Subsec. (a)(4). Pub. L. 103–66, § 13206(b)(2)(B)(i), substituted ''sections 103, 871(a),'' for ''sections 871(a)''.

Subsec. (e). Pub. L. 103–66, § 13206(b)(1)(A), struck out heading and text of subsec. (e). Text read as follows: ''This section shall not apply to any market discount bond issued on or before July 18, 1984.''

1988—Subsec. (b)(3). Pub. L. 100–647 designated paragraph relating to special rule where there are partial principal payments as par. (3) and inserted period at end.

1986—Subsec. (a)(3). Pub. L. 99–514, § 1803(a)(13)(A)(i), added par. (3). Former par. (3) redesignated (4).

Subsec. (a)(4). Pub. L. 99–514, § 1803(a)(13)(A)(i), (ii), redesignated par. (3) as (4) and substituted ''under paragraph (1) or (3)'' for ''under paragraph (1)''.

Subsec. (b). Pub. L. 99–514, § 1803(a)(13)(A)(iii), added undesignated par. at end relating to special rule where partial principal payments.

Subsec. (c)(3). Pub. L. 99–514, § 631(e)(15), struck out reference to section 334(c).

Subsec. (d)(1)(C). Pub. L. 99–514, § 1803(a)(5), added subpar. (C).

Subsec. (e). Pub. L. 99–514, § 1899A(28), substituted ''July 18, 1984'' for ''the date of the enactment of this section''.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13206(b)(3) of Pub. L. 103–66 provided that: ''The amendments made by this section [probably should be ''subsection'', which amended this section and sections 1277 and 1278 of this title] shall apply to obligations purchased (within the meaning of section 1272(d)(1) of the Internal Revenue Code of 1986) after April 30, 1993.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 631(e)(15) of Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

Amendment by section 1803(a)(5) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Section 1803(a)(13)(C) of Pub. L. 99–514 provided that: ''The amendments made by this paragraph [amending this section and section 1286 of this title] shall apply to obligations acquired after the date of the enactment of this Act [Oct. 22, 1986].''

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, and applicable to obligations issued after July 18, 1984, in taxable years ending after such date, see section 44 of Pub. L. 98–369, set out as a note under section 1271 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 1277. Deferral of interest deduction allocable to accrued market discount

(a) General rule

Except as otherwise provided in this section, the net direct interest expense with respect to any market discount bond shall be allowed as a deduction for the taxable year only to the extent that such expense exceeds the portion of the market discount allocable to the days during the taxable year on which such bond was held by the taxpayer (as determined under the rules of section 1276(b)).

(b) Disallowed deduction allowed for later years

(1) Election to take into account in later year where net interest income from bond

(A) In general

If—

(i) there is net interest income for any taxable year with respect to any market discount bond, and

(ii) the taxpayer makes an election under this subparagraph with respect to such bond,

any disallowed interest expense with respect to such bond shall be treated as interest paid or accrued by the taxpayer during such taxable year to the extent such disallowed interest expense does not exceed the net interest income with respect to such bond.

(B) Determination of disallowed interest expense

For purposes of subparagraph (A), the amount of the disallowed interest expense—

(i) shall be determined as of the close of the preceding taxable year, and

(ii) shall not include any amount previously taken into account under subparagraph (A).

(C) Net interest income

For purposes of this paragraph, the term ''net interest income'' means the excess of the amount determined under paragraph (2) of subsection (c) over the amount determined under paragraph (1) of subsection (c).

(2) Remainder of disallowed interest expense allowed for year of disposition

(A) In general

Except as otherwise provided in this paragraph, the amount of the disallowed interest expense with respect to any market discount bond shall be treated as interest paid or accrued by the taxpayer in the taxable year in which such bond is disposed of.

(B) Nonrecognition transactions

If any market discount bond is disposed of in a nonrecognition transaction—

(i) the disallowed interest expense with respect to such bond shall be treated as interest paid or accrued in the year of disposition only to the extent of the amount of gain recognized on such disposition, and

(ii) the disallowed interest expense with respect to such property (to the extent not so treated) shall be treated as disallowed interest expense—

(I) in the case of a transaction described in section 1276(c)(1), of the transferee with respect to the transferred basis property, or

(II) in the case of a transaction described in section 1276(c)(2), with respect to the exchanged basis property.

(C) Disallowed interest expense reduced for amounts previously taken into account under paragraph (1)

For purposes of this paragraph, the amount of the disallowed interest expense shall not include any amount previously taken into account under paragraph (1).

(3) Disallowed interest expense

For purposes of this subsection, the term ''disallowed interest expense'' means the aggregate amount disallowed under subsection (a) with respect to the market discount bond.

(c) Net direct interest expense

For purposes of this section, the term ''net direct interest expense'' means, with respect to any market discount bond, the excess (if any) of—

(1) the amount of interest paid or accrued during the taxable year on indebtedness which is incurred or continued to purchase or carry such bond, over

(2) the aggregate amount of interest (including original issue discount) includible in gross income for the taxable year with respect to such bond.

In the case of any financial institution which is a bank (as defined in section 585(a)(2)), the determination of whether interest is described in paragraph (1) shall be made under principles similar to the principles of section 291(e)(1)(B)(ii). Under rules similar to the rules of section 265(a)(5), short sale expenses shall be treated as interest for purposes of determining net direct interest expense.

(Added Pub. L. 98–369, div. A, title I, §41(a), July 18, 1984, 98 Stat. 545; amended Pub. L. 99–514, title IX, §§901(d)(4)(F), §902(e)(2), title XVIII, §1899A(29)–(31), Oct. 22, 1986, 100 Stat. 2380, 2382, 2960; Pub. L. 100–647, title I, §1018(u)(31), Nov. 10, 1988, 102 Stat. 3592; Pub. L. 103–66, title XIII, §13206(b)(1)(B), Aug. 10, 1993, 107 Stat. 465; Pub. L. 104–188, title I, §1616(b)(14), Aug. 20, 1996, 110 Stat. 1857.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–188 struck out ''or to which section 593 applies'' after ''585(a)(2))'' in closing provisions.

1993—Subsec. (d). Pub. L. 103–66 struck out heading and text of subsec. (d). Text read as follows: ''In the case of a market discount bond issued on or before July 18, 1984, any gain recognized by the taxpayer on any disposition of such bond shall be treated as ordinary income to the extent the amount of such gain does not exceed the amount allowable with respect to such bond under subsection (b)(2) for the taxable year in which such bond is disposed of.''

1988—Subsec. (c). Pub. L. 100–647 inserted a closing parenthesis after ''section 585(a)(2)''.

1986—Subsec. (b)(1)(C). Pub. L. 99–514, §1899A(29), substituted ''this paragraph'' for ''this paragaph''.

Subsec. (b)(2)(C). Pub. L. 99–514, §1899A(30), substituted ''paragraph (1)'' for ''paragraph 1'' in heading.

Subsec. (c). Pub. L. 99–514, §901(d)(4)(F), substituted ''which is a bank (as defined in section 585(a)(2) or to which section 593 applies'' for ''to which section 585 or 593 applies''.

Pub. L. 99–514, §902(e)(2), substituted ''section 265(a)(5)'' for ''section 265(5)''.

Subsec. (d). Pub. L. 99–514, §1899A(31), substituted ''July 18, 1984'' for ''the date of the enactment of this section''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, see section 1616(c) of Pub. L. 104–188, set out as a note under section 593 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to obligations purchased (within the meaning of section 1272(d)(1) of this title) after Apr. 30, 1993, see section 13206(b)(3) of Pub. L. 103–66, set out as a note under section 1276 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of

the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 901(d)(4)(F) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 901(e) of Pub. L. 99–514, set out as a note under section 166 of this title.

Amendment by section 902(e)(2) of Pub. L. 99–514 applicable to taxable years ending after Dec. 31, 1986, with certain exceptions and qualifications, see section 902(f) of Pub. L. 99–514, set out as a note under section 265 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, and applicable to obligations acquired after July 18, 1984, in taxable years ending after such date, see section 44 of Pub. L. 98–369, set out as a note under section 1271 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 1278. Definitions and special rules

(a) In general

For purposes of this part—

(1) Market discount bond

(A) In general

Except as provided in subparagraph (B), the term ''market discount bond'' means any bond having market discount.

(B) Exceptions

The term ''market discount bond'' shall not include—

(i) Short-term obligations

Any obligation with a fixed maturity date not exceeding 6 months from the date of issue.

(ii) United States savings bonds

Any United States savings bond.

(iii) Installment obligations

Any installment obligation to which section 453B applies.

(C) Section 1277 not applicable to tax-exempt obligations

For purposes of section 1277, the term ''market discount bond'' shall not include any tax-exempt obligation (as defined in section 1275(a)(3)).

(D) Treatment of bonds acquired at original issue

(i) In general

Except as otherwise provided in this subparagraph or in regulations, the term ''market discount bond'' shall not include any bond acquired by the taxpayer at its original issue.

(ii) Treatment of bonds acquired for less than issue price

Clause (i) shall not apply to any bond if—

(I) the basis of the taxpayer in such bond is determined under section 1012, and

(II) such basis is less than the issue price of such bond determined under subpart A of this part.

(iii) Bonds acquired in certain reorganizations

Clause (i) shall not apply to any bond issued pursuant to a plan of reorganization (within the meaning of section 368(a)(1)) in exchange for another bond having market discount. Solely for purposes of section 1276, the preceding sentence shall not apply if such other bond was issued on or before July 18, 1984 (the date of the enactment of section 1276) and if the bond issued pursuant to such plan of reorganization has the same term and the same interest rate as such other bond had.

(iv) Treatment of certain transferred basis property

For purposes of clause (i), if the adjusted basis of any bond in the hands of the taxpayer is determined by reference to the adjusted basis of such bond in the hands of a person who acquired such bond at its original issue, such bond shall be treated as acquired by the taxpayer at its original issue.

(2) Market discount

(A) In general

The term ''market discount'' means the excess (if any) of—

(i) the stated redemption price of the bond at maturity, over

(ii) the basis of such bond immediately after its acquisition by the taxpayer.

(B) Coordination where bond has original issue discount

In the case of any bond having original issue discount, for purposes of subparagraph (A), the stated redemption price of such bond at maturity shall be treated as equal to its revised issue price.

(C) De minimis rule

If the market discount is less than ¼ of 1 percent of the stated redemption price of the bond at maturity multiplied by the number of complete years to maturity (after the taxpayer acquired the bond), then the market discount shall be considered to be zero.

(3) Bond

The term ''bond'' means any bond, debenture, note, certificate, or other evidence of indebtedness.

(4) Revised issue price

The term ''revised issue price'' means the sum of—

(A) the issue price of the bond, and

(B) the aggregate amount of the original issue discount includible in the gross income of all holders for periods before the acquisition of the bond by the taxpayer (determined without regard to section 1272(a)(7) or (b)(4)) or, in the case of a tax-exempt obligation,

the aggregate amount of the original issue discount which accrued in the manner provided by section 1272(a) (determined without regard to paragraph (7) thereof) during periods before the acquisition of the bond by the taxpayer.

(5) Original issue discount, etc.

The terms ''original issue discount'', ''stated redemption price at maturity'', and ''issue price'' have the respective meanings given such terms by subpart A of this part.

(b) Election to include market discount currently

(1) In general

If the taxpayer makes an election under this subsection—

(A) sections 1276 and 1277 shall not apply, and

(B) market discount on any market discount bond shall be included in the gross income of the taxpayer for the taxable years to which it is attributable (as determined under the rules of subsection (b) of section 1276).

Except for purposes of sections 103, 871(a),,[1] 881, 1441, 1442, and 6049 (and such other provisions as may be specified in regulations), any amount included in gross income under subparagraph (B) shall be treated as interest for purposes of this title.

(2) Scope of election

An election under this subsection shall apply to all market discount bonds acquired by the taxpayer on or after the 1st day of the 1st taxable year to which such election applies.

(3) Period to which election applies

An election under this subsection shall apply to the taxable year for which it is made and for all subsequent taxable years, unless the taxpayer secures the consent of the Secretary to the revocation of such election.

(4) Basis adjustment

The basis of any bond in the hands of the taxpayer shall be increased by the amount included in gross income pursuant to this subsection.

(c) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subpart, including regulations providing proper adjustments in the case of a bond the principal of which may be paid in 2 or more payments.

(Added and amended Pub. L. 98–369, div. A, title I, §41(a), title X, §1001(b)(24), July 18, 1984, 98 Stat. 547; Pub. L. 99–514, title XVIII, §§1803(a)(6), 1878(a), 1899A(32), Oct. 22, 1986, 100 Stat. 2793, 2903, 2960; Pub. L. 100–647, title I, §§1006(u)(2), 1018(c)(2), (3), Nov. 10, 1988, 102 Stat. 3427, 3578; Pub. L. 103–66, title XIII, §13206(b)(2), Aug. 10, 1993, 107 Stat. 465.)

AMENDMENTS

1993—Subsec. (a)(1)(B)(ii)–(iv). Pub. L. 103–66, §13206(b)(2)(A)(i), redesignated cls. (iii) and (iv) as (ii) and (iii), respectively, and struck out heading and text of former cl. (ii). Text read as follows: ''Any tax-exempt obligation (as defined in section 1275(a)(3)).''

Subsec. (a)(1)(C), (D). Pub. L. 103–66, §13206(b)(2)(A)(ii), (iii), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (a)(4)(B). Pub. L. 103–66, §13206(b)(2)(B)(ii), inserted before period at end ''or, in the case of a tax-exempt obligation, the aggregate amount of the original issue discount which accrued in the manner provided by section 1272(a) (determined without regard to paragraph (7) thereof) during periods before the acquisition of the bond by the taxpayer''.

Subsec. (b)(1). Pub. L. 103–66, §13206(b)(2)(B)(i), substituted ''sections 103, 871(a),'' for ''sections 871(a)'' in last sentence.

1988—Subsec. (a)(4)(B). Pub. L. 100–647, §1006(u)(2), substituted ''section 1272(a)(7)'' for ''section 1272(a)(6)''.

Subsec. (b)(4). Pub. L. 100–647, §1018(c)(3), added par. (4).

Subsec. (c). Pub. L. 100–647, §1018(c)(2), inserted before period at end '', including regulations providing proper adjustments in the case of a bond the principal of which may be paid in 2 or more payments''.

1986—Subsec. (a)(1)(B)(i). Pub. L. 99–514, §1878(a), amended Pub. L. 98–369, §1001(b), by adding a par. (24) which contained directory language substituting ''6 months'' for ''1 year'' in cl. (i). See 1984 Amendment note below.

Subsec. (a)(1)(C). Pub. L. 99–514, §1803(a)(6), added subpar. (C).

Subsec. (a)(4). Pub. L. 99–514, §1899A(32), substituted ''means'' for ''means of'' in introductory provisions.

1984—Subsec. (a)(1)(B)(i). Pub. L. 98–369, §1001(b)(24), as added by Pub. L. 99–514, §1878(a), substituted ''6 months'' for ''1 year''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendments by Pub. L. 103–66 applicable to obligations purchased (within the meaning of section 1272(d)(1) of this title) after Apr. 30, 1993, see section 13206(b)(3) of Pub. L. 103–66, set out as a note under section 1276 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by sections 1803(a)(6) and 1878(a) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, except as otherwise provided, see section 44 of Pub. L. 98–369, set out as a note under section 1271 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the

[1] So in original.

first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

SUBPART C—DISCOUNT ON SHORT-TERM OBLIGATIONS

Sec.
1281. Current inclusion in income of discount on certain short-term obligations.
1282. Deferral of interest deduction allocable to accrued discount.
1283. Definitions and special rules.

§ 1281. Current inclusion in income of discount on certain short-term obligations

(a) General rule

In the case of any short-term obligation to which this section applies, for purposes of this title—

(1) there shall be included in the gross income of the holder an amount equal to the sum of the daily portions of the acquisition discount for each day during the taxable year on which such holder held such obligation, and

(2) any interest payable on the obligation (other than interest taken into account in determining the amount of the acquisition discount) shall be included in gross income as it accrues.

(b) Short-term obligations to which section applies

(1) In general

This section shall apply to any short-term obligation which—

(A) is held by a taxpayer using an accrual method of accounting,

(B) is held primarily for sale to customers in the ordinary course of the taxpayer's trade or business,

(C) is held by a bank (as defined in section 581),

(D) is held by a regulated investment company or a common trust fund,

(E) is identified by the taxpayer under section 1256(e)(2) as being part of a hedging transaction, or

(F) is a stripped bond or stripped coupon held by the person who stripped the bond or coupon (or by any other person whose basis is determined by reference to the basis in the hands of such person).

(2) Treatment of obligations held by pass-thru entities

(A) In general

This section shall apply also to—

(i) any short-term obligation which is held by a pass-thru entity which is formed or availed of for purposes of avoiding the provisions of this section, and

(ii) any short-term obligation which is acquired by a pass-thru entity (not described in clause (i)) during the required accrual period.

(B) Required accrual period

For purposes of subparagraph (A), the term ''required accrual period'' means the period—

(i) which begins with the first taxable year for which the ownership test of subparagraph (C) is met with respect to the pass-thru entity (or a predecessor), and

(ii) which ends with the first taxable year after the taxable year referred to in clause (i) for which the ownership test of subparagraph (C) is not met and with respect to which the Secretary consents to the termination of the required accrual period.

(C) Ownership test

The ownership test of this subparagraph is met for any taxable year if, on at least 90 days during the taxable year, 20 percent or more of the value of the interests in the pass-thru entity are held by persons described in paragraph (1) or by other pass-thru entities to which subparagraph (A) applies.

(D) Pass-thru entity

The term ''pass-thru entity'' means any partnership, S corporation, trust, or other pass-thru entity.

(c) Cross reference

For special rules limiting the application of this section to original issue discount in the case of nongovernmental obligations, see section 1283(c).

(Added Pub. L. 98–369, div. A, title I, § 41(a), July 18, 1984, 98 Stat. 548; amended Pub. L. 99–514, title XVIII, § 1803(a)(7), (8)(A), Oct. 22, 1986, 100 Stat. 2793, 2794.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–514, § 1803(a)(8), amended subsec. (a) generally, designating existing provisions as par. (1) and adding par. (2).

Subsec. (b)(1)(F). Pub. L. 99–514, § 1803(a)(7), added subpar. (F).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1803(a)(7) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Section 1803(a)(8)(A) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1018(c)(1), Nov. 10, 1988, 102 Stat. 3578, provided that the amendment made by section 1803(a)(8)(A) of Pub. L. 99–514 is effective with respect to obligations acquired after Dec. 31, 1985.

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, and applicable to obligations acquired after that date, with certain elections available, see section 44 of Pub. L. 98–369, set out as a note under section 1271 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 1282. Deferral of interest deduction allocable to accrued discount

(a) General rule

Except as otherwise provided in this section, the net direct interest expense with respect to

any short-term obligation shall be allowed as a deduction for the taxable year only to the extent such expense exceeds the sum of—

(1) the daily portions of the acquisition discount for each day during the taxable year on which the taxpayer held such obligation, and

(2) the amount of any interest payable on the obligation (other than interest taken into account in determining the amount of the acquisition discount) which accrues during the taxable year while the taxpayer held such obligation (and is not included in the gross income of the taxpayer for such taxable year by reason of the taxpayer's method of accounting).

(b) Section not to apply to obligations to which section 1281 applies

(1) In general

This section shall not apply to any short-term obligation to which section 1281 applies.

(2) Election to have section 1281 apply to all obligations

(A) In general

A taxpayer may make an election under this paragraph to have section 1281 apply to all short-term obligations acquired by the taxpayer on or after the 1st day of the 1st taxable year to which such election applies.

(B) Period to which election applies

An election under this paragraph shall apply to the taxable year for which it is made and for all subsequent taxable years, unless the taxpayer secures the consent of the Secretary to the revocation of such election.

(c) Certain rules made applicable

Rules similar to the rules of subsections (b) and (c) of section 1277 shall apply for purposes of this section.

(d) Cross reference

For special rules limiting the application of this section to original issue discount in the case of nongovernmental obligations, see section 1283(c).

(Added Pub. L. 98–369, div. A, title I, § 41(a), July 18, 1984, 98 Stat. 549; amended Pub. L. 99–514, title XVIII, § 1803(a)(8)(B), Oct. 22, 1986, 100 Stat. 2794.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–514 amended subsec. (a) generally, designating existing provisions as par. (1) and adding par. (2).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, and to obligations acquired after that date, see section 44 of Pub. L. 98–369, set out as a note under section 1271 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 1283. Definitions and special rules

(a) Definitions

For purposes of this subpart—

(1) Short-term obligation

(A) In general

Except as provided in subparagraph (B), the term ''short-term obligation'' means any bond, debenture, note, certificate, or other evidence of indebtedness which has a fixed maturity date not more than 1 year from the date of issue.

(B) Exceptions for tax-exempt obligations

The term ''short-term obligation'' shall not include any tax-exempt obligation (as defined in section 1275(a)(3)).

(2) Acquisition discount

The term ''acquisition discount'' means the excess of—

(A) the stated redemption price at maturity (as defined in section 1273), over

(B) the taxpayer's basis for the obligation.

(b) Daily portion

For purposes of this subpart—

(1) Ratable accrual

Except as otherwise provided in this subsection, the daily portion of the acquisition discount is an amount equal to—

(A) the amount of such discount, divided by

(B) the number of days after the day on which the taxpayer acquired the obligation and up to (and including) the day of its maturity.

(2) Election of accrual on basis of constant interest rate (in lieu of ratable accrual)

(A) In general

At the election of the taxpayer with respect to any obligation, the daily portion of the acquisition discount for any day is the portion of the acquisition discount accruing on such day determined (under regulations prescribed by the Secretary) on the basis of—

(i) the taxpayer's yield to maturity based on the taxpayer's cost of acquiring the obligation, and

(ii) compounding daily.

(B) Election irrevocable

An election under subparagraph (A), once made with respect to any obligation, shall be irrevocable.

(c) Special rules for nongovernmental obligations

(1) In general

In the case of any short-term obligation which is not a short-term Government obligation (as defined in section 1271(a)(3)(B))—

(A) sections 1281 and 1282 shall be applied by taking into account original issue discount in lieu of acquisition discount, and

(B) appropriate adjustments shall be made in the application of subsection (b) of this section.

(2) Election to have paragraph (1) not apply

(A) In general

A taxpayer may make an election under this paragraph to have paragraph (1) not apply to all obligations acquired by the taxpayer on or after the first day of the first taxable year to which such election applies.

(B) Period to which election applies

An election under this paragraph shall apply to the taxable year for which it is made and for all subsequent taxable years, unless the taxpayer secures the consent of the Secretary to the revocation of such election.

(d) Other special rules

(1) Basis adjustments

The basis of any short-term obligation in the hands of the holder thereof shall be increased by the amount included in his gross income pursuant to section 1281.

(2) Double inclusion in income not required

Section 1281 shall not require the inclusion of any amount previously includible in gross income.

(3) Coordination with other provisions

Section 454(b) and paragraphs (3) and (4) of section 1271(a) shall not apply to any short-term obligation to which section 1281 applies.

(Added Pub. L. 98–369, div. A, title I, § 41(a), July 18, 1984, 98 Stat. 549; amended Pub. L. 99–514, title XVIII, § 1803(a)(1)(B), Oct. 22, 1986, 100 Stat. 2792.)

AMENDMENTS

1986—Subsec. (d)(3). Pub. L. 99–514 substituted ''paragraphs (3) and (4) of section 1271(a)'' for ''section 1271(a)(3)''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, and to obligations acquired after that date, see section 44 of Pub. L. 98–369, set out as a note under section 1271 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

SUBPART D—MISCELLANEOUS PROVISIONS

Sec.
1286. Tax treatment of stripped bonds.
1287. Denial of capital gain treatment for gains on certain obligations not in registered form.
1288. Treatment of original issue discount on tax-exempt obligations.

§ 1286. Tax treatment of stripped bonds

(a) Inclusion in income as if bond and coupons were original issue discount bonds

If any person purchases after July 1, 1982, a stripped bond or a stripped coupon, then such bond or coupon while held by such purchaser (or by any other person whose basis is determined by reference to the basis in the hands of such purchaser) shall be treated for purposes of this part as a bond originally issued on the purchase date and having an original issue discount equal to the excess (if any) of—

(1) the stated redemption price at maturity (or, in the case of coupon, the amount payable on the due date of such coupon), over

(2) such bond's or coupon's ratable share of the purchase price.

For purposes of paragraph (2), ratable shares shall be determined on the basis of their respective fair market values on the date of purchase.

(b) Tax treatment of person stripping bond

For purposes of this subtitle, if any person strips 1 or more coupons from a bond and after July 1, 1982, disposes of the bond or such coupon—

(1) such person shall include in gross income an amount equal to the sum of—

(A) the interest accrued on such bond while held by such person and before the time such coupon or bond was disposed of (to the extent such interest has not theretofore been included in such person's gross income), and

(B) the accrued market discount on such bond determined as of the time such coupon or bond was disposed of (to the extent such discount has not theretofore been included in such person's gross income),

(2) the basis of the bond and coupons shall be increased by the amount included in gross income under paragraph (1),

(3) the basis of the bond and coupons immediately before the disposition (as adjusted pursuant to paragraph (2)) shall be allocated among the items retained by such person and the items disposed of by such person on the basis of their respective fair market values, and

(4) for purposes of subsection (a), such person shall be treated as having purchased on the date of such disposition each such item which he retains for an amount equal to the basis allocated to such item under paragraph (3).

A rule similar to the rule of paragraph (4) shall apply in the case of any person whose basis in any bond or coupon is determined by reference to the basis of the person described in the preceding sentence.

(c) Retention of existing law for stripped bonds purchased before July 2, 1982

If a bond issued at any time with interest coupons—

(1) is purchased after August 16, 1954, and before January 1, 1958, and the purchaser does

not receive all the coupons which first become payable more than 12 months after the date of the purchase, or

(2) is purchased after December 31, 1957, and before July 2, 1982, and the purchaser does not receive all the coupons which first become payable after the date of the purchase,

then the gain on the sale or other disposition of such bond by such purchaser (or by a person whose basis is determined by reference to the basis in the hands of such purchaser) shall be considered as ordinary income to the extent that the fair market value (determined as of the time of the purchase) of the bond with coupons attached exceeds the purchase price. If this subsection and section 1271(a)(2)(A) apply with respect to gain realized on the sale or exchange of any evidence of indebtedness, then section 1271(a)(2)(A) shall apply with respect to that part of the gain to which this subsection does not apply.

(d) Special rules for tax-exempt obligations

(1) In general

In the case of any tax-exempt obligation (as defined in section 1275(a)(3)) from which 1 or more coupons have been stripped—

(A) the amount of the original issue discount determined under subsection (a) with respect to any stripped bond or stripped coupon—

(i) shall be treated as original issue discount on a tax-exempt obligation to the extent such discount does not exceed the tax-exempt portion of such discount, and

(ii) shall be treated as original issue discount on an obligation which is not a tax-exempt obligation to the extent such discount exceeds the tax-exempt portion of such discount,

(B) subsection (b)(1)(A) shall not apply, and

(C) subsection (b)(2) shall be applied by increasing the basis of the bond or coupon by the sum of—

(i) the interest accrued but not paid before such bond or coupon was disposed of (and not previously reflected in basis), plus

(ii) the amount included in gross income under subsection (b)(1)(B).

(2) Tax-exempt portion

For purposes of paragraph (1), the tax-exempt portion of the original issue discount determined under subsection (a) is the excess of—

(A) the amount referred to in subsection (a)(1), over

(B) an issue price which would produce a yield to maturity as of the purchase date equal to the lower of—

(i) the coupon rate of interest on the obligation from which the coupons were separated, or

(ii) the yield to maturity (on the basis of the purchase price) of the stripped obligation or coupon.

The purchaser of any stripped obligation or coupon may elect to apply clause (i) by substituting ''original yield to maturity of'' for ''coupon rate of interest on''.

(e) Definitions and special rules

For purposes of this section—

(1) Bond

The term ''bond'' means a bond, debenture, note, or certificate or other evidence of indebtedness.

(2) Stripped bond

The term ''stripped bond'' means a bond issued at any time with interest coupons where there is a separation in ownership between the bond and any coupon which has not yet become payable.

(3) Stripped coupon

The term ''stripped coupon'' means any coupon relating to a stripped bond.

(4) Stated redemption price at maturity

The term ''stated redemption price at maturity'' has the meaning given such term by section 1273(a)(2).

(5) Coupon

The term ''coupon'' includes any right to receive interest on a bond (whether or not evidenced by a coupon). This paragraph shall apply for purposes of subsection (c) only in the case of purchases after July 1, 1982.

(6) Purchase

The term ''purchase'' has the meaning given such term by section 1272(d)(1).

(f) Treatment of stripped interests in bond and preferred stock funds, etc.

In the case of an account or entity substantially all of the assets of which consist of bonds, preferred stock, or a combination thereof, the Secretary may by regulations provide that rules similar to the rules of this section and 305(e),[1] as appropriate, shall apply to interests in such account or entity to which (but for this subsection) this section or section 305(e), as the case may be, would not apply.

(g) Regulation authority

The Secretary may prescribe regulations providing that where, by reason of varying rates of interest, put or call options, or other circumstances, the tax treatment under this section does not accurately reflect the income of the holder of a stripped coupon or stripped bond, or of the person disposing of such bond or coupon, as the case may be, for any period, such treatment shall be modified to require that the proper amount of income be included for such period.

(Added Pub. L. 98–369, div. A, title I, §41(a), July 18, 1984, 98 Stat. 551; amended Pub. L. 99–514, title XVIII, §§1803(a)(13)(B), 1879(s)(1), Oct. 22, 1986, 100 Stat. 2796, 2912; Pub. L. 100–647, title I, §1018(q)(4)(A), Nov. 10, 1988, 102 Stat. 3585; Pub. L. 108–357, title VIII, §831(a), Oct. 22, 2004, 118 Stat. 1587.)

AMENDMENTS

2004—Subsecs. (f), (g). Pub. L. 108–357 added subsec. (f) and redesignated former subsec. (f) as (g).

1988—Subsec. (d). Pub. L. 100–647 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as fol-

[1] So in original. Probably should be ''section 305(e),''.

lows: ''In the case of any tax-exempt obligation (as defined in section 1275(a)(3)) from which 1 or more coupons have been stripped—

''(1) the amount of original issue discount determined under subsection (a) with respect to any stripped bond or stripped coupon from such obligation shall be the amount which produces a yield to maturity (as of the purchase date) equal to the lower of—

''(A) the coupon rate of interest on such obligation before the separation of coupons, or

''(B) the yield to maturity (on the basis of purchase price) of the stripped obligation or coupon,

''(2) the amount of original issue discount determined under paragraph (1) shall be taken into account in determining the adjusted basis of the holder under section 1288,

''(3) subsection (b)(1) shall not apply, and

''(4) subsection (b)(2) shall be applied by increasing the basis of the bond or coupon by the interest accrued but not paid before the time such bond or coupon was disposed of (and not previously reflected in basis).''

1986—Subsec. (b)(1). Pub. L. 99–514, § 1803(a)(13)(B)(i), amended par. (1) generally, designating existing provisions as subpar. (A) and adding subpar. (B).

Subsec. (b)(2). Pub. L. 99–514, § 1803(a)(13)(B)(ii), substituted ''the amount included in gross income under paragraph (1)'' for ''the amount of the accrued interest described in paragraph (1)''.

Subsec. (d). Pub. L. 99–514, § 1879(s)(1), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''In the case of any tax-exempt obligation (as defined in section 1275(a)(3))—

''(1) subsections (a) and (b)(1) shall not apply,

''(2) the rules of subsection (b)(4) shall apply for purposes of subsection (c), and

''(3) subsection (c) shall be applied without regard to the requirement that the bond be purchased before July 2, 1982.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to purchases and dispositions after Oct. 22, 2004, see section 831(c) of Pub. L. 108–357, set out as a note under section 305 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1018(q)(4)(B) of Pub. L. 100–647 provided that: ''(i) Except as provided in clause (ii), the amendment made by subparagraph (A) [amending this section] shall apply to any purchase or sale after June 10, 1987, of any stripped tax-exempt obligation or stripped coupon from such an obligation.

''(ii) If—

''(I) any person held any obligation or coupon in stripped form on June 10, 1987, and

''(II) such obligation or coupon was held by such person on such date for sale in the ordinary course of such person's trade or business,

the amendment made by subparagraph (A) shall not apply to any sale of such obligation or coupon by such person and shall not apply to any such obligation or coupon while held by another person who purchased such obligation or coupon from the person referred to in subclause (I).''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1803(a)(13)(B) of Pub. L. 99–514 applicable to obligations acquired after Oct. 22, 1986, see section 1803(a)(13)(C) of Pub. L. 99–514, set out as a note under section 1276 of this title.

Section 1879(s)(2) of Pub. L. 99–514 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to any purchase or sale of any stripped tax-exempt obligation or stripped coupon from such an obligation after the date of the enactment of this Act [Oct. 22, 1986].''

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, except as otherwise provided, see section 44 of Pub. L. 98–369, set out as a note under section 1271 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 1287. Denial of capital gain treatment for gains on certain obligations not in registered form

(a) In general

If any registration-required obligation is not in registered form, any gain on the sale or other disposition of such obligation shall be treated as ordinary income (unless the issuance of such obligation was subject to tax under section 4701).

(b) Definitions

For purposes of subsection (a)—

(1) Registration-required obligation

The term ''registration-required obligation'' has the meaning given to such term by section 163(f)(2) except that clause (iv) of subparagraph (A), and subparagraph (B), of such section shall not apply.

(2) Registered form

The term ''registered form'' has the same meaning as when used in section 163(f).

(Added Pub. L. 98–369, div. A, title I, § 41(a), July 18, 1984, 98 Stat. 552; amended Pub. L. 111–147, title V, § 502(a)(2)(D), Mar. 18, 2010, 124 Stat. 107.)

AMENDMENT OF SUBSECTION (b)(1)

Pub. L. 111–147, title V, § 502(a)(2)(D), (f), Mar. 18, 2010, 124 Stat. 107, 108, provided that, applicable to obligations issued after the date which is 2 years after Mar. 18, 2010, subsection (b)(1) of this section is amended by striking ''except that clause (iv) of subparagraph (A), and subparagraph (B), of such section shall not apply''.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–147 applicable to obligations issued after the date which is 2 years after Mar. 18, 2010, see section 502(f) of Pub. L. 111–147, set out as a note under section 149 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, except as otherwise provided, see section 44 of Pub. L. 98–369, set out as a note under section 1271 of this title.

§ 1288. Treatment of original issue discount on tax-exempt obligations

(a) General rule

Original issue discount on any tax-exempt obligation shall be treated as accruing—

(1) for purposes of section 163, in the manner provided by section 1272(a) (determined without regard to paragraph (7) thereof), and

(2) for purposes of determining the adjusted basis of the holder, in the manner provided by

section 1272(a) (determined with regard to paragraph (7) thereof).

(b) Definitions and special rules

For purposes of this section—

(1) Original issue discount

The term ''original issue discount'' has the meaning given to such term by section 1273(a) without regard to paragraph (3) thereof. In applying section 483 or 1274, under regulations prescribed by the Secretary, appropriate adjustments shall be made to the applicable Federal rate to take into account the tax exemption for interest on the obligation.

(2) Tax-exempt obligation

The term ''tax-exempt obligation'' has the meaning given to such term by section 1275(a)(3).

(3) Short-term obligations

In applying this section to obligations with maturity of 1 year or less, rules similar to the rules of section 1283(b) shall apply.

(Added Pub. L. 98–369, div. A, title I, §41(a), July 18, 1984, 98 Stat. 553; amended Pub. L. 100–647, title I, §1006(u)(3), Nov. 10, 1988, 102 Stat. 3427.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–647 substituted ''paragraph (7)'' for ''paragraph (6)'' in pars. (1) and (2).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, and applicable to obligations issued after Sept. 3, 1982, and acquired after Mar. 1, 1984, see section 44 of Pub. L. 98–369, set out as a note under section 1271 of this title.

PART VI—TREATMENT OF CERTAIN PASSIVE FOREIGN INVESTMENT COMPANIES

Subpart
A. Interest on tax deferral.
B. Treatment of qualified electing funds.
C. Election of mark to market for marketable stock.
D. General provisions.

AMENDMENTS

1997—Pub. L. 105–34, title XI, §1122(d)(6), Aug. 5, 1997, 111 Stat. 977, added items for subparts C and D and struck out former item for subpart C ''General provisions''.

SUBPART A—INTEREST ON TAX DEFERRAL

Sec.
1291. Interest on tax deferral.

§ 1291. Interest on tax deferral

(a) Treatment of distributions and stock dispositions

(1) Distributions

If a United States person receives an excess distribution in respect of stock in a passive foreign investment company, then—

(A) the amount of the excess distribution shall be allocated ratably to each day in the taxpayer's holding period for the stock,

(B) with respect to such excess distribution, the taxpayer's gross income for the current year shall include (as ordinary income) only the amounts allocated under subparagraph (A) to—

(i) the current year, or

(ii) any period in the taxpayer's holding period before the 1st day of the 1st taxable year of the company which begins after December 31, 1986, and for which it was a passive foreign investment company, and

(C) the tax imposed by this chapter for the current year shall be increased by the deferred tax amount (determined under subsection (c)).

(2) Dispositions

If the taxpayer disposes of stock in a passive foreign investment company, then the rules of paragraph (1) shall apply to any gain recognized on such disposition in the same manner as if such gain were an excess distribution.

(3) Definitions

For purposes of this section—

(A) Holding period

The taxpayer's holding period shall be determined under section 1223; except that—

(i) for purposes of applying this section to an excess distribution, such holding period shall be treated as ending on the date of such distribution, and

(ii) if section 1296 applied to such stock with respect to the taxpayer for any prior taxable year, such holding period shall be treated as beginning on the first day of the first taxable year beginning after the last taxable year for which section 1296 so applied.

(B) Current year

The term ''current year'' means the taxable year in which the excess distribution or disposition occurs.

(b) Excess distribution

(1) In general

For purposes of this section, the term ''excess distribution'' means any distribution in respect of stock received during any taxable year to the extent such distribution does not exceed its ratable portion of the total excess distribution (if any) for such taxable year.

(2) Total excess distribution

For purposes of this subsection—

(A) In general

The term ''total excess distribution'' means the excess (if any) of—

(i) the amount of the distributions in respect of the stock received by the taxpayer during the taxable year, over

(ii) 125 percent of the average amount received in respect of such stock by the taxpayer during the 3 preceding taxable years (or, if shorter, the portion of the taxpayer's holding period before the taxable year).

For purposes of clause (ii), any excess distribution received during such 3-year period shall be taken into account only to the extent it was included in gross income under subsection (a)(1)(B).

(B) No excess for 1st year

The total excess distributions with respect to any stock shall be zero for the taxable year in which the taxpayer's holding period in such stock begins.

(3) Adjustments

Under regulations prescribed by the Secretary—

(A) determinations under this subsection shall be made on a share-by-share basis, except that shares with the same holding period may be aggregated,

(B) proper adjustments shall be made for stock splits and stock dividends,

(C) if the taxpayer does not hold the stock during the entire taxable year, distributions received during such year shall be annualized,

(D) if the taxpayer's holding period includes periods during which the stock was held by another person, distributions received by such other person shall be taken into account as if received by the taxpayer,

(E) if the distributions are received in a foreign currency, determinations under this subsection shall be made in such currency and the amount of any excess distribution determined in such currency shall be translated into dollars,

(F) proper adjustment shall be made for amounts not includible in gross income by reason of section 959(a) or 1293(c), and

(G) if a charitable deduction was allowable under section 642(c) to a trust for any distribution of its income, proper adjustments shall be made for the deduction so allowable to the extent allocable to distributions or gain in respect of stock in a passive foreign investment company.

(c) Deferred tax amount

For purposes of this section—

(1) In general

The term ''deferred tax amount'' means, with respect to any distribution or disposition to which subsection (a) applies, an amount equal to the sum of—

(A) the aggregate increases in taxes described in paragraph (2), plus

(B) the aggregate amount of interest (determined in the manner provided under paragraph (3)) on such increases in tax.

Any increase in the tax imposed by this chapter for the current year under subsection (a) to the extent attributable to the amount referred to in subparagraph (B) shall be treated as interest paid under section 6601 on the due date for the current year.

(2) Aggregate increases in taxes

For purposes of paragraph (1)(A), the aggregate increases in taxes shall be determined by multiplying each amount allocated under subsection (a)(1)(A) to any taxable year (other than any taxable year referred to in subsection (a)(1)(B)) by the highest rate of tax in effect for such taxable year under section 1 or 11, whichever applies.

(3) Computation of interest

(A) In general

The amount of interest referred to in paragraph (1)(B) on any increase determined under paragraph (2) for any taxable year shall be determined for the period—

(i) beginning on the due date for such taxable year, and

(ii) ending on the due date for the taxable year with or within which the distribution or disposition occurs,

by using the rates and method applicable under section 6621 for underpayments of tax for such period.

(B) Due date

For purposes of this subsection, the term ''due date'' means the date prescribed by law (determined without regard to extensions) for filing the return of the tax imposed by this chapter for the taxable year.

(d) Coordination with subparts B and C

(1) In general

This section shall not apply with respect to any distribution paid by a passive foreign investment company, or any disposition of stock in a passive foreign investment company, if such company is a qualified electing fund with respect to the taxpayer for each of its taxable years—

(A) which begins after December 31, 1986, and for which such company is a passive foreign investment company, and

(B) which includes any portion of the taxpayer's holding period.

Except as provided in section 1296(j), this section also shall not apply if an election under section 1296(k) is in effect for the taxpayer's taxable year. In the case of stock which is marked to market under section 475 or any other provision of this chapter, this section shall not apply, except that rules similar to the rules of section 1296(j) shall apply.

(2) Election to recognize gain where company becomes qualified electing fund

(A) In general

If—

(i) a passive foreign investment company becomes a qualified electing fund with respect to the taxpayer for a taxable year which begins after December 31, 1986,

(ii) the taxpayer holds stock in such company on the first day of such taxable year, and

(iii) the taxpayer establishes to the satisfaction of the Secretary the fair market value of such stock on such first day,

the taxpayer may elect to recognize gain as if he sold such stock on such first day for such fair market value.

(B) Additional election for shareholder of controlled foreign corporations

(i) In general

If—

(I) a passive foreign investment company becomes a qualified electing fund with respect to the taxpayer for a taxable year which begins after December 31, 1986,

(II) the taxpayer holds stock in such company on the first day of such taxable year, and

(III) such company is a controlled foreign corporation (as defined in section 957(a)),

the taxpayer may elect to include in gross income as a dividend received on such first day an amount equal to the portion of the post-1986 earnings and profits of such company attributable (under regulations prescribed by the Secretary) to the stock in such company held by the taxpayer on such first day. The amount treated as a dividend under the preceding sentence shall be treated as an excess distribution and shall be allocated under subsection (a)(1)(A) only to days during periods taken into account in determining the post-1986 earnings and profits so attributable.

(ii) Post-1986 earnings and profits

For purposes of clause (i), the term ''post-1986 earnings and profits'' means earnings and profits which were accumulated in taxable years of such company beginning after December 31, 1986, and during the period or periods the stock was held by the taxpayer while the company was a passive foreign investment company.

(iii) Coordination with section 959(e)

For purposes of section 959(e), any amount included in gross income under this subparagraph shall be treated as included in gross income under section 1248(a).

(C) Adjustments

In the case of any stock to which subparagraph (A) or (B) applies—

(i) the adjusted basis of such stock shall be increased by the gain recognized under subparagraph (A) or the amount treated as a dividend under subparagraph (B), as the case may be, and

(ii) the taxpayer's holding period in such stock shall be treated as beginning on the first day referred to in such subparagraph.

(e) Certain basis, etc., rules made applicable

Except to the extent inconsistent with the regulations prescribed under subsection (f), rules similar to the rules of subsections (c) and (d)(e),[1] of section 1246 (as in effect on the day before the date of the enactment of the American Jobs Creation Act of 2004) shall apply for purposes of this section; except that—

(1) the reduction under subsection (e) of such section shall be the excess of the basis determined under section 1014 over the adjusted basis of the stock immediately before the decedent's death, and

(2) such a reduction shall not apply in the case of a decedent who was a nonresident alien at all times during his holding period in the stock.

(f) Recognition of gain

To the extent provided in regulations, in the case of any transfer of stock in a passive foreign investment company where (but for this subsection) there is not full recognition of gain, the excess (if any) of—

(1) the fair market value of such stock, over

(2) its adjusted basis,

shall be treated as gain from the sale or exchange of such stock and shall be recognized notwithstanding any provision of law. Proper adjustment shall be made to the basis of any such stock for gain recognized under the preceding sentence.

(g) Coordination with foreign tax credit rules

(1) In general

If there are creditable foreign taxes with respect to any distribution in respect of stock in a passive foreign investment company—

(A) the amount of such distribution shall be determined for purposes of this section with regard to section 78,

(B) the excess distribution taxes shall be allocated ratably to each day in the taxpayer's holding period for the stock, and

(C) to the extent—

(i) that such excess distribution taxes are allocated to a taxable year referred to in subsection (a)(1)(B), such taxes shall be taken into account under section 901 for the current year, and

(ii) that such excess distribution taxes are allocated to any other taxable year, such taxes shall reduce (subject to the principles of section 904(d) and not below zero) the increase in tax determined under subsection (c)(2) for such taxable year by reason of such distribution (but such taxes shall not be taken into account under section 901).

(2) Definitions

For purposes of this subsection—

(A) Creditable foreign taxes

The term ''creditable foreign taxes'' means, with respect to any distribution—

(i) any foreign taxes deemed paid under section 902 with respect to such distribution, and

(ii) any withholding tax imposed with respect to such distribution,

but only if the taxpayer chooses the benefits of section 901 and such taxes are creditable under section 901 (determined without regard to paragraph (1)(C)(ii)).

(B) Excess distribution taxes

The term ''excess distribution taxes'' means, with respect to any distribution, the portion of the creditable foreign taxes with respect to such distribution which is attributable (on a pro rata basis) to the portion of such distribution which is an excess distribution.

(C) Section 1248 gain

The rules of this subsection also shall apply in the case of any gain which but for

[1] So in original. See 2010 Amendment notes below.

this section would be includible in gross income as a dividend under section 1248.

(Added Pub. L. 99–514, title XII, § 1235(a), Oct. 22, 1986, 100 Stat. 2566; amended Pub. L. 100–647, title I, § 1012(p)(1), (3), (6), (7), (9), (12)–(14), (28), (31), (33), title VI, § 6127(b), Nov. 10, 1988, 102 Stat. 3515–3517, 3520, 3521, 3715; Pub. L. 105–34, title XI, § 1122(b), Aug. 5, 1997, 111 Stat. 976; Pub. L. 105–206, title VI, § 6011(c)(2), July 22, 1998, 112 Stat. 818; Pub. L. 107–16, title V, § 542(e)(5)(B), June 7, 2001, 115 Stat. 85; Pub. L. 108–357, title IV, § 413(c)(24), Oct. 22, 2004, 118 Stat. 1509; Pub. L. 111–147, title V, § 521(b), Mar. 18, 2010, 124 Stat. 112; Pub. L. 111–312, title III, § 301(a), Dec. 17, 2010, 124 Stat. 3300.)

AMENDMENT OF SECTION

For termination of amendment by section 304 of Pub. L. 111–312, see Effective and Termination Dates of 2010 Amendment note below.

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

REFERENCES IN TEXT

The date of the enactment of the American Jobs Creation Act of 2004, referred to in subsec. (e), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

AMENDMENTS

2010—Subsec. (e). Pub. L. 111–312, §§ 301(a), 304, which directed that subsec. (e) be temporarily amended to read as if amendment by Pub. L. 107–16, § 542(e)(5)(B), had never been enacted, was executed by inserting ''(e),'' after ''subsections (c) and (d)'' and substituting ''; except that—'' and pars. (1) and (2) for the period at end. See 2001 Amendment note and Effective and Termination Dates of 2010 Amendment note below.

Pub. L. 111–147 substituted ''and (d)'' for '', (d), and (f)''.

2004—Subsec. (b)(3)(F). Pub. L. 108–357, § 413(c)(24)(A), substituted ''959(a)'' for ''551(d), 959(a),''.

Subsec. (e). Pub. L. 108–357, § 413(c)(24)(B), inserted ''(as in effect on the day before the date of the enactment of the American Jobs Creation Act of 2004)'' after ''section 1246'' in introductory provisions.

2001—Subsec. (e). Pub. L. 107–16, §§ 542(e)(5)(B), 901, temporarily struck out ''(e),'' after ''subsections (c), (d),'' and substituted period at end for ''; except that—

''(1) the reduction under subsection (e) of such section shall be the excess of the basis determined under section 1014 over the adjusted basis of the stock immediately before the decedent's death, and

''(2) such a reduction shall not apply in the case of a decedent who was a nonresident alien at all times during his holding period in the stock.''

See Effective and Termination Dates of 2001 Amendment note below.

1998—Subsec. (d)(1). Pub. L. 105–206 inserted at end ''In the case of stock which is marked to market under section 475 or any other provision of this chapter, this section shall not apply, except that rules similar to the rules of section 1296(j) shall apply.''

1997—Subsec. (a)(3)(A). Pub. L. 105–34, § 1122(b)(3), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows: ''The taxpayer's holding period shall be determined under section 1223; except that, for purposes of applying this section to an excess distribution, such holding period shall be treated as ending on the date of such distribution.''

Subsec. (d). Pub. L. 105–34, § 1122(b)(2), substituted ''subparts B and C'' for ''subpart B'' in heading.

Subsec. (d)(1). Pub. L. 105–34, § 1122(b)(1), inserted concluding provisions.

1988—Subsec. (a)(1)(B)(ii). Pub. L. 100–647, § 1012(p)(12), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''any period in the taxpayer's holding period before the 1st day of the 1st taxable year of the company for which it was a passive foreign investment company (or, if later, January 1, 1987), and''.

Subsec. (a)(3)(A). Pub. L. 100–647, § 1012(p)(14), substituted ''for purposes of applying this section to'' for ''in the case of''.

Subsec. (a)(4), (5). Pub. L. 100–647, § 1012(p)(7)(A), struck out par. (4) which related to coordination with section 904, and par. (5) which related to section 902 not applying.

Subsec. (b)(2)(A). Pub. L. 100–647, § 1012(p)(13), inserted at end ''For purposes of clause (ii), any excess distribution received during such 3-year period shall be taken into account only to the extent it was included in gross income under subsection (a)(1)(B).''

Subsec. (b)(3)(F). Pub. L. 100–647, § 1012(p)(3), added subpar. (F).

Subsec. (b)(3)(G). Pub. L. 100–647, § 1012(p)(33), added subpar. (G).

Subsec. (c)(1). Pub. L. 100–647, § 1012(p)(31), inserted at end ''Any increase in the tax imposed by this chapter for the current year under subsection (a) to the extent attributable to the amount referred to in subparagraph (B) shall be treated as interest paid under section 6601 on the due date for the current year.''

Subsec. (d)(1). Pub. L. 100–647, § 6127(b)(1), inserted ''with respect to the taxpayer'' after ''qualified electing fund''.

Pub. L. 100–647, § 1012(p)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''This section shall not apply with respect to—

''(A) any distribution paid by a passive foreign investment company during a taxable year for which such company is a qualified electing fund, and

''(B) any disposition of stock in a passive foreign investment company if such company is a qualified electing fund for each of its taxable years—

''(i) which begins after December 31, 1986, and for which such company is a passive foreign investment company, and

''(ii) which includes any portion of the taxpayer's holding period.''

Subsec. (d)(2)(A)(i). Pub. L. 100–647, § 6127(b)(2), inserted ''with respect to the taxpayer'' after ''qualified electing fund''.

Subsec. (d)(2)(B). Pub. L. 100–647, § 1012(p)(28), added subpar. (B) and struck out former subpar. (B) which related to adjustments to basis of stock to which subpar. (A) applies.

Subsec. (d)(2)(B)(i)(I). Pub. L. 100–647, § 6127(b)(2), inserted ''with respect to the taxpayer'' after ''qualified electing fund''.

Subsec. (d)(2)(C). Pub. L. 100–647, § 1012(p)(28), added subpar. (C).

Subsec. (e). Pub. L. 100–647, § 1012(p)(6)(B), substituted ''Except to the extent inconsistent with the regulations prescribed under subsection (f), rules similar''.

Subsec. (e)(2). Pub. L. 100–647, § 1012(p)(9), struck out ''not'' before ''a nonresident''.

Subsec. (f). Pub. L. 100–647, § 1012(p)(6)(A), amended subsec. (f) generally. Prior to amendment, subsec. (f), ''Nonrecognition provisions'', read as follows: ''To the extent provided in regulations, gain shall be recognized on any disposition of stock in a passive foreign investment company.''

Subsec. (g). Pub. L. 100–647, § 1012(p)(7)(B), added subsec. (g).

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Amendment by Pub. L. 111–312 applicable to estates of decedents dying, and transfers made after Dec. 31, 2009, except as otherwise provided, see section 301(e) of Pub. L. 111–312, set out as a note under section 121 of this title.

Section 901 of Pub. L. 107–16 applicable to amendments by section 301(a) of Pub. L. 111–312, see section 304 of Pub. L. 111–312, set out as a note under section 121 of this title.

Pub. L. 111–147, title V, § 521(c), Mar. 18, 2010, 124 Stat. 112, provided that: ''The amendments made by this section [amending this section and section 1298 of this title] take effect on the date of the enactment of this Act [Mar. 18, 2010].''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to estates of decedents dying after Dec. 31, 2009, see section 542(f)(1) of Pub. L. 107–16, set out as a note under section 121 of this title.

Amendment by Pub. L. 107–16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1012(p)(1), (3), (6), (7), (9), (12)–(14), (28), (31), (33) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 6127(b) of Pub. L. 100–647 effective as if included in the amendments made by section 1235 of Pub. L. 99–514, see section 6127(c)(1) of Pub. L. 100–647, set out as a note under section 1295 of this title.

EFFECTIVE DATE

Section 1235(h) of Pub. L. 99–514 provided that: ''The amendments made by this section [enacting this section and sections 1293 to 1297 of this title and amending sections 532, 542, 551, 851, 904, 951, 1246, and 6503 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 1986.''

SUBPART B—TREATMENT OF QUALIFIED ELECTING FUNDS

Sec.

1293. Current taxation of income from qualified electing funds.
1294. Election to extend time for payment of tax on undistributed earnings.
1295. Qualified electing fund.

§ 1293. Current taxation of income from qualified electing funds

(a) Inclusion

(1) In general

Every United States person who owns (or is treated under section 1298(a) as owning) stock of a qualified electing fund at any time during the taxable year of such fund shall include in gross income—

(A) as ordinary income, such shareholder's pro rata share of the ordinary earnings of such fund for such year, and

(B) as long-term capital gain, such shareholder's pro rata share of the net capital gain of such fund for such year.

(2) Year of inclusion

The inclusion under paragraph (1) shall be for the taxable year of the shareholder in which or with which the taxable year of the fund ends.

(b) Pro rata share

The pro rata share referred to in subsection (a) in the case of any shareholder is the amount which would have been distributed with respect to the shareholder's stock if, on each day during the taxable year of the fund, the fund had distributed to each shareholder a pro rata share of that day's ratable share of the fund's ordinary earnings and net capital gain for such year. To the extent provided in regulations, if the fund establishes to the satisfaction of the Secretary that it uses a shorter period than the taxable year to determine shareholders' interests in the earnings of such fund, pro rata shares may be determined by using such shorter period.

(c) Previously taxed amounts distributed tax free

If the taxpayer establishes to the satisfaction of the Secretary that any amount distributed by a passive foreign investment company is paid out of earnings and profits of the company which were included under subsection (a) in the income of any United States person, such amount shall be treated, for purposes of this chapter, as a distribution which is not a dividend; except that such distribution shall immediately reduce earnings and profits. If the passive foreign investment company is a controlled foreign corporation (as defined in section 957(a)), the preceding sentence shall not apply to any United States shareholder (as defined in section 951(b)) in such corporation, and, in applying section 959 to any such shareholder, any inclusion under this section shall be treated as an inclusion under section 951(a)(1)(A).

(d) Basis adjustments

The basis of the taxpayer's stock in a passive foreign investment company shall be—

(1) increased by any amount which is included in the income of the taxpayer under subsection (a) with respect to such stock, and

(2) decreased by any amount distributed with respect to such stock which is not includible in the income of the taxpayer by reason of subsection (c).

A similar rule shall apply also in the case of any property if by reason of holding such property the taxpayer is treated under section 1298(a) as owning stock in a qualified electing fund.

(e) Ordinary earnings

For purposes of this section—

(1) Ordinary earnings

The term ''ordinary earnings'' means the excess of the earnings and profits of the qualified electing fund for the taxable year over its net capital gain for such taxable year.

(2) Limitation on net capital gain

A qualified electing fund's net capital gain for any taxable year shall not exceed its earnings and profits for such taxable year.

(3) Determination of earnings and profits

The earnings and profits of any qualified electing fund shall be determined without regard to paragraphs (4), (5), and (6) of section 312(n). Under regulations, the preceding sentence shall not apply to the extent it would increase earnings and profits by an amount which was previously distributed by the qualified electing fund.

(f) Foreign tax credit allowed in the case of 10-percent corporate shareholder

For purposes of section 960—

(1) any amount included in the gross income under subsection (a) shall be treated as if it were included under section 951(a), and

(2) any amount excluded from gross income under subsection (c) shall be treated in the same manner as amounts excluded from gross income under section 959.

(g) Other special rules

(1) Exception for certain income

For purposes of determining the amount included in the gross income of any person under this section, the ordinary earnings and net capital gain of a qualified electing fund shall not include any item of income received by such fund if—

(A) such fund is a controlled foreign corporation (as defined in section 957(a)) and such person is a United States shareholder (as defined in section 951(b)) in such fund, and

(B) such person establishes to the satisfaction of the Secretary that—

(i) such income was subject to an effective rate of income tax imposed by a foreign country greater than 90 percent of the maximum rate of tax specified in section 11, or

(ii) such income is—

(I) from sources within the United States,

(II) effectively connected with the conduct by the qualified electing fund of a trade or business in the United States, and

(III) not exempt from taxation (or subject to a reduced rate of tax) pursuant to a treaty obligation of the United States.

(2) Prevention of double inclusion

The Secretary shall prescribe such adjustment to the provisions of this section as may be necessary to prevent the same item of income of a qualified electing fund from being included in the gross income of a United States person more than once.

(Added Pub. L. 99–514, title XII, § 1235(a), Oct. 22, 1986, 100 Stat. 2569; amended Pub. L. 100–647, title I, § 1012(p)(15), (18), (23), (32), Nov. 10, 1988, 102 Stat. 3518, 3519, 3521; Pub. L. 103–66, title XIII, § 13231(c)(3), Aug. 10, 1993, 107 Stat. 498; Pub. L. 105–34, title XI, § 1122(d)(3), Aug. 5, 1997, 111 Stat. 977.)

AMENDMENTS

1997—Subsecs. (a)(1), (d). Pub. L. 105–34 substituted ''section 1298(a)'' for ''section 1297(a)''.

1993—Subsec. (c). Pub. L. 103–66 inserted at end ''If the passive foreign investment company is a controlled foreign corporation (as defined in section 957(a)), the preceding sentence shall not apply to any United States shareholder (as defined in section 951(b)) in such corporation, and, in applying section 959 to any such shareholder, any inclusion under this section shall be treated as an inclusion under section 951(a)(1)(A).''

1988—Subsec. (b). Pub. L. 100–647, § 1012(p)(15), inserted at end ''To the extent provided in regulations, if the fund establishes to the satisfaction of the Secretary that it uses a shorter period than the taxable year to determine shareholders' interests in the earnings of such fund, pro rata shares may be determined by using such shorter period.''

Subsec. (c). Pub. L. 100–647, § 1012(p)(23), inserted '', for purposes of this chapter,'' after ''shall be treated'', and ''; except that such distribution shall immediately reduce earnings and profits'' after ''is not a dividend''.

Subsec. (e)(3). Pub. L. 100–647, § 1012(p)(18), added par. (3).

Subsec. (g). Pub. L. 100–647, § 1012(p)(32), added subsec. (g).

EFFECTIVE DATE OF 1997 AMENDMENT

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

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years of foreign corporations beginning after Sept. 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 13231(e) of Pub. L. 103–66, set out as a note under section 951 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, see section 1235(h) of Pub. L. 99–514, set out as a note under section 1291 of this title.

§ 1294. Election to extend time for payment of tax on undistributed earnings

(a) Extension allowed by election

(1) In general

At the election of the taxpayer, the time for payment of any undistributed PFIC earnings tax liability of the taxpayer for the taxable year shall be extended to the extent and subject to the limitations provided in this section.

(2) Election not permitted where amounts otherwise includible under section 951

The taxpayer may not make an election under paragraph (1) with respect to the undistributed PFIC earnings tax liability attributable to a qualified electing fund for the taxable year if any amount is includible in the gross income of the taxpayer under section 951 with respect to such fund for such taxable year.

(b) Definitions

For purposes of this section—

(1) Undistributed PFIC earnings tax liability

The term ''undistributed PFIC earnings tax liability'' means, in the case of any taxpayer, the excess of—

(A) the tax imposed by this chapter for the taxable year, over

(B) the tax which would be imposed by this chapter for such year without regard to the inclusion in gross income under section 1293 of the undistributed earnings of a qualified electing fund.

(2) Undistributed earnings

The term ''undistributed earnings'' means, with respect to any qualified electing fund, the excess (if any) of—

(A) the amount includible in gross income by reason of section 1293(a) for the taxable year, over

(B) the amount not includible in gross income by reason of section 1293(c) for such taxable year.

(c) Termination of extension

(1) Distributions

(A) In general

If a distribution is not includible in gross income for the taxable year by reason of section 1293(c), then the extension under subsection (a) for payment of the undistributed PFIC earnings tax liability with respect to the earnings to which such distribution is attributable shall expire on the last date prescribed by law (determined without regard to extensions) for filing the return of tax for such taxable year.

(B) Ordering rule

For purposes of subparagraph (A), a distribution shall be treated as made from the most recently accumulated earnings and profits.

(2) Transfers, etc.

If—

(A) stock in a passive foreign investment company is transferred during the taxable year, or

(B) a passive foreign investment company ceases to be a qualified electing fund,

all extensions under subsection (a) for payment of undistributed PFIC earnings tax liability attributable to such stock (or, in the case of such a cessation, attributable to any stock in such company) which had not expired before the date of such transfer or cessation shall expire on the last date prescribed by law (determined without regard to extensions) for filing the return of tax for the taxable year in which such transfer or cessation occurs. To the extent provided in regulations, the preceding sentence shall not apply in the case of a transfer in a transaction with respect to which gain or loss is not recognized (in whole or in part), and the transferee in such transaction shall succeed to the treatment under this section of the transferor.

(3) Jeopardy

If the Secretary believes that collection of an amount to which an extension under this section relates is in jeopardy, the Secretary shall immediately terminate such extension with respect to such amount, and notice and demand shall be made by him for payment of such amount.

(d) Election

The election under subsection (a) shall be made not later than the time prescribed by law (including extensions) for filing the return of tax imposed by this chapter for the taxable year.

(e) Authority to require bond

Section 6165 shall apply to any extension under this section as though the Secretary were extending the time for payment of the tax.

(f) Treatment of loans to shareholder

For purposes of this section and section 1293, any loan by a qualified electing fund (directly or indirectly) to a shareholder of such fund shall be treated as a distribution to such shareholder.

(g) Cross reference

For provisions providing for interest for the period of the extension under this section, see section 6601.

(Added Pub. L. 99–514, title XII, §1235(a), Oct. 22, 1986, 100 Stat. 2570; amended Pub. L. 100–647, title I, §1012(p)(4), (8), (25), (34), Nov. 10, 1988, 102 Stat. 3515, 3517, 3519, 3522; Pub. L. 108–357, title IV, §413(c)(25), Oct. 22, 2004, 118 Stat. 1509.)

AMENDMENTS

2004—Subsec. (a)(2). Pub. L. 108–357 amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''The taxpayer may not make an election under paragraph (1) with respect to the undistributed PFIC earnings tax liability attributable to a qualified electing fund for the taxable year if—

''(A) any amount is includible in the gross income of the taxpayer under section 551 with respect to such fund for such taxable year, or

''(B) any amount is includible in the gross income of the taxpayer under section 951 with respect to such fund for such taxable year.''

1988—Subsec. (c)(2). Pub. L. 100–647, §1012(p)(4), (34), substituted ''Transfers'' for ''Dispositions'' in heading and ''is transferred'' for ''is disposed of'' in subpar. (A), and in closing provisions substituted ''such transfer'' for ''such disposition'' in two places and inserted at end ''To the extent provided in regulations, the preceding sentence shall not apply in the case of a transfer in a transaction with respect to which gain or loss is not recognized (in whole or in part), and the transferee in such transaction shall succeed to the treatment under this section of the transferor.''

Subsec. (f). Pub. L. 100–647, §1012(p)(25), added subsec. (f).

Subsec. (g). Pub. L. 100–647, §1012(p)(8), added subsec. (g).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, see section 1235(h) of Pub. L. 99–514, set out as a note under section 1291 of this title.

§ 1295. Qualified electing fund

(a) General rule

For purposes of this part, any passive foreign investment company shall be treated as a qualified electing fund with respect to the taxpayer if—

(1) an election by the taxpayer under subsection (b) applies to such company for the taxable year, and

(2) such company complies with such requirements as the Secretary may prescribe for purposes of—

(A) determining the ordinary earnings and net capital gain of such company, and

(B) otherwise carrying out the purposes of this subpart.

(b) Election

(1) In general

A taxpayer may make an election under this subsection with respect to any passive foreign investment company for any taxable year of the taxpayer. Such an election, once made with respect to any company, shall apply to all subsequent taxable years of the taxpayer with respect to such company unless revoked by the taxpayer with the consent of the Secretary.

(2) When made

An election under this subsection may be made for any taxable year at any time on or before the due date (determined with regard to extensions) for filing the return of the tax imposed by this chapter for such taxable year. To the extent provided in regulations, such an election may be made later than as required in the preceding sentence where the taxpayer fails to make a timely election because the taxpayer reasonably believed that the company was not a passive foreign investment company.

(Added Pub. L. 99–514, title XII, § 1235(a), Oct. 22, 1986, 100 Stat. 2571; amended Pub. L. 100–647, title I, § 1012(p)(37)(A), title VI, § 6127(a), Nov. 10, 1988, 102 Stat. 3522, 3715.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–647, § 6127(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''For purposes of this part, the term 'qualified electing fund' means any passive foreign investment company if—

''(1) an election under subsection (b) applies to such company for the taxable year, and

''(2) such company complies for such taxable year with such requirements as the Secretary may prescribe for purposes of—

''(A) determining the ordinary earnings and net capital gain of such company for the taxable year,

''(B) ascertaining the ownership of its outstanding stock, and

''(C) otherwise carrying out the purposes of this subpart.''

Subsec. (b). Pub. L. 100–647, § 6127(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

''(1) IN GENERAL.—A passive foreign investment company may make an election under this subsection for any taxable year. Such an election, once made, shall apply to all subsequent taxable years of such company for which such company is a passive foreign investment company unless revoked with the consent of the Secretary.

''(2) WHEN MADE.—An election under this subsection may be made for any taxable year at any time before the 15th day of the 3rd month of the following taxable year. To the extent provided in regulations, such an election may be made later than as required by the preceding sentence in cases where the company failed to make a timely election because it reasonably believed it was not a passive foreign investment company.''

Pub. L. 100–647, § 1012(p)(37)(A), inserted sentence at end of par. (2) permitting a later election when a company reasonably believed it was not a passive foreign investment company.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1012(p)(37)(A) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6127(c) of Pub. L. 100–647 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 1291 of this title] shall take effect as if included in the amendments made by section 1235 of the Reform Act [Pub. L. 99–514].

''(2) TIME FOR MAKING ELECTION.—The period during which an election under section 1295(b) of the 1986 Code may be made shall in no event expire before the date 60 days after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE

Section applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, see section 1235(h) of Pub. L. 99–514, set out as a note under section 1291 of this title.

EXPIRATION OF SUBSECTION (b) ELECTION PERIOD

Section 1012(p)(37)(B) of Pub. L. 100–647 provided that: ''The period during which an election under section 1295(b) of the 1986 Code may be made shall in no event expire before the date 60 days after the date of enactment of this Act [Nov. 10, 1988].''

SUBPART C—ELECTION OF MARK TO MARKET FOR MARKETABLE STOCK

Sec.
1296. Election of mark to market for marketable stock.

AMENDMENTS

1997—Pub. L. 105–34, title XI, § 1122(a), Aug. 5, 1997, 111 Stat. 972, added subpart C and item 1296. Former subpart C redesignated D.

PRIOR PROVISIONS

A prior subpart C, consisting of sections 1296 and 1297 of this title, was redesignated subpart D consisting of sections 1297 and 1298.

§ 1296. Election of mark to market for marketable stock

(a) General rule

In the case of marketable stock in a passive foreign investment company which is owned (or treated under subsection (g) as owned) by a United States person at the close of any taxable year of such person, at the election of such person—

(1) If the fair market value of such stock as of the close of such taxable year exceeds its adjusted basis, such United States person shall include in gross income for such taxable year an amount equal to the amount of such excess.

(2) If the adjusted basis of such stock exceeds the fair market value of such stock as of the close of such taxable year, such United States person shall be allowed a deduction for such taxable year equal to the lesser of—

(A) the amount of such excess, or

(B) the unreversed inclusions with respect to such stock.

(b) Basis adjustments

(1) In general

The adjusted basis of stock in a passive foreign investment company—

(A) shall be increased by the amount included in the gross income of the United States person under subsection (a)(1) with respect to such stock, and

(B) shall be decreased by the amount allowed as a deduction to the United States person under subsection (a)(2) with respect to such stock.

(2) Special rule for stock constructively owned

In the case of stock in a passive foreign investment company which the United States person is treated as owning under subsection (g)—

(A) the adjustments under paragraph (1) shall apply to such stock in the hands of the person actually holding such stock but only for purposes of determining the subsequent treatment under this chapter of the United States person with respect to such stock, and

(B) similar adjustments shall be made to the adjusted basis of the property by reason of which the United States person is treated as owning such stock.

(c) Character and source rules

(1) Ordinary treatment

(A) Gain

Any amount included in gross income under subsection (a)(1), and any gain on the sale or other disposition of marketable stock in a passive foreign investment company (with respect to which an election under this section is in effect), shall be treated as ordinary income.

(B) Loss

Any—

(i) amount allowed as a deduction under subsection (a)(2), and

(ii) loss on the sale or other disposition of marketable stock in a passive foreign investment company (with respect to which an election under this section is in effect) to the extent that the amount of such loss does not exceed the unreversed inclusions with respect to such stock,

shall be treated as an ordinary loss. The amount so treated shall be treated as a deduction allowable in computing adjusted gross income.

(2) Source

The source of any amount included in gross income under subsection (a)(1) (or allowed as a deduction under subsection (a)(2)) shall be determined in the same manner as if such amount were gain or loss (as the case may be) from the sale of stock in the passive foreign investment company.

(d) Unreversed inclusions

For purposes of this section, the term ''unreversed inclusions'' means, with respect to any stock in a passive foreign investment company, the excess (if any) of—

(1) the amount included in gross income of the taxpayer under subsection (a)(1) with respect to such stock for prior taxable years, over

(2) the amount allowed as a deduction under subsection (a)(2) with respect to such stock for prior taxable years.

The amount referred to in paragraph (1) shall include any amount which would have been included in gross income under subsection (a)(1) with respect to such stock for any prior taxable year but for section 1291. In the case of a regulated investment company which elected to mark to market the stock held by such company as of the last day of the taxable year preceding such company's first taxable year for which such company elects the application of this section, the amount referred to in paragraph (1) shall include amounts included in gross income under such mark to market with respect to such stock for prior taxable years.

(e) Marketable stock

For purposes of this section—

(1) In general

The term ''marketable stock'' means—

(A) any stock which is regularly traded on—

(i) a national securities exchange which is registered with the Securities and Exchange Commission or the national market system established pursuant to section 11A of the Securities and Exchange Act of 1934, or

(ii) any exchange or other market which the Secretary determines has rules adequate to carry out the purposes of this part,

(B) to the extent provided in regulations, stock in any foreign corporation which is comparable to a regulated investment company and which offers for sale or has out-

standing any stock of which it is the issuer and which is redeemable at its net asset value, and

(C) to the extent provided in regulations, any option on stock described in subparagraph (A) or (B).

(2) Special rule for regulated investment companies

In the case of any regulated investment company which is offering for sale or has outstanding any stock of which it is the issuer and which is redeemable at its net asset value, all stock in a passive foreign investment company which it owns directly or indirectly shall be treated as marketable stock for purposes of this section. Except as provided in regulations, similar treatment as marketable stock shall apply in the case of any other regulated investment company which publishes net asset valuations at least annually.

(f) Treatment of controlled foreign corporations which are shareholders in passive foreign investment companies

In the case of a foreign corporation which is a controlled foreign corporation and which owns (or is treated under subsection (g) as owning) stock in a passive foreign investment company—

(1) this section (other than subsection (c)(2)) shall apply to such foreign corporation in the same manner as if such corporation were a United States person, and

(2) for purposes of subpart F of part III of subchapter N—

(A) any amount included in gross income under subsection (a)(1) shall be treated as foreign personal holding company income described in section 954(c)(1)(A), and

(B) any amount allowed as a deduction under subsection (a)(2) shall be treated as a deduction allocable to foreign personal holding company income so described.

(g) Stock owned through certain foreign entities

Except as provided in regulations—

(1) In general

For purposes of this section, stock owned, directly or indirectly, by or for a foreign partnership or foreign trust or foreign estate shall be considered as being owned proportionately by its partners or beneficiaries. Stock considered to be owned by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person.

(2) Treatment of certain dispositions

In any case in which a United States person is treated as owning stock in a passive foreign investment company by reason of paragraph (1)—

(A) any disposition by the United States person or by any other person which results in the United States person being treated as no longer owning such stock, and

(B) any disposition by the person owning such stock,

shall be treated as a disposition by the United States person of the stock in the passive foreign investment company.

(h) Coordination with section 851(b)

For purposes of section 851(b)(2), any amount included in gross income under subsection (a) shall be treated as a dividend.

(i) Stock acquired from a decedent

In the case of stock of a passive foreign investment company which is acquired by bequest, devise, or inheritance (or by the decedent's estate) and with respect to which an election under this section was in effect as of the date of the decedent's death, notwithstanding section 1014, the basis of such stock in the hands of the person so acquiring it shall be the adjusted basis of such stock in the hands of the decedent immediately before his death (or, if lesser, the basis which would have been determined under section 1014 without regard to this subsection).

(j) Coordination with section 1291 for first year of election

(1) Taxpayers other than regulated investment companies

(A) In general

If the taxpayer elects the application of this section with respect to any marketable stock in a corporation after the beginning of the taxpayer's holding period in such stock, and if the requirements of subparagraph (B) are not satisfied, section 1291 shall apply to—

(i) any distributions with respect to, or disposition of, such stock in the first taxable year of the taxpayer for which such election is made, and

(ii) any amount which, but for section 1291, would have been included in gross income under subsection (a) with respect to such stock for such taxable year in the same manner as if such amount were gain on the disposition of such stock.

(B) Requirements

The requirements of this subparagraph are met if, with respect to each of such corporation's taxable years for which such corporation was a passive foreign investment company and which begin after December 31, 1986, and included any portion of the taxpayer's holding period in such stock, such corporation was treated as a qualified electing fund under this part with respect to the taxpayer.

(2) Special rules for regulated investment companies

(A) In general

If a regulated investment company elects the application of this section with respect to any marketable stock in a corporation after the beginning of the taxpayer's holding period in such stock, then, with respect to such company's first taxable year for which such company elects the application of this section with respect to such stock—

(i) section 1291 shall not apply to such stock with respect to any distribution or disposition during, or amount included in gross income under this section for, such first taxable year, but

(ii) such regulated investment company's tax under this chapter for such first

taxable year shall be increased by the aggregate amount of interest which would have been determined under section 1291(c)(3) if section 1291 were applied without regard to this subparagraph.

Clause (ii) shall not apply if for the preceding taxable year the company elected to mark to market the stock held by such company as of the last day of such preceding taxable year.

(B) Disallowance of deduction

No deduction shall be allowed to any regulated investment company for the increase in tax under subparagraph (A)(ii).

(k) Election

This section shall apply to marketable stock in a passive foreign investment company which is held by a United States person only if such person elects to apply this section with respect to such stock. Such an election shall apply to the taxable year for which made and all subsequent taxable years unless—

(1) such stock ceases to be marketable stock, or

(2) the Secretary consents to the revocation of such election.

(*l*) Transition rule for individuals becoming subject to United States tax

If any individual becomes a United States person in a taxable year beginning after December 31, 1997, solely for purposes of this section, the adjusted basis (before adjustments under subsection (b)) of any marketable stock in a passive foreign investment company owned by such individual on the first day of such taxable year shall be treated as being the greater of its fair market value on such first day or its adjusted basis on such first day.

(Added Pub. L. 105–34, title XI, §1122(a), Aug. 5, 1997, 111 Stat. 972; amended Pub. L. 105–206, title VI, §6011(c)(3), July 22, 1998, 112 Stat. 818; Pub. L. 107–16, title V, §542(e)(5)(C), June 7, 2001, 115 Stat. 85; Pub. L. 108–311, title IV, §408(a)(19), Oct. 4, 2004, 118 Stat. 1192; Pub. L. 111–312, title III, §301(a), Dec. 17, 2010, 124 Stat. 3300.)

AMENDMENT OF SECTION

For termination of amendment by section 304 of Pub. L. 111–312, see Effective and Termination Dates of 2010 Amendment note below.

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

REFERENCES IN TEXT

Section 11A of the Securities and Exchange Act of 1934, referred to in subsec. (e)(1)(A)(i), is classified to section 78k–1 of Title 15, Commerce and Trade.

PRIOR PROVISIONS

A prior section 1296 was renumbered section 1297 of this title.

AMENDMENTS

2010—Subsec. (i). Pub. L. 111–312, §§301(a), 304, temporarily amended subsec. (i) to read as if amendment by Pub. L. 107–16, §542(e)(5)(C), had never been enacted. See 2001 Amendment note and Effective and Termination Dates of 2010 Amendment note below.

2004—Subsec. (h). Pub. L. 108–311 substituted ''section 851(b)(2)'' for ''paragraphs (2) and (3) of section 851(b)''.

2001—Subsec. (i). Pub. L. 107–16, §§542(e)(5)(C), 901, temporarily struck out subsec. (i). Text read as follows: ''In the case of stock of a passive foreign investment company which is acquired by bequest, devise, or inheritance (or by the decedent's estate) and with respect to which an election under this section was in effect as of the date of the decedent's death, notwithstanding section 1014, the basis of such stock in the hands of the person so acquiring it shall be the adjusted basis of such stock in the hands of the decedent immediately before his death (or, if lesser, the basis which would have been determined under section 1014 without regard to this subsection).'' See Effective and Termination Dates of 2001 Amendment note below.

1998—Subsec. (d). Pub. L. 105–206 inserted at end ''In the case of a regulated investment company which elected to mark to market the stock held by such company as of the last day of the taxable year preceding such company's first taxable year for which such company elects the application of this section, the amount referred to in paragraph (1) shall include amounts included in gross income under such mark to market with respect to such stock for prior taxable years.''

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Amendment by Pub. L. 111–312 applicable to estates of decedents dying, and transfers made after Dec. 31, 2009, except as otherwise provided, see section 301(e) of Pub. L. 111–312, set out as a note under section 121 of this title.

Section 901 of Pub. L. 107–16 applicable to amendments by section 301(a) of Pub. L. 111–312, see section 304 of Pub. L. 111–312, set out as a note under section 121 of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to estates of decedents dying after Dec. 31, 2009, see section 542(f)(1) of Pub. L. 107–16, set out as a note under section 121 of this title.

Amendment by Pub. L. 107–16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE

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

SUBPART D—GENERAL PROVISIONS

Sec.
1297. Passive foreign investment company.
1298. Special rules.

AMENDMENTS

1997—Pub. L. 105–34, title XI, §1122(a), (d)(5), Aug. 5, 1997, 111 Stat. 972, 977, redesignated subpart C of this part as this subpart and amended table of sections generally, renumbering items 1296 and 1297 as 1297 and 1298, respectively.

§ 1297. Passive foreign investment company

(a) In general

For purposes of this part, except as otherwise provided in this subpart, the term ''passive foreign investment company'' means any foreign corporation if—

(1) 75 percent or more of the gross income of such corporation for the taxable year is passive income, or

(2) the average percentage of assets (as determined in accordance with subsection (e)) held by such corporation during the taxable year which produce passive income or which are held for the production of passive income is at least 50 percent.

(b) Passive income

For purposes of this section—

(1) In general

Except as provided in paragraph (2), the term ''passive income'' means any income which is of a kind which would be foreign personal holding company income as defined in section 954(c).

(2) Exceptions

Except as provided in regulations, the term ''passive income'' does not include any income—

(A) derived in the active conduct of a banking business by an institution licensed to do business as a bank in the United States (or, to the extent provided in regulations, by any other corporation),

(B) derived in the active conduct of an insurance business by a corporation which is predominantly engaged in an insurance business and which would be subject to tax under subchapter L if it were a domestic corporation,

(C) which is interest, a dividend, or a rent or royalty, which is received or accrued from a related person (within the meaning of section 954(d)(3)) to the extent such amount is properly allocable (under regulations prescribed by the Secretary) to income of such related person which is not passive income, or

(D) which is export trade income of an export trade corporation (as defined in section 971).

For purposes of subparagraph (C), the term ''related person'' has the meaning given such term by section 954(d)(3) determined by substituting ''foreign corporation'' for ''controlled foreign corporation'' each place it appears in section 954(d)(3).

(c) Look-thru in the case of 25-percent owned corporations

If a foreign corporation owns (directly or indirectly) at least 25 percent (by value) of the stock of another corporation, for purposes of determining whether such foreign corporation is a passive foreign investment company, such foreign corporation shall be treated as if it—

(1) held its proportionate share of the assets of such other corporation, and

(2) received directly its proportionate share of the income of such other corporation.

(d) Exception for United States shareholders of controlled foreign corporations

(1) In general

For purposes of this part, a corporation shall not be treated with respect to a shareholder as a passive foreign investment company during the qualified portion of such shareholder's holding period with respect to stock in such corporation.

(2) Qualified portion

For purposes of this subsection, the term ''qualified portion'' means the portion of the shareholder's holding period—

(A) which is after December 31, 1997, and

(B) during which the shareholder is a United States shareholder (as defined in section 951(b)) of the corporation and the corporation is a controlled foreign corporation.

(3) New holding period if qualified portion ends

(A) In general

Except as provided in subparagraph (B), if the qualified portion of a shareholder's holding period with respect to any stock ends after December 31, 1997, solely for purposes of this part, the shareholder's holding period with respect to such stock shall be treated as beginning as of the first day following such period.

(B) Exception

Subparagraph (A) shall not apply if such stock was, with respect to such shareholder, stock in a passive foreign investment company at any time before the qualified portion of the shareholder's holding period with respect to such stock and no election under section 1298(b)(1) is made.

(4) Treatment of holders of options

Paragraph (1) shall not apply to stock treated as owned by a person by reason of section 1298(a)(4) (relating to the treatment of a person that has an option to acquire stock as owning such stock) unless such person establishes that such stock is owned (within the meaning of section 958(a)) by a United States shareholder (as defined in section 951(b)) who is not exempt from tax under this chapter.

(e) Methods for measuring assets

(1) Determination using value

The determination under subsection (a)(2) shall be made on the basis of the value of the assets of a foreign corporation if—

(A) such corporation is a publicly traded corporation for the taxable year, or

(B) paragraph (2) does not apply to such corporation for the taxable year.

(2) Determination using adjusted bases

The determination under subsection (a)(2) shall be based on the adjusted bases (as determined for the purposes of computing earnings and profits) of the assets of a foreign corporation if such corporation is not described in paragraph (1)(A) and such corporation—

(A) is a controlled foreign corporation, or

(B) elects the application of this paragraph.

An election under subparagraph (B), once made, may be revoked only with the consent of the Secretary.

(3) Publicly traded corporation

For purposes of this subsection, a foreign corporation shall be treated as a publicly traded corporation if the stock in the corporation is regularly traded on—

(A) a national securities exchange which is registered with the Securities and Exchange Commission or the national market system established pursuant to section 11A of the Securities and Exchange Act of 1934, or

(B) any exchange or other market which the Secretary determines has rules adequate to carry out the purposes of this subsection.

(Added Pub. L. 99–514, title XII, §1235(a), Oct. 22, 1986, 100 Stat. 2572, §1296; amended Pub. L. 100–647, title I, §§1012(p)(2), (5), (16), (26), (27), 1018(u)(40), Nov. 10, 1988, 102 Stat. 3515, 3518–3520, 3592; Pub. L. 103–66, title XIII, §13231(d)(1), (3), Aug. 10, 1993, 107 Stat. 499; Pub. L. 104–188, title I, §1704(r)(1), Aug. 20, 1996, 110 Stat. 1887; renumbered §1297 and amended Pub. L. 105–34, title XI, §§1121, 1122(a), (d)(4), 1123, Aug. 5, 1997, 111 Stat. 971, 972, 977; Pub. L. 105–206, title VI, §6011(b)(1), (d), July 22, 1998, 112 Stat. 817, 818; Pub. L. 110–172, §11(a)(24)(A), (g)(18), Dec. 29, 2007, 121 Stat. 2486, 2491.)

REFERENCES IN TEXT

Section 11A of the Securities and Exchange Act of 1934, referred to in subsec. (e)(3)(A), is classified to section 78k–1 of Title 15, Commerce and Trade.

PRIOR PROVISIONS

A prior section 1297 was renumbered section 1298 of this title.

AMENDMENTS

2007—Subsec. (b)(2)(D). Pub. L. 110–172, §11(g)(18), which directed amendment of subpar. (D) by striking out ''foreign trade income of a FSC or'', was executed by striking out ''foreign trade income of an FSC or'' before ''export trade income'' to reflect the probable intent of Congress.

Subsecs. (d) to (f). Pub. L. 110–172, §11(a)(24)(A), redesignated subsecs. (e) and (f) as (d) and (e), respectively, and struck out heading and text of former subsec. (d). Text read as follows: ''For purposes of this part, the term 'passive foreign investment company' does not include any foreign investment company to which section 1247 applies.''

1998—Subsec. (e). Pub. L. 105–206, §6011(d), redesignated subsec. (e), relating to methods for measuring assets, as (f).

Subsec. (e)(4). Pub. L. 105–206, §6011(b)(1), added par. (4).

Subsec. (f). Pub. L. 105–206, §6011(d), redesignated subsec. (e), relating to methods for measuring assets, as (f).

1997—Pub. L. 105–34, §1122(a), renumbered section 1296 of this title as this section.

Subsec. (a). Pub. L. 105–34, §1123(b)(2), struck out concluding provisions which read as follows: ''In the case of a controlled foreign corporation (or any other foreign corporation if such corporation so elects), the determination under paragraph (2) shall be based on the adjusted bases (as determined for purposes of computing earnings and profits) of its assets in lieu of their value. Such an election, once made, may be revoked only with the consent of the Secretary.''

Subsec. (a)(2). Pub. L. 105–34, §1123(b)(1), substituted ''(as determined in accordance with subsection (e))'' for ''(by value)''.

Subsec. (b)(3). Pub. L. 105–34, §1122(d)(4), struck out par. (3) which consisted of subpars. (A) to (C) relating to treatment of certain dealers in securities.

Subsec. (e). Pub. L. 105–34, §1123(a), added subsec. (e) relating to methods for measuring assets.

Pub. L. 105–34, §1121, added subsec. (e) relating to exception for United States shareholders of controlled foreign corporations.

1996—Subsec. (b)(2)(D). Pub. L. 104–188 added subpar. (D).

1993—Subsec. (a). Pub. L. 103–66, §13231(d)(1), substituted in closing provisions ''In the case of a controlled foreign corporation (or any other foreign corporation if such corporation so elects), the determination under paragraph (2) shall be based on the adjusted bases (as determined for purposes of computing earnings and profits) of its assets in lieu of their value. Such an election, once made, may be revoked only with the consent of the Secretary.'' for ''A foreign corporation may elect to have the determination under paragraph (2) based on the adjusted bases of its assets in lieu of their value. Such an election, once made, may be revoked only with the consent of the Secretary.''

Subsec. (b)(3). Pub. L. 103–66, §13231(d)(3), added par. (3).

1988—Subsec. (a). Pub. L. 100–647, §1018(u)(40), inserted a comma after ''subpart''.

Pub. L. 100–647, §1012(p)(27), inserted at end ''A foreign corporation may elect to have the determination under paragraph (2) based on the adjusted bases of its assets in lieu of their value. Such an election, once made, may be revoked only with the consent of the Secretary.''

Subsec. (b)(1). Pub. L. 100–647, §1012(p)(5), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Except as provided in paragraph (2), the term 'passive income' has the meaning given such term by section 904(d)(2)(A) without regard to the exceptions contained in clause (iii) thereof.''

Subsec. (b)(2). Pub. L. 100–647, §1012(p)(26), substituted ''Exceptions'' for ''Exception for certain banks and insurance companies'' in heading, and inserted sentence at end defining ''related person''.

Subsec. (b)(2)(B). Pub. L. 100–647, §1012(p)(16), inserted ''is predominantly engaged in an insurance business and which'' after ''a corporation which''.

Subsec. (b)(2)(C). Pub. L. 100–647, §1012(p)(26)(A), added subpar. (C).

Subsec. (c). Pub. L. 100–647, §1012(p)(2), inserted ''(directly or indirectly)'' after ''foreign corporation owns''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

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

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1704(r)(2) of Pub. L. 104–188 provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 1235 of the Tax Reform Act of 1986 [Pub. L. 99–514].''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years of foreign corporations beginning after Sept. 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 13231(e) of Pub. L. 103–66, set out as a note under section 951 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, see section 1235(h) of Pub. L. 99–514, set out as a note under section 1291 of this title.

§ 1298. Special rules

(a) Attribution of ownership

For purposes of this part—

(1) Attribution to United States persons

This subsection—

(A) shall apply to the extent that the effect is to treat stock of a passive foreign investment company as owned by a United States person, and

(B) except to the extent provided in regulations, shall not apply to treat stock owned (or treated as owned under this subsection) by a United States person as owned by any other person.

(2) Corporations

(A) In general

If 50 percent or more in value of the stock of a corporation is owned, directly or indirectly, by or for any person, such person shall be considered as owning the stock owned directly or indirectly by or for such corporation in that proportion which the value of the stock which such person so owns bears to the value of all stock in the corporation.

(B) 50-percent limitation not to apply to PFIC

For purposes of determining whether a shareholder of a passive foreign investment company is treated as owning stock owned directly or indirectly by or for such company, subparagraph (A) shall be applied without regard to the 50-percent limitation contained therein. Section 1297(d) shall not apply in determining whether a corporation is a passive foreign investment company for purposes of this subparagraph.

(3) Partnerships, etc.

Stock owned, directly or indirectly, by or for a partnership, estate, or trust shall be considered as being owned proportionately by its partners or beneficiaries.

(4) Options

To the extent provided in regulations, if any person has an option to acquire stock, such stock shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

(5) Successive application

Stock considered to be owned by a person by reason of the application of paragraph (2), (3), or (4) shall, for purposes of applying such paragraphs, be considered as actually owned by such person.

(b) Other special rules

For purposes of this part—

(1) Time for determination

Stock held by a taxpayer shall be treated as stock in a passive foreign investment company if, at any time during the holding period of the taxpayer with respect to such stock, such corporation (or any predecessor) was a passive foreign investment company which was not a qualified electing fund. The preceding sentence shall not apply if the taxpayer elects to recognize gain (as of the last day of the last taxable year for which the company was a passive foreign investment company (determined without regard to the preceding sentence)) under rules similar to the rules of section 1291(d)(2).

(2) Certain corporations not treated as PFIC's during start-up year

A corporation shall not be treated as a passive foreign investment company for the first taxable year such corporation has gross income (hereinafter in this paragraph referred to as the ''start-up year'') if—

(A) no predecessor of such corporation was a passive foreign investment company,

(B) it is established to the satisfaction of the Secretary that such corporation will not be a passive foreign investment company for either of the 1st 2 taxable years following the start-up year, and

(C) such corporation is not a passive foreign investment company for either of the 1st 2 taxable years following the start-up year.

(3) Certain corporations changing businesses

A corporation shall not be treated as a passive foreign investment company for any taxable year if—

(A) neither such corporation (nor any predecessor) was a passive foreign investment company for any prior taxable year,

(B) it is established to the satisfaction of the Secretary that—

(i) substantially all of the passive income of the corporation for the taxable year is attributable to proceeds from the disposition of 1 or more active trades or businesses, and

(ii) such corporation will not be a passive foreign investment company for either of the 1st 2 taxable years following such taxable year, and

(C) such corporation is not a passive foreign investment company for either of such 2 taxable years.

(4) Separate interests treated as separate corporations

Under regulations prescribed by the Secretary, where necessary to carry out the purposes of this part, separate classes of stock (or other interests) in a corporation shall be treated as interests in separate corporations.

(5) Application of part where stock held by other entity

(A) In general

Under regulations, in any case in which a United States person is treated as owning stock in a passive foreign investment company by reason of subsection (a)—

(i) any disposition by the United States person or the person owning such stock which results in the United States person being treated as no longer owning such stock, or

(ii) any distribution of property in respect of such stock to the person holding such stock,

shall be treated as a disposition by, or distribution to, the United States person with respect to the stock in the passive foreign investment company.

(B) Amount treated in same manner as previously taxed income

Rules similar to the rules of section 959(b) shall apply to any amount described in subparagraph (A) and to any amount included in gross income under section 1293(a) (or which would have been so included but for section 951(f))[1] in respect of stock which the taxpayer is treated as owning under subsection (a).

(6) Dispositions

Except as provided in regulations, if a taxpayer uses any stock in a passive foreign investment company as security for a loan, the taxpayer shall be treated as having disposed of such stock.

(7) Treatment of certain foreign corporations owning stock in 25-percent owned domestic corporation

(A) In general

If—

(i) a foreign corporation is subject to the tax imposed by section 531 (or waives any benefit under any treaty which would otherwise prevent the imposition of such tax), and

(ii) such foreign corporation owns at least 25 percent (by value) of the stock of a domestic corporation,

for purposes of determining whether such foreign corporation is a passive foreign investment company, any qualified stock held by such domestic corporation shall be treated as an asset which does not produce passive income (and is not held for the production of passive income) and any amount included in gross income with respect to such stock shall not be treated as passive income.

(B) Qualified stock

For purposes of subparagraph (A), the term ''qualified stock'' means any stock in a C corporation which is a domestic corporation and which is not a regulated investment company or real estate investment trust.

(8) Treatment of certain subpart F inclusions

Any amount included in gross income under section 951(a)(1)(B) shall be treated as a distribution received with respect to the stock.

(c) Treatment of stock held by pooled income fund

If stock in a passive foreign investment company is owned (or treated as owned under subsection (a)) by a pooled income fund (as defined in section 642(c)(5)) and no portion of any gain from a disposition of such stock may be allocated to income under the terms of the governing instrument of such fund—

(1) section 1291 shall not apply to any gain on a disposition of such stock by such fund if (without regard to section 1291) a deduction would be allowable with respect to such gain under section 642(c)(3),

(2) section 1293 shall not apply with respect to such stock, and

(3) in determining whether section 1291 applies to any distribution in respect of such stock, subsection (d) of section 1291 shall not apply.

(d) Treatment of certain leased property

For purposes of this part—

(1) In general

Any tangible personal property with respect to which a foreign corporation is the lessee under a lease with a term of at least 12 months shall be treated as an asset actually held by such corporation.

(2) Amount taken into account

(A) In general

The amount taken into account under section 1296(a)(2)[1] with respect to any asset to which paragraph (1) applies shall be the unamortized portion (as determined under regulations prescribed by the Secretary) of the present value of the payments under the lease for the use of such property.

(B) Present value

For purposes of subparagraph (A), the present value of payments described in subparagraph (A) shall be determined in the manner provided in regulations prescribed by the Secretary—

(i) as of the beginning of the lease term, and

(ii) except as provided in such regulations, by using a discount rate equal to the applicable Federal rate determined under section 1274(d)—

(I) by substituting the lease term for the term of the debt instrument, and

(II) without regard to paragraph (2) or (3) thereof.

(3) Exceptions

This subsection shall not apply in any case where—

(A) the lessor is a related person (as defined in section 954(d)(3)) with respect to the foreign corporation, or

(B) a principal purpose of leasing the property was to avoid the provisions of this part.

(e) Special rules for certain intangibles

For purposes of this part—

[1] See References in Text notes below.

(1) Research expenditures

The adjusted basis of the total assets of a controlled foreign corporation shall be increased by the research or experimental expenditures (within the meaning of section 174) paid or incurred by such foreign corporation during the taxable year and the preceding 2 taxable years. Any expenditure otherwise taken into account under the preceding sentence shall be reduced by the amount of any reimbursement received by the controlled foreign corporation with respect to such expenditure.

(2) Certain licensed intangibles

(A) In general

In the case of any intangible property (as defined in section 936(h)(3)(B)) with respect to which a controlled foreign corporation is a licensee and which is used by such foreign corporation in the active conduct of a trade or business, the adjusted basis of the total assets of such foreign corporation shall be increased by an amount equal to 300 percent of the payments made during the taxable year by such foreign corporation for the use of such intangible property.

(B) Exceptions

Subparagraph (A) shall not apply to—

(i) any payments to a foreign person if such foreign person is a related person (as defined in section 954(d)(3)) with respect to the controlled foreign corporation, and

(ii) any payments under a license if a principal purpose of entering into such license was to avoid the provisons[2] of this part.

(3) Controlled foreign corporation

For purposes of this subsection, the term ''controlled foreign corporation'' has the meaning given such term by section 957(a).

(f) Reporting requirement

Except as otherwise provided by the Secretary, each United States person who is a shareholder of a passive foreign investment company shall file an annual report containing such information as the Secretary may require.

(g) Regulations

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

(Added Pub. L. 99–514, title XII, § 1235(a), Oct. 22, 1986, 100 Stat. 2573, § 1297; amended Pub. L. 100–647, title I, § 1012(p)(10), (17), (20), (22), (24), (35), (36), Nov. 10, 1988, 102 Stat. 3517–3519, 3522; Pub. L. 101–239, title VII, § 7811(i)(4), Dec. 19, 1989, 103 Stat. 2410; Pub. L. 103–66, title XIII, § 13231(d)(2), (4), Aug. 10, 1993, 107 Stat. 499; Pub. L. 104–188, title I, §§ 1501(b)(10), (11), 1703(i)(5), (6), Aug. 20, 1996, 110 Stat. 1826, 1876; renumbered § 1298 and amended Pub. L. 105–34, title XI, § 1122(a), (e), Aug. 5, 1997, 111 Stat. 972, 977; Pub. L. 105–206, title VI, § 6011(b)(2), July 22, 1998, 112 Stat. 818; Pub. L. 110–172, § 11(a)(24)(C), (f)(2), Dec. 29, 2007, 121 Stat. 2487, 2489; Pub. L. 111–147, title V, § 521(a), Mar. 18, 2010, 124 Stat. 112.)

[2] So in original. Probably should be ''provisions''.

REFERENCES IN TEXT

Section 951(f), referred to in subsec. (b)(5)(B), was redesignated section 951(d) by Pub. L. 108–357, title IV, § 413(c)(16), Oct. 22, 2004, 118 Stat. 1508, and subsequently was redesignated section 951(c) by Pub. L. 110–172, § 11(g)(13), Dec. 29, 2007, 121 Stat. 2490.

Section 1296, referred to in subsec. (d)(2)(A), was renumbered section 1297 and a new section 1296 was added by Pub. L. 105–34, title XI, § 1122(a), Aug. 5, 1997, 111 Stat. 972.

AMENDMENTS

2010—Subsecs. (f), (g). Pub. L. 111–147 added subsec. (f) and redesignated former subsec. (f) as (g).

2007—Subsec. (a)(2)(B). Pub. L. 110–172, § 11(a)(24)(C), substituted ''Section 1297(d)'' for ''Section 1297(e)''.

Subsec. (b)(7) to (9). Pub. L. 110–172, § 11(f)(2), redesignated pars. (8) and (9) as (7) and (8), respectively, and struck out former par. (7) which read as follows: ''Section 1246 shall not apply to earnings and profits of any company for any taxable year beginning after December 31, 1986, if such company is a passive foreign investment company for such taxable year.''

1998—Subsec. (a)(2)(B). Pub. L. 105–206 inserted at end ''Section 1297(e) shall not apply in determining whether a corporation is a passive foreign investment company for purposes of this subparagraph.''

1997—Pub. L. 105–34, § 1122(a), renumbered section 1297 of this title as this section.

Subsec. (b)(1). Pub. L. 105–34, § 1122(e), inserted ''(determined without regard to the preceding sentence)'' after ''investment company'' in last sentence.

1996—Subsec. (b)(9). Pub. L. 104–188, § 1501(b)(10), substituted ''section 951(a)(1)(B)'' for ''subparagraph (B) or (C) of section 951(a)(1)''.

Subsec. (d)(2). Pub. L. 104–188, § 1703(i)(5)(B), in heading substituted ''Amount taken into account'' for ''Determination of adjusted basis''.

Subsec. (d)(2)(A). Pub. L. 104–188, § 1703(i)(5)(A), substituted ''The amount taken into account under section 1296(a)(2) with respect to any asset'' for ''The adjusted basis of any asset''.

Subsec. (d)(3)(B). Pub. L. 104–188, § 1501(b)(11), struck out ''or section 956A'' after ''this part''.

Subsec. (e). Pub. L. 104–188, § 1703(i)(6), inserted ''For purposes of this part—'' after heading.

Subsec. (e)(2)(B)(ii). Pub. L. 104–188, § 1501(b)(11), struck out ''or section 956A'' after ''this part''.

1993—Subsec. (b)(9). Pub. L. 103–66, § 13231(d)(2), added par. (9).

Subsecs. (d) to (f). Pub. L. 103–66, § 13231(d)(4), added subsecs. (d) and (e) and redesignated former subsec. (d) as (f).

1989—Subsec. (b)(5). Pub. L. 101–239, § 7811(i)(4)(A), substituted ''where stock held'' for ''where held'' in heading.

Subsec. (b)(5)(A). Pub. L. 101–239, § 7811(i)(4)(C), substituted ''treated as a disposition by, or distribution to'' for ''treated as a disposition to'' in concluding provisions.

Subsec. (b)(5)(A)(ii). Pub. L. 101–239, § 7811(i)(4)(B), substituted ''any distribution of'' for ''any disposition of''.

1988—Subsec. (a)(4). Pub. L. 100–647, § 1012(p)(10)(A), added par. (4). Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 100–647, § 1012(p)(10), redesignated par. (4) as (5) and substituted ''paragraph (2), (3), or (4)'' for ''paragraph (2) or (3)''.

Subsec. (b)(1). Pub. L. 100–647, § 1012(p)(36), substituted ''investment company which'' for ''investment corporation which''.

Subsec. (b)(3)(A). Pub. L. 100–647, § 1012(p)(22), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''such corporation (and any predecessor) was not a passive foreign investment corporation for any prior taxable year,''.

Subsec. (b)(5). Pub. L. 100–647, § 1012(p)(17), substituted ''part where held'' for ''section where stock held'' in heading, and amended text generally. Prior to amend-

ment, text read as follows: ''Under regulations, in any case in which a United States person is treated as holding stock in a passive foreign investment company by reason of subsection (a), any disposition by the United States person or the person holding such stock which results in the United States person being treated as no longer holding such stock, shall be treated as a disposition by the United States person with respect to stock in the passive foreign investment company.''

Subsec. (b)(6). Pub. L. 100–647, §1012(p)(20), substituted ''Except as provided in regulations, if a'' for ''If a''.

Subsec. (b)(8). Pub. L. 100–647, §1012(p)(24), added par. (8).

Subsecs. (c), (d). Pub. L. 100–647, §1012(p)(35), added subsec. (c) and redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by section 11(f)(2) of Pub. L. 110–172 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 11(f)(4) of Pub. L. 110–172, set out as a note under section 904 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

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

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1501(b)(10), (11) of Pub. L. 104–188 applicable to taxable years of foreign corporations beginning after Dec. 31, 1996, and to taxable years of United States shareholders within which or with which such taxable years of foreign corporations end, see section 1501(d) of Pub. L. 104–188, set out as a note under section 904 of this title.

Amendment by section 1703(i)(5), (6) of Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§13001–13444, to which such amendment relates, see section 1703(*o*) of Pub. L. 104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years of foreign corporations beginning after Sept. 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 13231(e) of Pub. L. 103–66, set out as a note under section 951 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, see section 1235(h) of Pub. L. 99–514, set out as a note under section 1291 of this title.

Subchapter Q—Readjustment of Tax Between Years and Special Limitations

Part
I. Income averaging.
II. Mitigation of effect of limitations and other provisions.
[III, IV. Repealed.]
V. Claim of right.
[VI. Repealed.]
VII. Recoveries of foreign expropriation losses.

AMENDMENTS

1997—Pub. L. 105–34, title IX, §933(b), Aug. 5, 1997, 111 Stat. 882, added item for part I.

1986—Pub. L. 99–514, title I, §141(c), Oct. 22, 1986, 100 Stat. 2117, struck out item for part I ''Income averaging''.

1981—Pub. L. 97–34, title I, §101(c)(2)(C), Aug. 13, 1981, 95 Stat. 183, struck out item for part VI ''Maximum rate on personal service income''.

1976—Pub. L. 94–455, title XIX, §§1901(b)(36)(E), (37)(F), 1951(c)(3)(D), Oct. 4, 1976, 90 Stat. 1802, 1803, 1841, struck out items for parts III and IV ''Involuntary liquidation and replacement of LIFO inventories'' and ''War loss recoveries'', respectively, and substituted in item for part VI ''Maximum rate on personal service income'' for ''Other limitations''.

1966—Pub. L. 89–384, §1(g)(1), Apr. 8, 1966, 80 Stat. 104, added item for part VII.

1964—Pub. L. 88–272, title II, §232(f)(3), Feb. 26, 1964, 78 Stat. 112, substituted ''averaging'' for ''attributable to several taxable years'' in item for part I.

PART I—INCOME AVERAGING

Sec.
1301. Averaging of farm income.

PRIOR PROVISIONS

A prior part I consisted of sections 1301 to 1305, prior to repeal by Pub. L. 99–514, title I, §141(a), Oct. 22, 1986, 100 Stat. 2117.

§ 1301. Averaging of farm income

(a) In general

At the election of an individual engaged in a farming business or fishing business, the tax imposed by section 1 for such taxable year shall be equal to the sum of—

(1) a tax computed under such section on taxable income reduced by elected farm income, plus

(2) the increase in tax imposed by section 1 which would result if taxable income for each of the 3 prior taxable years were increased by an amount equal to one-third of the elected farm income.

Any adjustment under this section for any taxable year shall be taken into account in applying this section for any subsequent taxable year.

(b) Definitions

In this section—

(1) Elected farm income

(A) In general

The term ''elected farm income'' means so much of the taxable income for the taxable year—

(i) which is attributable to any farming business or fishing business; and

(ii) which is specified in the election under subsection (a).

(B) Treatment of gains

For purposes of subparagraph (A), gain from the sale or other disposition of property (other than land) regularly used by the taxpayer in such a farming business or fishing business for a substantial period shall be treated as attributable to such a farming business or fishing business.

(2) Individual

The term ''individual'' shall not include any estate or trust.

(3) Farming business

The term ''farming business'' has the meaning given such term by section 263A(e)(4).

(4) Fishing business

The term ''fishing business'' means the conduct of commercial fishing as defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802).

(c) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including regulations regarding—

(1) the order and manner in which items of income, gain, deduction, or loss, or limitations on tax, shall be taken into account in computing the tax imposed by this chapter on the income of any taxpayer to whom this section applies for any taxable year, and

(2) the treatment of any short taxable year.

(Added Pub. L. 105–34, title IX, § 933(a), Aug. 5, 1997, 111 Stat. 881; amended Pub. L. 108–357, title III, § 314(b), Oct. 22, 2004, 118 Stat. 1468.)

PRIOR PROVISIONS

A prior section 1301, added Pub. L. 88–272, title II, § 232(a), Feb. 26, 1964, 78 Stat. 106; amended Pub. L. 91–172, title III, § 311(a), Dec. 30, 1969, 83 Stat. 586; Pub. L. 98–369, div. A, title I, § 173(b), (c)(1), July 18, 1984, 98 Stat. 704, placed a limit on the tax attributable to averagable income, prior to repeal by Pub. L. 99–514, title I, §§ 141(a), 151(a), Oct. 22, 1986, 100 Stat. 2117, 2121, effective Dec. 31, 1986.

Another prior section 1301, act Aug. 16, 1954, ch. 736, 68A Stat. 334, related to compensation from an employment, defined ''an employment'', and stated the rule with respect to partners, prior to the general revision of this part by Pub. L. 88–272.

A prior section 1302, added Pub. L. 88–272, title II, § 232(a), Feb. 26, 1964, 78 Stat. 106; amended Pub. L. 91–172, title III, § 311(b), Dec. 30, 1969, 83 Stat. 586; Pub. L. 94–455, title VII, § 701(f)(1), Oct. 4, 1976, 90 Stat. 1580; Pub. L. 95–30, title I, § 102(b)(15), May 23, 1977, 91 Stat. 138; Pub. L. 95–600, title I, § 101(d)(2), Nov. 6, 1978, 92 Stat. 2770; Pub. L. 95–615, § 202(g)(5), formerly § 202(f)(5), Nov. 8, 1978, 92 Stat. 3100, renumbered Pub. L. 96–222, title I, § 108(a)(1)(A), Apr. 1, 1980, 94 Stat. 223; Pub. L. 97–34, title I, § 111(b)(3), Aug. 13, 1981, 95 Stat. 194; Pub. L. 97–248, title II, § 265(b)(2)(B), Sept. 3, 1982, 96 Stat. 547; Pub. L. 98–369, div. A, title I, § 173(a), (c)(2)–(4), July 18, 1984, 98 Stat. 703, 704, defined ''averagable income'' and other terms related to income averaging, prior to repeal by Pub. L. 99–514, title I, §§ 141(a), 151(a), Oct. 22, 1986, 100 Stat. 2117, 2121, effective Dec. 31, 1986.

Another prior section 1302, act Aug. 16, 1964, ch. 736, 68A Stat. 335, related to income from an invention or artistic work, prior to the general revision of this part by Pub. L. 88–272.

A prior section 1303, added Pub. L. 88–272, title II, § 232(a), Feb. 26, 1964, 78 Stat. 107; amended Pub. L. 91–172, title III, § 311(d)(1), Dec. 30, 1969, 83 Stat. 587; Pub. L. 94–455, title XIX, § 1901(b)(8)(G), Oct. 4, 1976, 90 Stat. 1795; Pub. L. 97–34, title I, § 111(b)(4), Aug. 13, 1981, 95 Stat. 194; Pub. L. 99–272, title XIII, § 13206(a), (b), Apr. 7, 1986, 100 Stat. 318, 319, related to individuals eligible for income averaging, prior to repeal by Pub. L. 99–514, title I, §§ 141(a), 151(a), Oct. 22, 1986, 100 Stat. 2117, 2121, effective Dec. 31, 1986.

Another prior section 1303, acts Aug. 16, 1954, ch. 736, 68A Stat. 335, Sept. 22, 1961, Pub. L. 87–293, title II, § 201(b), 75 Stat. 625, related to income from back pay, prior to the general revision of this part by Pub. L. 88–272.

A prior section 1304, added Pub. L. 88–272, title II, § 232(a), Feb. 26, 1964, 78 Stat. 108; amended Pub. L. 91–172, title III, § 311(c), (d)(2), title V, § 515(c)(4), title VIII, §§ 802(c)(5), 803(d)(8), Dec. 30, 1969, 83 Stat. 587, 646, 678, 684; Pub. L. 93–406, title II, § 2005(c)(6), Sept. 2, 1974, 88 Stat. 991; Pub. L. 94–455, title III, § 302(c), title V, § 501(b)(7), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1555, 1559, 1834; Pub. L. 95–600, title IV, § 401(b)(5), Nov. 6, 1978, 92 Stat. 2867; Pub. L. 95–615, § 202(g)(5), formerly § 202(f)(5), Nov. 8, 1978, 92 Stat. 3100, renumbered Pub. L. 96–222, title I, § 108(a)(1)(A), Apr. 1, 1980, 94 Stat. 223; Pub. L. 97–34, title I, §§ 101(c)(2)(B), 111(b)(3), (4), Aug. 13, 1981, 95 Stat. 183, 194; Pub. L. 97–248, title II, § 265(b)(2)(C), Sept. 3, 1982, 96 Stat. 547, set out special rules for income averaging, prior to repeal by Pub. L. 99–514, title I, §§ 141(a), 151(a), Oct. 22, 1986, 100 Stat. 2117, 2121, effective Dec. 31, 1986.

Another prior section 1304, act Aug. 11, 1955, ch. 804, § 1(a), 69 Stat. 688, related to compensatory damages for patent infringement, prior to the general revision of this part by Pub. L. 88–272.

A prior section 1305, added Pub. L. 88–272, title II, § 232(a), Feb. 26, 1964, 78 Stat. 110; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, provided for promulgation of regulations for income averaging, prior to repeal by Pub. L. 99–514, title I, §§ 141(a), 151(a), Oct. 22, 1986, 100 Stat. 2117, 2121, effective Dec. 31, 1986.

Another prior section 1305, act Aug. 26, 1957, Pub. L. 85–165, § 1, 71 Stat. 413, related to damages for breach of contract or fiduciary duty, prior to the general revision of this part by Pub. L. 88–272.

A prior section 1306, Pub. L. 85–866, title I, § 58(a), Sept. 2, 1958, 72 Stat. 1646, related to damages received for injuries under the antitrust laws, prior to the general revision of this part by Pub. L. 88–272.

A prior section 1307, act Aug. 16, 1954, ch. 736, 68A Stat. 336, § 1307, formerly § 1304; renumbered § 1305, Aug. 11, 1955, ch. 804, § 1(a), 69 Stat. 688; renumbered § 1306, Aug. 26, 1957, Pub. L. 85–165, § 1, 71 Stat. 413; renumbered § 1307, Sept. 2, 1958, Pub. L. 85–866, title I, § 58(a), 72 Stat. 1646; amended Oct. 16, 1962, Pub. L. 87–834, § 22(a), 76 Stat. 1064, provided rules applicable to this part, prior to the general revision of this part by Pub. L. 88–272.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–357, § 314(b)(1), substituted ''farming business or fishing business'' for ''farming business'' in introductory provisions.

Subsec. (b)(1)(A)(i), (B). Pub. L. 108–357, § 314(b)(2), inserted ''or fishing business'' after ''farming business'' wherever appearing.

Subsec. (b)(4). Pub. L. 108–357, § 314(b)(3), added par. (4).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2003, see section 314(c) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 55 of this title.

EFFECTIVE DATE

Section 933(c) of Pub. L. 105–34, as amended by Pub. L. 105–277, div. J, title II, § 2011, Oct. 21, 1998, 112 Stat.

2681–902, provided that: ''The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1997.''

PART II—MITIGATION OF EFFECT OF LIMITATIONS AND OTHER PROVISIONS

Sec.
1311. Correction of error.
1312. Circumstances of adjustment.
1313. Definitions.
1314. Amount and method of adjustment.
[1315. Repealed.]

AMENDMENTS

1976—Pub. L. 94–455, title XIX, §1901(b)(35), Oct. 4, 1976, 90 Stat. 1802, struck out item 1315 ''Effective date''.

§ 1311. Correction of error

(a) General rule

If a determination (as defined in section 1313) is described in one or more of the paragraphs of section 1312 and, on the date of the determination, correction of the effect of the error referred to in the applicable paragraph of section 1312 is prevented by the operation of any law or rule of law, other than this part and other than section 7122 (relating to compromises), then the effect of the error shall be corrected by an adjustment made in the amount and in the manner specified in section 1314.

(b) Conditions necessary for adjustment

(1) Maintenance of an inconsistent position

Except in cases described in paragraphs (3)(B) and (4) of section 1312, an adjustment shall be made under this part only if—

(A) in case the amount of the adjustment would be credited or refunded in the same manner as an overpayment under section 1314, there is adopted in the determination a position maintained by the Secretary, or

(B) in case the amount of the adjustment would be assessed and collected in the same manner as a deficiency under section 1314, there is adopted in the determination a position maintained by the taxpayer with respect to whom the determination is made,

and the position maintained by the Secretary in the case described in subparagraph (A) or maintained by the taxpayer in the case described in subparagraph (B) is inconsistent with the erroneous inclusion, exclusion, omission, allowance, disallowance, recognition, or non-recognition, as the case may be.

(2) Correction not barred at time of erroneous action

(A) Determination described in section 1312(3)(B)

In the case of a determination described in section 1312(3)(B) (relating to certain exclusions from income), adjustment shall be made under this part only if assessment of a deficiency for the taxable year in which the item is includible or against the related taxpayer was not barred, by any law or rule of law, at the time the Secretary first maintained, in a notice of deficiency sent pursuant to section 6212 or before the Tax Court that the item described in section 1312(3)(B) should be included in the gross income of the taxpayer for the taxable year to which the determination relates.

(B) Determination described in section 1312(4)

In the case of a determination described in section 1312(4) (relating to disallowance of certain deductions and credits), adjustment shall be made under this part only if credit or refund of the overpayment attributable to the deduction or credit described in such section which should have been allowed to the taxpayer or related taxpayer was not barred, by any law or rule of law, at the time the taxpayer first maintained before the Secretary or before the Tax Court, in writing, that he was entitled to such deduction or credit for the taxable year to which the determination relates.

(3) Existence of relationship

In case the amount of the adjustment would be assessed and collected in the same manner as a deficiency (except for cases described in section 1312(3)(B)), the adjustment shall not be made with respect to a related taxpayer unless he stands in such relationship to the taxpayer at the time the latter first maintains the inconsistent position in a return, claim for refund, or petition (or amended petition) to the Tax Court for the taxable year with respect to which the determination is made, or if such position is not so maintained, then at the time of the determination.

(Aug. 16, 1954, ch. 736, 68A Stat. 337; Pub. L. 94–455, title XIX, §§1901(a)(142), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1788, 1834.)

AMENDMENTS

1976—Subsec. (b)(2). Pub. L. 94–455, §§1901(a)(142), 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' and ''of the United States'' after ''Tax Court'' wherever appearing.

Subsec. (b)(3). Pub. L. 94–455, §1901(a)(142), struck out ''of the United States'' after ''Tax Court''.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(142) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

§ 1312. Circumstances of adjustment

The circumstances under which the adjustment provided in section 1311 is authorized are as follows:

(1) Double inclusion of an item of gross income

The determination requires the inclusion in gross income of an item which was erroneously included in the gross income of the taxpayer for another taxable year or in the gross income of a related taxpayer.

(2) Double allowance of a deduction or credit

The determination allows a deduction or credit which was erroneously allowed to the taxpayer for another taxable year or to a related taxpayer.

(3) Double exclusion of an item of gross income

(A) Items included in income

The determination requires the exclusion from gross income of an item included in a

return filed by the taxpayer or with respect to which tax was paid and which was erroneously excluded or omitted from the gross income of the taxpayer for another taxable year, or from the gross income of a related taxpayer; or

(B) Items not included in income

The determination requires the exclusion from gross income of an item not included in a return filed by the taxpayer and with respect to which the tax was not paid but which is includible in the gross income of the taxpayer for another taxable year or in the gross income of a related taxpayer.

(4) Double disallowance of a deduction or credit

The determination disallows a deduction or credit which should have been allowed to, but was not allowed to, the taxpayer for another taxable year, or to a related taxpayer.

(5) Correlative deductions and inclusions for trusts or estates and legatees, beneficiaries, or heirs

The determination allows or disallows any of the additional deductions allowable in computing the taxable income of estates or trusts, or requires or denies any of the inclusions in the computation of taxable income of beneficiaries, heirs, or legatees, specified in subparts A to E, inclusive (secs. 641 and following, relating to estates, trusts, and beneficiaries) of part I of subchapter J of this chapter, or corresponding provisions of prior internal revenue laws, and the correlative inclusion or deduction, as the case may be, has been erroneously excluded, omitted, or included, or disallowed, omitted, or allowed, as the case may be, in respect of the related taxpayer.

(6) Correlative deductions and credits for certain related corporations

The determination allows or disallows a deduction (including a credit) in computing the taxable income (or, as the case may be, net income, normal tax net income, or surtax net income) of a corporation, and a correlative deduction or credit has been erroneously allowed, omitted, or disallowed, as the case may be, in respect of a related taxpayer described in section 1313(c)(7).

(7) Basis of property after erroneous treatment of a prior transaction

(A) General rule

The determination determines the basis of property, and in respect of any transaction on which such basis depends, or in respect of any transaction which was erroneously treated as affecting such basis, there occurred, with respect to a taxpayer described in subparagraph (B) of this paragraph, any of the errors described in subparagraph (C) of this paragraph.

(B) Taxpayers with respect to whom the erroneous treatment occurred

The taxpayer with respect to whom the erroneous treatment occurred must be—

(i) the taxpayer with respect to whom the determination is made,

(ii) a taxpayer who acquired title to the property in the transaction and from whom, mediately or immediately, the taxpayer with respect to whom the determination is made derived title, or

(iii) a taxpayer who had title to the property at the time of the transaction and from whom, mediately or immediately, the taxpayer with respect to whom the determination is made derived title, if the basis of the property in the hands of the taxpayer with respect to whom the determination is made is determined under section 1015(a) (relating to the basis of property acquired by gift).

(C) Prior erroneous treatment

With respect to a taxpayer described in subparagraph (B) of this paragraph—

(i) there was an erroneous inclusion in, or omission from, gross income,

(ii) there was an erroneous recognition, or nonrecognition, of gain or loss, or

(iii) there was an erroneous deduction of an item properly chargeable to capital account or an erroneous charge to capital account of an item properly deductible.

(Aug. 16, 1954, ch. 736, 68A Stat. 338; Pub. L. 85–866, title I, § 59(a), Sept. 2, 1958, 72 Stat. 1647.)

AMENDMENTS

1958—Pars. (6), (7). Pub. L. 85–866 added par. (6) and redesignated former par. (6) as (7).

EFFECTIVE DATE OF 1958 AMENDMENT

Section 59(c) of Pub. L. 85–866 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1314 of this title] shall apply to determinations (as defined in section 1313(a)) made after November 14, 1954.''

§ 1313. Definitions

(a) Determination

For purposes of this part, the term ''determination'' means—

(1) a decision by the Tax Court or a judgment, decree, or other order by any court of competent jurisdiction, which has become final;

(2) a closing agreement made under section 7121;

(3) a final disposition by the Secretary of a claim for refund. For purposes of this part, a claim for refund shall be deemed finally disposed of by the Secretary—

(A) as to items with respect to which the claim was allowed, on the date of allowance of refund or credit or on the date of mailing notice of disallowance (by reason of offsetting items) of the claim for refund, and

(B) as to items with respect to which the claim was disallowed, in whole or in part, or as to items applied by the Secretary in reduction of the refund or credit, on expiration of the time for instituting suit with respect thereto (unless suit is instituted before the expiration of such time); or

(4) under regulations prescribed by the Secretary, an agreement for purposes of this part, signed by the Secretary and by any person, relating to the liability of such person (or the

person for whom he acts) in respect of a tax under this subtitle for any taxable period.

(b) Taxpayer

Notwithstanding section 7701(a)(14), the term ''taxpayer'' means any person subject to a tax under the applicable revenue law.

(c) Related taxpayer

For purposes of this part, the term ''related taxpayer'' means a taxpayer who, with the taxpayer with respect to whom a determination is made, stood, in the taxable year with respect to which the erroneous inclusion, exclusion, omission, allowance, or disallowance was made, in one of the following relationships:

(1) husband and wife,

(2) grantor and fiduciary,

(3) grantor and beneficiary,

(4) fiduciary and beneficiary, legatee, or heir,

(5) decedent and decedent's estate,

(6) partner, or

(7) member of an affiliated group of corporations (as defined in section 1504).

(Aug. 16, 1954, ch. 736, 68A Stat. 339; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (a)(3), (4). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary'' wherever appearing.

§ 1314. Amount and method of adjustment

(a) Ascertainment of amount of adjustment

In computing the amount of an adjustment under this part there shall first be ascertained the tax previously determined for the taxable year with respect to which the error was made. The amount of the tax previously determined shall be the excess of—

(1) the sum of—

(A) the amount shown as the tax by the taxpayer on his return (determined as provided in section 6211(b)(1), (3), and (4), relating to the definition of deficiency), if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus

(B) the amounts previously assessed (or collected without assessment) as a deficiency, over—

(2) the amount of rebates, as defined in section 6211(b)(2), made.

There shall then be ascertained the increase or decrease in tax previously determined which results solely from the correct treatment of the item which was the subject of the error (with due regard given to the effect of the item in the computation of gross income, taxable income, and other matters under this subtitle). A similar computation shall be made for any other taxable year affected, or treated as affected, by a net operating loss deduction (as defined in section 172) or by a capital loss carryback or carryover (as defined in section 1212), determined with reference to the taxable year with respect to which the error was made. The amount so ascertained (together with any amounts wrongfully collected as additions to the tax or interest, as a result of such error) for each taxable year shall be the amount of the adjustment for that taxable year.

(b) Method of adjustment

The adjustment authorized in section 1311(a) shall be made by assessing and collecting, or refunding or crediting, the amount thereof in the same manner as if it were a deficiency determined by the Secretary with respect to the taxpayer as to whom the error was made or an overpayment claimed by such taxpayer, as the case may be, for the taxable year or years with respect to which an amount is ascertained under subsection (a), and as if on the date of the determination one year remained before the expiration of the periods of limitation upon assessment or filing claim for refund for such taxable year or years. If, as a result of a determination described in section 1313(a)(4), an adjustment has been made by the assessment and collection of a deficiency or the refund or credit of an overpayment, and subsequently such determination is altered or revoked, the amount of the adjustment ascertained under subsection (a) of this section shall be redetermined on the basis of such alteration or revocation and any overpayment or deficiency resulting from such redetermination shall be refunded or credited, or assessed and collected, as the case may be, as an adjustment under this part. In the case of an adjustment resulting from an increase or decrease in a net operating loss or net capital loss which is carried back to the year of adjustment, interest shall not be collected or paid for any period prior to the close of the taxable year in which the net operating loss or net capital loss arises.

(c) Adjustment unaffected by other items

The amount to be assessed and collected in the same manner as a deficiency, or to be refunded or credited in the same manner as an overpayment, under this part, shall not be diminished by any credit or set-off based upon any item other than the one which was the subject of the adjustment. The amount of the adjustment under this part, if paid, shall not be recovered by a claim or suit for refund or suit for erroneous refund based upon any item other than the one which was the subject of the adjustment.

(d) Periods for which adjustments may be made

No adjustment shall be made under this part in respect of any taxable year beginning prior to January 1, 1932.

(e) Taxes imposed by subtitle C

This part shall not apply to any tax imposed by subtitle C (sec. 3101 and following relating to employment taxes).

(Aug. 16, 1954, ch. 736, 68A Stat. 340; Pub. L. 85–866, title I, §59(b), Sept. 2, 1958, 72 Stat. 1647; Pub. L. 89–44, title VIII, §809(d)(5)(B), June 21, 1965, 79 Stat. 168; Pub. L. 91–172, title V, §512(f)(7), (8), Dec. 30, 1969, 83 Stat. 641, 642; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1969—Subsec. (a). Pub. L. 91–172, §512(f)(7), substituted ''capital loss carryback or carryover'' for ''capital loss carryover''.

Subsec. (b). Pub. L. 91–172, § 512(f)(8), inserted reference to net capital loss.

1965—Subsec. (a)(1)(A). Pub. L. 89–44 struck out ''(b)(1) and (3)'' and inserted in lieu thereof ''(b)(1), (3), and (4)''.

1958—Subsec. (c). Pub. L. 85–866 substituted in second sentence ''The'' for ''Other than in the case of an adjustment resulting from a determination under section 1313(a)(4), the''.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to net capital losses sustained in taxable years beginning after Dec. 31, 1969, see section 512(g) of Pub. L. 91–172, set out as a note under section 1212 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 applicable to taxable years beginning on or after July 1, 1965, see section 809(f) of Pub. L. 89–44, set out as a note under section 6420 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 effective with respect to determinations made after Nov. 14, 1954, see section 59(c) of Pub. L. 85–866, set out as a note under section 1312 of this title.

[§ 1315. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(143), Oct. 4, 1976, 90 Stat. 1788]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 341, related to effective date of this part.

EFFECTIVE DATE OF REPEAL

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

[PART III—REPEALED]

[§ 1321. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(144), Oct. 4, 1976, 90 Stat. 1788]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 342, related to involuntary liquidation of LIFO inventories.

EFFECTIVE DATE OF REPEAL

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

[PART IV—REPEALED]

[§§ 1331 to 1337. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(145)(A), Oct. 4, 1976, 90 Stat. 1788]

Section 1331, act Aug. 16, 1954, ch. 736, 68A Stat. 343, related to war loss recoveries.

Section 1332, act Aug. 16, 1954, ch. 736, 68A Stat. 343, related to inclusion in gross income of war loss recoveries.

Section 1333, act Aug. 16, 1954, ch. 736, 68A Stat. 344, related to tax adjustment measured by prior benefits.

Section 1334, act Aug. 16, 1954, ch. 736, 68A Stat. 346, related to restoration of value of investments referable to destroyed or seized property.

Section 1335, act Aug. 16, 1954, ch. 736, 68A Stat. 346, related to election by taxpayer for application of section 1333.

Section 1336, act Aug. 16, 1954, ch. 736, 68A Stat. 347, related to basis of recovered property.

Section 1337, act Aug. 16, 1954, ch. 736, 68A Stat. 347, related to applicable rules.

EFFECTIVE DATE OF REPEAL

Section 1901(a)(145)(B) provided that: ''The repeal by subparagraph (A) [repealing sections 1331 to 1337 of this title] shall apply with respect to war loss recoveries in taxable years beginning after December 31, 1976''.

PART V—CLAIM OF RIGHT

Sec.

1341. Computation of tax where taxpayer restores substantial amount held under claim of right.

[1342. Repealed.]

AMENDMENTS

1976—Pub. L. 94–455, title XIX, § 1901(b)(38), Oct. 4, 1976, 90 Stat. 1803, struck out item 1342 ''Computation of tax where taxpayer recovers substantial amount held by another under claim of right''.

§ 1341. Computation of tax where taxpayer restores substantial amount held under claim of right

(a) General rule

If—

(1) an item was included in gross income for a prior taxable year (or years) because it appeared that the taxpayer had an unrestricted right to such item;

(2) a deduction is allowable for the taxable year because it was established after the close of such prior taxable year (or years) that the taxpayer did not have an unrestricted right to such item or to a portion of such item; and

(3) the amount of such deduction exceeds $3,000,

then the tax imposed by this chapter for the taxable year shall be the lesser of the following:

(4) the tax for the taxable year computed with such deduction; or

(5) an amount equal to—

(A) the tax for the taxable year computed without such deduction, minus

(B) the decrease in tax under this chapter (or the corresponding provisions of prior revenue laws) for the prior taxable year (or years) which would result solely from the exclusion of such item (or portion thereof) from gross income for such prior taxable year (or years).

For purposes of paragraph (5)(B), the corresponding provisions of the Internal Revenue Code of 1939 shall be chapter 1 of such code (other than subchapter E, relating to self-employment income) and subchapter E of chapter 2 of such code.

(b) Special rules

(1) If the decrease in tax ascertained under subsection (a)(5)(B) exceeds the tax imposed by this chapter for the taxable year (computed without the deduction) such excess shall be considered to be a payment of tax on the last day prescribed by law for the payment of tax for the taxable year, and shall be refunded or credited in the same manner as if it were an overpayment for such taxable year.

(2) Subsection (a) does not apply to any deduction allowable with respect to an item which was included in gross income by reason of the sale or other disposition of stock in trade of the taxpayer (or other property of a kind which would properly have been included in the inventory of the taxpayer if on hand at the close of the prior taxable year) or property held by the

taxpayer primarily for sale to customers in the ordinary course of his trade or business. This paragraph shall not apply if the deduction arises out of refunds or repayments with respect to rates made by a regulated public utility (as defined in section 7701(a)(33) without regard to the limitation contained in the last two sentences thereof) if such refunds or repayments are required to be made by the Government, political subdivision, agency, or instrumentality referred to in such section, or by an order of a court, or are made in settlement of litigation or under threat or imminence of litigation.

(3) If the tax imposed by this chapter for the taxable year is the amount determined under subsection (a)(5), then the deduction referred to in subsection (a)(2) shall not be taken into account for any purpose of this subtitle other than this section.

(4) For purposes of determining whether paragraph (4) or paragraph (5) of subsection (a) applies—

(A) in any case where the deduction referred to in paragraph (4) of subsection (a) results in a net operating loss, such loss shall, for purposes of computing the tax for the taxable year under such paragraph (4), be carried back to the same extent and in the same manner as is provided under section 172; and

(B) in any case where the exclusion referred to in paragraph (5)(B) of subsection (a) results in a net operating loss or capital loss for the prior taxable year (or years), such loss shall, for purposes of computing the decrease in tax for the prior taxable year (or years) under such paragraph (5) (B), be carried back and carried over to the same extent and in the same manner as is provided under section 172 or section 1212, except that no carryover beyond the taxable year shall be taken into account.

(5) For purposes of this chapter, the net operating loss described in paragraph (4)(A) of this subsection, or the net operating loss or capital loss described in paragraph (4)(B) of this subsection, as the case may be, shall (after the application of paragraph (4) or (5)(B) of subsection (a) for the taxable year) be taken into account under section 172 or 1212 for taxable years after the taxable year to the same extent and in the same manner as—

(A) a net operating loss sustained for the taxable year, if paragraph (4) of subsection (a) applied, or

(B) a net operating loss or capital loss sustained for the prior taxable year (or years), if paragraph (5)(B) of subsection (a) applied.

(Aug. 16, 1954, ch. 736, 68A Stat. 348; Pub. L. 85–866, title I, §60(a)–(d), Sept. 2, 1958, 72 Stat. 1647; Pub. L. 87–863, §5(a), Oct. 23, 1962, 76 Stat. 1142; Pub. L. 88–272, title II, §234(b)(7), Feb. 26, 1964, 78 Stat. 116; Pub. L. 94–455, title XIX, §1901(a)(146), Oct. 4, 1976, 90 Stat. 1788.)

REFERENCES IN TEXT

Chapter 1 of the Internal Revenue Code of 1939, referred to in subsec. (a), was comprised of sections 1 to 482 of former Title 26, Internal Revenue Code. Chapter 1 was repealed by section 7851(a)(1)(A) of this title. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title. See also section 7851(e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

Subchapter E of chapter 2 of the Internal Revenue Code of 1939, referred to in subsec. (a), was comprised of sections 710 to 784 of former Title 26, Internal Revenue Code. Sections 710 to 736, 740, 742 to 744, 750, 751, 760, 761, and 780 to 784 were repealed by act Nov. 8, 1945, ch. 453, title I, §122(a), 59 Stat. 568. Section 741 was repealed by act Oct. 21, 1942, ch. 619, title II, §§224(b), 228(b), 56 Stat. 920, 925. Section 752 was repealed by act Oct. 21, 1942, ch. 619, title II, §229(a)(1), 56 Stat. 931, eff. as of Oct. 8, 1940.

AMENDMENTS

1976—Subsec. (b)(2). Pub. L. 94–455 struck out provision relating to the applicability of this paragraph where deduction arises out of payments or repayments made pursuant to a price redetermination provision in a subcontract entered into before Jan. 1, 1958.

1964—Subsec. (b)(2). Pub. L. 88–272 substituted ''7701(a)(33) without regard to the limitation continued in the last two sentences thereof)'' for ''1503(c) without regard to paragraph (2) thereof)''.

1962—Subsec. (b)(4), (5). Pub. L. 87–863 added pars. (4) and (5).

1958—Subsec. (a). Pub. L. 85–866, §60(a), inserted ''and subchapter E of chapter 2 of such code'' in last sentence.

Subsec. (b)(2). Pub. L. 85–866, §60(b), (c), in second sentence inserted ''with respect to rates'' and inserted '', or by an order of a court, or are made in settlement of litigation or under threat or imminence of litigation'' and inserted last sentence.

Subsec. (b)(3). Pub. L. 85–866, §60(d), added par. (3).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

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

EFFECTIVE DATE OF 1962 AMENDMENT

Section 5(b) of Pub. L. 87–863 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to taxable years beginning on or after January 1, 1962.''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 60(a), (c), (d) of Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

Section 60(e) of Pub. L. 85–866 provided that: ''The amendment made by subsection (b) [amending this section] shall apply with respect to taxable years beginning after December 31, 1957. No interest shall be allowed or paid on any overpayment resulting from the application of the amendment made by subsection (c) [amending this section].''

[§ 1342. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(147), Oct. 4, 1976, 90 Stat. 1788]

Section, added Aug. 12, 1955, ch. 870, §3, 69 Stat. 717, related to computation of tax where taxpayer recovers substantial amount held by another under claim of right.

EFFECTIVE DATE OF REPEAL

Repeal effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set

out as an Effective Date of 1976 Amendment note under section 2 of this title.

[PART VI—REPEALED]

[§ 1346. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(148), Oct. 4, 1976, 90 Stat. 1788]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 349, related to recovery of unconstitutional Federal taxes.

EFFECTIVE DATE OF REPEAL

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

[§ 1347. Repealed. Pub. L. 94–455, title XIX, § 1951(b)(12)(A), Oct. 4, 1976, 90 Stat. 1840]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 349; Sept. 2, 1958, Pub. L. 85–866, title I, § 61(a), 72 Stat. 1648; Dec. 30, 1969, Pub. L. 91–172, title VIII, § 803(d)(5), 83 Stat. 684, related to claims against the United States involving acquisition of property.

SAVINGS PROVISION

Section 1951(b)(12)(B) of Pub. L. 94–455 provided that: ''Notwithstanding subparagraph (A) [repealing this section], if amounts received in a taxable year beginning after December 31, 1976, would have been subject to the provisions of section 1347 if received in a taxable year beginning before such date, the tax imposed by section 1 attributable to such receipt shall be computed as if section 1347 had not been repealed.''

[§ 1348. Repealed. Pub. L. 97–34, title I, § 101(c)(1), Aug. 13, 1981, 95 Stat. 183]

Section, added Pub. L. 91–172, title VIII, § 804(a), Dec. 30, 1969, 83 Stat. 685; amended Pub. L. 93–406, title II, § 2005(c)(14), Sept. 2, 1974, 88 Stat. 992; Pub. L. 94–455, title III, § 302(a), Oct. 4, 1976, 90 Stat. 1554; Pub. L. 95–600, title IV, §§ 441(a), 442(a), title VII, § 701(x)(1), (2), Nov. 6, 1978, 92 Stat. 2878, 2920; Pub. L. 95–600, title IV, § 441(a), as amended Pub. L. 96–222, title I, § 104(a)(5)(B), Apr. 1, 1980, 94 Stat. 218, provided for a 50-percent maximum rate on personal service income.

EFFECTIVE DATE OF REPEAL

Repeal effective for taxable years beginning after Dec. 31, 1981, see section 101(f)(1) of Pub. L. 97–34, set out as an Effective Date of 1981 Amendment note under section 1 of this title.

TRANSITIONAL RULE IN CASE OF TAXABLE YEAR BEGINNING BEFORE NOV. 1, 1978, AND ENDING AFTER OCT. 31, 1978

Section 441(b)(2) of Pub. L. 95–600, as amended by Pub. L. 96–222, title I, § 104(a)(5)(A), Apr. 1, 1980, 94 Stat. 218, provided that in the case of a taxable year which began before Nov. 1, 1978, and ended after Oct. 31, 1978, the amount taken into account under subsec. (b)(2)(B) of section 1348 of this title by reason of section 57(a)(9) of this title be 50 percent of the lesser of the net capital gain for the taxable year or the net capital gain taking into account only gain or loss properly taken into account for the portion of the taxable year before Nov. 1, 1978.

PART VII—RECOVERIES OF FOREIGN EXPROPRIATION LOSSES

Sec.

1351. Treatment of recoveries of foreign expropriation losses.

§ 1351. Treatment of recoveries of foreign expropriation losses

(a) Election

(1) In general

This section shall apply only to a recovery, by a domestic corporation subject to the tax imposed by section 11 or 801, of a foreign expropriation loss sustained by such corporation and only if such corporation was subject to the tax imposed by section 11 or 801, as the case may be, for the year of the loss and elects to have the provisions of this section apply with respect to such loss.

(2) Time, manner, and scope

An election under paragraph (1) shall be made at such time and in such manner as the Secretary may prescribe by regulations. An election made with respect to any foreign expropriation loss shall apply to all recoveries in respect of such loss.

(b) Definition of foreign expropriation loss

For purposes of this section, the term ''foreign expropriation loss'' means any loss sustained by reason of the expropriation, intervention, seizure, or similar taking of property by the government of any foreign country, any political subdivision thereof, or any agency or instrumentality of the foregoing. For purposes of the preceding sentence, a debt which becomes worthless shall, to the extent of any deduction allowed under section 166(a), be treated as a loss.

(c) Amount of recovery

(1) General rule

The amount of any recovery of a foreign expropriation loss is the amount of money and the fair market value of other property received in respect of such loss, determined as of the date of receipt.

(2) Special rule for life insurance companies

The amount of any recovery of a foreign expropriation loss includes, in the case of a life insurance company, the amount of decrease of any item taken into account under section 807(c), to the extent such decrease is attributable to the release, by reason of such loss, of its liabilities with respect to such item.

(d) Adjustment for prior tax benefits

(1) In general

That part of the amount of a recovery of a foreign expropriation loss to which this section applies which, when added to the aggregate of the amounts of previous recoveries with respect to such loss, does not exceed the allowable deductions in prior taxable years on account of such loss shall be excluded from gross income for the taxable year of the recovery for purposes of computing the tax under this subtitle; but there shall be added to, and assessed and collected as a part of, the tax under this subtitle for such taxable year an amount equal to the total increase in the tax under this subtitle for all taxable years which would result by decreasing, in an amount equal to such part of the recovery so excluded, the deductions allowable in the prior taxable years on account of such loss. For purposes of

this paragraph, if the loss to which the recovery relates was taken into account as a loss from the sale or exchange of a capital asset, the amount of the loss shall be treated as an allowable deduction even though there were no gains against which to allow such loss.

(2) Computation

The increase in the tax for each taxable year referred to in paragraph (1) shall be computed in accordance with regulations prescribed by the Secretary. Such regulations shall give effect to previous recoveries of any kind (including recoveries described in section 111, relating to recovery of tax benefit items) with respect to any prior taxable year, but shall otherwise treat the tax previously determined for any taxable year in accordance with the principles set forth in section 1314(a) (relating to correction of errors). Subject to the provisions of paragraph (3), all credits allowable against the tax for any taxable year, and all carryovers and carrybacks affected by so decreasing the allowable deductions, shall be taken into account in computing the increase in the tax.

(3) Foreign taxes

For purposes of this subsection, any choice made under subpart A of part III of subchapter N (relating to foreign tax credit) for any taxable year may be changed.

(4) Substitution of current tax rate

For purposes of this subsection, the rates of tax specified in section 11(b) for the taxable year of the recovery shall be treated as having been in effect for all prior taxable years.

(e) Gain on recovery

That part of the amount of a recovery of a foreign expropriation loss to which this section applies which is not excluded from gross income under subsection (d)(1) shall be considered for the taxable year of the recovery as gain on the involuntary conversion of property as a result of its destruction or seizure and shall be recognized or not recognized as provided in section 1033.

(f) Basis of recovered property

The basis of property (other than money) received as a recovery of a foreign expropriation loss to which this section applies shall be an amount equal to its fair market value on the date of receipt, reduced by such part of the gain under subsection (e) which is not recognized as provided in section 1033.

(g) Restoration of value of investments

For purposes of this section, if the value of any interest in, or with respect to, property (including any interest represented by a security, as defined in section 165(g)(2))—

(1) which became worthless by reason of the expropriation, intervention, seizure, or similar taking of such property by the government of any foreign country, any political subdivision thereof, or any agency or instrumentality of the foregoing, and

(2) which was taken into account as a loss from the sale or exchange of a capital asset or with respect to which a deduction for a loss was allowed under section 165 or a deduction for a bad debt was allowed under section 166,

is restored in whole or in part by reason of any recovery of money or other property in respect of the property which became worthless, the value so restored shall be treated as property received as a recovery in respect of such loss or such bad debt.

(h) Special rule for evidences of indebtedness

Bonds or other evidences of indebtedness received as a recovery of a foreign expropriation loss to which this section applies shall not be considered to have any original issue discount within the meaning of section 1273(a).

(i) Adjustments for succeeding years

For purposes of this subtitle, proper adjustment shall be made, under regulations prescribed by the Secretary, in—

(1) the credit under section 27 (relating to foreign tax credit),

(2) the credit under section 38 (relating to general business credit),

(3) the net operating loss deduction under section 172, or the operations loss deduction under section 810,

(4) the capital loss carryover under section 1212(a), and

(5) such other items as may be specified by such regulations,

for the taxable year of a recovery of a foreign expropriation loss to which this section applies, and for succeeding taxable years, to take into account items changed in making the computations under subsection (d) for taxable years prior to the taxable year of such recovery.

(Added Pub. L. 89–384, §1(a), Apr. 8, 1966, 80 Stat. 99; amended Pub. L. 94–455, title X, §1031(b)(3), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1623, 1834; Pub. L. 95–600, title III, §301(b)(17), Nov. 6, 1978, 92 Stat. 2823; Pub. L. 98–369, div. A, title I, §42(a)(12), title II, §211(b)(18), title IV, §474(r)(25), July 18, 1984, 98 Stat. 557, 756, 844; Pub. L. 99–514, title XVIII, §1812(a)(4), Oct. 22, 1986, 100 Stat. 2833.)

AMENDMENTS

1986—Subsec. (d)(2). Pub. L. 99–514 substituted ''relating to recovery of tax benefit items'' for ''relating to recovery of bad debts, etc.''.

1984—Subsec. (a)(1). Pub. L. 98–369, §211(b)(18)(A), substituted ''801'' for ''802'' in two places.

Subsec. (c)(2). Pub. L. 98–369, §211(b)(18)(B), substituted ''section 807(c)'' for ''section 810(c)''.

Subsec. (h). Pub. L. 98–369, §42(a)(12), substituted ''section 1273(a)'' for ''section 1232(a)(2)''.

Subsec. (i)(1). Pub. L. 98–369, §474(r)(25)(A), substituted ''section 27'' for ''section 33''.

Subsec. (i)(2). Pub. L. 98–369, §474(r)(25)(B), substituted ''section 38 (relating to general business credit)'' for ''section 38 (relating to investment credit)''.

Subsec. (i)(3). Pub. L. 98–369, §211(b)(18)(C), substituted ''section 810'' for ''section 812''.

1978—Subsec. (d)(4). Pub. L. 95–600 substituted ''the rates of tax specified in section 11(b)'' for ''the normal tax rate provided by section 11(b) and the surtax rate provided by section 11(c) which are in effect''.

1976—Subsecs. (a)(2), (d)(2). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d)(3). Pub. L. 94–455, §1031(b)(3), struck out provisions relating to an election to have limitation provided by section 904(a)(2) apply and to revocation of such an election previously made.

Subsec. (i). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 42(a)(12) of Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

Amendment by section 211(b)(18) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

Amendment by section 474(r)(25) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1031(b)(3) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, with exceptions for certain mining operations, and for income from possessions, see section 1031(c) of Pub. L. 94–455, set out as a note under section 904 of this title.

EFFECTIVE DATE

Section 2 of Pub. L. 89–384, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by section 1 (except subsection (b)) [enacting this section and section 6167 of this title and amending sections 46, 901, 6503, and 6601 of this title] shall apply with respect to amounts received after December 31, 1964, in respect of foreign expropriation losses (as defined in section 1351(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] added by section 1(a)) sustained after December 31, 1958.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

Subchapter R—Election To Determine Corporate Tax on Certain International Shipping Activities Using Per Ton Rate

Sec.

1352. Alternative tax on qualifying shipping activities.
1353. Notional shipping income.
1354. Alternative tax election; revocation; termination.
1355. Definitions and special rules.
1356. Qualifying shipping activities.
1357. Items not subject to regular tax; depreciation; interest.
1358. Allocation of credits, income, and deductions.
1359. Disposition of qualifying vessels.

PRIOR PROVISIONS

A prior subchapter R, consisting of section 1361, related to election of certain partnerships and proprietorships to be taxed as domestic corporations, prior to repeal by Pub. L. 89–389, § 4(b)(1), Apr. 14, 1966, 80 Stat. 116, effective Jan. 1, 1969.

§ 1352. Alternative tax on qualifying shipping activities

In the case of an electing corporation, the tax imposed by section 11 shall be the amount equal to the sum of—

(1) the tax imposed by section 11 determined after the application of this subchapter, and

(2) a tax equal to—

(A) the highest rate of tax specified in section 11, multiplied by

(B) the notional shipping income for the taxable year.

(Added Pub. L. 108–357, title II, § 248(a), Oct. 22, 2004, 118 Stat. 1450.)

EFFECTIVE DATE

Subchapter applicable to taxable years beginning after Oct. 22, 2004, see section 248(c) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendments note under section 56 of this title.

§ 1353. Notional shipping income

(a) In general

For purposes of this subchapter, the notional shipping income of an electing corporation shall be the sum of the amounts determined under subsection (b) for each qualifying vessel operated by such electing corporation.

(b) Amounts

(1) In general

For purposes of subsection (a), the amount of notional shipping income of an electing corporation for each qualifying vessel for the taxable year shall equal the product of—

(A) the daily notional shipping income, and

(B) the number of days during the taxable year that the electing corporation operated such vessel as a qualifying vessel in United States foreign trade.

(2) Treatment of vessels the income from which is not otherwise subject to tax

In the case of a qualifying vessel any of the income from which is not included in gross income by reason of section 883 or otherwise, the amount of notional shipping income from such vessel for the taxable year shall be the amount which bears the same ratio to such shipping income (determined without regard to this paragraph) as the gross income from the operation of such vessel in the United States foreign trade bears to the sum of such gross income and the income so excluded.

(c) Daily notional shipping income

For purposes of subsection (b), the daily notional shipping income from the operation of a qualifying vessel is—

(1) 40 cents for each 100 tons of so much of the net tonnage of the vessel as does not exceed 25,000 net tons, and

(2) 20 cents for each 100 tons of so much of the net tonnage of the vessel as exceeds 25,000 net tons.

(d) Multiple operators of vessel

If for any period 2 or more persons are operators of a qualifying vessel, the notional shipping

income from the operation of such vessel for such period shall be allocated among such persons on the basis of their respective ownership, charter, and operating agreement interests in such vessel or on such other basis as the Secretary may prescribe by regulations.

(Added Pub. L. 108–357, title II, § 248(a), Oct. 22, 2004, 118 Stat. 1450; amended Pub. L. 109–135, title IV, § 403(g)(1)(A), Dec. 21, 2005, 119 Stat. 2624.)

AMENDMENTS

2005—Subsec. (d). Pub. L. 109–135 substituted ''ownership, charter, and operating agreement interests'' for ''ownership and charter interests''.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

§ 1354. Alternative tax election; revocation; termination

(a) In general

A qualifying vessel operator may elect the application of this subchapter.

(b) Time and manner; years for which effective

An election under this subchapter—

(1) shall be made in such form as prescribed by the Secretary, and

(2) shall be effective for the taxable year for which made and all succeeding taxable years until terminated under subsection (d).

Such election may be effective for any taxable year only if made on or before the due date (including extensions) for filing the corporation's return for such taxable year.

(c) Consistent elections by members of controlled groups

An election under subsection (a) by a member of a controlled group shall apply to all qualifying vessel operators that are members of such group.

(d) Termination

(1) By revocation

(A) In general

An election under subsection (a) may be terminated by revocation.

(B) When effective

Except as provided in subparagraph (C)—

(i) a revocation made during the taxable year and on or before the 15th day of the 3d month thereof shall be effective on the 1st day of such taxable year, and

(ii) a revocation made during the taxable year but after such 15th day shall be effective on the 1st day of the following taxable year.

(C) Revocation may specify prospective date

If the revocation specifies a date for revocation which is on or after the day on which the revocation is made, the revocation shall be effective for taxable years beginning on and after the date so specified.

(2) By person ceasing to be qualifying vessel operator

(A) In general

An election under subsection (a) shall be terminated whenever (at any time on or after the 1st day of the 1st taxable year for which the corporation is an electing corporation) such corporation ceases to be a qualifying vessel operator.

(B) When effective

Any termination under this paragraph shall be effective on and after the date of cessation.

(C) Annualization

The Secretary shall prescribe such annualization and other rules as are appropriate in the case of a termination under this paragraph.

(e) Election after termination

If a qualifying vessel operator has made an election under subsection (a) and if such election has been terminated under subsection (d), such operator (and any successor operator) shall not be eligible to make an election under subsection (a) for any taxable year before its 5th taxable year which begins after the 1st taxable year for which such termination is effective, unless the Secretary consents to such election.

(Added Pub. L. 108–357, title II, § 248(a), Oct. 22, 2004, 118 Stat. 1451; amended Pub. L. 109–135, title IV, § 403(g)(4), Dec. 21, 2005, 119 Stat. 2624.)

AMENDMENTS

2005—Subsec. (b). Pub. L. 109–135 inserted ''on or'' after ''only if made'' in concluding provisions.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

§ 1355. Definitions and special rules

(a) Definitions

For purposes of this subchapter—

(1) Electing corporation

The term ''electing corporation'' means any corporation for which an election is in effect under this subchapter.

(2) Electing group; controlled group

(A) Electing group

The term ''electing group'' means a controlled group of which one or more members is an electing corporation.

(B) Controlled group

The term ''controlled group'' means any group which would be treated as a single employer under subsection (a) or (b) of section 52 if paragraphs (1) and (2) of section 52(a) did not apply.

(3) Qualifying vessel operator

The term ''qualifying vessel operator'' means any corporation—

(A) who operates one or more qualifying vessels, and

(B) who meets the shipping activity requirement in subsection (c).

(4) Qualifying vessel

The term ''qualifying vessel'' means a self-propelled (or a combination self-propelled and non-self-propelled) United States flag vessel of not less than 6,000 deadweight tons used exclusively in the United States foreign trade during the period that the election under this subchapter is in effect.

(5) United States flag vessel

The term ''United States flag vessel'' means any vessel documented under the laws of the United States.

(6) United States domestic trade

The term ''United States domestic trade'' means the transportation of goods or passengers between places in the United States.

(7) United States foreign trade

The term ''United States foreign trade'' means the transportation of goods or passengers between a place in the United States and a foreign place or between foreign places.

(b) Operating a vessel

For purposes of this subchapter—

(1) In general

Except as provided in paragraph (2), a person is treated as operating any vessel during any period if—

(A)(i) such vessel is owned by, or chartered (including a time charter) to, the person, or

(ii) the person provides services for such vessel pursuant to an operating agreement, and

(B) such vessel is in use as a qualifying vessel during such period.

(2) Bareboat charters

A person is treated as operating and using a vessel that it has chartered out on bareboat charter terms only if—

(A)(i) the vessel is temporarily surplus to the person's requirements and the term of the charter does not exceed 3 years, or

(ii) the vessel is bareboat chartered to a member of a controlled group which includes such person or to an unrelated person who sub-bareboats or time charters the vessel to such a member (including the owner of the vessel), and

(B) the vessel is used as a qualifying vessel by the person to whom ultimately chartered.

(c) Shipping activity requirement

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, a corporation meets the shipping activity requirement of this subsection for any taxable year only if the requirement of paragraph (4) is met for each of the 2 preceding taxable years.

(2) Special rule for 1st year of election

A corporation meets the shipping activity requirement of this subsection for the first taxable year for which the election under section 1354(a) is in effect only if the requirement of paragraph (4) is met for the preceding taxable year.

(3) Controlled groups

A corporation who is a member of a controlled group meets the shipping activity requirement of this subsection only if such requirement is met determined by treating all members of such group as 1 person.

(4) Requirement

The requirement of this paragraph is met for any taxable year if, on average during such year, at least 25 percent of the aggregate tonnage of qualifying vessels used by the corporation were owned by such corporation or chartered to such corporation on bareboat charter terms.

(d) Activities carried on partnerships, etc.

In applying this subchapter to a partner in a partnership—

(1) each partner shall be treated as operating vessels operated by the partnership,

(2) each partner shall be treated as conducting the activities conducted by the partnership, and

(3) the extent of a partner's ownership, charter, or operating agreement interest in any vessel operated by the partnership shall be determined on the basis of the partner's interest in the partnership.

A similar rule shall apply with respect to other pass-thru entities.

(e) Effect of temporarily ceasing to operate a qualifying vessel

(1) In general

For purposes of subsections (b) and (c), an electing corporation shall be treated as continuing to use a qualifying vessel during any period of temporary cessation if the electing corporation gives timely notice to the Secretary stating—

(A) that it has temporarily ceased to operate the qualifying vessel, and

(B) its intention to resume operating the qualifying vessel.

(2) Notice

Notice shall be deemed timely if given not later than the due date (including extensions) for the corporation's tax return for the taxable year in which the temporary cessation begins.

(3) Period disregard in effect

The period of temporary cessation under paragraph (1) shall continue until the earlier of the date on which—

(A) the electing corporation abandons its intention to resume operation of the qualifying vessel, or

(B) the electing corporation resumes operation of the qualifying vessel.

(f) Effect of temporarily operating a qualifying vessel in the United States domestic trade

(1) In general

For purposes of this subchapter, an electing corporation shall be treated as continuing to use a qualifying vessel in the United States

foreign trade during any period of temporary use in the United States domestic trade if the electing corporation gives timely notice to the Secretary stating—

(A) that it temporarily operates or has operated in the United States domestic trade a qualifying vessel which had been used in the United States foreign trade, and

(B) its intention to resume operation of the vessel in the United States foreign trade.

(2) Notice

Notice shall be deemed timely if given not later than the due date (including extensions) for the corporation's tax return for the taxable year in which the temporary cessation begins.

(3) Period disregard in effect

The period of temporary use under paragraph (1) continues until the earlier of the date of[1] which—

(A) the electing corporation abandons its intention to resume operations of the vessel in the United States foreign trade, or

(B) the electing corporation resumes operation of the vessel in the United States foreign trade.

(4) No disregard if domestic trade use exceeds 30 days

Paragraph (1) shall not apply to any qualifying vessel which is operated in the United States domestic trade for more than 30 days during the taxable year.

(g) Great Lakes domestic shipping to not disqualify vessel

(1) In general

If the electing corporation elects (at such time and in such manner as the Secretary may require) to apply this subsection for any taxable year to any qualifying vessel which is used in qualified zone domestic trade during the taxable year—

(A) solely for purposes of subsection (a)(4), such use shall be treated as use in United States foreign trade (and not as use in United States domestic trade), and

(B) subsection (f) shall not apply with respect to such vessel for such taxable year.

(2) Effect of temporarily operating vessel in United States domestic trade

In the case of a qualifying vessel to which this subsection applies—

(A) In general

An electing corporation shall be treated as using such vessel in qualified zone domestic trade during any period of temporary use in the United States domestic trade (other than qualified zone domestic trade) if the electing corporation gives timely notice to the Secretary stating—

(i) that it temporarily operates or has operated in the United States domestic trade (other than qualified zone domestic trade) a qualifying vessel which had been used in the United States foreign trade or qualified zone domestic trade, and

(ii) its intention to resume operation of the vessel in the United States foreign trade or qualified zone domestic trade.

(B) Notice

Notice shall be deemed timely if given not later than the due date (including extensions) for the corporation's tax return for the taxable year in which the temporary cessation begins.

(C) Period disregard in effect

The period of temporary use under subparagraph (A) continues until the earlier of the date of which—

(i) the electing corporation abandons its intention to resume operations of the vessel in the United States foreign trade or qualified zone domestic trade, or

(ii) the electing corporation resumes operation of the vessel in the United States foreign trade or qualified zone domestic trade.

(D) No disregard if domestic trade use exceeds 30 days

Subparagraph (A) shall not apply to any qualifying vessel which is operated in the United States domestic trade (other than qualified zone domestic trade) for more than 30 days during the taxable year.

(3) Allocation of income and deductions to qualifying shipping activities

In the case of a qualifying vessel to which this subsection applies, the Secretary shall prescribe rules for the proper allocation of income, expenses, losses, and deductions between the qualified shipping activities and the other activities of such vessel.

(4) Qualified zone domestic trade

For purposes of this subsection—

(A) In general

The term ''qualified zone domestic trade'' means the transportation of goods or passengers between places in the qualified zone if such transportation is in the United States domestic trade.

(B) Qualified zone

The term ''qualified zone'' means the Great Lakes Waterway and the St. Lawrence Seaway.

(h) Regulations

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

(Added Pub. L. 108–357, title II, §248(a), Oct. 22, 2004, 118 Stat. 1452; amended Pub. L. 109–135, title IV, §403(g)(1)(B)–(2), Dec. 21, 2005, 119 Stat. 2624; Pub. L. 109–222, title II, §205(a), May 17, 2006, 120 Stat. 350; Pub. L. 109–432, div. A, title IV, §§413(a), 415(a), Dec. 20, 2006, 120 Stat. 2963.)

AMENDMENTS

2006—Subsec. (a)(4). Pub. L. 109–432, §413(a), substituted ''6,000'' for ''10,000 (6,000, in the case of taxable years beginning after December 31, 2005, and ending before January 1, 2011)''.

Pub. L. 109–222 inserted ''(6,000, in the case of taxable years beginning after December 31, 2005, and ending before January 1, 2011)'' after ''10,000''.

Subsecs. (g), (h). Pub. L. 109–432, §415(a), added subsec. (g) and redesignated former subsec. (g) as (h).

2005—Subsec. (a)(8). Pub. L. 109–135, §403(g)(1)(B), struck out heading and text of par. (8). Text read as fol-

[1] So in original.

lows: ''The term 'charter' includes an operating agreement.''

Subsec. (b)(1). Pub. L. 109–135, § 403(g)(1)(C), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Except as provided in paragraph (2), a person is treated as operating any vessel during any period if such vessel is—

''(A) owned by, or chartered (including a time charter) to, the person, and

''(B) is in use as a qualifying vessel during such period.''

Subsec. (c)(3). Pub. L. 109–135, § 403(g)(2), substituted ''determined by treating all members of such group as 1 person.'' for ''determined—

''(A) by treating all members of such group as 1 person, and

''(B) by disregarding vessel charters between members of such group.''

Subsec. (d)(3). Pub. L. 109–135, § 403(g)(1)(D), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''the extent of a partner's ownership or charter interest in any vessel owned by or chartered to the partnership shall be determined on the basis of the partner's interest in the partnership.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, § 413(b), Dec. 20, 2006, 120 Stat. 2963, provided that: ''The amendment made by this section [amending this section] shall take effect as if included in section 205 of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109–222].''

Pub. L. 109–432, div. A, title IV, § 415(b), Dec. 20, 2006, 120 Stat. 2965, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Dec. 20, 2006].''

Pub. L. 109–222, title II, § 205(b), May 17, 2006, 120 Stat. 350, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2005.''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendments by Pub. L. 109–135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which they relate, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

§ 1356. Qualifying shipping activities

(a) Qualifying shipping activities

For purposes of this subchapter, the term ''qualifying shipping activities'' means—

(1) core qualifying activities,

(2) qualifying secondary activities, and

(3) qualifying incidental activities.

(b) Core qualifying activities

For purposes of this subchapter, the term ''core qualifying activities'' means activities in operating qualifying vessels in United States foreign trade.

(c) Qualifying secondary activities

For purposes of this section—

(1) In general

The term ''qualifying secondary activities'' means secondary activities but only to the extent that, without regard to this subchapter, the gross income derived by such corporation from such activities does not exceed 20 percent of the gross income derived by the corporation from its core qualifying activities.

(2) Secondary activities

The term ''secondary activities'' means—

(A) the active management or operation of vessels other than qualifying vessels in the United States foreign trade,

(B) the provision of vessel, barge, container, or cargo-related facilities or services to any person,

(C) other activities of the electing corporation and other members of its electing group that are an integral part of its business of operating qualifying vessels in United States foreign trade, including—

(i) ownership or operation of barges, containers, chassis, and other equipment that are the complement of, or used in connection with, a qualifying vessel in United States foreign trade,

(ii) the inland haulage of cargo shipped, or to be shipped, on qualifying vessels in United States foreign trade, and

(iii) the provision of terminal, maintenance, repair, logistical, or other vessel, barge, container, or cargo-related services that are an integral part of operating qualifying vessels in United States foreign trade, and

(D) such other activities as may be prescribed by the Secretary pursuant to regulations.

Such term shall not include any core qualifying activities.

(d) Qualifying incidental activities

For purposes of this section, the term ''qualified incidental activities'' means shipping-related activities if—

(1) they are incidental to the corporation's core qualifying activities,

(2) they are not qualifying secondary activities, and

(3) without regard to this subchapter, the gross income derived by such corporation from such activities does not exceed 0.1 percent of the corporation's gross income from its core qualifying activities.

(e) Application of gross income tests in case of electing group

In the case of an electing group, subsections (c)(1) and (d)(3) shall be applied as if such group were 1 entity, and the limitations under such subsections shall be allocated among the corporations in such group.

(Added Pub. L. 108–357, title II, § 248(a), Oct. 22, 2004, 118 Stat. 1454; amended Pub. L. 109–135, title IV, § 403(g)(3), Dec. 21, 2005, 119 Stat. 2624.)

AMENDMENTS

2005—Subsec. (c)(2). Pub. L. 109–135, § 403(g)(3)(B), inserted concluding provisions.

Subsec. (c)(3). Pub. L. 109–135, § 403(g)(3)(A), struck out heading and text of par. (3). Text read as follows: ''(A) IN GENERAL.—Such term shall not include any core qualifying activities.

''(B) NONELECTING CORPORATIONS.—In the case of a corporation (other than an electing corporation) which is a member of an electing group, any core qualifying activities of the corporation shall be treated as qualifying secondary activities (and not as core qualifying activities).''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendments by Pub. L. 109–135 effective as if included in the provisions of the American Jobs Creation

Act of 2004, Pub. L. 108–357, to which they relate, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

§ 1357. Items not subject to regular tax; depreciation; interest

(a) Exclusion from gross income

Gross income of an electing corporation shall not include its income from qualifying shipping activities.

(b) Electing group member

Gross income of a corporation (other than an electing corporation) which is a member of an electing group shall not include its income from qualifying shipping activities conducted by such member.

(c) Denial of losses, deductions, and credits

(1) General rule

Subject to paragraph (2), each item of loss, deduction (other than for interest expense), or credit of any taxpayer with respect to any activity the income from which is excluded from gross income under this section shall be disallowed.

(2) Depreciation

(A) In general

Notwithstanding paragraph (1), the adjusted basis (for purposes of determining gain) of any qualifying vessel shall be determined as if the deduction for depreciation had been allowed.

(B) Method

(i) In general

Except as provided in clause (ii), the straight-line method of depreciation shall apply to qualifying vessels the income from operation of which is excluded from gross income under this section.

(ii) Exception

Clause (i) shall not apply to any qualifying vessel which is subject to a charter entered into before the date of the enactment of this subchapter.

(3) Interest

(A) In general

Except as provided in subparagraph (B), the interest expense of an electing corporation shall be disallowed in the ratio that the fair market value of such corporation's qualifying vessels bears to the fair market value of such corporation's total assets.

(B) Electing group

In the case of a corporation which is a member of an electing group, the interest expense of such corporation shall be disallowed in the ratio that the fair market value of such corporation's qualifying vessels bears to the fair market value of the electing groups total assets.

(Added Pub. L. 108–357, title II, § 248(a), Oct. 22, 2004, 118 Stat. 1455.)

REFERENCES IN TEXT

The date of the enactment of this subchapter, referred to in subsec. (c)(2)(B)(ii), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

§ 1358. Allocation of credits, income, and deductions

(a) Qualifying shipping activities

For purposes of this chapter, the qualifying shipping activities of an electing corporation shall be treated as a separate trade or business activity distinct from all other activities conducted by such corporation.

(b) Exclusion of credits or deductions

(1) No deduction shall be allowed against the notional shipping income of an electing corporation, and no credit shall be allowed against the tax imposed by section 1352(a)(2).[1]

(2) No deduction shall be allowed for any net operating loss attributable to the qualifying shipping activities of any person to the extent that such loss is carried forward by such person from a taxable year preceding the first taxable year for which such person was an electing corporation.

(c) Transactions not at arm's length

Section 482 applies in accordance with this subsection to a transaction or series of transactions—

(1) as between an electing corporation and another person, or

(2) as between an[2] person's qualifying shipping activities and other activities carried on by it.

(Added Pub. L. 108–357, title II, § 248(a), Oct. 22, 2004, 118 Stat. 1456.)

§ 1359. Disposition of qualifying vessels

(a) In general

If any qualifying vessel operator sells or disposes of any qualifying vessel in an otherwise taxable transaction, at the election of such operator, no gain shall be recognized if any replacement qualifying vessel is acquired during the period specified in subsection (b), except to the extent that the amount realized upon such sale or disposition exceeds the cost of the replacement qualifying vessel.

(b) Period within which property must be replaced

The period referred to in subsection (a) shall be the period beginning one year prior to the disposition of the qualifying vessel and ending—

(1) 3 years after the close of the first taxable year in which the gain is realized, or

(2) subject to such terms and conditions as may be specified by the Secretary, on such later date as the Secretary may designate on application by the taxpayer.

Such application shall be made at such time and in such manner as the Secretary may by regulations prescribe.

(c) Application of section to noncorporate operators

For purposes of this section, the term ''qualifying vessel operator'' includes any person who

[1] So in original. Probably should be section ''1352(2).''.

[2] So in original.

would be a qualifying vessel operator were such person a corporation.

(d) Time for assessment of deficiency attributable to gain

If a qualifying vessel operator has made the election provided in subsection (a), then—

(1) the statutory period for the assessment of any deficiency, for any taxable year in which any part of the gain is realized, attributable to such gain shall not expire prior to the expiration of 3 years from the date the Secretary is notified by such operator (in such manner as the Secretary may by regulations prescribe) of the replacement qualifying vessel or of an intention not to replace, and

(2) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of section 6212(c) or the provisions of any other law or rule of law which would otherwise prevent such assessment.

(e) Basis of replacement qualifying vessel

In the case of any replacement qualifying vessel purchased by the qualifying vessel operator which resulted in the nonrecognition of any part of the gain realized as the result of a sale or other disposition of a qualifying vessel, the basis shall be the cost of the replacement qualifying vessel decreased in the amount of the gain not so recognized; and if the property purchased consists of more than one piece of property, the basis determined under this sentence shall be allocated to the purchased properties in proportion to their respective costs.

(Added Pub. L. 108–357, title II, § 248(a), Oct. 22, 2004, 118 Stat. 1456.)

Subchapter S—Tax Treatment of S Corporations and Their Shareholders

Part

I. In general.
II. Tax treatment of shareholders.
III. Special rules.
IV. Definitions; miscellaneous.

PART I—IN GENERAL

Sec.

1361. S corporation defined.
1362. Election; revocation; termination.
1363. Effect of election on corporation.

§ 1361. S corporation defined

(a) S corporation defined

(1) In general

For purposes of this title, the term ''S corporation'' means, with respect to any taxable year, a small business corporation for which an election under section 1362(a) is in effect for such year.

(2) C corporation

For purposes of this title, the term ''C corporation'' means, with respect to any taxable year, a corporation which is not an S corporation for such year.

(b) Small business corporation

(1) In general

For purposes of this subchapter, the term ''small business corporation'' means a domestic corporation which is not an ineligible corporation and which does not—

(A) have more than 100 shareholders,

(B) have as a shareholder a person (other than an estate, a trust described in subsection (c)(2), or an organization described in subsection (c)(6)) who is not an individual,

(C) have a nonresident alien as a shareholder, and

(D) have more than 1 class of stock.

(2) Ineligible corporation defined

For purposes of paragraph (1), the term ''ineligible corporation'' means any corporation which is—

(A) a financial institution which uses the reserve method of accounting for bad debts described in section 585,

(B) an insurance company subject to tax under subchapter L,

(C) a corporation to which an election under section 936 applies, or

(D) a DISC or former DISC.

(3) Treatment of certain wholly owned subsidiaries

(A) In general

Except as provided in regulations prescribed by the Secretary, for purposes of this title—

(i) a corporation which is a qualified subchapter S subsidiary shall not be treated as a separate corporation, and

(ii) all assets, liabilities, and items of income, deduction, and credit of a qualified subchapter S subsidiary shall be treated as assets, liabilities, and such items (as the case may be) of the S corporation.

(B) Qualified subchapter S subsidiary

For purposes of this paragraph, the term ''qualified subchapter S subsidiary'' means any domestic corporation which is not an ineligible corporation (as defined in paragraph (2)), if—

(i) 100 percent of the stock of such corporation is held by the S corporation, and

(ii) the S corporation elects to treat such corporation as a qualified subchapter S subsidiary.

(C) Treatment of terminations of qualified subchapter S subsidiary status

(i) In general

For purposes of this title, if any corporation which was a qualified subchapter S subsidiary ceases to meet the requirements of subparagraph (B), such corporation shall be treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) immediately before such cessation from the S corporation in exchange for its stock.

(ii) Termination by reason of sale of stock

If the failure to meet the requirements of subparagraph (B) is by reason of the sale of stock of a corporation which is a qualified subchapter S subsidiary, the sale of such stock shall be treated as if—

(I) the sale were a sale of an undivided interest in the assets of such corporation

(based on the percentage of the corporation's stock sold), and

(II) the sale were followed by an acquisition by such corporation of all of its assets (and the assumption by such corporation of all of its liabilities) in a transaction to which section 351 applies.

(D) Election after termination

If a corporation's status as a qualified subchapter S subsidiary terminates, such corporation (and any successor corporation) shall not be eligible to make—

(i) an election under subparagraph (B)(ii) to be treated as a qualified subchapter S subsidiary, or

(ii) an election under section 1362(a) to be treated as an S corporation,

before its 5th taxable year which begins after the 1st taxable year for which such termination was effective, unless the Secretary consents to such election.

(E) Information returns

Except to the extent provided by the Secretary, this paragraph shall not apply to part III of subchapter A of chapter 61 (relating to information returns).

(c) Special rules for applying subsection (b)

(1) Members of a family treated as 1 shareholder

(A) In general

For purposes of subsection (b)(1)(A), there shall be treated as one shareholder—

(i) a husband and wife (and their estates), and

(ii) all members of a family (and their estates).

(B) Members of a family

For purposes of this paragraph—

(i) In general

The term ''members of a family'' means a common ancestor, any lineal descendant of such common ancestor, and any spouse or former spouse of such common ancestor or any such lineal descendant.

(ii) Common ancestor

An individual shall not be considered to be a common ancestor if, on the applicable date, the individual is more than 6 generations removed from the youngest generation of shareholders who would (but for this subparagraph) be members of the family. For purposes of the preceding sentence, a spouse (or former spouse) shall be treated as being of the same generation as the individual to whom such spouse is (or was) married.

(iii) Applicable date

The term ''applicable date'' means the latest of—

(I) the date the election under section 1362(a) is made,

(II) the earliest date that an individual described in clause (i) holds stock in the S corporation, or

(III) October 22, 2004.

(C) Effect of adoption, etc.

Any legally adopted child of an individual, any child who is lawfully placed with an individual for legal adoption by the individual, and any eligible foster child of an individual (within the meaning of section 152(f)(1)(C)), shall be treated as a child of such individual by blood.

(2) Certain trusts permitted as shareholders

(A) In general

For purposes of subsection (b)(1)(B), the following trusts may be shareholders:

(i) A trust all of which is treated (under subpart E of part I of subchapter J of this chapter) as owned by an individual who is a citizen or resident of the United States.

(ii) A trust which was described in clause (i) immediately before the death of the deemed owner and which continues in existence after such death, but only for the 2-year period beginning on the day of the deemed owner's death.

(iii) A trust with respect to stock transferred to it pursuant to the terms of a will, but only for the 2-year period beginning on the day on which such stock is transferred to it.

(iv) A trust created primarily to exercise the voting power of stock transferred to it.

(v) An electing small business trust.

(vi) In the case of a corporation which is a bank (as defined in section 581) or a depository institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1)), a trust which constitutes an individual retirement account under section 408(a), including one designated as a Roth IRA under section 408A, but only to the extent of the stock held by such trust in such bank or company as of the date of the enactment of this clause.

This subparagraph shall not apply to any foreign trust.

(B) Treatment as shareholders

For purposes of subsection (b)(1)—

(i) In the case of a trust described in clause (i) of subparagraph (A), the deemed owner shall be treated as the shareholder.

(ii) In the case of a trust described in clause (ii) of subparagraph (A), the estate of the deemed owner shall be treated as the shareholder.

(iii) In the case of a trust described in clause (iii) of subparagraph (A), the estate of the testator shall be treated as the shareholder.

(iv) In the case of a trust described in clause (iv) of subparagraph (A), each beneficiary of the trust shall be treated as a shareholder.

(v) In the case of a trust described in clause (v) of subparagraph (A), each potential current beneficiary of such trust shall be treated as a shareholder; except that, if for any period there is no potential current beneficiary of such trust, such trust shall be treated as the shareholder during such period.

(vi) In the case of a trust described in clause (vi) of subparagraph (A), the individual for whose benefit the trust was created shall be treated as a shareholder.

(3) Estate of individual in bankruptcy may be shareholder

For purposes of subsection (b)(1)(B), the term ''estate'' includes the estate of an individual in a case under title 11 of the United States Code.

(4) Differences in common stock voting rights disregarded

For purposes of subsection (b)(1)(D), a corporation shall not be treated as having more than 1 class of stock solely because there are differences in voting rights among the shares of common stock.

(5) Straight debt safe harbor

(A) In general

For purposes of subsection (b)(1)(D), straight debt shall not be treated as a second class of stock.

(B) Straight debt defined

For purposes of this paragraph, the term ''straight debt'' means any written unconditional promise to pay on demand or on a specified date a sum certain in money if—

(i) the interest rate (and interest payment dates) are not contingent on profits, the borrower's discretion, or similar factors,

(ii) there is no convertibility (directly or indirectly) into stock, and

(iii) the creditor is an individual (other than a nonresident alien), an estate, a trust described in paragraph (2), or a person which is actively and regularly engaged in the business of lending money.

(C) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to provide for the proper treatment of straight debt under this subchapter and for the coordination of such treatment with other provisions of this title.

(6) Certain exempt organizations permitted as shareholders

For purposes of subsection (b)(1)(B), an organization which is—

(A) described in section 401(a) or 501(c)(3), and

(B) exempt from taxation under section 501(a),

may be a shareholder in an S corporation.

(d) Special rule for qualified subchapter S trust

(1) In general

In the case of a qualified subchapter S trust with respect to which a beneficiary makes an election under paragraph (2)—

(A) such trust shall be treated as a trust described in subsection (c)(2)(A)(i),

(B) for purposes of section 678(a), the beneficiary of such trust shall be treated as the owner of that portion of the trust which consists of stock in an S corporation with respect to which the election under paragraph (2) is made, and

(C) for purposes of applying sections 465 and 469 to the beneficiary of the trust, the disposition of the S corporation stock by the trust shall be treated as a disposition by such beneficiary.

(2) Election

(A) In general

A beneficiary of a qualified subchapter S trust (or his legal representative) may elect to have this subsection apply.

(B) Manner and time of election

(i) Separate election with respect to each corporation

An election under this paragraph shall be made separately with respect to each corporation the stock of which is held by the trust.

(ii) Elections with respect to successive income beneficiaries

If there is an election under this paragraph with respect to any beneficiary, an election under this paragraph shall be treated as made by each successive beneficiary unless such beneficiary affirmatively refuses to consent to such election.

(iii) Time, manner, and form of election

Any election, or refusal, under this paragraph shall be made in such manner and form, and at such time, as the Secretary may prescribe.

(C) Election irrevocable

An election under this paragraph, once made, may be revoked only with the consent of the Secretary.

(D) Grace period

An election under this paragraph shall be effective up to 15 days and 2 months before the date of the election.

(3) Qualified subchapter S trust

For purposes of this subsection, the term ''qualified subchapter S trust'' means a trust—

(A) the terms of which require that—

(i) during the life of the current income beneficiary, there shall be only 1 income beneficiary of the trust,

(ii) any corpus distributed during the life of the current income beneficiary may be distributed only to such beneficiary,

(iii) the income interest of the current income beneficiary in the trust shall terminate on the earlier of such beneficiary's death or the termination of the trust, and

(iv) upon the termination of the trust during the life of the current income beneficiary, the trust shall distribute all of its assets to such beneficiary, and

(B) all of the income (within the meaning of section 643(b)) of which is distributed (or required to be distributed) currently to 1 individual who is a citizen or resident of the United States.

A substantially separate and independent share of a trust within the meaning of section

663(c) shall be treated as a separate trust for purposes of this subsection and subsection (c).

(4) Trust ceasing to be qualified

(A) Failure to meet requirements of paragraph (3)(A)

If a qualified subchapter S trust ceases to meet any requirement of paragraph (3)(A), the provisions of this subsection shall not apply to such trust as of the date it ceases to meet such requirement.

(B) Failure to meet requirements of paragraph (3)(B)

If any qualified subchapter S trust ceases to meet any requirement of paragraph (3)(B) but continues to meet the requirements of paragraph (3)(A), the provisions of this subsection shall not apply to such trust as of the first day of the first taxable year beginning after the first taxable year for which it failed to meet the requirements of paragraph (3)(B).

(e) Electing small business trust defined

(1) Electing small business trust

For purposes of this section—

(A) In general

Except as provided in subparagraph (B), the term ''electing small business trust'' means any trust if—

(i) such trust does not have as a beneficiary any person other than (I) an individual, (II) an estate, (III) an organization described in paragraph (2), (3), (4), or (5) of section 170(c), or (IV) an organization described in section 170(c)(1) which holds a contingent interest in such trust and is not a potential current beneficiary,

(ii) no interest in such trust was acquired by purchase, and

(iii) an election under this subsection applies to such trust.

(B) Certain trusts not eligible

The term ''electing small business trust'' shall not include—

(i) any qualified subchapter S trust (as defined in subsection (d)(3)) if an election under subsection (d)(2) applies to any corporation the stock of which is held by such trust,

(ii) any trust exempt from tax under this subtitle, and

(iii) any charitable remainder annuity trust or charitable remainder unitrust (as defined in section 664(d)).

(C) Purchase

For purposes of subparagraph (A), the term ''purchase'' means any acquisition if the basis of the property acquired is determined under section 1012.

(2) Potential current beneficiary

For purposes of this section, the term ''potential current beneficiary'' means, with respect to any period, any person who at any time during such period is entitled to, or at the discretion of any person may receive, a distribution from the principal or income of the trust (determined without regard to any power of appointment to the extent such power remains unexercised at the end of such period). If a trust disposes of all of the stock which it holds in an S corporation, then, with respect to such corporation, the term ''potential current beneficiary'' does not include any person who first met the requirements of the preceding sentence during the 1-year period ending on the date of such disposition.

(3) Election

An election under this subsection shall be made by the trustee. Any such election shall apply to the taxable year of the trust for which made and all subsequent taxable years of such trust unless revoked with the consent of the Secretary.

(4) Cross reference

For special treatment of electing small business trusts, see section 641(c).

(f) Restricted bank director stock

(1) In general

Restricted bank director stock shall not be taken into account as outstanding stock of the S corporation in applying this subchapter (other than section 1368(f)).

(2) Restricted bank director stock

For purposes of this subsection, the term ''restricted bank director stock'' means stock in a bank (as defined in section 581) or a depository institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1)),[1] if such stock—

(A) is required to be held by an individual under applicable Federal or State law in order to permit such individual to serve as a director, and

(B) is subject to an agreement with such bank or company (or a corporation which controls (within the meaning of section 368(c)) such bank or company) pursuant to which the holder is required to sell back such stock (at the same price as the individual acquired such stock) upon ceasing to hold the office of director.

(3) Cross reference

For treatment of certain distributions with respect to restricted bank director stock, see section 1368(f).

(g) Special rule for bank required to change from the reserve method of accounting on becoming S corporation

In the case of a bank which changes from the reserve method of accounting for bad debts described in section 585 or 593 for its first taxable year for which an election under section 1362(a) is in effect, the bank may elect to take into account any adjustments under section 481 by reason of such change for the taxable year immediately preceding such first taxable year.

(Added Pub. L. 97–354, §2, Oct. 19, 1982, 96 Stat. 1669; amended Pub. L. 98–369, div. A, title VII, §721(c), (f), July 18, 1984, 98 Stat. 967; Pub. L. 99–514, title IX, §901(d)(4)(G), title XVIII, §1879(m)(1)(A), Oct. 22, 1986, 100 Stat. 2380, 2910;

[1] So in original. Another closing parenthesis probably should precede the comma.

Pub. L. 100–647, title I, § 1018(q)(2), Nov. 10, 1988, 102 Stat. 3585; Pub. L. 101–239, title VII, § 7811(c)(6), Dec. 19, 1989, 103 Stat. 2407; Pub. L. 104–188, title I, §§ 1301–1302(c), 1303, 1304, 1308(a), (b), (d)(1), 1315, 1316(a), (e), 1616(b)(15), Aug. 20, 1996, 110 Stat. 1777, 1779, 1782, 1783, 1785, 1786, 1857; Pub. L. 105–34, title XVI, § 1601(c)(1), (3), (4)(B), (C), Aug. 5, 1997, 111 Stat. 1087; Pub. L. 105–206, title VI, § 6007(f)(3), July 22, 1998, 112 Stat. 810; Pub. L. 106–554, § 1(a)(7) [title III, § 316(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–644; Pub. L. 108–357, title II, §§ 231(a), 232(a), 233(a), (b), 234(a), 236(a), 239(a), Oct. 22, 2004, 118 Stat. 1433–1435, 1437; Pub. L. 109–135, title IV, §§ 403(b), 413(a)(1), (c), Dec. 21, 2005, 119 Stat. 2620, 2641; Pub. L. 110–28, title VIII, §§ 8232(a), 8233(a), 8234(a), May 25, 2007, 121 Stat. 197, 198.)

References in Text

The date of the enactment of this clause, referred to in subsec. (c)(2)(A)(vi), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

Prior Provisions

A prior section 1361, acts Aug. 16, 1954, ch. 736, 68A Stat. 350; Oct. 10, 1962, Pub. L. 87–792, § 7(h), 76 Stat. 829; Feb. 26, 1964, Pub. L. 88–272, title II, § 225(k)(5), 78 Stat. 94; Apr. 14, 1966, Pub. L. 89–389, § 4(a), 80 Stat. 115, related to election of certain partnerships and proprietorships to be taxed as domestic corporations, prior to repeal by Pub. L. 89–389, § 4(b)(1), Apr. 14, 1966, 80 Stat. 116, effective Jan. 1, 1969.

Amendments

2007—Subsec. (b)(3)(C). Pub. L. 110–28, § 8234(a), designated existing provisions as cl. (i), inserted cl. (i) heading, and added cl. (ii).

Subsec. (f). Pub. L. 110–28, § 8232(a), added subsec. (f).

Subsec. (g). Pub. L. 110–28, § 8233(a), added subsec. (g).

2005—Subsec. (b)(3)(A). Pub. L. 109–135, § 413(c)(1), struck out ''and in the case of information returns required under part III of subchapter A of chapter 61'' after ''Secretary''.

Subsec. (b)(3)(E). Pub. L. 109–135, § 413(c)(2), added subpar. (E).

Subsec. (c)(1). Pub. L. 109–135, § 403(b), reenacted heading without change and amended text generally. Prior to amendment, text consisted of subpars. (A) to (D) relating to treatment as 1 shareholder, family members, adoption, and election.

Subsec. (c)(2)(A)(vi). Pub. L. 109–135, § 413(a)(1), inserted ''or a depository institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1))'' after ''a bank (as defined in section 581)'' and ''or company'' after ''such bank''.

2004—Subsec. (b)(1)(A). Pub. L. 108–357, § 232(a), substituted ''100'' for ''75''.

Subsec. (b)(3)(A). Pub. L. 108–357, § 239(a), inserted ''and in the case of information returns required under part III of subchapter A of chapter 61'' after ''Secretary''.

Subsec. (c)(1). Pub. L. 108–357, § 231(a), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''For purposes of subsection (b)(1)(A), a husband and wife (and their estates) shall be treated as 1 shareholder.''

Subsec. (c)(2)(A)(vi). Pub. L. 108–357, § 233(a), added cl. (vi).

Subsec. (c)(2)(B)(vi). Pub. L. 108–357, § 233(b), added cl. (vi).

Subsec. (d)(1)(C). Pub. L. 108–357, § 236(a), added subpar. (C).

Subsec. (e)(2). Pub. L. 108–357, § 234(a), inserted ''(determined without regard to any power of appointment to the extent such power remains unexercised at the end of such period)'' after ''of the trust'' and substituted ''1-year'' for ''60-day''.

2000—Subsec. (e)(1)(A)(i)(IV). Pub. L. 106–554 added subcl. (IV).

1998—Subsec. (e)(4). Pub. L. 105–206 substituted ''section 641(c)'' for ''section 641(d)''.

1997—Subsec. (b)(1)(B). Pub. L. 105–34, § 1601(c)(4)(C), substituted ''subsection (c)(6)'' for ''subsection (c)(7)''.

Subsec. (b)(3)(A). Pub. L. 105–34, § 1601(c)(3), substituted ''Except as provided in regulations prescribed by the Secretary, for purposes of this title'' for ''For purposes of this title''.

Subsec. (c)(6), (7). Pub. L. 105–34, § 1601(c)(4)(B), redesignated par. (7) as (6).

Subsec. (e)(1)(B)(iii). Pub. L. 105–34, § 1601(c)(1), added cl. (iii).

1996—Subsec. (b)(1)(A). Pub. L. 104–188, § 1301, substituted ''75'' for ''35''.

Subsec. (b)(1)(B). Pub. L. 104–188, § 1316(a)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''have as a shareholder a person (other than an estate and other than a trust described in subsection (c)(2)) who is not an individual,''.

Subsec. (b)(2)(A). Pub. L. 104–188, § 1315, amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''a financial institution to which section 585 applies (or would apply but for subsection (c) thereof),''.

Pub. L. 104–188, § 1308(a), redesignated subpar. (B) as (A) and struck out former subpar. (A) which read as follows: ''a member of an affiliated group (determined under section 1504 without regard to the exceptions contained in subsection (b) thereof),''.

Subsec. (b)(2)(B). Pub. L. 104–188, § 1308(a), redesignated subpar. (C) as (B). Former subpar. (B) redesignated (A).

Pub. L. 104–188, § 1616(b)(15), struck out ''or to which section 593 applies'' after ''subsection (c) thereof)''.

Subsec. (b)(2)(C) to (E). Pub. L. 104–188, § 1308(a), redesignated subpars. (D) and (E) as (C) and (D), respectively. Former subpar. (C) redesignated (B).

Subsec. (b)(3). Pub. L. 104–188, § 1308(b), added par. (3).

Subsec. (c)(2)(A)(ii). Pub. L. 104–188, § 1303, substituted ''2-year period'' for ''60-day period'' in first sentence and struck out at end ''If a trust is described in the preceding sentence and if the entire corpus of the trust is includible in the gross estate of the deemed owner, the preceding sentence shall be applied by substituting '2-year period' for '60-day period'.''

Subsec. (c)(2)(A)(iii). Pub. L. 104–188, § 1303(1), substituted ''2-year period'' for ''60-day period''.

Subsec. (c)(2)(A)(v). Pub. L. 104–188, § 1302(a), added cl. (v).

Subsec. (c)(2)(B)(v). Pub. L. 104–188, § 1302(b), added cl. (v).

Subsec. (c)(5)(B)(iii). Pub. L. 104–188, § 1304, substituted ''a trust described in paragraph (2), or a person which is actively and regularly engaged in the business of lending money'' for ''or a trust described in paragraph (2)''.

Subsec. (c)(6). Pub. L. 104–188, § 1308(d)(1), struck out par. (6) which read as follows:

''(6) Ownership of stock in certain inactive corporations.—For purposes of subsection (b)(2)(A), a corporation shall not be treated as a member of an affiliated group during any period within a taxable year by reason of the ownership of stock in another corporation if such other corporation—

''(A) has not begun business at any time on or before the close of such period, and

''(B) does not have gross income for such period.''

Subsec. (c)(7). Pub. L. 104–188, § 1316(a)(2), added par. (7).

Subsec. (e). Pub. L. 104–188, § 1302(c), added subsec. (e).

Subsec. (e)(1)(A)(i). Pub. L. 104–188, § 1316(e), struck out ''which holds a contingent interest and is not a potential current beneficiary'' after ''170(c)''.

1989—Subsec. (b)(2)(B). Pub. L. 101–239 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''a financial institution which is a bank (as defined in section 585(a)(2)) or to which section 593 applies,''.

1988—Subsec. (d)(3). Pub. L. 100–647 substituted ''within the meaning of'' for ''treated as a separate trust under'' in last sentence.

1986—Subsec. (b)(2)(B). Pub. L. 99–514, §901(d)(4)(G), substituted ''which is a bank (as defined in section 585(a)(2)) or to which section 593 applies'' for ''to which section 585 or 593 applies''.

Subsec. (d)(3). Pub. L. 99–514, §1879(m)(1)(A), inserted at end ''A substantially separate and independent share of a trust treated as a separate trust under section 663(c) shall be treated as a separate trust for purposes of this subsection and subsection (c).''

1984—Subsec. (c)(6). Pub. L. 98–369, §721(c), amended par. (6) generally, substituting ''during any period within a taxable year'' for ''during any taxable year'' in provisions preceding subpar. (A), and substituting ''on or before the close of such period'' for ''on or after the date of its incorporation and before the close of such taxable year'' in subpar. (A), and ''does not have gross income for such period'' for ''does not have taxable income for the period included within such taxable year'' in subpar. (B).

Subsec. (d)(2)(B)(i). Pub. L. 98–369, §721(f)(3), substituted ''corporation'' for ''S corporation'' in heading and text.

Subsec. (d)(2)(D). Pub. L. 98–369, §721(f)(1), substituted ''15 days and 2 months'' for ''60 days''.

Subsec. (d)(3). Pub. L. 98–369, §721(f)(2), in amending par. (3) generally, redesignated subpar. (C) as (A), substituted a period for '', and'' at end of subpar. (B), and struck out former subpar. (A) which read ''which owns stock in 1 or more S corporations''.

Subsec. (d)(4). Pub. L. 98–369, §721(f)(2), in amending par. (4) generally, redesignated existing provisions as subpar. (A), inserted ''Failure to meet requirements of paragraph (3)(A)'' as subpar. (A) heading, substituted ''of paragraph (3)(A)'' for ''under paragraph (3)'', and added subpar. (B).

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–28, title VIII, §8232(c), May 25, 2007, 121 Stat. 198, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 1368 of this title] shall apply to taxable years beginning after December 31, 2006.

''(2) SPECIAL RULE FOR TREATMENT AS SECOND CLASS OF STOCK.—In the case of any taxable year beginning after December 31, 1996, restricted bank director stock (as defined in section 1361(f) of the Internal Revenue Code of 1986, as added by this section) shall not be taken into account in determining whether an S corporation has more than 1 class of stock.''

Pub. L. 110–28, title VIII, §8233(b), May 25, 2007, 121 Stat. 198, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006.''

Pub. L. 110–28, title VIII, §8234(b), May 25, 2007, 121 Stat. 199, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006.''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 403(b) of Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

Pub. L. 109–135, title IV, §413(d), Dec. 21, 2005, 119 Stat. 2642, provided that: ''The amendments made by this section [amending this section and sections 1362 and 4975 of this title] shall take effect as if included in the provisions of the American Jobs Creation Act of 2004 [Pub. L. 108–357] to which they relate.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, §231(c)(1), Oct. 22, 2004, 118 Stat. 1433, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2004.''

Pub. L. 108–357, title II, §232(b), Oct. 22, 2004, 118 Stat. 1434, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2004.''

Amendment by section 233(a), (b) of Pub. L. 108–357 effective Oct. 22, 2004, see section 233(e) of Pub. L. 108–357, set out as a note under section 512 of this title.

Pub. L. 108–357, title II, §234(b), Oct. 22, 2004, 118 Stat. 1435, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2004.''

Pub. L. 108–357, title II, §236(b), Oct. 22, 2004, 118 Stat. 1435, provided that: ''The amendments made by this section [amending this section] shall apply to transfers made after December 31, 2004.''

Pub. L. 108–357, title II, §239(b), Oct. 22, 2004, 118 Stat. 1437, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2004.''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which such amendment relates, see section 1(a)(7) [title III, §316(e)] of Pub. L. 106–554, set out as a note under section 51 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 36C of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by sections 1301–1302(c), 1303, 1304, 1308(a), (b), (d)(1), and 1315 of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1317(a) of Pub. L. 104–188, set out as a note under section 641 of this title.

Amendment by sections 1316(a), (e) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1997, see section 1316(f) of Pub. L. 104–188, set out as a note under section 170 of this title.

Amendment by section 1616(b)(15) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, see section 1616(c) of Pub. L. 104–188, set out as a note under section 593 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 901(d)(4)(G) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 901(e) of Pub. L. 99–514, set out as a note under section 166 of this title.

Section 1879(m)(2) of Pub. L. 99–514 provided that: ''The amendments made by this subsection [amending

this section and section 1368 of this title] shall apply to taxable years beginning after December 31, 1982.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 721(y) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, any amendment made by this section [amending this section, sections 48, 108, 267, 318, 465, 1362, 1363, 1367, 1368, 1371, 1374, 1375, 1378, 1379, 6362, and 6659 and provisions set out as a note under this section] shall take effect as if included in the Subchapter S Revision Act of 1982 [Pub. L. 97–354].

''(2) AMENDMENT MADE BY SUBSECTION (b)(2).—Subparagraph (C) of section 108(d)(7) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (b)(2)) shall apply to contributions to capital after December 31, 1980, in taxable years ending after such date.

''(3) AMENDMENT MADE BY SUBSECTION (g)(1).—If—

''(A) any portion of a qualified stock purchase is pursuant to a binding contract entered into on or after October 19, 1982, and before the date of the enactment of this Act [July 18, 1984], and

''(B) the purchasing corporation establishes by clear and convincing evidence that such contract was negotiated on the contemplation that, with respect to the deemed sale under section 338 of the Internal Revenue Code of 1986, paragraph (2) of section 1362(e) of such Code would apply,

then the amendment made by paragraph (1) of subsection (g) [amending section 1362 of this title] shall not apply to such qualified stock purchase.

''(4) AMENDMENTS MADE BY SUBSECTION *(l)*.—The amendments made by subsection *(l)* [amending section 1362 of this title] shall apply to any election under section 1362 of the Internal Revenue Code of 1986 (or any corresponding provision of prior law) made after October 19, 1982.

''(5) AMENDMENT MADE BY SUBSECTION (t).—If—

''(A) on or before the date of the enactment of this Act [July 18, 1984] 50 percent or more of the stock of an S corporation has been sold or exchanged in 1 or more transactions, and

''(B) the person (or persons) acquiring such stock establish by clear and convincing evidence that such acquisitions were negotiated on the contemplation that paragraph (2) of section 1362(e) of the Internal Revenue Code of 1986 would apply to the S termination year in which such sales or exchanges occur,

then the amendment made by subsection (t) [amending section 1362 of this title] shall not apply to such S termination year.''

EFFECTIVE DATE

Section 6 of Pub. L. 97–354, as amended by Pub. L. 97–448, title III, § 305(d)(1)(A), Jan. 12, 1983, 96 Stat. 2399; Pub. L. 98–369, div. A, title VII, § 721(i), (k), July 18, 1984, 98 Stat. 969; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this Act [enacting this section and sections 1362, 1363, 1366 to 1368, 1371 to 1375, 1377 to 1379, and 6241 to 6245 of this title, amending sections 31, 44D to 44F, 46, 48, 50A, 50B, 52, 53, 55, 57, 58, 62, 108, 163, 168, 170, 172, 179, 183, 189, 194, 267, 280, 280A, 291, 447, 464, 465, 613A, 992, 1016, 1101, 1212, 1251, 1254, 1256, 3453, 3454, 4992, 4996, 6037, 6042, 6362, and 6661 of this title and section 1108 of Title 29, Labor, omitting section 1376 of this title, and enacting provisions set out as a note under section 1 of this title] shall apply to taxable years beginning after December 31, 1982.

''(b) TRANSITIONAL RULES.—

''(1) SECTIONS 1379 AND 62(9) CONTINUE TO APPLY FOR 1983.—Sections 1379 and 62(9) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect before the date of the enactment of this Act [Oct. 19, 1982]) shall remain in effect for years beginning before January 1, 1984.

''(2) ALLOWANCE OF EXCLUSION OF DEATH BENEFIT.—Notwithstanding section 241(b) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 241(b) of Pub. L. 97–248, set out as a note under section 416 of this title] in the case of amounts received under a plan of an S corporation, the amendment made by section 239 of such Act [section 239 of Pub. L. 97–248, amending section 101 of this title] shall apply with respect to decedents dying after December 31, 1982.

''(3) NEW PASSIVE INCOME RULES APPLY TO TAXABLE YEARS BEGINNING DURING 1982.—In the case of a taxable year beginning during 1982—

''(A) sections 1362(d)(3), 1366(f)(3), and 1375 of the Internal Revenue Code of 1986 (as amended by this Act [Pub. L. 97–354]) shall apply, and

''(B) section 1372(e)(5) of such Code (as in effect on the day before the date of the enactment of this Act [Oct. 19, 1982]) shall not apply.

The preceding sentence shall not apply in the case of any corporation which elects (at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe) to have such sentence not apply. Subsection (e) shall not apply to any termination resulting from an election under the preceding sentence.

''(c) GRANDFATHER RULES.—

''(1) SUBSIDIARIES WHICH ARE FOREIGN CORPORATIONS OR DISC'S.—In the case of any corporation which on September 28, 1982, would have been a member of the same affiliated group as an electing small business corporation but for paragraph (3) or (7) of section 1504(b) of the Internal Revenue Code of 1986, subparagraph (A) of section 1361(b)(2) of such Code (as amended by section 2) shall be applied by substituting 'without regard to the exceptions contained in paragraphs (1), (2), (4), (5), and (6) of subsection (b) thereof' for 'without regard to the exceptions contained in subsection (b) thereof'.

''(2) CASUALTY INSURANCE COMPANIES.—

''(A) IN GENERAL.—In the case of any qualified casualty insurance electing small business corporation—

''(i) the amendments made by this Act shall not apply, and

''(ii) subchapter S (as in effect on July 1, 1982) of chapter 1 of the Internal Revenue Code of 1986 [former sections 1371 to 1379 of this title] and part III of subchapter L of chapter 1 of such Code [section 831 et seq. of this title] shall apply.

''(B) QUALIFIED CASUALTY INSURANCE ELECTING SMALL BUSINESS CORPORATION.—The term 'qualified casualty insurance electing small business corporation' means any corporation described in section 831(a) of the Internal Revenue Code of 1986 if—

''(i) as of July 12, 1982, such corporation was an electing small business corporation and was described in section 831(a) of such Code,

''(ii) such corporation was formed before April 1, 1982, and proposed (through a written private offering first circulated to investors before such date) to elect to be taxed as a subchapter S corporation and to be operated on an established insurance exchange, or

''(iii) such corporation is approved for membership on an established insurance exchange pursuant to a written agreement entered into before December 31, 1982, and such corporation is described in section 831(a) of such Code as of December 31, 1984.

A corporation shall not be treated as a qualified casualty insurance electing small business corporation unless an election under subchapter S of chapter 1 of such Code is in effect for its first taxable year beginning after December 31, 1984.

''(3) CERTAIN CORPORATIONS WITH OIL AND GAS PRODUCTION.—

''(A) IN GENERAL.—In the case of any qualified oil corporation—

''(i) the amendments made by this Act shall not apply, and

''(ii) subchapter S (as in effect on July 1, 1982) of chapter 1 of the Internal Revenue Code of 1986 [former sections 1371 to 1379 of this title] shall apply.

''(B) QUALIFIED OIL CORPORATION.—For purposes of this paragraph, the term 'qualified oil corporation' means any corporation if—

''(i) as of September 28, 1982, such corporation—

''(I) was an electing small business corporation, or

''(II) was a small business corporation which made an election under section 1372(a) after December 31, 1981, and before September 28, 1982,

''(ii) for calendar year 1982, the combined average daily production of domestic crude oil or natural gas of such corporation and any one of its substantial shareholders exceeds 1,000 barrels, and

''(iii) such corporation makes an election under this subparagraph at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe.

''(C) AVERAGE DAILY PRODUCTION.—For purposes of subparagraph (B), the average daily production of domestic crude oil or domestic natural gas shall be determined under section 613A(c)(2) of such Code without regard to the last sentence thereof.

''(D) SUBSTANTIAL SHAREHOLDER.—For purposes of subparagraph (B), the term 'substantial shareholder' means any person who on July 1, 1982, owns more than 40 percent (in value) of the stock of the corporation.

''(4) CONTINUITY REQUIRED.—

''(A) IN GENERAL.—This subsection shall cease to apply with respect to any corporation after—

''(i) any termination of the election of the corporation under subchapter S of chapter 1 of such Code, or

''(ii) the first day on which more than 50 percent of the stock of the corporation is newly owned stock within the meaning of section 1378(c)(2) of such Code (as amended by this Act [Pub. L. 97–354]).

''(B) SPECIAL RULES FOR PARAGRAPH (2).—

''(i) Paragraph (2) shall also cease to apply with respect to any corporation after the corporation ceases to be described in section 831(a) of such Code.

''(ii) For purposes of determining under subparagraph (A)(ii) whether paragraph (2) ceases to apply to any corporation, section 1378(c)(2) of such Code (as amended by this Act [Pub. L. 97–354]) shall be applied by substituting 'December 31, 1984' for 'December 31, 1982' each place it appears therein.

''(d) TREATMENT OF EXISTING FRINGE BENEFIT PLANS.—

''(1) IN GENERAL.—In the case of existing fringe benefits of a corporation which as of September 28, 1982, was an electing small business corporation, section 1372 of the Internal Revenue Code of 1986 (as added by this Act [Pub. L. 97–354]) shall apply only with respect to taxable years beginning after December 31, 1987.

''(2) REQUIREMENTS.—This subsection shall cease to apply with respect to any corporation after whichever of the following first occurs:

''(A) the first day of the first taxable year beginning after December 31, 1982, with respect to which the corporation does not meet the requirements of section 1372(e)(5) of such Code (as in effect on the day before the date of the enactment of this Act [Oct. 19, 1982]),

''(B) any termination after December 31, 1982, of the election of the corporation under subchapter S of chapter 1 of such Code, or

''(C) the first day on which more than 50 percent of the stock of the corporation is newly owned stock within the meaning of section 1378(c)(2) of such Code (as amended by this Act [Pub. L. 97–354]).

''(3) EXISTING FRINGE BENEFIT.—For purposes of this subsection, the term 'existing fringe benefit' means any employee fringe benefit of a type which the corporation provided to its employees as of September 28, 1982.

''(e) TREATMENT OF CERTAIN ELECTIONS UNDER PRIOR LAW.—For purposes of section 1362(g) of the Internal Revenue Code of 1986, as amended by this Act [Pub. L. 97–354] (relating to no election permitted within 5 years after termination of prior election), any termination or revocation under section 1372(e) of such Code (as in effect on the day before the date of the enactment of this Act [Oct. 19, 1982]) shall not be taken into account.

''(f) TAXABLE YEAR OF S CORPORATIONS.—Section 1378 of the Internal Revenue Code of 1986 (as added by this Act [Pub. L. 97–354]) shall take effect on the day after the date of the enactment of this Act [Oct. 19, 1982]. For purposes of applying such section, the reference in subsection (a)(2) of such section to an election under section 1362(a) shall include a reference to an election under section 1372(a) of such Code as in effect on the day before the date of the enactment of this Act [Oct. 19, 1982].''

ELIMINATION OF ALL EARNINGS AND PROFITS ATTRIBUTABLE TO PRE-1983 YEARS FOR CERTAIN CORPORATIONS

Pub. L. 110–28, title VIII, §8235, May 25, 2007, 121 Stat. 199, provided that: ''In the case of a corporation which is—

''(1) described in section 1311(a)(1) of the Small Business Job Protection Act of 1996 [Pub. L. 104–188, set out below], and

''(2) not described in section 1311(a)(2) of such Act,

the amount of such corporation's accumulated earnings and profits (for the first taxable year beginning after the date of the enactment of this Act [May 25, 2007]) shall be reduced by an amount equal to the portion (if any) of such accumulated earnings and profits which were accumulated in any taxable year beginning before January 1, 1983, for which such corporation was an electing small business corporation under subchapter S of the Internal Revenue Code of 1986.''

ELIMINATION OF CERTAIN EARNINGS AND PROFITS

Section 1311(a) of Pub. L. 104–188 provided that: ''If—

''(1) a corporation was an electing small business corporation under subchapter S of chapter 1 of the Internal Revenue Code of 1986 for any taxable year beginning before January 1, 1983, and

''(2) such corporation is an S corporation under subchapter S of chapter 1 of such Code for its first taxable year beginning after December 31, 1996,

the amount of such corporation's accumulated earnings and profits (as of the beginning of such first taxable year) shall be reduced by an amount equal to the portion (if any) of such accumulated earnings and profits which were accumulated in any taxable year beginning before January 1, 1983, for which such corporation was an electing small business corporation under such subchapter S.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TRANSITIONAL PROVISIONS

Pub. L. 97–448, title III, §305(d)(1)(B), Jan. 12, 1983, 96 Stat. 2399, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''If—

''(i) after September 30, 1982, and on or before the date of the enactment of this Act [Jan. 12, 1983], stock or securities were transferred to a small business corporation (as defined in section 1361(b) of the Internal

Revenue Code of 1986 [formerly I.R.C. 1954] as amended by the Subchapter S Revision Act of 1982 [Pub. L. 97–354]) in a transaction to which section 351 of such Code applies, and

''(ii) such corporation is liquidated under section 333 of such Code before March 1, 1983,

then such stock or securities shall not be taken into account under section 333(e)(2) of such Code.''

§ 1362. Election; revocation; termination

(a) Election

(1) In general

Except as provided in subsection (g), a small business corporation may elect, in accordance with the provisions of this section, to be an S corporation.

(2) All shareholders must consent to election

An election under this subsection shall be valid only if all persons who are shareholders in such corporation on the day on which such election is made consent to such election.

(b) When made

(1) In general

An election under subsection (a) may be made by a small business corporation for any taxable year—

(A) at any time during the preceding taxable year, or

(B) at any time during the taxable year and on or before the 15th day of the 3d month of the taxable year.

(2) Certain elections made during 1st 2½ months treated as made for next taxable year

If—

(A) an election under subsection (a) is made for any taxable year during such year and on or before the 15th day of the 3d month of such year, but

(B) either—

(i) on 1 or more days in such taxable year before the day on which the election was made the corporation did not meet the requirements of subsection (b) of section 1361, or

(ii) 1 or more of the persons who held stock in the corporation during such taxable year and before the election was made did not consent to the election,

then such election shall be treated as made for the following taxable year.

(3) Election made after 1st 2½ months treated as made for following taxable year

If—

(A) a small business corporation makes an election under subsection (a) for any taxable year, and

(B) such election is made after the 15th day of the 3d month of the taxable year and on or before the 15th day of the 3rd month of the following taxable year,

then such election shall be treated as made for the following taxable year.

(4) Taxable years of 2½ months or less

For purposes of this subsection, an election for a taxable year made not later than 2 months and 15 days after the first day of the taxable year shall be treated as timely made during such year.

(5) Authority to treat late elections, etc., as timely

If—

(A) an election under subsection (a) is made for any taxable year (determined without regard to paragraph (3)) after the date prescribed by this subsection for making such election for such taxable year or no such election is made for any taxable year, and

(B) the Secretary determines that there was reasonable cause for the failure to timely make such election,

the Secretary may treat such an election as timely made for such taxable year (and paragraph (3) shall not apply).

(c) Years for which effective

An election under subsection (a) shall be effective for the taxable year of the corporation for which it is made and for all succeeding taxable years of the corporation, until such election is terminated under subsection (d).

(d) Termination

(1) By revocation

(A) In general

An election under subsection (a) may be terminated by revocation.

(B) More than one-half of shares must consent to revocation

An election may be revoked only if shareholders holding more than one-half of the shares of stock of the corporation on the day on which the revocation is made consent to the revocation.

(C) When effective

Except as provided in subparagraph (D)—

(i) a revocation made during the taxable year and on or before the 15th day of the 3d month thereof shall be effective on the 1st day of such taxable year, and

(ii) a revocation made during the taxable year but after such 15th day shall be effective on the 1st day of the following taxable year.

(D) Revocation may specify prospective date

If the revocation specifies a date for revocation which is on or after the day on which the revocation is made, the revocation shall be effective on and after the date so specified.

(2) By corporation ceasing to be small business corporation

(A) In general

An election under subsection (a) shall be terminated whenever (at any time on or after the 1st day of the 1st taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

(B) When effective

Any termination under this paragraph shall be effective on and after the date of cessation.

(3) Where passive investment income exceeds 25 percent of gross receipts for 3 consecutive taxable years and corporation has accumulated earnings and profits

(A) Termination

(i) In general

An election under subsection (a) shall be terminated whenever the corporation—

(I) has accumulated earnings and profits at the close of each of 3 consecutive taxable years, and

(II) has gross receipts for each of such taxable years more than 25 percent of which are passive investment income.

(ii) When effective

Any termination under this paragraph shall be effective on and after the first day of the first taxable year beginning after the third consecutive taxable year referred to in clause (i).

(iii) Years taken into account

A prior taxable year shall not be taken into account under clause (i) unless—

(I) such taxable year began after December 31, 1981, and

(II) the corporation was an S corporation for such taxable year.

(B) Gross receipts from the sales of certain assets

For purposes of this paragraph—

(i) in the case of dispositions of capital assets (other than stock and securities), gross receipts from such dispositions shall be taken into account only to the extent of the capital gain net income therefrom, and

(ii) in the case of sales or exchanges of stock or securities, gross receipts shall be taken into account only to the extent of the gains therefrom.

(C) Passive investment income defined

(i) In general

Except as otherwise provided in this subparagraph, the term ''passive investment income'' means gross receipts derived from royalties, rents, dividends, interest, and annuities.

(ii) Exception for interest on notes from sales of inventory

The term ''passive investment income'' shall not include interest on any obligation acquired in the ordinary course of the corporation's trade or business from its sale of property described in section 1221(a)(1).

(iii) Treatment of certain lending or finance companies

If the S corporation meets the requirements of section 542(c)(6) for the taxable year, the term ''passive investment income'' shall not include gross receipts for the taxable year which are derived directly from the active and regular conduct of a lending or finance business (as defined in section 542(d)(1)).

(iv) Treatment of certain dividends

If an S corporation holds stock in a C corporation meeting the requirements of section 1504(a)(2), the term ''passive investment income'' shall not include dividends from such C corporation to the extent such dividends are attributable to the earnings and profits of such C corporation derived from the active conduct of a trade or business.

(v) Exception for banks, etc.

In the case of a bank (as defined in section 581) or a depository institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1)),[1] the term ''passive investment income'' shall not include—

(I) interest income earned by such bank or company, or

(II) dividends on assets required to be held by such bank or company, including stock in the Federal Reserve Bank, the Federal Home Loan Bank, or the Federal Agricultural Mortgage Bank or participation certificates issued by a Federal Intermediate Credit Bank.

(e) Treatment of S termination year

(1) In general

In the case of an S termination year, for purposes of this title—

(A) S short year

The portion of such year ending before the 1st day for which the termination is effective shall be treated as a short taxable year for which the corporation is an S corporation.

(B) C short year

The portion of such year beginning on such 1st day shall be treated as a short taxable year for which the corporation is a C corporation.

(2) Pro rata allocation

Except as provided in paragraph (3) and subparagraphs (C) and (D) of paragraph (6), the determination of which items are to be taken into account for each of the short taxable years referred to in paragraph (1) shall be made—

(A) first by determining for the S termination year—

(i) the amount of each of the items of income, loss, deduction, or credit described in section 1366(a)(1)(A), and

(ii) the amount of the nonseparately computed income or loss, and

(B) then by assigning an equal portion of each amount determined under subparagraph (A) to each day of the S termination year.

(3) Election to have items assigned to each short taxable year under normal tax accounting rules

(A) In general

A corporation may elect to have paragraph (2) not apply.

(B) Shareholders must consent to election

An election under this subsection shall be valid only if all persons who are sharehold-

[1] So in original. Another closing parenthesis probably should precede the comma.

ers in the corporation at any time during the S short year and all persons who are shareholders in the corporation on the first day of the C short year consent to such election.

(4) S termination year

For purposes of this subsection, the term ''S termination year'' means any taxable year of a corporation (determined without regard to this subsection) in which a termination of an election made under subsection (a) takes effect (other than on the 1st day thereof).

(5) Tax for C short year determined on annualized basis

(A) In general

The taxable income for the short year described in subparagraph (B) of paragraph (1) shall be placed on an annual basis by multiplying the taxable income for such short year by the number of days in the S termination year and by dividing the result by the number of days in the short year. The tax shall be the same part of the tax computed on the annual basis as the number of days in such short year is of the number of days in the S termination year.

(B) Section 443(d)(2) to apply

Subsection (d) of section 443 shall apply to the short taxable year described in subparagraph (B) of paragraph (1).

(6) Other special rules

For purposes of this title—

(A) Short years treated as 1 year for carryover purposes

The short taxable year described in subparagraph (A) of paragraph (1) shall not be taken into account for purposes of determining the number of taxable years to which any item may be carried back or carried forward by the corporation.

(B) Due date for S year

The due date for filing the return for the short taxable year described in subparagraph (A) of paragraph (1) shall be the same as the due date for filing the return for the short taxable year described in subparagraph (B) of paragraph (1) (including extensions thereof).

(C) Paragraph (2) not to apply to items resulting from section 338

Paragraph (2) shall not apply with respect to any item resulting from the application of section 338.

(D) Pro rata allocation for S termination year not to apply if 50-percent change in ownership

Paragraph (2) shall not apply to an S termination year if there is a sale or exchange of 50 percent or more of the stock in such corporation during such year.

(f) Inadvertent invalid elections or terminations

If—

(1) an election under subsection (a) or section 1361(b)(3)(B)(ii) by any corporation—

(A) was not effective for the taxable year for which made (determined without regard to subsection (b)(2)) by reason of a failure to meet the requirements of section 1361(b) or to obtain shareholder consents, or

(B) was terminated under paragraph (2) or (3) of subsection (d) or section 1361(b)(3)(C),

(2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent,

(3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness or termination, steps were taken—

(A) so that the corporation for which the election was made or the termination occurred is a small business corporation or a qualified subchapter S subsidiary, as the case may be, or

(B) to acquire the required shareholder consents, and

(4) the corporation for which the election was made or the termination occurred, and each person who was a shareholder in such corporation at any time during the period specified pursuant to this subsection, agrees to make such adjustments (consistent with the treatment of such corporation as an S corporation or a qualified subchapter S subsidiary, as the case may be) as may be required by the Secretary with respect to such period,

then, notwithstanding the circumstances resulting in such ineffectiveness or termination, such corporation shall be treated as an S corporation or a qualified subchapter S subsidiary, as the case may be[2] during the period specified by the Secretary.

(g) Election after termination

If a small business corporation has made an election under subsection (a) and if such election has been terminated under subsection (d), such corporation (and any successor corporation) shall not be eligible to make an election under subsection (a) for any taxable year before its 5th taxable year which begins after the 1st taxable year for which such termination is effective, unless the Secretary consents to such election.

(Added Pub. L. 97–354, § 2, Oct. 19, 1982, 96 Stat. 1672; amended Pub. L. 98–369, div. A, title I, § 102(d)(2), title VII, § 721(g), (h), (*l*), (t), July 18, 1984, 98 Stat. 623, 968, 969, 971; Pub. L. 100–647, title I, §§ 1006(f)(6), 1007(g)(9), Nov. 10, 1988, 102 Stat. 3406, 3435; Pub. L. 104–188, title I, §§ 1305(a), (b), 1308(c), 1311(b)(1), Aug. 20, 1996, 110 Stat. 1779, 1780, 1783, 1784; Pub. L. 106–170, title V, § 532(c)(2)(T), Dec. 17, 1999, 113 Stat. 1931; Pub. L. 108–357, title II, §§ 231(b), 237(a), 238(a), Oct. 22, 2004, 118 Stat. 1433, 1436; Pub. L. 109–135, title IV, § 413(b), Dec. 21, 2005, 119 Stat. 2641; Pub. L. 110–28, title VIII, § 8231(a), May 25, 2007, 121 Stat. 196; Pub. L. 110–172, § 11(a)(25), Dec. 29, 2007, 121 Stat. 2487.)

AMENDMENTS

2007—Subsec. (d)(3)(B) to (F). Pub. L. 110–28 added subpars. (B) and (C) and struck out former subpar. (B), which related to gross receipts from dispositions of capital assets (other than stock and securities) being

[2] So in original. Probably should be followed by a comma.

taken into account only to the extent of the capital gain net income therefrom, subpar. (C), which defined passive investment income, subpar. (D), which provided that, in the case of any options dealer or commodities dealer, passive investment income was to be determined by not taking into account any gain or loss from any section 1256 contract or property related to such a contract, subpar. (E), which related to certain dividends not being treated as passive investment income if an S corporation held stock in a C corporation meeting the requirements of section 1504(a)(2), and subpar. (F), which related to the exception from passive investment income for banks and depository institution holding companies.

Subsec. (f)(1). Pub. L. 110–172 substituted ''or section 1361(b)(3)(B)(ii)'' for '', section 1361(b)(3)(B)(ii), or section 1361(c)(1)(A)(ii)'' in introductory provisions and ''or section 1361(b)(3)(C)'' for '', section 1361(b)(3)(C), or section 1361(c)(1)(D)(iii)'' in subpar. (B).

2005—Subsec. (d)(3)(F). Pub. L. 109–135 substituted ''a depository institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1))'' for ''a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a))), or a financial holding company (within the meaning of section 2(p) of such Act)''.

2004—Subsec. (d)(3)(F). Pub. L. 108–357, §237(a), added subpar. (F).

Subsec. (f). Pub. L. 108–357, §238(a)(5), inserted ''or a qualified subchapter S subsidiary, as the case may be'' after ''S corporation'' in concluding provisions.

Subsec. (f)(1). Pub. L. 108–357, §238(a)(1), inserted '', section 1361(b)(3)(B)(ii),'' after ''subsection (a)'' in introductory provisions.

Pub. L. 108–357, §231(b)(1), inserted ''or section 1361(c)(1)(A)(ii)'' after ''section 1361(b)(3)(B)(ii),'' in introductory provisions.

Subsec. (f)(1)(B). Pub. L. 108–357, §238(a)(2), inserted '', section 1361(b)(3)(C),'' after ''subsection (d)''.

Pub. L. 108–357, §231(b)(2), inserted ''or section 1361(c)(1)(D)(iii)'' after ''section 1361(b)(3)(C),''.

Subsec. (f)(3)(A). Pub. L. 108–357, §238(a)(3), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''so that the corporation is a small business corporation, or''.

Subsec. (f)(4). Pub. L. 108–357, §238(a)(4), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''the corporation, and each person who was a shareholder in the corporation at any time during the period specified pursuant to this subsection, agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period,''.

1999—Subsec. (d)(3)(C)(ii). Pub. L. 106–170 substituted ''section 1221(a)(1)'' for ''section 1221(1)''.

1996—Subsec. (b)(5). Pub. L. 104–188, §1305(b), added par. (5).

Subsec. (d)(3). Pub. L. 104–188, §1311(b)(1)(A), in heading substituted ''accumulated'' for ''subchapter C''.

Subsec. (d)(3)(A)(i)(I). Pub. L. 104–188, §1311(b)(1)(B), substituted ''accumulated'' for ''subchapter C''.

Subsec. (d)(3)(B) to (E). Pub. L. 104–188, §1311(b)(1)(C), redesignated subpars. (C) to (F) as (B) to (E), respectively, and struck out former subpar. (B) which read as follows:

''(B) SUBCHAPTER C EARNINGS AND PROFITS.—For purposes of subparagraph (A), the term 'subchapter C earnings and profits' means earnings and profits of any corporation for any taxable year with respect to which an election under section 1362(a) (or under section 1372 of prior law) was not in effect.''

Subsec. (d)(3)(F). Pub. L. 104–188, §1311(b)(1)(C), redesignated subpar. (F) as (E).

Pub. L. 104–188, §1308(c), added subpar. (F).

Subsec. (f). Pub. L. 104–188, §1305(a), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows:

''(f) INADVERTENT TERMINATIONS.—If—

''(1) an election under subsection (a) by any corporation was terminated under paragraph (2) or (3) of subsection (d),

''(2) the Secretary determines that the termination was inadvertent,

''(3) no later than a reasonable period of time after discovery of the event resulting in such termination, steps were taken so that the corporation is once more a small business corporation, and

''(4) the corporation, and each person who was a shareholder of the corporation at any time during the period specified pursuant to this subsection, agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period,

then, notwithstanding the terminating event, such corporation shall be treated as continuing to be an S corporation during the period specified by the Secretary.''

1988—Subsec. (d)(3)(D)(v). Pub. L. 100–647, §1006(f)(6)(A), struck out cl. (v) which related to special rule for options and commodities dealers.

Subsec. (d)(3)(E). Pub. L. 100–647, §1006(f)(6)(B), added subpar. (E).

Subsec. (e)(5)(B). Pub. L. 100–647, §1007(g)(9), substituted ''Subsection (d)'' for ''Subsection (d)(2)''.

1984—Subsec. (b)(3)(B). Pub. L. 98–369, §721(*l*)(2), substituted ''on or before the 15th day of the 3rd month of the following taxable year'' for ''on or before the last day of such taxable year''.

Subsec. (b)(4). Pub. L. 98–369, §721(*l*)(1), added par. (4).

Subsec. (d)(3)(D)(v). Pub. L. 98–369, §102(d)(2), added cl. (v).

Subsec. (e)(2). Pub. L. 98–369, §721(g)(2), substituted ''as provided in paragraph (3) and subparagraphs (C) and (D) of paragraph (6)'' for ''as provided in paragraph (3)''.

Subsec. (e)(3)(B). Pub. L. 98–369, §721(h), struck out ''All'' in heading, and substituted ''subsection'' for ''paragraph'' and ''S short year and all persons who are shareholders in the corporation on the first day of the C short year'' for ''S termination year'' in text.

Subsec. (e)(6)(C). Pub. L. 98–369, §721(g)(1), added subpar. (C).

Subsec. (e)(6)(D). Pub. L. 98–369, §721(t), added subpar. (D).

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–28, title VIII, §8231(b), May 25, 2007, 121 Stat. 197, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [May 25, 2007].''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 413(d) of Pub. L. 109–135, set out as a note under section 1361 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, §231(c)(2), Oct. 22, 2004, 118 Stat. 1434, provided that: ''The amendments made by subsection (b) [amending this section] shall apply to elections and terminations made after December 31, 2004.''

Pub. L. 108–357, title II, §237(b), Oct. 22, 2004, 118 Stat. 1436, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2004.''

Pub. L. 108–357, title II, §238(b), Oct. 22, 2004, 118 Stat. 1436, provided that: ''The amendments made by this section [amending this section] shall apply to elections made and terminations made after December 31, 2004.''

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1305(c) of Pub. L. 104–188 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply with respect to elections for taxable years beginning after December 31, 1982.''

Amendment by sections 1308(c) and 1311(b)(1) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1317(a) of Pub. L. 104–188, set out as a note under section 641 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 102(d)(2) of Pub. L. 98–369 applicable to positions established after July 18, 1984, in taxable years ending after that date except as otherwise provided, see section 102(f), (g) of Pub. L. 98–369, set out as a note under section 1256 of this title.

Amendment by section 721(g), (h), (*l*), (t) of Pub. L. 98–369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97–354, except that amendment by section 721(g)(1) is not applicable to certain qualified stock purchases, amendment by section 721(*l*) is applicable to any election under this section (or any corresponding provision of prior law) made after Oct. 19, 1982, and amendment by section 721(t) is not applicable to certain S termination years, see section 721(y) of Pub. L. 98–369, set out as a note under section 1361 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1982, except that in the case of a taxable year beginning during 1982, subsec. (d)(3) of this section and sections 1366(f)(3) and 1375 of this title shall apply, and section 1372(e)(5) of this title as in effect on the day before Oct. 19, 1982, shall not apply, see section 6(a), (b)(3) of Pub. L. 97–354, set out as a note under section 1361 of this title. For additional provisions relating to the treatment of certain elections under prior law for purposes of subsec. (g) of this section, see section 6(e) of Pub. L. 97–354, set out as a note under section 1361 of this title.

TREATMENT OF CERTAIN ELECTIONS UNDER PRIOR LAW

Section 1317(b) of Pub. L. 104–188 provided that: ''For purposes of section 1362(g) of the Internal Revenue Code of 1986 (relating to election after termination), any termination under section 1362(d) of such Code in a taxable year beginning before January 1, 1997, shall not be taken into account.''

SUBCHAPTER S ELECTION

Section 102(d)(3) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, title XVIII, § 1808(a)(2), Oct. 22, 1986, 100 Stat. 2095, 2817, provided that: ''If a commodities dealer or an options dealer—

''(A) becomes a small business corporation (as defined in section 1361(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) at any time before the close of the 75th day after the date of the enactment of this Act [July 18, 1984], and

''(B) makes the election under section 1362(a) of such Code before the close of such 75th day,

then such dealer shall be treated as having received approval for and adopted a taxable year beginning on the first day during 1984 on which it was a small business corporation (as so defined) or such other day as may be permitted under regulations and ending on the date determined under section 1378 of such Code and such election shall be effective for such taxable year.''

§ 1363. Effect of election on corporation

(a) General rule

Except as otherwise provided in this subchapter, an S corporation shall not be subject to the taxes imposed by this chapter.

(b) Computation of corporation's taxable income

The taxable income of an S corporation shall be computed in the same manner as in the case of an individual, except that—

(1) the items described in section 1366(a)(1)(A) shall be separately stated,

(2) the deductions referred to in section 703(a)(2) shall not be allowed to the corporation,

(3) section 248 shall apply, and

(4) section 291 shall apply if the S corporation (or any predecessor) was a C corporation for any of the 3 immediately preceding taxable years.

(c) Elections of the S corporation

(1) In general

Except as provided in paragraph (2), any election affecting the computation of items derived from an S corporation shall be made by the corporation.

(2) Exceptions

In the case of an S corporation, elections under the following provisions shall be made by each shareholder separately—

(A) section 617 (relating to deduction and recapture of certain mining exploration expenditures), and

(B) section 901 (relating to taxes of foreign countries and possessions of the United States).

(d) Recapture of LIFO benefits

(1) In general

If—

(A) an S corporation was a C corporation for the last taxable year before the first taxable year for which the election under section 1362(a) was effective, and

(B) the corporation inventoried goods under the LIFO method for such last taxable year,

the LIFO recapture amount shall be included in the gross income of the corporation for such last taxable year (and appropriate adjustments to the basis of inventory shall be made to take into account the amount included in gross income under this paragraph).

(2) Additional tax payable in installments

(A) In general

Any increase in the tax imposed by this chapter by reason of this subsection shall be payable in 4 equal installments.

(B) Date for payment of installments

The first installment under subparagraph (A) shall be paid on or before the due date (determined without regard to extensions) for the return of the tax imposed by this chapter for the last taxable year for which the corporation was a C corporation and the 3 succeeding installments shall be paid on or before the due date (as so determined) for

the corporation's return for the 3 succeeding taxable years.

(C) No interest for period of extension

Notwithstanding section 6601(b), for purposes of section 6601, the date prescribed for the payment of each installment under this paragraph shall be determined under this paragraph.

(3) LIFO recapture amount

For purposes of this subsection, the term ''LIFO recapture amount'' means the amount (if any) by which—

(A) the inventory amount of the inventory asset under the first-in, first-out method authorized by section 471, exceeds

(B) the inventory amount of such assets under the LIFO method.

For purposes of the preceding sentence, inventory amounts shall be determined as of the close of the last taxable year referred to in paragraph (1).

(4) Other definitions

For purposes of this subsection—

(A) LIFO method

The term ''LIFO method'' means the method authorized by section 472.

(B) Inventory assets

The term ''inventory assets'' means stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year.

(C) Method of determining inventory amount

The inventory amount of assets under a method authorized by section 471 shall be determined—

(i) if the corporation uses the retail method of valuing inventories under section 472, by using such method, or

(ii) if clause (i) does not apply, by using cost or market, whichever is lower.

(D) Not treated as member of affiliated group

Except as provided in regulations, the corporation referred to in paragraph (1) shall not be treated as a member of an affiliated group with respect to the amount included in gross income under paragraph (1).

(5) Special rule

Sections 1367(a)(2)(D) and 1371(c)(1) shall not apply with respect to any increase in the tax imposed by reason of this subsection.

(Added Pub. L. 97–354, §2, Oct. 19, 1982, 96 Stat. 1676; amended Pub. L. 98–369, div. A, title VII, §721(a), (b)(1), (p), July 18, 1984, 98 Stat. 966, 970; Pub. L. 99–514, title V, §511(d)(2)(C), title VI, §632(b), title VII, §701(e)(4)(J), Oct. 22, 1986, 100 Stat. 2249, 2277, 2343; Pub. L. 100–203, title X, §10227(a), Dec. 22, 1987, 101 Stat. 1330–416; Pub. L. 100–647, title I, §1006(f)(7), title II, §2004(n), Nov. 10, 1988, 102 Stat. 3407, 3608; Pub. L. 109–135, title IV, §411(a), Dec. 21, 2005, 119 Stat. 2636.)

AMENDMENTS

2005—Subsec. (d)(5). Pub. L. 109–135 added par. (5).

1988—Subsec. (d). Pub. L. 100–647, §1006(f)(7), struck out subsec. (d) which related to distributions of appreciated property.

Subsec. (d)(4)(D). Pub. L. 100–647, §2004(n), added subpar. (D).

Subsec. (e). Pub. L. 100–647, §1006(f)(7), struck out subsec. (e) which provided that subsec. (d) not apply to reorganizations, etc.

1987—Subsec. (d). Pub. L. 100–203 added subsec. (d) relating to recapture of LIFO benefits.

1986—Subsec. (a). Pub. L. 99–514, §701(e)(4)(J), struck out ''and in section 58(d)'' after ''this subchapter''.

Subsec. (c)(2). Pub. L. 99–514, §511(d)(2)(C), redesignated subpars. (B) and (C) as (A) and (B), respectively, and struck out former subpar. (A) which read as follows: ''section 163(d) (relating to limitation on interest on investment indebtedness),''.

Subsec. (e). Pub. L. 99–514, §632(b), amended subsec. (e) generally, substituting ''reorganizations, etc.'' for ''complete liquidations and reorganizations'', in heading and in text struck out reference to property in complete liquidation of the corporation.

1984—Subsec. (b)(4). Pub. L. 98–369, §721(p), added par. (4).

Subsec. (c)(2). Pub. L. 98–369, §721(b)(1), redesignated subpars. (B) to (D) as (A) to (C), respectively, and struck out subpar. (A) which provided ''subsection (b)(5) or (d)(4) of section 108 (relating to income from discharge of indebtedness),''.

Subsec. (d). Pub. L. 98–369, §721(a)(2), substituted ''Except as provided in subsection (e), if'' for ''If''.

Subsec. (e). Pub. L. 98–369, §721(a)(1), added subsec. (e).

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–135, title IV, §411(b), Dec. 21, 2005, 119 Stat. 2636, provided that: ''The amendment made by this section [amending this section] shall take effect as if included in section 10227 of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1006(f)(7) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 2004(n) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10227(b) of Pub. L. 100–203 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2) the amendment made by subsection (a) [amending this section] shall apply in the case of elections made after December 17, 1987.

''(2) EXCEPTION.—The amendment made by subsection (a) shall not apply in the case of any election made by a corporation after December 17, 1987, and before January 1, 1989, if, on or before December 17, 1987—

''(A) there was a resolution adopted by the board of directors of such corporation to make an election under subchapter S of chapter 1 of the Internal Revenue Code of 1986, or

''(B) there was a ruling request with respect to the business filed with the Internal Revenue Service expressing an intent to make such an election.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 511(d)(2)(C) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 511(e) of Pub. L. 99–514, set out as a note under section 163 of this title.

Amendment by section 632(b) of Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liq-

uidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

Amendment by section 701(e)(4)(J) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97–354, see section 721(y)(1) of Pub. L. 98–369, set out as a note under section 1361 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as a note under section 1361 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(4)(J) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PART II—TAX TREATMENT OF SHAREHOLDERS

Sec.
1366. Pass-thru of items to shareholders.
1367. Adjustments to basis of stock of shareholders, etc.
1368. Distributions.

§ 1366. Pass-thru of items to shareholders

(a) Determination of shareholder's tax liability

(1) In general

In determining the tax under this chapter of a shareholder for the shareholder's taxable year in which the taxable year of the S corporation ends (or for the final taxable year of a shareholder who dies, or of a trust or estate which terminates, before the end of the corporation's taxable year), there shall be taken into account the shareholder's pro rata share of the corporation's—

(A) items of income (including tax-exempt income), loss, deduction, or credit the separate treatment of which could affect the liability for tax of any shareholder, and

(B) nonseparately computed income or loss.

For purposes of the preceding sentence, the items referred to in subparagraph (A) shall include amounts described in paragraph (4) or (6) of section 702(a).

(2) Nonseparately computed income or loss defined

For purposes of this subchapter, the term ''nonseparately computed income or loss'' means gross income minus the deductions allowed to the corporation under this chapter, determined by excluding all items described in paragraph (1)(A).

(b) Character passed thru

The character of any item included in a shareholder's pro rata share under paragraph (1) of subsection (a) shall be determined as if such item were realized directly from the source from which realized by the corporation, or incurred in the same manner as incurred by the corporation.

(c) Gross income of a shareholder

In any case where it is necessary to determine the gross income of a shareholder for purposes of this title, such gross income shall include the shareholder's pro rata share of the gross income of the corporation.

(d) Special rules for losses and deductions

(1) Cannot exceed shareholder's basis in stock and debt

The aggregate amount of losses and deductions taken into account by a shareholder under subsection (a) for any taxable year shall not exceed the sum of—

(A) the adjusted basis of the shareholder's stock in the S corporation (determined with regard to paragraphs (1) and (2)(A) of section 1367(a) for the taxable year), and

(B) the shareholder's adjusted basis of any indebtedness of the S corporation to the shareholder (determined without regard to any adjustment under paragraph (2) of section 1367(b) for the taxable year).

(2) Indefinite carryover of disallowed losses and deductions

(A) In general

Except as provided in subparagraph (B), any loss or deduction which is disallowed for any taxable year by reason of paragraph (1) shall be treated as incurred by the corporation in the succeeding taxable year with respect to that shareholder.

(B) Transfers of stock between spouses or incident to divorce

In the case of any transfer described in section 1041(a) of stock of an S corporation, any loss or deduction described in subparagraph (A) with respect such stock shall be treated as incurred by the corporation in the succeeding taxable year with respect to the transferee.

(3) Carryover of disallowed losses and deductions to post-termination transition period

(A) In general

If for the last taxable year of a corporation for which it was an S corporation a loss or deduction was disallowed by reason of paragraph (1), such loss or deduction shall be treated as incurred by the shareholder on the last day of any post-termination transition period.

(B) Cannot exceed shareholder's basis in stock

The aggregate amount of losses and deductions taken into account by a shareholder under subparagraph (A) shall not exceed the adjusted basis of the shareholder's stock in

the corporation (determined at the close of the last day of the post-termination transition period and without regard to this paragraph).

(C) Adjustment in basis of stock

The shareholder's basis in the stock of the corporation shall be reduced by the amount allowed as a deduction by reason of this paragraph.

(D) At-risk limitations

To the extent that any increase in adjusted basis described in subparagraph (B) would have increased the shareholder's amount at risk under section 465 if such increase had occurred on the day preceding the commencement of the post-termination transition period, rules similar to the rules described in subparagraphs (A) through (C) shall apply to any losses disallowed by reason of section 465(a).

(4) Application of limitation on charitable contributions

In the case of any charitable contribution of property to which the second sentence of section 1367(a)(2) applies, paragraph (1) shall not apply to the extent of the excess (if any) of—

(A) the shareholder's pro rata share of such contribution, over

(B) the shareholder's pro rata share of the adjusted basis of such property.

(e) Treatment of family group

If an individual who is a member of the family (within the meaning of section 704(e)(3)) of one or more shareholders of an S corporation renders services for the corporation or furnishes capital to the corporation without receiving reasonable compensation therefor, the Secretary shall make such adjustments in the items taken into account by such individual and such shareholders as may be necessary in order to reflect the value of such services or capital.

(f) Special rules

(1) Subsection (a) not to apply to credit allowable under section 34

Subsection (a) shall not apply with respect to any credit allowable under section 34 (relating to certain uses of gasoline and special fuels).

(2) Treatment of tax imposed on built-in gains

If any tax is imposed under section 1374 for any taxable year on an S corporation, for purposes of subsection (a), the amount so imposed shall be treated as a loss sustained by the S corporation during such taxable year. The character of such loss shall be determined by allocating the loss proportionately among the recognized built-in gains giving rise to such tax.

(3) Reduction in pass-thru for tax imposed on excess net passive income

If any tax is imposed under section 1375 for any taxable year on an S corporation, for purposes of subsection (a), each item of passive investment income shall be reduced by an amount which bears the same ratio to the amount of such tax as—

(A) the amount of such item, bears to

(B) the total passive investment income for the taxable year.

(Added Pub. L. 97–354, §2, Oct. 19, 1982, 96 Stat. 1677; amended Pub. L. 98–369, div. A, title IV, §474(r)(26), title VII, §735(c)(16), July 18, 1984, 98 Stat. 844, 985; Pub. L. 99–514, title VI, §632(c)(2), title VII, §701(e)(4)(K), Oct. 22, 1986, 100 Stat. 2277, 2343; Pub. L. 100–647, title I, §1006(f)(5)(E), Nov. 10, 1988, 102 Stat. 3406; Pub. L. 101–239, title VII, §7811(c)(7), Dec. 19, 1989, 103 Stat. 2407; Pub. L. 104–188, title I, §§1302(e), 1307(c)(3)(A), 1309(a)(1), 1312, Aug. 20, 1996, 110 Stat. 1779, 1782, 1783, 1784; Pub. L. 108–357, title II, §235(a), Oct. 22, 2004, 118 Stat. 1435; Pub. L. 110–172, §3(b), Dec. 29, 2007, 121 Stat. 2474.)

AMENDMENTS

2007—Subsec. (d)(4). Pub. L. 110–172 added par. (4).

2004—Subsec. (d)(2). Pub. L. 108–357 reenacted heading without change and amended text of par. (2) generally. Prior to amendment, text read as follows: ''Any loss or deduction which is disallowed for any taxable year by reason of paragraph (1) shall be treated as incurred by the corporation in the succeeding taxable year with respect to that shareholder.''

1996—Subsec. (a)(1). Pub. L. 104–188, §1302(e), inserted '', or of a trust or estate which terminates,'' after ''who dies'' in introductory provisions.

Subsec. (d)(1)(A). Pub. L. 104–188, §1309(a)(1), substituted ''paragraphs (1) and (2)(A)'' for ''paragraph (1)''.

Subsec. (d)(3)(D). Pub. L. 104–188, §1312, added subpar. (D).

Subsec. (g). Pub. L. 104–188, §1307(c)(3)(A), struck out subsec. (g) which provided a cross reference to subchapter D of chapter 63 of this title.

1989—Subsec. (f)(2). Pub. L. 101–239 substituted ''Treatment of tax imposed on built-in gains'' for ''Reduction in pass-thru for tax imposed on built-in gains'' in heading and amended text generally. Prior to amendment, text read as follows: ''If any tax is imposed under section 1374 for any taxable year on an S corporation, for purposes of subsection (a), the amount of each recognized built-in gain (within the meaning of section 1374) for such taxable year shall be reduced by its proportionate share of such tax.''

1988—Subsec. (f)(2). Pub. L. 100–647 substituted ''within the meaning of section 1374'' for ''as defined in section 1374(d)(2)''.

1986—Subsec. (f)(2). Pub. L. 99–514, §632(c)(2), amended par. (2) generally. Prior to amendment, par. (2), reduction in pass-thru for tax imposed on capital gain, read as follows: ''If any tax is imposed under section 1374 for any taxable year on an S corporation, for purposes of subsection (a)—

''(A) the amount of the corporation's long-term capital gains for the taxable year shall be reduced by the amount of such tax, and

''(B) if the amount of such tax exceeds the amount of such long-term capital gains, the corporation's gains from sales or exchanges of property described in section 1231 shall be reduced by the amount of such excess.

For purposes of the preceding sentence, the term 'long-term capital gain' shall not include any gain from the sale or exchange of property described in section 1231.''

Pub. L. 99–514, §701(e)(4)(K), struck out ''56 or'' before ''1374''.

1984—Subsec. (f). Pub. L. 98–369, §474(r)(26), substituted ''section 34'' for ''section 39'' in heading and text.

Subsec. (f)(1). Pub. L. 98–369, §735(c)(16), substituted ''and special fuels'' for '', special fuels, and lubricating oil''.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provisions of the Pension Protection Act of 2006,

Pub. L. 109–280, to which such amendment relates, see section 3(j) of Pub. L. 110–172, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, § 235(b), Oct. 22, 2004, 118 Stat. 1435, as amended by Pub. L. 109–135, title IV, § 403(c), Dec. 21, 2005, 119 Stat. 2620, provided that: ''The amendment made by this section [amending this section] shall apply to transfers after December 31, 2004.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1317(a) of Pub. L. 104–188, set out as a note under section 641 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 632(c)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, but only in cases where the return for the taxable year is filed pursuant to an S election made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, as amended, set out as an Effective Date note under section 336 of this title.

Amendment by section 701(e)(4)(K) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(26) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 735(c)(16) of Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1982, except that in the case of a taxable year beginning during 1982, subsec. (f)(3) of this section and sections 1362(d)(3) and 1375 of this title shall apply, and section 1372(e)(5) of this title as in effect on the day before Oct. 19, 1982, shall not apply, see section 6(a), (b)(3) of Pub. L. 97–354, set out as a note under section 1361 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(4)(K) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

§ 1367. Adjustments to basis of stock of shareholders, etc.

(a) General rule

(1) Increases in basis

The basis of each shareholder's stock in an S corporation shall be increased for any period by the sum of the following items determined with respect to that shareholder for such period:

(A) the items of income described in subparagraph (A) of section 1366(a)(1),

(B) any nonseparately computed income determined under subparagraph (B) of section 1366(a)(1), and

(C) the excess of the deductions for depletion over the basis of the property subject to depletion.

(2) Decreases in basis

The basis of each shareholder's stock in an S corporation shall be decreased for any period (but not below zero) by the sum of the following items determined with respect to the shareholder for such period:

(A) distributions by the corporation which were not includible in the income of the shareholder by reason of section 1368,

(B) the items of loss and deduction described in subparagraph (A) of section 1366(a)(1),

(C) any nonseparately computed loss determined under subparagraph (B) of section 1366(a)(1),

(D) any expense of the corporation not deductible in computing its taxable income and not properly chargeable to capital account, and

(E) the amount of the shareholder's deduction for depletion for any oil and gas property held by the S corporation to the extent such deduction does not exceed the proportionate share of the adjusted basis of such property allocated to such shareholder under section 613A(c)(11)(B).

The decrease under subparagraph (B) by reason of a charitable contribution (as defined in section 170(c)) of property shall be the amount equal to the shareholder's pro rata share of the adjusted basis of such property. The preceding sentence shall not apply to contributions made in taxable years beginning after December 31, 2011.

(b) Special rules

(1) Income items

An amount which is required to be included in the gross income of a shareholder and shown on his return shall be taken into account under subparagraph (A) or (B) of subsection (a)(1) only to the extent such amount is included in the shareholder's gross income on his return, increased or decreased by any adjustment of such amount in a redetermination of the shareholder's tax liability.

(2) Adjustments in basis of indebtedness

(A) Reduction of basis

If for any taxable year the amounts specified in subparagraphs (B), (C), (D), and (E) of

subsection (a)(2) exceed the amount which reduces the shareholder's basis to zero, such excess shall be applied to reduce (but not below zero) the shareholder's basis in any indebtedness of the S corporation to the shareholder.

(B) Restoration of basis

If for any taxable year beginning after December 31, 1982, there is a reduction under subparagraph (A) in the shareholder's basis in the indebtedness of an S corporation to a shareholder, any net increase (after the application of paragraphs (1) and (2) of subsection (a)) for any subsequent taxable year shall be applied to restore such reduction in basis before any of it may be used to increase the shareholder's basis in the stock of the S corporation.

(3) Coordination with sections 165(g) and 166(d)

This section and section 1366 shall be applied before the application of sections 165(g) and 166(d) to any taxable year of the shareholder or the corporation in which the security or debt becomes worthless.

(4) Adjustments in case of inherited stock

(A) In general

If any person acquires stock in an S corporation by reason of the death of a decedent or by bequest, devise, or inheritance, section 691 shall be applied with respect to any item of income of the S corporation in the same manner as if the decedent had held directly his pro rata share of such item.

(B) Adjustments to basis

The basis determined under section 1014 of any stock in an S corporation shall be reduced by the portion of the value of the stock which is attributable to items constituting income in respect of the decedent.

(Added Pub. L. 97–354, §2, Oct. 19, 1982, 96 Stat. 1679; amended Pub. L. 98–369, div. A, title VII, §§721(d), (w), 722(e)(2), July 18, 1984, 98 Stat. 967, 971, 974; Pub. L. 104–188, title I, §§1313(a), 1702(h)(14), Aug. 20, 1996, 110 Stat. 1785, 1874; Pub. L. 109–280, title XII, §1203(a), Aug. 17, 2006, 120 Stat. 1066; Pub. L. 110–343, div. C, title III, §307(a), Oct. 3, 2008, 122 Stat. 3869; Pub. L. 111–312, title VII, §752(a), Dec. 17, 2010, 124 Stat. 3321.)

AMENDMENTS

2010—Subsec. (a)(2). Pub. L. 111–312 substituted ''December 31, 2011'' for ''December 31, 2009'' in concluding provisions.

2008—Subsec. (a)(2). Pub. L. 110–343 substituted ''December 31, 2009'' for ''December 31, 2007'' in concluding provisions.

2006—Subsec. (a)(2). Pub. L. 109–280, which directed the addition of concluding provisions to section 1367(a)(2), without specifying the act to be amended, was executed to subsec. (a)(2) of this section, which is section 1367 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

1996—Subsec. (a)(2)(E). Pub. L. 104–188, §1702(h)(14), substituted ''section 613A(c)(11)(B)'' for ''section 613A(c)(13)(B)''.

Subsec. (b)(4). Pub. L. 104–188, §1313(a), added par. (4).

1984—Subsec. (a)(2)(E). Pub. L. 98–369, §722(e)(2), substituted ''for any oil and gas property held by the S corporation to the extent such deduction does not exceed the proportionate share of the adjusted basis of such property allocated to such shareholder under section 613A(c)(13)(B)'' for ''under section 611 with respect to oil and gas wells''.

Subsec. (b)(2)(B). Pub. L. 98–369, §721(w), substituted ''for any taxable year beginning after December 31, 1982, there is'' for ''for any taxable year there is''.

Subsec. (b)(3). Pub. L. 98–369, §721(d), inserted ''and 166(d)'' in heading and text.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §752(b), Dec. 17, 2010, 124 Stat. 3321, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made in taxable years beginning after December 31, 2009.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, §307(b), Oct. 3, 2008, 122 Stat. 3869, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made in taxable years beginning after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title XII, §1203(b), Aug. 17, 2006, 120 Stat. 1066, provided that: ''The amendment made by this section [amending this section] shall apply to contributions made in taxable years beginning after December 31, 2005.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1313(b) of Pub. L. 104–188 provided that: ''The amendment made by subsection (a) [amending this section] shall apply in the case of decedents dying after the date of the enactment of this Act [Aug. 20, 1996].''

Amendment by section 1702(h)(14) of Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 721(d), (w) of Pub. L. 98–369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97–354, see section 721(y)(1) of Pub. L. 98–369, set out as a note under section 1361 of this title.

Section 722(b)(3)(B) of Pub. L. 98–369 provided that: ''The amendment made by paragraph (2) [amending this section] shall apply to taxable years beginning after December 31, 1982.''

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as a note under section 1361 of this title.

§ 1368. Distributions

(a) General rule

A distribution of property made by an S corporation with respect to its stock to which (but for this subsection) section 301(c) would apply shall be treated in the manner provided in subsection (b) or (c), whichever applies.

(b) S corporation having no earnings and profits

In the case of a distribution described in subsection (a) by an S corporation which has no accumulated earnings and profits—

(1) Amount applied against basis

The distribution shall not be included in gross income to the extent that it does not exceed the adjusted basis of the stock.

(2) Amount in excess of basis

If the amount of the distribution exceeds the adjusted basis of the stock, such excess shall be treated as gain from the sale or exchange of property.

(c) S corporation having earnings and profits

In the case of a distribution described in subsection (a) by an S corporation which has accumulated earnings and profits—

(1) Accumulated adjustments account

That portion of the distribution which does not exceed the accumulated adjustments account shall be treated in the manner provided by subsection (b).

(2) Dividend

That portion of the distribution which remains after the application of paragraph (1) shall be treated as a dividend to the extent it does not exceed the accumulated earnings and profits of the S corporation.

(3) Treatment of remainder

Any portion of the distribution remaining after the application of paragraph (2) of this subsection shall be treated in the manner provided by subsection (b).

Except to the extent provided in regulations, if the distributions during the taxable year exceed the amount in the accumulated adjustments account at the close of the taxable year, for purposes of this subsection, the balance of such account shall be allocated among such distributions in proportion to their respective sizes.

(d) Certain adjustments taken into account

Subsections (b) and (c) shall be applied by taking into account (to the extent proper)—

(1) the adjustments to the basis of the shareholder's stock described in section 1367, and

(2) the adjustments to the accumulated adjustments account which are required by subsection (e)(1).

In the case of any distribution made during any taxable year, the adjusted basis of the stock shall be determined with regard to the adjustments provided in paragraph (1) of section 1367(a) for the taxable year.

(e) Definitions and special rules

For purposes of this section—

(1) Accumulated adjustments account

(A) In general

Except as otherwise provided in this paragraph, the term ''accumulated adjustments account'' means an account of the S corporation which is adjusted for the S period in a manner similar to the adjustments under section 1367 (except that no adjustment shall be made for income (and related expenses) which is exempt from tax under this title and the phrase ''(but not below zero)'' shall be disregarded in section 1367(a)(2)) and no adjustment shall be made for Federal taxes attributable to any taxable year in which the corporation was a C corporation.

(B) Amount of adjustment in the case of redemptions

In the case of any redemption which is treated as an exchange under section 302(a) or 303(a), the adjustment in the accumulated adjustments account shall be an amount which bears the same ratio to the balance in such account as the number of shares redeemed in such redemption bears to the number of shares of stock in the corporation immediately before such redemption.

(C) Net loss for year disregarded

(i) In general

In applying this section to distributions made during any taxable year, the amount in the accumulated adjustments account as of the close of such taxable year shall be determined without regard to any net negative adjustment for such taxable year.

(ii) Net negative adjustment

For purposes of clause (i), the term ''net negative adjustment'' means, with respect to any taxable year, the excess (if any) of—

(I) the reductions in the account for the taxable year (other than for distributions), over

(II) the increases in such account for such taxable year.

(2) S period

The term ''S period'' means the most recent continuous period during which the corporation has been an S corporation. Such period shall not include any taxable year beginning before January 1, 1983.

(3) Election to distribute earnings first

(A) In general

An S corporation may, with the consent of all of its affected shareholders, elect to have paragraph (1) of subsection (c) not apply to all distributions made during the taxable year for which the election is made.

(B) Affected shareholder

For purposes of subparagraph (A), the term ''affected shareholder'' means any shareholder to whom a distribution is made by the S corporation during the taxable year.

(f) Restricted bank director stock

If a director receives a distribution (not in part or full payment in exchange for stock) from an S corporation with respect to any restricted bank director stock (as defined in section 1361(f)), the amount of such distribution—

(1) shall be includible in gross income of the director, and

(2) shall be deductible by the corporation for the taxable year of such corporation in which or with which ends the taxable year in which such amount in[1] included in the gross income of the director.

(Added Pub. L. 97–354, § 2, Oct. 19, 1982, 96 Stat. 1680; amended Pub. L. 97–448, title III, § 305(d)(2), Jan. 12, 1983, 96 Stat. 2399; Pub. L. 98–369, div. A, title VII, § 721(r), July 18, 1984, 98 Stat. 970; Pub. L. 99–514, title XVIII, § 1879(m)(1)(B), Oct. 22, 1986, 100 Stat. 2910; Pub. L. 104–188, title I, § 1309(a)(2)–(c), Aug. 20, 1996, 110 Stat. 1783; Pub. L. 110–28, title VIII, § 8232(b), May 25, 2007, 121 Stat. 197.)

[1] So in original. Probably should be ''is''.

AMENDMENTS

2007—Subsec. (f). Pub. L. 110–28 added subsec. (f).

1996—Subsec. (d). Pub. L. 104–188, §1309(a)(2), inserted at end ''In the case of any distribution made during any taxable year, the adjusted basis of the stock shall be determined with regard to the adjustments provided in paragraph (1) of section 1367(a) for the taxable year.''

Subsec. (e)(1)(A). Pub. L. 104–188, §1309(c), substituted ''as otherwise provided in this paragraph'' for ''as provided in subparagraph (B)'' and ''section 1367(a)(2)'' for ''section 1367(b)(2)(A)''.

Subsec. (e)(1)(C). Pub. L. 104–188, §1309(b), added subpar. (C).

1986—Subsec. (e)(1)(A). Pub. L. 99–514 inserted ''and no adjustment shall be made for Federal taxes attributable to any taxable year in which the corporation was a C corporation'' before period at end.

1984—Subsec. (c). Pub. L. 98–369, §721(r)(2), inserted ''Except to the extent provided in regulations, if the distributions during the taxable year exceed the amount in the accumulated adjustments account at the close of the taxable year, for purposes of this subsection, the balance of such account shall be allocated among such distributions in proportion to their respective sizes.''

Subsec. (e)(1)(A). Pub. L. 98–369, §721(r)(1), substituted ''(except that no adjustment shall be made for income (and related expenses) which is exempt from tax under this title and the phrase '(but not below zero)' shall be disregarded in section 1367(b)(2)(A))'' for ''(except that no adjustment shall be made for income which is exempt from tax under this title and no adjustment shall be made for any expense not deductible in computing the corporation's taxable income and not properly chargeable to capital account)''.

1983—Subsec. (e)(3). Pub. L. 97–448 added par. (3).

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–28 applicable to taxable years beginning after Dec. 31, 2006, with special rule for treatment as second class of stock, see section 8232(c) of Pub. L. 110–28, set out as a note under section 1361 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1317(a) of Pub. L. 104–188, set out as a note under section 641 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1982, see section 1879(m)(2) of Pub. L. 99–514, set out as a note under section 1361 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97–354, see section 721(y)(1) of Pub. L. 98–369, set out as a note under section 1361 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 311(c)(4) of Pub. L. 97–448 provided that: ''The amendments made by subsection (d) of section 305 [amending this section and sections 221, 1374, and 4975 of this title, enacting provisions set out as a note under section 1361 of this title, and amending provisions set out as a note under section 1361 of this title] shall take effect on the date of the enactment of the Subchapter S Revision Act of 1982 [Oct. 19, 1982].''

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as a note under section 1361 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

PART III—SPECIAL RULES

Sec.
1371. Coordination with subchapter C.
1372. Partnership rules to apply for fringe benefit purposes.
1373. Foreign income.
1374. Tax imposed on certain built-in gains.
1375. Tax imposed when passive investment income of corporation having accumulated earnings and profits exceeds 25 percent of gross receipts.

AMENDMENTS

1996—Pub. L. 104–188, title I, §1311(b)(2)(D), Aug. 20, 1996, 110 Stat. 1784, substituted ''accumulated'' for ''subchapter C'' in item 1375.

1986—Pub. L. 99–514, title VI, §632(d), Oct. 22, 1986, 100 Stat. 2277, substituted ''built-in'' for ''capital'' in item 1374.

§ 1371. Coordination with subchapter C

(a) Application of subchapter C rules

Except as otherwise provided in this title, and except to the extent inconsistent with this subchapter, subchapter C shall apply to an S corporation and its shareholders.

(b) No carryover between C year and S year

(1) From C year to S year

No carryforward, and no carryback, arising for a taxable year for which a corporation is a C corporation may be carried to a taxable year for which such corporation is an S corporation.

(2) No carryover from S year

No carryforward, and no carryback, shall arise at the corporate level for a taxable year for which a corporation is an S corporation.

(3) Treatment of S year as elapsed year

Nothing in paragraphs (1) and (2) shall prevent treating a taxable year for which a corporation is an S corporation as a taxable year for purposes of determining the number of taxable years to which an item may be carried back or carried forward.

(c) Earnings and profits

(1) In general

Except as provided in paragraphs (2) and (3) and subsection (d)(3), no adjustment shall be made to the earnings and profits of an S corporation.

(2) Adjustments for redemptions, liquidations, reorganizations, divisives, etc.

In the case of any transaction involving the application of subchapter C to any S corporation, proper adjustment to any accumulated earnings and profits of the corporation shall be made.

(3) Adjustments in case of distributions treated as dividends under section 1368(c)(2)

Paragraph (1) shall not apply with respect to that portion of a distribution which is treated as a dividend under section 1368(c)(2).

(d) Coordination with investment credit recapture

(1) No recapture by reason of election

Any election under section 1362 shall be treated as a mere change in the form of conducting a trade or business for purposes of the second sentence of section 50(a)(4).

(2) Corporation continues to be liable

Notwithstanding an election under section 1362, an S corporation shall continue to be liable for any increase in tax under section 49(b) or 50(a) attributable to credits allowed for taxable years for which such corporation was not an S corporation.

(3) Adjustment to earnings and profits for amount of recapture

Paragraph (1) of subsection (c) shall not apply to any increase in tax under section 49(b) or 50(a) for which the S corporation is liable.

(e) Cash distributions during post-termination transition period

(1) In general

Any distribution of money by a corporation with respect to its stock during a post-termination transition period shall be applied against and reduce the adjusted basis of the stock, to the extent that the amount of the distribution does not exceed the accumulated adjustments account (within the meaning of section 1368(e)).

(2) Election to distribute earnings first

An S corporation may elect to have paragraph (1) not apply to all distributions made during a post-termination transition period described in section 1377(b)(1)(A). Such election shall not be effective unless all shareholders of the S corporation to whom distributions are made by the S corporation during such post-termination transition period consent to such election.

(Added Pub. L. 97–354, § 2, Oct. 19, 1982, 96 Stat. 1681; amended Pub. L. 98–369, div. A, title VII, § 721(e), (*o*), (x)(3), July 18, 1984, 98 Stat. 967, 970, 971; Pub. L. 99–514, title XVIII, § 1899A(33), (34), Oct. 22, 1986, 100 Stat. 2960; Pub. L. 101–508, title XI, § 11813(b)(23), Nov. 5, 1990, 104 Stat. 1388–555; Pub. L. 104–188, title I, § 1310, Aug. 20, 1996, 110 Stat. 1784.)

PRIOR PROVISIONS

A prior section 1371, added Pub. L. 85–866, title I, § 64(a), Sept. 2, 1958, 72 Stat. 1650; amended Pub. L. 86–376, § 2(a), Sept. 23, 1959, 73 Stat. 699; Pub. L. 88–272, title II, § 233(a), Feb. 26, 1964, 78 Stat. 112; Pub. L. 94–455, title IX, § 902(a)(1), (2), (c)(1), (2), Oct. 4, 1976, 90 Stat. 1608, 1609; Pub. L. 95–600, title III, §§ 341, 342, title VII, § 701(y)(1), Nov. 6, 1978, 92 Stat. 2843, 2921; Pub. L. 96–589, § 5(d), Dec. 24, 1980, 94 Stat. 3406; Pub. L. 97–34, title II, §§ 233(a), 234(a), (b), Aug. 13, 1981, 95 Stat. 250, 251; Pub. L. 97–448, title I, § 102(i)(1), Jan. 12, 1983, 96 Stat. 2372, related to definitions applicable to election of small business corporations as to taxable status, prior to the general revision of this subchapter by section 2 of Pub. L. 97–354.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–188 reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

''(1) IN GENERAL.—Except as otherwise provided in this title, and except to the extent inconsistent with this subchapter, subchapter C shall apply to an S corporation and its shareholders.

''(2) S CORPORATION AS SHAREHOLDER TREATED LIKE INDIVIDUAL.—For purposes of subchapter C, an S corporation in its capacity as a shareholder of another corporation shall be treated as an individual.''

1990—Subsec. (d)(1). Pub. L. 101–508, § 11813(b)(23)(A), substituted ''section 50(a)(4)'' for ''section 47(b)''.

Subsec. (d)(2), (3). Pub. L. 101–508, § 11813(b)(23)(B), substituted ''section 49(b) or 50(a)'' for ''section 47''.

1986—Subsec. (e)(1). Pub. L. 99–514, § 1899A(33), inserted ''(within the meaning of section 1368(e))''.

Subsec. (e)(2). Pub. L. 99–514, § 1899A(34), struck out ''(within the meaning of section 1368(e))'' after ''to such election''.

1984—Subsec. (c)(1). Pub. L. 98–369, § 621(e)(2), substituted ''paragraphs (2) and (3) and subsection (d)(3)'' for ''paragraphs (2) and (3)''.

Subsec. (d)(3). Pub. L. 98–369, § 721(e)(1), added par. (3).

Subsec. (e). Pub. L. 98–369, § 721(*o*), amended subsec. (e) generally, designating existing provisions as par. (1) and adding par. (2).

Subsec. (e)(2). Pub. L. 98–369, § 721(x)(3), inserted ''(within the meaning of section 1368(e))''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1317(a) of Pub. L. 104–188, set out as a note under section 641 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97–354, see section 721(y)(1) of Pub. L. 98–369, set out as a note under section 1361 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as a note under section 1361 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 1372. Partnership rules to apply for fringe benefit purposes

(a) General rule

For purposes of applying the provisions of this subtitle which relate to employee fringe benefits—

(1) the S corporation shall be treated as a partnership, and

(2) any 2-percent shareholder of the S corporation shall be treated as a partner of such partnership.

(b) 2-percent shareholder defined

For purposes of this section, the term ''2-percent shareholder'' means any person who owns (or is considered as owning within the meaning of section 318) on any day during the taxable year of the S corporation more than 2 percent of the outstanding stock of such corporation or stock possessing more than 2 percent of the total combined voting power of all stock of such corporation.

(Added Pub. L. 97–354, § 2, Oct. 19, 1982, 96 Stat. 1682.)

PRIOR PROVISIONS

A prior section 1372, added Pub. L. 85–866, title I, § 64(a), Sept. 2, 1958, 72 Stat. 1650; amended Pub. L. 87–29, § 2, May 4, 1961, 75 Stat. 64; Pub. L. 89–389, §§ 2(b)(2), 3(a), Apr. 14, 1966, 80 Stat. 114; Pub. L. 91–683, § 1(a), Jan. 12, 1971, 84 Stat. 2067; Pub. L. 94–455, title IX, § 902(c)(3), title XIX, §§ 1901(a)(149), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1609, 1788, 1834; Pub. L. 95–600, title III, § 343, Nov. 6, 1978, 92 Stat. 2843; Pub. L. 95–628, § 5(a), (b), Nov. 10, 1978, 92 Stat. 3628, related to manner, effect, termination, etc., of an election not to be subject to taxes imposed under this chapter, prior to the general revision of this subchapter by section 2 of Pub. L. 97–354.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1982, except that in the case of a taxable year beginning during 1982, sections 1362(d)(3), 1366(f)(3), and 1375 of this title shall apply and subsec. (e)(5) of this section as in effect on the day before Oct. 19, 1982, shall not apply, see section 6(a), (b)(3), of Pub. L. 97–354, set out as a note under section 1361 of this title. For additional provisions relating to the treatment of existing fringe benefit plans and the application of this section, see section 6(d) of Pub. L. 97–354, set out as a note under section 1361 of this title.

§ 1373. Foreign income

(a) S corporation treated as partnership, etc.

For purposes of subparts A and F of part III, and part V, of subchapter N (relating to income from sources without the United States)—

(1) an S corporation shall be treated as a partnership, and

(2) the shareholders of such corporation shall be treated as partners of such partnership.

(b) Recapture of overall foreign loss

For purposes of section 904(f) (relating to recapture of overall foreign loss), the making or termination of an election to be treated as an S corporation shall be treated as a disposition of the business.

(Added Pub. L. 97–354, § 2, Oct. 19, 1982, 96 Stat. 1682.)

PRIOR PROVISIONS

A prior section 1373, added Pub. L. 85–866, title I, § 64(a), Sept. 2, 1958, 72 Stat. 1652; amended Pub. L. 89–389, § 2(b)(3), Apr. 14, 1966, 80 Stat. 114; Pub. L. 91–172, title III, § 301(b)(10), Dec. 30, 1969, 83 Stat. 586, related to taxation of corporation undistributed taxable income to shareholders, prior to the general revision of this subchapter by section 2 of Pub. L. 97–354.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as a note under section 1361 of this title.

§ 1374. Tax imposed on certain built-in gains

(a) General rule

If for any taxable year beginning in the recognition period an S corporation has a net recognized built-in gain, there is hereby imposed a tax (computed under subsection (b)) on the income of such corporation for such taxable year.

(b) Amount of tax

(1) In general

The amount of the tax imposed by subsection (a) shall be computed by applying the highest rate of tax specified in section 11(b) to the net recognized built-in gain of the S corporation for the taxable year.

(2) Net operating loss carryforwards from C years allowed

Notwithstanding section 1371(b)(1), any net operating loss carryforward arising in a taxable year for which the corporation was a C corporation shall be allowed for purposes of this section as a deduction against the net recognized built-in gain of the S corporation for the taxable year. For purposes of determining the amount of any such loss which may be carried to subsequent taxable years, the amount of the net recognized built-in gain shall be treated as taxable income. Rules similar to the rules of the preceding sentences of this paragraph shall apply in the case of a capital loss carryforward arising in a taxable year for which the corporation was a C corporation.

(3) Credits

(A) In general

Except as provided in subparagraph (B), no credit shall be allowable under part IV of subchapter A of this chapter (other than under section 34) against the tax imposed by subsection (a).

(B) Business credit carryforwards from C years allowed

Notwithstanding section 1371(b)(1), any business credit carryforward under section 39 arising in a taxable year for which the corporation was a C corporation shall be allowed as a credit against the tax imposed by subsection (a) in the same manner as if it were imposed by section 11. A similar rule shall apply in the case of the minimum tax credit under section 53 to the extent attributable to taxable years for which the corporation was a C corporation.

(4) Coordination with section 1201(a)

For purposes of section 1201(a)—

(A) the tax imposed by subsection (a) shall be treated as if it were imposed by section 11, and

(B) the amount of the net recognized built-in gain shall be treated as the taxable income.

(c) Limitations

(1) Corporations which were always S corporations

Subsection (a) shall not apply to any corporation if an election under section 1362(a) has been in effect with respect to such corporation for each of its taxable years. Except as provided in regulations, an S corporation and any predecessor corporation shall be treated as 1 corporation for purposes of the preceding sentence.

(2) Limitation on amount of recognized built-in gains

The amount of the net recognized built-in gain taken into account under this section for any taxable year shall not exceed the excess (if any) of—

(A) the net unrealized built-in gain, over

(B) the net recognized built-in gain for prior taxable years beginning in the recognition period.

(d) Definitions and special rules

For purposes of this section—

(1) Net unrealized built-in gain

The term ''net unrealized built-in gain'' means the amount (if any) by which—

(A) the fair market value of the assets of the S corporation as of the beginning of its 1st taxable year for which an election under section 1362(a) is in effect, exceeds

(B) the aggregate adjusted bases of such assets at such time.

(2) Net recognized built-in gain

(A) In general

The term ''net recognized built-in gain'' means, with respect to any taxable year in the recognition period, the lesser of—

(i) the amount which would be the taxable income of the S corporation for such taxable year if only recognized built-in gains and recognized built-in losses were taken into account, or

(ii) such corporation's taxable income for such taxable year (determined as provided in section 1375(b)(1)(B)).

(B) Carryover

If, for any taxable year, the amount referred to in clause (i) of subparagraph (A) exceeds the amount referred to in clause (ii) of subparagraph (A), such excess shall be treated as a recognized built-in gain in the succeeding taxable year. The preceding sentence shall apply only in the case of a corporation treated as an S corporation by reason of an election made on or after March 31, 1988.

(3) Recognized built-in gain

The term ''recognized built-in gain'' means any gain recognized during the recognition period on the disposition of any asset except to the extent that the S corporation establishes that—

(A) such asset was not held by the S corporation as of the beginning of the 1st taxable year for which it was an S corporation, or

(B) such gain exceeds the excess (if any) of—

(i) the fair market value of such asset as of the beginning of such 1st taxable year, over

(ii) the adjusted basis of the asset as of such time.

(4) Recognized built-in losses

The term ''recognized built-in loss'' means any loss recognized during the recognition period on the disposition of any asset to the extent that the S corporation establishes that—

(A) such asset was held by the S corporation as of the beginning of the 1st taxable year referred to in paragraph (3), and

(B) such loss does not exceed the excess of—

(i) the adjusted basis of such asset as of the beginning of such 1st taxable year, over

(ii) the fair market value of such asset as of such time.

(5) Treatment of certain built-in items

(A) Income items

Any item of income which is properly taken into account during the recognition period but which is attributable to periods before the 1st taxable year for which the corporation was an S corporation shall be treated as a recognized built-in gain for the taxable year in which it is properly taken into account.

(B) Deduction items

Any amount which is allowable as a deduction during the recognition period (determined without regard to any carryover) but which is attributable to periods before the 1st taxable year referred to in subparagraph (A) shall be treated as a recognized built-in loss for the taxable year for which it is allowable as a deduction.

(C) Adjustment to net unrealized built-in gain

The amount of the net unrealized built-in gain shall be properly adjusted for amounts which would be treated as recognized built-in gains or losses under this paragraph if such amounts were properly taken into account (or allowable as a deduction) during the recognition period.

(6) Treatment of certain property

If the adjusted basis of any asset is determined (in whole or in part) by reference to the adjusted basis of any other asset held by the S corporation as of the beginning of the 1st taxable year referred to in paragraph (3)—

(A) such asset shall be treated as held by the S corporation as of the beginning of such 1st taxable year, and

(B) any determination under paragraph (3)(B) or (4)(B) with respect to such asset shall be made by reference to the fair market value and adjusted basis of such other asset as of the beginning of such 1st taxable year.

(7) Recognition period

(A) In general

The term ''recognition period'' means the 10-year period beginning with the 1st day of the 1st taxable year for which the corporation was an S corporation.

(B) Special rules for 2009, 2010, and 2011

No tax shall be imposed on the net recognized built-in gain of an S corporation—

(i) in the case of any taxable year beginning in 2009 or 2010, if the 7th taxable year in the recognition period preceded such taxable year, or

(ii) in the case of any taxable year beginning in 2011, if the 5th year in the recognition period preceded such taxable year.

The preceding sentence shall be applied separately with respect to any asset to which paragraph (8) applies.

(C) Special rule for distributions to shareholders

For purposes of applying this section to any amount includible in income by reason of distributions to shareholders pursuant to section 593(e)—

(i) subparagraph (A) shall be applied without regard to the phrase ''10-year'', and

(ii) subparagraph (B) shall not apply.

(8) Treatment of transfer of assets from C corporation to S corporation

(A) In general

Except to the extent provided in regulations, if—

(i) an S corporation acquires any asset, and

(ii) the S corporation's basis in such asset is determined (in whole or in part) by reference to the basis of such asset (or any other property) in the hands of a C corporation,

then a tax is hereby imposed on any net recognized built-in gain attributable to any such assets for any taxable year beginning in the recognition period. The amount of such tax shall be determined under the rules of this section as modified by subparagraph (B).

(B) Modifications

For purposes of this paragraph, the modifications of this subparagraph are as follows:

(i) In general

The preceding paragraphs of this subsection shall be applied by taking into account the day on which the assets were acquired by the S corporation in lieu of the beginning of the 1st taxable year for which the corporation was an S corporation.

(ii) Subsection (c)(1) not to apply

Subsection (c)(1) shall not apply.

(9) Reference to 1st taxable year

Any reference in this section to the 1st taxable year for which the corporation was an S corporation shall be treated as a reference to the 1st taxable year for which the corporation was an S corporation pursuant to its most recent election under section 1362.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section including regulations providing for the appropriate treatment of successor corporations.

(Added Pub. L. 97–354, §2, Oct. 19, 1982, 96 Stat. 1683; amended Pub. L. 97–448, title III, §305(d)(3), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 98–369, div. A, title I, §102(d)(1), title IV, §474(r)(27), title VII, §721(u), July 18, 1984, 98 Stat. 623, 844, 971; Pub. L. 99–514, title VI, §632(a), Oct. 22, 1986, 100 Stat. 2275; Pub. L. 100–647, title I, §1006(f)(1)–(5)(A), Nov. 10, 1988, 102 Stat. 3403, 3404; Pub. L. 101–239, title VII, §7811(c)(4), (5)(B), (8), Dec. 19, 1989, 103 Stat. 2407, 2408; Pub. L. 105–34, title XVI, §1601(f)(5)(B), Aug. 5, 1997, 111 Stat. 1091; Pub. L. 111–5, div. B, title I, §1251(a), Feb. 17, 2009, 123 Stat. 342; Pub. L. 111–240, title II, §2014(a), Sept. 27, 2010, 124 Stat. 2556.)

PRIOR PROVISIONS

A prior section 1374, added Pub. L. 85–866, title I, §64(a), Sept. 2, 1958, 72 Stat. 1653; amended Pub. L. 86–376, §2(b), Sept. 23, 1959, 73 Stat. 699; Pub. L. 94–455, title XIX, §1901(a)(150), Oct. 4, 1976, 90 Stat. 1788, related to allowance to shareholders of corporation net operating loss, prior to the general revision of this subchapter by section 2 of Pub. L. 97–354.

AMENDMENTS

2010—Subsec. (d)(7)(B). Pub. L. 111–240 amended subpar. (B) generally. Prior to amendment, text read as follows: ''In the case of any taxable year beginning in 2009 or 2010, no tax shall be imposed on the net recognized built-in gain of an S corporation if the 7th taxable year in the recognition period preceded such taxable year. The preceding sentence shall be applied separately with respect to any asset to which paragraph (8) applies.''

2009—Subsec. (d)(7). Pub. L. 111–5 amended par. (7) generally. Prior to amendment, text read as follows: ''The term 'recognition period' means the 10-year period beginning with the 1st day of the 1st taxable year for which the corporation was an S corporation. For purposes of applying this section to any amount includible in income by reason of section 593(e), the preceding sentence shall be applied without regard to the phrase '10-year'.''

1997—Subsec. (d)(7). Pub. L. 105–34 inserted at end ''For purposes of applying this section to any amount includible in income by reason of section 593(e), the preceding sentence shall be applied without regard to the phrase '10-year'.''

1989—Subsec. (b)(3)(B). Pub. L. 101–239, §7811(c)(8), inserted at end ''A similar rule shall apply in the case of the minimum tax credit under section 53 to the extent attributable to taxable years for which the corporation was a C corporation.''

Subsec. (d)(2)(A)(i). Pub. L. 101–239, §7811(c)(4), struck out ''(except as provided in subsection (b)(2))'' after ''taxable year if''.

Subsec. (d)(5)(B). Pub. L. 101–239, §7811(c)(5)(B)(i), inserted ''(determined without regard to any carryover)'' after ''during the recognition period''.

Subsec. (d)(5)(C). Pub. L. 101–239, §7811(c)(5)(B)(ii), substituted ''which would be treated as recognized built-in gains or losses under this paragraph if such amounts were properly taken into account (or allowable as a deduction) during the recognition period'' for ''treated as recognized built-in gains or losses under this paragraph''.

1988—Subsec. (a). Pub. L. 100–647, §1006(f)(1), inserted ''net'' before ''recognized''.

Subsec. (b)(1). Pub. L. 100–647, §1006(f)(2), added par. (1) and struck out former par. (1) which read as follows: ''The tax imposed by subsection (a) shall be a tax computed by applying the highest rate of tax specified in section 11(b) to the lesser of—

''(A) the recognized built-in gains of the S corporation for the taxable year, or

''(B) the amount which would be the taxable income of the corporation for such taxable year if such corporation were not an S corporation.''

Subsec. (b)(2). Pub. L. 100–647, §1006(f)(2), added par. (2) and struck out former par. (2) which read as follows: ''Notwithstanding section 1371(b)(1), any net operating loss carryforward arising in a taxable year for which the corporation was a C corporation shall be allowed as a deduction against the lesser of the amounts referred to in subparagraph (A) or (B) of paragraph (1). For purposes of determining the amount of any such loss which may be carried to subsequent taxable years, the lesser of the amounts referred to in subparagraph (A) or (B) of paragraph (1) shall be treated as taxable income.''

Subsec. (b)(4)(B). Pub. L. 100–647, §1006(f)(3), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the lower of the amounts specified in subparagraphs (A) and (B) of paragraph (1) shall be treated as the taxable income.''

Subsec. (c)(2). Pub. L. 100–647, §1006(f)(4), substituted ''net recognized built-in gain'' for ''recognized built-in gains'' in introductory provisions and in subpar. (B).

Subsec. (d)(2) to (9). Pub. L. 100–647, §1006(f)(5)(A), added pars. (2) to (9) and struck out former pars. (2), (3), and (4), which related to recognized built-in gain, recognition period, and taxable income, respectively.

Subsec. (e). Pub. L. 100–647, §1006(f)(5)(A), added subsec. (e).

1986—Pub. L. 99–514 amended section generally, substituting provisions imposing tax on certain built-in gains for provisions imposing tax on certain capital gains which had declared in: subsec. (a), general rule for capital gains tax on S corporations; subsec. (b), amount of tax; subsec. (c), general rule as to exceptions from subsec. (a) in par. (1), exception as to new corporations in par. (2), provisions relating to property with substituted basis in par. (3), and treatment of certain gains of options and commodities dealers in par. (4); and subsec. (d), determination of taxable income of corporation.

1984—Subsec. (b). Pub. L. 98–369, §474(r)(27), substituted ''section 34'' for ''section 39'' in provisions following par. (2).

Subsec. (c)(2). Pub. L. 98–369, §721(u), struck out ''(and any predecessor corporation)'' before ''has been in existence'' in subpar. (A), and inserted provision that to the extent provided in regulations, an S corporation and any predecessor corporation shall be treated as 1 corporation for purposes of this paragraph and paragraph (1).

Subsec. (c)(4). Pub. L. 98–369, §102(d)(1), added par. (4).

1983—Subsec. (d). Pub. L. 97–448 substituted ''this section'' for ''subsections (a)(2) and (b)(2)''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title II, §2014(b), Sept. 27, 2010, 124 Stat. 2556, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2010.''

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, §1251(b), Feb. 17, 2009, 123 Stat. 342, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 36C of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, but only in cases where the return for the taxable year is filed pursuant to an S election made after Dec. 31, 1986, and with provision that, in the case of any taxable year of an S corporation which begins after Dec. 31, 1986, and to which the amendments by section 632 (other than subsec. (b) thereof) of Pub. L. 99–514 do not apply, subsec. (b)(1) of this section (as in effect on the date before Oct. 22, 1986) shall apply as if it read as follows: ''an amount equal to 34 percent of the amount by which the net capital gain of the corporation for the taxable year exceeds $25,000, or'', and with other exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, as amended, set out as an Effective Date note under section 336 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 102(d)(1) of Pub. L. 98–369 applicable to positions established after July 18, 1984, in taxable years ending after that date, except as otherwise provided, see section 102(f), (g) of Pub. L. 98–369 set out as a note under section 1256 of this title.

Amendment by section 474(r)(27) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 721(u) of Pub. L. 98–369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97–354, see section 721(y)(1) of Pub. L. 98–369, set out as a note under section 1361 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective on date of enactment of Subchapter S Revision Act of 1982 [Oct. 19, 1982], see section 311(c)(4) of Pub. L. 97–448, set out as a note under section 1368 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as a note under section 1361 of this title.

§ 1375. Tax imposed when passive investment income of corporation having accumulated earnings and profits exceeds 25 percent of gross receipts

(a) General rule

If for the taxable year an S corporation has—

(1) accumulated earnings and profits at the close of such taxable year, and

(2) gross receipts more than 25 percent of which are passive investment income,

then there is hereby imposed a tax on the income of such corporation for such taxable year.

Such tax shall be computed by multiplying the excess net passive income by the highest rate of tax specified in section 11(b).

(b) Definitions

For purposes of this section—

(1) Excess net passive income

(A) In general

Except as provided in subparagraph (B), the term ''excess net passive income'' means an amount which bears the same ratio to the net passive income for the taxable year as—

(i) the amount by which the passive investment income for the taxable year exceeds 25 percent of the gross receipts for the taxable year, bears to

(ii) the passive investment income for the taxable year.

(B) Limitation

The amount of the excess net passive income for any taxable year shall not exceed the amount of the corporation's taxable income for such taxable year as determined under section 63(a)—

(i) without regard to the deductions allowed by part VIII of subchapter B (other than the deduction allowed by section 248, relating to organization expenditures), and

(ii) without regard to the deduction under section 172.

(2) Net passive income

The term ''net passive income'' means—

(A) passive investment income, reduced by

(B) the deductions allowable under this chapter which are directly connected with the production of such income (other than deductions allowable under section 172 and part VIII of subchapter B).

(3) Passive investment income, etc.

The terms ''passive investment income'' and ''gross receipts'' have the same respective meanings as when used in paragraph (3) of section 1362(d).

(4) Coordination with section 1374

Notwithstanding paragraph (3), the amount of passive investment income shall be determined by not taking into account any recognized built-in gain or loss of the S corporation for any taxable year in the recognition period. Terms used in the preceding sentence shall have the same respective meanings as when used in section 1374.

(c) Credits not allowable

No credit shall be allowed under part IV of subchapter A of this chapter (other than section 34) against the tax imposed by subsection (a).

(d) Waiver of tax in certain cases

If the S corporation establishes to the satisfaction of the Secretary that—

(1) it determined in good faith that it had no accumulated earnings and profits at the close of a taxable year, and

(2) during a reasonable period of time after it was determined that it did have accumulated earnings and profits at the close of such taxable year such earnings and profits were distributed,

the Secretary may waive the tax imposed by subsection (a) for such taxable year.

(Added Pub. L. 97–354, §2, Oct. 19, 1982, 96 Stat. 1684; amended Pub. L. 98–369, div. A, title IV, §474(r)(28), title VII, §721(v), July 18, 1984, 98 Stat. 844, 971; Pub. L. 99–514, title VI, §632(c)(3), Oct. 22, 1986, 100 Stat. 2277; Pub. L. 100–647, title I, §1006(f)(5)(B)–(D), Nov. 10, 1988, 102 Stat. 3406; Pub. L. 104–188, title I, §1311(b)(2)(A)–(C), Aug. 20, 1996, 110 Stat. 1784; Pub. L. 109–135, title IV, §412(qq), Dec. 21, 2005, 119 Stat. 2640.)

PRIOR PROVISIONS

A prior section 1375, added Pub. L. 85–866, title I, §64(a), Sept. 2, 1958, 72 Stat. 1654; amended Pub. L. 88–272, title II, §§201(d)(13), 233(b), Feb. 26, 1964, 78 Stat. 32, 112; Pub. L. 89–389, §§1(a), (b), 2(b)(4), Apr. 14, 1966, 80 Stat. 111, 114; Pub. L. 91–172, title III, §301(b)(11), Dec. 30, 1969, 83 Stat. 586; Pub. L. 94–455, title XIX, §§1901(a)(151), (b)(33)(Q), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1788, 1802, 1834; Pub. L. 95–600, title VII, §703(j)(6), Nov. 6, 1978, 92 Stat. 2941, related to special rules applicable to distributions of electing small business corporations, prior to the general revision of this subchapter by section 2 of Pub. L. 97–354.

A prior section 1376, added Pub. L. 85–866, title I, §64(a), Sept. 2, 1958, 72 Stat. 1655, related to adjustment to basis of stock of, and indebtedness owing, shareholders, prior to the general revision of this subchapter by section 2 of Pub. L. 97–354.

AMENDMENTS

2005—Subsec. (d)(1), (2). Pub. L. 109–135 substituted ''accumulated'' for ''subchapter C''.

1996—Pub. L. 104–188, §1311(b)(2)(C), substituted ''accumulated'' for ''subchapter C'' in section catchline.

Subsec. (a)(1). Pub. L. 104–188, §1311(b)(2)(A), substituted ''accumulated'' for ''subchapter C''.

Subsec. (b)(3). Pub. L. 104–188, §1311(b)(2)(B), amended par. (3) generally. Prior to amendment, par. (3) read as follows:

''(3) PASSIVE INVESTMENT INCOME; ETC.—The terms 'subchapter C earnings and profits', 'passive investment income', and 'gross receipts' shall have the same respective meanings as when used in paragraph (3) of section 1362(d).''

1988—Subsec. (b)(1)(B). Pub. L. 100–647, §1006(f)(5)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The amount of the excess net passive income for any taxable year shall not exceed the corporation's taxable income for the taxable year (determined in accordance with section 1374(d)(4)).''

Subsec. (b)(4). Pub. L. 100–647, §1006(f)(5)(C), added par. (4).

Subsec. (c). Pub. L. 100–647, §1006(f)(5)(D), amended subsec. (c) generally, in heading substituting ''Credits not allowable'' for ''Special rules'', and in text substituting ''No credit'' for ''(1) DISALLOWANCE OF CREDIT.—No credit'', and striking out par. (2) which related to coordination with section 1374.

1986—Subsec. (b)(1)(B). Pub. L. 99–514 substituted ''section 1374(d)(4)'' for ''section 1374(d)''.

1984—Subsec. (c)(1). Pub. L. 98–369, §474(r)(28), substituted ''section 34'' for ''section 39''.

Subsec. (d). Pub. L. 98–369, §721(v), added subsec. (d).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1317(a) of Pub. L. 104–188, set out as a note under section 641 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which

such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, but only in cases where the return for the taxable year is filed pursuant to an S election made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, as amended, set out as an Effective Date note under section 336 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(28) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 721(v) of Pub. L. 98–369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97–354, see section 721(y)(1) of Pub. L. 98–369, set out as a note under section 1361 of this title.

EFFECTIVE DATE

This section applicable to taxable years beginning after Dec. 31, 1982, except that in the case of a taxable year beginning during 1982, this section and sections 1362(d)(3) and 1366(f)(3) of this title shall apply, and section 1372(e)(5) of this title as in effect on the day before Oct. 19, 1982, shall not apply, see section 6(a), (b)(3) of Pub. L. 97–354, set out as a note under section 1361 of this title.

PART IV—DEFINITIONS; MISCELLANEOUS

Sec.
1377. Definitions and special rule.
1378. Taxable year of S corporation.
1379. Transitional rules on enactment.

§ 1377. Definitions and special rule

(a) Pro rata share

For purposes of this subchapter—

(1) In general

Except as provided in paragraph (2), each shareholder's pro rata share of any item for any taxable year shall be the sum of the amounts determined with respect to the shareholder—

(A) by assigning an equal portion of such item to each day of the taxable year, and

(B) then by dividing that portion pro rata among the shares outstanding on such day.

(2) Election to terminate year

(A) In general

Under regulations prescribed by the Secretary, if any shareholder terminates the shareholder's interest in the corporation during the taxable year and all affected shareholders and the corporation agree to the application of this paragraph, paragraph (1) shall be applied to the affected shareholders as if the taxable year consisted of 2 taxable years the first of which ends on the date of the termination.

(B) Affected shareholders

For purposes of subparagraph (A), the term ''affected shareholders'' means the shareholder whose interest is terminated and all shareholders to whom such shareholder has transferred shares during the taxable year. If such shareholder has transferred shares to the corporation, the term ''affected shareholders'' shall include all persons who are shareholders during the taxable year.

(b) Post-termination transition period

(1) In general

For purposes of this subchapter, the term ''post-termination transition period'' means—

(A) the period beginning on the day after the last day of the corporation's last taxable year as an S corporation and ending on the later of—

(i) the day which is 1 year after such last day, or

(ii) the due date for filing the return for such last year as an S corporation (including extensions),

(B) the 120-day period beginning on the date of any determination pursuant to an audit of the taxpayer which follows the termination of the corporation's election and which adjusts a subchapter S item of income, loss, or deduction of the corporation arising during the S period (as defined in section 1368(e)(2)), and

(C) the 120-day period beginning on the date of a determination that the corporation's election under section 1362(a) had terminated for a previous taxable year.

(2) Determination defined

For purposes of paragraph (1), the term ''determination'' means—

(A) a determination as defined in section 1313(a), or

(B) an agreement between the corporation and the Secretary that the corporation failed to qualify as an S corporation.

(3) Special rules for audit related post-termination transition periods

(A) No application to carryovers

Paragraph (1)(B) shall not apply for purposes of section 1366(d)(3).

(B) Limitation on application to distributions

Paragraph (1)(B) shall apply to a distribution described in section 1371(e) only to the extent that the amount of such distribution does not exceed the aggregate increase (if any) in the accumulated adjustments account (within the meaning of section 1368(e)) by reason of the adjustments referred to in such paragraph.

(c) Manner of making elections, etc.

Any election under this subchapter, and any revocation under section 1362(d)(1), shall be made in such manner as the Secretary shall by regulations prescribe.

(Added Pub. L. 97–354, § 2, Oct. 19, 1982, 96 Stat. 1685; amended Pub. L. 104–188, title I, §§ 1306–1307(b), Aug. 20, 1996, 110 Stat. 1780; Pub. L. 108–311, title IV, § 407(a), Oct. 4, 2004, 118 Stat. 1190.)

PRIOR PROVISIONS

A prior section 1377, added Pub. L. 85–866, title I, § 64(a), Sept. 2, 1958, 72 Stat. 1656; amended Pub. L. 94–455, title IX, § 902(b)(1), title XIX, § 1901(b)(32)(B)(iv), Oct. 4, 1976, 90 Stat. 1608, 1800, related to special rules applicable to earnings and profits of electing small

business corporations, prior to the general revision of this subchapter by section 2 of Pub. L. 97–354.

AMENDMENTS

2004—Subsec. (b)(3). Pub. L. 108–311 added par. (3).

1996—Subsec. (a)(2). Pub. L. 104–188, §1306, reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Under regulations prescribed by the Secretary, if any shareholder terminates his interest in the corporation during the taxable year and all persons who are shareholders during the taxable year agree to the application of this paragraph, paragraph (1) shall be applied as if the taxable year consisted of 2 taxable years the first of which ends on the date of the termination.''

Subsec. (b)(1)(A) to (C). Pub. L. 104–188, §1307(a), struck out ''and'' at end of subpar. (A)(ii), added subpar. (B), and redesignated former subpar. (B) as (C).

Subsec. (b)(2)(A) to (C). Pub. L. 104–188, §1307(b), added subpar. (A), redesignated subpar. (C) as (B), and struck out former subpars. (A) and (B) which read as follows:

''(A) a court decision which becomes final,

''(B) a closing agreement, or''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which such amendment relates, see section 407(c) of Pub. L. 108–311, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS

Pub. L. 105–34, title XVI, §1601(c)(2), Aug. 5, 1997, 111 Stat. 1087, provided that:

''(A) Notwithstanding section 1317 of the Small Business Job Protection Act of 1996 [Pub. L. 104–188, enacting provisions set out as notes under sections 641 and 1362 of this title], the amendments made by subsections (a) and (b) of section 1307 of such Act [amending this section] shall apply to determinations made after December 31, 1996.

''(B) In no event shall the 120-day period referred to in section 1377(b)(1)(B) of the Internal Revenue Code of 1986 (as added by such section 1307) expire before the end of the 120-day period beginning on the date of the enactment of this Act [Aug. 5, 1997].''

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1317(a) of Pub. L. 104–188, set out as a note under section 641 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as a note under section 1361 of this title.

§ 1378. Taxable year of S corporation

(a) General rule

For purposes of this subtitle, the taxable year of an S corporation shall be a permitted year.

(b) Permitted year defined

For purposes of this section, the term ''permitted year'' means a taxable year which—

(1) is a year ending December 31, or

(2) is any other accounting period for which the corporation establishes a business purpose to the satisfaction of the Secretary.

For purposes of paragraph (2), any deferral of income to shareholders shall not be treated as a business purpose.

(Added Pub. L. 97–354, §2, Oct. 19, 1982, 96 Stat. 1685; amended Pub. L. 98–369, div. A, title VII, §721(m), (q), July 18, 1984, 98 Stat. 969, 970; Pub. L. 99–514, title VIII, §806(b), Oct. 22, 1986, 100 Stat. 2363.)

PRIOR PROVISIONS

A prior section 1378, added Pub. L. 89–389, §2(a), Apr. 14, 1966, 80 Stat. 113; amended Pub. L. 91–172, title V, §511(c)(4), Dec. 30, 1969, 83 Stat. 638; Pub. L. 94–455, title XIX, §1901(a)(152), (b)(33)(R), Oct. 4, 1976, 90 Stat. 1789, 1802, related to tax imposed on certain capital gains, prior to the general revision of this subchapter by section 2 of Pub. L. 97–354.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–514, §806(b)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''For purposes of this subtitle—

''(1) an S corporation shall not change its taxable year to any accounting period other than a permitted year, and

''(2) no corporation may make an election under section 1362(a) for any taxable year unless such taxable year is a permitted year.''

Subsec. (b). Pub. L. 99–514, §806(b)(2), inserted at end ''For purposes of paragraph (2), any deferral of income to shareholders shall not be treated as a business purpose.''

Subsec. (c). Pub. L. 99–514, §806(b)(3), struck out subsec. (c) which required existing S corporations to use permitted year after 50-percent shift in ownership.

1984—Subsec. (c)(1). Pub. L. 98–369, §721(m), substituted ''which includes December 31, 1982 (or which is an S corporation for a taxable year beginning during 1983 by reason of an election made on or before October 19, 1982)'' for ''which includes December 31, 1982''.

Subsec. (c)(3)(B)(i). Pub. L. 98–369, §721(q), substituted ''who (or whose estate) held'' for ''who held''.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 806(e) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1008(e)(7), (8), (10), Nov. 10, 1988, 102 Stat. 3441, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 267, 441, and 706 of this title] shall apply to taxable years beginning after December 31, 1986.

''(2) CHANGE IN ACCOUNTING PERIOD.—In the case of any partnership, S corporation, or personal service corporation required by the amendments made by this section to change its accounting period for the taxpayer's first taxable year beginning after December 31, 1986—

''(A) such change shall be treated as initiated by the partnership, S corporation, or personal service corporation,

''(B) such change shall be treated as having been made with the consent of the Secretary, and

''(C) with respect to any partner or shareholder of an S corporation which is required to include the items from more than 1 taxable year of the partnership or S corporation in any 1 taxable year, income in excess of expenses of such partnership or corporation for the short taxable year required by such amendments shall be taken into account ratably in each of the first 4 taxable years beginning after December 31, 1986, unless such partner or shareholder elects to include all such income in the the [sic] partner's or shareholder's taxable year with or within which the partnership's or S corporation's short taxable year ends.

Subparagraph (C) shall apply to a shareholder of an S corporation only if such corporation was an S corporation for a taxable year beginning in 1986.

''(3) BASIS, ETC. RULES—

''(A) BASIS RULE.—The adjusted basis of any partner's interest in a partnership or shareholder's stock in an S corporation shall be determined as if all of the income to be taken into account ratably in the 4 taxable years referred to in paragraph (2)(C) were included in gross income for the 1st of such taxable years.

''(B) TREATMENT OF DISPOSITIONS.—If any interest in a partnership or stock in an S corporation is disposed of before the last taxable year in the spread period, all amounts which would be included in the gross income of the partner or shareholder for subsequent taxable years in the spread period under paragraph (2)(C) and attributable to the interest or stock disposed of shall be included in gross income for the taxable year in which the disposition occurs. For purposes of the preceding sentence, the term 'spread period' means the period consisting of the 4 taxable years referred to in paragraph (2)(C).''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in Subchapter S Revision Act of 1982, Pub. L. 97–354, see section 721(y)(1) of Pub. L. 98–369, set out as a note under section 1361 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as a note under section 1361 of this title.

CONSTRUCTION OF SECTION 806 OF PUB. L. 99–514

Pub. L. 100–647, title I, §1008(e)(9), Nov. 10, 1988, 102 Stat. 3441, provided that: ''Nothing in section 806 of the Reform Act [Pub. L. 99–514, amending this section and sections 267, 441, and 706 of this title and enacting provisions set out above] or in any legislative history relating thereto shall be construed as requiring the Secretary of the Treasury or his delegate to permit an automatic change of a taxable year.''

§ 1379. Transitional rules on enactment

(a) Old elections

Any election made under section 1372(a) (as in effect before the enactment of the Subchapter S Revision Act of 1982) shall be treated as an election made under section 1362.

(b) References to prior law included

Any references in this title to a provision of this subchapter shall, to the extent not inconsistent with the purposes of this subchapter, include a reference to the corresponding provision as in effect before the enactment of the Subchapter S Revision Act of 1982.

(c) Distributions of undistributed taxable income

If a corporation was an electing small business corporation for the last preenactment year, subsections (f) and (d) of section 1375 (as in effect before the enactment of the Subchapter S Revision Act of 1982) shall continue to apply with respect to distributions of undistributed taxable income for any taxable year beginning before January 1, 1983.

(d) Carryforwards

If a corporation was an electing small business corporation for the last preenactment year and is an S corporation for the 1st postenactment year, any carryforward to the 1st postenactment year which arose in a taxable year for which the corporation was an electing small business corporation shall be treated as arising in the 1st postenactment year.

(e) Preenactment and postenactment years defined

For purposes of this subsection—

(1) Last preenactment year

The term ''last preenactment year'' means the last taxable year of a corporation which begins before January 1, 1983.

(2) 1st postenactment year

The term ''1st postenactment year'' means the 1st taxable year of a corporation which begins after December 31, 1982.

(Added Pub. L. 97–354, §2, Oct. 19, 1982, 96 Stat. 1686; amended Pub. L. 98–369, div. A, title VII, §721(n), July 18, 1984, 98 Stat. 969.)

REFERENCES IN TEXT

The enactment of the Subchapter S Revision Act of 1982, referred to in subsecs. (a) to (c), is the enactment of Pub. L. 97–354, which was approved Oct. 19, 1982.

PRIOR PROVISIONS

A prior section 1379, added Pub. L. 91–172, title V, §531(a), Dec. 30, 1969, 83 Stat. 654; amended Pub. L. 93–406, title II, §2001(b), Sept. 2, 1974, 88 Stat. 952; Pub. L. 97–34, title III, §312(c)(6), Aug. 13, 1981, 95 Stat. 284; Pub. L. 97–248, title II, §238(c), Sept. 3, 1982, 96 Stat. 513, related to certain qualified pension, etc., plans, prior to the general revision of this subchapter by section 2 of Pub. L. 97–354.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–369 struck out ''In applying this subchapter to any taxable year beginning after December 31, 1982,'' and substituted ''Any references in this title to a provision'' for ''any reference in this subchapter to another provision''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in Subchapter S Revision Act of 1982, Pub. L. 97–354, see section 721(y)(1) of Pub. L. 98–369, set out as a note under section 1361 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, except that this section as in effect before Oct. 19, 1982, to remain in effect for years beginning before Jan. 1, 1984, see section 6(a), (b)(1) of Pub. L. 97–354, set out as a note under section 1361 of this title.

COORDINATION OF REPEALS OF CERTAIN SECTIONS

Subsec. (b) of this section as in effect on day before Sept. 3, 1982, inapplicable to any section 401(j) plan, see section 713(d)(8) of Pub. L. 98–369, set out as a note under section 404 of this title.

Subchapter T—Cooperatives and Their Patrons

Part
I. Tax treatment of cooperatives.
II. Tax treatment by patrons of patronage dividends and per-unit retain allocations.
III. Definitions; special rules.

AMENDMENTS

1966—Pub. L. 89–809, title II, §211(b)(5), Nov. 13, 1966, 80 Stat. 1582, inserted ''and per-unit retain allocations'' in heading of part II.

1962—Pub. L. 87–834, §17(a), Oct. 16, 1962, 76 Stat. 1045, added headings of subchapter T and of parts I to III.

PART I—TAX TREATMENT OF COOPERATIVES

Sec.
1381. Organizations to which part applies.
1382. Taxable income of cooperatives.
1383. Computation of tax where cooperative redeems nonqualified written notices of allocation or nonqualified per-unit retain certificates.

AMENDMENTS

1966—Pub. L. 89–809, title II, §211(a)(8), Nov. 13, 1966, 80 Stat. 1582, inserted ''or nonqualified per-unit retain certificates'' in item 1383.

1962—Pub. L. 87–834, §17(a), Oct. 16, 1962, 76 Stat. 1045, added heading of part I and items 1381 to 1383.

§ 1381. Organizations to which part applies

(a) In general

This part shall apply to—

(1) any organization exempt from tax under section 521 (relating to exemption of farmers' cooperatives from tax), and

(2) any corporation operating on a cooperative basis other than an organization—

(A) which is exempt from tax under this chapter,

(B) which is subject to the provisions of—

(i) part II of subchapter H (relating to mutual savings banks, etc.), or

(ii) subchapter L (relating to insurance companies), or

(C) which is engaged in furnishing electric energy, or providing telephone service, to persons in rural areas.

(b) Tax on certain farmers' cooperatives

An organization described in subsection (a)(1) shall be subject to the taxes imposed by section 11 or 1201.

(c) Cross reference

For treatment of income from load loss transactions of organizations described in subsection (a)(2)(C), see section 501(c)(12)(H).

(Added Pub. L. 87–834, §17(a), Oct. 16, 1962, 76 Stat. 1045; amended Pub. L. 108–357, title III, §319(d), Oct. 22, 2004, 118 Stat. 1472.)

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–357 added subsec. (c).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years beginning after Oct. 22, 2004, see section 319(e) of Pub. L. 108–357, set out as a note under section 501 of this title.

EFFECTIVE DATE

Section 17(c) of Pub. L. 87–834, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) FOR THE COOPERATIVES.—Except as provided in paragraph (3), the amendments made by subsections (a) and (b) [enacting this subchapter, amending sections 521 and 6072 of this title, and repealing section 522 of this title] shall apply to taxable years of organizations described in section 1381(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) beginning after December 31, 1962.

''(2) FOR THE PATRONS.—Except as provided in paragraph (3), section 1385 of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply with respect to any amount received from any organization described in section 1381(a) of such Code, to the extent that such amount is paid by such organization in a taxable year of such organization beginning after December 31, 1962.

''(3) APPLICATION OF EXISTING LAW.—In the case of any money, written notice of allocation, or other property paid by any organization described in section 1381(a)—

''(A) before the first day of the first taxable year of such organization beginning after December 31, 1962, or

''(B) on or after such first day with respect to patronage occurring before such first day,

the tax treatment of such money, written notice of allocation, or other property (including the tax treatment of gain or loss on the redemption, sale, or other disposition of such written notice of allocation) by any person shall be made under the Internal Revenue Code of 1986 without regard to subchapter T of chapter 1 of such Code [this subchapter].''

§ 1382. Taxable income of cooperatives

(a) Gross income

Except as provided in subsection (b), the gross income of any organization to which this part applies shall be determined without any adjustment (as a reduction in gross receipts, an increase in cost of goods sold, or otherwise) by reason of any allocation or distribution to a patron out of the net earnings of such organization or by reason of any amount paid to a patron as a per-unit retain allocation (as defined in section 1388(f)).

(b) Patronage dividends and per-unit retain allocations

In determining the taxable income of an organization to which this part applies, there shall not be taken into account amounts paid during the payment period for the taxable year—

(1) as patronage dividends (as defined in section 1388(a)), to the extent paid in money, qualified written notices of allocation (as defined in section 1388(c)), or other property (except nonqualified written notices of allocation (as defined in section 1388(d))) with respect to patronage occurring during such taxable year;

(2) in money or other property (except written notices of allocation) in redemption of a nonqualified written notice of allocation which was paid as a patronage dividend during the payment period for the taxable year during which the patronage occurred;

(3) as per-unit retain allocations (as defined in section 1388(f)), to the extent paid in money, qualified per-unit retain certificates (as defined in section 1388(h)), or other property (except nonqualified per-unit retain certificates, as defined in section 1388(i)) with respect to marketing occurring during such taxable year; or

(4) in money or other property (except per-unit retain certificates) in redemption of a nonqualified per-unit retain certificate which was paid as a per-unit retain allocation during the payment period for the taxable year during which the marketing occurred.

For purposes of this title, any amount not taken into account under the preceding sentence shall, in the case of an amount described in paragraph (1) or (2), be treated in the same manner as an item of gross income and as a deduction therefrom, and in the case of an amount described in paragraph (3) or (4), be treated as a deduction in arriving at gross income.

(c) Deduction for nonpatronage distributions, etc.

In determining the taxable income of an organization described in section 1381(a)(1), there shall be allowed as a deduction (in addition to other deductions allowable under this chapter)—

(1) amounts paid during the taxable year as dividends on its capital stock; and

(2) amounts paid during the payment period for the taxable year—

(A) in money, qualified written notices of allocation, or other property (except non-

qualified written notices of allocation) on a patronage basis to patrons with respect to its earnings during such taxable year which are derived from business done for the United States or any of its agencies or from sources other than patronage, or

(B) in money or other property (except written notices of allocation) in redemption of a nonqualified written notice of allocation which was paid, during the payment period for the taxable year during which the earnings were derived, on a patronage basis to a patron with respect to earnings derived from business or sources described in subparagraph (A).

(d) Payment period for each taxable year

For purposes of subsections (b) and (c)(2), the payment period for any taxable year is the period beginning with the first day of such taxable year and ending with the fifteenth day of the ninth month following the close of such year. For purposes of subsections (b)(1) and (c)(2)(A), a qualified check issued during the payment period shall be treated as an amount paid in money during such period if endorsed and cashed on or before the 90th day after the close of such period.

(e) Products marketed under pooling arrangements

For purposes of subsection (b), in the case of a pooling arrangement for the marketing of products—

(1) the patronage shall (to the extent provided in regulations prescribed by the Secretary) be treated as patronage occurring during the taxable year in which the pool closes, and

(2) the marketing of products shall be treated as occurring during any of the taxable years in which the pool is open.

(f) Treatment of earnings received after patronage occurred

If any portion of the earnings from business done with or for patrons is includible in the organization's gross income for a taxable year after the taxable year during which the patronage occurred, then for purposes of applying paragraphs (1) and (2) of subsection (b) to such portion the patronage shall, to the extent provided in regulations prescribed by the Secretary, be considered to have occurred during the taxable year of the organization during which such earnings are includible in gross income.

(g) Use of completed crop pool method of accounting

(1) In general

An organization described in section 1381(a) which is engaged in pooling arrangements for the marketing of products may compute its taxable income with respect to any pool opened prior to March 1, 1978, under the completed crop pool method of accounting if—

(A) the organization has computed its taxable income under such method for the 10 taxable years ending with its first taxable year beginning after December 31, 1976, and

(B) with respect to the pool, the organization has entered into an agreement with the United States or any of its agencies which includes provisions to the effect that—

(i) the United States or such agency shall provide a loan to the organization with the products comprising the pool serving as collateral for such loan,

(ii) the organization shall use an amount equal to the proceeds of such loan to make price support advances to eligible producers (as determined by the United States or such agency), to defray costs of handling, processing, and storing such products, or to pay all or part of any administrative costs associated with the price support program,

(iii) an amount equal to the net proceeds (as determined under such agreement) from the sale or exchange of the products in the pool shall be used to repay such loan until such loan is repaid in full (or all the products in the pool are disposed of), and

(iv) the net gains (as determined under such agreement) from the sale or exchange of such products shall be distributed to eligible producers, except to the extent that the United States or such agency permits otherwise.

(2) Completed crop pool method of accounting defined

For purposes of this subsection, the term ''completed crop pool method of accounting'' means a method of accounting under which gain or loss is computed separately for each crop year pool in the year in which the last of the products in the pool are disposed of.

(Added Pub. L. 87–834, § 17(a), Oct. 16, 1962, 76 Stat. 1046; amended Pub. L. 89–809, title II, § 211(a)(1)–(4), Nov. 13, 1966, 80 Stat. 1580, 1581; Pub. L. 91–172, title IX, § 911(a), Dec. 30, 1969, 83 Stat. 722; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–345, § 3, Aug. 15, 1978, 92 Stat. 483.)

AMENDMENTS

1978—Subsec. (g). Pub. L. 95–345 added subsec. (g).

1976—Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary'' wherever appearing.

1969—Subsec. (b)(3). Pub. L. 91–172 expanded the category of per-unit retain allocations that may not be taken into account in determining the taxable income of an organization, by including per-unit retain allocations paid for in money or other property (except nonqualified per-unit retain certificates as defined in section 1388(i) of this section).

1966—Subsec. (a). Pub. L. 89–809, § 211(a)(1), inserted reference to amounts paid to patrons as a per-unit retain allocation as defined in section 1388(f).

Subsec. (b). Pub. L. 89–809, § 211(a)(2), inserted ''and per-unit retain allocations'' in heading, added pars. (3) and (4), and, in text following par. (4), inserted provisions making existing text applicable only to amounts described in pars. (1) and (2) and inserted text covering the treatment of amounts described in pars. (3) and (4).

Subsec. (e). Pub. L. 89–809, § 211(a)(3), inserted provision that the marketing of products shall be treated as occurring during any of the taxable years in which the pool is open.

Subsec. (f). Pub. L. 89–809, § 211(a)(4), substituted ''paragraphs (1) and (2) of subsection (b)'' for ''subsection (b)''.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 911(c) of Pub. L. 91–172 provided that: ''The amendments made by this section [amending this sec-

tion and section 1388 of this title] shall apply to per-unit retain allocations made after October 9, 1969.''

EFFECTIVE DATE OF 1966 AMENDMENT

Section 211(e) of Pub. L. 89–809 provided that:

''(1) The amendments made by subsections (a), (b), and (c) [amending this section and sections 1383, 1385, and 1388 of this title] shall apply to per-unit retain allocations made during taxable years of an organization described in section 1381(a) (relating to organizations to which part I of subchapter T of chapter 1 applies) beginning after April 30, 1966, with respect to products delivered during such years.

''(2) The amendments made by subsection (d) [amending section 6044 of this title] shall apply with respect to calendar years after 1966.''

EFFECTIVE DATE

Section applicable, except as otherwise provided, to taxable years of organizations described in section 1381(a) of this title beginning after Dec. 31, 1962, see section 17(c) of Pub. L. 87–834, set out as a note under section 1381 of this title.

§ 1383. Computation of tax where cooperative redeems nonqualified written notices of allocation or nonqualified per-unit retain certificates

(a) General rule

If, under section 1382(b)(2) or (4), or (c)(2)(B), a deduction is allowable to an organization for the taxable year for amounts paid in redemption of nonqualified written notices of allocation or non-qualified per-unit retain certificates, then the tax imposed by this chapter on such organization for the taxable year shall be the lesser of the following:

(1) the tax for the taxable year computed with such deduction; or

(2) an amount equal to—

(A) the tax for the taxable year computed without such deduction, minus

(B) the decrease in tax under this chapter for any prior taxable year (or years) which would result solely from treating such nonqualified written notices of allocation or nonqualified per-unit retain certificates as qualified written notices of allocation or qualified per-unit retain certificates (as the case may be).

(b) Special rules

(1) If the decrease in tax ascertained under subsection (a)(2)(B) exceeds the tax for the taxable year (computed without the deduction described in subsection (a)) such excess shall be considered to be a payment of tax on the last day prescribed by law for the payment of tax for the taxable year, and shall be refunded or credited in the same manner as if it were an overpayment for such taxable year.

(2) For purposes of determining the decrease in tax under subsection (a)(2)(B), the stated dollar amount of any nonqualified written notice of allocation or nonqualified per-unit retain certificate which is to be treated under such subsection as a qualified written notice of allocation or qualified per-unit retain certificate (as the case may be) shall be the amount paid in redemption of such written notice of allocation or per-unit retain certificate which is allowable as a deduction under section 1382(b)(2) or (4), or (c)(2)(B) for the taxable year.

(3) If the tax imposed by this chapter for the taxable year is the amount determined under subsection (a)(2), then the deduction described in subsection (a) shall not be taken into account for any purpose of this subtitle other than for purposes of this section.

(Added Pub. L. 87–834, §17(a), Oct. 16, 1962, 76 Stat. 1047; amended Pub. L. 89–809, title II, §211(a)(5)–(7), Nov. 13, 1966, 80 Stat. 1581.)

AMENDMENTS

1966—Pub. L. 89–809, §211(a)(5), inserted ''or nonqualified per-unit retain certificates'' in section catchline.

Subsec. (a). Pub. L. 89–809, §211(a)(6), substituted ''section 1382(b)(2) or (4)'' for ''1382(b)(2)'' and inserted references to per-unit retain certificates.

Subsec. (b)(2). Pub. L. 89–809, §211(a)(7), substituted ''section 1382(b)(2) or (4)'' for ''section 1382(b)(2)'' and inserted references to per-unit retain certificates.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable to per-unit retain allocations made during taxable years of an organization described in section 1381(a) of this title (relating to organizations to which part I of subchapter T of chapter 1 applies) beginning after Apr. 30, 1966, with respect to products delivered during such years, see section 211(e)(1) of Pub. L. 89–809, set out as a note under section 1382 of this title.

EFFECTIVE DATE

Section applicable, except as otherwise provided, to taxable years of organizations described in section 1381(a) of this title beginning after Dec. 31, 1962, see section 17(c) of Pub. L. 87–834, set out as a note under section 1381 of this title.

PART II—TAX TREATMENT BY PATRONS OF PATRONAGE DIVIDENDS AND PER-UNIT RETAIN ALLOCATIONS

Sec.
1385. Amounts includible in patron's gross income.

AMENDMENTS

1962—Pub. L. 87–834, §17(a), Oct. 16, 1962, 76 Stat. 1048, added heading of part II and item 1385.

§ 1385. Amounts includible in patron's gross income

(a) General rule

Except as otherwise provided in subsection (b), each person shall include in gross income—

(1) the amount of any patronage dividend which is paid in money, a qualified written notice of allocation, or other property (except a nonqualified written notice of allocation), and which is received by him during the taxable year from an organization described in section 1381(a),

(2) any amount, described in section 1382(c)(2)(A) (relating to certain nonpatronage distributions by tax-exempt farmers' cooperatives), which is paid in money, a qualified written notice of allocation, or other property (except a nonqualified written notice of allocation), and which is received by him during the taxable year from an organization described in section 1381(a)(1), and

(3) the amount of any per-unit retain allocation which is paid in qualified per-unit retain certificates and which is received by him dur-

ing the taxable year from an organization described in section 1381(a).

(b) Exclusion from gross income

Under regulations prescribed by the Secretary, the amount of any patronage dividend, and any amount received on the redemption, sale, or other disposition of a nonqualified written notice of allocation which was paid as a patronage dividend, shall not be included in gross income to the extent that such amount—

(1) is properly taken into account as an adjustment to basis of property, or

(2) is attributable to personal, living, or family items.

(c) Treatment of certain nonqualified written notices of allocation and certain nonqualified per-unit retain certificates

(1) Application of subsection

This subsection shall apply to—

(A) any nonqualified written notice of allocation which—

(i) was paid as a patronage dividend, or

(ii) was paid by an organization described in section 1381(a)(1) on a patronage basis with respect to earnings derived from business or sources described in section 1382(c)(2)(A), and

(B) any nonqualified per-unit retain certificate which was paid as a per-unit retain allocation.

(2) Basis; amount of gain

In the case of any nonqualified written notice of allocation or nonqualified per-unit retain certificate to which this subsection applies, for purposes of this chapter—

(A) the basis of such written notice of allocation or per-unit retain certificate in the hands of the patron to whom such written notice of allocation or per-unit retain certificate was paid shall be zero,

(B) the basis of such written notice of allocation or per-unit retain certificate which was acquired from a decedent shall be its basis in the hands of the decedent, and

(C) gain on the redemption, sale, or other disposition of such written notice of allocation or per-unit retain certificate by any person shall, to the extent that the stated dollar amount of such written notice of allocation or per-unit retain certificate exceeds its basis, be considered as ordinary income.

(Added Pub. L. 87–834, §17(a), Oct. 16, 1962, 76 Stat. 1048; amended Pub. L. 89–809, title II, §211(b)(1)–(4), Nov. 13, 1966, 80 Stat. 1582; Pub. L. 94–455, title XIX, §§1901(b)(3)(I), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1793, 1834.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(2)(C). Pub. L. 94–455, §1901(b)(3)(I), substituted ''ordinary income'' for ''gain from the sale or exchange of property which is not a capital asset''.

1966—Subsec. (a)(3). Pub. L. 89–809, §211(b)(1), added par. (3).

Subsec. (c). Pub. L. 89–809, §211(b)(2)–(4), inserted ''and certain nonqualified per-unit retain certificates'' in heading, inserted provisions to par. (1) for the application of the subsection to any nonqualified per-unit retain certificates which were paid as per-unit retain allocations, and inserted references to per-unit retain certificates in par. (2).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(3)(I) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable to per-unit retain allocations made during taxable years of an organization described in section 1381(a) of this title (relating to organizations to which part I of subchapter T of chapter 1 applies) beginning after Apr. 30, 1966, with respect to products delivered during such years, see section 211(e)(1) of Pub. L. 89–809, set out as a note under section 1382 of this title.

EFFECTIVE DATE

Section applicable, except as otherwise provided, to taxable years of organizations described in section 1381(a) of this title beginning after Dec. 31, 1962, see section 17(c) of Pub. L. 87–834, set out as a note under section 1381 of this title.

PART III—DEFINITIONS; SPECIAL RULES

Sec.
1388. Definitions; special rules.

AMENDMENTS

1962—Pub. L. 87–834, §17(a), Oct. 16, 1962, 76 Stat. 1049, added heading of part III and item 1388.

§ 1388. Definitions; special rules

(a) Patronage dividend

For purposes of this subchapter, the term ''patronage dividend'' means an amount paid to a patron by an organization to which part I of this subchapter applies—

(1) on the basis of quantity or value of business done with or for such patron,

(2) under an obligation of such organization to pay such amount, which obligation existed before the organization received the amount so paid, and

(3) which is determined by reference to the net earnings of the organization from business done with or for its patrons.

Such term does not include any amount paid to a patron to the extent that (A) such amount is out of earnings other than from business done with or for patrons, or (B) such amount is out of earnings from business done with or for other patrons to whom no amounts are paid, or to whom smaller amounts are paid, with respect to substantially identical transactions. For purposes of paragraph (3), net earnings shall not be reduced by amounts paid during the year as dividends on capital stock or other proprietary capital interests of the organization to the extent that the articles of incorporation or bylaws of such organization or other contract with patrons provide that such dividends are in addition to amounts otherwise payable to patrons which are derived from business done with or for patrons during the taxable year.

(b) Written notice of allocation

For purposes of this subchapter, the term ''written notice of allocation'' means any cap-

ital stock, revolving fund certificate, retain certificate, certificate of indebtedness, letter of advice, or other written notice, which discloses to the recipient the stated dollar amount allocated to him by the organization and the portion thereof, if any, which constitutes a patronage dividend.

(c) Qualified written notice of allocation

(1) Defined

For purposes of this subchapter, the term ''qualified written notice of allocation'' means—

(A) a written notice of allocation which may be redeemed in cash at its stated dollar amount at any time within a period beginning on the date such written notice of allocation is paid and ending not earlier than 90 days from such date, but only if the distributee receives written notice of the right of redemption at the time he receives such written notice of allocation; and

(B) a written notice of allocation which the distributee has consented, in the manner provided in paragraph (2), to take into account at its stated dollar amount as provided in section 1385(a).

Such term does not include any written notice of allocation which is paid as part of a patronage dividend or as part of a payment described in section 1382(c)(2)(A), unless 20 percent or more of the amount of such patronage dividend, or such payment, is paid in money or by qualified check.

(2) Manner of obtaining consent

A distributee shall consent to take a written notice of allocation into account as provided in paragraph (1)(B) only by—

(A) making such consent in writing,

(B) obtaining or retaining membership in the organization after—

(i) such organization has adopted (after October 16, 1962) a bylaw providing that membership in the organization constitutes such consent, and

(ii) he has received a written notification and copy of such bylaw, or

(C) if neither subparagraph (A) nor (B) applies, endorsing and cashing a qualified check, paid as a part of the patronage dividend or payment of which such written notice of allocation is also a part, on or before the 90th day after the close of the payment period for the taxable year of the organization for which such patronage dividend or payment is paid.

(3) Period for which consent is effective

(A) General rule

Except as provided in subparagraph (B)—

(i) a consent described in paragraph (2)(A) shall be a consent with respect to all patronage of the distributee with the organization occurring (determined with the application of section 1382(e)) during the taxable year of the organization during which such consent is made and all subsequent taxable years of the organization; and

(ii) a consent described in paragraph (2)(B) shall be a consent with respect to all patronage of the distributee with the organization occurring (determined without the application of section 1382(e)) after he received the notification and copy described in paragraph (2)(B)(ii).

(B) Revocation, etc.

(i) Any consent described in paragraph (2)(A) may be revoked (in writing) by the distributee at any time. Any such revocation shall be effective with respect to patronage occurring on or after the first day of the first taxable year of the organization beginning after the revocation is filed with such organization; except that in the case of a pooling arrangement described in section 1382(e), a revocation made by a distributee shall not be effective as to any pool with respect to which the distributee has been a patron before such revocation.

(ii) Any consent described in paragraph (2)(B) shall not be effective with respect to any patronage occurring (determined without the application of section 1382(e)) after the distributee ceases to be a member of the organization or after the bylaws of the organization cease to contain the provision described in paragraph (2)(B)(i).

(4) Qualified check

For purposes of this subchapter, the term ''qualified check'' means only a check (or other instrument which is redeemable in money) which is paid as a part of a patronage dividend, or as a part of a payment described in section 1382(c)(2)(A), to a distributee who has not given consent as provided in paragraph (2)(A) or (B) with respect to such patronage dividend or payment, and on which there is clearly imprinted a statement that the endorsement and cashing of the check (or other instrument) constitutes the consent of the payee to include in his gross income, as provided in the Federal income tax laws, the stated dollar amount of the written notice of allocation which is a part of the patronage dividend or payment of which such qualified check is also a part. Such term does not include any check (or other instrument) which is paid as part of a patronage dividend or payment which does not include a written notice of allocation (other than a written notice of allocation described in paragraph (1)(A)).

(d) Nonqualified written notice of allocation

For purposes of this subchapter, the term ''nonqualified written notice of allocation'' means a written notice of allocation which is not described in subsection (c) or a qualified check which is not cashed on or before the 90th day after the close of the payment period for the taxable year for which the distribution of which it is a part is paid.

(e) Determination of amount paid or received

For purposes of this subchapter, in determining amounts paid or received—

(1) property (other than a written notice of allocation or a per-unit retain certificate) shall be taken into account at its fair market value, and

(2) a qualified written notice of allocation or qualified per-unit retain certificate shall be taken into account at its stated dollar amount.

(f) Per-unit retain allocation

For purposes of this subchapter, the term ''per-unit retain allocation'' means any allocation, by an organization to which part I of this subchapter applies, to a patron with respect to products marketed for him, the amount of which is fixed without reference to the net earnings of the organization pursuant to an agreement between the organization and the patron.

(g) Per-unit retain certificate

For purposes of this subchapter, the term ''per-unit retain certificate'' means any written notice which discloses to the recipient the stated dollar amount of a per-unit retain allocation to him by the organization.

(h) Qualified per-unit retain certificate

(1) Defined

For purposes of this subchapter, the term ''qualified per-unit retain certificate'' means any per-unit retain certificate which the distributee has agreed, in the manner provided in paragraph (2), to take into account at its stated dollar amount as provided in section 1385(a).

(2) Manner of obtaining agreement

A distributee shall agree to take a per-unit retain certificate into account as provided in paragraph (1) only by—

(A) making such agreement in writing, or

(B) obtaining or retaining membership in the organization after—

(i) such organization has adopted (after November 13, 1966) a bylaw providing that membership in the organization constitutes such agreement, and

(ii) he has received a written notification and copy of such bylaw.

(3) Period for which agreement is effective

(A) General rule

Except as provided in subparagraph (B)—

(i) an agreement described in paragraph (2)(A) shall be an agreement with respect to all products delivered by the distributee to the organization during the taxable year of the organization during which such agreement is made and all subsequent taxable years of the organization; and

(ii) an agreement described in paragraph (2)(B) shall be an agreement with respect to all products delivered by the distributee to the organization after he received the notification and copy described in paragraph (2)(B)(ii).

(B) Revocation, etc.

(i) Any agreement described in paragraph (2)(A) may be revoked (in writing) by the distributee at any time. Any such revocation shall be effective with respect to products delivered by the distributee on or after the first day of the first taxable year of the organization beginning after the revocation is filed with the organization; except that in the case of a pooling arrangement described in section 1382(e) a revocation made by a distributee shall not be effective as to any products which were delivered to the organization by the distributee before such revocation.

(ii) Any agreement described in paragraph (2)(B) shall not be effective with respect to any products delivered after the distributee ceases to be a member of the organization or after the bylaws of the organization cease to contain the provision described in paragraph (2)(B)(i).

(i) Nonqualified per-unit retain certificate

For purposes of this subchapter, the term ''nonqualified per-unit retain certificate'' means a per-unit retain certificate which is not described in subsection (h).

(j) Special rules for the netting of gains and losses by cooperatives

For purposes of this subchapter, in the case of any organization to which part I of this subchapter applies—

(1) Optional netting of patronage gains and losses permitted

The net earnings of such organization may, at its option, be determined by offsetting patronage losses (including any patronage loss carried to such year) which are attributable to 1 or more allocation units (whether such units are functional, divisional, departmental, geographic, or otherwise) against patronage earnings of 1 or more other such allocation units.

(2) Certain netting permitted after section 381 transactions

If such an organization acquires the assets of another such organization in a transaction described in section 381(a), the acquiring organization may, in computing its net earnings for taxable years ending after the date of acquisition, offset losses of 1 or more allocation units of the acquiring or acquired organization against earnings of the acquired or acquiring organization, respectively, but only to the extent—

(A) such earnings are properly allocable to periods after the date of acquisition, and

(B) such earnings could have been offset by such losses if such earnings and losses had been derived from allocation units of the same organization.

(3) Notice requirements

(A) In general

In the case of any organization which exercises its option under paragraph (1) for any taxable year, such organization shall, on or before the 15th day of the 9th month following the close of such taxable year, provide to its patrons a written notice which—

(i) states that the organization has offset earnings and losses from 1 or more of its allocation units and that such offset may have affected the amount which is being distributed to its patrons,

(ii) states generally the identity of the offsetting allocation units, and

(iii) states briefly what rights, if any, its patrons may have to additional financial

information of such organization under terms of its charter, articles of incorporation, or bylaws, or under any provision of law.

(B) Certain information need not be provided

An organization may exclude from the information required to be provided under clause (ii) of subparagraph (A) any detailed or specific data regarding earnings or losses of such units which such organization determines would disclose commercially sensitive information which—

(i) could result in a competitive disadvantage to such organization, or

(ii) could create a competitive advantage to the benefit of a competitor of such organization.

(C) Failure to provide sufficient notice

If the Secretary determines that an organization failed to provide sufficient notice under this paragraph—

(i) the Secretary shall notify such organization, and

(ii) such organization shall, upon receipt of such notification, provide to its patrons a revised notice meeting the requirements of this paragraph.

Any such failure shall not affect the treatment of the organization under any provision of this subchapter or section 521.

(4) Patronage earnings or losses defined

For purposes of this subsection, the terms ''patronage earnings'' and ''patronage losses'' means earnings and losses, respectively, which are derived from business done with or for patrons of the organization.

(k) Cooperative marketing includes value-added processing involving animals

For purposes of section 521 and this subchapter, the marketing of the products of members or other producers shall include the feeding of such products to cattle, hogs, fish, chickens, or other animals and the sale of the resulting animals or animal products.

(Added Pub. L. 87–834, §17(a), Oct. 16, 1962, 76 Stat. 1049; amended Pub. L. 89–809, title II, §211(c), Nov. 13, 1966, 80 Stat. 1582; Pub. L. 91–172, title IX, §911(b), Dec. 30, 1969, 83 Stat. 722; Pub. L. 94–455, title XIX, §1901(a)(153), Oct. 4, 1976, 90 Stat. 1789; Pub. L. 95–600, title III, §316(b)(3), Nov. 6, 1978, 92 Stat. 2830; Pub. L. 99–272, title XIII, §13210(a), Apr. 7, 1986, 100 Stat. 323; Pub. L. 101–508, title XI, §11813(b)(24), Nov. 5, 1990, 104 Stat. 1388–555; Pub. L. 108–357, title III, §§312(a), 316(a), Oct. 22, 2004, 118 Stat. 1467, 1469.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–357, §312(a), inserted at end of concluding provisions ''For purposes of paragraph (3), net earnings shall not be reduced by amounts paid during the year as dividends on capital stock or other proprietary capital interests of the organization to the extent that the articles of incorporation or bylaws of such organization or other contract with patrons provide that such dividends are in addition to amounts otherwise payable to patrons which are derived from business done with or for patrons during the taxable year.''

Subsec. (k). Pub. L. 108–357, §316(a), added subsec. (k).

1990—Subsec. (k). Pub. L. 101–508 struck out subsec. (k) which cross-referenced section 46(h) for provisions relating to apportionment of investment credit between cooperative organizations and their patrons.

1986—Subsecs. (j), (k). Pub. L. 99–272 added subsec. (j) and redesignated former subsec. (j) as (k).

1978—Subsec. (j). Pub. L. 95–600 added subsec. (j).

1976—Subsec. (c)(2)(B)(i). Pub. L. 94–455, §1901(a)(153)(A), substituted ''October 16, 1962'' for ''the date of the enactment of the Revenue Act of 1962''.

Subsec. (h)(2)(B)(i). Pub. L. 94–455, §1901(a)(153)(B), substituted ''November 13, 1966'' for ''the date of the enactment of this subsection''.

1969—Subsec. (f). Pub. L. 91–172 struck out reference to allocations made by organizations other than by payment of money or other property except per-unit retain certificates.

1966—Subsec. (e). Pub. L. 89–809, §211(c)(1), inserted references to per-unit retain certificates.

Subsecs. (f) to (i). Pub. L. 89–809, §211(c)(2), added subsecs. (f) to (i).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title III, §312(b), Oct. 22, 2004, 118 Stat. 1467, provided that: ''The amendment made by this section [amending this section] shall apply to distributions in taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004].''

Amendment by section 316(a) of Pub. L. 108–357 applicable to taxable years beginning after Oct. 22, 2004, see section 316(c) of Pub. L. 108–357, set out as a note under section 521 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 13210(c) of Pub. L. 99–272 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 521 of this title] shall apply to taxable years beginning after December 31, 1962.

''(2) NOTIFICATION REQUIREMENT.—The provisions of section 1388(j)(3) of the Internal Revenue Code of 1954 [now 1986] (as added by subsection (a)) shall apply to taxable years beginning on or after the date of the enactment of this Act [Apr. 7, 1986].

''(3) NO INFERENCE.—Nothing in the amendments made by this section [amending this section and section 521 of this title] shall be construed to infer that a change in law is intended as to whether any patronage earnings may or not be offset by nonpatronage losses, and any determination of such issue shall be made as if such amendments had not been enacted.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to taxable years ending after October 31, 1978, see section 316(c) of Pub. L. 95–600, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to per-unit retain allocations made after Oct. 9, 1969, see section 911(c) of Pub. L. 91–172, set out as a note under section 1382 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable to per-unit retain allocations made during taxable years of an or-

ganization described in section 1381(a) of this title (relating to organizations to which part I of subchapter T of chapter 1 applies) beginning after Apr. 30, 1966, with respect to products delivered during such years, see section 211(e)(1) of Pub. L. 89–809, set out as a note under section 1382 of this title.

EFFECTIVE DATE

Section applicable, except as otherwise provided, to taxable years of organizations described in section 1381(a) of this title beginning after Dec. 31, 1962, see section 17(c) of Pub. L. 87–834, set out as a note under section 1381 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

PER-UNIT RETAIN CERTIFICATES COVERED BY WRITTEN AGREEMENTS BETWEEN OCT. 14, 1965, AND NOV. 13, 1966: TRANSITION TREATMENT OF BY-LAW PROVISIONS

Section 211(f) of Pub. L. 89–809 provided that a written agreement between a patron and a cooperative association which met certain qualifications and was entered into after Oct. 14, 1965 and before Nov. 13, 1966, and which was in effect on Nov. 13, 1966, was to be treated for purposes of subsec. (h) of this section as if entered into after Nov. 13, 1966.

Subchapter U—Designation and Treatment of Empowerment Zones, Enterprise Communities, and Rural Development Investment Areas

Part
I. Designation.
II. Tax-exempt facility bonds for empowerment zones and enterprise communities.
III. Additional incentives for empowerment zones.
IV. Incentives for education zones.
V. Regulations.

PRIOR PROVISIONS

A prior subchapter U consisted of sections 1391 to 1397, prior to repeal by Pub. L. 99–514, title XIII, § 1303(a), Oct. 22, 1986, 100 Stat. 2658.

AMENDMENTS

1997—Pub. L. 105–34, title II, § 226(b)(1), Aug. 5, 1997, 111 Stat. 824, added items for parts IV and V and struck out former item for part IV ''Regulations''.

PART I—DESIGNATION

Sec.
1391. Designation procedure.
1392. Eligibility criteria.
1393. Definitions and special rules.

§ 1391. Designation procedure

(a) In general

From among the areas nominated for designation under this section, the appropriate Secretaries may designate empowerment zones and enterprise communities.

(b) Number of designations

(1) Enterprise communities

The appropriate Secretaries may designate in the aggregate 95 nominated areas as enterprise communities under this section, subject to the availability of eligible nominated areas. Of that number, not more than 65 may be designated in urban areas and not more than 30 may be designated in rural areas.

(2) Empowerment zones

The appropriate Secretaries may designate in the aggregate 11 nominated areas as empowerment zones under this section, subject to the availability of eligible nominated areas. Of that number, not more than 8 may be designated in urban areas and not more than 3 may be designated in rural areas. If 6 empowerment zones are designated in urban areas, no less than 1 shall be designated in an urban area the most populous city of which has a population of 500,000 or less and no less than 1 shall be a nominated area which includes areas in 2 States and which has a population of 50,000 or less. The Secretary of Housing and Urban Development shall designate empowerment zones located in urban areas in such a manner that the aggregate population of all such zones does not exceed 1,000,000.

(c) Period designations may be made

A designation may be made under subsection (a) only after 1993 and before 1996.

(d) Period for which designation is in effect

(1) In general

Any designation under this section shall remain in effect during the period beginning on the date of the designation and ending on the earliest of—

(A)(i) in the case of an empowerment zone, December 31, 2011, or

(ii) in the case of an enterprise community, the close of the 10th calendar year beginning on or after such date of designation,

(B) the termination date designated by the State and local governments as provided for in their nomination, or

(C) the date the appropriate Secretary revokes the designation.

(2) Revocation of designation

The appropriate Secretary may revoke the designation under this section of an area if such Secretary determines that the local government or the State in which it is located—

(A) has modified the boundaries of the area, or

(B) is not complying substantially with, or fails to make progress in achieving the benchmarks set forth in, the strategic plan under subsection (f)(2).

(e) Limitations on designations

No area may be designated under this section unless—

(1) the area is nominated by 1 or more local governments and the State or States in which it is located for designation under this section,

(2) such State or States and the local governments have the authority—

(A) to nominate the area for designation under this section, and

(B) to provide the assurances described in paragraph (3),

(3) such State or States and the local governments provide written assurances satisfac-

tory to the appropriate Secretary that the strategic plan described in the application under subsection (f)(2) for such area will be implemented,

(4) the appropriate Secretary determines that any information furnished is reasonably accurate, and

(5) such State or States and local governments certify that no portion of the area nominated is already included in an empowerment zone or in an enterprise community or in an area otherwise nominated to be designated under this section.

(f) Application

No area may be designated under this section unless the application for such designation—

(1) demonstrates that the nominated area satisfies the eligibility criteria described in section 1392,

(2) includes a strategic plan for accomplishing the purposes of this subchapter that—

(A) describes the coordinated economic, human, community, and physical development plan and related activities proposed for the nominated area,

(B) describes the process by which the affected community is a full partner in the process of developing and implementing the plan and the extent to which local institutions and organizations have contributed to the planning process,

(C) identifies the amount of State, local, and private resources that will be available in the nominated area and the private/public partnerships to be used, which may include participation by, and cooperation with, universities, medical centers, and other private and public entities,

(D) identifies the funding requested under any Federal program in support of the proposed economic, human, community, and physical development and related activities,

(E) identifies baselines, methods, and benchmarks for measuring the success of carrying out the strategic plan, including the extent to which poor persons and families will be empowered to become economically self-sufficient, and

(F) does not include any action to assist any establishment in relocating from one area outside the nominated area to the nominated area, except that assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary is permitted if—

(i) the establishment of the new branch, affiliate, or subsidiary will not result in a decrease in employment in the area of original location or in any other area where the existing business entity conducts business operations, and

(ii) there is no reason to believe that the new branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where the existing business entity conducts business operation, and

(3) includes such other information as may be required by the appropriate Secretary.

(g) Additional designations permitted

(1) In general

In addition to the areas designated under subsection (a), the appropriate Secretaries may designate in the aggregate an additional 20 nominated areas as empowerment zones under this section, subject to the availability of eligible nominated areas. Of that number, not more than 15 may be designated in urban areas and not more than 5 may be designated in rural areas.

(2) Period designations may be made and take effect

A designation may be made under this subsection after the date of the enactment of this subsection and before January 1, 1999.

(3) Modifications to eligibility criteria, etc.

(A) Poverty rate requirement

(i) In general

A nominated area shall be eligible for designation under this subsection only if the poverty rate for each population census tract within the nominated area is not less than 20 percent and the poverty rate for at least 90 percent of the population census tracts within the nominated area is not less than 25 percent.

(ii) Treatment of census tracts with small populations

A population census tract with a population of less than 2,000 shall be treated as having a poverty rate of not less than 25 percent if—

(I) more than 75 percent of such tract is zoned for commercial or industrial use, and

(II) such tract is contiguous to 1 or more other population census tracts which have a poverty rate of not less than 25 percent (determined without regard to this clause).

(iii) Exception for developable sites

Clause (i) shall not apply to up to 3 noncontiguous parcels in a nominated area which may be developed for commercial or industrial purposes. The aggregate area of noncontiguous parcels to which the preceding sentence applies with respect to any nominated area shall not exceed 2,000 acres.

(iv) Certain provisions not to apply

Section 1392(a)(4) (and so much of paragraphs (1) and (2) of section 1392(b) as relate to section 1392(a)(4)) shall not apply to an area nominated for designation under this subsection.

(v) Special rule for rural empowerment zone

The Secretary of Agriculture may designate not more than 1 empowerment zone in a rural area without regard to clause (i) if such area satisfies emigration criteria specified by the Secretary of Agriculture.

(B) Size limitation

(i) In general

The parcels described in subparagraph (A)(iii) shall not be taken into account in

determining whether the requirement of subparagraph (A) or (B) of section 1392(a)(3) is met.

(ii) Special rule for rural areas

If a population census tract (or equivalent division under section 1392(b)(4)) in a rural area exceeds 1,000 square miles or includes a substantial amount of land owned by the Federal, State, or local government, the nominated area may exclude such excess square mileage or governmentally owned land and the exclusion of that area will not be treated as violating the continuous boundary requirement of section 1392(a)(3)(B).

(C) Aggregate population limitation

The aggregate population limitation under the last sentence of subsection (b)(2) shall not apply to a designation under paragraph (1).

(D) Previously designated enterprise communities may be included

Subsection (e)(5) shall not apply to any enterprise community designated under subsection (a) that is also nominated for designation under this subsection.

(E) Indian reservations may be nominated

(i) In general

Section 1393(a)(4) shall not apply to an area nominated for designation under this subsection.

(ii) Special rule

An area in an Indian reservation shall be treated as nominated by a State and a local government if it is nominated by the reservation governing body (as determined by the Secretary of[1] Interior).

(h) Additional designations permitted

(1) In general

In addition to the areas designated under subsections (a) and (g), the appropriate Secretaries may designate in the aggregate an additional 9 nominated areas as empowerment zones under this section, subject to the availability of eligible nominated areas. Of that number, not more than seven may be designated in urban areas and not more than 2 may be designated in rural areas.

(2) Period designations may be made and take effect

A designation may be made under this subsection after the date of the enactment of this subsection and before January 1, 2002.

(3) Modifications to eligibility criteria, etc.

The rules of subsection (g)(3) shall apply to designations under this subsection.

(4) Empowerment zones which become renewal communities

The number of areas which may be designated as empowerment zones under this subsection shall be increased by 1 for each area which ceases to be an empowerment zone by reason of section 1400E(e). Each additional area designated by reason of the preceding sentence shall have the same urban or rural character as the area it is replacing.

(Added Pub. L. 103–66, title XIII, § 13301(a), Aug. 10, 1993, 107 Stat. 543; amended Pub. L. 105–34, title IX, §§ 951(a), 952(a), (d), Aug. 5, 1997, 111 Stat. 885–887; Pub. L. 106–554, § 1(a)(7) [title I, §§ 111, 112, title III, § 319(13)], Dec. 21, 2000, 114 Stat. 2763, 2763A–600, 2763A–601, 2763A–646; Pub. L. 111–312, title VII, § 753(a), Dec. 17, 2010, 124 Stat. 3321.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (g)(2), is the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

The date of the enactment of this subsection, referred to in subsec. (h)(2), is the date of enactment of Pub. L. 106–554, which was approved Dec. 21, 2000.

PRIOR PROVISIONS

A prior section 1391, added Pub. L. 95–600, title VI, § 601(a), Nov. 6, 1978, 92 Stat. 2892; amended Pub. L. 96–222, title I, § 106(a)(4), Apr. 1, 1980, 94 Stat. 221; Pub. L. 96–595, § 3(a)(1), (2), Dec. 24, 1980, 94 Stat. 3465, defined terms used in former subchapter U, prior to repeal by Pub. L. 99–514, title XIII, § 1303(a), Oct. 22, 1986, 100 Stat. 2658.

AMENDMENTS

2010—Subsec. (d)(1)(A)(i). Pub. L. 111–312, § 753(a)(1), substituted ''December 31, 2011'' for ''December 31, 2009''.

Subsec. (h)(2). Pub. L. 111–312, § 753(a)(2), struck out at end ''Subject to subparagraphs (B) and (C) of subsection (d)(1), such designations shall remain in effect during the period beginning on January 1, 2002, and ending on December 31, 2009.''

2000—Subsec. (d)(1)(A). Pub. L. 106–554, § 1(a)(7) [title I, § 112], amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''the close of the 10th calendar year beginning on or after such date of designation,''.

Subsec. (g)(3)(C). Pub. L. 106–554, § 1(a)(7) [title III, § 319(13)], substituted ''paragraph (1)'' for ''paragraph (1)(B)''.

Subsec. (h). Pub. L. 106–554, § 1(a)(7) [title I, § 111], added subsec. (h).

1997—Subsec. (b)(2). Pub. L. 105–34, § 951(a)(3), substituted ''1,000,000'' for ''750,000''.

Pub. L. 105–34, § 951(a)(2), substituted ''8'' for ''6'' before ''may be designated''.

Pub. L. 105–34, § 951(a)(1), substituted ''11'' for ''9''.

Subsec. (c). Pub. L. 105–34, § 952(d)(2), substituted ''subsection (a)'' for ''this section''.

Subsecs. (e), (f). Pub. L. 105–34, § 952(d)(1), substituted ''this section'' for ''subsection (a)'' in introductory provisions.

Subsec. (g). Pub. L. 105–34, § 952(a), added subsec. (g).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–312 applicable to periods after Dec. 31, 2009, see section 753(d) of Pub. L. 111–312, set out as a note under section 1202 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 951(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section and section 1396 of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997], except that designations of new empowerment zones made pursuant to such amendments shall be made during the 180-day period beginning on the date of the enactment of this Act. No designation pursuant to such amendments shall take effect before January 1, 2000.''

[1] So in original. Probably should be followed by ''the''.

TREATMENT OF CERTAIN TERMINATION DATES SPECIFIED IN NOMINATIONS

Pub. L. 111–312, title VII, §753(c), Dec. 17, 2010, 124 Stat. 3321, provided that: ''In the case of a designation of an empowerment zone the nomination for which included a termination date which is contemporaneous with the date specified in subparagraph (A)(i) of section 1391(d)(1) of the Internal Revenue Code of 1986 (as in effect before the enactment of this Act [Dec. 17, 2010]), subparagraph (B) of such section shall not apply with respect to such designation if, after the date of the enactment of this section [Dec. 17, 2010], the entity which made such nomination amends the nomination to provide for a new termination date in such manner as the Secretary of the Treasury (or the Secretary's designee) may provide.''

§ 1392. Eligibility criteria

(a) In general

A nominated area shall be eligible for designation under section 1391 only if it meets the following criteria:

(1) Population

The nominated area has a maximum population of—

(A) in the case of an urban area, the lesser of—

(i) 200,000, or

(ii) the greater of 50,000 or 10 percent of the population of the most populous city located within the nominated area, and

(B) in the case of a rural area, 30,000.

(2) Distress

The nominated area is one of pervasive poverty, unemployment, and general distress.

(3) Size

The nominated area—

(A) does not exceed 20 square miles if an urban area or 1,000 square miles if a rural area,

(B) has a boundary which is continuous, or, except in the case of a rural area located in more than 1 State, consists of not more than 3 noncontiguous parcels,

(C)(i) in the case of an urban area, is located entirely within no more than 2 contiguous States, and

(ii) in the case of a rural area, is located entirely within no more than 3 contiguous States, and

(D) does not include any portion of a central business district (as such term is used for purposes of the most recent Census of Retail Trade) unless the poverty rate for each population census tract in such district is not less than 35 percent (30 percent in the case of an enterprise community).

(4) Poverty rate

The poverty rate—

(A) for each population census tract within the nominated area is not less than 20 percent,

(B) for at least 90 percent of the population census tracts within the nominated area is not less than 25 percent, and

(C) for at least 50 percent of the population census tracts within the nominated area is not less than 35 percent.

(b) Special rules relating to determination of poverty rate

For purposes of subsection (a)(4)—

(1) Treatment of census tracts with small populations

(A) Tracts with no population

In the case of a population census tract with no population—

(i) such tract shall be treated as having a poverty rate which meets the requirements of subparagraphs (A) and (B) of subsection (a)(4), but

(ii) such tract shall be treated as having a zero poverty rate for purposes of applying subparagraph (C) thereof.

(B) Tracts with populations of less than 2,000

A population census tract with a population of less than 2,000 shall be treated as having a poverty rate which meets the requirements of subparagraphs (A) and (B) of subsection (a)(4) if more than 75 percent of such tract is zoned for commercial or industrial use.

(2) Discretion to adjust requirements for enterprise communities

In determining whether a nominated area is eligible for designation as an enterprise community, the appropriate Secretary may, where necessary to carry out the purposes of this subchapter, reduce by 5 percentage points one of the following thresholds for not more than 10 percent of the population census tracts (or, if fewer, 5 population census tracts) in the nominated area:

(A) The 20 percent threshold in subsection (a)(4)(A).

(B) The 25 percent threshold in subsection (a)(4)(B).

(C) The 35 percent threshold in subsection (a)(4)(C).

If the appropriate Secretary elects to reduce the threshold under subparagraph (C), such Secretary may (in lieu of applying the preceding sentence) reduce by 10 percentage points the threshold under subparagraph (C) for 3 population census tracts.

(3) Each noncontiguous area must satisfy poverty rate rule

A nominated area may not include a noncontiguous parcel unless such parcel separately meets (subject to paragraphs (1) and (2)) the criteria set forth in subsection (a)(4).

(4) Areas not within census tracts

In the case of an area which is not tracted for population census tracts, the equivalent county divisions (as defined by the Bureau of the Census for purposes of defining poverty areas) shall be used for purposes of determining poverty rates.

(c) Factors to consider

From among the nominated areas eligible for designation under section 1391 by the appropriate Secretary, such appropriate Secretary shall make designations of empowerment zones and enterprise communities on the basis of—

(1) the effectiveness of the strategic plan submitted pursuant to section 1391(f)(2) and the assurances made pursuant to section 1391(e)(3), and

(2) criteria specified by the appropriate Secretary.

(d) Special eligibility for nominated areas located in Alaska or Hawaii

A nominated area in Alaska or Hawaii shall be treated as meeting the requirements of paragraphs (2), (3), and (4) of subsection (a) if for each census tract or block group within such area 20 percent or more of the families have income which is 50 percent or less of the statewide median family income (as determined under section 143).

(Added Pub. L. 103–66, title XIII, § 13301(a), Aug. 10, 1993, 107 Stat. 545; amended Pub. L. 105–34, title IX, § 954, Aug. 5, 1997, 111 Stat. 888.)

PRIOR PROVISIONS

A prior section 1392, added Pub. L. 95–600, title VI, § 601(a), Nov. 6, 1978, 92 Stat. 2893; amended Pub. L. 96–222, title I, § 106(a)(5), Apr. 1, 1980, 94 Stat. 221; Pub. L. 96–595, § 3(a)(3), (4), Dec. 24, 1980, 94 Stat. 3465, related to election by general stock ownership corporations not to be subject to taxes imposed by this chapter, prior to repeal by Pub. L. 99–514, title XIII, § 1303(a), Oct. 22, 1986, 100 Stat. 2658.

AMENDMENTS

1997—Subsec. (d). Pub. L. 105–34 added subsec. (d).

§ 1393. Definitions and special rules

(a) In general

For purposes of this subchapter—

(1) Appropriate Secretary

The term ''appropriate Secretary'' means—

(A) the Secretary of Housing and Urban Development in the case of any nominated area which is located in an urban area, and

(B) the Secretary of Agriculture in the case of any nominated area which is located in a rural area.

(2) Rural area

The term ''rural area'' means any area which is—

(A) outside of a metropolitan statistical area (within the meaning of section 143(k)(2)(B)), or

(B) determined by the Secretary of Agriculture, after consultation with the Secretary of Commerce, to be a rural area.

(3) Urban area

The term ''urban area'' means an area which is not a rural area.

(4) Special rules for Indian reservations

(A) In general

No empowerment zone or enterprise community may include any area within an Indian reservation.

(B) Indian reservation defined

The term ''Indian reservation'' has the meaning given such term by section 168(j)(6).

(5) Local government

The term ''local government'' means—

(A) any county, city, town, township, parish, village, or other general purpose political subdivision of a State, and

(B) any combination of political subdivisions described in subparagraph (A) recognized by the appropriate Secretary.

(6) Nominated area

The term ''nominated area'' means an area which is nominated by 1 or more local governments and the State or States in which it is located for designation under section 1391.

(7) Governments

If more than 1 State or local government seeks to nominate an area under this part, any reference to, or requirement of, this subchapter shall apply to all such governments.

(8) Special rule

An area shall be treated as nominated by a State and a local government if it is nominated by an economic development corporation chartered by the State.

(9) Use of census data

Population and poverty rate shall be determined by the most recent decennial census data available.

(b) Empowerment zone; enterprise community

For purposes of this title, the terms ''empowerment zone'' and ''enterprise community'' mean areas designated as such under section 1391.

(Added Pub. L. 103–66, title XIII, § 13301(a), Aug. 10, 1993, 107 Stat. 547.)

PRIOR PROVISIONS

A prior section 1393, added Pub. L. 95–600, title VI, § 601(a), Nov. 6, 1978, 92 Stat. 2894; amended Pub. L. 96–595, § 3(a)(5), (6), (8), Dec. 24, 1980, 94 Stat. 3465, related to taxation of general stock ownership corporation taxable income to shareholders, prior to repeal by Pub. L. 99–514, title XIII, § 1303(a), Oct. 22, 1986, 100 Stat. 2658.

PART II—TAX-EXEMPT FACILITY BONDS FOR EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES

Sec.
1394. Tax-exempt enterprise zone facility bonds.

§ 1394. Tax-exempt enterprise zone facility bonds

(a) In general

For purposes of part IV of subchapter B of this chapter (relating to tax exemption requirements for State and local bonds), the term ''exempt facility bond'' includes any bond issued as part of an issue 95 percent or more of the net proceeds (as defined in section 150(a)(3)) of which are to be used to provide any enterprise zone facility.

(b) Enterprise zone facility

For purposes of this section—

(1) In general

The term ''enterprise zone facility'' means any qualified zone property the principal user of which is an enterprise zone business, and any land which is functionally related and subordinate to such property.

(2) Qualified zone property

The term ''qualified zone property'' has the meaning given such term by section 1397D; except that—

(A) the references to empowerment zones shall be treated as including references to enterprise communities, and

(B) section 1397D(a)(2) shall be applied by substituting ''an amount equal to 15 percent of the adjusted basis'' for ''an amount equal to the adjusted basis''.

(3) Enterprise zone business

(A) In general

Except as modified in this paragraph, the term ''enterprise zone business'' has the meaning given such term by section 1397C.

(B) Modifications

In applying section 1397C for purposes of this section—

(i) Businesses in enterprise communities eligible

References in section 1397C to empowerment zones shall be treated as including references to enterprise communities.

(ii) Waiver of requirements during startup period

A business shall not fail to be treated as an enterprise zone business during the startup period if—

(I) as of the beginning of the startup period, it is reasonably expected that such business will be an enterprise zone business (as defined in section 1397C as modified by this paragraph) at the end of such period, and

(II) such business makes bona fide efforts to be such a business.

(iii) Reduced requirements after testing period

A business shall not fail to be treated as an enterprise zone business for any taxable year beginning after the testing period by reason of failing to meet any requirement of subsection (b) or (c) of section 1397C if at least 35 percent of the employees of such business for such year are residents of an empowerment zone or an enterprise community. The preceding sentence shall not apply to any business which is not a qualified business by reason of paragraph (1), (4), or (5) of section 1397C(d).

(C) Definitions relating to subparagraph (B)

For purposes of subparagraph (B)—

(i) Startup period

The term ''startup period'' means, with respect to any property being provided for any business, the period before the first taxable year beginning more than 2 years after the later of—

(I) the date of issuance of the issue providing such property, or

(II) the date such property is first placed in service after such issuance (or, if earlier, the date which is 3 years after the date described in subclause (I)).

(ii) Testing period

The term ''testing period'' means the first 3 taxable years beginning after the startup period.

(D) Portions of business may be enterprise zone business

The term ''enterprise zone business'' includes any trades or businesses which would qualify as an enterprise zone business (determined after the modifications of subparagraph (B)) if such trades or businesses were separately incorporated.

(c) Limitation on amount of bonds

(1) In general

Subsection (a) shall not apply to any issue if the aggregate amount of outstanding enterprise zone facility bonds allocable to any person (taking into account such issue) exceeds—

(A) $3,000,000 with respect to any 1 empowerment zone or enterprise community, or

(B) $20,000,000 with respect to all empowerment zones and enterprise communities.

(2) Aggregate enterprise zone facility bond benefit

For purposes of paragraph (1), the aggregate amount of outstanding enterprise zone facility bonds allocable to any person shall be determined under rules similar to the rules of section 144(a)(10), taking into account only bonds to which subsection (a) applies.

(d) Acquisition of land and existing property permitted

The requirements of sections 147(c)(1)(A) and 147(d) shall not apply to any bond described in subsection (a).

(e) Penalty for ceasing to meet requirements

(1) Failures corrected

An issue which fails to meet 1 or more of the requirements of subsections (a) and (b) shall be treated as meeting such requirements if—

(A) the issuer and any principal user in good faith attempted to meet such requirements, and

(B) any failure to meet such requirements is corrected within a reasonable period after such failure is first discovered.

(2) Loss of deductions where facility ceases to be qualified

No deduction shall be allowed under this chapter for interest on any financing provided from any bond to which subsection (a) applies with respect to any facility to the extent such interest accrues during the period beginning on the first day of the calendar year which includes the date on which—

(A) substantially all of the facility with respect to which the financing was provided ceases to be used in an empowerment zone or enterprise community, or

(B) the principal user of such facility ceases to be an enterprise zone business (as defined in subsection (b)).

(3) Exception if zone ceases

Paragraphs (1) and (2) shall not apply solely by reason of the termination or revocation of a designation as an empowerment zone or an enterprise community.

(4) Exception for bankruptcy

Paragraphs (1) and (2) shall not apply to any cessation resulting from bankruptcy.

(f) Bonds for empowerment zones designated under section 1391(g)

(1) In general

In the case of a new empowerment zone facility bond—

(A) such bond shall not be treated as a private activity bond for purposes of section 146, and

(B) subsection (c) of this section shall not apply.

(2) Limitation on amount of bonds

(A) In general

Paragraph (1) shall apply to a new empowerment zone facility bond only if such bond is designated for purposes of this subsection by the local government which nominated the area to which such bond relates.

(B) Limitation on bonds designated

The aggregate face amount of bonds which may be designated under subparagraph (A) with respect to any empowerment zone shall not exceed—

(i) $60,000,000 if such zone is in a rural area,

(ii) $130,000,000 if such zone is in an urban area and the zone has a population of less than 100,000, and

(iii) $230,000,000 if such zone is in an urban area and the zone has a population of at least 100,000.

(C) Special rules

(i) Coordination with limitation in subsection (c)

Bonds to which paragraph (1) applies shall not be taken into account in applying the limitation of subsection (c) to other bonds.

(ii) Current refunding not taken into account

In the case of a refunding (or series of refundings) of a bond designated under this paragraph, the refunding obligation shall be treated as designated under this paragraph (and shall not be taken into account in applying subparagraph (B)) if—

(I) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

(II) the refunded bond is redeemed not later than 90 days after the date of issuance of the refunding bond.

(3) Empowerment zone facility bond

For purposes of this subsection, the term ''empowerment zone facility bond'' means any bond which would be described in subsection (a) if—

(A) in the case of obligations issued before January 1, 2002, only empowerment zones designated under section 1391(g) were taken into account under sections 1397C and 1397D, and

(B) in the case of obligations issued after December 31, 2001, all empowerment zones (other than the District of Columbia Enterprise Zone) were taken into account under sections 1397C and 1397D.

(Added Pub. L. 103–66, title XIII, §13301(a), Aug. 10, 1993, 107 Stat. 548; amended Pub. L. 104–188, title I, §1703(n)(7), Aug. 20, 1996, 110 Stat. 1877; Pub. L. 105–34, title IX, §§953(a), 955(a), (b), Aug. 5, 1997, 111 Stat. 887, 889, 890; Pub. L. 106–554, §1(a)(7) [title I, §§115(a), 116(b)(3), (4)], Dec. 21, 2000, 114 Stat. 2763, 2763A–601, 2763A–603; Pub. L. 107–147, title IV, §417(16), Mar. 9, 2002, 116 Stat. 56.)

PRIOR PROVISIONS

A prior section 1394, added Pub. L. 95–600, title VI, §601(a), Nov. 6, 1978, 92 Stat. 2895; amended Pub. L. 96–595, §3(a)(6)–(8), Dec. 24, 1980, 94 Stat. 3465, related to rules applicable to distributions of an electing general stock ownership corporation, prior to repeal by Pub. L. 99–514, title XIII, §1303(a), Oct. 22, 1986, 100 Stat. 2658.

A prior section 1395, added Pub. L. 95–600, title VI, §601(a), Nov. 6, 1978, 92 Stat. 2895, related to adjustment to basis of stock of shareholders, prior to repeal by Pub. L. 99–514, title XIII, §1303(a), Oct. 22, 1986, 100 Stat. 2658.

AMENDMENTS

2002—Subsec. (c)(2). Pub. L. 107–147 substituted ''paragraph (1)'' for ''subparagraph (A)''.

2000—Subsec. (b)(2). Pub. L. 106–554, §1(a)(7) [title I, §116(b)(3)(A)], substituted ''section 1397D'' for ''section 1397C'' in introductory provisions.

Subsec. (b)(2)(B). Pub. L. 106–554, §1(a)(7) [title I, §116(b)(3)(B)], substituted ''section 1397D(a)(2)'' for ''section 1397C(a)(2)''.

Subsec. (b)(3). Pub. L. 106–554, §1(a)(7) [title I, §116(b)(4)(A)], substituted ''section 1397C'' for ''section 1397B'' wherever appearing.

Subsec. (b)(3)(B)(iii). Pub. L. 106–554, §1(a)(7) [title I, §116(b)(4)(B)], substituted ''section 1397C(d)'' for ''section 1397B(d)''.

Subsec. (f)(3). Pub. L. 106–554, §1(a)(7) [title I, §115(a)], amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''For purposes of this subsection, the term 'new empowerment zone facility bond' means any bond which would be described in subsection (a) if only empowerment zones designated under section 1391(g) were taken into account under sections 1397B and 1397C.''

1997—Subsec. (b)(2). Pub. L. 105–34, §955(b), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''The term 'qualified zone property' has the meaning given such term by section 1397C; except that the references to empowerment zones shall be treated as including references to enterprise communities.''

Subsec. (b)(3). Pub. L. 105–34, §955(b), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''The term 'enterprise zone business' has the meaning given to such term by section 1397B, except that—

''(A) references to empowerment zones shall be treated as including references to enterprise communities, and

''(B) such term includes any trades or businesses which would qualify as an enterprise zone business (determined after the modification of subparagraph (A)) if such trades or businesses were separately incorporated.''

Subsec. (f). Pub. L. 105–34, §953(a), added subsec. (f).

1996—Subsec. (e)(2). Pub. L. 104–188, which directed that par. (2) be amended by striking ''(i)'' and inserting ''(A)'' and by striking ''(ii)'' and inserting ''(B)'', could not be executed, because par. (2) contained neither ''(i)'' nor ''(ii)''.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title I, §115(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–602, provided that: ''The amendments made by this section [amending this section] shall apply to obligations issued after December 31, 2001.''

Amendment by section 1(a)(7) [title I, §116(b)(3), (4)] of Pub. L. 106–554 applicable to qualified empowerment zone assets acquired after Dec. 21, 2000, see section 1(a)(7) [title I, §116(c)] of Pub. L. 106–554, set out as a note under section 1016 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 953(b) of Pub. L. 105–34 provided that: ''The amendment made by this section [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Aug. 5, 1997].''

Section 955(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§13001–13444, to which such amendment relates, see section 1703(*o*) of Pub. L. 104–188, set out as a note under section 39 of this title.

PART III—ADDITIONAL INCENTIVES FOR EMPOWERMENT ZONES

Subpart

A. Empowerment zone employment credit.
B. Additional expensing.
C. Nonrecognition of gain on rollover of empowerment zone investments.
D. General provisions.

AMENDMENTS

2000—Pub. L. 106–554, §1(a)(7) [title I, §116(b)(6)], Dec. 21, 2000, 114 Stat. 2763, 2763A–604, added items for subparts C and D and struck out former item for subpart C ''General provisions''.

SUBPART A—EMPOWERMENT ZONE EMPLOYMENT CREDIT

Sec.

1396. Empowerment zone employment credit.
1397. Other definitions and special rules.

§ 1396. Empowerment zone employment credit

(a) Amount of credit

For purposes of section 38, the amount of the empowerment zone employment credit determined under this section with respect to any employer for any taxable year is the applicable percentage of the qualified zone wages paid or incurred during the calendar year which ends with or within such taxable year.

(b) Applicable percentage

For purposes of this section, the applicable percentage is 20 percent.

(c) Qualified zone wages

(1) In general

For purposes of this section, the term ''qualified zone wages'' means any wages paid or incurred by an employer for services performed by an employee while such employee is a qualified zone employee.

(2) Only first $15,000 of wages per year taken into account

With respect to each qualified zone employee, the amount of qualified zone wages which may be taken into account for a calendar year shall not exceed $15,000.

(3) Coordination with work opportunity credit

(A) In general

The term ''qualified zone wages'' shall not include wages taken into account in determining the credit under section 51.

(B) Coordination with paragraph (2)

The $15,000 amount in paragraph (2) shall be reduced for any calendar year by the amount of wages paid or incurred during such year which are taken into account in determining the credit under section 51.

(d) Qualified zone employee

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the term ''qualified zone employee'' means, with respect to any period, any employee of an employer if—

(A) substantially all of the services performed during such period by such employee for such employer are performed within an empowerment zone in a trade or business of the employer, and

(B) the principal place of abode of such employee while performing such services is within such empowerment zone.

(2) Certain individuals not eligible

The term ''qualified zone employee'' shall not include—

(A) any individual described in subparagraph (A), (B), or (C) of section 51(i)(1),

(B) any 5-percent owner (as defined in section 416(i)(1)(B)),

(C) any individual employed by the employer for less than 90 days,

(D) any individual employed by the employer at any facility described in section 144(c)(6)(B), and

(E) any individual employed by the employer in a trade or business the principal activity of which is farming (within the meaning of subparagraph (A) or (B) of section 2032A(e)(5)), but only if, as of the close of the taxable year, the sum of—

(i) the aggregate unadjusted bases (or, if greater, the fair market value) of the assets owned by the employer which are used in such a trade or business, and

(ii) the aggregate value of assets leased by the employer which are used in such a trade or business (as determined under regulations prescribed by the Secretary),

exceeds $500,000.

(3) Special rules related to termination of employment

(A) In general

Paragraph (2)(C) shall not apply to—

(i) a termination of employment of an individual who before the close of the period referred to in paragraph (2)(C) becomes disabled to perform the services of such employment unless such disability is removed before the close of such period and the taxpayer fails to offer reemployment to such individual, or

(ii) a termination of employment of an individual if it is determined under the applicable State unemployment compensation law that the termination was due to the misconduct of such individual.

(B) Changes in form of business

For purposes of paragraph (2)(C), the employment relationship between the taxpayer and an employee shall not be treated as terminated—

(i) by a transaction to which section 381(a) applies if the employee continues to be employed by the acquiring corporation, or

(ii) by reason of a mere change in the form of conducting the trade or business of the taxpayer if the employee continues to be employed in such trade or business and the taxpayer retains a substantial interest in such trade or business.

(Added Pub. L. 103–66, title XIII, § 13301(a), Aug. 10, 1993, 107 Stat. 549; amended Pub. L. 104–188, title I, § 1201(e)(4), Aug. 20, 1996, 110 Stat. 1772; Pub. L. 105–34, title IX, §§ 951(b), 952(b), Aug. 5, 1997, 111 Stat. 885, 887; Pub. L. 106–554, § 1(a)(7) [title I, § 113(a), (b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–601.)

REFERENCES IN TEXT

The Taxpayer Relief Act of 1997, referred to in subsec. (b)(2), is Pub. L. 105–34, Aug. 5, 1997, 111 Stat. 788.

PRIOR PROVISIONS

A prior section 1396, added Pub. L. 95–600, title VI, § 601(a), Nov. 6, 1978, 92 Stat. 2895; amended Pub. L. 96–595, § 3(a)(6), (9), (10), Dec. 24, 1980, 94 Stat. 3465, related to minimum distributions by an electing general stock ownership corporation, prior to repeal by Pub. L. 99–514, title XIII, § 1303(a), Oct. 22, 1986, 100 Stat. 2658.

AMENDMENTS

2000—Subsec. (b). Pub. L. 106–554, § 1(a)(7) [title I, § 113(a)], amended subsec. (b) generally, substituting provisions establishing an applicable percentage of 20 percent for provisions setting out tables for determining the applicable percentage.

Subsec. (e). Pub. L. 106–554, § 1(a)(7) [title I, § 113(b)], struck out heading and text of subsec. (e). Text read as follows: ''This section shall be applied without regard to any empowerment zone designated under section 1391(g).''

1997—Subsec. (b). Pub. L. 105–34 substituted ''For purposes of this section—

''(1) IN GENERAL.—Except as provided in paragraph (2), the term 'applicable percentage' means the percentage determined in accordance with the following table:''

for ''For purposes of this section, the term 'applicable percentage' means the percentage determined in accordance with the following table:'' and added par. (2).

Subsec. (e). Pub. L. 105–34, § 952(b), added subsec. (e).

1996—Subsec. (c)(3). Pub. L. 104–188 substituted ''work opportunity credit'' for ''targeted jobs credit'' in heading.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(7) [title I, § 113(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–601, provided that: ''The amendments made by this section [amending this section and section 1400 of this title] shall apply to wages paid or incurred after December 31, 2001.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 951(b) of Pub. L. 105–34 effective Aug. 5, 1997, except that designations of new empowerment zones made pursuant to amendments by section 951 of Pub. L. 105–34 to be made during 180-day period beginning Aug. 5, 1997, and no designation pursuant to such amendments to take effect before Jan. 1, 2000, see section 951(c) of Pub. L. 105–34, set out as a note under section 1391 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to individuals who begin work for the employer after Sept. 30, 1996, see section 1201(g) of Pub. L. 104–188, set out as a note under section 38 of this title.

§ 1397. Other definitions and special rules

(a) Wages

For purposes of this subpart—

(1) In general

The term ''wages'' has the same meaning as when used in section 51.

(2) Certain training and educational benefits

(A) In general

The following amounts shall be treated as wages paid to an employee:

(i) Any amount paid or incurred by an employer which is excludable from the gross income of an employee under section 127, but only to the extent paid or incurred to a person not related to the employer.

(ii) In the case of an employee who has not attained the age of 19, any amount paid or incurred by an employer for any youth training program operated by such employer in conjunction with local education officials.

(B) Related person

A person is related to any other person if the person bears a relationship to such other person specified in section 267(b) or 707(b)(1), or such person and such other person are engaged in trades or businesses under common control (within the meaning of subsections (a) and (b) of section 52). For purposes of the preceding sentence, in applying section 267(b) or 707(b)(1), ''10 percent'' shall be substituted for ''50 percent''.

(b) Controlled groups

For purposes of this subpart—

(1) all employers treated as a single employer under subsection (a) or (b) of section 52 shall be treated as a single employer for purposes of this subpart, and

(2) the credit (if any) determined under section 1396 with respect to each such employer shall be its proportionate share of the wages giving rise to such credit.

(c) Certain other rules made applicable

For purposes of this subpart, rules similar to the rules of section 51(k) and subsections (c), (d), and (e) of section 52 shall apply.

(Added Pub. L. 103–66, title XIII, § 13301(a), Aug. 10, 1993, 107 Stat. 551.)

PRIOR PROVISIONS

A prior section 1397, added Pub. L. 95–600, title VI, § 601(a), Nov. 6, 1978, 92 Stat. 2895, related to special rules applicable to an electing general stock ownership corporation, prior to repeal by Pub. L. 99–514, title XIII, § 1303(a), Oct. 22, 1986, 100 Stat. 2658.

SUBPART B—ADDITIONAL EXPENSING

Sec.
1397A. Increase in expensing under section 179.

§ 1397A. Increase in expensing under section 179

(a) General rule

In the case of an enterprise zone business, for purposes of section 179—

(1) the limitation under section 179(b)(1) shall be increased by the lesser of—

(A) $35,000, or

(B) the cost of section 179 property which is qualified zone property placed in service during the taxable year, and

(2) the amount taken into account under section 179(b)(2) with respect to any section 179 property which is qualified zone property shall be 50 percent of the cost thereof.

(b) Recapture

Rules similar to the rules under section 179(d)(10) shall apply with respect to any qualified zone property which ceases to be used in an empowerment zone by an enterprise zone business.

(Added Pub. L. 103–66, title XIII, §13301(a), Aug. 10, 1993, 107 Stat. 552; amended Pub. L. 105–34, title IX, §952(c), Aug. 5, 1997, 111 Stat. 887; Pub. L. 106–554, §1(a)(7) [title I, §114(a), (b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–601.)

AMENDMENTS

2000—Subsec. (a)(1)(A). Pub. L. 106–554, §1(a)(7) [title I, §114(a)], substituted ''$35,000'' for ''$20,000''.

Subsec. (c). Pub. L. 106–554, §1(a)(7) [title I, §114(b)], struck out heading and text of subsec. (c). Text read as follows: ''For purposes of this section, qualified zone property shall not include any property substantially all of the use of which is in any parcel described in section 1391(g)(3)(A)(iii).''

1997—Subsec. (c). Pub. L. 105–34 added subsec. (c).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(7) [title I, §114(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–601, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2001.''

SUBPART C—NONRECOGNITION OF GAIN ON ROLLOVER OF EMPOWERMENT ZONE INVESTMENTS

Sec.
1397B. Nonrecognition of gain on rollover of empowerment zone investments.

AMENDMENTS

2000—Pub. L. 106–554, §1(a)(7) [title I, §116(a)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–602, added subpart C heading and item 1397B. Former subpart C, consisting of sections 1397B and 1397C, redesignated D.

§ 1397B. Nonrecognition of gain on rollover of empowerment zone investments

(a) Nonrecognition of gain

In the case of any sale of a qualified empowerment zone asset held by the taxpayer for more than 1 year and with respect to which such taxpayer elects the application of this section, gain from such sale shall be recognized only to the extent that the amount realized on such sale exceeds—

(1) the cost of any qualified empowerment zone asset (with respect to the same zone as the asset sold) purchased by the taxpayer during the 60-day period beginning on the date of such sale, reduced by

(2) any portion of such cost previously taken into account under this section.

(b) Definitions and special rules

For purposes of this section—

(1) Qualified empowerment zone asset

(A) In general

The term ''qualified empowerment zone asset'' means any property which would be a qualified community asset (as defined in section 1400F) if in section 1400F—

(i) references to empowerment zones were substituted for references to renewal communities,

(ii) references to enterprise zone businesses (as defined in section 1397C) were substituted for references to renewal community businesses, and

(iii) the date of the enactment of this paragraph were substituted for ''December 31, 2001'' each place it appears.

(B) Treatment of DC zone

The District of Columbia Enterprise Zone shall not be treated as an empowerment zone for purposes of this section.

(2) Certain gain not eligible for rollover

This section shall not apply to—

(A) any gain which is treated as ordinary income for purposes of this subtitle, and

(B) any gain which is attributable to real property, or an intangible asset, which is not an integral part of an enterprise zone business.

(3) Purchase

A taxpayer shall be treated as having purchased any property if, but for paragraph (4), the unadjusted basis of such property in the hands of the taxpayer would be its cost (within the meaning of section 1012).

(4) Basis adjustments

If gain from any sale is not recognized by reason of subsection (a), such gain shall be applied to reduce (in the order acquired) the basis for determining gain or loss of any qualified empowerment zone asset which is purchased by the taxpayer during the 60-day period described in subsection (a). This paragraph shall not apply for purposes of section 1202.

(5) Holding period

For purposes of determining whether the nonrecognition of gain under subsection (a) applies to any qualified empowerment zone asset which is sold—

(A) the taxpayer's holding period for such asset and the asset referred to in subsection (a)(1) shall be determined without regard to section 1223, and

(B) only the first year of the taxpayer's holding period for the asset referred to in subsection (a)(1) shall be taken into account for purposes of paragraphs (2)(A)(iii), (3)(C), and (4)(A)(iii) of section 1400F(b).

(Added Pub. L. 106–554, §1(a)(7) [title I, §116(a)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–602.)

REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (b)(1)(A)(iii), is the date of enactment of Pub. L. 106–554, which was approved Dec. 21, 2000.

PRIOR PROVISIONS

A prior section 1397B was renumbered section 1397C of this title.

EFFECTIVE DATE

Section applicable to qualified empowerment zone assets acquired after Dec. 21, 2000, see section 1(a)(7) [title I, §116(c)] of Pub. L. 106–554, set out as an Effective Date of 2000 Amendment note under section 1016 of this title.

SUBPART D—GENERAL PROVISIONS

Sec.
1397C. Enterprise zone business defined.
1397D. Qualified zone property defined.

AMENDMENTS

2000—Pub. L. 106–554, §1(a)(7) [title I, §116(a)(1), (b)(7)], Dec. 21, 2000, 114 Stat. 2763, 2763A–602, 2763A–604, redesignated subpart C of this part as this subpart and items for sections 1397B and 1397C as 1397C and 1397D, respectively.

§ 1397C. Enterprise zone business defined

(a) In general

For purposes of this part, the term ''enterprise zone business'' means—

(1) any qualified business entity, and

(2) any qualified proprietorship.

(b) Qualified business entity

For purposes of this section, the term ''qualified business entity'' means, with respect to any taxable year, any corporation or partnership if for such year—

(1) every trade or business of such entity is the active conduct of a qualified business within an empowerment zone,

(2) at least 50 percent of the total gross income of such entity is derived from the active conduct of such business,

(3) a substantial portion of the use of the tangible property of such entity (whether owned or leased) is within an empowerment zone,

(4) a substantial portion of the intangible property of such entity is used in the active conduct of any such business,

(5) a substantial portion of the services performed for such entity by its employees are performed in an empowerment zone,

(6) at least 35 percent of its employees are residents of an empowerment zone,

(7) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to collectibles (as defined in section 408(m)(2)) other than collectibles that are held primarily for sale to customers in the ordinary course of such business, and

(8) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to nonqualified financial property.

(c) Qualified proprietorship

For purposes of this section, the term ''qualified proprietorship'' means, with respect to any taxable year, any qualified business carried on by an individual as a proprietorship if for such year—

(1) at least 50 percent of the total gross income of such individual from such business is derived from the active conduct of such business in an empowerment zone,

(2) a substantial portion of the use of the tangible property of such individual in such business (whether owned or leased) is within an empowerment zone,

(3) a substantial portion of the intangible property of such business is used in the active conduct of such business,

(4) a substantial portion of the services performed for such individual in such business by employees of such business are performed in an empowerment zone,

(5) at least 35 percent of such employees are residents of an empowerment zone,

(6) less than 5 percent of the average of the aggregate unadjusted bases of the property of such individual which is used in such business is attributable to collectibles (as defined in section 408(m)(2)) other than collectibles that are held primarily for sale to customers in the ordinary course of such business, and

(7) less than 5 percent of the average of the aggregate unadjusted bases of the property of such individual which is used in such business is attributable to nonqualified financial property.

For purposes of this subsection, the term ''employee'' includes the proprietor.

(d) Qualified business

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the term ''qualified business'' means any trade or business.

(2) Rental of real property

The rental to others of real property located in an empowerment zone shall be treated as a qualified business if and only if—

(A) the property is not residential rental property (as defined in section 168(e)(2)), and

(B) at least 50 percent of the gross rental income from the real property is from enterprise zone businesses.

For purposes of subparagraph (B), the lessor of the property may rely on a lessee's certification that such lessee is an enterprise zone business.

(3) Rental of tangible personal property

The rental to others of tangible personal property shall be treated as a qualified business if and only if at least 50 percent of the rental of such property is by enterprise zone businesses or by residents of an empowerment zone.

(4) Treatment of business holding intangibles

The term ''qualified business'' shall not include any trade or business consisting predominantly of the development or holding of intangibles for sale or license.

(5) Certain businesses excluded

The term ''qualified business'' shall not include—

(A) any trade or business consisting of the operation of any facility described in section 144(c)(6)(B), and

(B) any trade or business the principal activity of which is farming (within the meaning of subparagraphs[1] (A) or (B) of section

[1] So in original. Probably should be ''subparagraph''.

2032A(e)(5)), but only if, as of the close of the taxable year, the sum of—

(i) the aggregate unadjusted bases (or, if greater, the fair market value) of the assets owned by the taxpayer which are used in such a trade or business, and

(ii) the aggregate value of assets leased by the taxpayer which are used in such a trade or business,

exceeds $500,000.

For purposes of subparagraph (B), rules similar to the rules of section 1397(b) shall apply.

(e) Nonqualified financial property

For purposes of this section, the term ''nonqualified financial property'' means debt, stock, partnership interests, options, futures contracts, forward contracts, warrants, notional principal contracts, annuities, and other similar property specified in regulations; except that such term shall not include—

(1) reasonable amounts of working capital held in cash, cash equivalents, or debt instruments with a term of 18 months or less, or

(2) debt instruments described in section 1221(a)(4).

(f) Treatment of businesses straddling census tract lines

For purposes of this section, if—

(1) a business entity or proprietorship uses real property located within an empowerment zone,

(2) the business entity or proprietorship also uses real property located outside the empowerment zone,

(3) the amount of real property described in paragraph (1) is substantial compared to the amount of real property described in paragraph (2), and

(4) the real property described in paragraph (2) is contiguous to part or all of the real property described in paragraph (1),

then all the services performed by employees, all business activities, all tangible property, and all intangible property of the business entity or proprietorship that occur in or is located on the real property described in paragraphs (1) and (2) shall be treated as occurring or situated in an empowerment zone.

(Added Pub. L. 103–66, title XIII, §13301(a), Aug. 10, 1993, 107 Stat. 552, §1397B; amended Pub. L. 104–188, title I, §1703(m), Aug. 20, 1996, 110 Stat. 1877; Pub. L. 105–34, title IX, §956(a), Aug. 5, 1997, 111 Stat. 890; Pub. L. 106–170, title V, §532(c)(4), Dec. 17, 1999, 113 Stat. 1931; renumbered §1397C, Pub. L. 106–554, §1(a)(7) [title I, §116(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–602.)

PRIOR PROVISIONS

A prior section 1397C was renumbered section 1397D of this title.

AMENDMENTS

2000—Pub. L. 106–554 renumbered section 1397B of this title as this section.

1999—Subsec. (e)(2). Pub. L. 106–170 substituted ''section 1221(a)(4)'' for ''section 1221(4)''.

1997—Subsec. (b)(2). Pub. L. 105–34, §956(a)(1), substituted ''50 percent'' for ''80 percent''.

Subsec. (b)(3). Pub. L. 105–34, §956(a)(2), substituted ''a substantial portion'' for ''substantially all''.

Subsec. (b)(4). Pub. L. 105–34, §956(a)(2), (3), substituted ''a substantial portion'' for ''substantially all'' and struck out '', and exclusively related to,'' after ''entity is used in''.

Subsec. (b)(5). Pub. L. 105–34, §956(a)(2), substituted ''a substantial portion'' for ''substantially all''.

Subsec. (c)(1). Pub. L. 105–34, §956(a)(1), substituted ''50 percent'' for ''80 percent''.

Subsec. (c)(2). Pub. L. 105–34, §956(a)(2), substituted ''a substantial portion'' for ''substantially all''.

Subsec. (c)(3). Pub. L. 105–34, §956(a)(2), (3), substituted ''a substantial portion'' for ''substantially all'' and struck out '', and exclusively related to,'' after ''business is used in''.

Subsec. (c)(4). Pub. L. 105–34, §956(a)(2), substituted ''a substantial portion'' for ''substantially all''.

Subsec. (d)(2). Pub. L. 105–34, §956(a)(4), inserted concluding provisions.

Subsec. (d)(3). Pub. L. 105–34, §956(a)(5), substituted ''at least 50 percent'' for ''substantially all''.

Subsec. (f). Pub. L. 105–34, §956(a)(6), added subsec. (f).

1996—Subsec. (d)(5)(B). Pub. L. 104–188 struck out ''preceding'' before ''taxable year'' in introductory provisions.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 956(b) of Pub. L. 105–34 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to taxable years beginning on or after the date of the enactment of this Act [Aug. 5, 1997].

''(2) SPECIAL RULE FOR ENTERPRISE ZONE FACILITY BONDS.—For purposes of section 1394(b) of the Internal Revenue Code of 1986, the amendments made by this section shall apply to obligations issued after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§13001–13444, to which such amendment relates, see section 1703(*o*) of Pub. L. 104–188, set out as a note under section 39 of this title.

§ 1397D. Qualified zone property defined

(a) General rule

For purposes of this part—

(1) In general

The term ''qualified zone property'' means any property to which section 168 applies (or would apply but for section 179) if—

(A) such property was acquired by the taxpayer by purchase (as defined in section 179(d)(2)) after the date on which the designation of the empowerment zone took effect,

(B) the original use of which in an empowerment zone commences with the taxpayer, and

(C) substantially all of the use of which is in an empowerment zone and is in the active conduct of a qualified business by the taxpayer in such zone.

(2) Special rule for substantial renovations

In the case of any property which is substantially renovated by the taxpayer, the requirements of subparagraphs (A) and (B) of para-

graph (1) shall be treated as satisfied. For purposes of the preceding sentence, property shall be treated as substantially renovated by the taxpayer if, during any 24-month period beginning after the date on which the designation of the empowerment zone took effect, additions to basis with respect to such property in the hands of the taxpayer exceed the greater of (i) an amount equal to the adjusted basis at the beginning of such 24-month period in the hands of the taxpayer, or (ii) $5,000.

(b) Special rules for sale-leasebacks

For purposes of subsection (a)(1)(B), if property is sold and leased back by the taxpayer within 3 months after the date such property was originally placed in service, such property shall be treated as originally placed in service not earlier than the date on which such property is used under the leaseback.

(Added Pub. L. 103–66, title XIII, § 13301(a), Aug. 10, 1993, 107 Stat. 554, § 1397C; renumbered § 1397D, Pub. L. 106–554, § 1(a)(7) [title I, § 116(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–602.)

PRIOR PROVISIONS

A prior section 1397D was renumbered section 1397F of this title.

AMENDMENTS

2000—Pub. L. 106–554 renumbered section 1397C of this title as this section.

PART IV—INCENTIVES FOR EDUCATION ZONES

Sec.
1397E. Credit to holders of qualified zone academy bonds.

AMENDMENTS

1997—Pub. L. 105–34, title II, § 226(a), Aug. 5, 1997, 111 Stat. 820, added part IV heading and item 1397E. Former part IV, consisting of section 1397D, redesignated V.

§ 1397E. Credit to holders of qualified zone academy bonds

(a) Allowance of credit

In the case of an eligible taxpayer who holds a qualified zone academy bond on the credit allowance date of such bond which occurs during the taxable year, there shall be allowed as a credit against the tax imposed by this chapter for such taxable year the amount determined under subsection (b).

(b) Amount of credit

(1) In general

The amount of the credit determined under this subsection with respect to any qualified zone academy bond is the amount equal to the product of—

(A) the credit rate determined by the Secretary under paragraph (2) for the month in which such bond was issued, multiplied by

(B) the face amount of the bond held by the taxpayer on the credit allowance date.

(2) Determination

During each calendar month, the Secretary shall determine a credit rate which shall apply to bonds issued during the following calendar month. The credit rate for any month is the percentage which the Secretary estimates will permit the issuance of qualified zone academy bonds without discount and without interest cost to the issuer.

(c) Limitation based on amount of tax

The credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

(1) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

(2) the sum of the credits allowable under part IV of subchapter A (other than subpart C thereof, relating to refundable credits, and subparts H, I, and J thereof).

(d) Qualified zone academy bond

For purposes of this section—

(1) In general

The term ''qualified zone academy bond'' means any bond issued as part of an issue if—

(A) 95 percent or more of the proceeds of such issue are to be used for a qualified purpose with respect to a qualified zone academy established by an eligible local education agency,

(B) the bond is issued by a State or local government within the jurisdiction of which such academy is located,

(C) the issuer—

(i) designates such bond for purposes of this section,

(ii) certifies that it has written assurances that the private business contribution requirement of paragraph (2) will be met with respect to such academy, and

(iii) certifies that it has the written approval of the eligible local education agency for such bond issuance,

(D) the term of each bond which is part of such issue does not exceed the maximum term permitted under paragraph (3), and

(E) the issue meets the requirements of subsections (f), (g), and (h).

(2) Private business contribution requirement

(A) In general

For purposes of paragraph (1), the private business contribution requirement of this paragraph is met with respect to any issue if the eligible local education agency that established the qualified zone academy has written commitments from private entities to make qualified contributions having a present value (as of the date of issuance of the issue) of not less than 10 percent of the proceeds of the issue.

(B) Qualified contributions

For purposes of subparagraph (A), the term ''qualified contribution'' means any contribution (of a type and quality acceptable to the eligible local education agency) of—

(i) equipment for use in the qualified zone academy (including state-of-the-art technology and vocational equipment),

(ii) technical assistance in developing curriculum or in training teachers in order to promote appropriate market driven technology in the classroom,

(iii) services of employees as volunteer mentors,

(iv) internships, field trips, or other educational opportunities outside the academy for students, or

(v) any other property or service specified by the eligible local education agency.

(3) Term requirement

During each calendar month, the Secretary shall determine the maximum term permitted under this paragraph for bonds issued during the following calendar month. Such maximum term shall be the term which the Secretary estimates will result in the present value of the obligation to repay the principal on the bond being equal to 50 percent of the face amount of the bond. Such present value shall be determined using as a discount rate the average annual interest rate of tax-exempt obligations having a term of 10 years or more which are issued during the month. If the term as so determined is not a multiple of a whole year, such term shall be rounded to the next highest whole year.

(4) Qualified zone academy

(A) In general

The term ''qualified zone academy'' means any public school (or academic program within a public school) which is established by and operated under the supervision of an eligible local education agency to provide education or training below the postsecondary level if—

(i) such public school or program (as the case may be) is designed in cooperation with business to enhance the academic curriculum, increase graduation and employment rates, and better prepare students for the rigors of college and the increasingly complex workforce,

(ii) students in such public school or program (as the case may be) will be subject to the same academic standards and assessments as other students educated by the eligible local education agency,

(iii) the comprehensive education plan of such public school or program is approved by the eligible local education agency, and

(iv)(I) such public school is located in an empowerment zone or enterprise community (including any such zone or community designated after the date of the enactment of this section), or

(II) there is a reasonable expectation (as of the date of issuance of the bonds) that at least 35 percent of the students attending such school or participating in such program (as the case may be) will be eligible for free or reduced-cost lunches under the school lunch program established under the Richard B. Russell National School Lunch Act.

(B) Eligible local education agency

The term ''eligible local education agency'' means any local educational agency as defined in section 9101 of the Elementary and Secondary Education Act of 1965.

(5) Qualified purpose

The term ''qualified purpose'' means, with respect to any qualified zone academy—

(A) rehabilitating or repairing the public school facility in which the academy is established,

(B) providing equipment for use at such academy,

(C) developing course materials for education to be provided at such academy, and

(D) training teachers and other school personnel in such academy.

(6) Eligible taxpayer

The term ''eligible taxpayer'' means—

(A) a bank (within the meaning of section 581),

(B) an insurance company to which subchapter L applies, and

(C) a corporation actively engaged in the business of lending money.

(e) Limitation on amount of bonds designated

(1) National limitation

There is a national zone academy bond limitation for each calendar year. Such limitation is $400,000,000 for 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, and 2007, and, except as provided in paragraph (4), zero thereafter.

(2) Allocation of limitation

The national zone academy bond limitation for a calendar year shall be allocated by the Secretary among the States on the basis of their respective populations of individuals below the poverty line (as defined by the Office of Management and Budget). The limitation amount allocated to a State under the preceding sentence shall be allocated by the State education agency to qualified zone academies within such State.

(3) Designation subject to limitation amount

The maximum aggregate face amount of bonds issued during any calendar year which may be designated under subsection (d)(1) with respect to any qualified zone academy shall not exceed the limitation amount allocated to such academy under paragraph (2) for such calendar year.

(4) Carryover of unused limitation

If for any calendar year—

(A) the limitation amount for any State, exceeds

(B) the amount of bonds issued during such year which are designated under subsection (d)(1) with respect to qualified zone academies within such State,

the limitation amount for such State for the following calendar year shall be increased by the amount of such excess. Any carryforward of a limitation amount may be carried only to the first 2 years (3 years for carryforwards from 1998 or 1999) following the unused limitation year. For purposes of the preceding sentence, a limitation amount shall be treated as used on a first-in first-out basis.

(f) Special rules relating to expenditures

(1) In general

An issue shall be treated as meeting the requirements of this subsection if, as of the date of issuance, the issuer reasonably expects—

(A) at least 95 percent of the proceeds from the sale of the issue are to be spent for 1 or

more qualified purposes with respect to qualified zone academies within the 5-year period beginning on the date of issuance of the qualified zone academy bond,

(B) a binding commitment with a third party to spend at least 10 percent of the proceeds from the sale of the issue will be incurred within the 6-month period beginning on the date of issuance of the qualified zone academy bond, and

(C) such purposes will be completed with due diligence and the proceeds from the sale of the issue will be spent with due diligence.

(2) Extension of period

Upon submission of a request prior to the expiration of the period described in paragraph (1)(A), the Secretary may extend such period if the issuer establishes that the failure to satisfy the 5-year requirement is due to reasonable cause and the related purposes will continue to proceed with due diligence.

(3) Failure to spend required amount of bond proceeds within 5 years

To the extent that less than 95 percent of the proceeds of such issue are expended by the close of the 5-year period beginning on the date of issuance (or if an extension has been obtained under paragraph (2), by the close of the extended period), the issuer shall redeem all of the nonqualified bonds within 90 days after the end of such period. For purposes of this paragraph, the amount of the nonqualified bonds required to be redeemed shall be determined in the same manner as under section 142.

(g) Special rules relating to arbitrage

An issue shall be treated as meeting the requirements of this subsection if the issuer satisfies the arbitrage requirements of section 148 with respect to proceeds of the issue.

(h) Reporting

Issuers of qualified academy zone bonds shall submit reports similar to the reports required under section 149(e).

(i) Other definitions

For purposes of this section—

(1) Credit allowance date

The term ''credit allowance date'' means, with respect to any issue, the last day of the 1-year period beginning on the date of issuance of such issue and the last day of each successive 1-year period thereafter.

(2) Bond

The term ''bond'' includes any obligation.

(3) State

The term ''State'' includes the District of Columbia and any possession of the United States.

(j) Credit included in gross income

Gross income includes the amount of the credit allowed to the taxpayer under this section (determined without regard to subsection (c)).

(k) Credit treated as nonrefundable bondholder credit

For purposes of this title, the credit allowed by this section shall be treated as a credit allowable under subpart H of part IV of subchapter A of this chapter.

***(l)* S corporations**

In the case of a qualified zone academy bond held by an S corporation which is an eligible taxpayer—

(1) each shareholder shall take into account such shareholder's pro rata share of the credit, and

(2) no basis adjustments to the stock of the corporation shall be made under section 1367 on account of this section.

(m) Termination

This section shall not apply to any obligation issued after the date of the enactment of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008.

(Added Pub. L. 105–34, title II, § 226(a), Aug. 5, 1997, 111 Stat. 821; amended Pub. L. 105–206, title VI, § 6004(g)(2)–(4), July 22, 1998, 112 Stat. 796; Pub. L. 106–78, title VII, § 752(b)(11), Oct. 22, 1999, 113 Stat. 1169; Pub. L. 106–170, title V, § 509, Dec. 17, 1999, 113 Stat. 1924; Pub. L. 107–110, title X, § 1076(t), Jan. 8, 2002, 115 Stat. 2092; Pub. L. 107–147, title VI, § 608(a), Mar. 9, 2002, 116 Stat. 60; Pub. L. 108–311, title III, § 304(a), title IV, § 406(c), Oct. 4, 2004, 118 Stat. 1179, 1189; Pub. L. 109–58, title XIII, § 1303(c)(2), (3), Aug. 8, 2005, 119 Stat. 997; Pub. L. 109–432, div. A, title I, § 107(a), (b)(1), Dec. 20, 2006, 120 Stat. 2938; Pub. L. 110–234, title XV, § 15316(c)(2), May 22, 2008, 122 Stat. 1511; Pub. L. 110–246, § 4(a), title XV, § 15316(c)(2), June 18, 2008, 122 Stat. 1664, 2273; Pub. L. 110–343, div. C, title III, § 313(b)(3), Oct. 3, 2008, 122 Stat. 3872; Pub. L. 111–5, div. B, title I, § 1531(c)(3), Feb. 17, 2009, 123 Stat. 360.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (d)(4)(A)(iv)(I), is the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

The Richard B. Russell National School Lunch Act, referred to in subsec. (d)(4)(A)(iv)(II), is act June 4, 1946, ch. 281, 60 Stat. 230, as amended, which is classified generally to chapter 13 (§ 1751 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of Title 42 and Tables.

Section 9101 of the Elementary and Secondary Education Act of 1965, referred to in subsec. (d)(4)(B), is classified to section 7801 of Title 20, Education.

The date of the enactment of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, referred to in subsec. (m), is the date of enactment of div. C of Pub. L. 110–343, which was approved Oct. 3, 2008.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2009—Subsec. (c)(2). Pub. L. 111–5 substituted '', I, and J'' for ''and I''.

2008—Subsec. (c)(2). Pub. L. 110–246, § 15316(c)(2), substituted ''subparts H and I'' for ''subpart H''.

Subsec. (m). Pub. L. 110–343 added subsec. (m).

2006—Subsec. (d)(1)(E). Pub. L. 109–432, § 107(b)(1)(A), added subpar. (E).

Subsec. (e)(1). Pub. L. 109–432, § 107(a), substituted ''2005, 2006, and 2007'' for ''and 2005''.

Subsecs. (f) to (*l*). Pub. L. 109–432, § 107(b)(1)(B), added subsecs. (f) to (h) and redesignated former subsecs. (f) to (i) as (i) to (*l*), respectively.

2005—Subsec. (c)(2). Pub. L. 109–58, §1303(c)(2), inserted '', and subpart H thereof'' after ''refundable credits''.

Subsec. (h). Pub. L. 109–58, §1303(c)(3), amended heading and text of subsec. (h) generally. Prior to amendment, text read as follows: ''For purposes of subtitle F, the credit allowed by this section shall be treated as a credit allowable under part IV of subchapter A of this chapter.''

2004—Subsec. (e)(1). Pub. L. 108–311, §304(a), substituted ''2003, 2004, and 2005'' for ''and 2003''.

Subsec. (i). Pub. L. 108–311, §406(c), added subsec. (i).

2002—Subsec. (d)(4)(B). Pub. L. 107–110 substituted ''9101'' for ''14101''.

Subsec. (e)(1). Pub. L. 107–147 substituted ''2000, 2001, 2002, and 2003'' for ''2000, and 2001''.

1999—Subsec. (d)(4)(A)(iv)(II). Pub. L. 106–78 substituted ''Richard B. Russell National School Lunch Act'' for ''National School Lunch Act''.

Subsec. (e)(1). Pub. L. 106–170, §509(a), substituted '', 1999, 2000, and 2001'' for ''and 1999''.

Subsec. (e)(4). Pub. L. 106–170, §509(b), inserted at end ''Any carryforward of a limitation amount may be carried only to the first 2 years (3 years for carryforwards from 1998 or 1999) following the unused limitation year. For purposes of the preceding sentence, a limitation amount shall be treated as used on a first-in first-out basis.''

1998—Subsec. (d)(4)(B). Pub. L. 105–206, §6004(g)(2), substituted ''local educational agency as defined'' for ''local education agency as defined''.

Subsec. (g). Pub. L. 105–206, §6004(g)(4), inserted ''(determined without regard to subsection (c))'' after ''section''.

Subsec. (h). Pub. L. 105–206, §6004(g)(3), added subsec. (h).

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–5 applicable to obligations issued after Feb. 17, 2009, see section 1531(e) of Pub. L. 111–5, set out as a note under section 54 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–343 applicable to obligations issued after Oct. 3, 2008, see section 313(c) of Pub. L. 110–343, set out as a note under section 54A of this title.

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 15316(c)(2) of Pub. L. 110–246 applicable to obligations issued after June 18, 2008, see section 15316(d) of Pub. L. 110–246, set out as a note under section 54 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §107(c), Dec. 20, 2006, 120 Stat. 2939, provided that:

''(1) EXTENSION.—The amendment made by subsection (a) [amending this section] shall apply to obligations issued after December 31, 2005.

''(2) SPECIAL RULES.—The amendments made by subsection (b) [amending this section and sections 54 and 1400N of this title] shall apply to obligations issued after the date of the enactment of this Act [Dec. 20, 2006] pursuant to allocations of the national zone academy bond limitation for calendar years after 2005.''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–58 applicable to taxable years beginning after Dec. 31, 2005, see section 1303(e) of Pub. L. 109–58, as amended, set out as an Effective Date note under section 54 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title III, §304(b), Oct. 4, 2004, 118 Stat. 1179, provided that: ''The amendment made by this section [amending this section] shall apply to obligations issued after December 31, 2003.''

Amendment by section 406(c) of Pub. L. 108–311 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 406(h) of Pub. L. 108–311, set out as a note under section 55 of this title.

EFFECTIVE DATE OF 2002 AMENDMENTS

Pub. L. 107–147, title VI, §608(b), Mar. 9, 2002, 116 Stat. 60, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to obligations issued after the date of the enactment of this Act [Mar. 9, 2002].''

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of Title 20, Education.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section 226(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [enacting this section and renumbering section 1397D as section 1397F of this title] shall apply to obligations issued after December 31, 1997.''

PART V—REGULATIONS

Sec.
1397F. Regulations.

AMENDMENTS

1997—Pub. L. 105–34, title II, §226(a), (b)(2), Aug. 5, 1997, 111 Stat. 820, 824, redesignated part IV of this subchapter as this part and item 1397D as 1397F.

§ 1397F. Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of parts II and III, including—

(1) regulations limiting the benefit of parts II and III in circumstances where such benefits, in combination with benefits provided under other Federal programs, would result in an activity being 100 percent or more subsidized by the Federal Government,

(2) regulations preventing abuse of the provisions of parts II and III, and

(3) regulations dealing with inadvertent failures of entities to be enterprise zone businesses.

(Added Pub. L. 103–66, title XIII, §13301(a), Aug. 10, 1993, 107 Stat. 555, §1397D; renumbered §1397F, Pub. L. 105–34, title II, §226(a), Aug. 5, 1997, 111 Stat. 820; amended Pub. L. 105–206, title VI, §6004(g)(1), July 22, 1998, 112 Stat. 796.)

AMENDMENTS

1998—Pub. L. 105–206 amended directory language of Pub. L. 105–34, §226(a). See 1997 Amendment note below.

1997—Pub. L. 105–34, §226(a), as amended by Pub. L. 105–206, renumbered section 1397D of this title as this section.

Subchapter V—Title 11 Cases

Sec.
1398. Rules relating to individuals' title 11 cases.

Sec.
1399. No separate taxable entities for partnerships, corporations, etc.

AMENDMENTS

1980—Pub. L. 96–589, §3(a)(1), Dec. 24, 1980, 94 Stat. 3397, added subchapter V heading ''Title 11 Cases'' and items 1398 and 1399.

§ 1398. Rules relating to individuals' title 11 cases

(a) Cases to which section applies

Except as provided in subsection (b), this section shall apply to any case under chapter 7 (relating to liquidations) or chapter 11 (relating to reorganizations) of title 11 of the United States Code in which the debtor is an individual.

(b) Exceptions where case is dismissed, etc.

(1) Section does not apply where case is dismissed

This section shall not apply if the case under chapter 7 or 11 of title 11 of the United States Code is dismissed.

(2) Section does not apply at partnership level

For purposes of subsection (a), a partnership shall not be treated as an individual, but the interest in a partnership of a debtor who is an individual shall be taken into account under this section in the same manner as any other interest of the debtor.

(c) Computation and payment of tax; basic standard deduction

(1) Computation and payment of tax

Except as otherwise provided in this section, the taxable income of the estate shall be computed in the same manner as for an individual. The tax shall be computed on such taxable income and shall be paid by the trustee.

(2) Tax rates

The tax on the taxable income of the estate shall be determined under subsection (d) of section 1.

(3) Basic standard deduction

In the case of an estate which does not itemize deductions, the basic standard deduction for the estate for the taxable year shall be the same as for a married individual filing a separate return for such year.

(d) Taxable year of debtors

(1) General rule

Except as provided in paragraph (2), the taxable year of the debtor shall be determined without regard to the case under title 11 of the United States Code to which this section applies.

(2) Election to terminate debtor's year when case commences

(A) In general

Notwithstanding section 442, the debtor may (without the approval of the Secretary) elect to treat the debtor's taxable year which includes the commencement date as 2 taxable years—

(i) the first of which ends on the day before the commencement date, and

(ii) the second of which begins on the commencement date.

(B) Spouse may join in election

In the case of a married individual (within the meaning of section 7703), the spouse may elect to have the debtor's election under subparagraph (A) also apply to the spouse, but only if the debtor and the spouse file a joint return for the taxable year referred to in subparagraph (A)(i).

(C) No election where debtor has no assets

No election may be made under subparagraph (A) by a debtor who has no assets other than property which the debtor may treat as exempt property under section 522 of title 11 of the United States Code.

(D) Time for making election

An election under subparagraph (A) or (B) may be made only on or before the due date for filing the return for the taxable year referred to in subparagraph (A)(i). Any such election, once made, shall be irrevocable.

(E) Returns

A return shall be made for each of the taxable years specified in subparagraph (A).

(F) Annualization

For purposes of subsections (b), (c), and (d) of section 443, a return filed for either of the taxable years referred to in subparagraph (A) shall be treated as a return made under paragraph (1) of subsection (a) of section 443.

(3) Commencement date defined

For purposes of this subsection, the term ''commencement date'' means the day on which the case under title 11 of the United States Code to which this section applies commences.

(e) Treatment of income, deductions, and credits

(1) Estate's share of debtor's income

The gross income of the estate for each taxable year shall include the gross income of the debtor to which the estate is entitled under title 11 of the United States Code. The preceding sentence shall not apply to any amount received or accrued by the debtor before the commencement date (as defined in subsection (d)(3)).

(2) Debtor's share of debtor's income

The gross income of the debtor for any taxable year shall not include any item to the extent that such item is included in the gross income of the estate by reason of paragraph (1).

(3) Rule for making determinations with respect to deductions, credits, and employment taxes

Except as otherwise provided in this section, the determination of whether or not any amount paid or incurred by the estate—

(A) is allowable as a deduction or credit under this chapter, or

(B) is wages for purposes of subtitle C,

shall be made as if the amount were paid or incurred by the debtor and as if the debtor were still engaged in the trades and businesses, and in the activities, the debtor was engaged in before the commencement of the case.

(f) Treatment of transfers between debtor and estate

(1) Transfer to estate not treated as disposition

A transfer (other than by sale or exchange) of an asset from the debtor to the estate shall not be treated as a disposition for purposes of any provision of this title assigning tax consequences to a disposition, and the estate shall be treated as the debtor would be treated with respect to such asset.

(2) Transfer from estate to debtor not treated as disposition

In the case of a termination of the estate, a transfer (other than by sale or exchange) of an asset from the estate to the debtor shall not be treated as a disposition for purposes of any provision of this title assigning tax consequences to a disposition, and the debtor shall be treated as the estate would be treated with respect to such asset.

(g) Estate succeeds to tax attributes of debtor

The estate shall succeed to and take into account the following items (determined as of the first day of the debtor's taxable year in which the case commences) of the debtor—

(1) Net operating loss carryovers

The net operating loss carryovers determined under section 172.

(2) Charitable contributions carryovers

The carryover of excess charitable contributions determined under section 170(d)(1).

(3) Recovery of tax benefit items

Any amount to which section 111 (relating to recovery of tax benefit items) applies.

(4) Credit carryovers, etc.

The carryovers of any credit, and all other items which, but for the commencement of the case, would be required to be taken into account by the debtor with respect to any credit.

(5) Capital loss carryovers

The capital loss carryover determined under section 1212.

(6) Basis, holding period, and character of assets

In the case of any asset acquired (other than by sale or exchange) by the estate from the debtor, the basis, holding period, and character it had in the hands of the debtor.

(7) Method of accounting

The method of accounting used by the debtor.

(8) Other attributes

Other tax attributes of the debtor, to the extent provided in regulations prescribed by the Secretary as necessary or appropriate to carry out the purposes of this section.

(h) Administration, liquidation, and reorganization expenses; carryovers and carrybacks of certain excess expenses

(1) Administration, liquidation, and reorganization expenses

Any administrative expense allowed under section 503 of title 11 of the United States Code, and any fee or charge assessed against the estate under chapter 123 of title 28 of the United States Code, to the extent not disallowed under any other provision of this title, shall be allowed as a deduction.

(2) Carryback and carryover of excess administrative costs, etc., to estate taxable years

(A) Deduction allowed

There shall be allowed as a deduction for the taxable year an amount equal to the aggregate of (i) the administrative expense carryovers to such year, plus (ii) the administrative expense carrybacks to such year.

(B) Administrative expense loss, etc.

If a net operating loss would be created or increased for any estate taxable year if section 172(c) were applied without the modification contained in paragraph (4) of section 172(d), then the amount of the net operating loss so created (or the amount of the increase in the net operating loss) shall be an administrative expense loss for such taxable year which shall be an administrative expense carryback to each of the 3 preceding taxable years and an administrative expense carryover to each of the 7 succeeding taxable years.

(C) Determination of amount carried to each taxable year

The portion of any administrative expense loss which may be carried to any other taxable year shall be determined under section 172(b)(2), except that for each taxable year the computation under section 172(b)(2) with respect to the net operating loss shall be made before the computation under this paragraph.

(D) Administrative expense deductions allowed only to estate

The deductions allowable under this chapter solely by reason of paragraph (1), and the deduction provided by subparagraph (A) of this paragraph, shall be allowable only to the estate.

(i) Debtor succeeds to tax attributes of estate

In the case of a termination of an estate, the debtor shall succeed to and take into account the items referred to in paragraphs (1), (2), (3), (4), (5), and (6) of subsection (g) in a manner similar to that provided in such paragraphs (but taking into account that the transfer is from the estate to the debtor instead of from the debtor to the estate). In addition, the debtor shall succeed to and take into account the other tax attributes of the estate, to the extent provided in regulations prescribed by the Secretary as necessary or appropriate to carry out the purposes of this section.

(j) Other special rules

(1) Change of accounting period without approval

Notwithstanding section 442, the estate may change its annual accounting period one time without the approval of the Secretary.

(2) Treatment of certain carrybacks

(A) Carrybacks from estate

If any carryback year of the estate is a taxable year before the estate's first taxable

year, the carryback to such carryback year shall be taken into account for the debtor's taxable year corresponding to the carryback year.

(B) Carrybacks from debtor's activities

The debtor may not carry back to a taxable year before the debtor's taxable year in which the case commences any carryback from a taxable year ending after the case commences.

(C) Carryback and carryback year defined

For purposes of this paragraph—

(i) Carryback

The term ''carryback'' means a net operating loss carryback under section 172 or a carryback of any credit provided by part IV of subchapter A.

(ii) Carryback year

The term ''carryback year'' means the taxable year to which a carryback is carried.

(Added Pub. L. 96–589, §3(a)(1), Dec. 24, 1980, 94 Stat. 3397; amended Pub. L. 99–514, title I, §104(b)(14), title XIII, §1301(j)(8), title XVIII, §1812(a)(5), Oct. 22, 1986, 100 Stat. 2105, 2658, 2833.)

REFERENCES IN TEXT

Part IV of subchapter A, referred to in subsec. (j)(2)(C)(i), probably means part IV of subchapter A of chapter 1 of this title.

AMENDMENTS

1986—Subsec. (c). Pub. L. 99–514, §104(b)(14)(A), substituted ''basic standard deduction'' for ''zero bracket amount'' in heading.

Subsec. (c)(3). Pub. L. 99–514, §104(b)(14)(B), amended par. (3) generally, substituting ''Basic standard deduction'' for ''Amount of zero bracket amount'' in heading and substituting ''In the case of an estate which does not itemize deductions, the basic standard deduction for the estate'' for ''The amount of the estate's zero bracket amount'' in text.

Subsec. (d)(2)(B). Pub. L. 99–514, §1301(j)(8), substituted ''section 7703'' for ''section 143''.

Subsec. (g)(3). Pub. L. 99–514, §1812(a)(5), amended par. (3) generally. Prior to amendment, par. (3), recovery exclusion, read as follows: ''Any recovery exclusion under section 111 (relating to recovery of bad debts, prior taxes, and delinquency amounts).''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(14) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1301(j)(8) of Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

Amendment by section 1812(a)(5) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Subchapter applicable to bankruptcy cases commencing more than 90 days after Dec. 24, 1980, see section 7(b) of Pub. L. 96–589, set out as an Effective Date of 1980 Amendment note under section 108 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 1399. No separate taxable entities for partnerships, corporations, etc.

Except in any case to which section 1398 applies, no separate taxable entity shall result from the commencement of a case under title 11 of the United States Code.

(Added Pub. L. 96–589, §3(a)(1), Dec. 24, 1980, 94 Stat. 3400.)

Subchapter W—District of Columbia Enterprise Zone

Sec.
1400. Establishment of DC Zone.
1400A. Tax-exempt economic development bonds.
1400B. Zero percent capital gains rate.
1400C. First-time homebuyer credit for District of Columbia.

§ 1400. Establishment of DC Zone

(a) In general

For purposes of this title—

(1) the applicable DC area is hereby designated as the District of Columbia Enterprise Zone, and

(2) except as otherwise provided in this subchapter, the District of Columbia Enterprise Zone shall be treated as an empowerment zone designated under subchapter U.

(b) Applicable DC area

For purposes of subsection (a), the term ''applicable DC area'' means the area consisting of—

(1) the census tracts located in the District of Columbia which are part of an enterprise community designated under subchapter U before the date of the enactment of this subchapter, and

(2) all other census tracts—

(A) which are located in the District of Columbia, and

(B) for which the poverty rate is not less than than[1] 20 percent as determined on the basis of the 1990 census.

(c) District of Columbia Enterprise Zone

For purposes of this subchapter, the terms ''District of Columbia Enterprise Zone'' and ''DC Zone'' mean the District of Columbia Enterprise Zone designated by subsection (a).

(d) Special rule for application of employment credit

With respect to the DC Zone, section 1396(d)(1)(B) (relating to empowerment zone employment credit) shall be applied by substituting ''the District of Columbia'' for ''such empowerment zone''.

(e) Special rule for application of enterprise zone business definition

For purposes of this subchapter and for purposes of applying subchapter U with respect to

[1] So in original. The second ''than'' probably should not appear.

the DC Zone, section 1397C shall be applied without regard to subsections (b)(6) and (c)(5) thereof.

(f) Time for which designation applicable

(1) In general

The designation made by subsection (a) shall apply for the period beginning on January 1, 1998, and ending on December 31, 2011.

(2) Coordination with DC enterprise community designated under subchapter U

The designation under subchapter U of the census tracts referred to in subsection (b)(1) as an enterprise community shall terminate on December 31, 2011.

(Added Pub. L. 105–34, title VII, §701(a), Aug. 5, 1997, 111 Stat. 863; amended Pub. L. 105–206, title VI, §6008(a), July 22, 1998, 112 Stat. 811; Pub. L. 106–554, §1(a)(7) [title I, §§113(c), 116(b)(5), 164(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–601, 2763A–603, 2763A–625; Pub. L. 108–311, title III, §310(a), Oct. 4, 2004, 118 Stat. 1180; Pub. L. 109–432, div. A, title I, §110(a)(1), Dec. 20, 2006, 120 Stat. 2939; Pub. L. 110–343, div. C, title III, §322(a)(1), Oct. 3, 2008, 122 Stat. 3873; Pub. L. 111–312, title VII, §754(a), Dec. 17, 2010, 124 Stat. 3321.)

REFERENCES IN TEXT

The date of the enactment of this subchapter, referred to in subsec. (b)(1), is the date of enactment of Pub. L. 105–34, which was approved Aug. 5, 1997.

AMENDMENTS

2010—Subsec. (f). Pub. L. 111–312 substituted ''2011'' for ''2009'' in pars. (1) and (2).

2008—Subsec. (f). Pub. L. 110–343 substituted ''2009'' for ''2007'' in pars. (1) and (2).

2006—Subsec. (f). Pub. L. 109–432 substituted ''2007'' for ''2005'' in pars. (1) and (2).

2004—Subsec. (f). Pub. L. 108–311 substituted ''2005'' for ''2003'' in pars. (1) and (2).

2000—Subsec. (d). Pub. L. 106–554, §1(a)(7) [title I, §113(c)], amended heading and text of subsec. (d) generally, striking out par. (1) designation and heading and par. (2), which provided that there would be no decrease of empowerment zone employment credit in 2002.

Subsec. (e). Pub. L. 106–554, §1(a)(7) [title I, §116(b)(5)], substituted ''section 1397C'' for ''section 1397B''.

Subsec. (f). Pub. L. 106–554, §1(a)(7) [title I, §164(a)(1)], substituted ''2003'' for ''2002'' in pars. (1) and (2).

1998—Subsec. (b)(2)(B). Pub. L. 105–206 inserted ''as determined on the basis of the 1990 census'' after ''percent''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §754(e), Dec. 17, 2010, 124 Stat. 3322, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 1400A to 1400C of this title] shall apply to periods after December 31, 2009.

''(2) TAX-EXEMPT DC EMPOWERMENT ZONE BONDS.—The amendment made by subsection (b) [amending section 1400A of this title] shall apply to bonds issued after December 31, 2009.

''(3) ACQUISITION DATES FOR ZERO-PERCENT CAPITAL GAINS RATE.—The amendments made by subsection (c) [amending section 1400B of this title] shall apply to property acquired or substantially improved after December 31, 2009.

''(4) HOMEBUYER CREDIT.—The amendment made by subsection (d) [amending section 1400C of this title] shall apply to homes purchased after December 31, 2009.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, §322(a)(2), Oct. 3, 2008, 122 Stat. 3873, provided that: ''The amendments made by this subsection [amending this section] shall apply to periods beginning after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §110(a)(2), Dec. 20, 2006, 120 Stat. 2939, provided that: ''The amendments made by this subsection [amending this section] shall apply to periods beginning after December 31, 2005.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title III, §310(e), Oct. 4, 2004, 118 Stat. 1180, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 1400A to 1400C and 1400F of this title] shall take effect on January 1, 2004.

''(2) TAX-EXEMPT ECONOMIC DEVELOPMENT BONDS.—The amendment made by subsection (b) [amending section 1400A of this title] shall apply to obligations issued after the date of the enactment of this Act [Oct. 4, 2004].''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by section 1(a)(7) [title I, §113(c)] of Pub. L. 106–554 applicable to wages paid or incurred after Dec. 31, 2001, see section 1(a)(7) [title I, §113(d)] of Pub. L. 106–554, set out as a note under section 1396 of this title.

Amendment by section 1(a)(7) [title I, §116(b)(5)] of Pub. L. 106–554 applicable to qualified empowerment zone assets acquired after Dec. 21, 2000, see section 1(a)(7) [title I, §116(c)] of Pub. L. 106–554, set out as a note under section 1016 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

§1400A. Tax-exempt economic development bonds

(a) In general

In the case of the District of Columbia Enterprise Zone, subparagraph (A) of section 1394(c)(1) (relating to limitation on amount of bonds) shall be applied by substituting ''$15,000,000'' for ''$3,000,000'' and section 1394(b)(3)(B)(iii) shall be applied without regard to the employee residency requirement.

(b) Period of applicability

This section shall apply to bonds issued during the period beginning on January 1, 1998, and ending on December 31, 2011.

(Added Pub. L. 105–34, title VII, §701(a), Aug. 5, 1997, 111 Stat. 864; amended Pub. L. 105–206, title VI, §6008(b), July 22, 1998, 112 Stat. 811; Pub. L. 106–554, §1(a)(7) [title I, §164(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–625; Pub. L. 108–311, title III, §310(b), Oct. 4, 2004, 118 Stat. 1180; Pub. L. 109–432, div. A, title I, §110(b)(1), Dec. 20, 2006, 120 Stat. 2939; Pub. L. 110–343, div. C, title III, §322(b)(1), Oct. 3, 2008, 122 Stat. 3873; Pub. L. 111–312, title VII, §754(b), Dec. 17, 2010, 124 Stat. 3321.)

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–312 substituted ''2011'' for ''2009''.

2008—Subsec. (b). Pub. L. 110–343 substituted ''2009'' for ''2007''.
2006—Subsec. (b). Pub. L. 109–432 substituted ''2007'' for ''2005''.
2004—Subsec. (b). Pub. L. 108–311 substituted ''2005'' for ''2003''.
2000—Subsec. (b). Pub. L. 106–554 substituted ''2003'' for ''2002''.
1998—Subsec. (a). Pub. L. 105–206 inserted before the period at end ''and section 1394(b)(3)(B)(iii) shall be applied without regard to the employee residency requirement''.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–312 applicable to bonds issued after Dec. 31, 2009, see section 754(e)(2) of Pub. L. 111–312, set out as a note under section 1400 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, § 322(b)(2), Oct. 3, 2008, 122 Stat. 3874, provided that: ''The amendment made by this subsection [amending this section] shall apply to bonds issued after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, § 110(b)(2), Dec. 20, 2006, 120 Stat. 2939, provided that: ''The amendment made by this subsection [amending this section] shall apply to bonds issued after December 31, 2005.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 applicable to obligations issued after Oct. 4, 2004, see section 310(e)(2) of Pub. L. 108–311, set out as a note under section 1400 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

§ 1400B. Zero percent capital gains rate

(a) Exclusion

Gross income shall not include qualified capital gain from the sale or exchange of any DC Zone asset held for more than 5 years.

(b) DC Zone asset

For purposes of this section—

(1) In general

The term ''DC Zone asset'' means—
(A) any DC Zone business stock,
(B) any DC Zone partnership interest, and
(C) any DC Zone business property.

(2) DC Zone business stock

(A) In general

The term ''DC Zone business stock'' means any stock in a domestic corporation which is originally issued after December 31, 1997, if—
(i) such stock is acquired by the taxpayer, before January 1, 2012, at its original issue (directly or through an underwriter) solely in exchange for cash,
(ii) as of the time such stock was issued, such corporation was a DC Zone business (or, in the case of a new corporation, such corporation was being organized for purposes of being a DC Zone business), and
(iii) during substantially all of the taxpayer's holding period for such stock, such corporation qualified as a DC Zone business.

(B) Redemptions

A rule similar to the rule of section 1202(c)(3) shall apply for purposes of this paragraph.

(3) DC Zone partnership interest

The term ''DC Zone partnership interest'' means any capital or profits interest in a domestic partnership which is originally issued after December 31, 1997, if—
(A) such interest is acquired by the taxpayer, before January 1, 2012, from the partnership solely in exchange for cash,
(B) as of the time such interest was acquired, such partnership was a DC Zone business (or, in the case of a new partnership, such partnership was being organized for purposes of being a DC Zone business), and
(C) during substantially all of the taxpayer's holding period for such interest, such partnership qualified as a DC Zone business.

A rule similar to the rule of paragraph (2)(B) shall apply for purposes of this paragraph.

(4) DC Zone business property

(A) In general

The term ''DC Zone business property'' means tangible property if—
(i) such property was acquired by the taxpayer by purchase (as defined in section 179(d)(2)) after December 31, 1997, and before January 1, 2012,
(ii) the original use of such property in the DC Zone commences with the taxpayer, and
(iii) during substantially all of the taxpayer's holding period for such property, substantially all of the use of such property was in a DC Zone business of the taxpayer.

(B) Special rule for buildings which are substantially improved

(i) In general

The requirements of clauses (i) and (ii) of subparagraph (A) shall be treated as met with respect to—
(I) property which is substantially improved by the taxpayer before January 1, 2012, and
(II) any land on which such property is located.

(ii) Substantial improvement

For purposes of clause (i), property shall be treated as substantially improved by the taxpayer only if, during any 24-month period beginning after December 31, 1997, additions to basis with respect to such property in the hands of the taxpayer exceed the greater of—
(I) an amount equal to the adjusted basis of such property at the beginning of such 24-month period in the hands of the taxpayer, or
(II) $5,000.

(5) Treatment of DC Zone termination

The termination of the designation of the DC Zone shall be disregarded for purposes of determining whether any property is a DC Zone asset.

(6) Treatment of subsequent purchasers, etc.

The term ''DC Zone asset'' includes any property which would be a DC Zone asset but for paragraph (2)(A)(i), (3)(A), or (4)(A)(i) or (ii) in the hands of the taxpayer if such property was a DC Zone asset in the hands of a prior holder.

(7) 5-year safe harbor

If any property ceases to be a DC Zone asset by reason of paragraph (2)(A)(iii), (3)(C), or (4)(A)(iii) after the 5-year period beginning on the date the taxpayer acquired such property, such property shall continue to be treated as meeting the requirements of such paragraph; except that the amount of gain to which subsection (a) applies on any sale or exchange of such property shall not exceed the amount which would be qualified capital gain had such property been sold on the date of such cessation.

(c) DC Zone business

For purposes of this section, the term ''DC Zone business'' means any enterprise zone business (as defined in section 1397C), determined—

(1) after the application of section 1400(e),

(2) by substituting ''80 percent'' for ''50 percent'' in subsections (b)(2) and (c)(1) of section 1397C, and

(3) by treating no area other than the DC Zone as an empowerment zone or enterprise community.

(d) Treatment of zone as including census tracts with 10 percent poverty rate

For purposes of applying this section (and for purposes of applying this subchapter and subchapter U with respect to this section), the DC Zone shall be treated as including all census tracts—

(1) which are located in the District of Columbia, and

(2) for which the poverty rate is not less than 10 percent as determined on the basis of the 1990 census.

(e) Other definitions and special rules

For purposes of this section—

(1) Qualified capital gain

Except as otherwise provided in this subsection, the term ''qualified capital gain'' means any gain recognized on the sale or exchange of—

(A) a capital asset, or

(B) property used in the trade or business (as defined in section 1231(b)).

(2) Gain before 1998 or after 2016 not qualified

The term ''qualified capital gain'' shall not include any gain attributable to periods before January 1, 1998, or after December 31, 2016.

(3) Certain gain not qualified

The term ''qualified capital gain'' shall not include any gain which would be treated as ordinary income under section 1245 or under section 1250 if section 1250 applied to all depreciation rather than the additional depreciation.

(4) Intangibles and land not integral part of DC Zone business

The term ''qualified capital gain'' shall not include any gain which is attributable to real property, or an intangible asset, which is not an integral part of a DC Zone business.

(5) Related party transactions

The term ''qualified capital gain'' shall not include any gain attributable, directly or indirectly, in whole or in part, to a transaction with a related person. For purposes of this paragraph, persons are related to each other if such persons are described in section 267(b) or 707(b)(1).

(f) Certain other rules to apply

Rules similar to the rules of subsections (g), (h), (i)(2), and (j) of section 1202 shall apply for purposes of this section.

(g) Sales and exchanges of interests in partnerships and S corporations which are DC Zone businesses

In the case of the sale or exchange of an interest in a partnership, or of stock in an S corporation, which was a DC Zone business during substantially all of the period the taxpayer held such interest or stock, the amount of qualified capital gain shall be determined without regard to—

(1) any gain which is attributable to real property, or an intangible asset, which is not an integral part of a DC Zone business, and

(2) any gain attributable to periods before January 1, 1998, or after December 31, 2016.

(Added Pub. L. 105–34, title VII, §701(a), Aug. 5, 1997, 111 Stat. 864; amended Pub. L. 105–206, title VI, §6008(c), July 22, 1998, 112 Stat. 811; Pub. L. 106–554, §1(a)(7) [title I, §§116(b)(5), 164(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–603, 2763A–625; Pub. L. 108–311, title III, §310(c)(1)–(2)(B), Oct. 4, 2004, 118 Stat. 1180; Pub. L. 109–432, div. A, title I, §110(c)(1)–(2)(B), Dec. 20, 2006, 120 Stat. 2940; Pub. L. 110–343, div. C, title III, §322(c)(1), (2)(A), (B), Oct. 3, 2008, 122 Stat. 3874; Pub. L. 111–312, title VII, §754(c), Dec. 17, 2010, 124 Stat. 3321.)

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–312, §754(c)(1), substituted ''2012'' for ''2010'' wherever appearing.

Subsec. (e)(2). Pub. L. 111–312, §754(c)(2)(A), substituted ''2016'' for ''2014'' in heading and text.

Subsec. (g)(2). Pub. L. 111–312, §754(c)(2)(B), substituted ''2016'' for ''2014''.

2008—Subsec. (b). Pub. L. 110–343, §322(c)(1), substituted ''2010'' for ''2008'' wherever appearing.

Subsec. (e)(2). Pub. L. 110–343, §322(c)(2)(A), substituted ''2014'' for ''2012'' in heading and text.

Subsec. (g)(2). Pub. L. 110–343, §322(c)(2)(B), substituted ''2014'' for ''2012''.

2006—Subsec. (b). Pub. L. 109–432, §110(c)(1), substituted ''2008'' for ''2006'' wherever appearing.

Subsec. (e)(2). Pub. L. 109–432, §110(c)(2)(A), substituted ''2012'' for ''2010'' in heading and text.

Subsec. (g)(2). Pub. L. 109–432, §110(c)(2)(B), substituted ''2012'' for ''2010''.

2004—Subsec. (b). Pub. L. 108–311, §310(c)(1), substituted ''2006'' for ''2004'' wherever appearing.

Subsec. (e)(2). Pub. L. 108–311, §310(c)(2)(A), substituted ''2010'' for ''2008'' in heading and text.

Subsec. (g)(2). Pub. L. 108–311, §310(c)(2)(B), substituted ''2010'' for ''2008''.

2000—Subsec. (b). Pub. L. 106–554, §1(a)(7) [title I, §164(b)(1)], substituted ''2004'' for ''2003'' wherever appearing.

Subsec. (c). Pub. L. 106–554, §1(a)(7) [title I, §116(b)(5)], substituted ''section 1397C'' for ''section 1397B'' in introductory provisions and in par. (2).

Subsec. (e)(2). Pub. L. 106–554, §1(a)(7) [title I, §164(b)(2)], substituted ''2008'' for ''2007'' in heading and text.

Subsec. (g)(2). Pub. L. 106–554, §1(a)(7) [title I, §164(b)(2)], substituted ''2008'' for ''2007''.

1998—Subsec. (b)(5). Pub. L. 105–206, §6008(c)(1), added par. (5).

Subsec. (b)(6). Pub. L. 105–206, §6008(c)(2), substituted ''(4)(A)(i) or (ii)'' for ''(4)(A)(ii)''.

Subsec. (c). Pub. L. 105–206, §6008(c)(3), struck out ''entity which is an'' before ''enterprise zone'' in introductory provisions.

Subsec. (d)(2). Pub. L. 105–206, §6008(c)(4), inserted ''as determined on the basis of the 1990 census'' after ''percent''.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–312 applicable to property acquired or substantially improved after Dec. 31, 2009, see section 754(e)(3) of Pub. L. 111–312, set out as a note under section 1400 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, §322(c)(3), Oct. 3, 2008, 122 Stat. 3874, provided that:

''(A) EXTENSION.—The amendments made by paragraph (1) [amending this section] shall apply to acquisitions after December 31, 2007.

''(B) CONFORMING AMENDMENTS.—The amendments made by paragraph (2) [amending this section and section 1400F of this title] shall take effect on the date of the enactment of this Act [Oct. 3, 2008].''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, §110(c)(3), Dec. 20, 2006, 120 Stat. 2940, provided that:

''(A) EXTENSION.—The amendments made by paragraph (1) [amending this section] shall apply to acquisitions after December 31, 2005.

''(B) CONFORMING AMENDMENTS.—The amendments made by paragraph (2) [amending this section and section 1400F of this title] shall take effect on the date of the enactment of this Act [Dec. 20, 2006].''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 effective Jan. 1, 2004, see section 310(e)(1) of Pub. L. 108–311, set out as a note under section 1400 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by section 1(a)(7) [title I, §116(b)(5)] of Pub. L. 106–554 applicable to qualified empowerment zone assets acquired after Dec. 21, 2000, see section 1(a)(7) [title I, §116(c)] of Pub. L. 106–554, set out as a note under section 1016 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

§ 1400C. First-time homebuyer credit for District of Columbia

(a) Allowance of credit

In the case of an individual who is a first-time homebuyer of a principal residence in the District of Columbia during any taxable year, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to so much of the purchase price of the residence as does not exceed $5,000.

(b) Limitation based on modified adjusted gross income

(1) In general

The amount allowable as a credit under subsection (a) (determined without regard to this subsection and subsection (d)) for the taxable year shall be reduced (but not below zero) by the amount which bears the same ratio to the credit so allowable as—

(A) the excess (if any) of—

(i) the taxpayer's modified adjusted gross income for such taxable year, over

(ii) $70,000 ($110,000 in the case of a joint return), bears to

(B) $20,000.

(2) Modified adjusted gross income

For purposes of paragraph (1), the term ''modified adjusted gross income'' means the adjusted gross income of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933.

(c) First-time homebuyer

For purposes of this section—

(1) In general

The term ''first-time homebuyer'' means any individual if such individual (and if married, such individual's spouse) had no present ownership interest in a principal residence in the District of Columbia during the 1-year period ending on the date of the purchase of the principal residence to which this section applies.

(2) One-time only

If an individual is treated as a first-time homebuyer with respect to any principal residence, such individual may not be treated as a first-time homebuyer with respect to any other principal residence.

(3) Principal residence

The term ''principal residence'' has the same meaning as when used in section 121.

(d) Carryforward of unused credit

(1) Rule for years in which all personal credits allowed against regular and alternative minimum tax

In the case of a taxable year to which section 26(a)(2) applies, if the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a)(2) for such taxable year reduced by the sum of the credits allowable under subpart A of part IV of subchapter A (other than this section and section 25D), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year.

(2) Rule for other years

In the case of a taxable year to which section 26(a)(2) does not apply, if the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a)(1) for such taxable year reduced by the sum of the credits allowable under subpart A of part IV of subchapter A (other than this section and sections 24, 25A(i), 25B, 25D, 30, and 30B, and 30D), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year.

(e) Special rules

For purposes of this section—

(1) Allocation of dollar limitation

(A) Married individuals filing separately

In the case of a married individual filing a separate return, subsection (a) shall be applied by substituting ''$2,500'' for ''$5,000''.

(B) Other taxpayers

If 2 or more individuals who are not married purchase a principal residence, the amount of the credit allowed under subsection (a) shall be allocated among such individuals in such manner as the Secretary may prescribe, except that the total amount of the credits allowed to all such individuals shall not exceed $5,000.

(2) Purchase

(A) In general

The term ''purchase'' means any acquisition, but only if—

(i) the property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under section 267 or 707(b) (but, in applying section 267(b) and (c) for purposes of this section, paragraph (4) of section 267(c) shall be treated as providing that the family of an individual shall include only his spouse, ancestors, and lineal descendants), and

(ii) the basis of the property in the hands of the person acquiring it is not determined—

(I) in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or

(II) under section 1014(a) (relating to property acquired from a decedent).

(B) Construction

A residence which is constructed by the taxpayer shall be treated as purchased by the taxpayer on the date the taxpayer first occupies such residence.

(3) Purchase price

The term ''purchase price'' means the adjusted basis of the principal residence on the date such residence is purchased.

(4) Coordination with national first-time homebuyers credit

No credit shall be allowed under this section to any taxpayer with respect to the purchase of a residence after December 31, 2008, if a credit under section 36 is allowable to such taxpayer (or the taxpayer's spouse) with respect to such purchase.

(f) Reporting

If the Secretary requires information reporting under section 6045 by a person described in subsection (e)(2) thereof to verify the eligibility of taxpayers for the credit allowable by this section, the exception provided by section 6045(e)(5) shall not apply.

(g) Credit treated as nonrefundable personal credit

For purposes of this title, the credit allowed by this section shall be treated as a credit allowable under subpart A of part IV of subchapter A of this chapter.

(h) Basis adjustment

For purposes of this subtitle, if a credit is allowed under this section with respect to the purchase of any residence, the basis of such residence shall be reduced by the amount of the credit so allowed.

(i) Application of section

This section shall apply to property purchased after August 4, 1997, and before January 1, 2012.

(Added Pub. L. 105–34, title VII, §701(a), Aug. 5, 1997, 111 Stat. 867; amended Pub. L. 105–206, title VI, §6008(d)(1)–(5), July 22, 1998, 112 Stat. 811, 812; Pub. L. 106–170, title V, §510, Dec. 17, 1999, 113 Stat. 1924; Pub. L. 106–554, §1(a)(7) [title I, §163], Dec. 21, 2000, 114 Stat. 2763, 2763A–625; Pub. L. 107–16, title II, §§201(b)(2)(H), 202(f)(2)(C), title VI, §618(b)(2)(E), June 7, 2001, 115 Stat. 46, 49, 108; Pub. L. 107–147, title IV, §417(23)(B), Mar. 9, 2002, 116 Stat. 57; Pub. L. 108–311, title III, §310(d), Oct. 4, 2004, 118 Stat. 1180; Pub. L. 109–58, title XIII, §1335(b)(3), Aug. 8, 2005, 119 Stat. 1036; Pub. L. 109–135, title IV, §402(i)(3)(F), (4), Dec. 21, 2005, 119 Stat. 2614, 2615; Pub. L. 109–432, div. A, title I, §110(d)(1), Dec. 20, 2006, 120 Stat. 2940; Pub. L. 110–343, div. B, title II, §205(d)(1)(E), div. C, title III, §322(d)(1), Oct. 3, 2008, 122 Stat. 3839, 3874; Pub. L. 111–5, div. B, title I, §§1004(b)(6), 1006(d)(1), 1142(b)(1)(F), 1144(b)(1)(F), Feb. 17, 2009, 123 Stat. 314, 316, 330, 332; Pub. L. 111–92, §11(i), Nov. 6, 2009, 123 Stat. 2991; Pub. L. 111–148, title X, §10909(b)(2)(M), (c), Mar. 23, 2010, 124 Stat. 1023; Pub. L. 111–312, title I, §101(b)(1), title VII, §754(d), Dec. 17, 2010, 124 Stat. 3298, 3322.)

AMENDMENT OF SECTION

For termination of amendment by section 10909(c) of Pub. L. 111–148, see Effective and Termination Dates of 2010 Amendment note below.

For termination of amendment by section 402(i)(3)(H) of Pub. L. 109–135, see Effective and Termination Dates of 2005 Amendments note below.

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

AMENDMENTS

2010—Subsec. (d)(2). Pub. L. 111–148, §10909(b)(2)(M), (c), as amended by Pub. L. 111–312, §101(b)(1), temporarily struck out ''23,'' after ''this section and sections''. See Effective and Termination Dates of 2010 Amendment note below.

Subsec. (i). Pub. L. 111–312, §754(d), substituted ''2012'' for ''2010''.

2009—Subsec. (d)(2). Pub. L. 111–5, §1144(b)(1)(F), substituted ''30, and 30B'' for ''and 30''.

Pub. L. 111–5, §1142(b)(1)(F), which directed the substitution of ''25D, and 30'' for ''and 25D'', was executed by making the substitution for ''25D'', to reflect the probable intent of Congress and the amendment by Pub. L. 110–343, §205(d)(1)(E). See 2008 Amendment note below.

Pub. L. 111–5, §1004(b)(6), inserted ''25A(i),'' after ''24,''.

Subsec. (e)(4). Pub. L. 111–92 struck out ''and before December 1, 2009,'' after ''December 31, 2008,''.

Pub. L. 111–5, §1006(d)(1), added par. (4).

2008—Subsec. (d)(2). Pub. L. 110–343, §205(d)(1)(E), substituted ''25D, and 30D'' for ''and 25D''.

Subsec. (i). Pub. L. 110–343, § 322(d)(1), substituted ''2010'' for ''2008''.

2006—Subsec. (i). Pub. L. 109–432 substituted ''2008'' for ''2006''.

2005—Subsec. (d). Pub. L. 109–135, § 402(i)(3)(F), (H), temporarily amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: ''If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under subpart A of part IV of subchapter A (other than this section and sections 23, 24, and 25B), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year.'' See Effective and Termination Dates of 2005 Amendments note below.

Pub. L. 109–58, § 1335(b)(3), which directed amendment of subsec. (d) by substituting ''this section and section 25D'' for ''this section'', was repealed by Pub. L. 109–135, § 402(i)(4). See Effective and Termination Dates of 2005 Amendments notes below.

2004—Subsec. (i). Pub. L. 108–311 substituted ''2006'' for ''2004''.

2002—Subsec. (d). Pub. L. 107–147 amended directory language of Pub. L. 107–16, § 618(b)(2)(E). See 2001 Amendment note below.

2001—Subsec. (d). Pub. L. 107–16, § 618(b)(2)(E), as amended by Pub. L. 107–147, substituted '', 24, and 25B'' for ''and 24''.

Pub. L. 107–16, §§ 202(f)(2)(C), 901, temporarily substituted ''sections 23 and 24'' for ''section 24''. See Effective and Termination Dates of 2001 Amendment note below.

Pub. L. 107–16, §§ 201(b)(2)(H), 901, temporarily inserted ''and section 24'' after ''this section''. See Effective and Termination Dates of 2001 Amendment note below.

2000—Subsec. (i). Pub. L. 106–554 substituted ''2004'' for ''2002''.

1999—Subsec. (i). Pub. L. 106–170 substituted ''2002'' for ''2001''.

1998—Subsec. (b)(1). Pub. L. 105–206, § 6008(d)(1), inserted ''and subsection (d)'' after ''this subsection'' in introductory provisions.

Subsec. (c)(1). Pub. L. 105–206, § 6008(d)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'first-time homebuyer' has the same meaning as when used in section 72(t)(8)(D)(i), except that 'principal residence in the District of Columbia during the 1-year period' shall be substituted for 'principal residence during the 2-year period' in subclause (I) thereof.''

Subsec. (e)(2)(B). Pub. L. 105–206, § 6008(d)(3), inserted ''on the date the taxpayer first occupies such residence'' before the period at end.

Subsec. (e)(3). Pub. L. 105–206, § 6008(d)(4), substituted ''on the date such residence is purchased.'' for ''on the date of acquisition (within the meaning of section 72(t)(8)(D)(iii)).''

Subsec. (i). Pub. L. 105–206, § 6008(d)(5), substituted ''Application of section'' for ''Termination'' in heading and amended text generally. Prior to amendment, text read as follows: ''This section shall not apply to any property purchased after December 31, 2000.''

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Amendment by section 754(d) of Pub. L. 111–312 applicable to homes purchased after Dec. 31, 2009, see section 754(e)(4) of Pub. L. 111–312, set out as a note under section 1400 of this title.

Amendment by Pub. L. 111–148 terminated applicable to taxable years beginning after Dec. 31, 2011, and section is amended to read as if such amendment had never been enacted, see section 10909(c) of Pub. L. 111–148, set out as a note under section 1 of this title.

Amendment by Pub. L. 111–148 applicable to taxable years beginning after Dec. 31, 2009, see section 10909(d) of Pub. L. 111–148, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–92 applicable to residences purchased after Nov. 30, 2009, see section 11(j)(2) of Pub. L. 111–92, set out as a note under section 36 of this title.

Amendment by section 1004(b)(6) of Pub. L. 111–5 applicable to taxable years beginning after Dec. 31, 2008, see section 1004(d) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Amendment by section 1006(d)(1) of Pub. L. 111–5 applicable to residences purchased after Dec. 31, 2008, see section 1006(f) of Pub. L. 111–5, set out as a note under section 36 of this title.

Amendment by section 1142(b)(1)(F) of Pub. L. 111–5 applicable to vehicles acquired after Feb. 17, 2009, see section 1142(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Amendment by section 1144(b)(1)(F) of Pub. L. 111–5 applicable to taxable years beginning after Dec. 31, 2008, see section 1144(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 205(d)(1)(E) of Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2008, see section 205(e) of Pub. L. 110–343, set out as an Effective and Termination Dates of 2008 Amendment note under section 24 of this title.

Pub. L. 110–343, div. C, title III, § 322(d)(2), Oct. 3, 2008, 122 Stat. 3874, provided that: ''The amendment made by this subsection [amending this section] shall apply to property purchased after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title I, § 110(d)(2), Dec. 20, 2006, 120 Stat. 2940, provided that: ''The amendment made by this subsection [amending this section] shall apply to property purchased after December 31, 2005.''

EFFECTIVE AND TERMINATION DATES OF 2005 AMENDMENTS

Amendment by section 402(i)(3)(F) of Pub. L. 109–135 subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, § 901, in the same manner as the provisions of such Act to which such amendment relates, see section 402(i)(3)(H) of Pub. L. 109–135, set out as a note under section 36C of this title.

The Internal Revenue Code of 1986 to be applied and administered as if the amendments made by section 1135(b)(1)–(3) of Pub. L. 109–58 had never been enacted, see section 402(i)(4) of Pub. L. 109–135, set out as a note under section 36C of this title.

Amendments by Pub. L. 109–135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which they relate, except that amendment by section 402(i)(3)(F) of Pub. L. 109–135 is applicable to taxable years beginning after Dec. 31, 2005, see section 402(m) of Pub. L. 109–135, set out as a note under section 36C of this title.

Amendment by Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, in taxable years ending after such date, see section 1335(c) of Pub. L. 109–58, set out as a note under section 36C of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 effective Jan. 1, 2004, see section 310(e)(1) of Pub. L. 108–311, set out as a note under section 1400 of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 inapplicable to taxable years beginning during 2004 or 2005, see section 312(b)(2) of Pub. L. 108–311, set out as a note under section 36C of this title.

Amendment by Pub. L. 107–16 inapplicable to taxable years beginning during 2002 and 2003, see section 601(b)(2) of Pub. L. 107–147, set out as a note under section 36C of this title.

Amendment by section 201(b)(2)(H) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 201(e)(2) of Pub. L. 107–16, set out as a note under section 24 of this title.

Amendment by section 202(f)(2)(C) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 202(g)(1) of Pub. L. 107–16, set out as a note under section 36C of this title.

Amendment by section 618(b)(2)(E) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 618(d) of Pub. L. 107–16, set out as a note under section 24 of this title.

Amendment by sections 201(b)(2)(H) and 202(f)(2)(C) of Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

Subchapter X—Renewal Communities

Part
I. Designation.
II. Renewal community capital gain; renewal community business.
III. Additional incentives.

PART I—DESIGNATION

Sec.
1400E. Designation of renewal communities.

§ 1400E. Designation of renewal communities

(a) Designation

(1) Definitions

For purposes of this title, the term ''renewal community'' means any area—

(A) which is nominated by 1 or more local governments and the State or States in which it is located for designation as a renewal community (hereafter in this section referred to as a ''nominated area''), and

(B) which the Secretary of Housing and Urban Development designates as a renewal community, after consultation with—

(i) the Secretaries of Agriculture, Commerce, Labor, and the Treasury;[1] the Director of the Office of Management and Budget, and the Administrator of the Small Business Administration, and

(ii) in the case of an area on an Indian reservation, the Secretary of the Interior.

(2) Number of designations

(A) In general

Not more than 40 nominated areas may be designated as renewal communities.

(B) Minimum designation in rural areas

Of the areas designated under paragraph (1), at least 12 must be areas—

(i) which are within a local government jurisdiction or jurisdictions with a population of less than 50,000,

(ii) which are outside of a metropolitan statistical area (within the meaning of section 143(k)(2)(B)), or

(iii) which are determined by the Secretary of Housing and Urban Development, after consultation with the Secretary of Commerce, to be rural areas.

(3) Areas designated based on degree of poverty, etc.

(A) In general

Except as otherwise provided in this section, the nominated areas designated as renewal communities under this subsection shall be those nominated areas with the highest average ranking with respect to the criteria described in subparagraphs (B), (C), and (D) of subsection (c)(3). For purposes of the preceding sentence, an area shall be ranked within each such criterion on the basis of the amount by which the area exceeds such criterion, with the area which exceeds such criterion by the greatest amount given the highest ranking.

(B) Exception where inadequate course of action, etc.

An area shall not be designated under subparagraph (A) if the Secretary of Housing and Urban Development determines that the course of action described in subsection (d)(2) with respect to such area is inadequate.

(C) Preference for enterprise communities and empowerment zones

With respect to the first 20 designations made under this section, a preference shall be provided to those nominated areas which are enterprise communities or empowerment zones (and are otherwise eligible for designation under this section).

(4) Limitation on designations

(A) Publication of regulations

The Secretary of Housing and Urban Development shall prescribe by regulation no later than 4 months after the date of the enactment of this section, after consultation with the officials described in paragraph (1)(B)—

(i) the procedures for nominating an area under paragraph (1)(A),

(ii) the parameters relating to the size and population characteristics of a renewal community, and

(iii) the manner in which nominated areas will be evaluated based on the criteria specified in subsection (d).

(B) Time limitations

The Secretary of Housing and Urban Development may designate nominated areas as renewal communities only during the period beginning on the first day of the first month following the month in which the regulations described in subparagraph (A) are prescribed and ending on December 31, 2001.

(C) Procedural rules

The Secretary of Housing and Urban Development shall not make any designation

[1] So in original. The semicolon probably should be a comma.

of a nominated area as a renewal community under paragraph (2) unless—

(i) the local governments and the States in which the nominated area is located have the authority—

(I) to nominate such area for designation as a renewal community,

(II) to make the State and local commitments described in subsection (d), and

(III) to provide assurances satisfactory to the Secretary of Housing and Urban Development that such commitments will be fulfilled,

(ii) a nomination regarding such area is submitted in such a manner and in such form, and contains such information, as the Secretary of Housing and Urban Development shall by regulation prescribe, and

(iii) the Secretary of Housing and Urban Development determines that any information furnished is reasonably accurate.

(5) Nomination process for Indian reservations

For purposes of this subchapter, in the case of a nominated area on an Indian reservation, the reservation governing body (as determined by the Secretary of the Interior) shall be treated as being both the State and local governments with respect to such area.

(b) Period for which designation is in effect

(1) In general

Any designation of an area as a renewal community shall remain in effect during the period beginning on January 1, 2002, and ending on the earliest of—

(A) December 31, 2009,

(B) the termination date designated by the State and local governments in their nomination, or

(C) the date the Secretary of Housing and Urban Development revokes such designation.

(2) Revocation of designation

The Secretary of Housing and Urban Development may revoke the designation under this section of an area if such Secretary determines that the local government or the State in which the area is located—

(A) has modified the boundaries of the area, or

(B) is not complying substantially with, or fails to make progress in achieving, the State or local commitments, respectively, described in subsection (d).

(3) Earlier termination of certain benefits if earlier termination of designation

If the designation of an area as a renewal community terminates before December 31, 2009, the day after the date of such termination shall be substituted for ''January 1, 2010'' each place it appears in sections 1400F and 1400J with respect to such area.

(c) Area and eligibility requirements

(1) In general

The Secretary of Housing and Urban Development may designate a nominated area as a renewal community under subsection (a) only if the area meets the requirements of paragraphs (2) and (3) of this subsection.

(2) Area requirements

A nominated area meets the requirements of this paragraph if—

(A) the area is within the jurisdiction of one or more local governments,

(B) the boundary of the area is continuous, and

(C) the area—

(i) has a population of not more than 200,000 and at least—

(I) 4,000 if any portion of such area (other than a rural area described in subsection (a)(2)(B)(i)) is located within a metropolitan statistical area (within the meaning of section 143(k)(2)(B)) which has a population of 50,000 or greater, or

(II) 1,000 in any other case, or

(ii) is entirely within an Indian reservation (as determined by the Secretary of the Interior).

(3) Eligibility requirements

A nominated area meets the requirements of this paragraph if the State and the local governments in which it is located certify in writing (and the Secretary of Housing and Urban Development, after such review of supporting data as he deems appropriate, accepts such certification) that—

(A) the area is one of pervasive poverty, unemployment, and general distress,

(B) the unemployment rate in the area, as determined by the most recent available data, was at least 1½ times the national unemployment rate for the period to which such data relate,

(C) the poverty rate for each population census tract within the nominated area is at least 20 percent, and

(D) in the case of an urban area, at least 70 percent of the households living in the area have incomes below 80 percent of the median income of households within the jurisdiction of the local government (determined in the same manner as under section 119(b)(2) of the Housing and Community Development Act of 1974).

(4) Consideration of other factors

The Secretary of Housing and Urban Development, in selecting any nominated area for designation as a renewal community under this section—

(A) shall take into account—

(i) the extent to which such area has a high incidence of crime, or

(ii) if such area has census tracts identified in the May 12, 1998, report of the Government Accountability Office regarding the identification of economically distressed areas, and

(B) with respect to 1 of the areas to be designated under subsection (a)(2)(B), may, in lieu of any criteria described in paragraph (3), take into account the existence of outmigration from the area.

(d) Required State and local commitments

(1) In general

The Secretary of Housing and Urban Development may designate any nominated area as

a renewal community under subsection (a) only if—

(A) the local government and the State in which the area is located agree in writing that, during any period during which the area is a renewal community, such governments will follow a specified course of action which meets the requirements of paragraph (2) and is designed to reduce the various burdens borne by employers or employees in such area, and

(B) the economic growth promotion requirements of paragraph (3) are met.

(2) Course of action

(A) In general

A course of action meets the requirements of this paragraph if such course of action is a written document, signed by a State (or local government) and neighborhood organizations, which evidences a partnership between such State or government and community-based organizations and which commits each signatory to specific and measurable goals, actions, and timetables. Such course of action shall include at least 4 of the following:

(i) A reduction of tax rates or fees applying within the renewal community.

(ii) An increase in the level of efficiency of local services within the renewal community.

(iii) Crime reduction strategies, such as crime prevention (including the provision of crime prevention services by nongovernmental entities).

(iv) Actions to reduce, remove, simplify, or streamline governmental requirements applying within the renewal community.

(v) Involvement in the program by private entities, organizations, neighborhood organizations, and community groups, particularly those in the renewal community, including a commitment from such private entities to provide jobs and job training for, and technical, financial, or other assistance to, employers, employees, and residents from the renewal community.

(vi) The gift (or sale at below fair market value) of surplus real property (such as land, homes, and commercial or industrial structures) in the renewal community to neighborhood organizations, community development corporations, or private companies.

(B) Recognition of past efforts

For purposes of this section, in evaluating the course of action agreed to by any State or local government, the Secretary of Housing and Urban Development shall take into account the past efforts of such State or local government in reducing the various burdens borne by employers and employees in the area involved.

(3) Economic growth promotion requirements

The economic growth promotion requirements of this paragraph are met with respect to a nominated area if the local government and the State in which such area is located certify in writing that such government and State (respectively) have repealed or reduced, will not enforce, or will reduce within the nominated area at least 4 of the following:

(A) Licensing requirements for occupations that do not ordinarily require a professional degree.

(B) Zoning restrictions on home-based businesses which do not create a public nuisance.

(C) Permit requirements for street vendors who do not create a public nuisance.

(D) Zoning or other restrictions that impede the formation of schools or child care centers.

(E) Franchises or other restrictions on competition for businesses providing public services, including taxicabs, jitneys, cable television, or trash hauling.

This paragraph shall not apply to the extent that such regulation of businesses and occupations is necessary for and well-tailored to the protection of health and safety.

(e) Coordination with treatment of empowerment zones and enterprise communities

For purposes of this title, the designation under section 1391 of any area as an empowerment zone or enterprise community shall cease to be in effect as of the date that the designation of any portion of such area as a renewal community takes effect.

(f) Definitions and special rules

For purposes of this subchapter—

(1) Governments

If more than one government seeks to nominate an area as a renewal community, any reference to, or requirement of, this section shall apply to all such governments.

(2) Local government

The term ''local government'' means—

(A) any county, city, town, township, parish, village, or other general purpose political subdivision of a State, and

(B) any combination of political subdivisions described in subparagraph (A) recognized by the Secretary of Housing and Urban Development.

(3) Application of rules relating to census tracts

The rules of section 1392(b)(4) shall apply.

(4) Census data

Population and poverty rate shall be determined by using 1990 census data.

(g) Expansion of designated area based on 2000 census

(1) In general

At the request of all governments which nominated an area as a renewal community, the Secretary of Housing and Urban Development may expand the area of such community to include any census tract if—

(A)(i) at the time such community was nominated, such community would have met the requirements of this section using 1990 census data even if such tract had been included in such community, and

(ii) such tract has a poverty rate using 2000 census data which exceeds the poverty rate for such tract using 1990 census data, or

(B)(i) such community would be described in subparagraph (A)(i) but for the failure to meet one or more of the requirements of paragraphs (2)(C)(i), (3)(C), and (3)(D) of subsection (c) using 1990 census data,

(ii) such community, including such tract, has a population of not more than 200,000 using either 1990 census data or 2000 census data,

(iii) such tract meets the requirement of subsection (c)(3)(C) using 2000 census data, and

(iv) such tract meets the requirement of subparagraph (A)(ii).

(2) Exception for certain census tracts with low population in 1990

In the case of any census tract which did not have a poverty rate determined by the Bureau of the Census using 1990 census data, paragraph (1)(B) shall be applied without regard to clause (iv) thereof.

(3) Special rule for certain census tracts with low population in 2000

At the request of all governments which nominated an area as a renewal community, the Secretary of Housing and Urban Development may expand the area of such community to include any census tract if—

(A) either—

(i) such tract has no population using 2000 census data, or

(ii) no poverty rate for such tract is determined by the Bureau of the Census using 2000 census data,

(B) such tract is one of general distress, and

(C) such community, including such tract, meets the requirements of subparagraphs (A) and (B) of subsection (c)(2).

(4) Period in effect

Any expansion under this subsection shall take effect as provided in subsection (b).

(Added Pub. L. 106–554, §1(a)(7) [title I, §101(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–589; amended Pub. L. 108–357, title II, §222(a), Oct. 22, 2004, 118 Stat. 1431; Pub. L. 109–135, title IV, §412(rr)(1), Dec. 21, 2005, 119 Stat. 2640.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (a)(4)(A), is the date of enactment of Pub. L. 106–554, which was approved Dec. 21, 2000.

Section 119(b)(2) of the Housing and Community Development Act of 1974, referred to in subsec. (c)(3)(D), is classified to section 5318(b)(2) of Title 42, The Public Health and Welfare.

AMENDMENTS

2005—Subsec. (c)(4)(A)(ii). Pub. L. 109–135 substituted ''Government Accountability Office'' for ''General Accounting Office''.

2004—Subsec. (g). Pub. L. 108–357 added subsec. (g).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, §222(b), Oct. 22, 2004, 118 Stat. 1432, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as if included in the amendments made by section 101 of the Community Renewal Tax Relief Act of 2000 [H.R. 5662, as enacted by section 1(a)(7) of Pub. L. 106–554, Dec. 21, 2000, 114 Stat. 2763, 2763A–587].''

AUDIT AND REPORT

Pub. L. 106–554, §1(a)(7) [title I, §101(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–599, provided that: ''Not later than January 31 of 2004, 2007, and 2010, the Comptroller General of the United States shall, pursuant to an audit of the renewal community program established under section 1400E of the Internal Revenue Code of 1986 (as added by subsection (a)) and the empowerment zone and enterprise community program under subchapter U of chapter 1 of such Code, report to Congress on such program and its effect on poverty, unemployment, and economic growth within the designated renewal communities, empowerment zones, and enterprise communities.''

ADVISORY COUNCIL ON COMMUNITY RENEWAL

Pub. L. 106–554, §1(a)(7) [title I, subtitle E, part II], Dec. 21, 2000, 114 Stat. 2763, 2763A–622, as amended by Pub. L. 107–147, title IV, §417(21), Mar. 9, 2002, 116 Stat. 57; Pub. L. 108–311, title IV, §408(b)(1), Oct. 4, 2004, 118 Stat. 1192, provided that:

''SEC. 151. SHORT TITLE.

''This part may be cited as the 'Advisory Council on Community Renewal Act'.

''SEC. 152. ESTABLISHMENT.

''There is established an advisory council to be known as the 'Advisory Council on Community Renewal' (in this part referred to as the 'Advisory Council').

''SEC. 153. DUTIES OF ADVISORY COUNCIL.

''The Advisory Council shall advise the Secretary of Housing and Urban Development (in this part referred to as the 'Secretary') on the designation of renewal communities pursuant to the amendment made by section 101 [adding this subchapter and amending section 469 of this title] and on the exercise of any other authority granted to the Secretary pursuant to the amendments made by this title [see Tables for classification].

''SEC. 154. MEMBERSHIP.

''(a) NUMBER AND APPOINTMENT.—The Advisory Council shall be composed of 7 members appointed by the Secretary.

''(b) CHAIRPERSON.—The Chairperson of the Advisory Council (in this part referred to as the 'Chairperson') shall be designated by the Secretary at the time of the appointment.

''(c) TERMS.—Each member shall be appointed for the life of the Advisory Council.

''(d) BASIC PAY.—

''(1) CHAIRPERSON.—The Chairperson shall be paid at a rate equal to the daily rate of basic pay for level III of the Executive Schedule for each day (including travel time) during which the Chairperson is engaged in the actual performance of duties vested in the Advisory Council.

''(2) OTHER MEMBERS.—Members other than the Chairperson shall each be paid at a rate equal to the daily rate of basic pay for level IV of the Executive Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Advisory Council.

''(e) TRAVEL EXPENSES.—Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.

''(f) QUORUM.—Four members of the Advisory Council shall constitute a quorum but a lesser number may hold hearings.

''(g) MEETINGS.—The Advisory Council shall meet at the call of the Secretary or the Chairperson.

''SEC. 155. POWERS OF ADVISORY COUNCIL.

''(a) HEARINGS AND SESSIONS.—The Advisory Council may, for the purpose of carrying out this part, hold hearings, sit and act at times and places, take testi-

mony, and receive evidence as the Advisory Council considers appropriate. The Advisory Council may administer oaths or affirmations to witnesses appearing before it.

''(b) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Advisory Council may, if authorized by the Advisory Council, take any action which the Advisory Council is authorized to take by this section.

''(c) OBTAINING OFFICIAL DATA.—The Advisory Council may secure directly from any department or agency of the United States information necessary to enable it to carry out this part. Upon request of the Chairperson of the Advisory Council, the head of that department or agency shall furnish that information to the Advisory Council.

''SEC. 156. REPORTS.

''(a) ANNUAL REPORTS.—The Advisory Council shall submit to the Secretary an annual report for each fiscal year.

''(b) INTERIM REPORTS.—The Advisory Council may submit to the Secretary such interim reports as the Advisory Council considers appropriate.

''(c) FINAL REPORT.—The Advisory Council shall transmit a final report to the Secretary not later than September 30, 2003. The final report shall contain a detailed statement of the findings and conclusions of the Advisory Council, together with any recommendations for legislative or administrative action that the Advisory Council considers appropriate.

''SEC. 157. TERMINATION.

''(a) IN GENERAL.—The Advisory Council shall terminate 30 days after submitting its final report under section 156(c).

''(b) EXTENSION.—Notwithstanding subsection (a), the Secretary may postpone the termination of the Advisory Council for a period not to exceed 3 years after the Advisory Council submits its final report under section 156(c).

''SEC. 158. APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.

''The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Advisory Council.

''SEC. 159. RESOURCES.

''The Secretary shall provide to the Advisory Council appropriate resources so that the Advisory Council may carry out its duties and functions under this part.

''SEC. 160. EFFECTIVE DATE.

''This part shall be effective 30 days after the date of its enactment [Dec. 21, 2000].''

PART II—RENEWAL COMMUNITY CAPITAL GAIN; RENEWAL COMMUNITY BUSINESS

Sec.
1400F. Renewal community capital gain.
1400G. Renewal community business defined.

§ 1400F. Renewal community capital gain

(a) General rule

Gross income does not include any qualified capital gain from the sale or exchange of a qualified community asset held for more than 5 years.

(b) Qualified community asset

For purposes of this section—

(1) In general

The term ''qualified community asset'' means—

(A) any qualified community stock,

(B) any qualified community partnership interest, and

(C) any qualified community business property.

(2) Qualified community stock

(A) In general

Except as provided in subparagraph (B), the term ''qualified community stock'' means any stock in a domestic corporation if—

(i) such stock is acquired by the taxpayer after December 31, 2001, and before January 1, 2010, at its original issue (directly or through an underwriter) from the corporation solely in exchange for cash,

(ii) as of the time such stock was issued, such corporation was a renewal community business (or, in the case of a new corporation, such corporation was being organized for purposes of being a renewal community business), and

(iii) during substantially all of the taxpayer's holding period for such stock, such corporation qualified as a renewal community business.

(B) Redemptions

A rule similar to the rule of section 1202(c)(3) shall apply for purposes of this paragraph.

(3) Qualified community partnership interest

The term ''qualified community partnership interest'' means any capital or profits interest in a domestic partnership if—

(A) such interest is acquired by the taxpayer after December 31, 2001, and before January 1, 2010, from the partnership solely in exchange for cash,

(B) as of the time such interest was acquired, such partnership was a renewal community business (or, in the case of a new partnership, such partnership was being organized for purposes of being a renewal community business), and

(C) during substantially all of the taxpayer's holding period for such interest, such partnership qualified as a renewal community business.

A rule similar to the rule of paragraph (2)(B) shall apply for purposes of this paragraph.

(4) Qualified community business property

(A) In general

The term ''qualified community business property'' means tangible property if—

(i) such property was acquired by the taxpayer by purchase (as defined in section 179(d)(2)) after December 31, 2001, and before January 1, 2010,

(ii) the original use of such property in the renewal community commences with the taxpayer, and

(iii) during substantially all of the taxpayer's holding period for such property, substantially all of the use of such property was in a renewal community business of the taxpayer.

(B) Special rule for substantial improvements

The requirements of clauses (i) and (ii) of subparagraph (A) shall be treated as satisfied with respect to—

(i) property which is substantially improved by the taxpayer before January 1, 2010, and

(ii) any land on which such property is located.

The determination of whether a property is substantially improved shall be made under clause (ii) of section 1400B(b)(4)(B), except that ''December 31, 2001'' shall be substituted for ''December 31, 1997'' in such clause.

(c) Qualified capital gain

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the term ''qualified capital gain'' means any gain recognized on the sale or exchange of—

(A) a capital asset, or

(B) property used in the trade or business (as defined in section 1231(b)).

(2) Gain before 2002 or after 2014 not qualified

The term ''qualified capital gain'' shall not include any gain attributable to periods before January 1, 2002, or after December 31, 2014.

(3) Certain rules to apply

Rules similar to the rules of paragraphs (3), (4), and (5) of section 1400B(e) shall apply for purposes of this subsection.

(d) Certain rules to apply

For purposes of this section, rules similar to the rules of paragraphs (5), (6), and (7) of subsection (b), and subsections (f) and (g), of section 1400B shall apply; except that for such purposes section 1400B(g)(2) shall be applied by substituting ''January 1, 2002'' for ''January 1, 1998'' and ''December 31, 2014'' for ''December 31, 2014''.

(e) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including regulations to prevent the abuse of the purposes of this section.

(Added Pub. L. 106–554, §1(a)(7) [title I, §101(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–594; amended Pub. L. 108–311, title III, §310(c)(2)(C), Oct. 4, 2004, 118 Stat. 1180; Pub. L. 109–432, div. A, title I, §110(c)(2)(C), Dec. 20, 2006, 120 Stat. 2940; Pub. L. 110–343, div. C, title III, §322(c)(2)(C), Oct. 3, 2008, 122 Stat. 3874.)

AMENDMENTS

2008—Subsec. (d). Pub. L. 110–343 substituted ''2014'.'' for ''2012'.''.

2006—Subsec. (d). Pub. L. 109–432 substituted ''2012'' for ''2010''.

2004—Subsec. (d). Pub. L. 108–311 substituted ''2010'' for ''2008''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–311 effective Jan. 1, 2004, see section 310(e)(1) of Pub. L. 108–311, set out as a note under section 1400 of this title.

§ 1400G. Renewal community business defined

For purposes of this subchapter, the term ''renewal community business'' means any entity or proprietorship which would be a qualified business entity or qualified proprietorship under section 1397C if references to renewal communities were substituted for references to empowerment zones in such section.

(Added Pub. L. 106–554, §1(a)(7) [title I, §101(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–596.)

PART III—ADDITIONAL INCENTIVES

Sec.
1400H. Renewal community employment credit.
1400I. Commercial revitalization deduction.
1400J. Increase in expensing under section 179.

§ 1400H. Renewal community employment credit

(a) In general

Subject to the modification in subsection (b), a renewal community shall be treated as an empowerment zone for purposes of section 1396 with respect to wages paid or incurred after December 31, 2001.

(b) Modification

In applying section 1396 with respect to renewal communities—

(1) the applicable percentage shall be 15 percent, and

(2) subsection (c) thereof shall be applied by substituting ''$10,000'' for ''$15,000'' each place it appears.

(Added Pub. L. 106–554, §1(a)(7) [title I, §101(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–596.)

§ 1400I. Commercial revitalization deduction

(a) General rule

At the election of the taxpayer, either—

(1) one-half of any qualified revitalization expenditures chargeable to capital account with respect to any qualified revitalization building shall be allowable as a deduction for the taxable year in which the building is placed in service, or

(2) a deduction for all such expenditures shall be allowable ratably over the 120-month period beginning with the month in which the building is placed in service.

(b) Qualified revitalization buildings and expenditures

For purposes of this section—

(1) Qualified revitalization building

The term ''qualified revitalization building'' means any building (and its structural components) if—

(A) the building is placed in service by the taxpayer in a renewal community and the original use of the building begins with the taxpayer, or

(B) in the case of such building not described in subparagraph (A), such building—

(i) is substantially rehabilitated (within the meaning of section 47(c)(1)(C)) by the taxpayer, and

(ii) is placed in service by the taxpayer after the rehabilitation in a renewal community.

(2) Qualified revitalization expenditure

(A) In general

The term ''qualified revitalization expenditure'' means any amount properly chargeable to capital account for property for which depreciation is allowable under section 168 (without regard to this section) and which is—

(i) nonresidential real property (as defined in section 168(e)), or

(ii) section 1250 property (as defined in section 1250(c)) which is functionally related and subordinate to property described in clause (i).

(B) Certain expenditures not included

(i) Acquisition cost

In the case of a building described in paragraph (1)(B), the cost of acquiring the building or interest therein shall be treated as a qualified revitalization expenditure only to the extent that such cost does not exceed 30 percent of the aggregate qualified revitalization expenditures (determined without regard to such cost) with respect to such building.

(ii) Credits

The term ''qualified revitalization expenditure'' does not include any expenditure which the taxpayer may take into account in computing any credit allowable under this title unless the taxpayer elects to take the expenditure into account only for purposes of this section.

(c) Dollar limitation

The aggregate amount which may be treated as qualified revitalization expenditures with respect to any qualified revitalization building shall not exceed the lesser of—

(1) $10,000,000, or

(2) the commercial revitalization expenditure amount allocated to such building under this section by the commercial revitalization agency for the State in which the building is located.

(d) Commercial revitalization expenditure amount

(1) In general

The aggregate commercial revitalization expenditure amount which a commercial revitalization agency may allocate for any calendar year is the amount of the State commercial revitalization expenditure ceiling determined under this paragraph for such calendar year for such agency.

(2) State commercial revitalization expenditure ceiling

The State commercial revitalization expenditure ceiling applicable to any State—

(A) for each calendar year after 2001 and before 2010 is $12,000,000 for each renewal community in the State, and

(B) for each calendar year thereafter is zero.

(3) Commercial revitalization agency

For purposes of this section, the term ''commercial revitalization agency'' means any agency authorized by a State to carry out this section.

(4) Time and manner of allocations

Allocations under this section shall be made at the same time and in the same manner as under paragraphs (1) and (7) of section 42(h).

(e) Responsibilities of commercial revitalization agencies

(1) Plans for allocation

Notwithstanding any other provision of this section, the commercial revitalization expenditure amount with respect to any building shall be zero unless—

(A) such amount was allocated pursuant to a qualified allocation plan of the commercial revitalization agency which is approved (in accordance with rules similar to the rules of section 147(f)(2) (other than subparagraph (B)(ii) thereof)) by the governmental unit of which such agency is a part, and

(B) such agency notifies the chief executive officer (or its equivalent) of the local jurisdiction within which the building is located of such allocation and provides such individual a reasonable opportunity to comment on the allocation.

(2) Qualified allocation plan

For purposes of this subsection, the term ''qualified allocation plan'' means any plan—

(A) which sets forth selection criteria to be used to determine priorities of the commercial revitalization agency which are appropriate to local conditions,

(B) which considers—

(i) the degree to which a project contributes to the implementation of a strategic plan that is devised for a renewal community through a citizen participation process,

(ii) the amount of any increase in permanent, full-time employment by reason of any project, and

(iii) the active involvement of residents and nonprofit groups within the renewal community, and

(C) which provides a procedure that the agency (or its agent) will follow in monitoring compliance with this section.

(f) Special rules

(1) Deduction in lieu of depreciation

The deduction provided by this section for qualified revitalization expenditures shall—

(A) with respect to the deduction determined under subsection (a)(1), be in lieu of any depreciation deduction otherwise allowable on account of one-half of such expenditures, and

(B) with respect to the deduction determined under subsection (a)(2), be in lieu of any depreciation deduction otherwise allowable on account of all of such expenditures.

(2) Basis adjustment, etc.

For purposes of sections 1016 and 1250, the deduction under this section shall be treated in the same manner as a depreciation deduction. For purposes of section 1250(b)(5), the straight line method of adjustment shall be determined without regard to this section.

(3) Substantial rehabilitations treated as separate buildings

A substantial rehabilitation (within the meaning of section 47(c)(1)(C)) of a building shall be treated as a separate building for purposes of subsection (a).

(4) Clarification of allowance of deduction under minimum tax

Notwithstanding section 56(a)(1), the deduction under this section shall be allowed in determining alternative minimum taxable income under section 55.

(g) Termination

This section shall not apply to any building placed in service after December 31, 2009.

(Added Pub. L. 106–554, §1(a)(7) [title I, §101(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–596.)

§ 1400J. Increase in expensing under section 179

(a) In general

For purposes of section 1397A—

(1) a renewal community shall be treated as an empowerment zone,

(2) a renewal community business shall be treated as an enterprise zone business, and

(3) qualified renewal property shall be treated as qualified zone property.

(b) Qualified renewal property

For purposes of this section—

(1) In general

The term ''qualified renewal property'' means any property to which section 168 applies (or would apply but for section 179) if—

(A) such property was acquired by the taxpayer by purchase (as defined in section 179(d)(2)) after December 31, 2001, and before January 1, 2010, and

(B) such property would be qualified zone property (as defined in section 1397D) if references to renewal communities were substituted for references to empowerment zones in section 1397D.

(2) Certain rules to apply

The rules of subsections (a)(2) and (b) of section 1397D shall apply for purposes of this section.

(Added Pub. L. 106–554, §1(a)(7) [title I, §101(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–598.)

Subchapter Y—Short-Term Regional Benefits

Part
I. Tax Benefits for New York Liberty Zone.
II. Tax Benefits for GO Zones.
III. Recovery Zone Bonds.

AMENDMENTS

2009—Pub. L. 111–5, div. B, title I, §1401(b), Feb. 17, 2009, 123 Stat. 351, added item for part III.

2005—Pub. L. 109–135, title I, §101(b)(3), Dec. 21, 2005, 119 Stat. 2593, substituted ''Short-Term Regional Benefits'' for ''New York Liberty Zone Benefits'' in subchapter heading and amended analysis generally, substituting items for parts I and II for item 1400L.

PART I—TAX BENEFITS FOR NEW YORK LIBERTY ZONE

Sec.
1400L. Tax benefits for New York Liberty Zone.

§ 1400L. Tax benefits for New York Liberty Zone

(a) Expansion of work opportunity tax credit

(1) In general

For purposes of section 51, a New York Liberty Zone business employee shall be treated as a member of a targeted group.

(2) New York Liberty Zone business employee

For purposes of this subsection—

(A) In general

The term ''New York Liberty Zone business employee'' means, with respect to any period, any employee of a New York Liberty Zone business if substantially all the services performed during such period by such employee for such business are performed in the New York Liberty Zone.

(B) Inclusion of certain employees outside the New York Liberty Zone

(i) In general

In the case of a New York Liberty Zone business described in subclause (II) of subparagraph (C)(i), the term ''New York Liberty Zone business employee'' includes any employee of such business (not described in subparagraph (A)) if substantially all the services performed during such period by such employee for such business are performed in the City of New York, New York.

(ii) Limitation

The number of employees of such a business that are treated as New York Liberty Zone business employees on any day by reason of clause (i) shall not exceed the excess of—

(I) the number of employees of such business on September 11, 2001, in the New York Liberty Zone, over

(II) the number of New York Liberty Zone business employees (determined without regard to this subparagraph) of such business on the day to which the limitation is being applied.

The Secretary may require any trade or business to have the number determined under subclause (I) verified by the New York State Department of Labor.

(C) New York Liberty Zone business

(i) In general

The term ''New York Liberty Zone business'' means any trade or business which is—

(I) located in the New York Liberty Zone, or

(II) located in the City of New York, New York, outside the New York Liberty Zone, as a result of the physical destruction or damage of such place of business by the September 11, 2001, terrorist attack.

(ii) Credit not allowed for large businesses

The term ''New York Liberty Zone business'' shall not include any trade or business for any taxable year if such trade or business employed an average of more than 200 employees on business days during the taxable year.

(D) Special rules for determining amount of credit

For purposes of applying subpart F of part IV of subchapter A of this chapter to wages paid or incurred to any New York Liberty Zone business employee—

(i) section 51(a) shall be applied by substituting ''qualified wages'' for ''qualified first-year wages'',

(ii) the rules of section 52 shall apply for purposes of determining the number of employees under this paragraph,

(iii) subsections (c)(4) and (i)(2) of section 51 shall not apply, and

(iv) in determining qualified wages, the following shall apply in lieu of section 51(b):

(I) Qualified wages

The term ''qualified wages'' means wages paid or incurred by the employer to individuals who are New York Liberty Zone business employees of such employer for work performed during calendar year 2002 or 2003.

(II) Only first $6,000 of wages per calendar year taken into account

The amount of the qualified wages which may be taken into account with respect to any individual shall not exceed $6,000 per calendar year.

(b) Special allowance for certain property acquired after September 10, 2001

(1) Additional allowance

In the case of any qualified New York Liberty Zone property—

(A) the depreciation deduction provided by section 167(a) for the taxable year in which such property is placed in service shall include an allowance equal to 30 percent of the adjusted basis of such property, and

(B) the adjusted basis of the qualified New York Liberty Zone property shall be reduced by the amount of such deduction before computing the amount otherwise allowable as a depreciation deduction under this chapter for such taxable year and any subsequent taxable year.

(2) Qualified New York Liberty Zone property

For purposes of this subsection—

(A) In general

The term ''qualified New York Liberty Zone property'' means property—

(i)(I) which is described in section 168(k)(2)(A)(i), or

(II) which is nonresidential real property, or residential rental property, which is described in subparagraph (B),

(ii) substantially all of the use of which is in the New York Liberty Zone and is in the active conduct of a trade or business by the taxpayer in such Zone,

(iii) the original use of which in the New York Liberty Zone commences with the taxpayer after September 10, 2001,

(iv) which is acquired by the taxpayer by purchase (as defined in section 179(d)) after September 10, 2001, but only if no written binding contract for the acquisition was in effect before September 11, 2001, and

(v) which is placed in service by the taxpayer on or before the termination date.

The term ''termination date'' means December 31, 2006 (December 31, 2009, in the case of nonresidential real property and residential rental property).

(B) Eligible real property

Nonresidential real property or residential rental property is described in this subparagraph only to the extent it rehabilitates real property damaged, or replaces real property destroyed or condemned, as a result of the September 11, 2001, terrorist attack. For purposes of the preceding sentence, property shall be treated as replacing real property destroyed or condemned if, as part of an integrated plan, such property replaces real property which is included in a continuous area which includes real property destroyed or condemned.

(C) Exceptions

(i) Bonus depreciation property under section 168(k)

Such term shall not include property to which section 168(k) applies.

(ii) Alternative depreciation property

The term ''qualified New York Liberty Zone property'' shall not include any property described in section 168(k)(2)(D)(i).

(iii) Qualified New York Liberty Zone leasehold improvement property

Such term shall not include any qualified New York Liberty Zone leasehold improvement property.

(iv) Election out

For purposes of this subsection, rules similar to the rules of section 168(k)(2)(D)(iii) shall apply.

(D) Special rules

For purposes of this subsection, rules similar to the rules of section 168(k)(2)(E) shall apply, except that clause (i) thereof shall be applied without regard to ''and before January 1, 2013'', and clause (iv) thereof shall be applied by substituting ''qualified New York Liberty Zone property'' for ''qualified property''.

(E) Allowance against alternative minimum tax

For purposes of this subsection, rules similar to the rules of section 168(k)(2)(G) shall apply.

(c) 5-year recovery period for depreciation of certain leasehold improvements

(1) In general

For purposes of section 168, the term ''5-year property'' includes any qualified New York Liberty Zone leasehold improvement property.

(2) Qualified New York Liberty Zone leasehold improvement property

For purposes of this section, the term ''qualified New York Liberty Zone leasehold improvement property'' means qualified leasehold improvement property (as defined in section 168(k)(3)) if—

(A) such building is located in the New York Liberty Zone,

(B) such improvement is placed in service after September 10, 2001, and before January 1, 2007, and

(C) no written binding contract for such improvement was in effect before September 11, 2001.

(3) Requirement to use straight line method

The applicable depreciation method under section 168 shall be the straight line method in the case of qualified New York Liberty Zone leasehold improvement property.

(4) 9-year recovery period under alternative system

For purposes of section 168(g), the class life of qualified New York Liberty Zone leasehold improvement property shall be 9 years.

(5) Election out

For purposes of this subsection, rules similar to the rules of section 168(k)(2)(D)(iii) shall apply.

(d) Tax-exempt bond financing

(1) In general

For purposes of this title, any qualified New York Liberty Bond shall be treated as an exempt facility bond.

(2) Qualified New York Liberty Bond

For purposes of this subsection, the term ''qualified New York Liberty Bond'' means any bond issued as part of an issue if—

(A) 95 percent or more of the net proceeds (as defined in section 150(a)(3)) of such issue are to be used for qualified project costs,

(B) such bond is issued by the State of New York or any political subdivision thereof,

(C) the Governor or the Mayor designates such bond for purposes of this section, and

(D) such bond is issued after the date of the enactment of this section and before January 1, 2012.

(3) Limitations on amount of bonds

(A) Aggregate amount designated

The maximum aggregate face amount of bonds which may be designated under this subsection shall not exceed $8,000,000,000, of which not to exceed $4,000,000,000 may be designated by the Governor and not to exceed $4,000,000,000 may be designated by the Mayor.

(B) Specific limitations

The aggregate face amount of bonds issued which are to be used for—

(i) costs for property located outside the New York Liberty Zone shall not exceed $2,000,000,000,

(ii) residential rental property shall not exceed $1,600,000,000, and

(iii) costs with respect to property used for retail sales of tangible property and functionally related and subordinate property shall not exceed $800,000,000.

The limitations under clauses (i), (ii), and (iii) shall be allocated proportionately between the bonds designated by the Governor and the bonds designated by the Mayor in proportion to the respective amounts of bonds designated by each.

(C) Movable property

No bonds shall be issued which are to be used for movable fixtures and equipment.

(4) Qualified project costs

For purposes of this subsection—

(A) In general

The term ''qualified project costs'' means the cost of acquisition, construction, reconstruction, and renovation of—

(i) nonresidential real property and residential rental property (including fixed tenant improvements associated with such property) located in the New York Liberty Zone, and

(ii) public utility property (as defined in section 168(i)(10)) located in the New York Liberty Zone.

(B) Costs for certain property outside zone included

Such term includes the cost of acquisition, construction, reconstruction, and renovation of nonresidential real property (including fixed tenant improvements associated with such property) located outside the New York Liberty Zone but within the City of New York, New York, if such property is part of a project which consists of at least 100,000 square feet of usable office or other commercial space located in a single building or multiple adjacent buildings.

(5) Special rules

In applying this title to any qualified New York Liberty Bond, the following modifications shall apply:

(A) Section 146 (relating to volume cap) shall not apply.

(B) Section 147(d) (relating to acquisition of existing property not permitted) shall be applied by substituting ''50 percent'' for ''15 percent'' each place it appears.

(C) Section 148(f)(4)(C) (relating to exception from rebate for certain proceeds to be used to finance construction expenditures) shall apply to the available construction proceeds of bonds issued under this section.

(D) Repayments of principal on financing provided by the issue—

(i) may not be used to provide financing, and

(ii) must be used not later than the close of the 1st semiannual period beginning after the date of the repayment to redeem bonds which are part of such issue.

The requirement of clause (ii) shall be treated as met with respect to amounts received within 10 years after the date of issuance of the issue (or, in the case of a refunding bond, the date of issuance of the original bond) if such amounts are used by the close of such 10 years to redeem bonds which are part of such issue.

(E) Section 57(a)(5) shall not apply.

(6) Separate issue treatment of portions of an issue

This subsection shall not apply to the portion of an issue which (if issued as a separate issue) would be treated as a qualified bond or as a bond that is not a private activity bond (determined without regard to paragraph (1)), if the issuer elects to so treat such portion.

(e) Advance refundings of certain tax-exempt bonds

(1) In general

With respect to a bond described in paragraph (2) issued as part of an issue 90 percent (95 percent in the case of a bond described in paragraph (2)(C)) or more of the net proceeds (as defined in section 150(a)(3)) of which were used to finance facilities located within the City of New York, New York (or property which is functionally related and subordinate to facilities located within the City of New York for the furnishing of water), one additional advanced refunding after the date of the enactment of this section and before January 1, 2006, shall be allowed under the applicable rules of section 149(d) if—

(A) the Governor or the Mayor designates the advance refunding bond for purposes of this subsection, and

(B) the requirements of paragraph (4) are met.

(2) Bonds described

A bond is described in this paragraph if such bond was outstanding on September 11, 2001, and is—

(A) a State or local bond (as defined in section 103(c)(1)) which is a general obligation of the City of New York, New York,

(B) a State or local bond (as so defined) other than a private activity bond (as defined in section 141(a)) issued by the New York Municipal Water Finance Authority or the Metropolitan Transportation Authority of the State of New York or the Municipal Assistance Corporation, or

(C) a qualified 501(c)(3) bond (as defined in section 145(a)) which is a qualified hospital bond (as defined in section 145(c)) issued by or on behalf of the State of New York or the City of New York, New York.

(3) Aggregate limit

For purposes of paragraph (1), the maximum aggregate face amount of bonds which may be designated under this subsection by the Governor shall not exceed $4,500,000,000 and the maximum aggregate face amount of bonds which may be designated under this subsection by the Mayor shall not exceed $4,500,000,000.

(4) Additional requirements

The requirements of this paragraph are met with respect to any advance refunding of a bond described in paragraph (2) if—

(A) no advance refundings of such bond would be allowed under any provision of law after September 11, 2001,

(B) the advance refunding bond is the only other outstanding bond with respect to the refunded bond, and

(C) the requirements of section 148 are met with respect to all bonds issued under this subsection.

(f) Increase in expensing under section 179

(1) In general

For purposes of section 179—

(A) the limitation under section 179(b)(1) shall be increased by the lesser of—

(i) $35,000, or

(ii) the cost of section 179 property which is qualified New York Liberty Zone property placed in service during the taxable year, and

(B) the amount taken into account under section 179(b)(2) with respect to any section 179 property which is qualified New York Liberty Zone property shall be 50 percent of the cost thereof.

(2) Qualified New York Liberty Zone property

For purposes of this subsection, the term ''qualified New York Liberty Zone property'' has the meaning given such term by subsection (b)(2), determined without regard to subparagraph (C)(i) thereof.

(3) Recapture

Rules similar to the rules under section 179(d)(10) shall apply with respect to any qualified New York Liberty Zone property which ceases to be used in the New York Liberty Zone.

(g) Extension of replacement period for nonrecognition of gain

Notwithstanding subsections (g) and (h) of section 1033, clause (i) of section 1033(a)(2)(B) shall be applied by substituting ''5 years'' for ''2 years'' with respect to property which is compulsorily or involuntarily converted as a result of the terrorist attacks on September 11, 2001, in the New York Liberty Zone but only if substantially all of the use of the replacement property is in the City of New York, New York.

(h) New York Liberty Zone

For purposes of this section, the term ''New York Liberty Zone'' means the area located on or south of Canal Street, East Broadway (east of its intersection with Canal Street), or Grand Street (east of its intersection with East Broadway) in the Borough of Manhattan in the City of New York, New York.

(i) References to Governor and Mayor

For purposes of this section, the terms ''Governor'' and ''Mayor'' mean the Governor of the State of New York and the Mayor of the City of New York, New York, respectively.

(Added Pub. L. 107–147, title III, §301(a), Mar. 9, 2002, 116 Stat. 33; amended Pub. L. 108–27, title II, §201(c)(2), May 28, 2003, 117 Stat. 757; Pub. L. 108–311, title III, §309(a)–(c), title IV, §403(c), Oct. 4, 2004, 118 Stat. 1179, 1180, 1187; Pub. L. 109–135, title IV, §§405(a)(2), 412(ss), Dec. 21, 2005, 119 Stat. 2634, 2640; Pub. L. 110–185, title I, §103(c)(8), Feb. 13, 2008, 122 Stat. 619; Pub. L. 111–240, title II, §2022(b)(6), Sept. 27, 2010, 124 Stat. 2558; Pub. L. 111–312, title IV, §401(d)(6), title VII, §761(a), Dec. 17, 2010, 124 Stat. 3306, 3323.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsecs. (d)(2)(D) and (e)(1), is the date of enactment of Pub. L. 107–147, which was approved Mar. 9, 2002.

AMENDMENTS

2010—Subsec. (b)(2)(D). Pub. L. 111–312, §401(d)(6), substituted ''January 1, 2013'' for ''January 1, 2011''.

Pub. L. 111–240 substituted ''January 1, 2011'' for ''January 1, 2010''.

Subsec. (d)(2)(D). Pub. L. 111–312, § 761(a), substituted ''2012'' for ''2010''.

2008—Subsec. (b)(2)(D). Pub. L. 110–185 substituted ''January 1, 2010'' for ''January 1, 2005''.

2005—Subsec. (b)(2)(C)(ii). Pub. L. 109–135, § 412(ss)(1), substituted ''section 168(k)(2)(D)(i)'' for ''section 168(k)(2)(C)(i)''.

Subsec. (b)(2)(C)(iv). Pub. L. 109–135, § 412(ss)(2), substituted ''section 168(k)(2)(D)(iii)'' for ''section 168(k)(2)(C)(iii)''.

Subsec. (b)(2)(D). Pub. L. 109–135, § 412(ss)(3), substituted ''section 168(k)(2)(E)'' for ''section 168(k)(2)(D)''.

Pub. L. 109–135, § 405(a)(2), substituted ''January 1, 2005'' for ''September 11, 2004''.

Subsec. (b)(2)(E). Pub. L. 109–135, § 412(ss)(4), substituted ''section 168(k)(2)(G)'' for ''section 168(k)(2)(F)''.

Subsec. (c)(5). Pub. L. 109–135, § 412(ss)(5), substituted ''section 168(k)(2)(D)(iii)'' for ''section 168(k)(2)(C)(iii)''.

2004—Subsec. (a)(2)(D). Pub. L. 108–311, § 403(c)(1)(A), substituted ''subchapter A'' for ''subchapter B'' in introductory provisions.

Subsec. (a)(2)(D)(ii). Pub. L. 108–311, § 403(c)(1)(B), substituted ''this paragraph'' for ''subparagraph (B)''.

Subsec. (b)(2)(D). Pub. L. 108–311, § 403(c)(2), inserted '', and clause (iv) thereof shall be applied by substituting 'qualified New York Liberty Zone property' for 'qualified property'.'' before period at end.

Subsec. (c)(5). Pub. L. 108–311, § 403(c)(3), added par. (5).

Subsec. (d)(2)(D). Pub. L. 108–311, § 309(a), substituted ''2010'' for ''2005''.

Subsec. (e)(1). Pub. L. 108–311, § 309(b), substituted ''2006'' for ''2005''.

Subsec. (e)(2)(B). Pub. L. 108–311, § 309(c), substituted ''or the Municipal Assistance Corporation, or'' for '', or'' at end.

Subsec. (f)(2). Pub. L. 108–311, § 403(c)(4), inserted '', determined without regard to subparagraph (C)(i) thereof'' before period at end.

2003—Subsec. (b)(2)(C)(i). Pub. L. 108–27, which directed amendment of heading by substituting ''Bonus depreciation property under section 168(k)'' for ''30-percent additional allowance property'', was executed by making the substitution for ''30 percent additional allowance property'' to reflect the probable intent of Congress.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 401(d)(6) of Pub. L. 111–312 applicable to property placed in service after Dec. 31, 2010, in taxable years ending after such date, see section 401(e)(1) of Pub. L. 111–312, set out as a note under section 168 of this title.

Pub. L. 111–312, title VII, § 761(b), Dec. 17, 2010, 124 Stat. 3323, provided that: ''The amendment made by this section [amending this section] shall apply to bonds issued after December 31, 2009.''

Amendment by Pub. L. 111–240 applicable to property placed in service after Dec. 31, 2009, in taxable years ending after such date, see section 2022(c) of Pub. L. 111–240, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–185 applicable to property placed in service after Dec. 31, 2007, in taxable years ending after such date, see section 103(d) of Pub. L. 110–185, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 405(a)(2) of Pub. L. 109–135 effective as if included in section 201 of the Jobs and Growth Tax Relief Reconciliation Act of 2003, Pub. L. 108–27, see section 405(b) of Pub. L. 109–135, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title III, § 309(d), Oct. 4, 2004, 118 Stat. 1180, provided that: ''The amendment made by subsection (c) [amending this section] shall take effect as if included in the amendments made by section 301 of the Job Creation and Worker Assistance Act of 2002 [Pub. L. 107–147].''

Amendment by section 403(c) of Pub. L. 108–311 effective as if included in the provisions of the Job Creation and Worker Assistance Act of 2002, Pub. L. 107–147, to which such amendment relates, see section 403(f) of Pub. L. 108–311, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable to taxable years ending after May 5, 2003, see section 201(d) of Pub. L. 108–27, set out as a note under section 168 of this title.

PART II—TAX BENEFITS FOR GO ZONES

Sec.
1400M. Definitions.
1400N. Tax benefits for Gulf Opportunity Zone.
1400O. Education tax benefits.
1400P. Housing tax benefits.
1400Q. Special rules for use of retirement funds.
1400R. Employment relief.
1400S. Additional tax relief provisions.
1400T. Special rules for mortgage revenue bonds.

AMENDMENTS

2007—Pub. L. 110–172, § 11(a)(27), Dec. 29, 2007, 121 Stat. 2487, added item 1400T.

2005—Pub. L. 109–135, title I, §§ 102(b), 103(b)(3), title II, § 201(b)(3), Dec. 21, 2005, 119 Stat. 2594, 2595, 2607, added items 1400O to 1400S.

§ 1400M. Definitions

For purposes of this part—

(1) Gulf Opportunity Zone

The terms ''Gulf Opportunity Zone'' and ''GO Zone'' mean that portion of the Hurricane Katrina disaster area determined by the President to warrant individual or individual and public assistance from the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act by reason of Hurricane Katrina.

(2) Hurricane Katrina disaster area

The term ''Hurricane Katrina disaster area'' means an area with respect to which a major disaster has been declared by the President before September 14, 2005, under section 401 of such Act by reason of Hurricane Katrina.

(3) Rita GO Zone

The term ''Rita GO Zone'' means that portion of the Hurricane Rita disaster area determined by the President to warrant individual or individual and public assistance from the Federal Government under such Act by reason of Hurricane Rita.

(4) Hurricane Rita disaster area

The term ''Hurricane Rita disaster area'' means an area with respect to which a major disaster has been declared by the President before October 6, 2005, under section 401 of such Act by reason of Hurricane Rita.

(5) Wilma GO Zone

The term ''Wilma GO Zone'' means that portion of the Hurricane Wilma disaster area determined by the President to warrant individual or individual and public assistance from

the Federal Government under such Act by reason of Hurricane Wilma.

(6) Hurricane Wilma disaster area

The term ''Hurricane Wilma disaster area'' means an area with respect to which a major disaster has been declared by the President before November 14, 2005, under section 401 of such Act by reason of Hurricane Wilma.

(Added Pub. L. 109–135, title I, §101(a), Dec. 21, 2005, 119 Stat. 2578.)

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in text, is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to chapter 68 (§5121 et seq.) of Title 42, The Public Health and Welfare. Section 401 of the Act is classified to section 5170 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

EFFECTIVE DATE

Section applicable to taxable years ending on or after August 28, 2005, see section 101(c)(1) of Pub. L. 109–135, set out as an Effective Date note under section 1400N of this title.

§ 1400N. Tax benefits for Gulf Opportunity Zone

(a) Tax-exempt bond financing

(1) In general

For purposes of this title—

(A) any qualified Gulf Opportunity Zone Bond described in paragraph (2)(A)(i) shall be treated as an exempt facility bond, and

(B) any qualified Gulf Opportunity Zone Bond described in paragraph (2)(A)(ii) shall be treated as a qualified mortgage bond.

(2) Qualified Gulf Opportunity Zone Bond

For purposes of this subsection, the term ''qualified Gulf Opportunity Zone Bond'' means any bond issued as part of an issue if—

(A)(i) 95 percent or more of the net proceeds (as defined in section 150(a)(3)) of such issue are to be used for qualified project costs, or

(ii) such issue meets the requirements of a qualified mortgage issue, except as otherwise provided in this subsection,

(B) such bond is issued by the State of Alabama, Louisiana, or Mississippi, or any political subdivision thereof,

(C) such bond is designated for purposes of this section by—

(i) in the case of a bond which is required under State law to be approved by the bond commission of such State, such bond commission, and

(ii) in the case of any other bond, the Governor of such State,

(D) such bond is issued after the date of the enactment of this section and before January 1, 2012, and

(E) no portion of the proceeds of such issue is to be used to provide any property described in section 144(c)(6)(B).

(3) Limitations on bonds

(A) Aggregate amount designated

The maximum aggregate face amount of bonds which may be designated under this subsection with respect to any State shall not exceed the product of $2,500 multiplied by the portion of the State population which is in the Gulf Opportunity Zone (as determined on the basis of the most recent census estimate of resident population released by the Bureau of Census before August 28, 2005).

(B) Movable property

No bonds shall be issued which are to be used for movable fixtures and equipment.

(4) Qualified project costs

For purposes of this subsection, the term ''qualified project costs'' means—

(A) the cost of any qualified residential rental project (as defined in section 142(d)) located in the Gulf Opportunity Zone, and

(B) the cost of acquisition, construction, reconstruction, and renovation of—

(i) nonresidential real property (including fixed improvements associated with such property) located in the Gulf Opportunity Zone, and

(ii) public utility property (as defined in section 168(i)(10)) located in the Gulf Opportunity Zone.

(5) Special rules

In applying this title to any qualified Gulf Opportunity Zone Bond, the following modifications shall apply:

(A) Section 142(d)(1) (defining qualified residential rental project) shall be applied—

(i) by substituting ''60 percent'' for ''50 percent'' in subparagraph (A) thereof, and

(ii) by substituting ''70 percent'' for ''60 percent'' in subparagraph (B) thereof.

(B) Section 143 (relating to mortgage revenue bonds: qualified mortgage bond and qualified veterans' mortgage bond) shall be applied—

(i) only with respect to owner-occupied residences in the Gulf Opportunity Zone,

(ii) by treating any such residence in the Gulf Opportunity Zone as a targeted area residence,

(iii) by applying subsection (f)(3) thereof without regard to subparagraph (A) thereof, and

(iv) by substituting ''$150,000'' for ''$15,000'' in subsection (k)(4) thereof.

(C) Except as provided in section 143, repayments of principal on financing provided by the issue of which such bond is a part may not be used to provide financing.

(D) Section 146 (relating to volume cap) shall not apply.

(E) Section 147(d)(2) (relating to acquisition of existing property not permitted) shall be applied by substituting ''50 percent'' for ''15 percent'' each place it appears.

(F) Section 148(f)(4)(C) (relating to exception from rebate for certain proceeds to be used to finance construction expenditures) shall apply to the available construction proceeds of bonds which are part of an issue described in paragraph (2)(A)(i).

(G) Section 57(a)(5) (relating to tax-exempt interest) shall not apply.

(6) Separate issue treatment of portions of an issue

This subsection shall not apply to the portion of an issue which (if issued as a separate issue) would be treated as a qualified bond or as a bond that is not a private activity bond (determined without regard to paragraph (1)), if the issuer elects to so treat such portion.

(7) Special rule for repairs and reconstructions

(A) In general

For purposes of section 143 and this subsection, any qualified GO Zone repair or reconstruction shall be treated as a qualified rehabilitation.

(B) Qualified Go Zone repair or reconstruction

For purposes of subparagraph (A), the term ''qualified GO Zone repair or reconstruction'' means any repair of damage caused by Hurricane Katrina, Hurricane Rita, or Hurricane Wilma to a building located in the Gulf Opportunity Zone, the Rita GO Zone, or the Wilma GO Zone (or reconstruction of such building in the case of damage constituting destruction) if the expenditures for such repair or reconstruction are 25 percent or more of the mortgagor's adjusted basis in the residence. For purposes of the preceding sentence, the mortgagor's adjusted basis shall be determined as of the completion of the repair or reconstruction or, if later, the date on which the mortgagor acquires the residence.

(C) Termination

This paragraph shall apply only to owner-financing provided after the date of the enactment of this paragraph and before January 1, 2012.

(8) Inclusion of certain counties

For purposes of this subsection, the Gulf Opportunity Zone includes Colbert County, Alabama and Dallas County, Alabama.

(b) Advance refundings of certain tax-exempt bonds

(1) In general

With respect to a bond described in paragraph (3), one additional advance refunding after the date of the enactment of this section and before January 1, 2011, shall be allowed under the applicable rules of section 149(d) if—

(A) the Governor of the State designates the advance refunding bond for purposes of this subsection, and

(B) the requirements of paragraph (5) are met.

(2) Certain private activity bonds

With respect to a bond described in paragraph (3) which is an exempt facility bond described in paragraph (1) or (2) of section 142(a), one advance refunding after the date of the enactment of this section and before January 1, 2011, shall be allowed under the applicable rules of section 149(d) (notwithstanding paragraph (2) thereof) if the requirements of subparagraphs (A) and (B) of paragraph (1) are met.

(3) Bonds described

A bond is described in this paragraph if such bond was outstanding on August 28, 2005, and is issued by the State of Alabama, Louisiana, or Mississippi, or a political subdivision thereof.

(4) Aggregate limit

The maximum aggregate face amount of bonds which may be designated under this subsection by the Governor of a State shall not exceed—

(A) $4,500,000,000 in the case of the State of Louisiana,

(B) $2,250,000,000 in the case of the State of Mississippi, and

(C) $1,125,000,000 in the case of the State of Alabama.

(5) Additional requirements

The requirements of this paragraph are met with respect to any advance refunding of a bond described in paragraph (3) if—

(A) no advance refundings of such bond would be allowed under this title on or after August 28, 2005,

(B) the advance refunding bond is the only other outstanding bond with respect to the refunded bond, and

(C) the requirements of section 148 are met with respect to all bonds issued under this subsection.

(6) Use of proceeds requirement

This subsection shall not apply to any advance refunding of a bond which is issued as part of an issue if any portion of the proceeds of such issue (or any prior issue) was (or is to be) used to provide any property described in section 144(c)(6)(B).

(c) Low-income housing credit

(1) Additional housing credit dollar amount for Gulf Opportunity Zone

(A) In general

For purposes of section 42, in the case of calendar years 2006, 2007, and 2008, the State housing credit ceiling of each State, any portion of which is located in the Gulf Opportunity Zone, shall be increased by the lesser of—

(i) the aggregate housing credit dollar amount allocated by the State housing credit agency of such State to buildings located in the Gulf Opportunity Zone for such calendar year, or

(ii) the Gulf Opportunity housing amount for such State for such calendar year.

(B) Gulf Opportunity housing amount

For purposes of subparagraph (A), the term ''Gulf Opportunity housing amount'' means, for any calendar year, the amount equal to the product of $18.00 multiplied by the portion of the State population which is in the Gulf Opportunity Zone (as determined on the basis of the most recent census estimate of resident population released by the Bureau of Census before August 28, 2005).

(C) Allocations treated as made first from additional allocation amount for purposes of determining carryover

For purposes of determining the unused State housing credit ceiling under section 42(h)(3)(C) for any calendar year, any increase in the State housing credit ceiling under subparagraph (A) shall be treated as an amount described in clause (ii) of such section.

(2) Additional housing credit dollar amount for Texas and Florida

For purposes of section 42, in the case of calendar year 2006, the State housing credit ceiling of Texas and Florida shall each be increased by $3,500,000.

(3) Difficult development area

(A) In general

For purposes of section 42, in the case of property placed in service during the period beginning on January 1, 2006, and ending on December 31, 2010, the Gulf Opportunity Zone, the Rita GO Zone, and the Wilma GO Zone—

(i) shall be treated as difficult development areas designated under subclause (I) of section 42(d)(5)(C)(iii),[1] and

(ii) shall not be taken into account for purposes of applying the limitation under subclause (II) of such section.

(B) Application

Subparagraph (A) shall apply only to—

(i) housing credit dollar amounts allocated during the period beginning on January 1, 2006, and ending on December 31, 2008, and

(ii) buildings placed in service during the period described in subparagraph (A) to the extent that paragraph (1) of section 42(h) does not apply to any building by reason of paragraph (4) thereof, but only with respect to bonds issued after December 31, 2005.

(4) Special rule for applying income tests

In the case of property placed in service—

(A) during 2006, 2007, or 2008,

(B) in the Gulf Opportunity Zone, and

(C) in a nonmetropolitan area (as defined in section 42(d)(5)(C)(iv)(IV)),[1]

section 42 shall be applied by substituting ''national nonmetropolitan median gross income (determined under rules similar to the rules of section 142(d)(2)(B))'' for ''area median gross income'' in subparagraphs (A) and (B) of section 42(g)(1).

(5) Time for making low-income housing credit allocations

Section 42(h)(1)(B) shall not apply to an allocation of housing credit dollar amount to a building located in the Gulf Opportunity Zone, the Rita GO Zone, or the Wilma GO Zone, if such allocation is made in 2006, 2007, or 2008, and such building is placed in service before January 1, 2012.

(6) Community development block grants not taken into account in determining if buildings are federally subsidized

For purpose of applying section 42(i)(2)(D)[1] to any building which is placed in service in the Gulf Opportunity Zone, the Rita GO Zone, or the Wilma GO Zone during the period beginning on January 1, 2006, and ending on December 31, 2010, a loan shall not be treated as a below market Federal loan solely by reason of any assistance provided under section 106, 107, or 108 of the Housing and Community Development Act of 1974 by reason of section 122 of such Act or any provision of the Department of Defense Appropriations Act, 2006, or the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006.

(7) Definitions

Any term used in this subsection which is also used in section 42 shall have the same meaning as when used in such section.

(d) Special allowance for certain property acquired on or after August 28, 2005

(1) Additional allowance

In the case of any qualified Gulf Opportunity Zone property—

(A) the depreciation deduction provided by section 167(a) for the taxable year in which such property is placed in service shall include an allowance equal to 50 percent of the adjusted basis of such property, and

(B) the adjusted basis of the qualified Gulf Opportunity Zone property shall be reduced by the amount of such deduction before computing the amount otherwise allowable as a depreciation deduction under this chapter for such taxable year and any subsequent taxable year.

(2) Qualified Gulf Opportunity Zone property

For purposes of this subsection—

(A) In general

The term ''qualified Gulf Opportunity Zone property'' means property—

(i)(I) which is described in section 168(k)(2)(A)(i), or

(II) which is nonresidential real property or residential rental property,

(ii) substantially all of the use of which is in the Gulf Opportunity Zone and is in the active conduct of a trade or business by the taxpayer in such Zone,

(iii) the original use of which in the Gulf Opportunity Zone commences with the taxpayer on or after August 28, 2005,

(iv) which is acquired by the taxpayer by purchase (as defined in section 179(d)) on or after August 28, 2005, but only if no written binding contract for the acquisition was in effect before August 28, 2005, and

(v) which is placed in service by the taxpayer on or before December 31, 2007 (December 31, 2008, in the case of nonresidential real property and residential rental property).

[1] See References in Text note below.

(B) Exceptions

(i) Alternative depreciation property

Such term shall not include any property described in section 168(k)(2)(D)(i).

(ii) Tax-exempt bond-financed property

Such term shall not include any property any portion of which is financed with the proceeds of any obligation the interest on which is exempt from tax under section 103.

(iii) Qualified revitalization buildings

Such term shall not include any qualified revitalization building with respect to which the taxpayer has elected the application of paragraph (1) or (2) of section 1400I(a).

(iv) Election out

If a taxpayer makes an election under this clause with respect to any class of property for any taxable year, this subsection shall not apply to all property in such class placed in service during such taxable year.

(3) Special rules

For purposes of this subsection, rules similar to the rules of subparagraph (E) of section 168(k)(2) shall apply, except that such subparagraph shall be applied—

(A) by substituting ''August 27, 2005'' for ''December 31, 2007'' each place it appears therein,

(B) without regard to ''and before January 1, 2013'' in clause (i) thereof, and

(C) by substituting ''qualified Gulf Opportunity Zone property'' for ''qualified property'' in clause (iv) thereof.

(4) Allowance against alternative minimum tax

For purposes of this subsection, rules similar to the rules of section 168(k)(2)(G) shall apply.

(5) Recapture

For purposes of this subsection, rules similar to the rules under section 179(d)(10) shall apply with respect to any qualified Gulf Opportunity Zone property which ceases to be qualified Gulf Opportunity Zone property.

(6) Extension for certain property

(A) In general

In the case of any specified Gulf Opportunity Zone extension property, paragraph (2)(A) shall be applied without regard to clause (v) thereof.

(B) Specified Gulf Opportunity Zone extension property

For purposes of this paragraph, the term ''specified Gulf Opportunity Zone extension property'' means property—

(i) substantially all of the use of which is in one or more specified portions of the GO Zone, and

(ii) which is—

(I) nonresidential real property or residential rental property which is placed in service by the taxpayer on or before December 31, 2011, or

(II) in the case of a taxpayer who places a building described in subclause (I) in service on or before December 31, 2011, property described in section 168(k)(2)(A)(i) if substantially all of the use of such property is in such building and such property is placed in service by the taxpayer not later than 90 days after such building is placed in service.

(C) Specified portions of the GO Zone

For purposes of this paragraph, the term ''specified portions of the GO Zone'' means those portions of the GO Zone which are in any county or parish which is identified by the Secretary as being a county or parish in which hurricanes occurring during 2005 damaged (in the aggregate) more than 60 percent of the housing units in such county or parish which were occupied (determined according to the 2000 Census).

(D) Only pre-January 1, 2012, basis of real property eligible for additional allowance

In the case of property which is qualified Gulf Opportunity Zone property solely by reason of subparagraph (B)(ii)(I), paragraph (1) shall apply only to the extent of the adjusted basis thereof attributable to manufacture, construction, or production before January 1, 2012.

(E) Exception for bonus depreciation property under section 168(k)

The term ''specified Gulf Opportunity Zone extension property'' shall not include any property to which section 168(k) applies.

(e) Increase in expensing under section 179

(1) In general

For purposes of section 179—

(A) the dollar amount in effect under section 179(b)(1) for the taxable year shall be increased by the lesser of—

(i) $100,000, or

(ii) the cost of qualified section 179 Gulf Opportunity Zone property placed in service during the taxable year, and

(B) the dollar amount in effect under section 179(b)(2) for the taxable year shall be increased by the lesser of—

(i) $600,000, or

(ii) the cost of qualified section 179 Gulf Opportunity Zone property placed in service during the taxable year.

(2) Qualified section 179 Gulf Opportunity Zone property

For purposes of this subsection—

(A) In general

The term ''qualified section 179 Gulf Opportunity Zone property'' means section 179 property (as defined in section 179(d)) which is qualified Gulf Opportunity Zone property (as defined in subsection (d)(2) without regard to subsection (d)(6)).

(B) Extension for certain property

In the case of property substantially all of the use of which is in one or more specified portions of the GO Zone (as defined by sub-

section (d)(6)), such term shall include section 179 property (as so defined) which is described in subsection (d)(2), determined—

(i) without regard to subsection (d)(6), and

(ii) by substituting ''2008'' for ''2007'' in subparagraph (A)(v) thereof.

(3) Coordination with empowerment zones and renewal communities

For purposes of sections 1397A and 1400J, qualified section 179 Gulf Opportunity Zone property shall not be treated as qualified zone property or qualified renewal property, unless the taxpayer elects not to take such qualified section 179 Gulf Opportunity Zone property into account for purposes of this subsection.

(4) Recapture

For purposes of this subsection, rules similar to the rules under section 179(d)(10) shall apply with respect to any qualified section 179 Gulf Opportunity Zone property which ceases to be qualified section 179 Gulf Opportunity Zone property.

(f) Expensing for certain demolition and clean-up costs

(1) In general

A taxpayer may elect to treat 50 percent of any qualified Gulf Opportunity Zone clean-up cost as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which such cost is paid or incurred.

(2) Qualified Gulf Opportunity Zone clean-up cost

For purposes of this subsection, the term ''qualified Gulf Opportunity Zone clean-up cost'' means any amount paid or incurred during the period beginning on August 28, 2005, and ending on December 31, 2007, for the removal of debris from, or the demolition of structures on, real property which is located in the Gulf Opportunity Zone and which is—

(A) held by the taxpayer for use in a trade or business or for the production of income, or

(B) property described in section 1221(a)(1) in the hands of the taxpayer.

For purposes of the preceding sentence, amounts paid or incurred shall be taken into account only to the extent that such amount would (but for paragraph (1)) be chargeable to capital account.

(g) Extension of expensing for environmental remediation costs

With respect to any qualified environmental remediation expenditure (as defined in section 198(b)) paid or incurred on or after August 28, 2005, in connection with a qualified contaminated site located in the Gulf Opportunity Zone, section 198 (relating to expensing of environmental remediation costs) shall be applied—

(1) in the case of expenditures paid or incurred on or after August 28, 2005, and before January 1, 2008, by substituting ''December 31, 2007'' for the date contained in section 198(h), and

(2) except as provided in section 198(d)(2), by treating petroleum products (as defined in section 4612(a)(3)) as a hazardous substance.

(h) Increase in rehabilitation credit

In the case of qualified rehabilitation expenditures (as defined in section 47(c)) paid or incurred during the period beginning on August 28, 2005, and ending on December 31, 2011, with respect to any qualified rehabilitated building or certified historic structure (as defined in section 47(c)) located in the Gulf Opportunity Zone, subsection (a) of section 47 (relating to rehabilitation credit) shall be applied—

(1) by substituting ''13 percent'' for ''10 percent'' in paragraph (1) thereof, and

(2) by substituting ''26 percent'' for ''20 percent'' in paragraph (2) thereof.

(i) Special rules for small timber producers

(1) Increased expensing for qualified timber property

In the case of qualified timber property any portion of which is located in the Gulf Opportunity Zone, in that portion of the Rita GO Zone which is not part of the Gulf Opportunity Zone, or in the Wilma GO Zone, the limitation under subparagraph (B) of section 194(b)(1) shall be increased by the lesser of—

(A) the limitation which would (but for this subsection) apply under such subparagraph, or

(B) the amount of reforestation expenditures (as defined in section 194(c)(3)) paid or incurred by the taxpayer with respect to such qualified timber property during the specified portion of the taxable year.

(2) 5 year NOL carryback of certain timber losses

For purposes of determining any farming loss under section 172(i), income and deductions which are allocable to the specified portion of the taxable year and which are attributable to qualified timber property any portion of which is located in the Gulf Opportunity Zone, in that portion of the Rita GO Zone which is not part of the Gulf Opportunity Zone, or in the Wilma GO Zone shall be treated as attributable to farming businesses.

(3) Rules not applicable to certain entities

Paragraphs (1) and (2) shall not apply to any taxpayer which—

(A) is a corporation the stock of which is publicly traded on an established securities market, or

(B) is a real estate investment trust.

(4) Rules not applicable to large timber producers

(A) Expensing

Paragraph (1) shall not apply to any taxpayer if such taxpayer holds more than 500 acres of qualified timber property at any time during the taxable year.

(B) NOL carryback

Paragraph (2) shall not apply with respect to any qualified timber property unless—

(i) such property was held by the taxpayer—

(I) on August 28, 2005, in the case of qualified timber property any portion of which is located in the Gulf Opportunity Zone,

(II) on September 23, 2005, in the case of qualified timber property (other than property described in subclause (I)) any portion of which is located in that portion of the Rita GO Zone which is not part of the Gulf Opportunity Zone, or

(III) on October 23, 2005, in the case of qualified timber property (other than property described in subclause (I) or (II)) any portion of which is located in the Wilma GO Zone, and

(ii) such taxpayer held not more than 500 acres of qualified timber property on such date.

(5) Definitions

For purposes of this subsection—

(A) Specified portion

(i) In general

The term ''specified portion'' means—

(I) in the case of qualified timber property any portion of which is located in the Gulf Opportunity Zone, that portion of the taxable year which is on or after August 28, 2005, and before the termination date,

(II) in the case of qualified timber property (other than property described in clause (i)) any portion of which is located in the Rita GO Zone, that portion of the taxable year which is on or after September 23, 2005, and before the termination date, or

(III) in the case of qualified timber property (other than property described in clause (i) or (ii)) any portion of which is located in the Wilma GO Zone, that portion of the taxable year which is on or after October 23, 2005, and before the termination date.

(ii) Termination date

The term ''termination date'' means—

(I) for purposes of paragraph (1), January 1, 2008, and

(II) for purposes of paragraph (2), January 1, 2007.

(B) Qualified timber property

The term ''qualified timber property'' has the meaning given such term in section 194(c)(1).

(j) Special rule for Gulf Opportunity Zone public utility casualty losses

(1) In general

The amount described in section 172(f)(1)(A) for any taxable year shall be increased by the Gulf Opportunity Zone public utility casualty loss for such taxable year.

(2) Gulf Opportunity Zone public utility casualty loss

For purposes of this subsection, the term ''Gulf Opportunity Zone public utility casualty loss'' means any casualty loss of public utility property (as defined in section 168(i)(10)) located in the Gulf Opportunity Zone if—

(A) such loss is allowed as a deduction under section 165 for the taxable year,

(B) such loss is by reason of Hurricane Katrina, and

(C) the taxpayer elects the application of this subsection with respect to such loss.

(3) Reduction for gains from involuntary conversion

The amount of any Gulf Opportunity Zone public utility casualty loss which would (but for this paragraph) be taken into account under paragraph (1) for any taxable year shall be reduced by the amount of any gain recognized by the taxpayer for such year from the involuntary conversion by reason of Hurricane Katrina of public utility property (as so defined) located in the Gulf Opportunity Zone.

(4) Coordination with general disaster loss rules

Subsection (k) and section 165(i) shall not apply to any Gulf Opportunity Zone public utility casualty loss to the extent such loss is taken into account under paragraph (1).

(5) Election

Any election under paragraph (2)(C) shall be made in such manner as may be prescribed by the Secretary and shall be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable year of the loss. Such election, once made for any taxable year, shall be irrevocable for such taxable year.

(k) Treatment of net operating losses attributable to Gulf Opportunity Zone losses

(1) In general

If a portion of any net operating loss of the taxpayer for any taxable year is a qualified Gulf Opportunity Zone loss, the following rules shall apply:

(A) Extension of carryback period

Section 172(b)(1) shall be applied with respect to such portion—

(i) by substituting ''5 taxable years'' for ''2 taxable years'' in subparagraph (A)(i), and

(ii) by not taking such portion into account in determining any eligible loss of the taxpayer under subparagraph (F) thereof for the taxable year.

(B) Suspension of 90 percent AMT limitation

Section 56(d)(1) shall be applied by increasing the amount determined under subparagraph (A)(ii)(I) thereof by the sum of the carrybacks and carryovers of any net operating loss attributable to such portion.

(2) Qualified Gulf Opportunity Zone loss

For purposes of paragraph (1), the term ''qualified Gulf Opportunity Zone loss'' means the lesser of—

(A) the excess of—

(i) the net operating loss for such taxable year, over

(ii) the specified liability loss for such taxable year to which a 10-year carryback applies under section 172(b)(1)(C), or

(B) the aggregate amount of the following deductions to the extent taken into account in computing the net operating loss for such taxable year:

(i) Any deduction for any qualified Gulf Opportunity Zone casualty loss.

(ii) Any deduction for moving expenses paid or incurred after August 27, 2005, and before January 1, 2008, and allowable under this chapter to any taxpayer in connection with the employment of any individual—

(I) whose principal place of abode was located in the Gulf Opportunity Zone before August 28, 2005,

(II) who was unable to remain in such abode as the result of Hurricane Katrina, and

(III) whose principal place of employment with the taxpayer after such expense is located in the Gulf Opportunity Zone.

For purposes of this clause, the term ''moving expenses'' has the meaning given such term by section 217(b), except that the taxpayer's former residence and new residence may be the same residence if the initial vacating of the residence was as the result of Hurricane Katrina.

(iii) Any deduction allowable under this chapter for expenses paid or incurred after August 27, 2005, and before January 1, 2008, to temporarily house any employee of the taxpayer whose principal place of employment is in the Gulf Opportunity Zone.

(iv) Any deduction for depreciation (or amortization in lieu of depreciation) allowable under this chapter with respect to any qualified Gulf Opportunity Zone property (as defined in subsection (d)(2), but without regard to subparagraph (B)(iv) thereof))[1] for the taxable year such property is placed in service.

(v) Any deduction allowable under this chapter for repair expenses (including expenses for removal of debris) paid or incurred after August 27, 2005, and before January 1, 2008, with respect to any damage attributable to Hurricane Katrina and in connection with property which is located in the Gulf Opportunity Zone.

(3) Qualified Gulf Opportunity Zone casualty loss

(A) In general

For purposes of paragraph (2)(B)(i), the term ''qualified Gulf Opportunity Zone casualty loss'' means any uncompensated section 1231 loss (as defined in section 1231(a)(3)(B)) of property located in the Gulf Opportunity Zone if—

(i) such loss is allowed as a deduction under section 165 for the taxable year, and

(ii) such loss is by reason of Hurricane Katrina.

(B) Reduction for gains from involuntary conversion

The amount of qualified Gulf Opportunity Zone casualty loss which would (but for this subparagraph) be taken into account under subparagraph (A) for any taxable year shall be reduced by the amount of any gain recognized by the taxpayer for such year from the involuntary conversion by reason of Hurricane Katrina of property located in the Gulf Opportunity Zone.

(C) Coordination with general disaster loss rules

Section 165(i) shall not apply to any qualified Gulf Opportunity Zone casualty loss to the extent such loss is taken into account under this subsection.

(4) Special rules

For purposes of paragraph (1), rules similar to the rules of paragraphs (2) and (3) of section 172(i) shall apply with respect to such portion.

***(l)* Credit to holders of Gulf tax credit bonds**

(1) Allowance of credit

If a taxpayer holds a Gulf tax credit bond on one or more credit allowance dates of the bond occurring during any taxable year, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of the credits determined under paragraph (2) with respect to such dates.

(2) Amount of credit

(A) In general

The amount of the credit determined under this paragraph with respect to any credit allowance date for a Gulf tax credit bond is 25 percent of the annual credit determined with respect to such bond.

(B) Annual credit

The annual credit determined with respect to any Gulf tax credit bond is the product of—

(i) the credit rate determined by the Secretary under subparagraph (C) for the day on which such bond was sold, multiplied by

(ii) the outstanding face amount of the bond.

(C) Determination

For purposes of subparagraph (B), with respect to any Gulf tax credit bond, the Secretary shall determine daily or cause to be determined daily a credit rate which shall apply to the first day on which there is a binding, written contract for the sale or exchange of the bond. The credit rate for any day is the credit rate which the Secretary or the Secretary's designee estimates will permit the issuance of Gulf tax credit bonds with a specified maturity or redemption date without discount and without interest cost to the issuer.

(D) Credit allowance date

For purposes of this subsection, the term ''credit allowance date'' means March 15, June 15, September 15, and December 15. Such term also includes the last day on which the bond is outstanding.

(E) Special rule for issuance and redemption

In the case of a bond which is issued during the 3-month period ending on a credit allowance date, the amount of the credit determined under this paragraph with respect to such credit allowance date shall be a rat-

[1] So in original. The second parenthesis probably should not appear.

able portion of the credit otherwise determined based on the portion of the 3-month period during which the bond is outstanding. A similar rule shall apply when the bond is redeemed or matures.

(3) Limitation based on amount of tax

The credit allowed under paragraph (1) for any taxable year shall not exceed the excess of—

(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

(B) the sum of the credits allowable under part IV of subchapter A (other than subparts C, I, and J and this subsection).

(4) Gulf tax credit bond

For purposes of this subsection—

(A) In general

The term ''Gulf tax credit bond'' means any bond issued as part of an issue if—

(i) the bond is issued by the State of Alabama, Louisiana, or Mississippi,

(ii) 95 percent or more of the proceeds of such issue are to be used to—

(I) pay principal, interest, or premiums on qualified bonds issued by such State or any political subdivision of such State, or

(II) make a loan to any political subdivision of such State to pay principal, interest, or premiums on qualified bonds issued by such political subdivision,

(iii) the Governor of such State designates such bond for purposes of this subsection,

(iv) the bond is a general obligation of such State and is in registered form (within the meaning of section 149(a)),

(v) the maturity of such bond does not exceed 2 years, and

(vi) the bond is issued after December 31, 2005, and before January 1, 2007.

(B) State matching requirement

A bond shall not be treated as a Gulf tax credit bond unless—

(i) the issuer of such bond pledges as of the date of the issuance of the issue an amount equal to the face amount of such bond to be used for payments described in subclause (I) of subparagraph (A)(ii), or loans described in subclause (II) of such subparagraph, as the case may be, with respect to the issue of which such bond is a part, and

(ii) any such payment or loan is made in equal amounts from the proceeds of such issue and from the amount pledged under clause (i).

The requirement of clause (ii) shall be treated as met with respect to any such payment or loan made during the 1-year period beginning on the date of the issuance (or any successor 1-year period) if such requirement is met when applied with respect to the aggregate amount of such payments and loans made during such period.

(C) Aggregate limit on bond designations

The maximum aggregate face amount of bonds which may be designated under this subsection by the Governor of a State shall not exceed—

(i) $200,000,000 in the case of the State of Louisiana,

(ii) $100,000,000 in the case of the State of Mississippi, and

(iii) $50,000,000 in the case of the State of Alabama.

(D) Special rules relating to arbitrage

A bond which is part of an issue shall not be treated as a Gulf tax credit bond unless, with respect to the issue of which the bond is a part, the issuer satisfies the arbitrage requirements of section 148 with respect to proceeds of the issue and any loans made with such proceeds.

(5) Qualified bond

For purposes of this subsection—

(A) In general

The term ''qualified bond'' means any obligation of a State or political subdivision thereof which was outstanding on August 28, 2005.

(B) Exception for private activity bonds

Such term shall not include any private activity bond.

(C) Exception for advance refundings

Such term shall not include any bond with respect to which there is any outstanding refunded or refunding bond during the period in which a Gulf tax credit bond is outstanding with respect to such bond.

(D) Use of proceeds requirement

Such term shall not include any bond issued as part of an issue if any portion of the proceeds of such issue was (or is to be) used to provide any property described in section 144(c)(6)(B).

(6) Credit included in gross income

Gross income includes the amount of the credit allowed to the taxpayer under this subsection (determined without regard to paragraph (3)) and the amount so included shall be treated as interest income.

(7) Other definitions and special rules

For purposes of this subsection—

(A) Bond

The term ''bond'' includes any obligation.

(B) Partnership; S corporation; and other pass-thru entities

(i) In general

Under regulations prescribed by the Secretary, in the case of a partnership, trust, S corporation, or other pass-thru entity, rules similar to the rules of section 41(g) shall apply with respect to the credit allowable under paragraph (1).

(ii) No basis adjustment

In the case of a bond held by a partnership or an S corporation, rules similar to the rules under section 1397E(*l*) shall apply.

(C) Bonds held by regulated investment companies

If any Gulf tax credit bond is held by a regulated investment company, the credit de-

termined under paragraph (1) shall be allowed to shareholders of such company under procedures prescribed by the Secretary.

(D) Reporting

Issuers of Gulf tax credit bonds shall submit reports similar to the reports required under section 149(e).

(E) Credit treated as nonrefundable bondholder credit

For purposes of this title, the credit allowed by this subsection shall be treated as a credit allowable under subpart H of part IV of subchapter A of this chapter.

(m) Application of new markets tax credit to investments in community development entities serving Gulf Opportunity Zone

For purposes of section 45D—

(1) a qualified community development entity shall be eligible for an allocation under subsection (f)(2) thereof of the increase in the new markets tax credit limitation described in paragraph (2) only if a significant mission of such entity is the recovery and redevelopment of the Gulf Opportunity Zone,

(2) the new markets tax credit limitation otherwise determined under subsection (f)(1) thereof shall be increased by an amount equal to—

(A) $300,000,000 for 2005 and 2006, to be allocated among qualified community development entities to make qualified low-income community investments within the Gulf Opportunity Zone, and

(B) $400,000,000 for 2007, to be so allocated, and

(3) subsection (f)(3) thereof shall be applied separately with respect to the amount of the increase under paragraph (2).

(n) Treatment of representations regarding income eligibility for purposes of qualified residential rental project requirements

For purposes of determining if any residential rental project meets the requirements of section 142(d)(1) and if any certification with respect to such project meets the requirements under section 142(d)(7), the operator of the project may rely on the representations of any individual applying for tenancy in such project that such individual's income will not exceed the applicable income limits of section 142(d)(1) upon commencement of the individual's tenancy if such tenancy begins during the 6-month period beginning on and after the date such individual was displaced by reason of Hurricane Katrina.

***(o)* Treatment of public utility property disaster losses**

(1) In general

Upon the election of the taxpayer, in the case of any eligible public utility property loss—

(A) section 165(i) shall be applied by substituting ''the fifth taxable year immediately preceding'' for ''the taxable year immediately preceding'',

(B) an application for a tentative carryback adjustment of the tax for any prior taxable year affected by the application of subparagraph (A) may be made under section 6411, and

(C) section 6611 shall not apply to any overpayment attributable to such loss.

(2) Eligible public utility property loss

For purposes of this subsection—

(A) In general

The term ''eligible public utility property loss'' means any loss with respect to public utility property located in the Gulf Opportunity Zone and attributable to Hurricane Katrina.

(B) Public utility property

The term ''public utility property'' has the meaning given such term by section 168(i)(10) without regard to the matter following subparagraph (D) thereof.

(3) Waiver of limitations

If refund or credit of any overpayment of tax resulting from the application of paragraph (1) is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this section by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period.

(p) Tax benefits not available with respect to certain property

(1) Qualified Gulf Opportunity Zone property

For purposes of subsections (d), (e), and (k)(2)(B)(iv), the term ''qualified Gulf Opportunity Zone property'' shall not include any property described in paragraph (3).

(2) Qualified Gulf Opportunity Zone casualty losses

For purposes of subsection (k)(2)(B)(i), the term ''qualified Gulf Opportunity Zone casualty loss'' shall not include any loss with respect to any property described in paragraph (3).

(3) Property described

(A) In general

For purposes of this subsection, property is described in this paragraph if such property is—

(i) any property used in connection with any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises, or

(ii) any gambling or animal racing property.

(B) Gambling or animal racing property

For purposes of subparagraph (A)(ii)—

(i) In general

The term ''gambling or animal racing property'' means—

(I) any equipment, furniture, software, or other property used directly in connection with gambling, the racing of ani-

mals, or the on-site viewing of such racing, and

(II) the portion of any real property (determined by square footage) which is dedicated to gambling, the racing of animals, or the on-site viewing of such racing.

(ii) De minimis portion

Clause (i)(II) shall not apply to any real property if the portion so dedicated is less than 100 square feet.

(Added Pub. L. 109–135, title I, § 101(a), Dec. 21, 2005, 119 Stat. 2579; amended Pub. L. 109–432, div. A, title I, §§ 107(b)(2), 120(a), (b), Dec. 20, 2006, 120 Stat. 2939, 2943; Pub. L. 110–28, title VIII, §§ 8221–8223, May 25, 2007, 121 Stat. 194, 195; Pub. L. 110–185, title I, § 103(c)(9), (10), Feb. 13, 2008, 122 Stat. 619; Pub. L. 110–234, title XV, § 15316(c)(1), May 22, 2008, 122 Stat. 1511; Pub. L. 110–246, § 4(a), title XV, § 15316(c)(1), June 18, 2008, 122 Stat. 1664, 2273; Pub. L. 110–289, div. C, title III, § 3082(b)(1), (c)(1), July 30, 2008, 122 Stat. 2907; Pub. L. 110–343, div. C, title III, § 320(a), Oct. 3, 2008, 122 Stat. 3873; Pub. L. 111–5, div. B, title I, §§ 1201(a)(2)(E), 1531(c)(3), Feb. 17, 2009, 123 Stat. 333, 360; Pub. L. 111–240, title II, § 2022(b)(7), Sept. 27, 2010, 124 Stat. 2558; Pub. L. 111–312, title IV, § 401(d)(7), title VII, §§ 762(a), 763, 764(a), 765(a), Dec. 17, 2010, 124 Stat. 3306, 3323, 3324.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsecs. (a)(2)(D), (b)(1), (2), and (*o*)(3), is the date of enactment of Pub. L. 109–135, which was approved Dec. 21, 2005.

The date of the enactment of this paragraph, referred to in subsec. (a)(7)(C), is the date of enactment of Pub. L. 110–28, which was approved May 25, 2007.

Subpar. (C) of section 42(d)(5), referred to in subsec. (c)(3)(A)(i), (4)(C), was redesignated (B) by Pub. L. 110–289, div. C, title I, § 3003(g)(3), July 30, 2008, 122 Stat. 2882.

Subpar. (D) of section 42(i)(2), referred to in subsec. (c)(6), was repealed by Pub. L. 110–289, div. C, title I, § 3002(b)(2)(C), July 30, 2008, 122 Stat. 2880.

Sections 106, 107, 108, and 122 of the Housing and Community Development Act of 1974, referred to in subsec. (c)(6), are classified to sections 5306, 5307, 5308, and 5321, respectively, of Title 42, The Public Health and Welfare.

The Department of Defense Appropriations Act, 2006, referred to in subsec. (c)(6), is div. A of Pub. L. 109–148, Dec. 30, 2005, 119 Stat. 2680. For complete classification of this Act to the Code, see Tables.

The Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006, referred to in subsec. (c)(6), is Pub. L. 109–234, June 15, 2006, 120 Stat. 418. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2010—Subsec. (a)(2)(D), (7)(C). Pub. L. 111–312, § 764(a), substituted ''January 1, 2012'' for ''January 1, 2011''.

Subsec. (c)(5). Pub. L. 111–312, § 763, substituted ''January 1, 2012'' for ''January 1, 2011''.

Subsec. (d)(3)(B). Pub. L. 111–312, § 401(d)(7), substituted ''January 1, 2013'' for ''January 1, 2011''.

Pub. L. 111–240 substituted ''January 1, 2011'' for ''January 1, 2010''.

Subsec. (d)(6)(B)(ii). Pub. L. 111–312, § 765(a)(1), substituted ''December 31, 2011'' for ''December 31, 2010'' in subcls. (I) and (II).

Subsec. (d)(6)(D). Pub. L. 111–312, § 765(a)(2), substituted ''January 1, 2012'' for ''January 1, 2010'' in heading and text.

Subsec. (h). Pub. L. 111–312, § 762(a), substituted ''December 31, 2011'' for ''December 31, 2009'' in introductory provisions.

2009—Subsec. (d)(3)(B). Pub. L. 111–5, § 1201(a)(2)(E), substituted ''January 1, 2010'' for ''January 1, 2009''.

Subsec. (*l*)(3)(B). Pub. L. 111–5, § 1531(c)(3), substituted '', I, and J'' for ''and I''.

2008—Subsec. (a)(8). Pub. L. 110–289, § 3082(c)(1), added par. (8).

Subsec. (d)(3)(A). Pub. L. 110–185, § 103(c)(9)(A), substituted ''December 31, 2007'' for ''September 10, 2001''.

Subsec. (d)(3)(B). Pub. L. 110–289, § 3082(b)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''by substituting 'January 1, 2008' for 'January 1, 2009' in clause (i) thereof, and''.

Pub. L. 110–185, § 103(c)(9)(B), substituted ''January 1, 2009'' for ''January 1, 2005''.

Subsec. (d)(6)(E). Pub. L. 110–185, § 103(c)(10), added subpar. (E).

Subsec. (h). Pub. L. 110–343 substituted ''December 31, 2009'' for ''December 31, 2008'' in introductory provisions.

Subsec. (*l*)(3)(B). Pub. L. 110–246, § 15316(c)(1), substituted ''subparts C and I'' for ''subpart C''.

2007—Subsec. (a)(7). Pub. L. 110–28, § 8223, added par. (7).

Subsec. (c)(3)(A). Pub. L. 110–28, § 8222(b)(1), substituted ''the period beginning on January 1, 2006, and ending on December 31, 2010'' for ''2006, 2007, or 2008''.

Subsec. (c)(3)(B)(ii). Pub. L. 110–28, § 8222(b)(2), substituted ''the period described in subparagraph (A)'' for ''such period''.

Subsec. (c)(5). Pub. L. 110–28, § 8222(a), added par. (5). Former par. (5) redesignated (6).

Subsec. (c)(6). Pub. L. 110–28, § 8222(c), added par. (6). Former par. (6) redesignated (7).

Pub. L. 110–28, § 8222(a), redesignated par. (5) as (6).

Subsec. (c)(7). Pub. L. 110–28, § 8222(c), redesignated par. (6) as (7).

Subsec. (e)(2). Pub. L. 110–28, § 8221, substituted ''this subsection—'', subpar. (A) heading, and ''The term'' for ''this subsection, the term'' and added subpar. (B).

2006—Subsec. (d)(6). Pub. L. 109–432, § 120(a), added par. (6).

Subsec. (e)(2). Pub. L. 109–432, § 120(b), inserted ''without regard to subsection (d)(6)'' after ''subsection (d)(2)''.

Subsec. (*l*)(7)(B)(ii). Pub. L. 109–432, § 107(b)(2), substituted ''1397E(*l*)'' for ''1397E(i)''.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 401(d)(7) of Pub. L. 111–312 applicable to property placed in service after Dec. 31, 2010, in taxable years ending after such date, see section 401(e)(1) of Pub. L. 111–312, set out as a note under section 168 of this title.

Pub. L. 111–312, title VII, § 762(b), Dec. 17, 2010, 124 Stat. 3323, provided that: ''The amendment made by this section [amending this section] shall apply to amounts paid or incurred after December 31, 2009.''

Pub. L. 111–312, title VII, § 765(b), Dec. 17, 2010, 124 Stat. 3324, provided that: ''The amendment made by this section [amending this section] shall apply to property placed in service after December 31, 2009.''

Amendment by Pub. L. 111–240 applicable to property placed in service after Dec. 31, 2009, in taxable years ending after such date, see section 2022(c) of Pub. L. 111–240, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by section 1201(a)(2)(E) of Pub. L. 111–5 applicable to property placed in service after Dec. 31, 2008, in taxable years ending after such date, see sec-

tion 1201(c)(1) of Pub. L. 111–5, set out as a note under section 168 of this title.

Amendment by section 1531(c)(3) of Pub. L. 111–5 applicable to obligations issued after Feb. 17, 2009, see section 1531(e) of Pub. L. 111–5, set out as a note under section 54 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, §320(b), Oct. 3, 2008, 122 Stat. 3873, provided that: ''The amendment made by this section [amending this section] shall apply to expenditures paid or incurred after the date of the enactment of this Act [Oct. 3, 2008].''

Pub. L. 110–289, div. C, title III, §3082(b)(2), July 30, 2008, 122 Stat. 2907, provided that: ''The amendment made by this subsection [amending this section] shall apply to property placed in service after December 31, 2007.''

Pub. L. 110–289, div. C, title III, §3082(c)(2), July 30, 2008, 122 Stat. 2908, provided that: 'The amendment made by this subsection [amending this section] shall take effect as if included in the provisions of the Gulf Opportunity Zone Act of 2005 [Pub. L. 109–135] to which it relates.''

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 15316(c)(1) of Pub. L. 110–246 applicable to obligations issued after June 18, 2008, see section 15316(d) of Pub. L. 110–246, set out as a note under section 54 of this title.

Amendment by Pub. L. 110–185 applicable to property placed in service after Dec. 31, 2007, in taxable years ending after such date, see section 103(d) of Pub. L. 110–185, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 107(b)(2) of Pub. L. 109–432 applicable to obligations issued after Dec. 20, 2006, pursuant to allocations of the national zone academy bond limitation for calendar years after 2005, see section 107(c) of Pub. L. 109–432, set out as a note under section 1397E of this title.

Pub. L. 109–432, div. A, title I, §120(c), Dec. 20, 2006, 120 Stat. 2943, provided that: ''The amendments made by this section [amending this section] shall take effect as if included in section 101 of the Gulf Opportunity Zone Act of 2005 [Pub. L. 109–135].''

EFFECTIVE DATE

Pub. L. 109–135, title I, §101(c), Dec. 21, 2005, 119 Stat. 2593, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and section 1400M of this title and amending sections 54 and 6049 of this title] shall apply to taxable years ending on or after August 28, 2005.

''(2) CARRYBACKS.—Subsections (i)(2), (j), and (k) of section 1400N of the Internal Revenue Code of 1986 (as added by this section) shall apply to losses arising in such taxable years.''

§ 1400O. Education tax benefits

In the case of an individual who attends an eligible educational institution (as defined in section 25A(f)(2)) located in the Gulf Opportunity Zone for any taxable year beginning during 2005 or 2006—

(1) in applying section 25A, the term ''qualified tuition and related expenses'' shall include any costs which are qualified higher education expenses (as defined in section 529(e)(3)),

(2) each of the dollar amounts in effect under subparagraphs (A) and (B) of section 25A(b)(1) shall be twice the amount otherwise in effect before the application of this subsection, and

(3) section 25A(c)(1) shall be applied by substituting ''40 percent'' for ''20 percent''.

(Added Pub. L. 109–135, title I, §102(a), Dec. 21, 2005, 119 Stat. 2594; amended Pub. L. 110–172, §11(a)(26), Dec. 29, 2007, 121 Stat. 2487.)

AMENDMENTS

2007—Par. (2). Pub. L. 110–172 substituted ''under'' for ''under of''.

§ 1400P. Housing tax benefits

(a) Exclusion of employer provided housing for individual affected by Hurricane Katrina

(1) In general

Gross income of a qualified employee shall not include the value of any lodging furnished in-kind to such employee (and such employee's spouse or any of such employee's dependents) by or on behalf of a qualified employer for any month during the taxable year.

(2) Limitation

The amount which may be excluded under paragraph (1) for any month for which lodging is furnished during the taxable year shall not exceed $600.

(3) Treatment of exclusion

The exclusion under paragraph (1) shall be treated as an exclusion under section 119 (other than for purposes of sections 3121(a)(19) and 3306(b)(14)).

(b) Employer credit for housing employees affected by Hurricane Katrina

For purposes of section 38, in the case of a qualified employer, the Hurricane Katrina housing credit for any month during the taxable year is an amount equal to 30 percent of any amount which is excludable from the gross income of a qualified employee of such employer under subsection (a) and not otherwise excludable under section 119.

(c) Qualified employee

For purposes of this section, the term ''qualified employee'' means, with respect to any month, an individual—

(1) who had a principal residence (as defined in section 121) in the Gulf Opportunity Zone on August 28, 2005, and

(2) who performs substantially all employment services—

(A) in the Gulf Opportunity Zone, and

(B) for the qualified employer which furnishes lodging to such individual.

(d) Qualified employer

For purposes of this section, the term ''qualified employer'' means any employer with a trade or business located in the Gulf Opportunity Zone.

(e) Certain rules to apply

For purposes of this subsection, rules similar to the rules of sections 51(i)(1) and 52 shall apply.

(f) Application of section

This section shall apply to lodging furnished during the period—

(1) beginning on the first day of the first month beginning after the date of the enactment of this section, and

(2) ending on the date which is 6 months after the first day described in paragraph (1).

(Added Pub. L. 109–135, title I, § 103(a), Dec. 21, 2005, 119 Stat. 2594.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (f)(1), is the date of enactment of Pub. L. 109–135, which was approved Dec. 21, 2005.

§ 1400Q. Special rules for use of retirement funds

(a) Tax-favored withdrawals from retirement plans

(1) In general

Section 72(t) shall not apply to any qualified hurricane distribution.

(2) Aggregate dollar limitation

(A) In general

For purposes of this subsection, the aggregate amount of distributions received by an individual which may be treated as qualified hurricane distributions for any taxable year shall not exceed the excess (if any) of—

(i) $100,000, over

(ii) the aggregate amounts treated as qualified hurricane distributions received by such individual for all prior taxable years.

(B) Treatment of plan distributions

If a distribution to an individual would (without regard to subparagraph (A)) be a qualified hurricane distribution, a plan shall not be treated as violating any requirement of this title merely because the plan treats such distribution as a qualified hurricane distribution, unless the aggregate amount of such distributions from all plans maintained by the employer (and any member of any controlled group which includes the employer) to such individual exceeds $100,000.

(C) Controlled group

For purposes of subparagraph (B), the term ''controlled group'' means any group treated as a single employer under subsection (b), (c), (m), or (*o*) of section 414.

(3) Amount distributed may be repaid

(A) In general

Any individual who receives a qualified hurricane distribution may, at any time during the 3-year period beginning on the day after the date on which such distribution was received, make one or more contributions in an aggregate amount not to exceed the amount of such distribution to an eligible retirement plan of which such individual is a beneficiary and to which a rollover contribution of such distribution could be made under section 402(c), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16), as the case may be.

(B) Treatment of repayments of distributions from eligible retirement plans other than IRAs

For purposes of this title, if a contribution is made pursuant to subparagraph (A) with respect to a qualified hurricane distribution from an eligible retirement plan other than an individual retirement plan, then the taxpayer shall, to the extent of the amount of the contribution, be treated as having received the qualified hurricane distribution in an eligible rollover distribution (as defined in section 402(c)(4)) and as having transferred the amount to the eligible retirement plan in a direct trustee to trustee transfer within 60 days of the distribution.

(C) Treatment of repayments for distributions from IRAs

For purposes of this title, if a contribution is made pursuant to subparagraph (A) with respect to a qualified hurricane distribution from an individual retirement plan (as defined by section 7701(a)(37)), then, to the extent of the amount of the contribution, the qualified hurricane distribution shall be treated as a distribution described in section 408(d)(3) and as having been transferred to the eligible retirement plan in a direct trustee to trustee transfer within 60 days of the distribution.

(4) Definitions

For purposes of this subsection—

(A) Qualified hurricane distribution

Except as provided in paragraph (2), the term ''qualified hurricane distribution'' means—

(i) any distribution from an eligible retirement plan made on or after August 25, 2005, and before January 1, 2007, to an individual whose principal place of abode on August 28, 2005, is located in the Hurricane Katrina disaster area and who has sustained an economic loss by reason of Hurricane Katrina,

(ii) any distribution (which is not described in clause (i)) from an eligible retirement plan made on or after September 23, 2005, and before January 1, 2007, to an individual whose principal place of abode on September 23, 2005, is located in the Hurricane Rita disaster area and who has sustained an economic loss by reason of Hurricane Rita, and

(iii) any distribution (which is not described in clause (i) or (ii)) from an eligible retirement plan made on or after October 23, 2005, and before January 1, 2007, to an individual whose principal place of abode on October 23, 2005, is located in the Hurricane Wilma disaster area and who has sustained an economic loss by reason of Hurricane Wilma.

(B) Eligible retirement plan

The term ''eligible retirement plan'' shall have the meaning given such term by section 402(c)(8)(B).

(5) Income inclusion spread over 3-year period

(A) In general

In the case of any qualified hurricane distribution, unless the taxpayer elects not to have this paragraph apply for any taxable year, any amount required to be included in

gross income for such taxable year shall be so included ratably over the 3-taxable year period beginning with such taxable year.

(B) Special rule

For purposes of subparagraph (A), rules similar to the rules of subparagraph (E) of section 408A(d)(3) shall apply.

(6) Special rules

(A) Exemption of distributions from trustee to trustee transfer and withholding rules

For purposes of sections 401(a)(31), 402(f), and 3405, qualified hurricane distributions shall not be treated as eligible rollover distributions.

(B) Qualified hurricane distributions treated as meeting plan distribution requirements

For purposes[1] this title, a qualified hurricane distribution shall be treated as meeting the requirements of sections 401(k)(2)(B)(i), 403(b)(7)(A)(ii), 403(b)(11), and 457(d)(1)(A).

(b) Recontributions of withdrawals for home purchases

(1) Recontributions

(A) In general

Any individual who received a qualified distribution may, during the applicable period, make one or more contributions in an aggregate amount not to exceed the amount of such qualified distribution to an eligible retirement plan (as defined in section 402(c)(8)(B)) of which such individual is a beneficiary and to which a rollover contribution of such distribution could be made under section 402(c), 403(a)(4), 403(b)(8), or 408(d)(3), as the case may be.

(B) Treatment of repayments

Rules similar to the rules of subparagraphs (B) and (C) of subsection (a)(3) shall apply for purposes of this subsection.

(2) Qualified distribution

For purposes of this subsection—

(A) In general

The term ''qualified distribution'' means any qualified Katrina distribution, any qualified Rita distribution, and any qualified Wilma distribution.

(B) Qualified Katrina distribution

The term ''qualified Katrina distribution'' means any distribution—

(i) described in section 401(k)(2)(B)(i)(IV), 403(b)(7)(A)(ii) (but only to the extent such distribution relates to financial hardship), 403(b)(11)(B), or 72(t)(2)(F),

(ii) received after February 28, 2005, and before August 29, 2005, and

(iii) which was to be used to purchase or construct a principal residence in the Hurricane Katrina disaster area, but which was not so purchased or constructed on account of Hurricane Katrina.

(C) Qualified Rita distribution

The term ''qualified Rita distribution'' means any distribution (other than a qualified Katrina distribution)—

(i) described in section 401(k)(2)(B)(i)(IV), 403(b)(7)(A)(ii) (but only to the extent such distribution relates to financial hardship), 403(b)(11)(B), or 72(t)(2)(F),

(ii) received after February 28, 2005, and before September 24, 2005, and

(iii) which was to be used to purchase or construct a principal residence in the Hurricane Rita disaster area, but which was not so purchased or constructed on account of Hurricane Rita.

(D) Qualified Wilma distribution

The term ''qualified Wilma distribution'' means any distribution (other than a qualified Katrina distribution or a qualified Rita distribution)—

(i) described in section 401(k)(2)(B)(i)(IV), 403(b)(7)(A)(ii) (but only to the extent such distribution relates to financial hardship), 403(b)(11)(B), or 72(t)(2)(F),

(ii) received after February 28, 2005, and before October 24, 2005, and

(iii) which was to be used to purchase or construct a principal residence in the Hurricane Wilma disaster area, but which was not so purchased or constructed on account of Hurricane Wilma.

(3) Applicable period

For purposes of this subsection, the term ''applicable period'' means—

(A) with respect to any qualified Katrina distribution, the period beginning on August 25, 2005, and ending on February 28, 2006,

(B) with respect to any qualified Rita distribution, the period beginning on September 23, 2005, and ending on February 28, 2006, and

(C) with respect to any qualified Wilma distribution, the period beginning on October 23, 2005, and ending on February 28, 2006.

(c) Loans from qualified plans

(1) Increase in limit on loans not treated as distributions

In the case of any loan from a qualified employer plan (as defined under section 72(p)(4)) to a qualified individual made during the applicable period—

(A) clause (i) of section 72(p)(2)(A) shall be applied by substituting ''$100,000'' for ''$50,000'', and

(B) clause (ii) of such section shall be applied by substituting ''the present value of the nonforfeitable accrued benefit of the employee under the plan'' for ''one-half of the present value of the nonforfeitable accrued benefit of the employee under the plan''.

(2) Delay of repayment

In the case of a qualified individual with an outstanding loan on or after the qualified beginning date from a qualified employer plan (as defined in section 72(p)(4))—

(A) if the due date pursuant to subparagraph (B) or (C) of section 72(p)(2) for any repayment with respect to such loan occurs during the period beginning on the qualified beginning date and ending on December 31, 2006, such due date shall be delayed for 1 year,

[1] So in original. Probably should be followed by ''of''.

(B) any subsequent repayments with respect to any such loan shall be appropriately adjusted to reflect the delay in the due date under paragraph (1) and any interest accruing during such delay, and

(C) in determining the 5-year period and the term of a loan under subparagraph (B) or (C) of section 72(p)(2), the period described in subparagraph (A) shall be disregarded.

(3) Qualified individual

For purposes of this subsection—

(A) In general

The term ''qualified individual'' means any qualified Hurricane Katrina individual, any qualified Hurricane Rita individual, and any qualified Hurricane Wilma individual.

(B) Qualified Hurricane Katrina individual

The term ''qualified Hurricane Katrina individual'' means an individual whose principal place of abode on August 28, 2005, is located in the Hurricane Katrina disaster area and who has sustained an economic loss by reason of Hurricane Katrina.

(C) Qualified Hurricane Rita individual

The term ''qualified Hurricane Rita individual'' means an individual (other than a qualified Hurricane Katrina individual) whose principal place of abode on September 23, 2005, is located in the Hurricane Rita disaster area and who has sustained an economic loss by reason of Hurricane Rita.

(D) Qualified Hurricane Wilma individual

The term ''qualified Hurricane Wilma individual'' means an individual (other than a qualified Hurricane Katrina individual or a qualified Hurricane Rita individual) whose principal place of abode on October 23, 2005, is located in the Hurricane Wilma disaster area and who has sustained an economic loss by reason of Hurricane Wilma.

(4) Applicable period; qualified beginning date

For purposes of this subsection—

(A) Hurricane Katrina

In the case of any qualified Hurricane Katrina individual—

(i) the applicable period is the period beginning on September 24, 2005, and ending on December 31, 2006, and

(ii) the qualified beginning date is August 25, 2005.

(B) Hurricane Rita

In the case of any qualified Hurricane Rita individual—

(i) the applicable period is the period beginning on the date of the enactment of this subsection and ending on December 31, 2006, and

(ii) the qualified beginning date is September 23, 2005.

(C) Hurricane Wilma

In the case of any qualified Hurricane Wilma individual—

(i) the applicable period is the period beginning on the date of the enactment of this subparagraph and ending on December 31, 2006, and

(ii) the qualified beginning date is October 23, 2005.

(d) Provisions relating to plan amendments

(1) In general

If this subsection applies to any amendment to any plan or annuity contract, such plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in paragraph (2)(B)(i).

(2) Amendments to which subsection applies

(A) In general

This subsection shall apply to any amendment to any plan or annuity contract which is made—

(i) pursuant to any provision of this section, or pursuant to any regulation issued by the Secretary or the Secretary of Labor under any provision of this section, and

(ii) on or before the last day of the first plan year beginning on or after January 1, 2007, or such later date as the Secretary may prescribe.

In the case of a governmental plan (as defined in section 414(d)), clause (ii) shall be applied by substituting the date which is 2 years after the date otherwise applied under clause (ii).

(B) Conditions

This subsection shall not apply to any amendment unless—

(i) during the period—

(I) beginning on the date that this section or the regulation described in subparagraph (A)(i) takes effect (or in the case of a plan or contract amendment not required by this section or such regulation, the effective date specified by the plan), and

(II) ending on the date described in subparagraph (A)(ii) (or, if earlier, the date the plan or contract amendment is adopted),

the plan or contract is operated as if such plan or contract amendment were in effect; and

(ii) such plan or contract amendment applies retroactively for such period.

(Added Pub. L. 109–135, title II, § 201(a), Dec. 21, 2005, 119 Stat. 2596.)

REFERENCES IN TEXT

The date of the enactment of this subsection and this subparagraph, referred to in subsec. (c)(4)(B)(i), (C)(i), is the date of enactment of Pub. L. 109–135, which was approved Dec. 21, 2005.

§ 1400R. Employment relief

(a) Employee retention credit for employers affected by Hurricane Katrina

(1) In general

For purposes of section 38, in the case of an eligible employer, the Hurricane Katrina employee retention credit for any taxable year is an amount equal to 40 percent of the qualified wages with respect to each eligible employee of such employer for such taxable year. For

purposes of the preceding sentence, the amount of qualified wages which may be taken into account with respect to any individual shall not exceed $6,000.

(2) Definitions

For purposes of this subsection—

(A) Eligible employer

The term ''eligible employer'' means any employer—

(i) which conducted an active trade or business on August 28, 2005, in the GO Zone, and

(ii) with respect to whom the trade or business described in clause (i) is inoperable on any day after August 28, 2005, and before January 1, 2006, as a result of damage sustained by reason of Hurricane Katrina.

(B) Eligible employee

The term ''eligible employee'' means with respect to an eligible employer an employee whose principal place of employment on August 28, 2005, with such eligible employer was in the GO Zone.

(C) Qualified wages

The term ''qualified wages'' means wages (as defined in section 51(c)(1), but without regard to section 3306(b)(2)(B)) paid or incurred by an eligible employer with respect to an eligible employee on any day after August 28, 2005, and before January 1, 2006, which occurs during the period—

(i) beginning on the date on which the trade or business described in subparagraph (A) first became inoperable at the principal place of employment of the employee immediately before Hurricane Katrina, and

(ii) ending on the date on which such trade or business has resumed significant operations at such principal place of employment.

Such term shall include wages paid without regard to whether the employee performs no services, performs services at a different place of employment than such principal place of employment, or performs services at such principal place of employment before significant operations have resumed.

(3) Certain rules to apply

For purposes of this subsection, rules similar to the rules of sections 51(i)(1) and 52 shall apply.

(4) Employee not taken into account more than once

An employee shall not be treated as an eligible employee for purposes of this subsection for any period with respect to any employer if such employer is allowed a credit under section 51 with respect to such employee for such period.

(b) Employee retention credit for employers affected by Hurricane Rita

(1) In general

For purposes of section 38, in the case of an eligible employer, the Hurricane Rita employee retention credit for any taxable year is an amount equal to 40 percent of the qualified wages with respect to each eligible employee of such employer for such taxable year. For purposes of the preceding sentence, the amount of qualified wages which may be taken into account with respect to any individual shall not exceed $6,000.

(2) Definitions

For purposes of this subsection—

(A) Eligible employer

The term ''eligible employer'' means any employer—

(i) which conducted an active trade or business on September 23, 2005, in the Rita GO Zone, and

(ii) with respect to whom the trade or business described in clause (i) is inoperable on any day after September 23, 2005, and before January 1, 2006, as a result of damage sustained by reason of Hurricane Rita.

(B) Eligible employee

The term ''eligible employee'' means with respect to an eligible employer an employee whose principal place of employment on September 23, 2005, with such eligible employer was in the Rita GO Zone.

(C) Qualified wages

The term ''qualified wages'' means wages (as defined in section 51(c)(1), but without regard to section 3306(b)(2)(B)) paid or incurred by an eligible employer with respect to an eligible employee on any day after September 23, 2005, and before January 1, 2006, which occurs during the period—

(i) beginning on the date on which the trade or business described in subparagraph (A) first became inoperable at the principal place of employment of the employee immediately before Hurricane Rita, and

(ii) ending on the date on which such trade or business has resumed significant operations at such principal place of employment.

Such term shall include wages paid without regard to whether the employee performs no services, performs services at a different place of employment than such principal place of employment, or performs services at such principal place of employment before significant operations have resumed.

(3) Certain rules to apply

For purposes of this subsection, rules similar to the rules of sections 51(i)(1) and 52 shall apply.

(4) Employee not taken into account more than once

An employee shall not be treated as an eligible employee for purposes of this subsection for any period with respect to any employer if such employer is allowed a credit under subsection (a) or section 51 with respect to such employee for such period.

(c) Employee retention credit for employers affected by Hurricane Wilma

(1) In general

For purposes of section 38, in the case of an eligible employer, the Hurricane Wilma employee retention credit for any taxable year is an amount equal to 40 percent of the qualified wages with respect to each eligible employee of such employer for such taxable year. For purposes of the preceding sentence, the amount of qualified wages which may be taken into account with respect to any individual shall not exceed $6,000.

(2) Definitions

For purposes of this subsection—

(A) Eligible employer

The term ''eligible employer'' means any employer—

(i) which conducted an active trade or business on October 23, 2005, in the Wilma GO Zone, and

(ii) with respect to whom the trade or business described in clause (i) is inoperable on any day after October 23, 2005, and before January 1, 2006, as a result of damage sustained by reason of Hurricane Wilma.

(B) Eligible employee

The term ''eligible employee'' means with respect to an eligible employer an employee whose principal place of employment on October 23, 2005, with such eligible employer was in the Wilma GO Zone.

(C) Qualified wages

The term ''qualified wages'' means wages (as defined in section 51(c)(1), but without regard to section 3306(b)(2)(B)) paid or incurred by an eligible employer with respect to an eligible employee on any day after October 23, 2005, and before January 1, 2006, which occurs during the period—

(i) beginning on the date on which the trade or business described in subparagraph (A) first became inoperable at the principal place of employment of the employee immediately before Hurricane Wilma, and

(ii) ending on the date on which such trade or business has resumed significant operations at such principal place of employment.

Such term shall include wages paid without regard to whether the employee performs no services, performs services at a different place of employment than such principal place of employment, or performs services at such principal place of employment before significant operations have resumed.

(3) Certain rules to apply

For purposes of this subsection, rules similar to the rules of sections 51(i)(1) and 52 shall apply.

(4) Employee not taken into account more than once

An employee shall not be treated as an eligible employee for purposes of this subsection for any period with respect to any employer if such employer is allowed a credit under subsection (a) or (b) or section 51 with respect to such employee for such period.

(Added Pub. L. 109–135, title II, § 201(a), Dec. 21, 2005, 119 Stat. 2601.)

§ 1400S. Additional tax relief provisions

(a) Temporary suspension of limitations on charitable contributions

(1) In general

Except as otherwise provided in paragraph (2), section 170(b) shall not apply to qualified contributions and such contributions shall not be taken into account for purposes of applying subsections (b) and (d) of section 170 to other contributions.

(2) Treatment of excess contributions

For purposes of section 170—

(A) Individuals

In the case of an individual—

(i) Limitation

Any qualified contribution shall be allowed only to the extent that the aggregate of such contributions does not exceed the excess of the taxpayer's contribution base (as defined in subparagraph (G) of section 170(b)(1)) over the amount of all other charitable contributions allowed under section 170(b)(1).

(ii) Carryover

If the aggregate amount of qualified contributions made in the contribution year (within the meaning of section 170(d)(1)) exceeds the limitation of clause (i), such excess shall be added to the excess described in the portion of subparagraph (A) of such section which precedes clause (i) thereof for purposes of applying such section.

(B) Corporations

In the case of a corporation—

(i) Limitation

Any qualified contribution shall be allowed only to the extent that the aggregate of such contributions does not exceed the excess of the taxpayer's taxable income (as determined under paragraph (2) of section 170(b)) over the amount of all other charitable contributions allowed under such paragraph.

(ii) Carryover

Rules similar to the rules of subparagraph (A)(ii) shall apply for purposes of this subparagraph.

(3) Exception to overall limitation on itemized deductions

So much of any deduction allowed under section 170 as does not exceed the qualified contributions paid during the taxable year shall not be treated as an itemized deduction for purposes of section 68.

(4) Qualified contributions

(A) In general

For purposes of this subsection, the term ''qualified contribution'' means any chari-

table contribution (as defined in section 170(c)) if—

(i) such contribution is paid during the period beginning on August 28, 2005, and ending on December 31, 2005, in cash to an organization described in section 170(b)(1)(A) (other than an organization described in section 509(a)(3)),

(ii) in the case of a contribution paid by a corporation, such contribution is for relief efforts related to Hurricane Katrina, Hurricane Rita, or Hurricane Wilma, and

(iii) the taxpayer has elected the application of this subsection with respect to such contribution.

(B) Exception

Such term shall not include a contribution if the contribution is for establishment of a new, or maintenance in an existing, segregated fund or account with respect to which the donor (or any person appointed or designated by such donor) has, or reasonably expects to have, advisory privileges with respect to distributions or investments by reason of the donor's status as a donor.

(C) Application of election to partnerships and S corporations

In the case of a partnership or S corporation, the election under subparagraph (A)(iii) shall be made separately by each partner or shareholder.

(b) Suspension of certain limitations on personal casualty losses

Paragraphs (1) and (2)(A) of section 165(h) shall not apply to losses described in section 165(c)(3)—

(1) which arise in the Hurricane Katrina disaster area on or after August 25, 2005, and which are attributable to Hurricane Katrina,

(2) which arise in the Hurricane Rita disaster area on or after September 23, 2005, and which are attributable to Hurricane Rita, or

(3) which arise in the Hurricane Wilma disaster area on or after October 23, 2005, and which are attributable to Hurricane Wilma.

In the case of any other losses, section 165(h)(2)(A) shall be applied without regard to the losses referred to in the preceding sentence.

(c) Required exercise of authority under section 7508A

In the case of any taxpayer determined by the Secretary to be affected by the Presidentially declared disaster relating to Hurricane Katrina, Hurricane Rita, or Hurricane Wilma, any relief provided by the Secretary under section 7508A shall be for a period ending not earlier than February 28, 2006.

(d) Special rule for determining earned income

(1) In general

In the case of a qualified individual, if the earned income of the taxpayer for the taxable year which includes the applicable date is less than the earned income of the taxpayer for the preceding taxable year, the credits allowed under sections 24(d) and 32 may, at the election of the taxpayer, be determined by substituting—

(A) such earned income for the preceding taxable year, for

(B) such earned income for the taxable year which includes the applicable date.

(2) Qualified individual

For purposes of this subsection—

(A) In general

The term ''qualified individual'' means any qualified Hurricane Katrina individual, any qualified Hurricane Rita individual, and any qualified Hurricane Wilma individual.

(B) Qualified Hurricane Katrina individual

The term ''qualified Hurricane Katrina individual'' means any individual whose principal place of abode on August 25, 2005, was located—

(i) in the GO Zone, or

(ii) in the Hurricane Katrina disaster area (but outside the GO Zone) and such individual was displaced from such principal place of abode by reason of Hurricane Katrina.

(C) Qualified Hurricane Rita individual

The term ''qualified Hurricane Rita individual'' means any individual (other than a qualified Hurricane Katrina individual) whose principal place of abode on September 23, 2005, was located—

(i) in the Rita GO Zone, or

(ii) in the Hurricane Rita disaster area (but outside the Rita GO Zone) and such individual was displaced from such principal place of abode by reason of Hurricane Rita.

(D) Qualified Hurricane Wilma individual

The term ''qualified Hurricane Wilma individual'' means any individual whose principal place of abode on October 23, 2005, was located—

(i) in the Wilma GO Zone, or

(ii) in the Hurricane Wilma disaster area (but outside the Wilma GO Zone) and such individual was displaced from such principal place of abode by reason of Hurricane Wilma.

(3) Applicable date

For purposes of this subsection, the term ''applicable date'' means—

(A) in the case of a qualified Hurricane Katrina individual, August 25, 2005,

(B) in the case of a qualified Hurricane Rita individual, September 23, 2005, and

(C) in the case of a qualified Hurricane Wilma individual, October 23, 2005.

(4) Earned income

For purposes of this subsection, the term ''earned income'' has the meaning given such term under section 32(c).

(5) Special rules

(A) Application to joint returns

For purposes of paragraph (1), in the case of a joint return for a taxable year which includes the applicable date—

(i) such paragraph shall apply if either spouse is a qualified individual, and

(ii) the earned income of the taxpayer for the preceding taxable year shall be the sum of the earned income of each spouse for such preceding taxable year.

(B) Uniform application of election

Any election made under paragraph (1) shall apply with respect to both sections 24(d) and section 32.

(C) Errors treated as mathematical error

For purposes of section 6213, an incorrect use on a return of earned income pursuant to paragraph (1) shall be treated as a mathematical or clerical error.

(D) No effect on determination of gross income, etc.

Except as otherwise provided in this subsection, this title shall be applied without regard to any substitution under paragraph (1).

(e) Secretarial authority to make adjustments regarding taxpayer and dependency status

With respect to taxable years beginning in 2005 or 2006, the Secretary may make such adjustments in the application of the internal revenue laws as may be necessary to ensure that taxpayers do not lose any deduction or credit or experience a change of filing status by reason of temporary relocations by reason of Hurricane Katrina, Hurricane Rita, or Hurricane Wilma. Any adjustments made under the preceding sentence shall ensure that an individual is not taken into account by more than one taxpayer with respect to the same tax benefit.

(Added Pub. L. 109–135, title II, § 201(a), Dec. 21, 2005, 119 Stat. 2604; amended Pub. L. 110–172, § 11(a)(14)(C), Dec. 29, 2007, 121 Stat. 2485.)

AMENDMENTS

2007—Subsec. (a)(2)(A)(i). Pub. L. 110–172 substituted ''subparagraph (G)'' for ''subparagraph (F)''.

§ 1400T. Special rules for mortgage revenue bonds

(a) In general

In the case of financing provided with respect to owner-occupied residences in the GO Zone, the Rita GO Zone, or the Wilma GO Zone, section 143 shall be applied—

(1) by treating any such residence in the Rita GO Zone or the Wilma GO Zone as a targeted area residence,

(2) by applying subsection (f)(3) thereof without regard to subparagraph (A) thereof, and

(3) by substituting ''$150,000'' for ''$15,000'' in subsection (k)(4) thereof.

(b) Application

Subsection (a) shall not apply to financing provided after December 31, 2010.

(Added Pub. L. 109–135, title II, § 201(a), Dec. 21, 2005, 119 Stat. 2607.)

PART III—RECOVERY ZONE BONDS

Sec.

1400U–1. Allocation of recovery zone bonds.
1400U–2. Recovery zone economic development bonds.
1400U–3. Recovery zone facility bonds.

§ 1400U–1. Allocation of recovery zone bonds

(a) Allocations

(1) In general

(A) General allocation

The Secretary shall allocate the national recovery zone economic development bond limitation and the national recovery zone facility bond limitation among the States in the proportion that each such State's 2008 State employment decline bears to the aggregate of the 2008 State employment declines for all of the States.

(B) Minimum allocation

The Secretary shall adjust the allocations under subparagraph (A) for any calendar year for each State to the extent necessary to ensure that no State receives less than 0.9 percent of the national recovery zone economic development bond limitation and 0.9 percent of the national recovery zone facility bond limitation.

(2) 2008 State employment decline

For purposes of this subsection, the term ''2008 State employment decline'' means, with respect to any State, the excess (if any) of—

(A) the number of individuals employed in such State determined for December 2007, over

(B) the number of individuals employed in such State determined for December 2008.

(3) Allocations by States

(A) In general

Each State with respect to which an allocation is made under paragraph (1) shall reallocate such allocation among the counties and large municipalities in such State in the proportion to[1] each such county's or municipality's 2008 employment decline bears to the aggregate of the 2008 employment declines for all the counties and municipalities in such State. A county or municipality may waive any portion of an allocation made under this subparagraph.

(B) Large municipalities

For purposes of subparagraph (A), the term ''large municipality'' means a municipality with a population of more than 100,000.

(C) Determination of local employment declines

For purposes of this paragraph, the employment decline of any municipality or county shall be determined in the same manner as determining the State employment decline under paragraph (2), except that in the case of a municipality any portion of which is in a county, such portion shall be treated as part of such municipality and not part of such county.

(4) National limitations

(A) Recovery zone economic development bonds

There is a national recovery zone economic development bond limitation of $10,000,000,000.

[1] So in original.

(B) Recovery zone facility bonds

There is a national recovery zone facility bond limitation of $15,000,000,000.

(b) Recovery zone

For purposes of this part, the term ''recovery zone'' means—

(1) any area designated by the issuer as having significant poverty, unemployment, rate of home foreclosures, or general distress,

(2) any area designated by the issuer as economically distressed by reason of the closure or realignment of a military installation pursuant to the Defense Base Closure and Realignment Act of 1990, and

(3) any area for which a designation as an empowerment zone or renewal community is in effect.

(Added Pub. L. 111–5, div. B, title I, §1401(a), Feb. 17, 2009, 123 Stat. 348.)

REFERENCES IN TEXT

The Defense Base Closure and Realignment Act of 1990, referred to in subsec. (b)(2), is part A of title XXIX of div. B of Pub. L. 101–510, Nov. 5, 1990, 104 Stat. 1808, which is set out as a note under section 2687 of Title 10, Armed Forces. For complete classification of this Act to the Code, see Tables.

EFFECTIVE DATE

Pub. L. 111–5, div. B, title I, §1401(c), Feb. 17, 2009, 123 Stat. 351, provided that: ''The amendments made by this section [enacting this part] shall apply to obligations issued after the date of the enactment of this Act [Feb. 17, 2009].''

§ 1400U–2. Recovery zone economic development bonds

(a) In general

In the case of a recovery zone economic development bond—

(1) such bond shall be treated as a qualified bond for purposes of section 6431, and

(2) subsection (b) of such section shall be applied by substituting ''45 percent'' for ''35 percent''.

(b) Recovery zone economic development bond

(1) In general

For purposes of this section, the term ''recovery zone economic development bond'' means any build America bond (as defined in section 54AA(d)) issued before January 1, 2011, as part of issue if—

(A) 100 percent of the excess of—

(i) the available project proceeds (as defined in section 54A) of such issue, over

(ii) the amounts in a reasonably required reserve (within the meaning of section 150(a)(3)) with respect to such issue,

are to be used for one or more qualified economic development purposes, and

(B) the issuer designates such bond for purposes of this section.

(2) Limitation on amount of bonds designated

The maximum aggregate face amount of bonds which may be designated by any issuer under paragraph (1) shall not exceed the amount of the recovery zone economic development bond limitation allocated to such issuer under section 1400U–1.

(c) Qualified economic development purpose

For purposes of this section, the term ''qualified economic development purpose'' means expenditures for purposes of promoting development or other economic activity in a recovery zone, including—

(1) capital expenditures paid or incurred with respect to property located in such zone,

(2) expenditures for public infrastructure and construction of public facilities, and

(3) expenditures for job training and educational programs.

(Added Pub. L. 111–5, div. B, title I, §1401(a), Feb. 17, 2009, 123 Stat. 349.)

§ 1400U–3. Recovery zone facility bonds

(a) In general

For purposes of part IV of subchapter B (relating to tax exemption requirements for State and local bonds), the term ''exempt facility bond'' includes any recovery zone facility bond.

(b) Recovery zone facility bond

(1) In general

For purposes of this section, the term ''recovery zone facility bond'' means any bond issued as part of an issue if—

(A) 95 percent or more of the net proceeds (as defined in section 150(a)(3)) of such issue are to be used for recovery zone property,

(B) such bond is issued before January 1, 2011, and

(C) the issuer designates such bond for purposes of this section.

(2) Limitation on amount of bonds designated

The maximum aggregate face amount of bonds which may be designated by any issuer under paragraph (1) shall not exceed the amount of recovery zone facility bond limitation allocated to such issuer under section 1400U–1.

(c) Recovery zone property

For purposes of this section—

(1) In general

The term ''recovery zone property'' means any property to which section 168 applies (or would apply but for section 179) if—

(A) such property was constructed, reconstructed, renovated, or acquired by purchase (as defined in section 179(d)(2)) by the taxpayer after the date on which the designation of the recovery zone took effect,

(B) the original use of which in the recovery zone commences with the taxpayer, and

(C) substantially all of the use of which is in the recovery zone and is in the active conduct of a qualified business by the taxpayer in such zone.

(2) Qualified business

The term ''qualified business'' means any trade or business except that—

(A) the rental to others of real property located in a recovery zone shall be treated as a qualified business only if the property is not residential rental property (as defined in section 168(e)(2)), and

(B) such term shall not include any trade or business consisting of the operation of any facility described in section 144(c)(6)(B).

(3) Special rules for substantial renovations and sale-leaseback

Rules similar to the rules of subsections (a)(2) and (b) of section 1397D shall apply for purposes of this subsection.

(d) Nonapplication of certain rules

Sections 146 (relating to volume cap) and 147(d) (relating to acquisition of existing property not permitted) shall not apply to any recovery zone facility bond.

(Added Pub. L. 111–5, div. B, title I, § 1401(a), Feb. 17, 2009, 123 Stat. 350.)

CHAPTER 2—TAX ON SELF-EMPLOYMENT INCOME

Sec.
1401. Rate of tax.
1402. Definitions.
1403. Miscellaneous provisions.

§ 1401. Rate of tax

(a) Old-age, survivors, and disability insurance

In addition to other taxes, there shall be imposed for each taxable year, on the self-employment income of every individual, a tax equal to the following percent of the amount of the self-employment income for such taxable year:

In the case of a taxable year		
Beginning after:	**And before:**	**Percent:**
December 31, 1983	January 1, 1988	11.40
December 31, 1987	January 1, 1990	12.12
December 31, 1989		12.40

(b) Hospital insurance

In addition to the tax imposed by the preceding subsection, there shall be imposed for each taxable year, on the self-employment income of every individual, a tax equal to the following percent of the amount of the self-employment income for such taxable year:

In the case of a taxable year		
Beginning after:	**And before:**	**Percent:**
December 31, 1983	January 1, 1985	2.60
December 31, 1984	January 1, 1986	2.70
December 31, 1985		2.90.

(c) Relief from taxes in cases covered by certain international agreements

During any period in which there is in effect an agreement entered into pursuant to section 233 of the Social Security Act with any foreign country, the self-employment income of an individual shall be exempt from the taxes imposed by this section to the extent that such self-employment income is subject under such agreement exclusively to the laws applicable to the social security system of such foreign country.

(Aug. 16, 1954, ch. 736, 68A Stat. 353; Sept. 1, 1954, ch. 1206, title II, § 208(a), 68 Stat. 1093; Aug. 1, 1956, ch. 836, title II, § 202(a), 70 Stat. 845; Pub. L. 85–840, title IV, § 401(a), Aug. 28, 1958, 72 Stat. 1041; Pub. L. 87–64, title II, § 201(a), June 30, 1961, 75 Stat. 140; Pub. L. 89–97, title I, § 111(c)(4), title III, § 321(a), July 30, 1965, 79 Stat. 342, 394; Pub. L. 90–248, title I, § 109(a)(1), (b)(1), Jan. 2, 1968, 81 Stat. 835, 836; Pub. L. 92–336, title II, § 204 (a)(1), (b)(1), July 1, 1972, 86 Stat. 420, 421; Pub. L. 92–603, title I, § 135(a)(1), (b)(1), Oct. 30, 1972, 86 Stat. 1362, 1363; Pub. L. 93–233, § 6(b)(1), Dec. 31, 1973, 87 Stat. 955; Pub. L. 94–455, title XIX, § 1901(a)(154), Oct. 4, 1976, 90 Stat. 1789; Pub. L. 95–216, title I, § 101(a)(3), (b)(3), title III, § 317(b)(1), Dec. 20, 1977, 91 Stat. 1511, 1512, 1539; Pub. L. 98–21, title I, § 124(a), (b), Apr. 20, 1983, 97 Stat. 89; Pub. L. 101–508, title XI, § 11801(a)(36), (c)(16), Nov. 5, 1990, 104 Stat. 1388–521, 1388–527; Pub. L. 108–203, title IV, § 415, Mar. 2, 2004, 118 Stat. 530; Pub. L. 111–148, title IX, § 9015(b)(1), title X, § 10906(b), Mar. 23, 2010, 124 Stat. 871, 1020; Pub. L. 111–152, title I, § 1402(b)(1)(B), Mar. 30, 2010, 124 Stat. 1063.)

AMENDMENT OF SUBSECTION (b)

Pub. L. 111–152, title I, § 1402(b)(1)(B), (3), Mar. 30, 2010, 124 Stat. 1063, provided that, applicable with respect to remuneration received, and taxable years beginning after, Dec. 31, 2012, subsection (b)(2) of this section, as added and amended by sections 9015 and 10906 of Pub. L. 111–148, is amended:

(1) in subparagraph (A), by striking ''and'' at the end of clause (i), redesignating clause (ii) as (iii), and adding after clause (i) the following new clause:

''(ii) in the case of a married taxpayer (as defined in section 7703) filing a separate return, ½ of the dollar amount determined under clause (i), and''; and

(2) in subparagraph (B), by striking ''under clauses (i) and (ii)'' and inserting ''under clause (i), (ii), or (iii) (whichever is applicable)''.

Pub. L. 111–148, title X, § 10906(b), (c), Mar. 23, 2010, 124 Stat. 1020, provided that, applicable with respect to remuneration received, and taxable years beginning, after Dec. 31, 2012, subsection (b)(2)(A) of this section, as added by section 9015(b)(1) of Pub. L. 111–148, is amended by striking ''0.5 percent'' and inserting ''0.9 percent''.

Pub. L. 111–148, title IX, § 9015(b)(1), (c), Mar. 23, 2010, 124 Stat. 871, 872, provided that, applicable with respect to remuneration received, and taxable years beginning, after Dec. 31, 2012, subsection (b) of this section is amended by inserting ''(1) In general'' before ''In addition'' and adding at the end a paragraph (2), to read as follows:

(2) Additional tax

(A) In general

In addition to the tax imposed by paragraph (1) and the preceding subsection, there is hereby imposed on every taxpayer (other than a corporation, estate, or trust) for each taxable year beginning after December 31, 2012, a tax equal to 0.5 percent of the self-employment income for such taxable year which is in excess of—

(i) in the case of a joint return, $250,000, and

(ii) in any other case, $200,000.

(B) Coordination with FICA

The amounts under clauses (i) and (ii) of subparagraph (A) shall be reduced (but not below zero) by the amount of wages taken into account in determining the tax imposed under section 3121(b)(2) with respect to the taxpayer.